Chapter Three

Sanctioning Colonial Legacies in the Sahara?
The Construction of Postcolonial Selfhood in the
Libya/Chad Territorial Dispute

1) Introduction

On 3 February 1994 far from the mountainous and sandy expanses of the central Sahara, the ICJ brought the protracted conflict between Libya and Chad to an end by ruling that the Aouzou Strip separating the two states was part of Chad. Responses to the ruling were swift; under UN auspices, Libyan troops withdrew from the territory and aside from occasional flights of rhetoric by Libya's leader, Qadhāfi, it would seem that the Court has resolved a postcolonial conflict of the most complex kind. 2 Many other methods of dispute resolution had failed to quieten neighbourly hostilities, prompting speculation about how and why international law could succeed where military conflict, regional institutions and negotiations had failed. These background factors were overlooked by the Court in its judgment, but they will be revisited throughout the chapter to explore how the parties as well as the Court drew boundaries, not only in the sand, but more importantly, between ‘law’ and ‘politics’. Representations of the relationship between law and politics diverged considerably, and so this Case is an ideal site in which to explore the discursive options available to postcolonial states in the courtroom. Given that this research is concerned with mapping legal grammars at play in ICJ territorial adjudication, the main task of this chapter will be to evaluate patterns of argumentation employed by the Court and the parties. What does the grammar of international law proscribe for states speaking

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1 Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad) (1994) ICJ Reps, p. 6, hereinafter Libya/Chad.

about the relationship between ‘law’ and ‘politics’ and which words or lexicon can be used in such an endeavour?

Perhaps more than any other ICJ case in this book, the *Territorial Dispute* captures the postcolonial paradox confronting Third World states in their resort to international law. Parties in ICJ disputes enter a courtroom where a number of cases about title to territory have already been heard. The law applied in such cases is largely a product of European experiences of statehood; ideas of effective control, international legal personality and the validity of treaties are all framed through the prism of European dominance and predominance during the colonial period as discussed in this Part’s introduction. For Third World states forged out of the colonial context, a dilemma emerges: to what extent should the postcolonial state be constituted through colonial practice and colonial history? Can postcolonial states escape the structuring device of colonialism? Libya and Chad answered these questions in diametrically opposed ways. On the one hand, Libya sought to subvert colonial legacies through an historical survey that characterised Ottoman and indigenous occupation as having continuing legal relevance for its title over the Aouzou Strip. Libya demonstrated how historical arguments lie at the heart of legal constructions of both personality and territory. Chad’s presentation, on the other hand, is marked ‘par l’absence de toute d’arguments d’ordre historique’.3 Instead of offering an account of pre-colonial selfhood, Chad relied solely on colonial practice in the hope of succeeding to French title through colonial treaties. The Court fulfilled these Chadian hopes by delivering a judgment confined to questions of treaty interpretation. In fact, the language of limitation is regularly invoked in the judgment, suggesting a bench at pains to defend itself against the disruptive ramifications of Libya’s ‘politicised’ position.

What were the implications of Libya’s position, and why did the Court reject these ideas so stridently through its silence? The division between successful and unsuccessful adjudicative strategies suggests that the Court did not understand the language spoken by Libya; Libya had transgressed the boundaries of suitable argument and was deemed incompetent for this reason. Libya’s claims challenged prevailing understandings about international law’s past by offering alternative approaches to international legal personality under colonialism. More disturbingly for proponents of postcolonial stability in Africa, it questioned the value of a blind acceptance of *uti possidetis*. Could Libya have succeeded if it had toned down its arguments, or was its failure grammatically pre-determined by a language premised on the law/politics dichotomy and postcolonialism’s