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10

The PRESIDENT: Please be seated. The sitting is open and we are going to continue with the first round of oral argument of Burkina Faso. Mr. Pellet has the floor. You have the floor, Sir.

Mr. PELLET: Thank you, Mr. President.

GENERAL INTRODUCTION

THE HISTORICAL BACKGROUND: THE POINTS OF AGREEMENT AND DISAGREEMENT BETWEEN THE PARTIES; BURKINA'S POSITION (continued and concluded)

III. Burkina's position (general introduction)

50. Mr. President, Members of the Court, in explaining the points on which the Parties agree, I set out — albeit somewhat “negatively” — the broad outline of Burkina's position, which my colleagues and friends Mathias Forteau, and then Jean-Marc Thouvenin, are going to explain in greater detail. I should like, however, in concluding this long presentation, happily interrupted by the lunch break, to summarize our position — this time “positively”. It will not take very long: the case before you is a straightforward one, as is our position.

51. In terms of principles, we maintain:

- (1) that the Court is asked to rule on the entirety of the frontier dispute which has been submitted to it, first by attaching the authority of *res judicata* to the course of that part of the frontier which the Parties have already demarcated, and secondly in confirming the delimitation deriving from the Erratum of 1927 as regards the remainder of the frontier line;
- (2) that the above instrument constitutes a legal title, which cannot be overridden by purported *effectivités* or alleged inconveniences; and
- (3) that, if on any point the Erratum does not suffice (that is to say, is insufficient) to determine the course of that line — but only on that hypothesis — the line to be followed is that indicated on the 1960 map of IGN France.

52. In concrete terms, Burkina can see no insufficiency in the Erratum, either in the demarcated sections of the frontier or in the “Téra sector”. On the other hand, it admits that the

11 Erratum does not suffice to determine the entire course of the frontier in the “Say sector”, and that it is necessary — marginally — to have recourse on an exceptional basis to the 1960 IGN France map, as regards certain segments of that sector.

53. Before briefly returning to the resultant frontier line, a minor clarification (which is indeed a repetition¹) regarding the debatable phrases: “Téra sector” and “Say sector”. They are debatable in that they appear to imply that the problem arises only in relation to Niger, where the towns of Téra and Say are located; moreover, they do not correspond to any division in the Erratum. Burkina has, however, “endorsed” this terminology for the sake of convenience, while remaining aware that it represents a slightly tendentious approximation.

[Slide 9: The course of the frontier in the Téra sector]

54. Thus in the “Téra sector”, the text of the Erratum of 5 October 1927 suffices perfectly well to determine the line of the frontier between the two countries:

“[from] the Tong-Tong astronomic marker[,] this line then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossebangou”².

55. The text is clear and precise and there is absolutely no need, in order to determine the course of the frontier, to refer to anything else — including the 1960 map. It follows that the frontier here consists of two sections:

- from the Tong-Tong astronomic marker to the Tao marker; and then
- from the Tao astronomic marker to the River Sirba at Bossébangou.

For the reasons which I have just recalled, in the absence of any indication to the contrary, these three points should be connected by straight lines — as indeed was already the case with the consensual line of 1988 and that in the 1991 Special Agreement. Niger’s claim that we should “essentially” follow the line shown on the 1960 map — but then later deviate from it³ and draw a particularly sinuous line corresponding neither to the text of the Erratum nor to the line shown on

¹CMBF, p. 9, footnotes 28 and 32; and pp. 69-70, paras. 3.14-3.17.

²Art. 1, first para.

³See MN, p. 93 (*b*). From the Tao astronomic marker to Bangaré, the course of the frontier essentially follows the IGN line; p. 93, para. 6.20; pp. 94-97, paras. 6.22-6.23; CMN, p.-61, para. 2.1.1; p. 63, para. 2.1.4; pp. 65-68, paras. 2.1.7-2.1.8.

12 the map — is not supported by any evidence whatever⁴. The fanciful nature of Niger’s argument is accentuated by the fact that, in its Counter-Memorial, Niger, as it modestly puts it, makes “small changes” to the “course” followed in its Memorial⁵.

[End of slide 9. Slide 10: The course of the frontier in the Say sector]

56. Things are (slightly) more complicated in the “Say sector”. The relevant text describes a more complex course — which poses no particular problem — but which is also defective on one specific point: the Erratum does not enable the course of the frontier to be determined from the point where it cuts the River Sirba at Bossébangou in order to turn back up “almost immediately” towards the north-west, leaving to Niger the four villages mentioned therein. Because of this insufficiency (and it is the only part of the frontier which the Erratum fails to describe sufficiently), we have to refer here to the line shown on the 1960 map. For the rest, the line described in the Erratum is valid. Niger’s main criticism of this reasoning is – and I quote its Counter-Memorial — that it “completely ignores the traditional course that was always given to the boundaries of Say *cercle*”⁶. Always? Until the appearance of the Erratum, which determined the inter-colonial boundary pursuant to Article 2, second paragraph, of the Decree of 28 December 1926, perhaps (although the evidence provided by Niger certainly does not prove that); but subsequently, most certainly not! Niger’s argument, which contradicts the clear terms of the Erratum in the name of an imaginary “tradition”, is quite simply unacceptable.

[End of slide 10]

57. Mr. President, in its Judgment of 3 February 1994 in the case of the *Aouzou Strip*, the Court held that the Franco-Libyan Treaty of Friendship and Good Neighbourliness of 10 August 1955 constituted a sufficient title, enabling the dispute before it to be conclusively determined. It considered that there was accordingly “no need . . . to explore matters which [had] been discussed at length before it” (*Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Judgment, I.C.J. Reports 1994*, p. 38, para. 75), such as “the effectiveness of occupation of the relevant areas in the past, and the question whether it was constant, peaceful and acknowledged” (*ibid.*, para. 76).

⁴CMBF, pp. 59-72, paras. 3.6-3.21.

⁵CMN, p. 61, para. 2.1.1.

⁶CMN, p. 83, para. 2.2.13; see also MN, p. 110, para. 7.21; p. 114, para. 7.30; p. 120, para. 7.40; CMN, p. 73, para. 2.2.1; p. 92, para. 2.2.21.

13 “The 1955 Treaty”, it concluded, “completely determined the boundary between Libya and Chad” (*ibid.*, p. 40, para. 76).

58. *Mutatis mutandis*, the same must apply in the present case: the Erratum of 5 October 1927 constitutes a clear and sufficient title enabling the course of the frontier between Burkina Faso and the Republic of Niger to be conclusively determined. There is thus no need to explore any further matters which Niger has presented at length to the Court in its written pleadings as purported colonial or post-colonial *effectivités*, the so-called “living” boundaries of the *cercles* and other territorial subdivisions, or the cartography of the region – with the exception of the 1960 IGN France map, in the sole case where the Erratum proves not to suffice.

59. It is thus, Mr. President, simply *ex abundanti* that, by their detailed descriptions of the frontier in the Téra sector on the one hand, and in that of Say on the other, Professors Forteau and Thouvenin will show that in any event the arguments dug out by Niger from a variety of sources other than the Erratum lack any legal foundation.

60. Mr. President, I should be grateful if you would kindly give the floor to Professor Mathias Forteau. Many thanks, Members of the Court, for your kind attention.

The PRESIDENT: Thank you. I give the floor to Mr. Forteau. You have the floor, Sir.

Mr. FORTEAU: Thank you, Mr. President.

**THE COURSE OF THE FRONTIER FROM THE TONG-TONG ASTRONOMIC MARKER TO
THE POINT WHERE IT REACHES THE RIVER SIRBA AT BOSSEBANGOU**

I. The line as described in the Erratum

Mr. President, Members of the Court, it is a privilege and an honour, but also a pleasure to be standing once again at this podium today.

1. Mr. President, Professor Pellet indicated the legal bases on which the course of the frontier between Burkina and Niger should be determined. As he recalled, in this case there exists an indisputable legal title that has been accepted by both Parties⁷. That instrument defines the course

⁷See CMN, p. 16, para. 1.1.2.

of the boundary which is the subject of the present dispute. And that title is the Erratum of 1927.

14 This instrument is beyond dispute, all the more so because the Agreement of 1987 and the Special Agreement seising the Court both refer to it. Since a legal instrument of delimitation exists, the Court is accordingly requested not to effect a delimitation, but simply to interpret the text governing the delimitation and to confirm the line that it adopts.

2. As we endeavour to determine the course of the frontier, which from now on will be the focus of the oral arguments of Burkina's counsel, it is appropriate to recall how the Erratum defines this frontier.

3. In the area covered by Article 2, paragraph 1, of the Special Agreement seising the Court, namely in respect of the unmarked section of the frontier that runs between the Tong-Tong astronomic marker and the beginning of the Botou bend, the Erratum defines the course of the frontier in three successive sentences.

[Slide 1: The text of the Erratum]

4. At the end of the first sentence, the Erratum states that from the Tong-Tong astronomic marker the line "then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossebangou".

5. The second sentence states that from the latter point — where the line "reach[es] the River Sirba at Bossebangou" — the line

"almost immediately turns back up towards the north-west, leaving to Niger, on the left bank of that river, a salient which includes the villages of Alfassi, Kouro, Tokalan, and Tankouro; then, turning back to the south, it again cuts the Sirba at the level of the Say parallel".

6. Finally, the Erratum provides that "[f]rom that point the frontier, following an east-south-east direction, continues in a straight line up to a point located 1,200 m to the west of the village of Tchenguiliba".

[End of slide 1]

7. In their written pleadings, in order to present their line in a methodical manner, the two Parties divided the boundary as defined in the Erratum into several sections. However, contrary to what Niger asserts in its Counter-Memorial — that "[b]oth Parties, in their respective memorials,

15 divided this part of the frontier in the same way, namely into two sectors”⁸ — the two Parties in fact divided it on different bases and therefore in different manners. And a first point of disagreement can be seen here — one that goes to the very heart of the case.

[Slide 2: The two sections to be delimited]

8. Relying on the title established by the Erratum, Burkina has divided the boundary according to the letter of that text. Accordingly, it ends each section of the frontier at a frontier point mentioned in the Erratum, and begins the following section at the same frontier point⁹. I am sorry to have to restate the obvious, but I am obliged to do so given that Niger, unlike Burkina, has departed from the text of the Erratum — I shall return to that in a moment — in the very presentation of its claim.

9. Thus, in accordance with what is stated in the Erratum, Burkina, in its written pleadings, first endeavours to define the line between the Tong-Tong astronomic marker and the point where the frontier reaches the River Sirba at Bossébangou; it then endeavours to define the line from that latter point up to the beginning of the Botou bend. And this is the same approach that will be used during the oral argument.

[End of slide 2]

10. For its part, Niger has structured its written pleadings around two sectors, but has used a basis other than that of the Erratum. That Niger has not taken the Erratum into account in its written pleadings is evident in two respects in particular.

11. First of all, Niger relies solely on the *cercles* of Niger adjoining the boundary, and makes a distinction, in its own terminology, between the “Téra sector” and the “Say sector”¹⁰. As Alain Pellet has just recalled, here Niger overlooks the fact that in 1927 there were also *cercles* belonging to Upper Volta on the other side of the boundary. It equally overlooks the fact that the object of the Erratum was inter-colonial and not intra-colonial: the aim of the Erratum was to delimit the respective territories of the two colonies.

⁸CMN, p. 17, para. 1.1.2.

⁹See MBF, Chap. IV; CMBF, Chaps. III and IV.

¹⁰See MN, Chaps. VI and VII; CMN, Chap. II.

16

12. Secondly, and even more bizarrely, Niger makes the switch from one section to the other at a point that is not mentioned in the Erratum. According to Niger, the two sections meet at the “point which in colonial times formed the boundary of Say *cercle* (tripoint between the *cercles* of Tillabéry, Dori and Say)”¹¹.

13. Yet this “tripoint” is not to be found anywhere in the Erratum, which makes no mention of a “tripoint” between the three *cercles*.

14. Niger’s approach departs still further from the provisions of the Erratum, since in addition the line claimed by Niger does not pass through the frontier point at Bossébangou, whereas that point is nevertheless explicitly referred to in the text of the Erratum — we shall return to that later.

**THE COURSE OF THE FRONTIER FROM THE TONG-TONG ASTRONOMIC MARKER TO
THE POINT WHERE IT REACHES THE RIVER SIRBA AT BOSSEBANGOU**

15. Mr. President, now that these introductory remarks have been made, I shall turn to the main subject of this speech and start with the first of the sections described in the Erratum: the one which, according to the text of the Erratum, runs between the Tong-Tong marker and the River Sirba at Bossébangou. Let me recall that the Erratum states that from the Tong-Tong marker the frontier line “then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reach[es] the River Sirba at Bossebangou”.

