Non-Corrigé
Uncorrected

Traduction
Translation

CR 93/32 (Traduction)
CR 93/32 (Translation)

Le mercredi 14 juillet 1993
Wesdnesday 14 July 1993

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

Mr. PELLET:

1. My brief oral pleading this morning introduces the fourth and last part of Chad's oral rejoinder.

This part will deal with the Franco-Libyan Treaty of 10 August 1955 which appears to us to be capable of providing sufficient, simple, and I was almost going to say "obvious" bases for the solution of the dispute on which you are requested to pronounce by the Framework Agreement concluded at Algiers on 31 August 1989.

One of the paradoxes of the case before you is, however, that after 2,344 pages of written pleadings - we have counted them, Mr. President! - not including, of course, the 21 volumes of annexes, and after a month of oral pleadings, the Parties continue to be opposed to one another as to the real nature and actual scope of their dispute.

There is no doubt: the Parties disagree. But about what?

2. As my colleagues and friends Professors Franck and Sorel showed yesterday, Chad's attitude during the 20 years that the dispute has lasted has been clear, consistent and firm. Poor and disadvantaged as it is, and weakened by civil war and too many fratricidal struggles, Chad has never wavered in its legal, and I would go so far as to say "patriotic", convictions. In all the Governments that have succeeded one another at N'Djamena since 1971, the year of the first threats to the integrity of the national territory, the Aozou strip dispute - for it is this that has been the point at issue all along - has always produced the

011 same reactions: this region of 114,000 square kilometres forms an integral part of the Republic of Chad, and that for reasons which have

not changed: the Treaty concluded on 10 August 1955 between independent Libya and France, to which Chad has succeeded, established *ne varietur* the boundary between the two countries; that of 7 January 1935, the Laval-Mussolini Treaty, never entered into force and produced no legal effect whatever.

3. It is more difficult to make sense of the successive positions adopted by Libya, although during the first 20 years which followed its accession to independence it manifested, by its consistent attitude, the conviction that the line of its southern boundary was indeed the line which Chad is defending today and which the 1955 Treaty had defined. This was reflected in a peaceful co-existence, first with France and later with independent Chad, until the end of the 1960s. And the fact is not without legal significance.

Matters became less clear thereafter: Libya made, or had circulated, some doubtful maps; but it disclaimed responsibility for them; it seized the Aozou strip but, for a while, affirmed that it was present there only for purely humanitarian reasons before going on to deny the existence of a dispute and then to justify itself grudgingly by arguments which always directly or indirectly - I am thinking of the invocation of the "phantom map" about which Professor Franck has spoken at some length - harked back to the Laval-Mussolini Treaty of 1935.

Yet Libya has brought a different dispute before the Court, a dispute defined by it alone as concerning half of Chad's territory. I may say that we believe we could detect, especially at the end of the Libyan pleadings, something like a tendency to fall back on the 1935 line. Moreover, everyone could read in the magazine *Jeune Afrique* of 8 July of this year an interview with the Libyan Minister for Foreign

Affairs, Mr. Al-Mountasser, in which he stated: "As for the dispute *concerning the Aozou strip*, we await the verdict of the Court at The Hague."

That statement adds to our perplexity, Mr. President; for on the very day when the head of Libya's diplomacy was making it Libya's Agent was reaffirming the Jamahiriya's submissions here (cf. CR 93/29, pp. 71-72). The legal problems to which Professor Higgins drew the Court's attention at the beginning of our pleadings (cf. CR 93/21, pp. 44 ff.) are therefore far from being resolved; but we are convinced that your Judgment will take care of that.

4. The contrast between what I might call the "amplitude" of Libya's claims - but that is an understatement - and its litigation strategy is very striking.

The Libyan Party has never, in point of fact, tried to establish positively the soundness of its claims, which are as unexpected as they are enormous. Rather, it has spent its time criticizing the legal arguments advanced by Chad. But piling up arguments that are exclusively negative does not seem to us to be of great help to the Court in settling the dispute. "Less plus less" has never added up to a positive solution; the negative strategy adopted by Libya may perhaps have raised a doubt concerning this or that element of our thesis, but it does not seem to us to be capable of establishing the soundness of the Libyan party's submissions, any more, come to that, than of calling into question Chad's case as a whole.

Such "harassment tactics" have another consequence: they oblige our adversaries to concentrate on points of detail. But, as Professor Crawford (CR 93/29, p. 32) pointed out to Mr. Sohier (CR 93/27, p. 66), it is not the good Lord but the devil that resides in the details.

013 5. We on this side of the bar believe that the purpose of judicial debate is to enable each party to justify its conclusions by legal arguments which ought to show an overall consistency.

That is why, in this last round of oral pleadings, we have endeavoured to demonstrate that our whole thesis ultimately converged upon the Treaty of 10 August 1955. That does not mean that the same result cannot be reached by other lines of argument; and we maintain, in particular, that it is possible to reason on grounds of territorial title rather than of the boundary line itself, and that the colonial *effectivités* followed by independent Chad's peaceful exercise of its territorial sovereignty justify the submissions Chad has put before you. We are likewise convinced that the agreements concluded between the colonial powers at the very end of the 19th century and at the beginning of the present one in themselves established the boundary whose course the Republic of Chad has defined. Likewise again, we think that this boundary is binding upon Libya by reason of its acquiescence thereto.

Each of these lines of argument has its merits and could be sufficient in itself. But the characteristic of the 1955 Franco-Libyan Treaty is that it is, as it were, the point of convergence; I would almost say that it "transcends" them all:

- it establishes beyond any doubt that the two Parties have a territorial title on either side of the frontier it determines. In this connection, I should like to open a brief parenthesis: on 6 July one of the eminent counsel for Libya mentioned three times "the extraordinary outburst" (CR 93/27, pp. 56-57) of a no less eminent

014 counsel for Chad, who had asked how the Libyan Party reconciled its theory according to which France had never acquired territorial title with its recognition of the validity of the 1955 Treaty (CR 93/24,

015 p. 42); asking this question was certainly not an "extraordinary

outburst", and I simply note in passing that the very existence of the Treaty shows that the two parties mutually recognized each other's territorial title which Libya today denies - retroactively - to France; the Treaty reaffirms the two States' territorial title;

- likewise, by *defining* the earlier delimitation agreements as being in force between the parties, the 1955 Treaty removed any doubt there might have been as to the opposability of those instruments to Italy and later to Libya;
- likewise again, by expressly *recognizing* in the Treaty that the frontiers between them resulted from those agreements, the two parties made superfluous any discussion concerning the reality and scope of previous acquiescences.

Of course this does not mean, I repeat, that the rights of the Republic of Chad do not also result from the territorial title to which it succeeded from France and also from the Agreements of 1899, 1902 and 1919 or from the previous acquiescences by Italy or Libya. It merely means that, since Libya and France agreed in 1955 upon the course of a boundary, there is no point in looking any further.

6. It is therefore particularly important, at this ultimate stage of the oral pleadings, to sum up what we have to say about the Treaty of 10 August 1955 in the light of the arguments developed by counsel for Libya during the oral pleadings.

First, Professor Jean-Pierre Cot will establish that the Treaty meets the basic objective of stability that any frontier settlement must meet, and that it must be interpreted in the light of that principle.

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Professor Higgins will then endeavour to show that the discussion on the constitutive or declaratory character of the Treaty, to which our adversaries have devoted so much time, is a dead-end.

Lastly, with your permission, Mr. President, Mr. Jean-Pierre Cot will return to the bar to address himself more specifically to the concept of international instruments in force before going on to the question of good faith.

Mr. President, Members of the Court, you have shown a great deal of patience and kindness by consenting to hear me on several occasions. For this I thank you most warmly and I ask you, Mr. President, to call upon Professor Cot.

Le PRESIDENT : Je vous remercie, Monsieur Pellet. Monsieur Cot.

Mr. COT: As Professor Pellet has just told you, we are reverting to the interpretation of the Treaty of 10 August 1955. That is what we started with in the first round. With that, logically, we end the second round because we believe that to apply the Treaty of 10 August 1955 suffices to resolve the dispute brought before you: to apply the Treaty of 10 August 1955 and, in particular, Article 3 of the Treaty and its Annex 1, which we have taken the liberty of redistributing to you for today's hearing folder.

I note that the Libyan Party actually projected for you and distributed to you several preliminary drafts and alternative texts envisaged at one point or another in the negotiations (cf. Judges' folders Nos. 12, 13, 187 and 96). And this as late as on the last day of Libya's oral pleadings by Professor Bowett . But I also note that it forgot to distribute to you the decisive text, that is to say Annex I of the Treaty! It did, of course, include the Annex in its written pleadings, but you will find no trace of it in the *Green Book*.

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Allow me to recall that under Article 9 of the Treaty of 10 August 1955 "the Conventions and Annexes appended to the present Treaty ... form an integral part of it". I add that Annex I, in

consigning to the same instrument Article 3 whose terms it reiterates and the lists of reference treaties, affirms by so doing the unity of the *instrumentum*, which is an additional indication of the Parties' will to envisage this set of norms as an indissociable whole.

For the purpose of interpreting the Treaty - as I recalled during the first round - we have at our disposal a "discourse on method": the Vienna Convention, which codifies your case-law. I invited Sir Ian Sinclair, who is well acquainted with those provisions, and for good reason, to apply them to the interpretation of the text we are concerned with. But he chose not to do so, seeking, on the contrary, with talent and skill, to mix up different methods of interpretation, to omit essential instruments and to recompose in his somewhat baroque fashion a treaty cobbled together out of odds and ends.

There is in this approach undoubtedly something of Anglo-Saxon pragmatism, which I salute - a defiance in the face of an excessively square Cartesianism. There is in it above all what one might call a wish to "fudge the issue" so as to avoid the conclusions to which the interpretation of the Treaty of 10 August 1955 according to the banal rules of the art inevitably leads. I am therefore faced with the difficult choice between either repeating myself or following Sir Ian in his excursions and peregrinations at the risk of losing sight of the essential point. Fortunately, Mr. Maghur suggests a sensible solution that can get us out of the difficulty:

> "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 ... 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 an admission." (CR 93/27, p. 17.)

I will, accordingly, avail myself of the freedom which Libya's Agent proposes to us, without, I hasten to reassure you, abusing it!

