COUR INTERNATIONALE DE JUSTICE

REQUÊTE

INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour
le 12 mars 1991

DÉLIMITATION MARITIME ENTRE LA GUINÉE-BISSAU ET LE SÉNÉGAL

(GUINÉE-BISSAU c. SÉNÉGAL)

INTERNATIONAL COURT OF JUSTICE

APPLICATION

INSTITUTING PROCEEDINGS

filed in the Registry of the Court
on 12 March 1991

MARITIME DELIMITATION BETWEEN GUINEA-BISSAU AND SENEGAL

(GUINEA-BISSAU *v.* SENEGAL)

1991
General List
No. 85

I. THE AMBASSADOR OF GUINEA-BISSAU TO THE KINGDOM OF THE NETHERLANDS TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

[Translation]

Brussels, 12 March 1991.

I have the honour, on behalf of the Government of the Republic of Guinea-Bissau, and in accordance with Article 40, paragraph 1, of the Statute of the Court, to transmit to you an Application instituting proceedings against the Government of the Republic of Senegal.

This is a second Application filed by my Government against the Government of Senegal, and is distinct from the one filed on 23 August 1989, in respect of which proceedings are in progress.

The purpose of the filing of this Application is, as will be clear from its text, to initiate, without delay, a process to make possible the settlement, under the Court's authority, of the specific dispute between the two States relating to the whole of their maritime territories, which has existed in defined terms since 31 July 1989.

In accordance with Article 40 of the Rules of Court, the Government of the Republic of Guinea-Bissau has appointed as its Agent Mr. Fidélis Cabral de Almada, Minister of State attached to the Presidency of the Council of State.

The address for service of the Agent of the Republic of Guinea-Bissau is the Embassy of the Republic of Guinea-Bissau in Brussels, 70, Avenue Franklin Roosevelt, 1050 Brussels, Belgium.

(Signed) Fali EMBALO,
Ambassador.

II. APPLICATION OF THE REPUBLIC OF GUINEA-BISSAU

[Translation]

I the undersigned, duly authorized by the Republic of Guinea-Bissau of which I am the Ambassador accredited to the Kingdom of the Netherlands, the Kingdom of Belgium and the European Economic Community, have the honour to refer to Article 36 of the Statute of the Court, to Article 38 of the Rules of Court, and to the declarations by which the Republic of Guinea-Bissau and the Republic of Senegal have respectively accepted the jurisdiction of the Court and, in consequence, to submit to it, in accordance with Article 40 of the Statute and Article 38 of the Rules of Court, an Application instituting proceedings brought by the Republic of Guinea-Bissau against the Republic of Senegal in the following case:

I. Statement of the Facts

1. The Republic of Guinea-Bissau has brought proceedings before the Court by an Application of 23 August 1989 relating to the inexistence and lack of validity of the purported arbitral award made on 31 July 1989 between Guinea-Bissau and Senegal.

As a totally separate matter, it is today submitting to the Court another dispute arising from the following facts:

From the first years after it attained independence in 1973, Guinea-Bissau was made aware of maritime issues by the debates in which it participated within the framework of the Third United Nations Conference on the Law of the Sea.

Its leaders, anxious to realize and utilize all the country's potential for development, were aware — and are more than ever aware — that a major part of the resources that can be enjoyed by its people may come from the sea which borders its coast, and that in view of the geography of the country, the length of its coastline, the presence of numerous inhabited islands, the shallow depth of the inshore sea-bed, the variety and importance of both biological and mineral resources, Guinea-Bissau should make rapid and rational use of its maritime wealth.

2. Any State which desires to proceed to a peaceful exploitation of maritime resources must, however, achieve first of all a clearly established delimitation with neighbouring States, so that the exploitation may not subsequently be a source of conflict.

