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10

The PRESIDENT: Please be seated. The sitting is open. The Court meets today to hear the second round of oral argument of the Republic of Niger. I should now like to invite Professor Maurice Kamto to open Niger's second round of oral argument.

Mr. KAMTO: Thank you, Mr. President.

THE APPLICABLE LAW

1. Mr. President, Members of the Court, Burkina Faso opened its second round of oral argument by returning to the issue of the applicable law. After referring in florid terms to what it presents as Niger's "at . . . times moving" "gift" for telling "stor[ies]"¹, my distinguished colleague, Professor Alain Pellet, made an appeal to "come back to reality and *lex dura*"². One must never give up hope, Members of the Court, because all good things come to those who wait. Here, at last, we have Burkina Faso claiming to be ready to talk about the facts; a little too late, but never mind. Niger has done its utmost since the beginning of these proceedings, indeed since the work of the Joint Commission, to show how necessary it is in a case of this kind for the law to be applied in the light of the facts, or for the facts to shed light on the application of the law. Niger will return to this essential question of the role of the facts in the implementation of the law, once it has replied to a series of points raised by Burkina Faso in what looks like a last-ditch effort: the question of the critical date, the status of the Agreement of 28 March 1987 and the role of the *effectivités* in the present case. But before that, Mr. President, allow me to reply to some preliminary questions.

I. Some preliminary questions

2. There are two such questions: firstly, the question put by Judge Donoghue and, secondly, the nature of the agreement constituted by the exchange of letters of 29 October and 2 November 2009 and the proof of its ratification by Niger.

¹CR 2012/25, p. 10, para. 1 (Pellet).

²*Ibid.*, para. 2 (Pellet).

11 A. Reply to Judge Donoghue’s question

3. On Friday 12 October, Judge Donoghue put the following question: “Are the Parties bound under international law by the results of the demarcation of the frontier to which the Special Agreement refers in Article 2, paragraph 2?” Niger’s reply is as follows: the Republic of Niger is bound, and has always considered itself to be bound, under international law, by the results contained in the agreement constituted by the exchange of letters of 29 October and 2 November 2009 between Burkina Faso and the Republic of Niger.

4. My esteemed colleague Professor Jean Salmon will reply, when you give him the floor during this second round of Niger’s oral argument, to the question put by Judge Bennouna.

B. The nature of the agreement constituted by the exchange of letters of 29 October and 2 November 2009

5. Mr President, Members of the Court, the results of the demarcation of the frontier in question are indeed embodied in an agreement in the form of an exchange of letters dated 29 October and 2 November 2009 between Niger and Burkina Faso.

6. Listening to Burkina Faso, you would think that “*entente*” was almost a dirty word. The opposing Party has made much of the translation by the Registry of that word “*entente*” by “agreement”, considering that “understanding”, for example, would have been a better translation for “*entente*” than the word “agreement”³. Because, for Burkina Faso, it cannot be an agreement, unlike in particular the Special Agreement of 24 February 2009, which is not “a mere ‘understanding’ of uncertain legal significance”⁴.

7. Mr. President, I plead fatigue on behalf of my distinguished opponent, Professor Alain Pellet, who was the one who picked this semantic fight, and I shall therefore refrain from engaging in any fisticuffs on the matter. Suffice it to recall here — with apologies to the Court — an extremely well-known provision of a convention with which all internationalists are very familiar. Article 2, paragraph 1 (a), of the 1969 Vienna Convention on the Law of Treaties — to which Niger acceded in 1971 and Burkina Faso in 2006 — provides in unequivocal terms that:

12

“1. For the purposes of the present Convention:

³CR 2012/25, p. 12, para. 6 (Pellet).

⁴*Ibid.*, pp. 15-16, para. 15 (Pellet).

(a) ‘treaty’ means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

Yes, I plead the fatigue of my learned colleague, because that alone can explain his failure to recall this provision. I would add only that numerous bilateral agreements are concluded between States by means of an exchange of letters, as is plain from international case law and in particular the various cases which your Court has had occasion to hear⁵.

8. The agreement constituted by the exchange of letters of 29 October and 2 November 2009 between Burkina Faso and Niger is therefore clearly an agreement under international law. This is the “positive law” which the opposing Party vaunted, rather sarcastically, in its introductory speech on Monday⁶.

9. In the course of replying to Judge Donoghue’s question, one of Burkina Faso’s counsel cast doubt on the fact that the ratification of the exchange of letters of 2009 had indeed taken place in Niger⁷. In order to remove all possible ambiguity on this point, Niger has produced, in accordance with Practice Direction IX of the Court

“Law No. 2011-38 of 3 December 2011, authorizing approval of the exchange of Notes embodying the agreement between the Parties on the delimited sectors of the frontier between the Republic of Niger and Burkina Faso, signed by the Minister Delegate for Regional Co-operation of Burkina Faso on 29 October 2009 and by the Minister for Foreign Affairs and Co-operation of Niger on 2 November 2009”.

This law was published in the *Journal officiel* of the Republic of Niger on 19 December 2011⁸. Members of the Court will find the text at tab 21 of the judges’ folder. Pursuant to this law, the President of the Republic of Niger signed the act of ratification by which, “[h]aving seen and examined the said law”, he affirms: “We declare that it is accepted, ratified and confirmed, and vow that it shall be scrupulously observed.”

13

10. By a letter dated 13 February 2012, the Minister for Foreign Affairs, Agent of the Republic of Niger, informed his counterpart from Burkina Faso of the fact that the ratification process had been concluded in Niger. His letter, which you will find at tab 22, reads as follows:

⁵See, for example, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, *I.C.J. Reports 2002*, p. 332, para. 34.

⁶CR 2012/25, p. 10, para. 1 (Pellet).

⁷*Ibid.*, pp. 12-13, para. 7 (Pellet).

⁸*Journal officiel* of the Republic of Niger, special edition No. 20, 19 December 2011, p. 1490.

“With reference to the above-mentioned exchange of Notes embodying the agreement between the Parties on the delimited sectors [of the frontier between our two countries], I have the honour to inform you that Niger has just ratified this exchange of Notes in accordance with the constitutional procedures in force.

Consequently, in the event that Burkina Faso has also carried out this formality in accordance with its internal procedures, I would suggest that we exchange the instruments of ratification at a date to be fixed by joint agreement as soon as possible.”

Clearly this letter received scant attention from its addressee, since no reaction was forthcoming from the Government of Burkina Faso. And, as Monday’s oral argument showed, it would also seem to have been overlooked by the opposing Party in the present proceedings. Niger can only regret this fact, but it willingly takes note of the apologies which were presented to it in this regard by the Deputy Agent of Burkina Faso in his letter of 16 October 2012. The incident can therefore be regarded as closed as far as Niger is concerned. In any case, it confirms the importance that Niger attaches to complying with its international commitments. There can be no further doubt in that regard.

11. However, this does not resolve the question of the legal scope of this agreement, on the subject of which the Parties remain divided. Burkina Faso declared that

“if this exchange of letters constitutes a treaty within the meaning of international law, subject to ratification under Article 7 of the 1987 Agreement, as the Agent of Niger asserts, then it has not, in any event, been ‘officially recognized’ under international law, to use Niger’s phrase in respect of the consensual line of 1988 and the political compromise of 1991; it has indeed not been ratified by both States; consequently . . . it remains legally non-binding between the Parties”⁹.

14 Niger agrees that a bilateral agreement which is subject to ratification, but which has not yet been ratified by the two States concerned, does not have the force of law between them. But it was — and moreover still is — up to Burkina Faso, if it wishes the said agreement to become a binding legal instrument between itself and Niger, to perform the necessary ratification formalities in its turn, so that the two States can proceed with the exchange of the instruments of ratification in order to complete the process, rather than asking the Court to do something which, in international law, is incumbent chiefly upon the States themselves. The Court, as respectable and respected as it may be, does not conclude treaties; it settles disputes. Its function is not to give its blessing, through a *res judicata*, to an international agreement which has been properly concluded.

⁹CR 2012/25, pp. 12-13, para. 7 (Pellet).

12. Following these preliminary questions, I shall now turn to a number of aspects of the applicable law which our opponents have raised once again. These are: the status of the Agreement of 28 March 1987, the question of the “critical date” and the role of the *effectivités* in the present case.

II. The status of the Agreement of 28 March 1987 in the present case

13. Members of the Court, your interpretation of Article 6 of the Special Agreement of 24 February 2009 will be one of the keys to this case. Our opponents seek to rely on whatever comes to hand, but the text of the Special Agreement of 2009 does not need to be compared to any other text in order to be understood. It is perfectly clear that the terms of a special agreement seising the Court can vary — and do generally vary — from one case to another. While the subject-matter of frontier disputes may appear to be the same — the delimitation of the frontier — each case has its own historical background. What counts here is what the Special Agreement says, and how it is to be understood in the light of international law. What counts in the present case is what the Special Agreement of 24 February 2009 says in regard to the applicable law, and not what it does not say, or what is said in other special agreements in other cases involving delimitation of the land frontier. To show how “crucial” (our opponents’ term) is the reference in the Special Agreement of February 2009 to the Agreement of 1987, our opponents make the point that there was no such reference in the Special Agreement in the *Burkina Faso/Republic of Mali* case, and that

15

“[t]hrough its silence the Special Agreement in [that] case referred back to general international law; the Special Agreement in the *Benin/Niger* case did not go very much further; the rules and principles of international law in Article 38 and the *uti possidetis juris* represent no great commitment. However, the reference to the 1987 Agreement is another matter altogether and it is far more restrictive.”¹⁰

This reasoning is difficult to follow: why on earth should the Special Agreement of 1983 between Burkina Faso and Mali, or that concluded between Benin and Niger, have referred to the Agreement of 1987?

14. Niger appreciates that our opponents seek to immure the present proceedings within the walls of that 1987 Agreement as regards the admissible evidence, and of the Erratum to the

¹⁰CR 2012/25, p. 14, para. 12 (Pellet).

1927 *Arrêté* as regards the course of the disputed frontier. However, it has to be shown convincingly why, firstly, the Court should abandon its well-established jurisprudence governing the methodology applied by it in delimiting the course of each disputed sector of a frontier, as well as the admissibility of evidence in that regard; and secondly, why the provisions of Article 6 of the Special Agreement of 24 February 2009 should be applied selectively. For Burkina Faso gives the impression of “picking and choosing” (as the British or the Americans would say), as if the applicable sources of law set out in that article were a “shopping list”. May I remind you that Article 6 is entitled “*Applicable law*”, and provides as follows:

“The rules and principles of international law applicable to the dispute are those referred to in Article 38, paragraph 1, of the Statute of the International Court of Justice, including: the principle of the intangibility of boundaries inherited from colonization; and the Agreement of 28 March 1987.”

I will not give way to the temptation to embark on an exercise of interpretation of this article. I would, nonetheless, note that my colleague on the other side of the Bar slipped into his speech last Monday — almost casually, but it cannot have escaped you, Members of the Court — the statement, in relation to that Agreement, that “[t]his is the law, the *lex specialis*, which is binding on the Parties and likewise on the Court”¹¹.

16 15. Thus for Burkina Faso, the law applicable — the sole law applicable — in the present case is the Agreement of 28 March 1987. In order to give you a visual illustration of this curious conception of the application of a provision of an agreement drafted in a single sentence, here [Slide of full text of Article 6] is what Article 6 of the Special Agreement of 24 February 2009 says, and here [Slide of the text of the article without the passages that Burkina disregards] is the text as Burkina Faso understands it. Niger, so we are told, has composed a fairy tale for your benefit; but it does not have the power — as if with a magic wand — to make entire passages disappear from a legal text. In fact, Members of the Court, Burkina Faso goes one better: it is, I believe, called a conjuring trick! At a stroke, all that is left is this famous “special law”¹², this “treaty adopted freely and knowingly by the Parties and which has the force of law between

¹¹CR 2012/25, p. 14, para. 11 (Pellet).

¹²*Ibid.*, p. 16, para. 16 (Pellet).

them”¹³. As if the Special Agreement of 24 February 2009, whose provisions our opponents thus seek to camouflage, was not also a treaty; as if the provisions of Article 6 of that treaty, on which the Court’s jurisdiction in the present case is founded, had, for their part, been adopted under constraint and unknowingly — and as if that Special Agreement does not have the force of law between them.

