

**CASE CONCERNING THE TERRITORIAL DISPUTE
(LIBYAN ARAB JAMAHIRIYA/CHAD)**

Judgment of 3 February 1994

In its Judgment in the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), the Court found that the boundary between Libya and Chad is defined by the Treaty of Friendship and Good Neighbourliness concluded on 10 August 1955 between France and Libya, and determined the course of that boundary (cf. sketch-map No. 4).

The Court was composed as follows: President Sir Robert Jennings; Vice-President Oda; Judges Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Ajibola, Herczegh; Judges *ad hoc* Sette-Camara, Abi-Saab; Registrar Valencia-Ospina.

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The full text of the operative paragraph is as follows:

“77. For these reasons,

THE COURT,

By 16 votes to 1,

(1) *Finds* that the boundary between the Great Socialist People’s Libyan Arab Jamahiriya and the Republic of Chad is defined by the Treaty of Friendship and Good Neighbourliness concluded on 10 August 1955 between the French Republic and the United Kingdom of Libya;

(2) *Finds* that the course of that boundary is as follows:

From the point of intersection of the 24th meridian east with the parallel 19°30’ of latitude north, a straight line to the point of intersection of the Tropic of Cancer with the 16th meridian east; and from that point a straight line to the point of intersection of the 15th meridian east and the parallel 23° of latitude north;

these lines are indicated, for the purpose of illustration, on sketch-map No. 4 on page 39 of this Judgment.

IN FAVOUR: President Sir Robert Jennings; Vice-President Oda; Judges Ago, Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Ajibola, Herczegh; Judge *ad hoc* Abi-Saab;

AGAINST: Judge *ad hoc* Sette-Camara.”

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Judge Ago appended a declaration to the Judgment of the Court.

Judges Shahabuddeen and Ajibola appended separate opinions to the Judgment of the Court.

Judge *ad hoc* Sette-Camara appended a dissenting opinion to the Judgment of the Court.

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Review of the proceedings and statement of claims
(paras. 1-21)

