

**Letter to the Registrar dated 24 October 2012**  
**from the Agent of Burkina Faso**

*[Translation]*

Re: Question put by Judge Bennouna at the end of the hearing of 12 October 2012

At the end of the hearing held on the afternoon of 12 October, Judge Bennouna put the following question to both Parties: “To what extent and for which section(s) do each of the Parties agree to refer to the 1960 IGN map to establish the course of the frontier between them?”

At that time, the President of the Court invited the Parties to reply orally to this question during the second round of their oral argument and, if necessary, to supplement in writing any oral answer which they provided. He stated that: “Any such supplementary reply must be submitted no later than 24 October 2012 at 6 p.m. Written comments on the replies of the other Party may be presented no later than 31 October 2012 at 6 p.m.”

Professor Alain Pellet gave a detailed reply to Judge Bennouna’s question at the hearing of 15 October (CR 2012/25, paras. 27-32). For the convenience of the Court, I am attaching hereto the text of that oral reply, to which we have nothing further to add for the time being, together with the sketch-map which was projected at that point in the hearing.

I note that, for its part, the Republic of Niger confined itself to giving an extremely brief reply to that same question, delivered by Professor Jean Salmon at the hearing of 17 October (CR 2012/26, para. 5). That very short statement does not call for any comment from Burkina Faso at the present stage. However, we reserve the right to respond to any further information that might be submitted in writing by Niger, in accordance with the invitation addressed to the Parties by the President of the Court.

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## ANNEX

### Extracts from the verbatim record of the hearing of 12 October 2012 (CR 2012/25), paras. 27-32, (B. The Erratum's inadequacies and the 1960 map)

[CR 2012/25, p. 21]

27. Members of the Court, the Erratum is not incomplete and only very marginally does not suffice. When — exceptionally — that is the case, reference must be made to the 1:200,000-scale IGN France map of 1960. And that brings me to our reply to Judge Bennouna's question. That question is twofold.

28. We must first explain “to what extent” we agree “to refer to the 1960 IGN map to establish the course of the frontier” between the Parties. The answer is, in fact, to be found in the Agreement of 28 March 1987 and, in particular, Article 2 thereof: reference may only be made to the map if the *Arrêté*, as clarified by its Erratum, does not suffice; and, in the absence of any other document accepted by joint agreement of the Parties, first, reference *must* be made to it and, second, reference *may* be made *to it alone*. This is not fetishism, Mr. President, it is not formalism, it is not “Freudian”; it is quite simply what *is stated* in the 1987 text, to which the Special Agreement refers.

29. But beware: it is not permitted to reverse the order of the factors and take the map as a starting point, a step which our opponents quite blithely do not hesitate to take. Thus Professor Salmon, after appearing to admit that the map has been granted “the status of *subsidiary* title”, goes on unwaveringly to explain that “Niger considered it legitimate to *rely on* this subsidiary source”<sup>39</sup>. And my esteemed opponent goes even further — much further: after [CR 2012/25, p. 22] admitting that Niger was, therefore, “rely[ing] on” the 1960 map, he explains that “Niger has scrupulously adhered to” its policy of only deviating “*from the IGN line* for reasons” based on the existence “of a colonial marker which was unknown to the drafters of the map”, of an alleged “agreement which was reached after independence”, of “information dating from the colonial period” and for a “number of reasons” — which he does not elucidate — in the Say sector<sup>40</sup>. No lengthy comments are necessary; I think it is sufficient for me to point out that:

— no, it is not the 1960 map that must be “rel[ied] on”, but the 1927 Erratum; and

— no, it is not permitted, should that text not suffice, to substitute the line shown on the map with an improbable mishmash of more or less formal colonial documents (generally less rather than more so, by the way).

If you will permit this bad play on words, Mr. President (which, incidentally, I am not sure can be translated into English): the map (*carte*) appears on a menu imposed by the 1987 Agreement — whether it is appetizing or not is irrelevant; Niger wishes, for its part, to choose the map (*à la carte*) in order to satisfy its culinary preferences. It may not do so.

30. Moreover, this is not quite the end of the matter — as I am quite willing to concede — since it is still necessary to determine exactly when the reference text does not suffice. Here too, it seems to me that the answer lies in the text: it is necessary for the Erratum *not to suffice* for the purposes of drawing the frontier line. My friend Professor Pierre Klein has gone to a great deal of trouble to show that the Erratum as a whole suffers from this defect of inadequacy<sup>41</sup>, and has

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<sup>39</sup>CR 2012/23, p. 55, para. 5 (Salmon); emphasis added.

<sup>40</sup>CR 2012/23, p. 56, para. 6 (Salmon); emphasis added.

<sup>41</sup>See CR 2012/23, pp. 21-34 (Klein).

denounced “the utter frivolity” of Burkina’s position<sup>42</sup> and the presumptuousness of its counsel who, in splendid isolation, are, he says, obstinately persisting in denying the obscurity of the Erratum<sup>43</sup>. Yet we are not postulating anything, Mr. President; this is a technical issue, and we are merely noting that the experts *of the two* Parties believed, in 1988, that it was perfectly possible to take the Erratum as the basis for the delimitation, even if it meant falling back on the map in those cases where that text did not describe the frontier adequately; and in the only instance where the map was unable to [CR 2012/25, p. 23] compensate for the Erratum, because a name that it mentioned did not appear on that map, the Joint Commission, in accordance with the letter and spirit of Article 2 of the 1987 Agreement, gave precedence to the Erratum over the map by interpreting the text of that instrument<sup>44</sup>.

[End of slide 5. Slide 6: The 1927 Erratum and the 1960 map] **(This slide is reproduced after the text.)**

31. Mr President, Judge Bennouna’s question also asks “for which section(s) . . . do each of the Parties agree to refer to the 1960 IGN map to establish the course of the frontier between them”. The diagram which is now being shown on the screen illustrates Burkina’s position on this point. The green line is compatible with both the description of the line in the Erratum and the line shown on the map; the red line represents the line described in the Erratum when the line shown on the map does not coincide with it, and the yellow line — which is not very easy to make out on the screen — represents the line shown on the map when the Erratum does not suffice. Professors Thouvenin and Forteau will elaborate on these segments of the frontier and explain the reasons which led the technical experts to think that, in these rare cases (only one as far as we are concerned), the Erratum did not suffice (I am referring to the short segment that I mentioned a moment ago<sup>45</sup>, which is situated in the sector running from Bossébangou to the intersection of the Sirba with the Say parallel).

32. I hope that I have replied to Judge Bennouna’s satisfaction, but, in accordance with your invitation, Mr. President, we reserve the right to supplement this answer by 24 October.

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<sup>42</sup>*Ibid.*, p. 21, para. 1 (Klein).

<sup>43</sup>See, in particular, *ibid.*, p. 22, paras. 2 and 3; or pp. 32-33, para. 15 (Klein).

<sup>44</sup>See CR 2012/19, pp. 34-35, paras. 20-22 (Pellet).

<sup>45</sup>See para. 25 above.

Slide 6: The 1927 Erratum and the 1960 map

