

CR 93/14

International Court
of Justice
THE HAGUE

Cour internationale
de Justice
LA HAYE

YEAR 1993

Public sitting

held on Monday 14 June 1993, at 10 a.m., at the Peace Palace,

President Sir Robert Jennings presiding

in the case concerning Territorial Dispute

(Libyan Arab Jamahiriya/Chad)

VERBATIM RECORD

ANNEE 1993

Audience publique

tenue le lundi 14 juin 1993, à 10 heures, au Palais de la Paix,

sous la présidence de sir Robert Jennings, Président

en l'affaire du Différend territorial

(Jamahiriya arabe libyenne/Tchad)

COMPTE RENDU

Present:

President Sir Robert Jennings

Vice-President Oda

Judges Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ranjeva
Ajibola
Herczegh

Judges *ad hoc* Sette-Camara
Abi Saab

Registrar Valencia-Ospina

Présents :

Sir Robert Jennings, Président

M. Oda, Vice-président

MM. Ago

Schwebel

Bedjaoui

Ni

Evensen

Tarassov

Guillaume

Shahabuddeen

Aguilar Mawdsley

Weeramantry

Ranjeva

Ajibola

Herczegh, juges

MM. Sette-Camara

Abi Saab, juges *ad hoc*

M. Valencia-Ospina, Greffier

The Government of the Libyan Arab Jamahiriya is represented by:

H.E. Mr. Abdulati Ibrahim El-Obeidi
Ambassador,

as Agent;

Mr. Kamel H. El Maghur
Member of the Bar of Libya,

Mr. Derek W. Bowett, C.B.E., Q.C., F.B.A.
Whenwell Professor emeritus, University of Cambridge,

Mr. Philippe Cahier
Professor of International Law, Graduate Institute of International Studies, University of Geneva Gen

Mr. Luigi Condorelli
Professor of International Law, University of Geneva,

Mr. James R. Crawford
Whenwell Professor of International Law, University of Cambridge,

Mr. Rudolph Dolzer
Professor of International Law, University of Mannheim,

Sir Ian Sinclair, K.C.M.G., Q.C.

Mr. Walter D. Sohler
Member of the Bar of the State of New York and of the District of Columbia,

as Counsel and Advocates;

Mr. Timm T. Riedinger
Rechtsanwalt, Frere Cholmeley, Paris,

Mr. Rodman R. Bundy
Avocat à la Cour, Frere Cholmeley, Paris,

Mr. Richard Meese
Avocat à la Cour, Frere Cholmeley, Paris,

Miss Loretta Malintoppi
Avocat à la Cour, Frere Cholmeley, Paris,

Miss Azza Maghur
Member of the Bar of Libya,

as Counsel;

Mr. Scott B. Edmonds
Cartographer, Maryland Cartographics, Inc.,

Mr. Bennet A. Moe
Cartographer, Maryland Cartographics, Inc.,

Le Gouvernement de la Jamahiriya arabe libyenne est représenté par :

S. Exc. M. Abdulati Ibrahim El-Obeidi
ambassadeur,

comme agent;

M. Kamel H. El Maghur
membre du barreau de Libye,

M. Derek W. Bowett, C.B.E., Q.C., F.B.A.
professeur émérite, ancien titulaire de la chaire Whewell à l'Université de Cambridge,

M. Philippe Cahier
professeur de droit international à l'Institut universitaire de hautes études internationales de
l'université de Genève,

M. Luigi Condorelli
professeur de droit international à l'Université de Genève,

M. James R. Crawford
titulaire de la chaire Whewell de droit international à l'Université de Cambridge,

M. Rudolph Dolzer
professeur de droit international à l'Université de Mannheim,

Sir Ian Sinclair, K.C.M.G., Q.C.

M. Walter D. Sohler
membre des barreaux de l'état de New York et du district de Columbia,

comme conseils et avocats;

M. Timm T. Riedinger
Rechtsanwalt, Frere Cholmeley, Paris,

M. Rodman R. Bundy
avocat à la Cour, Frere Cholmeley, Paris,

M. Richard Meese
avocat à la Cour, Frere Cholmeley, Paris,

Mlle Loretta Malintoppi
avocat à la Cour, Frere Cholmeley, Paris,

Mlle Azza Maghur
membre du barreau de Libye,

comme conseils;

M. Scott B. Edmonds
cartographe, Maryland Cartographics, Inc.,

M. Bennet A. Moe
cartographe, Maryland Cartographics, Inc.,

Mr. Robert C. Rizzutti
Cartographer, Maryland Cartographics, Inc.,

as Experts.

The Government of the Republic of Chad is represented by:

Rector Abderahman Dadi, Director of the Ecole nationale d'administration et de magistrature de N'Djamena,

as Agent;

H.E. Mr. Mahamat Ali-Adoum, Minister for Foreign Affairs of the Republic of Chad,

as Co-Agent;

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

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

as Advisers;

Mr. Alain Pellet, Professor at the University of Paris X-Nanterre and at the Institut d'études politiques of Paris,

as Deputy-Agent, Adviser and Advocate;

Mr. Antonio Cassese, Professor of International Law at the European University Institute, Florence,

Mr. Jean-Pierre Cot, Professor at the University of Paris I (Panthéon-Sorbonne),

Mr. Thomas M. Franck, Becker Professor of International Law and Director, Center for International Studies, New York University,

Mrs. Rosalyn Higgins, Q.C., Professor of International Law, University of London,

as Advisers and Advocates;

Mr. Malcolm N. Shaw, Ironsides Ray and Vials Professor of Law, University of Leicester, Member of the English Bar,

Mr. Jean-Marc Sorel, Professor at the University of Rennes,

as Advocates;

Mr. Jean Gateaud, Ingénieur général géographe honoraire,

as Adviser and Cartographer;

Mr. Jean-Pierre Mignard, Advocate at the Court of Appeal of Paris,

Mr. Robert C. Rizzutti
cartographe, Maryland Cartographics, Inc.,

comme experts.

Le Gouvernement de la République du Tchad est représenté par :

M. Abderahman Dadi, directeur de l'école nationale d'administration et de magistrature de N'Djamena,

comme agent;

S. Exc. M. Mahamat Ali-Adoum, ministre des affaires étrangères de la République du Tchad,

comme coagent;

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

S. Exc. M. Ramdane Barma, ambassadeur de la République du Tchad en Belgique et aux Pays-Bas,

comme conseillers;

M. Alain Pellet, professeur à l'Université de Paris X-Nanterre et à l'Institut d'études politiques de Paris,

comme agent adjoint, conseil et avocat;

M. Antonio Cassese, professeur de droit international à l'Institut universitaire européen de Florence,

M. Jean-Pierre Cot, professeur à l'Université de Paris I (Panthéon-Sorbonne),

M. Thomas M. Franck, titulaire de la chaire Becker de droit international et directeur du centre d'études internationales de l'Université de New York,

Mme Rosalyn Higgins, Q.C., professeur de droit international à l'Université de Londres,

comme conseils et avocats;

M. Malcolm N. Shaw, titulaire de la chaire Ironsides Ray and Vials de droit à l'Université de Leicester, membre du barreau d'Angleterre,

Mr. Jean-Marc Sorel, professeur de l'Université de Rennes,

comme avocats;

M. Jean Gateaud, ingénieur général géographe honoraire,

comme conseil et cartographe;

Me. Jean-Pierre Mignard, avocat à la Cour d'appel de Paris,

Mr. Marc Sassen, Advocate and Legal Adviser, The Hague,

as Counsel;

Mrs. Margo Baender, Research Assistant, Center of International Studies, New York University, School of Law,

Mr. Oliver Corten, Collaborateur scientifique, Université libre de Bruxelles,

Mr. Renaud Dehousse, Assistant Professor at the European University Institute, Florence,

Mr. Jean-Marc Thouvenin, attaché temporaire d'enseignement et de recherche at the University of Paris X-Nanterre,

Mr. Joseph Tjop, attaché temporaire d'enseignement et de recherche at the University of Paris X-Nanterre,

as Advisers and Research Assistants;

Secretariat services will be provided to the delegation by:

Mrs. Rochelle Fenchel;

Mrs. Susal Hunt;

Miss Florence Jovis;

Mrs. Mireille Jung;

Mrs. Martine Soulier-Moroni.

Me Marc Sassen, avocat et conseiller juridique, La Haye,

comme conseils;

Mme. Margo Baender, assistante de recherche au centre d'études internationales de la
Faculté de droit de l'Université de New York,

M. Oliver Corten, collaborateur scientifique, Université libre de Bruxelles,

M. Renaud Dehousse, maître-assistant à l'Institut universitaire européen de Florence,

M. Jean-Marc Thouvenin, attaché temporaire d'enseignement et de recherche à l'Université de
Paris X-Nanterre,

M. Joseph Tjop, attaché temporaire d'enseignement et de recherche à l'Université
de Paris X-Nanterre,

comme conseillers et assistants de recherche.

Le secrétariat de la délégation sera assuré par:

Mme Rochelle Fenchel;

Mme Susal Hunt;

Mlle Florence Jovis;

Mme Mireille Jung;

Mme Martine Soulier-Moroni.

The PRESIDENT: Please be seated. The Court sits today for the purpose of hearing the oral arguments of the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Chad in the case concerning the *Territorial Dispute* which they have agreed to refer to it for settlement.

And I note the presence in Court this morning of His Excellency Colonel Idriss Deby, President of the Republic of Chad, also the Foreign Minister of Chad.

Before proceeding, however, I must begin by welcoming to the bench three Judges who have still to make the solemn declaration required of them by the Statute of the Court.

My welcome is first addressed to Judge Géza Herczegh, whom we are pleased to have with us today. He was on 10 May elected by the Security Council and General Assembly of the United Nations to fill the vacancy left in January by the death of our colleague Judge Manfred Lachs.

Judge Herczegh is a noted internationalist and authority on international humanitarian law who, at the moment of his election, occupied the distinguished position of Vice-President of the Constitutional Court of the Republic of Hungary. I now call upon him to make the solemn declaration required of a new Member of the Court by Article 20 of the Statute, and would ask all those present to stand during the declaration.

Judge Herczegh.

Judge HERCZEGH: Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement en pleine et parfaite impartialité et en toute conscience.

The PRESIDENT: Thank you Judge Herczegh. Please be seated.

I place on record the declaration made by Judge Géza Herczegh and declare him duly installed as a Member of the International Court of Justice.

I now have pleasure in welcoming to the bench for the purposes of this dispute the two judges *ad hoc* appointed by the respective Parties in accordance with Article 31, paragraph 3, of the Statute.

First in order of seniority the judge *ad hoc* chosen by the Libyan Arab Jamahiriya. I could well dispense with any introduction for one so familiar as Judge José Sette-Camara. After a distinguished career in the Brazilian diplomatic service and at the United Nations, he joined the Court in 1979, was its Vice-President from 1982 to 1985 and, before he left the Court last year, presided over the Chamber that gave Judgment in the case concerning *Land, Island and Maritime Frontier Dispute* between El Salvador and Honduras, in whose maritime aspect Nicaragua was permitted to intervene. We welcome his back with us now in the new role of Judge *ad hoc*, which of course obliges him to make a new declaration. So I now call upon Judge Sette-Camara to make the solemn declaration required by Article 31, paragraph 6, and Article 20 of the Statute, and would ask all those present to stand.

Judge Sette-Camara.

Judge SETTE-CAMARA: I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.

The PRESIDENT: Thank you Judge Sette-Camara, Please be seated. I now turn to the judge *ad hoc* chosen in the present case by the Republic of Chad, Mr. Georges Abi-Saab, Professor of International Law at the Graduate Institute of International Studies in Geneva and one-time member of the Egyptian delegation to several diplomatic conferences.

Professor Abi-Saab is no stranger to this Court, since he has appeared before it as counsel and advocate and was chosen by the Republic of Mali to sit as judge *ad hoc* in the Chamber that resolved that State's *Frontier Dispute* with Burkina Faso. The Rules of Court require judges *ad hoc* to make a separate declaration in relation to each case in which they participate. I therefore call upon Professor Abi-Saab to make the solemn declaration required by Article 31, paragraph 6, and Article 20 of the Statute, and would ask all those present to stand.

