



# INTERNATIONAL COURT OF JUSTICE

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Press Release

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## Frontier Dispute (Benin/Niger)

### The Chamber of the Court determines the course of the whole boundary between the two States

### The Chamber determines, on the basis of the course of the boundary, which of the islands located in the River Niger belong to Benin and which to Niger; it finds that the island of Lété Goungou belongs to Niger

THE HAGUE, 12 July 2005. The Chamber formed by the International Court of Justice (ICJ) to hear the Frontier Dispute (Benin/Niger) today gave Judgment in the case.

In its Judgment, which is final, not subject to appeal and binding on the Parties, the Chamber

“(1) By four votes to one,

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 Judgment];

(2) By four votes to one,

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 Judgment];

(3) By four votes to one,

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;

(4) Unanimously,

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.”

This is the second time a Chamber of the Court has been called upon to decide a dispute between African States brought before it by special agreement: in 1986 a Chamber of the Court settled the Frontier Dispute (Burkina Faso/Republic of Mali).

#### Reasoning of the Chamber

##### History of the proceedings, geographical and historical background, applicable law

In its Judgment the Chamber begins by setting out the procedural history of this case, which was submitted jointly by the Republic of Benin (formerly called Dahomey) and the Republic of Niger on 3 May 2002. The Chamber recalls that “the task assigned to [it] in the present case . . . is to determine the course of the whole boundary between Benin and Niger and to specify which State owns each of the islands in the River Niger sector, and in particular the island of Lété”, which is the largest of those islands. The Chamber then outlines the geographical context and historical background to the dispute between these two former colonies, which were part of French West Africa (AOF) until their accession to independence in August 1960.

Going on to address the law applicable to the dispute, the Chamber states that it includes the principle of the intangibility of the boundaries inherited from colonization or the principle of uti possidetis juris, whose “primary aim is . . . securing respect for the territorial boundaries at the moment when independence is achieved”. “On the basis of the principle of uti possidetis juris, the . . . Chamber must thus seek to determine, in [this] case, the boundary that was inherited from the French administration. The Parties agree that the date to be taken into account for this purpose are those of their respective independence namely 1 and 3 August 1960”.

##### Course of the boundary in the River Niger sector and the question of to which Party the islands in the river belong

In their Special Agreement, the Parties divided the disputed boundary into two sectors: the River Mekrou in the West and the River Niger in the East.

The Chamber begins by considering the course of the boundary in the River Niger sector. According to Benin, the boundary follows the left bank of the river, and hence all of the islands belong to it. Niger, on the other hand, contends that the boundary is constituted by the line of deepest soundings in the river and that the question of to which Party the islands belong depends on whether they are situated to the left or right of that line.

The Chamber first examines the various regulative or administrative acts invoked by the Parties in support of their respective claims and concludes that “neither of the Parties has succeeded in providing evidence of title on the basis of [those] acts during the colonial period”. In accordance with the principle that, where no legal title exists, the effectivité “must invariably be taken into consideration”, the Chamber then considers the evidence presented by the Parties regarding the effective exercise of authority on the ground during the colonial period, in order to

determine the course of the boundary in the River Niger sector and to indicate to which of the two States each of the islands in the river belongs, and in particular the island of Lété.

On the basis of this evidence in respect of the period 1914-1954, the Chamber concludes that there was a modus vivendi between the local authorities of Dahomey and Niger in the region concerned, whereby both parties regarded the main navigable channel of the river as constituting the intercolonial boundary. That modus vivendi was in particular based on a letter of 3 July 1914 from the commandant of the secteur of Gaya (Niger), administrateur adjoint Sadoux, to the commandant of the cercle of Moyen-Niger (Dahomey), to which was appended a list of the islands of the river with an indication of the colony to which each island belonged according to its position with respect to the main navigable channel. In that letter Sadoux explained that he had prepared this list for the purpose of “clearly determining when grazing permits [should] be issued to the Peuhls from both banks and delimiting the territorial jurisdiction of the indigenous tribunals in the two colonies”. The Chamber observes that, pursuant to this modus vivendi, Niger exercised its administrative authority over the islands located to the left of the main navigable channel (including the island of Lété) and Dahomey over those located to the right of that channel. The Chamber notes that “the entitlement of Niger to administer the island of Lété was sporadically called into question for practical reasons but was neither legally nor factually contested”.

