

Non corrigé
Uncorrected

Traduction
Translation

CR 2012/21 (traduction)

CR 2012/21 (translation)

Mardi 9 octobre 2012 à 10 heures

Tuesday 9 October 2012 at 10 a.m.

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The PRESIDENT: Please be seated. The sitting is open. Judge Donoghue has informed me that she is unable to be present on the Bench today for reasons duly communicated to me. We shall hear the continuation of the first round of oral argument of Burkina Faso, and I give the floor to the counsel and advocate of Burkina Faso, Professor Jean-Marc Thouvenin. You have the floor, Sir.

Mr. THOUVENIN: Thank you, Mr. President.

**THE SAY SECTOR — FROM THE SIRBA AT BOSSÉBANGOU
TO THE BOTOU BEND**

1. Mr. President, Members of the Court, yesterday Burkina Faso presented the course of the boundary from the Tong-Tong astronomic marker to the River Sirba at Bossébangou. My task this morning is to continue that presentation of the frontier line from the River Sirba at Bossébangou to the point which is termed for convenience “the beginning of the Botou bend”. I will first endeavour to demonstrate that there is no justification for the line claimed by Niger, before presenting the frontier as it results from the applicable texts.

I. The line claimed by Niger

2. Niger’s position, as has already been explained in detail, leads it to disregard systematically both the text of the Erratum and the line shown on the 1960 map, in favour of the line shown on various maps and sketch-maps which the States have not accepted “by joint agreement of the Parties” for the determination of their common frontier. Essentially, it emerges that, in Niger’s view, the frontier in the Say sector corresponds to alleged “traditional” boundaries of *cercles*, and not to the line described by the 1927 Erratum.

3. This is in clear contradiction with the 1987 Agreement and the Special Agreement bringing the case before the Court. I shall not dwell on that; no more, Mr. President, than I shall dwell on the legal inconsistency of the thesis of alleged “traditional boundaries”, which has already been demonstrated by Professors Pellet and Forteau, or on the impossibility of locating those alleged boundaries, since Niger’s Counter-Memorial adds nothing in this regard to its first written pleading, which Burkina has already refuted. On this point, I would refer the Court to Burkina’s

11 Counter-Memorial¹. I shall therefore confine myself here to replying to the two arguments put forward by Niger concerning the section of the frontier which runs in a straight line from the intersection of the River Sirba with the Say parallel to the beginning of the Botou bend. I would recall that the Erratum describes this section of the frontier as follows: “From [the intersection of the River Sirba with the Say parallel] the frontier, following an east-south-east direction, continues in a straight line up to a point located 1,200 m to the west of the village of Tchenguiliba.”

4. According to Niger’s first argument, this line established by the Erratum has “no basis in the situation prior to the adoption of the Erratum and was never confirmed in the subsequent practice”². It argues, on the contrary, that there are numerous representations of the boundary in this area, dating from both before and after 1927, which show not one straight line but a line divided into two segments³. This argument will not detain us for long.

5. Firstly, it is inadmissible because it is based on documents, in particular sketch-maps, which have not been accepted by joint agreement of the Parties under the terms of the 1987 Agreement. Moreover, even if it were possible to rely on these documents for the purposes of determining the course of the boundary, they could only be used to deal with any instances where the Erratum might not suffice. However, the Erratum’s description of this section, which is formed of one straight line, cannot be said not to suffice. Even Niger acknowledges this⁴.

6. Secondly, it is erroneous in law, since even supposing that an informal “boundary” existed in this area before or after 1927, such a boundary would reflect *effectivités* which cannot take precedence over the legal title, the Erratum. There is impeccable case law to confirm this⁵.

7. Furthermore, supposing that the said *effectivités* were established, those which date from the period between 1932 and 1947 would also have no legal effect, since, as Professor Alain Pellet reminded us yesterday, after being dissolved in 1932, Upper Volta was reconstituted in 1947 within its 1932 boundaries. Consequently, anything which might have affected the course of the boundary between 1932 and 1947 must be disregarded. Yet the post-1927 maps, which Niger cites to justify

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¹CMBF, pp. 115-123, paras. 4.30-4.44.

²CMN, p. 92, para. 2.2.21.

³MN, p. 116, para. 7.35.

⁴CMN, p. 92, para. 2.2.21.

⁵MBF, pp. 59-61, paras. 2.14-2.19.

the line that it claims, date from this precise period⁶, whether it be the road map of 1934⁷ or the General Political and Administrative Map of 1939⁸. As for the sketch-maps on which our opponent believes that it is possible to rely, they are characterized by the fact that they are either not dated or were drawn up during the period between 1932 and 1947⁹. None of them therefore has any legal significance and none can take precedence over the line as established by the Erratum.

8. Niger presents its second argument as being “even more crucial” than the first — which, as we have just seen, is not at all crucial or even relevant. According to Niger, “for over fifty years now, the two States have agreed to consider that their common frontier in this sector passes through a point located on the road between Niamey and Ouagadougou, 14 kms from Mossipaga (Niger) and 17 kms from Kantchari (Burkina Faso)”¹⁰. Consequently, it argues that the course of the boundary between the point where the River Sirba intersects with the Say parallel and the beginning of the Botou bend does not follow one straight line, but a broken line passing through that point.

9. In support of this statement, Niger’s Counter-Memorial refers, by way of justification, to paragraph 7.38 of its Memorial. Here Niger writes, firstly, that the frontier point in question is undisputed between the two States and, secondly, that it would appear “always to have been clearly accepted by Burkina Faso”¹¹. The same statements are expanded in the Counter-Memorial, where Niger states that the existence of this frontier point has “never been disputed by the Parties”¹² and, furthermore, that a “subsequent agreement [was] reached by the two States on this point [prior to independence]” and that, in concluding that agreement, the latter “deliberately resorted to another boundary line” from the one indicated by the Erratum¹³. Niger concludes that this “subsequent agreement takes precedence over the definition of the boundary given by the 1927 Erratum”.

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⁶MN, p. 117, para. 7.37.

⁷MN, Ann. D 16.

⁸MN, Ann. D 18.

⁹MN, p. 117, para. 7.37.

¹⁰CMN, p. 92, para. 2.2.21.

¹¹MN, p. 118, para. 7.38.

¹²CMN, p. 92, para. 2.2.21.

¹³CMN, p. 93, para. 2.2.21.

10. Reading this, one would expect Niger to produce an instrument revealing the agreement of the two States to derogate not only from the Erratum, but also from the 1987 Agreement and the Special Agreement referring the case to the Court. However, Niger produces nothing except its own statements which, though reiterated, are not substantiated in any way.