Judge Abi-Saab.

Judge ABI-SAAB: Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement en pleine et parfaite impartialité et en toute

conscience.

The PRESIDENT: Thank you Judge Abi-Saab. Please be seated.

I place on record the declarations made by Judges Sette-Camara and Abi-Saab and declare them duly installed as judges *ad hoc* in the *Territorial Dispute* case between the Libyan Arab Jamahiriya and the Republic of Chad.

Our esteemed colleagues, the late Judge and former President Manfred Lachs, died in the early hours of Thursday, 14 January. The Court was able to pay a tribute to his memory at a sitting of the Court that morning. It is fitting, however, that the opportunity should be taken this morning to have a further tribute from Judge Ago, our senior Judge, who shared then bench with Judge Lachs fro 14 of the 26 years of Judge Lach's membership of the Court. Judge Ago.

M. AGO : Monsieur le Président, vous m'avez prié, en ma qualité de "senior judge" et d'amis de longue date de Manfred Lachs, de prononcer aujourd'hui quelques paroles en souvenir de lui.

Vous ne vous attendez certes pas qu'à cette occasion je m'attache à évoquer les différents aspects de la personnalité du savant, du maître, du diplomate et du juge disparu. Cela a d'ailleurs déjà été fait à d'autres occasions. Je me bornerai plutôt à rappeler brièvement quelques uns des souvenirs personnels qui se bouscuaient dans ma mémoire, souvenirs nés lors de rapports qui, tout au long de notre vie, se sont intensifiés jusqu'à devenir une constante.

Je revois encore le jour où mon vieil ami le Professeur Paul Guggenheim me présenta à Genève un jeune professeur tout juste arrivé de Pologne. Il était déjà en charge du département des affaires juridiques et des traités du Gouvernement polonais. Nous étions en 1949 et l'occasion qui nous fit nous rencontrer était, si je me souviens bien, la préparation d'une réunion de la Fédération mondiale des Associations pour les Nations Unies. Nous fûmes d'ailleurs amenés peu après à nous réunir à Varsovie pour l'une de nos premières assemblées plénières.

Je parlerai alors longtemps avec Manfred Lachs et pus me rendre compte à quel point cet homme aimait sa Pologne natale et ses étudiants qui lui avaient remis la médaille d'or de leur association. Il n'ignorait pas, bien sûr, les difficultés dans lesquelles son pays se débattait et c'est avec d'autant plus d'enthousiasme qu'il se vouait à sa reconstruction et surtout à sa réaffirmation dans le cadre des rapports internationaux.

J'eus en 1958 le plaisir de recevoir Manfred Lachs à Rome. Il s'y trouvait pour un congrès. Et plus tard, en 1965, j'eus l'occasion de revenir à Varsovie et d'être chaleureusement reçu dans son petit appartement. C'était au moment où l'Institut de droit international tenait sa 52^e session dans la capitale polonaise.

Ce fut à Genève, à l'occasion des conférences pour la codification du droit de la mer et puis de sa participation, de 1962 à 1966, à la Commission du droit international que nos rapports se firent plus assidus.

Mais ils continuèrent de s'intensifier même après son élection à la Cour, élection trois fois renouvelée entre 1969 et 1985, longue période marquée de 1973 à 1976, par sa présidence. Que ce

soit à l'institut de droit international, ou au Curatorium de l'Académie de droit international où, pendant plus de vingt ans, nous nous sommes partagés la présidence, ou encore à la Cour, où, à partir de février 1979, je vins le rejoindre, notre collaboration se fit de plus en plus amicale. Bien sûr, nous n'étions pas toujours du même avis, mais nous eûmes toujours le plus grand respect pour nos opinions respectives.

Le travail en commun nous fit mieux connaître et fit qu'une réelle sympathie était née entre nous. Je me souviens d'un si agréable dîner que Manfred offrit l'été dernier à mon épouse Hanka et à moi-même à Scheveningen. Nous parlâmes longtemps de la ressemblance entre Cracovie, sa ville préférée, et certaines villes italiennes. Il était si vivant, si gai, si plein de projets que rien, à ce moment là ne laissait supposer la survenue brutale de la maladie qui, quelques mois plus tard, devait l'emporter.

Monsieur le Président, le 14 janvier 1993 j'ai perdu un ami, un ami très cher, la Cour a perdu le plus ancien de ses "senior judges", celui dont on écoutait la parole en dernier lieu, avant les prises de position de la présidence.

Son opinion était toujours écoutée avec la plus grande attention. La contribution qu'il apportait avec sa vaste culture juridique, avec sa mémoire extraordinaire, avec sa parole mesurée et convaincante, nous manquera cruellement. Je suis sûr que le souvenir de ses opinions pleines de sagesse, expression toujours renouvelée de l'équilibre inné de son jugement, sera longtemps présent à notre esprit et nous guidera souvent à l'avenir comme s'il était encore avec nous.

Je vous remercie, Monsieur le Président.

The PRESIDENT: Thank you very much, Judge Ago.

The Court was seised of the case before us today between the Libyan Arab Jamahiriya and the Republic of Chad in the following manner.

On 31 August 1990 the Libyan Arab Jamahiriya filed in the Registry a notification of an instrument entitled "Framework Agreement on the Peaceful Settlement of the Territorial Dispute between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Chad", concluded in Algiers on 31 August 1989. By this notification, Libya submitted to the Court the territorial

dispute with Chad and defined the question put to the Court in the following terms :

"In further implementation of the Accord-Cadre, and taking into account the territorial dispute between the Parties, to decide upon the limits of their respective territories in accordance with the rules of international law in the matter."

On 3 September 1990 the Republic of Chad filed an Application instituting proceedings against the Libyan Arab Jamahiriya, based on Article 2 (a) of the "Framework Agreement" and subsidiarily on Article 8 of a Franco-Libyan Treaty of Friendship and Good Neighbourliness of

10 August 1955. In its Application Chad requested the Court:

"to determine the course of the frontier between the Republic of Chad and the Libyan Arab Jamahiriya, in accordance with the principles and rules of international law applicable in the matter as between the Parties".

Subsequently the Agent of Chad, by a letter of 28 September 1990, informed the Court that his Government had noted that:

"its claim coincides with that contained in the notification addressed to the Court on 31 August 1990 by the Libyan Arab Jamahiriya"

and considered that:

"Those two notifications relate to one single case, referred to the Court in application of the Algiers Agreement, which constitutes the Special Agreement, the principal basis of the Court's jurisdiction to deal with the matter."

At a meeting with representatives of the Parties held with President Ruda on 24 October 1990 it was agreed between the Agents that the proceedings in the case had in effect been instituted by two successive notifications of the special agreement constituted by the "Framework Agreement" of 31 August 1989 and that the procedure should be determined by the Court on that basis, pursuant to Article 46, paragraph 2, of the Rules of Court.

The same provision requires the parallel filing by each Party of a Memorial and a Counter-Memorial. The Court may also authorize the presentation of Replies, but only if it deems them to be necessary. In the present case, having ascertained the views of the Parties, the Court did so authorize, and the Replies were duly filed by 14 September of last year, thus making the case ready for hearing.

Having ascertained the views of both Parties, the Court has decided to make copies of the pleadings and documents annexed, accessible to the public in accordance with Article 53, paragraph 2, of the Rules of Court.

I note the presence in the Court this morning of His Excellency Colonel Idriss Deby, President of the Republic of Chad. I also note the presence of the Foreign Minister of Chad and I note the presence in the Court of the Agent of the Libyan Arab Jamahiriya, Mr. Abdulati Ibrahim El-Obeidi, and of the Agent of the Republic of Chad, Mr. Abderahman Dadi. It has been agreed between them that the oral proceedings shall open with the presentation of argument on behalf of Libya. I therefore now call upon the Agent for Libya, Mr. El-Obeidi.

Mr. EL-OBEIDI: Mr. President, Members of the Court,

It is a great honour to appear on behalf of my country in this important case before the International Court of Justice. As the Court well knows, it is often difficult — sometimes impossible — for States to resolve territorial disputes between them without resort to some kind of arbitration of judicial settlement. It is all the more difficult in a case such as this. For here, one Party, Chad, claims there is a conventional boundary and that the dispute has already been settled, and the other Party, Libya, denies there is a conventional boundary and comes to the Court to determine a boundary.

I have the greatest pleasure, as the Agent of Libya, to see H.E. Idriss Deby, President of Chad, sitting here before the Court with Chad's distinguished delegation. We all know the heavy burdens that are borne by Chiefs of State these days, particularly in the region from which we both come. I am happy to say that Libya's leader, Colonel Kadhafi, fully shares this view. May I express the hope on behalf of Libya that the settlement of this territorial dispute in accordance with the principles and rules of international law will pave the way for even better relations between Libya and the State of Chad.

It is a pleasure for me, Mr. President, to be able to tell the Court that today relations between Libya and Chad are excellent. The peoples of Libya and Chad have had too many centuries of living together, or intermingling, to allow the misunderstandings and difficulties that grew out of the

turbulent period in Chad following its independence to continue. Only recently, on 20 November 1992, a broad agreement of general assistance and mutual co-operation between Libya and Chad was entered into. Its preamble stresses the friendly ties and good neighbourly relations between the two countries. It is a matter of pride for my people that, second to no other State, Libya has provided extensive economic assistance to Chad in their difficulties inherited from the colonial times, especially during their bitter civil war.

I should also inform the Court that less than a month ago, on 19 and 20 May, the Prime Minister of Chad paid a visit to Libya. In his official statement he emphasized the friendly relations between Libya and Chad and the ties that have existed between the two countries since time immemorial. Chad's Prime Minister spoke of the deep respect that the Chadian people have for their Libyan neighbours. I mention this today because I have the great honour, on behalf of my country, to tell the Court, in the presence of the President of Chad, that the Libyan people share these same feelings in regard to the people of Chad. The recent visit of Chad's Prime Minister was specifically referred to by him as proof of Chad's wish to continue and to strengthen the fraternal relations between Chad and Libya.

Assisting its neighbours has been Libya's policy ever since it had the good fortune of discovering oil. Before that — and I include the period when the 1955 Treaty was negotiated and signed with France — Libya was a poor country, one of the very poorest in the world. Even today, Libya's relative wealth arises from a resource that one day will be depleted. Libya remains poor in other ways. Its large landmass lacks adequate water supply; and its population is much smaller than that of its neighbours.

Libya's policy of assisting its neighbours was not motivated by the desire to appropriate the territory of a neighbour or to interfere in its affairs. It is inspired by the Koran, for wealth is regarded in the Koran as a trust from God, to be shared with fellow beings.

Libya has not occupied territory or seized resources belonging to any of its neighbours; it has not sought to imitate the behaviour of the Colonial Powers in this respect. But there have been unresolved questions as to just where Libya's sovereignty ends and its neighbour's sovereignty

begins. This was so as to the continental shelf lying between Libya and Tunisia and between Libya and Malta. And it has all along been so as between Libya and Chad.

When Libya expanded the reach of its governmental administration in the northern borderlands, starting in late 1972, it did so in order to save and protect the peoples living there — peoples who Libya considered to be Libyans. For their lives were at risk in the civil war raging in Chad and they were in immediate danger of starvation. Libya considered the lands on which these peoples lived to be part of Libya. Libya continues to believe this.

These activities of Libya were not opposed by Chad and were openly welcomed by the peoples of the region. The famous Tombalbaye letter of 28 November 1972, and the Treaties entered into between Libya and Chad on 23 December 1972 and 2 August 1974, confirmed that Libya's actions were not then considered by Chad — or by any faction in Chad — to be an invasion of Chad territory. At the very least, these events reflected the view that sovereignty over the territory in question was in dispute and had yet to be settled. The materials recently submitted by Chad last February, after the closure of the written pleadings, fully confirm this.

