



INTERNATIONAL COURT OF JUSTICE

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Summary

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Territorial Dispute and Maritime Delimitation (Nicaragua v. Colombia)

Summary of the Judgment of 19 November 2012

Chronology of the procedure (paras. 1-17)

The Court recalls that, 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 “concerning title to territory and maritime delimitation” in the western Caribbean. The Court further recalls that on 13 December 2007 it rendered a Judgment on preliminary objections to the jurisdiction of the Court raised by Colombia, in which it 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 Catalina¹, and upon the dispute concerning the maritime delimitation between the Parties.

I. GEOGRAPHY (paras. 18-24)

The area where the maritime features in dispute (Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo) are located and within which the delimitation sought is to be carried out lies in the Caribbean Sea (see sketch-map No. 1: Geographical context).

II. SOVEREIGNTY (paras. 25-103)

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

Before addressing the question of sovereignty, the Court must determine whether the maritime features in dispute are capable of appropriation. It is well established in international law that islands, however small, are capable of appropriation. By contrast, low-tide elevations (features which are above water at low tide but submerged at high tide) cannot be appropriated, although a

¹In its 2007 Judgment on preliminary objections, the Court held that it had no jurisdiction with regard to Nicaragua’s claim to sovereignty over the islands of San Andrés, Providencia and Santa Catalina, 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, by which Nicaragua recognized Colombian sovereignty over these islands.

coastal State has sovereignty over low-tide elevations which are situated within its territorial sea, and these low-tide elevations may be taken into account for the purpose of measuring the breadth of the territorial sea.

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. Taking into account the scientific evidence in the case file, in particular, an Expert Report on Quitasueño relied on by Colombia, prepared by Dr. Robert Smith, the Court concludes that the feature referred to in the Smith Report as QS 32 is above water at high tide and is thus capable of appropriation. 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; it finds that they are low-tide elevations.

2. Sovereignty over the maritime features in dispute

In addressing the question of sovereignty over the maritime features in dispute, the Court first considers the 1928 Treaty. 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”. 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. The Court observes that Article I of the 1928 Treaty does not specify the composition of that Archipelago. As to the 1930 Protocol of Exchange of Ratifications of the 1928 Treaty, 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. The Court further observes that the historical material adduced by the Parties to support their respective arguments does not shed light on 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. The Court finds that neither the 1928 Treaty nor the historical records is conclusive as to the composition of that Archipelago.

In order to resolve the dispute before it, the Court must therefore 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.

The Court thus turns to the claims of sovereignty asserted by both Parties on the basis of uti possidetis juris (a principle according to which, upon independence, new States inherit territories and boundaries of former colonial provinces). 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 in the historical record clearly indicates whether these features were attributed to the colonial provinces of Nicaragua or of Colombia prior to or upon independence from Spain.

The Court next considers whether sovereignty can be established on the basis of effectivités (State acts manifesting a display of authority on a given territory). The Court notes that it is Colombia’s submission that effectivités confirm its prior title to the maritime features in dispute. The Court considers the different categories of effectivités presented by Colombia, namely: public administration and legislation, regulation of economic activities, public works, law enforcement measures, naval visits and search and rescue operations and consular representation. On the basis of the evidence on the case file, the Court finds 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 1969, when the dispute crystallized. 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 provide very strong support for Colombia's claim of sovereignty over the maritime features in dispute.

The Court also notes that, while not being evidence of sovereignty, Nicaragua's conduct with regard to the maritime features in dispute, the practice of third States and maps afford some support to Colombia's claim.

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 (paras. 104-112)

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 (see sketch-map No. 2: Delimitation claimed by Nicaragua) — is a new claim in relation to the claims presented in the Application and the Memorial, in which the Court was requested 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. 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 does not, in itself, render the claim inadmissible. 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. The Court concludes that the claim contained in final submission I (3) by Nicaragua is admissible.

IV. CONSIDERATION OF NICARAGUA'S CLAIM FOR DELIMITATION OF A CONTINENTAL SHELF EXTENDING BEYOND 200 NAUTICAL MILES (paras. 113-131)

The Court turns to the question whether it is in a position to delimit a maritime boundary between an extended continental shelf of Nicaragua and Colombia's continental shelf as requested by Nicaragua in its final submission I (3). The Court notes that Colombia is not a State party to the United Nations Convention on the Law of the Sea (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.

The Court further observes that in the case concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), it 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”. 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. The Court notes that Nicaragua submitted to the Commission only “Preliminary Information” which, by its own admission, falls short of meeting the requirements for the Commission to be able to make a recommendation relating to the establishment of the outer limits of the continental shelf.

As the Court was not presented with any further information, it finds that, in the present proceedings, Nicaragua 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 therefore not in a position to delimit the maritime boundary as requested by Nicaragua. The Court concludes that Nicaragua's claim contained in its final submission I (3) cannot be upheld.

V. MARITIME BOUNDARY (paras. 132-247)

1. The task now before the Court

In light of the decision it has taken regarding Nicaragua's proposed maritime delimitation as set out in its final submission I (3), the Court must consider what maritime delimitation should be effected. The Court observes that 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).

The Court notes that there is 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. Thus, notwithstanding its decision regarding Nicaragua's final submission I (3), the Court is still called upon to effect a delimitation between the overlapping maritime entitlements of Colombia and Nicaragua within 200 nautical miles of the Nicaraguan coast.

2. Applicable law

As the Court has already noted, the law applicable to this delimitation is customary international law. The Court considers that the principles of maritime delimitation enshrined in Articles 74 and 83 and the legal régime of islands set out in UNCLOS Article 121 reflect customary international law.

3. Relevant coasts

The Court begins by determining what the relevant coasts of the Parties are, namely, those coasts the projections of which overlap. After briefly setting out the positions of the Parties regarding their respective coasts (see sketch-map No. 4: The relevant coasts and the relevant area according to Nicaragua, and sketch-map No. 5: The relevant coasts and the relevant area according to Colombia), the Court proceeds to make its own determination.

For Nicaragua, the Court finds that the relevant coast is its whole coast 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 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.

For Colombia, in view of the fact that Nicaragua's claim to a continental shelf on the basis of natural prolongation has not been upheld, 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 facing the Nicaraguan mainland. 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. The Court also considers that the coasts of Alburquerque Cays, East-Southeast Cays, Roncador and Serrana must be considered part of the relevant coast. The Court has, however, disregarded Quitasueño, Serranilla and Bajo Nuevo for the purposes of determining Colombia's relevant coast.

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 (see sketch-map No. 6: The relevant coasts as identified by the Court).

4. Relevant maritime area

The Court then considers the extent of the relevant maritime area in which the potential entitlements of the Parties overlap. The Court begins by setting out the positions of the Parties regarding the relevant maritime area (see sketch-maps Nos. 4 and 5) before making its own determination.

The Court recalls that the legal concept of the "relevant area" has to be taken into account as part of the methodology of maritime delimitation. 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. 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. However, the Court emphasizes that the calculation of the relevant area does not purport to be precise but is only approximate and that the object of delimitation is to achieve a delimitation that is equitable, not an equal apportionment of maritime areas.

The relevant area comprises that part of the maritime space in which the potential entitlements of the parties overlap. 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.

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 Judgment of 8 October 2007, and a maritime boundary between Colombia and Jamaica established in 1993 through a bilateral Agreement. There is also a Colombia-Jamaica "Joint Regime Area" (an area in which Colombia and Jamaica have agreed upon shared development, rather than delimitation). In the south, there is a boundary between Colombia and Panama established pursuant to a bilateral Agreement which was signed in 1976 and entered into force in 1977. There is also a boundary between Colombia and Costa Rica established in 1977 by means of a bilateral Agreement, which has not yet been ratified.

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.

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.

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, until it reaches latitude 16 degrees north. It then continues due east until it reaches the boundary of the Colombia-Jamaica "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. 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. (See sketch-map No. 7: The relevant maritime area as identified by the Court.)

The relevant area thus drawn has a size of approximately 209,280 sq km.

5. Entitlements generated by maritime features

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. The Parties differ regarding the entitlements

which may be generated by Alburquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo.

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. With regard to Alburquerque Cays, East-Southeast Cays, Roncador and Serrana, the Court observes that international law today sets the breadth of the territorial sea which the coastal State has the right to establish at 12 nautical miles. These features are therefore 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. The Court does not deem it 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.

The Court finds that Colombia is entitled to a territorial sea of 12 nautical miles around QS 32 at Quitasueño. Moreover, in measuring that territorial sea, Colombia is 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. The Court observes that 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

To effect the delimitation, the Court follows the three-stage methodology employed in its case law. In the first stage, the Court establishes a provisional delimitation line between territories (including the island territories) of the Parties. The line is constructed using the most appropriate base points on the coasts of the Parties. 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. 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.

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

For the Nicaraguan coast, the Court uses base points located on Edinburgh Reef, Muerto Cay, Miskitos Cays, Ned Thomas Cay, Roca Tyra, Little Corn Island and Great Corn Island.

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 Court's view, neither should a base point be placed on Serrana or on Low Cay. The base points on the Colombian side will, therefore, be located on Santa Catalina, Providencia and San Andrés islands and on Alburquerque Cays.

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. (See sketch-map No. 8: Construction of the provisional median line.)

8. Relevant circumstances

The Court notes that the Parties invoked several different circumstances which they found relevant to the achievement of an equitable solution, which the Court now considers in turn.

