International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 1993

Public sitting

held on Tuesday 6 July 1993, at 10 a.m., at the Peace Palace,

President Sir Robert Jennings presiding

in the case concerning Territorial Dispute

(Libyan Arab Jamahiriya/Chad)

VERBATIM RECORD

ANNEE 1993

Audience publique

tenue le mardi 6 juillet 1993, à 10 heures, au Palais de la Paix,

sous la présidence de sir Robert Jennings, président

en l'affaire du Différend territorial

(Jamahiriya arabe libyenne/Tchad)

COMPTE RENDU

Present:	President	Sir Robert Jennings
	Vice-President	Oda
	Judges	Ago
		Schwebel
		Bedjaoui
		Ni
		Evensen
		Tarassov
		Guillaume
		Shahabuddeen
		Aguilar Mawdsley
		Weeramantry
		Ranjeva
		Ajobola
		Herczegh
	Judges *ad hoc*	Sette-Camara
		Abi-Saab
	Registrar	Valencia-Ospina

Présents :

Sir	Robert Jennings, Président
M.	Oda, Vice-Président
MM.	Ago
	Schwebel
	Bedjaoui
	Ni
	Evensen
	Tarassov
	Guillaume
	Shahabuddeen
	Aguilar Mawdsley
	Weeramantry
	Ranjeva
	Ajobola
	Herczegh
MM.	Sette-Camara
	Abi-Saab, juges *ad hoc*
M.	Valencia-Ospina, Greffier

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H.E. Mr. Ahmad Allam-Mi, Ambassador of the Republic of Chad to France,

H.E. Mr. Ramadane Barma, Ambassador of the Republic of Chad to Belgium and the Netherlands,

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S. Exc. M. Ahmad Allam-Mi, ambassadeur de la République du Tchad en France,

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The PRESIDENT: Please by seated. This morning we begin the second round of pleadings from Libya. Mr. Maghur, please.

Mr. MAGHUR: Mr. President, Members of the Court, at the outset of Libya's rebuttal, permit me to remind the Members of the Court of what Libya regards to be the three main questions to be resolved by the Court in this territorial dispute submitted by the Parties under the *Accord-Cadre:*

First, did the 1955 Treaty create a territorial boundary between Libya and Chad that did not already exist? Libya submits that it did not,

Second, to the extent that it did not — in other words, to the extent that the 1955 Treaty was simply declaratory of the existing boundary situation, was there a conventional boundary between Libya and France concerning territory now lying between Libya and Chad on the date of Libya's independence, 24 December 1951, the critical date in this case?

Libya believes it has amply demonstrated that there was not.

Third, if there was no such conventional boundary, then where does such a boundary lie based on a determination of which of the Parties has established title to territories lying within the Libya-Chad borderlands?

Chad's Agent asserted that the dispute before the Court goes back only 20 years — to 1973, when Libya — and I am translating his exact words — "taking advantage of the civil war raging in Chad, established itself in the region of Aouzou" (CR 93/21, p. 13). The only question, he said, aside from Libya's alleged occupation of Aouzou by what he wrongly described as "force", is a simple matter of *demarcation*. In other words, there is no question of *delimitation* at all for the Court to consider.

It almost seems as if Chad now regrets having signed the *Accord-Cadre*. Well, Libya does not. There is — and has been for *over 100 years* — a territorial dispute to be resolved. It is now of great importance that this dispute be settled. Until resolved, it remains a thorn in the side of the full resumption of friendly relations between Libya and Chad, and a matter of uncertainty for the people living in the borderlands.

The only aim and desire of Libya in bringing this case to the Court is to resolve this dispute, definitively, in accordance with the principles and rules of international law. The case Libya presents to the Court is *not*, as Chad's Deputy-Agent suggested (CR 93/25, p. 23), a facade — a thin veil of supposedly applicable legal principles — behind which lurks Libyan expansionist appetites. Libya does not want one inch of Chad's territory. Rather, Libya has come to the Court to find out what Libya's territory and what is Chad's based on the facts and the law.

I have to pause here, Mr. President, with regret, to mention that the Court heard counsel for Chad three times refer to a parallel between Mussolini and Libya. It was said that Libya, like Mussolini, seeks half of Chad. I very much regret that such a comparison was drawn, for I would not have thought it necessary to remind counsel for Chad of the suffering which Libya was subjected to under the fascist régime. I will not say more on this point.

When Chad brought a complaint against Libya to the United Nations in February 1978, some *five* years after Libya was administering the northern sector of the borderlands, Libya's representative had this to say — and it seems very pertinent today:

> `" If there is a Libyan administration now in Aouzou, or anywhere else in Libya, there is a simple explanation. After the revolution people began to take an interest in the interior and the construct hospitals, schools, administrative centres and regions on the frontiers between us and Chad and other neighbouring countries.
>
> . . .
>
> We say we are in our country, you say we are in yours. You say it is Chad. We say it is Libya. This is a classic frontier problem."

And it is *this classic problem* that has been submitted for resolution to the Court.

As the Court witnessed, Chad's oral presentation began in a startlingly political fashion.

Mr. President, I was for a time Libya's representative to the United Nations. Throughout Chad's presentation I felt I was back in New York at United Nations Headquarters again — not here in The Hague before the International Court of Justice. The Agent and I say here and heard Libya accused of such things as:

— Insidious interference in Chad's internal affairs;

— Trying to destabilize all of Africa and to claim the territory not only of half of Chad but of Niger, Algeria and even of non-neighbouring States;

— Practising charity but not so as to benefit Chad. Let me quote Chad's Agent here: "Bien sûr, je ne conteste pas que la Libya pratique la charité mais je doute que le Tchad en soit le bénéficiaire." And similar accusations appeared throughout Chad's oral presentation, especially in the last day.

What a paradox! Chad attempted to try its legal case before the Security Council and General Assembly. And Chad criticizes Libya for not having followed suit. Now, Chad comes before a judicial institution — the Court — to present its *political* case; while at the same time intimating that Libya also seeks to use the Court for the political purpose of defending its activities in the northern part of the borderlands. This is false. Libya is here to present a *legal* case and nothing else.

The Court will recall that Professor Higgins suggested that Chad's internal problems, which fuelled the debates before the United Nations, really began in 1969 when the Libyan Government changed (CR 93/26, pp. 10-12). In fact, the problem started in 1965 when the French left, and the rebellion *actively* began in 1968, *before* the change in the Government of Libya. But in spite of Chad's ferocious political attacks against Libya before the United Nations, in the late 1970s and the 1980s, *no* resolution of any kind condemning Libya resulted either before the United Nations or the OAU. Libya *denied* Chad's politically inspired accusations at the time and Libya denies them here today since, as Chad well knows, the time and Libya denies them here today since, as Chad well knows, the situation was largely a product of internal Chadian instability.

While those are the facts, the important point is that Libya and Chad are before a court of *law* today, and have submitted a *territorial dispute* of a *legal* nature — *not* a political dispute — to the Court's Statute. This fully accords with Article 36 (3) of the *Charter* which provides the "*legal* disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court".

By the same token, when Chad's Agent said that Chad was not the beneficiary of Libya's generosity, I had to wonder what he meant. Chad's Agent knows even better than I that the roads, the schools, the medical facilities and help, and the food that sustained the peoples of the borderlands, which kept them alive and helped to improve the desperate situation into which they had

fallen after years of colonial neglect, was paid for almost entirely by Libya and supported by Libyan technical assistance.

Yet, again, this is not really the point. For Libya and Chad come before the Court as *equals* under the law, not as rich, powerful Libya, on the one hand, and poor, weak chad, on the other, as Chad's Agent would suggest. When I think back to Libya's situation in the 1950s, I am aware of the truth of the Court's statement in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* the economic considerations are "virtually extraneous factors since they are variables which unpredictable national fortune or calamity . . . might at any time cause to tilt the scale one way or the other" (*I.C.J. Reports 1982* p. 77, para. 107).

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Another point mentioned by Chad's team concerned the fact that in January 1955, the French Government placed listening devices in rooms in Paris used by Libya's Prime Minister. I think the popular term for this is "bugging" that show, *on their face*, that they were recorded by listening devices. These transcripts were supplied form the archives of the Quai d'Orsay, *not* through some sort of counter-espionage operation, as Professor Cot suggested. Libya will gladly furnish the file of documents in which this evidence was found unjust the form received from the Quai d'Orsay. A sample of these transcripts were furnished with Libya's Reply (Exhibit 6.4). But what there transcripts brought out, among other things, is that Libya did not wish or intend to deal with the delimitation of Libya's boundaries in the 1955 Treaty. So this odd place of *travaux* confirmed and reinforced the Libyan *travaux* that Libya has furnished in this case.

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Libya's claim extends as far south as 15° N latitude not because of territorial greed, as Chad would have the Court believe, but because of historical facts. It is true that 15° N latitude marks roughly the geographical separation between the Sahara and the zones of the more fertile Sahel and Savannah to the south — and that this separation is reflected in the nature, the lives and event the religion of the peoples to the north and south. Professor Cot kindly presented again Libya's maps illustrating this fact last week. So geography is certainly a basis for the selection of this line. But the line of 15° N latitude is significant for a whole host of other reasons: as Libya's Agent said, it was not just "pulled out of a hat". Such reasons include the following:

— In 1899, Italy made it clear to Great Britain that any acts affecting territorial rights north of 15° would affect the status quo of the Mediterranean, which had been guaranteed by treaty; and Great Britain assured Italy that the 1899 Declaration had no such effect;

— The only boundary delimited under the 1899 Declaration was Article 2 boundary, which, as you can see form the map on the screen, included the shaded area to be delimited that went no further north than 15° latitude;

— The *de facto* line between the Ottomans and the French during the *modus vivendi* that lasted from 1909 to mid-1913 lay roughly along 15° latitude;

— France's most northerly military post during this period was at Arada, which lies almost exactly on the 15° line, and in the French negotiations with the Senoussi, conducted by M. Bonnel de Mezières, Arada was suggested — and appeared acceptable to the Head of the Senoussi — as a point on the boundary in the eastern sector of Libya's southern boundary;

— The 1911 proposal of the *vilayet* of Tripoli to reduce the 1890 Ottoman claim suggested a line that descended as far south as 15°;

— The 1928 Minimum Program of *Italy* — not of Mussolini — went south to 15°;

— In more recent times, the initial *ligne rouge* drawn by the French in 1983, after deploying some 2,500 troops in Chad, was along 15° N latitude.

Libya's claim line thus marks the part of the borderlands to which Libya believes it has title. This is a matter for the Court to decide; and Libya has set out a number of relevant factors for the Court take into account in arriving at its decision.

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Have made these preliminary remarks, I should like to turn next to several other issues:

— *First*, a matter that has procedural as well as substantive implications. This concerns the issues of importance in this case not adequately addressed by Chad, and the consequences of Chad's failure;

— *Second*, evidence produced the positions taken by Chad from which it now, apparently, seeks to resile; and

— *Third*, the question of maps.

In counsel's presentation, Libya will indicate for the Court the principal matters of substance in this case not adequately addressed in Chad's written pleadings, or in these oral proceedings, for the issues concerned to have been truly joined. It will be recalled the attention was brought to this fact in my pleading during the first round. There, I noted that in both international and domestic practice the failure to address points of evidence and arguments of an adversary may well result in a tribunal's construing such failure as tantamount to admission.

There is a second procedural point to be made, as well. This is that for the party who has the last word in oral proceedings, such as these, to fail to address issues prior to the final pleading, and, as a result, to be able to make points of substance that its adversary will not have the opportunity to address at all, is an abuse of procedure.

