COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE À LA SENTENCE ARBITRALE DU 31 JUILLET 1989

(GUINÉE-BISSAU c. SÉNÉGAL)

ARRÊT DU 12 NOVEMBRE 1991

1991

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
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CASE CONCERNING THE ARBITRAL AWARD OF 31 JULY 1989

(GUINEA-BISSAU *v.* SENEGAL)

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CASE CONCERNING THE ARBITRAL AWARD OF 31 JULY 1989

(GUINEA-BISSAU *v.* SENEGAL)

International arbitral award — Application based on Article 36, paragraph 2, of the Statute, requesting Court to declare inexistence or nullity of the award — Recognition by both Parties that proceedings not by way of appeal — Jurisdiction not disputed by Respondent.

Allegation of abuse of process.

Possible effect of absence of arbitrator from meeting at which award delivered to Parties.

Inexistence of award attributed to lack of real majority — Declaration appended to award by President of Tribunal did not invalidate his vote.

Nullity of award on grounds of excès de pouvoir *and insufficiency of reasoning — Second question put to Tribunal by arbitration agreement to be answered "In the event of a negative answer" to the first question — No reply given to second question — Whether lack of reply supported by sufficient reasoning — Criticism of structure of award.*

Interpretation by tribunal of provisions of arbitration agreement governing its competence — Role of the Court in nullity proceedings not to determine what interpretation might be preferable but to ascertain whether tribunal acted in manifest breach of competence conferred by arbitration agreement — Application of relevant rules of treaty interpretation — Ordinary meaning of words confirmed by travaux préparatoires.

Argument that Tribunal required to answer both questions in any event — Absence of agreement of Parties to that effect when Arbitration Agreement drafted — Argument that Tribunal's answer to first question was partially negative — Interpretation of expression "negative answer" — Tribunal's answer to first question was complete and affirmative answer.

Provision in Arbitration Agreement for drawing of boundary line on a map — Decision not to attach map sufficiently reasoned — Absence of map not, in the circumstances of the case, such an irregularity as would render award invalid.

JUDGMENT

Present: *President* Sir Robert JENNINGS; *Vice-President* ODA; *Judges* LACHS, AGO, SCHWEBEL, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, AGUILAR MAWDSLEY, WEERAMANTRY, RANJEVA; *Judges* ad hoc THIERRY, MBAYE; *Registrar* VALENCIA-OSPINA.

In the case concerning the Arbitral Award of 31 July 1989,

between

the Republic of Guinea-Bissau,

represented by

H.E. Mr. Fidélis Cabral de Almada, Minister of State attached to the Presidency of the Council of State of Guinea-Bissau,

as Agent;

H.E. Mr. Fali Embalo, Ambassador of Guinea-Bissau to the Benelux countries and the European Communities,

as Co-Agent;

Mrs. Monique Chemillier-Gendreau, Professor at the University of Paris VII,
Mr. Miguel Galvão Teles, Advocate and former Member of the Council of State of Portugal,
Mr. Keith Highet, Adjunct Professor of International Law at the Fletcher School of Law and Diplomacy and Member of the Bars of New York and the District of Columbia,
Mr. Charalambos Apostolidis, Lecturer at the University of Bourgogne,

Mr. Paulo Canelas de Castro, Assistant Lecturer at the Law Faculty of the University of Coimbra,
Mr. Michael B. Froman, Harvard Law School,

as Counsel;

Mr. Mario Lopes, Procurator-General of the Republic,
Mr. Feliciano Gomes, Chief of Staff of the National Navy,

as Advisers,

and

the Republic of Senegal,

represented by

H.E. Mr. Doudou Thiam, Advocate, former Bâtonnier, Member of the International Law Commission,

as Agent;

Mr. Birame Ndiaye, Professor of Law,
Mr. Tafsir Malick Ndiaye, Professor of Law,

as Co-Agents;

Mr. Derek W. Bowett, Q.C., Queens' College, Cambridge; Whewell Professor of International Law, University of Cambridge,
Mr. Francesco Capotorti, Professor of International Law, University of Rome,
Mr. Ibou Diaite, Professor of Law,
Mr. Amadou Diop, Legal Adviser, Embassy of Senegal to the Benelux countries,
Mr. Richard Meese, Legal Adviser, partner in Frere Cholmeley, Paris,

as Counsel,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 23 August 1989 the Ambassador of the Republic of Guinea-Bissau to the Netherlands filed in the Registry of the Court an Application instituting proceedings against the Republic of Senegal in respect of a dispute concerning the existence and validity of the Arbitral Award delivered on 31 July 1989 by an arbitration tribunal established pursuant to an Arbitration Agreement between the two States dated 12 March 1985. In order to found the jurisdiction of the Court the Application relied on the declarations made by the two Parties accepting the jurisdiction of the Court as provided for in Article 36, paragraph 2, of the Statute of the Court.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was communicated forthwith by the Registrar to the Republic of Senegal; in accordance with paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

3. By an Order dated 1 November 1989 the Court fixed time-limits for the written proceedings (Memorial of Guinea-Bissau and Counter-Memorial of Senegal).

4. Since the Court at that time included upon the Bench a judge of Senegalese nationality, Judge Kéba Mbaye, Vice-President of the Court, but did not include a judge of the nationality of Guinea-Bissau, the Government of Guinea-Bissau, in exercise of its right under Article 31, paragraph 2, of the Statute of the Court, chose Mr. Hubert Thierry to sit as judge *ad hoc* in the case.

5. On 18 January 1990 the Government of Guinea-Bissau filed in the Registry of the Court a request, on the basis of Article 41 of the Statute of the Court and Article 74 of the Rules of Court, for the indication of provisional measures. By an Order dated 2 March 1990, the Court, after hearing the Parties, dismissed that request.

6. The Memorial and Counter-Memorial having been duly filed within the time-limits fixed by the Court, the case became ready for hearing in accordance with Article 54, paragraph 1, of the Rules of Court.

7. On 5 February 1991 the term of office of Judge Mbaye came to an end in accordance with the Statute. The Government of Senegal thereupon became entitled, under Article 31, paragraph 3, of the Statute of the Court, to choose a judge *ad hoc* to sit in the case, and chose Judge Mbaye.

