

DISSENTING OPINION OF JUDGE *AD HOC* BENNOUNA

[Translation]

*Determination of legal title and effectivité at critical date in August 1960 — Effectivité can supplement imprecise title — Legal title places boundary on left bank of River Niger — Raynier letter of 27 August 1954 referred back to Dahomey's title established in 1900 — Effectivités of Benin take precedence at critical date over those of Niger and confirm location of boundary on left bank of River Niger — Chamber lacking jurisdiction to rule on course of boundary on bridges over River Niger (between Gaya and Malanville).*

1. I cannot agree with the Chamber's first, second and third findings as below, regarding the course of the boundary between Benin and Niger in the River Niger sector and the question of which Party the islands therein belong to:

*Firstly:*

“*Finds* that the boundary between the Republic of Benin and the Republic of Niger in the River Niger sector takes the following course:

- the line of deepest soundings of the main navigable channel of that river, from the intersection of the said line with the median line of the River Mekrou until the point situated at co-ordinates 11° 52' 29" latitude North and 3° 25' 34" longitude East;
- from that point, the line of deepest soundings of the left navigable channel until the point located at co-ordinates 11° 51' 55" latitude North and 3° 27' 41" longitude East, where the boundary deviates from this channel and passes to the left of the island of Kata Goungou, subsequently rejoining the main navigable channel at the point located at co-ordinates 11° 51' 41" latitude North and 3° 28' 53" longitude East;
- from this latter point, the line of deepest soundings of the main navigable channel of the river as far as the boundary of the Parties with Nigeria;

and that the boundary line, proceeding downstream, passes through the points numbered from 1 to 154, the co-ordinates of which are indicated in paragraph 115 of the present Judgment.”

*Secondly:*

“*Finds* that the islands situated in the River Niger therefore belong to the Republic of Benin or to the Republic of Niger as indicated in paragraph 117 of the present Judgment.”

*Thirdly:*

“*Finds* that the boundary between the Republic of Benin and the Republic of Niger on the bridges between Gaya and Malanville follows the course of the boundary in the river.”

Nor do I accept the reasoning underlying these findings.

2. On the other hand, I agree with the fourth finding of the Chamber on the course of the boundary between Benin and Niger in the River Mekrou sector, namely:

“*Finds* that the boundary between the Republic of Benin and the Republic of Niger in the River Mekrou sector follows the median line of that river, from the intersection of the said line with the line of deepest soundings of the main navigable channel of the River Niger as far as the boundary of the Parties with Burkina Faso.”

I likewise agree with the reasoning underlying this finding.

3. Before turning to the reasons which have prevented me from agreeing with the Chamber’s first three findings, I should like, in my capacity as judge *ad hoc*, to recall Sir Elihu Lauterpacht’s pertinent analysis of the role of *ad hoc* judges, to which I entirely subscribe, in his separate opinion in the provisional measures phase of the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Order of 13 September 1993, where he stated *inter alia*:

“consistently with the duty of impartiality by which the *ad hoc* judge is bound, there is still something specific that distinguishes his role. He has, I believe, the special obligation to endeavour to ensure that, so far as is reasonable, every relevant argument in favour of the party that has appointed him has been fully appreciated in the course of collegial consideration and, ultimately, is reflected — though not necessarily accepted — in any separate or dissenting opinion . . .” (*I.C.J. Reports 1993*, p. 409, para. 6.)<sup>1</sup>

4. Before I address these three findings of the Chamber concerning the boundary in the River Niger sector and the attribution of the islands therein, and the course of the boundary on the Gaya-Malanville bridges, I consider that it is necessary to examine in detail the law applicable to the dispute, particularly since this involves the colonial heritage, which dates from almost 45 years ago.

<sup>1</sup> On the role of the judge *ad hoc*, Thomas Franck took a similar view in his dissenting opinion in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, *I.C.J. Reports 2002*, pp. 693-695.

## I. THE LAW APPLICABLE TO THE DISPUTE

5. In Article 6 of the Special Agreement of 15 June 2001 seising the Court of the matter, the Parties concurred on the law applicable:

“The rules and principles of international law applicable to the dispute are those set out in Article 38, paragraph 1, of the Statute of the International Court of Justice, including the principle of State succession to the boundaries inherited from colonization, that is to say, the intangibility of those boundaries.”