A. Disparity in the lengths of the relevant coasts

The Court begins by observing that 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. In the present case, the disparity between the relevant Colombian coast and that of Nicaragua is approximately 1:8.2. 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

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.

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. The effect of the provisional median line is to cut Nicaragua off from some three quarters of the area into which its coast projects. 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.

C. Conduct of the Parties

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

The Court states that it will bear in mind any legitimate security concerns 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

The Court 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

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. 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.

The Court further 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

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 proceeds by way of shifting the provisional median line. In this context, the Court draws 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. In the first, western, part of the relevant area, the relevant circumstances 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.

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 proceeds 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. 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. The weighted line, constructed on this basis, has a curved shape with a large number of turning points (see sketch-map No. 9: Construction of the weighted line). Mindful that such a configuration of the line may create difficulties in its practical application, the Court proceeds to a further adjustment by reducing the number of turning points and connecting them by geodetic lines. This produces a simplified weighted line (see sketch-map No. 10: The simplified weighted line). The line thus constructed forms the boundary between the maritime entitlements of the two States between points 1 and 5.

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 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.

With this in mind, the Court plots the boundary line as follows (see sketch-map No. 11: Course of the maritime boundary).

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, 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).

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, 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.

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. 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.

10. The disproportionality test

In carrying out the disproportionality test, the Court notes that it is not applying a principle of strict proportionality. Maritime delimitation is not designed 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. The Court's task is to check for a significant disproportionality so gross as to "taint" the result and render it inequitable. In the present case, the boundary line has the effect of dividing the relevant area between the Parties in a ratio of approximately 1:3.44 in Nicaragua's favour, while 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. The Court concludes that, taking account of all the circumstances of the present case, the result achieved by the maritime delimitation does not entail such a disproportionality as to create an inequitable result.

VI. NICARAGUA'S REQUEST FOR A DECLARATION (paras. 248-250)

In addition to its claims regarding a maritime boundary, in its final submissions, Nicaragua 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".

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 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.

VII. OPERATIVE CLAUSE (para. 251)

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 Albuquerque, 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.

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.

Dissenting opinion of Judge Owada

In his dissenting opinion, Judge Owada states that, although he has voted in favour of all the conclusions of the Court relating to the merits of the dispute as contained in subparagraphs (1) and subparagraphs (3) through (6) of the operative paragraph, he has been unable to vote in favour of subparagraph (2) relating to the issue of admissibility of the claim by Nicaragua contained in its final submission I (3). In his view, the conclusion of the Court on this point is not in line with the criterion for judging admissibility of a claim as developed by the Court and not right as a matter of principle.

Judge Owada notes that both the Applicant and the Respondent cite the jurisprudence of this Court — particularly the cases concerning Certain Phosphate Lands in Nauru and Ahmadou Sadio Diallo — to determine whether or not the allegedly newly formulated claim of the Applicant can be considered admissible. In Judge Owada's view, however, it is doubtful whether either of these two cases is strictly pertinent to the present case. Judge Owada points out that in each of these cases, the alleged new claim was, in its essential character, a new additional claim which had not expressly been included in the original Application. Judge Owada submits that this is not the situation in the present case, where the Applicant attempted to replace the original formulation of the claim submitted to the Court in its Application by a newly formulated, ostensibly different, claim relating to the existing dispute.

Judge Owada states that the Société Commerciale de Belgique case is more akin to the situation in the present case. In that case, the Court accepted a claim that was reformulated by the Belgian Government in its final submissions. Judge Owada remarks, however, that the Court in that case emphasized that its decision to accept Belgium's reformulated claim was based in large part on the lack of an objection by Greece to the reformulated claim. Judge Owada notes that, by comparison, in the present case the Respondent raised a strong objection to the Applicant's novel formulation of its claim.

Judge Owada observes that, at the oral hearings, the Applicant explained that it adjusted its submissions (and its line of argument) following the Court's Judgment of 13 December 2007, in which the Court upheld Colombia's first preliminary objection concerning the Court's jurisdiction as regards the question of sovereignty over the islands of San Andrés, Providencia, and Santa Catalina. Judge Owada remarks, however, that, whatever may be the background behind the Applicant's change of position, the 2007 Judgment of the Court did not produce such a fundamental change in the legal situation as to require the Applicant to give up its original position and to drastically change its principal claim as well as its legal basis.

Judge Owada notes that the present Judgment rejects the contention of Colombia that this revised claim transforms the subject-matter of the dispute. He observes that, in so doing, the Judgment relies largely upon the argument of the Applicant. Judge Owada respectfully differs from this perception of the Court about the nature and the subject-matter of the dispute as submitted to the Court by the Applicant. In Judge Owada's view, this sudden change of position on the part of the Applicant cannot be described as anything but a radical transformation of the subject-matter of the dispute itself.

Although the Applicant argues that the subject of the dispute has not been modified, Judge Owada states that he is unable to agree with this position, given that the legal character of a continental shelf based on the distance criterion and that of a continental shelf based on the natural

prolongation criterion are quite distinct. As a result, in Judge Owada's opinion, what is proposed by the Applicant by way of its newly reformulated submission I (3) is not something that can be characterized as relating only to the means by which it is suggested to resolve the dispute, as the Applicant claimed.

Judge Owada notes that there is no express definition in the Application to indicate what, in the view of the Applicant, constitutes the dispute being submitted by the Applicant in the present case. In his view, the crucial part of the Application is paragraph 8, in which the Applicant asks 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". Judge Owada states that this language could not be clearer; its purport is to identify a very specific objective that the Applicant seeks to attain by the Judgment: delimitation of the course of a single maritime boundary constituting both the continental shelf boundary and the economic zone boundary. Judge Owada adds that this language cannot be read as merely indicating one possible means to be employed by the Court for achieving the general objective of demarcating maritime areas lying between the two Parties.

Judge Owada then turns to what in his view is an even more important point — namely, the consideration of judicial policy of this Court. Judge Owada points out that in the Certain Phosphate Lands in Nauru case, the Court came to the conclusion that the claim made by Nauru was inadmissible because it constituted, both in form and in substance, a new claim. The Court in that case also emphasized that the subject of the dispute would have been transformed if it entertained that claim. In Judge Owada's view, the same consideration should apply in the present case: if the Court were to accept this radical change in the Applicant's submission, then the whole issue of maritime delimitation would acquire a totally different character, not only in form but also in substance. Specifically, according to Judge Owada, the Court would have to consider a number of legal issues that were not envisaged by the Parties or by the Court when the original submission of the Applicant was made in its Application and its Memorial.

Judge Owada states that one important point for the Court to consider is that this radical change in the Applicant's position took its concrete form only in late 2007, more than six years after the dispute was originally submitted. In his view, the rationale of the prohibition of the transformation of the dispute into a new dispute is solidly founded on the consideration of fair administration of justice to be applied to both Parties and the consideration of legal stability and predictability.

Separate opinion of Judge Abraham

In his separate opinion, Judge Abraham states that, although he has voted in favour of all of the points in the operative clause of the Court's Judgment, he nevertheless disagrees with two aspects of the reasoning followed by the Court in its Judgment.

As regards sovereignty over the maritime features in dispute, Judge Abraham is of the view that, before turning to consider uti possidetis juris and the post-colonial effectivités, the Court should have interpreted the 1928 Treaty in order to determine whether the latter made it possible to settle the issue of sovereignty over the maritime features in dispute, or over certain of them. In Judge Abraham's opinion, the Court, without providing any valid justification, has refrained from interpreting the Treaty, confining itself to finding that the composition of the San Andrés Archipelago, which the Treaty awarded to Colombia, was not clearly defined. In so doing, the Court has not fulfilled its duty.

With regard to the maritime delimitation, Judge Abraham considers that the so-called equidistance method was unsuitable in this instance on account of the geographical facts of this case. Thus, it was not possible in this case to draw a provisional median line which takes into account all of the “relevant [Colombian] coasts”, as defined by the Court’s Judgment, namely a provisional line which is drawn from the most relevant points of the western — but also eastern, northern and southern — coasts of the Colombian islands. Moreover, in Judge Abraham’s opinion, the Court, by adding two horizontal lines and four frontier points to the provisional line, is wrong to assert that it is carrying out a mere “adjustment” or “shifting” of the provisional median line in the light of the particular relevant circumstances. In conclusion, Judge Abraham is of the view that, although the Court has claimed to apply its “standard method” for maritime delimitation in this case, it has in fact departed greatly from it, which was inevitable because of its unsuitability in this case.

Declaration of Judge Keith

Judge Keith in his declaration states that he agrees with the conclusions the Court reaches. He also agrees in general, with one exception, with the reasons the Court gives. That exception concerns the law to be applied to the delimitation of the maritime boundary and the application of the law to the facts.

Judge Keith briefly reviews the development of the law and practice of delimitation since the International Law Commission took up the matter in the 1950s. By reference particularly to what the Court said in 1969 in the North Sea Continental Shelf cases and the development through the 1970s of the relevant articles of the 1982 Convention on the Law of the Sea he emphasizes the aim, stated in those articles, of achieving an equitable result. That is to be achieved by whatever method or combination of methods is appropriate.

Judge Keith, addressing the most unusual geographic situation presented by this case, indicates the combination of methods that he considers should have been used in this case to achieve an equitable result. They would achieve that result, he considers, more directly than the heavily modified version of the usual delimitation method used by the Court. He recognizes that the application of the methods he proposes would result in essentially the same line as that established by the Court.

