

STATUS OF CASES OF WHICH THE INTERNATIONAL COURT OF JUSTICE HAS BEEN SEISED
INVOLVING QUESTIONS RELATING TO THE LAW OF THE SEA

(Contribution covering the period from June 2021 to June 2022)

1. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*

These proceedings were instituted by Nicaragua against Colombia on 16 September 2013 with regard to a “dispute concern[ing] the delimitation of the boundaries between, on the one hand, the continental shelf of Nicaragua beyond the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and on the other hand, the continental shelf of Colombia”.

In its Application, Nicaragua made two requests. First, it asked the Court to determine “[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012” in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. Second, it requested the Court to indicate “[t]he principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical mile from Nicaragua’s coast”.

Having observed that “[t]he single maritime boundary between the continental shelf and the exclusive economic zones of Nicaragua and of Colombia within the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured was defined by the Court in paragraph 251 of its Judgment of 19 November 2012”, Nicaragua recalled that “[i]n that case [it] had sought a declaration from the Court describing the course of the boundary of its continental shelf throughout the area of the overlap between its continental shelf entitlement and that of Colombia”, but that “the Court considered that Nicaragua had not then established that it has a continental margin that extends beyond the 200 nautical mile from the baselines from which its territorial sea is measured, and that it was therefore not then in a position to delimit the continental shelf as requested by Nicaragua”.

Noting in this regard that the “final information” it submitted to the Commission on the Limits of the Continental Shelf on 24 June 2013 “demonstrates that Nicaragua’s continental margin extends more than 200 nautical mile from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and both (i) traverses an area that lies more than 200 nautical mile from Colombia and also (ii) partly overlaps with an area that lies within 200 nautical mile of Colombia’s coast”, the Applicant maintained that the two States “have not agreed upon a maritime boundary between them in the area beyond 200 nautical mile from the coast of Nicaragua” and that “Colombia has objected to continental shelf claims [from other States] in that area”.

As basis for the Court’s jurisdiction, Nicaragua invoked Article XXXI of the American Treaty on Pacific Settlement (the “Pact of Bogotá”) signed on 30 April 1948.

By an Order of 9 December 2013, the Court fixed 9 December 2014 and 9 December 2015 as the respective time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Colombia.

On 14 August 2014, Colombia raised certain preliminary objections to the Court’s jurisdiction and the admissibility of the Application. After Nicaragua had filed a written statement of its observations and submissions on the preliminary objections raised by Colombia, and having held public hearings from 5 to 9 October 2015, the Court found, in its Judgment of 17 March 2016, that

it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to entertain the First Request put forward by Nicaragua in its Application, namely that the Court determine “[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012”, and that this Request was admissible. The Court further found, however, that Nicaragua’s Second Request, whereby it invited the Court, pending the delimitation of the Parties’ maritime boundary beyond 200 nautical mile of Nicaragua’s coast, to adjudge and declare the principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims, was inadmissible. The Court considered that this Request did not relate to an actual dispute between the Parties and did not specify what exactly the Court was being asked to decide.

By an Order of 28 April 2016, the President of the Court fixed 28 September 2016 as the new time-limit for the filing of Nicaragua’s Memorial and 28 September 2017 as the new time-limit for the filing of Colombia’s Counter-Memorial. The Memorial and Counter-Memorial were filed within the time-limits thus fixed.

By an Order of 8 December 2017, the Court authorized the submission of a Reply by Nicaragua and a Rejoinder by Colombia, and fixed 9 July 2018 and 11 February 2019 as the respective time-limits for the filing of those pleadings. The Reply and the Rejoinder were filed within the time-limits thus fixed.

The case is now ready for hearing and the Court will hold public hearings in due course.

2. Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)

On 21 April 2022, the Court rendered its Judgment in the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*.

In its Judgment, the Court ruled on the merits of the dispute submitted to it on 26 November 2013 by Nicaragua against Colombia regarding alleged violations of the sovereign rights and maritime zones which the Court had recognized as appertaining to Nicaragua in its Judgment of 19 November 2012 in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*.