It is to settle this territorial dispute that Libya and Chad have come to the Court, just as Libya and Tunisia did over 10 years ago in the case of their dispute concerning the continental shelf being between them. In that case, Libya and Tunisia came together to the Court to settle the matter, and the Court did so with finality. Since that time, Libya and Tunisia have fulfilled their obligations in accordance with the decision of the Court and have resumed brotherly relations, which that dispute had momentarily disturbed.

But beyond that, Libya and Tunisia have formed a joint venture covering the development and commercial exploitation of certain offshore areas lying on both sides of the line dividing the Libyan and Tunisian shelves that was established in carrying out the Court's Judgment. Not only did the Court in that case settle the dispute and restore peace to the region but its decision also opened the way to a mutually beneficial development of resources.

The decision of the Court in the Libya/Malta case was also peacefully settled with finality by the Court.

Once again, Libya returns to request the Court to settle a dispute concerning sovereignty — a territorial dispute between Libya and Chad. What Libya asks of the Court is to *settle* this dispute *with finality*. Libya asks the Court to *determine* the boundary. Libya has not the slightest doubt that the Court has the jurisdiction and possesses the competence to carry out this task; and Libya has no reservations about its own duty after the Court has rendered its decision in this case to observe the judgment both in letter and in spirit.

Mr. President, I am going to leave the presentation of Libya's legal case to Libya's counsel, led by colleague and good friend, Mr. Maghur. But there are several points that I must address here. In Chad's Memorial there appear certain statements whose tone and context Libya simply cannot accept. Not only do they fail to reflect the good relations existing between the peoples and the Governments of Libya and Chad, these accusations are wrong, and they are offensive. I very much hope that this kind of distasteful argument will not be repeated here so as to mar these proceedings.

Libya rejects outright the suggestion that, in challenging Chad's claimed boundary, Libya is contributing to the destabilization of Africa and its frontiers. I wish to make it clear that Libya believes firmly in the principle of the stability of boundaries. Libya and Chad have together brought this case to the Court to resolve the territorial dispute between them. There certainly is nothing destabilizing about that. Such action by African States can only promote the stability of boundaries in Africa.

But the stability of boundaries cannot be based on *false* boundaries, or on *myths* about boundaries invented by the Colonial Powers to serve their own interests. That was hardly what the African States agreed in their 1964 Cairo Declaration. If, as here, no boundary exists, the question of the stability of boundaries does not even exist.

Yet there seems to be a theme running through Chad's pleadings that the validity of the boundary Chad claims cannot be examined too closely, for to do so would be destabilizing. Chad seems to suggest that the Court's role is to rubber stamp what some States allegedly had come to assume was the boundary, largely on the basis of France's say-so. The argument also seems to be that what the official geographers of certain States, relying on French sources, said was the

boundary has to be accepted as the boundary. Of course, this line of argument completely ignores the fact that France itself in the past repeatedly sought to modify what it claimed to be the boundary.

Now I have the highest regard for the excellence of the French maps prepared by the French map agency, the IGN, as well as for maps prepared by the Geographer of the United States under the guidance of the State Department. I wish both Libya and Chad had such capabilities. But the official indications by those governmental agencies of where they regard international boundaries to lie is a matter dictated by their country's policies. Libya comes to the Court not for a political decision but for a decision based on the principles and rules of international law.

There is a second point I must address. Libya's claim is not arbitrarily conceived. Libya did not pick the 15° N latitude out of a hat. Perhaps Libya's claim to the Libya-Chad borderlands as far south as 15° N latitude came as a surprise to Chad's advisers. But they should not have been surprised. For this territorial dispute is not the doing of Libya and Chad. Its origins go back over 100 years. Libya's claim is solidly based on the rights asserted by the Ottoman Empire and by Italy in the past. It is entirely consistent with the history of this territorial dispute, which has never been resolved.

There is, however, a fundamental difference between the claims of the Parties. Unlike Chad, Libya does not say that the line defining Libya's claim was a recognized international boundary or is the only possible line. It is a claim line defining territory to which, in the absence of a conventional boundary, Libya believes it has the better claim to title.

This belief does not rest solely on what the Ottoman Empire or Italy did or had a right to claim. Libya believes that the peoples inhabiting the region within its claim line are Libyan peoples who had title to this territory before the arrival of the Ottomans, or the Italians, or the French. The Muslim tribes there were the Senoussi tribes who opposed the French invasion of their lands from the south and the Italian invasion from the north. No people in the region fought as valiantly as the Senoussi people against the foreign invaders.

Some of these tribes — the Awlad Sulaiman, the Qadhadfa tribe, which is the tribe of Colonel Muammar Kadhafi, and the Orfella — were, and still are Libyans. Tribes, such as the Toubou of

Tibesti, have for centuries lived and travelled and traded with the oases to the north of Cyrenaica and Fezzan, which are part of Libya.

The peoples of the Libyan/Chad borderlands inhabit regions north of what the French unfortunately referred to as "*le Chad utile*" — that is north of roughly 15° N latitude. It is true that the borderlands may be sparsely populated and the region may be economically poor. Of course, that is true of most of Libya. But there are people living there, in the borderlands, who in Libya's view, are Libyan people. Merely because the region is not rich in mineral resources — as was once believed — does not mean that the region should be considered useless and its people ignored. Yet that was the French colonial attitude, and the region was treated no better after Chad's independence. In fact it was ravaged by civil war. It is time that the inhabitants of the borderlands were given the attention and the care they deserve as human beings.

Three years ago, under the *Accord-Cadre* of 1989, Libya and Chad agreed to seek a *legal* — a *judicial* — solution to the territorial dispute. This reflects the fact that a hundred years of attempting to resolve the dispute at the *political-diplomatic* level had failed. Libya and Chad appear here today before the Court to settle this dispute with finality.

The central questions in this case — and they are legal questions — are, *first*, was there a conventional boundary east of Toummo on the critical date, the date of Libya's independence? *Second*, if not, where does that boundary lie? Libya does not believe that either Party is hindered from, or limited in, presenting its claim to the Court. The *Accord-Cadre* prescribes no such limitations.

I should like to add that in the attempt to present Libya's case as objectively as possible, it sometimes has been necessary for Libya to make what might appear as harsh judgments concerning the past conduct of other States. Libya implies by this no disrespect of the Government of any other State today. I think we all recognize that the colonial period in Africa was not one of the happiest moments in the history of mankind.

Before concluding, I must say a word about the letter President Tombalbaye wrote to Colonel Kadhafi in November 1972. But as Agent of Libya I can assure the Court that I have no

doubt that this letter was sent and received and that the contents of the copy we have of it are correct — no doubt whatsoever.

Let me end my remarks, Mr. President, by saying that Libya considers that, as an organ of the United Nations, the Court plays a vital role today in the peaceful settlement of disputes. In this sense, the Court's functions go beyond a narrow legal one, and in its decision the Court will surely address all the elements that may bear upon reaching a truly satisfactory and final resolution of this

dispute. Libya has full confidence that the Court will arrive at a settlement that will foster international peace and security, as well as justice, to use the words of Article 2, paragraph 3, of the Charter of the United Nations.

This concludes my opening remarks, Mr. President. I thank you and Members of the Court and I would ask now that Your Excellency call on Professor Bowett. Thank you very much.

The PRESIDENT: Thank you Mr. El-Obeidi. Professor Bowett.

Mr. BOWETT: Mr. President, Members of the Court, it is my task, in this early stage of the presentation of Libya's case, to assist you by giving a brief summary of that case. As you will have seen from the written pleadings, the history of this matter is long, at times very complex, and in some aspects inconclusive. It may help the Court, therefore, if I sketch out in summary fashion how Libya sees this case. This will, I hope, make the more detailed arguments which are to follow more easily understood.

A. The Principal Elements of the Libyan Case

There are *three* principal elements to Libya's case. The *first* is that to the south of Libya in the borderlands between Libya and Chad there never has been a defined boundary. The *second* is that title to these borderlands was never acquired by France: not by treaty, not by "occupation", and certainly not by conquest. So if France never had title, Chad never inherited any title from France. And the *third* element is that the title to these territories which certainly did exist — vested in the indigenous Senoussi tribes, and claimed on the international plane by the Ottoman Empire and then by Italy — has by law passed to Libya. Let me explain these three principal elements in a little more detail,

First, and foremost, Libya came into existence as an independent State in 1951 with no agreed, defined, "southern" boundary. Whilst it had other, settled boundaries to the east and the west, the fact was that no settled boundary existed between Libya and the territories of French colonial Africa to the south.

This is why Libya rejects entirely the accusation that it is defying the well-established

principle that newly-independent States must respect established boundaries. In the south of Libya — in the borderlands between Libya and the French colony of Chad — there was no established boundary. So that principle is not in issue, and no part of Libya's case represents a challenge to that principle.

If proof of that statement is needed, then it can be seen in the detailed refutation by Libya in its written pleadings of Chad's argument that a boundary had been established by treaty, or rather a series of treaties, long prior to independence. And this detailed refutation will in due course be developed in oral argument.

But there is additional evidence to hand, of a much simpler, and straightforward kind. This lies in the record of the discussions within the United Nations immediately prior to Libya's independence. The General Assembly, through the Interim Committee, began a study of the procedures to delimit the boundaries of Libya (Res. 289 (IV), Sect. C). The UN Secretariat, in a Memorandum of 27 January 1950, examined what boundaries were already delimited by treaty. The Secretariat's task was complicated by the fact that France provided some misleading information — referring to a non-existent treaty and a non-existent map — but the Secretariat concluded that, as regards the southern boundary, the matter was far from clear. And that view was endorsed by the General Assembly in resolution 392 of the Fifth Session. The Assembly determined that "the portion of its (Libya's) boundary with French territory not already delimited by international agreement be delimited, upon Libya's achievement of independence, by negotiation ...".

Thus, in 1950, France totally failed to convince the United Nations that this southern boundary was already delimited by treaty. And that part of the resolution could only have referred to the southern boundary, to the very boundary which is now before the Court.

1. The 1955 negotiations

Now in 1955 France and Libya did negotiate. They concluded the 1955 Treaty of Amity. The delegations were a strange contrast. On the one side were the French — experienced, well-equipped with documentary evidence of the whole history of the boundary, desperately keen to restore France's role in North Africa, and prepared to outmanoeuvre the Libyans, even if it meant

"bugging" their quarters. On the other side were the Libyans — totally inexperienced, lacking records and anyone with legal expertise in international matters.

Yet in the main the Libyans succeeded: they secured the withdrawal of french military forces from the Fezzan, which was undisputed Libyan territory. They paid a certain price, for in the 1956 Agreement Libya was forced to agree on a rectification of that part of the boundary which lay between Ghadamès and Ghât, so as to give the Edjele oil field to France. France refused to ratify the 1955 Agreement unless Libya agreed to this rectification. But that lay to the west, along the boundary with Algeria.

So far as the southern boundary was concerned, the position was simply this. Libya agreed in Article 3 of the 1955 Treaty to such boundaries with french territory as might result from the international agreements in force ("*qui résultent des actes internationaux en vigueur ...*") and these agreements were listed in Annex I.

There is no question that in 1955 such agreements did exist as regards the boundaries with Tunisia and with Algeria. But as regards Chad to the south? That question remained to be examined.

Now there were, in fact, three possibilities. The first was that the treaties listed in Annex I did not, in fact, establish any boundary. The second possibility was that the treaties listed in Annex I did conclusively establish a boundary: we shall show that this was not so. And a third possibility was that Article 3 established a boundary *de novo*. This would mean that, even though the Parties recognised that no previous boundary existed, they agreed that a boundary should exist from 1955 onwards, along some line which might — or might not — emerge from the earlier treaties which did *not* establish a boundary.

Now the Court may feel that this third hypothesis is somewhat unlikely: indeed it is. What is more, if one looks carefully at the record of negotiations, the hypothesis becomes more than unlikely: it becomes absurd.

Consider the following facts. The Libyan delegation told the French that they were not in a position to discuss new boundaries: they were simply not equipped to undertake that task. And no

substantive discussion of this southern boundary occurred. The French delegation produced no map to show where the supposed southern boundary might lie: nor even the texts of the treaties which are now said to support such a boundary line.