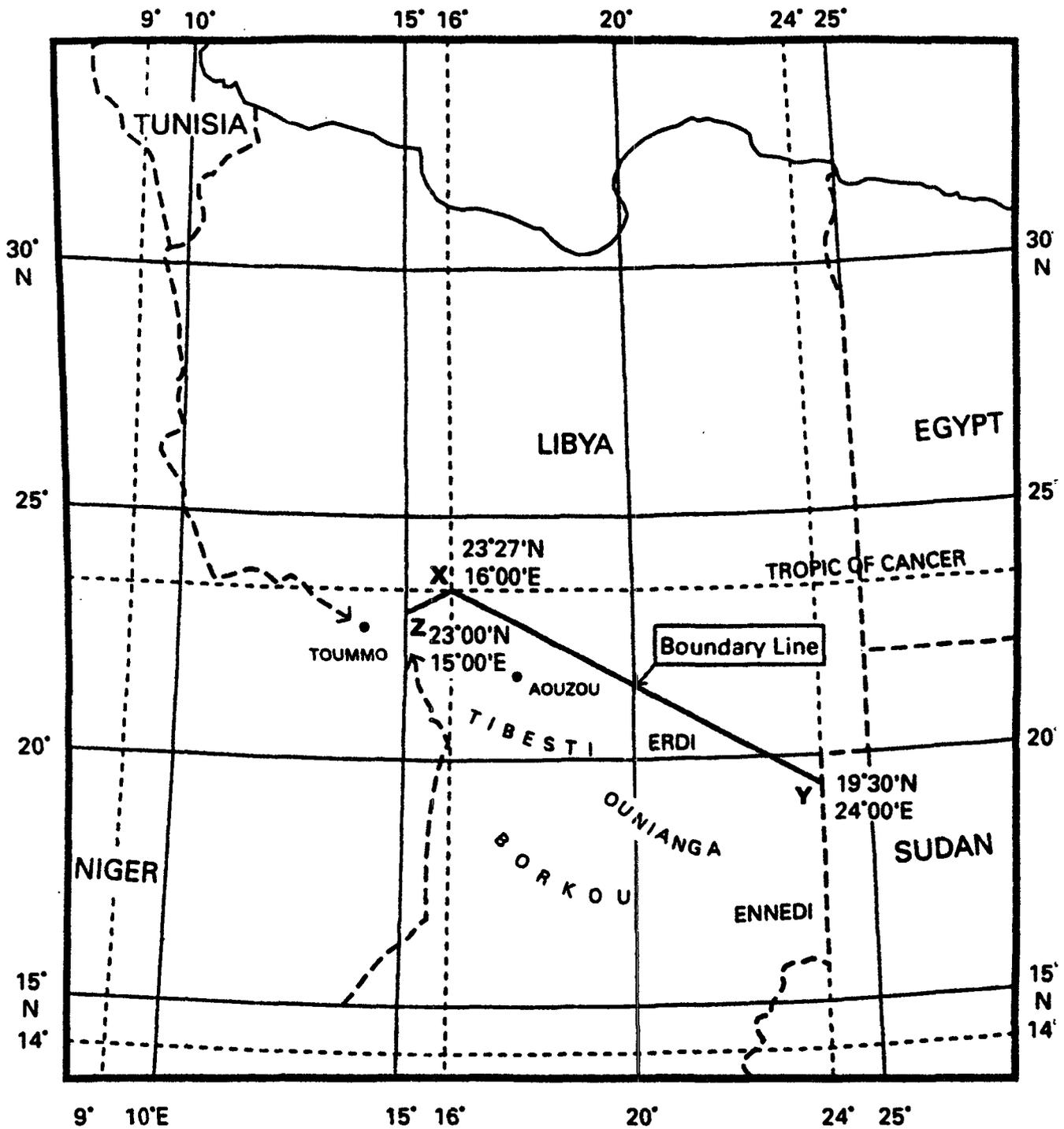
The Court outlines the successive stages of the proceedings as from the time the case was brought before it (paras. 1-16) and sets out the submissions of the Parties (paras. 17-21). It recalls that the proceedings had been instituted by two successive notifications of the Special Agreement constituted by the 1989 “Framework Agreement [Accord-Cadre] on the Peaceful Settlement of the Territorial Dispute between the Great Socialist People’s Libyan Arab Jamahiriya and the Republic of Chad”—the notification filed by Libya on 31 August 1990 and the communication from Chad filed on 3 September 1990, read in conjunction with the letter from the Agent of Chad of 20 September 1990.

In the light of the Parties’ communications to the Court, and their submissions, the Court observes that Libya proceeds on the basis that there is no existing boundary, and asks the Court to determine one, while Chad proceeds on the basis that there is an existing boundary, and asks the Court to declare what that boundary is. Libya considers that the case concerns a dispute regarding attribution of territory, while in Chad’s view it concerns a dispute over the location of a boundary.

The Court then refers to the lines claimed by Chad and by Libya, as illustrated in the attached sketch-map No. 1. Libya’s claim is on the basis of a coalescence of rights and titles of the indigenous inhabitants, the Senoussi Order, the Ottoman Empire, Italy and Libya itself; and that of Chad is on the basis of a Treaty of Friendship and Good Neighbourliness concluded by France and Libya on 10 August 1955, or, alternatively, on French *effectivités*, either in relation to, or independently of, the provisions of earlier treaties.

The 1955 Treaty of Friendship and Good Neighbourliness between France and Libya
(paras. 23-56)

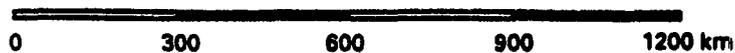
Having drawn attention to the long and complex historical background to the dispute and having enumerated a number of conventional instruments reflecting that history and which appear to be relevant, the Court observes that it is recognized by both Parties that the 1955 Treaty of Friendship and Good Neighbourliness between France and Libya is the logical starting point for consideration of the issues before the Court. Neither Party questions the validity of the 1955 Treaty, nor does Libya question Chad’s right to invoke against Libya any such provisions thereof as relate to the frontiers of Chad. The 1955 Treaty, a complex treaty, comprised, in addition to the Treaty itself, four appended Conventions and eight annexes; it dealt with a broad range of issues concerning the future relationship between the two parties. It was provided by article 9 of the Treaty that the Conventions and annexes appended to it formed an integral part of the Treaty. One of the matters specifically addressed was the question of frontiers, dealt with in article 3 and annex I.

