

The Legal And Diplomatic Evolution of Sudan - Zaire Boundary

***Bukhari Abdalla Elgaali**

* Ph.D.. in Law, London University, 1975.
Legal Counsellor, Department of legal Advice and legislation, Council of Ministers,
Kuwait.

Abstract

Among the issue of international law and international relations within Africa, none has been of greater immediate interest to the African States in the last three decades than that of their international boundaries. It is common-place that the contemporary political map of Africa represents for the most part the international boundaries which were established by the Colonial Powers. A firsthand account of how the Colonial Powers handled the paper partition of Africa was given by Lord Salisbury after the conclusion of the Anglo-French Convention in 1890, which established the basis for the international boundaries between the present States of Niger, Dahomy, Nigeria and Chad: "We have been engaged in drawing lines upon maps where no white man's foot ever trod; we have been giving away mountains and rivers and lakes of each other, only hindered by small impediment that we never knew exactly where the mountains and rivers and lakes were". Indeed geographical phrases or features were used extensively in the delimitation of the African boundaries, without exactly defining them. Accordingly many anomalies, difficulties and disputes are imposing themselves. Within this context the object of this article is to examine the origins of the present boundary between Sudan and Zaire, to trace its diplomatic evolution, to consider its legal aspects and to state their present status.

Introduction:

The Republic of Sudan, with an area of nearly one million square miles, is the largest state in Africa. The distance from east to west is almost as great as that from north to south, about 1,300 miles. This vast area has international boundaries with Egypt, Ethiopia, Kenya, Uganda, Zaire, the Central African Republic, Chad and Libya, in addition to its maritime boundaries.

While the history of a considerable part of the present Sudanese territory can be traced back to the Middle Kingdom period (2,000-1,600 B.C.), (Addison, 1935:21) the present boundaries of Sudan were substantially settled after the inception of the Anglo-Egyptian regime in 1899. A glance at the history of the eight African States sharing boundaries with Sudan shows that all major European colonial powers were involved in the evolution of the Sudanese international boundaries. In the Anglo-German Treaties of the 1st July 1890, (Hertslet, 1909: 899) and the 15th November 1893, (Hertslet:913) and the Anglo-Italian Treaty of the 24th March 1891, (Hertslet:948) the valley of the Upper Nile was recognised as a British sphere of influence. By the Anglo-Congo Agreement of the 12th May 1894 (Hertslet; 796) Great Britain granted to King Leopold II, as sovereign of the Congo Independent State, a lease of a large area in Bahr el Ghazal. In return, Britain was to lease a strip of territory extending to Lake Albert and Edward. The Anglo-French Convention of the 14th June 1898 (Hertslet: 795), regulated the boundaries between the British and French colonies, possessions, and spheres of influence to the west and east of the Niger, and the Anglo-French Declaration of 21st March 1899 (Hertslet: 796), established their respective spheres of influence in Central Africa and Sudan. These few examples indicate that Sudan shares with most African States a similar history regarding the evolution of its international boundaries, the expedients invented by colonial diplomacy for African expansion, and the modes (the so-called title deeds or other documents) by which the colonial powers acquired territories in Africa (Elgaali, 1982).

It must also be added that the decision of the British authorities to conquer Sudan in the last decade of the nineteenth century raised a number of important boundary problems. Not only was the extent of the territory extremely uncertain, but now neighbours had appeared since the days of the Turko-Egyptian regime as well as during the period of the Mahdist State. France established itself near the western frontiers of Sudan; Belgium established itself on the southern frontiers; and Italy succeeded in establishing itself on the north-east frontiers of Sudan. In 1889 Menelik, then independent King of Shoa, took advantage of the death of Emperor Yohannis and proclaimed himself Negus, King of Kings of Ethiopia. From the very beginning, Menelik showed territorial pretensions with the view of advancing his frontiers to the white Nile (Elgaali, 1979). The way that Britain dealt with, and eventually settled, the boundary of Sudan with Belgium i.e. the boundary of Sudan with the present day Zaire will be the focus of this article.

The boundary between Sudan and Zaire is unique among the international boundaries of Sudan, for at least two reasons. First: the diplomatic evolution of the boundary was especially intensely involved in the scramble among the European powers to acquire territories on the Upper Nile and in East and Central Africa during

the last fifteen years of the nineteenth century, since this is the only international boundary of Sudan to have emerged as a product of colonial competition between as many as four European Powers - Britain, the King of Belgium, France and Germany. This scramble was mainly responsible for several anomalies, and awkward devices of territorial adjustment. Second: the boundary, from its inception to the present day, has been formed throughout its entire length by the Nile-Congo watershed. The truth of these two propositions will emerge as the story unfolds; it suffices, for the moment, to say that there was no single instrument completely devoted to the boundary between Sudan and Zaire and that the legal instruments which settled this boundary were clauses of agreements meant to settle or adjust other territorial questions concerning the colonial administrations then involved, viz., those of Uganda and the Congo. It is not intended to embark on a complete examination of these instruments; they will be examined only to the extent to which they had direct bearing on the diplomatic evolution of the boundary between Sudan and Zaire. Accordingly, the topic will be discussed in accordance with the following sections:

- (1) the delimitation of 1894 and the Anglo-French Controversy;
- (2) the Convention of 1906 and the adjustment of the boundary;
- (3) the Nile-Congo watershed as basis for the boundary; and (4) the present legal status of the boundary and conclusion.

