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

Mr. CASSESE: Mr. President, yesterday I endeavoured to show that as early as 1919 the French by their effective hold on Borkou, Ennedi and Tibesti had acquired sovereign rights over the region. This is confirmed by the Italian recognition - explicit or implicit - deriving *inter alia* from the Laval-Mussolini Treaty and the Jef-Jef incident of 1938.

But our honourable opponents claim to derive advantage from another incident in which Italy and France were pitted against each other, in 1941, in connection with the implementation of the Franco-Italian Armistice Agreement of 1940.

According to our opponents this incident proves that at that period Italy was still clinging to the idea that there was no frontier in the south of Libya (RL, para. 6.247).

6. The Franco-Italian Armistice Agreement of 1940

Let us therefore look at the facts. But to understand the facts and the relevant legal rules it is necessary to sketch in their historical context.

The Franco-Italian Armistice Agreement was signed on 24 June 1940. Italy had entered the war against France only two weeks before, at a time when the Germans were at the gates of Paris and there was no doubt of the issue of the battle. Mussolini therefore decided to impose the armistice upon the French some days before the Franco-German armistice. The fascist dictator, with his usual presumptuousness and opportunism, hoped to take advantage of that opportunity to impose humiliating conditions upon France and to seize French territories in Europe and Africa.

011 However, Hitler, anxious to treat the Vichy Government with consideration and fearing that the French Empire in Africa would flare up in reaction

to increased extortion, forced Mussolini to moderate his requirements. Nevertheless, the armistice conditions were *dictated by Italy to France*, even though the Italian authorities made some minor concessions.

I am stressing the historical context, Mr. President, because it is vital for an understanding of the provisions of the Agreement that are of direct interest to us. It was Italy that drafted the proposed Armistice Agreement - in bad French - and in fact imposed it on France except as far as marginal points were concerned.

The provision of the Agreement which is central to our case is Article 3, paragraph 3 of which, Members of the Court, you will find in our hearings folder and which is also shown on the screen.

This provides *inter alia* that to the south of Libya: "a zone extending from the Libyan frontier to a parallel line 200 kilometres distant therefrom shall be demilitarized" for the duration of the armistice (CMC, Ann. 84).

Moreover, Article 4 of the Agreement added that the zones to be demilitarized under the terms of Article 3 would be evacuated by French forces. Article 23 provided that an "*Italian Armistice Commission*" under the authority of the *Italian* Supreme Command would be entrusted with "the regulation and supervision, either directly or through its organs" of the implementation of the Agreement. A "French delegation" established at the headquarters of the Commission in Turin was authorized to make known "the wishes of its Government with regard to the implementation" of the Agreement.

012 The text of these provisions confirms what I said just now, namely that the Italians *considered themselves* as the victors. Let us look at Article 3, paragraph 3. One point is obvious, Mr. President, Members of the Court. This is that Italy, which ruled the roost at the time, imposed the Article upon France and in that Article speaks of the

southern "Libyan frontier". Therefore - I stress this point - *Italy based itself on the idea* that a southern Libyan frontier well and truly existed. This is the first glaring contradiction of the contention of our opponents.

Where was this frontier located?

Clearly Article 3 did not have to and could not specify this: it was sufficient to refer to the *existing southern frontier*. But it is just as clear that to implement Article 3 that frontier had to be identified. To that end, General Grossi, President of the Italian Armistice Commission, sent a letter to the President of the French delegation (CMC, Ann. 85).

The purport of that letter may be summarized in three points.

First, Grossi indicated that the course of the southern frontier had not yet been "determined in joint agreement" with Italy and France.

Second, he admitted that the Treaty of 1935, the Laval-Mussolini Treaty, had never entered into force and that consequently the line set out in Article 2 of the Treaty was not legally binding.

013 Third, he nevertheless stated that when Italy had "fixed the outer limit of the demilitarized zone in Article 3" - these are his own words - "it could only have been taking as the baseline the line which must, on *its own interpretation*, have been the frontier" (our italics). In other words: as it was we, the Italians, who established Article 3, it is our interpretation of that Article and therefore it is the course that we, the Italians, choose that must prevail. This was a bare-faced return to the *quia sum leo* of Aesop's fables! ("I shall decide because I am the lion and you are the lamb".)

In their reply (CMC, Ann. 93), the French dotted the i's: the 1935 course was unacceptable, said the French, for the Laval-Mussolini Treaty had been "rejected" by the Italians themselves. It was true that

there had been no "convention or treaty fixing the course of that portion of the boundary bilaterally with Italy". Nevertheless, the French note continued, despite the absence of a bilateral convention, Italy had recognized the 1899-1919 line; consequently the only line to be considered for the purposes of the Armistice Agreement was that of 1899-1919. This was the French reply, firm, clear, reasoned and absolutely consistent with the position that France had always adopted.

What was the Italian reaction?

In the face of the French attitude one might have expected a reaction that was all the harder and more categorical since Italy was - I repeat - *in a position of strength*. Just as it had imposed Article 3 of the Armistice Agreement Italy could have imposed upon France its interpretation and its implementation of Article 3, namely the Laval-Mussolini Treaty line. But that was not so. Far from it: Italy preferred to give in to the French contention. In a letter of 14 July 1941, the President of the Italian Armistice Commission merely pointed out that the question was not within the competence of the Armistice Commission and was of no practical importance.

Mr. President, Members of the Court, what conclusions can we draw from this exchange of letters?

To my mind, four points need to be made. First, Italy by the very fact of drafting Article 3 formally recognized *that a southern frontier of Libya existed*, thus confirming the position it had long held.

Second, Italy and France agreed on the fact that there was no bilateral treaty between them specifically covering the delimitation of the *southern frontier of Libya*.

Third, Italy, in the face of the specific arguments put forward by France, *dropped its insistence on the 1935 line* which it had tried to impose.

Even more - this is my fourth point - during the bargaining of 1941, Italy never contested, though it had the political power to do so, the *force and the validity of the French contention*, that only the 1899-1919 frontier counted.

7. Conclusion

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Mr. President, Members of the Court, I come to the end of my remarks on the Italian recognition of the French *effectivités* in the B.E.T. I believe I have shown that Italy undeniably recognized those *effectivités* and accepted the sovereign rights of France. The *reiterated* affirmation of the French State presence was answered by *reiterated* recognition of that line by the Italian Government. That recognition contributed to *consolidating* the French title derived from customary law.

III. THE RECOGNITION OF FRENCH SOVEREIGNTY BY LIBYA

31. Mr. President, Members of the Court, up till now I have spoken of Italian recognition.

I should like now to stress that Libya too after independence recognized French sovereignty over the Aozou strip up to the frontier that the Italians had previously accepted.

Libyan recognition was expressed in obvious fashion in 1955 on the occasion of an important incident. In this connection I must repeat what I said yesterday concerning the Jef-Jef incident, namely that conflicts, confrontations and incidents between States have always acted as a *detector* of the existing legal situation. On the occasion of such conflicts, the States concerned take a position on the controversial points and clearly show their opinions and legal contentions.

32. The incident on which I should like to dwell for a moment is that of Moya (or Aozou as we have called it up till now). It took place in 1955, four years after the independence of Libya.

On 21 February 1955 a Libyan team left Koufra for Aozou.

On 28 February 1955 a group of three jeeps carrying six civilians accompanied by an officer, a corporal and 11 Libyan soldiers were stopped by a French detachment at Moya, ten kilometres north of Aozou, that is to say 80 kilometres from the Franco-Libyan frontier. This is the account of the incident given by Mr. Pinay, Minister for Foreign Affairs to the French National Assembly, written in reply to a question from the MP

Mr. Bardoux:

"The subaltern commanding the French patrol, having stopped the vehicles, invited the Head of the Libyan Mission to return to the frontier immediately; since the latter insisted on seeing the officer of the guard at Aozou, one of the jeeps was authorized to continue thus far, having been disarmed, the other vehicles remaining on the spot under the guard of French soldiers. The commander of the Libyan column informed the subaltern, officer of the guard, that he had the task of making a census of the population of Aozou and of carrying out a medical visit there; requested to return to the frontier, he immediately left the oasis where he had spent a quarter of an hour and was not invited to lunch by the officer of the guard who, on the contrary, refused him authorization to take on fresh supplies on the spot and immediately sent him back to Moya, whence the three vehicles of the convoy returned to Libya without further incident." (MC, Ann. 341.)

33. What was the impact of this abortive Libyan mission?

Let us first of all point out that the Libyan mission was of a civilian nature, even if the Libyan delegation was accompanied by a military escort. The tasks of the mission were of an administrative nature: to make a census of the population and have it inspected by a doctor. Nevertheless the French soldiers *repelled* the Libyan team in the firmest manner. It should also be noted that while most of the Libyan mission remained in Moya under the guard of French soldiers, those of its members who were authorized to continue to Aozou were *disarmed*.

This conduct by France shows in the clearest fashion the determination to signify that the foreign mission was under full French sovereignty.

017 In the face of this French reaction, what did the members of the Libyan mission do? Did they protest? Did they assert an alleged claim to move freely in the Aozou strip? *Not at all.* The Libyans packed up and turned back without saying a word. They left immediately despite the fatigue of a seven-day journey from Koufra to Moya, the fact that one of the participants was later to describe as exhausting and nerve-wracking in the stifling and inhospitable heat of the desert (MC, Ann. 272).

Mr. President, one might even be surprised at the attitude of the French, which was not only firm and energetic but even rather harsh: they even deliberately omitted to invite the Libyan mission to lunch. The fact is, Mr. President, Members of the Court, that the French authorities considered that *there was no time for politeness.*

In the face of an unauthorized intrusion into French territory, in the face of a flagrant violation of French sovereignty, there could only be one hard and energetic reaction: *to expel the intruders immediately, to return them to the frontier.*

C18 None the less, Mr. President, Members of the Court, the reaction of France did not stop there. On 4 March 1955 the Minister of France in Tripoli sent the Libyan Government a formal protest. These are the words used by the Minister of France. We have been unable to find the text of this note in the diplomatic archives. But there is no doubt of its existence for it is mentioned in the written reply of Mr. Pinay which I have just quoted and in four French documents (see RC, Ann. 86; MC, Anns. 256 and 257; and ML, Vol. III, p. 167). We also know the content of the French "formal protest" for it was summarized as follows by Mr. Pinay: the French Minister in Tripoli "recalled firmly" to the

Libyan Government "that Aozou is on the territory of French Equatorial Africa, whose frontiers, settled by instruments of international law, are incontestable" (MC, Ann. 341).

At the request of the Minister for Overseas Territories, who had requested Mr. Pinay to address "a strong protest to the Libyan Government" (MC, Ann. 252), the French protest was reiterated on 19 March (see the previously quoted written reply by Mr. Pinay, *ibidem*). So there were two French protests.

The Libyan Government, with which the British Government authorities had intervened in the hope of making it see reason, eventually came round to France's view. It gave an assurance that Tripoli would in future respect French sovereignty over Aozou and would refrain from sending troops into the region (into the Aozou strip). These assurances were given at the highest level, that is to say by Prime Minister Ben Halim. This emerges from several French diplomatic documents, in particular a telegram sent to Paris by the French Minister in Tripoli. After giving an account of steps taken by the British Minister in Tripoli, Mr. Graham, the telegram reported that:

"The [Libyan] Prime Minister, to whom I had given a serious warning in that regard, confirmed what Mr. Graham had done and made it clear that his Government had no intention of reverting to the question of Aozou *as he recognized that that village was located on French territory.*

He also promised to notify that position to the Commander of the Security Forces of Cyrenaica and to the civilian authorities of that region." (MC, Ann. 264.)

There, once more, we have the clearest possible admission of French sovereignty over the Aozou strip.

I may add that the Libyan undertakings are established by several sources. Because of their importance, they were reported by the Quai d'Orsay to the Minister for Overseas Territories (MC, Ann. 266) and

confirmed by the French Minister in Tripoli to the Minister for Foreign Affairs, Mr. Pinay, in a further despatch (MC, Ann. 267).

34. What lesson can be drawn from this incident?

Two conclusions appear to me to be called for.

First, the sharp reaction of the French authorities in the field and the Libyans' acquiescence confirm without the least doubt that the zone we now call the "Aozou strip" was indeed, at the time these events took place, under the effective control and authority of France.

Second, the Libyan attitude is quite unambiguous. It is perfectly clear-cut. Both by their conduct in the field and by their reaction to the two French protests, the Libyan authorities recognized in the most explicit fashion that the zone in question was indeed under French sovereignty.

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Allow me to add one comment, Mr. President. Who could deny a *striking and astonishing parallelism* between the incident I have just described and the Jef-Jef incident I spoke about yesterday? Just as at Jef-Jef in 1938 - 17 years earlier, Mr. President! - the State whose sovereignty had been violated in 1955 exercised its sovereign powers in the field by expelling the intruders, and later protested in the most energetic manner. To my mind, the 1955 incident of Moya and Aozou is even more eloquent. It shows with much greater force - were this possible - that the Aozou strip was under French authority, if only because on this occasion the explicit acknowledgment of France's sovereign rights emanates from the highest Libyan authority, Prime Minister Ben Halim.

