

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING THE FRONTIER DISPUTE
(BURKINA FASO/NIGER)**

MEMORIAL OF THE REPUBLIC OF NIGER

APRIL 2011

[Translation by the Registry]

TABLE OF CONTENTS

List of principal abbreviations	1
INTRODUCTION.....	1
Burkina Faso	2
The Republic of Niger.....	4
CHAPTER I THE LAWS AND REGULATIONS GOVERNING THE STRUCTURE OF THE COLONIES CONCERNED.....	6
Section 1 — The dismemberment of French Sudan	10
A. The organization of the First Military Territory	10
B. The creation of a Third Military Territory in FWA	10
C. The incorporation of the Territory of Say into the <i>cercle</i> of Moyen-Niger	12
D. The Territories of Senegambia and Niger (1902 to 1904)	12
E. The creation of the Colony of Haut-Sénégal et Niger (1904-1920).....	14
F. The division of the Military Territory of Niger into three regions	16
G. The incorporation of the <i>cercles</i> of Fada N’Gourma and Say into the Colony of Haut-Sénégal et Niger	18
H. The four Regions of the Military Territory of Niger.....	18
I. The detachment of the Military Territory of Niger from the Colony of Haut-Sénégal et Niger	21
J. The creation of the Colony of Upper Volta (1919 to 1932).....	21
K. The abolition of Téra Subdivision following the creation of the Colony of Upper Volta (1919 to 1932).....	23
L. The Military Territory of Niger becomes the Territory of Niger	23
M. The disappearance of the Colony of Haut-Sénégal et Niger and the resurrection of the Colony of French Sudan.....	23
Section 2 — The conversion of the Civil Territory of Niger into an autonomous Colony.....	25
A. The transfer of the administrative centre of the Colony of Niger from Zinder to Niamey and the subsequent territorial changes	25
B. The territorial changes to the Colonies of Niger and Upper Volta	27
C. The preparatory works for the delimitation between the Colonies of Niger and Upper Volta	27
D. The <i>Arrêté</i> of 31 August 1927 and its Erratum of 5 October 1927, fixing the boundary between the Colonies of Niger and Upper Volta.....	29
E. <i>Arrêté local</i> No. 126 of 3 November 1928 reconstituted Téra Subdivision within Tillabéry <i>cercle</i>	32
F. The dissolution and dismemberment of the Colony of Upper Volta and the incorporation of Dori and Fada N’Gourma <i>cercles</i> into the Colony of Niger (1932 to 1947)	32

G. Law No. 47-1707 of 4 September 1947 reconstituted the Colony of Upper Volta with its 1932 boundaries; the <i>cercles</i> of Dori and Fada N’Gourma were reincorporated into the Colony	34
H. The <i>Arrêté</i> of 30 March 1956 creating seven <i>cercles</i> within the territory of Niger	34
CHAPTER II THE DIFFICULTIES AND INCIDENTS IN THE DISPUTED AREA.....	37
Section 1 — The difficulties encountered during the period prior to independence	37
Section 2 — The difficulties encountered during the period subsequent to independence	44
CHAPTER III THE ATTEMPTS BY NIGER AND BURKINA FASO TO SETTLE THE FRONTIER DISPUTE PEACEFULLY	48
Section 1 — The work of the Joint Technical Commission on Demarcation of the Frontier	48
Section 2 — The attempts to settle the frontier dispute peacefully at diplomatic level.....	51
Section 3 — The Special Agreement seising the Court of 24 February 2009	52
A. Negotiation of the Agreement.....	52
B. Content.....	53
CHAPTER IV CARTOGRAPHIC MATERIAL RELATING TO THE DISPUTED AREA	55
CHAPTER V THE LEGAL BASES FOR DETERMINATION OF THE FRONTIER.....	63
Section 1 — The legislative texts	64
A. Content of the 1927 texts	64
B. Methods of interpreting the 1927 texts	68
(a) <i>Interpretation using cartographic material</i>	68
(b) <i>Textual interpretation</i>	70
(c) <i>Interpretation based on the travaux préparatoires</i>	72
(d) <i>Interpretation based on the practice of the local colonial authorities</i>	74
Section 2 — The 1:200,000 map of the <i>Institut géographique national de France</i> , 1960 edition	75
Section 3 — The relevant documents accepted by joint Agreement of the Parties	76
CHAPTER VI DETERMINATION OF THE FRONTIER IN THE TÉRA SECTOR.....	78
Section 1 — Physical and human description of Téra sector.....	78
Section 2 — The course of the frontier in the Téra sector	81
A. Methodology adopted	81
B. The course of the frontier in the Téra sector	88
(a) <i>From Tong-Tong to Tao, the boundary consists of two straight lines</i>	88

(b) <i>From the Tao astronomic marker to Bangaré, the line of the frontier basically follows the IGN line</i>	89
(c) <i>From Bangaré to the boundary of Say cercle, the frontier follows the IGN line</i>	92
CHAPTER VII DETERMINATION OF THE FRONTIER IN THE SAY SECTOR	95
Section 1 — Physical and human description of the Say sector	95
Section 2 — The course of the frontier in the Say sector	97
A. There was no justification for continuing the inter-colonial boundary to the village of Bossébangou.....	99
B. The frontier line in the sector of the four villages can be identified with precision	107
C. The representation of the course of the frontier in two straight lines between the point where it leaves the “salient” and enters the Botou Loop is entirely justified	112
SUBMISSIONS.....	116
Summary of sketch-maps and maps illustrating the Memorial.....	i
Sketch-maps (in chronological order).....	i
Maps	ii
List of documents in the annexes to the Memorial of Niger	iii
SERIES A — Diplomatic documents	iii
SERIES B — Legislative and regulatory documents	iv
SERIES C — Administrative documents and correspondence	vi
SERIES D — Maps	xii

LIST OF PRINCIPAL ABBREVIATIONS

FWA	French West Africa
ICJ	International Court of Justice
<i>IGN</i>	<i>Institut géographique national</i>
OJ	Official Journal
OJFWA	Official Journal of French West Africa
OJFR	Official Journal of the French Republic
OJRN	Official Journal of the Republic of Niger
MN	Memorial of the Republic of Niger

INTRODUCTION

0.1. By a joint letter of 12 May 2010, filed in the Registry of the Court on 20 July 2010¹, the Ministers for Foreign Affairs of Burkina Faso and the Republic of Niger notified to the Court a certified copy of the Special Agreement seising the International Court of Justice of the frontier dispute between Burkina Faso and the Republic of Niger, signed in Niamey on 24 February 2009, together with a copy of the Protocol of Exchange of the Instruments of Ratification of the Special Agreement, signed in Ouagadougou on 20 November 2009². At the same time, the two Parties also transmitted to the Court a certified copy of the exchange of notes embodying the agreement between the two States on the delimited sectors of their joint frontier, dated 29 October and 2 November 2009.

0.2. Under Article 2 of the Special Agreement, concerning the subject of the dispute, the Parties request the Court to:

- “1. determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong (latitude 14° 25' 04" N; longitude 00° 12' 47" E) to the beginning of the Botou bend (latitude 12° 36' 18" N; longitude 01° 52' 07" E);
2. place on record the Parties' agreement on the results of the work of the Joint Technical Commission on Demarcation of the Burkina Faso-Niger boundary with regard to the following sectors:
 - (a) the sector from the heights of N'Gouma to the astronomic marker of Tong-Tong;
 - (b) the sector from the beginning of the Botou bend to the River Mekrou.”³

0.3. Article 3 of the same document provides that the Parties request the Court to authorize the following procedure for the written pleadings:

- “(a) a Memorial filed by each Party not later than nine (9) months after the seising of the Court; [. . .]”⁴.

0.4. By Order of 14 September 2010, the Court set 20 April 2011 as the date for the filing of a Memorial by each of the Parties. This Memorial is filed pursuant to that Order.

0.5. The structure of the Memorial is as follows. It sets out the historical and legal background to the frontier between Burkina Faso and Niger (Chap. 1), before describing the

¹Joint notification of the Special Agreement seising the International Court of Justice of the frontier dispute between Burkina Faso and the Republic of Niger, letter dated 12 May 2010, filed in the Registry of the Court on 20 July 2010; MN, Anns., Series A, No. 20.

²Protocol of Exchange of the Instruments of Ratification of the Special Agreement seising the International Court of Justice of the frontier dispute between Burkina Faso and the Republic of Niger signed on 24 February 2009 in Niamey, Ouagadougou 20 November 2009; MN, Anns., Series A, No. 18.

³Certified copy of the Special Agreement seising the International Court of Justice of the frontier dispute between Burkina Faso and the Republic of Niger, signed in Niamey on 24 February 2009; MN, Anns., Series A, No. 13.

⁴*Ibid.*

difficulties to which the course of the boundary between the two Colonies, and then of the frontier between the two States, gave rise (Chap. 2). Details are then given of the attempts to achieve a peaceful settlement of the frontier dispute, which culminated in the conclusion of a protocol of agreement and of the Special Agreement seising the International Court of Justice in 2009 (Chap. 3). The cartographic material relating to the disputed area is analysed (Chap. 4), after which the legal bases for the determination of the frontier in this case are set out (Chap. 5). Finally, the position of the Republic of Niger on the determination of the frontier in this area is presented, distinguishing between the Téra sector (Chap. 6) and the Say sector (Chap. 7). Before commencing these Chapters, we shall give a brief description of the Parties to the dispute.

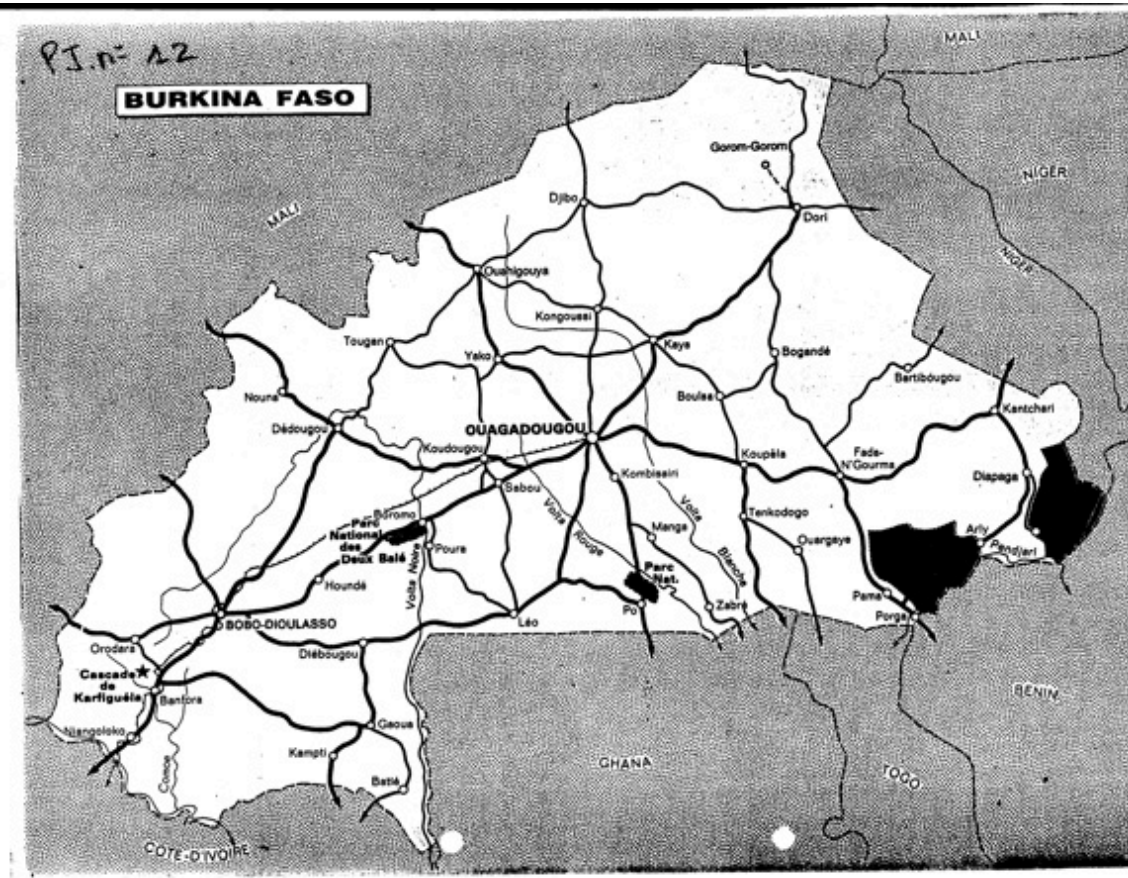
BURKINA FASO

0.6. Burkina Faso is a landlocked country, with a total surface area of approximately 274,200 sq km. It is bounded on the north and west by Mali, to the east by Niger, and to the south by Benin, Togo, Ghana and Côte d'Ivoire.

Burkina Faso has a hydrographic network consisting of three main basins: those of the Volta, the Comoé and the Niger. The country is traversed by three watercourses: the Mouhoun (formerly the Black Volta), the Nakambé (White Volta) and the Nazinon (Red Volta). The Mouhoun is the only permanent river, and flows towards Ghana.

0.7. The population of Burkina Faso was estimated in 2009 at approximately 16 million inhabitants. The territory of the country is divided into 13 regions and subdivided into 45 provinces, 350 *départements*, 359 independent *communes* and some 8,000 villages.

0.8. During the colonial period this West African territory had a variety of colonial statuses. The Colony of Upper Volta was created in 1919 as part of French West Africa (FWA), a grouping of French colonies in West Africa, but was then abolished in 1932. Between 1932 and 1947 the administrative divisions which composed it were distributed among the neighbouring Colonies of French Sudan (today Mali), Niger and Côte d'Ivoire. Upper Volta was re-established as an Overseas Territory from 1947 to 1958. On 11 December 1958 it became the Republic of Upper Volta, and was a member of the "Community" established by the French Constitution of 1958, before becoming independent on 5 August 1960. Subsequently, on 4 August 1984, it took the name of Burkina Faso, meaning "the country of honest men".



THE REPUBLIC OF NIGER

0.9. The Republic of Niger is a landlocked Sahelo-Saharan country situated in West Africa, with a surface area of 1,267,000 sq km.

It is bounded to the east by Chad, to the west by Burkina Faso and Mali, to the south by Nigeria and Benin, and to the north by Algeria and Libya.

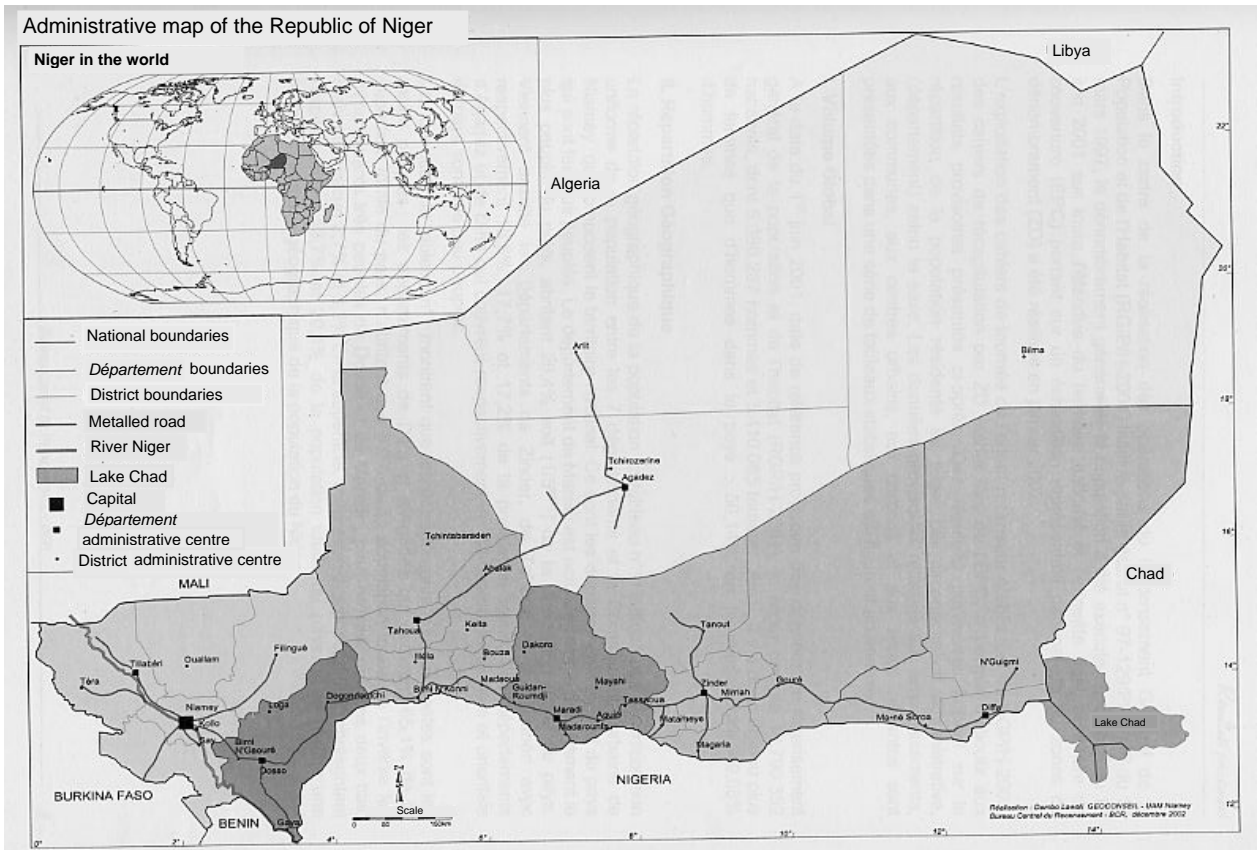
The country is basically watered by the river Niger over a distance of 550 km, with a few seasonal tributaries to the west, the Magia and the Goulbin-Maradi in the south-central area, the river Komadougou Yobé, and Lake Chad to the extreme east.

0.10. In 2010 the population of Niger was estimated at over 15 million inhabitants⁵. It is divided into the eight regions and 36 *départements* which today make up the territory of the Republic of Niger. The territory's over 10,000 villages and tribes are grouped into 266 *communes*⁶.

0.11. During the colonial period, Niger had a variety of administrative statuses as a component part of French West Africa (FWA). It was, *inter alia*, a Military Territory, before becoming a Colony in 1922 and an Overseas Territory from 1946-1958. Niger became a Republic in 1958 as a member of the Community established by the French Constitution of 1958, and obtained its independence on 3 August 1960.

⁵Projection by the Niger National Statistical Office from the first quarter of 2010.

⁶National Atlas of Niger, December 2002 edition.



CHAPTER I

THE LAWS AND REGULATIONS GOVERNING THE STRUCTURE OF THE COLONIES CONCERNED

1.1. In West Africa, in line with the principle of effective occupation as set out in the General Act of the Berlin Conference of 1885, the French settlements situated on the Atlantic coast gradually spread towards the interior of the continent. The conquest and occupation of the region were carried out by a series of expeditions, in Senegal and French Sudan, in Guinea, in Côte d'Ivoire and in Dahomey. In order to prepare the ground for future penetration and to outdistance the expeditions of other competing European powers in what is now the western part of Niger and the eastern area of Burkina Faso, the French colonial authorities first sent various exploratory expeditions to reconnoitre the region. These enabled treaties of protection to be concluded with the local rulers so as to enable the river Niger to be reached. Subsequently, having concluded the reconnaissance period, the French authorities proceeded to the colonial occupation phase.

1.2. Following the effective occupation, in 1897, of the Gourma, and of the areas extending from Aribinda to Say, including Dori, the Yagha and the Torodi, all of these territories were incorporated into the Colony of Sudan (Eastern Region and Macina). This was part of a larger whole constituting a union instituted by a Decree of 16 June 1895⁷, which lasted until the end of the colonial period: French West Africa (FWA). In establishing a Government-General for FWA, this decree sought to create an organ responsible for co-ordinating activities and resolving conflicts among the various Colonies composing it, whose interests sometimes differed. FWA was headed by a Governor-General (then later by a High Commissioner), while the Colonies were administered by Lieutenant-Governors.

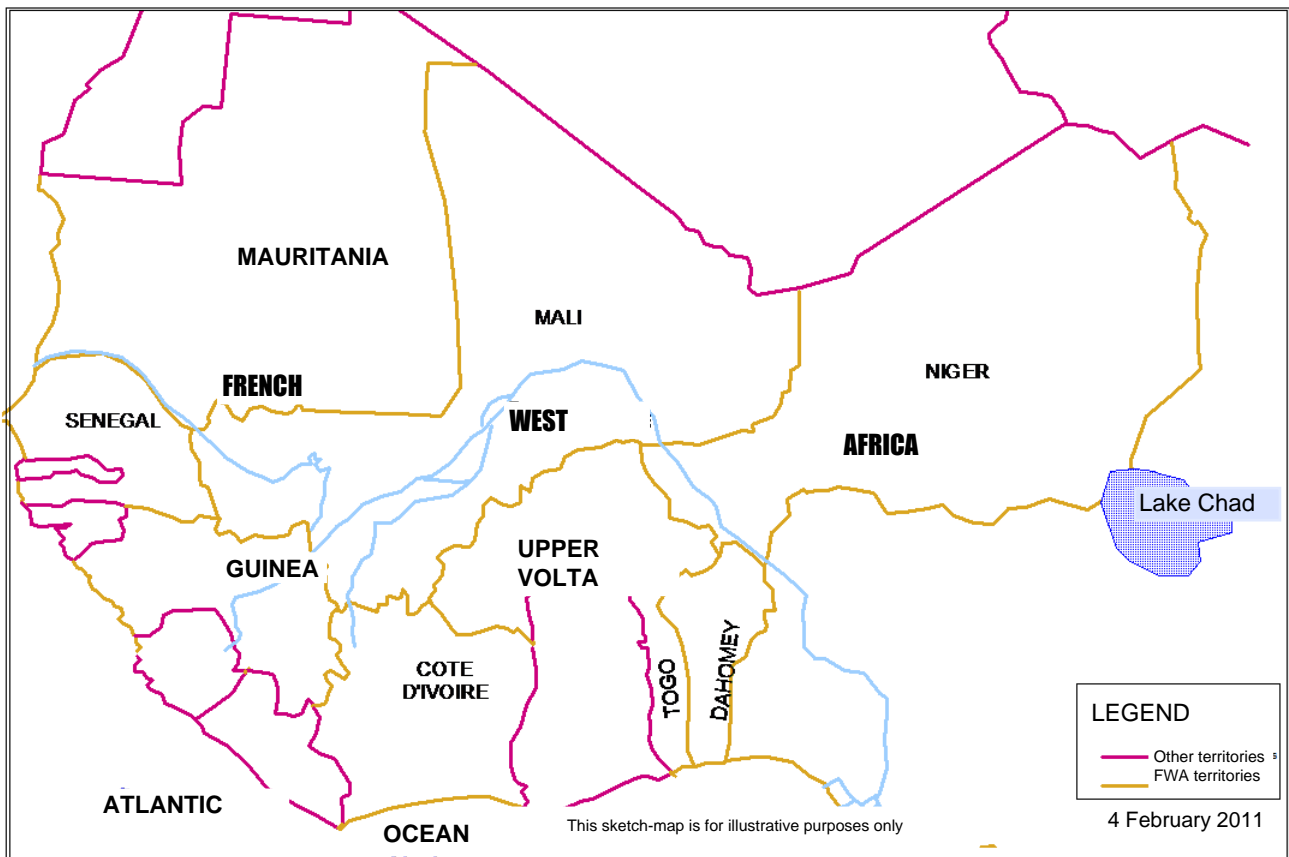
1.3. In 1957, FWA consisted of territories distributed along the Atlantic coast on the one hand, and in the Sahel-Sudan region on the other. The first category, in addition to the Colony of Senegal, which was the oldest, included Guinea, Côte d'Ivoire, Dahomey and Mauritania. The territories of Upper Volta, Niger and French Sudan belong to the second category.

1.4. Within the Colonies, the basic administrative unit was the *cercle*, headed by a Colonial Administrator. Thus, in the disputed area, four *cercles* are involved, in the territory of Niger the *cercles* of Say and Tillabéry⁸, and in the Colony of Upper Volta the *cercles* of Dori and Fada N'Gourma. The *cercle* could be a single unit, or include territorial subdivisions. These subdivisions consisted either of *cantons* (for the sedentary population) or *groupements* (for the nomadic and Bellah peoples). The *cantons* were composed of villages and hamlets, and the *groupements* of tribes.

1.5. Throughout the colonial period, the territories involved in the present dispute underwent numerous changes, as a result of the frequent reorganizations of the constituent elements of FWA in this region. Thus in the following pages we shall analyse the laws and regulations concerning the structure of the Colonies covered by the dispute, as well as the creation and development of the *cercles* concerned.

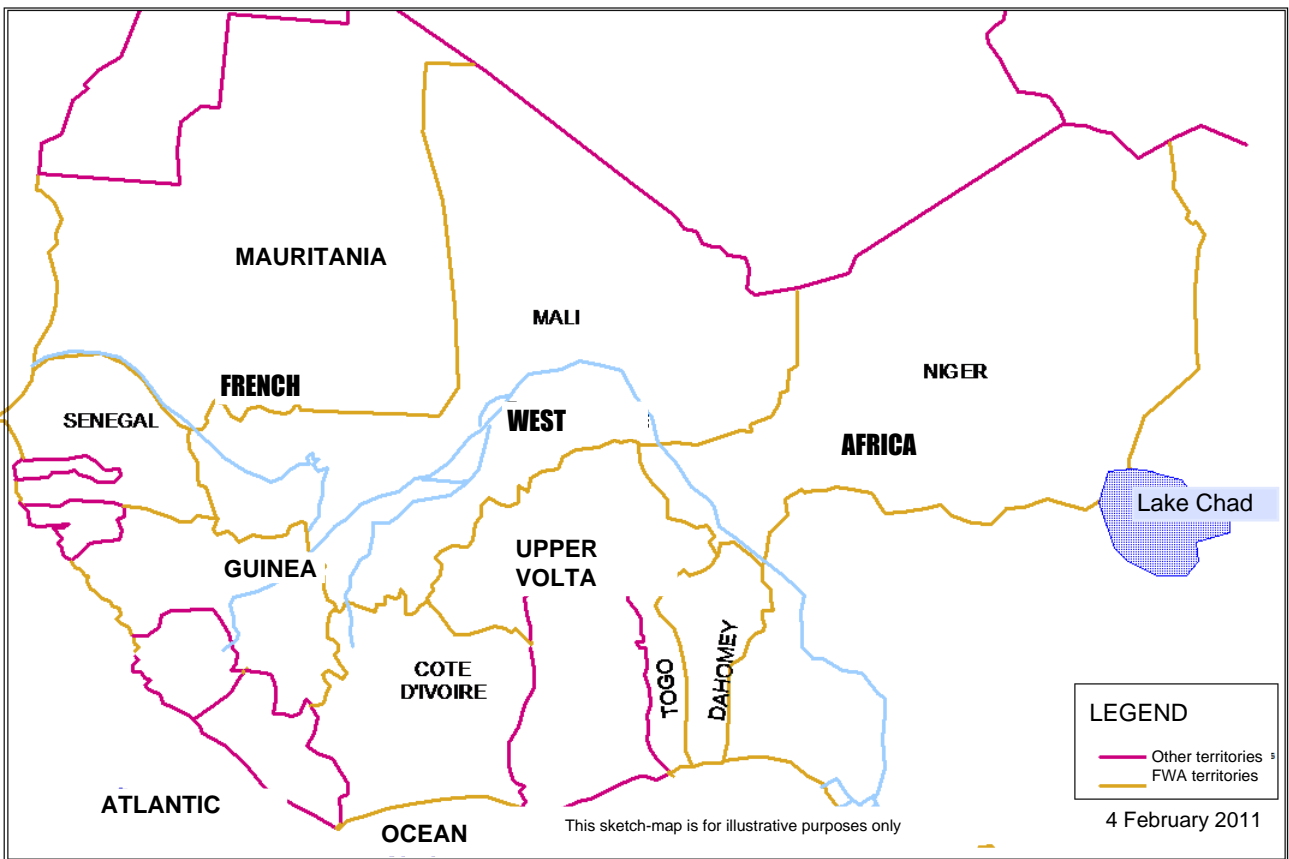
⁷Decree of 16 June 1895 establishing a Government-General of French West Africa; MN, Anns., Series B, No. 1.

⁸This name has changed its spelling over the years, sometimes "Tillabéry" as shown in the original (generally during the colonial period), sometimes "Tillabéri" (particularly after independence); in this Memorial, the Republic of Niger has decided to reproduce the spelling as it appears in the reference documents cited.



1.6. As indicated above, following the colonial occupation of the Gourma region and the area extending from Dori to Say, these territories were incorporated into the Colony of French Sudan⁹. The dismemberment of that Colony, in October 1899, would result in major territorial changes in French West Africa.

⁹See above, para. 1.2.



Section 1 — The dismemberment of French Sudan

1.7. The Decree of 17 October 1899¹⁰ dismembered French Sudan, incorporating its component parts into Senegal, Côte d'Ivoire, French Guinea and Dahomey and two Military Territories. Article 1 of the Decree provided:

“[. . .] The *cantons* of Kouala or Nebba south of Liptako and the Territory of Say, comprising the *cantons* of Djennaré, Diongoré, Fiolmongani and Botou, are hereby incorporated into Dahomey.

The *cercles* or *résidences* of the administrative division known as the ‘northern and north-eastern region of French Sudan’, namely Timbuktu, Jumpi, Goudam, Bandiagra, Dori and Ouahigouya, as well as the *cercles* or *résidences* of the administrative division known as the Volta region [. . .], shall form two Military Territories, under the authority of the Governor-General and governed by two Military Commanders [. . .]”.

A. The organization of the First Military Territory

1.8. Pursuant to that Decree, the Governor-General of FWA adopted an *arrêté* in order to organize the Military Territories. Thus Article 1 of the *Arrêté* of 25 December 1899¹¹ incorporated Sinder *cercle* and Dori *residence* into the First Military Territory:

“The *cercles* of Timbuktu, Sumpi, Bamba, Gao, and Sinder and the *résidences* of Dori, Macina, and Yatenga shall, with effect from 1 January 1900, shall constitute the First Military Territory.”

A Second Military Territory was created on the same date, with a command post at Timbuktu, and its administrative centre at Bobo Dioulasso (capital of the Second Military Territory).

B. The creation of a Third Military Territory in FWA

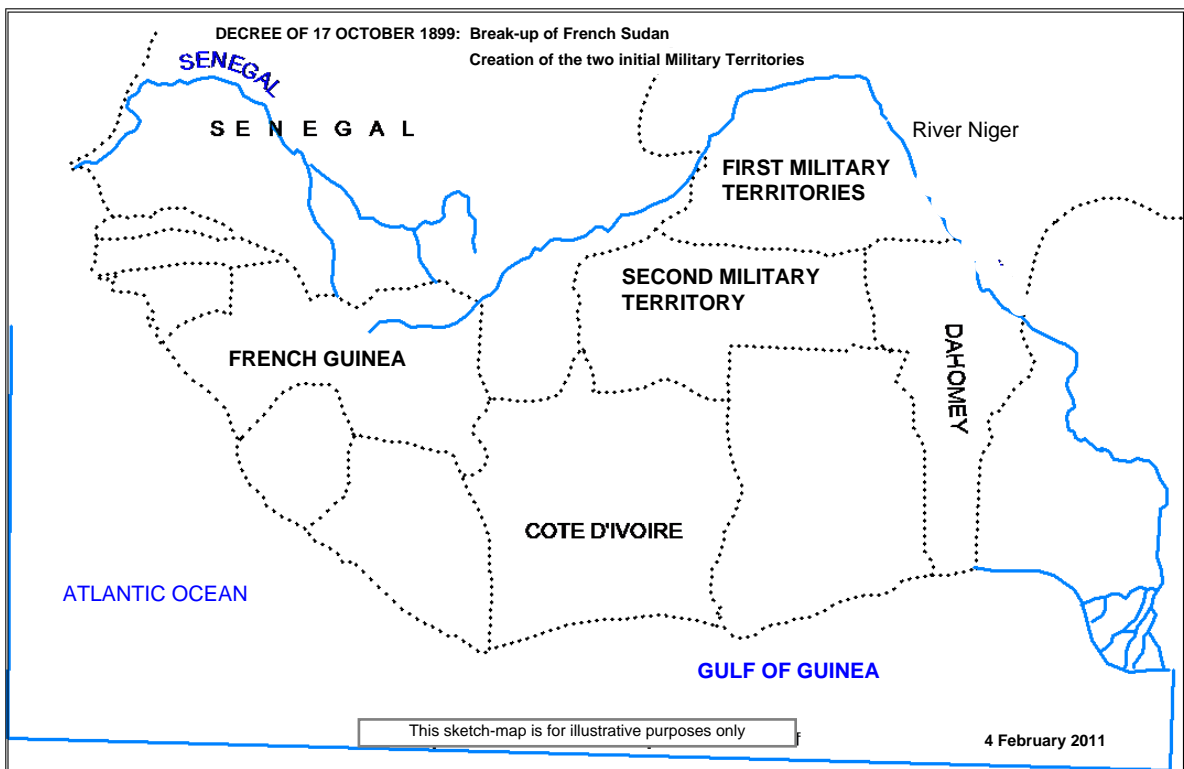
1.9. The *Arrêté* of the Governor-General of FWA of 23 July 1900¹² created a Third Military Territory. Article 1 of that text provided:

“This territory shall encompass the areas on the left bank of the Niger, from Say to Lake Chad, which were placed under the French sphere of influence by the Convention of 14 June 1898.”

¹⁰Decree of 17 October 1899 reorganizing the territories having constituted the possessions of French Sudan, *OJFWA*, No. 212 of 9 November 1899; MN, Anns., Series B, No. 2.

¹¹*Arrêté général* of 25 December 1899 organizing the Military Territories of French West Africa; MN, Anns., Series B, No. 3.

¹²*Arrêté général* of 23 July 1900 creating a Third Military Territory, with its administrative centre at Zinder, *OJFWA*, undated, 1900, p. 313; MN, Anns., Series B, No. 4.



This *Arrêté* was confirmed by a Decree of the French Republic of 20 December 1900¹³, which provides:

“there is hereby constituted between the Niger and Lake Chad a Third Military Territory having its administrative centre at Zinder, under the authority of the Governor-General of West Africa and governed by a Military Commander”¹⁴.

These two texts created the entity whose territory would form the basis of what would subsequently become the Colony, then the State of Niger.

C. The incorporation of the Territory of Say into the *cercle* of Moyen-Niger

1.10. Following the Decree of 17 October 1899 allocating the Territory of Say to the Government of Dahomey, Article 1 of *Arrêté* No. 149 of 20 March 1901¹⁵ of the Governor of Dahomey and Dependencies incorporated the Territory of Say into the *cercle* of Moyen-Niger (Kandi *cercle*):

“The Territory of Say, whose precise boundaries will be fixed subsequently, is hereby incorporated into the *cercle* of Moyen-Niger [. . .].”

D. The Territories of Senegambia and Niger (1902 to 1904)

1.11. By a Decree of 1 October 1902¹⁶ of the President of the French Republic, the list of territories composing French West Africa was amended as follows:

“the protectorate areas which are currently dependencies of Senegal, and the Territories of Haut-Sénégal and Moyen-Niger, shall henceforth be grouped in a single new financial and administrative unit, under the name ‘Territories of Senegambia and Niger’”¹⁷.

This new administrative division encompassed, *inter alia*, the First and Second Military Territories.

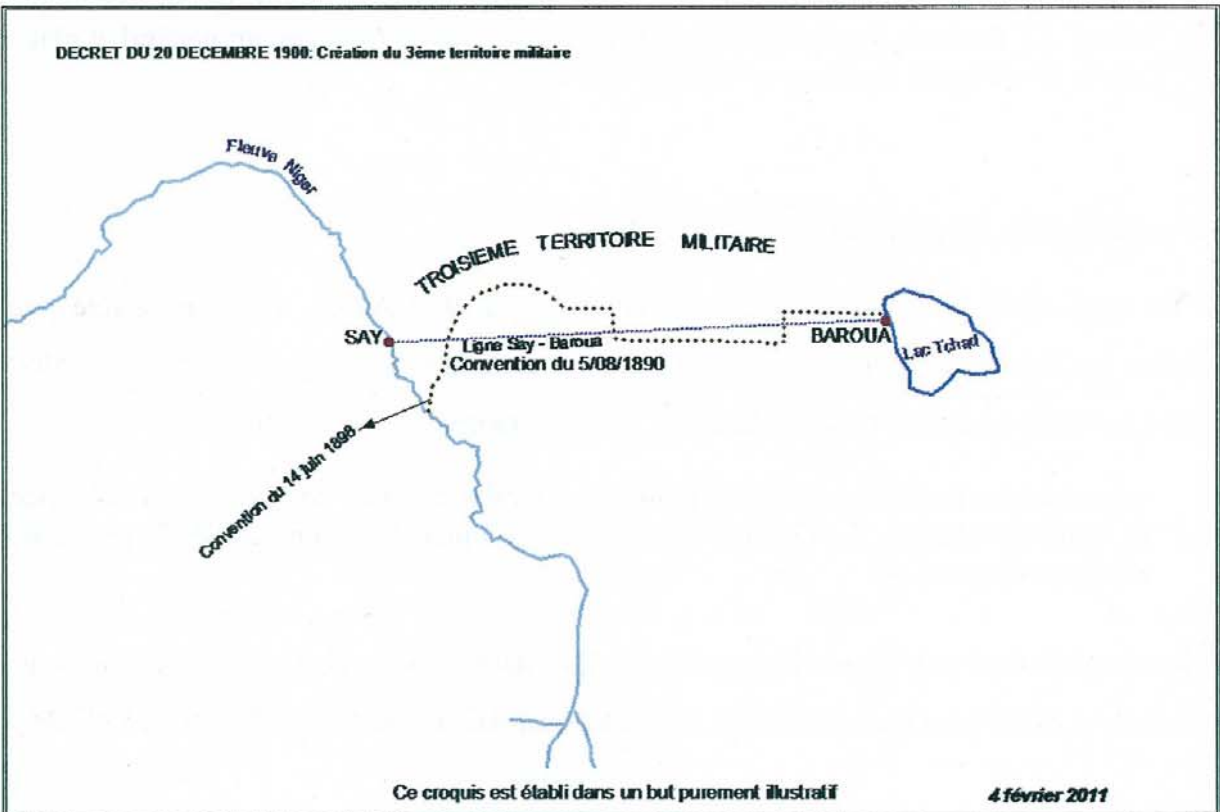
¹³Decree of 20 December 1900 confirming the *Arrêté* of the Governor-General of 23 July 1900 and creating a Third Military Territory in French West Africa (*Bulletin officiel du Ministère des colonies*, 14th year — 1900, Vol. 14, Nos. 1-12, pp. 1087-1088; MN, Anns., Series B, No. 5).

¹⁴Care should be taken not to confuse Sinder, located on the River Niger 15 km north-west of Tillabéry, with the town of Zinder, located over 1,000 km to the east.

¹⁵*Arrêté* No. 149 of 20 March 1901 incorporating the Territory of Say into the *cercle* of Moyen-Niger (original manuscript text); MN, Anns., Series B, No. 6.

¹⁶Decree of 1 October 1902 reorganizing the Government-General of French West Africa (*Official Journal of Senegal and Dependencies*, undated, 1902, pp. 582-583); MN, Anns., Series B, No. 7.

¹⁷*Ibid.*, Article 1 (5).



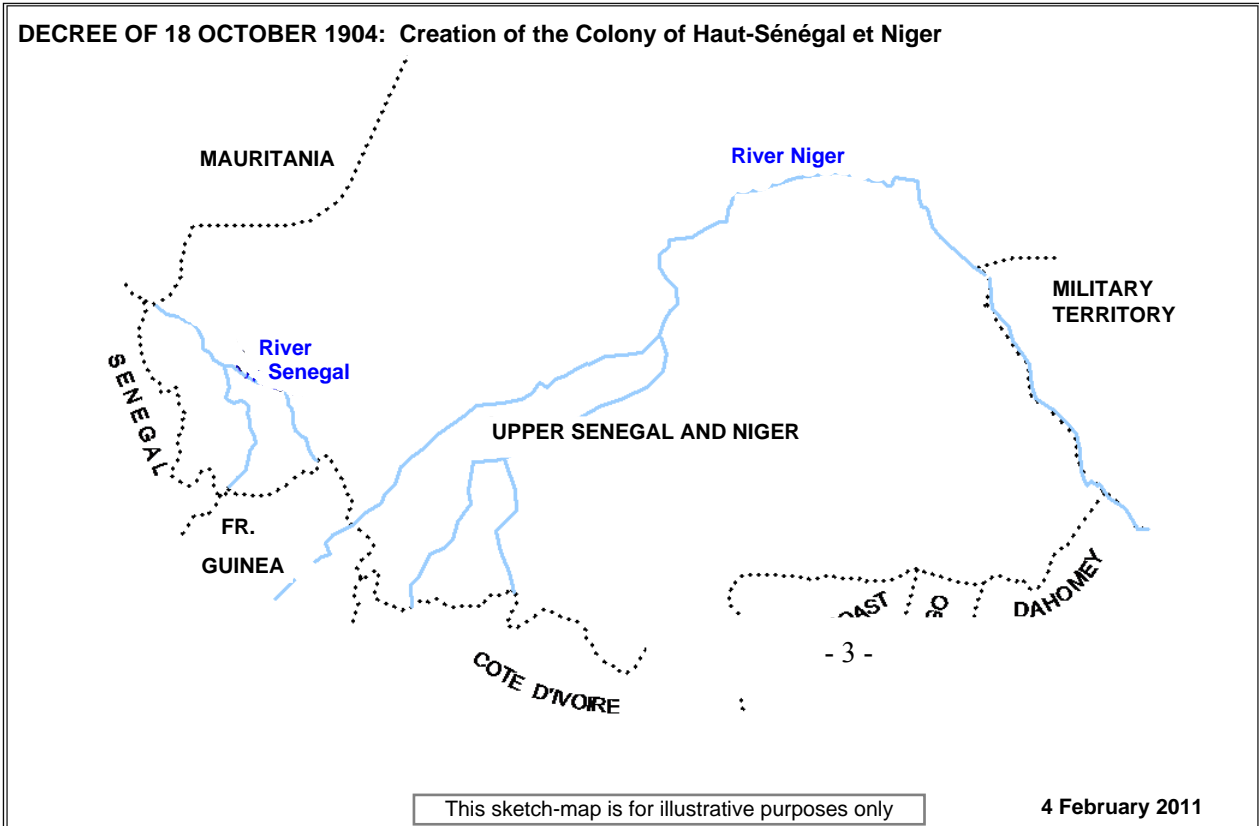
E. The creation of the Colony of Haut-Sénégal et Niger (1904-1920)

1.12. Two years later, a Decree of 18 October 1904¹⁸ once more reorganized the Government-General of French West Africa. Under this text, a part of the Territories of Senegambia and Niger took the name Haut-Sénégal et Niger and became a separate Colony:

“The Colony of Haut-Sénégal et Niger [...] shall encompass the former Territories of Haut-Sénégal and Moyen-Niger, as well as those forming the Third Military Territory. Its administrative centre shall be at Bamako. This Colony comprises:

- (a) the *cercles* under civil administration, which shall include those currently comprising the Second Military Territory;
- (b) a military territory, called ‘Military Territory of Niger’, which shall comprise the current administrative divisions of the First and Third Military Territories”.

¹⁸Decree of 18 October 1904 reorganizing the Government-General of French West Africa, *Renseignements coloniaux*, No. 11/1904; MN, Anns., Series B, No. 8.