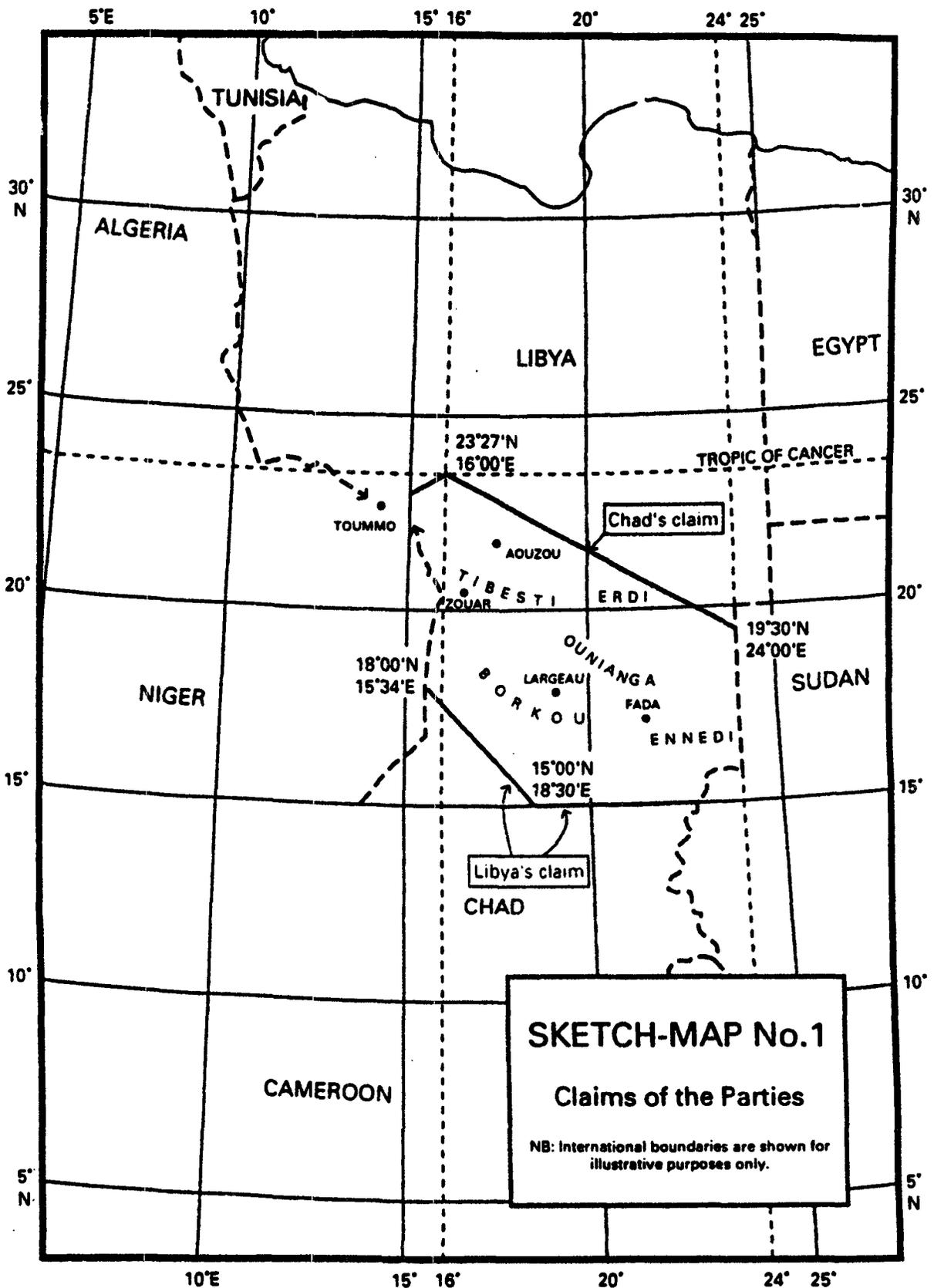


SKETCH-MAP No.4

**Boundary Line
determined by the
Court's Judgment**

**NB: International boundaries indicated
by pecked lines are shown for
illustrative purposes only.**





The Court then examines article 3 of the 1955 Treaty, together with the annex to which that article refers, in order to decide whether or not that Treaty resulted in a conventional boundary between the territories of the Parties. It observes that if the 1955 Treaty did result in a boundary, this furnishes the answer to the issues raised by the Parties: it would be a response at one and the same time to the Libyan request to determine the limits of the respective territories of the Parties and to the request of Chad to determine the course of the frontier.

