

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 2024 to June 2025)

1. *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 on 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 the 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-limits 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.

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

On 19 May 2025, the Court rendered its Judgment on the merits in the case concerning *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*. It is recalled that the 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 requested 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 was 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 delimiting the land and maritime frontiers of Equatorial Guinea and Gabon, signed in Bata on 12 September 1974” (the “Bata Convention”),

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 1900 Convention).

Oral proceedings were held in the case from 30 September to 4 October 2024. In its final submissions as formulated at the close of the oral proceedings, Gabon invoked, in respect of the delimitation of the Parties’ common maritime boundary, the same legal titles as those mentioned in the Special Agreement. Equatorial Guinea, for its part, referred in its final submissions, in addition to the 1900 Convention in so far as it established the terminus of the land boundary in Corisco Bay, to the United Nations Convention on the Law of the Sea (UNCLOS) and to customary international law in so far as it establishes that a State’s title and entitlement to adjacent maritime areas derives from its title to land territory.

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In its Judgment, the Court first clarified the task entrusted to it under the Special Agreement. It noted that it had not been asked therein to delimit the land and maritime boundary or determine sovereignty over the three islands, but only to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law in their relations in so far as they concern the dispute between them.

The existence and authenticity of the “Bata Convention”, invoked by Gabon, were the subject of debate between the Parties. A particular difficulty arose from the fact that no original of the “Bata Convention” had been presented to the Court. For the purposes of the case, the Court decided to assume that a document had been signed at Bata, and that the “copies” placed on the record in the proceedings were reproductions of that document. In the Court’s view, the decisive question was whether the “Bata Convention” is a treaty having the force of law between the Parties concerning their dispute and whether it thus constitutes a legal title within the meaning of the Special Agreement. Based on the subsequent conduct of the Parties, the Court concluded that the “Bata Convention” is not a treaty having the force of law between Equatorial Guinea and Gabon and, accordingly, does not constitute a legal title.

Having concluded that the “Bata Convention” does not constitute a legal title within the meaning of the Special Agreement, the Court stated that it would examine only the legal titles, treaties and international conventions invoked by Equatorial Guinea concerning the delimitation of the Parties’ common maritime boundary.

In the Court’s view, the legal titles it was asked to identify under the Special Agreement need not be dispositive of the maritime delimitation. The Court noted that the Parties agreed that the titles to which they succeeded upon independence were held by the colonial Powers on the basis of the 1900 Convention. It observed that Article IV of that instrument determined the land boundary terminus, which serves as the starting-point of the maritime boundary. The Court concluded that the 1900 Convention is therefore a source of the Parties’ rights to adjacent maritime areas in so far as it established the land boundary terminus from which the maritime boundary starts.

In respect of UNCLOS, to which Equatorial Guinea and Gabon are both parties, the Court observed that it is an international convention that provides a legal framework for the delimitation of the Parties’ common maritime boundary. It is thus relevant to the delimitation of the Parties’ maritime boundary and can play an important role therein. The Court recalled that maritime boundaries may be established by agreement or through adjudication, in accordance with the rules laid down by UNCLOS, and that while UNCLOS may “concern” the delimitation of the Parties’ common maritime boundary, it is not itself the source of a right to specific maritime areas. Consequently, the Court concluded that UNCLOS does not constitute a legal title within the meaning of the Special Agreement, but that it is an international convention which has the force of law in the relations between the Parties.

Finally, as regards customary international law, invoked by Equatorial Guinea, the Court recalled that the principle that the land dominates the sea does not automatically assign coastal States rights to specific maritime areas. While the principle may “concern” the delimitation of the Parties’ common maritime boundary, it is not itself the source of a right to specific maritime areas. In the Court’s view, through the Special Agreement, the Parties intended to request the Court to determine whether the legal titles invoked by the Parties have the force of law in the relations between them in so far as they concern the delimitation of their common maritime boundary. In light of the foregoing, the Court concluded that customary international law, in so far as it establishes that a State’s entitlement to adjacent maritime areas derives from its title to land territory, does not constitute a legal title within the meaning of the Special Agreement.