35. To conclude, Mr. President, the Aozou incident confirms in exemplary fashion that from the moment of its independence Libya recognized the effective sovereignty of France over the Aozou strip. Libya admitted the validity of a protest in which Paris claimed that the

southern boundary of Libya had been "defined by international instruments". That is Mr. Pinay speaking. These international instruments are the same as the "international instruments in force" to which the Franco-Libyan Treaty of Friendship and Good Neighbourliness was to refer six months later, on 10 August 1955. Thus, without the slightest break in continuity, the frontier between Chad and Libya has remained that determined by the Agreements of 1899-1919.

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As you see, the third Chadian thesis, while logically autonomous in relation to Chad's two other theses, finally becomes incorporated in them, it finally confirms and strengthens them.

The Aozou strip, then, is indeed in Chadian territory and the 1899-1919 boundary, reiterated and formally endorsed by the 1955 Franco-Libyan Treaty, is the one that separates Chad from Libya south of that country.

Thank you very much, Mr. President, for your patient attention. May I ask you to call on Mr. Cot.

Le PRESIDENT : Je remercie beaucoup M. Cassese. Je donne la parole à M. Cot.

Mr. COT: Mr. President, Members of the Court, it seemed useful to us, at this stage of our oral arguments, to present to you, with the aid of Engineer General Gateaud, a few observations on the maps produced by the two Parties.

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The Republic of Chad does not accord any overriding importance to geographical maps in this case. We certainly do not regard maps as establishing legal title. Some maps have been alluded to at greater length in our statements, the map in the French *Livre jaune* coming to mind, but this was in order to throw more light on the will of the Parties and I shall not revert to those demonstrations.

All the same, jurisprudence has by now determined with a certain precision the role of maps before a judicial body such as yours. As stated in 1986 by the Chamber, in the *Frontier Dispute* case:

"maps can still have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps" (*I.C.J. Reports* 1986, p. 583, para. 56).

Maps may thus constitute corroborative evidence, particularly when a series of maps establishes the notoriety of a boundary line ... or invalidates such notoriety.

That, it seems to me, was how the Chamber proceeded last year in the case concerning the *Land, Island and Maritime Frontier Dispute* (*El Salvador/Honduras: Nicaragua intervening*), where, after recalling the judicial precedent I have just cited, the Chamber went on to say:

"for the reasons explained by the *Frontier Dispute* Chamber, it [the Chamber] attaches only the value of corroborative evidence to a number of maps of the 19th century, to which Honduras in particular has drawn attention, showing the political limits of the two States, including the present disputed sector of the land boundary. The large majority of these, to the extent that they show a clear line in the area, do however reflect the position that it is the present course of the Goascoran which constitutes the boundary." (*I.C.J. Reports* 1992, p. 550, para. 316.)

The Libyan Party observed in its pleadings that we had mainly produced French maps, to be suspected therefore of partiality.

023 I would point out that our little atlas was not intended only to amass maps in order to emphasize the notoriety of the boundary line that we are defending, but also to provide the Court with the necessary cartographic material for an understanding of specific passages of our pleadings.

The composition of our atlas thus did not seek to reflect any particular balance. But our opponents may rest assured that, in the selection of maps for my statement, I have taken account of their

observation, and I shall naturally highlight maps prepared by third States or international bodies not liable to be taxed with partiality.

Our honourable opponents have also criticized us for not providing the Italian maps unfavourable to us, in that they show no boundary line. I refer here in particular to the maps distributed in your folder and projected by Professor Condorelli in the course of his statement. The quite simple explanation is that, as I must avow, we were unable to find them in London, Paris or Rome, and in Rome again not in the military geographical service, not in the Italian Ministry of Foreign Affairs, and not in the archives of the Ministry of the Colonies.

I concede this point to our colleagues of the Libyan Party, but let me at the same time return the selectivity compliment by observing that the Libyan Party, for its part, has produced only the maps serving its purposes. Our opponents have deliberately discarded all the maps that might embarrass them and not hesitated to interrupt a series of maps when they were becoming unfavourable to them, as in the case of the United Nations maps that they very generously produced up to 1960, but refraining from continuing the series.

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Before projecting our maps, I should like to make a few general observations on the cartographic material presented by the two Parties. We have made an inventory of all the maps and diagrams published and produced by the Parties in their pleadings. We left aside the demonstration diagrams prepared by the Parties *ad causam*, abundant and suggestive diagrams drawn up on behalf of Libya and the fewer, more modest diagrams prepared for Chad.

We finally listed 277 maps and diagrams that are *public*, hence contributing to or negating the notoriety of the boundary line. They comprise:

- 203 maps and diagrams presented by Chad and filed with the Registry of the Court, in accordance with your Rules;
- 98 maps and diagrams presented by Libya, of which only a dozen or so have been filed with the Registry;
- 24 of these maps or diagrams have been presented simultaneously by both Parties and are therefore counted twice in my calculation.

But be reassured, it is not a mere statistical exercise for this case, an exercise that would be quite pointless!

The Republic of Chad has presented few maps in its Memorial. We had no particular reason to do otherwise. Our contention was, and is for that matter, that the boundary between the two Parties is formed by two straight lines defined by the Treaties of reference. On such an assumption, a map can never serve to specify a line determined by astronomical points but, at the most, to situate that line better on the ground.

025 But on the other hand, faced with a remarkable array of cartographic illustrations in the Memorial of Libya, to which I shall return in a moment, Chad has thought it necessary to correct the impression given by our opponents and to show that the maps actually published did in fact bolster the submissions of the Republic of Chad. Hence the small atlas annexed to our Counter-Memorial, with reproductions of maps that are sometimes difficult to decipher because of the format chosen. I apologize for this, and we have consequently had these little magnifying glasses distributed to you. We must make do with what technology we have!

The Libyan Arab Jamahiriya has presented few original maps in its Memorial. In general, as you will see, it has produced few maps in its pleadings, half as many as Chad - with, as I said, 98 as against 203 maps for us - and mainly in defence as it were, to counter Chad's assertions; but seldom, and for good reason, in support of its own arguments. Not a

single published and hence public map has been produced that gives the boundary line claimed by Libya in its submissions. There is a certain consistency about that since Libya claims that the boundary between the two Parties has never been delimited and that, as a result of the Libyan proposition, the non-existent boundary line cannot be entered on a map.

On the other hand, the Libyan Party has had a great many colour sketch-maps prepared for demonstration purposes. I take my hat off to the aesthetic and instructive performance of our opponents. They have in the process adroitly sought to "impress" the Court. A case in point is map No. 1 of the Libyan Memorial. All the African boundaries are faithfully shown, as you can see, with just one exception (which is of course the southern boundaries of Libya), but otherwise you will just about find the other boundaries, as if it were the only area of the African continent without defined boundaries. Furthermore, the arrowing produces a clearly visible funnel-shaped effect intimating a sort of invitation for the southward extension of Libyan sovereignty.

Being unable to use public maps to illustrate its boundary claims, as emerging from its submissions and roughly coincidental with the 15th parallel, Libya tries to suggest that line, to work it in by presenting it as a self-evident boundary:

- a natural boundary,
- a historic boundary.

Map No. 8 of the Libyan Memorial is fairly typical of a series of Libyan maps presented in the Memorial, fairly typical of this manner of indirectly accrediting the 15th parallel. You see where it is and, there you are, you see the colours change. This map describes the vegetation in Africa. But other maps of the same kind are to be found, all equally eloquent and attractive, equally coloured for soil, rainfall or climate.

The demonstration is clear: Nature takes care to draw on the ground the line tiresomely overlooked by the politicians and the cartographers. We find the same technique as regards social activities, for instance in map No. 19 of the Memorial of Libya. It is a map which, as you can see, distinguishes the Islamic and the Christian areas, and still with the same divide, that is, roughly the 15th parallel. It is here, as though by chance, that the two main religious zones share out Chad equitably, as it were. We also have, and in the same style, a map of the distribution of the Toubous and related tribes that also happens to follow or pick up the same line.

- The demonstration then becomes more dubious in taste. I am calling for map No. 103 of the Libyan Memorial to be projected. There it is.

When the authors of the Libyan Memorial refer, to underpin their argument, to Colonel Spartacus's sketch-map concerning the Manta operation, with the "red line" here, which is at the 16th parallel - the "red line" being, as you know, the military defence line set up by the Chadian and French troops during the Libyan invasion of 1983-1984 - a line drawn on the basis of the range of the French air force called in to help the Libyan legal authorities.

For our part, we hope that the period of large-scale invasions has passed and I would add that Libya did not greatly appreciate this reminder.

There are few maps in the Libyan Counter-Memorial, and those there are are mainly illustrative sketch-maps. This is quite natural, since Libya had not yet had an opportunity to see and critically assess our small atlas. The Libyan Reply is the response. And this attempt to refute our cartographic material is, I must say, rather difficult to follow since it is divided between the body of the text of the Reply, the Supplementary Annexes of Volume 2 and the Exhibits.

In this connection, I would point out that the Libyan Reply does not seek to suggest, to illustrate, even indirectly, the thesis of the 15th parallel. On the other hand, a new line appears. Could you show map No. 10-B of the Libyan Reply?

It is still the same procedure of suggestion and overprinting; here it is the mathematical line (true south-east). Here, we see it printed on the Justus Perthes map of 1892 and we find it again on many maps of the Libyan Reply, in particular on the maps illustrating the French military presence in the region from 1914 to 1930.

029 - Lastly, we find the mathematical line printed over a sketch-map relating to the "border régime" of the 1955 Convention. You can see it here (map No. 6-A, p. 69 of the Libyan Reply).

- At the same time, moreover, as another line - an anachronistic one on the admission of both Parties - that of the 1935 Treaty of Rome.

One may wonder why the mathematical line is printed over a sketch-map illustrating the 1955 Treaty when no one had given any thought to this mathematical line for donkey's years!

Does Libya's insistence, in its Reply, on the so-called "mathematical" line constitute a fall-back position from the line of the 15th parallel? Professor Higgins raised this question last Friday. It is not for us to judge. However, I note that these overprintings are not innocuous and that they shift very appreciably northwards, or more precisely could shift very appreciably northwards, Libya's submissions, formal submissions or informal suggestions, we will see!

Let us now return to the set of public maps and sketch-maps produced by the Parties. I am not going to show all these items, let me reassure you, but shall confine myself to making a few points and taking a few samples.

To begin with, the map in Atlas No. 2.

030 Prior to 1899, as we know, most of the maps do not show any boundary in the modern sense. However, this one, the Justus Perthes map of 1892, does depict a *Grenze*, in other words a border, to indicate the boundary of Tripolitania. One can see it, one can sense it, and I would refer you to Professor Pellet's explanations on this subject. Further south, the area is little known and unexplored; this explains the absence of any border line - moreover, at that time, the area was not covered by international agreements.

From 1899 onwards, everything changes on the maps. A line appears. The *Livre jaune* map, please.

Yes, a line appears which is sometimes the course represented on the *Livre jaune* map (ML, map No. 40), which is being shown at this moment and which you see appearing now, this map from the *Livre jaune* which, as we know, accompanies the 1899 Declaration at the time of the negotiations then initiated between the French and Italian authorities. I shall not dwell any further on this chapter, which we have already discussed.

We encounter this same course on the map published as early as 1899 in *Le Figaro*, as well as on that published in the *Bulletin du comité de l'Afrique française*. Can you show it, please? Yes, this is more or less the course of the *Livre jaune* map.

And here, it is interesting to note that the Tibesti massif, as it was known at the time, is situated entirely south of the boundary line. Logically, this course of the line in the *Livre jaune* is found on all the maps published by the French authorities at the time; you will find examples of it in our small atlas.

Maps from other sources show other lines, particularly the so-called "mathematical" line. An example is map. No. 14-A in the Libyan Counter-Memorial, whose interesting geographical sector we have had enlarged.

031 This is a British map published by the Royal Geographic Society. Here, you see it; it shows the strictly south-east, so-called "mathematical" line. But we shall see, in this respect, that once the Franco-British Declaration of 8 September 1919 has been signed, British maps adopt the line ending at point 19°30' of latitude north, about here. And we also note that the negotiator of the 1919 Agreement, MacMichael, sends to Lord Allenby, British High Commissioner in Cairo, a letter explaining the reasons for what he considers to be an error made by the British cartographers in the preceding period (RC, Ann. 43, 5 March 1923). An error of which this map is an illustration, according to MacMichael.

As we know, Libya has produced, in its pleadings, Italian maps from the same period - can you show map No. 16-B in the Libyan Reply, for example - which bear the so-called "mathematical" line. This one, which dates from 1912, is interesting because it too indicates that the entire Tibesti massif, according to the information available to the Italian cartographers of the period, was south of the boundary line, even though the map also adopts the "mathematical" line. These Italian maps record what I shall call an undeniable squabble between the various Italian government departments, since they scarcely correspond to the positions adopted by the Italian Government at that period, which have been analysed by Professor Cassese.