16. Members of the Court, Article 6 of the Special Agreement of 24 February 2009 was drafted in such a way as to enable the Court, in order to settle the present dispute, to apply all the rules and principles of international law, among which the Parties wished to include the provisions of the 1987 Agreement, without substituting those provisions for the entire corpus of the relevant rules and principles of international law applicable both to proceedings before the Court and to the delimitation of their land frontier. Clearly, if the parties to the 2009 Special Agreement had wanted the Court to apply only the Agreement of 28 March 1987, and nothing but that agreement, in order to settle this dispute, they would not have encumbered themselves with the reference to Article 38, paragraph 1, of the Statute of the Court, or to the principle of the intangibility of boundaries inherited from colonization. If this so-called *lex specialis* of 1987 were alone applicable to the present dispute in its current contentious phase before the Court, then our opponents should tell us when, to whom, or to what is applicable the *lex generalis* referred to in that same Article 6. But it has not uttered a single word on the subject. That *lex generalis* has suddenly disappeared; for our opponents, it no longer exists.

17. And the worst of it, Mr. President, is that Burkina Faso itself fails to keep faith with this “special law” over which it makes such a hullabaloo. Criticizing Niger for having spoken on the *uti possidetis* principle in the first round in terms that were “too abstract”, our opponents argue that, in doing so, Niger

“failed to take account of the fact that, in our case, it must be applied while taking full account of the Special Agreement; of the reference in the latter to the 1987 Agreement; and of the exclusive role which that Agreement accords, on the one hand, to the 1927 *Arrêté* and its Erratum and on the other, in the alternative, to the 1960 IGN France map. That is the applicable law, and that above all else.”¹⁴

¹³CR 2012/25, p. 15, para. 13 (Pellet).

¹⁴*Ibid.*, p. 16, para. 16 (Pellet).

No further reference at all to “any other relevant document accepted by joint agreement of the Parties”, which is the third type of document for the application of which Article 2 of the 1987 Agreement provides, “should the *Arrêté* and Erratum not suffice”.

18. Make no mistake, Members of the Court, this is not an oversight, but a deliberate omission. Our opponents are extremely attached — or at least they appear to be — to this article, and are far too well aware of its precise terms to have been guilty of a simple oversight. The truth is that the reference to any other document accepted by joint agreement of the Parties runs counter to the approach of our opponents, who maintain that there have never been any such agreements. Thus Burkina Faso pares down Article 2 of the Agreement, leaving only the *Arrêté* as amended by the Erratum and the 1960 IGN map.

19. For Niger, the provisions of Article 2 of the Special Agreement of February 2009 form a single whole, which the Court must interpret and apply, taking account: *firstly*, of the fact that the Agreement of 28 March 1987 referred to therein was concluded in the context of a bilateral process for demarcation of the frontier in which the Parties had drawn up a limitative list of the documents and materials that they wished to be taken into account for purposes of that exercise; and *secondly*, of the fact that the Court cannot deprive itself of the means which are supposed to assist it in establishing the legal truth in this case, by permitting the exclusion of evidence that the Parties never wished to exclude in this contentious phase of the settlement of their frontier dispute.

20. I now come to the issue of the critical date.

18

III. The critical date in this case

21. Mr. President, Members of the Court, in its oral presentation last week, Niger put forward a conception of *uti possidetis* founded on the jurisprudence of the Court, and in particular on the Judgment of the Chamber of 22 December 1986 in the *Burkina Faso/Republic of Mali* case. How troublesome our opponents appear to find that Judgment. Unable to find fault with the use that we make of it, they are reduced to criticizing the sound of our voice. When it is they who invoke that Judgment — as indeed they do, but in a manner to which I will return shortly; when it is Burkina Faso which invokes that Judgment, it “cites” it¹⁵; however, when it is Niger’s counsel

¹⁵CR 2012/25, p. 15, para. 15 (Pellet).

who refer to it, “they recite it as if it were a breviary”¹⁶. In respect of what Niger has to say on the critical date, our opponents regard our approach as “uncompromising — formalistic . . .”. Burkina claims that Niger “wants a single critical date”, and that we are forcing them “to choose” — or, rather, that we “proclaim that the only critical date to be taken into account is the date of independence”¹⁷. But it is not Niger which is “uncompromising” in its approach to the critical date. Members of the Court, it is this Court’s established jurisprudence which imposes that approach — both on Niger and on Burkina Faso. Burkina, moreover, states that it is “more than ready to accept that the critical date for the application of the *uti possidetis* principle in our case is August 1960”¹⁸. So why not leave it at that? Instead of that, our opponents launch themselves into an argument which is largely irrelevant, persisting in seeking to convince us that there could nonetheless be several critical dates. “The notion of a critical date is not unequivocal”¹⁹, assert our opponents: first, it can be used both “to determine the date for the application of the *uti possidetis* principle” as well as “for establishing the date on which a dispute crystallized”²⁰; secondly, “and more generally, the term serves, in practice, to identify any date where pause must be taken in order to assess the status quo, be this territorial or otherwise”²¹.

19

22. I do not know to whom or to what this passage from our opponents’ oral presentation represents a response. At no time has Niger engaged in a general discussion of the notion of the critical date in international law. It is the critical date, for purposes of the application of the *uti possidetis* principle in a decolonization context, which Niger has identified from the jurisprudence of the Court. Thus our opponents’ arguments here are completely beside the point. Moreover, none of the judgments which they cite in support of their argument in footnote 22 to the Verbatim Report of the hearings on Monday 15 October [CR 2012/25] deals with a case of boundary delimitation following decolonization. Furthermore, when our opponents refer to the *Burkina Faso/Mali* case in support of their general argument on the critical date, they go about it in

¹⁶CR 2012/25, para. 14 (Pellet).

¹⁷*Ibid.*, p. 16, para. 17 (Pellet).

¹⁸*Ibid.*, para. 18 (Pellet).

¹⁹*Idem.*

²⁰*Idem.*

²¹*Idem.*

quite the wrong way — to put it politely. Last Monday, our opponents would have you believe that in that case the Chamber of the Court “began by explaining that a first critical date was the dates of independence”. However, not only is there nowhere to be found in the Judgment of 22 December 1986 either the expression, or even the idea, of a “first critical date”, but our opponents have failed to tell you when the second critical date occurred, for Niger believes that, if there is a first one, there must be a second.

23. So what is Burkina Faso telling you on this point, Members of the Court? That, over and above the first critical date of 1960, “the 1986 Chamber had to go back in time in order to determine [the] ‘content’ [of the *uti possidetis*] — i.e., the course of the frontier”²². Then, in order to substantiate its assertions, it proceeds to quote the Chamber’s Judgment, but inaccurately, since the quotation is both truncated and taken out of context. According to our opponents, what the Chamber allegedly said was the following:

“the Chamber’s task in this case is to indicate the line of the frontier inherited by both States from the colonizers on their accession to independence . . . [T]his task amounts to ascertaining and defining the lines which formed the administrative boundaries of the colony of Upper Volta on 31 December 1932.”

However, this is what the Court actually said:

20

“the Chamber’s task in this case is to indicate the line of the frontier inherited by both States from the colonizers on their accession to independence. *For the reasons explained above*, this task amounts to ascertaining and defining the lines which formed the administrative boundaries of the colony of Upper Volta on 31 December 1932. *Admittedly, the Parties could have modified the frontier existing on the critical date by a subsequent agreement. If the competent authorities had endorsed the agreement of 15 January 1965, it would have been unnecessary for the purpose of the present case to ascertain whether that agreement was of a declaratory or modifying character in relation to the 1932 boundaries.*” (*Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, pp. 632-633, para. 148.)

24. Firstly, the omission of the phrase “For the reasons explained above” prevents us from understanding why the Chamber states that its task here is to ascertain the 1932 boundaries. The phrase refers back to paragraph 142 of the Judgment, where the Chamber “finds that the available information is not always sufficient to establish which of two possible lines coincides with the one which existed in 1932”. Secondly, as can readily be seen, the uncited remainder of the quotation shows clearly that the critical date — the only critical date to which the Chamber is referring

²²CR 2012/25, p. 17, para. 19 (Pellet).

here — is indeed 1960, when the two Parties to the dispute attained independence, as is shown by the reference to a 1965 agreement which could have modified the existing boundary. Yes indeed, Members of the Court, Niger prefers to recite the Court’s Judgment “like a breviary”, with the fidelity required of believers in Holy Writ.

25. But our opponents did not content themselves with an abbreviated quotation from the jurisprudence on the critical date. They further embarked on a journey through time which defies the imagination. According to our opponents, “1960 relates back to 1947. . . . However, we have to go a little further back in time, since 1987 (by virtue of the Parties’ Agreement of 28 March) ‘bestrides’ . . . this entire period, and refers directly to the 1927 Erratum, while fast-forwarding to the 1960 map should that Erratum not suffice.”²³ So 1987 “bestrides” the entire long period from 1986 to 1927, with an intervening fast-forward to the IGN map of 1960. We have to ask ourselves what purpose this fast-forward serves, since Burkina Faso invites us to return to the limbo of the primordial year of 1927, where everything was perfect as regards the course of the frontier. At the same time, it asks us to “bestride” that same period — but in the reverse sense — in order to follow that unchangeable 1927 line on the ground, so that it may serve as the frontier between what would become the Republic of Niger and Burkina Faso. What a piece of pure fanatasy! Between the “house of cards constructed by Niger”²⁴ and this remarkable sandcastle of our opponents, there has to be something a little more solid. Mr. President, we are left with one undeniable fact: for purposes of the application of the *uti possidetis* principle in a decolonization context — as is the case here — 1960, the date of the two countries’ independence, can relate to no other date than 1960, the one and only critical date on which the colonial heritage falls to be determined.

21

26. It only remains for me now, to conclude my oral presentations in this case, to reply to certain criticisms addressed to Niger by our opponents, in the course of their second round of oral argument, on the role of the *effectivités* in the present case.

²³CR 2012/25, para. 20 (Pellet).

²⁴*Ibid.*, p. 18, para. 22 (Pellet).

IV. The role of *effectivités* in the present case

27. Mr. President, Members of the Court, Niger has told you that, in its view, this case corresponds to the fourth of the hypotheses identified by the Chamber in the *Burkina Faso/Republic of Mali* case, namely the one in which the title is insufficient — not non-existent, not absent, but insufficient — and where the *effectivités* can be used to supplement it. The other Party has not told you which of these four hypotheses it argues in this case. It could not tell you, because it does not know itself which of these hypotheses can be used to support its position. Moreover, it admits as much. Indeed, having invoked the hypothesis where “the act corresponds exactly to law” and where “the only role of *effectivité* is to confirm the exercise of the right derived from a legal title”, and then another hypothesis where “the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title” and where “preference should be given to the holder of the title”, our opponents declared on Monday: “[w]e are in one, or perhaps the other, of [these] two hypotheses”²⁵. To mask their confusion, our opponents glibly state that Niger “has the wrong hypothesis”²⁶ and that Burkina is “certainly not in the one in which [Niger] has positioned [itself]”²⁷.

28. Burkina Faso’s approach to the case was bound to lead it into a dead end. First of all, the other Party argues the untenable theory of a clear and precise title, sufficient in itself to determine the entire course of the frontier. But it clings to this theory so tightly that unfortunately it does not hesitate to cite case law which is inappropriate to support it. Our opponents first cite the Judgment delivered by the Court on 3 February 1994 in the *Libyan Arab Jamahiriya/Chad* case. The reference they make to paragraph 51 of that Judgment is misleading. In that paragraph we do indeed find the following passage, which appears in parenthesis, moreover, as an explanation of the Court’s reasoning: “Having before it a clause which leaves little to be desired in the nature of clearness, it 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.*)

²⁵CR 2012/25, p. 27, para. 41 (Pellet).

²⁶*Ibid.*, para. 40 (Pellet).

²⁷*Ibid.*, para. 41 (Pellet).

29. However, in that case the Court was not considering a text determining the course of the frontier between Libya and Chad. It was considering the interpretation of Article 3 of the 1955 Treaty which “refers to the international instruments ‘*en vigueur*’ (in force) on the date of the constitution of the United Kingdom of Libya, ‘*tels qu’ils sont définis*’ (as listed) in the attached exchange of letters” (*Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Judgment, I.C.J. Reports 1994*, p. 24, para. 49), and not a legal instrument determining the frontier line between the two parties to the dispute. The terms of that Article 3 were interpreted differently by the parties. The Court, moreover, notes that

“[t]he parties could have indicated the frontiers by specifying in words the course of the boundary, or by indicating it on a map, by way of illustration or otherwise; or they could have done both. They chose to proceed in a different manner and to establish, by agreement, the list of international instruments from which the frontiers resulted, but the course for which they elected presents no difficulties of interpretation. That being so, the Court’s task is clear.”