Moreover, I shall also note that we were struck by several glaring inconsistencies between the presentations of Chad's advocates. My colleagues will also discuss these during their presentations.

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I turn, next, to evidence produced, and positions taken, by Chad that it now seeks to disavow, ignore or otherwise distance itself from.

First, I was struck by the fact that Chad tried to explain away virtually every agreement entered into with Libya after Chad's independence, even to the extent of arguing that certain persons did into have the authority to bind Chad. We will show that Chad's position on these arguments is untenable.

Next, there was Chad's complete *volte face* on the Senoussi. In Chad's Memorial the significance of the Ottoman assertion of direct control in the borderlands, starting in 1908 and ending in mid-1913, was sought by Chad to be side-stepped by French documentary evidence that the Senoussi were in *firm control* of the borderlands at the time and that the Ottomans constituted a pathetic straggle of soldiers virtually held hostage by the Senoussi. Now, in oral argument, Chad disputes that the Senoussi ever had real control.

I have already cited during the first round some of the evidence on which Libya relies to show the extent of the Ottoman-Senoussi *co-operation* and the fact that the Senoussi paid allegiance to the Caliph. Some of this evidence was discussed in Part IV of Libya's Memorial; but important new documentary evidence was produced with Libya's Reply and discussed there. Chad has not addressed any of this evidence — its written pleadings just state conclusions based on erroneous and biased French reports. And here in the oral proceedings, Chad simply repeated these incorrect conclusions or made declaratory statements as if they were evidence being presented by an expert witness.

Mr. President, not only did Libya's Reply include important new evidence, but in Volume 2, Supplementary Annex No. 3 of that pleading may be found a detailed, and *undeniably* expert analysis of the Senoussi-Ottoman relationship. Chad just ignores this evidence, despite the fact that it concerns a major element of proof establishing Libya's title to the borderlands.

In this connection, there are four points that must be emphasized which Professor Shaw failed to reflect properly. *First*, the nature of Islamic and Ottoman sovereignty very much included the concept of shared sovereignty and delegated power. Thus, it was perfectly natural for the Senoussi and the Ottomans to exercise jointly the attributes of sovereignty in the borderlands. Now, *second*,

the Senoussi through their *zawiyas* performed important administrative functions, particularly in the field of dispute settlement, and were not simply a religious order or group of dervishes. *Third*, Ottoman-Senoussi governmental authority and control extended throughout the borderlands up to 1913, with the Senoussi presence and control continuing thereafter. And *fourth*, Ottoman control was acknowledged by France.

To the extent there were French protests, they were directed against the Ottoman assertion of sovereignty. But the existence of Ottoman authority and control over the borderlands was accepted by France pending the resolution of the Tripolitanian boundary issue at the conference table. Chad not only seeks to downplay the *modus vivendi* that came into being and which is so fully established by French documents in evidence in the case, it also implies that the "arrangement passager" was to protect France's neutrality. This is simply not true: the *modus vivendi predated* the outbreak of the Italo/Ottoman war.

And of course Ottoman control was peaceful. The Ottomans, unlike the French later on, were accepted by the local peoples of the borderlands and by the Senoussi, a matter once more established by evidence produced by Libya.

A second major piece of evidence introduced by Chad, which it has subsequently sought to discredit, that piece of evidence concerns the Tombalbaye letter. I will leave this subject to my colleagues to take up later on. I only note now that Chad has almost totally ignored the point established by Libya in the first phase of these proceedings that the new material introduced by Chad covering the period 1972-1974 establishes the fact that, quite apart from the Tombalbaye letter, there existed an unresolved territorial dispute in the view of both Libya and Chad.

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Mr. President, I now turn to the question of maps used in these proceedings, a matter first brought up by Chad's Deputy Agent, I am sorry, in a distasteful way — as if Libya were trying to

mislead the Court and, as he put it, like soap salesmen, attempting to put on a slick publicity show in order to sell a defective product. Those are his words. I hope I translate them the way they are in French.

While I am sure there may be a few inadvertent errors on some of Libya's maps in spite of the technical competence of those preparing them and Libya's efforts to make them as accurate as possible, Libya has given a great deal of attention to its maps in an effort to bring clarity to the points in issue. Our purpose has been to assist the Court.

Let me turn to certain specific remarks of Chad's Deputy Agent on the subject of Libya's maps. He referred to a map in Libya Reply (CR, 25 June, p. 27), and he suggested that Libya had touched up or enhanced a line on this map so as to modify the line's meaning as defined in the map's legend.

Mr. President, this is a very serious accusation which, later in this rebuttal, Libya will demonstrate is totally wrong. We will also focus on some of the plainly incorrect conclusions that Chad attempts to derive from the maps.

For the purposes, let me mention just one of the misleading tactics of Chad's map analysis.

Last Thursday, Professor Cot sought to impress upon the Court that the United Nations map of the boundary situation after Libya's independence reflected a "consensus" on what the international community considered the boundary to be — the 1919 line (CR 93/25, p. 39).

Mr. President, distinguished Judges, the facts do not bear Professor Cot's assertions out.

One of the maps that he placed on the screen was a 1963 map prepared by the United Nations (No. 141 in Chad's Atlas). I have had this map put back up on the screen because I fear that in his haste, Professor Cot neglected to draw an important feature of this map to the Court's attention. While Professor Cot pointed to the line which he said confirmed "the quasi unanimous international consensus" on the boundary, he forgot to read that caption that accompanied this line which appears here on the map and which is being shown up on the screen so that you can read it. As the Court can plainly see, it reads: "The boundary shown on this map do not imply official endorsement or acceptance by the United Nations."

Now virtually the same disclaimer appears on the other United Nations map that Chad has

produced. So, if we look at the United Nations map from No. 147 of Chad's map Atlas, we see the same caption. The important point is that the United Nations maps clearly reflected the fact that the boundary question remained open and that, prudently, the United Nations did *not* endorse or accept any line shown on the amps. This can hardly be characterized as confirming a "quasi unanimous" international acceptance of the 1919 line.

Nor was Chad's treatment of the Libya's maps any better. For example, Professor Cot put up on the screen No. 142 from Chad's Map Atlas, to which he said Chad attached particular importance (CR 93/25, p. 45). Now this was the geological map prepared for the Libyan Government in 1962, which purported to show the 1919 line. But Professor Cot chose to play down the very clear *disclaimer* appearing on the map which specifically stated: "International boundaries as illustrated herein are neither *final* nor *binding* on the Libyan Government." (Emphasis added.)

So here is a *clear* statement of Libya that the boundary as shown on the map was *not final* or *binding*, exactly the opposite conclusion which Chad has sought to argue.

Aside from the question of the accuracy of the maps, there is the matter of the completeness of the map demonstrations. In Volume 2 of its Reply (Supplementary Annex No. 2), Libya included a detailed analysis of the maps to be found in Chad's Map Atlas. While Professor Cot did make several references to that analysis, he gave no satisfactory explanation for the fact the Chad's Atlas omitted virtually *all* the relevant Italian and British maps that were shown on the screen during Libya's first round presentation and which so clearly indicated that both Great Britain and Italy interpreted the south-east line of Article 3 of the 1899 Declaration as a *strict* south-east line. The Italian maps also established Italy's official position that the wavy, dashed line around Tripolitania on the *Livre jaune* map was *not* a conventional boundary and that east of Toummo, *no* conventional boundary existed. These maps make nonsense out of Chad's theory of Italian acquiescence.

Professor Higgins on the opening day of Chad's oral presentation, said the following on this subject: "Italy did sometimes claim that the frontier was unsettled, as certain maps of the period show."

Mr. President, Members of the Court, except for a brief period just after 1935, every single official Italian map from 1906 to 1941 showed there to be *no* southern boundary *east* of Toummo.

And when they depicted the south-east line of Article 3 of the 1899 Declaration — but not, of course, as a boundary — every single one of these maps — just as every one of the pre-1919 British War Office maps — showed that line to be a strict south-east line.

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Mr. President, the final matter I should like to address was raised by Professor Pellet in his first intervention (CR 93/22, pp. 74-75). At that time, Professor Pellet raised the spectre of Libya's claims "amputating" part of Niger's territory if they were to be accepted by the Court (CR 93/22, pp. 74-75). To illustrate his point, Professor Pellet placed on the screen a map of which Libya's claim line was *artificially extended* by a series of dashed lines well into Niger's territory. Here is what Chad tried to show.

The Court will see that this is a "scare tactic". Libya has advanced *no such claim*. It is a figment of Professor Pellet's imagination. As the Court can perfectly well see from the map appearing as No. 32 in Libya's Reply, and now on the screen, Libya's claim in no way trespasses on Niger.

Mr. President, the situation before the Court is very clear. The Court's jurisdiction in this case is defined by the *Accord-Cadre*. Article 2 of the *Accord-Cadre* provided that, absent a political settlement of the dispute, the *two* parties — Libya and Chad — would submit *their* territorial dispute to the Court. There was no question of submitting a dispute involving a third State not party to the *Accord-Cadre*. Only the dispute between Libya and Chad is submitted to the Court's jurisdiction.

And, as is also perfectly clear, under Article 59 of the Court's Statute, "the *decision* of the Court has no binding force *except between the parties and in respect of that particular case*". So any decision on Libya's claims — as well as on those of Chad — will only be binding as between them, but not on any third States, which, in any event, have always had the disposition of Article 62 of the Court's Statute available to them if they felt their legal interests were affected.

The situation is not essentially different from that confronted by the Chamber in the *Frontier Dispute* case. Coincidentally, in that case, as well, the question of Niger's interests arose in connection with the determination of the end-point of the Burkina Faso-Mali frontier which lay on the frontier of Niger.

This fact in no way prevented the Chamber from deciding, to use the Chamber's own words, "the whole of the *petitum* entrusted to it . . . the line . . . over the *entire length* of the disputed area" (*I.C.J. Reports 1986*, p. 579, para. 50, emphasis added). In so doing, the Chamber emphasized that it was only deciding the frontier between Burkina Faso and Mali, and that this would "not amount to a decision by the Chamber that this is a tripoint with affects Niger". As the Chamber stated: "In accordance with Article 59 of the Statute, this Judgment will also not be opposable to Niger as regards the course of that country's frontiers" (*ibid.*, p. 580). Thus, just as Niger's interests were protected in the *Frontier Dispute* case, so also will Niger's interests — as well as those of other States, if any — by fully protected here.

So Chad's alarmist claim of an "amputation" of Niger's territory accords neither with Libya's claim, nor with the normal protection offered by the Court's Statute and jurisprudence. Indeed, Mr. President, there is a ceratin irony to Professor Pellet's claim of "amputation"; for he told us that in 1930 the whole of the Tibesti was transferred from the AOF (Afrique occidentale française). So if there has ever been an "amputation" of Niger's territory, it has been by France, not by Libya.

Chad has raised this issue for a particular reason that has a direct bearing on the boundary claimed by Chad. This concerns the sector of the boundary claimed by Chad lying between the intersection of the Tropic of Cancer and 16° E longitude and the point of intersection of the Niger-Chad boundary with the straight line drawn form the Tropic of Cancer intersection point and Toummo. It is easier to visualize this segment by showing it on the screen: it is this segment — that is the western segment — as shown on the screen of the two-segment boundary claimed by Chad. I will refer to it as the "Western segment".