11. This is not surprising, since Burkina has never agreed with its neighbour on this point and has never given any sign of accepting the modification of the line established in the Erratum. Moreover, it is sufficient to read the records of the discussions that the Parties have held since 1964 to be convinced that the agreement cited by Niger does not exist: neither the Protocol of Agreement of 1964 nor the 1987 Agreement mentions an “agreement” of the Parties concerning this alleged frontier point which derogates from the Erratum; as for the discussions held after 1987 by the Commission on Demarcation, which I reported on yesterday, they attest to the fact that the alleged agreement cited by Niger does not exist, since the consensual line of 1988 shows the frontier as a straight line between the intersection of the Sirba with the Say parallel and the beginning of the Botou bend.

12. Mr. President, these arguments, together with those already put forward by Burkina in its written pleadings¹⁴, conclude its demonstration that the line claimed by Niger in the Say sector is not justified. By contrast, Burkina’s position in this sector, as in the others, moreover, consists of applying the law which the Parties have agreed is applicable and which they have asked the Court to apply. I shall now turn therefore to the presentation of the course of the frontier claimed by Burkina Faso.

II. The line resulting from the methodology adopted by the two States

13. In this regard, Niger rightly states that Burkina Faso’s approach “closely follow[s] the methodology adopted by the two States to determine the course of the frontier”, “the Parties [having] decided to give clear precedence to the 1927 texts and [having] only provided for recourse to other documents — in particular the 1960 IGN map — in the event that those texts should ‘not

¹⁴CMBF, pp. 115-135, paras. 4.30-4.75.

14 suffice”¹⁵. Niger also points out, again rightly so, that Burkina’s approach remains “in line” with this methodology¹⁶. I shall now explain it.

14. The Erratum describes the frontier as follows: after reaching the River Sirba at Bossébangou, it

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

15. This description, with which we are now well acquainted, contains three types of information. It mentions: frontier points (A), the directions followed by the line in several of its sections (B), and the general shape of the line (C). I shall now address each of these three groups of information in turn, beginning with the frontier points.

A. The description of the frontier points

16. The Erratum specifies the position of three of these:

- the River Sirba at Bossébangou – for convenience we have termed it point P;
- the point where the River Sirba meets the Say parallel – which we have called point P3; and
- the point located 1,200 m to the west of the village of Tchenguiliba — this is the beginning of the Botou bend.

17. The Parties have agreed on the geographical co-ordinates of this last point. The first two, points P and P3, can also easily be located.

(a) Point P

15 18. Point P, defined as “the River Sirba at Bossébangou”, is easily identified, since even though the village of Bossébangou is not strictly speaking “on” the Sirba, in the sense that it is located on the right bank of that river, this village is nevertheless barely 500 m from the course of the river, which the inhabitants use constantly for various activities. Captain Fabry, M.D. indicates in his report of 9 April 1936: “At Bossébangou . . . people go to collect water from the Sirba, which

¹⁵CMN, pp. 2-3, para. 0.3.

¹⁶CMN, p. 3, para. 0.5.

is less than 500 m from the village, they go there to wash, to fish . . .”¹⁷. Clearly, therefore, the “River Sirba at Bossébangou” refers to the place on the right bank of the Sirba which is closest to Bossébangou and which the villagers regard as naturally forming part of the village.

[Slide 1]

19. To determine the precise location of this point, it is sufficient to draw a straight line between the Tao astronomic marker and the centre of the village of Bossébangou, and to place point P at the point where this line intersects with the right bank of the River Sirba. The geographical co-ordinates of this point are 13° 21' 06.5" N and 1° 17' 11" E. The Court will find more detailed explanations of this point in Burkina’s Memorial¹⁸. I note that Niger has not contested them¹⁹.

[End of slide 1]

(b) Point P3

20. It is just as straightforward to determine the location of point P3, which is at the point where the frontier, *turning back to the south* after turning back up towards the north-west to form a salient, *cuts the River Sirba at the level of the Say parallel*. According to this description, this point is situated at the intersection of three lines:

- the straight line running from north to south, from the place where the frontier “turns back to the south” under the terms of the Erratum;
- the line formed by the River Sirba; and
- the Say parallel.

21. As a rule, the advantage of this kind of description is that it is sufficient to know the course of at least two of these lines to know the position of the point that is situated at the intersection of all three. In this case, we know the course of the River Sirba and it is easy to draw the Say parallel, since we know the location of Say²⁰. Point P3 is therefore situated at the intersection of those two lines.

¹⁷MN, Ann. C 62.

¹⁸MBF, pp. 104-108, paras. 4.18-4.23.

¹⁹CMN, p. 81, para. 2.2.11.

²⁰[MBF, p. 143], footnote 404.

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22. The result of this exercise nonetheless lacks precision, since the Say parallel cuts the River Sirba from east to west at several points: it cuts it first on its right bank, then at the level of its median line, and finally on its left bank.

23. However, the text of the Erratum makes it possible to consider with certainty that the frontier point lies on the right bank of the River Sirba. As has been said, this point is after all at the intersection not of two lines but of three, the third being the line which the Erratum tells us “turns back” to the south to reach this point P3. But the Erratum specifies that before reaching that point, this north-south section “again *cuts* the Sirba”. However, if this line, which is the frontier line, “cuts” the Sirba, it cannot stop at the bank that it reaches first, the left bank, nor can it stop at the level of its median line. In order to “cut” the Sirba, the frontier, arriving from the north, must necessarily cross it and reach its right bank.

24. It therefore follows from all the information given in the Erratum that point P3 must be at the intersection of the right bank of the Sirba with the Say parallel, that is to say, at the point with the co-ordinates latitude 13° 06' 10.7" N and longitude 0° 59' 40.0" E. As we can see, the text of the Erratum provides sufficient information to determine the location of point P3.

25. Nevertheless, Niger contests this conclusion, claiming that “the expression ‘at the level of the Say parallel’ [used by the author of the Erratum] [is] merely indicative”²¹. It states that the proof of this is, firstly, that the documents written preparatory to the official 1927 texts suggest a flexible interpretation of the expression “at the level of the Say parallel”²² and, secondly, argues that if this were not the case, one or more of the four villages listed in the Erratum as having to be left to Niger would be on the Burkina Faso side.

26. Niger develops its first argument as follows:

“the Record of Agreement of 10 February 1927, which served as a preparatory document for the *Arrêté général* of August 1927 and for the Erratum which corrected the latter, was evidently less precise on the matter. Thus it stated that the boundary of Say *cercle* in this area consisted in ‘[t]o the south-west, a line starting approximately from the Sirba at the level of the Say parallel and running as far as the Mekrou’. This clearly can but confirm that the text of the Erratum should not be read too literally on this point.”²³

²¹CMN, p. 86, para. 2.2.15.

²²CMN, p. 87, para. 2.2.15.

²³MN, p. 115, para. 7.32.

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27. Here our opponent explicitly acknowledges that the Erratum fixes the point that we are calling “P3” with formidable precision. This is the only point of agreement between the Parties, since all of the rest militates in favour of rejecting Niger’s argument.