Article 3 of the Treaty begins as follows:

“The two High Contracting Parties recognize that the frontiers between the territories of Tunisia, Algeria, French West Africa and French Equatorial Africa on the one hand, and the territory of Libya on the other, are those that result from the international instruments in force on the date of the constitution of the United Kingdom of Libya as listed in the attached Exchange of Letters (Ann. I).”

Annex I to the Treaty comprises an exchange of letters which, after quoting article 3, begins as follows:

“The reference is to [*Il s’agit de*] the following texts:

- the Franco-British Convention of 14 June 1898;
- the Declaration completing the same, of 21 March 1899;
- the Franco-Italian Agreements of 1 November 1902;
- the Convention between the French Republic and the Sublime Porte, of 12 May 1910;
- the Franco-British Convention of 8 September 1919;
- the Franco-Italian Arrangement of 12 September 1919.”

The Court recalls that, in accordance with the rules of general international law, reflected in article 31 of the 1969 Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Interpretation must be based above all upon the text of the treaty. As a supplementary measure, recourse may be had to means of interpretation such as the preparatory work of the treaty and the circumstances of its conclusion.

According to article 3 of the 1955 Treaty, the parties “recognize [*reconnaissent*] that the frontiers . . . are those that result” from certain international instruments. The word “recognize” used in the Treaty indicates that a legal obligation is undertaken. To recognize a frontier is essentially to “accept” that frontier, that is, to draw legal consequences from its existence, to respect it and to renounce the right to contest it in future.

In the view of the Court, the terms of the Treaty signified that the parties thereby recognized complete frontiers between their respective territories as resulting from the combined effect of all the instruments listed in annex I; no relevant frontier was to be left undefined and no instrument listed in annex I was superfluous. It would be incompatible with a recognition couched in such terms to contend, as Libya has done, that only some of the specified instruments contributed to the definition of the frontier, or that a particular frontier remained unsettled. So to contend would be to deprive article 3 of the Treaty and annex I of their ordinary meaning. By entering into the Treaty, the parties recognized the frontiers to which the text of the Treaty referred; the task of the Court is thus to determine the exact content of the undertaking entered into.

The fixing of a frontier depends on the will of the sovereign States directly concerned. There is nothing to prevent the parties from deciding by mutual agreement to consider a certain line as a frontier, whatever the previous status of that line. If it was already a territorial boundary, it is confirmed purely and simply. If it was not previously a territorial boundary, the agreement of the parties to “recognize” it as such invests it with a legal force which it had previously lacked. International conventions and case-law evidence a variety of ways in which such recognition can be expressed. The fact that article 3 of the Treaty specifies that the frontiers recognized are “those that result from the international instruments” defined in annex I means that all of the frontiers result from those instruments. Any other construction would be contrary to the actual terms of article 3 and would render completely ineffective the reference to one or other of those instruments in annex I. Article 3 of the 1955 Treaty 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; Libya contends that the instruments mentioned in annex I and relied on by Chad were no longer in force at the relevant date. The Court is unable to accept these contentions. Article 3 does not refer merely to the international instruments “*en vigueur*” (in force) on the date of the constitution of the United Kingdom of Libya, but to the international instruments “*en vigueur*” on that date “*tels qu’ils sont définis*” (as listed) in annex I. To draw up a list of governing instruments while leaving to subsequent scrutiny the question whether they were in force would have been pointless. It is clear to the Court that the parties agreed to consider the instruments listed as being in force for the purposes of article 3, since otherwise they would not have referred to them in the annex. The text of article 3 clearly conveys the intention of the parties to reach a definitive settlement of the question of their common frontiers. Article 3 and annex I are intended to define frontiers by reference to legal instruments which would yield the course of such frontiers. Any other construction would be contrary to one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence, namely, that of effectiveness.