F. The division of the Military Territory of Niger into three regions

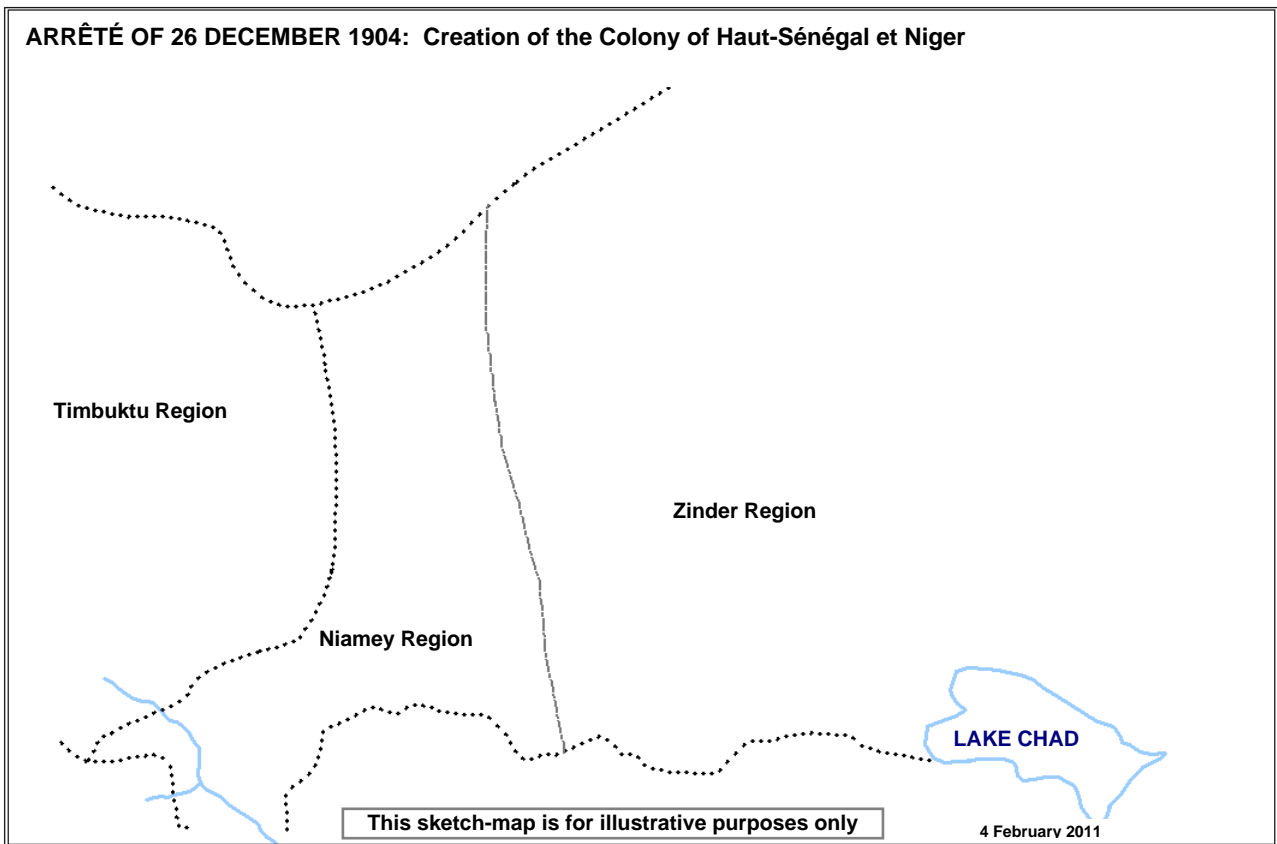
1.13. The second paragraph of Article 5 of this Decree provided that:

“the Governor-General shall determine in government council on a proposal from the Lieutenant-Governors concerned the administrative divisions within each of the Colonies of French West Africa”.

On the basis of this provision, the first paragraph of Article 6 of the *Arrêté* of 26 December 1904¹⁹ of the Governor-General of French West Africa divided the military territory of Niger into three Regions, having as their respective administrative centres Niamey, Timbuktu and Zinder. The first paragraph of Article 7 of that *Arrêté* further provided:

“Each Region shall be divided into *cercles*, namely: [. . .] Niamey Region: Djerma, Dounzou and Dori.”

¹⁹*Arrêté général* of 26 December 1904 organizing the Military Territory of Niger (*Official Journal of Senegal and Dependencies*, 31 December 1904); MN, Anns., Series B, No. 9.



G. The incorporation of the *cercles* of Fada N’Gourma and Say into the Colony of Haut-Sénégal et Niger

1.14. The Decree of the President of the Republic of 2 March 1907²⁰ detached the *cercles* of Fada N’Gourma and Say from the Colony of Dahomey and incorporated them into the Colony of Haut-Sénégal et Niger. In his report to the President of the Republic, justifying this transfer of territory, the Minister for the Colonies gave the following reasons:

“My attention has been drawn a number of times to the disadvantages of the incorporation into our Colony of Dahomey of the *cercles* of Fada N’Gourma and Say.

Ethnic considerations of genuine importance, as well as administrative requirements, make it necessary, on the contrary, that these *cercles* be incorporated in our Colony of Haut-Sénégal et Niger, which had moreover already possessed them in part prior to the Decree of 17 October 1899. [. . .]”.

H. The four Regions of the Military Territory of Niger

1.15. *Arrêté général* No. 1277 of 31 December 1907²¹ of the Governor-General of French West Africa defined the various administrative units of the Military Territory of Niger. It was composed of four Regions: Timbuktu, Gao, Niamey and Zinder. Article 3 of that document provided:

“The Gao Region shall consist of the current territories of the *cercles* of Dori, Dounzou and Gao and the *secteur* of Bourem.

It includes: [. . .]

2. Tillabéry *cercle* within its current boundaries;
3. Dori *cercle*, consisting of the current *cercle* minus Torodi”.

Article 4 of the *arrêté* further provided:

“The Niamey Region shall comprise the current territories of the *cercles* of Djenna [Djerma], Tahoua and Say, together with Torodi.

It shall include:

1. Djenna [Djerma] *cercle*, formed by Niamey district, Karma, Diamaré and Torodi *cantons*, Say *cercle* [. . .]”.

Thus, within the Military Territory of Niger, Say became part of the Niamey Region. This was not a change of colony, but simply an incorporation into a different entity within the Colony of Haut-Sénégal et Niger. Thus, pursuant to the fifth subparagraph of Article 1 of the above-mentioned Decree of 18 October 1904 reorganizing the Government-General of French

²⁰Decree of 2 March 1907 incorporating into the Colony of Haut-Sénégal et Niger the *cercles* of Fada N’Gourma and Say, *OJFWA* of 30 March 1907; MN, Anns., Series B, No. 10.

²¹*Arrêté général* No. 1277 of 31 December 1907 defining the various administrative divisions of the Military Territory of Niger (*OJFWA*, No. 158 of 11 January 1908, p. 12); MN, Anns., Series B, No. 11.

West Africa²², the Military Territory of Niger containing the administrative divisions of the First and Third Military Territories was an integral part of the Colony of Haut-Sénégal et Niger.

An *Arrêté* No. 1241 *bis*, adopted by the Governor-General of French West Africa on 14 December 1908²³, reorganized the administrative divisions of the Military Territory of Niger. It maintained the four above-mentioned Regions. Article 3 provided:

“The Gao Region shall include: [. . .]

2. Tillabéry *cercle* ;

3. Dori *cercle*”.

Article 4 further provided:

“The Niamey Region shall consist of the current territories of Djerma *cercle* [which since 31 December 1907 included the territory of the former Say *cercle*], Dosso *cercle* and the Tahoua *cercle* [. . .]”.

Article 1 of the *Arrêté* of 21 June 1909²⁴ integrated Dori *cercle* into the Civil Territory of Haut-Sénégal et Niger:

“Dori *cercle*, being part of the Military Territory of Niger, is hereby incorporated within its current boundaries into the Civil Territory of Haut-Sénégal et Niger with effect from 1 August 1910.”

Similarly, Article 1 of the *Arrêté* of the Governor-General of French West Africa of 22 June 1910²⁵ removed from the Military Territory of Niger the Timbuktu Region, as well as the parts of Gao, Tillabéry and Djerma *cercles* situated on the right bank of the Niger and incorporated them, with effect from 1 January 1911, into the Civil Territory of Haut-Sénégal et Niger.

Article 2 of that document provided:

“These territories shall form (. . .)

4. The *cercle* of Say, consisting of the *cantons* on the right bank detached from Djerma *cercle*;

Finally, the *cantons* of Tillabéry on the right bank shall be incorporated into Dori *cercle*.”

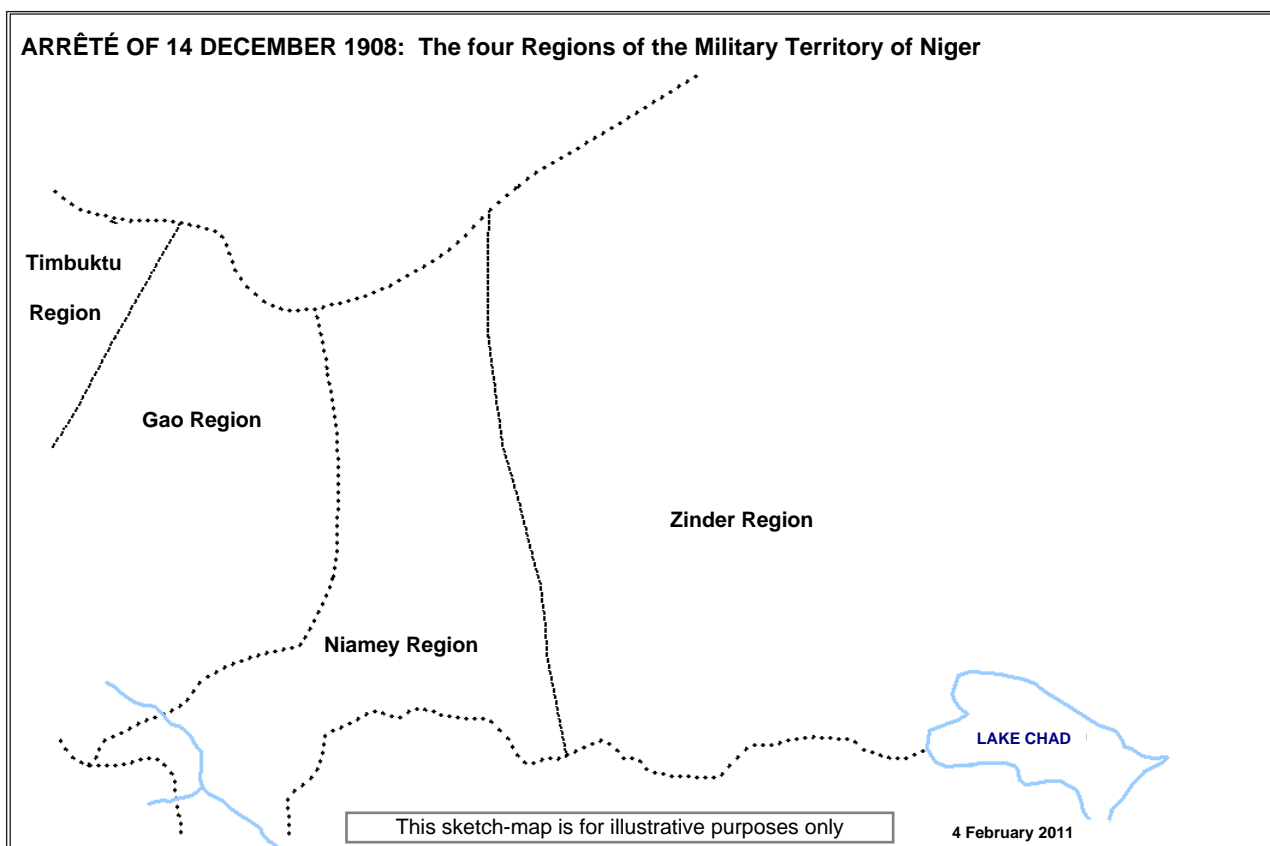
It should be emphasized that Say *cercle*, consisting of the *cantons* on the right bank of the Niger detached from Djerma *cercle*, at that point, like Dori *cercle* a year earlier, left the Military Territory of Niger. From that date onwards, there would no longer be any territories belonging to the Military Territory of Niger on the right bank of the river.

²²See above, para. 1.11.

²³*Arrêté* No. 1241 *bis* of 14 December 1908 reorganizing the administrative divisions of the Military Territory of Niger (*OJFWA*, No. 209 of 2 January 1909); MN, Anns., Series B, No. 12.

²⁴*Arrêté* No. 673 of 21 June 1909 incorporating Dori *cercle* into the Civil Territory of Haut-Sénégal et Niger; MN, Anns., Series B, No. 13.

²⁵*Arrêté général* of 22 June 1910 incorporating the Region of Timbuktu into the Civil Territory of Haut-Sénégal et Niger (*OJ Haut-Sénégal et Niger*, 1 September 1910); MN, Anns., Series B, No. 14.



Following the preceding administrative text, a second *Arrêté* of 22 June 1910²⁶, also adopted by the Governor-General of French West Africa and reorganizing the Military Territory of Niger, the administrative centre of which became Zinder with effect from 1 January 1911, divided it into seven *cercles*, namely Gao, Niamey, Madaoua, Zinder, N'guigmi, Agadez and Bilma. Niamey *cercle* consisted of the *secteurs* of Tillabéry, Gaya, Dosso, Yeni and the district of Dogondoutchi, all situated on the left bank.

I. The detachment of the Military Territory of Niger from the Colony of Haut-Sénégal et Niger

1.16. Subsequently, a Decree of 7 September 1911²⁷ detached the Military Territory of Niger from the Colony of Haut-Sénégal et Niger. The Military Territory of Niger was to be governed by a senior officer under the direct authority of the Governor-General of French West Africa.

Following that Decree, *Arrêté* No. 1728 of 23 November 1912²⁸ of the Governor-General of French West Africa reorganized the internal administration of the Military Territory of Niger. It was divided into seven *cercles*, namely Niamey, Madaoua, Zinder, Gouré, Mainé-Soroa, Agadez and Bilma. Thus Niamey *cercle* consisted of the central *secteur* of Niamey and the *secteurs* of Tillabéry, Dasso, Dogondoutchi and Gaya.

The creation of the Colony of Upper Volta in March 1919 would cause a significant change in the territorial configuration of the region.

J. The creation of the Colony of Upper Volta (1919 to 1932)

1.17. In 1919 certain southern and western *cercles* of the Colony of Upper Volta and Niger were detached from it in order to make up the new Colony of Upper Volta. Article 1 of the Decree of 1 March 1919²⁹ provided:

“The *cercles* of Gaoua, Bobo-Dioulasso, Dédougou, Ouagadougou, Dori, Say and Fada-N’Gourma, currently part of Haut-Sénégal et Niger, shall form a new separate Colony called Upper Volta.

The administrative seat shall be at Ouagadougou.”

It should be emphasized that the creation of this new Colony was not accompanied by a description of the boundaries of the entities composing it. The procedure, as usual, was to list the *cercles* that it contained. The boundary between the Military Territory of Niger and the Colony of Upper Volta ran between Niamey *cercle* on one side and Dori and Say *cercles* on the other. Thus the boundary between this new entity and the Military Territory of Niger, which would later become the Territory of Niger and then the Colony of Niger, was fixed at that time at the River Niger.

²⁶*Arrêté général* No. 672 of 22 June 1910 reorganizing the Military Territory of Niger (*OJFWA*, undated, 1910, p. 475); MN, Anns., Series B, No. 15.

²⁷Decree of 7 September 1911 incorporating the Military Territory of Niger into the Government-General of French West Africa with effect from 1 January 1912, and *Arrêté* promulgating that Decree in French West Africa (*OJ Haut-Sénégal — Niger*, 1911, pp. 511-512); MN, Anns., Series B, No. 16.

²⁸*Arrêté général* No. 1728 of 23 November 1912 reorganizing the internal administration of the Military Territory of Niger (*OJ FWA*, 11 January 1913); MN, Anns., Series B, No. 17.

²⁹Decree of 1 March 1919 dividing the Colony of Haut-Sénégal et Niger and creating the Colony of Upper Volta, and *Arrêté* promulgating that Decree in French West Africa (*OJFWA*, No. 768, 1919, pp. 550-551); MN, Anns., Series B, No. 18.

K. The abolition of Téra Subdivision following the creation of the Colony of Upper Volta (1919 to 1932)

1.18. Following the Decree of 1 March 1919 creating the Colony of Upper Volta, *Arrêté* No. 384 of 16 August 1920³⁰ of the Governor of Upper Volta abolished Téra Subdivision. Article 1 provided:

“Téra Subdivision (Dori *cercle*) is hereby abolished and shall be directly administered from Dori.”

L. The Military Territory of Niger becomes the Territory of Niger

1.19. The Decree of 4 December 1920³¹ converted the Military Territory of Niger into the Territory of Niger. Article 1 provided:

“With effect from 1 January 1921, the Military Territory of Niger shall take the name ‘Territory of Niger’.”

The Territory remained divided into seven *cercles*: Agadez, Gouré, Kaouar-Tibesti (administrative centre at Bilma), Madaoua, N’guigmi, Niamey and Zinder.

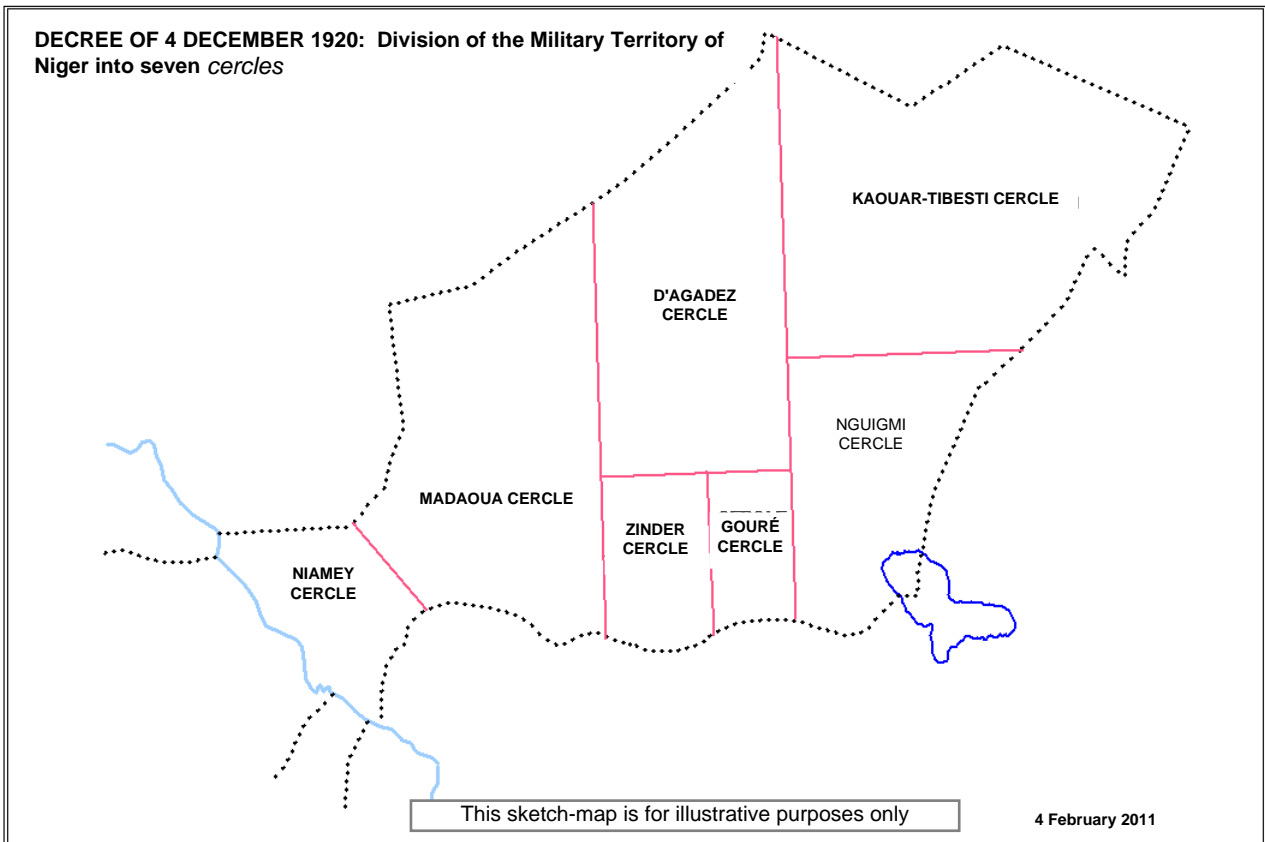
M. The disappearance of the Colony of Haut-Sénégal et Niger and the resurrection of the Colony of French Sudan

1.20. A further Decree of 4 December 1920³² naming the Colonies and Territories composing the Government-General of French West Africa reconstituted the Colony of French Sudan, into which part of the territories which had previously composed the Colony of Haut-Sénégal et Niger were incorporated.

³⁰Arrêté No. 384 of 16 August 1920 abolishing Téra Subdivision; MN, Anns., Series B, No. 19.

³¹Decree of 4 December 1920 reorganizing the Military Territory of Niger and converting it into a Colony of the Civil Territory of Mauritania, and *Arrêté* promulgating that Decree (OJFWA, undated, 1921, pp. 81-82); MN, Anns., Series B, No. 20.

³²Decree of 4 December 1920 naming the Colonies and Territories composing the Government-General of French West Africa, and *Arrêté* promulgating that Decree (OJFWA, 1921); MN, Anns., Series B, No. 21.



**Section 2 — The conversion of the Civil Territory of Niger
into an autonomous Colony**

1.21. Article 1 of the Decree of 13 October 1922³³ raised the Territory of Niger to the status of an autonomous Colony:

“The Territory of Niger is hereby converted, with effect from 1 July 1922, into a Colony, which shall take the name of Colony of Niger [. . .]”.

A. The transfer of the administrative centre of the Colony of Niger from Zinder to Niamey and the subsequent territorial changes

1.22. Following the conversion of the Territory of Niger into an autonomous Colony, Article 1 of the Decree of 28 December 1926³⁴ transferred the administrative centre of the Colony from Zinder to Niamey:

“The administrative centre of the Colony of Niger is hereby established at Niamey.”

Article 2 of the Decree continued:

“The following territories, which are currently part of the Colony of Upper Volta, shall be incorporated in the Colony of Niger with effect from 1 January 1927:

1. Say *cercle*, with the exception of Gourmantché Botou *canton*;
2. The *cantons* of Dori *cercle* which were formerly part of the Military Territory of Niger in the Téra and Yatacala regions, and were detached from it by the *Arrêté* of the Governor-General of 22 June 1910.

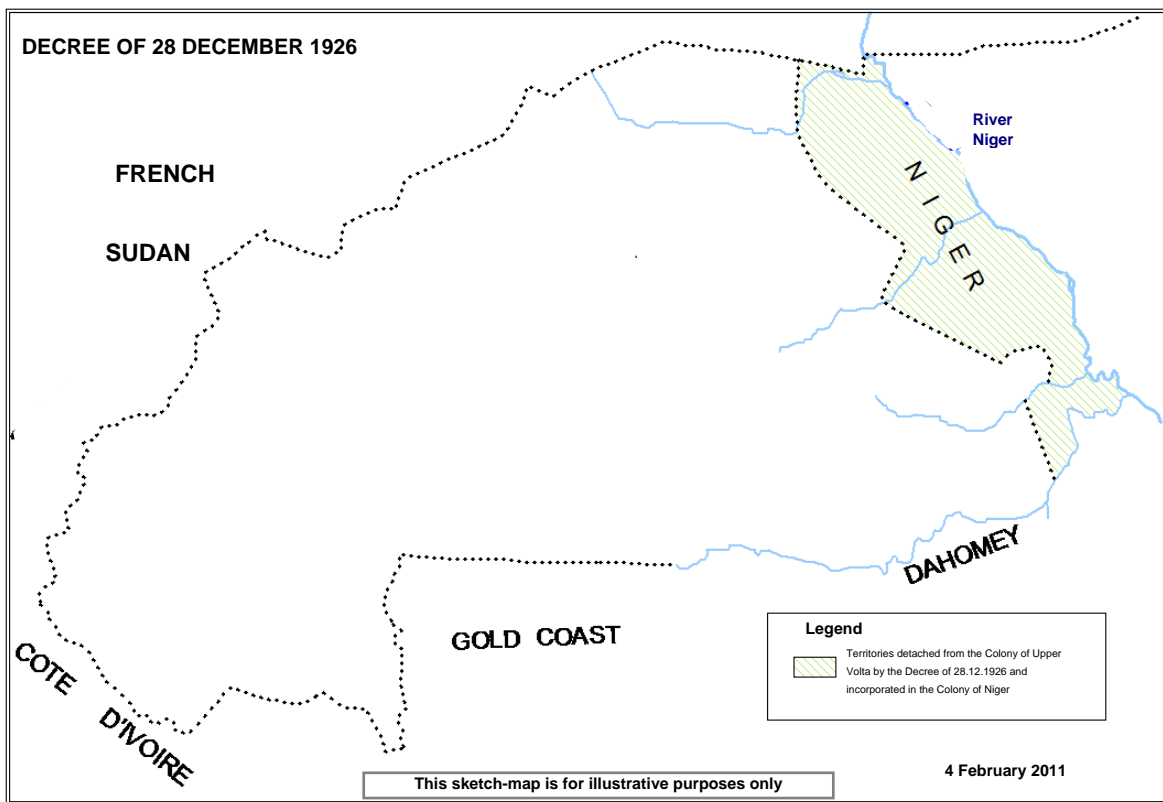
An *Arrêté* of the Governor-General in Standing Committee of the Government Council shall determine the course of the boundary of the two Colonies in this area.”

In his report to the President of the Republic, the Minister for the Colonies gave the following reasons justifying the incorporation of Say *cercle* and the Téra and Yatacala regions into the Colony of Niger.

“For political, economic, and administrative reasons, the Governor-General of French West Africa proposes that the administrative centre of the Colony of Niger be transferred from Zinder to Niamey. This measure will have inter-colonial consequences, in that the head of the Colony of Niger will take up residence close to territories which are currently very remote from their administrative centre and over which it will now be easy for him to exercise immediate direction and control. These administrative divisions were formerly part of the Territory of Niger when its

³³Decree of 13 October 1922 converting the Civil Territory of Niger into an autonomous Colony (*OJFWA*, No. 955, 20 January 1923, p. 58); MN, Anns., Series B, No. 22.

³⁴Decree of 28 December 1926 transferring the administrative centre of the Colony of Niger and providing for territorial changes in French West Africa, and *Arrêté* promulgating that Decree (*OJFWA*, No. 1167, undated, 1927, p. 92); MN, Anns., Series B, No. 23.



administrative centre was at Niamey. They were only removed at a time when military concerns required that Zinder be chosen as administrative centre of the Colony. It is thus logical that they should be returned to it at a time when the government will again be moved to Niamey.

As the administrative areas in question lie along the Niger, which will become the administrative and economic axis of the Colony of Niger, it will be possible to give this area a unity and cohesion which will be essential factors in its future development.”³⁵

B. The territorial changes to the Colonies of Niger and Upper Volta

1.23. Following this Decree, an *Arrêté* providing for territorial changes to the Colonies of Upper Volta and Niger adopted by the Governor-General of French West Africa on 22 January 1927³⁶ provided:

“Article 1 — That part of Dori *cercle* assigned to the Colony of Niger shall be incorporated into the territory of the current Tillabéry Subdivision (Niamey *cercle*), and shall constitute the *cercle* of Tillabéry.

Article 2 — That part of Say *cercle* assigned to the Colony of Niger shall constitute, under the same name, a *cercle* of that Colony.

Article 3 — The *canton* of Gourmantché-Botou, previously part of Say *cercle* and remaining in the Colony of Upper Volta, shall be incorporated into Fada *cercle*.”

C. The preparatory works for the delimitation between the Colonies of Niger and Upper Volta

1.24. The Decree of 28 December 1926 further provided that an *arrêté* of the Governor-General in standing committee of the Government Counsel would determine the course of the boundary of the two Colonies in that area. That *arrêté* was adopted on 22 January 1927 and the Lieutenant-Governors of Niger and Upper Volta were made responsible for its execution. In order to secure material for that delimitation, the two Colonies agreed on three texts:

- a Record of Agreement of 2 February 1927 between Mr. Brévié, Governor of the Colony of Niger and Mr. Lefilliatre, Inspector of Administrative Affairs, Representative of the Governor of Upper Volta³⁷. This Agreement listed the *cantons* having belonged on 22 June 1910 to the former Tillabéry *cercle*, which were to be reincorporated into Niger, and defined the boundary between these *cantons* and that part of Dori *cercle* remaining in Upper Volta;
- a Record of Agreement of 10 February 1927 between Mr. Lefilliatre, Inspector of Administrative Affairs, Representative of the Governor of Upper Volta, and Mr. Choteau,

³⁵Report of the Minister for the Colonies to the President of the French Republic concerning the treatment of the administrative centre of the Colony of Niger and territorial changes in French West Africa, *OJFR*, 5 January 1927, p. 198; MN, Anns., Series B, No. 24.

³⁶*Arrêté* of 22 January 1927 providing for territorial changes to the Colonies of Upper Volta and Niger, *OJFWA*, No. 1169, 12 February 1927; MN, Anns., Series B, No. 25.

³⁷Record of Agreement of 2 February 1927 between Brévié, Governor of the Colony of Niger, and Lefilliatre, Inspector of Administrative Affairs, representative of the Governor of Upper Volta; MN, Anns., Series C, No. 7.

Chief Colonial Administrator, representing the Governor of the Colony of Niger³⁸. That Agreement listed the *cantons* constituting Say *cercle* which were to be incorporated in the Colony of Niger, defined the boundaries of Say *cercle* and listed the villages forming the *canton* of Botou;

- a Record of Agreement of 9 May 1927 between the Administrator of Fada *cercle* (Mr. de Coutouly) and the Administrator of the *cercle* (Mr. Lesserteur)³⁹. This document defined the boundaries of Gourmantché Botou *canton*.

1.25. On 27 April 1927, the Lieutenant-Governor of Upper Volta, Hesling, wrote to the Commanders of Dori and Fada *cercles*, asking them to provide him as soon as possible with accurate material to enable him to prepare an *arrêté général* fixing the new boundaries between the Colonies of Niger and Upper Volta. He emphasized that it was essential that the course of the boundary should be determined on the ground by full agreement between the administrators of the administrative divisions concerned⁴⁰. Pursuant to that instruction, in June 1927 the Administrators of the two *cercles* concerned, Messrs. Delbos (Dori) and Prudon (Tillabéry), carried out a field mission. We do not have the report of Administrator Delbos on the route followed on that occasion together with Administrator Prudon, but we do have a sketch-map prepared by him⁴¹, and a detailed draft delimitation, both dated 27 August 1927⁴², accompanied by a further sketch-map⁴³. For his part, the Commander of Tillabéry *cercle*, Prudon, reported on his mission in his Tour Report dated 4 August 1927⁴⁴, to which he also attached a sketch-map⁴⁵.

These documents did not, however, reach Dakar in time to be taken into account in the preparation of the *Arrêté* of 31 August 1927 fixing the boundary between the two Colonies.

³⁸Record of Agreement of 10 February 1927 between Lefilliatre, Inspector of Administrative Affairs, representative of the Governor of Upper Volta, and Choteau, Chief Colonial Administrator, representing the Governor of the Colony of Niger; MN, Anns., Series C, No. 8.

³⁹Record of Agreement of 9 May 1927 between the Administrator of Fada *cercle* (de Coutouly) and the Administrator of Say *cercle* (Lesserteur); MN, Anns., Series C, No. 9; sketch-map on a scale of 1:50,000 attached to the Agreement; MN, Anns., Series C, No. 10.

⁴⁰Telegram/letter No. 1166/AG from the Lieutenant-Governor of Upper Volta, Hesling, to the Commanders of Dori and Fada *cercles*, dated 27 April 1927; MN, Anns., Series C, No. 11.

⁴¹Sketch-map of Administrator Delbos following a field mission carried out in June 1927; MN, Anns., Series C, No. 14.

⁴²Draft delimitation prepared by Administrator Delbos following a field mission carried out in June 1927, dated 27 August 1927; MN, Anns., Series C, No. 16.

⁴³*Ibid.*

⁴⁴Extract from Tour Report No. 25 of Administrator Prudon, dated 4 August 1927; MN, Anns., Series C, No. 15.

⁴⁵Sketch-map of Administrator Prudon, attached to his Tour Report of June 1927, dated 4 August 1927; MN, Anns., Series D, No. 3.

D. The *Arrêté* of 31 August 1927 and its Erratum of 5 October 1927, fixing the boundary between the Colonies of Niger and Upper Volta

1.26. It was thus solely on the basis of the three Records of Agreement of 2 February, 10 February and 9 May 1927 that the new boundaries of the two Colonies resulting from these territorial changes were subsequently described in *Arrêté* No. 2336 of 31 August 1927⁴⁶. That *Arrêté* of the Governor-General fixed the boundaries of the Colonies of Upper Volta and Niger as follows:

Article 1

“1. Boundaries between the Tillabéry *cercle* and Upper Volta:

This boundary is determined to the north by the current boundary with Sudan (Gao *cercle*) as far as the heights of N’Gourma, and to the west by a line passing through the Kabia ford, Mount Darouskoy and Mount Balébangouia, west of the ruins of the village of Tokébangou, and Mount Doumafondé, which then turns towards the south-east, leaving the ruins of Tong-Tong to the east and descending in a north-south direction, cutting the Téra-Dori motor road to the west of the Ossolo Pool, until it reaches the River Sirba (boundary of Say *cercle*), near to and to the south of Boulkalo.

2. Boundaries between the Say *cercle* and Upper Volta:

The villages of Botou *canton* are excluded from this boundary.

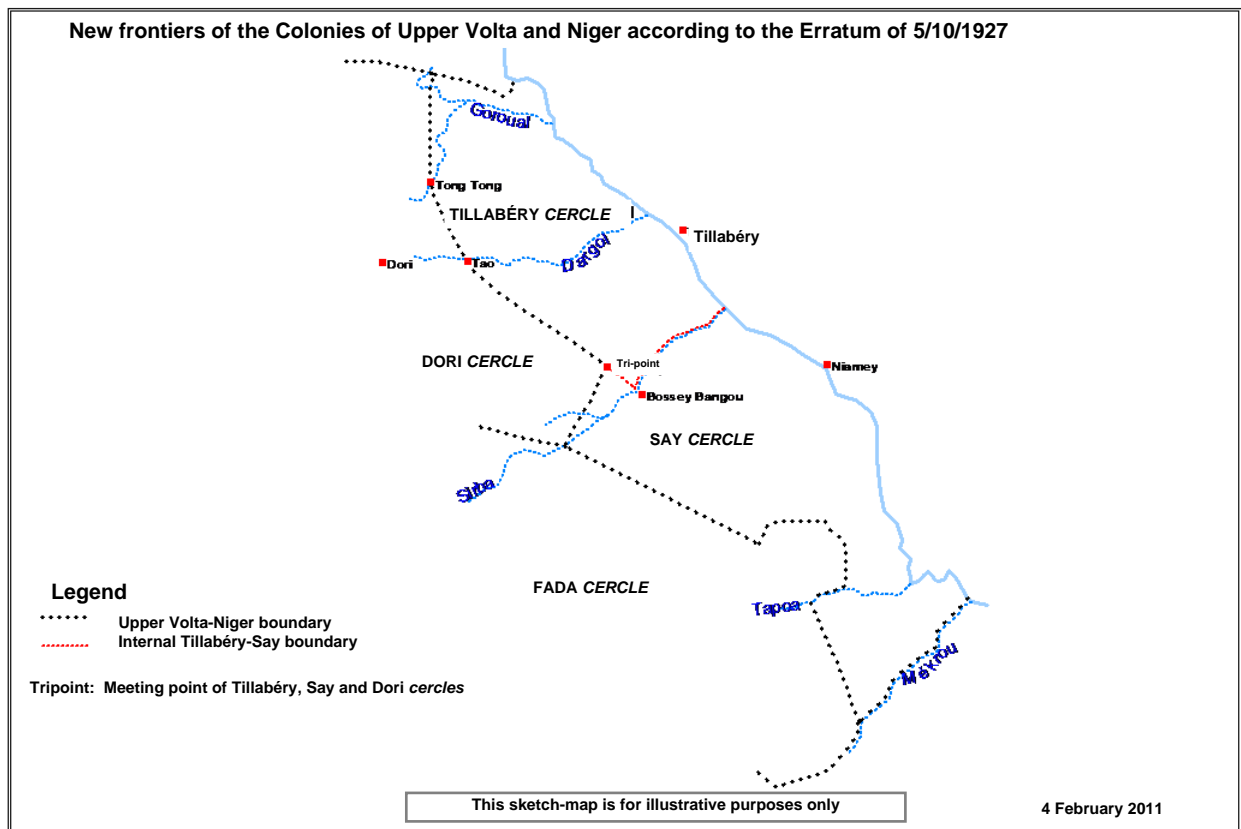
To the north and to the east, by the current boundary with Niger (Niamey *cercle*), from Sorbohaoussa to the mouth of the River Mekrou;

To the north-west, by the River Sirba from its mouth as far as the village of Bossébangou. From this point a salient, including on the left bank of the Sirba the villages of Afassi, Kouro, Takalan and Tankouro;

To the south-west, a line starting approximately from the Sirba at the level of the Say parallel and running as far as the Mekrou;

To the south-east, by the Mekrou from that point as far as its confluence with the Niger.”

⁴⁶*Arrêté général* No. 2336 of 31 August 1927 fixing the boundaries of the Colonies of Upper Volta and Niger (*OJFWA*, No. 1201 of 24 September 1927); MN, Anns., Series B, No. 26.



This *Arrêté général* contained a drafting error, for it described the boundaries of the entire Say *cercle*, instead simply of that part of those boundaries which constituted the frontier with Upper Volta. It was therefore the subject of an Erratum No. 2602/APA of 5 October 1927⁴⁷, which read as follows:

“Article 1 of the *Arrêté* of 31 August 1927 fixing the boundaries of the Colonies of Niger and Upper Volta, published in the Official Journal of French West Africa No. 1201, of 24 September 1927, page 638, should read as follows:

Article 1

The boundaries of the Colonies of Niger and Upper Volta are determined as follows:

A line starting from the heights of N’Gouma, passing through the Kabia ford (astronomic point), Mount Arounskoye and Mount Balébangouia, to the west of the ruins of the village of Tokebangou, Mount Doumafende and the Tong-Tong astronomic marker; this line then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossebangou. 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.

From that point it turns back up in a straight line that runs in a marked SSW-NNE direction; it passes approximately 2 km west of the village of Birniouoli and, approximately 2 km to the south of the south of the village of Vendou Mama, reaches the top of the northernmost spur of the Heni-Djouré (Gourma) massif or Jackal Mountain.

Running then in a west-east direction, it passes 1 km south of Mount Tambado Djoaga, follows the course of the Dantiabonga *marigot*, passes south of Dantiandou, follows the line of the Yoga Djoaga hills as far as the confluence of the Dantiabonga and Diamongou *marigots*, and runs along the latter as far as the confluence of the Dialongou and Boulelfonou *marigots* approximately 5 km north of the latter village.

From that point, the boundary follows the crests of the Djoapionga hills as far as the source of the Boulelfonou *marigot*, runs up the northern slope of the Tounga and Djoaga massif and terminates at the point known as Niobo-Farou (Caiman Pool), a sort of broad basin, which is traversed during the dry season by the track from Botou to Fombonou.

It is then determined by the eastern crests of the Tounga Djoaga massif, before running towards the River Tapoa in a precise north-south direction. It passes approximately 5 km east of the village of Kogori and reaches the Tapoa approximately 4 km south of the aforementioned village.

⁴⁷Erratum No. 2602/APA of 5 October 1927 to the *Arrêté général* of 31 August 1927 fixing the boundaries of the Colonies of Niger and Upper Volta (*OJFWA*, No. 1205 of 15 October 1927, p. 718); MN, Anns., Series B, No. 27.

It then follows the course of the Tapoa upstream until it meets the former boundary of the Fada and Say *cercles*, which it follows as far as the point where it intersects with the course of the Mekrou.

Dirat, Acting Governor-General.”

E. *Arrêté local* No. 126 of 3 November 1928 reconstituted Téra Subdivision within Tillabéry cercle

1.27. Article 1 of the *Arrêté* of 3 November 1928⁴⁸ recreated Téra Subdivision within Tillabéry *cercle* and established its administrative centre at Téra.

Article 2 provided that Téra Subdivision:

“[. . .] shall comprise the *cantons* of: Téra, Diagourou, Kokoro and Logomaten, and the two independent nomad *fractions* of the Gaobé Peulhs and the Doufarafara Tuareg”.

F. The dissolution and dismemberment of the Colony of Upper Volta and the incorporation of Dori and Fada N’Gourma *cercles* into the Colony of Niger (1932 to 1947)

1.28. The Colony of Upper Volta was dissolved by a Decree of 5 September 1932⁴⁹. The Minister for the Colonies justified this measure for financial and economic reasons. Upper Volta having been dissolved, it remained to decide what would happen to its former administrative divisions. The colonial authorities decided that

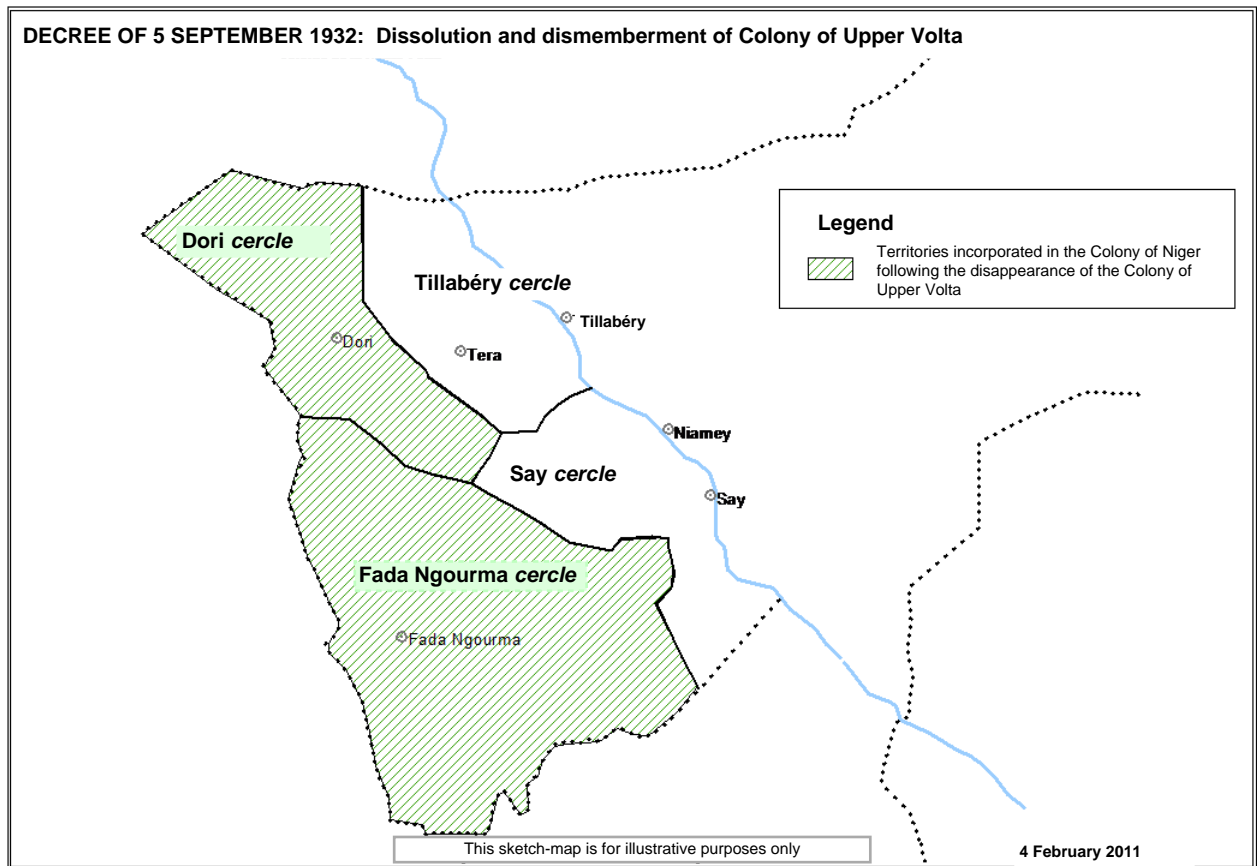
“in light of the findings on trade flows, [. . .] the administrative divisions of the former Colony should be distributed among the neighbouring Colonies of Niger, French Sudan and Côte d’Ivoire”⁵⁰.