032 The Franco-British Declaration of 8 September 1919 clarifies the cartographic situation in relation to the interpretation of the 1899 Declaration. As we know, it fixes the boundary line following "a

south-easterly direction", making it end at the point defined on the Sudanese boundary by the co-ordinates 24° east and 19°30' north. This is immediately recorded on the maps produced by the parties to the Franco-British Declaration.

Can you show mapNo. 15A on the Libyan Counter-Memorial, please. Here is this new British map, also by the Royal Geographic Society, of 1924; it has rectified the position. You will find the same course, in other words the course defined by the 1919 Agreement, on the other British maps, of the Royal Geographic Society as well as of the War Office, which have been produced by the Parties. You will find the same line on the French maps, which thus gain in precision. Lastly, you will find this line on the maps of the 1919 Peace Conference and on the map attached to the 1924 Agreement. But above all, what it seems to me important to note here is the fact that the "mathematical" line has disappeared. You will not find it again on a single *public* map produced by the Parties. From this time on, when the boundary is indicated, it is the 1919 line. And we will virtually have to await the overprintings of the Libyan Reply, or more precisely the Libyan Memorial, but above all of the Libyan Reply, in other words over 70 years, to see the mathematical phoenix reborn from the ashes.

Professor Cassese has retraced the hesitations and divisions in the Italian administration during the inter-war period. Hesitations reflected in the maps without boundaries shown by Professor Condorelli, and even more so in the maps relating to the colonial programmes, which convey the nostalgia and appetites of the Italian colonial lobby.

From 1935 and with the signature of the Treaty of Rome, the maps once more fall into step with one another.

- the Italian maps, which naturally record the course of the Treaty of Rome,

- the British maps still - could you show map No. 16B from the Libyan Counter-Memorial - here we have the course of the Treaty of Rome, on a 1935 map,
- lastly, the French maps, which also, immediately after the signature of the Treaty, record map No. 53 in the atlas, this map of 1935, a French map, which therefore corrects French cartography upon the signature of the Treaty, anticipating the exchange of ratifications, this is the immediate decision where the French geographical maps are concerned.

This period of happy harmony is short-lived, since as early as 1938 the maps once again begin to diverge, when it appears that the exchange of ratifications of the Treaty of Rome will not take place, in other words that the Laval-Mussolini Treaty will not enter into force.

Is there, at that time, a return to the status quo?

Not at all. As we have seen, the so-called "mathematical" line has disappeared for good from the maps after 1919.

The Italian maps showing the absence of delimitation in southern Libya also disappear, after a short reappearance. Could you show the 1941 Italian map of the Ministry of Foreign Affairs.

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You will recognize this map, which Professor Condorelli showed you. Take a good look at this map, Members of the Court, and note it one last time! Take a good look at it, because you will not see it again for 50 years! This type of map is going to disappear for half a century. No State, no public or private cartographer, neither of the Parties in the case, nor France, naturally, nor Chad, nor the United Kingdom, nor Italy, nor Libya, was subsequently to claim, on the basis of the maps, that there was no delimited boundary.

This map is the swan song of the maximalist Italian colonial claims.

And one will have to wait until 1991 and the Libyan Memorial to see this type of map reappear, with the corresponding claim relating to half of Chad's territory. The other maps published after this date hesitate between the course of the Treaty of Rome of 1935; can you show map No. 72 from our atlas?

Here, for example, is a German map of 1940, which adopts the Laval-Mussolini line, as we can see quite clearly.

This is also the case with other Italian maps. Can you show map No. 78 from our small atlas? The boundary is less clear here but one can just make it out, bisecting the massif; here it is.

It is an Italian map from the Armed Forces Supreme Command. It dates from 1941, in other words from the same year as the map I have called the "colonial swan song" map. But it bears the line of the 1935 Treaty of Rome.

On the other hand - and as early as 1938 - French maps revert to the 1919 course of the boundary. Can you show map No. 67 in our atlas?

This map dates from 1938 and adopts - one can make out the angle - the line of the 1919 Agreement. It is a map from the French Army's geographical department. It did not wait for the ink to dry on the letter by which Count Ciano renounced the exchange of ratifications to return to the 1919 line.

035 You will find other examples of French maps in the small atlas, both the IGN maps and the Michelin road maps, geological maps, etc.

All, after 1938, indicate the boundary of the 1919 Agreement. Whereas France immediately records the non-ratification of the treaty, the other States take slightly longer to amend their maps.

Hence, for example, map No. 87, this map, or rather this sketch-map, published in 1943 by "The Geographer", the official American department, still carries the boundary of the Laval-Mussolini Agreement. Along the

same lines, we have pointed to a National Geographic Society map of 1950, which continues to show this anachronistic line; you will find it in your small atlas.

As for the British maps, they were not corrected until after the war. We have submitted a War Office map of 1948 which does, indeed, return to the 1919 line. So here too, there is some wavering in this period. It is a wavering that is easily understandable. From 1940 onwards, the principal protagonists in our cases were at war. Priorities lay elsewhere, and from 1945 to 1949, uncertainty reigns both as regards the fate of the former Italian colonies and the possible adjustment in their boundaries. Incidentally, I am not going to recap on what, alas, has to be termed the shambles of French diplomatic representation at the Conference of Deputy Foreign Ministers of the Four Powers, or the error made by the United Nations Secretariat in 1950, for Professor Franck has explained all of this to you.

But, in this case, although diplomats and politicians are not capable of seeing the wood for the trees - both sides have shown you this - one well understands that cartographers, carrying out the political line, are scarcely on their side.

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However, let us be clear about the nature of this wavering. In fact, the hesitations of the 1940-1950 decade are very different from those we have observed prior to 1919. Here, it is no longer a question of a divergence of interpretation regarding the course of the boundary line, nor is it a question of establishing what "south-easterly direction" means. All of that was settled in 1919.

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The "mathematical" line, as I have said, is definitively dead and buried. And everyone is convinced, according to the published maps, that there is indeed a boundary. There are no longer any maps without boundaries, "funnel-maps"! The uncertainty, during this period of

vacillation, relates exclusively to the point of the entry into force or not of the Laval-Mussolini Treaty, and therefore of the substitution or not, for the line described by the Franco-British Agreement of 1919, of the line described by the 1935 Treaty of Rome. In other words, the choice now is between two lines: 1919 or 1935.

Cartographers and publishers no longer have to deal with a problem of the accuracy of the course or of interpreting texts: the matter is settled! But a problem of choosing between these two boundary lines, which enclose what was later to be called the Aouzou strip. From 1950, the maps bear the 1919 line, sometimes, moreover, indicating the territorial dispute between the two possible lines.

Let us give an example: map No. 153 in our atlas.

This is a recent American map by the National Geographic Society of 1990. It bears - we are going to see an enlargement - the two lines; as you see, it principally bears the 1919 boundary line and the Laval-Mussolini Treaty line in dots, with a note reading "claimed and partly occupied by Libya". And this indication refers to the "Aouzou's strip".

We therefore clearly see here, on this map, that the National Geographic Society reflects the data of the problem as it stands after the Second World War, the problem being that of the Aouzou strip.

038 A word on the United Nations maps. I shall not go over the demonstration by my colleague Professor Franck again, who explained the halting progress of the Four-Power Commission of Investigation,

- the 1950 sketch illustrating the hesitations of the General Assembly's Interim Committee,
- and the origin of the error added to the United Nations maps.

Could you show United Nations map No. 235 please; this is the first of the maps on which counsel for Libya base their demonstration. With the 1935 line, this is the United Nations "map No. 235" of December 1949, and the little crenellations characteristic of the Laval-Mussolini line. This map, the purpose of which is to describe the principal routes and trails, let me stress "as principal transport routes", dates from 1949 and therefore shows the 1935 line. This map is interesting because it is the matrix of the erroneous maps published by the United Nations in the following decade. We have made enquiries at the United Nations Secretariat concerning this map and Professor Franck has outlined its genesis and posterity.

Libya has made much of this series of maps starting with the 1935 map. Unfortunately, as I mentioned just now their curiosity did not extend beyond 1958; otherwise they would have told the rest of the story and published the complete series of the United Nations maps. They could even have published map No. 141 of our little atlas; that was a map - I believe that it was the February 1963 map of the United Nations - which does show the 1919 line.

039 I note that since the beginning of the 1960s all the maps published by the United Nations show the 1919 frontier. Professor Franck projected a series identical to this one, which continued up to the 1980s. These maps do not indicate the frontier with Chad in any particular way and, as you see, it is shown with the same kind of dotted line as all Libya's international frontiers. They do not indicate that this course is particularly contested. The approval of the Organization's cartographic service reflects the almost unanimous consensus - we shall see this in a moment - of cartographic opinion with respect to the southern frontier of Libya.

Libya has tried to reduce the scope of the Organization's more recent maps by considering them as technical maps illustrating technical reports.

This is true. But it is also true, Mr. President, of the earlier maps. The map originating the error, which I showed you before, map No. 235 of 1949, was intended for the United Nations transport and communications review. As to the sketch accompanying the reports of Mr. Pelt, the High Commissioner, their function was not to spell out the frontiers, a problem which did not fall within his competence. After 1955, i.e. after the signature of the Treaty of 10 August 1955, consensus on the 1919 line became overwhelming in all the maps published.

- All the United Nations maps, as I have said,
- all the French maps,
- all the British maps,
- all the American maps,
- all the Italian maps,
- even the Soviet maps,

if you will project it for me, here is a Soviet map of 1985.

040 This is an interesting map. It emanates from a great power, a great power which at the time was rather sympathetic towards the Libyan régime; and yet it reproduces the 1919 line because it registers the international consensus that had formed at the time.

Only the Libyan maps continue to show the line of the 1935 Treaty. (You can project map No. 150 from our atlas for me.) We have a map of Libyan origin, and not an English one as indicated by mistake in the hearings folder. This Libyan map which follows the Treaty, we can see the little crenellation of the Laval-Mussolini line.

In this case, I stress, it is not that the frontier is missing; no, it is there. It is not in this case, I stress, a mathematical line - it has nothing mathematical about it - it is the line of the Laval-Mussolini Treaty that our opponents today agree has no legal basis.

Mr. President, Members of the Court, this unanimity - or quasi-unanimity - of the maps (with the exception of the Libyan maps) since the signature of the Treaty of 10 August 1955 seems to me to have met, for at least 30 years, the criteria laid down by the Court of Arbitration in the *Beagle Channel* case.

"Where there is a definite preponderance on one side - particularly if it is a very marked preponderance - and while of course every map must be assessed on its own merits - the cumulative impact of a large number of maps, relevant for the particular case, that tell the same story - especially when some of them emanate from the opposite Party, or from third countries, - cannot but be considerable, either as indications of general or at least widespread repute or belief, or else as confirmatory of conclusions reached, as in the present case, independently of the maps." (Award of 18 April 1977, p. 84, para. 139.)

041 Mr. President, in this case, it seems to me that the indications given by the map, all cartography since 1955 and for 30 years do meet these conditions.

We shall, moreover, see that, in the words of the Court of Arbitration in the *Beagle Channel* case, "some of the maps" - at least one - "emanate from the opposite Party". But let us not anticipate.

Mr. President, Members of the Court, to complete this projection I shall refer to the case of three significant maps, to reply to the arguments of Libya.

The first concerns the map published by "The Geographer", the official institution of the United States of America. You may project map No. 135 in our atlas.

042 This map is an interesting one because of its origin. It is just a sketch, but it is a sketch with particular authority.

Studying the frontiers of Africa in his authoritative work,
Professor Brownlie expresses himself thus concerning this kind of map:

"Various categories of evidence may overlap. Thus the Geographer of the United States Department of State publishes material (*International Boundary Studies*), which is both official in provenance, since he is an authorized government agency, and also expert evidence in terms of its technical provenance. Evidence of the views of third states is relevant not only when the location of tripoint boundary junctions is in issue, but in general as evidence of general recognition of an alignment and of its notorious and public character. Thus official maps produced by the United Kingdom, French and American government agencies provide evidence of the alignments of African boundaries." (*African Boundaries*, p. 5.)

Libya, embarrassed by this map, has tried to get round the argument by observing that the studies in "*International Boundary Studies*" are certainly not neutral but express the official position of the United States Government (RL, Supplementary Annex, Vol. 2, No. 2, p. 15).

Mr. President, Members of the Court, let us not commit any anachronisms here. In 1961 the United States Government had no reason to favour the Republic of Chad rather than the United Kingdom of Libya, where there were then substantial American interests, may I remind you, strategic interests, economic interests and oil interests.

We therefore maintain that the opinion of the Geographer in 1961 was of considerable interest to our case.

The second map was published by the International Civil Aviation Organization in 1959.

C43 - This map, where you see the frontier course, here, which is indeed the 1919 course, is the expression by another international organization of the shared conviction as to the course of the frontier line;

- this map would not be worthy of further comment if Libya had not produced the beginning of correspondence exchanged in 1955 between the French Government and the Secretary-General of the International Civil

Aviation Organization concerning the frontier line to be indicated on aeronautical maps.

Our Libyan colleagues conclude in their pleadings in the Supplementary Annex to Volume 2 of their Reply: "The end of this saga is not revealed by documents found in the Quai d'Orsay Archives." (*Ibid.*, Supplementary Annex, Vol. 2, p. 4, para. 4.)