Declaration of Judge Xue

In her declaration, Judge Xue expresses her reservations on two key aspects of the Judgment, the three-stage methodology adopted by the Court and the treatment of the interest of third States.

On the first issue, while acknowledging the Court’s effort in developing a certain approach to provide for legal certainty and predictability for the process of delimitation in the recent Black Sea case, Judge Xue emphasizes that the guiding principle for maritime delimitation as laid down in Articles 74 and 83 of the Convention on the Law of the Sea has not been changed by this development. In her opinion, the methodology cannot be predetermined, because the aim to achieve an equitable solution requires that the selection of method(s) for the delimitation be considered in the light of the geographic features and the relevant circumstances in each case.

Judge Xue takes issue on the three-stage method employed by the Court for the reason that the relevant circumstances of the present case are considerably different from those in the Black Sea case and it is inappropriate and infeasible to delimit the entire relevant area on the basis of a provisional median line located to the west of the Colombian islands. In her view, any

subsequent “adjustment or shifting”, however substantial, of the provisional median line in the western part would not be able to overcome the gross disproportion in the lengths of the coasts and the ratio of the relevant area between the Parties as determined by the Court, hence unable to achieve an equitable result.

Considering the disparity in the lengths of the relevant coasts and the overall geographical context, the Court adjusted the median line by using a 3:1 ratio between Nicaraguan and Colombian base points, as a result of which, some base points on the Nicaraguan side are “superseded”. Judge Xue questions whether this is a shifting of the provisional median line or rather a reconstruction of a new line by 3:1 ratio between the base points of the Parties. In her opinion, the Court could have achieved the same result by directly selecting a couple of outermost base points by equal number from each side of the Parties as the controlling points and drawing up the line by 3:1 ratio. She notes that the rationale of the 3:1 ratio method is based on the delimitation principle — to achieve an equitable solution. This method stands in its own right; it does not have to be mixed up with the provisional median line. Judge Xue further observes that the Court has apparently drawn the boundary in the northern and southern sections by different methods — enclaving and latitude line. She finds it hard to justify them as “adjustment of” or “shifting from” the provisional median line, if the latter does not mean total departure. She questions the Court’s approach to proceed with the three-stage method simply for the sake of standardization of methodology.

Notwithstanding her reservation, Judge Xue agrees with the Court’s concurrent use of different methods in this case, as long as an equitable solution can be so achieved. In her view, the Judgment reaffirms the established jurisprudence in the maritime delimitation that the goal to arrive at an equitable result excludes any recourse to a method chosen beforehand.

Her second reservation relates to the interest of third States in the south. In her view, the boundary should stop at Point 8 with an arrow pointing eastward.

Judge Xue explains that from Point 8 to further east, the boundary line will enter into the area where potentially the maritime entitlements of three or even four States may overlap, as coastal projections of Nicaragua and Colombia, as well as those of Costa Rica and Panama, all extend to that area. Judge Xue considers that regardless of being mainland coasts or islands, they all enjoy full and the same maritime entitlements under general international law. The fact that Colombian entitlements do not go beyond the treaty boundaries with third States does not mean third States do not have interest against Nicaragua in the relevant area above the treaty boundaries. In the view of Judge Xue, by restricting the coastal projections of Colombian islands against those of the Nicaraguan coast, the Court also unduly restricts the coastal projections of Colombian islands against those of the other two third States, which has gone beyond the jurisdiction of the Court in this case. She is concerned that the principle *res inter alios acta* and Article 59 of the Statute may not help in the present situation. She believes that the Court could have avoided that effect by resting the boundary at Point 8 with an arrow pointing eastward for the time being, a technique that the Court normally employs in the maritime delimitation for the protection of the interest of third States.

In regard to the cut-off effect, Judge Xue notes that the coastal relationship between the three adjacent coastal States and Colombia in the south of the Caribbean Sea is a complicated one. She considers the extent to which the Nicaraguan mainland coast can project eastward against the coastal projections of Costa Rica and possibly those of Panama depends on the maritime delimitation between Nicaragua and its adjacent neighbour(s). Once that is decided, it would be more proper to determine how far the boundary between the Parties in the present case will run eastward from Point 8.

Lastly, Judge Xue holds that the consideration of the public order and stable legal relations should apply to the southern area as well. The boundary line in the south as drawn by the Court would virtually produce the effect of invalidating the existing bilateral agreements and drastically changing the maritime relations in the area. In her opinion, the better approach is to just point out the direction of the boundary between the Parties in this area, allowing enough space for the States concerned to first draw up their respective boundaries and then readjust their maritime relations. She regrets that the Court does not take that course.

Separate opinion of Judge Donoghue

In a separate opinion, Judge Donoghue notes that she agrees with the Court's decision not to uphold Nicaragua's claim to continental shelf in the area more than 200 nautical miles of its coast, because Nicaragua did not adduce sufficient evidence to support the claim. She has misgivings about the reasoning that the Court gives for rejecting the claim, which suggests that the Court will not delimit continental shelf beyond 200 nautical miles of the coast of any State party to the 1982 United Nations Convention on the Law of the Sea ("UNCLOS") before the outer limits of such continental shelf have been established by that State in accordance with Article 76 of UNCLOS. She takes the view that delimitation of maritime boundaries and delineation of the outer limits of continental shelf are distinct exercises. The methodology proposed by Nicaragua blurs this distinction, because it uses the delineation of the outer limits of the continental shelf as a step in delimitation of the boundary. Nonetheless, in other circumstances, it may be appropriate to delimit an area of continental shelf beyond 200 nautical miles of a State's coast before the outer limits of the continental shelf have been established. It is better to leave open the door to such an outcome, so that the Court and the Commission on the Limits of the Continental Shelf, a body established by UNCLOS, may proceed in parallel to contribute to the public order of the oceans and the peaceful resolution of maritime boundary disputes.

Judge Donoghue also recalls that she dissented from the Court's 2011 Judgments denying applications for intervention by Costa Rica and Honduras. She continues to believe that both States met the criteria for intervention and offers an illustration of a concrete interest of a legal nature on the part of Honduras.

Declaration of Judge ad hoc Mensah

Judge ad hoc Mensah states in a declaration that although he agrees with the decision not to uphold Nicaragua's claim to a continental shelf in the area beyond 200 nautical miles of its coast, he has some concerns regarding the Court's reasoning for the decision.

In particular, Judge Mensah has problems with the reference in the Judgment to the 2007 decision in the Nicaragua v. Honduras case, where the Court stated that "any claim to continental shelf rights beyond 200 miles must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder". Judge Mensah notes the Court's suggestion that the statement in the 2007 Judgment was intended to apply only to claims by States parties to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), but asserts that the Court's reliance on that statement, as well as the Court's arguments based on Nicaragua's obligations under UNCLOS, in a case agreed to be governed by customary international law, may nonetheless have troubling implications for States that are not parties to UNCLOS when they seek delimitation of their entitlements to continental shelf vis-à-vis non-parties to the treaty. Judge Mensah's concern is that the Judgment might be interpreted to suggest that a court or tribunal must, in every case, automatically rule that it cannot decide a dispute that concerns the delimitation of continental shelf beyond 200 nautical miles of a State's

coast if that State has not established the outer limits of its continental shelf pursuant to Article 76. In his view, the possibility should be left open that, depending on the circumstances of the particular case, it may be possible and appropriate to decide on such a dispute.

With respect to the present case, Judge Mensah explains that he would have preferred the Judgment to make it clear that the evidence submitted by Nicaragua did not provide a sufficient basis for the Court to accede to Nicaragua's delimitation request in the area beyond 200 nautical miles of its coast not because Nicaragua had not yet established outer limits on the basis of a recommendation from the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8, of UNCLOS, but rather because the evidence presented to the Court by Nicaragua was inadequate.

Judge Mensah also considers that the Judgment does not give sufficient weight to the rights and interests of third States, the effect and significance of bilateral agreements concluded in the area and their implications for the "public order of the oceans". It is not clear, in his view, that reliance on Article 59 of the Court's Statute alone will provide adequate protection to those third States or achieve the objective of stability and practicability in the Western Caribbean Sea.

