

INTERNATIONAL COURT OF JUSTICE

TERRITORIAL DISPUTE

(LIBYAN ARAB JAMAHIRIYA/CHAD)

REPLY

SUBMITTED BY THE

GREAT SOCIALIST PEOPLE'S

LIBYAN ARAB JAMAHIRIYA

VOLUME 1

14 SEPTEMBER 1992

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

IN THE NAME OF GOD

THE MERCIFUL, THE BENEVOLENT

TABLE OF CONTENTS

	<u>Page</u>
PART I INTRODUCTION	1
CHAPTER I. THE ESSENTIALS OF THE LIBYAN CASE AND THE DISTORTIONS OF THAT CASE IN CHAD'S COUNTER-MEMORIAL.....	1
SECTION 1. The Essentials of the Libyan Case	1
SECTION 2. The Distortions of Libya's Case in Chad's Counter-Memorial	6
CHAPTER II. THE ISSUES THAT CONTINUE TO DIVIDE THE PARTIES.....	12
CHAPTER III. THE TASK OF THE COURT	14
SECTION 1. Interpretation of the <u>Compromis</u> : Ordinary Meaning, Context and <u>Travaux Préparatoires</u>	16
(a) The Ordinary Meaning of the <u>Accord-Cadre</u>	17
(b) The "Context" of the <u>Accord-Cadre</u> and the Importance of the Positions Adopted by the Parties in their Written Pleadings	19
(c) Factors Establishing Chad's Recognition of the Court's <u>Compétence</u> to Examine the Merits of Libya's Claim	21
(d) The Lack of Purpose of Embarking on an "Historical" Interpretation of the <u>Accord-Cadre</u>	26
SECTION 2. The Nature of the Dispute and the Task of the Court	28
(a) The Alleged "Political Nature" of the Dispute as Presented by Libya.....	28
(b) The Nature of the Dispute: "Territorial" or "Boundary"?	29
(c) The <u>Compétence Ratione Materiae</u> of the Court.....	30
(d) The Extent of the Court's Powers.....	30
(e) The Applicable Law	31
(f) The Order of Questions Submitted to the Court.....	32

PART II	THE ISSUE OF THE TREATY BASIS OF THE BOUNDARY	35
CHAPTER IV.	THE DIFFERING POSITIONS OF THE PARTIES CONCERNING THE EXISTENCE OF A CONVENTIONAL BOUNDARY	35
SECTION 1.	The Two Positions Compared	35
SECTION 2.	Deceptive Points of Agreement and Disagreement Concerning the 1955 Treaty	36
SECTION 3.	U.N. General Assembly Resolution 392 (V) of 15 December 1950	38
CHAPTER V.	THE MEANING OF ARTICLE 3 OF THE 1955 TREATY	46
SECTION 1.	Introduction	46
SECTION 2.	The Treaty's Object and Purpose	49
SECTION 3.	Ordinary Meaning of the Terms of Article 3	51
SECTION 4.	Context of Article 3	66
	(a) The 1956 Agreement	66
	(b) The 1955 Convention	67
	(c) Other Elements Within the Context of the 1955 Treaty	71
	(i) U.N. Maps	72
	(ii) Libyan Petroleum Regulation No. 1 and Map No. 1 of 14 August 1955	72
	(iii) Statement of Prime Minister Ben Halim on 14 October 1955	74
	(iv) Failure to Register the 1955 Treaty Under Article 102 of the U.N. Charter	75
	(v) The 1955 Treaty's 20-Year Term	77
	(d) 1966 Libya-Chad Accord	77
SECTION 5.	<u>Travaux Préparatoires</u>	79
	(a) Preliminary Comments	79

	(b)	The <u>CC-M's</u> Incorrect and Inadequate Treatment of the <u>Travaux</u>	81
	(c)	Additional <u>Travaux</u> from the French Diplomatic Archives	90
CHAPTER VI.		THE BOUNDARY STATUS QUO ON THE CRITICAL DATE AS RECOGNISED IN ACCORDANCE WITH THE CRITERIA OF ARTICLE 3 OF THE 1955 TREATY	92
SECTION 1.		Introduction.....	92
SECTION 2.		1899 Declaration.....	95
SECTION 3.		The 1900-1902 Accords	105
SECTION 4.		1902 Anglo-Italian Accord	117
SECTION 5.		Treaty of Ouchy (1912); 1912 Franco-Italian Agreement	120
	(a)	Introduction	120
	(b)	The Role of the 1912 Treaty of Ouchy in the Settlement of the Present Dispute	122
	(c)	1912 Franco-Italian Agreement (Tittoni-Poincaré).....	125
	(i)	Ordinary Meaning	125
	(ii)	Object and Purpose - Context	127
	(iii)	<u>Travaux Préparatoires</u>	131
	(iv)	Subsequent Conduct	134
	(A)	Conduct of France and Italy: Officially Published Maps	136
	(B)	Impending Negotiations (1912-1914): Between France and the Ottoman Empire and, then, France and Italy.....	140
	(C)	Franco-Italian Delimitation Negotiations.....	142
	(D)	The 1928 Attempt of the French Government to Obtain Italian Recognition of the 1899 Declaration (as modified in 1919) and of the 1900-1902 Accords.....	144
SECTION 6.		1915 Secret Treaty of London	145

SECTION 7.	1919 Anglo-French Convention (8 September).....	146
	(a) Ordinary Meaning of the Text in its Context and in the Light of the Object and Purpose	146
	(i) Text and Context	147
	(ii) Object and Purpose.....	149
	(b) Non-opposability of the 1919 Convention to Italy.....	151
	(c) The 1919 Line in the Light of Article 3 of the 1955 Treaty	153
	(d) The Unaccounted For Segment of the Conventional Boundary Claimed by Chad: West of the Tropic of Cancer (and 16°E) to the Border with Niger	156
SECTION 8.	1919 Franco-Italian Accord (12 September).....	160
	(a) The 1919 Franco-Italian Accord Fixed the Western Boundary of Libya Between Ghadamès and Toummo for the First Time.....	161
	(b) The Accord's Relationship to Article 13 of the 1915 Treaty of London	163
	(c) Libya's Right to Invoke France's Unpaid Debt in respect to Libya's Southern Boundary.....	164
SECTION 9.	1924 Anglo-French Protocol and Declaration	164
SECTION 10.	Period of Italian Protests, Anglo-French Replies and Franco-Italian Proposals and Negotiations: 1919-1935	169
	(a) Introduction	169
	(b) The Diametrically Opposed Views of the British and French Governments Over the Meaning and Effect of the 1919 Convention.....	172
	(c) The Contention that Italy Had No Right to Protest the 1919 Convention.....	176
	(d) The "Mock War" Between the Italian Ministry of Foreign Affairs and Ministry of Colonies.....	177
	(e) 1930 Italian School Map Atlas Incident.....	179

	(f)	The Consistency of Italian Conduct in Protesting and Rejecting the 1919 Convention and in Protesting French Military Incursions North of a Strict Southeast Line.....	181
	(g)	French Conduct During the Period Revealing the French Government's Awareness that there Was No Conventional Libyan Boundary East of Toummo	182
SECTION 11.		The 1935 Franco-Italian Settlement.....	183
	(a)	Introduction.....	183
	(b)	Recognition of the Absence of Any Conventional Boundary.....	184
	(c)	Recognition of Italy's Title to the Territories to the North of the 1935 Line.....	188
	(d)	The Influence on the Settlement of the Present Dispute of France's Obligations to Italy under Article 13 of the 1915 Treaty of London.....	188
	(e)	Conclusion.....	190
SECTION 12.		Post-1935 Agreements and Events	191
	(a)	1941 Italian Armistice Commission.....	192
	(b)	1947 Italian Peace Treaty	196
	(i)	The 1947 Treaty and Article 13 of the 1915 Treaty of London.....	196
	(ii)	French proposals to modify Libya's Alleged Boundaries under Article 23 and Annex XI of the 1947 Treaty.....	196
	(iii)	France's Failure to Notify Certain Agreements under Article 44 of the 1947 Treaty	198
	(c)	1949 Four Power Commission Report.....	198
	(d)	Article 4 of the 1951 Constitution of the United Kingdom of Libya.....	200

PART III	TITLE TO THE BORDERLANDS INDEPENDENTLY OF TREATIES	203
CHAPTER VII.	TITLE TO THE TERRITORY PRIOR TO THE ARRIVAL OF THE FRENCH.....	203
SECTION 1.	The Borderlands Were Not <u>Terra Nullius</u> at the End of the 19th Century	203
SECTION 2.	The Relevance of the Western Sahara Case	204
	(a) Did the Court Intend to State a Principle of General Application?	204
	(b) Is the Court's Opinion Consistent with Chad's Argument that State Practice and Doctrine in the Relevant Period (1899-1914) show that the Borderlands Were Properly Regarded by France as <u>Terra Nullius</u> ?	207
SECTION 3.	The Links Between the Tribes such as the Toubou and the Awlad Sulaiman and the Senoussi	216
SECTION 4.	The Identity of the Indigenous Inhabitants of the Borderlands with Libya.....	219
SECTION 5.	The Basis of the Early Claims by the Ottoman Empire.....	220
SECTION 6.	The Nature of "Shared Sovereignty" in this Region	223
SECTION 7.	The Effect of the Treaty of Ouchy	225
CHAPTER VIII.	THE FRENCH CLAIMS OF TITLE.....	227
SECTION 1.	Chad's Misuse of the Notion of "Inter-temporal" Law	227
SECTION 2.	The Nature and Extent of French Occupation (<u>Effectivités</u>) of the Borderlands.....	228
SECTION 3.	The Invalidity of Acquisition of Title to Territory by Conquest Post-1919	232
PART IV	CONSISTENCY OF CONDUCT AND THE ISSUE OF ACQUIESCENCE	237
CHAPTER IX.	CONDUCT OF THE OTTOMAN EMPIRE, THE SENOUSSE, FRANCE, BRITAIN, AND ITALY PRE-1945.....	237
SECTION 1.	Introduction.....	237
SECTION 2.	Ottoman Conduct.....	241
SECTION 3.	Senoussi Conduct.....	243

SECTION 4.	British Conduct	245
SECTION 5.	French Conduct	250
SECTION 6.	Italian Conduct.....	252
CHAPTER X.	SUBSEQUENT CONDUCT OF INTERESTED PARTIES UNTIL 1951.....	256
SECTION 1.	French Conduct in Fezzan and the Libya/Chad Borderlands	257
SECTION 2.	Senoussi Conduct During World War II.....	257
SECTION 3.	Treaty of Peace with Italy and Four Power Discussions on Libya	258
SECTION 4.	United Nations Consideration of Libya's Boundaries	260
CHAPTER XI	CONDUCT OF LIBYA AND CHAD POST-1951.....	266
SECTION 1.	Introduction.....	266
SECTION 2.	Conduct of Libya and Chad in the Context of Their Mutual Relations.....	267
SECTION 3.	The Positions Taken by Libya and Chad Before the O.A.U.	277
SECTION 4.	Behaviour of Libya and Chad Before the U.N.....	280
SECTION 5.	Conclusions.....	285
SUBMISSIONS		293

VOLUME 2 Supplementary Annexes

VOLUME 3 Exhibits

Part A Exhibits LR 1-6
Part B Exhibits LR 7-15

MAP INDEX

<u>Map Number</u>	<u>Appearing at Para.</u>
LR 1	1.29
	Comparison between:
	Libya's claim
	1911 Vilayet of Tripoli proposal
	1929 Italian claim
LR 2	4.25
	Comparison between:
	U.N. Map No. 241
	1955 Libya Petroleum Regulation
	Map No. 1
LR 3	5.21
	Territorial coverage of the.....
	1955 Treaty
LR 4	5.26
	Libya-Algeria boundary rectification, 1956.....
LR 5	5.49
	Various boundary scenarios
	between Point 1010 and Toummo
LR 6A	5.53
	The 1955 Convention
	"Régime frontalier"
LR 6B	5.72
	The 1966 Libya-Chad Accord
	"Régime frontalier"
LR 7	5.55
	Mourie Idie - Piste No.5.....
LR 8	5.58
	Comparison between:
	Libyan National Atlas, 1978
	1955 Libya Petroleum Regulation
	Map No. 1
LR 9	6.15
	Negotiations preceding the.....
	1899 Anglo-French Declaration
LR 10A	6.18
	French Army Map: 1896.....
LR 10B	6.18
	Justus Perthes Map: 1892
LR 11	6.46
	Geographical setting of the
	1900 Franco-Italian Accord
LR 12A	6.54
	"Extract" of the <u>Livre jaune</u>
	map appearing at <u>CM</u> , page 162
LR 12B	6.54
	Reproduction of the <u>Livre</u>
	<u>jaune</u> map (fold-out)

LR 13	Justus Perthes map, 1892, showing: 6.55 Tripolitanian notional boundary..... 6.160 Strict southeast line, Article 3, 1899 Declaration	
LR 14	Pre-1919 gap between the 6.100 1910 Franco-Ottoman Treaty boundary and the 1899 Anglo-French Declaration east-southeast line	
LR 15A	Map annexed to A.E.F. <u>Annuaire</u> 6.110 of 1912	
LR 15A-1	Same (with explanatory <u>Supp. Annex No. 2</u> legend) <u>Para. 8</u>	
LR 15B	1912 French Ministry of Colonies map..... 6.110	
LR 16 A-1	1906 Italian Ministry of Foreign 6.112 Affairs map	
LR 16 A-2	Detail of 1906 map..... 6.112	
LR 16B	1912 Italian Ministry of Foreign 6.112 Affairs map	
LR 16C	1917 Italian Ministry of Colonies map..... 6.112	
LR 16D	1941 Italian Ministry of Foreign 6.118 Affairs map	
LR 16E	1930 Italian school atlas map 6.202 <u>Supp. Annex No. 5.10</u>	
LR 17	Ottoman occupation of the Libya-Chad..... 6.121 borderlands: 1908-1913	
LR 18	Comparison between: 6.121 1890 Ottoman claim 1911 Recommendation of the Vilayet by Tripoli	
LR 19	The Anglo-French Convention of 6.135 8 September 1919	
LR 20A	Territory encompassed by a strict southeast..... 6.141 line and 1919 Anglo-French line	
LR 20B	Territory encompassed by a strict southeast line and the <u>Livre jaune</u> line 6.141	
LR 20C	Territory encompassed by the <u>Livre jaune</u> 6.141 line and the 1919 Anglo-French line	
LR 21	Reproduction of the <u>Livre jaune</u> map 6.151 (reduced)	

LR 13	Justus Perthes map, 1892, showing..... Tripolitanian notional boundary Strict southeast line, Article 3, 1899 Declaration	6.160
LR 22	Comparison: French Military Presence:..... 1914, 1917-1929;..... Strict southeast line; 1919 Anglo-French Convention line	6.190 8.05
LR 23	<i>French military battles in the Libya-Chad</i> borderlands: 1914-1927	6.190
LR 24	Sarra Triangle.....	6.193
LR 25	Franco-Italian negotiations following the 1919 Declaration	6.197
LR 16E	1930 Italian school atlas map	6.202
LR 26	Frontiers of Libya: 1948 boundary proposals of Egypt and France	6.251
LR 27A	French Boundary Proposal: 1953	6.251
LR 27B	French Boundary Proposal: 1954	6.251
LR 27C	French Boundary Proposal: 1955	6.251
LR 28 (LR 22)	Progression de l'Occupation Francaise - 1900-1914 (<u>C-CM</u> , p. 254): contrasted with the facts and the true picture (LR 22)	8.05
LR 29	Ottoman Presence in the Libya-Chad Borderlands..... 1908-1912	9.12
LR 30	"Zone à Surveiller"..... implemented by the French military: 1930	9.32
LR 31	U.N. Map No. 241.....	10.15
LR 32	Libya's Claim	Before Submissions
LR 33	1987 O.A.U. Map.....	Supp. Annex No. 2; para. 6
LR 34	Map No. 41 from Chad's Map Atlas	Supp. Annex No. 2; para. 15
LR 35	Map No. 43 from Chad's Map Atlas	Supp. Annex No. 2; para. 15
LR 36	Comparison: Maps Nos. 33, 68 and 98 from..... Chad's Map Atlas	Supp. Annex No. 2; para. 23
LR 37	World Bank Map 1960.....	Supp. Annex No. 2; para. 32

LR 38	World Bank Map 1960.....	Supp. Annex No. 2; para. 32
LR 39	Oil Company Map	Supp. Annex No. 2; para. 32
LR 40	Oil Company Map	Supp. Annex No. 2; para. 32
LR 41	Oil Company Map	Supp. Annex No. 2; para. 32
LR 42	1926 Italian Map with strict southeast line	Supp. Annex No. 5.5
LR 43	The General Setting	Supp. Annex No. 7
LR 44	Map with French boundary proposals	Supp. Annex No. 6.3(1) of 1946, 1953

PART I
INTRODUCTION

1.01 This Reply is filed by Libya in accordance with the Court's Order of 14 April 1992 fixing 14 September 1992 as the time-limit for the submission of Replies by the Parties¹. Libya's Reply is submitted in four volumes: Volume 1 - the text of the Reply (Parts I-IV) and Libya's Submissions; Volume 2 - Supplementary Annexes; Volume 3, Parts A and B - Exhibits.

**CHAPTER I. THE ESSENTIALS OF THE LIBYAN CASE AND THE
DISTORTIONS OF THAT CASE IN CHAD'S COUNTER-
MEMORIAL**

SECTION 1. The Essentials of the Libyan Case

1.02 The proposition which is fundamental to Libya's case is that there is not, and never has been, an established conventional boundary in the borderlands between Libya and Chad. It follows from this that the Court is required by the Accord-Cadre to resolve the "territorial dispute" referred to the Court as, in the first place, an issue of title to the territory. It is a classic illustration of the "attribution" of territory between two rival claimants on the basis of which claimant establishes the better claim of title. The determination of a precise line of delimitation, dividing the areas over which the two Parties have the better claim, is essentially a second phase of the judicial task. But neither the task of "attribution" nor that of "delimitation" is outside the proper scope of the judicial function.

1.03 It is equally fundamental to Libya's case that it does not invoke any "new" legal theories or principles, but relies on principles and criteria - whether relating to attribution or to delimitation - which are well-established in the law. Thus, there is nothing novel in Libya's reliance on pre-existing legal titles to the territory. Insofar as Libya is the successor-in-title, such reliance is entirely normal. There is nothing novel or extraordinary in Libya's detailed and rigorous

1 Terms such as "Libya" and "Chad" as defined in Libya's Memorial will continue to be used in the same sense in the present pleading. References to the Memorial and Counter-Memorial of Libya and of Chad will often be made by the use of the acronyms LM, LC-M, CM and CC-M, respectively. Abbreviated references will often be made to international agreements and lines produced by them. For example, the "1935 line" refers to the boundary agreed between Italy and France in the 1935 Treaty of Rome (the "1935 Treaty"), ratifications of which were not exchanged. See, Supplementary Annex, No.1, hereto, for an explanation of other similar abbreviated references.

analysis of the complex treaty history affecting Libyan territory, for only by such means can the fallacies of the Chadian thesis be exposed. And, insofar as Libya demonstrates that the borderlands were not terra nullius when invaded by French military forces, that demonstration is based upon the Court's own Opinion in the Western Sahara Case², and involves only such deductions from the principles of that case as are logically inherent in the Opinion.

1.04 Nothing in Libya's case invites States generally, whether in Africa or elsewhere, to challenge established boundaries. By the accidents of history, Libya has been left with an undefined, undelimited boundary which requires determination by judicial means. The Court has assumed such a task in other cases - in the Burkina Faso/Mali Case³, and more recently in the El Salvador/Honduras Case⁴, for example - and it is unacceptable to treat an application to this Court to determine an unresolved boundary as if it were an invitation to world-wide anarchy.

1.05 Libya has succeeded to certain established boundaries in the west and the east and, whilst the circumstances leading to their establishment may be a matter of regret, Libya fully accepts that, to the extent these boundaries have been established, they must be respected. But Libya's "boundary" in the south is a very different matter. There is no doubt that, as a matter of indisputable historical record, the borderlands were held and inhabited by tribes closely linked to what is now Libya, were claimed by the Ottoman Empire, but were gradually and systematically invaded by the French. That invasion was strenuously resisted by the indigenous peoples, organised and led by the Senoussi. Ultimately, however, that resistance was ruthlessly suppressed by France in a campaign of undisguised, colonial expansion.

1.06 Certainly it is true that France sought international recognition for its expansionist aims. By a series of agreements with Great Britain and Italy, as will presently be shown, France sought agreement as to the precise limits of the territory it intended to acquire by conquest. The agreement sought was from States also engaged in colonial conquest and expansion. But in fact,

2 Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12.

3 Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 554.

4 Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Arbitral Award of 31 July 1989, Provisional Measures, Order of 2 March 1990, I.C.J. Reports 1990, p. 64.

that agreement was never reached between France and other States capable of agreeing on a boundary in the borderlands. Italy alone had that capacity after the 1912 Treaty of Ouchy, holding sovereignty between 1912 and 1947, but its 1935 treaty with France was never implemented.

1.07 Libya thus faces a claim by Chad in which Chad essentially relies on French claims based upon military conquest of the tribal peoples of the borderlands, and, moreover, conquest at a time when France had solemnly renounced the right to acquire territory by conquest.

1.08 Not surprisingly, Chad is reticent about placing its claim on so defective, and unattractive, a basis. Thus, Chad presents before the Court a somewhat abstract claim of title, as deriving from this series of international agreements in which France attempted to secure recognition of its expansionist aims. The treaty history is somewhat complex but it can be summarised as follows.

1.09 For practical purposes, one can begin with the year 1890 when the Ottoman Empire first articulated its Tripolitanian hinterland claim, which was neither accepted, nor specifically rejected, by Britain and France. The Anglo-French Additional Declaration of 1899 is the next big "international act". At that time, French military forces had not yet reached Lake Chad. There was *no British civil or military presence in territories immediately to the north or east of the famous southeast line described in Article 3 of the Declaration*. From the British point of view, the Declaration did not truly divide "spheres of influence" between Britain and France and did not affect the territorial claims or prospective claims of other Powers. It merely posited a line to the north and east of which France would not seek to extend its pretensions. This was the explanation given at the time, or shortly thereafter, to the Ottoman and Italian representatives.

1.10 The Franco-Italian Accords of 1900 and 1902 were not concerned at all with the southeast line described in Article 3 of the Declaration. They were primarily directed towards reassuring Italy (as the European Power hoping to succeed in due course to the rights and titles of the Ottoman Empire in and in relation to Tripolitania) that France's territorial ambitions in North Africa, where it was at the time in possession of Tunisia and Algeria, did not extend to an

encroachment from the west on the territory of Tripolitania as it was then generally understood to be.

1.11 The Anglo-French Convention of 8 September 1919 is not directly relevant to the determination of Libya's southern boundary east of Toummo. That Convention may have established, as between Britain and France, and subject to further delimitation in the area between 11° and 15°N, a north-south boundary dividing what the parties considered to be French or British territories on its east and west up to a point at 19°30'N latitude. But that point was not opposable to Italy which protested strongly against the 1919 Convention on the grounds that its purported effect was to deprive Italy of territories to which it was legally entitled on the grounds of Italy's succession to Ottoman rights and titles. The prolonged negotiations between France and Italy between 1920 and 1934 testify to the absence of any agreed southern boundary of Libya at that time.

1.12 The Treaty of Rome of 1935 for the first time established such an agreed boundary, but, for reasons unconnected with that boundary, it failed to enter into force.

1.13 U.N. General Assembly Resolution 392(V) acknowledged that there was a portion of Libya's boundaries with French territories which had not been delimited by previous international agreements; the circumstances surrounding the adoption of that Resolution clearly demonstrate that that portion was Libya's southern boundary with French territories east of Toummo. Article 3 of the Franco-Libyan Treaty of 1955 did not, directly or indirectly, establish Libya's southern boundary with French territories east of Toummo for reasons made abundantly clear in Libya's previous written pleadings. These reasons will again be set out in Part II of this Reply.

1.14 These are the bare bones of Libya's contention that there is not now, and never has been, any conventional boundary separating the territories of Libya and Chad. This contention is amply sustained and evidenced by the voluminous materials which Libya has presented to the Court, including materials that demonstrate that France itself recognised in 1935, in a most formal fashion, the absence of any conventional boundary with Italy (then exercising sovereignty over Libya) east of Toummo.

1.15 As France has never acquired title on the basis of treaty law, other modes of acquisition of title necessarily must come into play. In the view of Chad, France has indeed established a title on the basis of conquest and occupation. Turning, first, to occupation, these French and Chadian arguments must be wrong because they assume that the borderlands were terra nullius. However, they were not, as the Western Sahara Opinion of the Court clearly shows. For the Senoussi peoples were organised in a political, military, economic and cultural manner which, according to this Opinion, excludes acquisition of title on the basis of occupation. Presumably aware of this situation, Chad additionally seems to rely on title by conquest. However, by the time French forces moved in any strength into the borderlands, conquest had become illegal on the basis of the Covenant of the League of Nations in 1919 and the Kellogg-Briand Pact in 1928. Moreover, military occupation in itself will not satisfy the requirements for acquisition of title, and this is conceded explicitly by Chad. And France never established a civilian organisation in the borderlands. In consequence, the modes of acquisition discussed and claimed by Chad will not lead to a title to which Chad could succeed.

1.16 Thus, in the absence of a conventional boundary, and of any title based on occupation or conquest, the Court will be forced to rely on other rules to govern both attribution and delimitation. These are the accepted rules of attribution of territory which serve to delimit the territories of sovereign States. It is regrettable that Chad, in all her pleadings, has entirely failed to assist the Court in the task of identifying and applying these rules. It has rested with Libya in its Counter-Memorial to spell out these rules of attribution, to apply them to the facts of the case and to indicate the frontier which results.

1.17 It is necessary to approach this task in an historical manner, as Courts have done in previous cases, establishing step-by-step the evolution of the factual and legal situation in the borderlands. And the central lesson of history relevant to this case shows that the Senoussi Order had established itself in the region by 1890 and had governed the territory comprising the borderlands under a system of power-sharing with the Ottomans until the end of 1912. The Senoussi peoples defended their territory against the French colonialist forces all along, and they continued to do so in spite of the French military advance into the borderlands after 1913. And when Libya gained independence in 1951, Libya inherited the borderland territory which the Senoussi peoples, together with the Ottoman Empire and Italy, held from the mid-19th Century to 1947-1951. Thus,

the Libyan case rests on the recognition that the indigenous peoples, organised and led by the Senoussi, who had fought the colonial Powers for decades, had held title and never lost it. It was the legal rights of the indigenous peoples, coupled with the assertion of sovereignty on the international plane by the Ottoman Empire and Italy successively, and the specific rights which Italy had as against France, which Libya acquired in 1951 upon independence.

1.18 After 1951, this legal situation never changed even though Libya was not in a position to assert her territorial rights by military means. Nor did Libya acquiesce, at any point after 1951, in claims by France or Chad which were incompatible with the territorial rights inherited by Libya. The internal strife within Chad after independence in 1961 precluded any settlement of the boundary issue until, in 1989, the Parties agreed to submit their dispute to the Court.

1.19 The Court has, in Libya's submission, the necessary facts and evidence to determine both title and a precise boundary. On the basis of the maps and documentary evidence provided in the Libyan pleadings, it is possible to identify the limits of Ottoman occupation as well as of legally effective French penetration prior to the Covenant of the League outlawing further acquisition of territory. And the location of tribes, their affiliations and links, whether cultural, religious or economic, together with the geography of the terrain, are all matters sufficiently within the knowledge of the Court to permit a boundary to be drawn which will conform to the law and to equity.

1.20 This, then, is the essence of Libya's case. It is immediately apparent that the portrayal of Libya's case in Chad's Counter-Memorial defies recognition. In the Section that follows the major distortions of Libya's case are identified.

SECTION 2. The Distortions of Libya's Case in Chad's Counter-Memorial

1.21 At a stage in the written pleadings when the Parties are expected to identify the essential issues that divide them, so as to assist the Court, it is to be regretted that Chad has sought to distort and misrepresent Libya's arguments. Whether done by way of a series of wild accusations against Libya, or by way of a re-formulation of Libya's arguments so that they become a travesty of what Libya has actually said, the result is the same: the issues before the Court -

which need to be clarified and identified - become increasingly blurred and obscured by rhetoric.

1.22 Thus Libya is accused of seeking to promote anarchy. Why else should Chad's Counter-Memorial begin by comparisons with Iraq's invasion of Kuwait, and with the confused situation in Yugoslavia and the Soviet Union⁵? What other purpose is served by the repeated accusation that the Libyan claims will have a politically-destabilising effect in Africa as a whole⁶? How can the continued accusation that Libya does not respect its treaty obligations assist⁷?

1.23 It is a fact of international life that boundary disputes and unsettled frontiers do exist, not only in Africa but elsewhere in the world. Whatever the causes may be, they are not of Libya's creation, and it is little short of absurd to cite this fact of international life as "proof" of Libya's intention to promote international anarchy. Indeed, given that Libya has voluntarily submitted this dispute for settlement by the International Court, it is an extraordinary concept of anarchy that would view such a submission of a dispute, for settlement by law, as promoting "anarchy".

1.24 There is a portrayal of Libya as "revisionist", as a State seeking to revise the existing boundary and promote the "secession" of northern Chad⁸. But, clearly, this merely begs the question. Chad simply assumes that the frontier is fixed by treaty, and thus characterises Libya's aim as seeking to revise the relevant treaties. Yet this is not Libya's argument. It should be apparent to even the most casual reader of Libya's Memorial that Libya denies that this frontier has ever been established by treaty. And, far from being a novel thesis, surprising Chad, it is a thesis which emerges with absolute clarity from the diplomatic record. The Ottoman Empire protested the Anglo-French

5 See, CC-M, para. 1.01.

6 See, CC-M, paras. 1.08 and 12.20.

7 See, CC-M, paras. 3.23-3.25, where Chad suggests that Libya seeks to invalidate the boundary treaties of 1899, 1919 and 1955 retroactively by invoking ius cogens. This is a travesty of Libya's argument. Libya's argument does not go to the validity of those treaties; its point is simply that those treaties did not establish a boundary opposable to Libya.

8 See, especially, CC-M, paras. 4.20-4.21 and the comparison with Ruanda-Urundi. See, also, CC-M, paras. 12.08, 12.16 and 12.19.

pretensions over what the Porte regarded as its hinterland from the 1890's⁹, and specifically rejected any claim that the line established in the 1899 Anglo-French Declaration was a boundary¹⁰. Italy, in turn, rejected the 1919 Anglo-French Convention line as a boundary¹¹, and claimed territory roughly equal in overall extent to the present Libyan claim. Thus, if there is any "novelty" about the present Libyan claim it can only be so regarded by someone who has totally ignored the whole diplomatic record. So either the claim of "novelty" betrays a quite exceptional degree of incompetence, or it is in fact a quite specious claim.

1.25 In much the same vein Libya is portrayed as "expansionist", as a State with "un appétit territorial féroce"¹². But the historical record shows unmistakably who the expansionist Power was: it was, without question, France, and in effect Chad now seeks to derive full benefit from the voracious appetite of that Colonial Power. So far as Libya is concerned, the territory it claims is Libyan, and Libya has at no stage transgressed an established international frontier or occupied "foreign" territory. The Tombalbaye letter of 1972¹³ recognised the so-called "Aouzou Strip" as being Libyan territory - and hence the lack of protest by Chad when Libya established its administration there shortly thereafter. Even the later involvement of Libyan forces in the internal conflict in Chad was at the specific request of the Government of Chad¹⁴.

1.26 An accusation of a different kind, but nevertheless untrue, is that Libya belittles Chad, portraying it as an artificial creation by a Colonial Power¹⁵. Libya in its Memorial had merely cited a respected authority who had commented on the very special circumstances under which Chad achieved its independence¹⁶. That being said, it is a matter of record that, on independence,

9 See, LM, paras. 5.49-5.55.

10 See, especially, the dispatch of 19 May 1899, LM, French Archives Annex, p. 61.

11 See, LM, paras. 5.188-5.191.

12 CC-M, para. 1.03.

13 See, LC-M, paras. 5.119-5.120.

14 Libyan forces were promptly withdrawn when so requested, although Libyan governmental authority remained in the northern borderlands where it was lawfully present.

15 See, CC-M, para. 1.09.

16 See, LM, para. 5.532.

Libya welcomed Chad into membership of the United Nations, concluded treaties with Chad on a basis of full equality, and extended aid and assistance to Chad on a scale matched only by France. So it is not that Libya seeks to "belittle" Chad but rather, on a basis of sovereign equality, Libya seeks to resolve a genuine dispute over title to territory. Libya does not see itself as "dominant" in this relationship. Even accepting the present disparity in wealth, Libya is very conscious that its oil reserves will not last forever, and that the day may come when Chad - with its larger population and broader economic base - sees itself as the more "dominant"¹⁷.

1.27 There is, finally, the rather serious accusation¹⁸ that Libya argues a case based on facts rather than law, a case politically motivated and entirely "strategic" - by which it is implied that Libya makes large claims simply hoping the Court will have to give it something.

1.28 Libya makes no apology for its attempt in both its Memorial and Counter-Memorial to set out the facts, carefully and thoroughly. It will by now be evident to the Court that the facts are complex, but of the highest importance. Chad may well have an interest in glossing over the facts, for it is the facts which give the lie to so many of the propositions at the heart of Chad's case. To give but a few examples: the proposition that the 1899 line and the 1919 line are the same; the proposition that France had completed effective occupation of the entire borderlands by 1919 (or even by 1914, as the CC-M appears to contend); the proposition that the borderlands were terra nullius; the proposition that the southern boundary of Libya was clear to the United Nations in 1950-1951; the proposition that in the 1955 Treaty the Libyan side accepted that the southern frontier of Libya had been previously delimited by treaty - all these are propositions that can be shown to be false on the facts. There seems little point in engaging in lengthy, and somewhat abstract, expositions of legal principle when what is needed is a close analysis of the facts to see whether such legal principles have any relevance.

17 This is not to give credence to the suggestion by Chad (at CC-M, para. 1.36) that Libya sees itself threatened by Chad. However, the possibility that other Powers might pose a threat to Libya from Chadian territory cannot be excluded, so that Libya must remain concerned about the defensibility of its southern frontier.

18 See CC-M, paras. 1.19 and 2.06.

1.29 As to the suggestion that Libya makes a "strategic", or "opportunistic" claim, asking for much in the hope that the Court will award it just a little¹⁹, it need only be stated that the Ottoman Empire and Italy were fully prepared to negotiate with France on the basis of claims of roughly comparable territorial extent, as Map LR 1 illustrates²⁰. Neither the Ottoman Empire nor Italy contemplated claims before this or any Court. They had no "judicial strategy" of any kind. The claims they advanced were regarded as bona fide claims, based on the best available evidence, as are Libya's present claims. Chad's suggestion that these are novel, opportunistic claims concocted with the Court in mind suggests that Chad simply has not read, or else wishes to forget, the historical record.

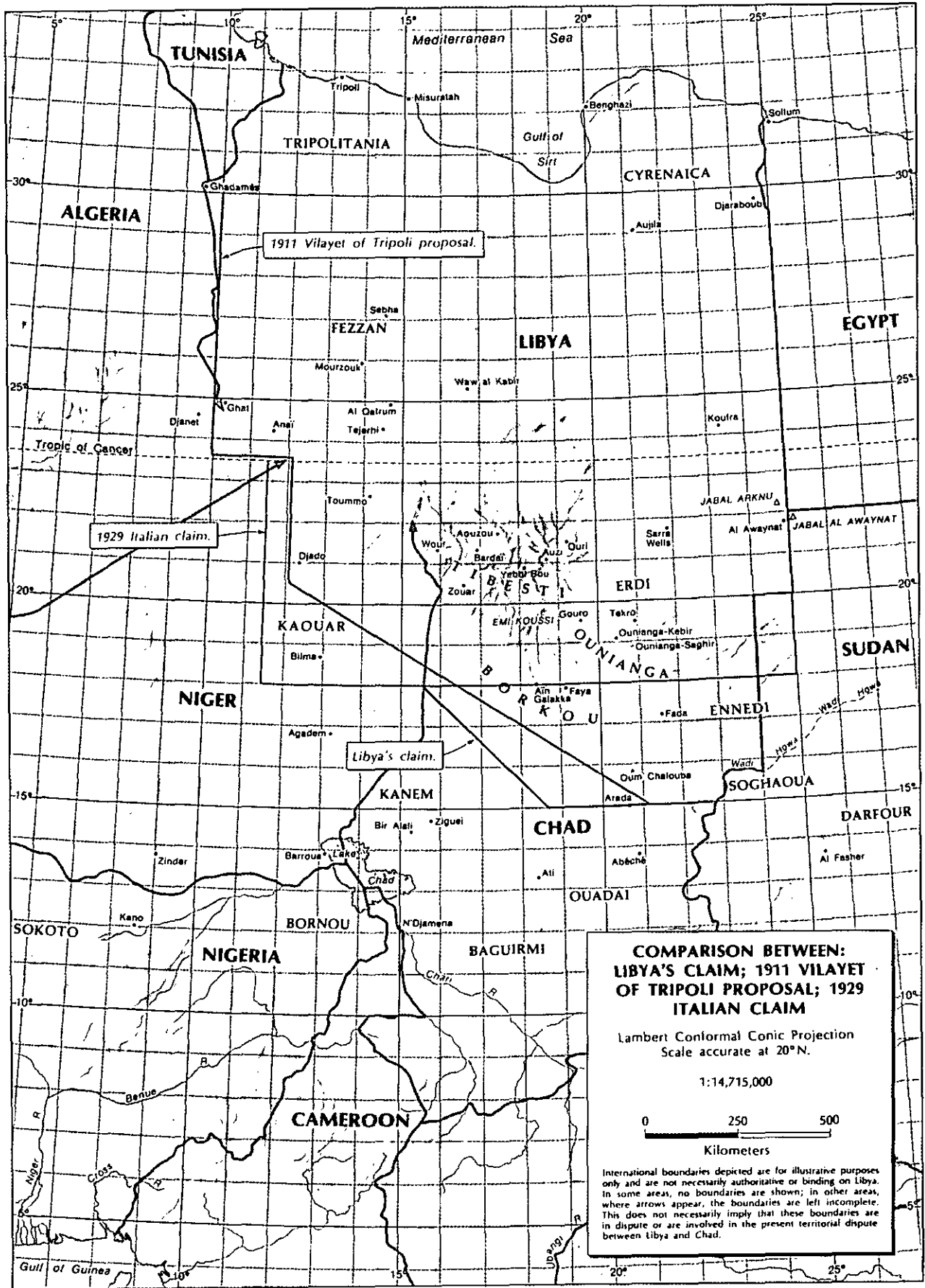
* * *

1.30 Libya would have liked to have kept this Reply down to one, relatively short, volume, but circumstances have made this impossible. First, as mentioned in paragraphs 5.99-5.102 below, Libya has only recently been granted access to certain French archives containing important documents bearing on the case. These documents are placed in evidence in Volume 3 as Exhibits to this Reply. This new evidence has, in turn, made it necessary to supplement the documents already provided from other files. Second, Chad's Counter-Memorial contains a large number of assertions that are incorrect and require rebuttal. This has made it necessary to present certain additional evidence.

1.31 In order to assist the Court in its examination of this new evidence as well as to understand why some of Chad's assertions are so totally wrong in certain instances, Libya has prepared eleven Supplementary Annexes, which comprise Volume 2. References in the text of the Reply to this documentary evidence will, in the first instance, be to Volume 2, where the

19 See, CC-M, para. 12.25.

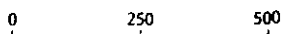
20 See, also, the maps illustrating the successive Turkish and Italian claims and proposals reproduced in the LM: Map Nos. 52/B, 54-57 and 68-73.



**COMPARISON BETWEEN:
LIBYA'S CLAIM; 1911 VILAYET
OF TRIPOLI PROPOSAL; 1929
ITALIAN CLAIM**

Lambert Conformal Conic Projection
Scale accurate at 20°N.

1:14,715,000



International boundaries depicted are for illustrative purposes only and are not necessarily authoritative or binding on Libya. In some areas, no boundaries are shown; in other areas, where arrows appear, the boundaries are left incomplete. This does not necessarily imply that these boundaries are in dispute or are involved in the present territorial dispute between Libya and Chad.

meaning and relevance of the evidence is summarized. Then, in Volume 3, the new evidence itself may be found and examined in detail.

1.32 To take an example, Supplementary Annex, No 6 is divided into 10 sub-annexes (6.1-6.10) in which particular documents or groups of documents are commented on. The evidence itself appears in Volume 3, LR Exhibit 6, under the same sub-annex numbers as in the Supplementary Annex, that is, LR Exhibits 6.1-6.10. If within a sub-annex there are several documents, the particular document being referred to is set forth in parenthesis: Supplementary Annex, No. 6.4(6) or 6.4 (Document 6).

1.33 In some cases, where documents have heretofore been placed in evidence by either Libya or Chad, the documents themselves have been appended to the Volume 2 commentary rather than placed in Volume 3, so as to make it easier to examine the evidence directly in weighing the respective merits of the differing positions of the Parties.

1.34 Finally, since there are so many assertions in Chad's pleadings with which Libya takes issue, it has not been possible to deal with each and every one of them. As a result, Libya informs the Court that its failure to address an argument or an assertion concerning a question of fact or law does not imply Libya's agreement or acceptance thereof; such arguments or assertions not addressed must be deemed to have been denied by Libya.

CHAPTER II. THE ISSUES THAT CONTINUE TO DIVIDE THE PARTIES

2.01 The Counter-Memorials of the Parties reveal only a very marginal area of agreement: this includes the propositions that, in this case, the critical date is 24 December 1951 (the date of Libya's independence); that the 1955 Treaty would be expected to be the starting-point for the Court's task, since it either did (Chad's view) or did not (Libya's view) establish the boundary; and that a valid title to territory cannot be acquired by force.

2.02 Beyond this, however, the Parties remain fundamentally at odds; and in this Reply, Libya has tried to concentrate on the essential points of difference. It may assist the Court to have these essential questions listed with references to where, in this Reply¹, these points have been addressed.

2.03 First, does the Court's compétence extend to deciding on a delimitation which involves attribution of territory, based on evidence as to which of the Parties has the better claim to title; or is it limited to delimitation in the narrow sense of deciding between the 1899-1919 "line" and the 1935 line? (Chapter III of this Reply).

2.04 Second, did the 1955 Treaty establish a boundary directly (in the sense that it identified and established a line) and was constitutive of the boundary, or indirectly (i.e., by reference to international acts which established the line) and hence was only declaratory of whatever boundary existed on the critical date? Chad argues both possibilities, whilst Libya rejects both. (Chapters IV, V and VI of this Reply).

2.05 Third, in the event that no treaty delimitation of the boundary can be established, which Party has the better claim of title? Is it:

- Chad, based on succession to France, by virtue of:
 - Occupation of the territory as terra nullius? (Chapter VII on the nature of the territory; and Chapter VIII on the evidence of French "occupation".)

1 The relevant sections of the Reply contain further references to the earlier pleadings.

boundary, in which the sole question to be answered is whether the boundary line separating Libya from Chad lies along the northern edge or along the southern edge of the so-called "Aouzou Strip". As a result, Chad contends that the Court has not been, and could not be, seized with the task of resolving a "territorial" dispute concerning the attribution of territory to one or the other Party. Libya, on the other hand, considers that the compétence of the Court is subject to no limitation of this kind.

3.05 Regarding the second theme, Chad contends that the sole task conferred on the Court is precisely to decide which of two possible boundary lines is the line binding in law: the 1899-1919 line or the 1935 line? In contrast, Libya considers (i) that nothing stands in the way of the Court deciding that no conventional boundary has ever been fixed in the region, (ii) that therefore the boundary is to be determined now for the first time by the Court itself in the light of international law, taking into consideration the respective legal titles of the Parties over the territory in dispute, and (iii) that it cannot be ruled out a priori that the ultimate boundary may not correspond to either of the lines posed by Chad as alternatives for the Court to choose between.

3.06 As to the third theme, Chad contends that the Court can discharge this task essentially by applying pertinent international treaties and, in particular, by not allowing equitable principles to play any role at all. In contrast, Libya considers that, although a number of international agreements may prove useful to the Court, none alone or in combination decides the question. Accordingly, the Accord-Cadre does not in any way limit recourse to other sources of international law; and whatever sources of law are relied on, whether conventional or otherwise, equity will have an important role to play within the jurisdictional framework of the resolution of the dispute secundum jus.

3.07 Notwithstanding the differing points of view of the Parties on these three themes, the Parties are in agreement that the reconciliation of these differences must be drawn from an interpretation of the Accord-Cadre of 31 August 1989, which without any doubt constitutes a compromis¹. Where a compromis exists it constitutes "la base même de la compétence de la Cour"², for

1 See, the Court's Order of 26 October 1990, settling this point.

2 Guyomar, G.: Commentaire du règlement de la Cour Internationale de Justice, Paris, Pedone, 1983, p. 253.

"... celle-ci est déterminée dans les affaires contentieuses par l'étendue du consentement des Parties de se soumettre à la juridiction de la Cour³". In other words, unquestionably the principle extra compromissum arbiter nihil facere potest is valid for the Court as well.

3.08 Hence, it is appropriate to begin, once again, by taking a close look at the Accord-Cadre of 1989 in order to determine the extent to which a serious lack of agreement continues to exist between the Parties, after having exchanged Memorials and Counter-Memorials, concerning the scope of the compétence granted to the Court by this compromis. This will be taken up in Section 1. This analysis will then make it possible - in Section 2 - to consider the three themes on which the Parties differ in the light of the pleadings of the Parties.

SECTION 1. Interpretation of the Compromis: Ordinary Meaning, Context and Travaux Préparatoires

3.09 As with any international agreement, the Accord-Cadre is to be interpreted in the light of the pertinent criteria and principles. The Parties have expressly agreed that these criteria and principles are those set out in Article 31, et seq., of the 1969 Vienna Convention on the Law of Treaties⁴. Both the jurisprudence and the doctrine are unanimous in the view that these articles are a codification of general international law concerning the interpretation of treaties. They are entirely appropriate for application here even though neither Libya nor Chad has ratified the Vienna Convention.

3.10 The ordinary meaning of the Accord-Cadre will be taken up first (para. (a)), analysed within the framework of its context (paras. (b) and (c)). As for the travaux préparatoires of the compromis and "the circumstances of its conclusion" (Article 32 of the Convention), these certainly must be considered, bearing in mind that their role is only that of "supplementary means of interpretation" and cannot be used to modify the clear result pointed to by the ordinary meaning of the text in its context (para. (d)).

3 Abi-Saab, G.: Les exceptions préliminaires dans la procédure de la Cour internationale, Paris, Pedone, 1967.

4 See, U.N. Doc. A/CONF. 39/27, adopted 22 May 1969; reprinted in, Int'l. Leg. Mat., Vol. VIII, 1969, p. 679, at p. 691.

(a) The Ordinary Meaning of the Accord-Cadre

3.11 In their written pleadings, the Parties have set out the elements to consider in order to discern the ordinary meaning of the compromis. To begin with, the words "territorial dispute" appear formally in this instrument's title. Then, after stating in its Preamble the intention of the Parties to "régler pacifiquement leur différend territorial", the Accord-Cadre repeats the terms "différend territorial" two more times (Article 1 and Article 2, first phrase) to indicate at what point the "différend" itself (this time without any adjective) will be submitted to the Court (Article 2(a)): in the event a "réglement politique" would not appear feasible. Further on, in (b) of the same article, the instrument refers to "la région litigieuse", without any geographical definition. Finally, the Parties undertook certain accompanying measures pending the Court's rendering of "un arrêt définitif sur le litige territorial"⁵.

3.12 There is no question that the Accord-Cadre omits most of the details identifying with any precision the dispute or what the Parties expect the Court to do. But the essential elements are there: first, that the dispute submitted to the Court is "territorial"; second, that the dispute concerns the ownership of a "région" by one or the other of the Parties; third, that the Parties request the Court to resolve this dispute definitively; and fourth, that the settlement is to be juridical not political in character.

3.13 With regard to the first element, one cannot help but be impressed by the clarity, consistency and clearly expressed purpose that emerges from this text. As just shown, the sole qualifying word used to identify the nature of the dispute is "territorial", and this word - to avoid any misunderstanding - is repeated five times. To support Chad's contention that the Accord-Cadre deals not with a territorial dispute but with a boundary dispute would require proof that the same error was made five times over in the text and even in the official title to this case: "Territorial Dispute (Libyan Arab Jamahiriya/Chad)". In short, Chad must demonstrate here that the "ordinary meaning" of the treaty's terms is to be disregarded, contrary to what is prescribed in Article 31, para. 1, of the Vienna Convention. Such a result cannot be envisaged unless supported by clear and precise evidence establishing, on the basis of an historical and contextual interpretation, that the intention of the Parties was other than that resulting from the ordinary meaning of the text.

5 Accord-Cadre, Art. 2(d).

3.14 As for the second element, the fact that the compromis talks of a "région litigieuse" fully confirms the correctness of the preceding analysis: it means that there is a territory that belongs to one or the other Party. In other words, to resolve the territorial dispute, it is evident that the Court must focus on the legal titles establishing the attribution of the "région" in question, whose geographical extent must, of course, be identified.

3.15 With regard to the third element, as reflected in the very title of the compromis, the Parties expect the Court to deal with the dispute so as to arrive at a decision definitively resolving the dispute. This implies that the Court must be seized with the case in all its aspects so as to be able to reach a solution disposing of the case. A definitive decision is clearly not possible if the Court is not considered to have the compétence to allow it to deal with all of the Parties' arguments and allegations in all their aspects. It must be stressed that the Accord-Cadre imposes no restrictions of any kind on the Court in arriving at a solution. Nowhere in the Accord-Cadre is it suggested, as Chad contends, that the Court is limited to a choice between two predetermined solutions. It follows, therefore, that the Court must be able to consider and decide with the fullest compétence how under the principles and rules of international law the dispute should be decided definitively.

3.16 Finally, the fourth element is that, without any doubt, the Court must resolve the territorial dispute secundum jus. This is clearly implied in the Accord-Cadre by the fact that the Parties agreed therein to submit their dispute for decision by the Court "à défaut d'un règlement politique". In any event, no other conclusion could be reached. Under the Statute of the Court, the Court is called on to adjudicate the cases submitted to it in conformity with international law (Article 38, para. 1), unless the parties have agreed to request the Court to decide a case ex aequo et bono (Article 38, para. 2). As the Accord-Cadre contained no mention of a ruling ex aequo et bono, neither Libya nor Chad contends that the Court could resolve the present dispute other than by applying the law.

3.17 In this regard, the Accord-Cadre makes no mention of the law to be applied. This would indicate that the Parties did not want to limit the power of the Court to consider freely the principles and rules of international law applicable to the case. In other words, the compromis lends no support to Chad's thesis that the Court should limit itself, in resolving the dispute, to international

treaties. The compromis contains no indication that the Court should only seek to find the applicable law to apply in international instruments as the sole source of law. Such treaties must, of course, be applied; but if they do not settle the question, then other sources of law have to be consulted by the Court. It must not be forgotten that the Accord-Cadre entrusted the Court with the task of definitively resolving the dispute between the Parties; the Court would betray its mission if, in the absence of a solution provided under treaty, the Court should refuse to find a legal solution relying on other sources of law.

(b) **The "Context" of the Accord-Cadre and the Importance of the Positions Adopted by the Parties in their Written Pleadings**

3.18 The need to have recourse to a "contextual" interpretation of the Accord-Cadre is stressed in the CC-M, where it is stated:

"(L)'accord-cadre de 1989 n'existe pas dans un vacuum. Il doit être compris dans son contexte historique et diplomatique⁶."

Libya fully shares this point of view: it is true that the Accord-Cadre furnishes few details concerning the task of the Court and, thus, it is indispensable to consider the instrument in the light of its context in order to verify the conclusions reached from an examination of its ordinary meaning⁷.

3.19 Libya is astonished, however, that Chad completely mixes together the "context" and the travaux préparatoires. All of Chad's arguments are aimed at arriving at the meaning of the Accord-Cadre through an analysis of the debates before the O.A.U. and the U.N. as well as from certain statements of Libya's representatives - statements that are anything but precise - made in the course of debates or of diplomatic exchanges that occurred before the Accord-Cadre was concluded.

3.20 It must be said straight off that these debates and exchanges - as will be demonstrated shortly - do not have the probative character that Chad would attribute to them. Furthermore, they have only a faint relevance to the interpretation of the Accord-Cadre. They do not concern the negotiations leading up to the Accord-Cadre, and they do not contain reliable information

6 CC-M, para. 2.82.

7 See, Vienna Convention on the Law of Treaties, *op. cit.*, Art. 31.

allowing the intention of the Parties to be established at the moment they adopted the Accord-Cadre's text.

3.21 But the essential point is that these elements relied on by Chad have absolutely nothing to do with the "context" of the Accord-Cadre. On the contrary they are part of the "circumstances of (the compromis)' conclusion" and, thus, part of the travaux préparatoires, as described in Article 32 of the Vienna Convention. They are simply a "supplementary means of interpretation" for use only to confirm the validity of the interpretation resulting from the criteria stipulated in Article 31 (the ordinary meaning of the treaty) or to determine the meaning if the plain meaning leads to an interpretation that is "ambiguous or obscure" or to a result that is "manifestly absurd or unreasonable" (Article 32).

3.22 The meaning and application of Articles 31 and 32 are so well known that this inter-mixture by Chad of elements of "context" and elements of travaux is perplexing and points up the difficulties Chad must have had in supporting its incorrectly narrow reading of the Accord-Cadre. But setting this aside, one of the privileged elements of interpretation, falling under Article 31(b), concerns any agreements and practices subsequent to a treaty that establish the agreement of the parties as to its interpretation. It is useful, therefore, to consider now how the Parties themselves have interpreted the compromis in papers produced by them. This will show that the Parties have not always been so far apart regarding the Court's compétence and powers under the Accord-Cadre.

3.23 Proceeding in this fashion is especially appropriate when the treaty in question is a compromis. For it is established that -

"... the jurisdiction of the Court to deal with and to decide a case on the merits depends on the will of the Parties⁸."

As a consequence -

"... a State may not be compelled to submit its disputes to arbitration without its consent⁹."

8 Anglo-Iranian Oil Co., Judgment, I.C.J. Reports 1952, at p. 103.

9 Ambatielos, Merits, Judgment, I.C.J. Reports 1953, at p. 19.

Moreover, it is clear that "consent may be given ante hoc, ad hoc, or post hoc¹⁰." In particular, post hoc consent either replaces ante hoc consent and ad hoc consent (giving rise to the phenomenon of forum prorogatum) or supplements them. In other words, even in the event of a compromis (ad hoc consent) it is possible that:

"... les demandes, les arguments ou les faits invoqués par l'une des Parties dépassent les limites de la compétence établie par le compromis¹¹."

According to this hypothesis (which Chad considers to be the situation in the present dispute, and Libya does not), the conduct of a party opponent during judicial proceedings may constitute a type of post hoc consent, placing beyond contest the question of the Court's compétence. This is the result when the interested party neglects to raise an issue as to the Court's compétence or expressly accepts that the Court examine on the merits an alleged exorbitant claim of the opposing party.

(c) **Factors Establishing Chad's Recognition of the Court's Compétence to Examine the Merits of Libya's Claim**

3.24 Turning now, in the light of the above comments, to the Parties' positions before the Court, an examination of them permits a determination whether, notwithstanding what Chad says now, in its written pleadings Chad did, indeed, accept Libya's interpretation of the Accord-Cadre, thus rendering incontestable the Court's compétence - even if Chad's narrow interpretation of the Accord-Cadre is correct (and Libya's is wrong) that at the outset of the case Libya's claim went beyond the scope of the compromis.

3.25 It will be recalled that the first two documents of the Parties initiating these proceedings before the Court were formulated differently. Libya's Notification, dated 31 August 1990, requested the Court:

"... to decide upon the limits of their [the Parties'] respective territories in accordance with the rules of international law ...¹²."

10 Fitzmaurice, G.: The Law and Procedure of the International Court of Justice, Vol. II, 1986, p. 496.

11 Abi-Saab, G, op. cit., p. 20.

12 See, LM, International Accords and Agreements Annex, No. 39.

The request was based on the line of reasoning that while the Court has available to it a series of international instruments to take into consideration in resolving the dispute:

"... none of those agreements finally fixed the boundary between the Parties which, accordingly, remains to be established in accordance with the applicable principles of international law¹³."

3.26 Chad, on the other hand, in its Application filed on 3 September 1990, asked the Court to "déterminer le tracé de la frontière" between the Parties, and in so doing to adjudge and declare that the boundary line had been fixed and defined by a series of Anglo-French and Franco-Italian international agreements binding on Libya and Chad, as confirmed by the 1955 Treaty. Therefore, it was evident from the start of the proceedings that a major difference existed between the positions of the Parties concerning the very essence of the dispute.

3.27 It is clear that when Chad presented its Application to the Registrar, Chad was unaware of the precise request set out in Libya's Notification formally presented on that day. Chad may be presumed to have been unaware, in particular, that Libya's request was based on a thesis that no international agreement had ever definitively fixed this boundary and that, as a consequence, the boundary was to be determined *hic et nunc* by the Court under international law. However, Chad was no longer unaware of Libya's request on 28 September 1990, when Chad's Agent sent the Court a letter acknowledging (i) that the two introductory documents concerned the same dispute and (ii) that the Court's *compétence* to resolve the dispute was granted by the *Accord-Cadre*, which constituted a *compromis*. In this same letter, Chad's Agent added:

"... quoique la République du Tchad reconnaisse *sans restriction* la compétence de la Cour pour trancher le règlement territorial qui lui a été soumis par les Parties, mon gouvernement conteste formellement l'affirmation de la Jamahiriya arabe libyenne selon laquelle la frontière entre les deux Etats n'aurait pas fait l'objet d'une délimitation négociée. Celle-ci résulte d'une série d'accords La République du Tchad se réserve la possibilité de rétablir les faits ... dans les phases ultérieures de la procédure¹⁴."

13 *Ibid.*

14 Emphasis added.

For Chad, therefore, Libya's request was not inadmissible, it was unfounded. Far from taking exception, as a preliminary matter, to the Court's compétence to consider a claim based on the absence of any conventional boundary, Chad acknowledged expressis verbis the compétence of the Court and called upon the Court to examine Libya's claim on the merits and to reject it¹⁵.

3.28 Chad's Memorial takes the identical position, raising no question as to the Court's compétence to consider Libya's request. On the contrary, Chad itself envisaged the possibility of no conventional boundary ever having existed between Libya and Chad - in putting forward its third alternative theory under which the boundary line presently proposed by Chad would result from colonial effectivités. By this fact alone, Chad recognised that the Court was fully compétent to resolve the dispute even if its resolution might not result from the application of any international agreement.

3.29 It is, of course, true that when Chad filed its Memorial, it was unaware of the geographical extent of Libya's claim, as set forth in the LM, for the two pleadings were simultaneously filed. It was in the CC-M that Chad could have questioned the Court's compétence to examine Libya's claim concerning territories located south of the 1935 line. But Chad has chosen not to do so, even going so far as to expressly recognise that the Court's compétence included all that might be required to review Libya's claim, to adjudicate it on the merits and to decide whether or not it should be rejected.

3.30 It is true that, in certain parts of the CC-M, Chad has maintained that Libya's version of the dispute does not fall within the Court's compétence as set out in the compromis¹⁶, giving a variety of reasons. But it is

15 In these first two documents submitted to the Court, Chad also mentioned, as an alternative basis of jurisdiction, Article 8 of the 1955 Treaty, which provided for settlement by the Court of disputes over the interpretation and application of that Treaty, opening up questions that went far beyond the confines of the Accord-Cadre under Chad's narrow interpretation of the latter instrument.

16 See, CC-M, paras. 1.17, 2.09 and 2.82. For example, in a confused section of the CC-M, Chad seems to contend that Libya's claim as presented in the LM would serve to "transformer unilatéralement la nature juridique du différend que les parties ont soumis à la Cour en vertu de l'Accord-cadre..." by which the Court is requested to "statuer sur les limites de leurs territoires respectifs" (para. 2.09).

At the same time, Chad commits the curious bévue of describing the scope of the Accord-Cadre in words taken directly from Libya's Notification. It is futile for Chad to contend that a contradiction as to the "nature juridique du différend" exists between how the

important to point out that, despite its allegations to the contrary, Chad has never made any formal objection to the Court's compétence, and has even explicitly recognised the Court's compétence.

3.31 It suffices simply to read Chad's conclusions in the CC-M to see that Chad repeats the claim it presented in the CM, requesting the Court to reject Libya's claim on the merits. Chad fails to contend that the Court may not consider any particular aspect of Libya's claim.

3.32 As to Chad's explicit recognition of the Court's compétence, the following passage in the CC-M is revealing:

"L'accord-cadre de 1989 n'a jamais eu pour objet de demander à la Cour de trancher un différend territorial pré-existant qui aurait porté sur plus de la moitié du territoire du Tchad. En termes simples, la Cour a compétence sur le différend frontalier dans la bande d'Aozou. Aucun compromis ne demande à la Cour de connaître d'une revendication différente, formulée pour la première fois dans le Mémoire de la Libye. ... Ces demandes extravagantes sont assurément inacceptables, tant d'un point de vue procédural, que sur le fond¹⁷."

3.33 Is Chad trying to raise an objection to the Court's compétence that it unfortunately neglected to set out in its Submissions? At first glance, it would so appear, especially if the above-cited passage is considered in isolation from the rest of the pleading. In fact, this passage has no real meaning; and its highly coloured and totally out-of-place verbiage regarding the

dispute is expressed in Libya's Notification of the Accord-Cadre of 31 August 1990 and how it is expressed in the LM: they are perfectly in accord.

Chad appears to forget that Libya's initial document in these proceedings had carefully stipulated that the Court should:

"statuer sur les limites de leurs territoires";

and was based on the contention that no treaty definitively fixed the boundary and that:

"... accordingly (it) remains to be established in accordance with the applicable principles of international law."

17 CC-M, paras. 2.82 and 2.83. Similar comments are made in para. 2.95: "...le différend que les deux parties ont ... convenu de soumettre à la Cour, porte sur la localisation exacte de la frontière dans la bande d'Aozou ... aucun différend plus étendu n'a été soumis à la Cour."

"extravagance" of the claims of Libya or the "démésure qui frise le grotesque"¹⁸ (not to mention Libya's "appétit territorial féroce"¹⁹) are merely a certain style of advocacy aimed at tarnishing in the eyes of the Court the image of an adversary party and presenting that party in the most unfavorable light possible. So far as they bear on the Court's compétence, these prejudicial remarks turn out to be entirely gratuitous as a result of Chad's express declarations in the CC-M that it recognises the Court's compétence to examine Libya's claim on the merits, notwithstanding "l'ambition exagérée" that it supposedly reveals:

"Le gouvernement de la République du Tchad considère cet ensemble d'arguments comme irrecevable sur le fond comme en procédure. Il serait en droit d'exiger l'interruption de la procédure engagée devant la Cour internationale de Justice si profondément dénaturée par l'extravagance des demandes libyennes. Il se gardera cependant de céder à ce qu'il considère comme une provocation politique. Le gouvernement du Tchad fait confiance à la justice internationale et à l'application impartiale des règles du droit international public. Il demande justice, rien de plus"²⁰.

The same line of reasoning, similarly expressed, crops up in another passage of the CC-M:

"Le Gouvernement tchadien qui serait en droit de mettre fin à la procédure que la Libye tente de détourner de son objet, a néanmoins, par respect pour la Cour et par souci de voir enfin réglé définitivement le litige de la bande d'Aozou - forgé de toutes pièces par la Libye -, décidé de la poursuivre jusqu'à son terme, sans répondre aux provocations de la partie libyenne... la République du Tchad se placera donc exclusivement sur le terrain juridique et montrera ci-après, que ses droits sur la bande de Aozou ne sont nullement remis en question par l'argumentation développée par la Libye"²¹.

3.34 If by this careless, wild language Chad means to say to the Court that it renounces its "droit d'exiger l'interruption de la procédure" since it has "confiance à la justice internationale", then Chad accepts that Libya's claim be examined on the merits by the Court, without any procedural reservations, counting on the Court's finding that Libya's claim is without merit, and in the "souci de voir enfin réglé définitivement le litige". In other words, Chad accepts

18 CC-M, para. 2.06 (i).

19 CC-M, para. 1.03.

20 CC-M, para. 1.17.

21 CC-M, paras. 1.69-1.70.

that the Accord-Cadre can be interpreted to cover Libya's claim, and consequently, to establish the Court's compétence to adjudicate Libya's claim in all its aspects. In these circumstances, any future objection to the Court's compétence would not merely be unfounded; it would be inadmissible. Any further discussion as to the extent of the Court's compétence as established in the compromis, therefore, would serve no purpose.

(d) **The Lack of Purpose in Embarking on an "Historical" Interpretation of the Accord-Cadre**

3.35 The literal and contextual interpretation of the Accord-Cadre leads to clear, precise and consistent conclusions. Even if its "historical" meaning suggested by Chad were correct, it could not in any way prevail over the instrument's authentic interpretation confirmed by the positions taken by the Parties in these very proceedings.

3.36 Hence, it would be a superfluous exercise for the Court to consider Chad's allegations attempting to demonstrate that, when the Accord-Cadre was concluded, Libya acknowledged that its dispute with Chad was strictly a boundary dispute and that it dealt exclusively with title to the so-called "Aouzou Strip". Nevertheless, Libya - out of a concern for re-establishing the truth that the Chadian pleadings attempt to distort - feels it appropriate to present a few short observations on the subject as it relates to the jurisdiction and tasks of the Court. In Chapter XI below, the matter will be dealt with again in the context of the conduct of the Parties.

3.37 The first observation is that Chad's contentions do not relate to the travaux préparatoires of the Accord-Cadre, the relevant documents of which have not been produced by either Chad or Libya. With the exception of the text of the Accord-Cadre itself, no document or declaration of the representatives of the Parties has been produced to date to clarify the intention partium at the time of concluding the compromis.

3.38 Chad can hardly contend that the Parties' intentions can be proved by relying on statements by third party States or by committees composed of representatives of third party States²². For the most part, these types of statements indicate how certain third party States perceived the nature and extent

22 See, CC-M, para. 1.43, et seq., and para. 2.23, et seq.

of the dispute; nothing of significance can be inferred from these statements as to the specific intent of the Parties themselves.

3.39 In reality, the kinds of documents on which Chad tries to base its arguments are far more peripheral and less relevant than travaux préparatoires; they only concern the circumstances in which the Accord-Cadre was concluded²³.

3.40 It is clear that no meaning can be ascribed to a random selection of miscellaneous statements of Libya's representatives or other persons as members of international organisations, having no precise or direct connection with the Accord-Cadre and which refer to one phase or another of a dispute that has existed for 100 years and concerns such aspects as, for example, accusations of one State's interference in the internal affairs of another State. As Chapter XI will show, the most that can be deduced from the miscellaneous statements made by representatives of Libya is that they were convinced that (i) neither the international instruments cited in Annex I of the 1955 Treaty, nor the Treaty itself, had resolved the dispute, and (ii) the territories located north of the 1935 line were indisputably in Libyan territory.

3.41 Libya never expressly or impliedly excluded the possibility that the legal titles working in Libya's favor concerned other territories located south of the 1935 line. Quite the opposite: Libya had invoked these titles by emphasising its position as successor State to the Ottoman Empire via Italy²⁴.

3.42 Once the Parties finally agreed to submit to the Court the task of definitively resolving their dispute, without imposing any restrictions, it became necessary for Libya in preparing for these proceedings to conduct a most thorough research into every relevant aspect of the case. The results of this research persuaded Libya of the validity and strength of its legal titles not only to regions north of the 1935 line but also to regions located south of the 1935 line. As a result, Libya submitted its claims to the Court in the knowledge that the Court enjoyed the full compétence and power to decide the dispute in its entirety, leaving "no stone unturned". In contrast to Chad, which casts doubt on the extent of the Court's compétence and would like to see its compétence exercised in a

23 See, Vienna Convention on the Law of Treaties *op. cit.*, Art. 32.

24 See, para. 11.39, *et seq.*, below.

limited fashion, Libya expresses no such reservations. Libya very much hopes the Court will examine all of the Parties' allegations and arguments so that the territorial dispute may be brought to an end, leaving not the slightest obstacle to sincerely amicable relations between Libya and Chad in the future.

SECTION 2. The Nature of the Dispute and the Task of the Court

3.43 On the basis of the Accord-Cadre, interpreted in the light of the foregoing comments, the various allegations of Chad, aimed at restricting the reach of the dispute and the mission of the Court, may readily be refuted. These allegations are discussed below under six headings.

(a) **The Alleged "Political Nature" of the Dispute as Presented by Libya**

3.44 According to Chad, the "ambition exagérée" of Libya would:

"...sortir le différend de la catégorie des différends juridiques où il avait été cantonné jusqu'alors pour le transformer en différend politique majeur²⁵."

3.45 Chad even declares that it would be "en droit d'exiger l'interruption de la procédure engagée devant la Cour internationale de Justice" as a result. But then it goes on to renounce this right "par respect pour la Cour et par souci de voir définitivement réglé le litige²⁶". The total inconsistency of these propositions leaps from the page, as can be demonstrated by two simple observations.

3.46 First, if the dispute has really turned into one of a political nature, the Court would not have jurisdiction to resolve it, for under the U.N. Charter and the Statute of the Court itself the Court is a legal, not a political, organ of the U.N. The incompétence of the Court to adjudicate matters of a political nature can hardly be cured by the particular position taken by one of the Parties to the dispute. That is to say, Chad's renunciation of its right to challenge the Court's compétence could not have the slightest effect on whether the Court in fact has compétence.

25 CC-M, paras. 1.17. See, para. 3.30, et seq., above.

26 CC-M, para. 1.69.

3.47 Second, it is clear that the political or legal nature of this dispute cannot depend on the extent of the territory claimed by one Party or the other: it is the grounds on which the claim is based that matter. In the present case, the two Parties base their claims exclusively on the applicable international law in force. Their dispute, notwithstanding the extent of the territory involved, is strictly and indisputably legal in character.

(b) The Nature of the Dispute: "Territorial" or "Boundary"?

3.48 It has been seen above that the "territorial" nature of the dispute could not have been more clearly specified than it was in the text of the Accord-Cadre. The repeated, consistent use of the word "territorial" in the text is the result of a careful choice of words to describe the dispute. Chad's observation that certain O.A.U. documents used the terms "boundary" dispute and "territorial" dispute interchangeably²⁷, only proves that the terminology used by the O.A.U. cannot be relied on and that the care exercised in the use of legal terminology left much to be desired (as the CC-M itself complains). In contrast, no looseness in the use of terminology is reflected in the Accord-Cadre. The dispute is always characterised (in five different places) as "territorial".

3.49 Admittedly, if the Court should find - as Chad contends - that a boundary has already been established in the borderlands by conventional means, this finding would suffice to resolve the dispute. But if not, the Court will have to determine the boundary itself in order to accomplish the task that the Parties have assigned to it - to resolve the dispute definitively. Such a delimitation of the boundary can only be established on the basis of the legal titles of the Parties over the territory in dispute between them.

3.50 As demonstrated above, the Accord-Cadre identifies the extent of the compétence of the Court in a sufficiently broad manner as to permit the Court to proceed to an attribution of territory. Chad, moreover, does not contest this. On the contrary, Chad fully acknowledges the compétence of the Court in this respect, even to the extent of asking the Court to reject on the merits the Libyan claim which is based, not on a treaty establishing a boundary, but on other legal titles.

27 See, CC-M, para. 2.43.

3.51 It will be recalled that, as already mentioned above²⁸, Chad's acknowledgment of the Court's compétence is also implicit in its request to the Court to base the attribution to Chad of the so-called "Aouzou Strip" on colonial effectivités - Chad's third theory - in the event the Court were to decide that a conventional boundary has not already been established.

(c) **The Compétence Ratione Materiae of the Court**

3.52 Ratione materiae, the compétence of the Court is not subject to any limitation as to the geographical extent of the territory that may be claimed by one Party or the other, contrary to what Chad asserts. Such a limitation cannot be found in the Accord-Cadre, which entrusted the Court with the task of definitively resolving the entire territorial dispute, without establishing a restrictive definition of what that was.

3.53 In its written pleadings, moreover, Chad has expressly recognised the compétence of the Court to examine Libya's claim on the merits, including the extent of its effect on territories situated south of the 1935 line. In any event, even before the conclusion of the Accord-Cadre, Libya had set out, at least in general terms, its position as to the territorial extent of the dispute. Libya had clearly indicated that it considered itself as successor State to the Ottoman Empire (via Italy) and accordingly that Libya had the right in the course of the resolution of the dispute, to invoke all pertinent legal titles over the full extent of the territories to which these titles attached. This is precisely the scope of the dispute that the Court has been called upon to decide in the compromis.

(d) **The Extent of the Court's Powers**

3.54 Since the Accord-Cadre is silent as to the Court's powers, it follows that the Court is called upon to exercise, without restriction, its judicial task, including the use of all powers required to arrive at a final resolution of the dispute on the basis of international law.

3.55 It bears repeating once again that if, as Chad contends, the Court were to find that the boundary between Libya and Chad had already been delimited by conventional means, such a finding would resolve the dispute. But if, as Libya is convinced, the Court finds that no conventional boundary has yet been

28 See, para. 3.28, above.

fixed, it must of necessity proceed itself to delimit the boundary in order to accomplish the task entrusted to it by the Parties. This is an operation that a judicial body can carry out by an evaluation of the legal titles invoked by the Parties to the dispute. The precedents cited by Libya in Chapter II of the LC-M demonstrate this beyond any doubt.

3.56 It is to be noted that, in spite of appearances to the contrary, Chad recognizes the correctness of the analysis, for it states -

"Ce n'est donc que si la Cour concluait qu'aucune frontière n'a jamais existé ... qu'elle pourrait commencer à considérer la revendication exorbitante (sic) de la Libye concernant son titre sur la moitié du Tchad²⁹."

Hence, Chad admits that were such a situation to occur the Court could appropriately proceed itself to fix the boundary on the basis of legal titles, other than conventional titles, of the Parties. The Parties are in full agreement on this point.

(e) **The Applicable Law**

3.57 There is no disagreement between the Parties that the present dispute is to be resolved by the Court "in accordance with international law³⁰", and not ex aequo et bono. Thus, all the sources of international law may be relevant. Neither expressly nor implicitly does the compromis restrict in any way the power of the Court freely to select the applicable principles and rules in order to resolve the dispute - the principle jura novit curia is given its full effect here.

3.58 The basic question here is whether the resolution of the dispute can be based exclusively on conventional norms or whether recourse to norms stemming from other sources of international law will apply. This question does not relate only to general principles and rules of customary international law, it is valid as well to equity, as the Court has indicated in the well-known

29 CC-M, para. 2.15.

30 Article 38 of the Statute of the Court.

statement, "... la notion juridique d'équité est un principe général directement applicable en tant que droit³¹".

3.59 It is elementary that equity (infra and secundum legem) has an important, continuing role to play in judicial decisions secundum jus. This obvious point should require no further discussion, but Libya is obliged to return to it in order to express its astonishment over the extraordinary effort Chad has made to try to exclude equitable principles. Obviously Chad is afraid of equity; it fears the idea that the Court might find inspiration in equitable principles in seeking to find a just solution in this case. This can only mean that Chad has serious doubts as to the equitable character of its claim.

3.60 The CC-M insists on presenting a veritable caricature of the Libyan position, arguing that Libya's aim is the use of equity "en tant que substitut au droit³²" and that, in addition, Libya "se trompe d'exercice" because equity has no role to play in land boundary delimitations unlike the major role equity plays in maritime delimitations³³.

3.61 These two allegations are completely wrong. The LM and the LC-M emphasised that Libya has never sought to refer to aequitas contra legem or to aequitas praeter legem. But international jurisprudence and doctrine have made very clear the role aequitas infra legem and secundum legem may play in the application of international rules whether conventional or customary. This applies equally to land boundary delimitations, as a well-known work on the subject attests to³⁴.

(f) **The Order of Questions Submitted to the Court**

3.62 In comparing the written pleadings of the Parties, the Court will not discern any real disagreement as to the modus procedendi or, in

31 Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982, p.18, para. 71.

32 CC-M, para. 1.52.

33 Ibid.

34 Bardonnnet, D.: "Equité et frontières terrestres", Mélanges offerts à Paul Reuter, Paris, Pedone, 1981, at pp. 44-45.

particular, as to the order in which the Court might wish to address the various issues arising from this dispute.

3.63 First, it would be expected that the Court would want to address at the outset the procedural questions relating to jurisdiction and to the extent of its compétence and powers. Without doubt, these issues can be settled rapidly. In fact, as just stated above, the two Parties have effectively admitted that the Court has the full compétence and power required to resolve the dispute definitively. The Parties admit that no restrictions are imposed on the Court as far as the examination of the merits of the claims presented by Libya and Chad is concerned.

3.64 Second, turning to the examination of the merits of the cases, the Court would certainly want to "consider initially whether existing agreements have identified a boundary" between the two Parties, as Libya has put it³⁵. Or, to use Chad's words, the Court would "commencer son examen par le Traité de 1955 pour déterminer ... s'il a jamais établi une ligne frontière"; and also examine if "un tracé frontalier avait été ... établi par les textes internationaux de référence"³⁶.

3.65 In this regard, it should be noted that Libya and Chad have acknowledged their agreement that the "textes de référence" are not to be taken into consideration as "actes" establishing a boundary in the event they "... ne seraient pas ou plus en vigueur le 24 décembre 1951", as Chad has correctly put it³⁷. Since the positions of the Parties here are identical³⁸, it follows that neither

35 See, LC-M, para. 2.10.

36 CC-M, paras. 2.10 and 2.12.

37 See, CC-M, para. 11.20. The LC-M uses much the same language: see, LC-M, para. 3.09. See, also, para. 4.07, et seq., below.

38 The relevant passage in the CC-M:

"La frontière ne peut être déterminée que par rapport aux actes internationaux en vigueur à l'indépendance de la Libye. On a ici une double limitation: sont exclus, d'une part les actes non internationaux, comme par exemple des actes administratifs internes aux puissances coloniales et, d'autre part, les actes internationaux qui ne seraient pas ou plus en vigueur le 24 décembre 1951, date de l'indépendance libyenne." (CC-M, para. 11.20; see, also, CC-M, para. 11.42.)

The relevant passage in the LC-M:

Party can, with any credibility, change its position on this matter in subsequent phases of the proceedings. In Libya's view, any such change of position would not be admissible in the circumstances.

3.66 The Court would be free - following a review of the relevant treaties - to find that a conventional boundary does indeed exist that is binding on Libya and Chad. Libya is convinced that the Court will not so find; Chad has declared that it is convinced that the Court will do so. It is clear that if the Court does find the existence of such a conventional boundary, the Court will have resolved the dispute (to the extent the boundary covers the full length of the Libya-Chad frontier). On the other hand, if the Court's review should produce a negative result - no conventional boundary - the Court would, it is respectfully suggested, be obliged to proceed further in its analysis, examining the legal titles that might form the basis of a delimitation operation. Unquestionably, the Court has the full compétence to itself determine such a delimitation, as the Parties have expressly recognised both in the compromis concluded between them and in the interpretation they have given it in their pleadings.

3.67 Third, the Court would then have to decide which of the legal titles of the Parties are determinative in the delimitation of the territories comprising the Libya-Chad borderlands. Having identified these titles and, in the case of conflicting titles, having decided which is the better title, the Court would then be able to decide upon the limits of the territories of the Parties.

"... Article 3 expressly required that these agreements be 'en vigueur' on the date of Libya's independence in order to be taken into account in recognizing any boundary emerging from them. If the list included 'actes' not 'en vigueur' on that date, they would have to be ignored for not having fulfilled that essential condition of Article 3. As an annex consisting of an exchange of letters between the heads of the Libyan and French negotiating teams, which was referred to in Article 3, Annex I was necessarily subordinate to Article 3 and had no independent life of its own." (LC-M, para. 3.09.)

PART II

**THE ISSUE OF THE TREATY
BASIS OF THE BOUNDARY**

**CHAPTER IV. THE DIFFERING POSITIONS OF THE PARTIES
CONCERNING THE EXISTENCE OF A
CONVENTIONAL BOUNDARY**

4.01 The differences between the cases presented by the Parties, in broad outline, have been set out in Chapters I and II above. *Pre-eminent among these differences are the diametrically opposed views of Libya and Chad as to whether a conventional boundary exists between them.*

SECTION 1. The Two Positions Compared

4.02 Chad's Memorial suggests that the issue posed in this case is simple: since the 1935 Treaty never took effect in respect to the agreed boundary line for Libya's southern boundary east of Toummo, the 1899-1919 line agreed between Great Britain and France was Libya's southern boundary on the critical date - when Libya became an independent State. According to Chad, this was confirmed by the 1955 Treaty.

4.03 However, Chad's case does not stop there. It offers the Court three separate theories to choose among, all of which are claimed to lead to the exact same line, the 1899-1919 line, supplemented by the relevant portion of a straight line connecting Toummo and the starting point of the 1899-1919 line¹. These three theories were thoroughly analysed in Libya's Counter-Memorial². Aside from the obvious implication to be drawn from the submission of three separate theories - that Chad did not have sufficient confidence in any one theory to base its case entirely on that theory - the result is that Chad's case is highly complex, as the LC-M demonstrated³.

4.04 Whilst it would be misleading to suggest that the present territorial dispute is a simple matter to resolve, the essential elements of Libya's case are perfectly straightforward:

1 Chad's three separate theories are summarized in the LC-M, paras. 1.32-1.39.

2 See, LC-M, Parts III, IV and V.

3 See, LC-M, para. 1.37, where Chad's theories were compared to an intricate circus trapeze act.

- On the critical date (the date of Libya's independence), there was no conventional southern boundary of Libya east of Toummo;
- The 1955 Treaty did not modify that situation; it recognised the boundary status quo on the critical date, an affirmation of uti possidetis juris;
- Since then, there has been no agreement between Libya and France or Libya and Chad fixing Libya's southern boundary.

Thus, the Court's task, as explained in the previous Chapter, once it has determined that there is no conventional boundary binding on Libya and Chad, will be to examine the legal titles that might form the basis of a delimitation operation, a straightforward task for which the Court has full compétence.

4.05 In the following two Chapters, the two principal elements comprising the issue over the treaty basis of the Libya-Chad boundary will be dealt with: (i) the meaning and effect of the 1955 Treaty; and (ii) the boundary status quo on the critical date as recognized by Article 3 of the 1955 Treaty. Part III (Chapters VII and VIII) will then turn to an examination of the legal titles claimed by the Parties.

4.06 There are two points to be taken up before going into the detail of the 1955 Treaty and the other international agreements of possible relevance. First, in Section 2 below, certain deceptive points of agreement and disagreement between the Parties concerning the 1955 Treaty will be discussed. Second, in Section 3 below, the meaning and effect of U.N. General Assembly Resolution 392(V) of 15 December 1950 - a matter on which the positions of the Parties remain wide apart - will be dealt with in the light of the CC-M.

SECTION 2. Deceptive Points of Agreement and Disagreement Concerning the 1955 Treaty

4.07 In its Chapter 11, devoted to a discussion of the 1955 Treaty, the CC-M makes two statements with which Libya is in full agreement:

"La frontière ne peut être déterminée que par rapport aux actes internationaux en vigueur à l'indépendance de la Libye. On a ici une double limitation: sont exclus, d'une part les actes non internationaux, comme par exemple des actes administratifs internes aux puissances coloniales et, d'autre part, les actes

internationaux qui ne seraient pas ou plus en vigueur le 24 décembre 1951, date de l'indépendance libyenne⁴."

Under the first criterion, French colonial effectivités are clearly ruled out, and thus Chad's third theory is ruled out as well, for it relies wholly on French effectivités⁵. Moreover, Chad's second theory sustains a mortal wound in the light of this admission in the CC-M, for it relies in part on French effectivités⁶. Under the second criterion, there are ruled out under Article 3 "actes internationaux" that were not, or were no longer, "en vigueur" on the critical date.

4.08 The reason why this apparent agreement between the Parties is deceptive is that Chad actually has failed to apply its own criteria. French colonial effectivités continues to be the mainstay of Chad's third theory. And it remains, as well, an indispensable part of its second theory, for it is only through resort to alleged French colonial effectivités in the borderlands that the 1919 line became transformed into a boundary opposable to Italy, according to this theory⁷. As to the second criterion, a number of the "actes internationaux" on which Chad's case depends - both under its first and second theories - were not "en vigueur" on the critical date, including general "actes" that appear on the Annex I list. This will be discussed further in Chapter VI below. The point to be made here is that the CC-M totally ignores this critical fact, which the CM had specifically referred to⁸.

4.09 Then there is a point of disagreement concerning the 1955 Treaty, the effect of which is less significant than might first appear. This concerns the question whether the Annex I list was intended to be exhaustive. Libya has set out a number of reasons why it seems clearly not to have been intended to be exhaustive, particularly in the light of French and Chadian conduct⁹. However, in the last analysis it is not an issue that really matters much, for several reasons.

4 CC-M, para. 11.20.

5 See, LC-M, para. 5.01, et seq.

6 See, LC-M, paras. 4.02 and 4.199, et seq.

7 Ibid.

8 See, CM, pp. 122-123, para. 81.

9 See, LC-M, para. 3.12, et seq.

4.10 First, in arguing its case, Chad has made extensive use of agreements not included in the Annex I list, including the following:

- 1900 Franco-Italian Accord;
- 1902 Anglo-Italian Accord;
- 1912 Franco-Italian Agreement;
- 1924 Anglo-French Protocol and Declaration.

Similarly, Libya has referred to as relevant some 11 agreements that fail to appear on the Annex I list¹⁰.

4.11 Second, even were the boundary to be determined solely on the basis of the listed agreements, no conventional boundary would emerge that was agreed to be recognised under Article 3 of the 1955 Treaty. This is demonstrated below in Chapters V and VI.

SECTION 3. U.N. General Assembly Resolution 392(V) of 15 December 1950

4.12 Chad seeks to downplay the significance of General Assembly Resolution 392(V), after an initial attempt to argue that the Resolution supports Chad's thesis. That initial attempt, as put forward in the CM, relies on the following propositions:

- France had repeatedly and publicly presented before the various U.N. organs the texts applicable to Libya's southern boundary and her presentation had not been challenged. Thus, the Member States of the U.N. had acquiesced in the French position¹¹.
- In particular, Italy did not react to the corrective statement made by the French representative to the Ad Hoc Political Committee and must therefore be deemed to have

10 See, LC-M, para. 4.09.

11 See, CM, p. 222, para. 64; and CM, p. 232, para. 98, where it is repeated that the French position had been "énoncée clairement".

acquiesced in the French position as regards Libya's southern boundary¹².

- The U.N. Commissioner for Libya also remained silent as to the southern boundary of Libya in his Second Report of 30 October 1951¹³.
- The General Assembly, in adopting Resolution 392(V), may have had in mind the French claim for rectification of the Libya-Algeria boundary in the area of Ghat and Serdeles rather than Libya's southern boundary¹⁴.

4.13 Libya responded comprehensively in its Counter-Memorial to these arguments, both as regards the facts and the inferences to be drawn from them¹⁵. It is, of course, highly significant that Chad nowhere seeks to explain what was the portion of Libya's boundary with French territory not already delimited by international agreement to which reference is made in Resolution 392(V), if not Libya's southern boundary - only Libya's southern boundary fulfilled this criterion.

4.14 In its Counter-Memorial, Chad appears to have jettisoned its initial attempt to maintain that Resolution 392(V) supported its thesis that a conventional Libyan southern boundary existed at the time the Resolution was adopted (15 December 1950). Now, the argument is rather that the 1955 Treaty in fact gave effect to the recommendation in Resolution 392(V). Chad asserts that the overriding object and purpose of that Resolution was to ensure that no dispute arose as to Libya's external frontiers, and that the Resolution must be read in this sense. Two possibilities existed. Either the frontiers were already delimited by international arrangements - in which case there would be no dispute - or, alternatively, the frontiers were not yet delimited, in which case it was recommended that France and Libya conclude an agreement which would effectively delimit the frontier¹⁶.

12 CM, p. 228, para. 84.

13 CM, p. 231, para. 96.

14 This seems to be the implication to be drawn from CM, p. 227, para. 82.

15 See, LC-M, paras. 8.34-8.43.

16 See, CC-M, para. 11.136.

4.15 It is necessary once again to examine the pertinent provisions of the Resolution:

"That the portion of its boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments, assisted on the request of either party by a third person to be selected by them or, failing their agreement, to be appointed by the Secretary-General.¹⁷"

Libya's boundary on the west as far south as Toummo had in 1950 been delimited by two international agreements: the 1910 Treaty between France and the Ottoman Empire; and the 1919 Accord between Italy and France. It had not been delimited to France's satisfaction, however, and France informed the U.N. that it planned to negotiate directly with Libya certain modifications or rectifications of Libya's boundary with Algeria. Those mentioned concerned the boundary in the area of Ghat; and it was clear that these were not negotiations that fell within the scope of the Resolution, for during the debate prior to its adoption, the United States representative sponsoring the Resolution stated explicitly that it did not concern boundary rectifications; and the French representative made a speech pointing out the need to distinguish clearly between the different operations of delimitation, demarcation and rectification¹⁸. Thus, there was no ambiguity on this point when the Resolution was adopted.

4.16 So when the Resolution was tabled and voted on in December 1950, Libya's boundary on the west as far as Toummo had been delimited and was intended by France to be rectified in the region of Ghat in negotiations with Libya; but this rectification did not fall within the scope of the Resolution. This left the Libyan boundary east of Toummo for consideration; and it was as to that boundary that the French representative corrected an earlier "bévue" committed by France in connection with the 1949 Report of the Four Power Commission, when certain omissions and incorrect references as to the international agreements considered relevant to that boundary had been made by the French participants, and these mistakes were reflected in the subsequent Study of the Secretariat¹⁹. There was no question at the time as to where France thought the boundary line to lie, for the map attached to the Four Power Commission Report showed both the line east of Toummo espoused by France

17 The Resolution is taken up again below in Chapter X in the context of the post-World War II conduct of France.

18 See, LM, paras. 5.388-5.389. See, also, Supplementary Annex, No. 6.1, Vol. 2, hereto.

19 See, LM, paras. 5.375-5.385.

(the 1919 line as far as 18°E longitude) and what appears to be the 1935 line. Thus, the only confusion created by France's mistake was over the international agreements on which France relied, not over the direction of its line. In the event, the Secretariat's Study concluded that it was "not clear whether and to what extent this frontier had been delimited or demarcated".

4.17 During the debate on the Resolution and before the vote was taken, the French representative corrected the earlier "bévue" by referring to all the texts on which France relied to support the line it claimed to be Libya's southern boundary. Had France's position at the time been that Libya's boundary east of Toummo had been delimited by the international agreements cited, it should in all logic have voted against this portion of the Resolution relating to Libya, for there was no boundary that had not been delimited, according to the French thesis. There was no question that the discussion just prior to the vote on the Resolution was directed at Libya's southern boundary east of Toummo. Nevertheless, France voted for the Resolution. In doing so, it formally acquiesced in the position that Libya's boundary east of Toummo was to be delimited in negotiations with Libya when it achieved independence. In fact, in the statement of France's representative, M. Naudy, correcting the earlier "bévue", he ended by saying: "The matter was therefore governed at present by all the texts he had just mentioned." This was a formulation not unlike the wording of Article 3 of the 1955 Treaty: "les frontières sont telles qui résultent des actes internationaux en vigueur" at the time Libya achieved independence. M. Naudy's statement did not cause the Ad Hoc Committee to reconsider the need for adopting this part of the Resolution concerning Libya's boundary. It proceeded to adopt the Resolution with the support of France.

4.18 The CC-M is incorrect in saying that Libya considers the 1955 Treaty to be "sans rapport avec" the Resolution²⁰; and the CC-M fails to come to grips with the specific intent of the Resolution by suggesting, for example, that it revealed the desire and intent of the Ad Hoc Committee that Libya's boundaries be definitively settled²¹.