Accordingly, in a spirit of good neighbourliness and peaceful relations conducted on the basis of the law, Guinea-Bissau proposed to the two adjoining States that they should enter into negotiations, with a view to reaching a delimitation agreement with each of them, in accordance with the requirements of international law.

3. Negotiations with Senegal began in 1977.

After some initial expression of uncertainty, Senegal, a few weeks after the first meeting, invoked an exchange of letters between France and Portugal dating from 1960, which it claimed had settled the delimitation, leaving no more

to be said. That text, formally defective for lack of ratification and publication in Portugal, and concluded by third Powers, could not, in the view of Guinea-Bissau (to which it was therefore not opposable), permit the parties to dispense with a detailed negotiation aimed at effecting a modern delimitation meeting the relevant requirements of the law of the sea, both from the standpoint of the applicable principles of delimitation and in relation to all the areas currently placed under national jurisdiction.

4. After eight years of difficult negotiations, on 12 March 1985 an Arbitration Agreement was signed by which the two States submitted to a Tribunal of three members to be set up by them the following two questions:

> "(1) Does the Agreement concluded by an exchange of letters on 26 April 1960, and which relates to the maritime boundary, have the force of law in the relations between the Republic of Guinea-Bissau and the Republic of Senegal?
>
> (2) In the event of a negative answer to the first question, what is the course of the line delimiting the maritime territories appertaining to the Republic of Guinea-Bissau and the Republic of Senegal respectively?"

5. In accordance with the law of international arbitration, the two parties had, by that twofold question and by the form of words selected, precisely defined the extent of the Tribunal's jurisdiction.

There was no confusion as to the purpose of the request, as was confirmed by the pleadings and oral argument of both States.

The object was the delimitation of the maritime territories appertaining respectively to the one and to the other, without excluding from the jurisdiction of the Tribunal any of the categories of territory over which the contemporary law of the sea now permits a coastal State to exercise rights.

The request related to *a line — one line* —, as the two parties had unambiguously agreed that it was necessary that the delimitation of their territorial seas, continental shelves and exclusive economic zones should coincide. The text of the Arbitration Agreement was clear in that respect; the parties' arguments were no less clear. Neither of the two States wanted any overlapping of jurisdictions; they were in agreement on that point.

6. The outcome of the arbitration, made known on 31 July 1989, was obviously not such as to make possible a definitive delimitation of all the maritime areas over which the parties had rights.

The text issued as an award on 31 July 1989 gave a decision on some fragmentary elements of a solution, but did not lead to any result applicable to the concrete situation which it had been the will of the States to have resolved.

Nonetheless Senegal in the ensuing weeks advanced the view, both in talks between the authorities of the two countries and in a certain number of public declarations, that the *"award"* had put an end to the dispute between the parties. It did not, however, provide any clear explanation of the applicability of that text, sometimes giving the impression that, by confirming the 1960 exchange of letters between France and Portugal, the award had established the 240° azimuth line derived from that text as a general delimitation, and by other statements (in contradiction with the first) conveying the notion that the division of the territorial seas and continental shelves would have to suffice, and that the division of the exclusive economic zones was not in issue (which was, however, contrary to the terms of the Arbitration Agreement and to the trend of its own arguments). The deficiencies and lacunae in that *"award"* were such as to permit those ambiguities and opened the way to further disputes.

7. Faced with this very serious difficulty, Guinea-Bissau opted for continued recourse to legal means, and reference of the dispute concerning the validity of the outcome of the arbitration to the International Court of Justice.

The proceedings are currently in progress, and in them Guinea-Bissau is claiming that the purported *"award"* of 31 July 1989 is inexistent as it did not obtain the support of a real majority of the arbitrators and, subsidiarily, null and void because of an *excès de pouvoir* arising from an inadequate reply, the absence of a map and a lack of reasoning, and that it is not applicable.

The Court has not however been seised in those proceedings of the actual delimitation.

Thus when those first proceedings are concluded, and whatever the outcome, the delimitation of all the maritime territories will still not have been effected.

