



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

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### Frontier Dispute (Burkina Faso/Niger)

#### The Court determines the course of the frontier between the two States in the sector running from the astronomic marker of Tong-Tong to the beginning of the Botou bend

THE HAGUE, 16 April 2013. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Judgment in the case concerning the Frontier Dispute (Burkina Faso/Niger).

In its Judgment, which is final, without appeal and binding on the Parties, the Court

- (1) finds, unanimously, that it cannot uphold the requests made in points 1 and 3 of the final submissions of Burkina Faso;
- (2) decides, unanimously, that, from the Tong-Tong astronomic marker, situated at the point with geographic co-ordinates 14° 24' 53.2" N; 00° 12' 51.7" E, to the Tao astronomic marker, the precise co-ordinates of which remain to be determined by the Parties as specified in paragraph 72 of the present Judgment, the course of the frontier between Burkina Faso and the Republic of Niger takes the form of a straight line;
- (3) decides, unanimously, that, from the Tao astronomic marker, the course of the frontier follows the line that appears on the 1:200,000-scale map of the Institut géographique national (IGN) de France, 1960 edition, (hereinafter the "IGN line") until its intersection with the median line of the River Sirba at the point with geographic co-ordinates 13° 21' 15.9" N; 01° 17' 07.2" E;
- (4) decides, unanimously, that, from this latter point, the course of the frontier follows the median line of the River Sirba upstream until its intersection with the IGN line, at the point with geographic co-ordinates 13° 20' 01.8" N; 01° 07' 29.3" E; from that point, the course of the frontier follows the IGN line, turning up towards the north-west, until the point, with geographic co-ordinates 13° 22' 28.9" N; 00° 59' 34.8" E, where the IGN line turns south. At that point, the course of the frontier leaves the IGN line and continues due west in a straight line until the point, with geographic co-ordinates 13° 22' 28.9" N; 00° 59' 30.9" E, where it reaches the meridian which passes through the intersection of the Say parallel with the right bank of the River Sirba; it then runs southwards along that meridian until the said intersection, at the point with geographic co-ordinates 13° 06' 12.08" N; 00° 59' 30.9" E;

- (5) decides, unanimously, that, from this last point to the point situated at the beginning of the Botou bend, with geographic co-ordinates 12° 36' 19.2" N; 01° 52' 06.9" E, the course of the frontier takes the form of a straight line;
- (6) decides, unanimously, that it will nominate at a later date, by means of an Order, three experts in accordance with Article 7, paragraph 4, of the Special Agreement of 24 February 2009.

### **1. Procedural, historical and factual background of the case**

The Court recalls that, by a joint letter of notification dated 12 May 2010, Burkina Faso and Niger transmitted to the Registrar a Special Agreement, whereby they agreed to submit to the Court the frontier dispute between them over a section of their common boundary. Attached to this letter were the Protocol of Exchange of the Instruments of Ratification of the said Special Agreement and an exchange of Notes, dated 29 October and 2 November 2009, placing on record the agreement (“entente”) between the two States on the results of the work of the Joint Technical Commission on Demarcation concerning the demarcated sectors of the frontier running, in the north, from the heights of N’Gouma to the astronomic marker of Tong-Tong and, in the south, from the beginning of the Botou bend to the River Mekrou. The Court further recalls that it was requested, in Article 2 of the said Special Agreement, to determine the course of the boundary between Burkina Faso and Niger in the sector from the astronomic marker of Tong-Tong to the beginning of the Botou bend and to place on record the Parties’ agreement [“leur entente”] on the results of the work of the Joint Technical Commission on Demarcation of the boundary. Before responding to the Parties’ request, the Court briefly sets out the historical and factual background of the dispute between these two former colonies, which were part of French West Africa until they gained independence in 1960.

### **2. The request concerning the two sectors running, in the north, from the heights of N’Gouma to the Tong-Tong astronomic marker and, in the south, from the beginning of the Botou bend to the River Mekrou**

The Court indicates that, when it is seised on the basis of a special agreement, any request made by a party in its final submissions can fall within the jurisdiction of the Court only if it remains within the limits defined by the provisions of that special agreement. However, in the opinion of the Court, the request made by Burkina Faso in points 1 and 3 of its final submissions does not exactly correspond to the terms of the Special Agreement, since that State does not request the Court to “place on record the Parties’ agreement” (“leur entente”) regarding the delimitation of the frontier in the two demarcated sectors, but rather to delimit itself the frontier according to a line that corresponds to the conclusions of the Joint Technical Commission. Although the Court has the power to interpret the final submissions of the Parties in such a way as to maintain them within the limits of its jurisdiction under the Special Agreement, that is not, however, sufficient to entertain such a request: the object of that request must also fall within the Court’s judicial function, which is to decide, in accordance with international law, such disputes as are submitted to it. However, in the present case, neither of the Parties has ever claimed that a dispute continued to exist between them concerning the delimitation of the frontier in the two sectors in question on the date when the proceedings were instituted — nor that such a dispute has subsequently arisen. Accordingly, the Court considers that Burkina Faso’s request exceeds the limits of its judicial function.