4.19 The Resolution reflected the uncertainty of the U.N. that Libya's boundary east of Toummo had been delimited, in spite of France's correction of the mistaken references to the texts it felt to be relevant. France's vote for the Resolution effectively barred France from later claiming that Libya's

20 See, CC-M, para. 11.133.

21 See, CC-M, para. 11.134.

southern boundary had been delimited and hence did not require to be negotiated with Libya. What the Resolution called for was that France and Libya should sit down to negotiate the southern boundary, examining the texts of the international agreements on which France's position relied, or others en vigueur in 1951, as well as maps of the area, and then to agree that a conventional boundary existed at the time of Libya's independence (and where it lay), or that it did not, and in the latter case, to negotiate over where that boundary line should be drawn.

4.20 The Parties are in agreement that no such negotiations concerning the southern boundary took place²². Thus, Article 3 was only a first step in the carrying out of the mandate of the U.N. in Resolution 392(V); Article 3 cannot be construed, as the CC-M suggests, as having itself accomplished the delimitation by reference to some (but not all) of the texts referred to by M. Naudy in 1950, just before the vote on the Resolution, a reference which the U.N. considered not to have resolved the question of Libya's southern boundary - and which France, by voting for the Resolution, must be deemed formally to have conceded. The Resolution called for negotiations, not an attempt to impose the French position in an indirect, ambiguous manner without any effort to seek a meeting of minds.

4.21 It is appropriate to ask why, then, after the signing of the 1955 Treaty, France and Libya did not proceed to negotiate the delimitation of the southern boundary. Although this question was addressed in the LC-M²³, the reasons why this did not take place will be summarised here, in the light of additional evidence from the files of the Quai d'Orsay recently made available to Libya.

4.22 The overriding reason was that, with the Edjélé oil field discovery (only confirmed in January 1956), rectification of Libya's boundary with Algeria became urgent. The oil boycott imposed on France after the 1956 Suez crisis made this oil discovery all the more important to France. It will be recalled that at this time Algeria was part of metropolitan France and thus its boundaries were of greater importance to France than those of the colonies grouped within the A.O.F. and the A.E.F. As a result, French ratification of the 1955 Treaty and the evacuation of French troops from Fezzan were explicitly made subject to the condition of Libyan acceptance of the rectifications of its boundary with Algeria

22 See, e.g., CC-M, para. 11.129.

23 LC-M, paras. 3.109-3.113.

delimited in 1919, so as to ensure that Edjélé lay on the French side of the line, together with other related modifications in France's favour along the same sector of the boundary. This was achieved through the 1956 Accord²⁴. Most of 1956 was consumed in the difficult negotiations concerning this sector of Libya's boundary.

4.23 A second reason was that serious border incidents had broken out along the Algerian frontier, particularly in the Ghat-Toummo area. Although Annex I to the 1955 Treaty had designated three points through which this boundary should pass, thus substantially rectifying the boundary delimited by the 1919 Accord (even taking into account the vagueness of its provisions), Libya had balked at proceeding to demarcate the boundary, and the three points did not at all resolve the course of the boundary between Ghat and Toummo. Many questions remained to be dealt with. The contention in the CC-M that, as allegedly called for by Resolution 392(V), "le Traité de 1955 contient une délimitation précise", is refuted by the facts. The part of the boundary over which the parties did negotiate in 1955 in order to rectify the 1919 Accord, by designating three points, that is the sector between Ghat and point 1010 (where the Algerian and Niger boundaries meet west of Toummo), remained unresolved. The course of that line was not definitively fixed at all. Thus, following the signing of the 1955 Treaty, the energies of the Libyans and the French were devoted to this part of the line as well, it being considered by the French that the imprecision of this boundary was contributing to the border incidents. Furthermore, oil companies were seeking licences to prospect in the area, and it was feared that conflicting claims would arise as a result of the boundary there not being defined.

4.24 The other reasons why negotiations never occurred pursuant to the Resolution, and following the principles agreed in Article 3 of the 1955 Treaty, are set out in paragraph 3.113 of the LC-M:

- The French Government had developed second thoughts about ratifying the 1955 Treaty, and it was not even presented to the French Parliament until November 1956, less than a month before the agreed date for the evacuation of Fezzan. It is reasonable to conclude that had the Edjélé oil discovery not been made, and had Libya not been willing

24 Demarcation of the line agreed has never occurred; and Libya has never ratified the 1956 Accord.

to agree that these fields lay in French territory, the 1955 Treaty would not have been ratified by France;

- During the 1956 negotiations to rectify the Algerian boundary, Libya did propose discussing the southern sector, as well, and was rebuffed by France²⁵;
- The Algerian war, Libya's recognition of the Algerian F.L.N., the Suez crisis and the low status of France at the time throughout the Arab world made boundary negotiations with France after 1956 very difficult for Libya to undertake without arousing the strong criticism of other Arab countries;
- From the French standpoint, the best tactic was "to let sleeping dogs lie", and to hope that when the question of Libya's southern boundary was taken up later with Chad no difficulties with Libya would be confronted²⁶.

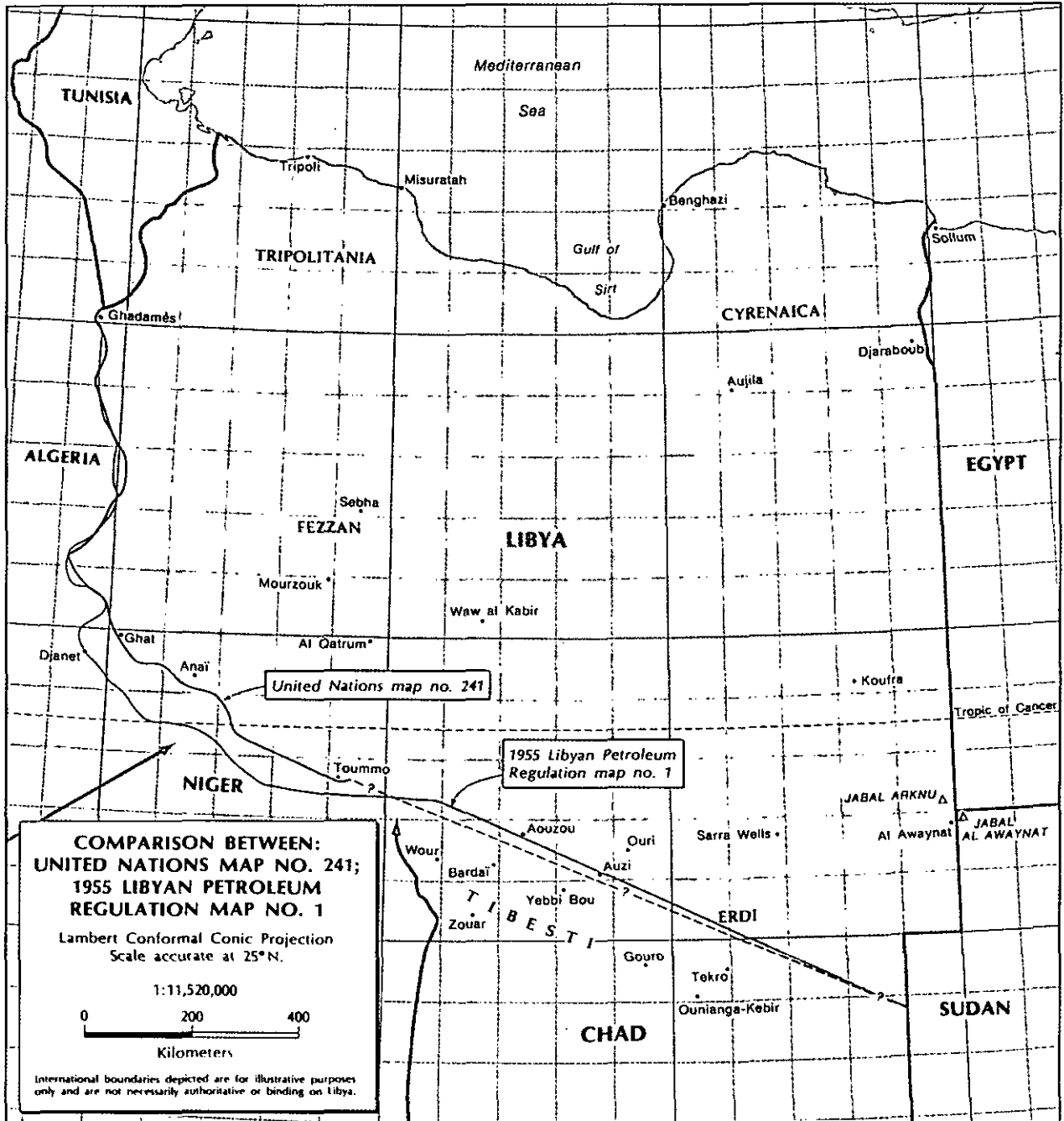
4.25 Thus, when Chad became independent in 1960, there had as yet been no negotiations concerning its boundary with Libya. Contrary to what the CC-M and Chad's Map Atlas have claimed, U.N. maps until 1963 consistently showed a Libyan southern boundary that did not accord with the 1919 line claimed by France²⁷. The first U.N. map was dated December 1949, showing the 1935 line²⁸. U.N. Map No. 241 of January 1950, attached to the Secretariat's Report, showed a line that was neither the 1919 nor the 1935 line, and it was accompanied by question marks to illustrate the Study's conclusion that it was not clear whether Libya's southern boundary had been delimited. It was approximately this line that appeared on Libya's first official map of this boundary, Map No. 1 attached to Libya's 1955 Petroleum Regulation No. 1, promulgated a few days after the signing of the 1955 Treaty in August 1955 (Map LR 2). U.N. Map No. 256 of May 1950, showing the 1935 line, was attached to Commissioner Pelt's first annual report; U.N. Map No. 256(A), a version of the same map in Arabic, issued in November 1955, three months after the signing of

25 See, LC-M, para. 3.110, et seq.

26 See, e.g., Supplementary Annex, No. 6.7 (Document 10).

27 See, Supplementary Annex, No. 2, paras 26-28.

28 U.N. Map No. 235; see, LM, para. 5.396 and the U.N. maps appearing there.



Specially prepared for presentation to the International Court of Justice.

the 1955 Treaty, showed the 1935 not the 1919 line. U.N. Map No. 256, Rev. 1, of March 1958, showed no change in the southern boundary, which was portrayed as the 1935 line despite the 1955 Treaty.

4.26 As a result, at the time of Chad's independence, U.N. maps consistently showed a boundary line between Libya and Chad that differed from the 1919 line. The assertion in the CC-M that after the signing of the 1955 Treaty U.N. maps were changed to reflect the 1919 line is totally wrong²⁹. No U.N. maps during the period 1949-1963 have been produced that show the 1919 line, and these were maps issued at a time when the Libyan boundary was under active discussion, unlike the handful of U.N. maps issued thereafter to which Chad refers, produced in connection with various economic and other studies unrelated to the boundary question³⁰.

4.27 Certainly, U.N. maps cannot be taken as evidence as to where Libya's southern boundary lay, and they all contained the customary disclaimer; but they do reflect the uncertainty concerning that boundary. The generally-held view that Libya's southern boundary required to be delimited by negotiation, which was reflected in Resolution 392(V), continued to prevail well after the signing of the 1955 Treaty and even after the independence of Chad in 1960, as the U.N. maps showed.

29 See, CC-M, para. 10.32.

30 See, Supplementary Annex, No.2, paras. 26-28.

CHAPTER V. THE MEANING OF ARTICLE 3 OF THE 1955 TREATY

SECTION 1. Introduction

5.01 The Court may well regard the 1955 Treaty as the logical starting point in its consideration of how to resolve the territorial dispute in this case. But contrary to what Chad contends, the provisions of the 1955 Treaty will not, in Libya's view, lead the Court to a resolution of this dispute. It is in fact the last, historically, of the international agreements to consider in determining whether a conventional southern boundary of Libya existed on the critical date. Entered into almost four years after Libya's independence, the 1955 Treaty established that date as the critical date in this case and set out the agreed criteria for the recognition of a boundary.

5.02 As brought out in the discussion of good faith in Part VII of the LC-M, in Libya's written pleadings France's conduct in the 1955 negotiations has not been invoked as a cause of challenge to the 1955 Treaty insofar as the present case is concerned; and this remains so in spite of evidence recently uncovered by Libya in the Quai d'Orsay's archives that the French Government engaged in the extraordinary conduct of placing listening devices so as to record the internal discussions of the Libyan delegation during the January 1955 negotiations in Paris¹. Nevertheless, Libya regards French conduct during the negotiations as an important element to be taken into account in interpreting the 1955 Treaty², especially since the drafts of the Treaty were prepared by the French in the French language.

5.03 Thus, almost all of Section 2, Chapter 11 of the CC-M, that relates to the enforceability of the 1955 Treaty requires no response³. Libya is not, as the final conclusion in the CC-M suggests, attempting to avoid "les exigences claires du principe pacta sunt servanda". Libya accepted and

1 This evidence was found in files made available to Libya at the end of May 1992 following Libya's démarche to the French referred to in the LC-M, para. 1.44, fn. 37, to which a reply was received on 18 March 1992. A sampling of the transcripts made by the French Government of these intercepted discussions appears as Exhibit LR 6.4, hereto, and is briefly discussed in Supplementary Annex, No. 6.4.

2 See, LC-M, para. 7.38.

3 There are, however, a number of assertions in that section of the CC-M requiring correction; and this will be accomplished in the course of this pleading.

performed the obligations it undertook under the 1955 Treaty; but this did not resolve the dispute between Libya and Chad.

5.04 There is no doubt at all that Article 3 of the 1955 Treaty is directly pertinent to resolving the present dispute: on its face it related, *inter alia*, to the southern boundary of Libya. But the Article must be applied in its entirety - both in respect to what it prescribes and what it forbids. In other words, Article 3 bound the parties to it not just in respect to the positive factors to take into account in determining a boundary, but also as to the factors that it ruled out in making such a determination.

5.05 It is not easy to discern with any precision just what Chad's position is today as to the meaning of the 1955 Treaty; and it is evident that this position has shifted in major respects from Chad's case as expressed in Chad's Application filed on 3 September 1990 with the Court and in Chad's supplementary letter to the Court of 28 September 1990.

5.06 In its Application, Chad appeared to base its case on the principle of *uti possidetis juris*, maintaining that the boundary claimed by Chad was that which existed at the time of the independence of Libya (1951) and Chad (1960) as inherited from their colonial predecessors. The Application adds that the 1955 Treaty did not modify the boundary situation that existed in 1951, at the time of Libya's independence, but rather confirmed the applicability of *uti possidetis* and the boundary line "tel qu'il résulte des accords" listed in an earlier paragraph, namely the agreements of 1898, 1899, 1919 and 1924 (the latter not appearing on the Annex I list), to which Italy is claimed to have acquiesced in the 1902 Accord.

5.07 In its subsequent letter of 28 September 1990, Chad described the alleged conventional boundary as resulting from a whole series of Anglo-French and Franco-Italian agreements and stated that the 1955 Treaty had confirmed this boundary. This interpretation of the Treaty was described in the CM as the "consécration explicite de 'l'*uti possidetis* de 1951'"⁴.

5.08 By the time Chad's Memorial was submitted, this position seemed to have shifted, for under Chad's first theory the 1955 Treaty itself is said

4 CM, p. 142, para. 2.

to have determined with precision the boundary line⁵. That this was not Chad's position at the time it presented its case to the O.A.U. Subcommittee of experts and jurists is seen from the fact that the Subcommittee's Second Report observed that the Treaty did not itself fix the Libyan boundary⁶. The Subcommittee's observation seems to indicate that Chad had at that time (1988) only set forth its second theory - that the 1955 Treaty was the explicit consecration of uti possidetis 1951 - minus the element of French effectivités, which first makes its appearance in the CM. This had been the publicly proclaimed French position: that at the time of Libya's independence in 1951 a conventional boundary existed arising from a series of Anglo-French and Franco-Italian agreements en vigueur at that time.

5.09 The lack of clarity in Chad's position arises from the fact that, at least up until the filing of its Counter-Memorial, Chad avoided certain key questions concerning the meaning of Article 3 of the 1955 Treaty. Was it the agreement of the parties to the 1955 Treaty, as expressed in Article 3, to accept the boundary situation as it existed on the critical date - the date of Libya's independence, 24 December 1951 - as determined by international agreements then in force? Or does Chad maintain that the 1955 Treaty determined Libya's boundaries with France and French territories regardless of where any of the conventional boundaries lay on the critical date or whether, as to the relevant part of Libya's frontier, there was any conventional boundary at all on the critical date?

5.10 Libya's position is very clear: Article 3 of the 1955 Treaty confirmed the parties' acceptance of the status quo on the critical date based on a strict application of the principle of uti possidetis juris in accordance with the Article's criteria: "actes internationaux en vigueur" on the critical date. It was not intended to modify the status quo, so determined, on the critical date; it recognised it.

5.11 In the light of the CC-M, it is necessary once more to examine Article 3 of the 1955 Treaty in order to bring out where the Parties differ. Its "object and purpose" will be discussed first, then the "ordinary meaning"

5 See, analysis of Chad's first theory in the LC-M, para. 3.01, et seq.

6 See, CM, Livre VI, p. 351, at p. 379.

to be given to the terms of the Treaty, followed by its "context" and travaux préparatoires⁷.

SECTION 2. The Treaty's Object and Purpose

5.12 The objectives of Libya and France in entering into Article 3 of the 1955 Treaty were not the same. Chad wrongly assumes that the parties to the Treaty must necessarily have had the common objective of fixing a definitive boundary. This overlooks the fact that there may well be circumstances when parties to a treaty do not have identical views on an issue and yet may wish to include language in the treaty dealing with the matter, though not resolving it. This is a perfectly normal course of action, and it was the case here. France may have had the misplaced confidence that by referring to certain legal instruments, using the formula of Article 3, the boundary it sought would be agreed by Libya in a subsequent phase. Libya, on the other hand, had given the matter of its southern boundary only a superficial review; and it had not examined the "actes internationaux" referred to in Article 3 and Annex I, let alone looked into whether they were "en vigueur" in 1951. The attention of both Libya and France during the 1955 negotiations had been directed at Libya's boundary with Algeria south of Ghat; and it is evident that the French negotiating team had been given instructions to avoid an open discussion of the "actes internationaux"⁸...

5.13 The background of the 1955 Treaty is relevant in considering the objectives of the parties. France initially urged Libya shortly after its independence to enter into a Treaty of Amity that would have constituted an alliance providing for the long-term military occupation of Fezzan by French forces. France was spurred on by the fact that the United Kingdom and the United States were negotiating agreements of this kind with Libya. At the end of 1954, Libya made it clear that continued occupation of Fezzan, and an alliance of any kind with France, were out of the question.

5.14 France was faced with other problems as well having a direct bearing on the terms of a treaty of amity with Libya. These were: (i) the war with the F.N.L. in Algeria and serious unrest in Tunisia and Morocco; (ii) the discovery of oil at a time when the oil boycott in the wake of the Suez crisis was in effect

7 See, 1969 Vienna Convention on the Law of Treaties, Arts. 31 and 32.

8 See, Supplementary Annex, No. 6.6 (Documents 3, 4, 9, 13 and 14).

against France; (iii) indications of valuable mineral deposits in the north of the Tibesti massif, as well as military pressures to rectify the 1899-1919 line in the Tibesti region so as to encompass the entire massif and to control a strategic road running through this region; and (iv) to avoid further loss of prestige in North Africa and with the Arab world.

5.15 As a result, at the outset of the negotiations in 1955, France sought to rectify all of its existing and claimed boundaries with Libya but to do so, at least initially, in an indirect way in the context of appearing to apply the international agreements in force on the date of Libya's independence. The Edjélé oil discovery, however, required France to come out in the open after the Treaty was signed and overtly to insist on rectifying the Ghadamès-Ghat sector as a condition of the evacuation of Fezzan and the ratification of the 1955 Treaty. As to the Ghat-Toummo sector, when Libya accepted only two of the three points France wished to have designated in Annex I as points through which the boundary passed, Ambassador Dejean, two days before the planned signature date, threatened to refuse to sign on behalf of France unless the third point was agreed; and Libya was forced to capitulate. Moreover, the French team entered the July-August negotiations with authority to make a boundary proposal - if this were possible without raising the question as to the validity of the French thesis concerning Libya's southern boundary - substantially departing from the 1899-1919 line espoused by France, so as to embrace the entire Tibesti massif, while making what to France was a concession to Libya in the eastern sector of this boundary⁹.

5.16 However, France emphatically did not want to have the treaty basis of its thesis concerning Libya's southern boundary examined or questioned. Its aim was to get general agreement to abide by the boundary that emerged from "actes internationaux en vigueur" in 1951; then it hoped during a later phase to gain acceptance of the 1899-1919 line. It believed it had convinced Libya that the 1935 Treaty did not meet the criterion of Article 3. Furthermore, that Treaty had not been included in the Annex I list. Thus, the main stumbling block had been overcome in the mind of the French Government.

5.17 Libya's objectives were entirely different. The overriding purpose of the 1955 Treaty for Libya was to get the French out of Fezzan. The

9 See, Supplementary Annex, No. 6.6 (Document 5).

Libyan Prime Minister made it clear in the negotiations that he did not want to tie the question of settling Libya's boundaries to the taking effect of the 1955 Treaty¹⁰. The Libyan Government was not prepared to discuss the boundary issue; it had not studied the question or examined the relevant international agreements; and it had not yet engaged outside technical and legal advisers to prepare the Government for boundary negotiations. Mr. Ben Halim's position on the boundary at that point was quite simple: he believed Libya was obliged by U.N. Resolution to accept whatever boundary existed on the date of its independence; and in January he agreed to such a formula. All these points will be taken up again below when the Treaty's travaux préparatoires are discussed.

5.18 Libya was only partially successful in adhering to this approach as concerned its boundaries. Although the southern boundary east of Toummo was never discussed in any kind of detail - a fact that is not in dispute between the Parties -, Libya was forced to consider the boundary changes France wanted to make in the Ghat-Toummo sector, and it reluctantly agreed to two geographical points to be mentioned in Annex I as lying on this boundary, and under great pressure just before signature, to a third point. Libya was particularly vulnerable to such pressure for it was imperative to accomplish the French evacuation of Fezzan as quickly as possible.

SECTION 3. Ordinary Meaning of the Terms of Article 3

5.19 The examination of Article 3 of the 1955 Treaty here in this Chapter is primarily directed at Chad's first theory: that Article 3 itself delimited Chad's boundary with Libya and was not, as Libya maintains, the recognition of the territorial status quo on the critical date.

5.20 Chad appears to assume that the ordinary or literal meaning of Article 3 of the 1955 Treaty supports its thesis that a conventional boundary existed between Libya and what is now Chad prior to 1955, that this boundary "resulted" from certain of the international acts listed in Annex I (notably, the 1899 Declaration, the 1902 Accord, and the 1919 Convention (8 September)), and that Article 3 of the 1955 Treaty confirmed the existence of this boundary. Chad also asserts that Libya is seeking to escape from the consequences of her

10 See, Supplementary Annex, No. 6.4 (Document 6 - the draft procès-verbal of the January 1955 meetings), and LM, para. 5.459, et seq., covering the July-August meetings.

acceptance of this boundary and accordingly is in breach of the fundamental rule of the law of treaties incorporated in the principle pacta sunt servanda.

5.21 All this is patently false, as Libya will now proceed to demonstrate. First, it is necessary to recall the precise terms of Article 3 of the 1955 Treaty:

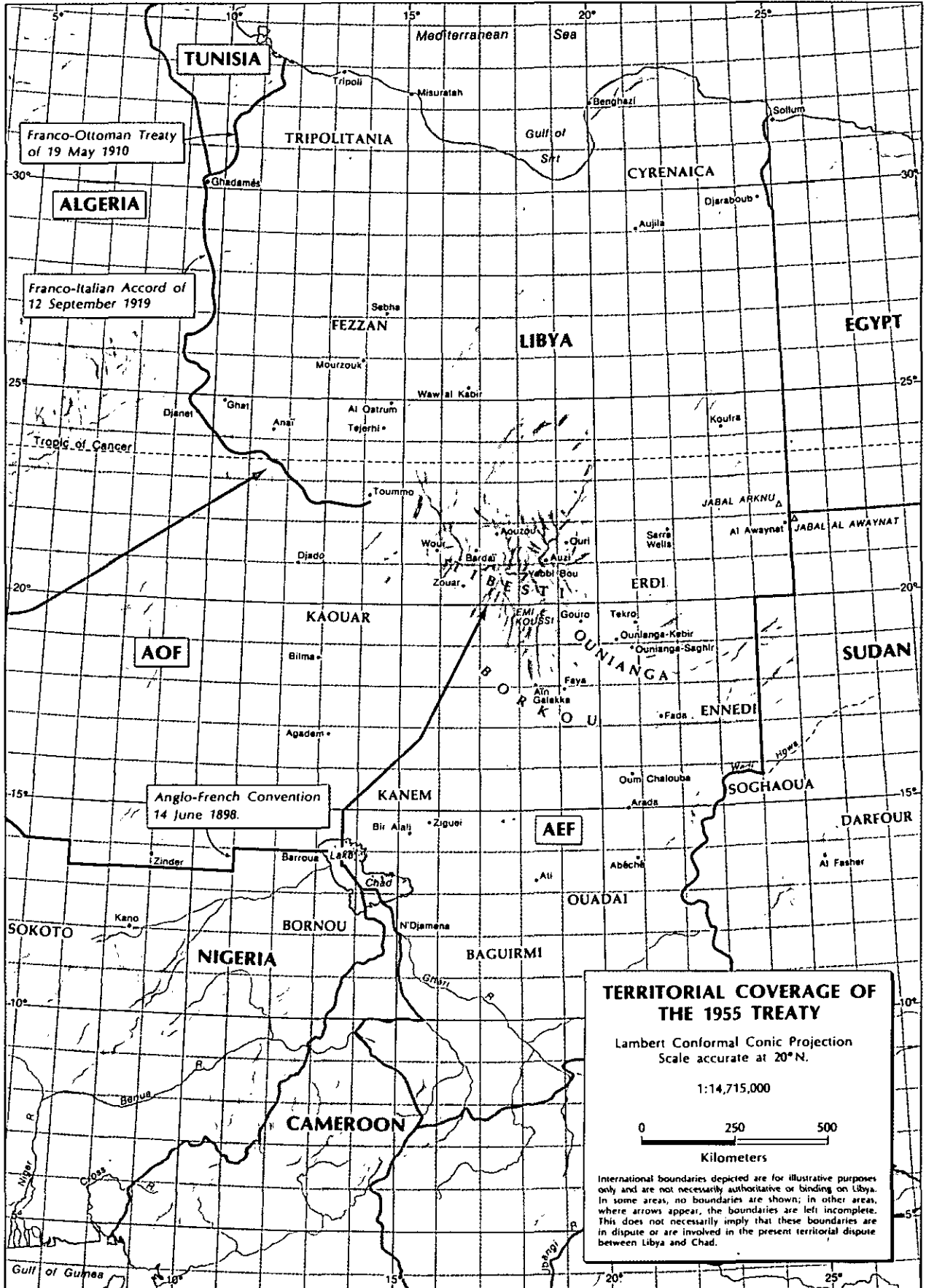
"Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française et de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annex I)."

The initial point to note about this text is that its geographical scope extends well beyond the issue of whether there exists today, or existed in 1955, a "frontière" (boundary) separating the territory of Libya from the territory of what is now Chad. It was a global provision purporting to regulate boundary questions as between Libya, on the one hand, and the totality of what were in 1955 parts of metropolitan France (Algeria) or French colonies (including Tunisia, a protectorate) bordering on Libya, on the other hand. Its geographical reach extended from the juncture between Tunisia and Libya on the Mediterranean coast to the juncture between Libya and Sudan (Map LR 3).

5.22 So, what did Article 3 achieve? One of the most important and significant words in Article 3 is the word "reconnaissent"¹¹. Chad indeed places a good deal of emphasis on the use of the word¹². But Chad invokes the use of the word "reconnaissent" to attack a false target, namely, the alleged Libyan thesis according to which Article 3 did not embody any definitive

11 It is obvious that the word "reconnaissent" or "recognise" has a broad range of possible meanings. Chad wrongly assumes that what it calls "l'institution de la reconnaissance" presumes the intent to arrive at a definitive resolution of the boundary (see, CC-M, para. 11.32). What is meant by "recognise" depends on the intentions of the parties and must be determined in that context, not vice versa. Similarly, citations to other treaties using what Chad calls the technique of "délimitation par référence" does not determine what in 1955 Libya and France intended by Article 3. Each situation must be examined in context. States may choose to refer to other treaties in order definitively to settle a boundary; or they may make such a reference, as here, to provide an agreed basis for a possible settlement. See, para 5.39, and fn. 44, below.

12 See, CC-M, paras. 11.27-11.32.



Specially prepared for presentation to the International Court of Justice.

settlement of the "boundary problem"¹³ nor regulate any boundary question¹⁴. This is not, and never has been, the "Libyan thesis". Article 3 has to be read as a whole, in its context, and in the light of the object and purpose of the Treaty, as the general rule of interpretation set out in Article 31 of the Vienna Convention on the Law of Treaties makes clear. What the parties were "recognising" by virtue of Article 3 of the 1955 Treaty was that the boundaries separating Tunisia, Algeria, French West Africa and French Equatorial Africa on the one hand, from Libya on the other hand, were the boundaries that resulted from the international acts in force as of the date of Libyan independence, an indication of which (but an inaccurate indication) was given in Annex I. What both parties were agreed upon, and what Article 3 achieved, was that pre-existing boundaries binding on France and Italy that resulted from international acts in force on the date of Libya's independence, were recognised as being the boundaries between Tunisia, Algeria, French West Africa and French Equatorial Africa, on the one hand, and Libya, on the other hand¹⁵.

5.23 The lack of respect for the text of Article 3 demonstrated in the CC-M is startling: no reluctance is shown just to rewrite this provision to accord with Chad's interpretation. Typical examples are the following:

"... par l'art. (...), les Parties 'reconnaissent' expressément que la frontière résulte d'actes internationaux que l'annexe I énumère¹⁶."

* * *

"... les deux parties y 'reconnaissent' que la frontière entre la Libye et l'A.E.F. - à laquelle le Tchad a succédé - résulte des instruments énumérés¹⁷."

13 CC-M, para. 11.32.

14 See, CC-M, para. 11.23.

15 Whether such international acts were limited to those listed in Annex 1 of the Treaty (as Chad contends) or not (as Libya contends) is of no consequence.

16 CC-M, para. 1.58.

17 CC-M, para. 8.09.

The trick practiced here in Chad's pleading is to delete three key words from the text of Article 3 - "sont celles qui"¹⁸ -, as demonstrated below on the text of Article 3 itself by crossing out these three words:

"Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française, et de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, ~~sont celles qui~~ résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye tels qu'ils sont définis dans l'échange de lettres ci-jointes."

From here, it is an easy next step to arrive at this further deformation of Article 3:

"Les deux Hautes Parties reconnaissent comme frontières séparant les territoires ... les tracés résultant des actes internationaux en vigueur"

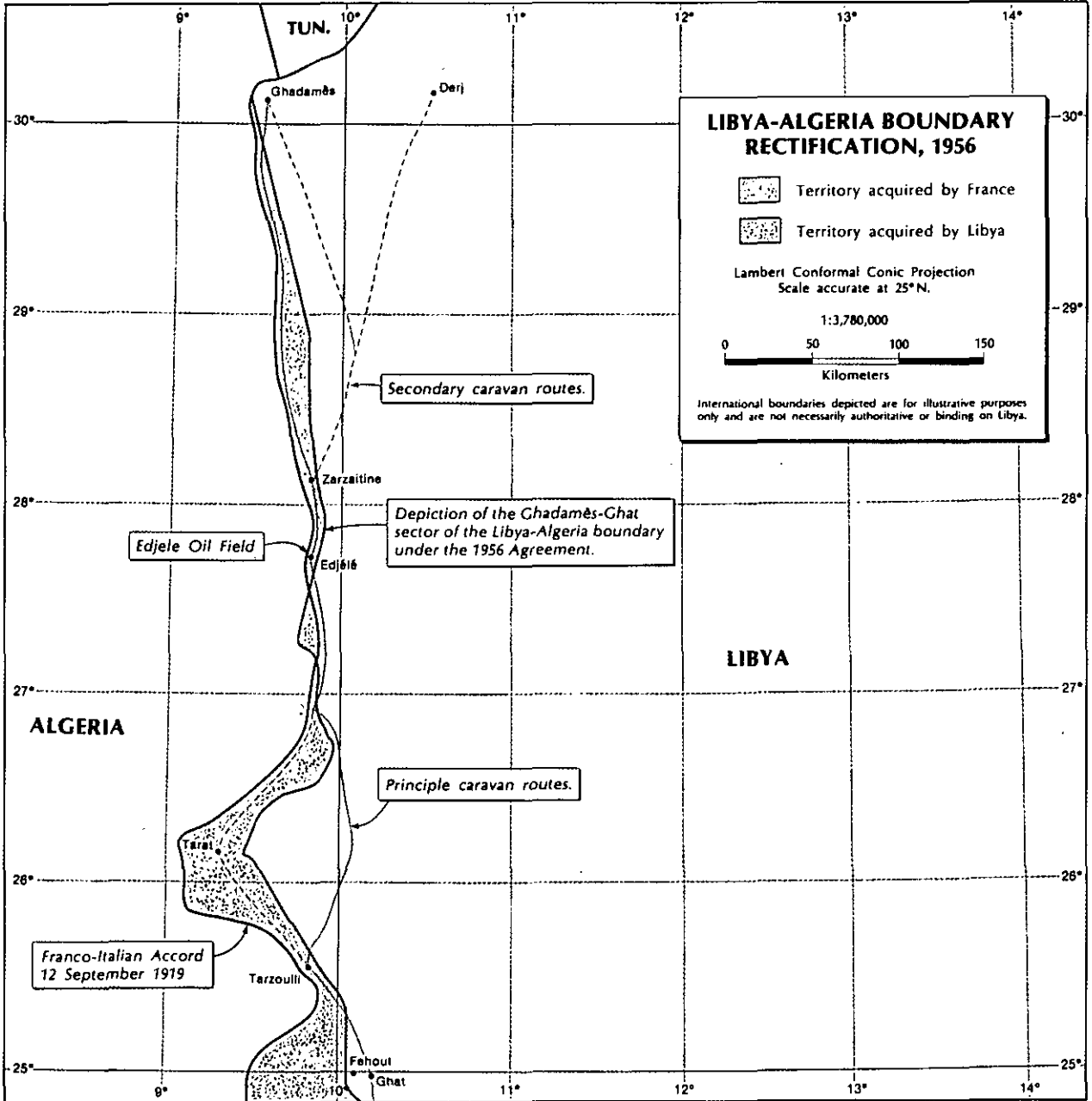
But this is self-defeating: if the text of Article 3 has to be rewritten in order to mean what Chad says it means then, ipso facto, the text does not have the meaning that Chad wishes it to have.

5.24 Reading Article 3 as a whole, and in conjunction with Annex I, which depends on Article 3, it is apparent that it achieved only a partial settlement of Libya's boundary problems, and did not, in particular, resolve the question of Libya's southern boundary east of Toummo. Why is this so? A careful study of the Franco-Ottoman 1910 Convention shows that it was a true boundary agreement between Tripolitania and what was then the French protectorate of Tunisia, concluded directly between the two Powers then exercising sovereignty over Tripolitania and Tunisia respectively. It is a detailed agreement expressly delimiting a boundary between Tripolitania and Tunisia; and it was subsequently demarcated in 1911 with the erection of 333 boundary pillars along the boundary¹⁹.

5.25 In principle, the same holds true for the boundary between Libya and Algeria (then part of metropolitan France), though here there are complications. This boundary (between Ghadamès and Toummo) had been delimited by virtue of the Franco-Italian Accord of 12 September 1919, again

18 See, LC-M, para. 3.05, fn. 3, where it is noted that the Arabic text of these words in Article 3 reads (translated into French): "sont les frontières qui".

19 See, LM, paras. 5.111-5.112.



Specially prepared for presentation to the International Court of Justice.

concluded directly between the two Powers at the time exercising sovereignty over Libya and Algeria respectively; but the French demanded a clarification and rectification of the boundary between Ghat and Toummo (up to the point 1010 where the Algerian boundary ended) during the 1955 negotiations between France and Libya²⁰. This accounts for the inclusion in Annex I of the paragraph making it clear that, as regards the Franco-Italian 1919 Accord, the boundary between Ghat and Toummo was to pass through three identified points. As already mentioned above, the identification of these three points in Annex I did not settle the course of the line in this sector for it left open a number of questions still to be resolved.

5.26 The rectification of the Ghadamès-Ghat sector of the boundary between Libya and Algeria in the light of the Edjélé oil discovery, effected by virtue of the 1956 Agreement (the conclusion of which was insisted upon by the French as their price for ratifying the 1955 Treaty and evacuating Fezzan), is an even more significant indication that Article 3 of the 1955 Treaty had not resolved all boundary problems between Libya and France as regards French territory or possessions bordering upon Libya (Map LR 4).

5.27 It was indeed precisely because Article 3 of the 1955 Treaty had the legal effect for which Libya contends - namely, to confirm that, as between France and Libya, the Libya-Tunisia boundary was the boundary delimited by virtue of the 1910 Convention, as subsequently demarcated in 1911, and the Libya-Algeria boundary was the boundary delimited by virtue of the 1919 Accord - that France was so insistent that the course of the Libya-Algeria boundary be clarified and rectified in Annex I of the 1955 Treaty itself (as regards the Ghat-Toummo sector). The precise course of the boundary between Libya and Algeria is not at issue in the present case, and the clarifications and rectifications of that boundary agreed upon in 1955 and 1956 are relevant for the purposes of the present dispute only insofar as they shed light on the true interpretation of Article 3 of the 1955 Treaty. There is no doubt that Article 3 of the 1955 Treaty, read literally, and in conjunction with Annex I, had the immediate legal effect only of confirming or rectifying those boundaries that had already been delimited by the international acts claimed by France to be en vigueur in 1951; and that is why France insisted upon, and succeeded in achieving (in Annex I to the 1955 Treaty and in the 1956 Agreement), what she conceived

20 See, generally, LM, paras. 5.448-5.490.

to be essential rectifications and clarifications of the Libya-Algeria boundary as delimited by virtue of the 1919 Agreement.

5.28 Thus, the text of Article 3 makes it clear that it did not create, *ex novo*, boundaries where they did not exist by, for example, transforming into a genuine boundary line a line that served a different purpose. The role of Article 3 was to render incontestable those boundaries, binding on Libya and France on the critical date, which the Colonial Powers had fixed conventionally (that is, real boundaries) prior to the critical date. It is precisely for that reason that Article 3 has been cited in the literature as a prototype of a treaty provision consecrating the principle *uti possidetis juris*²¹.

5.29 But, surely, it may be argued, if this was the *sole* immediate legal effect of Article 3, that legal effect was extremely limited. This is, however, to ignore the true significance of Article 3 of the 1955 Treaty. In 1955, Libya was a newly independent State in Africa, the forerunner of the many newly independent States in Africa that were to emerge during the next twenty years or so. In 1955, there was uncertainty as to what would be the attitude of these newly emerging States in Africa towards the boundaries they might inherit as a result of agreements between Colonial Powers during the colonialist period or, as a result of administrative arrangements made by a single Colonial Power. It was not until some eight years later - on 25 May 1964 - that the African Heads of States and of Government approved the Cairo Declaration declaring that all the Member States (of the O.A.U.) undertook to respect the frontiers existing at the moment when they achieved independence²².

5.30 But, it may be contended, why was reference made in Annex I of the 1955 Treaty to the 1899 Declaration, to the Anglo-French Convention of 8 September 1919 and to the 1902 Accord, if the sole immediate legal effect of Article 3 of the 1955 Treaty was to confirm the continued applicability, as between France and Libya, of such boundaries as resulted from those international acts on the Annex I list as were binding on them?

5.31 Here we are in the realm of speculation, since no evidence has as yet been forthcoming from Chadian or French sources as to the genesis of

21 See, CM, p. 76, para. 99.

22 It was entirely consistent that Libya registered no reservation to the Declaration.

the list of agreements set out in Annex I. Both the CM and the CC-M merely pose possible answers to the puzzle of why this list was inserted in Annex I in the final days of the negotiations in August 1955. The complete absence of any discussion in the record of the Annex I list suggests that it was added at the last minute - in quite a rush it would appear - as a perfunctory listing of the agreements believed by France to be relevant texts to be examined²³.

5.32 There is also another possible reason - and here the significance of the word "reconnaissent" in Article 3 of the 1955 Treaty needs to be considered further²⁴. The use of this word demonstrates that (leaving aside the rectification of the Ghat-Toummo sector of the Libya-Algeria boundary brought about by Annex I of the 1955 Treaty itself) Article 3 was purely declaratory of pre-existing boundaries. It did not purport to fix, to settle or to delimit boundaries that had not previously been fixed, settled or delimited as between Powers competent to do so. However, as Article 3 was supposed to apply globally to all boundary questions as between Libya and French territory and possessions bordering on Libya, some mention had to be made of the unsettled issue of Libya's southern boundary east of Toummo. France was well aware that this was, and remained, an unsettled issue. A major effort had been made to resolve it as between France and Italy in 1935, but ratifications of the 1935 Treaty were never exchanged as the Treaty prescribed; and France had admitted in 1935 in the Exposé des motifs presented to the French Parliament that, prior to the conclusion of the 1935 Treaty, no boundary existed between Libyan territory and the territory of French Equatorial Africa to the east of Toummo.

5.33 How to resolve the dilemma? France did not wish to enter into substantive negotiations with Libya on the course of the boundary east of Toummo; the documents in the French diplomatic archives emphasise that the texts on which the French position relied were not to be taken up and discussed. This was the view of the Governor General of the A.E.F. and of the *Ministre de la France d'Outre-Mer*; and it was incorporated in the instructions of the *Ministre des Affaires Etrangères* to the French negotiating team as they resumed negotiations in mid-July 1955²⁵. Chad admits yet again in its Counter-Memorial

23 See, para. 5.89, et seq., below, where Annex I is discussed further.

24 See, para. 5.22, and fn. 10, above.

25 See, fn. 8, above.

that the 1955 negotiations bore almost exclusively upon the segment of the boundary separating Libya from Algeria and Niger²⁶. A convenient solution appeared to be to include in the Annex I list references to certain international acts that might be thought relevant to the determination of Libya's southern boundary and to leave the 1935 Treaty off the list. Although France was well aware that no boundary between Libya and French Equatorial Africa had resulted from the 1899 Declaration, the 1902 Accord, or the 1919 Anglo-French Convention, the French no doubt had it in mind that they could maintain that such a boundary had resulted from these acts; and in the course of subsequently delimiting this boundary they hoped to gain acceptance by Libya of this boundary espoused by France east of Toummo.

5.34 Libya has convincingly demonstrated in its earlier pleadings that neither Article 3 of the 1955 Treaty itself, nor any one or combination of the international acts listed in Annex I, fixed a boundary separating the territory of Libya from the territory of what is now Chad. Whatever kind of limit to French expansion eastwards towards the Nile Valley had been agreed upon between Britain and France under the 1899 Declaration was certainly not an agreed boundary between these two Powers, as Chad readily admits; nor did it subsequently become such a boundary by virtue of the 1919 Anglo-French Convention. That Convention may have established, as between Britain and France, a north/south boundary line, subsequently to be delimited and demarcated by virtue of the 1924 Anglo-French Protocol and Declaration, dividing French possessions from the Anglo-Egyptian Sudan²⁷. But it most certainly did not establish a boundary along the southeast line indicated in Article 3 of the 1899 Declaration (whatever may have been the precise direction of that line), far less as that line may have been modified as a result of fixing its terminal point at the juncture of 24°E longitude with 19°30'N latitude. Even if this were not the case, it is clear that Italy (exercising sovereignty over Libya at the time) vigorously protested and refused to accept the 1919 Anglo-French Convention, not least because it purported to shift the north/south boundary (and hence the end point of the southeast line) further north by fixing its terminal point on the 24th parallel at 19°30'N latitude.

26 See, CC-M, para. 11.123.

27 It is thus striking that these 1924 instruments were omitted from the Annex I list, strongly suggesting that the Annex I list was not meant to be exhaustive. This is confirmed by the fact that the 1924 instruments were mentioned in Chad's Application filed with the Court on 3 September 1990, before the preparation of its pleadings.

5.35 Libya has also convincingly demonstrated that the 1902 Accord did not have the legal effect attributed to it by Chad²⁸. Moreover, the inclusion in Annex I of the 1902 Accord was patently in error, given that this Accord was not in force on the date of Libya's independence (by reason of France's failure to notify it to Italy under the terms of Article 44 of the Italian Peace Treaty of 1947), a condition expressly insisted upon by Chad²⁹. The inclusion in Annex I of this Accord could not retrospectively bring back into force as between France and Libya an "international act" which, by virtue of Article 44 of the Italian Peace Treaty, must be considered to have been abrogated as between France and Italy by reason of France's failure to notify the Accord to Italy under the terms of, and within the time-limit specified in, that particular provision of the Peace Treaty.

5.36 Even were the position otherwise, it has also been conclusively demonstrated by Libya that the key sentence in the 1902 Franco-Italian Accord about the "limit of French expansion" referred only to French expansion to the east of France's possessions of Tunisia or Algeria which adjoined the western frontier of the vilayet of Tripoli, and did not refer at all to Libya's undetermined southern boundary to the east of Toummo³⁰. It is manifestly clear that the 1902 Accord did not constitute a boundary treaty, nor did it concern the régime of a boundary, if only for the reason that Italy had no capacity at the time to determine the boundaries of Tripolitania, which was under the undisputed sovereignty of the Ottoman Empire in 1902. At most, the 1902 Accord can be construed as a political assurance given to and accepted by Italy, in her capacity as potential inheritor of Ottoman rights in and over Tripolitania, that French designs did not extend to encroachment eastwards from Tunisia and Algeria over what were generally regarded at the time as the approximate western limits of the vilayet of Tripoli, as shown notionally on a map referred to in the Accord by a dashed, wavy line, and not identified on the map's legend as a boundary.

5.37 Chad, after having reproduced the French texts of Article 3 and Annex I of the 1955 Treaty, appears to assume that a simple reading of these

28 See, LC-M, para. 4.90, et seq.; see, also, para. 6.42, et seq., below.

29 See, CC-M, para. 11.20. For the same reason, the inclusion on the list of the Franco-Italian Accord of 12 September 1919 was also in error. It, too, had been abrogated as a result of not being notified under the Italian Peace Treaty.

30 See, LC-M, paras. 4.106-4.125, setting out cogent reasons to support this conclusion.

provisions suffices to resolve definitively what it refers to as the "boundary dispute". Chad specifically states:

"Il n'y a donc pas lieu de compliquer inutilement le litige: il suffit de consacrer un texte conventionnel parfaitement clair et de lui donner son sens ordinaire³¹."

5.38 It has already been illustrated above how in Chad's pleadings the text of Article 3 is sought to be modified³². But even as to the unmodified text, Libya's conception of what is the ordinary (or literal) meaning of Article 3 differs radically from that of Chad, in the following respects:

- Article 3 did not establish any boundaries where no boundaries had previously existed, and Annex I in no way modified this result. The use of the word "reconnaissent" demonstrated that it was designed to be declaratory of existing boundaries and not constitutive of boundaries where no boundaries had previously existed. If a boundary resulted from any of the international acts en vigueur in 1951, notwithstanding that the boundary might have been determined and delimited by agreements or other international acts concluded between France and other Powers at the time entitled to exercise sovereignty over what is now Libya, that boundary was recognised in the 1955 Treaty as binding between France and Libya if it was binding between them on the critical date³³;
- This reading of Article 3, read in conjunction with Annex I³⁴, is further supported by the absence of any reference in the preamble to the 1955 Treaty or in the text of the Treaty

31 CC-M, para. 11.12.

32 See, para. 5.23, above.

33 It is paradoxical that France either proposed, or succeeded in, rectifying all of the actually delimited boundaries, with the exception of the Tunisian boundary; and even that boundary was proposed to be discussed at the outset of the negotiations in January 1955. When the July-August 1955 negotiations started, the French team had authority even to seek a major change in the course of what France had maintained, before then, to be Libya's southern boundary in the Tibesti area.

34 Which depends on, and is subject to the provisions of, Article 3.

itself, to G.A. Resolution 392(V). Chad appears to attach no significance to this striking omission³⁵. Yet it is clear that this omission is crucial. What the General Assembly had recommended in Resolution 392(V) as already discussed above, was that:

"... the portion of [Libya's] boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments" (Emphasis added).

- It is clear from the debates in the General Assembly preceding the adoption of G.A. Resolution 392(V) that the General Assembly had concluded that there was a portion of Libya's boundary with French territory which had not already been delimited by international agreement, and that this portion included the boundary with what was later to become Chad. And yet, notwithstanding this specific mandate from the General Assembly, no negotiation took place between France and Libya in 1955 to delimit any boundary between Libya and French territory east of Toummo, and there was virtually no discussion at all of that boundary³⁶. All that resulted was the general formula in Article 3 whereby the boundaries of Libya with French territory were to be "those which result from international acts in force at the date of Libya's independence". Commenting on the significance of Article 3, Chad states:

"Il s'agit en quelque sorte de la réaffirmation sous une autre forme des termes de la résolution 392(V)"³⁷.

- If Article 3 of the 1955 Treaty was designed to be simply a "reaffirmation" in another form of the terms of Resolution 392(V), then it is clear that the parties to the 1955 Treaty did not, by that Treaty, discharge the specific mandate

35 See, CC-M, para. 11.138.

36 This is conceded by Chad; see, CC-M, paras 11.123-11.129.

37 CC-M, para. 11.137.

conferred on them by the Resolution to "negotiate" the delimitation of the Libyan boundary with French territory east of Toummo. This is particularly the case where, as Libya has established in its written pleadings, the "international acts" that might be relevant to the delimitation of the boundary east of Toummo (whether or not listed in Annex I) do not disclose the existence of any "boundary" between Libya and what is now Chad that was binding on Libya and France on the critical date.

- The "ordinary meaning" of Article 3 of the 1955 Treaty is not the abstract ordinary meaning of the words used, resulting from a purely grammatical analysis:

"Il ne s'agit donc pas d'un sens ordinaire abstrait, mais d'un sens ordinaire concret qui ne peut être discerné que par l'examen du terme en question dans le contexte de ce terme et à la lumière du but et de l'objet du traité. C'est ce sens qui peut être retenu dans le processus de l'interprétation du traité³⁸."

So, one has to begin by looking at the specific meaning of the text calling for interpretation - in this case, Article 3, read in conjunction with Annex I, in its application to the question of whether a "boundary" between Libyan and French territory east of Toummo "resulted" from any of the "international acts" in force at the date of Libya's independence to which an incomplete and partly erroneous reference is made in Annex I. No such "boundary" had ever been delimited between France and Libya, nor indeed between France and Italy in respect of Libya (save in the 1935 Settlement). Nor indeed, for that matter, had a "boundary" ever been delimited between France and Great Britain along the southeast line described in the 1899 Declaration, as "interpreted" in 1919.

- This is not to deprive Article 3 of the 1955 Treaty of all practical meaning. It was clearly operative to confirm, as

38 Yasseen, "Interprétation des traités d'après la Convention de Vienne sur le Droit des Traités", Recueil des Cours, Vol. 151, 1976-III, p. 26.

between France and Libya, Libya's western boundary with Tunisia and (subject to the rectifications and clarifications embodied in Annex I) Libya's western frontier with Algeria³⁹. But these frontiers are not in issue in the present case. The only conclusion that can properly be drawn from a consideration of the text of Article 3 of the 1955 Treaty, including Annex I, and in the light of the circumstances of the conclusion of that Treaty, is that these provisions neither delimited a boundary between Libyan and French territories east of Toummo, nor did they confirm a pre-existing "boundary" in that sector.

5.39 As was noted in Section 1 of this Chapter, Chad's position as to the meaning of Article 3 of the 1955 Treaty has not only changed since it set forth its thesis to the O.A.U., and since its Notification to the Court filed on 3 September 1990, but is also unclear. For example, in discussing Article 3, the CC-M states that:

"Par ces dispositions, les deux Parties reconnaissent que la frontière doit être déterminée à l'aide de certains actes ...⁴⁰"

This suggests that Article 3 set the ground rules for a subsequent delimitation based on (with the aid of) the "actes internationaux en vigueur" in 1951 and, thus, was purely declaratory. But this seems to be in contradiction with what is said a few pages further on, where the CC-M suggests that the Article 3 formula represented:

"... une technique de délimitation particulière: la référence à des textes internationaux antérieurs"⁴¹.

What these words appear to suggest is that the reference to the earlier texts accomplished the delimitation, and that Article 3 was constitutive. The CC-M goes on to say that the exact delimitation is easy to arrive at: from the texts a line

39 However, before the ink was dry on the 1955 Treaty, France had insisted that the Algerian boundary between Ghadamès and Ghat, so confirmed, be rectified. Furthermore, the Ghat-Toummo sector was not sufficiently delimited to be able to demarcate it.

40 CC-M, para. 11.20. Emphasis added.

41 CC-M, para. 11.34.

may be deduced or "results" from the texts; and no map is needed, thus avoiding problems of interpretation and compatibility between map and text. The "recognition" operates directly to make opposable a line emerging from these texts, and hence:

"... la valeur ou l'opposabilité aux Etats parties à la Convention des textes internationaux auxquels il est fait référence est sans importance⁴²."

Such an interpretation suggests that Article 3 established a boundary by mere reference to agreements listed in Annex I, regardless of their validity or opposability to Libya (and presumably whether or not they were en vigueur in 1951). The precedents cited - to show that this technique of delimitation by reference to international texts is well-known and wide-spread - show nothing of the kind⁴³. The terms used in these other treaties were entirely different from Article 3: they referred to "frontière établie", "frontières définies", or "frontières définies et tracées", or "boundaries established"⁴⁴.

5.40 In describing this interpretation of Article 3, the CC-M makes this candid admission: "Cette formulation n'est pas innocente⁴⁵." But how can this statement be squared with Chad's repeated assertion that Article 3 is simple and clear and its meaning can be discerned from the text without the aid of travaux? Chad's remark certainly suggests that France's intention was to lead

42 CC-M, para. 11.35.

43 See, CC-M, para. 11.36, et seq.

44 Chad seems to assume that the exact meaning and precise effects of Article 3 of the 1955 Treaty may be determined by way of analogy, relying on international agreements that concerned other States and different regions. Evidently Chad chooses not to follow the admonition of Charles De Visscher that, on the one hand (and as a general rule) -

"... la prédominance naturelle dans les rapports internationaux de situations fortement individualisées sur les situations générales réduit notablement le champ d'application de l'analogie.";

and on the other hand, in respect more specifically to treaties -

"(c)elle-ci n'a manifestement qu'une place très restreinte dans le droit conventionnel et de façon plus générale dans le droit particulier On ne la conçoit guère ici comme légitimant un élargissement des dispositions arrêtées par les Parties". De Visscher, C.: Problèmes d'interprétation judiciaire en droit international public, Paris, 1963, p. 40.

45 CC-M, para. 11.27.

Libya on to ultimately accept the "opposability" of a situation that was not in fact well-defined or well-known, and as to which Libya was in total ignorance, since there had been no negotiations on this subject and the Annex I list had appeared at the last minute without explanation or discussion.

5.41 Of course, this apparent inconsistency in Chad's case is reflected in the conflict between Chad's first and second theories, in reality two alternative cases, supplemented by a third case - French effectivités alone, which had no relation at all to the text of Article 3. Chad maintains that Article 3 (and Annex I) of the 1955 Treaty resolved the question of the land boundary between Libya and Chad. It is not acceptable, therefore, for Chad to offer two alternative theories as to the meaning of this pivotal agreement, and a third that ignores it. It is not acceptable for Chad to argue that it is not necessary to choose among the three theories, for they lead to the exact same line. It is not acceptable for Chad to dodge the question as to what Article 3 means if, in fact, under "actes internationaux en vigueur" in 1951 the international boundary between Libya and Chad either did not exist - as Libya has demonstrated - or was a line different from that claimed by Chad. It would be an extraordinary coincidence if three such radically different theories should lead to the same precise line.

5.42 The CC-M has suggested that the principle of uti possidetis has virtually gained the status of a rule of jus cogens⁴⁶. Such a view is clearly wrong, since it would result in the nullification of any treaty that modified a boundary resulting from the application of the principle of uti possidetis. But if Chad's view were correct, it would lead to the conclusion that for Article 3 to have modified the boundary between Libya and Chad as it existed on the critical date in 1951, applying the criteria of Article 3 - a strict application of uti possidetis juris - would be in contravention of a rule of jus cogens, and hence invalid.

5.43 In this case, Chad is put to the proof of establishing where the boundary, if any, lay in application of the principle of uti possidetis juris, as defined in Article 3. For this can be the only meaning emerging from a literal meaning of the text of that Article. In the next Chapter, it will be demonstrated that this is an impossible task, for no conventional boundary in conformity with the criteria of Article 3 existed on the critical date.

46 See, CC-M, para. 3.33.

SECTION 4. Context of Article 3

5.44 The object and purpose of Article 3, as well as the ordinary meaning of its text, have been examined above. It is now necessary to consider its context before turning to supplementary means of interpretation.

(a) The 1956 Agreement

5.45 No doubt the various companion agreements and annexes of the 1955 Treaty are part of its context. But before taking up these provisions, there is another agreement that had an overriding importance as part of the context of Article 3 of the 1955 Treaty. This was the 1956 Agreement concerning rectification of the Algerian boundary, for reaching agreement on these boundary changes, whose primary aim was to ensure that the Edjélé oil fields belonged to France, was imposed by specific amendment to the French law authorizing ratification of the 1955 Treaty (the Isorni amendment) as a prior condition to ratification. The 1956 Agreement made it apparent that Article 3 of the 1955 Treaty was not intended by France to resolve the delimitation of Libya's boundaries, for in the sector of Libya's boundaries of greatest interest by far both to Libya and France, it required a subsequent agreement in 1956 to attempt to fix the course of the boundary, which had not even been discussed in the 1955 negotiations.

5.46 Hence, it is incorrect to assert, as the CC-M does, that Article 3 was intended to resolve all uncertainties over Libya's boundaries, as the following extract wrongly suggests:

"Elle marque la volonté de ses auteurs de mettre fin à une situation encore marquée par le doute ou l'incertitude⁴⁷."

When the 1955 Treaty was signed on 10 August 1955, the French Government knew full well that it had not resolved the doubts or uncertainties along the Algerian boundary with Libya, for the 1919 Accord did not produce a line acceptable to France. However, rather than face up to the issue in the 1955 negotiations, France postponed it until the matter of ratification came up; then Libya's agreement to this rectification of the boundary was imposed as a condition of ratification. In similar fashion, the three points designated in Annex I of the 1955 Treaty brought about a change in the sector of the Algerian

47 CC-M, para. 11.27.

boundary south of Ghat; but they did not resolve the delimitation of this boundary as modified, as has been shown above.

5.47 The situation as to what the French regarded as Libya's southern boundary was similar. The French came to the July-August negotiations armed with a proposal of the French military to rectify in the Tibesti area the 1919 line (which France claimed to be the boundary) to meet military objectives, and because of the results of recent explorations in this region, that had given rise to expectations of important mineral deposits⁴⁸. Apparently, the French negotiators did not find an opportunity to table this new boundary proposal without opening up the whole French thesis as to a southern boundary to scrutiny. Their instructions were not to allow this to happen and only to advance the rectification proposals if the occasion arose without risk to France's thesis⁴⁹.

(b) The 1955 Convention

5.48 Turning to the other agreements and annexes accompanying the 1955 Treaty, the CC-M focusses on the following provisions:

- Article 5 of the Treaty (para. 11.53);
- Article 1 of the Convention de bon voisinage (paras. 11.55-11.57);
- Articles 9, 10 and 11 of the same Convention (paras. 11.59 and 11.65); and
- Article II of Annex III of the Convention particulière (para. 11.66).

The first provision, Article 5, was part of the Treaty itself; it concerned arrangements for consultation over mutual defence in the event of a military attack against North Africa. For this purpose, France's territories were defined in Article 5 - not as those over which it had sovereignty, but as those for which it had

48 See, para. 6.241, below, and Map LR 27C.

49 See, Supplementary Annex, No. 6.6 (Document 9).

assumed responsibility for their defence⁵⁰. This included at the time the Libya-Chad borderlands, but no longer Fezzan.

5.49 The last sentence of Article 5 refers to Libyan territory in this way:

"En ce qui concerne la Libye, il s'agit du territoire libyen, tel qu'il est défini à l'article 3 du présent traité."

The CC-M contends that the last phrase of this sentence:

"... marque bien la conviction des Parties que le territoire libyen est, dans cet article (that is, Article 3), délimité avec l'ensemble des territoires limitrophes."

But the phrase is no more than a reference back to Article 3 and is entirely consistent with the interpretation that the boundary was expected to be delimited soon, in accordance with the criteria established in Article 3. The Algerian boundary south to Ghat and between Ghat and Toummo had in fact not been definitively delimited in 1955, for the northern sector was modified in 1956, and south of Ghat the points designated in Annex I still left unresolved a number of open questions as to the course of that boundary. Beyond the third agreed point in Annex I (point 1010) and Toummo, there were various widely differing scenarios as to how to draw the boundary⁵¹ (Map LR 5). The Algerian boundary in both sectors was of much greater concern to France in the event of hostilities than Libya's southern boundary.

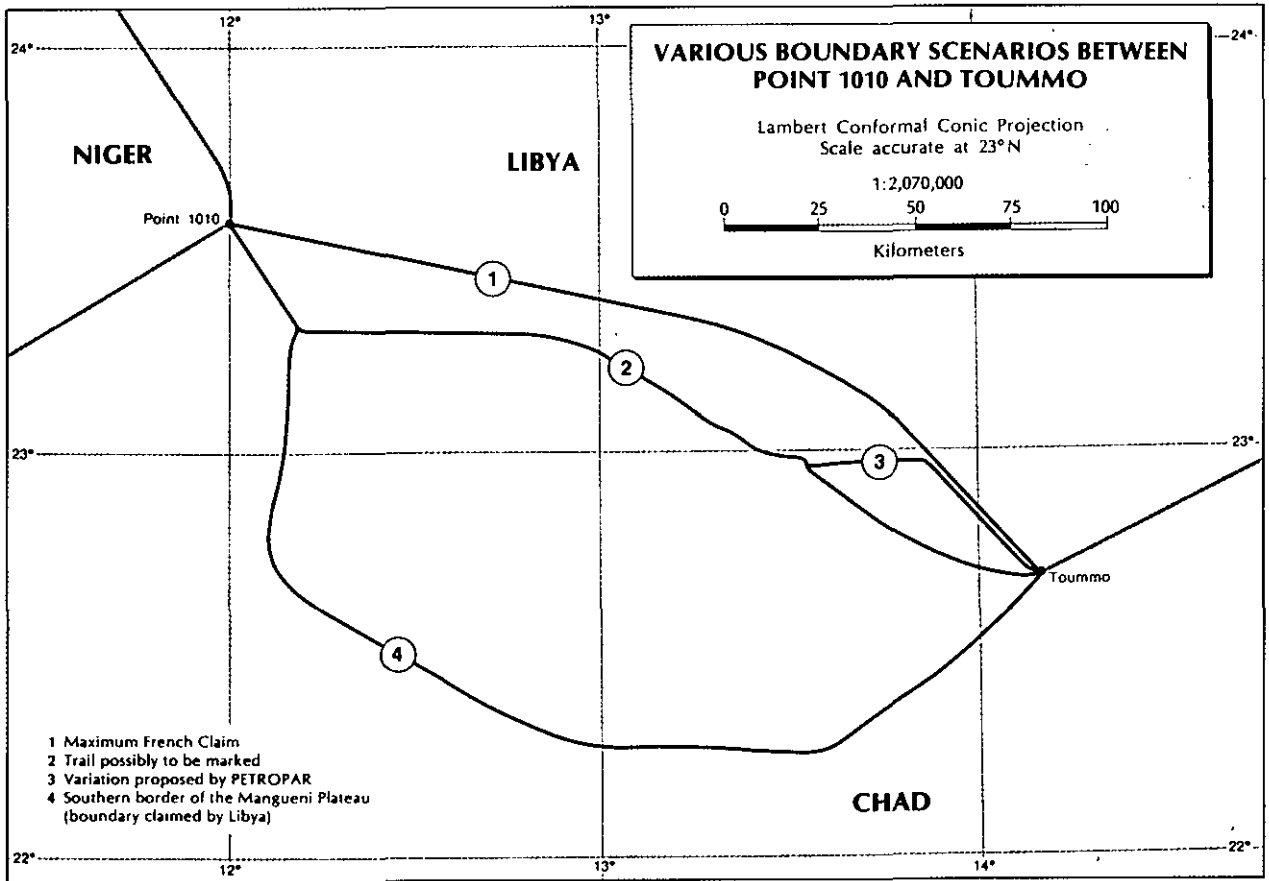
5.50 The other provisions listed above in paragraph 5.48 concerned not the boundary but the "régime frontalier"⁵². The French diplomatic records show that details of this "régime" had been formulated several years before in proposals made by the Governor General of the A.E.F. and the *Ministre de la France d'Outre-Mer*. Some, it appears, had already been put into effect. This was at a time well before Article 3 allegedly fixed Libya's boundaries.

50 Article 5 defined French and Libyan territories in this way:

"En ce qui concerne la France, il s'agit des territoires dont elle assume la défense et qui sont limitrophes de la Libye ... En ce qui concerne la Libye, il s'agit du territoire Libyen tel qu'est défini à l'article 3 du présent Traité."

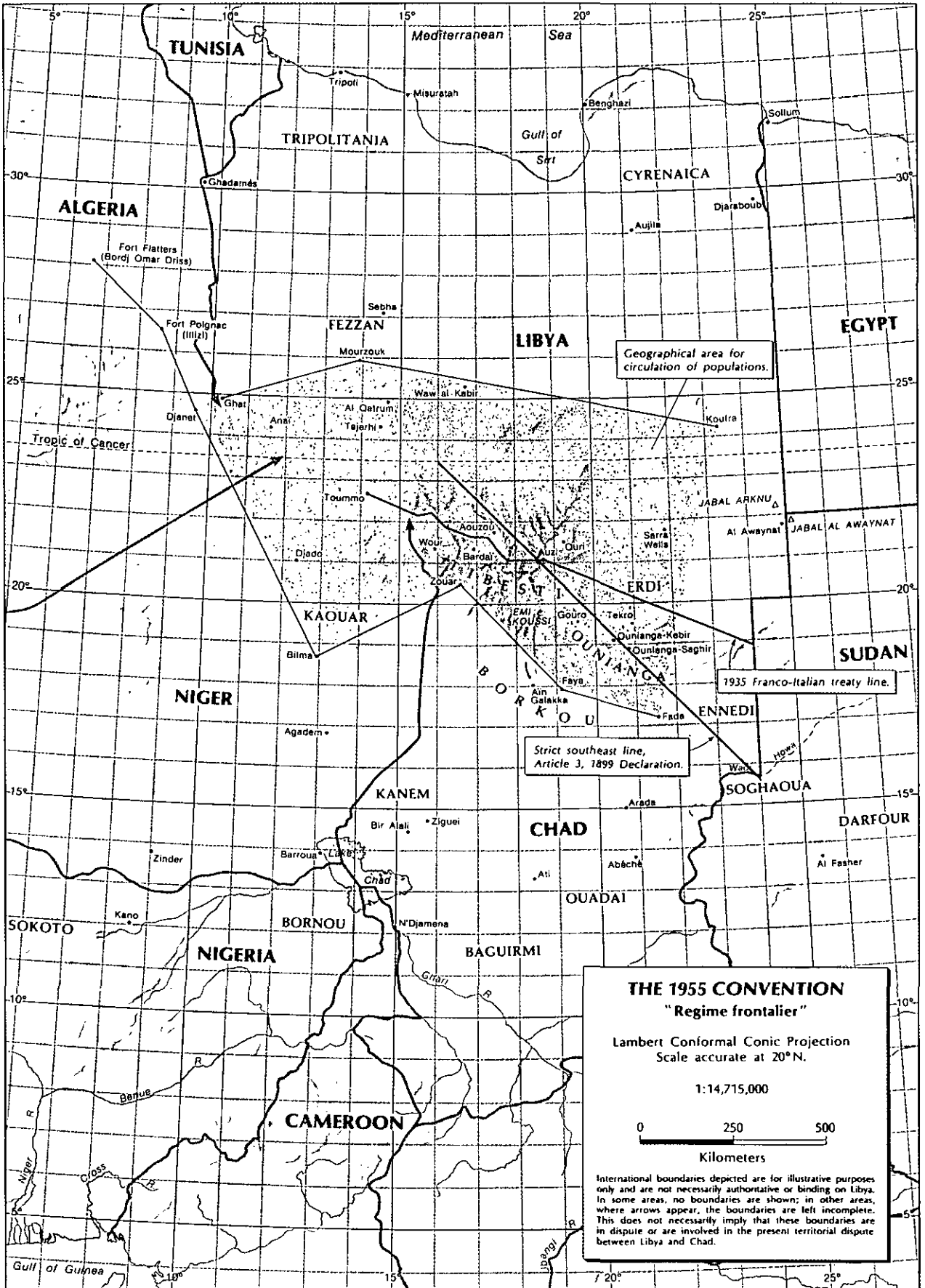
51 See, Supplementary Annex, No. 6.9 (7).

52 Supplementary Annex, No.6.6 (3).



Specially prepared for presentation to the International Court of Justice.

Source: Quai d'Orsay Archives:
LR Exhibit 6.9.



Specially prepared for presentation to the International Court of Justice.

In fact, the French authorities made a clear distinction between the question of boundaries and the "régime frontalier"⁵³.

5.51 Considering, in turn, each of the other provisions said by Chad to form part of the context of Article 3 of the 1955 Treaty, Article 1 of the Convention refers back to Article 3 of the 1955 Treaty, using the same words as Article 5 of the Treaty itself: "sur les frontières telles que définies à l'article 3 ...", and does not presume the existence of a finally delimited Libyan boundary for the reasons just set out above. Moreover, in Article 1 of the Convention, French territories are again defined in terms of territories for which France had assumed the defence, not over which it asserted sovereignty. The boundaries referred to were between Libyan and French territories so defined, which as already noted covered the borderlands, so that no precision as to these boundaries east of Toummo was necessary. Whatever the sovereign rights to the borderlands might be, France had at the time assumed responsibility for their defence.

5.52 There are then Articles 9, 10 and 11 of the Convention to consider⁵⁴. Once again, the boundary referred to was one separating the territory of Libya from French territory, already defined in the Convention in terms of responsibility for defence, not sovereignty, which no longer included Fezzan (at least after French evacuation, which was to take place at the end of November 1956) but which did include the borderlands, whatever their status as Libyan or French territory might have been at the time. As the LM explained, this was a practical arrangement based on the situation on the ground; it had nothing to do with sovereign rights. Moreover, it formalized a "régime frontalier" that had been operating informally.

5.53 The zone created under Article 10 illustrated that the parties to the Convention did not rely on precisely delimited Libyan boundaries⁵⁵. Map LR 6A shows this zone, formed by a line between certain designated points said to lie in "territoire français", and other points in "territoire libyen". It was within this zone (shaded red) that the nomadic peoples circulated. It is necessary to repeat once more that "territoire français" was defined in the Convention to mean territory for which France had assumed the defence, not

53 Ibid.

54 In this regard, see, LM, paras. 5.542-5.545.

55 See, LC-M, paras. 5.543-5.545 and Map LC-M 99 appearing there.

over which it had sovereignty. What is striking about the zone shown on the map is that it left a great deal of leeway for the delimitation of a boundary. The 1935 line and a strict southeast line under Article 3 of the 1899 declaration have been drawn in red on this map. Both lines fit comfortably within this zone. Almost all of the regions of Tibesti, all of Ounianga and Erdi, and half of Ennedi fell within the zone, for these were the regions of the nomadic peoples. It is evident that the existence of a delimited southern boundary was of little consequence to the definition of and operations within the "régime frontalier"; in fact, these peoples had been circulating within this zone for centuries.

5.54 In this regard, there is no basis at all for the statement in the CC-M, referring to the Convention, that:

"... sa mise en oeuvre supposait que les frontières soient définies⁵⁶."

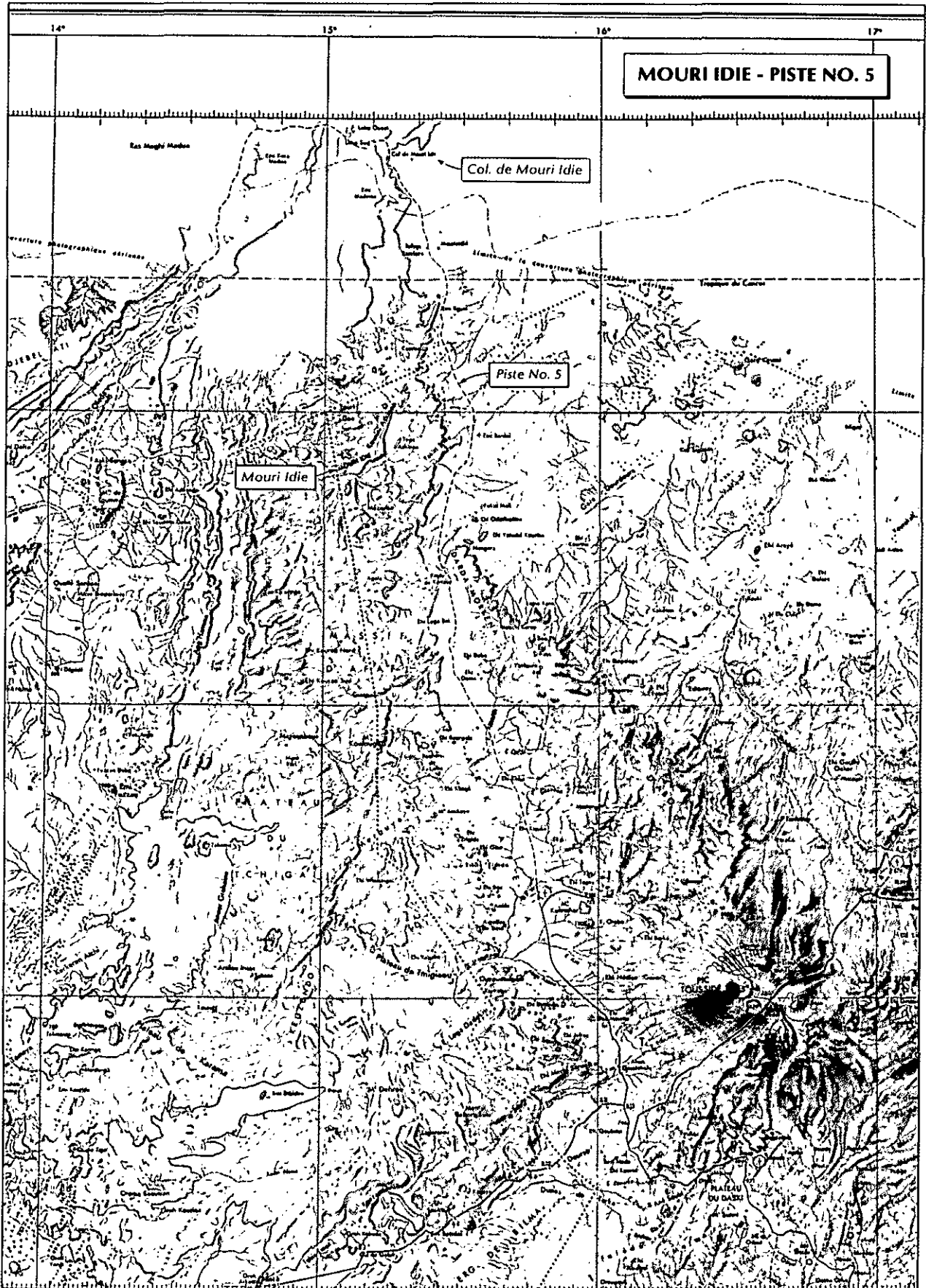
Chad produces no evidence to support such a conclusion; and it is wrong, as the French diplomatic records establish and as shown by the fact that such a régime concerning cross-boundary movements and commerce had informally been in effect long before Article 3 of the 1955 Treaty took effect - which it should be borne in mind was not until 12 February 1957.

5.55 This leaves Article II of Annex III of the Convention particulière to be discussed, concerning Piste No. 5. This route is described as passing through a number of points starting in Tunisia and descending south to Chad. The CC-M underlines this part of the description:

"... et pénètre en territoire du Tchad dans la région de Muri Idie."

It is to be noted that it is not "territoire français" but "territoire du Tchad" which is mentioned. But this could not have referred to territory in terms of sovereignty, for Chad was a French colony that was, in turn, a part of the A.E.F, and "territoire du Tchad" was a military term. Furthermore, the description in this Article "in the region of Mouri Idie" is not at all precise, as the map shows (Map LR 7). Is the reference to the "Col. de Mouri Idie" or to "Mouri Idie" itself, far to the south west? There is no indication at all what part of this immense area lay in the "territoire du Tchad". Whether or not it lay in Libyan territory was not relevant to the fact that, being near the Algerian frontier, it was an area over which France

56 CC-M, para. 11.64.



Source: Djado NF-33, Carte Internationale du Monde.
Scale 1,000,000, Published by IGN, 1975.

had a special interest in retaining the defence responsibility in 1955, and it fell within the area of responsibility of the military commander of Chad, - in this sense, therefore, "territoire du Tchad". So this brings out again the fact that the "régime frontalier" formalized in the agreements accompanying the 1955 Treaty was a matter quite apart from the question of whether there was a southern boundary and, if so, where it lay.

(c) Other Elements Within the Context of the 1955 Treaty

5.56 The CC-M does not mention a number of other elements of conduct that might be considered as further "context" in interpreting Article 3 of the Treaty. These include the following:

- U.N. maps at the time the Treaty was negotiated and after it was signed;
- Issuance of Libya's Petroleum Regulation No. 1 and Map No. 1 annexed thereto, on 14 August 1955;
- Prime Minister Ben Halim's statement on 14 October 1955 that:

"Le traité franco-libyen est un accord d'évacuation pur et simple qui n'engage en rien la Libye."⁵⁷

and the French reaction to it;

- The conduct of France in regard to registration of the 1955 and 1956 Treaties under Article 102 of the U.N. Charter;
- The 20-year term of the 1955 Treaty.

(i) U.N. Maps

5.57 The U.N. maps have already been discussed above⁵⁸, so only the remaining elements of the broader "context" will be taken up below.

(ii) Libyan Petroleum Regulation No. 1 and Map No. 1 of 14 August 1955

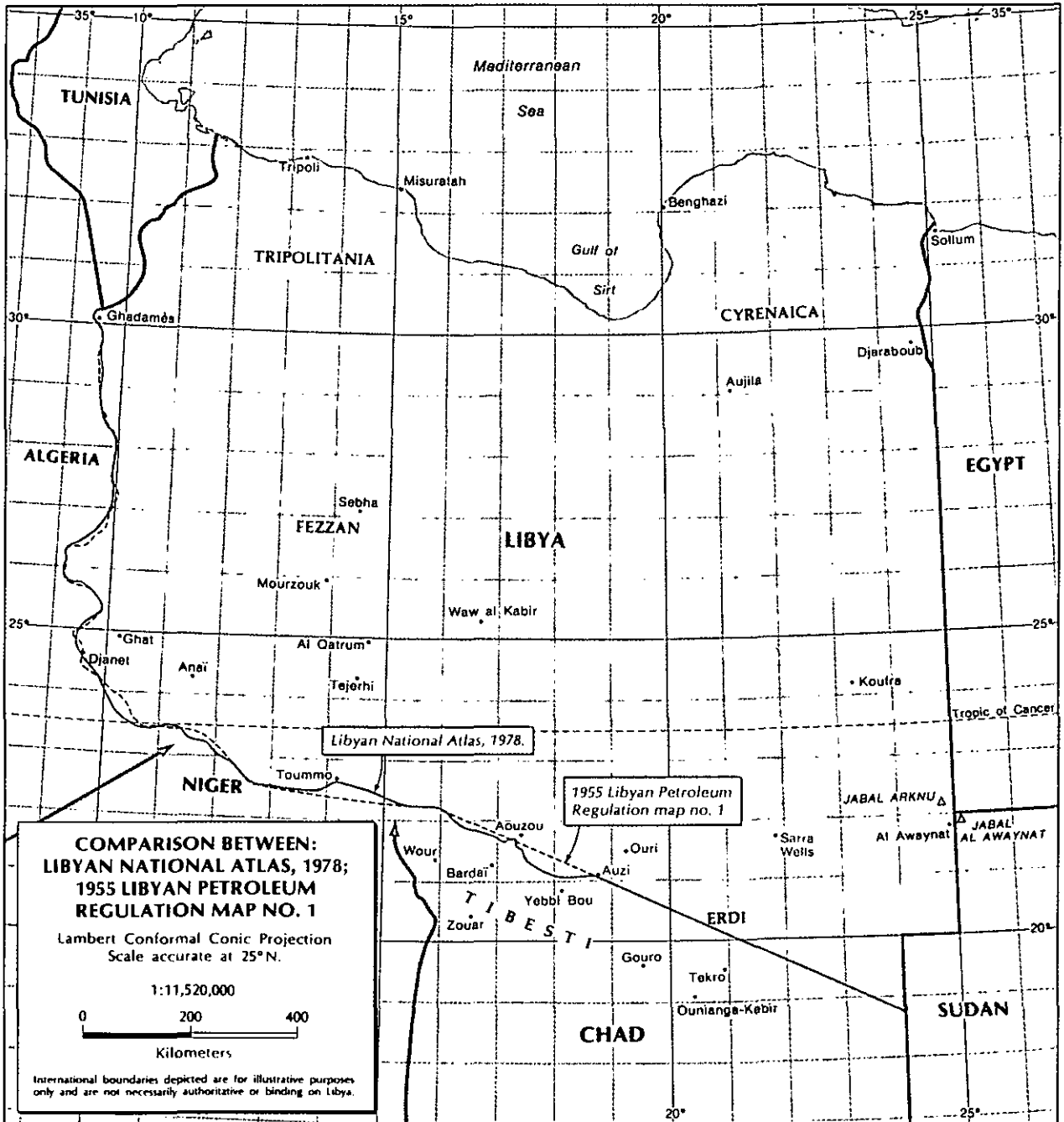
5.58 Libya's 1955 map is evidence that bears directly on the meaning of Article 3 of the 1955 Treaty, for it was issued only four days after the Treaty was signed. It was an official Libyan map, signed by a Libyan Minister, and it contained no disclaimer as to the international boundaries portrayed⁵⁹. When, in 1978, the Libyan Atlas was issued, it contained a disclaimer as to international boundaries shown; and Libya's southern boundary, shown on the maps in this Atlas, was fairly close to that portrayed in 1955 on Libyan Map No. 1 (Map LR 8).

5.59 In both its Memorial and Counter-Memorial, Libya states that it knew of no evidence to indicate any French protest against Libyan Map No. 1. The CC-M dodges the issue and refers instead to a 1962 geological map prepared by the U.S. Geological Survey showing the position of the United States Government as to the location of Libya's boundaries, which accorded with the French position. The map portrayed "miscellaneous geological investigations" and did not purport to indicate Libya's position as to the international boundaries shown, as the disclaimer at the bottom of the map in bold red type states: "International boundaries as illustrated herein are neither final nor binding on the Libyan Government." No such disclaimer had been placed on Map No. 1, which was the official Libyan map and was so regarded by the international oil companies and other international organisations. However, having examined the files recently made available to Libya by the Quai d'Orsay, Libya has uncovered evidence that France did indeed promptly protest Libya's Map No. 1. It is to be regretted that Chad's Counter-Memorial did not so inform the Court.

5.60 On 25 August 1955, Ambassador Dumarçay sent a note verbale to the Libyan Foreign Ministry protesting Map No. 1, issued eleven days

58 See, para. 4.25, et seq., above. See, also, Supplementary Annex, No. 2, in which Chad's Map Atlas is analysed.

59 See, LM, para. 5.524, et seq.



Specially prepared for presentation to the International Court of Justice.

earlier, because the boundary of Libya shown on the Map did not accord, he wrote, with the "textes en vigueur" as defined in Annex I of the 1955 Treaty⁶⁰. On several subsequent occasions when inquiries were made about Map No. 1 by oil companies, M. Dumarçay referred to this protest. Whilst protesting this official Libyan map that made clear, four days after the signing of the 1950 Treaty, that Libya did not agree with France as to the location of its western and southern boundaries, France only took steps to deal with Libya's boundary on the west with Algeria. Thus, France may be considered to have acquiesced in the fact that the southern boundary of Libya had not been resolved by the 1955 Treaty⁶¹.

5.61 The line shown on Map No. 1 was not the 1935 line. As Map LR 2 referred to in paragraph 4.25 above shows, it was almost the same line as appeared on U.N. Map No. 241 of January 1950, attached to the U.N. Secretariat's Study, the main difference being that the U.N. map had question marks interposed on the line running across southern Libya east of Toummo. Unlike U.N. maps and other maps relating to petroleum concessions, Libya's Map No. 1 contained no disclaimer.

5.62 It is important to explain why such a conclusion concerning France's conduct is warranted. The bearing of this map on the meaning of Article 3 is that it made clear that Libya did not regard Article 3 as having fixed Libya's southern boundary or that there was such a conventional boundary as then espoused by France and now by Chad. France's prompt protest revealed that the two States were not in agreement on the course of Libya's boundary, only a few days after the signing of the 1955 Treaty. The French note verbale, however, did not base its protest against Map No. 1 on the grounds that the boundary it portrayed differed from a boundary allegedly established by Article 3 and Annex

60 See, Supplementary Annex, No. 6.10 (5).

61 Libya does not give the principles of acquiescence and estoppel the major emphasis that Chad does. Nevertheless, Libya does maintain that at several critical moments at least, France's conduct should have prevented France, and should now prevent Chad from arguing that there was a conventional boundary at the time of Libya's independence: for example, (i) when France signed the 1915 Treaty of London and expressed no reservations in respect to the recognition of Italy as successor to Ottoman rights over Libya in its Article 10 (see, para. 6.131, below); (ii) when, in 1935, the French Government in the Exposé des motifs accompanying the law to authorize ratification of the 1935 Treaty informed the French Parliament that there was no such boundary (see, LM, para. 5.336, et seq; LC-M, para. 6.28); and (iii) when, in December, 1950, France voted in favour of Resolution 392(V), calling for negotiation of any undelimited Libyan boundaries - in the circumstances an unmistakable reference to Libya's southern boundary east of Toummo (see, para. 4.16, above).

I. It protested because the line on the map departed from a boundary that allegedly emerged from the "textes en vigueur" as defined in Annex I. It may be presumed that M. Dumarçay, who had been intimately involved in the July-August 1955 negotiations in Tripoli where he was Ambassador at the time (but not the head of the French negotiating team), had cleared the text of this note verbale with the French Ministry of Foreign Affairs before presenting it to the Libyan Government. Thus, in this note verbale, the French Government officially endorsed the interpretation of Article 3 as declaratory of the boundary situation as it existed on the critical date (uti possidetis juris) rather than as itself constitutive of Libya's boundaries.

5.63 A final word on Map No. 1 is appropriate to understand why Libya selected the particular boundary line shown on this map to the east of Toummo. When a State issues a map showing its boundaries, it is incongruous for it to leave certain sectors blank - without any boundary shown. Normally, a choice has to be made, particularly if the map concerns oil concessions (as distinct from Italy's maps issued in 1916, 1926, 1939 and 1941 in the context of negotiations with France). Libya issued Map No. 1 as part of the Petroleum Regulation it promulgated on 14 August 1955. Oil had yet to be discovered in Libya other than in the area of Edjélé on the Libya-Algeria frontier. Libya's 1955 Petroleum Law was issued to provide the ground rules and framework within which concessions to oil companies would be issued. Thus, a conservative line based on the U.N. map that illustrated the uncertainty attached to this boundary was a safe line to pick as a guide to foreign oil companies⁶².

(iii) Statement of Prime Minister Ben Halim on 14 October 1955

5.64 Next to be considered, along with the context of the 1955 Treaty and subsequent conduct of the parties, is the reported remark of Prime Minister Ben Halim on 14 October 1955, when he asserted that the Treaty was

62 In LM, para. 5.552, Libya discussed the dilemma that a State faces in issuing oil concession maps when it comes to indicating boundaries, resulting in the tendency that the boundaries shown err on the side of conservatism, usually coupled with a disclaimer, so as to avoid incidents when concessions extend beyond boundaries. The CC-M brushes this aside with this impetuous remark: "La laborieuse explication de la partie libyenne sur la prudence des cartes géologiques n'est guère convaincante" (para. 10.36). It tries to dismiss the fact that Map No. 1 was issued four days after the 1955 Treaty was signed with the irrelevant observation that its preparation had occurred before signature. As far as Libya was concerned, the principles to govern delimitation of its boundaries were agreed in January 1955 and the Article 3 formulation was only a restatement of that agreement.

simply an agreement to evacuate Fezzan "qui n'engage en rien la Libye⁶³." This provoked a sharp reaction from such astute critics of the 1955 Treaty as M. Soustelle, Governor General of Algeria; and it was suggested during the French Parliamentary debates that perhaps there was no use considering ratification in the light of the Libyan Prime Minister's statement, taken by these French critics to mean that the Treaty had already been violated. If Mr. Ben Halim had believed that Article 3 had fixed Libya's boundaries, it seems implausible he would have made such a statement. M. Soustelle's remarks during the French Parliamentary debates also made it very clear that he did not regard Article 3 as having adequately fixed Libya's boundary with Algeria by a mere reference to the Accord of 12 September 1919⁶⁴.

(iv) **Failure to Register the 1955 Treaty Under Article 102 of the U.N. Charter**

5.65 The next item appropriately considered along with the context of the 1955 Treaty concerns the failure to register it under Article 102 of the U.N. Charter⁶⁵. There are a number of documents in the archives of the Quai d'Orsay recently made available to Libya that complete this story⁶⁶. In fact, the story differs from what Libya had previously understood on the basis of only fragmentary information. The CM and CC-M make no attempt to set out the full facts. The full and accurate story recounted by the French diplomatic files has an important bearing on the meaning of Article 3 of the 1955 Treaty.

5.66 The matter of registration of the 1955 Treaty under Article 102 was not raised within the French Government until October 1961 - over six years after signature and four and one-half years after the Treaty was ratified. In contrast, the 1956 Agreement signed in December 1956 was registered under Article 102 on 19 May 1958 even though the 1956 Agreement had not been presented by the Libyan Government to its Parliament for ratification.

5.67 It was the French Foreign Ministry's Service Juridique that asked in October 1961 whether any reasons of a political nature stood in the way

63 See, LM, para. 5.494; LC-M, para. 3.74, et seq.

64 See, LM, para. 5.494.

65 See, LM, para. 5.504, et seq.; LC-M, para. 3.129, et seq.

66 See, Supplementary Annex, No. 6.8.

of proceeding with registration. Apparently none were perceived, for on 20 June 1962 instructions were sent from the Quai d'Orsay to the French Mission at the U.N. to take the necessary steps, which occurred on 3 July 1962. On 20 July, the U.N. Secretariat pointed out that a required document was missing: a declaration that the texts submitted included any existing reservations to the treaty. It was at this point that a problem arose: there had been two secret letters accompanying the Treaty, and the French Government felt it had to consult Libya before going any further with registration.

5.68 At the end of the day, Libya sent France a note verbale dated 18 February 1963 to the effect that it had no objection to registration in the circumstances. There are, however, two French dispatches of special interest in this file to be noted: the first, dated 29 November 1962, reporting a conversation with Libya's First Secretary in Paris (Mr. Elatrash); the second, a dispatch dated 20 February 1963 from Paris to Tripoli just after Libya's note agreeing to registration had been received. The first document reports that Mr. Elatrash, expressing his personal opinion, did not see why registration was appropriate because certain provisions were "caduc" and a new treaty appeared to him to be preferable. This was, of course, two years after Chad had achieved independence. The second dispatch, the Quai d'Orsay's dispatch of 20 February 1963, expressed surprise over Libya's consent to registration and suggested it might be inopportune then to so proceed:

"Au moment où la négociation que nous menons avec le Gouvernement libyen vise à remettre en cause en fait, sinon en droit, certaines des obligations que nous avons souscrites dans le Traité, sans contrepartie véritable de la part de ce Gouvernement ..."

