LAND AND MARITIME TRIPOINTS IN INTERNATIONAL JURISPRUDENCE

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Writing on “Intervention in the Proceedings before the International Court of Justice and the International Tribunal for the Law of the Sea” Rüdiger Wolfrum noted that “due to the growing legal interdependence of States, every dispute has to be considered from the point of view of multilateralism”. The evolution of the international case law concerning the determination of tripoints on the occasion of disputes concerning land or maritime delimitation confirms this view.

According to Coalter G. Lathrop, “[a]proximately one half of all maritime boundary delimitations worldwide involve a tripoint issue”; the proportion is probably even higher concerning land delimitation. Such a situation is a matter of embarrassment for the States concerned when they delimit their boundaries bilaterally and for the international courts and tribunals when they are called upon to decide on a bilateral frontier dispute involving the rights of one or two (rarely more) third States. However, the issue has been abusively complicated by the ICJ, which, in some Judgments, stated that it arises differently in matters of maritime delimitation on the one hand and land delimitation on the other hand.

In its Judgment of 10 October 2002 in the Cameroon v. Nigeria case, the ICJ did not “accept […] that the reasoning […] in regard to land boundaries is necessarily transposable to those concerning maritime boundaries. These are two distinct areas of the law, to which

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different factors and considerations apply."3 While understanding the underlying reasons for caution, the present writer respectfully does not agree. In particular, he is of the opinion that there is no reason for distinguishing between the rules applicable to the determination (or non-determination) of land tripoints on the one hand and maritime tripoints (whatever maritime area is concerned) on the other hand.

In both situations:

- the Court or international tribunal seised of the case must fix a complete and final boundary between the Parties;
- the purpose being the same, contrary to widely shared misconceptions, the process followed in both cases is quite similar;
- while at the same time the rights of third States must be preserved; and
- as a result of these apparently conflicting duties, the Court or the international tribunal in question cannot decide on the precise location of tripoints, but can (and must) indicate the general direction of the boundary line between the Parties up to the (undetermined) point where it reaches the jurisdiction of a third State.

A. On Land or at Sea: Similar Purposes

As the firmly established case law of the World Court shows, “[i]n general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality”.4 In particular, “[i]t is, […] natural that any article [of a treaty] designed to fix a frontier should, if possible, be so interpreted that the result of the application of its provisions in their entirety should be the establishment of a precise, complete and definitive frontier.”5

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3 Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), ICJ Reports 2002, 421, para. 238. The Court expressly cited its reasoning in the Frontier Dispute (Burkina Faso / Republic of Mali), ICJ Reports 1986, 554 and the Territorial Dispute (Libyan Arab Jamahiriya / Chad), ICJ Reports 1994, 6. While I was Counsel for Cameroon in that case, I wish to stress that I do not criticize the outcome of this Judgment with respect to the tripoint; what I do criticize is the declaration that different factors and considerations apply or, at least, prevail.
