19 NOVEMBER 2012

JUDGMENT

TERRITORIAL AND MARITIME DISPUTE

(NICARAGUA *v.* COLOMBIA)

DIFFÉREND TERRITORIAL ET MARITIME

(NICARAGUA c. COLOMBIE)

19 NOVEMBRE 2012

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JUDGMENT

Present: *President* TOMKA; *Vice-President* SEPÚLVEDA-AMOR; *Judges* OWADA, ABRAHAM, KEITH, BENNOUNA, SKOTNIKOV, CANÇADO TRINDADE, YUSUF, GREENWOOD, XUE, DONOGHUE, SEBUTINDE; *Judges* ad hoc MENSAH, COT; *Registrar* COUVREUR.

In the case concerning the territorial and maritime dispute,

between

the Republic of Nicaragua,

represented by

H.E. Mr. Carlos José Argüello Gómez, Ambassador of the Republic of Nicaragua to the Kingdom of the Netherlands,

as Agent and Counsel;

Mr. Vaughan Lowe, Q.C., former Chichele Professor of International Law, University of Oxford, associate member of the Institut de droit international,

Mr. Alex Oude Elferink, Deputy-Director, Netherlands Institute for the Law of the Sea, Utrecht University,

Mr. Alain Pellet, Professor at the University Paris Ouest, Nanterre-La Défense, former Member and former Chairman of the International Law Commission, associate member of the Institut de droit international,

Mr. Paul Reichler, Attorney-at-Law, Foley Hoag LLP, Washington D.C., Member of the Bars of the United States Supreme Court and the District of Columbia,

Mr. Antonio Remiro Brotóns, Professor of International Law, Universidad Autónoma, Madrid, member of the Institut de droit international,

as Counsel and Advocates;

Mr. Robin Cleverly, M.A., D.Phil, C.Geol, F.G.S., Law of the Sea Consultant, Admiralty Consultancy Services, The United Kingdom Hydrographic Office,

Mr. John Brown, R.D., M.A., F.R.I.N., F.R.G.S., Law of the Sea Consultant, Admiralty Consultancy Services, The United Kingdom Hydrographic Office,

as Scientific and Technical Advisers;

Mr. César Vega Masís, Director of Juridical Affairs, Sovereignty and Territory, Ministry of Foreign Affairs,

Mr. Walner Molina Pérez, Juridical Adviser, Ministry of Foreign Affairs,

Mr. Julio César Saborio, Juridical Adviser, Ministry of Foreign Affairs,

Ms Tania Elena Pacheco Blandino, Juridical Adviser, Ministry of Foreign Affairs,

Mr. Lawrence H. Martin, Foley Hoag LLP, Washington D.C., Member of the Bars of the United States Supreme Court, the District of Columbia and the Commonwealth of Massachusetts,

Ms Carmen Martínez Capdevila, Doctor of Public International Law, Universidad Autónoma, Madrid,

as Counsel;

Mr. Edgardo Sobenes Obregon, First Secretary, Embassy of Nicaragua in the Kingdom of the Netherlands,

Ms Claudia Loza Obregon, Second Secretary, Embassy of Nicaragua in the Kingdom of the Netherlands,

Mr. Romain Piéri, Researcher, Centre for International Law (CEDIN), University Paris Ouest, Nanterre-La Défense,

Mr. Yuri Parkhomenko, Foley Hoag LLP, Washington D.C.,

as Assistant Counsel;

Ms Helena Patton, The United Kingdom Hydrographic Office,

Ms Fiona Bloor, The United Kingdom Hydrographic Office,

as Technical Assistants,

and

the Republic of Colombia,

represented by

H.E. Mr. Julio Londoño Paredes, Professor of International Relations, Universidad del Rosario, Bogotá,

as Agent and Counsel;

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international, Barrister,

Mr. Rodman R. Bundy, *avocat à la Cour d'appel de Paris*, member of the New York Bar, Eversheds LLP, Paris,

Mr. Marcelo Kohen, Professor of International Law at the Graduate Institute of International and Development Studies, Geneva, associate member of the Institut de droit international,

as Counsel and Advocates;

H.E. Mr. Eduardo Pizarro Leongómez, Ambassador of the Republic of Colombia to the Kingdom of the Netherlands, Permanent Representative of Colombia to the OPCW,

as Adviser;

H.E. Mr. Francisco José Lloreda Mera, Presidential High-Commissioner for Citizenry Security, former Ambassador of the Republic of Colombia to the Kingdom of the Netherlands, former Minister of State,

Mr. Eduardo Valencia-Ospina, Member of the International Law Commission,

H.E. Ms Sonia Pereira Portilla, Ambassador, Ministry of Foreign Affairs,

Mr. Andelfo García González, Professor of International Law, former Deputy Minister for Foreign Affairs,

Ms Mirza Gnecco Plá, Minister-Counsellor, Ministry of Foreign Affairs,

Ms Andrea Jiménez Herrera, Counsellor, Embassy of Colombia in the Kingdom of the Netherlands,

as Legal Advisers;

CF William Pedroza, International Affairs Bureau, National Navy of Colombia,

Mr. Scott Edmonds, Cartographer, International Mapping,

Mr. Thomas Frogh, Cartographer, International Mapping,

as Technical Advisers;

Mr. Camilo Alberto Gómez Niño,

as Administrative Assistant,

The COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 6 December 2001, the Republic of Nicaragua (hereinafter "Nicaragua") filed in the Registry of the Court an Application instituting proceedings against the Republic of Colombia (hereinafter "Colombia") in respect of a dispute consisting of "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean.

In its Application, Nicaragua seeks to found the jurisdiction of the Court on the provisions of Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, officially designated, according to Article LX thereof, as the "Pact of Bogotá" (hereinafter referred to as such), as well as on the declarations made by the Parties under Article 36 of the Statute of the Permanent Court of International Justice, which are deemed, for the period which they still have to run, to be acceptances of the compulsory jurisdiction of the present Court under Article 36, paragraph 5, of its Statute.

2. In accordance with Article 40, paragraph 2, of the Statute of the Court, the Registrar immediately communicated the Application to the Government of Colombia; and, in accordance with paragraph 3 of that Article, all other States entitled to appear before the Court were notified of the Application.

3. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise its right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Nicaragua first chose Mr. Mohammed Bedjaoui, who resigned on 2 May 2006, and then Mr. Giorgio Gaja. Following his election as a Member of the Court, Mr. Gaja decided that it would not be appropriate for him to sit in the case. Nicaragua then chose Mr. Thomas Mensah as judge *ad hoc*. Colombia first chose Mr. Yves Fortier, who resigned on 7 September 2010, and subsequently Mr. Jean-Pierre Cot.

4. By an Order dated 26 February 2002, the Court fixed 28 April 2003 as the time-limit for the filing of the Memorial of Nicaragua and 28 June 2004 as the time-limit for the filing of the Counter-Memorial of Colombia. Nicaragua filed its Memorial within the time-limit so prescribed.

5. On 21 July 2003, within the time-limit set by Article 79, paragraph 1, of the Rules of Court, as amended on 5 December 2000, Colombia raised preliminary objections to the jurisdiction of the Court. Consequently, by an Order dated 24 September 2003, the Court, noting that by virtue of Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were suspended, fixed 26 January 2004 as the time-limit for the presentation by Nicaragua of a written statement of its observations and submissions on the preliminary objections made by Colombia. Nicaragua filed such a statement within the time-limit so prescribed, and the case thus became ready for hearing in respect of the preliminary objections.

6. The Court held public hearings on the preliminary objections raised by Colombia from 4 to 8 June 2007. In its Judgment of 13 December 2007, the Court concluded that it had jurisdiction, under Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute concerning

sovereignty over the maritime features claimed by the Parties, other than the islands of San Andrés, Providencia and Santa Catalina, and upon the dispute concerning the maritime delimitation between the Parties (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 876, para. 142 (3)).

7. By an Order of 11 February 2008, the President of the Court fixed 11 November 2008 as the new time-limit for the filing of Colombia's Counter-Memorial. That pleading was duly filed within the time-limit thus prescribed.

8. By an Order of 18 December 2008, the Court directed Nicaragua to submit a Reply and Colombia to submit a Rejoinder and fixed 18 September 2009 and 18 June 2010 as the respective time-limits for the filing of those pleadings. The Reply and the Rejoinder were duly filed within the time-limits thus prescribed.

9. Referring to Article 53, paragraph 1, of the Rules of Court, the Governments of Honduras, Jamaica, Chile, Peru, Ecuador, Venezuela and Costa Rica asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties in accordance with that same provision, the Court decided to grant each of these requests. The Registrar duly communicated these decisions to the said Governments and to the Parties.

10. On 25 February 2010 and 10 June 2010, respectively, the Republic of Costa Rica and the Republic of Honduras each filed in the Registry of the Court an Application for permission to intervene in the case, invoking Article 62 of the Statute of the Court. In separate Judgments rendered on 4 May 2011, the Court found that those Applications could not be granted.

11. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court decided that, after ascertaining the views of the Parties, copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

12. Public hearings were held between 23 April and 4 May 2012, at which the Court heard the oral arguments and replies of:

For Nicaragua: H.E. Mr. Carlos José Argüello Gómez,
Mr. Alex Oude Elferink,
Mr. Antonio Remiro Brotóns,
Mr. Alain Pellet,
Mr. Robin Cleverly,
Mr. Vaughan Lowe,
Mr. Paul Reichler.

For Colombia: H.E. Mr. Julio Londoño Paredes,
Mr. James Crawford,
Mr. Marcelo Kohen,
Mr. Rodman R. Bundy.

13. The Parties provided judges' folders during the oral proceedings. The Court noted, with reference to Article 56, paragraph 4, of the Rules of Court, as supplemented by Practice Direction IX*bis*, that two documents included by Nicaragua in one of its judges' folders had not been annexed to the written pleadings and were not "part of a publication readily available". The Court thus decided not to allow those two documents to be produced or referred to during the hearings.

14. At the hearings, Members of the Court put questions to the Parties, to which replies were given orally and in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Under Article 72 of the Rules of Court, each Party presented written observations on the written replies received from the other.

*

15. In its Application, the following requests were made by Nicaragua:

> "[T]he Court is asked to adjudge and declare:
>
> *First*, that the Republic of Nicaragua has sovereignty over the islands of Providencia, San Andrés and Santa Catalina and all the appurtenant islands and keys, and also over the Roncador, Serrana, Serranilla and Quitasueño keys (in so far as they are capable of appropriation);
>
> *Second*, in the light of the determinations concerning title requested above, the Court is asked further to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary."

Nicaragua also stated:

> "Whilst the principal purpose of this Application is to obtain declarations concerning title and the determination of maritime boundaries, the Government of Nicaragua reserves the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian, in the absence of lawful title. The Government of Nicaragua also reserves the right to claim compensation for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua.
>
> The Government of Nicaragua, further, reserves the rights to supplement or to amend the present Application."

16. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,

in the Memorial:

"Having regard to the legal considerations and evidence set forth in this Memorial: *May it please the Court to adjudge and declare that*:

(1) the Republic of Nicaragua has sovereignty over the islands of San Andrés, Providencia, and Santa Catalina and the appurtenant islets and cays;

(2) the Republic of Nicaragua has sovereignty over the following cays: the Cayos de Albuquerque; the Cayos del Este Sudeste; the Cay of Roncador; North Cay, Southwest Cay and any other cays on the bank of Serrana; East Cay, Beacon Cay and any other cays on the bank of Serranilla; and Low Cay and any other cays on the bank of Bajo Nuevo;

(3) if the Court were to find that there are features on the bank of Quitasueño that qualify as islands under international law, the Court is requested to find that sovereignty over such features rests with Nicaragua;

(4) the Barcenas-Esguerra Treaty signed in Managua on 24 March 1928 was not legally valid and, in particular, did not provide a legal basis for Colombian claims to San Andrés and Providencia;

(5) in case the Court were to find that the Barcenas-Esguerra Treaty had been validly concluded, then the breach of this Treaty by Colombia entitled Nicaragua to declare its termination;

(6) in case the Court were to find that the Barcenas-Esguerra Treaty had been validly concluded and were still in force, then to determine that this Treaty did not establish a delimitation of the maritime areas along the 82° meridian of longitude West;

(7) in case the Court finds that Colombia has sovereignty in respect of the islands of San Andrés and Providencia, these islands be enclaved and accorded a territorial sea entitlement of twelve miles, this being the appropriate equitable solution justified by the geographical and legal framework;

(8) the equitable solution for the cays, in case they were to be found to be Colombian, is to delimit a maritime boundary by drawing a 3 nautical mile enclave around them;

(9) the appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a single maritime boundary in the form of a median line between these mainland coasts."

in the Reply:

"Having regard to the legal considerations and evidence set forth in this *Reply*:

I. *May it please the Court to adjudge and declare that:*

(1) The Republic of Nicaragua has sovereignty over all maritime features off her Caribbean coast not proven to be part of the 'San Andrés Archipelago' and in particular the following cays: the Cayos de Albuquerque; the Cayos del Este Sudeste; the Cay of Roncador; North Cay, Southwest Cay and any other cays on the bank of Serrana; East Cay, Beacon Cay and any other cays on the bank of Serranilla; and Low Cay and any other cays on the bank of Bajo Nuevo.

(2) If the Court were to find that there are features on the bank of Quitasueño that qualify as islands under international law, the Court is requested to find that sovereignty over such features rests with Nicaragua.

(3) The appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary with the following co-ordinates:

1. 13° 33' 18"N 76° 30' 53"W;

2. 13° 31' 12"N 76° 33' 47"W;

3. 13° 08' 33"N 77° 00' 33"W;

4. 12° 49' 52"N 77° 13' 14"W;

5. 12° 30' 36"N 77° 19' 49"W;

6. 12° 11' 00"N 77° 25' 14"W;

7. 11° 43' 38"N 77° 30' 33"W;

8. 11° 38' 40"N 77° 32' 19"W;

9. 11° 34' 05"N 77° 35' 55"W.

(All co-ordinates are referred to WGS84.)

(4) The islands of San Andrés and Providencia (Santa Catalina) be enclaved and accorded a maritime entitlement of twelve nautical miles, this being the appropriate equitable solution justified by the geographical and legal framework.

(5) The equitable solution for any cay, that might be found to be Colombian, is to delimit a maritime boundary by drawing a 3-nautical-mile enclave around them.

II. Further, the Court is requested to *adjudge and declare that*:

— Colombia is not acting in accordance with her obligations under international law by stopping and otherwise hindering Nicaragua from accessing and disposing of her natural resources to the east of the 82nd meridian;

— Colombia immediately cease all these activities which constitute violations of Nicaragua's rights;

— Colombia is under an obligation to make reparation for the damage and injuries caused to Nicaragua by the breaches of the obligations referred to above; and,

— The amount of this reparation shall be determined in a subsequent phase of these proceedings."

On behalf of the Government of Colombia,

in the Counter-Memorial:

"For the reasons set out in this Counter-Memorial, taking into account the Judgment on Preliminary Objections and rejecting any contrary submissions of Nicaragua, Colombia requests the Court to adjudge and declare:

(a) That Colombia has sovereignty over all the maritime features in dispute between the Parties: Alburquerque, East-Southeast, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo, and all their appurtenant features, which form part of the Archipelago of San Andrés.

(b) That the delimitation of the exclusive economic zone and the continental shelf between Nicaragua and Colombia is to be effected by a single maritime boundary, being the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the Parties is measured, as depicted on Figure 9.2 of this Counter-Memorial.

Colombia reserves the right to supplement or amend the present submissions."

in the Rejoinder:

"For the reasons set out in the Counter-Memorial and developed further in this Rejoinder, taking into account the Judgment on Preliminary Objections and rejecting any contrary submissions of Nicaragua, Colombia requests the Court to adjudge and declare:

(a) That Colombia has sovereignty over all the maritime features in dispute between the Parties: Alburquerque, East-Southeast, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo, and all their appurtenant features, which form part of the Archipelago of San Andrés.

(b) That the delimitation of the exclusive economic zone and the continental shelf between Nicaragua and Colombia is to be effected by a single maritime boundary, being the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the Parties is measured, as depicted on Figure 9.2 of the Counter-Memorial, and reproduced as Figure R-8.3 of this Rejoinder.

(c) That Nicaragua's request for a Declaration . . . is rejected.

Colombia reserves the right to supplement or amend the present submissions."

17. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,

at the hearing of 1 May 2012:

"In accordance with Article 60 of the Rules of Court and having regard to the pleadings, written and oral, the Republic of Nicaragua,

I. May it please the Court to adjudge and declare that:

(1) The Republic of Nicaragua has sovereignty over all maritime features off her Caribbean coast not proven to be part of the 'San Andrés Archipelago' and in particular the following cays: the Cayos de Albuquerque; the Cayos del Este Sudeste; the Cay of Roncador; North Cay, Southwest Cay and any other cays on the bank of Serrana; East Cay, Beacon Cay and any other cays on the bank of Serranilla; and Low Cay and any other cays on the bank of Bajo Nuevo.

(2) If the Court were to find that there are features on the bank of Quitasueño that qualify as islands under international law, the Court is requested to find that sovereignty over such features rests with Nicaragua.

(3) The appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties.

(4) The islands of San Andrés and Providencia and Santa Catalina be enclaved and accorded a maritime entitlement of 12 nautical miles, this being the appropriate equitable solution justified by the geographical and legal framework.

(5) The equitable solution for any cay, that might be found to be Colombian, is to delimit a maritime boundary by drawing a 3-nautical-mile enclave around them.

II. Further, the Court is requested to adjudge and declare that:

— Colombia is not acting in accordance with her obligations under international law by stopping and otherwise hindering Nicaragua from accessing and disposing of her natural resources to the east of the 82nd meridian."

On behalf of the Government of Colombia,

at the hearing of 4 May 2012:

"In accordance with Article 60 of the Rules of Court, for the reasons set out in Colombia's written and oral pleadings, taking into account the Judgment on Preliminary Objections and rejecting any contrary submissions of Nicaragua, Colombia requests the Court to adjudge and declare:

(a) That Nicaragua's new continental shelf claim is inadmissible and that, consequently, Nicaragua's Submission I (3) is rejected.

(b) That Colombia has sovereignty over all the maritime features in dispute between the Parties: Alburquerque, East-Southeast, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo, and all their appurtenant features, which form part of the Archipelago of San Andrés.

(c) That the delimitation of the exclusive economic zone and the continental shelf between Nicaragua and Colombia is to be effected by a single maritime boundary, being the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of the Parties is measured, as depicted on the map attached to these submissions.

(d) That Nicaragua's written Submission II is rejected."

*

* *

I. GEOGRAPHY

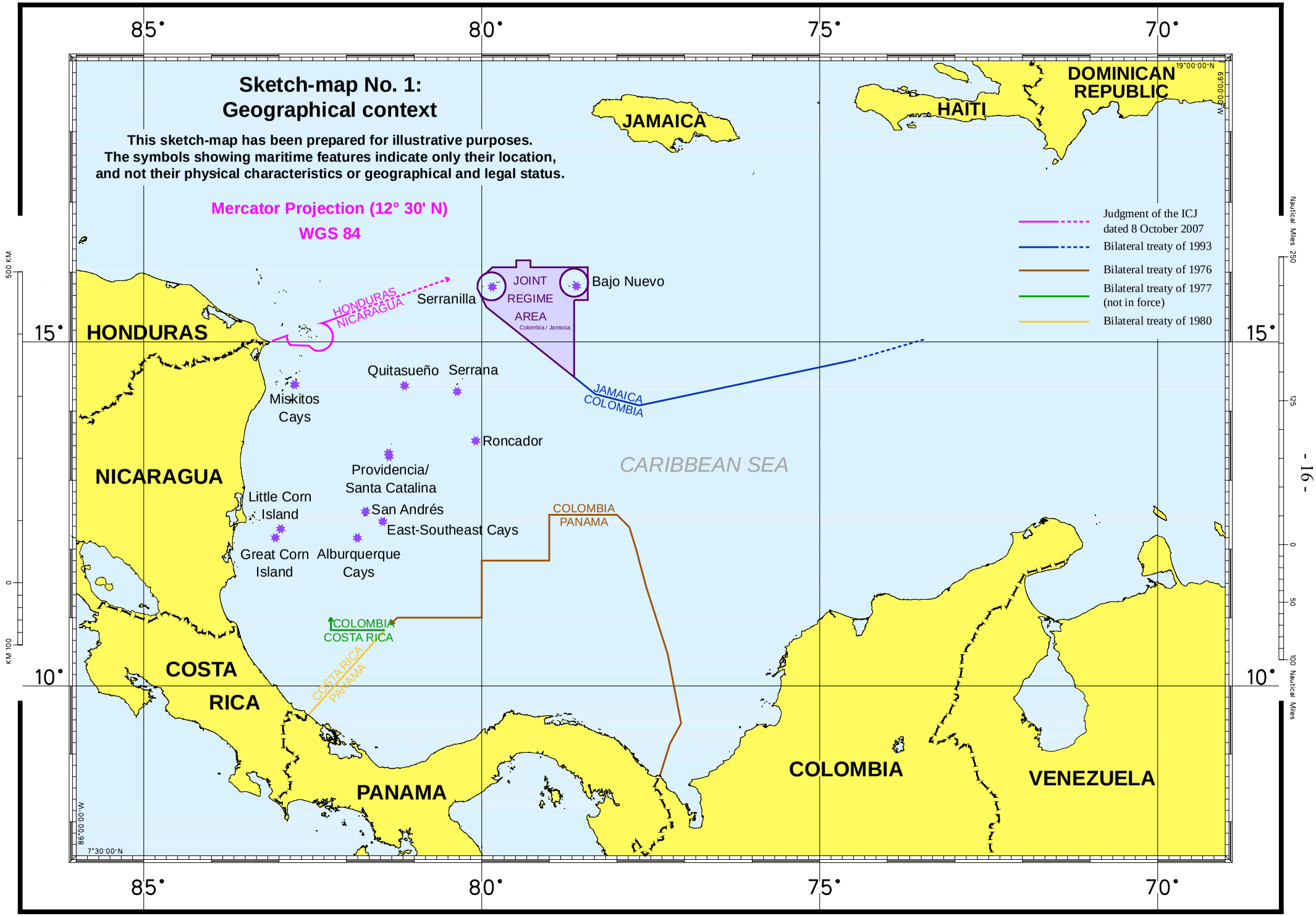
18. The area where the maritime features in dispute (listed in the Parties' submissions in paragraphs 16 and 17 above) are located and within which the delimitation sought is to be carried out lies in the Caribbean Sea. The Caribbean Sea is an arm of the Atlantic Ocean partially enclosed to the north and east by the islands of the West Indies, and bounded to the south and west by South and Central America.

19. Nicaragua is situated in the south-western part of the Caribbean Sea. To the north of Nicaragua lies Honduras and to the south lie Costa Rica and Panama. To the north-east Nicaragua faces Jamaica and to the east it faces the mainland coast of Colombia. Colombia is located to the south of the Caribbean Sea. In terms of its Caribbean front, it is bordered to the west by Panama and to the east by Venezuela. The islands of San Andrés, Providencia and Santa Catalina lie in the south-west of the Caribbean Sea, a little more than 100 nautical miles to the east of the Nicaraguan coast. (For the general geography of the area, see sketch-map No. 1.)

20. In the western part of the Caribbean Sea there are numerous reefs, some of which reach above the water surface in the form of cays. Cays are small, low islands composed largely of sand derived from the physical breakdown of coral reefs by wave action and subsequent reworking by wind. Larger cays can accumulate enough sediment to allow for colonization and fixation by vegetation. Atolls and banks are also common in this area. An atoll is a coral reef enclosing a lagoon. A bank is a rocky or sandy submerged elevation of the sea-floor with a summit less than 200 metres below the surface. Banks whose tops rise close enough to the sea surface (conventionally taken to be less than 10 metres below water level at low tide) are called shoals. Maritime features which qualify as islands or low-tide elevations may be located on a bank or shoal.

21. There are a number of Nicaraguan islands located off the mainland coast of Nicaragua. To the north can be found Edinburgh Reef, Muerto Cay, the Miskitos Cays and Ned Thomas Cay. The Miskitos Cays are largely given up to a nature reserve. The largest cay, Miskitos Cay, is approximately 12 sq km in size. To the south are the two Corn Islands (sometimes known as the Mangle Islands), which are located approximately 26 nautical miles from the mainland coast and have an area, respectively, of 9.6 sq km (Great Corn) and 3 sq km (Little Corn). The Corn Islands have a population of approximately 7,400. Roughly midway between these two groups of islands can be found the small island of Roca Tyra.

22. The islands of San Andrés, Providencia and Santa Catalina are situated opposite the mainland coast of Nicaragua. San Andrés is approximately 105 nautical miles from Nicaragua. Providencia and Santa Catalina are located some 47 nautical miles north-east of San Andrés and approximately 125 nautical miles from Nicaragua. All three islands are approximately 380 nautical miles from the mainland of Colombia.


Sketch-map No. 1:
Geographical context
This sketch-map has been prepared for illustrative purposes.
The symbols showing maritime features indicate only their location,
and not their physical characteristics or geographical and legal status.
Mercator Projection (12° 30' N)
WGS 84
85°
80°
75°
70°
15°
10°
JAMAICA
HAITI
DOMINICAN REPUBLIC
19°00'00"N
69°00'00"W
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
VENEZUELA
CARIBBEAN SEA
JOINT REGIME AREA
Colombia / Jamaica
Bajo Nuevo
Serranilla
Quitasueño
Serrana
Roncador
Miskitos Cays
Providencia/ Santa Catalina
San Andrés
East-Southeast Cays
Little Corn Island
Great Corn Island
Alburquerque Cays
HONDURAS NICARAGUA
JAMAICA COLOMBIA
COLOMBIA PANAMA
COLOMBIA COSTA RICA
COSTA RICA PANAMA
Judgment of the ICJ dated 8 October 2007
Bilateral treaty of 1993
Bilateral treaty of 1976
Bilateral treaty of 1977 (not in force)
Bilateral treaty of 1980
500 KM
0
KM 100
Nautical Miles 250
125
0
50
100 Nautical Miles
7°30'00"N
81°00'00"W

San Andrés has an area of some 26 sq km. Its central part is made up of a mountainous sector with a maximum height of 100 metres across the island from north to south, from where it splits into two branches. San Andrés has a population of over 70,000. Providencia is some 17.5 sq km in area. It has varied vegetation. On the north, east and south coasts, Providencia is fringed by an extensive barrier reef. It has a permanent population of about 5,000. Santa Catalina is located north of Providencia. It is separated from Providencia by the Aury Channel, some 130 metres in width.

23. Nicaragua, in its Application, claimed sovereignty over the islands of San Andrés, Providencia and Santa Catalina. In its Judgment of 13 December 2007 (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 832), the Court held that it had no jurisdiction with regard to this claim, because the question of sovereignty over these three islands had been determined by the Treaty concerning Territorial Questions at Issue between Colombia and Nicaragua, signed at Managua on 24 March 1928 (hereinafter the "1928 Treaty"), by which Nicaragua recognized Colombian sovereignty over these islands.

24. Starting from the south-west of the Caribbean and moving to the north-east, there are various maritime features, sovereignty over which continues to be in dispute between the Parties.

(a) ***Alburquerque Cays***[1]

Alburquerque is an atoll with a diameter of about 8 km. Two cays on Alburquerque, North Cay and South Cay, are separated by a shallow water channel, 386 metres wide. The Alburquerque Cays lie about 100 nautical miles to the east of the mainland of Nicaragua, 65 nautical miles to the east of the Corn Islands, 375 nautical miles from the mainland of Colombia, 20 nautical miles to the south of the island of San Andrés and 26 nautical miles to the south-west of the East-Southeast Cays.