6. Under the terms of this provision the Chamber must seek to ascertain what the territorial title was, basing itself on the colonial heritage according to colonial law at the “critical date” of the passage of the two Parties to international sovereignty. However, inasmuch as the principle of *uti possidetis juris* is of a dispositive character, and the Parties are able to derogate from it by joint agreement, the Special Agreement does not preclude the Chamber from taking account of international obligations undertaken by the two independent States. Thus the Court is called upon to apply the rules and principles of international law set out in Article 38 of its Statute, that is to say, in particular, “international conventions whether general or particular, establishing rules expressly recognized by the contesting States”.

7. The Chamber must begin by examining the colonial legacy, namely the law promulgated by the colonial Power and the international obligations undertaken by it, as well as the manner in which public authority was exercised in the colonies, before turning to the norms of international law binding the two Parties following their accession to independence.

The logic of this approach is to determine the course of the boundary at the critical date and the territorial configuration of the two new States, before considering any subsequent obligations entered into by them which confirm or deny the colonial heritage (and to what extent they do so).

8. The Parties have thus designated as primary source a substantive body of law, the colonial heritage, which the Chamber must examine first, before considering whether there are other obligations which have become binding on the Parties following independence. Benin and Niger achieved independence on 1 and 3 August 1960 respectively, which means that the critical date for determination of the colonial heritage falls within this period, at the beginning of August 1960.

9. The critical date, which is essential for purposes of applying the *uti possidetis juris* principle, enables the Court to ascertain to what point in time it must refer in order to determine the colonial heritage and rule accordingly on the boundaries of the States in question. It is in particular in relation to that point in time that the Court must engage in its search for evidence, even if it may have to clarify that evidence by reference to material facts subsequent to independence:

“The Chamber may have regard also . . . to documentary evidence of post-independence *effectivités* when it considers they afford indications in respect of the . . . *uti possidetis juris* boundary . . .” (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, *Judgment, I.C.J. Reports 1992*, p. 399, para. 62.)

10. Given that these are two countries, Benin and Niger, which before 1960 were subject to the sovereignty of the same colonial Power, France, the Chamber’s task is to determine the administrative boundaries between the two colonies according to French colonial law at the critical date.

11. When international law refers to the colonial heritage, and hence to the state of the law governing that heritage at the time of independence, its aim in so doing is to stabilize the boundaries inherited from the colonial Power and thus prevent new States from becoming involved in disputes, or even destructive confrontations. Thus, as the Court emphasized in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case,

“[t]he essential requirement of stability in order to survive, to develop and gradually to consolidate their independence in all fields, has induced African States judiciously to consent to the respecting of colonial frontiers” (*Judgment, I.C.J. Reports 1986*, p. 567, para. 25).

12. It follows that the boundary transmitted to the new States is that which existed at “the critical dates” of their independence, and it is unnecessary to go into the various changes which the law may have undergone over the colonial period. As the Court stated in the case of the *Frontier Dispute (Burkina Faso/Republic of Mali)* cited above:

“International law — and consequently the principle of *uti possidetis* — applies to the new State (as a State) not with retroactive effect, but immediately and from that moment onwards. It applies to the State *as it is*, i.e., to the ‘photograph’ of the territorial situation then existing. The principle of *uti possidetis* freezes the territorial title; it stops the clock, but does not put back the hands.” (*I.C.J. Reports 1986*, p. 568, para. 30; emphasis in original.)

13. Thus it is in August 1960, the critical date, that the legal title or *effectivités* have to be determined in this dispute between Benin and Niger, and not by reference to a colonial practice some years or decades prior to that time, which may be regarded as a parenthesis that occurred within the colonial period and came to an end before independence.

14. Colonial law is not to be considered in itself as basis of the territorial title; it is simply “an element of fact” — confirmation of the title promulgated by the colonial Power, and hence evidence of the colonial heritage.

15. Nonetheless, in seeking to ascertain “the colonial fact” at the criti-

cal date, the Chamber will accord precedence to the legal title, as embodied in colonial law, over the *effectivité*, namely the fact that the disputed territory was administered in practice by a particular colonial authority.

The Court explained the relationship between legal title and *effectivité* in the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)*, from which I have already quoted:

“In the event that the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The *effectivités* can then play an essential role in showing how the title is interpreted in practice.”  
(*I.C.J. Reports 1986*, p. 587, para. 63.)