May I respectfully point out, that the end of the saga is not perhaps in the documents in the Quai D'Orsay Archives but probably in the map projected, issued by ICAO in 1959, ICAO having meanwhile successfully concluded its survey?

Lastly, the third series of maps concern oil research.

- The initial sketch-map (map No. 1) is annexed to the petroleum regulations proclaimed on 14 August 1955. And you see it here, it is a sketch to which Libya attaches importance.

The Reply of Libya describes this sketch as follows:

"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 companies" (RL, p. 74, para. 5.63 *in fine*).

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May I say, Mr. President, Members of the Court, that Libya has a rather curious concept of a "conservative line". Moreover, it demonstrated this contradiction itself in its map - please project now the sketch that was made by Libya and published in its Reply. This is map LR 2 of the Libyan Reply in which Libya demonstrates its contradiction.

This map superposes - I don't know if you can see it closely - the line of the United Nations map (UN map No. 241) and the sketch-map that we have just projected (No. 1955, Libyan Petroleum Regulations map No. 1).

You will see that these two lines do not coincide and that the Libyan petroleum map takes some liberties, in particular in this sector, with the United Nations map

- notably in the petroleum areas, a little higher in the Edjelé sector which is round here;

- we see that it penetrates into Algerian territory and that this penetration is not negligible since it is a good hundred kilometres away from Ghat.

All the same, the petroleum sketch that I showed you first that accompanied the Libyan oil law of 1955 brought an immediate protest from the French Ambassador in Tripoli.

- Just as France was to protest against the maps published by the World Bank in its study on the economic development of Libya in 1960.

- Libya in its Reply also produced three private oil exploration maps, based, as is normal, on the official sketch-map of 1955.

- On the other hand it tries to underestimate the importance of the map published by its own services in 1962, a map that we have reproduced in the Atlas No. 142.

- This map is a map to which we attach importance. It was established by the official American geologists for the Libyan Government and clearly shows, as you see, the frontier of 1919 and of the 1955 Treaty.

- It was established following consultation with the various competent Libyan Ministries. As you see, the United States Department of the Interior's Geological Survey drew up the map for the Libyan Government, United Kingdom of Libya, Ministries of National Economy, Petroleum Affairs and Industry.

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- Light is thrown on the history of this map by the note from Mr. Sebilleau, French Ambassador in Tripoli, dated 28 April 1961, which is reproduced in the Reply of Libya (Exhibits, Part A (1-6), Vol. 3, Exhibit 6.10, last document).
- Ambassador Sebilleau fears publication of an official Libyan map showing a frontier different from the frontier of the 1955 Treaty.
- He therefore proposes that the Department should approach the Libyan Government and the other Governments concerned to ensure that an official map contradicting the text of the 1955 Treaty should not be issued.
- I note that these various approaches met with success since the official map, containing certain disclaimers, published in the name of the United Kingdom of Libya, shows the 1919 frontier indicated by the 1955 Treaty.

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Mr. President, Members of the Court, to summarize my argument, four findings in connection with the many maps produced by the Parties to the present case:

1. I note that not a single published map shows the line claimed by Libya in its submissions

- that is to say the frontier of the 15th parallel;

2. I note that not a single map published since 1919 shows the line known as the "mathematical" line;

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3. I note that not a single map published since the independence of the two Parties shows the line of the 1935 Treaty of Rome (with the exception, of course, of the Libyan maps); at the most this line is indicated in alternative with the 1919 frontier enclosing the Aozou strip, as we have seen in the National Geographic map.

4. Lastly, I note that not a single Libyan protest has been made against the many maps published since the independence of the two Parties, whereas the French Government and then the Chadian Government reserved their rights whenever any maps showed the course of the frontier of 1935.

Mr. President, may it please the Court to hold on this point that the maps filed by the Parties constitute, as a whole, a consistent piece of evidence supporting the contentions of the Republic of Chad.

I thank you for your attention and after the break I will ask you to be kind enough to call Professor Franck to the bar.

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

The Court adjourned from 11.25 a.m. to 11.40 a.m.

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Le PRESIDENT : Je donne la parole à M. Franck.

M. FRANCK :

L'effectivité de la ligne après l'indépendance de la Libye et du Tchad

La reconnaissance internationale de cette ligne à l'Organisation des Nations Unies : aux dates critiques, la Libye a bénéficié du nouveau droit de la décolonisation appliqué par l'ONU et elle y a acquiescé à plusieurs reprises

I. La reconnaissance internationale de la ligne de 1955 à l'Organisation des Nations Unies

1. Monsieur le Président et Messieurs de la Cour. Ainsi que le Tchad le réaffirme constamment, le traité de 1955 est la pierre angulaire sur laquelle notre argumentation repose. Mais le Tchad est également convaincu que, même s'il n'y avait pas eu de traité en 1955, la ligne que ce traité décrit était déjà devenue, en droit, la frontière entre la

Libye et l'Afrique équatoriale française. Cela découle de l'opération des traités coloniaux et des effectivités, mais cela découle aussi de l'opération des droits et des pratiques de la décolonisation à l'Organisation des Nations Unies. La frontière de la Libye n'a pas été contestée au moment de son accession à l'indépendance en 1951, et elle a donc été confirmée comme frontière entre la Libye et le Tchad au moment de l'accession du Tchad à l'indépendance, en 1960. Le droit coutumier et la pratique de la décolonisation présument que les nouveaux Etats accèdent à l'indépendance avec les frontières telles qu'elles se présentaient lorsqu'ils ont cessé d'être des entités dépendantes. Cette forte présomption est réfutable mais elle n'est pas facile à réfuter et elle doit l'être au moment opportun par ceux qui demandent qu'elle ne s'applique pas.

2. Au moment de son indépendance, la Libye a exprimé son fort attachement à ce principe, et elle en a bénéficié. De 1948 à 1952, l'Egypte avait revendiqué des ajustements de frontières et la reconnaissance d'un titre historique sur l'est de la Libye. La France, faisant valoir des facteurs ethniques et géographiques, avait formulé des revendications sur l'ouest de la Libye. L'émir Idriss de Cyrénaïque, qui allait bientôt devenir roi de Libye, a informé le Secrétaire général Trygve Lie de sa farouche opposition à "toute décision prise pour découper une partie quelconque de la Libye en faveur d'un autre pays..." (mémoire du Tchad, p. 233, par. 99, avec citations). Contrairement à la thèse de la "pauvre Libye" avancée ici, l'émir et ses conseillers n'étaient ni ignorants ni passifs. Cependant, l'émir s'en est bien remis aux Nations Unies, et non sans résultat, pour défendre l'héritage territorial de la Libye. M. Pelt, le Commissaire des Nations Unies, s'est vraiment défendu comme un lion dans cette affaire. Sir Ian Sinclair observe, comme nous le faisons nous-mêmes, que le Commissaire

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des Nations Unies pour la Libye n'avait pas compétence pour résoudre des revendications de frontières. En revanche, il avait bien compétence pour garantir l'unité interne de la Libye et la défendre contre des prétentions extérieures. C'est ainsi, par exemple, qu'agissant au nom des intérêts libyens tels qu'ils lui apparaissaient, le Commissaire des Nations Unies pour la Libye s'est fermement opposé au point de vue soutenu par le ministre français de l'intérieur, M. Queuille, qui était responsable de l'administration du Fezzan libyen. Lorsque Queuille a avancé l'idée que, peut-être, les habitants de la province du Fezzan devraient avoir le droit de choisir de faire sécession avant l'indépendance (mémoire du Tchad, p. 235, par. 104, annexe 312), il s'est heurté à la vigoureuse opposition de M. Pelt.

3. Et c'est avec la même vigueur que M. Pelt s'est élevé contre le souhait exprimé, selon certaines indications, par la population touareg de Ghat de ne pas rester dans le cadre d'une Libye indépendante (mémoire du Tchad, p. 234, par. 102, annexe 313) - quelques éléments touaregs avaient fait des démarches dans ce sens. Le Commissaire s'est opposé à ces revendications sécessionnistes, trouvant pour ce faire un soutien sans ambiguïté dans la résolution 289 (IV) dans laquelle l'Assemblée générale avait recommandé que les différentes régions soient administrées de manière à faciliter la réalisation "de l'unité ... de la Libye" (mémoire du Tchad, annexe 307, art. 10b)). Les Membres de l'Assemblée étaient unis dans leur détermination à amener à l'indépendance une Libye définie par ses frontières pré-existantes héritées de l'époque de la colonisation italienne, sans rien y retrancher ou y substituer. La notion d'intégrité territoriale est donc quelque chose dont la Libye a largement profité et c'est une notion qui lui était familière.

4. Le souci de l'ONU de voir la Libye accéder à l'indépendance avec ses frontières coloniales antérieures et une intégrité territoriale intacte a été une des premières manifestations du nouveau droit de la décolonisation qui était en train de s'élaborer dans la pratique des Nations Unies. La Libye a été l'un des tout premiers bénéficiaires de cette pratique normative naissante. Aussi aurait-il été naturel que la Libye fût parmi les premiers à trouver juste d'appliquer les mêmes normes pratiques au Tchad lorsque celui-ci, dix ans plus tard, a accédé à son indépendance et est entré à l'Organisation des Nations Unies. Et c'est bien ce qui s'est produit, la Libye accueillant chaleureusement le Tchad, sans donner la moindre impression qu'un différend pourrait apparaître.

5. C'est aussi précisément l'intégrité territoriale du Tchad qui a été ratifiée par la Libye avec le traité franco-libyen de 1955. En 1960, il y avait deux nouvelles notions. Une frontière commune - et pas de problème. L'intégrité territoriale, notion absolument déterminante pour la réussite du processus de décolonisation, semblait l'avoir emporté. Pourtant, aujourd'hui, dans ses écritures, la Libye traite par le mépris la revendication d'intégrité territoriale du Tchad, en reprenant par exemple à son compte la remarque perfide qu'elle cite dans son mémoire selon laquelle le Tchad n'était qu'un "sous-produit artificiel de priorités politiques et stratégiques que la France avait ailleurs" (mémoire de la Libye, par. 5.532). Le Tchad, en effet, comme la Libye et comme la plupart des Etats d'Afrique, est un sous-produit de son histoire coloniale. Mais il est bien davantage le fruit de la détermination de l'Afrique et de l'ONU à préserver ces frontières, cette intégrité territoriale, que la Libye présente aujourd'hui avec mépris, par ses paroles et par ses actes, comme "artificielle". S'il se peut que ces frontières aient été tracées par les puissances coloniales sans songer au bien-être des Africains, il n'en demeure pas moins que le bien-être des

051 Africains est aujourd'hui indissociablement lié à ces frontières.

Presque tous les autres Etats africains et arabes reconnaissent que c'est là une nécessité pratique, en même temps qu'une exigence du droit.

6. La Libye conserve une attitude ambiguë sur la question de l'intégrité territoriale. D'un côté, elle méprise le principe de l'intégrité territoriale, y voyant une rémanence du colonialisme, bien qu'elle en ait largement bénéficié elle-même lorsque l'Egypte et la France avaient des prétentions sur son territoire. D'un autre côté, elle accepte théoriquement l'*utis possidetis*. Mais la Libye cherche à limiter la portée de cette doctrine en en restreignant l'application aux seuls territoires non contestés et aux seules frontières qui ne sont pas en litige. Une frontière est une frontière uniquement lorsqu'elle n'est pas contestée. C'est ainsi que la Libye conçoit l'intégrité territoriale. L'on ne saurait assortir l'*uti possidetis* d'une telle réserve. L'objectif essentiel de ce concept est de défendre l'intégrité territoriale et les frontières des nouveaux Etats tels qu'ils se présentent au moment de l'indépendance contre toute remise en question de la part d'autres Etats. C'est précisément pour légitimer des frontières qui risquaient d'être remises en question que le principe a été élaboré au moment de la décolonisation de l'Amérique latine et réaffirmé, plus récemment, au moment de la décolonisation de l'Afrique.

7. L'indépendance de la Libye et du Tchad à l'intérieur des frontières territoriales établies au moment de la colonisation est garantie, de même que l'intégrité territoriale de tous les Membres, par l'article 2, paragraphe 4, de la Charte des Nations Unies. La Libye nie maintenant avoir violé l'intégrité territoriale du Tchad. Elle justifie ces dénégations en affirmant que la zone qu'elle a envahie en 1973 n'était pas vraiment, pas légitimement tchadienne. Elle ne conteste pas que le Tchad administrait cette zone en 1960, elle ne conteste pas que la

052 France y était présente en 1955. Et pourtant, la Libye voudrait nous faire croire que la notion d'intégrité territoriale n'a pas à s'appliquer parce qu'elle a une revendication territoriale à formuler. Mais cet argument est par trop étrange. Non seulement il vide l'*uti possidetis* de son sens mais encore il le rend inopérant. La Libye n'a pas revendiqué ces territoires lorsqu'elle a accédé à l'indépendance, à la fin de 1951 et elle ne les a pas revendiqués non plus lorsqu'ils ont été placés sous l'autorité souveraine d'un Tchad indépendant en 1960, ni lorsque le Tchad est entré à l'ONU avec la bénédiction de la Libye (contre-mémoire du Tchad, p. 151 à 154, par. 4.52 à 4.58). Ce n'est que dans les années 1970 que la Libye a commencé à remettre en cause la situation pacifique, fruit de l'*uti possidetis*.