As I said, the Libyans were inexperienced: but they were not complete fools! Can you imagine anyone in their right minds agreeing to a boundary when they have been shown nothing to support its existence, and do not even know where such a boundary might lie? As I have said, the hypothesis is absurd.

Now certainly the French were not fools either. So the question is, what were they trying to achieve? In fact the French tactics had been laid down in advance in advice given by the French Governor-General of French Equatorial Africa. He advised his Government *to avoid all discussion of the actual boundary line*, and to somehow get Libya to commit itself to the frontier resulting from the 1899 Anglo-French Declaration (ML, French Archives Annex, pp. 169-171).

Not to put too fine a point on it, the tactic was to trick the Libyans. It was to pretend that the 1899 Declaration really had established a frontier — and to avoid any discussion or debate. Now the trick had three fatal flaws. First, the 1899 Declaration did *not*, in fact, establish a frontier. Second, the Libyans did not fall for the trick, as the record shows. And, third, the trick would eventually be found out.

2. The fallacy of the pre-existing treaty boundary

The 1899 Franco-British Declaration could not possibly have determined a boundary — and, indeed, Chad does not argue that it did so in 1899. The French had never occupied the territory to the south of that line — they were still far to the south around Lake Chad. Nor had the British occupied the area to the north of the line — the British were established in the east, in Egypt and the Sudan. So the so-called "boundary" lay in territory neither occupied by, nor even known to, either Party. In fact, they were not even sure of the location of the Tibesti mountains.

Certainly they drew a line on the map — a line running south-east from a point where the 16° east line of longitude meets the Tropic of Cancer — but this was simply a bilateral agreement that France would never attempt to acquire territory north of this line. It did not purport to be a land

boundary between adjoining sovereigns, for neither Party had the slightest claim to sovereignty.

How, therefore, could such a line ever become a true boundary, binding on the territorial sovereigns?

Well, not by any process of recognition or acquiescence. The Ottoman Empire protested the 1899 Declaration from the start. The indigenous people, led by the Senoussi, fought the French tooth and nail. The Italians are suggested by Chad to have accepted this line in the 1902 Accords. But these 1902 Accords were not concerned with this southern boundary and, in any event, in 1902 Italy was not in a position to accept any boundary — for Italy had at that time no sovereignty in the area.

Now it is true that in 1919 a further Franco-British Convention redefined the line, changing it from a true south-east line to an east-southeast line — in effect adding a further 178,651 square kilometres to the French claim. But how could that reinforce the 1899 line? It was a different line; the territory did not belong to Great Britain to cede; the 1919 Convention was protested vigorously by Italy — which was now sovereign over the territory. Indeed, during the 1920s and 1930s Italy sought to negotiate a boundary with France, and the Italian claims make it clear that Italy accepted neither of the Anglo-French lines, neither the 1899 version nor the 1919 version. So the notion that somehow the 1899 line had been recognized or acquiesced in, is simply wishful thinking.

So where does that leave Chad's case? Well it really leaves only one remaining avenue of argument open. If there was no actual agreed treaty boundary, and no recognition or acquiescence in a line originating in a treaty, Chad is essentially left with only one argument. This is that France had acquired sovereignty over this territory by occupation: and it is this title which Chad has succeeded to.

3. The alleged French title based on "occupation"

The idea of a French title based on "occupation" faces an insurmountable obstacle. This is that it presupposes that the territory was *terra nullius*.

The Court will in due course hear about this territory in some detail. Essentially it is a vast territory, mainly desert and mountain, and inhabited by Muslim tribes who follow a pastoral, or nomadic life-style. In 1900, when the French first arrived at Lake Chad, these peoples had an undisputed title to their lands. The tribes acknowledged the sovereignty of the Ottomans and looked to the Caliph in Istanbul as their spiritual leader and as the sovereign ruler of the Islamic State of which they formed a part. And they also acknowledged the leadership and authority of the Senoussi. The tribes were well organized, into coherent societies. They had a social structure, a legal system, procedures for dispute settlement, a religion, schools, commercial links with Tripolitania, Fezzan and Cyrenaica to the north, and relative security: their lands were not *terra nullius*.

Their security was in due course shattered by the French military invasion. But in all the years during which France launched intermittent raids into this territory and established a few military posts, France never exercised any civil administration of the territory comparable to that which the Senoussi had established. So the notion that the territory was *terra nullius* before France arrived, and became effectively occupied after France arrived, has a special irony. The truth is that France never achieved the effective control which the Senoussi had exercised before their arrival, or even the degree of civil administration which the Ottoman Empire had exercised in the area. It is significant that, so long as the Ottomans remained in the borderlands, the French stayed south of the 15° line of latitude. It was only when the Ottomans withdrew, in 1913, that the French military forces began their sporadic raids into the borderlands north of 15° of latitude.

The consequence of this is clear. The idea of a French "occupation" is totally inappropriate. What we are dealing with, in reality, is a French claim to military conquest of lands to which title was already established.

The Court will in due course have the full story of the military conquest explained to it. For present purposes the point to be made is simply this. France had not militarily occupied these

borderlands prior to 1919. Indeed, the French re-entered Tibesti only in 1929, having withdrawn in 1916. And the very limited French military presence was not intended as a true occupation of the borderlands. There was no civil administration to accompany it, and hence no attempt to govern the territory. It was essentially a "buffer zone". The purpose was to protect the "*Tchad utile*" which lay to the south of the borderlands.

Moreover, as the Court is well aware, in 1919 and again in 1928 France entered into solemn treaty obligations *not* to acquire territory by military conquest. I refer, of course, to the obligations assumed by France under the Covenant of the League of Nations and the Pact of Paris. So, whatever may be the doubts over the effectiveness of the French military occupation, as a question of fact, the result, as a matter of law, was that France *could not acquire a valid title to these territories*. Accordingly, title remained with the indigenous peoples, and with Italy for purposes of representation on the international plane (as successor to the Ottoman Empire). And so the second basic proposition which is an essential element of Libya's case is that France did not occupy these borderlands. It did not do so in fact, and it could not do so as a matter of law, both because the lands were not *terra nullius* and because, after 1919, conquest was illegal.

4. The prior title to which Libya has succeeded

For the third basic element in Libya's case is not simply that a prior title existed in these borderlands, but that this title is now vested in Libya.

As I indicated, prior to 1912 that title lay with the indigenous tribes, organized by the Senoussi, and represented on the international plane by the Ottoman Empire. The attributes of sovereignty were shared by these three "partners" in a manner which suited these Islamic people.

The Court will hear, in considerable detail, how, within these borderlands, the whole range of governmental, administrative responsibilities were exercised either by the Ottoman representatives, or by the Senoussi, or by the tribes themselves through their traditional chiefs and leaders. Trade was protected and promoted, education was given, disputes were settled and the laws and customs of the tribes were enforced, religious instruction was given, wells were dug and protected — and so on.

As I have said, these lands were certainly not *terra nullius*: not by the standards of the day,

and not by the standards enunciated by this Court in the *Western Sahara* case. And so Libya utterly rejects Chad's argument that these lands were acquired by French military occupation.

The title to these territories was consistently asserted by the Ottoman Empire and after Italy had succeeded to the Ottomans in 1912 by Italy. Indeed, during the 1920s, Italy was to negotiate with France over the boundary in these borderlands, making claims which differed only slightly from the boundary settlement proposed by the vilayet of Tripoli in 1911.

Now, it is true that in 1935 the Mussolini/Laval Pact envisaged a boundary line which would have involved a considerable cession of Libyan territory to France. But that 1935 Treaty never entered into force. Italy declined to ratify this cession of territory when Mussolini discovered that, contrary to what he believed France had promised, France did not in fact support the Italian aggression against Ethiopia.

Thus, title remained where it had long rested — with the Senoussi tribes of the borderlands — and now with Italy; and no boundary was agreed.

And there the situation remained until, with Libya's independence in 1951, Libya succeeded to Italy. However, this was no formal State succession to territory. It was a succession not only to territory, but also to the peoples who inhabit these borderlands.

For the tribes are Muslim and Senoussi — some are tribes which originated from further north in territory indisputably Libyan, like the Awlad Sulaiman, and some, like the Toubou, were tribes whose links had always been with the north. The Senoussi are unquestionably Libyan: their struggle for Libyan independence lasted for over 50 years. And the Ottoman title passed first to Italy, and then to Libya. So with the independence of Libya in 1951 Libya succeeded not only to Italy's title, but to the claims and rights of both the Senoussi and the tribes which had persisted throughout all the changes in the international representation of the territory.

5. The Court's task

This brings me briefly to the task of the Court. In one sense this is much simplified — for neither Party contests the Court's jurisdiction. True, the Parties see the task rather differently. For Chad, it is simply a matter of confirming the existing line resulting from certain treaties. For Libya, it is first and foremost a dispute over title — a "territorial" dispute, rather than a "boundary" dispute. Certainly, the Court will have to determine the boundary, but this comes as a secondary or consequential task once title is decided. The boundary represents the limits of the area of entitlement.

Libya does not pretend that, once title is decided, the task of defining the boundary is simple. With the French presence prior to 1919 so intermittent and widely dispersed, it may not be self-evident at all points along the boundary where French control extended to, at that point in time, and where the previous title to the territory might be argued to have been lost.

But the task is clearly a legal one, a legal task with which the Court is fully competent to deal. Attribution of territory is no less a legal task than delimitation of boundaries. That must have been the view of the Permanent Court in the *Legal Status of Eastern Greenland* case, and of this Court in the *Minquiers and Ecrehos* case.

And there is a sense in which Chad seeks to restrict the Court's competence, even though not formally objecting to that competence. This arises from Chad's characterization of Libya's claim as "political" — implying, I suppose, that it is not a "legal" one.

There is really no need for me to spend any time on this accusation. Why a dispute over attribution of territory, or title, is "political", but a more limited boundary dispute is "legal", escapes me. The law provides no support for that proposition. Only two years ago this Court faced a situation, in the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* where, over quite large areas, no boundary existed. So the Court dealt with attribution and then, consequentially, delimitation as a normal judicial task. And neither Party treated the other's claim as "political".

But there is a more serious aspect to Libya's accusation. This lies in the charge that, if the

Court were to entertain Libya's claims, the stability of Libya's other boundaries, and even of other States' boundaries elsewhere in the world, will be threatened.

I trust the Court will not take fright at this "bogeyman". So far as Libya is concerned, as the Agent has already stated, Libya has no wish to challenge existing established boundaries. As for the rest of the world, that same principle of the sanctity of established boundaries must be respected. But we cannot pretend that everywhere, throughout the world, the boundaries are already established and protected by law. Whether we like it or not, the fact is that history has not always produced clear, recognized boundaries. There remain locations, in nearly every continent, where for one reason or another territorial disputes do exist, and established boundaries do not.

It is for this reason that this case is an important precedent. The Court now has the opportunity to demonstrate that the law does provide a means of resolving disputes over title and of providing boundaries *de novo*. There are legal criteria to achieve this, and, in applying them, the Court can demonstrate that the rights and interests of peoples can be safeguarded by the law, and were not simply obliterated by colonialism.

Mr. President, I need detain the Court no longer with this brief introduction. It may help both the Court and our colleagues representing Chad if I indicate the order in which Libya's oral argument will follow.

B. The Order of Oral Argument

The next part of the argument will be devoted to examining the position on the critical date — the status quo, as it were.

Mr. Maghur will begin by commenting on the new documents produced by Chad after the closure of the written pleadings, and he will then turn to the question whether, in the actual circumstances of the negotiations, the Parties to the 1955 Treaty could ever have believed that their Treaty constituted a boundary *de novo*. This discussion will lay the ground for Sir Ian Sinclair who will follow.

Now Sir Ian Sinclair will examine the 1955 Treaty in some detail, including the background to the Treaty, in particular the discussions within the United Nations, continuing into Tuesday. He

will be followed by Mr. Sohier who will review in detail the history of the various treaties which concerned this territory from 1890 through to the Treaty of Ouchy in 1912. And he will at the same time give the Court a picture of what the situation was, on the ground, both at the beginning and at the end of that period. Mr. Sohier's presentation will continue into Wednesday morning.