Thus the first paragraph of Article 2 of the Decree of 5 September 1932 incorporated into the Colony of Niger the *cercles* of Fada N’Gourma and Dori, with the exception of Aribinda *canton*.

⁴⁸*Arrêté local* No. 126 of 3 November 1928 creating Téra Subdivision within Tillabéry *cercle*; MN, Anns., Series B, No. 28.

⁴⁹Decree of 5 September 1932 dissolving the Colony of Upper Volta and distributing its territory among the Colonies of Niger, French Sudan and Côte d’Ivoire, *OJFWA*, 15 October 1932, p. 902; MN, Anns., Series B, No. 29.

⁵⁰See Report from the Minister for the Colonies, Mr. Albert Sarraut, to the President of the French Republic for purposes of adoption of the Decree of 5 September 1932, *ibid.*



G. Law No. 47-1707 of 4 September 1947 reconstituted the Colony of Upper Volta with its 1932 boundaries; the *cercles* of Dori and Fada N’Gourma were reincorporated into the Colony

1.29. Article 2 of Law No. 47-1707 of 4 September 1947⁵¹, which reconstituted the Colony of Upper Volta as a new entity within the French Union, defined its boundaries as those of the former Colony of Upper Volta as at 5 September 1932:

“The re-established territory of Upper Volta shall have administrative and financial autonomy under the same conditions as the other territories of the French West African group.

Its administrative centre shall be at Ouagadougou and its boundaries shall be those of the former Colony of Upper Volta on 5 September 1932.”

In consequence, the *cercles* of Dori and Fada N’Gourma, which had been incorporated into the Colony of Niger in 1932, were reincorporated into the reconstituted Upper Volta.

H. The *Arrêté* of 30 March 1956 creating seven *cercles* within the territory of Niger

1.30. *Arrêté* No. 2690 of 30 March 1956⁵² created within the territory of Niger seven new *cercles*, including Téra *cercle*. Article 2 provided:

“Téra *cercle* shall comprise the territories having previously belonged to Téra Subdivision (Tillabéry *cercle*) together with Dargol *canton*, which is hereby detached from the territories administered directly by Tillabéry *cercle*.”

The creation of these new *cercles*, in particular Téra *cercle*, which bordered on Dori *cercle*, had no impact whatever on the territorial boundaries between Niger and Upper Volta. The territories of the two Colonies, now Member States of the community created by the French Constitution of 1958, underwent no changes in regard to the disputed area up to the time when they acceded to independence, on 3 August 1960 in the case of Niger, and on 5 August of the same year for Upper Volta.

*

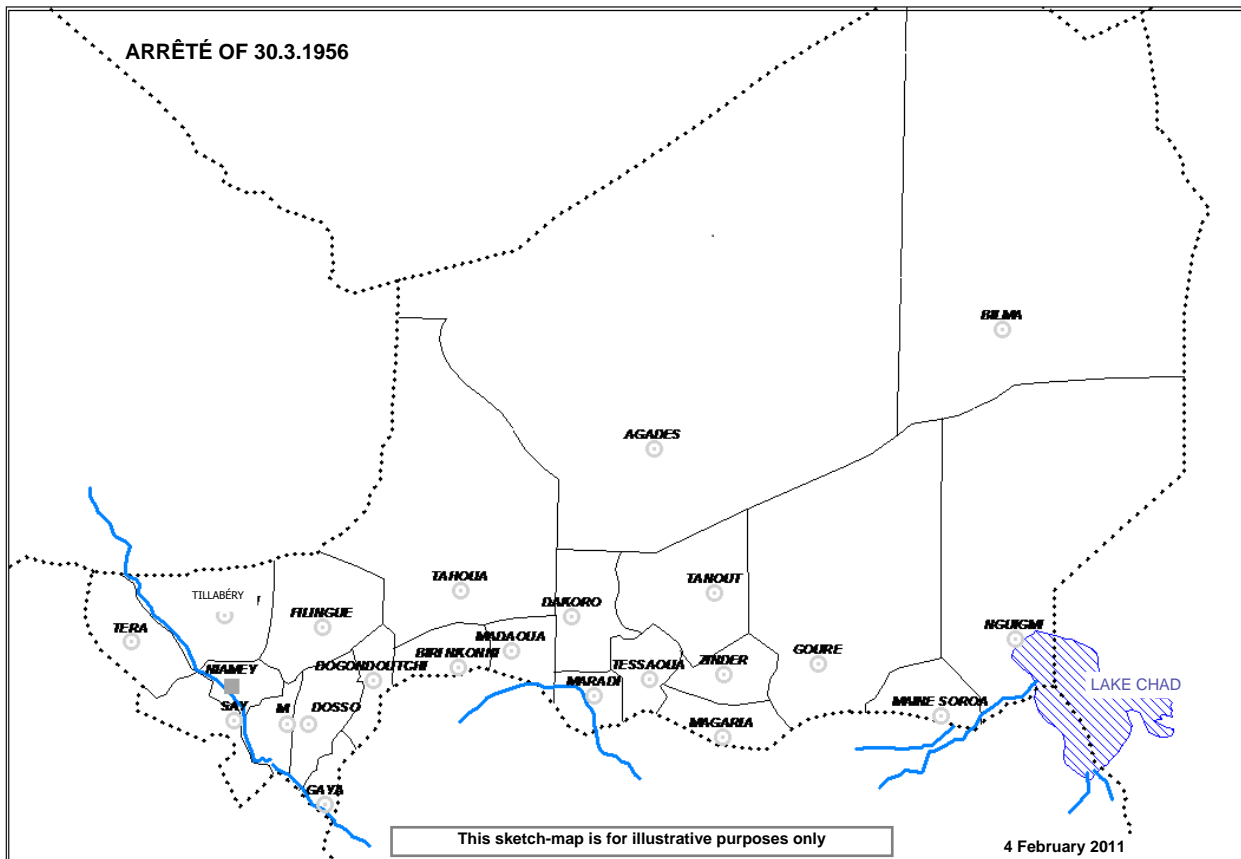
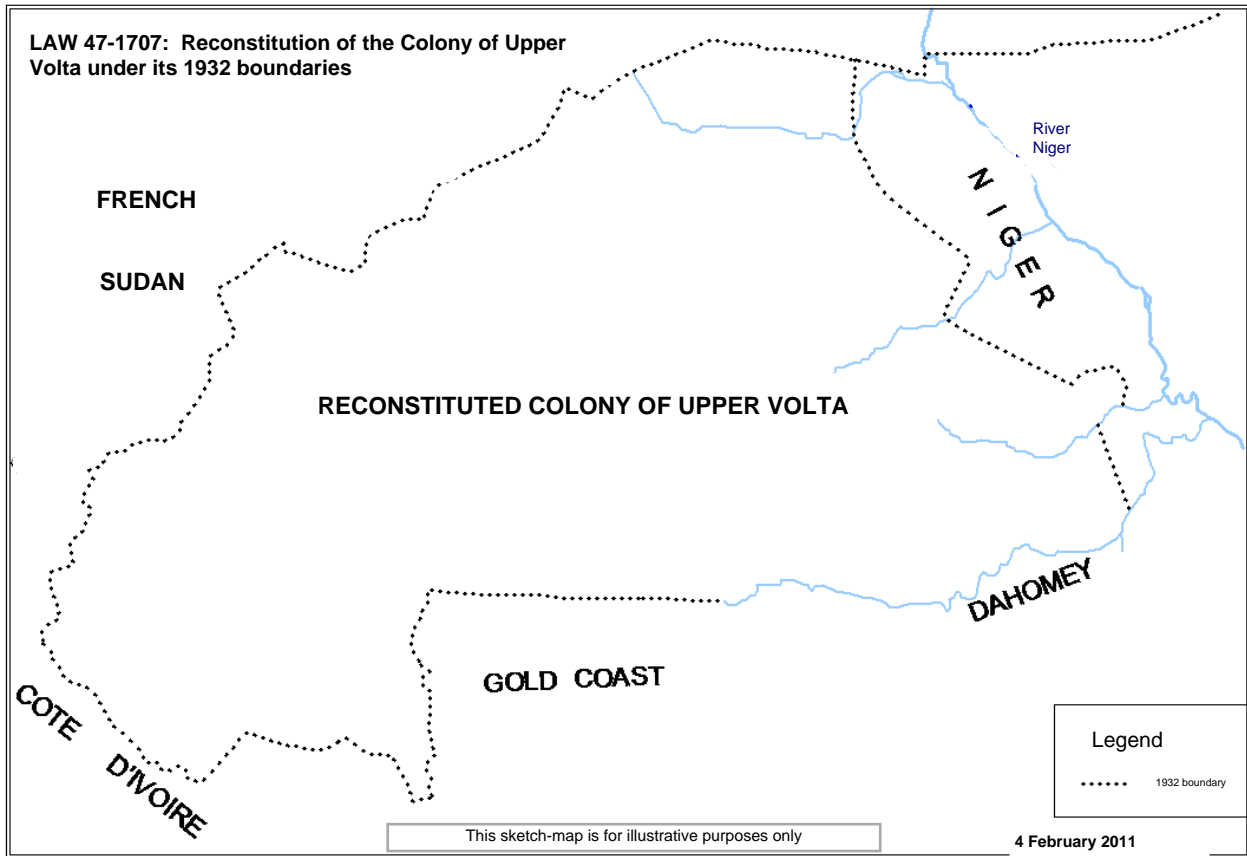
1.31. It is thus clear from the foregoing account that, following their occupation by French troops, the territories which would come to constitute Upper Volta were initially incorporated into the Colony of French Sudan. Subsequently, the majority of those territories were attributed to the Colony of Haut-Sénégal et Niger. The Decree of 1 March 1919 detached the southern and western *cercles* from that Colony in order to create the Colony of Upper Volta. Having been abolished by the Decree of 5 September 1932, the Colony of Upper Volta was re-established in 1947 by the French National Assembly. As regards Niger, the entity initially created as the third Military Territory in 1900, which extended from the left bank of the River Niger as far as Lake Chad,

⁵¹Law No. 47-1707 of 4 September 1947 reconstituting the Colony of Upper Volta, and *arrêté* promulgating that Law, OJFWA, 27 September 1947; MN, Anns., Series B, No. 30.

⁵²*Arrêté général* No. 2690 of 30 March 1956 creating seven *cercles* within the territory of Niger, OJFWA, 14 April 1956, p. 1658; MN, Anns., Series B, No. 32.

became, successively, the Military Territory of Niger in 1904, the Territory of Niger in 1920, and finally the Colony of Niger in 1922.

1.32. The boundary between the two Colonies was fixed by the Erratum No. 2602/APA of 5 October 1927, rectifying *Arrêté* No. 2336 of 31 August 1927. The boundary established by those two instruments was never changed until the accession of the two Colonies to independence. Thus the Agreement signed in Ouagadougou on 28 March 1987 between the Revolutionary Government of Burkina Faso and the Government of the Republic of Niger on the demarcation of the frontier between the two countries provided that the 1927 texts were to remain the bases for determining the frontier between the territories of Upper Volta and Niger.



CHAPTER II

THE DIFFICULTIES AND INCIDENTS IN THE DISPUTED AREA

2.1. Examination of the relevant documents from the colonial period discloses persistent difficulties as a result of the uncertainty regarding the boundary between the Colonies of Niger and Upper Volta as shown in the Erratum of 5 October 1927⁵³ correcting the *Arrêté général* of 31 August 1927⁵⁴. We will confine ourselves here to outlining a brief summary of these, both for the period prior to independence (Sec. 1) and for the subsequent period (Sec. 2).

Section 1 — The difficulties encountered during the period prior to independence

2.2. Shortly after the adoption of the *Arrêté général* of 31 August 1927 determining the boundaries of the Colonies of Upper Volta and Niger, the Acting Governor of the Colony of Upper Volta sent telegram/letters dated the same day⁵⁵ to the Commanders of Dori and Fada *cercles* asking whether the “demarcation [sic] line” as determined by the *arrêté* in fact corresponded to the result of the operations conducted with their colleagues from Tillabéry and Say *cercles* in Niger.

In reply, the Commander of Dori *cercle* stated that the Erratum of 5 October 1927 — which had been adopted in the meantime — and the copy of the 1:1,000,000 map which had been sent to him included “errors”, which he listed in his letter. He pointed out that he and Prudon, Commander of the Tillabéry *cercle*, had agreed on the course of the boundary, which had been communicated to the Governor, and he expressed his surprise at the fact that “there could be any dispute between the two Colonies”, since the two Administrators had “carried out the work by joint agreement”⁵⁶.

Thus already in 1927 a dispute was apparent over the boundaries fixed by the Erratum of 5 October 1927 correcting the *Arrêté* of 31 August 1927.

2.3. Throughout the colonial period, local officials constantly complained about the lack of precision in the boundary as adopted. Thus on 26 February 1930⁵⁷ the Commander of Dori *cercle* proposed that a new delimitation be carried out. On 19 March 1930 the Governor of Upper Volta asked him to prepare a report and to submit proposals as appropriate⁵⁸.

In a letter of 10 April 1932⁵⁹, the Commander of Dori *cercle* wrote as follows to the Governor of Upper Volta: “common sense and reality require that this boundary be modified”. He

⁵³Erratum No. 2602/APA of 5 October 1927; MN, Anns., Series B, No. 27.

⁵⁴*Arrêté général* No. 2336 of 31 August 1927; MN, Anns., Series B, No. 26.

⁵⁵See telegram/letter No. 2713 A.G. from the Acting Governor of Upper Volta to the Commander of Dori *cercle* dated 20 October 1927; MN, Anns., Series C, No. 18; see also telegram/letter No. 2714 A.G. from the Acting Governor of Upper Volta to the Commander of Fada *cercle*, dated 20 October 1927; MN, Anns., Series C, No. 19.

⁵⁶Letter No. 731 from Administrator Delbos, Commander of Dori *cercle*, to the Governor of Upper Volta dated 17 December 1927, MN, Anns., Series C, No. 20, regarding the work of Delbos and Prudon in 1927; see also para. 1.25 above.

⁵⁷Letter No. 135 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 26 February 1930; MN, Anns., Series C, No. 32.

⁵⁸Telegram No. 687 from the Governor of Upper Volta to the Commander of Dori *cercle* dated 19 March 1930, MN, Anns., Series C, No. 33.

⁵⁹Letter No. 112 and Tour Report from Roser, Civil Service Deputy, Acting Commander of Dori *cercle*, to the Governor of Upper Volta dated 10 April 1932; MN, Anns., Series C, No. 45.

proposed what he called “[p]ossible solutions to the problem arising out of the inadequate and defective drafting of the official texts”⁶⁰. He proposed a “further erratum”, which would determine a “natural boundary”, which would be particularly relevant in his view, since he and the Head of Téra Subdivision were in agreement on its course⁶¹.

In a Political Report of 30 June 1934⁶², the Commander of Dori *cercle* noted that, to the north at Falagountou and to the south at Sinibellabé, “the boundary between the two administrative divisions is theoretical and extremely imprecise”. The report of 6 July 1951⁶³ from the Commander of Tillabéry *cercle* stated that “the boundaries fixed by the *Arrêté général* of 10 August 1927 are extremely imprecise”. In a letter to the Commander of Tillabéry *cercle* dated 10 July 1951⁶⁴, the Governor of Niger stated the following:

“Indeed as you point out, the lack of precise boundaries means that the jurisdiction *ratione loci* of the courts cannot be determined with certainty.”

And similarly again, in a letter of 11 July 1951⁶⁵ to the Tillabéry *cercle*, Larue, Head of Téra Subdivision, notes that

“[t]he inaccuracy and imprecision of the Erratum have moreover been pointed out numerous times”.

In 1952⁶⁶, the same official continued to point out the inadequacies of the *Arrêté général* of 31 August 1927 and its Erratum,

“whose imprecision is matched only by its inaccuracy, the source of constant argument between Yagha and Diagourou farmers [. . .]”.

In a letter of 17 April 1953⁶⁷, the Governor of Niger wrote to the Commander of Tillabéry *cercle*:

“However, I must draw your attention to the imprecision of the *Arrêté* of 31 August 1927 and its Erratum, in particular regarding the line from the Tong-Tong astronomic marker, which crosses the Téra-Dori road at the Tao marker and continues to Bossébangou. The tendency of the Dori authorities has at certain times been to regard this as a straight line, the result of which has been the annexation by Dori of certain territories manifestly belonging to Téra, reopening old disputes. This delimitation should thus be undertaken with great care, village by village, hamlet by hamlet.”

⁶⁰*Ibid.*

⁶¹*Ibid.*, p. 6.

⁶²Colony of Niger, Dori *cercle*, Political Report, Second Quarter 1934, 30 June 1934, p. 1; MN, Anns., Series C, No. 55.

⁶³Joint Report of the Commanders of Dori *cercle* and of Tillabéry *cercle* at Téra, dated 6 July 1951; MN, Anns., Series C, No. 72.

⁶⁴Telegram/letter of 10 July 1951 from the Governor- General of Niger to the Tillabéry *cercle*, MN, Anns., Series C, No. 72.

⁶⁵Official telegram/letter No. 70 from the Head of Téra Subdivision to Tillabéry *cercle* dated 11 July 1951; MN, Anns., Series C, No. 73.

⁶⁶Report of the census tours of Téra *canton*, carried out from 28 July to 22 August and 20 to 21 September 1952 by the Head of Téra Subdivision, Annex: Territorial Organisation of Moyen Niger, Establishment of Téra Outpost, p. 13; MN, Anns., Series C, No. 74.

⁶⁷Letter No. 1511/APA from the Governor of Niger to the Commander of Tillabéry *cercle* dated 17 April 1953; MN, Anns., Series C, No. 75.

In a letter of 22 December 1953⁶⁸, whereby he transmitted a field mission report to the Governor of Niger, the Commander of Tillabéry *cercle* referred to the joint operation carried out by Deputy-Administrator Lacroix with the Commander of Dori *cercle* regarding the boundary between Téra and Dori:

“Mr. Lacroix’s report has enabled the boundaries in a little visited region to be clarified and has demonstrated the deficiencies in the relevant official texts”.

Finally, a Note apparently dating from 1955⁶⁹, entitled “Geographical Survey of Téra Subdivision”, again observes notes that

“the lack of precision of the *Arrêté général* of 31 August 1927 fixing the boundaries between the Colonies of Upper Volta and Niger, a source of frequent argument between natives of Dori and Téra, has necessitated a series of survey missions, conducted jointly by Dori and Tillabéry *cercles*”.

2.4. Throughout this period, the conclusions of the Delbos/Prudon Agreement⁷⁰ of 1927⁷¹ continued to serve as a reference basis. They were often cited or recommended. Thus we find them mentioned for example:

— on 10 October 1929⁷², in telegram/letter No. 815 from the Commander of Tillabéry *cercle* to Dori *cercle*:

“[h]onour to inform you that, after approval Governor Niger, following instructions given to Téra Subdivision : maintain status quo, namely tolerance zone accepted in 1927 without encroachment or spoliation”;

— in a report from the Commander of Dori *cercle* dated 7 July 1930⁷³, where it is noted in particular that the *Arrêté général* of 31 August 1927 reproduced the Record of Agreement signed in Téra on 2 February 1927 “and took no account of the delimitation carried out on the ground by the two *cercles* Commanders of Dori and Tillabéry”;

— in a letter of 10 April 1932⁷⁴ to the Governor of Upper Volta, in which Roser, Acting Commander of Dori *cercle*, indicated the agreement secured with Commander Boyer of Tillabéry *cercle* to accept as boundary between the two *cercles* the Delbos/Prudon line described in the letter of 17 December 1927;

— the Record of Agreement between Garnier and Lichtenberger of 15 April 1935:

⁶⁸Telegram/letter No. 710 from the Commander of Tillabéry *cercle* to the Governor of Niger dated 22 December 1953; MN, Anns., Series C, No. 17.

⁶⁹Geographical survey of Téra Subdivision, extract from the *Monographie de Téra*, National Archives of Niger, Ann. 19-1.1bis; MN, Anns., Series C, No. 85.

⁷⁰See above, paras. 1.24 and 1.25.

⁷¹Record of Agreement between the Commander of Dori (Garnier) and the Head of Téra Subdivision (Lichtenberger) dated 13 April 1935; MN, Anns., Series C, No. 56.

⁷²Telegram/letter No. 815 from the Commander of Tillabéry *cercle* to the Commander of Dori *cercle* dated 10 October 1929; MN, Anns., Series C, No. 31.

⁷³Report No. 416 from the Commander of Dori *cercle* on the difficulties created by the delimitation established in 1927 between the Colonies of Niger and Upper Volta (*Arrêté* of 31 August 1927) regarding the boundaries between Dori *cercle* and Tillabéry *cercle*, 7 July 1930; MN, Anns., Series C, No. 38.

⁷⁴Letter No. 112 of 10 April 1932; MN, Anns., Series C, No. 45.

“in principle, this boundary [between Dori and Téra] shall be determined in accordance with the indications given in letter No. 438 from the Commander of [Dori] *cercle* to the Governor of Upper Volta of 3 April [read August] 1927”;

- on 9 May 1935⁷⁵, in a letter from the Commander of Dori *cercle* to the Governor of Niger, referring to the Garnier-Lichtenberger meeting:
 - “[a]t Sinibellabé, we confirmed the boundary agreed in 1927 by administrators Delbos and Prudhon [*sic*] (see letter 3 August 1927 Commander Dori *cercle* to Governor Upper Volta)”;
- in a letter of 10 May 1935⁷⁶ from Téra Subdivision to Tillabéry *cercle*, where it was stated that administrators Garnier and Lichtenberger were proposing to mark out the boundary described in the letter of 27 August 1927;
- on 19 May 1943⁷⁷, in a telegram/letter, in which Delmond, Commander of Dori *cercle*, refers also to the Delbos-Prudon boundary;
- on 11 July 1951⁷⁸, in a letter from Larue, Head of Téra Subdivision, to Tillabéry *cercle*, to which was appended the Delbos sketch-map;
- a Record of Agreement of 17 May 1953⁷⁹ concerning a dispute between the localities of Alfassi and Kokoloko;
- on 24 December 1953⁸⁰, in the report of Commander Lacroix on the survey of the boundary between Dori and Tillabéry *cercles*, where reference was again made to the work of 1927.

2.5. The boundary resulting from the 1927 texts raised problems for the nomadic populations, who were accustomed to travelling within a unitary area, which was now divided into two separate colonies. In order to retain their customary transhumant routes, or even to cultivate their croplands which overlapped the boundary, they had to pass from one Colony to the other.

The colonial officials complained about this. Thus in a letter of 14 August 1929⁸¹ to the Governor of Upper Volta, the Commander of Dori *cercle* wrote:

“the territories to which the native *groupements* lay claim, in particular in semi-desert savannah areas, have traditional boundaries which are somewhat imprecise. There are

⁷⁵Letter No. 168 from the Commander of Dori *cercle* to the Governor of Niger dated 9 May 1935; MN, Anns., Series C, No. 58.

⁷⁶Letter No. 140 from the Head of Téra Subdivision to the Commander of Tillabéry *cercle* dated 10 May 1935; MN, Anns., Series C, No. 59.

⁷⁷Official telegram/letter No. 231 from the Commander of Dori *cercle* to the Commander of Tillabéry *cercle* dated 19 May 1943; MN, Anns., Series C, No. 67.

⁷⁸Official telegram/letter No. 70 from the Head of Téra Subdivision to the Commander of Tillabéry *cercle* dated 11 July 1951; MN, Anns., Series C, No. 73.

⁷⁹Record of Settlement of a Frontier Dispute, signed by the Commanders of Niamey and Dori *cercles*, dated 17 May 1953; MN, Anns., Series C, No. 76.

⁸⁰Report of a tour carried out from 16 to 23 November 1953 by Deputy-Administrator Lacroix (Tillabéry *cercle*) dated 24 December 1953; MN, Anns., Series C, No. 79.

⁸¹Letter No. 411 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 14 August 1929; MN, Anns., Series C, No. 25.

areas where they interlock or overlap: they are not drawn with the precision of urban concessions.”

Right up to the eve of independence, quite sizeable groups sometimes settled without authorization on the other side of the boundary and caused problems for the local villages. Thus, on 14 May 1959⁸² the Head of Say Subdivision (Niger) complained about a Peulh group, estimated at over 200 individuals, from Seba, Yagha *canton*, Dori *cercle* (Upper Volta) which had settled on Alfassi croplands without being registered in that village and without a permit.

On the other hand, very quickly, the nomadic or semi-nomadic populations became aware of the advantages that they could derive from the situation in order to escape taxes or other services required by the colonial power, or enlistment in the armed forces. The Commander of Dori *cercle* constantly complained about this. Thus on 31 July 1929⁸³, following registration by Téra subdivision (Niger) of semi-nomads who had gone to Ossolo Pool (part of Téra) in order to water their flocks and herds, and again on 23 April 1929⁸⁴, he wrote:

“Dori taxpayers who have settled in Téra, and who, this year only, have refused to pay taxes to their traditional chiefs are delighted: no taxes, no services; no recruitment”.

We see similar references in the letter of 11 June 1930⁸⁵ and in the Report of 7 July 1930⁸⁶ of the Commander of Dori *cercle* to the difficulties created by the 1927 delimitation regarding the boundaries between Dori and Tillabéry *cercles*.

This situation thus posed problems for the colonial officials, who could not force the nomadic tribes to settle in one place, and were encountering difficulties in registering them and assigning them a territory of origin, or accusing the other *cercle* of “taking” its nationals⁸⁷.

2.6. The Lieutenant-Governors of Upper Volta and Niger endeavoured to alleviate the problems. Thus on 14 August 1929⁸⁸ the Lieutenant-Governor of Upper Volta proposed the following specific measures to the Governor of Niger:

- “1. Official declaration of residence, including registration for tax purposes, Dori and Téra to afford one another mutual and vigorous assistance in collecting taxes on behalf of the Colony of registration.

⁸²Letter No. 104 from the Head of Say Subdivision to the Overseas-France Chief Administrator, Commander of Niamey *cercle*, dated 14 May 1959; and, similarly, the Annual Report of Say *cercle* for the year 1959, dated 20 January 1961, p. 7; MN, Anns., Series C, No. 86.

⁸³Letter No. 367 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 31 July 1929; MN, Anns., Series C, No. 23.

⁸⁴Letter No. 96 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 23 April 1929; MN, Anns., Series C, No. 21.

⁸⁵Letter No. 362 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 11 June 1930; MN, Anns., Series C, No. 37.

⁸⁶Report No. 416 of the Commander of Dori *cercle* on the difficulties created by the delimitation established in 1927 between the Colonies of Niger and Upper Volta (*Arrêté* of 31 August 1927) regarding the boundaries between Dori and Tillabéry *cercles*, dated 7 July 1930; MN, Anns., Series C, No. 38.

⁸⁷See, for example, telegram/letter No. 196 from the Commander of Dori *cercle* to the Commander of Tillabéry *cercle* dated 22 March 1930; MN, Anns., Series C, No. 34.

⁸⁸Letter No. 275 AP from the Chief Colonial Administrator, Acting Lieutenant-Governor of Upper Volta, to the Governor of Niger dated 14 August 1929; MN, Anns., Series C, No. 26.

2. A right for all users in possession of a *laissez-passer* from Dori or Téra to follow their traditional routes, free of all taxes, charges or fees, including free access to customary communal watering places.
3. In the event of significant departures of herders to the more favoured region of Téra, facilities for livestock purchases (. . .).”

The Governor of Niger replied on 27 September 1929⁸⁹, in which he stressed the importance of freedom of movement, the right to allow livestock to graze on croplands and the need to require the use of family cards. In early October 1929⁹⁰ he gave the following instructions to Téra Subdivision:

- “— No registration to be carried out in the disputed area, that is to say the boundaries of Tagha and Diagourou;
- all pending disputes to be settled personally *in situ* between Dori and Tillabéry administrators.”

2.7. Thus administrators had to meet frequently in order to settle disputes over the ownership of croplands — a practice accepted or recommended by the respective Governors⁹¹. In this regard, mention may be made of:

- the Agreement of May 1929⁹² on the registration of nomads, mentioned in correspondence between the Commander of Tillabéry *cercle* and the Dori Commander;
- the instructions given in July 1931⁹³ by the Governor of Niger to the Commander of Tillabéry *cercle* regarding Sénébellabé;
- the meeting on 30 June 1934 between the Commanders of Tillabéry and Dori *cercles* regarding various disputes⁹⁴;
- the Record of Agreement of 17 May 1953⁹⁵ in a dispute between the villagers of Alfassi and Kokoloko.

In the first years of implementation of the 1927 texts, the Commander of Dori *cercle* asked his counterpart in Tillabéry *cercle* “to mitigate the rigour of the official texts”, to interpret the texts flexibly, or establish a tolerance zone, in order to deal with the problems that they were both

⁸⁹Letter No. 2259 AGI from the Lieutenant-Governor of Niger to the Lieutenant-Governor of Upper Volta; MN, Anns., Series C, No. 30. The Governor of Upper Volta reminded the Commander of Dori *cercle* of this exchange of letters in his letter No. 2954 AP of 10 November 1931; MN, Anns., Series C, No. 42.

⁹⁰See telegram/letter No. 815 from the Commander of Tillabéry *cercle* to the Commander of Dori *cercle* dated 10 October 1929; MN, Anns., Series C, No. 31.

⁹¹See letter E/251 AP from the Chief Colonial Administrator to the Governor of Niger dated 31 July 1929; MN, Anns., Series C, No. 22, and reply from the Governor of Niger No. 2087 AGI dated 26 August 1929; MN, Anns., Series C, No. 28.

⁹²Letter No. 100 from the Commander of Tillabéry *cercle* to his Dori counterpart dated 19 September 1929; MN, Anns., Series C, No. 29.

⁹³Letter No. 748 to the Commander of Tillabéry *cercle* dated 31 July 1931; MN, Anns., Series C, No. 40.

⁹⁴Tour Report from the Commander of Tillabéry *cercle* dated 30 June 1934; MN, Anns., Series C, No. 54.

⁹⁵Record of settlement of a boundary dispute, signed by the Commanders of Niamey and Dori *cercles*, dated 17 May 1953; MN, Anns., Series C, No. 76.

encountering. This request was repeated *inter alia* in his letters of 31 July 1929⁹⁶, 9 August 1929⁹⁷, 14 August 1929⁹⁸ and 19 August 1929⁹⁹.

2.8. The officials also had to meet frequently in order to attempt to determine the boundaries between the two Colonies on the ground. A large number of agreements were concluded in order to define those boundaries:

- the Record of Agreement of 12 March 1931, signed at Ossolo between the Commanders of Dori and Tillabéry *cercles*, appended to the Tour Report of the Commander of Dori *cercle* of 31 March 1931¹⁰⁰. It was, however, understood that this record defining territorial boundaries would have to be submitted to the higher authorities¹⁰¹;
- the Roser-Boyer Agreement of 10 April 1932¹⁰², which would also require the approval of the Governors;
- the agreement reached following a tour conducted from 22 to 24 October 1933¹⁰³ by the Head of Téra Subdivision and the Commander of Dori *cercle* on the location of the Tao marker, and of the status of the villages of Sénébellabé and Tingou.
- the Record of Agreement of 13 April 1935¹⁰⁴ between Administrators Garnier and Lichtenberger recording the placing of a marker at Ouiboriels;
- the Record of Agreement of 25 April 1935¹⁰⁵ with a view to “settl[ing] the disputes between natives of the two *cantons* of Diagourou (Téra) and Yagha (Dori)” concerning rights in respect of croplands claimed by the parties in question, which in reality concealed a boundary dispute;
- the Record of Agreement of 8 December 1943¹⁰⁶, which describes the delimitation operations between Dori and Tillabéry carried out by Administrators Delmond (Dori *cercle*), Texier (Tillabéry *cercle*) and Garat (Téra Subdivision). This record was approved by the Governor of Niger on 7 June 1944;

⁹⁶Letter No. 367 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 31 July 1929; MN, Anns., Series C, No. 23.

⁹⁷Letter No. 399 from the Commander of Dori *cercle* to the Commander of Tillabéry *cercle* dated 9 August 1929; MN, Anns., Series C, No. 24.

⁹⁸Letter No. 411 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 14 August 1929; MN, Anns., Series C, No. 25.

⁹⁹Letter No. 418 from the Commander of Dori *cercle* to the Commander of Tillabéry *cercle* dated 19 August 1929; MN, Anns., Series C, No. 27.

¹⁰⁰Tour Report No. 108 from the Administrator of Dori *cercle* to the Governor of Upper Volta dated 31 March 1931; MN, Anns., Series C, No. 41.

¹⁰¹On this question, see generally para. 5.10 below.

¹⁰²Tour Report from Roser, Civil Services Deputy, Acting Commander of Dori *cercle* to the Governor of Upper Volta dated 10 April 1952; MN, Anns., Series C, No. 45.

¹⁰³Tour Report from the Head of Téra Subdivision to the Commander of Tillabéry *cercle* dated 8 November 1933; MN, Anns., Series C, No. 52.

¹⁰⁴Record of Agreement of 13 April 1935 between Garnier, Commander of Dori *cercle* and Lichtenberger, Head of Téra Subdivision; MN, Anns., Series C, No. 56.

¹⁰⁵Record of Agreement of 25 April 1935 between Messrs. Garnier and Lichtenberger; MN, Anns., Series C, No. 57.

¹⁰⁶Record of Delimitation Operations between Dori and Tillabéry *cercles* by the officials concerned, dated 8 December 1943; MN, Anns., Series C, No. 69.

- the agreement given in 1953¹⁰⁷ by the Governor of Niger to a project for marking the boundary between Téra Subdivision and Dori *cercle*. However, as was noted in the report of the tour conducted from 16 to 23 November 1953 by Administrator Lacroix, the purpose of which was to “survey the boundary between the *cercles* of Dori (Upper Volta) and Tillabéry (Niger)”, this marking operation “was not carried out”, for the reasons set out in the report¹⁰⁸.

Thus, at the dawn of independence, the two Colonies were encumbered with a dispute dating back to 1927. Independence, as we shall see, would not improve matters.

Section 2 — The difficulties encountered during the period subsequent to independence

2.9. With independence, certain of the difficulties described in the previous section would continue. This was thus the case regarding:

- complaints concerning the lack of precision in the boundaries. In a note of 3 February 1961¹⁰⁹, the Internal Affairs Department of the Republic of Niger recalled that

“Téra has for long indicated that, notwithstanding an *Arrêté* of 31 August 1927, which determines the frontier on paper, it is in fact unclear on the ground because the linking points in the frontier, the astronomic markers of Tong-Tong and Tao, have disappeared”;

- a prejudice in favour of the Delbos-Prudon Agreement of 1927. The note from the Internal Affairs Department of the Republic of Niger cited above¹¹⁰ continues as follows:

“Moreover, a survey carried out by Administrator Delbos in 1927, which gives a precise description of the frontier, was not accurately reproduced by the *Arrêté* of 31 August 1927”;

- problems of registration caused by certain differences in the regulations — particularly in regard to the taxation of livestock — which continued to encourage nomads to change their territory of origin¹¹¹.

2.10. But certain problems also changed in character as a result of the fact that the disputed boundary lines were no longer boundaries between two Colonies ruled by the same sovereign power, but frontiers between two separate independent States. This resulted in a series of new problems.

- thus from now on a dispute over whether a piece of land belonged to what formerly had been a Colony became a territorial dispute, and a dispute over land occupation could also constitute a

¹⁰⁷Letter 1511/APA from the Governor of Niger to the Commander of Tillabéry *cercle* dated 17 April 1953; MN, Anns., Series C, No. 75; see also letter No. 87 from the Head of Téra Subdivision to the Commander of Tillabéry *cercle* dated 3 June 1953; MN, Anns., Series C, No. 77.

¹⁰⁸Report of a tour conducted from 16 to 23 November 1953 by Deputy Administrator Lacroix (Tillabéry *cercle*) dated 24 December 1953; MN, Anns., Series C, No. 79.

¹⁰⁹Note on the frontier issues between the Republic of Niger and Upper Volta (Téra *cercle* and Say Subdivision — Dori *cercle* and Oudalen Subdivision) dated 3 February 1961; MN, Anns., Series C, No. 88; this is restated in identical terms in a note from the same department dated 22 June 1961; MN, Anns., Series C, No. 90.

¹¹⁰*Ibid.*

¹¹¹See, for example, letter No. 62/A1 from the Minister of the Interior to the President of the Republic of Niger dated 16 January 1961; MN, Anns., Series C, No. 87.

territorial dispute. An example was a dispute over land clearance activities in Komanti, which resulted in a formal record of a meeting between the Head of Téra Subdivision (Niger) and the Head of Sebba Outstation (Upper Volta) dated 21 March 1963¹¹²:

“It was merely a pretext for raising the real problem, which calls into question the very ownership of Komanti Territory.”

- residence within a particular State can — under certain conditions — result in attribution of nationality under the operation of the *jus soli*. In this regard we would cite the letter of 16 January 1961¹¹³ from the Minister of the Interior to the President of the Republic of Niger

“These questions of population movements between Téra and Dori have now taken on a particular aspect: the nationality of those involved is in issue; even in the absence of a code, nationality exists under the general law, and it is a privilege enjoyed by all citizens having been born in this country, having lived there as their forbears did, and possessing links of tribal attachment and tradition.

That nationality is not repudiated because an individual settles on the other side of the frontier and a chief enters him in his register. And even that simplified administrative approach, which was acceptable previously, should no longer be permitted.

The two issues, nationality and registration, must not be confused; foreign nationals, having settled or immigrated, may be registered, but on individual lists and only if they are in fact resident, a notion which in the case of nomads is often interpreted in a tendentious manner; that is why, in our relations with our neighbours, it remains necessary that the prior agreement of the administrative division of origin be obtained, and that the emigrant should continue to retain his nationality of origin.”;

- similarly in a letter of February 1961¹¹⁴, the Commander of Téra *cercle* wrote to the Commander of Dori *cercle*:

“Nomads are registered ‘*jure sanguinis*’ and not ‘*jure soli*’: they cannot be registered in a sedentary *canton* and remain in principle attached to their *groupement*, wherever they may temporarily settle.”

- in a similar vein, the Note of 22 June 1961¹¹⁵ from the Internal Affairs Department of the Republic of Niger on the frontier problems between the Republics of Niger and Upper Volta stated:

“The definition of nationality given in Niger’s code does not resolve the situation[. . .]. The presumption of nationality results from residence in Niger, hence for nomads, from their parentage; this precludes the possibility of changes of registration from one State to the other, without the question of nationality being raised. An individual leaving Niger to be registered in Dori retains his nationality. It

¹¹²Record of the meeting between the Head of Téra Subdivision and the Head of Sebba Outstation dated 21 March 1963; MN, Anns., Series C, No. 93.

¹¹³Letter No. 62/A1 from the Minister of the Interior to the President of the Republic of Niger dated 16 January 1961; MN, Anns., Series C, No. 87.

¹¹⁴Confidential letter No. 22/cf from the Commander of Téra *cercle* to the Commander of Dori *cercle* dated 11 February 1961; MN, Anns., Series C, No. 89.

¹¹⁵Note on the frontier issues between the Republics of Niger and Upper Volta (Téra *cercle* and Say Subdivision — Dori *cercle*), dated 22 June 1961; MN, Anns., Series C, No. 90.

is now from this perspective that we have to address the issue and establish an agreement.”

- in a letter of 1 June 1962¹¹⁶ to the President of the Republic of Niger, the President of the Republic of Upper Volta suggested a solution to smooth out the difficulties resulting from nationality disputes:

“As you observe in your letter, registration does not involve a presumption of individual nationality, which is governed by the provisions of the States’ nationality codes. It follows that, if the inhabitants in question habitually live on the territory of Niger or of Upper Volta, they are presumed to be nationals of Niger or of Upper Volta, the burden being on them or on the Governments concerned to prove the contrary.”

If an official of one State crosses the frontier without special authorization from the other State, that is a breach of international law. Thus, numerous disputes arose where border guards crossed the frontier (26 September 1961¹¹⁷) or performed acts outside the territory of the State to which they belonged (23 January 1964¹¹⁸ and 20 March 1964¹¹⁹). In his letter of 1 June 1962¹²⁰ to the President of the Republic of Niger, the President of the Republic of Upper Volta noted that

“[t]he lack of precision in the frontiers between our two States results in overlapping areas of authority”.

The result was that no arrest could take place on the territory of the other country without authorization, and that the person arrested could not be transferred without extradition proceedings (29 March 1964¹²¹). Similarly, a summons to appear before a judge of one of the States addressed to a person present on the territory of the other now had to pass through official national channels (13 March 1964¹²²).

2.11. In order to smooth out these various local disputes, the practice of meetings between the heads of the administrative divisions concerned of the two States was maintained during the initial years of independence. This was thus the case, for example, on 7 January 1964¹²³, 5 March 1964¹²⁴ and 10 April 1964¹²⁵. But from 22 April 1964¹²⁶, the authorities of the two States

¹¹⁶Letter No. 82 Pres/IS from the President of the Republic of Upper Volta to the President of the Republic of Niger dated 1 June 1962; MN, Anns., Series B, No. 92

¹¹⁷Letter No. 297 Ai from the Commander of Dori *cercle* to the Commander of Téra *cercle* dated 26 September 1961; MN, Anns., Series C, No. 91.

¹¹⁸Letter No. 00013/CONF from the Commander of Dori *cercle* to the Commander of Téra *cercle* dated 23 January 1964; MN, Anns., Series C, No. 95.

¹¹⁹Letter No. 31/CF from the Head of Téra administrative division to the Niger Minister of the Interior dated 20 March 1964; MN, Anns., Series C, No. 98.

¹²⁰Letter No. 82 Pres/IS from the President of the Republic of Upper Volta to the President of the Republic of Niger dated 1 June 1962; MN, Anns., Series B, No. 92.

¹²¹Letter No. 31/CF from the Head of Téra administrative division to the Niger Minister of the Interior dated 20 March 1964; MN, Anns., Series C, No. 98.

¹²²Letter No. 49/CT from the Head of Téra administrative division to the Niger Minister of the Interior dated 13 March 1964; MN, Anns., Series C, No. 97.

¹²³Letter No. 25/MI/AI/CF from the Minister of the Interior to the Commander of Téra *cercle* dated 7 January 1964; MN, Anns., Series C, No. 94.

¹²⁴Letter No. 4/CD from the Commander of Diapaga *cercle* to the Head of Say Subdivision as representative of the Commander of Niamey *cercle* dated 5 March 1964; MN, Anns., Series C, No. 96.

became aware that it would now be better to have recourse to diplomatic channels. This marked the start of a new era: that of diplomatic relations between sovereign States and of the peaceful settlement of disputes, and will be dealt with in the following chapter.