### **3. The course of the section of the frontier remaining in dispute**

#### **A. Applicable law**

The Court observes that Article 6 of the Special Agreement, entitled “Applicable law”, highlights, amongst the rules of international law applicable to the dispute, “the principle of the

intangibility of boundaries inherited from colonization and the Agreement of 28 March 1987". It notes that the first two articles of that Agreement specify the acts and documents of the French colonial administration which must be used to determine the delimitation line that existed when the two countries gained independence. It observes in this connection that it follows from the 1987 Agreement that the Arrêté of 31 August 1927 adopted by the Governor-General ad interim of FWA with a view to "fixing the boundaries of the colonies of Upper Volta and Niger", as clarified by its Erratum of 5 October 1927, is the instrument to be applied for the delimitation of the boundary. It further observes that the 1987 Agreement provides for the possibility of "the Arrêté and Erratum not suffic[ing]" and establishes that, in that event, "the course shall be that shown on the 1:200,000-scale map of the Institut géographique national de France, 1960 edition".

## **B. The course of the frontier**

### 1. The course of the frontier between the Tong-Tong and Tao astronomic markers

The Court is of the opinion that a straight line connecting the two markers should be regarded as constituting the frontier between Burkina Faso and Niger in the sector in question, since the colonial administration officials interpreted the Arrêté in that manner.

### 2. The course of the frontier between the Tao astronomic marker and the River Sirba at Bossébangou

The Court notes that it is not possible to determine from the Arrêté how to connect the Tao astronomic marker to "the River Sirba at Bossébangou". Recourse must therefore be had to the line appearing on the 1960 IGN map. Moreover, the Court declares that it cannot uphold Niger's requests that the said line be shifted slightly at the level of the localities of Petelkolé and Oussaltane, on the ground that these were purportedly administered by Niger during the colonial period. According to the Court, once it has been concluded that the Arrêté is insufficient, and in so far as it is insufficient, the effectivités can no longer play a role in the present case.

### 3. The course of the frontier in the area of Bossébangou

The Court considers that, according to the description in the Arrêté, the frontier line, after reaching the median line of the River Sirba while heading towards Bossébangou, at the point called point SB on sketch-maps 1, 2, 3 and 4, follows that line upstream until its intersection with the IGN line, at the point called point A on sketch-maps 3 and 4. From that point, since the Arrêté does not suffice to determine precisely the course of the frontier line, that line follows the IGN line, turning up towards the north-west until the point, called point B on sketch-map 3, where the IGN line markedly changes direction, turning due south in a straight line. As this turning point B is situated some 200 m to the east of the meridian which passes through the intersection of the Say parallel with the River Sirba, the IGN line does not cut the River Sirba at the Say parallel. However — the Court notes — the Arrêté expressly requires that the boundary line cut the River Sirba at that parallel. The frontier line must therefore depart from the IGN line as from point B and, instead of turning there, continue due west in a straight line until the point, called point C on sketch-maps 3 and 4, where it reaches the meridian which passes through the intersection of the Say parallel with the right bank of the River Sirba. According to the description in the Erratum, the frontier line then runs southwards along that meridian until the said intersection, at the point called point I on sketch-maps 3 and 4.

#### 4. The course of the southern part of the frontier

The Court observes that, according to the Arrêté, “[f]rom 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”. It considers that the Arrêté is precise in this section of the frontier, in that it establishes that the frontier line is a straight-line segment between the intersection of the Say parallel with the Sirba and the point located 1,200 m to the west of the village of Tchenguiliba, which marks the start of the southern section of the already demarcated portion of the frontier.

#### **4. Nomination of experts**

The Court decides that, having regard to the circumstances of the present case, it will nominate at a later date, by means of an Order, the experts requested by the Parties in Article 7, paragraph 4, of the Special Agreement to assist them in the demarcation of their frontier in the area in dispute.

#### Composition of the Court

The Court was composed as follows: President Tomka; Vice-President Sepúlveda-Amor; Judges Owada, Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Gaja, Sebutinde, Bhandari; Judges ad hoc Mahiou, Daudet; Registrar Couvreur.