Declaration of Judge ad hoc Cot

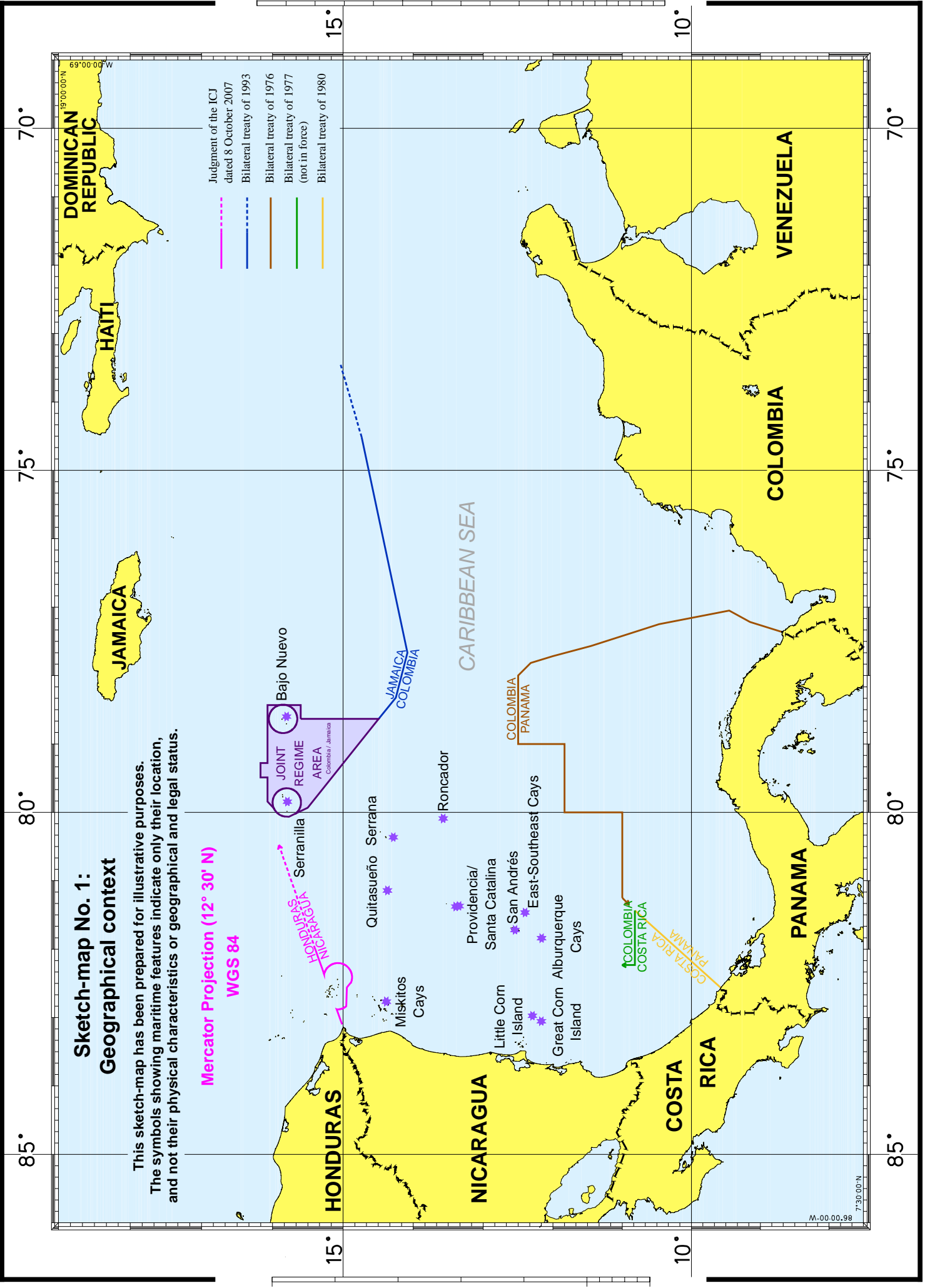
Judge ad hoc Cot agrees on the whole with the Judgment of the Court. However, he has serious reservations about certain points.

Judge Cot regrets the strictly bilateral approach adopted by the Court in its treatment of the dispute. The western Caribbean is a complex and sensitive maritime area. States have established a series of treaties which go beyond mere questions of delimitation and deal with the protection of the marine environment, the sharing of fish stocks, the exploitation of resources, scientific research and the fight against drug trafficking. It is this multilateral management of the maritime area that is today called into question by the Judgment. More specifically, Judge Cot considers that the delimitation as established by the Judgment affects the rights of third States. Article 59 of the Statute of the Court does not suffice to protect those rights.

Moreover, Judge Cot considers that the delimitation line drawn between the mainland coast of Nicaragua and the San Andrés Archipelago appears overly complicated. The Court would have done well to adhere to its past jurisprudence (Libya/Malta, Jan Mayen), and drawn a basically simplified provisional median line, and then displaced that line eastwards in order to take account of the considerable disparity of coastal lengths. The result would not have been very different from the one reached by the Court. However, it would have been clearer, more readily justifiable, and easier for the many parties involved to comply with in the Caribbean Sea.

Lastly, Judge Cot considers that the procedure provided for by Article 76, paragraph 8, of the 1982 Convention does not fall within the scope of customary international law and is thus not relevant to the present case, since Colombia is not a party to the Convention. The Court should have confined itself to examining the evidence produced by Nicaragua to find that it was not sufficient and to reject Nicaragua's request to delimit its continental shelf beyond 200 nautical miles. On this point, Judge Cot fully agrees with the views expressed by Judge ad hoc Mensah.

- Sketch-map No. 1: Geographical context;
- Sketch-map No. 2: Delimitation claimed by Nicaragua;
- Sketch-map No. 3: Delimitation claimed by Colombia;
- Sketch-map No. 4: The relevant coasts and the relevant area according to Nicaragua;
- Sketch-map No. 5: The relevant coasts and the relevant area according to Colombia;
- Sketch-map No. 6: The relevant coasts as identified by the Court;
- Sketch-map No. 7: The relevant maritime area as identified by the Court;
- Sketch-map No. 8: Construction of the provisional median line;
- Sketch-map No. 9: Construction of the weighted line;
- Sketch-map No. 10: The simplified weighted line;
- Sketch-map No. 11: Course of the maritime boundary.