Professor Condorelli will follow him. Professor Condorelli will take the Court through the Treaty of Ouchy and the relations between Italy and both France and Great Britain between 1912 and 1915. He, too, will summarize the position on the ground as it changed during that period. Professor Cahier will then begin on Thursday morning, noting the few developments which occurred during the period of the First World War and then examining the period from 1919 to 1935. At that point Professor Condorelli will return to demonstrate how Italy saw the position up to 1935, as reflected in the Italian maps, and he will then go on to analyse the 1935 Agreement and finally to show that, even after 1935, the practice of both Italy and France confirmed that no boundary as yet existed. This remained so even at the time of the 1947 Peace Treaty.

Sir Ian will continue through the 1955 and 1956 Treaties between Libya and France, followed by Professor Cahier who will review the subsequent events principally in the context of relations between Libya and the newly-independent Chad. I will conclude Friday's presentations by suggesting how, in the light of the entire background, we must approach the interpretation of the Special Agreement and the task of the Court.

In the following week we shall turn to a new part of the argument. Having shown that there exists no conventional boundary, we will examine the non-treaty basis for the claims by both Libya and Chad.

Professor Crawford will begin on Monday by examining the nature of the territory and the legal principles relevant to the acquisition of title. I will analyse Chad's claim immediately after Professor Crawford.

Mr. Maghur will then begin the demonstration of the Libyan claim, building on the legal principles set out by Professor Crawford. He will describe the borderlands and their peoples and how, by the end of the 19th century, those peoples had accepted the Ottoman claim to sovereignty.

Mr. Kamel Maghur will be followed by Professor Dolzer on Tuesday, who will examine the situation from 1900 to the 1912 Treaty of Ouchy; and he will then make a comparison between the Ottoman and French claims. He will then be followed by Professor Condorelli who will first examine the title inherited by Italy, and then review the various factors now relevant to determining both title and the actual location of the boundary, after which I can conclude the first round of Libya's pleadings by showing how, with Libya's independence, the rights and title to this territory coalesced and were inherited by Libya.

Mr. President, we will provide the Members of the Court and our colleagues on the Chad team with a dossier of maps, to which we will add each day the additional maps relevant to the arguments for that day.

Mr. President, that concludes all I need to say at this stage. Perhaps after the coffee break you could call on Mr. Maghur to speak.

The PRESIDENT: Yes, thank you very much, Professor Bowett. We will take our ten minute break now.

The Court adjourned from 11.30 to 11.45 a.m.

The PRESIDENT: Please be seated. I now call upon Mr. Kamel Maghur.

Mr. MAGHUR: Thank you, Mr. President.

Mr. President, Members of the Court,

It is a very special honour to appear again before the Court on behalf of Libya. The last time I was so privileged was as Libya's Agent in the *Tunisia/Libya* case, some ten years ago.

As I look across today at the Court, I see only a few of the same faces. I should like to mention three of the Judges who are not sitting on the Court today. Judge Elias of Nigeria was presiding at that time. His passing was deeply felt by us. So also was the passing of Judge Singh, who I can still see following the oral argument of a case with lively interest. And only recently Judge Lachs has left us. It is difficult to put into words the feelings we have about that fine man: how much we admired and liked him and how much his presence is missed. This dispute between Libya and Chad now before the Court is the sort of case these Judges would have taken the greatest interest in. I should like to add how fine it is that Judge Herczegh has just been elected to the Court to fill the vacancy left by Judge Lachs and sits on the Court today to hear this case.

Mr. President, in my remarks today I shall start with a few comments about the way in which Libya approached the presentation of this case to the Court. Then I shall turn to two matters that Libya wishes to deal with right at the start. The first concerns the new materials produced by Chad after the closure of written proceedings. Ordinarily I would not take up this aspect of the conduct of Parties at this stage of our presentation, since I was planning to turn directly to other matters. However, Chad's late filing of these materials obliges me to address procedural and substantive aspects of this issue now; and I trust that the Court will bear with me if I have to go into some details in this respect. The second concerns the question whether the 1955 Treaty between Libya and France was itself constitutive of a boundary, as Chad maintains. The main legal analysis and discussion of the 1955 Treaty will be undertaken by Sir Ian Sinclair, who follows me. My purpose is to mention, as an introduction to the discussion of the 1955 Treaty, certain of the circumstances surrounding its negotiation. Finally, I shall conclude my remarks today with a short comment about Libya's conduct before the United Nations and the Organization of African Unity. Later on in this first round of oral argument Professor Cahier will return to the subject of the post-independence conduct of Libya and Chad.

Mr. President, turning then to Libya's approach to the preparation and presentation of its case: as Ambassador Obeidi has just mentioned, this case concerns a territorial dispute in circumstances where there has never been a conventional boundary in the region concerned. It is not

a case where Libya claims one line as a conventional boundary and Chad claims another line.

In a situation such as this, neither Party knows where the boundary lies, and the two Parties come to the Court to decide the question. Therefore, Libya has viewed its task to be to examine each aspect of the question, to study each agreement and document and each fact of relevance, and to present them to the Court. Libya did not begin its preparation of the case with the defence of a preconceived boundary in mind. It has not sifted through the evidence to uncover only the favourable facts.

Now, this effort has not been directed at preparing a lecture to be given the Court on the relevant principles and rules of international law. I have served long enough as a judge myself to appreciate the saying that "the Court knows the law". What Libya believes the Court requires is a complete understanding of the facts and circumstances to which the relevant principles and rules of international law may be applied in order to resolve the dispute.

Libya's three written pleadings have been directed in large part at such a task. Our purpose here at the oral hearing is not to repeat all this material. We are mindful of Article 60, paragraph 1, of the Rules of the Court, which requires that oral statements be "directed to the issues that still divide the parties" and that they shall not "go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain". One of Libya's prime objectives here at the oral hearing will be to point up the important elements of the case so that when the Court returns again to the written pleadings, the relevance of the many facts, documents and agreements will be more evident — some life will have been injected into them.

In this regard, Libya regrets that the issues dividing the Parties have not adequately been dealt with as yet. There are many issues that, up to now, Chad's pleadings have either totally ignored or have not bothered to face up to. Libya's Reply has cited some conspicuous examples of this failure. In municipal and international practice, a party who follows such a practice does so at his peril. In the course of these proceedings, Libya will bring out what these issues are. Libya invites the Court to reach the inevitable conclusion, if these issues are not adequately confronted by our distinguished adversaries.

Mr. President, I come now to my second subject today — the new materials submitted by Chad after the closure of the written pleadings in this case. These concerned, or were supposed to concern, the famous letter written by Chad's President Tombalbaye to Colonel Kadhafi in November 1972 recognizing Libya's sovereignty over what he called the "Aouzou Strip", a letter that Chad, not Libya, has placed into evidence.

I should like to remind the Court of the form and contents of this letter by referring the Court to a reproduction of the three-page letter placed in evidence by Chad as Annex 343 to Chad's Memorial, which will now appear on the screen behind me. It is not a very legible document and some writing seems to have been added to it. The first page has the Presidential letterhead at the top. The second page contains the key paragraph. At the bottom of the third page appears what purports to be President Tombalbaye's signature, which can hardly be made out. The Court will find in folder No. 5 a copy of the key paragraph and a more readable retyped text which I have placed on the screen behind me.

As the Agent of Libya has said, Libya does not doubt the authenticity of this letter, whose existence is supported by secondary evidence, but it has not been able to find the original letter. As a result, Libya did not produce the letter and did not discuss it in its first Memorial. To Libya, the letter's importance is that, at the very least, it reflected the unresolved status of the Libya/Chad borderlands at the time.

On 9 February 1993, the Deputy-Agent of Chad sent a letter to the Registrar of the Court. The letter stated that Chad, having noted that Libya's Reply had placed new emphasis on the Tombalbaye letter, had gathered what the letter described as the sworn testimony of *all the close associates* of the former President who were still alive 20 years afterwards and could be found in Chad. Enclosed with Chad's letter were the original copies of 11 documents purporting to be this sworn testimony gathered by the Court of Appeals in N'Djamena in October and November 1992.

On 21 March 1993, the Agent of Libya set forth his observations in a letter to the Registrar. The Libyan Agent's letter deals fully with the procedural aspects of this late submission of evidence by Chad under the Rules of the Court and explains why Libya decided not to object to the

production of these materials.

Before turning to a discussion of the form, nature and contents of this new material submitted by Chad, there is one point made in Ambassador Obeidi's letter that I wish to repeat. There was no new emphasis placed on the Tombalbaye letter in Libya's Reply that would justify the production of this material. This is apparent from a comparison between what is said about the letter in Libya's Counter-Memorial (paras. 5.118-5.134 and 8.76-8.77) and in Libya's Reply (paras. 11.13-11.32).

The reason I repeat this point is that I want to draw attention to the procedure followed here by Chad. The Tombalbaye letter is dated November 1972. Starting in 1978, the issue with which the letter dealt concerning title to the so-called "Aouzou strip" was placed in full public view by Chad. Rumours were already widespread about such a letter or commitment by Chad's President. Even after Libya furnished a copy of the letter to the OAU Subcommittee of Experts in 1987, Chad had had some five years to produce these new materials. But Chad waited until the last moment.

Why did Chad follow such a procedure, which is hardly in keeping with the spirit of the Court's Rules? Perhaps they were hoping to find an original copy of the letter or expecting that Libya might do so. After all, there is nothing very unusual about even major world Powers misplacing key documents. Whatever Chad's answer may be, Libya rejects the suggestion that new emphasis placed on the letter in Libya's Reply was a legitimate reason for this last-minute production of these materials.

Libya's position as to the Tombalbaye letter, as set out in both its Counter-Memorial and Reply, is simply that:

- It *confirms* that Chad believed in 1972 that the 1955 Treaty had not delimited Libya's boundary with Chad;
- It shows that Chad recognizes Libyan sovereignty over the territory referred to in the letter, and that there was no question at all of Chad's *ceding* territory to Libya in the letter;
- At the very least, it *established* that the question of delimiting the boundary between Libya and Chad remained to be resolved.

The question that comes to mind concerning this late submission by Chad is: *why all the*

fuss? Why does Chad feel it necessary to submit all this sworn testimony?

Of course, this is for Chad to explain. But one can hazard the guess that Chad has become increasingly concerned over the implications of the Tombalbaye letter *it* had placed in evidence, not Libya. Chad's advisers may also have, at the outset, reassured themselves that, even had the letter been sent, it concerned the *ceding* by Chad to Libya of territory, a power which Chad's President did not possess under Chad's Constitution. In other words, an *ultra vires* act. But, as pointed out in Libya's Counter-Memorial, the letter cannot be interpreted that way. There was no cession of territory involved at all. The letter is to be read as recognizing Libyan sovereignty over certain disputed territory. In both its Counter-Memorial (para. 5.12, fn. 19) and its Reply (para. 11.17), citing the *Nuclear Tests* cases and the *Legal Status of Eastern Greenland* case, Libya pointed out the legal significance under international law of such a formal declaration by a Head of State.

Thus, Chad must have had second thoughts over the wisdom of its having introduced the Tombalbaye letter into evidence. But there is another, even more important, point to be made. The new materials Chad has now produced deal with matters that go well beyond questions concerning the letter. They deal with alleged facts and events occurring in the years 1972, 1973 and 1974 that have never before been placed in evidence in this case. These events concern the alleged conduct of Libya and Chad during this period. So it would appear that what Chad is really concerned about — and why it produced these materials after reading Libya's Reply — is not what Libya said about the Tombalbaye letter, but what Libya's reply revealed concerned Chad's conduct during the 1970s, in *not protesting* Libya's presence in the borderlands for some five years after Chad was fully aware of the fact.

Mr. President, this new material submitted into evidence by Chad, independently of the Tombalbaye letter, confirms what Libya believed the Tombalbaye letter to have established: that at the very least, the question of delimiting the boundary between Libya and Chad remained to be resolved. It made clear that the 1955 Treaty had not settled the question of Libya's southern boundary. It demonstrated that, in the period 1972 to 1974 with which these materials are concerned, neither Libya nor Chad believed there was a conventional boundary between them, and

they both recognized the existence of a territorial dispute that had yet to be resolved.