8. At public hearings held between 3 and 11 April 1991, the Court heard oral arguments addressed to it by the following:

For the Republic of Guinea-Bissau: H.E. Mr. Fidélis Cabral de Almada,
Mrs. Monique Chemillier-Gendreau,
Mr. Miguel Galvão Teles,
Mr. Keith Highet.

For the Republic of Senegal: H.E. Mr. Doudou Thiam,
Mr. Derek W. Bowett, Q.C.,
Mr. Francesco Capotorti.

In the course of the hearings, questions were put to both Parties by Members of the Court; replies in writing were filed in the Registry in accordance with Article 61, paragraph 4, of the Rules of Court.

9. During the hearings, the Agent of Guinea-Bissau requested the Court to authorize the calling as a witness or expert witness of a person already included, as an adviser, in the list of those representing that State furnished by it to the Court; the Agent of Senegal, on the basis, *inter alia*, of Article 57 of the Rules of Court, objected to this being done. After consideration, the Court decided that it would not be appropriate to accede to the request of Guinea-Bissau.

* *

10. In the course of the written proceedings, the following submissions were presented by the Parties:

On behalf of the Republic of Guinea-Bissau,

in the Memorial:

"For the reasons set forth above, and for any other reasons adding to or amending them which it reserves the right to submit and elaborate on during the subsequent written and oral proceedings, the Government of Guinea-Bissau respectfully asks the Court to adjudge and declare:

— that the so-called 'award' of 31 July 1989 is inexistent in view of the fact that one of the two arbitrators making up the appearance of a majority in favour of the text of the 'award', has, by a declaration appended to it, expressed a view in contradiction with the one apparently adopted by the vote;

— subsidiarily, that that so-called decision is absolutely null and void, as the Tribunal failed to reply to the second question raised by the Arbitration Agreement, whereas its reply to the first question implied a need for a reply to be given to the second, as it did not comply with the provisions of the Arbitration Agreement by which the Tribunal was asked to decide on the delimitation of the maritime areas as a whole, to do so by a single line and to record that line on a map, and as it has not given the reasons for the restrictions thus improperly placed upon its jurisdiction;

— that the Government of Senegal is thus not justified in seeking to require the Government of Guinea-Bissau to apply the so-called award of 31 July 1989."

On behalf of the Republic of Senegal,

in the Counter-Memorial:

"Considering the *facts and arguments* stated above, the Government of the Republic of Senegal requests the Court to:

1. Reject the Submissions of the Government of the Republic of Guinea-Bissau directed at establishing the inexistence and, subsidiarily, the nullity of the Arbitral Award of 31 July 1989.

2. Adjudge and declare that the said Arbitral Award is valid and binding for the Republic of Senegal and the Republic of Guinea-Bissau, which have the obligation to apply it."

11. At the conclusion of its last oral statement, each Party presented submissions identical to those contained respectively in the Memorial and the Counter-Memorial.

* * *

12. The events leading up to the present proceedings are as follows. On 26 April 1960 an Agreement by exchange of letters was concluded between France, on its own behalf and that of the *Communauté*, and Portugal for the purpose of defining the maritime boundary between the Republic of Senegal (at that time an autonomous State within the *Communauté*) and the Portuguese Province of Guinea. The letter of France proposed *(inter alia)* as follows:

"As far as the outer limit of the territorial sea, the boundary shall consist of a straight line drawn at 240° from the intersection of the prolongation of the land frontier and the low-water mark, represented for that purpose by the Cape Roxo lighthouse.

As regards the contiguous zones and the continental shelf, the delimitation shall be constituted by the prolongation in a straight line, in the same direction, of the boundary of the territorial seas."

The letter of Portugal expressed its agreement to this proposal.

13. After the accession to independence of Senegal and Guinea-Bissau a dispute arose between them concerning the delimitation of their maritime areas. This dispute was the subject of negotiations between them from 1977 onward, in the course of which Senegal asserted, *inter alia*, that the line defined in the 1960 Agreement had been validly established, while Guinea-Bissau disputed the validity of that Agreement and its opposability to Guinea-Bissau, and insisted that the maritime areas in question be delimited without reference to the Agreement.

14. On 12 March 1985 the Parties concluded an Arbitration Agreement for submission of that dispute to an arbitration tribunal; the terms of the Agreement, so far as relevant to the questions now before the Court, were as follows:

"The Government of the Republic of Senegal and the Government of the Republic of Guinea-Bissau,

Recognizing that they have been unable to settle by means of diplomatic negotiation the dispute relating to the determination of their maritime boundary,

Desirous, in view of their friendly relations, to reach a settlement of that dispute as soon as possible and, to that end, having decided to resort to arbitration,

Have agreed as follows:

Article 1

1. The Arbitration Tribunal (hereinafter called "the Tribunal") shall consist of three members designated in the following manner:

Each Party shall appoint one arbitrator of its choice;

The third arbitrator, who shall function as President of the Tribunal, shall be appointed by mutual agreement of the two Parties or, in the absence of such agreement, by agreement of the two arbitrators after consultation with the two Parties.

2. . . .

3. . . .

Article 2

The Tribunal is requested to decide in accordance with the norms of international law on the following questions:

1. Does the Agreement concluded by an exchange of letters on 26 April 1960, and which relates to the maritime boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?

2. In the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?

. . . .

Article 4

1. The Tribunal shall take its decisions only in its full composition.

2. The decisions of the Tribunal relating to all questions of substance or procedure, including all questions relating to the jurisdiction of the Tribunal and the interpretation of the Agreement, shall be taken by a majority of its members.

. . . .

Article 9

1. Upon completion of the proceedings before it, the Tribunal shall inform the two Governments of its decision regarding the questions set forth in Article 2 of the present Agreement.

2. That decision shall include the drawing of the boundary line on a map. To that end, the Tribunal shall be empowered to appoint one or more technical experts to assist it in the preparation of such map.

3. The Award shall state in full the reasons on which it is based.

4. . . .

Article 10

1. The Arbitral Award shall be signed by the President of the Tribunal and by the Registrar. The latter shall hand to the Agents of the two Parties a certified copy in the two languages.

2. The Award shall be final and binding upon the two States which shall be under a duty to take all necessary steps for its implementation.

3. . . .

Article 11

1. No activity of the Parties during the course of the proceedings may be deemed to prejudge their sovereignty over the areas the subject of the Arbitration Agreement.