Section One

The Delimitation of 1894 And The Anglo-French controversy:

To understand the conflicts which were created by the Agreement of 1894 and the devices embodied in the Agreement, it is important to refer briefly to the circumstances that led to its conclusion between the United Kingdom and the Congo Free State. Arrangements had been made in 1890 between Sir W. Mackinnon of the Imperial British East Africa Company and the administrator of the Congo Free State, under which the Company agreed to waive in favour of the latter any powers which the former might acquire in the territories so described as a Charter Company administering in the British sphere with the sanction of the Crown; More importantly, the arrangement recognised the "sovereign rights" of the Congo Free State on the west bank of the Nile as far north as Lado, and the Company's "sovereign rights" over a strip territory from Uganda to lake Tanganyika (F.O./84/2082, 9.5.1890). This arrangement, commonly known as the "Mackinnon Treaty", was very clumsy, judged in its historical context, and complications were bound to arise. The cession of the strip of territory to the Company, for instance, could have pushed France to invoke its "right of preference" recognised by the International Association of the Congo in 1884. Indeed, the Association declared, in an exchange of notes with France, and undertook to give France "the right of preference if, through unforeseen circumstances, the Association were compelled to sell the Possessions".⁽¹⁾

The Foreign Office was very reluctant to sanction the "Mackinnon Treaty", (F.O./84/2086, 27.5.1890) for 'the last thing Salisbury wanted, in May and June 1890, was to give France a pretext for disrupting the delicate web of his African negotiations' (Sanderson, 1965:91). Accordingly, intensive consultations were undertaken by the British Government, King Leopold of Belgium, (F.O./84/2082,

5.6.1890) and the Company, which resulted in an agreement that the ratification of the "Mackinnon Treaty" Should be subject to the signature of an Additional Declaration (F.O./84/2084, 22.6.1890). This provided that the Congo Free State should make no cession of territory which might entail interference from France (F.O./84/2085, 9.7.1890). Thus, though the "Treaty" Continued to be valid, it emerged as without practical significance to the Company. On the other hand, it should not be overlooked that Salisbury succeeded in insuring against any French interference.

It is against this historical background that we proceed to consider the first stage in the diplomatic evolution of the present boundary between Sudan and Zaire. In this connection, two important facts should be borne in mind. The first is that the Imperial East Africa Company opted to surrender its concession at the end of 1892, that political vacuum was filled by the British Government, and the area eventually emerged, in 1894, as a British Protectorate. Secondly, the Congo Free State Administration, in virtue of the arrangements of 1890, continued to send exploring expeditions into the territory affected by them, and in fact, a number of treaties were collected and several posts were established ⁽²⁾. Most of these expansionist activities were within the British sphere of influence secured by the Heligoland Agreement between the British and German Governments, of 1890 (Hertslet, 1909:899). Though the British Government made an official protest to King Leopold about those activities, it was not in a position to press the matter very hard, not only because the region concerned was not under actual control by the British, but also because its tolerance vis-a-vis Leopold would, in effect, have kept the French away from the Upper Nile, at least for the time being.

Eventually, in examining this situation in connection with the Protectorate of Uganda, the British Government decided to put an end to all controversy and to come to an arrangement with Leopold which would be satisfactory to both parties. When the British Government approached him, it "found him fully disposed to enter into an arrangement which, while enabling him to continue the work he had commenced, would record his recognition of the position of Great Britain in her sphere, and of such claims as Egypt, and, through her, Turkey, may have to the Equatorial Provinces whose administration was abandoned owing to the evacuation of Sudan" (Supra, Note no. 17). The outcome was the Agreement of May 1894, between Britain and King Leopold, relating to the sphere of influence of Great Britain and the Independent State of the Congo in East and Central Africa (Hertslet, 1909: 578, Sanderson, 1955: 1-68).

The boundary between the British sphere and the Congo State was described in Article 1 (a) as follows:

It is agreed that the sphere of influence of the Independent Congo State shall be limited to the north of the German sphere in East Africa by a frontier following the 30th meridian east of Greenwich up to its intersection by the watershed in a northerly and north-westerly direction (Hertslet, 1909: 578).

The effect of this Article was to leave the whole of the Bahr-el-Ghazal in the Brit-

ish sphere, together with the Upper Nile east of the 30th meridian. The **quid pro quo** for recognition of British sovereignty to the north of the Congo Free State boundary of 1885-93 was that Britain agreed to lease to Leopold a region whose boundaries were described in Article 11 in the following way:

a line starting from a point situated on the west shore of lake Albert, immediately to the south of Mahagi, to the nearest point of the frontier defined in paragraph (a) of the preceding Article. Thence it shall follow the watershed between the Congo and the Nile up to 25th meridian east of Greenwich, and that meridian up to its intersection by the 10th parallel north, whence it shall run along that parallel directly to a point to be determined to the north of Fasheda. Thence it shall follow the "thalweg" of the Nile southward to lake Albert and the western shore of lake Albert to the point above indicated south of Mahagi (Hertslet: 578).

So far as the present boundary between Sudan and Zaire is concerned, it is important to note that the Agreement of 1894 for the first time laid down the boundary as **the watershed between the Congo and the Nile**. However, according to the same Article, the territories leased to King Leopold were, as can be seen in the map in the Appendix to this Article, divided into two distinct areas:

- (1) the area marked A (a portion of Sudan territory) was leased to King Leopold and to his heirs, as long as he or they remained sovereigns of the Congo Free State, even if the latter became a possession of the Belgian State;
- (2) the area marked B (including the area described as Lado Enclave) was leased to King Leopold for the period of his reign only. ⁽³⁾

It seems clear that the leases granted in the Anglo-Congolese Agreement of 1894 were of a remarkable nature and, indeed, were of peculiar diplomatic implications. For in many respects this Agreement was a modified version of the arrangement referred to above as the "Mackinnon Treaty" of 1890, held inactive by Salisbury to avoid any reaction from France. Lindley correctly notes that "Great Britain in thus granting to King Leopold a lease of a large tract of territory which she had never occupied, obtained from that monarch a recognition that the region was within her sphere of influence and, at the same time, endeavoured to take advantage of the Congo State's occupation of the territory" (Lindley, 1926: 241). And, as could be expected, no sooner was the Anglo-Congolese Agreement of May 12, 1894, published than both Germany and France protested, denying its validity.

It is not within the scope of this Article to go into the details of the German protest, for it was largely concerned with territories containing part of the present day boundary between Uganda and Zaire ⁽⁴⁾. The French protest, however, concerned territories which contained a portion of the present-day boundary between Sudan and Zaire. The French protest against the Agreement was mainly based on the grounds that France had pre-emptive rights by the Agreement of 1884, which, as residuary legatee, endowed to France under that Agreement. In an attempt to meet the French protest, white argued that "Great Britain, as the tutelary Power in Egypt,

has expressly reserved Egyptian rights in Sudan, and herself reserves her own sovereign rights whenever these may be implemented under the various treaties which, rightly or wrongly, constitute the Upper Nile basin a British sphere of influence. By leasing the Bahr-el-Ghazal to King Leopold, Great Britain, it is clear, does not cede any sovereign rights; and therefore, the question in dispute is not one, or should not be one, between Great Britain and France nor even between the Congo State and France alone: it is a question in which all the Signatory Powers of the Berlin Conference (1894-95) may rightly claim to have a voice" (White, 1894: 32).