The object and purpose of the Treaty as stated in the preamble confirm the interpretation of the Treaty given above, inasmuch as that object and purpose led naturally to the definition of the territory of Libya, and thus the definition of its boundaries.

The conclusions which the Court has reached are further reinforced by an examination of the context of the Treaty, and, in particular, of the Convention of Good Neighbourliness between France and Libya, concluded between the parties at the same time as the Treaty, as well as by the *travaux préparatoires*.

The frontier line (paras. 57-65)

Having concluded that the contracting parties wished, by the 1955 Treaty, and particularly by its article 3, to define their common frontier, the Court examines what is the frontier between Libya and Chad which results from the international instruments listed in annex I.

(a) *To the east of the line of 16° longitude*
(paras. 58-60)

The Franco-British Declaration of 1899, which complements the Convention of 1898, defines a line limiting the French zone (or sphere of influence) to the north-east in the direction of Egypt and the Nile Valley, already under British control. It provides in paragraph 3 as follows:

“It is understood, in principle, that to the north of the 15th parallel the French zone shall be limited to the north-east and east by a line which shall start from the point of intersection of the Tropic of Cancer with the 16th degree of longitude east of Greenwich (13°40′ east of Paris), shall run thence to the south-east until it meets the 24th degree of longitude east of Greenwich (21°40′ east of Paris), and shall then follow the 24th degree until it meets, to the north of the 15th parallel of latitude, the frontier of Darfour as it shall eventually be fixed.”

Different interpretations of this text were possible, since the point of intersection of the line with the 24th degree of longitude east was not specified, and the original text of the Declaration was not accompanied by a map showing the course of the line agreed. However, a few days after the adoption of that Declaration, the French authorities published its text in a *Livre jaune* including a map. That map showed the line as running not directly south-east, but rather in an east-south-east direction, so as to terminate at approximately the intersection of the 24° meridian east with the parallel 19° of latitude north.

For the purposes of the present Judgment, the question of the position of the limit of the French zone may be regarded as resolved by the Convention of 8 September 1919 signed at Paris between Great Britain and France, supplementary to the 1899 Declaration.

Its concluding paragraph provided:

“It is understood that nothing in this Convention prejudices the interpretation of the Declaration of the 21st March, 1899, according to which the words in Article 3 ‘ . . . shall run thence to the south-east until it meets the 24th degree of longitude east of Greenwich (21°40′ east of Paris)’ are accepted as meaning ‘ . . . shall run thence in a south-easterly direction until it meets the 24th degree of longitude east of Greenwich at the intersection of that degree of longitude with parallel 19°30′ degrees of latitude’.”

The 1919 Convention presents this line as an interpretation of the Declaration of 1899; in the view of the Court, for the purposes of the present Judgment, there is no reason to categorize it either as a confirmation or as a modification of the Declaration. Inasmuch as the two States parties to the Convention are those that concluded the Declaration of 1899, there can be no doubt that the “interpretation” in question constituted, from 1919 onwards, and as between them, the correct and binding interpretation of the Declaration of 1899. It is opposable to Libya by virtue of the 1955 Treaty. For these reasons, the Court concludes that the line described in the 1919 Convention represents the frontier between Chad and Libya to the east of the line of 16° longitude.

(b) *To the west of the line of 16° longitude*
(paras. 61-62)

The Franco-Italian Agreements (Exchange of Letters) of 1 November 1902 state that

“the limit to French expansion in North Africa, as referred to in the above-mentioned letter . . . dated 14 December 1900, is to be taken as corresponding to the frontier of Tripolitania as shown on the map annexed to the Declaration of 21 March 1899”.

The map referred to could only be the map in the *Livre jaune*, which showed a pecked line indicating the frontier of Tripolitania. That line must therefore be examined by the Court.

