

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 2019 to June 2020)

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 makes two requests. First, it asks 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 requests 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 miles 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 recalls 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 miles 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 miles 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 miles from Colombia and also (ii) partly overlaps with an area that lies within 200 nautical miles of Colombia’s coast”, the Applicant maintains that the two States “have not agreed upon a maritime boundary between them in the area beyond 200 nautical miles 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 invokes 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 miles 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)

These proceedings were instituted by Nicaragua against Colombia on 26 November 2013 with regard to a “dispute concern[ing] the violations of Nicaragua’s sovereign rights and maritime zones declared by the Court’s Judgment of 19 November 2012 [in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*] and the threat of the use of force by Colombia in order to implement these violations”.

In its Application, Nicaragua “requests the Court to adjudge and declare that Colombia is in breach of: its obligation not to use or threaten to use force under Article 2 (4) of the UN Charter and international customary law; its obligation not to violate Nicaragua’s maritime zones as delimited in paragraph 251 of the ICJ Judgment of 19 November 2012 as well as Nicaragua’s sovereign rights and jurisdiction in these zones; its obligation not to violate Nicaragua’s rights under customary international law as reflected in Parts V and VI of UNCLOS [the United Nations Convention on the Law Of the Sea]; and that, consequently, Colombia is bound to comply with the Judgment of 19 November 2012, wipe out the legal and material consequences of its internationally wrongful acts, and make full reparation for the harm caused by those acts”.

In support of its claim, Nicaragua quotes various statements allegedly made by Colombia’s highest authorities which, in its view, show Colombia’s “rejection of the Court’s Judgment” and its decision to regard that Judgment as “not applicable”. It also refers to the enactment of a decree of the President of Colombia (“Decree 1946”) on the establishment of an “Integral Contiguous Zone”, which is said to violate Nicaragua’s sovereign rights over its maritime areas in the Caribbean. Finally, the Applicant asserts that “[p]rior and especially subsequent to the enactment of Decree 1946, the threatening declarations by Colombian Authorities and the hostile treatment given by Colombian naval forces to Nicaraguan vessels have seriously affected the possibilities of Nicaragua for exploiting the living and non-living resources in its Caribbean exclusive economic zone and continental shelf”.

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

By an Order of 3 February 2014, the Court fixed 3 October 2014 and 3 June 2015 as the respective time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Colombia. The Memorial of Nicaragua was filed within the time-limit thus fixed.

On 19 December 2014, Colombia raised certain preliminary objections to the jurisdiction of the Court. After Nicaragua had filed a written statement of its observations and submissions on the preliminary objections, and following public hearings held from 28 September to 2 October 2015, the Court, in its Judgment of 17 March 2016, found that it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning the alleged violations by Colombia of Nicaragua’s rights in the maritime zones which, according to Nicaragua, the Court declared in its 2012 Judgment appertain to Nicaragua. However, it upheld Colombia’s objection that the Court lacked jurisdiction under the Pact of Bogotá to entertain the claim concerning the alleged breach of Colombia’s obligation not to use force or threaten to use force, because there was no dispute between the Parties in that respect as at 26 November 2013, the date when the Application was filed. The Court found, in particular, that nothing in the evidence suggested that, at the date of filing of the Application, Nicaragua had indicated that Colombia had violated its obligations under Article 2, paragraph 4, of the Charter of the United Nations or under customary international law regarding the threat or use of force.

By an Order of 17 March 2016, the Court fixed 17 November 2016 as the new time-limit for the filing of a Counter-Memorial by Colombia.

In its Counter-Memorial, which was filed within the time-limit thus fixed, Colombia submitted four counter-claims. By an Order dated 15 November 2017, the Court found two of these counter-claims admissible — one concerning Nicaragua’s alleged infringement of the customary artisanal fishing rights of the local inhabitants of the San Andrés Archipelago to access and exploit their traditional fishing grounds, and the other relating to Nicaragua’s adoption of Decree No. 33-2013 of 19 August 2013, which, according to Colombia, established straight baselines and had the effect of extending Nicaragua’s internal waters and maritime zones beyond what international law permits. However, the Court found that the other two counter-claims submitted by Colombia — one on Nicaragua’s alleged breach of a duty of due diligence to protect and preserve the marine environment of the south-western Caribbean Sea, and the other on Nicaragua’s alleged breach of its duty of due diligence to protect the right of the inhabitants of the San Andrés Archipelago to benefit from a healthy, sound and sustainable environment — were inadmissible as such and consequently did not form part of the current proceedings.