I shall refer first to the cardinal principle of the stability and finality of the border dispute settlement. In connection with this principle, I had quoted - almost *pour mémoire*, I should say - the Advisory Opinion of the Permanent Court of International Justice in the *Interpretation of the Treaty of Lausanne* case and the Judgment of the International Court of Justice in the *Temple of Preah Vihear* case. Sir Ian Sinclair surprised me by his insistence on minimizing the scope of the *dicta* I had cited, as though they concerned only special cases or were *obiter dicta* without any consequence (CR 93/27, pp. 29-30).

I must say that I completely disagree with Sir Ian. It was not the local circumstances that in both these cases led the Court to recognize the stability and finality of the boundary settlement, but on the contrary, it was the search for the stability and finality of the boundary settlement that led the Permanent Court to stipulate a complete boundary line in the *Treaty of Lausanne* case and the International Court to recognize the existence of an *estoppel* and to dismiss the argument of error in the *Temple of Preah Vihear* case.

It is indeed the cardinal principle of stability of frontiers that governed the settlement of the cases at issue, and not the other way round. Moreover, we are not dealing with a few isolated cases.

I shall not bore the Court by recapitulating all the many cases relating to this principle. The Permanent Court recalled that the

019 boundary must be delimited completely and uninterruptedly in the *Jaworzina* case (*P.C.I.J., Series B, No. 8*, p. 32). International tribunals emphasized the stability requirement in the *Grisbadarna* case (*RSA*, Vol. XI, p. 161), the *Frontier Land* case

(*I.C.J. Reports 1959*, pp. 221-222), the *Beagle Channel* case (in which the Tribunal referred explicitly to the Court's *dictum* in the *Temple of Preah Vihear* case: 52 *ILR*, p. 131) and the *Aegean Sea* case, in which your Court stated in connection with delimitation that:

> "Whether it is a land frontier or a boundary line in the continental shelf that is in question, the process is essentially the same, and inevitably involves the same element of stability and permanence and is subject to the rule excluding boundary agreements from fundamental change of circumstances." (*I.C.J. Reports 1978*, p. 36.)

The doctrine is just as voluminous, and I shall confine myself to agreeing with the authors of the 9th edition of Oppenheim that a tribunal dealing with a boundary dispute - as we are now - "will have it in mind that 'one of the primary objects' of boundary settlement 'is to achieve stablity and finality' ..." (pp. 667-668).

I shall not return to the demonstration conducted yesterday by my colleague Professor Franck concerning the stability of African frontiers and the application of the *uti possidetis* principle within the Organization of African Unity. The principle of the stability and finality of frontiers is a cardinal principle which is very widely applicable.

We are not asserting that this principle is absolutely applicable, for the Parties can set it aside or can agree to carry out only a partial delimitation of the boundary. But what we maintain is that if this principle has any meaning, if it is not just an empty formula, a rhetorical phrase, it should serve as a presumption and should clarify the interpretation of the provisions of a treaty or of an article of a treaty concerning an international frontier. As the Permanent Court stated in the *Treaty of Lausanne* case, and I beg your pardon for repeating this quotation in one pleading after another:

> "It is ... natural that any article designed to fix a frontier should, if possible, be so interpreted that the result of the application of its provisions in their entirety should be the establishment of a precise, complete and definitive frontier." (*P.C.I.J., Series B, No. 12*, p. 20.)

• 021 I can understand Sir Ian's embarrassment and his unwillingness to accept this principle and the legal presumption which follows from it, since he has no possibility of proving the contrary intention of the parties. We demonstrated this during the first round and I shall return to the point in a moment. Neither the text, the context nor the subsequent practice establishes any such contrary intention, any more than do the *travaux préparatoires*.

To set this presumption aside would be detrimental to the stability of boundary settlements and take us beyond the scope of the present case. I have no desire to bestride the horses of the apocalypse of which we have spoken so much, but if you follow the reasoning of our opponents, you will be inviting a general, critical review of the territorial clauses of all treaties. I am therefore sure that you will maintain this presumption of the stability and finality of the boundary settlement. Let us now see whether the Libyan Party has succeeded in refuting this presumption by means of new and decisive evidence.

First of all, let us take the object and purpose of the Treaty. My opponent spoke ironically about my analysis of the preamble of the Treaty: what I stressed was that the Treaty intended to facilitate the settlement of *all* the questions that arose for the two countries from their geographic situation. As we know, a preamble is only a part of a whole, and it is rather more than a "nicety", since it declares the will of the parties to contribute to the settlement of all these problems.

This will is also manifested by Article 3 of the Treaty and Annex I thereto, which define the boundaries between the two High Contracting

• 022 Parties and provide for a demarcation procedure, a delimitation of the

whole of the frontier between the two parties or, more precisely - and Sir Ian is right on that point - of *all the frontiers* between the two parties.

Why this plural? I would be inclined to say that it is because in good French one speaks of *"les frontières de la France"* or *"les frontières de l'Ecosse"*, but it is also because the legal status of the French possessions in Africa varied greatly at the time - protectorates, departments, overseas territories. But in any case, this grammatical point, this plural, in no way affects the requirement of the stability and finality of the boundary settlement between the contracting parties.

With regard to the hypothesis of two segments of the frontier, one delimited and the other "to be delimited", and the correlative hypothesis of an implicit mandate for negotiation on the segments of the frontier which are not delimited, I still do not see any shadow of proof in its favour, either in the text, in the context or in the *travaux préparatoires*. Sir Ian Sinclair has certainly refined his hypothesis by distinguishing between four instead of two segments pertaining to different conventional instruments. But he is battering at an open door, if I may say so, since he has in no way established the will of the parties to deal specifically or differently with any segments of the frontier according to the instrument of reference in question. I can thus refer the Court to my pleading on this subject during the first round (CR 93/22, pp. 11-14). I have nothing to add to this.

The parties not only agreed to delimit all their frontiers, but they provided for a demarcation procedure to eliminate all difficulties on the ground. The French and Libyan diplomats were well aware of the distinction between delimitation and demarcation, and we have constantly been reminded that it was the representatives of France who introduced

that distinction during debates in the United Nations (CR 93/27, p. 35). And in this connection, Sir Ian Sinclair even paid a tribute to the French diplomatic service!

He has never contested that demarcation presupposes delimitation, a frontier which has already been delimited, and this has confronted him with a difficulty, that of explaining the establishment of a procedure of demarcation, and not a procedure of delimitation, of the frontiers between the two parties. Our opponent tried to evade this difficulty by interpreting the paragraphs relating to the demarcation procedure, those of Annex I, as applying only to the segment between Ghât and Toummo and by pointing out that these paragraphs concerning demarcation follow the paragraph in which the two parties establish the three points serving as a basis for the delimitation of the frontier in that segment. (CR 93/27, pp. 47-48). He is thus trying to break up the effect of Annex I and to confine the demarcation procedure to one specific segment.

This interpretation in no way results from the text of Annex I, which refers to "demarcating the boundary, *wherever* that work has not yet been done and where either Government may consider it to be necessary".

I would add that the interpretation in question, designed to break up the effect of Annex I, is further refuted by the subsequent conduct of the parties, as may be seen from the Inoharten incident (MC, Anns. 276 and 278). Inoharten is north of Ghât, in the Edjelé region. Following a frontier incident, Prime Minister Ben Halim requested in March 1956 that the demarcation procedure provided for in Annex I to the 1955 Treaty be applied. The French Government consented, pointing out that the Treaty of 1955 had not yet entered into force and that there could be no formal application of the procedure provided for in it, but neither the

French Government nor the Libyan Government sought to limit the demarcation procedure to the segment between Ghât and Toummo, which did not comprise the Inoharten region.

And then, we are asked, why did the French Government not call for demarcation along the whole length of the frontier, and particularly the frontier between Toummo and Sudan, if it believed that this frontier had already been delimited by the 1955 Treaty? Why, because there was no need to delimit this frontier! Demarcation is a difficult and expensive operation, especially under the conditions of the time, in 1955, when the equipment we have now was not available, and especially in such an inhospitable desert region as the Tibesti can be. In this sector, and through the application of the instruments of reference, delimitation can be precisely established by referring to specific astronomic co-ordinates; in 1955 the boundary line did not pass through any populated centres, cultivated land or military installations. The caravans of necessity travelled from one watering place to another, every one of these points being situated on one or the other side of the frontier, and this sufficed for any controls. At that time, fortunately, no one had the preposterous idea of setting up a frontier barrier with a customs officer in a peaked hat in the middle of the desert. Demarcation had no meaning in this sector.

I therefore note that on this point the Libyan Party has adduced no proof that in 1955 the parties intended to accord different treatment to any particular segment of the frontier. The text of Article 3 does not distinguish between the frontiers concerned, and the text of Annex I lists all the applicable conventions without making any distinction between them. The demarcation procedure is applicable, as necessary and at the request of one or the other party, to any segment whatsoever of the frontier or frontiers.

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Mr. President, I now come to the context.

Our opponents have not said much about the context, and I shall therefore take the liberty of referring to the "Maghur doctrine". Articles 4 and 5 refer back to Article 3 for the definition of the frontier, and thereby imply its existence. The same applies to the Convention of Good Neighbourliness and also to the special convention which, as we know, explicitly situates the Muri Idie region in Chadian territory and thus confirms the appurtenance of the Aozou strip to Chad. Finally, the hypothesis of an imaginary defence zone has not been resuscitated in our opponents' reply (cf. CR 93/22, pp. 14-17).

Sir Ian Sinclair reproaches me for being reticent about the subsequent practice of the parties (CR 93/17, pp. 48-49). What I have in mind is the subsequent practice as it is defined in Article 31 of the Vienna Convention, that is to say, the practice "which establishes the agreement of the parties regarding [the] interpretation [of the treaty]". I have singled out two texts in this connection. Contrary to what Sir Ian says, the Agreement of 26 December 1956 does not completely refute our assertion that the Treaty of 10 August 1955 was intended to define the boundary line throughout its entire length. And I ask you, why was the 1956 Agreement concluded? Was it because there was no delimited frontier between Ghadamès and Ghât, the sector in question? Not at all! It was because the frontier as delimited by the Agreement of 12 September 1919 and referred to in the 1955 Treaty did not suit France, which wished, by an authentic interpretation, to round off its territory in the sector in such a way as to comprise the whole of the oil deposit recently discovered at Edjelé.

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In this connection, our opponents not unreasonably raise the question of France's blackmail to the ratification of the Treaty of 10 August 1955 (CR 93/15, p. 61). By accepting the Isorni amendment in

the French National Assembly - and I would remind you that Maître Isorni was to be one of the champions of French Algeria - the French Government in fact made the fate of the Treaty of 10 August 1955 dependent on the prior adoption of the authentic interpretation of the boundary line in the Edjelé sector. We have given an account of all this in our Memorial and we have annexed to it the relevant parliamentary and diplomatic documentation.