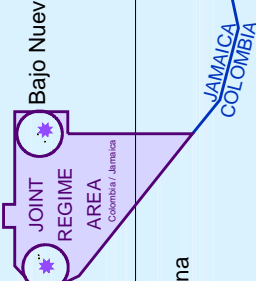


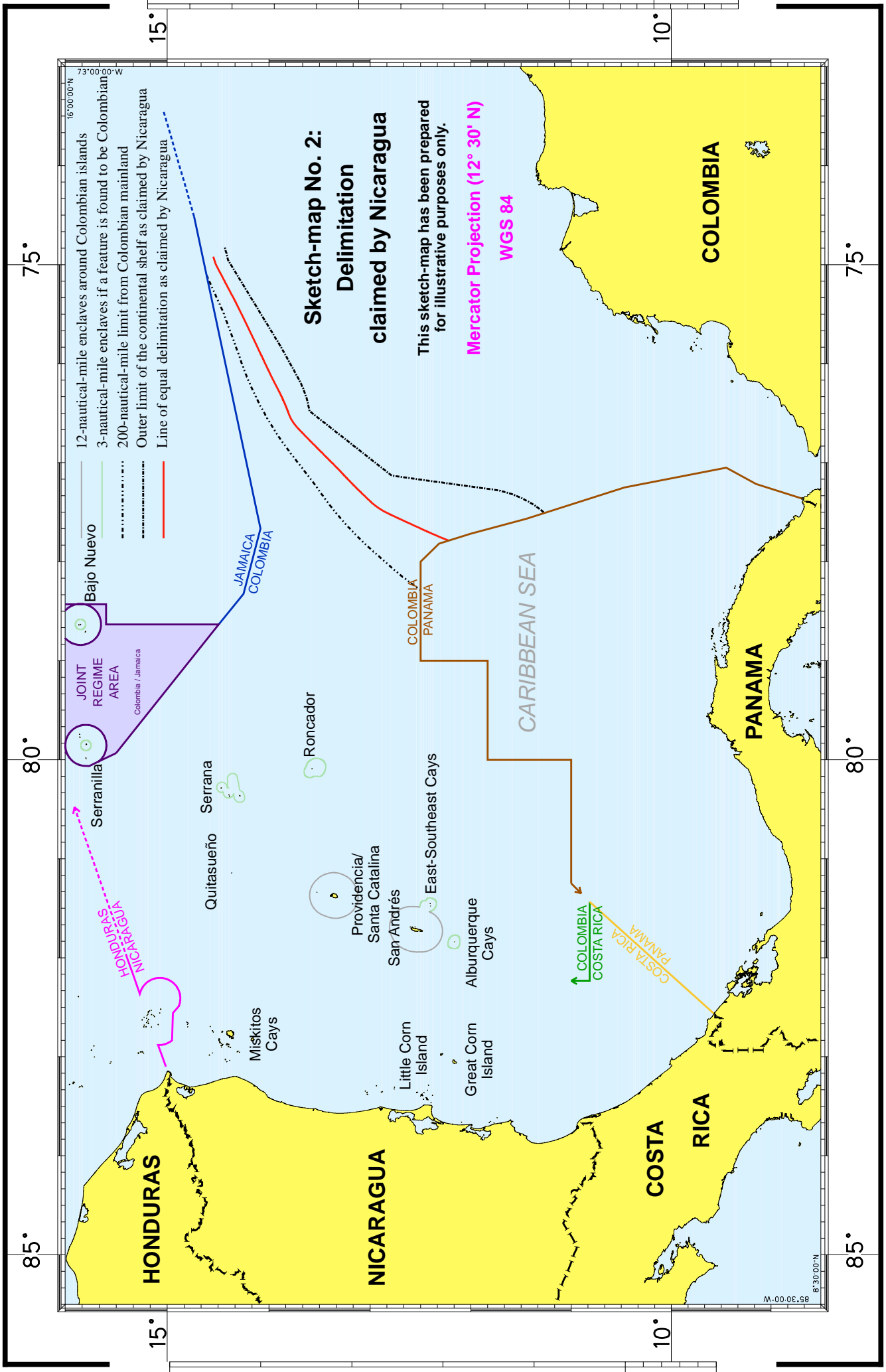
Sketch-map No. 1: Geographical context

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

- 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





**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

Bajo Nuevo
JAMAICA
COLOMBIA

JOINT
REGIME
AREA
Colombia / Jamaica

Serranía
HONDURAS
NICARAGUA

Quitasueño
Serranía

Roncador

Providencia/
Santa Catalina
San Andrés

East-Southeast Cays

Alburquerque
Cays

Little Corn
Island

Great Corn
Island

COLOMBIA
COSTA RICA
PANAMA

CARIBBEAN SEA

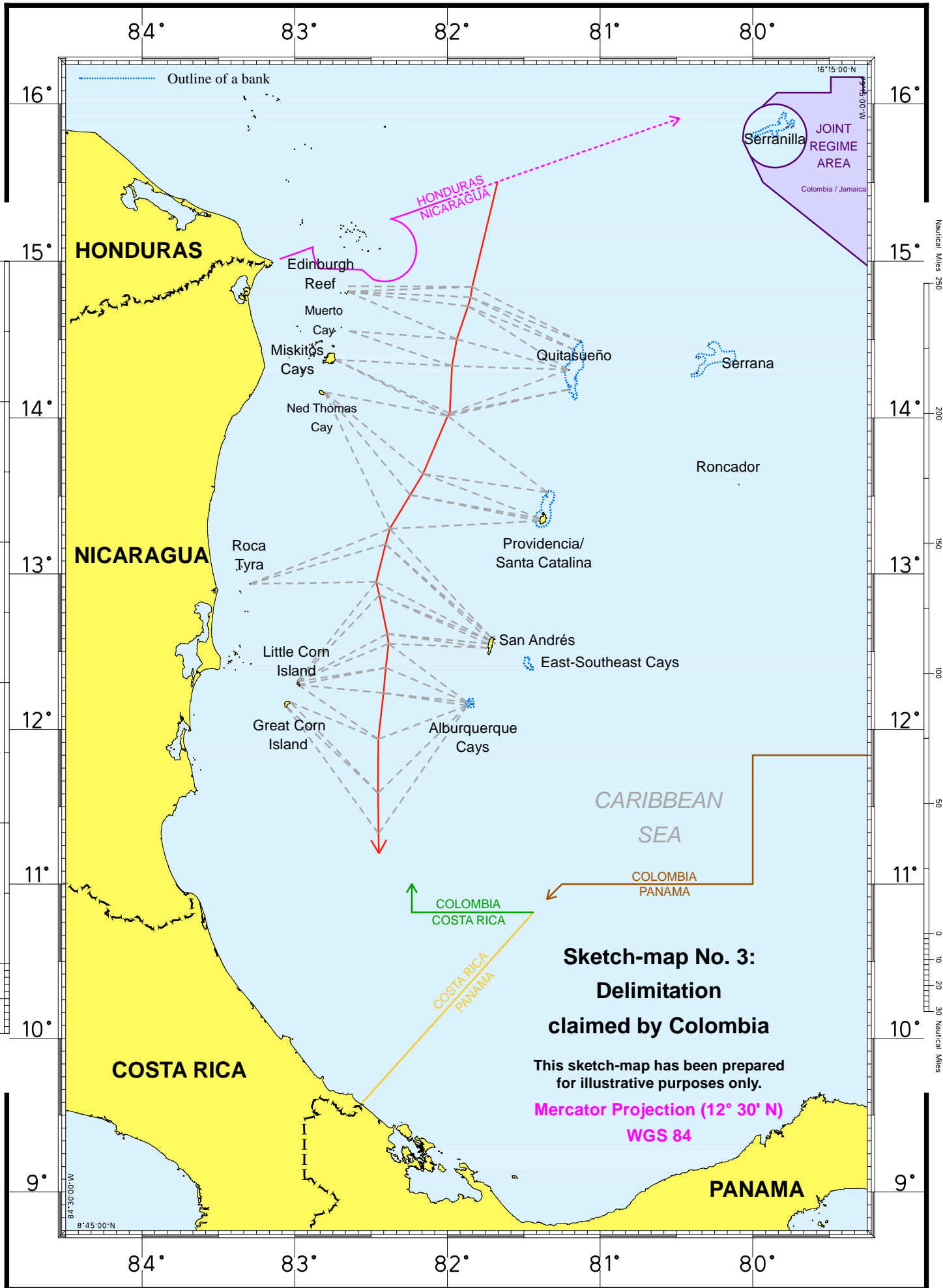
PANAMA

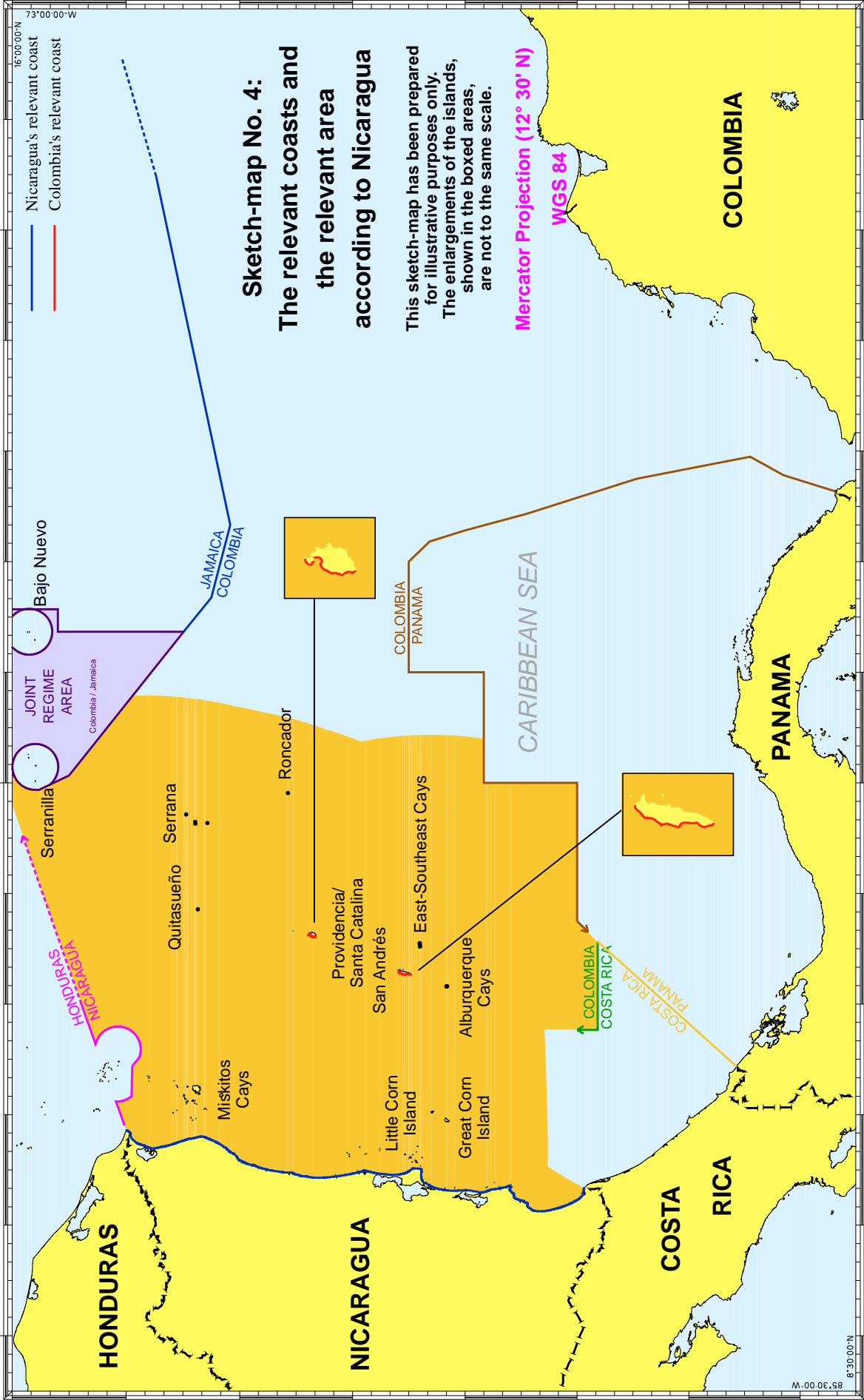
COLOMBIA

COSTA
RICA

HONDURAS

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)