With respect to the islands located opposite the town of Gaya (Niger), the Chamber notes that, on the basis of the modus vivendi established by the 1914 Sadoux letter, these islands were considered to fall under the jurisdiction of Dahomey. It therefore follows, in the view of the Chamber, that in this sector of the river the boundary was regarded as passing to the left of these three islands.

The Chamber finds that “the situation is less clear in the period between 1954 and 1960”. It adds, however, that, on the basis of the evidence submitted by the Parties, it “cannot conclude that the administration of the island of Lété, which before 1954 was undoubtedly carried out by Niger, was effectively transferred to or taken over by Dahomey”.

The Chamber concludes from the foregoing that the boundary between Benin and Niger in this sector follows the main navigable channel of the River Niger as it existed at the dates of independence, it being understood that, in the vicinity of the three islands opposite Gaya, the boundary passes to the left of these islands. Consequently, Benin has title to the islands situated between the boundary thus defined and the right bank of the river and Niger has title to the islands between that boundary and the left bank of the river.

In order to determine the precise location of the boundary line in the main navigable channel, namely the line of deepest soundings, as it existed at the dates of independence, the Chamber bases itself on a report prepared in 1970, at the request of the Governments of Dahomey, Mali, Niger and Nigeria, by the firm, Netherlands Engineering Consultants (NEDECO). The Chamber considers that this report “provides the most useful information on the situation at the critical date”. Except in the case of the islands opposite Gaya, the boundary between the Parties therefore follows the line of deepest soundings of the main navigable channel of the River Niger as it appears in the 1970 NEDECO report, from the intersection of this line with the median line of the River Mekrou until its intersection with the boundary of the Parties with Nigeria. In the Judgment the Chamber specifies the coordinates of 154 points through which the boundary between Benin and Niger passes in this sector; the boundary line is also indicated on a sketch map appended to the Judgment for illustrative purposes.

In paragraph 117 of the Judgment the Chamber determines to which Party each of the 25 islands of the river belongs, on the basis of the boundary line as described above. It states inter alia that Lété Goungou belongs to Niger. The Chamber further observes that this determination is without prejudice to any private law rights in respect of those islands.

Finally, the Chamber concludes that the Special Agreement also conferred it with jurisdiction to determine the line of the boundary on the bridges between Gaya and Malanville. It finds that the boundary on those structures follows the course of the boundary in the river.

#### Course of the boundary in the River Mekrou sector

In the second part of its Judgment, the Chamber deals with the western section of the boundary between Benin and Niger. According to Benin, the boundary in this sector commences from the left bank of the River Niger, then follows the median line of the River Mekrou as far as the Parties' boundary with Burkina Faso, whereas Niger claims that the boundary consists of a straight line in two parts, which starts from the confluence of the River Mekrou with the Niger, but then leaves the river and runs in a south-westerly direction until it reaches a differently defined point on the Parties' boundary with Burkina Faso.

The Chamber examines the various documents relied on by the Parties in support of their respective claims. It concludes that, notwithstanding the existence of a legal title of 1907 relied on by Niger in support of the boundary which it claims, it is clear that, "at least from 1927 onwards, the competent administrative authorities regarded the course of the Mekrou as the intercolonial boundary separating Dahomey from Niger, that those authorities reflected that boundary in the successive instruments promulgated by them after 1927, some of which expressly indicated that boundary, whilst others necessarily implied it, and that this was the state of the law at the dates of independence in August 1960". The Chamber concludes that in the River Mekrou sector the boundary between Benin and Niger is constituted by the median line of that river.

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#### Composition of the Chamber

The Chamber was composed as follows: Judge Ranjeva, Vice-President of the Court, President of the Chamber; Judges Kooijmans, Abraham; Judges ad hoc Bedjaoui, Bennouna; Registrar Couvreur.

Judge ad hoc Bennouna appends a dissenting opinion to the Judgment.

This Chamber is one of six Chambers formed by the Court pursuant to Article 26, paragraph 2, of the Statute and Article 17 of the Rules of Court. Benin and Niger agreed that their written pleadings and oral argument would be presented in the French language (Article 5 of the Special Agreement).

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A summary of the Judgment appears in the document entitled "Summary No. 2005/2", to which a summary of the dissenting opinion appended to the Judgment is annexed. The present press release, the summary and the full text of the Judgment also appear on the Court's website ([www.icj-cij.org](http://www.icj-cij.org)) under the headings "What's new" and "Decisions".

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