The Court observed that Nicaragua claimed that Colombia had violated Nicaragua’s sovereign rights and jurisdiction in Nicaragua’s exclusive economic zone. First, Nicaragua contended that Colombia had interfered with Nicaraguan-flagged or Nicaraguan-licensed fishing and marine scientific research vessels in that zone. It also claimed that Colombia had repeatedly directed its naval frigates and military aircraft to obstruct activities carried out by the Nicaraguan Navy in the exercise of its mission. Secondly, Nicaragua stated that Colombia had granted permits for fishing and authorizations for marine scientific research in Nicaragua’s exclusive economic zone to Colombians and nationals of third States. Thirdly, Nicaragua alleged that Colombia had offered and awarded hydrocarbon blocks encompassing parts of that zone. Nicaragua further objected to Presidential Decree No. 1946 of 9 September 2013, as amended by Decree No. 1119 of 17 June 2014 (hereinafter “Presidential Decree 1946”), which establishes an “integral contiguous zone” that allegedly violates customary international law.

The Court noted that, in its counter-claims, Colombia first contended that Nicaragua had infringed the traditional fishing rights of the inhabitants of the San Andrés Archipelago to access their traditional fishing banks located in the maritime areas beyond the territorial sea of the islands of the San Andrés Archipelago and those banks located in the Colombian maritime areas, access to which requires navigating outside that territorial sea. Secondly, Colombia asserted that the straight

baselines established by Decree No. 33-2013 of 19 August 2013 (hereinafter “Decree 33”), enacted by Nicaragua on 27 August 2013 and subsequently amended in 2018, and which connect a series of maritime features appertaining to Nicaragua east of its continental coast in the Caribbean Sea, were unlawful and directly impeded the rights and jurisdiction to which Colombia was entitled in the Caribbean Sea, in so far as they pushed the external limit of its territorial sea far east of the 12-mile limit permitted by international law.

Before examining Nicaragua’s claims and Colombia’s counter-claims, the Court addressed the scope of its jurisdiction *ratione temporis*, a matter raised by Colombia in its Counter-Memorial.

Scope of the jurisdiction ratione temporis of the Court

The Court noted that a number of the incidents on which Nicaragua based its claims had occurred after 27 November 2013, the date on which the Pact of Bogotá — the instrument forming the basis of the Court’s finding, in its 2016 Judgment on preliminary objections, that it had jurisdiction to entertain the dispute in the present case — ceased to be in force for Colombia. It observed that the incidents in question generally concerned Colombian naval vessels and aircraft allegedly interfering with Nicaraguan fishing activities and marine scientific research in Nicaragua’s maritime zones, Colombia’s alleged policing operations and interference with Nicaragua’s naval vessels in Nicaragua’s maritime waters, and Colombia’s alleged authorization of fishing activities and marine scientific research in Nicaragua’s exclusive economic zone. The Court first considered the scope of its jurisdiction *ratione temporis*. In its view, the criteria that it has considered relevant in its jurisprudence to determine the limits *ratione temporis* of its jurisdiction with respect to a claim or submission made after the filing of the application, or the admissibility thereof, should apply to the Court’s examination of the scope of its jurisdiction *ratione temporis* in the present case. The Court noted that, in cases involving the adjudication of a claim or submission made after the filing of an application, it considers whether such a claim or submission arose directly out of the question which is the subject-matter of the application or whether entertaining such a claim or submission would transform the subject of the dispute originally submitted to the Court. It considered that the claims and submissions made by Nicaragua in relation to the incidents at issue arose directly out of the question which was the subject-matter of the Application, that those alleged incidents were connected to the alleged incidents that had already been found to fall within the Court’s jurisdiction, and that consideration of those alleged incidents did not transform the nature of the dispute between the Parties in the present case. The Court therefore had jurisdiction *ratione temporis* over Nicaragua’s claims relating to those alleged incidents.

Alleged violations by Colombia of Nicaragua’s rights in its maritime zones

— Colombia’s contested activities in Nicaragua’s maritime zones

The Court noted that since Nicaragua is a party to the United Nations Convention on the Law of the Sea (hereinafter “UNCLOS”) and Colombia is not, the applicable law was customary international law. It considered that the customary rules on the rights and duties in the exclusive economic zone of coastal States and other States are reflected in Articles 56, 58, 61, 62 and 73 of the Convention.

The Court further noted that, in considering whether the evidence established the violations of customary international law alleged by Nicaragua, it would be guided by its jurisprudence on questions of proof. The Court recalled that, as a general rule, it is for the party which alleges a particular fact in support of its claims to prove the existence of that fact. It observed that it would treat with caution evidentiary materials prepared for the purposes of a case, as well as evidence from secondary sources. It would consider evidence from contemporaneous and direct sources to be more probative and credible. The Court would also give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person from whom the evidence emanates.

