

**INTERNATIONAL COURT OF JUSTICE**

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**DISPUTE CONCERNING THE  
QUESTION OF THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN  
NICARAGUA AND COLOMBIA BEYOND 200 NAUTICAL MILES FROM THE  
NICARAGUAN COAST  
(NICARAGUA V. COLOMBIA)**

**MEMORIAL  
OF THE REPUBLIC OF NICARAGUA**

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## **CHAPTER 1**

### **INTRODUCTION**

1.1 This case is the continuation of the Application made by Nicaragua concerning the delimitation of its continental shelf boundary with Colombia, which resulted in the Court's Judgment dated 19 November 2012.

1.2 The present case was instituted by Nicaragua's Application dated 16 September 2013. It concerns the delimitation of the boundary between, on the one hand, that part of the continental shelf of Nicaragua that lies beyond the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and on the other hand, the continental shelf of Colombia.

1.3 In its Application, Nicaragua requested the Court to:

- (1) determine the precise course of the boundary of the continental shelf between Nicaragua and Colombia in accordance with the principles and rules of international law, and
- (2) indicate the rights and duties of the two States in relation to the area of overlapping claims and the use of its resources pending the precise delimitation of the line of the boundary

These proceedings are the latest in the case arising from the group of related legal issues in the territorial and maritime dispute between Nicaragua and Colombia, which was first put before the Court in 2001.<sup>1</sup>

## **A. History of the Dispute**

### **1. The 2001 Application and the 2007 and 2011 Judgments**

1.4 In its Application dated 6 December 2001, Nicaragua asked the Court (i) to declare 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), and (2) in the light of those determinations of title, 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.

1.5 In July 2003, Colombia raised preliminary objections to the jurisdiction of the Court. Colombia argued *inter alia* that there was no extant dispute, the matters in issue having been settled by a treaty concluded by Colombia and Nicaragua in 1928, and that the real purpose behind Nicaragua's Application was maritime delimitation rather than the determination of sovereignty over the maritime features.

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<sup>1</sup> See Nicaragua's Application Instituting Proceedings in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, 6 December 2001.

1.6 On 13 December 2007, the Court delivered its Judgment in respect of Colombia's preliminary objections.<sup>2</sup> It upheld in part Colombia's first preliminary objection, deciding that the 1928 treaty had settled the question of sovereignty over the islands of San Andrés, Providencia and Santa Catalina in favour of Colombia, but had not settled the question of sovereignty over the other maritime features. The Court found that it had jurisdiction to adjudicate upon the dispute concerning sovereignty over those other maritime features, and upon the dispute concerning maritime delimitation. Colombia's second preliminary objection was rejected.

1.7 Having rejected, in its Judgments dated 4 May 2011, applications by Costa Rica<sup>3</sup> and Honduras<sup>4</sup> to intervene in the proceedings, the Court proceeded to hear the merits of the case.

## **2. The 2012 Judgment and the limits on its scope**

1.8 The Court delivered its Judgment on the merits on 19 November 2012.<sup>5</sup> The Court found that Colombia has sovereignty over the islands of Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla,<sup>6</sup> and proceeded to determine the line of the single maritime boundary delimitating the continental shelf and exclusive economic zones of Nicaragua and Colombia out to the point where it reaches the 200-nautical-mile limit from the baselines

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<sup>2</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007*, p.83.

<sup>3</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2011*, p. 348.

<sup>4</sup> *Ibid.* p. 420.

<sup>5</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 624.

<sup>6</sup> *Ibid.* para. 251(1).

from which the territorial sea of Nicaragua is measured,<sup>7</sup> and to draw a single maritime boundary enclaving Quitasueño and Serrana.<sup>8</sup>

1.9 The Court rejected Nicaragua's request for a declaration that Colombia was in violation of international law by preventing Nicaragua from having access to natural resources east of the 82<sup>nd</sup> meridian,<sup>9</sup> on the ground that prior to the Court's decision the maritime boundary had not been settled and that the Judgment had not attributed to Nicaragua the whole of the area in respect of which Nicaragua sought the declaration.<sup>10</sup>

1.10 It is the findings in sub-paragraphs (2) and (3) of the *dispositif* of the 2012 Judgment that are of most relevance for the present proceedings. Those sub-paragraphs read as follows:

“(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”;

(3) Unanimously,  
*Finds* that it cannot uphold the Republic of Nicaragua's claim contained in its final submission I (3)”.

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<sup>7</sup>*Ibid.* para. 251(4).

<sup>8</sup>*Ibid.* para 251(5).

<sup>9</sup>*Ibid.* para 251(6).

<sup>10</sup>*Ibid.* para 250.



1.11 Sub-paragraph (2) refers to the area of overlapping entitlements beyond 200 nautical miles from Nicaragua's baselines. Nicaragua is entitled under Article 76(1) of the 1982 United Nations Convention on the Law of the Sea ('UNCLOS')<sup>11</sup> to a continental shelf extending beyond 200 nautical miles from its baselines, out as far as the outer edge of the continental margin, as defined in Article 76. The continental margin of Colombia does not reach 200 nautical miles from its mainland baselines, but Colombia is entitled to a continental shelf extending to 200 nautical miles.<sup>12</sup>

1.12 The entitlements of Nicaragua and Colombia overlap, as is depicted on Sketch-map No.2 in the Court's 2012 Judgment, reproduced here as Figure 1.1. Nicaragua's final submission I (3)<sup>13</sup> related to the delimitation of this area of overlap.

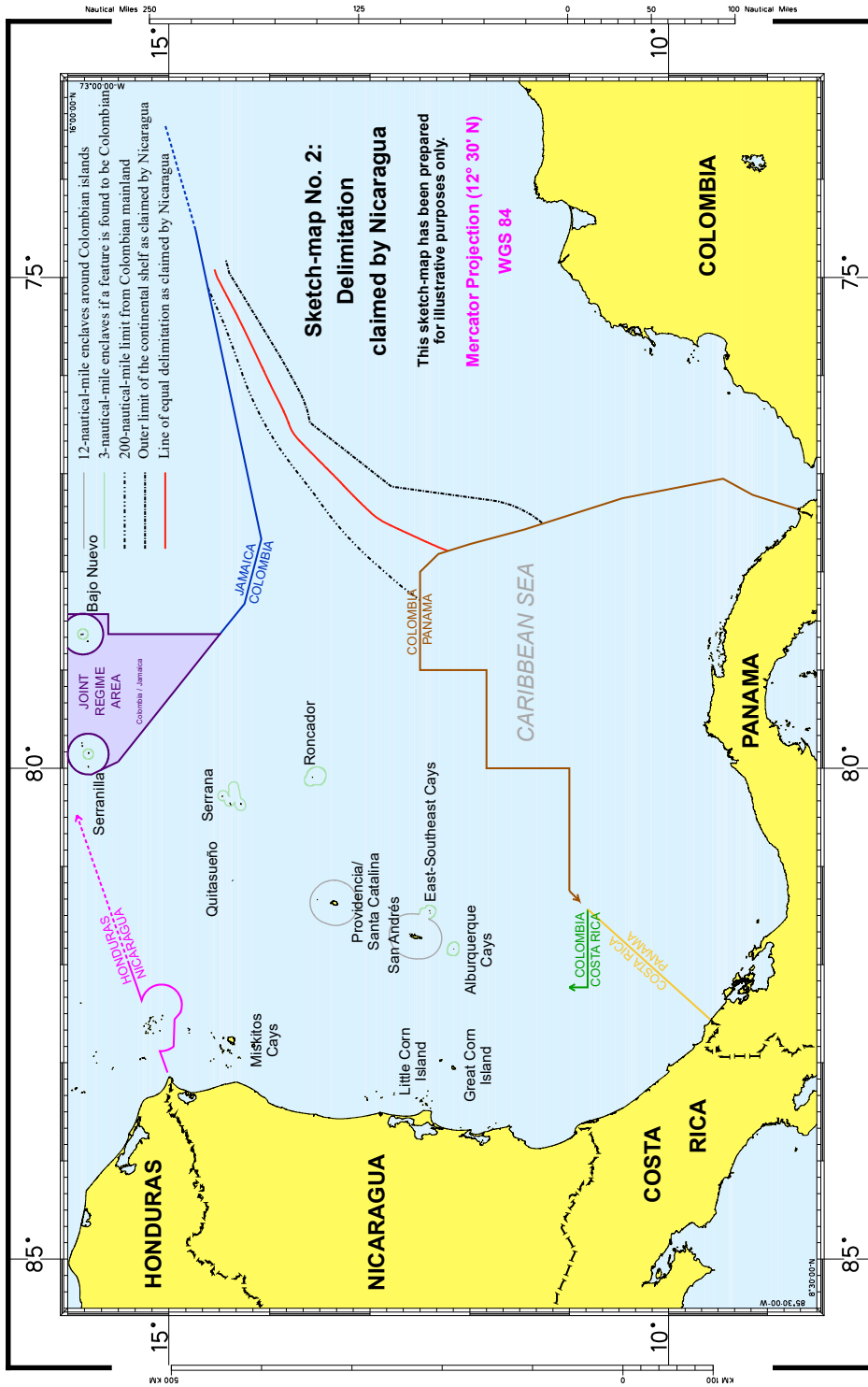
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<sup>11</sup> Reproduced below, at paragraph 1.15.

<sup>12</sup> Supranote 5, para. 105.

<sup>13</sup> *Ibid.* para 17.

Figure 1.1 Overlapping Continental shelf Entitlements



Sketch map 2 from *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, p 55

1.13 This overlap was put squarely before the Court in a revision of Nicaragua’s initial claim. Colombia objected during the hearing that Nicaragua’s continental shelf claim beyond 200 nautical miles was a new claim, not implicit in Nicaragua’s Application or Memorial, and was for that reason inadmissible.<sup>14</sup> The Court was “not convinced by Colombia’s contentions that this revised claim transforms the subject-matter of the dispute brought before the Court”,<sup>15</sup> and decided that Nicaragua’s claim regarding the continental shelf beyond 200 nautical miles from its baselines was admissible.<sup>16</sup> Sub-paragraph (2) in the *dispositif* gives effect to that decision.

1.14 The Court proceeded to consider Nicaragua’s claim in relation to the continental shelf beyond 200 nautical miles.<sup>17</sup> Nicaragua is a party to UNCLOS, but Colombia is not. Accordingly, the Court applied customary international law, but accepted that the provisions of UNCLOS Article 76(1) concerning the definition of the continental shelf reflect customary international law.<sup>18</sup>

1.15 Article 76(1) reads as follows:

“The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

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<sup>14</sup> *Ibid.* para 107.

<sup>15</sup> *Ibid.* para 109.

<sup>16</sup> *Ibid.* para 112.

<sup>17</sup> *Ibid.* paras.113 – 131.

<sup>18</sup> *Ibid.* para 118. The Court said that “it does not need to decide whether other provisions of Article 76 of UNCLOS form part of customary international law.”

1.16 UNCLOS provides for the establishment of the outer limit of the continental shelf of a coastal State party beyond 200 nautical miles. Article 76 paragraphs (7)–(10) read as follows:

“7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.”

1.17 Rule 45 of the Rules of Procedure of the Commission on the Limits of the Continental Shelf (‘the Commission’ or ‘CLCS’) requires that an UNCLOS State Party intending to establish the outer limits of its continental shelf beyond

200 nautical miles from its baselines should submit to the Commission particulars of such limits along with supporting scientific and technical data, within 10 years of the entry into force of the Convention for that State.<sup>19</sup>

1.18 That deadline proved unfeasible for some coastal States Parties, in particular developing countries, and it was therefore decided by the States Parties to UNCLOS that the obligation to submit data within 10 years

“may be satisfied by submitting to the Secretary-General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf.”<sup>20</sup>

1.19 At the date of the hearing in the Court, Nicaragua, relying upon that decision by the UNCLOS States Parties, had satisfied its obligation under Article 4 of UNCLOS Annex II to submit particulars of the limits of its continental shelf by filing preliminary information. Nicaragua’s full submission was provided to the Commission later, on 24 June 2013.