The "western segment" is the "Achilles' heel" of the Chad's claimed boundary, for there is not event the semblance of a conventional basis for such a boundary. And Chad has not established any other legal basis to support the western segment. All Chad's emphasis has been on the eastern

segment; very little has been said by Chad about the western segment. However, Libya in the rebuttal will have a lot to say about it. And the false issue of an amputation of Niger's territory is a "bogeyman" designed to detract attention from the basic problem in Chad's case concerning the western segment of its claimed boundary.

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That concludes my remarks, Mr. President, I thank the Court for its patience. Libya's counsel will continue our presentation and deal with the essential points that Chad has advanced. I would ask, therefore, Mr. President, if you would call on Sir Ian Sinclair. Thank you.

The PRESIDENT: Thank you very much, Mr. Maghur. Sir Ian.

Sir Ian SINCLAIR: Mr. President, Members of the Court, I would like to respond briefly to some of the points made by Professor Cot in his pleading of 25 and 28 June on the interpretation of the 1955 Treaty, and at the same time to amplify some of the arguments I presented on this aspect of the case in my own address of 15 June. I propose, Mr. President, in addition to take up some of the arguments presented by Professor Franck on the handling of the Libyan question in the United Nations in 1949 and 1950, and also to comment on other of the presentations made by Chad's counsel which relate to the interpretation of the 1955 Treaty.

I am glad to note at the outset that Chad continues to attach as much importance and significance to the 1955 Treaty. But I fear not. The presentation made by Professor Cot could suggest that he and I are in fact reading different treaties. Let me give the Court a few examples.

Professor Cot seeks to interpret the second paragraph of the preamble as meaning that the parties intended to regulate *all* the questions posed for the two countries by their geographical situation and their interests in Africa. this paragraph expressing the willingness of both parties not to

allow any dispute to persist between them in this regard. But, with all respect, Mr. President, this is altogether too grandiose a construction of an introductory paragraph declaring the conviction of the parties that a treaty of friendship and good neighbourliness "will *facilitate* the settlement" of all these questions. The preambular paragraph does not say that the treaty itself provides the solution to all these questions; it is simply expressing the sentiment, familiar to those versed in the diplomatic niceties, that the conclusion of a treaty of friendship will be creative of an atmosphere in which questions not regulated, or not regulated fully, in the treaty will be settled. In the English language, we have an expression about making a mountain out of a molehill. It could well be applied to Professor Cot's argument on this point. It is indeed this inflation of language which permeates much of the argumentation so ably advanced by Professor Cot. But it can be creative of serious misunderstanding. Another example is furnished by Professor Cot's bald assertion that "la définition des frontières . . . est incontestablement un des objets du traité". That the treaty has something to say about boundaries is of course not contested. But that it was designed to "define" boundaries throughout the whole length of the territory dividing Libya, on the one hand, from the French possessions of Tunisia, Algeria, AOF and AEF, on the other hand, remains to be established from the terms of the Treaty itself and circumstances of its conclusion.

Counsel for Chad seeks to rely on the principle of effectiveness and on a *presumption* that the parties to the 1955 Treaty intended to define their common frontier in a definitive manner and throughout its entire length; and he prays in aid passages from the advisory opinion of the Permanent Court in the case concerning the *Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne* and from the Judgment of this Court in the *Temple of Preah Vihear* case. But the Court will hardly need reminding that the circumstances of these two cases differ radically from the circumstances of the present case. In the first case, Article 3, paragraph 2 of the Treaty of Lausanne required the frontier between Turkey and Iraq to be "laid down in friendly arrangement to be concluded between Turkey and Great Britain within nine months", failing which the dispute was to be referred to the Council of the League of Nations. So it was clear and undisputed that the object of Article 3, Paragraph 2 was to *establish* a frontier between the two States. This being the position, it is only logical that the Permanent Court should have deduced from this common intention to

establish a frontier an intention to establish "a definite boundary line throughout its length". In the second case — the *Temple of Preah Vihear* case — the passage cited by Professor Cot occurs in the middle of the Court's discussion of the relationship between the map and the treaty settlement. As one of the arguments advanced by Thailand was that the map line was in error because it departed from the line of the watershed, it was again only natural that the Court should have stressed the importance of the concepts of stability and finality. In both these cases, there was no dispute between the parties that the treaty provisions in question were designed to establish frontiers. In any event, Mr. President, why should one seek to rely on a *presumption* when the text of Article 3 itself, read with the *travaux préparatoires*, so clearly establishes that it was *not* common intention of France and Libya in 1955 to fix a frontier along the entire length of the territorial dividing line separating Libya from French possessions? What they were doing, and the language of Article 3 clearly confirms this, was to *recognize* certain boundaries already established by treaty between France and Other Powers (in this instance, Italy and the Ottoman Empire) as boundaries between France and Libya. They were not engaged in fixed boundaries in sectors where there was no existing boundary. The *travaux* and the subsequent practice of the parties unhesitatingly confirm this view of the matter. In my first intervention, I drew attention to the evidence in the *travaux* which establishes the *absence* of any common intention to fix boundaries in those sectors where no boundaries had previously been fixed. On the French side, there is of course the letter from the Governor General of the AEF of 2 May 1955. There are also the draft provisions for inclusion in the treaty which Ambassador Dejean brought with him to Tripoli at the opening of the second round of negotiations in July 1955, one of which would have specifically incorporated in Article 3 a paragraph to the following effect:

> "To the east of Toummo the delimitation of the boundary will be the subject of a later convention between the High Contracting Parties."

The fact that this paragraph was not introduced into the final text of Article 3 is of course entirely consistent with the fact, which Chad has not sought to deny, that there was no discussion whatsoever of the alleged boundary east of Toummo during the negotiations in January and July 1955.

So, even if there were such presumption as Professor Cot contends for (which Libya firmly denies, at least in relation to Article 3 of the 1955 Treaty), that presumption is comprehensively rebutted by the evidence of the *travaux*.

The subsequent practice of the parties in fact provides further confirmation of the conclusion that the parties did *not* intend in 1955 to delimit boundaries in sectors where no boundary existed, and certainly did not intend to define their common frontier definitively and throughout its entire length. Chad can hardly deny, for example, that the ink was hardly dry upon the signature of the 1955 Treaty before France was seeking a further rectification or clarification of the boundary line between Ghadamès and Ghat in the vicinity of the Edjelé oil field — a goal which France achieved in the Exchange of Letters of 26 December 1956. Chad equally can hardly deny the numerous admissions made by senior French officials subsequent to 1955 that the boundary between Ghat and Toummo remained to be delimited, notwithstanding the terms of Annex I to the 1955 Treaty. In my first statement to the Court, I cited passages from notes by the "Service du Levant" of the Quai d'Orsay dated 15 july 1958 and 11 February 1960, which clearly indicate that the boundary between Ghat and Toummo remained imprecisely defined even after the conclusion of the 1955 Treaty. To this evidence, I would now add the following. In May and June 1960, French officials began to express concern about the problem posed for oil companies by the overlapping of exploration licences in the vicinity of the supposed boundary between Niger and Libya, particularly in view of the lack of any agreed line between point 1010 and Toummo. In responding to a letter from the Secretary-General of the French Community drawing attention to this problem, the French Foreign Minister at the time, M. Couve de Murville stated in an undated letter (but almost certainly sent in June 1960):

> As you know, a large part of the Franco/Libyan boundaries remains imprecise. Only the section running from Ghadamès to Ghat has been fixed by the 1955 Treaty, and, moreover, the demarcation, to which we have proceeded unilaterally, has not been recognized by the Libyan Government. To the sought of Ghat, the text of the treaty only gives general directions marked by some characteristic points. Now, in any boundary negotiation ceratin concessions have to be made from one side or the other. If we ourselves propose to defend the most favourable line between point 1010 . . . and Toummo, that is to say, in the Libya/Niger sector, where the oil prospectors have already found encouraging signs, we could be forced to agree to give up in other sectors of the Sahara which could also be of interest." (RL, Exhibit 6.10.)

Thus, some five years after signature of the 1955 Treaty, we find the French Foreign Minister conceding that a large part of the Franco-Libyan boundary remained imprecise and indeed envisaging that further negotiations with Libya will be necessary. What could be further removed from the argument advanced by Counsel for Chad that the 1955 Treaty had achieved and effected definitively the delimitation of the Franco-Libyan frontier along its entire length from the Mediterranean to the Sudanese border? Of equal interest is a despatch from M. Sebilleau (French Ambassador to Libya at the time) to the French Foreign Minister of 13 June 1960, which also discusses this problem of overlapping of concessions. He reports that oil prospectors from a company working in Libya had come south from Libya and worked in what he called Chadian territory between 9 January and 18 March 1960. Almost simultaneously oil prospectors from the Bureau de Recherches de Pétrole had undertaken, from Chad, a deep reconnaissance into Libyan territory. Ambassador Sebilleau's conclusion form all these developments was:

> "It is thus likely that, sooner or later, the definition of the Franco-Libyan boundary between the Ghat and the Sudanese border will become necessary. I continue to think however that such a definition should not be sought outside a comprehensive settlement of the boundary problem, without a Libyan initiative and with a Government whose continued existence at the end of the summer is open to question." (RL, Supplementary Annex No. 6.10, pp. 7-8.)

So, here again, we have a distinguished French Ambassador, some five years after conclusion of the 1955 Treaty, envisaging the future *definition* of the Franco-Libyan boundary between Ghat and the Sudanese border. Note that I say "definition". This is not, as Professor Higgins would have us believe, a casual misdescription based upon the lack of knowledge of the writer of the difference between "delimitation" and "demarcation". This was an eminent French Ambassador writing specifically about boundaries. And what he says simply confirms the compelling evidence form other sources that, even as late as the 1960s, French officials consistently acknowledged that the sector of the Franco-Libyan boundary running from Ghat through Toummo to the Sudanese border had not been delimited, far less demarcated, by the 1955 Treaty.

Of course, Chad seeks to argue that some of the passages I cited in my opening statement from the notes by the "Service du Levant" of the Quai d'Orsay are counterbalanced by other passages in the same notes attesting to the fact that the demarcation of the frontier between Toummo

and the Sudanese border should not give rise to any difficulty. Libya does not contest that the two notes contain the passages cited by Professor Cot for drawing attention to them. For in fact they attest to the persistence of the French thesis that a southern boundary of Libya had inevitably "resulted from" the international acts listed in Annex I. It is the French *thesis* which Libya believes to be, and indeed always to have been, profoundly mistaken. Libya does not doubt that the French authorities in 1955 wished to see the delimitation and indeed demarcation of what they considered to be the boundary between Toummo and the Sudanese border. But they were constrained by the wise advice of the Governor-General of the AEF not to open up even for discussion the legal basis for the French thesis that the southern boundary of Libya resulted from the combined effect of the Anglo-French Additional Declaration of 1899, the Franco-Italian Accord of 1902 and the Anglo-French Convention of 1919. And why was this advice given? One can only speculate, but it seems likely that the Governor-General was well aware that the Libyans would not accept the French thesis.

Mr. President, Members of the Court, I want to make it quite clear that I have drawn attention to these extracts from French official documents dating from 1960 simply for the purpose of demonstrating that the argument advanced by our opponents that the 1955 Treaty definitively established the boundaries between Libya and French possessions throughout their entire length is comprehensively contradicted by a series of frank admissions made by French officials during the following five years. Libya is *not* relying upon these extracts for any other purpose.