The Court began by considering the incidents alleged by Nicaragua in the south-western Caribbean Sea. Upon examination of the evidence submitted by Nicaragua, it took the view that Nicaragua had failed to discharge its burden of proof with regard to some of the alleged incidents. However, it considered that a number of facts supporting Nicaragua's claim were established. Colombian naval vessels had, for instance, exercised enforcement jurisdiction in Nicaragua's exclusive economic zone, conduct that had been carried out to give effect to a policy whereby Colombia had sought to continue to control fishing activities and the conservation of resources in that maritime area. The Court viewed as unfounded Colombia's contention that its actions were justified as an exercise of its freedoms of navigation and overflight and on the basis of its alleged international obligation to protect and preserve the marine environment of the south-western Caribbean Sea. It noted in this regard that freedoms of navigation and overflight do not include rights relating to the exploration, exploitation, conservation and management of the natural resources of the maritime zone, nor do they include jurisdiction to enforce conservation measures. It further noted that, in the exclusive economic zone, such rights and jurisdiction are reserved for the coastal State, since it has jurisdiction over the conservation of biological resources and the protection and preservation of the marine environment. The Court concluded that Colombia's conduct was in contravention of customary rules of international law as reflected in Articles 56, 58 and 73 of UNCLOS. Colombia had thus violated its international obligation to respect Nicaragua's sovereign rights and jurisdiction in the latter's exclusive economic zone.

The Court then turned to Colombia's alleged authorization of fishing activities and marine scientific research in Nicaragua's exclusive economic zone. In particular, it considered resolutions issued by the Governor of the San Andrés Archipelago after the 2012 Judgment which define the fishing zone as including areas within Nicaragua's exclusive economic zone and suggest that Colombia continued to assert the right to authorize fishing activities in this maritime zone. The Court next examined the alleged incidents at sea. In its view, the evidence presented by the Parties revealed at least three facts. First, the fishing vessels allegedly authorized by Colombia had engaged in fishing activities in Nicaragua's exclusive economic zone during the relevant time. Secondly, such fishing activities had often been conducted under the protection of Colombian frigates. Thirdly, Colombia recognized that the Luna Verde area was in Nicaragua's exclusive economic zone. On the basis of all these considerations, the Court concluded that Colombia had violated Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone by authorizing vessels to conduct fishing activities in that zone. The Court could not, however, draw a conclusion from the available evidence that Colombia had also authorized marine scientific research in Nicaragua's exclusive economic zone.

Finally, the Court considered Nicaragua's contention that Colombia had offered and awarded hydrocarbon blocks encompassing parts of Nicaragua's exclusive economic zone. After finding the claim admissible, in so far as it arose directly out of the question that was the subject-matter of the Application, the Court noted that hydrocarbon blocks had been offered and awarded by Colombia before the maritime boundary between the Parties had been delimited. However, Nicaragua failed to prove that Colombia continued to offer petroleum blocks situated in Nicaragua's exclusive economic zone. The Court therefore rejected the allegation that Colombia had violated Nicaragua's sovereign rights by issuing oil exploration licences.

— Colombia's "integral contiguous zone"

The Court noted that among its allegations of Colombia's violations of Nicaragua's rights in its maritime zones, Nicaragua referred to Colombia's Presidential Decree 1946 establishing an "integral contiguous zone" around Colombian islands in the western Caribbean Sea.

The Court first observed that Article 33 of UNCLOS on the contiguous zone reflects contemporary customary international law on this zone, both in respect of the powers that a coastal State may exercise there, which are confined to customs, fiscal, immigration and sanitary matters, and regarding the maximum breadth of the contiguous zone, which cannot exceed 24 nautical miles.

The Court was of the view that the 2012 Judgment did not delimit, expressly or otherwise, the contiguous zone of either Party. It noted that the establishment by one State of a contiguous zone is not incompatible with the existence of the exclusive economic zone of another State in the same area. Indeed, the powers that a State may exercise in the contiguous zone are different from the rights and duties that a coastal State has in the exclusive economic zone. The Court considered that Colombia therefore had the right to establish a contiguous zone around the San Andrés Archipelago in accordance with customary international law. The Court then examined whether Colombia's "integral contiguous zone" is compatible with customary international law. In this regard, it noted that the breadth of the "integral contiguous zone" zone exceeds the 24-nautical-mile limit. It further noted that the powers claimed by Colombia in this zone, such as those concerning security, "national maritime interests" and the preservation of the environment, exceed those permitted under customary international law.

— **Conclusions and remedies**

In light of the foregoing, the Court found that Colombia had breached its international obligation to respect Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone. Consequently, Colombia's international responsibility is engaged and it must immediately cease its wrongful conduct.