053 8. Bien évidemment, les principes de l'intégrité territoriale et de l'*uti possidetis* ne deviennent pas inapplicables du seul fait qu'un Etat a une revendication historique sur le territoire d'un autre Etat. Et, de toute façon, même si la revendication d'un titre historique pouvait rendre inapplicable l'*uti possidetis*, la Libye n'a formulé pareille revendication à aucun des moments critiques où on aurait pu s'attendre qu'elle le fasse. Et si l'on peut concevoir que la revendication contre l'intégrité territoriale d'une colonie fondée sur un titre historique puisse demeurer même après l'accession de cette colonie à l'indépendance, du moins aurait-il fallu que cette revendication existe et soit exprimée publiquement, avant et au moment de l'accession de la colonie à l'indépendance et de son entrée à l'Organisation des Nations Unies.

9. Naturellement, le fait que la Libye indépendante n'a pas formulé pareille revendication pour s'opposer à l'application de l'*uti possidetis* au moment critique de l'indépendance du Tchad et de son admission à l'ONU cadre avec ce qui a pu être observé auparavant.

Ces nouveaux silences de la Libye, après son accession à l'indépendance, doivent se comprendre comme confirmant l'absence de contestation des déclarations faites par la France devant l'Assemblée générale au sujet de la frontière méridionale de la Libye durant la période de la tutelle des Nations Unies sur la Libye, entre 1948 et 1952. Il faut considérer qu'ils confirment l'acceptation par la Libye de sa frontière méridionale telle que définie dans le traité de 1955.

10. Monsieur le Président, Messieurs de la Cour, nous avons vu comment le nouveau droit de la décolonisation s'est appliqué, dans un premier temps, dans l'intérêt de la Libye. Si la Libye avait estimé que ce nouveau droit de la décolonisation ne pouvait s'appliquer au Tchad, aurait-elle signé et ratifié le traité de 1955 ? Et n'aurait-elle pas dû le dire clairement à l'ONU dès la première occasion constituant un moment critique engageant l'Organisation, en l'occurrence au moment de l'indépendance du Tchad, en 1960, et au moment de l'entrée de ce dernier à l'ONU ? Assurément, par rapport au Tchad, en 1960, la Libye ou bien estimait avoir une frontière avec ce pays, ou bien estimait avoir un différend frontalier avec lui. Il est impossible de déduire de l'attitude chaleureuse et bienveillante de la Libye à l'ONU qu'elle estimait avoir avec le Tchad non pas une frontière mais un différend.

11. En 1960, rien n'indiquait que, plus tard, la Libye se rebellerait contre le nouveau droit de la décolonisation. Les deux grands principes de ce nouveau droit sont l'intégrité territoriale (ou *l'uti possidetis*) et *l'autodétermination*. Le sens à donner à ces deux principes est au coeur de la présente affaire. L'argument du Tchad est sans ambiguïté : lorsqu'il a accédé à l'indépendance, le Tchad était fondé à recevoir les frontières qui correspondaient à l'"instantané" du territoire sous administration française qui lui a été légué, incontesté, au moment de sa décolonisation. Le contenu de ce droit avait été

clairement exposé par la France qui s'était exprimée sur ce sujet à maintes reprises, publiquement et clairement, à l'ONU. Et il a été confirmé par la Libye dans le traité de 1955. L'acte d'autodétermination du Tchad est intervenu dans le cadre des frontières résultant de ce droit territorial. Si, malgré tout, la Libye avait souhaité revendiquer une partie de ce territoire ou cherché à faire reconnaître une autre frontière, la pratique qui s'était instaurée à l'Organisation des Nations Unies en matière de décolonisation montrait clairement comment cela pouvait se faire au moment critique de l'accession du Tchad à l'indépendance et de son admission à l'ONU. L'intégrité territoriale était un droit, mais ce n'était pas un droit irréfutable. Le nouveau droit coutumier de la décolonisation permettait également de demander qu'il soit dérogé au principe dans certaines circonstances spéciales. Mais la Libye n'a pas cherché à obtenir pareille dérogation. Il faut assurément y voir la preuve que la Libye était satisfaite du jeu normal des principes applicables en matière de décolonisation et des frontières établies en accord avec ces principes.

II. L'indépendance du Tchad à l'Organisation des Nations Unies

12. Monsieur le Président, Messieurs de la Cour, arrêtons-nous un moment à la décolonisation du Tchad. L'Organisation des Nations Unies n'a pas supervisé l'accession du Tchad à l'indépendance d'aussi près qu'elle l'avait fait pour la Libye dix ans plus tôt. Elle a néanmoins supervisé l'administration de tous les territoires non-autonomes. De 1947 à 1959, la France a régulièrement soumis à l'Assemblée des rapports sur ses colonies (*ibid.*, par. 4.56), y compris des renseignements détaillés sur le Tchad. Dans ces rapports, la France affirmait que ce qui est maintenant le Tchad couvrait un territoire qui englobait le BET. Ainsi, en 1955, l'année même où le traité franco-libyen confirmait leur frontière mutuelle, la France stipulait dans son rapport à l'ONU que le

Tchad comprenait 538 000 kilomètres carrés expressément attribués au BET (*ibid.*, avec citations). Cette définition du BET englobe tout le territoire occupé en 1973 par la Libye. Or, il ne s'agissait pas d'un mémorandum secret des dossiers du Quai d'Orsay. La Libye, en sa qualité de Membre de l'ONU, recevait ces rapports qui étaient publiés. On aurait attendu d'elle qu'elle se plaigne si, en 1955, elle estimait que l'attribution de territoire faite par la France était extravagante ou si elle avait pu lui opposer une revendication territoriale. Dans les années cinquante, c'était pratique courante pour les Etats Membres de critiquer violemment les aspects déplaisants de l'administration coloniale française (*ibid.*, par. 4.57 et 4.58). Pourtant, la Libye n'a pas contesté les dimensions territoriales du Tchad telles qu'indiquées par la France ni formulé une revendication sur une partie quelconque du territoire dont la France était encore responsable. Elle n'a certainement pas dit à l'ONU que sa frontière était incertaine ou indéterminée, ni qu'elle avait besoin d'une assistance technique pour s'assurer des droits qui étaient les siens en vertu de la doctrine ottomane de l'*hinterland*.

13. Ce silence de la Libye est particulièrement significatif à la lumière de la pratique normative contemporaine. En 1960, le Tchad est parvenu à l'indépendance. En 1960, l'ONU avait fixé en matière de décolonisation des règles qui s'appliquaient de manière générale aux territoires qui s'acheminaient vers l'indépendance. En même temps s'était établi l'usage de protester contre leur application dans des cas particuliers. J'en donnerai bientôt quelques exemples. Pourtant, on voyait alors le Tchad se diriger vers l'indépendance, avec un territoire défini et administré et des frontières défendues par la France, par le régime colonial. On avait l'ONU qui insistait pour que l'indépendance du Tchad intervienne dans le respect des paramètres normatifs de

l'autodétermination, de l'*uti possidetis* ou de l'intégrité territoriale. N'y avait-il pas lieu d'attendre que la Libye, si elle pensait alors ce qu'elle affirme aujourd'hui, s'écrie : "Un instant ! Avant que nous n'encourageons la France à remettre ses pouvoirs à un gouvernement élu au Tchad et avant que nous n'admettions le Tchad à l'ONU, faisons pression sur la France et les autorités de N'Djamena pour qu'elles redressent un tort ancien et rendent à la Libye des terres et des peuples qui lui appartiennent de droit !" ? N'est-on pas en droit de tirer des conclusions du fait que la Libye se soit abstenue d'élever la voix à ce moment critique en des termes quelque peu analogues ? N'est-il pas raisonnable de penser que la Libye s'est tue parce qu'elle n'imaginait pas alors qu'elle avait une raison quelconque de demander une dérogation à la règle générale de l'autodétermination ? Ne pouvons-nous pas en déduire qu'en 1960 la Libye était satisfaite des frontières qu'elle avait et qui étaient protégées par le principe de l'intégrité territoriale ?

III. Les nouvelles règles de la décolonisation

14. Comme l'a fait observer une Chambre de la Cour en 1986 dans l'affaire du *Différend frontalier*, le principe de l'*uti possidetis* avait été consacré et universalisé par le nouveau droit de la décolonisation afin que l'indépendance ne conduise pas "à des luttes fratricides nées de la contestation des frontières à la suite du retrait de la puissance administrante" (C.I.J. Recueil 1986, p. 565). Selon les termes de la Cour, cette règle "gèle le titre territorial" en vigueur au moment de l'indépendance, c'est-à-dire "au moment de l'accession à l'indépendance ..." (*ibid.*, p. 566, 568; contre-mémoire du Tchad, p. 131 et 132, par. 4.12 à 4.14, et p. 152, par. 4.54). Ce même souci était implicite dans la déclaration historique de l'Assemblée générale sur l'octroi de l'indépendance aux pays et peuples coloniaux (la fameuse

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résolution 1514 (XV) de l'Assemblée générale du 14 décembre 1960) adoptée en 1960 juste au moment où le Tchad parvenait à l'indépendance. Elle condamne "toute tentative visant à détruire partiellement ou totalement l'unité nationale et l'intégrité territoriale d'un pays". Cette même norme figure naturellement dans la Déclaration de 1970 de l'Assemblée sur les relations amicales (Déclaration relative aux principes du droit international touchant les relations amicales et la coopération entre les Etats, résolution 2625 (XXV) de l'Assemblée générale du 24 octobre 1970; contre-mémoire du Tchad, p. 132 et 133, par. 4.16). La Libye a en effet voté en faveur de ces deux résolutions (pour l'examen de la résolution 2625 (XXV) de l'Assemblée, voir contre-mémoire du Tchad, p. 133, par. 4.17). Elle n'a pas dit : ce sont de bonnes règles, mais elles ne s'appliquent pas aux frontières que nous contestons, ni aux territoires sur lesquels nous avons une revendication insatisfaite.

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15. Dans la pratique de l'ONU, l'universalité et le prestige dont était investi le nouveau droit de la décolonisation signifiait que les Etats Membres de l'ONU faisaient tout ce qui était en leur pouvoir pour que les colonies accèdent à l'indépendance en conservant exactement les frontières territoriales qu'elles avaient lors de la dernière phase du processus de décolonisation. La fermeté de cet attachement ressort de la résistance opposée par l'ONU aux quelques demandes de dérogation à ces règles. L'examen des demandes de dérogation auxdites règles nous donne un aperçu de ce qu'aurait été la transition du Tchad de l'état de colonie à celui de nation si une revendication avait été formulée contre lui par la Libye ou même par les populations du BET administrées par la France.

16. Ces demandes de dérogation ont généralement été présentées dans deux types de situations. L'une était celle où l'on prétendait que l'autodétermination devait être appliquée de manière à donner à un groupe ethnique distinct et cohérent du territoire colonial l'occasion de se

détacher avant que ce territoire dépendant n'accède à l'indépendance. L'autre situation dans laquelle des demandes de dérogation ont été présentées était celle où un Etat déjà indépendant et déjà membre de l'ONU, d'ordinaire un Etat voisin, revendiquait tout ou partie d'un territoire dépendant qui s'acheminait vers l'indépendance, généralement en se fondant sur un titre historique. Bien que l'ONU ait très rarement accédé à ces demandes de dérogation, celles-ci n'étaient pas rares. En tant que Membre de l'ONU depuis près d'une décennie avant l'indépendance du Tchad, la Libye ne pouvait guère ignorer cette pratique, car elle en avait des exemples partout autour d'elle.

17. Premièrement, la dérogation fondée sur l'autodétermination. En 1960, on pouvait fort bien imaginer une demande de dérogation fondée sur l'autodétermination c'est-à-dire l'autodétermination d'un sous-groupe vivant à l'intérieur de la colonie. La demande de sécession aurait pu être présentée par les populations vivant dans le BET ou même par la Libye parlant en leur nom. Aucune demande ne fut formulée. De plus, le référendum qui a eu lieu au Tchad en 1958 sur la question de l'autodétermination ne suscita aucun mouvement de sécession. Tout le BET participa aux élections de 1959 précédant l'indépendance du Tchad, et il y eut de nombreux partis, dont plusieurs réussirent à élire des députés à l'Assemblée nationale. M. Bowett, le 22 juin, a parlé de l'absence totale de preuves d'acquiescement des populations autochtones dans la zone appelée les confins (CR 93/20, 22 juin 1993, p. 19). Pas du tout. En 1960, les populations du BET, y compris celles d'Aouzou, avaient exercé leur droit à l'autodétermination, comme le montrent bien les résultats des élections de 1959 publiés dans *Perspective Africaine* à Paris le 16 juin 1959, dont nous avons joint le texte, en tant qu'annexe 107, au contre-mémoire du Tchad et qui se trouvent projetés derrière moi.