16. Certainly, in the total absence of any legal title, the judge must examine the state of the *effectivités*, which necessarily gives him a greater margin of discretion in determining the weight to be accorded to a particular administrative practice. These are *effectivités* “at the critical date”. Thus, if the practice of the administrative authorities underwent a clear change at that date, the Chamber must take account of such change as part of the colonial heritage; particularly if this new practice stems from an uncontested intention and will to act as exclusive holder of authority over the portion of territory in dispute.

17. However, where a legal title exists but leaves the course of the boundary undetermined, it is for the judge to consider to what extent the conduct of the administrative authorities at the critical date can provide an authentic interpretation of the title in question; that is to say, using the language of the Court which I have just cited, “how the title is interpreted in practice”. In this case the *effectivité* serves not to replace a defective title, but to complete an imprecise title.

## II. THE BOUNDARY IN THE RIVER NIGER SECTOR AND THE QUESTION OF THE OWNERSHIP OF THE ISLANDS IN THAT RIVER

18. In the River Niger sector, Benin has in my view demonstrated the existence of a legal title whose content and scope, at the critical date, enable the Chamber to place the boundary between the two States on the left bank of the River Niger (A).

Furthermore, in so far as the Chamber found that neither Party had any legal title, it ought to have accorded precedence at the critical date to the *effectivités* of Benin (B).

### A. The Legal Title Places the Boundary on the Left Bank

19. Before addressing the legal title proper, it is helpful briefly to recall the historical circumstances surrounding the creation by France of the

colonies of Benin (Dahomey) and Niger, which will throw light on the course of their boundaries.

20. What should be noted from this historical background is that the creation of the colony of Dahomey predated that of Niger<sup>2</sup>. In 1885, starting from its trading posts in the Bight of Benin, France attempted to reach the River Niger, and beyond it Sudan and its other possessions in Africa. The “colony of Dahomey and dependencies”, created by decree of 22 October 1894, was by *arrêté* of 11 August 1898 extended as far as the River Niger and beyond by incorporation of a new “*cercle* of Moyen-Niger”. This became possible following the conclusion on 21 October 1897 of a treaty of protection between France and the King of Dendi (whose kingdom extended to both sides of the Niger). Two years later, by an *arrêté* of 17 October 1899, the colony of Dahomey was incorporated into French West Africa (AOF).

21. The colony of Niger originates in an *arrêté* of the Governor of French West Africa of 23 July 1900 creating a third military territory:

“There is hereby created a third military territory, the administrative centre of which shall be established at Zinder. This territory encompasses the areas on the left bank of the Niger between Say and Lake Chad that were placed within the French sphere of influence by the Convention of 14 June 1898.” (Memorial of Niger, Annexes, Series B, B.12.)

22. Thus, while the boundaries of the future colony of Niger are not yet defined in this *arrêté*, there is one at least which will not change, namely the “left bank of the Niger”, or indeed the territory’s southern boundary.

23. The terms of this *arrêté* were confirmed by a decree of 22 December 1900, which created a military territory by detaching it from the “*cercle* of Moyen-Niger” (the former Dendi kingdom), which extended over both banks.

24. It was not until the decree of the President of the Republic of 13 October 1922 that the “autonomous colony” of Niger was created out of the “civil territory”, which had replaced the “military territory”.

25. It should be noted that a map of French West Africa published in 1922, shortly after the creation of the colony of Niger, clearly places the boundary on the left bank of the River Niger (Memorial of Niger, Annexes, Series D, map No. 28), thus confirming that this colony, created *inter alia* by detaching certain territories from Dahomey, started

---

<sup>2</sup> The Chamber recalls and emphasizes (paragraph 34 of the Judgment) that the colony of Dahomey “encompassed, in the region concerned by the recent dispute, territories situated on both banks of the River Niger”, but it draws no conclusion from this in relation to the delimitation and to the reference in the instruments of 1900 to “the left bank of the River Niger” as the boundary.

from a line constituted by the left bank of the river, the remainder of the river being regarded as an integral part of Dahomey.

26. Such is the historical background, which provides the key to an understanding of the subsequent development of the issue of the boundaries between the two colonies, and in particular the uncertainties by which it was characterized, at least until 1954, when there was a clear and agreed interpretation of the original founding instruments, adopted in 1900, that provided the basis for colonial policy in the region.