28. First, at the risk of taxing the Court’s patience, it is necessary to repeat once again that this Record of Agreement is not one of the documents accepted “by joint agreement of the Parties” for the purposes of determining the course of their boundary in accordance with the 1987 Agreement. In any case, even if it were, this Record of Agreement, which is not a regulatory text and is of a solely preparatory nature, cannot take precedence over the Erratum which is, on the contrary, a regulatory text and the text that was ultimately adopted.

29. Next, what Niger fails to mention is that the *Arrêté* of August 1927 — and I do mean the *Arrêté* and not the Erratum — repeated the notion that the frontier started “approximately from the Sirba at the level of the Say parallel and [ran] as far as the Mekrou”. Its repetition of these words clearly shows, moreover, that this text was relying on the *travaux préparatoires* of February 1927. But it is precisely because it repeated these words and, in so doing, described the boundary of the colonies unsatisfactorily, in particular by relying on the imprecise description of boundaries of *cercles*, that the Erratum was drafted with a view to correcting it. It is clear that if the author of the Erratum had intended the reference to the Say parallel to remain “approximate”, as it was in the text of the *Arrêté*, then he would have been perfectly at liberty to repeat the initial wording. Given that he was fully informed of the existence of this approach, the fact that he did *not* follow it indicates not that he wanted to confirm that approach, as Niger suggests, but that he knowingly renounced it in order to describe a precise rather than an approximate frontier point.

30. Ultimately, on closer inspection, what Niger is seeking to have prevail over the terms of the Erratum is not so much the *travaux préparatoires* of February 1927 as the *Arrêté* of August of the same year which, as I have just recalled, expressly made the reference to the Say parallel an approximate one. However, in so doing, Niger not only commits an error in law, since the Erratum was adopted precisely in order to correct the *Arrêté*, but also mires itself deeper into inconsistency

since it is also pleased to point out, but rightly this time, that the Erratum “quite simply replaced the operative part of the text of the *Arrêté*”²⁴.

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31. In contrast to that first argument, which would appear to disregard the text of the Erratum, Niger’s second argument takes precisely the opposite line. It consists of maintaining that a literal interpretation of the Erratum, to which it suddenly gives priority, cannot result in a line which leaves to Niger all the villages mentioned in that text as having to be included in the salient, referring to Tokalan, Tankouro and then Boborgou Saba.

32. This argument is just as weak as the previous one, as Burkina has already noted in its Memorial and Counter-Memorial, since the villages of Tokalan and Tankouro are quite simply impossible to locate²⁵, and especially since, as Niger itself states, those villages had probably disappeared in 1927²⁶. Furthermore, Niger appeared to acknowledge its mistakes regarding the location of the village of Tokalan in its Memorial, and merely set forth an unsubstantiated hypothesis, according to which that village “would be very close to . . . the village of Tangangari, to the east of Takatami”²⁷. On reading the Counter-Memorial, it would appear that this hypothesis has now been confirmed, since Niger asserts that:

“further research and a comparison of the maps and sketch-maps contemporary to the official texts of 1927 with more recent maps — in particular the 1960 IGN map — make it possible to locate the site of the former village of Tokalan on the eastern edge of the pool formed by the arms of the rivers Faga and Yamanou”²⁸.

It also implies that it has discovered the village of Tankouro.

33. By way of further research, Mr. President, Niger merely produces extracts of maps and sketch-maps covered with notes which Niger itself has added and which are, in fact, utterly incomprehensible²⁹; it would therefore be very hard for me to pass any comment on them, apart from noting their most blatant inconsistencies.

²⁴CMN, p. 5, para. 0.9.

²⁵MBF, pp. 144-145, paras. 4.118-4.119; CMBF, p. 125, para. 4.48.

²⁶MN, p. 113, para. 7.28.

²⁷MN, p. 115, para. 7.31.

²⁸CMN, p.88, para. 2.2.17.

²⁹CMN, p. 89-90.

[Slide 2]

34. The first inconsistency is that sketch-maps 1 and 2 on page 90 of Niger's Counter-Memorial show Takalan first to the south-west and then to the north-west of Kouro.

[End of slide 2]

[Slide 3]

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35. The second inconsistency is that Tankouro is added in red on sketch-map 1, but we do not know on what basis this was done; moreover, it appears considerably further to the west on the Blondel-La Rougerie map, reproduced on page 89 of the Counter-Memorial, which we can see here on the right of the screen.

36. Something else which can be ascertained from the new discoveries unveiled by Niger in its Counter-Memorial is the technique it uses to carry out its so-called "further research". This map, reproduced on page 89 of the Counter-Memorial and purporting to represent "The four villages of the salient attributed to the Colony of Niger by the Erratum of 5 October 1927"³⁰, which you see on the right-hand side of the slide, is a good illustration of that technique. The background map is the 1926 Blondel-La Rougerie map, but if you look closely at it, you will find that it has been altered by means of various additions which do not appear on the original. A number of villages are underlined (Takalan, Kouro, Alfassi), which is not the case on the original map. Moreover, another village not shown on the original map, Tankouro, appears here. However, at no point does Niger state or give the impression that the map it has reproduced has been "supplemented" by Niger itself in order to bear out its arguments.

[End of slide 3]

37. By way of a third argument to contest the location of point P3, Niger finally ends up citing, amid utter confusion, a village which the Erratum does not mention as being left to Niger by the salient but which has always, according to our opponents, been considered part of Niger, both before and after the Erratum was adopted. This village is Boborgou Saba, which it assimilates with Dogona³¹.

³⁰MN, Ann. D 9.

³¹CMN, pp. 90-91, para. 2.2.18.

38. The first source of confusion is that the basis for Niger's argument has changed here. Its submission no longer consists of relying on the Erratum and contending that its very wording rules out the notion that point P3 lies at the intersection of the River Sirba with the Say parallel; instead, it now rejects the text of the Erratum, because, it claims, it conflicts with one of Niger's *effectivités* from both before and after 1927. Here again, Niger seeks, mistakenly, to give *effectivités* precedence over the title, which, as we know, they cannot replace.

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39. The second source of confusion is that Niger asserts in its Counter-Memorial that it has referred in its Memorial to “documents from the colonial period which *establish*” — and it does indeed say “establish”, Mr. President — “the boundary between the colonies of Niger and Upper Volta on the colonial road at a point situated four kilometres south-west” of Boborgou-Saba³². Yet there is nothing in the Memorial to support this, unless it is a reference to Annex C 35, which has nothing to do with the “establishment” of a boundary, since it is a report of the census tour conducted from 9 to 23 March 1930 by Sergeant Labitte.

40. The third source of confusion is that Niger's Counter-Memorial dismisses this Annex C 35 as entirely irrelevant, since according to footnote 283, it was reproduced by mistake instead of the “correct” document, a sketch-map reproduced in Figure 16 on page 91 of the Counter-Memorial.