Lors de ce scrutin, nul ne préconisait la sécession. C'était en 1959. L'année suivante, l'Assemblée tchadienne dûment élue a décidé de proclamer l'indépendance de la nation. Cela ne suscita pas non plus d'appel à la sécession, ni de la part des représentants élus, ni de la part de la population (contre-mémoire du Tchad, p. 135, par. 4.21, avec citations, y compris l'annexe 107 du contre-mémoire du Tchad).

18. Il est toujours dangereux de prétendre savoir ce que les gens pensaient trente-trois ans auparavant, mais nous pouvons faire certaines déductions en comparant la façon dont l'autodétermination fonctionnait au Tchad avec les événements très différents qui se déroulaient au même moment dans d'autres colonies africaines. Ainsi, au moment même où le Tchad s'acheminait pacifiquement vers l'indépendance à l'intérieur de frontières territoriales qui n'étaient contestées ni sur le plan interne, ni sur le plan international, la Belgique mettait fin à sa tutelle au Ruanda-Urundi. Là, au cours des années 1959-1962, les deux régions et les populations avaient, lors de plusieurs élections, exprimé clairement leur préférence pour la sécession mutuelle plutôt que pour l'intégrité territoriale. Après une forte résistance initiale, l'ONU finit par bénir la séparation juste avant l'indépendance, avec une grande réticence (contre-mémoire du Tchad, p. 133 à 135, par. 4.19 et 4.20). Elle avait reconnu l'intensité des sentiments séparatistes au Ruanda-Urundi et accepté de déroger dans ce cas-là au principe de l'intégrité territoriale. Le contraste entre ce qui se passait au Tchad et ce qui arrivait au même moment au Ruanda et au Burundi ne saurait être plus frappant. Les populations du BET n'ont exprimé aucun désir de sécession, la Libye n'a pas présenté de demande en leur nom et, bien entendu, les règles pratiquées par l'ONU ont été appliquées. Il serait désastreux, plus de trente ans plus tard, que la Cour revienne sur des règles et méthodes de décolonisation élaborées avec soin pour les modifier.

19. La Libye savait certainement comment user de la carte de l'autodétermination si elle en avait eu une à sa disposition. En effet, elle jouait un rôle actif dans un cas de ce genre au moment même où le Tchad allait devenir indépendant, ayant beaucoup contribué à persuader l'ONU, en 1960, d'autoriser un plébiscite qui devait révéler si la population du Cameroun septentrional, sous administration britannique, souhaitait faire sécession au moment de l'indépendance et se joindre au Nigéria voisin (contre-mémoire du Tchad, p. 142 à 145, par. 4.33 à 4.38 avec citations). En effet, la Libye aida le Cameroun septentrional à obtenir une dérogation à l'*uti possidetis* et au principe de l'intégrité territoriale. Ses représentants savaient parfaitement comment demander la dérogation. Pourtant, la Libye n'a fait aucun effort pour presser la France d'organiser dans le BET un plébiscite distinct comparable à celui qu'elle avait réussi à obtenir pour la région du Cameroun septentrional britannique. A ce moment critique, avant l'indépendance du Tchad, la Libye ne présenta aucune demande. Certes, le Cameroun britannique était un territoire sous tutelle alors que le Tchad était une colonie. Mais, en 1960, l'Assemblée générale avait largement effacé la signification pratique de cette différence et supervisait activement le processus de décolonisation. Il faut présumer que si la Libye n'a présenté aucune demande, c'est parce qu'elle a estimé qu'elle n'avait pas de demande à formuler.

20. M. Bowett invite la Cour à tenir compte du fait "qu'à l'époque contemporaine l'accent est mis sur les *populations*, fait qui se reflète dans les principes juridiques relatifs aux droits de l'homme et dans le droit des peuples à disposer d'eux-mêmes" (CR 93/18, p. 71). Pour bien intentionnées que puissent être ces belles paroles, Monsieur le Président, vous n'ignorez pas quelles conséquences s'ensuivraient - les "peuples" ne seraient pas les derniers à les subir - si la Cour

commençait à revoir le tracé des frontières d'Etats souverains pour appliquer des théories relatives à ce que veulent les "peuples", en particulier des théories proposées par les gouvernements voisins. La Libye a présenté à la Cour des pétitions de personnes qui vivent dans la bande d'Aouzou sous son occupation militaire : le gambit du "pays des Sudètes". La Cour ne va certes pas aider maintenant la Libye à redéfinir l'intégrité territoriale du Tchad, ni à réexaminer l'acte d'autodétermination de ses populations. Ces questions ont été résolues en 1960. Aucune des populations du Tchad, y compris celles qui subissent maintenant l'occupation libyenne, n'a exprimé un quelconque désir de sécession il y a trente ans. Elles n'ont pas demandé à être consultées en qualité de "peuples" distincts de tous les autres Tchadiens. Le processus démocratique par lequel le Tchad est parvenu à l'indépendance a droit au même respect que celui de tout autre Membre de l'Organisation des Nations Unies. A aucun moment pendant ces événements, alors que l'Assemblée générale examinait les progrès accomplis par les Français vers l'indépendance du Tchad, la Libye n'a demandé que l'Assemblée donne à la France des instructions pour qu'elle aligne les frontières et le régime territorial du Tchad sur une quelconque revendication de liens ethniques transnationaux. Ni le mot "Ottoman", ni le mot "Senoussi", ne franchirent jamais les lèvres des représentants de la Libye à l'Organisation des Nations Unies. Bien plutôt, ce qui se passa en 1960, lors de la déclaration d'indépendance du Tchad, ce fut précisément ce que prescrivit plus tard l'avis consultatif rendu dans l'affaire du *Sahara occidental* (contre-mémoire du Tchad, p. 139 et 140, par. 4.26 à 4.28) : la mise en oeuvre dans une autre colonie du "principe d'autodétermination grâce à l'expression libre et authentique de la volonté des populations du territoire" (*Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, par. 162, et voir aussi par. 52 à 54). Aucune

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voix, tchadienne ou libyenne, ne s'éleva pour demander une autre forme d'autodétermination que celle qui fut effectivement mise en oeuvre de façon très appropriée et démocratique. Il est certes irresponsable de demander à la Cour, comme le conseil de la Libye l'a fait tout récemment encore le 22 juin, de consulter quelque chose qu'on appelle le "facteur humain" et de prendre, en 1993, une décision fondée sur ce que la population de la bande d'Aouzou, ou de l'ensemble du BET, pourrait maintenant vouloir. Nous avons présenté des preuves d'où semble résulter que le seul point commun entre toutes les factions du BET, c'est qu'elles ne se considèrent pas elles-mêmes comme libyennes. Notre agent a été éloquent sur ce point. Mais ce que le Québec, ou la Bretagne, ou l'est de Sri Lanka, pourraient vouloir à un moment quelconque, ce n'est certes pas, quoi qu'il arrive, une question qu'il faille adresser à la Cour ou qu'elle doive redresser. L'acte d'autodétermination du Tchad de 1960 peut être comparé en fait avec avantage à celui de n'importe quelle nation nouvelle. Pourtant, en définitive, la question ne réside pas là non plus. La Cour n'est pas le lieu et 1993 n'est pas le moment pour réexaminer la bonne foi de l'acte d'autodétermination du Tchad. Nul, s'il s'intéresse vraiment au "facteur humain", ne pourrait souhaiter un revirement qui porte en germe un tel chaos.

21. Voilà pour l'autodétermination. Que dire du titre historique ? Une fois encore, il y aurait eu une époque, à la fin des années cinquante, pendant laquelle la Libye aurait pu demander avec insistance à l'Organisation des Nations Unies de prévoir dans le cas de la colonie du Tchad une dérogation au droit de la décolonisation par déférence pour la revendication d'un titre historique. Si la Libye avait eu une telle revendication à formuler, elle aurait pu soulever des objections, à ce moment-là, à l'application de l'*uti possidetis*. Un tel moment aurait pu être propice pour que la Libye, dirigée par un roi senoussi, formule

une revendication fondée sur son prétendu rôle de successeur aux titres et revendications des Ottomans, des Senoussi, des Italiens, ou de tous ensemble. Mais il s'agit de la revendication que la Libye formule maintenant, en 1993. Au moment critique, quand une telle demande de dérogation au droit moderne de la décolonisation aurait pu être appropriée, quand on préparait le Tchad à l'indépendance, quand diverses commissions de l'Organisation des Nations Unies contrôlaient ses progrès et en discutaient, quand vint le moment de l'indépendance, le Gouvernement libyen ne prononça pas une seule parole irrédentiste.

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n'estimait pas elle-même, au moment critique, avoir une revendication à formuler ?

23. Tout comme l'affaire du *Cameroun* doit avoir démontré à la Libye comment on présente une affaire fondée sur l'autodétermination, il y avait de même une abondance d'exemples contemporains instructifs dont la Libye pouvait s'inspirer si elle souhaitait persuader l'Organisation des Nations Unies que le Tchad ne devait pas accéder à l'indépendance tant que la France n'aurait pas reconnu, sans parler encore d'y faire droit, la revendication libyenne relative à certaines parties du territoire tchadien alors soumises à l'administration française et sur le point de passer sous l'administration tchadienne. La Libye n'aurait certes pas été le seul Membre de l'Organisation des Nations Unies à réclamer une telle dérogation à l'application de l'*uti possidetis*. De nombreux demandeurs avaient montré le chemin : en formulant avec énergie et à maintes reprises des revendications relatives à un titre historique devant des organes de l'ONU. Ces demandeurs, d'ordinaire des Etats voisins d'une colonie, présentaient avec insistance leurs arguments pas tellement dans l'espoir d'obtenir une décision favorable de l'Organisation des Nations Unies - bien qu'en fait l'ONU ait à l'occasion témoigné de la sympathie pour de telles revendications (voir la discussion des revendications de l'Espagne et de l'Argentine contre la Grande-Bretagne dans le contre-mémoire du Tchad, p. 156 à 159, par. 4.65 à 4.70) - mais surtout afin de sauvegarder la viabilité de la revendication au-delà du moment critique de l'indépendance de la colonie et de l'acquisition, par celle-ci, de la qualité de membre de l'ONU - au-delà du moment du gel - au-delà du moment auquel l'*uti possidetis* prendrait effet. Ces demandeurs, qui affirmaient et réaffirmaient leur titre historique devant les instances de l'ONU, comprenaient que le silence avait la valeur d'un assentiment donné au nouvel Etat, que le

silence validait l'intégrité territoriale de celui-ci, "gelait" les frontières existantes et excluait les efforts ultérieurs de revision non consensuelle. Cela, la Libye a dû le savoir.

24. Ce n'est pas une simple conjecture que les silences de la Libye attestent l'absence de toute revendication au moment critique de l'indépendance du Tchad. Tout autour, les autres Etats sauvegardaient leurs revendications territoriales au moment où les colonies voisines approchaient de l'indépendance. Quelques exemples suffiront (contre-mémoire du Tchad, p. 160 à 162, par. 4.59 à 4.82, avec citations) et je me suis efforcé d'éviter d'évoquer ce qui touche personnellement aux expériences de membres de la Cour. Pendant la période qui s'est écoulée de 1955 à 1960, les organes de l'ONU ont entendu le Yemen revendiquer la colonie d'Aden, le Guatemala la colonie de Belize, l'Espagne la colonie de Gibraltar, le Maroc les colonies de Mauritanie et du Sahara occidental, l'Indonésie la colonie de l'Irian occidental. Au moment même où la Libye félicitait le Tchad de son indépendance et appuyait son admission à l'ONU, le Maroc affirmait bruyamment son titre historique, ethnique et géographique sur la Mauritanie et s'opposait féroceement à la demande d'admission de celle-ci à l'Organisation. Il agissait ainsi, disait-il, "pour sauvegarder notre position sur le plan international" (contre-mémoire du Tchad, p. 161 à 162, par. 4.73 à 4.75 avec citation). Or que faisait la Libye ? La Libye apportait en réalité un soutien actif au Maroc dans son opposition à la demande d'admission présentée par la Mauritanie. Si la Libye avait estimé, à cette époque, qu'elle pouvait formuler une revendication historiquement et ethniquement fondée sur le BET semblable à celle du Maroc sur la Mauritanie, aurait-elle souhaité la bienvenue au Tchad comme nouveau Membre, tout en aidant le Maroc à fermer la porte à la Mauritanie ? N'aurait-elle pas essayé de sauvegarder sa position juridique, comme le Maroc, en la

définissant de façon réitérée, avec énergie, tout en s'opposant à l'admission du Tchad comme membre de l'Organisation des Nations Unies ?