5.69 The file does not reveal why, finally, the French Government took no further action to register the 1955 Treaty. But it is not plausible to believe that such a step would have been so delayed (and ultimately not taken) if France believed that the 1955 Treaty itself had fixed any of Libya's boundaries. On the other hand, if the French Government believed the Treaty only to be declaratory of the boundary status quo on the critical date, it is understandable that it might regard its registration under Article 102 as of no real consequence, unlike the 1956 Agreement which itself specifically rectified the boundary between Libya and Algeria. This is consistent with France's indifference in not following up its protest against Libya's map No.1 in respect to Libya's southern boundary. Moreover, the question of registering the 1955 Treaty

first came up only in 1961, after Chad had achieved independence. Libya's southern boundary was no longer a problem for France to resolve; it was a problem to be resolved between Libya and Chad⁶⁷.

(v) **The 1955 Treaty's 20-Year Term**

5.70 It is also a significant element of the 1955 Treaty's context that its Article 11 provided that the Treaty had a duration of only 20 years. It is far more likely that Article 3 was intended to be declaratory in such a situation; for the ultimate boundary would not arise from the 1955 Treaty itself, but from other "actes internationaux en vigueur" on the critical date. Thus, once the ground rules for determining the boundary were agreed, the Treaty itself had no further role to play.

(d) **1966 Libya-Chad Accord**

5.71 The CC-M includes the 1966 Libya-Chad Accord as part of the context of Article 3 of the 1955 Treaty. This is clearly not correct under the criteria of Article 31(2) of the 1969 Vienna Convention on the Law of Treaties; nor was it a "subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions", or "subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation", to quote from Article 31(3) of the same Convention. The parties to the two agreements were not the same. Furthermore, the 1966 Accord, which was part of a package of economic agreements, all signed by the respective Economic Ministers of Libya and Chad, replaced (so far as Chad was concerned) the provisions of the 1955 Convention, not the 1955 Treaty, and thus concerned the "régime frontalier", not the Libya-Chad boundary.

5.72 This difference between the "régime frontalier" and the boundary itself appears clearly in documents in the French diplomatic archives, as has already been discussed above in connection with the 1955 Convention⁶⁸. The excerpts from the 1966 Treaty quoted in the CC-M all relate to the "régime frontalier". Of course, in the 1966 Accord the references in the 1955 Convention to French territory (defined as territory over which France had assured the defence, not in terms of sovereignty) had been replaced by references to Chadian

67 See, Supplementary Annex, No. 6.7(10).

68 See, para. 5.48, et seq., above.

territory or simply to Chad. But the geographical zone described in the 1966 Treaty remained the same as that described in the 1955 Convention, excluding of course Niger and Algeria, as Map LR 6B shows. This left the same flexibility in terms of delimitation of the boundary between Libya and Chad as already noted above in connection with the 1955 Convention⁶⁹.

5.73 Thus, the 1966 Accord simply replaced the provisions concerning the "régime frontalier" contained in the 1955 Convention. It was not relevant at all to Article 3 of the 1955 Treaty. It is incorrect to say, as the CC-M does, that Articles 2 and 3 of the 1966 Accord:

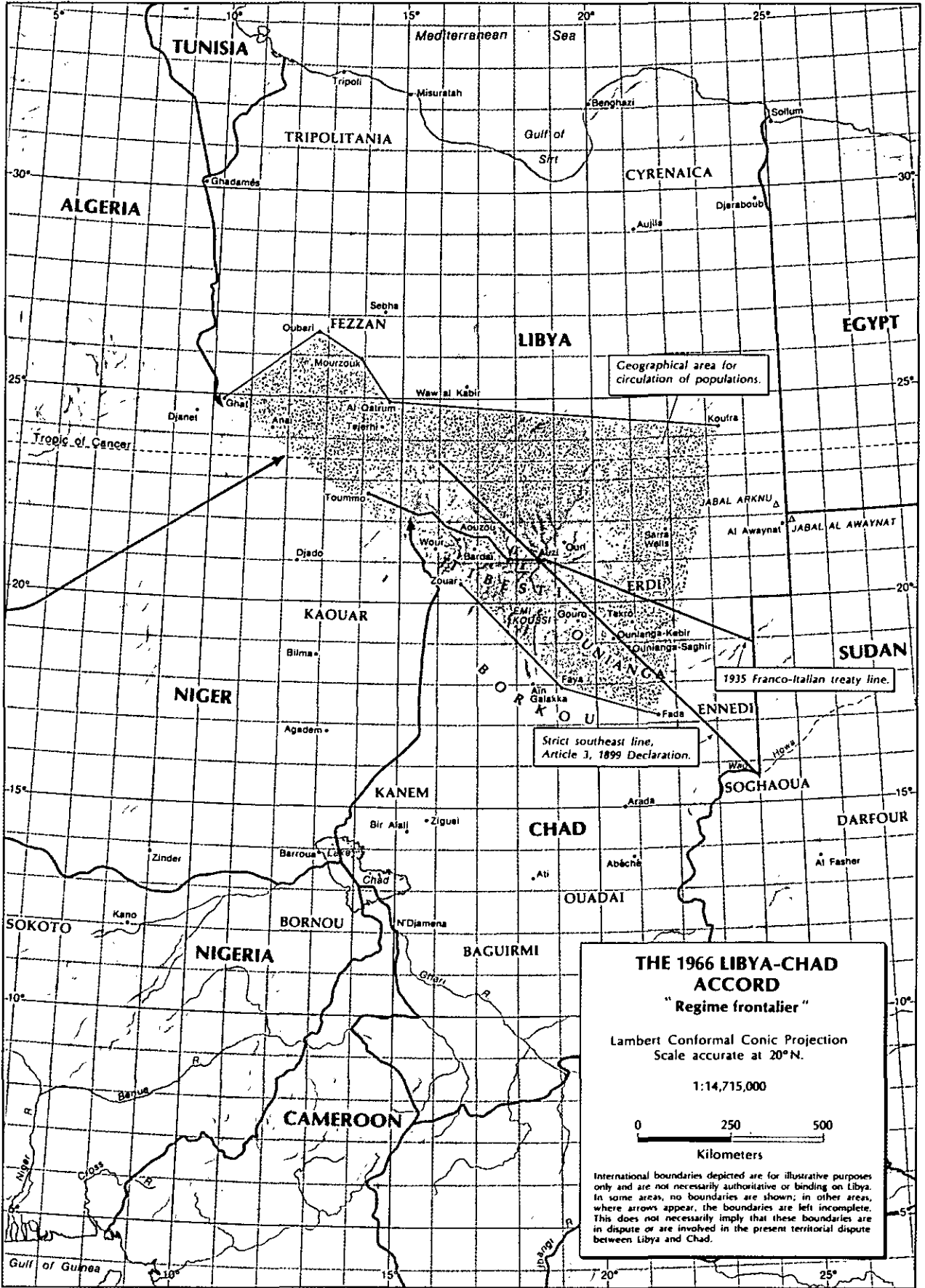
"... confirment d'ailleurs la frontière établie par l'article 3 du Traité de 1955⁷⁰."

The 1966 Accord did not indicate, any more than had the 1955 Convention, where the Libya-Chad boundary lay; and it defined the exact same geographical zone as described in the 1955 Convention, within the Libya-Chad borderlands, leaving a good deal of leeway for delimitation of the boundary within this zone.

5.74 The argument that Chad does not advance is that the 1966 Accord established the boundary or limits to the boundary by mutual agreement between Libya and Chad. Such an argument, if it had any basis in fact or law - which it does not - would be more to the point, than trying to fit the 1966 Accord within the "context" of the 1955 Treaty. However, such an interpretation would clearly be inconsistent with the subsequent Treaties between Libya and Chad of 1972 and 1974, with the famous letter of President Tombalbaye of 28 November 1972, and with the subsequent assumption of administration of parts of the borderlands by Libya starting at the end of 1972, provoking no formal protest from Chad for almost five years. The 1972 Treaty made no mention of boundaries even though it was entered into at a time when Libya's activities in the borderlands had begun. The 1974 Protocole d'Accord in effect replaced the "régime frontalier" of the 1966 Accord substituting a more general approach to cross-frontier circulation and policing in what it called the "border areas", implying that the Libya-Chad boundary had not been delimited. These agreements are again taken up in Chapter XI in the context of the post-1951 conduct of Libya and Chad.

69 See, para. 5.53, above, and Map LR 6A.

70 CC-M, para. 11.87.



Specialy prepared for presentation to the International Court of Justice.

SECTION 5. Travaux Préparatoires

(a) Preliminary Comments

5.75 The CC-M starts off its discussion of the travaux préparatoires with an obvious misreading of Libya's Memorial, referring to a passage where Libya suggested that Article 3 of the 1955 Treaty was a "reflection of France's confidence in its 'thesis' that a conventional boundary already existed in 1951"⁷¹. Says the CC-M:

"Cet extrait du Mémoire libyen est fondamental. En effet, la Libye semble y reconnaître la portée réelle du Traité de 1955 qui refléterait la 'position française' selon laquelle le tracé frontalier est celui résultant des accords de l'époque coloniale."

Article 3 did not reflect France's thesis; it reflected France's confidence in its thesis - misplaced as it may have been -, and this is brought out by the travaux.

5.76 In January 1955, before the long hiatus in the negotiations, Libya and France agreed to the following, as shown in the French draft record:

"Les deux Gouvernements conviennent de s'en tenir, en ce qui concerne le tracé des frontières ..., aux stipulations générales des textes en vigueur à la date de la création de l'Etat libyen"⁷².

This was the agreed basis for taking up the boundary question again when negotiations resumed in July 1955. The January formula was redrafted by the French in July to read:

"Les deux Hautes Parties Contractantes reconnaissent que les frontières séparant les territoires de la Tunisie, de l'Algérie, de l'Afrique Occidentale Française et de l'Afrique Equatoriale Française d'une part, du territoire de la Libye d'autre part, sont celles qui résultent des actes internationaux en vigueur à la date de la constitution du Royaume Uni de Libye, tels qu'ils sont définis dans l'échange de lettres ci-jointes (Annex I)."

This is the text of Article 3; the words are different but the sense is the same as in the agreed formula of January 1955. This is apparent from the plain meaning of Article 3 discussed earlier; and it is confirmed by the travaux.

71 CC-M, para. 11.101.

72 See, LM, paras. 5.457 and 5.472. A copy of the draft minutes of the January meeting has been found in the Quai d'Orsay's archives. See, Supplementary Annex, No.6.4(6).

5.77 France was confident that the application of this formula - a strict application of uti possidetis juris 1951, based on "actes internationaux en vigueur" on the critical date, the date of Libya's independence - would produce the boundary which is now the boundary submitted by Chad to the Court. France was also confident that its thesis (which is now Chad's thesis) as to where the boundary lay, applying these criteria, would be accepted by Libya when it came time to agree the actual line. The travaux and a number of French documents following the signature of the 1955 Treaty demonstrate this.

5.78 Contrary to what is said in the rather convoluted passages of the CC-M based on the above misreading of the LM, Libya's method of interpretation of Article 3 of the 1955 Treaty is in strict accordance with classical rules of treaty interpretation codified in the 1969 Vienna Convention. Earlier paragraphs of this Chapter have summarized what has already been set out in the LM and the LC-M as to the "ordinary meaning to be given the terms of (Article 3 and Annex I) in its context and in the light of its object and purpose". Libya now turns here to the "preparatory work of the treaty, including the circumstances of its conclusion" and other "supplementary means of interpretation", already extensively dealt with in earlier pleadings, but now enriched by documents recently made available by the French Foreign Ministry, to confirm the plain meaning of Article 3.

5.79 Chad appears to believe that the meaning of Article 3 is so clear that recourse to supplementary means of interpretation is unnecessary⁷³. Nevertheless, it devotes a number of pages of its CC-M to the travaux préparatoires. Whilst Libya believes that the plain meaning of Article 3 leads to the reading Libya gives to that Article - what the CM, in fact, described as a "consécration d'uti possidetis 1951" -, at the same time, it believes it appropriate to consult the travaux in this case⁷⁴. This is so for several reasons. First, Article 3 is a most unusual delimitation provision. Both the CM and the CC-M have devoted considerable space to an attempt to demonstrate that delimitation by reference to other treaties is a common, well-proven method of delimitation.

73 See, CC-M, paras. 11.102-11.110.

74 Professor Bastid, citing recent jurisprudence, suggests that the use of travaux préparatoires may now play a more prominent role in the interpretation of treaties than it did in the past. See, Bastid, S.: "Effets de Traités entre les Parties", in Les Traités dans la Vie Internationale, Paris, Economica, 1985, pp. 115-141.

None of the examples cited by Chad resemble in the least Article 3⁷⁵. Libya knows of no other treaty containing a delimitation formula such as this. If, as the CM suggests, Article 3 is a "classical" type of delimitation provision, it is so because it is in a class by itself.

5.80 Second, it is difficult to understand why such a round-about formula was chosen if the intention of the parties could have been expressed so much more clearly and simply had they intended to agree upon a specific boundary line: the 1935 line could have been specifically rejected; and the 1899-1919 line and the Toummo-Tropic of Cancer segment of the claimed boundary could have been specifically identified and even drawn on an annexed map. This would have been entirely normal practice. The indirect approach of Article 3 is one of the strongest reasons for rejecting Chad's contention that the 1955 Treaty fixed a line. Nevertheless, such an unusual approach as that of Article 3 warrants consulting supplementary means of interpretation.

5.81 Third, Annex I of the 1955 Treaty, referred to in Article 3, in and of itself, is unclear in terms of what purpose it was intended to serve. Was this list of agreements set out in Annex I intended to be exhaustive? If so, why were such agreements, so critical to the French thesis, as the 1900 Accord, the 1912 Franco-Italian Agreement and the 1924 Protocol and Declaration omitted? Furthermore, it appears that two of the agreements on the list - the 1902 Accord and the Accord of 12 September 1919 - were not "en vigueur" on the critical date. So an investigation of the travaux seems merited to discern the purpose of Annex I.

(b) **The CC-M's Incorrect and Inadequate Treatment of the Travaux**

5.82 In the summary discussion of travaux that follows, certain remarks set out in the CC-M will be considered first. Then each category of travaux will be dealt with, summarizing the conclusions that emerge from them.

75 See, para. 5.22, and fn. 11, and para. 5.39, and fn. 44, above.

5.83 The CC-M contrasts Libya's vigilance in getting French troops to leave Fezzan with Libya's complacency over continued French military occupation and administration of the borderlands⁷⁶, considering that:

"Cette attitude serait incompréhensible si le gouvernement libyen n'avait pas été convaincu de l'existence de la souveraineté française sur le Tibesti."

This conclusion is wrong for it fails to take account of the situation that existed in 1955 and the predicament in which Libya was placed. Libya was then a very weak and poor State. Substantial British and American forces continued to remain in Libya in 1955, and the U.K. had undertaken the responsibility for its defence. (They were not to leave until after 1969.)

5.84 Immediately following the January 1955 negotiations, the Mendès-France Government fell, and the new French Government had serious doubts about continuing the negotiations and agreeing to evacuate Fezzan. The second round of negotiations did not resume until 18 July, and then only after Libya had threatened to take the matter of French occupation of Fezzan to the Security Council. French reluctance to evacuate Fezzan did not end with the signing of the 1955 Treaty on 10 August. While Libya proceeded promptly to submit the Treaty to its Parliament and to ratify it (20 March 1956), the French Government once more had serious second thoughts about the Treaty, even to the point of considering not submitting the Treaty to the French Parliament for ratification, which, in the end, did not occur until early November 1956, less than 30 days before the date set for evacuation of Fezzan under the Treaty⁷⁷. As the price for allowing the 1955 Treaty to go into force by ratifying it (and as a consequence having to withdraw from Fezzan), France exacted additional consideration from Libya: the agreement that the Edjélé oil fields would belong to France⁷⁸.

76 See, CC-M, paras. 11.114-11.118.

77 See, Supplementary Annex, No. 6.7.

78 It may be said in passing that such conduct is a perfect illustration of the kind of behaviour condemned in the 1969 Declaration, adopted at the same time as the Vienna Convention on the Law of Treaties (and annexed to the Convention): the Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties. In that Declaration, the Conference -

"Deploring the fact that in the past States have sometimes been forced to conclude treaties under pressure exerted in various forms by other States ...

5.85 In these circumstances, it is not imaginable that the Libyan Government would have insisted that French troops had to evacuate the borderlands as well. In any event, as brought out above in discussing the "régime frontalier" provided for in the 1955 Convention, these were areas for which France had undertaken to guarantee the defence. These military occupations at the time were not manifestations of sovereignty, unless such sovereign rights had already been established. Certainly, while France occupied Fezzan, its occupation was not a manifestation of French sovereignty over Fezzan.

5.86 There is a second point that comes up again in the CC-M. Instead of producing additional travaux from the French archives to fill the conspicuous evidentiary gap that existed - for example, to explain the reasons for the last-minute appearance of the Annex I list, which Chad continues merely to speculate over despite the fact that its case largely depends on it -, the CC-M again harks back to the so-called "Aouzou Incident", as a sort of surrogate travaux⁷⁹. This episode has been dealt with so fully in the LC-M that only a few additional comments need to be made here:

- Chad's account continues to be inaccurate: there were no "excuses" presented by the Libyan Government; the "excuses" of the U.N. were routine and certainly no acknowledgement of French sovereignty; and a contemporaneous account of this episode by the Quai d'Orsay makes no suggestion that any acknowledgement by Libya of French sovereignty was involved⁸⁰.
- Chad still fails to note that this was not a military but a civilian mission, - an attempted act of assertion of sovereignty by Libya, repulsed by French military force⁸¹;

Solemnly condemns the threat or use of pressure in any form, whether military, political, or economic, by any State in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent"

79 See, CC-M, paras. 11.119-11.121.

80 See, Supplementary Annex, No. 7.9.

81 The Cyrenaican authorities organised the mission in the belief Aouzou was not occupied by the French, a reasonable assumption in the circumstances. See, LC-M, paras. 5.113, et seq.; see, also, Supplementary Annex, No. 7.9.

the withdrawal of the Libyan mission was not the acknowledgment of anything except that there were guns pointed in their faces;

- Chad fails to explain why, if this incident was of such significance, it has introduced no evidence to show that it was mentioned during the July negotiations; Libya has seen no evidence of any kind the French brought up the incident at these meetings;

- New documentary evidence found in the French files shows that this episode was one of a number of similar events during 1954 and 1955, and that the French authorities were anxious that these events not prejudice France's position in the forthcoming negotiations⁸²; now Chad tries to convert the so-called "Aouzou incident" into a major event in which Libya allegedly recognised France's sovereignty over Tibesti.

Thus, Libya finds the CC-M's attempt to fit this episode within the Temple of Préah-Vihear case very contrived⁸³. Furthermore, it is evident that in February 1955 Libya was not at all anxious to enter into another dispute with the French Government, particularly when the latter had shown that it was very uncertain over whether to resume the 1955 Treaty negotiations.

5.87 The CC-M concedes that the negotiations leading to the 1955 Treaty dealt almost exclusively with the Algerian boundary:

"Il ne fait pas de doute ... que les négociations relatives à la [sic] frontières ont porté principalement sur le segment séparant la Libye de l'Algérie et du Niger. La France cherchait en effet des garanties pour cette partie de la frontière, comme le montre notamment l'examen de la procédure de ratification du traité⁸⁴."

This statement is most disingenuous. As the French travaux shows, during the ratification process the French goal was to secure Libyan agreement that the

82 See, Supplementary Annex, No. 6.5.

83 See, CC-M, para. 11.120, et seq.

84 CC-M, para. 11.123.

Edjélé oil fields fell within Algerian (that is French) territory; ratification was specifically tied to achieving that goal - that was the "guarantee" they sought. The 1955 Treaty negotiations concerned, almost exclusively, the attempt to reach agreement on three points through which the Algerian part of the Ghat-Toummo sector would pass, thus rectifying the boundary delimited by the 12 September 1919 Accord, notwithstanding its vagueness. What Chad, in the passage cited above, calls "guarantees" concerned changes in the delimited line, but a clearly defined boundary line did not result from these points being designated in Annex I. A number of questions remained to be resolved before this sector could be definitively fixed. It is misleading to say that the effect of Annex I was to "préciser le sens de la convention de 1919", as the CC-M states⁸⁵: it modified that agreement but without sufficient precision to indicate exactly where the boundary was to be located between Ghat and Toummo⁸⁶.

5.88 It is not convincing to argue that, although the sector of Libya's boundary that was almost the sole subject of the negotiations was not settled by Article 3 of the 1955 Treaty, nevertheless the boundary east of Toummo was definitively resolved by a mere reference to "actes internationaux en vigueur" in 1951. Possibly, France assumed that subsequent negotiations on a line would be a pure formality; but that is not at all the same as reaching agreement on Libya's southern boundary.

5.89 Perhaps the most conspicuous gap in the travaux produced by Chad concerns Annex I of the 1955 Treaty. It is clear from the travaux - as Chad has admitted⁸⁷ - that the Annex I list of agreements made its appearance at the very end of the negotiations in August. But what was its purpose? Here is the answer which the CC-M comes up with:

"En revanche, les négociateurs estimèrent insuffisante la référence générale prévue en janvier aux 'textes internationaux en vigueur'. Était-ce l'incident d'Aozou du 28 février 1958 [sic] qui les conduisirent à changer de méthode? Était-ce le cours de la négociation? Était-ce l'inquiétude des services administratifs français, révélée entre autres par la lettre du Gouverneur général de l'A.E.F. qu'analyse largement le Mémoire libyen? ... Toujours est-il que le texte définitivement retenu, loin d'esquiver la difficulté de la définition de la frontière entre la Libye et l'Afrique

85 Ibid.

86 See, para. 5.49, above, and Map LR 5.

87 See, CM, p. 136, para. 119; see, also, LC-M, para. 3.23, et seq.

équatoriale française, la résout en précisant le projet initial par l'énumération de l'annexe I⁸⁸."

Faced with one of the critical questions concerning the meaning of Article 3 and Annex I, the CC-M merely speculates, advancing no proof at all. What proof is there that the negotiators in August 1955 considered the January formula ("conviennent de s'en tenir ... aux obligations générales des textes en vigueur à la date de la création de l'Etat libyen") to be insufficient? Insufficient in what sense? What proof is there that the negotiators were led to change the method of delimitation ("à changer de méthode")⁸⁹? It is astounding that such an important question could be treated in such an off-hand way.

5.90 This question concerning Annex I has been discussed above⁹⁰. There it is suggested that it was intended to be no more than a handy, though defective, list to which to refer when the actual delimitation of Libya's southern boundary was undertaken in accordance with the agreed criteria set out in Article 3 of the 1955 Treaty. The very fact that Chad has not produced evidence concerning either the appearance or purpose of Annex I confirms the conclusion that it could not have been intended to play a substantive role. There is not a shred of evidence to suggest that Annex I was intended to change the ground rules agreed in January and to substitute an entirely new method, as Chad now suggests for the first time in the CC-M.

5.91 In its Memorial, Libya produced a document that bears directly on this question: the letter of 2 May 1955 from the Governor General of the A.E.F. to the Ministre de la France d'Outre Mer⁹¹. It will be recalled that in this letter, sent to Paris between the two sets of negotiations, the Governor

88 CC-M, para. 11.126.

89 In the same paragraph, reference is made to the CM, pp. 109-110, which concerned the criticisms of the Governor General of Algeria, M. Soustelle, as well as of the Ministers of Interior and Defence. These criticisms were made after the Treaty was signed, not while the negotiations were going on, unlike the letter of the Governor General of the A.E.F. dated 2 May 1955.

90 See, paras 5.30-5.33, above.

91 See, LM, para. 5.437, et seq.; LC-M, paras. 3.42-3.43. The Governor General of the A.E.F. was only concerned with the part of the boundary to the east of Toummo (or more precisely east of point 1010 just west of Toummo), in other words with Libya's southern boundary.

General urged that the boundary question be handled "avec la plus grande prudence" and that any discussion of the boundary lines be avoided:

"Il semble que cette question ne devrait être évoquée dans les accords que pour poser le principe d'une délimitation sur le terrain à entreprendre dans l'avenir, mais en prenant pour seules bases les traités en vigueur à la date de la création de l'Etat Libyen."

5.92 The CC-M seeks to minimize the importance of this document⁹²: it was just the point of view of a "chef de service", "un fonctionnaire français"; "un instrument somme toute mineure"; other "services français" had equally strong views that were different; the A.E.F.'s advice was not followed, etc. The French travaux, only recently made available to Libya, confirms the fact that the A.E.F.'s advice was followed, and that it represented the thinking of the French Government when negotiations resumed in July as reflected, inter alia, in instructions given to the French team⁹³. The views of the other French services referred to by Chad, expressing dismay that France had not rectified that boundary more in the 1955 Treaty, not only were expressed after the signing of the Treaty⁹⁴, but also concerned only the Libya-Algeria boundary. These "virulent" criticisms made their mark and led to the 1956 Agreement rectifying the Algerian boundary between Ghadamès and Ghat. But they did not concern Libya's southern boundary and had nothing to do with the advice of the Governor General of the A.E.F..

5.93 Contrary to the impression given by the CC-M, the Governor General was not a low-level official out in the field sending in messages to Paris that were ignored; he was among the most knowledgeable persons concerning the boundary between Libya and the A.E.F., and his offices in Brazzaville were the acknowledged centers of practical experience and informed study on this matter. His advice was extremely influential and indeed it was followed in this case by the Ministre de la France d'Outre Mer. The Quai d'Orsay's archives contain an interesting exchange between the Ministre de la France d'Outre Mer and the Ministre des Affaires Etrangères of 20 and 23 July

92 See, CC-M, paras. 11.126 and 11.130.

93 See, Supplementary Annex, No. 6.6. See, also, Supplementary Annex, No. 6.5(2) for a summary of the A.E.F. dispatch of 10 February 1955.

94 See, fn. 89, above.

1955 just after the July negotiations had started⁹⁵. A meeting of the interested Ministries had been held in Paris shortly before to assemble maps and other data in preparation for the negotiations. The *Ministre de la France d'Outre Mer* had not been invited to attend, and his letter reveals that he was not happy over this as well as concerned that perhaps French policy had been changed without his knowledge. His 20 July letter expressed in strong terms his hope that the ground rules concerning the boundary negotiations had not been modified, and he set forth what he believed them to be⁹⁶. The *Ministre des Affaires Etrangères* (*Direction Générale des Affaires Politiques*) promptly replied, assuring his colleague that the guidelines the latter had set out in his letter of 20 July were to be carefully followed and that they accorded with the instructions given to the French team, which he described in this way:

"J'ai l'honneur de vous confirmer ... que les instructions données à notre Délégation lui prescrivent de baser son attitude, dans la discussion de la délimitation des frontières franco-libyennes, sur les textes internationaux en vigueur au moment où a été proclamée l'indépendance libyenne (24 Décembre 1951), c'est-à-dire la déclaration franco-britannique du 21 mars 1899, admise par l'Italie le 1er novembre 1902 (échange de lettres Barrère-Prinetti) et interprétée par la Convention franco-britannique du 8 septembre 1919, ainsi que les accords franco-italiens du 12 septembre 1919."

This was essentially the formula agreed in January, with the addition of a list of agreements said to have been in force on the critical date. In fact, this list was to become the Annex I list, to which the 1898 and the 1910 Conventions were added.

5.94 There was also reflected in this exchange the fact that it was intended that representatives of the A.E.F. and A.O.F. be sent to Tripoli to be on hand to advise the French negotiating team. It is clear from this exchange and from other documents, both during and after the negotiations, that the January formula, which was essentially what the A.E.F. had urged, was being strictly followed and that there was to be no discussion of a southern boundary line, which would be left to a later phase. The 23 July letter also made a clear distinction between boundary questions and the "régime frontalier".

95 See, Supplementary Annex, No. 6.6 (13 and 14).

96 "J'entends m'en tenir aux dispositions des accords franco-italiens de 1919 et de la déclaration franco-britannique de 1899, et ne saurais admettre que la définition de la frontière franco-libyenne puisse être remise en discussion."

5.95 The CC-M misses the point when it suggests that Libya's thesis is that the travaux show that a clear distinction was intended to be made between Libya's boundary with the Libya-Algeria boundary and Libya's southern boundary: the former to be delimited immediately, the latter to be left to future negotiations. This is not Libya's thesis; and the evidence shows something quite different: the Algerian boundary between Ghadamès and Ghat, as delimited by the Accord of 12 September 1919, was not touched by the 1955 Treaty; it was left for rectification in 1956 as a condition of ratifying the 1955 Treaty. The fixing of that boundary was thus postponed. The Algerian boundary between Ghat and Toummo - over which virtually all of the negotiations in July-August 1955 were concerned - was not definitively fixed, but by designating three points through which that sector of the boundary should pass, France secured Libya's agreement to a rectification of the 1919 delimitation. Its final delimitation was also left for future negotiations. As to Libya's southern boundary east of Toummo, it was recognised to be whatever boundary resulted from "actes internationaux en vigueur" on the critical date. Agreement on a line was left to the future. This is precisely what the A.E.F. letter of 2 May 1955 proposed and what the travaux (the 23 July letter just discussed) show to have been the instructions given to the French team.

5.96 The CC-M cites the Gorse Report to the Assemblée Nationale of March 1955 as representing the approach followed by the French Government in the negotiations⁹⁷. M. Gorse was a member of the French Parliament not the French Government. His strong recommendation that Libya's southern boundary should be settled definitively once and for all - an approach calling for France to put all of its cards on the table during the negotiations - was not followed; these were not the instructions of the French Government, as just shown.

5.97 Thus, the parties to the 1955 Treaty, for different reasons, reached the same conclusion concerning the delimitation of Libya's boundary east of Toummo. They both wanted to postpone the fixing of the line.

5.98 The absence in the travaux of any explanation for the reason why Annex I made its appearance, can only be taken to mean that it was not intended to change the basic ground rules already agreed on in January, and

97 The exact same citation from the Gorse Report may be found in LM, para. 5.435.

expressed in different words in Article 3. For any change of such importance would certainly have been the subject of discussion, and the record of the meetings would have revealed this.

(c) Additional Travaux from the French Diplomatic Archives

5.99 The LC-M pointed out that the travaux relating to the July-August negotiations produced by Chad were very sparse and that Libya had not been given equal access to the French archives, prompting the sending of a note verbale to the French Government⁹⁸. To fill the gap, Libya supplied documents from the British Foreign Office files that are of considerable value in understanding what took place as well as concerning the intentions of the parties. Libya also produced a considerable amount of material consisting of its own unilateral record of the negotiations.

5.100 The French Foreign Ministry has been most cooperative and courteous in responding to Libya's request for access to the files relating to the 1955 Treaty. A substantial number of relevant travaux and similar documentary evidence providing a supplementary means of interpretation have been found in the French files and are annexed here, broken down into 11 annexes according to subject matter. A summary description of these documents and their significance is found at Supplementary Annex, No. 6.

5.101 It is surprising that the CC-M criticises Libya for not producing Libyan travaux, when Libya in fact produced considerably more documentary evidence than Chad regarding the July-August negotiations, supplemented by important British "travaux", which if anything may have more value than what could be seen, in some cases, as self-serving documents prepared by the parties to the negotiations. Libya was taken aback that the CC-M could make the statement set out below, when it can hardly be doubted that counsel preparing Chad's pleadings were fully aware of Libya's note verbale to the French Government⁹⁹:

"Il (Chad) note par ailleurs que la partie libyenne n'a pas utilisé les archives importantes du ministère français des Affaires étrangères,

98 See, LC-M, p. 19, fn. 37; see, generally, LC-M, paras. 3.19-3.87.

99 In fact, the statement itself reveals Chad's awareness of Libya's request to the French Government.

dont les éléments essentiels - aux yeux de la République du Tchad - ont été fournis en annexe au Mémoire tchadien. Il ne doute pas que la partie libyenne révisera son argumentation à la lumière de ces informations complémentaires mises à la disposition des deux parties et se réserve de discuter l'argumentation libyenne contenue dans le Contre-Mémoire¹⁰⁰."

5.102 Chad suggests here that the French travaux that Chad produced and the travaux that Libya would come upon in the Quai d'Orsay's archives would cause Libya to modify the line of argument of its case. Quite to the contrary, this documentary evidence has strengthened Libya's case. However, Chad seems to be playing a waiting game, holding back information until it sees what Libya discovers. These files have been open to Chad from the very beginning; its failure to produce important documents and relevant travaux that were in the files apparently was deliberate. Libya would like to make it perfectly clear that it will vigorously oppose any attempt of Chad to introduce additional documentary evidence after the submission of the Replies in this case. Chad had a duty, just like Libya, to supply the Court with all relevant documentary information having a significant bearing on this case in its written pleadings, and it has had every opportunity to do so.

100 CC-M, para. 11.113.

CHAPTER VI. THE BOUNDARY STATUS QUO ON THE CRITICAL DATE AS RECOGNISED IN ACCORDANCE WITH THE CRITERIA OF ARTICLE 3 OF THE 1955 TREATY

SECTION 1. Introduction

6.01 As just demonstrated in Chapter V above, Article 3 of the 1955 Treaty expressed the agreement of Libya and France to recognise and abide by the boundary situation as it existed on the critical date, the date of Libya's independence, that is to say to recognise the boundaries separating their respective territories that were binding on them on that date and that resulted from "actes internationaux" then "en vigueur". It is necessary, therefore, to examine the various international acts and agreements that might have produced a boundary binding on Libya and France in the part of Libya's frontier that now lies between Libya and Chad. Although for purposes of interpreting Article 3 in the previous Chapter, all of the Libyan boundaries were relevant - for Article 3 was not just restricted to the frontier now lying between Libya and Chad but covered all of Libya's frontiers with France or French colonial possessions - once Article 3 has been interpreted as not intended to change the boundary status quo as it existed on the critical date - except for the three points designated in Annex I, which do not concern the Libya-Chad boundary - the other boundaries can be set aside. They are not at issue in the present case.

6.02 Chad claims that the situation as to the boundary on the critical date was that two boundary lines between Libya and Chad were binding under conventional international law on Libya and France as a result of "actes internationaux en vigueur" on that date: a straight line connecting Toummo and the intersection of 16°E and the Tropic of Cancer; and another straight line connecting that intersection point with the intersection of 24°E and 19°30'N. Article 3 specifically required that the international agreements establishing such boundaries be "en vigueur" on the critical date. Thus, in order to support its claims to these two lines, Chad must establish that they were boundaries that bound both Italy and France as a result of "actes internationaux en vigueur" on the date of Libya's independence, when Libya inherited from Italy the boundaries relating to its territories.

6.03 Paragraph 11.20 of the CC-M is directly relevant here. For Chad admits there, in the course of examining the text of Article 3, that:

"La frontière ne peut être déterminée que par rapport aux actes internationaux en vigueur à l'indépendance de la Libye."

Chad finds in the Article's text a double limitation; first:

"... sont exclus, d'une part les actes non internationaux, comme par exemple des actes administratifs internes aux puissances coloniales ...";

and second:

"... d'autre part, les actes internationaux qui ne seraient pas ou plus en vigueur le 24 décembre 1951, date de l'indépendance libyenne."

Libya agrees with both these statements of Chad, which have already been discussed above¹.

6.04 The first limitation imposed by Article 3 excludes per tabulas the possibility that the boundaries could result from colonial effectivités (which might, for example, consist of "actes administratifs internes"), whether Italian or French. In Article 3, the parties agreed to recognise a boundary, not a line, that emerged from "actes internationaux en vigueur" - a boundary binding on Libya and France resulting only from such "actes", without reference to colonial effectivités². The "actes" had to produce a boundary; and they had to be opposable to Libya and France on the critical date.

6.05 The second limitation excludes boundaries resulting from "actes" that were not "en vigueur" on the critical date.

6.06 The CC-M then suggests that there was a third limitation imposed by Article 3 as a result of Annex I and the "actes internationaux" appearing on the list. For Chad contends that the list was an exhaustive one:

"Sont donc exclus tous les actes internationaux en vigueur le 24 décembre 1951 mais non repris dans la liste annexée à l'article 3³."

1 See, paras.4.07 - 4.08, above.

2 As discussed in LC-M, para. 5.112, France was particularly concerned to rule out the possibility that Italian military operations at the start of World War II might be considered as relevant effectivités. Article 3 was a confirmation of uti possidetis juris 1951, and ruled out uti possidetis de facto. Certainly Chad's third theory, based as it is entirely on French effectivités producing the boundary rather than "actes internationaux", is entirely incompatible with Article 3.

3 CC-M, para. 11.20.

Libya has shown that the list could not have been intended to be exhaustive and that the conduct of both France and Chad reveal that it was not so intended⁴. And there is the further problem that at least two of the "actes" on the Annex I list were not "en vigueur" on the critical date - the 1902 Accord and the Accord of 12 September 1919 both between Italy and France - as Chad has admitted and has established by evidence produced by it⁵. For all the reasons given earlier in this Reply, the Annex I list must be regarded as having been no more than a tentative, incomplete and incorrect listing of the agreements that the parties to the Treaty should consult to determine what, if any, boundary binding on Libya and France was produced by them. Thus, the third limitation suggested by Chad must be rejected⁶.

6.07 However, this point of difference does not affect the question whether a conventional boundary between what is now Libya and Chad existed on the critical date. In its Memorial and Counter-Memorial, Libya scrutinized all the international agreements of any possible relevance to this territorial dispute, whether or not on the Annex I list or "en vigueur" on the critical date. What this comprehensive review shows is that even if the "en vigueur" limitation of Article 3 were ignored - which of course cannot be done - and even if the "actes" examined were restricted to those on the Annex I list, no conventional boundary would emerge that was opposable to Italy and France and, hence, inherited by Libya on the critical date (and in 1960, by Chad, as successor to France).

6.08 Libya continues here the same approach of examining all possibly relevant "actes internationaux" below; however, since these various agreements were extensively dealt with in Libya's two prior pleadings, the analysis that follows will be relatively conclusory, aimed principally at bringing out differences between the Parties that the CC-M makes apparent.

4 See, LM, para. 5.474, et seq.; and LC-M, para. 3.12, et seq., and 4.09 (where 11 possibly relevant agreements are listed that fail to appear on the list). Of particular note among the agreements not on the list, because of Chad's heavy reliance on them, nevertheless, to establish the boundary it claims, are the 1900 Accord and the 1912 Agreement between Italy and France, as well as the 1924 Protocol and Declaration between Great Britain and France.

5 See, CM, pp. 122-123, para. 81.

6 It is incongruous that the four principal agreements between Italy and France, which would be expected to be the most relevant, the 1900-1902 Accords, the Accord of 12 September 1919 and the 1935 Treaty, were all ruled out by Article 3, for none were "en vigueur" on the critical date.

SECTION 2. 1899 Declaration

6.09 The Annex I list included the 1898 Anglo-French Convention, to which the 1899 Declaration was added, both having been signed and ratified together; but the 1898 Convention produced no boundary relevant to Libya's boundaries with France or French territories on the critical date⁷.

6.10 The 1899 Declaration is one of the critical links in Chad's case. Libya's first two pleadings have established two related facts concerning this agreement that Chad seems not to comprehend:

- North of 15°N latitude, the Declaration did not produce a boundary of any kind, nor was it any sort of delimitation, even of British and French zones of influence⁸;
- The southeast line described in Article 3 of the Declaration was no more than a limit to French expansion ("in the negative sense", as Lord Salisbury wrote)⁹.

It is important to grasp these two points because Chad, by assuming (wrongly) that the 1899 Declaration involved a delimitation of the areas north of 15°N latitude - albeit admitting that it was not then a boundary delimitation but one of spheres of influence (British and French) - then tries to upgrade this alleged delimitation, by virtue of the 1902 Accord and French colonial effectivités, into a boundary delimitation. A basic flaw in Chad's argument is that the starting premise is wrong: the 1899 Declaration north of 15°N did not delimit anything. Great Britain, as the 1899 travaux show so clearly, deliberately avoided any recognition of a French zone, contrary to what Chad maintains, and it did not

7 The inclusion of the 1898 Convention shows that each of the "actes" on the Annex I list did not necessarily produce a boundary in the area of the Libya-Chad borderlands or between Libya and French territory or colonies.

8 See, e.g. LM, para. 5.58, et seq.; LC-M, paras. 4.72 and 4.211. In para. 8.08, the CC-M wrongly asserts that Libya does not contest that the "actes" listed in Annex I were treaties of delimitation. This is absolutely incorrect. The 1899 Declaration was not a treaty of delimitation as to territories north of 15°N, dealt with in Article 3 of the Declaration - the only territories covered by the Declaration that are of concern in this case. As will be seen further on, the 1902 Accord had nothing to do with any kind of delimitation; it referred to no boundary, other than the notional Tripolitanian boundary; and the parties to the Accord had no standing to fix any boundaries of relevance to this case.

9 See, LM, para. 5.60.

seek or receive recognition of any British zone. So no delimitation between French and British zones could even have been contemplated¹⁰.

6.11 Then there is the critically important point for Chad's case as to the direction of the line intended by Article 3 of the 1899 Declaration¹¹. The CC-M continues to advance the patently wrong proposition, first advanced in the CM, that three quite different lines - the 1899 line (a true southeast line intersecting 24°E at approximately 15°35'N), the line shown on the map - the 1899 Livre jaune map - the map referred to in the 1902 Accord (east-southeast intersecting 24°E at 19°N), and the 1899 line as "interpreted" in the Convention of 8 September 1919 (east-southeast intersecting 24°E at 19°30'N) - are in fact the same line:

"... il ressort tant des travaux préparatoires à la Déclaration de 1899 que de ses suites que la limite décidée alors a été consacrée en 1919 et correspond à celle figurant sur la carte à laquelle se réfère l'échange de lettres franco-italien de 1902¹²."

The LC-M has illustrated the difference between the various lines on a number of maps¹³; these maps, which are reproduced again in this Reply at paragraph 6.141 (Maps LR 20A; 20B and 20C), show that the choice of line could affect the allocation of thousands of square kilometres of the borderlands.

6.12 Article 3 of the 1899 Declaration describes a line that starts from the intersection of 16°E with the Tropic of Cancer and runs "thence to the south-east" until it "meets, to the north of the 15th parallel of latitude, the frontier of Darfur as it shall eventually be fixed". Libya sees no ambiguity or obscurity in this description; certainly the ordinary meaning of "to the south-east" is not to the east-southeast. Nor does the interpretation that a true southeast line was intended lead to an absurd or unreasonable result. In fact, such a line carried out

10 The entire line of argument set out in CC-M, paras. 8.11-8.22, is thus misdirected. Great Britain wanted to agree on a line with France to limit France's expansionist aims eastward toward the Nile, aims that shortly before had led to the Fachoda crisis.

11 In discussing this matter, the CC-M once again mis-states what Libya said in the LM. The Parties are not in accord that the 1899 line was a delimitation of zones of influence north of 15°N latitude. In CC-M, para. 8.84, Chad distorts paras. 5.26 and 5.38 of the LM; for example, the words delimitation and limitation quite clearly do not mean the same thing.

12 CC-M, para. 8.83.

13 See, e.g., Maps LC-M 19, 20, 21 and 24.

the object and purpose of Article 3, which was to limit France's expansion toward the Nile north of 15°N but to leave on the southwest side of the line the regions of Borkou, Tibesti, Ounianga, Ennedi and Soghaoua. On the maps available at the time that were used by the negotiators, a strict southeast line carried out this purpose, and an east-southeast line would have fallen several hundred kilometres too far to the north of such features as the Tibesti massif and, thus, would have been unreasonable and contrary to the intention of the parties. This was fully demonstrated in the LC-M¹⁴. These 1890s-vintage maps were produced by Chad with the CM, but apparently Chad failed to examine them with care or to grasp their significance.

6.13 Chad's discussion of the travaux of the 1899 Declaration in the CC-M is as incomplete and defective as in the CM. Chad continues to use the travaux to try to refute the plain meaning of Article 3 of the 1899 Declaration, contrary to the interpretative rules of Article 32 of the Vienna Convention, under which travaux may be invoked only to perform a confirmative function. Chad tries to play down the importance of the line of 15°N latitude. For example, it says that the Parties are in agreement that 15°N was first mentioned only during the negotiations on 19 March 1899, citing paragraph 5.41 of the LM. No such statement appears in that paragraph. As paragraph 4.33 of the LC-M shows, as early as 16 February, the line of 15°N latitude appeared in a French draft submitted by M. Cambon. The line of 15°N latitude is a fundamental element in this case: it marked the northern end of the southern sector of Article 2, which did concern a boundary delimitation, and the southern end of the Article 3 sector, which did not concern a boundary at all. Lord Salisbury referred specifically to areas north of 15°N latitude when he reassured the Ottoman Empire and Italy that the 1899 Declaration had not affected their rights or aspirations north of that line.

6.14 The CC-M reflects Chad's continued misunderstanding of what so clearly appears from the documents concerning the episode of 19 March 1899 (what the CC-M calls "cet épisode crucial"¹⁵). It will be recalled that Ambassador Cambon rejected Lord Salisbury's draft that day, which would have had the Article 2 sector end (and the Article 3 sector start) at 18°N, rather than at 15°N (as in M. Cambon's draft of 16 February). The LC-M demonstrated that

14 See, LC-M, para. 4.71, et seq., and Maps LC-M 22, 23 and 24.

15 CC-M, para. 8.99.

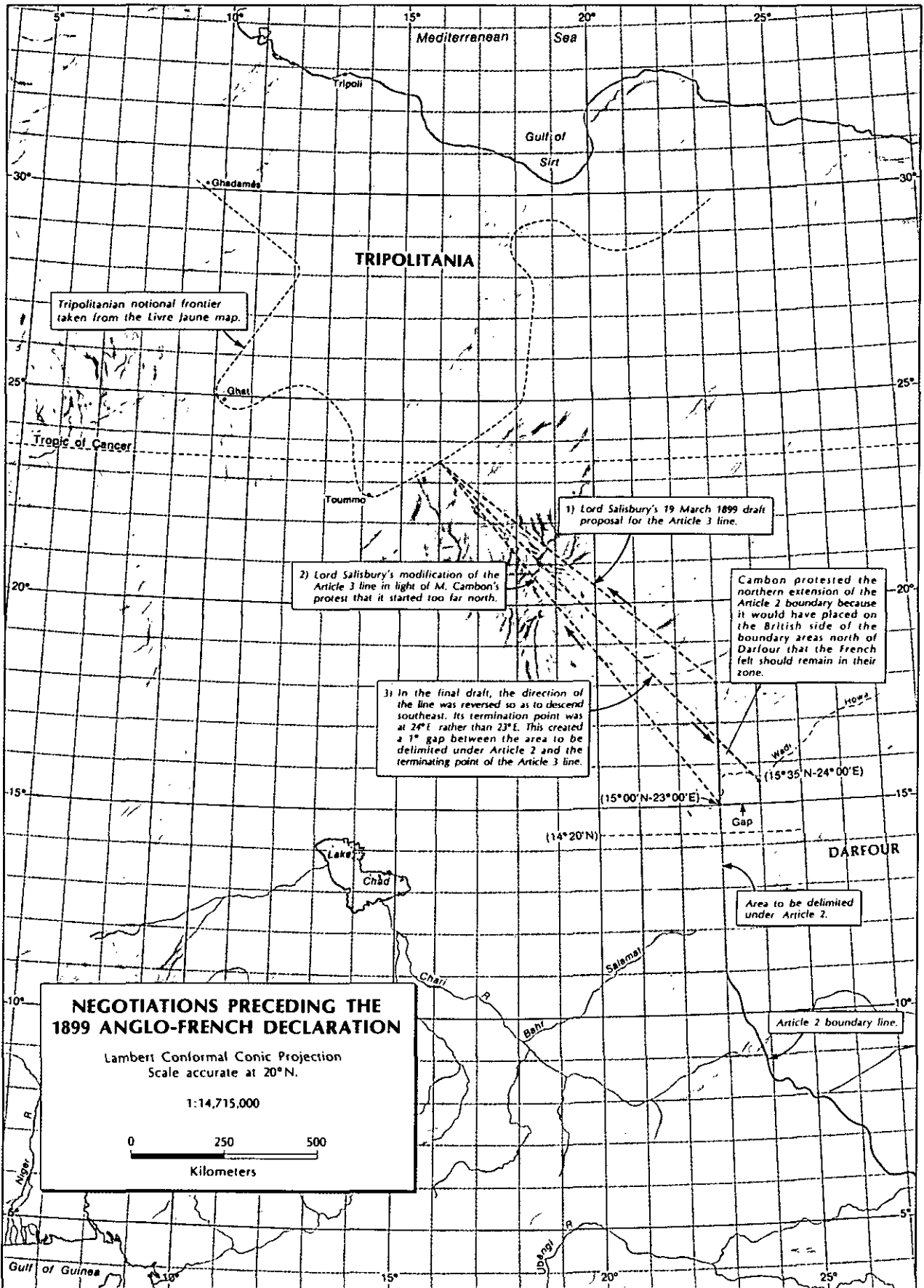
Lord Salisbury's proposal would have deprived France of areas north of Darfour that it felt should lie on the French side¹⁶. The CC-M correctly gives this as the reason for M. Cambon's refusal. Where Chad is mistaken is in its interpretation of what then transpired. This mistake occurs because the CC-M's analysis is based on an incomplete set of the documents in the British and French archives. A detailed analysis of the documents bearing on this question, and of Chad's mistakes, may be found in Supplementary Annex, No. 4, hereto. As this analysis shows, the CC-M ignores the 19 and 20 March drafts that revealed that the end point of the Article 2 sector, ultimately agreed upon, reverted to 15°N.

6.15 It was at that moment in the negotiations that the first of two important changes were made: the direction of the Article 3 southeast line was reversed in the description given it in that Article. Rather than starting at 15°N and ascending northwest to the intersection point on the Tropic of Cancer, the line descended southeast from that point. The reason for this reversal in direction is apparent, as the LC-M has explained¹⁷. The only point that could be fixed was the intersection of 16°E and the Tropic of Cancer, which in the earlier drafts prior to 19 March had been its end point. However, a starting point on the southeastern end of the line could not be precisely identified since the Article 2 sector north of 11°N had not yet been delimited, although it was intended, of course, that one sector would end where the other began (Map LR 9). Since, as a practical matter, it is the starting point of a line that needs to be exactly identified, the direction of its description in Article 3 was reversed on 19 March. Instead of indicating as the starting point of this line the point where it intersected 24°E - which could not be precisely identified until the Article 2 sector had been delimited - Article 3 described it as the end point. The starting point became the Tropic of Cancer (and 16°E), the line running "thence to the south-east" - and such a line, that is an approximately strict southeast line, would have intersected 24°E at approximately 15°35'N.

6.16 At the same time, a second change was made. The line of longitude which the descending southeast line was to intersect was moved east from 23°E to 24°E. This also is shown on Map LR 9.

16 See, Maps LC-M 16, 31A and 31B.

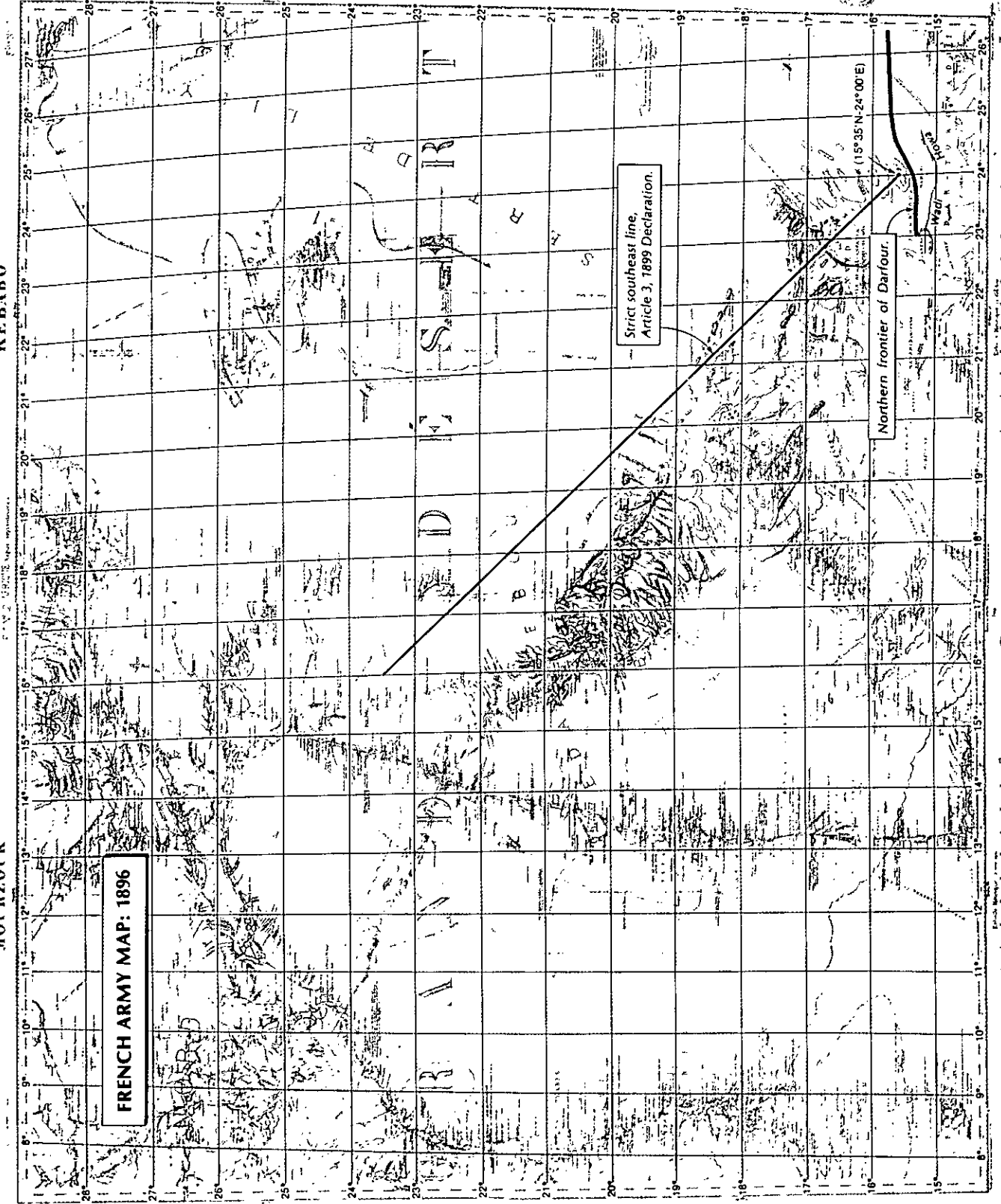
17 See, LC-M, para. 4.184.

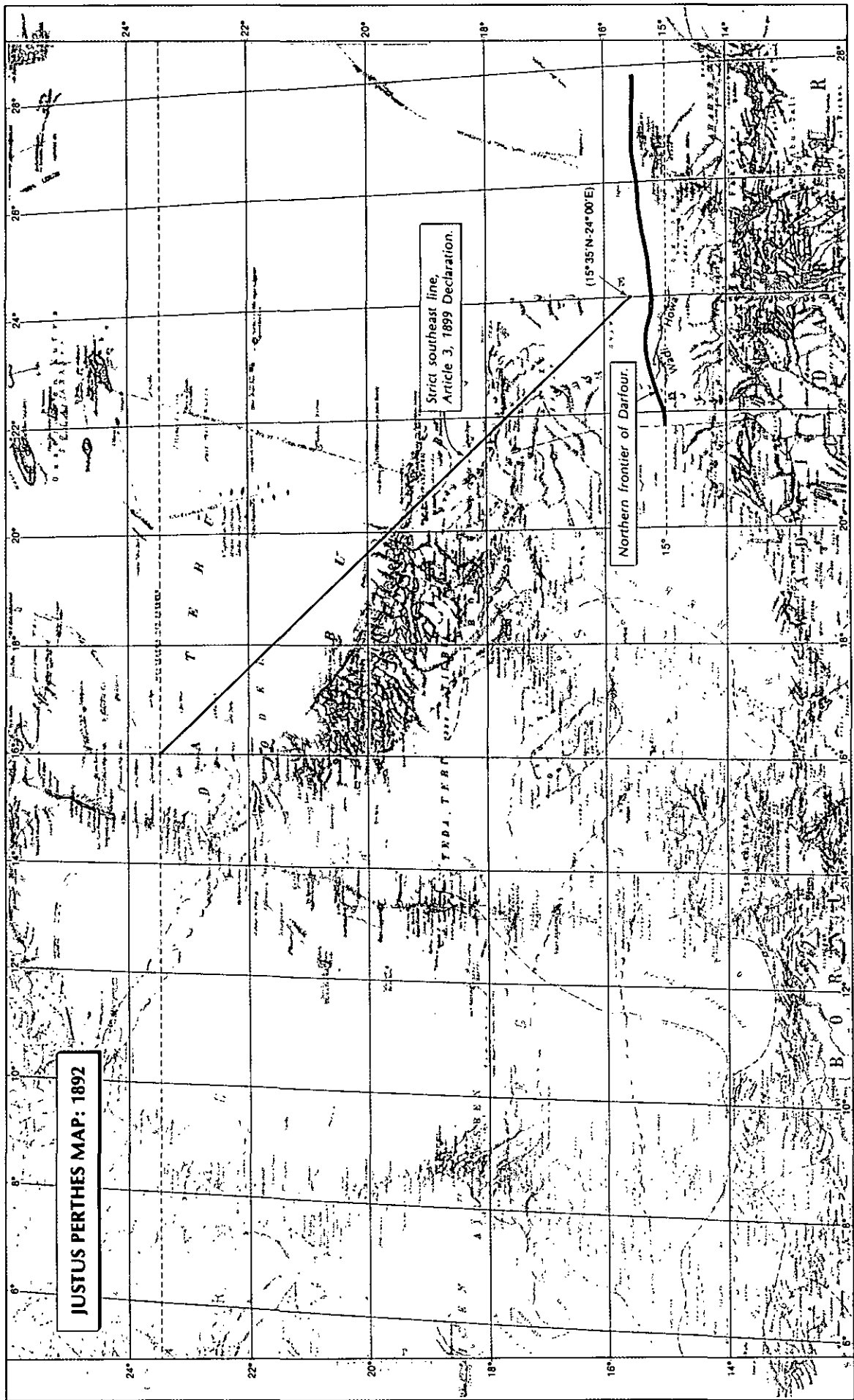


Specialty prepared for presentation to the International Court of Justice.

KEBABO

MOURZOUK





JUSTUS PERTHES MAP: 1892

Strict southeast line,
Article 3, 1899 Declaration.

Northern frontier of Darfour.

(15°35'N-24°00'E)

6.17 It is in connection with the above that the CC-M makes one of several mistakes in its analysis of the travaux and of the maps being consulted by the negotiators in 1899. It remarks that:

"Il est révélateur que la Libye doit préciser qu'il ne s'agit que d'une orientation 'presque' (almost) exactement sud-est¹⁸."

The CC-M pounces on this point to argue that Libya found such flexibility necessary because a strict southeast line would, it says, have intersected 24°E south of the Darfour boundary and hence would be inconsistent with the text of Article 3. But once more, Chad has failed to take a close look at the maps it has produced, maps which it is evident Lord Salisbury and M. Cambon had themselves closely examined.

6.18 On Maps LR 10A and 10B, reproductions of the French Army map, 1896, and the Justus Perthes map, 1892, the frontier of Darfour, as it was then conceived, runs east/west just north of the Wadi Howa at about 15°20'N latitude (between 23° E and 24°E longitude). A strict southeast line intersects 24°E at 15°35'N on these maps, that is just north of the Darfour frontier line (not to its south, as Chad mistakenly suggests). The text of Article 3 of the 1899 Declaration reads, in pertinent part, as follows:

"... (the southeast line) shall then follow the 24th degree until it meets, to the north of the 15th parallel of latitude, the frontier of Darfur as it shall eventually be fixed."

As can be seen on these maps, this is exactly what a strict southeast line does: as the line follows 24°E southward from the intersection at 15°35'N it meets the notional Darfour frontier shown on these contemporaneous maps at about 15°20'N, that is to the north of 15°N, perfectly matching the text and confirming that an almost strict southeast line was intended. The reason "almost" had to be inserted in Libya's description of the direction of the Article 3 line is that the Darfour boundary had yet to be fixed in a delimitation of the Article 2 sector that had been left undone - so the precise end point of the Article 3 line was not known. If it had been, it could have been designated.

18 CC-M, para. 8.109.

6.19 Thus, the CC-M, once again, is wrong when it declares:

"Non seulement l'interprétation avancée par la Libye est contraire aux intentions claires des parties, mais encore, elle aboutit à priver la mention du 24ème degré - que la ligne doit suivre 'jusqu'à sa rencontre (...) avec la frontière du Darfour' - de tout effet utile¹⁹."

Such an incorrect conclusion could only be reached as a result of not having examined all of the evidence and not having studied carefully the relevant maps.

6.20 In examining the subsequent conduct of the parties to the 1899 Declaration, the CC-M commits what are two unpardonable offenses. One concerns the reaction of Lord Sanderson to the Non-Annexed Map in a note to Lord Salisbury²⁰; the other relates to the subsequently-issued official British maps²¹.

6.21 The note of Lord Sanderson is again reproduced below:

*The French have drawn
the line from the Tripic Hances
to S. S. S. instead N. S. S.
I do not know what it
means much -
Otherwise their line seems
fair*

*Thos
S*

19 CC-M, para. 8.112.

20 See, LC-M, para. 4.60, et seq.

21 See, LM, para. 5.182 and Map No. 63; LC-M, para. 4.18 and Maps LC-M 14A and 14B.

It is a conclusive piece of evidence, for it establishes that when the British negotiations saw the map annexed to the Livre jaune text of the 1899 Declaration they immediately perceived that the direction of the Article 3 line was incorrectly drawn: it followed an east-southeast, instead of a southeast, direction. In the part of the CC-M where Chad attempts to establish that the Livre jaune map (the Non-Annexed Map) confirmed the line described in Article 3 of the 1899 Declaration, Chad refers to this handwritten note of Lord Sanderson and brushes it aside. Describing Lord Salisbury as the principle negotiator ("presque exclusif"), the CC-M says the following:

"Son attention a été attirée sur ce qu'une personne qui n'avait pas suivi les négociations, comme Lord SANDERSON, pouvait trouver étrange dans l'orientation de la ligne tracée sur la carte par comparaison avec le texte même de la Déclaration. Malgré cela, Lord SALISBURY n'a pas réagi²²".

6.32 The shocking aspect of Chad's reaction to this evidence is the off-hand way in which the CC-M falsifies the facts - facts that appear from a mere glance at the travaux of the 1899 negotiations and that a modicum of research would have made evident to those who prepared Chad's Counter-Memorial.

6.33 As the Fachoda crisis was being resolved in the fall of 1898, M. Cambon had been named to succeed the Baron de Courcel as Ambassador in London; Lord Salisbury was Foreign Secretary; and Lord Sanderson was Permanent Under-Secretary of State for Foreign Affairs, in other words the senior civil servant at the head of the Foreign Office²³. Shortly after the crisis subsided, the negotiations over the 1899 Declaration began. Lord Sanderson had worked as Lord Salisbury's right hand man during the Fachoda crisis, and he continued to do so during the 1899 negotiations. The travaux reflect his detailed involvement: drafts are addressed to him rather than to Lord Salisbury; M. Cambon reports to M. Delcassé of meetings with Lord Sanderson. Lord Sanderson was right in the middle of things during the negotiations leading up to the 1899 Declaration.

22 CC-M, para. 8.133. By inadvertence, an error in the numbering of paragraphs has been made. The next paragraph after para. 6.21 is para. 6.32. Cross-references are not affected.

23 See, Histoire de l'Administration Française, Tome II, 1870-1980, Paris, Editions du Centre National de la Recherche Scientifique, 1984, p. 238. See, Exhibits LR 3 and 4, Foreign Office Lists for 1899 and 1901.

6.34 What the Sanderson-Salisbury note shows is that Lord Sanderson, "cette personne", as Chad casually says, spotted a mistake in the intended direction of the Article 3 line on the Livre jaune map and called it to Lord Salisbury's attention. No one was more qualified to know it was a mistake than Lord Sanderson. Contrary to what the CC-M says, Lord Salisbury did react: he placed his initial ("S") on the message, which under the practice of the British Foreign Office at the time meant that he had read the note and had no comment to make. Under the same practice, had he disagreed, he would have commented, particularly as to the direction of a line over which a good deal of time had been expended during the negotiations just ended. So it can be taken as certain that he shared the same view as Lord Sanderson: the line shown on the French Livre jaune map did not follow the direction intended by Article 3 - it was an east-southeast rather than a southeast line.

6.35 The CC-M tries to build an argument out of the alleged absence of any reaction from Lord Salisbury. It is argued that if he had agreed with Lord Sanderson - as his initial at the bottom of the note shows that, in fact, he did - he would have made a fuss. But even Lord Sanderson in his note did not take the error in the French map seriously: "I do not know that it matters much". Why not? It is evident that they correctly assessed the Livre jaune map attached unilaterally by the French as of no legal significance. It was not an agreed map; and in the face of British attempts to annex a map to the Declaration, France had strongly opposed annexing a map; so the French themselves could not have considered this map as having any significance. In fact, when Foreign Minister Delcassé passed on to M. Cambon in London the Livre jaune version of the 1899 Declaration together with map, he referred to the map as "indicative"²⁴. No doubt, M. Cambon's failure to react was for much the same reasons as the British.

6.36 There is also the fact that in the aftermath of the Fachoda crisis, Great Britain had so humiliated France (already in the throes of the Dreyfus Affair) that Queen Victoria had to intercede with Lord Salisbury, according to official French sources, "d'aider les Français à sortir de cette horrible impasse"²⁵. This was hardly the moment to create another new incident over a trivial, illustrative map.

24 See, CM, pp. 161 and 163, para. 75, and Annex 57; see, also, LC-M, para. 4.59.

25 Histoire de l'Administration Française, op. cit., p. 238.

6.37 The second unpardonable offense committed by the CC-M here concerns how Great Britain interpreted the Article 3 line on its own official maps. The LM contains a reproduction of the official British War Office map of 1916, a larger colour version of which was furnished to the Court²⁶. The line shown is a strict southeast line. Since that time, Libya has found the 1906 (revised to August 1913) and 1914 Official British War Office maps to which reference had been made in the documents covering the Italian protests to the 1919 "interpretation" of the 1899 line. These were attached to the LC-M²⁷. Yet in the collection of 162 maps in the CC-M's Map Atlas, none of these British maps appear²⁸. If such important maps as these were omitted from the Atlas, what purpose was the Atlas intended to serve?

6.38 The reaction of Lord Sanderson and Lord Salisbury is thus confirmed by maps subsequently issued by the British Government. There is no doubt that the intended direction of the Article 3 line was, as the text stated, southeast so as to intersect 24°E close to where the Article 2 boundary, still to be delimited, was likely to end²⁹. Such a line carried out the aim and purpose of the parties in the light of their knowledge of the geography of the region as portrayed on the maps which they had before them.

6.39 One final point about the 1899 Declaration is that it mentioned neither Tripolitania nor its boundaries. The Declaration provided no basis at all for the Toummo-Tropic of Cancer segment of the boundary now claimed by Chad. It is pure fantasy for Chad to suggest the following concerning the 1899 Declaration, trying to draw a parallel with the Burkina Faso/Mali case:

26 See, LM, Map No. 63.

27 Maps LC-M 14A and 14B.

28 Similarly, none of the important Italian maps appear in Chad's Map Atlas. See, e.g., Maps LC-M, 52, 53 and 54 and Map LR 16A-1. See, also, Supplementary Annex, No. 2, hereto, containing a critique by Libya of this Atlas.

29 In the 19 March draft of Salisbury proposing that the line start at 18°N, the direction of the line (before it was reversed) was expressed "dans la direction à peu près du nord-ouest", not "to the northwest", reflecting the fact that it was approaching north-northwest rather than northwest. The Livre jaune map line was even less a northwest/southeast line since its end point was at 19°N not 18°N.

"... les Etats parties à l'accord de 1899 ont constaté que la frontière du Vilayet de Tripoli s'étendait jusqu'à ce point (the intersection of 16°E with the Tropic of Cancer)³⁰."

There is no support at all in the 1899 Declaration for any segment of a boundary to the west of the starting point of the southeast line.

6.40 The following conclusions may, therefore, be drawn concerning the 1899 Declaration and whether it produced a boundary binding on Italy and France (and thus on Libya and Chad) which Libya and France would have recognised under Article 3 of the 1955 Treaty³¹:

- The 1899 Declaration concerned no delimitation at all, even of zones of influence, north of 15°N, and, a fortiori, produced no boundary there;
- The direction of the Article 3 line was intended to be strict southeast, subject, possibly, to a slight variation depending on the Article 2 delimitation not yet accomplished;
- No map was annexed to the Declaration; and the map annexed to its text as published by the French in the Livre jaune showed the Article 3 line incorrectly; but, in any event, this map was not intended to be more than illustrative;
- The British Government officially declared its view that the direction of the Article 3 line was strict southeast in maps published by it dated 1906 (revised to 1913), 1914 and 1916;
- The 1899 Declaration provided no basis for a boundary between Toummo and the Tropic of Cancer.

6.41 The CC-M skips over the Ottoman Empire's protests to the 1899 Declaration and the British Government's responses. Similarly, it gives no attention to the British explanation to Italy in 1899 as to the meaning of the 1899 Declaration. Great Britain made it very clear to both the Ottoman Empire and

30 CC-M, para. 8.166.

31 Chad has produced no evidence to show that the 1899 Declaration was "en vigueur" on the critical date.

Italy that no delimitation was involved, that no boundary of any kind resulted and that, in any event, the agreement expressed in the Declaration was between Great Britain and France and, thus, in accordance with the principle res inter alios acta, did not and could not affect Ottoman rights or potential Italian interests. This point was stressed by the German notes verbales of 3 May and 16 July 1899, as paragraphs 5.56 and 5.57 of the LM bring out.

SECTION 3. The 1900-1902 Accords

6.42 The CC-M contends that the 1900-1902 Accords resulted in making opposable to Italy the alleged delimitation between the Tropic of Cancer and 24°E, said to have been fixed in 1899 - and to have undergone no modification since - and to have been recognised by Great Britain as a delimitation of zones of influence, a delimitation which, by virtue of French effectivités, became transformed into "une véritable frontière internationale"³². This is so, Chad contends, because in these Accords Italy recognised a French zone of influence up to the Tripolitanian boundary shown on the map referred to in the 1902 Accord (the Non-Annexed Map).

6.43 The 1902 Accord also determined the sector of the boundary between Toummo and the Tropic of Cancer, according to Chad:

"... du même coup, s'est trouvé déterminé le secteur de la frontière allant de Toummo au Tropique de Cancer, qui lui aussi figure sur la carte acceptée par l'Italie comme fixant les frontières de la Tripolitaine"³³.

Thus, magically, these Accords had two critical results: the southeast line, allegedly transformed into a boundary well after 1902, became opposable to Italy; and the Toummo-Tropic of Cancer segment became fixed as a boundary accepted by Italy.

6.44 The importance to France's claim (and now to Chad's case) of the 1900-1902 Accords, and the map referred to in the latter, as annexed to the

32 CC-M, para. 8.170.

33 Ibid. Note the unsupportable allegation that Italy at the time accepted the map as fixing Tripolitania's boundaries. The map was referred to in the 1902 Accord in order to make more precise the limits of French expansion vis-à-vis Tripolitania-Cyrenaica set out in the 1900 Accord; the wavy, dashed line encircling "Tripolitaine" on the map is not identified as a boundary in the map's legend. See, para. 6.54, below.

1899 Declaration, can hardly be overstated. Hence, the fact that the 1900 Accord was carelessly omitted from the Annex I list³⁴, and the fact that neither it nor the 1902 Accord were en vigueur on the critical date, deal a mortal blow to Chad's case entirely aside from other weaknesses and defects.

6.45 In discussing the 1900 Accord³⁵, the CC-M reveals Chad's sensitivity to the fact that the Accord consisted of two unilateral declarations, neither statement confirming the other. The declaration of relevance here was that of French Ambassador Barrère. If it is accepted for purposes of discussion that this Accord fits within the Article 3 category of "actes internationaux" - by no means a foregone conclusion - then the ordinary meaning of this French declaration must first be considered. In his letter M. Barrère assured Signor Visconti-Venosta that the 1899 Declaration:

"... en laissant en dehors du partage d'influence qu'elle sanctionne le vilayet de Tripoli, marque pour la sphère d'influence française, par rapport à la Tripolitaine-Cyrénaïque, une limite que le Gouvernement de la République n'a pas l'intention de dépasser"

He added to this an assurance concerning the caravan routes from Tripoli:

"... et qu'il n'entre pas dans ses projets d'intercepter les communications caravanières de Tripoli vers les régions visées par la susdite convention³⁶."

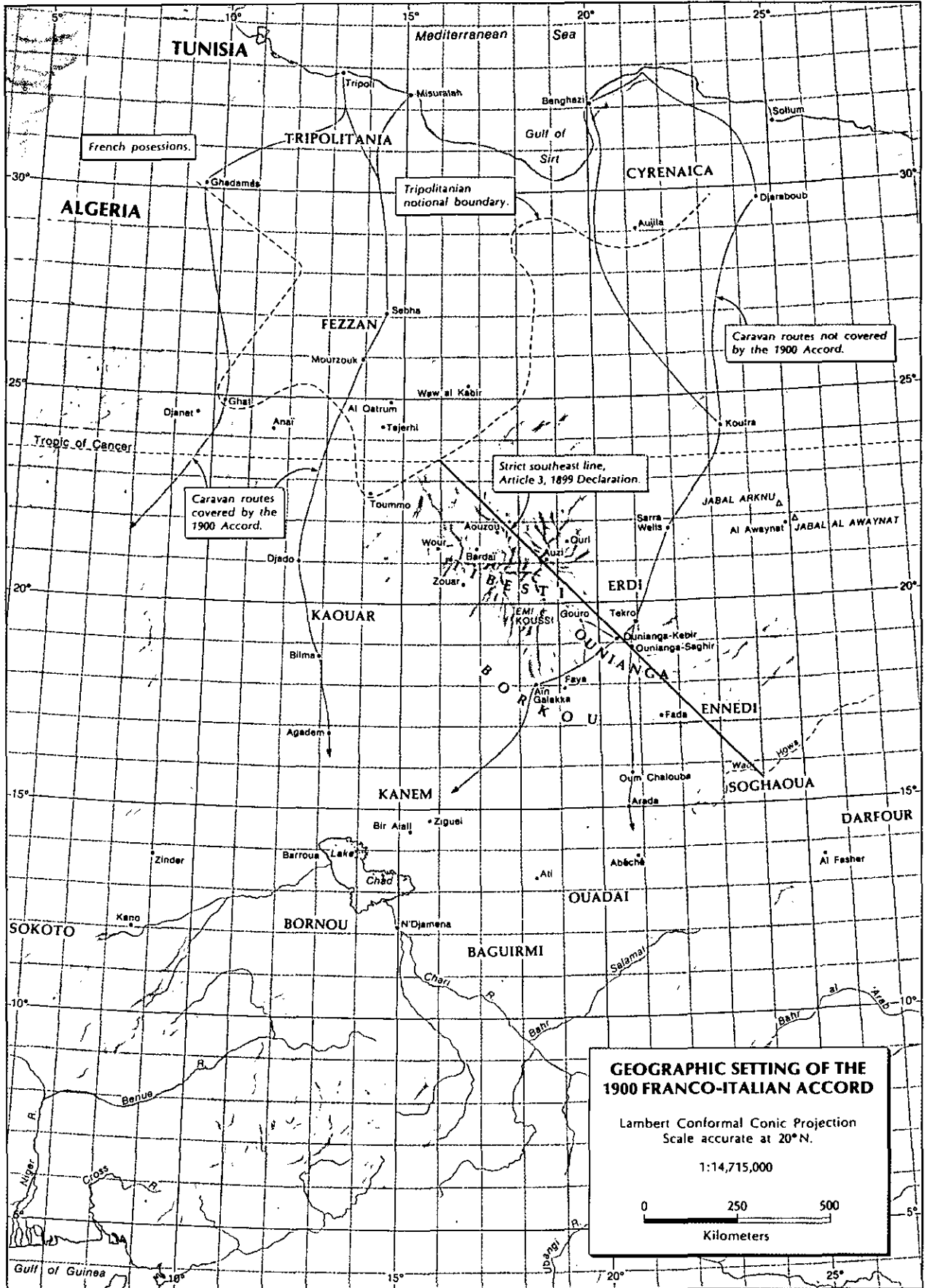
6.46 As has been brought out earlier, to describe the effect of the 1899 Declaration north of 15°N latitude as a "partage d'influence" was an exaggeration, which the British made clear at the time they were not in agreement with. The ordinary meaning of the first extract of the Accord quoted above is that (i) the 1899 Declaration had excluded and not dealt with the vilayet of Tripoli; (ii) but that its exclusion meant that France considered the vilayet as a limit it did not intend to exceed³⁷. The purpose and intent of this part of the Accord was to

34 The two Accords have always been considered together, for one modified and clarified the other. The Annex I list mentions "les accords franco-italiens du 1er novembre 1902"; the use of the plural "accords" suggests that the 1900 Accord was carelessly omitted for there was only one 1902 Franco-Italian Accord. See, CM, p. 166, para. 88, for an embarrassed attempt to explain away this mistake.

35 The 1900 Accord is discussed in LM, para. 5.67, et seq., and LC-M para. 4.73, et seq.

36 See, LM, French Archives Annex, p. 91.

37 Chad argues that the phrase "en laissant en dehors du partage d'influence qu'elle sanctionne", included at the request of Signor Visconti-Venosta, constituted Italy's



Specially prepared for presentation to the International Court of Justice.

assure Italy that France had no designs on Tripolitania-Cyrenaica. As the passage concerning caravan routes shows - for it dealt only with the caravan routes from Tripoli, and not with the important eastern routes running south from Benghazi (Map LR 11) - the focus of the 1900 Accord was entirely on the western side of Tripolitania where it bordered French territories; and this was precisely what Signor Prinetti said in his veiled reference to the secret 1900 Accord during a speech to the Italian Parliament in 1901, the text of which had laboriously been coordinated word-for-word with the French³⁸.

6.47 It is evident, bearing in mind the criteria of Article 3 of the 1955 Treaty, that the 1900 Accord resulted in no boundary - it did not even refer to a boundary. If, indeed, it could be fitted within the description of "actes internationaux", it did not appear on the Annex I list; and not having been notified by France under Article 44 of the 1947 Italian Peace Treaty it was not en vigueur on the critical date. So it is not clear on what basis Chad believes it is relevant to the resolution of the present territorial dispute³⁹.

6.48 The 1902 Accord was the result of two other factors⁴⁰. In Signor Visconti-Venosta's unilateral statement in his letter that was a part of the 1900 Accord, he dealt with French interests in Morocco and Italian interests in Tripolitania. It was an unequal arrangement, however: France was to have a free hand to pursue its interest in Morocco, and if (but only if) the existing Moroccan situation should be altered, Italy would then have the right to develop its influence in respect of Tripolitania-Cyrenaica. Italy sought to correct this imbalance in a more reciprocal arrangement. The second factor concerned Italy's membership in the Triple Alliance. France sought certain assurances in regard to the alliance between Italy, Germany and Austria. As a rather subsidiary matter, the Italians wanted to make more specific the unilateral undertaking of M.

recognition of the object of the 1899 Declaration and thus waived a defense of res inter alios acta in respect of the Declaration so far as Italy was concerned. Among the many holes in this argument, it must be asked by what extraordinary feat of magic an alleged interpretation, rejected by Great Britain, but contained in a unilateral French statement could be turned into the adherence by Italy to the 1899 Declaration?

38 See, discussion of Prinetti Declaration, LM, para. 5.74, et seq.; LC-M para. 4.85, et seq., and Map LC-M 27. Signor Prinetti had just succeeded Signor Visconti-Venosta as Italian Foreign Minister.

39 See, LC-M, p. 152, fn. 109, where it is pointed out that in CM, p. 168, paras. 94-95, Chad concedes that the 1900 Accord was not a boundary delimitation treaty.

40 The 1902 Accord is discussed at LM, para. 5.83, et seq., and LC-M, para. 4.73, et seq.

Barrère in 1900, for, as Libya has explained and illustrated in detail, the frontier of Tripolitania had never been defined, which left France's declaration concerning the limits to its expansion too vaguely worded for the Italians⁴¹.

6.49 Turning to the form of the 1902 Accord and the ordinary meaning of its text, it was clearly bilateral and incontestably fell within the ambit of "actes internationaux" referred to in Article 3 of the 1955 Treaty. It was also on the Annex I list. But for the same reason set out above as to the 1900 Accord, it was not en vigueur on the critical date. The remaining questions required to be answered by Article 3 are, did the 1902 Accord produce or result in a boundary, and was any such boundary opposable to Libya on the critical date?

6.50 It is the first two paragraphs of this Accord that are pertinent here. The first paragraph, whose text appears in the footnote below⁴², refers to earlier conversations between the two Powers concerning their reciprocal rights in the Mediterranean: Italy as to Tripolitania-Cyrenaica; France as to Morocco. From these conversations, it says, it was concluded to be opportune "de préciser les engagements" resulting from the exchange of letters constituting the 1900 Accord. This precision was aimed at the following:

"... en ce sens que chacune des deux puissances pourra librement développer sa sphère d'influence dans les régions susmentionnées" (Emphasis added).

The words underlined in this passage were underlined in the CC-M, where Chad proceeds to criticise Libya for having ignored this part of the 1902 Accord. The CC-M reaches the following conclusion as to this passage:

41 See, LM, paras. 5.70 and 5.93-5.95, and Map No. 49.

42 The first paragraph, in pertinent part, reads as follows:

"A la suite des conversations que nous avons eues touchant la situation réciproque de l'Italie et de la France dans le bassin méditerranéen, et touchant plus spécialement les intérêts respectifs des deux nations en Tripolitaine-Cyrénaïque et au Maroc, il nous a paru opportun de préciser les engagements qui résultent des lettres échangées à ce sujet entre Votre Excellence et le Marquis VISCONTI VENOSTA, les 14 et 16 décembre 1900, en ce sens que chacune des deux Puissances pourra librement développer sa sphère d'influence dans les régions susmentionnées ...". Emphasis added in CC-M, para. 8.37.

"Cela signifie que la France reconnaît à l'Italie une sphère d'influence en Tripolitaine, dans les limites qui sont précisées à la phrase suivante.⁴³"

The reference by Chad to "la phrase suivante" was to the second paragraph of the Accord. The CC-M reflects a misreading of the last word of the first paragraph to be "sousmentionnées" (mentioned below) instead of "susmentionnées" (mentioned above).

6.51 Chad's interpretation is completely wrong. The quoted text merely redressed the imbalance of the 1900 Accord by no longer making Italy's right to "développer éventuellement son influence par rapport à la Tripolitaine Cyrénaïque"⁴⁴ dependent on a change in the situation in Morocco. In other words, the only part of the text that merits underlining is "librement". Moreover, Chad ignores the fact that Tripolitania in 1902 was under Ottoman sovereignty. France could have recognised no more than a potential Italian influence over this Ottoman territory.

6.52 Returning again to the 1902 Accord, its second paragraph is set out below:

"Il a été expliqué à cette occasion que par la limite de l'expansion française en Afrique septentrionale, visée dans ma lettre précitée de Votre Excellence du 14 décembre 1900, on entend bien la frontière de la Tripolitaine indiquée par la carte annexée (to the 1899 Declaration)."

The CC-M contends that this paragraph defined the sphere of influence of Italy recognised by France in the first paragraph; and it emphasises the word "frontière" contained in the text:

"Le mot 'frontière' est important: la Tripolitaine, intégrée à l'Empire Ottoman a une frontière; la France accepte, par avance, que l'Italie en prennent possession, mais dans le cadre de limites bien précises qui sont, aux yeux des parties, celles, existantes, de la frontière figurant sur la carte⁴⁵."

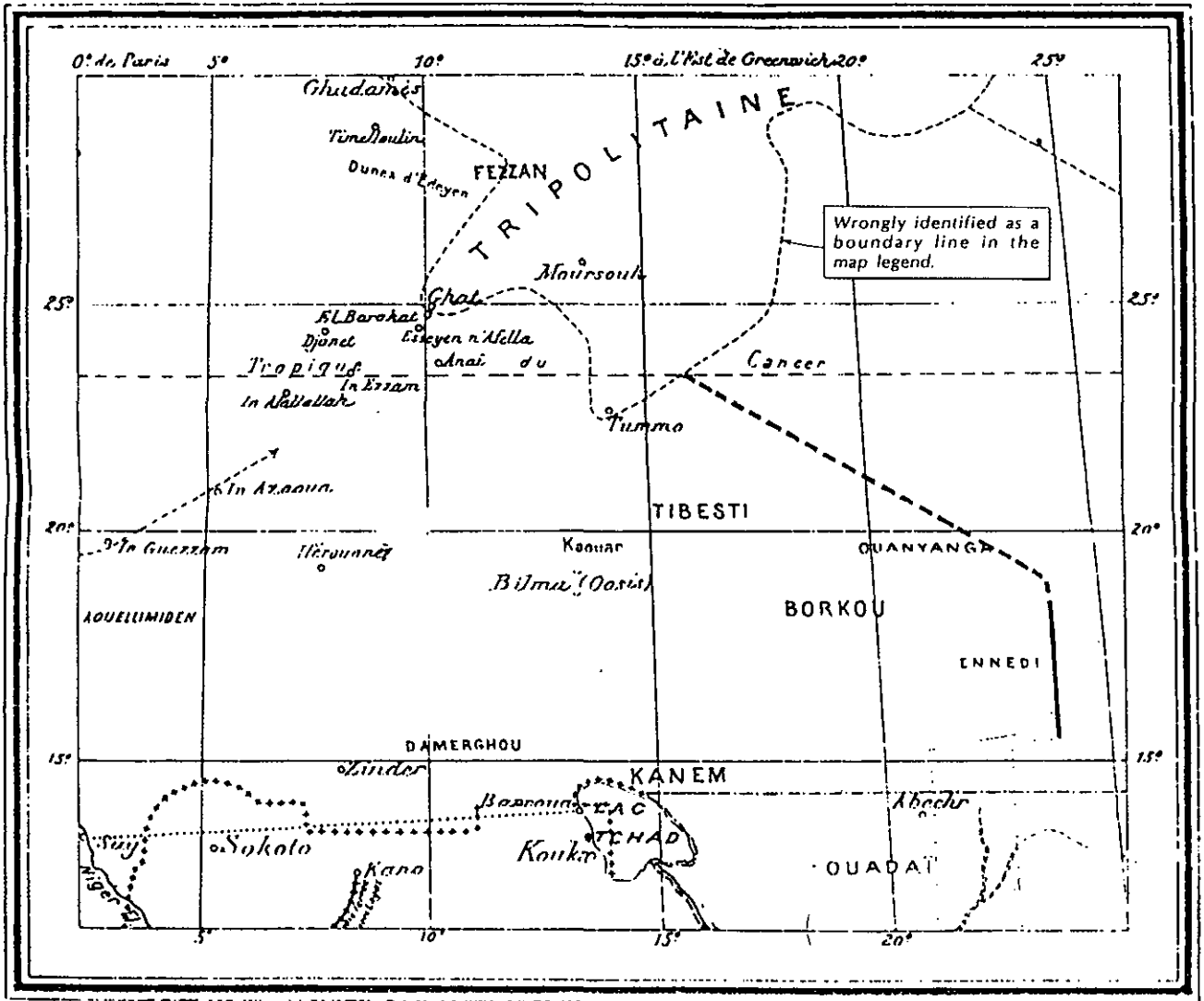
43 CC-M, para. 8.37.

44 Taken from the text of the 1900 Accord (Visconti-Venosta letter).

45 CC-M, para. 8.37.

Extrait

de la Carte annexée à la déclaration additionnelle
du 21 Mars 1899 à la Convention Franco-Anglaise du 14 Juin 1898



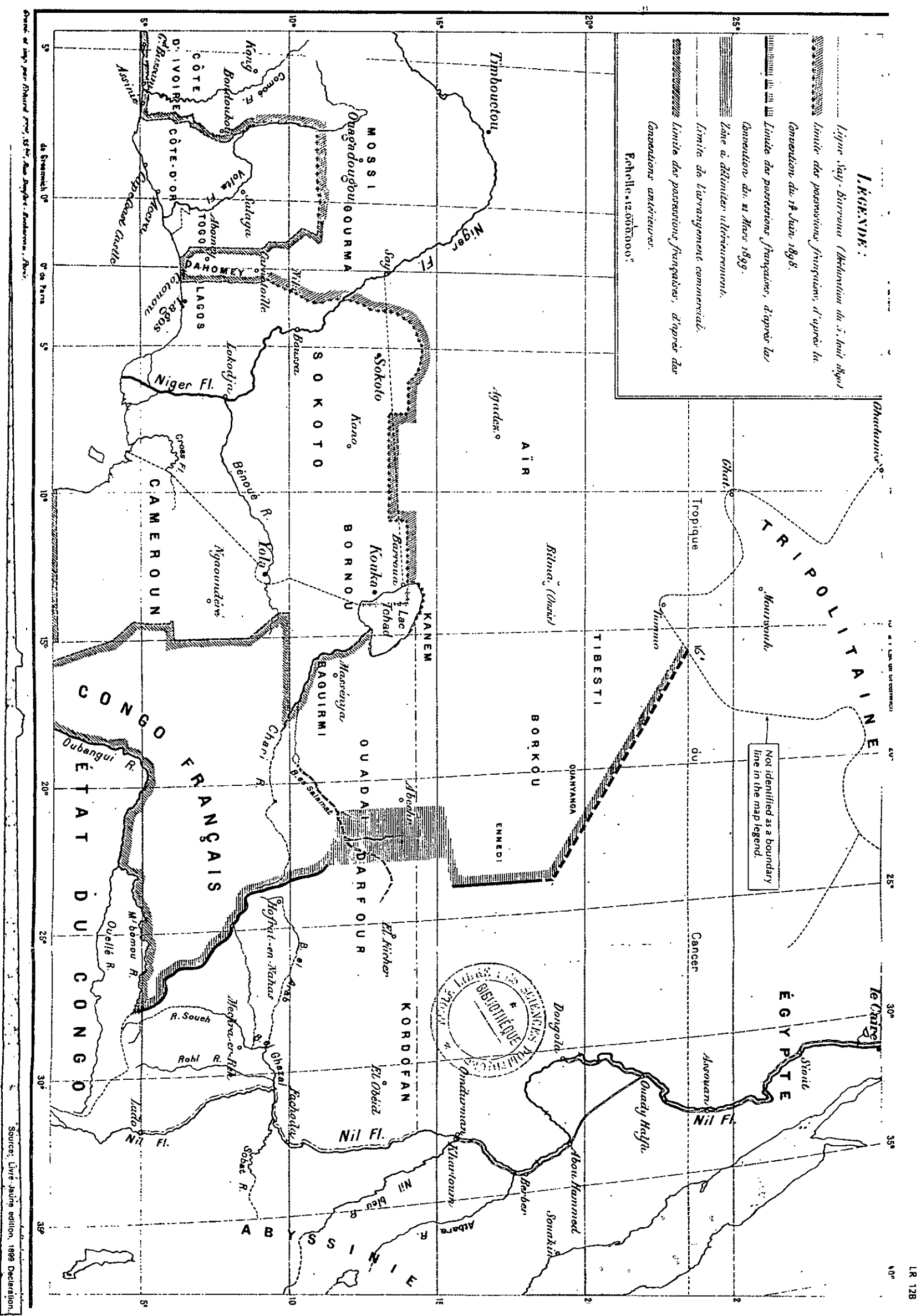
Gouvernement Général de l'Algérie

Echelle: 1:12,000,000

0 50 100 200 300 400 500 1000 km.

- Ligne Sey-Barrouta. Déclaration du 21 Mars 1899
- Limite des possessions françaises d'après la convention du 14 Juin 1898
- d'..... 21 Mars 1899
- Zone à délimiter ultérieurement.
- Limite de l'arrangement commercial
- Limite des possessions françaises d'après des conventions antérieures

Limite des possessions françaises,
d'après des conventions antérieures.