[Slide 4]

41. However, doubts inevitably remain about this document, which Niger entitles “Sketch-map showing the boundary 4 km from Boborgou Saba”.

42. As produced in the Counter-Memorial, the sketch-map is incomplete, and it is the incomplete version which you see on the screen. The full version of the sketch-map is, however, shown in Annex C 36 of Niger's Memorial.

[End of slide 4]

The title of that Annex C 36 indicates that the sketch-map was drawn by Sergeant Labitte and is “undated”. Niger thus acknowledged, when producing this document as an annex to its Memorial, that it was impossible for it to date this sketch-map. Yet, in its Counter-Memorial, we

³²CMN, p. 91, para. 2.2.18.

find it asserting that this sketch-map was drawn in 1930, on the occasion of the tour which led Sergeant Labitte to draw up the report contained in Annex C 35.

43. That is a highly dubious assertion. Firstly, the sketch-map in question has no title, no “official” author, and no date. Admittedly, the name “Sgt Labitte” appears at the bottom of the sketch-map, but it is written in pencil, whereas the majority of the entries on the map are made in ink. This is therefore an addition whose origin is uncertain.

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44. Secondly, we are bound to note that the sketch-map in Annex C 36 cannot be connected to the 1930 census report. That sketch-map clearly has nothing to do with a census, since its purpose is merely to give the distance in kilometres between Niamey and various villages.

45. Furthermore, when we refer to the aforementioned tour report, we find that in Boborgou-Saba, “24 taxpayers, with 72 bovinds, reside in Upper Volta”³³. Clearly, therefore, Sergeant Lafitte had located Boborgou-Saba in Upper Volta, not in Niger, contrary to what appears to be indicated by the sketch-map.

46. In the final analysis, Mr. President and Members of the Court, Niger is seeking to set confused and unsubstantiated speculation against what it acknowledges itself to be the clear terms of the Erratum. Yet it is obviously the text of the Erratum that must take precedence.

[Slide 5]

On the basis of that text, the location of points P and P3 can be determined as I have just shown, whilst the point corresponding to the beginning of the Botou bend does not raise any difficulty.

B. The descriptions of the directions followed by the line

47. The text of the Erratum does not of course merely describe the frontier points, but also states the *direction* followed by the line, either from those points onwards or before it reaches them. Three references to direction should be noted.

³³MN, Ann. C 35.

(a) *“almost immediately turns back up towards the north-west”*

48. The first reference to a direction is that after point P, the frontier “almost immediately turns back up towards the north-west”.

[End of slide 5. Slide 6]

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This statement is entirely consistent with the description of the line followed by the frontier before reaching point “P”, since coming from the Tao marker, which is situated to the north-west of that point, the frontier can perfectly well “turn back up” towards the north-west, but not immediately, unless it were to “retrace its steps”, which is of course not an option.

49. Two details are provided by the text.

50. The first one, as I have just mentioned, is that the frontier does not turn back up to the north-west immediately; instead, it does this “almost immediately”. That means that it continues to run westwards for some distance after reaching point P, before “turning back up” towards the north-west.

51. Burkina has shown in its Memorial that this section of the frontier must of necessity follow the course of the River Sirba upstream, following its right bank³⁴.

[End of slide 6. Slide 7]

There are at least three arguments to support this conclusion.

52. Firstly, the evidence that the frontier continues along the river before starting to turn back up towards the north-west is provided by the fact that the purpose of its turning back up in this way is to leave to Niger the villages situated on the left bank of the river. This means that before it turns back up, the frontier does not leave the left bank of the River Sirba to Niger, and therefore that bank remains part of Upper Volta. Of course, the same result can be achieved whether the frontier follows the right bank of the river or its median line, or thalweg, as Niger points out³⁵.

53. However, and this is the second point, another detail in the text of the Erratum provides confirmation that the frontier does not run along the median line, nor along the left bank, but remains on the right bank. When it arrives at point P, the frontier actually “reaches” the right bank of the River Sirba at Bossébangou, as I have already demonstrated; and since the text gives no

³⁴[MBF], pp. 139-141, paras. 4.101-4.105.

³⁵CMN, p. 82, para. 2.2.12.

further details of its course until the point where it turns back up towards the north-west, the conclusion must be that it *remains* on the right bank of the River Sirba until that point. Otherwise, the text would have had to state that the frontier follows the median line of the river before almost immediately turning back up towards the north-west, which it does not state.

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54. Finally, as a third point, the 1960 IGN map also confirms this line, so that even if it were necessary to consider that the Erratum's description of the frontier in the area did not suffice, which, as I have just shown, is not the case here, the right bank of the River Sirba would still have to be taken as constituting the frontier between the two States from point P until the point where the frontier starts to turn back up towards the north-west.

55. Just a word, if I may, Mr. President, on a frontier point left unspecified in the Erratum, namely the point we have called "P1", which marks the end of the section of the frontier which we have just described and the start of the upward turn towards the north-west. The Erratum refers to this point only indirectly, so that various hypotheses are possible, the only condition being that as it turns back up from this point towards the north-west, the frontier leaves to Niger the village of Alfassi, the northernmost of the four villages mentioned by the Erratum. Consequently, as Burkina states in its Memorial, since reference to the Erratum, quite exceptionally, does not suffice here, we should turn to the 1960 map in order to establish exactly where this point is situated³⁶.

[End of slide 7. Slide 8]

On that basis, the co-ordinates of point P1 can be established as latitude 13° 19' 53.5" north and longitude 1° 7' 20.4" east.

56. I come now to the second detail provided by the text of the Erratum regarding the direction taken by the frontier after reaching the River Sirba at Bossébangou. The text states that the frontier has to turn back up "towards" the north-west, which may be taken as meaning that it points in a north-westerly direction but does not necessarily follow a due north-west bearing.

57. Here again, there are various possible courses that the line could follow, and the Erratum does not enable just one of them to be selected. There are several ways in which the line can turn back up towards the north-west in order to form the "salient" which it is intended to begin creating.

³⁶MBF, p. 148, para. 4.127.

The only constraints imposed by the Erratum are that the line should point towards the north-west and that it should pass to the north of Alfassi³⁷. Here too, it transpires that the text of the Erratum does not suffice to describe the course of the frontier, and therefore reference should be made to the line on the 1960 IGN map in order to determine this segment of it.

[End of slide 8. Slide 9]

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58. However, there is no need to refer to the 1960 map when it comes to the second and third references to direction given by the text.

[End of slide 9]

(b) “turning back to the south”

59. The second reference to direction provided by the Erratum is that, after turning back up towards the north-west for some distance, the frontier “turns[s] back to the south”, reaching the intersection of the River Sirba with the Say parallel at the point we have called “P3”. That direction is distinguished by its complete precision. The direction is south, and the text leaves no room for the slightest degree of vagueness, as would have been the case had it used the words “towards the south”, following the example of other indications of direction which it contains³⁸. It should be noted that Niger has raised no objection to this literal interpretation of the text. I shall come back to the resulting line very shortly.