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Then comes the passage which I mentioned above and which begins with the words “[h]aving before it a clause which leaves little to be desired in the nature of clearness, etc.”. The clause was so clear because it was essentially enumerative, listing a number of international treaties, and not operative, as is usually the case with frontier delimitation instruments. As you can see, Members of the Court, it is something quite different from what our colleagues on the other side of the Bar would have us believe. What is really at issue here is their method, which is defective.

30. The fact that it is defective cannot be masked by our opponent’s skill in picking out a few words from the speech by the Agent of Niger before the Court, in which he refers to the efforts made by both States since their accession to independence “to identify the precise line of the frontier”²⁸. “Identify” is an inappropriate word here, according to the other Party, since it could be a synonym for “delimit”, whereas the Parties have only ever tried to demarcate their frontier, in particular by concluding the 1987 Agreement. I hesitated, Mr. President, before looking at this spurious semantic quibble; because so what? You cannot demarcate a frontier without knowing it, that is to say, without identifying it. Our opponents reduce demarcation to the act of marking out. Perhaps they are not aware that the first stage in the process of demarcation is an evaluation of the frontier, which includes establishing co-ordinates, and that the stage which consists of constructing

²⁸CR 2012/22, p. 12, para. 10 (Bazoum).

boundary markers only comes afterwards. That is why the exercise of demarcation always involves multidisciplinary teams, within which the legal experts assist in applying the delimitation instrument correctly.

31. But what is more serious, Members of the Court, is that Burkina Faso has consistently misled both Niger and the Court by claiming that “[t]he matter is settled” regarding the non-binding nature of the much-vaunted “consensual line”, inasmuch as it was not the subject of “a conventional text”²⁹. It maintains to the end that something can be done about this improbable “consensual line”. On Monday, Professor Pellet believed he could usefully cite in support of this cause the Judgment delivered by the Chamber of the Court in the *Gulf of Fonseca* case. But he quoted a passage which has absolutely no relevance to the present case, whereby the Chamber declared that

24

“[n]o account could be taken by the Chamber of any negotiating concessions which might have been made as to the position of the limit . . . the Chamber is entitled to take account of the shared view in 1881 and 1884 of the Parties as to the basis and extent of their dispute”³⁰.

32. The quotation is truncated, that is to say, there is a passage left out in the middle; but even contemplating it in the state in which it was produced by the other Party, you do not have to read it many times before you realize that taking account of the view of the parties “as to the basis and extent of their dispute” has absolutely nothing to do with the fact that there is an agreement between the Parties — in this case the 1987 Agreement — which defines the documents to be used for the purpose of determining the course of the common frontier in a bilateral process. Did the so-called “consensual line” concern “the basis and extent” of the dispute between Niger and Burkina Faso? Is that the positive law extolled by the other Party and with which it merrily urges Niger to comply?

33. Another reason why Burkina Faso does not know to which of the hypotheses identified in the Chamber’s 1986 Judgment in the *Burkina Faso/Republic of Mali* case it should subscribe is that, despite its energetic defence of its “clear title” theory, it is forced to bow to reality, to the facts. Thus, although the other Party contests in principle the idea that colonial *effectivités* have a

²⁹CR 2012/25, p. 20, para. 26 (Pellet).

³⁰Quoted in CR 2012/25, p. 20, para. 26.

role to play in this case, it is obliged to concede, in words that convey both its unease and the fact that it is torn between two irreconcilable strands of logic, that “the Erratum is not incomplete and only very marginally does not suffice”³¹. In other words, it is complete and does not suffice, albeit marginally! Herein lies another potential semantic quibble, but Niger will not get involved in this one. It is far more important to repeat here that Burkina Faso no longer adheres absolutely and exclusively to the complete title constituted by the 1927 Erratum. It sometimes breaks free from it, as and when it suits, and gives preference to the 1960 IGN map. Then it decides that both Parties should leave it at that; namely, at this exceptional case where it allows us to follow a tiny bit of the line on the IGN map. For the rest, no other document is admissible because the door was shut once and for all on which documents can be used in 1987, in the Agreement of 28 March.

25

34. I have shown during these pleadings that the other Party is far from being absolutely faithful to Article 2 of that Agreement, which it brandishes feverishly when it accuses Niger of “substitut[ing] the line shown on the map with an improbable mishmash of more or less formal colonial documents (generally less rather than more so, by the way)”³². However, armed with its complete title, Burkina Faso could have provided the Court with confirmatory *effectivités*, since it claimed on Monday that “[t]he colonial *effectivités* have no role to play, other than a confirmatory one”³³. But it does not provide any at all, Members of the Court; on the contrary, it persists in trying to pick holes in or undermine the credibility of the hundreds of documents supplied by Niger to confirm boundary practice and demonstrate the complexity of the case. But obviously, it could not call into question the approach taken by the Court in resolving cases of this kind, from which it is clear that the Court takes account of all the evidence produced by the parties in order to ascertain the course of a frontier, even one which has already been defined in an instrument that is not contested by the parties, as the analysis of the Judgment of the Court in the *Cameroon v. Nigeria* case has so eloquently shown. Mr. President, Niger notes that Burkina Faso has not for one moment contested the relevance of that decision, which describes in detail the methodology used by the Court in the said case. Niger accordingly notes that the Parties do not disagree on this

³¹CR 2012/25, p. 21, para. 27 (Pellet).

³²*Ibid.*, p. 22, para. 29 (Pellet).

³³*Ibid.*, p. 27, para. 40 (Pellet).

subject. Similarly, Niger notes that the Parties no longer really disagree as to the documents from the 1932 to 1947 period. No doubt remembering its position on this subject in the *Burkina Faso/Republic of Niger* case, Burkina Faso remained silent on the matter in the second round of its oral argument.

26 35. Mr. President, Members of the Court, Professor Pellet concluded his pleadings on Monday by stating that “[i]t is quite simply inappropriate to claim, in our case, that ‘the 1927 *Arrêté* and its Erratum are one piece of evidence of the frontier line, among others’”³⁴. What should we do? Niger is not arguing what is appropriate, but what is stated by international law. Here, it is what is stated in the established jurisprudence of your Court, in particular in the *Burkina Faso/Republic of Mali* case, regarding all acts of colonial law, and as the Court’s predecessor, the Permanent Court of International Justice, found earlier in respect of domestic legislation and administrative acts. Burkina should therefore have cited jurisprudence, in this connection, and not Niger’s pleadings which themselves refer to it. If the other Party disagrees with the Court’s jurisprudence, it should say so to the Court, rather than reproaching Niger for relying on it.

36. Members of the Court, as you can see, the methodology used by the Republic of Niger for the purposes of determining the disputed frontier remains on solid ground. And I shall end my pleading there, having paved the way for that of Professor Tankoano, who will contest what remains of the straight-line theory put forward by the other Party, that of Professor Salmon on the course of the frontier in the Téra sector, and that of Professor Klein, who will close by replying to Burkina Faso’s challenges as to the course of the frontier in the Say sector. I thank you for your kind attention.

Mr. President, I would now ask you to give the floor to Professor Tankoano.

The PRESIDENT: Thank you very much. I give the floor immediately to Professor Amadou Tankoano. You have the floor, Sir.

³⁴CR 2012/25, p. 27, para. 41 (Pellet).

Mr. TANKOANO:

THE STRAIGHT-LINE POSTULATE

27 1. Mr. President, Members of the Court, during the pleadings on Monday morning, Burkina Faso continued to defend its assertion that the frontier in the Téra sector is composed of a series of straight lines. The other Party's argument on this point focused on two main areas. First, our opponents presented their view of how the 1927 official texts had been prepared. Then Professor Forteau referred to a set of documents from the colonial period which, according to him, show that the colonial administrators themselves saw the boundary in the Téra sector as following straight lines. This presentation will be devoted to rebutting those two arguments.

A. The process of preparing the 1927 official texts

2. During the second round of oral argument, Burkina Faso once again put forward the hypothesis that the 1927 *Arrêté* and Erratum had been prepared in a way that might be described as essentially "technocratic". It was the Governor-General of FWA, and he alone, who determined *ex nihilo* the new boundary between the Colonies of Upper Volta and Niger in the cosy atmosphere of his office in Dakar; that is not stated explicitly by our opponents, but their scenario would seem to suggest just that kind of atmosphere. According to Professor Forteau, "the author of the instrument, the Governor-General of FWA, did not have umpteen methods at his disposal for delimiting the territory of the colonies"³⁵. In this case, recourse to an artificial — and therefore arbitrary — line was necessary³⁶. In this context, our opponents reaffirmed the constitutive character of the 1927 texts³⁷. And Professor Forteau described in particularly graphic terms the method used by the author of those texts:

"When reading the Erratum, it is apparent that its draftsman is following the course of the line with his pen: '[t]he boundaries', states the Erratum, 'are determined as follows': '[a] line', which starts from the heights of N'Gouma, and then passes in turn through a number of points until it reaches Tong-Tong; 'this line [the author of the Erratum is still following the same line, he has not lifted his pen] 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 [again, his pen has not moved from the line

³⁵CR 2012/25, p. 37, para. 6 (Forteau).

³⁶*Ibid.*, para. 8 (Forteau).

³⁷CR 2012/25, p. 26, para. 39 (Pellet).

he is following] reaching the River Sirba at Bossebangou'. 'It [the same line again, his pen has still not moved from this line] almost immediately turns back up', etc."³⁸.

It's a pretty picture and, as we listen to Professor Forteau, we can almost see the course of the boundary being traced by the author of the texts.

28 3. That said, what actual basis is there to support Burkina Faso's scenario? None at all. In fact, the case file shows that a quite different method was used to prepare the 1927 texts. I would first of all recall that the boundaries of the *cantons* of Dori *cercle* which were to be transferred to Niger in accordance with the presidential Decree of 28 December 1926 were set out in a Record of Agreement of 2 February 1927 concluded between the representatives of the Colony of Upper Volta with a view to preparing the *Arrêté* of delimitation³⁹. The wording of this Record of Agreement is as follows: the *cantons* concerned [Slide showing the text of the Record of Agreement and the *Arrêté*]

"are bounded to the north by the current boundary with Sudan (Gao *cercle*) as far as the heights of N'Gourma, and to the west by a line passing through the Kabia ford, Mount Darouskoy and Mount Balébanguia, west of the ruins of the village of Tokébangou, and Mount Doumafondé, which then turns towards the south-east, leaving the ruins of Tong-Tong to the east and descending in a north-south direction, cutting the Téra-Dori motor road to the west of the Ossolo Pool, until it reaches the River Sirba (boundary of Say *cercle*), near to and to the south of Boukalo".

As you can see on the screen, this text is reproduced word for word in the *Arrêté* of 31 August 1927. Its key elements are also contained in the text of the Erratum of 5 October. [End of slide]

That being so, how is it possible to continue to claim that the 1927 texts constitute a new situation, with no link to the realities on the ground? The 1927 texts were undoubtedly prepared on the basis of work carried out on the ground, which sought to clearly reflect the boundaries of the *cantons* as they existed at that time. It was not the intention of the authors of the Record of Agreement of 2 February 1927 to draw abstract and artificial straight lines, but to reflect the actual boundaries. As the commander of Dori *cercle* very clearly stated in his letter of 14 August 1929 to the Governor of Upper Volta, the Record of Agreement concluded between Governor Brévié and Inspector Leffiliatre "first lists the *cantons* transferred to Niger and then determines the boundaries

³⁸CR 2012/25, p. 38, para. 10 (Forteau).

³⁹MN, Ann. C 7.

of the two colonies in accordance with those of the *cantons*⁴⁰. It is the outcome of this work that the Governor-General of FWA reproduced word for word in the 1927 *Arrêté*, without altering it in any way. In so doing, the authorities of French West Africa obviously adhered unreservedly to the method adopted by the authors of the Record of Agreement: to determine the boundaries of the *cantons* first of all, and then, on that basis, to fix the boundaries between the two colonies.

29

4. It is clear from the cartographic file that those pre-existing boundaries did not, for the most part, follow a straight-line course in this sector. In his statement last Friday, Professor Jean Salmon showed that the boundary identified by Lieutenant Coquibus in 1908 in the Téra sector probably did not follow a straight line, but rather a slightly curved line from the Tong-Tong astronomic marker to the tripoint between the *cercles* of Dori, Tillabéry and Say. [Slide of the “new frontier” map] This shape is found on the 1927 “new frontier” map. [Straight lines superimposed] As you can now see on the screen, Professor Forteau’s claim that “that it suffices to lay a ruler on the 1927 map to see that it provides in reality for a boundary in the form of two straight lines”⁴¹ is clearly not correct. The 1934 and 1946 Niamey maps kept the same curved line. [End of slide] Compared to the “new frontier” map, the IGN line is very sinuous because the scale of the map makes this possible. As we shall now see, neither do the various documents from the colonial period referred to by our opponents provide any basis to support the straight-line theory in the Téra sector.