¹²⁵Record of the meeting between Upper Volta and Niger with a view to harmonizing relations between frontier populations dated 10 April 1964; MN, Anns., Series B, No. 99.

¹²⁶Letter No. 445/AI from the Niger Minister of the Interior to the Niger Minister for Foreign Affairs dated 22 April 1964; MN, Anns., Series C, No. 100.

CHAPTER III

THE ATTEMPTS BY NIGER AND BURKINA FASO TO SETTLE THE FRONTIER DISPUTE PEACEFULLY

3.1. Ever since their accession to independence the Republic of Niger and Burkina Faso have endeavoured to settle their frontier dispute peacefully. Several meetings were held during the first half of the 1960s between the local authorities of the two States. Those authorities sought to find a solution to the various practical difficulties described in the preceding chapter by clarifying the course of the common frontier. In 1964 an agreement was concluded between the two States in an attempt to settle these practical issues¹²⁷, and in particular the delimitation issue. To that end, the agreement established a joint commission charged with undertaking the work of demarcation of the frontier. The text provided that the parties had:

“decided to take as the basic documents for the determination of the frontier *Arrêté général* 2336 of 31 August 1927, as clarified by Erratum 2602 APA of 5 October 1927, and the 1:200,000-scale map of the Paris *Institut Géographique National*”¹²⁸.

However, the Joint Commission whose establishment was provided for in that agreement was never able to carry out its mission, and it was only some 20 years later that initiatives to this end were recommenced.

3.2. These more recent attempts at a settlement have been conducted on the one hand at technical level, within the framework of the Joint Technical Commission set up in 1987 (Section 1), and on the other at diplomatic level, between the political representatives of the two States (Section 2). The work of the Joint Commission led to the signature, in 2009¹²⁹, of an agreement between the two States on the course of certain sectors of their common frontier, but not on all of it. The relative lack of success in bringing these efforts at delimitation and demarcation to fruition led the two Parties to sign the Special Agreement whereby they entrusted the International Court of Justice with settlement of the frontier issues which remained in dispute between them (Section 3).

Section 1 — The work of the Joint Technical Commission on Demarcation of the Frontier

3.3. The negotiation process between the two States over the course of the common frontier was relaunched in the mid-1980s. Thus, at the meeting in February 1985 between the Niger Minister-Delegate of the Interior and the Minister for Territorial Administration and Security of Burkina Faso,

“[i]t was recommended that the frontier between the territories of the two States be demarcated on the basis of the Protocol of Agreement of 23 June 1964”¹³⁰.

¹²⁷See above, paras. 2.9 and 2.10.

¹²⁸Protocol of Agreement signed at Niamey on 23 June 1964, *OJRN*, 1 April 1966, pp. 150-151; MN, Anns., Series A, No. 1.

¹²⁹See below, paras. 3.15 ff.

¹³⁰Report of the meeting between the Niger Minister-Delegate for the Interior and the Minister for Territorial Administration and Security of Burkina Faso, Ouagadougou, 12 to 14 February 1985, p 5; MN, Anns., Series A, No. 2.

In accordance with that recommendation, a meeting between technical experts of the Republics of Niger and Burkina Faso was held in May 1986 in Ouagadougou¹³¹. The only point on the agenda of that meeting was the evaluation of the costs of the demarcation works for the Niger/Burkina frontier. In order to provide those works with a current framework, an Agreement and Protocol of Agreement were signed on 28 March 1987 in Ouagadougou between the Governments of the Republic of Niger and Burkina Faso on the demarcation of the frontier between the two countries. Article 3 of the Agreement created a Joint Technical Commission on Demarcation of the Frontier, composed of equal numbers from each side, whose powers were defined by the Protocol of Agreement. That Commission enjoyed full autonomy in the execution of the demarcation works. However, any difficulties liable to hinder the conduct of the works, as well as important decisions with potential financial consequences or involving additional costs, had to be submitted to the Governments of the two countries (Art. 5).

3.4. In March 1988 the technical experts of the Commission met at Téra, in Niger, in order to set up technical field teams, to discuss working methods and to launch the effective commencement of the works. Then, between 1988 and 1990, the Joint Technical Commission conducted a campaign which notably resulted in the placing of 23 markers out of the 45 envisaged, in particular:

- six markers between Kabia Ford and Tong Tong;
- one marker at Tao;
- 16 markers around the Botou Loop¹³².

However, differences persisted between the Parties regarding the location of the other markers and the course of the frontier in the areas concerned. Therefore, in accordance with Article 5 of the Protocol of Agreement of 1987, the Commission decided to submit the difficulties encountered to the two Governments.

3.5. It was in pursuance of that decision of the Joint Technical Commission on Demarcation that a Ministerial consultative and working meeting was convened between Niger and Burkina Faso and held in May 1991 in Ouagadougou¹³³. The Minister of the Interior of Niger and the Minister for Territorial Administration of Burkina Faso, having found that there were lacunae in relation to the implementation of the *Arrêté* of 1927 and its Erratum, took the following decision on behalf of their respective Governments:

- “1. From the Tong-Tong astronomic marker to the River Sirba at Bossebangou, passing through the Tao astronomic marker, the frontier shall consist of a series of straight lines.
2. From the River Sirba at Bossebangou to the River Mekrou, the course of the frontier adopted shall be that shown on the map to a scale of 1:200,000 of IGN/France, 1960 edition.

¹³¹Report of the meeting between technical experts of the Republics of Niger and Burkina Faso, Ouagadougou, 21 to 23 May 1986; MN, Anns., Series A, No. 3.

¹³²Report of the second ordinary session of the Joint Technical Commission on the Demarcation of the Niger-Burkina Faso Frontier, held in Ouagadougou from 23 to 28 July 1990, Ann. 2, *Summary of the Work of the 1989-1990 Season*; MN, Anns., Series A, No. 5.

¹³³Joint communiqué on the Ministerial consultative and working meeting between Niger and Burkina Faso held on 14 and 15 May 1991 in Ouagadougou; MN, Anns., Series A, No. 6.

To that end, two extracts from the 1:200,000 map of IGN/France, 1960 edition, on which that course is shown have been initialled by both Ministers.

The Joint Technical Commission on Demarcation has accordingly been authorized to continue its work forthwith on that basis.”

3.6. However, on the Niger side, serious doubts were raised as to the advisability of adopting the compromise solution that the Ministry of the Interior had approved. It was considered that the solution proposed did not comply with the conditions laid down by Articles 1 and 2 of the Agreement of 28 March 1987. It was accordingly decided not to submit the text to the ratification procedure required by Article 7 of the Agreement in order to secure its final approval.

3.7. This led to a deadlock, which lasted until 2001. It was only in that year that the Joint Technical Commission met again for its fourth session, in Ouagadougou in July 2001, when the question of the course of the frontier once again became a matter of prime concern in the work of the Commission. A joint committee of 12 members was established in order to study the theoretical course of the frontier in light of the basic documents, namely: the Agreement and Protocol of Agreement of 28 March 1987 on the one hand, and the Erratum of 5 October 1927 correcting the *Arrêté* of 31 August 1927 on the other.

3.8. After discussing the work of the joint committee, the Joint Technical Commission came to the following conclusions:

- it was decided to send a survey team into the field in order to identify the ruins of the village of Tokébangou;
- the survey team had found that the frontier from Tchenguilibà to the River Mekrou was clearly defined, subject to verification of the position of the village of Kogori;
- there were differing interpretations of the passage “*this line then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossebangou*”, as contained in the 1927 text. The Commission decided to continue its documentary research in order to clarify the course of the frontier in the area concerned;
- it was found that, from Bossébangou to Tchenguiliba, there were difficulties of interpretation connected with the failure to identify the villages cited in the Erratum and in identifying the point where the frontier line again cuts the Sirba at the level of the Say parallel. The technical survey team was requested to visit the area in order to identify the villages of Alfassi, Kouro, Tokalan and Tankouro, or their sites in 1927¹³⁴.

3.9. At the close of its fifth session, held in Niamey in September 2004, the Joint Commission produced the following results: neither of the two Parties had presented new documents; regarding the survey mission recommended at the fourth session, which it had not been possible to carry out, the Commission decided to engage a team of specialists (archaeologists, historians, topographers), who would be responsible, according to their mission statement, as appended in Annex 1 to the report of the session:

¹³⁴See the report of the fourth ordinary session of the Joint Technical Commission on Demarcation of the Burkina-Niger Frontier, held in Ouagadougou from 18 to 21 July 2001; MN, Anns., Series A, No. 8.

“for informing the Joint Commission regarding the identification and location of the sites of the villages and ruins in 1927, as referred to in the *Arrêté général* of 31 August 1927, as clarified by its Erratum of 5 October 1927”¹³⁵.

3.10. Regarding the study of the basic texts as agreed between the Parties,

“the Commission noted the lack of any development in the differences over the interpretation of those texts, as well as the lack of new documents which might help to resolve those differences”¹³⁶.

It accordingly recommended that the two States provide the necessary means

“for the conduct of joint missions to seek out new documents capable of throwing further light on the course of the frontier line where those differences persist”¹³⁷.

3.11. In short, it appears that the work of the Joint Technical Commission and, in general, the technical attempts at settlement subsequent to the independence of the two countries, namely the proposals put forward by the experts, were merely provisional positions, in view or hope of reaching a negotiated settlement of the dispute which the parties have committed themselves to seeking.

Section 2 — The attempts to settle the frontier dispute peacefully at diplomatic level

3.12. It being no longer possible to continue the work of demarcation in the disputed frontier areas, various incidents continued to affect relations between the two Parties. In February 2006 the proliferation of these incidents led the Prime Minister of Niger to propose to his counterpart in Burkina Faso that they recommence the work of demarcation of the frontier and revive the work of the Joint Technical Commission¹³⁸.

3.13. The response from the Prime Minister of Burkina Faso was positive, expressing his agreement in principle to a reopening of the dialogue over the delimitation of the frontier. He added:

“However, and without prejudice to the results of these new discussions, it seems to me important that we initiate action aimed at a definitive solution. It is for that reason that we have already sought your views on the option of jointly putting the matter before the International Court of Justice, so that it may rule on the persisting differences of interpretation in regard to the colonial texts.”¹³⁹

¹³⁵*Ibid.* The sites in question were: (a) the ruins of Tokebangou village; (b) the villages of Kouro, Alfassi, Tokalan, and Tankouro; (c) Kogori village.

¹³⁶*Ibid.*, p. 3.

¹³⁷*Ibid.*, p. 4.

¹³⁸Letter No. 000082 from the Prime Minister of Niger to the Prime Minister of Burkina Faso dated 2 February 2006; MN, Anns., Series A, No. 10.

¹³⁹Letter No. 2006.039/PM/CAB from the Prime Minister of Burkina Faso to the Prime Minister of Niger dated 9 February 2006; MN, Anns., Series A, No. 11.

Subsequently, the Minister for Foreign Affairs of the Republic of Niger indicated his State's positive response in principle to this proposal to place the matter jointly before the Court¹⁴⁰.

3.14. From the preceding account of the attempts to delimit and demarcate the frontier between Niger and Burkina Faso, the following conclusion can be drawn: the two countries have made constant efforts to determine the precise course of their common frontier and to demarcate it. They have done so with a remarkable concern to maintain their friendly and neighbourly relations, and to preserve the peace between them and also, on the ground, between the peoples of the frontier areas concerned. However, while significant progress has been made, enabling part of the frontier to be marked, a dispute persists between the two countries in regard to the interpretation of the instruments for delimitation of the common frontier dating from the colonial period.

Section 3 — The Special Agreement seising the Court of 24 February 2009

3.15. The agreement of principle expressed by the representatives of the two States regarding seisin of the Court resulted in a meeting of their plenipotentiaries in February 2009 in Niamey, at which they negotiated and signed the Special Agreement seising the Court, of which we will now give a brief summary.

A. Negotiation of the Agreement

3.16. The delegations of Niger and Burkina Faso met in Niamey from 22 to 24 February 2009, led respectively by the Minister for Foreign Affairs and Co-operation of the Republic of Niger and the Minister for Foreign Affairs and Regional Co-operation of Burkina Faso, with a view to "negotiating and signing the Special Agreement to seise the International Court of Justice of the frontier dispute between the two countries"¹⁴¹, on the "*instructions*" of the Presidents of Niger and Burkina Faso. In parallel with the work on the draft Special Agreement, the two parties also sought place on record their agreement on the sectors of their common frontier over which there was no dispute.

3.17. To this end, from 23 June to 3 July 2009 the experts of the two countries conducted a joint survey mission to record the co-ordinates of the markers constructed on the Burkina Faso-Niger Frontier. They "*laid down their agreement*" in a record signed at Diapaga (Burkina Faso) on 3 July 2009¹⁴². A second joint mission to ascertain the co-ordinates of the unmarked points in Sector B was carried out in October 2009. Here again, the experts "*laid down their agreement*" in a report signed at Kantchari (Burkina Faso) on 15 October 2009¹⁴³. Following those missions, a total of 22 markers had been identified and their co-ordinates noted. Furthermore the co-ordinates of two unmarked points in Sector B were ascertained from the 1:200,000 IGN/France

¹⁴⁰Letter No. 06-006/MAECR/SG/DAJC/SAJ from the Minister for Foreign Affairs of Burkina Faso to the Minister for Foreign Affairs of Niger dated 27 January 2006; MN, Anns., Series A, No. 9.

¹⁴¹Joint communiqué of the meeting of the Ministers for Foreign Affairs for negotiation and signature of the Special Agreement seising the ICJ of the frontier dispute between Niger and Burkina Faso, dated 24 February 2009; MN, Anns., Series A, No. 12.

¹⁴²Record of the work of the joint survey mission to determine the co-ordinates of the boundary markers erected along the frontier between Burkina Faso and the Republic of Niger, conducted from 23 June to 3 July 2009, dated 3 July 2009; MN, Anns., Series A, No. 14.

¹⁴³Report of the meeting to determine the co-ordinates of the unmarked points in Sector B, dated 15 October 2009; MN, Anns., Series A, No. 15.

maps of 1960 (Kirtachi sheet). In a letter of 29 October 2009¹⁴⁴, the Burkina Faso Minister-Delegate responsible for regional co-operation and Acting Minister for Foreign Affairs and Regional Co-operation, proposed to his Niger counterpart that those two reports be formally embodied in an agreement between the two Governments. The Niger Minister for Foreign Affairs and Co-operation replied in a letter dated 2 November 2009¹⁴⁵, in which she confirmed “*the agreement of the Government of Niger to this proposal*”, so that the above-mentioned letter from the Burkina Faso Minister and her own letter “*constitute[d] an agreement placing on record the understanding between Burkina Faso and the Republic of Niger on the delimited sectors of the frontier between the two countries*”. That accord was submitted to the Court together with the Special Agreement, under the title “[E]xchange of notes embodying the agreement of the Parties on the delimited sectors of the frontier”¹⁴⁶.

3.18. A Protocol of Exchange of the Instruments of Ratification of the Special Agreement was signed on 20 November 2009 in the capital of Burkina Faso by the Minister for Foreign Affairs and Co-operation of the Republic of Niger and the Minister for Foreign Affairs and Regional Co-operation of Burkina Faso, on behalf of their respective Governments¹⁴⁷. The Special Agreement itself was signed on 24 February 2009 and notified to the Court on 20 July 2010.

B. Content

3.19. The Special Agreement seising the Court contains ten articles, preceded by a preamble which cites the legal instruments governing delimitation of the frontier between Niger and Burkina Faso and specifies the sectors of the frontier on the delimitation of which the parties have agreed.

3.20. Articles 1 and 3 to 9 deal with the classic issues contained in every agreement of this type, namely, respectively: each party’s right to seise the Court (Art. 2); the rules governing the written proceedings (Art. 3) and the oral proceedings (Art. 4), as well as the language of the proceedings (Art. 5); the applicable law (Art. 6); the binding force, implementation, and any difficulties of implementation, in respect of the Court’s future judgment (Art. 7); entry into force (Art. 8); registration and notification (Art. 9).

3.21. Article 10 contains a special undertaking by the parties, which is not a classic clause, although similar provisions are to be found in certain special seisin agreements. Under that provision, which reflects remarkably well the friendly atmosphere and spirit of brotherhood which prevail in relations between the two countries, as well as their desire to preserve the climate of calm which characterizes those relations,

“the parties undertake to maintain peace, security and tranquillity among the populations of the two States in the frontier region, by refraining from any act of incursion into the disputed areas and organizing regular meetings of administrative officials and the security services”.

¹⁴⁴Letter No. 2009/OO4874/MAECR/SG/DGAJC from the Minister for Foreign Affairs of Burkina Faso to the Minister for Foreign Affairs of Niger, dated 29 October 2009; MN, Anns., Series A, No. 16.

¹⁴⁵Letter No. 007505/MAE/C/DAGC/DIR from the Minister for Foreign Affairs of Niger to the Minister for Foreign Affairs of Burkina Faso of 2 November 2009; MN, Anns., Series A, No. 17.

¹⁴⁶Exchange of notes embodying the agreement of the parties on the delimited sectors of the frontier; MN, Anns., Series A, No. 21.

¹⁴⁷MN, Anns., Series A, No. 19.

3.22. The core of the Special Agreement remains, however, Article 2, which describes the subject of the dispute. It is on that Article that the Court is called upon to focus its attention in relation to the merits, in order, first, to determine the course of the frontier in the sectors where the Parties have been unable to reach final agreement on a line, and secondly, to place on record the Parties' agreement on the results of the work of the Joint Technical Commission on Demarcation of the Burkina Faso-Niger Frontier and, in so doing, to confer on that bilateral agreement between the two States the force of *res judicata*.

3.23. The frontier in the disputed area having been delimited and demarcated by agreement between the Parties in the other sectors, the 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, of which the geographical co-ordinates are respectively: 14° 25' 04" N; 00° 12' 47" E; and 12° 36' 18" N; 01° 52' 07" E. It is accordingly that stretch of the frontier between the Republic of Niger and Burkina Faso that the Parties respectfully request the Court to delimit, on the basis of the texts indicated in the Special Agreement signed by both Parties.

CHAPTER IV

CARTOGRAPHIC MATERIAL RELATING TO THE DISPUTED AREA

4.1. Although the sector of the frontier involved in the present dispute is relatively restricted, the region where it is located has been the subject of a very large number of surveys and cartographic representations since the beginnings of colonial penetration into the area. There is thus available an abundance of cartographic material, dating back in certain cases to the very beginning of the twentieth century, which illustrates the development of the territories concerned and their boundaries.

4.2. Maps or sketch-maps of all kinds relating to the area concerned by the present dispute have been produced over the years¹⁴⁸. These include, *inter alia*:

- sketch-maps produced by soldiers, explorers or colonial administrators;
- sketch-maps of geographical surveys, prepared by soldiers and geographers attached to scientific missions;
- sketch-maps from compilations of the available documents concerning the areas in question;
- semi-official maps resulting from direct surveys or from the first aerial photographs;
- official maps, prepared from aerial photographs from the 1950s.

4.3. However, for purposes of the present Memorial, only sketch-maps and maps of real interest, whether from the point of view of their scale or of the detail represented, will be relied on. The representation of the administrative boundaries that they depict will also determine the choice of certain documents, even if their technical quality is not as good as it might be. Moreover, certain maps and sketch-maps are only of interest in terms of their toponymy.

In the following pages we will make a chronological examination of a sample of the maps or sketch-maps relating to the disputed area.

4.4. Sketch-map of the course of the Niger through Djerma *cercle*, scale 1:1,000,000, appended to report No. 20 of 18 June 1909 of Captain Boutiq, Commander of Djerma *cercle*, with reference to the possible conversion of the military régime to a civil régime for the right bank of the Niger¹⁴⁹.

This sketch-map, which shows the boundaries of Say *cercle*, has an inset showing the point where Tillabéry, Say and Dori *cercles* join.

¹⁴⁸Because of the methodological and scientific differences in the preparation of the maps and sketch-maps, it was considered preferable to classify them in different ways. Thus the maps will appear in Series D of the Annexes, while the sketch-maps have been treated as administrative documents and therefore appear in Series C, except when their size has required them to be treated as Series D documents for logistical reasons.

¹⁴⁹MN, Anns., Series D, No. 1.

4.5. Say *cercle*, sketch-map drawn by *cercle* Administrator Truchard, scale 1:500,000; Say, 1 April 1915¹⁵⁰.

All of the boundaries of Say *cercle* are shown on this sketch-map, in particular in the area of Bossébangou and in that of the four villages cited in the Erratum of 5 October 1927, three of which are shown (Alfassi, Kouro and Tankourou). This sketch-map was drawn before Botou *canton* was detached from that *cercle*.

4.6. Africa 1:2,000,000: French Sudan, provisional edition, drafted, heliographed and published by the Army Geographical Section in 1925¹⁵¹.

Despite its date (1925), this is probably a more recent edition, since it includes data subsequent to 1927 (Botou *canton* in Fada, and a roughly drawn boundary between Dori and Tillabéry). In 1925, Say *cercle* still included Botou *canton*, and all of the territories on the right bank of the River Niger were at that time part of the Colony of Upper Volta.

4.7. Atlas of *Cercles*: Fascicle IV— Upper Volta, Map No. 60— Say *cercle*, Geographical Department of French West Africa, scale 1:500,000, published by Forest, 17 rue de Buci, Paris 1, January 1926 printing¹⁵².

This map clearly shows the boundaries of Say *cercle* as they were before Botou *canton* was detached. We see the salient encompassing the four villages cited in the Erratum of 5 October 1927. Three of those villages are shown (Alfassi, Kouro and Tokalan). The boundary continues along a broken line until it intersects with the roughly drawn outline of the River Mékrou.

4.8. Atlas of *Cercles*: Fascicle IV— Upper Volta, Map No. 53— Dori *cercle*, Geographical Department of French West Africa, scale 1:100,000, published by Forest, 17 rue de Buci, Paris 1, January 1926 printing¹⁵³.

The boundaries of Dori *cercle* shown on this map are those existing before the areas on the right bank of the River Niger were incorporated into the Colony of Niger by the Decree of 28 December 1926. At that time, Niamey *cercle* (Niger Colony) bordered on Dori and Say *cercles* (Colony of Upper Volta).

4.9. Atlas of *Cercles*: Fascicle IV— Upper Volta, Map No. 54— Fada *cercle*, Geographical Department of French West Africa, scale 1:1,00,000, published by Forest, 17 rue de Buci, Paris 1, January 1926 printing¹⁵⁴.

This map shows the boundaries between Say and Fada *cercles*.

¹⁵⁰MN, Anns., Series D, No. 4.

¹⁵¹MN, Anns., Series D, No. 5.

¹⁵²MN, Anns., Series D, No. 6.

¹⁵³MN, Anns., Series D, No. 7.

¹⁵⁴MN, Anns., Series D, No. 8.

4.10. Map of the Colonies of French West Africa to a scale of 1:500,000: Upper Volta, Niger, Dahomey, Niamey, Survey Map D 31 SW, drawn and published by the Geographical Department of French West Africa in Dakar under the direction of Commander de Martonne, heliographed by éd. Blondel la Rougery, Paris, June 1926¹⁵⁵.

This map clearly shows the boundaries of Say *cercle*, which at that time still included Botou *canton*.

4.11. Sketch-map of the Sahara and Neighbouring Regions on a scale of 1:1,000,000, Niamey ND 31, prepared by the Geographical Department of French West Africa at Dakar in 1926, drafted, heliographed and printed by the Army Geographical Section in 1927¹⁵⁶.

This map shows the boundaries of the *cercles* composing the Colonies. The boundary between Say and Fada *cercles* is indicated. The Yatacala region had at that time not been incorporated into Tillabéry *cercle*. The tripoint between Dori, Tillabéry and Say *cercles* is at a point located to the north-west of Bossébangou and thus falls outside that locality. Before the Botou Loop, the boundary between Fada and Say *cercles* is shown by a broken line.

4.12. Dori *cercle*, route taken in June 1927 by Administrator Delbos for the purpose of delimiting the boundary between Dori and Tillabéry *cercles*¹⁵⁷.

This sketch-map shows the route followed by this official and his proposal for the boundary between the two Colonies.

4.13. Sketch-map on a scale of 1:200,000— course of the boundary as surveyed in June 1927 by Chief Administrator Prudon, Commander of Tillabéry *cercle*¹⁵⁸.

This sketch-map indicates the villages and *groupements* located in Tillabéry *cercle* and asking to be incorporated in Niger. It also shows the route followed from the Kabia ford passing through the Tao astronomic marker and reaching the River Sirba in the neighbourhood of Nababori. It also shows the draft boundary of the Colonies.

4.14. Government-General of French West Africa: Colony of Upper Volta, road map, prepared by the Geographical Department of French West Africa, Dakar, according to the information provided by the Government of Upper Volta as well as the surveys and route-maps of the officers and NCOs of the Geographical Section, Mr. Carde being Governor-General of FWA and Mr. Hessling Lieutenant-Governor of Upper Volta, scale 1:1,000,000, E. Girard, publisher/geographer, 17-18 rue de Buci, Paris, 1927 edition¹⁵⁹.

While the main purpose of this map was not the inter-colonial boundary, it is interesting to note that that boundary does not pass through Bossébangou. It should be noted in the northern part that the Yatacala region had not yet been incorporated into the Colony of Niger.

¹⁵⁵MN, Anns., Series D, No. 9.

¹⁵⁶MN, Anns., Series D, No. 10.

¹⁵⁷MN, Anns., Series D, No. 2.

¹⁵⁸MN, Anns., Series D, No. 3.

¹⁵⁹MN, Anns., Series D, No. 11.

4.15. Map of Botou *canton*, 1:500,000, May 1927¹⁶⁰.

Prepared by Lieutenant Billidenty of the French West African Geographical Department, this map was appended to the Record of Agreement of 9 May 1927 to show the boundaries of Botou *canton*, as incorporated into Fada *cercle* (Upper Volta) by the Decree of 28 December 1926.

4.16. French West Africa: new frontier between Upper Volta and Niger (according to the Erratum of 5 October 1927 to the *Arrêté* of 31 August 1927), scale 1:1,000,000¹⁶¹.

This was an illustration to the Erratum of 5 October 1927 produced by the FWA Geographical Department. Neither the frontier line of small crosses nor the tripoint touches Bossébangou.

4.17. French West Africa: general political and administrative map (semi-mural type), to a scale of 1:2,500,000, Second Edition 1928, showing the division into *cercles* of the eight Colonies, autonomous and mixed *communes*, chambers of commerce, railway stations, post and telegraph offices, wireless telegraph stations, military outposts, etc. (information as at 1 January 1928); prepared and published by the FWA Geographical Department, Dakar¹⁶².

The interest of this map lies in the fact that it shows, in addition to the administrative boundaries, the numbers of the sheets relating to the *cercles* of the various Colonies.

4.18. Map of French West Africa to a scale of 1:3,000,000 prepared by A. Meunier, geographer with the Ministry for the Colonies, 1930, Third Edition¹⁶³.

The boundaries of the Colonies shown on this map do not pass through Bossébangou.

4.19. Road map of Niger to a scale of 1:2,500,000, 1936 Edition, prepared, drawn, heliographed and printed by the FWA Geographical Department, Dakar¹⁶⁴.

This map shows the boundaries of the Colonies and *cercles* at the time when Upper Volta was dissolved.

4.20. French West Africa: general political and administrative map (semi-mural type), on a scale of 1:2,500,000, Fourth Edition 1939, showing the division into *cercles* of the eight Colonies, autonomous and mixed *communes*, chambers of commerce, railway stations, post and telegraph offices, wireless telegraph stations, military outposts, etc. (information as at 1 January 1939); prepared and published by the French West Africa Geographical Department, Dakar¹⁶⁵.

This map shows the sheet numbers relating to the various *cercles* of the Colonies and the administrative boundaries at a time when the Colony of Upper Volta no longer existed.

¹⁶⁰MN, Anns., Series D, No. 12.

¹⁶¹MN, Anns., Series D, No. 13.

¹⁶²MN, Anns., Series D, No. 14.

¹⁶³MN, Anns., Series D, No. 15.

¹⁶⁴MN, Anns., Series D, No. 17.

¹⁶⁵MN, Anns., Series D, No. 18.

4.21. Africa 1:1,000,000, Niamey (Second Edition) ND 31, map prepared by the FWA Geographical Department, Dakar, in 1926, drawn, heliographed and printed by the Army Geographical Section in 1927 (Third Edition, 1934), geographical section, General Staff No. 2465, War Office 1940, heliographed at O.S.¹⁶⁶.

This map is based on an original French map of 1926. The sheets and projection are those of the international map. The boundaries of Dori, Tillabéry, Say and Fada *cercles* are clearly shown. The tripoint Téra, Say, Dori appears quite clearly. The boundary between the two Colonies, from the end of the salient encompassing the four villages to the start of the Botou Loop is represented by a line in two straight sections.

4.22. Sketch-map of French Africa on a scale of 1:1,000,000, Niamey ND 31, prepared, drawn and published by the *Institut géographique national* in 1946¹⁶⁷.

Since Upper Volta did not exist at this time, this map's legend shows only provincial, departmental or territorial boundaries. The boundary between Dori and Tillabéry on the one hand, and between Fada and Say on the other, is clearly shown. The tripoint is located well to the west of Bossébangou. The boundary is significantly curved from just after Tong-Tong to a point located in the neighbourhood of Alfassi. The boundary at the level of the Say parallel runs towards Tchenguilita (*sic*), following a broken line.

4.23. Diagourou *canton* on a scale of 1:250,000, produced in 1954¹⁶⁸.

This sketch-map shows us the boundaries of Diagourou *canton*, as well as the names of the villages composing it (including Bangaré).

Kamanti Village, which is shown, and indicated as a hamlet belonging to Dori, is located deep inside, and surrounded by, other villages of Diagourou *canton*.

This sketch-map is appended to the census report for Diagourou *canton* prepared at Téra on 10 August 1954 by the Head of Subdivision, Marc Perret, Overseas Administrator.

4.24. Map No. 1: surface formations and hydrology, scale 1:200,000, BURGEAP 219-R.178, Nov. 1954¹⁶⁹.

This map shows the boundary between the two Colonies as far as Tao. From the Tong-Tong astronomic marker to the Tao marker, the boundary is significantly curved.

4.25. Maps of West Africa on a scale 1:200,000, drawn and published by the *Institut géographique national* — Paris (Dakar Annex), 1955 and subsequent editions.

These are topographical maps produced from aerial photographs taken in the years 1955 and 1956. Field completion surveys were carried out during the 1958-1959 seasons.

¹⁶⁶MN, Anns., Series D, No. 19.

¹⁶⁷MN, Anns., Series D, No. 20.

¹⁶⁸MN, Anns., Series D, No. 21.

¹⁶⁹MN, Anns., Series D, No. 22.

The maps have two grid systems (geographical and kilometric), enabling distances and co-ordinates to be calculated. This is the only series of medium-scale (1:200,000) maps covering the whole of the territory of the two States. The disputed area is covered by four sheets of one square degree each, roughly 110 km by 110 km. The sheets concerned are, from north to south, as follows:

- map of West Africa at 1:200,000: Republic of Mali, Republic of Niger, Republic of Upper Volta, Téra, sheet ND 31 XIII, drawn and published by the *Institut géographique national*, Paris (West Africa branch, Dakar), First Edition July 1960, reprinted September 1969¹⁷⁰;
- map of West Africa at 1:200,000: Republic of Niger, Republic of Upper Volta, Sebba, sheet ND31 VII, drawn and published by the Geographical Department, Dakar, 1960¹⁷¹;
- map of West Africa at 1:200,000: Republic of Niger, Republic of Upper Volta, Gothèye, sheet ND 31 VIII, drawn and published by the Geographical Department, Dakar, 1960¹⁷²;
- map of West Africa at 1:200,000: Republic of Niger, Republic of Upper Volta, Diapaga, sheet ND 31 II, drawn and published by the Geographical Department, Dakar, 1960¹⁷³.

4.26. Basically, preparation of the final map in paper format comprised the following stages:

- photogrammetric reconstitution so as to obtain a stereomodel or planimetric outline;
- completion on the ground;
- cartographic preparation and laboratory work, resulting in a series of master negatives (planimetry, hydrography, orography, toponymy);
- printing on paper, production of final map.

4.27. The division and designation of the planimetric outlines obtained by photogrammetric reconstitution will correspond to those of the final map. The reconstituted details (villages, watercourses, mountains, roads, etc.) may be clear or hidden, because of anomalies in the photographic images. Use of survey and astronomic points enables accuracy in the planimetric outline to be obtained in both vertical and horizontal planes.

4.28. The following stage, field completion, is carried out on the ground by topographers using the planimetric outlines. The purpose of this stage is to:

- check the reconstituted data;
- identify hidden details;
- gather toponyms;

¹⁷⁰MN, Anns., Series D, No. 23.

¹⁷¹MN, Anns., Series D, No. 24.

¹⁷²MN, Anns., Series D, No. 25.

¹⁷³MN, Anns., Series D, No. 26.

- obtain additional information from the local and customary authorities relating to administrative boundaries, status of localities, transcription of toponyms, etc.

All of this information is entered on the stereomodel in accordance with a prepared table of conventional signs and will be shown in legend form on the final map.

The completed planimetric outline is then passed to the mapmakers for preparation of the final sheet.

4.29. Completion surveys for production of the IGN France maps on a scale of 1:200,000, 1960 edition, covering the region were carried out during the 1958-1959 season. The completion sheets show, *inter alia*, draft textual data, as well as planimetric corrections and other information, including the draft frontier line to be shown on the final sheets.

Most of the completion sheets used in the preparation of the maps concerned here have been found in the archives of IGN France. The completion sheets which are of significance for the interpretation of the final map are those relating to textual data and other information. They are the following:

- Téra, Textual Data/Other Information, sheet ND-31-XIII, map of French West Africa, 1:200,000¹⁷⁴; the draft frontier line is marked by a continuous yellow line. That line does not pass through the Tong-Tong astronomic marker, which it leaves to the west. It does pass through the site of the Tao astronomic marker, which is represented on the sheet by triangulation pillar 268. In general, the draft frontier line follows the rare watercourses in the area.
- Sebba, Other Information, sheet ND-31-VII, map of French West Africa, 1:200,000¹⁷⁵; the draft frontier on this sheet appears as a continuous yellow line, marked in red in several places “boundary uncertain”. This line follows the existing watercourses or watersheds in the area.
- Gotheye, Other Information, sheet ND-31-VIII, map of French West Africa, 1:200,000¹⁷⁶; the draft frontier is shown as a continuous yellow line following the natural ground features: including relief and watercourses.
- Diapaga, Other Information, sheet ND-31-II, map of French West Africa, 1:200,000¹⁷⁷; two draft frontier lines appear on this sheet:
 - an initial draft line, shown as a broken yellow line, following the watercourses and marked “territorial boundary according to Niger *cercles* Commanders and local inhabitants. To be deleted”;
 - a second broken yellow line, running alongside a broken red line, which is then extended by a continuous yellow line marked: “territorial boundary according to the Protocol of Agreement (not surveyed on the ground) — uncertain boundary to be maintained”.

At the intersection of federal highway No. 36, Bamako-Niamey, with this second line, a frontier post is marked.

¹⁷⁴MN, Anns., Series D, No. 27.

¹⁷⁵MN, Anns., Series D, No. 28.

¹⁷⁶MN, Anns., Series D, No. 29.

¹⁷⁷MN, Anns., Series D, No. 30.

4.30. These maps from 1960 are of particular significance. First, they were prepared with particular care, combining the most up-to-date techniques of the time with detailed work on the ground. They are thus highly reliable, in terms both of accuracy in the representation of local detail and of the wealth of information in regard to toponyms. Secondly, they represent the cartographic material closest to the date of independence of the two Colonies. For this reason, these maps are the most relevant for purposes of determining the colonial heritage of the two Parties.

4.31. Upper Volta: road map, scale 1:1,000,000, drawn and published by the *Institut géographique national*, Paris (Dakar Annex, First Edition, May 1963)¹⁷⁸.

This map is based on the 1:200,000 IGN maps which have just been discussed. It groups together, on a scale of 1:1,000,000, the sheets for Téra, Sebba, Gothèye and Diapaga. The frontier line shown there is identical to that on those sheets.

4.32. The cartographic material covering the disputed area also includes a number of sketch-maps of various kinds, whose dates and authors — and sometimes even the scale — are not always known. These sketch-maps can, however, provide useful information on certain points. They will accordingly be referred to a number of times in this Memorial.

¹⁷⁸MN, Anns., Series D, No. 31.

CHAPTER V

THE LEGAL BASES FOR DETERMINATION OF THE FRONTIER

5.1. Under Article 6 of the Special Agreement signed on 24 February 2009, the rules of law applicable to resolve the dispute are the following:

“The rules and principles of international law applicable to the dispute are those referred to in Article 38, paragraph 1, of the Statute of the International Court of Justice, including: the principle of the intangibility of boundaries inherited from colonization; and the Agreement of 28 March 1987.”

The Agreement of 28 March 1987 is that whereby the two Governments agreed to demarcate their common frontier and, as we have seen, proceeded for that purpose to establish a Joint Technical Demarcation Commission¹⁷⁹. That Agreement of 28 March 1987 provides as follows in its Articles 1 and 2:

“Article 1

The frontier between the two States shall run from the heights of N’Gouma, situated to the north of the Kabia ford, to the intersection of the former boundary of the *cercles* of Fada and Say with the course of the Mekrou, as described in the *Arrêté* of 31 August 1927.”

“Article 2

The frontier shall be demarcated by boundary markers following the course described by *Arrêté* 2336 of 31 August 1927, as clarified by Erratum 2602/APA of 5 October 1927. Should the *Arrêté* and Erratum not suffice, the course shall be that shown on the 1:200,000-scale map of the *Institut Géographique National de France*, 1960 edition, and/or any other relevant document accepted by joint agreement of the Parties.”

5.2. These various provisions state very precisely what is to be understood in this case by the application of the principle of “the intangibility of boundaries”, that is to say the *uti possidetis* at the date of independence of the two States in 1960. As we have seen in Chapter I of this Memorial, independence took place on, respectively, 3 August 1960 for Niger and 5 August 1960 for Upper Volta. The date to be taken for the application of the *uti possidetis* principle is thus the latter, namely 5 August 1960.

For purposes of the practical application of that principle, the text of the 1987 Agreement, as referred to in the Special Agreement, relies on three criteria, which will be examined in detail in this Chapter. The Agreement begins by citing two pieces of legislation from 1927 (Section 1). It then goes on to refer to the 1960 IGN map, in the following terms:

“Should the *Arrêté* and Erratum not suffice, the course shall be that shown on the 1:200,000-scale map of the *Institut Géographique National de France*, 1960” (Section 2);

¹⁷⁹Agreement between the Revolutionary Government of Burkina Faso and the Government of the Republic of Niger on the demarcation of the frontier between the two countries; MN, Anns., Series A, No. 4; see above para. 3.3.

finally it refers to “any other relevant document accepted by joint agreement of the Parties” (Section 3).

Section 1 — The legislative texts

5.3. In order to determine what were the boundaries of the territory of the two States as at 5 August 1960, it is necessary to seek out the most recent legislative or regulatory acts of the colonial power having determined those boundaries. The only ones to have been found are the Erratum 2602/APA of 5 October 1927 correcting *Arrêté* 2336 of 31 August 1927, which has, moreover, been consistently cited by the parties. We shall examine in turn the content of those texts (A), before dealing with the issue of how they should be interpreted (B).

The question is doubtless complicated by the fact that Upper Volta was dismembered and shared out among the neighbouring Colonies on 5 September 1932¹⁸⁰. However, the Law of 4 September 1947¹⁸¹ reconstituted the Colony of Upper Volta within the boundaries that it had possessed at the time of its abolition by the Decree of 5 September 1932:

“Article 1

The Decree of 5 September 1932 dissolving the Colony of Upper Volta is, and shall remain, abrogated.

Article 2

[. . .] Its administrative centre shall be at Ouagadougou and its boundaries shall be those of the former Colony of Upper Volta on 5 September 1932.

Article 3

The territorial boundaries defined in Article 2 may be modified following consultation with the local assemblies concerned.”

Neither of the two Parties contends that there was any change to the legal situation existing between 4 September 1947 and 5 August 1960, the date of the accession of Upper Volta to independence. It follows that we have to go back to see what was the instrument which, on 5 September 1932, governed the boundaries of the two Colonies. That instrument was in fact the Erratum of 5 October 1927 to the *Arrêté* of 31 August 1927 fixing the boundaries of the Colonies of Upper Volta and Niger.

A. Content of the 1927 texts

5.4. These two texts originated in the Decree of 28 December 1926 transferring the administrative centre of the Colony of Niger and providing for territorial changes in French West Africa¹⁸²:

¹⁸⁰Decree of 5 September 1932 dissolving the Colony of Upper Volta and distributing its territory among the Colonies of Niger, French Sudan and Côte d’Ivoire; *OJFWA*, 15 October 1932, p. 902. See MN, Anns., Series B, No. 29.

¹⁸¹Law 47-1707 of 4 September 1947 reconstituting the Colony of Upper Volta; *OJFWA*, 27 September 1947. See MN, Anns., Series B, No. 30.

¹⁸²That Decree was promulgated in French West Africa by an *Arrêté* of the Governor-General of French West Africa of 21 January 1927 and published in *OJFWA*, No. 1167, undated, year 1927, p. 92. See MN, Anns., Series B, No. 23.

“[Art. 2] The following territories, which are currently part of the Colony of Upper Volta, shall be incorporated in the Colony of Niger with effect from 1 January 1927:

1. Say *cercle*, with the exception of Gourmantché Botou *canton*;
2. The *cantons* of Dori *cercle* which were formerly part of the Military Territory of Niger in the Téra and Yatacala regions, and were detached from it by the *Arrêté* of the Governor-General of 22 June 1910.

An *Arrêté* of the Governor-General in Standing Committee of the Government Council shall determine the course of the boundary of the two Colonies in this area.”

An *Arrêté* providing for territorial changes to the Colonies of Upper Volta and Niger was subsequently adopted by the Governor-General of French West Africa on 22 January 1927¹⁸³. It provided as follows:

“Article 1 — That part of Dori *cercle* assigned to the Colony of Niger shall be incorporated into the territory of the current Tillabéry Subdivision (Niamey *cercle*), and shall constitute the *cercle* of Tillabéry.

Article 2 — That part of Say *cercle* assigned to the Colony of Niger shall constitute, under the same name, a *cercle* of that Colony.

Article 3 — The *canton* of Gourmantché-Botou, previously part of Say *cercle* and remaining in the Colony of Upper Volta, shall be incorporated into Fada *cercle*.”

As we have seen¹⁸⁴, several records of agreement were adopted by the colonial authorities of Niger and Upper Volta in order to prepare the delimitation between the two Colonies in that area. It was on the basis of those documents that, a few months later, the *Arrêté* of 31 August 1927, subsequently corrected by the Erratum of 5 October 1927, was adopted.

5.5. On 31 August 1927, *Arrêté* No. 2336 of the Governor-General of French West Africa fixed the boundaries of the Colonies of Upper Volta and Niger as follows:

“[Article 1]

1. Boundaries between the Tillabéry *cercle* and Upper Volta:

This boundary is determined to the north by the current boundary with Sudan (Gao *cercle*) as far as the heights of N’Gourma, and to the west by a line passing through the Kabia ford, Mount Darouskoy and Mount Balébanguia, west of the ruins of the village of Tokébangou, and Mount Doumafondé, which then turns towards the south-east, leaving the ruins of Tong-Tong to the east and descending in a north-south direction, cutting the Téra-Dori motor road to the west of the Ossolo Pool, until it reaches the River Sirba (boundary of Say *cercle*), near to and to the south of Boulkalo.