(c) “an east-south-east direction”

60. The third reference to direction, just as clear as the previous one, concerns the line drawn between point “P3” and the beginning of the Botou bend. Here again, a precise direction is given, in this case “east-south-east”. There is no need to demonstrate this further, since Niger does not contest it³⁹.

C. The general shape of the frontier line

61. Finally, the text gives two indications as to the *shape* taken by the line and the way in which that shape is obtained.

³⁷MBF, p. 149, paras. 4.128-4.129.

³⁸MBF, p. 146, paras. 4.121-4.123.

³⁹CMN, p. 92, para. 2.2.21.

62. Firstly, when it turns back up towards the north-west after point [P], it does so “almost immediately”, as a result leaving to Niger, on the left bank of the River Sirba, a “salient” encompassing four villages, before it turns back to the south and reaches point P3.

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63. A “salient” is a geometric shape for which there is no standardized outline, and so the mere reference to a salient, without any further details, does not allow its shape to be determined straight away. However, two pieces of information provided by the Erratum allow the general shape of this particular salient to be worked out. It emerges from the Erratum that this salient is made up of two lines. The first “turns . . . up” towards the north-west “almost immediately” after point P. No further description of it is provided. In other words, the description of it given in the Erratum does not “suffice”, and that is why, as I have just shown, we should take it that here the line follows that shown on the 1960 IGN map. [Slide 9] The second line, which starts at the point where the previous one comes to an end, “turn[s] back to the south”. The straight line of which it forms a segment can easily be established, since we not only know that this a straight line running from north to south, hence a meridian line, but also that it passes through point “P3”. [Slide 10] On the basis of those pieces of information, the sketch-map on this slide shows the western edge of the salient as it results from the text of the Erratum. [Slide 11] And here you have an overlay of the last two sketch-maps, which shows the final shape of the salient. The position of point P2, which is at the north-east corner of the salient, can easily be worked out, since it lies at the intersection of the meridian passing through point P3 with the line shown on the 1960 IGN map turning back up towards the north-west to form the salient. [Slide 12]

64. I now come, very briefly, to the second indication as to the shape of the salient provided by the Erratum. According to the text, when the frontier leaves point P3 and continues its course in an east-south-east direction, it runs “in a straight line”. The only comment called for by that point is that it does not raise any difficulties⁴⁰. [Slide 13]

65. In conclusion, Mr. President, Members of the Court, Burkina contends that Niger’s claim in the Say sector is without foundation, and that the course of the frontier is as follows:

⁴⁰CMN, p. 92, para. 2.2.21.

- from the point where the frontier reaches the River Sirba at Bossébangou, the frontier follows the right bank of the River Sirba from east to west until point P1, situated on its right bank;
 - from that point, P1, the frontier follows the line shown on the 1:200,000-scale map of the *Institut Géographique National de France*, 1960 edition, until the point referred to as P2;
 - from that point, the frontier runs in a straight line southwards, ending at the intersection of the right bank of the River Sirba with the Say parallel;
- 26 — from that point, the frontier runs in a straight line as far as the beginning of the Botou bend.

66. Mr. President, Members of the Court, that concludes Burkina’s pleading regarding the course of the frontier between the Tong-Tong marker and the beginning of the Botou bend. I should like to thank you for your kind attention, and ask you to give the floor to Professor Pellet.

The PRESIDENT: Thank you, Mr. Thouvenin. I now give the floor to Mr. Pellet.

Mr. PELLET: Thank you, Mr. President.

THE DEMARCATED PORTION OF THE FRONTIER — CONCLUSION

1. Mr. President, Members of the Court, as I said yesterday morning, Burkina Faso and the Republic of Niger agree in principle on the subject of the dispute submitted to you. They both interpret Article 2 of the Special Agreement as requesting the Court “to put an end, with the authority of *res judicata*, to the entire frontier dispute between the Parties”⁴¹ — the full text of the Special Agreement is provided at tab 3.23 of your folders. They further agree that this request includes the demarcated portion of the frontier⁴².

2. Nevertheless, Mr. President, to be perfectly frank, the authorities of Burkina have two concerns. Firstly, when the Special Agreement was being negotiated, they were concerned by Niger’s reluctance to include the two sections at either end of the frontier line in the definition of the subject of the dispute⁴³. Today, they are concerned to note that not only did Niger make no reference whatsoever in its submissions to Article 2, paragraph 2, of the Special Agreement, but also that in its written pleadings — Niger’s pleadings — it asserts, in a number of places, that “the

⁴¹MBF, p. 5, para. 0.14; see also MN, pp. 47-48, para. 3.22; CMBF, p. 5, para. 0.6; or CMN, p. 4, para. 0.7.

⁴²See MBF, p. 91, para. 3.36; MN, p. 48, para. 3.22; CMBF, p. 2, table, point 2; CMN, p. 4, para. 0.7.

⁴³See MBF, p. 3, para. 0.14; p. 78, para. 3.11; or CMN, p. 4, para. 0.7.

only stretch of the frontier concerned by the present dispute runs from the astronomic marker of Tong-Tong to the beginning of the Botou bend . . .”⁴⁴, which does not include the demarcated portions.

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3. We sincerely hope that we are not being unfair to our friends from Niger, but we wonder whether their quietly persistent denial of the existence of a dispute in respect of those demarcated sections should not be seen as some form of disguised objection to admissibility (or is it to jurisdiction?): “no dispute, no action”. And we would certainly feel more reassured about Niger’s intentions, if it included in its submissions a request that confirmed the one made to the Court in Article 2, paragraph 2, of the Special Agreement.

4. As the Agent of Burkina Faso said yesterday morning, it is very important for his country that the Court should fully complete the task entrusted to it by the Parties in the Special Agreement of 24 February 2009. That is why, at the risk of repeating to some extent what we wrote in Chapter III of our Memorial — due to the fact that Niger has not replied — I shall return, briefly, to the scope of the second paragraph of Article 2 of that Agreement (I), before recalling that the demarcation, on which the Parties agreed, confirms the positions of Burkina Faso as to the method to be used to determine the delimitation of the remainder of the disputed frontier (II)

I. The scope of Article 2, paragraph 2, of the Special Agreement

5. Mr. President, regarding the first point, the scope of Article 2, paragraph 2, of the Special Agreement, I believe two questions arise:

- (1) what does the “Parties’ agreement” referred to in this provision consist of? And
- (2) what is the task of the Court under this provision?

[Slide 1: The demarcated sectors]

6. The answer to the first question is not as obvious as it might seem. A simple reminder of the chronology of events is sufficient to explain why there may be some confusion:

- the Special Agreement was signed on 24 February 2009;
- it refers to what has been translated into English by the Registry as an “agreement” — though, with due respect, that is not quite right; an “*entente*” is, I think, something less formal than an

⁴⁴MN, p. 48, para. 3.23. See also MN, p. 45, para. 3.16; CMN, p. 4, para. 0.7; p. 8, para. 0.15; p. 16, para. 1.1.2; p. 47, para. 1.2.3; p. 54, para. 1.2.19.