Now Mr. President, I should perhaps refer here more fully to the argument advanced by Professor Higgins that statesmen and civil servants often use the terms delimitation and demarcation loosely and interchangeably (CR 93/21, p. 61). There may be a measure of truth in this observation; there is certainly evidence in the documentation presented to the Court in this case that the term "cession" has from time to time been utilised inaccurately. Professor Cassese gave us some striking examples in his statement of 30 June, on which my colleagues Professor Condorelli will be commenting further. But the Court should recall that it was the French representative to the *Ad Hoc* Political Committee of the General Assembly who, on 13 December 1950, reminded the assembled delegates of the need to distinguish between:

"the concept of delimiting a boundary by international agreement, that of a demarcation

> on the spot of a boundary already fixed by convention, and that of rectification of a boundary, in view of paragraphs 2 and 3 of Annex XI of the Peace Treaty with Italy".

Even if officials may occasionally use legal terms imprecisely, that cannot begin to explain the frequent references in post-1955 French archives to the lack of "definition" of the boundary or to the need to negotiate the "delimitation" of the sector from Ghat to the Sudanese border. One or two lapses might be excusable; but not constant misstatements. And I have too much admiration and respect for the French Civil Service to think otherwise. In any event, the same French officials are always careful to talk about "demarcation" when they mean demarcation, as, for example, in the case of the unilateral demarcation undertaken by the French authorities to give effect to the Exchange of Letters of 26 December 1956 (see the note from the Service de Levant of the Quai d'Orsay of 11 February, 1960 at RL Exhibit 6.9, sixth document).

Mr. President, I turn now to another feature of the arguments advanced by our opponents. Now, here I refer to what is obviously a central issue — namely, whether Article 3 of the 1955 Treaty, read with Annex I, should be regarded as declaratory rather than constitutive of the legal position. This is an issue which the Court will have to decide upon. Libya has throughout taken the view that Article 3 is declaratory of the boundary status quo as of the critical date in 1951, namely, the date of Libya's independence. Chad's position, it must be said, is more equivocal. Thus, Professor Pellet seems at one point to espouse the declaratory view of Article 3. In his view the 1955 Treaty merely "confirmed" a pre-existing frontier; it did not define that frontier *de novo*, but by reference to previous international acts. On the other hand, when he argues that the problem of opposability is irrelevant as regards Chad's first thesis, he might be thought to be embracing the constitutive view. And, indeed, later in his statement of 28 June, Professor Pellet, seems, I stress the word, *seems* to adopt the constitutive view by citing the written submissions of Chad concerning the course of the southern boundary of Libya and then adding: *"C'est exactement le tracé qaue j'ai pu retrouver sur la base du traité de 1955 et de lui seul"*. (CR 93/22, p. 81.) By way of contrast, Professor Franck clearly adopts the declaratory view; on his approach, France and Libya did not, in the 1955 Treaty constituting a sort of "renewal of vows" in the light of changed circumstances (CR 93/22, p. 44). Of course, the slightly awkward feature of this second metaphor is that if indeed

Article 3 of the 1955 Treaty constitutes a " renewal of vows" it was a renewal of vows made by others. Indeed, one might almost think that bigamy was being envisaged. Professor cot, on the other hand, is more uncertain. For him, recognition is at one and the same time both declaratory and constitutive. And he seems to argue that the phrase refers to the three points between Ghat and Toummo) must, on Liyba's submission this is to misconstrue the object and purpose of that part of Annex I relating to the three pints. The Court will readily recall that the two Parties disagree as to whether the identification of the three points between Ghat and Toummo through which the boundary line should pass constitutes a *rectification* or a *clarification* of the Franco/Italian Arrangement of 12 September 1919. It is precisely the use of the phrase "il a été reconnu" which has enabled France (and now Chad) to claim that what was involved was simply a *clarification* rather than a *modification* of the earlier Arrangement.

But, Mr. President, it is Professor Cot's uncertainty on this point which, in Libya's view, leads him into error in his analysis of Article 3 and Annex I. The Court will have noted that Professor Cot made little or no reference in his statement to one of the crucial elements in Article 3, namely the condition specified in Article 3 that the international acts listed in Annex I should have been in force on the date of Libya's independence. He did of course refer to that condition in seeking to deal with the Libyan contention that it operated to exclude that taking into account of *effectivités* in the determination of a conventional boundary. That Libyan contention was of course based *inter alia* on a clear admission made by Chad itself in its Counter-memorial (at para. 11.20) interpreting this condition as excluding, and again here I am quoting form the Chad Counter-Memorial, as excluding "non-international acts, as for example administrative acts internal to the colonial powers"; and nothing that Professor Cot has said affects the force of the Libyan argument on this point.

I will have more to say later about the *"en vigueur"* requirement staed in Article 3. Professor Cot's failure to refer otherwise to the condition in Article 3 about the international acts being in force on the date of the constitution of the United Kingdom of Libya might be thought to case a measure of doubt on Chad's acceptance of this date as the "critical date" in this case. As the Corut will be aware, one of the few points on which the Parties have so far been in agreement in their respective legal analyses have been their acceptance of the date of Libya's independence as the

critical date in this case. It is therefore somewhat reassruing to note that Professor Higgins reaffirmed Chad's acceptance of 1951 as teh critical date in teh present case when she spoke on 2 July (CR 93/26, p. 29).

Mr. President, Members of the Court, there is one decisive reason why the Court should not be deceived by Chad's ambivalence on the declaratory or constitutive view of Article 3. There is clear and undisputed evidence that as early as 1950 France itsel, one of the original parties to teh 1955 Treaty, unreservedly embraced the declaratory view. In his statement to the *Ad Hoc* Political Committee of the General Assembly on 13 December 1950, the French representative (Mr. Naudy) gave his famous clarificaiton of the French position on Libya's boundaries. For the benefit of the Court, I show on the screen an english translation of the relevant passage of his statement. Copies of both the original French text of this passage, and of the English translaiton, ar in the Judges' folders.

There are two quite separate conclusions which can be drawn from this passage. First, and this responds to the declaratory.constitutive argument, the international acts cited by Mr. Naudy are virtually identical with the international acts listed in Annex I to the 1955 Treaty. The differences are in fact marginal; Mr. Naudy cites the Anglo/French Declaration of 21 January 1924, in addition to the international acts listed in Annex I to the 1955 Treaty, but this is immaterial for the purposes of my analysis. Nor is it material that the Annex I list, on the other hand, includes the France/Ottoman treaty of 1910 relating to the boundary with Tunisia, while, as your will see, Mr. Naudy's statement makes no reference to this instrument. If these international acts can be prayed in aid in 1950 in an endeavour to claim that Libya's boundary has *already been fixed* by them then it cannot be argued that the self-same acts *constitute* Libya's boundaries by virtue of the 1955 Treaty alone. The international acts in question cannot be *declaratory* in 1950 but have been rendered *constitutive* five years later by the mere cross-reference made to them in Article 3 of the 1955

Treaty. That, of course, is the main conclusion I wish to draw form that passage, but while we have this passage up on the screen I would like to indecate and this — is in fact in response to a separate point made by Professor Franck — that there is absolutely no way in which this explanation give by Mr. Naudy can be presented to the Court as a clear definition of Libya's southern frontier. Let us

just look at the egregious errors embodied in the statement.

first of all, the false reference to teh map supposely anned to the Additional Declaration of 1899, but not so annexed.

Second, the unqualified reference ot the "boundary of Triplitania" indicated on the non-annexed map, when that was no more thatn a notional boundary, uncertain and portratyed as such on the map.

Apart from these errors, the statement of course presents a conclusion ("the matter was therefore governed at present by all the texts he had just quoted") which does not logically follow from what has just been said. That conclusion would be correct if, but only if, the texts did in fact produce a boundary.

I would, however, wish to make one additional point on the question of whether Article 3 of the 1955 Treaty, read with Annex I, was declaratory or constitutive. At present, Chad has not pronounced itself definitively on whether it regards Article 3 and Annex I as being declaratory or constitutive. But Libya could envisage a scenario in which , even at this very late stage, Chad might argue that Libya is now bound to accept the line agreed in the Anglo-French Convention of 1919 *as a boundary*, because Libya agreed to the inclusion of a reference to the Convention in Annex I to the 1955 Convention. So Libya would, on that analysis, be bound to that Convention, not as successor to Italy, but by virtue of its own agreement in 1955. Chad has not yet made the argument in these terms, but it may yet do so. And if it did, this would presumably make the boundary provisions of the 1955 Treaty truly constitutive in Chad's view.

I must say that, if an argument along these lines were to appeal to the Court, it would raise very serious questions indeed about the good faith nature of the 1955 negotiations. Libya would, on that analysis, have been induced to agree a boundary by inadvertence. Libya is therefore confident that the Court would not entertain a result of this nature. The Court will in any event recall the following:

1. The Libyan Prime Minister said in 1955 that the Libyans were not ready to discuss boundaries;

2. There was no real discussion of the southern boundary — in the sense of an examination of

maps, proposal, etc.;

3. France produced neither the text of the 1919 Convention nor a map showing the boundary France claimed to produced;

4. Annex I, identifying the 1919 Convention as a relevant text, appeared only at the last minute and in circumstances not revealed in travaux;

5. Within four days of signature of the 1955 Treaty, Libya had issued its famous May No. I annexed to its Petroleum Regulation No. !. Mr. President, you will recall that Mr. Maghur showed this map on the screen on 14 June and discussed it (CR 93/14, pp. 72-73). The southern boundary portrayed on Libya's Map No. 1 was almost the same line as appeared on United Nations Map No. 241 attached to the United Nations Secretariat study. This is sufficient in itself to show that Libya did *not* accept that the 1955 Treaty had determined Libya southern boundary in the sense of the 1919 line.

How could Libya therefore have agreed in 1955 to a line it never saw, on the basis of a text never produced to it? I need hardly remind you, Members of the Court, that a treaty embodies only what is agreed by common consent. In the circumstances, Mr. President, it is impossible to believe that Libya could have agreed in 1955 to do anything more than look at the 1919 Convention in due course as one of the texts on which future negotiations to settle the southern boundary would be based.

Mr. President, this could perhaps be a convenient point at which you might have the coffee break.

The PRESIDENT: Yes indeed, Sir Ian. We will take it now. Thank you.

The Court adjourned from 11.20 a.m. to 11.40 a.m.

The PRESIDENT: Sir. Ian.

Sir Ian SINCLAIR: Mr. President, Members of the Court, when we had our coffee break I

had just completed my discussion of the difference between the declaratory and the constitutive view of Article 3 in Annex I. There is at least one further comment which I must make on the presentations of Professors Higgins and Cot and which relates directly to the interpretation of Article 3. Chad prides itself on relying on the literal wording of Article 3 to sustain its argument that that Article, read with Annex I, effected the delimitation of the entire boundary between Libya and Chad. So what does Article 3 say? Mr. President, Members of the Court, the texts of Article 3 in the French and English are now on the screen. And what do Chad's Counsel say? I take first Professor Higgins. On 25 June, she is recorded as arguing:

> "The Treaty of 1955 dined the line of the frontier by reference to a line resulting from international instruments annexed to the 1955 Treaty." (CR 93/21, p. 58.)

Now is this really what Article 3 says? What Professor Higgins would have us do is to replace the phrase "sont celles qui résultent" by "sont des lignes qui résultent". And this distorts completely the meaning of the language used. Then what does Professor Cot say? Well, he is a bit more cunning. He is quite content with the Libyan demonstration that the phrase "celles qui résultent" refers to the frontiers already mentioned. But note what he then says, and I hope I have correctly translated his remarks into English:

> "The more it is emphasized that it is indeed a question of frontiers, that is to say of lines separating the territories of the two Parties and not of an undetermined zone, the more the text gains in precision." (CR 93/21, p. 74.)