(c) *The complete line*
(paras. 63-65)

It is clear that the eastern end-point of the frontier will lie on the meridian 24° east, which is here the boundary of the Sudan. To the west, the Court is not asked to determine the tripoint Libya-Niger-Chad; Chad in its submissions merely asks the Court to declare the course of the frontier “as far as the fifteenth degree east of Greenwich”. In any event, the Court’s decision in this respect, as in the *Frontier Dispute* case, “will . . . not be opposable to Niger as regards the course of that country’s frontiers” (*I.C.J. Reports 1986*, p. 580, para. 50). Between 24° and 16° east of Greenwich, the line is determined by the Anglo-French Convention of 8 September 1919: i.e., the boundary is a straight line from the point of intersection of the meridian 24° east with the parallel 19°30′ north to the point of intersection of the meridian 16° east with the Tropic of Cancer. From the latter point, the line is determined by the Franco-Italian exchange of letters of 1 November 1902, by reference to the *Livre jaune* map: i.e., this line, as shown on that map, runs towards a point immediately to the south of Toummo; before it reaches that point, however, it crosses the meridian 15° east, at some point on which, from 1930 onward, was situated the commencement of the boundary between French West Africa and French Equatorial Africa. This line is confirmed by references in the Particular Convention annexed to the 1955 Treaty to a place called Muri Idie.

Chad, which in its submissions asks the Court to define the frontier as far west as the 15° meridian, has not defined the point at which in its contention the frontier intersects that meridian. Nor have the Parties indicated to the Court the exact coordinates of Toummo in Libya. However, on the basis of the information available, and in particular the maps produced by the Parties, the Court has come to the conclusion that the line of the *Livre jaune* map crosses the 15° meridian east at the point of intersection of that meridian with the parallel 23° of north latitude. In this sector, the frontier is thus constituted by a straight line from the latter point to the point of intersection of the meridian 16° east with the Tropic of Cancer.

Subsequent attitudes of the Parties
(paras. 66-71)

Having concluded that a frontier resulted from the 1955 Treaty, and having established where that frontier lay, the Court considers the subsequent attitudes of the Parties to the question of frontiers. It finds that no subsequent agreement, either between France and Libya, or between Chad and Libya, has called in question the frontier in this region deriving from the 1955 Treaty. On the contrary, if one considers treaties subsequent to the entry into force of the 1955 Treaty, there is support for the proposition that after 1955 the existence of a determined frontier was accepted and acted upon by the Parties.

The Court then examines the attitudes of the Parties, subsequent to the 1955 Treaty, on occasions when matters pertinent to the frontiers came up before international forums, and notes the consistency of Chad's conduct in relation to the location of its boundary.

Permanent boundary established
(paras. 72-73)

The Court finally states that, in its view, the 1955 Treaty, notwithstanding the provisions in article 11 to the effect that "The present Treaty is concluded for a period of 20 years", and for unilateral termination of the Treaty, must be taken to have determined a permanent frontier. There is nothing in the 1955 Treaty to indicate that the boundary agreed was to be provisional or temporary; on the contrary, it bears all the hallmarks of finality. The establishment of this boundary is a fact which, from the outset, has had a legal life of its own, independently of the fate of the 1955 Treaty. Once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries. A boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. When a boundary has been the subject of agreement, the continued existence of that boundary is not dependent upon the continuing life of the treaty under which the boundary is agreed.

Declaration of Judge Ago

My own view is still the conviction that, at the time of the independence of the new State of Libya, the southern frontier of that country with the French possessions of West Africa and Equatorial Africa, between Toummo and the frontier of the Anglo-Egyptian Sudan, had not yet been the subject of a treaty delimitation between the parties then directly concerned. I recognize, however, that by concluding the Treaty of 10 August 1955 with France, the Government of Libya, which was primarily interested in other aspects of the body of questions to be settled, implicitly recognized, with regard to that southern frontier, the conclusions which the French Government deduced from the instruments mentioned in annex I to that Treaty.

It is for that reason that I have decided to add my vote to those of my colleagues who have pronounced in favour of the Judgment.