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- “agreement” — it refers, then, to an “agreement”, for which it does not provide a date — “it” being the Special Agreement, not the Registry —, and with good reason: it was in fact on the same day, 24 February 2009, that the Foreign Ministers of the two States “also adopted the experts’ proposal for a joint field mission to agree on the co-ordinates of the boundary markers in Sectors A and B referred to in the Special Agreement”⁴⁵;
- on the following 3 July (more than four months *after* the Special Agreement was concluded), the directors of the national geographic institutes of the two countries signed a joint communiqué indicating the co-ordinates of the markers and the method used to ascertain them⁴⁶;
- on 17 July 2009, the Minister for Foreign Affairs of Burkina wrote to his Niger counterpart proposing to embody the agreement (“*entente*”) of the Parties in an exchange of Notes, a draft of which he enclosed⁴⁷;
- the Minister of Niger replied on 8 September with counter-proposals⁴⁸, to which the Minister of Burkina agreed on 8 October, though he in turn suggested a few adjustments to the wording proposed — mainly in respect of ascertaining the co-ordinates of the unmarked endpoints of “sector B” (“from the beginning of the Botou bend to the River Mekrou”), which was to be done at a further meeting between the experts⁴⁹;
- that further meeting took place on 15 October 2009 and, once the co-ordinates of those points had been ascertained⁵⁰, the Minister for Foreign Affairs of Burkina repeated his proposal of 29 October⁵¹, which was accepted on 2 November 2009⁵².

⁴⁵Joint Communiqué of the meeting of Foreign Ministers for negotiation and signature of the Special Agreement seising the International Court of Justice, 24 February 2009, MBF, Ann. 98, p. 3.

⁴⁶[Record of the work of the Joint Survey Mission to ascertain the co-ordinates of the markers constructed on the frontier between Burkina Faso and the Republic of Niger, 3 July 2009, MBF, Ann. 101.]

⁴⁷Letter from the Minister for Foreign Affairs of Burkina Faso to the Minister for Foreign Affairs of Niger regarding the draft exchange of Notes embodying the agreement between the Parties on the delimited sectors of the frontier, 17 July 2009, MBF, Ann. 102.

⁴⁸Letter from the Minister for Foreign Affairs of Niger to the Minister for Foreign Affairs of Burkina Faso regarding the draft exchange of Notes embodying the agreement between the Parties on the delimited sectors of the frontier, 8 September 2009, MBF, Ann. 103.

⁴⁹Letter from the Minister for Foreign Affairs of Burkina Faso to the Minister for Foreign Affairs of Niger regarding the draft exchange of Notes embodying the agreement between the Parties on the delimited sectors of the frontier, 8 October 2009, MBF, Ann. 104.

⁵⁰Record of the meeting to ascertain the co-ordinates of the unmarked points in Sector B, 15 October 2009, MBF, Ann. 105.

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7. It is this exchange of letters dated 29 October and 2 November 2009 which constitutes the “agreement on the results of the work of the Joint Technical Commission on Demarcation” referred to in Article 2, paragraph 2, of the Special Agreement, signed more than eight months earlier. It is only from this date that the content of the provision became “palpable”, so to speak. And what, Mr. President, is that content?

8. It ensues from the exchange of letters that “the records of the experts’ work [of 3 July and 15 October 2009 are considered] to represent [the Parties’] agreement within the meaning of the above-quoted provision of the Special Agreement”. The list of the co-ordinates accepted by joint agreement of the Parties in those records appears on page 95 of Burkina’s Memorial; Niger has not contested those data. The sketch-map now on the screen — if it is legible — provides a graphical illustration of the line — which we will see again later on in diagram form — in the two sectors of the frontier (“A” and “B”) covered by this agreement. I shall return briefly to their description in a moment.

[End of slide 1]

9. As I recalled, it is this agreement (“*entente*”) that the Court is kindly requested to place on record by conferring on it the force of *res judicata*. Admittedly, this is a precaution. However, as I have already had occasion to state⁵³, it is not redundant, contrary to Niger’s assertion⁵⁴:

— Burkina has grown accustomed to Niger’s about-turns, which have not facilitated the settlement of the dispute;

— the Parties’ “*entente*” on this demarcated portion of the frontier was the subject of a very informal agreement, while, as we know only too well, Niger is quick to hold such agreements null and void when the necessary requirements are not fulfilled, as can be seen from its about-turns in respect of the consensual line of 1988 and the political compromise of 1991; indeed, this “*entente*” is enshrined only in the Special Agreement bringing the matter before the

⁵¹Letter No. 2009-004874/MAECR/SG/DGAJC from the Minister for Foreign Affairs of Burkina Faso to the Minister for Foreign Affairs of the Republic of Niger, 29 October 2009, MBF, Ann. 106.

⁵²Letter No. 007505/MAE/C/DAJC/DIR from the Minister for Foreign Affairs of the Republic of Niger to the Minister for Foreign Affairs of Burkina Faso, 2 November 2009, MBF, Ann. 107.

⁵³See CR 2012/20, para. 31 (Pellet).

⁵⁴CMN, p. 4, para. 0.7.

Court; ultimately, it will derive its legal force from the authority of *res judicata*, with which the Parties request the Court to invest it;

- 30 — this is not a dispute that has been settled — even partially — but, as both Parties also agree, one that will only be fully settled once the course of the *entire* frontier, including the sectors which are the subject of this “*entente*” that is so difficult to define (and not only difficult to define, but subsequent to the Special Agreement), becomes *res judicata* by virtue of the forthcoming judgment;
- this confers greater stability on the solution thus to be established than would a mere agreement — particularly such a vague “*entente*”: *res judicata* can only be called into question in the event of the discovery of a new fact within the meaning of Article 61, paragraph 1, of the Statute of the Court, and this under the latter’s strict control; whereas an “*entente*” — a highly ambiguous word in law — may be called into question, without it being possible, unless agreed otherwise, to submit any ensuing dispute to an impartial third party.

10. Members of the Court, for all these reasons Burkina Faso urges you not to “overlook” this part of the task entrusted to you by the Parties in the Special Agreement of 24 February 2009, notwithstanding Niger’s disinclination to confirm it and to define its precise scope. As we have amply demonstrated in our Memorial⁵⁵, there is nothing to prevent the Court from granting the joint request of Burkina Faso and the Republic of Niger, and I do not think it useful to return to this subject: even though Niger shows little enthusiasm in this regard, it has raised no objection.