27. Thus, with French colonial continuity playing its part in the process, successive officials simply adopted the “course of the River Niger” as the boundary, particularly as the colonial administration had decided from the outset that the River Niger, from Niamey to Gaya, would be managed as a continuous whole (the section within Niger proper and the boundary section). Management of the river was delegated by the Governor-General of French West Africa first to the authorities of Niger and then, from 1934, to those of Dahomey.

28. It is thus hardly surprising that henceforth no one concerned themselves with the instruments of 1900, or with the fact that the administrative boundary between the two colonies had been fixed on the left bank of the river, since the sole major interest of any delimitation, namely management of navigation on the river, was in the hands of the central colonial authorities.

29. As regards the *modus vivendi* of 1914, which we know of only by “hearsay”, it would appear to derive from action by local officials, faced from 1914 with disputes between pastoralists over certain islands in the river. It is in any event clear that these local officials received no response from their superiors in regard to this purported “*modus vivendi*”, which sought to take as the boundary the centre of the river’s main channel and to attribute the islands accordingly. Given that this was in any case a local arrangement for the settlement of disputes between Peuhls from the two banks visiting the islands in the river, the *modus vivendi* in question, which was never approved by the competent authorities of the two colonies, could neither be relied on as a legal title nor create an *effectivité* on which one or other of the independent States might rely<sup>3</sup>. The concern of these local officials was to reach agreement regarding the local population for whom each of them was personally responsible and not to settle a dispute over borders and attribution of territory, which were manifestly matters outside their competence.

30. Administrators adopted the River Niger as the physical boundary

---

<sup>3</sup> In the case concerning the *Temple of Preah Vihear (Cambodia v. Thailand)*, the Court stated:

“[T]he acts concerned were exclusively the acts of local, provincial, authorities . . . [T]he Court finds it difficult to regard such local acts as overriding and negating the consistent and undeviating attitude of the central Siamese authorities to the frontier line as mapped.” (*Merits, Judgment, I.C.J. Reports 1962*, p. 30.)

between the two colonies, and were little concerned as to its precise location — on the bank, on the median line or at the thalweg. This is in all probability why the *arrêtés* of 7 December 1934 and 27 October 1938, “reorganizing the territorial divisions of the colony of Dahomey”, referred to the “course of the Niger” as the north-eastern boundary of the frontier *cercle* of Kandi.

However, these texts, whose primary concern was economic and administrative harmonization, took no account of the practice adopted since 1914 by local officials on both banks in order to settle disputes between Peuhls who grazed their herds on the islands.

31. Nevertheless, that practice did not suffice to prevent numerous disputes over grazing on the islands, which sometimes required intervention by security forces from one or other of the colonies. It was after one of these incidents, which had required intervention by Dahomeyan forces in order to restore order on an island opposite Gaya (Niger), that the head of that *subdivision* wrote to the Governor of Niger on 23 July 1954, through the *commandant* of the *cercle* of Dosso, asking for “all relevant information regarding the islands in the river belonging to Niger or to Dahomey” (Counter-Memorial of Niger, Annex C120).

32. At the same time, the *commandant* of the *cercle* of Kandi (Dahomey) wrote to the Governor of the colony, Mr. Bonfy, asking to whom the island located opposite Gaya belonged. In a letter of 1 July 1954, the latter stated that he could recall only the *arrêtés* of 1934 and 1938 and that these instruments were “silent on the question”, referring simply to the “course of the Niger”. However, he acknowledged that the problem of ownership of the islands had arisen a number of times, because

“all along the river’s banks there are constant population movements according to the seasons or to grazing conditions, or when the inhabitants seek to escape payment of income or livestock taxes or grazing charges” (letter No. 992/APA, Memorial of Benin, Annex 66).

For the first time, administrators recognized the ineffectiveness of the *modus vivendi* for settling disputes between Peuhls and raised with their superiors the question of the territorial attribution of the islands between the two colonies.

33. In reply to the head of the Gaya *subdivision*, Governor *ad interim* Raynier informed him by letter of 27 August 1954 that

“[t]he boundary of the Territory of Niger is constituted by the line of highest water, on the left bank of the river, from the village of Bandofay to the frontier of Nigeria [and that] [c]onsequently all the islands situated in this part of the river form part of the Territory of Dahomey” (letter No. 3722/APA, Memorial of Benin, Annex 67).

34. However, Governor Raynier did not invent this boundary on the left bank, particularly as it was unfavourable to the colony under his administration. In our view, he was simply taking account of the found-

ing texts of 1900 and of the circumstances in which the colony of Niger was created. That is why the Governor's letter only makes sense if read in conjunction with those texts, even though it makes no specific reference to them. The Governor of Niger could not have given his response lightly, knowing that his letter would have consequences on the ground.