Judge Bennouna appends a declaration to the Judgment of the Court; Judges Cançado Trindade and Yusuf, as well as Judges ad hoc Mahiou and Daudet, append separate opinions to the Judgment of the Court.

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A summary of the Judgment appears in the document “Summary No. 2013/1”. This press release, the summary and the full text of the Judgment are available on the Court’s website ([www.icj-cij.org](http://www.icj-cij.org)), under the heading “Cases”.

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Note: The Court’s press releases do not constitute official documents.

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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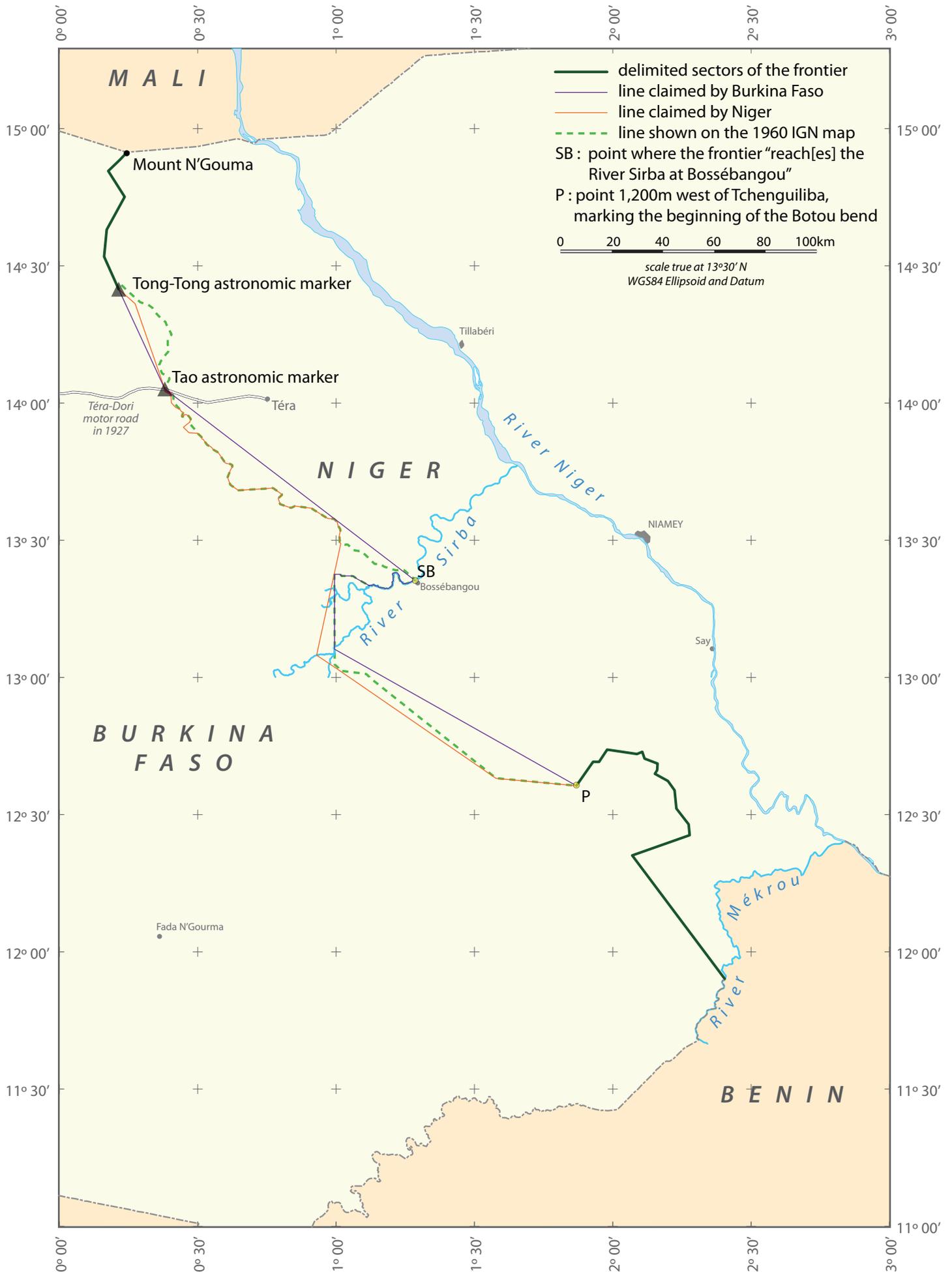
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- Sketch map No. 1: Parties' claims and line depicted on the 1960 IGN map;
- Sketch map No. 2: Course of the frontier from the Tao astronomic marker to the point where it "reach[es] the River Sirba at Bossébangou";
- Sketch map No. 3: Course of the frontier from the point where it "reach[es] the River Sirba at Bossébangou" to the intersection of the River Sirba with the Say parallel;
- Sketch map No. 4: Course of the frontier as decided by the Court.