The Court also found that the "integral contiguous zone" established by Presidential Decree 1946 is not in conformity with customary international law with respect to its breadth and the powers asserted therein. It moreover considered that, in the maritime areas where it overlaps with Nicaragua's exclusive economic zone, the integral contiguous zone infringes upon Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone. Colombia is therefore under the obligation, by the means of its own choosing, to bring the provisions of Presidential Decree 1946 into conformity with customary international law in so far as they relate to Nicaragua's maritime areas.

However, the Court considered that Presidential Decree 1946 does not violate customary international law in so far as it concerns archaeological and historical objects. It was of the view that Article 303 of UNCLOS, which gives the coastal State the power to exercise control over objects of an archaeological and historical nature found in its contiguous zone, reflects customary international law.

The Court moreover rejected the request by Nicaragua to order Colombia to pay compensation. It also considered that there was no legal basis for the Court to accept Nicaragua's request that it remain seised of the case.

Counter-claims made by Colombia

— **Nicaragua's alleged infringement of the artisanal fishing rights of the inhabitants of the San Andrés Archipelago, in particular the Raizales**

The Court noted that the applicable law was customary international law, as reflected in the relevant provisions of Part V of UNCLOS. It then turned to the question whether the inhabitants of the San Andrés Archipelago had historically enjoyed artisanal fishing rights in areas that now fall within Nicaragua's exclusive economic zone. To that end, the Court examined affidavits from fishermen of the San Andrés Archipelago, which contained indications that some fishing activities had in the past taken place in areas which now fall within Nicaragua's exclusive economic zone. However, the Court also noted that the periods during which such activities took place had not been established with certainty, nor had the existence of a constant practice. The Court was of the opinion that Colombia's claim regarding a long-standing practice of artisanal fishing was not sufficiently established. It also considered that previous positions adopted by or on behalf of Colombia undermined its claim. The Court then turned to several statements of Nicaragua's Head of State. It

nonetheless considered that, contrary to what Colombia claimed, these statements did not establish acceptance or recognition by Nicaragua that the artisanal fishermen of the San Andrés Archipelago have the right to fish in Nicaragua's maritime zones without prior authorization. The Court concluded that Colombia had failed to establish that the inhabitants of the San Andrés Archipelago enjoyed artisanal fishing rights in waters now located in Nicaragua's exclusive economic zone. It therefore dismissed Colombia's counter-claim in this respect.

— **Alleged violation of Colombia's sovereign rights and maritime spaces by Nicaragua's use of straight baselines**

The Court then turned to Colombia's counter-claim relating to Decree 33, through which Nicaragua established a system of straight baselines along its Caribbean coast. It observed that customary international law as reflected in Article 7, paragraph 1, of UNCLOS provides for two alternative geographical preconditions for the establishment of straight baselines: a coastline that is "deeply indented and cut into", or the existence of a "fringe of islands" along the coast in its immediate vicinity. The Court noted that, with respect to the straight baselines drawn from Cabo Gracias a Dios on the mainland to Great Corn Island along the coast (points 1-8), Nicaragua asserted that there was "a fringe of islands along the coast in its immediate vicinity" that entitled it to use straight rather than normal baselines. As to the southernmost part of its mainland coast, Nicaragua claimed instead that the indentation of the coast from Monkey Point to the land boundary terminus with Costa Rica justified Nicaragua's straight baseline segment drawn from point 8 (Great Corn Island) to point 9 (Barra Indio Maíz).

With regard to the straight baseline segment between base points 8 and 9, the Court was of the view that the indentations along the relevant portion of Nicaragua's coast did not penetrate sufficiently inland or present characteristics sufficient for it to consider the said portion as "deeply indented and cut into". It found that the straight baseline segment between base points 8 and 9 did not conform with customary international law on the drawing of straight baselines as reflected in Article 7, paragraph 1, of UNCLOS.

As regards the remainder of Nicaragua's straight baselines running from point 1 to point 8, the Court considered whether Nicaragua had demonstrated the presence of "islands" and, if so, whether those islands amounted to "a fringe . . . along the coast in its immediate vicinity". Given the uncertainty about which of the features are islands, the Court was not satisfied that the number of Nicaragua's islands relative to the length of the coast was sufficient to constitute "a fringe of islands" along Nicaragua's coast. The Court also considered that customary international law requires the said fringe of islands to be sufficiently close to the mainland to warrant its consideration as the outer edge or extremity of that coast. However, the Nicaraguan "islands" are not sufficiently close to each other to form a coherent "cluster" or a "fringe" along the coast and are not sufficiently linked to the land domain to be considered as the outer edge of the coast. Moreover, their masking effect is not significant enough for them to be considered as masking a large proportion of the coast from the sea. In the view of the Court, it follows that the straight baselines drawn from point 1 to point 8 do not meet the requirements of customary international law reflected in Article 7, paragraph 1, of UNCLOS.