Turning to the *nature and form* of this new material, it consists of 11 documents — described in Chad's letter as "sworn testimony" ("*témoignages sous serment*") and in the documents themselves as "*Procès-verbal de déposition de témoin*", or the "Verbatim Record of the Deposition of the Witness". However, it is apparent that those 11 documents have no greater value as evidence than would sworn affidavits. The documents are clearly not depositions in the sense of answers given to questions and cross-questions submitted by each side to the persons questioned. There is no indication of exactly what copy of the Tombalbaye letter was shown to each person. We are not told who prepared the questions put to them or whether they were shown the questions beforehand. There are indications that their replies may have been edited. We have no idea how many of such documents were discarded because the answers were considered unsatisfactory. So these documents have no more evidentiary weight than statements prepared by Chad's counsel and signed and sworn to by each person.

It is also clear that these materials cannot be regarded as submissions from which the Court is invited to pick and choose — a sort of buffet or *smorgasbord*, with none of the dishes necessarily recommended by the chef. To the contrary, just as in the case of allegations of Chad in its written pleadings or in evidence annexed to its pleadings, the various allegations made by these 11 persons must be taken to be assertions whose correctness Chad not only concedes but also endorses.

What is the composition of this group signing statements, whom Chad's letter describes as "all close assistants" ("*tous les proches collaborateurs*") of former President Tombalbaye still alive and living in Chad?

If I were to take the Court through a detailed scrutiny of the group, and the general contents of each statement, a number of things would become apparent:

1. The persons could hardly be the only close associates of President Tombalbaye still available to give statements. In fact, over half of them appear not to have been close associates of the President at all.
2. Very few had any detailed knowledge of the operations of the President's secretariat, and

their comments on the letter are not reliable testimony.

3. Most of the persons appear to have been selected to answer questions on matters other than the letter, such as meetings held in 1972, 1973 and 1974.
4. Almost all these persons volunteered statements that had nothing to do with the areas of their experience or even with the letter itself — such as, for example, the 1971 speech of Chad's representative before the United Nations.

Rather than dwell on the make-up of this group of people, I shall turn to the contents of their responses to the questions put to them. Again, I regret having to deal with these details, but this is necessary to place Chad's late filing in proper perspective. I intend to demonstrate that this new material has made the question of the authenticity of the Tombalbaye letter entirely moot. For it established beyond doubt the very proposition that Libya would have based on the Tombalbaye letter, had the original one been found. That is — to repeat what I said a few minutes ago — that both Libya and Chad acknowledged that they had a territorial dispute to resolve and that no conventional boundary existed between them.

There are some eight subjects covered by these materials:

First, of course, is the authenticity of the letter. Here a number of aspects of the letter are commented on in the sworn statements:

- (i) Whether the type used conformed to typewriters in the secretariat — let me pause a moment Mr. President — as if it was obligatory for the President, and President only, to use typewriters in the secretariat. Here the evidence seems to show the type was different. But several statements suggest that a close Syrian adviser of the President, Mr. El Zir, might have had the letter typed on typewriters other than those in the secretariat — presumably on instructions from the President. According to one statement, Mr. El Zir carried around with him Presidential letterhead, including pre-signed sheets of letterhead papers.
- (ii) The letter's form and contents. Here the evidence seems rather manufactured. Persons, whose relationship to the President does not appear close, and with no knowledge of

secretariat procedure, express their purely personal opinion.

- (iii) The use of the term in the letter, "*bande d'Aouzou*". Here the line of questions is directed at establishing that the term was not in common use until 1975, and that no one close to President Tombalbaye heard him use this term during the period 1972 to 1974. Hence, the argument presumably goes, the President could not have written the letter for this term in the letter was not then used by him or anyone else. The answers to this question are conflicting, several persons believing the term "*bande d'Aouzou*" to have been in current use in 1973.
- (iv) A fourth point about the letter, dealt with in questions put to this group, concerns President Tombalbaye's signature. With only a few exceptions, the witnesses say that they were not shown a sufficiently legible copy of the letter to determine the authenticity of the signature. Mr. President, if they were shown a copy no clearer than that put in evidence by Chad, this certainly appears to be correct, as the Members of the Court can verify from the copy in the Judges' folder. But what is striking, is that none of the witnesses explicitly *denies* that the signature is Mr. Tombalbaye's.

There also are questions put concerning the date when the President changed his first name (*prénom*) from François, which appears typed under the signature on the letter, to another name. The evidence given is that the change occurred after the date of the letter, so this line of questioning appears to fizzle out.

Chad does not state what conclusion it has reached concerning the authenticity of the letter based on this evidence. But there appears from the new evidence the distinct possibility that, on instructions, it was prepared by the President's close adviser, Mr. El Zir, for this new evidence also establishes that the President himself did not normally draft his own letters.

So much for the authenticity of the letter, Mr. President, the first subject addressed in these statements.

The *second* subject concerns the 1971 United Nations speech of Chad's representative. Professor Cahier will deal with this matter later on in Libya's presentation, so I need not go into this

further except to say that the official transcript of this speech refutes the allegations concerning it contained in these materials.

Third, several of the statements mention a governmental meeting in Chad on 28 November 1972, the same date as appears on the letter. They seem to establish that the letter was not mentioned at this meeting, which dealt with other subjects. It is not apparent why this fact casts doubt on the authenticity of the letter.

The *fourth* matter related to the situation at Aouzou during 1972 to 1974. Aouzou is referred to in the statements variously as a military post, an administrative post and a bivouac. Several statements allege facts that have never before been introduced into evidence.

One person asserts that, although President Tombalbaye never talked about the "*bande d'Aouzou*", he often mentioned the post of Aouzou as occupied by the Libyans. So Chad admits that Libya's presence there was well known at the very top of Chad's Government around the time of the letter.

Another individual, who joined the Chadian Government in a position clearly bringing him into close contact with the President, alleges that in October 1973 he was put in charge of what he calls "*l'affaire du Poste d'Aouzou*". He goes on to say that the *Préfet* of the so-called "BET", in his monthly reports of November and December 1973, reported on the presence of Libyan patrols at this post. This person also states that Libya had raised its flag over the post. He referred to it as a "*petit drapeau libyen*". He says that he informed the President at once of these "excursions" and that the President charged him to look into the matter ("*de voir cette affaire de très près*"). But no further investigation is reported by him until June 1974, when the President formed a delegation, which included this person, to go to Tripoli to discuss with the Libyan authorities "*cette affaire du Poste d'Aouzou*". He reports on this meeting, described as warm and friendly.

Mr. President, this is the first time this June 1974 meeting has been mentioned in this case. Libya has not had time to assemble its own evidence concerning the allegations made here, so it can neither confirm nor deny them. However, let us see what Chad here alleges took place:

— The Libyans were asked if they wanted to install themselves at the Post of Aouzou. Allegedly

they replied, no — and that they had no claim over this zone ("*cette zone*"). I will come back to this claim.

Well, of course, there is something wrong here. For this same person had just finished denying that at the time the region was referred to as the "*bande d'Aouzou*". So what was this zone allegedly referred to by him?

- The Libyans, according to this report, went on to say that they were there because the people there were starving. It was a humanitarian mission on the part of Libya.
- Why then had you raised the Libyan flag over the fort? Oh, allegedly was the Libyan reply, it was a mistake of the military *who were patrolling the zone*.
- The Libyans allegedly suggested, to allay suspicions, that a joint administrative arrangement be put together so that any irregularities that might create trouble could be jointly discussed.
- Satisfied with the response and the good behaviour of the Libyans, the Chadian delegation left, saying they would pass this on to their President.

Mr. President, it is difficult to find consistency between what these statements say concerning President Tombalbaye's knowledge of the Libyan presence in the borderlands. One says that President Tombalbaye often mentioned the fort of Aouzou was occupied by the Libyans. Another states that President Tombalbaye, on various occasions, informed Chad's political party, which the President was the leader of, of the attempt of the Libyan authorities to justify their rights over a band of territory that included Aouzou. Yet this account of the June 1974 mission to Tripoli attempts to give the impression that Libya's presence in the region had just been discovered, conveniently overlooking the *Préfet's* report of the year before concerning Libya's presence there.

Another statement also mentions a Libyan flag at Aouzou. It recalls that the weekly *Jeune Afrique* had reported a flag-raising ceremony at which the Chadian members of the Frolinat were present and went on to give a little of the recent history of the fort. It is said that during the French occupation there were about 60 camel-mounted troops stationed there, who were relieved at six-month intervals. After Chad's independence and the French military withdrawal, the troops stationed there fell to 30. Seeing this reduction in force, the Frolinat attacked and destroyed the fort.

No precise dates were given. After that, with the agreement of the Frolinat, Libya raised the Libyan flag in place of the flag of Chad. This is not just another miscellaneous detail — the present leadership of Chad is made up of former members of the Frolinat.

What can be made out of these various overlapping and, at times, conflicting allegations? First of all, it took Chad some six months to look into the situation reported by the *Préfet* of the BET. Obviously, it was not of particular concern. Then the Chadian delegation happily accepted Libya's assurances that their activities in the region of Aouzou were humanitarian not military. They were satisfied that Libya was not out to make trouble or to disturb the good relations recently restored between Libya and Chad. But it is evident that President Tombalbaye was well aware of Libya's presence in Aouzou and of Libya's claim to the region, for he frequently mentioned the situation to some of his colleagues, according to some of the statements.

Perhaps the most important point is that these statements confirm what Libya's Agent said in his opening remarks. Libya brought its governmental administration into this region because the peoples there were starving and they were regarded to be Libyan peoples. It was not a military move to try to assert rights in order to get the upper hand in future negotiations to settle which State had sovereignty over the area.

I turn now to the *fifth* subject addressed in these affidavits. Most persons were asked this question:

"If the expression '*bande d'Aouzou*' was not employed at that time (that is in the period 1972-1973), how did President Tombalbaye designate 'the territory contested between Libya and Chad' (*'le territoire contesté'*)?"

It is the question itself put by Chad that is of interest. Putting such a question to these 11 persons is a clear admission by Chad that there was an unresolved *territorial* dispute. Not a *boundary* dispute, a *territorial* dispute. And not a dispute over something called the "*bande d'Aouzou*" — the "Aouzou Strip" — for Chad, in introducing these statements, describes the use of that term at that time.

Only two persons say there was no contested area. The answer of a third is of special interest. This person says that at the time it was the political extension of Libya, which went beyond

this zone of Tibesti, as he called it, that was Chad's concern. He goes on to say that there was under discussion with President Tombalbaye the possibility of creating a *zone tampon* (a buffer zone) between Libya and Chad to be called a "zone of friendship and solidarity", to be exploited economically by both countries and militarily occupied by the forces of both. He recounts some of the details of a working trip of President Tombalbaye to Tripoli on 10 November 1974. I shall return to his account of this meeting in a minute.

Mr. President, the *sixth* matter addressed was the December 1972 visit to Libya of President Tombalbaye. This event is dealt with rather briefly in the written pleadings. What Chad appears to be attempting to demonstrate is that there was no mention of the "*bande d'Aouzou*" during the visit.

One person, who accompanied President Tombalbaye on this trip, which culminated in the signing of the Treaty of 23 December 1972 between Libya and Chad, states that a joint communiqué was issued at the end of the visit and that it was silent about the territorial dispute. Chad does not furnish the document. In its Counter-Memorial (para. 5.124) Libya quotes from President Tombalbaye's speech at a banquet given in his honour at the time. The full text was annexed as CML, Exhibit 24. This speech included these remarks:

"History tells us that before imperialism, which has ruled both our countries, there were close fraternal bonds. The current borders were created by imperialism ... We, the Libyans and Chad, consider any difference between us as the result of the geographic situation created by imperialism."

His words clearly reflected the fact that an unsettled territorial question remained to be resolved.