2. . . .

. . . .

Done in duplicate in Dakar, on 12 March 1985, in the French and Portuguese languages, both texts being equally authentic."

15. An Arbitration Tribunal was duly constituted under the Agreement, by the appointment first of Mr. Mohammed Bedjaoui and then of Mr. André Gros, Arbitrators, and of Mr. Julio A. Barberis, President. On 31 July 1989 the Tribunal pronounced the Award the existence and validity of which have been challenged in the present proceedings. According to this Award it was adopted by the votes of the President of the Tribunal and Mr. Gros, over the negative vote of Mr. Bedjaoui.

16. The findings of the Tribunal may for the purposes of the present judgment be summarized as follows. The Tribunal concluded that the 1960 Agreement was valid and could be opposed to Senegal and to Guinea-Bissau (Award, para. 80); that it had to be interpreted in the light of the law in force at the date of its conclusion (*ibid.*, para. 85); that

> "the 1960 Agreement does not delimit those maritime spaces which did not exist at that date, whether they be termed exclusive economic zone, fishery zone or whatever . . .",

but that

> "the territorial sea, the contiguous zone and the continental shelf . . . are expressly mentioned in the 1960 Agreement and they existed at the time of its conclusion" *(ibid.)*.

The Tribunal went on to say that:

> "As regards the continental shelf, the question of determining how far the boundary line extends can arise today, in view of the evolution of the definition of the concept of 'continental shelf'. In 1960, two criteria served to determine the extent of the continental shelf: that of the 200-metre bathymetric line and that of exploitability. The latter criterion involved a dynamic conception of the continental shelf, since the outer limit would depend on technological developments and could consequently move further and further to seaward. In view of the fact that the 'continental shelf' existed in the international law in force in 1960, and that the definition of the concept of that maritime space then included the dynamic criterion indicated, it may be concluded that the Franco-Portuguese Agreement

delimits the continental shelf between the Parties over the whole extent of that maritime space as defined at present." (Award, para. 85.)

17. The Tribunal then explained that

"Bearing in mind the above conclusions reached by the Tribunal and the wording of Article 2 of the Arbitration Agreement, in the opinion of the Tribunal it is not called upon to reply to the second question.

Furthermore, in view of its decision, the Tribunal considered that there was no need to append a map showing the course of the boundary line." (*Ibid.*, para. 87.)

18. The operative clause of the Award was as follows:

"For the reasons stated above, the Tribunal *decides* by two votes to one:

To reply as follows to the first question formulated in Article 2 of the Arbitration Agreement: The Agreement concluded by an exchange of letters of 26 April 1960, and relating to the maritime boundary, has the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal with regard solely to the areas mentioned in that Agreement, namely the territorial sea, the contiguous zone and the continental shelf. The 'straight line drawn at 240°' is a loxodromic line." (Para. 88.)

19. Mr. Barberis, President of the Arbitration Tribunal, appended a declaration to the Award, and Mr. Bedjaoui, who had voted against the Award, appended a dissenting opinion. The declaration of President Barberis read as follows:

"I feel that the reply given by the Tribunal to the first question put by the Arbitration Agreement could have been more precise. I would have replied to that question as follows:

'The Agreement concluded by an exchange of letters of 26 April 1960, and relating to the maritime boundary, has the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal with respect to the territorial sea, the contiguous zone and the continental shelf, but does not have the force of law with respect to the waters of the exclusive economic zone or the fishery zone. The "straight line drawn at 240° " mentioned in the Agreement of 26 April 1960 is a loxodromic line.'

This partially affirmative and partially negative reply is, in my view, the exact description of the legal position existing between the Parties. As suggested by Guinea-Bissau in the course of the present arbitration (Reply, p. 248), this reply would have enabled the Tribunal to deal in its Award with the second question put by the Arbitration Agreement. The *partially* negative reply to the first question would have conferred on the Tribunal a *partial* competence to reply to the second, i.e., to do so to the extent that the reply to the first question would have been negative.

In that case, the Tribunal would have been competent to delimit the

waters of the exclusive economic zone* or the fishery zone between the two countries. The Tribunal thus could have settled the whole of the dispute, because, by virtue of the reply to the first question of the Arbitration Agreement, it would have determined the boundaries for the territorial sea, the contiguous zone and the continental shelf, as the Award has just done and, by its answer to the second question, the Tribunal could have determined the boundary for the waters of the exclusive economic zone or the fishery zone, a boundary which might or might not have coincided with the line drawn by the 1960 Agreement.

* I refer to the 'waters' of the exclusive economic zone and I think it necessary to be as specific as this, because it sometimes occurs that the notion of this zone covers also the continental shelf as, for example, in Article 56 of the 1982 Montego Bay Convention."

20. In his dissenting opinion, Mr. Bedjaoui referred to the declaration by President Barberis, which, he said,

> "shows to what an extent the Award is incomplete and inconsistent with the letter and spirit of the Arbitration Agreement with regard to the single line desired by the Parties. Since it emanates from the President of the Tribunal himself, that Declaration, by its very existence as well as by its contents, justifies more fundamental doubts as to the existence of a majority and the reality of the Award." (Para. 161.)

21. A public sitting of the Tribunal was held on 31 July 1989 for delivery of the Award, at which President Barberis and Mr. Bedjaoui were present, but not Mr. Gros. At that sitting, after the Award had been delivered, the representative of Guinea-Bissau indicated that, pending full reading of the documents and consultation with his Government, he reserved the position of Guinea-Bissau regarding the applicability and validity of the Award, as he alleged that it did not satisfy the requirements laid down by agreement between the two Parties. After contacts between the Governments of the two Parties, in which Guinea-Bissau indicated its reasons for not accepting the Award, the present proceedings were brought before the Court by Guinea-Bissau.

* * *

22. The Court will first consider its jurisdiction. In its Application, Guinea-Bissau founds the jurisdiction of the Court on "the Declarations by which the Republic of Guinea-Bissau and the Republic of Senegal have respectively accepted the jurisdiction of the Court under the conditions set forth in Article 36, paragraph 2, of the Statute" of the Court. These declarations were deposited with the Secretary-General of the United Nations, in the case of Senegal on 2 December 1985, and in the case of Guinea-Bissau on 7 August 1989. Guinea-Bissau's declaration contained no reservation; Senegal's declaration, which replaced a previous declaration of 3 May 1985, provided that

> "Senegal may reject the Court's competence in respect of:
>
> — Disputes in regard to which the parties have agreed to have recourse to some other method of settlement;

— Disputes with regard to questions which, under international law, fall exclusively within the jurisdiction of Senegal."