(b) ***East-Southeast Cays***

The East-Southeast Cays (East Cay, Bolivar Cay (also known as Middle Cay), West Cay and Arena Cay) are located on an atoll extending over some 13 km in a north-south direction. The East-Southeast Cays lie 120 nautical miles from the mainland of Nicaragua, 90 nautical miles from the Corn Islands, 360 nautical miles from the mainland of Colombia, 16 nautical miles south-east of the island of San Andrés and 26 nautical miles from Alburquerque Cays.

(c) ***Roncador***

Roncador is an atoll located on a bank 15 km long and 7 km wide. It is about 190 nautical miles to the east of the mainland of Nicaragua, 320 nautical miles from the mainland of Colombia, 75 nautical miles east of the island of Providencia and 45 nautical miles from Serrana. Roncador Cay, located half a mile from the northern border of the bank, is some 550 metres long and 300 metres wide.

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[1]These cays are referred to either as "Alburquerque" or as "Albuquerque". For the purposes of the present case, the Court will use "Alburquerque".

(d) ***Serrana***

The bank of Serrana is located at 170 nautical miles from the mainland of Nicaragua and about 360 nautical miles from the mainland of Colombia; it lies approximately 45 nautical miles to the north of Roncador, 80 nautical miles from Providencia and 145 nautical miles from the Miskitos Cays. There are a number of cays on this bank. The largest one, Serrana Cay (also known as Southwest Cay), is some 1,000 metres in length and has an average width of 400 metres.

(e) ***Quitasueño***

The Parties differ about the geographical characteristics of Quitasueño (a large bank approximately 57 km long and 20 km wide) which is located 45 nautical miles west of Serrana, 38 nautical miles from Santa Catalina, 90 nautical miles from the Miskitos Cays and 40 nautical miles from Providencia, on which are located a number of features the legal status of which is disputed.

(f) ***Serranilla***

The bank of Serranilla lies 200 nautical miles from the mainland of Nicaragua, 190 nautical miles from the Miskitos Cays, 400 nautical miles from the mainland of Colombia, about 80 nautical miles to the north of the bank of Serrana, 69 nautical miles west of Bajo Nuevo, and 165 nautical miles from Providencia. The cays on Serranilla include East Cay, Middle Cay and Beacon Cay (also known as Serranilla Cay). The largest of them, Beacon Cay, is 650 metres long and some 300 metres wide.

(g) ***Bajo Nuevo***

The bank of Bajo Nuevo is located 265 nautical miles from the mainland of Nicaragua, 245 nautical miles from the Miskitos Cays and about 360 nautical miles from the mainland of Colombia. It lies around 69 nautical miles east of Serranilla, 138 nautical miles from Serrana and 205 nautical miles from Providencia. There are three cays on Bajo Nuevo, the largest of which is Low Cay (300 metres long and 40 metres wide).

II. SOVEREIGNTY

1. Whether the maritime features in dispute are capable of appropriation

25. The Court recalls that the maritime features in dispute comprise the Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo. Before addressing the question of sovereignty, the Court must determine whether these maritime features in dispute are capable of appropriation.

26. It is well established in international law that islands, however small, are capable of appropriation (see, e.g., *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 102, para. 206). By contrast, low-tide elevations cannot be appropriated, although "a coastal State has sovereignty over low-tide elevations which are situated within its territorial sea, since it has sovereignty over the territorial sea itself" (*ibid.*, p. 101, para. 204) and low-tide elevations within the territorial sea may be taken into account for the purpose of measuring the breadth of the territorial sea (see paragraph 182 below).

27. The Parties agree that Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo remain above water at high tide and thus, as islands, they are capable of appropriation. They disagree, however, as to whether any of the features on Quitasueño qualify as islands.

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28. According to Nicaragua, Quitasueño is a shoal, all of the features on which are permanently submerged at high tide. In support of its position, Nicaragua invokes a survey prepared in 1937 by an official of the Colombian Foreign Ministry which states that "[t]he Quitasueño Cay does not exist". Nicaragua also quotes another passage from the report, that "[t]here is no guano or eggs in Quitasueño because there is no firm land". Nicaragua also refers to the 1972 Vázquez-Saccio Treaty between Colombia and the United States whereby the United States relinquished "any and all claims of sovereignty over Quita Sueño, Roncador and Serrana". Nicaragua emphasizes that this treaty was accompanied by an exchange of diplomatic Notes wherein the United States expressed its position that Quitasueño "being permanently submerged at high tide, is not at the present time subject to the exercise of sovereignty". In addition, Nicaragua makes extensive reference to earlier surveys of Quitasueño and to various charts of that part of the Caribbean, none of which, according to Nicaragua, show the presence of any islands at Quitasueño.

29. For its part, Colombia, relying on two surveys, namely the Study on Quitasueño and Alburquerque prepared by the Colombian Navy in September 2008 and the Expert Report by Dr. Robert Smith, "Mapping the Islands of Quitasueño (Colombia) — Their Baselines, Territorial Sea, and Contiguous Zone" of February 2010 (hereinafter the "Smith Report"), argues that there are 34 individual features within Quitasueño which "qualify as islands because they are above water at high tide" and at least 20 low-tide elevations situated well within 12 nautical miles of one or more of those islands. The Smith report refers to these features as "QS 1" to "QS 54".

30. Nicaragua points out that both reports relied on by Colombia were prepared specially for the purposes of the present proceedings. Nicaragua contests the findings that there are 34 features that are "permanently above water" and objects to the method used by Dr. Smith in making these

findings. Nicaragua considers that the global Grenoble Tide Model used by Dr. Smith is inappropriate for determining whether some of the features at Quitasueño are above water at Highest Astronomical Tide (HAT). According to Nicaragua, the global Grenoble Tide Model is used for research purposes for modelling ocean tides but, as stated by the United States National Aeronautics and Space Administration ("NASA") in its published collection of global tidal models, these global models "are accurate to within 2 to 3 cm in waters deeper than 200 m. In shallow waters they are quite inaccurate, which makes them unsuitable for navigation or other practical applications."

Colombia disagrees with Nicaragua's criticism of the Grenoble Tide Model. It contends that this model should not be rejected for three reasons, namely that international law does not prescribe the use of any particular method of tidal measurement, that the measurements of the many features made by Dr. Smith were accurate and clear, and that his approach to whether those features were above water at "high tide" was conservative, because it was based upon HAT rather than "mean high tide".

31. Nicaragua claims that the "'Admiralty Total Tide' model", produced by the United Kingdom Hydrographic Office, is more appropriate to determine height in the area of Quitasueño, because it is more accurate in shallow waters. Applying that model to the features identified in the Smith Report, all the features, except for the one described in the Smith report as "QS 32", are below water at HAT. QS 32's height above HAT is about 1.2 metres according to the Smith Report, but only 0.7 metres if measured by the "'Admiralty Total Tide' model".

32. In any case, Nicaragua contends that QS 32 is "[a]n individual piece of coral debris, that is, a part of the skeleton of a dead animal, is not a naturally formed area of land" and, as such, does not fall within the definition of islands entitled to maritime zones. In response, Colombia notes that there is no case in which a feature has been denied the status of an island merely because it was composed of coral. According to Colombia, coral islands are naturally formed and generate a territorial sea as do other islands. Colombia moreover asserts that QS 32 is not coral debris, but rather represents part of a much larger coral reef firmly attached to the substrate.

33. Nicaragua also claims that size is crucial for determining whether a maritime feature qualifies as an island under international law. It notes that the top of QS 32 "seems to measure some 10 to 20 cm". Colombia, on the other hand, contends that customary international law does not prescribe a minimum size for a maritime feature to qualify as an island.

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34. The Court recalls that, in its Judgment in the *Pulp Mills* case, it said that

> "the Court does not find it necessary in order to adjudicate the present case to enter into a general discussion on the relative merits, reliability and authority of the documents and studies prepared by the experts and consultants of the Parties. It needs only to be mindful of the fact that, despite the volume and complexity of the factual information submitted to it, it is the responsibility of the Court, after having given careful consideration to all the evidence placed before it by the Parties, to determine which facts must be considered relevant, to assess their probative value, and to draw conclusions from them as appropriate. Thus, in keeping with its practice, the Court will make its own determination of the facts, on the basis of the evidence presented to it, and then it will apply the relevant rules of international law to those facts which it has found to have existed." (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, pp. 72-73, para. 168.)

35. The issue which the Court has to decide is whether or not there exist at Quitasueño any naturally formed areas of land which are above water at high tide. It does not consider that surveys conducted many years (in some cases many decades) before the present proceedings are relevant in resolving that issue. Nor does the Court consider that the charts on which Nicaragua relies have much probative value with regard to that issue. Those charts were prepared in order to show dangers to shipping at Quitasueño, not to distinguish between those features which were just above, and those which were just below, water at high tide.

36. The Court considers that what is relevant to the issue before it is the contemporary evidence. Of that evidence, by far the most important is the Smith Report, which is based upon actual observations of conditions at Quitasueño and scientific evaluation of those conditions. Nevertheless, the Court considers that the conclusions of that Report have to be treated with a degree of caution. As the Court has already stated, even the smallest island generates a 12-nautical-mile territorial sea (see *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, pp. 101-102, para. 205; see also *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 751, para. 302). The Court therefore has to make sure that it has before it evidence sufficient to satisfy it that a maritime feature meets the test of being above water at high tide. In the present case, the proof offered by Colombia depends upon acceptance of a tidal model which NASA describes as inaccurate in shallow waters. The waters around Quitasueño are very shallow. Moreover, all of the features at Quitasueño are minuscule and, even on the Grenoble Tide Model, are only just above water at high tide — according to the Smith Report, with the exception of QS 32 only one feature (QS 24) is more than 30 cm and only four others measured on site (QS 17, QS 35, QS 45 and QS 53) are more than 20 cm above water at high tide; a fifth, measured from the boat (QS 30), was 23.2 cm above water at high tide. The other 27 features which the Smith Report characterizes as islands are all less than 20 cm above water at high tide, with one such feature (QS 4) being described in the Smith Report as only 4 mm above water at high tide.

37. No matter which tidal model is used, it is evident that QS 32 is above water at high tide. Nicaragua's contention that QS 32 cannot be regarded as an island within the definition established in customary international law, because it is composed of coral debris, is without merit. International law defines an island by reference to whether it is "naturally formed" and whether it is above water at high tide, not by reference to its geological composition. The photographic evidence shows that QS 32 is composed of solid material, attached to the substrate, and not of loose debris. The fact that the feature is composed of coral is irrelevant. Even using Nicaragua's preferred tidal model, QS 32 is above water at high tide by some 0.7 metres. The Court recalls that in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)* (*Merits, Judgment, I.C.J. Reports 2001*, p. 99, para. 197), it found that Qit'at Jaradah was an island, notwithstanding that it was only 0.4 metres above water at high tide. The fact that QS 32 is very small does not make any difference, since international law does not prescribe any minimum size which a feature must possess in order to be considered an island. Accordingly, the Court concludes that the feature referred to as QS 32 is capable of appropriation.

38. With regard to the other maritime features at Quitasueño, the Court considers that the evidence advanced by Colombia cannot be regarded as sufficient to establish that any of them constitutes an island, as defined in international law. Although the Smith Report, like the earlier report by the Colombian Navy, involved observation of Quitasueño on specified dates, an essential element of the Smith Report is its calculations of the extent to which each feature should be above water at HAT. Such calculations, based as they are upon a tidal model whose accuracy is disputed when it is applied to waters as shallow as those at and around Quitasueño, are not sufficient to prove that tiny maritime features are a few centimetres above water at high tide. The Court therefore concludes that Colombia has failed to prove that any maritime feature at Quitasueño, other than QS 32, qualifies as an island. The photographic evidence contained in the Smith Report does, however, show those features to be above water at some part of the tidal cycle and thus to constitute low-tide elevations. Moreover, having reviewed the information and analysis submitted by both Parties regarding tidal variation, the Court concludes that all of those features would be low-tide elevations under the tidal model preferred by Nicaragua. The effect which that finding may have upon the maritime entitlement generated by QS 32 is considered in paragraphs 182 to 183, below.

2. Sovereignty over the maritime features in dispute

39. In addressing the question of sovereignty over the maritime features in dispute, the Parties considered the 1928 Treaty and *uti possidetis juris* as a source of their title, as well as *effectivités* invoked by Colombia. They also discussed Colombia's allegation that Nicaragua had recognized Colombia's title, as well as positions taken by third States, and the cartographic evidence. The Court will deal with each of these arguments in turn.

A. The 1928 Treaty

40. Article I of the 1928 Treaty reads as follows:

> "The Republic of Colombia recognises the full and entire sovereignty of the Republic of Nicaragua over the Mosquito Coast between Cape Gracias a Dios and the San Juan River, and over Mangle Grande and Mangle Chico Islands in the Atlantic Ocean (Great Corn Island and Little Corn Island). The Republic of Nicaragua recognises the full and entire sovereignty of the Republic of Colombia over the islands of San Andrés, Providencia and Santa Catalina and over the other islands, islets and reefs forming part of the San Andrés Archipelago.
>
> The present Treaty does not apply to the reefs of Roncador, Quitasueño and Serrana, sovereignty over which is in dispute between Colombia and the United States of America." *[Translation by the Secretariat of the League of Nations, for information.]* (*League of Nations, Treaty Series*, N 2426, Vol. CV, pp. 340-341.)

41. The second paragraph of the 1930 Protocol of Exchange of Ratifications of the 1928 Treaty (hereinafter the "1930 Protocol") stipulated that the "San Andrés and Providencia Archipelago mentioned in the first clause of the said Treaty does not extend west of the 82nd degree of longitude west of Greenwich" *[translation by the Secretariat of the League of Nations, for information]* (*League of Nations, Treaty Series*, N 2426, Vol. CV, pp. 341-342).

42. The Court notes that under the terms of the 1928 Treaty, Colombia has sovereignty over "San Andrés, Providencia and Santa Catalina and over the other islands, islets and reefs forming part of the San Andrés Archipelago" (see paragraph 23). Therefore, in order to address the question of sovereignty over the maritime features in dispute, the Court needs first to ascertain what constitutes the San Andrés Archipelago.

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43. Nicaragua observes that, as the first paragraph of Article I of the 1928 Treaty does not provide a precise definition of that Archipelago, it is necessary to identify the geographical concept of the San Andrés Archipelago. In Nicaragua's view, the proximity test cannot justify the Colombian claim that the maritime features in dispute are covered by the term San Andrés Archipelago. Nicaragua argues that the only maritime features that are relatively near to the island of San Andrés are the Alburquerque Cays and the East-Southeast Cays, while the closest cay to the east of Providencia is Roncador at 75 nautical miles; Serrana lies at 80 nautical miles from Providencia; Serranilla at 165 nautical miles; and Bajo Nuevo at 205 nautical miles; Quitasueño bank is at 40 nautical miles from Santa Catalina. According to Nicaragua, taking into account the distances involved, it is inconceivable to regard these maritime features claimed by Colombia as forming a geographical unit with the three islands referred to in Article I of the 1928 Treaty.

44. Nicaragua further contends that there is no historical record showing that the disputed islands and cays formed part of a geographical unit with the islands of San Andrés, Providencia and Santa Catalina. At the beginning of the nineteenth century, the first Governor of what was referred to then as the "San Andrés Islands" only mentioned five islands when explaining the composition of the group: San Andrés, Providencia, Santa Catalina, Great Corn Island and Little Corn Island. In other documents from the colonial period, which refer to the islands of San Andrés, the maritime features in dispute are never described as a group, or as part of a single archipelago. In that regard, Nicaragua cites the Royal Order of 1803, the survey of "the cays and banks located between Cartagena and Havana" carried out at the beginning of the nineteenth century on the instructions of the Spanish authorities, and the Sailing Directions *(Derrotero de las islas antillanas)* published by the Hydrographic Office of the Spanish Navy in 1820.

45. Nicaragua stresses that the definition of the San Andrés Archipelago as an administrative unit in Colombian domestic legislation is of no relevance at an international level. Nicaragua argues that, from a historical and geographical point of view, the creation of this administrative unit does not prove that it constitutes an archipelago within the meaning agreed by the Parties in the 1928 Treaty.

46. Nicaragua further explains that, under the second paragraph of Article I of the 1928 Treaty, the maritime features of Roncador, Quitasueño and Serrana were explicitly excluded from the scope of that Treaty, and thus clearly not considered part of the San Andrés Archipelago.

47. With regard to the 82°W meridian in the 1930 Protocol, Nicaragua argues that this did not set a limit to Nicaraguan territory east of that meridian, but only meant that "no island lying west of the 82°W meridian forms part of the archipelago within the meaning of the Treaty". Nicaragua thus asserts that the 1930 Protocol merely sets a western limit to the San Andrés Archipelago.

48. Nicaragua concludes that the Archipelago comprises only the islands of San Andrés, Providencia and Santa Catalina and does not include the Alburquerque Cays, the East-Southeast Cays, Roncador, Serrana, the shoal of Quitasueño, or any cays on the banks of Serranilla and Bajo Nuevo.

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49. According to Colombia the islands and cays of the San Andrés Archipelago were considered as a group throughout the colonial and post-colonial era. In support of its position, Colombia contends that they were referred to as a group in the early nineteenth century survey of

the cays and banks "located between Cartagena and Havana" which was carried out on the instructions of the Spanish Crown and in the Sailing Directions *(Derrotero de las islas antillanas)* published by the Hydrographic Office of the Spanish Navy in 1820. With regard to the report by the first Governor of the San Andrés islands, Colombia argues that the five named islands are clearly the main islands of the group but that the smaller islets and cays also formed part of the Archipelago. In Colombia's opinion, the fact that references to the San Andrés islands in historical documents (in 1803 or subsequently) did not always specify each and every feature making up the Archipelago does not mean that it only consisted of the larger maritime features named.

50. Colombia contends that the concept and composition of the Archipelago remained unchanged and that this was the understanding at the time of the signature of the 1928 Treaty and the 1930 Protocol.

Further, Colombia contends that the 82nd meridian is, at the very least, a territorial allocation line, separating Colombian territory to the east from Nicaraguan territory to the west, up to the point where it reaches third States to the north and south. Colombia concludes that the 1928 Treaty and the 1930 Protocol left no territorial matters pending between the Parties. Under the terms of these instruments, according to Colombia, neither State "could claim insular territory on the 'other' side of the 82ºW meridian".

51. Colombia adds that by agreeing, under the second paragraph of Article I of the 1928 Treaty, to exclude Roncador, Quitasueño and Serrana from the scope of the Treaty, since they were in dispute between Colombia and the United States, Nicaragua accepted that these features formed part of the Archipelago.

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52. The Court observes that Article I of the 1928 Treaty does not specify the composition of the San Andrés Archipelago. As to the 1930 Protocol, it only fixes the western limit of the San Andrés Archipelago at the 82nd meridian and sheds no light on the scope of the Archipelago to the east of that meridian. In its 2007 Judgment on the Preliminary Objections, the Court stated:

> "it is clear on the face of the text of the first paragraph of Article I of the 1928 Treaty that its terms do not provide the answer to the question as to which maritime features apart from the islands of San Andrés, Providencia and Santa Catalina form part of the San Andrés Archipelago over which Colombia has sovereignty" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 863, para. 97).

53. However, Article I of the 1928 Treaty does mention "the other islands, islets and reefs forming part of the San Andrés Archipelago". This provision could be understood as including at least the maritime features closest to the islands specifically mentioned in Article I. Accordingly,

the Alburquerque Cays and East-Southeast Cays, given their geographical location (lying 20 and 16 nautical miles, respectively, from San Andrés island) could be seen as forming part of the Archipelago. By contrast, in view of considerations of distance, it is less likely that Serranilla and Bajo Nuevo could form part of the Archipelago. Be that as it may, the question about the composition of the Archipelago cannot, in the view of the Court, be definitively answered solely on the basis of the geographical location of the maritime features in dispute or on the historical records relating to the composition of the San Andrés Archipelago referred to by the Parties, since this material does not sufficiently clarify the matter.

54. According to the second paragraph of Article I of the 1928 Treaty, this treaty does not apply to Roncador, Quitasueño and Serrana which were in dispute between Colombia and the United States at the time. However, the Court does not consider that the express exclusion of Roncador, Quitasueño and Serrana from the scope of the 1928 Treaty is in itself sufficient to determine whether these features were considered by Nicaragua and Colombia to be part of the San Andrés Archipelago.

55. The Court further observes that the historical material adduced by the Parties to support their respective arguments is inconclusive as to the composition of the San Andrés Archipelago. In particular, the historical records do not specifically indicate which features were considered to form part of that Archipelago.

56. In view of the above, in order to resolve the dispute before it, the Court must examine arguments and evidence submitted by the Parties in support of their respective claims to sovereignty, which are not based on the composition of the Archipelago under the 1928 Treaty.

B. *Uti possidetis juris*

57. The Court will now turn to the claims of sovereignty asserted by both Parties on the basis of *uti possidetis juris* at the time of independence from Spain.

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58. Nicaragua explains that the Captaincy-General of Guatemala (to which Nicaragua was a successor State) held jurisdiction over the disputed islands on the basis of the Royal Decree *(Cédula Real)* of 28 June 1568, confirmed in 1680 by Law VI, Title XV, Book II, of the Compilation of the Indies *(Recopilación de las Indias)* and, later, the New Compilation *(Novísima Recopilación)* of 1744, which signalled the limits of the *Audiencia de Guatemala* as including "the islands adjacent to the coast".

59. Nicaragua recalls that, according to the doctrine of *uti possidetis juris*, there could have been no *terra nullius* in the Spanish colonies located in Latin America. It contends that it thus held "original and derivative rights of sovereignty over the Mosquito Coast and its appurtenant maritime features", including the islands of San Andrés, Providencia and Santa Catalina based on the *uti possidetis juris* at the moment of independence from Spain. In Nicaragua's opinion, the application of *uti possidetis juris* should be understood in terms of attachment to or dependence on the closest continental territory, that of Nicaragua. For Nicaragua, "it is incontrovertible that all the islands off the Caribbean coast of Nicaragua at independence appertained to this coast". Although, as a result of the 1928 Treaty, it ceded its sovereignty over the islands of San Andrés, Providencia and Santa Catalina, this did not affect sovereignty over the other maritime features appertaining to the Mosquito Coast. Nicaragua concludes that Roncador and Serrana, as well as the other maritime features that are not referred to *eo nomine* in the Treaty, belong to Nicaragua on the basis of *uti possidetis juris*, since, in law, the islands and cays have followed the fate of the adjacent continental coast.

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60. For its part, Colombia claims that its sovereignty over the San Andrés Archipelago has its roots in the Royal Order of 1803, when it was placed under the jurisdiction of the Viceroyalty of Santa Fé (New Granada), which effectively exercised that jurisdiction until independence. Colombia therefore argues that it holds original title over the San Andrés Archipelago based on the principle of *uti possidetis juris* supported by the administration of the Archipelago by the Viceroyalty of Santa Fé (New Granada) during colonial times.

61. Colombia asserts that the exercise of jurisdiction over the San Andrés Archipelago by the authorities of the Viceroyalty of Santa Fé (New Granada) was at no time contested by the authorities of the Captaincy-General of Guatemala. Colombia states that during the period prior to independence, Spain's activities in relation to the maritime features originated either in Cartagena, or on the island of San Andrés itself, but never had any connection with Nicaragua, which was a province on the Pacific coast under the Captaincy-General of Guatemala. Colombia concludes that such was the situation of the islands of San Andrés when, in 1810, the provinces of the Viceroyalty of Santa Fé (New Granada) began their process of independence.

62. Colombia finally states that the 1928 Treaty and the 1930 Protocol did not alter the situation vis-à-vis its sovereignty over the San Andrés Archipelago based on *uti possidetis juris*.

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63. In response to Colombia's assertions on the basis of the Royal Order of 1803, Nicaragua argues that this Order did not alter Nicaraguan jurisdiction over the islands, which remained appurtenances of the Mosquito Coast. Nicaragua claims that the Royal Order only dealt with matters of military protection and that, as it was not a Royal Decree, the Order lacked the legal requirements to effect a transfer of territorial jurisdiction. Furthermore, the Captaincy-General of Guatemala protested the Royal Order of 1803, which, according to Nicaragua, was repealed by a Royal Order of 1806. Nicaragua claims that its interpretation of the Royal Order of 1803 is confirmed by the Arbitral Award rendered by the President of the French Republic, Mr. Emile Loubet, on 11 September 1900 (hereinafter the "Loubet Award"), setting out the land boundary between Colombia (of which Panama formed part at the time) and Costa Rica (see paragraph 86 below). Nicaragua interprets that Award as clarifying that Colombia could not claim any rights over the Atlantic Coast on the basis of the Royal Order of 1803.

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64. The Court observes that, as to the claims of sovereignty asserted by both Parties on the basis of the *uti possidetis juris* at the time of independence from Spain, none of the colonial orders cited by either Party specifically mentions the maritime features in dispute. The Court has previously had the opportunity to acknowledge the following, which is equally applicable to the case at hand:

> "when the principle of the *uti possidetis juris* is involved, the *jus* referred to is not international law but the constitutional or administrative law of the pre-independence sovereign, in this case Spanish colonial law; and it is perfectly possible that that law itself gave no clear and definite answer to the appurtenance of marginal areas, or sparsely populated areas of minimal economic significance" (*Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, p. 559, para. 333).

65. In light of the foregoing, the Court concludes that in the present case the principle of *uti possidetis juris* affords inadequate assistance in determining sovereignty over the maritime features in dispute between Nicaragua and Colombia because nothing clearly indicates whether these features were attributed to the colonial provinces of Nicaragua or of Colombia prior to or upon independence. The Court accordingly finds that neither Nicaragua nor Colombia has established that it had title to the disputed maritime features by virtue of *uti possidetis juris*.

C. *Effectivités*

66. Having concluded that no title over the maritime features in dispute can be found on the basis of the 1928 Treaty or *uti possidetis juris*, the Court will now turn to the question whether sovereignty can be established on the basis of *effectivités*.

(a) ***Critical date***

67. The Court recalls that, in the context of a dispute related to sovereignty over land, such as the present one, the date upon which the dispute crystallized is of significance. Its significance lies in distinguishing between those acts *à titre de souverain* occurring prior to the date when the dispute crystallized, which should be taken into consideration for the purpose of establishing or ascertaining sovereignty, and those acts occurring after that date,

> "which are in general meaningless for that purpose, having been carried out by a State which, already having claims to assert in a legal dispute, could have taken those actions strictly with the aim of buttressing those claims" (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 697-698, para. 117).

68. As the Court explained in the *Indonesia/Malaysia* case:

> "it cannot take into consideration acts having taken place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them" (*Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 682, para. 135).

* *

69. Nicaragua maintains that the date on which the dispute over maritime delimitation arose was 1969. Nicaragua notes in particular that the dispute came about when Nicaragua granted oil exploration concessions in the area of Quitasueño in 1967-1968, leading to a Note of protest being sent by Colombia to Nicaragua on 4 June 1969 in which, for the first time after the ratification of the 1928 Treaty, Colombia claimed that the 82nd meridian was a maritime boundary between the Parties. Nicaragua underlines that it responded a few days later, on 12 June 1969, denying this Colombian claim that reduced by more than half Nicaragua's rights to a full exclusive economic zone and continental shelf.

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70. According to Colombia, the dispute concerning the sovereignty over the maritime features crystallized in 1971 when Colombia and the United States began negotiations to resolve the situation as regards Roncador, Quitasueño and Serrana, which were excluded from the scope of the 1928 Treaty, and Nicaragua raised claims over the San Andrés Archipelago. In the course of the hearings, Colombia limited itself to taking note of the critical date proposed by Nicaragua, and to setting out the *effectivités* carried out by Colombia before that date.