The Court also noted that Nicaragua's own evidence establishes that the straight baselines convert into internal waters certain areas which otherwise would have been part of Nicaragua's territorial sea or exclusive economic zone and convert into territorial sea certain areas which would have been part of Nicaragua's exclusive economic zone. Nicaragua's straight baselines thus deny to Colombia the rights to which it is entitled in the exclusive economic zone, including the freedoms of navigation and overflight and of the laying of submarine cables and pipelines, as provided under customary international law as reflected in Article 58, paragraph 1, of UNCLOS.

For the reasons set out above, the Court concluded that the straight baselines established by Decree 33, as amended, do not conform with customary international law. The Court considered that a declaratory judgment to that effect was an appropriate remedy.

3. Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)

On 12 October 2021, the Court delivered its Judgment in the case concerning *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*.

In its Judgment, the Court ruled on the merits of the dispute submitted to it by Somalia against Kenya on 28 August 2014, regarding “the establishment of the single maritime boundary between Somalia and Kenya in the Indian Ocean delimiting the territorial sea, exclusive economic zone . . . and continental shelf, including the continental shelf beyond 200 nautical mile”.

Historical background

In its reasoning, the Court began by recalling the historical background of the dispute. On 15 July 1924, Italy and the United Kingdom concluded a treaty regulating certain questions concerning the boundaries of their respective territories in East Africa, including what Somalia described as “the Italian colony of Jubaland”, located in present-day Somalia, and the British colony of Kenya. By an Exchange of Notes dated 16 and 26 June 1925, the boundary between the Italian and British colonial territories was redefined in its southernmost section. Between 1925 and 1927, a joint British-Italian commission surveyed and demarcated the boundary. Following the completion of this exercise, the commission recorded its decisions in an Agreement signed on 17 December 1927 (hereinafter the “1927 Agreement”), which was subsequently formally confirmed by an Exchange of Notes of 22 November 1933 between the British and Italian Governments (the 1927 Agreement and the Exchange of Notes hereinafter collectively referred to as the “1927/1933 treaty arrangement”).

Overview of the positions of the Parties

The Court noted that the Parties had adopted fundamentally different approaches to the delimitation of the maritime areas. Somalia argued that no maritime boundary existed between the two States and asked the Court to plot a boundary line using the equidistance/special circumstances method (for the delimitation of the territorial sea) and the equidistance/relevant circumstances method (for the maritime areas beyond the territorial sea). Kenya, for its part, contended that there was already an agreed maritime boundary between the Parties, because Somalia had acquiesced to a boundary following the parallel of latitude at 1° 39' 43.2" S (hereinafter “the parallel of latitude”).

Whether Somalia had acquiesced to a maritime boundary following the parallel of latitude

The Court first ascertained whether there was an agreed maritime boundary between the Parties following the parallel of latitude on the basis of acquiescence by Somalia.

The Court observed that it has set a high threshold for proof that a maritime boundary has been established by acquiescence or tacit agreement. It has thus emphasized that since the establishment of a permanent maritime boundary is a matter of grave importance, evidence of a tacit legal agreement must be compelling. Acquiescence presupposes clear and consistent acceptance of another State’s position.

The Court examined whether there was compelling evidence that Kenya’s claim to a maritime boundary at the parallel of latitude was maintained consistently and, consequently, called for a response from Somalia. It then considered whether there was compelling evidence that Somalia had clearly and consistently accepted the boundary claimed by Kenya.

Having examined the arguments of the Parties relating to their conduct between 1979 and 2014, the Court concluded that Kenya had not consistently maintained its claim that the parallel of latitude constituted the single maritime boundary with Somalia and there was no compelling evidence that Somalia had acquiesced to the maritime boundary claimed by Kenya. Consequently, there was no agreed maritime boundary between the Parties at the parallel of latitude.

Maritime delimitation

The Court then dealt with the maritime delimitation between the Parties in the Indian Ocean.

The Court noted that both Somalia and Kenya are parties to the United Nations Convention on the Law of the Sea (hereinafter “UNCLOS” or the “Convention”), and that therefore the provisions of UNCLOS had to be applied in determining the course of the maritime boundary between them.