2. Boundaries between the Say *cercle* and Upper Volta:

¹⁸³*Arrêté* of 22 January 1927 providing for territorial changes to the Colonies of Upper Volta and Niger; OJFWA, No. 1169, 12 February 1927. See MN, Anns., Series B, No. 25.

¹⁸⁴See above, para. 1.24.

The villages of Botou *canton* are excluded from this boundary.

To the north and to the east, by the current boundary with Niger (Niamey cercle), from Sorbohaoussa to the mouth of the River Mekrou;

To the north-west, by the River Sirba from its mouth as far as the village of Bossébangou. From this point a salient, including on the left bank of the Sirba the villages of Afassi, Kouro, Takalan and Tankouro;

To the south-west, a line starting approximately from the Sirba at the level of the Say parallel and running as far as the Mekrou;

To the south-east, by the Mekrou from that point as far as its confluence with the Niger.”

We have already drawn attention¹⁸⁵ to the confusion resulting from the *Arrêté* of 31 August 1927, which had led to the adoption of the Erratum of 5 October that same year. The *Arrêté général* contained a manifest drafting error. Instead of that part of the boundaries of Say *cercle* which from then on was to constitute the frontier with Upper Volta, it described the *cercle's* entire boundaries — which are indicated in italics in the above extract.

The *Arrêté* was accordingly the subject of an Erratum No. 2602/APA of 5 October 1927. The full text of the Erratum is as follows:

“Article 1 of the *Arrêté* of 31 August 1927 fixing the boundaries of the Colonies of Niger and Upper Volta, published in the Official Journal of French West Africa No. 1201, of 24 September 1927, page 638, should read as follows:

Article 1

The boundaries of the Colonies of Niger and Upper Volta are determined as follows:

A line starting from the heights of N’Gouma, passing through the Kabia ford (astronomic point), Mount Arounskoye and Mount Balébangou, to the west of the ruins of the village of Tokebangou, Mount Doumafende and the Tong-Tong astronomic marker; this line then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossebangou. 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.

From that point it turns back up in a straight line that runs in a marked SSW-NNE direction; it passes approximately 2 km west of the village of Birniouli and, approximately 2 km to the south of the south of the village of Vendou Mama, reaches the top of the northernmost spur of the Heni-Djouri (Gourma) massif or Jackal Mountain.

¹⁸⁵See above, para. 1.26.

Running then in a west-east direction, it passes 1 km south of Mount Tambado Djoaga, follows the course of the Dantiabonga *marigot*, passes south of Dantiandou, follows the line of the Yoga Djoaga hills as far as the confluence of the Dantiabonga and Diamongou *marigots*, and runs along the latter as far as the confluence of the Dialongou and Boulelfonou *marigots* approximately 5 km north of the latter village.

From that point, the boundary follows the crests of the Djoapionga hills as far as the source of the Boulolfonou *marigot*, runs up the northern slope of the Tounga and Djoaga massif and terminates at the point known as Niobo-Farou (Caiman Pool), a sort of broad basin, which is traversed during the dry season by the track from Botou to Fombonou.

It is then determined by the eastern crests of the Tounga Djoaga massif, before running towards the River Tapoa in a precise north-south direction. It passes approximately 5 km east of the village of Kogori and reaches the Tapoa approximately 4 km south of the aforementioned village.

It then follows the course of the Tapoa upstream until it meets the former boundary of the Fada and Say *cercles*, which it follows as far as the point where it intersects with the course of the Mekrou.”¹⁸⁶

In relation to the previous text, the description of the boundary was also modified in its northern part — not relevant here — and to the south-west, where the boundary of Tillabéry *cercle* meets that of Say *cercle*. Finally the description of the boundary between Say *cercle* and Upper Volta was supplemented by a description of the internal boundaries of Botou *canton*. However, as will be explained later¹⁸⁷, this new draft contained another error in the area of Bossébangou, where it continued to include in the inter-colonial boundary a part of the internal boundaries of Say *cercle*.

5.6. Despite the new draft, this text remains particularly rudimentary. That part of the text of the Erratum which concerns the boundary still in dispute between the two Parties is the following: from the Tong-Tong astronomic marker,

“this line then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossebangou. 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”.

Thus in the Tillabéry *cercle* sector, for the stretch of the frontier which remains in dispute between the two Parties, we have only two certain points: the Tong-Tong astronomic marker and the Tao astronomic marker. The point where the line reaches the boundary of Say *cercle* in the vicinity of Bossébangou remains, as we shall see, problematic¹⁸⁸.

Thus, as has already been explained, this text was criticized from the outset by the colonial officials and authorities of the two Colonies¹⁸⁹. From all sides there was a chorus of complaints over the lack of precision in the boundaries and the constant disputes to which those shortcomings

¹⁸⁶Erratum No. 2602/APA of 5 October 1927 to the *Arrêté général* of 31 August 1927 fixing the boundaries of the Colonies of Niger and Upper Volta (*OJFWA*, No. 1205 of 15 October 1927, p. 718); *MN*, Anns., Series B, No. 27.

¹⁸⁷See below, paras. 7.14 ff.

¹⁸⁸*Ibid.*

¹⁸⁹See above, paras. 2.3 ff.

gave rise on the ground. The text was full of the kind of errors to be avoided in the description of a frontier, as was pointed out, in general terms, by the Head of the French West Africa Geographical Department in a letter of 8 May 1942 to the Director of Political and Administrative Affairs in Dakar:

“Any description of a frontier which includes language like ‘the north-south line . . . , the line leaving to the east the villages of . . . , the line running in a south-easterly direction . . . ’ is so imprecise that in Europe, an area that is well known, it would require meetings of bilateral commissions and a great deal of demarcation work.

In the present case, for the *cercles* of French West Africa, (. . .) the territorial boundaries need to be indicated by using the many existing *marigots* or thalwegs, or clear ridgelines.

This can only be done if the authorities concerned (*cercle* or subdivision Commanders) go out and follow the line of the boundary which they are seeking to determine and, on returning, provide a sketch-map, even a rough one, but including the real names of the rivers — streams — thalwegs — ridgelines chosen as natural boundaries.

A work of this kind, carried out in the office on a small-scale map, gives only very rough indications, opening the door to all kinds of challenges, disputes and arguments.”¹⁹⁰

It follows from the summary and imprecise nature of the description of the boundary in several sectors that the practical scope of the *Arrêté* and its Erratum remains extremely limited. It is therefore necessary to consider the possibilities for interpreting these texts by having recourse to cartographic or textual criteria, preparatory work or the practice.

B. Methods of interpreting the 1927 texts

(a) Interpretation using cartographic material

5.7. The first question is whether reliance can be placed, in order to interpret these texts, on the 1:1,000,000 map entitled “French West Africa — new frontier between Upper Volta and Niger (according to the Erratum of 5 October 1927 to the *Arrêté* of 31 August 1927)”, itself published in 1927¹⁹¹. This map was in fact examined by the Chamber of the International Court of Justice in its Judgment of 22 December 1986 in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case¹⁹². The Chamber expressed itself with great caution in relation to this map, which was relevant to the frontier between Mali and Burkina Faso in regard to the location of Mount N’Gouma, which constitutes the tripoint between Burkina Faso, Mali and Niger;

“As regards Order 2336 of 1927 and its erratum, Mali has produced a map bearing the inscription ‘new frontier of Upper Volta and Niger (according to the Erratum of 5 October 1927 to the Order dated 31 August 1927)’; however, the

¹⁹⁰Letter No. 1144.C.M.2 from the Head of the Geographical Department of French West Africa to the Director of Political and Administrative Affairs at Dakar, dated 8 May 1942; MN, Anns., Series C, No. 66.

¹⁹¹MN, Anns., Series D, No. 13; for an analysis of this map, see above, para. 4.16.

¹⁹²*Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, p. 554.

document offers no information as to which official body compiled it or which administrative authority approved the line shown on it.”¹⁹³

Moreover, Mali had drawn attention to the fact that

“in 1975 the Bureau des frontières of the French Institut géographique national stated: ‘to the best of our knowledge there is no specific map which interpreted the General Order of 31 August 1927 and its erratum of 5 October 1927’”¹⁹⁴.

This had ultimately had led the Chamber,

“while not ascribing to this map submitted by Mali the authoritative status of a document explaining the Order and erratum, i.e., one issued with the colonial administration’s stamp of approval [to hold] nevertheless that it cannot be overlooked as a piece of evidence; for even if it cannot be shown to have been drawn up by that administration, it remains certain that the map’s compiler, having perused the governing texts, and possibly the accessible maps, had acquired a very clear understanding of the intention behind the texts, which enabled him afterwards to lend that intention cartographic expression. That does not mean that the map necessarily conveyed the correct interpretation of the erratum, but it does at least tend to confirm that the difficulties of interpretation which Mali perceives in the text of the Order did not exist at the time, having arisen from the perusal of certain maps published subsequently.”¹⁹⁵

The Judgment of the Chamber of the Court is, as we can see, very tentative: the map in question is in no sense an instrument of authentic interpretation. There is nothing to show that it might have accompanied the Erratum. Nonetheless, it constitutes a significant piece of evidence. This view is confirmed by the fact that, contrary to what the Chamber of the Court believed, the map is undoubtedly an official one; it had indeed been published by the administrative authorities. It was sent under cover of a transmission note by the military *Chef du cabinet* (Second Section) to the Director of Political and Administrative Affairs in Dakar on 6 October 1927, with “copy to the Department and to the two Colonies concerned”¹⁹⁶. Even if the map was not appended to the text, there is every indication that the administration of the Government-General of French West Africa regarded it as reflecting the course of the boundary that it had just promulgated.

However, as we shall see, while the map in question relied largely on many old maps and sketch-maps concerning Say *cercle* — modified by the removal of Botou *canton* — it did not enjoy the same support as regards the boundaries of the *cantons* of Tillabéry *cercle*. We will discuss later¹⁹⁷ to what extent it is permissible to have recourse to it in interpreting the 1927 text (in particular as regards the point where the southern boundary of Tillabéry *cercle* meets the boundary of Say *cercle*).

¹⁹³*Ibid.*, p. 583, para. 57.

¹⁹⁴*Ibid.*, p. 646, para. 171.

¹⁹⁵*Ibid.*

¹⁹⁶This is noted on the transmission note accompanying the map, sent by the military *Chef du cabinet* (Second Section) to the Director of Political and Administrative Affairs at Dakar dated 6 October 1927; MN, Anns., Series C, No. 17.

¹⁹⁷See below, paras. 7.17 ff.

(b) Textual interpretation

5.8. On the basis of their interpretation of the texts, both Parties have proposed, between Tong-Tong and the boundary of Say *cercle*, a frontier line in geometric form: a concave curve according to Niger, two separate straight lines according to Burkina Faso. These two positions were described as follows in the report of 28 July 1990 of the Joint Technical Commission on the Demarcation of the Boundary.

According to Niger:

“From the Tong-Tong astronomic marker, the frontier line turns in a uniform direction (south-east) and following a uniform course as far as the River Sirba at Bossébangou, passing through the Tao astronomic marker.

The only geometric form that would enable the frontier to pass through these three points, which are clearly not aligned, is a curve. That curve is the arc of a circle, with a well-defined centre and radius.”¹⁹⁸

That view was based on the text of the *Arrêté*, which states that the line “turns” [“s’infléchit”], and on the rough boundary line shown on the 1:1,000,000 map published in 1927 which has just been discussed.

On the contrary, for its part:

“Burkina Faso asserts that, from its starting point to its endpoint, the frontier is composed of a succession of straight lines, other than the waterways and the ridgelines, and that this is also the case between Tong-Tong and Tao and between Tao and Bossébangou.

.....

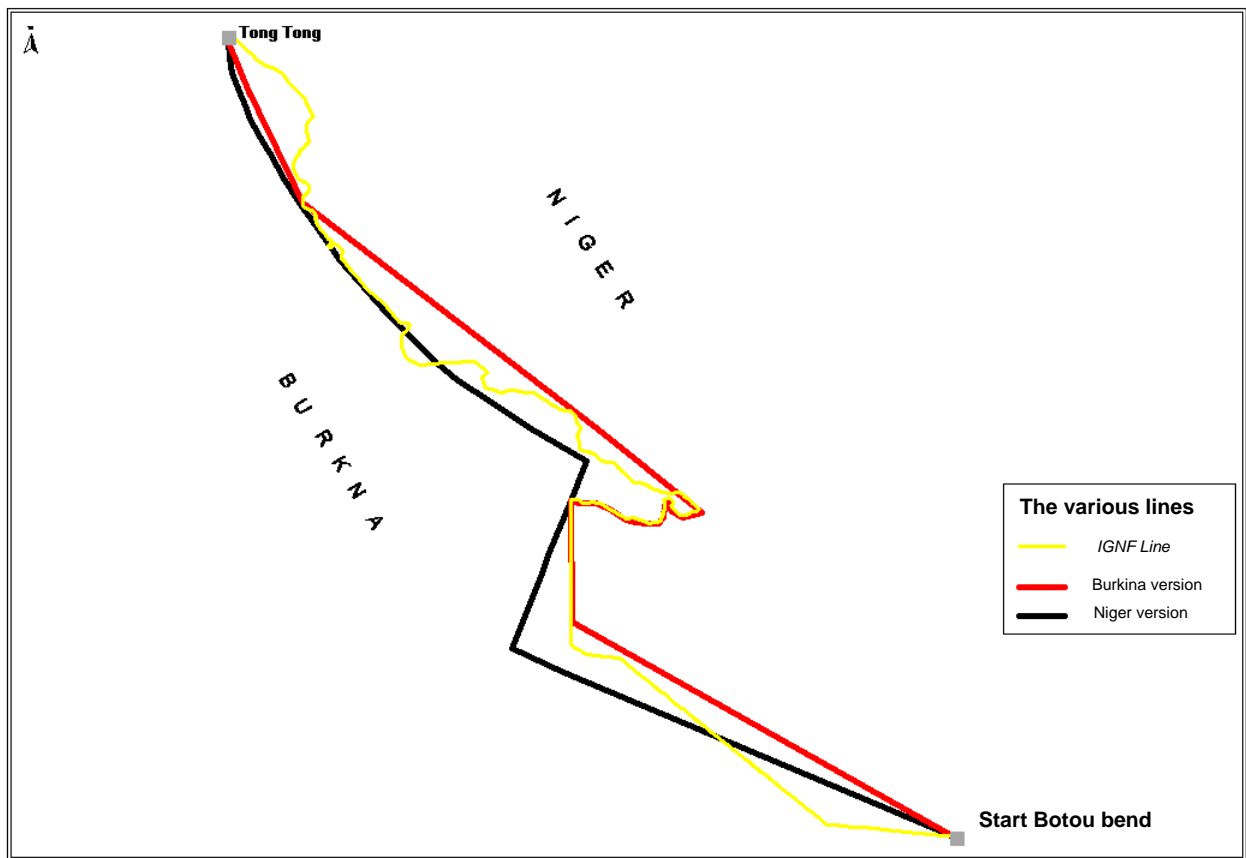
The Burkina Faso delegation contends that the meaning given to the word ‘s’infléchir’ must be understood as a ‘change of direction’, and that if it had involved a curve the author would have made this clear by expressly so stating. Furthermore, given the means of transport at that time (horses, motor vehicles) and the technical specialists employed, neither the author nor the technical specialists would have considered configuring the frontier line in that way.”¹⁹⁹

These two opposed positions were defended throughout the work of the Joint Commission on the Demarcation of the Boundary. The lines resulting from them are shown on the sketch-map on the facing page. Thus on that sketch-map the following appear:

- the line claimed by Niger during the negotiations (shown in black);
- the line claimed by Burkina Faso during the negotiations (shown in red);
- the IGN boundary shown on the 1960 1:200,000 map (shown in yellow).

¹⁹⁸Report of 28 July 1990 of the Joint Technical Commission on Demarcation of the Boundary; MN, Anns., Series A, No. 5.

¹⁹⁹*Ibid.*



5.9. At all events, both views are debatable, for a number of reasons.

In practical terms, there would seem to be little doubt that the overall shape of the boundary is necessarily concave, and that the concave side of the curve faces east on a small-scale map. But when this position is reflected on a larger scale map, it has to be adapted to the demands of the topography (hilltops, ridgelines, thalwegs), as well as to *canton* boundaries and the existence of villages. Burkina Faso's argument can be turned against it, inasmuch as, if straight lines had been intended, "the author would have made this clear by expressly so stating". Nor is the reference to contemporary means of transport persuasive; thus, while vehicles could not travel in curved lines, nor could they do so in straight lines. The straight-line technique appears feasible only for Say *cercle*, where many maps are available dating back to the origins of that *cercle* and confirming its geometrical configuration. That is not case for Tillabéry *cercle*.

(c) Interpretation based on the travaux préparatoires

5.10. These 1927 texts were preceded by preparatory works which shed a certain light on their meaning. Thus we should not lose sight of the essential point: the purpose of the 1927 *Arrêté* and its Erratum was to transfer from one Colony to the other a *cercle* composed of cantons. The texts confirm this. The 1927 *Arrêté* and its Erratum were adopted pursuant to the Decree of 28 December 1926 "transferring the administrative centre of the Colony of Niger and providing for territorial changes in French West Africa"²⁰⁰.

It will be recalled that Article 2 of that text read as follows:

"The following territories, which are currently part of the Colony of Upper Volta, shall be incorporated in the Colony of Niger with effect from 1 January 1927:

1. Say *cercle*, with the exception of Gourmantché Botou *canton*;
2. The *cantons* of Dori *cercle* which were formerly part of the Military Territory of Niger in the Téra and Yatacala regions, and were detached from it by the *Arrêté* of the Governor-General of 22 June 1910."²⁰¹

As has also already been mentioned, for purposes of preparation of the *Arrêté*, two Records of Agreement were drafted²⁰². Thus, for Tillabéry *cercle*, the Record of Agreement signed at Téra on 2 February 1927 between the Governor of the Colony of Niger and Inspector of Administrative Affairs Lefilliatre, representative of the Governor of Upper Volta, read as follows:

"Having regard to the Decree dated the twenty-eighth of December, one thousand nine hundred and twenty-six.

The following was agreed:

The *cantons* belonging to the former Tillabéry *cercle* on 22 June 1910 shall be incorporated in the Colony of Niger.

The *cantons* are:

²⁰⁰Decree of 28 December 1926 transferring the administrative centre of the Colony of Niger and providing for territorial changes in French West Africa, *OJFWA*, No. 1167, 1927, p. 92); See MN, Anns., Series B, No. 23.

²⁰¹Emphasis added.

²⁰²See above, para. 1.24.

1. Dargol Sonrhais)
2. Kokoro ditto)
3. Diagourou Peuhls) (former subdivision of Téra)
4. Téra Sonrhais)
5. Goroual ditto
6. Logomatén (nomads and Bellahs) . . . ”²⁰³

And for Say *cercle*, the Record of Agreement incorporating into the Colony of Niger the *cantons* composing Say *cercle*, drafted at Say on 10 February 1927 by Inspector of Administrative Affairs Lefilliatre, representative of the Governor of Upper Volta, and Chief Colonial Administrator Choteau, representative of the Governor of the Colony of Niger, provided:

“The following *cantons* composing Say *cercle* are hereby incorporated into Niger Colony . . . Namaro . . . Lamordé . . . Torodi . . . Gueladio . . . Diongoré . . . Say . . . Tamou . . . Tiala . . . independent villages of Sarakolés, Dantiandou, [Colo], Dar-es-Salam.”²⁰⁴

There was thus no question of drawing geometric lines but of incorporating *cantons* into the territory of each Colony. Where the boundaries of those *cantons* reflected occupation on the ground by the local people (in villages), they did not follow straight lines. That was the case in particular for Tillabéry *cercle*, contrary to Say *cercle*, which was largely uninhabited at the time.

5.11. It is significant that, although their views were not taken into account, because they arrived after publication of the *Arrêté*²⁰⁵, the work of the Administrators of the two *cercles* concerned (Delbos and Prudon) consisted in determining on the ground the boundaries of their respective *cantons*. Delbos and Prudon based themselves in particular on a sketch-map of the former boundary of Tillabéry, prepared several years before by Captain Coquibus, on which no indication could be seen of any geometric boundaries²⁰⁶.

As soon as the texts of the *Arrêté* and its Erratum of 1927 were published, it was apparent to the Administrators of the *cercles* that these texts were inadequate as regards the Tillabéry sector. It was quite clear from an examination of the disputes between the inhabitants of their *cercles* that the traditional boundaries of the *cantons* did not follow regular geometric lines. At all times, the

²⁰³Record of Agreement of 2 February 1927 between Brévié, Governor of the Colony of Niger, and Lefilliatre, Inspector of Administrative Affairs, representative of the Governor of Upper Volta; MN, Anns., Series C, No. 7. See above, Chap. I, para. 1.24.

²⁰⁴Record of Agreement of 10 February 1927 between Lefilliatre, Inspector of Administrative Affairs, representative of the Governor of Upper Volta, and Choteau, Chief Colonial Administrator, representing the Governor of the Colony of Niger; MN, Anns., Series C, No. 8. See above, Chap. I, para. 1.24.

²⁰⁵See above, Chap. I, para. 1.25.

²⁰⁶It should be noted that Captain Coquibus's sketch-map has not been found, but a reference to the route followed by him appears on the sketch-map drawn by Delbos. See below, para. 6.12.

Administrators sought to determine the boundaries of their *cantons*. The continuing influence of the spirit, if not of the text, of the Delbos/Prudon Agreement confirms this²⁰⁷.

(d) Interpretation based on the practice of the local colonial authorities

5.12. During the colonial period, the local colonial authorities often had to deal with disputes over the occupation and use of land in the frontier area, or disputes over the colonial boundaries. Local agreements were frequently made between the Commanders of different *cercles* in order to resolve these problems. The question is, what effect should be given to those agreements?

It is true that the Commanders of *cercles* had no power to replace the competent colonial authorities in order to modify or clarify the boundaries between Colonies. This principle was recalled on a number of occasions:

— telegram of 10 October 1929 from the Commander of Tillabéry *cercle*:

“Honour inform you that after *approval Governor* of Niger, following instructions given to Téra subdivision: ‘Maintain status quo, namely tolerance zone accepted in 1927 by Delbos and Prudon [*sic*] without encroachment or spoliation . . . All pending disputed issues will be settled personally on the spot between Administrators Dori and Tillabéry’²⁰⁸;

— the agreement reached at Ossolo Pool on 12 March 1931 regarding Pételkalkallé or Fétokarkalé, which had to be submitted for *approval by the Governors of the Colonies of Niger and Upper Volta*²⁰⁹. Upper Volta insisted on this²¹⁰. For his part, the Governor of Niger asked the Governor of Upper Volta to inform the Dori Commander whether he had indeed approved that Agreement²¹¹.

— the agreement between Commanders Roser and Boyer of April 1932, partially accepting the Delbos/Prudon position of 1927²¹². In the absence of authority to treat this agreement as an authentic interpretation of the 1927 texts, the two officials recommended the promulgation of a *new erratum*. According to the *Bulletin de renseignements politiques* of 11 October 1932, “at the present time” no text had been issued²¹³;

— in a circular of 22 March 1933, addressed to all Lieutenant-Governors of the Colonies of French West Africa, Governor-General Brévié recalled that “[a]ny boundary of a *cercle* or a subdivision merely deriving from a practice, not yet *endorsed by an official text*, should be

²⁰⁷This was the case even after independence. Thus for example, a “Note on the problems of the frontier between the Republics of Niger and Upper Volta (Téra *cercle* and Say subdivision — Dori *cercle* and Oudalen and Diapaga subdivisions)”, dated 3 February 1961, maintains this view: “A topographic mission is required in order to restore the missing boundary markers and mark the frontier in accordance with the *Arrêté* in force, and if possible the ‘Delbos line’. The frontier would be established by a boundary commission, which would not modify it but determine its course.” See MN, Anns., Series C, No. 88.

²⁰⁸Telegram/letter No. 815 from the Commander of Tillabéry *cercle* to the Commander of Dori *cercle* dated 10 October 1929; MN, Anns., Series C, No. 31; emphasis added.

²⁰⁹Agreement of 12 March 1931 appended to the Tour Report of 31 March 1931 forwarded by the *cercle* Administrator to the Governor of Upper Volta. MN, Anns., Series C, No. 41.

²¹⁰Tillabéry *Bulletin de renseignements politiques*, dated 27 January 1932; MN, Anns., Series C, No. 43.

²¹¹Letter No. 40 A.G.I., dated 6 February 1932; MN, Anns., Series C, No. 44.

²¹²See letter No. 112 and the Tour Report from the Commander of Dori *cercle* to the Governor of Upper Volta, dated 10 April 1932. MN, Anns., Series C, No. 45.

²¹³*Bulletin de renseignements politiques* of Tillabéry *cercle*, dated 11 October 1932. MN, Anns., Series C, No. 46.

confirmed as soon as possible by a local *arrêté* in the case of subdivision boundaries, and by a draft *Arrêté général in the case of cercle boundaries*²¹⁴;

- since the *cercles* concerned had not yet been modified following the dissolution of Upper Volta, it was agreed between the Commanders of Tillabéry and Dori *cercles*²¹⁵ that, once the harvest was over, “a precise delimitation would be carried from the Tong Tong astronomic marker to Bossébangou at the same time as precise censuses of the local inhabitants between whom disputes have arisen”. This signifies that at that time there had been no change to the text of the 1927 Erratum.

The only agreement from the colonial period which appears to have been regarded as determining the boundary of Tillabéry *cercle* was that adopted by the Record of Agreement of 13 April 1935²¹⁶ (concerning the Ouiboriels marker), which was incorporated in the boundaries of the *cercle* in the description of Tillabéry *cercle* prepared in 1941²¹⁷. That Agreement was approved by the Governor of Niger.

5.13. Despite the wish frequently *expressed* by officials of the two Colonies for the course of the boundary to be clarified by a new text so as to accord more closely with the true boundaries of the *cantons* in practice, this was never done. Thus the two States, aware of the limitations of the colonial texts, provided in the Agreement of 28 March 1987 for recourse to two subsidiary criteria, which will now be examined in turn.

Section 2 — The 1:200,000 map of the *Institut géographique national de France*, 1960 edition

5.14. The text of the 1987 Agreement leaves no doubt as to the intention of the Parties; the language is mandatory:

“Should the *Arrêté* and Erratum not suffice, the course shall be that shown on the 1:200,000-scale map of the *Institut Géographique National de France*, 1960 edition.”

That map, or rather that collection of sheets, is indeed particularly relevant. It dates quite precisely from 1960; one could not be closer to the critical date in order to establish a “photograph” of the *uti possidetis*. It is on an appropriate scale: 1:200,000. Moreover, as has already been explained, it rests, at least from the cartographic point of view, on solid technical foundations²¹⁸. The toponymy, which was of a notably summary nature in the preceding maps of the Army Geographical Section, and then of the IGN, is as complete as knowledge of occupation on the ground could make it. 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 clear — even if they are sometimes tentatively represented by discontinuous lines of crosses, inasmuch as the information on which they were based could not necessarily be fully relied on — and their sinuous nature suggests that they were prepared with some care. It is clear that, in the absence of reliable information from the local authorities, the drafters of the map followed the

²¹⁴Circular from Governor-General Brévié, addressed to all Lieutenant-Governors of the Colonies of French West Africa, dated 22 March 1933. MN, Anns., Series C, No. 48; emphasis added.

²¹⁵See Tour Report from the Commander of Tillabéry *cercle* dated 30 June 1934; MN, Anns., Series C, No. 54.

²¹⁶Record of Agreement of 13 April 1935 between the Commander of Dori *cercle* and the Head of Téra subdivision; MN, Anns., Series C, No. 56.

²¹⁷Description of Tillabéry *cercle*, prepared in 1941 by Mr. Leca; MN, Anns., Series C, No. 65.

²¹⁸See above, para. 4.27

rivers, *marigots* and ridgelines, which together represent more than 50 per cent of the boundaries for the Téra sector.

All of this implies that, far from relying on the old sketch-maps, which showed straight or curved lines connecting isolated points, the drafters of the 1960 map based themselves on a whole body of pertinent data in order to represent the probable boundaries of the *cantons* as they were applied in practice at the critical date.

Unless we find abnormal deviations in relation to the texts, or manifest lacunae in the information on the *canton* boundaries, and subject to the necessary caution where the hesitation of the map's drafters is reflected in gaps in the lines of crosses, these results should in principle be followed.

Section 3 — The relevant documents accepted by joint Agreement of the Parties

5.15. In regard to this subsidiary criterion provided for in Article 2 of the Agreement of 28 March 1987, there is little to be said. In the context of the negotiating procedure between the two States at that time, this expression referred to *documents* discovered by either side which might provide evidence as to the course of the frontier between the two Colonies. In the practice of the Joint Demarcation Commission, documentary research was carried out independently, with each Party conducting its own research, and at its own discretion. A Party which had discovered a document which it considered relevant would submit it for approval to the other Party at the following meeting of the Commission. If the document was approved, it became relevant "by joint Agreement of the Parties" and could be cited as a reference in the subsequent work of delimitation of the frontier line. In the course of the Joint Commission's work, no document was accepted on this basis. Thus, for example, the map "French West Africa: new frontier between Upper Volta and Niger (according to the Erratum of 5 October 1927 and the *Arrêté* of 31 August 1927)", proposed by Niger, was not accepted by Burkina and thus was not retained as a "relevant document accepted by joint Agreement of the Parties"²¹⁹.

5.16. Independently of the procedure within the Joint Commission, the two sovereign States involved were clearly free to enter into agreements on frontier issues, provided that these were concluded by the authorities competent to bind the two countries internationally. The only agreement subsequent to independence concerning frontier issues and binding on the two States under their respective laws, are

— first, that which the Court is requested to place on record in Article 2 (2) of the Special Agreement:

"The Court is requested to . . .

2. place on record the Parties' agreement on the results of the work of the Joint Technical Commission on Demarcation of the Burkina Faso-Niger boundary with regard to the following sectors:

(a) the sector from the heights of N'Gouma to the astronomic marker of Tong-Tong;

(b) the sector from the beginning of the Botou bend to the River Mekrou".

²¹⁹Report of the Third Ordinary Session of the Joint Technical Commission on the Demarcation of the Frontier between Niger and Burkina Faso, held at Niamey from 2 to 4 November 1994; MN, Anns., Series A, No. 7.

— secondly, the exchange of letters of 29 October 2009 and 2 November 2009 between the Minister for Foreign Affairs and Regional Co-operation of Burkina Faso and the Minister for Foreign Affairs and Co-operation of the Republic of Niger²²⁰. That exchange of letters enshrines the *Agreement* between the two States concerning the report on the work of the joint mission on the ground for purposes of reaching agreement on the co-ordinates of the boundary markers in the sectors running from the heights of N'Gouma to the Tong-Tong astronomic marker, and from the beginning of the Botou bend to the River Mékrou.

The other work of the Joint Commission was unable to produce a similar international agreement²²¹.

However, apart from the Commission's work, agreements can relate to specific points: such as those resulting from construction work on international highways connecting the two Parties, for example at Petelkolé, at the point with co-ordinates 14° 00' 04.2" N; 00° 24' 16.3" E.

*

5.17. According to the terms of the Special Agreement of 24 February 2009, the Court is requested to determine the course of the boundary between the two States in a sector which in reality covers two separate sectors. These, as a result both of geographical and of human and historical factors, require separate treatment. The sectors in question are, respectively, those of Téra and of Say, in relation to which the position of Niger regarding the course of the frontier line will be set out in the two final chapters of this Memorial.

²²⁰Letter No. 2009-004874 of 29 October 2009; MN, Anns., Series A, No. 16, and letter No. 007505 of 2 November 2009; MN, Anns., Series A, No. 17.

²²¹See above, paras. 3.3 ff.

CHAPTER VI

DETERMINATION OF THE FRONTIER IN THE TÉRA SECTOR

6.1. The first section of boundary concerned by the present dispute is that where the frontier separates the current *département* of Téra (Gorouol, Téra, Diagourou, and Dargol *cantons*), on the Niger side, from the provinces of Oudalan, Seno (Dori) and Yagha (Sebba), on the Burkina Faso side. These current administrative divisions correspond to the former colonial divisions constituted, at the time of accession of the two States to independence, by Téra *cercle* in Niger²²² and Dori *cercle* in Upper Volta. This section is some 150 km long and runs from the Tong-Tong astronomic marker to the junction of the boundary with Say *cercle*.

We will begin by presenting a physical and human description of the Téra sector (Section 1), before setting out Niger's position on the determination of the frontier in this sector (Section 2).

Section 1 — Physical and human description of Téra sector

6.2. In physical terms, the area traversed by the frontier between the two States in this sector consists of a rocky plateau made up of slabs in the northern part (Téra/Dori boundary). Along the middle reaches of the River Sirba, there are bluffs forming rocky barriers: the Sirba heights, the Grand Cessara²²³ and the Petit Cessera. The plateau slopes gently down towards the River Niger in a west-east direction. It is irrigated by tributaries of the River Niger, of which the main one is the River Sirba, which, in its lower part, served until 1927 as the boundary between Say and Dori *cercles*.

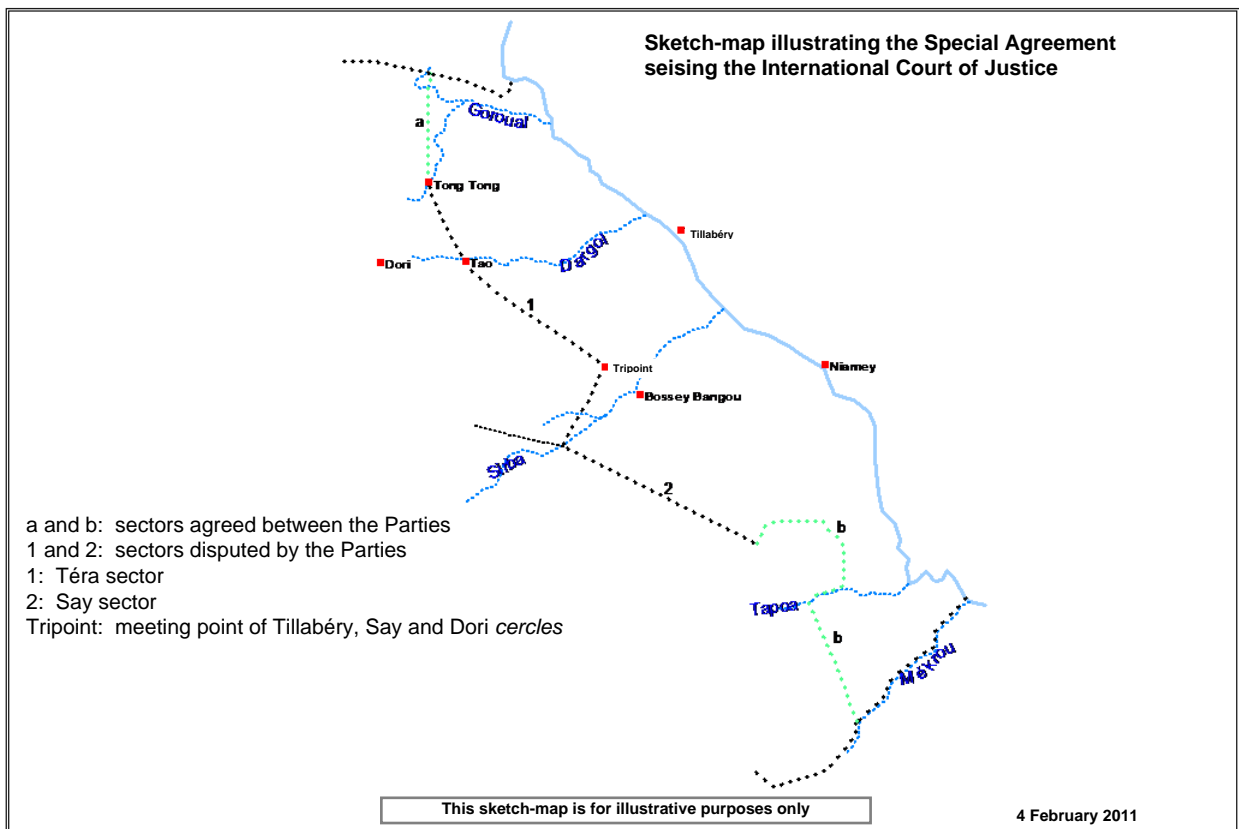
6.3. In climatic terms, the Téra/Dori region is influenced by two air masses: the harmattan, a hot, dry wind from the east, blowing from October to May, and the wet Atlantic monsoon, which blows from April to October. The climate is characterized by a long dry season of eight months and a short rainy season of four months. Evaporation/transpiration varies between 2 and 3 metres per year. Relative to precipitation, the hydric balance is heavily negative.

6.4. The vegetation in the area is of the typical Sahelo-Saharan type, consisting of tiger bush on the plateaux and hillsides and gallery-forests along the wet river-banks. Because of the low precipitation and excessive heat, both herbaceous and ligneous cover are subject to heavy human and animal pressure (population growth, overgrazing, clearing of bush, soil degradation, etc.). Water, land and vegetation are a vital resource, placing humans, domestic animals and wild animals in competition for natural resources. There are significant quantities of wildlife: gazelle, deer, warthog, ostrich, wildfowl, etc. The pools and rivers are well stocked with fish.

6.5. This section of the frontier is of an unusual nature, being an agro-pastoral area. The land is basically favourable to both agriculture and animal husbandry, which explains the density of the population along the frontier. The area is not affected by the serious endemic health problems, such as sleeping sickness and malaria, which characterize the Say sector.

²²²It had been detached from Tillabéry *cercle* in 1956 (see above, para. 1.30).

²²³Sometimes also "Sessera", meaning, in the local language, a range or chain of mountains.



6.6. We have seen that Téra subdivision had been detached from the former Dori *cercle*, which then extended as far as the River Niger²²⁴, and incorporated into Tillabéry *cercle*. The result of this transfer was to disorientate the local population, both sedentary and nomadic, in relation to their tribal, ethnic, territorial and administrative homelands²²⁵. Before the partition of Dori *cercle*, the territorial matrix had been the same for all: nomads, semi-nomads and sedentary peoples; all lived under the same administration within the same territory, where each had their own homeland.

The new boundary was defined as a series of juxtaposed cantonal boundaries, themselves composed of a series of village and/or hamlet boundaries. In sparsely populated areas, the *canton* boundaries were quite vague: for example on rocky hillsides and infertile plateaux, and in open pastureland.

The territorial partition did not create problems for the villages, which were concentrated in a relatively confined space (a few hectares). However, for peoples whose homelands were spread over more extended areas (covering dozens, if not hundreds, of square kilometres), their partition was socially disruptive and provoked population movements motivated by the preservation of communal or cultural identities, or the safeguard of interests. Each *cercle*, now wishing to know the precise number of its inhabitants, was impelled to carry out censuses. The instability of the populations of areas close to the shared boundaries or territories resulted in multiple registrations and the use of contradictory criteria for defining administrative links (place of temporary settlement or village of origin).

Apart from traditional nomadic movements or the search for new land, there were various factors impelling populations to change from one territory to another: differences in régime as between colonies in the matter of compulsory service or of human or livestock taxation, the existence of basic infrastructure in the neighbouring territory (access to water, vaccination facilities for livestock, schools, health centres, etc.), power relationships within tribes, etc. Thus, all along the frontier, a game of cat-and-mouse developed between colonial administrators and frontier populations.

6.7. The Téra/Dori frontier area is entirely Sahelian in nature and inhabited by:

- sedentary peoples, living in villages or hamlets and carrying on their agricultural activities within the boundaries of their own homeland. Human activities are conducted within the framework of administrative territorial units (villages, *cantons*);
- nomadic peoples, whose territorial movements are constrained only by natural possibilities of access to pastureland and water and by temporary health and security conditions (epizootic diseases, wild animals, etc.);
- semi-nomadic peoples living in hamlets, whose range of movement is more limited.

The problems of the frontier area are conditioned by various dominant forms of production, namely: itinerant nomadism; seasonal trans-frontier pastoral transhumance, conducted on a pendular basis; semi-nomadism; sedentary field agriculture; itinerant agriculture; gold prospection and extraction.

The expansion and dispersal of villages makes it more difficult to determine the course of the frontier. The exhaustion of the soil on the plateaux is another movement factor. This frequently causes the inhabitants of a village to transfer to a new site, situated a few kilometres from the

²²⁴See above, para. 1.27.

²²⁵See above, para. 2.3.

previous one. It is not unusual, in such cases, for the hamlets attached to the main village of origin to have similar or identical names to the latter.

Section 2 — The course of the frontier in the Téra sector

6.8. Before setting out the position of the Republic of Niger regarding the course of the frontier in this sector (Subsection B), some explanations are required regarding the methodology adopted for this purpose (Subsection A).

A. Methodology adopted

6.9. The only text from the colonial period determining the boundaries of the two Colonies in this area is the Erratum No. 2602/APA of 5 October 1927, which corrected *Arrêté* No. 2336 of the Governor-General of French West Africa of 31 August of the same year. Regarding the Tillabéry sector, the original text of the *Arrêté* read as follows:

Article 1

“1. Boundaries between the Tillabéry *cercle* and Upper Volta:

This boundary is determined to the north by the current boundary with Sudan (Gao *cercle*) as far as the heights of N’Gourma, and to the west by *a line* passing through the Kabia ford, Mount Darouskoy and Mount Balébanguia, west of the ruins of the village of Tokébangou, and Mount Doumafondé, which then turns towards the south-east, *leaving the ruins of Tong-Tong to the east and descending in a north-south direction, cutting the Téra-Dori motor road to the west of the Ossolo Pool, until it reaches the River Sirba (boundary of Say cercle), near to and to the south of Boukalo*”²²⁶.

Erratum No. 2602/APA of 5 October 1927 reads as follows regarding the same area:

“*A line* starting from the heights of N’Gouma, *passing* through the Kabia ford (astronomic point), Mount Arounskoye and Mount Balébanguia, to the west of the ruins of the village of Tokebangu, Mount Doumafende and *the Tong-Tong astronomic marker; this line then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossebangou.*”²²⁷

Given the Parties’ agreement on the course of the frontier in “the sector from the heights of N’Gouma to the astronomic marker of Tong-Tong”²²⁸, the only stretch still in dispute for the Téra sector is that indicated in italics in the two preceding quotations.

In the sector from the Tong-Tong astronomic marker to the boundary of Say *cercle*, the *Arrêté* of 31 August 1927, as corrected by the Erratum of 5 October 1927, identifies only two frontier points: the Tong-Tong astronomic marker and the Tao astronomic marker. The point

²²⁶*Arrêté général* No. 2336 of 31 August 1927 fixing the boundaries of the Colonies of Upper Volta and Niger (OJFWA, No. 1201 of 24 September 1927); MN, Anns., Series B, No. 26; emphasis added.

²²⁷Erratum No. 2602/APA of 5 October 1927 to the *Arrêté général* of 31 August 1927 fixing the boundaries of the Colonies of Niger and Upper Volta (OJFWA, No. 1205 of 15 October 1927, p. 718; MN, Anns., Series B, No. 27; emphasis added.

²²⁸Article 2 of the Special Agreement seising the ICJ of 24 February 2009, MN, Anns., Series A, No. 13.

where the frontier reaches the boundary of the Say *cercle*, in the area of Bossébangou, remains problematic, as we shall see later²²⁹.

As a description of the frontier over a distance over some 150 km, it has to be said that the official text is particularly succinct.