* *

71. The Court observes that there is no indication that there was a dispute before the 1969 exchange of Notes mentioned by Nicaragua. Indeed, the Notes can be seen as the manifestation of a difference of views between the Parties regarding sovereignty over certain maritime features in the south-western Caribbean. Moreover, Colombia does not seem to contest the critical date put forward by Nicaragua. In light of the above, the Court concludes that 12 June 1969, the date of Nicaragua's Note in response to Colombia's Note of 4 June 1969 (see paragraph 69), is the critical date for the purposes of appraising *effectivités* in the present case.

(b) *Consideration of* effectivités

72. The Court notes that it is Colombia's submission that *effectivités* confirm its prior title to the maritime features in dispute. By contrast, Nicaragua has not provided any evidence that it has acted *à titre de souverain* in relation to these features and its claim for sovereignty relies largely on the principle of *uti possidetis juris*.

* *

73. Colombia contends that the activities *à titre de souverain* carried out in relation to the islands coincide with Colombia's pre-existing title and are entirely consistent with the legal position that resulted from the 1928 Treaty and its accompanying 1930 Protocol. Were the Court to find that *effectivités* do not co-exist with a prior title, Colombia argues that *effectivités* would still be relevant for its claim to sovereignty.

74. With reference to the maritime features in dispute, Colombia notes that it has exercised public, peaceful and continuous sovereignty over the cays of Roncador, Quitasueño, Serrana, Serranilla, Bajo Nuevo, Alburquerque and East-Southeast for more than 180 years as integral parts

of the San Andrés Archipelago. In particular, it maintains that it has enacted laws and regulations concerning fishing, economic activities, immigration, search and rescue operations, public works and environmental issues concerning the Archipelago; that it has enforced its criminal legislation over the entire Archipelago; that, from the mid-nineteenth century onwards, it has carried out surveillance and control activities over the entire Archipelago; that it has authorized third parties to prospect for oil in the maritime areas of the San Andrés Archipelago; and that it has carried out scientific research with a view to preserving and making responsible use of the natural wealth of the San Andrés Archipelago. Colombia notes that public works have been built and maintained by the Colombian Government on the Archipelago's cays, including lighthouses, quarters and facilities for Navy detachments, facilities for the use of fishermen and installations for radio stations.

75. Colombia adds that Nicaragua cannot point to any evidence that it ever had either the intention to act as sovereign over these islands, let alone that it engaged in a single act of a sovereign nature on them. Moreover, Nicaragua never protested against Colombia's exercise of sovereignty over the islands throughout a period of more than 150 years.

*

76. For its part, Nicaragua asserts that the reliance on *effectivités* is only relevant for justifying a decision that is not clear in terms of *uti possidetis juris*. Nicaragua considers that any possession of Colombia over the area only included the major islands of San Andrés, Providencia and Santa Catalina but not the cays on the banks of Roncador, Serrana, Serranilla and Bajo Nuevo, or any of the other banks adjacent to the Mosquito Coast. Nicaragua points out that in the nineteenth century, the only activity on the cays was that of groups of fishermen and tortoise hunters, who carried out their activities without regulations or under any governmental authority. Towards the middle of the nineteenth century, the United States of America, through the Guano Act of 1856, regulated and granted licences for the extraction of guano at Roncador, Serrana and Serranilla.

77. Nicaragua contests the relevance of activities undertaken by Colombia subsequent to the critical date in this case, i.e., 1969. It notes that the establishment of naval infantry detachments only began in 1975; likewise, it was only in 1977 that Colombia replaced the beacons installed by the United States on Roncador and Serrana, and placed a beacon on Serranilla. These activities, according to Nicaragua, cannot be considered as the normal continuation of earlier practices; they were carried out with a view to improving Colombia's legal position vis-à-vis Nicaragua and are not pertinent to the Court's decision.

78. Nicaragua asserts that legislation and administrative acts can only be taken into consideration as constituting a relevant display of authority "[if they] leave no doubt as to their specific reference" to the territories in dispute. It argues that the legal provisions and administrative acts relating to the San Andrés Archipelago relied upon by Colombia have been of a general nature and were not specific to the cays. Hence, it maintains that they should not be considered as evidence of sovereignty over the maritime features.

79. Nicaragua contends that in any event it protested the activities undertaken by Colombia, but did not have the necessary means at its disposal to demand that its title over the disputed features be respected by a State with superior means on the ground and conducting a policy of "faits accomplis".

* *

80. The Court recalls that acts and activities considered to be performed *à titre de souverain* are in particular, but not limited to, legislative acts or acts of administrative control, acts relating to the application and enforcement of criminal or civil law, acts regulating immigration, acts regulating fishing and other economic activities, naval patrols as well as search and rescue operations (see *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 713–722, paras. 176-208). It further recalls that "sovereignty over minor maritime features . . . may be established on the basis of a relatively modest display of State powers in terms of quality and quantity" (*ibid.*, p. 712, para. 174). Finally, a significant element to be taken into account is the extent to which any acts *à titre de souverain* in relation to disputed islands have been carried out by another State with a competing claim to sovereignty. As the Permanent Court of International Justice stated in its Judgment in the *Legal status of Eastern Greenland* case:

> "It is impossible to read the records of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries." (*Legal status of Eastern Greenland, Judgment, 1933, P.C.I.J. Series A/B, No. 53*, p. 46.)

81. The Court notes that although the majority of the acts *à titre de souverain* referred to by Colombia were exercised in the maritime area which encompasses all the disputed features, a number of them were undertaken specifically in relation to the maritime features in dispute. Colombia has indeed acted *à titre de souverain* in respect of both the maritime area surrounding the disputed features and the maritime features themselves, as will be shown in the following paragraph.

82. The Court will now consider the different categories of *effectivités* presented by Colombia.

Public administration and legislation. In 1920, the *Intendente* (governor) of the Archipelago of San Andrés submitted to the Government a report concerning the functioning of the public administration of the Archipelago for the period from May 1919 to April 1920. The report

specifically referred to Roncador, Quitasueño and Serrana as Colombian and forming an integral part of the Archipelago. In the exercise of its legal and statutory powers, the Board of Directors of the Colombian Institute for Agrarian Reform passed resolutions dated 16 December 1968 and 30 June 1969 dealing with the territorial régime, in particular, of Alburquerque, East-Southeast, Serrana, Roncador, Quitasueño, Serranilla and Bajo Nuevo.

Regulation of economic activities. In April 1871, the Congress of Colombia issued a law permitting the Executive Branch to lease the right to extract guano and collect coconuts on Alburquerque, Roncador and Quitasueño. In September 1871, the Prefect of San Andrés and San Luis de Providencia issued a decree prohibiting the extraction of guano from Alburquerque, Roncador and Quitasueño. In December 1871, the Prefect of San Andrés and San Luis de Providencia granted a contract relating to coconut groves on Alburquerque. In 1893, a permit for the exploitation of guano and lime phosphate on Serrana was issued by the Governor of the Department of Bolívar. Contracts for exploitation of guano on Serrana, Serranilla, Roncador, Quitasueño and Alburquerque were concluded or terminated by the Colombian authorities in 1893, 1896, 1915, 1916 and 1918. In 1914, and again in 1924, the Governor of the Cayman Islands issued a Government Notice informing fishing vessels that fishing in, or removing guano or phosphates from, the Archipelago of San Andrés was forbidden without a licence from the Colombian Government. The notice listed the features of the Archipelago "in which the Colombian Government claims territorial jurisdiction" as including "the islands of San Andres and Providence [sic], and the Banks and Cays known as Serrana, Serranilla, Roncador, Bajo Nueva [sic], Quitasueno [sic], Albuquerque and Courtown [East-Southeast cays]".

Public works. Since 1946, Colombia has been involved in the maintenance of lighthouses on Alburquerque and East-Southeast Cays (Bolívar Cay). In 1963, the Colombian Navy took measures to maintain the lighthouse on East-Southeast Cays, and in 1968 it took further measures for the inspection and upkeep of the lighthouse on East-Southeast Cays as well as those on Quitasueño, Serrana and Roncador.

Law enforcement measures. In 1892, the Colombian Ministry of Finance made arrangements to enable a ship to be sent to the Prefect of Providencia so that he could visit Roncador and Quitasueño in order to put a stop to the exploitation of guano. In 1925, a decree was issued by the *Intendente* of San Andrés and Providencia to appropriate funds to cover the expenses for the rental of a ship transporting administrative personnel to Quitasueño in order to capture two vessels under the British flag engaged in the illegal fishing of tortoiseshell. In November 1968, a United States-flagged vessel fishing in and around Quitasueño was sequestered by the Colombian authorities in order to determine whether it had complied with Colombian fishing regulations.

Naval visits and search and rescue operations. In 1937, 1949, 1967-1969, the Colombian Navy visited Serrana, Quitasueño and Roncador. In 1969, two rescue operations were carried out in the immediate vicinity of Alburquerque and Quitasueño.

Consular representation. In 1913 and 1937, the President of Colombia recognized that the jurisdiction of German consular officials extended over the islands of San Andrés, Providencia and Roncador.

83. Colombia's activities *à titre de souverain* with regard to Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla, in particular, legislation relating to territorial organization, regulation of fishing activities and related measures of enforcement, maintenance of lighthouses and buoys, and naval visits, continued after the critical date. The Court considers that these activities are a normal continuation of prior acts *à titre de souverain*. The Court may therefore take these activities into consideration for the purposes of the present case (see *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 682, para. 135).

84. It has thus been established that for many decades Colombia continuously and consistently acted *à titre de souverain* in respect of the maritime features in dispute. This exercise of sovereign authority was public and there is no evidence that it met with any protest from Nicaragua prior to the critical date. Moreover, the evidence of Colombia's acts of administration with respect to the islands is in contrast to the absence of any evidence of acts *à titre de souverain* on the part of Nicaragua.

The Court concludes that the facts reviewed above provide very strong support for Colombia's claim of sovereignty over the maritime features in dispute.

D. Alleged recognition by Nicaragua

85. Colombia also contends that its sovereignty over the cays was recognized by Nicaragua itself.

86. As proof of Nicaragua's recognition of Colombia's sovereignty over the disputed maritime features, Colombia refers to Nicaragua's reaction to the Loubet Award of 11 September 1900, by which the President of France determined what was then the land boundary between Colombia and Costa Rica and is today the boundary between Costa Rica and Panama. According to this Award:

> "As regards the islands situated furthest from the mainland and located between the Mosquito Coast and the Isthmus of Panama, namely Mangle-Chico, Mangle-Grande, Cayos-de-Albuquerque, San Andrés, Santa-Catalina, Providencia and Escudo-de-Veragua, as well as all other islands, islets and banks belonging to the former Province of Cartagena, under the denomination of Canton de San Andrés, it is understood that the territory of these islands, without exception, belongs to the United States of Colombia." (United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXVIII, p. 345 *[translation of French original by the Registry]*.)

Colombia recalls that in its Note of protest of 22 September 1900 against the findings in the Loubet Award, Nicaragua stated that the Award "may in no way prejudice the incontestable rights of the Republic of Nicaragua" over certain islands, banks and islets located within a specified geographical area. The Note states that those islands and other features "are currently militarily occupied, and politically administered by the authorities of [Nicaragua]". In that regard, Colombia emphasizes that none of the islands currently in dispute are situated in the geographical area

described by Nicaragua in its Note. Indeed, in its Note, Nicaragua only advanced claims to the Great Corn and Little Corn islands and to the islands, islets and cays and banks in immediate proximity to the Mosquito Coast, identifying its area of jurisdiction as only extending to "84º30' of the Paris meridian", which Colombia explains is equivalent to 82º09' longitude west of Greenwich. Moreover, none of the islands currently in dispute were "militarily occupied, and politically administered" by Nicaragua in 1900.

Colombia further argues that Nicaragua failed to protest or to claim rights over Roncador, Quitasueño and Serrana, in dispute between Colombia and the United States; and that it was only in 1972 that Nicaragua first advanced claims over some of the features comprised in the Archipelago.

*

87. For its part, Nicaragua states that it has not recognized Colombian sovereignty over the disputed cays. In particular, it notes that the express exclusion of the features of Roncador, Quitasueño and Serrana in the 1928 Treaty as a result of the dispute over them between the United States of America and Colombia did not amount to a Nicaraguan renunciation of its claim of sovereignty over them. Nicaragua contends that neither the text of the 1928 Treaty nor the negotiating history supports such an assertion. Nicaragua points out that, as soon as it became aware of the negotiations concerning Roncador, Quitasueño and Serrana between Colombia and the United States leading to the 1972 Vázquez-Saccio Treaty, it reserved Nicaragua's rights over these maritime features.

* *

88. The Court considers that Nicaragua's reaction to the Loubet Award provides a measure of support for Colombia's case. Although that Award expressly referred to Colombian sovereignty over Alburquerque Cays and at least some of the other islands currently in dispute, Nicaragua's protest was confined to the Corn Islands and certain features close to the Nicaraguan coast. Nicaragua, by contrast, failed to make any protest with regard to the Award's treatment of the maritime features which are the subject of the present case. That failure suggests that Nicaragua did not claim sovereignty over those maritime features at the time of the Award.

89. The Court also observes that, in the second paragraph of Article I of the 1928 Treaty, Nicaragua agreed that Roncador, Quitasueño and Serrana should be excluded from the scope of the Treaty on the ground that sovereignty over those features was in dispute between Colombia and the

United States of America. The Court considers that this provision, which was not accompanied by any reservation of position on the part of Nicaragua, indicates that, at the time of the conclusion of the Treaty, Nicaragua did not advance any claim to sovereignty over those three features. However, in 1972, there was a change in Nicaragua's position on the occasion of the conclusion of the Vázquez-Saccio Treaty when it laid claim to Roncador, Quitasueño and Serrana.

90. The Court considers that although Nicaragua's conduct falls short of recognition of Colombia's sovereignty over the maritime features in dispute, it nevertheless affords some support to Colombia's claim.

E. Position taken by third States

91. The Court now turns to the evidence said by Colombia to demonstrate recognition of title by third States.

* *

92. Colombia notes that various reports, memoranda, diplomatic Notes and other correspondence emanating from the British Government confirm that "the British authorities clearly understood not only that the San Andrés Archipelago was considered as a group, from Serranilla and Bajo Nuevo until Alburquerque, but also its appurtenance to Colombia".

Colombia further contends that "[a]ll neighbouring States have recognised Colombia's sovereignty over the Archipelago, including the cays". In particular, Colombia refers to its 1976 Treaty with Panama on the Delimitation of Marine and Submarine Areas and Related Matters, to its 1977 Treaty with Costa Rica on Delimitation of Marine and Submarine Areas and Maritime Cooperation, to the 1980 Treaty on Delimitation of Marine Areas and Maritime Cooperation between Panama and Costa Rica, to its 1986 Treaty with Honduras concerning Maritime Delimitation, to its 1981 and 1984 Fishing Agreements with Jamaica, and to its 1993 Maritime Delimitation Treaty with Jamaica. Colombia refers to the 1972 Vázquez-Saccio Treaty as evidence demonstrating recognition by the United States of its claim to sovereignty over Roncador, Quitasueño and Serrana.

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93. Nicaragua, for its part, contends that in the 1972 Vázquez-Saccio Treaty, the United States renounced any claim to sovereignty over the cays but that this renunciation was not in favour of Colombia. Nicaragua adds that when the United States ratified that Treaty, it assured Nicaragua that it did not understand the Treaty to confer rights or impose obligations or prejudice the claims of third States, particularly Nicaragua.

94. Nicaragua furthermore asserts that there can be no doubt that any recognition by third States, including those which have signed maritime delimitation treaties with Colombia, is not opposable to Nicaragua.

* *

95. The Court considers that correspondence emanating from the United Kingdom Government and the colonial administrations in what, at the relevant time, were territories dependent upon the United Kingdom, indicates that the United Kingdom regarded Alburquerque, Bajo Nuevo, Roncador, Serrana and Serranilla as appertaining to Colombia on the basis of Colombian sovereignty over San Andrés.

The Court notes that the 1972 Vásquez-Saccio Treaty mentions some of the maritime features in dispute. That Treaty contains no explicit provision to the effect that the United States of America recognized Colombian sovereignty over Quitasueño, Roncador or Serrana, although some language in the Treaty could suggest such recognition in so far as Roncador and Serrana were concerned (it was the view of the United States that Quitasueño was not capable of appropriation). However, when Nicaragua protested, the United States response was to deny that it was taking any position regarding any dispute which might have existed between Colombia and any other State regarding sovereignty over those features.

Treaties concluded by Colombia with neighbouring States are compatible with Colombia's claims to islands east of the 82nd meridian but cannot be said to amount to clear recognition of those claims by the other parties to the treaties. In any event these treaties are *res inter alios acta* with regard to Nicaragua.

Taking the evidence of third State practice as a whole, the Court considers that, although this practice cannot be regarded as recognition by third States of Colombia's sovereignty over the maritime features in dispute, it affords some measure of support to Colombia's argument.

F. Evidentiary value of maps

96. Colombia asserts that in the Colombian official maps published up to the present day, the cays in dispute have always appeared as part of the San Andrés Archipelago and therefore as Colombian. In this regard, Colombia ascribes special value to two official maps published by its

Ministry of Foreign Affairs in 1920 and in 1931, i.e., before and immediately after the conclusion of the 1928 Treaty and the signature of the 1930 Protocol. A comparison of these two maps shows that both of them include a legend indicating that the maps depict the Archipelago of San Andrés and Providencia as "belonging to the Republic of Colombia" *(Cartela del Archipiélago de San Andrés y Providencia perteneciente a la República de Colombia)*. Both maps show all the maritime features now in dispute. The difference is that the 1931 map reflects the results of the 1928-1930 agreements concluded between Nicaragua and Colombia. It therefore depicts a line following meridian 82ºW, to the left of which is written "REPÚBLICA DE NICARAGUA".

97. Colombia further refers to a number of maps published in third countries, in which the San Andrés Archipelago appears in greater or lesser detail and in which neither the cays in dispute nor any other maritime features east of the 82ºW meridian are indicated as belonging to or claimed by Nicaragua.

98. Colombia finally asserts that the maps published by Nicaragua prior to 1980 also show that Nicaragua never considered that the islands and cays of the San Andrés Archipelago — with the exception of the Corn Islands — belonged to it.

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99. Nicaragua contests the evidentiary value of the maps and charts produced by Colombia. Nicaragua asserts that these maps do not contain any legend making it possible to assess their precise meaning. At most, these maps depict the 82nd meridian as the dividing line between the islands of San Andrés and Providencia and their surrounding islets on the one hand and the Corn Islands on the other.

* *

100. The Court recalls that,

> "of themselves, and by virtue solely of their existence, [maps] cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights" (*Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 582, para. 54).

Moreover, according to the Court's constant jurisprudence, maps generally have a limited scope as evidence of sovereign title.

101. None of the maps published by Nicaragua prior to 1980 (when Nicaragua proclaimed that it was denouncing the 1928 Treaty) show the maritime features in dispute as Nicaraguan. By contrast, Colombian maps and indeed some maps published by Nicaragua show at least some of the more significant features as belonging to Colombia and none as belonging to Nicaragua.

102. The Court considers that, although the map evidence in the present case is of limited value, it nevertheless affords some measure of support to Colombia's claim.

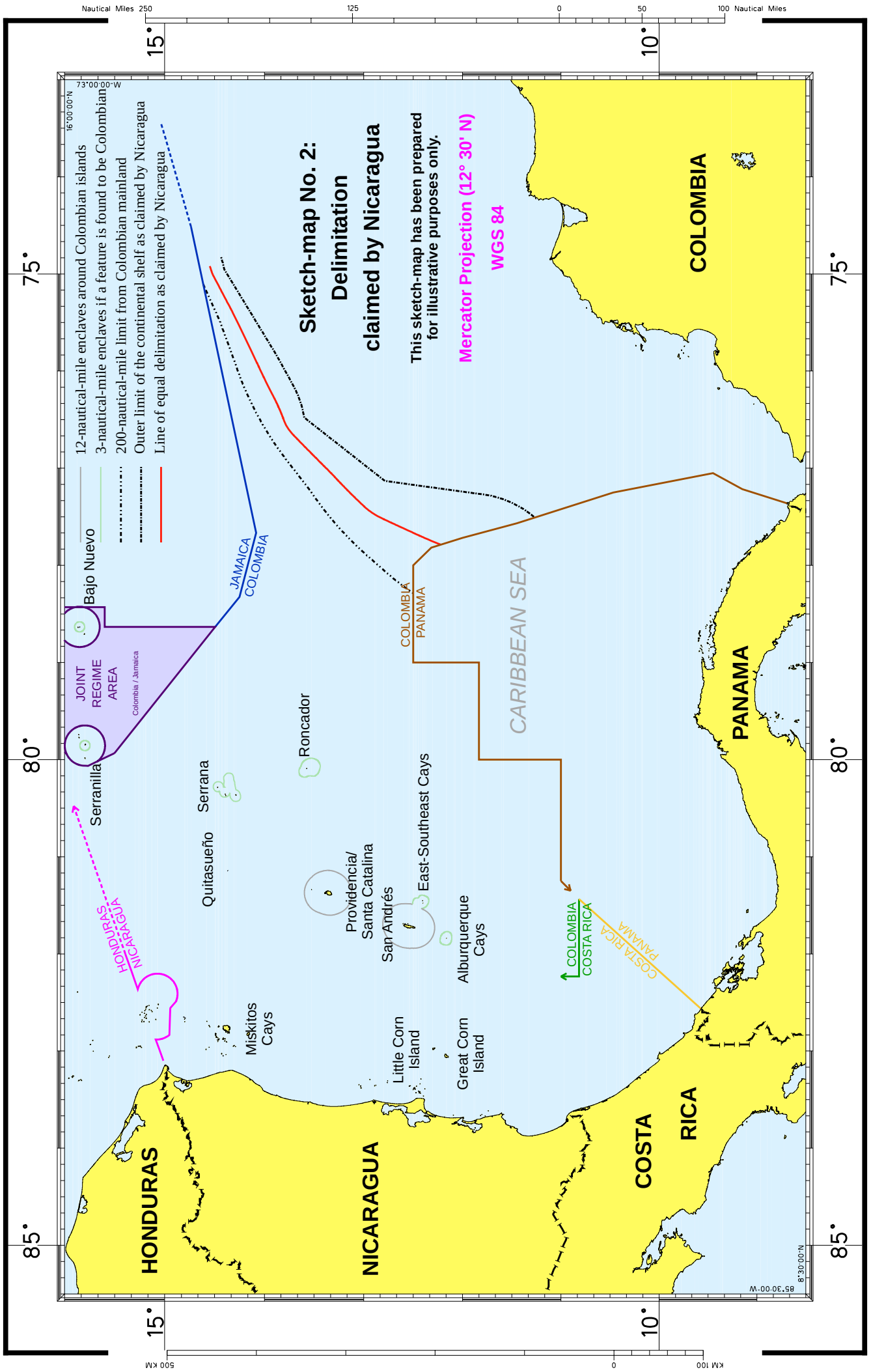
3. Conclusion as to sovereignty over the islands

103. Having considered the entirety of the arguments and evidence put forward by the Parties, the Court concludes that Colombia, and not Nicaragua, has sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla.

III. ADMISSIBILITY OF NICARAGUA'S CLAIM FOR DELIMITATION OF A CONTINENTAL SHELF EXTENDING BEYOND 200 NAUTICAL MILES

104. The Court recalls that in its Application and Memorial, Nicaragua requested the Court to determine the "single maritime boundary" between the continental shelf areas and exclusive economic zones appertaining respectively to Nicaragua and Colombia in the form of a median line between the mainland coasts of the two States. In its Counter-Memorial, Colombia contended that the boundary line claimed by Nicaragua was situated in an area in which the latter had no entitlements in view of the fact that the two mainland coasts are more than 400 nautical miles apart.

105. In its Reply, Nicaragua contended that, under the provisions of Article 76 of the United Nations Convention on the Law of the Sea (UNCLOS), it has an entitlement extending to the outer edge of the continental margin. Nicaragua thus requested the Court to delimit the continental shelf between Nicaragua and Colombia in view of the fact that the natural prolongations of the mainland territories of the Parties meet and overlap. Nicaragua explains this change of its claim on the ground that "[o]nce the Court had upheld '[Colombia's] first preliminary objection . . .' in its Judgment [on Preliminary Objections] of 13 December 2007, Nicaragua could only accept that decision and adjust its submissions (and its line of argument) accordingly". In the course of the hearings, Nicaragua acknowledged that, while the outer edge of the continental margin of the mainland of Colombia did not extend up to 200 nautical miles, Article 76 entitled it to a continental shelf extending to a limit of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured (see sketch-map No. 2).


Sketch-map No. 2:
Delimitation
claimed by Nicaragua
This sketch-map has been prepared for illustrative purposes only.
Mercator Projection (12° 30' N)
WGS 84
12-nautical-mile enclaves around Colombian islands
3-nautical-mile enclaves if a feature is found to be Colombian
200-nautical-mile limit from Colombian mainland
Outer limit of the continental shelf as claimed by Nicaragua
Line of equal delimitation as claimed by Nicaragua
Nautical Miles 250 125 0 50 100 Nautical Miles
KM 500 0 KM 100
73°00'00"W
16°00'00"N
85°30'00"W
8°30'00"N
15°
10°
75°
80°
85°
COLOMBIA
PANAMA
CARIBBEAN SEA
HONDURAS
NICARAGUA
COSTA RICA
JAMAICA
COLOMBIA
COLOMBIA
PANAMA
HONDURAS
NICARAGUA
COLOMBIA
COSTA RICA
COSTA RICA
PANAMA
JOINT REGIME AREA
Colombia / Jamaica
Bajo Nuevo
Serranilla
Serrana
Quitasueño
Roncador
Providencia/
Santa Catalina
San Andrés
East-Southeast Cays
Alburquerque
Cays
Miskitos
Cays
Little Corn
Island
Great Corn
Island

106. In its final submission I (3), Nicaragua requested the Court to define "a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties". According to Nicaragua, the subject-matter of the dispute set out in its final submissions is not fundamentally different from that set out in the Application since the purpose of the Application was to request the Court to settle issues of sovereignty and, in the light of that settlement, to delimit the maritime areas between the two States "in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation".

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107. For its part, Colombia asserts that in its Reply Nicaragua changed its original request and that the new continental shelf claim was not implicit in the Application nor in the Nicaraguan Memorial. Colombia states that the question of Nicaragua's entitlement to a continental shelf extending beyond 200 nautical miles (hereinafter referred to as "extended continental shelf"), and the delimitation of that shelf based on geological and geomorphological factors cannot be said to arise directly out of the question that was the subject-matter of the Application, namely the delimitation of a single maritime boundary based solely on geographical factors. Colombia recalls that the Court has held on a number of occasions that a new claim which changes the subject-matter of the dispute originally submitted is inadmissible. In this regard, Colombia points to a series of additional questions of fact and law that Nicaragua's new claim would, in its view, require the Court to address. In these circumstances, according to Colombia, Nicaragua's claim to an extended continental shelf, as well as its request for the Court to delimit on this basis the continental shelf boundary between the Parties, is inadmissible.

* *

108. The Court observes that, from a formal point of view, the claim made in Nicaragua's final submission I (3) (requesting the Court to effect a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties) is a new claim in relation to the claims presented in the Application and the Memorial.

109. The Court is not however convinced by Colombia's contentions that this revised claim transforms the subject-matter of the dispute brought before the Court. The fact that Nicaragua's claim to an extended continental shelf is a new claim, introduced in the Reply, does not, in itself, render the claim inadmissible. The Court has held that "the mere fact that a claim is new is not in itself decisive for the issue of admissibility" (*Territorial and Maritime Dispute between Nicaragua*

and Honduras in the Caribbean Sea (Nicaragua v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 695, para. 110). Rather, "the decisive consideration is the nature of the connection between that claim and the one formulated in the Application instituting proceedings" (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Judgment, I.C.J. Reports 2010 (II)*, p. 657, para. 41).