There is thus no possible way in which the 1956 Agreement can be regarded as an interpretation of the Treaty within the meaning alleged by our opponents, that is to say, a recognition of the absence of delimitation: we know that this is a question of authentic interpretation, or rectification.

May I be permitted to make a slight digression at this point. Sir Ian cited and commented on two letters of 1960, one from the Minister for Foreign Affairs, Mr. Maurice Couve de Murville, and the other from the French Ambassador in Tripoli, Mr. Pierre Sébilleau (CR 93/27, pp. 32-33).

These letters, written five years after the 1955 Treaty, do not constitute an agreement between the parties on the interpretation of the treaty. Moreover, they do not say what Sir Ian would like them to say.

The letters refer mainly to the Ghât-Toummo sector, that is to say, the sector which was the subject of a specific delimitation by reference to three geographic points in the Treaty of 1955. They do not say at any point that the delimitation is non-existent, but they say that the delimitation is unsatisfactory and should be completed - the Ambassador refers to a general demarcation - so that there is no question of a delimitation *de novo*. In my opinion, all this does not deserve so much of Sir Ian's attention.

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I should now like to draw attention to some negligence on the part of our opponents. Sir Ian cited the letter from Ambassador Sébilleau, but the Libyan Reply reproduces only part of this letter, up to page 8 (letter of 13 June 1960, RL, Exhibit 6-10, pp. 1-8; cf., also, the English translation of this Exhibit, which indicates that the document transmitted to the Registry is incomplete). The rest is missing, but not for everyone, since Sir Ian was able to complete the sentence begun on that page. This minor slip, which I in no way ascribe to our friend Sir Ian Sinclair, knowing his scrupulous probity, would not be worthy of our attention if there had not been some repetition.

This is the fourth time that the Libyan Party is submitting an interesting document, but providing the Registry with an incomplete version, in violation of Article 50 of your Rules.

The first time was in connection with Exhibit 73 of the Libyan Memorial, the Libyan minutes of the final negotiations.

The second time, it was in connection with Exhibit 74 of the Libyan Memorial, the Report of Colonel Latyoush's mission of 4 August 1955. I shall return to this in the second part of my pleading, and we have distributed the document in today's folders, to facilitate its consultation.

The third time, it was in connection with that curious document (RL, Exhibit 6-4) whose origin I had questioned. Mr. Maghur reassured us completely on the respectable source of this document (CR 93/27, p. 15), but added that:

> "what these 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".

I tried to check in the Exhibit annexed to the Libyan Reply the accuracy of this assertion, which did not correspond to what I remembered, but found nothing of the kind.

I then realized that once again the Libyan Party had only provided *extracts* from this curious document and had not submitted the whole text to the Registry.

Mr. President, four successive violations of Article 50 of the Rules of Court is quite a lot! We are not trying to create a procedural incident, but you will agree that all this creates some disorder.

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After the 1956 Agreement, the second text which we think involves the subsequent practice of the parties is the Convention of Good Neighbourliness of 2 March 1966. Last Thursday, Professor Cahier analysed this Convention (CR 93/28, pp. 59-61), which reproduces the essential provisions of the Good Neighbourliness Convention of 1955. That is why we thought it unnecessary in our first statement to repeat in connection with the 1966 Convention the remarks we had made concerning the Convention annexed to the Treaty of 10 August 1955. I would point out, to complete the picture, that Articles 1, 2, 6 and 8 of the 1966 Convention refer explicitly to the frontier between the two countries, or to separate borderlands, one Chadian and the other Libyan, on either side of the frontier, something that hardly corresponds to Professor Cahier's analysis of one vast borderland which he showed us on the big screen the other day. I should like to add two remarks in this connection.

1. Two good-neighbourliness conventions, one of 1955 and the other of 1966, clearly establish a boundary-zone governed by common rules on either side of a frontier defined by Article 3 of the Treaty and Annex I thereto. But the establishment of such a borderland does not automatically abolish the linear frontier. I would remind the Court of the award handed down by the Arbitral Tribunal in the *Lac Lanoux* case: the Spanish Government postulated the existence of "a zone organized in

accordance with a special customary law incorporated in international law by the delimitation treaties under which it has been recognized" (XII *UNRIAA*, p. 307) *[translation by the Registry]*.

030 In this case, the Tribunal summed up as follows:

> "It is impossible to extend the régime of *compascuités* beyond the limits assigned to them by treaties, or to derive from them a generalized concept of 'community' which would have any legal content whatsoever. With regard to recourse to the concept of 'borderlands', it cannot through the use of doctrinal terminology add any obligation to those imposed by positive law." *[Translation by the Registry.]*

And Mr. Cahier who is an eminent representative of the orthodox view, as he reminded us the other day, is here advancing a concept, that of frontier zone, which has no more legal substance today than in 1957.

2. My second remark relates to the way in which Professor Cahier has described the frontier zone established by Article 2 of the Treaty of Good Neighbourliness of 1966. He pointed out, you will perhaps remember, that there were 750 kilometres between Faya in the south and the northern point of the zone that was defined, or, as he said, more than the distance between Nice and Paris! I compare this remark with the repeated assertions of Professor Bowett about the impossibility for a contingent of a few hundred men to ensure the effective presence of a State in such a vast space. If I have understood them well, my colleagues have not had our opportunity of visiting the superb regions of which we are speaking. They would have flown for hours at low altitude over the plateaux without seeing a living soul, perhaps a shepherd and a few scrawny beasts here or there. They would have seen in the few palmgroves, a population mass but of small numbers, for the resources derived from stock-breeding do not allow large numbers of people to live there.

The population density in the B.E.T. is 0.2 inhabitants per square kilometre. In the Aozou strip, what can the population be estimated at?

031 Some 5,000 inhabitants for 120,000 square kilometres, one inhabitant per

20 square kilometres. If I remember my geography, in a country like the one where we are today, the proportion is rather different: well over 200 inhabitants per square kilometre. I stress this point, Mr. President, because the exercise of acts of sovereignty there is necessarily different, sporadic. Order is maintained there by patrols of what used to be called *méharis*; the public services work on an *ad hoc* basis rather than by presence in a fixed post. The very concept of frontier zone is quite different from what we know in Europe. The journey from Gatroum to Faya is nothing like the journey from Paris to Nice, and the frontier zone referred to in the Treaties of Good Neighbourliness of 1955 and 1966 has little to do with the free zones of Upper Savoy and the district of Gex! Nevertheless it is a frontier zone straddling a frontier line defined by the relevant treaties.

Mr. President, Members of the Court, the application of the principal methods of interpretation therefore amply confirms, in our view, the presumption raised by the principle of stability and finality of frontier lines. Keeping to the text, placed in its context, illuminated by the object and purpose of the Treaty, and regard being had to the subsequent practice of the parties, Article 3 and Annex I of the Treaty of 10 August 1955 do have the object and effect of determining the whole length of the frontiers between the two Parties, notably from Toummo to the Sudanese frontier.

But here Sir Ian Sinclair brings out his secret weapon. All this does not work, he says, since Article 3 is declaratory and not constitutive.

032 In the first round of the pleadings I had the opportunity to explain why we consider this thesis ill-founded, why we think the problem is a false problem invented by our opponents to get out of a difficult

situation. I may add that if we were to follow our honourable opponents on this ground we should then be in complete opposition to all the provisions concerning the frontiers and the frontier régime contained in the Treaties of 1955 and 1966 which I have just discussed. But as the Libyan thesis attacks the heart of the Treaty and the solution it adopts in frontier matters, we shall now subject it to re-examination, a re-examination which Professor Higgins will present.

Monsieur le Président, comme nous nous arrêterons un peu tôt ce matin, vous jugerez peut-être commode d'interrompre les plaidoiries à ce moment-là, même si c'est un peu tôt, et de faire une pause avant d'appeler Mme Higgins.

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Le PRESIDENT : Oui, si cela entre dans le programme général, Monsieur Cot, merci beaucoup, et nous allons maintenant suspendre l'audience.

The Court adjourned from 10.50 to 11.15 a.m.

Le PRESIDENT : Je donne la parole à Mme Higgins.

Mme HIGGINS : Monsieur le Président, Messieurs de la Cour, la Libye est confrontée à un traité qu'elle a signé et ratifié et qui règle la question litigieuse, qui est de savoir où est la frontière. Afin d'éluder cette réalité déplaisante, la Libye se lance dans les promesses les plus hardies en fait de science-fiction, à la grande joie du spectateur. Ces tentatives d'exploits de science-fiction revêtent la forme d'une véritable série de propositions juridiques qui sont tout à fait de l'ordre de l'imaginaire : l'avis relatif au *Sahara occidental* a décidé que la France n'aurait jamais pu avoir de titre; il faut choisir entre la *res nullius* et la conquête; le Pacte de la Société des Nations

interdisait déjà de fonder un titre colonial sur l'occupation militaire; une doctrine de la non-succession à l'acquiescement permet d'écarter la notion juridique d'opposabilité. On peut encore citer l'introduction des théories déclaratoire et constitutive de la reconnaissance dans les traités relatifs aux frontières.

2. La Libye nous engage à dévaler à sa suite toutes ces voies d'évasion et à l'aider à se dérober au bras de la loi en répondant à toutes les questions qu'elle a choisies. Dans l'ensemble, ces questions nous paraissent dépourvues de pertinence par rapport au point litigieux en cause et nous ne sommes pas enclins à aider la Libye quand elle tente d'échapper au traité de 1955. Pourtant, plaider en justice, c'est plaider en justice et nous nous sommes efforcés de faire connaître notre point de vue à la Libye et à la Cour.

3. Quelle est la thèse de la Libye concernant l'article 3 et les théories - constitutive et déclaratoire - de la reconnaissance ? Je vais essayer, sans artifice, de répéter comment nous comprenons ce que dit la Libye. Je rappellerai, une fois de plus, les termes de l'article 3 du traité de 1955 :

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

034 Vient ensuite la mention de l'annexe I.

4. Les Parties ont adopté des points de vue différents au sujet de la signification des divers éléments de l'article 3, y compris les expressions "celles qui résultent", "actes internationaux en vigueur", et "sont définis". La Libye considère que notre interprétation du mot "reconnaissent" présente de l'importance par elle-même et parce qu'elle éclaire notre interprétation de ces autres termes.