The Court will note the casual way in which a highly controversial definition of the term "frontiers" is introduced into this sentence. Again, the term "lines" is equated with "frontiers". But a line is not a frontier, certainly not necessarily a frontier. The Additional Declaration of 1899 certainly fixed a line in Article 3; but even Chad admits it was not a frontier line at that time. Professor Cot would therefore have us make the same emendation of the text as Professor Higgins. He might indeed go further and ask us to remove from the text altogether the phrase "sont celles qui". And this is how Chad seeks to distort the plain meaning of Article 3.

Another feature of Chad's argument on which I feel bound to comment is Professor Cot's insistence that what the 1955 Treaty envisaged was the delimitation of a *single* frontier, and that Article 3 and Annex I were concerned only with "une frontière unique". I do not wish to be unfair to

our learned opponents, but once again, we do not seem to have been reading the same documents. In the first place, I look at Article 3 of the 1955 Treaty and the very first words I see are "Les deux hautes Parties Contractantes reconnaissent que *les frontières . . .*"". Note the use of the plural. Article 3 itself acknowledges that more than one single boundary is involved. In the second place, does Chad seek to deny that the actual boundary negotiations undertaken by the two parties in 1955 bore exclusively upon the identification of three points thought which the boundary line should run in the sector of the Libyan/Algerian boundary between Ghat and Toummo? If he does do so, then where in the *travaux préparatoires* are there any references to the delimitation of the boundary between Ghat and Toummo? If she does do so, then where in the *travaux préparatoires* are there any references to the delimitation of the boundary in the sector between Toummo and the Sudanese border? The notion that Article 3 of the 1955 Treaty, read with Annex I, was constitutive of the boundary between the French and Libyan territory throughout its entire length is quite inconsistent with the fact that the boundary negotiations in 1955 concentrated only on the sector between Ghat and Toummo, and were followed by separate boundary negotiations in 1956 as regards the sector between Ghadamès and Ghat. The alleged *single* frontier in 1955 consisted of the following distinct sectors":

(1) form the Mediterranean to Gadamès;

(2) from Ghadamès to Ghat;

(3) from Ghat to Toummo;

(4) from Toummo to the Sudanese border.

Not only were these distinct sectors in 1955/1956; but the alleged conventional basis for the delimitation of each of these sectors differed one from the other, as the Court will be well aware. Prior to 1955, the delimitation of the boundary in sectors (2) and (3), which I have mentioned, resulted form the Franco-Italian Arrangement of 12 September 1919, but we know that this was modified or clarified (depending on one's point of view) by the Exchange of Letters of 26 December 1956, as regards sector (2), and by Annex I to the 1955 Treaty as regards sector (3). So the mirage of a *single* frontier throughout its entire length delimited by the combined effect of Article 3 and Annex I remains a mirage; as soon as one looks at it closely, it disappears and

dissolves into the different sectors with which the Court will already be familiar. In this context, Mr. President, I should perhaps indicate now that Libya will have more to say at a later stage about the complete absence of any conventional basis, even if one accepted Chad's first thesis, for the sector joining Toummo to the Tropic of Cancer.

Now, I cannot conclude my analysis of the arguments presented by Chad on the interpretation of Article 3 and Annex I without commenting on the silences of Chad's Counsel on a number of highly significant issues. For example, there is the whole question of Annex I. Professor Cot chides me for having translated the phrase "tels qu'ils sont d'finis" by "as listed in Annex I". I can only plead in my defence that, on this specific pint, I did in fact utilise the translation provided by the Registry of the Court. What is perhaps more significant in Professor Cot's treatment of Annex I is his continued insistence that this is a "normative provision"defining a corpus of instruments describing completely and precisely the frontier between the two Parties. I am perplexed by this. The Court will recall that the only reference one can find in the *travaux* to the Annex I list is the lapidary statement to be founding the Aide-Memoire handed over to the Libyan Prime Minister by Ambassador Dejean on 8 August:

> "Nous avons admis, dans l'Artilce 3 du traité . . . que les frontières par les actes internationaux en vigueur. Nous sommes d'accord sur la liste de ces actes." (Ann. 130 to the CR.)

Of course, in my earlier statement of 15 June, I did point out the inaccuracy of the first sentence of this passage. But the point I wish to make now is that, in this Aide-Memoire, the French negotiators are quite content to refer simply to the agreement reached on the "list" of these acts. There is nothing here to support the suggestion that the list of international acts in Annex I constitutes by itself a "normative provision". There may be other "normative provisions" in Annex I., but not the list by itself, which, Libya continues to insist, is essentially designed to identify the international acts to which the necessary cross-reference is made in Article 3 of the Treaty itself. As far as the recognition of the frontier is concerned, it is Article 3, admittedly read in conjunction with Annex I, which is the "normative provision".

But there is one additional feature of the list in Annex I on which our opponents neglect to comment; and that is its mysterious genesis. Libya has carefully analyzed all the *travaux* that have

been presented to the Court and has concluded that the list in Annex I must have been presented for inclusion in Annex I sometime between 28 July and 8 August, since we know that Ambassador Dejean reported to Paris on 28 July that the boundary question had been settled to France's satisfaction. Our opponents have not sought to contest this conclusion. However, they still seek to rely heavily on the alleged normative effect of the list in Annex I, even though they can produce no evidence on the origins of that list and when it came to be incorporated in the text.

One final pint, Mr. President, on Annex I. Professor Cot seeks to draw from the reference to "demarcation" in that Annex the conclusion that the delimitation of Libya's boundaries throughout their entire length had already been settled in the body of the treaty. Let us just look at this a little bit more closely. Annex I does indeed include a paragraph on demarcation in the following terms and here I give an English translation:

> "The French Government is ready to appoint experts who could form part of a mixed Franco-Libyan Commission entrusted with the task of demarcating the boundary, wherever that work has not yet been done and where either Government may consider it to be necessary."

This paragraph immediately follows the paragraph in Annex I which defined the three pints through which the boundary from Ghat to Toummo runs. It is clear that the immediate necessity for demarcation arose precisely in the sector running from Ghat to Toummo where the course of the boundary line already delimited by the Franco-Italian Arrangement of 12 September 1919 had been rectified. This is confirmed by the entry in the Libyan *travaux* for 26 July 1955, where the "formation of a Franco-Libyan committee to demarcate the frontier" is lined to the "interpretative letter" relating to the frontiers (ML, Exhibit 73). It is in any event somewhat ironic that if, as Chad contends, the 1955 Treaty had the effect of delimiting Libya's southern boundary, *France* did not request the demarcation of that sector pursuant to the procedure set out in Annex I. Libya had no thought of making such a request since, in Libya's view, her southern boundary had not been delimited by the 1955 Treaty or indeed by any of the instruments listed in Annex I.

There is another major gap in the analysis which our opponents have made of the context of the 1955 Treaty. They have sought to analyze in some detail the relevance of Articles 4 and 5 of the Treaty and of certain provisions of the Convention de bon voisinage and the convention particulière.

I have already dealt with theses pints in my first statement and do not need to revert to them. But our opponents are strangely reticent about the Exchange of Letters of 26 December 1956. Professor Cot does of course not seek to deny that this is part of the context of the 1955 Treaty. But all he says about it is that this agreement renders more precise the delimitation effected by the 1955 Treaty in the region of Edjelé; that its preamble refers to the Franco-Italian arrangement of 12 September 1919, considered as being in force; and that at no pint in the text is any mention made of another sector of the boundary between the Parties which could be the subject of a subsequent delimitation. Now, Mr. President, Members of the Court, does this explain the true significance of the 1956 Exchange of Letters as part of the context of the 1955 Treaty? Libya would say not at all. The Court will not wish me to repeat what I said in my first statement on 15 June. What is truly significant about the 1956 Exchange of Letters is that it totally destroys the Chad myth that the 1955 Treaty finally achieved or confirmed the delimitation of the entire length of the boundary dividing Libya from French possessions. If that Treaty truly did what Chad claims for it, why was it necessary for France to insist in 1956 upon a further rectification of the boundary between Libya and Algeria as a precondition for French ratification of the 1955 Treaty? There is, in Libya's submission, no way in which the 1956 Exchange of Letters can be reconciled with the Chad view of the matter.

There is one further important observation which I must make. Professor Cot professes puzzlement about the passage in Libya's Memorial (para. 5.470) which states that the words in Article 3 "reconnaissent . . . que les frontières . . . sont celles qui résultent des actes internationaux en vigueur" were a reflection of France's confidence in its thesis that a conventional boundary already existed in 1951. And he suggests (a passage which I profess not wholly to understand) that this means that the text of the treaty embodied the French thesis but should be considered as not having been written because it did not embody the Libyan thesis (CR 93/22, p. 24).

Mr. President, Members of the Court, I amy have misunderstood this passage and I would not wish to suggest that our opponents are deliberately seeking to obscure a very clear and simple passage of Libya's Memorial. But, with all respect, Professor Cot seems entirely to have missed the point. What Libya is saying is that *France* was quite content with the text of Article 3 because the

French negotiators purported to believe that a southern boundary of Libya did result from a combination of the texts listed in Annex I. They did not even begin to consider that possibility that a southern boundary of Libya did not or would not result from any of these instruments because of their content of their lack of opposability to Libya. In other words, they did not even contemplate that their thesis might be misguided. Libya, on the other hand, was content with the text of Article 3 and Annex I because Libya did not believe that the language used was such as to determine a boundary in any sector where a boundary had not previously been determined. Libya's firm conviction even after 1955 was that its southern boundary remained to be delimited.

I turn now to another point arising on the interpretation of Article 3 to which our opponents have directed little attention. That is the meaning to be attributed to the phrase "actes internationaux en viguer à la date de la constitution du Royume-Uni de Libye". Our opponents construe this phrase as establishing the intent of the Parties to regard the instruments listed in Annex I as being in force on 24 December 1951, irrespective of whether, as a matter of treaty law, they *could* have been regarded as being in force on that date. But surely, Members of the Court, this cannot be enough. The temporal condition specified in Article 3 existed independently of the Annex I listed and has to be satisfied. The Annex I list simply identifies the intentional acts to which reference is made in Article 3 without certifying as to their being in force on 24 December 1951. That is a condition, set out in Article 3 itself, which remains to be satisfied. Libya is of course aware of Chad's argument that Article 44 of the Italian Peace Treaty did not require the notification of treaties affecting territories to which Italy renounced title by that Treaty. But, even if Chad were right on this point, it would not necessarily solve the problem. As I pointed out in my earlier statement of 15 June, the Franco-Italian Accord of 1902 would have terminated in any event in 1947. Italy, having renounced title to Libya, was no longer in a position to fulfil such obligations as it had undertaken towards France in 1902. As between the parties, therefore, the 1902 Accord had expired: its raison d'êre had disappeared. This was simply an example which I gave without considering whether any of the other listed acts remained in force on 24 December 1951.

There are a few additional miscellaneous points to which I should now direct attention. The first concerns the Emir Idris. Various of Chad's counsel (including in particular Professor Franck)

have sought to argue that significance should be attached to the fact that, in 1948-1949, the Emir Idris protested vociferously against the Egyptian territorial claim but said nothing about French claims. This is just to remind the Court, and indeed our opponents, that, at the relevant time, the Emir Idris was simply Emir of Cyrenaica and therefore not authorized to speak or act on behalf of Libya as a whole.