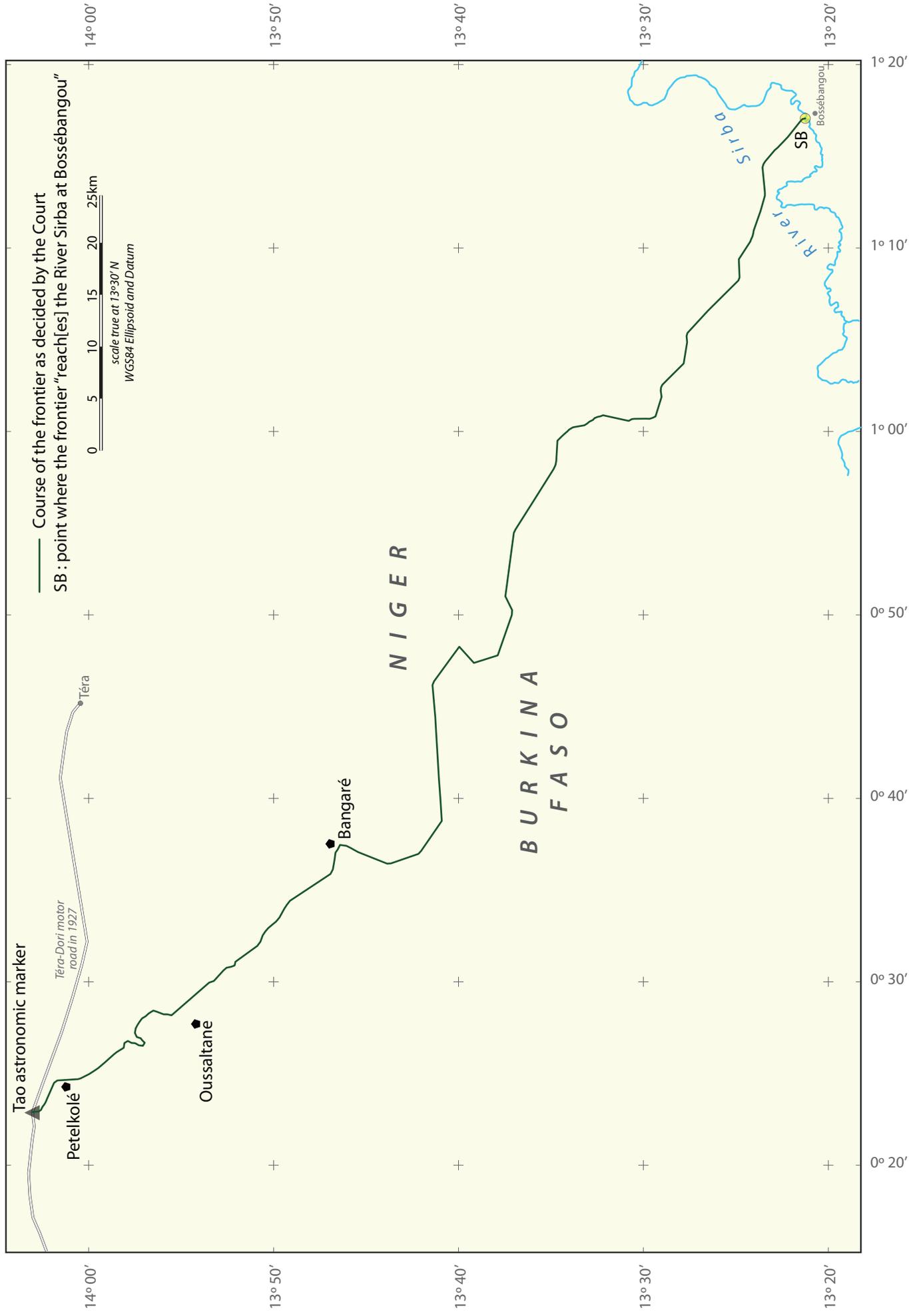
**Sketch Map 1:**  
**PARTIES' CLAIMS AND LINE DEPICTED ON THE 1960 IGN MAP**  
*This sketch map has been prepared for illustrative purposes only*



Sketch Map 2:

COURSE OF THE FRONTIER FROM THE TAO ASTRONOMIC MARKER TO THE POINT WHERE IT "REACH[ES] THE RIVER SIRBA AT BOSSÉBANGOU"