It is not surprising that the unresolved territorial question was not specifically mentioned in the communiqué allegedly issued (but not furnished by Chad), although this person does not say that such a question was not raised at the December 1972 meeting. For according to him the visit was devoted to broader questions and resulted in the formation of three committees: political, economic and security. This is confirmed in two other statements.

If the "*bande d'Aouzou*" was not a matter taken up at the December 1972 meeting, this hardly establishes that the Tombalbaye letter was not written. The opposite conclusion could be drawn, for the letter would have made it unnecessary to take up the subject at the meeting.

Since I am taking these matters up more or less chronologically, I turn next to the *seventh* on the list: the visit of Colonel Kadhafi to Chad in November 1972, reported on by two persons. According to one account, it was a simple protocol visit to lay the cornerstone of a clinic at N'Djaména. A conversation between President Tombalbaye and Colonel Kadhafi during that visit is reported during which the question of Libya's help in restraining the rebellion in the north was raised. Colonel Kadhafi allegedly responded that he could not stop fellow Muslims coming into Libya but he would not provide them with funds and arms.

This person expresses surprise that the question of Aouzou or of any other dispute failed to be discussed at the meeting. *Yes, it does* seem surprising. But not for the reasons this person apparently wished to convey. What is surprising is that President Tombalbaye and his associates at the meeting, fully aware of Libya's activities in the north of the borderlands at the time, had themselves not asked Colonel Kadhafi what they were doing there if they felt it to be a violation of Chad's sovereignty. The deliberate silence of President Tombalbaye is evidence that lends support to the existence of his letter of 28 November 1972.

I have already mentioned the allegations concerning a meeting between representatives of the two countries in Tripoli in June 1974 and the said allegations to discuss Libya's presence in Aouzou and the vicinity that was drawn to President Tombalbaye's attention by reports of the "*Préfet*" of what Chad calls the "BET" in November and December 1973.

So I turn next to the *eighth*, and last, subject addressed in the questions put by Chad to this group. This concerns President Tombalbaye's trip to Libya on 10 November 1974, with a delegation, and what allegedly transpired during his meeting with Colonel Kadhafi and his aides.

This is another meeting that comes up for the first time in this case. It is mentioned in the affidavit of a person who claims to have accompanied President Tombalbaye on the trip. This witness states that there was talk at that time of creating a jointly occupied, jointly developed "*zone tampon*" between Libya and Chad, a matter confirmed in another statement, as I have already mentioned.

Among the delegation, this witness reports, was another non-Chadian personal adviser to the

President, Mr. Abdel Aziz, a Mauritanian. The Court will recall that earlier I brought out the important role some witnesses felt a top Syrian adviser to President Tombalbaye, Mr. El Zir, may have played. Here, as in the case of the Syrian adviser, Chad furnishes no affidavit from the person.

This person — the person who made the statement — alleges that the question of creating a *zone tampon* was raised by President Tombalbaye during the meeting, which included Colonel Kadhafi, Major Jalloud, and others. His description of what ensued goes this way:

In response to the proposal, Colonel Kadhafi, turning to a map, asked the President to indicate where the zone would be.

President Tombalbaye replied that if the principle was accepted, it could be left to the experts to delimit the zone.

The conclusion drawn by this person from this alleged discussion — that it disproves the existence of the Tombalbaye letter — makes no sense at all: it has nothing to do with that. At the time, Libyan assistance to the peoples of the borderlands was not restricted to Aouzou or to any so-called Aouzou Strip. It extended throughout the region at least as far south as Faya and Fada at roughly 18° N latitude. The *zone tampon* might well have embraced much of this area as well, not just the so-called Aouzou Strip.

Another person reports on the meeting in Tripoli of 10 November 1974, although he apparently was not there. He claims that at the meeting the question of the distribution of Libyan identity cards in the "contested zone", as he expresses it, was raised both at the Committee level discussions at the plenary meeting. He quotes Colonel Kadhafi as saying that Libya already had a vast territory and had no need to annex the territory of friendly neighbours. What was involved, he said, was not the distribution of identity cards, but of food to the peoples of the region who were dying of famine — both Libyans and Chadians.

Mr. President, no official record of the meeting has been furnished by Chad or has been uncovered by Libya in preparing for this case, so this witness's choice of words in describing the conversation must be taken with a grain of salt. The fact is, Libyan identity cards were issued throughout much of the northern borderlands. Libya has examples of such cards. If the Court so

requests, Libya will produce those documents. Issuing these cards was an administrative measure linked to the distribution of food to the peoples of the area. Once again, the statements produced by Chad here emphasize the purpose of Libya's activities in this region: to save the starving population.

This same individual also reports a confidential discussion with President Tombalbaye in which the latter said he had made this proposal about a zone to trick Libya into implicitly recognizing that the contested zone, which this person identifies as the Aouzou strip, belonged to Chad. Allow me, Mr. President, to repeat this sentence of mine because I have to repeat it: he, speaking about the President, said the President said that he had made this proposal about a zone to trick Libya into implicitly recognizing that the contested zone, which this person identifies as the Aouzou strip, belonged to Chad. If this is true, first of all here is an example of the President using the term "Aouzou strip" before 1975.

Of course, this evidence is a clear admission by Chad that there was a territorial dispute to be resolved. And it brings out something else as well — that is why I repeated the sentence, Mr. President. Just as France in the 1955 negotiations avoided any attempt to deal directly with Libya over the unresolved question of Libya's boundaries east of Toummo, so did Chad in 1974. How history repeats itself.

To conclude this discussion of Chad's new, last-minute documentary submission, it is quite apparent that what really concerned Chad, and led to the last-minute production of these materials, is what Libya said in its Reply — not about the Tombalbaye letter, but about Chad's own conduct during the 1970s concerning the territorial dispute between Libya and Chad.

The fact that no protest was made by Chad against Libya's extension of governmental administration into the northern borderlands regions until almost five years after the fact, when there had been a political change in Chad, is a further indication that Chad knew at the time that sovereignty over this area remained at least to be resolved. If the original copy of this letter were found, it would reinforce this other evidence. But Chad's new submission, by itself, establishes the point, making moot the question of the authenticity of this letter.

This brings me to the end of the first matter that Libya wishes to dispose of right at the start

of its oral argument. Later on, when Professor Cahier considers the post-1960 conduct of Libya and Chad, he will return to the Tombalbaye letter and Chad's new submission in that context.

Mr. President, Members of the Court, I have taken enough of the Court's time discussing the matter of Chad's late filing. Now, I should like to turn to the main matter that I had planned to dispose of right at the start — the 1955 Treaty. What I have to say is introductory to the detailed legal treatment that Sir Ian Sinclair will give the subject after I finish.

Prior to the achieving of independence in 1951, Libya had been ravaged by war. There had been the war with the French in the borderlands, the war with the Italians further north, and, of course, World War II, in which the major North African battles on Libyan soil had taken their toll of the Libyan peoples, their lands and their possessions, primarily along the coastal region of Cyrenaica and Tripolitania.

Not only had Libya been ravaged by war, but it had been occupied by three military Powers, who were still there at the time of its independence on 24 December 1951 — France in the borderlands and Fezzan; Great Britain in Cyrenaica and Tripolitania; and the United States, which had built the Wheelus Air Force Base in Tripolitania and other bases elsewhere in Libya. And France had territorial aspirations to annex the borderlands and Fezzan to its African possessions and territories. In 1948, France advanced the proposal that would have greatly modified the conventional boundary France claimed to exist based on the two 1919 treaties. It would have appropriated to France huge areas along the Libyan frontier with Algeria and along its southern frontier. The other Powers, notably the Soviet Union, refused to accept the French proposal.

Aside from recovering from the shock of war and being occupied by three major Powers, Libya was one of the poorest States in the world in 1951. Its peoples were largely uneducated and untrained. It was not a good prospect to be granted independence as a State. At the United Nations, France, in particular, strongly opposed Libya's independence, feeling that it could not survive as an independent State. It was nothing short of a miracle that under the auspices of the United Nations, and with the notable assistance of the United States and the Soviet Union, Libya entered the family of nations in 1951, and somewhat later was admitted to the United Nations.

One of the events occurring at the time of Libya's independence was the adoption of a Constitution installing the Head of the Senoussi, King Idris, as Monarch and Chief of State of the United Kingdom of Libya. Article 4 of its Constitution referred to Libya's boundaries in such a way as to make it clear that there was no conventional boundary east of Toummo. This will be demonstrated by Sir Ian Sinclair. Libya achieved independence without a conventional southern boundary between Toummo and the Sudan border, and its Constitution reflected that fact.

The United Nations issued a map with the Study of the Secretariat in January 1950 regarding the delimitation of Libya's boundaries showing a line which was neither the 1919 Anglo-French Convention line claimed by France nor the 1935 Franco-Italian Treaty line. And this line was accompanied by question marks. Here, on the screen, is that map. It will be again discussed by Sir Ian Sinclair. The need for France and Libya to negotiate to delimit this boundary was then set out in General Assembly resolution 392 (V) in December 1950.

Thus, when Libya achieved independence in December 1951, three key elements were in accord that Libya had no conventional southern boundary: General Assembly resolution 392 (V); the United Nations map attached to the Secretariat's study of the boundary question; and Libya's Constitution. This essential fact — the absence of a southern conventional boundary — conditioned Libya's subsequent conduct concerning its boundaries.

Sir Ian Sinclair will analyse the events occurring at the United Nations leading to resolution 392 (V) as well as the negotiations leading to the 1955 Treaty between Libya and France. And he will examine in detail Article 3 of the 1955 Treaty, a provision that dealt specifically with the question of boundaries between Libya and the surrounding French territories. I shall limit myself here to saying something about Libya's attitude towards these negotiations at the time, its total lack of capability to deal then with boundary negotiations, and its intention not to do so.

When the negotiations that ultimately led to the 1955 Treaty started in January 1955, I would estimate there were not more than five lawyers in Libya. Only one lawyer, Mr. Fekini, fresh from law school in Tunisia, with no experience of any kind, was assigned to assist the Libyan team. When I graduated from law school in Cairo two years later, I would estimate that the number of

lawyers throughout all of Libya had increased to about 10. Like Mr. Fekini, I knew nothing about matters of international law and international boundaries when I graduated from law school.

Libya's Prime Minister, who led the Libyan negotiating team during the January and the July-August negotiations, had been born 34 years earlier in Alexandria and had lived and received his education in Egypt. He was neither a trained diplomat nor a lawyer; he was an engineer. Nine years out of the university, at the age of 34, he had been appointed both Libyan Prime Minister and Foreign Minister. The contrast between this young man conducting the 1955 Treaty for Libya and France's M. Mendès-France and, later, M. Dejean, a senior French diplomat formerly one of General de Gaulle's right-hand men, is striking.

If Libya's young Prime Minister's *curriculum vitae* was a little unusual to qualify him to conduct the negotiations, it is clear that he had one primary objective — to get the French to leave Fezzan as soon as possible. And he never let up until he thought he had achieved that goal with the signing of the 1955 Treaty. He also knew what he did not wish to deal with in the 1955 Treaty — namely, boundary questions. He was not equipped to do so.

But the French Government forced his hand in both matters. I wish to emphasize here a few of the points that emerge from the available Libyan *travaux*.

In the January phase of the negotiations, Libya's Prime Minister made clear that the French had to leave Fezzan — as quickly as possible. He agreed to a formula concerning the Franco-Libyan boundaries under which the parties were to abide by the general stipulations of the international treaties in force at the time of Libya's independence ("*aux stipulations générales des textes en vigueur à la date de la création de l'Etat libyen*").

But in February 1955, the French Government of M. Mendès-France fell, and there was considerable doubt for a time whether the French would resume negotiations. There was strong French sentiment not to evacuate Fezzan.

When negotiations did resume in July 1955, the French Government sent a high-powered team to Tripoli, led by M. Dejean, armed with a draft treaty and various alternative propositions. This particular part of the French *travaux* from the Quai d'Orsay archives has been put in evidence by

Libya but not by Chad.

The major sticking point in the July-August negotiations concerned reaching agreement over the French military role in Fezzan should hostilities break out in the region after their departure. This problem had contributed to the delay in resuming the negotiations after January so as to allow time for the British and French to reach a side agreement covering their respective roles in the event of the outbreak of hostilities.