The French protest was followed by intensive diplomatic representations between France, Britain and Belgium, coupled with a threat of military force by France against Belgium (Langer, 1960: 139). The cumulative result of the controversy was that the French protest was recognised, and given effect to, by Article IV of the Boundary Agreement of August 14, 1894, between France and the Congo Free State. This Article provided that "the Free State binds herself to renounce all occupation, and to exercise in the future no political influence west or north of a line thus determined: longitude 30° east of Greenwich, starting from its intersection of the watershed of the Congo and Nile basins, up to the point where it meets the parallel 5°30', and then along that parallel to the Nile" (Hertslet, 1909: 569). It may be recalled that one of the objectives of the British lease to King Leopold was to take advantage of the Congo Free State's occupation of the leased territory and consequently, to stop the French advance towards the Nile (Lindley, 1926: 241). As is evident from Article IV of the French-Congolese Agreement of 1894, the British attempt met with little success, for Leopold agreed to renounce the rights granted to him over the greater part of the lease, although he continued to occupy the area shown in the map as Lado Enclave.

Section Two

The Convention of 1906 And The Adjustment of The Boundary:

The next ten years, 1895-1905, witnessed developments which are of special importance in the diplomatic evolution of the boundary between Sudan and the present-day Central African Republic and Chad. In the last five years of the nineteenth century the French concentrated on extending their sphere of influence across Africa. Indeed, its advance eastwards towards the Upper Nile led eventually to the famous confrontation with Britain commonly known as the Fashoda incident. When in 1899 France renounced all its territorial ambitions concerning the Upper Nile, King Leopold, in turn, revived his claims to the Bahr-el-Ghazal under the terms of the Agreement of 1894. Britain declined to renew the lease, and protracted negotiations followed, and it was not until 1906 that a settlement was reached⁽⁵⁾. Thus, in accordance with Article 1 of the Anglo-Congolese Agreement of 1906, the two parties agreed to annul the lease granted by the Agreement of 1894, and that no claims should be put forward by either party in connection with that lease or with any right derived therefrom. It was also agreed that King Leopold should continue, during his reign, to occupy, on the same conditions, the territory then held by him and known as the Lado Enclave. However, the Enclave should be handed over to the Sudanese Government within six months of the termination of King Leopold's occupation. As

defined by the same Article, the Enclave comprises the territory bounded by a line drawn from a point on the watershed between the Nile and the Congo basins; thence the boundary follows the watershed up to its intersection from the north with the 30th meridian east of Greenwich, then that meridian up to its intersection with the parallel 5° 30' of north latitude, whence it runs along the parallel to the Nile; thence it follows the Nile southwards to Lake Albert, then the western shore of Lake Albert down to a point south of Mahagi (Hertslet, 1909: 584). It is clear that while the eastern and western frontiers of the Enclave were formed by natural features, the northern and southern consisted of arbitrary lines. As correctly noted by Stigand, "it is not surprising that such lines should ruthlessly cut tribes and sub-tribes, and even villages, in two, and so can in no sense be considered good boundaries. A frontier of this sort has often had to be designed on paper, where political reasons have demanded the delimitation of a territory as yet little known or exploited" (Stigand, 1923: 1).

more important is the fact that Article II of the Agreement of 1906 confirmed the general alignment of the boundary between the present-day Sudan and Zaire, as set up for the first time in 1894. The relevant part is:

The boundary between the Independent State of the Congo on the one hand and the Anglo-Egyptian Sudan on the other, starting from the point of intersection from the south of the meridian of 30° longitude east of Greenwich, with the watershed between the Nile and the Congo, shall follow the line of that watershed in a general north-westerly direction until it reaches the frontier between the Independent State of the Congo and French Congo (Hertslet, 1909: 585).

King Leopold died on December 17, 1909. As has been shown above, it had been agreed that his occupation of the Lado Enclave should be terminated within six months of his death. Thus, in fulfilment of this provision, the Belgian authorities notified the British Government of their intention to transfer the Enclave to the Sudan Government at the end of November 1909, and, indeed, the re-cession of Lado Enclave was completed by a joint commission on June 16, 1910⁽⁶⁾. In this connection, it may be recalled that with a view to simplifying administration an arrangement was made in 1913 by which Sudan took over Uganda territory on the east bank of the Nile as far south as Nimule in exchange for the south end of the Lado Enclave as far north as Dufile. (El Gaali, 1975: 122-190)

By the Agreement of 1915 between the United Kingdom and Belgium the Contracting Parties agreed to adjust their boundaries in East Africa. Indeed, as the official title of the Agreement indicates, it was essentially concerned with a portion which is part of the present-day boundary between Zaire and Uganda. The Agreement contained nothing concerning the boundary between Sudan and Zaire, although it could be argued that it confirmed, by implication, that the boundary was the Nile-Congo watershed. Thus, recalling the relevant parts of the Agreement of 1894, the Convention of 1906 and the Agreement of 1915, it can be asserted that the only description given of the boundary is, as the Nile-Congo watershed. No attempt was made in any of these documents to give any details of this vague geographical con-

cept. However, it is interesting to note that the Intelligence Division of the Naval Staff in its book entitled **A Handbook of the Anglo-Egyptian Sudan**, published in 1922, gave detailed description for the boundary between Sudan and the Belgian Congo (Handbook of the Anglo-Egyptian Sudan, 1922). But this well-detailed description of the boundary between Sudan and Zaire finds no support in any of the legal documents that have a special bearing upon the boundary. This is also evident from the correspondence passed between the Governments concerned in the period between 1922-1940. Moreover, the similar book issued by the same body, in 1944, about the Belgian Congo, described the boundary between the Congo and Sudan as "the watershed", and no attempt was made to give a detailed description of the watershed, in spite of the fact that the book contains a list of the Agreements concerning the delimitation and demarcation of the boundary of the Congo. (The Belgian Congo, 1944; 220) In these circumstances, it can hardly be said that the above description of 1922 is an accurate description of the watershed and that it represents an agreed boundary between the present-day Sudan and Zaire. It seems, however, that that description reflected the customary boundary as it was understood by the British Administration in 1922. From this point of view, it may also be asserted that that description of the boundary is a unilateral description which, as can be judged from the documents, never had binding force vis-a-vis the Belgian Administration in the Congo.