Selon la Libye, comme elle l'indique clairement au paragraphe 5.38 de sa réplique :

> "L'emploi du mot 'reconnaissent' montre que cette disposition devait être *déclaratoire* de frontières existantes et non *constitutive* de frontières là où il n'en avait pas existé précédemment."

6. Qu'est-ce-que la Libye tire de cet argument ? Eh bien, la Libye dit que "reconnaître" une frontière indique le choix d'une conception déclaratoire (tandis que, probablement, "accepter" indiquerait le choix d'une conception constitutive). Autrement dit le traité de 1955 n'a effectué aucune délimitation de frontières, mais simplement reconnu des frontières *qui existaient déjà* et étaient opposables à la Libye, en vertu d'instruments internationaux qui s'appliquaient en 1951.

7. On est frappé par l'ampleur que la Libye donne à son rejet du traité de 1955 comme règlement frontalier. La Libye dit dans son contre-mémoire, au paragraphe 3.04 :

> "Comme son libellé le dit clairement, l'article 3 stipulait que la Libye et la France reconnaissaient *quelques aspects de certaines frontières* ... l'article 3 *ne fixait pas de frontières*, mais il reconnaissait les frontières qui avaient déjà été fixées en vertu d'accords internationaux en vigueur en 1951." (Les italiques sont de nous.)

Certaines frontières, déclare la Libye, avaient peut-être bien été déjà fixées avant 1951 et la Libye indique lesquelles dans sa réplique (par. 5.22). Mais ces frontières n'englobaient pas la frontière à l'est de Toummo, et celle-ci ne pouvait pas davantage être considérée comme opposable à la Libye, car en 1951 l'accord de 1902 n'était pas "en vigueur". La Libye présente cela d'une manière un peu curieuse et soutient que "ni l'accord franco-italien de 1900, ni celui de 1902 *n'établissent de frontière*" (contre-mémoire de la Libye, par. 3.11; les italiques sont de nous). Le Tchad ne demande pas à l'accord de 1902

035

"d'établir une frontière" : cela a été accompli par les conventions de 1899 et 1919. Cet accord fait toutefois partie de l'histoire de l'opposabilité d'une frontière existante à l'Italie, puis à la Libye.

8. Bref, l'emploi du mot "reconnaissent" permet d'invoquer la doctrine de l'effet déclaratoire de la reconnaissance et de limiter le renvoi aux seules frontières qui existaient déja en 1951.

9. Monsieur le Président, Messieurs de la Cour, le Tchad a indiqué clairement dans son contre-mémoire (par. 11.28) qu'il envisage ces deux conceptions possibles de la reconnaissance - déclaratoire par opposition à constitutive - avec indifférence. Même si nous devions nous engager sur le terrain de la Libye et admettre qu'il faut faire un choix entre la théorie déclaratoire et la théorie constitutive, cela, selon nous, ne change rien à l'affaire. Si le mot "reconnaissent" produit un effet déclaratoire, alors la ligne frontière que demande la Libye existait bien déjà en 1951 par référence à ces instruments de base. Même si on adopte le point de vue déclaratoire, le fait que l'accord de 1902 n'était pas "en vigueur" en 1951 ne fournit aucune échappatoire.

10. L'inclusion de la formule "en vigueur" avait pour but *d'exclure* le traité de 1935. Non seulement ce traité ne devait pas figurer à l'annexe, mais les termes dont il s'agit devaient souligner qu'il était mis fin désormais à l'appel constant à un instrument dépourvu de portée juridique. Quant au fait que l'accord de 1902 figure sur la liste alors qu'il n'était pas, objectivement, "en vigueur" en 1951, les parties en 1955 ont simplement décidé de considérer ledit accord comme relevant de la catégorie des instruments "en vigueur" à cette date. La mention du traité de 1902 sur la liste était un acte de volonté clair et délibéré des parties.

11. Les parties ne cherchaient pas à s'engager dans leur propre analyse juridique. L'expression "en vigueur" a été employée à des fins descriptives et non à titre de condition préalable de l'effet donné aux autres clauses du traité. Cette formule n'était certes *pas*, comme l'a soutenu la Libye, une "condition inéluctable" de l'effet donné à l'article 3 (contre-mémoire de la Libye, par. 4.04). Même si le *fait* d'être "en vigueur" en 1902 constituait une erreur (à la différence de l'inscription sur la liste par les parties), où cela nous mène t-il ? Dans l'affaire du *Temple de Préah Vihéar*, dans le fameux passage où la Cour affirme le principe de la stabilité des frontières et des solutions définitives, elle déclare :

> "Cela est impossible si le tracé ainsi établi peut être remis en question à tout moment, sur la base d'une procédure constamment ouverte, et si la rectification peut en être demandée chaque fois que l'on découvre une inexactitude par rapport à une disposition du traité de base. Pareille procédure pourrait se poursuivre indéfiniment et l'on n'atteindrait jamais une solution définitive aussi longtemps qu'il resterait possible de découvrir des erreurs." (*C.I.J. Recueil 1962*, p. 34.)

12. Nous pouvons penser que, si les parties se résolvent clairement à délimiter une frontière, comme c'était le cas en 1955, l'erreur devrait pour autant jouer un rôle limité quand il s'agit de remettre en question cette intention. De plus, l'emploi du terme "reconnaissent" souligne cette considération et sert aussi de garantie contre le recours au moyen tiré de l'erreur. De l'avis du Tchad, il doit y avoir là un principe d'interprétation des traités frontaliers qui entrent en vigueur, aussi bien que des traités frontaliers depuis longtemps établis.

13. D'ailleurs, si le traité de 1955 doit être considéré comme "constitutif", cela aussi convient au Tchad. Si le traité de 1955 crée des obligations *de novo* et établit des frontières là où il n'y en avait

pas auparavant, et même si notre frontière n'existait pas déjà (elle existait), cela aussi donne une frontière, fût-elle *de novo*, et la Libye y a consenti.

14. Dans une affaire où l'on entend donner un effet constitutif à cette reconnaissance, dit la Libye, mieux vaut consacrer à cela quelques observations. C'est ce qu'a fait sir Ian Sinclair. Pour l'essentiel, on traite de l'éventualité constitutive, que la Libye présente comme une solution impensable, en criant au mauvais coup. Sans demander à la Cour d'écarter le traité de 1955, la Libye la presse plutôt de ne pas l'interpréter comme ayant un "effet constitutif", car cela ne tiendrait pas compte de la situation désavantagée et de l'ignorance dans lesquelles la Libye se trouvait quand elle l'a conclu. L'argument de la "pauvre Libye" n'a pas pour but de priver le traité de validité, mais de l'interpréter afin qu'il dise ce qu'il ne dit pas. Sur le fond de cette demande, M. Cot vous en dira davantage.

15. Ainsi le Tchad n'a-t-il perçu aucune nécessité spéciale d'effectuer les choix que la Libye veut que nous fassions.

16. Toutefois, de toute manière, Monsieur le Président, Messieurs de la Cour, le Tchad a une autre raison de ne pas s'intéresser à faire de tels choix pour la Libye. La voici. Nous croyons que, non seulement du point de vue des *conséquences*, mais *en droit*, il n'y a *tout simplement pas lieu* de choisir entre la théorie déclaratoire et la théorie constitutive.

17. La reconnaissance a des effets divers en droit international, et elle peut elle-même varier beaucoup selon sa nature et porter sur des objets différents. L'élément commun, c'est que la reconnaissance suppose qu'un Etat constate ou déclare publiquement qu'il accepte un fait ou une situation, quels qu'ils soient, survenant dans ses relations avec un autre Etat. Eric Suy en a donné la définition suivante :

> "La reconnaissance est une manifestation de volonté unilatérale par laquelle un sujet de droit constate une situation donnée et exprime la volonté de la considérer comme étant conforme au droit." (*Les actes juridiques unilatéraux en droit international public*, 1967, p. 190.)

Il y a des possibilités sans fin de faits susceptibles de donner lieu à une reconnaissance. Les situations sont un peu plus faciles à grouper : de nouveaux Etats naissent. Des gouvernements changent d'une manière violente ou inconstitutionnelle. Des hostilités éclatent entre des nations. Des guerres civiles font rage à l'intérieur d'Etats. La souveraineté territoriale doit être attribuée. Et des frontières font l'objet d'un règlement définitif.

038

18. La plupart de ces catégories de reconnaissance se présentent comme des actes unilatéraux. Un Etat décide tout simplement s'il entend reconnaître un autre Etat, ou un gouvernement, ou une situation de belligérance. Quand la non-reconnaissance est utilisée à des fins politiques, la décision peut être multilatérale, et être adoptée dans le cadre de l'ONU ou d'autres groupements non régionaux. Parfois, le procédé approprié pour exprimer une reconnaissance est un traité. Les déterminations de frontières sont très souvent effectuées par traité et la reconnaissance de la frontière dont il s'agit constitue un élément de ce traité ou de cet acte international. L'instrument peut être multilatéral (comme l'acte final d'Helsinki) ou bilatéral (comme dans le traité de 1955 entre la France et la Libye).

19. Demander si une obligation contenue dans un traité est constitutive ou déclaratoire, c'est poser une non-question. Voilà pourquoi, malgré les protestations de la Libye, le Tchad a refusé de répondre à la question pour le traité de 1955. La reconnaissance de faits et situations autres que la naissance de nouveaux Etats n'est ni déclaratoire, ni constitutive. Les clauses d'un traité signifient

simplement ce qu'elles disent, ni plus ni moins, et obligent comme telles. Quand un traité sert d'instrument pour exprimer que l'on est disposé à reconnaître un fait ou une situation, le sens et la portée des termes qu'il contient doivent être déterminés par référence au principe de l'interprétation des traités et non à ceux de la reconnaissance des Etats.

20. M. Cot a déjà parlé à la Cour des principes de l'interprétation des traités qui sont pertinents du point de vue de l'article 3 et de l'annexe I du traité de 1955. Cette question est développée plus en détail dans nos pièces de procédure écrite.

21. L'étude de la doctrine confirme cette analyse. Le point de départ classique de toute discussion sur la reconnaissance et surtout sur le débat relatif à la nature constitutive ou déclaratoire de celle-ci doit être l'ouvrage familier de sir Hersch Lauterpacht sur la reconnaissance et le droit international (*Recognition and International Law*). Je pense que même des juristes de tradition romaniste l'admettront ! Nous pouvons nous remémorer les termes précis dont il s'est servi :

> "Reconnaître une communauté politique comme Etat signifie déclarer qu'elle remplit les conditions que doit réunir l'Etat au regard du droit international... Bien qu'ainsi la reconnaissance soit déclaratoire d'un fait existant, une telle déclaration, faite pour exécuter de façon impartiale une obligation juridique, est constitutive, dans les rapports entre l'Etat qui reconnaît et la communauté ainsi reconnue, des droits et devoirs internationaux liés à la pleine qualité d'Etat." (P. 6.)