B. The documents from the colonial period do not support the hypothesis of a boundary line in two straight-line sections in the Téra sector

5. In his statement on Monday, Professor Forteau referred to various documents which, in his view, showed that the colonial administrators agreed that the boundary between Tong-Tong and Tao consisted of two straight lines. In reality, the outwardly convincing exercise undertaken by our opponent is an example of the art of mobilizing a wide variety of circumstances as if they were proof of an unconditional surrender to the obsession with straight lines⁴².

⁴⁰MN, Ann. C 25.

⁴¹CR 2012/25, p. 44, para. 39 (Forteau).

⁴²*Ibid.*, p. 45, para. 40 (Forteau).

30

6. The first hypothesis we find in those documents is that the administrators considered that the 1927 line, by establishing a boundary crossing Dori *cercle* in a west-east direction, made it difficult for them to keep a check on their nomads who had fields on either side of the boundary and who wished to settle where taxes were lower. The administrators therefore complained about that new boundary, without however ever considering the line in question to be a straight line. And although they considered the line to be fixed, they wanted it to be applied flexibly in order to resolve specific cases. This is the case with the letter of 9 August 1929⁴³ and the letter of 14 August 1929, in particular. In this context, the other Party also criticized the letter of 31 July 1929⁴⁴ by asserting that its author, who said that he would like “Téra to agree to apply a little less precision in relation to the boundaries between Dori and Tillabéry”⁴⁵, was attempting “to escape the rigours of . . . the Erratum”⁴⁶. However, in this case, wishing to escape the rigours of the Erratum in no way implies that the Erratum established a straight line in this sector, but rather that its existence made it possible for nomads to move away from the *cercle* of the author of the letter. That, I am sure you will agree, is a completely different type of concern.

7. The same applies to the subject of the letter of 19 August 1929, cited by Professor Forteau for the same purposes⁴⁷. What the author of the letter, Taillebourg, seeks to do is to retain the population and the cultivated fields in spite of the new boundary. It is therefore not a matter in this case of a boundary that follows a straight line, but simply a boundary that makes the administration of that part of the Téra sector difficult. Our opponents also cite the letter of 27 September 1929⁴⁸, in which the Governor of Niger refers to “a theoretical and artificial frontier”. Professor Forteau deduces from this, without further ado, that this is “precisely what a line in two straight sections represents”. In fact, Governor Brévié referred to a theoretical and artificial frontier because it established a new boundary in an area where previously there had been none for the nomads, in

⁴³CR 2012/25, para. 41 (Forteau).

⁴⁴*Ibid.*, para. 42 (Forteau).

⁴⁵MN, Ann. C 23, p. 2.

⁴⁶CR 2012/25, p. 45, para. 42 (Forteau).

⁴⁷*Ibid.*, p. 46, para. 43 (Forteau).

⁴⁸CR 2012/20, p. 28, para. 68 (Forteau).

what formerly had been a single *cercle* — the Dori *cercle*. The author of the letter makes no mention of two straight lines⁴⁹.

31

8. The second hypothesis is that the administrators describe the boundary as artificial or theoretical. However, that terminology does not mean that they are referring to artificial straight lines, but that, like all lines on a map that are invisible on the ground, they did not exist for the nomads and that they must not be allowed to cause problems for either the local populations or the administrators. Thus, in a letter of 6 February 1932⁵⁰, the *Chef de cabinet* of the Lieutenant-Governor of Upper Volta describes the Erratum boundary in the Téra sector as “a boundary that is simply a line on the map”⁵¹. In Mr. Forteau’s opinion, that automatically means a reference to an artificial boundary⁵². In fact, the conclusion is still the same: the new boundary re-creating Téra Subdivision made the management of nomads problematic; that did not mean, however, that the boundary followed a straight line.

9. The third hypothesis is that the boundary is described as theoretical and abstract, in the sense that it does not correspond to the reality on the ground. Once again, that does not necessarily mean that it consists of two straight lines. Thus, in the letter of 19 May 1943⁵³, the line is regarded as “purely theoretical and artificial”; it is not the line that is followed in practice. Likewise, according to our opponents, the author of the report of 24 December 1953 said that “the Tao-Sirba line of the *Arrêté* was more ‘theoretical’ than the proposals by Delbos in 1927 for a series of straight lines”⁵⁴. What does Administrator Lacroix, the author of the report, actually say? He states: “Again, this clearly involved theoretical lines — which still did not mean much to the local people concerned — but which were nonetheless easier to identify in the field than the “Tao-Sirba line” in the *Arrêté*.”⁵⁵ This unredacted excerpt from the report in question once again clearly shows that the question of theoretical boundaries is raised solely in relation to the problems those

⁴⁹CR 2012/20, p. 28, para. 68 (Forteau).

⁵⁰CR 2012/25, p. 46, para. 44 (Forteau).

⁵¹MN, Ann. C 44.

⁵²CR 2012/25, p. 46, para. 44 (Forteau).

⁵³*Ibid.*, pp. 46-47, para. 47 (Forteau).

⁵⁴*Ibid.*

⁵⁵MN, Ann. C 79.

32

boundaries caused on the ground. There is no mention in this document of the two straight lines to which the other Party repeatedly refers. In a similar vein, our opponents attempt to use a letter of 17 December 1927⁵⁶ in support of their thesis, in which Delbos, referring to the Coquibus map, stated that it “only showed theoretical lines and points”. However, contrary to what Professor Forteau appears to infer, that does not mean that the theoretical lines in question consisted of two straight lines. We know, on the contrary, that the line shown on Administrator Delbos’s sketch-map is a curved line, like the Coquibus line.

10. The fourth type of documents cited by our opponents in support of their argument that the colonial administrators adhered to a course consisting of two straight lines in the Téra sector consists of documents in which those administrators are said to acknowledge that the boundary runs from Tong-Tong to Bossébangou following a straight-line course. In his letter of 10 April 1932, Roser refers to problems posed by the interpretation of the Erratum “when a straight line is drawn between the Tao marker and the River Sirba at Bossébangou”⁵⁷. However, it is precisely an interpretation of the text that he disputes and which he rejects as being contrary to the *effectivités*.

11. The general conclusion that Professor Forteau draws from the various documents he selected is the following: “What emerges from all of these documents is clear: the Erratum provided for an artificial delimitation, in the form of two straight lines, between the Tong-Tong and Tao markers and Bossébangou.”⁵⁸ This conclusion is quite incorrect. As we have just seen, while it is true that various documents from the colonial period refer to the 1927 texts as creating theoretical or artificial boundaries, those terms must not be understood as having the meaning given to them by our opponents. In none of the documents in question do we find any mention of a course consisting of two straight lines in the Téra sector, contrary to what the other Party would have you believe. The question of the theoretical or artificial nature of the boundary is raised primarily in relation to considerations connected with the administration of nomadic groups in the area. Whereas until 1927 those groups could move freely back and forth across Dori *cercle*, which

⁵⁶CR 2012/20, p. 28, para. 68 (Forteau).

⁵⁷MN, Ann. C 45, pp. 5-6; cited in CR 2012/20, p. 28, para. 68 (Forteau).

⁵⁸CR 2012/25, p. 47, para. 48 (Forteau).

33

at that time extended to the River Niger, their movements were severely affected by the creation of a new boundary between two distinct colonies in this sector in 1927. These explanations of key historical and sociological issues have once again been completely ignored by our opponents.

12. Mr. President, Members of the Court, that concludes my statement in the second round of oral argument. I should like to thank you very much for your attention. Mr. President, I should be most grateful if you would give the floor to Professor Jean Salmon, who will continue with Niger's oral presentation.

The PRESIDENT: Thank you. I give the floor to Professor Salmon . . . although I may interrupt you at the appropriate moment for a break. You have the floor, Sir.

Mr. SALMON: I thought that my statement would be after the break, Mr. President. Could you tell me how many minutes I have now, Mr. President, so that I do not exceed that time?

The PRESIDENT: About 20 minutes.

Mr. SALMON: Very well. Thank you, Mr. President.

THE COURSE OF THE BOUNDARY IN THE TÉRA SECTOR

1. Mr. President, Members of the Court, in its written pleadings and its first round of oral argument Niger has set out the reasons why the boundary between Niger and Upper Volta in the Téra sector was not an artificial and arbitrary line and, as our colleague Professor Tankoano has just demonstrated, masterfully in my view, could not be formed of two straight lines.

The section of the boundary between Tao and the point where the boundary reaches Say *cercle* was imprecise; research had to be carried out to identify the boundary at the date of the *uti possidetis* in this sector. Two methods were required: the first was to refer to cartographic material, and in particular the IGN map of 1960, while the second consisted of taking into account the *effectivités* throughout the colonial period.

34

2. The cartographic material yielded several maps and sketch-maps, which provided important information in order to identify the notion that people had of the boundary in this sector at various times.

- (a) First and foremost is the sketch-map prepared by Captain Coquibus, which had served as a basis for determining the 1910 line and which, according to the information that we have about it, showed a curved line.
- (b) Next we have the Delbos sketch-maps, which enjoyed great popularity in Dori and Tillabéry *cercles* and which, while adopting the course of the Coquibus line for the vast majority of the boundary, showed a triangular salient, known as the Yagha or red triangle, in its eastern part.
- (c) The “new frontier” map, which was sent to the colonies and *cercles* with the Erratum on 5 October 1927, illustrated the intention of the Erratum’s authors: it showed the boundary following a curved line, directly inspired by the Coquibus line, but ignored the red triangle which was dear to Commander Delbos. This map showed the tripoint between the *cercles* of Say, Dori and Tillabéry at a point with the co-ordinates 13° 29' 08" N and 01° 01' 00" E and not at Bossébangou. This map would prove to be a valuable resource for the *cercle* commanders. They had received it as an official map accompanying the Erratum, as is shown for example by the Roser/Boyer Agreement of 1932.
- (d) Sketch-maps of *cantons*: in the Téra sector only one sketch-map has come down to us concerning Diagourou *canton*. Although the boundaries of this *canton*, which were constantly being crossed by the nomads, were not easy to delimit, the Head of Téra Subdivision was able to append to his report of 10 August 1954 on the census of Diagourou *canton* a map showing *all the villages* of that *canton*⁵⁹. Its date is known. The map was appended to the said 1954 report as is clear from the first page thereof⁶⁰.
- (e) However, the map which would ultimately play a decisive role in the post-independence period is the collection of sheets produced in 1958/60 by the *Institut géographique national de France*. This map was distinguished not only by its unprecedented topographic quality but also by the fact that it identified the administrative boundaries which existed in 1958. It constitutes the best photograph of the colonial legacy at a date close to independence. This is particularly true in the Téra region, which is the most populous of the entire frontier. The best evidence of the care taken by the drafters of the map to plot the inter-colonial boundary in this sector as

⁵⁹MN, Ann. D 21.

⁶⁰MN, Ann. C 84.

accurately as possible, is the large number of toponyms and the very meandering route that is adopted for the boundary line, mirroring as closely as possible the population distribution on either side of the boundary.

3. As for the *effectivités*, they are established by various documents: four reports of *cercle* commanders, official lists of villages, electoral lists from 1956, Records of Agreement regarding the settlement of territorial disputes, etc.

4. Based on its conviction of the care with which the drafters of the 1960 map had represented the probable boundaries of the *cantons* as they existed in practice at the critical date, Niger considered that this map should in principle serve as a guide for determining the course of the inter-colonial boundary in 1960. Unless abnormal deviations in relation to the texts or manifest lacunae in the information on the *canton* boundaries are discovered, and subject to the necessary caution where the hesitation of the map's drafters is reflected in gaps in the line of crosses, Niger believes that, in this sector, it is the boundary drawn on the IGN map which should be adopted as the frontier line.

5. This may be an appropriate time to reply to Judge Bennouna's question [slide of the sketch-map showing the line of the frontier]. For the record, that question reads as follows: "To what extent and for which section(s) do each of the Parties agree to refer to the 1960 IGN map to establish the course of the frontier between them?"

The sketch-map which is now being shown marks in red the portions of the boundary line shown on the IGN France map which are followed by Niger, and in yellow those which are not. This sketch-map therefore shows that the first section in which the boundary shown on the map is followed by Niger is the one which runs from the Tao astronomic marker to the site of the former "tripoint" between Dori, Tillabéry and Say *cercles*. The only exceptions in this section are the sites of Petelkolé and Oussaltan. The second section in which the boundary that appears on the 1960 map is followed by Niger runs from the Gouina frontier point to the beginning of the Botou bend. Niger will provide in writing, before the deadlines set by the Court, additional information about the reasons for which it does not adopt the other portions of the boundary line shown on the IGN France map. I hope that this reply will satisfy Judge Bennouna for the time being [end of slide].