110. For this purpose it is not sufficient that there should be a link of a general nature between the two claims. In order to be admissible, a new claim must satisfy one of two alternative tests: it must either be implicit in the Application or must arise directly out of the question which is the subject-matter of the Application *(ibid.)*.

111. The Court notes that the original claim concerned the delimitation of the exclusive economic zone and of the continental shelf between the Parties. In particular, the Application defined the dispute as "a group of related legal issues subsisting between the Republic of Nicaragua and the Republic of Colombia concerning title to territory and maritime delimitation". In the Court's view, the claim to an extended continental shelf falls within the dispute between the Parties relating to maritime delimitation and cannot be said to transform the subject-matter of that dispute. Moreover, it arises directly out of that dispute. What has changed is the legal basis being advanced for the claim (natural prolongation rather than distance as the basis for a continental shelf claim) and the solution being sought (a continental shelf delimitation as opposed to a single maritime boundary), rather than the subject-matter of the dispute. The new submission thus still concerns the delimitation of the continental shelf, although on different legal grounds.

112. The Court concludes that the claim contained in final submission I (3) by Nicaragua is admissible. The Court further notes that in deciding on the admissibility of the new claim, the Court is not addressing the issue of the validity of the legal grounds on which it is based.

IV. CONSIDERATION OF NICARAGUA'S CLAIM FOR DELIMITATION OF A CONTINENTAL SHELF EXTENDING BEYOND 200 NAUTICAL MILES

113. The Court now turns to the question whether it is in a position to determine "a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties" as requested by Nicaragua in its final submission I (3).

* *

114. The Parties agree that, since Colombia is not a party to UNCLOS, only customary international law may apply in respect to the maritime delimitation requested by Nicaragua. The Parties further agree that the applicable law in the present case is customary international law reflected in the case law of this Court, the International Tribunal for the Law of the Sea (ITLOS) and international arbitral courts and tribunals. The Parties further agree that the relevant provisions of UNCLOS concerning the baselines of a coastal State and its entitlement to maritime zones, the definition of the continental shelf and the provisions relating to the delimitation of the exclusive economic zone and the continental shelf reflect customary international law.

115. The Parties agree that coastal States have *ipso facto* and *ab initio* rights to the continental shelf. However, Nicaragua and Colombia disagree about the nature and content of the rules governing the entitlements of coastal States to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

116. Nicaragua states that the provisions of Article 76, paragraphs 1 to 7, relating to the definition of the continental shelf and to the determination of the outer limits of the continental shelf beyond 200 nautical miles, have the status of customary international law.

117. While Colombia accepts that paragraph 1 of Article 76 reflects customary international law, it asserts that "there is no evidence of State practice indicating that the provisions of paragraphs 4 to 9 of Article 76 [of UNCLOS] are considered to be rules of customary international law".

118. The Court notes that Colombia is not a State party to UNCLOS and that, therefore, the law applicable in the case is customary international law. The Court considers that the definition of the continental shelf set out in Article 76, paragraph 1, of UNCLOS forms part of customary international law. At this stage, in view of the fact that the Court's task is limited to the examination of whether it is in a position to carry out a continental shelf delimitation as requested by Nicaragua, it does not need to decide whether other provisions of Article 76 of UNCLOS form part of customary international law.

* *

119. Nicaragua asserts that the existence of a continental shelf is essentially a question of fact. Nicaragua argues that the natural prolongation of its landmass seawards is constituted by the "Nicaraguan Rise", which is "a shallow area of continental crust extending from Nicaragua to Jamaica" that represents the natural prolongation of Nicaragua's territory and overlaps with Colombia's entitlement to a continental shelf of 200 nautical miles generated by its mainland coast.

120. Nicaragua notes that, in accordance with Article 76, paragraph 8, of UNCLOS, any State party which intends to delineate the outer limits of its continental shelf where it extends beyond 200 nautical miles must submit relevant information to the Commission on the Limits of the Continental Shelf (hereinafter the "Commission"). The Commission will review the data and make recommendations. The limits established by a coastal State on the basis of these recommendations are final and binding. Nicaragua recalls that in May 2000 it ratified UNCLOS, and that in April 2010, within the ten-year deadline, it submitted "Preliminary Information" to the Secretary-General of the United Nations (in accordance with the requirements established by the Meeting of the States parties to UNCLOS) indicative of the limits of the continental shelf. Such preliminary information does not prejudice a full submission, and will not be considered by the Commission. According to Nicaragua, the basic technical and other preparatory work that is required in order for it to make a full submission is well advanced. Nicaragua asserts that it has established the outer limit of its continental shelf beyond 200 nautical miles on the basis of available public domain datasets and intends to acquire additional survey data in order to complete the information to be submitted to the Commission in accordance with Article 76 of UNCLOS and the Scientific and Technical Guidelines of the Commission.

121. Nicaragua also maintains that its entitlement to continental shelf beyond 200 nautical miles extends into areas within 200 nautical miles of Colombia's coasts and that, under Article 76, paragraph 1, of UNCLOS, an entitlement to continental shelf based on the distance criterion does not take precedence over an entitlement based on the criterion of natural prolongation.

*

122. According to Colombia, Nicaragua's request for continental shelf delimitation is unfounded because there are no areas of extended continental shelf within this part of the Caribbean Sea given that there are no maritime areas that lie more than 200 nautical miles from the nearest land territory of the coastal States. Colombia contends that Nicaragua's purported rights to the extended continental shelf out to the outer edge of the continental margin beyond 200 nautical miles have never been recognized or even submitted to the Commission. According to Colombia, the information provided to the Court, which is based on the "Preliminary Information" submitted by Nicaragua to the Commission, is "woefully deficient". Colombia emphasizes that the "Preliminary Information" does not fulfil the requirements for the Commission to make recommendations, and therefore Nicaragua has not established any entitlement to an extended continental shelf. That being the case, Colombia asserts that Nicaragua cannot merely assume that it possesses such rights in this case or ask the Court to proceed to a delimitation "based on rudimentary and incomplete technical information".

123. Colombia maintains that a State's entitlement based on the distance criterion always takes precedence over another State's entitlement based on natural prolongation beyond 200 nautical miles. Colombia further contends that Article 76 of UNCLOS does not enable States by means of outer continental shelf submissions, and particularly ones that have not followed the procedures of the Convention, to encroach on other States' 200-mile limits.

124. Colombia adds that the Commission will not consider any extended continental shelf submissions unless neighbouring States with potential claims in the area consent. Thus, if a neighbouring State does not give its consent, the Commission will take no action with the result that a State will not have established extended continental shelf limits that are final and binding. Colombia recalls that such limits, in any event, are without prejudice to questions of delimitation and would not be opposable to Colombia.

* *

125. The Court begins by noting that the jurisprudence which has been referred to by Nicaragua in support of its claim for continental shelf delimitation involves no case in which a court or a tribunal was requested to determine the outer limits of a continental shelf beyond 200 nautical miles.

Nicaragua relies on the Judgment of 14 March 2012 rendered by ITLOS in the case concerning *Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*. ITLOS in this Judgment did not, however, determine the outer limits of the continental shelf beyond 200 nautical miles. The Tribunal extended the line of the single maritime boundary beyond the 200-nautical-mile limit until it reached the area where the rights of third States may be affected (*ibid.*, para. 462). In doing so, the Tribunal underlined that, in view of the fact that a thick layer of sedimentary rocks covers practically the entire floor of the Bay of Bengal, the Bay presents a unique situation and that this fact had been acknowledged in the course of negotiations at the Third United Nations Conference on the Law of the Sea (*ibid.*, paras. 444-446).

The Court emphasizes that both parties in the *Bay of Bengal* case were States parties to UNCLOS and had made full submissions to the Commission (see *ibid.*, para. 449) and that the Tribunal's ruling on the delimitation of the continental shelf in accordance with Article 83 of UNCLOS does not preclude any recommendation by the Commission as to the outer limits of the continental shelf in accordance with Article 76, paragraph 8, of the Convention. ITLOS further noted that a "clear distinction" exists under UNCLOS between the delimitation of continental shelf and the delineation of its outer limits (*ibid.*, paras. 376-394).

126. In the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, the Court stated that "any claim of continental shelf rights beyond 200 miles [by a State party to UNCLOS] must be in accordance

with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder" (*I.C.J. Reports 2007 (II)*, p. 759, para. 319). The Court recalls that UNCLOS, according to its Preamble, is intended to establish "a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources". The Preamble also stresses that "the problems of ocean space are closely interrelated and need to be considered as a whole". Given the object and purpose of UNCLOS, as stipulated in its Preamble, the fact that Colombia is not a party thereto does not relieve Nicaragua of its obligations under Article 76 of that Convention.

127. The Court observes that Nicaragua submitted to the Commission only "Preliminary Information" which, by its own admission, falls short of meeting the requirements for information on the limits of the continental shelf beyond 200 nautical miles which "shall be submitted by the coastal State to the Commission" in accordance with paragraph 8 of Article 76 of UNCLOS (see paragraph 120 above). Nicaragua provided the Court with the annexes to this "Preliminary Information" and in the course of the hearings it stated that the "Preliminary Information" in its entirety was available on the Commission's website and provided the necessary reference.

128. The Court recalls that in the second round of oral argument, Nicaragua stated that it was "not asking [the Court] for a definitive ruling on the precise location of the outer limit of Nicaragua's continental shelf". Rather, it was "asking [the Court] to say that Nicaragua's continental shelf entitlement is divided from Colombia's continental shelf entitlement by a delimitation line which has a defined course". Nicaragua suggested that "the Court could make that delimitation by defining the boundary in words such as 'the boundary is the median line between the outer edge of Nicaragua's continental shelf fixed in accordance with UNCLOS Article 76 and the outer limit of Colombia's 200-mile zone"'. This formula, Nicaragua suggested, "does not require the Court to determine precisely where the outer edge of Nicaragua's shelf lies". The outer limits could be then established by Nicaragua at a later stage, on the basis of the recommendations of the Commission.

129. However, since Nicaragua, in the present proceedings, has not established that it has a continental margin that extends far enough to overlap with Colombia's 200-nautical-mile entitlement to the continental shelf, measured from Colombia's mainland coast, the Court is not in a position to delimit the continental shelf boundary between Nicaragua and Colombia, as requested by Nicaragua, even using the general formulation proposed by it.

130. In view of the above, the Court need not address any other arguments developed by the Parties, including the argument as to whether a delimitation of overlapping entitlements which involves an extended continental shelf of one party can affect a 200-nautical-mile entitlement to the continental shelf of another party.

131. The Court concludes that Nicaragua's claim contained in its final submission I (3) cannot be upheld.

V. MARITIME BOUNDARY

1. The task now before the Court

132. In light of the decision it has taken regarding Nicaragua's final submission I (3) (see paragraph 131 above), the Court must consider what maritime delimitation it is to effect. Leaving out of account any Nicaraguan claims to a continental shelf beyond 200 nautical miles means that there can be no question of determining a maritime boundary between the mainland coasts of the Parties, as these are significantly more than 400 nautical miles apart. There is, however, an overlap between Nicaragua's entitlement to a continental shelf and exclusive economic zone extending to 200 nautical miles from its mainland coast and adjacent islands and Colombia's entitlement to a continental shelf and exclusive economic zone derived from the islands over which the Court has held that Colombia has sovereignty (see paragraph 103 above).

133. The present case was brought before the Court by the Application of Nicaragua, not by special agreement between the Parties, and there has been no counter-claim by Colombia. It is, therefore, to the Nicaraguan Application and Nicaragua's submissions that it is necessary to turn in order to determine what the Court is called upon to decide. In its Application, Nicaragua asked the Court

> "to determine the course of the single maritime boundary between the areas of continental shelf and exclusive economic zone appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances recognized by general international law as applicable to such a delimitation of a single maritime boundary".

This request was clearly broad enough to encompass the determination of a boundary between the continental shelf and exclusive economic zone generated by the Nicaraguan mainland and adjacent islands and the various maritime entitlements appertaining to the Colombian islands.

134. In its Reply, however, Nicaragua amended its submissions. In its final submissions, as has been seen, it sought not a single maritime boundary but the delimitation of a continental shelf boundary between the two mainland coasts. Nevertheless, Nicaragua's final submissions at the end of the oral phase also asked the Court to adjudge and declare that

> "(4) The islands of San Andrés and Providencia and Santa Catalina be enclaved and accorded a maritime entitlement of 12 nautical miles, this being the appropriate equitable solution justified by the geographical and legal framework.
>
> (5) The equitable solution for any cay, that might be found to be Colombian, is to delimit a maritime boundary by drawing a 3-nautical-mile enclave around them."

These submissions call upon the Court to effect a delimitation between the maritime entitlements of the Colombian islands and the continental shelf and exclusive economic zone of Nicaragua. That this is what the Court is asked to do is confirmed by the statement made by the Agent of Nicaragua in opening the oral proceedings:

> "On a substantive level, Nicaragua originally requested of the Court, and continues to so request, that all maritime areas of Nicaragua and Colombia be delimited on the basis of international law; that is, in a way that guarantees to the Parties an equitable result.
>
> . . . . . .
>
> But whatever method or procedure is adopted by the Court to effect the delimitation, the aim of Nicaragua is that the decision leaves no more maritime areas pending delimitation between Nicaragua and Colombia. This was and is the main objective of Nicaragua since it filed its Application in this case." (See sketch-map No. 2.)

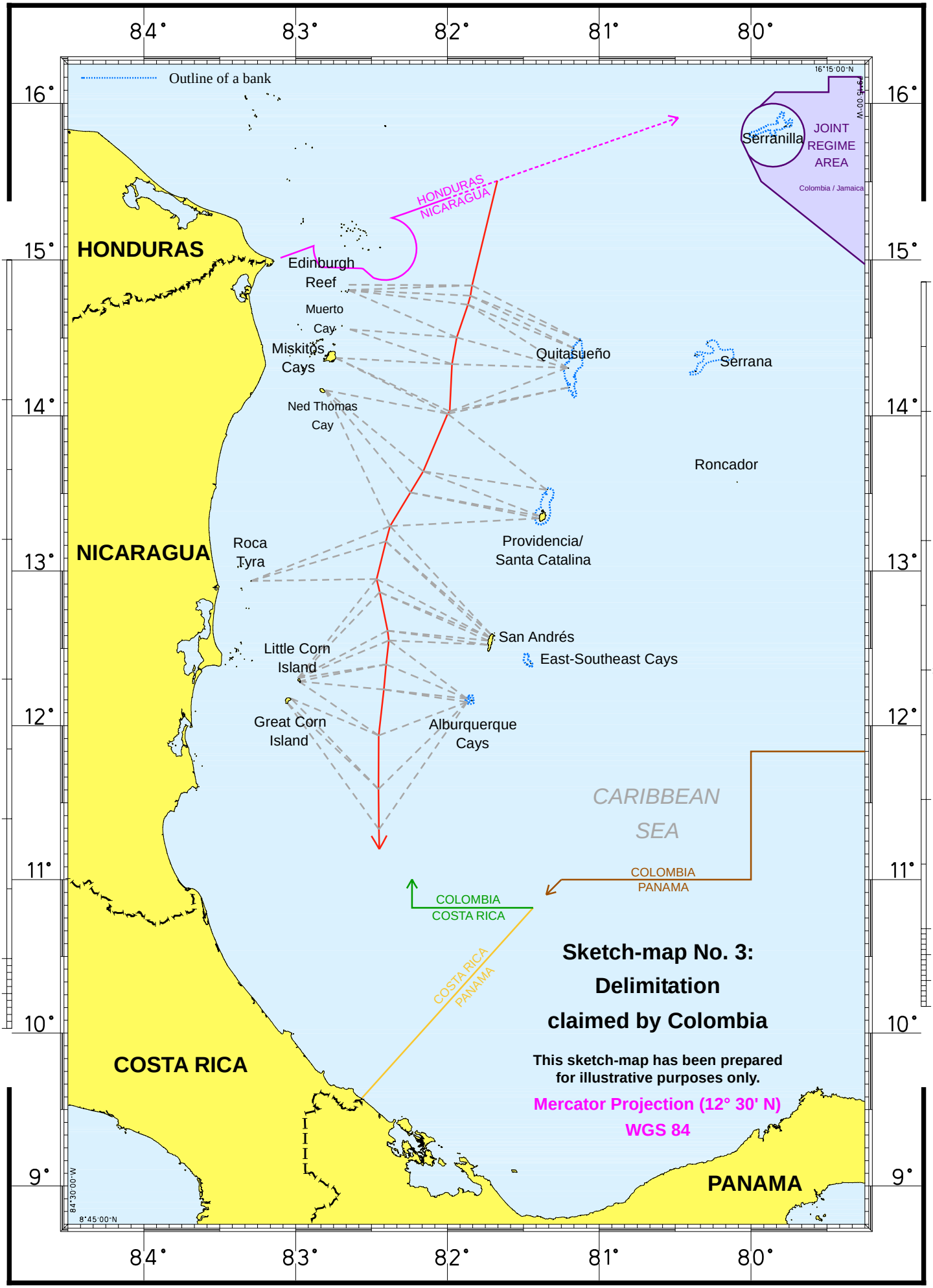
135. Colombia, for its part, has requested that the delimitation of the exclusive economic zone and the continental shelf between Nicaragua and Colombia be effected by a single maritime boundary, constructed as a median line between Nicaraguan fringing islands and the islands of the San Andrés Archipelago (see sketch-map No. 3: Delimitation claimed by Colombia).

136. As the Court held in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case, "[t]he Court must not exceed the jurisdiction conferred upon it by the Parties, but it must also exercise that jurisdiction to its full extent" (*Judgment, I.C.J. Reports 1985*, p. 23, para. 19). Notwithstanding its decision regarding Nicaragua's final submission I (3) (paragraph 131 above), it is still called upon to effect a delimitation between the maritime entitlements of Colombia and the continental shelf and exclusive economic zone of Nicaragua within 200 nautical miles of the Nicaraguan coast.

2. Applicable law

137. The Court must, therefore, determine the law applicable to this delimitation. The Court has already noted (paragraph 114 above) that, since Colombia is not party to UNCLOS, the Parties agree that the applicable law is customary international law.

138. The Parties are also agreed that several of the most important provisions of UNCLOS reflect customary international law. In particular, they agree that the provisions of Articles 74 and 83, on the delimitation of the exclusive economic zone and the continental shelf, and Article 121, on the legal régime of islands, are to be considered declaratory of customary international law.


Outline of a bank
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
HONDURAS
NICARAGUA
Edinburgh Reef
Muerto Cay
Miskitos Cays
Ned Thomas Cay
Quitasueño
Serrana
Roncador
Providencia/ Santa Catalina
Roca Tyra
San Andrés
East-Southeast Cays
Little Corn Island
Great Corn Island
Alburquerque Cays
Serranilla
JOINT REGIME AREA
Colombia / Jamaica
CARIBBEAN SEA
COLOMBIA
PANAMA
COLOMBIA
COSTA RICA
COSTA RICA
PANAMA
Sketch-map No. 3:
Delimitation
claimed by Colombia
This sketch-map has been prepared for illustrative purposes only.
Mercator Projection (12° 30' N)
WGS 84
16°15'00"N
79°15'00"W
84°30'00"W
8°45'00"N
84°
83°
82°
81°
80°
16°
15°
14°
13°
12°
11°
10°
9°
500 KM
400
300
200
100
0
KM 50
25
Nautical Miles 250
200
150
100
50
0
10
20
30 Nautical Miles

Article 74, entitled "Delimitation of the exclusive economic zone between States with opposite or adjacent coasts", provides that:

"1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement."

Article 83, entitled "Delimitation of the continental shelf between States with opposite or adjacent coasts", is in the same terms as Article 74, save that where Article 74, paragraphs (1) and (4), refer to the exclusive economic zone, the corresponding paragraphs in Article 83 refer to the continental shelf.

Article 121, entitled "Regime of islands", provides that:

"1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

139. The Court has recognized that the principles of maritime delimitation enshrined in Articles 74 and 83 reflect customary international law (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 91, paras. 167 *et seq.*). In the same case it treated the legal definition of an island embodied in Article 121, paragraph 1, as part of customary international law (*ibid.*, p. 91, para. 167 and p. 99, para. 195). It reached the same conclusion as regards Article 121, paragraph 2 (*ibid.*, p. 97,

para. 185). The Judgment in the *Qatar* v. *Bahrain* case did not specifically address paragraph 3 of Article 121. The Court observes, however, that the entitlement to maritime rights accorded to an island by the provisions of paragraph 2 is expressly limited by reference to the provisions of paragraph 3. By denying an exclusive economic zone and a continental shelf to rocks which cannot sustain human habitation or economic life of their own, paragraph 3 provides an essential link between the long-established principle that "islands, regardless of their size, . . . enjoy the same status, and therefore generate the same maritime rights, as other land territory" (*ibid.*, p. 97, para. 185) and the more extensive maritime entitlements recognized in UNCLOS and which the Court has found to have become part of customary international law. The Court therefore considers that the legal régime of islands set out in UNCLOS Article 121 forms an indivisible régime, all of which (as Colombia and Nicaragua recognize) has the status of customary international law.

3. Relevant coasts

140. It is well established that "[t]he title of a State to the continental shelf and to the exclusive economic zone is based on the principle that the land dominates the sea through the projection of the coasts or the coastal fronts" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 89, para. 77). As the Court stated in the *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)* cases, "the land is the legal source of the power which a State may exercise over territorial extensions to seaward" (*Judgment, I.C.J. Reports 1969*, p. 51, para. 96). Similarly, in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case, the Court observed that "the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it" (*Judgment, I.C.J. Reports 1982*, p. 61, para. 73).

141. The Court will, therefore, begin by determining what are the relevant coasts of the Parties, namely, those coasts the projections of which overlap, because the task of delimitation consists in resolving the overlapping claims by drawing a line of separation between the maritime areas concerned. As the Court explained in the *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* case:

> "The role of relevant coasts can have two different though closely related legal aspects in relation to the delimitation of the continental shelf and the exclusive economic zone. First, it is necessary to identify the relevant coasts in order to determine what constitutes in the specific context of a case the overlapping claims to these zones. Second, the relevant coasts need to be ascertained in order to check, in the third and final stage of the delimitation process, whether any disproportionality exists in the ratios of the coastal length of each State and the maritime areas falling either side of the delimitation line." (*Judgment, I.C.J. Reports 2009*, p. 89, para. 78.)

142. The Court will first briefly set out the positions of the Parties regarding their respective coasts (see sketch-maps No. 4 and 5).

A. The Nicaraguan relevant coast

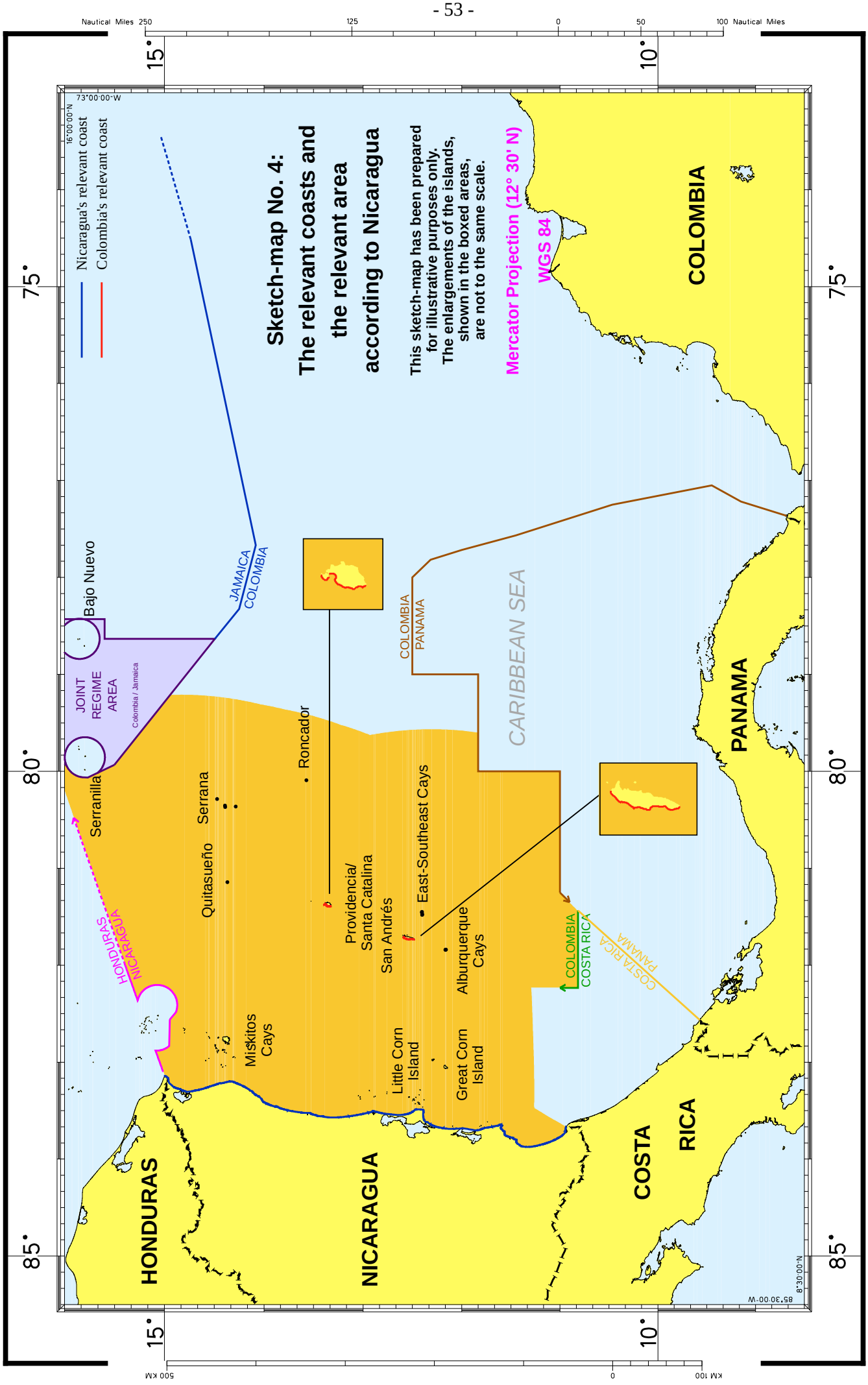
143. Nicaragua maintains that its relevant coast comprises its entire mainland coast in the Caribbean together with the islands which it considers to be "an integral part of the mainland coast of Nicaragua". In this context, it principally refers to the Corn Islands in the south and the Miskitos Cays in the north (see paragraph 21). The latter are located within 10 nautical miles of the coast. The former are located approximately 26 nautical miles from the coast but Nicaragua maintains that the presence of a number of smaller islets and cays between the Corn Islands and the mainland means that there is a continuous belt of territorial sea between the islands and the mainland.