11. I merely wish to recall further that the Parties’ agreement (“*entente*”) includes the endpoints of their common frontier: Mount N’Gouma in the north, and the intersection of the former boundary of the *cercles* of Fada and Say with the Mekrou in the south. These points correspond to the tripoints with Mali, on the one hand, and with Benin, on the other. It so happens that, in both cases, the Court was also called upon to rule on “bilateral” frontiers, firstly between Burkina and Mali (which it did by the Judgment of the Chamber of 22 December 1986⁵⁶), and secondly between Benin and Niger (which it did by the Judgment of another Chamber, dated

⁵⁵MBF, pp. 89-92, paras. 3.32-3.39 (1. The Court’s participation in the comprehensive settlement of the frontier dispute between the Parties).

⁵⁶*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 650, para. 179.A.8).

31 12 July 2005⁵⁷). Nevertheless, there is a slight difference between the two decisions: in the second Judgment (of 2005), the Chamber adopted a slightly less precise solution, in so far as it referred to the point where the median line of the River Mekrou reached “the boundary of the Parties with Burkina Faso”⁵⁸, though it did not define that boundary — which it could not do without determining the rights of Burkina, which was not present at the proceedings. In this case, however, the problem is not the same: a ruling by the Court on the point of intersection between the Burkina/Niger frontier, on the one hand, and the Niger/Benin frontier, on the other, would in no way violate the principle of consent to jurisdiction, since the latter country — Benin — has received a Judgment which is *res judicata* for it, indicating in advance that that intersection — that tripoint — is opposable to it.

12. We therefore believe, Mr. President, that in these very specific circumstances, the Court can indeed determine the delimitation of the *entire* frontier, including the endpoints constituted by the tripoints with Mali and Benin, as provided for by the Parties in their agreement (“*entente*”) of 29 October and 2 November 2009.

II. Remarks on the methodology used to carry out the demarcation

13. Mr. President, there is another reason why I believe our friends from Niger are wrong to disregard the demarcated portion of the frontier, and that is the methodology which was used to demarcate that section and which should have been used as a model for demarcating the portion of the frontier whose delimitation is challenged by Niger. That methodology follows to the letter the recommendations of the 1987 Agreement (to which, I recall, the 2009 Special Agreement refers); in order to carry out the demarcation, the Parties

- referred first and foremost to the Erratum of 5 October 1927, and
- in the few cases where they considered that the Erratum did not suffice to determine the exact course of the frontier, they referred to the 1960 IGN France map,
- without taking any other elements into consideration.

⁵⁷*Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005*, p. 151, para. 146.4).

⁵⁸*Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005*, p. 151, para. 146.4).

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14. This leads me to an aside, Mr. President, which I consider not to be without importance. Repeatedly in its written pleadings, Niger takes issue with Burkina's position regarding the completeness of the delimitation of the entire frontier⁵⁹. However, this is precisely what the Parties accepted in their 1987 Agreement: unless they agree to take other documents into account, the Erratum — supplemented if necessary by the 1960 map, should the Erratum not suffice — defines the frontier *in its entirety*. That is clear. No doubt there may be instances where the description of a line in a text may not be sufficient to perform the demarcation of a frontier (even then, good sense must prevail, and we cannot declare that something “does not suffice” when we simply disapprove of it, as Niger repeatedly does), but that cannot be possible in the case of a map on which the whole length of the frontier is depicted (albeit in broken lines) — a map whose relevance and accuracy Niger is keen to underline:

“the scale of the [1960] map at 1:200,000 is sufficiently detailed. It also has a solid technical basis, at least from a cartographic point of view. The coverage of toponyms — which was notoriously rudimentary in earlier maps by the Army Geographical Section and later the IGN — is as complete as knowledge of occupation on the ground allowed. The hydrographic and orographic detail, prepared from aerial photographs and refined by field surveys, is of excellent quality. Finally the indications of the boundaries are based on information obtained from the local authorities — even if they are sometimes tentatively represented by discontinuous lines of crosses, inasmuch as the information on which they were based could not always be fully relied on — and their sinuous nature suggests that they were prepared with some care.”⁶⁰

15. Of course, I do not endorse all those remarks — in particular the last two — but no matter: the fact is that the 1960 maps (they are in fact a “collection of sheets”⁶¹) “were prepared with particular care, combining the most up-to-date techniques of the time with detailed work on the ground”⁶². It does not follow that they should be considered as the preferred reflection of the “colonial heritage”, as Niger affects to believe⁶³, since the boundary line which is depicted there does not reflect the frontier title constituted by the 1927 Erratum; however, as the Chamber of the Court noted in [1986 in *Burkina Faso/Mali*] on the subject of the same 1960 map:

⁵⁹CMN, p. 2, para. 0.3; pp. 9-10, para. 0.17; pp. 34-35, para. 1.1.23; p. 45, para. 1.1.33.

⁶⁰CMN, p. 44, para. 1.1.32, which reproduces MN, p. 75, para. 5.14 — footnote omitted; see also MN, pp. 55-59, paras. 4.25-4.32.

⁶¹CMN, *ibid.*

⁶²MN, pp. 58-59, para. 4.30.

⁶³See MN, p. 59, para. 4.30; p. 75, para. 5.14; or CMN, pp. 43-45, para. 1.1.32.

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“The Chamber cannot uphold the information given by the map where it is contradicted by other trustworthy information concerning the intentions of the colonial power. However, having regard to the date on which the surveys were made and the neutrality of the source, the Chamber considers that *where all other evidence is lacking, or is not sufficient* to show an exact line, the probative value of the IGN map becomes decisive.” (*Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, *I.C.J. Reports 1986*, p. 586, para. 62; emphasis added.)

16. It is in this spirit that the Parties agreed, in Article 2 of their Agreement of 28 March 1987, that the map was a *subsidiary* means for determining the course of the frontier, which must be used (but which may *only* be used) if the Erratum does not suffice. And that is also how it was understood by the competent authorities of the two countries when they proceeded to demarcate the frontier on those bases between May 1987 and May 1990. During that process, the Joint Technical Commission on Demarcation consistently relied on the only documents designated in the 1987 Agreement⁶⁴.

17. That process is described in Burkina’s Memorial⁶⁵, where it can be seen that:

- both countries considered that the frontier *was delimited* and that all that remained was its demarcation on the ground;
- the technical experts responsible for that demarcation consistently relied on the text of the Erratum and not on the map, which was used only to identify the “defining points” of the frontier and to plot the line adopted by joint agreement — in other words, it was not necessary to have recourse to the line shown on the map;
- once that line had been plotted, markers were erected in the specified locations.

18. As can be seen from the report of the meeting of the Joint Technical Commission on Demarcation of 15 May 1988, there were only two problem points:

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“first, the geographic location of the village of Takabangou and, second, the location of the frontier line from the Say parallel to another village named Tyenkilibi or Tyenkiliba”⁶⁶.