— Starting-point of the maritime boundary

The Court first addressed the question of the starting-point of the maritime boundary. Taking into account the views of the Parties that had evolved during the proceedings and become by and large concordant, the Court considered that the starting-point was to be determined by connecting the final permanent land boundary beacon, known as Primary Beacon No. 29, to a point on the low-water line by a straight line that runs in a south-easterly direction and that is perpendicular to “the general trend of the coastline at Dar Es Salam” in accordance with the terms of the 1927/1933 treaty arrangement (see sketch-map No. 3 reproduced below).

— Delimitation of the territorial sea

The Court then proceeded with the delimitation of the territorial sea. At the outset, it noted that Article 15 of UNCLOS provides for the use of a median line.

The Court recalled that the delimitation methodology is based on the geography of the coasts of the two States concerned, and that a median or equidistance line is constructed using base points appropriate to that geography. It explained that, although in the identification of base points the Court has regard to the proposals of the parties, it need not select a particular base point, even if the parties are in agreement in that respect, if it does not consider that base point to be appropriate. The Court further recalled that it has sometimes been led to eliminate the disproportionate effect of small islands by not selecting a base point on such small maritime features, and there may be situations in which the equitableness of an equidistance line depends on the precaution taken to eliminate the disproportionate effect of certain islets, rocks and minor coastal projections.

In the circumstances of the case, the Court considered it appropriate to place base points for the construction of the median line solely on solid land on the mainland coasts of the Parties and provided their geographical co-ordinates.

The resulting line delimiting the territorial sea between Somalia and Kenya starts from the land boundary terminus and continues out to a point (Point A) at a distance of 12 nautical miles from the coast (see sketch-map No. 5 reproduced below).

— Delimitation of the exclusive economic zone and the continental shelf within 200 nautical mile

The Court next turned to the delimitation of the exclusive economic zone and the continental shelf within 200 nautical mile from the coasts of the Parties. The Court recalled that, since the adoption of UNCLOS, it has gradually developed a maritime delimitation methodology which consists of three stages. First, a provisional equidistance line is established from the most appropriate base points on the parties’ coasts; secondly, the Court considers whether there are factors calling for

the adjustment of the provisional equidistance line in order to achieve an equitable result; thirdly, it subjects the delimitation line to a disproportionality test. The purpose of this test is to assure the Court that there is no marked disproportion between the ratio of the lengths of the parties' relevant coasts and the ratio of the parties' respective shares in the relevant area to be delimited by the envisaged line, and thus to confirm that the delimitation achieves an equitable solution, as required by the Convention.

The Court observed that the three-stage methodology is not prescribed by UNCLOS and therefore is not mandatory. It has been developed by its jurisprudence on maritime delimitation as part of its effort to arrive at an equitable solution, as required by Articles 74 and 83 of UNCLOS. The Court saw no reason in the present case to use a different methodology.

Relevant coasts and relevant area

The Court began by identifying the relevant coasts of the Parties, namely those coasts whose projections overlap. It used radial projections which overlap within 200 nautical mile.

The Court then identified the relevant area. It recalled that the relevant area comprises that part of the maritime space in which the potential entitlements of the parties overlap. In the present case, the Court was of the view that, in the north, the relevant area extends as far as the overlap of the maritime projections of the coast of Kenya and the coast of Somalia. The Court considered it appropriate to use the overlap of the 200 nautical mile radial projections from the land boundary terminus. As far as the southern limit of the relevant area is concerned, the Court noted that the Parties agreed that the maritime space south of the boundary between Kenya and Tanzania was not part of the relevant area.

Provisional equidistance line

The Court next constructed the provisional equidistance line. It identified the appropriate base points for the construction of this line within 200 nautical mile of the coasts. The provisional equidistance line constructed on the basis of these base points begins from the endpoint of the maritime boundary in the territorial sea (Point A) and continues until it reaches 200 nautical mile from the starting-point of the maritime boundary, at Point 10' (see sketch-map No. 9 reproduced below).

Whether there was a need to adjust the provisional equidistance line

The Court considered whether there were factors requiring the adjustment or shifting of the provisional equidistance line in order to achieve an equitable solution.

It recalled that the ICJ itself and international tribunals have acknowledged that the use of an equidistance line can produce a cut-off effect, particularly where the coastline is characterized by concavity, and that an adjustment of that line might be necessary in order to reach an equitable solution.

The Court observed that if the examination of the coastline was limited only to the coasts of Kenya and Somalia, there was no conspicuous concavity. The potential cut-off of Kenya's maritime entitlements should, however, be assessed in a broader geographical configuration. When the mainland coasts of Somalia, Kenya and Tanzania were observed together, as a whole, the coastline was undoubtedly concave. Kenya faced a cut-off of its maritime entitlements as the middle State located between Somalia and Tanzania.