35. Governor Raynier's letter of 27 August 1954 is not a simple communication internal to the colony of Niger, incapable of having any effect outside it. On 27 October, the *commandant* of the *cercle* of Dosso (Niger), to whom the letter was addressed, passed it on to his counterpart on the other side of the river, the *commandant* of the *cercle* of Kandi (Dahomey), explaining that "the territorial boundary . . . is entirely favourable to Dahomey" and asking him if he would have "any objection to these facilities [facilities of Gaya *subdivision* located on the island] being retained there, at least for the time being" (letter No. 576, Memorial of Benin, Annex 68).

36. The *commandant* of the *cercle* of Kandi, Mr. Daguzay, passed this information to the Governor of Dahomey in a letter of 12 November 1954, adding that he was "in favour of continuing to allow Niger to retain its facilities there".

37. This correspondence ends with a letter from the Governor of Dahomey to his counterpart in Niger, taking note of the fact that the boundary of the colony of Niger was located on the left bank of the river and declaring himself prepared not to dispute "the customary rights of the inhabitants of Niger over certain of these islands", or to raise the question of the existing "facilities", and requesting finally "references to the instruments or agreements determining those boundaries" (letter No. 2475/APA of 11 December 1954, Memorial of Benin, Annex 70).

Clearly, the Governor of Dahomey did not conduct any research going beyond the "imprecise" *arrêtés* of 1934 and 1938, whilst the Governor of Niger did not see fit to reply to his enquiry.

38. The fact remains that administrators accepted that the boundary lay on the left bank of the River Niger, thus going back to the founding texts of 1900. The letter of 1954 was written in a context of total uncertainty regarding the attribution as between the colonies of the various islands in the river, which was the only question really at issue in the determination of the boundary between the two colonies. Up to that time administrators had concerned themselves with the rights of the local population moving to and from the islands and not with the territorial rights of the two colonies.

39. It has been asked why Governor Raynier's letter of 27 August 1954 restricted itself to the boundary "between Bandofay and the frontier with Nigeria". In reality, it was precisely along this stretch of the river that the disputed islands were located. Moreover, it was when the land in dispute was of greater importance than navigation, and the course of the river was in any case unstable, that boundaries were placed on river banks, particularly during the colonial period.

Furthermore, during this same period we find "the boundary on the

bank” being defined as “the line of highest water”, excluding any claim to flooded banks. Benin has, moreover, never sought to use this definition of the boundary in order to lay claim to any portion of Niger’s territory on the left bank.

40. I consider that Raynier’s letter of 27 August 1954 constituted a reminder that Dahomey had title, as established in 1900, over the boundary portion of the river with Niger and over the islands situated therein. The reaction to this letter shows that there was no competing title in 1954 and right up to August 1960, the “critical date” for determination of the territorial dispute between Benin and Niger.

Thus, while the *modus vivendi* of 1914 could not constitute a legal title, the *arrêtés* of 1934 and 1938, by referring to the “course of the river”, without further precision, were not intended to fix the boundary between the two colonies, although they described its general course.

*B. The Effectivities of Benin Prevail at the Critical Date over Those of Niger, and Place the Boundary on the Left Bank*

41. Whilst the Chamber was unable to discover any “confirmation” of a boundary in the letter from Governor Raynier, since in its view no boundary was established in 1900, it nonetheless adds that it is, “however, aware of the fact that the letter of 27 August 1954 may have led to certain *effectivités*” (Judgment, paras. 65 and 67). The Chamber accordingly devoted a separate section of its reasoning (Judgment, paras. 89 *et seq.*) to “the *effectivités* in the period from 1954 until the critical date in 1960”, acknowledging that during this period “the claims of Dahomey to be entitled to administer the island of Lété became more frequent”.

42. It was thus by reference to the 1954 letter that administrators expressed with increasing clarity an “animus” or intention to act as exclusive holders of territorial authority over the islands in the river, and in particular the most important and significant one, Lété Island. That intention was demonstrated in particular in the levying of taxes in respect of grazing rights by officials from Dahomey and in the intervention of the colony’s security forces to restore order in the event of disputes or incidents.