16. I shall define the course of the frontier in this sector in three stages: I shall first of all set out the points on which the Parties agree, and those on which they disagree, in respect of the line between the two endpoints of the frontier in this sector (I); I shall then identify the successive points through which the frontier has to pass (II); and lastly, I shall describe the course of the line connecting these frontier points as it emerges from the text of the Erratum (III).

I. The points on which the Parties agree and those on which they disagree

17. Regarding the points on which they agree, I should say first of all that both Parties acknowledge that the frontier in this sector is relatively short in length. In its Memorial, Niger

¹¹CMN, para. 2.1.10.

17

takes the view that “the sector of the frontier involved in the present dispute is relatively restricted”¹²; this is particularly true of just one part of this stretch, namely the one we are dealing with here, which runs over a distance of approximately 150 km.

18. Nor do the two Parties disagree as to the identification of two of the frontier points in this sector, even though they differ very slightly in respect of the co-ordinates of the second of them — to which I shall not return today, as there is nothing more to be added to what is written on this subject in Burkina’s Counter-Memorial, to which I respectfully refer you¹³. Keeping to the Erratum, Burkina and Niger at least adopt as common frontier points the two astronomic markers of Tong-Tong and Tao, both of which are referred to therein.

19. The two Parties also agree — though Niger is less consistent in this regard — that when the Erratum states that the line passes through two points, it should be assumed, unless stated otherwise, that those two points are necessarily connected by a straight line. This is in fact the solution adopted by joint agreement of the Parties in the demarcated sectors of the frontier, a point to which Professor Pellet will return tomorrow morning.

20. Niger also applies this solution to the first three frontier points in the line it claims in this sector. Niger in fact considers that they should be connected, in its own words, by “two straight lines”¹⁴. However, Niger applies this solution only partially, using it between the Tong-Tong and Tao markers, only to rule it out between the Tao marker and the following frontier point, without giving any justification for this difference in treatment¹⁵. Yet there is nothing in the text of the Erratum to justify this double standard.

21. The points on which the two Parties disagree, which can be seen in the difference between the lines claimed by each of them, are already evident from this last remark. Niger is right to state in this connection, in its Counter-Memorial, that the reasoning and logic used by each Party in this sector are “diametrically opposed”¹⁶. Let me briefly recall the actual differences between the Parties in this sector.

¹²MN, para. 4.1.

¹³CMBF, para. 3.4.

¹⁴MN, pp. 91-93, (a).

¹⁵See below, para. 34.

¹⁶CMN, para. 2.1.1.

18 [Slide 3: The line as described in the Erratum]

22. First, Burkina considers it beyond dispute that the most natural interpretation of the text of the Erratum, and indeed the obvious interpretation, is based on three elements in this sector: firstly, the Erratum does not adopt a natural boundary here, contrary to what it does in respect of other segments of the frontier; secondly, it designates three frontier points — no more and no less, all three of which can be identified and located; and finally, the Erratum states that the frontier line passes through those three points in turn, and through those three points alone.

23. It is natural, and common sense dictates, that the two following conclusions should be drawn:

- (i) since no other frontier point is mentioned, it necessarily follows that the line must connect each of these three points *directly*: if this had not been the intention of the author of the Erratum, he would inevitably have had to designate the other frontier points through which the boundary had to pass; but he did not do so;
- (ii) in the absence of any other indication, the only way to connect two points directly with an artificial line is to draw a straight line: and it suffices to mention two points in order to draw such a line. On the other hand, drawing a line other than a straight line between two points — a curved line, for example — implies that other additional information should be given, such as, for example, the radius of the circle to be used to draw the curve¹⁷; but no such information appears in the Erratum. It follows that the three frontier points mentioned in the Erratum are connected by two straight lines — which is, moreover, fully in keeping with the method applied by the Parties in the demarcated sectors of the frontier.

24. In short, the equation that applies in this case is thus very simple.

[End of slide 3]

25. The line claimed by Niger is different from the line I have just presented on a number of counts: in addition to the fact that, as my colleague Alain Pellet recalled, Niger departs from the applicable methodology and law, there are three notable differences:

¹⁷See MBF, paras. 4.39-4.40.

19

- (i) firstly, Burkina's line is described with clarity; Niger's is extremely complex and muddled;
- (ii) secondly, Burkina's line has never varied — quite simply because the text of the Erratum has remained unchanged since 1927; as for Niger's line, it has changed constantly, even between the Memorial and the Counter-Memorial, and perhaps we can expect some further changes over the next few days;
- (iii) thirdly, Burkina's line results from the interpretation of the Erratum; Niger's line, for its part, does not correspond to what the Erratum says and has no foundation in that text.

26. Mr. President, I shall briefly take up, in that order, each of these three points.

27. There is no escaping the fact that Niger's line is complex and muddled. One need only put side by side the text of the Erratum, on the one hand, and Niger's written submissions, on the other, to see that this is so:

- (i) the Erratum describes the line in this sector in a clear and concise manner; Niger, for its part, needs two pages in its Memorial and eleven indents to describe its line¹⁸;
- (ii) furthermore, Niger's line includes no less than twenty or so frontier points — with sometimes rather exotic names, such as the “frontier point called Baobab”¹⁹. Among those twenty or so frontier points, only two (the Tong-Tong and Tao markers) are designated in the Erratum;
- (iii) moreover, Niger's line follows a number of watercourses or tributaries of which there is also no mention in the Erratum, which, let me recall, does not refer to any natural frontier in this sector.

28. The upshot of all this is that the reader's first impression on becoming acquainted with Niger's line is to wonder how it relates to the text of the Erratum.

20

29. That impression becomes all the stronger when Niger's line, or, to be more precise, Niger's lines, are put in their historical perspective. As Burkina has already shown in its written pleadings, and as Professor Thouvenin recalled, Niger constantly changed its position throughout the work of demarcating the frontier: after taking the view that the latter followed two straight

¹⁸MN, pp. 122-123.

¹⁹*Ibid.*

lines, Niger then argued for a curved line. It subsequently once more accepted a course consisting of two straight lines, before changing its mind again. It eventually claimed yet another line in its Memorial, based on a combination of the line on the 1960 map, some alleged *effectivités* and a number of natural features²⁰.

30. Furthermore, the line claimed by Niger changed yet again between the Memorial and the Counter-Memorial²¹. As Niger in fact admits, though it uses understatement, the better to hide its inconsistency,

“[w]hile following the same course [as the Memorial], this Counter-Memorial makes certain small changes and limits the number of situations where the Republic of Niger considers it necessary to deviate from the IGN line to three . . .”²².

Mr. President, this is a highly opportunistic interpretation of the Erratum, but it is hardly one based on law.

31. Moreover, the word interpretation is misused in this context, since Niger quite evidently does not interpret the Erratum. Interpretation actually presupposes adhering to the text to be interpreted and therefore complying with what it says. However,

- (i) Niger refuses to run its line through the third of the frontier points designated in the Erratum: the point where the boundary reaches the River Sirba at Bossébangou;
- (ii) on the contrary, Niger inserts a new frontier point between the Tong-Tong and Tao markers — the Vibourié marker — of which the Erratum, notwithstanding, makes no mention;
- (iii) and between the Tao marker and the River Sirba at Bossébangou, Niger then invents nigh on twenty frontier points which are not referred to in the Erratum either.

21

32. From this point of view, it is not so much the positions of the Parties that diverge in this case; what is at variance here, quite simply, is Niger’s line with the legal title, namely the Erratum.

33. In its most recent version, the line claimed by Niger is as follows²³:

²⁰See CMBF, p. 53, para. 2.15.

²¹MN, paras. 6.21-6.25; CMN, paras. 2.1.1-2.1.15.

²²CMN, p. 61, para. 2.1.1.

²³See CMN, p. 95.

- (i) from the Tong-Tong astronomic marker, the boundary runs in a straight line to the Vibourié marker;
- (ii) from that marker, the boundary runs in a straight line to the Tao marker;
- (iii) from the Tao marker, the boundary does not run towards the River Sirba at Bossébangou, but towards a point situated tens of kilometres upstream, a point that Niger refers to as the “tripoint of the former boundaries of the *cercles*” of Dori, Tillabéry and Say;
- (iv) between the Tao marker and that point, Niger’s line does not simply follow a straight line; nor does it take the form of a purely artificial line; and nor does it exclusively follow the line drawn on the 1960 map: Niger’s line is a combination of straight lines, lines following watercourses that are not mentioned in the Erratum, stretches that follow the line on the 1960 map (even though the Erratum clearly suffices) and enclaves that conveniently place in Niger’s territory villages that it claims on the basis of alleged *effectivités* which nevertheless cannot take precedence over the title constituted by the Erratum.

II. The frontier points

34. As far as the frontier points in this sector are concerned, there should not actually be any debate between the Parties. These points are expressly designated in the Erratum. The boundary has to pass through the Tong-Tong marker and then through the Tao marker before finally reaching the River Sirba at Bossébangou.

35. The fact that these three points are mentioned in the Erratum has two implications, one of them positive, the other negative: firstly, the frontier must pass through these three points; and secondly, the frontier is not supposed to deviate from its normal course (in this case, a straight line, in the absence of any indication to the contrary) in order to meet up with other frontier points: for indeed, if that had been required, it would have been *essential* to indicate in the Erratum what those other frontier points were. It can be inferred from the Erratum’s silence on the latter point that it is not possible to introduce any frontier points other than those which it expressly designates.

36. The situation would be different, were it legitimate to assume that the delimitation made by the Erratum had been *deliberately* left incomplete by the author of the text. However, an

interpretative presumption of this kind has to be ruled out in the case of a legal act whose very purpose is to effect a delimitation: as your Court stated in 1959 and then in 1994, in a dictum which applies *mutatis mutandis* to this case,

“Any interpretation under which the Boundary Convention is regarded as leaving in suspense and abandoning for a subsequent appreciation of the status quo the determination of the right of one State or the other to the disputed plots would be incompatible with [the] common intention [to effect this delimitation]” (Case concerning *Sovereignty over Certain Frontier Land (Belgium/Netherlands)*, Judgment, *I.C.J. Reports 1959*, pp. 221-222; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, *I.C.J. Reports 1994*, p. 24, para. 47).

37. That being the case, as the Permanent Court of International Justice emphasized in 1925 “[i]t is . . . natural that any article designed to fix a frontier should, if possible, be so interpreted that the result of the application of its provisions in their entirety should be the establishment of a precise, complete and definitive frontier” (*Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne, Advisory Opinion, 1925, P.C.I.J., Series B, No. 12*, p. 20).

38. In the case in point, it is quite possible to rely upon the Erratum in order to determine the entire and definitive course of this section of the frontier: it runs through three frontier points, which it reaches by means of two straight lines. This interpretation is sufficient in itself.

39. Nevertheless, Niger attempts to incorporate several new frontier points into this sector.

40. In order to justify the frontier points which it invents between the Tao marker and the River Sirba at Bossébangou, Niger claims *effectivités*. In a few minutes’ time, Professor Thouvenin will respond to that particular aspect of Niger’s claim, which is bound to fail in the present case. Firstly, there are no such *effectivités*. Secondly, even assuming that they had once existed, the title would have taken precedence over them in any event.

23

41. Between the Tong-Tong and Tao astronomic markers, Niger claims another new frontier point, which is also nowhere to be found in the text of the Erratum.

42. According to Niger, the frontier does not join those two astronomic markers by means of one straight line; instead, the frontier juts out towards the east to reach an intermediate point, claimed to be the Vibourié marker. The frontier thus does not follow one straight line between the Tong-Tong and Tao astronomic markers, according to Niger, but two successive straight lines

pointing in different directions, since they have to connect to the Vibourié marker further to the east²⁴.

43. That claim made by Niger is also without merit, for at least three reasons.

44. Firstly, and this is enough to settle the matter once and for all, the Vibourié marker, unlike the Tong-Tong and Tao markers, is not mentioned in the Erratum.

45. Secondly, and in the alternative, this marker is not shown as a frontier point on the 1960 IGN map, as Niger acknowledges in its Counter-Memorial²⁵.

46. Finally, for the sake of completeness, the argument upon which Niger bases its claim is intrinsically flawed. Niger contends that the new frontier point, which the Vibourié marker is said to constitute, can be traced back to the Record of Agreement of 13 April 1935 concluded between Administrator Garnier (*Dori cercle*) and Assistant Deputy Lichtenberger (*Téra cercle*)²⁶. In fact, contrary to Niger's assertion, this Record of Agreement could not and, moreover, did not adopt a new frontier point.

47. The legal title to which the 1987 Agreement and the Special Agreement seising the Court refer is indeed the 1927 Erratum, and the Erratum alone. Consequently, as the Erratum precedes the 1935 Record of Agreement, that Record of Agreement has no effect whatsoever on the Erratum.