By the same Order of 15 November 2017, the Court directed Nicaragua to submit a Reply and Colombia to submit a Rejoinder relating to the claims of both Parties in the proceedings, and fixed 15 May 2018 and 15 November 2018 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 December 2018, the Court authorized the submission by Nicaragua of an additional pleading relating solely to the counter-claims submitted by Colombia and fixed 4 March 2019 as the time-limit for the filing of that pleading. Nicaragua’s additional pleading on Colombia’s counter-claims was filed within the time-limit thus fixed.

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

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

These proceedings were instituted by Somalia against Kenya on 28 August 2014 with regard to “a dispute concerning maritime delimitation in the Indian Ocean”.

In its Application, Somalia contends that both States “disagree about the location of the maritime boundary in the area where their maritime entitlements overlap”, and asserts that “[d]iplomatic negotiations, in which their respective views have been fully exchanged, have failed to resolve this disagreement”. Somalia requests the Court “to determine, on the basis of international law, the complete course of the single maritime boundary dividing all the maritime areas appertaining to Somalia and to Kenya in the Indian Ocean, including the continental shelf beyond 200 [nautical miles]”. The Applicant further asks the Court “to determine the precise geographical co-ordinates of the single maritime boundary in the Indian Ocean”.

In the view of the Applicant, the maritime boundary between the Parties in the territorial sea, exclusive economic zone (EEZ) and continental shelf should be established in accordance with, respectively, Articles 15, 74 and 83 of the United Nations Convention on the Law of the Sea (UNCLOS). Somalia explains that, accordingly, the boundary line in the territorial sea “should be a median line as specified in Article 15, since there are no special circumstances that would justify departure from such a line” and that, in the EEZ and continental shelf, the boundary “should be established according to the three step process the Court has consistently employed in its application of Articles 74 and 83 [of UNCLOS]”.

The Applicant asserts that “Kenya’s current position on the maritime boundary is that it should be a straight line emanating from the Parties’ land boundary terminus, and extending due east along the parallel of latitude on which the land boundary terminus sits, through the full extent of the territorial sea, EEZ and continental shelf, including the continental shelf beyond 200 [nautical miles]”.

As basis for the Court’s jurisdiction, Somalia invokes the provisions of Article 36, paragraph 2, of its Statute, referring to the declarations recognizing the Court’s jurisdiction as compulsory made by Somalia on 11 April 1963 and by Kenya on 19 April 1965. In addition, the Applicant submits that “the jurisdiction of the Court under Article 36, paragraph 2, of its Statute is underscored by Article 282 of UNCLOS”, which Somalia and Kenya both ratified in 1989.

By an Order of 16 October 2014, the President fixed 13 July 2015 as the time-limit for the filing of the Memorial of Somalia and 27 May 2016 for the filing of the Counter-Memorial of Kenya. Somalia filed its Memorial within the time-limit thus fixed.

On 7 October 2015, Kenya raised certain preliminary objections to the jurisdiction of the Court and to the admissibility of the Application.

After the filing by Somalia of a written statement of its observations and submissions on the preliminary objections, and following public hearings held from 19 to 23 September 2016, the Court, in its Judgment of 2 February 2017, declared that it had jurisdiction to entertain the Application filed by Somalia on 28 August 2014 and that the Application was admissible.

By an Order dated 2 February 2017, the Court fixed 18 December 2017 as the time-limit for the filing of the Counter-Memorial of Kenya. The Counter-Memorial was filed within the time-limit thus fixed.

By an Order dated 2 February 2018, the Court authorized the submission of a Reply by Somalia and a Rejoinder by Kenya and fixed 18 June and 18 December 2018 as the respective time-limits for the filing of those written pleadings. The Reply and the Rejoinder were filed within the time-limits thus fixed.

The case is now ready for hearing. The Court had originally planned to hold public hearings from 9 to 13 September 2019. However, on 6 September 2019, further to a request made by Kenya on 3 September 2019, the Court decided to postpone the opening of the oral proceedings to 4 November 2019. Kenya having reiterated, on 16 September 2019, its request to postpone the hearings, on 18 October 2019, the Court decided that they would begin on 8 June 2020. On 24 April 2020, in light of the COVID-19 pandemic, Kenya requested that the oral proceedings be postponed. On account of the exceptional situation occasioned by the pandemic, the Court decided to postpone the opening date of the oral proceedings to the week beginning Monday 15 March 2021.

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 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.