1.20 Emphasising that Nicaragua had not at the time made the full filing that was required before the Commission could make its recommendations under

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<sup>19</sup> Rules of Procedure of the Commission on the Limits of the Continental Shelf, UN Doc. CLCS /40/Rev.1, 17 April 2008, < <http://www.un.org/Docs/journal/asp/ws.asp?m=CLCS/40/Rev.1> >, Rule 45. For a State Party for which the Convention entered into force before 13 May 1999, the ten-year time period is taken to have commenced on 13 May 1999, when the Commission adopted its Scientific and Technical Guidelines: *see* UN Doc. SPLOS/72, 29 May 2001.

<sup>20</sup> *See* UN Doc SPLOS/183, 20 June 2008, p. 2: < <https://daccess-ods.un.org/TMP/8691020.01190186.html> >.

UNCLOS Article 76(8), Colombia argued before the Court 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”; and it said that “therefore Nicaragua has not established any entitlement to an extended continental shelf.”<sup>21</sup>

1.21 The Court held that

“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 ...”<sup>22</sup>

1.22 Thus, while Nicaragua’s claim in respect of the continental shelf beyond 200 nautical miles was admissible, the Court did not actually rule upon it. The question of the maritime boundary in that area was left open. It is the question of the location of that boundary that is now before the Court.

### **3. The 2016 Judgment**

1.23 Nicaragua filed its Application in the present case on 16 September 2013. As stated, two claims were presented in the Application:

“Nicaragua requests the Court to adjudge and declare:

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<sup>21</sup> Supranote 5, para 122.

<sup>22</sup> *Ibid.* para 129.

*First:* The precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012.

*Second:* The principles and rules of international law that determine the rights and duties of two States in relation to the area of overlapping continental shelf claims and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua's coast.”

1.24 On 14 August 2013, Colombia raised five preliminary objections to the jurisdiction of the Court. Objection (1) concerned the application of the Pact of Bogotá *ratione temporis*. In objection (3)<sup>23</sup> Colombia contended that the issues raised in Nicaragua's Application of 16 September 2013, had been explicitly decided by the Court in its 2012 Judgment, which had created a *res judicata* and accordingly precluded further consideration of the question by the Court. In objection (4), Colombia argued that Nicaragua's Application was an attempt to appeal and revise the 2012 Judgment. Those three objections were rejected by the Court.<sup>24</sup>

1.25 Colombia's second preliminary objection concerned Nicaragua's submission that the Court has 'continuing jurisdiction' after its 2012 Judgment in the *Territorial and Maritime Dispute* case. Colombia argued that unless the Court expressly reserves its jurisdiction, which it did not do in that case, there is no basis upon which it can exercise continuing jurisdiction after it has delivered its

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<sup>23</sup> This is the order in which the Court addressed the objections: *see* Judgment of 17 March 2016, paragraph 17.

<sup>24</sup> Judgment of 17 March 2016, paragraph 126.

judgment on the merits. The Court found in the present case that it has jurisdiction based on the Pact of Bogotá, and accordingly held that it was unnecessary to rule upon this second preliminary objection.<sup>25</sup>

1.26 Colombia's fifth preliminary objection was that Nicaragua's First Request was inadmissible because Nicaragua had not secured a recommendation from the Commission; and its Second Request was inadmissible because if it were to be granted (as Nicaragua requested) at the same time as the First Request it would have no object, and that the Second Request was a disguised request for provisional measures, and that there was in any event no actual dispute between the Parties.

1.27 The Court ruled that Nicaragua's Second Request was inadmissible because it did not relate to an actual dispute between the parties and did not specify what exactly the Court was being asked to decide.<sup>26</sup> Nicaragua is accordingly not pursuing its Second Request in these proceedings.

1.28 The Court's ruling in relation to Nicaragua's First Request is of the utmost importance for the next phase of these proceedings. In order to explain its position, Nicaragua will set out its understanding of what the Court has decided in this respect, referring particularly to the Court's reasoning in relation to Colombia's third and fifth preliminary objections.

1.29 The Court began by explaining the scope of sub-paragraph 3 of the operative clause (paragraph 126) of its 2012 Judgment, in which the Court found that "it cannot uphold the Republic of Nicaragua's claim" regarding its continental shelf beyond 200 nautical miles from its baselines. After a detailed

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<sup>25</sup> Judgment of 17 March 2016, paragraph 94.

<sup>26</sup> Judgment of 17 March 2016, paragraph 124.



analysis of the Judgment the Court set out its conclusion. Its importance warrants its quotation *in extenso*.

“[83.] ... the Court did not take a decision on whether or not Nicaragua had an entitlement to a continental shelf beyond 200 nautical miles from its coast. That is confirmed by the language of paragraph 129 [sc., of the 2012 Judgment] itself. The first sentence of that paragraph states that

“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”.

Not only does the reference to “the present proceedings” seem to contemplate the possibility of future proceedings, but the Court there speaks only of a continental margin which overlaps with the 200-nautical-mile entitlement from the Colombian mainland. The Judgment says nothing about the maritime areas located to the east of the line lying 200 nautical miles from the islands fringing the Nicaraguan coast, beyond which the Court did not continue its delimitation exercise, and to the west of the line lying 200 nautical miles from Colombia’s mainland. Yet, the Court was, as regards these areas, faced with competing claims by the Parties concerning the continental shelf: Nicaragua, on the one hand, claimed an extended continental shelf in these areas, and Colombia, on the other, maintained that it had rights in the same areas generated by the islands over which it claimed sovereignty, and that the Court indeed declared to be under its sovereignty.

84. It therefore follows that while the Court decided, in subparagraph 3 of the operative clause of the 2012 Judgment, that Nicaragua's claim could not be upheld, it did so because the latter had yet to discharge its obligation, under paragraph 8 of Article 76 of UNCLOS, to deposit with the CLCS the information on the limits of its continental shelf beyond 200 nautical miles required by that provision and by Article 4 of Annex II of UNCLOS.

85. The Court has clarified the content and scope of subparagraph 3 of the operative clause of the 2012 Judgment, taking into account the differing views expressed by the Parties on the subject. It has found that delimitation of the continental shelf beyond 200 nautical miles from the Nicaraguan coast was conditional on the submission by Nicaragua of information on the limits of its continental shelf beyond 200 nautical miles, provided for in paragraph 8 of Article 76 of UNCLOS, to the CLCS. The Court thus did not settle the question of delimitation in 2012 because it was not, at that time, in a position to do so.

86. The Court recalls that, in its Application, Nicaragua states that on 24 June 2013 it provided the CLCS with "final" information. This statement has not been contested by Colombia.

87. The Court accordingly considers that the condition imposed by it in its 2012 Judgment in order for it to be able to examine the claim of Nicaragua contained in final submission I(3) has been fulfilled in the present case<sup>27</sup>

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<sup>27</sup> Judgment of 17 March 2016, paragraphs 83 – 87.

1.30 Later in its 2016 Judgment the Court reiterated that it had “held, in its 2012 Judgment, that Nicaragua had to submit such information [sc., as required by UNCLOS Article 76(8)] as a prerequisite for the delimitation of the continental shelf beyond 200 nautical miles by the Court.”<sup>28</sup>

#### **4. The role of the CLCS and its impact on maritime delimitation issues**

1.31 The Court considered in detail the scope of the Commission’s competence. Noting that the Commission’s main role is to “[prevent] the continental shelf from encroaching on the ‘Area and its resources’, which are ‘the common heritage of mankind’ (UNCLOS Article 136)”,<sup>29</sup> the Court said:

“110. Because the role of the CLCS relates only to the delineation of the outer limits of the continental shelf, and not delimitation, Article 76 of UNCLOS states in paragraph 10 that “[t]he provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.

...

112. The procedure before the CLCS relates to the delineation of the outer limits of the continental shelf, and hence to the determination of the extent of the sea-bed under national jurisdiction. It is distinct from the delimitation of the continental shelf, which is governed by Article 83 of UNCLOS and effected by agreement between the States concerned, or by recourse to dispute resolution procedures.”<sup>30</sup>

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<sup>28</sup> Judgment of 17 March 2016, paragraph 105.

<sup>29</sup> Judgment of 17 March 2016, paragraph 109.

<sup>30</sup> Judgment of 17 March 2016, paragraphs 110, 112.

1.32 The Court acknowledged that “it is possible that the two operations [sc., delineation of the outer limit of the continental shelf, and delimitation of inter-State continental shelf boundaries] may impact upon one another”, but observed that the Commission “has ... established procedures, in accordance with Annex II to UNCLOS, to ensure that its actions do not prejudice matters relating to delimitation.”<sup>31</sup>

1.33 The Court’s conclusion on the role of the Commission in the context of delimitation disputes was clear:

“The Court accordingly considers that, since the delimitation of the continental shelf beyond 200 nautical miles can be undertaken independently of a recommendation from the CLCS, the latter is not a prerequisite that needs to be satisfied by a State party to UNCLOS before it can ask the Court to settle a dispute with another State over such a delimitation.”<sup>32</sup>

1.34 The key points in these important passages from the 2016 Judgment are, in Nicaragua’s submission, as follows:

1. The area that lies east of the 200-nautical-mile limit measured from Nicaragua’s baselines, and (north)west of Colombia’s mainland has not been delimited.
2. The reason that the boundary in that area has not been delimited is that Nicaragua had not (at that time) fulfilled the precondition under

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<sup>31</sup> Judgment of 17 March 2016, paragraph 113.

<sup>32</sup> Judgment of 17 March 2016, paragraph 114.

UNCLOS Article 76(8) by filing its full submission with the Commission.

3. The filing of the full submission to the Commission was a procedural precondition to the delimitation of the boundary in that area.

4. That procedural precondition is now satisfied, and the obstacle to the delimitation of this area by the Court has been removed. It is not necessary for the Court to wait for the Commission to issue a recommendation before it delimits this area.

5. The area that lies east of the 200-nautical-mile limit measured from Nicaragua's baselines, and within the 200-nautical-mile limit measured from Colombia's islands also has not been delimited.

6. The Court did not suggest that the principles applicable to the delimitation of these undelimited areas are in any way different from the principles that it has laid down in its case law in respect of other continental shelf delimitation disputes that have come before it.

1.35 The way is thus now clear for Nicaragua to put before the Court the evidence of its entitlement to continental shelf rights over the seabed beyond its 200 nautical mile limit, and insofar as that entitlement overlaps with an entitlement of Colombia, for the Court to draw the boundary between the continental shelves of Nicaragua and Colombia.

## **5. Colombia's rejection of Nicaragua's entitlement**

1.36 Colombia does not accept that Nicaragua has any entitlement to continental shelf rights in respect of areas lying more than 200 nautical miles from Nicaragua's baselines. In its Preliminary Objections, Colombia sought to draw a distinction between the continental shelf within 200 nautical miles of a coast, to which a coastal State is entitled *ipso jure*,<sup>33</sup> and the continental shelf beyond 200 nautical miles and up to the edge of the continental margin, in respect of which there is "the potentiality of entitlement."<sup>34</sup> No authority was cited for that distinction. UNCLOS Article 76 draws no such distinction between different parts of a continental shelf. Nothing in the Court's 2012 or 2016 Judgments indicates that there is such a distinction.

1.37 Nicaragua has filed with this Memorial 2 copies of its full submission to the Commission, which contain all the scientific evidence on which it relies for its assertions concerning the geology and geomorphology of the relevant areas.<sup>35</sup>

## **6. Colombia's rejection of the Judgment and the new Nicaraguan Application.**

1.38 As the Court is aware, Colombia rejected the Court's 2012 Judgment and denounced the Pact of Bogotá in response to the Court's delimitation.

1.39 On 27 November 2012, Colombia's Minister of Foreign Affairs, María Ángela Holguín, stated: "The enemy is the Court which did not base its decision on the law, that Judgment is full of inadequacies and one reads it and cannot

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<sup>33</sup> *Preliminary Objections of the Republic of Colombia*, August 2014, paragraph 7.6.

<sup>34</sup> *Preliminary Objections of the Republic of Colombia*, August 2014, paragraph 7.7.