6.53 This is wrong for several reasons. Turning to the text of the second paragraph quoted above, it is evident that it was intended to clarify the meaning of M. Barrère's unilateral Declaration in 1900: it specifically refers to his letter. What the text says is that by the reference in 1900 to the "limite de l'expansion française" in North Africa was meant "la frontière de la Tripolitaine indiquée par la carte annexée" to the 1899 Declaration. Thus, this paragraph - which was added at Signor Prinetti's request - did no more than clarify what was meant in the 1900 Accord. This was done by reference to a map, misrepresented as having been annexed to the 1899 Declaration.

6.54 It is appropriate to examine again the full-scale colour reproduction made by Libya of this famous map annexed to the Livre jaune version of the 1899 Declaration. The original map is not difficult to find in Paris: Libya located an excellent copy in the library of the Ecole Libre des Sciences Politiques in Paris⁴⁶. Nowhere has Chad annexed a full-scale, colour copy of the actual map. However, the colours are important in order to understand the application of the legend on the map⁴⁷. The LC-M demonstrated with the use of Maps LC-M 25 and 26 (referred to at paragraph 4.53 thereof) the distortion of the Livre jaune map made in the extract of this map appearing at page 162 of the CM. This demonstration is made once again here: Maps LR 12A and 12B. The legend on the extract of the map appearing on the left-hand page identifies the wavy, dashed line encircling "Tripolitaine" as a conventional boundary: "Limites des possessions françaises d'après des conventions antérieures". The fold-out map on the right-hand page, an authentic copy of the original map, makes no such identification of the wavy, dashed line - only such a line underlined in gray would fit the description in the legend of a conventional boundary. The line encircling Tripolitania on the map is neither defined nor identified as a boundary in the legend or elsewhere.

46 Known as "Sciences Po".

47 Among the 162 maps in the CC-M's Map Atlas, there are seven versions of this map, such as small reproductions of it in the BCAF, in Prof. Rouard De Card's studies, and in Le Figaro. One of the most bizarre entries in the Atlas is a copy of this map reproduced by the Italian Government and attached to a 1925 Italian study. The Map Atlas incorrectly calls it an Italian map (Map No. 32). Inter alia, this map reveals that even in 1925 the Italian Government was unaware that no such map had been annexed to the 1899 Declaration.

6.55 As mentioned above, a Tripolitanian boundary had never been defined by agreement. A notional boundary existed, however; and this can be detected on the colour version of the 1892 Justus Perthes map found in Chad's Map Atlas (Map 2), where it appears as a faint broken yellow line (Map LR 13)⁴⁸. This was the origin of that line placed on the livre jaune map. It was to this notional boundary that the second paragraph of the 1902 Accord referred, indicating that it was explained to the Italian Foreign Minister that this wavy, dashed line was what M. Barrère meant when he referred to the limits of French expansion.

6.56 Thus, to summarize, the map referred to in 1902 showed no boundary for Tripolitania, only a wavy, dashed line, not identified in the map's legend, but representing its notional boundary at the time, which had never been defined by convention. The use of the word "frontière" in the second paragraph of the 1902 Accord refers to that line as shown on that map. Whether M. Barrère showed such a map to Signor Visconti-Venosta in 1900, when he made the explanation to him referred to in the 1902 Accord, is not known from the evidence. Nor is it clear whether a map was shown to Signor Prinetti in 1902, although it seems unlikely because, as the LM shows, he subsequently had to request Italy's Paris Embassy to send him a copy of the Livre jaune map after the Accord had been signed⁴⁹.

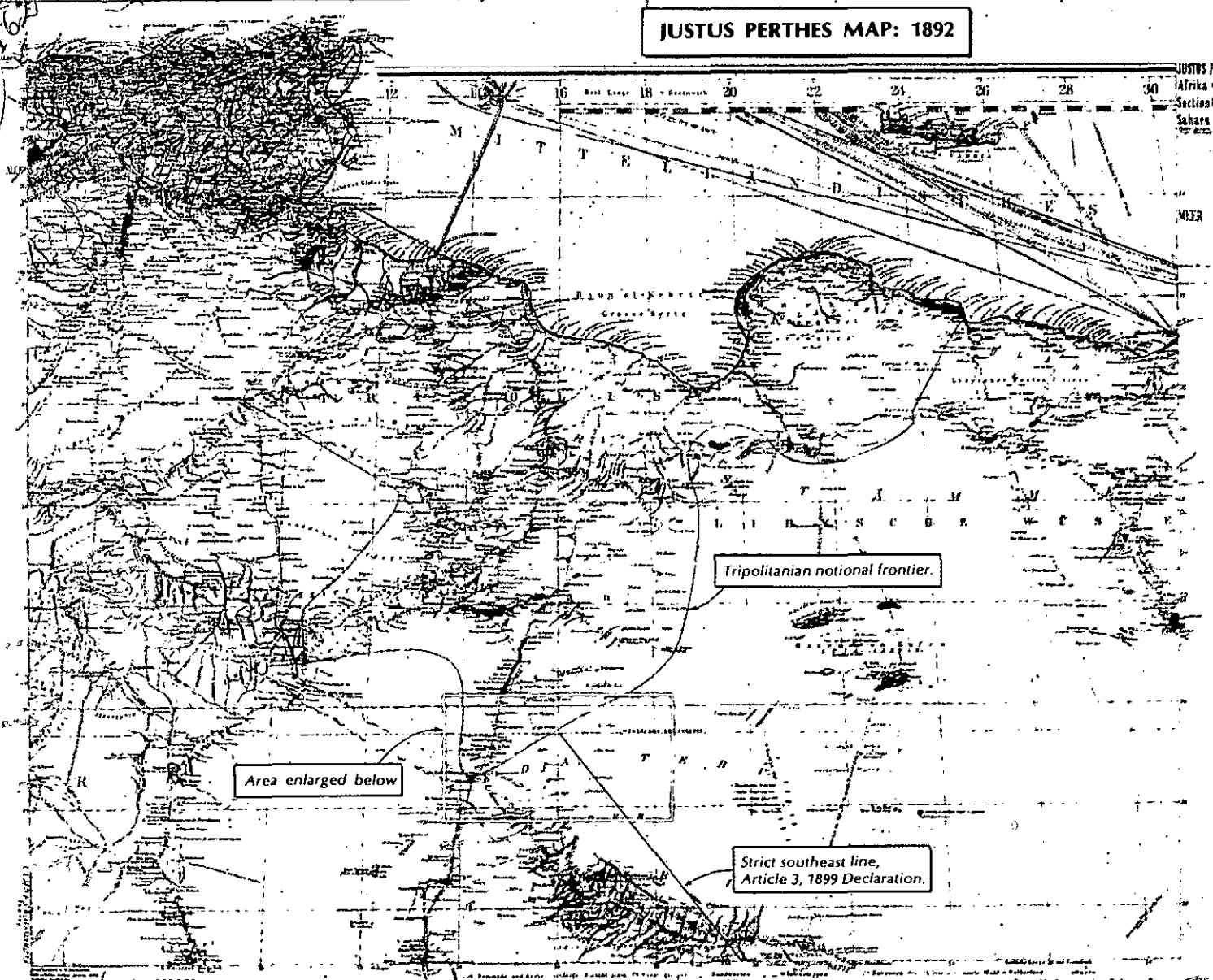
6.57 There is not the slightest hint in the text of either Accord - or in any other evidence - that either Italy or France regarded this limit to French expansion to be a boundary - thus upgrading it from the notional boundary shown on the map. Even if they had, neither had standing to reach such an agreement concerning territory under Ottoman sovereignty. Moreover, at the time, French military forces had not occupied territories adjoining the notional boundary of Tripolitania, on the west, anywhere near as far south as Toummo; and in the south, the French were still only in the region of Lake Chad.

6.58 It is clear, therefore, that the 1902 Accord did not produce or result in any kind of boundary. The southeast line under Article 3 of the 1899 Declaration, which appeared on the Livre jaune map, was of no relevance to the subject of this Accord or of the 1900 Accord, and is not referred to in either of

48 Map LR 13 appears again at para 6.160 (last comment, p.160), below.

49 See, LM, para. 5.93.

JUSTUS PERTHES MAP: 1892



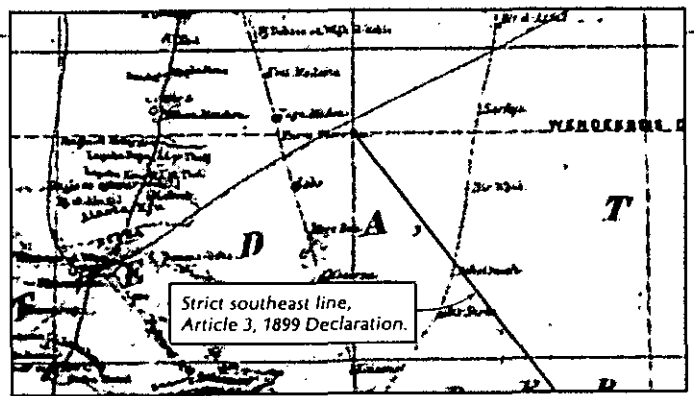
Area enlarged below

Tripolitanian notional frontier.

Strict southeast line, Article 3, 1899 Declaration.

Maßstab 1:4 000 000

Transparische, Turische, Britische, Italienische Besitzungen, Ägypten unter französischer Verwaltung, Leichenführung u. Sprechliches siehe Sektion 3



Strict southeast line, Article 3, 1899 Declaration.

them. There is no acknowledgment by Italy of anything in either Accord concerning the 1899 Declaration; the 1902 Accord only clarified the unilateral French Declaration of 1900 by reference to the notional boundary of Tripolitania shown on a map. There is, thus, no basis for this statement that appears in the CC-M:

"... l'échange de lettres de 1902 confirme celui de 1900. Leur combinaison constitue une reconnaissance par l'Italie de la zone d'influence française prévue par la Déclaration franco-britannique de 1899⁵⁰."

Italy recognised nothing in these Accords concerning an alleged French zone of influence; it received assurances that France's territorial ambitions would not transgress Tripolitania as shown notionally on a map. That is all.

6.59 The plain textual meaning of the 1900 and 1902 Accords, which produced and resulted in no boundary of any kind, exposes the fact that the only, and very fragile, basis Chad has for the Toummo-Tropic of Cancer segment of the line Chad claims totally vanishes. For it was founded on the supposition that the wavy, dashed line was a boundary, indeed a boundary accepted by Italy⁵¹. Neither proposition is correct.

6.60 It is here that the CC-M makes several additional mistakes about the 1902 Accord, saying that it had a double effect:

- First, that -

"... la France et l'Italie, par cet échange de lettres, se reconnaissent mutuellement des zones d'influence⁵².";

- Second, that the limits of the Italian zone of influence were indicated by the wavy, dashed line on the map (the notional boundary of Tripolitania).

50 CC-M, para. 8.38.

51 See, CC-M, para. 8.142.

52 CC-M, para. 8.144.

The first contention totally misses the meaning of the 1902 Accord. The mutual recognition of its first paragraph concerned giving France a free hand, not in Tripolitania, but in Morocco; and as pointed out above, no Italian zone of influence over Tripolitania was or could have been agreed in 1902 by France⁵³. Thus the second point falls, as well.

6.61 The discussion of the Livre jaune map appearing at paragraphs 8.145 to 8.160 of the CC-M is quite beside the point. The map showed no Tripolitanian boundary, only a notional one. So whether Italy might have protested that it had been misled about the map - since it had not been annexed to the 1899 Declaration - is of no real importance: there was nothing to protest against, for the map showed no Tripolitanian boundary, merely a notional one that was adequate for the specific purpose of illustrating the limits of French expansion contained in French Ambassador Barrère's unilateral statement in 1900. The CC-M discusses what it claims was the effect of the reference to this map in the 1902 Accord by quoting from the Court's Judgment in the 1986 Burkina Faso/Mali case:

"De ce fait, elle a acquis, pour la France et l'Italie, 'une valeur juridique intrinsèque aux fins de l'établissement des droits territoriaux'⁵⁴."

This is all wrong; but it does suggest how dependent Chad's case is on this map.

6.62 The plain meaning of the text of the 1902 Accord shows that the Accord had nothing to do with establishing territorial rights; and the parties to the Accord had no standing to do so at the time. It is apparent why Chad has avoided producing a faithful reproduction of the actual map annexed to the Livre jaune, which is so easily obtainable in Paris, and instead has placed in the CM an extract that distorts the map and has included some seven extracts in its Map Atlas that either distort or obscure the meaning of the wavy, dashed line. For the map itself shows no boundary for Tripolitania; and the reference in the 1902 Accord to the Tripolitanian boundary shown on the map, could not have had the effect of transforming that line into a boundary as Chad now seeks to do, for the

53 See, also, CC-M para. 8.170(v) where Chad wrongly contends that in the 1900-1902 Accords Italy recognised a French zone of influence up to the Tripolitanian boundary shown on the map. Italy only recognised France's right to pursue its ambitions in Morocco.

54 CC-M, para. 8.157.

map did not show the wavy, dashed line encircling Tripolitania as a boundary. It was only a notional boundary that had never been fixed by agreement in 1900 or in 1902.

6.63 The CC-M says that:

"Le segment allant de Toummo au Tropic du Cancer n'a jamais été modifié depuis 1902⁵⁵."

It would have been more accurate to say that this segment never was a boundary either before or after 1902; and that remains true today⁵⁶. The CC-M, in fact, seems to go part way in acknowledging the weakness of its case concerning this segment of the boundary when it admits that Chad:

"... ne prétend pas qu'il y ait là une présomption irréfragable en soi. Mais elle constate que la Libye n'a pas apporté le début d'une preuve contraire⁵⁷."

The plain meaning of the 1900-1902 Accords is all the proof needed to refute Chad's case concerning the claimed boundary along the line between Toummo and the Tropic of Cancer.

6.64 There are two pieces of negative evidence of special significance regarding the intended meaning of the 1900-1902 Accords. These consist of the two summaries prepared by Ambassador Barrère in 1902 and then in 1912 (when the French Government was considering whether to abrogate the 1902 Accord). In neither report is any mention made of the interpretations Chad now attempts to draw from these Accords. It is unthinkable that such detailed analyses by such a qualified person as M. Barrère would have overlooked important matters of this kind had there been any thought that such was the meaning of these Accords. The line of argument put forward by France, and

55 CC-M, para. 8.160.

56 The statement in CC-M, para. 8.166, that in the 1899 Declaration, Great Britain and France had established that the Tripolitanian boundary extended up to the starting point of the Article 3 southeast line at the Tropic of Cancer, is pure fantasy. The 1899 Declaration had nothing to do with Tripolitania and made no reference to it; it was this silence that provoked the French assurance in the 1900-1902 Accords concerning the limits of its expansion.

57 CC-M, para. 8.169.

since then adopted by Chad, was not developed until after 1914, when these secret Accords first became known⁵⁸.

6.65 In Chapter 7 of the CC-M, which takes up the subject of Libya's succession to the rights of the Ottoman Empire, Chad makes certain additional remarks concerning the effect of the 1902 Franco-Italian Accord in discussing the 1912 Franco-Italian Agreement. It wrongly states that the purpose of the 1902 Accord was to:

"... délimiter les zones respectives d'influence et d'établir la limite au-delà de laquelle chacune des Parties n'aurait pu aller, dans son action politique et militaire future⁵⁹."

This is totally incorrect, as shown above; in the 1902 Accord, Italy recognised France's interest in developing its sphere of influence in Morocco, and France recognised Italy's potential interest in Tripolitania-Cyrenaica. There is no basis at all for contending that the engagements undertaken by Italy and France concerned "la limite spatiale de leur action réciproque au sud de la Libye et au nord du Tchad"⁶⁰.

6.66 From these incorrect contentions, Chad goes on to claim that, as a result:

"... le tracé de 1899, accepté par l'Italie en 1902, fut transformé en frontière réciproquement reconnue par les deux Etats⁶¹."

What a remarkable shift! In the 1902 Accord, Chad argues, Italy recognised the notional boundary shown on the map referred to as the boundary of Tripolitania. It has been shown why this is not so. Now the CC-M shifts to the 1899 southeast line, to which the 1902 Accord made no reference at all. Through a negligent misreading of the first paragraph of the Accord ("susmentionnées" not sousmentionnées)⁶², Chad claims that Italy recognised France's zone of influence

58 See, Rouard De Card, E.: Le différend franco-italien concernant la frontière méridionale de la Libye, Paris, Pedone/Gamber, 1929, pp. 7-9.

59 CC-M, para. 7.30.

60 Ibid.

61 CC-M, para. 7.31.

62 See, para. 6.50, above.

outside the confines of the Tripolitania boundary shown on the map. The CC-M then asserts that, as a result of the 1902 Accord with Great Britain, Italy regarded itself as virtually a party to the 1899 Declaration, from which Chad concludes that Italy accepted the southeast line. This then leads Chad to the following conclusion concerning the effect of the 1912 Agreement (which will be taken up below following a brief discussion of the 1902 Anglo-Italian Accord), because of its reaffirmation of the 1902 Accord:

"En souscrivant à l'Accord de 1912, l'Italie s'engageait donc explicitement à considérer le tracé de 1899 comme la frontière méridionale de la Libye. Par voie de conséquence, l'Italie s'engageait à ne pas avancer de prétentions fondées sur ses droits de succession à l'Empire ottoman⁶³."

This is an important shift in Chad's case. Instead of basing Italy's alleged renunciation on the 1902 Accord, Chad now contends that the renunciation occurred in 1912, after the Treaty of Ouchy, when Italy had attained sovereignty over Tripolitania⁶⁴.

SECTION 4. 1902 Anglo-Italian Accord

6.67 The 1902 Accord between Italy and Great Britain consisted of the simultaneous exchange of several documents. It qualifies, Libya believes, as falling within the category "actes internationaux", but it does not appear on the Annex I list. It clearly produced no boundary; and Libya understands that it was not en vigueur on the critical date, not having been notified by the United Kingdom under Article 44 of the 1947 Italian Peace Treaty. Its importance lies in the light it sheds on the meaning of the 1899 Declaration. For in the exchanged documents, Great Britain made clear to Italy its interpretation of the 1899 Declaration⁶⁵. These documents, combined with the Lansdowne-Currie dispatch of 3 February 1902, establish beyond any doubt that, as to territories north of 15°N latitude, the 1899 Declaration had been carefully drafted, in Article 3, to define a line "beyond which the French Government would not at any time advance its pretensions"⁶⁶. The 1899 Declaration was intended to avoid "bringing

63 CC-M, para. 7.35.

64 The complexity of Chad's arguments concerning the 1902 Accord is dazzling. And yet Chad's pleadings maintain that Chad advances a simple case!

65 This Accord was signed shortly before the 1902 Franco-Italian Accord.

66 See, LM, para. 5.105.

into question the existing rights of other Powers or any prospective claim they might hereafter put forward".

6.68 The CC-M's discussion of the relevant documents is highly selective, leading to the following remarkable conclusions⁶⁷:

- The 1902 Anglo-Italian Accord matched the 1900 Franco-Italian Accord, being based on the same idea;
- This idea was that, in the 1900 Accord, Italy's sphere of influence was recognised and that, as a result of the 1902 Accords with France and Great Britain, Italy recognised the British and French spheres resulting from the 1899 Declaration;
- Accordingly, Italy in fact became a party (at least in respect to the French zone) to that Declaration, which thereafter was opposable to Italy.

This, of course, does not reflect at all the British view as expressed in the documents exchanged with Italy that constituted their 1902 Accord⁶⁸. It is contrary to the ordinary meaning of this Accord in the light of its aim and purpose and its context, none of which the CC-M properly examines.

6.69 In reviewing the background of this Accord, the CC-M takes completely out of context a conversation with Signor Prinetti reported by Lord Currie, the British Ambassador in Rome, to Lord Lansdowne, the Foreign Minister, in a dispatch of 13 January 1902⁶⁹. There were in fact five such dispatches in January 1902⁷⁰, but the context of this Accord goes back to 1899 when Admiral Canevaro, the Italian Foreign Minister, sought a three-party agreement in which Italy's special status in Tripolitania would be explicitly recognised. Both Great Britain and France promptly rejected this proposal,

67 CC-M, para. 8.29.

68 See, LM, para. 5.103, et seq.

69 See, CC-M, para. 8.28.

70 See, LM, para. 5.103.

giving as their reason the commitments they had made to respect the integrity of the Ottoman Empire. As the LM stated:

"The Quai d'Orsay ... feared the repercussions of such a declaration, which would be tantamount to the recognition of or acquiescence in Italy's ambitions with regard to Tripolitania⁷¹."

It was shortly thereafter that the Porte vigorously protested the 1899 Declaration.

6.70 The relevant 1902 documents forming part of the background of the 1902 Anglo-Italian Accord bring out the fact that Italy sought more from Great Britain and France in the way of recognition of its potential interests in Tripolitania than either was prepared to accord to Italy. The passage quoted in the CC-M from Lord Currie's dispatch of 13 January 1902 set out what Italy wanted but was refused: recognition of an Italian sphere of influence, thus making Italy virtually a party to the 1899 Declaration⁷². Chad tries to construct out of Italy's proposal, which had been rejected by Great Britain and France in 1899 and again in 1902, a theory that the 1900 and 1902 Accords accomplished Italy's purpose. This makes no sense; both Great Britain and France refused to recognise an Italian zone of influence. There is also nothing in Italy's Accord with Great Britain that recognises a British sphere, and the 1899 Declaration does not mention anything at all about a British zone or sphere of influence. Thus, Chad's contention that the 1899 Declaration, combined with the 1900 and 1902 Accords, resulted in the three Powers recognising each other's zones of influence is totally wrong. Italy's aim to have Tripolitania recognised as falling within its zone of influence was rejected. For its part, Italy never recognised any British or French zone of influence. Great Britain explicitly stated that the 1899 Declaration north of 15°N latitude only created a limit to French expansion and was not a delimitation of zones of influence; and Great Britain itself asked for no zone of influence, and none was recognised⁷³.

71 LM, para. 5.51.

72 See, CC-M, para. 8.28.

73 Great Britain's situation was complicated by the fact that its influence over regions adjoining Cyrenaica was indirect, for any sovereign rights over regions to the east of Cyrenaica were held by the Khedive of Egypt.

SECTION 5. Treaty of Ouchy (1912); 1912 Franco-Italian Agreement

(a) Introduction

6.71 The CC-M takes up these two "actes internationaux", neither of which appear on the Annex I list, in the course of examining the question of Libya's inheritance of territorial rights and titles in the borderlands from the Ottoman Empire⁷⁴. Chad offers three arguments to establish that Libya's claim based on its Ottoman heritage (via Italy) is "radicalement mal fondée"⁷⁵. The first argument - that the Ottoman Empire never acquired any sovereign rights in the area - will be dealt with in Chapter VII, Section 5. The second argument, however, is directly relevant to both the *Treaty of Ouchy* and the 1912 Agreement. Chad argues that, even if the Ottoman Empire had held sovereign territorial rights (jointly with the Senoussi peoples), Italy did not succeed to them in respect to Libya's southern boundary:

"... car l'Italie réitéra par l'accord POINCARE-TITTONI de 1912 sa reconnaissance de la frontière méridionale de la Libye telle qu'elle avait été établie par l'accord franco-anglais de 1899 reconnu par l'accord franco-italien de 1902. Donc, même à supposer que la Turquie ait eu des droits souverains sur la région, ou des droits concernant la délimitation de la frontière méridionale de la Libye, l'Italie renonça à ces droits du fait qu'elle conclut avec la France un accord portant sur la frontière de 1899⁷⁶."

6.72 In spite of Libya's careful legal analysis of the *Treaty of Ouchy* in its Memorial, the CC-M finds a failure there to discuss the general principles involved. Then, following a discussion of the principles of international law concerning State succession - as to which the Court requires no lecture - the CC-M concludes that the general principles are superfluous as a result of the 1912 Agreement. In this way, Chad would dispose of the relevance of the *Treaty of Ouchy*.

74 See, CC-M, Chapter 7. It should be mentioned again that certain "actes" that failed to appear on the Annex I list are, nevertheless, extensively discussed in Chad's pleadings and are given an important role by Chad in seeking to establish a conventional boundary.

75 CC-M, para. 7.02.

76 CC-M, para. 7.02. Chad's third argument is that, after 1912, Italy never invoked Ottoman rights and titles, relying instead on the 1902 Accord and, later, on Article 13 of the 1915 *Treaty of London*. This argument is also unfounded as well as misleading (see, para. 6.198, et seq., below).

6.73 The Treaty is not avoided this easily, for on 20 October 1912, only five days after the Treaty was signed, France recognised Italy's inheritance of sovereign rights thereunder from the Ottoman Empire; as reported by French Foreign Minister Poincaré to Ambassador Barrère in Rome:

"Je viens de déclarer à M. Tittoni que 'le Gouvernement de la République reconnaît la souveraineté de l'Italie sur la Tripolitaine et la Cyrénaïque'⁷⁷."

M. Poincaré then set out the text of the agreement proposed to be entered into a few days later as a quite separate matter in order to avoid any linkage (which Italy had strongly opposed). The text of the Agreement itself was settled in only eight days of negotiations. So recognition of Italy's sovereignty and agreement on the text of the Agreement, expressing the quid pro quo to be received by France for according such recognition, were accomplished within the very short time period of 13 days after the Treaty of Ouchy was signed (15 October 1912). In 1912, Italy's inheritance of Ottoman rights was clearly not in issue.

6.74 Neither France nor Great Britain (which at the time also had recognised that Italy had acquired sovereignty over Tripolitania-Cyrenaica by virtue of the Treaty of Ouchy) expressed any reservations concerning the effect of the Treaty of Ouchy in transferring sovereignty over Libya to Italy. In Article 10 of the secret 1915 Treaty of London they reaffirmed this recognition of the transfer of Ottoman rights to Italy, again without any reservations:

"All rights and privileges in Libya at present belonging to the Sultan by virtue of the Treaty of Lausanne are transferred to Italy⁷⁸."

If, in 1915, France had believed that an exception existed, by virtue of the 1900-1902 Accords and the 1912 Agreement, with respect to Italy's inheritance of Ottoman rights and titles over territories lying within the Libyan hinterland, the French Government would have been bound to have registered some form of reservation. But just as in the case of the Treaty of Ouchy and in the case of France's recognition of Italian sovereignty in 1912, Article 10 contains no reservation of any kind.

77 Dispatch, Poincaré-Barrère, 20 October 1912, LR Exhibit 5.

78 See, LM, para. 5.150, et seq.

6.75 Thus, Article 10 of the 1915 Treaty of London refutes Chad's contentions that the 1900-1902 Accords and the 1912 Agreement were a formal repudiation by Italy of its inheritance from the Ottoman Empire of territorial rights and titles over territories lying to the south of Tripolitania-Cyrenaica. France's agreement, without reservation, to Article 10 of the 1915 Treaty of London barred France from thereafter claiming that in 1902 or 1912 Italy renounced its Ottoman heritage; and Chad is, as a result, barred from making that argument today. This is so quite aside from the fact that the 1900-1902 Accords and the 1912 Agreement did not have the effect of a repudiation by Italy of any rights and titles inherited from the Ottoman Empire, in the first place⁷⁹.

(b) **The Role of the 1912 Treaty of Ouchy in the Settlement of the Present Dispute**

6.76 The analysis of the Treaty of Ouchy presented by Chad is preceded by a peculiar dissertation to the effect that Libya had not contributed "le moindre début de démonstration juridique" to justify the affirmation that Italy succeeded to the Ottoman Empire under the terms of the Treaty of Ouchy⁸⁰. As just mentioned above, Chad blames Libya for not discussing the general legal principles governing this subject. However, at the end of this lecture, Chad discovers, with the help of a rich variety of doctrinal quotations, that the principle to be retained is precisely what Libya had indicated in its Memorial; namely, that in that era, in the event of annexation of the territory of one sovereign State by another -

"... la succession d'Etat ne portait atteinte ni aux frontières ni aux droits et obligations se rapportant au régime du territoire annexé⁸¹."

6.77 It is in fact in applying this principle that the correct interpretation of the Treaty of Ouchy is arrived at. The Treaty consecrated legally the succession between the Ottoman Empire and Italy concerning Libya's territory. The territory in question was thus transmitted to Italy in its entirety and under exactly the same conditions as had applied when the territory was part of

79 This has been demonstrated above with regard to the 1900-1902 Accords and is shown below as to the 1912 Agreement.

80 See, CC-M, para. 7.04, et seq.

81 CC-M, para. 7.06.

the Ottoman Empire: i.e., with such boundaries as had been previously fixed or, if none had been so fixed, without precise boundaries⁸². Of course, in the latter case (which was the situation to the south of Tripolitania and Cyrenaica, where no boundary had previously been fixed), Italy inherited all the Ottoman rights, titles and claims on the basis of which such a boundary would in the future be established.

6.78 Certainly, the Treaty of Ouchy says nothing at all about Libya's boundaries. But this fact does not render the Treaty irrelevant, as Chad appears to believe⁸³. Chad wrongly understates the importance of the Treaty of Ouchy. This Treaty transmitted to Italy along with Libya's territory the entirety of the territorial demands and claims that the Ottoman Empire could have put forward in its negotiations with France or with any other country in an attempt to determine Libya's boundaries⁸⁴. In other words, the Treaty of Ouchy has a central role to play in the present dispute since it represents the essential legal foundation of the territorial rights of Italy towards France from 1912 onwards, and thus is one of the legal bases of the territorial rights of Libya vis-à-vis Chad today.

6.79 As a result of the Treaty of Ouchy, Italy found itself in the shoes of the Ottoman Empire not merely in respect to the geographical extent of Libyan territory. There was a "personal" dimension to the succession as well. The Ottoman inheritance, in fact, entailed, according to the terms of the Treaty, that Italy exercise its powers towards all the "habitants de la Tripolitaine et de la Cyrénaïque", whose autonomy Italy undertook to respect. It goes without saying

82 See, in this respect, the highly pertinent observation of the U.S. Government on the Report of the International Law Commission on the succession of States in respect of treaties, A/CN.4/SER A/1974/Add. 1(Part 1), pp. 80-81.

"A successor State can only acquire as its territorial domain the territory and territorial rights of the predecessor. If the territory as held by the State had boundaries firmly fixed ... the successor State inherits all this ... On the other hand, if the territory as held by the predecessor State had a poorly-defined boundary ... the successor State acquires what the predecessor had, territory with badly defined boundaries"

83 See, CC-M, para. 7.10, et seq.

84 See, on this subject, Waldock, H.: Premier rapport sur la succession d'états en matière de traités, A.C.D.I., 1974, Vol. II, 1st part, p. 84 "... l'Etat successeur ne peut acquérir que les droits que l'Etat prédécesseur avait le pouvoir de lui donner". See, also, in particular, Mochi Onory, A.G.: La succession d'état aux traités, Milan, 1968, p. 128: "... le nouvel Etat succède aussi aux 'claims', c'est-à-dire aux revendications possibles sur ce territoire"

that these Libyan peoples could only have been the same peoples who were legally subject to the authority of the Ottoman Empire before the Italo-Turkish war⁸⁵.

6.80 From this it follows that if before 1912 the Ottoman Empire had enjoyed legal titles over regions within the Libya-Chad borderlands that can be identified on the basis of both territorial criteria (the occupation of the territory in question by the Porte) and personal criteria (the allegiance of the populations to the Ottoman authority), these titles were transmitted to Italy, which had the right to assert them against France in arriving at a conventional delimitation of the southern boundary of Libya. In the absence of a delimitation established in the colonial period, the same titles were transmitted to Libya, which in turn has the right to invoke them now against Chad.

6.81 The CC-M objects that, in any event, the Treaty of Ouchy was res inter alios acta for France, and could not thus have had any legal effect on France⁸⁶. But, Chad disregards the fact that France, like the other major European Powers, recognised explicitly the acquisition by Italy of sovereignty over Libya as a result of the Treaty of Ouchy⁸⁷. Furthermore, France recognised the Treaty of Ouchy itself in a number of multilateral treaties accepting that the above-mentioned Treaty be interpreted in the sense of abolishing all the rights and privileges which remained in favour of the Ottoman Empire⁸⁸. The Treaty of Ouchy was clearly not res inter alios acta for France; to the contrary, France formally recognised the Treaty.

6.82 Certainly, the Treaty of Ouchy had its share of ambiguities, as Chad rightly observes⁸⁹. This resulted from the unusual separation of powers under the Treaty between Italy and the Ottoman Empire (which retained certain rights over Libyan territory) and particularly in the way in which the Treaty seemingly entrusted Italy with the exercise of sovereignty over Libya, whilst the sovereign title seemed to have been retained by the Ottoman Empire. Such

85 See, LM, paras. 5.134-5.138.

86 See, CC-M, para. 7.09.

87 See, para. 6.73, above.

88 Article 10 of the Treaty of London of 1915; Article 121 of the Treaty of Sèvres of 1920; Article 27 of the Treaty of Lausanne of 1923.

89 See, CC-M, para. 7.12, et seq.

ambiguities were entirely removed subsequently, in favour of Italy, through the series of international agreements binding on France footnoted in the previous paragraph.

6.83 In conclusion, as a result of this succession, fully recognised by France, Italy received from the Ottoman Empire, together with Libya's territory, all the legal rights and titles relating to it that the Ottoman Empire could have invoked in the negotiations for the delimitation of the southern boundary. Prior to 15 October 1912, Italy could not have waived these rights with dispositive effect (nemo dat quod non habet). Obviously, such a waiver could only have intervened after 15 October 1912. This is the hypothesis which, according to Chad, occurred under the terms of the Tittoni-Poincaré Agreement of 28 October 1912, to which the discussion now turns⁹⁰.

(c) **1912 Franco-Italian Agreement (Tittoni-Poincaré)**

6.84 The Treaty of Ouchy and Italy's desire for immediate recognition from the major Powers of its sovereignty over Libya form the background of the 1912 Agreement. The Agreement and France's recognition of Italian sovereignty were separate acts. The purpose of the Agreement was to set out France's quid pro quo for prompt recognition. In its discussion of this background, the CC-M largely repeats and requotes what had already been set out in the LM.

(i) **Ordinary Meaning**

6.85 It is appropriate to turn now to an examination of the ordinary meaning of the text of the Agreement and to test it under the criteria of

⁹⁰ There is one element of Ottoman and French conduct that has an important bearing here. It will be recalled that both the French and the Ottomans considered that it was the Treaty of Ouchy that required the withdrawal of Ottoman civil and military administration, not just from Tripolitania - Cyrenaica, but from the borderlands as well, starting at the end of 1912. This is recognised by Chad in the CM (see, CM, p. 180, paras. 137-138). It was so perceived by the French military at the time, as described in the official history of the A.E.F.:

"Par le traité de Lausanne, signé le 18 octobre 1912, les Turcs abandonnèrent aux Italiens leur souveraineté sur la Tripolitaine et la Cyrénaïque. La Senoussiya restait seule maîtresse au Borkou et l'attitude déjà assez froide d'Abdallah Toueur ne tarda pas à devenir hostile." Emphasis added. (Histoire militaire de l'Afrique Equatoriale Française, Paris, Imprimerie Nationale, 1931, p. 424. See, LC-M, Exhibit 13.)

Article 3 of the 1955 Treaty. The Agreement itself comprised these two sentences:

"Le gouvernement de la République française et le gouvernement royal d'Italie, désireux d'exécuter dans l'esprit le plus amical leurs accords de 1902, confirment leur mutuelle intention de n'apporter réciproquement aucun obstacle à la réalisation de toutes les mesures qu'ils jugeront opportun d'édicter, la France au Maroc et l'Italie en Libye.

Ils conviennent de même que le traitement de la nation la plus favorisée sera réciproquement assuré à la France en Libye et à l'Italie au Maroc: ledit traitement devant s'appliquer de la manière la plus large aux nationaux, aux produits, aux établissements et aux entreprises de l'un et l'autre Etats sans exception."

6.86 According to Chad, in entering into the Agreement, Italy:

- "... renonça à toute prétention ou revendication qu'elle aurait pu éventuellement avancer ... en vertu des principes ... concernant la succession entre Etats⁹¹,"
- Arranged things in such a way that a line allegedly delimiting mere spheres of influence (as of 1899) "fut transformé en frontière⁹²,"
- "... réaffirma d'une manière claire et indiscutable" this boundary, i.e. "s'engageait ... explicitement à considérer le tracé de 1899 comme la frontière méridionale de la Libye⁹³."

6.87 What an array of spectacular legal effects the Agreement produced! Almost to the extent of itself settling the present dispute! What a shame it does not appear among the "actes internationaux" to which Article 3 (and Annex I) of the 1955 Franco-Libyan Treaty refer and thus, according to Chad, cannot be taken into account in determining the boundary⁹⁴! What a pity it was not en vigueur in 1951 because France had omitted to notify it to Italy

91 CC-M, para. 7.18.

92 CC-M, para. 7.30, et seq.

93 CC-M, paras. 7.18 and 7.35.

94 See, CC-M, para. 11.20.

under Article 44 of the 1947 Peace Treaty! An unbridled imagination is required to read all these remarkable achievements into the meaning of the two sentences of the Agreement just quoted. In fact, Chad even overlooked these remarkable attributes of the 1912 Agreement in its Memorial.

6.88 An examination of the ordinary meaning of the Agreement's text reveals the following:

- It was intended to carry out, in the most amicable fashion, the 1902 Accord between Italy and France;
- In this regard, the parties confirmed their intention, on a reciprocal basis, not to place any obstacle in the way of carrying out any measures they considered opportune: France as to Morocco; Italy as to Libya;
- Each party would extend to the other most favoured nation treatment: France in Libya; Italy in Morocco - in the broadest possible fashion.

There is not a word, not a hint, about boundaries or about lines of any kind!

(ii) Object and Purpose - Context

6.89 Though the ordinary meaning of the text of the Agreement excludes any interpretation that it produced a boundary, the next question is whether there is anything in its context or its object and purpose that would lead to the conclusion that a boundary did result from the 1912 Agreement?

6.90 In considering the historical context of the 1912 Agreement, it should be remembered that the French military campaigns had only just brought the French to the periphery of the borderlands. At the time, these regions were, in France's mind at least, vast, unknown and dangerous desert regions of no economic value. There was no question of installing there a real French colonial administration - and there never was thereafter; the borderlands were merely the site of sporadic French military operations whose purpose was to protect the regions lying south of the borderlands (well below 15°N latitude). There was, thus, no practical reason to fix precise boundaries there. But this was

not at all the case as to Libya's boundaries on the west with French Algeria and Tunisia.

6.91 The travaux préparatoires of the 1912 Agreement demonstrate this clearly, as Libya has pointed out in its prior pleadings. Now, however, the CC-M has given this demonstration its unqualified support, for Chad there indicates that all the pertinent documents unambiguously show that France's sole preoccupation at the time was over the Tripolitania-Algeria frontier, not Libya's southern frontier. It was in respect to this French preoccupation that the reference in the 1902 Accord had been made in the 1912 Agreement, according to Chad. Chad does not hesitate to admit ore rotundo that, throughout the 1912 negotiations -

"... (l)a France ne songea jamais à soulever la question de la frontière méridionale de la Libye."

And so far as Italy was concerned, she -

"... non plus ne crut bon de soulever la question de la frontière méridionale⁹⁵."

6.92 One has to reread these passages of the CC-M to be sure they are not just a dream. For Chad here expressly recognizes that neither party to the 1912 Agreement raised the question of Libya's southern boundary during the negotiations and that the matter was never discussed; accordingly, not a word concerning the boundary appears in the Agreement's text. How then can Chad maintain that by the 1912 Agreement Italy renounced any Ottoman rights to territories lying south of Tripolitania-Cyrenaica and that Italy and France could have agreed such a boundary by reference to the 1902 Accord? How can such a far-fetched, contradictory argument be seriously advanced?

6.93 The CC-M suggests there was special meaning in the negotiations leading up to this agreement, and breaks these negotiations down into three phases. It also emphasises that the reference to the 1902 Accord was inserted at the request of Italian Foreign Minister Prinetti⁹⁶.

95 CC-M, para. 7.25.

96 See, CC-M, paras. 7.18-7.36.

6.94 What is revealed by the evidence concerning the object and purpose of the Agreement is that it constituted the French quid pro quo for formal recognition of Italian sovereignty over Tripolitania-Cyrenaica⁹⁷ following the Treaty of Ouchy.

6.95 At the outset, M. Poincaré had suggested to Italy that French recognition of Italy's sovereignty should be subordinated, inter alia, to:

"... une réserve portant sur la fixation de la partie de notre frontière commune qui n'est pas encore délimitée⁹⁸."

This suggestion, on the face of it, reflected M. Poincaré's view that a part of Libya's boundaries with France or French possessions had not been delimited. French Ambassador Barrère discouraged this linkage, setting out his reasons in this equally revealing statement:

"Cette délimitation pourrait d'ailleurs à mon sens devenir le prétexte de la remise au point de nos accords [antérieurs] avec l'Italie, comme la partie fixée par la convention franco-anglaise de 1899 fut le motif des accords franco-italiens de 1900 et 1902."

English translation

"Besides, that delimitation could in my view become the pretext for having to reclarify our prior accords with Italy, just as the arrangement fixed by the (1899 Anglo-French Declaration) was the reason for the (1900-1902 Franco-Italian Accords)."

In other words, M. Barrère advised against stirring up questions as to the meaning of the 1900-1902 Accords (which were then still secret)⁹⁹.

6.96 Initially, Foreign Minister Poincaré took issue with his Ambassador in Rome on this point¹⁰⁰. He emphasised that France was in a different position from the other Powers vis-à-vis Italy: France had common

97 At the time, what later became Fezzan was subsumed within these two provinces. Often, they were referred to together as the vilayet of Tripoli or, simply, Tripolitania.

98 Barrère to Poincaré, 17 October 1912, LM, French Archives Annex, p. 142; repeated in CC-M, Annex 30, No. 188 and quoted at para. 7.23.

99 M. Barrère's position is similar to that taken by the French Government during the 1955 negotiations: to avoid opening up questions as to the meaning of prior agreements.

100 See, Poincaré to Barrère, 18 October 1912, LM, French Archives Annex, p. 145.

boundaries with Italy in North Africa, and this was a good occasion to safeguard French interests:

"(The 1899 Declaration) part du tropique du Cancer et laisse par conséquent indéterminée la frontière sur plus de douze cents kilomètres. Il dépend du Gouvernement italien de formuler sa demande de reconnaissance dans des termes qui réservent entièrement nos droits."

The record does not establish why M. Poincaré, shortly after sending this dispatch, abandoned the idea of linking this boundary delimitation with recognition of Italian sovereignty and agreed to an arrangement in which the matter of boundaries was not taken up at all. The CC-M speculates that this was because there was no need to take up the matter of Libya's southern boundary since the 1902 Accord, by its reference to the Livre jaune map, had established "d'une manière claire" this boundary¹⁰¹. This is not plausible: a person as meticulous and informed as M. Poincaré, would not have mistakenly referred to Libya's undetermined boundaries with French territories if they had all been settled in 1902; and M. Barrère, the French negotiator of the 1902 Accord, would have advised M. Poincaré at once that Libya's boundaries had been settled in 1902, if he had thought that was so¹⁰².

6.97 Chad does, on the other hand, correctly conclude that the boundary M. Poincaré was referring to as "indéterminée" was the "frontière algéro-tripolitaine"¹⁰³. As just discussed, this was an admission by Chad that the 1902 Accord, referred to in the Agreement in an insertion requested by Italy, concerned only the part of the boundary to the west of Toummo¹⁰⁴. It is also a clear indication that M. Poincaré did not believe that the Tripolitania-Algeria boundary between Ghadamès and the Tropic of Cancer had been agreed as a result of the reference in the 1902 Accord to the Livre jaune map, on which Tripolitania's notional boundary was shown as a wavy, dashed line.

101 See, CC-M, para. 7.25. Chad does not seem to have entirely made up its mind whether the 1902 Accord or the 1912 Agreement established Libya's southern boundary - an understandable confusion since it is clear that neither agreement had anything to do with the establishment of boundaries, least of all Libya's southern boundary.

102 It will be recalled again that in his detailed reports on the 1902 Accord - in 1902 and again in 1912 - M. Barrère never mentioned that it had the effect of fixing any of Libya's boundaries. See, para. 6.64, above.

103 See, CC-M, para. 7.22.

104 This is confirmed by the Marin reports of 1914 and 1915. See, LC-M, para 4.247, et seq.

6.98 As just mentioned, the CC-M suggests that, unlike the Tripolitania-Algeria boundary, which was M. Poincaré's concern, the southern boundary of Libya required no discussion, for it had been established "d'une manière claire" by the 1902 Accord and its reference to the 1899 map¹⁰⁵. The CC-M even goes so far as to suggest that Italy itself raised no questions as to Libya's southern boundary at the time for the reason that Italy also considered that the matter had been resolved by the 1902 Accord¹⁰⁶. So with complete self-assurance the CC-M contends that the total absence of any reference to a boundary in the 1912 Agreement served to confirm the boundary allegedly established in the 1902 Accord¹⁰⁷ - not the Libya-Algerian boundary, the southern boundary of Libya. It is the reference in the 1912 Agreement to the 1902 Accord - inserted at Italy's request - that is the anchor to Chad's argument; it is an argument conceived in desperation, for if the Chadian thesis concerning the effect of the 1902 Accord and map referred to there (the Non-Annexed Map) is rejected, as it must be, Chad's case for a conventional boundary collapses.

(iii) Travaux Préparatoires

6.99 Chad has furnished a document as part of the travaux of the 1912 Agreement whose significance it apparently has failed to grasp. This is a dispatch to M. Poincaré from the French Ambassador at the Porte dated 19 October 1912¹⁰⁸. In this dispatch, M. Bompard expressed the same thought as M. Poincaré had the previous day in his message to M. Barrère:

"La France en est limitrophe (to Libya) sur des milliers de kilomètres; il importe donc que tout d'abord l'Italie accepte les limites fixées par la convention franco-anglaise du 21 mars 1899 et par la convention franco-turque du 19 mai 1910 ..., puis que des dispositions soient convenues en vue de la délimitation entre les points extrêmes des lignes de démarcation tracées par ces deux conventions¹⁰⁹."

105 This argument is a forerunner of a similar argument now made by Chad regarding the 1955 Treaty - that the failure to have negotiated over Libya's southern boundary was a reflection of the fact it had been settled.

106 See, CC-M, para. 7.25 (ii).

107 Perhaps inspired by the saying, "Absence makes the heart grow fonder".

108 See, Bompard to Poincaré, 19 October 1912, CC-M, Annex 32.

109 Also quoted in full in CC-M, p. 281, fn. 3.

As the CC-M notes, the text as published in the DDF¹¹⁰ bears the following annotation of M. Poincaré, following the reference to the 1899 Declaration: "M. Bompard ignore-t-il les accords de 1902?" The CC-M suggests that this annotation confirms that the 1902 Accord clearly established Libya's boundary (and an editorial footnote added by the archivists at the French Foreign Ministry when this DDF series was published many years later suggests the same)¹¹¹.

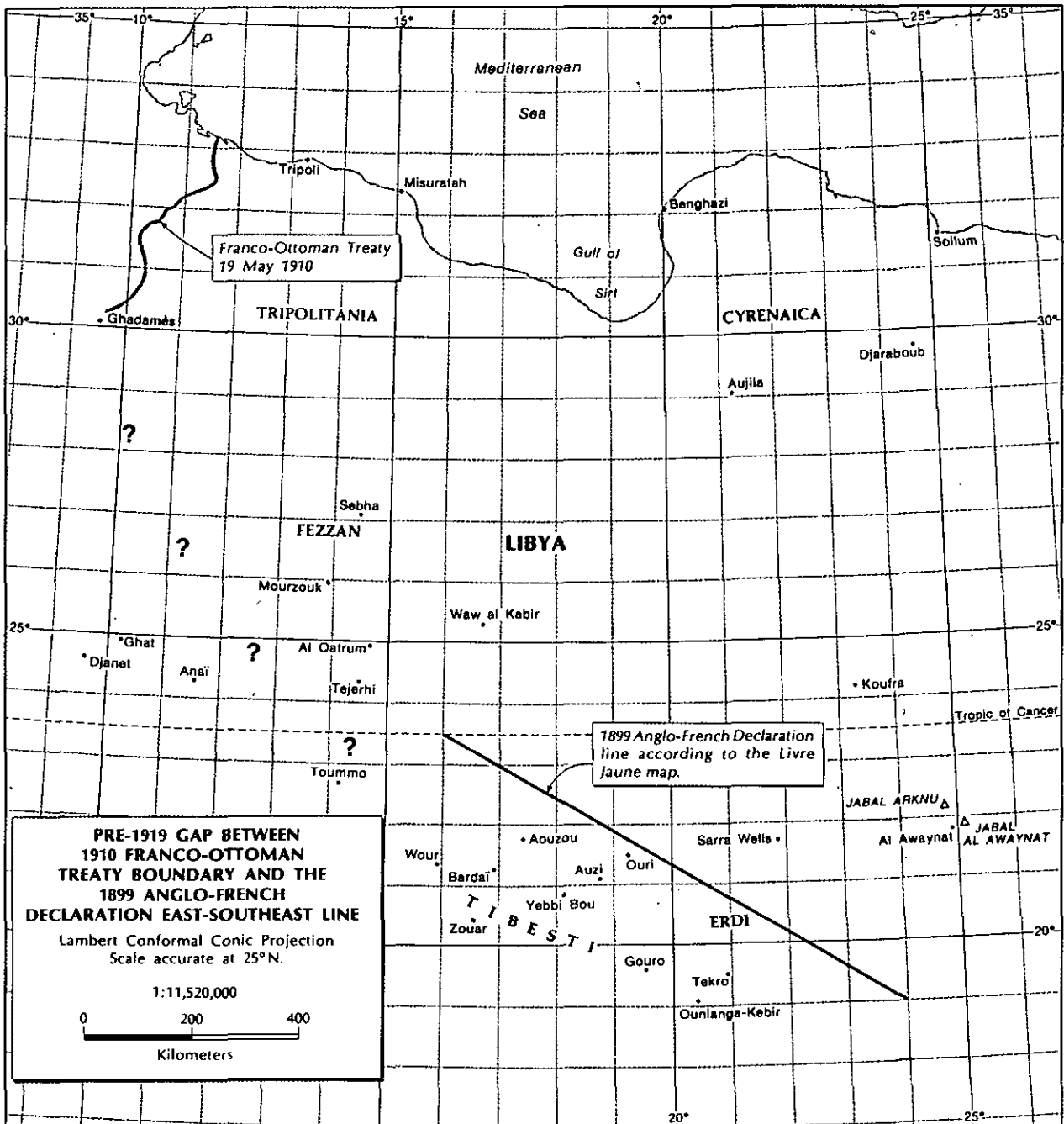
6.100 The CC-M misunderstands this note of the French Foreign Minister. The note also contradicts the later annotation of the French archivists. M. Bompard had suggested that this was an opportune moment to secure Italy's acceptance of "les limites fixées" by two treaties not opposable to Italy: the Anglo-French 1899 Declaration and the Franco-Ottoman Treaty of 1910. (M. Poincaré did not question this conclusion.) But this left a gap between the 1910 boundary ending at Ghadamès and the starting point of the 1899 Declaration line ("les points extrêmes des lignes de démarcation tracées par ces deux conventions") (Map LR 14). This gap only partly concerned Libya's southern boundary - for it concerned the frontier between the end point of the 1910 Treaty and the starting point of the 1899 Declaration - only some of which might be described as "méridionale" to Libya (between Toummo and the intersection of the Tropic of Cancer and 16°E).

6.101 Thus, M. Poincaré's note could only have been referring to the Libyan boundary between Ghadamès and the Tropic of Cancer (and 16°E) for he was commenting on M. Bompard's concern that there was no agreement to cover this sector and his suggestion that Italy's acceptance might be sought of a boundary here. As to this part of the boundary, M. Bompard recommended that "des dispositions soient convenues" to fill the gap between the "limites fixées" by the 1910 Treaty and the 1899 Declaration. M. Poincaré then asked the question - is M. Bompard not aware of the 1902 Accord? What he meant by this could only have been that the 1902 Accord should be added as a third agreement whose "limites fixées" should be accepted by Italy. This must have been a reference to the "limite de l'expansion française" mentioned in the 1900 Accord and more precisely identified in the 1902 Accord as the wavy, dashed line on the map

110 Documents Diplomatiques Français.

111 The editor's note reads:

"Suivant la lettre adressée le 10 juillet 1902, par M. Prinetti à M. Barrère, l'Italie acceptait cette limite."



Specialty prepared for presentation to the International Court of Justice.

referred to there - the notional boundary of Tripolitania. Such a conclusion is reflected in the earlier Poincaré-Barrère exchange in which the Foreign Minister referred to this sector of the Libyan boundary as "indéterminée". From this, three conclusions emerge: first, M. Poincaré's note was referring to the boundary west of the intersection of 16°E and the Tropic of Cancer only; second, he clearly did not believe that the 1902 Accord had established that sector of the boundary; and third, M. Poincaré shared the view of his Ambassador in Constantinople that the line described in Article 3 of the 1899 Declaration was not opposable to Italy.

6.102 At the end of the day, M. Barrère's counsel prevailed: not to stir things up concerning the 1902 Accord. The 1912 Agreement contained nothing at all about Libya's frontiers, whether on the west or the south. The reference to the 1902 Accord related only to that part of the Accord having to do with the reciprocal arrangements between Italy and France concerning Morocco and Tripolitania; but in any event, the CC-M concedes that, if it were related to a boundary, it was only to Libya's western, not southern, boundary¹¹². The CC-M conjures up "un échange intense de notes diplomatiques sur l'importance de l'accord de 1902". But all this took place in the space of two days and reflected no more than the dealing with the usual last-minute details just prior to the signing of an international agreement.

6.103 There is not an iota of evidence to support Chad's conclusion that:

"En souscrivant à l'Accord de 1912, l'Italie s'engageait donc explicitement à considérer le tracé de 1899 comme la frontière méridionale de la Libye. Par voie de conséquence, l'Italie s'engageait à ne pas avancer de prétentions fondées sur ses droits de succession à l'Empire ottoman¹¹³."

It is clear from the diplomatic dispatches at the time that Messrs. Poincaré, Barrère and Bompard did not believe that the 1902 Accord had settled any boundary question¹¹⁴. They toyed with the idea of trying to get Italy to agree that the wavy, dashed line portrayed on the map referred to in the 1902 Accord

112 See, paras. 6.91-6.92 and 6.97, above.

113 CC-M, para. 7.35.

114 Once again, Chad shows how critical to its case the 1902 Accord is (and the reference there to the Non-Annexed Map). In a major shift in Chad's case, the CC-M now places heavy reliance on the supposed confirmation in the 1912 Agreement of the 1902 Accord, at a time when Italy had just become sovereign over Libya.

was the Libyan boundary between the end point of the 1910 Treaty and the starting point of the 1899 Declaration, as well as to accept the 1910 and 1899 lines as boundaries opposed to Italy. But they dropped the whole idea, leaving out of the 1912 Agreement any reference whatsoever to boundaries. Therefore, the 1912 Agreement stands for almost the very opposite of what Chad contends: it confirmed the fact that Libya's boundary beyond Ghadamès all the way to the Sudan frontier was not covered by any international convention opposable to Italy.

(iv) Subsequent Conduct

6.104 Chad has discussed what it describes as the conduct of Italy and France subsequent to the 1912 Agreement that it finds relevant to its interpretation. The examples cited are nothing of the kind, at least in the sense contemplated by the 1969 Vienna Convention. What Chad attempts to do is to fit the conduct relating specifically to the two 1919 agreements subsequently entered into - the 8 September Anglo-French agreement "interpreting" the 1899 Declaration and the 12 September Franco-Italian Accord - within the framework of conduct bearing on the meaning of the 1912 Agreement.

6.105 The elements of subsequent conduct cited by Chad are these: Italy's protests against the Anglo-French Convention of 8 September 1919; and the so-called "déclaration" of Italian Foreign Minister Tittoni to the Italian Chamber of Deputies on 27 September 1919. The Italian protests to the 1919 Anglo-French Convention will be taken up below in the discussion of that agreement. Although the statement of Signor Tittoni was made in the course of discussing the other 1919 agreement - between France and Italy concerning Libya's western boundary - it does have a certain bearing on the meaning of the 1902 Accord as well as on what Chad has to say concerning the 1912 Agreement, so it will be dealt with here.

6.106 It is not necessary to repeat what has already been said in Libya's earlier pleadings about the choice of words used by Signor Tittoni concerning the 1902 Accord in the context of a speech to the Italian Parliament explaining the recently concluded Franco-Italian Accord of 8 September 1919, which concerned Libya's western boundary. His words were subsequently blown up out of all proportion by the French colonialists writing in the BCAF¹¹⁵ and

115 The French colonialists' periodical, le Bulletin Colonial de l'Afrique Française.

elsewhere, in an attempt to interpret the 1902 Accord as a renunciation by Italy of the Tripolitanian hinterland claimed by the Ottoman Empire¹¹⁶. The CC-M itself illustrates the fragility of this argument built around Signor Tittoni's words.

6.107 First, the CC-M mistakenly refers to it as a "Déclaration" of Signor Tittoni, and adds that it would be difficult not to regard these words "comme la confirmation formelle d'une reconnaissance antérieure indiscutable"¹¹⁷. But there was no declaration at all involved. In a side comment, pointing out the sometimes fickle attitude of the Italian public, Signor Tittoni had mentioned, as an example, the outcry that resulted when the Italian public first learned (around 1914) that, in the 1902 Accord (prior to then kept secret), "nous avons reconnu la frontière" of the 1898 Anglo-French Convention (seemingly a mistaken reference intended to be to the 1899 Declaration) "qui avait assigné à la France le Tibesti et le Borkou". It was this perception of the Italian public to which Signor Tittoni was referring - they had just learned of the 1902 Accord¹¹⁸.

6.108 Second, to try to make the passage from this speech appear to have been a formal declaration, the CC-M has deleted a few words from its quoted text. Instead of referring to what the Italian public learned, the CC-M's rendition simply begins the passage this way: "déjà (in the 1902 Accord), nous avons reconnu la frontière"¹¹⁹, thus giving the impression that M. Tittoni, rather than the Italian public, had drawn such a conclusion. This is seriously misleading and can only reflect the weakness of the argument. If it is necessary to modify the text of the speech in this way in order to sustain Chad's argument, the speech evidently failed to have the meaning and importance ascribed to it. After a flurry of articles by French colonialists appeared drawing extreme conclusions from these few words, Signor Tittoni made very clear (in a 1927 article reprinted in the BCAF) what he meant and did not mean to say¹²⁰. However, in the meantime, the French had told the British that Foreign Minister Tittoni had made such a "declaration", which led the British to believe that, in the 1902 Accord, Italy had

116 See, CC-M, heading of para. B at p. 289; and para. 8.52.

117 CC-M, para. 8.52.

118 The Tombalbaye letter, on the other hand, is an example of a formal declaration clearly intended to bind the State. See, LC-M, para. 5.119, et seq., and fn. 191 at p. 303.

119 CC-M, para. 8.52. Emphasis added.

120 See, LM, para. 5.171.

abandoned any Ottoman territorial rights inherited from the Ottoman Empire by the Treaty of Ouchy¹²¹.

6.109 *There is, however, subsequent conduct of both France and Italy that does have an important bearing on the meaning of the 1900-1902 Accords and the 1912 Agreement. This conduct falls into three categories:*

- Maps issued by the French and Italian Governments;
- The negotiations scheduled to take place, first, between the Ottoman Empire and France, and then, after the Treaty of Ouchy, between Italy and France;
- France's attempt to secure Italy's recognition of the 1899 Declaration and the 1900-1902 Accords in connection with its offer in 1928 to modify Libya's western boundary delimited by the Franco-Italian Accord of 12 September 1919 in Italy's favour, involving a salient of territory south of Toummo to include the Djado oasis¹²².

(A) **Conduct of France and Italy: Officially Published Maps**

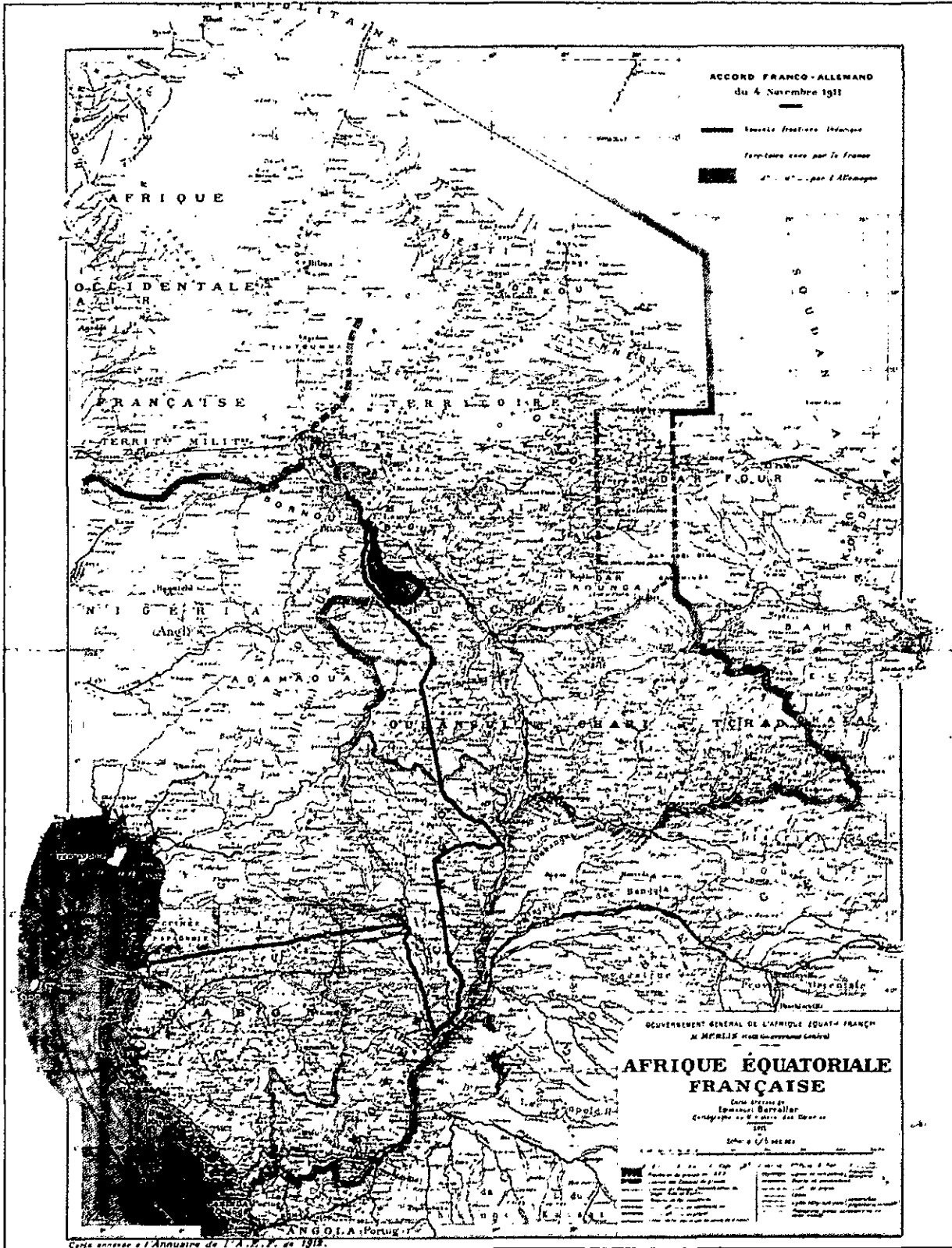
6.110 In 1911-1912, the French Government published two maps, both of which have been introduced into evidence in this case. LC-M Map 28A is discussed in Libya's Counter-Memorial in connection with the 1912 Agreement¹²³. Chad's Map Atlas contains the other map (No. 16)¹²⁴. Both maps are reproduced here again (Maps LR 15A and 15B). They appear to be based on the same map prepared by the French Ministry of Colonies. According to Chad's description of its Map No. 16, that map was prepared for the A.E.F. in 1911, annexed to the A.E.F. Annuaire of 1912, and used in connection with the 1911 Franco-German delimitation. So it was unquestionably an official French map.

121 See, para. 6.189, et seq., below.

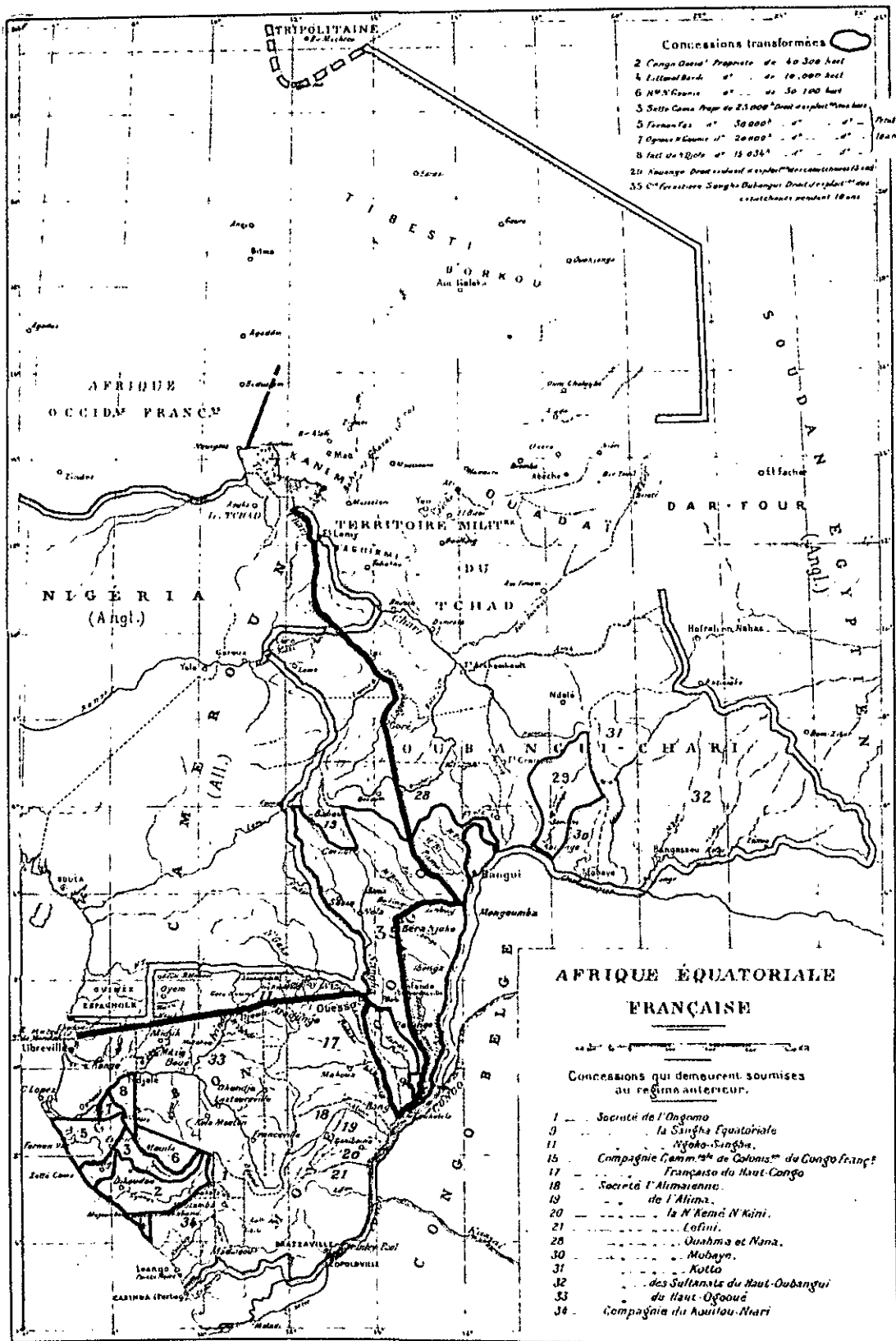
122 See, LM, para. 5.260, et seq., and Maps Nos. 74 and 75A and B.

123 See, LC-M, para. 4.150, et seq. This map was found in the British Public Records Office.

124 Chad's Map Atlas is analysed in detail in Vol. 2, Supplementary Annex, No. 2.



Carte annexée à l'Annuaire de l'A. E. F. de 1912.



Concessions transformées

- 2 Congo Oussé Propriété de 40 300 hect
- 4 Lottand-Bard " " de 10 000 hect
- 6 N'N'Koum " " de 50 100 hect
- 3 Sella-Cama Propriété de 25 000 hect exploité 10 ans
- 5 Fernan-Fas " " de 30 000 " " " " " "
- 7 Ognon-Coum " " de 20 000 " " " " " "
- 8 fact de Bole " " de 15 034 " " " " " "
- 20 Kouango Droit exclusif d'exploiter les concessions 13 ans
- 35 C^{te} Ferrière-Sangha-Oubangui Droit d'exploiter des concessions pendant 18 ans

AFRIQUE ÉQUATORIALE FRANÇAISE

Concessions qui demeurent soumises au régime antérieur.

- 1 Société de l'Ongomo
- 9 la Sangha Équatoriale
- 11 Nyoko-Sangha
- 15 Compagnie Commerciale de Colonies du Congo Français
- 17 Français du Haut-Congo
- 18 Société l'Alimani
- 19 de l'Alima
- 20 la N'Kamé N'Kini
- 21 Cofini
- 26 Ouahma et Nana
- 30 Mubaya
- 31 Kotto
- 32 des Sultans du Haut-Oubangui du Haut-Ogoué
- 33
- 34 Compagnie du Aouitou-Niari

Service Géographique des Colonies.

Janvier, 1912

— Frontières actuelles
 — Frontières résultant de l'Accord du 4 Novembre 1911

6.111 Both maps incorrectly show the southeast line of Article 3 of the 1899 Declaration as an existing boundary; and the line follows the direction of the east-southeast line on the Livre jaune map on both maps. From 15°N latitude south to 11°N, the boundary is correctly shown (in a different way on each map) as not delimited. The interesting sector, for purposes of the present discussion concerning the 1912 Agreement, is to the west of the Tropic of Cancer intersection point (at the very top of the map). Chad maintains that this sector of Libya's frontier - more fully depicted on Chad's own map (Map LR 15A) between Ghat and the Tropic of Cancer - was agreed between Italy and France as the boundary of Tripolitania in the 1902 Accord by virtue of the reference to the famous Non-Annexed Map; and in any event, by the reaffirmation of the 1902 Accord in the 1912 Agreement (after Italy's sovereignty over Tripolitania had been established and formally recognised), the line shown on the non-Annexed Map in this sector became a boundary binding on Italy. It has been demonstrated above that the ordinary meaning of the 1902 and 1912 texts lends no support at all to such a proposition. The 1911-1912 official maps of the French Government reveal that at the time this was not, in fact, the view of the French Government¹²⁵ - and as the diplomatic record discussed above shows, it was clearly not the view of Messrs. Poincaré, Barrère and Bompard¹²⁶. France's conduct in issuing these official maps refutes Chad's contention that, at least by the end of 1912, there was a conventional boundary between Ghat-Toummo and the Tropic of Cancer point of intersection. These two maps show no boundary there.

6.112 Maps published by the Italian Government in 1906, 1912, 1916 and 1917 reveal Italy's understanding of the effect of the 1899 Declaration, the 1900-1902 Accords and, except for the earlier 1906 map, the 1912 Agreement. The 1906, 1912 and 1917 maps, not previously introduced in evidence, appear here as Maps LR 16A-1, 16A-2, 16B and 16C.

6.113 The 1906 Italian map deserves special comment (Maps LR 16A-1 and 16A-2). It was published by the Italian Ministry of Foreign Affairs, not the Ministry of Colonies. Although maps published by both Ministries were

125 On neither map is the sector west of the Tropic of Cancer intersection point shown as a boundary. On Map LR 15B, it is shown as a dashed orange line, in contrast to the solid orange line running east-south east from the Tropic of Cancer. On Map LR 15A, the demonstration is even clearer: in much of this sector no line of any kind appears.

126 See, para. 6.99, et seq., above.

equally official, this fact about the 1906 map is important because Chad has tried to dismiss Ministry of Colonies maps on the basis of Chad's invalid "mock war" thesis: that there was a basic, even bitter, difference of view between the two Ministries and that the Ministry of Colonies in the end was overruled¹²⁷. This is pure nonsense, as Libya demonstrates in Volume 2 of this Reply¹²⁸. But, in any event, Chad cannot disparage Italy's official 1906 map on this theory for it was a Ministry of Foreign Affairs map¹²⁹.

6.114 This map, issued four years after the 1902 Accord, establishes several very interesting points:

- No Tripolitanian boundary is shown, notional or otherwise, corresponding to the wavy, dashed line on the Livre jaune map to which the 1902 Accord referred; and the shaded area, generally representing Tripolitania and Fezzan, extends well west and south of that wavy, dashed line;
- The line of Article 3 of the 1899 Declaration is shown as almost a true southeast line (intersecting 24°E longitude at 16°N latitude - a true southeast line would intersect at 15°35'N);
- The Ottoman claim made in 1890 is portrayed, as well as an area of overlap of territory claimed by both France and the Ottoman Empire;
- North of 15° latitude, no boundary of any kind is shown, and the sector of the Anglo-French boundary falling under Article 2 of the 1899 Declaration is marked on the map as "Confine da definirsi" (boundary to be defined).

127 See, CC-M, paras. 7.49-7.60 and para. 10.29.

128 In Supplementary Annex, No. 5, this thesis is examined, together with the relevant documentary evidence; it is demonstrated there that Chad's "mock war" has no basis in fact: the two Ministries were in basic agreement as to the negotiating tactic to adopt with the French. The subject of Italian maps is taken up in Supplementary Annex, No. 2, in which Chad's Map Atlas is analysed. There it is shown how completely Chad's 162-page Map Atlas has ignored the important official Italian maps.

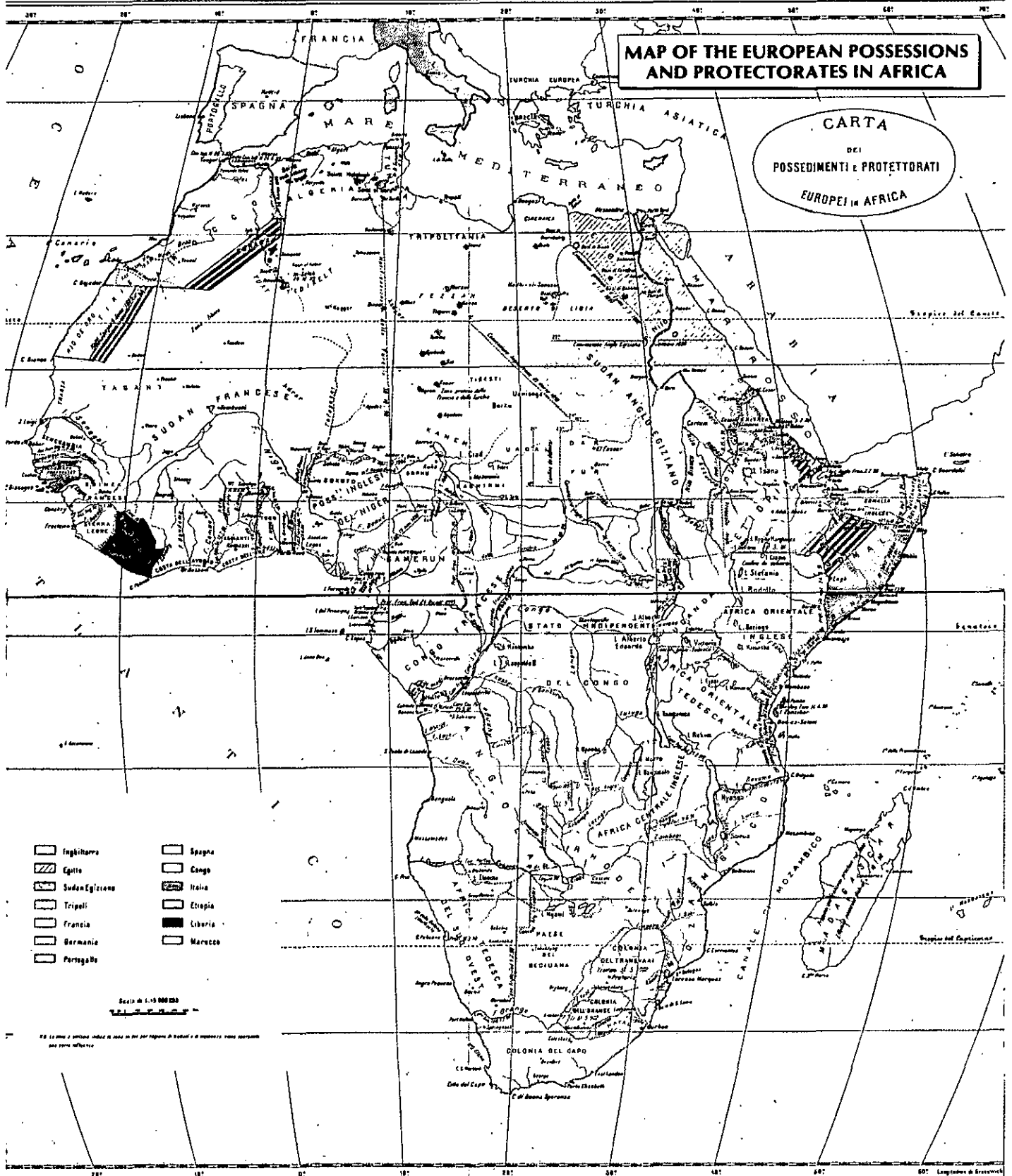
129 The Colonial Office of the Ministry of Foreign Affairs, which issued the map, reported to the Minister of Foreign Affairs.

MINISTRY OF FOREIGN AFFAIRS
COLONIAL OFFICE

MINISTERO DEGLI AFFARI ESTERI
UFFICIO COLONIALE

MAP OF THE EUROPEAN POSSESSIONS
AND PROTECTORATES IN AFRICA

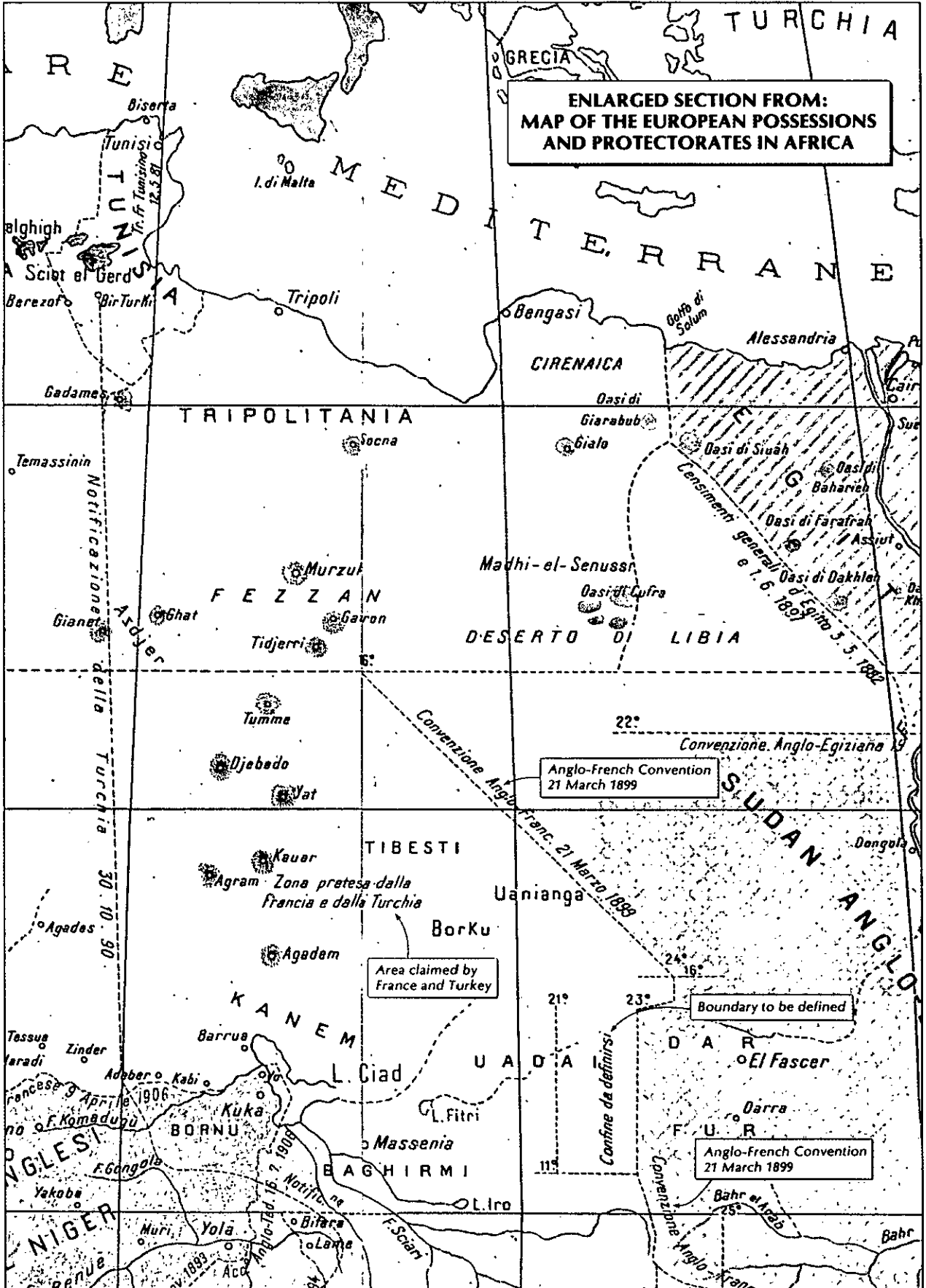
CARTA
DEI
POSSEDDIMENTI E PROTETTORATI
EUROPEI IN AFRICA



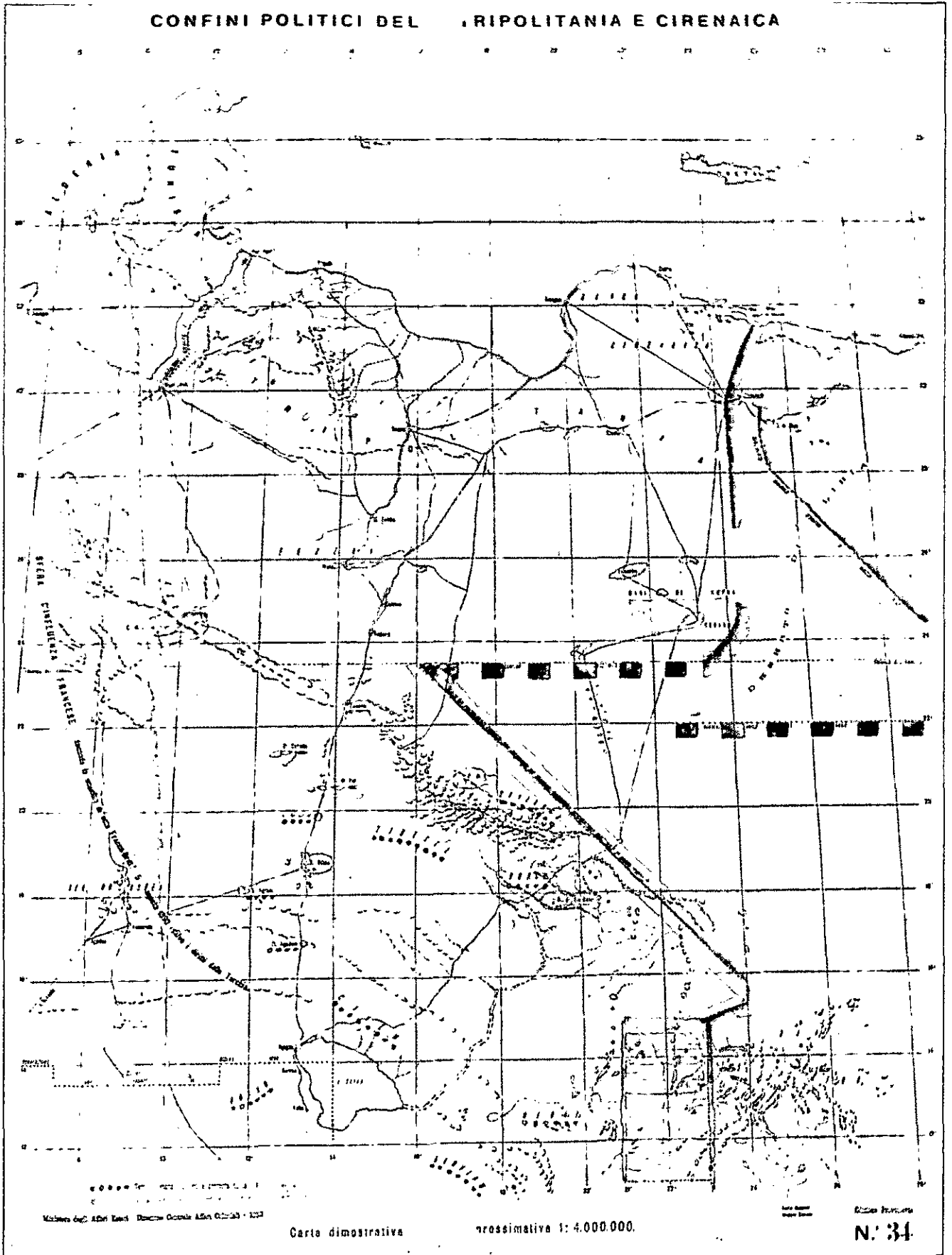
- Inghilterra
- Egitto
- Sudan Egiziano
- Tripoli
- Francia
- Germania
- Portogallo
- Spagna
- Congo
- Italia
- Etiopia
- Liberia
- Marocco

Scala di 1:10 000 000

La linea di confine indica il luogo in cui per ragioni di spazio e di rapporto sono mostrati
solo i nomi delle città



CONFINI POLITICI DEL TRIPOLITANIA E CIRENAICA



Milano: Ed. Adri. Edit. Direzione Generale ASDN, 00143 - 122

Carta dimostrativa

prossimativa 1: 4.000.000.

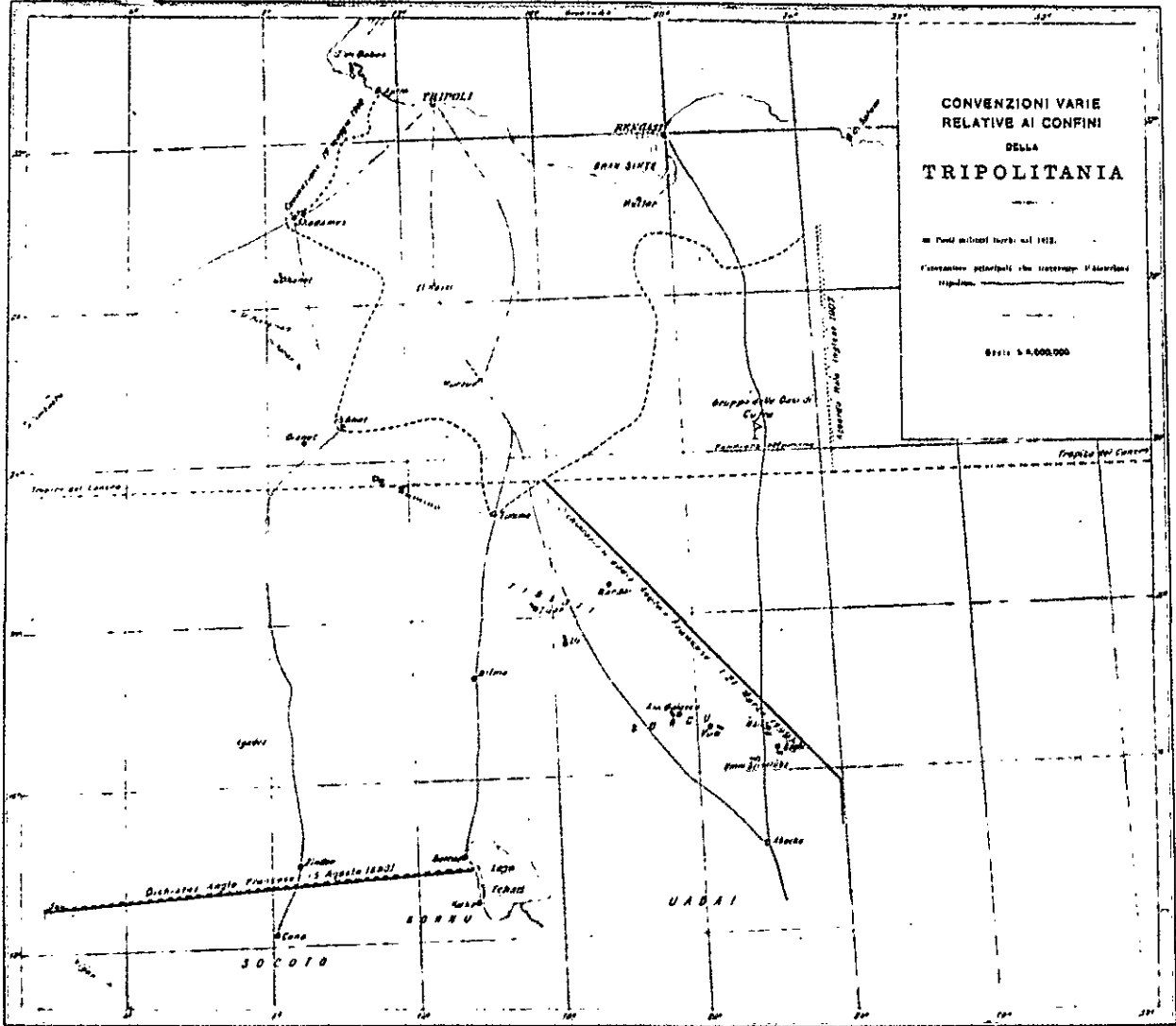
Scale 1:4,000,000

N. 34

2200

ATLAS GLOBALE
DEGLI AFFARI POLITICI
E GEOGRAFICI

N. 132 - 1917.
(Continua)



CONVENZIONI VARIE
RELATIVE AI CONFINI
DELLA
TRIPOLITANIA

in forza di trattati firmati nel 1912.
Convenzioni relative alle frontiere della
Tripolitania.

Scala 1:4.000.000

6.115 On the basis of this official Italian map it may be concluded that Italy in 1906 did not consider that any boundaries concerning Tripolitania had been agreed in the 1902 Accord. The map also demonstrates Italy's reliance on the claimed rights and titles of the Ottoman Empire, and it emphasises the area of overlap between Ottoman and French claims to the Tripolitanian hinterland as far south as Lake Chad. Although in 1906 Italy had no sovereign rights in the area, it had expectations of succeeding to those of the Ottoman Empire. The map can be taken as a recognition by Italy (i) of the Ottoman claim and (ii) of the unresolved status of the Tripolitanian hinterland. It refutes any notion that, in the 1902 Accord, Italy in some fashion renounced any future Ottoman inheritance; the map reveals a high degree of Italian interest in the Ottoman claim.

6.116 The 1912 and 1917 Italian maps show as an actual Tripolitanian boundary only the boundary delimited in 1910 between Tripolitania and Tunisia in the Franco-Ottoman Treaty. Both maps also show the parts of the borderlands occupied by the Ottoman Empire in 1912, and the 1912 Italian map shows the extent of the hinterland claim made by the Porte in 1890. Once again, these maps refute any notion that Italy had renounced the Ottoman rights and titles either in 1902 or in 1912, after the Treaty of Ouchy.

6.117 This French and Italian map evidence establishes that neither France nor Italy at the time considered that an agreed boundary existed between Ghadamès and the Tropic of Cancer intersection. This was precisely the view of Messrs. Poincaré, Barrère and Bompard as shown by the diplomatic record referred to earlier.

6.118 The official Italian maps issued in 1916¹³⁰, 1926¹³¹, 1939¹³² and again in 1941 (after the demise of the 1935 Treaty) uniformly showed no boundary east of Toummo (except that the 1916 map, which preceded the Accord of 12 September 1919, showed no boundary beyond Ghadamès). A

130 See, LM, Maps Nos. 54, 55, 56, and 57 the officially published Italian maps, on which Italy's alternative programs were depicted.

131 Map LC-M 52.

132 Map LC-M 54.

reproduction of the 1941 official Italian map, not previously introduced, appears here (Map LR 16D) - no boundary is shown east of Toummo¹³³.