That declaration was also expressed as being applicable solely to "all legal disputes arising after the present declaration . . ."

23. Senegal observed that if Guinea-Bissau were to challenge the decision of the Arbitration Tribunal on the merits, it would be raising a question excluded from the Court's jurisdiction by the terms of Senegal's declaration. According to Senegal, the dispute concerning the maritime delimitation was the subject of the Arbitration Agreement of 12 March 1985 and consequently fell into the category of disputes "in regard to which the parties have agreed to have recourse to some other method of settlement". Furthermore, in the view of Senegal, that dispute arose before 2 December 1985, the date on which Senegal's acceptance of the compulsory jurisdiction of the Court became effective, and is thus excluded from the category of disputes "arising after" that declaration.

24. However, the Parties were agreed that there was a distinction between the substantive dispute relating to maritime delimitation, and the dispute relating to the Award rendered by the Arbitration Tribunal, and that only the latter dispute, which arose after the Senegalese declaration, is the subject of the present proceedings before the Court. Guinea-Bissau also took the position, which Senegal accepted, that these proceedings were not intended by way of appeal from the Award or as an application for revision of it. Thus, both Parties recognize that no aspect of the substantive delimitation dispute is involved. On this basis, Senegal did not dispute that the Court had jurisdiction to entertain the Application under Article 36, paragraph 2, of the Statute. In the circumstances of the case the Court regards its jurisdiction as established.

25. In this respect the Court would emphasize that, as the Parties were both agreed, these proceedings allege the inexistence and nullity of the Award rendered by the Arbitration Tribunal and are not by way of appeal from it or application for revision of it. As the Court had occasion to observe with respect to the contention of nullity advanced in the case of the *Arbitral Award Made by the King of Spain on 23 December 1906:*

> "the Award is not subject to appeal and . . . the Court cannot approach the consideration of the objections raised by Nicaragua to the validity of the Award as a Court of Appeal. The Court is not called upon to pronounce on whether the arbitrator's decision was right or wrong. These and cognate considerations have no relevance to the function that the Court is called upon to discharge in these proceedings, which is to decide whether the Award is proved to be a nullity having no effect." (*I.C.J. Reports 1960,* p. 214.)

* *

26. The Court will now consider a contention by Senegal that Guinea-Bissau's Application is inadmissible, insofar as it seeks to use the declaration of President Barberis for the purpose of casting doubt on the validity of the Award (see paragraph 30 below). Senegal argues that that declaration is not part of the Award, and therefore that any attempt by Guinea-Bissau to make use of it for that purpose "must be regarded as an abuse of process aimed at depriving Senegal of the rights belonging to it under the Award". Senegal also contends that the remedies sought are disproportionate to the grounds invoked and that the proceedings have been brought for the purpose of delaying the final solution of the dispute.

27. The Court considers that Guinea-Bissau's Application has been properly presented in the framework of its right to have recourse to the Court in the circumstances of the case. Accordingly, it does not accept Senegal's contention that Guinea-Bissau's Application, or the arguments used in support of it, amount to an abuse of process.

* *

28. Guinea-Bissau contends that the absence of Mr. Gros from the meeting of the Arbitration Tribunal at which the Award was pronounced amounted to a recognition that the Tribunal had failed to resolve the dispute. Guinea-Bissau accepts that at this meeting

> "it was not intended that a 'decision' should be taken, and by a formal and strict interpretation it would be possible to avoid applying to it Article 4, paragraph 1 [of the Arbitration Agreement], requiring that the Tribunal be in its full composition . . .".

Guinea-Bissau however takes the view that this was a particularly important meeting of the Tribunal and that the absence of Mr. Gros lessened the Tribunal's authority.

29. The Court notes that it is not disputed that Mr. Gros participated in the voting when the Award was adopted. Thereafter the Award had to be delivered to the Parties. In this respect Article 10, paragraph 1, of the Arbitration Agreement provided that the Award having been signed by the President and the Registrar, the Registrar was to "hand to the Agents of the two Parties a certified copy in the two languages". This was done. A meeting was held at which the Award was read. The absence of Mr. Gros from that meeting could not affect the validity of the Award which had already been adopted.

* * *

30. The Court will now examine the submissions of Guinea-Bissau that the Arbitral Award is inexistent, or subsidiarily that it is absolutely null and void. In support of its principal contention, that the Award is inexis-

tent, the Applicant claims that the Award was not supported by a real majority. Guinea-Bissau does not dispute the fact that the Award was expressed to have been adopted by the votes of President Barberis and Mr. Gros; it contends however that President Barberis's declaration contradicted and invalidated his vote, thus leaving the Award unsupported by a real majority. The Tribunal, having concluded, in reply to the first question in the Arbitration Agreement, that the 1960 Agreement "has the force of law in the relations between" the Parties, held that that was so "with regard solely to the areas mentioned in that Agreement, namely, the territorial sea, the contiguous zone and the continental shelf . . ." (Award, para. 88). However, Guinea-Bissau drew attention to the fact that, in his declaration, President Barberis stated that he would have replied to the effect that the Agreement had the force of law in the relations between the Parties "with respect to the territorial sea, the contiguous zone and the continental shelf, but does not have the force of law with respect to the waters of the exclusive economic zone or the fishery zone . . ." (paragraph 19 above).

31. The Court considers that, in putting forward this formulation, what President Barberis had in mind was that the Tribunal's answer to the first question "could have been more precise" — to use his own words —, not that it had to be more precise in the sense indicated in his formulation, which was, in his view, a preferable one, not a necessary one. In the opinion of the Court, the formulation discloses no contradiction with that of the Award.

32. Guinea-Bissau also drew attention to the fact that President Barberis expressed the view that his own formulation "would have enabled the Tribunal to deal in its Award with the second question put by the Arbitration Agreement" and that the Tribunal would in consequence "have been competent to delimit the waters of the exclusive economic zone or the fishery zone between the two countries", in addition to the other areas. The Court considers that the view expressed by President Barberis, that the reply which he would have given to the first question would have enabled the Tribunal to deal with the second question, represented, not a position taken by him as to what the Tribunal was required to do, but only an indication of what he considered would have been a better course. His position therefore could not be regarded as standing in contradiction with the position adopted by the Award.

