

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 2022 to June 2023)

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.

By an Order of 4 October 2022, the Court indicated that, in the circumstances of the case, before proceeding to any consideration of technical and scientific questions in relation to the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measured, it was necessary to decide on certain questions of law, after hearing the Parties thereon. Accordingly, Nicaragua and Colombia were directed to present their arguments at the forthcoming oral proceedings in the case exclusively with regard to the following two questions: “(1) Under customary international law, may a State’s entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured extend within 200 nautical miles from the baselines of another State?” and “(2) What are the criteria under customary international law for the determination of the limit of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured and, in this regard, do paragraphs 2 to 6 of Article 76 of the United Nations Convention on the Law of the Sea reflect customary international law?”

Public hearings on the two questions identified by the Court in its Order of 4 October 2022 were held on 5, 6, 7 and 9 December 2022.

2. 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.

By an Order of 24 June 2022, the Court fixed 8 December 2022 and 8 June 2023 as the respective time-limits for the filing of a Reply by Guatemala and a Rejoinder by Belize. The Reply was filed within the time-limit thus fixed.

3. *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/Cocoteros 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 a Reply by Equatorial Guinea and a Rejoinder by Gabon. The Reply and the Rejoinder were filed within the time-limit thus fixed.
