

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 2023 to June 2024)

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

On 13 July 2023, the Court rendered its Judgment in the case concerning the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*.

It is recalled that, following the filing of the written pleadings in the case, the Court, in its Order of 4 October 2022, decided that, 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 oral proceedings in the case exclusively with regard to two questions of law. The first question was whether, under customary international law, 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 may extend within 200 nautical miles from the baselines of another State. The second question addressed 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 whether paragraphs 2 to 6 of Article 76 of the United Nations Convention on the Law of the Sea reflect customary international law.

The Court observed that the first question had a preliminary character in the sense that it had to be answered in order to ascertain whether the Court may proceed to the delimitation requested by Nicaragua. The Court noted that the substantive and procedural conditions for determining the outer limits of the continental shelf beyond 200 nautical miles were the result of a compromise reached during the final sessions of the Third United Nations Conference on the Law of the Sea. The aim was to avoid undue encroachment on the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, considered the "common heritage of mankind" and referred to in UNCLOS as the "Area". The Court further noted that, in practice, the vast majority of States parties to UNCLOS that had made submissions to the Commission on the Limits of the Continental Shelf had chosen not to assert, therein, outer limits of their extended continental shelf that extended within 200 nautical miles of the baselines of another State. It considered that, taken as a whole, the practice of States may be considered sufficiently widespread and uniform for the purpose of the identification of customary international law. In addition, given its extent over a long period of time, this State practice may be seen as an expression of *opinio juris*, which is a constitutive element of customary international law. The Court concluded that, under customary international law, 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 may not extend within 200 nautical miles from the baselines of another State.

The Court found that, it followed from this conclusion that, in the absence of overlapping entitlements over the same maritime areas, the Court could not proceed to a maritime delimitation. Consequently, there was no need for the Court to address the second question.

The Court then turned to the requests contained in Nicaragua's submissions set out in its written pleadings. The request contained in Nicaragua's first submission proposed co-ordinates for

the continental shelf boundary between Nicaragua and Colombia in the area beyond 200 nautical miles from the baselines of Nicaragua's coast but within 200 nautical miles from the baselines of Colombia's mainland coast. The request contained in Nicaragua's second submission proposed co-ordinates to delimit the area of the continental shelf in which, according to Nicaragua, its entitlement to an extended continental shelf overlapped with Colombia's entitlement to a continental shelf within 200 nautical miles from the baselines of the coasts of San Andrés and Providencia. The Court considered that it followed from the conclusion that it had reached on the first question that, within 200 nautical miles from the baselines of Colombia's mainland coast or the baselines of Colombia's islands, there was no area of overlapping entitlement to be delimited in the case. Therefore, Nicaragua's requests could not be upheld.

The request contained in Nicaragua's third submission concerned the maritime entitlements of Serranilla, Bajo Nuevo and Serrana. The Court observed that, if Serranilla and Bajo Nuevo were entitled to exclusive economic zones and continental shelves, then, in view of the Court's conclusion above, any extended continental shelf that Nicaragua claimed may not extend within the 200-nautical-mile maritime entitlements of these islands. If, on the other hand, Serranilla or Bajo Nuevo were not entitled to exclusive economic zones or continental shelves, then they did not generate any maritime entitlements in the area in which Nicaragua claimed an extended continental shelf. In either case, as a consequence of the Court's conclusion in relation to the first question, within 200 nautical miles from the baselines of Serranilla and Bajo Nuevo, there could be no area of overlapping entitlement to a continental shelf to be delimited in the present proceedings. The Court therefore considered that it did not need to determine the scope of the entitlements of Serranilla and Bajo Nuevo in order to settle the dispute submitted by Nicaragua. As far as the island of Serrana was concerned, the Court considered that the effect of Serrana's maritime entitlements had already been determined conclusively in its 2012 Judgment and that there was no need for the Court to reaffirm it.

## ***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 and the Rejoinder were filed within the time-limits 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 on 15 November 2016 and entered into force on 4 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-limits thus fixed.

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With respect to the first question, the Court noted that the substantive and procedural conditions for determining the outer limits of the continental shelf beyond 200 nautical miles were the result of a compromise reached during the final sessions of the Third United Nations Conference on the Law of the Sea. The aim was to avoid undue encroachment on the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, considered the "common heritage of mankind" and referred to in UNCLOS as the "Area". The Court further noted that, in practice, the vast majority of States parties to UNCLOS that had made submissions to the Commission on the Limits of the Continental Shelf had chosen not to assert, therein, outer limits of their extended continental shelf that extended within 200 nautical miles of the baselines of another State. It considered that, taken as a whole, the practice of States may be considered sufficiently widespread and uniform for the purpose of the identification of customary international law. In addition, given its extent over a long period of time, this State practice may be seen as an expression of *opinio juris*, which is a constitutive element of customary international law. The Court concluded that, under customary international law, 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 may not extend within 200 nautical miles from the baselines of another State. The Court found that, it followed from this conclusion that, in the absence of overlapping entitlements over the same maritime areas, the Court could not proceed to a maritime delimitation. Consequently, there was no need for the Court to address the second question.

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co-ordinates to delimit the area of the continental shelf in which, according to Nicaragua, its entitlement to an extended continental shelf overlapped with Colombia's entitlement to a continental shelf within 200 nautical miles from the baselines of the coasts of San Andrés and Providencia. The Court considered that it followed from the conclusion that it had reached on the first question that, within 200 nautical miles from the baselines of Colombia's mainland coast or the baselines of Colombia's islands, there was no area of overlapping entitlement to be delimited in the case. Therefore, Nicaragua's requests could not be upheld.

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