25. Le fait qu'alors le Maroc ait revendiqué la totalité de la Mauritanie, tandis que, maintenant, la Libye revendique "seulement" à peu près la moitié du Tchad n'y change rien. S'il y avait là un élément important à distinguer, la Cour préférera peut-être envisager le cas de l'admission de la Somalie à l'Organisation des Nations Unies. Avec beaucoup de passion et de fréquentes répétitions, la Somalie s'est efforcée d'empêcher le "gel" de ses frontières au moment critique et de sauvegarder sa revendication sur des parties de l'Ethiopie et du Kenya (mémoire du Tchad, p. 155 et 156, par. 4.60 à 4.64). Alors même qu'elle demandait son admission à l'ONU, la Somalie a présenté avec énergie à l'Assemblée son point de vue bien connu selon lequel ses frontières au moment de l'indépendance n'étaient pas conformes aux exigences de la résolution 392 (V) de l'Assemblée générale, notre vieille connaissance, c'est-à-dire la résolution même sur laquelle se fonde maintenant - mais maintenant seulement - la Libye à l'appui de sa revendication sur Aouzou. La Libye était présente quand la Somalie a donné l'exemple de ce qu'il fallait faire pour tenter de sauvegarder la revendication d'un titre historique, malgré le nouveau droit de la décolonisation, malgré "l'instantané", malgré le "gel". N'est-ce-pas au moins un indice qu'en présence de toute cette pratique, dont l'intention juridique est évidente, la Libye n'ait rigoureusement rien dit ?

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IV. A quel moment la Libye aurait dû présenter sa cause, si elle en avait une

26. Il y a eu, Monsieur le Président, trois moments critiques :

1) en décembre 1951 ou février 1952, lors de la déclaration

d'indépendance de la Libye et de sa reconnaissance par

l'Assemblée générale;

- ii) en 1955, lors de la conclusion du traité franco-libyen;
- iii) en 1960, lors de l'indépendance du Tchad et sa demande d'admission à l'Organisation des Nations Unies.

En toutes ces occasions, ou en l'une quelconque d'entre elles, la Libye avait à la fois l'occasion et l'obligation de se faire entendre, si elle estimait, au moment critique, que le nouveau droit de la décolonisation - avec ses éléments d'autodétermination dans le cadre des unités coloniales existantes que légitimait l'*uti possidetis* - que ces règles ne devaient pas s'appliquer au Tchad pour des raisons spéciales. Il semble que tous ceux qui avaient une revendication non satisfaite se faisaient entendre. Que la Libye ne l'ait pas fait, cela donne à entendre qu'elle n'avait aucune revendication de ce genre, pas à cette époque. Elle ne peut donc pas espérer, *nunc pro tunc*, se servir de la Cour pour substituer la décision de celle-ci maintenant à celle que prit la communauté internationale en 1960, surtout étant donné qu'elle n'a pas établi qu'il y ait eu une fraude ou aucune irrégularité grave en ces moments critiques. Monsieur le Président, Messieurs de la Cour, rien de tel n'a été établi. Rien du tout. Nous l'affirmons : les dés étaient jetés et le livre fermé, et l'on avait satisfait aux règles en vigueur à l'époque. Demain, dans la dernière partie de mon exposé, je m'efforcerai de démontrer qu'au moment où la Libye a effectivement décidé de formuler une revendication sur une partie du Tchad, elle savait une chose : elle savait qu'elle avait renoncé depuis longtemps à ses prétentions juridiques, elle savait qu'il n'existait aucune règle sur laquelle elle pût se fonder sauf le droit du plus fort et elle a donc préféré tirer ses arguments non du droit, mais de la puissance.

• 068 Je vous remercie, Monsieur le Président, de la patience et de l'indulgence dont vous avez fait preuve en m'écoutant et je proposerai, si je peux me permettre, que vous donniez la parole à mon collègue M. Sorel.

Le PRESIDENT : Je vous remercie beaucoup, Monsieur Franck.
Monsieur Sorel.

Mr. SOREL: Mr. President, Members of the Court, it is an immense honour for me to appear before you for the first time, and I hope that you will pardon the imperfections due to the slight nervousness of these initial steps. This will at least have the advantage of making me brief!

1. I am taking over from Professor Franck to deal with another fundamental aspect of *effectivités* proving the existence of a boundary confirmed after independence. My predecessor has alluded here to the international recognition of that line in the United Nations and to the successive acquiescences of Libya. For my part, I should like briefly to describe the *effectivités* of Chad after its independence through two complementary aspects.

First, the territorial sovereignty exercised by Chad over the Aozou strip following the State succession.

Second, conventional activity between Chad and Libya subsequent to the independence of Chad.

2. The two aspects confirm that Chad exercised effective sovereignty over the Aozou strip up to the time of the forceful invasion of the strip by Libya, and that nothing in the conventional activity supports our opponents' assertion that no boundary exists.

069 I. The territorial sovereignty exercised by Chad following the State succession

3. I should like to take up the first point concerning the territorial sovereignty exercised by Chad following the instance of State succession that occurred. Chad has been a sovereign and independent State since 11 August 1960, and Chad has since then intended to exercise the entire extent of its sovereign jurisdiction over the whole of its territory. The accession of Chad to independence was no doubt an occasion for rejoicing in Africa, as our honourable opponents emphasize, but all accessions to independence are an occasion for rejoicing, and this does not prevent the expression of specific claims or the raising of particular protests where sufficient cause exists. At that time, Libya had been independent for nearly nine years and, despite its relative lack of resources frequently recalled by the opposing Party, it was nevertheless in a position to draft a note of protest if it saw the need for one. It took no such action.

4. On becoming independent, Chad succeeded to France and the facts clearly show that, at that time, the part of Chadian territory since referred to as the "Aozou strip" remained subject to the *effective* and *exclusive* authority of the successor of France, namely the Republic of Chad. There exists then a phenomenon of continuity with France since that State, in conformity with the boundary line confirmed in 1955, had up to 1960 exercised all the attributes of sovereignty as far as the southern boundary of Libya. Treaties and *effectivités* were quite logically merged since Libya, France and subsequently Chad recognized the existence of the same boundary line.

070 5. The *effectivités* of Chad are numerous, though "proportional" - as it were - to the special situation of the B.E.T., and match the "classic" exercise of the jurisdiction of a State over its territory.

Some rapid reference to these actions will be in place (details of such aspects are given in the Memorial of Chad, Chapter VI, pp. 293 et seq.), with a topic-by-topic regrouping. I apologize in advance for this rather descriptive reminder, particularly so late in the morning, but there was a need to cut short certain insinuations of the opposing Party. For, as recalled by the Chamber of the Court in the case concerning the *Frontier Dispute* between Burkina Faso and Mali:

"Where the act corresponds exactly to law, where effective administration is additional to the *uti possidetis juris*, the role of *effectivité* is to confirm the exercise of the right derived from a legal title." (*I.C.J. Reports 1986*, pp. 586-587, para. 63.)

This will be the purpose of my brief demonstration but if one supposes - and only if - as Libya asserts, that there is no legal title - something that Chad challenges - then I venture to continue my relevant quotation from the *Frontier Dispute* case since the Chamber of the Court goes on to specify:

"In the event that the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration." (*Ibid.*)

It is therefore in two respects that this reminder is necessary.

6. Chad first exercised, starting in 1960, an administrative authority - in the general sense - over the B.E.T. region, which became a prefecture divided into three sub-prefectures. Up to 1965, it was admittedly French officers who held high administrative posts, but that was the outcome of defence and technical and military assistance agreements concluded between Chad and France in August 1960. The French officers, it must be added, were appointed by the Chadian Government and took instructions only from it (MC, p. 303, paras. 37-38). There was consequently not a continuity of military occupation, as Libya insinuates in its Counter-Memorial (CML, para. 5.107), but simply a "continuity of individuals" made necessary for obvious and very practical reasons

pending the training of key Chadian personnel (which materialized by 1965). Furthermore, the utilization by one State of organs of another State, which the latter makes available to it, is a well-known phenomenon in international law, as Judge Ago had occasion to point out in his report on State responsibility (cf. R. Ago, Third Report on State Responsibility, *Yearbook of the International Law Commission*, 1971, Vol. II, 1st Part, paras. 198-214). We may therefore note a continuous presence of administrative personnel in the sub-prefectures of the B.E.T. until 1968 (MC, p. 304, para. 41, listing the prefects and sub-prefects). At that time, Libya issued strictly no protest against that effective presence (CMC, paras. 2.100-2.101, 4.44).

7. That presence of Chad was to be reflected in actual functions common to all States on their territory. For instance, elections were held in the B.E.T., including the Aozou strip, on 4 March 1962, under the control of the Chadian Government; or again, according to the reports of the monthly political bulletin of the sub-prefect of the Tibesti, taxes were regularly levied.

. 072 8. Also noteworthy was the exercise of police activity in the region, despite difficulties and imperfections due to the geographical situation (MC, p. 313, para. 76). That activity comprised both border surveillance and the arrest of bandits. Mention is made, for example, of the presence of a police inspector at Aozou in 1968, in the correspondence of the B.E.T. prefect (MC, p. 319, para. 107).

. 073 9. One of the roles of those police officials and of the armed forces was also the monitoring of population movements through supervision both of the passes required for individual travel and of the transhumance permit. Very significantly, the prefect of the B.E.T. was in 1964 to require passports to be stamped with a residence visa in Chad in the case of Libyan nationals. This was notified to the head of post

at Zouar and concerned Libyan nationals, particularly those "of the north zone of the boundary line" (MC, Ann. 126). As of 1965, the sub-prefect of the Tibesti also called for the establishment of customs offices in the main population centres (Wour, Aozou, Bardaï and Yebibou - cf. MC, Ann. 120). This made the authorities more effective in arresting smugglers in the border zone.

10. Closely linked to this latter activity, the population census already active under French administration (MC, p. 279, paras. 269-271) was carried on by the Chadian authorities, despite the difficulties resulting from the nomadic way of life, which made that accounting somewhat haphazard as mentioned in a report by the sub-prefect of the Tibesti in June 1966 (MC, p. 306, para. 51).

11. In addition, if there is one domain that makes it possible to determine the effective authority of a Government over the population, it is well and truly that of teaching and education. A considerable effort was made to promote school enrolment (MC, p. 310, para. 68), this being linked to the development of civil registration and more generally of good citizenship (MC, p. 307, para. 53). The aim was, despite the difficulties, to interest Chadians in the requirements of the smooth running of a modern State. For that purpose, "tournées de contact" (the expression then used), or tours of contact, with the population were organized. The school-enrolment counts, incidentally, were among the most accurate, and we thus learn that, in 1966, there were some 20 pupils at the Aozou cafeteria but that their number could rise to 30 or 40 children depending on the movements of the population (MC, p. 317, para. 100). A list of schools was also maintained and Aozou and Zouar are mentioned in the 1970 and 1971 reports. We even learn from them which schools had to be closed down because of the rebellion! Which proves that for Chad there was no question of giving up part of its

territory but, on the contrary, the requirement was to combat a situation needing to be remedied.

12. There is another area that confirms Chad's *effectivités*: that of economic development. Thus in the area of hydrocarbon prospection, a licence was granted, for example, in 1961 to a French company to prospect in the Aozou strip zone (MC, pp. 313, para. 80). This turned out to be fruitless, but the issuing of this permit is quite significant. It was on 31 October 1961 that the Chadian Minister for Public Works granted an exclusive licence to prospect for oil or gas (No. 189/PC-TPMHH, *Journal Officiel de la République du Tchad*, 15 Nov. 1961, pp. 468-469) to the *Société de participations pétrolières Petropar*. This licence was granted for a five-year period and was renewable; it covered an area of 152,000 square kilometres located at the extreme north-east of the Ennedi, bounded on the north by the frontier with Libya and on the east by the frontier with Sudan. For the purpose of exploration Petropar built a private airfield near Tekro in Ennedi, which also resulted in the establishment of a police post (*Journal Officiel de la République du Tchad*, 15 Oct. 1963, p. 567). This activity proves that Chad exercised governmental attributes over the region and Libya did not protest. Needless to say, for its part Libya never delivered any licence of this kind!

13. Similarly attempts were made to develop agriculture during the period from 1960 to 1966 and, in 1966, the sub-prefect of Tibesti in an economic bulletin mentioned the gushing of a well at - Aozou! The development of tourist infrastructures was also considered. This was not followed up. Lastly, it was not possible to develop any economic activity in the region of the Aozou strip and in general in the B.E.T. after the independence of Chad since the difficulties encountered were too great (geographical isolation, desert area, etc.). Mr. Cassese has

already mentioned these points. A vehicle essential to trade but of the most basic kind was a rare and precious asset in such a vast area (MC, p. 305, para. 44). This is, however, of little importance in the context of the present dispute. What is important is that Chad exercised over the whole of the B.E.T. - including, I stress, the Aozou strip - exclusive rights of sovereignty.

14. This global situation leads us to stress a point already mentioned by Mr. Cassese: "intense" administrative activity cannot be expected in such a disadvantaged and underpopulated region. The *effectivités* must therefore be considered, in terms of this situation, according to a criterion that I would describe as that of proportionality. Moreover, the Court has constantly recognized this in its case-law (*Eastern Greenland, P.C.I.J., Series A/B, No. 53, p. 48; Minquiers and Ecrehos, I.C.J. Reports 1953, p. 47; Western Sahara, I.C.J. Reports 1975, pp. 46-47*). But above all when it is recognized that a State has title and that a frontier is established - which is the case with Chad - it is unnecessary to require substantial signs of sovereignty. Each State is free to manifest, in a manner corresponding to its geographical, political and social situation, its sovereignty as it wishes and with the intensity that it wishes within its frontiers.