6.119 One of the most legally significant events concerning maps occurred in 1930, and is briefly referred to in the LM under the heading "Italian School Map Incident"¹³⁴. It is discussed, together with the relevant documents, in Supplementary Annex, No. 5.10, hereto. Contrary to the incorrect assertion in the CC-M that during this period there was no "contestacion cartographique" between Italy and France¹³⁵, that is exactly what this incident was - and at the highest diplomatic level: a formal protest by France's Ambassador in Rome to the Italian Ministry of Foreign Affairs. Following the protest, the Italian school map, which had shown a southern Libyan boundary area running south of Tibesti - a colour version of this map recently found in the Italian archives is reproduced as Map LR 16E and may be found at paragraph 6.202 below - reverted to showing no boundary east of Toummo, and France raised no objection to these revised maps. The School Map incident also shows how absurd is the notion of a "mock war" between the Italian Ministry of Colonies and the Ministry of Foreign Affairs invented in the CC-M, by which Chad seeks to brush aside the officially-published Italian maps. The School Map Incident concerned the Italian Ministry of Foreign Affairs directly, not supposed colonial extremists in the Ministry of Colonies. It was the Italian Foreign Minister who instructed that Italian maps conform to the consistently followed policy of the Italian Government of showing no boundary east of Toummo.

(B) **Impending Negotiations (1912-1914): Between France and the Ottoman Empire and, then, France and Italy**

6.120 There is no clearer evidence in the conduct of France that Libya's boundary beyond the end point of the 1910 boundary at Ghadamès required to be delimited, than the plans made for delimitation negotiations for this very purpose, first with the Ottoman Empire and, then, with Italy¹³⁶.

133 A larger-size copy of this map has been furnished to the Registry.

134 See, LM, paras. 5.278-5.279 and Maps Nos. 78 and 79. See, also, para. 6.202, et seq., below.

135 See, CC-M, para. 10.29. The CC-M simply ignores the School Map Incident.

136 See, LM, para. 5.111, et seq., for a fuller account of these plans. See, also, Supplementary Annex, Nos. 9.6 and 9.8.

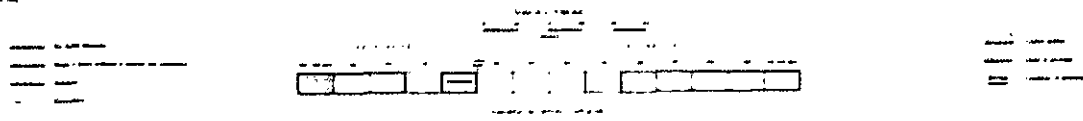
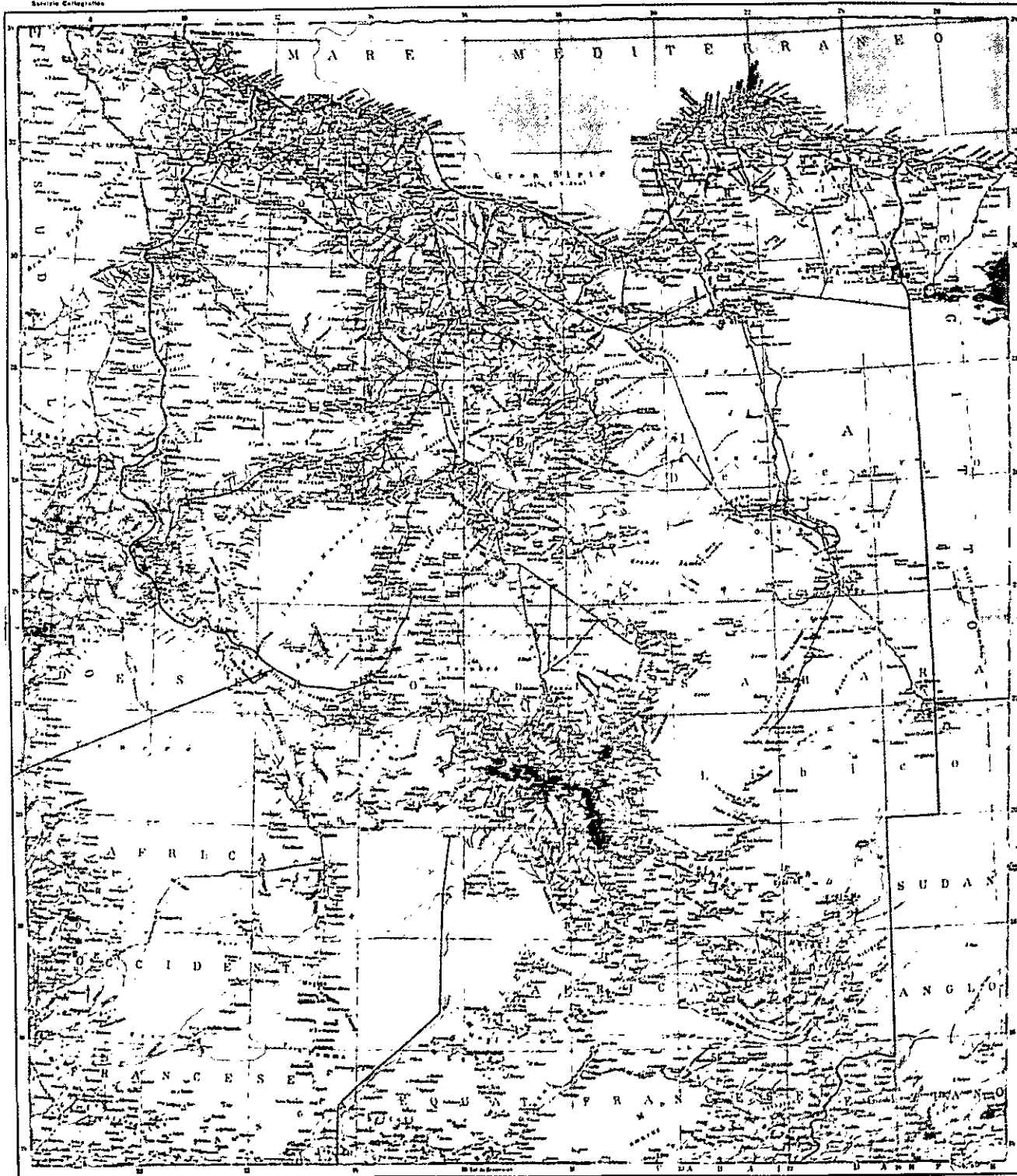
LIBIA

Carta amministrativa Esikopolitica

F. Leg. n. 1241/27

MINISTERO DELL'AFRICA ITALIANA
OFFICINA 2700
Servizio Cartografico

A. 70 - 1913



6.121 The Franco-Ottoman discussions were the natural outgrowth of the 1910 Treaty between France and the Ottoman Empire delimiting the Libya-Tunisia boundary as far south as Ghadamès, the demarcation of which was completed in 1911. The salient points about them are the following:

- Negotiations were scheduled against a background of Ottoman occupation of the borderlands starting in 1908, with the support of the local tribes and the Senoussi Order, involving the installation of civilian governmental authority, starting in northwest Tibesti and continuing progressively southeast across Borkou and Ounianga into Ennedi (Map LR 17)¹³⁷;
- On instructions from the French Foreign Ministry in Paris, French forces remained below 15°N latitude - which became a de facto line - pending the outcome of the forthcoming delimitation negotiations¹³⁸;
- The Ottoman Empire had vigorously and repeatedly protested the 1890 and 1899 Anglo-French agreements as transgressing the Tripolitanian hinterland to which they explicitly laid claim in 1890; and the Porte had been assured by Great Britain that these agreements did not affect any territorial rights or claims of third States;
- The French Government stated that it was not prepared to consider the recent Ottoman occupation of the borderlands (i.e., Ottoman effectivités) as an appropriate factor to be taken into account in the forthcoming negotiations to delimit the boundary¹³⁹;

137 A similar map appeared in the LC-M as Map LC-M 28. See, Supplementary Annex, Nos. 10.2, 10.3, 10.4, 10.9 and 10.10.

138 See, LM Map No. 34, referred to there at para. 4.120.

139 See, LM, paras 5.114-5.115 and citations.

- The vilayet of Tripoli proposed a reduction in the 1890 Ottoman hinterland claim as the opening negotiating position of the Porte (Map LR 18)¹⁴⁰; this proposal clearly reflected the fact of Ottoman occupation in the borderlands and France's observance of a de facto line along roughly 15°N latitude.

6.122 These plans of France and the Ottoman Government to negotiate to delimit the Libyan boundary south of Ghademès establish that no conventional Libyan boundary was considered to exist by either Government beyond that point in 1911-1912. As seen earlier, this was the view of Messrs. Poincaré, Barrère and Bompard in 1912, as well. France's opening position was to base its case on the 1899 Declaration and to reject Ottoman effectivités. In the light of the British assurance to the Porte, the 1899 Declaration would certainly have been a slender reed on which to hang France's claim, for it clearly was not opposable to the Ottoman Empire, which had strongly protested against the Declaration. With the Treaty of Ouchy, the Ottoman Empire was replaced by Italy at the negotiating table.

(C) **Franco-Italian Delimitation Negotiations**

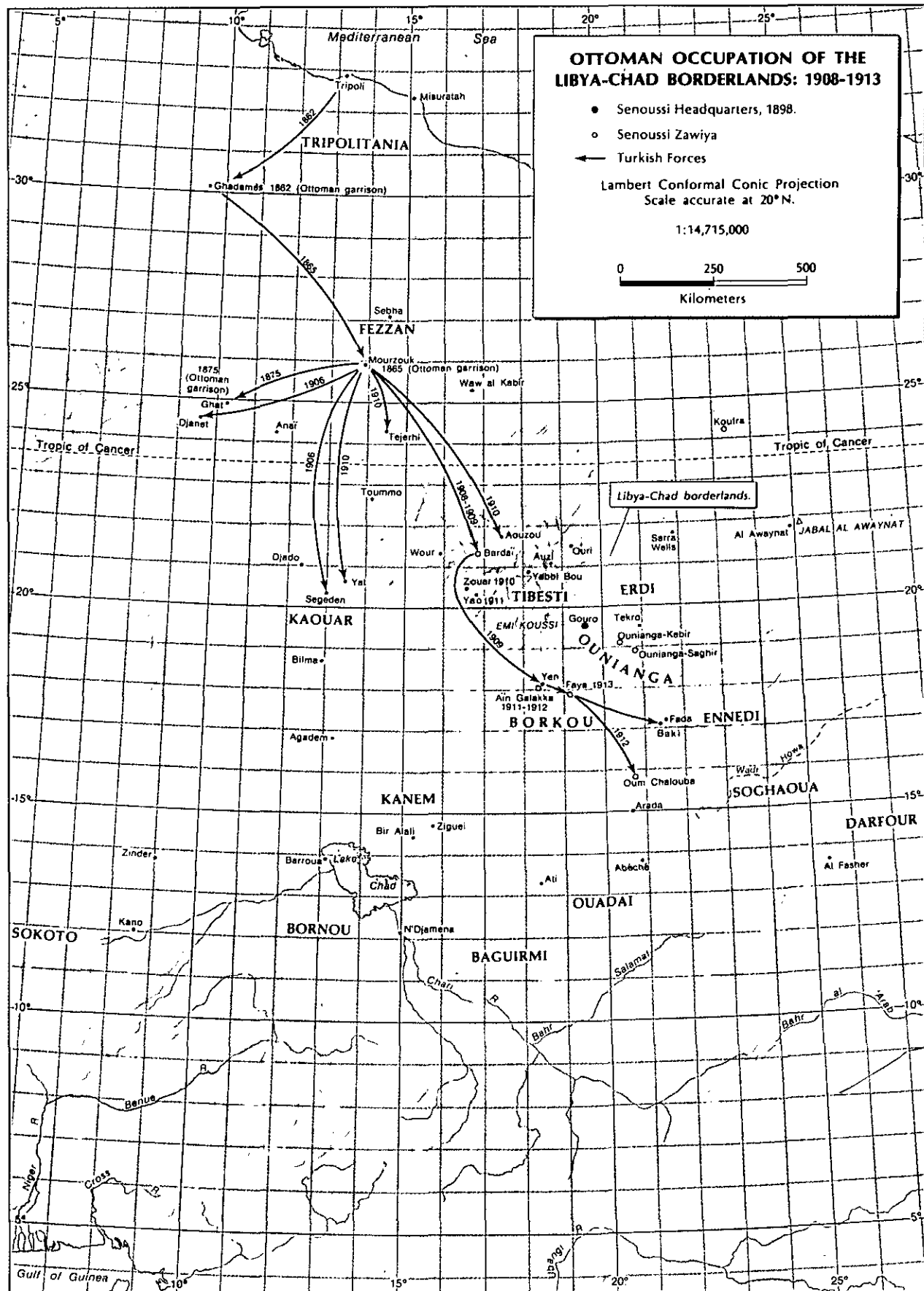
6.123 It will be recalled that M. Poincaré rather quickly abandoned an idea he had first had when Italy approached France after the Treaty of Ouchy for recognition of Italian sovereignty. This had been to link agreement on the boundary not yet fixed with the recognition of Italian sovereignty. Thus, after France's recognition of Italian sovereignty over Tripolitania-Cyrenaica shortly after the Treaty of Ouchy and the entering into of the 1912 Franco-Italian Agreement, the boundary question remained open. As a result, the two Governments agreed to resolve this question by negotiations between them, and scheduled the initial meeting to take place in Bern on 20 July 1914¹⁴¹.

6.124 It was at about that time that the 1900-1902 secret Accords between France and Italy became known in France¹⁴². Prior to then, there had

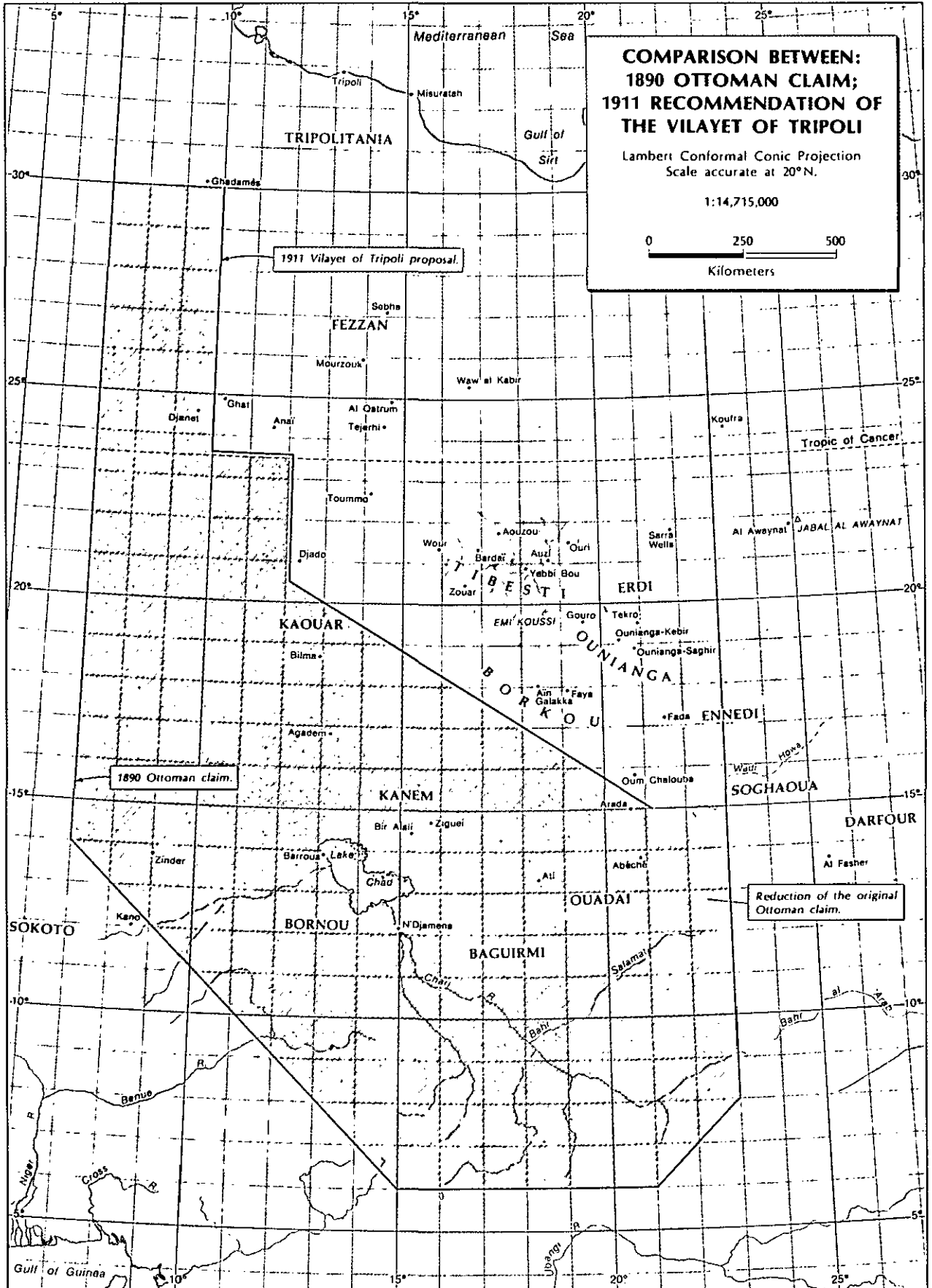
140 This map appeared in the LM as Map No. 52/B.

141 See, LM, paras. 5.120-5.121.

142 They were not to be officially published by the French Government until 1920, when a Livre jaune containing these documents was issued.



Specialy prepared for presentation to the International Court of Justice.



Specially prepared for presentation to the International Court of Justice

been mounting apprehension in French colonial circles that Italy would take over the Ottoman claims to the Tripolitanian hinterland, even before the Treaty of Ouchy. The architect of the French colonialist legal position, Professor Rouard De Card, shared this concern, as he subsequently reported:

"Moi-même je partageai cette appréhension. Aussi, vers la fin de 1905, j'écrivis les lignes suivantes: 'L'Italie, maîtresse du vilayet turc, sera portée à s'étendre vers le Sud; elle ne tardera pas à vouloir accaparer le Tibesti, le Borkou et l'Ennedi, coupant de la sorte la jonction entre nos possessions du Tchad et nos possessions de la Méditerranée'¹⁴³."

However, when the 1900-1902 Accords became known, the legal theory built around these Accords by France was developed for the first time. As Professor Rouard De Card (writing in 1927) put it -

"Ayant alors pris connaissance de l'accord du 1er novembre 1902, je fus amené à modifier complètement ma manière de voir. D'après les stipulations de cet accord, je constatai que l'Italie avait reconnu la frontière de la Tripolitaine tracée sur la carte de déclaration du 21 mars 1889 et qu'elle s'était ainsi implicitement engagée à ne pas s'étendre au delà de cette frontière¹⁴⁴."

6.125 Of course, Messrs. Poincaré and Barrère were well aware of these Accords in 1912¹⁴⁵; but they had entertained no thought that the Accords had the result attributed to them in the above quotation. This was a legal position that evolved in 1913-1914 in the face of the impending Franco-Italian delimitation negotiations; and it is reflected in the 1913 report of M. Louis Marin to the French Chambre des Deputés on the Ministry of Foreign Affairs' budget for 1914¹⁴⁶. M. Marin repeated this position in his report the following year, expressing the view that in the forthcoming negotiations with Italy, scheduled to start in Bern on 20 July 1914, it was purely a question of demarcation, for the boundary had already been agreed¹⁴⁷. A good negotiating position, but bad history and bad law!

143 Rouard De Card, E., op cit., p. 8. It is interesting to note the distinction made here between Tibesti, Borkou and Ennedi and Chad.

144 Ibid. Even Prof. De Card qualified his statement: 'implicitement'.

145 See, para. 6.99, et seq., above.

146 See, CM, Annex 335.5.

147 See, CM, Annex 336.1.

6.126 The Marin reports are discussed in some detail in the LC-M¹⁴⁸. These reports discreetly avoided any mention of the still secret 1900-1902 Accords; but they staked out the French negotiating position with Italy based on these Accords¹⁴⁹. These reports also made it clear that, so far as the French Government was concerned, the object of these impending delimitation negotiations only concerned the sector of the Libyan frontier between Ghadamès and Toummo, although adding to it the Toummo-Tropic of Cancer segment. The legal basis for France's position was set out by M. Marin, in which he contrasted Italy's legal position with that of the Ottoman Empire in 1911, when it had planned to delimit Libya's boundaries with France:

"Cependant, l'Italie avait adhéré à la déclaration du 21 mars 1899, additionnelle à la convention franco-anglaise du 14 juin 1898, qui, par la carte annexée à cet accord, fixe ne varietur, mais aussi théoriquement, les zones d'influence respectives des puissances européennes dans l'Afrique du Nord."

This was clearly not the position of the Italian Government on the eve of negotiations as seen, inter alia, from official Italian maps¹⁵⁰.

(D) **The 1928 Attempt of the French Government to Obtain Italian Recognition of the 1899 Declaration (as modified in 1919) and of the 1900-1902 Accords**

6.127 This final element of French conduct to be discussed here - the 1928 proposal by the French Government to "cede" the oasis of Djado to Italy - has been fully discussed and illustrated in the LM¹⁵¹. With its proposal, France tabled a draft treaty, under Article 3 of which it was proposed that Italy expressly recognise as a boundary line east of Toummo the southeast line defined in Article 3 of the 1899 Declaration (as "interpreted" by the 1919 Anglo-French Convention) and as "reconnue par l'Italie en vertu de l'Accord franco-italien du 1er novembre 1902".

6.128 By 1928, the Ghadamès-Toummo sector of the Libyan boundary had been delimited by the Franco-Italian 1919 Accord. The addition of

148 See, LC-M, para. 4.247, et seq.

149 The 1914 Marin report directly ties Italy's position concerning Libya's boundaries to its inheritance from the Ottoman Empire.

150 See, Maps LR 16A-1, 16A-2 and 16B, referred to in para. 6.112, above.

151 See, LM, para. 5.260, et seq.

this provision in the draft treaty reveals that the French Government were well aware that east of Toummo there was no conventional boundary, for the 1899-1919 line was not opposable to Italy, and the French argument built around the 1902 Accord required express Italian acceptance to be valid. Thus, the French Government sought to resolve this problem by securing Italy's agreement at the same time as its offer of the Djado salient was agreed. The offer, however, was refused by Italy.

SECTION 6. 1915 Secret Treaty of London

6.129 This Treaty is covered in the LM and the LC-M¹⁵², and it crops up, as well, in several parts of this Reply. So only the main points to be borne in mind about the Treaty are set out here. This is another of many important subjects dealt with in the LM to which Chad has not submitted any rebuttal.

6.130 First, the 1915 Treaty of London contained two articles directly relevant to the present case: Article 10, recognizing Italy's inheritance by virtue of the Treaty of Ouchy of the Ottoman Empire's sovereign rights in Libya; and Article 13, under which France and Great Britain undertook to compensate Italy in Africa by "the settlement in her favour of the questions relative to the frontiers of ... [Libya] and the neighbouring colonies belonging to France and Great Britain".

6.131 Second, Article 10 refutes Chad's thesis that Italy, either in the Franco-Italian Accord of 1902 or Agreement of 1912, renounced its Ottoman heritage. Article 10 expressly recognized Italy as successor to the Ottoman rights in respect to Libya, and no reservations were registered by France in respect to the hinterland of Libya to which the Ottoman Empire had asserted a claim as early as 1890 and, over the hinterland region north of approximately 15°N latitude, over which the Ottoman Empire had exercised sovereign authority starting in 1908 until the 1912 Treaty of Ouchy brought about the Ottoman withdrawal from Libya and its hinterland.

6.132 Third, Article 10 had the effect of making the Treaty of Ouchy opposable to France insofar as Italy's sovereign rights to Libya and its

152 See, e.g., LM, paras. 5.150-5.155; LC-M, paras. 4.147, 4.178, et seq., paras. 6.16-6.19 and paras. 6.36-6.46.

hinterland were concerned (as had France's recognition of Italian sovereignty in 1912).

6.133 Fourth, the ordinary meaning of the text of Article 13 of the Treaty reveals that the compensation promised did not necessarily involve the rectification of Libya's boundaries. It encompassed, as well, the settlement of boundary questions in areas where no boundaries existed. Such an interpretation is borne out by the conduct of Italy and France in entering into the Accord of 12 September 1919 under which a boundary between Ghadamès and Toummo was delimited for the first time. Similarly, the 1935 Treaty would have settled the question concerning Libya's southern boundary by agreement on a boundary where one had not previously existed.

6.134 Finally, Italy's right to the unfulfilled obligations of France under Article 13 are part of the territorial inheritance of Libya from Italy and may now be invoked against Chad, which inherited France's territorial obligations.

SECTION 7. 1919 Anglo-French Convention (8 September)

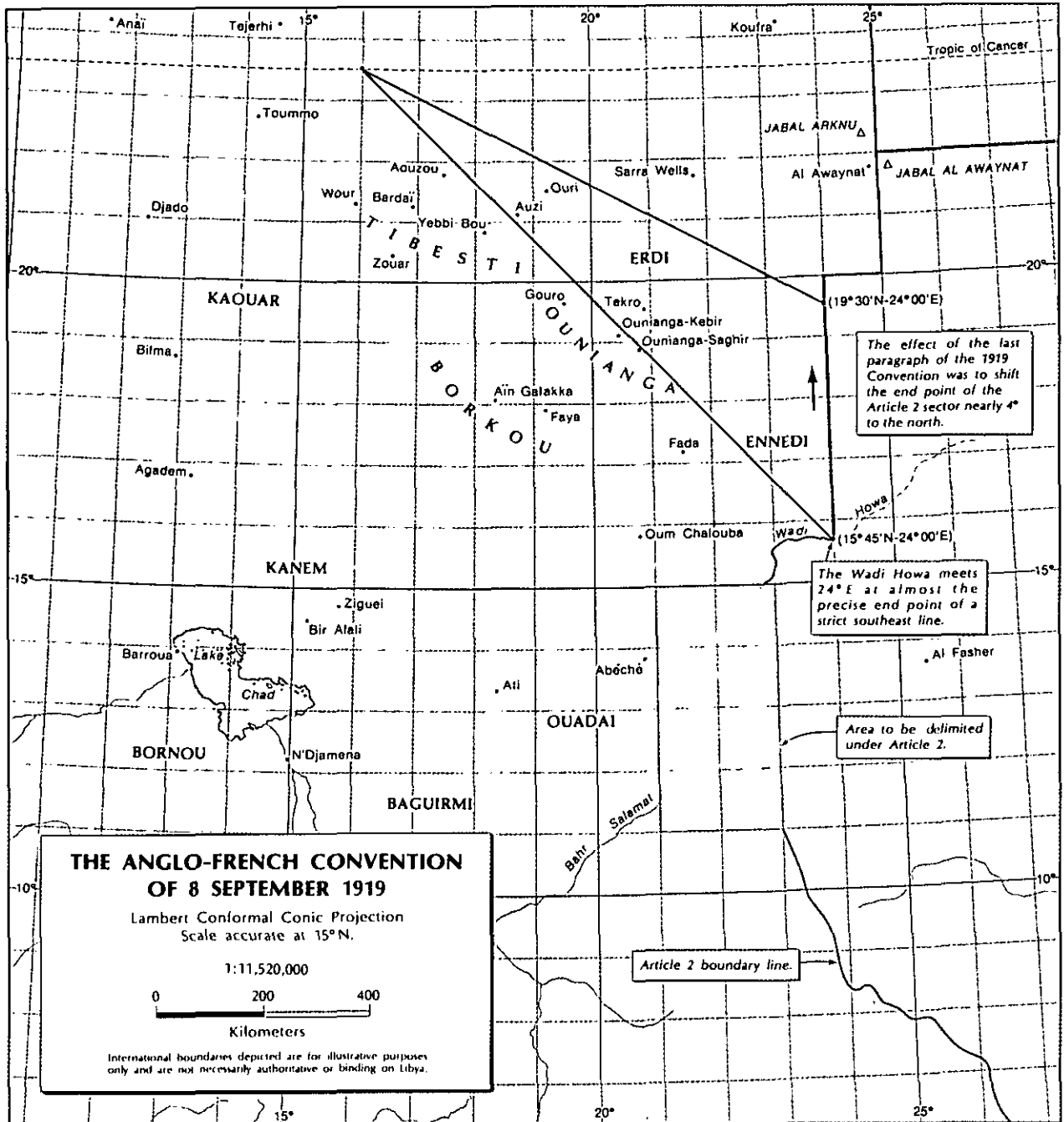
6.135 The effect of the 1919 Convention can be rather simply shown on a map (Map LR 19)¹⁵³. Since this Convention was given a very full analysis in both the LM and the LC-M¹⁵⁴, it is only necessary here to recall the salient points and to rebut the rather cursory treatment of the Convention in the CC-M.

(a) **Ordinary Meaning of the Text in its Context and in the Light of its Object and Purpose**

6.136 The LC-M subjected the terms of the 1919 Convention to a detailed analysis. It also carefully considered the Convention's context and its object and purpose, leading to a number of conclusions that are important to this case.

153 The same map appeared as LC-M 29.

154 See, LM, para. 5.174, et seq.; LC-M, para. 4.161, et seq.



Specially prepared for presentation to the International Court of Justice

(i) **Text and Context**

6.137 It is the final paragraph of the Convention that is directly relevant. Yet it seems to have been added as an after-thought. The Treaty itself was known as the "Ouadaï-Darfour Convention", for it accomplished the delimitation of that part of the boundary not yet fully delimited by Article 2 of the 1899 Declaration. The Exposé des motifs of the 1919 Convention prepared by the French Government did not even mention the last paragraph (which dealt with territory north of 15°N latitude, the sector covered by Article 3, and did not concern a boundary); it discussed only the Ouadaï-Darfour boundary south of 15°N, covered by Article 2.

6.138 As to the object and purpose of the final paragraph, it clearly was to modify the line described in Article 3 of the 1899 Declaration. Unlike Libya's pleadings¹⁵⁵, Chad's pleadings make no attempt to analyse in depth the text of this paragraph in the light of its object and purpose; and what little analysis is undertaken by Chad is incorrect.

6.139 The CC-M sets out the opening phrase of the last paragraph, underlining certain words:

"It est entendu que la présente Convention ne modifiera en rien l'interprétation donnée à la Déclaration du 21 mars 1899 ..."¹⁵⁶

(The paragraph then goes on to describe a line running "in a south-easterly direction" from the intersection of the Tropic of Cancer and 16°E longitude to the intersection of 24°E longitude and 19°30'N latitude, referred to in Libya's pleading as the "1919 line".) From this, Chad puts forward the following contentions:

- That the underlined words of the text made clear that the last paragraph did not modify Article 3 of the 1899 Declaration;

155 The text of the last para. of the 1919 Convention is comprehensively analysed in the LC-M, starting at para. 4.163.

156 CC-M, para. 8.120. The English text reads:

"It is understood that nothing in this Convention prejudices the interpretation of the [1899 Declaration]..."

- That the southeast line described in Article 3, as illustrated on the Livre jaune map, was confirmed by the 1919 Convention (the difference between the Livre jaune map line, ending at 19°N latitude, and the 1919 line, ending at 19°30'N, being negligible¹⁵⁷).

6.140 Chad has misread the underlined words of the last paragraph. As the LC-M points out¹⁵⁸, these words do not say that this "interpretation" of Article 3 did not modify Article 3; they say that "la présente Convention ne modifiera en rien l'interprétation" ("nothing in this Convention prejudices the interpretation"). The ordinary meaning of these words is that the 1919 Convention did not modify or prejudice an "interpretation" of the southeast line described in Article 3 of the 1899 Declaration that placed the end point of the line at the intersection of 24°E longitude and 19°30'N latitude. But that is quite different from saying that the "interpretation" did not modify Article 3. The last paragraph does not say this, as Chad wrongly argues. As is demonstrated in the LC-M, the text of the "interpretation" set out in the last paragraph modified both the text of Article 3 itself (substituting "shall run thence in a south-easterly direction" for "shall run thence to the south-east") and the direction of the line which, as shown earlier and in the LC-M, was intended to be approximately a true southeast line¹⁵⁹. The CC-M scolds Libya for ignoring the text of the 1919 Convention; saying that -

"... il est très remarquable que la partie libyenne n'attache la moindre importance au texte clair de la disposition pertinente¹⁶⁰."

It is evident that this is not so and that Chad's pleadings reflect its own failure to have examined with sufficient care the text on which its case so heavily relies.

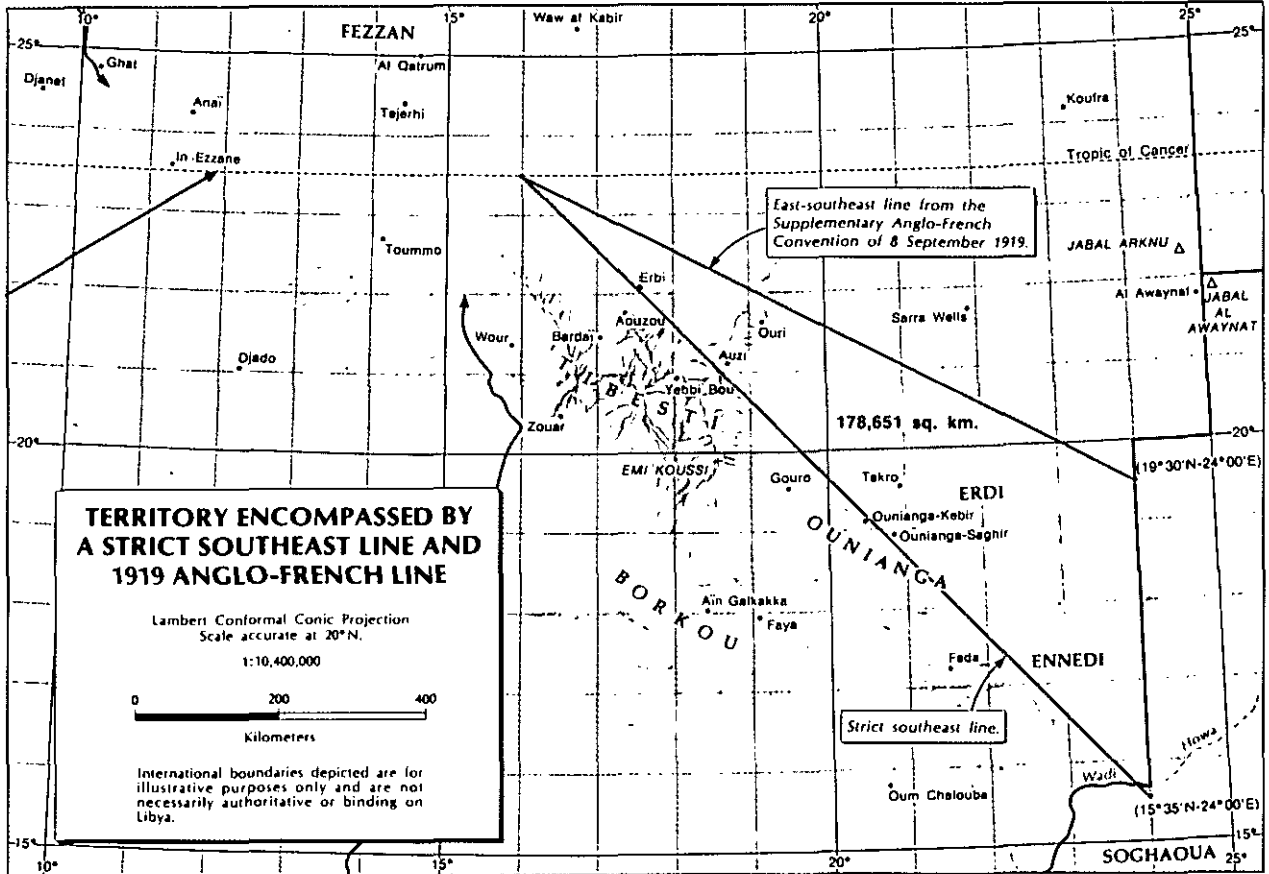
6.141 As is shown in Libya's Counter-Memorial, lines intersecting 24°E longitude at 15°35'N (a true southeast line), at 19°N (the line drawn on the Livre jaune map) and at 19°30'N (the 1919 line) cannot be described as the same line, and to detect the difference between them does not require extraordinarily

157 As Chad puts it: "Il faut, à vrai dire, de très bons yeux" to tell the difference between the lines.

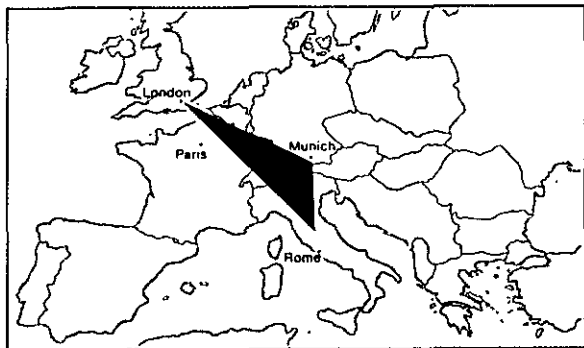
158 See, LC-M, para. 4.168.

159 See, para. 6.11, et seq., above.

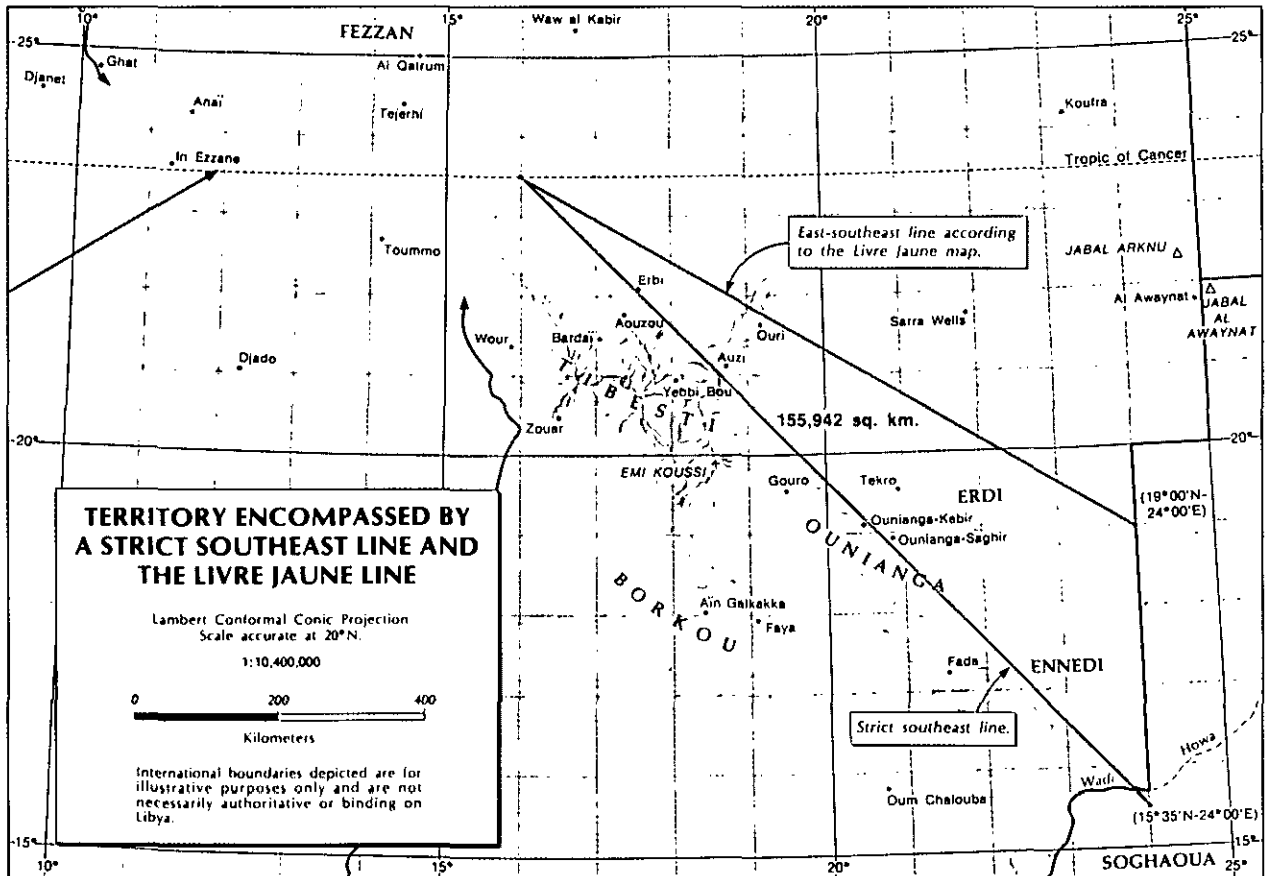
160 CC-M, para. 8.116.



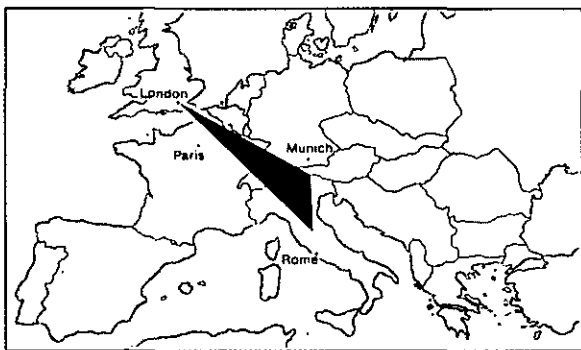
Specially prepared for presentation to the International Court of Justice.



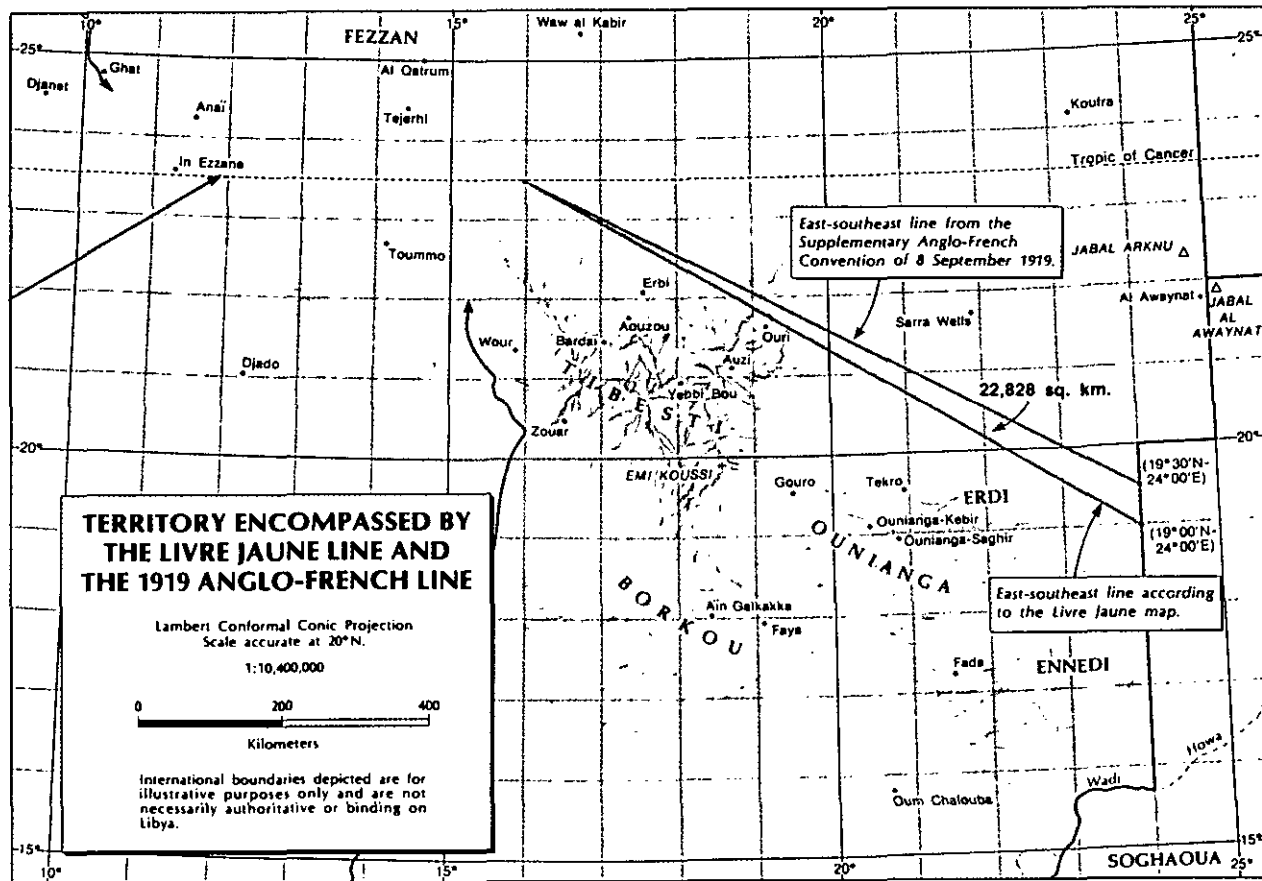
AREA COMPARISON



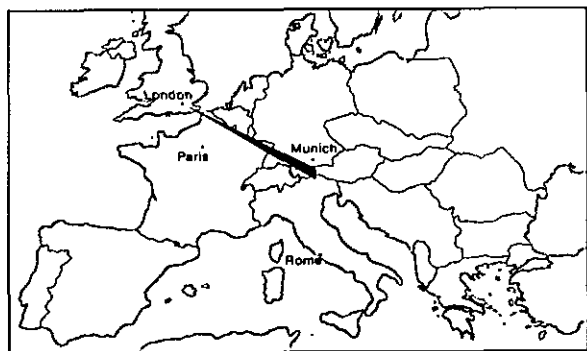
Specially prepared for presentation to the International Court of Justice.



AREA COMPARISON



Specially prepared for presentation to the International Court of Justice.



AREA COMPARISON

keen eyesight, as the CC-M suggests. This fact is shown again here (Maps LR 20A, 20B and 20C). The difference between these lines was noted on French and Italian maps issued at the time. In a dispatch to the Quai d'Orsay of 11 March 1930, the French Ambassador in Rome, M. Beaumarchais, observed that the 1899 Declaration's southeast line was subject to three different interpretations: (i) "our interpretation", that is the Livre jaune map interpretation of the line; (ii) the Italian interpretation of the line - and he might have added the British interpretation also - a strict southeast line; and (iii) the line resulting from the 1919 Convention¹⁶¹. This dispatch reveals that M. Beaumarchais had been authorized, in the negotiations with the Italians then in progress, to renounce in favour of Italy the difference between the line on the Livre jaune map and the 1919 line, but had not yet played this card. The CC-M just ignores this evidence.

(ii) Object and Purpose

6.142 It was clearly the purpose of the last paragraph of the 1919 Convention to modify the direction of the southeast line described in Article 3, for it had the effect of pushing northward by 4° of latitude along 24°E longitude the Article 2 boundary (Map LR 19 referred to above at para. 6.135). Both Great Britain and France had come to realize that the Article 3 line, which was based on the geography as understood from the maps in 1899, did not follow a course that would leave on the southwest side of the line all of the regions intended when considered in the light of the more accurate maps available in 1919. This is brought out by the travaux, particularly certain documents introduced by Chad¹⁶². Great Britain was content to make this change both in the end point of the Article 2 boundary (at 19°30'N) and the consequent change in direction of the southeast line because it left the French with the problem of the unruly tribes in the area¹⁶³.

6.143 Why then, it may be asked, was the last paragraph so curiously framed - as an "interpretation" of Article 3 of the 1899 Declaration, when it was so obviously intended to be a modification of the Article? Although there is no direct evidence on the point, the answer is apparent: Great Britain and France had not discharged their obligations to Italy under Article 13 of the 1915

161 See, LM, para. 5.271, and French Archives Annex, p. 391.

162 See, analysis in LC-M, para. 4.178, et seq.

163 See, LC-M, paras. 4.173 and 4.188.

Treaty of London, as was acknowledged in the 1919 Peace Congress. If the modifications brought about by the 1919 Convention could be dressed up as an "interpretation" of the 1899 Declaration, then Italy could be disregarded in spite of Article 13; and should Italy complain later, the parties to the Convention could pretend that really nothing had been changed, only "interpreted". Four days after the 1919 Convention was signed (8 September), French Foreign Minister Pichon signed the Accord of 12 September 1919 between Italy and France, which concerned Libya's boundary with Algeria between Ghadamès and Toummo. Not a word was mentioned to Italian Foreign Minister Bonin of the Anglo-French Convention signed four days earlier by the same M. Pichon.

6.144 Of course, the scheme was a bit naïve; Italy learned of the Convention in 1921 when its ratification was authorized by French law. The Italian Government immediately perceived the modification in the 1899 Declaration brought about by the 1919 Convention and protested, refusing to accept its application to Italy, and continued to protest right up until the 1935 Treaty was entered into between Italy and France¹⁶⁴.

6.145 The following conclusions may, therefore, be drawn from the terms of the last paragraph of the Convention, viewed in context, and in the light of its object and purpose:

- This "interpretation" was intended to modify the direction of the southeast line of Article 3 of the 1899 Declaration;
- The 1919 line did not correspond at all to the Article 3 line on the Livre jaune map line;
- The effect of the "interpretation" was to extend the Article 2 north/south boundary, as between Great Britain and France, north along 24°E longitude to 19°30'latitude;
- Italian interests were ignored by Great Britain and France, in violation of their obligations to Italy under Article 13 of the 1915 Treaty of London.

164 The Italian protests and the British and French responses thereto are dealt with in Section 10, below.

(b) Non-opposability of the 1919 Convention to Italy

6.146 It is obvious on the face of it that a line agreed between Great Britain and France in 1919, which substantially modified a line established in 1899, could not be opposable to Italy - even if, as Chad wrongly contends, Italy in 1902 had accepted the 1899 line¹⁶⁵. Great Britain and France could not modify the juridical situation of Italy resulting from the 1902 Accord without Italy's consent¹⁶⁶.

6.147 To attempt to get around this difficulty, Chad advances several arguments, the first being that the 1899 and 1919 lines were really the same line. The substantial difference in the direction of the lines has already been illustrated; and the invalidity of Chad's attempt to use the Livre jaune map in order to swing the end point of the 1899 southeast line from 15°45'N to 19°N has also been shown¹⁶⁷.

6.148 There is, as well, another aspect to the 1919 line - one which the 1924 Protocol and Declaration formalized¹⁶⁸. The 1919 Convention had the effect, not explicitly stated in its final paragraph, of shifting north, from approximately 15°45'N (the end point of a strict southeast line at its intersection with 24°E) to 19°30'N, the northern limit of the Article 2 boundary. Thus, the 1919 Convention brought about not only a substantial change in the direction of the 1899 southeast line - which was not intended by the parties to the Declaration to be a boundary - but also a major shift northward of the north/south Article 2 boundary. Not only this, but after 1919, the French contended that even the 1919 southeast line was a boundary - a proposition consistently rejected by Great Britain as well as Italy.

6.149 This second aspect of the 1919 Convention adds to Chad's problems . To overcome this hurdle, Chad again relies on the Livre jaune map which was referred to in the 1902 Franco-Italian Accord. And the CC-M introduces another argument. Evidently, to rely entirely on this map,

165 See, para. 6.42, et seq., above, and references there to the LM and LC-M, for the reasons why Chad's thesis concerning the 1902 Accord is wrong.

166 See, LC-M, para. 4.198. Chad has tried to side-step this critical legal problem in its case by trying to find various kinds of Italian acquiescence in the 1919 line.

167 See, para. 6.11, et seq., above, and references there to the LM and LC-M.

168 The 1924 instruments are discussed in Section 9, below.

misrepresented as having been annexed to the 1899 Declaration, must have seemed too risky. This second argument is expressed this way:

"Et, de toutes manières, tant la carte que les accords de 1899 et 1919 concernaient exclusivement les relations franco-britanniques; l'Italie pour sa part avait par l'échange de lettres de 1902 reconnu à la France le droit de développer sa sphère d'influence dans toutes les régions situées au-delà des frontières de la Tripolitaine-Cyrenaïque¹⁶⁹."

As already discussed, this new argument is based on the negligent misreading of the first paragraph of the 1902 Accord (substituting "sousmentionées" for "susmentionées") and must be rejected¹⁷⁰.

6.150 Chad's reliance on the Livre jaune map to attempt to establish Italy's acceptance in 1902 of the continuation of the Article 2 boundary north along 24°E to 19°N is based on the fact that the map shows the east-southeast line descending from the Tropic of Cancer "en pointillées", whereas the north/south line along 24°E ending at 19°N is shown on the map "en trait plein"¹⁷¹. Thus, according to Chad, Italy accepted this line as a boundary in 1902.

6.151 This is a preposterous argument. The 1902 Accord referred to the map in these words:

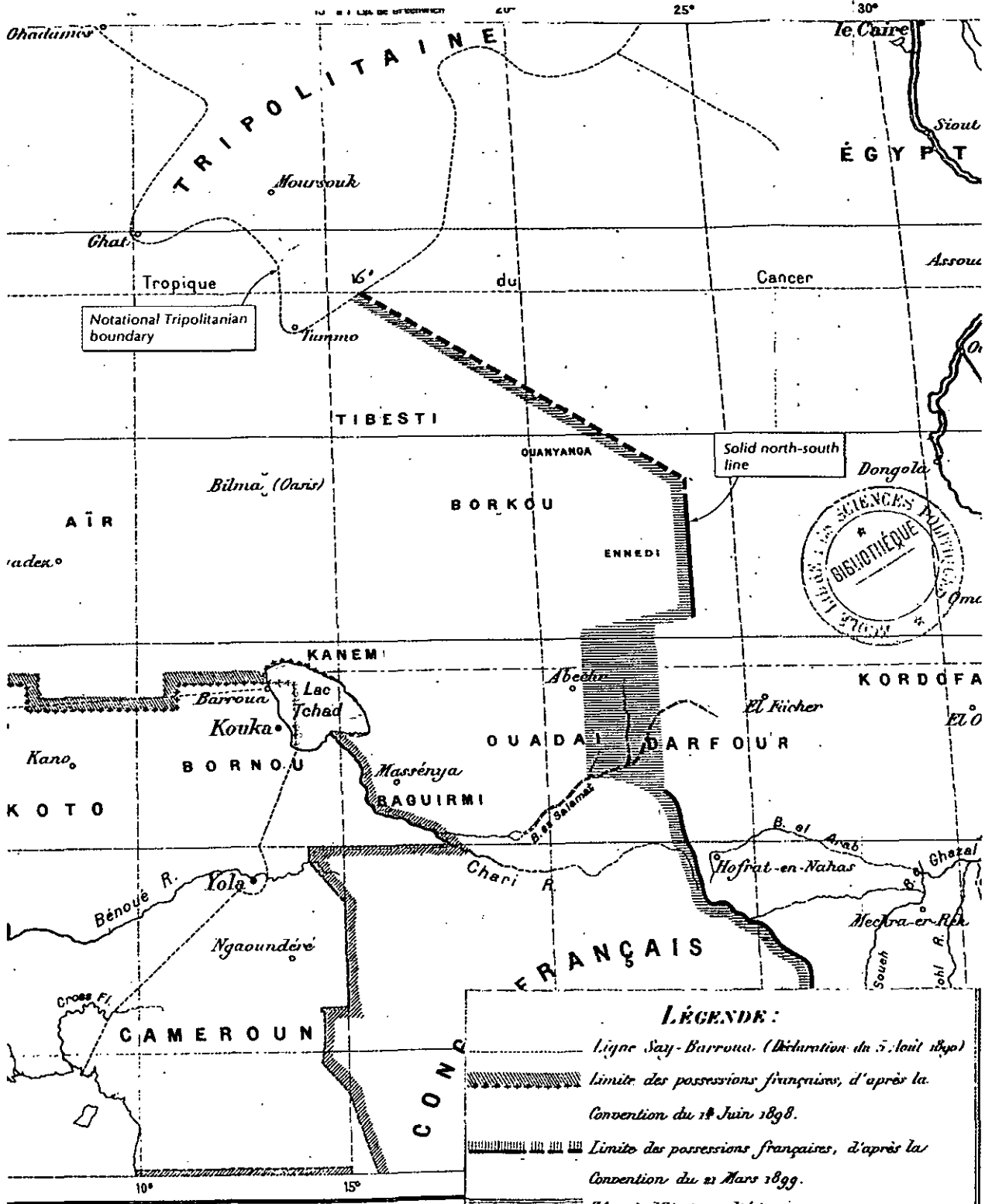
"... par la limite de l'expansion française ... on entend bien la frontière de la Tripolitaine indiquée par la carte annexée à la déclaration"

The wavy, dashed line on the map indicating the notional boundary of Tripolitania lay hundreds of miles to the northwest - on the other side of the borderlands - of the solid, north/south line on the map running north along 24°E to 19°N (Map LR 21). The 1902 Accord clearly had nothing to do with that line, a fact brought home by the fact that, whereas the 1900 Accord referred to the limit of French expansion in relation to "Tripolitaine-Cyrénaïque", the 1902 Accord talked only of the Tripolitanian boundary, shown notionally on the map. There is

169 CC-M, para. 8.140; see, also, CC-M, para. 8.37. As pointed out in para. 6.151, below, the 1902 Accord, unlike the 1900 Accord, referred only to the Tripolitanian frontier.

170 See, paras. 6.50 and 6.66, above.

171 CC-M, para. 8.130. Actually, the east-southeast line is shown as a dashed line not a dotted line. See, LM, paras. 5.205-5.206, for a discussion of this same argument as set out in an internal French note of 8 December 1992.



LÉGENDE :

- ligne Say-Barroua. (Déclaration du 5 Août 1890)*
- limite des possessions françaises, d'après la Convention du 1^{er} Juin 1898.*
- limite des possessions françaises, d'après la Convention du 21 Mars 1899.*
- Zone à délimiter ultérieurement.*
- limite de l'arrangement commercial.*
- limite des possessions françaises, d'après des Conventions antérieures.*

Echelle: 1:12.500.000^e

just no connection at all between the wavy, dashed line and the straight north/south line. Moreover, several renditions of the Livre jaune map in Chad's Map Atlas show both the north/south and southeast lines as solid lines (Maps 10, 13 and 14), indicating that there was no significant difference between the two types of lines, and the legend of the authentic Livre jaune map (see, Map LR 12B, referred to in paragraph 6.54 above) makes no distinction between a solid and a dashed line: both are wrongly described as "limite des possessions françaises, d'après la Convention du 21 Mars 1899".

6.152 Official maps of Italy and Great Britain issued between 1899 and 1919 show the 1899 line as a strict southeast line - there is only the tiniest north/south segment on these maps running north of 15°N along 24°E longitude¹⁷². If Italy recognized the 1899 line in the 1902 Accord - which it is clear Italy did not - then it was a strict southeast line that it recognized, a line that indicated the limits of French expansion not a boundary line. This accorded with the British view.

(c) **The 1919 Line in the Light of Article 3 of the 1955 Treaty**

6.153 Chad mentions that none of the above really matters since the renvoi in Article 3 of the 1955 Treaty ipso facto was a recognition by Libya and France of the 1919 line as the part of the boundary between Libya and what is now Chad, east and south of the point of intersection of the Tropic of Cancer and 16°E. However, the CC-M contends that, either by itself or as a result of the Article 3 renvoi, the 1919 Convention established this part of the boundary between Libya and Chad:

"Tel est le tracé de la frontière. Il vaut par lui-même. Il vaut par le renvoi que fait à cette disposition l'annexe I au Traité franco-libyen de 1955¹⁷³."

In other words, under either its first or second theories, Chad contends the 1919 line is opposable to Libya and establishes its southern boundary with Chad, except for the segment to the west of the intersection of the Tropic of Cancer and 16°E¹⁷⁴.

172 See, paras. 6.37 and 6.112, above, and the British and Italian maps there referred to.

173 CC-M, para. 8.117.

174 This boundary segment will again be taken up below.

6.154 Chad's first theory, under which Article 3 and Annex I of the 1955 Treaty themselves establish the boundary, has already been dealt with in Chapter V above, where it is shown that Article 3 cannot be so interpreted - and Annex I, of course, did not operate independently of the criteria set out in Article 3. Therefore, it is appropriate to consider the application of Chad's second theory to the 1919 Convention.

6.155 Under the criteria of Article 3, did the parties to the 1955 Treaty recognize the 1919 line as the southern boundary of Libya? This requires the following questions to be answered in the affirmative:

- Did the 1919 Convention fall within the category "actes internationaux"?

Comment: Unquestionably, yes.

- Was the 1919 Convention "en vigueur" on the critical date?

Comment: Chad has not established this to have been the case. Libya has no knowledge whether or not it was in force then, but since Chad contends that the Convention establishes a large part of its boundary with Libya, this is a fact for Chad to prove.

- Did a boundary result from the 1919 Convention that was opposable to Italy and, accordingly, opposable to Libya on the critical date?

Comment: Clearly not. If Italy recognized any line at all - which Libya denies Italy did - it was the 1899 strict southeast line not the 1919 line, which it vigorously, consistently and continually protested in formal diplomatic notes from the moment the Convention came to its attention in 1921 until 1935, when Italy and France reached a settlement of this boundary question.

Further Comment: But even if Italy recognised the strict southeast line of the 1899 Declaration it did not recognize it as a boundary line but only as a line limiting French expansion. Italy recognized no line running north of the end point of a strict southeast line (approximately 15°35'N) along 24°E longitude as a boundary of any kind.

Thus, under the principle uti possidetis juris, on the critical date (the date of Libya's independence on 24 December 1951) no boundary resulted from the 1919 Convention that was opposable to Libya.

6.156 Chad's second theory, however, contains an additional element: French colonial effectivités, which it argues converted a line delimiting zones of influence into a boundary line by 1919. Chad argues further that Italy acquiesced in that boundary, and that Chad's boundary, at least as far north along 24°E as 19°30'N (said to be a tripoint between the boundaries of Chad, Sudan and Libya), was officially recognized by Great Britain in 1924. Since these arguments have been discussed at length and disposed of in Libya's prior pleadings as well as in this Reply, they can be dealt with here in summary form:

- French colonial effectivités were ruled out by Article 3 as a criterion in identifying a boundary recognized by the parties to the 1955 Treaty¹⁷⁵;
- In any event, prior to 1919, the French had not effectively occupied the borderlands up to the 1919 line (or anywhere near it), and, thereafter, any French conquest of the region by force was contrary to international law¹⁷⁶;
- Far from acquiescing in the 1919 line, either in terms of its direction or its purported status as a boundary, Italy protested the 1919 Convention and rejected its application to Italy¹⁷⁷; Great Britain concurred that the 1919 Convention (to which it was a party) did not and could not affect Italian rights and interests in the area¹⁷⁸;
- Accordingly, under Articles 34 and 35 of the 1969 Vienna Convention, the 1919 Convention could not have had any legal effect on Italy, for Italy had refused to give its consent to that Convention;

175 See, para. 4.07, et seq., above, and references there to Libya's earlier pleadings.

176 See, para. 8.04, et seq., below, and references there to Libya's earlier pleadings.

177 See, Section 10, below, and references there to Libya's earlier pleadings.

178 Ibid.

- Furthermore, were the 1919 Convention construed to affect Italian interests it would have produced no legal effect on Italy for another reason: it would have been in violation of the obligations of Great Britain and France to Italy under Article 13 of the 1915 Treaty of London;
 - Great Britain did not recognize the north/south line along 24°E to 19°30'N as a boundary opposable to Italy, and in the Italo-Anglo-Egyptian Accord of 1934, Great Britain made it clear that it did not recognize any boundary tripoint at 19°30'N¹⁷⁹.
- (d) The Unaccounted For Segment of the Conventional Boundary Claimed by Chad: West of the Tropic of Cancer (and 16°E) to the Border with Niger

6.157 Aside from the numerous other flaws in Chad's arguments based on the 1899-1902-1919 agreements, there is a gaping hole in Chad's case. This concerns the sector of the claimed boundary to the west of the starting point of the 1919 line at the Tropic of Cancer (Map LR 21 referred to in paragraph 6.151). Chad contends that this sector of its claimed boundary with Libya "résulte de trois 'actes internationaux' auxquels renvoie également l'annexe I (of the 1955 Treaty)": the Franco-Italian 1902 Accord, the 1899 Declaration and the Franco-Italian Accord of 12 September 1919¹⁸⁰.

6.158 In so saying, the CC-M paraphrases some, but not all, of the criteria set out in Article 3 of the 1955 Treaty. Conspicuously missing is the criterion that the "actes internationaux" be "en vigueur" on the critical date. Since neither the 1902 nor the 1919 Franco-Italian Accords were in fact "en vigueur" on the critical date, not having been notified by France under Article 44 of the 1947 Italian Peace Treaty, they are excluded from consideration by Article 3 in determining a boundary to be recognised by Libya and France. The renvoi in Annex I to these agreements would thus have no effect at all because the criteria of Article 3 clearly were controlling over this subordinate instrument, Annex I. To construe Article 3 and Annex I otherwise would be to nullify one of the essential criteria of Article 3: "en vigueur" on the critical date.

179 See, paras. 6.180 and 9.26, et seq., below.

180 See, CC-M, para. 8.142.

6.159 But setting aside this point, what about the other criteria of Article 3? Chad is certainly correct that the three agreements it refers to, from which this segment of the claimed boundary allegedly results, were "actes internationaux". But did such a boundary result from them? And was that boundary opposable to Italy and, hence, to Libya on the critical date?

- As to the 1902 Accord, it is clear that no boundary at all resulted from this instrument: Italy had no status in 1902 to agree a boundary, even if in the 1902 Accord it had attempted to do so - which was clearly not the case; the wavy, dashed line on the Livre jaune map encircling Tripolitania and passing from Toummo, through the starting point of the 1899 southeast line, and on to the northeast, was not portrayed as a boundary (despite Chad's presentation in the CM and CC-M of reproductions of the map changing the original maps so as to show this line to be a boundary when it was not)¹⁸¹;
- As to the 1899 Declaration, it established no boundary north of 15°N; the southeast line described in Article 3 not only was not a boundary line but did not relate to any territory to the west or south of its starting point at the Tropic of Cancer (Map LR 21); moreover, neither Tripolitania nor Cyrenaica are mentioned in the 1899 Declaration - an omission that led to the 1900-1902 Accords, in which Italy sought (and received) reassurance that this region was excluded from the reach of the Declaration;
- As to the Accord of 12 September 1919 between Italy and France, it delimited Libya's western boundary with Algeria between Ghadamès and Toummo, but not beyond; none of that boundary lies between Libya and Chad.

6.160 How does Chad attempt to overcome these obstacles? The CC-M maintains that the 1902 Accord determined "la ligne frontière dans son ensemble" (i.e., between Toummo and the Tropic of Cancer) while the other two

181 See, para. 6.54, above.

agreements "confirment l'emplacement du point de départ et du point d'aboutissement de celle-ci¹⁸²". Briefly stated, this is Chad's line of argument:

- In the 1902 Accord, Italy and France recognized mutual zones of influence; and by the reference to the Livre jaune map, Italy acknowledged and accepted the Tripolitanian boundary shown on the map, and in particular the segment between Toummo and the Tropic of Cancer¹⁸³;

Comment: The only recognition of a French zone of influence in the 1902 Accord concerned Morocco; the CC-M completely misreads the first paragraph of the Accord (in effect substituting "sous-mentionées" for "susmentionées")¹⁸⁴; the Livre jaune map did not portray any Tripolitanian boundary, as its legend made clear; it showed by means of a wavy, dashed line a notional frontier for Tripolitania corresponding to that traditionally shown on maps at the time (e.g., the Justus Perthes map of 1892); no agreement of any kind established a Tripolitanian boundary south of Ghadamès prior to 1919¹⁸⁵.

- The Franco-Italian Accord of 12 September 1919 delimited the boundary of Libya as far as Toummo, resulting in two confirmations by Italy:

"...; confirmant ainsi que c'est à ce point que la frontière fait un coude pour remonter le nord-est¹⁸⁶";

* * *

"en décidant que Toummo constitue le point extrême de l'extension de la Libye vers le Sud-Est, il confirme l'acceptation par l'Italie de la frontière de la Tripolitaine indiquée sur la carte annexée à la Déclaration franco-britannique du 21 mars 1899¹⁸⁷."

182 CC-M, para. 8.143.

183 See, CC-M, paras. 8.144-8.160.

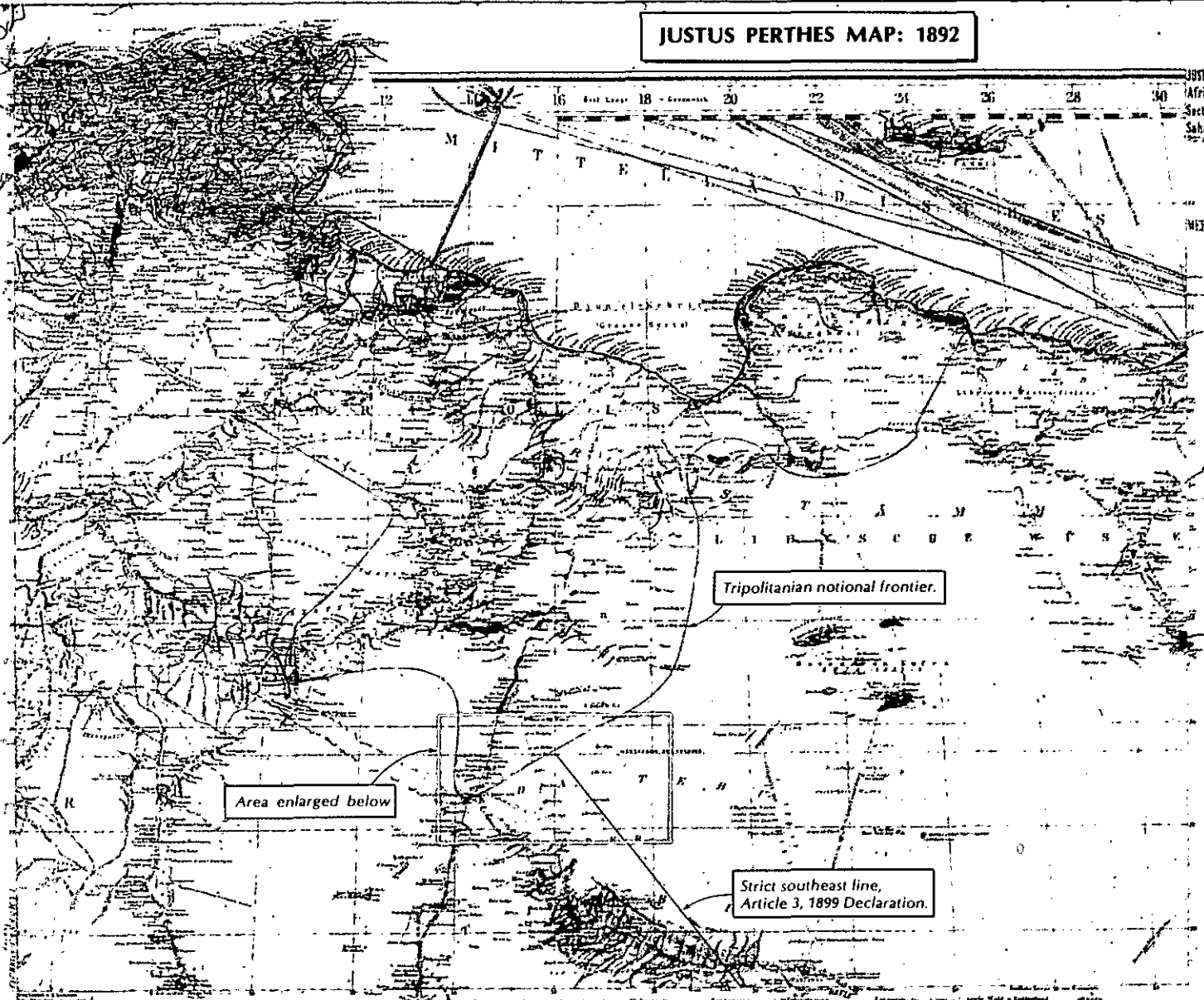
184 See, paras. 6.50 and 6.66, above.

185 See, para. 6.166, below. See, Maps LR 12A and 12B, referred to in para. 6.54, above, showing how Chad in its pleadings has modified the Livre jaune map by false reproductions that portray the wavy, dashed line as the conventional boundary of Tripolitania.

186 CC-M, para. 8.161.

187 CM, p. 203, para. 236.

JUSTUS PERTHES MAP: 1892



JUSTUS PER
 Afrika
 Section Co
 Sahara

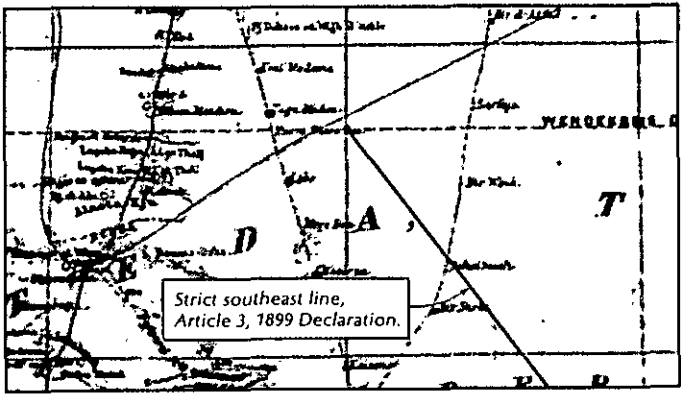
Area enlarged below

Tripolitanian notional frontier.

Strict southeast line,
 Article 3, 1899 Declaration.

Maßstab 1: 4 000 000

Legend: Französische, Deutsche, Britische, Italienische Besitzungen, Ägypten, Sonstige Gebiete, Inseln, Seehöhenkurven u. Sprachliches siehe Sektion 3



Strict southeast line,
 Article 3, 1899 Declaration.

Comment: These arguments are simply baffling; nothing in the 1919 Accord suggests anything about a boundary continuing beyond Toummo or making a bend to the northeast. And how possibly could Italy's acceptance in the 1919 Accord of Toummo as the terminal point of Libya's boundary thereunder imply the acceptance of the Tripolitania boundary shown on the map "annexed" to the 1899 Declaration? No Tripolitanian boundary was shown on the map (the Livre jaune map - not annexed to the 1899 Declaration) as just discussed above. What connection is there, in any event, between the 1919 Accord and the Livre jaune map, except that the Accord modified the notional boundary shown on the map in Italy's favour both as to the course of the line and as to its legal nature? Finally, a close look at the Livre jaune map shows that the wavy, dashed line does not pass through Toummo at all, but to the south of it (Map LR 21).

- The starting point of the southeast line described in Article 3 of the 1899 Declaration coincides with the point of intersection of the Tropic of Cancer and the wavy, dashed line, from which Chad concludes the following:

"Il est très révélateur que la France et la Grande-Bretagne aient fixé ce point à cet endroit: il n'a, à l'évidence, pas été choisi au hasard; ceci montre en effet que ces deux pays avaient la conviction qu'au delà, ils eussent empiété sur les droits appartenant à la Porte puisque ce point est fixé à la frontière même du Vilayet de Tripoli¹⁸⁸."

Comment: There is not a shred of evidence as to why this point on the Tropic of Cancer was selected as the starting point of the 1899 line. But the map that Lord Salisbury and M. Cambon had before them showing the wavy, dashed line depicting the notional frontier of Tripolitania was not the Livre jaune map - it had not been prepared yet. It was the Justus Perthes map of 1892, which showed such a line (Map LR 13)¹⁸⁹. If the map is looked at closely (see the enlarged area), it will be seen that the wavy, dashed line does not intersect the Tropic of Cancer at 16° - as it does on the Livre jaune map -, but south and east of that point. So the starting point of the 1899 line does not coincide with a point on this notional boundary. The 1899 Declaration does not refer to Tripolitania or to a Tripolitanian boundary at all. Even if it had, as Great Britain had made clear, the 1899 Declaration was not intended to, and did not infringe on any hinterland rights the Ottoman Empire might have had in the area through which the southeast line passed.

188 CC-M, para. 8.165.

189 See, para. 6.55, above, and Map LR 13, which appears again here. This map appears as Map 2 in Chad's Map Atlas.

6.161 In a rare moment of candor, the CC-M acknowledges that its thesis concerning the claimed boundary segment between Toummo and the Tropic of Cancer may be vulnerable:

"La République du Tchad ne prétend pas qu'il y ait là une présomption irréfragable en soi¹⁹⁰."

But it goes on to say that "la Libye n'a pas apporté le début d'une preuve contraire". It is not Libya's task to prove a negative: the non-existence of a boundary in this section; it is for Chad to prove its claim to such a boundary. Libya has demonstrated that Chad has totally failed to do so; and the 1912 French maps demonstrate that France itself did not consider that a boundary existed between Toummo and the Tropic of Cancer¹⁹¹.

6.162 However, the CC-M asserts that the "caractère irréfragable" of this sector of the boundary it claims -

"... découle de la double acceptation du tracé de la frontière entre Toummo et le Tropic de Cancer, par l'Italie en 1902; par la Libye elle-même, en 1955¹⁹²."

But where is this "tracé" - this line - to be found? Only on the Livre jaune map. And the line is not shown as a boundary on this map. It was a notional boundary. No boundary was fixed by any agreement between Ghadamès and Toummo until 1919. And there never has been an agreement fixing a boundary east of Toummo.

SECTION 8. 1919 Franco-Italian Accord (12 September)

6.163 After taking up here the other of the two 1919 "actes internationaux", the Franco-Italian Accord of 12 September 1919, it will be appropriate to turn next to the Anglo-French 1924 Protocol and Declaration demarcating the north/south boundary between Great Britain and France delimited by the 1919 Convention as far north of 19°30'N (Section 9). In this context, the 1934 Italo-Anglo-Egyptian Accord of 1934 will be discussed, as well.

190 CC-M, para. 8.169.

191 See, para. 6.110, above, and Maps LR 15A and 15B.

192 CC-M, para. 8.169.

Then, in Section 10, the period of protests of Italy against the 1919 Convention, and the extended Franco-Italian negotiations up to 1935, will be dealt with briefly.

6.164 The Accord of 12 September 1919 has been dealt with in detail in the LM and the LC-M¹⁹³. It is one of the "actes internationaux" appearing on the Annex I list. Unlike the 1899 Declaration and the 1902 Accord, this 1919 Accord between Italy and France delimited an international boundary - between Italian and French colonial territories from Ghadamès to Ghat. Thus, to this extent it meets the criteria of Article 3 of the 1955 Treaty. However, it was not a treaty reported by France under Article 44 of the 1947 Italian Peace Treaty and, thus, was not en vigueur on the critical date. It also does not concern territory of direct concern in the present dispute.

6.165 Nevertheless, this Accord has an indirect relevance here for, in the light of its context and travaux préparatoires, it reveals how France and Italy at the time regarded the situation concerning the boundaries between their colonial territories in the region. There are three points to bring out here in illustration of the issues dividing the Parties:

- The Accord fixed Libya's western boundary between Ghadamès and Toummo for the first time;
 - It only partially discharged France's obligation to Italy under Article 13 of the 1915 Treaty of London;
 - Libya has the right to invoke to its advantage the remainder of France's unpaid debt to Italy.
- (a) **The 1919 Franco-Italian Accord Fixed the Western Boundary of Libya Between Ghadamès and Toummo for the First Time**

6.166 The essential point here is that the French negotiating position, developed in 1913-1914 in preparation for the impending delimitation negotiations with Italy¹⁹⁴, depended on the incorrect assumption that the map referred to in the 1902 Accord contained a line identified as the Tripolitanian

193 See, LM, para. 5.168, et seq.; LC-M, para. 4.243, et seq.

194 See, para. 6.123, et seq., above.

boundary. The French thesis was that by referring to the map containing this alleged boundary line Italy accepted the line as an international boundary. This has been the spring-board for Chad's further development of the French thesis. As has been pointed out and illustrated, the wavy, dashed line encircling Tripolitania on the Non-Annexed Map (referred to in 1902) was not a boundary at all, as a proper colour reproduction of that map so clearly shows¹⁹⁵. Furthermore, Italy and France had no standing in 1902 to agree a boundary; and the 1912 Franco-Italian Agreement had nothing to do with Libya's boundaries¹⁹⁶.

6.167 Thus, France's negotiating position in 1913-1914, reflected in the 1913 and 1914 reports of M. Louis Marin, referred to above¹⁹⁷, would have been an easy target for Italy to attack in these negotiations - had they ever taken place. When Italy and France entered into the 1919 Accord, therefore, they delimited the boundary between Ghadamès and Toummo for the first time, "modifying" what was only a notional boundary shown on a map. This "modification" may well have been thought of by France as a concession of territory to Italy, but in fact it was not - for there had been no conventional boundary between Ghadamès and Ghat. The French Livre jaune map confirms that fact.

6.168 There are several implications to this conclusion. First, the French argument constructed around the reference to a map in the 1902 Accord makes it evident that the Accord concerned only Libya's western frontier, not its southern frontier. Second, the 1919 Accord did not involve a "cession" of territory or a "rectification" of a boundary pursuant to Article 13 of the 1915 Treaty; this was the settlement in Italy's favour of questions relative to the frontier of Libya and neighbouring colonies of France (to paraphrase the text of Article 13). Third, the 1919 Franco-Italian Accord delimited a boundary only as far as Toummo; it had no bearing on a boundary east of Toummo - and hence provides no support for either segment of the line claimed by Chad: Toummo to the Tropic of Cancer (and 16°E); Tropic of Cancer to 24°E (and 19°30'N). Thus, its scope was less than that contemplated in 1914 according to the Marin report, which would have

195 See, para. 6.54, et seq., above and Map LR 12B.

196 See, para. 6.88, above.

197 See, para. 6.126, above.

continued the work of the boundary commission as far as the Tropic of Cancer¹⁹⁸.

(b) **The Accord's Relationship to Article 13 of the 1915 Treaty of London**

6.169 The Parties are in agreement that, although the 1919 Accord was entered into as a boundary settlement in favour of Italy under Article 13, it was only a partial discharge of France's obligations to Italy under Article 13. The text of the 1919 Accord made this clear¹⁹⁹. The CC-M readily concedes that the boundary question that remained open was that concerning Libya's southern boundary, which was dealt with in the 1935 Treaty but not resolved²⁰⁰. From this, two consequences flow.

6.170 First, the 1919 Accord demonstrates that Article 13 did not concern merely boundary rectifications; as was the case with the Accord, the "equitable compensation" for Italy under Article 13 could equally well have involved a delimitation ex novo in favour of Italy's claims, where no prior boundary existed.

6.171 The second consequence is that France acquitted only part of its debt to Italy under the 1919 Accord; and what remained to be paid concerned the determination of Libya's southern boundary. The CC-M explains the situation in these words, in referring to Libya's southern boundary:

"Dans ces conditions, il n'eût évidemment pas été logique de procéder à la démarcation sur le terrain d'une frontière dont la délimitation devait être modifiée²⁰¹."

This is a clear shift in position by Chad from the CM, where it was denied that the unfulfilled obligations of France necessarily concerned the southern frontier of Libya.

198 Ibid.

199 See, LC-M, para. 6.10, et seq.

200 See, CC-M, para. 8.51. This admission contrasts with Chad's earlier position concerning Article 13. See, CM, p. 202, para. 232.

201 CC-M, para. 8.51.

6.172 The erratic character of Chad's position is striking. Whilst waiting for the next volte-face, Libya limits itself to the observation that there could have been no question of demarcation along Libya's southern frontier in any event: a demarcation presumes a prior delimitation, and there had been none!

(c) **Libya's Right to Invoke France's Unpaid Debt in respect to Libya's Southern Boundary**

6.173 In order to put an end to a territorial dispute that France recognised was unresolved before World War II, is it not necessary to take into account all the arguments that were available to France and Italy during the colonial period, including the unpaid obligation to make equitable compensation that France had to Italy?

6.174 Libya has set out in the LC-M its position: that the obligation of France to Italy falls squarely within the purview of Article 11 of the 1978 Vienna Convention²⁰². Chad is clearly wrong in arguing that the 1947 Italian Peace Treaty eliminated all remaining obligations under Article 13 of the 1915 Treaty of London. Although Italy certainly lost, in 1947, all the rights Italy might have had in respect to Libyan territory, this certainly did not mean, applying the normal rules of State succession, that Libya, as inheritor of Italy, lost rights that inhered in the territory it inherited from Italy on the date of its independence.

SECTION 9. 1924 Anglo-French Protocol and Declaration

6.175 These agreements were the formal confirmation by the British and French Governments of the demarcation of the boundaries delimited, as between French and British territories, by the 1919 Anglo-French Convention²⁰³. Thus, the demarcated boundary extended from 11°N latitude to the Wadi Howa (15°40'N), and from there effect was given to the last paragraph of the 1919 Convention, and the boundary was demarcated, from the juncture of Wadi Howa and 24°E north, along this meridian to 19°30'N. As a result, the Article 2 sector of the 1899 Declaration, which (unlike the Article 3 sector) concerned a territorial boundary, was extended north to 19°30'N. This was a

202 See, LC-M, para. 6.36, et seq.

203 The 1924 Protocol and Declaration are discussed in LM, para. 5.215, et seq.; LC-M, para. 4.203, et seq.

north/south boundary between French and British territories and, as such, did not directly affect Italy since it was clearly res inter alios acta.

6.176 However, by pushing the boundary north by some 4° of latitude, the 1924 demarcated boundary had the effect of pushing north the end point of the southeast line of the 1899 Declaration, as well, which France also asserted had become a boundary (Map LR 19, at paragraph 6.135, above). This was regarded by Italy as a direct threat to its territorial rights, for it encroached on areas claimed by the Ottoman Empire, whose rights Italy had inherited through the 1912 Treaty of Ouchy. Therefore, Italy protested the 1919 Convention in 1921, when Italy first learned of it; and Italy renewed its protest in 1924 when the Anglo-French Protocol and Declaration were made public.

6.177 In itself, these 1924 instruments did not concern territory now lying between Libya and Chad. However, Chad's contentions as to their meaning and effect have a direct bearing on this case. As has been noted above, these 1924 "actes internationaux" were not included in the Annex I list, although they were mentioned as among the agreements considered relevant to the matter of Libya's southern boundary by France's representative to the U.N. when he corrected the French "bêvue", just prior to adoption of the G.A. Resolution 392(V) on 15 December 1950; and they were similarly referred to in Chad's Application formally filed with the Court on 3 September 1990 as among the key agreements to consider²⁰⁴.

6.178 Chad contends that the 1924 demarcation of this line by the Anglo-French boundary commission (which is illustrated in Chad's Map Atlas by Maps 26 and 27), confirmed by the 1924 Protocol and Declaration, "consacre officiellement la reconnaissance anglaise de la limite Nord-Est du Tchad"²⁰⁵. The CC-M explains Great Britain's conduct in agreeing to this demarcation in this way:

"Puisqu'elle considérait que les protestations italiennes étaient sans fondement ... elle procède à la démarcation sur le terrain de la frontière qui sépare le Soudan du Tchad où elle considère que la

204 See, LC-M, para. 3.14-3.16.

205 CC-M, p. 445, commentary on Map 27.

France est le légitime souverain territorial, conformément aux accords de délimitation antérieurs²⁰⁶."

And the CC-M describes the maps issued before and after 1919 showing southern Cyrenaïca and its hinterland in the borderlands, as well as the way in which the delimitation and demarcation operations proceeded, in this way: (i) Italy's rights over Koufra were only recognized in 1924²⁰⁷, and the Sarra triangle was only "ceded" by Great Britain in 1934; thus the area was a sort of "no-man's land"; (ii) however, after 1919, the east-southeast line between the Tropic of Cancer and 19°30' appeared on all the maps (except for Italian maps which should be ignored²⁰⁸); (iii) the 1919 line became a total boundary for France and only a partial boundary for Great Britain; and (iv) only the north/south part of the 1919 delimitation (up to 19°30') was demarcated because from there to the Tropic of Cancer was "un désert pur et simple", and also because, although France was in effective occupation up to the east-southeast line, Great Britain was not.

6.179 This is another analysis that is full of mistakes, as will shortly be shown. It is not hard to guess why Chad follows this line of argument. The 1924 "actes" confirming the 1919 delimitation resulted in a clear distinction being made between the north/south sector (from roughly 15°N to 19°30'N) and the sector defined by the east-southeast line between the Tropic of Cancer (and 16°E) and 19°30'N: the north/south line was demarcated; the east-southeast was not. Chad must somehow explain how both lines, nevertheless, became boundaries as between Great Britain and France, opposable to, or acquiesced in by, Italy.

6.180 The following are among the mistakes in Chad's analysis:

- Great Britain did not give official recognition to the end point of the north/south line demarcated in 1924 as far north of 19°30'N as the "limite Nord-Est du Tchad";

Reason: The Anglo-French 1919 delimitation and 1924 demarcation up to 19°30' were res inter alios acta; both acts were vigorously protested by Italy, which rejected their applicability to Italy or their effect on Italian rights. In the

206 CC-M, para. 8.125.

207 The year intended to be referred to by Chad is 1925.

208 See, CC-M, para. 10.29.

*1934 agreement between Italy, Great Britain and Egypt concerning the Sarra Triangle, the southern point of the delimitation was fixed at 20°N for the express reason of avoiding any recognition by either Italy or Great Britain of 19°30'N as the northern limit of French territory*²⁰⁹;

- Great Britain's so-called "rejection" of Italy's protests to the 1919 Convention and 1924 instruments (occurring only after 1924) were not a reflection of what Chad claims to have been the British view that Italy had no basis for claims in the area and that France had sovereign title there derived from prior agreements;

Reason: Great Britain's responses to Italy's protests were based on the legal grounds that any Italian rights in the area could not be affected. They were a "rejection" by the British Government of the Italian protests only in the sense that Italy was regarded as not having been injured in any way by not having been consulted in 1919 in connection with the Anglo-French Convention then entered into. Whatever views the British Foreign Office may have had internally of the strength of Italy's claims are of no importance, particularly since they were not the result of a careful study. However, the British Government did make clear that it considered Italian claims to be based on any prior Ottoman rights and titles. And in the 1934 negotiations over the Sarra triangle, Italy made clear this same point. The British Government never recognized French sovereignty to the west of the north/south line delimited in 1919 as far north as 19°30', and demarcated up to that point in 1924; nevertheless, it was able to rationalize its entirely different views from those of the French as to the legal effect of the 1919 and 1924 instruments by referring to its understanding - based entirely on French representations - that France and Italy had entered into a separate agreement (a reference to the 1900-1902 Accords, which the British Foreign Office had not taken the time to study.)

- As to the status of southern Cyrenaica and its hinterland at the time, Italy's interest in Koufra was recognised by Great Britain well before 1924;

*Reason: Italy's rights to Koufra were recognised in 1914*²¹⁰. As far as Koufra was concerned, the 1924 agreement was merely a confirmation in treaty form of this prior recognition of Italian rights by Great Britain.

209 For a discussion of the 1934 Exchange of Notes, see, LM, para. 5.284, et seq., and esp. para. 5.299; LC-M, para. 4.230, et seq.; see, also, para. 9.26, et seq., below.

210 See, LM, para. 5.218.

- The Sarra Triangle was not "ceded" to Italy by Great Britain in 1934;

Reason: The unfounded nature of this assertion is set out in sufficient detail in the LM and the LC-M as not to require further discussion here²¹¹. This matter is also taken up again below in Chapter IX in reference to pre-1945 British conduct²¹².

- The 1919 line did not become a total boundary for France (the north/south segment and the east-southeast line) but only a partial one for Great Britain (the north/south segment).

Reason: As between Great Britain and France, the north/south line as far north as 19°30'N became a boundary inter se. It was not opposable to third parties (res inter alios acta); and its extension above 15°35' (the terminal point at 24°E of a strict southeast line) was protested by Italy. Great Britain confirmed to Italy the limited legal effect of this line. The east-southeast line between the Tropic of Cancer and 19°30' never became a boundary as between Great Britain and France. The British Government's explanations to Italy made it clear that this line had not changed its character since 1899 - it remained a line only intended as a limitation to French expansion. As a matter of law, this east-southeast line could not have been an international boundary if only because Great Britain did not assert sovereign rights to the north and northeast of the line²¹³.

- Chad's argument as to why only the north/south line (but not the east-southeast line) was demarcated are easily disproved.

Reason: Chad advances two arguments: (i) France's effective occupation up to this line had been accomplished by 1919, but not British effective occupation; and (ii) the line crossed a desert "pur et simple". The actual reason for no demarcation of the southeast line is that it had not been delimited as a boundary in 1919, even as between Great Britain and France. As to the desert argument, it would be hard to distinguish, north of Wadi Howa, between the areas of desert covered by

211 See, LM, paras. 5.284-5.303; LC-M, paras. 4.230-4.242.

212 Starting at para. 9.19, below; see, esp., paras. 9.26-9.28.

213 In any event, any sovereign rights there would have been for Egypt to assert.

*the north/south line and those along the east-southeast line. They were both desolate regions of desert*²¹⁴.

