

**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”. 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. The Court found, in its Judgment of 17 March 2016 on those preliminary objections, that it had jurisdiction 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.

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)*. It 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 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 2016 that it had jurisdiction to entertain the dispute in the present case — ceased to be in force for Colombia. The Court first considered the scope of its jurisdiction

*ratione temporis*. In its view, the claims and submissions made by Nicaragua in relation to the above-mentioned incidents arose directly out of the question that was the subject-matter of the Application, that those 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. The Court thus concluded that it had jurisdiction *ratione temporis* over Nicaragua's claims relating to those alleged incidents.

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 observed 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. In addition, fishing vessels allegedly authorized by Colombia had engaged in fishing activities in Nicaragua's exclusive economic zone, and these activities had often been conducted under the protection of Colombian frigates. The Court concluded that Colombia had violated its international obligation to respect Nicaragua's sovereign rights and jurisdiction in its exclusive economic zone, by interfering with Nicaraguan-flagged or Nicaraguan-licensed fishing and marine scientific research vessels, hindering the operations of Nicaragua's naval vessels, seeking to enforce conservation measures and authorizing fishing activities in that zone. Consequently, Colombia's international responsibility was engaged and it must immediately cease its wrongful conduct. 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. The Court further rejected Nicaragua's allegation that Colombia had offered and awarded hydrocarbon blocks encompassing parts of Nicaragua's exclusive economic zone since the maritime boundary between the Parties had been delimited, thereby violating Nicaragua's sovereign rights.

The Court noted that among its allegations of Colombia's violations of Nicaragua's rights in its maritime zones, Nicaragua referred 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" 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. It was of the view 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. However, it considered that, in this instance, Colombia's "integral contiguous zone" was incompatible with customary international law, in so far as its breadth exceeds the 24-nautical-mile limit and 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. It was moreover of the opinion 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.

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. It noted 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 therefore of the opinion that Colombia's claim regarding a long-standing practice of artisanal fishing was not sufficiently established. It also considered that, contrary to what Colombia claimed, the statements of Nicaragua's Head of State 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.

The Court observed that Colombia further contended in its counter-claims that the straight baselines established by Decree No. 33-2013 of 19 August 2013 (hereinafter "Decree 33"), 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. It first noted 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. In the opinion of the Court, neither precondition justifying the drawing of straight baselines by Nicaragua was met in the present case. The Court therefore considered that those lines did not conform with customary international law on the drawing of straight baselines as reflected in Article 7, paragraph 1, of UNCLOS.

The Court also noted that Nicaragua's own evidence established that the straight baselines converted into internal waters certain areas which otherwise would have been part of Nicaragua's territorial sea or exclusive economic zone and converted 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.

For these reasons, 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)*. 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 miles".

The Court first ascertained whether there was an agreed maritime boundary between the Parties following the parallel of latitude at 1° 39' 43.2" S on the basis of acquiescence by Somalia, as claimed by Kenya. The Court observed that it has set a high threshold for proof that a maritime boundary has been established by acquiescence or tacit agreement. After examining the conduct of the Parties, it concluded that there was no agreed maritime boundary between the Parties at the parallel of latitude.

The Court then dealt with the maritime delimitation between the Parties in the Indian Ocean. It noted that both Somalia and Kenya are parties to the United Nations Convention on the Law of the Sea (hereinafter "UNCLOS"), and that therefore the provisions of UNCLOS had to be applied in determining the course of the maritime boundary between them.

It first addressed the question of the starting-point of the maritime boundary. It 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.

Addressing the delimitation of the Parties' territorial seas, the Court noted that Article 15 of UNCLOS, concerning the delimitation of the territorial sea between States with opposite or adjacent coasts, provides for the use of a median line. It recalled that the delimitation methodology is based on the geography of the coasts of the two States concerned and that a median line is constructed using base points appropriate to that geography. The Court selected base points that differ from those proposed by the Parties and drew a median line using base points solely on solid land on the mainland coasts of the Parties. The resulting line delimiting the territorial sea starts from the land boundary terminus and continues out to a point (Point A) at a distance of 12 nautical miles from the coast.

The Court next turned to the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles from the coasts of the Parties. It applied its maritime delimitation methodology consisting of three stages. First, it establishes a provisional equidistance line; secondly, it examines whether there are factors calling for the adjustment of the provisional equidistance line; thirdly, it conducts a disproportionality test.

The Court started by identifying the relevant coasts of the Parties, namely those coasts whose projections overlap. It used radial projections which overlap within 200 nautical miles. The Court also identified the relevant area and recalled that it comprises that part of the maritime space in which the potential entitlements of the parties overlap. Then, having selected the appropriate base points, the Court constructed the provisional equidistance line, which begins from the endpoint of the maritime boundary in the territorial sea (Point A) and continues until it reaches 200 nautical miles from the starting-point of the maritime boundary, at Point 10'.

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

In the circumstances of the case, it 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, appertaining to Tanzania, accentuated this cut-off effect. It therefore considered it 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.

In the final stage, the Court compared 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. In the absence of any significant or marked disproportionality, the Court concluded 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 miles in the Indian Ocean achieved an equitable solution.

The Court next turned to the question of the delimitation of the continental shelf beyond 200 nautical miles. 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 miles to the Commission in order to obtain its recommendations, in accordance with Article 76, paragraph 8, of UNCLOS. It further noted that in most of the area of overlapping claims beyond 200 nautical miles, both Parties assert that their continental shelf extends to a maximum distance of 350 nautical miles.

In order to delimit the continental shelf between the Parties beyond 200 nautical miles, 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 miles. The Court thus concluded that the maritime boundary beyond 200 nautical miles continues along the same geodetic line as the adjusted line within 200 nautical miles 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.

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

#### ***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.

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.

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 President of 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.

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