48. It should also be noted that the Record of Agreement was concluded in 1935, at a time when Upper Volta had ceased to exist. The latter was reconstituted in 1947, within its 1932 boundaries — therefore anything which may have happened in 1935 is, once again, devoid of any legal effect on the course of the boundaries of Upper Volta and of Niger.

24

49. Niger is mistaken in law, and it has also got its facts wrong. The 1935 Record of Agreement does not actually indicate in any way that the colonial administrators granted the Vibourié marker “the status of a frontier point”, as Niger asserts, i.e., the status of a point through which the frontier should have passed²⁷. The Record of Agreement states that it was decided to

²⁴MN, para. 6.20; CMN, para. 2.1.4.

²⁵CMN, p. 63, para. 2.1.4.

²⁶CMN, para. 2.1.4.

²⁷MN, para. 6.20.

“establish . . . a marker” on the “notional line” of the boundary defined by the Erratum²⁸. Consequently, the establishment of that marker did not, could not and was not intended to have the effect of amending the 1927 boundary. The sole aim of the demarcation was to follow the delimitation, and not vice versa, as argued by Niger, which contends that the course of the frontier today should pass through Vibourié, simply because a marker was established there.

50. The best evidence that the establishment of that marker cannot have the effect of amending the course of the frontier, consisting of a single straight line between the Tong-Tong and Tao markers, is that the Record of Agreement itself states — thereby providing a particularly convincing interpretation of the 1927 Erratum — that the “boundary . . . follow[s] a notional straight line starting from the Tong-Tong astronomic marker and running to the Tao astronomic marker”. The same Record of Agreement indicates clearly that it is on this “notional straight line” that the authors of the Record of Agreement agreed and intended to establish the Vibourié marker.

51. Admittedly, it would appear, according to Niger, that the Vibourié marker was not actually established at the place where it was thought to have been established. Yet this factor has no effect on the delimitation. The marker was supposed to be established on the “notional straight line” running between the Tong-Tong and Tao markers. The place where it was actually established cannot, therefore, have the effect of amending that delimitation in the form of a straight line between the Tong-Tong and Tao markers.

[End of slide 5]

III. The course of the line connecting the frontier points referred to in the Erratum

[Slide 6: The line between Tong-Tong and Bossébangou]

25 52. Mr. President, it clearly follows from what I have just said that in this sector, from the Tong-Tong marker to the River Sirba at Bossébangou, the Erratum follows a course consisting of two successive straight lines. In 1935, as I have just pointed out, the Erratum was interpreted as following a “notional straight line” between the Tong-Tong and Tao markers. A similar interpretation must necessarily be applied to the course of the line between the Tao marker and the

²⁸MN, Anns. Series C, No. 56.

River Sirba at Bossébangou. Indeed there is no difference in the language of the Erratum in its descriptions of the course of the line between Tong-Tong and Tao and between Tao and Bossébangou: in each case, the Erratum indicates two points, without specifying the form of the line connecting them, a silence which can only be interpreted as implying a straight line.

[End of slide 6]

53. However, in its Counter-Memorial Niger puts forward certain objections to this interpretation, which I will briefly refute, as they are quite artificial (A). I will then set out all the evidence which confirms the correctness of the interpretation of the Erratum in favour of the view that the frontier consists of two straight lines in this sector (B).

A. Niger's objections

54. In its Memorial, Burkina devoted more than 20 pages to an analysis of the text of the Erratum: the ordinary meanings of the words in light of their context, the Erratum's *travaux préparatoires*, the official interpretation given to it by Burkina and Niger, and the practice followed in boundary delimitations, in particular the jurisprudence of the International Court of Justice²⁹.

55. In reply, Niger put forward just two objections, as succinct as they are one-sided, to this solidly founded interpretation of the Erratum as prescribing a frontier consisting of two straight lines.

56. In its first objection, Niger states concisely that “[f]or its part”, it rejects what it calls the “straight-line theory”, preferring “its position of following the boundaries of the *cantons* — a position largely reflected by the IGN map”³⁰. Again according to Niger, it would be wrong to overlook “the importance attached by the French authorities to the *canton* boundaries in the delimitation process in 1926”³¹.

²⁹MBF, pp. 109-132, paras. 4.26-4.82.

³⁰CMN, p. 64, para. 2.1.5.

³¹CMN, p. 62, para. 2.1.2.

26

57. This is an argument based on faith. It has nothing to do with the operation of interpreting the Erratum. That was already explained this morning, and I will therefore not return to it: the Erratum does not attribute *cantons*, but establishes an inter-colonial boundary, and it is that boundary, as defined by the Erratum, that must be applied³².

58. The second objection is that Burkina has failed to “adhere strictly to the terms of the 1927 texts” — a criticism not without piquancy when we see the degree of freedom and fantasy with which Niger “interprets” the 1927 Erratum. Niger’s objection is as follows: “[w]hile the 1927 text states that the frontier line turns at Tong-Tong, the other Party argues that the line in this sector is perfectly straight”³³.

[Slide 7: Sketch-map on page 40 of Niger’s Counter-Memorial [page 28 of the English version], extracted from cartographic Annex MBF 36]

59. This objection is illustrated in Niger’s Counter-Memorial by the sketch-map on the screen, which at point 6 shows Mount Doumafendé, and at point 7 the Tong-Tong marker. Niger justifies its objection by pointing out that Burkina’s position in the Joint Technical Commission on Demarcation was that the phrase used in the Erratum to describe the course of the line from the Tong-Tong marker, “this line then turns towards the south-east”,

“referred to a change in direction between a series of straight lines. In the present proceedings [I continue to quote Niger], Burkina Faso devotes more than 20 pages of its Memorial to the interpretation of this word and maintains that it refers to a change in direction. Rather surprisingly, however, [continues Niger], the line claimed by Burkina Faso, as it is drawn on the map attached to its Memorial, is perfectly straight in this area and does not include the least change in direction. The other Party in fact places Mount Doumafendé (point 6), the Tong-Tong astronomic marker (point 7) and the Tao astronomic marker (Tao) on the same straight line. Clearly [continues Niger], Burkina now offers another — and rather unusual — interpretation of the word ‘*s’infléchir*’”³⁴.

60. I will make the following three comments on this argument.

61. In the first place, if this interpretation was really as “unusual” as Niger claims, it would be hard to understand why Niger’s experts nonetheless accepted it in 1988, and the competent authorities of Niger approved it in their turn in 1991³⁵. I shall come back to this point.

³²See the preceding presentation of Professor Alain Pellet.

³³CMN, p. 62, para. 2.1.2.

³⁴CMN, p. 39 [end para. 1.1.27; p. 27 in the English text].

³⁵See MBF, pp. 118-123.

27 [Slide 8: The change of direction at Tong-Tong]

62. Secondly, it is undoubtedly true that the portion of the line which begins at the Tong-Tong marker and continues as far as Bossébangou runs in a south-easterly direction in relation to the preceding section from the Mali tripoint. The general direction of the line between the Mali tripoint and the Tong-Tong marker is overall north to south, and even slightly south-west, whilst from the Tong-Tong marker, the line runs in a general south-easterly direction. It is thus clear that the line changes direction.

63. That was, moreover, the interpretation of the Erratum made by this Court in its 1986 Judgment in the *Frontier Dispute (Burkina Faso/Republic of Mali)*³⁶.

[End of slide 8]

64. Thirdly and finally, and I would even say *in any event*, the only relevance that Niger's objection could have would be to show that the words "*s'infléchir*" are not compatible with the so-called "straight-line theory" that Burkina has always defended. However, it is apparent that Niger itself now argues in this sector in favour of a frontier consisting of two straight lines.

65. The two States have thus agreed that the line which arrives at the Tong-Tong marker is a straight one; and the line which, according to Niger, departs from that marker to run to the Vibourié marker is likewise a straight line. On the other hand, Burkina takes the view — as I would remind you — that the straight line from the Tong-Tong marker runs to the Tao marker, without any change of direction towards Vibourié. However, the fact remains that both Parties are "at least now in agreement on one point": the correct interpretation of the 1927 Erratum is that the section of the frontier line which arrives at the Tong-Tong marker, as well as that which departs from it, are both straight lines.

66. In these circumstances, Niger's contortions are totally artificial: Niger itself no longer questions the fact — after having supported the thesis of a curved line³⁷ — that the words "*s'infléchir*" refer to a delimitation consisting of straight lines to either side of the turning point, thus once again supporting Burkina's position.

³⁶See MBF, paras. 4.77-4.81

³⁷See CMBF, paras. 2.15-2.16.

28 B. The correctness of Burkina's interpretation

67. Mr. President, Members of the Court, with Niger's two objections disposed of, it remains for us to explain the other reasons why our view that the Erratum provided for a line in two straight sections is correct. These reasons are both multiple and convergent.

68. In the first place, the colonial authorities themselves never had the slightest doubt that the delimitation adopted in 1927 was of an artificial nature, and consisted of two straight lines. It is true that certain of them disputed that delimitation. However, they never denied that this was what the Erratum said. Those colonial interpretations clearly contradict the thesis of sinuous, effective *canton* boundaries as defended by Niger:

(i) thus, in a letter of 17 December 1927, the Commander of Dori *cercle* pointed out to the Governor of Upper Volta that the boundaries resulting from the 1927 Erratum "had been established on the basis of the map prepared by Captain Coquibus, which only showed theoretical lines and points . . ." ³⁸;

(ii) in a letter of 27 September 1929, addressed to the Lieutenant-Governor of Upper Volta, the Lieutenant-Governor of Niger referred to the delimitation applicable in that sector as constituting "a theoretical and artificial frontier"— which is precisely what a line in two straight sections represents ³⁹;

(iii) on 10 April 1932, Civil Service Deputy Roser, Acting Commander of Dori *cercle*, informed the Governor of Upper Volta that the line of the 1927 Erratum "takes no account of the reality" and has the result of placing the village of Bangaré in Upper Volta territory. That village is indeed located to the west, on the Upper Volta side of the frontier, when a straight line is drawn between the Tao marker and the River Sirba at Bossébangou ⁴⁰;

29 (iv) on 13 April 1935, Administrator Garnier (of Dori *cercle*) and Deputy Lichtenberger (of Téra Subdivision) jointly recognized that, between the Tong-Tong and Tao markers, the boundary described in the Erratum followed "a notional straight line" ⁴¹;

³⁸MN, Ann. C 20; emphasis added.

³⁹MN, Ann. C 30.

⁴⁰MN, Ann. C 45, pp. 5-6; CMBF, para. 3.36.

⁴¹MN, Ann. C 56.

(v) on 30 May 1947, Inspector of Colonies Bargues wrote in regard to the boundaries separating Niger and Upper Volta that they “were purely theoretical and did not correspond to any geographical reality”⁴²;

(vi) on 11 July 1951, the Head of Téra Subdivision, writing to Tillabéry *cercle*, pointed out that the Erratum “connect[s] the Tao boundary marker directly with Bossébangou”⁴³.

69. If there were still any doubt, Burkina has furthermore shown in its Memorial — and without any contradiction on the part of Niger — that in jurisprudence a delimitation text indicating, without any indication to the contrary, that a line passes through two points is interpreted as specifying a boundary in the form of a straight line connecting those two points⁴⁴:

(i) thus in 1986 this Court pointed out that in French colonial practice straight lines were generally used, and the Court adopted a presumption that, in the absence of any indication to the contrary, the least complex line should be chosen⁴⁵;

(ii) in the *Cameroon/Nigeria* case, your Court, faced with uncertainty in one sector in regard to the precise course of the boundary, likewise gave preference to the line claimed by Nigeria, on the ground that it was the one which connected “most directly” the boundary points in question, and on that basis the Court opted for a straight line⁴⁶;

(iii) the Court did the same in the *El Salvador/Honduras* case in 1992⁴⁷;

(iv) just as significant is the fact that international courts and tribunals, and this Court in particular, generally consider that *it suffices* to state in their judgments on maritime delimitation that the line turns or passes through a point in order to indicate that those two points are connected by a straight line⁴⁸.

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70. I would further note that both Parties have several times agreed that the Erratum should be interpreted as producing a boundary in two straight-line sections in this sector.

⁴²MBF, Ann. 38, p. 11.

⁴³MN, Ann. C 73. See also MN, Ann. C 79, p. 2.

⁴⁴MBF, pp. 123-132.

⁴⁵See MBF, para. 4.60.

⁴⁶See MBF, para. 4.65.

⁴⁷See MBF, paras. 4.66-4.69.

⁴⁸See MBF, paras. 4.70-4.75.

[Slide 9: The 1998 consensual line]

71. First, this represented the unanimous interpretation of the Parties' experts at the end of their work in 1988, conducted under the aegis of the Joint Commission on Demarcation in accordance with the terms of the 1987 Agreement. Following that consensual interpretation, the installation of boundary markers on the ground was moreover planned. In the present sector, only two so-called "turning point" markers were envisaged by the Parties: the Tong-Tong marker and the Tao marker⁴⁹. We are again a very long way from the twenty frontier points since invented by Niger.