6.181 Libya considers that the 1924 "actes internationaux" are relevant to the present case in two respects: first, the omission of the 1924 arguments from the list set out in Annex I of the 1955 Treaty reveals that the list was not intended to be exhaustive and had only the limited effect of setting out a partial listing of the agreements for Libya and France to consider when they sat down to negotiate Libya's southern boundary, for the 1924 "actes" were certainly highly relevant in the opinion of France (and now of Chad); second, the demarcation of the north/south segment but not the east-southeast segment was an indication that, even as between Great Britain and France, the east-southeast segment had not been delimited as a territorial boundary.

SECTION 10. Period of Italian Protests, Anglo-French Replies and Franco-Italian Proposals and Negotiations: 1919-1935

(a) Introduction

6.182 The discussion here will, again, be of a summary nature, directed largely at contentions set out in the CC-M, since the events of this period have been carefully examined in the LM and LC-M²¹⁵. But it must be emphasised that many of these events have a special importance, for they led directly to the boundary settlement reached between Italy and France set out in the 1935 Treaty.

6.183 It is interesting that the CC-M deals with the Italian protests starting in 1921 as subsequent conduct in relation to the 1912 Franco-Italian Agreement when, in fact, they were directed at the 1919 Convention²¹⁶. The thesis Chad advances is expressed in this way:

"Un examen minutieux de l'attitude que l'Italie adopta au fil des années au sujet de la frontière meridionale de la Libye montre

214 See, dispatch of Lord Allenby of 4 December 1919 quoted in CC-M, para. 8.54 (and taken from CM, Annex 96):

"To the north of Wadi Howa (...) the French sphere is here bounded to the East and North by sheer desert, and consequently the matter (la délimitation envisagée) is susceptible of some delay."

215 See, LM, paras. 5.188-5.214; LC-M, paras. 4.203-4.229.

216 The 1912 Agreement is discussed above, starting at para. 6.84. The Italian protests are discussed in the CC-M in both Chapters 7 and 8 (starting at para. 8.57).

clairement que, - malgré les efforts des milieux colonialistes italiens, dont se faisait l'écho le Ministère Italien des Colonies, visant à insister sur les droits successoraux de l'Italie à la Turquie -, le Ministère des Affaires étrangères italien demeura ferme dans son 'attachement' aux accords de 1902 et de 1912. Autrement dit, quand l'Italie decida de protester, entre 1921 et 1934, contre l'occupation effective, par la France, de la région au sud de la frontière de 1899/1919, elle fonda ses protestations sur le prétendue violation, par la France, de ses engagements contractuels avec l'Italie, et non pas sur d'éventuels droits de succession de l'Italie²¹⁷."

Chad finds this supposed attitude of the Italian Government expressed at three levels: (i) in the official exchanges between the Italian and French Governments; (ii) in the 1919 Tittoni speech to Parliament, once again totally misdescribed as "declarations solennelles devant le Parlement italien²¹⁸"; and (iii) in internal dispatches of the Italian Government.

6.184 There are several comments to be made straight off about the two sentences quoted above. First, as will become more evident as other passages of the CC-M are examined, Chad confuses Italy's protests against the 1919 Convention with its territorial claims. Second, Chad confuses Italy's protests against the 1919 Convention (and the subsequent 1924 demarcation north to 19°30'N) with its protests against France's incursions north of the strict southeast line described in Article 3 of the 1899 Declaration; and these protests were not against France's effective occupation, as Chad suggests, but against its incursions north of a strict southeast line. It was not until after 1930 that French troops went north of a strict southeast line to establish military installations²¹⁹. Third, none of the official or internal dispatches, or even M. Tittoni's speech, contained a word about the 1912 Agreement. Fourth, these sentences, quoted above, reflect an attempt in the CC-M to create what will be called here a "mock war" between the Italian Ministry of Foreign Affairs and the Ministry of Colonies, when in fact the two Ministries were working together in harmony.

6.185 What Chad is attempting to do is to find support for its contentions built around the 1900-1902 Accords and the 1912 Agreement - which

217 CC-M, para. 7.37.

218 This is a reference to a few words in a speech by Foreign Minister Tittoni to the Italian Parliament on 27 September 1919 on the subject of the Franco-Italian Accord of 12 September 1919, which concerned Libya's western, not southern boundary. See, para. 6.105, et seq., above.

219 See, LC-M, para. 5.43 and Map LC-M 45. See, also, para. 8.05, below, and Map LR 28.

are so important to Chad's case - in the conduct of Italy after 1919, when it protested the 1919 Convention, when it protested French military incursions north of a strict southeast line and during negotiations with France concerning Libya's southern boundary in the period up to 1935. It bears repeating that in none of the records of diplomatic notes and internal dispatches is there any reference to the 1912 Agreement. This should come as no surprise; at the time, it was obvious to both the Italian and French Governments that the 1912 Agreement had nothing to do with Libya's boundaries. At the same time, Chad appears to be trying to divert attention from the fact that the 1919 Convention between Great Britain and France was forcefully, consistently and continually protested by Italy and rejected as not opposable to Italy.

6.186 The issues on which Libya will focus here are the following:

- The fundamental difference between the British and French Governments as to the interpretation and effect of the 1919 Convention;
- Chad's contention that Italy had no right to protest the 1919 Convention;
- The absence of any conflict between the Italian Ministries as concocted in the CC-M (the "mock war"), and the true situation concerning the Italian position during the period of protest and negotiation, which involved two quite separate matters: diplomatic protests and negotiating strategy;
- The significance of the official Italian maps, which Chad has ignored, particularly as illustrated in a most formal and official way in the 1930 Italian School Map Atlas incident;
- The consistency of Italy's conduct in protesting the 1919 Convention and in protesting French incursions north of a strict southeast line;
- France's conduct during the period, revealing the awareness of the French Government that there was no conventional boundary east of Toummo.

(b) **The Diametrically Opposed Views of the British and French Governments Over the Meaning and Effect of the 1919 Convention**

6.187 The differences dividing Great Britain and France over the interpretation and application of the 1919 Convention were brought into focus when the two Governments tried to coordinate their responses to Italy's protest in 1921²²⁰. This has already been examined in considerable detail by Libya²²¹. Chad maintains in the CC-M that there was no contradiction between the British and French responses²²². The CC-M states this view in the following words:

"En réalité la position des deux Etats est, fondamentalement, identique même si les raisons invoquées ne le sont pas entièrement, mais ces divergences apparentes s'expliquent par leur situation respective, à la fois sur le terrain et en droit²²³."

6.188 No one who had examined the evidence produced by Libya in the LM could have written these sentences with any sincerity: that the British and French positions were "fundamentally identical"! As the LM points out, when Foreign Minister Poincaré received the general lines of the proposed reply of the British Government to Italy in a note from Lord Curzon dated 16 May 1922, he sent the British note on to his Ambassador in Rome, M. Barrère, still there after over 22 years and the most experienced of all the French diplomats as to the meaning of the 1900-1902 Accords and all the supervening events and agreements²²⁴. M. Barrère reacted strongly. Pointing out that the French, unlike the British, considered as a "véritable frontière les délimitations établies par les accords de 1899 et 1919", M. Barrère warned:

"Il y a donc une différence fondamentale²²⁵ entre le point de vue français et le point de vue anglais quant à l'interprétation à donner aux accords de 1899 et de 1919. Alors que nous voulons par notre

220 As in the CM, the CC-M again refers to Italy's protest in 1921 against the 1919 Convention as having been made "tardivement". See, CC-M, para. 8.57. This is false; it was not until 1921 that Italy learned of the 1919 Convention, entered into behind its back in violation of the obligations of Great Britain and France under Article 13 of the 1915 Treaty of London. Italy then promptly protested.

221 See, LM, para. 5.192, et seq.; LC-M, para. 4.207, et seq.

222 See, CC-M, para. 8.59.

223 CC-M, para. 8.65.

224 See, LM, para. 5.192, et seq.

225 At least Chad and M. Barrère are in agreement on the word "fondamentale"!

réponse fermer la porte à toutes revendications italiennes, les Anglais, s'ils répondent dans le sens indiqué par Lord Curzon, autorisent les Italiens à perséverer dans leur demande. La Consulta aura beau jeu pour nous dire que ce que nous appelons une ligne-frontière n'a jamais été considérée comme telle par le Gouvernement Anglais et que notre interprétation des accords de 1899 et 1919 est en contradiction avec celle de Gouvernement Britannique²²⁶."

It is quite remarkable that the CC-M could quote from M. Barrère's dispatch and yet omit the essence of his message to M. Poincaré - that the British and French positions were fundamentally different²²⁷.

6.189 This fundamental difference identified by M. Barrère never vanished: the cracks were merely papered over. The covering used was the supposed special situation between France and Italy created by the 1900-1902 Accords (not a word being mentioned about the 1912 Agreement²²⁸). It will be recalled that the first reaction of the British Foreign Office to the line of argument advanced by the French Government as a basis for replying to the Italian protest was that it was "extraordinary", particularly in its reliance on a map said to have been annexed to the 1899 Declaration, which the British could not find annexed to their original copy²²⁹.

6.190 Chad attempts to reconcile what M. Barrère regarded as the fundamentally different positions of Great Britain and France in several ways:

- That the British and French were in agreement that Italy's protest was unfounded²³⁰;

Comment: But for entirely different reasons: for the British, because Italy's rights were not (and could not be) affected by the 1919 Convention between Great Britain and France and, therefore, its protest was unfounded; for the French, Italy's protest was unfounded because Italy had supposedly accepted the alleged 1919 boundary in the 1900-1902 Accords. The CC-M quotes from internal British Foreign Office notes that

226 LM, para. 5.195, and French Archives Annex, p. 353.

227 See, CC-M, para. 8.71.

228 See, LM, para. 5.205, where the French note reacting to Lord Curzon's proposed response to Italy is quoted from.

229 See, LM, paras. 5.205-5.208.

230 See, CC-M, para. 8.66.

*disparage Italy's territorial claims in the region, but this was no more significant than rather uninformed, backstairs gossip*²³¹.

- That France and Great Britain were in very different positions, on the ground, in 1919-1921: as to France:

"... elle occupait effectivement l'intégralité de la zone d'influence que lui avait reconnue les accords franco-britanniques de 1899 et 1919²³²,"

as to Great Britain, its side of the line remained merely a zone of influence, which the British had no difficulty, in respect to part of Cyrenaica, "pour s'effacer au profit de l'Italie"; as a result:

"Ce qui demeurait pour les Britanniques une simple zone d'influence était devenu pour les Français une possession coloniale 'à part entière'²³³."

*Comment: On the factual plane, the intentions of the British and French concerning the territories lying north of approximately 15°N latitude were certainly different; but the French were far from having effectively occupied the whole of the area up to the 1919 line. They had withdrawn from Tibesti in 1916, not to return until 1929-1930; neither by 1919 nor by 1924 had French military forces established installations north of the strict southeast line described in Article 3 of the 1899 Declaration (Map LR 22)²³⁴. Both to the north and south of that line the French forces were engaged in a continual series of battles with the indigenous Senoussi peoples between 1914 and the 1930s, as depicted on Map LR 23²³⁵, which covers these events through 1927. So French *effectivités*, a prime requisite of which is *peaceful* occupation, had not been established by France in any of the borderlands by 1919-1921, not even up to a strict southeast line, let alone up to the 1919*

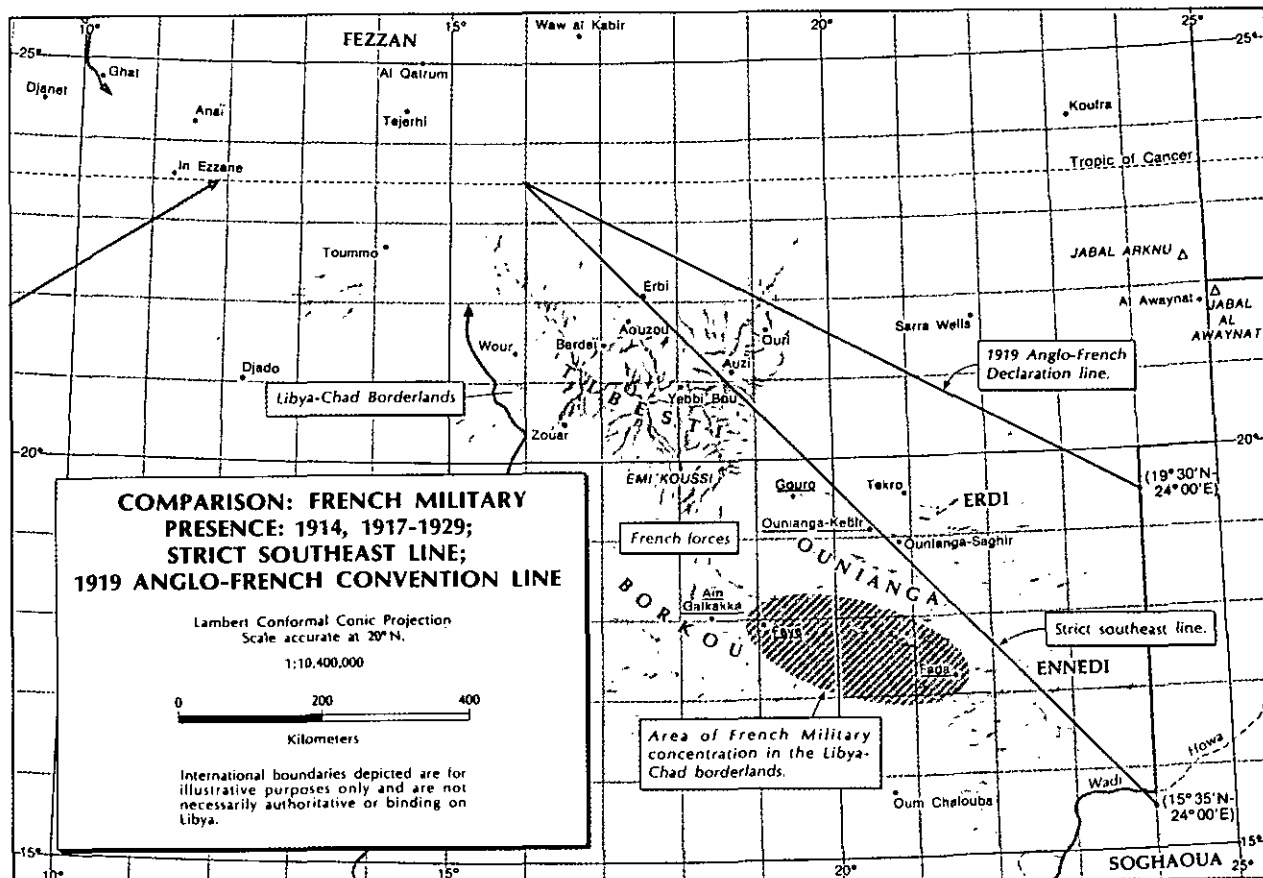
231 These notes are mentioned and quoted in LC-M, para. 4.190, pointing out that some of the notes were full of mistakes, such as that there had been no Ottoman protests to the 1899 Declaration, when indeed there had been. See, LM, para. 4.190.

232 CC-M, para. 8.71. This is an important admission by Chad that the 1919 Convention, just like the 1899 Declaration, did not involve the recognition of any more than a zone of influence.

233 CC-M, para. 8.71. The words quoted are taken from the Barrère note referred to above.

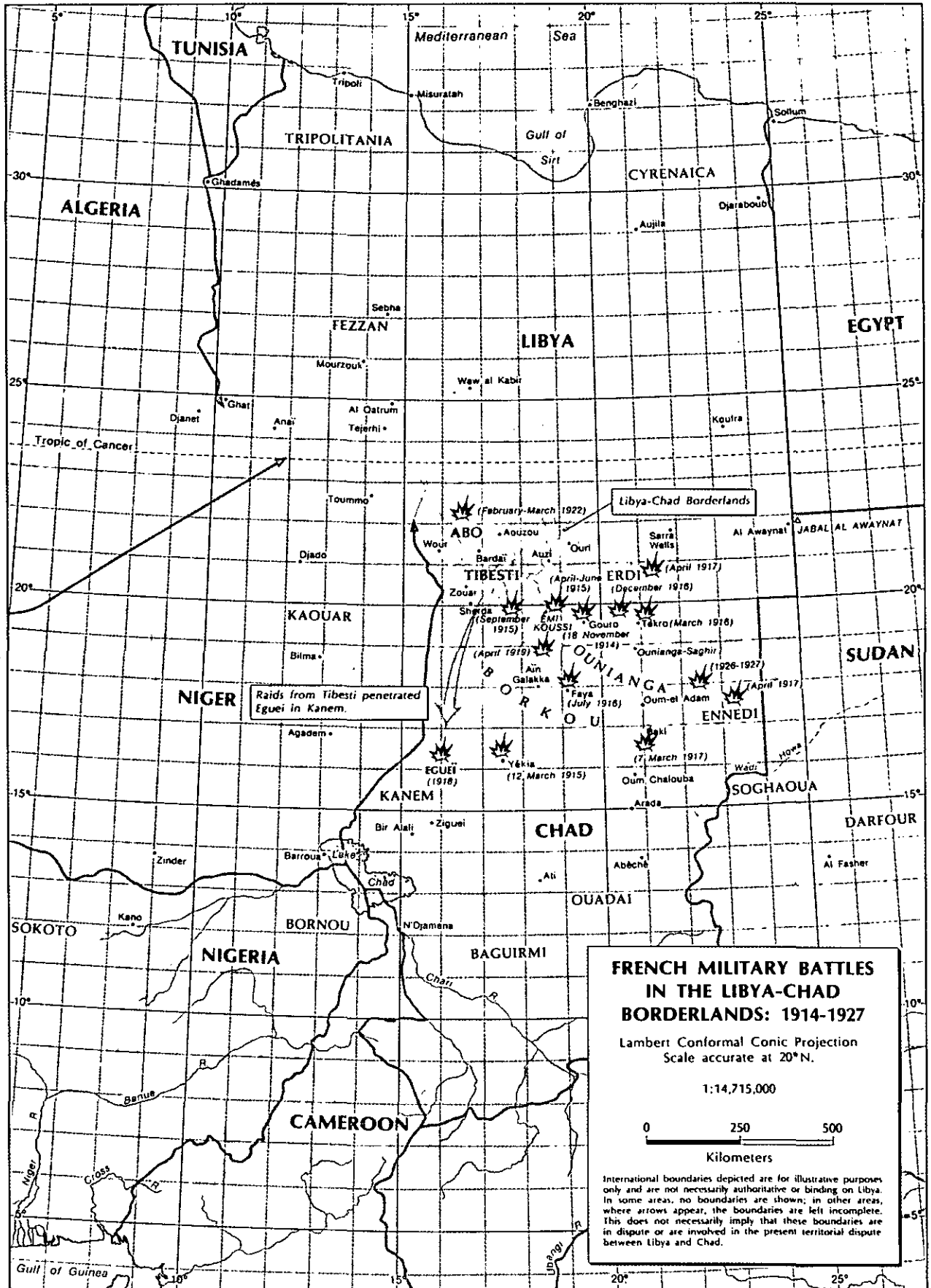
234 A similar map appeared as Map LC-M 45, referred to in the LC-M at para. 5.43, where it illustrated the situation on the ground in 1914 according to the Histoire Militaire de l'Afrique Equatoriale Française. Map LR 22 describes the situation on the ground between 1917 and 1929, as well, so these dates have been added to the map.

235 This map appeared as Map LC-M 48, referred to in LC-M, para. 5.60.



Specially prepared for presentation to the International Court of Justice.

Note: Map reflects only A.E.F. military activity. A.O.F. occupied Zouar in December 1913 and Bardai in 1914, abandoning both posts in August 1916.



*line. The situation on the ground has been described in detail in the LM and LC-M, revealing the lack of French *effectivités* now claimed by Chad²³⁶. On the legal plane, Chad makes no attempt to explain how a territorial boundary can emerge from a treaty where one party denies that this was the treaty's intent.*

6.191 The CC-M suggests that, on the legal plane, the British and French positions were different vis-à-vis Italy because in the 1900-1902 Accords Italy had recognized a French zone of influence up to the Tripolitanian frontier indicated on the famous map (the wavy, dashed line indicating the notional frontier of Tripolitania), whereas the 1902 Anglo-Italian Accord had not had the same effect. Of course, such a conclusion is based on the misreading of the first paragraph of the 1902 Franco-Italian Accord (substituting "sous-mentionées" for "susmentionées") demonstrated above²³⁷. Italy never recognised any French zone of influence in North Africa in 1902 (or in 1912) except in respect to Morocco.

6.192 As for the comment that Great Britain had exercised care not to affect French rights in its negotiations in 1934 with Italy concerning the Sarra Triangle²³⁸, the real point is that the British took pains not to affect the position of either France or Italy in the negotiations that had been going on between France and Italy for over five years. The French Government's considerable anxiety over these negotiations between Great Britain and Italy related to two matters: (i) not to put in issue the "interpretation" of the 1899 Declaration contained in the final paragraph of the 1919 Convention - this concerned the end point of the Article 3 southeast line, which had been shifted north by 4° of latitude to 19°30'N; and (ii) to refrain from relying on arguments of a geographical, economic, political or historical nature that might strengthen Italian claims in the area. Italy was anxious not to acknowledge the 19°30'N latitude end point of the 1899-1919 line, since it had consistently maintained in its diplomatic protests that the 1899 line, as shown on official Italian maps, was a strict southeast line and that the 1919 Convention modified that line to Italy's possible disadvantage.

236 See, LM, para. 4.173, et seq.; LC-M, para. 5.35, et seq. See, also para. 8.05, below, and Map LR 28.

237 See, paras. 6.50 and 6.66, above.

238 See, CC-M, para. 8.74. See, also, LM, paras. 5.294-5.298 and 5.302.

6.193 In the event, the British accommodated both France and Italy. In respect to Italy, the 1934 agreement over the Sarra triangle (Map LR 24) fixed no southern terminal point for the Libya-Sudan frontier, only referring vaguely to "its junction with the frontier of French possessions", and omitted any reference to the 1919 Convention (Map LR 24)²³⁹. France's anxiety over these Anglo-Italian negotiations, to which it was not a party, reflected the insecurity of its position vis-à-vis Italy, which had rejected the 1919 "interpretation", and its awareness that the British had a very different view from the French as to the meaning and effect of the 1919 Convention.

(c) **The Contention that Italy Had No Right to Protest the 1919 Convention**

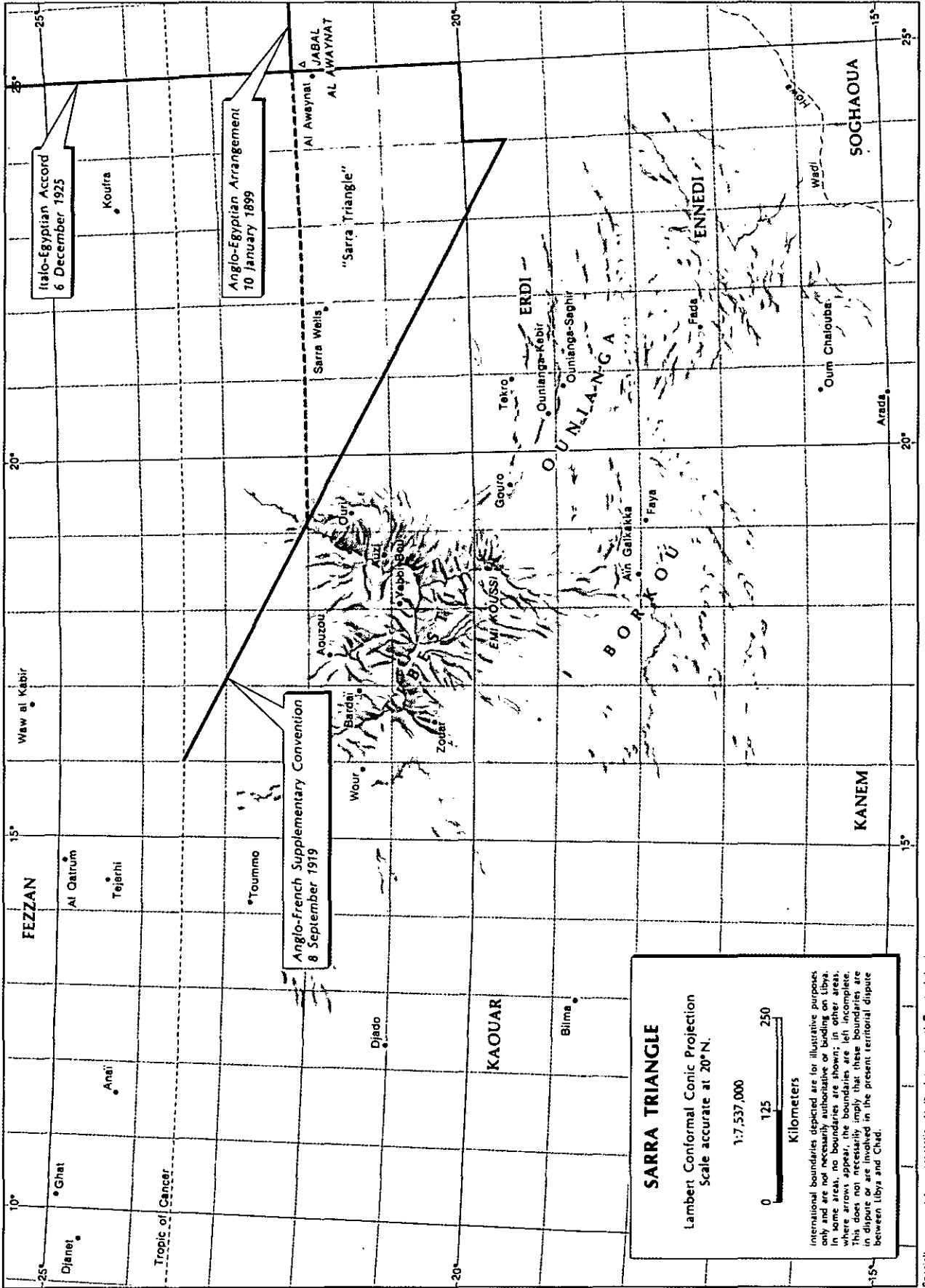
6.194 As originally formulated by the French Government in its responses to the Italian protests to the 1919 Convention, the quite astonishing argument that Italy had no right to protest the Convention was based on the assumption that in the 1900-1902 Accords Italy had forfeited any rights, outside the specific limits of Tripolitania shown on the famous Livre jaune map, based on its heritage from the Ottoman Empire²⁴⁰. The CM follows this line of argument²⁴¹.

6.195 The CC-M, however, has turned the argument around, perhaps realising its weakness. For how could Italy forfeit something it had no right to in the first place? Chad now argues that, in the first paragraph of the 1902 Accord, Italy recognized France's zone of influence outside the wavy, dashed line, which Chad claims was shown as the Tripolitanian boundary on the map a recognition reaffirmed in the 1912 Agreement, which referred to the 1902 Accord. It has been shown above how completely wrong this line of argument is:

239 See, LM, paras. 5.295-5.299 and 5.302. Map LR 24 appears in the LM as Map No. 82 referred to in para. 5.286. On the map, the boundary with Sudan is shown stopping at its juncture with the 1919 line at 19° 30'N. This is only because the map was prepared to illustrate the "Sarra triangle"; the 1934 agreement specified no such end point.

240 See, LM, para. 5.209.

241 See, e.g., CM, p. 191, para. 186.



Specially prepared for presentation to the International Court of Justice.

- It is based on a misreading of the first paragraph of the 1902 Accord²⁴²; for the only French zone of influence recognised there by Italy concerned Morocco;
- It is based on a distortion of the Livre jaune map, which did not define the wavy, dashed line as a conventional boundary encircling Tripolitania; it was only a notional frontier.

These points have been adequately elaborated on elsewhere in this Reply.

(d) **The "Mock War" Between the Italian Ministry of Foreign Affairs and Ministry of Colonies**

6.196 The CC-M has devoted so much attention to inventing this "mock war" that it calls for some comment in Libya's Reply. Since to do so requires a close look at the relevant documents (what the CC-M calls "un examen minutieux"²⁴³), Libya has prepared a detailed analysis of this matter, which appears in Volume 2 as Supplementary Annex, No. 5, where the Italian documents (in translation either into English or French) appear alongside the commentary.

6.197 What this analysis shows is the following:

- The initial diplomatic protests of Italy in 1921 and 1922, prepared by the Ministry of Colonies, had followed a line of argument based on the strict southeast line described in Article 3 of the 1899 Declaration and its modification to Italy's potential disadvantage by the 1919 Convention;
- These initial diplomatic notes had not relied on Italy's Ottoman heritage or on the fact that the 1900-1902 Accords were not concerned at all with this southeast line; as a result the Minister of Foreign Affairs took the position in 1924 that it was too late to bring in these other arguments (which the Ministry of Colonies had neglected to rely on earlier);

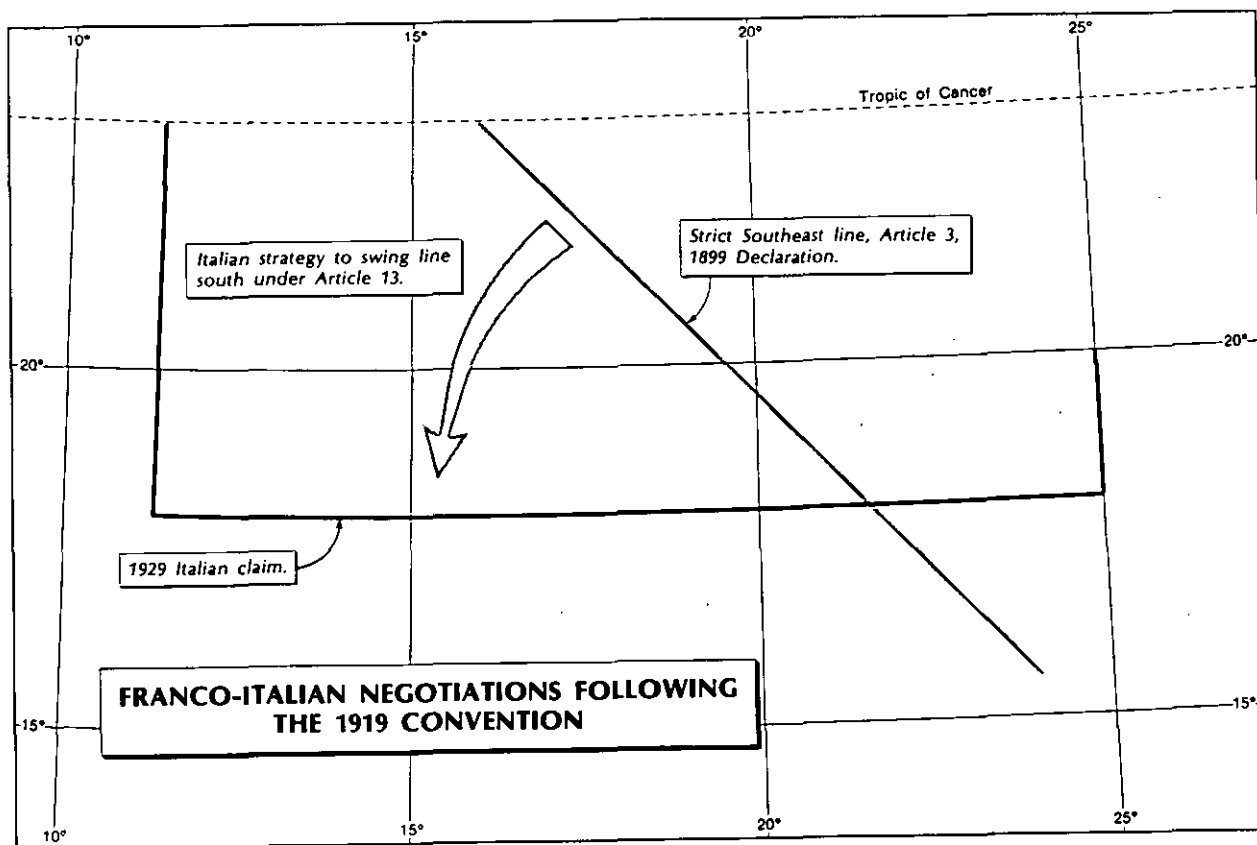
242 See, paras. 6.50 and 6.66, above; by substituting "sousmentionées" for "susmentionées".

243 CC-M, para. 7.37.

- However, the discussions were taking place at several, quite separate levels: diplomatic protests against the 1919 Convention; diplomatic protests against French troops establishing posts north of a strict southeast line; and the boundary negotiations, which started in 1928, beginning with the French offer to Italy of the Djado salient, followed by the 1929 claim tabled by Mussolini;
- The negotiating strategy adopted by Italy - with the full agreement of the Ministries of Foreign Affairs and Colonies - was to rely on the agreements entered into between France and Italy, which France could not dispute, rather than on the Ottoman claims, which France was certain to contest; this was a practical decision as to how to get the best results in the negotiations;
- The agreements in question were the 1900-1902 Accords (the 1912 Agreement was never mentioned) and Article 13 of the 1915 Treaty of London;
- Italy's aim was to start with the 1899 strict southeast line; to claim that, in the 1902 Accord, France was bound in respect to Italy not to exceed that line; then, invoking Article 13, to swing the northeast end of the line southward to 18°N to accord with the 1929 claim tabled by Mussolini (Map LR 25).

6.198 The CC-M is largely correct in its statement at paragraph 7.41 that Italy relied on the 1899 and 1902 agreements and on Article 13 of the 1915 Treaty of London. But this was its negotiating strategy - to rely on agreements which France could not contest rather than to engage in a long discussion about Ottoman rights and titles, which was sure to provoke a strong French reaction.

6.199 Italy neither abandoned nor waived any of these rights; it simply chose not to put them on the negotiating table. And there could be no question of Italy (and even less Libya) being estopped at a later stage from invoking these claims based on succession to the Ottoman Empire. No rule of law requires a party to negotiations to disclose or invoke all its legal arguments. And



where those negotiations fail, as they did in this case, there is no prejudice to the other party that might form the basis of an estoppel argument. Moreover, at the time of making his 1929 proposal, Mussolini made it perfectly clear to French Ambassador Beaumarchais that Italy could base its claims on its Ottoman heritage. In the 1934 negotiations with Great Britain over the Sarra triangle, Italy again referred to its Ottoman rights. British Foreign Office memoranda acknowledged that Italian rights in the area derived from Ottoman rights and titles, to the extent that they could be established. On the basis of rather limited information, the British Foreign Office may have had rather sceptical views as to the merits of those Ottoman rights inherited by Italy, but this is of no relevance to the present dispute. Finally, official Italian maps make clear Italy's reliance on its Ottoman inheritance²⁴⁴. But when it came to how to negotiate with France, Italy decided not to play the Ottoman card, but rather to invoke the various agreements signed by France, in particular Article 13 of the 1915 Treaty of London.

6.200 Italy's decision as to how to express its diplomatic protests and how to negotiate its claim to the hinterland of Tripolitania, with France are of interest, but not binding on Libya. If Italy made mistakes in its legal analysis, Libya did not inherit these mistakes any more than Chad has inherited France's mistakes, although Chad has chosen to adopt most of them. Article 3 of the 1955 Treaty established the standard for the recognition of any southern Libyan boundary: "actes internationaux en vigueur" on the critical date - not the welter of diplomatic notes and internal memoranda of the Italian and French Governments, knowledge of which neither negotiating team had in 1955.

6.201 It is apparent from the evidence analysed in detail in Supplementary Annex, No. 5, that there was no "mock war" between the two Italian Ministries. If there was any disagreement initially, it was over the way the Ministry of Colonies had prepared the diplomatic protests in 1921 and 1922, having been overly conservative.

(e) 1930 Italian School Map Atlas Incident

6.202 This incident, discussed and illustrated in the LM²⁴⁵, has been totally ignored in Chad's pleading to date and in Chad's Map Atlas. The

244 See, Maps LR 16A-1 and 16A-2, referred to at para. 6.112, above.

245 See, LM, paras. 5.278-5.279 and Maps Nos. 78 and 79.

episode is taken up again in Supplementary Annex, No. 5.10, found in Volume 2 hereto, with reference to English translations of the relevant documents, all of which were furnished as Exhibits to the LM. The original colour version of the map that provoked this incident has been located in the Italian archives and appears here (Map LR 16E).

6.203 It is interesting to examine this map. The conventional boundary of Libya on the west stops at Toummo; east of there to the Sudan boundary no north/south boundary is shown. This conformed to all other official Italian maps issued prior thereto: no official Italian maps, of which Libya is aware, up until 1935, showed a southern Libyan boundary east of Toummo. The Italian School Atlas Map does not show a boundary in that region, but the area of Libya coloured yellow-green, identified in the map's legend as an Italian possession, extends well south of Tibesti, the southeast corner reaching approximately 15°N latitude, and enveloping most of the Libya-Chad borderlands. In fact, the southern reach of the yellow-green area bears a close resemblance to Libya's claim in this case (Map LR 1 referred to at paragraph 1.29 above). The area bears an even closer resemblance to the modified Ottoman proposal made by the vilayet of Tripoli in 1911 (also shown on Map LR 1). The area covered extended well south of a strict southeast line under Article 3 of the 1899 Declaration and could only have been based on Italy's Ottoman heritage. It was this southern extension of the yellow-green area that the French Embassy in Rome spotted and protested in its Aide-Memoire dated 12 December 1930:

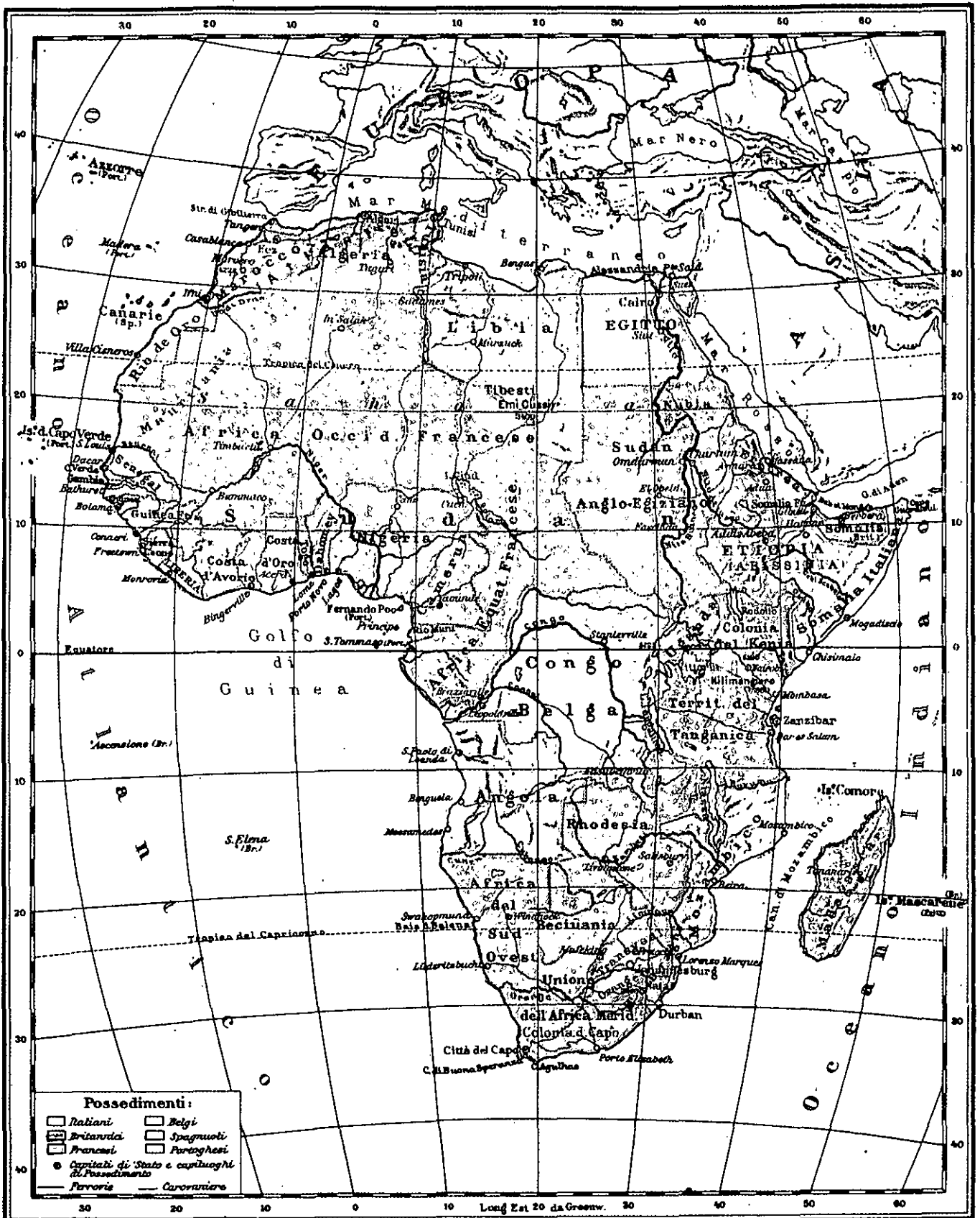
"Si une ligne très nette de démarcation ne sépare les territoires français et italiens que jusqu'à Toummo, l'identité de couleur entre la Libye et les territoires à l'Est et au Sud-Est de Toummo, qualifiés: Tibesti, tend à faire croire que cette dernière région est comprise dans la zone italienne²⁴⁶."

6.204 What then occurred, after the formal French protest was received by the Italian Foreign Ministry, was the following:

- The Foreign Ministry informed the Ministry of Colonies that since the frontiers in the area had not been internationally defined, it would have been preferable to follow the solution adopted on other official Italian maps: to leave in white

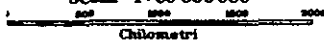
246 See, Supplementary Annex, No. 5.10.

AFRICA



PROPRIETÀ ARTISTICO-LETTERARIA

Scala - 1 : 50 000 000



Chilometri

Disegno, incisione e stampa: S. A. PROF. G. DE AGOSTINI - MILANO

(rather than coloured yellow-green) the area where sovereignty had not yet been defined;

- The Ministry of Colonies replied, indicating it was in full agreement;
- Instructions were then issued to the Ministry of National Education to modify the map atlas accordingly²⁴⁷;
- Libya has seen no evidence of any French protest to the revised map, which showed no southern Libyan boundary.

6.205 This incident is of particular significance for it occurred in the middle of the Franco-Italian boundary negotiations that culminated in the 1935 boundary settlement. The official Italian view was that there was no conventional southern boundary of Libya east of Toummo. This is what all the Italian maps showed. This is also what the French Government formally advised the French Parliament in the Exposé des motifs accompanying the law authorising ratification of the 1935 Treaty. The incident reveals, as well, that the two Italian Ministries were working in complete harmony: there was no war between them, as Chad attempts to show.

(f) **The Consistency of Italian Conduct in Protesting and Rejecting the 1919 Convention and in Protesting French Military Incursions North of a Strict Southeast Line**

6.206 Chad concedes that Italy repeatedly protested ("at least five diplomatic notes") over a long period (between 1921 and 1934) the 1919 Convention and the subsequent 1924 demarcation²⁴⁸. Chad also concedes that Italy protested French military incursions north of a strict southeast line²⁴⁹. These protests were first made when French forces moved in to occupy Tibesti in 1930²⁵⁰. In 1933, Italy protested France's move northward to occupy for the first

247 Libya has not been able to locate the coloured map in the Italian School Map Atlas as altered according to those instructions.

248 See, CC-M, para. 7.40.

249 See, e.g., CC-M, para. 7.44.

250 See, LM, para. 5.269, et seq.; LC-M, para. 5.78.

time the key oasis of Tekro on the trade route from Benghazi to Ouadaï. Italy's conduct in this respect will again be examined below in Chapter IX.

(g) **French Conduct During the Period Revealing the French Government's Awareness that there Was No Conventional Libyan Boundary East of Toummo**

6.207 It is only necessary to list here the elements of French conduct showing that the French Government knew very well that there was no conventional boundary east of Toummo:

- The very fact that from 1928 to 1935 negotiations were actively underway between Italy and France to delimit Libya's southern boundary;
- French studies in 1928 (the studies of General Serrigny and of M. Saint, Resident General in Tunisia) that envisaged large territorial concessions being made to Italy south of Fezzan and Cyrenaica, to include all of Tibesti and areas even further south²⁵¹;
- The terms of the draft treaty accompanying the 1928 proposal offering Italy the Djado salient²⁵²;
- Certain internal dispatches of Ambassador Beaumarchais²⁵³;
- French insecurity demonstrated during the Anglo-Italian negotiations in 1934²⁵⁴;
- The 1935 Exposé des motifs of the French Government²⁵⁵.

French conduct pre-1945 is again examined in Chapter IX below.

251 See, LM, para. 5.258, et seq.

252 See, LM, para. 5.260, et seq.

253 See, LM, para. 5.262, et seq.

254 See, para. 6.193, above.

255 See, para. 6.215, below.

SECTION 11. The 1935 Franco-Italian Settlement

(a) Introduction

6.208 The CC-M contains some remarkable pages concerning the 1935 Franco-Italian Agreements - even more remarkable for what they do not say than for what they say! It would appear that Chad prefers to slide past the essence of the arguments concerning the 1935 Treaty of Rome presented by Libya in its Memorial (and developed further in its Counter-Memorial) and instead to linger over certain aspects of distinctly minor importance.

6.209 Chad is wrong if it believes that by dodging the real issues they can be made to disappear. It will be recalled what Libya has pointed out in its earlier pleadings about the central role played by the 1935 Treaty in the present dispute - and in spite of the fact that the most important instrument comprising the 1935 Agreements, the "African" Treaty (referred to generally as the 1935 Treaty), never formally entered into force, as both Parties concede. But the tactics adopted in Chad's pleadings of burying the head in the sand like an ostrich, at least reduces the number of pages required for rebuttal. In fact, it is Libya's view that the boundary agreed between Italy and France should be the starting point of Chad's claim, not the 1919 line.

6.210 In view of the failure to exchange ratifications, the 1935 Treaty never achieved the status of a treaty which, in the words of Article 26 of the Vienna Convention on the Law of Treaties, "is binding upon the parties to it and must be performed by them in good faith". This is a settled point. Another point - on which both Libya and Chad are also fully agreed - is that, in spite of this, the 1935 Treaty, as well as the negotiations leading up to it, and the debates that ensued, are among the essential elements of the conduct of Italy and France on the international plane. For such conduct reveals: (i) the intention of the parties to the 1935 Treaty; (ii) the problems that they sought to settle; and (iii) the status of the boundaries between their colonial possessions that existed in 1935, which they sought to modify or resolve.

6.211 It is on the basis of these premises that Libya has pointed out three things in its earlier pleadings:

- In 1935, Italy and France had explicitly recognised in public, formal declarations that no conventional boundary had

previously been fixed between their respective territories east of Toummo. Thus, the line provided for in Article 2 of the 1935 Treaty delimited for the first time this boundary and did not constitute the rectification of a pre-existing boundary. Since the Treaty of Rome never entered into force, it follows that the pre-existing situation of no delimited boundary survived unmodified;

- In 1935, Italy and France explicitly recognised in public, formal declarations that the Treaty did not concern a cession of French territories to Italy, but rather the recognition of the ownership by Italy of the territories situated to the north of the new boundary;

- In 1935, Italy and France explicitly recognised in public, formal declarations that the 1935 Treaty, had it entered into force, would have finally discharged France of the obligation, set out in Article 13 of the 1915 Treaty of London, to resolve in Italy's favour the question pending between the two Powers over the southern boundary of Libya. It follows, therefore, that since the Treaty never entered into force, the obligation in question was not discharged by France. Accordingly, it must be taken into account today in order to put an end to the present territorial dispute sub judice.

Each of these three points will now be touched on. It will be shown at the same time that Chad's Counter-Memorial presents no challenge to the validity of these premises.

(b) Recognition of the Absence of Any Conventional Boundary

6.212 In the LM and LC-M it was shown that the text of the 1935 Treaty, its context and the travaux préparatoires demonstrate beyond any doubt that no boundary had been established east of Toummo before 1935 and that France (like Italy) had explicitly and publicly so recognised.

6.213 Dealing first with the text of the 1935 Treaty, it is sufficient to recall here that Article 2 of the 1935 Treaty, relating to Libya, speaks of the

"détermination" of the boundary east of Toummo, specifically identified as the "point terminal de la ligne fixée par l'Accord de Paris du 12 septembre 1919" (emphasis added). In other words, the text makes clear that the matter in hand was to determine (or fix) for the very first time the boundary line in a region to which the line fixé (or determined) in the 1919 delimitation, also for the first time, did not extend. The precise legal significance of this choice of terms becomes even more apparent if Article 2 is compared with Article 4 of the same Treaty, which talks of the "substitution" of a boundary for the previously established boundary between other Italian and French colonial territories (Eritrea and the Somali Coast).

6.214 As to the context of the 1935 Treaty, Libya has emphasised the very special importance of the official press communiqué in which France and Italy explained internationally that the Treaty had brought about a "rectification" of the boundary between Eritrea and the Somali Coast, while in the case of Article 2 (which concerned Libya) the question was to "déterminer" the boundary line beyond the "point final" of the course of the boundary fixed in 1919²⁵⁶.

6.215 Finally, the French parliamentary travaux furnish the clearest sort of confirmation that there was no pre-existing boundary. The French Government, in the Exposé des motifs accompanying the draft law to authorise ratification of the 1935 Treaty, assured the Parliament that the Treaty would put an end to the awkward situation of "absence de frontières" in the region, and even explained that this absence resulted from the fact that "(l)'arrangement du 12 septembre 1919 laissait l'Italie et la France sans frontière conventionnelle à l'est de Tummo"²⁵⁷.

6.216 How does Chad's Counter-Memorial attempt to deal with these documents of apparent overwhelming probative force? It tries to avoid them. The CC-M just ignores the several acknowledgements of no pre-existing boundary contained in the negotiated texts (the Treaty and the press communiqué), as well as in the unequivocal declaration of the French Government to the Parliament (the Exposé des motifs). All that can be found in the CC-M is the peremptory remark that Libya in its assertions concerning the recognition by France of the absence of a boundary "fausse la réalité juridique et

256 See, LM, para. 5.327.

257 LM, para. 5.336, et seq.

factuelle"²⁵⁸. No more than that; except that the CC-M gives the impression that the Libyan analysis was based exclusively on some off-hand suggestions contained in an unsigned "note interne du Quai d'Orsay"²⁵⁹. The formal statement of the French Government in the Exposé des motifs is simply ignored! There is enough here to raise the question who is the "faussaire": is it Libya, which cites numerous official documents of both a unilateral and bilateral character, or is it Chad, which does all it can to conceal them?

(c) **Recognition of Italy's Title to the Territories to the North of the 1935 Line**

6.217 The text of the 1935 Treaty itself does not provide the clearest answer to the question whether in the delimitation carried out under Article 2 the parties felt that a cession of territory was involved or simply the recognition of ownership of the territories concerned. However, certain specific factors, appearing both in the context of the Treaty and in the travaux, establish the second hypothesis.

6.218 Here the decisive proof is the joint declaration, issued to the public by the two States, contained in the official press communiqué of 7 January 1935. In it the territories situated north of the line provided for in Article 2 are carefully described as "territoires ainsi reconnus comme appartenant à la Libye". This official declaration of the parties to the Treaty constitutes without any doubt an authentic interpretation of the Treaty, (ejus interpretare, cujus condere). It fits the definition of that fundamental element of the context referred to in Article 31(a)(2) of the Vienna Convention: "any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty".

6.219 As to the travaux préparatoires, it is not necessary to repeat the analysis already set out in the LM, particularly since Chad has made no attempt to deal with it in the CC-M²⁶⁰. This analysis shows that the solution adopted in Article 2 represented an important territorial sacrifice for Italy. Italy had accepted to give up its previous and much more extensive claims in order to obtain from France "les mains libres" in Italy's planned aggression against Ethiopia. In other words, for reasons having nothing to do with Libya, Italy was

258 CC-M, para. 9.48.

259 CC-M, para. 9.47.

260 See, LM, para. 5.303, et seq.; C-CM, para. 6.03, et seq.

willing to settle for French recognition of Italian ownership of territory south of Tripolitania, Cyrenaica and Fezzan that was minuscule in comparison with the territory to which Italy believed it had a legitimate claim.

6.220 Thus, under the 1935 Treaty, France did not cede to Italy a portion of French territory; it recognised that the territory in question belonged to Italy. The evidence supporting these arguments is indisputable. No doubt this explains why Chad has failed to find any better way to rebut Libya's arguments than just to ignore them. Chad also ignores how the United Kingdom, very well informed on, and extremely interested in, the ups and downs of Libya's territorial claims, had interpreted the situation, as the LM set forth. The documentary evidence produced by Libya reveals that the United Kingdom also believed that, by the 1935 Treaty, "... France has now definitely recognised as Italian territory the ownership of which had not been previously determined²⁶¹".

6.221 The CC-M attempts a diversionary tactic in the face of this evidence. The CC-M spins out a theory around a certain number of Italian and French documents (most of them internal) in which, in the context of proceeding to implement Article 2 of the 1935 Treaty, references are made to a "cession" of territory by France to Italy. According to Chad, this language implied the recognition by both France and Italy that the Treaty was aimed at transferring to Italy territory that was French, a transfer that could not ultimately be carried out since the Treaty never entered into force²⁶².

6.222 The first observation to make about this theory is that in no event could the documents cited prevail over such a document as the joint declaration of 7 January 1935, a document prepared and signed by both parties to the Treaty and expressing their mutual intent. But, in addition, the LC-M has fully explained why such documents talk of a "cession". It is because, at the time of signature of the 1935 Treaty, Italy was well aware that French forces had established positions - contrary to law in Italy's view - in certain locations situated in the area claimed by Italy, both north and south of the boundary line that was to be set out in Article 2 of the Treaty. Moreover, Italy had sent to the French Government a number of very firm notes of protest in this regard, pointing out the unlawful nature of the presence of French forces in these regions. Thus, had

261 LM, para. 5.341.

262 CC-M, para. 9.50, *et seq.*

the Treaty entered into force, its implementation on the French side would have involved the withdrawal of French troops from the scattered locations where they had established posts within the territory recognized as belonging to Italy. The French departure would have meant handing over these locations to the Italian army.

6.223 It is thus not surprising that both Parties talked of a "cession" in referring to the arrangements that they envisaged carrying out. It was a handy term that appropriately described what was going to occur concretely on the ground. In other words, the fact that both Parties had talked of a "cession" had no implications for the identification of the legal titles over the territory in question; it related to the practical measures required to implement the Italian take-over. As a result of this so-called "cession", Italy finally could exert its sovereignty over this territory, in accordance with the legal titles which it had inherited from the Ottoman Empire and which France had finally recognised, albeit over only a small part of the territory to which Italy and the Ottoman Empire had laid claim in the past.

(d) **The Influence on the Settlement of the Present Dispute of France's Obligations to Italy under Article 13 of the 1915 Treaty of London**

6.224 Both Libya and Chad have indicated their agreement that the 1935 Treaty of Rome would have completely released France from the obligations it had assumed in 1915: to grant Italy "equitable compensation" in the form of settling questions concerning the boundaries between their colonial territories in favour of Italy²⁶³. Since the 1935 Treaty did not enter into force, the obligation in question was never extinguished.

6.225 For Chad, the fact that the 1935 Treaty was unquestionably linked to the 1915 Treaty of London means that the 1935 Treaty concerned a "cession" of territory. Chad's reasoning is as follows: if France owed "compensation" to Italy, and if the Treaty of Rome granted such "compensation", this necessarily meant that, in the 1935 Treaty, France had ceded French territories to Italy.

6.226 Unfortunately, this syllogism, while logical in appearance, is fundamentally defective. "Compensation" cannot be assimilated to "cession de

263 Article 13 of the 1915 Treaty of London.

territoires", as the LM and the LC-M, have fully explained²⁶⁴. Given the fact that, in its Counter-Memorial, Chad has chosen not to comment on Libya's explanations, let alone criticise them, only a short résumé of the essential elements of this explanation is necessary.

6.227 According to the tenor of Article 13, what France had to do to "compensate" Italy was to settle in Italy's favour "the questions relative to the frontiers of the Italian colonies" (which included Libya) and the neighbouring colonies of Great Britain and France. Certainly in doing so a cession of territory - as for example in the boundary substitution provided for in Article 4 of the 1935 Treaty in favour of Eritrea - might well be involved. But a cession of territory might also not be involved, as for example where no delimitation had been agreed upon previously. In such a case, France would have been obliged to take into account Italy's claims in order to arrive at a settlement in Italy's favour. Article 2 of the 1935 Treaty was directed at this type of situation, since it fixed for the first time the southern boundary of Libya in a way that would be in Italy's favour, at least as seen from the French standpoint. Of course, as has been pointed out in the LM and the LC-M, Italy was short-changed in this settlement of Libya's southern boundary: in reality the settlement was more in France's favour, but this was the price Italy was willing to pay in order to achieve its objectives in Ethiopia.

6.228 The 1935 Treaty never entered into force. And it must not be forgotten that Italy, in spite of France's insistence, refused to exchange ratifications precisely because the Treaty was so unfavourable to it from a territorial point of view and because Italy had not obtained from France the counter-part concerning Tunisia and Ethiopia it had taken for granted. Had the territorial settlements of the Treaty been advantageous to Italy it would have promptly exchanged ratifications and received the benefit of these "compensations" irrespective of the absence of a counter-part. At the end of the day, Italy did not receive the "compensations" to which it was entitled and the French debt remained unextinguished. It remains then to be seen to what extent it may be argued that the right of Italy to "compensation" was inherited by Libya at the time of its independence, and the corresponding French obligation was inherited by Chad.

6.229 The question comes down to whether, in the settlement of the territorial dispute now before the Court, Article 13 of the 1915 Agreement

264 See, LM, para. 5.152, et seq.; LC-M, para. 6.17.

should be taken into account. May Libya, as the successor to Italy's territorial rights, claim as against Chad, as successor to France, the equitable compensation due to Italy from France as part of the rights and titles of its inheritance?

6.230 The LC-M has carefully explained why, in Libya's view, the Court should answer in the positive this question. For Article 13 of the Treaty of London was for France and for Italy the source of the sort of "obligations and rights established by a treaty and relating to the regime of a boundary" that are not affected by State succession, under the relevant principles of international law as codified in Article 11 of the Vienna Convention on Succession of States in respect of Treaties²⁶⁵.

6.231 Chad has not yet had the opportunity to address this argument, which was not fully developed until the LC-M.

(e) Conclusion

6.232 What emerges from the arguments concerning the 1935 Treaty and related Accords set out in the LM and LC-M, and summarized above, and what Libya wishes to emphasise once more, is that the Treaty and Accords have an essential role to play in the settlement of the present dispute - in spite of the fact that the Treaty did not come into force for failure to exchange ratifications.

6.233 It is also apparent to Libya, after the exhaustive study necessary to prepare for these proceedings, that Libya was perfectly justified in invoking the 1935 Treaty in the past, both during the debates at the U.N. and the O.A.U. and in the several meetings with Chad at which the boundary question came up, in defending Libya's presence in part of the borderlands.

6.234 Chad is thus wrong to reproach Libya for what it terms the "extraordinaire contraste" between the role played by the 1935 Treaty in the position presently developed by Libya before the Court, and that taken before the O.A.U.²⁶⁶. Libya remains firmly convinced that its presence in the northern part of the borderlands is legally indisputable. In its statements to the U.N. and the O.A.U., Libya was defending this position, not advancing a territorial claim. Just

²⁶⁵ See, LC-M, para. 6.36, et seq.

²⁶⁶ See, CC-M, para. 1.49.

as Italy in the 1941 Armistice Commission discussions with France considered that the demilitarized zone being designated should be based on the 1935 line rather than the 1899-1919 line proposed by France, regardless of the fact that this boundary never took effect²⁶⁷, so Libya today considers that the starting point of Chad's claim should be the 1935 line. The 1935 Treaty was not "mort né", as Chad maintains. For over three years it was expected to be placed in effect. Italian and French maps were changed to show the 1935 line. It was only in December 1938 that it became clear that ratifications would not be exchanged. Furthermore, the Treaty had been overwhelmingly approved by the French and Italian Parliaments.

SECTION 12. Post-1935 Agreements and Events

6.235 When it became apparent in December 1938 that the boundary settlement reached between Italy and France would fall apart, the outbreak of World War II was less than a year away. As Libya's Counter-Memorial points out, between then and the critical date - 24 December 1951, the date of Libya's independence - nothing that took place on the ground did or could have affected the claims to title in the borderlands as they stood in 1935, just prior to the signing of the 1935 Treaty, and in 1938 when Italy announced that ratifications would not be exchanged²⁶⁸. It was also demonstrated in the LC-M that Chad's contentions that Italy had several times recognized France's sovereignty over the "bande d'Aouzou"²⁶⁹ - a term not invented until the 1970s -, built around such minor incidents as that occurring at the Jef-Jef Plateau in 1938, have no substance²⁷⁰.

6.236 The official Italian view that there was no conventional boundary east of Toummo was clearly set out on the maps issued by the Italian Ministries. The LC-M included official Italian maps of 1926 and 1939 showing no such boundary - the area east of Toummo to the Sudan border is left blank²⁷¹. In this Reply, a third Italian map, issued in 1941 by the Ministero Dell' Africa Italiana, has been included (Map LR 16C, referred to at paragraph 6.118 above).

267 See, LM, para. 5.360, et seq.; LC-M, para. 5.112, et seq.; and para. 6.238, et seq., below.

268 See, LC-M, para. 5.103, et seq.

269 This invalid contention is repeated in the CC-M at para. 9.73.

270 See, LC-M, para. 8.28, et seq.

271 See, Maps LC-M 52 and 54, referred to at LC-M, para. 8.33.

East of Toummo to the Sudan border is left blank - no boundary appears in the region of the borderlands. This was Italy's official position, as the 1930 Italian School Map Atlas incident brought out. No evidence of any French protest against these maps has been uncovered by Libya or submitted as evidence in this case. So much for Italy's alleged acquiescence in France's sovereignty over the area.

6.237 Chad has focussed on one incident during this post-1935 period and invented another fanciful scenario not unlike the "mock war" just discussed. This concerns the 1941 French-Italian Armistice Commission, which is discussed in both of Libya's prior pleadings²⁷².

(a) **1941 French-Italian Armistice Commission**

6.238 The CC-M challenges Libya's conclusion that in the course of the work of the Commission, Italy's representative General Grossi "left open the legal status of the 1935 line and clearly indicated that the delimitation of this boundary had yet to be accomplished²⁷³". Chad maintains that -

"Un examen fouillé de toute la documentation pertinente permet, au contraire, de démontrer qu'en substance l'affirmation libyenne est dénuée de fondement, car après avoir rejeté la thèse française, l'Italie finit par renoncer à la contester²⁷⁴."

6.239 It will be recalled that one task of the Commission was to create a demilitarized zone. The French argued that the starting point should be the 1919 line. The Italians (General Grossi) rejected this view, observing that Italy was not a signatory to the 1919 Convention, and suggested that the 1935 line, which both Italy and France had once agreed upon, made more sense, even if it was not technically a conventional boundary. It would seem that General Grossi's position was a very sensible one. However, the French were recalcitrant, and at the end of the day, the Italians said it did not matter much and, in any event, it was beyond the mandate of the Commission to deal with international boundary questions. So they put the issue aside.

272 See, CC-M, para. 9.75, et seq.; see, also, LM, paras. 5.360-5.361; LC-M, para. 5.112.

273 LM, para. 5.361.

274 CC-M, para. 9.76.

6.240 Chad arrives at a very different interpretation of the documents, which it examines at length in the CC-M. Chad takes the letter of General Grossi (President of the Italian Armistice Commission) to his French counterpart dated 12 March 1941²⁷⁵ and interprets it in this manner:

"Il découle clairement de la teneur de cette lettre que les Italiens voulaient imposer aux Français, par un acte de force, le tracé prévu en 1935, tout en reconnaissant que ce tracé ne liait pas juridiquement la France²⁷⁶."

The Court has only to read this letter to see what a remarkable interpretation this is. General Grossi's letter is correct and businesslike; there is not a hint of a threat of force²⁷⁷. Moreover, in quoting from the letter, the CC-M omits the key words from its opening paragraph:

"Le tracé de la frontière méridionale de la Lybie n'a effectivement pas encore été déterminé de commune entente avec l'Italie et la France."

Thus, General Grossi, in a mild, circumspect letter, informed his French counterpart that the Commission considered the 1935 Treaty to be the appropriate starting point for drawing up the demilitarised zone, for both France and Italy had agreed on this line, in contrast to the 1919 line, to which Italy had never agreed. General Grossi added:

"Ceci évidemment sans préjudice de la délimitation définitive de la frontière, question qui dépasse le compétence de cette Commission."

It would be difficult to argue with the logic of this position - and impossible to characterize it as a threat of force.

275 See, LM, French Archives Annex, p. 164; CC-M, Annex 85.

276 CC-M, para. 9.79.

277 It is a well-known fact that top military officers of opposing States serving on armistice commissions of this kind are normally punctiliously correct and courteous to each other. The documents produced by Chad here confirm that this was so in 1941.

6.241 The CC-M then takes its almost ludicrous scenario one step further:

"Il va sans dire que l'attitude arrogante des autorités italiennes non seulement déconcerta les Français, mais provoqua également une vive réaction²⁷⁸."

The documents produced by Chad reveal that between the 12 March letter of General Grossi and France's official reply on 14 May, there was utter confusion within the Vichy Government as to just what France's position was, all of which seems quite understandable given the circumstances of the war, with the French Ministries in Vichy not fully familiar with the file or with France's position during its pre-1935 negotiations with Italy. This all got straightened out in France's 14 May response.

6.242 In this letter, France adhered to its position fashioned in 1913-1914²⁷⁹ that the 1919 line should be the basis for the demilitarized zone because, in the absence of a bilateral treaty, the 1899-1919 Anglo-French arrangements were the only acts bearing on the question that had an international status. The letter went on to say that the line resulting from these acts was formally recognised as a valid boundary by Italy in the 1900-1902 Accords²⁸⁰. No doubt the Italians were stunned when they read the French argument that the line radically modified as to its direction and nature in 1919 could have been accepted by Italy in 1900-1902! But they were too courteous to say so.

6.243 Continuing its scenario, the CC-M then suggests that in the light of "l'âpreté et l'arrogance de la note italienne du 12 mars 1941" one would have expected "un rejet radical" by the Italian side; but instead the Italians caved in ("les Italiens préférèrent capituler"). What the Italian response of 14 July 1941 said was simply this:

- The question of Libya's southern boundary was beyond the competence of the Commission;

278 CC-M, para. 9.80.

279 See, para. 6.123, et seq., above.

280 See, CC-M, para. 9.87 and Annex 93.

- This question would find its place among the problems to be resolved between Italy and France in the peace treaty;
- The resolution of the question no longer had any practical importance and could be left unresolved²⁸¹.

6.244 From this, the CC-M concludes the following:

"L'Italie, face aux arguments juridiques précis avancés par la France, renonça à insister sur le tracé de 1935;

L'Italie ne contesta pas la valeur et le bien-fondé de la thèse française d'après laquelle seule comptait la frontière 1899-1919²⁸²."

6.245 The CC-M's analysis of this episode and of the related documents is truly laughable. A polite, reasonable letter from General Grossi is described as arrogant and as a threat to use force to shove down the throat of France the 1935 line. The period of French fumbling to formulate a reply is glossed over. Although it is not really relevant, it reveals the intense French insecurity as to its position concerning a southern boundary of Libya. Italy's reasonableness in the face of French intransigence is called a capitulation in the light of the probative force of France's legal arguments.

6.246 Italy's final letter of 14 July made the obvious point: the Commission was not the place to argue about boundaries. Since the matter had ceased to have any practical significance, the Italians chose to avoid getting into an acrimonious exchange with the French. The CC-M describes this as a position "à la Ponce Pilate²⁸³!"

6.247 Libya believes that the Armistice Commission episode illustrates, once again, Italy's official position that no conventional Libyan southern boundary existed at the time. Presumably, the Vichy Government of France had chosen to overlook the 1935 French Exposé des motifs, in which exactly the same conclusion was expressed.

281 CC-M, para. 9.88 and Annex 95.

282 CC-M, para. 9.89.

283 CC-M, para. 9.89.

(b) **1947 Italian Peace Treaty**

6.248 There are three subjects of particular relevance concerning the 1947 Treaty that have come up in the pleadings so far. First, in the light of the failure to exchange ratifications of the 1935 Treaty, the 1947 Treaty's effect, if any, on the remaining obligations of France to Italy under Article 13 of the 1915 Treaty of London, which were only partially discharged in the 1919 Franco-Italian Convention. Second, the French proposals to modify Libya's boundaries under the provisions of Article 23 and Annex XI of the Italian Peace Treaty. Third, the failure of France to notify under Article 44 of the 1947 Treaty certain treaties as remaining in force, and the effect of this failure.

(i) **The 1947 Treaty and Article 13 of the 1915 Treaty of London**

6.249 The CC-M has modified Chad's earlier position and now not only concedes that France had remaining obligations to Italy after the débat of the 1935 Treaty (as it had in the CM) but also admits that these obligations concerned Libya's southern boundary²⁸⁴. Chad maintains, however, without explaining why, that the 1947 Italian Peace Treaty extinguished the remaining obligations of France to Italy under Article 13²⁸⁵.

6.250 That such a conclusion is wrong has already been fully explained by Libya²⁸⁶. The fact that Italy in 1947 lost its rights in respect to Libyan territory did not alter the rules of State succession under which Libya, as Italy's successor in title, inherited Italy's rights, which included the unfulfilled French obligations under Article 13.

(ii) **French Proposals to Modify Libya's Alleged Boundaries under Article 23 and Annex XI of the 1947 Treaty**

6.251 It has been mentioned in Libya's Memorial that in 1948 France made a proposal for an extensive revision in what France professed to regard as Libya's western and southern boundaries²⁸⁷. This is illustrated on Map LR 26. In fact, the French military had already drawn up a rectification proposal

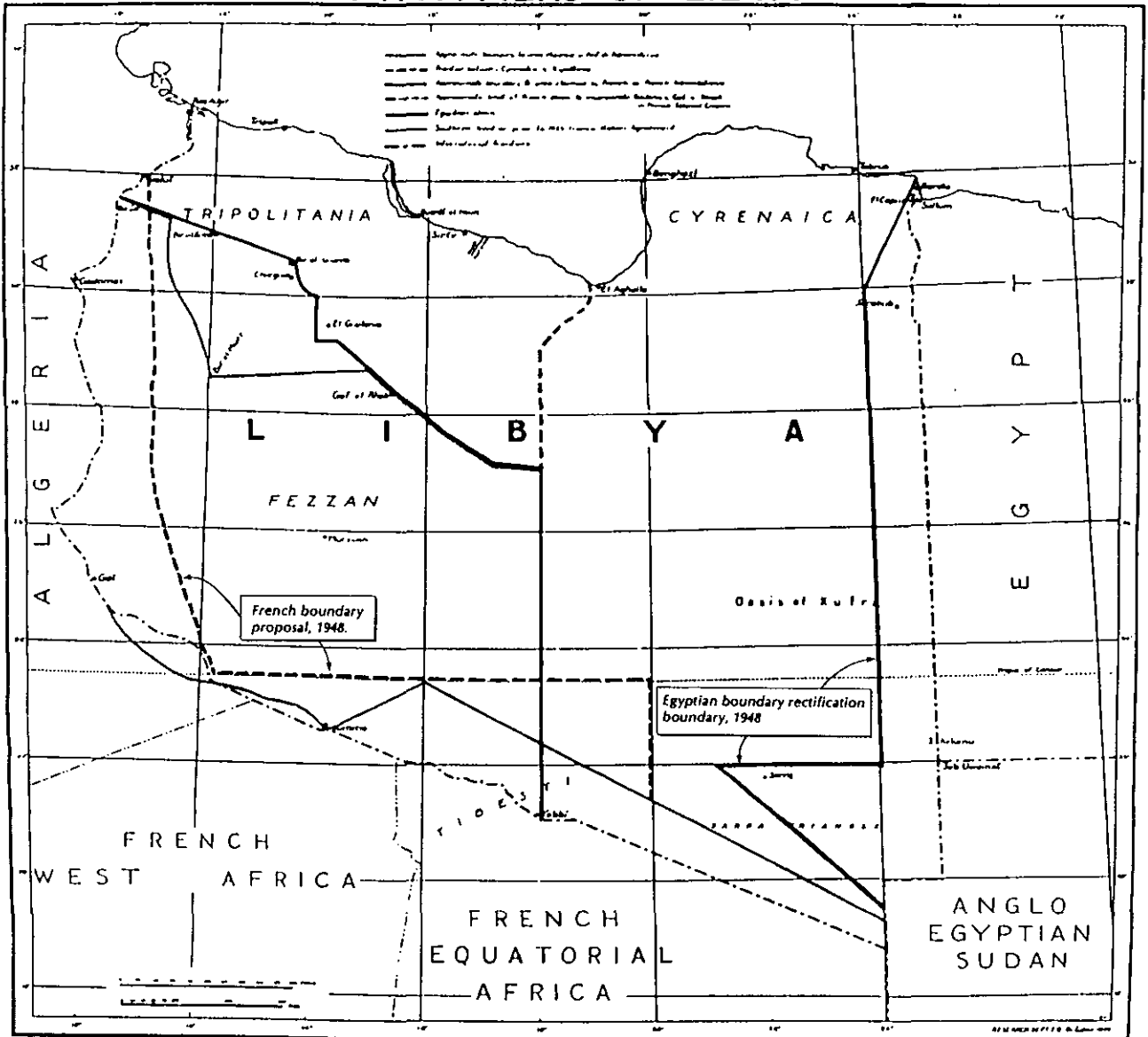
284 See, para. 6.169, et seq., above.

285 See, CM, p. 202, para. 232; the same contention is hinted at in CC-M, para. 8.51.

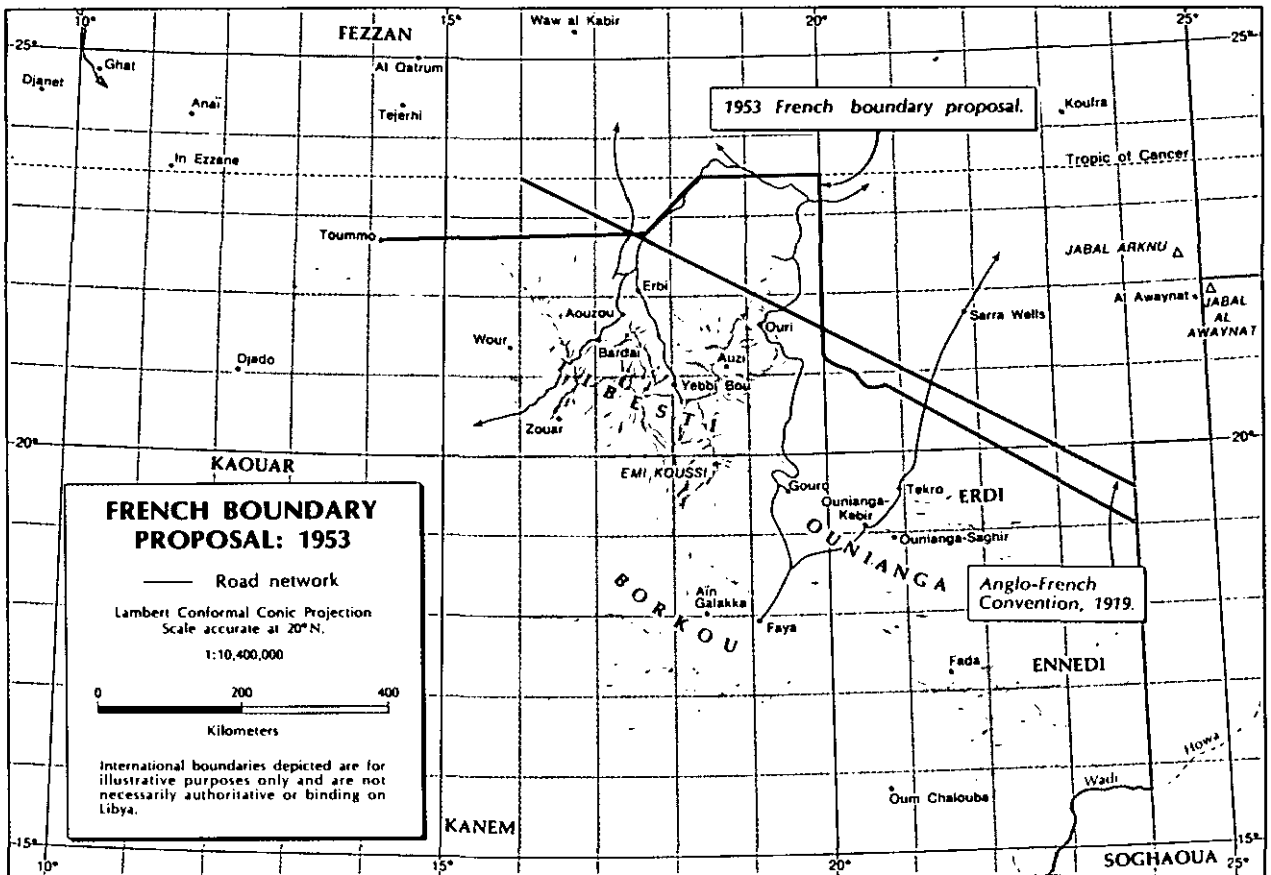
286 See, para. 6.174, above, and LC-M, para. 6.36, et seq.

287 See, LM, para. 5.365, et seq.

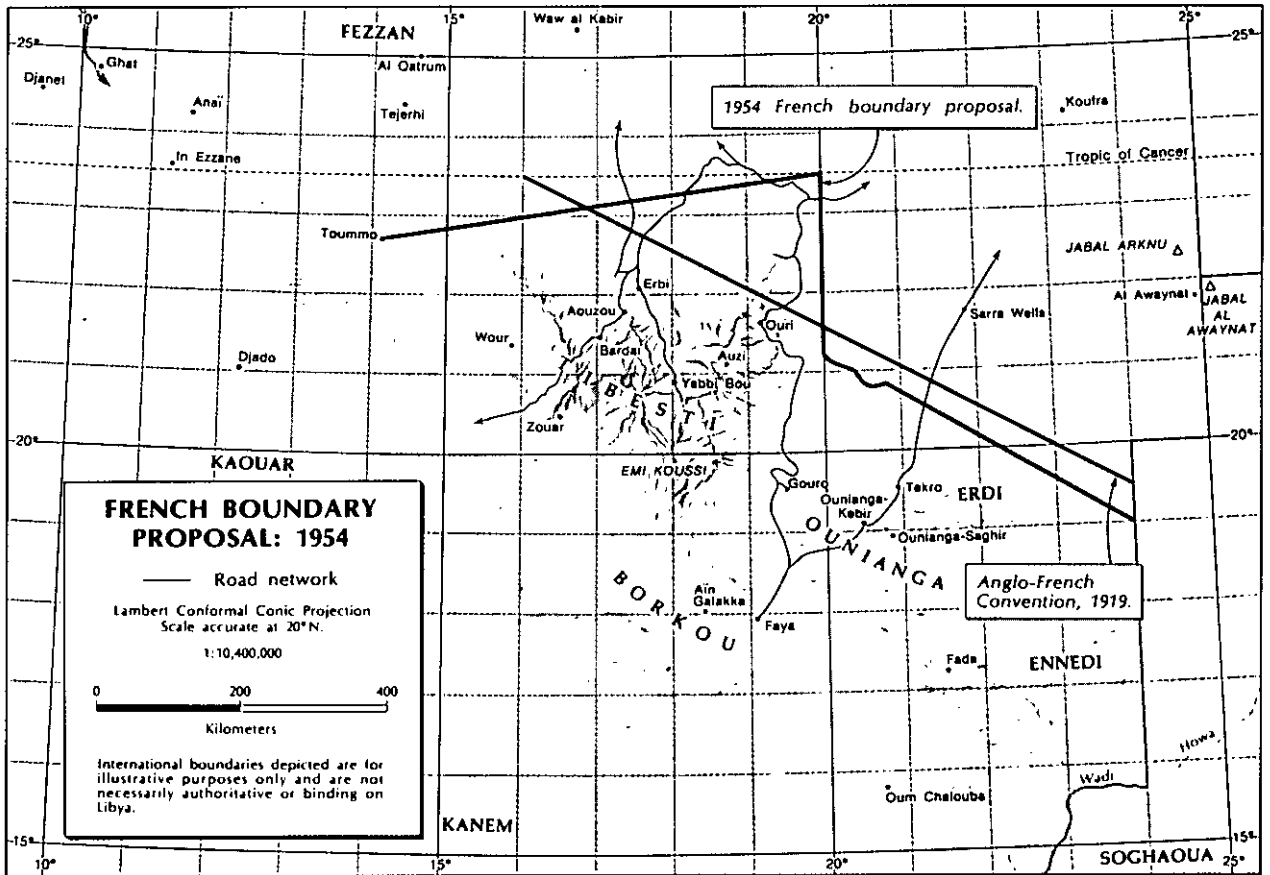
FRONTIERS OF LIBYA



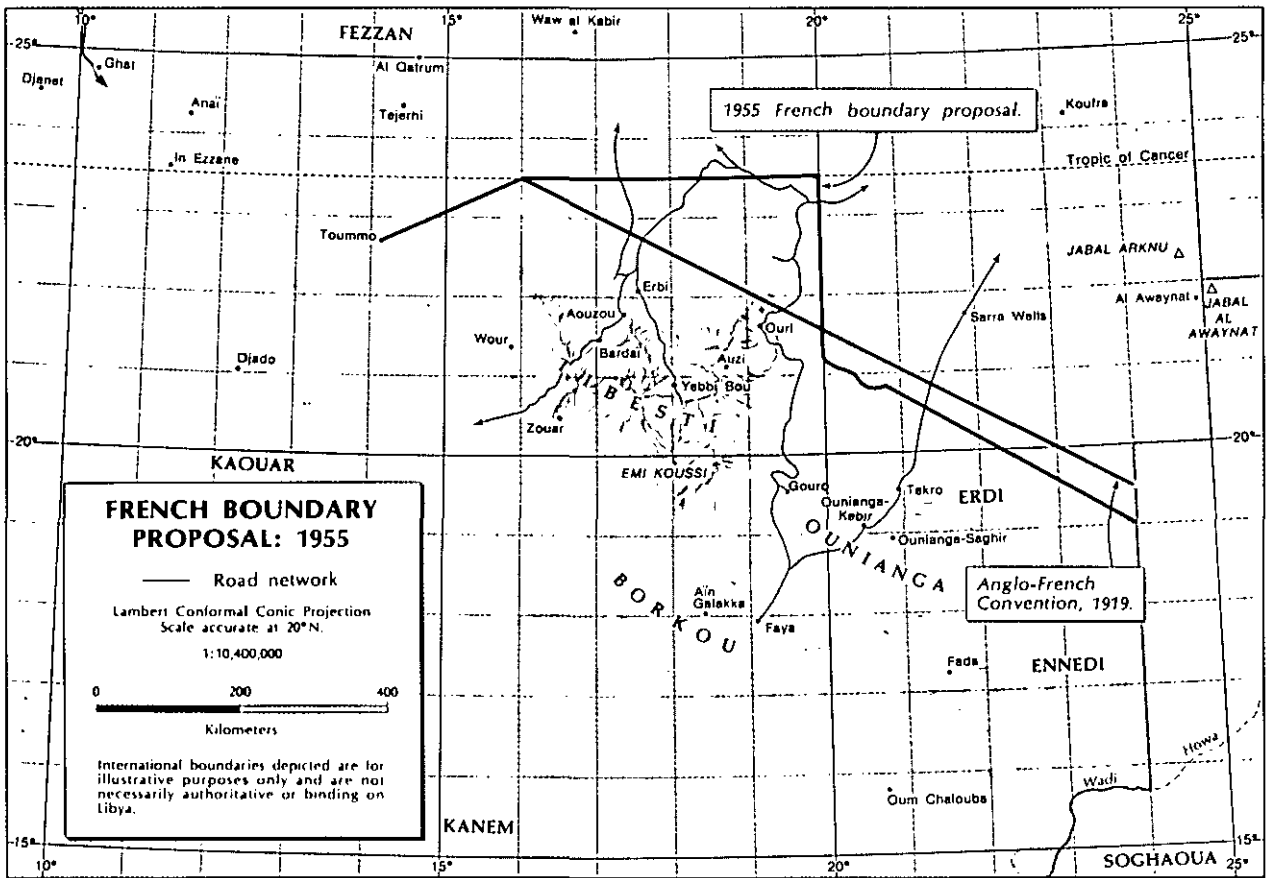
Source: Research Department of the British Foreign Office, 1948.



Specially prepared for presentation to the International Court of Justice.



Specially prepared for presentation to the International Court of Justice.



Specially prepared for presentation to the International Court of Justice.

of the 1919 line in 1946²⁸⁸. France had hoped to accomplish its objective of extensively modifying Libya's boundary with French Algeria and of acquiring the entire Tibesti massif under Annex XI of the 1947 Treaty rather than in direct negotiations later with an independent Libya. These proposals were reflected in the subsequent proposals of the French military in 1953, 1954 and 1955 (Maps LR 27A, 27B and 27C), proposals not based on any French claim of title, but on what was hoped would be leverage in France's favour in the negotiations with Libya.

6.252 France's objectives in 1948 were frustrated by the other three of the four Powers concerned with setting the fate of Italy's former colonies, particularly the Soviet Union. As a result, France proceeded to play its cards in a circumspect manner, unlike Egypt which set out the full extent of boundary changes it wanted, although deferring the issue until Libya became independent. Evidence produced by Chad with its Memorial reveals that in 1950 the French Government considered the pre-war boundary treaties relating to Libya as only "provisoirement en vigueur" and not "déjà fixés par des arrangements internationaux" within the meaning of G.A. Resolution 289(C)²⁸⁹.

6.253 These events lead to the following conclusions:

- At the time of the Italian Peace Treaty in 1947, France did not regard Libya's boundaries as either fixed or sacrosanct; the French Government was anxious to change radically in its favour the western and southern boundaries that had resulted, according to France, from the two 1919 agreements;
- This remained the intention of the French Government right up until December 1956, when it was able to extract a major concession from Libya along the Algerian frontier as the additional price of France proceeding to carry out the 1955 Treaty and evacuate Fezzan;

288 See, also, LM, paras. 5.365-5.366 and Maps Nos. 85 and 86.

289 See, LC-M, para. 3.94, et seq., and references there to the documents introduced by Chad.

- France had hoped to gain its objectives by a deal agreed among the Four Powers rather than in a subsequent negotiation with a newly independent Libya; France's policy had been, and would continue to be, to attempt to achieve its objectives by indirect means rather than in face-to-face negotiations.

(iii) **France's Failure to Notify Certain Agreements under Article 44 of the 1947 Treaty**

6.254 This subject has been extensively dealt with above and in the LC-M²⁹⁰. Article 44 of the 1947 Treaty was a provision under which the signatories to the Treaty were to indicate which of the various treaties with Italy they considered to remain in force or they wanted to put back into force.

6.255 Chad has produced evidence that several of the "actes internationaux" on which its case relies - notably the 1900-1902 Franco-Italian Accords, the 1912 Franco-Italian Agreement and the 1919 Franco-Italian Convention were not notified under Article 44, which provided that -

"Tous les traités de cette nature qui n'auront pas fait l'objet d'une telle notification seront tenus pour abrogés²⁹¹."

Chad has yet to explain how these "actes internationaux", whether or not included on the Annex I list, which were not in force as a result of not having been notified under Article 44, could meet the criteria of Article 3 of the 1955: "actes internationaux en vigueur" on the critical date, the day of Libya's independence.

(c) **1949 Four Power Commission Report**

6.256 This Report has special relevance to the present territorial dispute because of the map attached to it, which emphasised the uncertain status of Libya's southern boundary. It will be recalled that it was in a note appended to

290 See, LC-M, para. 3.11, et seq.

291 CM, Annex 210. It cannot be maintained that the French Government failed to notify these "actes internationaux" because it was considered that they concerned boundaries and hence survived World War II and did not need to be notified to continue in effect. On the list of treaties notified by France were the extremely important 1860 boundary treaties under which Nice and Savoy became French territory. See, LC-M, para. 3.11.

the map explaining the French position as to Libya's alleged southern boundary that the French Government committed its famous "bévue"²⁹².

6.257 Like a number of other episodes that occurred during the history of this dispute, this particular one has been exaggerated far beyond its significance, first by France, and now by Chad. It is reminiscent of other episodes or incidents similarly inflated and distorted in Chad's pleadings: the "Aouzou incident" (1955); the Jef-Jef incident (1938); the "mock war" between the Italian Ministries (1921-1934); the absurd Italian Armistice Commission scenario.

6.258 The reason the French "bévue" committed in this note inserted on the map was a relatively minor matter - although it created problems for the U.N. Secretariat in preparing its Report concerning the boundaries of the former Italian colonies, which led to the adoption of Resolution 392(V) - is that the French position was clearly shown on the map: the 1919 line. It was only the treaty basis for this line claimed by France that was botched in the French note.

6.259 The French-Chadian tactic is obvious: the "bévue" led to an erroneous analysis in the Secretariat's report and, in turn, to U.N. maps showing a Libyan southern boundary that did not conform to the French view; however, the mess was all sorted out in the 1955 Treaty, and in any event, the French representative corrected the mistake in December 1950.

6.260 The difficulty with this line of argument is, first, that the confusion was over only the minor matter of citing the proper supporting treaties, not over the direction of the line argued for by France, the 1919 line. Second, the "bévue" was corrected by the French representative just prior to adoption of Resolution 392(V), so the U.N. was acting after the matter had been straightened out. Nevertheless, the Resolution on its face recognized that there was a problem concerning the delimitation of Libya's southern boundary to be resolved, so the problem had nothing to do with the "bévue". Significantly, France voted for the Resolution²⁹³.

292 See, para. 4.17, above.

293 See, para. 4.17, above.

(d) **Article 4 of the 1951 Constitution of the United Kingdom of Libya**

6.261 Libya's first Constitution was the work of various groups and councils. It was a task to which U.N. Commissioner Pelt devoted a great deal of attention, drawing on the views of the Four Powers, including of course France. The French Government, therefore, participated fully in the process of preparing and approving Libya's Constitution and must be presumed to have had detailed knowledge of its provisions²⁹⁴.

6.262 The terms of Libya's 1951 Constitution pertaining to its boundaries are, thus, of great importance to this case. Article 4 of the Constitution provided, as follows:

"The boundaries of the United Kingdom of Libya are: On the north, the Mediterranean Sea; On the east, the boundaries of the Kingdom of Egypt and of the Anglo-Egyptian Sudan; On the south, the Anglo-Egyptian Sudan, French Equatorial Africa, French West Africa and the Algerian Desert; On the west, the boundaries of Tunisia and Algeria²⁹⁵."

What is striking about the text of this Article is that the word "boundaries" is omitted as to the north and as to the south but is included as to Libya's boundaries to the east and west. On the north, the Mediterranean formed a natural boundary. But the omission of "boundaries" as to Libya's southern flank reflects the same conclusion as Resolution 392(V), adopted a year earlier: the undetermined status of Libya's southern boundary.

6.263 Just as France had voted for Resolution 392(V) in December 1950, so it had participated in and lent its support to the preparation and approval of the Libyan Constitution of 1951, which contained this provision concerning Libya's southern boundaries on the critical date. This was at a time when the Quai d'Orsay was describing the pre-war boundary treaties as only "provisoirement" in force. Article 4 of Libya's Constitution said in words what the Italian maps showed graphically: that no conventionally delimited southern boundary of Libya existed.

294 See, Supplementary Annex, No. 6.2, which discusses the extent of French participation.

295 LM, Exhibit 3.

6.264 Unlike Libya, Chad's independence was not introduced with a Constitution that dealt with its boundaries; and Libya is aware of no protest by either France or Chad with regard to Article 4 of Libya's 1951 Constitution. Up until now, Chad has simply ignored this subject entirely, like so many other issues.