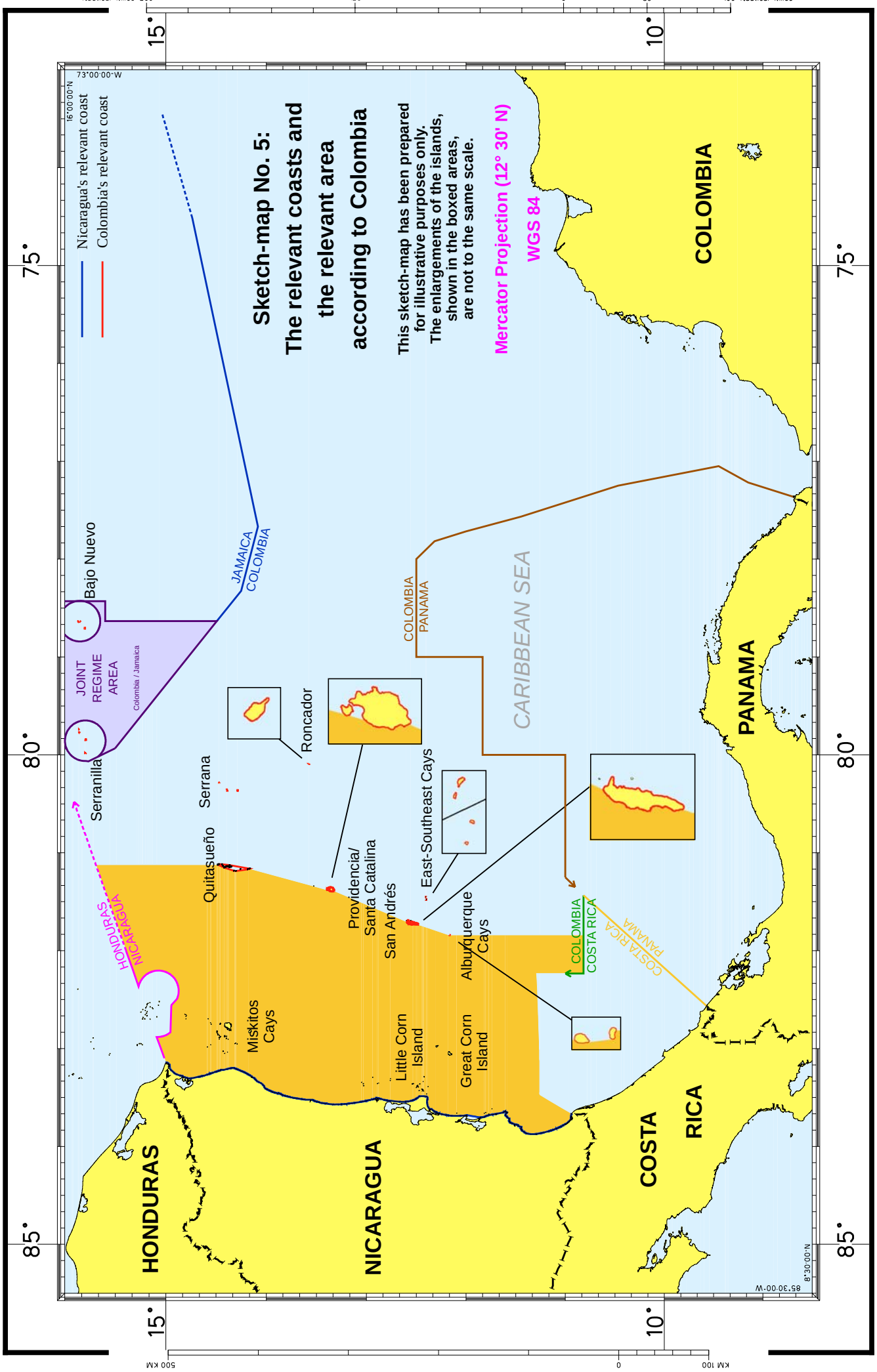
Employing, for these purposes, a straight line from the northern boundary with Honduras to the southern boundary with Costa Rica, Nicaragua estimates the length of its relevant coast as 453 km. Alternatively, Nicaragua estimates the length of the relevant coast, if one follows its natural configuration, as 701 km.

*

144. Although Colombia appeared at one point to suggest that the relevant Nicaraguan coast was confined to the east-facing coasts of the islands, since it is from these islands that the Nicaraguan entitlement to a 200-nautical-mile continental shelf and exclusive economic zone would be measured, in its pleadings as a whole, Colombia accepts that the relevant Nicaraguan coast comprises the mainland coast of Nicaragua and the Nicaraguan islands. Colombia accepts that this coast has a length of 453 km, if the straight line system is used. If, however, the Nicaraguan coast is measured in a way which takes full account of its natural configuration, Colombia maintains that the maximum length of that coast is 551 km and not the 701 km suggested by Nicaragua.

* *


Sketch-map No. 4:
The relevant coasts and the relevant area according to Nicaragua
This sketch-map has been prepared for illustrative purposes only. The enlargements of the islands, shown in the boxed areas, are not to the same scale.
Mercator Projection (12° 30' N)
WGS 84
Nicaragua's relevant coast
Colombia's relevant coast
Nautical Miles 250 125 0 50 100 Nautical Miles
KM 500 0 KM 100
73°00'00"W
16°00'00"N
85°30'00"W
14°30'00"N
15°
10°
75°
80°
85°
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
COLOMBIA
CARIBBEAN SEA
Bajo Nuevo
Serranilla
JOINT REGIME AREA
Colombia / Jamaica
JAMAICA
COLOMBIA
HONDURAS
NICARAGUA
COLOMBIA
PANAMA
COLOMBIA
COSTA RICA
COSTA RICA
PANAMA
Quitasueño
Serrana
Roncador
Providencia/ Santa Catalina
San Andrés
East-Southeast Cays
Alburquerque Cays
Miskitos Cays
Little Corn Island
Great Corn Island


Sketch-map No. 5:
The relevant coasts and the relevant area according to Colombia
This sketch-map has been prepared for illustrative purposes only. The enlargements of the islands, shown in the boxed areas, are not to the same scale.
Mercator Projection (12° 30' N)
WGS 84
Nicaragua's relevant coast
Colombia's relevant coast
Nautical Miles 250 125 0 50 100 Nautical Miles
KM 500 0 KM 100
73°00'00"W
16°00'00"N
85°30'00"W
8°30'00"N
15°
10°
75°
80°
85°
COLOMBIA
PANAMA
CARIBBEAN SEA
HONDURAS
NICARAGUA
COSTA RICA
JAMAICA
COLOMBIA
Bajo Nuevo
JOINT REGIME AREA
Colombia / Jamaica
Serranilla
Serrana
Roncador
Quitasueño
Providencia/
Santa Catalina
San Andrés
East-Southeast Cays
Albuquerque Cays
Miskitos Cays
Little Corn Island
Great Corn Island
COLOMBIA
PANAMA
HONDURAS
NICARAGUA
COLOMBIA
COSTA RICA
COSTA RICA
PANAMA

145. The Court considers that the relevant Nicaraguan coast is the whole coast which projects into the area of overlapping potential entitlements and not simply those parts of the coast from which the 200-nautical-mile entitlement will be measured. With the exception of the short stretch of coast near Punta de Perlas, which faces due south and thus does not project into the area of overlapping potential entitlements, the relevant coast is, therefore, the entire mainland coast of Nicaragua (see sketch-map No. 6). Taking the general direction of this coast, its length is approximately 531 km. The Court also considers that Nicaragua's entitlement to a 200-nautical-mile continental shelf and exclusive economic zone has to be measured from the islands fringing the Nicaraguan coast. The east-facing coasts of the Nicaraguan islands are parallel to the mainland and do not, therefore, add to the length of the relevant coast, although they contribute to the baselines from which Nicaragua's entitlement is measured (see below, paragraph 201).

B. The Colombian relevant coast

146. There is a more marked difference between the Parties regarding what constitutes the relevant Colombian coast. Nicaragua's position is that it is the part of the mainland coast of Colombia which faces west and north-west. Nicaragua advanced that position in connection with its initial claim for a single maritime boundary following the median line between the two mainland coasts. It maintains this position in connection with its current claim for a continental shelf boundary between the outer limit of the extended continental shelf which it claims and the continental shelf entitlement generated by the Colombian mainland. Nicaragua argues, in the alternative, that, if the Court were to hold that it was not possible to address the delimitation of the continental shelf beyond 200 nautical miles, then the relevant Colombian coast would be that of the islands of San Andrés, Providencia and Santa Catalina. It maintains, however, that only the west-facing coasts of those islands should be considered as the relevant coast, since only they project towards Nicaragua, and to treat the other coasts of the islands as part of the relevant coast would constitute a form of double counting. Nevertheless, Nicaragua contends that the area of overlapping entitlements extends all the way from the Nicaraguan coast to a line 200 nautical miles from the baselines of that coast.

147. Nicaragua estimates the total length of the west-facing coasts of the islands of San Andrés, Providencia and Santa Catalina as 21 km. So far as the other maritime features are concerned, Nicaragua maintains that they should not be counted as part of the relevant coast and that, in any event, they are so small that the combined length of their west-facing coasts would be no more than 1 km.

*

148. Colombia's position is that its mainland coast is irrelevant because it is more than 400 nautical miles from Nicaragua's coast and thus cannot generate maritime entitlements which overlap with those of Nicaragua. Colombia maintains that the relevant Colombian coast is that of the Colombian islands. Its position about what part of those coasts is to be taken into account, however, is closely bound up with its view of what constitutes the relevant area (a subject which the Court considers below in paragraphs 155-166). Colombia's initial position is that the relevant area in which the Court is called upon to effect a delimitation between overlapping entitlements is located between the west-facing coasts of the islands and the Nicaraguan mainland and islands, so that only the west-facing coasts of the Colombian islands would be relevant. However, Colombia argues, in the alternative, that if the area of overlapping entitlements includes the area to the east of the islands, extending as far as the line 200 nautical miles from the Nicaraguan baselines, then the entire coasts of the Colombian islands should be counted, since islands radiate maritime entitlement in all directions.

149. Colombia estimates the overall coastline of San Andrés, Providencia and Santa Catalina at 61.2 km. It also maintains that the coasts of the cays immediately adjacent to those three islands (Hayne's Cay, Rock Cay and Johnny Cay, adjacent to San Andrés, and Basalt Cay, Palma Cay, Cangrejo Cay and Low Cay, adjacent to Providencia and Santa Catalina) are also relevant, thus adding a further 2.9 km. In addition, Colombia contends that the coastlines of Alburquerque (1.35 km), East-Southeast Cays (1.89 km), Roncador (1.35 km), Serrana (2.4 km), Serranilla (2.9 km) and Bajo Nuevo (0.4 km) are relevant, giving a total of 74.39 km. At certain stages during the hearings, Colombia also suggested that the coast of Quitasueño, calculated by a series of straight lines joining the features that Colombia claims are above water at high tide, constitutes part of Colombia's relevant coast.

* *

150. The Court recalls that, in order for a coast to be regarded as relevant for the purpose of a delimitation, it "must generate projections which overlap with projections from the coast of the other Party" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 97, para. 99) and that, in consequence, "the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration" (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 75).

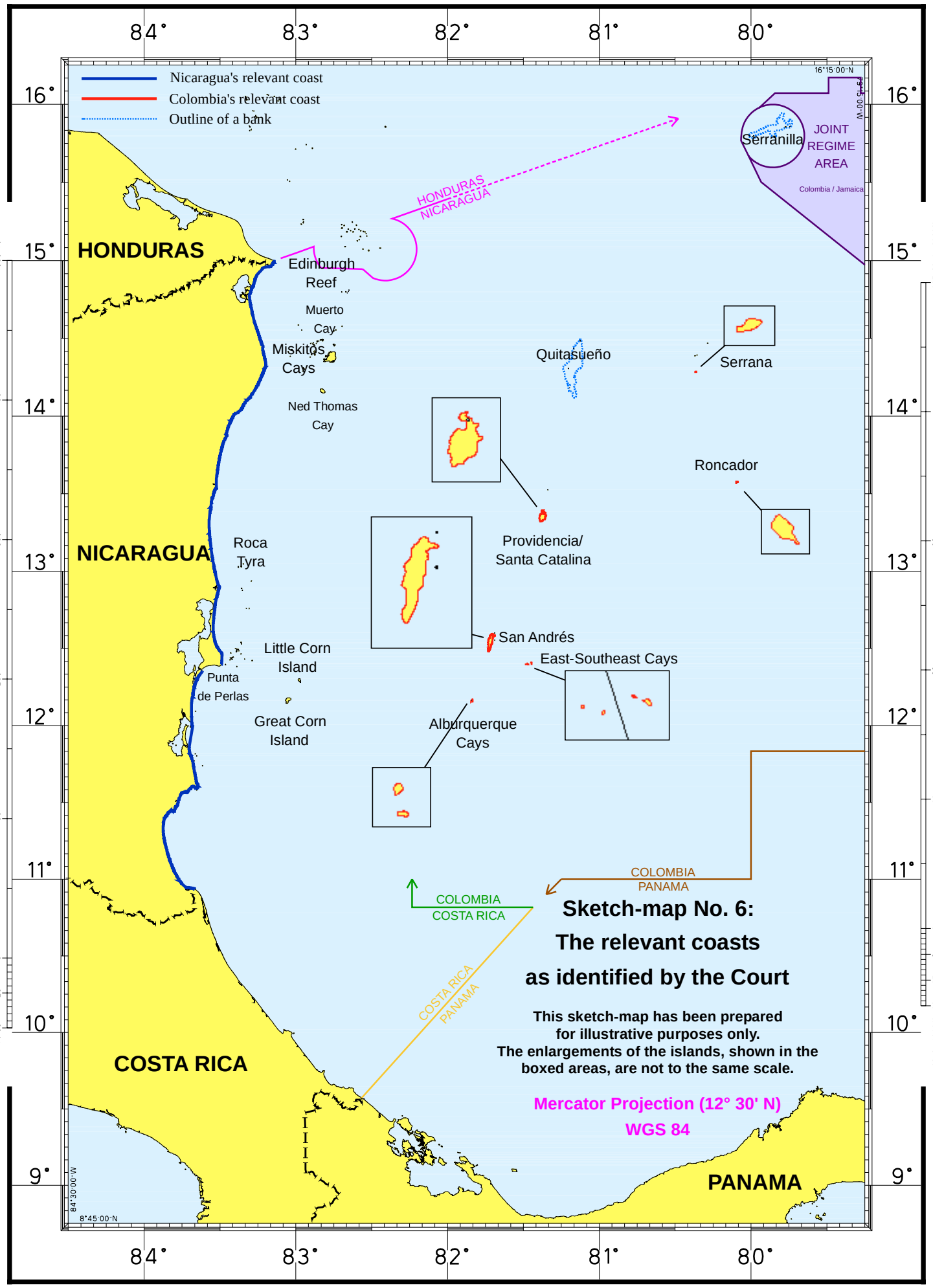
151. In view of the Court's decision regarding Nicaragua's claim to a continental shelf on the basis of natural prolongation (see paragraph 131 above), the Court is concerned in the present proceedings only with those Colombian entitlements which overlap with the continental shelf and exclusive economic zone entitlements within 200 nautical miles of the Nicaraguan coast. Since the

mainland coast of Colombia does not generate any entitlement in that area, it follows that it cannot be regarded as part of the relevant coast for present purposes. The relevant Colombian coast is thus confined to the coasts of the islands under Colombian sovereignty. Since the area of overlapping potential entitlements extends well to the east of the Colombian islands, the Court considers that it is the entire coastline of these islands, not merely the west-facing coasts, which has to be taken into account. The most important islands are obviously San Andrés, Providencia and Santa Catalina. For the purposes of calculating the relevant coasts of Providencia and Santa Catalina, those two features were joined with two short straight lines, so that the parts of the coast of each island (in the north-west of Providencia, in the area of San Juan Point, and in the south-east of Santa Catalina) which are immediately facing one another are not included in the relevant coast. The Court does not consider that the smaller cays (listed in paragraph 149 above), which are immediately adjacent to those islands, add to the length of the relevant coast. Following, as with the Nicaraguan coastline, the general direction of the coast, the Court therefore estimates the total length of the relevant coast of the three islands as 58 km.

152. The Court also considers that the coasts of Alburquerque Cays, East-Southeast Cays, Roncador and Serrana must be considered part of the relevant coast. Taken together, these add a further 7 km to the relevant Colombian coast, giving a total length of approximately 65 km. The Court has not, however, taken account of Serranilla and Bajo Nuevo for these purposes. These two features lie within an area that Colombia and Jamaica left undelimited in their 1993 Maritime Delimitation Treaty (United Nations, *Treaty Series (UNTS)*, Vol. 1776, p. 27) in which there are potential third State entitlements. The Court has also disregarded, for these purposes, Quitasueño, whose features, as explained below (see paragraphs 181-183) are so small that they cannot make any difference to the length of Colombia's coast.

153. The lengths of the relevant coasts are therefore 531 km (Nicaragua) and 65 km (Colombia), a ratio of approximately 1:8.2 in favour of Nicaragua. The relevant coasts as determined by the Court are depicted on sketch-map No. 6.

154. The second aspect mentioned by the Court in terms of the role of relevant coasts in the context of the third stage of the delimitation process (see paragraph 141 above and paragraphs 190 *et seq.* below) will be dealt with below in paragraphs 239 to 247 in the section dealing with the disproportionality test.


Nicaragua's relevant coast
Colombia's relevant coast
Outline of a bank
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
HONDURAS NICARAGUA
Edinburgh Reef
Muerto Cay
Miskitos Cays
Ned Thomas Cay
Quitasueño
Serrana
Serranilla
JOINT REGIME AREA
Colombia / Jamaica
Roncador
Providencia/ Santa Catalina
Roca Tyra
San Andrés
East-Southeast Cays
Little Corn Island
Punta de Perlas
Great Corn Island
Alburquerque Cays
COLOMBIA PANAMA
COLOMBIA COSTA RICA
COSTA RICA PANAMA
Sketch-map No. 6:
The relevant coasts
as identified by the Court
This sketch-map has been prepared for illustrative purposes only.
The enlargements of the islands, shown in the boxed areas, are not to the same scale.
Mercator Projection (12° 30' N)
WGS 84
84°
83°
82°
81°
80°
16°
15°
14°
13°
12°
11°
10°
9°
16°15'00"N
84°30'00"W
8°45'00"N
500 KM
400
300
200
100
0
25
50
Nautical Miles
250
200
150
100
50
0
10
20
30

4. Relevant maritime area

155. The Court will next consider the extent of the relevant maritime area, again in the light of its decision regarding Nicaragua's claim to a continental shelf beyond 200 nautical miles. In these circumstances, Nicaragua maintains that the relevant area is the entire area from the Nicaraguan coast, in the west, to a line 200 nautical miles from the Nicaraguan coast and islands, in the east. For Nicaragua, the southern boundary of the relevant area is formed by the demarcation lines agreed between Colombia and Panama and Colombia and Costa Rica (see paragraph 160 below) on the basis that, since Colombia has agreed with those States that it has no title to any maritime areas to the south of those lines, they do not fall within an area of overlapping entitlements. In the north, Nicaragua contends that the relevant area extends to the boundary between Nicaragua and Honduras, which was determined by the Court in its Judgment of 8 October 2007 (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 659). The sketch-maps of the relevant area submitted by Nicaragua also excluded the Colombia-Jamaica "Joint Regime Area" (see paragraph 160 below), although at one point, during the oral proceedings, counsel for Nicaragua suggested that "the Joint Regime Area is part of the area that [the Court is] asked to delimit". (See sketch-map No. 4: The relevant coasts and the relevant area according to Nicaragua.)

*

156. Colombia maintains that the relevant area is confined to the area between the west coasts of the Colombian islands and the Nicaraguan coast (see sketch-map No. 5: The relevant coasts and the relevant area according to Colombia) bordered in the north by the boundary between Nicaragua and Honduras and in the south by the boundary between Colombia and Costa Rica (see paragraph 160 below). Colombia considers that its sovereignty over the islands bars any claim on the part of Nicaragua to maritime spaces to the east of Colombia's islands.

* *

157. The Court recalls that, as it observed in the *Maritime Delimitation in the Black Sea* case, "the legal concept of the 'relevant area' has to be taken into account as part of the methodology of maritime delimitation" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 99, para. 110). Depending on the configuration of the relevant coasts in the general geographical context, the relevant area may include certain maritime spaces and exclude others which are not germane to the case in hand.

158. In addition, the relevant area is pertinent when the Court comes to verify whether the line which it has drawn produces a result which is disproportionate. In this context, however, the Court has repeatedly emphasized that:

> "The purpose of delimitation is not to apportion equal shares of the area, nor indeed proportional shares. The test of disproportionality is not in itself a method of delimitation. It is rather a means of checking whether the delimitation line arrived at by other means needs adjustment because of a significant disproportionality in the ratios between the maritime areas which would fall to one party or other by virtue of the delimitation line arrived at by other means, and the lengths of their respective coasts." (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 99-100, para. 110.)

The calculation of the relevant area does not purport to be precise but is only approximate and "[t]he object of delimitation is to achieve a delimitation that is equitable, not an equal apportionment of maritime areas" (*ibid.*, p. 100, para. 111; see also *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 22, para. 18; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 45, para. 58; *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway), Judgment, I.C.J. Reports 1993*, p. 67, para. 64).

159. The relevant area comprises that part of the maritime space in which the potential entitlements of the parties overlap. It follows that, in the present case, the relevant area cannot stop, as Colombia maintains it should, at the western coasts of the Colombian islands. Nicaragua's coast, and the Nicaraguan islands adjacent thereto, project a potential maritime entitlement across the sea-bed and water column for 200 nautical miles. That potential entitlement thus extends to the sea-bed and water column to the east of the Colombian islands where, of course, it overlaps with the competing potential entitlement of Colombia derived from those islands. Accordingly, the relevant area extends from the Nicaraguan coast to a line in the east 200 nautical miles from the baselines from which the breadth of Nicaragua's territorial sea is measured. Since Nicaragua has not yet notified the Secretary-General of the location of those baselines under Article 16, paragraph 2, of UNCLOS, the eastern limit of the relevant area can be determined only on an approximate basis.

160. In both the north and the south, the interests of third States become involved.

In the north, there is a boundary between Nicaragua and Honduras, established by the Court in its 2007 Judgment (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, pp. 760-763). The endpoint of that boundary was not determined but "[t]he Court made a clear determination [in paragraphs 306-319 of the 2007 Judgment] that the bisector line would extend beyond the 82nd meridian until it reached the area where the rights of a third State may be affected" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene*, Judgment of 4 May 2011, para. 70). In the north, the Court must also take into account that the 1993 Agreement between Colombia and Jamaica (paragraph 152 above) established a maritime boundary between those two States but left undelimited the "Joint Regime Area" (depicted in sketch-map No. 1).

In the south, the Colombia-Panama Agreement (*UNTS*, Vol. 1074, p. 221) was signed in 1976 and entered into force on 30 November 1977. It adopted a step-line boundary as a simplified form of equidistance in the area between the Colombian islands and the Panamanian mainland. Colombia and Costa Rica signed an Agreement in 1977, which adopts a boundary line that extends from the boundaries agreed between Colombia and Panama (described above) and between Costa Rica and Panama. The Agreement has not been ratified, although Colombia contends that Costa Rica has indicated that it considers itself to be bound by the substance of this Agreement. The boundary lines set out in all of these agreements are depicted on sketch-map No. 1.

161. The Court recalls the statement in its 2011 Judgment on Costa Rica's Application to intervene in the present proceedings that, in a maritime dispute, "a third State's interest will, as a matter of principle, be protected by the Court" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Costa Rica for Permission to Intervene*, Judgment of 4 May 2011, para. 86). In that Judgment the Court also referred to its earlier Judgment in the case concerning *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, in which it stated that

> "the taking into account of all the coasts and coastal relationships . . . as a geographical fact for the purpose of effecting an eventual delimitation as between two riparian States . . . in no way signifies that by such an operation itself the legal interest of a third . . . State . . . may be affected" (*Judgment, I.C.J. Reports, 1990*, p. 124, para. 77).

In the *Maritime Delimitation in the Black Sea* case, the Court noted that, in parts of the area in which the potential entitlements of Romania and Ukraine overlapped, entitlements of third States might also come into play. It considered, however, that this fact did not preclude the inclusion of those parts in the relevant area "without prejudice to the position of any third State regarding its entitlements in this area" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 100, para. 114). The Court stated that

> "where areas are included solely for the purpose of approximate identification of overlapping entitlements of the Parties to the case, which may be deemed to constitute the relevant area (and which in due course will play a part in the final stage testing for disproportionality), third party entitlements cannot be affected. Third party entitlements would only be relevant if the delimitation between Romania and Ukraine were to affect them." *(Ibid.)*

162. The same considerations are applicable to the determination of the relevant area in the present case. The Court notes that, while the agreements between Colombia, on the one hand, and Costa Rica, Jamaica and Panama, on the other, concern the legal relations between the parties to each of those agreements, they are *res inter alios acta* so far as Nicaragua is concerned. Accordingly, none of those agreements can affect the rights and obligations of Nicaragua vis-à-vis Costa Rica, Jamaica or Panama; nor can they impose obligations, or confer rights, upon Costa Rica, Jamaica or Panama vis-à-vis Nicaragua. It follows that, when it effects the delimitation

between Colombia and Nicaragua, the Court is not purporting to define or to affect the rights and obligations which might exist as between Nicaragua and any of these three States. The position of Honduras is somewhat different. The boundary between Honduras and Nicaragua was established by the Court's 2007 Judgment, although the endpoint of that boundary was not determined. Nicaragua can have no rights to the north of that line and Honduras can have no rights to the south. It is in the final phase of delimitation, however, not in the preliminary phase of identifying the relevant area, that the Court is required to take account of the rights of third parties. Nevertheless, if the exercise of identifying, however approximately, the relevant area is to be a useful one, then some awareness of the actual and potential claims of third parties is necessary. In the present case, there is a large measure of agreement between the Parties as to what this task must entail. Both Nicaragua and Colombia have accepted that the area of their overlapping entitlements does not extend beyond the boundaries already established between either of them and any third State.

163. The Court recalls that the relevant area cannot extend beyond the area in which the entitlements of both Parties overlap. Accordingly, if either Party has no entitlement in a particular area, whether because of an agreement it has concluded with a third State or because that area lies beyond a judicially determined boundary between that Party and a third State, that area cannot be treated as part of the relevant area for present purposes. Since Colombia has no potential entitlements to the south and east of the boundaries which it has agreed with Costa Rica and Panama, the relevant area cannot extend beyond those boundaries. In addition, although the Colombia-Jamaica "Joint Regime Area" is an area in which Colombia and Jamaica have agreed upon shared development, rather than delimitation, the Court considers that it has to be treated as falling outside the relevant area. The Court notes that more than half of the "Joint Regime Area" (as well as the island of Bajo Nuevo and the waters within a 12-nautical-mile radius thereof) is located more than 200 nautical miles from Nicaragua and thus could not constitute part of the relevant area in any event. It also recalls that neither Colombia, nor (at least in most of its pleadings) Nicaragua, contended that it should be included in the relevant area. Although the island of Serranilla and the waters within a 12-nautical-mile radius of the island are excluded from the "Joint Regime Area", the Court considers that they also fall outside the relevant area for the purposes of the present case, in view of potential Jamaican entitlements and the fact that neither Party contended otherwise.

164. The Court therefore concludes that the boundary of the relevant area in the north follows the maritime boundary between Nicaragua and Honduras, laid down in the Court's Judgment of 8 October 2007 (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 659), until it reaches latitude 16 degrees north. It then continues due east until it reaches the boundary of the "Joint Regime Area". From that point, it follows the boundary of that Area, skirting a line 12 nautical miles from Serranilla, until it intersects with the line 200 nautical miles from Nicaragua.

165. In the south, the boundary of the relevant area begins in the east at the point where the line 200 nautical miles from Nicaragua intersects with the boundary line agreed between Colombia and Panama. It then follows the Colombia-Panama line to the west until it reaches the line agreed between Colombia and Costa Rica. It follows that line westwards and then northwards, until it intersects with a hypothetical equidistance line between the Costa Rican and Nicaraguan coasts.

166. The relevant area thus drawn has a size of approximately 209,280 sq km. It is depicted on sketch-map No. 7.

5. Entitlements generated by maritime features

167. The Court finds it convenient at this point in its analysis to consider the entitlements generated by the various maritime features in the present case.