⁶⁴See the report of the meeting of the Joint Technical Commission on Demarcation of the Burkina-Niger Frontier, Diapaga, 12-15 May 1988, 15 May 1988, MBF, Ann. 80; report of the fourth meeting of the Joint Technical Commission on Demarcation of the Burkina-Niger Frontier, Niamey, 26-28 September 1988, 28 September 1988, MBF, Ann. 81; report on completion of the survey of the proposed demarcation of the Niger-Burkina frontier, 28 September 1988, MBF, Ann. 82; report of the second ordinary session of the Joint Technical Commission on Demarcation of the Burkina-Niger Frontier, Ouagadougou, 23-28 July 1990, 28 July 1990, MBF, Ann. 87.

⁶⁵MBF, pp. 76-78, paras. 3.5-3.8.

⁶⁶Report of the meeting of the Joint Technical Commission on Demarcation of the Burkina-Niger Frontier, Diapaga, 12-15 May 1988, 15 May 1988, MBF, Ann. 80.

[Slide 2: Sector A of the demarcated portion of the frontier]

19. I mentioned this episode yesterday⁶⁷, but will return to it because it is very significant.

Informed by that process,

“[t]he Commission noted that the line along this part of the frontier was based on that of the French National Geographic Institute (IGN France) 1:200,000 map, not on *Arrêté* No. 2326 of 31 August 1927, as clarified by its Erratum of 5 October 1927, both of which were designated in the agreement signed by the two Governments in March 1987 in Ouagadougou.

The technical specialists explained that their position was based on the frontier line as recorded in the report of the meeting between specialists from Niger and Burkina held from 21 to 23 May 1986 in Ouagadougou.

It was apparent that this line was an interpretation of the above-mentioned *Arrêté* and Erratum. The Commission considered that the technical staff were *not authorized* to adopt a procedure *that deviated* from the decisions of the two Governments. They were accordingly instructed to reconsider the 110 km portion in question within eight (8) days, *complying with the texts designated in the Agreement and Protocol of Agreement* signed by the two Governments.”⁶⁸

In other words, the technical experts were made to revise their sketch because it did not follow the line described in all simplicity in the Erratum, that is to say, because they had “interpreted” the entirely sufficient terms of the Erratum with the help of the line shown on the map, a map to which they had erroneously given precedence over the 1927 text.

20. With regard to the segment of the frontier which runs from the Say parallel to the village known as Tyenkilibi, this could be done on the basis of the Erratum without any particular problems⁶⁹. On the other hand, despite every effort, the “ruins of the village of Tokebangou” mentioned in the Erratum could not be found. As indicated in the report on completion drawn up by the technical experts⁷⁰ (and annexed to the report of the fourth meeting of the Joint Technical Commission on Demarcation⁷¹), “[i]t had to be acknowledged that the basic text [referring to the Erratum] did not suffice and recourse was had to the map”; but that map, which mentions the village of “Tokabougou”, is also silent on the ruins of the ancient village of Tokébangou. Faced

⁶⁷CR 2012/[19], para. 49 (Pellet).

⁶⁸Above-mentioned report of 15 May 1988, MBF, Ann. 80; emphasis added.

⁶⁹See the report on completion of the survey of the proposed demarcation of the Niger-Burkina frontier, 28 September 1988, MBF, Ann. 82.

⁷⁰Report on completion of the survey of the proposed demarcation of the Niger-Burkina frontier, 28 September 1988, MBF, Ann. 82.

⁷¹Report of the fourth meeting of the Joint Technical Commission on Demarcation of the Niger-Burkina Frontier, Niamey, 26-28 September 1988, 28 September 1988, MBF, Ann. 81.

with this twofold insufficiency, both on the ground and on the map, the experts proposed a median solution on the basis of the information provided by the inhabitants of the region⁷².

21. What we have here is an exceptional case in which the Erratum does not suffice on its own, while the line shown on the map does not help to interpret the Erratum.

22. However, this does not vindicate Niger, which, in instances which it declares are similar, chooses to “replace” the line shown on the 1960 map with that attributed to the territorial subdivisions prior to the 1926 Decree of the President of the French Republic and the *Arrêté* of 1927. Here, the experts of the two countries adhered more closely to the text of the Erratum, since it indisputably describes a line: instead of falling back on the course of the frontier shown on the map and drawing a straight line between Bellé Banguia (which is point 4 on the sketch-map currently on the screen) and Mount Douma Fendé (which is located at point 6 on the slide) — a line which would nevertheless join points 4 and 6 on the 1960 map (this can also be seen on the sketch-map) — the experts agreed to fix an intermediate point corresponding to the likely location of the ruins of Tokébangou which are mentioned in the “basic text”, so as not to omit a defining point of that text. In other words, the experts declined to give precedence to the line shown on the map over the line in the Erratum, even though the latter does not suffice — however, giving precedence to the map would not have been in compliance with that reference text.

23. And since we are looking at this sketch-map, Mr. President, let me make a brief comment: this sketch-map clearly shows that the technical experts, with the approval of the Joint Technical Commission and then of the political authorities of the two countries, determined the course of the frontier in the two sectors whose delimitation Niger does not contest:

- 36** — on the basis of the Erratum,
— all the points in which, and only those points, were accepted as being “defining” points and then marked,
— the course on which the two States agreed being made up of segments of *straight* lines joining those defining points to one another.

[End of slide 2. Slide 3: Sector B of the demarcated portion of the frontier]

⁷²Report mentioned above in note 70.

24. The same observation applies to the sketch-map showing sector B of the demarcated portion of the frontier: where the course of the frontier does not follow the river, it is made up of straight-line segments which join all the points listed in the Erratum of 5 October 1927. And those segments can be relatively long: the segment running from where the course of the Tapoa meets the former boundary of the Fada and Say *cercles* (point 31 on the sketch-map) to the point where that same boundary intersects with the course of the Mekrou is at least 60 km.

[End of slide 3]

25. Mr. President, Members of the Court:

- the 1927 Erratum is *the* frontier title which enables the frontier between the two countries to be completely determined;
- the Erratum was the law of the Parties when they agreed on the demarcation of the two end portions of their common boundary;
- its insufficiencies should not be exaggerated — they are few and far between and very limited; and
- where they do exist, they can be resolved by having recourse to the 1960 IGN France map;
- it being understood that under no circumstances can the line shown on that map contradict the line resulting from the Erratum.

These lessons which can be drawn from examining the demarcated part of the frontier are applicable in all respects to the delimitation of the portion on which the Parties have been unable to agree.

26. Mr. President, Members of the Court, that concludes the first round of oral argument of Burkina Faso. On behalf of our Agent, our team and myself, I should like to thank you for listening so patiently and attentively.

37 The PRESIDENT: Thank you, Mr. Pellet.

That brings to an end the first round of oral argument of Burkina Faso. The Court will meet again on Thursday 11 October 2012 at 3 p.m. to hear the first round of oral argument of the Republic of Niger. The sitting is closed.

The Court rose at 11.20 a.m.
