

A Note on the International Court of Justice Ruling on the Chad-Libya Dispute

*Gerald Blake**

The International Court of Justice (ICJ) delivered its judgement in the Chad-Libya territorial dispute on 3 February 1994, after proceedings which had lasted since September 1990. Chad emerged as the clear winner in the case. The Court found that the boundary between Chad and Libya was defined by the Treaty of Friendship and Good Neighbourliness concluded between France and Libya on 10 August 1955¹. The line referred to in that Treaty has commonly featured on maps and atlases as the Chad-Libya boundary since 1919. The Court did not recognise any Libyan claims to the south of the line (Figure 1, Sketch Map No.4 of the ICJ).

The 1955 Treaty dealt with a whole range of issues among which was the question of frontiers (in Article 3 and Annex 1). Article 3 stated that the parties "*recognise*" the frontiers as those arising from international instruments in force at the time of Libyan independence in 1960. These were listed in Annex 1, including the Franco-British Convention of 8 September 1919 which broadly confirmed an earlier Franco-British Convention of 14 June 1898 whose purpose had been to define the northern limits of French influence in those parts, following the Fashoda incident in the same year.

By determining the Chad-Libya boundary in accordance with the 1919 Treaty line the Court clearly ruled that Libyan occupation of the Aouzou Strip was illegal. Libyan forces occupied the area in June 1973 on the grounds that a 1935 Treaty between France and Italy had conceded the Aouzou Strip to Italy². In fact France had never ratified the Treaty, possibly because of misgivings about the Italian invasion of Abyssinia. For whatever reason, the Treaty did not enter into force and was very rarely discussed until Colonel Qadhafi came to power in Libya in 1969.

Although the 1935 line had no validity it appeared with surprising regularity on maps, including some published by the United Nations. The French consistently protested about such maps on behalf of Chad.

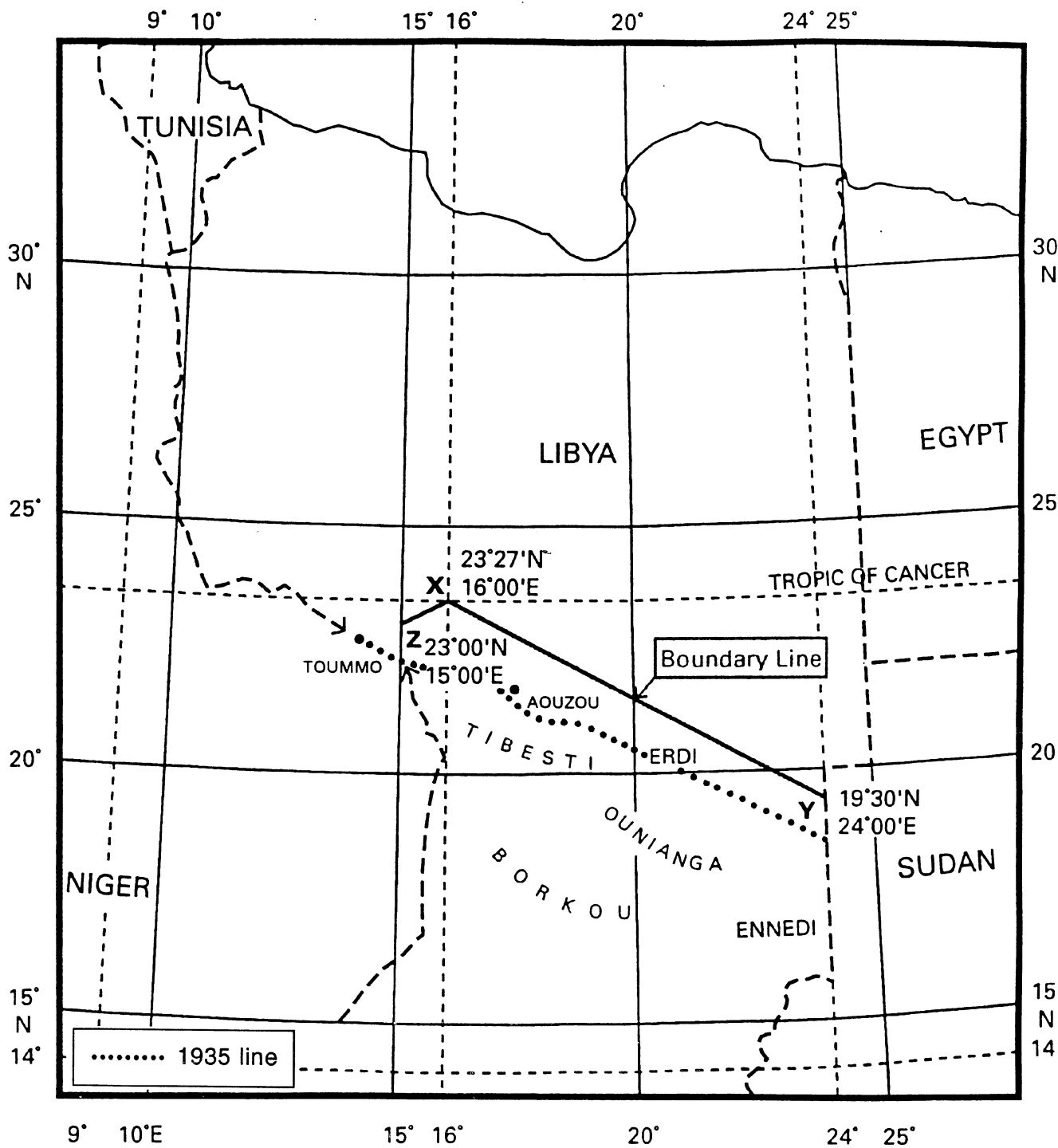
Against this background it was generally assumed that the Chad-Libya dispute was primarily about the Aouzou Strip, the 114,000km² (43,000 square miles) which lies between the 1919 and 1935 versions of the international boundary, and that this question would preoccupy the ICJ (Figure 1). The Libyan claim took the Court somewhat by surprise, extending as far south as 15° latitude in its eastern sector (Figure 2, Sketch Map No 1 of the ICJ).