[End of slide 9]

72. In 1991 an authentic interpretation of the Erratum was issued, this time by the Nigerian Interior Minister and the Minister for Territorial Administration of Burkina Faso; the two Ministers concluded, on behalf of their respective Governments, that, "[f]rom the Tong-Tong astronomic marker to the River Sirba at Bossebangou, passing through the Tao astronomic marker, the frontier shall consist of a series of straight lines"⁵⁰.

73. I stress the use of the declarative formula used in the original French text: the Ministers are not adopting a new line here, as they did, by contrast, for the sector continuing beyond Bossébangou: they are simply noting that the frontier in this sector, as described by the Erratum, "consists" of [*est constituée*] *par* two straight lines.

31 74. Taken together, these various pieces of evidence, some attributable to the colonial authorities, others to the Niger State, leave no doubt as to the interpretation to be given to the text — which is moreover clear — of the 1927 Erratum. That text defines a frontier consisting of two straight lines, connecting first the Tong-Tong marker with the Tao marker, and then the latter with the point where the frontier reaches the River Sirba at Bossébangou.

75. That accordingly is the course of the frontier which Burkina Faso asks you, Members of the Court, to adopt.

⁴⁹See MBF, paras. 4.47-4.51.

⁵⁰MN, Ann. A 6; MBF, para. 4.53-4.56.

76. Mr. President, that concludes my presentation. I would be most grateful if you could now call Professor Thouvenin to the Bar, and he will demonstrate to you the erroneous basis of the line claimed by Niger.

Thank you.

The PRESIDENT: Thank you, Professor, and I now invite Mr. Thouvenin to continue Burkina Faso's oral presentation. You have the floor, Sir.

Mr. THOUVENIN: Thank you, Mr. President.

THE TÉRA SECTOR — THE FLAWED BASES OF NIGER'S LINE

[Slide 1]

1. Mr. President, Members of the Court, the second speech which I have to deliver to you concerns the course of the frontier proposed by Niger in the sector known, for convenience, as the "Téra sector". From first glance, it is clear that this line takes an irregular course from north to south, generally following the already meandering route of the line shown on the 1960 map, but not always, with additional twists and turns; as can be seen, this line never reaches Bossébangou.

[End of slide 1]

2. Before addressing the arguments put forward by Niger to justify those twists and turns (II), and then dealing with the case of Bangaré (III), I must first clarify the legal basis of that line (I).

1. The legal basis of the line claimed by Niger

3. Niger is, in fact, very evasive on this subject.

32

4. Does our opponent contend that the description of the frontier contained in the Erratum does not suffice and that, consequently, the course of the frontier is determined by the line shown on the 1960 map, in accordance with the 1987 Agreement?

5. No, it does not. What is more, Niger cannot rely on the line shown on the 1960 map in the Téra sector, because it contests the fact — established by the Erratum and correctly represented by the 1960 cartographic line — that the River Sirba at Bossébangou is a frontier point. Professor Forteau will return to this subject later.

6. Does Niger argue that 1910 is the “critical date” because, in the Téra sector, the frontier follows the boundaries — as they were in 1910 — of the *cantons* which were detached from the Tillabéry *cercle* in that year and returned to Niger 16 years later by the 1926 Decree?

7. That is suggested by one passage in the Counter-Memorial, where we read that, by means of the 1926 Decree, “the 1910 boundary would once again serve as the inter-colonial boundary between Niger and Upper Volta”⁵¹.

8. In the end, however, Niger does not advance that argument in respect of the Téra sector and makes no attempt to justify the line it claims in that sector by making reference to the boundary situation in 1910.

9. Does our opponent maintain, then, that the critical date is 1927 — or 1926, since, according to Niger, the Erratum was entirely without effect — and that we must go back to that date in order to determine the frontier line on the basis of the *canton* boundaries?

10. Once again, despite some passages which could give that impression⁵², this is clearly not what emerges from its written pleadings. There are three reasons to account for this.

33 11. First, Niger is unable to indicate, in any precise terms, what the boundaries of those *cantons* were in 1927. What is more, the colonial documents show that no one at that time knew what they were, for the simple reason that they had never been fixed⁵³. The only documents on which Niger could seek to rely are those produced by Delbos and Prudon. And although Niger refers to their work — indeed extensively — it does so only in an attempt to discredit the Erratum. Furthermore, in its Memorial, it recognizes that the views of the colonial boundaries held by those two Administrators do not coincide⁵⁴.

[Slide 2]

12. Second, if Niger were to pursue this line of reasoning, it would be forced to argue that in the southern part of the Téra sector the frontier cuts deep into its territory, thereby attributing to Burkina an area over which the latter has no claim. On the screen is a map showing both the

⁵¹CMN, p. 29, para. 1.1.19.

⁵²MN, pp. 90-91, para. 6.15; CMN, p. 62, para. 2.1.2.

⁵³MN, Ann. C45.

⁵⁴[CMN], p. 27, para. 1.1.16.

frontier described by the Erratum and the Delbos line. As can be seen, if Niger were to argue in favour of that line, it would have to surrender the coloured areas on the map. Understandably, therefore, it is somewhat reluctant to rely on the work of Delbos and Prudon.

[End of slide 2]

13. All the more so since — and this is the third reason — if Niger were to adhere to the line of the *canton* boundaries, as they emerge from the work of the Administrators at that time, it would have to relinquish its claim to certain villages, such as Bangaré and Petelkolé, which are shown on the sketch-map drawn by Prudon in 1927 as being in Upper Volta territory⁵⁵.

14. Finally, does Niger contend that the critical date is 1960 and that the best “snapshot” of the boundaries of the two colonies at the time of independence is provided by the line shown on the 1960 map?

15. Close inspection reveals this to be Niger’s argument: in its view, the line shown on the 1960 map “should in principle serve as a guide to determine the course of the inter-colonial boundary in 1960”⁵⁶ — I stress “in 1960”, and not in 1927 or on any other date.

34 16. Moreover, Niger’s use of the lists of villages in various *cantons*, in order to justify the line it claims, demonstrates its belief that it is the *canton* boundaries *as they were in 1960* which determine the frontier. Thus, it writes that “the lists of villages of those *cantons up to independence* give an indication of the composition of the *cercles* concerned, and hence of their boundaries”⁵⁷.

17. This is further confirmed by Niger’s references to the situation of certain villages such as Ouro Gaobe⁵⁸. Niger does not claim that this village belonged to one of the *cantons* transferred to Niger in 1926, nor that it illustrates the boundaries of the *cantons* as they existed in 1910. To do so would be untenable, moreover, since that village is listed in fascicle IV of the General List of Localities of FWA of 1927 as being located in Upper Volta, in the Yagha *canton*⁵⁹, a *canton* which definitely remained a part of Dori *cercle* after 1927. It is cited by Niger, therefore, not because it

⁵⁵MN, p. 97, para. 6.24; MN, Ann. D3.

⁵⁶MN, p. 91, para. 6.16.

⁵⁷MN, pp. 90-91, para. 6.15.

⁵⁸CMN, p. 71, para. [2.1.14].

⁵⁹MBF, Ann. 27, p. 44.

has “always” belonged to Niger, but simply because the Chief of Téra village believed, in 1954, that it was part of the Diagourou *canton*⁶⁰.

18. The evidence tallies, therefore, and demonstrates that the *canton* boundaries which Niger claims serve as its frontier with Burkina are, according to Niger, those which existed in 1960, not those which existed in 1910 or in 1926-1927. In other words, in its view, it is the colonial *effectivités* at the time of independence which determine the course of the frontier.

19. The problem, Members of the Court, is that in adopting this line of argument, Niger clearly ignores the well-established principle that title prevails over any *effectivités* to the contrary — and in this case, assuming that the line put forward by Niger corresponds to the *effectivités*, as it claims it does, that line would directly contradict the line established by the title, as Professor Forteau has just explained.

20. And that is not all, because the argument put forward by Niger contradicts just as blithely the sovereign commitments which it made in the 1987 Agreement. Under that Agreement, the course of the frontier is that described by the Erratum and, “[s]hould the *Arrêté* and Erratum not suffice, the course *shall be* that shown on the 1:200,000-scale map of the *Institut Géographique National de France*, 1960 edition”. By joint agreement of the Parties, the *effectivités* cannot, therefore, have any role to play in the determination of the frontier.

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21. However, our opponent appears to suggest — albeit very allusively — that in making reference to the line shown on the map, should the Erratum not suffice, the 1987 Agreement only intended it to be referred to in so far as that line reflects the colonial *effectivités*⁶¹.

22. Firstly, this is attributing to the 1987 Agreement something which it does not say. Moreover, Niger knows all too well that referring to the cartographic line, as called for by the Agreement, is not conditional but *mandatory*, at least in the event that the Erratum does not suffice. Niger itself has drawn attention to that requirement in its written pleadings⁶².

23. And secondly, it is attributing to the 1987 Agreement something which no one has ever thought it said, since the experts of the Joint Technical Commission on Demarcation have never

⁶⁰MN, Ann. C84.

⁶¹MN, Ann. 84.

⁶²MN, p. 75, para. 5.14.

interpreted their mandate, fixed by the 1987 Protocol of Agreement, as requiring them to identify the colonial *effectivités*.

24. Members of the Court, the very basis of Niger's frontier claim in the Téra sector is, therefore, legally flawed. But that is not all. Assuming, solely for the purposes of discussion, that the colonial *effectivités* could be entertained in the present case, it is clear, as I shall now demonstrate, that Niger has failed to establish that the line it claims follows the borders of those *effectivités*.

The PRESIDENT: Mr. Thouvenin, I believe you are going to demonstrate that after the coffee break. The hearing is suspended for 20 minutes.

The Court adjourned from 4.15 p.m. to 4.35 p.m.

The PRESIDENT: Please be seated. The hearing is resumed. Mr. Thouvenin, you may continue.

36 Mr. THOUVENIN: Thank you very much Mr. President. Mr. President, Members of the Court, my plan after the break is first to show you that the line claimed by Niger does not follow the borders of the colonial *effectivités*, after which I will return to the case of Bangaré.

II. The line claimed by Niger does not follow the borders of the colonial *effectivités*

25. In general terms, Niger argues that, in the Téra sector, a part of the frontier line follows that shown on the 1960 map (A). However, in its written pleadings it deviates from the latter in two places, at Petelkolé (B) and Oussaltane (C). Further, in its Memorial it sought to do the same in the area of the Komanti encampments, but eventually abandoned that claim in its Counter-Memorial (D).

A. The line shown on the 1960 map does not correspond to the colonial *effectivités*

26. I will return in a moment to the case of these three enclaves, but first let us examine Niger's assertion that, essentially, the *de facto* division of the colonial territories in 1960 is "largely

reflected by the IGN map”⁶³. It is this fact which, according to Niger, in principle justifies treating the line shown on the 1960 IGN map as the frontier line. In truth, there are three insurmountable objections to this.

27. First, Niger’s claim that the 1960 line faithfully reflects the *effectivités* is an unsupported allegation. Niger provides no evidence of what it asserts. Moreover, nothing in the documents produced by the Parties to the Court throws any light on the way in which the 1960 map was prepared.

28. Furthermore, even supposing that Niger’s assertion were correct, we are not told which parts of the line shown on the map are to be considered sufficiently reliable to enable us to ascertain from them the line of the frontier. Indeed, according to our opponents this line merely “in large part” reflects the line of the *effectivités*. Which, then, are the “large parts”? How can we determine this, since we do not know how the map was prepared? And how, then, are we to separate those parts of the IGN line which genuinely reflect the *effectivités* from those which do not? Niger is silent on the point. Moreover, according to Niger this map shows only the “*probable boundaries*” of the *effectivités*⁶⁴. However, to state that there is a probability that a line reflects certain boundaries equally means that there is a probability that it does not do so. There thus remains an insuperable doubt as to how far this line faithfully reflected the *de facto* boundaries as they were in 1960.

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29. Finally, Niger itself admits the hollowness of its claim when it writes that: “the information on which they [the boundaries] were based could not always be fully relied on”, or that, “in the absence of reliable information from the local authorities, the drafters of the map followed the rivers, *marigots* and ridgelines, which together represent more than 50 per cent of the boundaries of Téra sector”⁶⁵. In other words, according to Niger, in the Téra sector the 1960 IGN line is based, as to at least 50 per cent, not on the boundaries of *cantons*, but on natural features which appeared relevant to the drafters of the map.

⁶³CMN, p. 64, para. 2.1.5.

⁶⁴MN, p. 76, para. 5.14, and p. 91, para. 6.16.

⁶⁵CMN, p. 44, para. 1.1.32.