This leads us to consider the difficulties involved and the problems which may arise in any subsequent discussion about defining on the ground the Nile-Congo watershed which is supposed to be the boundary between the present-day Sudan and Zaire. For as Cukwurah correctly notes, "the identification of a boundary feature, be it a mountain range or a plateau, a lake, or a river, is only a first step. It does not answer the all-embracing question: where is the boundary line actually to be found?" (Cukwurah, 1967: 180)

Section Three

The Nile-Congo Watershed As A Boundary

Boggs, in a general treatment of watershed boundaries, (Boggs, 1940) recalling that the boundary between the Belgian Congo and Sudan follows the Congo-Nile watershed in a south-easterly direction and that part of this watershed is very flat and featureless, stated that "according to verbal report, an American missionary at Aba twenty-five or more years ago, desirous of ascertaining whether certain property was situated on the Belgian or the Sudan side of the boundary, engaged native porters to carry water for several days and to pour it on the land in question. He found that the water established a rill emptying into a stream known as part of the Congo system and therefore, that he was in the Belgian Congo" (Boggs, 1940: 167). Apart from its humorous aspect, this story posed the question of the exact meaning and limits of the Nile-Congo watershed.

Many of the boundaries in the world were defined as following a certain river, mountain, range, water parting, watershed or lake. Indeed the usage of phrases such as mountain range, mountain chain, massive, mountain mass, or the crest of the mountains are misleading in many cases (Holdich: 197). This kind of boundary definition was, for a long time, classified as natural boundaries. The difficulties in-

volved in such definitions and the inaccuracy of the classification is now well known and settled (Carrington, 1960: 424). As far as we are concerned in this Article, it suffices to direct our attention to the difficulties involved in the term "watershed" which was selected by the colonial powers as basic definition of the boundary between Sudan and the present day Zaire.

It seems that the term "**watershed**" is an English translation of the German word **wasserscheide**. The **Oxford English Dictionary** defines a 'watershed' as 'the line separating the waters flowing into different rivers or river basins, a narrow elevated tract of ground between two drainage areas' (Little, 1933:2394, Bouchez, 1963: 793). **Webster's International Dictionary** defines it as "the line of division between two adjacent rivers or lakes with respect to the flow of water by natural channels into them; the natural boundary of a basin." (Webster's, 1903: 1632) According to Adami, a watershed is "the line of water parting formed by joining all points where the water separates, whether on or below the ground, to follow respectively into the adjacent basins of the two rivers" (Adami, 1927:112). And, as defined in **A Glossary of Geographical Terms** (1961:482) the word means the line from which surface-streams flow in two different directions as well as the whole gathering ground of a river system. These definitions reflect the uncertainty as to the exact meaning of the term. Indeed, as pointed out in the **Glossary of Geographical Terms**, (1961:482) "the word is causing great confusion because of the complete difference between British and American usage. The British usage is equivalent to water-parting, the American equivalent to river basin."

Moreover it is well settled that water partings have certain peculiarities which should be fully appreciated (Jones, 1945:192). Among these Holdich has pointed out that a range may be traversed by one or more major rivers, yet be the water-parting for lesser streams. According to him "the greatest snow-peaks and glaciers of the world are piled on the summits of this vast crystalline axis of the Himalaya. Could any thing be better than this magnificent array of unapproachable snow and ice to serve as the unmistakable barrier between two vast Asiatic Countries? Nothing could be better, provided we do not define it as the **watershed** between India and Tibet. From its southern flanks the first beginnings of many mighty rivers flow southward to the plains of India; from its northern buttresses and spurs many a torrent pours northward and turns equally to the plains of India" (Holdich, 1899:469-70).

Although, so far as the boundary between Sudan and Zaire is concerned, one is tempted to adopt the English usage, equivalent to "water-parting", this in itself, does not solve the whole problem (Hinks, 1921:422-23). Diplomats in the nineteenth century, in concluding boundary documents, acted for a considerable time on the assumption that mountains form a good boundary line and that the slopes up to the summits were normally presumed to belong to the same State as the adjoining country (British and Foreign state papers, 714). The intention of the diplomats was to make the boundary coincide with the physical watershed. It should be borne in mind, however, that the water-parting is not always the same as the line of the highest crests and that in the case of a plateau, it does not, as a rule, coincide with the edge of the table or crest of the slope (Lindley, 1926:275). The second part of the quotation is of particular importance, because the "watershed" or "water-parting" between

the Nile and the Congo could be classified as a plateau rather than a mountain (The Belgian Congo, 1944:34).

A number of territorial agreements made between the colonial powers of Africa referred to watersheds as boundary lines between their administrations or spheres of influence. As far as our topic is concerned, the Nile-Congo watershed is generally described as:

an undulating plateau with an altitude varying from 4,200 feet in the east to about 2,000 feet in the west. Near the frontier with Uganda topography is more irregular than it is further west.(...)
Small mountains rise from the high plateau, and the country is broken as the edge of the Rift Valley is approached. The hills of the Congo Nile watershed rise 300 to 700 feet above the plateau and are bush-covered. On the Nile-Congo watershed small hills define the divide as far west as the point where the road from Faradje to Juba crosses the boundary, but from there to the source of the Bomu river, the watershed is a narrow strip of nearly flat bush-covered upland, sometimes as much as 2 miles in width, but generally much less, and from 2,000-3000 feet above sea level. The streams which rise on this flat upland might easily flow in either direction, for it is as undefined a watershed as that between the Zambezi and the Congo (The Belgian Congo, 1944:34).

This kind of topography, and particularly those parts which are very flat and featureless, (Boggs, 1940:167) are bound to give rise to some anomalies, if and when the boundary between Sudan and Zaire is demarcated on the ground. It should not be understood that no attempt to define this boundary on the ground was ever made. Indeed, the question figured for the first time as early as 1914 when, in a note to the Foreign Office, the Director of Military Operations emphasised the importance of the "delimitation" of the boundary between Sudan and the Congo (F.O. /371/1908, 4.2.1914). A joint Commission was formed, and arrangements for the delimitation were practically concluded, but the delimitation was postponed indefinitely owing to the outbreak of war.