Libya argued that there was no existing boundary with Chad, and asked the Court to determine one. Chad believed there to be an existing boundary with Chad, and asked the Court to declare what that boundary is.

Libya presented an ingenious case, based on an array of arguments demonstrating geographical, historic and administrative links between northern Chad and Libya. The Ottoman empire had extended its administration south from Libya into Chad by delegation of authority to the indigenous inhabitants. The Senoussi Order, whose power base was in Libya had also extended influence over northern Chad. Libya's arguments also included the needs of national security, especially the importance of controlling the Tibesti mountains to prevent hostile incursions from the south.

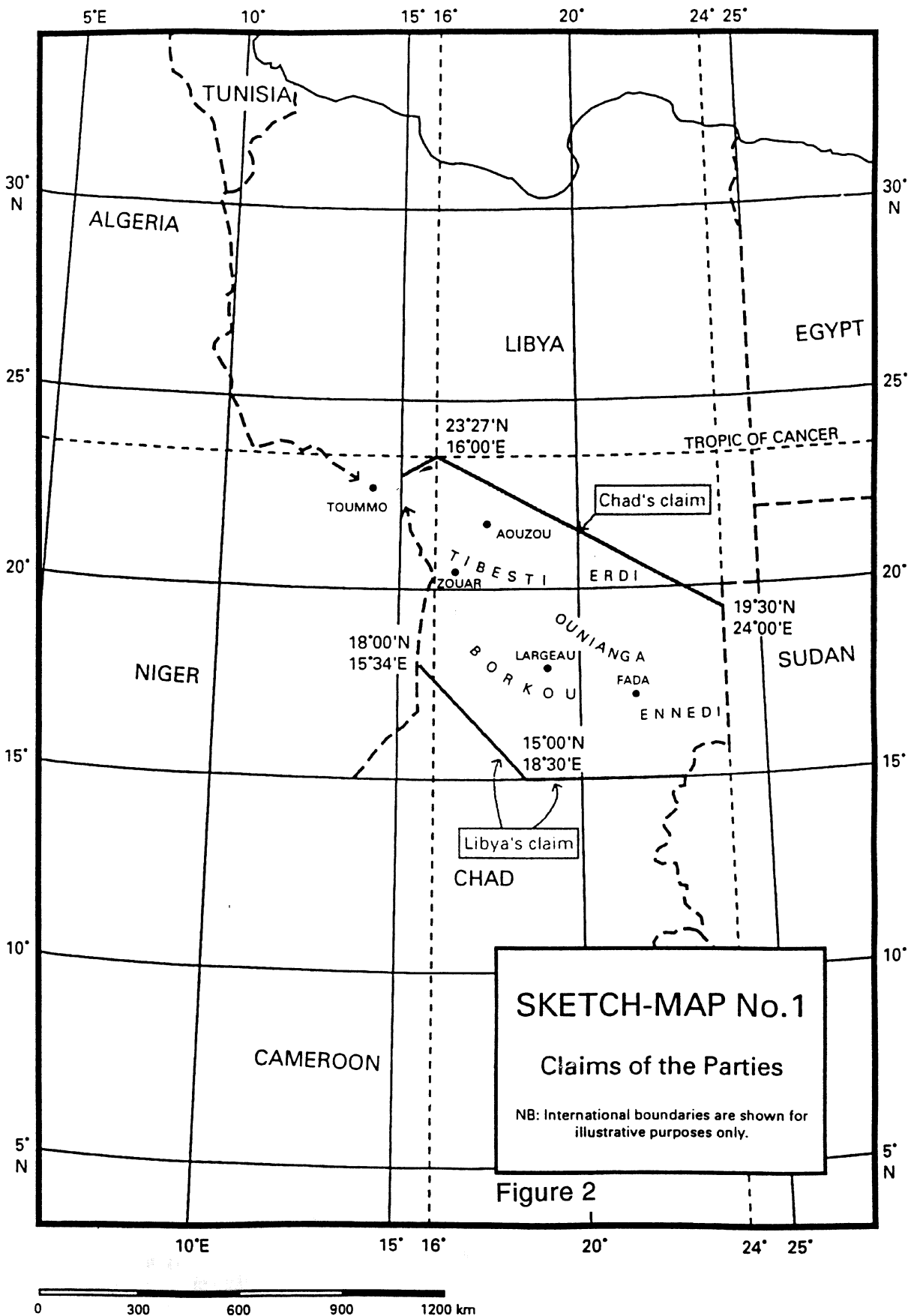
The Court's decision that the case was settled by the 1955 Treaty of Friendship made many of the arguments assembled by both parties redundant. There was no need, for example, for Chad to deploy arguments about French *effectivités* in the exercise of sovereignty in northern Chad. There were several Libyan objections to the validity of the 1955 Treaty.