6. Thus, to return to the Téra sector, Niger only makes three modifications to the line shown on the IGN France map. The first is the Vibourié marker, which escaped the notice of the map's drafters, but which is justified, as we demonstrated last week and as my colleague Amadou Tankoano has again mentioned, by the existence of an intermediary frontier point between Tong-Tong and Tao, which was established by means of a marker by the colonial authorities. The other two exceptions are at Petelkolé and Houssaltane.

7. For this sector our opponents speak of "enclaves"⁶¹. The word is skilfully chosen. It suggests that Niger is claiming areas which are in Burkina territory. It will not fool anyone. In fact, what we have here is a *border area* which was very well analysed in the Roser/Boyer report of 10 April 1932⁶². Professor Thouvenin regarded the analysis that I made of that document last week as "unfruitful — not to say impenetrable"⁶³. It is true that the Roser/Boyer report is not easy to decipher, but it nonetheless illustrates the difficulties that the *cercle* commanders had to overcome. Boyer, the Head of Téra Subdivision, and Roser, the commander of Dori *cercle*, say that they travelled the course of the *boundaries* of their administrative divisions. What boundaries? In particular the Téra/Dori *border area*; they write: "We travelled together from Tao to Tingou, passing through Petelkelé, Houssaltane, Bangaré."⁶⁴ This is therefore about localities on the frontier and not enclaves. They do so following a map. Roser specifies that it is "[t]he map that the Dori *cercle* received from the administrative centre in support of the official text" and added that he "noted this by very carefully enlarging the map to 1:500,000"⁶⁵. Turning then to another frontier point (in the Yagha triangle), he writes that "the line . . . cannot lie more than a dozen kilometres from the frontier as shown *on the official map*. A millionth-scale map cannot possibly show clearly all the twists and turns of a boundary line." Contrary to what Mr. Thouvenin asserts⁶⁶, it is not therefore in any sense an extrapolation to consider that this description is of the "new frontier" map that Roser has with him. It is true that, basing themselves on the

37

⁶¹CR 2012/25, p. 29, para. 2, in particular (Thouvenin).

⁶²MN, Ann. C 45 and judges' folder, tab 13.

⁶³CR 2012/25, p. 30, para. 3 (Thouvenin).

⁶⁴MN, Ann. C 45 and judges' folder, tab 13, p. 1.

⁶⁵*Ibid.*, p. [5].

⁶⁶CR 2012/25, p. 30, para. 5 (Thouvenin).

Delbos/Prudon maps, which they particularly prized, the two administrators, Roser and Boyer, believed that the boundary ought to have granted the red Yagha triangle to Upper Volta. Nevertheless, the fact remains that the portion of the boundary which concerns us here — a boundary which, unless the Governor of Upper Volta objected, those administrators were proposing to mark with frontier posts — passed, according to them,

“through Bangaré (three districts: one to the east of the Bangaré *marigot* and two to the west . . .), to Houssaltane, which it leaves to the east, to Petelkarkalé, which it leaves to the west, to Petelkolé which it leaves to [the] east, and from there it runs in a straight line to the frontier marker situated 5.75 km from the Tao astronomic marker”.

This is what is indicated with great precision by the *effectivités* which prevailed, at the time, in this sector. The course of the boundary between Petelkarkalé and Petelkolé is moreover confirmed by the tour report of 24 December 1953 of Deputy-Administrator Lacroix (*Tillabéry cercle*)⁶⁷.

Burkina, on the other hand, regards these texts as evidence of the application of the Erratum. However, that is not the point which is the purpose of our demonstration. This document is relevant in that it is evidence of the de facto boundary which was applied on the ground. The village of Petelkolé appears again on the map of Diagourou *canton* of 10 August 1954. In any case, the Court will have noticed that Burkina does not provide a single piece of documentary evidence to show the *effectivités* at Petelkolé. It would have been difficult to do so against the word of the commander of Dori.

8. But what settles any dispute over this frontier point once and for all is the establishment of a juxtaposed frontier post in this locality. Burkina cannot contest the conclusions of the bilateral (Burkina-Niger) Committee on the identification of sites for the installation of juxtaposed control posts of 9 June 2006, which recommended the construction of the post which is situated 2 km from the frontier of Burkina⁶⁸. Here, all of a sudden and for the first time, during the proceedings before the Court, we have Burkina arguing that this post was created by a committee which had no power to conclude a frontier agreement⁶⁹. But that is obviously not what this is about. The bilateral Committee in question did not conclude a frontier agreement and Niger has never claimed that it

⁶⁷MN, Ann. C 79, p. 3.

⁶⁸CMN, Ann. A 24 and judges' folder, tab 16.

⁶⁹CR 2012/25, p. 31, paras. 11-12 (Thouvenin).

did. That Committee simply noted that the frontier passed between Petelkolé (Niger) and Seynotyondi (Burkina). No one contested that report. The juxtaposed control post was built on the proposed site and has been in operation for many years. It is hard to imagine that Burkina would have failed to oppose the erection of such a post, and the construction by Niger of 2 km of road beyond that post, if all of this had taken place in Burkina territory.

Mr. President, I think that now might be a good time, with your permission, in order to avoid my starting . . .

The PRESIDENT: Thank you very much. It seems that it really is teatime now! We will take a break of 20 minutes and then go on with your presentation. The sitting is adjourned for 20 minutes.

The Court adjourned from 4.40 p.m to 5 p.m.

The PRESIDENT: Please be seated. I invite Professor Salmon to continue his presentation. You have the floor, Sir.

Mr. SALMON: Mr. President, Members of the Court, I will now address the second disputed issue, namely the Oussaltane area.

Oussaltane

39 9. In order to dispel all uncertainty in this regard, we submitted a total of seven documents showing that Niger exercised sovereignty over Oussaltane. Of those seven documents, Burkina challenges only three; we note the lack of comment on the four others. As to the three documents which it disputes, the first concerns a situation where certain *fractions* claimed that they lived in Oussaltane and therefore asked to be transferred to Tillabéry *cercle*. In relation to this request, Mr. Thouvenin tells us that it is not for *fractions* to decide whether or not they belong to Dori *cercle*, it is up to the administrative authorities. That is precisely what happened. The two *cercle* commanders decided to go and check whether the three *fractions* in question did indeed live in Oussaltane. Thus this meant that the two *cercle* commanders recognized that Oussaltane was part of the territory of Niger. The second document relates to an official who had come to Oussaltane

to serve a court summons on a national there. Mr. Thouvenin tells us that this all goes to show that this was an area where Dori had jurisdiction, since it was an official from Dori who came to serve the summons. However, what Mr. Thouvenin neglects to tell us is that we learn from the rest of the document that the Téra representative explains that the opposite is the case: namely, that Oussaltane is indeed in Niger and that an unofficial arrangement on this matter had been agreed with his predecessor. As to the third document, it is a telegram/letter of 11 July 1951 from Larue, Head of Téra subdivision, in Tillabéry *cercle*, stating once again that the line leaves Oussaltane to the east. However, it seems that, in the course of this discussion, the commander of Dori *cercle* had, on the contrary, insisted that the boundary be demarcated on the basis of the Erratum — a fact of which Mr. Thouvenin, of course, makes great play. However, he once again neglects to read us the end of Larue's document, which states the following: "Apparently, [the Dori commander] fails to appreciate some of the consequences of that position . . . The inaccuracy and imprecision of the Erratum have moreover been pointed out numerous times."⁷⁰

That is all we have on Oussaltane. You will note that Burkina Faso seeks systematically to use against Niger all of the documents produced by us in support of our arguments. However, our opponents have failed to produce the slightest evidence of *effectivités* from their own archives. As we find it difficult to believe that those busy little bees acting as counsel for Burkina Faso did not do their own research, we are bound to conclude that they came away empty-handed.

Bangaré

40 10. Let us now turn to Bangaré. Bangaré is a locality which is accepted to have existed from the outset, and which, moreover, had the status of village from 1945. This village has been the subject of a particularly fierce onslaught on the part of my colleague, Mr. Thouvenin, who has developed a whole series of arguments to which I was unable to respond the first time round, for lack of time — and I fear that I may well find myself in the same situation now. Nonetheless, Commander Roser, in his report of 10 April 1932, stated quite categorically that Bangaré has always been located on Niger territory. Our opponents have sought to discredit Roser's position, arguing that in so stating he was basically contradicting the Erratum. However, I believe that, once

⁷⁰MN, Ann. C 73.

again, looking at the matter from the current perspective, that criticism does not hold up, for we are talking here about *effectivités*, and the information that Bangaré has always been located on Niger's territory, provided by Roser, Commander of Dori *cercle*, undoubtedly carries particular weight. Moreover, subsequently, as I have just told you, in 1945 Bangaré would appear as a village on the various lists prepared by Tillabéry *cercle*. Mr. Thouvenin has a further argument: namely that, if there is a Bangaré, in all likelihood it changed its location, because Bangaré cannot be where we place it. Well, yes, Members of the Court, it is true that from time to time villages were relocated, Alfassi for example, and Senobellabé, but there has never been the slightest shred of evidence that Bangaré was ever relocated.

Our opponent then goes on to challenge a whole series of documents in our Memorial and Counter-Memorial, telling us that Annexes C 117, C 118 and C 125 are problematic, since it is not clear who their authors were, or where they come from, etc. However, in terms of substance, all of these documents do indeed mention Bangaré, and are pertinent. Their authenticity and dates are vouched for by Niger's Agent. It is true that, like other documents extracted from lists of villages, they are part of longer documents. The complete documents are at the Court's disposal, if it wishes to examine them. As regards series C 117, C 118, C 119, C 120, C 121, C 122, etc., they are all part of a particularly voluminous document, prepared in Téra on 10 August 1954 by the Head of the Subdivision, Marc Perret. This document originates from Niger's national archives, and bears the reference number 19.3.39. Niger's delegation to The Hague has brought with it this original document of 81 pages — one of our colleagues has it — and, if necessary, it can be filed in the Registry, if the Court so wishes (and this will prove that all of the documents on Bangaré that we have provided are all authentic).

41

Mr. Thouvenin has told us that he finds it somewhat curious that this village can be regarded as a district of Diagourou. How, he says, is it possible, at a time when no district could normally be located over 20 km away from its administrative centre, for Bangaré to be regarded as a district of Diagourou? This must be some other Bangaré. However, the data on the sheet are perfectly clear: the village, which is indeed 35 km away from Téra, lies only 23 or 24 km from Diagourou. But there is no problem with the fact of the village of Bangaré being regarded as a dependency of Diagourou. A challenge of a similar order was mounted by our opponents on the basis that the

Arrêté of 1 January 1956, which established polling stations and districts for the elections to the National Assembly⁷¹, had provided for two polling stations at Diagourou: a first one, where Bangaré was cited along with other names of tribes; and then a second, “Diagourou village”, in which Bangaré was not mentioned. According to Mr. Thouvenin, this was clear evidence that the Bangaré in question was not a village of Niger, but in fact a village of Upper Volta, and that what was happening was simply that Niger nationals living in Upper Volta were entitled, on an individual basis, to vote at Diagourou’s first polling station. But that is precisely not what happened. The practice, as I am now explaining it to you, has, moreover, continued to this day. The voters in question (those of Bangaré, which is a hamlet or farming settlement) actually vote — and still vote today — at Diagourou, which is the village to which they are attached. The reason for this is that voters’ lists are prepared on the basis of census returns, which are themselves prepared village by village, family by family. The inhabitants of Bangaré village, which, in administrative terms, is no more than a farming village for certain inhabitants of Diagourou, are registered at Diagourou, which is the “mother village” from which they originate. Their polling station is thus located at Diagourou, and they vote at the same time as those members of their family who are not living at the hamlet or farming settlement.

42

Once again, as the Court will have noted, Burkina seeks to use against Niger documents produced in order to facilitate the Court’s work. But it fails to provide the slightest scintilla of evidence of any *effectivité* from its own archives. It would have been far simpler and far more convincing to have produced evidence that the village of Bangaré voted in Upper Volta!

13. I believe it is clear from all of this that Niger, for its part, has provided evidence showing that the villages of Petelkolé, Oussaltan and Bangaré, located in the border area, have indeed always been regarded as part of the colony of Niger, and are in no sense “enclaves” within the territory of Burkina Faso.