<sup>35</sup> See letters from H.E. Carlos José Argüello Gómez to the Registrar of the ICJ, Ref: HOL-EMB-227, 28 September 2016.

believe that the states parties that conform the Court elected those judges to decide such an important Judgment”.<sup>36</sup>

1.40 The Foreign Minister followed this statement with a letter to the Secretary General of the Organization of American States denouncing the Pact of Bogotá. The letter reads in pertinent part:

“I have the honor to address Your Excellency pursuant to Article LVI of the American Treaty on Pacific Settlement in order to give notice to the General Secretariat of the Organization of American States, which you head, as the successor to the Pan American Union, that the Republic of Colombia denounces as of today the “American Treaty on Pacific Settlement”, signed on April 30, 1948, whose instrument of ratification was deposited by Colombia on November 6, 1968.”<sup>37</sup>

1.41 The following day, President Santos explained that Colombia’s decision to denounce the Pact was in response to the Court’s decision on delimitation:

“I have decided that the highest national interests demand that the territorial and maritime boundaries be fixed through treaties, as has been the legal tradition of Colombia, and not through judgments rendered by the International Court of Justice.

...

This is why yesterday Colombia denounced the Pact of Bogotá. Proper notice was given to the Secretary General of the Organization of

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<sup>36</sup> “The Colombian Foreign Minister Calls The Hague an Enemy”, *El Nuevo Herald*, 28 November 2012 (NM, Annex 5) (“*El enemigo es la Corte que no falló en derecho, ese fallo está lleno de exabruptos, uno lo lee y no puede creer que los países que lo conforman hayan elegido esos jueces para un fallo tan importante*”).

<sup>37</sup> Letter from Colombia to Secretary General of the Organization of American States dated 27 November 2012 (GACIJ No.79357) (NM, Annex 1).

American States. ... Never again, never again will what happened through the International Court of Justice's Judgment of 19 November happen to us again.

...

The decision I have made obeys to a fundamental principle: the boundaries between states should be fixed by States themselves. Land borders and maritime boundaries between states should not be left to a Court, but rather must be fixed by States through treaties of mutual agreement”.<sup>38</sup>

1.42 It was this repudiation by Colombia of the Court's authority, coupled with its notice of withdrawal from the Court's jurisdiction, that led to the filing of Nicaragua's Application in this case on 16 September 2013.

1.43 It has been reported that the Court's 2016 Judgment in the present case was also repudiated by Colombia. According to media reports:

“Colombia's President Juan Manuel Santos ... declared that Colombia would take no further part in any proceedings at the ICJ in relation to the case. He also repeated Colombia's view that the ICJ's 2012 ruling was illegitimate and flawed, for which reason, he insisted, Colombia and Nicaragua should agree a bilateral treaty to resolve their territorial dispute. President Santos argued, ‘We are very clear that whatever the final result, our country's maritime limits can only be modified via an

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<sup>38</sup> “Declaration of President Juan Manuel Santos on the denunciation of the Pact of Bogota”, 28 November 2012 (NM, Annex 2) ([http://wsp.presidencia.gov.co/Prensa/2012/Noviembre/Paginas/20121128\\_04.aspx](http://wsp.presidencia.gov.co/Prensa/2012/Noviembre/Paginas/20121128_04.aspx)).



international treaty”<sup>39</sup>

1.44 The Court is able to proceed with the delimitation whether or not Colombia refuses to participate in the proceedings.<sup>40</sup> Nicaragua hopes, nonetheless, that Colombia will engage in good faith with the settlement of this dispute by the Court.

### **B. The Task of the Court**

1.45 Now that Nicaragua has made its full submission to the Commission and satisfied the precondition for the exercise by the Court of its jurisdiction, the obstacle to the completion by the Court of the continental shelf delimitation first put before it in 2001 has been removed.

1.46 The task of the Court is the completion of the drawing of the continental shelf boundary between Nicaragua and Colombia, in respect of those portions of the boundary not already defined by the Court: i.e., the drawing of the boundary in areas more than 200 nautical miles from Nicaragua’s coast.

1.47 As is explained in Chapter 5, the main focus for the delimitation exercise is the area in which the continental shelf beyond 200 nautical miles generated by the coast of Nicaragua overlaps with the 200 nautical miles continental shelf of Colombia’s mainland coast. As Chapter 5 also indicates, the delimitation involving the continental shelf of the islands of San Andrés, Providencia and Santa Catalina is incidental to the mainland to mainland delimitation.

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<sup>39</sup> *Colombia and Chile Signal Their Defiance of International Law*, Telesur, 31 March 2016. < <http://www.telesurtv.net/english/opinion/Colombia-and-Chile-Signal-Their-Defiance-of-International-Law-20160331-0024.html> >

<sup>40</sup> See Statute of the Court, Article 53.

1.48 It was common ground between Nicaragua and Colombia in the proceedings leading to the 2012 Judgment that the provisions of UNCLOS concerning the baselines of a coastal State, its entitlement to maritime zones, the definition of the continental shelf in Article 76(1), and the provisions relating to the delimitation of the exclusive economic zone and the continental shelf reflect customary international law,<sup>41</sup> and are to be applied in this context.

1.49 The boundary of Nicaragua’s 200 nautical mile exclusive economic zone is determined by three basepoints on the Nicaraguan coast. While Colombia has objected to Nicaragua’s straight baselines,<sup>42</sup> there does not appear to be any dispute concerning Nicaragua’s basepoints themselves; and the straight baselines connecting those basepoints are not relevant for the purposes of this delimitation. The three basepoints are depicted on Figure 1.3, and their coordinates are listed in Table 1.1., below.

Table 1.1 Coordinates of Nicaragua’s (Relevant) Basepoints

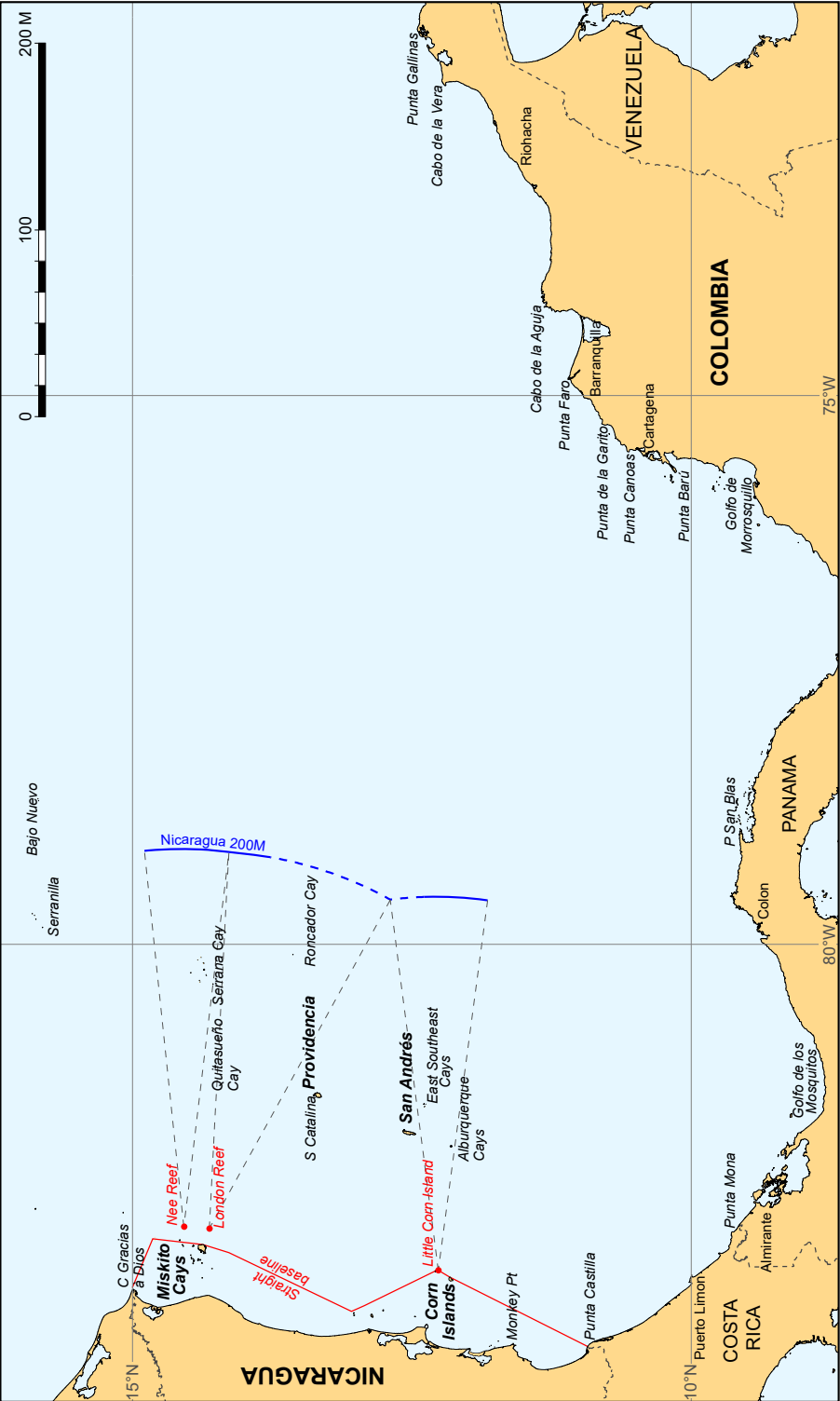
<b>Latitude</b>	<b>Longitude</b>	<b>Name</b>
14° 32’ 41.4’’ N	82° 34’ 20.0’’ W	Nee Reef
14° 19’ 10.1’’ N	82° 35’ 25.3’’ W	London Reef
12° 16’ 55.5’’ N	82° 57’ 54.0’’ W	Little Corn Island

Coordinates are referred to WGS84

<sup>41</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 624, paragraph 114.

<sup>42</sup> See the letter from the Minister of Foreign Affairs of Colombia to the Secretary-General, Ref. S-GACIL-13-044275, 1 November 2013 ( NM, Annex 4), available at <[http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn99\\_2013\\_col.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/communicationsredeposit/mzn99_2013_col.pdf) > Colombia also made a point in the letter concerning the non-opposability of the basepoints to States that are not parties to UNCLOS; but it did not object to the basepoints, in contrast to the basepoints.

Figure 1.2 Nicaragua's Baselines and Base Points



1.50 The remaining chapters of this Memorial set out Nicaragua's case concerning the delimitation. Chapter 2 addresses the question of the applicable law and explains the legal principles that govern the delimitation. Chapter 3 presents the physical facts that are relevant to the delimitation, explaining the geography and geomorphology of the area. Chapter 4 explains what are, in the analytical framework developed by the Court in its jurisprudence, the relevant coasts and the relevant area, with reference to which the delimitation is to be effected. Chapter 5 sets out Nicaragua's submissions on the precise course of the maritime boundary.

## CHAPTER 2

### THE APPLICABLE LAW ON THE DELIMITATION OF THE CONTINENTAL SHELF

2.1 The purpose of the present Chapter is to identify the source (A.) and content (B.) of the law applicable to the present dispute as well as the method of delimitation to be followed (C.). This method will be developed and applied in Chapter 5. In a nutshell, Nicaragua submits that the applicable law is customary international law as reflected in Articles 76, 83 and 121 of UNCLOS and in the case-law of international courts and tribunals.

#### **A. The Source of the Applicable Law**

2.2 The issue of the source of the law applicable between the Parties has been already discussed and decided in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. The legal situation of the Parties has not changed since the Judgment of 19 November 2012. Accordingly, the Court's findings are applicable *mutatis mutandis* in the present case.