PART III

TITLE TO THE BORDERLANDS INDEPENDENTLY OF TREATIES

CHAPTER VII. TITLE TO THE TERRITORY PRIOR TO THE ARRIVAL OF THE FRENCH

SECTION 1. The Borderlands Were Not Terra Nullius at the End of the 19th Century

7.01 Chad's thesis - that France acquired title to the borderlands by occupation - can only be tenable if the territories were res nullius. Libya disputes that this was so. In Libya's submission, this view of the legal nature of the territories was one commonly adopted by European Powers in the era of colonisation, for it facilitated the acquisition of a colonial title in situations where local rulers or tribes were unwilling to accept voluntarily - by treaties of cession or protection - the claim of sovereignty by a European Power. And whereas such a claim may have been valid in relation to uninhabited territories, when applied to inhabited territories, the claim rested upon the assumption that, because in terms of social, political and economic organisation the territories did not conform to a European "model", the territories were by definition terra nullius.

7.02 It was the rejection of this assumption by the Court in the Western Sahara Case that constituted one of the Court's most significant attempts to move international law away from this Eurocentric bias, and to give to territorial title a meaning more consonant with the experience of peoples world-wide.

7.03 It may be recalled that the Court's test was not a very demanding one. The Court found that the territory was not terra nullius on the basis that the "Western Sahara was inhabited by peoples which, if nomadic, were socially and politically organised in tribes and under chiefs competent to represent them"¹. By this test it is clear that the borderlands were not terra nullius, even if that test does not answer the further question as to which State, if any, was entitled to claim sovereignty on the international plane - a separate matter dealt with in Section 4 below.

7.04 Simply applying the Court's test, it seems undeniable that it was met in this case. For this reason, Chad has sought to minimise the relevance

1 Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 39, para. 81.

of the Court's Opinion to the present case. As the following Section will demonstrate, Chad's view of the Opinion is not sustainable, as a matter of law. Nor, on the facts, is Chad's view sustainable. As Libya's Memorial demonstrated², the Toubou, Bideyat, Zaghawa, Awlad Sulaiman tribes, and the Tuareg confederation of tribes, were identifiable tribes or tribal confederations with a traditional social structure under acknowledged leaders: the "derdé", chief, or "sultan"³. That they had a strong sense of title, or ownership, to their traditional lands is evidenced by the frequency of disputes over their territorial rights that the Senoussi sought to resolve.

7.05 Chad assumes that the tribes would need to have "une structure unifiée"⁴. But this is to add a quite extraneous condition. Many areas of the world are not terra nullius, but equally peopled by ethnic or tribal groups that lack a unified structure. Examples exist in almost all continents, including Europe - as the present difficulties in the Balkans bear witness. Yet lack of unity amongst peoples does not signify that the territory they live in is res nullius.

SECTION 2. The Relevance of the Western Sahara Case

7.06 Chad seeks to minimise the effect of the Court's statement of the law in its Advisory Opinion of 1975. Essentially, Chad advances two propositions: first, that the Court there dealt with a specific and special case, so that the Court's statements were not intended as statements of general principle; second, that any general principle to be extracted from State practice and doctrine existing at that time, i.e., the end of the 19th and beginning of the 20th Centuries, shows that the territory in dispute in the present case could properly be regarded as terra nullius, and therefore open to occupation by France. These two propositions need to be examined separately.

(a) Did the Court Intend to State a Principle of General Application?

7.07 Chad argues that "les observations" of the International Court of Justice were not general in character, and were made "dans le contexte des questions spécifiques (et différentes) auxquelles elle devait répondre".

2 See, LM, paras. 3.34-3.43.

3 As acknowledged in CC-M, para. 5.176.

4 CC-M, para. 5.179.

Consequently, "... il serait erroné de déduire de l'affaire du Sahara Occidental une doctrine générale du statut juridique des populations indigènes"⁵.

7.08 For Chad, this context is provided by the two questions on which G.A. Resolution 3292 (XXIX) dated 13 December 1974 requested the Court to give an advisory opinion, quoted at the end of paragraph 3.08 of the CC-M. Then, it is said in paragraph 3.09 that "dans ce contexte, la Cour a indiqué ...", followed by a quotation of a part of paragraph 80 of the 1975 Advisory Opinion.

7.09 However, the answer of the Court to Question I ("was Western Sahara ... at the time of colonisation by Spain a territory belonging to no one (terra nullius)?") was given in paragraphs 79-83 of its Advisory Opinion. It seems necessary, therefore, to place the Chadian partial quotation of paragraph 80 in the context of the other paragraphs of the Advisory Opinion dealing with Question I; and, in so doing, to indicate the elements of this context that the CC-M has deliberately omitted in order to reduce or nullify the Court's statement on the law in force at the time.

7.10 It should be observed, first, that the CC-M does not refer to paragraph 79 of the Advisory Opinion, where the expression terra nullius was considered by the Court in connection with occupation as "... one of the accepted legal methods of acquiring sovereignty over territory". By so doing, Chad deliberately omits the following consequence in law, clearly general in character, which the Court laid down:

"'Occupation' being legally an original means of peaceably acquiring sovereignty over territory otherwise than by cession or succession, it was a cardinal condition of a valid 'occupation' that the territory should be terra nullius - a territory belonging to no-one at the time of the act alleged to constitute the 'occupation',⁶"

7.11 Then, having stated this general rule, the Court went on to the particular issue contained in Question I of the Advisory Opinion. But once more Chad fails to mention that the Court, taking into account the above "cardinal condition of a valid occupation", stated that:

5 See, CC-M, paras. 3.11, 5.13 and 5.186.

6 Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 79, p. 39.

"In the view of the Court, therefore, a determination that Western Sahara was a 'terra nullius' at the time of colonization by Spain would be possible only if it were established that at that time the territory belonged to no-one in the sense that it was open to acquisition through the legal process of 'occupation'⁷."

7.12 Secondly, if one turns to the quotation of paragraph 80 of the Advisory Opinion made in the CC-M, it can be observed that two main points have been omitted.

7.13 On the one hand, the CC-M leaves out the legal rationale for the Court's statement. In fact, the Court begins paragraph 80 by saying - "Whatever differences of opinion there may have been amongst jurists, the State practice of the relevant period indicates that" Therefore, in relation to the sources enumerated in Article 38 of the Statute of the Court, it is clear that the Court's statement on the law in force at the time of colonisation was not grounded on doctrine (a "subsidiary means for the determination of rules of law") but on "... the State practice of the relevant period", that is, on "international custom as evidence of a general practice accepted as law". Chad seeks to evade this conclusion by dropping the reference to doctrine and speaking only, in an imprecise way, of "la pratique".

7.14 In addition, the CC-M has omitted a large part of paragraph 80, namely, that part where "occupation" in its relationship to agreements with local chiefs is considered by the Court so as to reinforce the previous statement on the law in force at the time⁸. In the part omitted by Chad the Court stated that:

"On occasion, it is true, the word 'occupation' was used in a non-technical sense denoting simply acquisition of sovereignty; but that does not signify that the acquisition of sovereignty through such agreements with authorities of the country was regarded as 'occupation' of a 'terra nullius' in the proper sense of these terms. On the contrary, such agreements with local rulers, whether or not considered as an actual 'cession' of the territory, were regarded as

7 Ibid.

8 See, Supplementary Annex, Nos 6.3(2) and 7.10. This is a 1931 French study in which it is revealed that in 1862 France signed a convention with the Ajjer Tuareg dealing with a broad range of subjects including taxation. It is not apparent that this tribe differed significantly in terms of the criteria set out in the Eastern Greenland case from the Awlad Sulaiman, the Toubou and the other borderlands tribes. Certainly, territory inhabited by a tribe with which a major Power had contracted in this way could not be said to be terra nullius.

derivative roots of title, and not original titles obtained by occupation of terrae nullius⁹."

7.15 It is absolutely clear, when the whole of paragraph 80 is read in context, that the Court was stating a general principle, discernible in the practice of States in Africa generally, to the effect that under the law then in force there could be no valid occupation of African territories if those territories were inhabited by tribes or other socially and politically organised peoples, because such territories were not terra nullius.

7.16 The suggestion that the Court was merely giving an historical account of the particular case of the Western Sahara is unacceptable¹⁰. It is clear that the Court dealt with the questions put to it as legal questions:

"The questions submitted by the General Assembly have been framed in terms of law and raise problems of international law ... These questions are by their very nature susceptible of a reply based on law; indeed, they are scarcely susceptible of a reply otherwise than on the basis of law"¹¹.

7.17 It is equally clear that the law stated by the Court was the law as it then existed, that is to say, in the words of the Court "at the period beginning in 1884"¹². Thus, it can safely be assumed that the same principles are applicable in this case, for Chad asserts that the French "occupation" occurred between 1899-1914.

(b) **Is the Court's Opinion Consistent with Chad's Argument that State Practice and Doctrine in the Relevant Period (1899-1914) show that the Borderlands Were Properly Regarded by France as Terra Nullius?**

7.18 Obviously there is a preliminary question of fact, namely did the peoples in the borderlands exhibit sufficient evidence of "social and political

9 I.C.J. Reports 1975, para. 80, p. 39.

10 See, CC-M, para. 3.09. Chad places itself in a more radical position than Spain in the Western Sahara Case, given that Spain, although not denying the "legal" character of the questions posed by the General Assembly Resolution, had considered that "in the particular circumstances of the case" they were, however, "of a pure historical or academic character". On the answer of the Court rejecting the Spanish objection, see, Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 16, p. 19, et seq.

11 I.C.J. Reports 1975, para. 15, p. 18.

12 I.C.J. Reports 1975, para. 78, p. 38.

organisation" so as to bring them within the ambit of the Court's statement of principle? As to this, Libya has no doubt that the answer must be affirmative.

7.19 If this is so, and if one rejects Chad's arguments that the Court was not laying down any general principle, or not a principle of law, or not of the law relevant at the period critical in this case, then Chad's argument that the law was different from that maintained by the Court must be rejected. It is an argument which, on its face, runs directly contrary to what the Court has said. Not surprisingly, the argument is advanced by Chad by a process of reasoning which is not that used by the Court and which, quite independently of the Court's Opinion, would be very difficult to sustain.

7.20 Essentially, Chad's argument is that the doctrine - the juristic writings - of the time lend ample support to the French position that the borderlands could be regarded as terra nullius.

7.21 Chad relies on a part of the doctrine - called by Jörg Fisch the "Theorie der herrenlosen Souveränität" or "theory of sovereignty without master" - closely linked with the interests of the European Colonising Powers, which presupposes that sovereignty only could attach to "Civilized States"¹³. Chad deliberately ignores other authors of the time, clearly in favour of the rights of indigenous peoples¹⁴, and concludes that the Libyan thesis on title to the territory:

"... présente de très lointains rapports non seulement avec l'opinion sur la personnalité juridique internationale des tribus et populations indigènes, prédominante parmi les juristes positivistes de l'époque, mais encore avec celle, pourtant très nuancée, de D. ANZILOTTI (deuxième version)¹⁵."

13 See, CC-M, paras. 5.141-5.142. Fisch, J., Die Europäische Expansion und das Völkerrecht, Stuttgart, Steiner, 1984.

14 On the doctrine of the period, see, Exposé Ecrit de la Mauritanie, in I.C.J. Pleadings, Oral Arguments, Documents, Western Sahara, Vol. III, pp. 28-48, in particular, pp. 33-37, and more extensively Fisch, J.: op. cit., Kapitel 4, "Die Stellung der überseeischen Gebiete in der Völkerrechtslehre" (The position of colonial territories in the doctrine of International Law), pp. 153 et seq.

15 CC-M, para. 5.143, adding in the following paragraph that: "Toutefois, même à supposer que cette affirmation libyenne soit correcte, et que les Senoussistes aient dès lors possédé un titre juridique sur le B.E.T., il n'en demeurerait pas moins vrai que ce titre serait remis en cause par l'occupation militaire française." CC-M, pp. 219-220. To sustain this argument, Chad treats the title of the local tribes as purely proprietary in character,

7.22 The argument is defective, not only because it is based upon a highly selective choice of doctrine, but even more because it simply ignores the Court's conclusions in the 1975 Opinion that this positivist, minority view in the doctrine did not represent the law. Many writers have noted that one of the most important contributions made by the Western Sahara Opinion was the rejection of that positivist, minority view. As Shaw puts it:

"The Court unambiguously asserted that 'the State practice of the relevant period indicates that territories inhabited by tribes or peoples having a social and political organization were not regarded as *terrae nullius*'. This posthumous rehabilitation of the classic authors of international law, and sidestepping of those late nineteenth-century theorists denying any form of international personality inherent in non-State entities, places considerable stress upon the numerous agreements concluded between the European colonizing powers and the local communities. It elevated them from the status of mere methods by which European powers demonstrated their occupation of a particular territory as against each other to documents of a central character in the acquisition of sovereignty over territory¹⁶."

7.23 The Court's opinion, not surprisingly, has influenced legal doctrine in this area, and it has not been unusual for commentators to modify their previously held views in the light of the Court's position. To give just one example, Ian Brownlie adapted his views to the Court's pronouncements. In the second edition of his "Principles of Public International Law" (1973), p. 141, he stated that territory not possessed by a political community satisfying the criteria of statehood "are subject to occupation"; six years later, after the Western Sahara Opinion was rendered, the same passage refers in the third edition (1979), p. 142, to territory not possessed by a community having a social and political organisation.

deriving from tribal customary law and having no significance for public international law: CC-M, para. 5.18.

16 Shaw, M., "The Western Sahara Case", British Year Book of International Law, Vol. XLIX, 1978, pp. 120-154, at p. 133. See, also Fisch, J.: op. cit., p. 467. Although observing that the Advisory Opinion did not judge the nature and legal effects of such agreements, Fisch states that "In gleiche Weise ergibt sich indirekt, dass die Stämme Völkerrechtssubjekte sind". ("Equally it results indirectly that tribes are subjects of international law.") For other comments on the Western Sahara Case, see, Chappetz, J., in R.G.D.I.P., t. 80, 1976, pp. 1132-1187; Flory, M., in A.F.D.I., t. 21, 1975, pp. 253-277; Franck, Th. M., in A.J.I.L., Vol. 70, 1976, pp. 694-721; McWhinney, E., in Zaöry, Vol. 37, 1977, pp. 1-42; Prevost, J.F., in Clunet, J., t. 103, 1976, pp. 831-862; Riedel, E.H., in German Y.B.I.L., Vol. 19, 1976, pp. 405-442 and Okere, N.O., in I.C.L.O., Vol. 28, 1979, pp. 296-317.

7.24 In French legal doctrine, the Court's analysis of the law was also widely praised. Thus, Nguyen Quoc Dinh, D., Daillier, P., and Pellet, A., in Droit International Public, 2^e éd. (1980), p. 432, highlight the Western Sahara Opinion in these words:

"La doctrine traditionnelle distingue les territoires étatiques des territoires sans maître - ces derniers étant définis comme non incorporés dans un Etat; n'importe quel territoire se trouve alors inclus dans l'une ou l'autre catégorie.

Cette conception européen-centriste a été clairement rejetée par la C.I.J. dans son avis consultatif du 16 octobre 1975; appelée à répondre à la question suivante: "Le Sahara Occidental était-il au moment de la colonisation par l'Espagne un territoire sans maître (res nullius)?", la Cour a admis que ce territoire, habité par des populations nomades socialement et politiquement organisées, ne constituait pas, au moment de l'occupation coloniale, une terra nullius.

Il convient donc de distinguer les territoires sans maître, inhabités - car on imagine mal des sociétés humaines totalement inorganisées - des territoires non étatiques mais habités."

7.25 However, Chad's refusal to acknowledge the Court's rejection of this minority doctrine is not the most conspicuous weakness of Chad's argument. It lies in Chad's refusal to acknowledge that what the Court had principally relied on - to support its conclusions on the law - was not doctrine, but State practice.

7.26 In paragraph 8.1 of its Advisory Opinion, the Court considered the Spanish practice in respect of the Western Sahara territory. It stressed the fact that the Royal Order of 1884 proclaimed the establishment of a protectorate "... on the basis of agreements which had been entered into with the chief of the local tribes". It noted that Spain, in negotiating with France over the limits of the territory in the north, "... did not rely upon any claim to the acquisition of sovereignty over a terra nullius"¹⁷.

7.27 The first fact, considered as the "controlling factor" in the case, prompted Judge Dillard to state that "... you do not protect a terra nullius"¹⁸. The Court relied on the "State practice of the relevant period" - that is, on the general practice of European States dealing with indigenous peoples

17 I.C.J. Reports 1975, para. 81, p. 39.

18 I.C.J. Reports 1975, p. 124.

with regard to acquisition of African territory - without examining its constitutive elements.

7.28 In fact, these elements of practice were demonstrated in the information furnished to the Court, particularly by Mauritania¹⁹, and they are contained in well-known works of that period²⁰. In respect of Great Britain, the works of M.F. Lindley and E. Hertslet²¹. The works of Rouard De Card and P. Fauchille illustrate French practice²²; and that of E. Nys the practice of Belgium in respect of the Congo area²³. To these may be added the studies of G. Jeze and Ch. Salomon²⁴ and, amongst more recent studies, the works published by Ch. Alexandrowicz²⁵ presumably were also relevant for the Court in the Western Sahara case.

7.29 From the State practice in the relevant period, that of France merits particular attention, given that the CC-M in paragraph 3.12 states that: "La France a, en fait, conclu certains accords avec des chefs dans la partie méridionale de ce qui est aujourd'hui le Tchad (même si ces accords n'ont pas été respectés)." Adding that: "Toutefois, ailleurs, elle a établi son autorité par voie d'occupation, parfois par usage de la force²⁶."

-
- 19 I.C.J. Pleadings, Oral Arguments, Documents, Western Sahara, Vol. III, pp. 48-50.
- 20 See, Fisch, J.: op. cit., pp. 332-337 on this matter and, in particular, his remarks on colonial agreements in the treaty collection of Martens, at p. 337.
- 21 Lindley, M.F.: The Acquisition and Government of Backward Territory in International Law, Treaties on the Law and Practice in Relation to the Law of Colonial Expansion, London, Longmans, Green and Co., 1926; Hertslet, E.: Map of Africa by Treaty, Vol. 1.
- 22 Rouard De Card, E.: Les Traités de Protectorat conclus par la France en Afrique, 1870-1895, Paris, Durand et Pedone-Lauriel, 1897; Fauchille, P.: Traité de Droit International Public, Paris, Rousseau, 1925, t. I, 2ème Partie, p. 692, et seq.
- 23 Nys, E.: Le Droit International. Les principes, les théories, les faits, t. II, Bruxelles, Edit. Weisenbruch, pp. 85-90.
- 24 Jeze, G.: Etude théorique et pratique sur l'occupation comme mode d'acquérir les territoires en Droit international, Paris, Girard de Brière, 1896; Salomon, Ch.: De l'occupation des territoires sans maître, Paris, 1889.
- 25 Alexandrowicz, Ch.: "The Role of Treaties in the European-African Confrontation in the Nineteenth Century", in African International Legal History, Mensah-Brown, 1975, p. 64, et seq.; The European African Confrontation, A Study in Treaty Making, Leyden, 1973.
- 26 CC-M, para. 3.12.

7.30 In fact, independently of agreements with indigenous peoples collected in the French works indicated above, it may be noted that, for the period from November 1883 to December 1884, the President of the French Republic signed a series of decrees approving treaties concluded with indigenous chiefs. It results from those acts that France concluded 11 agreements concerning Senegal and Haut-Niger, two with regard to the Côte des Graines, seven concerning the Ivory Coast and about 30 concerning the Gulf of Guinea and the Congo areas²⁷. It seems difficult to deny that such agreements were considered by France as a basis for title in Africa, for they had no other very obvious purpose²⁸.

7.31 It is worth noting that this belief was also shared by Great Britain and Germany in respect to the Lake Chad area. This fact is evidenced by Article 5 of the Convention of 1st July 1890 concluded by them, in which each Party undertook to notify the other Party of any treaties or agreements it might conclude with tribes inhabiting the area surrounding Lake Chad²⁹.

7.32 This practice eloquently testifies to the fact that, in this period, European Powers did not rely on occupation as a root of title, but rather on cession. Thus they did not regard Africa as generally *terra nullius*, and they were in principle prepared to accept a derivative title, based on treaties of cession or protection, which presupposes that they accepted the validity of the prior title of the relevant African tribe.

7.33 One element largely ignored by Chad in its presentation of the law is the body of arbitral practice. This is perhaps because that arbitral practice is largely contrary to Chad's thesis. True, Judge Huber in the Island of Palmas Case viewed these treaties as in the nature of mere contracts and not in themselves a basis of title³⁰. But this view was not shared by other arbitrators.

27 I.C.J. Pleadings, Oral Arguments, Documents, Western Sahara, Vol. III, p. 49 referring to the Revue de Géographie, t. XVI, janvier-juin 1885, p. 223.

28 See, also, fn. 8, above, concerning a 1862 convention between France and the Ajjer Tuareg.

29 I.C.J. Pleadings, Oral Arguments, Documents, Western Sahara, Vol. III., p. 50, referring to Bonfils, H.: Manuel de Droit International Public (Droit des Gens), 7ème ed., Paris, Ed. Rousseau, 1914, No. 541, p. 379.

30 U.N.R.I.A.A., Vol. II., p. 858.

7.34 In the Case of the sovereignty of Zanzibar and its dependencies in Africa in respect to Muscat after the death of Sayid-Said, decided on 2nd April 1861 by the Governor of India³¹, an African ruler, the Sultan of Zanzibar, accepted international arbitration with an Arab State. The previous Report of General W.M. Cohan and the final decision of the Governor of India did not express any doubt on the international personality of Zanzibar or its title to territory; the former Report referred to "... l'indépendante souveraineté de Zanzibar et de ses territoires d'Afrique"³².

7.35 In the later case of the Lamu Island (Germany/Great Britain), decided in 1889, the sovereignty of the Zanzibar Sultanate over its territory and its international capacity to enter an agreement with European Powers is once more recognised, both Parties relying on evidence of their rights in acts of the local ruler³³.

7.36 African tribes have also submitted themselves to international arbitration with States. In the Case of the Territory of Bechuanaland and Griqualand³⁴, the Parties were effectively the Republic of South Africa (Transvaal) on one hand and, on the other hand, the Chiefs of the Barolong, the Batlapins, of the Bechuana, and the Chief of the Griquas. Being an international arbitration, the international personality of those African tribes cannot be denied. This case is of special interest on the status of territory under African rulers.

7.37 In accordance with the special agreements of 1 March 1871, the subject matter of the dispute was the limits between the territories of the tribes and that of the Republic of Transvaal, the latter claiming against the Chief of Griquas "... la ligne suivante, que ce dernier considère comme la frontière septentrionale de son territoire, savoir ..."; and the Chief "... conteste le droit de la

31 See, De Lapradelle, A., and Politis, N.: Recueil des Arbitrages Internationaux, t. II, 1856-1872, 2nd. ed., Paris, Les Editions Internationales, 1957, pp. 54-77. For other sources, see, Stuyt, A.M.: Survey of International Arbitrations 1794-1970, Leiden, Sijthoff, 1972, Nr. 62, p. 65.

32 De Lapradelle, A., and Politis, N., op. cit., t. II, p. 69.

33 See, the sources in Stuyt, A.M.: op. cit., Nr. 156, p. 161, and the comments on the case by Fisch, J.: op. cit., pp. 419-422.

34 De Lapradelle, A., and Politis, N.: Recueil des Arbitrages Internationaux, 2nd. ed. Paris, Les Editions Internationales, 1956, t. II, pp. 676-705 with a Note of J. Westlake.

République Sud-Africaine sur le territoire situé au S. de cette ligne, qu'il réclame, au contraire, pour lui et le peuple dont il est le chef". Transvaal also claimed against the Chiefs of the Bechuana tribes "... certaines lignes dont la description est donnée dans le document ci-annexé" and the Chiefs "... contestent les droits de la République Sud-Africaine sur les territoires situés à l'O. et au S. des lignes décrites dans l'appendice ci-joint"³⁵. The arbitral decision of 17 October 1871 not only established the boundary between the territories of the tribes and Transvaal but also the limits between the territories of tribes.

7.38 It is implicit in that decision that the territory in question could not be terra nullius. Nor can it be persuasively argued that the issues raised were simply issues of proprietary rights, without prejudice to whether the territory was res nullius or not, because questions of proprietary rights could have been settled by the municipal courts of the Transvaal, without any need for arbitration.

7.39 Moreover, these decisions cannot be distinguished on the basis that some of the tribes were parties to the arbitration, because similar principles have been applied even in cases where the two parties were European States.

7.40 In the Case of the Bulama Island (Portugal/Great Britain)³⁶, the judgment of 21 April 1870, comparing the titles to the territories claimed by each party, stated that "... le titre britannique dérive d'une prétendue cession consentie par les chefs indigènes en 1792", although in the result the Arbitrator preferred the Portuguese title because "... la souveraineté du Portugal avait été établie sur le continent et sur l'île de Bulama"³⁷. However, the validity of such agreements entered into with local rulers as a basis of title was not denied.

7.41 A similar case is the Delagoa Bay Case (Great Britain/Portugal)³⁸, where the British contended that the territory was "... libre et indépendant, les naturels du pays, sous l'autorité de leurs chefs, y gardant un pouvoir absolu en étant en possession des territoires". Britain argued that the

35 De Lapradelle, A., and Politis, N., op. cit., pp. 685-688.

36 Ibid., t. II, pp. 605-617.

37 Ibid., p. 613.

38 Ibid., t. III, pp. 597-650.

territory appertained to the African rulers of the Tembe and the Mapouto, and "... ces chefs, avec le consentement des indigènes, et en vertu de leurs droits indépendants, ont cédé par un traité, en 1823, la souveraineté sur ces territoires à la Couronne de la Grande-Bretagne"³⁹. These contentions, it may be observed, are far from the idea of terra nullius and they rely on the legal validity and effects of agreements with local chiefs. Portugal did not oppose them on the merits, but argued that such agreements were without effect on quite different grounds⁴⁰.

7.42 In the judgment of 24 July 1875, the Arbitrator upheld Portugal's claims to the territory on the basis of a long and effective presence partly acquiesced in by other European Powers, adding in respect of the British title that "... si l'affaiblissement accidentel de l'autorité portugaise dans ce parage a pu, en 1823, induire en erreur le capitaine Owen et lui faire considérer de bonne foi comme réellement indépendants de la Couronne de Portugal les chefs indigènes des territoires aujourd'hui contestés, les actes par lui conclus avec ces chefs n'en étaient pas moins contraires aux droits de Portugal". The Arbitrator added that, after Owen's visit in 1823, "... les chefs indigènes de Tembe et de Mapouto ont de nouveau reconnu leur dépendance vis-à-vis des autorités portugaises"⁴¹.

7.43 Finally, in the Barotse Land Boundary case (Great Britain/Portugal)⁴², the parties asked the Arbitrator to determine "... the limits of the territory of the Barotse Kingdom", this expression meaning "... the territory over which the King of Barotse was paramount ruler on the 11th June 1891". The reference to this date is of great interest: it is that of the Treaty between Great Britain and Portugal establishing spheres of influence in Central Africa, in which the limits reached "the territory of the Barotse Kingdom"⁴³.

7.44 Consequently, to decide on the dispute between Great Britain and Portugal, the judgment of 30 May 1905 was obliged to determine the extent of the territory over which "... le Roi du Barotse regnait comme Chef

39 Ibid., p. 604.

40 Ibid., p. 614.

41 Ibid., p. 638.

42 U.N.R.I.A.A., Vol. XI, pp. 65-69.

43 Ibid., p. 65.

Suprême (Paramount Ruler)", and so to establish which tribes were under his actual authority. To this end, the Arbitrator referred to local law in force, by virtue of which:

"... le Chef Suprême est celui qui exerce l'autorité gouvernementale selon leurs coutumes, c'est-à-dire, en nommant des Chefs subalternes, ou en leur accordant l'investiture, en décidant des litiges entre ces Chefs, en les déposant selon les circonstances, et en les obligeant à les reconnaître comme leur Seigneur Suprême⁴⁴."

7.45 Once more, the doctrine of terra nullius is rejected if title to territory of an African ruler is clearly recognised and if this title is taken as a basis for the delimitation of spheres of influence between two European Powers.

SECTION 3. The Links Between Tribes such as the Toubou and the Awlad Sulaiman and the Senoussi

7.46 Chad's thesis of the lack of "une structure unifiée" depends upon minimising the role and influence of the Senoussi. Thus, Chad concludes that the Senoussi never provided the essential political and social organisation⁴⁵, that they were an entirely religious organisation⁴⁶, with no powers of administration or taxation over the tribes, but only over caravans⁴⁷. Chad concedes that, in order to resist the French advance, the Senoussi assumed a military role, organising the tribes, but for Chad this role fell far short of territorial sovereignty based on effective, stable and permanent control over the tribes⁴⁸.

7.47 As can be seen from Libya's Memorial⁴⁹, this picture of Senoussi control deliberately minimise its effectiveness. It omits the rôle of the Senoussi in providing education, protection of the caravan trade, settlement of tribal disputes, and active encouragement of commerce. It ignores the special tax exemptions granted by the Ottoman Governor of Tripolitania, pursuant to

44 Ibid., p. 68.

45 See, CC-M, para. 5.156.

46 See, CC-M. para. 5.157.

47 See, CC-M, paras. 5.158-5.159.

48 See, CC-M, paras. 5.163-5.164.

49 See, LM, para. 3.44, et seq.

Firmans from the Sublime Porte, to each zawiya and the sheikh at its head⁵⁰, as a recognition of the quasi-autonomy of the Senoussi movement. Moreover, it shows a total failure to grasp the link between the religious authority of the Senoussi and temporal power. Libya has included in Volume 2 of this Reply a note that explains in some detail this Ottoman-Senoussi relationship and the roles of each under Islamic concepts of sovereignty⁵¹. In addition, Ottoman documents from the Turkish archives have been annexed that specifically demonstrate this relationship⁵². For many years, communications passed between the Porte and the Head of the Senoussi. Gifts and ceremonial robes were sent to the sheiks of the zawiyas. The Senoussi were consulted on matters of defence of the region from the invading European Powers.

7.48 Traditional Islamic doctrine saw no division between religious authority and temporal power, the latter being conceded by the followers of Islam to the Caliph or his representatives⁵³. As noted in a British Foreign Office memorandum, "In Islam rule and religion go together⁵⁴". Without overall temporal authority, the Senoussi could not have organised the tribes into a collective, military defence of the territory.

7.49 It is clear from the historical record that France began to make contact with the leader of the Senoussi in June 1911, via the French Consul-General in Cairo, with a view to coming to an agreement over boundaries⁵⁵. Such a move was unthinkable if the Senoussi presence in the borderlands was as trivial as Chad now pretends. The reply of the Head of the Senoussi Order took the French to imply that Arada was the frontier claimed by France, and reiterated

50 See, Al-Dajani, A.: The Senussi Movement: its Origin and Development in the Nineteenth Century, 1967, pp. 205-206, LR Exhibit 12.

51 See, Supplementary Annex, No. 3.

52 See, Supplementary Annex, No. 8.

53 See, El-Kosheri, "History of the Law of Nations, Regional Developments: Islam", 7 Encyclopedia of International Law, pp. 222-230. The separation of state and religion was essentially a modern development, beginning in the 20th Century, with no influence in the borderlands at this time. See, also, Supplementary Annex, No. 3, pp. 1-8.

54 Cited in LM, para. 3.47.

55 See, Supplementary Annex, No. 10.7

that the Senoussi boundaries ("c'est à dire celles du Gouvernement ottoman") are at Oum Chalouba ("sont à Oum Chalouba"⁵⁶).

7.50 In the event, higher French authority regretted this initiative taken by the French Consul-General and it was not pursued. It was seen as detrimental to the French claim to the limit laid down in the 1899 Declaration⁵⁷. But the incident reflects the French perception at the time that real control of the territory lay with the Senoussi.

7.51 The paradox in Chad's argument lies in its unwitting destruction of any French claim to have replaced Senoussi control. For if one accepts Chad's argument that Senoussi control was inadequate to sustain legal title to the territory, it follows inevitably that one must reject the French claim. Whatever one thinks of the effectiveness of the Senoussi control, the fact is that it was not a purely military administration. There was at least some semblance of the normal attributes of territorial administration - the provision of education, the furtherance of commerce, the settlement of disputes etc. - whereas with the French there was none. It is clear beyond question that the only French activity was military, confined to very few posts, and in relation to Tibesti, relying exclusively on very occasional patrols around the perimeter of the area⁵⁸. So the very tests which Chad applies in an effort to defeat any claim of title by the Senoussi are in fact fatal to Chad's own thesis. For by those tests France could never have acquired title.

7.52 The further weakness in Chad's argument is that it depends upon isolating each element in the Libyan claim - as if each element, independently, had to establish a sovereign claim of title to the territory. Thus, in Chad's view, the indigenous peoples, considered as a separate element, lacked sufficient unity to claim title. Similarly, the Senoussi, as a separate element, were too ineffective to support a claim of title. And lastly, the "effectivités" of the Ottoman Empire were, as a third separate element, inadequate. As will be shown in Section 5 below, this view reflects a total failure to understand the system by which, under overall Ottoman sovereignty, these territories were administered. Thus, if one looks at the administration of the territory as a system combining all

56 LR Exhibit 10.23.

57 See, Supplementary Annex, Nos. 10.7, 10.11 and 10.12.

58 See, para. 8.04, et seq., below.

three elements - the local tribes, the Senoussi, and the Ottomans - rather than looking at each element in isolation, it can readily be seen that there was an effective administration of the territory, far superior to that which the French subsequently brought to the territory after conquest.

7.53 However, mention must first be made of a different strand in Chad's argument, namely that the indigenous peoples were quite separate from the Libyan people.

SECTION 4. The Identity of the Indigenous Inhabitants of the Borderlands with Libya

7.54 Chad questions the identity between the tribes of the borderlands and the people of Libya itself⁵⁹. It is not entirely clear what purpose this observation serves within the context of Chad's legal argument as a whole: it cannot be to question Libya's *locus standi*, so it is presumably directed more to questioning Libya's right of succession to the claims of title derived from these tribes.

7.55 In any event, it is an observation with no foundation in fact. The Awlad Sulaiman are without question a Libyan tribe in the sense of a tribe whose origins lie in territory that is indisputably Libyan, having moved southwards from Fezzan in the mid-19th Century in the face of Ottoman penetration of the "hinterland". So far as the Toubou are concerned, the Teda Toubou, although centred in the Tibesti, are nomadic and range from areas as far north as Al Qatrun in Fezzan and the Koufra oases in Cyrenaica⁶⁰: their links are therefore decidedly "Libyan", and Chad has conceded their close tie to the Senoussi⁶¹. During the recent civil war in Chad, many Toubou fled north to Fezzan and Cyrenaica. The Daza Toubou are certainly centred more in the south, as well as in Ennedi and Ounianga, but their trading links have been traditionally northwards. The numerous Libyan merchants, originating in Fezzan and Cyrenaica, are unquestionably Libyan. And the Senoussi of course are so, with

59 See, CC-M, para. 5.174.

60 See, LM, para. 3.40, and the authorities there cited.

61 See, CC-M, para. 5.71, where a 1911 despatch of a French Officer is cited in which it was said of the Toubou that they "reçoivent leur mot d'ordre des Senoussis et leur obéissent aveuglément."

the result that the predominant affinity of the borderland peoples is now, and always has been, with Libya⁶².

SECTION 5. The Basis of the Early Claims by the Ottoman Empire

7.56 Chad's basic thesis is that the Ottomans never acquired any rights or title in the borderlands⁶³. From this it would follow, according to Chad, that neither Italy nor Libya had anything to inherit from the Ottoman Empire.

7.57 The Ottoman hinterland claim was expressed in some detail by Munir Bey, the Turkish Ambassador to Paris in May 1899⁶⁴. Although lacking precise limits - and on that score being treated with a certain scepticism by both France and Great Britain - such a hinterland claim had rather more right to recognition, as the law stood at the end of the 19th Century, than a claim to a mere "zone of influence". For it was a claim to sovereignty, which the Anglo-French claim to a mere zone of influence was not.

7.58 Moreover, unlike the British and French, to whom in 1899 the borderlands were unknown territory, the Ottomans knew the territory and had already established some evidence of control. Munir Bey was able to cite the dispatch of military expeditions, of civil servants, magistrates and religious teachers; the fostering of the caravan trade; and the acceptance of the authority of the Sultan in Constantinople as "Caliph", as the leader of Islam. The Ottoman emissary, Muhammed Basala had been in close contact with the tribes and rulers of tribes as far south as Lake Chad by 1894⁶⁵.

7.59 Of the re-inforcement by Turkish forces of positions throughout the borderlands, in 1908-1913, in response to the French advance

62 The CC-M attempts to portray the Senoussi Order as non-Libyan because the founder of the Order, the Grand Senoussi, was born in Algeria. See, CC-M, para. 5.104. But all his descendants became unmistakably Libyan as were most of the sheikhs of the zawiyas appointed by the Head of the Order. See, Evans-Pritchard, E.E.: The Sanusi of Cyrenaica, Oxford, 1949, pp. 11-23. See, also, Supplementary Annex, No. 3, paras 4.1 - 4.9.

63 See, CC-M, para. 5.19.

64 See, LM, French Archives Annex, p. 61.

65 See, LM, paras. 4.122-4.125.

northwards from Lake Chad, there can be no doubt⁶⁶. This is portrayed on Map LR 29, which appears below at paragraph 9.12. Certainly Chad rejects the notion that a purely military presence could confer title⁶⁷ (despite the implication this must have for the eventual French military "occupation"). But there is equally no question that the Ottomans had a rudimentary civilian administration in place. The French acknowledged the appointment of a Kaimakam in Tibesti in 1910⁶⁸, and the post of Kaimakam was that of a civilian administrator. In fact, the French Government expressed great concern over this development⁶⁹. The French ambassador to Constantinople sent a full report to the French foreign minister, by letter dated 9 May 1911, confirming that a Kaimakam had been appointed for Bardai since 1908, supported by Turkish gendarmes from 1910 onwards⁷⁰.

7.60 The Ottoman system of administration, based on the 1861 Law of the Vilayets, envisaged each vilayet with its own Governor, and, under his authority were the Kaimakams and Mutassarifs (a Mutassarifik being a sort of district or arrondissement) who exercised both administrative and judicial functions⁷¹. However, the Ottoman system conferred on each district a large measure of self-government, so that the total picture of the administration of the territory emerges, not from the Turkish presence in isolation, but from the totality of the administrative system. And, whilst the Porte recognised the quasi-autonomy of the Senoussi, certain controls were maintained. When the European States complained of Senoussi activities, the Porte sent a delegation to Djaraboub in 1889 to inquire about these matters directly from the Head of the Senoussi⁷². The reports indicated his loyalty to the Caliph⁷³, and both by correspondence and by personal envoys to the Caliph⁷⁴ the Senoussi

66 See, LM, paras 4.121-4.150; and see, Maps Nos. 34 and 35 in that section of the LM.

67 See, CC-M, para. 5.56.

68 See, CC-M, para. 5.60.

69 See, Supplementary Annex, Nos. 9.2, 9.3, 9.4, 9.8, 9.9 and 9.10.

70 See, Supplementary Annex, No. 9.10.

71 See, Encyclopedia Britannica, 11th Ed. (1910-1911), pp. 427-428. See, also, LC-M, para. 5.29 and Exhibit 14 thereto.

72 Al-Dajani, A., op. cit., p. 210.

73 Ibid., pp. 213-214.

74 Ibid., p. 210.

demonstrated their support of the Ottoman Caliphate. Thus, since Ottoman rule was accepted, the situation did not call for close supervision from Constantinople.

7.61 The system, as a system of indirect rule, was not essentially different from that used by other empires where vast and inaccessible territories were governed with a minimum of presence of the Imperial Power on the ground. The Spanish, Portuguese, French and British empires would offer analogous systems. Yet no one would have characterised the territories in question as terra nullius.

7.62 Indeed, in the present case, whilst scepticism was expressed about how far south the Ottoman hinterland might extend, no truly direct challenge to the Ottoman claim of sovereignty was made, even by the two Powers, Great Britain and France, which had the greatest interest in making that challenge. Great Britain was at pains to assure the Ottomans that the Anglo-French Declaration of 1899 did not prejudice their claims⁷⁵. And France, far from directly challenging the Ottoman claim, merely supported France's own claim to the areas around Lake Chad itself, then in the process of occupation by France⁷⁶; and as late as 1911-1912 France was not prepared to directly challenge the presence of Turkish troops in these borderlands⁷⁷. To the west of the borderlands, in the region of Djanet, there was an actual confrontation between French and Italian forces resulting in a status quo agreement being reached⁷⁸. In October 1911, the French Minister of Colonies reported to the French Foreign Minister that the construction of a blockhouse at Yao in Tibesti by the Turks "constituerait une manifestation indiscutable de l'occupation effective ottomane dans ces régions"⁷⁹. His concern was that Italy might succeed to the Turkish claims, and thus he argued for a study of how France might secure "nos droits" in these regions.

7.63 At the risk of repetition, it needs to be emphasised that, however limited the Ottoman presence, it far exceeded the purely military

75 LM, paras. 5.56-5.61.

76 LM, paras 5.54-5.55.

77 LM, para. 4.135, et seq., see, esp., Map No. 35.

78 See, Supplementary Annex, No. 9.1.

79 See, Supplementary Annex, No. 10.3.

presence France brought to parts of these borderlands. Moreover there was a fundamental difference. The Ottoman presence was accepted, and even sought after, by the local tribes and the Senoussi. Thus, it was a peaceful occupation, which the French presence in the area was not until well into the 1930s⁸⁰. Thus, Ottoman control could function by way of delegation. The Turkish authorities could, with confidence, leave much of the local administration in the hands of the tribal leaders, and the Senoussi, precisely because the voluntary acceptance of Ottoman authority permitted that degree of delegation. It was this loose partnership that Libya has described as "shared sovereignty", a term which Chad professes not to understand (and to which, therefore, the following section must be dedicated). But France could never rely on such delegation, for its authority was vehemently resisted. Accordingly, claims of title by France had to rely on French military force alone, as contrasted with the Ottoman claims resting on the combined administration of Ottoman, Senoussi, and tribal agencies.

SECTION 6. The Nature of "Shared Sovereignty" in this Region

7.64 Chad professes to find "incoherent" Libya's thesis that sovereignty in the borderlands was shared between the indigenous tribes, the Senoussi, and the Ottoman Empire⁸¹. Obviously, it is easier for Chad to take each "partner" in turn, and to argue that neither the Turks, nor the local tribes, nor the Senoussi could separately have sovereignty than for Chad to argue that the effectiveness of the partnership between these three elements fell short of that required to support a sovereign claim of title to the territory.

7.65 Yet Chad's notion of sovereignty, of the powers of government being located in one person, is neither necessary nor in accordance with the experience of States. There is no inherent reason why title to the borderlands should not have resided in the local tribes, with the administration - the executive and judicial powers - being divided between the tribal leaders and the Senoussi, given that no real separation existed between the temporal and spiritual power, so that the spiritual leadership of the Senoussi gave rise, quite naturally, to leadership in such matters as education, commerce and dispute

80 For example, in 1933 a French expedition was sent to the Tibesti oasis of Modra, where resistance was being encountered, with the objective that Modra be "entièrement ruiné". See, Supplementary Annex, No. 7.4.

81 CC-M, paras. 5.167-5.199.

settlement⁸². The result was that, in sparsely-populated territory of desert and mountains, the Ottomans had no need to provide any overall, elaborate system of governmental administration. Being accepted by the local tribes, and with the Caliph in Constantinople commanding their spiritual allegiance, the Ottomans could govern in partnership with the tribes and the Senoussi, with minimal direct control.

7.66 Shared sovereignty can exist in many forms, and no rule of law dictates a particular distribution of the various powers that together constitute sovereignty⁸³. Thus, there is no prescribed form of federalism: the distribution of powers between central and local units - be they cantons, provinces or states - is no concern of international law provided that, in the totality of powers exercised in partnership, the obligations of the State are fulfilled⁸⁴. Equally, there is no standard or prescribed form of Protectorate, and each Treaty of Protection has provided for such distribution of powers between the Protecting Power and the protected territory as was deemed appropriate to the circumstances⁸⁵. The Mandates system and its successor, the Trusteeship system, saw yet another form of "partnership", between indigenous people, administering authority and supervisory body (Council of the League, Trusteeship Council)⁸⁶. The quite special relationship between the Holy See and Italy, embodied in the Lateran Treaties of 1929, illustrates yet another form of "partnership"⁸⁷.

7.67 A distinct type of shared territorial sovereignty has been known in international law under the term "condominium", characterised as a

82 See, Supplementary Annex, No. 3.

83 See, Ago, R.: Yearbook of the I.L.C., Vol. 2, 1971, p. 1 at p. 276.

84 See, Rudolf: "Federal States", 10 Encyclopedia of Public International Law, pp. 165-178; Reuter, P.: "Confédération et Fédération: vetera et nova" in Mélanges offerts à Charles Rousseau, 1974.

85 See, Crawford: The Creation of States, 1979, pp. 187-208; Venturini: Il Protettorato Internazionale, 1979.

86 Bentwich: The Mandates System, 1930; Hall: Mandates, Dependencies and Trusteeship, 1948; Chowdhuri: International Mandates and Trusteeship Systems. A Comparative Study, 1955.

87 See, Cardinale: The Holy See and the International Order, 1976.

territory over which at least two States share sovereignty⁸⁸. At various times, well-known, relevant examples of this State practice (albeit in different settings) have existed: in Schleswig-Holstein (after 1864); in Sudan (after 1899); New Hebrides (now Vanuatu, after 1906); and Memel and Danzig (after 1919).

7.68 Thus, given this abundant experience, there is no basis for Chad's ridicule of the notion of "partnership" or "shared sovereignty". It existed between the tribes, the Senoussi and the Ottoman Empire precisely because it was accepted and applied voluntarily by all three parties. That could not happen with France. For France came as a foreign conqueror, an alien power to be resisted by armed struggle.

SECTION 7. The Effect of the Treaty of Ouchy

7.69 If it is accepted that the borderlands were not terra nullius, but territory held under the joint or shared sovereignty of local tribes, Senoussi and Ottoman Empire, it follows that any claim of title by France must rest on conquest. The only way to avoid this conclusion would be to argue (although Chad does not so argue) that with the departure of the Turkish forces in 1913 a "vacuum" of sovereignty arose, which France was able to fill.

7.70 Such an argument is not tenable, however, given the terms of the Treaty of Ouchy of 15 October 1912⁸⁹. The effect of this Treaty was to transfer to Italy the rights previously enjoyed by the Ottoman Empire over the territorial and personal rights subject to its control⁹⁰. No "vacuum" could arise, therefore, and France was expressly excluded from refusing to acknowledge Italy's succession to Ottoman rights, both as a result of its recognition of Italian sovereignty over Tripolitania and Cyrenaica on 20 October 1912⁹¹ and by Article 10 of the Treaty of London of 1915, under which:

88 See, Schneider, P.: Encyclopedia of Public International Law, Vol. 10, 1987, p. 58; El-Erian, A.: Condominium and Related Situations in International Law, 1952.

89 See, LM, para. 5.130, et seq.; and para. 6.76, et seq., above.

90 The transfer was not unconditional: it involved a reciprocal obligation on Italy to respect and observe the "autonomy" granted by the Firman to the inhabitants of Tripolitania and Cyrenaica and to respect certain rights retained by the Porte.

91 See, para. 6.73, above.

"All rights and privileges in Libya at present belonging to the Sultan by virtue of the Treaty of Lausanne are transferred to Italy"⁹².

7.71 The Treaty of Lausanne of 24 July 1923 confirmed Turkey's renunciation in favour of Italy of all its rights ("tous droits et titres")⁹³.

7.72 It necessarily follows, therefore, that the French military invasion of the borderlands was either aggression against Ottoman territory or against Italian territory, depending on whether the violation occurred pre- or post 1912. There was no interval of time during which France could have taken advantage of any "vacuum" in which sovereignty had lapsed.

92 See, para. 6.74, above.

93 See, also, the reference to the Treaty of Sèvres of 1920 footnoted in para. 6.81, above.

CHAPTER VIII. THE FRENCH CLAIMS OF TITLE

8.01 In essence, Chad adopts the French claims of title, and Chad's Counter-Memorial reveals the complete identity between the tactics pursued by France in 1955 and Chad's tactics in this case. Chad seeks to shift attention away from the basis of title (what Chad disparagingly terms "titres historiques"¹) and to focus the attention of the Court on the 1955 Treaty (le coeur du litige²). This had always been the French policy. Recognising the weakness of a claim of title - whether based on occupation or conquest - France sought to remedy that weakness in 1955 by persuading newly independent Libya to sign the 1955 Treaty, without any negotiations concerning Libya's southern boundary, in the hope that the provisions of Article 3 would create an illusion of title which the Libyans were unable to challenge. Today Chad adopts exactly the same tactic before the Court.

8.02 Libya has shown elsewhere³ that in 1955 Libya did not intend to recognise any specific boundary in the south, or to recognise French title to any specific area of territory. Libya had neither the necessary knowledge nor the means of verifying any French claims, at that stage⁴. But quite apart from the fact that this was not the purpose of the 1955 Treaty, it is self-evident that France lacked the capacity to conclude a boundary treaty, endorsing the supposed 1899-1919 line, unless France had title to the territory to the south of that line. Thus, whatever view is taken of the 1955 Treaty, there is no way in which Chad can escape the obligation of showing that France was sovereign over all territory to the south of the line Chad now claims. The issue of title cannot be evaded.

SECTION 1. Chad's Misuse of the Notion of "Inter-temporal" Law

8.03 Chad suggests that Libya's arguments contradict the requirements of "inter-temporal" law⁵. In fact the position is the opposite. Libya has no quarrel with Max Huber's dictum that juridical acts must be evaluated in

1 CC-M, para. 3.01.

2 See, CC-M, para. 3.03.

3 See, LM, paras. 5.438-5.462; LC-M, paras. 3.03-3.33.

4 See, also, Supplementary Annex, No. 6.7 (5).

5 See, CC-M, paras. 3.02-3.06.

the light of the law prevailing at the time those acts were committed⁶. Libya does not, in fact, seek to apply legal principles - specifically the principle of the prohibition of the use of force - retroactively. For Libya the essential questions are the following:

- (i) Were the borderlands terra nullius at the time France started to invade part of them militarily?
- (ii) If yes, did the actions of France constitute a sufficient occupation of the territory, in accordance with the law then prevailing, to confer a good legal title?
- (iii) If no, did the actions of France constitute an unlawful acquisition of territory by force, in accordance with the law then prevailing, so as to negate any title claimed thereby?

It is clear that none of the above questions involves any reliance on the retroactivity of the rule outlawing the acquisition of territory by conquest, or, indeed, of any other rule. In the sections that follow the essential issues arising from these questions will be examined.

SECTION 2. The Nature and Extent of French Occupation (Effectivités) of the Borderlands

8.04 It is only if the borderlands were terra nullius that this question arises. As indicated in Section 1 of the previous Chapter, in Libya's view the evidence and the law suggest incontrovertibly that this was not the case. However, even if, arguendo, this were the case, there is in Libya's submission no evidence that the French presence constituted a sufficient, peaceful and continuous display of State authority over the territory in question. Both Parties agree that a purely military administration would not ground a good title⁷.

8.05 Chad's evidence as to what France actually did is again set out in Chapter 6 and Chapter 9 of its Counter-Memorial. It amounts to this: only in 1913, after

6 See, Island of Palmas Case, 11 U.N.R.I.A.A., at p. 845: "... a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises "

7 See, LC-M, paras. 9.24-9.27; CM, pp. 71-73, paras. 89-92.

the Turkish units had been withdrawn⁸, did France begin its military occupation of specific locations in Borkou and Ennedi: Aïn Galakka fell to the French in November 1913, Faya in December 1913, and also Gouro a few days later; Ounianga was not entered by the French until late December 1913. Regrettably, the CC-M has attempted to blur and even to mis-state the facts by use of a map appearing there at page 254. The striking misrepresentations on this map of the alleged "progression of French occupation" is illustrated here on Map LR 28: the left-hand map is Chad's erroneous map (on page 254 of the CC-M).

8.06 The important elements in this narrative are, first, that the French invasion occurred after the Turkish troops had left, that is, it began in November 1913. This fact alone suggests the territory was not terra nullius. The Ottoman presence was clearly based on a claim of title, repeatedly asserted since the 1890's, and, moreover, it was a presence sought by, and co-ordinated with, the Senoussi. Nor was it a purely military presence, for the Ottoman Kaimakam was a civilian, not a military governor. Thus, though the Ottoman units were not large, they were part of a complex relationship of military, civil and religious authority which could realistically be regarded as an "effective occupation"⁹. The French military incursions in 1913-1914 could not. They were entirely military and aimed at controlling a few strategic points. The French presence was resisted by the local population, and France made no pretence at providing any form of civil administration or government of the territory.

8.07 As regards Tibesti, the French incursion came from another direction, from French West Africa (the A.O.F.), and consisted of one column of troops. Having occupied Zouar on 13 December 1913 and Bardai in July 1914, and having sent reconnaissance patrols to Yoo, Kayougué, Wour and Aouzou, the French column was disbanded in October 1914¹⁰. What remained was a detachment of 80 men at Bardai, commanded by a French lieutenant and 3

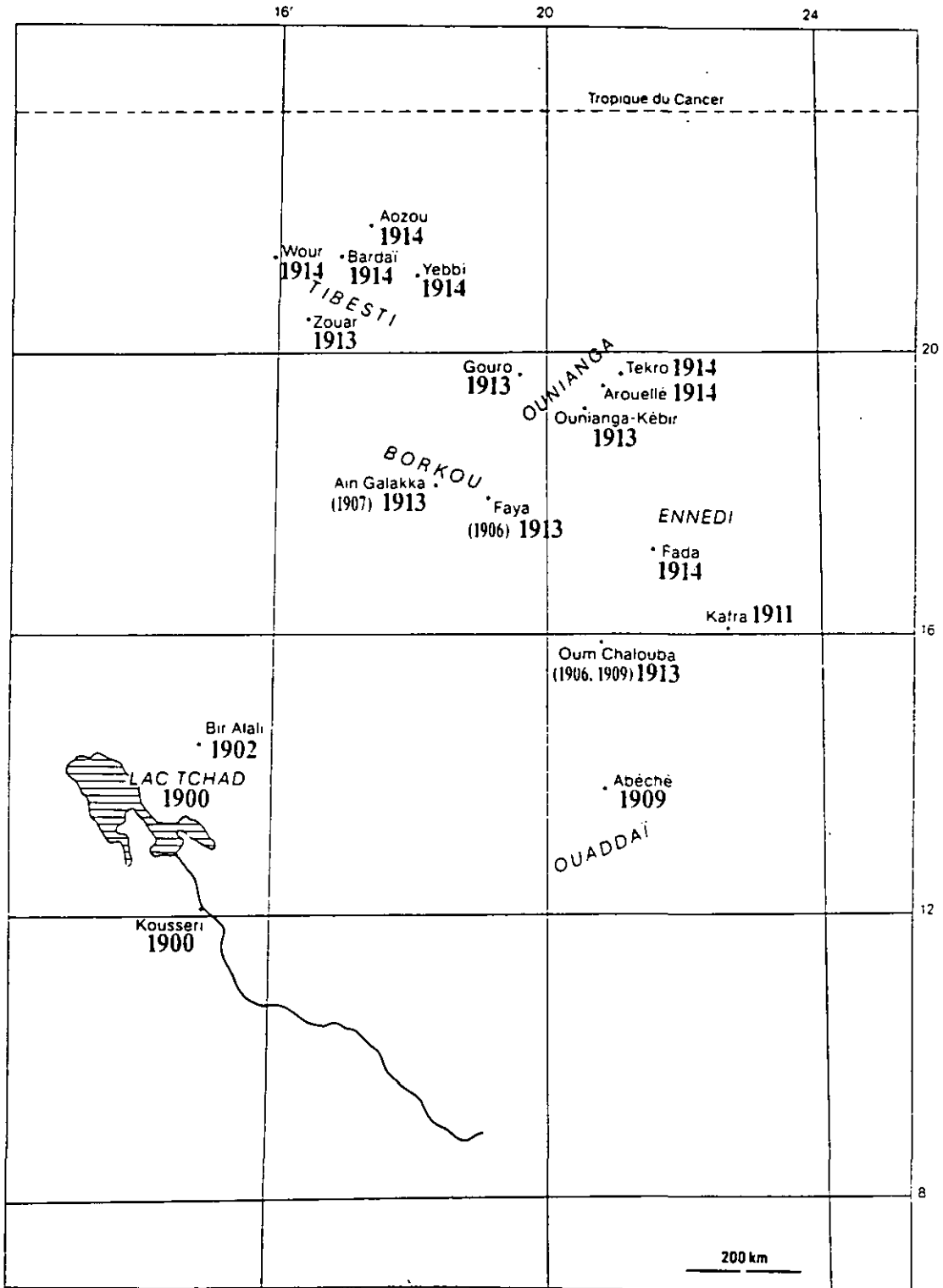
8 Chad suggests that it was not the military strength of the Ottomans that caused the French military advance to halt, but rather a diplomatic concern not to embarrass an ally. The reason matters little, although this suggestion in the CC-M lacks credibility. The fact is that the Ottomans were in possession of these borderlands, in alliance with the Senoussi and under a claim of title, until early 1913. See, CC-M, paras. 6.51-6.55.

9 See, para. 7.59, above.

10 See, CC-M, para. 6.59.

FALSE PICTURE OF FRENCH OCCUPATION OF THE BORDERLANDS

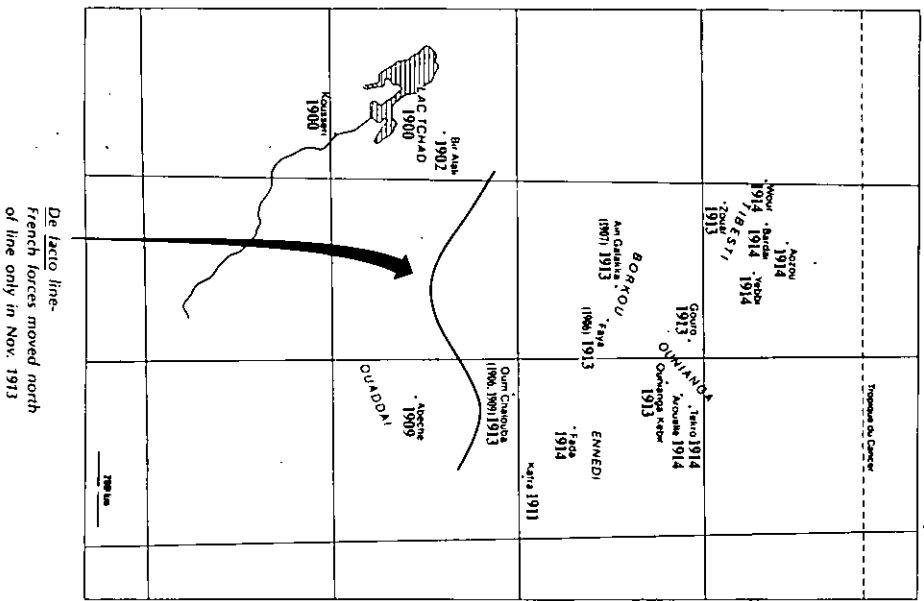
PROGRESSION DE L'OCCUPATION FRANÇAISE - 1900-1914



THE FACTS

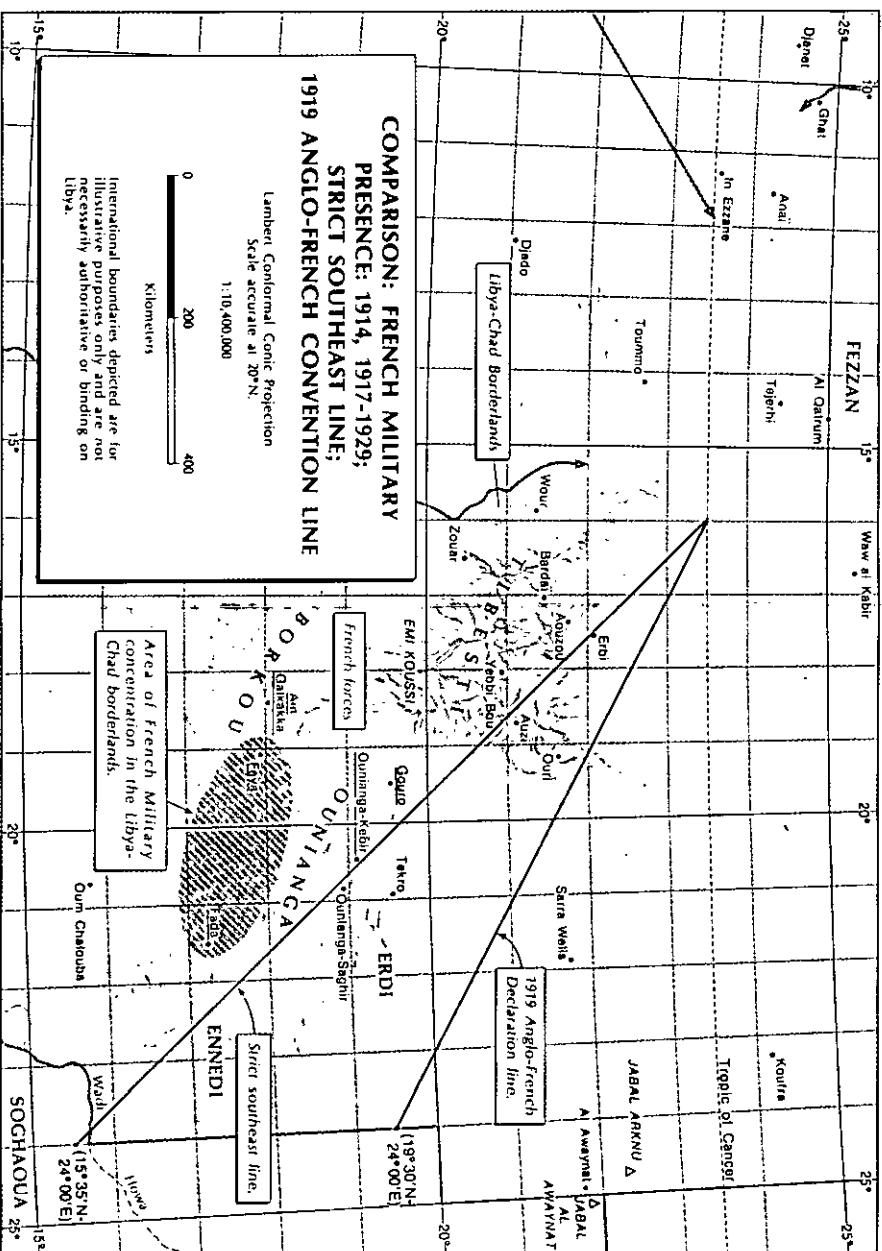
French forces did not start to move into borderlands (north of 15° N) before November 1913. Tibesti was not occupied until the start of 1930.

- Aouzen**
French column passes through: 1914
French first occupy: April 1930
French post unmanned: 1935-1937
Post vacated: Feb. 1938-April 1954
- Wour**
French post established: 1930
- Bardai**
French post established: July 1914
Post abandoned: August 1916
French post reestablished: 1930
- Yebbi Bou**
French post established: 1930
- Zouar**
French post established: Dec. 1913
Post abandoned: August 1916
- Goufo**
French post established: Nov. 1914
Proposals to evacuate: 1914, 1916
- Ain Chalka**
French raid: 1907*
Ottoman occupation: 1911
French destruction of Zawya:
Nov. 1913
French post established: 1914



- Tekro**
French reconnaissance: 1914
French post established: Dec. 1933
Post evacuated April 1935 with assassination of French Chief of post.
Post abandoned: April 1941
- Arouelle**
French reconnaissance: 1914
No French post established.
- Ounianza Kehir**
Post established: Dec. 1913
Proposals to evacuate: 1914, 1916
Post abandoned: July 1940
- Faya**
French raids: 1906, 1908*
Ottoman occupation: until early 1913
French post established: 1913
- Oun Chalouba**
French raids: 1906, 1909*
Ottoman occupation: 1912-1913
French post established: 1913
- Fada**
Ottoman occupation of nearby Baki until March 1913.
French post established: 1914
- Kafra**
No evidence of French post being established.

TRUE PICTURE OF FRENCH OCCUPATION OF THE BORDERLANDS



Note: Map reflects only A.E.F. military activity. A.O.F. occupied Zouar in December 1913 and Bardai in 1914, abandoning both posts in August 1916.

*French raids determined ineffectual by senior French military commanders. See Supplementary Annex, No. 95.

French N.C.O.'s; and a small detachment at Zouar - one section of camel-mounted troops, one section of riflemen, commanded by a French lieutenant and 2 N.C.O.'s¹¹.

8.08 But Bardai was abandoned toward the end of July 1916, as was Zouar, and no permanent French presence existed in Tibesti from 1916-1929¹².

8.09 Given this account, it is extraordinary that Chad should seriously claim that France had exercised an "effective occupation" over Tibesti. Even as a military presence it scarcely existed after 1916, and Chad adduces no evidence whatsoever of any attempt to bring to the territory a peaceful and continuous display of State authority.

8.10 It is true that Chad devotes the whole of Chapter 9 of its Counter-Memorial to an attempt to prove the contrary. It is entitled "l'exercice continu de la souveraineté française, puis Tchadienne, sur le B.E.T." But this is based on the following:

- A supposed Italian recognition of French sovereignty over the so-called "B.E.T." during the 1919 Peace Conference (para. 9.07);
- A statement by a French Senator in 1920 (para. 9.09);
- A few words taken from a speech by Foreign Minister Tittoni to the Italian Parliament in 1919 (para. 9.12)¹³;
- The evidence that Italy sought a "cession" of the "B.E.T." from France in the period 1928-1934 (paras. 9.14-9.21)¹⁴.

11 See, CC-M, para. 6.75.

12 The CC-M (para. 6.78) claims that Zouar was reoccupied in 1916, based on a statement in a book by Emile Gentil. This is overwhelmingly refuted by other evidence. See, General Serrigny's Report of 12 October 1928, LM, para. 5.259; see, also, Supplementary Annex, Nos. 11.3 and 11.4.

13 On this, see, LC-M, paras. 4.192-4.195; see, also, para. 6.105, et seq., above.

14 As to why Italy negotiated in these terms, see, para. 6.222, et seq., and 11.4, above.

Clearly, this is no evidence of effective occupation at all. That concept requires evidence of administration, of State activity, within the territory. Statements made in Paris or Rome cannot constitute effective occupation of the borderlands¹⁵.

8.11 The conclusion must be, therefore, that even on Chad's own assumption that the territory was terra nullius - a assumption which Libya has shown above to be wrong - there is no evidence that France acquired a valid title to the borderlands via effective occupation in 1914 (or in 1919), as Chad claims. What we have is evidence of a very minimal French military presence at a few posts in Borkou and Ennedi, and virtually no evidence of even a military presence in Tibesti from 1916-1929. Until at least 1933, fighting between the indigenous peoples and the French continued. There is no real evidence of even an attempt at genuine, effective administration of the territory until the 1950's - after the critical date and Libyan independence. The result is that, whatever title France did acquire had to be acquired, not by occupation, but by military conquest.

SECTION 3. The Invalidity of Acquisition of Title to Territory by Conquest Post-1919

8.12 Chad seems undecided whether it should argue that France acquired the borderlands by way of conquest or by way of occupation. It is true that at one point the CC-M explicitly states that the alleged title was acquired on the basis of "occupation" and not on the basis of "conquest" in the narrow sense of the term¹⁶, and that this legal view is, at least in the terminology used, repeated in subsequent passages of the CC-M¹⁷. However, in other parts of the same Chapter, a different position is expressed and the Chadian arguments refer to the French "conquest"¹⁸. Such inconsistent terminology is striking because the difference between occupation and conquest as modes of territorial acquisition is well-established and discussed in every treatise of international law. So it would appear that the confusion created in Chad's pleadings is intentional.

15 Chad's later evidence (CC-M, paras. 9.22-9.41) of French attempts to conduct a referendum in 1958, or to requisition land for military use in 1956-1957 (CC-M, para. 9.33) is wholly irrelevant to Chad's claim that France had acquired title by means of effective occupation as early as 1914 and, in any event, by 1919.

16 CC-M, para. 6.04.

17 CC-M, paras. 6.24, 6.42, 6.62 and 6.82.

18 CC-M, paras. 6.08, 6.25, 6.56 and 6.72.

8.13 "Conquest" refers to acquisition of territory previously held by an entity recognised by international law as having title to the territory. "Conquest" also presupposes the use of force which brings an end to the resistance by the previous holder of title, and in case of partial annexation a treaty of peace is needed to complete the process of acquisition. In contrast to the specific legal regime of conquest, "occupation" refers to a situation in which terra nullius is effectively occupied, without further requirements.

8.14 Given these differences between conquest and occupation, it is not open to Chad to seek to evade qualifying the relevant French acquisition by treating the two concepts in an apparently interchangeable manner. As shown previously, the borderlands were not terra nullius, but were held in shared sovereignty, first by the indigenous peoples and the Ottoman Empire, and, later, by the indigenous peoples and Italy. Thus, the only way for France to acquire the lands was on the basis of conquest. However, the requirements of acquisition of title by conquest were not met. Resistance by those who held title was not overcome by France until long after conquest had become illegal, nor was any peace treaty concluded which would have transferred the territorial rights to France.

8.15 Chad does not argue that France was not bound by the obligation of Article X of the Covenant of the League or by the 1928 Pact of Paris. Chad argues that the obligations of France extended only to other States¹⁹, and that Article X "... n'a rien à voir avec de futures acquisitions de titre sur des territoires, qui n'avaient pas encore acquis l'indépendance ..." ²⁰. In short, Chad's thesis is that "colonial" aggression remained lawful.

8.16 This highly unattractive thesis fails to take account of the view that entities lacking statehood could legitimately hold sovereign rights. If the Court's affirmation of that principle in the Western Sahara Case is correct²¹, it becomes difficult to explain why, with the introduction of a rule of law prohibiting

19 In fact the terms of Article X contemplated not "States", but only "Member States". It is not clear whether Chad is suggesting that aggression remained permissible against non-Member States.

20 CC-M, para. 3.45.

21 Chad's insistence that in this case the Court made no finding as to the illegality of Spain's conquest of the Western Sahara is surely irrelevant. The Spanish conquest occurred long before the Covenant of the League (CC-M, paras. 3.09-3.10).

aggression, sovereign rights vested in States were protected by the principle, but sovereign rights vested in non-State entities were not.

8.17 However, the central point - which Chad's thesis overlooks - is that the territory did belong to a sovereign State, moreover a member State of the League of Nations, namely Italy. For if the borderlands were under Ottoman possession until 1913, by claim of right as territorial sovereign, and if Italy succeeded to the Ottoman Empire's rights under the Treaty of Ouchy of 1912, as France expressly recognised at the time, and reaffirmed in Article 10 of the 1915 Treaty of London and in the Treaty of Lausanne of 1923, it follows that the borderlands were in fact State territory at all relevant times. It is no answer for Chad to suggest that the Treaty of Ouchy did not define the limits of the territory to which Italy succeeded: France knew that the borderlands were claimed by the Ottomans. The Ottomans had held these territories, civilly and militarily, until 1913, and France had halted its northerly expansion south of 15°N latitude as a matter of high French policy because of this Ottoman presence²². Thus, France knew that to penetrate further northwards would involve the invasion of the territory of a recognised State; and, in so far as Italy succeeded to the Ottoman Empire, that position remained unchanged.

8.18 The French military incursions post-1919 were fully subject to the prohibition of Article X of the Pact of the League of Nations, and thereafter to the 1928 Pact of Paris. And, in so far as the French military conquest was a continuing wrong - at no stage accepted by the indigenous population and converted into a peaceful occupation - France's breach of those treaty provisions was a continuing breach. In short, France never did acquire a valid title to the borderlands. As the CC-M admits, Italy protested these French military incursions, although in the context of the on-going negotiations between Italy and France.

8.19 In its Counter-Memorial, Chad misunderstands Libya's arguments concerning this notion of a continuing breach. In its Memorial, Libya had cited Max Huber's dictum in the Palmas Island Case to the effect that a State asserting title had to show not only that title had been validly acquired (i.e., in conformity with the law as it stood at the date of acquisition), but also that it had

22 See, Supplementary Annex, No. 10.4

been maintained in accordance with the changing requirements of the law²³. The classic example would be when a title acquired in the 16th Century by mere discovery would require the support of effective occupation in the 20th Century.

8.20 Chad sees Libya's reliance on this doctrine as a misapplication of inter-temporal law²⁴. In fact, however, Libya does no more than repeat the normal principle that State conduct must be judged, as to its validity, by the prevailing law. In the present case, even if France had effectively conquered certain limited areas of the borderlands pre-1919, so as to acquire a title under the law then prevailing, France could not thereafter validly maintain that title by conduct which had become illegal. In short, whether France acquired new territory by conquest or continued to control territory previously conquered by military coercion, such conduct was illegal after 1919 and could not support a valid title. The concept of State conduct being continuously subject to scrutiny under the changing conditions of the law - and of "continuing breach" where those conditions are not met - is familiar enough in the context of de-colonisation. For no one doubted that the colonial titles were originally validly acquired. But with the evolution of the law, and the gradual recognition that the maintenance of a colonial title contrary to the wishes of the indigenous peoples was illegal, that original validity was lost. There is no reason why similar principles should not apply to the French acquisition and maintenance of title by conquest.

23 See, LM, para. 6.66.

24 See, CC-M, paras. 3.13-3.18.

PART IV

CONSISTENCY OF CONDUCT AND THE ISSUE OF ACQUIESCENCE

**CHAPTER IX. CONDUCT OF THE OTTOMAN EMPIRE, THE
SENOUSSI, FRANCE, BRITAIN AND ITALY PRE-1945**

SECTION 1. Introduction

9.01 This Chapter is devoted to a consideration of whether, on the assumption that there exists at present no conventional boundary east of Toummo, it is possible to maintain that, by reason of the conduct of one or more of the States or other entities from time to time exercising or claiming to exercise sovereign rights in or over the Libya-Chad borderlands, a settled boundary has come to be tacitly recognised. More specifically, it analyses, from this perspective, Ottoman conduct (up to 1913), Senoussi conduct, British conduct, French conduct and Italian conduct in the period up until 1945. It is useful at the outset of the discussion to summarize the conclusions reached in this Chapter.

9.02 As far as Ottoman conduct is concerned, it is demonstrated below that there is not a shred of evidence to support the view that the Ottoman Empire "acquiesced" in a French claim of title to the borderlands, a claim so flagrantly incompatible with the hinterland rights asserted by the Ottoman Empire in 1890 and again in 1899 and 1902 and so obviously at variance with the Ottoman civil and military presence in parts of the borderlands from 1908 onwards.

9.03 As far as Senoussi conduct is concerned, the evidence is clear that the Senoussi tribes in the borderlands offered fierce, determined and widespread resistance to the French military advance northwards in 1913-1914 and continued to attack the limited number of French garrisons and advance posts in the borderlands long after the end of World War I and indeed well into the 1930s. Far from "acquiescing" in the French attempt to take over their territories in the borderlands, the Senoussi, in conjunction with the indigenous tribes, offered prolonged resistance.

9.04 British conduct is more peripheral to the issue, since Britain never at any time exercised or claimed to exercise sovereign rights over the borderlands. But it is clear that Britain did not take the same view as France about the legal effect of the 1899 Declaration. The British view at the time was

that, north of 15°N latitude, the 1899 southeast line was not intended to be a territorial boundary and that the Declaration as a whole could not affect the rights of third States. The British may have accepted, after 1919, that the Anglo-French Convention of 1919 created, as between Britain and France, a true east/west boundary as far north as the intersection of the southeast line with latitude 19°13'N, but otherwise their position remained unchanged. Throughout the period until 1945, Britain, although aware of conflicting French and Italian claims to title over the borderlands, refused to take a position on these conflicting claims.

9.05 French conduct has to be considered from the standpoint of whether it displayed inconsistencies as regards the French claim to title over the borderlands, based on the thesis that a conventional boundary had resulted from the combined effect of the 1899 Declaration, the 1900 and 1902 Franco-Italian Accords and the Anglo-French Convention of 1919. The most notable French flaws and inconsistencies were the following:

- Their repeated assertions that a map was annexed to the 1899 Declaration and that this map supported the French thesis as to the direction of the 1899 southeast line;
- The agreement of the French Government in 1911 and again in 1914 to enter into delimitation negotiations with the Ottoman Empire and, then with Italy - negotiations that would have included Libya's southern boundary - while subsequently maintaining that Libya's southern boundary had already been fixed conventionally (as least as far as Italy was concerned);
- The admission in the Exposé des motifs accompanying the draft French law authorising ratification of the 1935 Treaty of Rome that, prior to signature of that Treaty, there had been no conventional boundary between France and Italy east of Toummo, followed by subsequent French assertions that a boundary in this area had resulted from the combined effect of the 1899, 1900, 1902 and 1919 instruments mentioned above.

France did not seek at any time to rely on colonial effectivités as the basis of its claim to title over the borderlands.

9.06 Italian conduct displays no evidence of Italian "acquiescence" in the French interpretation of the nature or direction of the 1899-1919 southeast line during any part of the period between 1912 and 1945. There is no evidence of Italian "acquiescence" in French title to any part of the borderlands, save in the context of the boundary which Italy was reluctantly prevailed upon to agree with France in Article 2 of the 1935 Treaty of Rome, which failed to come into force. Italy took the view that the 1899 southeast line was intended to be a strict southeast line, challenged the French claim that the line had become a boundary line, and protested vigorously against the 1919 Anglo-French Convention and the 1924 Protocol and declaration, and equally protested against any French military incursion across the 1899 strict southeast line.

9.07 It is an integral part of the Chad thesis that Italy "recognised" a French sphere of influence extending up to the "frontier" of Tripolitania by virtue of the 1900-1902 Franco-Italian Accords, and that the northern and eastern limits of that French sphere of influence were constituted by the southeast line from Toummo to 24°E longitude described in the 1899 Declaration as "interpreted" (or, as Libya would contend, modified) by the Anglo-French Convention of 8 September 1919. The Chad thesis is then amplified to assert that Italy had, at some unspecified point of time, accepted in respect of Libya the line constituted by the 1919 Anglo-French Convention as the boundary between Libya and what is now Chad.

9.08 How Italy could, in 1900-1902 have accepted a "line" the course of which, even as between Britain and France, was fixed in 1919 (modifying the line fixed in 1899), is conveniently left unargued. Equally, Chad dodges the issue that not until after the 1912 Treaty of Ouchy did Italy have standing to agree a boundary with France concerning Libya¹.

9.09 Chad's thesis is the more striking, given the ample evidence on the record of vigorous and repeated Italian protests through the 1920s and

1 As Chapter VI has demonstrated, the 1900-1902 Accords and the 1912 Franco-Italian Agreement, entered into shortly after the Treaty, were in any event not concerned with fixing boundaries.

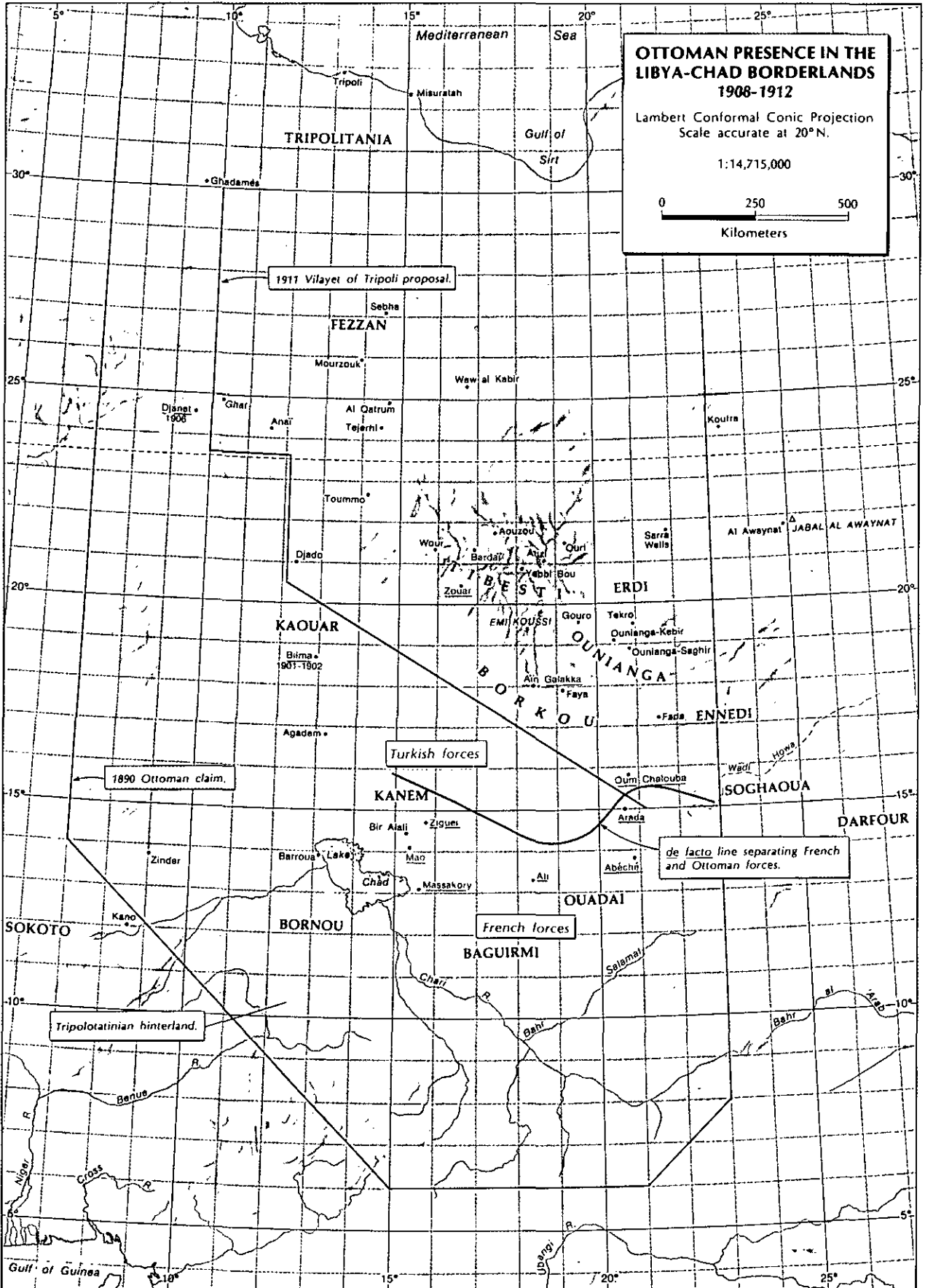
early 1930s against the 1919 Convention. That France itself did not seriously espouse the view that the combined effect of the 1899 Declaration, the 1902 Accord and the 1919 Convention was to establish a boundary as between Libya and what is now Chad is confirmed beyond a peradventure:

- By the terms of Article 2 of the 1935 Treaty of Rome, where it is stated that the boundary separating Libya from the A.O.F. and the A.E.F. "sera déterminée" as follows²; and
- By the terms of the Exposé des motifs accompanying the French draft law authorising ratification of the Treaty of Rome of 1935, where it is clearly admitted that the 1919 Franco-Italian Agreement left Italy and France without a conventional boundary to the east of Toummo³.

9.10 But assuming that no such conventional boundary had been established prior to 1935, assuming also that, as both Chad and Libya agree, the boundary line stipulated in Article 2 of the 1935 Treaty never took legal effect as a result of the failure of the two States concerned (France and Italy) to exchange instruments of ratification of the Treaty, and assuming finally that the 1955 Treaty did not itself determine Libya's southern boundary east of Toummo: is it possible to maintain that, by reason of the conduct of one or more of the States or other entities from time to time exercising or claiming to exercise sovereign rights in or over the Libya-Chad borderlands, a settled boundary had come to be tacitly recognised? In this Chapter, Libya will assess the conduct of all interested parties prior to 1945 from this perspective - that is to say the conduct of the Ottoman Empire, the Senoussi, Britain, France and Italy. In Chapter X, Libya will similarly assess the conduct of all interested parties, including France, Italy, the Four Powers and the United Nations, in the period between the close of World War II and the advent of Libyan independence in 1951. Finally, in Chapter XI, Libya will analyse the significance of Libyan and Chad conduct since 1951 from this point of view.

2 See, LM paras. 5.331 and 5.332; see, also, para. 6.213, above.

3 See, LM, paras. 5.335-5.338. Note also that the British Foreign Office took the view that, prior to the negotiation of the 1935 Treaty, Libya's southern boundary had not been determined: see, LM, paras. 5.340 and 5.341.



Specially prepared for presentation to the International Court of Justice

SECTION 2. Ottoman Conduct

9.11 Ottoman conduct prior to 1912 is relatively straightforward. In 1890, the Ottoman Empire vigorously protested the Anglo-French Declaration of 5 August 1890, whereby Britain recognised a French "zone of influence" southwards from their Mediterranean possessions to the Say-Barroua line, on the ground that this was an encroachment on territories over which the Ottoman Empire had rights as part of the hinterland of Tripolitania⁴. The Ottoman Empire again lodged a strong protest against the terms of the 1899 Declaration. The protest was made not only in Paris and London, but also in Berlin, Vienna and St. Petersburg⁵. The Ottoman protest was repeated on 12 March 1902, when the Ottoman ambassador in Paris handed in to the Quai d'Orsay a memorandum elaborating on the reasons why the 1899 Declaration infringed Ottoman hinterland rights⁶. France returned no reply to this communication.

9.12 But Ottoman conduct did not stop at making paper protests. There is evidence that the Sublime Porte was becoming increasingly concerned at French expansionism in north/central Africa in the early years of the century to the detriment of Ottoman rights in and over the hinterland of Tripolitania. As early as 1901-1902, it was reported that a detachment of Ottoman forces had occupied Bilma⁷. In 1906, the Ottomans were installed at Djanet, and a modus vivendi was reached between the French and Ottomans covering that region pending diplomatic settlement (Map LR 29)⁸. With the steady French military advance towards the northern oases of Kouar in 1907, the indigenous tribes of the borderlands, acting in conjunction with the Senoussi, sought, and were accorded, the protection of Ottoman forces⁹.

4 See, LM, paras. 5.09-5.15: see, also, LM, paras. 4.46-4.49. It will be recalled that Britain and France had sought to soften the Ottoman protest by exchanging notes placing on record their view that the 1890 Declaration "... does not affect any rights which His Imperial Majesty the Sultan may have in the regions which lie on the southern frontier of his Tripolitanian dominions".

5 See, LM, paras. 5.49-5.55.

6 See, LM, para. 5.77.

7 See, LM, paras. 5.78, 5.80 and 5.81.

8 See, also, Map LR 17, referred to at para. 6.121, above, and Supplementary Annex, No. 9.1.

9 See, LM, paras. 4.126 and 4.127.

9.13 There is clear evidence of an Ottoman political and military presence in Tibesti from early 1908 onwards, in Borkou from 1911 onwards, and in Ennedi from 1912 onwards. There is likewise clear evidence of the steps taken on the ground by local Ottoman and French military commanders to avert conflict between forces under their respective commands. The correspondence between Captain Rifky (the Ottoman commander at Aïn Galakka) and Colonel Largeau (the French commander at Fort Lamy) in 1911, particularly after the outbreak of war between Italy and the Ottoman Empire in September, 1911, confirms that a temporary modus vivendi was arranged in this region (as in the region of Djanet) whereby the status quo (including the continued presence of Ottoman troops and officials in the posts which they then occupied in Tibesti, Borkou and Ennedi) would be maintained until the end of the Italo-Turkish war¹⁰ (Map LR 29). It was only after the conclusion of the Treaty of Ouchy in October, 1912, that the Ottoman forces began to withdraw and the French felt able to resume their advance north of 15°N latitude, although this move was further delayed until November 1913¹¹.

9.14 It will of course be recalled that part of the background to these developments on the ground was that France and the Ottoman Empire had agreed in 1911, following the successful outcome of the Franco-Ottoman negotiations in 1910 to delimit the boundary between Tripolitania and Tunisia, to form a mixed commission to continue the delimitation of the boundaries of their respective territories in the Sahara and the Sudan beyond Ghadamès. As a result of the outbreak of the Italo-Ottoman war in 1911 and the subsequent defeat of the Ottoman forces in Tripolitania in 1912, this mixed commission never met; but the evidence establishes that the modus vivendi on the ground in the borderlands (as well as in the area of Djanet) was reached with the insistence of Paris because it was anticipated at the time that the question of the boundary with French territories south and east of Ghadamès would be resolved shortly through the work of this Franco-Ottoman mixed commission¹².

10 See, LM, paras. 4.142-4.150; and LC-M, paras. 5.25-5.28. See, also, Supplementary Annex, Nos. 10.12 and 11.3.

11 See, LC-M, para. 5.29. See, para. 8.05, above, and Map LR 28, for a discussion of the false picture the CC-M portrays of France's advance into the borderlands, trying to play down the modus vivendi reached generally along 15°N latitude.

12 See, LM, paras. 5.113-5.116; and LC-M, para. 4.140.

9.15 There is accordingly not a shred of evidence deriving from Ottoman conduct that would support any view that the Ottoman Empire or its representatives in Tripoli or in the borderlands had ever "acquiesced" in a French claim of title to the borderlands, a claim so flagrantly incompatible with the hinterland rights asserted by the Ottoman Empire in 1890 and again in 1899 and 1902. By the time Ottoman forces evacuated Tibesti, Borkou and Ennedi in 1913, they had been, together with the Senoussi and the indigenous tribes owing allegiance to the Senoussi, in effective occupation of large parts of the borderlands for periods of some five years. Furthermore, even the compromise proposal recommended by the vilayet of Tripoli to the Porte in 1911 as the basis for the Ottoman position in the planned negotiations within the Franco-Ottoman mixed commission would have left almost all of the borderlands on the Ottoman side of the line¹³. Thus, it cannot seriously be maintained that the Ottoman Empire had at any time admitted any French claim of title to the borderlands¹⁴.

SECTION 3. Senoussi Conduct

9.16 If Ottoman conduct prior to 1912 is relatively straightforward, Senoussi conduct through the period in which they played an active role in the borderlands is equally so. In the latter years of the 19th Century, the Senoussi had acquired a powerful religious and secular influence over the indigenous tribes of the borderlands, partly as a result of their proselytising activities and partly as a result of the educational and mediating role which they played in seeking to settle disputes among the various tribes whose home was in the borderlands¹⁵. Even Chad, in its Memorial, correctly acknowledges that, at

13 See, LM, paras. 4.140 and 4.141, together with Map. No. 35. See, also, paras. 7.59 and 8.06, above, where it is brought out that the Ottomans installed civil administration in this region, unlike the subsequent, purely military, French presence; furthermore, that the Ottomans had been welcomed by the Senoussi peoples while the French invasion was bitterly contested.

14 See, also, LC-M, paras. 8.62 and 8.63.

15 For a description of these various nomadic tribes and tribal groups, see LM, paras. 3.34-3.43; for a general account of the unique role played by the Senoussi in the region in the late 19th Century and early 20th Century, see, LM, paras. 1.22-1.30, and 3.12-3.19; and for a more detailed account of how the Senoussi exercised their authority in the borderlands, and indeed throughout the region as a whole, see LM, paras. 3.44-3.71. See, also, LM, para. 4.78 for comment on Ottoman-Senoussi relations, and LM, paras. 4.89-4.98 and 4.103-4.112, for the role played by the Senoussi in organising the resistance of the indigenous tribes to French advances north of Lake Chad. See, also, Exhibit LR 12 and Supplementary Annex, No. 3, for independent studies of the matter.

that time, and at least until 1912, it was the Senoussi who exercised sovereign rights in and over the borderlands¹⁶.

9.17 Admittedly Chad seeks to go back on this admission in its Counter-Memorial by denying that the Senoussi, although having a certain structure and a certain degree of social organisation, were sufficiently organised as an entity to be able to acquire title to the borderlands¹⁷. Chad then seeks to develop the imaginative (but fallacious) theory that a distinction can be said to exist between a "territorial title" inhering in the indigenous peoples of the lands which they occupy (deriving from customary tribal law) and a "sovereign title" (deriving from the international law of the time)¹⁸. Chad cites no authority for this theory, which in any event fails to explain how, and in what manner, the asserted "sovereign title" could displace the "territorial title" in the absence of agreements with the leaders of the indigenous peoples. The flaws in Chad's arguments have already been demonstrated in the previous two Chapters¹⁹.