The matter was initiated for the first time, after the war, by the Acting Governor of Uganda in connection with his proposal to the Colonial Office concerning the demarcation of a portion of the Uganda boundary which extended from this point where the boundary reaches the Congo-Nile watershed to the junction of the Uganda-Congo-Sudan boundaries. This proposal was conveyed by the colonial Office to the For-

Foreign Office. (F.O./371/4406, 22.7.1920) As usual, the latter requested the High Commissioner in Cairo to enquire of the Sudan Government whether there was any possibility of the proposal being carried out in connection with the Sudan-Congo boundary. (F.O./371/4406, 4.8.1920) he reported that the Sudan Government could not definitely state at that time how soon the demarcation could be undertaken. (F.O./371/4406, 8.9.1920). In a subsequent dispatch to the High Commissioner, the Governor-General of Sudan argued that the Sudan Government, although recognising the desirability of demarcating the Sudan-Congo boundary, was averse to pledging itself to undertake the survey within the next four years, viz. up to 1925.

Nothing further was heard of this question until in November 1922, the Acting Governor of Uganda, in a letter to the Secretary of State for the Colonies, enquired whether it was proposed that steps should be taken at an early date for the demarcation of the Sudan-Uganda-Congo boundary (Dakhliya, 1922). The normal series of consultations were made between the Foreign Office, the High Commissioner in Cairo, and the Governor-General of Sudan. The outcome was that the British authorities decided to postpone the matter. But this quiescence did not last long because the Belgian authorities brought up the question, and indeed, they suggested an expedition of a scientific nature, to carry out the demarcation of the boundary between the Congo and Uganda, as well as that between the Congo and Sudan. (F.O./141/664, 25.4.1924)

The Colonial Office, in noting the difference between the expedition proposed by the Belgian Ambassador and that contemplated by the Governor of Uganda, argued that the despatch of a scientific Commission would not be justified from the point of view of the British Government. Accordingly, in a subsequent despatch, the Belgian Ambassador was told that the British Government would prefer to postpone the proposed delimitation of the boundary between the Belgian-Congo on the one hand, and Sudan and Uganda on the other. The reason adduced was that the considerable expenditure which the demarcation would involve did not appear to the British Government to be warranted by the prevailing administrative requirements of the British territories concerned (Dakhliya, 1924).

It seems that the Belgian Government accepted the British view because, as can be seen from the document, nothing was heard of this question from November 1924 until 1930 when the Governor-General of the Congo in a direct despatch to the Governor-General of Sudan, noted the subject of the transgression of the boundary by subjects of the two Administrations (F.O./141/729, 22.11.1930). It is noteworthy that the issue was approached on the local level between the Governors of the two colonial administrations, as distinct from State-Level contact, i.e. between the Belgian and the British Governments.

Again a long silence followed until 1937, when it was reported that a Captain Verlinden was carrying out a survey of the boundary for the Congo Government. A despatch was sent to the British Embassy in Cairo, proposing correspondence with the Congo Government to get an assurance that they did not regard those activities as being in any way binding on the Sudan Government (F.O./141/630, 7.8.1937). The outcome was that Captain Verlinden was charged with a survey of the sources of Kaliga and Okaba Rivers, which are tributaries of the N'Zoro and rise close to the spot where the boundaries of the Sudan, Uganda and the Belgian Congo meet. More important is that:

An assurance is added that the survey and the marks erected by Captain V. affect only the Congo Government and are not intended to influence any delimitation of frontiers that may be undertaken by the two Governments in the future (F.O./141/630, 2.11.1937).

Apart from the Belgian Cartographic mission of 1937 which was intended to clarify the position of Ambeh Hill (the Sudanese name: "Mont Embe" according to the Congolese), (Dakhli, 14.12. 1939) there is nothing to be mentioned for the period 1937 to 1945. However, as a result of air photos taken by the R.A.F. in 1945, it became possible for the Sudanese authorities to show, on a scale of 1/50,000, the topography near the boundary all the way between Doruma and a point south-east of Yambio, and the position of the watershed was plotted with an accuracy of probably better than a mile. There were one or two gaps in the photographs, due to areas of thick forest where the stream heads, and therefore the watershed, could not be determined exactly (Dakhli, 30.10.1947). This was followed in 1946 by locating the boundary on the ground by a survey team at four points: (a) on the Bengengai-Doruma road; (b) on the path south of Sakure; (c) and (d) at two points on resettlement lines south-east of Yambio. It must be added that a copy of the air survey was sent by the Sudanese authorities to the Belgians, who acknowledged receipt without any reservations (Dakhli, 30.10.1947).

Thus, as can be seen in the foregoing examination, the boundary which was defined as early as 1894 as following the Nile-Congo watershed continued to be the same without final and definitive demarcation. Several attempts were made to define the boundary on the ground, but with one exception all of them ended without a satisfactory result. It remains to say that the Nile-Congo water-parting *per se* can hardly be described as a satisfactory boundary, for we find tribes living astride the frontier, and these people are unable to recognise the water-parting as a boundary, for, as described by Stigand in 1923, "it is a boundary which has never existed for them" (Stigand, 1923:70). According to Barbour, "on the west bank of the Nile, the frontier again pays little heed to the convenience of the inhabitants of the area, for by treaty it was settled that it should follow the watershed of the Nile and Congo drainage systems. In this way almost every tribe of the area has been divided, since the topography is for the most part such as to favour settlement along the watersheds rather than beside the rivers. The most flagrant example of this is the division of the large Zande tribe, which in 1953 was estimated to have 230,000 members in Sudan; 520,000 members in the Belgian Congo; and 20,000 in French Equatorial Africa" (Barbour, 1961:117).