15. From 1968 onwards, the central Government of Chad ceased to have control over part of the B.E.T. The Chadian army left the Aozou post in 1968 following a revolt by nomad guards (MC, p. 34, para. 77). Chad then entered a "turbulent zone" which was to last more than 20 years, and the B.E.T. was to become the base for successive movements revolting against the central authority (this was the case with Doctor Abba Sidick's Frolinat and in the north with the armed forces of Hissène Habré and Goukouni Oueddeï). This was also the period that marked the beginning of the Libyan claims in 1971 (by means of a tourist map) before the armed

invasion of the region in 1973. In this connection mention should be made of the strangeness of the Libyan argument that justified such actions by a threat to its security in the south because of the rebellions in Chad (ML, para. 3.07) and the need to protect the exploitation of its petroleum resources in the north of the frontier zone (ML, para. 5.538). Libya creates confusion in this regard. The rebellion in the north of Chad, which had no secessionist aim, did not mean that the State of Chad renounced the exercise of effective authority there. On the contrary, that was what was essentially at issue in the struggle that was to take place, while Libya, stirring up that struggle by various forms of assistance, hoped to see in it a renunciation that did not exist.

077 16. All the actions and events described nevertheless constitute unquestionable signs of the presence of the Chadian authorities after independence in the zone that is the subject of the dispute. This indicates no less clearly that the frontier behind which these *effectivités* were exercised was delimited and accepted as such by the two States. This is not surprising and corresponds to the firm principle of international law that a change due to a State succession does not affect the status of a frontier treaty. The frontiers of Chad were "inherited" from the entity of which the new State was previously part. And, since the frontier had been unambiguously confirmed by the Treaty of August 1955, the absence of claims or even protests from Libya until 1971 is quite logical and in accordance with the law (CML, para. 2.04). Frontiers have an objective character opposable to all and this principle is respected by all, including States that are rather favourable to the "clean slate" in matters of succession.

078 17. The conclusion of this short account on the first point is simple: the incontestable title that Chad derived from the Treaty of 10 August 1955 is faithfully reflected on the ground by the effective presence of the Chadian authorities. This concurrence is clearly no accident.

The incontestable territorial title of Chad over the region claimed by Libya is again confirmed by a study of the treaty relations between the two States subsequent to Chad's independence.

This is the second point, Mr. President, Members of the Court, that I should like to deal with in my short speech.

II. Treaties concluded between Chad and Libya subsequent to the independence of Chad

18. The treaty relations between Chad and Libya subsequent to the independence of Chad confirm, despite the civil war, despite the disturbances of the period, the consistency of the attitude of Chad and the conviction of the two countries that a frontier exists and has always existed and that it remains the frontier that was defined before the independence of Chad. A brief survey of the various agreements confirms this.

079 19. On 2 March 1966 a Treaty of Friendship and Good Neighbourliness was signed in Tripoli (MC, Ann. 15) which organized the movement of the population living on either side of the frontier and commercial and caravan traffic between the two countries. This agreement confirmed the peaceful frontier relations between the two States and it seems hardly realistic that such an agreement should have been concluded if there was a claim on the course of the frontier and *a fortiori* if there were no frontiers (MC, p. 33, para. 75). This confirms that the Treaty of 1955 was considered as the right reference by the two States. Without going

into details of this agreement, Mr. President, Article 1, paragraph 1, should be quoted:

"On the *frontier* between the territory of the United Kingdom of Libya and that of the Republic of Chad, the Governments of Libya and Chad shall take all necessary steps to ensure the maintenance of order and security by promoting a working relationship and co-operation between their security services." (Emphasis added.)

"On the *frontier*", Mr. President, and this was not an isolated expression in the Treaty, for the subsequent articles also refer to the frontier. Thus Article 2 is very instructive (this is document No. 1 in your pleadings folder) because it mentions "the populations living on either side of the *frontier*, within the geographical areas", and these geographical areas unambiguously place Zouar, Largeau and Fada in Chad. These three localities are of course in the B.E.T., very far north of the line claimed by Libya in its pleadings. Similarly Article 4 states that "trans-frontier traffic permits" shall be issued. Lastly, Article 7 mentions the measures that the "frontier authorities" shall take.

These references are not innocuous, all the more so because the Treaty makes no mention of the frontier to be delimited, which tends to prove that it was already delimited in the minds of the signatories. An existing delimitation is used very simply in the framework of trans-frontier co-operation. It is thus clear that the 1966 Agreement was conceived without the slightest doubt being expressed about the sovereign jurisdiction of the parties on their territory. It follows that for the two countries the frontier was located within the zone established by the Agreement.

20. The subsequent agreements were part of a different context since, as I have mentioned, from 1968 onwards a more troubled period started for Chad. Libya, in its written and oral pleadings, several times asserts that Chad had been silent on the frontier question

from 1972 onwards and that this silence is inexplicable if Chad had wished to protest against the occupation of the Aozou strip. Here I open a small parenthesis, Mr. President, to point out to our opponents that Libya did not hesitate to employ this argument to state that in 1960 there was no legal obligation for Libya to raise an objection at the time of independence (CR 93/18, p. 30). The contradiction is clear, but I close the parenthesis.

This, Mr. President, is not a matter of "silence" but one of "prudence". As Professor Higgins will demonstrate after me, the prudence that emerges from these accords should not be confused with a renunciation. Numerous instances of bilateral relations between the two States deriving from these accords testify to a diplomatic activity in which Chad's protests were clearly expressed. Why, then, such prudence in the Agreements? It is perfectly clear, and I see no reason for not saying so, that Chad feared the reprisals of its increasingly threatening neighbour to the north. It therefore sought to avoid direct confrontation, and it is in this context that the Agreements that followed should be understood. Of course, or as Mr. Cahier tells us (CR 93/18, p. 40), it can be thought that international law does not concern itself with the ulterior motives of statesmen - even if, as Paul Valéry put it: "The only treaties that counted should be those concluded between ulterior motives." (*Regard sur le monde actuel.*) But legal instruments are never isolated and lacking in foundation. The source material, the context, the specific conditions of a period give declarations and treaties their full meaning. The "circumstances of [a treaty's] conclusion" form part of supplementary means of interpretation, as provided in Article 32 of the Vienna Convention on the Law of Treaties. I will not revert to the legal consequences of these

provisions; Professor Cot has already spoken at length on that subject (CR 93/22, p. 24). It is prudence, then, prudence justified by the specific context of the period, that characterizes these agreements, not silence or giving in. Did Chad give in? Absolutely not. And we shall see that it did not.

21. I will refrain from expatiating on the "Tombalbaye letter" (MC, Ann. 343) that Libya sets so much store by; Professor Pellet will refer to this aspect later. In any event, this letter, if it exists, does not constitute an agreement and is therefore not germane to the study of treaty relations during this period.

082 22. The Treaty of Friendship, Co-operation and Mutual Assistance between Chad and Libya of 23 December 1972 was situated in a special context. The Chadian régime was weakened by the rebellion in the north and, in face of the Libyan threats (the 1971 map is a portent), President Tombalbaye sought to avoid confrontation. After a short crisis, diplomatic relations were resumed in April 1972 and the Chadian President, on a visit to Tripoli from 20 to 23 December - during which the Treaty was to be signed - therefore sought appeasement but absolutely did not give in before the Libyan claims. A reading of the Treaty proves this, since no mention is made of the question of boundaries and since the Treaty confines itself to a series of very vague declarations, without much relevance, incidentally, to the case under consideration. As a matter of fact, the issue was raised shortly afterwards and Chad protested strongly at bilateral meetings within the framework of a joint commission provided for in Article 4 of the Treaty. This aspect will be developed by Professor Higgins.

If we go forward in time we find that the Agreement of 12 August 1974 was signed following a visit by Colonel Qaddafi to N'Djamena in March 1974 (ML, Ann. 35). This Agreement is marked by the

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same spirit as the 1966 Accord. True, its Article 2 tackles the issue of boundaries (it is document No. 2, which you will find in your folder) by stating that "the frontiers between the two countries are a colonial conception in which the two peoples and nations had no hand". It is hardly necessary to analyse this sentence in depth to notice that it does not speak of a colonial concept of frontiers the challenging of which would necessitate a new delimitation, but simply states that existing "frontiers" originate in the colonial partition in which the two peoples "had no hand". This is true - at least for Chad - and is, incidentally, the case with the great majority of African States. It should be observed in this respect, however, that the 1955 Treaty was concluded by independent Libya. That is a rare privilege on the African continent. In short, what we have here is a regret in respect of an earlier situation whose existence is recognized *a contrario*, not a modification of that situation. The frontier exists independently of the colonial conception that motivated and fashioned it. It therefore appears difficult, to say the least, to affirm that this is the expression of an absence of a boundary or of the absence of its delimitation, as Libya does in its Reply (RL, para. 11.25).

The dispute concerning the Libyan occupation was more than ever present and, once again, the Chadians had not given in. Once again, this agreement must simply be restored to its context. Chad was in the throes of serious internal troubles (President Tombalbaye was to be overthrown shortly afterwards) and had to "temporize" and concede a few tokens to its lurking neighbour; but, I repeat, Mr. President, outside this the negotiations continued within the commissions established under the agreements. Indeed, parallel with the conclusion of the agreement, a Chadian mission was in Tripoli for the purpose of tackling this question of the occupation of the Aozou strip.

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24. If we go forward still further in time, we come to the Treaty of Friendship and Alliance of 15 June 1980 (ML, Ann. 37). This Treaty was concluded in the midst of civil war. Confusion was at its height and the Treaty offered to Libya the pretext it was waiting for in order to intervene officially in the civil war. What value is to be attached to it when it is known that this Treaty was signed on the Chadian side by a member of one of the rival factions, and that he had no official function in the Government? In face of this situation, how to believe our adversaries' argument when they affirm in their pleadings (ML, para. 5.565) that such a Treaty could not have been concluded if the unlawful occupation of a part of the territory had been recognized? Yet, in this accord, as in that of 1974, mention is made of freedom of movement between the two States, which presupposes the existence of a frontier and of an administrative authority on either side of the frontier. From this it may be concluded that the existence of a boundary is recognized, that boundary - in the absence of any indication to the contrary - corresponding to the boundary confirmed by the Treaty of 10 August 1955.

25. Lastly, mention must be made of the joint communiqué between Chad and Libya of 6 January 1981, a communiqué described as an "*Accord de fusion*" (Libya makes a habit of this type of accord). The contents of this communiqué are highly virulent; for example, it denounces the attempts of imperialism, Zionism and reaction backed by colonialism (ML, Ann. 38) to destabilize the region. The tone is set. Nevertheless, and despite the virulent tone, one article of the communiqué is significant. In his written statement (CR 93/18, p. 47) Mr. Cahier cited two articles (8 and 10) of the agreement. I will take the liberty of going on to refer to Article 11 (this is document No. 3 in your folder), which, with

085 a view to achieving "fusion" between the two peoples, decides that the frontiers between the two States shall be opened. Frontiers therefore existed, and since no action whatever was taken following this communiqué and since "fusion" was never accomplished, it may be inferred that the frontiers that were to be opened still exist. Furthermore, it should also be pointed out that opening a frontier is not tantamount to abolishing it. This plan of "fusion", whose nature was not final and binding, which was denounced with indignation by the international community and the African Heads of State (CMC, Ann. 129), and which reflected a mere declaration of intention - as was to be very quickly realized by Chad - remains, by default, highly instructive. One of its points was the opening of frontiers which were regarded as a reality in 1981 by the two States.

26. There were to be no further treaty relations between the two States until the 1989 Algiers Framework Agreement (MC, Ann. 17), which proved unambiguously that there was a dispute to be settled, that dispute actually forming the subject of the Agreement.

086 27. To conclude, Mr. President, Members of the Court, it can be confirmed that there is a continuity and a consistency in Chad's attitude, but, contrary to what Libya asserts, it is not a continuity covering the period between 1972 and 1983 (RL, par. 11.32), but a continuity that runs from Chad's independence in 1960 to the Framework Agreement in 1989. If we look closely once more at these agreements, including those of the "time of troubles", we see that nothing indicates any Chadian acquiescence in Libya's presence in the Aozou strip or, *a fortiori*, an absence of a frontier with Libya. On the contrary, notwithstanding the play of changing alliances, Chad never lost its concern to recover its sovereignty over the whole of its territory, as was clearly stated on the occasion of the bilateral negotiations with

Libya. This attitude has the merit of clarity and continuity. And the presence of the President of the Republic of Chad before your Court on the first day, proves the consistency of that State's attitude. When Libya says in its oral arguments: "as it gradually became more familiar with the case, Libya was to specify its claims" (CR 93/18, Eng. Trans. p. 23), one has reason to be surprised. Forty years (from 1951-1991) is a long time to take to decide what one wants! Right from 1960, Chad knew its frontiers and the area of its territory.

. 087 28. Professor Higgins will speak next on an aspect complementary to my brief statement. I shall be grateful if you will call on her - no doubt tomorrow - and I thank you for your kind attention.

Le PRESIDENT : Je remercie beaucoup M. Sorel de son exposé. Nous reprendrons demain matin à 10 heures.

The Court rose at 1.05 p.m.