33. Furthermore, even if there had been any contradiction, for either of the two reasons relied on by Guinea-Bissau, between the view expressed by President Barberis and that stated in the Award, such contradiction could not prevail over the position which President Barberis had taken when voting for the Award. In agreeing to the Award, he definitively agreed to the decisions, which it incorporated, as to the extent of the maritime areas governed by the 1960 Agreement, and as to the Tribunal not being required to answer the second question in view of its answer to the first. As the practice of international tribunals shows, it sometimes happens that a member of a tribunal votes in favour of a decision of the tribu-

nal even though he might individually have been inclined to prefer another solution. The validity of his vote remains unaffected by the expression of any such differences in a declaration or separate opinion of the member concerned, which are therefore without consequence for the decision of the tribunal.

34. Accordingly, in the opinion of the Court, the contention of Guinea-Bissau that the Award was inexistent for lack of a real majority cannot be accepted.

* * *

35. Subsidiarily, Guinea-Bissau maintains that the Award is, as a whole, null and void, on the grounds of *excès de pouvoir* and of insufficiency of reasoning. Guinea-Bissau observes that the Tribunal did not reply to the second question put in Article 2 of the Arbitration Agreement, and did not append to the Award the map provided for in Article 9 of that Agreement. It is contended that these two omissions constitute an *excès de pouvoir*. Furthermore, no reasons, it is said, were given by the Tribunal for its decision not to proceed to the second question, for not producing a single delimitation line, and for refusing to draw that line on a map.

36. The Court will examine Guinea-Bissau's contentions, whether presented as of *excès de pouvoir* or as lack of reasoning, which are based on the absence of a reply to the second question put by the Arbitration Agreement, before dealing with those relating to the absence of a map.

* *

37. On this first point, the Court would, for convenience, recall at the outset that, according to Article 2 of the Arbitration Agreement:

> "The Tribunal is requested to decide in accordance with the norms of international law on the following questions:
>
> 1. Does the Agreement concluded by an exchange of letters on 26 April 1960, and which relates to the maritime boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?
>
> 2. In the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?"

38. The Award, after dealing with some preliminary matters, analyses the grounds upon which Guinea-Bissau based its assertions that the 1960 Agreement did not have the force of law in its relations with Senegal (paras. 35-79). The conclusion in paragraph 80 of the Award is that "the

1960 Agreement is valid and can be opposed to Senegal and to Guinea-Bissau". The Award then deals, in paragraphs 80 to 86, with "the scope of substantive validity of the 1960 Agreement" and states that:

> "the 1960 Agreement does not delimit those maritime spaces which did not exist at that date, whether they be termed exclusive economic zone, fishery zone or whatever.
>
> . . . .
>
> On the other hand, the position regarding the territorial sea, the contiguous zone and the continental shelf is quite different. These three concepts are expressly mentioned in the 1960 Agreement and they existed at the time of its conclusion."

The Award goes on to say that, for the reasons explained in the passage quoted in paragraph 16 above,

> "the Franco-Portuguese Agreement delimits the continental shelf between the Parties over the whole extent of that maritime space as defined at present".

Then the Award continues, in paragraph 87:

> "Bearing in mind the above conclusions reached by the Tribunal and the actual wording of Article 2 of the Arbitration Agreement, in the opinion of the Tribunal it is not called upon to reply to the second question."

Finally, paragraph 88 of the Award declares in its first sentence that:

> "For the reasons stated above, the Tribunal *decides* by two votes to one:
>
> To reply as follows to the first question formulated in Article 2 of the Arbitration Agreement: The Agreement concluded by an exchange of letters on 26 April 1960, and relating to the maritime boundary, has the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal with regard solely to the areas mentioned in that Agreement, namely the territorial sea, the contiguous zone and the continental shelf."

39. Guinea-Bissau's complaint on the ground that the Tribunal did not give an answer to the second question in Article 2 of the Arbitration Agreement involves three arguments. It questions whether the Tribunal really took a decision not to give an answer; it contends that, even if there was such a decision, there was insufficient reasoning in support of it; and, finally, it contests the validity of any such decision.

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40. As to the first of these three arguments, Guinea-Bissau suggests that what the Tribunal did was not to decide not to answer the second question

put to it; it simply omitted, for lack of a real majority, to reach any decision at all on the issue. In this respect Guinea-Bissau stresses that what is referred to in the first sentence of paragraph 87 of the Award as an "opinion of the Tribunal" on the point appears in the statement of reasoning, not in the operative clause of the Award; that the Award does not specify the majority by which that paragraph would have been adopted; and that only Mr. Gros could have voted in favour of this paragraph. In the light of the declaration made by President Barberis, Guinea-Bissau questions whether any vote was taken on paragraph 87.

41. The Court recognizes that the structure of the Award is, in that respect, open to criticism. Article 2 of the Arbitration Agreement put two questions to the Tribunal; and the Tribunal was, according to Article 9, to "inform the two Governments of its decision regarding the questions set forth in Article 2". Consequently, it would have been normal to include in the operative part of the Award, i.e., in a final paragraph, both the answer given to the first question and the decision not to answer the second. It is to be regretted that this course was not followed. However, when the Tribunal adopted the Award by two votes to one, it was not only approving the content of paragraph 88, but was also doing so for the reasons already stated in the Award and, in particular, in paragraph 87. It is clear from that paragraph, taken in its context, and also from the declaration of President Barberis, that the Tribunal decided by two votes to one that, as it had given an affirmative answer to the first question, it did not have to answer the second. By so doing, the Tribunal did take a decision: namely, not to answer the second question put to it. The Award is not flawed by any failure to decide.

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42. Guinea-Bissau argues, secondly, that any arbitral award must, in accordance with general international law, be a reasoned one. Moreover, according to Article 9, paragraph 3, of the Arbitration Agreement, the Parties had specifically agreed that "the Award shall state in full the reasons on which it is based". Yet, according to Guinea-Bissau, the Tribunal in this case did not give any reasoning in support of its refusal to reply to the second question put by the Parties or, at the very least, gave "wholly insufficient" reasoning, which did not even make it possible to "determine the line of argument followed" and did not "reply on any point to the questions raised and discussed during the arbitral proceedings". On this ground also, it is claimed that the Award is null and void.