Section Four

The Present Legal Status And Conclusion:

At the outset, the paper partition of Africa by the imperialist powers into territorial regions, as well as the delimitation of boundaries, was made at a time when the interior of the continent was still geographically unknown to Europe; although as early as the fifteenth century the continent had been continually circumnavigated (Harri-

son, 1956:731, Lucas, 1922:42-49) almost until the end of the nineteenth century Africa remained for the Europeans the Dark Continent. Books with titles such as "In Darkest Africa" served, by those very titles, to underline the remoteness and the isolation of the lands which so long remained unknown and unexplored by Europeans (Stamp, 1952:6) the few explorers who did visit the interior prepared maps which, owing to lack of precise instruments and unfavourable conditions, were not correct, and in some cases they were not even sure of what they had discovered⁽⁷⁾. It was under these conditions that the European politicians embarked on the task of delimitation of most of the present boundaries in Africa. A first-hand account of how they handled the paper partition of Africa was given by Lord Salisbury in the Mansion House after the conclusion of the Anglo-French Convention in 1890, which established the basis for the international boundaries between the present states of Nigeria, Dahomey, Niger and Chad:

We have been engaged in drawing lines
upon maps where no white man's foot
ever trod; we have been giving away
mountains and rivers and lakes to each
other, only hindered by the small
impediment that we never knew exactly
where the mountains and rivers and
lakes were (McMichael, 1954: 57, Anene, 1970:3).

Indeed, it did not take too long for the imperialist powers to complete the paper partitioning of Africa. It is generally agreed that colonial boundaries by their very nature have divided up a country without consideration for its natural divisions, routes, and linguistic or tribal boundaries (Fawcett, 1918:60, Kedleston, 1907:34). This point is closely linked to the basic criticism directed against the colonial boundaries in Africa - that they were superimposed on the cultural landscape. It is evident that the colonial delimitation had divided many ethnic groups; at the same time, such delimitation has created new nationalities with a new formal status as citizens of one and only one State (Svendsen, 1969:37).

It is not intended to deal with all the tribes which were, or for that matter remain, divided by the colonial boundaries. But, to quote a few examples: the Somalis have been scattered between Ethiopia, Somali, Kenya and Djibouti; the Zanda between the Sudan, Zaire, and the Central African Republic. Moreover, the Baka tribe - which is associated ethnographically with the Bongo Group of the Nile-Congo divide, was divided by the Nile-Congo watershed, which left a small isolated section on the Belgian side of the boundary. As far as the Sudan Administration is concerned, there was a small but steady infiltration of these people into the Sudan, despite the restriction of the Sleeping Sickness Regulations. (F.o. /141/729, 24.11.1933) Within only two decades (roughly, between 1885 and 1905), the entire continent was shared out - with but few exceptions - among six European powers: France, Great Britain, Portugal, Spain, Belgium and Germany. The imperialist powers relied basically upon the device of the so-called "sphere of influence", which can be considered as the first step towards the delimitation of boundaries in Africa. (El Gaali, 1979:8).

Indeed Africa consequently bears evidence of the fact that the powers hastened to make boundary agreements without finding time to survey and map unknown territories and without consulting the interests of native populations to the extent that they would presumably be considered today. (Boggs, 1940:156) For the African people, the colonial boundaries imposed upon and often cut across tribal units which had grown up in adjustment to conditions of the natural environment, (Whittlsey, 1944:332-4). and according to Rudin, the colonial boundaries were "written in the heavens" by Europeans, because the interior was almost totally unexplored. (Rudin, 1953:53) It would seem, therefore, that the present boundaries in Africa were superimposed.

Thus immediately after Sudan became an independent State in 1956, and prior to the emergence of Zaire as an independent State in 1960, the Belgian Embassy in Khartoum sent a note to the Sudanese Ministry of Foreign Affairs concerning the common boundary between Sudan and the then Belgian Congo. The note recalled that the boundary between Sudan and Uganda on the one hand, and the Belgian Congo on the other, had been defined by the Agreement of 1894, the Convention of 1906, and the Agreement of 1951. The note stressed that the boundary never been "demarcated" and that 'this is the case, in particular, of the Belgian Congo-Sudan border. This situation might in the future give rise to difficulties (Dakhli, 23.4.1957). The Belgian Embassy expressed its awareness of the difficulties involved in such a "delimitation" and for that reason suggested that the "delimitation" should be preceded by reconnoitring the field beforehand: "This reconnoitring would facilitate the subsequent demarcation of the border line". Accordingly, the Embassy suggested that a joint reconnaissance should be made by the two Governments.

The Belgian note was not clear in many parts and, indeed, in the particular circumstances of the boundary between Sudan and Zaire the terms employed could involve considerable difficulties. For, as can be seen, the note spoke of "demarcation" as well as of "delimitation"⁽⁶⁾. clearly at one point the note indicates that the boundary was delimited and that what was required was to demarcate the boundary on the ground. On the other hand, the note indicates that in order to demarcate the boundary the two countries should delimit the boundary in the first place. One possibility is that the terms "delimitation" and "demarcation" were used as synonyms. However, to assume this would merely add to the confusion. In any case, it is vital for the Sudan Government to clarify this point. It is needless to stress that the legal and practical difficulties involved in the process of delimitation are quite different from those involved in the process of demarcation.