2.3 Nicaragua is a Party to the 1982 UNCLOS, which it signed on 9 December 1984 and ratified on 3 May 2000.<sup>43</sup> In accordance with Article 308(2) of UNCLOS, the Convention entered into force for Nicaragua on 2 June 2000.<sup>44</sup> For its part, Colombia is a Party to the 1958 Geneva Convention on the Continental Shelf – to which Nicaragua is not a Party – but not to UNCLOS. Consequently, as the Court noted in its 2012 Judgment, “since Colombia is not a party to UNCLOS, only customary international law may apply in respect to the maritime

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<sup>43</sup> [http://www.un.org/Depts/los/reference\\_files/status2010.pdf](http://www.un.org/Depts/los/reference_files/status2010.pdf)

<sup>44</sup> Article 308(2) provides that “[f]or each State ratifying or acceding to this Convention after the deposit of the sixtieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession [...]”.

delimitation requested by Nicaragua.”<sup>45</sup> Both Parties agreed with that conclusion.<sup>46</sup>

2.4 Since the Judgment of 19 November 2012, Nicaragua has not denounced the 1982 UNCLOS and Colombia has not signed, let alone ratified, it. Therefore, like in the *Territorial and Maritime Dispute*, “the law applicable in the [present] case, which is between a State party to UNCLOS (Nicaragua) and a non-party State (Colombia), is customary international law.”<sup>47</sup>

## **B. The Content of the Applicable Law**

2.5 In the 2012 Judgment, the Court explained that it

“considers that the definition of the continental shelf set out in Article 76, paragraph 1, of UNCLOS forms part of customary international law.”<sup>48</sup>

The Court also noted that

“[t]he 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.”<sup>49</sup>

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<sup>45</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 666, para. 114. See also, *ibid.*, para. 118 and pp. 673-674, paras. 137-139. See also Judgment, 17 March 2016, *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, para. 78.

<sup>46</sup> *Ibid.* See also the Counter-Memorial of Colombia in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, 11 November 2008, Vol. I, pp. 305-306, paras. 3-4 and the Reply of Nicaragua in that same case, 18 September 2009, Vol. I, pp. 63-64, paras. 2.4-2.5.

<sup>47</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)*.

<sup>48</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 666, para. 118.

<sup>49</sup> *Ibid.*, pp. 673-674, para. 138.

2.6 Article 74 is irrelevant in the present case since it deals with the delimitation of the economic exclusive zone, a task that has been completed by the Court in its 2012 Judgment.<sup>50</sup>

2.7 Article 76 concerns the “Definition of the continental shelf”. It reads as follows:

“1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

2. The continental shelf of a coastal State shall not extend beyond the limits provided for in paragraphs 4 to 6.

3. The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof.

4. (a) For the purposes of this Convention, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by either:

(i) a line delineated in accordance with paragraph 7 by reference to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or

(ii) a line delineated in accordance with paragraph 7 by reference to fixed points not more than 60 nautical miles from the foot of the continental slope.

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<sup>50</sup> Colombia does not comply with this decision – but this is not the subject-matter of the present case.

(b) In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.

5. The fixed points comprising the line of the outer limits of the continental shelf on the seabed, drawn in accordance with paragraph 4 (a)(i) and (ii), either shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres.

6. Notwithstanding the provisions of paragraph 5, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured. This paragraph does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.

7. The coastal State shall delineate the outer limits of its continental shelf, where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

9. The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give due publicity thereto.

10. The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts.”



2.8 In its 2012 Judgment, the Court acknowledged the customary character of paragraph 1 of Article 76, but considered that “it d[id] not need to decide whether other provisions of Article 76 of UNCLOS form part of customary international law.”<sup>51</sup>

2.9 At the end of the oral hearings on the Merits in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case, Judge Bennouna asked the Parties whether

“the rules laid down in Article 76 of the 1982 United Nations Convention on the Law of the Sea concerning the determination of the outer limit of the continental shelf beyond 200 nautical miles [can] today be considered as rules of customary international law?”<sup>52</sup>

2.10 It is convenient to fully reproduce Nicaragua’s answer, which reflects its views in some detail as to the law applicable to the delineation of the continental shelf:

*“Factual background*

1. Nicaragua considers that the definition of the continental shelf set out in Article 76 (1) - (7) of the 1982 United Nations Convention on the Law of the Sea ('UNCLOS' or 'the Convention') has the status of a rule of customary international law, and not only of a rule of treaty law. Nicaragua holds this view for the following reasons:

2. The automatic appurtenance of the continental shelf was established by the Court in the *North Sea Continental Shelf* cases.<sup>53</sup> The Court said:

‘19. ... the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it, namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a

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<sup>51</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Reports 2012*, p. 666, para. 118.

<sup>52</sup> CR 2012/17, 4 May 2012, p. 37.

<sup>53</sup> Note 1: “*ICJ Reports 1969*, p. 3.”

natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right.’<sup>54</sup>

3. The Court explicated this principle, pointing out that the greater proximity of an area of seabed to one State rather than another had no necessary connection with the entitlement to that area,<sup>55</sup> and explaining that:

‘43. More fundamental than the notion of proximity appears to be the principle-constantly relied upon by all the Parties of the natural prolongation or continuation of the land territory or domain, or land sovereignty of the coastal State, into and under the high seas, via the bed of its territorial sea which is under the full sovereignty of that State. There are various ways of formulating this principle, but the underlying idea, namely of an extension of something already possessed, is the same, and it is this idea of extension which is, in the Court’s opinion, determinant. Submarine areas do not really appertain to the coastal State because – or not only because – they are near it. They are near it of course; but this would not suffice to confer title, any more than, according to a well-established principle of law recognized by both sides in the present case, mere proximity confers *per se* title to land territory. What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion, – in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea. From this it would follow that whenever a given submarine area does not constitute a natural – or the most natural – extension of the land territory of a coastal State, even though that area may be closer to it than it is to the territory of any other State, it cannot be regarded as appertaining to that State; – or at least it cannot be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned is to be regarded as a natural extension, even if it is less close to it.’<sup>56</sup>

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<sup>54</sup> Note 2: “*idem*, p. 3, at paragraph 19.”

<sup>55</sup> Note 3: “*idem*, p. 3, at paragraphs 39-42.”

<sup>56</sup> Note 4: “*idem*, p. 3, at paragraph 43.”

4. The doctrine of automatic appurtenance supposes that there is a determinable area to which the doctrine applies. That area was defined by the Court in terms of the natural prolongation of the State's land territory under the sea. That concept was regarded by the Court as a rule of customary international law reflected or crystallized in Articles 1-3 of the 1958 Convention on the Continental Shelf.<sup>57</sup>

5. The Third United Nations Conference on the Law of the Sea ('the Conference') took up the concept of 'natural prolongation' as one of two bases for the definition of the continental shelf, the other being a distance criterion. Developments in the Conference are summarized in volume II of the *Virginia Commentary*, at pp. 825-899.

6. The key points that are evident from the record of the Conference are:

i. the limits of the continental shelf were regarded as insufficiently precisely defined in 1969;<sup>58</sup>

ii. the Conference devoted sustained and focused effort to the task of defining the limits of the continental shelf;<sup>59</sup>

iii. throughout its work the Conference distinguished between, on the one hand, the continental shelf or 'natural prolongation' or 'continental margin' or 'continental shelf, slope and rise', which is under national jurisdiction, and on the other hand the deep sea-bed beyond national jurisdiction;<sup>60</sup>

iv. the terms 'natural prolongation' and 'continental margin' and 'continental shelf, slope and rise' were used without any clear distinction being drawn between them to describe the 'physical' submarine area over which national jurisdiction exists (as opposed to the area defined by distance from the shore).

v. In 1975, seven years before the Conference adopted its final text, it was proposed by the USA that the limits of the continental margin should

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<sup>57</sup> Note 5: "*idem*, p. 3, at paragraph 63."

<sup>58</sup> Note 6: "See UNGA resolution 2754A (XXIV), 15 December 1969."

<sup>59</sup> Note 7: "*Virginia Commentary*, paragraphs VI.6-VI.14, 76.1-76.17."

<sup>60</sup> Note 8: "*idem*."

be defined by either (a) a formula linked to the nature of the seabed sedimentary rocks, or (b) fixed points not more than 60 nm from the foot of the continental slope;<sup>61</sup> and in 1976 that approach was given clear and detailed definition in a draft Article proposed by Ireland.<sup>62</sup>

vi. the alternative definitions in the Art. 76 (4) were intended to enable States to choose the ‘foot-of-slope (‘FOS’) + 60 nm’ line in definition (b) if they wished, for example where the geological data necessary for the geological definition (a) were not available;<sup>63</sup>

vii. the Article 76 (4) alternative definitions were included by consensus in subsequent drafts of the Convention, and the final text was adopted in 1982 by a vote of 130 to 4 with 17 abstentions.

7. The ‘FOS + 60nm’ definition, which is the applicable part of the definition in the present case, was included (along with the alternative ‘thickness of sedimentary rocks’ definition) in the UNCLOS as Article 76(4)(a)(ii). In 1982, 119 delegations (including Colombia) signed the Convention. As of 10 May 2012, 162 States or entities are Parties to the Convention.

#### *Legal argument*

8. The purpose of Article 76, particularly paragraphs (4)-(7), is to limit<sup>64</sup> and give greater precision to the definition of the continental shelf appertaining to each coastal State.

9. It is universally accepted that each coastal State has an entitlement to continental shelf rights over the natural prolongation of its land territory to the outer edge of its continental margin, and there is in State practice no other definition of the continental margin that contradicts or competes with the definition set out in Article 76 paragraphs (4)-(7).

10. State practice shows that this definition, and no other, is generally supported. The website of the UN Department for Ocean Affairs and the Law of the Sea carries the legislation of 151 States.<sup>65</sup> Of those 151 States, approximately 90 have legislation relevant to the continental shelf

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<sup>61</sup> Note 9: “*Virginia Commentary*, p. 848, paragraph 76.6.”

<sup>62</sup> Note 10: “*idem*, p. 852, paragraph 76.7.”

<sup>63</sup> Note 11: “*idem*, pp. 855-857, paragraph 76.8-76.10.”

<sup>64</sup> Note 12: “*See* Ireland’s comments introducing the Irish proposal at the Conference: *Virginia Commentary*, pp. 855-856, paragraph 76.9.”

<sup>65</sup> Note 13: “<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/index.htm>.”

and its outer limits: the approximation is necessary because some references to the continental shelf are oblique, and some laws are not readily available.

11. Of those 90 or so States, some 6 merely provide for delimitation of their continental shelf on the basis of agreements with neighbouring States (eg Croatia, Bulgaria, Estonia). It appears that approximately 50 of the remaining States adopt in their domestic law a definition of the continental shelf that is in line with 76(1) UNCLOS, referring to a continental margin; some go further in defining that margin in line with 76(3) UNCLOS; some refer to the provisions of Art 76 UNCLOS in general terms; and at least 3, including a State that has neither signed nor ratified the UNCLOS (Ecuador), refer to further detailed criteria under the provisions of Article 76 (5)-(6).

12. A further 19 States adhere to the '200m isobath + exploitability' criterion used in Article 1 of the 1958 Continental Shelf Convention or simply to an exploitability criterion; but 17 of those have signed or ratified UNCLOS, and some or all of them may either have adopted legislation to implement UNCLOS domestically, or have a legal system which gives direct effect to treaties. Further, 8 of the 19 have made submissions to the CLCS.

13. A further 16 States limit their assertions of jurisdiction over the continental shelf to 200 nm. But 14 of those have signed or ratified UNCLOS, and some or all of them may either have adopted legislation to implement UNCLOS domestically, or have a legal system which gives direct effect to treaties. Further, 7 of the 16 have made submissions to the CLCS.

14. The conclusion is that more than 80 States of the 90 that have continental shelf legislation appear to accept the definition in Article 76 (4) - (7) either explicitly in their laws or implicitly by their acceptance of the UNCLOS.

15. Finally, of all remaining States that have no (published) legislation on the continental shelf, 28 have made submissions to the CLCS, which indicates their acceptance of the provisions in Article 76 (4)-(7).

16. Even non-Parties to UNCLOS have explicitly accepted this definition. For example, in 1987 the USA stated that:

‘... the proper definition and means of delimitation in international law are reflected in Article 76 of the 1982 United Nations Convention on the Law of the Sea. The United States has exercised and shall continue to exercise jurisdiction over its continental shelf in accordance with and to the full extent permitted by international law as reflected in Article 76, paragraphs (1), (2) and (3). At such time in the future that it is determined desirable to delimit the outer limit of the continental shelf of the United States beyond two hundred nautical miles from the baseline from which the territorial sea is measured, such delimitation shall be carried out in accordance with paragraphs (4), (5), (6) and (7).’<sup>66</sup>

It will be noted that the USA does not consider compliance with Article 76(8) to be necessary in this context.