Nicaragua's relevant coast
Colombia's relevant coast

JOINT
REGIME
AREA
Colombia/ Jamaica

HONDURAS
NICARAGUA

COLOMBIA
PANAMA

COLOMBIA
COSTA RICA

COSTA RICA
PANAMA

CARIBBEAN SEA

HONDURAS

NICARAGUA

COSTA
RICA

PANAMA

COLOMBIA

73°00'00"W

16°00'00"N

8°30'00"N

M-00.00.66

75°

80°

85°

15°

10°

75°

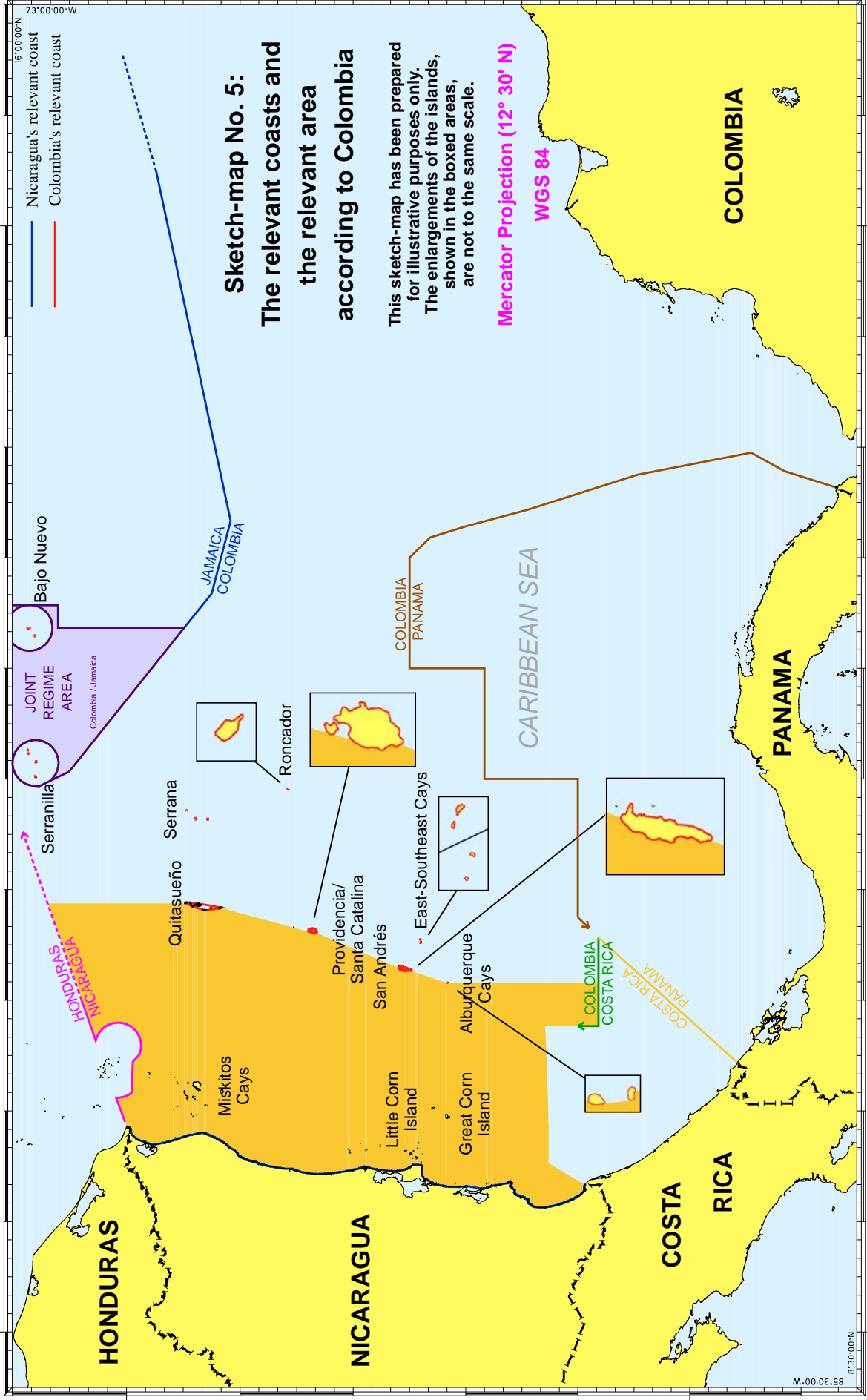
80°

85°

75°

80°

85°



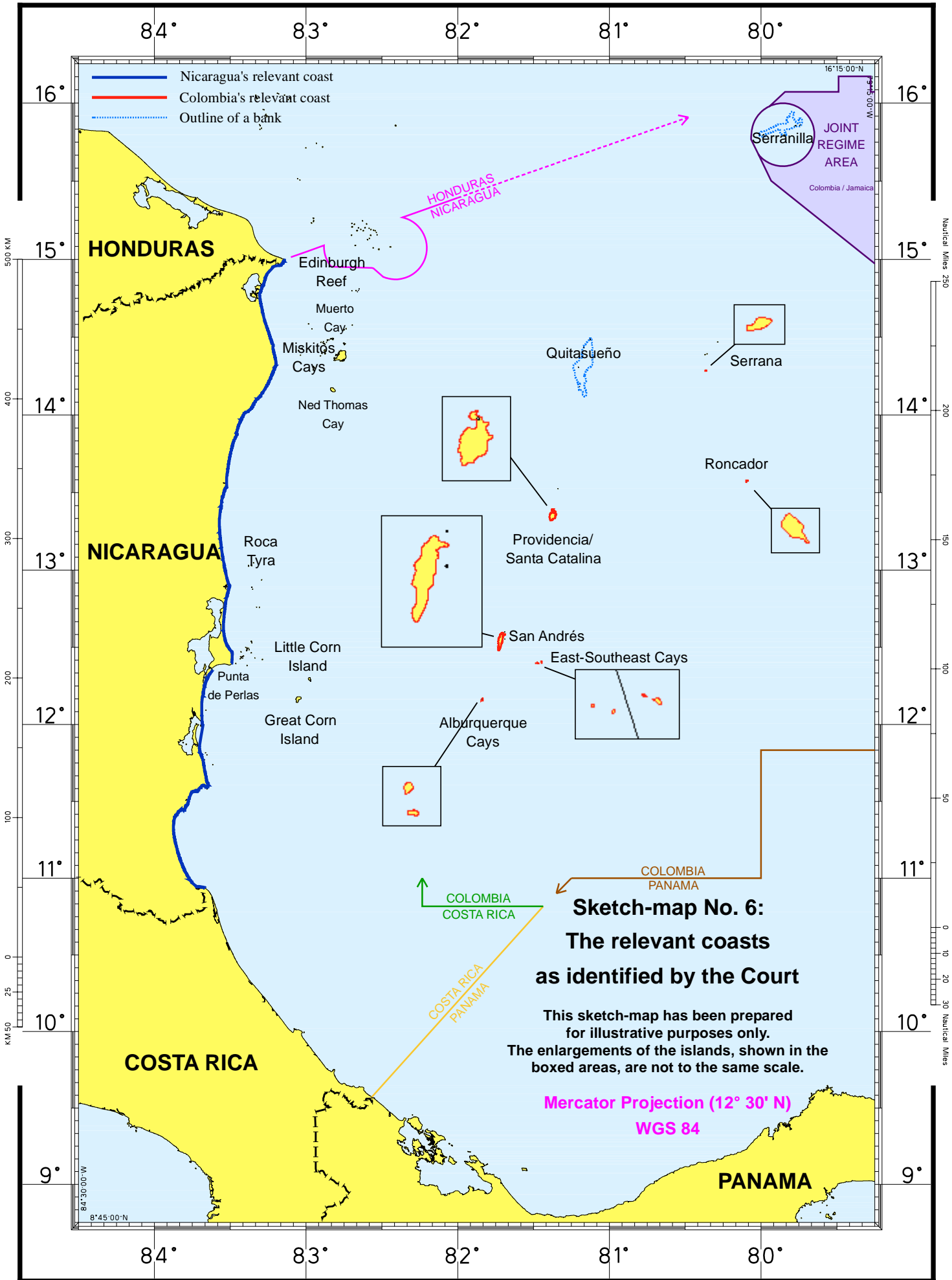
75°

80°

85°

15°

10°



**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

COLOMBIA
PANAMA

COLOMBIA
COSTA RICA

COSTA RICA
PANAMA

15°

10°

75°

75°

80°

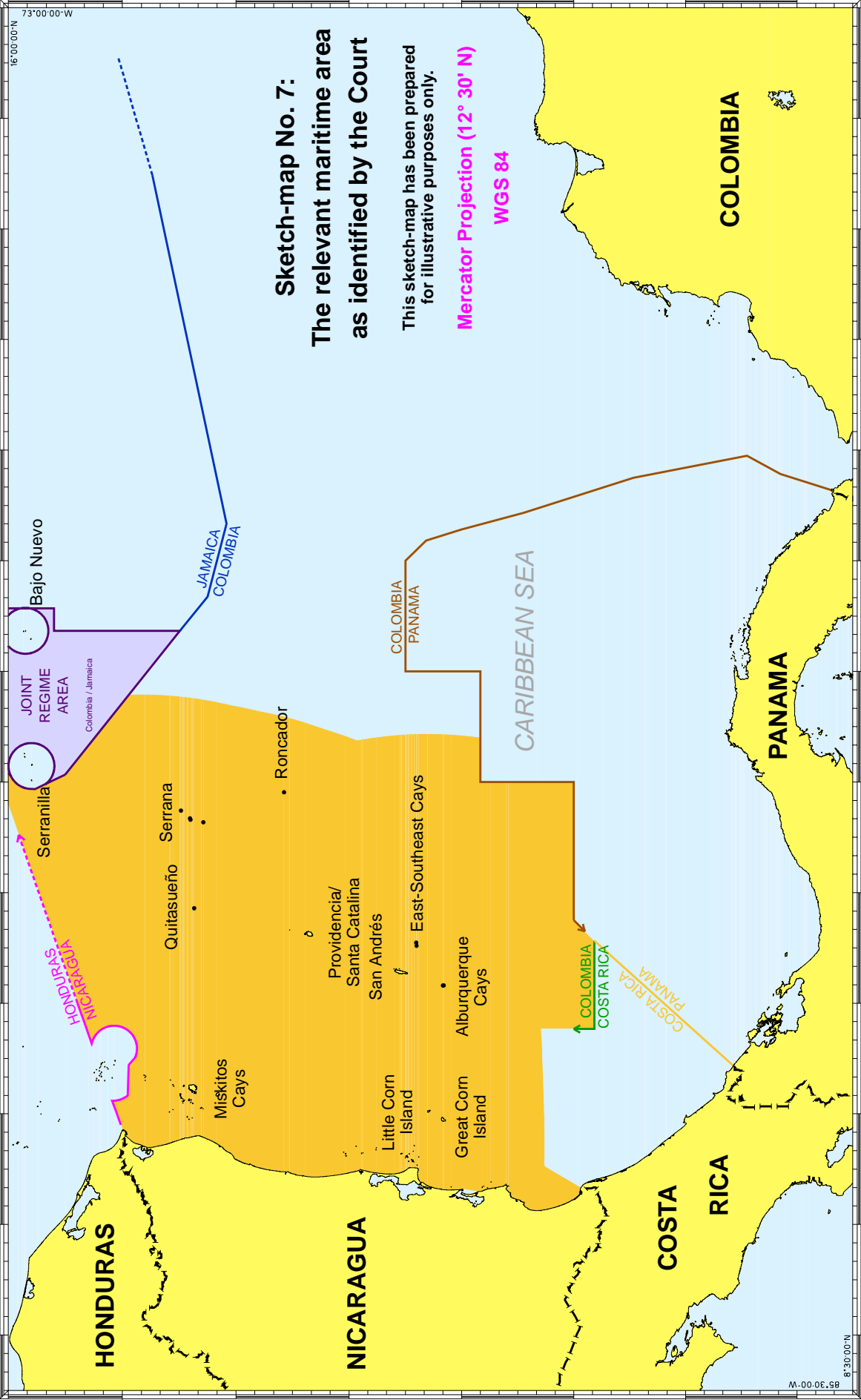
80°

85°

85°

15°

10°