30. In these circumstances, it is difficult to understand how we can be asked by Niger to believe that the line in question faithfully follows the borders of the *effectivités* wherever this suits our opponent, while deviating therefrom where it fails to come up to expectation. That, however, is the sole methodology employed by Niger — if it can be said to pursue one at all — in order to justify the creation of the three enclaves which it claims.

[Start of slide 3]

B. The Petelkolé enclave

31. The case of the Petelkolé enclave, which lies to the north of the sector represented on the sketch-map currently projected, is moreover emblematic of this method. In its Memorial, Niger claimed this village on the ground that it lay to the eastern side — hence on Niger’s side — of the frontier. It claimed that the IGN line corresponded to the colonial *effectivités*, asserting that “the IGN line passes to the west of Petelkolé . . . which it leaves to Niger”, or again “[t]he village is shown as belonging to Niger on the 1960 IGN map”, which, in its view, “corresponded to the administrative information from the colonial period”⁶⁶. All of this is incorrect, as Niger now admits. Burkina had also noted this in its Counter-Memorial⁶⁷.

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32. Nonetheless, our opponents are resolved not to “lose” Petelkolé. Now claiming that the cartographic data which are unfavourable to it are “contradictory”⁶⁸, it relies solely on the *effectivités* to justify a line deviating from that shown on the 1960 map in order to create the Petelkolé enclave.

[End of slide 3]

33. Niger’s agility in saying one thing and then its opposite is impressive, but, in any event, the matters relied on by it in the latest version of its claim in no way prove that Petelkolé was administered by Niger at the time of independence, and still less do they support the line proposed by Niger in order to enclave the village.

⁶⁶MN, p. 94, para. 6.22.

⁶⁷CMBF, p. 96, para. 3.69.

⁶⁸CMN, p. 65, para. 2.1.7.

34. This is the case for the alleged “Roser/Boyer Agreement of April 1932”, which, according to our opponents, “locates the village of Petelkolé to the east of the boundary and the Féto Karkalé pool to the west”⁶⁹.

35. In reality, it is the opposite which emerges from the Tour Report sent to the Governor of Upper Volta by the Commander of Dori *cercle*, Mr. Roser, recording his discussions with the Head of Yagha *canton*⁷⁰. The author of the report criticizes the line in the Erratum, but expressly recognizes it as the “legally established boundary” in 1927⁷¹. Furthermore, Mr. Roser emphasizes the frustrations which this boundary has aroused amongst certain administrators: but above all, he notes that “no new erratum was provided to correct the errors in question”⁷². This leads Mr. Roser to propose *modifying* the boundary by the adoption of a “new erratum”⁷³, in particular so as to place Petelkolé on the Niger side. He concludes by expressing the wish that his proposals will receive the “approval” of the Governor-General of Upper Volta, while at the same time stating that he hopes that the Governor of Niger will also give his approval⁷⁴. However, as we know, these proposals were never approved⁷⁵. It follows, Mr. President, that what Administrator Roser’s report proves is exactly the opposite of what Niger claims: it confirms that Petelkolé was on the Burkina side of the boundary in 1932, and that it has remained there ever since.

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36. The same applies to the Tour Report from the Administrator of Dori *cercle* of 31 March 1931⁷⁶, also cited by Niger — again with the contrary sense — in footnote 190 to its Counter-Memorial, as confirmation that Petelkolé was at that time, in 1931, on the Niger side of the frontier. In reality, in stating, in regard to “Petkalkallé or Fétokarkalé”, that the frontier passes approximately 1 km to the east of this village, all that this report suggests is that the village to which it refers lies to the west of the frontier, that is to say on the Burkina side.

⁶⁹CMN, p. 65, para. 2.1.7; see also MN, p. 94, para. 6.22.

⁷⁰MN, Ann. C 45.

⁷¹*Ibid.*, p. 6 of the report.

⁷²*Ibid.*, p. 5 of the report.

⁷³*Ibid.*, p. 6 of the report.

⁷⁴*Ibid.*, last page of the report.

⁷⁵MN, Ann. C 45; see on this point CMBF, p. 96, para. 3.69.

⁷⁶MN, Ann. C 41.

37. As to the Tour Report of Administrator Lacroix in 1953, from which Niger quotes the lines “Rimaïbé having established the permanent hamlets of Petelkarkalé and Petelkolé, between which the boundary passes”⁷⁷, it proves nothing, not only because its author starts from the mistaken premise that the description of the boundary proposed by Administrator Delbos is legally valid, whereas it is the 1927 Erratum alone that determines the boundary, but also because it is impossible to locate Petelkarkalé on the 1960 map⁷⁸.

38. Niger relies above all, in order to justify the enclaving of Petelkolé, on the existence of a Niger border post installed in that enclave after 2006, in accordance with a proposal by the Bilateral (Burkina-Niger) Committee on the identification of sites for the installation of juxtaposed control posts on the Ouagadougou-Dori-Téra road⁷⁹. However, Niger provides no explanation as to the legal basis of the argument that this work had consequences for the course of the frontier. It is certainly not obvious, and on reflection nothing can be found to justify it.

39. In the first place, the Report of the Bilateral (Burkina-Niger) Committee of June 2006 cannot be evidence of a consensus *between the Parties* that their common frontier, as delimited by the Erratum, passes to the west of Petelkolé. Only the Joint Technical Commission on Demarcation, created by the 1987 Protocol of Agreement, was competent at that time in relation to the frontier. For their part, the experts composing the Bilateral Committee had strictly no power as regards the course of the frontier. Their sole duty was to make recommendations to “the competent authorities of the two States” on the best sites for the border control posts on the Ouagadougou-Dori-Téra road.

40

40. Moreover, if Niger is claiming that the experts’ recommendation represents a delimitation agreement, that position would be difficult to reconcile with its rejection of the consensual line in 1988, which it regarded as without any legal force, because it had never been officially incorporated in a final legal document ratified by Niger’s Head of State.

41. Secondly, neither is the 2006 work evidence of the existence of an agreement *between the experts* — still less between the Parties — to modify the line of the frontier inherited from the

⁷⁷MN, Ann. C 79, quoted in CMN, p. 66, para. 2.1.7 and MN, p. 94, para. 6.22.

⁷⁸CMBF, p. 96, para. 3.69.

⁷⁹CMN, Ann. A 24, p. 5.

colonial period. Reading the Report of the Bilateral Committee of June 2006, it can be seen very clearly that the committee members *believed* that the frontier left Petelkolé to Niger, whereas they in fact had no way of knowing this, since the frontier had still not been demarcated in that area, and its course was the subject of a dispute between the two States. They thus expressed themselves in ignorance of the true situation. They made a mistake, and obviously had no idea that they were recommending that the course of the frontier should be shifted westwards so as to enclose Petelkolé in an enclave of Niger territory.

42. Finally, we are bound to note that the 2006 Report of the Bilateral Committee of Experts is not a “document accepted by joint agreement of the Parties” within the meaning of the 1987 Agreement, and nor is it mentioned in the Special Agreement, which thus precludes it from being used in order to determine the course of the frontier.

[Slide 3 again]

43. I would add, Mr. President, that, if Niger has failed to establish that Petelkolé was administered by itself at the time of independence, it has also failed to propose a line to enclave Petekolé that is in any way credible. The “frontier points”, of which we have heard so much, and which Niger appears to make up as it goes along, are so lacking in any true basis that they come and go as they please, from one written pleading to another.

41

44. This applies to the “endpoint of the new stretch of the Téra-Dori road constructed by Niger”, in relation to which it is difficult to see why it should be given the status of a frontier point; the same can be said of the point with co-ordinates 13° 59' 03" N and 00° 25' 12" E⁸⁰. While these co-ordinates appear quite precise, they have clearly been chosen out of pure wishful thinking on Niger’s part, since it does not hesitate to change them from one pleading to another — as we can see when we look at the sketch-map currently on the screen. The red line represents the course chosen by Niger in its Memorial; the mauve line represents the course shown in the Counter-Memorial. There is a considerable divergence between these two lines.

45. It would therefore be no exaggeration to say that this is all totally lacking in rigour and has nothing to do with the course of the frontier between Niger and Burkina Faso.

⁸⁰CMN, p. 66-67, para. 2.17.

C. The Oussaltane enclave

46. As to the Oussaltane enclave, which is shown in the middle of the sketch-map currently on the screen, here Niger simply repeats in its Counter-Memorial the arguments already presented in its Memorial⁸¹, which Burkina has already refuted⁸².

47. The Counter-Memorial does, however, contain new material regarding the *course* of the Oussaltane enclave. It is apparent that none of the points whose co-ordinates are given in the Memorial as frontier points reappear in the Counter-Memorial, with the exception of that where the proposed line rejoins the IGN line. Here again, the sketch-map on the screen shows this clearly. One is bound therefore to conclude that, once more, Niger is improvising the course of a line which has nothing to do with the frontier as the two States agreed to define it in 1987.

D. The invention, then disappearance, of the Komanti encampment enclave

48. Furthermore, Niger's exercise in improvisation, Members of the Court, is such that its claim to an enclave around the Komanti encampments, in respect of which its Memorial insisted that this corresponded to the colonial *effectivités*, has quite simply been abandoned in the Counter-Memorial. The claim was nevertheless a firm one: thus Niger argued that the course of the line on the 1960 IGN map was very uncertain here, and that it should therefore not be followed, with the result that the encampments fell on its own side of the border, since, as it claimed, they had been "administered by Niger since the colonial period"⁸³. Without giving the slightest explanation, the Counter-Memorial makes a complete about-turn and abandons this enclave — despite the fact that it accords with its general approach — and ultimately returns to the allegedly "very uncertain" line on the 1960 IGN map.

42

49. Over and above the bias which they bring to the judicial debate, these changes of position are somewhat unsettling, for what is expected of a frontier, just as with all frontier claims, is that it should have a certain permanence. In any event, these constant changes confirm the fanciful nature of the line which Niger proposes that the Court should enshrine as the frontier around Petelkolé and Oussaltane.

⁸¹MN, pp. 95-97, para. 6.23, and CMN, pp. 67-68, para. 2.1.8.

⁸²CMBF, pp. 97-99, paras. 3.71-3.76.

⁸³MN, p. 96, para. 6.23.

[End of slide]

III. Bangaré

50. I now come to the village of Bangaré, to which I shall devote my final set of observations. Mr. President, Bangaré is the village after which Niger gives up arguing for enclaves and instead relies on the line on the 1960 IGN map, until the so-called “tripoint” with which Niger replaces the point situated on the River Sirba at Bossébangou. Fundamentally, what Niger seeks to argue here is that because Bangaré has, in its view, *always* been part of its territory, the line shown on the map, which allocates that village to Niger, is correct.

51. That method is open to question right from the outset, due to the extremely weak nature of arguments based on the exact geographical position of villages in the region through the ages. Senobellabé is a typical case in point: although this village appears on Niger’s side of the 1960 line, and is cited as a village of Diagourou *canton* in 1933 and 1948, Niger acknowledges in its Memorial that no conclusions can be drawn as a result, since “[t]he sites change according to the seasons and retain the same toponyms”⁸⁴.

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52. Leaving aside that note of warning, Niger’s argument is based on *effectivités* which are no such thing. Apart from those already refuted in Burkina’s Counter-Memorial, to which there is no need to return⁸⁵, there are seven documents annexed to Niger’s Counter-Memorial which are worth discussing at this stage.

53. The first is an extract from the “Directory of localities” 1927: villages of the *canton* of independent Peulhs — Diagourou (Dori *cercle*)⁸⁶; here we find a reference to a village called “Bankaré”. The second is a list of the villages of Téra Subdivision, in Diagourou *canton*, in which mention is also made of a village called “Bankaré”⁸⁷.

54. Those two documents must be disregarded from the outset, for there are no grounds for assimilating Bangaré and Bankaré, as Niger does. There is nothing to prove that both names refer to the same village, but everything to show that this cannot be the case, since it was quite usual,

⁸⁴MN, p. 99, para. 6.25.

⁸⁵CMBF, pp. 101-102, paras. 3.80-3.84.

⁸⁶CMN, Ann. C109.

⁸⁷CMN, Ann. C110.

during the colonial period, for many villages in this region to have similar names, despite being separate places. As evidence for this, the 1927 General List of Localities of Upper Volta lists different villages with very similar names, such as Bangaba, Bangama, Bangassa, Bangassé, Bangassi, Bangasso, Bangassom, Bangassoum, Bangassoko, Bankaré, Bankandé, Bankora, Bankouma, etc.⁸⁸ Furthermore, the 1954 sketch-map of Diagourou *canton* shows a “Bankara”, which could equally well be Bankaré, but is clearly not Bangaré⁸⁹. Moreover, two of the new documents annexed to Niger’s Counter-Memorial include the names of “Bangaré” and “Bankara” as two *different* entities in the list of villages of Téra Subdivision, Diagourou *canton*⁹⁰.