17. The implementation of article 76 has been the subject of the annual United Nations General Assembly Resolutions on oceans and law of the sea. The Resolutions underline the significance of article 76 for the international community at large. The Resolution of December 2011 observes among others:

‘*Noting* the importance of the delineation of the outer limits of the continental shelf beyond 200 nautical miles and that it is in the broader interest of the international community that coastal States with a continental shelf beyond 200 nautical miles submit information on the outer limits of the continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf ("the Commission"), and welcoming the submissions to the Commission by a considerable number of States Parties on the outer limits of their continental Shelf beyond 200 nautical miles, that the Commission has continued to fulfil its role, including of making recommendations to coastal States, and that the summaries of recommendations are being made publicly available.’<sup>67</sup>

18. Further, non-UNCLOS-Party States also have a role in the work of the Commission: they are informed of submissions and have the right to comment upon them.<sup>68</sup> The following States have availed themselves of

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<sup>66</sup> Note 14: “J. Ashley Roach and Robert W. Smith, *United States Responses to Excessive Maritime Claims*, (2nd ed., 1996), pp. 201-202.”

<sup>67</sup> Note 15: “UNGA Resolution A/RES/66/231 adopted on 24 December 2011 (available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/472/68/PDF/N1147268.pdf?OpenElement>).” The last of these resolutions was adopted on 23 December 2015 (Res. 70/235 - [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/70/235](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/235)).

<sup>68</sup> Note 16: “Rule 50 of the Rules of Procedure of the CLCS specifies that: “The Secretary-General shall, through the appropriate channels, promptly notify the Commission and all States Members of the United Nations, including States Parties to the Convention, of the receipt of the submission,

the possibility to submit comments, while not being a Party to the Convention: Canada (on the Submission of the Russian Federation); Denmark (on the Submission of the Russian Federation); Peru (on the Preliminary Information submitted by Chile); Timor-Leste (on the submission of Australia); the United States (on the submissions of Argentina, Australia, Brazil, Cuba, Japan and the Russian Federation) and Venezuela (on the submissions of Barbados and Guyana). All indications point to the conclusion that the States Parties, non-Party States and the Commission consider that Article 76 paragraphs (4)-(7) are entirely consistent with customary international law.

19. The very wide ratification of UNCLOS, with the result that Article 76 paragraphs (4)-(7) became binding for States Parties as a matter of treaty law, “does not mean that they cease to exist and to apply as principles of customary law, even as regards countries that are parties”<sup>69</sup> to the UNCLOS.

20. When a State claims to establish or invoke a specific legal institution, such as a continental shelf or EEZ or contiguous zone, it must be presumed to do so in the terms in which that institution is established and / or generally understood in international law. *A fortiori*, when customary international law automatically attributes a continental shelf to a State, it necessarily does so within the meaning that customary international law gives to the concept of the continental shelf.

21. The definition in Article 76 is the only definition that has general support in international law. There is no indication that States have sought to create any alternative or competing definition of the continental shelf.”<sup>70</sup>

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and make public the executive summary including all charts and coordinates referred to in paragraph 9.1.4 of the Guidelines and contained in that summary, upon completion of the translation of the executive summary referred to in rule 47, paragraph 3.” (emphasis added) According to the *modus operandi* of the Commission, a State in presenting its submission shall comment on “any note verbale from other States regarding the data reflected in the executive summary including all charts and coordinates as made public by the Secretary-General in accordance with rule 50”: CLCS Rules, Annex III, section II.2(a)(v).”

<sup>69</sup> Note 17: “*Nicaragua v United States of America*, ICJ Reports 1984, p. 392, paragraph 73.”

<sup>70</sup> “Written reply of the Republic of Nicaragua to the question put by Judge Bennouna at the public sitting held on the afternoon of 4 May 2012”, 11 May 2012 (<http://www.icj-cij.org/docket/files/124/17752.pdf>).

2.11 To summarize, Nicaragua submits that Article 76, as a whole, is customary, thus the rules it contains are legally binding on non-Party States as well as on Parties to the UNCLOS.

2.12 For its part, Article 83 of UNCLOS concerns the “Delimitation of the continental shelf between States with opposite or adjacent coasts”.<sup>71</sup>

“1. The delimitation of the continental shelf 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 continental shelf shall be determined in accordance with the provisions of that agreement.”

2.13 The Court acknowledged for the first time the customary status of the rules embodied in Article 83 in the *Jan Mayen* case. In its 1993 Judgment, the Court stated that:

“That statement of an ‘equitable solution’ as the aim of any delimitation process reflects the requirements of customary law as regards the delimitation both of continental shelf and of exclusive economic zones.”<sup>72</sup>

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<sup>71</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 673, para. 138.

<sup>72</sup> I.C.J., Judgment, 14 June 1993, *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Reports 1993, p. 59, para. 48.



2.14 The Court confirmed this position in its two most recent Judgments concerning the delimitation of the continental shelf.<sup>73</sup> In its 2012 Judgment in *Nicaragua v. Colombia*, the Court recalled that it

“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.*).”<sup>74</sup>

2.15 Similarly, in the *Peru v. Chile* case, where Peru was not a Party to UNCLOS, the Court applied the principles embodied in Article 83 of the UNCLOS to the delimitation of the continental shelf because it “reflect[s] customary international law.”<sup>75</sup>

2.16 Therefore, the law applicable to the delimitation of the continental shelf in the present case is customary international law as enshrined in Article 83, paragraph 1, of UNCLOS.

2.17 The principles embodied in Article 121 of UNCLOS are also to be applied in the present case insofar as some maritime features have a role to play in the delimitation.<sup>76</sup> It reads as follows:

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

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<sup>73</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Reports 2012*, p. 674, para. 139 and Judgment, 27 January 2014, *Maritime Dispute (Peru v. Chile)*, *Reports 2014*, p. 65, para. 179.

<sup>74</sup> I.C.J., Judgment, 19 November 2012, *id.*, p. 674, para. 139.

<sup>75</sup> I.C.J., Judgment, 27 January 2014, *Maritime Dispute (Peru v. Chile)*, *Reports 2014*, p. 65, para. 179.

<sup>76</sup> See paras. 3.79-3.80 and para.4.18.

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.”

2.18 As the Court noted in its 2012 Judgment, in *Qatar v. Bahrain*,

“it treated the legal definition of an island embodied in Article 121, paragraph 1, as part of customary international law<sup>[77]</sup> [...]. It reached the same conclusion as regards Article 121, paragraph 2<sup>[78]</sup> [...]. The Judgment in the *Qatar v. Bahrain* case did not specifically address paragraph 3 of Article 121...”<sup>79</sup>

2.19 In the 2012 Judgment, the Court further observed

“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.* [referring to *Qatar v. Bahrain*]) 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

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<sup>77</sup> ICJ, Judgment, 16 March 2001, *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, *Merits*, *I.C.J. Reports 2001*, p. 91, para. 167 and p. 99, para. 195.

<sup>78</sup> *Ibid.*, p. 97, para. 185.

<sup>79</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Reports 2012*, p. 674, para. 139.

of which (as Colombia and Nicaragua recognize) has the status of customary international law.”<sup>80</sup>

2.20 The remaining (and crucial) question is whether or not Article 83 and Article 121 of UNCLOS are equally applicable to the delimitation of the continental shelf within *and* beyond 200 nautical miles.

2.21 In its 2006 Award, the Arbitral Tribunal in the *Barbados/Trinidad and Tobago* case made clear that “there is in law only a single ‘continental shelf’ rather than an inner continental shelf and a separate extended or outer continental shelf.”<sup>81</sup> The ITLOS shares this position. In its 2012 Judgment in the *Bangladesh/Myanmar* case, the Tribunal explained that Article 76(1) of UNCLOS, which reflects customary international law<sup>82</sup>, “embodies the concept of a single continental shelf.”<sup>83</sup> Indeed, Article 76(1) provides that:

“The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

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<sup>80</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 674, para. 139.

<sup>81</sup> *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them*, Award, 11 April 2006, *R.I.A.A.*, Vol. XXVII, pp. 208-209, para. 213.

<sup>82</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 666, para. 118.

<sup>83</sup> ITLOS, Judgment, 14 March 2012, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, para. 361. See also *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award, 7 July 2014, para. 177.

2.22 Article 83 of UNCLOS, the text of which is reproduced at paragraph 2.12 above, confirms the unity of the continental shelf. As the ITLOS noted in its 2012 Judgment in *Bangladesh/Myanmar*,

“article 83 of the Convention addresses the delimitation of the continental shelf between States with opposite or adjacent coasts *without any limitation as to area*. It contains no reference to the limits set forth in article 76, paragraph 1, of the Convention.”<sup>84</sup>

It logically concluded that “Article 83 applies equally to the delimitation of the continental shelf both within and beyond 200 nm.”<sup>85</sup> The Arbitral Tribunal in the *Bangladesh v. India* case reached the same conclusion in its 7 July 2014 Award.<sup>86</sup>

2.23 In the absence of a distinction between two parts of the continental shelf, one inner, lying within 200 nautical miles, and one outer, lying beyond 200 nautical miles, there must be no distinction in the applicable law. Therefore, in the present case, as in the Bay of Bengal cases,

“the law applicable to the delimitation of the continental shelf beyond 200 nm is article 83 of the Convention, which provides that the delimitation ‘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’.”<sup>87</sup>

### **C. The Method of Delimitation**

2.24 As is apparent from the text of Article 83(1) of UNCLOS, this provision

“sets a goal to be achieved, but is silent as to the method to be followed to achieve it. It restricts itself to setting a standard, and it is left to States

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<sup>84</sup> ITLOS, Judgment, 14 March 2012, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, para. 454 – emphasis added.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award, 7 July 2014, paras. 438 and 456.

<sup>87</sup> *Ibid.*, para. 438.

themselves, or to the courts, to endow this standard with specific content.”<sup>88</sup>

2.25 The I.C.J. and other courts and tribunals have fulfilled this task. Their jurisprudence constitutes an “*acquis judiciaire* [...which] should be read into articles 74 and 83.”<sup>89</sup> The ITLOS aptly summarized the role of the jurisprudence of the last 30 years:

“226. International courts and tribunals have developed a body of case law on maritime delimitation which has reduced the elements of subjectivity and uncertainty in the determination of maritime boundaries and in the choice of methods employed to that end.

[...]

228. Over time, the absence of a settled method of delimitation prompted increased interest in enhancing the objectivity and predictability of the process. The varied geographic situations addressed in the early cases nevertheless confirmed that, even if the pendulum had swung too far away from the objective precision of equidistance, the use of equidistance alone could not ensure an equitable solution in each and every case. A method of delimitation suitable for general use would need to combine its constraints on subjectivity with the flexibility necessary to accommodate circumstances in a particular case that are relevant to maritime delimitation.”<sup>90</sup>

2.26 This “standard method”<sup>91</sup> has been “adopted by international courts and tribunals in the majority of the delimitation cases that have come before them”,<sup>92</sup>

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<sup>88</sup> I.C.J., Judgment, 2 June 1985, *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Reports 1985, pp. 30-31, para. 28. See also ITLOS, Judgment, 14 March 2012, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, para. 225.

<sup>89</sup> *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award, 7 July 2014, para. 339.

<sup>90</sup> ITLOS, Judgment, 14 March 2012, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, paras. 226, 228-229 and 235.

<sup>91</sup> I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 698, para. 199.

<sup>92</sup> ITLOS, Judgment, 14 March 2012, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, para. 235.

including in the first *Nicaragua v. Colombia* case, in which the Court applied it to the delimitation of the continental shelf up to 200 nautical miles. In its 2012 Judgment, the Court described the method as follows:

“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 [...] 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) [...].