3. Obligations of States in respect of Climate Change

On 29 March 2023, the General Assembly of the United Nations adopted resolution A/RES/77/276 in which, referring to Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court, it requested the Court to give an advisory opinion on the following questions:

“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

- (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
- (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"

The request for an advisory opinion was transmitted to the Court by the Secretary-General of the United Nations by a letter dated 12 April 2023.

By an Order dated 20 April 2023, the President of the Court decided, pursuant to Article 66, paragraph 1, of the Court's Statute, that the United Nations and its Member States were likely to be able to furnish information on the questions submitted to the Court for an advisory opinion. The Court subsequently authorized the participation in the proceedings of the International Union for Conservation of Nature, the Commission of Small Island States on Climate Change and International Law, the European Union, the African Union, the Organization of the Petroleum Exporting Countries, the Organisation of African, Caribbean and Pacific States, the Melanesian Spearhead Group, the Pacific Islands Forum Fisheries Agency, the Pacific Community, the Pacific Islands Forum, the Alliance of Small Island States, the Parties to the Nauru Agreement Office and the World Health Organization.

Ninety-one written statements were filed in the Registry by 79 States and 12 organizations. Sixty-three written comments were filed in the Registry by 55 States and eight organizations. Public hearings were held between 2 and 13 December 2024. During the hearings, 96 States and 11 international organizations presented oral statements.

In their written and oral statements, many participants argued that anthropogenic greenhouse gas (GHG) emissions are causing harm to the marine environment, as well as climate change and damage to the climate system, and that the United Nations Convention on the Law of the Sea (UNCLOS) should therefore be taken into account in the advisory opinion. The majority of the participants considered Part XII of UNCLOS, which concerns the protection and preservation of the marine environment and sets forth obligations that apply to the marine environment as a whole, to be of particular relevance.

The provisions most often referred to during the written and oral proceedings were Articles 192 and 194 of UNCLOS, which were presented as setting forth obligations relevant to the protection of the climate system and other parts of the environment. Several participants submitted that, under Articles 192 and 194 of UNCLOS, States have an obligation to protect and preserve the marine environment, as well as to prevent, reduce and control pollution of that environment, which includes an obligation to protect the ocean from the negative effects caused by the release of GHG emissions. They emphasized that both obligations are generally considered to be obligations of conduct which must be fulfilled with due diligence.

The participants recalled that Article 192 of UNCLOS stipulates that "States have the obligation to protect and preserve the marine environment", arguing that this provision lays down a general duty to protect and preserve the marine environment, namely to take all measures necessary to prevent future harm and to preserve the marine environment against the harmful impacts of climate change. Several participants expressed the view that this obligation has both "positive and negative" dimensions, and many argued that Article 192 reflects customary international law and has an *erga omnes* character. Some participants submitted that this obligation applies not only to the

activities directly carried out by the State and its organs, but also to the activities of non-State actors taking place under the jurisdiction or control of the State that cause harm to the marine environment.

With regard to Article 194, many participants stressed that this provision contains obligations, incumbent on States parties, to prevent, reduce and control “pollution” of the marine environment. The vast majority explained that anthropogenic GHG emissions introduce energy in the form of heat, and substances such as CO₂, which have, *inter alia*, an adverse impact on marine ecosystems. They concluded on that basis that anthropogenic GHG emissions can be considered as “pollution”.

Many participants further emphasized that Article 194, paragraph 1, of UNCLOS imposes an obligation on States “to take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source”, and that paragraph 2 of the same Article obliges them to “take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment”. Participants generally considered that the obligations contained in Article 194 must be carried out with due diligence and that paragraph 2 of that provision reflects a customary obligation to prevent significant harm to the environment. Several participants also claimed that Article 194 incorporates the CBDR-RC (common but differentiated responsibilities and respective capabilities) principle, because it provides that States must use “the best practicable means at their disposal” and act in “accordance with their capabilities” in order to comply with their obligations.

Several participants maintained that the general obligations contained in Articles 192 and 194 of UNCLOS do not operate in a legal vacuum and must be read together with the rest of Part XII. In light of their analysis, these participants argued that, under UNCLOS, developed States are required to provide technical and financial assistance to developing States to assist in climate mitigation and adaptation initiatives.