6.10. The question whether reliance can be placed on the 1:1,000,000 map entitled “French West Africa— new frontier between Upper Volta and Niger (according to the Erratum of 5 October 1927 to the *Arrêté* of 31 August 1927)”²³⁰ in order to interpret the above texts has already been raised previously²³¹. Even though this was not a map appended to the text of the Erratum, its official nature and the intention of the FWA authorities to use it to illustrate the new boundary between Upper Volta and Niger is not in doubt. It was sent on 6 October 1927, *the day following the date of the Erratum*, by the Military *Chef du Cabinet* of the Government-General of French West Africa to the Director of Political and Administrative Affairs, with copies to the two Colonies concerned²³². Nonetheless, in the stretch of the frontier under discussion here, that map, given its scale, is of no great help. It shows the two points mentioned in the Erratum (the Tong-Tong and Tao astronomic markers, before joining the boundary of Say *cercle*). The shape of the line connecting these three points is slightly curved, with the concave side facing east. This shows that, for this sector— contrary to the Say sector²³³— the cartographic service of the FWA Government had no sketch-map available to it showing the boundaries of the former Tillabéry *cercle* at the time when the part constituting Téra subdivision was absorbed by Dori *cercle* in 1910²³⁴, and that the drafters of the 1927 map confined themselves to illustrating the rudimentary indications given in the Erratum.

6.11. It is therefore necessary to look elsewhere in order to identify this stretch of the boundary between the two territories. The history of its origins offers such a possibility, which should now be explored. It will be recalled that the justification for the *Arrêté* of 31 August 1927 lay in the Decree of the President of the French Republic of 28 December 1926, “transferring the administrative centre of the Colony of Niger and providing for territorial changes in French West Africa”²³⁵. Article 2 of that text provided:

“The following territories, which are currently part of the Colony of Upper Volta, shall be incorporated in the Colony of Niger with effect from 1 January 1927:
[. . .]

2. The *cantons* of Dori *cercle* which were formerly part of the Military Territory of Niger in the Téra and Yatacala regions, and were detached from it by the *Arrêté* of the Governor-General of 22 June 1910 [. . .]”²³⁶.

²²⁹See below, para. 7.13.

²³⁰See above for the analysis of this map, para. 4.13.

²³¹See above, para. 5.7.

²³²See the Dispatch Note of 6 October 1927, MN, Anns., Series C, No. 17.

²³³See below, para. 7.19.

²³⁴See above, para. 1.15, Article 1 of *Arrêté* No. 675 of the Governor-General of French West Africa, dated 22 June 1910; MN, Anns., Series B, No. 15.

²³⁵See above, para. 1.22.

²³⁶*OJFWA*, No. 1167, 1927, p. 92; MN, Anns., Series B, No. 23; emphasis added.

It was on the basis of this Decree that, a few months later, the *Arrêté* of 31 August 1927 and its Erratum of 5 October 1927 were adopted. The purpose of these texts could only have been to transfer the above-mentioned *cantons*.

An *Arrêté* of 22 January 1927 providing for territorial changes to the Colonies of Upper Volta and Niger was in turn published by the Governor-General of French West Africa²³⁷, and read as follows:

“Article 1 — That part of Dori *cercle* assigned to the Colony of Niger shall be incorporated into the territory of the current Tillabéry Subdivision (Niamey *cercle*), and shall constitute the *cercle* of Tillabéry [. . .].

Article 4 — The Lieutenant-Governors of Niger and Upper Volta shall be responsible, in their respective areas, for the implementation of this *Arrêté*, which shall take effect from 1 January 1927.”

In preparation for the implementing *Arrêté*, two Records of Agreement were established in the *cercles* concerned (Tillabéry and Say). Thus, for the Tillabéry *cercle* the agreement signed at Téra on 2 February 1927 between the Governor of the Colony of Niger and Inspector of Administrative Affairs Lefilliatre, representative of the Governor of Upper Volta, provided:

“Having regard to the Decree dated the twenty-eighth of December, one thousand nine hundred and twenty-six.

The following was agreed:

The *cantons* belonging to the former Tillabéry *cercle* on 22 June 1910 shall be incorporated in the Colony of Niger.

The *cantons* are:

1. Dargol Sonrhais)
2. Kokoro ditto)
3. Diagourou Peuhls) (former subdivision of Téra)
4. Téra Sonrhais)
5. Goroual ditto
6. Logomaten (nomads and Bellahs).

They are bounded to the north by the current boundary with Sudan (Gao *cercle*) as far as the heights of N’Gourma, and to the west by a line passing through the Kabia ford, Mount Darouskoy and Mount Balébanguia, west of the ruins of the village of Tokébangou, and Mount Doumafondé, which then turns towards the south-east, leaving the ruins of Tong-Tong to the east and descending in a north-south direction, cutting the Téra-Dori motor road to the west of the Ossolo Pool, until it reaches the River Sirba (boundary of Say *cercle*), near to and to the south of Boukalo.”²³⁸

²³⁷See above, para. 1.23, *OJFWA*, No. 1169, 12 February 1927; MN, Anns., Series B, No. 25.

²³⁸Record of Agreement of 2 February 1927; MN, Anns., Series C, No. 7.

Thus, independently of the two or three points designated by the *Arrêté* of 31 August 1927 as amended by the Erratum of 5 October 1927, and of the curved line on the 1927 1:1,000,000 map, we know the names of the *cantons* which were transferred. This can give two valuable indications. The first concerns the content of those *cantons* (names of villages, names of nomad tribes and topographical indications), where these can be found on the administrative documents of the colonial era. As will be seen later²³⁹, indications of this kind, although few in number, can supplement the summary description in the *Arrêté* and Erratum of 1927.

The second indication is a presumption that the areas composing these *cantons*, occupied by indigenous peoples, and the villages, fields or pastures and nomad routes, did not in principle follow abstract lines (whether curved or straight), but were based on land occupation and followed the configuration or nature of the ground.

6.12. It is symptomatic that the Governor of Upper Volta, who was attentive to this aspect of matters, had made the following request to the Commanders of Dori and Fada *cercles*, who were going to be affected by these boundary changes:

“Request send me soon as possible precise information to enable preparation *Arrêté général* fixing new boundaries between Colonies Niger and Upper Volta.

Solely to avoid error and need subsequent correction, essential that course be determined on ground with full agreement Administrators Divisions concerned.

Results work recognized and accepted by Heads both adjacent Colonies to be forwarded Dakar for action definitive text.”²⁴⁰

A Note from the *Chef du cabinet* of the Governor of Upper Volta dated 2 June 1927 gave the following instructions to Dori *cercle*:

“Could you commence work with Administrator Tillabéry simply following Coquilin line²⁴¹ and examine population situation as you suggest.”²⁴²

The work of the Administrators of the two *cercles* concerned consisted in determining on the ground the boundaries of the *cantons* of their respective *cercles*. For this purpose, they based themselves on a sketch-map of the former boundary of Tillabéry prepared previously by Captain Coquibus. Two reports followed, one from Prudon, Commander of Tillabéry *cercle*, the other from Delbos, Commander of Dori *cercle*. These reports are similar, even though they do not totally coincide. However, both have the merit of showing that the boundary was a sinuous one. Prudon’s report of 4 August 1927 to the Governor of Niger reads as follows:

“From Nababori, we travelled in a northerly direction following the natural boundary traced by hills of some 50 to 60 m in height.

According to the information given by the local inhabitants and by the Chiefs of the Dorgol (Tillabéry) and Yaga (Dori) *cantons*, the range of hills that we were following is indeed the boundary between the two *cantons* and hence of the two

²³⁹See, for example, below, para. 6.11.

²⁴⁰Telegram-letter No. 1166/A.G. of 27 April from the Governor of Upper Volta; MN, Anns., Series C, No. 11.

²⁴¹This clearly refers to sketch-map prepared by Capitain Coquibus, as is apparent from the references or partial descriptions of it in the subsequent correspondence. Capitain Coquibus’s sketch-map has not been found in the archives. See already above, para. 5.11.

²⁴²Note BL/HV No. 1393/AE from the *Chef de cabinet* to the Commander of Dori *cercle* dated 2 June 1927; MN, Anns., Series C, No. 12.

colonies. This boundary has existed for many years and no dispute has ever arisen between the two *cantons* over possession of the land.

The ideal boundary line drawn by Lieutenant Coquibus crosses the hills, but according to the wishes [reports] of the local people, the Lieutenant did not follow the boundary but travelled over country further east.

Furthermore, the boundary that we have established joins the line marked by Lieutenant Coquibus at the end of this chain of hills and follows it until the boundary with the Gao *cercle*.

Apart from this slight modification, following natural frontiers, the delimitation of the *cercle* made by Lieutenant Coquibus is indeed the line that we followed and the line recognized by the various chiefs of the frontier *cantons* in the two colonies concerned.

Moreover we climbed all of the hills, which enabled us to have a much wider view and helped us to locate the villages that we could see.

Political considerations

From Nababori, on the boundary of the Say and Dori *cercles*, as far as Doulgou²⁴³, no dispute (the farmlands of the Niger natives do not extend beyond the hills to the west of the path which we followed [. . .] From Doulgou to Tao, no dispute [. . .]²⁴⁴.

The report from Delbos on the joint reconnaissance carried out in June, sent on 3 August 1927 to the Governor of Upper Volta under cover of a Note bearing the No. 438 has not been found. However, there are frequent references to it in the subsequent correspondence. On the other hand, we do have the sketch-maps drawn at the time by Administrator Delbos, as well as a supplementary report of 27 August 1927²⁴⁵, which contains a draft delimitation for submission to the Government-General of French West Africa, in the following terms:

“[. . .] the *cercles* of Dori and Tillabéry will henceforth be delimited as follows:

In the north by the current boundary with Sudan (Gao *cercle*), as far as the N’Gouma Heights, then to the west by a line starting from Kabia ford and running to the south towards the Yatakala-Falagountou road, which it cuts 7.5 km to the north-east of Falagountou.

From this point the boundary, descending on a bearing of 156°, crosses the Téra-Dori road 5.75 km from Tao (Soum Pool); on reaching Tao it descends on a bearing of 135° for 27.5 km, then for 26.5 km on a bearing of 147°, until it reaches a point 5 km to the north of the Iga Pool.

It then turns back up in a north-easterly direction on a bearing of 79° for 31.5 km, before redescending on a bearing of 127° for a distance of 13.5 km, and then on a bearing of 190° for 25.5 km, before finally following a bearing of 170° until it reaches the boundary of Say *cercle* to the west of Alfassi on the River Cirba.

²⁴³In Diagourou *canton* (Tillabéry *cercle*).

²⁴⁴Tour Report No. 25 from administrator Prudon, Commander of Tillabéry *cercle*, dated 4 August 1927; MN, Anns., Series C, No. 15; and sketch-map, MN, Anns., Series D, No. 3.

²⁴⁵Letter from the Commander of Dori *cercle* to the Governor of Upper Volta, dated 27 August 1927; MN, Anns., Series C, No. 16; and Delbos sketch-map of the June tour; MN, Anns., Series C, No. 14.

No opposition on the part of the local inhabitants having been encountered, this report was closed and signed by the Parties. Signed Prudhon [*sic*]²⁴⁶.

In any event, the proposals from the two officials reached Dakar too late, after the *Arrêté* of 31 August 1927 had been published, and could have no effect on its text, or on the text of the Erratum.

6.13. When he learnt of the content of the *Arrêté*, Delbos protested vigorously on 17 December 1927:

“The boundaries as described in Official Journal No. 1021 are an exact copy from the Report signed in my presence at Téra by Governor Brévié and Inspector Lefilliatre. They had been established on the basis of the map prepared by Captain Coquibus, which only showed theoretical lines and points which do not appear to have been visited, since two of them do not exist, Mounts Balabanguia and Dourouskoy [. . .]

From there, Captain Coquibus travelled in a SOUTH-EASTERLY direction and finished south of Boulkabo and not Bossébangou.

However, following the survey carried out together with Mr. Prudon, Commander of the Tillabéry *cercle*, we had by joint agreement settled the boundaries between the two Colonies, as I had the honour of reporting to you in my letter No. 438 of 3 August 1927.

The Erratum of 6 October 1927 and the copy of the map to a scale of 1:1,000,000, which you were kind enough to send me, contain the following errors.

The frontier starting from the N’Gouma Heights passes through the Kabia Ford, then runs in a south-westerly direction where, after 2.6 km, it meets the astronomic marker (Dori Pool), then runs in a southerly direction towards the road between Yatakala and Foulagountou (the village where the astronomic marker is located).

From that point, it runs for some 55 km towards the Iga Pool, before turning to the north-east and then, as my letter 438 states, running southward as far as Nababori, reaching the Say *cercle* to the west of Alfassi and not at Bossébangou, which is further up.

While we can accept the Kabia-Iga section, despite certain differences due either to mistakes in the reduction of a 1:200,000 map to a scale of 1:1,000,000, or to an over-hasty copy of that map, it seems to me that it would be difficult to abandon the area which I have marked in red, since this area, which is surrounded by hills forming natural boundaries, has always belonged to the Yagha *canton* without ever being challenged by any of the neighbouring peoples.

I end by asking that the boundaries indicated in my letter 438 be maintained, and I am surprised that there could be any dispute between the two Colonies, since Mr. Prudon and I carried out the work by joint agreement.”²⁴⁷

²⁴⁶The reference to the signature of Prudon seems to be by Delbos, doubtless in order to indicate the agreement of the Commander of Tillabéry *cercle* to this draft text.

²⁴⁷Letter from the Commander of Dori *cercle* to the Governor of Upper Volta dated 17 December 1927; MN, Anns., Series C, No. 20, and appended sketch-map.

6.14. However, this urgent plea had no effect, and no change was made to the legislative text up to the time of independence. It should, nonetheless, be borne in mind that the spirit in which the two *cercles* Commanders had worked in 1927 remained present throughout the colonial period. References were frequently made to their work in order to resolve disputes between the *cercles* concerned by the boundary. In this regard, we would cite the agreement between Commanders Roser (Dori) and Boyer (Tillabéry) of 21 March 1932. These two officials envisaged having an erratum adopted to the 1927 text, in order better to reflect the true situation on the ground. Their proposal was as follows:

“Going from south to north, the boundary between Tillabéry and Dori *cercles* is as follows: it starts at Alfassi, passes through Nabambori (Yagha crop-growing village), follows the line of the watershed of the mountain known as the Great Sesséra, as far as its northern extremity, then a line joining that extremity to the eastern extremity of the mountain known as the Little Sesséra, follows the line of the watershed of the Little Sesséra to its western extremity, then the prolongation of that mountain chain as far as a point situated 5 km to the north-west of Higa Pool; from there, the line shown on the Delbos map, passing through Bangaré . . . , to Houssaltane, which it leaves to the east, to Petelkarkalé, which it leaves to the west, to Petelkolé which it leaves to east, and from there it runs in a straight line to the frontier marker situated 5.75 km from the Tao astronomic marker”²⁴⁸.

It is apparent that human settlements in the *cantons* and natural boundaries also constituted the basis for the completion works of the IGN during the 1958-1959 season²⁴⁹.

6.15. In view of the fact that the Presidential Decree of 28 December 1926 and the preparatory works for the *Arrêté* of 31 August 1927 show that the operation effectively consisted in a transfer of *cantons*, it may reasonably be considered that the lists of villages of those *cantons* up to independence give an indication of the composition of the *cercles* concerned, and hence of their boundaries. In examining the course of the boundary, we will consider the— modest— possibilities offered by this approach.

6.16. As has already been pointed out, notwithstanding the wish frequently expressed by officials of the two Colonies, the course of the boundary was never clarified by a new text so as to correspond more closely with the actual boundaries of the *cantons* in practice²⁵⁰. Conscious of the limitations of the colonial texts, Burkina Faso and Niger provided in the Agreement of 28 March 1987 for recourse to subsidiary criteria, among which the 1:200,000 map of the *Institut géographique nationale*, 1960 edition, plays a pivotal role²⁵¹.

We have already explained the extent to which the drafters of the 1960 map based themselves on a body of relevant data in order to represent the probable boundaries of the *cantons* as these were applied in practice at the critical date²⁵². In consequence, unless we find abnormal deviations in relation to the texts or manifest lacunae in the information on the *canton* boundaries, and subject to the necessary caution where the hesitation of the map’s drafters is reflected in gaps in the line of crosses, these results should in principle serve as a guide to determine the course of the inter-colonial boundary in 1960.

²⁴⁸Tour Report from the Commander of Dori *cercle* to the Governor of Upper Volta, dated 10 April 1932; MN, Anns., Series C, No. 45.

²⁴⁹See the IGN sheets “Textual Data/Other Information”, MN, Anns., Series D, Nos. 27-30.

²⁵⁰See above, para. 5.13.

²⁵¹See above, paras. 5.14 ff.

²⁵²*Ibid.*

B. The course of the frontier in the Téra sector

6.17. In the following paragraphs, the course of the frontier in the Téra sector will be examined by being subdivided into three sections: from Tong-Tong to Tao (*a*), from Tao to Bangaré (*b*), and from Bangaré to the boundary of Say *cercle* (*c*).

(a) From Tong-Tong to Tao, the boundary consists of two straight lines

6.18. It will be recalled that between Tong-Tong and Tao the Erratum determines the boundary in the following terms:

“[after] the Tong-Tong astronomic marker[,] this line then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker”.

The sketch-maps prepared in 1927 by Delbos²⁵³ and Prudon²⁵⁴, as well as the map, “New frontier of Upper Volta and Niger”, published the same year²⁵⁵, connect these two points with a straight line.

The 1960 IGN map adopts a shape broadly incurvated to the west. That incurvation is new. We will now examine step-by-step whether it is justified.

6.19. Tong-Tong astronomic marker

The starting point of the boundary, at the Tong-Tong astronomic marker, is not in dispute between the Parties. Its position was established as far back as 1927 by Captain Nevière²⁵⁶. According to the letter from IGN/France to the authorities of the Republic of Niger of 23 June 1988²⁵⁷, its co-ordinates were the following: latitude 14° 25' 04" N, longitude 0° 12' 47" E. The report of 18 March 1989 of the Joint Technical Commission on Demarcation ascribes the same co-ordinates to that marker. Its co-ordinates are given as the starting point for the frontier sector in dispute in Article 2 of the Special Agreement of 24 February 2009.

The starting point indicated on the IGN map, located further east, is thus incorrect.

6.20. The Vibourié marker

Geographical co-ordinates: 14° 21' 44" N, 0° 16' 25" E.

Since the colonial era, the next point on the boundary is the Vibourié marker. The origin of this point is a Record of Agreement of 13 April 1935²⁵⁸ between Administrator Garnier (Dori *cercle*) and Assistant Deputy Lichtenberger (Téra *cercle*) following the settlement of a dispute over the occupation of cropland:

²⁵³MN, Anns., Series D, No. 2.

²⁵⁴MN, Anns., Series D, No. 3.

²⁵⁵MN, Anns., Series D, No. 13.

²⁵⁶See the reference in letter DEC/934 from France IGN to the Niger Finance Ministry date 23 June 1988; MN, Anns., Series C, No. 105.

²⁵⁷*Ibid.*

²⁵⁸Record of Agreement of 13 April 1935; MN, Anns., Series C, No. 56.

“Furthermore, in order to prevent any similar further territorial dispute in this area, we have established a marker designed to fix the boundary between Dori and Téra, the boundary in principle following a notional straight line starting from the Tong-Tong astronomic marker and running to the Tao marker.

The Ouiboriels marker [Vibourié on the 1960 IGN Téra map] being located on this notional line, on a ridgeline some 10 km to the east of Falagountou and 2 km to the east of Ouiboriels.

This delimitation, having been effected on an adversarial basis, has not been disputed by the parties involved.”

This arrangement, citing the 1927 Erratum, was approved by the Governor of Niger by Official Telegram-Letter 693 AP of 17 May 1935, as stated in the *Description of Tillabéry Cercle* of 1941²⁵⁹ in the paragraph devoted to a description of the boundaries of that *cercle*. In reality, this was the only agreement between *cercles*, subsequent to 1927, which was approved by a higher authority. It is true that this agreement dates from after the disappearance of Upper Volta and hence its retention following the reconstitution of the Colony could be regarded as debatable²⁶⁰.

However, Niger in any event regards this agreement as a simple interpretation of the 1927 Erratum and accordingly recognizes that the Vibourié marker has the status of a frontier point. On the other hand, there is nothing to justify a boundary moved further to the east as shown on the IGN map. It follows that, from the Vibourié marker, the frontier runs in a straight line to join the IGN line at the Tao astronomic marker. This sector is thus considered to consist of two straight lines.

(b) *From the Tao astronomic marker to Bangaré, the line of the frontier basically follows the IGN line*

6.21. From the Tao astronomic marker, which is cited in the Erratum of 5 October 1927, the official text gives no further indication until the point where the inter-colonial boundary rejoins the boundary of Say *cercle*. It is therefore reasonable to rely for this section, subject to any justified exception, on the 1960 IGN line.

6.22. The Tao astronomic marker

The Tao astronomic marker is located, according to the above-mentioned letter from the IGN of 23 June 1988²⁶¹, at a point with the following co-ordinates: latitude 14° 02' 21" N, longitude 0° 19' 55" E. This point is shown as a frontier point on the 1960 IGN map. However the frontier marker is situated slightly further south and east, at the following co-ordinates: 14° 03' 02" N, 00° 22' 52" E. It is this latter point which should be taken as a frontier point.

From this point, the IGN line passes to the west of Petelkolé (the village's co-ordinates are 14° 00' 35.7" N, 00° 24' 52.6" E), which it leaves to Niger. This is in accordance with the administrative information from the colonial period. Petelkolé was already regarded as belonging to Niger at the time of the Roser/Boyer agreement of April 1932²⁶². Similarly, in the report in

²⁵⁹Description of Tillabéry *cercle*; MN, Anns., Series C, No. 65.

²⁶⁰Regarding the implications in relation to boundaries of the dissolution of Upper Volta in 1932 and its reconstitution in 1947, see above, para. 5.3.

²⁶¹Letter No. DEC/934 of 23 June 1988; MN, Anns., Series C, No. 105.

²⁶²See above, 6.22.

which Administrator Lacroix, of Tillabéry *cercle*, gave an account of the tour which he had made in order to survey the boundary between the two Colonies in this sector²⁶³, we find the following: “the permanent hamlets of Petelkarkalé and Petelkolé, between which the boundary passes”. A sketch-map shows the village of Petelkolé as part of that *canton*²⁶⁴. The village is shown as belonging to Niger on the 1960 IGN map²⁶⁵. It has remained under Niger authority since independence, is administratively attached to the rural municipality of Bankilaré and numbers 2654 inhabitants. This village is the site of the frontier control post between Niger and Burkina Faso. That post is situated entirely within Niger territory. Its co-ordinates are the following: 14° 00' 10.4" N, 00° 24' 34.4" E.

The frontier line follows the IGN line as far as the outskirts of Petelkolé. It then deviates slightly to the west so as to meet the endpoint of the upgraded stretch of the Téra-Dori road constructed by Niger (co-ordinates: 14° 00' 04.2" N, 00° 24' 16.3" E). It then rejoins the IGN line at the point having co-ordinates 13° 59' 39" N, 00° 25' 12" E.

The frontier then follows the IGN line, leaving Fetokarkale (Burkina Faso) to the west. It then passes through a frontier point known as Baobab (13° 58' 38.9" N, 00° 26' 03.5" E), and through Tindiki (13° 57' 15.4.9" N, 00° 26' 23.6" E), as far as the break in the line of crosses in the vicinity of Ihouhaltane (Ousalta on the 1960 IGN map, Sebba sheet).

6.23. Ihouhaltane or Ouchaltan, Ousaltan, Ousalta

Geographical co-ordinates: 13° 54' 41.4" N, 00° 27' 34.8" E.

Although its ownership has been disputed²⁶⁶, this village was regarded as belonging to Niger by the Roser/Boyer Agreement of April 1932²⁶⁷, cited by the authorities of Niger Colony on 24 May 1935²⁶⁸ and 11 July 1951²⁶⁹. The locality is shown on the sketch-map of Diagourou *canton* in 1954 under the name of Ousselta — Oussaltane²⁷⁰.

It is an encampment, or more precisely a group of encampments, of the Kel Tamajirt tribe, of the Tinguéréguédesch *groupement* of the rural municipality of Bankilaré. Its population is estimated at 296 inhabitants, of whom the majority are of Niger nationality and regularly pay their taxes at Bankilaré (Oussaltan is indicated as a dependent settlement [*lougan*] of Logomaten Kel Timijirt²⁷¹ in the directory of villages of Téra subdivision dating from 1941²⁷²). The frontier passes

²⁶³Report of a tour conducted from 16 to 23 November 1953 by Deputy Administrator Lacroix, (Tillabéry *cercle*), dated 24 December 1953; MN, Anns., Series C, No. 79.

²⁶⁴*Ibid.*

²⁶⁵MN, Anns., Series D, No. 27.

²⁶⁶It appears on the frontier according to the sketch-map prepared by Delbos in June 1927; MN, Anns., Series C, No. 14.

²⁶⁷Tour Report of the Dori *cercle* Commander (Roser) to the Governor of Upper Volta, dated 10 April 1932; MN, Anns., Series C, No. 45.

²⁶⁸Letter No. 161 from the Head of Téra subdivision to the Commander of Tillabéry *cercle*; MN, Anns., Series C, No. 60.

²⁶⁹Official telegram/letter No. 70 from the Head of Téra subdivision to Tillabéry *cercle*; MN, Anns., Series C, No. 73.

²⁷⁰Sketch-map of Diagourou; MN, Anns., Series D, No. 21. This sketch-map was appended to the report of the Head of Téra subdivision on the census of Diabourou *canton*, dated 10 August 1954; MN, Anns., Series C, No. 84.

²⁷¹See the Record of Agreement of 2 February 1927, which mentions the Logomaten as a *canton* of Tillabéry; MN, Anns., Series C, No. 7.

²⁷²See MN, Anns., Series C, No. 64.

through a point situated on the river to the west of the encampment, whose co-ordinates are 13° 55' 36.4" N, 00° 27' 07.2" E.

The area of Ihouhaltane encampments encompasses lands situated beneath the arm of the river to the west, as far as the encampment of Débééré Bagna or Débééré Siri N'Gobé located to the south, which has belonged to the Peulh tribes of Téra subdivision since at least 1933. The boundary passes through the point having co-ordinates 13° 53' 12.8" N, 00° 28' 13.5" E located on the Kalsatouma-Sidibébé road. It then rejoins the IGN line at the point having co-ordinates 13° 53' 24" N, 00° 29' 58" E. From that point the boundary follows the 1960 IGN line as far as the point having co-ordinates 13° 52' 04" N, 00° 31' 00" E, where the area of Komanti encampments (Kamanti or Comanti on certain documents) commences.

In reality this is a vast area, comprising several encampments with identical names situated to either side of the frontier.

Among the encampments administered by Niger since the colonial period we would cite:

- Komanti, an encampment of the Kel Tamaguit tribe of the Tuareg Tinguereguedesh *groupement* (former Logomaten *canton*) of Bankilaré rural municipality, described as a dependent settlement of the Assadek Logomaten²⁷³ in the 1941 directory of villages of Téra subdivision;
- Kamanti (Ourou Toupé), place of residence of the Kel Tamaguit tribe, of the Tuareg Tinguereguedesh *groupement* (former Logomaten *canton*) of Bankilaré rural municipality; its population is estimated at 236 inhabitants, who regularly pay their taxes at Bankilaré;
- Zongowaétan (Fété Tao), Kel Tamaguit tribe, 500 inhabitants, who pay their taxes at Bankilaré²⁷⁴;
- Ouro Tambella (Dingui Dingui), Peulh tribe of Diagourou municipality.

The frontier marked on the 1960 IGN sheets is drawn with many gaps, to indicate that its course is particularly problematic in this sector; that is moreover confirmed by the completion sheets of the 1958-1959 season²⁷⁵ relating to this area, on which can be read the comment "boundary uncertain".

From the point having co-ordinates 13° 52' 04" N, 0° 31' 00" E, where there is a break in the line of crosses on the 1960 IGN map, the boundary passes through the point having co-ordinates 13° 48' 55" N, 0° 30' 23" E, then reaches the point with co-ordinates 13° 46' 31" N, 0° 30' 27" E. It then runs to the point with co-ordinates 13° 46' 18" N, 0° 32' 47" E located to the north of Ouro Sabou on the tributary arm of the River Tyekol Dyongoltol. The frontier then follows that tributary until its confluence with the Tyekol Dyongoltol at the point with co-ordinates 13° 46' 51" N, 00° 35' 53" E; from there, it follows the IGN line as far as the point with co-ordinates 13° 46' 22.5" N, 0° 37' 25.9" E, located at the level of Bangaré on the River Folko, thus leaving Ouro Boulé (Komanti) to Burkina and Ourou Toupé (Kamanti) to Niger.

This boundary leaves to Burkina Faso the localities of Ouro Boulé, also called Komanti, Ouro Sabou, Débildani and Tonguel as shown on the IGN/France map, and to Niger the localities

²⁷³*Ibid.*

²⁷⁴Zongowaetan is shown on the 1954 sketch-map of Diagourou *canton*; see MN, Anns., Series D, No. 21.

²⁷⁵MN, Anns., Series D, sheets Nos. 27-30.

of Komanti, Kamanti, also called Ouro Toupé, Zongouweitan, also called Kamanti Fété Tao, and Dingui-Dingui, also called Ouro Tanbella²⁷⁶.

(c) From Bangaré to the boundary of Say cercle, the frontier follows the IGN line

6.24. Bangaré has always been located in the territory of Niger. It was a dependency of Diagourou, which had existed since the beginning of the twentieth century. On the sketch-map drawn by Prudon in 1927, Bangaré was, however, shown in Upper Volta territory²⁷⁷. In the sketch-maps prepared by Delbos in June²⁷⁸ and August²⁷⁹ 1927, this name appears on the boundary. The locality acquired the status of a village in 1945²⁸⁰. The frontier passes through it, according to the Lacroix Report of November 1953²⁸¹. The village was part of Diagourou *canton* in 1954. It is shown on the sketch-map of Diagourou *canton* prepared the same year²⁸², as well as in the list of villages voting in Niger for the National Assembly in 1956²⁸³ and in 1959²⁸⁴. It is located in Niger by the IGN map of 1960²⁸⁵.

Today, Bangaré is a large, cosmopolitan village of over 1,000 souls. The frontier with Burkina Faso is located at the level of Goro Bandé. This is an arm of one of the main tributaries of the River Niger, the Dargol, which is known locally as the Folko. At this point, the frontier line takes a clear south-west orientation. The co-ordinates of the point where the frontier line changes direction are the following: 13° 46' 22.5" N, 00° 37' 25.9" E.

To the south of Bangaré, the boundary returns to the IGN line. Following the watercourses, where there are no crosses, it passes between Kolangoldagabé, in Burkina Faso (co-ordinates 13° 43' 52.3" N, 00° 36' 14.5" E) and Lolnando, in Niger (co-ordinates 13° 43' 50.3" N, 00° 36' 49.0" E). The line leaves the locality of Kolmangol Nore Ole to Niger, Gourel Manna to Burkina Faso and Pate Bolga to Niger.

6.25. The frontier then passes through the locality of Sénobellabé (geographical co-ordinates: 13° 36' 52.6" N, 00° 50' 00.8" E). This crop-growing area was the subject of numerous disputes in the past: it was regarded as belonging to Upper Volta by the Roser/Boyer Agreement of April 1932, in reliance on the Delbos line of 1927²⁸⁶. This view was confirmed by the tour report of the Head of Téra subdivision dated 8 November 1933, forwarded to the Governor of Niger by the Commander of Tillabéry *cercle*²⁸⁷. The same view was taken in the Record of Agreement

²⁷⁶Toponyms such as Ouchaltane, Komanti, Kamanti, Herou and Haïni designate plateaux or valleys in which there are a number of localities or hamlets whose name is associated with the toponym in question. As a result, on either side of the frontier line we find a number of different localities called Komanti, Kamanti, Haïni, Herou or Ouchaltane.

²⁷⁷Prudon sketch-map; MN, Anns., Series D, No. 3.

²⁷⁸Delbos sketch-map, June 1927; MN, Anns., Series C, No. 2.

²⁷⁹Delbos sketch-map, August 1927; MN, Anns., Series C, No. 16.

²⁸⁰Report from the Head of Téra subdivision on the census of Diagourou *canton*, dated 10 August 1954, p. 9; MN, Anns., Series C, No. 84.

²⁸¹Report of a tour conducted from 16 to 23 November 1953 by Deputy Administrator Lacroix (Tillabéry *cercle*), dated 24 December 1953; MN, Anns., Series C, No. 79.

²⁸²*Ibid.*

²⁸³*Ibid.*

²⁸⁴*Ibid.*

²⁸⁵MN, Anns., Series D, No. 28.

²⁸⁶Letter No. 112 of 10 April 1932; MN, Anns., Series C, No. . . . **Mistake! Source of reference could not be found.**

²⁸⁷Tour Report of 8 November 1933; MN, Anns., Series C, No. 52.

between the Administrators of Dori and Téra of 25 April 1935²⁸⁸. The result was a transfer of population of Niger origin to the localities of Taka and Yolo, situated in Niger territory. The same happened with the Record of Agreement of 8 December 1943²⁸⁹.

However, this position was never confirmed by the competent higher authority. Sénobellabé (or Sénébellabé, depending on the documents) remained cited among the villages of Diagourou *canton* (Niger) in 1933 and in 1948²⁹⁰. This locality was located in Niger on the 1960 IGN map (Sebba sheet). However, these are farming hamlets, which do not remain in the same place. The sites change according to the seasons and retain the same toponyms. Before 1960, Sénobellabé was further north. Today, the former site has been abandoned and the hamlets which continue to bear that name are to be found on the Burkina side of the IGN line. Their co-ordinates are as follows: 13° 36' 52.6" N, 00° 50' 00.8" E.

The current site of Sénobellabé must be regarded as being located on the Burkina side of the frontier, just as Hérou Bouleba is.

The IGN line meets the line which at the time constituted the boundary of Say (tripoint for the *cantons* of Tillabéry, Dori and Say) at the point with co-ordinates 13° 29' 08" N, 01° 01' 00" E.

6.26. In conclusion, for all of the reasons set out in this Chapter, the course of the frontier between the two States in the Téra sector should be the following:

- starting from the Tong-Tong astronomic marker (co-ordinates: 14° 25' 04" N, 00° 12' 47" E);
- from that point: a straight line as far as the Vibourié marker (co-ordinates: 14° 21' 44" N, 0° 16' 25" E);
- from that point: a straight line as far as the Tao astronomic marker (co-ordinates: 14° 03' 02.2" N, 00° 22' 52.1" E);
- from that point the frontier follows the 1960 IGN line (Téra sheet) as far as the point having co-ordinates 14° 01' 55" N, 00° 24' 11" E;
- from that point, it runs in a straight line to the frontier point on the new Téra-Dori road (co-ordinates: 14° 00' 04.2" N, 00° 24' 16.3" E);
- it then meets a river arm at the point with co-ordinates 13° 59' 03" N, 00° 25' 12" E. The frontier then passes through a frontier point called Baobab (13° 58' 38.9" N, 00° 26' 03.5" E), then follows the IGN line, leaving Tindiki (13° 57' 15.4" N, 00° 26' 23.6" E) to Niger, as far as the break in the line of crosses north of Ihouchaltane (Oulsalta) on the 1960 IGN map (Sebba sheet), at the point with co-ordinates 13° 55' 54" N, 00° 28' 21" E. From this point the frontier follows the loop formed by the river to the west as far as the point having co-ordinates 13° 55' 32" N, 00° 27' 07" E, and passes through a point situated on the Sidibébé-Kalsatouma road having co-ordinates 13° 52' 32.8" N, 00° 28' 13.5" E. From that point, it rejoins the IGN line at the point having co-ordinates 13° 53' 24" N, 00° 29' 58" E, as far as the break in the crosses at the point having co-ordinates 13° 52' 04" N, 0° 31' 00" E. The frontier then runs south as far as the point having co-ordinates 13° 48' 55" N, 00° 30' 23" E situated on the arm of the river to the west of Komanti, passes through a point south-west of Ouro Toupé (Kamanti)

²⁸⁸Record of Agreement of 25 April 1935; MN, Anns., Series C, No. 57.

²⁸⁹Record of Agreement of 8 December 1943; MN, Anns., Series C, No. 69.

²⁹⁰List of villages of Téra subdivision, documents of 6 July 1933 and 1948, undated; MN, Anns., Series C, Nos. 50 and 71.

with co-ordinates $13^{\circ} 46' 31''$ N, $00^{\circ} 30' 27''$ E, then to the north of Ouro Sabou to a point on the arm of the tributary of the Tyekol Dyongoytol whose co-ordinates are $13^{\circ} 46' 18''$ N, $00^{\circ} 32' 47''$ E. The frontier then follows this tributary until its confluence with the Tyekol Dyongoytol at the point having co-ordinates $13^{\circ} 46' 51''$ N, $00^{\circ} 35' 53''$ E. From there it follows the 1960 IGN line until it reaches the level of Bangaré (Niger) on the River Folko at the point having co-ordinates $13^{\circ} 46' 22.5''$ N, $00^{\circ} 37' 25.9''$ E.

From that point the frontier follows the IGN line, following the watercourses where there are no crosses, passing between Kolangoldagabé (BF) (co-ordinates $13^{\circ} 43' 52.3''$ N, $00^{\circ} 36' 14.5''$ E) and Lolnando (N) (co-ordinates $13^{\circ} 43' 50.3''$ N, $00^{\circ} 36' 49.0''$ E). The line leaves the hamlet known as Kolnangol Nore Ole to Niger, Gourel Manma to Burkina Faso and Pate Bolga to Niger.

- The frontier then follows the 1960 IGN line (Sebba sheet) as far as the point with co-ordinates $13^{\circ} 37' 20''$ N, $00^{\circ} 50' 47''$ E and then to the point with co-ordinates $13^{\circ} 34' 47''$ N, $00^{\circ} 58' 20''$ E, leaving to Burkina Faso the current site of Hérou Bouléba and to Niger that of Hérou Boularé.
- From there it follows the IGN line, connecting the gaps between sections with straight lines, as far as the tripoint of the former boundaries of the *cercles* of Say, Tillabéry and Dori (co-ordinates $13^{\circ} 29' 08''$ N, $01^{\circ} 01' 00''$ E).

CHAPTER VII

DETERMINATION OF THE FRONTIER IN THE SAY SECTOR

7.1. The second section of the frontier concerned by the present dispute is that which separates the current *département* of Say (Tillabéry region) on the Niger side from the provinces of Yagha, Komandjari and Tapoa (Eastern region) on the Burkina side. These current administrative subdivisions correspond to the former colonial administrative divisions constituted, at the time of the accession of the two States to independence, by Say *cercle* in Niger and Fada N’Gourma *cercle* in Upper Volta. This section is some 160 km long. It runs from the boundary between the Say and Tillabéry *départements* as far as the Botou Loop, where the two parties have reached agreement on the course of their common frontier (this latter sector being identified in subparagraph (b) of Article (2) of the Special Agreement seising the Court).

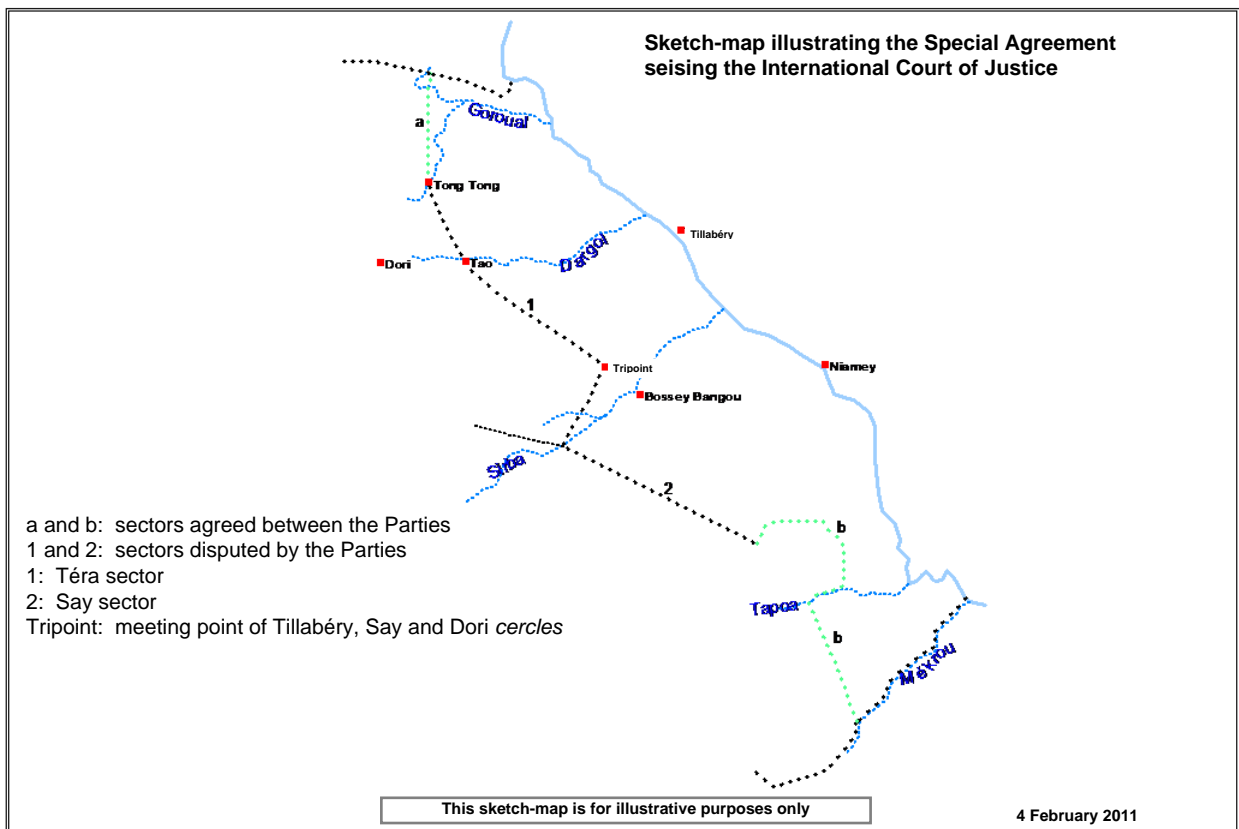
7.2. The present Chapter includes a physical and human description of the Say sector (Section 1), as well as the statement of the claims of the Republic of Niger regarding the course of the frontier in this area (Section 2).

Section 1 — Physical and human description of the Say sector

7.3. In physical terms, the area traversed by the frontier between the two States in this sector consist of a rocky plateau, which slopes gently down towards the River Niger in a west-east direction, before ending in steep cliffs. To the south, in the area of the W Regional Park, this plateau is drained by the Rivers Tapoa and Mekrou.

7.4. Climatically, the Say/Fada area forms part of a climatic strip situated at the interface of continental and maritime climates. The climate is characterized by a dry season of seven months and a rainy season of five months. This alternation produces a hydric balance in overall equilibrium, favouring substantial vegetative growth.

7.5. The vegetation in this area consists of dry, low-growing forests on the plateaux, clear forests on the hillsides, gallery-forests along the damp riverbanks and arboreal savannah in the dry valleys. Thanks to the extensive hydrographic network and the nature of the soil, the vegetation is rich and very varied. The ligneous vegetation provides the local people with a major part of their domestic needs (timber) and food requirements (leaved plants, flowers, grain, fruit, edible roots) and furnishes significant pharmacopoeia and handicraft resources. Forest resources are, however, under threat from illegal logging, land clearance, overgrazing and bushfires.



7.6. The area is characterized by the presence of abundant wildlife. Its southern part includes one of the most important wildlife reserves in West Africa: the Niger W Regional Park²⁹¹, which covers 1 million hectares on the territories of Niger, Burkina Faso and Benin. Outside the area of the park, towards the River Sirba, herds of elephant, buffalo and warthog can be met with, as well as groups of lion, hyena and leopard, which makes the conduct of human activity problematic in the area. The region's watercourses and pools were long infested with tsetse flies, causing blindness among humans and animals. This parasite was eradicated several decades ago. But previously, the presence of tsetse fly and poisonous snakes resulted in the relocation of many villages, or even their disappearance.