43. In paragraph 87 of the Award, referred to above, the Tribunal, "bearing in mind the . . . conclusions" that it had reached, together with "the wording of Article 2 of the Arbitration Agreement", took the view that it was not called upon to reply to the second question put to it. This reasoning is brief, and could doubtless have been developed further. But the references in paragraph 87 to the Tribunal's conclusions and to the

wording of Article 2 of the Arbitration Agreement make it possible to determine, without difficulty, the reasons why the Tribunal decided not to answer the second question. By referring to the wording of Article 2 of the Arbitration Agreement, the Tribunal was taking note that, according to that Article, it was asked, first, whether the 1960 Agreement had "the force of law in the relations" between Guinea-Bissau and Senegal, and then, "in the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories" of the two countries. By referring to the conclusions that it had already reached, the Tribunal was noting that it had, in paragraphs 80 *et seq.* of the Award, found that the 1960 Agreement, in respect of which it had already determined the scope of its substantive validity, was "valid and can be opposed to Senegal and to Guinea-Bissau". Having given an affirmative answer to the first question, and basing itself on the actual text of the Arbitration Agreement, the Tribunal found as a consequence that it did not have to reply to the second question. That statement of reasoning, while succinct, is clear and precise. The second contention of Guinea-Bissau must also be dismissed.

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44. Thirdly, Guinea-Bissau challenges the validity of the reasoning thus adopted by the Tribunal on the issue whether it was required to answer the second question. In this respect Guinea-Bissau presents two arguments: first that the Arbitration Agreement, on its true construction, required an answer to the second question whatever might have been its reply to the first; secondly, that in any event an answer to the second question was required because the answer to the first question was in fact partially negative.

45. Guinea-Bissau's first argument is that the Arbitration Agreement was concluded on the basis of an agreement

> "that a two-fold question should be posed to the Tribunal, in order to ensure that whatever [the Tribunal's] reply concerning the value of the Franco-Portuguese exchange of letters, the Tribunal would be called upon to proceed to a comprehensive delimitation of the maritime territories".

In the view of Guinea-Bissau, even if the Tribunal upheld the validity and opposability of the 1960 Agreement, the effect would not be to produce a complete delimitation, and a complete delimitation by a single line was the object and purpose of the Arbitration Agreement. Accordingly, Guinea-Bissau is in effect contending that that Agreement required the Tribunal to answer the second question whatever was its answer to the first.

46. In this connection the Court would first recall

> "a rule consistently accepted by general international law in the matter of international arbitration. Since the *Alabama* case, it has been generally recognized, following the earlier precedents, that, in the

> absence of any agreement to the contrary, an international tribunal has the right to decide as to its own jurisdiction and has the power to interpret for this purpose the instruments which govern that jurisdiction." (*Nottebohm, Preliminary Objection, Judgment, I.C.J. Reports 1953*, p. 119.)

In the present case, Article 4, paragraph 2, of the Arbitration Agreement confirmed that the Tribunal had the power to determine its own jurisdiction and to interpret the Agreement for that purpose.

47. By its argument set out above, Guinea-Bissau is in fact criticizing the interpretation in the Award of the provisions of the Arbitration Agreement which determine the Tribunal's jurisdiction, and proposing another interpretation. However, the Court does not have to enquire whether or not the Arbitration Agreement could, with regard to the Tribunal's competence, be interpreted in a number of ways, and if so to consider which would have been preferable. By proceeding in that way the Court would be treating the request as an appeal and not as a *recours en nullité*. The Court could not act in that way in the present case. It has simply to ascertain whether by rendering the disputed Award the Tribunal acted in manifest breach of the competence conferred on it by the Arbitration Agreement, either by deciding in excess of, or by failing to exercise, its jurisdiction.

48. Such manifest breach might result from, for example, the failure of the Tribunal properly to apply the relevant rules of interpretation to the provisions of the Arbitration Agreement which govern its competence. An arbitration agreement *(compromis d'arbitrage)* is an agreement between States which must be interpreted in accordance with the general rules of international law governing the interpretation of treaties. In that respect

> "the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words." (*Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, p. 8.)

The rule of interpretation according to the natural and ordinary meaning of the words employed

> "is not an absolute one. Where such a method of interpretation results in a meaning incompatible with the spirit, purpose and context of the clause or instrument in which the words are contained, no

reliance can be validly placed on it." (*South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 336.)

These principles are reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary international law on the point.

49. Furthermore, when States sign an arbitration agreement, they are concluding an agreement with a very specific object and purpose: to entrust an arbitration tribunal with the task of settling a dispute in accordance with the terms agreed by the parties, who define in the agreement the jurisdiction of the tribunal and determine its limits. In the performance of the task entrusted to it, the tribunal "must conform to the terms by which the Parties have defined this task" (*Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 266, para. 23).

50. In the present case, Article 2 of the Arbitration Agreement presented a first question concerning the 1960 Agreement, and then a second question relating to delimitation. A reply had to be given to the second question "in the event of a negative answer to the first question". The Court notes that those last words, which were originally proposed by Guinea-Bissau itself, are categorical. The situation in the present case differs from that faced by the Court or by arbitral tribunals when they had to reply to successive questions which were not made conditional on each other, and to each of which some meaning had in any event to be attributed in order for a reply to be given thereto, as for example in the case of the *Free Zones of Upper Savoy and the District of Gex* (*Order of 19 August 1929, P.C.I.J., Series A, No. 22*, p. 13), or *Corfu Channel, Merits* (*Judgment, I.C.J. Reports 1949*, p. 24). Where, however, successive questions were put to the Court which were made conditional on each other, the Court replied, or found no room to reply, according to whether or not the governing condition had been fulfilled, as, for example, in *Interpretation of the Greco-Bulgarian Agreement of 9 December 1927* (*Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 45*, pp. 70, 86-87); and *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania* (*First Phase, Advisory Opinion, I.C.J. Reports 1950*, pp. 65, 67-68, 75, 76, 77; *Second Phase, Advisory Opinion, ibid.*, pp. 225, 226, 230).