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."<sup>93</sup>

2.27 The preference for this method can easily be explained:

- *first*, it ensures a reasonable measure of transparency and predictability for the Parties; and
- *second*, it provides enough flexibility for various relevant factors to be taken into consideration in the delimitation process, in order to achieve an equitable result as required by Article 83(1) of UNCLOS.

2.28 The standard method was applied by the ITLOS in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*<sup>94</sup> and by the Annex VII Arbitral Tribunal in the *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*.<sup>95</sup>

2.29 The *Bay of Bengal* cases are of particular relevance since they are the only cases in which the continental shelf beyond 200 nautical miles has been delimited by an international court or arbitral tribunal. In *both* cases, these tribunals applied the same method within *and* beyond 200 nautical miles.<sup>96</sup>

2.30 In the *Bangladesh/Myanmar*, the ITLOS found that

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<sup>93</sup> *Ibid.*, pp. 695-696, paras. 190-193 – emphasis added.

<sup>94</sup> ITLOS, Judgment, 14 March 2012, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, para. 239.

<sup>95</sup> *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award, 7 July 2014, para. 345.

<sup>96</sup> See ITLOS, Judgment, 14 March 2012, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, para. 455 and *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award, 7 July 2014, para. 438.

“the delimitation method to be employed in the present case for the continental shelf beyond 200 nautical miles should not differ from that within 200 nm [...].”<sup>97</sup>

The Tribunal justified its decision as follows:

“This method is rooted in the recognition that sovereignty over the land territory is the basis for the sovereign rights and jurisdiction of the coastal State with respect to both the exclusive economic zone and the continental shelf. This should be distinguished from the question of the object and extent of those rights, be it the nature of the areas to which those rights apply or the maximum seaward limits specified in articles 57 and 76 of the Convention.”<sup>98</sup>

2.31 Notably, the arbitral tribunal in the *Bangladesh v. India* case did not even explain why it applied the same method to the delimitation of the continental shelf within and beyond 200 nautical miles. The Tribunal simply noted that:

“The Parties also agree that the law applicable to the delimitation of the continental shelf beyond 200 nm is article 83 of the Convention, which provides that the delimitation ‘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’.”<sup>99</sup>

2.32 In the present case, there is no reason that could justify a departure from this settled case-law and Nicaragua calls upon the Court to apply its now-standard and well settled method to delimit the respective continental shelf of the Parties.

2.33 As will be demonstrated in Chapter 5 below, there is an overlap between Nicaragua’s potential continental shelf entitlement beyond 200 nm from its mainland coast and Colombia’s potential continental shelf entitlement emanating from its mainland coast. By application of the now-standard method, the first step

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<sup>97</sup> ITLOS, Judgment, 14 March 2012, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, paras. 454-455.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award, 7 July 2014, para. 438.



in the delimitation process is to draw a provisional equidistance line dividing the area of overlapping continental shelf entitlement. The provisional equidistance line proposed by Nicaragua follows this guideline. Then, in line with the standard method, once the provisional line settled, in accordance with the standard-method, the Court should then consider “whether there are any relevant circumstances which may call for an adjustment or shifting” of the provisional line and apply the test of non-disproportionality.<sup>100</sup>

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<sup>100</sup> *Ibid.*, p. 696, paras. 192-193.



**CHAPTER 3**  
**THE LEGAL FRAMEWORK. NICARAGUA'S CONTINENTAL SHELF**  
**ENTITLEMENT UNDER ARTICLE 76. TECHNICAL DESCRIPTION OF**  
**CONTINENTAL SHELF**

Chapter (pages 47 to 90) not reproduced

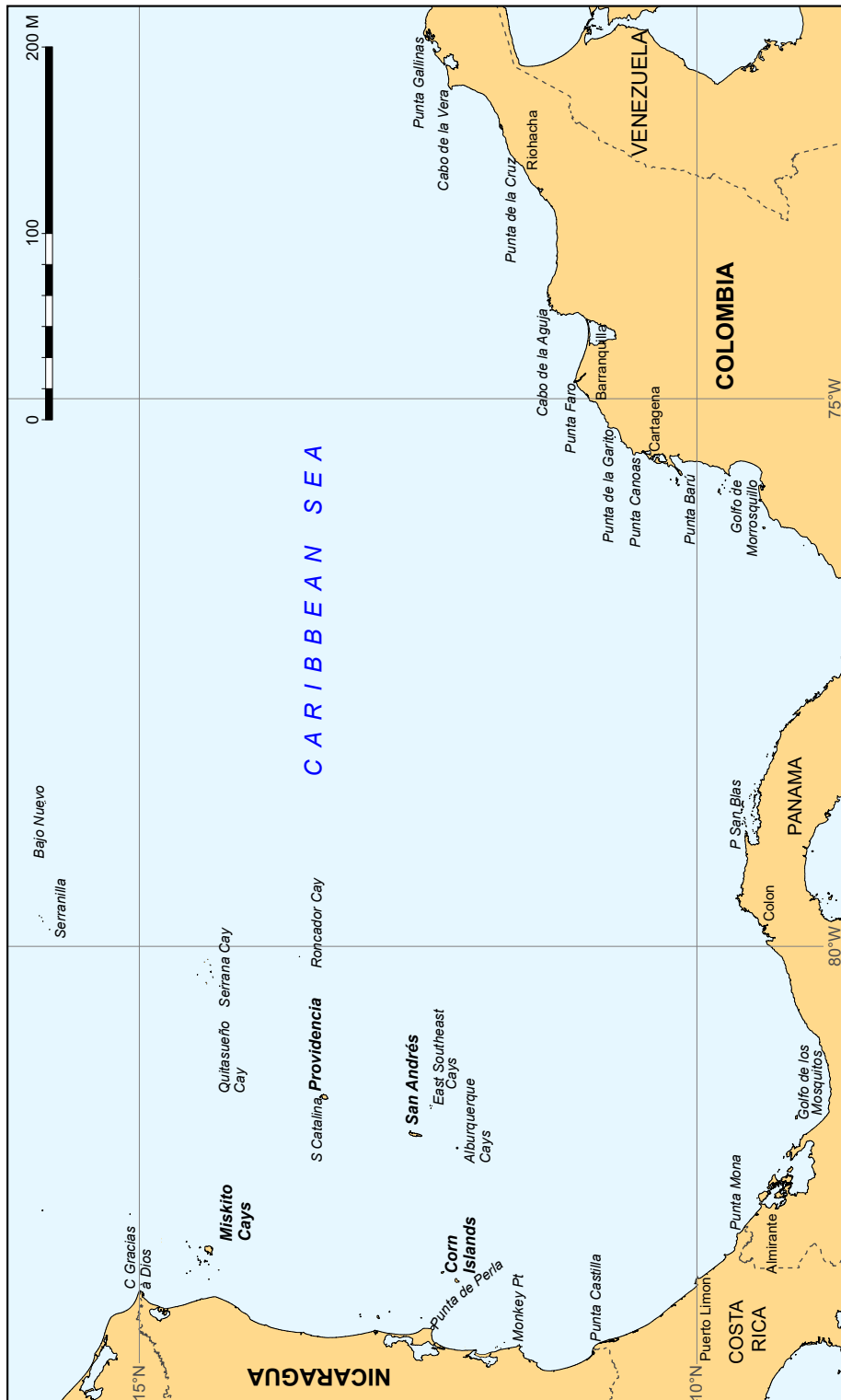
## **CHAPTER 4**

### **THE RELEVANT COASTS AND THE RELEVANT AREA**

#### **A. Introduction**

4.1 The general geographical framework for the delimitation of the continental shelf beyond 200 nautical miles of Nicaragua and the continental shelf of Colombia is the southwestern part of the Caribbean Sea. The coasts of Nicaragua, Costa Rica, Panama, Colombia, and Jamaica surround this part of the Caribbean Sea. In addition, there are a number of small offshore islands of Colombia, including San Andrés and Providencia, that are located in the southwestern part of the Caribbean Sea (see Figure 4.1.).

Figure 4.1 SW Caribbean: Regional Geography



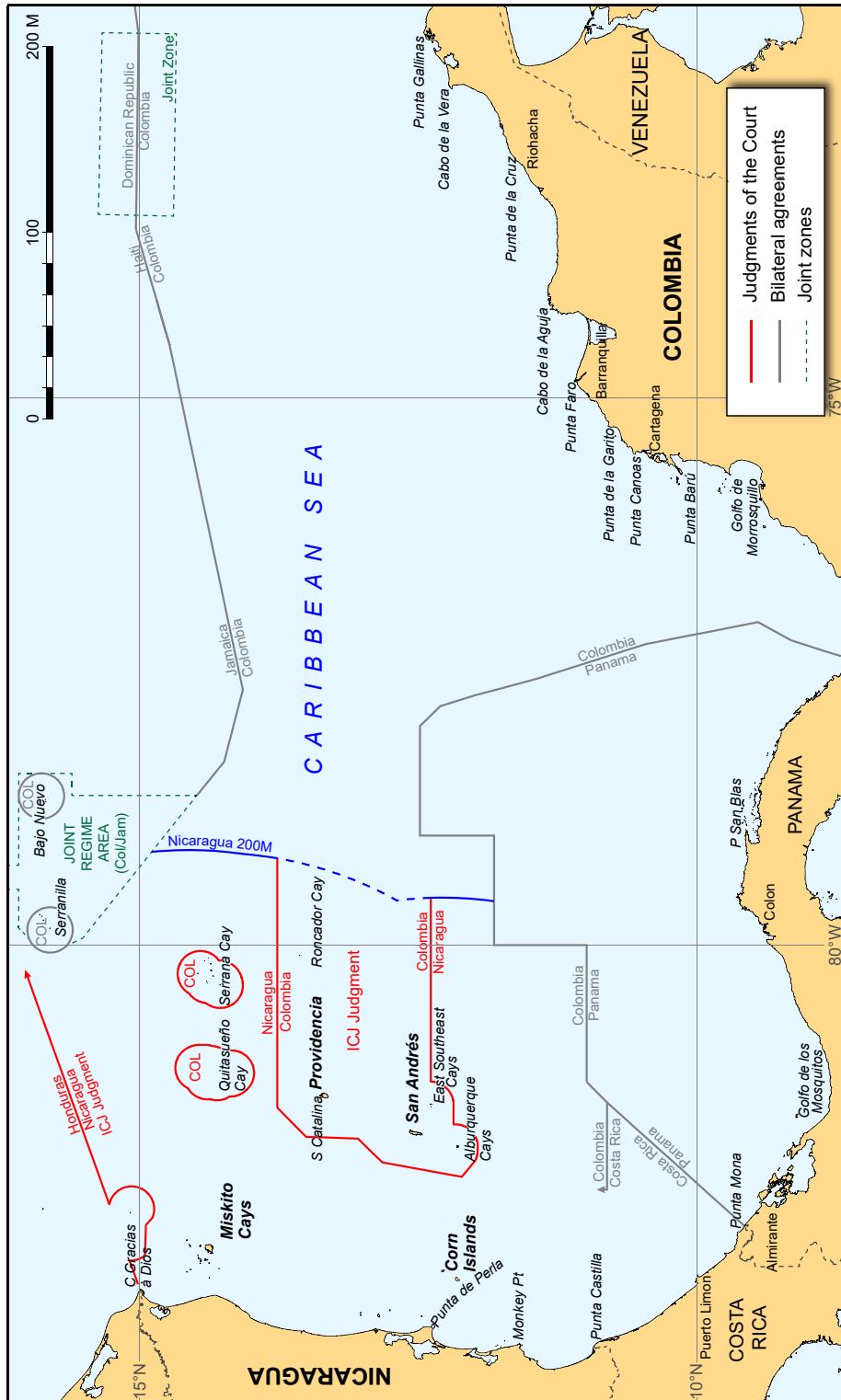
4.2 Costa Rica, Panama and Jamaica have defined the extent of their maritime zones in the southwestern part of the Caribbean Sea through bilateral agreements each of them has concluded with Colombia (see Figure 4.2.).<sup>111</sup> These agreements are *res inter alios* for Nicaragua. This notwithstanding, in accordance with the jurisprudence of this Court,<sup>112</sup> these agreements are relevant for determining the relevant area for the delimitation of the continental shelf beyond 200 nautical miles of Nicaragua and the continental shelf of Colombia.