The villages located between the IGN line and the straight line claimed by Burkina Faso

14. [Slide: Extract from the 1960 IGN map] You will note that, while Burkina has thus focused its attack on the areas along Niger’s territorial boundary, it has remained surprisingly silent

⁷¹CMN, Ann. B 35.

on the issue of which country has sovereignty over the villages located between the IGN line and the straight line which it claims. The latter in effect, because of its arbitrary nature — i.e., of Burkina’s line — blunders blindly through areas which belonged to Niger during the colonial period and have continued to do so ever since. That, moreover, is the reason why that line could not be accepted under the 1988 and 1991 compromises. It would have transferred to Burkina Faso villages that undoubtedly fall within Niger’s sovereignty [End of slide]. We will give you a few examples:

Beina (Beyna)

This village is among those included in the list of localities in Téra subdivision in 1952⁷², 1954⁷³, and 1959⁷⁴.

[Slide: Diagourou sketch-map]

It appears on the sketch-map of Diagourou *canton*⁷⁵ of 10 August 1954⁷⁶. There is a data sheet “Beina astronomic station”, Niger territory — Téra region, updated on 20 February 1957⁷⁷ (this would seem to be a document that carries particular weight). The village appears again on the list of localities of Diagourou *canton* in 1959⁷⁸. It appears on the list of polling stations for the elections to the 1956 National Assembly⁷⁹.

43

Mamassirou

16. We now come to Mamassirou, a village regarded as belonging to Niger in the Roser/Boyer agreement⁸⁰, and shown as belonging to Diagourou *canton* in the census returns of

⁷²Census of Téra *canton*, 10 July 1952 (CMN, Ann. C 115).

⁷³List of villages of Téra Subdivision at 1 January 1954 — Téra *canton* (CMN, Ann. C 116).

⁷⁴List of villages of Téra *canton*, 17 April 1959 (CMN, Ann. C 124).

⁷⁵Diagourou *canton* on a scale of 1:250,000, 1954 (MN, Ann. D 21).

⁷⁶Report from the Had of Téra Subdivision on the census of Diagourou *canton*, dated 10 August 1954 (MN, Ann. C 84).

⁷⁷Data sheet, “Beina astronomic station”, 20 February 1957 (CMN, Ann. C 123).

⁷⁸List of villages of Téra *canton*, 17 April 1959 (CMN, Ann. C 124).

⁷⁹Arrêté No. 2794 establishing polling stations and districts for the elections to the National Assembly, *Journal officiel* of Niger, No. 304, 1 January 1956 (CMN, Ann. B 35).

⁸⁰Letter No. 112 of 10 April 1932, and Tour Report from Civil Service Deputy Roser, Acting Commander of Dori *cercle*, to the Commander of Upper Volta (Political Office). Certified copy of 15 September 1943 (MN, Ann. C 45, p. 6).

1954⁸¹ and 1959⁸². This village features in an annex⁸³ appended to the report from the head of Téra subdivision of 10 August 1954⁸⁴. It also appears on the 1954 sketch-map of Diagourou *canton*⁸⁵. It is included in the list of polling stations for the 1956 elections to the National Assembly⁸⁶.

Ouro Gaobe

17. Here we have a report on the 1954 census of Diagourou *canton*, where the village is described as having been “established some 20 years ago by some Rimaibé from Yagha”⁸⁷.

44

Yolo

And finally, the village of Yolo. It is mentioned in all of the lists of villages of Téra Subdivision, Diagourou *canton*, under the name of Yolo (in 1927⁸⁸, 1933⁸⁹, 1948⁹⁰ and 1954⁹¹), then Yélo (in 1959⁹²). It appears on the sketch-map of that *canton* prepared in 1954⁹³. It is also mentioned on the data sheets appended to the report on the census of Diagourou *canton* prepared

⁸¹List of villages of Téra Subdivision at 1 January 1954 — Diagourou *canton* (CMN, Ann. C 117), and list of villages of Téra Subdivision at 10 August 1954 (extract No. 1) (CMN, Ann. C 118).

⁸²List of villages of Diagourou *canton*, 17 April 1959 (CMN, Ann. C 125).

⁸³“Mamassirou Beyna”: appended to the Report from the Head of Téra Subdivision on the census of Diagourou *canton*, dated 10 August 1954 (MN, Ann. C 121).

⁸⁴Report from the Head of Téra Subdivision on the census of Diagourou *canton*, dated 10 August 1954 (MN, Ann. C 84).

⁸⁵Diagourou *canton* on a scale of 1:250,000, 1954 (MN, Ann. D 21).

⁸⁶Arrêté No. 2794 establishing polling stations and districts for the elections to the National Assembly, *Journal officiel* of Niger No. 304, 1 January 1956 (CMN, Ann. B 35).

⁸⁷Report from the Head of Téra Subdivision on the census of Diagourou *canton*, dated 10 August 1954 (MN, Ann. C 84).

⁸⁸Extract from the “Directory of localities” (1927): villages of the *cantons* of independent Peuls — Diagourou (Dori *cercle*) (CMN, Ann. C 109).

⁸⁹List of villages of Téra Subdivision — Diagourou *canton*, 6 July 1933 (CMN, Ann. C 110).

⁹⁰List of Niger *cantons* and villages forwarded to the Minister for Overseas France (Diagourou, Tamou and Torodi *cantons*), undated, 1948 (MN, Ann. C 71).

⁹¹List of villages of Téra Subdivision at 1 January 1954 — Diagourou *canton* (CMN, Ann. C 117), and list of villages of Téra Subdivision at 10 August 1954 (extract No. 2) (CMN, Ann. C 119).

⁹²List of villages of Diagourou *canton*, 17 April 1959 (CMN, Ann. C 125).

⁹³Diagourou *canton* on a scale of 1:250,000, 1954 (MN, Ann. D 21).

on 10 August 1954 by the Head of Téra Subdivision⁹⁴. Finally, this village is included in the list of polling stations for the 1956 elections to the National Assembly⁹⁵.

[End slide: Diagourou]

As is clear from the foregoing, the frontier line claimed by Niger essentially follows the IGN line for the section running from Tao to the tripoint between Dori, Tillabéry and Say *cercles*. It only deviates from that line for specific reasons. Mr. President, Members of the Court, we now come to the end of my presentation in this second round of oral argument. Please excuse me for the rush at the start to catch up on the extra minutes that I thought I had been given — not by you, but by my team. It remains for me to thank you for having kindly listened to me and I now ask you, Mr. President, to give the floor to Professor Pierre Klein for Niger’s reply to Burkina Faso’s argument on the line of the frontier in the Say sector.

45 The PRESIDENT: Thank you very much, Professor. I give the floor to Professor Klein. You have the floor, Sir.

Mr. KLEIN: Thank you, Mr. President.

THE BOUNDARY IN THE SAY SECTOR

1. Mr. President, Members of the Court, it thus remains for me now to go back over Niger’s claims concerning the course of the frontier in the Say sector. Claims which Niger apparently failed to explain properly during the first round of its oral argument — according to our opponent, who, at the start of this week, stated that it had “heard . . . hardly anything about Niger’s line”⁹⁶. During my presentation last Friday on the Say sector, however, I set out at great length the bases on which Niger founded its claim in that sector. I can only regret that those explanations clearly did not reach the ears of counsel for Burkina Faso; be that as it may, I have no intention of setting them out again. Instead, I shall use this afternoon to address the points which still divide the Parties at this stage of the proceedings.

⁹⁴“Yollo Beyna”, “Yollo Djinkargou”, “Yollo Hamidou” and “Yollotaka or Taka”: appended to the Report from the Head of Téra Subdivision on the census of Diagourou *canton*, dated 10 August 1954 (CMN, Ann. C 122).

⁹⁵*Arrêté* No. 2794 establishing polling stations and districts for the elections to the National Assembly, *Journal officiel* of Niger, No. 304, 1 January 1956 (CMN, Ann. B 35).

⁹⁶CR 2012/25, p. 57, para. 6 (Thouvenin).

In order to do so, I shall return, first, to the question of the error involving Bossébangou, then to the line proposed by Burkina after Bossébangou, then to the question of the location of the former “tripoint” and, finally, to the course consisting of two straight-lines in the sector up to the beginning of the Botou bend.

A. The author of the Erratum committed an error in describing the new inter-colonial boundary as passing through the village of Bossébangou

46 2. In its oral argument at the beginning of this week, our opponent once again rejected the error theory which had been put forward by Niger, and the bases of which do not need repeating here. In response to Niger’s arguments on this point, Professor Forteau invoked what he called the “deafening silence” maintained by Niger during the first round of its oral argument on a series of documents from the colonial period which Burkina Faso said “confirmed that the line was indeed intended to pass through Bossébangou”⁹⁷. And as for the line shown on what our opponent persists in calling the “1927 sketch-map”, Professor Forteau regards this merely “as proof that it was the draftsman of the map who made a mistake”⁹⁸. Allow me to revisit briefly these two points. In respect of the first, Niger did indeed remain silent on the small number of documents from the colonial period which were referred to by Professor Forteau during his initial presentation; however, we did so not only because of time constraints, but, in particular, because those documents appeared to us to carry very little weight. What do they actually say? That, as stated in the report from the Commander of Dori *cercle*, dated 7 July 1930 and cited by our opponent, “an Erratum to that *Arrêté* [the *Arrêté* of 31 August 1927] does not alter the boundaries fixed, except that the frontier line should reach the River Sirba at Bossébangou instead of Boulkabo”⁹⁹. Or, in the case of the letter of April [1953] from the Governor of Niger, which was also cited by Mr. Forteau, that the line as described in the Erratum starts “from the Tong-Tong astronomic marker . . . crosses the Téra-Dori road at the Tao marker and continues to Bossébangou”¹⁰⁰. In other words, those documents merely describe the boundary in that sector as it is set out in the

⁹⁷CR 2012/25, p. 52, para. 22 (Forteau).

⁹⁸*Ibid.*, p. 51, para. 19 (Forteau).

⁹⁹MN, Ann. C 38, p. 2, cited in CR 2012/20, p. 61, para. 58 (Forteau).

¹⁰⁰MN, Ann. C 75, p. 2, cited in CR 2012/20, p. 62, para. 61 (Forteau).

Erratum. Nothing more. For its part, Niger therefore finds it very difficult to see how these documents “confirmed that the line was indeed intended to pass through Bossébangou”, to recall the words of our opponent. So, silence filled and, all things considered, it was not so deafening after all.

47 3. The question as to who made a mistake in their description of the inter-colonial boundary in the area — the author of the Erratum or the drafter of the 1927 map — is, of course, impossible to answer on the basis of these documents alone. While Niger concluded that the line adopted in the Erratum was wrong, because it described the inter-colonial boundary as running as far as Bossébangou, it reached that conclusion on the strength of various pieces of evidence, all of which suggested the same thing. The 1927 map is far from an isolated piece of evidence. The line shown on that map in this sector is, in fact, confirmed by two types of sources. First, by a series of statements of colonial administrators, which leave no room for ambiguity, since they expressly draw attention to the error perpetuated by the Erratum on this point¹⁰¹. Niger has already amply discussed these statements in its written pleadings and during the first round of its oral argument. I shall not go over them again, therefore. Second, it must be pointed out that, far from being isolated, the line shown on the 1927 map can, on the contrary, be seen on various other maps drawn up during the colonial period. [Slide of Say *cercle*, extract from the 1928 General Map of FWA] In this regard, I shall limit myself to mentioning the map of the region established by the Geographical Department of FWA in 1934¹⁰² [End of slide — slide of the 1946 IGN Niamey map] and the “Niamey” sheet of the 1946 IGN map¹⁰³ [End of slide]. It is true, as our opponents rightly recalled on Monday, that in the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*, the Court observed that, while the author of the 1927 map had acquired “a very clear understanding of the intention behind the texts” of 1927, “[t]hat does not mean that the map necessarily conveys the correct interpretation of the erratum”¹⁰⁴. In this instance, however, the combination of the various pieces of evidence which have just been presented would suggest that

¹⁰¹See, in particular, MN, pp. 108-110, paras. 7.19-7.20.

¹⁰²MN, Ann. D 19.

¹⁰³MN, Ann. D 20.

¹⁰⁴*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 646, para. 171, cited in CR 2012/25, p. 52, para. 20 (Forteau).

the interpretation given by the drafter of the 1927 map to this part of the Erratum was, in fact, the “correct” one, on account of his “very clear understanding of the intention behind the texts”, which is confirmed by those other pieces of evidence. In any event, it should be noted that, if the Court were to find that there was such an error, the legal consequences of that finding would be clear-cut. That section of the frontier line would have no “legal validity”, in accordance with the Chamber’s ruling in the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*. During the second round of its oral argument, our opponent, in fact, no longer disputed that this would be the consequence of the factual error, and so it may be considered that the Parties agree on this point. Just as it is not correct that the frontier passes through the village of Bossébangou, it is likewise clear that the line claimed by Burkina Faso after that locality is misconceived.