55. The third, fourth and fifth documents, numbered as Annexes C 117, C 118 and C 125 to Niger’s Counter-Memorial, pose a problem as regards their nature and purpose. They are of indeterminate origin: their author is not mentioned, and neither is their object; as for their date, it is written by hand, whereas the remainder of the documents is typed. Furthermore, they are taken out of context, since these are obviously extracts from much weightier tomes of which virtually nothing is known.

44

56. The final two documents are a report dated 10 August 1954, specifically relating to “Bangaré”⁹¹, and the *Arrêté* of 1 January 1956 establishing polling stations and districts for the elections to the National Assembly in the administrative division of Niger⁹².

57. Upon careful analysis, the 1954 report reveals that what it refers to as “Bangaré” is not the village of “Bangaré” which appears to the west of the line on the 1960 IGN map and is claimed by Niger. The village of Bangaré shown on that map is in fact 25 km from Diagourou as the crow flies, which is totally incompatible with the observation made in the 1954 report⁹³, according to which Bangaré is, historically, a “district of Diagourou in existence since the beginning of the century”. No African village, at the beginning of the twentieth century, ever had a district lying more than 20 km from its centre.

⁸⁸MBF, Ann. 27.

⁸⁹MN, Ann. D21.

⁹⁰CMN, Anns. C117 and 118, in particular.

⁹¹CMN, Ann. C120.

⁹²CMN, Ann. B35.

⁹³CMN, Ann. C120.

58. The last of the documents we should discuss, which is both the most official one, since it is the *Arrêté* of 1 January 1956 establishing polling stations and districts for the elections to the National Assembly in the administrative division of Niger, and the one closest to the date when the colonies gained independence, since it is from 1956, provides confirmation that the village of Bangaré is not part of Niger. It is reproduced at tab 2.19 of the judges' folder. Admittedly, Bangaré is listed here as being allocated to the first polling station in Diagourou. Yet what emerges most clearly from this document, and Niger obviously neglects to note this point, is that Bangaré is *not* mentioned as a village — something which is neither an oversight, nor a mistake.

59. What the *Arrêté* actually does is to draw a distinction between those voters attached to villages or oases, who belong to specific tribes or “factions”, and those unspecified persons who vote in Niger for reasons which are not connected with their place of residence, but with their personal attachment to Niger.

60. That is the justification for having two polling stations in Diagourou. The second one is reserved for voters from specific villages. The *Arrêté* expressly refers — I quote the text of the *Arrêté*, Mr. President — to the “*Villages* of : Ouagadougoubé, Yolo Hamidou . . .”. The first polling station, for its part, is allocated voters without any reference to the fact that they belong to a particular village. The *Arrêté* refers — and here again I quote its text — to “Sanrarébé, Wengardé . . . Bangaré”. The word “village” is not mentioned. Bangaré is not, therefore, listed as a village with a particular geographical location, allocated to a polling station in Niger on the basis of that location.

61. The fact that Bangaré appears in this *Arrêté*, but is not referred to as a village, even though it is established that it became one in 1945⁹⁴, indicates an *effectivité* which is quite the opposite of that which Niger claims to discern. It means that the colonial authorities knew full well that the *village* of Bangaré was not situated in Niger, but in Upper Volta, due to the delimitation made by the Erratum. For the purposes of the election in Niger, they merely noted that the residents of Bangaré were included in the voting lists of Niger, and told them in the *Arrêté* where they could go to vote.

⁹⁴CMBF, p. 100, para. 3.80.

62. That being the case, Mr. President, Members of the Court, both the line described by Niger's Counter-Memorial in the Téra sector and the line claimed in Niger's Memorial, which happens to be different, are without any merit, both in fact and in law.

63. From the Tong-Tong astronomic marker, as Burkina has always maintained, the frontier follows a straight line until the Tao astronomic marker; then, from that point onwards, it follows a straight line until the point where the frontier reaches the River Sirba at Bossébangou.

64. Mr. President, that concludes my pleading. I should like to thank you for your patient attention and ask you to give the floor to Professor Forteau, who will present a part of the line in the second sector of the contested frontier.

The PRESIDENT: Thank you, Professor. I give the floor once again to Mr. Forteau.

Mr. FORTEAU:

**THE COURSE OF THE FRONTIER FROM THE POINT WHERE IT REACHES THE RIVER SIRBA
AT BOSSÉBANGOU TO THE BOTOU BEND**

**I. The starting-point of the line (the point where the frontier reaches
the River Sirba at Bossébangou)**

I am very grateful to you, Mr. President, for giving me the floor again.

[Slide 1: The second section to be delimited (from Bossébangou to the Botou bend)]

46

1. Mr. President, Members of the Court, the second section of the frontier whose delimitation is contested by Niger is defined in the following manner by the Erratum of 1927: the delimitation line, having arrived at the point where it reaches the River Sirba at Bossébangou,

“almost immediately turns back up towards the north-west, leaving to Niger, on the left bank of that river, a salient which includes the villages of Alfassi, Kouro, Tokalan, and Tankouro; then, turning back to the south, it again cuts the Sirba at the level of the Say parallel. From that point the frontier, following an east-south-east direction, continues in a straight line up to a point located 1,200 m to the west of the village of Tchenguiliba.”

2. The first point of divergence between the Parties, which is also common to the preceding stretch, concerns the starting-point of the frontier in this section. It is in fact necessary to determine from which point the line “almost immediately turns back up towards the north-west”. The object of this, my second speech, will be to identify that point.

[End of slide 1]

3. In all honesty, it should take no more than a few seconds to deal with this question. The line necessarily “turns back up” from the point it has just reached: the frontier, according to the Erratum “reach[es] the River Sirba at Bossébangou. It almost immediately turns back up towards the north-west”; therefore the River Sirba at Bossébangou is the relevant frontier point.

4. Niger creates a completely artificial problem in respect of this point, by refusing to apply the Erratum. In its Counter-Memorial, Niger in fact asserts that the stretch in question starts not at the point designated by the Erratum, but at the “point which was formerly the ‘tripoint’ between the *cercles* of Dori, Tillabéry and Say”. Niger further considers that “to the start of the Botou bend, that line follows what were the traditional boundaries of Say *cercle*, as handed down to the Colony of Niger in 1926”⁹⁵.

[Slide 2: The lines claimed by the Parties in the area of the salient]

5. The line claimed here by Niger, which is shown on the screen, departs from the Erratum in two respects:

- 47
- (i) Niger asserts that it is basing itself on what the situation was alleged to have been in 1926 — and I use the word “alleged” advisedly —, namely the year before the *Arrêté* and Erratum were adopted; yet those two legal instruments are the only ones having force of law to determine the delimitation. At best, Niger’s claim is anachronistic, particularly since the 1926 decree itself refers to a future delimitation — which occurred in 1927;
 - (ii) moreover, Niger pays absolutely no heed to the letter of the Erratum, which indisputably adopts the River Sirba at Bossébangou as a frontier point, with no mention at all of any “tripoint”.

[End of slide 2]

6. Given the clarity of the text of the Erratum, Niger is reduced to claiming in its written pleadings that the author of the Erratum had made an error in adopting Bossébangou as a frontier point, instead of what Niger calls the “tripoint” between the *cercles* of Dori, Tillabéry and Say. This “error theory” is, however, completely baseless, as I shall first of all show (I). I shall then

⁹⁵CMN, para. 2.2.1.

develop the various elements which confirm that the point where the frontier reaches the River Sirba at Bossébangou is indisputably the relevant frontier point, from which the frontier starts in this section (II).

I. The error theory is irrelevant

7. Mr. President, it should at least be acknowledged that Niger puts up a valiant defence of its position in respect of the frontier point at Bossébangou. The claim is clear, even though it is unfounded. According to Niger,

“this reference in the Erratum to a boundary passing through the locality of Bossébangou [is] marked by error. On this point the Erratum did not correct the text of the *Arrêté* it replaced, as it retained in its description of the inter-colonial boundary some of the internal boundaries of Say *cercle* — which had no place to be there”⁹⁶.

Again according to Niger,

“[i]n this way [the Erratum] partially perpetuated the error which it was supposed to correct, by making the line which it described end at a point which constituted a purely internal boundary between the *cercles* of Tillabéry and Say, which belonged to one and the same Colony”⁹⁷.

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8. The irony of the argument is that it rests precisely on the confusion that Niger complains of:

- (i) nowhere is it stated in the Erratum that it delimits the *cercles* — its purpose is clearly restricted to the inter-colonial delimitation;
- (ii) Niger, for its part, makes strenuous efforts to claim as a frontier point what it calls a “tripoint” between three *cercles*, in contradiction with the inter-colonial purpose of 1927 Erratum. Therefore, if anyone is confusing *cercle* boundaries with colony boundaries in this case, it is not the draftsman of the Erratum, but indeed Niger.

9. In any event, Niger’s argument quite simply does not stand up, for three broad sets of reasons:

⁹⁶CMN, para. 2.2.2.

⁹⁷MN, para. 7.14.

- in the first place, the error theory can have no effective consequence: even if there had been an error (*quod non*), it would still not alter the fact that the Erratum would nevertheless apply in this case (A);
- in the second place, the error theory rests on two erroneous assumptions: firstly, that in 1927 there existed boundaries that had already been defined, and, secondly, that the Erratum ought to have confined itself to reproducing those alleged boundaries as they stood (B);
- and in the third place, the error theory assumes that the draftsman’s reference to Bossébangou in the Erratum was made in ignorance of the true facts — which is contradicted by analysis of the Erratum’s actual text (C).

Mr. President, allow me to return to each of these three points in greater detail.

A. Even if there had been an error (*quod non*), the Erratum would nevertheless apply in this case

10. In respect of the first point (even if there had been an error, the Erratum would nevertheless apply in this case), I shall begin by recalling what Niger’s argument consists of.

According to Niger,

49

“In describing the inter-colonial boundary as running as far as the village of Bossébangou, and thus effectively lopping off a portion of the area of Say *cercle* in the south — removing it from Niger and giving it to Upper Volta, the Erratum of 5 October 1927 blatantly contradicts the Decree of 28 December 1926, which both Parties recognize as being of fundamental importance in this dispute. Consequently, in respect of this specific point, the Erratum is deprived of any legal basis — and thus also legal effect — since in the hierarchy of French administrative acts a decree comes above an *arête*.”⁹⁸

11. More specifically, Niger bases its assertion on the *Burkina/Mali* precedent, whereby the Court considered that the frontier line “had to be defined not according to international law, but according to the French legislation which was applicable to such *territoires*”⁹⁹. Niger uses this as an argument to claim that it is for the Court to judge the legality of the Erratum, to find it incompatible with the Decree of December 1926, and for that reason to exclude it on the basis of French law.

⁹⁸See CMN, para. 2.2.10.

⁹⁹CMN, para. 2.2.10.

12. However, irrespective of any intrinsic merit in this argument, there is a significant difference between the *Burkina/Mali* case of 1986 and the one that is before us today: the 1927 Erratum is the legal title in the present case on two grounds: it is the legal title by application of the principle of *uti possidetis juris*, thus by reference to French colonial law; but it is also the legal title by virtue of the fact that it is referred to in the Agreement of 1987 and the Special Agreement seising the Court, both of which are treaties. By reason of this treaty-based reference, even if the Erratum were erroneous (*quod non*), it would nevertheless still constitute the only applicable legal title, recognized as such in a treaty by the two Parties, for purposes of defining the course of their common frontier. In light of this, the status of the Erratum in French colonial law is quite simply irrelevant.

13. In these circumstances, the findings reached by this Court in the *Libya/Chad* case are fully applicable to the present case. In that Judgment, you stated:

“That being so, the Court’s task is clear:

‘Having before it a clause which leaves little to be desired in the nature of clearness [here the Court is speaking of the 1955 treaty which defined the frontier by referring to other instruments, and that is also the case here with the 1987 Agreement which refers to the Erratum], [the Court] is bound to apply this clause *as it stands, without considering whether other provisions might with advantage have been added to or substituted for it.*’ (*Acquisition of Polish Nationality, Advisory Opinion, 1923, P.C.I.J., Series B, No. 7, p. 20.*)”

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(*Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, p. 25, para. 51; emphasis added.*)

14. In other words, and to quote again from your Judgment of 1994, in concluding the 1987 Agreement which refers to the Erratum, Burkina and Niger undertook to accept the frontier as defined in the Erratum and are obliged — and I cite from your 1994 Judgment — to “draw legal consequences from its existence, to respect it and to renounce the right to contest it in future” (*ibid.*, p. 22, para. 42). Whether or not the Erratum is erroneous is therefore not at issue. Niger cannot dismiss the Erratum without breaching its own consent given in 1987 and reiterated in 2001.