7.7. In human terms, the Say/Fada region is lightly populated. It is subject to constant regional transhumance. This is of three kinds:

- major transhumance, which consists of movements over very long distances, generally practiced by the Bororo and related Peulhs;
- minor transhumance, a movement over short and medium distances, generally carried out in order to exploit the pastureland beside rivers and pools;
- commercial transhumance, involving small flocks, for the purpose of increasing milk production and taking advantage of the pasturage provided by fallow croplands.

This activity, which dates back to the mists of time, is today regulated within the Economic Community of West African States (ECOWAS), of which Niger and Burkina are both members.

7.8. As has been observed in the Téra sector, these phenomena of migration linked to crop farming or stock-raising have had the effect, in this area too, of causing relocations of villages, many of which have subsequently been abandoned in favour of other settlements. This situation has on a number of occasions resulted in disputes between the authorities of the two States regarding sovereignty over certain of these villages. The exploitation of gold deposits has also given rise to disputes in this area. However, generally speaking, these disputes have turned out to be far less serious than those affecting the Téra sector, because of the generally low habitation levels in the areas concerned.

Section 2 — The course of the frontier in the Say sector

7.9. As was the case for the Téra sector, the only text from the colonial period determining the boundaries of the two Colonies in the Say sector is the Erratum No. 2602/APA of 5 October 1927, correcting *Arrêté* No. 2336 of the Governor General of French West Africa of 31 August of the same year. Regarding the Say sector, the text of Article 1 of the *Arrêté* originally read as follows:

“2. Boundaries between the Say *cercle* and Upper Volta:

The villages of Botou *canton* are excluded from this boundary.

To the north and to the east, by the current boundary with Niger (Niamey *cercle*), from Sorbohaoussa to the mouth of the River Mekrou;

²⁹¹This official name of the park is due to the fact that the course of the River Niger in this area takes the form of the letter “W”.

To the north-west, by the River Sirba from its mouth as far as the village of Bossébangou. From this point a salient, including on the left bank of the Sirba the villages of Afassi, Kouro, Takalan and Tankouro;

To the south-west, a line starting approximately from the Sirba at the level of the Say parallel and running as far as the Mekrou;

To the south-east, by the Mekrou from that point as far as its confluence with the Niger.”²⁹²

7.10. As has already been explained²⁹³, that *Arrêté* in reality manifestly went beyond the scope of its initial object. Instead of confining itself to describing the boundary between the Colonies of Niger and Upper Volta in this area, it described the entire boundaries of Say *cercle* (thus including those separating it from other neighbouring *cercles* belonging either to the Colony of Niger or to that of Dahomey). That error was corrected — although not entirely, we will come back to that — by the above-mentioned Erratum, according to which the boundary between the two Colonies was constituted by

“[a] line starting at the heights of N’Gouma, passing through the Kabia ford (astronomic point), Mount Arounskoye and Mount Balébangouia, to the west of the ruins of the village of Tokebangou, Mount Doumafende and the Tong-Tong astronomic marker; this line then turns towards the south-east, cutting the Téra-Dori motor road at the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossebangou. 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. [...]”

7.11. This description of the boundary was thus extremely succinct for the sector of the frontier with which we are concerned in the present Chapter, which stretches from the point where the line “reach[es] the River Sirba at Bossebangou” to the village of Tchenguiliba. The section described in the first part of the Erratum (before reaching the Sirba) in fact concerns the Téra sector. Its latter part, beyond the village of Tchenguiliba, goes from the start of the Botou Loop to the point where the frontier between Burkina Faso and Niger meets the territory of Benin — a sector which, as already stated above, is not in dispute between the Parties. In reality, all that we have available to us is a text of five lines to identify the course of the frontier between the two States in this area over a distance of almost 160 km.

7.12. This text was, however, never the subject of any addition, amendment or correction during the colonial period. It remained, at the time when the two States became independent, the only reference text for the determination of their common frontier. In accordance with the general approach of the Republic of Niger regarding the principles applicable through the determination of the frontier in the present dispute — and in accordance with the terms of the 2009 Special Agreement and of the 1987 Agreement between the two States — it is thus the text of the

²⁹²*Arrêté* of 31 August 1927; MN, Anns., Series B, No. 26.

²⁹³See above, para. 1.26.

1927 Erratum which will constitute the primary basis for determination of the course of the frontier between the two States in this second sector. It is clear, however, in the first place, that certain parts of that text are problematic, in that it describes not the inter-colonial boundary (but in fact a section of the boundary between two administrative divisions both belonging to the Colony of Niger). Secondly, the course of the boundary shown on the 1960 IGN map in part deviates markedly from that described in the Erratum. It is therefore essential to consider separately the three sections identified in this part of the 1927 Erratum, in order to determine as precisely as possible the boundary which it describes, but also in order to show that there are well-established reasons for not following it in certain respects.

7.13. We shall therefore show in turn in the present Section that there was no justification for continuing the inter-colonial boundary to the village of Bossébangou, as stated in the text of the Erratum (A), and that the “salient” comprising four villages defined in the Erratum can be clearly identified (B) and, finally, that a course consisting of a series of straight lines for the part of the frontier which runs from the Say parallel to the village of Tchenguiliba is fully justified (C).

A. There was no justification for continuing the inter-colonial boundary to the village of Bossébangou

7.14. According to the text of the 1927 *Arrêté*, the route whereby the inter-colonial boundary reached the Say sector is the following: from the north, it arrived at the “River Sirba (boundary of Say *cercle*), near to and to the south of Boulkalo”. While this text was then supposed to go on to define the boundary between Say *cercle* and Upper Volta, it included the entire perimeter of Say *cercle*. The Erratum modified the text of the *Arrêté* by indicating that the inter-colonial boundary reached the Say sector by running from “the Tao astronomic marker located to the west of the Ossolo Pool, and reaching the River Sirba at Bossébangou”. In this way it partially perpetuated the error which it was supposed to correct, by making the line which it described end at a point which constituted a purely internal boundary between the *cercles* of Tillabéry and Say, which belonged to one and the same Colony. This appears very clearly from the series of stages which led to the adoption of the Erratum of October 1927.

7.15. As was recalled earlier²⁹⁴, the need to define the new inter-colonial boundaries between Upper Volta and Niger resulted from the incorporation into the latter Colony of various *cantons* of Dori *cercle*, as well as Say *cercle* (which the exception of Botou *canton*), carried out in December 1926²⁹⁵. Whereas at that date the Colony of Niger was confined to the left bank of the River Niger, this incorporation had the effect of extending it to include territories situated on the river’s right bank. The text of the Decree effecting that incorporation provided that “[a]n *Arrêté* of the Governor-General in Standing Committee of the Government Council shall determine the course of the boundary of the two Colonies in this area”. It was in this context that on 10 February 1927 a Record of Agreement between Lefilliatre, Inspector of Administrative Affairs, representative of the Governor of Upper Volta, and Choteau, Chief Colonial Administrator, representing the Governor of the Colony of Niger, was signed at Say incorporating into the Colony of Niger the *cantons* constituting the Say *cercle*²⁹⁶. Under the terms of that Agreement:

“The following *cantons* composing Say *cercle* are hereby incorporated into Niger Colony . . . Namaro . . . Lamordé . . . Torodi . . . Gueladio . . . Diongoré . . .

²⁹⁴See above, paras. 1.22, 5.4 ff. and 6.11 ff.

²⁹⁵Decree of 28 December 1926 transferring the administrative centre of the Colony Niger and providing for territorial changes in French West Africa, and *Arrêté* promulgating that Decree; MN, Anns., Series B, No. 23.

²⁹⁶Record of Agreement of 10 February 1927; MN, Anns., Series C, No. 8.

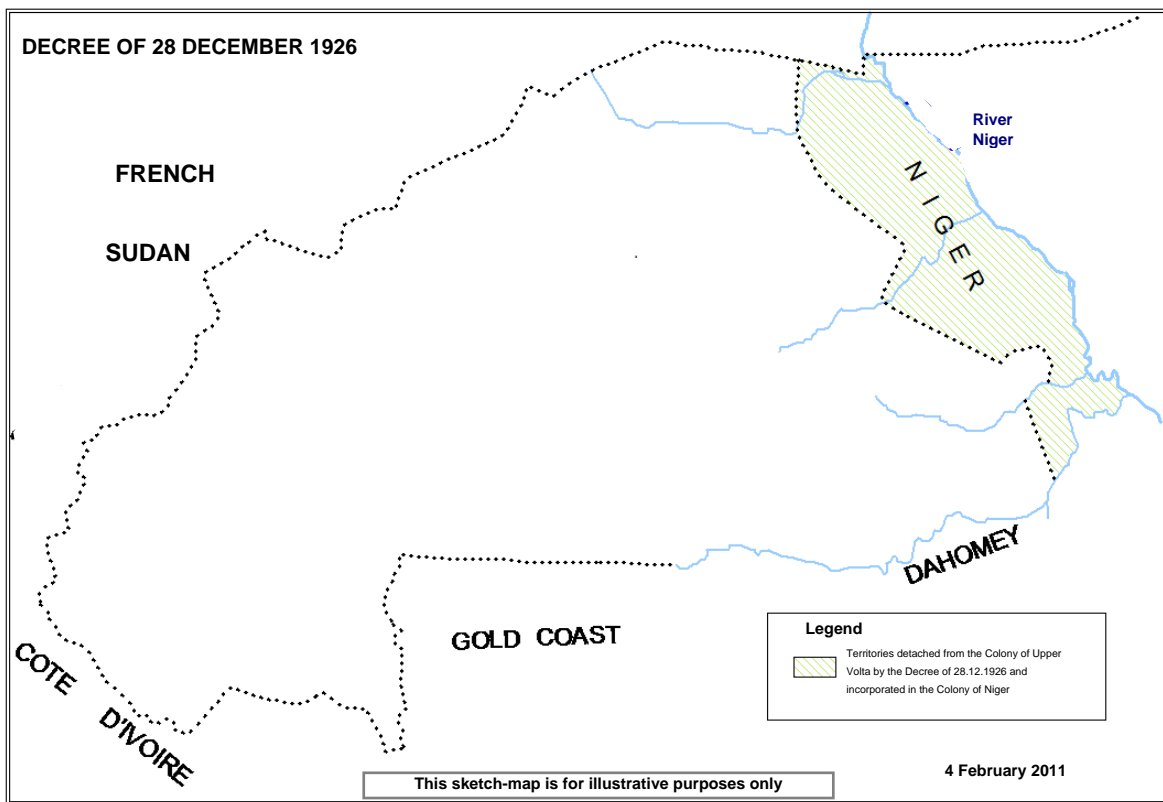
Say . . . Tamou . . . Tiala . . . independent villages of Sarakolés, Dantiandou, [Colo], Dar-es-Salam.

These territories are bounded: to the north and east, by the current boundary with Niger . . . To the north-west, by the River Sirba from its mouth as far as the village of Bossébangou. From this point a salient, including on the left bank of the Sirba, the villages of Alfassi, Kouro, Tokalan and Tankourou.

To the south-west, a line starting approximately from the Sirba at the level of the Say parallel and running as far as the Mekrou.

To the south-east, by the Mekrou from that point as far as its confluence with the Niger.

Excluded from this boundary are the villages forming the *canton* of Botou listed below . . .”.



7.16. It is thus indeed the entire boundaries of Say *cercle* (not including Botou *canton*) which are described in this text. And it is quite clearly on that basis that the *Arrêté général* of August 1927 was prepared, since it reproduces it practically word for word and describes the entire boundaries of the *cercle*. The text of that document thus describes both the boundaries separating that *cercle* from the neighbouring Colonies (Upper Volta and Dahomey) and those separating it from other *cercles* within the Colony of Niger. However, only the boundaries between the Colonies of Niger and Upper Volta should have been described there. The Erratum of October 1927 almost completely corrected this mistake, except in one respect: in making the inter-colonial boundary run as far as the village of Bossébangou. While this locality was indeed located on the boundary between Say *cercle* and the *cantons* of Dori *cercle* incorporated into Niger in 1926, it was, however, no longer on the boundary with Upper Volta after that incorporation had been carried out.

7.17. This appears very clearly on the many maps of the period. The map entitled “French West Africa — New frontier between Upper Volta and Niger”, published in 1927 (and expressly referring, which should be stressed, to the *Arrêté* and the Erratum) thus indicated very clearly the difference between these two types of boundary. Thus the boundary between the two *cercles* now belonging to Niger was indicated by a line •—•—•—•—•, whilst that separating the two Colonies was indicated by +—+—+—+—+. Whilst the first of these lines clearly passes through Bossébangou, the second runs some 20 km away from that locality. This is very far from being an isolated case and is repeated on a large number of maps of the colonial period. These include:

- the road map of the Colony of Upper Volta on a scale of 1:1,000,000, 1927 edition, Geographical Department of French West Africa, Dakar²⁹⁷;
- the Niamey sheet of the “Sketch-Maps of the Sahara and Neighbouring Regions on a scale of 1:1,000,000” (ND-31), Army Geographical Section, 1926-1927²⁹⁸;
- the 1:2,500,000 road maps of the Colony of Niger, 1934²⁹⁹ and 1936³⁰⁰ editions;
- French West Africa: General Political and Administrative Map to a scale of 1:2,500,000, second edition 1928, FWA Geographical Department, Dakar³⁰¹;
- the map entitled “French West Africa” to a scale of 1:3,000,000, third edition, 1930, prepared by A. Meunier, Geographer with the Ministry for the Colonies³⁰²;
- road map of the Colony of Upper Volta to a scale of 1:1,000,000, 1936 edition, FWA Geographical Department, Dakar³⁰³.

None of these maps shows the inter-colonial boundary running as far as Bossébangou. On the contrary, in each case the boundary is represented as clearly changing direction towards the south-west well before reaching that locality. It is this point, and not the village of Bossébangou,

²⁹⁷MN, Anns., Series D, No. 11.

²⁹⁸MN, Anns., Series D, No. 10.

²⁹⁹MN, Anns., Series D, No. 16.

³⁰⁰MN, Anns., Series D, No. 17.

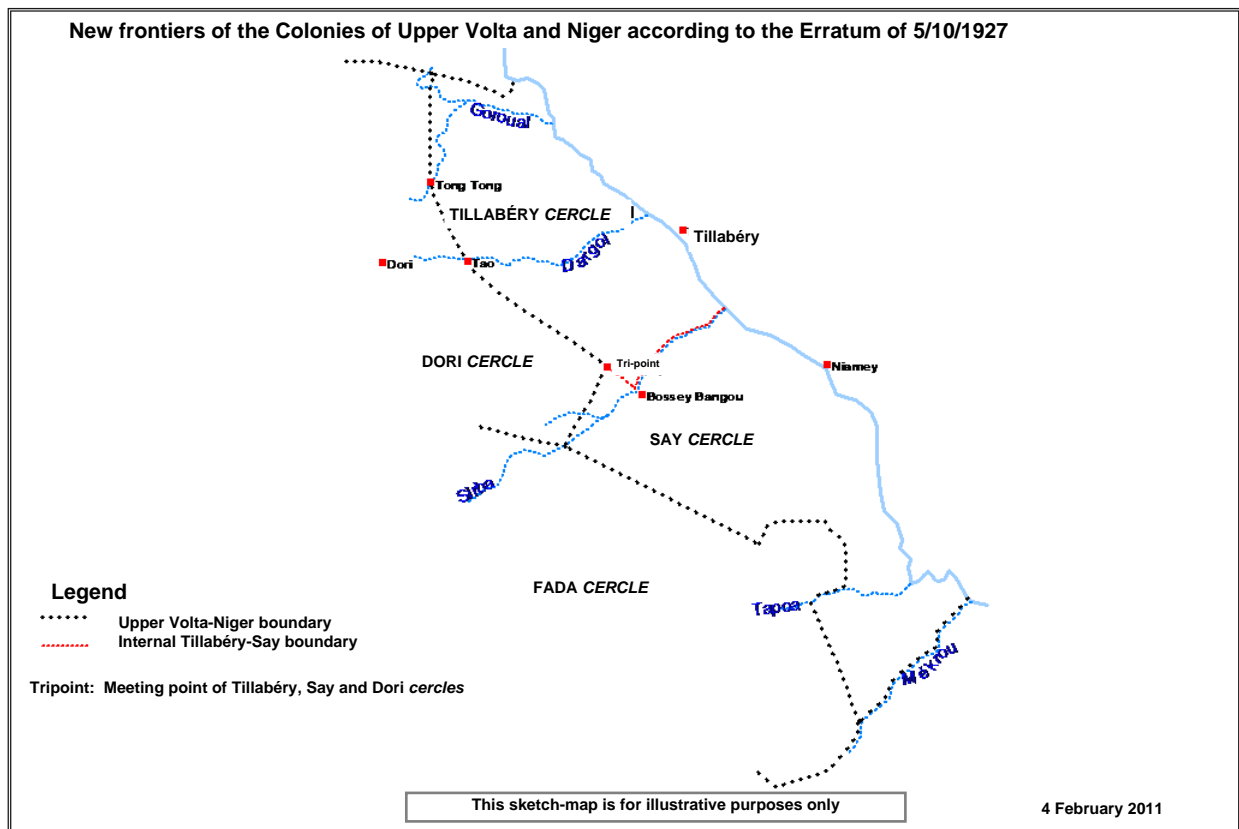
³⁰¹MN, Anns., Series D, No. 14.

³⁰²MN, Anns., Series D, No. 15.

³⁰³MN, Anns., Series D, No. 17.

which is systematically presented as the “tripoint” between the *cercles* of Tillabéry, Say and Dori. The same applies to the sketch-maps of the area prepared during the colonial period³⁰⁴.

³⁰⁴See *inter alia* the 1:1,000,000 sketch-map entitled “Colony of Niger — Niamey *cercle* — Links between Niamey and Fada N’Gourma”, prepared by Administrator Duranteau, *cercle* Commander, Niamey, 29 May 1933; MN, Anns., Series C, No. 49.



7.18. The mistake on this point contained in the Erratum of October 1927 thus continued to have no effect on the representation of the inter-colonial boundary in this area throughout the colonial period. Likewise, there is no evidence at all that, in the eyes of the colonial authorities themselves, Bossébangou was regarded as a border locality during that period. A large number of documents confirm this.

7.19. This is the case in particular for the reports prepared by the colonial officials on the various tours or missions conducted by them in order to identify the boundaries of the *cercles* and Colonies in this sector. The first of these are the reports prepared in 1927 by the Commanders of the *cercles* concerned, with a view to the adoption of the *arrêté* intended to fix the new boundaries between the two Colonies in this sector. In a letter of 27 August 1927, Administrator Delbos wrote in this regard that the boundary between the two *cercles* “follow[s] a bearing of 170° until it reaches the boundary of Say *cercle* to the west of Alfassi on the River Cirba”³⁰⁵. There was thus no question of a boundary reaching Bossébangou. Still more explicitly, on 17 December 1927, in reaction to the text of the Erratum adopted in October in order to correct the text of the *Arrêté*, the same official wrote: “[the frontier] runs, . . . as my letter 438 states . . . southward as far as Nababori, reaching the Say *cercle* to the west of Alfassi and not at Bossébangou, which is further up”³⁰⁶. The two explanatory sketch-maps appended to his reports are very eloquent in this regard³⁰⁷. In his Tour Report of 4 August 1927, the Commander of Tillabéry *cercle*, Prudon, stated much the same: “[f]rom Nababori, we travelled in a northerly direction”³⁰⁸. His sketch-map shows that the boundary coming from the north and passing through Nababori joins the Sirba at the level of Alfassi. A supplementary report by Administrator Delbos, dated 27 August 1927, was accompanied by a draft delimitation for submission to the Government-General of French West Africa, which quite explicitly confirmed this line. The boundary as described there, coming from the north after Tao,

“descends on a bearing of 135° for 27.5 km, then for 26.5 km on a bearing of 147°, until it reaches a point 5 km to the north of Iga Pool.

It then turns back up in a north-easterly direction on a bearing of 79° for 31.5 km, before redescending on a bearing of 127° for a distance of 13.5 km, and then on a bearing of 190° for 25.5 km, before finally *following a bearing of 170° until it reaches the boundary of Say cercle to the west of Alfassi on the River Cirba.*

No opposition on the part of the local inhabitants having been encountered, this report was closed and signed by the parties.”³⁰⁹

This draft thus shows very clearly that, both in the eyes of the officials concerned, and in those of the local population, there was no justification for having the inter-colonial boundary run through Bossébangou.

³⁰⁵Letter from the Commander of Dori *cercle* to the Governor of Upper Volta dated 27 August 1927; MN, Anns., Series C, No. 16.

³⁰⁶Letter No. 731 of 17 December 1927; MN, Anns., Series C, No. 20; emphasis added.

³⁰⁷*Ibid.*

³⁰⁸Report No. 25 of 4 August 1927; MN, Anns., Series C, No. 15.

³⁰⁹Letter from the Commander of Dori *cercle* to the Governor of Upper Volta dated 27 August 1927; MN, Anns., Series C, No. 16.

7.20. This view of the course of the inter-colonial boundary in this sector was also very strongly maintained after 1927. Thus, following their meeting of 10 April 1932, the Commander of Dori *cercle* (Roser) and the Head of Téra subdivision (Boyer) wrote to the same effect:

“Going from south to north, the boundary between Tillabéry and Dori *cercles* is as follows: it starts at Alfassi, passes through Nabambori (Yagha crop-growing village).”³¹⁰

The Record of Agreement of 8 December 1943 describing the delimitation operations between Dori and Tillabéry carried out by Administrators Delmond (Dori *cercle*), Texier and Garat (Tillabéry *cercle*) arrived at similar conclusions:

“Description of the stretch of boundary adopted

[...] the undersigned... decided to visit the place which, according to certain information, was said to be the meeting point of the three territories of Dori (Yagha *canton*), Tillabéry (Dargol *canton*) and Say (Torodi *canton*), and had moreover been proposed as such by Administrators Prudhon [*sic*] and Delbos during their joint tour of the area in 1927. This point is a small platform situated 6.5 km (as the crow flies) to the north-east of the hamlet of Nabambori, at the source of one of the streams which form the Tiekol Nabambori, tributary of the Sirba, and lying between the massifs of Samkyilga to the west and Fisso to the east. This platform, known as Fisso, is recognizable from the alignment of laterite rocks of probably very ancient origin which occupy its upper part.”³¹¹

Here again, it is not Bossébangou which is taken as “tripoint” between the *cercles* of Dori, Tillabéry and Say, but a point close to the hamlet of Nabambori, not far from Alfassi. This thus appears to be the consistent position during the colonial period.

7.21. Finally, the 1960 IGN map is the first document of this type which makes the boundary between Upper Volta and Niger descend as far as Bossébangou. It thus reproduces the mistake contained in the Erratum of 1927. In so doing, the IGN called into question the traditional course of the boundaries of Say *cercle*, which had, however, never changed throughout the colonial period. We have seen above that this had been the case for the period subsequent to 1927³¹². But this traditional course was also already apparent on various sketch-maps and maps prior to that date. These included:

- the sketch-map of Captain Boutiq, Commander of Djerma *cercle*, to a scale of 1:1,000,000 of 19 June 1909³¹³;
- the sketch-map of Commander Truchard to a scale of 1:500,000 of 1 August 1915³¹⁴;
- map No. 80 of the Atlas of *Cercles* — Say *cercle*, to a scale of 1:500,000 of January 1926³¹⁵;
and

³¹⁰Letter No. 112 of 10 April 1932; MN, Anns., Series C, No. 45, p. 6.

³¹¹Record of Agreement of 8 December 1943; MN, Anns., Series C, No. 69.

³¹²See the various maps mentioned above, para. 7.17.

³¹³MN, Anns., Series D, No. 1.

³¹⁴MN, Anns., Series D, No. 4.

³¹⁵MN, Anns., Series D, No. 6.

— the map Volta-Niger-Dahomey 1926 (Blondel la Rougery) to a scale of 1:500,000 of June 1926³¹⁶.

7.22. The first of these sketch-maps is of fundamental importance. This is the sketch-map appended to the report of Captain Boutiq, Commander of Djerma *cercle*, on the possible transition of the military régime to a civil one for the right bank of the Niger. Prepared in 1909 (the date-stamp for its arrival in the Military Territory of Niger shows 19 June), this is thus a sketch-map of the region showing the *cercles* of Say, Tillabéry and Dori *before* the part of Tillabéry *cercle* situation on the right bank of the River Niger was joined to Dori *cercle* in 1910. This sketch-map shows very clearly the boundaries between Tillabéry *cercle*, Say *cercle* and Dori *cercle*. The tripoint is indicated there quite precisely at the point of the salient, and not at Bossébangou. This position was restored by the 1926 Decree, of which the 1927 *Arrêté* was an implementing text, which could not conceivably have been in contradiction with that Decree, since it was from it that it derived its legitimacy.

7.23. This boundary is thus not in accordance with the representations of the inter-colonial boundary in this area, as it appears on numerous documents from the colonial period. As has been shown above, it has no basis either in the colonial practice subsequent to 1927.

7.24. It is thus from the point identified on these various maps as the meeting-point of the *cercles* of Tillabéry, Say and Dori, and not from the village of Bossébangou itself, that the identification of the following section of boundary must start, which, according to the Erratum of 1927, creates a “salient” of four villages before meeting the River Sirba further south. This “tripoint” (in the context of the colonial period, in any event) is situated at the place where the boundary between Dori and Tillabéry *cercles* joins the traditional boundary of Say *cercle*; its co-ordinates are as follows: 13° 29' 08" N, 1° 1' 00" E.

B. The frontier line in the sector of the four villages can be identified with precision

7.25. The next section of the inter-colonial boundary is defined as follows in the Erratum of 1927: “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.”

7.26. Before going any further, it should be noted that, in light of the conclusions just reached regarding the correctness of the course of the boundary described in the 1927 text in this area, the word “salient” used therein becomes problematic. The course of the line implied by that expression only makes sense in relation to the boundary between Dori and Say *cercles*, which is internal to the Colony of Niger. However, it makes no sense in relation to the inter-colonial boundary. Given that this boundary came not from Bossébangou but ran directly from the Tao marker to the “tripoint” between the *cercles* of Dori, Tillabéry and Say, as identified above³¹⁷, the frontier cannot create a salient in this area. It simply turns in a south-westerly direction from that “tripoint”. But the fact remains that, under the text of the Erratum — but also in light of the cartographic representations of the boundary during the colonial period — the course of the frontier in this sector must necessarily leave to Niger the sites corresponding to the villages of Alfassi, Kouro, Tokalan and Tankouro.

³¹⁶MN, Anns., Series D, No. 9.

³¹⁷See above, para. 6.25.

7.27. With this clarification, it is now possible to pass to the interpretation of this part of the Erratum, which raises difficulties of two kinds. First, it is necessary to identify the four villages mentioned and their exact location and also, in direct relation to this question, the depth of the “salient” so described. Secondly, we need to determine the arrival point of the line in this sector (the place where it reaches the Sirba “at the level the Say parallel”, before turning east-south-east).

7.28. The 1927 Erratum lists four villages, which it locates on the left bank of the River Sirba in this area and includes in the territory of Say *cercle*. These are the villages of Alfassi, Kouro, Tokalan and Tankouro. The first problem in this respect results from the fact that the last of these localities, Tankouro, appears on only a very limited number of documents from the colonial period. One of the very rare references to it is to be found on the sketch-map of Say *cercle*, prepared in 1915 by Administrator Truchard³¹⁸. On the other hand, there is no mention of it on the map illustrating the “new frontier between Upper Volta and Niger”³¹⁹, prepared following the adoption of the 1927 *Arrêté* and its Erratum. Similarly, this locality is nowhere mentioned in the lists of the villages of the relevant *canton* of Say *cercle* (Torodi *canton*). Nor do these lists mention the village of Tokalan, whose name never appears. That locality is, however, shown on the above-mentioned map of 1927 (although with a slightly different spelling: Takalan). It is thus very likely that these two latter villages simply disappeared during the period contemporary with the adoption of the 1927 Erratum, doubtless as a result of the very unfavourable health conditions prevailing at the time in this sector.

7.29. In effect, a number of documents from this period show that various villages located in this area were severely hit by sleeping sickness. This led the colonial authorities to order their relocation some distance from their original sites. This was in particular the case for Kouro and Alfassi — and even, it would also seem, for Bossébangou — at the start of the year 1927³²⁰. In a Tour Report dated 26 November 1930, the Administrator of Say subdivision thus mentions the fact that all inhabitants of Kouro and Alfassi were then residing in their new villages. He notes, however, in regard to this latter locality, that “[d]uring the rainy season, several families settled in an area west of Faga to plant. The area is infested with tsetse fly and is apparently located on the other side of the frontier”³²¹. A sketch-map is appended to this report, illustrating very clearly the former and new locations of each of the villages concerned.

7.30. These relocations, however, had no effect on the determination of the inter-colonial boundary in this sector. This was done — it should be recalled — on the basis of a Record of Agreement adopted right at the beginning of 1927³²², at a time when the relocations in question had not yet been carried out. It is clear that it was in fact the initial locations of these villages that the authors of the agreement took into account in their description of Say *cercle*. The best evidence of this is surely the fact that, according to the sketch-maps prepared by the Administrator of Say subdivision in 1930, the new locations of the villages of Alfassi and Kouro were situated on the right bank of the Sirba, whereas the 1927 texts quite explicitly place them on the left bank of that river. This situation is shown clearly on the maps from 1915 and 1927 mentioned above, and it is thus on these that reliance should be placed in order to determine the precise course of the “salient”

³¹⁸MN, Anns., Series D, No. 4.

³¹⁹MN, Anns., Series D, No. 13.

³²⁰See the Tour Report of the Administrator of Say subdivision, dated 26 November 1930 (MN, Anns., Series C, No. 39); for Bossébangou, see letter No. 1049 from the Governor of Niger to the Commander of Niamey *cercle* dated 17 May 1936 (MN, Anns., Series C, No. 62).

³²¹Tour Report of the Administrator of Say subdivision, dated 26 November 1930, incl. sketch-map; MN, Anns., Series C, No. 39.

³²²See above, para. 1.24.

as defined by the Erratum of October 1927. It is for this reason that we should disregard the representation of the “salient” as it appears on the 1960 IGN maps, which makes the frontier in this area run significantly further to the east than that shown on the previous maps. Here again, this line does not correspond to the traditional shape of Say *cercle*, as it was consistently represented during the colonial period³²³.

³²³See above, para. 7.21.



7.31. In order to interpret this text, we do have available to us an additional indication to determine the depth of the “salient” at its point. In a telegram/letter sent in 1935 by Say subdivision to Dori *cercle*, we find the following:

“After Bosseibangou [*sic*], Say Subdivision encroaches on the left bank [of the River Sirba] to a depth of some 15 km — the village of Alfassi (Torodi *canton*) is the only Say village located on that bank. Moreover the ‘Niamey’ sheet of the 1:1,000,000 map mistakenly shows that village in Dori *cercle* — the frontier then passes close to the village of Takatami, which belongs to Dori *cercle*. Its direction is roughly NNE/SSW and it forms a right angle where it joins the Niamey Say-Fada boundary.”³²⁴

On this basis, it may accordingly be asserted that the frontier must be located 15 km from the Sirba at the point where the course of the latter bends to the south. The location of Takalan (which has disappeared) would be very close to that of the village of Tangangari, to the east of Takatami³²⁵, beside the Foga, a tributary of the River Sirba, to the south of the site of the village of Kouro³²⁶.

7.32. Certain difficulties have also arisen in determining the point where the boundary changes direction in order to run in an east-south-east direction. According to the Erratum of October 1927, this is the point where, “turning back to the south [on leaving the salient], [the line] again cuts the Sirba at the level of the Say parallel”. The work of the Joint Commission revealed the problems of interpreting these words too strictly. Niger thus observed in this regard that “[t]he frontier line, in creating the salient, cannot cut the Sirba at its exact intersection with the Say parallel and at the same time encompass the four villages. This shows that the expression ‘at the level of the Say parallel’ was merely indicative.”³²⁷ This view can undoubtedly find support in the fact that 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”³²⁸. This clearly can but confirm that the text of the Erratum should not be read too literally on this point.

7.33. As regards this lower part of the “salient”, the solution adopted above is supported by two elements dating from the colonial period. The first is that deriving from the location of the frontier on the road from Bossébangou to Fada N’Gourma. Thus, according to documents from the colonial period, the boundary is located 4 km south of Boborgou Saba³²⁹, which confirms the correctness of the thesis put forward by Niger. Moreover, it is clear that reference has to be made to the representations of the Say parallel *as it was shown on the maps of the period* — and not on modern maps — in order to determine the point where the frontier changes direction in this sector. In this regard, the Blondel-La Rougery map of 1926 appears to represent a reliable reference

³²⁴Telegram/letter No. 47 of 18 June 1935; MN, Anns., Series C, No. 61.

³²⁵IGN/France map of 1960, 1:200,000, Sebba sheet; MN, Anns., Series D, No. 28.

³²⁶Map of the Colonies of French West Africa; MN, Anns., Series D, No. 9.

³²⁷Report of the Second Ordinary Session of the Joint Technical Commission on the Demarcation of the Frontier between Niger and Burkina Faso held at Ouagadougou from 23 to 28 July 1990; MN, Anns., Series A, No. 5.

³²⁸Emphasis added.

³²⁹Report of the tour conducted from 9 to 23 March 1930 by Sergeant Labitte, including 1:500,000 sketch-map; MN, Anns., Series C, No. 35.

document³³⁰. It is thus from this point where the line changes direction, situated on the Sirba at the level of the Say parallel, as it can, for example, be identified on the 1926 map, that the final stretch of the boundary in the Say sector runs. The co-ordinates of this point are the following: 13° 04' 52" N, 0° 55' 45" E.

C. The representation of the course of the frontier in two straight lines between the point where it leaves the “salient” and enters the Botou Loop is entirely justified

7.34. The final section of boundary in the Say sector is described in the 1927 Erratum in a particularly lapidary manner: “from that point [the point where the boundary, leaving the salient, cuts the River Sirba at the level of 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”.

7.35. This description appears to be of great simplicity. However the straight-line boundary which it establishes appears to have no basis in the situation prior to the adoption of the Erratum and was never confirmed in the subsequent practice. Thus, both before and after 1927, we find numerous representations of the boundary in this area in the form of a line divided into two sections, as is shown, *inter alia*, on the 1960 IGN map.

7.36. It is indeed a line in two sections which appears on various maps prior to the adoption of the *Arrêté général* and the Erratum of 1927 (including Blondel-La Rougery 1926; FWA Map, 1:500,000, Niamey, D31 SW³³¹). There is nothing to explain how the Erratum came to define the boundary in this area as a single straight line.

7.37. It should, moreover, be noted that neither is a straight line of this kind to be found on a number of maps prepared during the colonial period, which also represent the boundary in this area as two lines. Such a representation can be found, *inter alia*, on the following documents:

- the Niamey sheet of the “Sketch-Maps of the Sahara and Neighbouring Regions to a scale of 1:1,000,000” (ND-31), Army Geographical Section, 1926-1927³³²;
- Government-General of French West Africa, Colony of Niger, road map to a scale of 1:2,500,000, 1934 edition³³³;
- French West Africa, General Political and Administrative Map, at 1:2,500,000, 4th edition 1939, FWA Geographical Department, Dakar³³⁴.

The same applies to a large number of sketch-maps of the area prepared during the colonial period. We would cite, for example, the following:

- the 1:1,000,000 sketch-map entitled “Colony of Niger — Niamey *Cercle* — Links between Niamey and Fada N’Gourma”, prepared by Administrator Duranteau, *cercle* Commander, Niamey, 29 May 1933³³⁵;

³³⁰MN, Anns., Series D, No. 9.

³³¹*Ibid.*

³³²MN, Anns., Series D, No. 10.

³³³MN, Anns., Series D, No. 16.

³³⁴MN, Anns., Series D, No. 18.

- the 1:500,000 sketch-map entitled “Say *Cercle*”, with no mention of the author or of the date³³⁶;
- the 1:500,000 sketch-map entitled “Say *Cercle*”, no author or date³³⁷;
- the 1:500,000 sketch-map entitled “Villages Seen [during] Tours”, prepared by Sergeant Labitte, undated³³⁸;
- the 1:400,000 sketch-map entitled “Tour of 17 to 27 May 1943”, no author or date³³⁹; and
- a 1:500,000 sketch-map showing Say *cercle*, no title, author or date³⁴⁰.

7.38. Moreover the point where the frontier changes direction, which appears, *inter alia*, on the 1960 IGN map, is an undisputed frontier point between the two States. The fact that this was already the case during the colonial period is, for example, confirmed by a telegram/letter sent in 1954 by the Head of Say subdivision to the Commander of Niamey *cercle*³⁴¹. That communication, the purpose of which was to provide a description of the roads and tracks within the subdivision, indicates that the distance between Tamou and the frontier of Upper Volta is 8 km. It also states that the boundary of Upper Volta on the federal highway from Niamey is located 127 km from Niamey and 14 km from Mossipaga and 17 km from Kantchari. This corresponds very precisely with the point where the line in two sections changes direction in order to connect with the start of the Botou Loop. That point is, moreover, very clearly identified on the completion surveys carried out by the IGN during its 1958-1959 season. The survey entitled “Diapaga Information” corresponding to this sector of the frontier does in fact include the indication “frontier marker” at the precise place where the line changes direction before subsequently connecting with the start of the Botou Loop³⁴². There can thus be no doubt that, throughout the colonial period, it was indeed by a line in two sections, changing direction at the place where it crossed the road from Niamey to Ouagadougou, that the boundary between the two Colonies was defined and not according to the single straight line described in the 1927 Erratum on the basis of information which to this day remains unknown. Moreover this fact appears always to have been clearly accepted by Burkina Faso.

7.39. The correctness of this line is moreover again confirmed by the fact that various villages located in the portion of territory lying between the two-section line claimed by Niger and the straight line described in the 1927 Erratum have always been regarded as belonging to Niger — and administered by the latter — both during the colonial period and following accession to independence. Thus a number of these localities are mentioned in official documents (lists of the composition of *cantons* or *cercles*, censuses, lists of polling stations). This is in particular the case for:

³³⁵MN, Anns., Series C, No. 49.

³³⁶MN, Anns., Series C, No. 1.

³³⁷MN, Anns., Series C, No. 2.

³³⁸MN, Anns., Series C, No. 36.

³³⁹MN, Anns., Series C, No. 68.

³⁴⁰MN, Anns., Series C, No. 3.

³⁴¹Telegram/letter No. 106 from the Head of Say subdivision to the Commander of Niamey *cercle*, dated 16 June 1954; MN, Anns., Series C, No. 82.

³⁴²MN, Anns., Series D, No. 30.

- Dissi (or Dissirire)³⁴³;
- Fombon (or Fombongou, or Fambangou)³⁴⁴;
- Latti³⁴⁵;
- Tabaré (or Taboura)³⁴⁶;
- Tiabougou³⁴⁷.

Conversely, none of these localities has ever been shown as belonging to Upper Volta — or to Burkina Faso — in documents of the same type describing the composition of *cantons* or subdivisions of that Colony — and then of that State³⁴⁸. There is thus nothing in the practice to challenge the presentation of the course of the frontier in this sector as two straight lines.

7.40. We would, however, make it clear that the frontier line claimed by Niger, as regards the first of the sections, is not the same as that which appears on the 1960 IGN map, even though it is very close to it. The reason for this is quite simply that the line shown by the IGN after the point where the frontier crosses the road from Borgou-Saba runs in a generally easterly direction, before turning back to the south-east a few kilometres further on until it reaches the frontier point located on the Niamey-Ouagadougou road. Here again, nothing in the practice of the colonial authorities, or in the representations of this part of the frontier on the maps and sketch-maps of the colonial period appears to justify this deviation. Niger accordingly maintains its claim here to a frontier in two straight-line sections, as it appears on those maps and sketch-maps of the colonial period.

³⁴³Directory of the villages of Say subdivision, Tamou *canton*, 1941 (MN, Anns., Series C, No. 63); Census of Tamou *canton*, 1947 (MN, Anns., Series C, No. 70); Census tour of Tamou *canton* by the Head of Say subdivision, 25 March 1954 (MN, Anns., Series C, No. 81); Record of tax receipts, Tamou *canton*, 3 September 1971 (MN, Anns., Series C, No. 101); Localities of Tamou *canton*, 1987, 1991 and 2001 (MN, Anns., Series C, Nos. 104, 107 and 108).

³⁴⁴List of *cercle* villages by *canton*, prepared on 1 October 1921 — Torodi *canton* (MN, Anns., Series C, No. 4); List of localities of Torodi *canton*, extract from *General Directory of the Localities of French West Africa*, 1927 (MN, Anns., Series C, No. 6); Tour Report, Say subdivision, 13 to 27 September 1933 (MN, Anns., Series C, No. 51); List of Niger *cantons* and villages forwarded in 1948 to the Minister for Overseas France (MN, Anns., Series C, No. 71); Alphabetical list of villages by *canton*, Torodi *canton*, updated 1 January 1954 (MN, Anns., Series C, No. 80); List of villages of Torodi *canton*, 19 August 1973 (MN, Anns., Series C, No. 103).

³⁴⁵List of *cercle* villages by *canton* prepared on 1 October 1921 — Torodi *canton* (MN, Anns., Series C, No. 4); List of localities of Torodi *canton*, extract from the *General List of Localities of French West Africa*, Upper Volta, fascicle IV, 1927 (MN, Anns., Series C, No. 6); List of Niger *cantons* and villages forwarded in 1948 to the Minister for Overseas France (MN, Anns., Series C, No. 71); *Arrêté* No. 2794/APA establishing polling stations and districts for the elections to the National Assembly, 1955 (MN, Anns., Series B, No. 31); Record of tax receipts, Torodi *canton*, 1971 (MN, Anns., Series C, No. 102); Republic of Niger, Tillabéry *département*, Say District, list of Say polling stations, 1 November 1989, p. 8 (MN, Anns., Series C, No. 106).

³⁴⁶List of *cercle* villages by *canton* prepared on 1 October 1921 — Torodi *canton* (MN, Anns., Series C, No. 4); List of localities of Torodi *canton*, extract from the *General List of Localities of French West Africa*, Upper Volta, fascicle IV, 1926 (MN, Anns., Series C, No. 6); List of Niger *cantons* and villages forwarded in 1948 to the Minister for Overseas France (MN, Anns., Series C, No. 71); Alphabetical list of villages by *canton*, Torodi *canton*, updated 1 January 1954 (MN, Anns., Series C, No. 80); *Arrêté* No. 2794/APA establishing polling stations and districts for the elections to the National Assembly, 1955 (MN, Anns., Series B, No. 31); Record of tax collection, Torodi *canton*, 1971 (MN, Anns., Series C, No. 102); List of localities of Torodi *canton*, Say District, Tillabéry *département*, 2001 (MN, Anns., Series C, Nos. 108).

³⁴⁷List of localities of Torodi *canton*, Say District, Tillabéry *département*, 1991 and 2001 (MN, Anns., Series C, Nos. 107 and 108).

³⁴⁸Subject, of course, to their being mentioned in the documents of the Colony of Upper Volta for the period during which Say *cercle* was part thereof.

7.41. The above frontier marker constitutes the point where the frontier line changes direction and turns towards the start of the Botou Loop. Its co-ordinates are as follows: 12° 37' 55" N, 1° 34' 40" E. The endpoint of this latter section of the frontier line has, for its part, been precisely defined by Agreement between the Parties. Its co-ordinates are as follows: 12° 36' 18" N, 01° 52' 07" E.