22. Le débat entre la théorie déclaratoire et la théorie constitutive n'est pertinent que pour la reconnaissance des Etats. Le "fait" reconnu - la naissance d'un nouvel agent international - constitue la dernière question liminaire à laquelle il faut répondre pour pouvoir qualifier une entité d'Etat souverain. C'est l'existence même d'un sujet

du droit international qui est en cause. Dans une telle perspective, on comprend parfaitement la pertinence de cette question : la reconnaissance par d'autres du caractère d'Etat de celui qui s'en prévaut est-elle elle-même une condition préalable pour qu'il ait ce caractère ?
Dans d'autres domaines, l'opposition entre la conception déclaratoire et la théorie constitutive ne sert aucune fin fonctionnelle. Il n'est pas d'autres circonstances posant le problème de la reconnaissance où apparaisse une question liminaire de ce genre. Ainsi, la reconnaissance d'un gouvernement produit certains effets sur les relations entre les deux Etats, mais elle ne détermine pas si le *gouvernement existe*. La reconnaissance comme belligérant est pertinente du point de vue des droits qui seront accordés à la partie reconnue dans certaines catégories de situation de fait. Selon l'expression de Lauterpacht, elle déclenche "une obligation imposée par les faits en l'occurrence" (*Recognition in International Law*, p. 175). Toutefois, la reconnaissance ne détermine pas ici *l'existence des hostilités*. Il n'y a pas lieu de poser la question ("ma reconnaissance fait-elle *exister* cette entité ?") que tentent d'examiner ceux qui débattent de la théorie déclaratoire et de la théorie constitutive. Demander "si la reconnaissance d'une situation d'hostilités dans le pays X est constitutive ou déclaratoire" n'a pas de sens. Ce n'est pas par coïncidence que cette théorie a tant retenu l'attention dans la perspective de la reconnaissance de la qualité d'Etat. Elle n'a aucune place dans les autres formes de reconnaissance.

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23. Même dans le contexte de la qualité d'Etat, cette notion a suscité plus d'intérêt chez les auteurs que dans la pratique étatique. Les Etats reconnaissent d'autres Etats sans se demander si ce qu'ils font produit un effet constitutif de la naissance du nouvel Etat ou déclaratoire de son existence. Le fait que ceux qui reconnaissent un

nouvel Etat sont peu nombreux - soit que la communauté internationale ait appelé à la non-reconnaissance (comme dans le cas des Bantoustans, ou de l'Etat fédératif turc de Chypre), soit peut-être pour d'autres raisons (comme dans le cas du Biafra) - produira des conséquences indiscutables. Pourtant, peu d'Etats estiment aujourd'hui qu'il soit utile d'exprimer ces conséquences en termes d'une conception constitutive ou déclaratoire de la reconnaissance. Du reste, ce sujet retient de moins en moins l'attention même parmi les auteurs : dans la plupart des ouvrages de base, il fait l'objet d'une brève mention à titre de question d'intérêt historique. Il est frappant de constater que seule une brève mention lui est consacrée dans la neuvième édition d'*Oppenheim*, dont la huitième avait été dirigée, évidemment, par sir Hersch Lauterpacht.

041

24. Quelle place l'opposition entre la théorie constitutive et la théorie déclaratoire pourrait-elle donc occuper dans la reconnaissance de revendications d'un autre Etat ou d'une ligne frontière ? La réponse est qu'il n'y a pas place pour elle. Ici, la reconnaissance ne sert pas à entamer un tel débat théorique plutôt stérile, mais à des fins tout à fait différentes. Reconnaître officiellement un fait ou une situation juridique, c'est se voir interdire par *l'estoppel* de nier ce fait ou cette situation. Un auteur de *common law*, J.F. Williams, a déclaré dans son cours sur la reconnaissance à l'Académie de La Haye en 1933 (un cours donné, semble-t-il, en français) :

> "On donne à la reconnaissance une fonction qui ressemble à celle de 'l'estoppel' (empêchement) en droit anglais : quand un Etat a reconnu une prétention, il est empêché (*estopped*) de la contester." (*RCADI* (1933-II), vol. 44, p. 210.)

Le même point de vue a été adopté par Anzilotti, qui a déclaré :

> "la reconnaissance peut produire en droit international un effet semblable à celui de la prescription en droit privé". (J.F. Williams, p. 210, citant Anzilotti, *Cours de droit international*, Recueil Sirey, Paris, 1929.)

25. Monsieur le Président, Messieurs de la Cour, nous l'avons dit : il ne s'agit pas d'une théorie déclaratoire ou constitutive de la reconnaissance, mais d'interpréter l'article 3 et l'annexe I conformément à leur sens manifeste, dans leur contexte et d'une manière qui ne soit pas absurde ni ne les vide de tout contenu. Or, quand on agit *ainsi*, l'emploi du mot "reconnaissent" garde de l'importance, mais non celle qu'espérait la Libye.

26. La jurisprudence de la Cour et les principaux auteurs attestent amplement que la *reconnaissance* d'une situation entraîne certaines conséquences importantes en droit. L'emploi de ce terme signifie un désir commun de certitude, une intention des parties de reléguer les différends dans le passé, une ferme volonté de préserver la stabilité des frontières et la forclusion pour ce qui est de toute revendication contraire à ce qui a été reconnu.

042

27. Dans les questions territoriales et frontalières, le terme "reconnaissent" n'est employé que quand il existe une *certitude* sur le fait ou la situation en l'occurrence. Ce n'est pas là une expression à laquelle on a recours quand il y a une hésitation quelconque au sujet du régime juridique d'un territoire ou de la délimitation d'une frontière, selon le cas. Ainsi la Cour permanente a-t-elle déclaré dans son avis consultatif en l'affaire de *Jaworzina* (*C.P.J.I. série B n° 8*, p. 32) :

> "Les clauses concernant la reconnaissance immédiate de la souveraineté des Etats intéressés sur les territoires ... supposent l'existence d'un territoire entièrement circonscrit et délimité, notamment vis-à-vis de l'autre Etat."

28. On voit aussi souvent employer le terme "reconnaître" quand les parties ont conclu des accords frontaliers alors qu'il y a eu toute une histoire de difficultés et de conflits, ou d'arrangements conclus à grand peine. L'une des parties propose une contrepartie, un *quid pro quo*, et

il est demandé à l'autre partie de reconnaître la ligne frontière. Le terme employé exprime "un marché conclu". On comprend ce que cela veut dire dans l'accord conclu entre la France et la Turquie le 23 juin 1939 au sujet du règlement de problèmes territoriaux entre la Turquie et la Syrie. La France cédait à la Turquie le Sandjak d'Alexandrette. Corrélativement, l'article 7 stipulait : "la Turquie reconnaît comme constituant la limite définitive de son territoire la ligne" décrite dans ce passage.

29. En 1955, la Libye a obtenu ce qu'elle voulait : le retrait de la France du Fezzan. La Libye nous dit que tel était en réalité le seul objet du traité de 1955, que toute délimitation était réservée pour l'avenir, à d'éventuels arrangements qui seraient conclus tout à fait en dehors du cadre du traité de 1955. Mais la réalité est que l'article 3 était la contrepartie, à savoir la *reconnaissance* de la ligne frontière de 1899. Dans ce traité, à la différence de l'accord franco-turc de 1939, cette disposition est rédigée sous forme d'une obligation qui échoit aux deux parties : cela est certain. Toutefois, elle supposait pour la Libye seulement la renonciation à sa ligne préférée, la ligne de 1935.

043

30. Quiconque reconnaît quelque chose s'engage à ne pas faire valoir de revendication en sens contraire, alors qu'autrement, il est probable que de telles revendications auraient été poursuivies. Dans l'affaire du *Droit de passage* (*C.I.J. Recueil 1960*, p. 39), la Cour a décrit comment :

> "Les Britanniques s'abstinrent de prétendre eux-mêmes à la souveraineté en qualité de successeurs des Mahrattes, mais ils ne reconnurent pas non plus expressément la souveraineté du Portugal... Ainsi la souveraineté du Portugal sur les villages fut-elle reconnue par les Britanniques en fait et par implication; elle le fut ensuite tacitement par l'Inde. En conséquence, les villages visés par la concession mahratte acquirent le caractère d'enclaves portugaises en territoire indien."

31. Dans cette affaire, la reconnaissance a eu cette conséquence parce que des revendications qui auraient pu être formulées ne l'ont pas été. Lorsque la reconnaissance d'une situation est une *obligation conventionnelle expressément assumée*, comme dans le traité de 1955, c'est avec beaucoup plus de force encore que ce principe suppose une obligation de ne pas invoquer des revendications contraires.

32. Cette situation a été exprimée clairement dans l'affaire du *Statut juridique du Groënland oriental* où, se référant à certains accords bilatéraux et multilatéraux, la Cour permanente a déclaré ce qui suit :

> "En acceptant comme obligatoires pour elle ces traités bilatéraux ou plurilatéraux, la Norvège a réaffirmé le fait que tout le Groënland est reconnu par elle comme danois, réaffirmation qui exclut une contestation de la souveraineté danoise sur l'ensemble du Groënland." (*C.P.J.I. série A/B n° 53*, p. 68-69.)

33. Hans Blix a établi une distinction entre la reconnaissance de sujets du droit international et les autres formes de reconnaissance. A propos de ces dernières, par exemple, parlant de la "reconnaissance d'une frontière", il dit que

> "en pareil cas, la reconnaissance suppose une acceptation de la juridiction revendiquée et signifie que son auteur est disposé à la respecter dans la pratique" (*RCADI* (1870-II), vol. 130, p. 599).

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34. Georg Schwarzenberger a souligné en ces termes que, lorsqu'il est employé dans un traité de frontières, le mot "reconnu" a pour but de préserver la stabilité :

> "Quelle que puisse être la faiblesse d'un titre, et sans égard à tout autre critère, la reconnaissance interdit à l'Etat qui a reconnu le titre de contester un jour sa validité." (*AJIL*, 1957, p. 316.)