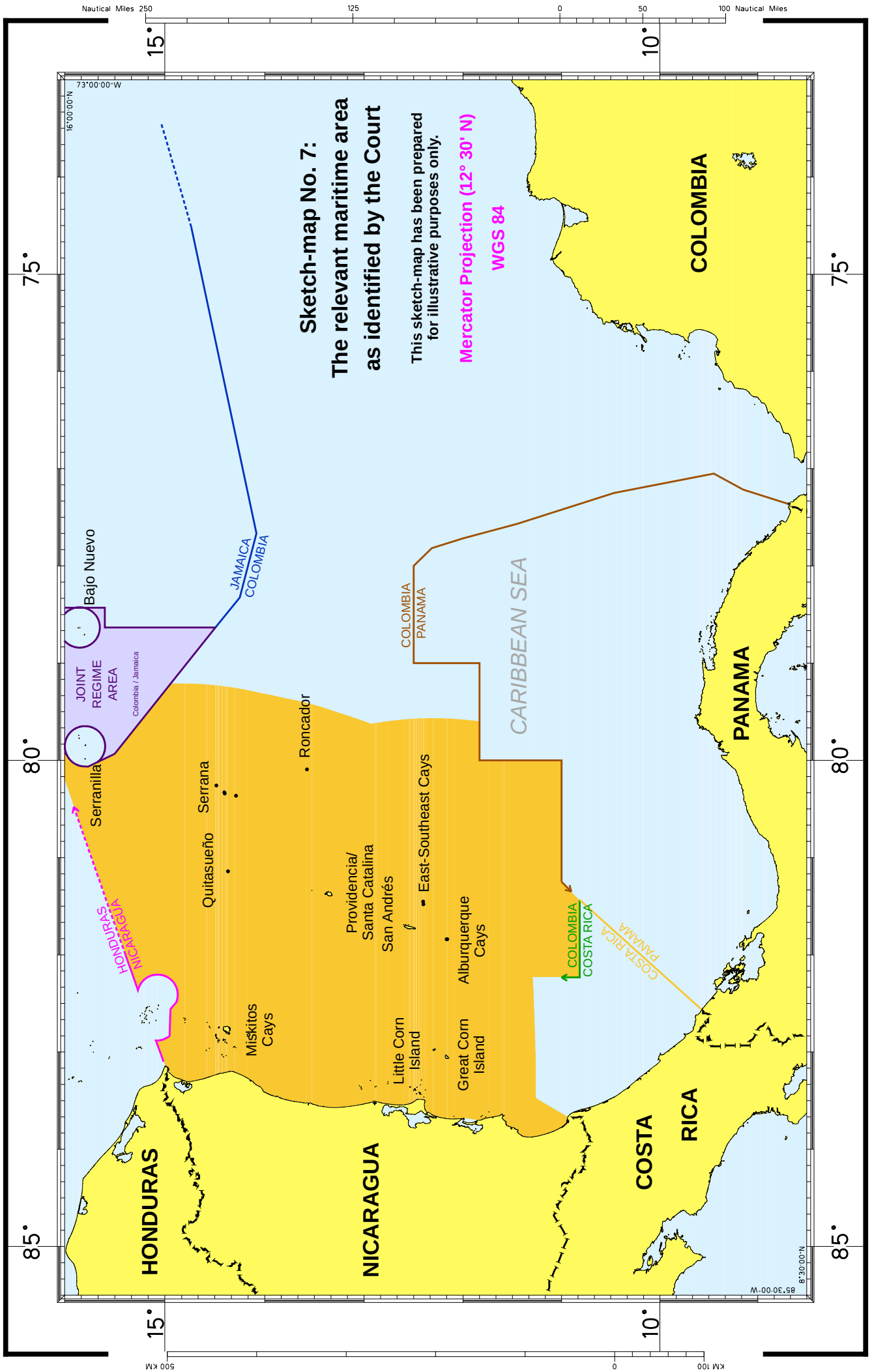
A. San Andrés, Providencia and Santa Catalina

168. The Parties agree that San Andrés, Providencia and Santa Catalina are entitled to a territorial sea, exclusive economic zone and continental shelf. In principle, that entitlement is capable of extending up to 200 nautical miles in each direction. As explained in the previous section, that entitlement overlaps with the entitlement to a 200-nautical-mile continental shelf and exclusive economic zone of the Nicaraguan mainland and adjacent islands. That overlap exists to the east, as well as the west, of San Andrés, Providencia and Santa Catalina. However, to the east the maritime entitlement of the three islands extends to an area which lies beyond a line 200 nautical miles from the Nicaraguan baselines and thus falls outside the relevant area as defined by the Court.

169. Nicaragua submits that, in order to achieve an equitable solution, the boundary which the Court will draw should confine each of the three islands to an enclave of 12 nautical miles. The Court will consider that submission when it comes to determine the course of the maritime boundary (see paragraphs 184-247). At this stage, it is necessary only to note that the Parties are agreed regarding the potential entitlements of the three islands.

B. Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo

170. The Parties differ regarding the entitlements which may be generated by the other maritime features. Their differences regarding Quitasueño are such that the entitlements generated by Quitasueño will be dealt with in a separate section (paragraphs 181-183 below). Nicaragua contends that Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo all fall within the exception stated in Article 121, paragraph 3, of UNCLOS, that is to say, they are rocks with no entitlement to a continental shelf or exclusive economic zone. Nicaragua argues that these features must each be regarded separately and such entitlements as they generate cannot be enlarged by treating them as a group, particularly in view of the considerable distances between them. It also rejects what it characterizes as Colombia's attempt to suggest that these islands are larger than they are by giving the dimensions of the banks and shoals on which the different cays sit. Nicaragua maintains that it is only those individual features which are above water at high tide that generate any maritime entitlement at all and that in each case the extent of that entitlement is determined by the size of the individual island, not by its relationship to other maritime features.


Sketch-map No. 7:
The relevant maritime area
as identified by the Court
This sketch-map has been prepared
for illustrative purposes only.
Mercator Projection (12° 30' N)
WGS 84
Nautical Miles 250
125
0
50
100 Nautical Miles
500 KM
0
KM 100
73°00'00"W
16°00'00"N
85°30'00"W
8°30'00"N
15°
10°
75°
80°
85°
COLOMBIA
PANAMA
CARIBBEAN SEA
HONDURAS
NICARAGUA
COSTA RICA
JAMAICA
COLOMBIA
JOINT REGIME AREA
Colombia / Jamaica
Bajo Nuevo
Serranilla
HONDURAS
NICARAGUA
COLOMBIA
PANAMA
COLOMBIA
COSTA RICA
COSTA RICA
PANAMA
Roncador
Serrana
Quitasueño
Miskitos Cays
Providencia/
Santa Catalina
San Andrés
East-Southeast Cays
Alburquerque Cays
Little Corn Island
Great Corn Island

171. Nicaragua points to the small size of these islands and the absence of any settled population and maintains, in addition, that none of them has any form of economic life. It argues that they cannot sustain human habitation or economic life of their own and therefore constitute rocks which fall within the exceptional rule stated in Article 121, paragraph 3, of the Convention. Accordingly, it contends that they have no entitlement to either an exclusive economic zone or a continental shelf and are confined to a territorial sea.

172. In addition, Nicaragua maintains that the achievement of an equitable solution regarding the overlapping entitlements around these islands requires that each be restricted to an enclave extending 3 nautical miles from its baselines. In support of this submission, it points to a number of instances in which it maintains that the Court and arbitration tribunals have accorded only a restricted territorial sea to small islands and maritime features.

*

173. Colombia maintains that Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo are islands which have the same maritime entitlements as any other land territory, including an entitlement to a territorial sea of 12 nautical miles, an exclusive economic zone and a continental shelf. Colombia points to the presence on Alburquerque (North Cay), East-Southeast Cays, Roncador, Serrana and Serranilla of housing for detachments of Colombian armed forces and other facilities, on several of the islands of communication facilities and heliports, and on some of them of activities by local fishermen. It maintains that all of the islands are capable of sustaining human habitation or economic life of their own and would thus fall outside the exception in Article 121, paragraph 3.

174. So far as the entitlement of each island to a territorial sea is concerned, Colombia denies that there is any basis in law for Nicaragua's proposal that the territorial sea surrounding each island can be restricted to 3 nautical miles. Colombia maintains that the entitlement of an island, even one which falls within the exception stated in Article 121, paragraph 3, to a territorial sea is the same as that of any other land territory and that, in accordance with the customary international law principle now codified in Article 3 of UNCLOS, a State may establish a territorial sea of up to 12 nautical miles from its territory, something which Colombia has done. According to Colombia, where the entitlement to a territorial sea of one State overlaps with the entitlement of another State to a continental shelf and exclusive economic zone, the former must always prevail, because the sovereignty of a State over its territorial sea takes priority over the rights which a State enjoys over its continental shelf and exclusive economic zone.

* *

175. The Court begins by recalling that Serranilla and Bajo Nuevo fall outside the relevant area as defined in the preceding section of the Judgment and that it is accordingly not called upon in the present proceedings to determine the scope of their maritime entitlements. The Court also notes that, in the area within 200 nautical miles of Nicaragua's coasts, the 200-nautical-mile entitlements projecting from San Andrés, Providencia and Santa Catalina would in any event entirely overlap any similar entitlement found to appertain to Serranilla or Bajo Nuevo.

176. With regard to Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo, the starting-point is that

> "[i]n accordance with Article 121, paragraph 2, of the 1982 Convention on the Law of the Sea, which reflects customary international law, islands, regardless of their size, in this respect enjoy the same status, and therefore generate the same maritime rights, as other land territory" (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 97, para. 185).

It inevitably follows that a comparatively small island may give an entitlement to a considerable maritime area. Moreover, even an island which falls within the exception stated in Article 121, paragraph 3, of UNCLOS is entitled to a territorial sea.

177. That entitlement to a territorial sea is the same as that of any other land territory. Whatever the position might have been in the past, international law today sets the breadth of the territorial sea which the coastal State has the right to establish at 12 nautical miles. Article 3 of UNCLOS reflects the current state of customary international law on this point. The Court notes that Colombia has established a 12-nautical-mile territorial sea in respect of all its territories (as has Nicaragua). While the territorial sea of a State may be restricted, as envisaged in Article 15 of UNCLOS, in circumstances where it overlaps with the territorial sea of another State, there is no such overlap in the present case. Instead, the overlap is between the territorial sea entitlement of Colombia derived from each island and the entitlement of Nicaragua to a continental shelf and exclusive economic zone. The nature of those two entitlements is different. In accordance with long-established principles of customary international law, a coastal State possesses sovereignty over the sea-bed and water column in its territorial sea (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 93, para. 174). By contrast, coastal States enjoy specific rights, rather than sovereignty, with respect to the continental shelf and exclusive economic zone.

178. The Court has never restricted the right of a State to establish a territorial sea of 12 nautical miles around an island on the basis of an overlap with the continental shelf and exclusive economic zone entitlements of another State. In the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v.

Honduras), Nicaragua argued that the four small islands which the Court had held belonged to Honduras (Bobel Cay, South Cay, Savanna Cay and Port Royal Cay) should be accorded a territorial sea of only 3 nautical miles in order to prevent them having an inequitable effect on the entitlement of Nicaragua to a continental shelf and exclusive economic zone, whereas Honduras maintained that it was entitled to a 12-nautical-mile territorial sea around each island, save where that territorial sea overlapped with the territorial sea of one of Nicaragua's territories. The Court found for Honduras on this point:

> "The Court notes that by virtue of Article 3 of UNCLOS Honduras has the right to establish the breadth of its territorial sea up to a limit of 12 nautical miles be that for its mainland or for islands under its sovereignty. In the current proceedings Honduras claims for the four islands in question a territorial sea of 12 nautical miles. The Court thus finds that, *subject to any overlap between the territorial sea around Honduran islands and the territorial sea around Nicaraguan islands* in the vicinity, Bobel Cay, Savanna Cay, Port Royal Cay and South Cay shall be accorded a territorial sea of 12 nautical miles." (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 751, para. 302; emphasis added.)

Other tribunals have adopted the same approach. For example, the Court of Arbitration in the *Dubai-Sharjah Border Arbitration* (1981) (*International Law Reports (ILR)*, Vol. 91, p. 543) rejected Dubai's submission that the territorial sea around the island of Abu Musa should be limited to 3 nautical miles. The Court of Arbitration held that "every island, no matter how small, has its belt of territorial sea" and that the extent of that belt was 12 nautical miles except where it overlapped with the territorial sea entitlement of another State (p. 674). Most recently, ITLOS held, in the *Bay of Bengal* case, that

> "Bangladesh has the right to a 12 nm territorial sea around St. Martin's Island in the area where such territorial sea no longer overlaps with Myanmar's territorial sea. A conclusion to the contrary would result in giving more weight to the sovereign rights and jurisdiction of Myanmar in its exclusive economic zone and continental shelf than to the sovereignty of Bangladesh over its territorial sea." (*Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal*, Judgment of 14 March 2012, para. 169.)

179. Since the entitlement to a 12-nautical-mile territorial sea became established in international law, those judgments and awards in which small islands have been accorded a territorial sea of less than 12 nautical miles have invariably involved either an overlap between the territorial sea entitlements of States (e.g., the treatment accorded by the Court to the island of Qit'at Jaradah in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 109, para. 219) or the presence of an historic or agreed boundary (e.g., the treatment of the island of Alcatraz by the Court of Arbitration in the *Guinea-Guinea Bissau Maritime Delimitation Case* (1985), *RIAA*, Vol. XIX, p. 190 (French); *ILR*, Vol. 77, p. 635 (English)).

180. The Court cannot, therefore, accept Nicaragua's submission that an equitable solution can be achieved by drawing a 3-nautical-mile enclave around each of these islands. It concludes that Roncador, Serrana, the Alburquerque Cays and East-Southeast Cays are each entitled to a territorial sea of 12 nautical miles, irrespective of whether they fall within the exception stated in Article 121, paragraph 3, of UNCLOS. Whether or not any of these islands falls within the scope of that exception is therefore relevant only to the extent that it is necessary to determine if they are entitled to a continental shelf and exclusive economic zone. In that context, the Court notes that the whole of the relevant area lies within 200 nautical miles of one or more of the islands of San Andrés, Providencia or Santa Catalina, each of which — the Parties agree — is entitled to a continental shelf and exclusive economic zone. The Court recalls that, faced with a similar situation in respect of Serpents' Island in the *Maritime Delimitation in the Black Sea* case, it considered it unnecessary to determine whether that island fell within paragraph 2 or paragraph 3 of Article 121 of UNCLOS (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 122-123, para. 187). In the present case, the Court similarly concludes that it is not necessary to determine the precise status of the smaller islands, since any entitlement to maritime spaces which they might generate within the relevant area (outside the territorial sea) would entirely overlap with the entitlement to a continental shelf and exclusive economic zone generated by the islands of San Andrés, Providencia and Santa Catalina.

C. Quitasueño

181. The Court has already set out (paragraphs 27-38 above) the reasons which lead it to find that one of the features at Quitasueño, namely QS 32, is above water at high tide and thus constitutes an island within the definition embodied in Article 121, paragraph 1, of UNCLOS and that the other 53 features identified at Quitasueño are low-tide elevations. The Court must now consider what entitlement to a maritime space Colombia derives from its title to QS 32.

182. For the reasons already given (paragraphs 176-180 above), Colombia is entitled to a territorial sea of 12 nautical miles around QS 32. Moreover, in measuring that territorial sea, Colombia is entitled to rely upon the rule stated in Article 13 of UNCLOS:

"Low-tide elevations

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own."

The Court has held that this provision reflects customary international law (*Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Judgment, I.C.J. Reports 2001*, p. 100, para. 201). Colombia is therefore entitled to use those low-tide elevations within 12 nautical miles of QS 32 for the purpose of measuring the breadth of its territorial sea. Colombia's pleadings in the present case make clear that it has exercised this right and has used all the features identified in the Smith Report in measuring the breadth of the territorial sea around Quitasueño.

183. The Court observes that all but two of the low-tide elevations on Quitasueño (QS 53 and QS 54) are within 12 nautical miles of QS 32. Thus the territorial sea around Quitasueño extends from those low-tide elevations located within 12 nautical miles of QS 32, the position of which means that they contribute to the baseline from which the breadth of the territorial sea is measured. It has not been suggested by either Party that QS 32 is anything other than a rock which is incapable of sustaining human habitation or economic life of its own under Article 121, paragraph 3, of UNCLOS, so this feature generates no entitlement to a continental shelf or exclusive economic zone.

6. Method of delimitation

184. The Court will now turn to the methodology to be employed in effecting the delimitation. On this subject, the Parties express markedly different views.

* *

185. Nicaragua maintains that the geographical context is such that it would not be appropriate for the Court to follow the approach which it normally employs, namely to establish a provisional equidistance/median line, then analyse whether there exist relevant circumstances requiring an adjustment or shifting of that line and, finally, test the adjusted line to see whether the result which it would produce is disproportionate. For Nicaragua, the act of constructing a provisional equidistance line between the Nicaraguan coast and the west-facing coasts of the Colombian islands would be wholly artificial. It would treat the islands as though they were an opposing mainland coast, despite the fact that the west-facing coasts of San Andrés, Providencia and Santa Catalina are less than one twentieth the length of the mainland coast of Nicaragua and the islands which would be used in the construction of the provisional equidistance/median line are situated at a considerable distance from one another. Moreover, Nicaragua maintains that a provisional equidistance/median line would completely disregard the substantial part of the

relevant area which lies to the east of the Colombian islands, thus leaving some three quarters of the relevant area on the Colombian side of the line. While Nicaragua recognizes that the establishment of a provisional equidistance/median line is only the first step in the methodology normally employed by the Court, it contends that, in the present case, adjustment or shifting of that line would be insufficient to achieve an equitable solution and that a different methodology is required. Nicaragua notes that in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, the Court stated that there may be factors which make it inappropriate to use the methodology of constructing a provisional equidistance/median line and then determining whether there are circumstances requiring its adjustment or shifting (*Judgment, I.C.J. Reports 2007 (II)*, p. 741, para. 272). Nicaragua maintains that this is such a case.

186. For Nicaragua, the appropriate methodology requires recognition at the outset that the Colombian islands are very small features and are located on what it describes as the Nicaraguan continental shelf. It maintains that small island features of this kind are frequently given a reduced effect, or even no effect at all, in maritime delimitation. In these circumstances, Nicaragua maintains that the appropriate methodology to adopt is to enclave each of the Colombian islands, while recognizing that, outside these enclaves, the continental shelf and exclusive economic zone from the Nicaraguan coast to the line 200 nautical miles from the Nicaraguan baselines would be Nicaraguan. Nicaragua contends that the enclave approach was employed in respect of the Channel Islands by the Court of Arbitration in the case of the *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic* (1977) (*RIAA*, Vol. XVIII, p. 3; *ILR*, Vol. 54, p. 6), and that it is appropriate in the present case for the same reasons. Nicaragua also refers to a number of other judgments and arbitration awards in which it maintains that comparatively small islands were given a reduced maritime space.

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187. Colombia maintains that the Court should adopt the same methodology it has used for many years in cases regarding maritime delimitation, starting with the construction of a provisional equidistance/median line and then adjusting or shifting that line if relevant circumstances so require. Colombia acknowledges that the Court has not invariably employed this method but observes that in the only recent case in which the Court departed from it, the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, the reason for doing so was that the configuration of the coastline made the construction of an equidistance line impossible (*Judgment, I.C.J. Reports 2007 (II)*, p. 743, para. 280). According to Colombia, nothing in the present case renders the construction of a provisional equidistance/median line impossible or even difficult.

188. Colombia rejects the enclave approach suggested by Nicaragua as an unwarranted departure from the approach which, it maintains, has become standard practice both for the Court and for other international tribunals, of establishing a provisional equidistance/median line and then examining whether there exist circumstances requiring adjustment or shifting of that line. It argues that the *Anglo-French Continental Shelf* case is not a relevant precedent, as the Channel Islands were located very close to the French coast, surrounded on three sides by French territory and the overall context was that of a delimitation between the opposite coasts of the United Kingdom and France. According to Colombia, the present context is entirely different, as its islands are more than 65 nautical miles from the nearest Nicaraguan territory, face the Nicaraguan coast in only one direction and the delimitation does not involve the mainland coast of Colombia.

189. In addition, Colombia contends that the enclave methodology proposed by Nicaragua would fail to take account of Colombia's entitlements, derived from the islands, to the east of the line drawn 200 nautical miles from the Nicaraguan baselines.

* *

190. The Court has made clear on a number of occasions that the methodology which it will normally employ when called upon to effect a delimitation between overlapping continental shelf and exclusive economic zone entitlements involves proceeding in three stages (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 46, para. 60; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, paras. 115-116).

191. In the first stage, the Court establishes a provisional delimitation line between territories (including the island territories) of the Parties. In doing so it will use methods that are geometrically objective and appropriate for the geography of the area. This task will consist of the construction of an equidistance line, where the relevant coasts are adjacent, or a median line between the two coasts, where the relevant coasts are opposite, unless in either case there are compelling reasons as a result of which the establishment of such a line is not feasible (see *Territorial and Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 745, para. 281). No legal consequences flow from the use of the terms "median line" and "equidistance line" since the method of delimitation in each case involves constructing a line each point on which is an equal distance from the nearest points on the two relevant coasts (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, para. 116). The line is constructed using the most appropriate base points on the coasts of the Parties (*ibid.*, p. 101, paras. 116-117).

192. In the second stage, the Court considers whether there are any relevant circumstances which may call for an adjustment or shifting of the provisional equidistance/median line so as to achieve an equitable result. If it concludes that such circumstances are present, it establishes a different boundary which usually entails such adjustment or shifting of the equidistance/median line as is necessary to take account of those circumstances (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 47, para. 63; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, pp. 102-103, paras. 119-121). Where the relevant circumstances so require, the Court may also employ other techniques, such as the construction of an enclave around isolated islands, in order to achieve an equitable result.

193. In the third and final stage, the Court conducts a disproportionality test in which it assesses whether the effect of the line, as adjusted or shifted, is that the Parties' respective shares of the relevant area are markedly disproportionate to their respective relevant coasts. As the Court explained in the *Maritime Delimitation in the Black Sea* case

> "Finally, and at a third stage, the Court will verify that the line (a provisional equidistance line which may or may not have been adjusted by taking into account the relevant circumstances) does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line . . . A final check for an equitable outcome entails a confirmation that no great disproportionality of maritime areas is evident by comparison to the ratio of coastal lengths.
>
> This is not to suggest that these respective areas should be proportionate to coastal lengths — as the Court has said 'the sharing out of the area is therefore the consequence of the delimitation, not vice versa' (*Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway), Judgment, I.C.J. Reports 1993*, p. 67, para. 64)." (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 103, para. 122.)

194. The three-stage process is not, of course, to be applied in a mechanical fashion and the Court has recognized that it will not be appropriate in every case to begin with a provisional equidistance/median line (see, e.g., *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 741, para. 272). The Court has therefore given careful consideration to Nicaragua's argument that the geographical context of the present case is one in which the Court should not begin by constructing a provisional median line.

195. Unlike the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, this is not a case in which the construction of such a line is not feasible. The Nicaraguan coast (including the Nicaraguan islands) and the west-facing coasts of the islands of San Andrés, Providencia and Santa Catalina, as well as the Alburquerque Cays, stand in a relationship of opposite coasts at a distance which is nowhere less than 65 nautical miles (the distance from Little Corn Island to the Alburquerque Cays). There is no difficulty in constructing a provisional line equidistant from base points on these two coasts. The question is not whether the construction of such a line is feasible but whether it is appropriate as a starting-point for the delimitation. That question arises because of the unusual circumstance that a large part of the relevant area lies to the east of the principal Colombian islands and, hence, behind the Colombian baseline from which a provisional median line would have to be measured.

196. The Court recognizes that the existence of overlapping potential entitlements to the east of the principal Colombian islands, and thus behind the base points on the Colombian side from which the provisional equidistance/median line is to be constructed, may be a relevant circumstance requiring adjustment or shifting of the provisional median line. The same is true of the considerable disparity of coastal lengths. These are factors which have to be considered in the second stage of the delimitation process; they do not justify discarding the entire methodology and substituting an approach in which the starting-point is the construction of enclaves for each island, rather than the construction of a provisional median line. The construction of a provisional median line in the method normally employed by the Court is nothing more than a first step and in no way prejudges the ultimate solution which must be designed to achieve an equitable result. As the Court said in the *Maritime Delimitation in the Black Sea* case:

> "At this initial stage of the construction of the provisional equidistance line the Court is not yet concerned with any relevant circumstances that may obtain and the line is plotted on strictly geometrical criteria on the basis of objective data." (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 101, para. 118.)

197. The various considerations advanced by Nicaragua in support of a different methodology are factors which the Court will have to take into account in the second stage of the process, when it will consider whether those factors call for adjustment or shifting of the provisional median line and, if so, in what way. Following this approach does not preclude very substantial adjustment to, or shifting of, the provisional line in an appropriate case, nor does it preclude the use of enclaving in those areas where the use of such a technique is needed to achieve an equitable result. By contrast, the approach suggested by Nicaragua entails starting with a solution in which what Nicaragua perceives as the most relevant considerations have already been taken into account and in which the outcome is to a large extent pre-ordained.

198. The Court does not consider that the award of the Court of Arbitration in the *Anglo-French Continental Shelf* case calls for the Court to abandon its usual methodology. That award, which was rendered in 1977 and thus some time before the Court established the

methodology which it now employs in cases of maritime delimitation, was concerned with a quite different geographical context from that in the present case, a point to which the Court will return. It began with the construction of a provisional equidistance/median line between the two mainland coasts and then enclaved the Channel Islands because they were located on the "wrong" side of that line (*Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic* (1977), *RIAA*, Vol. XVIII, p. 88, para. 183; *ILR*, Vol. 54, p. 96). For present purposes, however, what is important is that the Court of Arbitration did not employ enclaving as an alternative methodology to the construction of a provisional equidistance/median line, but rather used it in conjunction with such a line.

199. Accordingly, the Court will proceed in the present case, in accordance with its standard method, in three stages, beginning with the construction of a provisional median line.

7. Determination of base points and construction of the provisional median line

200. The Court will thus begin with the construction of a provisional median line between the Nicaraguan coast and the western coasts of the relevant Colombian islands, which are opposite to the Nicaraguan coast. This task requires the Court to determine which coasts are to be taken into account and, in consequence, what base points are to be used in the construction of the line. In this connection, the Court notes that Nicaragua has not notified the Court of any base points on its coast. By contrast, Colombia has indicated on maps the location of the base points which it has used in the construction of its proposed median line (without, however, providing their co-ordinates) (see sketch-map No. 3: Delimitation claimed by Colombia). Those base points include two base points on Alburquerque Cays, several base points on the west coast of San Andrés and Providencia, one base point on Low Cay, a small cay to the north of Santa Catalina, and several base points on Quitasueño. As the Court noted in the *Maritime Delimitation in the Black Sea* case

> "In . . . the delimitation of the maritime areas involving two or more States, the Court should not base itself solely on the choice of base points made by one of those Parties. The Court must, when delimiting the continental shelf and exclusive economic zones, select base points by reference to the physical geography of the relevant coasts." (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 108, para. 137.)

The Court will accordingly proceed to construct its provisional median line by reference to the base points which it considers appropriate.

201. The Court has already decided that the islands adjacent to the Nicaraguan coast are part of the relevant coast and contribute to the baselines from which Nicaragua's entitlements to a continental shelf and exclusive economic zone are to be measured (see paragraph 145). Since the islands are located further east than the Nicaraguan mainland, they will contribute all of the base points for the construction of the provisional median line. For that purpose, the Court will use base points located on Edinburgh Reef, Muerto Cay, Miskitos Cays, Ned Thomas Cay, Roca Tyra, Little Corn Island and Great Corn Island.

