

**PROCEDURAL STATUS OF CASES PENDING BEFORE THE INTERNATIONAL COURT
OF JUSTICE WHICH RELATE TO THE LAW OF THE SEA**

(Contribution covering the period from September 2014 to June 2015)

As of 30 June 2015, there were 12 contentious cases in the Court's General List. This report gives details of five cases which wholly or partly involve issues relating to the law of the sea.

1. *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*

These proceedings were instituted by Bolivia on 24 April 2013 with regard to a dispute “relating to Chile’s obligation to negotiate in good faith and effectively with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean”.

The Application contains a summary of the facts — starting from the independence of Bolivia in 1825 and continuing until the present day — which, according to Bolivia, are “the main relevant facts on which [its] claim is based”. Bolivia states that the subject of the dispute lies in “(a) the existence of [the above] obligation, (b) the non-compliance of that obligation by Chile and (c) Chile’s duty to comply with the said obligation”. Asserting, *inter alia*, that “beyond its general obligations under international law, Chile has committed itself, more specifically through agreements, diplomatic practice and a series of declarations attributable to its highest-level representatives, to negotiate a sovereign access to the sea for Bolivia”, Bolivia considers that “Chile has not complied with this obligation and . . . denies the existence of its obligation”. Bolivia accordingly “requests the Court to adjudge and declare that: (a) Chile has the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean; (b) Chile has breached the said obligation; (c) Chile must perform the said obligation in good faith, promptly, formally, within a reasonable time and effectively, to grant Bolivia a fully sovereign access to the Pacific Ocean”.

As basis for the jurisdiction of the Court, Bolivia invokes Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948, to which both States are party.

By an Order of 18 June 2013, the Court fixed 17 April 2014 and 18 February 2015 as the respective time-limits for the filing of a Memorial by Bolivia and a Counter-Memorial by Chile. The Memorial of Bolivia was filed within the time-limit thus prescribed.

On 15 July 2014, Chile filed a preliminary objection to the jurisdiction of the Court, contending, *inter alia*, that Article VI of the Pact of Bogotá excludes Bolivia’s claim from the jurisdiction of the Court because it concerns matters settled and governed by the 1904 Peace Treaty. By an Order of 15 July, the President of the Court fixed 14 November 2014 as the time-limit for the filing by Bolivia of a written statement of its observations and submissions on the preliminary objection raised by Chile. Bolivia’s written statement was filed within the time-limit thus prescribed. At the end of its written statement, Bolivia asked the Court to “reject the objection to its jurisdiction submitted by Chile” and to “adjudge and declare that the claim brought by Bolivia enters within its jurisdiction”.

Having held public hearings from 4 to 8 May 2015, the Court began its deliberation on the preliminary objection raised by Chile.

2. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)*

Nicaragua instituted these proceedings against Colombia on 16 September 2013 in relation 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 requests 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 the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. The Applicant further requests the Court to state “[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”.

After observing 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 200 nautical miles from the baselines from which its territorial sea is measured, and that [the Court] was therefore not then in a position to delimit the continental shelf as requested by Nicaragua”.

Contending in this respect that the “final information” submitted by it 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 observes 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 in that area”.

As basis for the jurisdiction of the Court, Nicaragua invokes Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948, to which “both Nicaragua and Colombia are Parties”. It states that it has been “constrained into taking action upon this matter rather sooner than later in the form of the present application” because “on 27 November 2012, Colombia gave notice that it denounced as of that date the Pact of Bogotá; and in accordance with Article LVI of the Pact, that denunciation will take effect after one year, so that the Pact remains in force for Colombia until 27 November 2013”.

In addition, Nicaragua contends that “the subject-matter of the present Application remains within the jurisdiction of the Court established in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* . . . , in as much as the Court did not in its Judgment dated 19 November 2012 definitively determine the question of the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast, which question was and remains before the Court in that case”.

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 jurisdiction of the Court and to the admissibility of the Application. By an Order of 19 September 2014, the Court fixed 19 January 2015 as the time-limit for the filing by Nicaragua of a written statement of its

observations and submissions on the preliminary objections raised by Colombia. At the end of its written statement, filed within the time-limit thus prescribed, Nicaragua requested the Court to adjudge and declare that the preliminary objections raised by Colombia, both in respect of the jurisdiction of the Court and the admissibility of the case, were invalid.

The case is now ready for hearing on the preliminary objections and the Court will hold public sittings on those objections in due course.

3. Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)

These proceedings were instituted on 26 November 2013 by Nicaragua against Colombia in relation 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 the *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 . . . Charter [of the United Nations] 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, the Applicant cites various declarations reportedly made between 19 November 2012 and 18 September 2013 by the President, the Vice-President and the Minister for Foreign Affairs of Colombia, as well as by the Commander of the Colombian Navy. Nicaragua claims that these declarations represent a “rejection” by Colombia of the Judgment of the Court, and a decision on Colombia’s part to consider the Judgment “not applicable”.

Nicaragua states that “these declarations by the highest Colombian Authorities culminated with the enactment [by the President of Colombia] of a Decree that openly violated Nicaragua’s sovereign rights over its maritime areas in the Caribbean”. Specifically, the Applicant quotes Article 5 of Presidential Decree 1946, establishing an “Integral Contiguous Zone”, which, according to the President of Colombia, “covers maritime spaces that extend from the south, where the Albuquerque and East Southeast keys are situated, and to the north, where Serranilla Key is located . . . [and] includes the San Andrés, Providencia and Santa Catalina, Quitasueño, Serrana and Roncador islands, and the other formations in the area”.