35. La jurisprudence de la Cour permanente ainsi que de la Cour internationale de Justice, de même que l'opinion unanime des juristes qui font autorité, sont donc autant d'éléments qui montrent que la

reconnaissance d'une frontière suppose l'engagement de mettre fin à tout différend et d'accepter la stabilité des frontières. La reconnaissance reflète également un désir de certitude et a pour conséquence, par voie d'*estoppel*, d'interdire à la partie qui en est l'auteur de défendre des revendications en sens contraire. Et il en est ainsi sans égard à la question de savoir si la reconnaissance est unilatérale ou si elle est exprimée dans un traité.

36. Si, comme dans la présente affaire, cette reconnaissance est exprimée dans un traité, ces conséquences juridiques sont consacrées dans un instrument qui, en soi est sans que la "reconnaissance" doive même être expressément mentionnée, a pour objet un échange d'obligations contraignantes : *pacta sunt servanda*. L'on pourrait dire qu'il s'agit là d'une disposition assez proche d'une clause de stabilisation, laquelle, dans un traité *liant déjà les parties*, a pour effet de mettre en relief l'importance que revêtent pour ces dernières certaines dispositions; et c'est également le cas de l'introduction du concept de reconnaissance dans un traité qui, du fait de sa nature juridique, oblige déjà les parties à accepter les obligations qu'il énonce.

37. Que dire par conséquent de notre traité, du traité de 1955 et en particulier de son article 3 et de son annexe I ? Que savons-nous de l'introduction de ce mot "reconnaissent" ? Son but est-il d'introduire des notions d'effet déclaratoire, comme l'a suggéré sir Ian Sinclair, ou est-il plutôt d'établir exactement ce que ce terme a généralement pour but d'établir dans des traités frontaliers, c'est-à-dire la finalité et les autres conséquences dont j'ai parlé ? Dans ses écritures, il y a lieu de le rappeler à la Cour une fois de plus, la Libye soutient que l'introduction du mot "reconnaissent" "*devait être*" déclaratoire de frontières existantes (réplique de la Libye, par. 5.38).

045

38. Monsieur le Président, Messieurs de la Cour, les éléments de preuve sont passablement clairs sur ce point. Commençons par les documents de négociation des parties. L'on sait qu'à la fin de 1954 déjà, la rumeur était que la Libye avait l'intention d'occuper Aouzou. Cela ressort clairement des éléments de preuve produits aussi bien par la Libye que par le Tchad lors de la procédure écrite (voir mémoire de la Libye, Annexe : archives françaises, p. 166 et mémoire du Tchad, annexe 262). Le projet de procès-verbal du 30 mars 1955 établi par les services administratifs français montre que, si certaines questions à l'examen faisaient encore l'objet de formules différentes échangées entre la France et la Libye, il avait été trouvé au paragraphe IV une formule commune concernant les frontières qui se lisait comme suit :

> "Les deux gouvernements conviennent de s'en tenir, en ce qui concerne les tracés des frontières séparant les territoires français et libyen, aux stipulations générales des textes internationaux en vigueur à la date de la création de l'Etat libyen."

Les parties étaient donc déjà disposées, pour ce qui était de la ligne frontière, à *convenir de s'en tenir aux stipulations générales* des instruments internationaux en vigueur à la date de l'indépendance de la Libye.

39. Au printemps 1955, la Libye manifestait un intérêt visible pour le traité Laval-Mussolini et rassemblait auprès de différentes sources toutes les informations possibles quant aux possibilités qu'il offrait (mémoire du Tchad, annexe 258). C'est là une question dont M. Cot vous parlera plus longuement. En février 1955 s'est produit le fameux "incident d'Aouzou" (mémoire de la Libye, Annexe : archives françaises, p. 167; mémoire du Tchad, annexe 272; réplique du Tchad, annexe 92bis). Les preuves documentaires font ressortir clairement les préoccupations de

046

la France et sa volonté de voir réglés une fois pour toutes les questions de frontière et les problèmes résultant de l'accord Laval-Mussolini non ratifié.

40. Et les documents suivants, ce sont les projets que l'ambassadeur Dejean a amenés avec lui à Tripoli comme base de travail pour les négociations de juillet. L'article 3 du premier de ces projets spécifiait que les deux parties : "*reconnaissent* que les frontières sont celles qui résultent des actes internationaux en vigueur" (réplique de la Libye, pièce 6.6, p. 3). Quant au deuxième projet, il disait que "La délimitation des frontières franco-libyennes *est fixée* par les documents figurant en annexes à la présente lettre." (*Ibid.*, p. 7.)

41. Comme nous le voyons, il y a eu des changements importants, et en particulier l'introduction du mot "reconnaissent" pour remplacer le membre de phrase "conviennent de s'en tenir" et le remplacement du renvoi aux stipulations générales des instruments de référence par des "frontières", qui sont "celles qui résultent" des instruments énumérés dans une annexe. L'intention était, d'une part, de renforcer les obligations et les conséquences juridiques, et, de l'autre, de préciser davantage la situation.

42. Cette précision a effectivement été obtenue dans la version finale lorsque les instruments en question ont été spécifiés dans une seule annexe distincte, l'annexe I. Et, comme la Cour le sait fort bien, le mot "reconnaissent" a été introduit également dans l'échange de lettres figurant à l'annexe I.

43. Cette évolution délibérée vers une plus grande précision, d'une part, et vers l'énoncé d'engagements juridiques aussi fermes que possible en ce qui concerne la frontière, de l'autre, est confirmée par des documents français qui ne font pas partie des documents de négociation.

047 La note d'information venue de Paris en 1955 (mémoire du Tchad, annexe 145) nous dit en effet qu'à ce stade, il était jugé préférable de ne présenter que des propositions rédigées en termes extrêmement généraux.

44. Et il y a eu, en mai, une réunion d'experts français afin de préparer les négociations de juillet. Aucun problème n'a été soulevé quant à notre tronçon de frontière (réplique de la Libye, pièce 6.6). Ce qu'il fallait, c'était obtenir qu'elle soit fermement *reconnue*, et l'importance de ce point est soulignée dans une lettre du 14 mai contenant les instructions du ministre des affaires étrangères. La délimitation satisfaisante des frontières était l'une des "conditions minima" à un accord concernant l'évacuation des troupes françaises du Fezzan. Selon ces instructions, la délégation française "ne manquera pas de demander ... en particulier, *la reconnaissance* par la Libye de l'appartenance de certains points aux territoires français". Cette formule devait se retrouver dans l'annexe à propos de la référence aux trois points, dans laquelle nous trouvons les mots : "il a été reconnu..." Voilà, selon la Libye, le seul engagement contraignant en vertu du traité de 1955. Comme M. Cot l'a fait observer dans ses plaidoiries, il est bien étrange que les mots "il a été reconnu" soient traités d'une façon aussi différente des mots "ils reconnaissent"; cela illustre bien le caractère artificiel de toute cette argumentation.

45. Le traité proposé qui devait être conclu sous peu est expliqué dans une note du 25 juillet établie à l'intention de la présidence par le ministre des affaires étrangères. Le résumé qui y est fait des dispositions relatives aux frontières correspond exactement à la formule issue des propositions de l'ambassadeur Dejean dont je viens de parler. Enfin, un document français passe en revue les progrès accomplis entre

les négociations de janvier 1955 et de juillet-août 1955. Ce document relève à la fois la précision apportée au texte et le fait que celui-ci excluait le traité de 1935 :

048

> "a) Enumération limitative des actes internationaux définissant les frontières, excluant les accords Laval-Mussolini de 1935 (par conséquent renonciation de la Libye à toute prétention sur le Tibesti)."

47. Reconnaissance et précision allaient de pair. Loin d'ouvrir la porte, par l'introduction de concepts académiques liés à une théorie constitutive ou déclaratoire, à la possibilité que le traité se trouve vidé de toute signification, ces termes reflètent l'engagement irrévocable des parties, sur le plan politique comme en droit, de respecter les frontières convenues.

Je remercie très sincèrement la Cour de sa très aimable attention, et je vous saurais gré, Monsieur le Président, de bien vouloir donner la parole à M. Cot.

Le PRESIDENT : Je vous remercie beaucoup, Madame Higgins. Je donne la parole à M. Cot.

Mr. COT: Mr. President, Members of the Court, Professor Higgins has just taken apart the logical trap in which Libya was trying to catch the Court by calling upon it to reply to the "declaratory or constitutive" option, and thus rendering sterile the provisions of Article 3 of the Treaty and of its Annex I. By establishing that the sovereign will of the contracting parties was indeed to render effective the provisions in question, Mrs. Higgins has restored meaning to a treaty which without this would really have been nonsense on this point. We are aware of the penchant of our honourable opponents for this particular form of British humour, but I doubt that Messrs. Dejean and Ben Halim were joking when they negotiated the Treaty of 10 August 1955.

049

Mr. President, it now remains for us to draw the logical conclusions from our analysis as to the concept of treaty in force within the meaning of Article 3 and to respond to Sir Ian Sinclair's final criticism concerning the implementation of the principle of good faith.

First of all, as far as the texts in force are concerned the High Contracting Parties went straight to the point. In Article 3 they specified that the international instruments in force from which the frontier resulted were referred to in Annex I. In sovereign fashion they therefore considered these instruments as being in force. Our opponents have constructed their declaratory theory to make this observation sterile and deprive the clear wording of Article 3 of all meaning, thus transforming an observation: "the following international instruments are in force" into a condition: "the following international instruments are applicable if they are in force".

This reasoning, the signal weakness of which has just been demonstrated by Mrs. Higgins, led our opponents to demonstrate that the instruments of reference were not in force at the critical date, whatever the sovereign parties might have thought.

At first, as you will recall, our opponents claimed that the treaties concluded with Italy were no longer in force as they had not been notified in accordance with Article 44 of the Peace Treaty of 1947. These instruments should therefore irrevocably be considered abrogated and this would allow the fate of the Franco-Italian Accords of 1902 and 1919 to be settled.

I believe I refuted this argument on 28 June. It is contrary to the text of the Treaty of Peace since by Article 23 Italy renounced all right and title to its former colonies and could therefore not be concerned by the fate of the treaties relating to them. But the Libyan argument, I

050

recalled, was still contrary to the unanimous practice of the States concerned since no treaty of this type was notified, and lastly we noted that the United Nations itself considered these instruments as being in force in 1950. Apparently our opponents accepted our arguments on this point. Professor Condorelli admitted, and I quote, that

> "the bilateral delimitation treaties relating to the former Italian colonies, including the Franco-Italian Accord of 12 September 1919 ... were maintained in force" (CR 93/28, p. 51).