**Sketch-map No. 7:
The relevant maritime area
as identified by the Court**

This sketch-map has been prepared
for illustrative purposes only.

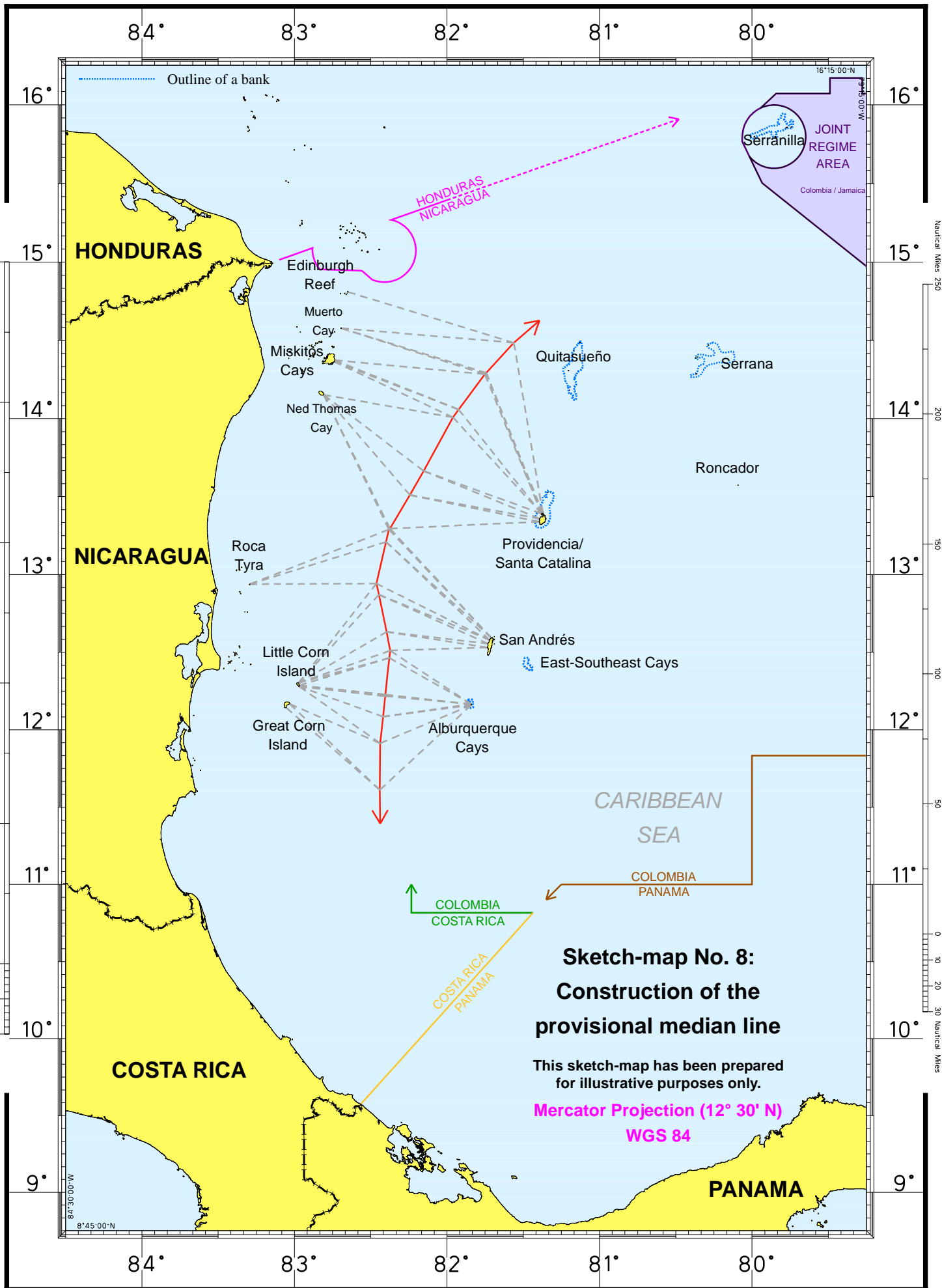
Mercator Projection (12° 30' N)
WGS 84

16°00'00"N

73°00'00"W

8°30'00"N

M.00.0E.98



..... Outline of a bank

Serranilla
 JOINT REGIME AREA
 Colombia / Jamaica

HONDURAS
 NICARAGUA

HONDURAS

NICARAGUA

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

CARIBBEAN
 SEA

COLOMBIA
 PANAMA

COLOMBIA
 COSTA RICA

COSTA RICA
 PANAMA

500 KM
400
300
200
100
0
25
KM 50

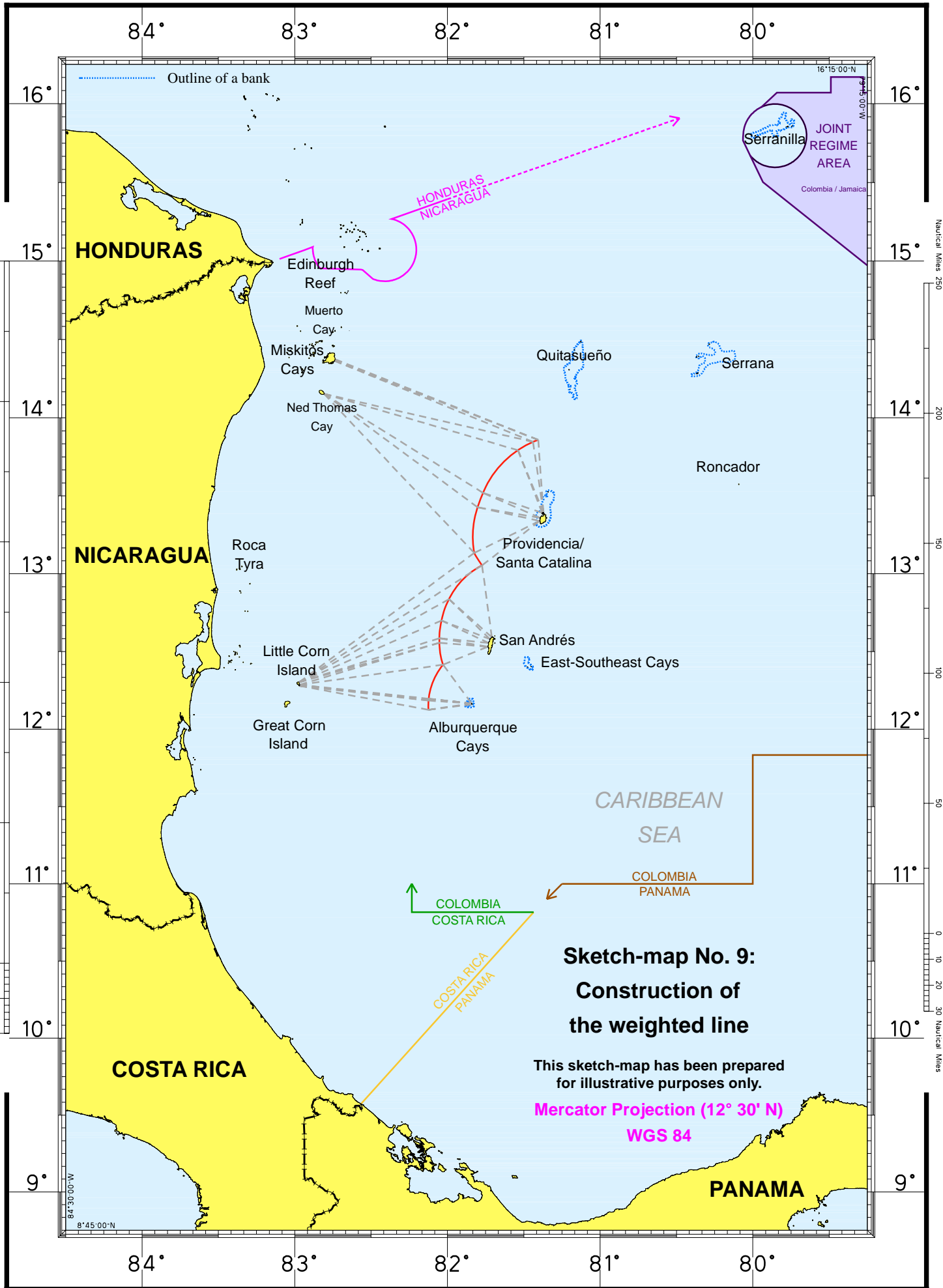
Nautical Miles 250
200
150
100
50
0
10
20
30 Nautical Miles