Separate opinion of Judge Shahabuddeen

In his separate opinion, Judge Shahabuddeen observed that the case involved a number of important issues relating to the state of the international community a century ago. Those issues were, however, foreclosed by the answer which the Court had returned to what both Parties agreed was the threshold question, that is to say, whether the boundary claimed by Chad was supported by the 1955 Franco-Libyan Treaty. The answer given by the Court resulted inevitably from the application of the normal principles of interpretation to the provisions of the Treaty. He did not consider that it was either relevant or necessary to invoke the principle of stability of boundaries in support of that answer. The issue before the Court was whether there was any treaty in existence defining the boundary. In his opinion, the principle of stability of boundaries did not assist in answering that question.

Separate opinion of Judge Ajibola

In his separate opinion, Judge Ajibola generally supports the view taken by the Court in its Judgment that the Treaty of Friendship and Good Neighbourliness between the French Republic and Libya of 10 August 1955 in effect determines the boundary dispute between the latter and Chad.

He further deals with some aspects of the mode of interpretation of the 1955 Treaty, concentrating in particular upon such questions as the object and purpose of the Treaty, good faith and the subsequent acts of the Parties.

Judge Ajibola also examines the claims and submissions of the Parties and particularly those of Libya in relation to what is termed "litigation and strategy" on the issue of the "borderlands".

Finally, he advances two other extrinsic but supplementary grounds of support for the Judgment of the Court, the first being based on estoppel, acquiescence, preclusion and recognition, and the second based on the principle of *uti possidetis*.

Dissenting opinion of Judge ad hoc Sette-Camara

In his dissenting opinion, Judge Sette-Camara observes that the borderlands were never a *terra nullius* open to occupation according to international law. The land was occupied by local indigenous tribes, confederations of tribes, often organized under the Senoussi Order. Furthermore, it was under the distant and laxly exercised sovereignty of the Ottoman Empire, which marked its presence by delegation of authority to the local people.

The great European Powers were engrossed with the task of carving up Africa but they did not go beyond the distribution of spheres of influence.

French presence in the borderlands did not occur before 1913, after the Treaty of Ouchy, which put an end to the war between Italy and the Ottoman Empire. Historic title over the region belonged first to the indigenous peoples, and eventually passed to the Ottoman Empire, and later to Italy.

The frictions between the colonial Powers' ambitions led to the Fashoda incident, which triggered the negotiations leading to the 1899 Declaration, which established a division of spheres of influence and limits to the French expansion northward and eastward.

In fact, in the present case there were two key questions: (1) Is there, or has there ever been, a conventional boundary between Libya and Chad east of Toummo? (2) Are the Conventions listed in annex I of the 1955 Franco-Libyan Treaty of Friendship and Good Neighbourliness actually boundary treaties?

As to the first question, Judge Sette-Camara is convinced that there is not now nor has there ever been a boundary line, short of the line of the 1935 Laval-Mussolini Treaty which was not ratified.

As to the second question, Judge Sette-Camara believes that none of the treaties listed in annex I qualifies as a boundary treaty: the 1899 Declaration divided spheres of influence only. The 1902 Barrère-Prinetti Treaty, a secret exchange of letters concluded by France and Italy, dealt with reciprocal respect for interests of France in Morocco and Italian ambitions in Tripolitania and Cyrenaica and intruded into territory under the sovereignty of the Ottoman Empire. The 1919 Convention also divided spheres of influence and dealt mainly with the Wadai-Darfour frontier.

As to the 1955 Treaty, the rock of the Chadian argument, its article 11 established an agreed duration of 20 years. The Chadian Counter-Memorial itself recognized that it lapsed in 1975.

The question of *effectivités* is to be disregarded, since there is no evidence on the point provided by the Parties.

In a series of treaties concluded since 1972 by the two countries, there is no reference to the existence of a further dispute.

Judge Sette-Camara believes that the titles to the territory asserted by Libya are valid. Neither France nor Chad presented sounder titles.

In the opinion of Judge Sette-Camara, it is regrettable that neither the Court nor the Parties explored the compromise solution that would have been the line of United Nations map No. 241, which is close to the 1935 line but not identical to it, or reverted to the 1899 strict south-east line, which was at the origin of the dispute and which continues to appear on very recent maps, for instance, the 1988 OAU map attached to its Subcommittee's report on the Libya-Chad dispute.

Both lines would have offered the advantage of dividing the Tibesti massif between the two countries, which both claim to be essential for their defence.