I am happy at this beginning of a point of convergence, but I would ask our opponents to make yet another little effort. Libya grants the Accord of 12 September 1919, but on the other hand it claims that the exchange of letters of 1 November 1902 lapsed, independently of the operation of Article 44 of the Treaty of Peace. The grounds for this invalidity are sketched in rather than developed by Libya. According to Professor Condorelli, the Accord of 1902 was extinguished because it was not revived by resolution 289 (IV) of the United Nations General Assembly, since it was not an agreement delimiting a boundary, (CR 93/28, p. 51). For Professor Bowett, the Accord disappeared as early as 1947 with Italy's renunciation of all its rights and titles to Libya.

Mr. President, Members of the Court, I confess that I am perplexed. The United Nations General Assembly certainly did not mean to decide on whether or not treaties concluded with Italy and concerning its former colonies should be maintained in force or not. Professor Franck has shown you that the sole concern of the General Assembly on this point was to promote a stable and definitive solution of the frontier problems, leaving the parties concerned to settle the procedure. True, resolution 289 (IV) implies that frontiers had been settled by international treaties, but it does not list them and is careful not to come to any conclusion on their status.

051 As to Italy's renunciation of its rights over Libya, this had the effect of triggering the State succession, but it did not make the treaties from which Libya's frontiers resulted lose their "raison d'être" - to use the expression employed by our opponents.

I shall not come back to the Accords of 1902, the legal nature of which has been analysed by Professor Pellet. Our opponents argue that these Accords no longer have any "raison d'être" - this is the expression used - because they have no relation to the establishment of a frontier and because they are exclusively bound to the legal personality of Italy. And, Mr. President, the aim of these Accords of 1902 was to recognize a sphere of influence in the frontiers of Tripolitania as they figured on the map of 1899 - and I shall not return to Alain Pellet's demonstration here. Although some of their provisions have incontestably become invalid, their territorial objective still exists in full; they do still have that "raison d'être". This theoretical controversy is interesting but - may I respectfully suggest - it is a controversy that has indeed lost any "raison d'être", since France and Libya settled the question on 10 August 1955. The two contracting parties noted in sovereign fashion that the frontiers separating their respective territories resulted *inter alia* from the Accords of 1902.

In brief, both here and elsewhere, it is the criterion of the sovereign will of the parties that settles the problem of the succession of States to bilateral treaties. And this will is clearly expressed - made explicit - as far as the Accords of 1902 are concerned.

The reason is even clearer, obviously, for the Franco-British Accords of 1899 and 1919. Our opponents do not rely on their

052 invalidity. There is no succession of States here. At the most Libya

has outlined - the line here is very blurred - the argument of opposability. These Accords are not applicable to Libya because they are not opposable to it.

This is a curious argument, which as Professor Higgins recalled, acknowledges as the principal reason for international recognition the rendering of a legal instrument or a situation opposable to the recognizing State. And, whatever the nature of Article 3 and Annex I of the Treaty of 1955, let us agree that it proceeds to a recognition of the treaties defined in Annex I, for otherwise these provisions would not even have the value of the shopping list to which our opponents claim to reduce it!

Mr. President, Members of the Court, let us stop producing arguments and quibbles to defeat the wish of the parties. In 1955 France and Libya wished to identify their frontiers by referring to the Franco-British Accords of 1899 and 1919, and to the Franco-Italian Accords of 1902 and 1919. The point was to render effective this clearly expressed desire. The point was to apply the Treaty.

Mr. President, Members of the Court, to conclude this pleading I come to the question of good faith. You will remember that Libya called into question the good faith of the French negotiators in the first round of pleadings, thus seeking to create a climate of suspicion in order to derive a marginal advantage as regards the interpretation of the Treaty of 1955.

• 053 Our opponents doubtless took our objections into account; they did not again impute ulterior motives to us in their reply. Noted.

But, all the same, Sir Ian Sinclair has not abandoned the theme of good faith. He has turned the argument round and tells us today that Libya's good faith must be protected. I quote him. Referring to our contentions Sir Ian states:

> "I must say that, if an argument along these lines were to appeal to the Court, it would raise some very serious questions indeed about the good faith nature of the 1955 negotiations. Libya would, on that analysis, have been induced to agree to a boundary by inadvertence. Libya is therefore confident that the Court would not entertain a result of this nature." (CR 93/27, p. 41.)

And in his robust way Professor Bowett hammered in the nail on 8 July: "no negotiations, no texts, no maps" (CR 93/29, p. 67).

Mr. President, this is not correct, there were negotiations, there were texts, there were maps and I now have to show you proof of this.

I shall use simultaneously the three sources available: the French diplomatic dispatches, which are confirmed by the diplomatic documents of the Foreign Office, and by the Libyan minutes of the negotiation. These combined sources help us to follow the thread of the negotiation and to set aside without any possible doubt the thesis that the Libyans were induced by inadvertence to agree to the Tibesti boundary in the final negotiation.

The boundary question, as we know, was brought up from the outset of the negotiations in the month of January between Premier Mendès-France and Prime Minister Ben Halim. The French summary record, more specifically the French note on the January conversations, tells us that Premier Mendès-France stated on 4 January that:

> "the aspects of particular importance to us were ... to delimit a frontier such as would be accepted by both parties, with the joint organization of a frontier police force" (MC, Vol. IV, p. 32, Ann. 239).

And in reply to Prime Minister Ben Halim, the French Premier "noted Libya's desire for a clarification of the status of the frontiers" (*ibid.*, p. 33).

Mr. Ben Halim's objection at that point did not relate to the delimitation of the frontier but to its concomitance with the evacuation of the French troops from the Fezzan.

All this is very general, you will tell me. No, for the immediate problem facing the Libyan delegation is that of the delimitation of our boundary, the boundary of Tibesti. It was Mr. Wilford, of the British Embassy in Paris, who received the information on 5 January 1955 from Mr. Jerbi, a Libyan diplomat and former Under-Secretary of State for Foreign Affairs, specifying

> "that he would be returning [Jerbi, of course] to Tripoli via Rome in order that he could try to get from the Italian Government the archives dealing with the Laval-Mussolini Agreement of 1935, to which they were entitled and without which his Government could not decide what position to take up." (RC, Ann. 79, matched by MC, Ann. 245, p. 3.)

The Libyan Government asked in January, as early as 5 January, to be provided with the archives of the 1935 negotiation, which so far as we are concerned, that is, as regards the Libyan boundaries, related only to the Tibesti boundary.

Mr. Aneizi, a member of the Libyan delegation and Minister of Finance, headed the mission to Rome to obtain that documentation (MC, Ann. 258). He no doubt met there with Italian diplomats. They were perfectly familiar with the case, and hence with a number of maps, as Professor Condorelli has shown us with his customary talent. Mr. Jerbi

055

reported on it to Mr. Ravensdale, of the British Embassy in Tripoli (RC, Ann. 84), as early as 15 January. He knew, then, that the exchange of ratifications of the Treaty of Rome had not taken place and he was still unclear as to the instruments applicable, but had discussed the matter in Rome with his Italian interlocutors.

The Italian Ministry of Foreign Affairs subsequently provided the Libyan Ministry of Foreign Affairs with the text of the Treaty of Rome, together with the necessary explanations (MC, Ann. 258). It is a pity that we do not have all that material that must be in Tripoli. In any case, documents there are!

Then came the Aozou or Moya incident, on 28 February 1955. I shall not go back over the incident itself since Mr. Cassese has analysed it. What interests me is the reaction of the Prime Minister, Mr. Ben Halim.

Aozou, as we know, is the main palmgrove, the main settlement in the strip that bears its name, as Professor Sorel reminded us yesterday. Now the incident took place more than a month after the return of the mission specially sent to Rome to clarify the matter. The French protest came at about the time when the Italians supplied the documentary material requested in Rome by Mr. Aneizi and Mr. Jerbi.

Prime Minister Ben Halim is unlikely to have been completely unaware of the boundary situation when acknowledging that the village of Aozou lay in French territory. The Aneizi mission must have reported to him. He knew that Aozou was north of the line of the Treaty of Rome. Ignorance of that was still more improbable in June 1955 when the British Ambassador to Tripoli, Mr. Graham, called the Prime Minister's attention to the serious consequences of repeating the previous February's escapade (MC, Ann. 264).

056

Mr. Ben Halim had ample time to inform himself and prepare for the the forthcoming negotiations with the French and, for his part, Mr. Graham certainly did not step in without a "biscuit", given the special relations between those two allied States that Great Britain and Libya were.

I come now to the maps. Our opponents contend, once more - I respectfully tell them - against all probability, that the Libyan negotiators had no maps. It is very likely, as we have seen, that the Italian diplomats showed them some when they went to Rome. You do not discuss the course of a boundary line in the abstract and without maps.

Professor Condorelli showed us a number of maps. But above all, maps were, as we know, produced and discussed during the negotiation of July 1955.

It is certainly the case that, in the final negotiation, the Tibesti was discussed on the basis of a map, a map produced by the Libyan delegation and no doubt featuring the boundary of the Treaty of Rome. The Ambassador, Mr. Dejean, who led the French delegation, cabled the information to his ministry on 28 July. Mr. Dejean had this to say:

> "Even though certain Libyan officers produced, during yesterday's meeting, a map which included in Libya [word omitted and hence not included in the transmission] of the Tibesti, Mr. Ben Halim recognized this morning, in the meeting, that the Agreements should be applied to those areas. This means that there is no longer any major difficulty. We still have to reach agreement on a delimitation of the frontier between Ghât and Toummo, for which the texts are rather difficult to interpret. Officers brought over specially from Paris are working on the problem with Libyan officers, in a sub-committee that was set up this morning." (MC, Ann. 268.)

The cable is dated 28 July, and the map of the Tibesti was produced by the Libyan officers on 27 July.

057

The Dejean cable is confirmed by the report of Colonel El Senoussi Latyoush dated 4 August 1955, following the mission of the sub-committee mentioned by Dejean. This is the report that you will find in your folder, Exhibit 74 of the Libyan Memorial. Annexed to the report, as indicated by Colonel Latyoush, are maps unfortunately not in our possession.

The joint Franco-Libyan mission of 1 and 2 August 1955 flew over the boundary between Ghât and Toummo and consulted with Touareg representatives at Ghât. What was the purpose of that mission? To compare the boundary lines on two maps: a map A of French origin, and a map B of Italian origin. Colonel Latyoush was perfectly capable of

reading the maps and he devoted his report to a detailed comparison of the two lines. And in conclusion, he recommended adoption of the boundary line shown on map B.