9.18 Where Chad falls into error yet again is in denying the continued relevance of the original title shared between the Senoussi and the Ottoman Empire after the events of 1912. Senoussi conduct after 1912 cannot be represented as amounting to capitulation to the territorial designs of the French in the borderlands or as any "acquiescence" in the establishment of French title to the borderlands. Indeed, the evidence demonstrates that the Senoussi tribes offered widespread and determined resistance to the French military advance northwards in 1913-1914, and continued to attack French garrisons or advance posts in the borderlands long after the end of World War I, and indeed up until the early 1930s²⁰. It is a travesty of the historical record for Chad to claim that by 1919 (when French forces had been withdrawn from Tibesti and exercised at most a precarious and sporadic control through a post established in other parts of the borderlands) France had peacefully occupied the whole of Borkou, Ennedi and Tibesti up to the 1919 line²¹. Far from "acquiescing" in the French attempt to

16 See, CM, p. 254, para. 177; and, p. 19, para. 12.

17 See, CC-M, para. 3.07.

18 See, CC-M, paras. 5.16 to 5.18.

19 See, paras. 7.57, et seq., and 8.12, et seq., above.

20 See, LC-M, paras. 5.35-5.95. See, also, Supplementary Annex, Nos. 7.2 and 7.4.

21 The CC-M even attempts to move up the date of alleged French occupation to 1914, presumably to try to show that on the eve of delimitation negotiations with the Italians,

take over their territories in the borderlands, the Senoussi, in conjunction with the indigenous tribes, fought the French tooth and nail; and this struggle continued long after the Ottoman withdrawal in 1913. Moreover, the Senoussi found themselves with the problem of organising the indigenous peoples' defence on two fronts: in the south against the French; and in the north against the Italians.

SECTION 4. British Conduct

9.19 Throughout the period until 1945, British conduct was reasonably coherent, though it did display some inconsistencies. In 1899, British policy in Africa was dominated by the need to establish a barrier against French colonial expansion eastwards to the Nile Valley where the British position in Egypt and the Anglo-Egyptian Sudan had been seriously threatened by the Fachoda incident of the previous year. This is in itself sufficient to explain the British interest in agreeing with France a line to the northeast of Lake Chad which would effectively place a limit on French expansionist policies in north-central Africa. The British certainly did not regard the southeast line described in Article 3 of the 1899 Declaration as a territorial boundary. Neither Britain nor France were in occupation of territory anywhere near the course, or approximate course, of the southeast line. But Britain did have designs on Darfour, which it regarded as appertaining to the Anglo-Egyptian Sudan. There was no agreed boundary between Darfour and Ouadaï which lay to its west. Equally there was no agreed boundary between the French Congo possessions and that part of the Anglo-Egyptian Sudan lying to the south of Darfour. Thus, part of the object and purpose of the 1899 Declaration was to establish a true east/west frontier between French possessions south of 15°N latitude and the Anglo-Egyptian Sudan, and part was to place a limit on French expansionism to the north and east of the southeast line described in Article 3.

9.20 Although it proved possible during the 1899 negotiations to fix the boundary between approximately 5°N and 11°N, it was not possible to determine the boundary between Darfour and Ouadaï; it was therefore agreed that this task should be entrusted to a mixed commission, which would have the task of delimiting that portion of the boundary in an area between Darfour and Ouadaï stretching from approximately 11°N to 15°N and lying between 21°E and

which in the event never occurred, French forces were in firm control of the borderlands. This is totally refuted by the evidence set out in the LM, LC-M and here. See, e.g., para. 8.05, above, and Map LR 28.

23°E. Article 2 of the 1899 Declaration dealt with the boundary south of 15°N; and Article 3 described the southeast line as running from the point of intersection of the Tropic of Cancer with 16°E longitude southeast to 24°E longitude and then following 24°E longitude until it met, to the north of 15°N latitude, the frontier of Darfour as eventually fixed.

9.21 Libya has analysed in great detail the travaux préparatoires of Article 3 of the 1899 Declaration, and the matter has been taken up once more in Chapter VI above²². The story is a complex one; and the record has become somewhat blurred as a result of the confusion created by the Non-Annexed Map and the uncertain state of geographical knowledge at the time. However, as Libya has demonstrated, the travaux do disclose that the intended direction of the southeast line in Article 3 was true southeast to intersect with 24°E longitude just to the north of 15°N. Certainly, Britain regarded it as a true southeast line at the time, as is evidenced by the British War Office maps of 1906 (revised to 1913), 1914 and 1916²³.

9.22 A factor which influenced British conduct in 1899 (and indeed in subsequent years) was the concern that the southeast line described in Article 3 of the Additional Declaration might be regarded by the Porte as an infringement of Ottoman rights over the hinterland of Tripolitania and Cyrenaica. Lord Salisbury was well aware that, only nine years previously, the Ottoman Empire had staked out a far-reaching hinterland claim and had notified it to Britain and France. Lord Salisbury was also anxious about Italy's reaction, since it was known that Italy regarded itself as the potential successor to Ottoman rights in Tripolitania and Cyrenaica. These concerns were voiced to M. Cambon at several stages during the negotiation of the 1899 Additional Declaration.²⁴ A study of the travaux reveals that it was the British, much more than the French, who were anticipating, and wished to soften the effect of, potential Ottoman and Italian protests and expressions of concern.

9.23 This is indeed confirmed by the explanations which the British subsequently gave in response to Ottoman and Italian representations.

22 See, LM, paras. 5.19-5.48; LC-M, paras. 4.14-4.72; see, para. 5.75, et seq., above.

23 See, LC-M, para. 4.18, and Maps LC-M 14A and 14B; see, also, LM, para. 5.182 and Map No. 63.

24 See, LM, paras. 5.21-5.22, 5.25, 5.27 and 5.32.

The most complete and significant explanation is that given in the 1902 Anglo-Italian Accord²⁵. It will be seen that Britain specifically assured Italy that, to the north of 15°N latitude, the line described in the 1899 Declaration represented merely the limit beyond which the French Government would not at any time advance its pretensions; and equally assured Italy that the provisions in which this limit was laid down were carefully worded so as to avoid bringing into question either the existing rights of other Powers or any prospective claim which they might later put forward²⁶. Even more specifically, Britain declared to Italy on 11 March, 1902, inter alia, that the 1899 Declaration "... in no way purported to deal with the rights of other Powers, and that, in particular, as regards the vilayet of Tripoli and the Mutessarifik of Benghazi, all such rights remain entirely unaffected by it"²⁷.

9.24 Thus, the British view of the legal effect of the 1899 Declaration differed radically from the French view as it was subsequently to be developed. The British view was that, north of 15°N latitude, the 1899 southeast line was not intended to be, and indeed could not be, a territorial boundary, and that the Declaration as a whole could not affect the rights of other non-signatory Powers. This was the view consistently maintained by Britain in subsequent years, notably in the exchanges between Britain and France in the early 1920s when these two States were seeking to prepare a concerted response to the Italian protest against the Anglo-French Convention of 8 September 1919²⁸.

9.25 That Britain and France were anxious to conceal their differences when responding to the Italian protest against the 1919 Convention is only natural. But this in no way implies, as the CC-M appears to suggest²⁹, that the British and French views on the effect of the 1899 Declaration were identical or even complementary one to another. A close study of the record reveals the contrary.

25 See, LM, paras. 5.59 and 5.103-5.110; and LC-M, paras 4.97-4.105.

26 See, LM, para. 5.105.

27 Cited at LM, para 5.107.

28 See, LM, paras 5.192-5.214; LC-M, paras 4.203-4.218; see, also, para. 6.187, et seq., above.

29 CC-M, paras. 8.65-8.75.

9.26 In the CC-M, an attempt is made to argue that the effect of the 1919 Anglo-French Convention, coupled with the effective French occupation of her "zone" up to the 1899 line, was to transform what had hitherto been a line dividing the limits of spheres of influence into a true boundary. Quite how this miracle was achieved is nowhere made clear. The most that can plausibly be argued is that, as between Britain and France, the 1919 Convention established an east/west boundary between Darfour and Ouadaï, and extended that boundary northwards from 15°N latitude along 24°E longitude to 19°30' N latitude, which was "interpreted" to be the terminal point of the famous southeast line described in Article 3 of the 1899 Declaration³⁰. In no sense at all can it be argued that the 1919 Convention altered the character of the southeast line described in Article 3 of the 1899 Declaration; it merely modified its direction (under the guise of "interpretation") as between the parties alone. This is amply confirmed by the attitude which the British side took during the negotiations preceding signature of the Italo-Anglo-Egyptian Exchange of Notes of 20 July 1934, relating to the Sarra triangle. Libya has produced a full account of those negotiations³¹. Two points are particularly worthy of attention:

- The internal Foreign Office memorandum of 16 November, 1933, in describing the Sarra triangle, states that "... the line fixed in the Anglo-French agreement of 1919 represented the southerly limit of a triangle in which His Majesty's Government might wish to acquire territory or political influence"³², thereby confirming that, even after 1919, the southeast line described in Article 3 of the 1899 Additional Declaration (as "interpreted" in 1919) was not regarded by Britain as a territorial boundary.

- Britain, being aware of the continuing dispute between France and Italy about the course of Libya's southern boundary with French possessions east of Toummo, specifically dissociated itself from taking any position on that

30 See, para. 5.09, et seq., for a fuller discussion of the 1899 Declaration.

31 See, LM, paras. 5.284-5.302; and see, also, LC-M, paras. 4.230-4.242, rebutting the totally unfounded Chadian argument that, by concluding this Exchange of Notes, Italy had somehow succeeded to British rights and obligations under the earlier Anglo-French agreements of 1899 and 1919.

32 Cited in LM, para. 5.289. Emphasis added.

dispute by agreeing that the southern terminal point of the Libya-Sudan boundary should be on the 24th meridian at "... its junction with the frontier of French possessions." Accordingly, Britain clearly did not take the position that the terminal point of the southeast line (in its 1919 version) at the point of intersection of 19°30'N with the 24th meridian was opposable to Italy, the question of where should be the junction of the Libya-Sudan boundary with the frontier of French possessions being left over for further negotiations between Italy and France³³.

9.27 It will be recalled, in further confirmation of this consistent British position, that the Foreign Office took the view that the Treaty of Rome of 1935 had, for the first time, determined a frontier in the area where southern Libya meets French Equatorial Africa - that is to say, in the area east of Toummo³⁴.

9.28 Thus, it is clear that Britain never accepted the 1899 southeast line (even as "interpreted" in 1919) as a territorial boundary between Britain and France. At most, it may have come to be thought of as a line dividing spheres of influence, without any impact on the rights of other interested Powers such as the Ottoman Empire and Italy, although even this concept is complicated by the fact that Egyptian, not British, sovereign rights were concerned to the northeast of the line. How a line (or, rather, differing lines because of the disparities between the 1899 and 1919 lines) of this nature can be regarded as a "boundary" line between two Powers, one of whom consistently denies that it was a boundary, defies legal analysis. Britain was throughout the period up until 1945 fully aware that there were conflicting claims of title by France, on the one hand, and by the Ottoman Empire and Italy, on the other hand, to the borderlands between Libya and what is now Chad. But Britain steadfastly refused to take a position on these conflicting claims, and there is nothing in Britain's conduct, beyond the occasional sceptical comment about the extent of the Ottoman

33 The CC-M's Map Atlas, No. 27, reproduces a part of the map accompanying the 1924 Anglo-French Protocol delimiting this boundary between France and Great Britain north to 19°30'N latitude and speculates that this "consacre officiellement la reconnaissance anglaise de la limite Nord-Est du Tchad". The 1934 Exchange of Notes destroys entirely any such contention.

34 See, citations from British documents at LM, para. 5.341.

hinterland claim advanced in 1890 and the occasional doubt expressed about the strength of Italian claims based on Ottoman occupation of the borderlands between 1908 and 1912, to suggest that Britain was taking a position on these conflicting claims to title in and over the borderlands³⁵.

SECTION 5. French Conduct

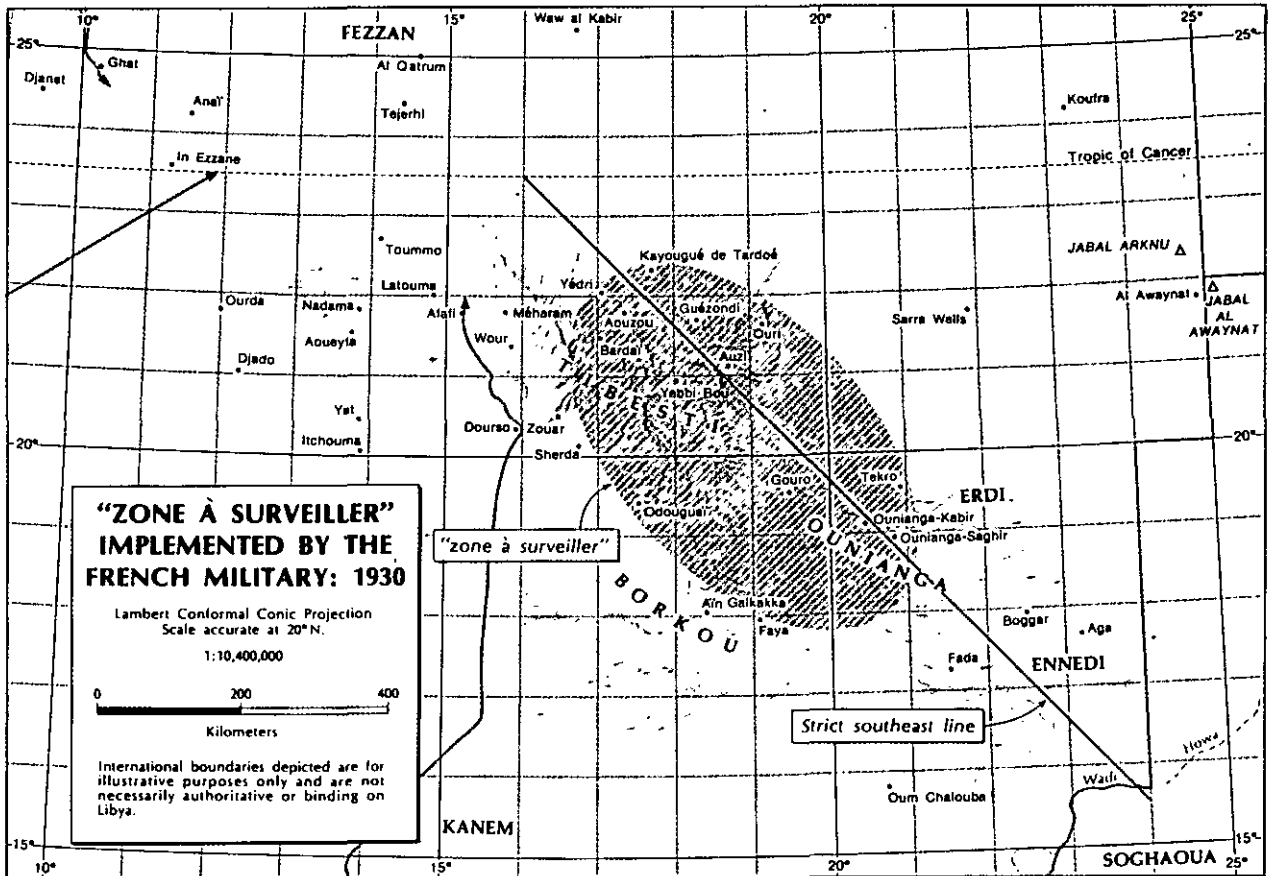
9.29 French conduct up to 1945 is marked by notable inconsistencies, which must cast doubt on the credibility of the French thesis, maintained up until 1955, that a conventional boundary between Libya and what is now Chad had resulted from the combined effect of the 1899 Declaration, the Anglo-French Convention of 8 September 1919, and the Franco-Italian Accords of 1900 and 1902. The most flagrant example of French inconsistency of conduct, amounting effectively to a distortion of the truth, are the repeated French assertions that a map (the notorious Livre Jaune map) had been annexed to the 1899 Declaration³⁶. An almost equally flagrant example of French inconsistency of conduct is the continuing French assertion, following the refusal of Italy to exchange ratifications of the 1935 Treaty of Rome in 1938, that the boundary between Libya and what is now Chad had reverted to that which resulted from these four instruments, notwithstanding that in the Exposé des motifs accompanying the draft French law authorising ratification of the Treaty of Rome, it is specifically stated that the Franco-Italian Agreement of 12 September 1919 had left France and Italy without a conventional boundary east of Toummo³⁷.

9.30 Quite how the failure of the 1935 Treaty to enter into force could transform what the French Government of the time had acknowledged to be, immediately following the signature of the Treaty, the absence of a boundary between Libya and French possessions east of Toummo into a boundary deriving from instruments which, in the Exposé des motifs, France had acknowledged had not been accepted by Italy as determining a territorial frontier, is nowhere

35 British skepticism can be traced to an incomplete knowledge of the extent and nature of Ottoman occupation of the borderlands at the time, an understandable failure given the lack of knowledge of the region possessed by Great Britain and France.

36 See, LM, paras. 5.29, 5.31, 5.85, 5.91, 5.92, 5.94, 5.96 to 5.98, 5.189, 5.197, 5.207, 5.210, 5.263, 5.392 and 5.393; see, also LC-M, paras. 4.50-4.72 and 7.10-7.19. As the map appearing in the CC-M's Map Atlas as Map 32 shows, even in 1925, Italy was not aware that no map had been annexed to the 1899 Declaration.

37 See, LM, paras. 5.336-5.338; and LC-M, paras. 6.27-6.35.



Specially prepared for presentation to the International Court of Justice.

explained. The significance of what is admitted in the Exposé des motifs is particularly illuminating, given that, at the time when it was submitted to the French Parliament, the French Government had high hopes that the Treaty would be ratified by both France and Italy, thereby delimiting for the first time a true boundary between Libya and French possessions east of Toummo, and could therefore afford to be more frank and open about the previous absence of a boundary in this area.

9.31 Leaving aside for the moment the frank admission by the French Government in the Exposé des motifs accompanying the French draft law authorising ratification of the Treaty of Rome of 1935, the one relatively constant theme in the French position vis-à-vis Italy in the 1920s and 1930s was that the boundary between Libya and what is now Chad had been laid down in the 1899 Declaration as "interpreted" in 1919 and that the line so laid down was opposable to Italy by virtue of the 1902 Franco-Italian Accord³⁸. France did not seek at this stage, nor indeed did she do so subsequently in the Franco-Libyan negotiations in 1955, to rely on French colonial effectivités as giving her title in and over the borderlands. In this major respect, the case now advanced by Chad differs from the pre-1945 position taken by France.

9.32 It is nonetheless interesting that Chad now appears to rely, inter alia, as an element supporting or sustaining French title to the borderlands, on a claim that, by 1919, French forces had occupied all the territories on the French side of the 1899-1919 southeast line. This claim is unfounded on the facts³⁹. It was not indeed until 1930 with the establishment of a French "zone à surveiller" in northern Tibesti that we begin to see the first signs of French military posts being installed north of a strict southeast line; and it is significant to note that this provoked an immediate Italian protest on 19 May 1930⁴⁰ (Map LR 30).

38 See, para. 6.125, above, where it is shown, citing Prof. Rouard De Card, that this French thesis was first devised in 1913-1914.

39 See, LC-M, 5.40, et seq.; and para. 8.05, et seq., and Map LR 28, above.

40 See, LC-M, paras. 5.77 and 5.78

SECTION 6. Italian Conduct

9.33 Italian conduct throughout the period up to 1945 displayed a high degree of consistency. Italy regarded herself, in consequence of the conclusion of the Treaty of Ouchy in 1912, as having inherited all Ottoman rights and claims in respect of the territory of Libya as a whole (*i.e.*, Tripolitania, Cyrenaica, Fezzan and the borderlands). Prior to 1912, of course, Italy had an interest in Libya, since she regarded herself as the potential successor to the Ottoman Empire as sovereign over the territory; but Italy had, at that time, no formal status in or in relation to Tripolitania, Cyrenaica and the Tripolitanian-Cyrenaican hinterland. Accordingly, the Franco-Italian Accords of 1900 and 1902 were political, and not territorial, agreements since Italy had no authority at the time to determine with a third power the limits of Ottoman territory.

9.34 Libya has already disposed decisively of Chad's arguments that, by the Franco-Italian Accords of 1900 and 1902:

- Italy had recognised a French zone of influence extending up to the Tripolitanian boundary⁴¹;
- Italy had accepted the 1899 southeast line⁴²;
- Italy had accepted the Tripolitanian boundary⁴³;
- Italy had renounced the rights of the Ottoman Empire⁴⁴.

These arguments are again refuted in Chapter VI, Section 3, above.

9.35 All of these arguments are completely lacking in foundation if a close study is made of contemporary documents. But they were advanced by France (and are now advanced by Chad) to overcome the formidable hurdle that the two Anglo-French agreements of 1899 and 1919 were res inter alios acta so far as other Powers were concerned, those other Powers including, prior to 1912, the Ottoman Empire and, subsequent to 1912, Italy, as the States exercising sovereignty in and over Libya.

41 See, LC-M, paras. 4.80-4.82, 4.85-4.89, 4.93-4.95, 4.106-4.109, 4.114-4.115, and 4.123.

42 See, LC-M, paras. 4.119-4.122.

43 See, LC-M, paras. 4.123-4.125.

44 See, LC-M, paras. 4.126, et seq., esp., paras. 4.142-4.149.

9.36 Even if the view were taken that Italy had at some stage accepted the 1899 southeast line, if only as a strict southeast line dividing spheres of influence, this cannot be interpreted as acceptance by Italy of the modification in the direction of that line effected by the Anglo-French Convention of 8 September 1919. Italy protested strongly to Britain and France in 1921 about the northward shift in the terminal point of the 1899 southeast line, and repeated that protest in 1924⁴⁵. The Italian refusal to accept that part of the 1919 Anglo-French Convention, which related to the extension northwards to 19°30'N of the Darfour-Ouadaï boundary dividing the Sudan from French possessions, and to the direction of the southeast line described in the 1899 Declaration as "interpreted" in 1919, was persistently maintained until the conclusion of the 1935 Treaty which would, had the exchange of ratifications taken place, have fixed the terminal point of the agreed boundary east of Toummo at the intersection of 18°45'N latitude with 24°E longitude. This is evidenced, *inter alia*, by the position taken by Italy in the Anglo-Italian negotiations of 1934 relating to the Sarra triangle⁴⁶.

9.37 In the CC-M, an attempt is made to argue that, whatever the position may have been in consequence of the 1902 Franco-Italian Accord, Italy in any event renounced definitively her right to rely on the Ottoman claims by way of inheritance by relying exclusively on Article 13 of the Treaty of London and on her protests against the 1919 Anglo-French Convention in negotiating with France on Libya's southern boundary between 1920 and 1934⁴⁷. But a careful study of the documentation relied on by Chad in this respect reveals no more than that Italy invoked Article 13 of the Treaty of London as a basis for negotiations with France over Libya's southern boundary⁴⁸. This was a basis which France could not deny, since, in the Franco-Italian Accord of 12 September 1919, both parties specifically acknowledged that the boundary question resolved by that Accord - namely, the course of the boundary between Ghadamès and Toummo - did not exhaust all the boundary questions in issue between Libya and French

45 See, LM, paras. 5.188-5.191 and 5.217; see, also, LC-M, paras. 4.203-4.218.

46 See, LM, paras. 5.290-5.299.

47 See, CC-M, paras. 7.40-7.60

48 See, para. 6.196, *et seq.*, above, and Supplementary Annex, No. 5.

possessions bordering on Libya and that "other points" were reserved for subsequent examination⁴⁹.

9.38 It was only natural that Italy would rely on Article 13 of the 1915 Treaty of London in subsequent negotiations, given that France had acknowledged that her obligations to Italy under that Article had not been exhausted by the conclusion of the Accord of 12 September 1919; but this in no sense implied that Italy had renounced or abandoned the rights which she claimed by way of inheritance from the Ottoman Empire. Indeed, in the Anglo-Italian negotiations in 1933-1934 on the Sarra triangle, Italy specifically invoked the Ottoman occupation of part of the Libya-Chad borderlands in the period immediately preceding 1912 as the ground for her entitlement to the area in dispute⁵⁰. And in the 1928-1929 negotiations conducted between French Ambassador Beaumarchais and Mussolini, the latter specifically referred to the Ottoman rights inherited by Italy⁵¹.

9.39 Libya has already demonstrated that no importance should be attached to the use of the word "cession" in certain French and Italian documents dating from the period 1935 to 1938⁵². In this context, it is worth recalling that, at the time, the word "cession" was not always utilised with strict accuracy. In the Sarra triangle negotiations, even British officials, at least in internal documents, referred inaccurately to the "cession" of the Sarra triangle when it is clear that all they had in mind was merely the renunciation by Britain and the Sudan of their potential claim to the territory comprising the Sarra triangle⁵³.

9.40 Thus, there is no evidence of Italian "acquiescence" in the French interpretation of the 1899-1919 southeast line during any part of the period between 1912 and 1945. Nor is there any evidence of Italian "acquiescence" in French title to any part of the Libya-Chad borderlands, save in the context of the boundary which Italy was reluctantly prepared to agree with

49 See, LM, paras. 5.168-5.172.

50 See, passage cited in LM, para. 5.291.

51 See, Supplementary Annex, No. 5.4.

52 See, LC-M, paras. 6.30-6.35; see, also, paras. 6.222-6.223, above.

53 See, the passage from British internal documents cited at LM, para. 5.295.

France under Article 2 of the 1935 Treaty. Italy firmly and consistently took the position that the 1899 southeast line did no more than divide spheres of influence between Britain and France and that it was intended to be a strict southeast line intersecting the 24°E longitude just to the north of 15°N latitude. Indeed, Italy consistently protested against any French military incursion beyond the 1899 strict southeast line (Map LR 30).

**CHAPTER X. SUBSEQUENT CONDUCT OF INTERESTED PARTIES
UNTIL 1951**

10.01 In the immediate post-war period from 1945 to 1957, it is French conduct and, to a very much lesser extent, British conduct that is of most interest in the context of the present dispute. With the defeat of Italy during World War II, Italian conduct ceases to have any real importance. On the other hand, account has to be taken of the 1947 Treaty of Peace with Italy; and, even more significantly, account has to be taken of discussions within the United Nations preceding the independence of Libya and relating to Libya's frontiers with neighbouring States and territories. It is to these matters that attention is now directed.

10.02 What is shown below is that French conduct during the period between 1945 and 1951 was dominated by the desire to acquire and retain, for the benefit of French possessions bordering on Libya, substantial portions of Libyan territory. As far as Libya's southern boundary was concerned, France continued to rely on her thesis that, with the failure of the 1935 Treaty to enter into force, the boundary had reverted to the 1899-1919 line opposable to Italy (and any successor in title to Italy in respect of Libya) by virtue of the 1902 Franco-Italian Accord and other assorted instances of Italian acquiescence. But this did not inhibit France, in the Four Power discussions, immediately following the entry into force of the 1947 Italian Peace Treaty, from advancing claims to a sizable portion of Libyan territory, including territory to the north of the 1899-1919 line.

10.03 That France was nervous about the validity of her main thesis is, however, attested to by her conduct in the United Nations debates on Libya's boundaries. Confusion was undoubtedly created in the Four Power discussions and later in the United Nations debates by reliance on misleading maps, some of British and some of French Algerian provenance. Even more confusion was created by a French notation on one of those maps referring to a (non-existent) Franco-Italian protocol of 10 January 1924. But the French representative to the Ad Hoc Political Committee corrected these errors immediately before the vote on what was to become General Assembly Resolution 392(V); and the vote on that Resolution (conducted in full knowledge of the French thesis) demonstrated that the General Assembly was not convinced that Libya's southern boundary had already been delimited by international agreement.

SECTION 1. French Conduct in Fezzan and the Libya/Chad Borderlands

10.04 During World War II, Libya was a major theatre of military operations. From the beginning of 1943 onwards, British and other Allied forces, advancing from Egypt, succeeded in occupying the whole of Cyrenaica and Tripolitania; and French troops, advancing from the south, occupied the borderlands and Fezzan¹. One detachment of French troops in fact occupied Koufra, which was however later handed over to British military administration.

10.05 Thus, by the end of World War II, the whole of Libya was under foreign military administration, and this remained the position until Libya achieved its independence at the end of 1951. In the immediate post-war period, French forces, and indeed French Governments generally, were determined to stay in Fezzan for reasons of national pride and for other, and perhaps more compelling, political and economic reasons².

SECTION 2. Senoussi Conduct During World War II

10.06 The Senoussi joined the British (and eventually Allied) cause during World War II. A meeting of Senoussi leaders from Tripolitania and Cyrenaica resolved in August 1940 to participate in the war alongside the British army in Egypt under the leadership of the Senoussi Emirate. Subsequently, a Libyan Arab Force came into being, as a result of an agreement between the Assistant Military Secretary, British Forces in Egypt and the Emir Idris, representing the Senoussi³. The British were conscious of the Senoussi contribution to the war effort, and on 8 January 1942, Mr. Eden (then Foreign Secretary) declared that this British Government were determined that, at the end of the war, the Senoussi in Cyrenaica would in no circumstances again fall under Italian domination⁴.

1 See, LM, para. 5.357.

2 See, LM, paras. 5.403 and 5.412.

3 See, LM, para. 5.355.

4 See, LM, para. 5.356.

10.09 There were differing reactions to these treaty provisions. Within Libya itself the Four Power Commission reported that there was an almost unanimous Libyan desire for complete independence, although the Commission itself concluded that Libya was neither economically self-supporting (this was before the discovery of oil on Libyan territory) nor ready for independence. As already indicated, Italy wanted Libya placed under U.N. trusteeship, with herself as Administering Power, but this was objected to by Britain. Egypt supported Libyan independence but proposed herself as Administering Power if the trusteeship solution were decided upon.

10.10 For the Four Powers, the matter was complicated by demands for an adjustment of Libya's boundaries (or asserted boundaries) advanced by Egypt and France. The Egyptian demand was for revision of her eastern boundary with Libya, so that the oasis of Djaraboub, the plateau of Sollum, Bardia and the Sarra triangle would either revert to, or be acknowledged as belonging to, Egypt. The French demand was for revision of the boundary between Libya and Algeria so as to place Ghadamès and Ghat firmly within Algerian territory; it was also for a drastic simplification of what France regarded Libya's southern boundary (pre-1935) to be, involving the transfer to France of all territory to the south of a straight line drawn along the Tropic of Cancer from approximately 11°N longitude to 20°N longitude, from whence it would descend due south to join the 1899-1919 southeast line (Map LR 26 referred to in paragraph 6.251)⁶. The French wished the Four Power Commission to examine these demands for "frontier adjustment". But this was never done.

10.11 Thus, France sought to take advantage of her privileged position as one of the Four Powers to have attributed to her, in respect of Algeria, French West Africa and French Equatorial Africa, sizable portions of Libyan territory, even before the final disposal of Italian possessions in Africa had been decided upon. Fortunately, others of the Four Powers resisted this French pressure, and it was eventually decided that any question of revision of Libya's external frontiers should be left over until a decision on the final disposal of Libya had been taken, the question of frontiers thereafter to be settled by a boundary commission to be set up by the United Nations⁷.

6 See, also, LM, paras. 5.364 and 5.365.

7 See, LM, para. 5.367.

10.12 As the Four Powers were unable to agree on the final disposal of Libya within the time-limit fixed in the Joint Declaration (Annex XI to the Treaty of Peace with Italy), the issue was referred to the U.N. General Assembly in 1949.

SECTION 4. United Nations Consideration of Libya's Boundaries

10.13 Both Libya and Chad have sought to analyse in considerable detail the debates within the various United Nations organs to whom was assigned the task of studying the Libyan question between 1949 and 1951⁸.

10.14 Libya contends that the wording of General Assembly Resolution 392(V) of 15 December 1950, particularly when read in the light of the travaux préparatoires of that Resolution, confirms that, on the date of its adoption, no agreed boundary existed between Libya and French possessions east of Toummo⁹. The Resolution recommended, inter alia, "that the portion of [Libya's] boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation between the Libyan and French Governments ...". But the adoption of this Resolution had been preceded by significant preparatory studies. General Assembly Resolution 289(IV) of 21 November 1949, had already recommended, despite doubts expressed by Britain and France, that Libya should be constituted as an independent and sovereign State and that this independence should become effective as soon as possible and in any case not later than 1 January 1952¹⁰. Section C of the same Resolution called upon the Interim Committee of the General Assembly "to study the procedure to be adopted to delimit the boundaries of the former colonies in so far as they are not already fixed by international agreement" and to report with conclusions to the next regular session of the General Assembly¹¹. It should be noted that this was to be a general study embracing all the former Italian colonies and not simply Libya.

8 See, LM, paras. 5.369-5.397; CM, pp. 221-235, paras. 61-104; LC-M, paras. 8.34-8.43; and CC-M, paras. 11.133-11.138.

9 The Resolution is discussed above, starting at para. 4.12.

10 See, LM, para. 5.373.

11 See, LM, para. 5.376.

LIBYA : SKETCH MAP OF FRONTIERS



10.15 The Interim Committee thereupon (in early January 1950) commissioned the U.N. Secretariat to study the problems. The Secretariat Study was submitted to the Interim Committee on 27 January 1950. It is an important document, despite the confusion that Chad tries now to lay at its doorstep. The Study (correctly) pointed out that Libya's boundary with Tunisia had been fixed by the Franco-Ottoman Convention of 1910; that Libya's boundary with Sudan had also been fixed by *international agreement*; and that Libya's boundary with Algeria and French West Africa had also been fixed by the Franco-Italian agreement of 12 September 1919¹². The Study noted that no claims or questions had been raised with regard to these portions of Libya's frontiers with adjoining territories. But uncertainty was apparent with respect to Libya's southern frontier with French West Africa and French Equatorial Africa. The Secretariat Study had included, as an Annex, a map entitled "Libya : Sketch Map of Frontiers", showing the southern boundary of Libya, east of Toummo, as a dashed line with question marks (Map LR 31)¹³. The boundary was not the southeast line resulting from the Anglo-French Convention of 8 September 1919; it was closer to, but not identical with, the line described in Article 2 of the 1935 Treaty¹⁴.

10.16 The Secretariat was clearly perplexed by the map attached to the Report of the Four Power Commission which contained a Note by the Commission itself and a "Note by the French Delegation"¹⁵. The map itself was a reproduction of a British Ordnance Survey map based on a map printed by the Italian Ministry of Colonies in 1937, and showed the southern boundary as a line similar to the 1935 Treaty line. But it also showed an alternative French version of this line (but stopping short at 18°E longitude) based upon a map published by the Algerian Government in February 1948. The "Note by the French Delegation" (correctly) pointed out that the boundary shown on the British Ordnance Survey map was based on the 1935 Treaty, which had never entered into force, but (incorrectly) claimed that the 1948 Algerian Government map was

12 See, LM, para. 5.378.

13 This map appeared in the LM as Map No. 87.

14 See, LM, para. 5.377 and Map No. 87.

15 See, LM, para. 5.381, and Map No. 88.

based on a non-existent Franco-Italian Protocol of 10 January 1924. This was duly pointed out by the Secretariat in its Study of 27 January 1950¹⁶.

10.17 The Interim Committee deferred consideration of the question of boundaries in the light of the Secretariat Study until 15 September 1950. It is appropriate to interpolate here that this left the French delegation ample time to correct any misunderstanding created by the incorrect reference made in the "Note by the French Delegation" added to the map annexed to the Report of the Four Power Commission; but nothing was done. When the Interim Committee met on 15 September 1950, the United States Delegation tabled a draft resolution, the relevant part of which was virtually identical with the text of what became General Assembly Resolution 392(V)¹⁷. This was forwarded to the Ad Hoc Political Committee which began to debate it on 13 December 1950. Before a vote on the draft resolution was taken, the French representative made a statement which, inter alia, presented a claim for rectification of Libya's boundary with Algeria in the area of Ghat and Serdeles and then proceeded to correct the error created by the mistaken reference to a Franco-Italian Protocol of 10 January 1924¹⁸.

10.18 If the object and purpose of the corrective statement by the French representative was to maintain that Libya's southern boundary had been delimited by the international agreements and acts referred to in that statement, it is clear that his statement did not carry conviction with other delegations. Moreover, had that been the object and purpose, France should in all logic have voted against Resolution 392(V) instead of voting for it. The reference in Resolution 392(V) to "the portion of [Libya's] boundary with French territory not already delimited" could only have been a reference to Libya's southern boundary, since the Secretariat Study (which was not contested on this point) had already concluded that Libya's boundaries with Tunisia, Algeria and the Sudan had already been fixed by international agreement, and the French claim advanced in the debate was a claim for rectification of Libya's boundary with Algeria. Furthermore, the Egyptian claim was likewise a claim for rectification of

16 The studiously neutral analysis by the Secretariat of the position on this aspect of the matter is reproduced at LM, para. 5.379; see, also, LM, para. 5.382.

17 See, LM, paras. 5.386 and 5.387.

18 Relevant extracts from the statement by the French representative are reproduced at LM, paras. 5.388 and 5.390-5.392. See, also, Supplementary Annex, No. 6.1.

the Libyan-Egyptian boundary, and this was to be the subject of a separate General Assembly resolution of 28 January 1952 recognising Egypt's intent to enter into negotiations with Libya¹⁹.

10.19 The CC-M makes a comment about Article 3 of the 1955 Treaty that Libya finds revealing, even if it is not simple to understand:

"Il s'agit en quelque sorte de la réaffirmation sous une autre forme des termes de la résolution 392(V)²⁰."

But Resolution 392(V) had called for substantive negotiations on those of Libya's boundaries with French territory which had not clearly been delimited by international agreement - this referring specifically, as Libya has demonstrated, to Libya's southern boundary. Chad does not, and cannot, on the facts, assert that substantive negotiations took place in 1955 on Libya's southern boundary. Indeed, Chad admits that the substantive frontier negotiations between Libya and Chad in 1955 related to the segment of boundary separating Libya from Algeria and Niger²¹. This was the segment of boundary that France wished the most to have rectified in her favour.

10.20 Chad then goes on to argue that little importance should be attached to the consideration that the 1955 Treaty makes no mention of Resolution 392(V) and that one should not in any event attach to the travaux of the U.N. any fundamental importance in the interpretation of the 1955 Treaty²². This only serves to confirm the weakness of the Chad position as regards the significance of Resolution 392(V) and its relationship to the 1955 Treaty.

10.21 As Libya has already explained, neither Libya nor France wished to enter into substantive negotiations in 1955 on the subject of what was or should be Libya's southern boundary²³. Libya did not wish to do so because her basic position was that frontier delimitation questions should be dealt with outside the framework of the 1955 Treaty and because she was insufficiently informed as

19 See, LM, para. 5.394 and fn. 458.

20 CC-M, para.11.137.

21 See, CC-M, para. 11.123.

22 See, CC-M, para. 11.138.

23 See, para. 5.12, et seq., above.

to the details and did not have available in its delegation any experts on frontier problems. Libya's prime objective was to secure the evacuation of French forces from Fezzan²⁴.

10.22 France's position was different. She wished to receive compensation for agreeing to withdraw French forces from Fezzan, particularly on questions of security and frontiers²⁵. But, as regards frontiers, and particularly the "frontier" between Libya and French Equatorial Africa, the Governor General of the A.E.F. strongly advised against asking Libya to recognise what France regarded as the existing boundary between Libya and the A.E.F., but rather to set out the principles that should govern such a delimitation in the future, taking as the sole basis for such a delimitation the treaties in force on the date of Libya's independence²⁶. The views of the Governor General were concurred in by the *Ministre de la France d'Outre Mer* and were reflected in the instructions given to the French negotiating team when negotiations resumed in July 1955²⁷. France therefore confined itself, in the Franco-Libyan negotiations, to seeking rectification of the *Libyan-Algerian portion of the boundary between Ghat and Toummo*, but was otherwise content not specifically to raise the question of Libya's other boundaries with French territory, including Libya's southern boundary²⁸.

10.23 Such travaux préparatoires to the 1955 Treaty as are available do not disclose why no reference was made in the preamble to that Treaty to General Assembly Resolution 392(V). One can surmise that the French negotiators might have been reluctant to include a preambular reference to that Resolution since it was predicated on the assumption that there was a portion of Libya's boundary with French territory which had not been delimited by international agreement. It is however equally plausible that it was in the interest of both parties not to make any reference in the 1955 Treaty to General Assembly Resolution 392(V), since both sides were aware that the 1955 Treaty

24 See, LM, paras. 5.423, 5.445-5.451, and 5.459-5.462.

25 See, LM, paras. 5.429-5.439.

26 See, LM, paras. 5.437-5.439.

27 See, Supplementary Annex, No. 6.6.

28 The Ghadamès-Ghat segment of the Libyan boundary was subsequently dealt with in the 1956 Agreement. The southern boundary was intended to be settled at a subsequent time. See, para. 5.12, et seq., above.

provisions on frontiers did not give effect to the recommendation in that Resolution, but at most amounted to what Chad has revealingly referred to as "la réaffirmation sous une autre forme des termes de la résolution.392(V)²⁹".

29 See, para. 5.38, above.

CHAPTER XI . CONDUCT OF LIBYA AND CHAD POST-1951

SECTION 1. Introduction

11.01 In its Counter-Memorial, Chad reproached Libya for "incohérent" conduct in the period between Libya's independence and the presentation to the Court of its Memorial. According to the CC-M, Libya had many opportunities to set forth its present territorial claims but failed to do so. As a result of this conduct, Chad asserts that Libya recognised a boundary between Libya and Chad corresponding to the boundary line claimed by Chad in this case.

11.02 It is appropriate, in beginning this analysis of the conduct of the Parties after 1951, to recall that General Assembly Resolution 392(V) of 15 December 1950 reflected the view that no boundary existed between Libya and France's colonial boundaries east of Toummo¹. France had expressly recognised this to be the case in 1935². Accordingly, in this Resolution, the General Assembly invited Libya and France to negotiate in order to delimit this boundary. As Libya has demonstrated, such negotiations concerning Libya's southern boundary east of Toummo never took place and, thus, the 1955 Treaty did not carry out such a delimitation. No such boundary east of Toummo resulted from the 1956 Agreement either, since it was concerned solely with the rectification of Libya's Algerian boundary between Ghadamès and Ghat³.

11.03 Thereafter, the international climate was hardly propitious for such negotiations between Libya and France, as has been explained above and in prior pleadings⁴. To mention again a few reasons why this was so, France was caught up in the war with the F.L.N. in Algeria, thus earning it the hostility of the Arab world. As a result, France had more important worries than the delimitation of Libya's southern boundary. As for Libya, it supported the Algerian people in their struggle for independence. Any negotiation of this character presupposed the existence of a minimum climate of confidence and

1 See, para. 4.17, above, and the discussion of the Resolution just above in the previous Chapter.

2 See, LM, para. 5.325; LC-M, para. 6.26; and para. 6.211, above.

3 See, para. 5.45, above.

4 See, para. 4.21, et seq., above, and references there to the LM and LC-M.

goodwill between the participating States. This confidence was conspicuously absent at the time⁵. Outside the meaning to be attributed to the 1955 Treaty and the 1956 Agreement, no conclusions can be drawn from Libya's conduct between its independence in 1951 and 1960, when Chad achieved independence. In the discussion that follows, the following conclusions are reached concerning the post-1951 conduct of Libya and of Chad:

- In their mutual relations, the two Parties failed to raise the problem of their boundary during the period 1960-1971;
- In the period after 1971, Chad recognised Libya's sovereignty over the so-called "Aouzou Strip", but subsequently reversed itself and contested Libya's sovereignty there;
- The debates before the U.N. were essentially political;
- It was only in 1987 that the O.A.U. started to become really involved in the matter of the Libya-Chad boundary;
- In its statements before both international bodies on the question of the territorial dispute between Libya and Chad, Libya made reference to its inheritance of the rights and titles of the Ottoman Empire.

11.04 In the following discussion, the conduct of the Parties will be examined in the context of their mutual relations. Then the conduct of each Party before the O.A.U. and the U.N. will be examined.

SECTION 2. Conduct of Libya and Chad in the Context of Their Mutual Relations

11.05 An understanding of the relations between two States can only be acquired if examined in historical context. Both States had just emerged from their colonial past: Libya regaining independence under the special procedures of the 1947 Italian Peace Treaty and under the aegis of the U.N.; Chad as a result of decolonization. But as new States they had shaky foundations.

⁵ LC-M, para. 3.113.

They knew practically nothing about the prior relations among Great Britain, France and Italy - and hence about any possible boundary problem between them. And Chad, almost from the moment of independence, suffered from intense instability, rendering any meaningful negotiations over its territorial boundaries virtually impossible.

11.06 To pretend today that Libya had a duty starting in 1960 to formally set out its territorial claims, based on a rigorous juridical analysis and a thorough knowledge of the background facts and documents, is to try to rewrite history and especially to ignore the situation that then prevailed in the region. But this is Chad's position before the Court in this case; and it occurs to Libya that it might have behooved Chad to be more temperate in its attack on Libya for supposed "incohérence" when its own conduct was, without any doubt, far worse.

11.07 The situation before and at the time of the conclusion of the 1966 Treaty between Libya and Chad may accurately be described in this way. From independence and for many years following, Libya was a poor country. It was dependent on international support. It certainly had no corps of competent jurists (certainly not to deal with such matters as international boundaries); and it had no knowledge of the documents to be found in the British, French and Italian archives relating to the questions now before the Court in the present dispute. A candid assessment of Libya's knowledge, preparation and competence in such matters as boundary negotiations - and in respect to the 1956 negotiations concerning the Algerian boundary, as to which the Libyans were far more informed than its southern boundary - is contained in a note of 23 November 1956 of M. Joxe, Secretary General of the Ministry of Foreign Affairs:

"... nos interlocuteurs n'avaient qu'une connaissance insuffisante des régions en cause; ils étaient incapables de formuler clairement leurs revendications et encore moins de les arrêter sur une carte; ils ne possédaient ni dossiers ni documents, se bornant à se faire l'écho de vagues témoignages et de prétentions exagérées dont ils ne parviennent pas à faire une synthèse cohérente⁶."

A few days later, on 29 November 1956, the French Minister gave a similar account to the French Parliament of the difficulties that Libya faced at the time in readying itself for boundary negotiations, again as to the boundary with Algeria:

6 Supplementary Annex, No. 6.7.

"C'est en juin que nos experts devaient se rendre à Tripoli. Que s'est-il passé? Il s'est passé ... que la Libye n'avait pas d'expert, qu'elle a dû en chercher en Suisse, et qu'au dernier moment, cet expert s'est trouvé indisponible".

This perfectly illustrates the predicament facing these new States that had just achieved independence - and yet today Chad would attempt to hold Libya to a standard of conduct that not many experienced States could live up to.

11.08 It should be noted that Libya as well as Chad experienced its share of instability during this period. Between 1963 and 1969, seven changes of the Libyan Government and 15 ministerial replacements occurred. The 1967 aggression against Arab States in the Middle East must also not be overlooked and the troubles resulting within the Arab world. In that year, there were demonstrations and riots in Tripoli, including attacks against British and American installations.

11.09 Thus, Chad was not alone in experiencing difficulties. Like Libya, it had been poorly prepared for independence by its colonial parent. This was especially the case with respect to military matters, as reflected in the 1960 Accord between France and Chad, which accorded in its Article 4 -

"... aux forces armées françaises la libre disposition des bases qui leur sont nécessaires".

And the companion Accord concerning military and technical assistance provided, in its Article 1, that France would assist Chad in establishing its police force and national army. Thus, whatever military presence there was in the borderlands was purely French.

11.10 Chad's poverty was brought out in this 1972 description:

"En termes d'économie moderne, le Tchad est l'un des pays les plus pauvres du monde".

7 Journal Officiel de la République Française (J.O.R.F.), 29 November 1956, p. 2364.

8 J.O.R.F., 24 Nov. 1960, p. 10460.

9 Casterou, C.: "La rébellion au Tchad", Revue française d'études politiques africaines, Janvier 1972, p. 47.

But even graver was the rebellion that developed as early as 1963 and led, in 1966, to the creation of the Frolinat¹⁰. As a result, there was a progressive disappearance of any semblance of governmental administration. It was owing to French military intervention in 1968 and 1969 that Chad avoided falling totally into chaos.

11.11 It is, thus, no surprise that neither of the parties to the 1966 Treaty of Amity between Libya and Chad raised the matter of territorial boundaries. This is illustrated by the fact that the 1966 Treaty, whose provisions replaced those of the 1955 Convention concerning the "régime frontalier"¹¹, never refers back (unlike the 1955 Convention) to Article 3 of the 1955 Treaty. The quite different function of the 1955 Convention (and its successor, the 1966 Treaty, in respect to the "régime frontalier") has already been discussed above¹².

11.12 It is mystifying how the CC-M can see in the subsequent agreements between Libya and Chad, in 1972, 1974 and 1980, any further proof of Libyan acquiescence in the boundary line claimed by Chad. For these agreements lead to quite the opposite conclusion.

11.13 In 1971, the then Government of Chad, alleging that Libya was interfering in its internal affairs, broke off diplomatic relations. But relations resumed in 1972, culminating in the 1972 Treaty, signed in December of that year, which concerned cooperation and mutual assistance¹³. There was no mention at all of boundaries in this Treaty; it dealt only with cooperation in such fields as economy and finance, commerce, technical assistance, and cultural affairs¹⁴. In the Treaty, the parties undertook to resolve any future disputes by means of negotiation, observing the provisions of the Charters of the U.N. and the O.A.U..

11.14 Why were boundary problems not raised at that time? The answer is clear: it was hardly the right moment to do so given the stormy period

10 Front de libération nationale tchadien.

11 See, para. 5.50, et seq., above.

12 Ibid.

13 Libya had already started to establish its civilian administration in the north of the borderlands by then.

14 See, LM, para. 5.554, et seq. and International Accords and Agreements Annex, No. 34, where the Treaty's text is set out.

both countries had been through. And what was to be discussed had not been defined, and this was a very poor time to do so.

11.15 The 1972 Treaty was signed on 23 December 1972 less than a month after the letter President Tombalbaye addressed to Colonel Kadhafi (dated 28 November), containing this declaration:

"En ma qualité de Président légal du Tchad, je tiens à vous affirmer que la bande d'Aouzou a été et sera, sans aucun doute, partie intégrante du Territoire Libyen."

This letter, which Chad has chosen to introduce into evidence, is important in several respects. First, it confirms what Libya also believed in 1972: that the 1955 Treaty had not delimited Libya's boundary with Chad. Otherwise, the letter would not have brought up the question of sovereignty over the so-called "bande d'Aouzou".

11.16 Second, the letter shows that Chad recognised Libyan sovereignty over this territory. There was no question in the letter of ceding territory; President Tombalbaye affirmed that "la bande d'Aouzou a été partie intégrante du territoire libyen¹⁵". Thus, Chad's President expressed the view - in a most official manner - that this region had always belonged to Libya. This official view of Chad at the time is a long distance away from Chad's position today in front of the Court. In addition, by this letter Chad foreswore any claim in the future concerning this region of the borderlands. For the letter said that this region not only had always been Libyan territory but also that it would always remain so ("le sera")¹⁶.

11.17 The legal effect of such an official statement has been addressed by the Court¹⁷. In respect to territorial questions, the Permanent Court had this to say, in the Eastern Greenland case:

"The Court considers it beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling

15 Emphasis added.

16 The text of the letter is set out in CM, Annex 343. See, also, LC-M, para. 5.119, et seq.

17 See, LC-M, para. 5.123, fn. 191.

within his province, is binding upon the country to which the Minister belongs¹⁸."

That case concerned a statement by a Minister of Foreign Affairs. A fortiori, a statement by the head of a State carries even more legal weight. It is also apparent that such a letter must have been written in response to a question raised by Libya in order to determine whether in Chad's view this region was under Libyan sovereignty. It was a very pertinent question at the time since Libya, assuming that the territory was Libyan, had started to install its civilian administration there.

11.18 However the Tombalbaye letter is interpreted - even if it is not read as a renunciation of territory by Chad - at the very least it establishes that the question of delimiting the boundary between Libya and Chad remained to be resolved and that it would necessarily be the subject of negotiations in the future. In fact, evidence from the French diplomatic files reveals that shortly after Chad's independence this was the view of the Governments of both France and Chad¹⁹.

11.19 As Libya explained in the LC-M, Libya did not refer to or produce the copy it has of the Tombalbaye letter in the present case because it has not been able to find the original. Apparently, Chad has not found her copy, but the CM discusses the letter and produced the same copy that Libya has of it. The rumours as to such a letter were sufficiently wide-spread at the time²⁰ as to suggest that the copy produced by Chad is a faithful copy of the original. Chad's subsequent conduct also confirms the fact that such a letter was sent. In fact, it would not matter if such a letter had never been sent, for Chad's attitude and conduct in the ensuing years reveals that Chad acquiesced in the Libyan presence in this northern part of the borderlands. Otherwise, Chad's conduct in the face of this fact made no sense.

11.20 Starting at the end of 1972, Libya started to expand the reach of its governmental administration into the northern borderlands - an indication that the Tombalbaye letter did in fact exist, for having received this

18 Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53, at p. 71.

19 See, Supplementary Annex, No. 6.9 (6, 8 and 10).

20 See, Lanne, B.: Tchad: La guerre des frontières, Paris, Karthala, 1982, pp. 228-229.

recognition of Libyan sovereignty in the region, it was an appropriate move to make. Moreover, Libya's action incited not the slightest Chadian protest.

11.21 Nor was there any reaction from France, which was minutely following the situation in Chad and which had intervened militarily and was to intervene again several times in Chad to safeguard the various successive Chadian governments. It will be recalled that the French Ambassador in Chad at the time noted the absence of any Chadian reaction to Libya's actions in his book published in 1974, saying:

"Aouzou est maintenant dotée d'une garnison libyenne, sans avoir pour autant entraîné réaction du gouvernement de Tombalbaye²¹."

Over ten years later, the French Minister of Defence, Charles Hernu, had this to say on the subject in a statement he made on 27 March 1985:

"La bande d'Aouzou est hors du Tchad. Cela, tout le monde en est d'accord. ... C'est une affaire qui remonte à 1934²²."

Such an affirmation at the very least is evidence that the French Government had never been convinced that the 1955 Treaty established a boundary between Libya and Chad. M. Hernu's reference to the year 1934, just before the signing of the 1935 Treaty, once again confirms the French Government's statement in the Exposé des motifs accompanying the law to authorize ratification of the 1935 Treaty that prior thereto no such boundary existed.

11.22 It is not the mere absence of a Chadian protest that is significant. After 1973, Chad and Libya enjoyed excellent relations, which had been restored in December 1972, just when Libya's move into the borderlands was under way. On 7 March 1974, on the occasion of a visit of Colonel Kadhafi to N'Djamena, according to Chad's official communiqué:

"Le Président N'Garta Tombalbaye a tenu à remercier son collègue libyen et le peuple de Libye pour l'aide efficace qu'ils apportent pour le développement du Tchad²³."

21 See, LM, para. 5.560, and the citation there to this book; See, also, LC-M, para. 5.125.

22 LC-M, para. 5.145.

23 Agence Tchad Presse, Nouvelles Nationales, 8 mars 1974.

No head of State would so address another whose troops were in occupation of its territory.

11.23 Chad's acquiescence is confirmed by the 1974 Treaty between Libya and Chad. After stressing the ties that existed between the two States, Article 2 thereof provided as follows:

"The frontier between the two countries is a colonial conception in which the two peoples and nations had no hand, and this matter should not obstruct their cooperation and fraternal relations²⁴."

11.24 The 1974 Treaty in fact substituted a new régime frontalier for that established in the 1955 Convention and replaced in the 1966 Treaty. If, as Chad mentions, the reference in these 1955 and 1966 instruments to a boundary means that a boundary had been determined - a proposition Libya rejects - then it is clear that such a boundary included within Libyan territory the part of the borderlands Chad called the "bande d'Aouzou".

11.25 Two conclusions may be drawn from the 1974 Treaty. First, Libya's presence in a part of the borderlands went uncontested by Chad. Otherwise, Chad would not have concluded this Treaty in 1974 that stresses repeatedly the fraternal character of the relations between the two States. Second, that aside from the so-called "bande d'Aouzou" there existed an unresolved question of delimiting the Libya-Chad boundary. This is the only explanation to be given to the statement in Article 2, quoted above, that the colonial concept of the frontiers between the two countries should provide no obstacle to their close relations. This Article supports Libya's view that no conventional boundary existed then (or exists now): for in the 1974 Treaty the two States took note of the fact that the boundary between them had not been delimited and that such differences between them should be resolved by future negotiations.

11.26 The CC-M gives the 1974 Treaty a different reading. It directs attention to the use of the words "frontiers" in Article 2 of the Treaty, overlooking Article 3, which refers to the "border areas", and from this fragile base concludes that:

24 LM, International Accords and Agreements Annex, No. 35.

"Cet accord prouve l'existence d'une frontière et la reconnaissance du fait qu'il est préférable d'aborder le problème des frontières héritées de l'époque coloniale, en admettant cette réalité et en prévoyant la coopération et la libre circulation des peuples concernés²⁵."

But that was not what Article 2 of the 1974 Treaty could have meant: it referred to the "conception" of frontiers (or boundaries) not to the fact that there was a boundary between the two States. What it meant was that colonial conceptions should not stand in the way of resolving their territorial problems amicably through negotiations. If, indeed, the parties to the Treaty believed there was an existing boundary, Chad's conduct establishes that any such boundary would have included the northern part of the borderlands being administered at the time by Libya without any objection from Chad.

11.27 As to the several meetings after 1974 between the Parties when the boundary issue came up, the very fact that there were these discussions meant that there was a boundary to be established between them. The LC-M points out that the unilateral record of the meeting of 23-26 June 1977 provided by Chad must be read with caution²⁶. But in any event, an analysis of this document reveals several things.

11.28 First, it was evident that in 1977 the Parties were not well informed at all as to the legal aspects of the territorial dispute before them. Libya invoked the 1935 Treaty as a justification for its presence in the borderlands; Chad argued that the 1935 Treaty did not apply because it had been denounced by Italy and France. A superficial knowledge of the file would have revealed that the boundary agreed in the 1935 Treaty did not take effect because the instruments of ratification were not exchanged, not because it entered into force and then was denounced - legally, an important distinction.

11.29 Second, the unilateral record of this meeting indicated that when the question of sovereignty over the so-called "bande d'Aouzou" came up, the reaction from Chad was as follows:

25 CC-M, para. 2.76.

26 See, LC-M, para. 5.134, et seq.

"La Partie Tchadienne, de son côté, pense que tant qu'il y a une présence effective Libyenne à AOUZOU, toute coopération bilatérale est impossible²⁷."

It would be thought that in the light of such a rigid protest on the part of Chad, good relations between the two States would have come to a halt then and there. But nothing of the sort happened. On 15 June 1980, the two States concluded a Treaty of Alliance and Friendship. It contained provisions concerning mutual defence that included the right of Chad to call on Libya for assistance if its territorial integrity was threatened. It also contained a provision under which Chad undertook not to allow the establishment of any foreign military base.

11.30 The CC-M accurately points out that the 1980 Treaty made no mention of any territorial claim; but the real point is that, with Libya present in part of the borderlands, had Chad considered that it had sovereignty over that area, it could hardly have signed the Treaty leaving such an issue unmentioned. No State would sign such a treaty with another State which it considered to be occupying part of its territory. Chad undertook in the Treaty not to permit the establishment of foreign military bases on Chadian territory. Then why did the Treaty not include a provision requiring Libya to withdraw from the borderlands? It will be recalled that on 22 January 1980, the Chadian Government called on France to withdraw its forces; and on 27 April, the French Government reported that the evacuation had been accomplished²⁸. Why was there not a similar request made by Chad to Libya?

11.31 The 1980 Treaty clearly demonstrates that Chad did not have any thought at the time that Libya's presence in the borderlands violated its sovereign territorial rights. The 1981 Treaty establishes the same point. There was not the slightest mention in it of a boundary problem. The Treaty never took effect, and was contested by other States in the region; in any event it only contemplated steps to be taken in the future.

11.32 Thus, in the period 1972-1983 - except for a short period in 1976-1977, when the Parties held three non-productive meetings and Chad complained to the O.A.U. and then to the U.N. (and its complaint was immediately withdrawn) - Chad's attitude was consistent: it recognised Libyan

27 CM, Annex 284.

28 See, LM, para. 5.566.

sovereignty over what it termed the "bande d'Aouzou". Starting in 1983, however, Chad's conduct changed, particularly in the arena of international organisations. It is to the behaviour of the two States before the O.A.U. and the U.N. that this discussion now turns.

SECTION 3. The Positions Taken by Libya and Chad Before the O.A.U.

11.33 As discussed above, in 1972 Chad recognised Libya's sovereignty over part of the borderlands, implicitly confirmed by the 1974 Treaty. However, in 1977, Chad abruptly changed its course, filing a complaint before the O.A.U. regarding Libya's presence in what it claimed to be the territory of Chad. At the same time, in 1977, futile discussions were taking place between Libya and Chad.

11.34 The result of Chad's complaint was the creation at the Conference of Heads of State of an ad hoc Committee. The latter recommended -

"... la constitution d'un sous-comité d'experts chargé d'étudier le problème frontalier posé dans tous ses aspects²⁹."

Thus, the Subcommittee had a broad mandate in respect to the Libya-Chad territorial dispute.

11.35 The work of the Subcommittee, however, made little progress in the following years due to the resumption of friendly relations between Libya and Chad, exemplified by the 1980 Treaty, entered into without a word being mentioned about Libya's presence in the northern part of the borderlands.

11.36 Both Chad's Memorial and Counter-Memorial give the impression that there was intense activity at the O.A.U. concerning the Libya-Chad territorial dispute. In fact, there was none. The O.A.U. during the 1980s pursued two important objectives: (i) evacuation of foreign forces from Chad's territory; and especially (ii) the reconciliation of the rival factions within Chad claiming the right to govern Chad. None of the activity had anything to do with the question of where the boundary between Libya and Chad lay.

11.37 It was not until 1987 - 10 years after Chad filed its initial complaint - that the O.A.U. embarked on a study of the problem. In this regard, the following points should be remembered. First, the O.A.U.'s Ad Hoc Committee gave these reasons for its previous inactivity:

"... un immobilisme certain dans le fonctionnement du Comité dix ans après son institution ... le drame intérieur tchadien qui avait pris le pas sur le différend frontalier Libye-Tchad et le refus de coopération de la Libye ...³⁰"

Second, the Subcommittee of experts in its First Report (19 May 1987) recalled "le caractère non exhaustif de la documentation³¹".

11.38 Although in the conclusions set out below these points will be mentioned again, it must be borne in mind that special factors existed at the time:

- The internal strife in Chad made impossible any attempt to resolve the territorial dispute between Libya and Chad;
- Libya did not cooperate in the work of the O.A.U. - but this was due not only to Chad's internal convulsions but also to Libya's view that the O.A.U. was not the proper forum for settling the dispute;
- The file was incomplete.

These factors bear witness to the legal complexity of the problem, as Libya had always maintained. It also reveals the fact that Chad had not totally cooperated, either, in furnishing documentation. Chad can hardly be blamed for this given the complexity of the problem and what Chad did not know about the French case that it was disposed blindly to follow.

11.39 Nevertheless, in 1988, though it had deliberately refrained from participating in the work of the Subcommittee up to then, Libya informed the Ad Hoc Committee generally as to its legal position concerning its boundary

30 CC-M, Annex 135.

31 CC-M, Annex 136.

with Chad. The position presented was nowhere near as developed as that now presented to the Court, for the O.A.U. was not the appropriate forum for such a detailed presentation. In the event, the general line of Libya's presentation was as follows:

"Ce sont ces droits historiques que revendique aujourd'hui la Libye en tant qu'Etat successeur à la fois à l'Empire ottoman par l'Italie interposée et à l'Italie elle-même... ."

- As to the 1898, 1899 and 1919 agreements, they:

"... ne procèdent pas à une délimitation de frontières mais visent simplement à fixer, en principe, les limites des zones d'influence française... ."

- Finally:

"Pour la Libye, le Traité de 1955 n'avait pas pour fonction de délimiter la frontière entre elle et le Tchad, alors territoire français. Il ne comporte ni disposition ni critère de délimitation précise et les documents cités en annexe sont dépourvus de pertinence faute de valeur juridique . . .³²."

11.40 The O.A.U. Ad Hoc Committee took no position concerning the legal validity of these arguments: it was not its function to do so. In spite of the brevity with which Libya's arguments were expressed, the Court will find quite easily the broad outlines of the case Libya now presents to the Court.

11.41 In the light of this presentation by Libya, Chad makes a rather surprising argument:

"Bien que tout l'éventail des arguments libyens ait été mentionné, il n'était suggéré nulle part que la Libye était habilitée à revendiquer plus que la bande d'Aouzou."

While it is true that, formally speaking, the O.A.U. Committee was concerned with the "boundary dispute" between Libya and Chad - for that was the title given to the Committee's reports - Chad should have considered more carefully the substance of the thesis Libya set out at the O.A.U. If Chad had done so, it would

32 Comité ad hoc de l'OUA, synthèse des rapports I et II, Libreville, 13-14 avril 1988; CM, Annex 293.

have realised that, when the appropriate time came before the appropriate forum, Libya would claim as successor State to the rights and titles of the Ottoman Empire. It was evident on its face that such rights and titles certainly were not exclusively limited to the region of Aouzou - a region that had no special geographical or political significance (and was certainly not described in Ottoman times as the so-called "Aouzou Strip", which gained currency only in the 1970s). The point to be emphasised here is that when Libya claimed this inheritance from the past it manifestly was because it considered that no boundary delimitation resulted from the Anglo-French Accords in 1899 and 1919 or from the 1955 Treaty.

11.42 Chad cannot pretend today not to have realised that, in 1988, after a very modest effort to assemble and to consider the file, Libya evaluated the dispute as involving a territorial area far larger than the so-called "Aouzou Strip". If Chad claims to be stunned today over the scope of the territorial dispute Libya and Chad have brought to the Court - and attempts to limit its scope -, it can only be for purely tactical reasons, for Chad's feigned surprise is totally unconvincing.

SECTION 4. Behaviour of Libya and Chad Before the U.N.

11.43 The CC-M repeats the argument, so fully set out in the CM, that Libya had an obligation to raise the Libya-Chad territorial dispute at the time of Chad's admission to the U.N.³³. In its response to this contention, Libya has pointed out that the admission of a new State was a time for rejoicing and not the moment to air grievances³⁴. The fact that other States may have acted differently on such occasions does not lead to the conclusion that there is a legal obligation in such circumstances to challenge the boundaries of the new State if they do not correspond with the realities, legally speaking. No better example of this is the case of Burkina Faso and Mali, where no boundary claims were interjected at the time of their admission as new States, although within a matter of years, their boundary dispute was brought before the Court. And there is the further point - brought out on several occasions in the 1950s and 1960s: Libya just did not know the details of the file concerning its boundary with Chad. It intended to deal with

33 See, CC-M, para. 9.115; CM, p. 321, para. 117.

34 See, LC-M, para. 8.53.

the problem at a time when future negotiations became practicable. There was no articulated Libyan claim as to the boundary with Chad in 1960.

11.44 Chad attempts to build up the significance of its intervention at the General Assembly on 6 October 1971. But what was really involved? The only issue concerned the alleged interference by Libya in the internal affairs of Chad - and Libya's supposed expansionist aims. There was no question then in 1971 of Libya's presence in the borderlands; Libya was not to start to install the machinery of government there until a year later.

11.45 Nevertheless, Chad tries to build two arguments around its 1971 U.N. intervention. It should be emphasised that these arguments have been devised by Chad now in this case; they were never made before the U.N. or elsewhere. First, it suggests that the speech constituted the first protest against Libya's presence in the borderlands. It does so by moving up in time Libya's presence in the borderlands by over a year in order to make it appear that the 1971 speech of the U.N. representative was in protest against that presence³⁵. But it was not, and nothing can disguise the fact that Libya's assumption of civilian administration in that region, occurring at the end of 1972, gave rise to no official Chadian protest until over four years later. Second, Chad argues that Libya's response to Chad's interventions at the U.N. revealed Libya's acquiescence in what Chad now considers to be the boundary between the Parties.

11.46 The first argument is entirely contrived, revealing the vulnerability of Chad's conduct in not having made any public protest at all against Libya's presence in that sector of the borderlands for some five years. The second argument is refuted by the statement of Libya's representative to the U.N. at the time, who said the following:

"Ce n'est pas la première fois que le Gouvernement du Tchad accuse ses voisins de s'ingérer dans ses affaires, mais au moins la troisième fois. Précédemment, il avait également accusé deux autres de ses voisins en faisant les mêmes allégations. Il ne faut pas prendre ces accusations pour argent comptant; elles sont en fait le reflet de problèmes internes que le Tchad n'a pas le droit d'imputer à d'autres Etats³⁶."

35 See, CM, p. 323, para. 124; CC-M, para. 2.49.

36 Documents officiels de l'Assemblée générale, 26^e session, 12 octobre 1971, para. 201.

Libya's representative also made the point that if any threats were involved they were made by Chad against Libya and could be traced to what President Tombalbaye allegedly said to the Agence France Presse:

"Les Libyens qui veulent établir des bases au Tchad pour combattre Kadhafi me trouveront prêt à les leur fournir³⁷."

11.47 It must be borne in mind that at this time, and during other subsequent interventions, these statements were made during the general debates of the General Assembly that preceded the more concrete matters to be addressed. Such a general airing of grievances, for which the General Assembly is such an important forum, is hardly the time or place to introduce a serious juridical discussion of the problems concerning a territorial dispute.

11.48 In any event, the incident lasted for no time at all. One year later, in 1972, Libya and Chad concluded a Treaty of Amity.

11.49 The next intervention of Chad before the U.N. took place in February 1978. At the time, Chad attempted to paint a darker picture of Libya's supposed intervention in the internal affairs of Chad. In truth, the situation was not like that described: Chad's civil war was raging, and the situation had become far more complex within Chad, where the warring factions were making all sorts of accusations and claims. Chad's representative at the U.N. did denounce Libya's presence in what he termed the "Aouzou Strip" at that time. This was the first time Chad had done so despite Libya's presence in the area since the end of 1972. Libya's representative replied at once, as follows:

"La révolution existe au Tchad depuis 20 ans ... Il ne s'agit pas d'une question de frontières. Il se peut qu'il y ait un problème de frontières, mais de tels problèmes ne se traitent pas de cette façon³⁸."

As to the so-called "Aouzou Strip", Libya's representative added:

"Le représentant du Tchad nous a accusé d'avoir occupé Aouzou en 1973, mais ce n'est pas vrai, nous n'avons rien occupé³⁹."

37 Ibid., para. 212.

38 Ibid., para. 49. Emphasis added.

39 Ibid., para. 65.

The CM sees in this passage a denial by Libya of any claim to this territory; but this is not so at all, as Libya's delegation made clear immediately:

"Si Aouzou comme n'importe quelle autre partie de la Libye se trouve sous administration libyenne⁴⁰."

11.50 Thus, it is evident that there was no question of Libya occupying the region of Aouzou, as alleged by Chad, for it was Libyan territory - at least in the mind of Libya -, and a State cannot fairly be said to occupy an area that is its own territory. Libya's representative then made this important statement:

"S'il y a un problème de frontières, nous sommes prêts à le discuter avec le Tchad. Nous disons nous, que nous sommes chez nous; les Tchadiens, eux, nous disent que nous n'y sommes pas et que nous sommes chez eux, au Tchad. C'est donc un problème classique de frontières⁴¹."

11.51 Chad now says that at that time (1978) "il n'existait dans l'esprit du gouvernement libyen aucune réfutation juridique crédible⁴²" to Chad's position as to the boundary between them. This is just not so. As has just been shown above, Libya claimed before the Security Council that the area it occupied in the north of the borderlands belonged to Libya. It did not develop its reasons for that was hardly the appropriate place to do so. Furthermore, if Chad had been so sure of its entitlement to this region, how does it explain the conclusion of the 1980 and 1981 Treaties? The fact is that Chad withdrew its complaint to the Security Council three days after this debate - and the territorial situation had hardly changed in just three days.

11.52 In 1983, the Security Council was witness to a new Chadian complaint. As before, Chad's complaint was made in the context of Libya's alleged interference in the internal affairs of Chad; and at the time there was intense fighting going on in Chad. In its statements, Chad relied on the same legal arguments that had been developed by its representative in 1978, stressing in particular the validity of the 1955 Treaty and the fact that the 1935 Treaty was not in force. Libya's representative replied by saying this:

40 Ibid., para. 66.

41 Ibid., para. 67.

42 CM, p. 330, para. 149.

"The people in Aouzou are Libyans and have representatives in the Libyan General People's Congress⁴³."

He also pointed out the complexity of the question and the inappropriateness of dealing with such a matter before the Security Council⁴⁴, and he reminded the Security Council that in two similar disputes, concerning delimitations of the continental shelf between Libya and Tunisia and between Libya and Malta, Libya had agreed to their resolution by the Court.

11.53 Libya's representative at the time declared: "Libya's border(s) during the Ottoman era were at the city of Faya⁴⁵". Without developing the legal arguments in any detail, he went on to say:

"What is the purpose of the Council: to discuss legal question? Is it the International Court of Justice? Is it the Committee of Good Offices of the OUA? The Council is concerned with peace and security and discusses political issues in the first place and not legal issues⁴⁶."

Nonetheless, Libya did allude to the rights it had inherited from the Sublime Porte. At the end of the day, the Security Council called on Libya and Chad to settle their differences by negotiations using the good offices of the O.A.U.

11.54 These debates continued before the Security Council and the General Assembly in the course of the years 1984 to 1987. Their focus was principally the situation in Chad, a situation that had not really improved. Both States claimed sovereignty over the northern part of the borderlands, popularly called the "Aouzou Strip". Chad based its claim on Article 3 of the 1955 Treaty and, thus, on "actes internationaux en vigueur" in 1951; Libya invoked its Italian colonial heritage.

11.55 In the CM, Chad has argued that if, in 1985, before the Security Council -

43 Séance du 22 mars 1983, para. 72.

44 Ibid., para. 63.

45 Ibid., para. 65.

46 Ibid., para. 193.

"La Libye avait disposé d'arguments supplémentaires et plus convaincants, ils auraient certainement été présentés en cette circonstance⁴⁷."

This is certainly not so. As the record of the hearings shows, the relations between Libya and Chad were particularly stormy at the time. And it concerned essentially a political problem. As has already been mentioned above, it was Libya's view that the Security Council, being a political forum, was certainly not in a position to judge the merits of the legal problems surrounding the territorial dispute, unlike the International Court of Justice.

11.56 Thus, Libya did not attempt to plead its case before the Security Council. However, in 1988, it revealed the essential elements of its argument, such as had been developed up until then, before the O.A.U.

SECTION 5. Conclusions

11.57 Chad's theme concerning Libya's conduct is expressed in this way in the CC-M:

"Le comportement passé de la Libye est tout à fait incompatible avec ses revendications actuelles ...⁴⁸."

Chad goes on to say that Libya -

"... avait, indépendamment de l'accord de 1955, acquiescé à l'affirmation française relative à la localisation de la frontière entre la Libye et le Tchad⁴⁹."

Thus, Chad's theme is based on the supposed acquiescence of Libya resulting from its conduct after the signing of the 1955 Treaty. But as has been shown in the analysis above of Libya's conduct, no such thing is demonstrated by Libya's conduct. If anything, it was the conduct of Chad during this period that raises a question of acquiescence.

11.58 Libya did not consider that the 1955 Treaty delimited its boundary with Chad or that it had carried out the mandate of Resolution 392(V),

47 CM, p. 339, para. 180.

48 CC-M, para. 2.108.

49 CC-M, para. 2.112.

which reflected the view of the General Assembly that such a boundary had up until then (December 1950) not been delimited.

11.59 In 1960, Libya celebrated the gaining by Chad of its independence. No doubt, in the next few years, negotiations to delimit a boundary might have begun. But both countries lacked the qualified people and, as the pleadings of the Parties have shown, the legal complexity of the case is such that neither State could have understood its real dimensions at the time.

11.60 For a short period after Chad's independence, the situation between the two States disintegrated and diplomatic relations were severed. Chad seized the opportunity in 1971 to denounce what it described as Libya's expansionist aims, which Libya denied. Thus, in the years between 1960 and 1971, the territorial issue was not raised, and this did not imply acquiescence of any sort by either State. The question reflected in Resolution 392(V) merely remained open and unresolved.

11.61 Then in 1972 the situation changed. In his letter of 28 November 1972, Chad's President recognised the merits of the Libyan claim to the sovereignty over what he called the "Aouzou Strip". Such a recognition of sovereignty could only have been in response to Libyan claims. Thus, the problem of delimiting the boundary between Libya and Chad was placed then on their common agenda.

11.62 There is no issue between the Parties that, starting at the end of 1972, Libya installed its governmental administration throughout the northern part of the borderlands. It was a peaceful administration which Libya installed, and it was common knowledge throughout the world that this had occurred, as France's Ambassador to Chad has recorded⁵⁰.

11.63 In the face of this development, Chad not only registered no protest but it impliedly consented when it entered into the 1972 and 1974 Treaties with Libya. While it is true that in 1977 Chad protested before the O.A.U against Libya's presence in what it claimed to be Chad's territory, and repeated this protest before the Security Council in 1978, the latter protest was at once withdrawn. In any event, this protest continued for a very limited time and was

50 See, LM, para. 5.560, et seq.

then contradicted by Chad's conduct in entering into the 1980 and 1981 Treaties with Libya.

11.64 In this regard, the jurisprudence cited by Chad works against Chad rather than Libya⁵¹. In the Temple of Préah Vihear case, the Court took into consideration, in finding Thailand's conduct to constitute acquiescence, the absence of protest by that State against manifestations of sovereignty by Cambodia. The Court acted similarly in the King of Spain arbitration. Thus, it would appear that, in the light of Libya's clear and continuous behaviour in the northern borderlands from 1973 on, Chad's positive acts of entering into treaties with Libya and the absence of any sustained protest from Chad until 1983 constituted its acquiescence and should prevent Chad now from making a claim to these areas of the borderlands.

11.65 There is no doubt that starting in 1983, Chad's conduct changed: it reversed its prior attitude as expressed, inter alia, in the Tombalbaye letter and laid claim to the so-called "Aouzou Strip". But this did not erase its earlier acquiescence. Furthermore, Libya contested Chad's claim and continued to affirm that this region belonged to Libya. It continued to govern a substantial part of the northern borderlands.

11.66 Thus, if the attitude and conduct of Libya and Chad are compared in respect to this region in the years after 1960 right up until now, the following conclusions emerge:

- Between 1960 and 1972, no delimitation was attempted and the matter of the boundary between them was raised by neither State;
- Between 1973 and 1983, in the face of Libya's presence in the northern part of the borderlands, Chad by its conduct recognised Libya's sovereignty there but then, in 1983, reversed this position;

51 See, CC-M, para. 2.111, et seq.

- Libya's conduct from 1972 was a clear and consistent manifestation of sovereignty over the northern part of the borderlands;
- If the conduct of either Party constituted acquiescence or at the very least inconsistency, it was the conduct of Chad not Libya.

11.67 Chad's position based on acquiescence, unfounded as it is, is not just aimed at the region it calls the "Aouzou Strip". For Chad attempts to stop Libya from presenting its claims to areas that extend well beyond the territory falling within that region, reproaching Libya for not having formulated such claims in the past before the initiation of this case before the Court.

11.68 It should be emphasised here that the settlement of a question of attribution of territory fits quite naturally within the framework of bilateral negotiations between the parties to a territorial dispute. Now there is no question that Chad's internal situation from 1965 until the end of the 1980s was hardly suited to deal with negotiations of this kind. The situation in Chad was characterized by rebellion and then civil war, by unsuccessful attempts at national reconciliation and by repeated intervention of French forces. Few, if any, African States have had such a tragic beginning as a newly independent State. Such events could not have failed to engender great concern in Libya, where the memory of the French occupation of Fezzan was still fresh as well as the great difficulties encountered by Libya in getting France to withdraw, including the French Government's refusal to honour its obligations under the 1955 Treaty until it had been awarded additional consideration in the form of the Edjélé oil field.

11.69 In spite of these conditions, it was possible for Libya and Chad to enter into agreements of amity of a general nature, such as the 1972, 1974, 1980 and 1981 Treaties. For these required only the political will to do so. But to attempt to settle then the territorial dispute between Libya and Chad was of an entirely different order of difficulty, requiring the expertise to examine legal files of great complexity.

11.70 This can be seen from the work of the O.A.U. where the difficulties of even collecting the complete dossier became apparent. In the

report of the Subcommittee of 19 May 1987, well after work had begun, the Subcommittee emphasised "le caractère non exhaustif de la documentation" and added that "la délégation tchadienne s'est engagée à faire parvenir au Président du Comité les textes des deux accords par voie diplomatique⁵²". At the meeting of the Subcommittee on 20 May 1987, several experts considered that there was a need for an "éclairage historique". If the list of accords deposited by Chad with the Subcommittee is examined, it can be seen how far it is from being complete⁵³.

11.71 Libya certainly does not blame Chad for these gaps; they merely illustrate the difficulties encountered by the Parties in trying to assemble the very extensive historical and legal files. This explains why Libya was not able for a long time to express with any precision its territorial claims, other than by the use of the handy phrase "Aouzou Strip".

11.72 Libya pointed this out to the U.N., when it said:

"Frontier problems are not easy to resolve ... But there are things that must be examined and discussed⁵⁴."

11.73 The fact is that if Chad had made the effort to really examine Libya's attitude at the time, rather than repeating the French thesis that it knew by heart, Chad would have understood the essential position of Libya as it has now been formulated. For example, in 1983, Libya invoked its Ottoman heritage and mentioned that Faya had once been occupied by the Ottomans. In 1985, Libya invoked the Italian rights which it had inherited. Even a superficial consideration of the implications of these sources of Libya's territorial claims would lead to the realisation that the dispute was not narrowed to the so-called "Aouzou Strip". And there is not the slightest indication of Libya's acquiescence in Chad's claims as set out to the U.N. in 1983.

11.74 Chad argues that the spirit of the Accord-Cadre of 31 August 1989, the basis of the Court's jurisdiction, as understood both by Chad and the O.A.U., was that it concerned only the "Aouzou Strip". This is incorrect and unsupportable. To pick just one example, it will be recalled that in 1988 Libya

52 CC-M, Annex 136.

53 CC-M, Annex 137.

54 S/PV. 2060, 17 February 1978, para. 71.

indicated to the O.A.U. that its rights stemmed from its Ottoman heritage. This by itself revealed that the scope of the dispute far exceeded the region called the "Aouzou Strip". Chad was not unaware of this fact when it signed the Accord-Cadre. As has already been pointed out in Chapter III above, by not making a formal objection to the Court's competence to deal with the dispute as presently framed by the pleadings of the Parties, Chad has now waived the right to do so. Such an objection could have not have been made, in any event, because of the history of the relations between the two States.

11.75 But putting aside the procedural aspects of the case, Chad has invoked Libya's conduct in connection with the merits of the case, contending that its conduct is not compatible with Libya's present claim before the Court. There are two elements of this line of argument. The first is acquiescence, which has already been discussed and found wanting. The second is estoppel. Here Chad claims that Libya has modified its case, has "blown hot and cold"⁵⁵, leading to a situation of estoppel.

11.76 The Court has considered claims of estoppel in a number of different situations. In the North Sea Continental Shelf cases the Court said the following regarding estoppel:

"... that is to say if the Federal Republic were now precluded from denying the applicability of the conventional régime, by reason of past conduct, declarations, etc., which not only clearly and consistently evinced acceptance of that régime, but also had caused Denmark or the Netherlands, in reliance on such conduct, detrimentally to change position or suffer some prejudice"⁵⁶.

In the Gulf of Maine case, the Court added the following:

"... but even disregarding the element of detriment or prejudice caused by a State's change of attitude, which distinguishes estoppel stricto sensu from acquiescence, it nevertheless presupposes clear and consistent acceptance"⁵⁷.

55 See, CC-M, para. 2.14.

56 North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 26, para. 30.

57 Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, at p. 309.

11.77 None of the conclusions indicated by the Court finds application to the present case. Libya has not modified its claim, for in the statements of its representatives before the U.N. it was not presenting a claim but rather defending its presence in the north of the borderlands. This necessarily focussed attention on the so-called "Aouzou Strip" for much of that region happened to be where Libya had established its governmental administration. However, the broad outline of what Libya would claim gradually emerged, particularly when it furnished documents believed relevant by Libya to the O.A.U. Subcommittee. For these documents related to Libya's Ottoman and Italian heritage.

11.78 There is also no showing of any prejudice to Chad, one of the conditions of estoppel set out by the Court in the North Sea Continental Shelf cases. It is true that Chad asserts in the CC-M that:

"Le Tchad a, de plus, consenti à la soumission à la Cour d'un différend relatif à la bande d'Aouzou et à la frontière qui l'encadre, et son Mémoire est rédigé en conséquence⁵⁸."

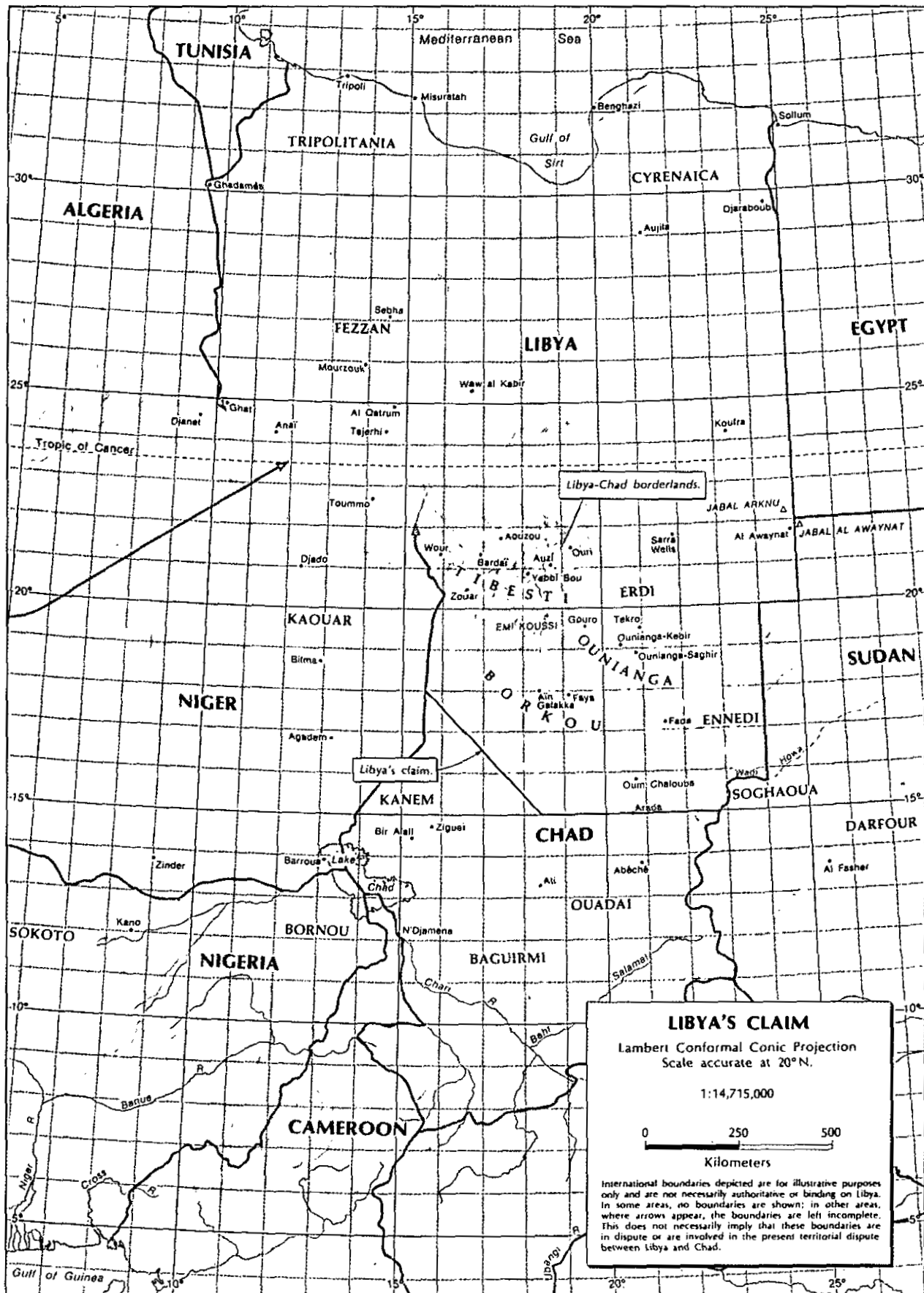
This suggests that Chad has been prejudiced, but the statement is not accurate. Chad signed the Accord-Cadre in full knowledge of Libya's claim to have inherited the rights and titles of the Ottoman Empire and Italy in its brief participation in the O.A.U. discussion in 1988. This made clear that the dispute was not limited to the "Aouzou Strip".

11.79 Clearly, there has been neither acquiescence by Libya nor a situation that gives rise to estoppel against Libya. Chad's arguments on both counts must be rejected as without any foundation. It is quite true that, as this case has developed in the written pleadings, the positions of both Parties have evolved in the light of the evidence produced and the arguments of the other side. This is normal for any case of this kind, and the evolution of Chad's case has, in the view of Libya, been considerable. This is not a matter that gives rise to blame on either side; but it demonstrates that the territorial dispute in this case is not a simple one to resolve, as Chad has contended.

11.80 As Libya has maintained over the past 30 years, the dispute is very complex and the relevant file is enormous. It is foolhardy for a State to try

58 CC-M, para. 2.116.

to make out its claim in such a case before political organs such as the Security Council, the General Assembly and the O.A.U.. The Court is the proper forum before which to present such a claim; and it is only before the Court that Libya has attempted to set out its claim.



Specialy prepared for presentation to the International Court of Justice.

SUBMISSIONS

Having regard to the various international treaties, agreements, accords and understandings and their effect or lack of effect on the present dispute, as set out in Libya's Memorial, Counter-Memorial and in preceding parts of this Reply;

In view of the other facts and circumstances having a bearing on this case, as discussed above, and in Libya's Memorial and Counter-Memorial;

In the light of the conduct of the Parties, of the conduct of other States or political, secular or religious forces, whose conduct bears on the rights and titles claimed by the Parties, and of the conduct of the indigenous peoples whose territories are the subject of this dispute;

In application of the principles and rules of international law of relevance to this dispute;

May it please the Court, rejecting all contrary claims and submissions:

To adjudge and declare, as follows:

1. That there exists no boundary, east of Toummo, between Libya and Chad by virtue of any existing international agreement.
2. That in the circumstances, therefore, in deciding upon the attribution of the respective territories as between Libya and Chad in accordance with the rules of international law applicable in this matter, the following factors are relevant:
 - (i) that the territory in question, at all relevant times, was not terra nullius;
 - (ii) that title to the territory was, at all relevant times, vested in the peoples inhabiting the territory, who were tribes, confederations of tribes or other peoples owing allegiance to the Senoussi Order who had

accepted Senoussi leadership in their fight against the encroachments of France and Italy on their lands;

- (iii) that these indigenous peoples were, at all relevant times, religiously, culturally, economically and politically part of the Libyan peoples;
- (iv) that, on the international plane, there existed a community of title between the title of the indigenous peoples and the rights and titles of the Ottoman Empire, passed on to Italy in 1912 and inherited by Libya in 1951;
- (v) that any claim of Chad rests on the claim inherited from France;
- (vi) that the French claim to the area in dispute rested on "actes internationaux" that did not create a territorial boundary east of Toummo, and that there is no valid alternative basis to support the French claim to the area in dispute.

3. That, in the light of the above factors, Libya has clear title to all the territory north of the line shown on Map 105 in Libya's Memorial, on Map LC-M 55 in Libya's Counter-Memorial and shown again here on Map LR 32, that is to say the area bounded by a line that starts at the intersection of the eastern boundary of Niger and 18°N latitude, continues in a strict southeast direction until it reaches 15°N latitude, and then follows this parallel eastwards to its junction with the existing boundary between Chad and Sudan.

(Signed)

Abdullati Ibrahim El-Obeidi
Agent of the Socialist People's
Libyan Arab Jamahiriya