The best evidence of this situation was furnished in 1964 by *Commandant* Daguzay, who was responsible for the administration of the *cercle* of Kandi:

“At that time [1954-1956], the Territory of Niger and the inhabitants of the *Subdivision* of Gaya certainly considered that the Island of l’ETE (*sic*) belonged to Dahomey; in order to demonstrate their friendship, the inhabitants of Malanville [Dahomey] permitted those of Gaya to use the island for grazing. There was thus no dispute at that time.” (Memorial of Benin, Annex 87.)

43. It has been established, in any event, that from 1954 onwards officials from Dahomey exercised territorial authority over Lété Island,

collecting taxes and intervening to restore order, as the Chamber itself notes (Judgment, paras. 90 *et seq.*).

The fact that, during the same period, certain prior practices were continued, such as the retention of Lété Island on the list of Niger's polling stations, can be explained by the slowness of the administration in adapting to the new situation resulting from the 1954 exchange of letters.

However, what counts in order to establish the *uti possidetis juris* is the "photograph of the territory", that is to say, the latest state of the *effectivités* and of how the status of the territory at issue was perceived. And those elements unquestionably tip the balance in favour of attribution of the islands, and in particular Lété Island, to Dahomey.

44. The Chamber is aware of the significant development that occurred in 1954 and of the changes in the *effectivités* during the period 1954-1960, acknowledging that "[t]he situation is less clear" than before (Judgment, para. 100). However, influenced by the practice arising from the so-called "*modus vivendi*" of 1914, the Chamber gives preference to the *effectivités* of Niger and finds that the boundary between the two colonies follows "the line of deepest soundings in the River Niger", without showing that such a boundary was retained and respected after 1954, or that this was still the case at the "critical date" in 1960.

45. True, as the Chamber recalls (Judgment, para. 102), the "concept of the intention and will to act as sovereign" cannot purely and simply be "transplanted" in order to assess the conduct of a colonial authority in its colonies, and thus the *effectivités*. However, that does not mean to say that this should not be done by adapting the concept to the situation of a colonial authority, for that is the only way to distinguish between acts of toleration (for example, in regard to grazing by the Peuhls) and the exercise of territorial authority.

46. There is no doubt that the coexistence of territorial rights on Lété Island with simple toleration of members of other groups was capable of creating tension and even degenerating into serious incidents, such as those which, during the night of 29 June 1960, led to the death of four Peuhls and the burning of several dwellings.

It was, as the Chamber notes (Judgment, para. 96), the *commandant* of the *cercle* of Kandi who was responsible for informing the Minister of the Interior of Dahomey that order had been restored, even though the police unit stationed on the island came from both colonies (which was justified by the fact that the clashes involved inhabitants from both banks). In any event, the Prime Minister of Dahomey, citing the 1954 letter, considered on 29 July 1960 that the territorial question had already been settled.

It is therefore apparent to me that, according to the territorial "photograph", the colonial heritage with respect to Lété Island was in favour of Dahomey.

47. I accordingly conclude that the boundary between Benin and Niger in the River Niger sector is situated on the left bank of the River Niger, on the basis of the legal title established in 1900 and clearly

reaffirmed in relations between the two colonies in 1954. Consequently, all the islands in the River Niger belong to Benin. Moreover, the *effectivités* on the islands from 1954 to 1960 also support such an attribution.

48. Turning to the question of the course of the boundary on the two bridges which cross the River Niger, I cannot agree with the Chamber's interpretation of the Special Agreement of 15 June 2001, when it considers that, since those bridges form part of the "River Niger sector", it is entitled to rule on the matter.

The Special Agreement must be interpreted *stricto sensu* as concerning the River Niger (waterway and banks, including the islands); if the Parties had intended the Chamber also to fix the course of the boundary on the bridges, they would have stipulated this as they did for the islands. I thus consider that the Chamber has exceeded its jurisdiction and the mandate entrusted to it by the Parties in fixing the boundary on the bridges which cross the river.

It is for the Parties to ensure that full effect is given to the Judgment, including with respect to co-operation on the river and the delimitation of the boundary on any present or future bridges crossing it.

49. It is true that neither Benin nor Niger is responsible for the colonial history that they inherited on independence. The two countries should be credited for having sought a judicial settlement of their border dispute and for having undertaken to pursue their co-operation in respect of the boundary rivers, the Niger and the Mekrou, whatever the terms of the Judgment rendered by the Chamber.

(Signed) Mohamed BENNOUNA.

---