Nicaragua further states that the President of Colombia has declared that “[i]n this Integral Contiguous Zone [Colombia] will exercise jurisdiction and control over all areas related to security and the struggle against delinquency, and over fiscal, customs, environmental, immigration and health matters and other areas as well”.

Nicaragua concludes by stating 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.”

According to the Applicant, the President of Nicaragua indicated his country's willingness "to discuss issues relating to the implementation of the Court's Judgment" and its determination "to manage the situation peacefully", but the President of Colombia "rejected the dialogue".

Nicaragua bases the jurisdiction of the Court on Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948, to which "both Nicaragua and Colombia are Parties". It points out that "on 27 November 2012, Colombia gave notice that it denounced as of that date the Pact of Bogotá; and in accordance with Article LVI of the Pact, that denunciation will take effect after one year, so that the Pact remains in force for Colombia until 27 November 2013".

Additionally, Nicaragua argues, "moreover and alternatively, [that] the jurisdiction of the Court lies in its inherent power to pronounce on the actions required by its Judgments".

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 prescribed.

On 19 December 2014, Colombia raised certain preliminary objections to the jurisdiction of the Court. By an Order of 19 December 2014, the Court fixed 20 April 2015 as the time-limit for the filing by Nicaragua of a written statement of its observations and submissions on the preliminary objections raised by Colombia. At the end of its written statement, filed within the time-limit thus prescribed, Nicaragua requested the Court to reject the preliminary objections raised by the Republic of Colombia, and hence to declare itself competent.

The case is now ready for hearing on the preliminary objections and the Court will hold public sittings on those objections in due course.

4. Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)

These proceedings were instituted on 25 February 2014 by Costa Rica against Nicaragua with regard to a "[d]ispute concerning maritime delimitation in the Caribbean Sea and the Pacific Ocean".

In its Application, Costa Rica requests the Court "to determine the complete course of a single maritime boundary between all the maritime areas appertaining, respectively, to Costa Rica and to Nicaragua in the Caribbean Sea and in the Pacific Ocean, on the basis of international law". It "further requests the Court to determine the precise geographical co-ordinates of the single maritime boundaries in the Caribbean Sea and in the Pacific Ocean".

Costa Rica explains that "[t]he coasts of the two States generate overlapping entitlements to maritime areas in both the Caribbean Sea and the Pacific Ocean" and that "[t]here has been no maritime delimitation between the two States [in either body of water]". It states that "[d]iplomatic negotiations have failed to establish by agreement the maritime boundaries between Costa Rica and Nicaragua in the Pacific Ocean and the Caribbean Sea", referring to various failed attempts to settle this issue by means of negotiations between 2002 and 2005, and in 2013. It further maintains that the two States "have exhausted diplomatic means to resolve their maritime boundary disputes".

According to the Applicant, during negotiations, Costa Rica and Nicaragua "presented different proposals for a single maritime boundary in the Pacific Ocean to divide their respective territorial seas, exclusive economic zones and continental shelves" and "[t]he divergence between the . . . proposals demonstrated that there is an overlap of claims in the Pacific Ocean".

With respect to the Caribbean Sea, Costa Rica maintains that in negotiations both States "focused on the location of the initial land boundary marker on the Caribbean side, but . . . were unable to reach agreement on the starting point of the maritime boundary". In the view of the

Applicant, “[the existence of a dispute] between the two States as to the maritime boundary in the Caribbean Sea has been affirmed . . . , in particular by the views and positions expressed by both States during Costa Rica’s request to intervene in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*; in exchanges of correspondence following Nicaragua’s submissions to the Commission on the Limits of the Continental Shelf; by Nicaragua’s publication of oil exploration and exploitation material; and by Nicaragua’s issuance of a decree declaring straight baselines in 2013”.

According to Costa Rica, in that decree, “Nicaragua claims as internal waters areas of Costa Rica’s territorial sea and exclusive economic zone in the Caribbean Sea”. The Applicant adds that it “promptly protested this violation of its sovereignty, sovereign rights and jurisdiction in a letter to the United Nations Secretary-General dated 23 October 2013”.

Costa Rica claims that, in March 2013, it once again invited Nicaragua to resolve these disputes through negotiations, but that Nicaragua, while formally accepting this invitation, “took no further action to restart the negotiation process it had unilaterally abandoned in 2005”.

As basis for the Court’s jurisdiction, Costa Rica invokes the declaration of acceptance of the compulsory jurisdiction of the Court made by Costa Rica on 20 February 1973 under Article 36, paragraph 2, of the Statute, and that made by Nicaragua on 24 September 1929 (and amended on 23 October 2001), under Article 36 of the Statute of the Permanent Court of International Justice, which is deemed, pursuant to Article 36, paragraph 5, of the Statute of the present Court, to be acceptance of the latter’s compulsory jurisdiction.

In addition, Costa Rica submits that the Court has jurisdiction “in accordance with the provisions of Article 36, paragraph 1, of its Statute, by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement of Disputes” (Pact of Bogotá), signed on 30 April 1948, to which “[b]oth Costa Rica and Nicaragua are parties”.

By an Order dated 1 April 2014, the Court fixed 3 February 2015 and 8 December 2015 as the respective time-limits for the filing of a Memorial by Costa Rica and a Counter-Memorial by Nicaragua. The Memorial of Costa Rica was filed within the time-limit thus prescribed.

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

These proceedings were instituted on 28 August 2014 by Somalia against Kenya 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”.

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 the Court’s 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, Somalia 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.

Article 282 of UNCLOS provides that: “If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.”

By an Order of 16 October 2014, the President of the Court fixed 13 July 2015 and 27 May 2016 as the respective time-limits for the filing of a Memorial by Somalia and a Counter-Memorial by Kenya.