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<sup>111</sup> Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica of 17 March 1977; Treaty on Maritime Delimitation between the Republic of Colombia and Jamaica of 12 November 1993 (1776 UNTS 27); Treaty on the Delimitation of Marine and Submarine Areas and Related Matters between the Republic of Colombia and the Republic of Panama of 20 November 1976 (1074 UNTS 221).

<sup>112</sup> See further below paragraphs 4.19 and following.

Figure 4.2 Bilateral Agreements and Boundaries determined by the Court



4.3 The maritime boundaries between Nicaragua and Colombia within 200 nautical miles of the baselines from which the breadth of the territorial sea of Nicaragua is measured have been determined by the Judgment of the Court of 19 November 2012 in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, except for the maritime boundary between Nicaragua and the Colombian cays on the banks of Serranilla and Bajo Nuevo. This latter issue is further considered below at paragraph 4.39.

4.4 This Chapter will first consider the coasts of Nicaragua and Colombia that are relevant for the delimitation of the continental shelf beyond 200 nautical miles of Nicaragua and the continental shelf of Colombia. For Nicaragua, this concerns its mainland coast and fringing islands. In the case of Colombia, this concerns (1) the Colombian mainland coast and fringing islands; and (2) the Colombian islands of San Andrés, and Providencia and Santa Catalina and the small cays scattered throughout the Western Caribbean, including the cays of Albuquerque, Bajo Nuevo, East- Southeast Cays, Roncador, Serranilla and Serrana.

4.5 A second part of the Chapter will consider the relevant area for the delimitation of the continental shelf beyond 200 nautical miles of Nicaragua and the continental shelf of Colombia. As will be explained below, the relevant area includes the entire area between the mainland coasts of Nicaragua and Colombia, in which the Colombian islands of San Andrés, and Providencia and Santa Catalina and the smaller cays of Albuquerque, Bajo Nuevo, East- Southeast Cays, Roncador, Serranilla and Serrana are located.

4.6 A final section of the chapter summarizes its main conclusions.



## B. The Determination of the Relevant Coasts

4.7 The Court's approach to determining the relevant coasts for the delimitation of maritime boundaries between neighboring States is well-established. As the Court pointed out in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, the relevant coasts of the Parties are "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".<sup>113</sup> Apart from the purpose of determining what constitute the overlapping claims of the Parties to maritime zones, the relevant coasts need to be determined to allow checking whether there exists any disproportionality "in the ratios of the coastal length of each State and the maritime areas falling either side of the delimitation line".<sup>114</sup> In what is now the Court's standard approach to delimitation, this proportionality test is the third stage of the delimitation exercise.

### 1. Nicaragua's relevant coast

4.8 The Court has considered the relevant coasts of Nicaragua and Colombia in connection with the delimitation of the maritime boundaries between Nicaragua and Colombia in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*.<sup>115</sup> As far as Nicaragua's relevant coast was concerned, the Court concluded that:

the relevant Nicaraguan coast is the whole coast which projects into the area of overlapping potential entitlements [...]. With the exception of the

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<sup>113</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment of 19 November 2012, *I.C.J. Reports 2012*, p. 674, para. 141.

<sup>114</sup> *Ibid.*, p. 675, para. 141, quoting the Judgment of the Court in the *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* case.

<sup>115</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment of 19 November 2012, *I.C.J. Reports 2012*, pp. 675-680, paras 143-154.

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, p. 681). Taking the general direction of this coast, its length is approximately 531 km.<sup>116</sup>

Sketch-map No. 6 included in the Court's Judgment is included as Figure 4.3. in this Memorial. The coastal length of 531 kilometers corresponds to a measurement of Nicaragua's relevant coast along its natural configuration. If this relevant coast is measured along a straight line, it measures 454 kilometers (see Figure 4.4.).

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<sup>116</sup> *Ibid*, p. 678, para. 145.

Figure 4.3 Sketch Map 6 from the Court's Judgment in Nicaragua v Colombia

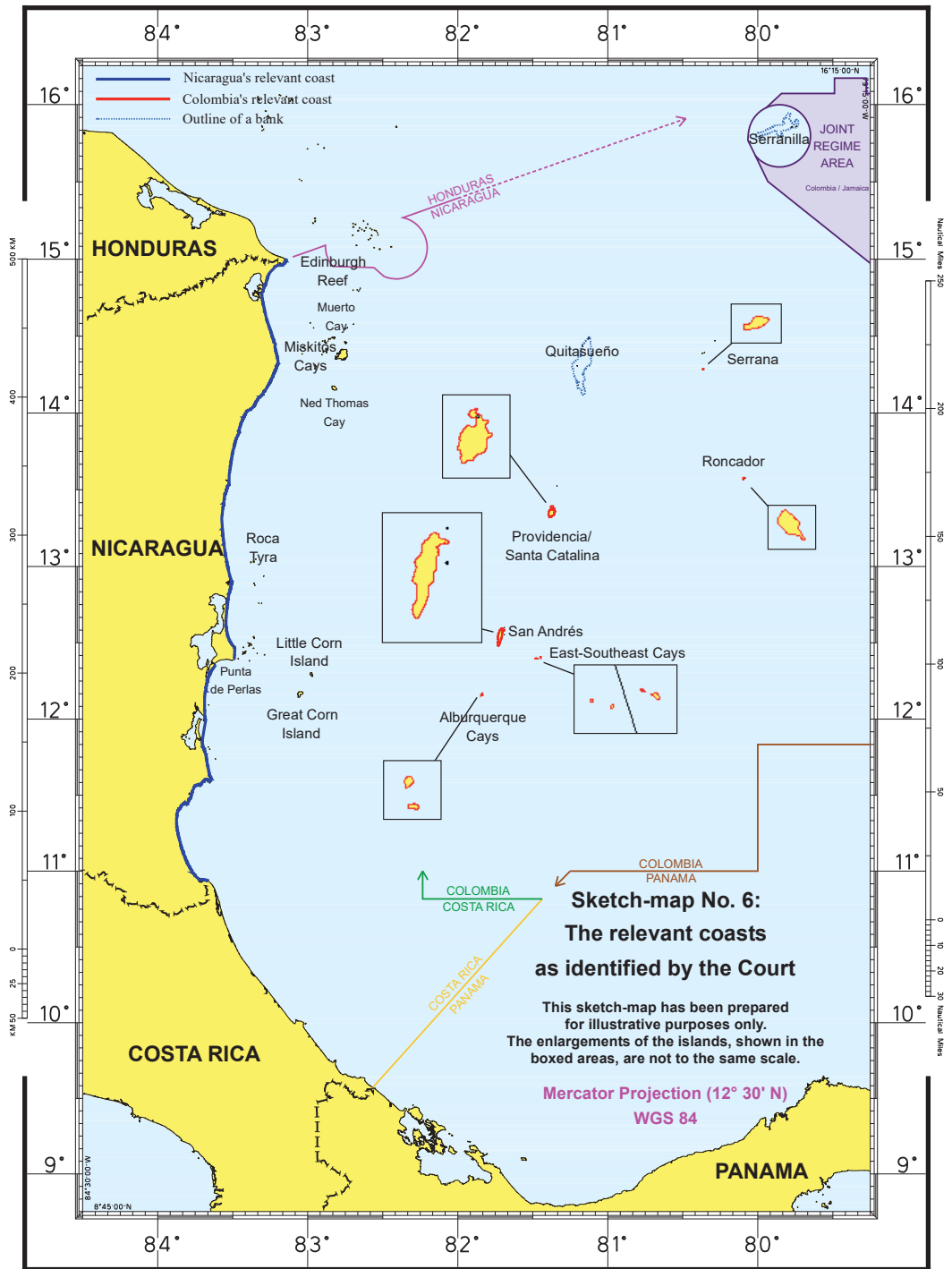
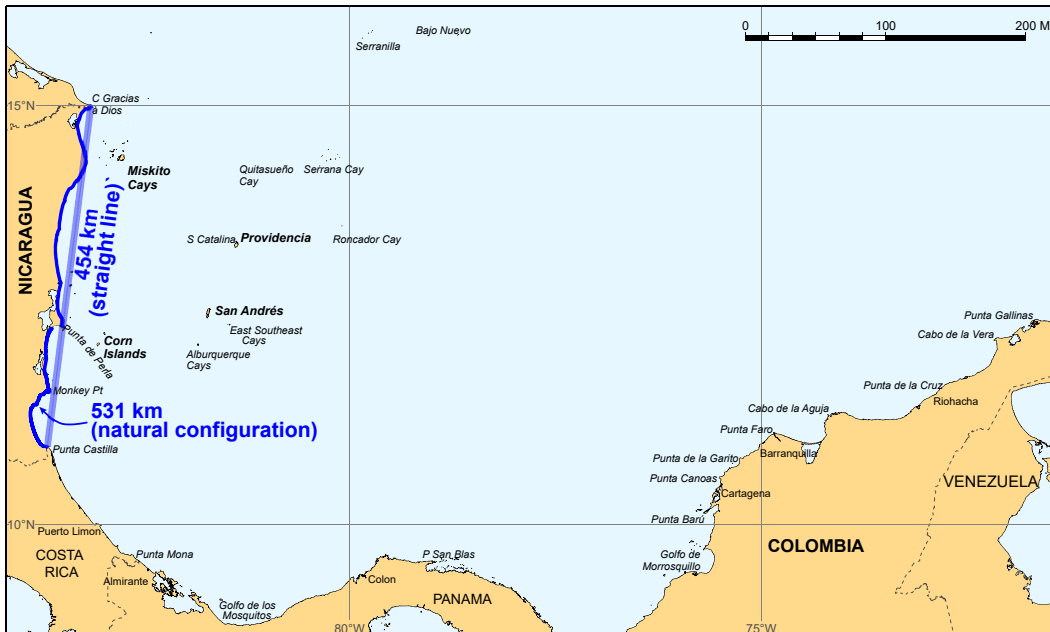