[Slide 3: Sketch-map on page 117 of CMBF [page 89 of the English version]]

15. Niger’s argument is, moreover, without any practical consequence. If Niger were in fact right (*quod non*) in claiming that the Erratum was tainted by error, and that you should therefore

disregard it, and accepting that the Erratum could accordingly be said “not to suffice” within the meaning of the 1987 Agreement — which is questionable to say the least —, in that case you would be required to have recourse to the line on the 1960 map. Yet, as can be seen on the screen, that line does not stop at Niger’s “tripoint”: the line on the map continues on to Bossébangou, which is shown as a frontier point — as Niger indeed acknowledges¹⁰⁰. In its attempts to exclude the Bossébangou frontier point, Niger makes no headway at all when it invokes the alleged “error” in the Erratum.

[End of slide 3]

B. The error theory is based on a doubly mistaken premise: that defined boundaries already existed in 1927, and that the Erratum of 1927 should have reproduced those boundaries as they stood

51

16. I come now Mr. President, very much in the alternative, to the second series of reasons why the error theory is wrong. It is based on a doubly mistaken premise: on the one hand, that in 1927 defined boundaries already existed and, on the other, that the 1927 Erratum should have reproduced them as they stood. Thus Niger argues in its Counter-Memorial that the Erratum “contains an erroneous description of this section of the inter-colonial boundary”¹⁰¹.

17. However, the purpose of the Erratum was in no sense to “describe”, as Niger writes, an allegedly pre-existing boundary — and which was thus wrongly reproduced. The Erratum is an act of delimitation which, as such, has a constitutive and not a declaratory aspect. Moreover, the terms which it uses confirm this, since Article 1, in particular, provides not that the boundaries “are the following”, but that they “are *determined* as follows” — and the use of the verb “determine” indeed implies that a decision has been taken¹⁰².

18. This constitutive aspect was, moreover, inevitable, since at the date of adoption of the Erratum no previous *arrêté* or decree had delimited the territories of the two colonies, or even, indeed, the territories of the *cercles* adjoining the boundary line. That is precisely why the

¹⁰⁰MN, para. 7.21.

¹⁰¹CMN, para. 2.2.8.

¹⁰²See above, speech of Alain Pellet, para. 19.

1926 Decree had expressly provided that an *Arrêté* “shall determine the course of the boundary of the two Colonies in this area”¹⁰³.

19. Niger, however, maintains that the draftsman of the 1927 *Arrêté* and its Erratum made a mistake in neglecting to take account of the fact that certain *cantons* had been transferred in 1926 from the Colony of Upper Volta to the Colony of Niger. According to Niger, while the locality of Bossébangou “was indeed located on the boundary between Say *cercle* and the *cantons* of Dori *cercle* incorporated into Niger in 1926, it was, however, no longer on the boundary with Upper Volta after that incorporation had been carried out”¹⁰⁴.

20. Niger bases its argument on the Record of Agreement of 10 February 1927 between Messrs. Lefilliatre, representative of the Governor of Upper Volta, and Choteau, representing the Governor of the Colony of Niger, on the basis of which the 1927 *Arrêté* was prepared. Niger considers that this agreement describes all the boundaries of Say *cercle*, not merely those adjoining the Colony of Upper Volta — which would confirm that there had been a mistake, in that the territorial changes effected by the 1926 Decree had not been taken into account in the preparation of the *Arrêté*.

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21. However, as Burkina Faso points out in its Counter-Memorial¹⁰⁵, Niger fails to take account of the fact that the 1927 *Arrêté* was *also* prepared on the basis of the Record of Agreement of 2 February 1927 between Messrs. Brévié, Governor of the Colony of Niger, and Lefilliatre, representative of the Governor of Upper Volta. This agreement is quite clear: it takes account of the territorial changes effected by the 1926 Decree in the inter-colonial delimitation which it proposes.

22. In order to be able to state that the draftsman of the Erratum committed an error in not reproducing exactly the boundaries of Say *cercle* as they are alleged to have existed in 1926, it would have to be demonstrated, in any case, that those boundaries were indeed those which Niger claims. However, to Burkina’s knowledge, Niger has never produced any legal text from the colonial period purporting to define those boundaries as they were in 1926.

¹⁰³MBF, Ann. 26.

¹⁰⁴MN, para. 7.16.

¹⁰⁵See CMBF, paras. 4.21-4.27.

23. Nor has Niger produced any colonial text defining what it repeatedly refers to as the “traditional boundaries” of Say *cercle*. The 1926 decree refers to territories, not boundaries, and nowhere in the instruments cited in the Preamble, or in those cited in the 1927 *Arrêté* and its Erratum, is there any reference to legal delimitation texts of which account was to be taken in the adoption of the Erratum.

24. The only document which Niger has produced in connection with the boundaries of Say *cercle* moreover confirms that these had not yet been defined in 1927. Niger appended to its Memorial *Arrêté* No. 149 of 20 March 1901 incorporating the Territory of Say into the *cercle* of Moyen-Niger¹⁰⁶. In Article 1, that *Arrêté* provides that “[t]he Territory of Say, whose precise boundaries will be fixed subsequently, is hereby incorporated into the *cercle* of Moyen-Niger”. That amounts to an admission that the boundaries of Say Territory had not been defined. Niger has provided no other document which subsequently made good that deficiency.

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25. Niger nonetheless continues to claim that the 1926 Erratum ought to have endorsed a pre-existing delimitation. It contends that, as a result of the “territorial changes” to the colonies of Upper Volta and Niger effected by the Decree of 28 December 1926 and the *Arrêté* of 22 January 1927, which reallocated certain territories, including Say *cercle*, by transferring them from one Colony to the other, the colonial Power had already delimited those territories in those two texts of December 1926 and January 1927, with binding effect on the draftsman of the August 1927 *Arrêté* and the Erratum of October.

26. That, however, was not the interpretation which Niger itself defended a few years ago in its Counter-Memorial filed on 28 May 2004 in the case between itself and Benin. At that time Niger wrote that “the *Arrêté* of 22 January 1927 does not set any boundaries, and it is therefore difficult to see how the *Arrêté* of 31 August 1927 could clarify it”. Niger further stated that the boundaries “result, rather, from the Erratum”¹⁰⁷. That is quite true: neither the Decree of December 1926, nor the *Arrêté* of January 1927, are acts of delimitation. Only the Erratum has such a status.

¹⁰⁶MN, Ann. B.6

¹⁰⁷CMN in the *Benin/Niger* case, Ann. 1, p. 203, para. 14 (www.icj-cij.org).

27. It is moreover symptomatic that Niger does not concern itself with the way it has set about determining the precise location of the “tripoint” that it seeks at all costs to establish as the relevant frontier point. If, as Niger claims, at the time of adoption of the 1926 Decree the *cercles* concerned had already been the subject of a delimitation binding on the Governor-General of French West Africa for purposes of establishing the inter-colonial boundary, it would have been possible to deduce the location of the tripoint from those previous instruments delimiting the *cercles*. However, once again Niger has produced no such text. That explains why it has had to fall back on a different technique, one which strays still further from the methodology defined and accepted by Burkina Faso and Niger in the 1987 Agreement.

[Slide 4: Sketch-map facing page 107 of Niger’s Memorial [page 105 of the English version]]

28. In order to locate its tripoint, Niger confines itself to a reference to various maps which allegedly “identified . . . the meeting-point of the *cercles* of Tillabery, Say and Dori”¹⁰⁸. In other words, Niger does not base its “tripoint” on the legal instruments of delimitation which purportedly existed in 1926. It seeks retrospectively to deduce the co-ordinates of this point from various selectively chosen maps, with, of course, all the uncertainties of such a method in view of the very great imprecision of the sketch-maps prior to 1926.

54

29. This method is particularly surprising, moreover, in that as far back as 1910¹⁰⁹ — and hence in 1919 at the time of the creation of Upper Volta — there was no longer any “tripoint” between the three *cercles* in the region. From 1910, Say *cercle* was bounded to the north-west by just one *cercle*: Dori *cercle*, which had absorbed the former *cercle* of Tillabéry on that side of the River Niger¹¹⁰.

[Slide 5: Sketch-map facing page 14 of Niger’s Memorial [page 22 of the English version]]

In its Memorial, Niger has provided an illustration, which we now see on the screen, showing the *cercles* of the Colony of Upper Volta at the time of its creation in 1919. In these circumstances, to claim to locate a tripoint between three *cercles* at a time when there were only two is a veritable *tour de force*!

¹⁰⁸MN, para. 7.24.

¹⁰⁹See MN, para. 1.15 *in fine*.

¹¹⁰See *Arrêté* of 22 June 1910, MN, Ann. B 14.

[End of slide 5]

30. In order to locate its “tripoint”, Niger bases itself on maps and sketch-maps alleged to represent the situation as it existed in 1927: the 1:1,000,000 sketch-map of 19 June 1909 of Captain Boutiq, commander of Djerma *cercle*¹¹¹, the 1:500,000 sketch-map of 1 August 1915 of Commander Truchard¹¹², map No. 60 of the *Atlas des cercles*, showing Say *cercle* on a scale of 1:500,000¹¹³; and the Blondel la Rougery map of Volta-Niger-Dahomey on a scale of 1:500,000 of June 1926¹¹⁴.

[Slide 6: Sketch-map MN, D. 1]

— Only the first sketch-map — that of 1909 — shows a true tripoint, but, in the first place, this map is only a sketch-map, and does not enable the tripoint to be located precisely; secondly, at that time it was Djerma *cercle*, and not Say *cercle*, strictly so-called (which was only a subdivision of Djerma *cercle*) that adjoined Dori *cercle*; furthermore, Niger does not claim in its written pleadings any tripoint corresponding to that shown, very imprecisely, on the 1909 sketch-map.

55

[End of slide 6]

— As for the three other sketch-maps, they do not show any tripoint, since at the date when they were prepared — after 1910, as I have just pointed out — Say *cercle* was bounded to the north-west by just one other *cercle*, Dori *cercle*¹¹⁵. It is thus hard to understand how Niger can rely on these three sketch-maps in order to locate the tripoint claimed by it.

31. We would also point out that the maps or sketch-maps on which Niger relies are not mutually consistent. I will take two series of examples.

32. The first of these concerns the location of the villages in the neighbourhood of Niger’s “tripoint”:

[Slide 7: Relevant extract from the 1:500,000 map of 1926]

¹¹¹MN, Ann. D. 1.

¹¹²MN, Ann. D. 4.

¹¹³MN, Ann. D. 6.

¹¹⁴MN, Ann. D. 9.

¹¹⁵See CMBF, para. 4.33.

— The 1:500,000 map of 1926 does indeed locate the village of Alfassi within the salient, but it places it to the north-west of the village of Bossébangou¹¹⁶; on the other hand, on the 1960 IGN map the village of Alfassi is located to the south-west of Bossébangou;

[Slide 8: Relevant extract from the 1:1,000,000 sketch-map of 1926]

— However, the 1:1,000,000 sketch-map of 1926 places the village of Alfassi not squarely within the salient but on the direct prolongation of the straight line running from the Tao marker¹¹⁷.

33. These examples show how unreliable the maps prior to the Erratum were in the area where Niger seeks today to locate its “tripoint”.

[End of slide 8]

34. The second example concerns the very relevance of the idea of a tripoint in relation to the 1927 delimitation.

56 [Slide 9: Zoom in on the relevant part of sketch-map D. 20 from Niger’s Memorial]

On page 75 of its Counter-Memorial [p. 53 in the English version], Niger reproduces the 1946 1:1,000,000 sketch-map shown in Annex D. 20 of its Memorial, giving it the following title: “The traditional boundaries of Say *cercle* in 1927”. That sketch-map shows a tripoint where three *cercles* meet. However, this map, which Niger claims to represent the “traditional boundaries of Say *cercle*”, is very clearly contrary not only to the Erratum, *but also* to Niger’s interpretation thereof and to the line which Niger itself claims. Thus, as you can see on the screen, the sketch-map places the village of Alfassi to the north-east of the tripoint, thus outside Say *cercle* and outside the salient.

[End of slide 9]

C. The error theory assumes that the draftsman’s reference in the Erratum to Bossébangou was made in ignorance of the true facts — which is contradicted by an analysis of the Erratum’s text

35. Finally, in order for the error theory to be correct — and in so doing I address the third series of reasons which contradict that theory — it will be necessary to show that the draftsman of the Erratum was acting in ignorance of the true facts when he indicated Bossébangou as a frontier

¹¹⁶MN, Ann. D. 9.

¹¹⁷MN, Ann. D. 10.

point. Niger states in this regard that the “reference in the Erratum to a boundary passing through the locality of Bossébangou was marked by error”, and that “the Erratum did not correct the text of the *Arrêté* it replaced”¹¹⁸.