48

B. The line claimed by Burkina after Bossébangou does not accord at all with the wording of the Erratum

4. As will be clear to the Members of the Court at this stage, the frontier line claimed by our opponent after Bossébangou follows the line shown on the IGN map up to the tip of the salient. However, on this subject, we were reminded by our opponent on Monday that Burkina had adopted this line because it “derives from the Erratum” and not simply because it was the line shown on the IGN map¹⁰⁵. Duly noted, and Niger can only regret that the other Party has relied on what it terms our “lack of understanding”¹⁰⁶ of its position, which has led it to conduct the debate on the basis of a false premise. But Niger can also only admit its complete and utter bewilderment at our opponent’s claim that its line in that area is based solely on the text of the Erratum. [Slide of sketch-map No. 10, p. 148 of MBF] I would remind you that the Erratum describes a boundary which “almost immediately turns back up towards the north-west”. If the map in Burkina’s Memorial showing the latter’s claims in this sector, which can now be seen by Members of the Court, is meant to represent a line which takes a north-westerly direction so as then to form a salient, one can clearly only question our opponent’s grasp of the points of the compass. In the end, the most accurate presentation of the line claimed by Burkina Faso in this area would appear to be that made by Professor Thouvenin last week, during which he explained that the frontier in

¹⁰⁵CR 2012/25, pp. 58-59, para. 11 (Thouvenin).

¹⁰⁶*Ibid.*, p. 59, para. 11 (Thouvenin).

this sector “follows the right bank of the River Sirba from east to west until point P1”¹⁰⁷. East-west, then, much more so than “towards the north-west”. I shall say no more, except that, once again, it is difficult to reconcile our opponent’s claim with the wording of the 1927 Erratum. [End of slide] I now come to the question of the determination of the “tripoint”.

C. The location of the former “tripoint” between Say, Dori and Tillabéry cercles can be identified with precision

49 5. Whether this point can be identified with precision has continued to be the subject of debate between the Parties. During the second round of its oral argument, our opponent rejected that possibility, contending that this point could not be determined on the basis of traditional boundaries of Say *cercle*, whose very existence it contests¹⁰⁸, and that, if a tripoint did exist, it was situated at Boulkalo, and not at the place where Niger locates it. I shall revisit in detail these two points, which are clearly connected.

6. Firstly, Burkina Faso claims that there are no traditional boundaries of Say *cercle*. Thus, Mr. Forteau criticized Niger for having invented what he called the notion of “the High Speed Traditional boundary”, arguing that “[i]n less than ten years, in a region that was uninhabited or unexplored, traditional colonial boundaries of a purely pragmatic nature are said [by Niger] to have been born and fixed once and for all in 1910, with such certainty and geographical precision that they tied the hands of the Governor-General of French West Africa 17 years later, when he was preparing the Erratum”¹⁰⁹. “Is that really convincing?”, Mr. Forteau then asked. There is a two-stage answer to that question. First, the period to take into consideration when assessing whether or not there are traditional boundaries of Say *cercle* does not end in 1910, but in 1927. That is the year in which the *Arrêté*, and subsequently the Erratum, were adopted, and which is relevant for establishing the bases on which those documents were drafted. [Slide of the 1909 Boutiq sketch-map] Secondly in this regard, it would appear very difficult to deny the existence of such boundaries when they consistently appear on the sketch-maps and maps of Say *cercle* drawn

¹⁰⁷CR 2012/21, p. 25, para. 65 (Thouvenin).

¹⁰⁸CR 2012/25, p. 51, para. 17 (Forteau); p. 53, para. 24 (Forteau).

¹⁰⁹*Ibid.*, p. 51, para. 17 (Forteau).

up in 1909¹¹⁰, [End of slide. Slide of the 1915 Truchard sketch-map] 1915¹¹¹, [End of slide. Slide of the 1926 Blondel map] 1926¹¹², [End of slide. Slide of the 1927 “new frontier” map] and also 1927. [End of slide. Slide showing both the 1909 Boutiq sketch-map and the 1927 “new frontier” map, side by side] As you can see, the appearance of these boundaries did not change between 1909 and 1927, except, of course, for the removal of Botou *canton*. Clearly, it does not appear to do violence to these maps to talk of traditional boundaries of Say *cercle*. [End of slide]

50

7. What should we conclude from this? That, in the words of our opponent, the hands of the Governor-General of FWA were “tied” by the course of those boundaries¹¹³, or that the purpose of the Erratum was “to enshrine the so-called traditional course of the boundaries of Say *cercle*”¹¹⁴? Despite what our opponent seems to think, Niger has never claimed anything of the sort. It has simply noted the constancy of the course of those boundaries. And, moreover, it could not help but assess the impact of that pre-existing situation on the way in which the boundaries were described in the official texts of 1927. It will be recalled that, with respect to Say *cercle*, the *Arrêté* of 31 August 1927 reproduces almost word for word the description of the boundaries of that *cercle* as contained in a record of agreement of 10 February 1927, drawn up by a representative of the Colony of Upper Volta and a representative of the Colony of Niger¹¹⁵. [Slide showing both the description of the boundaries as contained in the Record of Agreement of 10 February 1927 and in the *Arrêté* of 31 August 1927] The slide currently on the screen makes it possible to see just how close the text of the *Arrêté* is to that of the Record of Agreement. I shall not read it out again. We can, in any event, agree that this similarity is, at the very least, striking, and that it further seriously undermines Burkina Faso’s argument that, in adopting the 1927 texts, the Governor-General created an entirely new boundary, which in no way reflected the existing situation. [End of slide] What, in fact, did the authors of the Record of Agreement of 10 February do, other than to refer to the maps of the *cercle* which were available to them and which their description of the boundary

¹¹⁰MN, Ann. D 1.

¹¹¹MN, Ann. D 4.

¹¹²MN, Anns. D 6 and D 7.

¹¹³CR 2012/25, p. 51, para. 17 (Forteau).

¹¹⁴*Ibid.*, p. 56, para. 3 (Thouvenin).

¹¹⁵MN, Ann. C 8.

51

follows most precisely? That there were traditional boundaries of Say *cercle*, therefore, emerges very clearly from all of the documents I have just mentioned. The evidence also demonstrates that the authors of the official texts of 1927 had no intention of departing from the course of those traditional boundaries. This is true for the *Arrêté*, as we have just seen. But it is also true for the Erratum, since the sole purpose of its adoption was to rid the original text of the description of the “internal” boundaries of Say *cercle*, which were not relevant to the determination of the inter-colonial boundary with Upper Volta. The best evidence of this is that the description of the *cercle*’s “relevant” boundaries remained virtually unchanged between the *Arrêté* and the Erratum. Contrary to our opponent’s assertions, the characteristic “salient” of the boundaries of Say *cercle* was, therefore, by no means a recent creation “gained” by that *cercle* in 1927¹¹⁶. It follows from all of the foregoing that Niger is perfectly entitled to rely on the traditional maps of Say *cercle* in order to determine the position of the former tripoint, which can be located at the tip of the aforementioned “salient”. That this is where the tripoint was located, as I had the opportunity to explain last week, can be confirmed with the help of other evidence, including the 1927 “new frontier” map and the mission report prepared by the Administrators of Dori and Tillabéry *cercles* in 1943, which indicates very precisely where the former tripoint could be located, supported by geographical features¹¹⁷.

8. Burkina Faso also disputes the location of the tripoint claimed by Niger on another basis. In its view, the documents used to prepare the official texts of 1927 show that this point was, in fact, located further downstream on the River Sirba, at the village of Boukalo. [Slide of sketch-map, tab 7 of the judges’ folder, Burkina Faso — “The delimitation according to the *Arrêté* of August 1927”] Our opponent bases that assertion, first and foremost, on sketch-maps which it has furnished and which show the boundary running in a south-east direction reaching the River Sirba precisely at the village of Boukalo. I have two points to make on this subject. The first is that the text of the *Arrêté*, which this sketch-map is supposed to illustrate, talks about a boundary that reaches “the River Sirba (boundary of Say *cercle*), near to and to the south of Boukalo” and not “at Boukalo”, as this sketch-map suggests. The second observation is that such a boundary

¹¹⁶CR 2012/25, p. 53, para. 27 (Forteau).

¹¹⁷CR 2012/24, p. 31, para. 11 (Klein) and references.

52

line does not appear on any — and I mean not one single — map from the colonial period. That, moreover, is the very reason why our opponent could find no other solution than to create this map to support its argument. [End of slide. Slide of sketch-map, Ann. MBF 24] Our opponent also referred to a sketch-map annexed to a letter of 1926 from the Governor of Niger concerning the incorporation into his colony of that part of Dori *cercle* which had been detached from Tillabéry *cercle* in 1910¹¹⁸. Burkina Faso invokes that document, among others, in order firmly to conclude that the “tripoint was located in 1908 on the Sirba”¹¹⁹ and that “there is, moreover, no salient at the level of this tripoint”¹²⁰. Mr. President, Members of the Court, we cannot help but be impressed by our opponent’s extraordinary eyesight. One sketch-map showing a single *cercle* — the Dori *cercle*, as it was at that time — and yet not in its entirety or accurately, but I shall come back to that in a few moments — is enough for it to determine the location of what, in its view, is the true “tripoint”. The scale of that achievement must be properly appreciated, especially since the sketch-map in question shows neither the Sirba, nor the village of Boukalo or that of Bossébangou. [End of slide] And one cannot but admire the “cool” of a Party which last week criticized Niger for basing the location of the tripoint claimed by it on maps which date back to a period when only two *cercles* existed in the area in question¹²¹. Niger, however, has since explained that the location of a tripoint does not change simply because, during a given period, that point was located on the boundary between two, rather than three, *cercles*¹²². What is more, Burkina did not contest that point. Here, we are shown nothing at all. There is not a single feature which would make it possible to identify the alleged tripoint on the Sirba. Moreover, the sketch-map which our opponent used for its demonstration is not accurate, because it does not include Diagourou among the subdivisions making up Dori *cercle*. [Slide showing together the sketch-map in Ann. MBF 24 and MN, Ann. C 5] As is shown in this 1924 sketch-map, which was annexed to an Annual General Report of Dori *cercle*¹²³, Diagourou *canton* was situated between Dargol and Yagha. To

¹¹⁸MBF, Ann. 24.

¹¹⁹CR 2012/25, p. 54, para. 28 (Forteau).

¹²⁰*Ibid.*

¹²¹CR 2012/20, p. 54, para. 29 (Forteau).

¹²²CR 2012/24, p. 30, para. 11 (Klein).

¹²³MN, Ann. C 5.

53

remove all doubt, Niger has itself highlighted the boundaries on this map in red ink. It — that is to say Diagourou *canton* — would also be transferred to the Colony of Niger following the Decree of 28 December 1926. And, therefore, it is at the point where the line separating the *cantons* of Yagha and Diagourou would meet the boundary of Say *cercle* that the tripoint was located, not at the point erroneously presented to you by our opponent. [End of slide]

9. The reference, in the *Arrêté* of 31 August 1927, to a boundary coming from the north-west and reaching “the River Sirba . . . near to and to the south of Boulkalo” also warrants a word of explanation. Its origins can readily be traced back to another record of agreement, that of 2 February 1927, which my colleague, Professor Amadou Tankoano, spoke to you about earlier this afternoon¹²⁴. Like the Record of Agreement of 10 February 1927 describing the boundaries of Say *cercle*, and of which I spoke a few moments ago, that text sets out the boundaries of the *cantons* of Dori *cercle* which are about to be incorporated into the Colony of Niger. It is that text which describes the aforementioned point where the boundary meets the Sirba, a description which — you were told — would be reproduced word for word in the *Arrêté* of 31 August. [Slide of the 1926 Blondel-La Rougery map] The reference to Boulkalo is easily explained, since at that time it was the only locality in that part of Dori *cercle* which was depicted on maps, as shown, for example, by the 1926 Blondel-La Rougery map. It was, therefore, the only identifiable point within Dori *cercle* to which the signatories of the Record of Agreement could legitimately refer in order to describe the boundaries of that *cercle*. [End of slide] However, it was clearly never their intention to make the locality of Boulkalo itself the meeting point of the new Dori-Tillabéry boundary and Say *cercle*. The language they used makes this sufficiently clear: “near to and to the south of Boulkalo”. Thus the picture of the situation as presented to you by our opponent at the start of this week turns out, once again, to be singularly incomplete. I repeat, the boundary as presented by Burkina Faso cannot be found on a single map from the colonial period. [Slide of the “Téra Subdivision” sketch-map, MN, Ann. C 47] On the contrary, if one looks at the sketch-maps which were produced at the same time as the 1927 texts, and which show the boundaries of Téra Subdivision as they were at that time, it is clear that the meeting point of the divisions in question is

¹²⁴MN, Ann. C 7.

located at the tip of the salient, as Niger has always contended. [End of slide] I would remind you that the co-ordinates of that point, as determined by Niger, can be found in its written pleadings¹²⁵.