Finally, in their analysis of the obligations of States under the law of the sea, a few participants deemed it important to further set out their position as to the consequences of sea level rise. They did so with regard to the maritime entitlements of States, contending that, in the event of sea level rise, the maritime entitlements of States should not be subject to any reduction. They argued that States’ baselines and the outer limits of the maritime zones must be preserved, and thus rejected the so-called “ambulatory theory of baselines”.

The Court began its deliberations in the case following the conclusion of the public hearings.

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On 8 April 2020, the Agent of Guatemala requested a 12-month extension of the time-limit for the filing of the 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-limits thus extended.

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“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”.

In its Judgment, the Court first noted that it had not been asked in the Special Agreement to delimit the land and maritime boundary or determine sovereignty over the three islands, but only to determine whether the legal titles, treaties and international conventions invoked by the Parties have the force of law in their relations in so far as they concern the dispute between them.

It recalled that, with respect to the delimitation of the maritime boundary in particular, Gabon invoked the Convention delimiting the land and maritime frontiers of Equatorial Guinea and Gabon of 12 September 1974 (the “Bata Convention”), while Equatorial Guinea, for its part, referred to 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 1900 Convention), in so far as it established the terminus of the land boundary in Corisco Bay, as well as to the United Nations Convention on the Law of the Sea (UNCLOS) and to customary international law in so far as it establishes that a State's title and entitlement to adjacent maritime areas derives from its title to land territory.

The Court concluded as regards the "Bata Convention", based on the subsequent conduct of the Parties, that it is not a treaty having the force of law between Equatorial Guinea and Gabon and, accordingly, that it does not constitute a legal title within the meaning of the Special Agreement.

Having concluded that the "Bata Convention" does not constitute a legal title, the Court stated that it would examine only the legal titles, treaties and international conventions invoked by Equatorial Guinea concerning the delimitation of the Parties' common maritime boundary.

The Court noted that the Parties agreed that the titles to which they succeeded upon independence were held by the colonial Powers on the basis of the 1900 Convention. It concluded that this Convention is therefore a source of the Parties' rights to adjacent maritime areas in so far as it established the land boundary terminus from which the maritime boundary starts. It further concluded that the 1900 Convention constitutes a legal title within the meaning of the Special Agreement to the extent that it established the terminus of the land boundary.

In respect of UNCLOS, to which Equatorial Guinea and Gabon are parties, the Court observed that although UNCLOS does not constitute a legal title within the meaning of the Special Agreement, it is an international convention which has the force of law in the relations between the Parties.

Finally, as regards customary international law, invoked by Equatorial Guinea, the Court concluded that customary international law, in so far as it establishes that a State's entitlement to adjacent maritime areas derives from its title to land territory, does not constitute a legal title within the meaning of the Special Agreement.

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By an Order dated 20 April 2023, the President of the Court decided, pursuant to Article 66, paragraph 1, of the Court's Statute, that the United Nations and its Member States were likely to be able to furnish information on the questions submitted to the Court for an advisory opinion. The Court subsequently authorized the participation in the proceedings of 13 international organizations.

Ninety-one written statements were filed in the Registry by 79 States and 12 organizations. In addition, 63 written comments were filed in the Registry by 55 States and eight organizations. Public hearings were held between 2 and 13 December 2024. During the hearings, 96 States and 11 international organizations presented oral statements.

In their written and oral statements, many participants submitted that anthropogenic greenhouse gas (GHG) emissions are causing harm to the marine environment, as well as climate change and damage to the climate system, and that the United Nations Convention on the Law of the Sea (UNCLOS) should therefore be taken into account in the advisory opinion. The majority of the participants considered Part XII of UNCLOS, which concerns the protection and

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Several participants maintained that the general obligations contained in Articles 192 and 194 of UNCLOS do not operate in a legal vacuum and must be read together with the rest of Part XII.

Finally, a few participants, in their analysis of the obligations of States under the law of the sea, deemed it important to further set out their position as to the consequences of sea level rise. They contended that, in the event of sea level rise, the maritime entitlements of States should not be subject to any reduction. In their view, States' baselines and the outer limits of the maritime zones must be preserved. They thus rejected the so-called "ambulatory theory of baselines".

The Court began its deliberations in the case following the conclusion of the public hearings.