36. However, from a formal perspective, such an argument would only begin to make sense if the texts of the two instruments were identical. But that is not the case: the August *Arrêté* stated that the boundary “reaches the River Sirba (boundary of Say *cercle*) near to and to the south of Boulkalo”. On the other hand, the Erratum no longer refers to the boundary of Say *cercle* nor to Boulkalo: it now states, quite precisely, that the boundary “reach[es] the River Sirba at Bossébangou”. This precision, which was clearly deliberate, is significant.

[Slide 10: Sketch-map of page 117 of Burkina Faso’s Counter-Memorial [page 89 of the English version]]

37. Moreover, the Erratum adds a further clarification. It states that, from Bossébangou, the line “almost immediately turns back up towards the north-west”. This clarification, brief as it is, confirms that the draftsman of the Erratum deliberately decided to specify Bossébangou as a frontier point, drawing the necessary consequences when defining the continuation of the line of the boundary: that line runs down in a north-west/south-east direction as far as Bossébangou, then leaves in an *almost* opposite direction. Thus the Erratum is quite correct in using the phrase “almost immediately”, since otherwise the line could have been thought to double back on itself, which a frontier cannot do. The insertion of the words “almost immediately” confirms that the draftsman of the Erratum knew exactly what he was doing in defining the boundary of the sector as he did.

57

[End of slide 10]

38. It follows that the intention of the draftsman of the Erratum was thus perfectly clear and that, moreover, the language used in that text is equally clear, and that the interpretation of the Erratum poses no problem at all. In no sense does it “not suffice”.

¹¹⁸CMN, para. 2.2.2.

II. The point where the line “reach[es] the River Sirba at Bossebangou” is the frontier point

39. The error theory, as we have just seen, is quite clearly baseless. Therefore it cannot support Niger’s claim, which is manifestly contrary to the text of the 1927 Erratum.

40. Nonetheless, Niger alleges that there are a number of documents from the colonial period which prove that the locality of Bossébangou was not regarded as bordering on the Colony of Upper Volta¹¹⁹. It draws particular attention to a letter of 17 December 1927 from Administrator Delbos, Commander of Dori *cercle*, to the Governor of Upper Volta, in which Delbos stated that the frontier ran “as far as Nababori, reaching the Say *cercle* to the west of Alfassi and not at Bossébangou, which is further up”¹²⁰.

41. However, Niger fails to cite in full the incidentally rather limited number of documents on which it seeks to base its claim, and to place these in their proper context. In its Counter-Memorial, Burkina analysed those documents in detail. Its findings, which I shall run through briefly, were as follows¹²¹.

58

42. First, since the documents referred to by Niger have not been “accepted by joint agreement of the Parties”, pursuant to the 1987 Agreement, they cannot prevail over the clear text of the Erratum, regardless of their content.

43. Second, what the documents invoked by Niger show in reality is that certain colonial Administrators wished to *modify* the delimitation of the Erratum because it took Bossébangou as a frontier point: it follows, therefore, that Bossébangou was a frontier point after the adoption of the 1927 Erratum and that the colonial authorities did not consider the Erratum to be without legal effect on that particular point.

44. Third, those documents demonstrate that the frontier point *proposed* (again unsuccessfully) at the time as a replacement for Bossébangou is not a point that was established prior to 1927 by a “traditional course” which the author of the Erratum had no choice but to ratify. Rather, there are several approximate points, located in various places, suggested in those documents:

¹¹⁹CMN, para. 2.2.5.

¹²⁰MN, Ann. C 20, cited in CMN, para. 2.2.5.

¹²¹See CMBF, paras. 4.30-4.39.

- thus, it should be noted that the so-called “traditional boundary”, said to be illustrated by Captain Boutiq’s 1909 sketch-map, does not correspond to the frontier claimed by Niger today¹²²;
- the course set out in the Tour Report of Civil Service Deputy Roser of 15 September 1943 is, for its part, also different to that claimed by Niger today, because it starts at Alfassi and not at Nababori¹²³;
- similarly, the Report of the Delimitation Operations between the *cercles* of Dori and Tillabéry, adopted on 8 December 1943 — thus prior to the 1947 reconstitution of Upper Volta within its 1932 boundaries — *proposes* that the “meeting point” of the three territories of Dori, Tillabéry and Say is located at a point other than Alfassi and Nababori: that meeting point, which is identified as being that proposed by Administrators Delbos and Prudon in 1927, “is a small platform situated 6.5 km (as the crow flies) to the north-east of the hamlet of Nabambori”, known as the “Fisso” platform¹²⁴. No preparatory document for the amended *Arrêté* of 1927 — for either the *Arrêté* or the Erratum, in fact — has ever made mention of that point.

59

45. Whatever view may be taken of those proposals, everything in the case file leads to the conclusion that Bossébangou is the relevant frontier point, and not the tripoint put forward by Niger.

46. That conclusion emerges first from the Erratum itself and from the 1960 map referred to by the 1987 Agreement and the Special Agreement seising the Court. Both take Bossébangou as the frontier point, to the exclusion of any “tripoint”, and that is enough to dispose of the question.

47. That same interpretation of the Erratum was adopted in 1988 by the members of the Joint Technical Commission on Demarcation, who took Bossébangou as the frontier point¹²⁵; it was also the authoritative interpretation adopted in May 1991 by the competent ministers of Burkina and Niger, who agreed that “[f]rom the Tong-Tong astronomic marker to the River Sirba at

¹²²See CMBF, para. 4.34, final bullet point.

¹²³MN, Ann. C 45.

¹²⁴MN, Ann. C 69.

¹²⁵MBF, paras. 4.47-4.51.

Bossebangou, passing through the Tao astronomic marker, the frontier shall consist of a series of straight lines”¹²⁶.

48. Moreover, when considered in its context, there is nothing ambiguous about Niger’s position during the work of the Joint Commission. At the extraordinary meeting of 14 May 1990, Niger contested the 1988 consensual line, contending, for the first time, that the Erratum was wrong not to establish the purported traditional boundary which, according to Niger, did not reach Bossébangou¹²⁷. Two months later, however, at the second ordinary session of the Joint Committee, Niger was obliged to go back on that position. After re-examining the line and re-interpreting the Erratum, Niger declared that it “accept[ed] that the line of the frontier reaches the River Sirba at Bossébangou”, a position which it did not again call into question until the filing of its Memorial¹²⁸.

49. More precisely, Niger acknowledged the following:

60

“Although the Erratum specifies that the frontier line reaches the River Sirba at Bossébangou following a south-easterly direction, and then turns back in the opposite direction (north-west), which would eliminate the frontier line over that short stretch, Niger accepts that the line of the frontier reaches the River Sirba at Bossébangou.”¹²⁹

50. In other words, Niger’s only hesitation concerned the potential inconsistency of the line, and not the fact that the Erratum should be considered invalid, as it is now claiming; even so, that hesitation did not prevent Niger from acknowledging that Bossébangou is the relevant frontier point.

51. Moreover, as I recalled earlier, Niger’s hesitation was unfounded, because the Erratum does not say that the frontier turns back up towards the north-west, but that it *almost immediately* turns back up in that direction¹³⁰.

52. Two new documents annexed by Niger to its Counter-Memorial confirm this.

53. A Note from the Permanent Secretary to the Niger Minister of the Interior containing the report of the meeting of the Joint Technical Commission on Demarcation of 31 July 1990 records

¹²⁶MN, Ann. A 6; emphasis added.

¹²⁷MBF, Ann. 85.

¹²⁸See CMBF, para. 2.17.

¹²⁹MBF, Ann. 87, p. 3.

¹³⁰See above, para. 37.

as follows the view of the authorities of Niger: “according to the text [of the Erratum], the frontier line joins the River Sirba at two places: at Bossébangou and at the level of the Say parallel”. The same Note also states that the frontier line must “connect the three points mentioned above”, namely the Tong-Tong marker, the Tao marker and “the River Sirba ([at] Bossébangou)”¹³¹.

61

54. The letter of 17 December 1990 sent by the Permanent Secretary of the National Frontier Commission to the Niger Minister of the Interior reaffirms that the course of the frontier should pass in turn through the three points mentioned in the Erratum, namely Tong-Tong, Tao and “the Sirba at Bossébangou”. In addition, that letter states — and I stress this point — that such interpretation “is consistent with the spirit and letter of the Decree dated 28 December 1926”. Furthermore, the letter lists the points of disagreement between the Parties in the “[s]ection going from the Sirba at Bossébangou to the Sirba at the level of the Say parallel”, without calling into question the location of the starting-point of the frontier in that section¹³².

55. A number of documents from the colonial period also confirm that the inter-colonial boundary passed through Bossébangou, as stated in the Erratum.

56. Among the colonial documents dating from or after 1927, the following, in particular, may be mentioned, stretching from 1927 to the dates of independence.

57. In his aforementioned letter of 17 December 1927, Administrator Delbos expressed concern that the Erratum made the frontier run to the River Sirba at Bossébangou and not to Nababori, as he had recommended¹³³. However, as Niger indicates in its Memorial, “this urgent plea had no effect, and no change was made to the legislative text up to the time of independence”¹³⁴.

58. Barely three years later, Report No. 416 from the Commander of Dori *cercle*, dated 7 July 1930, states that “an Erratum to that *Arrêté* [the *Arrêté* of August 1927] does not alter the boundaries fixed, except that the frontier line should reach the River Sirba at Bossébangou instead of Boulkabo”¹³⁵.

¹³¹CMN, Ann. C 130.

¹³²CMN, Ann. C 131.

¹³³MN, Ann. C 20.

¹³⁴MN, para. 6.14.

¹³⁵MN, Ann. C 38, p. 2.

59. The Tour Report from the Commander of Tillabéry *cercle*, dated 30 June 1934, affirms that the colonial Administrators had intended to carry out a “precise delimitation” — in the context of that Report, the term delimitation refers to the demarcation of the frontier on the ground — which, according to the text, was supposed to be carried out “from the Tong-Tong astronomic marker to Bossébangou”¹³⁶.

62

60. On 11 July 1951, the Head of Téra Subdivision informs Tillabéry *cercle* that the Commander of Dori *cercle* has “stated again that he believes it is important to demarcate the boundary on the basis of the Erratum . . . of 1927, by connecting the Tao boundary marker directly with Bossébangou”. For his part, the Head of Téra Subdivision expresses concern in that telegram about the possible consequences of that demarcation and indicates his preference for “the solution proposed by Mr. Roser, acting Commander of Dori *cercle*, in 1932”. It should be recalled that that proposal was presented as a suggested amendment to the Erratum, which was not followed up¹³⁷.

61. Moreover, in a letter sent on 17 April 1953 to the Commander of Tillabéry *cercle*, the Governor of Niger describes the line defined in the Erratum in the following terms: “the line from the Tong-Tong astronomic marker, which crosses the Téra-Dori road at the Tao marker and continues to Bossébangou”. He writes:

“The tendency of the Dori authorities has at certain times been to regard this as a straight line, the result of which has been the annexation by Dori of certain territories manifestly belonging to Téra, reopening old disputes. This delimitation should thus be undertaken with great care, village by village, hamlet by hamlet.”¹³⁸

62. That last approach, I should point out, was completely removed from the text of the Erratum. Where the latter sought to define the course of the frontier according to the inclusion of certain villages in a particular Colony, it did so expressly, as in the case of the four villages of the salient. By contrast, the Erratum does not make reference to any village other than that of Bossébangou in the section of the frontier running from the Tao marker to the village of Bossébangou. What is more, the Governor of Niger does not dispute in that letter that the frontier must reach the village of Bossébangou.

¹³⁶MN, Ann. C 54; emphasis added.

¹³⁷MN, Ann. C 73.

¹³⁸MN, Ann. C 75.

63. Finally, in a Tour Report of 24 December 1953, Deputy-Administrator Lacroix of Tillabéry *cercle* mentions what he refers to, in the singular, as “the ‘Tao-Sirba line’ in the *Arrêté*”. In that same Report, he expresses regret that that line is not “eas[y] to identify in the field”. That, however, is a feature of any theoretical line. Be that as it may, the mention of the “Tao-Sirba” line confirms that the Administrator has no doubt as to the fact that the Erratum adopted a straight–line course between the Tao marker and the River Sirba at Bossébangou¹³⁹.

63 To conclude, Members of the Court, it is indisputable that the frontier defined by the Erratum reaches the River Sirba at Bossébangou before continuing from that same point. As I recalled in the introduction to this speech, one only has to read the Erratum in order to arrive at this conclusion. It is therefore quite incomprehensible why Niger should refuse to accept it.

65. Mr. President, with your permission, my colleague and friend, Jean-Marc Thouvenin, will take my place tomorrow morning in order to continue the description of the course of the frontier from the point where it reaches the River Sirba at Bossébangou. Members of the Court, I thank you for listening patiently and attentively and wish you a pleasant afternoon.

The PRESIDENT: Thank you very much. The Court will meet again tomorrow morning at 10 a.m. The sitting is closed.

The Court rose at 5.55 p.m.

¹³⁹MN, Ann. C 79.