The boundary question was a distinctly secondary matter during the second phase of the negotiations, except for the part of the Libya-Algeria frontier south of Ghadames in the direction of Toummo. There the French brought heavy pressure on Libya to agree to the rectification of this part of the line delimited in the Franco-Italian Accord of 12 September 1919. They succeeded in exacting an agreement on three points through which the boundary was to pass, which was incorporated into Annex I to the Treaty. But the Libya-Algeria boundary between Ghadames and Ghat, delimited by the same 1919 Accord, was specifically recognized, and the French did not disclose at the time their aim to rectify this boundary so as to obtain for France the Edjélé oil field, whose prospects for high commercial production were well known by mid-1955.

When the 1955 Treaty was signed on 11 August 1955, Libya thought it had achieved its objective — to get the French out of Fezzan by the end of November 1956. They had postponed settling the boundary question, which Libya had repeatedly stated it was not prepared to discuss, except for the southern sector of the Algerian boundary. There Libya had agreed to a rectification of that boundary after quite a struggle, an examination of maps, and a field trip to the site by a joint Libyan-French team.

Libya proceeded promptly to ratify the Treaty. Not so the French! Not until less than a month before the date set for the French to evacuate Fezzan — that is, 30 November 1956 — did the French Government even present the 1955 Treaty to the French Parliament for ratification. Finally, as a condition of ratification, an additional price was exacted from Libya to avoid France's abrogation of its commitment to leave Fezzan. This additional price was to rectify, under a separate agreement, the Ghadames-Ghat sector of Libya's boundary with Algeria in order to secure the Edjélé

oil field for France. At the end of 1955, the production of oil in important commercial quantities from the Edjélé field had been confirmed, and it was heralded as a major discovery.

Mr. President, there was no mention at all in the 1956 Treaty, which accomplished this boundary rectification, of Libya's southern frontier east of Toummo.

What, then, was the resulting situation as to the southern Libyan boundary after the 1955 Treaty had been signed and ratified and after the 1956 Treaty had been signed?

Clearly, Libya had not negotiated with France the delimitation of its southern boundary. The subject had not been dealt with. Libya and France had postponed doing so. So the situation remained as described in Article 4 of Libya's Constitution: no southern boundary. The furthest Libya had gone in Article 3 of the 1955 Treaty was to agree to accept a conventional boundary if it existed under international agreements in force on the date of its independence.

In the course of the 1956 negotiations forced on Libya — and this time Libya had a Swiss technical adviser to actually participate in the negotiations — the proposal to consider the entire Libyan frontier, including that between Toummo and the Sudan, was made by the Libyan side. The French flatly refused to consider regions south of Ghat in the discussions.

Shortly after the signing of the 1956 Agreement, disputes with France broke out along Libya's frontier with Algeria. There were a series of serious skirmishes between Libyan and French troops. The Algerian war, which had begun recently in 1954 and had increased in intensity, and Libya's open support of Algeria led to a further deterioration of Libya's relations with France. There was no prospect of negotiations resuming with France to delimit Libya's southern boundary, and neither Libya nor France made any effort to do so after 1956.

However, Libya took one important action four days after the signing of the 1955 Treaty. Libya issued an official map, without any disclaimer, on which was drawn a southern boundary . This map now appears on the screen. It was signed by Libya's Minister of Economy. This map, called map No. 1, was annexed to Libya's Petroleum Regulation No. 1 issued under its 1955 Petroleum Law. This Petroleum Law was the first set of rules issued by Libya to govern petroleum concessions granted to foreign companies. Map No. 1 was Libya's first official map.

As you can see on the screen, Mr. President and Members of the Court, map No. 1's southern boundary coincided almost exactly with how the United Nations maps then being issued portrayed a southern Libyan boundary, east of Toummo, as is shown on the screen, although in the case of the United Nations maps, always with a disclaimer. This line was neither the 1935 line nor the 1919 line claimed by France but rather the line shown with question marks on the map annexed to the Secretariat's 1950 Study.

When this map was issued, I was still a student. I do not know why this exact line was placed on map No. 1. But since then I have served as Libya's Minister of Petroleum and have come to know something about matters of this kind, at least from the Libyan standpoint.

On an official map of petroleum zones, boundary lines cannot be omitted — or left blank. The whole purpose of such a map is to instruct and guide foreign oil companies as to the limits of their concessions. If a boundary is not known, it is the practice — and a wise practice — to place such a line in a conservative way, usually with a disclaimer, and sometimes also indicating that there is an unresolved boundary question. This is done so as not inadvertently to lead an oil company into a possible boundary infringement incident.

The line chosen for this map by Libya made a good deal of sense. As you can see again on the screen, it conformed to neither the 1919 line nor the 1935 line.

Rather, it followed a line set out on United Nations maps at the time, which reflected the fact that Libya's southern boundary had not been delimited.

The French Ambassador to Tripoli at the time, M. Dumarçay, an experienced and astute diplomat, immediately protested the map. Libya did not respond officially to the French protest. But it did not change map No. 1. By its protest, France had officially proclaimed that it was aware that Libya and France were not in agreement as to a Libyan boundary line east of Toummo — a mere four days after signature of the 1955 Treaty. Yet France took no further action to attempt to delimit this boundary. At the same time, while failing to take any further action regarding Libya's southern frontier, and even rejecting Libya's proposal in 1956 to consider this frontier, France proceeded to force Libya to rectify the Libya-Algeria boundary between Ghadamès and Ghat as a

condition of ratifying the 1955 Treaty.

The contrast between France's conduct in respect to Libya's southern boundary and the western frontier is revealing. It certainly cannot be said that France refrained from proposing to proceed to delimit Libya's southern boundary, as called for by General Assembly resolution 392 (V), because it thought Libya had agreed that the matter was settled. Libya's map No. 1, which France officially protested, clearly showed that Libya and France were not in agreement over Libya's southern boundary four days after the signature of the 1955 Treaty.

When Chad achieved independence in 1960, all official United Nations maps then issued showed a line for Libya's southern boundary that was neither the 1919 line nor the 1935 line. Libya placed those maps in evidence in its Memorial. The line on those United Nations maps was virtually the same line as appeared on Libya's map No. 1. And the United Nations had made it clear that this line did not indicate a conventional boundary but rather marked a frontier where the boundary had not yet been delimited.

Mr. President, for the nomadic *Muslim* tribes of Libya and the borderlands the concept of political boundaries had historically been of little concern. So it is no surprise that boundaries were not the first order of business for Libya to deal with after its independence. As a new State struggling for survival, other matters necessarily came first. I was interested to note in the book written by the distinguished Agent of Chad, entitled *Tchad: l'Etat retrouvé* and published in 1987, that boundaries had the same sort of low priority for Chad, as well. The distinguished Agent of Chad said in his book on page 115, that Chad also was too preoccupied with other issues to be able to give the matter, i.e., the matter of boundary, any priority of attention.

When, in 1977, and thereafter, the Libyan-Chad territorial dispute entered the international political arena, it was as part of a larger, more serious political dispute in which Libya was falsely accused by Chad of intervening in its internal affairs. From time to time, the accusations became vitriolic, varying in intensity according to which group was in power.

It is important to note that the positions of Libya and Chad were entirely different. And this difference led to a different approach to their public handling of the dispute at the time.

Chad had decided to adopt — hook, line and sinker — the French thesis concerning Libya's southern boundary based on the 1919 Anglo-French Convention line. For Libya, the question had yet to be resolved — the delimitation negotiations called for in General Assembly resolution 392 (V) had yet to take place. Libya felt it inappropriate and unwise to attempt to try a legal case before a political forum, particularly when the items on the agenda to be debated concerned the broader, quite different matter of allegations of intervention by Libya in the internal affairs of Chad, allegations that were untrue.

If the position of a State is that a conventional boundary exists, it may feel compelled to assert its rights at every opportunity, whether appropriate or not. If, on the other hand, a State believes no such conventional boundary to exist, it has no obligation to lay out the basis of its claim in a political forum in advance of the negotiations yet to take place between the parties or, failing resolution, in anticipation of a judicial settlement. A lot of public posturing by Libya at the time would only have aggravated the difficulties between the two countries.

Mr. President, Members of the Court, I want to be completely frank about this. Libya had not given the matter of its southern boundary the kind of thorough legal analysis that such a question must have before a State can adopt and state publicly its official legal position. Libya did not then have the legal staff to conduct such a study. Libya does not today have such a capability without going outside of Libya, retaining legal experts and mounting a major legal experts and mounting a major legal project. With no prospect in sight in the 1960s, the 1970s and the 1980s of being able to sit down and negotiate with Chad the delimitation of this boundary, Libya had no reason — and certainly no legal obligation — to undertake such a project.

Chad's situation was entirely different. It adopted the French position that had been in the making since at least 1914. All Chad had to do was to piece together the already fully prepared, well-articulated French case. And as both the Agent and I have emphasized, Chad like France was attempting to defend a line that they maintained was a conventional boundary. For Libya, there was no conventional boundary unless it was the 1935 Treaty boundary, a matter into which they (Libya) had looked in a preliminary way.

To resume the story, Mr. President, there were a few random meetings between delegations of Libya and Chad in the late 1970s. They were doomed to failure in view of Chad's internal difficulties. Had an agreement been reached with one group in power in Chad or in parts of Chad, Libya realized it might soon be denounced by the next group coming to power or even subsequently by the same group if it stayed in power.

The situation before the OAU was essentially the same story as before the United Nations. It was a political — diplomatic forum, and the territorial dispute involved legal issues beyond the competence of the Organization of African Unity. When, finally, the OAU came to realize the futility of trying to reach a settlement of the dispute at the political level — and that it concerned complex legal questions — the OAU recommended that Libya and Chad take the dispute to international arbitration or to the International Court of Justice.

Thus, to summarize what I have said about Libya's conduct during the period since its independence, Libya favoured postponing the issue of delimiting its southern boundary in 1955 with the French because it was not prepared for these negotiations. The French Government carefully avoided tabling the issue at the negotiations for it was aware that the French thesis as to a southern boundary had certain fatal flaws. The French thought they could bluff their way through. Thereafter, relations deteriorated to the point that no such boundary negotiations were feasible. But France was on record — in the most official kind of way in the light of its protest to Libya's map No. 1, issued four days after the signature of the 1955 Treaty — (France was on record) that the territorial dispute concerning Libya's southern frontier had not been settled.

After Chad's independence in 1960, Chad was in no condition to negotiate such an agreement, and Libya realized the futility of trying to do so. Moreover, neither Libya nor Chad considered the matter to be one of top priority in the light of the many other problems facing these two newly independent States. Chad's new, last-minute submission confirms that both Libya and Chad recognized that the territorial dispute between them, inherited from colonial days, remained to be resolved.

When the territorial dispute was discussed before the Organization of African Unity and the United Nations, it was as part of more serious, politically charged issues. Libya regarded these

political forums to be inappropriate to deal with this kind of legal question. The United Nations had adopted the resolution in 1950 that it had no power to delimit boundaries; by General Assembly resolution 392 (V) the United Nations had referred the matter to Libya and France to resolve by negotiations. The Organization of African Unity, realizing the complexity of the legal questions, recommended that the matter be referred by Libya and Chad to the International Court of Justice.

But here today, Mr. President, in the case now before the Court, following the failure of efforts at the political-diplomatic level going back around 100 years, Libya has no reluctance to place the entire matter in the hands of the Court, without restriction. It appears to be *Chad* who hesitates to ask the Court to resolve this dispute with finality without imposing limits as to what the Court is competent to decide.

This brings me, Mr. President, to the end of my statement. And I would ask you now to call on Sir Ian Sinclair to return to a detailed discussion of the 1955 Treaty between Libya and France.

I thank you, Mr. President.

The PRESIDENT: Thank you, Mr. Maghur. Sir Ian we have a problem, we were prepared to sit rather later than usual but I think you would prefer to begin afresh with a clean start tomorrow morning at 10 o'clock. Thank you very much.

The Court rose at 1.05 p.m.