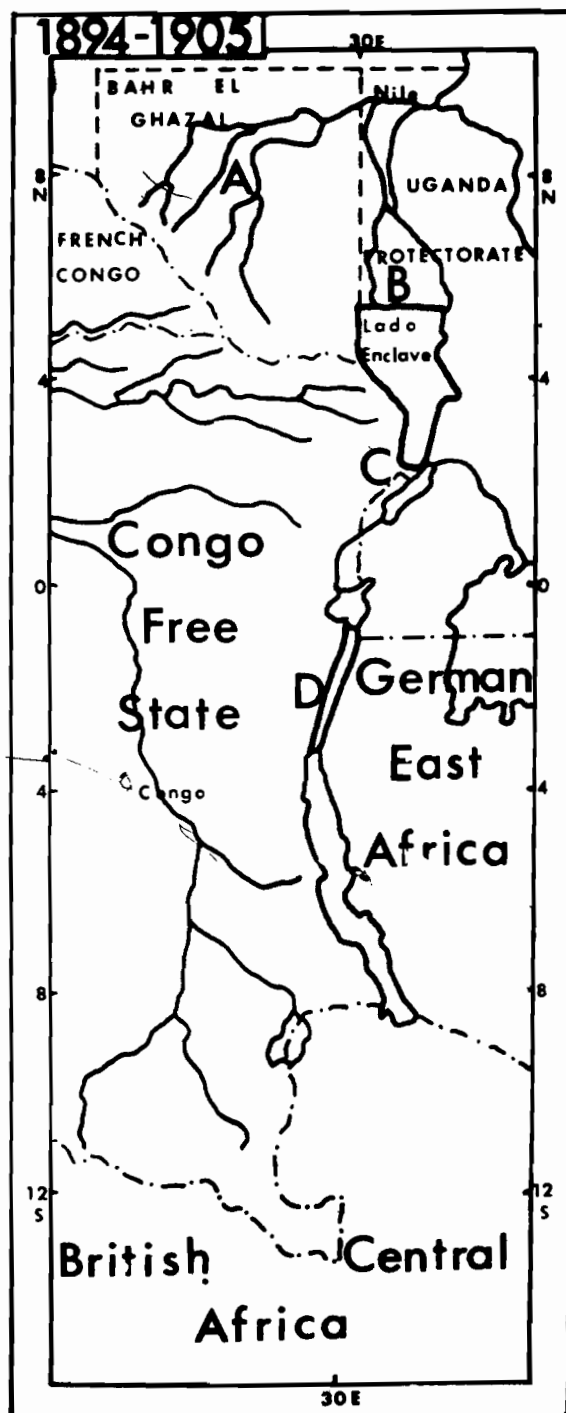
As can be judged from the documents, the reaction of the Sudan Government in 1957 was concerned with the practical difficulties of demarcating the boundary rather than with clarifying the ambiguity involved in using two different terms which are generally held to bear quite different meanings. From this point of view, it can be argued, however, that what the Sudan government understood from the Belgian note was a demarcation and not a "delimitation" because the Sudanese Ministry of Foreign Affairs, in its reply to the Belgian Embassy, referred specifically to "demarcation" of the boundary. (Dakhli, 3.11.1957)

Apart from what has been said above, it should also be noted that, so far as the Sudan is concerned, the Belgian Embassy always asked for demarcation of the

boundary between Sudan and the then Belgian Congo at the most unfavourable times. In this connection, it may be recalled that the first request to demarcate the boundary was made in 1923. That request, however, was rejected in 1924, due to the situation in Sudan at that time. Concerning the request of 1957 to demarcate the boundary, it is common knowledge that that time was a very unfavourable time for Sudan to get involved in such a proposal. At that time, the southern provinces of Sudan were in a state of emergency due to the disturbances of 1955. Moreover, any attempt to demarcate one part of the Sudan's boundary would have stirred up demands for similar demarcation from adjoining countries, especially as adjoining countries would have had to be called on to confirm the junction point. It was for all these reasons that the Sudanese Ministry of Foreign Affairs expressed its regrets to the Belgian Embassy that the proposed demarcation could not possibly be undertaken at that time (Dakhliya, 3.11.1957).

Nothing further has been heard of this question, from 1957 to the present. Meanwhile, however, important events took place which will have some bearing on the common boundary in the near future. The Belgian Congo emerged as an independent State in 1960. The previous attempts concerning the boundary were initiated by a colonial power with an independent State. Though one is tempted to argue that Zaire should be taken as having acquiesced in the colonial boundary, this should not be overstated. More important, however, is the fact that the state of war which continued in the southern part of Sudan from 1955 up to 1971 is over[®]. Tribes which were affected by the war are now fully rehabilitated, and have returned to their homes, which is almost certain to bring up again the question of the final settlement of the boundary. Although the local administrators on both sides of the boundary have enjoyed friendly relations for a long time and the boundary is well known to the local people, the definition of the boundary as the Nile-Congo watershed is highly unsatisfactory.

No doubt that the process of demarcation of the boundary is very expensive and because of this very reason, it is not advisable to embark on it. However, the problem of the Sudan-Zaire boundary is, in the first place, a problem of the exact definition of the boundary. It is highly recommended for both States to initiate serious negotiations with a view to come to a definitive delimitation for the common boundary at least on paper and maps.



Notes

1. See E. Hertslet, **The Map of Africa by Treaty**, 3rd ed. London: 1909. Exchange of notes between the Congo Free State and France, respecting the right of Pre-emption of France over the territory of Congo Free State, 23rd April 1884, P. 562.
2. Africa, No.4 (1894), Explanatory Despatch, dated May 23, 1894, from the Earl of Kimberley, published as a Parliamentary Paper.
3. In return for the above lease, the Congo Free State also leased to Britain a strip of territory, D, 15.5 Miles wide connecting the north end of lake Tanganyika with Lake Albert Edward. In 1910, the Mahagi strip (shown at C) 15.5 miles wide was leased. Hertslet, **The Map of Africa by Treaty**, 3rd ed. London: 1909.
4. The German protest against Article III of the Anglo-Congo Agreement was based upon ground that it infringed (a) the repeated declarations of neutrality by the Congo State, (b) the treaty between that State and Germany in 1884, (c) the General Act of 1895, and (d) the Anglo-German Convention of 1890.
5. F.O. Handbook, No 98, see also Langer, **The Diplomacy of Imperialism** PP.571-73.R.O. Collins, "Anglo-Congolese Negotiations 1900-1906" Zaire 12 (1958), 479 and 619.
6. It is interesting to note that the Sudan Government was for some time reluctant to assume responsibility for the Enclave, see Mongalla, 1.8.51, Wingate to Grost, 3.5.1910.
7. Speke was challenged by Burton on his theory of the discovery of source of the Nile, see Perham and Simons, **African Discovery**, London, 1957, P.143.
8. There has been some confusion in the past over the precise meanings of "delimitation" and "demarkation". It was not until the end of the nineteenth century that McMahon drew a distinction between the two. In his address to the Royal Artillery Institution in 1896, he said: Delimitation, to compromise the determination of a boundary by a treaty or otherwise and its definition in written, verbal terms. Demarcation, to compromise the actual Laying down of a boundary line on the ground, and its definition by boundary pillars or other similar physical means". See A.H.McMahon, "International Boundaries", **The Journal of the Royal African Society**, Vol.84 (1935), p.4, see Alson Curzon, **Frontiers**, 1907 p.51, Fawcett, **Frontiers**, 1918 p.6, Jones, **Boundary Making**, 1945. pp. 190-1.
9. The recent state of war which has broken in the southern part of Sudan does not affect the submission since Equatoria Province which has the main common boundary with Zaire is not seriously involved.