The second miscellaneous point concerns the Libyan submission that Article 3 of the 1955 Treaty operates to exclude colonial *effectivités* in the determination of any boundary pursuant to its terms. Libya continues to believe that this exclusion is a natural consequence of the wording of Article 3 which refers to the boundaries recognized by the parties as being those "which result from the international acts in force on the date of the constitution of the United Kingdom of Libya". Chad contest this interpretation. In this context, Mr. President, I would simply draw the attention of the Court to the Libyan *travaux* of the 1955 Treaty. Exhibit 73 to the Memorial of Libya contains an exchange between the Libyan Prime Minister and Ambassador Dejean at the morning meeting held on 28 August 1955. In that exchange the Libyan Prime Minister is recorded as saying that the frontier question (and by this he clearly meant that Libyan/Algerian frontier) "was not free from difficulty since the Italians had occupied may centres behind the existing frontier". Ambassador Dejean is recorded as having said in reply that

> "it had actually been done but in an illegal manner and that Italy had exploited France's weakness during the last war ensconce itself in its lands and that it had crossed over the borders which had been agreed upon under the Agreement of 1919 which were still valid at the present time".

Here there is cogent and compelling evidence of the French position that the boundaries recognized under Article 3 must be conventional boundaries deriving from the specified international acts, and not boundaries deriving from *effectivités* alone. Moreover, it is contemporaneous evidence demonstrating France's anxiety about Italian *effectivités,* not a simply theoretical construct dreamt up nearly 40 years on.

Mr. President, the third miscellaneous point concerns the so-called "Aouzou incident" or "Moya" incident of 1955. Professor Cassese, in his second pleading on 1 July made more of this incident, presenting it as a clear acknowledgement by Libya and France's sovereignty over the

so-called "Aouzou strip". It was of course nothing of the kind. The facts of this incident, stripped of the tendentious overtones which Professor Cassese seeks to put on them, are recounted in paragraphs 1.19 and 3.34 to 3.56 of the Counter-Memorial of Libya. Libya would respectfully ask the Members of the Court to compare Professor Cassese's colourful version with the more sober and restrained account of the same incident given in the Counter-Memorial of Libya. It would seem that the facts of this incident are obscure and contested. Libya hotly denies the inferences which Chad seeks to draw form its version of the facts. There is a supposed conversation between Mr. Dumarçay and the Libyan Prime Minister, but, although the Libyan Prime Minister is alleged to have given a similar assurance to the British Ambassador, there is no confirmation of this in the British archives. And from all this Professor Cassese deduces Libyan acknowledgement that the so-called "Aouzou strip" — not even known at that time by the name — belongs to France. No attempt is even made to discuss, far less respond to, the more measured Libyan account of this incident in its Counter-Memorial. Mr. President, this bears some resemblance to a dialogue of the deaf; it is hardly serious.

I turn now to the first pleading of Professor Franck. In this pleading, our learned opponents seek to explain away French conduct at the United Nations in 1949-1950 and the terms of General Assembly resolution 392 (v). The Court will of course have noted that our opponents have not referred to the proposal for boundary revision presented by France to the Four Power Commission in 1948, the proposal which, as I demonstrated to the Court on 15 June, would, had it not encountered resistance from other of the Four Powers, have amputated Libyan territory in the west and the south to the benefit of Algeria, French West Africa and French Equatorial Africa. now, one of the points persistently made by Professor Franck and, indeed, other of Chad's counsel is that French representatives clearly and unequivocally presented to the United Nations General Assembly the French position on Libya's southern boundary, and that this position was not contradicted. I give a few examples of this line of argument:

1. Professor Franck on 28 June:

"the [General] Assembly had presented to it, by France, repeatedly, a clear and uncontroversial definition of Libya's southern frontier, a definition in which the United Nations members acquiesced" (CR 93/22, p. 46).

2. Professor Franck in the same address on 28 June, referring to the statement by Mr. Naudy to the *Ad Hoc* Political Committee on 13 December 1950:

> "With great clarity, he spelled out the agreements of the colonial era which were relevant to Libya's southern frontier, listing the Franco-Italian Agreement of 1 November 1902 which confirmed the Additional Statement of 21 March 1899 to the Franco-British Convention of 14 June 1898, complete with the supplementary Franco-British Convention of 8 September 1919." (CR 93/22, p. 60.)

Mr. President, I showed this extract from Mr. Naudy's statement on the screen a few minutes ago. How this can be represented as a clear and uncontroversial definition of Libya's southern frontier defies belief. To refer the bemused delegates to the *Ad Hoc* Political Committee to a Franco-British Declaration of 1899, to a Franco-Italian Accord of 1902 and to a Franco-British Convention of 1919 as defining Libya's southern boundary in 1950, without any further explanation, is rather like expecting a group of nine-year-olds to respond to a claim asserting the authenticity of the Hitler diaries. In this particular instance, at least, silence should not indicate acquiescence — it could only indicate utter bewilderment. And this is quite apart form the fact that the statement contains several notable errors to which I draw attention earlier.

There is one additional point I would make on Professor Franck's presentation of 28 June concerning the period of the United Nations involvement in 1949-1950.

Professor Franck sought to make fun of the United Nations map No. 241, the "Sketch-Map of Libya's Frontiers" attached to the Secretariat Study of January 1950, referring to it as the "phantom map" and seeking to trace its paternity (CR 93/22, pp. 48-51). Indeed he characterizes it as "son of the Four-Power map, grandson of the British Ordnance map and great-grandson of Mussolini's map". Well, let us carry out the necessary blood tests. here, on the screen is the so-called : Four-Power map" — the amp annexed to the Report of the Four-Power Commission. And here you will see is United Nations map No. 241. Now we revert to the Four-Power Commission map where the line shown on that map has now been emphasized. And what we have to do is to compare the line on that map with the line on United Nations map No. 241. The Court will see the result. I am sorry to say that this casts very considerable doubt on the paternity of United Nations map No. 241. It looks as if we may have to look for another father.

Then, Mr. President, we have resolution 392 (V). Professor Franck affects to believe that,

following M. Naudy's statement to the *Ad Hoc* Political Commission and the lack of reaction to it, France was able to vote in favour of resolution 392 (V). According to him, French conduct in 1950 shows "that it would not have voted for a resolution which placed in doubt a boundary with it had so clearly and publicly defined" (CR 93/22, p. 60).

Mr. President, might I suggest politely that this is really no more than an *ex post facto* rationalization? I am sorry to have to repeat myself but the true explanation must surely be that France maintained blindly and stubbornly that the instruments cited by M. Naudy *did* result in a southern boundary for Libya. There must be at least a large measure of doubt as to whether that position was, or could have been, based on a genuine belief. The evidence certainly shows that some French officials retained vestigial doubts about the public French position. But it is that French position, persisted in with so much commitment, that Libya maintains is, and always was, profoundly mistaken. It is only in the *exposé des motifs* of 1935 that we see the truth conceded.

Mr. President, Members of the Court, I do not think I can conclude without making reference to what I must characterize as the extraordinary outburst we heard from Professor Higgins at the conclusion of her argument to the Court on 30 June. She enquired rhetorically: why did Libya conclude a treaty on its boundaries with a State that, on its own argument, could never have secured international title to Chad? What was the purpose of the 1955 treaty? And she goes on to comment:

> "We have now reached the point where we have a treaty that not only does not do what it clearly says, but refers without point to annexed instruments of reference — and it is concluded with a party said to have no legal rights over the subject-matter." (CR 93/24, p. 42.)

Why I characterize this as an extraordinary outburst is because it seems to reveal that Professor Higgins has had some difficulty in understanding Libya's written pleadings. I will just remind her briefly of the following points:

1. The 1955 Treaty was a treaty of friendship designed primarily to secure the evacuation of French troops from the Fezzan.

2. Libya did not want the 1955 Treaty to deal with boundaries, but, on French insistence, agreed to the inclusion in the Treaty of Article 3 and Annex I.

3. What Article 3 clearly says is that both Libya and France recognize that the boundaries which separate their respective territories are the boundaries which result form certain international acts in force on the date of Libya's independence, as listed in Annex I.

4. Some of these international acts had fixed boundaries, others had not; some had been concluded between France and Libya's predecessor or predecessors in title, others had been concluded between France and third States.

Now it is of course a well-known trick of advocacy to distort the case of one's opponent in order the more easily to refute it. The problem with Professor Higgins' outburst is that it does not even begin to describe Libya's case. She is rather inviting us to enter one of these "crazy houses" to be found in an amusement park where she is seeking to persuade us that the grotesque figure to be seen in a distorting mirror is Libya's case. Libya can only deplore such excess of language, and will endeavour not to emulate it.

I would simply remind the Court, and indeed our distinguished opponents, that Libya believes that Article 3 does exactly what it says it does. It operates as a joint *recognition* by both Parties of those boundaries already fixed by international agreements between States competent to fix such boundaries. This was clearly the case with the boundary between Libya and Tunisia fixed by the 1910 Convention between France and the Ottoman Empire, and it was also the case with the boundary between Libya and Algeria fixed by the Franco-Italian Arrangement of 12 September 1919. But it was not, repeat not, the case with Libya's southern boundary east of Toummo. What Libya and France were doing in Article 3 of the 1955 Treaty was precisely to apply in advance, in their mutual relations, the terms of the Cairo Declaration to be adopted nine years later in 1964. That is why Libya never had any problems with the Cairo Declaration; she had already accepted the principles which it embodied in the 1955 Treaty with France.

Mr. President, Members of the Court, that concludes my presentation. I am very grateful to you for your attention and I would like you now to call upon Mr. Sohier.

The PRESIDENT: Thank you very much, Sir Ian. Mr. Sohier.

Mr.SOHIER: Thank you Mr. President, Members of the Court. During Professor Pellet's

second intervention on Tuesday 29 June, attention was drawn to a major change in emphasis in Chad's case. This concerned Chad's second thesis, based on the 1899 Declaration and the 1900-1902 Accords.

No doubt Chad's second thesis is acrobatic in its complexity; and changes in such a complex scenario are not always easy to detect. But, fortunately, Professor Pellet specifically noted this change in Chad's case; and, of course, when such an important change occurs this late in the case, it is of special interest. The change, according to Professor Pellet, is that Chad has essentially dropped the French argument that the 1902 Accord made the south-east line of Article 3 of the 1899 Declaration opposable to Italy and, thus, the contention that the Article 3 line limited the French zone of expansion vis-à-vis Italy.

Chad's Change of Position

At the core of Chad's conventional boundary or second thesis is the 1902 Accord, or more correctly, the 1900-1902 Franco-Italian Accords. The 1902 Accord was what the French Government called the "texte de base" of its position as to Libya's southern frontier. The French Government used just these words — "texte de base" — when, in May 1955, as preparations were being made for the second phase of negotiations of the 1955 Treaty, M. de la Chevalerie of the French Embassy paid a call on the British Foreign Office, leaving an *aide-mémoire*, in an attempt to win Great Britain's support for the French position in the negotiations. The extensive discussion devoted to this Accord by Professor Pellet last week gives the strong impression that the Accords remain very much the "texte de base" of Chad's case.

Before going into these Accords, let me first bring to the Court's attention the fact that Chad would define tem second thesis, according to Professor Pellet, on the assumption that the 1955 Treaty did not exist. This cannot be accepted. The Treaty is in effect and binding between Libya and Chad. Chad cannot in such a facile way attempt to escape from the conditions of Article 3 of the Treaty under which the boundaries recognized there by the parties were those boundaries that resulted from "actes internationaux en vigueur" on the critical date, that is the date of Libya's independence. These conditions must be applied to Chad's second theory, not just to its first theory.