7.42. In conclusion, for all of the reasons set out in the present Chapter, the course of the frontier between the two States in the Say sector should be the following:

From the tripoint with co-ordinates 13° 29' 08" N, 01° 01' 00" E, the frontier runs in a straight line as far as the point having co-ordinates 13° 04' 52" N, 00° 55' 47" E, then from that point a straight line passing through a point situated 4 km to the south-west of Dogona with co-ordinates 13° 01' 44" N, 01° 00' 25" E, as far as the frontier marker with co-ordinates 12° 37' 55.7" N, 01° 34' 40.7" E, and finally from there to the point fixed by agreement between the Parties, the co-ordinates of which are the following: 12° 36' 18" N, 01° 52' 07" E.

SUBMISSIONS

The Republic of Niger requests the Court to adjudge and declare that the frontier between the Republic of Niger and Burkina Faso in the Téra sector takes the following course:

- starting from the Tong-Tong astronomic marker (co-ordinates: 14° 25' 04" N, 00° 12' 47" E);
- from that point: a straight line as far as the Vibourié marker (co-ordinates: 14° 21' 44" N, 0° 16' 25" E);
- from that point: a straight line as far as the Tao astronomic marker (co-ordinates: 14° 03' 02.2" N, 00° 22' 52.1" E);
- from that point the frontier follows the 1960 IGN line (Téra sheet) as far as the point having co-ordinates 14° 01' 55" N, 00° 24' 11" E;
- from that point, it runs in a straight line to the frontier point on the new Téra-Dori road (co-ordinates: 14° 00' 04.2" N, 00° 24' 16.3" E);
- it then meets a river arm at the point with co-ordinates 13° 59' 03" N, 00° 25' 12" E. The frontier then passes through a frontier point called Baobab (13° 58' 38.9" N, 00° 26' 03.5" E), then follows the IGN line, leaving Tindiki (13° 57' 15.4" N, 00° 26' 23.6" E) to Niger, as far as the break in the line of crosses north of Ihouchaltane (Oulsalta) on the 1960 IGN map (Sebba sheet), at the point with co-ordinates 13° 55' 54" N, 00° 28' 21" E;
- from this point the frontier follows the loop formed by the river to the west as far as the point having co-ordinates 13° 55' 32" N, 00° 27' 07" E, and passes through a point situated on the Sidibébé-Kalsatouma road having co-ordinates 13° 52' 32.8" N, 00° 28' 13.5" E. From that point, it rejoins the IGN line at the point having co-ordinates 13° 53' 24" N, 00° 29' 58" E, which it follows as far as the break in the line of crosses at the point having co-ordinates 13° 52' 04" N, 0° 31' 00" E;
- the frontier then turns to the south again as far as the point having co-ordinates 13° 48' 55" N, 00° 30' 23" E situated on the arm of the river to the west of Komanti, passes through a point south-west of Ouro Toupé (Kamanti) with co-ordinates 13° 46' 31" N, 00° 30' 27" E, then to the north of Ouro Sabou to a point on the arm of the tributary of the Tyekol Dyongoytol whose co-ordinates are 13° 46' 18" N, 00° 32' 47" E. The frontier then follows this tributary until its confluence with the Tyekol Dyongoytol at the point having co-ordinates 13° 46' 51" N, 00° 35' 53" E. From there it follows the 1960 IGN line until it reaches the level of Bangaré (Niger) on the River Folko at the point having co-ordinates 13° 46' 22.5" N, 00° 37' 25.9" E;
- from that point the frontier follows the IGN line, following the watercourses where there are no crosses, passing between Kolangoldagabé (Burkina Faso) (co-ordinates 13° 43' 52.3" N, 00° 36' 14.5" E) and Lolnando (Niger) (co-ordinates 13° 43' 50.3" N, 00° 36' 49.0" E). The line leaves the hamlet known as Kolnangol Nore Ole to Niger, Gourel Manma to Burkina Faso and Pate Bolga to Niger;
- the frontier then follows the 1960 IGN line (Sebba sheet) as far as the point with co-ordinates 13° 37' 20" N, 00° 50' 47" E and then to the point with co-ordinates 13° 34' 47" N, 00° 58' 20" E, leaving to Burkina Faso the current site of Hérou Bouléba and to Niger that of Hérou Boularé;

- from there it follows the IGN line, connecting the gaps between continuous sections with straight lines, as far as the tripoint of the former boundaries of the *cercles* of Say, Tillabéry and Dori (co-ordinates 13° 29' 08" N, 01° 01' 00" E);
- from that point, the frontier runs in a straight line as far as the point having co-ordinates 13° 04' 52" N, 00° 55' 47" E, then from that point a straight line passing through a point situated 4 km to the south-west of Dogona with co-ordinates 13° 01' 44" N, 01° 00' 25" E, as far as the frontier marker with co-ordinates 12° 37' 55.7" N, 01° 34' 40.7" E, and finally from there to the point fixed by agreement between the Parties, the co-ordinates of which are the following: 12° 36' 18" N, 01° 52' 07" E.

(Signed) His Excellency Abdou ABARRY,

[Stamp and coat-of-arms
of Republic of Niger,
Brussels Embassy]

Deputy Agent of Niger.
[Signature illegible]

**SUMMARY OF SKETCH-MAPS AND MAPS
ILLUSTRATING THE MEMORIAL**

Sketch-maps (in chronological order)	Page
Sketch-map illustrating the territories of French West Africa	7, 9
Sketch-map illustrating the dismemberment of French Sudan and the creation of two initial Military Territories by the Decree of 17 October 1899	11
Sketch-map illustrating the creation of a third Military Territory by the Decree of 20 December 1900	13
Sketch-map illustrating the creation of the Colony of Haut-Sénégal et Niger by the Decree of 18 October 1904	15
Sketch-map illustrating the division of the Military Territory of Niger into three regions by the <i>Arrêté</i> of 26 December 1904.....	17
Sketch-map illustrating the four regions of the Military Territory of Niger at the date of the <i>Arrêté</i> of 14 December 1908.....	20
Sketch-map illustrating the creation of the Colony of Upper Volta by the Decree of 1 March 1919	22
Sketch-map illustrating the division of the Military Territory of Niger into seven <i>cercles</i> by the Decree of 4 December 1920.....	24
Sketch-map illustrating the territories detached from the Colony of Upper Volta by the Decree of 28 December 1926 and incorporated into the Colony of Niger.....	26, 101
Sketch-map illustrating the new frontier of the Colonies of Upper Volta and Niger according to the Erratum of 5 October 1927.....	30, 104
Sketch-map illustrating the territories incorporated into the Colony of Niger following the disappearance of the Colony of Upper Volta pursuant to the Decree of 5 September 1932.....	33
Sketch-map illustrating the reconstitution of the Colony of Upper Volta within its 1932 boundaries by Law 47-1707.....	36
Sketch-map illustrating the course of the boundaries and frontiers fixed by the <i>Arrêté</i> of 30 March 1956	36
Sketch-map illustrating the respective claims of Burkina Faso and Niger in the 1990s by comparison with the course of frontier as shown on the 1960 map of IGN France.....	71
Sketch-map illustrating the Special Agreement seising the International Court of Justice.....	79, 96

Maps

General map of Burkina Faso..... 3

General map of the Republic of Niger 5

Sketch-map illustrating the difference between the course of the frontier as shown on the
1960 map of IGN France and the traditional frontier in the Kouro/Alfassi sector 110

Map illustrating Niger's frontier claims At end of volume

**LIST OF DOCUMENTS IN THE ANNEXES
TO THE MEMORIAL OF NIGER**

SERIES A — Diplomatic documents

- A 1. Protocol of Agreement signed in Niamey on 23 June 1964, *OJRN*, 1 April 1966, pp. 150-151.
- A 2. Report of the meeting between the Niger Minister Delegate for the Interior and the Minister for Territorial Administration and Security of Burkina Faso, Ouagadougou, 12-14 February 1985.
- A 3. Report of the meeting between technical experts of the Republics of Niger and Burkina Faso, Ouagadougou, 21 to 23 May 1986.
- A 4. Agreement and Protocol of Agreement of 28 March 1987 between the Revolutionary Government of Burkina Faso and the Government of the Republic of Niger on the demarcation of the frontier between the two countries.
- A 5. Report of the second ordinary session of the Joint Technical Commission on Demarcation of the Niger-Burkina Faso Frontier, held in Ouagadougou from 23 to 28 July 1990, and annexes. Annex 2, *Summary of the Work of the 1989-1990 Season*.
- A 6. Joint Communiqué on the Ministerial consultative and working meeting between Niger and Burkina Faso, held on 14 and 15 May 1991 in Ouagadougou.
- A 7. Report of the third ordinary session of the Joint Technical Commission on Demarcation of the Niger-Burkina Frontier, held in Niamey from 2 to 4 November 1994.
- A 8. Report of the fourth ordinary session of the Joint Technical Commission on Demarcation of the Niger-Burkina Frontier, held in Ouagadougou from 18 to 21 July 2001.
- A 9. Letter No. 06-006/MAECR/SG/DAJC/SAJ from the Minister for Foreign Affairs and Regional Co-operation of Burkina Faso to the Minister for Foreign Affairs, Co-operation and African Integration of Niger, dated 27 January 2006 (forwarded under cover of letter No. 0034/ABFM/BKO/DC/AB from the Embassy of Burkina Faso in Mali to the Minister for Foreign Affairs of Niger, dated 2 February 2006).
- A 10. Letter No. 000082 from the Prime Minister of Niger to the Prime Minister of Burkina Faso dated 2 February 2006.
- A 11. Letter No. 2006.039/PM/CAB from the Prime Minister of Burkina Faso to the Prime Minister of Niger dated 9 February 2006.
- A 12. Joint Communiqué of the meeting of Foreign Ministers for negotiation and signature of the Special Agreement seising the ICJ of the frontier dispute between Niger and Burkina Faso, dated 24 February 2009.
- A 13. Certified copy of the Special Agreement seising the International Court of Justice of the frontier dispute between Burkina Faso and the Republic of Niger, signed in Niamey on 24 February 2009.

- A 14. Record of the work of the Joint Survey Mission to determine the co-ordinates of the boundary markers erected along the frontier between Burkina Faso and the Republic of Niger, conducted from 23 June to 3 July 2009, Diapaga, 3 July 2009.
- A 15. Report of the meeting to determine the co-ordinates of the unmarked points in Sector B, Kantchari, 15 October 2009.
- A 16. Letter No. 2009-004874/MAECR/SG/DGAJC from the Minister for Foreign Affairs of Burkina Faso to the Minister for Foreign Affairs of Niger, dated 29 October 2009.
- A 17. Letter No. 007505/MAE/C/DAJC/DIR from the Minister for Foreign Affairs of Niger to the Minister for Foreign Affairs of Burkina Faso, dated 2 November 2009.
- A 18. Protocol of exchange of instruments of ratification of the Special Agreement seising the ICJ of the frontier dispute between Burkina Faso and the Republic of Niger signed on 24 February 2009 in Niamey, Ouagadougou, 20 November 2009.
- A 19. Joint Communiqué of the Foreign Ministers of Burkina Faso and Niger, dated 20 November 2009, following the solemn ceremony of exchange of instruments of ratification of the Special Agreement seising the ICJ of the frontier dispute between the two countries.
- A 20. Joint Notification of the Special Agreement seising the International Court of Justice of the frontier dispute between Burkina Faso and the Republic of Niger, letter of 12 May 2010, filed at the Registry of the Court on 20 July 2010.
- A 21. Letter [reference uncertain] from the Minister for Foreign Affairs of Niger to the Minister for Foreign Affairs of Burkina Faso concerning the draft exchange of Notes embodying the Agreement of the Parties on the delimited sector of the frontier, dated [date uncertain; July 2009?].

SERIES B — Legislative and regulatory documents

- B 1. Decree of 16 June 1895 establishing a Government-General of French West Africa, and *Arrêté* promulgating that Decree.
- B 2. Decree of 17 October 1899 reorganizing the territories having constituted the possessions of French Sudan, *OJFWA*, No. 212, 9 November 1899.
- B 3. *Arrêté général* of 25 December 1899 organizing the Military Territories of French West Africa.
- B 4. *Arrêté général* of 23 July 1900 creating a Third Military Territory, with its administrative centre at Zinder, *OJFWA*, undated, 1900, p. 313.
- B 5. Decree of 20 December 1900 confirming the *Arrêté* of the Governor-General of 23 July 1900 and creating a Third Military Territory in French West Africa, *Bulletin officiel du ministère des colonies*, 14th year — 1900, Vol. 14, Nos. 1 to 12, pp. 1086-1089.
- B 6. *Arrêté* No. 149 of 20 March 1901 incorporating the Territory of Say into the *cercle* of Moyen-Niger (original manuscript text).

- B 7. Decree of 1 October 1902 reorganizing the Government-General of French West Africa, and *Arrêté* promulgating that Decree (*Official Journal of Senegal and Dependencies*, undated, 1902, pp. 582-583).
- B 8. Decree of 18 October 1904 reorganizing the Government-General of French West Africa, *Renseignements coloniaux*, No. 11/1904, pp. 279-279.
- B 9. *Arrêté général* No. 896 of 26 December 1904 organizing the Military Territory of Niger, *Official Journal of Senegal and Dependencies*, 31 December 1904, pp. 718-719.
- B 10. Decree of 2 March 1907 incorporating into the Colony of Haut-Sénégal et Niger the *cercles* of Fada N’Gourma and Say (*OJFWA* of 30 March 1907, p. 135).
- B 11. *Arrêté général* No. 1277 of 31 December 1907 defining the various administrative divisions of the Military Territory of Niger (*OJFWA*, No. 158 of 11 January 1908, pp. 12-13).
- B 12. *Arrêté général* No. 1241bis of 14 December 1908 reorganizing the administrative divisions of the Military Territory of Niger (*OJFWA*, No. 209 of 2 January 1909).
- B 13. *Arrêté* No. 673 of 21 June 1909 incorporating Dori *cercle* into the Civil Territory of Haut-Sénégal et Niger (*OJFWA*, undated, 1909).
- B 14. *Arrêté général* of 22 June 1910 incorporating the Region of Timbuktu into the Civil Territory of Haut-Sénégal et Niger (*Official Journal of Haut-Sénégal et Niger*, No. 29, 1 September 1910, p. 419).
- B 15. *Arrêté général* No. 672 of 22 June 1910 reorganizing the Military Territory of Niger (*OJFWA*, undated, 1910, p. 475).
- B 16. Decree of 7 September 1911 incorporating the Military Territory of Niger into the Government-General of French West Africa with effect from 1 January 1912, and *Arrêté* promulgating that Decree in French West Africa (*Official Journal of Haut-Sénégal et Niger*, No. 128 of 15 November 1911, pp. 511-512).
- B 17. *Arrêté général* No. 1728 of 23 November 1912 reorganizing the internal administration of the Military Territory of Niger (*OJFWA*, 11 January 1930).
- B 18. Decree of 1 March 1919 dividing the Colony of Haut-Sénégal et Niger and creating the Colony of Upper Volta, and *Arrêté* promulgating that Decree in French West Africa (*OJFWA*, No. 768, 1919, pp. 550-551).
- B 19. *Arrêté* No. 384 of 16 August 1920 abolishing Téra Subdivision (signed certified copy).
- B 20. Decree of 4 December 1920 reorganizing the Military Territory of Niger and converting it into a Colony of the Civil Territory of Mauritania, and *Arrêté* promulgating that Decree (*OJFWA*, undated, 1921, pp. 81-82).
- B 21. Decree of 4 December 1920 naming the Colonies and Territories composing the Government-General of French West Africa, and *Arrêté* promulgating that Decree (*OJFWA*, 1921).
- B 22. Decree of 13 October 1922 converting the Civil Territory of Niger into an autonomous Colony (*OJFWA*, No. 955, 20 January 1923, p. 58).

- B 23. Decree of 28 December 1926 transferring the administrative centre of the Colony of Niger and providing for territorial changes in French West Africa, and *Arrêté* of 21 January 1927 promulgating that Decree (*OJFWA*, No. 1167, undated, 1927, p. 92).
- B 24. Report of the Minister for the Colonies to the President of the French Republic concerning the treatment of the administrative centre of the Colony of Niger and territorial changes in French West Africa (*OJFR*, 5 January 1927, p. 198).
- B 25. *Arrêté* of 22 January 1927 providing for territorial changes to the Colonies of Upper Volta and Niger (*OJFWA*, No. 1169, 12 February 1927).
- B 26. *Arrêté général* No. 2336 of 31 August 1927 fixing the boundaries of the Colonies of Upper Volta and Niger (*OJFWA*, No. 1201, 24 September 1927).
- B 27. Erratum No. 2602/APA of 5 October 1927 to the *Arrêté général* of 31 August 1927 fixing the boundaries of the Colonies of Niger and Upper Volta (*OJFWA*, No. 1205, 15 October 1927, p. 718).
- B 28. *Arrêté local* No. 126 of 3 November 1928 creating Téra Subdivision within Tillabéry *cercle*.
- B 29. Decree of 5 September 1932 dissolving the Colony of Upper Volta and distributing its territory among the Colonies of Niger, French Sudan and Côte d'Ivoire (*OJFWA*, No. 1471, 15 October 1932, p. 902).
- B 30. Law No. 47-1707 of 4 September 1947 for the re-establishment of the territory of Upper Volta, and *Arrêté* promulgating that Law (*OJFWA*, 27 September 1947).
- B 31. *Arrêté* No. 2794/APA establishing polling stations and districts for the elections to the National Assembly (*Official Journal of Niger*, No. 304, 1 January 1956).
- B 32. *Arrêté général* No. 2690 of 30 March 1956 creating seven *cercles* within the Territory of Niger (*OJFWA*, 14 April 1956, p. 1658).

SERIES C — Administrative documents and correspondence

- C 1. 1:500,000 sketch-map entitled "Say *Cercle*" (1), no author or date.
- C 2. 1:500,000 sketch-map entitled "Say *Cercle*" (2), no author or date.
- C 3. 1:500,000 sketch-map representing Say *cercle*, no title, author or date.
- C 4. List of *cercle* villages by *canton*, Torodi *canton* (extract), prepared on 1 October 1921.
- C 5. Extract from the Annual General Report of Dori *cercle* for the year 1924; 1:500,000 sketch-map of Dori *cercle*, by the *cercle* Commander.
- C 6. List of localities of Torodi *canton*, extract from the *General List of Localities of French West Africa*, Upper Volta, fascicle IV (extract), undated, 1927.
- C 7. Record of Agreement between Mr. Brévié, Governor of the Colony of Niger, and Mr. Lefilliatre, Inspector of Administrative Affairs, representative of the Governor of Upper Volta, Téra, 2 February 1927.

- C 8. Record of Agreement between Mr. Lefilliatre, Inspector of Administrative Affairs, representative of the Governor of Upper Volta, and Mr. Choteau, Chief Colonial Administrator, representing the Governor of the Colony of Niger, Say, 10 February 1927.
- C 9. Record of Agreement of 9 May 1927 between Mr. de Coutouly, Administrator of Fada *cercle*, and Mr. Lesserteur, Administrator of Say *cercle*.
- C 10. Sketch-map of 27 May 1927 of the Botou region, prepared by Commander de Coutouly, Administrator of Fada *cercle*, in connection with the above document and forwarded to the Governor of Upper Volta.
- C 11. Telegram/letter No. 1166/AG from the Lieutenant-Governor of Upper Volta, Hesling, to the Commanders of Dori and Fada *cercles*, dated 27 April 1927.
- C 12. Correspondence between the Governor of Upper Volta and the Commander of Dori *cercle*: telegram/letter No. 344 from the *cercle* Commander dated 1 June 1927, and reply by Note BLHV No. 1.393 from the *Chef de cabinet* of the Governor of Upper Volta dated 2 June 1927.
- C 13. Note 1040/AG/I [ref. uncertain] from Administrator Choteau to the Governor-General of French West Africa dated 27 June 1927.
- C 14. Sketch-map prepared by Administrator Delbos of the route followed by the Administrators of Dori and Tillabéry on a mission in June 1927 with a view to delimitation between Dori and Tillabéry *cercles*.
- C 15. Extract No. 25 from the Tour Report of Administrator Prudon dated 4 August 1927.
- C 16. Letter from Delbos, Commander of Dori *cercle*, to the Governor of Upper Volta dated 27 August 1927, inc. two sketch-maps.
- C 17. Transmission Note No. 99213 for the 1:1,000,000 sketch-map entitled "New Frontier Upper Volta-Niger", sent by the military *Chef de cabinet* (2nd section) to the Director of Political Administrative Affairs in Dakar, dated 6 October 1927.
- C 18. Telegram/letter No. 2713 AG from the Acting Governor of Upper Volta to the Commander of Dori *cercle* dated 20 October 1927.
- C 19. Telegram/letter No. 2714 AG from the Acting Governor of Upper Volta to the Commander of Fada *cercle* dated 20 October 1927.
- C 20. Letter No. 731 from Administrator Delbos, Commander of Dori *cercle*, to the Governor of Upper Volta dated 17 December 1927, inc. two sketch-maps.
- C 21. Letter No. 96 from the Commander of Dori *cercle* to the Commander of Upper Volta dated 23 April 1929.
- C 22. Letter No. E/251 AP from Fousset, Chief Colonial Administrator, to the Lieutenant-Governor of Niger dated 31 July 1929.

- C 23. Letter No. 367 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 31 July 1929 and previous correspondence (telegram/letter No. 244 from Téra Subdivision to Dori *cercle* dated 27 July 1929; telegram/letter No. 359 from Dori *cercle* to Téra Subdivision dated 29 July 1929; telegram/letter No. 364 from Dori *cercle* to Téra Subdivision dated 30 July 1929).
- C 24. Letter No. 399 from the Commander of Dori *cercle* to the Commander of Tillabéry *cercle* dated 9 August 1929.
- C 25. Letter No. 411 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 14 August 1929.
- C 26. Letter No. E.275 AP from the Chief Colonial Administrator, Acting Lieutenant-Governor of Upper Volta, to the Governor of Niger, dated 14 August 1929.
- C 27. Letter No. 418 from the Commander of Dori *cercle* to the Commander of Tillabéry *cercle* dated 19 August 1929.
- C 28. Letter No. 2087 AG.I from the Governor of Niger to the Governor of Upper Volta dated 26 August 1929.
- C 29. Letter No. 100 from the Commander of Tillabéry *cercle* to the Commander of Dori *cercle* dated 19 September 1929.
- C 30. Letter No. 2259 A.G.I. from the Lieutenant Governor of Niger to the Lieutenant-Governor of Upper Volta dated 27 September 1929.
- C 31. Telegram/letter No. 815 from the Commander of Tillabéry *cercle* to Dori *cercle* dated 10 October 1929 (certified copy forwarded under cover of letter No. 623 of 23 October 1929).
- C 32. Letter No. 135 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 26 February 1930.
- C 33. Telegram No. 687 from the Governor of Upper Volta to the Commander of Dori *cercle* dated 19 March 1930.
- C 34. Telegram/letter No. 196 from the Commander of Dori *cercle* to the Commander of Tillabéry *cercle* dated 22 March 1930.
- C 35. Report of the tour conducted from 9 to 23 March 1930 by Sergeant Labitte, inc. a sketch-map on a scale of 1:500,000.
- C 36. 1:500,000 sketch-map entitled "Villages seen [during] Tours", drawn by Sergeant Labitte, undated.
- C 37. Letter No. 362 from the Commander of Dori *cercle* to the Governor of Upper Volta dated 11 June 1930.
- C 38. Report No. 416 from the Commander of Dori *cercle* on the difficulties created by the delimitation established in 1927 between the Colonies of Niger and Upper Volta (*Arrêté* of 31 August 1927) regarding the boundaries between Dori *cercle* and Tillabéry *cercle*, 7 July 1930.

- C 39. Tour Report from the Administrator of Say Subdivision dated 26 November 1930, inc. a sketch-map on a scale of 1:500,000.
- C 40. Letter No. 748 A.G.I. to the Commander of Tillabéry *cercle* dated 31 July 1931.
- C 41. Tour Report from the Administrator of Dori *cercle* to the Governor of Upper Volta dated 31 March 1931.
- C 42. Letter No. 2954 A.P. from the Office of Political Affairs to the Commander of Dori *cercle* dated 10 November 1931.
- C 43. *Bulletin de renseignements politiques* of Tillabéry *cercle* dated 27 January 1932.
- C 44. Letter No. 40 A.G.I. from the *Chef de cabinet* of the Lieutenant-Governor of Upper Volta dated 6 February 1932.
- C 45. Letter No. 112 of 10 April 1932 and Tour Report from Civil Service Deputy Roser, Acting Commander of Dori *cercle*, to the Governor of Upper Volta (Political Office). Certified copy of 15 September 1943.
- C 46. *Bulletin de renseignements politiques* of Tillabéry *cercle* dated 11 October 1932.
- C 47. Sketch-map with no date (but subsequent to 1932) or title, to a scale of 1:1,000,000 showing the boundaries of Téra Subdivision.
- C 48. Circular from Governor-General Brévié, addressed to all Lieutenant-Governors of the Colonies of French West Africa, dated 22 March 1933.
- C 49. 1:1,000,000 sketch-map entitled "Colony of Niger — Niamey *cercle* — Links between Niamey and Fada N’Gourma", prepared by Administrator Duranteau, *cercle* Commander, Niamey, 29 May 1933.
- C 50. List of villages in Téra Subdivision, 6 July 1933.
- C 51. Tour Report, Say Subdivision (extract), 13-27 September 1933.
- C 52. Tour Report from the Head of Téra Subdivision to the Governor of Niger dated 8 November 1933, forwarded by the Commander of Tillabéry *cercle* under cover of a letter of 17 November 1933.
- C 53. Extract from the Tour Report of the Commander of Dori *cercle* from 25 to 31 December 1933, sketch-map of Téra Subdivision.
- C 54. Tour Report from the Commander of Tillabéry *cercle* dated 30 June 1934.
- C 55. Niger Colony, Dori *cercle*, Political Report, Second Quarter 1934, 30 June 1934.
- C 56. Certified copy of 14 April of Record of Agreement of 13 April 1935 between Administrator Garnier (Dori *cercle*) and Deputy Lichtenberger (Téra Subdivision).
- C 57. Certified copy of 30 April of the Record of Agreement of 25 April 1935 between Administrator Garnier (Dori *cercle*) and Deputy Lichtenberger (Téra Subdivision).
- C 58. Letter No. 168 from the Commander of Dori *cercle* to the Governor of Niger dated 9 May 1935.

- C 59. Letter No. 140 from the Head of Téra Subdivision to Tillabéry *cercle* dated 10 May 1935.
- C 60. Letter No. 161 from the Head of Téra Subdivision to Tillabéry *cercle* dated 24 May 1935.
- C 61. Telegram/letter No. 47 from the Head of Say Subdivision to Dori *cercle* dated 18 June 1935.
- C 62. Letter No. 1049 AG/SS from the Governor of Niger to the Commander of Dori *cercle* dated 17 May 1936, inc. reports from two army doctors requesting the relocation of the village of Bossébangou for health reasons.
- C 63. Directory of villages of Say Subdivision, Tamou *canton* (extract), undated, 1941.
- C 64. Directory of villages of Téra Subdivision, villages of Kel Tamared, Kel Tinijirt, Logomaten Assadek, Logomaten Allaban, undated, 1941.
- C 65. Description of Tillabéry *cercle*, prepared in 1941 by Mr. Leca.
- C 66. Letter No. 1.144 C.M.2. from the Head of the Geographical Department of French West Africa to the Director of Political and Administrative Affairs, Dakar, dated 8 May 1942.
- C 67. Certified copy of 11 June 1943 of official telegram/letter No. 231 from the Commander of Dori *cercle* to the Commander of Tillabéry *cercle* dated 19 May 1943.
- C 68. 1:400,000 sketch-map entitled "Tour of 17 to 27 May 1943, Route followed", no author or date.
- C 69. Transmission Note No. 959 to the Commanders of Dori and Tillabéry *cercles*, and to the Head of Téra Subdivision, dated [1944, date uncertain]; and Report of delimitation operations between Dori and Tillabéry *cercles* by the Administrators of Dori *cercle* (Delmond) and Tillabéry *cercle* (Texier and Garat), dated 8 December 1943.
- C 70. Census tour of Say Subdivision, Tamou *canton*, dated 23 March 1947.
- C 71. List of Niger *cantons* and villages forwarded to the Minister for Overseas France (Diagourou, Tamou and Torodi *cantons*), undated, 1948.
- C 72. Correspondence between the Governor of Niger and Tillabéry *cercle* (telegram/letter No. 339/APA of 10 July 1951; confidential report and notice of meeting between the Commanders of Dori and Tillabéry *cercles* at Téra on 6 July 1951; confidential telegram/letter No. 64 c of 6 July 1951; notice of meeting of 29 June 1951).
- C 73. Official telegram/letter No. 70 from the Head of Téra Subdivision to Tillabéry *cercle* dated 11 July 1951, inc. reproduction on a scale of 1:500,000 of a sketch-map by Mr. Delbos.
- C 74. Report of the census tours of Téra *canton* conducted from 28 July to 22 August and 20 to 21 September, 1952, by the Head of Téra Subdivision; Annex: *Territorial Organization of Moyen Niger, Establishment of Téra Station*, pp. 10-13.
- C 75. Letter No. 1511/APA from the Governor of Niger to the Commander of Tillabéry *cercle* dated 17 April 1953.

- C 76. Record of settlement of a frontier dispute signed by the Commander of Niamey *cercle* and the Commander of Dori *cercle*, dated 17 March 1953.
- C 77. Letter No. 87 from the Head of Téra Subdivision to the Commander of Tillabéry *cercle* dated 3 June 1953.
- C 78. Telegram/letter No. 710 from the Commander of Tillabéry *cercle* to the Governor of Niger dated 22 December 1953.
- C 79. Report of a tour conducted from 16 to 23 November 1953 by Deputy-Administrator Lacroix (Tillabéry *cercle*), dated 24 December 1953.
- C 80. Alphabetical list of villages by *canton*, Torodi *canton* (extract), updated to 1 January 1954.
- C 81. Census tour of Tamou *canton* by the Head of Say Subdivision (extract), 25 March 1954.
- C 82. Telegram/letter No. 106 from the Head of Say Subdivision to the Commander of Niamey *cercle* dated 16 June 1954.
- C 83. Report of census tour of Torodi *canton* by the Head of Say Subdivision, dated 25 March 1954.
- C 84. Report from the Head of Téra Subdivision on the census of Diagourou *canton*, dated 10 August 1954.
- C 85. Geographical study of Téra Subdivision, extract from *Monographie de Téra*, National Archives of Niger, Ann. 19-1.1bis; presumed date 1955.
- C 86. Certified copy of 19 January 1961 of letter No. 104 from the Head of Say Subdivision to the Overseas France Chief Administrator, Commander of Niamey *cercle*, dated 14 May 1959; appended thereto: extract from the annual Report of the Head of Subdivision for the Year 1959, dated 20 January 1961.
- C 87. Letter No. 62/A1 from the Minister of Internal Affairs to the President of the Republic of Niger dated 16 January 1961.
- C 88. Note on the frontier problems between the Republics of Niger and Upper Volta (Téra *cercle* and Say Subdivision — Dori *cercle* and Oudalen Subdivision), dated 3 February 1961.
- C 89. Confidential letter No. 22/Cf from the Commander of Téra *cercle* to the Commander of Dori *cercle* dated 11 February 1961.
- C 90. Note on the frontier problems between the Republics of Niger and Upper Volta (Téra *cercle* and Say Subdivision — Dori *cercle* and Oudalen and Diapaga Subdivisions), dated 3 February 1961.
- C 91. Letter No. 297 Ai from the Commander of Dori *cercle* to the Commander of Téra *cercle* dated 26 September 1961.
- C 92. Letter 82 PRES/IS from the President of the Republic of Upper Volta to the President of the Republic of Niger dated 1 June 1962.

- C 93. Report of the meeting between the Head of Téra Subdivision (Niger) and the Head of Sebba Administrative Station (Upper Volta) dated 21 March 1963.
- C 94. Confidential letter No. 25/MI/AI/CF from the Minister for the Interior of Niger to the Head of Téra Division dated 7 January 1964.
- C 95. Certified copy of 24 January 1964 of confidential letter No. 00013/CONF from the Commander of Dori *cercle* to the Head of Téra Division dated 23 January 1964.
- C 96. Certified copy of 12 March 1964 of letter No. 4/CD from the Commander of Diapaga *cercle* to the Head of Say Subdivision c/o the Commander of Niamey *cercle*, dated 5 March 1964.
- C 97. Letter No. 49/CT from the Head of Téra Division to the Minister of the Interior of Niger dated 13 March 1964.
- C 98. Confidential letter No. 31/CF from the Head of Téra Division to the Minister of the Interior of Niger dated 20 March 1964.
- C 99. Report of the meeting between Upper Volta and Niger with a view to harmonizing relations between frontier peoples, dated 10 April 1964.
- C 100. Letter No. 445/AI/cf from the Niger Minister of the Interior to the Minister for Foreign Affairs, dated 22 April 1964.
- C 101. Record of tax receipts, Say District, Tamou *canton*, dated 3 September 1971.
- C 102. Record of tax receipts, Torodi *canton* (extract), undated, 1971.
- C 103. List of villages in Torodi *canton* (extract), 19 August 1973.
- C 104. Localities in Tamou *canton* (extract), undated, 1987.
- C 105. Letter DEC/934 from IGN France to the Secretary-General of the Niger Minister of State for Finance, dated 23 June 1988.
- C 106. Republic of Niger, Tillabéry *département*, Say District, list of polling stations in Say District (extract), 1 November 1989.
- C 107. List of villages and localities in Tamou and Torodi *cantons*, undated, 1991.
- C 108. List of villages and localities in Tamou and Torodi *cantons*, undated, 2001.

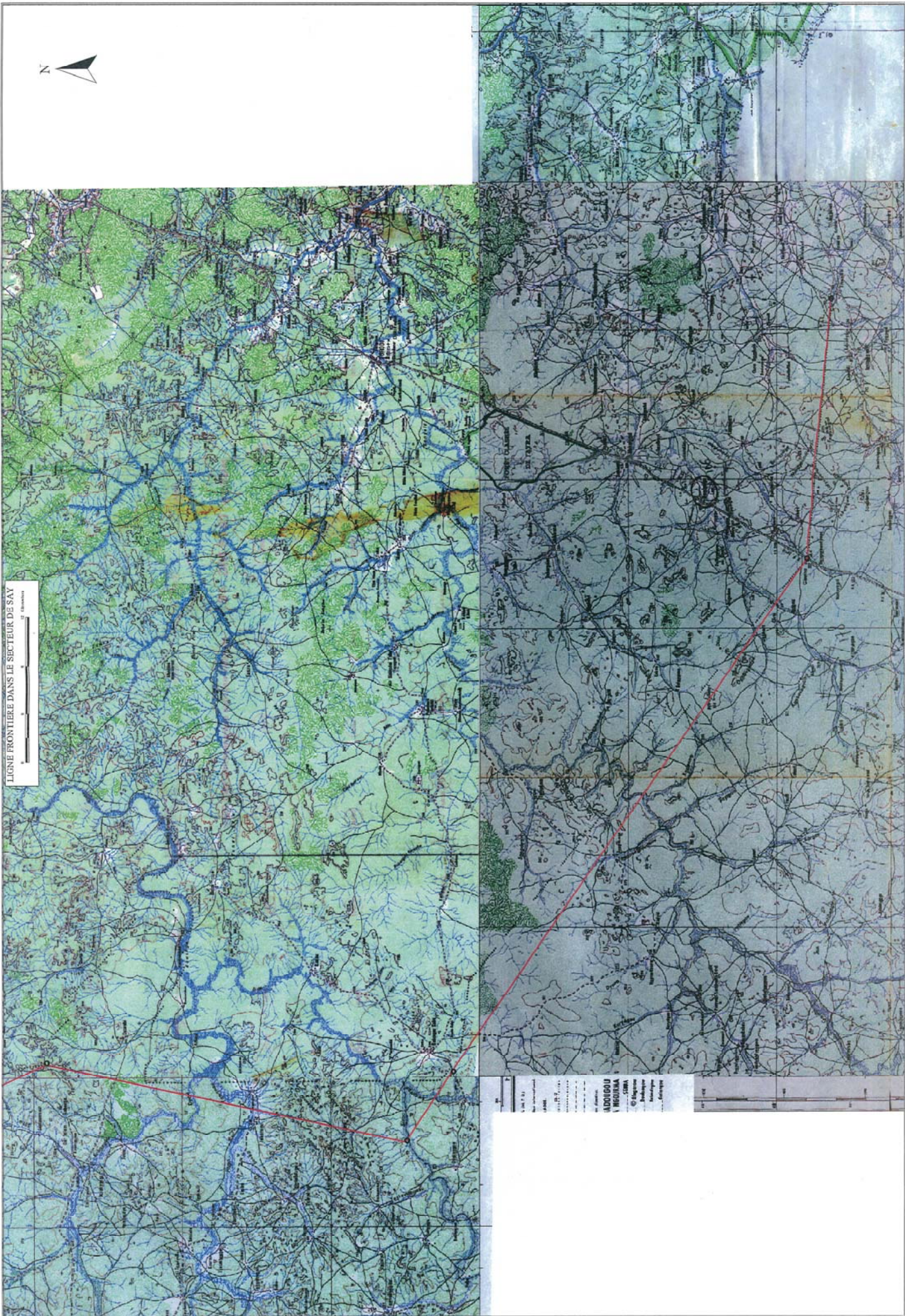
SERIES D — Maps

- D 1. Djerma *cercle*, 1:1,000,000 sketch-map prepared by Captain Boutiq, *cercle* Commander, dated 19 June 1909.
- D 2. Dori *cercle*, sketch-map by Administrator Delbos following a field mission conducted in June 1927.
- D 3. Tillabéry *cercle*, 1:200,000 sketch-map prepared by Administrator Prudon, June 1927.

- D 4. Say *cercle*, scale 1:500,000; Say, 1 April 1915, prepared by *cercle* Administrator Truchard.
- D 5. Africa 1:2,000,000: French Sudan, Provisional Edition, drafted, heliographed and published by the Army Geographical Section in 1925.
- D 6. Atlas of *Cercles*: Fascicle IV — Upper Volta, Map No. 60 — Say *cercle*, Geographical Department of French West Africa, scale 1:500,000, published by Forest, 17 rue de Buci, Paris, first printing, January 1926.
- D 7. Atlas of *Cercles*: Fascicle IV — Upper Volta, Map No. 53 — Dori *cercle*, Geographical Department of French West Africa, scale 1:1,000,000, published by Forest, 17 rue de Buci, Paris, first printing, January 1926.
- D 8. Atlas of *Cercles*: Fascicle IV — Upper Volta, Map No. 54 — Fada *cercle*, Geographical Department of French West Africa, scale 1:1,000,000, published by Forest, 17 rue de Buci, Paris, first printing, January 1926.
- D 9. Map of the Colonies of French West Africa to a scale of 1:500,000: Upper Volta, Niger, Dahomey, Niamey, survey map D 31 SW, drawn and published by the Geographical Department of French West Africa in Dakar under the direction of Commander de Martonne, heliographed and printed by éd. Blondel la Rougery, Paris, June 1926.
- D 10. Sketch-map of the Sahara and neighbouring regions on a scale of 1:1,000,000, Niamey ND 31, prepared by the Geographical Department of French West Africa, Dakar, 1926, drafted, heliographed and printed by the Army Geographical Section in 1927.
- D 11. Government-General of French West Africa: Colony of Upper Volta, road map, prepared by the Geographical Department of French West Africa, Dakar, according to the information provided by the Government of Upper Volta as well as the surveys and route maps of the Officers and NCOs of the Geographical Section, Mr. Carde being Governor-General of FWA and Mr. Hessling Lieutenant-Governor of Upper Volta, scale 1:1,000,000, E. Girard, publisher/geographer, 17-18 rue de Buci, Paris, 1927 edition.
- D 12. Map of Botou *canton*, May 1927.
- D 13. French West Africa: new frontier between Upper Volta and Niger (according to the Erratum of 5 October 1927 to the *Arrêté* of 31 August 1927), scale 1:1,000,000.
- D 14. French West Africa: general political and administrative map (semi-mural type), to a scale of 1:2,500,000, Second Edition 1928, showing the division into *cercles* of the eight Colonies, autonomous and mixed *communes*, chambers of commerce, railway stations, post and telegraph offices, wireless telegraph stations, military outposts, etc. (information as at 1 January 1928); prepared and published by the FWA Geographical Department, Dakar.
- D 15. Map of French West Africa to a scale of 1:3,000,000 prepared by A. Meunier, Geographer with the Ministry for the Colonies, 1930, Third Edition.
- D 16. Government-General of French West Africa, Niger Colony, road map to a scale of 1:2,500,000, 1934 Edition.

- D 17. Road map of Niger to a scale of 1:2,500,000, 1936 Edition, prepared, drawn, heliographed and printed by the FWA Geographical Department, Dakar.
- D 18. French West Africa: general political and administrative map (semi-mural type), to a scale of 1:2,500,000, Fourth Edition 1939, showing the division into *cercles* of the eight Colonies, autonomous and mixed *communes*, chambers of commerce, railway stations, post and telegraph offices, wireless telegraph stations, military outposts, etc. (information as at 1 January 1939); prepared and published by the FWA Geographical Department, Dakar
- D 19. AFRICA 1:1,000,000, Niamey (Second Edition) ND 31, map prepared by the FWA Geographical Department, Dakar, in 1926, drawn, heliographed and printed by the Army Geographical Section in 1927 (Third Edition, 1934), geographical section, General Staff No. 2465, War Office 1940, heliographed at O.S
- D 20. Sketch-map of French Africa on a scale of 1:1,000,000, Niamey ND 31, prepared, drawn and published by the *Institut géographique national* in 1946.
- D 21. Diagourou *canton*: scale 1:250,000, 1954.
- D 22. Map No. 1: Surface formations and hydrology, scale 1:200,000, BURGEAP 219-R.178, November 1954.
- D 23. Map of West Africa at 1:200,000: Republic of Mali, Republic of Niger, Republic of Upper Volta, Téra, sheet ND31 XIII, drawn and published by the *Institut géographique national*, Paris (West Africa Branch, Dakar), First Edition July 1960, reprinted September 1969.
- D 24. Map of West Africa at 1:200,000: Republic of Niger, Republic of Upper Volta, Sebba, sheet DN 31 VII, drawn and published by the Geographical Department, Dakar, 1960.
- D 25. Map of West Africa at 1:200,000: Republic of Niger, Republic of Upper Volta, Gothèye, sheet ND 31 VIII, drawn and published by the Geographical Department, Dakar, 1960.
- D 26. Map of West Africa at 1:200,000: Republic of Niger, Republic of Upper Volta, Diapaga, sheet ND 31 II, drawn and published by the Geographical Department, Dakar, 1960.
- D 27. TERA, Textual Data/Other Information, Sheet ND-31-XIII, map of French West Africa, 1:200,000.
- D 28. SEBBA, Other Information, Sheet ND-31-VII, map of French West Africa, 1:200,000.
- D 29. GOTHEYE, Other Information, Sheet ND-31-VIII, map of French West Africa, 1:200,000.
- D 30. DIAPAGA, Other Information, Sheet ND-31-II, map of French West Africa, 1:200,000.
- D 31. Upper Volta: road map, scale 1:1,000,000, designed and published by the *Institut géographique national*, Paris (Dakar Branch, First Edition, May 1963).
-

LIGNE FRONTIERE DANS LE SECTEUR DE SAY



LIGNE FRONTIERE DANS LE SECTEUR DE TERA