I add that Colonel Latyoush was fully aware of the situation to the east of Toummo since he informed the Touareg representatives "about the discussions of the frontier between Italy and France in the year 1935". And he noted that France had then ceded territory to Italy, but that the Treaty of Rome had never entered into force. If the Latyoush mission, of 1 and 2 August 1955, did not allude to the frontier to the east of Toummo and did not fly over the Tibesti, it was because the matter had already been settled on the previous 28 July, as we have just seen.

But the Libyan Party will have difficulty in convincing you that a patriotic colonel well versed in cartography and wishing to reopen the boundary issue - this is another of their conclusions - became fascinated with the maps west of Toummo while giving no attention to those for the area east of Toummo!

058

Particularly since we have here a final indication I find in Exhibit 73, of the Libyan Party, of the Libyan Memorial, those Libyan minutes of the July negotiation that our opponents have belatedly supplied. Therein we meet Colonel Latyoush again. He attended the negotiation. He was present on 28 July in the morning, before the opening of the meeting. To do what? To submit his report on the boundaries of the Fezzan. And it was most probably Colonel Latyoush in person who, the day before, presented the map of the Tibesti that offended the Ambassador, Mr. Dejean, since he is the officer cited in the minutes kept by the Libyan Party of the negotiation. All this hangs together.

The French and Libyan military cartographers took part in the negotiation, in the discussion of the Tibesti boundary on the basis of maps, and in particular the map supplied by the Libyan officers. Then, the problem having been settled, they went off together into the field to fly over the Toummo-Ghât sector and so complete the agreement being negotiated.

So much for the maps then!

The sources of the three origins - French, British and Libyan - are in agreement. These same sources enable us to reconstitute the final phase of the negotiation, which is not at all that described by Sir Ian Sinclair and Professor Bowett. The French wished, as we have seen, to secure a consecration of the boundary of the Tibesti based on the line of the Anglo-French Agreement of 8 September 1919. The Libyans did not want this. The Prime Minister, Mr. Ben Halim, tried to prevent the Treaty envisaged from settling the issue. He only resigned himself to that, as we know, on 28 July, the day after the discussion that had taken place about the Tibesti map produced by the Libyan officers.

059

This we learn from the Libyan minutes, in Exhibit 73. "No boundary, no treaty," exclaimed Ambassador Dejean, you remember. He thus put the deal bluntly to the Prime Minister, Mr. Ben Halim. The latter capitulated, accepted the deal, accepted the Tibesti boundary, unwillingly no doubt but quite advisedly. That precise result was recorded in the French dispatches and in the British dispatches. On the French side, I have mentioned the Dejean dispatch of 28 July. It is confirmed by a dispatch, from the same Ambassador, dated 9 August 1955 (RL, Ann. 6.6). On the British side, there is the dispatch from Mr. Graham, the British Ambassador to Tripoli, to the Foreign Secretary, Harold MacMillan, of 30 July 1955:

> "The Libyan representatives, who throughout the negotiations were far more conciliatory and anxious to reach an agreement than the French had dared to hope, admitted freely that the frontiers should be based on the international agreements in force at the time Libya gained her independence. They conceded, apparently with a wry smile, that the Laval-Mussolini agreement of 1935 was nugatory." (RC, Ann. 120.)

Mr. Ben Halim did capitulate on the question of the Tibesti. No doubt with a "wry smile", but with full knowledge of the facts and in exchange for advantages obtained elsewhere within the overall agreement.

Prime Minister Ben Halim was probably criticized for that concession in his own country. As early as 4 August 1955, as we can see, Colonel Latyoush called for the negotiations to be reopened on all the boundaries. In 1956, what I shall call the revisionist party, that seeking a review of the agreement, returned to the attack. And, as we know, the Libyan delegation asked in November 1956 for the whole matter to be reopened. We also know that the French delegation refused and gave as its reason the existence of the Treaty of 10 August 1955, as having already resolved the issue (CML, para. 3.110). The Libyan delegation capitulated: *pacta sunt servanda*.

I conclude, Mr. President, Members of the Court.

We cannot say that there was no negotiation on the Tibesti boundary in 1955. The question was raised on the very first day by President Mendès-France and the Prime Minister, Mr. Ben Halim. The question was the subject of an explicit settlement in the final phase of the negotiations, on 28 July 1955. Meanwhile, the Libyan Government sought information on this situation from the Italian Government and probably from the British Government. In any case, as we know, it had texts, it had maps and it concluded quite advisedly. "Negotiations, texts, maps", it's all there, Professor Bowett.

The last question is whether Prime Minister Ben Halim was at fault in signing the Treaty of 10 August 1955 and then having it ratified? Some thought so, as we have seen, even before the signing of the treaty. Others think so today, no doubt among our opponents! But let us leave that to the historians. It was at the time a matter of political appreciation and it has become a historical issue. But the question of the appreciation made in 1955, by the Libyan Prime Minister of his country's interests in the negotiation has never at any time been a legal issue. I add that that appreciation, which goes beyond our jurisdiction, could only be made in the light of the overall outcome of a negotiation which, I note in passing, was conducted intelligently and doggedly by the Libyan negotiators.

061

I think that in this case we have turned over all the stones in the course of the long oral arguments that you have been patient enough to hear out. We have examined all aspects of the Treaty of 10 August 1955 with the aid of our friends and opponents of the Libyan Party. We remain convinced, for our part, that the key to this whole matter is to be found in the simple application of a treaty concluded advisedly between two sovereign States, the Treaty of 10 August 1955. I hope that we have convinced you of this.

Mr. President, before requesting you to call upon the Agent of the Republic of Chad, you will allow me to voice the usual expression of thanks since I am the last counsel of our team to be speaking.

My thanks go to our colleagues and opponents, to whom I wish to express our admiration for the talent displayed in the defence of a difficult cause - they are all difficult - and our greetings at the close of a joust that has in no way impaired our bonds of esteem.

Our thanks go to the Registrar of the Court, to all the staff, to the interpreters, and here I wish to express our gratitude for their competence and kindness.

Our thanks go, if you will permit me, to you Mr. President and to you, Members of the Court, since you have throughout these weeks maintained this redoubtable, vigilant and, when all is said and done, kindly attention.

Mr. President, I request you now to call upon the Agent of the Republic of Chad, Rector Abderahman Dadi.

U62

Le PRESIDENT: Je remercie beaucoup M. Cot. Rector Dadi, you have the floor.

Mr. DADI: Mr. President, Members of the Court.

These hearings are drawing to their close. Libya has already presented its submissions. Today it is the turn of Chad, but before presenting the formal submissions, I should like to say a few words following the second round of Libyan oral arguments.

Libya has persisted in allusions to "the purely formal independence" of Chad.

Allow me, Mr. President, simply to say that Chad is a fully-fledged member of the international community.

And one can never, through allusion or insinuation, diminish its status as a sovereign State, particularly since Chad has been - and remains - highly vulnerable in the face of the threats of a powerful neighbour, which happens to be Libya itself.

Mr. President, if the Libyan people exists, so then does the Chadian people. The Libyan people and the Chadian people are equal in dignity and have the same rights.

As to the Toubou, an integral part and active component of the Chadian people, they were no more Senoussi than they are Libyan today. History establishes this clearly and firmly.

I am a Toubou, but I have never felt Libyan, nor have I contemplated my future on the other side of the boundary.

Mr. President, things are simple: Libya and Chad are two neighbouring States, both very large and sparsely populated countries, 1,760,000 and 1,284,000 square kilometres in area and with four million and five million inhabitants, respectively. Their common boundary has been very clearly delimited. Theie relations must be envisaged in the light of the necessities that any such neighbourly proximity implies.

063

Chad wishes to live in harmony with its neighbours, but it intends to remain its own master at home. Its internal political difficulties? It will be capable of overcoming them by finding the necessary resources within itself. What the Chadian people really need is peace and respect for their territorial integrity and not a dismembering of their country to fulfil the dreams of grandeur of a neighbour.

Here now are the final submissions of Chad:

The Republic of Chad respectfully requests the International Court of Justice to adjudge and declare that its frontier with the Libyan Arab Jamahiriya is constituted by the following line:

- from the point of intersection of the 24° of longitude east of Greenwich with the parallel of 19° 30' of latitude north, the frontier shall run as far as the point of intersection of the Tropic of Cancer with the 16° of longitude east of Greenwich;

- from that latter point it shall follow a line running towards the well of Toummo as far as the 15° east of Greenwich.

Just a few more words, Mr. President, to bring my statement to its close.

1. I should like in turn to greet the Agent and the Members of the team of Libya and commend their cordiality throughout these long oral arguments.

2. I should also like to thank, publicly once more, the eminent jurists who have assisted Chad in presenting its position to your Court, together with their associates. In this they have displayed competence and dedication, forgoing a substantial part of the normal fees.

364

This is a practical gesture of solidarity towards a poor country like Chad, which has also received assistance from the special United Nations Trust Fund. For this, I wish hereby to express the gratitude of the Government of Chad.

Mr. President, Members of the Court, I thank you for your patient attention and wish you a very good holiday.

Le PRESIDENT : Thank you very much, Rector Dadi. Cela nous amène à la fin de la procédure orale dans la présente affaire entre la Libye et le Tchad et au nom de la Cour je voudrais exprimer mes remerciements aux agents et conseils des deux Parties pour la très grande assistance qu'ils ont donnée à la Cour par la manière dont ils ont conduit cette procédure. Conformément à la pratique habituelle je dois demander aux agents de rester à la disposition de la Cour pour les renseignements supplémentaires dont la Cour pourrait avoir besoin.

Demeure la question que le juge Guillaume a posée à la Libye le 3 juillet. Je crois savoir qu'une réponse écrite a déjà été déposée au Greffe au cours de la matinée et, conformément à l'article 72 du

Règlement, une copie de cette réponse sera communiquée au Tchad, à qui la possibilité sera dûment offerte de présenter des observations à son sujet s'il le désire.

La Cour va donc maintenant se retirer pour délibérer sur cette affaire et notification sera faite aux agents en temps voulu de la date à laquelle la décision sera prononcée. Compte tenu des réserves que j'ai mentionnées, je déclare donc maintenant close la procédure orale dans cette affaire. Je vous remercie beaucoup.

L'audience est levée à 12 h 35.