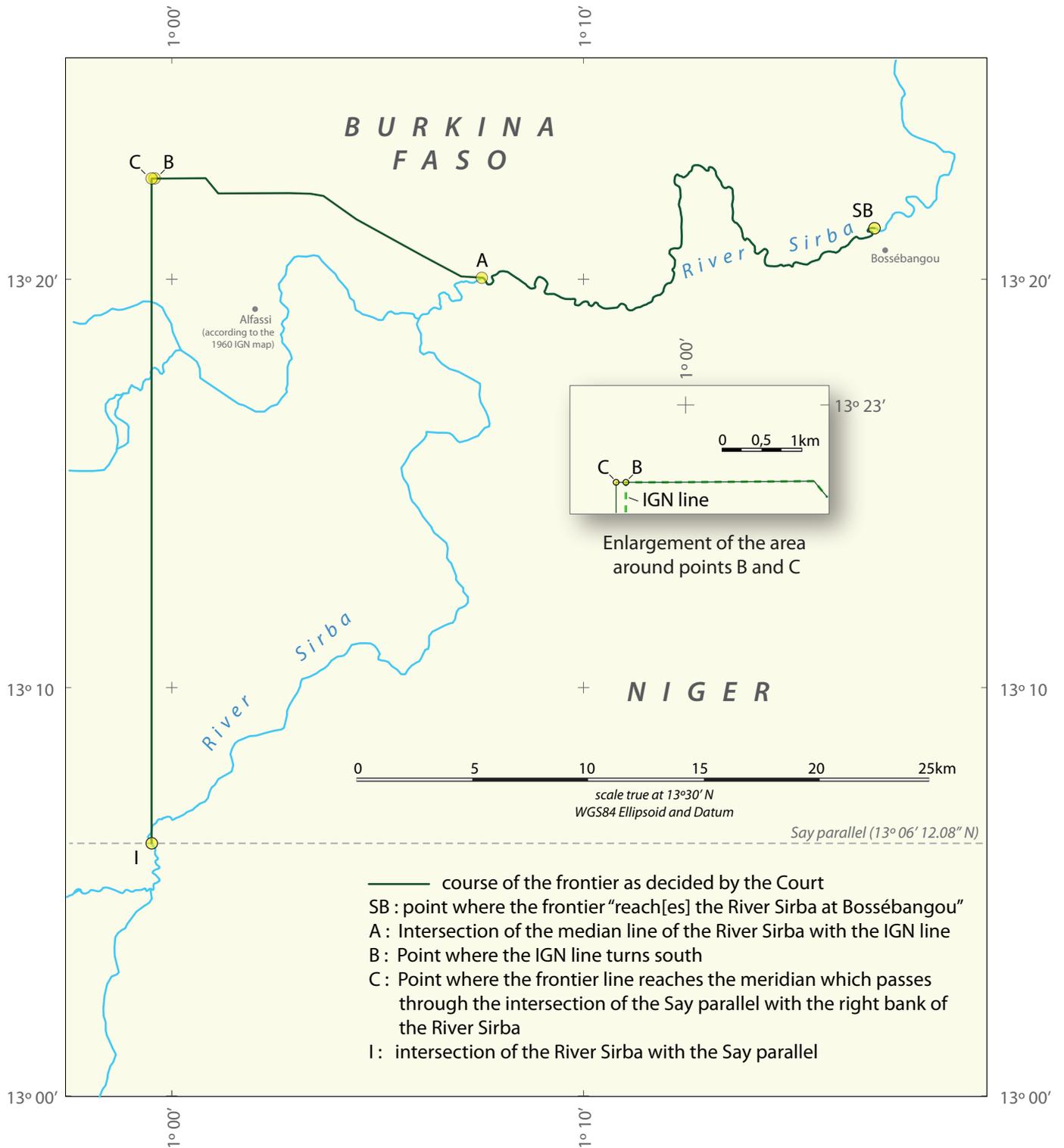
*This sketch map has been prepared for illustrative purposes only*



### Sketch Map 3:

COURSE OF THE FRONTIER FROM THE POINT WHERE IT "REACH[ES] THE RIVER SIRBA AT BOSSÉBANGOU" TO THE INTERSECTION OF THE RIVER SIRBA WITH THE SAY PARALLEL

*This sketch map has been prepared for illustrative purposes only*



**Sketch Map 4:**  
**COURSE OF THE FRONTIER AS DECIDED BY THE COURT**  
*This sketch map has been prepared for illustrative purposes only*