54 10. We can therefore now turn to the final section of the boundary, which runs to the beginning of the Botou bend.

D. The double-straight-line section preceding the start of the Botou bend is part of the colonial heritage that Burkina Faso has never challenged

11. In its written pleadings, as well as in its first round of oral argument, Niger explained how the colonial authorities had precisely fixed the boundary between the two colonies on the road linking Niamey with Ouagadougou. The point on the road where the documents from the colonial period locate this point inevitably entails a modification of the line of the frontier in relation to that described in the Erratum. Whereas the latter speaks of a single straight line as far as the start of the Botou bend, the agreement between the authorities of the two colonies on the determination of the frontier point requires a boundary in two straight lines in this area. At no time, either in its written pleadings or in the first and second round of oral argument, have our opponents disputed the fact that the documents from the colonial period to which I have just referred gave an accurate description of the location of the frontier on the road between the two colonies. We are bound to place this on record. [Slide: Supplementary IGN sheet showing the location of the frontier post] Just as we are bound to place on record the fact that the cartographers of the *Institut géographique national de France* had noted, in the course of their preparatory surveys for what was to become the 1960 map, the presence of a “frontier post” at the location determined jointly by the colonial authorities. [End slide: Slide showing extract from the 1960 IGN map] This was duly marked on the map in its final version. Thus, in showing the frontier in this sector as consisting of two straight lines, the IGN cartographers were not inventing anything; they were simply reproducing on the map the situation which they had noted on the ground. [End slide]

12. This was thus the situation facing the two States at the time of their accession to independence in 1960. That is the content, in this sector, of their colonial heritage at that time. Did either of the two States subsequently seek to challenge it? Our opponents have made desperate

¹²⁵CMN, p. 84, para. 2.2.13.

55

efforts to have us believe this in the course of their oral argument, citing the positions of the representatives of the two States during the work of the Joint Technical Commission on the Demarcation of the Frontier¹²⁶. Or by asserting that the 1987 Agreement required us in any event to follow to the letter the line described in the Erratum, regardless of any subsequent development on the ground, even if this reflected an agreement — even a tacit one — between the two States¹²⁷. However, let us bear in mind, once again, that, in these proceedings before the Court, the 1987 Agreement is no longer the only reference source. As Professor Kamto has just reminded you, the dispute has to be settled on a far broader basis: the “rules and principles of international law . . ., including the Principle of the Intangibility of the Boundaries Inherited from Colonization and the Agreement of 28 March 1987”¹²⁸, in accordance with the terms of Article 6 of the Special Agreement. And what is the point that we are addressing here? None other than the determination of the boundary inherited by the two States in this sector at the time of their accession to independence. And their acquiescence in the perpetuation of that situation. In his oral presentation last Monday, Professor Thouvenin suggested that this was a somewhat superficial argument. “[I]n order,” he stated, “for an acquiescence to have the effect of modifying a frontier line, we need rather more”¹²⁹. And he then referred us to what the Court said in the *Malaysia/Singapore* case in 2008:

“any passing of sovereignty over territory on the basis of the conduct of the Parties . . . must be manifested clearly and without any doubt by that conduct and the relevant facts. That is especially so if what may be involved, in the case of one of the Parties, is in effect the abandonment of sovereignty over part of its territory.” (*Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, I.C.J. Reports 2008, p. 51, para. 122.)

However, Mr. President, Members of the Court, what Professor Thouvenin neglects to tell you is that there is no question here of any abandonment by Burkina Faso “of sovereignty over the part of its territory” — to cite the language of the Court. [Slide: IGN map, with the triangular area located between the lines claimed by the two Parties] During the colonial period, as I have just reminded you, the area situated between the line of the frontier as shown on the IGN map and that claimed by

¹²⁶CR 2012/21, p. 10, para. 11 (Thouvenin).

¹²⁷CR 2012/25, p. 63, para. 29 (Thouvenin).

¹²⁸Article 6 of the Special Agreement of 24 February 2009 (MN, Ann. A 13).

¹²⁹CR 2012/25, p. 63, para. 30 (Thouvenin).

56 Burkina Faso was always regarded as belonging not to Upper Volta, but to Niger. And that situation continued after independence, as is shown by the fact that the villages located in that area have always been administered since then by Niger. In other words, if there is a change of sovereignty as a result of the Court's decision in this case, it will be to the detriment not of Burkina Faso, but of Niger.

13. Niger has indeed set out in its Memorial evidence going back to the colonial period and showing that various localities situated within that area belonged to the Colony of Niger¹³⁰. This has, however, been challenged in Burkina's Counter-Memorial, where it states that Niger wrongly identified these villages¹³¹. To give you just one example, our opponents deny that the village of Lati (with one "t"), which several directories of villages clearly confirm as belonging to Niger Colony, is the same as Latti (with two "t"s), as shown on the extract from the IGN map¹³². However, this challenge is based on pure supposition, and blithely takes no account of what was the repeated practice in the area. To cite just a few names — which are now familiar to Members of the Court — we find Tillabery spelled as "Tillabéri", Bossébangou as "Bossébangou", or Nababori as "Nababori", without it ever occurring to anyone to claim that this implied some form of confusion as to the identity of the localities in question. Moreover, the Director of Burkina's Geographical Institute told us no different in the part of his speech regarding the use of names in the disputed area, during his presentation of Monday, 8 October¹³³. He noted, for example, that the village called Tchenguiliba in the 1927 *Arrêté* had been identified under the name of Tyenkilibi on the IGN map¹³⁴; as you see, this is not just a question of the difference between one or two "t"s. It is hard to see how differing views should be taken of the village of Latti, according to whether its name is written with one "t" or with two.

57 14. What is in any event striking here — and this is clearly absolutely basic — is the fact that our opponents once again confine themselves to challenging the documentary evidence submitted by Niger, without providing the slightest proof that the villages in question belong to Upper Volta;

¹³⁰MN, pp. 118-120, para. 7.39.

¹³¹CMBF, pp. 129-135, paras. 4.65 to 4.74.

¹³²CMBF, p. 134, paras. 4.70 to 4.72.

¹³³CR 2012/19, p. 39, para. 37 (Tapsoba).

¹³⁴*Ibid.*

and that is particularly revealing. Even supposing — *quod non* — that the other Party had been able to establish — negatively — that there is nothing to show that these localities belonged to Niger, it is quite incapable of demonstrating that they were regarded as belonging to Upper Volta — in other words, to provide proof positive. Hence we have no evidence whatever that the localities situated within the triangle in question, whatever their names, have at any time been regarded as belonging to Upper Volta. I leave it to the Members of the Court to draw the necessary conclusions [End of slide]. The situation shown on the 1960 IGN map is thus indeed that which prevailed on the ground at the time; it was that situation which the two Parties to the present dispute inherited when they acceded to independence, and I can only repeat that neither of the two States subsequently made any formal challenge to that part of the colonial heritage.

15. Mr. President, Members of the Court, that ends Niger's second round of oral argument. I thank you for your attention and I ask you, Mr. President, kindly to give the floor to the Co-Agent of the Republic of Niger for a brief speech in which he will read out the submissions of the Republic of Niger.

The PRESIDENT: Thank you, Professor. I give the floor to His Excellency Mr. Amadou, Co-Agent of the Republic of Niger. You have the floor, Excellency.

Mr. AMADOU: Thank you, Mr. President.

CLOSING SPEECH AND SUBMISSIONS

1. Mr. President, Members of the Court, in the absence of the Agent of Niger, I have the honour, on behalf of my country, before this honourable and prestigious Court, to read out the submissions of Niger.

58

2. Before I do so, I should like to remind you of the subject-matter of the dispute before the Court: under the terms of Article 2 of the Special Agreement seising the Court, of 24 February 2009, the Court is requested to determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong to the beginning of the Botou bend, and to place on record the Parties' agreement on the results of the work of the Joint Technical Commission on Demarcation of the Burkina Faso-Niger boundary with regard to:

- (a) the sector from the heights of N’Gouma to the astronomic marker of Tong-Tong; and
- (b) the sector from the beginning of the Botou bend to the River Mekrou.

With respect to this second part of the subject-matter of the dispute, the Court is not required “to confirm the course of the frontier” in the demarcated sectors, as requested by the Co-Agent of Burkina Faso in her concluding remarks on Monday, but to place “on record the Parties’ agreement” on the results of the work of the Joint Technical Commission on Demarcation of the boundary in the sectors in question. It is to that second request, as it was formulated in the Special Agreement — and to that request alone — that the Court is called upon to respond.

3. Having clarified that, I should like to express my pleasure at the quality of the proceedings which have taken place before this honourable Court over these two weeks. I am certain that these oral hearings, together with all of the documents which have been produced in the context of this case, will enable the Court to settle once and for all the delimitation of the portion of the frontier which remains in dispute between our two brother and friendly countries.

4. I should now like, on behalf of my Government and the people of Niger, to express our sincere thanks to you, Mr. President and Members of the Court, for listening to us so attentively and patiently; I should also like to thank Mr. Philippe Couvreur, Registrar of the Court, and his entire team for the readiness to help, professionalism, sense of duty and conscientiousness which they have shown since the beginning of these proceedings; I take this occasion to offer a special thanks to the interpreters for their patience and the quality of their services. As for our team of counsel and experts, they know how much the Government of Niger appreciates their tireless work. Finally, I should like to thank our brothers and friends from Burkina Faso for their co-operation throughout these proceedings, by renewing the friendship of the people of Niger. Like my sister and colleague, Ms Salamata Sawadogo Tapsoba, Co-Agent and Minister of Justice of Burkina Faso, I shall leave The Hague knowing that the judgment which the Court will render in this case between our two countries will help to strengthen further the fraternal and good-neighbourly relations which have always existed between the peoples of Burkina and Niger.

59

5. Mr. President, Members of the Court, to conclude our oral argument and in accordance with the provisions of Article 60, paragraph 2, of the Rules of Court, I should like to request the

Court to adjudge and declare that the frontier between the Republic of Niger and Burkina Faso takes the course described on pages 95 and 96 of the Counter-Memorial of the Republic of Niger.

In accordance with Article 7, paragraph 4, of the Special Agreement, Niger also requests the Court to nominate, in its Judgment, three experts to assist our two countries as necessary in the demarcation of the common frontier.

With this, and recalling our complete confidence in the impartiality of the Court, I thank you, Mr. President and Members of the Court, for your kind attention.

Mr. PRESIDENT: Thank you, Your Excellency, Minister and Co-Agent of Niger. The Court takes note of the final submissions which you have just read out on behalf of the Republic of Niger, as it took note, on Monday 15 October 2012, of the final submissions of Burkina Faso. Judge Cançado Trindade has two or three questions to put to the Parties. To that end, I shall now give the floor to Judge Cançado Trindade. Judge Cançado Trindade, you have the floor.

Judge CANÇADO TRINDADE: Thank you, Mr. President. For precision purposes, as to the factual context of the present case, I address my questions to both Parties:

— First, could the Parties indicate in a map the areas through which nomadic populations used to move, during the period when they became independent and today, and to what extent the frontier will affect these populations?

60 — Secondly, what is the radius of the areas of movement of these populations along the border between the two States concerned (if possible, indicating in a map the exact parts of the border)?

— Thirdly, what villages are susceptible to be affected by the frontier the Parties are claiming for?

Thank you, Mr. President.

The PRESIDENT: Thank you, Judge Cançado Trindade. The texts of the questions will be sent to the Parties in writing as soon as possible. In accordance with the usual practice, the Parties are invited to provide their written replies to the questions by not later than 6 p.m. on 24 October 2012. Any comments a Party may wish to make, in accordance with Article 72 of the

Rules of Court, on the replies by the other Party must be submitted no later than 6 p.m. on 31 October 2012.

This brings us to the end of the hearings devoted to the oral arguments in this case. I should like to thank the Agents, counsel and advocates of the two Parties for their statements. In accordance with the usual practice, I shall request the Agents to remain at the Court's disposal to provide any additional information the Court may require.

With this proviso, I now declare closed the oral proceedings in the case concerning the *Frontier Dispute (Burkina Faso/Niger)*. The Court will now retire for deliberation. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver its judgment. As the Court has no other business before it today, the sitting is now closed.

The Court rose at 6.05 p.m.