51. In fact in the present case the Parties could have used some such expression as that the Tribunal should answer the second question "taking into account" the reply given to the first, but they did not; they directed that the second question should be answered only "in the event of a negative answer" to that first question. In that respect, the wording was very different from that to be found in another Arbitration Agreement to which Guinea-Bissau is a party, that concluded on 18 February 1983 with the Republic of Guinea. By that Agreement, those two States asked another tribunal to decide on the legal value and scope of another Franco-Portuguese delimitation convention and annexed documents, and then,

"according to the answers given" to those initial questions, to determine the "course of the boundary between the maritime territories" of the two countries.

52. Faced with the problem presented by the prefatory words of the second question, the Applicant stresses that, according to the Preamble of the Arbitration Agreement, its object was to settle the dispute that had arisen between the two countries relating to the determination of their maritime boundary. The first sentence of Article 2 requested the Tribunal to decide on the two questions put to it. The Tribunal was, according to Article 9, to "inform the two Governments of its decision regarding the questions set forth in Article 2". That decision was to "include the drawing of the boundary line on a map". According to Guinea-Bissau, the Tribunal was therefore required to delimit by a single line the whole of the maritime areas appertaining to each State. As, for the reasons given by the Tribunal, its answer to the first question put in the Arbitration Agreement could not lead to a comprehensive delimitation, it followed, in Guinea-Bissau's view, that, notwithstanding the prefatory words to the second question the Tribunal was required to answer that question and to effect the overall delimitation desired by both Parties.

53. It is useful to recall, in order to assess the weight of that line of argument, the circumstances in which the Arbitration Agreement was drawn up. Following various incidents, Senegal and Guinea-Bissau engaged in negotiations, from 1977 to 1985, with regard to their maritime boundary. Two opposing views were asserted. Senegal maintained that the Agreement concluded in 1960 between France, on its own behalf and that of the *Communauté*, and Portugal had the force of law in the relations between the two States, by virtue of the rules relating to State succession, and that the line defined by that Agreement defined the boundary. Guinea-Bissau however considered that that Agreement was inexistent, null and void, and in any case not opposable to it. From this it inferred that it would be appropriate to proceed *ex novo* to a maritime delimitation between the two States. When the time came to draft the Arbitration Agreement, Senegal proposed that the Tribunal should decide solely whether the 1960 Agreement had the force of law in the relations between the Parties. Guinea-Bissau asked that the Tribunal should be entrusted only with the task of drawing the line delimiting the maritime territories in dispute. After lengthy discussions, it was agreed that there should first be put to the Tribunal the question proposed by Senegal. Guinea-Bissau suggested in addition that, "in the event of a negative answer to the first question", the Tribunal should be asked to define the course of the delimitation line. That form of words was ultimately adopted.

54. It will be apparent that the two questions had a completely different subject matter. The first concerned the issue whether an international agreement had the force of law in the relations between the Parties, while the second was directed to a maritime delimitation in the event that that agreement did not have such force. Senegal was counting on an affirmative reply to the first question, and concluded that the straight line on a

bearing of 240°, adopted by the 1960 Agreement, would constitute the single line separating the whole of the maritime areas of the two countries. Guinea-Bissau was counting on a negative answer to the first question, and concluded that a single dividing line for the whole of the maritime areas of the two countries would be fixed *ex novo* by the Tribunal in reply to the second question. The two States intended to obtain a delimitation of the whole of their maritime areas by a single line. But Senegal was counting on achieving this result through an affirmative answer to the first question, and Guinea-Bissau through a negative answer to that question. No agreement had been reached between the Parties as to what should happen in the event of an affirmative answer leading only to a partial delimitation, and as to what might be the task of the Tribunal in such case. The *travaux préparatoires* accordingly confirm the ordinary meaning of Article 2.

55. The Court considers that this conclusion is not at variance with the circumstance that the Tribunal adopted as its title "Arbitration Tribunal for the Determination of the Maritime Boundary: Guinea-Bissau/Senegal", or with its definition, in paragraph 27 of the Award, of the "sole object of the dispute" as being one relating to "the determination of the maritime boundary between the Republic of Senegal and the Republic of Guinea-Bissau, a question which they have not been able to settle by means of negotiation . . .". In the opinion of the Court, that title and that definition are to be read in the light of the Tribunal's conclusion, which the Court shares, that, while its mandate did include the making of a delimitation of all the maritime areas of the Parties, this fell to be done only under the second question and "in the event of a negative answer to the first question".

56. In short, although the two States had expressed in general terms in the Preamble of the Arbitration Agreement their desire to reach a settlement of their dispute, their consent thereto had only been given in the terms laid down by Article 2. Consequently the Tribunal did not act in manifest breach of its competence to determine its own jurisdiction by deciding that it was not required to answer the second question except in the event of a negative answer to the first. The first argument must be rejected.

57. The Court now turns to Guinea-Bissau's second argument. Apart from its contention that, on a true construction, the Arbitration Agreement required recourse to the second question whatever was the answer to the first, Guinea-Bissau argues that the answer in fact given by the Tribunal to the first question was a partially negative answer and that this sufficed to satisfy the prescribed condition for entering into the second question. Accordingly, and as was to be shown by the declaration of President Barberis, the Tribunal was, it is said, both entitled and bound to answer the second question.

58. It is true that the Arbitration Tribunal, when answering the first question, in paragraph 88 of the Award, explained that the 1960 Agree-

ment had the force of law in the relations between the Parties "with regard solely to the areas mentioned in that Agreement, namely the territorial sea, the contiguous zone and the continental shelf". Consequently "the 1960 Agreement does not delimit those maritime spaces which did not exist at that date, whether they be termed exclusive economic zone, fishery zone or whatever" (Award, para. 85).

59. In his declaration appended to the Award reproduced in paragraph 19 above, President Barberis added that he would have preferred that, in paragraph 88 of the Award, an affirmative answer be given with respect to the areas delimited by the 1960 Agreement, and a negative answer with respect to the areas not delimited by that Agreement. In his opinion, such a partially negative wording would have conferred on the Tribunal a partial competence to reply to the second question, and to determine the boundary of the waters of the exclusive economic zones or fishery zones between the two countries.