In addition, the Court observed that the presence of Pemba Island, a large and populated island appertaining to Tanzania, accentuated this cut-off effect because of its influence on the course of a hypothetical equidistance line between Kenya and Tanzania. Even though the cut-off effect in the

present case was less pronounced than in some other cases, the Court considered that it was nonetheless still serious enough to warrant some adjustment to address the substantial narrowing of Kenya's potential entitlements. It believed that it was necessary to shift the line to the north so that, from Point A, it follows a geodetic line with an initial azimuth of 114°. The resulting line would end at its intersection with the 200-nautical-mile limit from the coast of Kenya, at Point B (see sketch-map No. 11 reproduced below).

Disproportionality test

In the final stage, the Court checked whether the envisaged delimitation line would lead to a significant disproportionality between the ratio of the lengths of the Parties' respective relevant coasts and the ratio of the size of the relevant areas apportioned by that line. The Court noted that the ratio of the relevant coasts was 1:1.43 in favour of Somalia and the ratio between the maritime zones that would appertain respectively to Kenya and Somalia was 1:1.30 in favour of Kenya. Since the comparison of these two ratios did not reveal any significant or marked disproportionality, the Court was satisfied that the adjusted line it had established as the maritime boundary for the exclusive economic zones and the continental shelves of Somalia and Kenya within 200 nautical mile in the Indian Ocean achieved an equitable solution.

— Question of the delimitation of the continental shelf beyond 200 nautical mile

The Court turned finally to the question of the delimitation of the continental shelf beyond 200 nautical mile. It recalled that any claim of continental shelf rights beyond 200 miles by a State party to UNCLOS must be in accordance with Article 76 of the Convention and reviewed by the Commission on the Limits of the Continental Shelf (hereinafter the "Commission") established thereunder.

The Court observed that both States had made submissions on the limits of the continental shelf beyond 200 nautical mile to the Commission in order to obtain its recommendations, in accordance with Article 76, paragraph 8, of UNCLOS.

The Court recalled that the exercise by international courts and tribunals of their jurisdiction regarding the delimitation of maritime boundaries, including that of the continental shelf, is without prejudice to the exercise by the Commission of its functions on matters related to the delineation of the outer limits of the continental shelf.

The Court noted that in their submissions to the Commission both Somalia and Kenya claim a continental shelf beyond 200 nautical mile on the basis of scientific evidence, and that their claims overlap. In most of the area of overlapping claims beyond 200 nautical mile, both Parties assert that their continental shelf extends to a maximum distance of 350 nautical miles. The Court further noted that neither Party questions the existence of the other Party's entitlement to a continental shelf beyond 200 nautical mile or the extent of that claim. Their dispute concerns the boundary delimiting that shelf between them.

In order to delimit the continental shelf between the Parties beyond 200 nautical mile, the Court considered it appropriate to extend the geodetic line used for the delimitation of the exclusive economic zone and the continental shelf within 200 nautical mile.

The Court concluded that the maritime boundary beyond 200 nautical mile continues along the same geodetic line as the adjusted line within 200 nautical mile until it reaches the outer limits of the Parties' continental shelves, which are to be delineated by Somalia and Kenya, respectively, on the basis of the recommendations to be made by the Commission, or until it reaches the area where the rights of third States may be affected.

The complete course of the maritime boundary is depicted on sketch-map No. 13 (reproduced below).

Alleged violations by Kenya of its international obligations

Finally, the Court turned to the alleged violations by Kenya of its international obligations.

It first examined Somalia's argument that, by its unilateral actions in the disputed area, Kenya had violated Somalia's sovereignty over the territorial sea and its sovereign rights and jurisdiction in the exclusive economic zone and on the continental shelf.

The Court considered that when maritime claims of States overlap, maritime activities undertaken by a State in an area subsequently attributed to another State by a judgment cannot be considered to be in violation of the latter's sovereign rights if those activities were carried out before the judgment was delivered and if the area concerned was the subject of claims made in good faith by both States.

In the circumstances of the case, the Court concluded that it had not been established that Kenya's maritime activities, including those that might have been conducted in parts of the disputed area attributed to Somalia, were in violation of Somalia's sovereignty or its sovereign rights and jurisdiction.