Bibliography

- | | |
|---|---|
| Adami, A. | National Frontiers in Relation to International Law , London: 1927. |
| Addison, F. | "An Archeological Survey of Sudan", in J.A. Hamilton (ed.)
The Anglo-Egyptian Sudan from Within , London: 1935. |
| Anene, J.C. | The International Boundaries of Nigeria , London: 1970 |
| Barbour, K.M. | The Republic of Sudan , A Regional Geography, London: 1961. |
| The Belgian Congo 1944. | Issued by Naval Staff Intelligence Division. |
| Boggs, S.W. | International Boundaries , New York: 1940. |
| Bouchez, L.J. | "The Fixing of Boundaries in International Boundaries Rivers".
International and Comparative Law Quarterly , (1963), P.793. |
| British and Foreign State Papers , Vol.89.p.714. | |
| Carrington, C.E. | "Frontiers in Africa", International Affairs , Vol. 36 1960. |
| Collins, R.O. | "Anglo-Congolese Negotiations, 1900-1906", Zaire 12 (1958), 479-619. |
| Cukwurah, A.O. | The Settlement of Boundary Disputes in International Law , Manchester: 1967. |
| Curzon of Kedleston. | Frontiers , The Romances Lecture, Oxford: 1907. |

- Dakhliia Sudan-Zaire-Boundary, Jarvist to Colonial Office, 14.11.1922.
Sudan-Zaire-Boundary, Foreign Office to the Belgian Ambassador in London. 1.11.1947.
Sudan-Zaire-Boundary, Director Surveys to Chief Conservator of Forests. 30.10.1947.
Sudan-Zaire-Boundary, Report on the Incident at Mont: Embe. 14.12.1939.
sudan-Zaire-Boundary, The Belgian Embassy in Khartoum to the Ministry of Foreign Affairs. 23.4.1957.
Sudan-Zaire-Boundary, The Sudanese Ministry of Foreign Affairs to the Belgian Embassy in Khartoum. 3.11.1957.
- Elgaali, B.A. **The Diplomacy of Boundaries in Africa: The Diplomatic Evolution and Legal Aspects of the Boundary Dispute between Sudan and Ethiopia, Kuwait: 1979.** (In Arabic)
-“The Sudan Boundary with Uganda”. Chapter IV, Viz. In “The Diplomatic Evolution and Legal Aspects of the International Boundaries of Sudan”, Unpublished Ph.D. Thesis Submitted to the University of London, 1975.
-Legal and Diplomatic Expedients for Colonial Expansion in Africa”, **Journal of Social Studies**, University of Kuwait, 1982.
- Fawcett, C.G. **Frontiers, A Study in Political Geography**, Oxford: 1918.
F.O./371/4406, Acting High Commissioner to Foreign Office, 8.9.1920.
F.O./141/664, The Belgian Ambassador to Foreign Office. 25.4.1924.
F.O./141/630, Civil Secretary of Sudan to His B.M's Ambassador and Extraordinary and Plenipotentiary, Cairo: 2.11.1937.
F.O./371/4406, Colonial Office to Foreign Office, 22.7.1920.
F.O./371/1908, Director of Military Operations to Foreign Office, 4.2.1914.
F.O./84/2082, Draft of the Treaty and Minutes of Salisbury, 9.5.1890.
F.O./371/4406, Foreign office to Allenby, 4.8.1920
F.O./141/729, Governor-General of Belgian Congo to the
Governor-General of Sudan, 22.11.1930.
F.O./141/630, Governor-General of Sudan to His Britannic Majesty's Charge d'Affaires, 7.8.1937.
F.O./141/729, Governor-General of Sudan to High Commissioner 24.11.1933.
F.O./84/2084, Leopold to Salisbury, 22.6.1890.
F.O./84/2086, Minutes by Salisbury on Anderson's Memorandum, 27.5.1890
F.O./84/2082, Minutes by Salisbury on Record by Anderson of the Meeting with Mckinnon, 5.6.1890.
F.O./84/2085, Salisbury to Leopold, 9.7.1890.
- A Handbook of the Anglo-Egyptian Sudan, 1922**, Issued by Naval Staff Intelligence Division.
- Harrison Church R.J. “The Impact of the Outer World on Africa”, in W.G. East (ed) **The Changing World**, London: 1956, p.731.
- Hertslet, E. **The Map of Africa by Treaty**, 3rd.Ed. London: 1909.
- Hinks, A.R. “Notes on the Technique of Boundary Delimitation”, **Geographical Journal**, Vol. 58, 1921.
- Holdich, T. **Political Frontiers and Boundary Making, The Diplomacy of Imperialism**, 2nd ed. New York: 1960.
“The Use of Political Geography Issustrated by recent Frontier Operations **Geographical Journal**, Vol.13. (1899). 469-70.
- A Glossary of Geographical Terms**, L.D. Stamp Ed., London: 1961.

-
- Jones, S.B. **Boundary-Making**, Washington, 1945.
- Langer, W. **The Diplomacy of Imperialism**, 2nd ed. New York: 1960.
- Lindley, M.F. **The Acquisition and Government of Backward Territories in International Law**, London: 1926.
- Little, W. **The Shorter Oxford English Dictionary on Historical Principles**, Oxford, 1933.
- Lucas, C. **The Partition and Colonisation of Africa**, Oxford: 1922.
- McMichael, H. **The Sudan**, London: 1954.
- Perham and Simons. **African Discovery**, London: 1977.
- Rudin, H.R. "Africa in Perspective", **Journal of International Affairs**, Vol. VII, No.2. 1953.
- Sanderson, C.N. **England, Europe and the Upper Nile**, Edinburgh: 1965.
- "Leopold II and the Nile Valley, 1880-1906 **Proceedings of the Sudan Historical Association**, Vol. 7, 1955.
- Stamp, L.D. **Africa**, New York: 1952.
- Stigand, C.H. **Equatoria: The Lado Enclave**, London: 1923.
- Svendsen, K.E. "The Economics of the Boundaries in West, Central and East Africa", (in) Widstrand Uppsala, (ed). **African Boundary Problems**, 1969.
- Webster's **International Dictionary of the English Language**, London: 1903.
- white, A.S. "The Partition of Africa", **Nineteenth Century**, 1894.
- whittlsey. **The Earth and the State**, 2nd ed. New York: 1944.
-