8. In this situation, although Guinea-Bissau is convinced that a sound delimitation, based upon equitable principles and constituting an instrument for good management of the relations between the parties, may take time, in view of the various obstacles which have arisen along the way, it is aware of the responsibility of the two States to employ every means to reach a rapid, definitive and satisfactory settlement of the original dispute, namely that relating to the delimitation of all the maritime territories appertaining respectively to Senegal and to Guinea-Bissau.

It is in that spirit that it has decided by the present Application to bring the dispute relating to the maritime delimitation between the two States before the Court, without further delay.

II. The Jurisdiction of the Court

9. If, in accordance with Guinea-Bissau's firm conviction, the *"award"* of 31 July 1989 were to be found by the Court to be inexistent or null and void, the delimitation dispute that Guinea-Bissau is submitting by the present Application would, in every respect, be the one that was the subject of an Arbitration Agreement on 12 March 1985. In that case, because of the reservations made by Senegal, its declaration of acceptance of the jurisdiction of the Court, dated 2 December 1985, would not apply. This Application would in that event be submitted to the Court on the basis of Article 38, paragraph 5, of the Rules of Court, and Senegal would be faced with its responsibility of having to accept the jurisdiction of the Court. It would thus show whether or not it is truly determined to settle its delimitation dispute with Guinea-Bissau on a legal basis.

10. In the unlikely event that the *"award"* of 31 July 1989 were to be in any way confirmed, the delimitation dispute would then be an entirely new dispute, and the question of the Court's jurisdiction would appear in a different light.

The two States concerned by this Application have both accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute.

The declaration of Guinea-Bissau was made on 7 August 1989, and is without reservations.

The declaration of Senegal is dated 2 December 1985. It includes a certain number of reservations, which cannot, in the view of Guinea-Bissau, be so interpreted as to preclude the Court from exercising its jurisdiction to deal with the present case, on the hypothesis here envisaged.

III. The Dispute and the Legal Means of Its Resolution

11. The Court is currently seised of an initial Application by Guinea-Bissau relating to the *"award"* of 31 July 1989 which, instead of settling the maritime delimitation between the two States, of itself constitutes an additional impediment to that settlement.

None of the possible outcomes to that first case can lead to a real and definitive settlement of the delimitation conflict.

The expressed wish of the two parties to arrive at a delimitation of the whole of their maritime territories will in any event remain unsatisfied. New means of settling that new dispute will then have to be resorted to.

12. Negotiation would seem to be the best of those means. Efforts have been made to that end, but have so far remained fruitless. The legal vacuum is thus being perpetuated with respect to a question of international law — one which is however decisive in the relations between States.

Guinea-Bissau accordingly considers that to achieve an effective settlement the only remaining possible course is to bring the matter before the Court by the present Application.

The Court has already been entrusted with the resolution of the distinct case of the Arbitration of 31 July 1989, and will accordingly be fully informed of the elements of that first case.

13. As for the issue of maritime delimitation which arises over and above the question of the *validity of the "award"*, its settlement accordingly depends upon the application of general international law and, in particular, the current trends of the new law of the sea as expressed in the United Nations Convention on the Law of the Sea of 10 December 1982, not yet in force, but which has been signed and ratified by the two States Parties to the present case.

It is on the basis of that law that Guinea-Bissau is asking the Court to define the delimitation between Guinea-Bissau and Senegal of all their maritime territories.

IV. Decision Requested of the Court

14. On the basis of the above statement of facts and considerations of law, the Government of Guinea-Bissau, reserving the right to supplement and amend the present submissions during the subsequent proceedings, asks the Court to adjudge and declare:

> What should be, on the basis of the international law of the sea and of all the relevant elements of the case, including the future decision of the Court in the case concerning the arbitral *"award"* of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal.

Brussels, 12 March 1991.

(Signed) Fali Embalo,
Ambassador.