This attempt to sweep tem 1955 Treaty out the door comports with Chad's claim that its case relies on the 1955 Treaty.

Chad's position based on tem 1900-1902 Accords was modelled on the French position Rouard de Card. It was further developed by the French Government and later embellished by Chad. Up until this recent change in Chad's case, these Accords were said to establish the following essential propositions of Chad's case:

— That as a result of these Accords a division of spheres of influence was agreed between Italy, Great Britain and France over Tripolitania and the territories adjoining it;

— that, as a consequence, Italy virtually became a party to the 1899 Anglo-French Declaration;

— that Italy specifically recognized and agreed to a French sphere of influence outside of the wavy, dashed line encircling Tripolitania on the *Livre jaune* map;

— that this line was also accepted by Italy as delimiting the southern boundary of Tripolitania between Toummo and the Tropic of Cancer;

— that, at the same time, Italy accepted, as well, the east-south-east line appearing on the *Livre jaune* map as faithfully representing the Article 3 line of the 1899 Declaration;

— that this line, being so close to the Article 3 line as " interpreted" by the 1919 Anglo-French Convention, was in effect also accepted by Italy and, hence, became opposable to it;

— that, as a result, Italy had no right to object to or protest the 1919 Convention; and last, but not least,

— that, in the 1902 Accord, Italy renounced any inheritance of Ottoman territorial rights, titles or claims over the Tripolitanian hinterland, and could no longer base a territorial claim on any inherited Ottoman rights.

One is stunned by the sheer scope and boldness of these assertions said to emanate from such modest Accords. For example, that Italy in the 1902 Accord could be deemed to have accepted an alleged boundary first established 17 years later by Great Britain and France: Or that in 1902 Italy renounced Ottoman rights that were reasserted in the borderlands by direct Ottoman administration and control starting some six years afterward!

Libya's written pleadings demonstrated the may defects in Chad's second thesis based in large

part on the 1900-1902 Accords, and these defects were again dealt with briefly during the first phase of the oral proceedings. Certain of these defects apparently have come to appear particularly threatening to Chad's case as that case has developed.

For example, what if the Court should decide, contrary to Libya's position, that in the 1900-1902 Accords Italy accepted the Article 3 line of the 1899 Declaration, but then should decide, in agreement with Libya, that this line was intended to be a south-east line, as wrongly shown on the *Libre jaune* map? Such a line now appears on the screen. The only consolation for Chad, if such a boundary were fixed by the Court, would be that Aouzou happens to lie to the south of such a line.

So it may have occurred to Chad that the French theory that Italy accepted the Article 3 line in the 1902 Accord was risky. There was also the embarrassment to face that Great Britain and France differed fundamentally both as to the direction and the nature of the 1899 line — not to speak of the fact that Italy vigorously and continually protested both the claimed direction and nature of the line as modified in 1919 right up to the end of 1934.

Then there was the problem of the Ottoman rights and titles inherited by Italy under the Treaty of Ouchy in 1912. At firs, Chad's pleadings treated this aspect of Libya's case as being not too serious, relying on the uninformed and biased French military accounts that depicted the Ottoman present in the borderlands as ephemeral ("éphémère") and, with a Gallic touch, "platonique" (platonic). Libya's pleadings have proved otherwise, and the extensive attention given to the matter by Professor Shaw suggest that Chad now takes the basis of the Ottoman claim far more seriously. So this, too, posed a new problem to try to get around. Fro the Court might have been tempted to consider Chad's far-fetched renunciation argument based on the 1902 Accord if the Ottoman claims seemed trivial; but certainly not when it became apparent that the Ottoman claims were indeed substantial.

Libya's pleadings have also identified a serious legal defect in Chad's conventional boundary theory based on the 1900-1902 Accords. This is the lack of standing of either Italy or France in 1900-1902 to settle the status of territories or territorial boundaries in these regions where they were not sovereign.

And Libya has pointed out that complete absence of any legal basis for the segment of the

boundary claimed by Chad lying on a line between Toummo and the Tropic of Cancer.

Finally, Chad may have realized that it had to face the fact that the "texte de base" of Chad's conventional boundary case totally vanishes for the reason that the 1900-1902 Accords were not *en vigueur* on the critical date in 1951, as required by Article 3 of the 1955 Treaty.

So a shift has been made in Chad's case in an attempt to deal with these problems. Instead of emphasizing Italy's supposed acceptance in 1902 of the south-east line of Article 3 of the 1899 Declaration, Chad's case has shifted to establishing that, in the 1900-1902 Accords, Italy recognized an *actual existing Tripolitanian boundary*, as shown on the *Livre jaune* map — the wavy, dashed line — and a French sphere of influence up to that line.

Such a shift would mean that the Article 3 south-east line was of relevance only to Great Britain, for the French sphere supposedly recognized by Italy went far beyond it, as shown on the screen. Hence, Chad would argue, Italy had no right to object to the 1919 modification of this line. it just did not concern Italy. And the territorial rights inherited from the Ottoman Empire under the Treaty of Ouchy, vis-à-vis France at least, were subject to the alleged agreement by Italy in 1902 as to Tripolitania's boundary and as to the French sphere of influent up to that boundary. Such an agreement would, it is contended, eliminate Italy's right to claim any Tripolitanian hinterland beyond that boundary.

Moreover, under this shift, the Tripolitanian boundary would not have been a boundary in 1902, but would be an already recognized international boundary claimed to appear on maps at the time.

The fact that the 1902 Accord was not *en vigueur* in 1951 would also not really matter any more, for Italy's territorial rights east of Toummo could not be based on any Ottoman rights, titles or claims, but only on Article 13 of the 1915 Treaty of London. Chad could thus argue that the 1919 Anglo-French line, combined with alleged French *effectivité*, provided a far stronger basis of title than any rights or titles inherited by Libya from Italy.

So the key to Chad's revision second theory was to firm up the argument that the wavy, dashed line on the *Livre jaune* map referred to in the 1902 Accord was indeed a an international boundary. Professor Pellet informed the Court that Chad has discovered what appears to Chad to be

the basis for establishing that this line was such a boundary (CR 93/23, pp. 29-32).

This discovery is a map that first appeared in this case in Chad's Map Atlas annexed to its Counter-Memorial. This is the German Justus Perthes map of 1892, one of the two maps that were consulted by Lord Salisbury and Mr. Cambon during the 1899 negotiations. These maps were referred to in the first round by Libya.

1892 Justus Perthes Map: the Undefined Tripolitanian Frontier

Libya reproduced this German map in its Reply and, according to Chad, modified a part of the map in such a way as to obscure the that that the line encircling Tripolitania on the map was identified as a colonial boundary.

It is, or course, a serious accusation, as Mr. Maghur has pointed out, to suggest that Libya tampered with this map to obscure a material fact in this case.

I now invite the Court to examine the details of Chad's accusation. On the screen is this map. Professor Pellet suggests that, on the reproduced of this map in Libya's Reply, the wavy, dashed line — which, the Court can see may barely be made out, if at all — was enhanced or drawn over by a line placed on the map by Libya.

Professor Pellet is quite right. The line placed on the map by Libya is being shown on the screen. Libya did superimpose such a line on the map. This was done so that the wavy, dashed line on the German map would be visible.

Professor Pellet claimed last week that, by so emphasizing or drawing over the wavy, dashed line, Libya modified it in such a way that the line no longer corresponded with any line in the map's legend. whereas the line, as shown on the original map, before being drawn over by Libya, corresponded to a line in the legend defined in German as indicating "Turkish colonial frontiers".

This will now be demonstrated on the screen. here is the German map's legend. On it appears a continuous line composed of dashes and dots identified as *Kolonialgrenzen* or "colonial frontiers". Another part of the legend, by the use of coloured boxes, shows the colours that correspond to different States. The orange colour corresponds to Turkish areas, that is areas of the Ottoman Empire.

Referring to the map again, it will be seen that the wavy, sashed line is indeed a line composed of dashes and dots, as is the line identified in the legend to indicate colonial frontiers. This line is accompanied on the inside by a much thicker, orange line, thus identifying Tripolitania, which lies inside the line, as being Ottoman. The line is indicated as a solid line there on the right-hand side of the map and then the line becomes not a solid line, but a broken line.

thus it is apparent that the wavy, dashed line encircling Tripolitania on the Justus Perthes map does not correspond to the line in the legend identified as indicating colonial frontiers. One is a broken line; the other is a continuous line. And this difference is reflected a common cartographic practice of long standing, one which in fact prevails today. Defined boundaries are indicated by continuous lines; undefined frontiers, by broken lines. I think the Court can clearly see that the line running in this direction there on the map is a broken line and that this is a continuous line here on the map and hence identified in the legend of the map as a colonial frontier.

I invite the Court to examine the part of this line in the region of Toummo. Toummo is right here on the map. The line comes down here and runs up north. It is a broken line throughout the region indicating that it was not a defied or certain frontier.

So Libya's enhancing of this map, so as to make the wavy, dashed line encircling Tripolitania visible, in no way affected the meaning or interpretation of this line. For that line is not shown as a boundary on the map — only as an uncertain, undefined boundary, what Libya has called a notional frontier. This term — notional frontier — provoked Professor Pellet to suggest that Libya's counsel were faithful disciples of the French playwright Giraudoux, who described the law as the best training ground for the imagination. My recommended reading for distinguished counsel of Chad is somewhat different. I would suggest Gustave Flaubert, who is credited with having said: "God is in the details"("le bon Dieu est dans les détails").

Livre jaune Map

But the matter does not end there, for Chad's quest for a Tripolitanian boundary dates back to Chad's case of the *Livre jaune* map — neither annexed nor referred to in the 1899 Declaration, I must again remind the Court — , Chad's Memorial displayed, not a colour reproduced of the original

map — so easily found in Paris — but a black and white "extract" of a portion of the map. This is a reproduction of the map that Libya found in the Library of the *Science Po* in Paris. This map does not appear in this coloured form in the Map Atlas of Chad. I mentioned that in Chad's Memorial the map I just displayed was not included but rather an extract — a black and white extract — that contained the very sort of modification of the *Livre jaune* map, so as to alter its meaning, that Professor Pellet accused Libya of doing in respect to that Justus Perthes map.

In both its Counter-Memorial and its Reply, Libya demonstrated the misrepresentation contained in the extract of the *Livre jaune* map appearing at page 162 of Chad's Memorial. Let me make the same demonstration on the screen. You have in front of you the colour reproduction of the original *Livre jaune* map. It is necessary to have a colour reproduction to understand and apply the legend. The point of interest is the wavy, dashed line encircling Tripolitania. The question is how is that line defined in the map's legend?

The legend depicts lines indicating boundaries of French possessions pursuant to prior conventions. These are shown by a grey symbol, and these sorts of boundaries can be found on the map as the arrows on the map show. The wavy, dashed line is clearly not such a boundary as the arrow at the top indicates. A red symbol on the map's legend shows the French boundaries pursuant to the 1899 Declaration. Such boundaries can also be located on the map. Once again, the wavy, dashed line does not match these boundaries.

In fact, the wavy, dashed line on the *Livre jaune* map is not identified in the legend at all. no line corresponding to the wavy, dashed line appears in the legend. Thus, on no account, could this map be read as representing the wavy, dashed line to be a boundary. For this reason, Libya's maps have labelled this line as a "notional frontier", a term that disturbed Professor Pellet, apparently. So perhaps a happier term might be an uncertain or undefined frontier.