The Court then examined the Applicant's argument that Kenya's activities were in violation of Article 74, paragraph 3, and Article 83, paragraph 3, of UNCLOS. Under these provisions, States with opposite or adjacent coasts that have not reached an agreement on the delimitation of the exclusive economic zone or continental shelf are under an obligation to "make every effort . . . during this transitional period, not to jeopardize or hamper the reaching of the final agreement". The Court considered that the "transitional period" mentioned in these provisions refers to the period from the moment the maritime delimitation dispute has been established until a final delimitation by agreement or adjudication has been achieved. The Court considered that a maritime delimitation dispute between the Parties had been established since 2009.

In the circumstances of the case, the Court could not conclude that the activities carried out by Kenya in the disputed area after 2009 jeopardized or hampered the reaching of a final agreement on the delimitation of the maritime boundary, in violation of Article 74, paragraph 3, or Article 83, paragraph 3, of UNCLOS.

The Court thus rejected the submission made by Somalia concerning the allegation that Kenya, by its conduct in the disputed area, had violated its international obligations.

Sketch-maps reproduced:

- Sketch-map No. 3: Starting-point for the Maritime Delimitation
- Sketch-map No. 5: Delimitation of the Territorial Sea
- Sketch-map No. 9: Construction of the provisional equidistance line
- Sketch-map No. 11: The adjusted line
- Sketch-map No. 13: Course of the maritime boundary

4. *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)*

The Court was seised of this case on 7 June 2019, following notification to the Registry, by Guatemala and Belize, of a Special Agreement “to submit Guatemala’s territorial, insular and maritime claim to the International Court of Justice”, concluded on 8 December 2008, and a Protocol thereto dated 25 May 2015.

Under the Special Agreement and the Protocol, the two States had agreed, subject to approval by referendum in each country (Article 7 of the Special Agreement, as amended by the Protocol), to “submit to the Court the dispute described in Article 2 of [the said] Special Agreement”, which reads as follows: “[t]he Parties request the Court to determine in accordance with applicable rules of international law as specified in Article 38(1) of the Statute of the Court any and all legal claims of Guatemala against Belize to land and insular territories and to any maritime areas pertaining to these territories, to declare the rights therein of both Parties, and to determine the boundaries between their respective territories and areas”.

In their letters of notification of the Special Agreement (received in the Registry on 22 August 2018, in respect of Guatemala, and 7 June 2019, in respect of Belize), the Parties noted that their populations had approved the submission of the dispute to the Court by referenda held in Guatemala on 15 April 2018 and in Belize on 8 May 2019.

By an Order of 18 June 2019, the Court fixed 8 June 2020 and 8 June 2021 as the respective time-limits for the filing of a Memorial by Guatemala and a Counter-Memorial by Belize.

On 8 April 2020, the Agent of Guatemala requested a 12-month extension of the time-limit for the filing of its Memorial, on the grounds that the COVID-19 pandemic had resulted in delays in his Government’s preparation of that pleading. After due consideration of the matter, the Court, by an Order of 22 April 2020, decided to extend to 8 December 2020 and 8 June 2022 the respective time-limits for the filing of the Memorial of Guatemala and the Counter-Memorial of Belize. The Memorial and the Counter-Memorial were filed within the time-limit thus extended.

5. *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*

These proceedings were instituted on 5 March 2021, following notification to the Registry of a Special Agreement between Gabon and Equatorial Guinea, which was signed in 2016 and entered into force in March 2020.

In the Special Agreement, the Parties request the Court

“to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law in the relations between the Gabonese Republic and the Republic of Equatorial Guinea in so far as they concern the delimitation of their common maritime and land boundaries and sovereignty over the islands of Mbanié/Mbañe, Cocotiers/Cocoterros and Conga”.

It is stated in the Special Agreement that

“[t]he Gabonese Republic recognizes as applicable to the dispute the special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900, and the Convention demarcating the land and maritime frontiers of Equatorial Guinea and Gabon, signed in Bata on 12 September 1974”,

and that

“[t]he Republic of Equatorial Guinea recognizes as applicable to the dispute the special Convention on the delimitation of French and Spanish possessions in West Africa, on the coasts of the Sahara and the Gulf of Guinea, signed in Paris on 27 June 1900”.

The Special Agreement further states that both Gabon and Equatorial Guinea reserve the right to invoke other legal titles.

By an Order of 7 April 2021, the Court fixed 5 October 2021 and 5 May 2022 as the respective time-limits for the filing of a Memorial by Equatorial Guinea and a Counter-Memorial by Gabon. The Memorial and the Counter-Memorial were filed within the time-limit thus fixed.

By an Order of 6 May 2022, the Court fixed 5 October 2022 and 6 March 2023 as the respective time-limits for the filing of the Reply by Equatorial Guinea and a Rejoinder by Gabon.