60. The Court would first observe that the Tribunal did not, in paragraph 88 of its Award, adopt the form of words that President Barberis would have preferred. Guinea-Bissau thus cannot base its arguments upon a form of words that was not in fact adopted by the Tribunal. The Tribunal found, in reply to the first question, that the 1960 Agreement had the force of law in the relations between the Parties, and at the same time it defined the substantive scope of that Agreement. Such an answer did not permit of a delimitation of the whole of the maritime areas of the two States, and a complete settlement of the dispute between them. It achieved a partial delimitation. But that answer was nonetheless both a complete and an affirmative answer to the first question; it recognized that the Agreement of 1960 had the force of law in the relations between Senegal and Guinea-Bissau. The Tribunal could thus find, without manifest breach of its competence, that its answer to the first question was not a negative one, and that it was therefore not competent to answer the second question. In this respect also, the contention of Guinea-Bissau that the entire Award is a nullity must be rejected.

* *

61. Finally, Guinea-Bissau recalls that, according to Article 9, paragraph 2, of the Arbitration Agreement, the decision of the Tribunal was to "include the drawing of the boundary line on a map", and that no such map was produced by the Arbitration Tribunal. Guinea-Bissau contends that the Tribunal also did not give sufficient reasons for its decision on that point. It is contended that the Award should, for these reasons, be considered wholly null and void.

62. The Court observes that the Award states that the 1960 Agreement "clearly determines the maritime boundary as regards the territorial sea, the contiguous zone and the continental shelf" by adopting "a straight line

drawn at 240° " (paras. 80 and 85). The Award states that this terminology "makes it possible to rule out any geodesic line", so that the line would have to be a loxodromic line, which, moreover is in accordance with the "sketch included in the preparatory work of the 1960 Agreement" (paras. 86 and 88). Then, after deciding not to answer the second question, the Tribunal adds that: "Furthermore, in view of its decision, the Tribunal considered that there was no need to append a map showing the course of the boundary line."

63. The Court is unable to uphold the contention that the reasoning of the Tribunal was insufficient on this point. The reasoning mentioned above is, once again, brief but sufficient to enlighten the Parties and the Court as to the reasons that guided the Tribunal. It found that the boundary line fixed by the 1960 Agreement was a loxodromic line drawn at 240° from the point of intersection of the prolongation of the land frontier and the low-water line of the two countries, represented for that purpose by the Cape Roxo lighthouse. Since it did not reply to the second question, it did not have to define any other line. It thus considered that there was no need to draw on a map a line which was common knowledge, and the definitive characteristics of which it had specified.

64. In view of the wording of Articles 2 and 9 of the Arbitration Agreement, and the positions taken by the Parties before the Arbitration Tribunal, it is open to argument whether, in the absence of a reply to the second question, the Tribunal was under an obligation to produce the map envisaged by the Arbitration Agreement. The Court does not however consider it necessary to enter into such a discussion. In the circumstances of the case, the absence of a map cannot in any event constitute such an irregularity as would render the Award invalid. The last argument of Guinea-Bissau is therefore also not accepted.

65. The submissions of Guinea-Bissau must accordingly be rejected. The Arbitral Award of 31 July 1989 is valid and binding upon the Republic of Senegal and the Republic of Guinea-Bissau, which have the obligation to apply it.

* * *

66. The Court nonetheless takes note of the fact that the Award has not brought about a complete delimitation of the maritime areas appertaining respectively to Guinea-Bissau and to Senegal. It would however observe that that result is due to the wording of Article 2 of the Arbitration Agreement.

67. The Court has moreover taken note of the fact that on 12 March 1991 Guinea-Bissau filed in the Registry of the Court a second Application requesting the Court to adjudge and declare:

> "What should be, on the basis of the international law of the sea and of all the relevant elements of the case, including the future

> decision of the Court in the case concerning the arbitral *'award'* of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal."

It has also taken note of the declaration made by the Agent of Senegal in the present proceedings, according to which one solution

> "would be to negotiate with Senegal, which has no objection to this, a boundary for the exclusive economic zone or, should it prove impossible to reach an agreement, to bring the matter before the Court".

68. Having regard to that Application and that declaration, and at the close of a long and difficult arbitral procedure and of these proceedings before the Court, the Court considers it highly desirable that the elements of the dispute that were not settled by the Arbitral Award of 31 July 1989 be resolved as soon as possible, as both Parties desire.

* * *

69. For these reasons,

THE COURT,

(1) Unanimously,

Rejects the submission of the Republic of Guinea-Bissau that the Arbitral Award given on 31 July 1989 by the Arbitration Tribunal established pursuant to the Agreement of 12 March 1985 between the Republic of Guinea-Bissau and the Republic of Senegal, is inexistent;

(2) By eleven votes to four,

Rejects the submission of the Republic of Guinea-Bissau that the Arbitral Award of 31 July 1989 is absolutely null and void;

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen; *Judge* ad hoc Mbaye.

AGAINST: *Judges* Aguilar Mawdsley, Weeramantry, Ranjeva; *Judge* ad hoc Thierry.

(3) By twelve votes to three,

Rejects the submission of the Republic of Guinea-Bissau that the Government of Senegal is not justified in seeking to require the Government of Guinea-Bissau to apply the Arbitral Award of 31 July 1989; and, on the submission to that effect of the Republic of Senegal, *finds* that the Arbitral

Award of 31 July 1989 is valid and binding for the Republic of Senegal and the Republic of Guinea-Bissau, which have the obligation to apply it.

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Ranjeva; *Judge* ad hoc Mbaye.

AGAINST: *Judges* Aguilar Mawdsley, Weeramantry; *Judge* ad hoc Thierry.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twelfth day of November, one thousand nine hundred and ninety-one, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Guinea-Bissau and the Government of the Republic of Senegal, respectively.

(Signed) R. Y. JENNINGS,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judge TARASSOV and Judge *ad hoc* MBAYE append declarations to the Judgment of the Court.

Vice-President ODA, Judges LACHS, NI and SHAHABUDDEEN append separate opinions to the Judgment of the Court.

Judges AGUILAR MAWDSLEY and RANJEVA append a joint dissenting opinion, and Judge WEERAMANTRY and Judge *ad hoc* THIERRY dissenting opinions, to the Judgment of the Court.

(Initialled) R.Y.J.

(Initialled) E.V.O.