While conceding that other boundaries were settled by that Treaty, the Libyans argued that the Chad-Libya boundary was excluded. It was suggested that Libya had been deceived by the Treaty, which Libya had assumed referred to the 1935 line as the Chad-Libya boundary in force at the time of Libyan independence.



SKETCH-MAP No.4
Boundary Line
determined by the
Court's Judgment
 NB: International boundaries indicated
 by pecked lines are shown for
 illustrative purposes only.

Figure 1



The Court rightly rejected these arguments. The Court argued that both parties had subsequently acted as though the 1955 frontier was accepted and agreed. For example, as part of the political deal surrounding the 1955 Treaty, France agreed to withdraw all remaining forces from bases in the Fezzan region of southern Libya, and this was done. Article 11 of the Treaty provided that "*the present Treaty is concluded for a period of 20 years*". The Court stated however that when a boundary has been the subject of agreement, its continued existence is not dependent upon the continuing life of the treaty under which the boundary is agreed. Once agreed, the boundary stands, for any other approach would undermine the fundamental principle of the stability of boundaries.

The Court defined the Chad-Libya boundary on the basis of the international instruments listed in Annex 1 of the 1955 Treaty (Figure 1). West of the line of 16°E longitude the boundary depends largely on a Franco-Italian Exchange of Letters in November 1902.

Chad asked the Court to determine a boundary only as far as 15°E, so there remains some uncertainty as to a small sector west of the 15°E line of longitude involving the Chad-Niger-Libya tripoint.

East of the line of 16°E longitude, the boundary runs in a south-easterly direction to meet the Sudan boundary at 24°E and 19°30'N, in accordance with the Convention of 8 September 1919 between Britain and France. This Convention specified these co-ordinates as being an agreed interpretation of the Declaration of 1899 which had not given the point of intersection with the 24°E line of longitude.

It remains to be seen whether Libya will now withdraw from the Aouzou Strip. During Court proceedings Libya declared that it was willing to accept the judgement of the International Court. If that proves to be the outcome it will be a triumph for the work of the Court and will earn Libya some credit in the international community. To date however Libyan statements appear to have been contradictory (see News Section pages 22-23), but talks about withdrawal are reported to have taken place in Ndajemena on 4 March which is a hopeful sign. The likelihood is that Libya will resort to delaying tactics while declaring a willingness to withdraw.

Notes

- 1 International Court of Justice, *Communiqué Concerning Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, No 94/4, 3 February 1994, 1-10
 - 2 Allcock, J.B. *et al* (eds) (1992) *Border and Territorial Disputes* (3rd edn.), Longman Current Affairs, 229-234.
- * Dr Gerald Blake is the Director of the International Boundaries Research Unit, University of Durham.

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