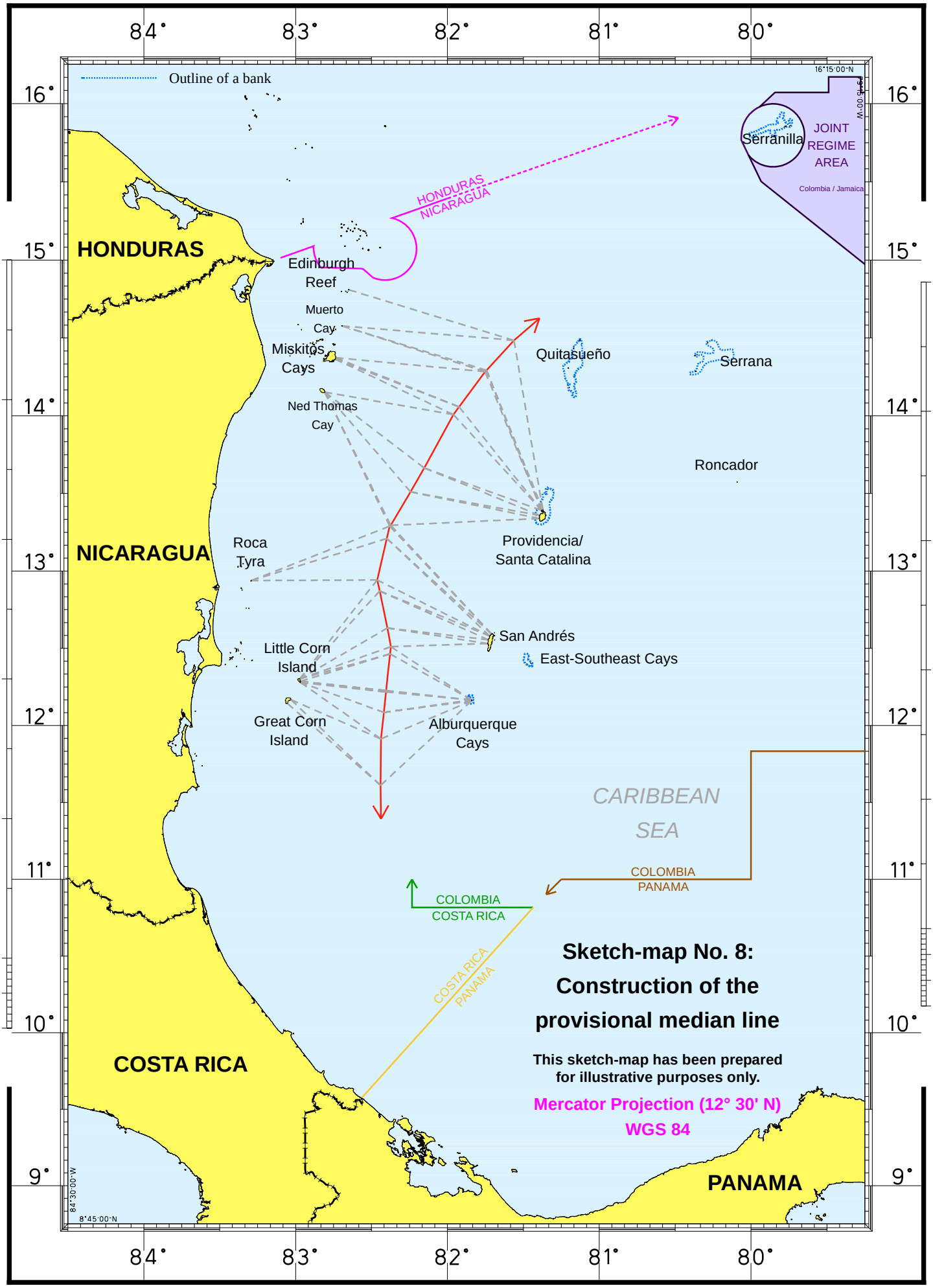
202. So far as the Colombian coast is concerned, the Court considers that Quitasueño should not contribute to the construction of the provisional median line. The part of Quitasueño which is undoubtedly above water at high tide is a minuscule feature, barely 1 sq m in dimension. When placing base points on very small maritime features would distort the relevant geography, it is appropriate to disregard them in the construction of a provisional median line. In the *Maritime Delimitation in the Black Sea* case, for example, the Court held that it was inappropriate to select any base point on Serpents' Island (which, at 0.17 sq km was very much larger than the part of Quitasueño which is above water at high tide), because it lay alone and at a distance of some 20 nautical miles from the mainland coast of Ukraine, and its use as a part of the relevant coast "would amount to grafting an extraneous element onto Ukraine's coastline; the consequence would be a judicial refashioning of geography, which neither the law nor practice of maritime delimitation authorizes" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 110, para. 149). These considerations apply with even greater force to Quitasueño. In addition to being a tiny feature, it is 38 nautical miles from Santa Catalina and its use in the construction of the provisional median line would push that line significantly closer to Nicaragua.

Colombia did not place a base point upon Serrana. The Court's decision not to place a base point upon Quitasueño means, however, that it must consider whether one should be placed upon Serrana. Although larger than Quitasueño, Serrana is also a comparatively small feature, whose considerable distance from any of the other Colombian islands means that placing a base point upon it would have a marked effect upon the course of the provisional median line which would be out of all proportion to its size and importance. In the Court's view, no base point should be placed on Serrana.

The Court also considers that there should be no base point on Low Cay, a small uninhabited feature near Santa Catalina.

203. The base points on the Colombian side will, therefore, be located on Santa Catalina, Providencia and San Andrés islands and on Alburquerque Cays.

204. The provisional median line constructed from these two sets of base points is, therefore, controlled in the north by the Nicaraguan base points on Edinburgh Reef, Muerto Cay and Miskitos Cays and Colombian base points on Santa Catalina and Providencia, in the centre by base points on the Nicaraguan islands of Ned Thomas Cay and Roca Tyra and the Colombian islands of Providencia and San Andrés, and in the south by Nicaraguan base points on Little Corn Island and Great Corn Island and Colombian base points on San Andrés and Alburquerque Cays. The line thus constructed is depicted on sketch-map No. 8.


Outline of a bank
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
HONDURAS
NICARAGUA
Edinburgh Reef
Muerto Cay
Miskitos Cays
Ned Thomas Cay
Roca Tyra
Little Corn Island
Great Corn Island
Quitasueño
Serrana
Roncador
Providencia/ Santa Catalina
San Andrés
East-Southeast Cays
Alburquerque Cays
Serranilla
JOINT REGIME AREA
Colombia / Jamaica
CARIBBEAN SEA
COLOMBIA
PANAMA
COLOMBIA
COSTA RICA
COSTA RICA
PANAMA
Sketch-map No. 8:
Construction of the provisional median line
This sketch-map has been prepared for illustrative purposes only.
Mercator Projection (12° 30' N)
WGS 84
84°
83°
82°
81°
80°
16°
15°
14°
13°
12°
11°
10°
9°
16°15'00"N
13°15'00"W
8°45'00"N
84°30'00"W
500 KM
400
300
200
100
0
KM 50
25
Nautical Miles 250
200
150
100
50
0
10
20
30 Nautical Miles

8. Relevant circumstances

205. As indicated above (see paragraph 192), once the Court has established the provisional median line, it must then consider "whether there are factors calling for the adjustment or shifting of that line in order to achieve an 'equitable result'" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 441, para. 288). Those factors are usually referred to in the jurisprudence of the Court as "relevant circumstances" and, as the Court has explained, "[t]heir function is to verify that the provisional median line, drawn by the geometrical method from the determined base points on the coasts of the Parties is not, in light of the particular circumstances of the case, perceived as inequitable" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 112, para. 155).

206. The Parties invoked several different considerations which they found relevant to the achievement of an equitable solution. They drew markedly different consequences from their analysis of those considerations. For Nicaragua these factors necessitate a complete break with the provisional median line and the substitution of enclaves around each of the Colombian islands. The result would be separate Colombian enclaves around San Andrés and Alburquerque, East-Southeast Cays, Providencia and Santa Catalina, Serrana and Roncador, as well as Quitasueño, if any maritime features on it were to be above water at high tide. Colombia argues that the provisional median line affords an equitable solution and therefore requires no adjustment or shifting.

207. The Court will examine in turn each of the considerations invoked by the Parties. In doing so, it will determine whether those considerations require an adjustment or shifting of the provisional median line constructed by the Court in the previous section of the Judgment in order to achieve an equitable result.

A. Disparity in the lengths of the relevant coasts

208. Nicaragua emphasizes the fact that its coast is significantly longer than that of the Colombian islands and argues that this factor must be taken into account in order to arrive at an equitable solution. Colombia responds that the achievement of an equitable solution does not entail an exact relationship between the lengths of the respective coasts and the proportion of the relevant area which the delimitation would leave to each Party. It adds that Nicaragua's approach of enclaving each island would itself fail to give due effect to the length of the Colombian relevant coast.

* *

209. The Court begins by observing that "the respective length of coasts can play no role in identifying the equidistance line which has been provisionally established" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 116, para. 163). However, "a *substantial* difference in the lengths of the parties' respective coastlines *may* be a factor to be taken into consideration in order to adjust or shift the provisional delimitation line" (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 446, para. 301; emphasis added).

210. In this respect, two conclusions can be drawn from the jurisprudence of the Court. First, it is normally only where the disparities in the lengths of the relevant coasts are substantial that an adjustment or shifting of the provisional line is called for (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 323, para. 185; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 116, para. 164). Secondly, as the Court emphasized in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)*, "taking account of the disparity of coastal lengths does not mean a direct and mathematical application of the relationship between the length of the coastal front [of the Parties]" (*Judgment, I.C.J. Reports 1993*, p. 69, para. 69).

211. In the present case, the disparity between the relevant Colombian coast and that of Nicaragua is approximately 1:8.2 (see paragraph 153). This is similar to the disparity which the Court considered required adjustment or shifting of the provisional line in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)* (*ibid.*, p. 65, para. 61) (approximately 1:9) and the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (*Judgment, I.C.J. Reports 1985*, p. 53, paras. 74-75) (approximately 1:8). This is undoubtedly a substantial disparity and the Court considers that it requires an adjustment or shifting of the provisional line, especially given the overlapping maritime areas to the east of the Colombian islands.

B. Overall geographical context

212. Both Parties have addressed the Court on the subject of the effect which the overall geographical context should have on the delimitation. Nicaragua maintains that the Colombian islands are located "on Nicaragua's continental shelf", so that the waters and sea-bed around them naturally form part of Nicaragua. It contends that one of the most important principles of the international law of maritime delimitation is that, so far as possible, a State should not be cut off, or blocked, from the maritime areas into which its coastline projects, particularly by the effect of small island territories. Nicaragua argues that Colombia's approach in the present case treats the western coasts of Alburquerque Cays, San Andrés, Providencia, Santa Catalina and Serrana as a wall blocking all access for Nicaragua to the substantial area between the east coasts of those islands and the line 200 nautical miles from the Nicaraguan baselines, an area to which, according to Nicaragua, it is entitled by virtue of the natural projection of its coast.

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213. Colombia rejects Nicaragua's reliance on natural projection and contends that the significance which it attaches to its islands does not infringe any principle precluding a "cut-off". Moreover, it maintains that Nicaragua's proposed solution of enclaving the Colombian islands itself infringes that principle, since it denies those islands their natural projection to the east up to and, indeed, beyond, the line 200 nautical miles from the Nicaraguan coast. According to Colombia, Nicaragua's proposed solution, by confining the Colombian islands to their territorial seas would, in effect, require Colombia to sacrifice the entire continental shelf and exclusive economic zone to which the islands would entitle it.

* *

214. The Court does not believe that any weight should be given to Nicaragua's contention that the Colombian islands are located on "Nicaragua's continental shelf". It has repeatedly made clear that geological and geomorphological considerations are not relevant to the delimitation of overlapping entitlements within 200 nautical miles of the coasts of States (see, e.g., *Continental Shelf (Libyan Arab Jamahirya/Malta), Judgment, I.C.J. Reports 1985*, p. 35, paras. 39-40). The reality is that the Nicaraguan mainland and fringing islands, and the Colombian islands, are located on the same continental shelf. That fact cannot, in and of itself, give one State's entitlements priority over those of the other in respect of the area where their claims overlap.

215. The Court agrees, however, that the achievement of an equitable solution requires that, so far as possible, the line of delimitation should allow the coasts of the Parties to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 127, para. 201). The effect of the provisional median line is to cut Nicaragua off from some three quarters of the area into which its coast projects. Moreover, that cut-off effect is produced by a few small islands which are many nautical miles apart. The Court considers that those islands should not be treated as though they were a continuous mainland coast stretching for over 100 nautical miles and cutting off Nicaraguan access to the sea-bed and waters to their east. The Court therefore concludes that the cut-off effect is a relevant consideration which requires adjustment or shifting of the provisional median line in order to produce an equitable result.

216. At the same time, the Court agrees with Colombia that any adjustment or shifting of the provisional median line must not have the effect of cutting off Colombia from the entitlements generated by its islands in the area to the east of those islands. Otherwise, the effect would be to remedy one instance of cut-off by creating another. An equitable solution requires that each State

enjoy reasonable entitlements in the areas into which its coasts project. In the present case, that means that the action which the Court takes in adjusting or shifting the provisional median line should avoid completely cutting off either Party from the areas into which its coasts project.

C. Conduct of the Parties

217. Both Parties addressed the Court regarding the significance of conduct in the relevant area but it was Colombia that principally relied upon this factor, so that it is appropriate to begin by reviewing Colombia's arguments. Colombia submits that it has for many decades regulated fishing activities, conducted scientific exploration and conducted naval patrols throughout the area to the east of the 82nd meridian, whereas there is no evidence of any significant Nicaraguan activity there until recent times.

*

218. Nicaragua argues that Colombia's case on this point amounts in practice to an attempt to resurrect its argument that the 1928 Treaty established a maritime boundary along the 82nd meridian, a theory which the Court rejected in its Judgment on Preliminary Objections (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 869, para. 120). According to Nicaragua, the conduct of Colombia with regard to fisheries and patrolling neither establishes a tacit agreement between the Parties to treat the 82nd meridian as a maritime boundary, nor constitutes a relevant circumstance to be taken into account in achieving an equitable solution.

* *

219. The Court has already held that the 1928 Treaty did not fix the 82nd meridian as a maritime boundary between the Parties (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 869, para. 120). The Court does not understand Colombia as attempting either to reopen that question by arguing that the Parties have expressly agreed upon the 82nd meridian as a maritime boundary, or as contending that the conduct of the Parties is sufficient to establish the existence of a tacit agreement between them to treat the 82nd meridian as such a boundary. In that context, the Court would, in any event, recall that

> "[e]vidence of a tacit legal agreement must be compelling. The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed." (*Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007 (II)*, p. 735, para. 253.)

220. The Court understands Colombia to be advancing a different argument, namely that the conduct of the Parties east of the 82nd meridian constitutes a relevant circumstance in the present case, which suggests that the use of the provisional median line as a line of delimitation would be equitable. While it cannot be ruled out that conduct might need to be taken into account as a relevant circumstance in an appropriate case, the jurisprudence of the Court and of arbitral tribunals shows that conduct will not normally have such an effect (*Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway) Judgment, I.C.J. Reports 1993*, p. 77, para. 86; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 447, para. 304; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 125, para. 198; award of the Arbitration Tribunal in the *Barbados/Trinidad and Tobago* case (2006), *RIAA*, Vol. XXVII, p. 222, para. 269; *ILR*, Vol. 139, p. 533; award of the Arbitration Tribunal in the *Guyana/Suriname* case (2007), *Permanent Court of Arbitration Award Series (2012)*, pp. 147-153; *ILR*, Vol. 139, pp. 673-678, paras. 378-391). The Court does not consider that the conduct of the Parties in the present case is so exceptional as to amount to a relevant circumstance which itself requires it to adjust or shift the provisional median line.

D. Security and law enforcement considerations

221. Both Parties also invoke security and law enforcement considerations in relation to the appropriate course of the maritime boundary. Colombia contends that it has taken responsibility for the exercise of jurisdiction in relation to drug trafficking and related crimes in the area east of the 82nd meridian. Nicaragua counters that most of the crime in question originates in Colombia.

222. The Court considers that much of Colombia's arguments on this issue are, in effect, arguments regarding conduct which have been dealt with in the preceding section of the Judgment. It also notes that control over the exclusive economic zone and the continental shelf is not normally associated with security considerations and does not affect rights of navigation. However, the Court has recognized that legitimate security concerns might be a relevant consideration if a maritime delimitation was effected particularly near to the coast of a State and the Court will bear this consideration in mind in determining what adjustment to make to the provisional median line or in what way that line should be shifted.

E. Equitable access to natural resources

223. Both Parties raise the question of equitable access to natural resources but neither offers evidence of particular circumstances that it considers must be treated as relevant. The Court notes, however, that, as the Arbitral Tribunal in the *Barbados/Trinidad and Tobago* case observed,

> "[r]esource-related criteria have been treated more cautiously by the decisions of international courts and tribunals, which have not generally applied this factor as a relevant circumstance" (*Award of 11 April 2006*, *RIAA*, Vol. XXVII, p. 214, para. 241; *ILR*, Vol. 139, p. 523).

The Court, which quoted this observation with approval in its Judgment in the *Maritime Delimitation in the Black Sea* case (*I.C.J. Reports 2009*, p. 125, para. 198), considers that the present case does not present issues of access to natural resources so exceptional as to warrant it treating them as a relevant consideration.

F. Delimitations already effected in the area

224. Colombia refers in some detail to delimitation agreements which it has concluded with other States in the region. Those agreements are described in paragraph 160, above.

The lines prescribed by all of these agreements, together with the boundary agreed between Costa Rica and Panama in an Agreement of 1980, and the boundary between Nicaragua and Honduras established by the Court's 2007 Judgment, are depicted on sketch-map No. 1.

225. The Court has already explained the relevance of these agreements and the judicial determination of the Nicaragua-Honduras boundary for the identification of the relevant area (see paragraphs 160-163, above). The Court will now consider whether, and if so how, they affect the boundary now to be determined by the Court.

* *

226. There are two questions for the Court to consider. The first is whether the agreements between Colombia and Costa Rica, Jamaica and Panama amount, as Colombia argues, to a recognition by those States of Colombian entitlements in parts of the relevant area which the Court should take into account in the present case. The second is whether those agreements impose limits upon the action which the Court can take in the present case, because of the requirement that the Court respect the rights of third States.

227. With regard to the first question, the Court accepts that Panama's agreement with Colombia amounts to recognition by Panama of Colombian claims to the area to the north and west of the boundary line laid down in that agreement. Similarly the unratified treaty between Colombia and Costa Rica entails at least potential recognition by Costa Rica of Colombian claims to the area to the north and east of the boundary line which it lays down, while the Colombia-Jamaica agreement entails recognition by Jamaica of Colombian claims to the area to the south-west of the boundary of the Colombia-Jamaica "Joint Regime Area". The Court cannot, however, agree with Colombia that this recognition amounts to a relevant circumstance which the Court must take into account in effecting a maritime delimitation between Colombia and Nicaragua. It is a fundamental principle of international law that a treaty between two States cannot, by itself, affect the rights of a third State. As the Arbitral Tribunal in the *Island of Palmas* case put it, "it is evident that whatever may be the right construction of a treaty, it cannot be interpreted as disposing of the rights of independent third Powers" (*RIAA*, Vol. II, p. 842). In accordance with that principle, the treaties which Colombia has concluded with Jamaica and Panama and the treaty which it has signed with Costa Rica cannot confer upon Colombia rights against Nicaragua and, in particular, cannot entitle it, vis-à-vis Nicaragua, to a greater share of the area in which its maritime entitlements overlap with those of Nicaragua than it would otherwise receive.

228. With regard to the second question, the Court observes that, as Article 59 of the Statute of the Court makes clear, it is axiomatic that a judgment of the Court is not binding on any State other than the parties to the case. Moreover, the Court has always taken care not to draw a boundary line which extends into areas where the rights of third States may be affected. The Judgment by which the Court delimits the boundary addresses only Nicaragua's rights as against Colombia and vice versa and is, therefore, without prejudice to any claim of a third State or any claim which either Party may have against a third State.

9. Course of the maritime boundary

229. Having thus identified relevant circumstances which mean that a maritime boundary following the course of the provisional median line would not produce an equitable result, the Court must now consider what changes are required to that line. The extent and nature of those changes is determined by the particular relevant circumstances which the Court has identified. The first such circumstance is the considerable disparity in the lengths of the relevant coasts, the ratio of Colombia's relevant coast to that of Nicaragua being approximately 1:8.2 (see paragraphs 208-211, above). The second relevant circumstance is the overall geographical context, in which the relevant Colombian coast consists of a series of islands, most of them very small, and located at a considerable distance from one another, rather than a continuous coastline (see paragraphs 212-216, above). Since these islands are situated within 200 nautical miles of the Nicaraguan mainland, the potential entitlements of the Parties are not confined to the area between that mainland and the western coast of the Colombian islands, but extend to the area between the east coasts of the Colombian islands and the line 200 nautical miles from the Nicaraguan baselines

(see paragraphs 155-166, above, and sketch-map No. 7). The first circumstance means that the boundary should be such that the portion of the relevant area accorded to each State takes account of the disparity between the lengths of their relevant coasts. A boundary which followed the course of the provisional median line would leave Colombia in possession of a markedly larger portion of the relevant area than that accorded to Nicaragua, notwithstanding the fact that Nicaragua has a far longer relevant coast. The second circumstance necessitates a solution in which neither Party is cut off from the entirety of any of the areas into which its coasts project.

230. In the Court's view, confining Colombia to a succession of enclaves drawn around each of its islands, as Nicaragua proposes, would disregard that second requirement. Even if each island were to be given an enclave of 12 nautical miles, and not 3 nautical miles as suggested by Nicaragua, the effect would be to cut off Colombia from the substantial areas to the east of the principal islands, where those islands generate an entitlement to a continental shelf and exclusive economic zone. In addition, the Nicaraguan proposal would produce a disorderly pattern of several distinct Colombian enclaves within a maritime space which otherwise pertained to Nicaragua with unfortunate consequences for the orderly management of maritime resources, policing and the public order of the oceans in general, all of which would be better served by a simpler and more coherent division of the relevant area.

231. Moreover, the jurisprudence on which Nicaragua relies does not support its argument that each Colombian island should be confined to an enclave. As the Court has already remarked (paragraph 198 above), the decision of the Court of Arbitration in the *Anglo-French Continental Shelf* case to enclave the Channel Islands took place in the context of a delimitation between mainland coasts. As the Court of Arbitration remarked

> "The Channel Islands . . . are situated not only on the French side of a median line drawn between the two mainlands but practically within the arms of a gulf on the French coast. Inevitably, the presence of these islands in the English Channel in that particular situation disturbs the balance of the geographical circumstances which would otherwise exist between the Parties in this region as a result of the broad equality of the coastlines of their mainlands." (*Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic* (1977), *RIAA*, Vol. XVIII, p. 88, para. 183; *ILR*, Vol. 54, p. 96.)

By contrast, in the present case the Colombian islands face Nicaragua in only one direction and from a far greater distance than the Channel Islands face France. Whereas the distance between the nearest point in the Channel Islands and the French coast was less than 7 nautical miles, the most westerly point on the Colombian islands, Alburquerque Cays, is more than 65 nautical miles from the nearest point on the Nicaraguan islands and, most of the San Andrés Archipelago is much

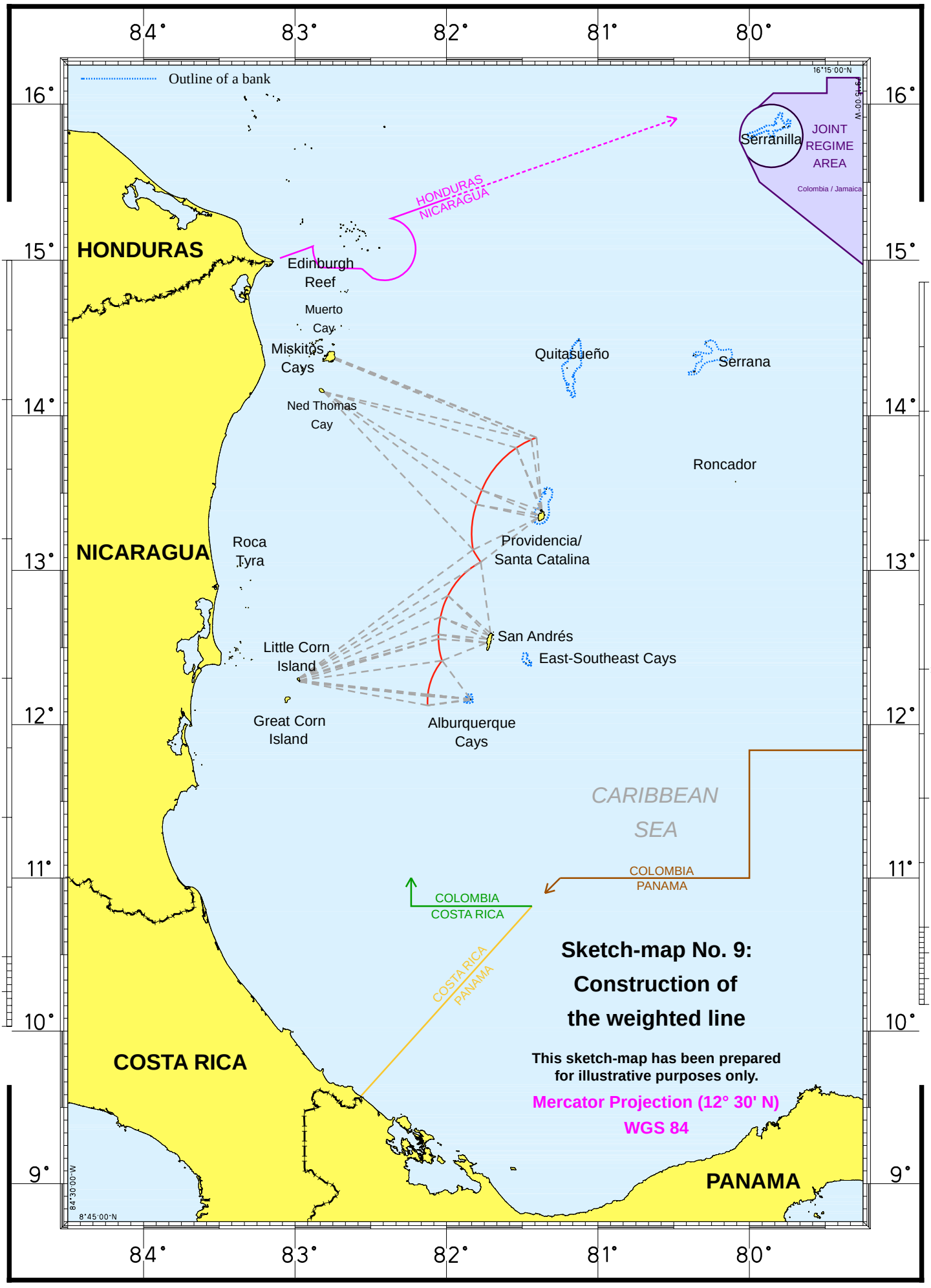
farther away from Nicaragua than that. Nor did the approach taken by the Court of Arbitration in the *Anglo-French Continental Shelf* case divide the Channel Islands into a series of separate enclaves. None of the other instances in which enclaving was employed involved a situation comparable with that in the present case.