Now, I ask the Court to take a look at the so-called "extract" of this map that appeared in Chad's Memorial. The wavy, dashed line around Tripolitania is identified in this map's legend as a boundary, established under prior conventions. Aside from being an obvious distortion of the *Livre jaune* map, of which it purport to be an "extract" — for as just shown the *Livre jaune* map does not represent this line as a boundary — ,the identification of this line as a conventional boundary is

false. There were no prior conventions establishing a Tripolitanian boundary in 1899 or in 1902. Only in 1910 was the first of such boundaries established by treaty; the boundary between Tripolitania and Tunisia as far as a point just south of Ghadamès.

With Chad's Counter-Memorial was furnished a Map Atlas that contained 162 maps. And last week the Court had the benefit of hearing Professor Cot on the subject of this Map Atlas. Not one of the maps in the Atlas was a colour reproduction of the *Livre jaune* map. Chad merely furnished extracts or partial black and white reproductions, on none of which was it possible clearly to determine from the legend that the wavy, dashed line was not identified on the map as a boundary.

In Chad's Reply, there is no explanation given as to why Chad has furnished maps that misrepresent or obscure a correct reading of the *Livre jaune* map and Chad agave no explanation during these oral proceedings even during Professor Cot's extensive discussion of maps, and in spite of the fact that Libya has repeatedly raised the point.

So it must be concluded that the supposedly recent cartographic discovery made by Chad is no discovery at all. No published map available in 1902 showed any conventional Tripolitanian boundary. This is not surprising: in 1902 there were no such conventions establishing such a boundary.

1906 Italian Ministry of Foreign Affairs Map

Mr. President, in 1906. the Italian Minister for Foreign Affairs issued a map, which is now on the screen and which the Court will recall from Professor Condorelli's presentation. This official Italian map, issued only four years after the 1902 Accord, shows no line of any kind encircling Tripolitania. It depicts the line of Article 3 of the 1899 Declaration as a strict south-east line, not an eat-south line as shown on the *Livre jaune* map. And it contains a large area south of Tripolitania shaded white, which is described on the map as territory claimed by both France and Turkey, that is the Ottoman Empire.

This 1906 map by itself refutes Chad's interpretation of the meaning and effect of the 1900 and 1902 Accords.

France's subsequent conduct

France's subsequent conduct also refutes Chad's interpretation of these Accords. There has been placed on the screen the area to the west of Tripolitania in he vicinity of Djanet where a status quo agreement was reached between France and the Ottoman Empire in 1906; and subsequently a line, established by decree issued by the Governor-General of Algeria in 1907, limiting the advance eastward toward Tripolitania of French forces. This data was discussed in the first round.

This status quo agreement and line of limitation are incompatible with the claim of Chad that in 1902 the wavy, dashed line sown on the *Livre jaune* map was a recognized boundary. Had there been such a boundary, the status quo agreement and the line of limitation would have been unnecessary or at least a basis for discussion. The evidence produced in this case concerning Djanet status quo agreement contains no reference to any kind to a Tripolitanian boundary.

The absence of such a boundary was once more demonstrated in 1910, when the Tripolitania-Tunisia boundary was delimited by Treaty and subsequently demarcated. The text of the 1910 Treaty contains no suggestion that it was replacing or modifying an existing Tripolitanian boundary. It clearly was delimiting a boundary for the first time. This is seen, for example, from the Treaty's title — "Convention *fixant* la frontière" between Tunisia and Libya. There is no suggestion of rectifying an existing boundary. And Article 3 speaks of "La dernier élément de la frontière, a part of the boundary that continued on to a point 15 kilometres further south of Ghadamès. There is no mention of its linked up with another boundary continuing on to the south. The sector at Ghadamès was described in the Treaty as the last element of the boundary line.

That this was the end of the boundary was confirmed in the subsequent efforts to the French Government to convince the Ottoman Empire to agree to the appointment of a joint delimitation commission to complete the work begun in 1910 in order to fix Libya's boundary beyond Ghadamès.

The position of the French Government was set out in a statement of the Ministry of Colonies, dated 13 August 1911, published in *Le Temps* (ML, para. 4.139). It was made just after news of the Ottoman presence at Aïn Galakka had been reported to Paris. In this statement, the French Minister refers to the provisional status of Tibesti and Borkou. He mentions the forthcoming meeting in Tripoli of a joint delimitation commission to delimit the boundary between Tripolitania and what he

calls the French Sahara. It is clear from his statement and an analysis of it in the *Bulletin colonial de l'Afrique française* (ML, Exhibit 32), that the task of the joint commission was to complete the boundary delimitation begun in 1910 so as to fix the rest of the Tripolitanian boundary from Ghadamès on to the Anglo-Egyptian Sudan frontier.

There was no Tripolitanian boundary of any kind until the 1910 Treaty delimiting the Tripolitania-Tunisia boundary. Chad's attempts to establish that there was the wavy, dashed line appearing on the *Livre jaune* map fail completely. In 1902, no map in evidence in this case or known to Libya showed the wavy, dashed line encircling Tripolitania on the *Livre jaune* map to be a boundary.

The consequence of this failure of Chad directly concern the boundary claimed by Chad in its Submissions. There is no legal basis whatsoever to support the western segment of Chad's claimed line, that is the segment between the intersection of the Tropic of Cancer at 16° E longitude and a straight line drawn toward Toummo as far as its intersection with the Niger boundary. This is the segment which was illustrated with the Niger boundary. This is the segment which was illustrated on the screen and which Mr. Maghur identified as the "Achilles' heel" of Chad's boundary.

Now if we consider the terms of Article 3 of the 1955 Treaty — under which the Parties recognized such boundaries as resulted from international agreements in force — and if we examine the 1902 Accord, which appears on the list in Annex I to the 1955 Treaty; what boundaries resulted from that Accord? None at all. So, in a sense, it may not really matter that on the critical date in 1951 the Accord was not, in fact, *en vigueur*: for it resulted in no boundary anyway.

Rebuttal of other points concerning the 1900-1902 Accords

I should like to turn next, Mr. President, Members of the Court, to a brief rebuttal of other arguments made by Professor Pellet concerning the 1900-1902 Accords. I have to say, with due respect, that in Chad's treatment of these agreements in the first round there appeared to be little efforts made to narrow the issues at all. One heard largely a repetition of Chad's written pleadings, interspersed with occasional suggestions of inconsistency on the part of Libya's counsel. So I will try to narrow the issues myself and to do it very briefly.

Italy's Recognition of a French Sphere of Influence only as to Morocco

The second argument that is basic to Chad's change of emphasis in setting out its second thesis is that Italy, in the 1900-1902 Accords, recognized a French sphere of influence right up to the boundary line of Tripolitanian boundary. But what about this sphere of influence argument?

To state in the simplest of terms how Professor Pellet described it, this argument follows the following remarkable course:

— It starts out with the 1899 Declaration and the false assumption that north of 15° N latitude the Declaration established a French sphere of influence. Professor Pellet incorrectly stated that, in its written pleadings, Libya did not contest that, in the 1899 Declaration, Great Britain recognized a French sphere of influence. That is wrong. Libya has consistently made it clear that north of 15° N latitude Article 3 of the Declaration was not a delimitation or recognition of spheres of influence or a recognition by Great Britain of a French sphere. The Article 3 line simply established a limit to a French zone.

— The next line in the argument is that in Mr. Barrère's declaration in the letter comprising part of the 1900 Accord the words "French sphere of influence" appear.

The text of this paragraph of Mr. Barrère's unilateral declaration to Italy has been put on the screen. Chad's argument is, *first*, that by the inclusion of these words, "French sphere of influence", Italy and France recognized that the 1899 Declaration reserved to France a sphere of influence and, *second*, that Italy indeed acknowledged that France had such a sphere of influence.

I pause here to show how truly remarkable such an interpretation is. For, Mr. Barrère's letter was a unilateral declaration by France concerning the effect of the 1899 Declaration. The 1900 exchange of letters contained no Italian acknowledgment or acceptance at all of the assurance contained in Mr. Barrère's declaration. But Professor Pellet tries to make a bilateral undertaking out of this, nevertheless. This is a paraphrase of his argument: "How could Italy be satisfied with there assurance if, at the time, Italy did not accept the validity of the French sphere of influence?

Professor Pellet argues that Italy could only have been satisfied with such a commitment if it had accepted the validity of France's sphere of influence? Why is this so? There is no meaning to

this argument.

The exchange of letters constituting the 1900 Accord was simply this. France sought Italian recognition of the French sphere of influence *in Morocco*. The Accord was one of a group of agreements between 1902 and 1911, under with France received such recognition from other powers: Germany, Great Britain and Spain. Italy, on the other hand, sought recognition as heir apparent to Tripolitania, which both France and Great Britain refused to give. Instead, Italy received a rather weak, non-reciprocal recognition of its potential sphere in Tripolitania. But, in addition, Italy obtained a clarification — a rather confused clarification, it must be said — of the effect of the 1899 Declaration upon Tripolitania, then under Ottoman sovereignty.

I now move on to the ext link in Chad's argument. This concerns the 1902 Accord between Italy and France. Unlike the 1900 Accord, this was bilateral agreement. Professor Pellet argued that this Accord by its *renvoi* to the 1900 Accord recognized the French sphere of influence said to have been established by the 1899 Declaration. The text of the pertinent part of the 1902 Accord is now on the screen. Chad's second thesis largely depends on the proposition that this clause, by its reference back to the 1900 Accord, constituting Italy's recognition of a French sphere of influence up to the Tripolitanian frontier shown on the *Livre jaune* map.

But this cannot be correct. The *renvoi* is to an Accord — the 1900 Accord — that certainly did not constitute Italian recognition of any French sphere of influence, as just discussed.

As a matter of law, if Italy, not being the territorial sovereign, had in fact recognized limits to Ottoman territory, this would involve a purely *personal* undertaking towards France. So when Italy became territorial sovereign in succession to the Ottoman Empire, Italy inherited the full title of the Ottoman Empire. If Italy then asserted that title against France, France might complain of a breach of the prior, personal undertaking: but France could not challenge the territorial title.

The absurdity of this line of Chad's argument based on the 1900-1902 Accords is seen again when one considers the object and purpose of the 1902 Accord. The French sphere of influence for which Italian recognition was sought concerned Morocco, and only Morocco. France had no idea or interest at the time of obtaining a commitment from Italy as to a sphere of influence in the regions around Tripolitania. France's position in Algeria and Tunisia had already been secured, and Italy

had no territorial status in the region, in any event, and no standing to recognize the rights of other Powers in the region. But like Great Britain, France was prepared to give Italy a guarantee to respect the status quo in Tripolitania and a vague promise of a free hand there if Italy one day should become heir to this Ottoman possession.

There was no Italian recognition of a French sphere of influence up to the wavy, dashed line in these agreements. France's only concern at the time related to Morocco. However, in 1902, in the light of Italy's renewal of its membership in the Triple Alliance, France also sought a commitment from Italy that the engagements Italy had entered into did not affect French standpoint. The further clarification in the 1902 Accord of Mr. Barrère's unilateral declaration in 1900 was purely subsidiary. It was made at Italy's request, for Italy wanted a more precise definition of France's commitment in 1900 as to the limit of any French advance eastward toward Tripolitania from France's possession of Tunisia and the northern part of Algeria.

I see, Mr. President, that we have reached 1 o'clock and this would be a good breaking time for me as well. If I could be called again tomorrow to resume?

The PRESIDENT: Certainly. Thank you very much, Mr. Sohier. We will break now and resume at 10 o'clock tomorrow morning.

The Court rose at 1 p.m.