84° 83° 82° 81° 80°

16° 15° 14° 13° 12° 11° 10° 9°

84°30'00" W
 8°45'00" N

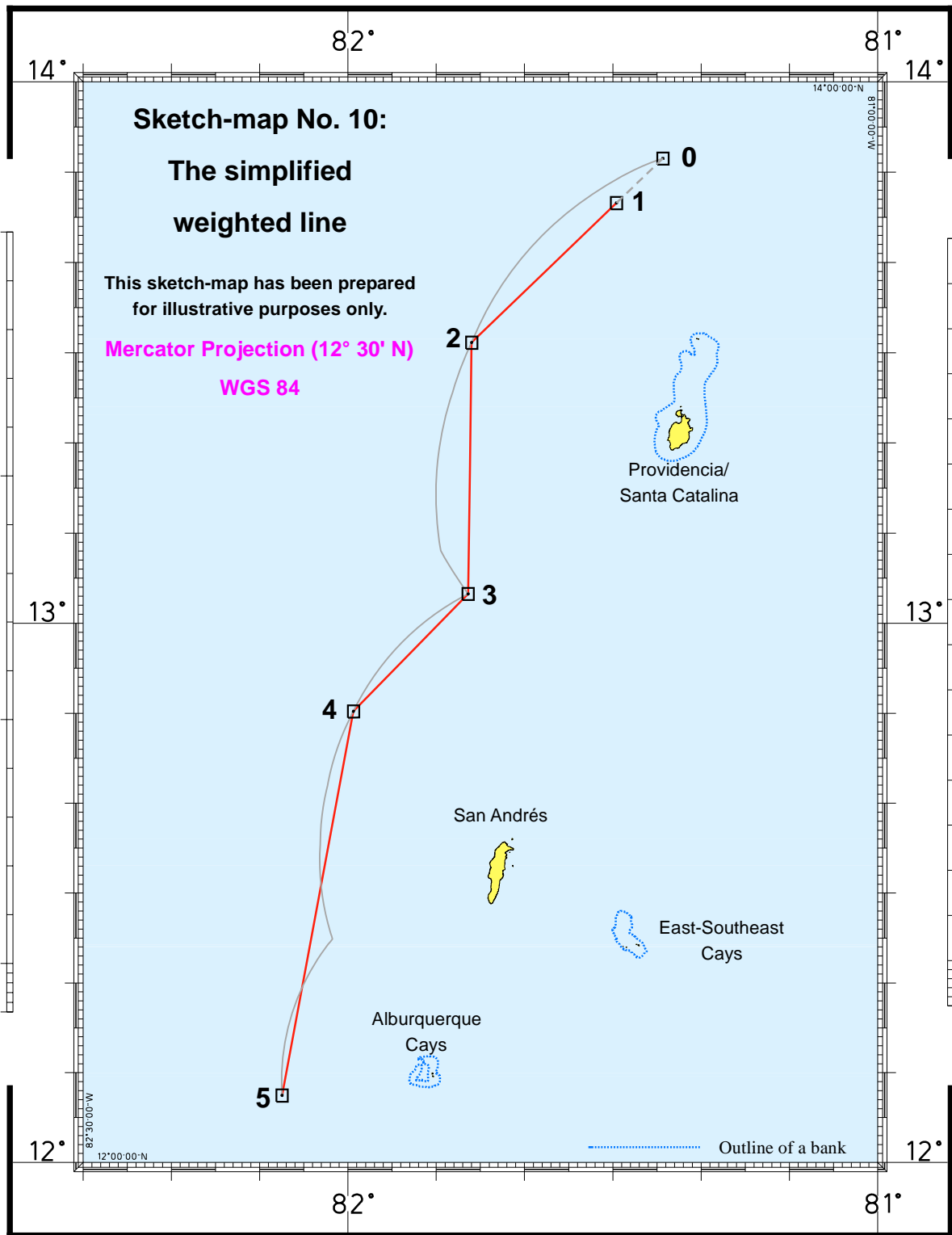
16°15'00" N

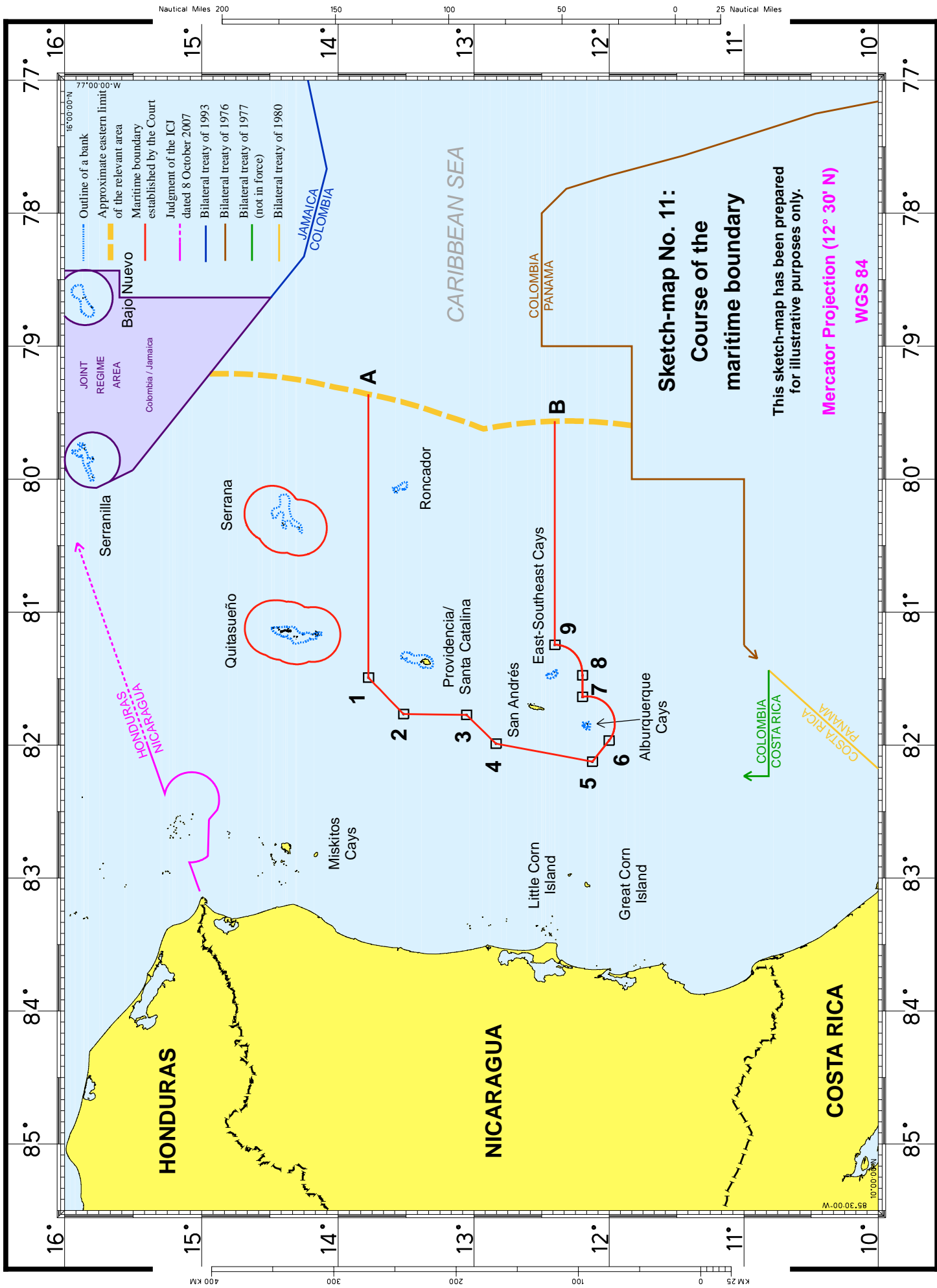


**Sketch-map No. 9:
Construction of
the weighted line**

This sketch-map has been prepared
for illustrative purposes only.

Mercator Projection (12° 30' N)
WGS 84





NICARAGUA
HONDURAS

**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

- 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

Bajo Nuevo

Serranilla

Quitasueño

Serrana

Roncador

Providencia/
Santa Catalina

San Andrés

East-Southeast Cays

Alburquerque Cays

Little Corn Island

Great Corn Island

Miskitos Cays

A

B

1

2

3

4

5

6

7

8

9

COLOMBIA
COSTA RICA

COSTA RICA
PANAMA

JAMAICA
COLOMBIA

COLOMBIA
PANAMA

M-00.00.58
10/00/00K1