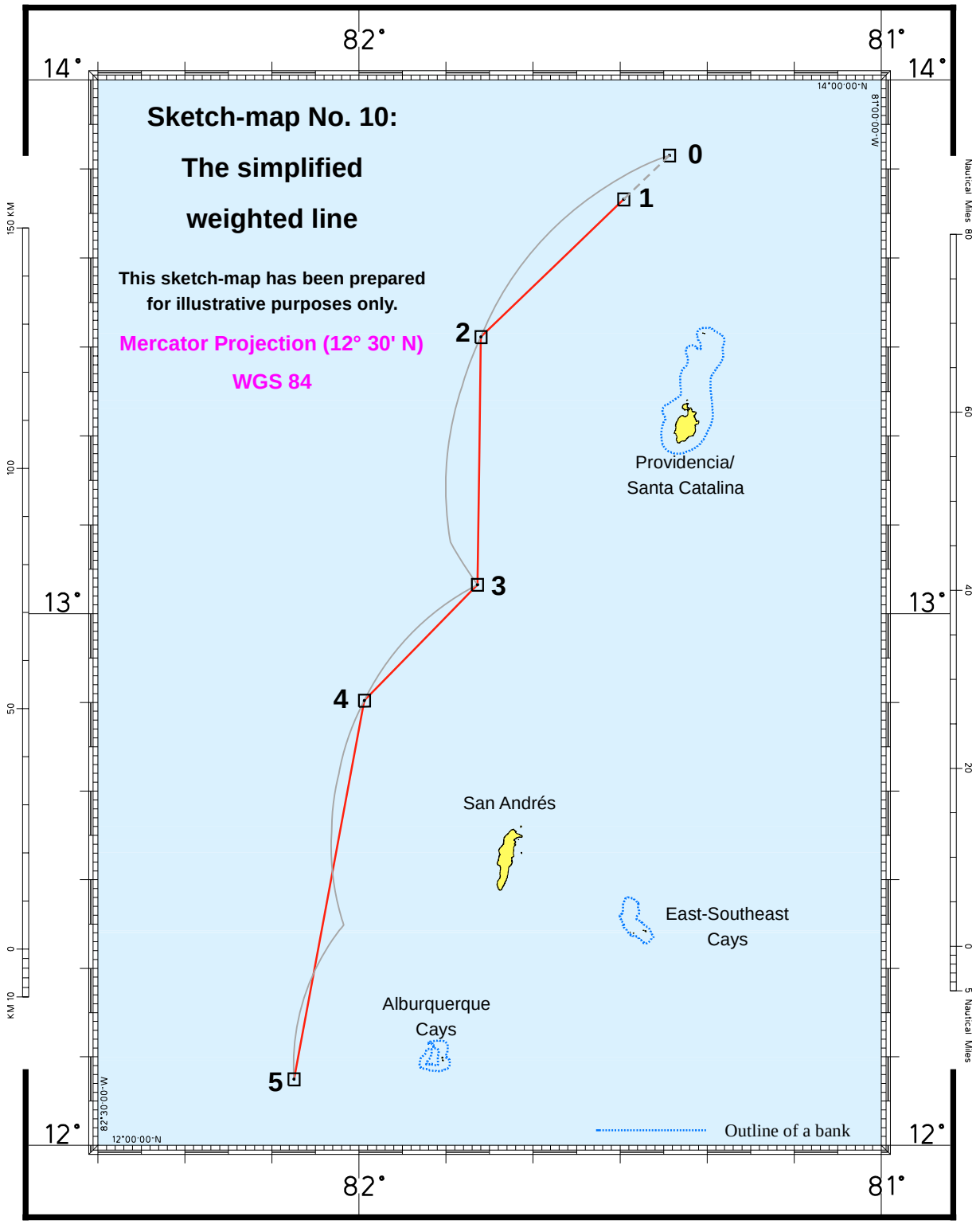
232. The Court considers that it should proceed by way of shifting the provisional median line. In this context, it is necessary to draw a distinction between that part of the relevant area which lies between the Nicaraguan mainland and the western coasts of Alburquerque Cays, San Andrés, Providencia and Santa Catalina, where the relationship is one of opposite coasts, and the part which lies to the east of those islands, where the relationship is more complex.

233. In the first, western, part of the relevant area, the relevant circumstances set out above call for the provisional median line to be shifted eastwards. The disparity in coastal lengths is so marked as to justify a significant shift. The line cannot, however, be shifted so far that it cuts across the 12-nautical-mile territorial sea around any of the Colombian islands, since to do so would be contrary to the principle set out in paragraphs 176 to 180, above. The Court notes that there are various techniques which allow for relevant circumstances to be taken into consideration in order to reach an equitable solution. In the present case, the Court considers that in order to arrive at such a solution, taking due account of the relevant circumstances, the base points located on the Nicaraguan and Colombian islands, respectively, should be accorded different weights.

234. In the Court's opinion, an equitable result is achieved in this part of the relevant area by giving a weighting of one to each of the Colombian base points and a weighting of three to each of the Nicaraguan base points. That is done by constructing a line each point on which is three times as far from the controlling base point on the Nicaraguan islands as it is from the controlling base point on the Colombian islands. The Court notes that, while all of the Colombian base points contribute to the construction of this line, only the Nicaraguan base points on Miskitos Cays, Ned Thomas Cay and Little Corn Island control the weighted line. As a result of the fact that the line is constructed using a 3:1 ratio between Nicaraguan and Colombian base points, the effect of the other Nicaraguan base points is superseded by those base points. The line ends at the last point that can be constructed using three base points. (See sketch-map No. 9: Construction of the weighted line.)

235. The method used in the construction of the weighted line (as described in the previous paragraph) results in a line which has a curved shape with a large number of turning points. Such a configuration of the line may create difficulties in its practical application. The Court therefore proceeds to a further adjustment by reducing the number of turning points and connecting them by geodetic lines. This produces a simplified weighted line which is depicted on sketch-map No. 10. The line thus constructed ("the simplified weighted line") forms the boundary between the maritime entitlements of the two States between points 1 and 5, as depicted on sketch-map No. 10.


Outline of a bank
HONDURAS
NICARAGUA
COSTA RICA
PANAMA
HONDURAS
NICARAGUA
Edinburgh Reef
Muerto Cay
Miskitos Cays
Ned Thomas Cay
Roca Tyra
Little Corn Island
Great Corn Island
Quitasueño
Serrana
Roncador
Providencia/ Santa Catalina
San Andrés
East-Southeast Cays
Alburquerque Cays
Serranilla
JOINT REGIME AREA
Colombia / Jamaica
CARIBBEAN SEA
COLOMBIA
PANAMA
COLOMBIA
COSTA RICA
COSTA RICA
PANAMA
Sketch-map No. 9:
Construction of
the weighted line
This sketch-map has been prepared
for illustrative purposes only.
Mercator Projection (12° 30' N)
WGS 84
16°15'00"N
79°15'00"W
8°45'00"N
84°30'00"W
84°
83°
82°
81°
80°
16°
15°
14°
13°
12°
11°
10°
9°
500 KM
400
300
200
100
0
25
50
Nautical Miles
250
200
150
100
50
0
10
20
30


Sketch-map No. 10:
The simplified
weighted line
This sketch-map has been prepared for illustrative purposes only.
Mercator Projection (12° 30' N)
WGS 84
0
1
2
3
4
5
Providencia/
Santa Catalina
San Andrés
East-Southeast
Cays
Alburquerque
Cays
Outline of a bank
82°
81°
14°
13°
12°
14°00'00"N
12°00'00"N
81°00'00"W
82°30'00"W
150 KM
100
50
0
KM 10
Nautical Miles 80
60
40
20
0
5 Nautical Miles

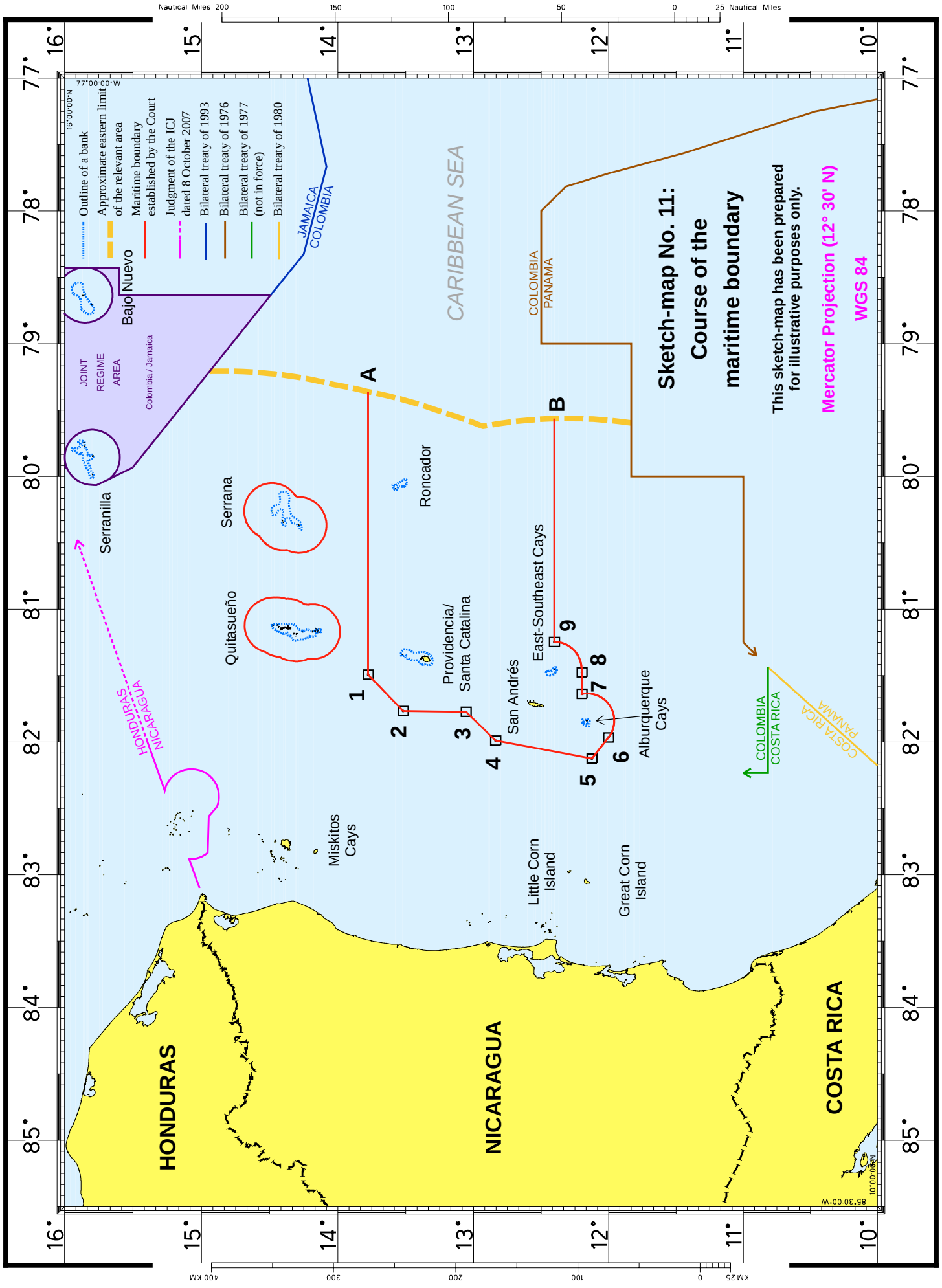
236. The Court considers, however, that to extend that line into the parts of the relevant area north of point 1 or south of point 5 would not lead to an equitable result. While the simplified weighted line represents a shifting of the provisional median line which goes some way towards reflecting the disparity in coastal lengths, it would, if extended beyond points 1 and 5, still leave Colombia with a significantly larger share of the relevant area than that accorded to Nicaragua, notwithstanding the fact that Nicaragua's relevant coast is more than eight times the length of Colombia's relevant coast. It would thus give insufficient weight to the first relevant circumstance which the Court has identified. Moreover, by cutting off Nicaragua from the areas east of the principal Colombian islands into which the Nicaraguan coast projects, such a boundary would fail to take into account the second relevant circumstance, namely the overall geographical context.

The Court considers that it must take proper account both of the disparity in coastal length and the need to avoid cutting either State off from the maritime spaces into which its coasts project. In the view of the Court, an equitable result which gives proper weight to those relevant considerations is achieved by continuing the boundary line out to the line 200 nautical miles from the Nicaraguan baselines along lines of latitude.

237. As illustrated on sketch-map No. 11 ("Course of the maritime boundary"), that is done as follows.

First, from the extreme northern point of the simplified weighted line (point 1), which is located on the parallel passing through the northernmost point on the 12-nautical-mile envelope of arcs around Roncador, the line of delimitation will follow the parallel of latitude until it reaches the 200–nautical–mile limit from the baselines from which the territorial sea of Nicaragua is measured (endpoint A). As the Court has explained (paragraph 159 above), since Nicaragua has yet to notify the baselines from which its territorial sea is measured, the precise location of endpoint A cannot be determined and the location depicted on sketch-map No. 11 is therefore approximate.

Secondly, from the extreme southern point of the adjusted line (point 5), the line of delimitation will run in a south-east direction until it intersects with the 12–nautical–mile envelope of arcs around South Cay of Alburquerque Cays (point 6). It then continues along that 12-nautical-mile envelope of arcs around South Cay of Alburquerque Cays until it reaches the point (point 7) where that envelope of arcs intersects with the parallel passing through the southernmost point on the 12-nautical-mile envelope of arcs around East-Southeast Cays. The boundary line then follows that parallel until it reaches the southernmost point of the 12-nautical-mile envelope of arcs around East-Southeast Cays (point 8) and continues along that envelope of arcs until its most eastward point (point 9). From that point the boundary line follows the parallel of latitude until it reaches the 200–nautical–mile limit from the baselines from which the territorial sea of Nicaragua is measured (endpoint B, the approximate location of which is shown on sketch-map No. 11).


Sketch-map No. 11:
Course of the
maritime boundary
This sketch-map has been prepared
for illustrative purposes only.
Mercator Projection (12° 30' N)
WGS 84
CARIBBEAN SEA
HONDURAS
NICARAGUA
COSTA RICA
Outline of a bank
Approximate eastern limit
of the relevant area
Maritime boundary
established by the Court
Judgment of the ICJ
dated 8 October 2007
Bilateral treaty of 1993
Bilateral treaty of 1976
Bilateral treaty of 1977
(not in force)
Bilateral treaty of 1980
JOINT
REGIME
AREA
Colombia / Jamaica
JAMAICA
COLOMBIA
COLOMBIA
PANAMA
HONDURAS
NICARAGUA
COLOMBIA
COSTA RICA
COSTA RICA
PANAMA
Bajo Nuevo
Serranilla
Serrana
Quitasueño
Roncador
Providencia/
Santa Catalina
San Andrés
East-Southeast Cays
Alburquerque
Cays
Miskitos
Cays
Little Corn
Island
Great Corn
Island
A
B
1
2
3
4
5
6
7
8
9
Nautical Miles 200
150
100
50
0
25 Nautical Miles
KM 25
0
100
200
300
400 KM

238. That leaves Quitasueño and Serrana, both of which the Court has held fall on the Nicaraguan side of the boundary line described above. In the Court's view, to take the adjusted line described in the preceding paragraphs further north, so as to encompass these islands and the surrounding waters, would allow small, isolated features, which are located at a considerable distance from the larger Colombian islands, to have a disproportionate effect upon the boundary. The Court therefore considers that the use of enclaves achieves the most equitable solution in this part of the relevant area.

Quitasueño and Serrana are each entitled to a territorial sea which, for the reasons already given by the Court (paragraphs 176-180 above), cannot be less than 12 nautical miles in breadth. Since Quitasueño is a rock incapable of sustaining human habitation or an economic life of its own and thus falls within the rule stated in Article 121, paragraph 3, of UNCLOS, it is not entitled to a continental shelf or exclusive economic zone. Accordingly, the boundary between the continental shelf and exclusive economic zone of Nicaragua and the Colombian territorial sea around Quitasueño will follow a 12-nautical-mile envelope of arcs measured from QS 32 and from the low-tide elevations located within 12 nautical miles from QS 32 (see paragraphs 181-183 above).

In the case of Serrana, the Court recalls that it has already concluded that it is unnecessary to decide whether or not it falls within the rule stated in Article 121, paragraph 3, of UNCLOS (paragraph 180 above). Its small size, remoteness and other characteristics mean that, in any event, the achievement of an equitable result requires that the boundary line follow the outer limit of the territorial sea around the island. The boundary will therefore follow a 12-nautical-mile envelope of arcs measured from Serrana Cay and other cays in its vicinity.

The boundary lines thus established around Quitasueño and Serrana are depicted on sketch-map No. 11.

10. The disproportionality test

239. The Court now turns to the third stage in its methodology, namely testing the result achieved by the boundary line described in the preceding section to ascertain whether, taking account of all the circumstances, there is a significant disproportionality which would require further adjustment.

240. In carrying out this third stage, the Court notes that it is not applying a principle of strict proportionality. Maritime delimitation is not designed to produce a correlation between the lengths of the Parties' relevant coasts and their respective shares of the relevant area. As the Court observed in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case,

> "If such a use of proportionality were right, it is difficult to see what room would be left for any other consideration; for it would be at once the principle of entitlement to continental shelf rights and also the method of putting that principle into operation." (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 45, para. 58.)

The Court's task is to check for a significant disproportionality. What constitutes such a disproportionality will vary according to the precise situation in each case, for the third stage of the process cannot require the Court to disregard all of the considerations which were important in the earlier stages. Moreover, the Court must recall what it said more recently in the *Maritime Delimitation in the Black Sea* case,

> "that various tribunals, and the Court itself, have drawn different conclusions over the years as to what disparity in coastal lengths would constitute a significant disproportionality which suggested the delimitation line was inequitable and still required adjustment" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 129, para. 213).

241. ITLOS, in the *Bay of Bengal* case, spoke of checking for "significant disproportion" (Judgment of 14 March 2012, para. 499). The Arbitration Tribunal in the *Barbados/Trinidad and Tobago* case referred to proportionality being used as "a final check upon the equity of a tentative delimitation to ensure that the result is not tainted by some form of *gross disproportion*" (*Award of 11 April 2006*, *RIAA*, Vol. XXVII, p. 214, para. 238; *ILR*, Vol. 139, pp. 522-523; emphasis added). The Tribunal in that case went on to state that this process

> "does not require the drawing of a delimitation line in a manner that is mathematically determined by the exact ratio of the lengths of the relevant coastlines. Although mathematically certain, this would in many cases lead to an inequitable result. Delimitation rather requires the consideration of the relative lengths of coastal frontages as one element in the process of delimitation taken as a whole. The degree of adjustment called for by any given disparity in coastal lengths is a matter for the Tribunal's judgment in the light of all the circumstances of the case." (*RIAA*, Vol. XXVII, p. 235, para. 328; *ILR*, Vol. 139, p. 547.)

242. The Court thus considers that its task, at this third stage, is not to attempt to achieve even an approximate correlation between the ratio of the lengths of the Parties' relevant coasts and the ratio of their respective shares of the relevant area. It is, rather, to ensure that there is not a disproportion so gross as to "taint" the result and render it inequitable. Whether any disproportion is so great as to have that effect is not a question capable of being answered by reference to any mathematical formula but is a matter which can be answered only in the light of all the circumstances of the particular case.

243. Application of the adjusted line described in the previous section of the Judgment has the effect of dividing the relevant area between the Parties in a ratio of approximately 1:3.44 in Nicaragua's favour. The ratio of relevant coasts is approximately 1:8.2. The question, therefore, is whether, in the circumstances of the present case, this disproportion is so great as to render the result inequitable.

244. The Court recalls that its selection of that line was designed to ensure that neither State suffered from a "cut-off" effect and that this consideration required that San Andrés, Providencia and Santa Catalina should not be cut off from their entitlement to an exclusive economic zone and continental shelf to their east, including in that area which is within 200 nautical miles of their coasts but beyond 200 nautical miles from the Nicaraguan baselines. The Court also observes that a relevant consideration, in the selection of that line, was that the principal Colombian islands should not be divided into separate areas, each surrounded by a Nicaraguan exclusive economic zone and that the delimitation was one which must take into account the need of contributing to the public order of the oceans. To do so, the delimitation should be, in the words of the Tribunal in the *Barbados/Trinidad and Tobago* case, "both equitable and as practically satisfactory as possible, while at the same time in keeping with the requirement of achieving a stable legal outcome" (*Award of 11 April 2006*, *RIAA*, Vol. XXVII, p. 215, para. 244; *ILR*, Vol. 139, p. 524).

245. Analysis of the jurisprudence of maritime delimitation cases shows that the Court and other tribunals have displayed considerable caution in the application of the disproportionality test. Thus, the Court observes that in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, the ratio of relevant coasts was approximately 1:8, a figure almost identical to that in the present case. The Court considered, at the second stage of its analysis, that this disparity required an adjustment or shifting of the provisional median line. At the third stage, it confined itself to stating that there was no significant disproportionality without examining the precise division of shares of the relevant area. That may have been because of the difficulty of determining the limits of the relevant area due to the overlapping interests of third States. Nevertheless, it is clear that the respective shares of Libya and Malta did not come anywhere near a ratio of 1:8, although Malta's share was substantially reduced from what it would have been had the boundary followed the provisional median line.

246. Similarly in the case concerning *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark* v. *Norway)*, the ratio of relevant coasts was approximately 1:9 in Denmark's favour (*Judgment, I.C.J. Reports 1993*, p. 65, para. 61). That disparity led the Court to shift the provisional median line. Again, the Court did not discuss, in its Judgment, the precise shares of the relevant area (referred to in that Judgment as the "area of overlapping potential entitlements") which the line thus established attributed to each State, but the description in the Judgment and the depiction of the boundary on the maps attached thereto show that it was approximately 1:2.7. The Court did not consider the result to be significantly disproportionate.

247. The Court concludes that, taking account of all the circumstances of the present case, the result achieved by the application of the line provisionally adopted in the previous section of the Judgment does not entail such a disproportionality as to create an inequitable result.

VI. NICARAGUA'S REQUEST FOR A DECLARATION

248. In addition to its claims regarding a maritime boundary, Nicaragua's Application reserved "the right to claim compensation for elements of unjust enrichment consequent upon Colombian possession of the Islands of San Andrés and Providencia as well as the keys and maritime spaces up to the 82 meridian" and "for interference with fishing vessels of Nicaraguan nationality or vessels licensed by Nicaragua". In its final submissions, Nicaragua made no claim for compensation but it requested that the Court adjudge and declare that "Colombia is not acting in accordance with her obligations under international law by stopping and otherwise hindering Nicaragua from accessing and disposing of her natural resources to the east of the 82nd meridian". In this regard, Nicaragua referred to a number of incidents in which Nicaraguan fishing vessels had been arrested by Colombian warships east of the 82nd meridian.

249. Colombia states that Nicaragua's request for a declaration is unfounded. According to Colombia, Nicaragua has not demonstrated that it has suffered any damage as a result of Colombia's alleged conduct. It adds, first, that in a maritime delimitation dispute, parties do not claim reparation if the judgment finds that areas over which one party has been exercising its jurisdiction actually fall under the jurisdiction of the other. Secondly, Colombia argues that it cannot be criticized for blocking Nicaragua's access to natural resources to the east of the 82nd meridian. In particular, Colombia states that, in the normal exercise of its jurisdiction, it has intercepted to the east of the 82nd meridian fishing vessels flying the Nicaraguan flag which were not in possession of the appropriate permits. Additionally, Colombia contends that there is no evidence that any Nicaraguan vessel involved in the exploitation of natural resources in the areas east of the 82nd meridian has been threatened or intercepted by Colombia. In light of the above, Colombia submits that the Court should reject Nicaragua's request for a declaration.

* *

250. The Court observes that Nicaragua's request for this declaration is made in the context of proceedings regarding a maritime boundary which had not been settled prior to the decision of the Court. The consequence of the Court's Judgment is that the maritime boundary between Nicaragua and Colombia throughout the relevant area has now been delimited as between the Parties. In this regard, the Court observes that the Judgment does not attribute to Nicaragua the whole of the area which it claims and, on the contrary, attributes to Colombia part of the maritime spaces in respect of which Nicaragua seeks a declaration regarding access to natural resources. In this context, the Court considers that Nicaragua's claim is unfounded.

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251. For these reasons,

THE COURT,

(1) Unanimously,

Finds that the Republic of Colombia has sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla;

(2) By fourteen votes to one,

Finds admissible the Republic of Nicaragua's claim contained in its final submission I (3) requesting the Court to adjudge and declare that "[t]he appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties";

IN FAVOUR: *President* Tomka; *Vice-President* Sepúlveda-Amor; *Judges* Abraham, Keith, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue, Sebutinde; *Judges* ad hoc Mensah, Cot;

AGAINST: *Judge* Owada;

(3) Unanimously,

Finds that it cannot uphold the Republic of Nicaragua's claim contained in its final submission I (3);

(4) Unanimously,

Decides that the line of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of the Republic of Nicaragua and the Republic of Colombia shall follow geodetic lines connecting the points with co-ordinates:

	Latitude north	Longitude west
1.	13° 46' 35.7"	81° 29' 34.7"
2.	13° 31' 08.0"	81° 45' 59.4"
3.	13° 03' 15.8"	81° 46' 22.7"
4.	12° 50' 12.8"	81° 59' 22.6"
5.	12° 07' 28.8"	82° 07' 27.7"
6.	12° 00' 04.5"	81° 57' 57.8"

From point 1, the maritime boundary line shall continue due east along the parallel of latitude (co-ordinates 13° 46' 35.7" N) until it reaches the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured. From point 6

(with co-ordinates 12° 00' 04.5" N and 81° 57' 57.8" W), located on a 12-nautical-mile envelope of arcs around Alburquerque, the maritime boundary line shall continue along that envelope of arcs until it reaches point 7 (with co-ordinates 12° 11' 53.5" N and 81° 38' 16.6" W) which is located on the parallel passing through the southernmost point on the 12-nautical-mile envelope of arcs around East-Southeast Cays. The boundary line then follows that parallel until it reaches the southernmost point of the 12-nautical-mile envelope of arcs around East-Southeast Cays at point 8 (with co-ordinates 12° 11' 53.5" N and 81° 28' 29.5" W) and continues along that envelope of arcs until its most eastward point (point 9 with co-ordinates 12° 24' 09.3" N and 81° 14' 43.9" W). From that point the boundary line follows the parallel of latitude (co-ordinates 12° 24' 09.3" N) until it reaches the 200–nautical–mile limit from the baselines from which the territorial sea of Nicaragua is measured;

(5) Unanimously,

Decides that the single maritime boundary around Quitasueño and Serrana shall follow, respectively, a 12-nautical-mile envelope of arcs measured from QS 32 and from low-tide elevations located within 12 nautical miles from QS 32, and a 12-nautical-mile envelope of arcs measured from Serrana Cay and the other cays in its vicinity;

(6) Unanimously,

Rejects the Republic of Nicaragua's claim contained in its final submissions requesting the Court to declare that the Republic of Colombia is not acting in accordance with its obligations under international law by preventing the Republic of Nicaragua from having access to natural resources to the east of the 82nd meridian.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this nineteenth day of November, two thousand and twelve, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Nicaragua and the Government of the Republic of Colombia, respectively.

(Signed) Peter TOMKA,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge OWADA appends a dissenting opinion to the Judgment of the Court; Judge ABRAHAM appends a separate opinion to the Judgment of the Court; Judges KEITH and XUE append declarations to the Judgment of the Court; Judge DONOGHUE appends a separate opinion to the Judgment of the Court; Judges *ad hoc* MENSAH and COT append declarations to the Judgment of the Court.

(Initialled) P. T.

(Initialled) Ph. C.