Figure 4.4 Nicaragua's Relevant Coast



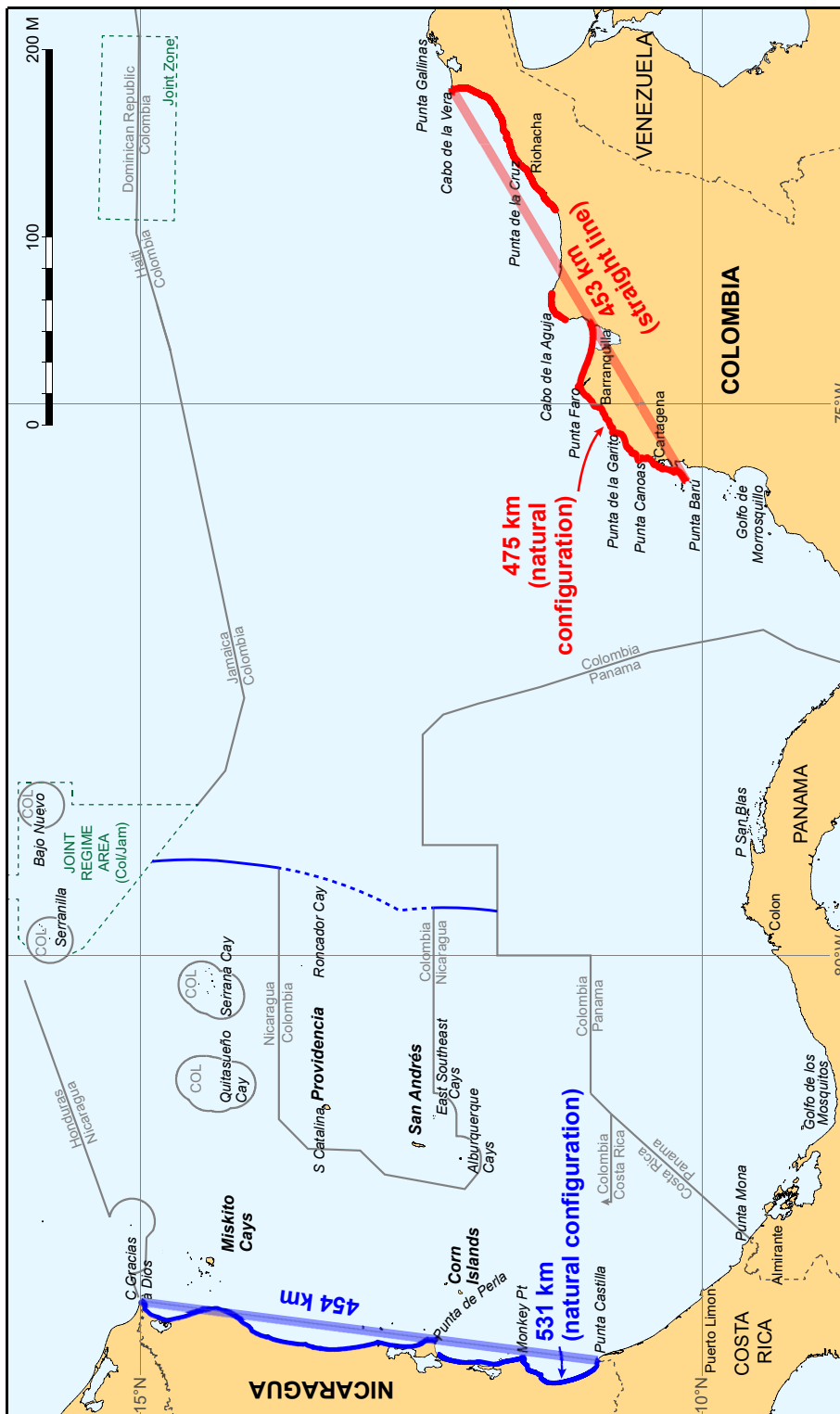
4.9 Nicaragua submits that its relevant coast for the delimitation of its continental shelf beyond 200 nautical miles and Colombia's continental shelf is the relevant Nicaraguan coast that the Court identified in its Judgment of 19 November 2012 in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. As can be appreciated from Figure 4.4., the entire coast of Nicaragua as identified by the Court projects east, up to the outer limit of Nicaragua's continental shelf beyond 200 nautical miles, which overlaps with the 200-nautical-mile continental shelf of Colombia's mainland coast and the continental shelf of the islands of San Andrés and Providencia.

## 2. Colombia's relevant coast

4.10 Colombia's relevant coast is constituted by a part of its mainland coast and the coasts of the Colombian islands of San Andrés, and Providencia and Santa Catalina and the smaller cays scattered throughout the Western Caribbean.

4.11 Nicaragua considers that only a part of Colombia's mainland coast is part of Colombia's relevant coast. This is explained by the fact that not all of Colombia's mainland coast projects into the area of overlapping potential entitlements. This concerns the following segments of Colombia's mainland coast. First, Colombia's mainland coast to the south and west of Punta Baru up to Colombia's land boundary with Panama projects in the direction of Colombia's maritime boundary with Panama, and not in the direction of the area of overlapping entitlements between Nicaragua and Colombia. The first part of this coast, between Punta Baru and the Golfo de Morrosquillo, projects seaward in an almost westerly direction, while the area of overlapping entitlements is located to the northwest of this stretch of coast (see Figure 4.5). The Colombian coast to the south of the Golfo de Morrosquillo projects seaward in a north-western direction up to the maritime boundary between Colombia and Panama (see Figure 4.5). A second segment of Colombia's mainland coast that is not part of its relevant coast is located to the east of Cabo de la Vera. This part of Colombia's mainland coast projects seaward into an area that is to the east of the area of overlapping entitlements (see Figure 4.5).

Figure 4.5 Colombia's Relevant Coast



4.12 The relevant mainland coast of Colombia is therefore located between Punta Baru and Cabo de la Vera (see Figure 4.5). The seaward projection of this coast extends into the area of overlapping entitlements. However, if this coast is compared to the mainland coast of Nicaragua, the Court's Judgment on the merits in *Territorial and Maritime Dispute (Nicaragua v. Colombia)* indicates that two segments of this coast should not be included in Colombia's relevant coast. As was observed above, the Court in its 2012 Judgment in *Territorial and Maritime Dispute (Nicaragua v. Colombia)* held that a "short stretch of coast near Punta de Perlas, which faces due south and thus does not project into the area of overlapping potential entitlements," was not part of Nicaragua's relevant coast.<sup>117</sup> If Colombia's coast between Punta Baru and Cabo de la Vera is assessed in the light of this observation, it is apparent that the stretch of coast south of Cabo de la Aguja running due south and facing due west similarly does not extend into the area of overlapping entitlements. Second, a section of the Colombian mainland coast east of Cabo de la Aguja extends seaward in a northward direction to the east of the area of overlapping entitlements.

4.13 The relevant coast of Colombia between Punta Baru and Cabo de la Vera, excluding the stretches of coast identified above that face due west and due north, measured along its natural configuration measures 475 kilometers. Nicaragua considers that in the present case, due to the sinuosities and irregularity of the Colombian mainland coast, it is proper to determine the length of that relevant coast not by measuring it along its natural configuration, but by measuring it along a straight line. Measured along a straight line, the relevant mainland coast of Colombia is 453 kilometers.

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<sup>117</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment of 19 November 2012, *I.C.J. Reports 2012*, pp. 678, para. 145.

4.14 Apart from Colombia's mainland coast, the coasts of its offshore islands in the Western Caribbean form part of its relevant coast for the delimitation of Nicaragua's continental shelf beyond 200 nautical miles and Colombia's continental shelf. The Court in *Territorial and Maritime Dispute (Nicaragua v. Colombia)* determined the relevant coast of these islands in connection with the delimitation between the Parties of the area within 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measured.<sup>118</sup> The Court in its 2012 Judgment in *Territorial and Maritime Dispute (Nicaragua v. Colombia)* concluded that, first, the entire coastlines of the islands of San Andrés, Providencia and Santa Catalina had to be taken into account in determining their relevant coasts. The Court estimated that the total length of these relevant coasts as 58 kilometers.<sup>119</sup> Second, the Court considered that the coasts of the cays of Albuquerque Cays, East-Southeast Cays, Roncador and Serrana had to be considered to be a part of the relevant coast for the purposes of that case. The Court's Judgment indicates that these coasts measure seven kilometers, giving a total length of the relevant coast of all the islands of approximately 65 kilometers.<sup>120</sup>

4.15 Nicaragua considers that the relevant coast of Colombia's islands as determined by the Court in *Territorial and Maritime Dispute (Nicaragua v. Colombia)* also is part of the relevant coast of Colombia for effecting the third-stage proportionality test in the present case. This is so even though not all of these coasts are projecting seawards into the area of overlapping continental shelf entitlements beyond the 200-nautical-mile limit of Nicaragua. As a matter of fact, the western coasts of the islands are facing away from that area. However, as stated in Chapter 1 and further explained below at paragraphs 4.28 and following,

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<sup>118</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case Judgment of 19 November 2012, *I.C.J. Reports 2012*, pp. 679-680, paras 146-152.

<sup>119</sup> *Ibid.*, p. 680, para. 151.

<sup>120</sup> *Ibid.*, para. 152.



the delimitation the Court is required to effect in the present case is a continuation of the delimitation of the maritime boundaries between Nicaragua and Colombia that were already delimited in part by the Court in its 2012 Judgment in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. To assess whether the delimitation the Court will effect in the present case leads to an equitable solution, it is appropriate to consider how the delimitations effected by the Court in 2012 and in the present case divide the totality of the relevant area between the parties and how that ratio compares to the ratio between the lengths of the relevant coasts. This requires taking into account the relevant coasts for the delimitation of the maritime boundary between the parties within and beyond 200 nautical miles of their coasts.

4.16 In its 2012 Judgment in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, the Court did not delimit the maritime boundary between Nicaragua and the cays on the banks of Bajo Nuevo and Serranilla. Nicaragua is now requesting the Court to also delimit that maritime boundary.<sup>121</sup> Consequently, the coasts of these cays also form part of the relevant coast of Colombia. When the length of the coasts of these cays is determined in accordance with the methodology used by the Court in its 2012 Judgment, they measure 2 kilometers. The length of the relevant coasts of all of Colombia's mid-sea islands thus is 67 kilometers.

4.17 While the entire coast of Colombia's islands is part of the relevant coast for purposes of the third-stage proportionality test, this entire coast is not the relevant coast for other aspects of the delimitation process the Court is required to carry out. In particular, in considering appropriate methods for the delimitation of the continental shelf beyond 200 nautical miles of Nicaragua and the continental shelf of Colombia, only the east-facing coasts of San Andrés and Providencia

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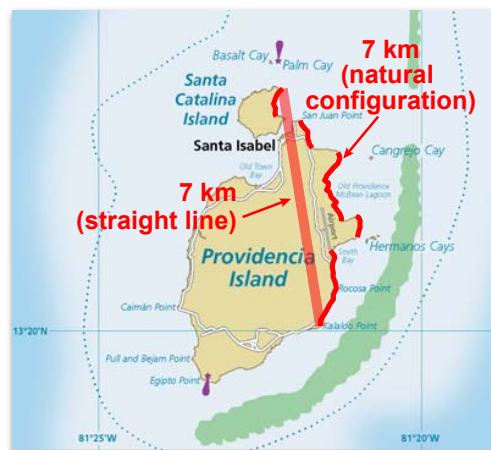
<sup>121</sup> See further below at paragraph 4.39.

constitute the relevant coasts. This is explained by the fact that the area where Nicaragua’s continental shelf beyond 200 nautical miles overlaps with the continental shelf entitlement of Colombia’s islands and Colombia’s mainland is situated only to the east of the Colombian islands. The length of these coasts of the islands along their natural configuration measures approximately 27 kilometers (San Andrés 20 km; Providencia and Santa Catalina 7 km) (see Figure 4.6). The length of the relevant coasts of the islands measured along a straight line representing the general direction of these coasts on this basis is approximately 20 kilometers (San Andrés 13 km; Providencia and Santa Catalina 7 km) (see Figure 4.6).

Figure 4.6 Relevant Coast of San Andres and Providencia



Extract from Nic v Col I, Col Memorial Figure 2.2



Extract from Nic v Col I, Col Memorial Figure 2.3

4.18 Second, the relevant coast for considering appropriate methods of delimitation for the continental shelf beyond the 200-nautical-mile limit of Nicaragua does not include the coasts of Albuquerque Cays, Bajo Nuevo, East- Southeast Cays, Roncador, Serrana and Serranilla, even though they are part of the relevant coasts for the third-stage proportionality test. They are part of the relevant coast for the third-stage test because these islands are located in the relevant area and their territorial sea entitlement forms part of the relevant area. However, as was submitted by Nicaragua in its pleadings in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, these islands do not have a continental shelf and exclusive economic zone, as they are rocks under the terms of Article 121(3) of the United Nations Convention on the Law of the Sea.<sup>122</sup> As a consequence, their coasts are not relevant to the delimitation of Nicaragua's continental shelf beyond 200 nautical miles and Colombia's continental shelf.

### **C. The Determination of the Relevant Area**

4.19 This section first explains that the relevant area is the entire area located between the relevant mainland coasts of the Parties. A subsequent sub-section discusses the lateral limits of the relevant area.

#### **1. The Relevant Area is Located between the Relevant Mainland Coasts of the Parties**

4.20 The Court has defined the relevant maritime area as comprising “that part of the maritime space in which the potential entitlements of the parties overlap.”<sup>123</sup> The Court has also indicated that in areas where the interests of third

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<sup>122</sup> See e.g. CR2012/14, pp. 31-32, paras 4-6

<sup>123</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case, Judgment of 19 November 2012, *I.C.J. Reports 2012*, p. 683, para. 159.

States become involved those interests may impact on the definition of the relevant maritime area.<sup>124</sup>

4.21 The present case is concerned with the delimitation of the continental shelf beyond 200 nautical miles of Nicaragua and the continental shelf of Colombia. In that light, it is first of all necessary to determine the extent of the continental shelf of Nicaragua and Colombia, as this allows determining the area of potential overlapping entitlements.

4.22 As is set in Chapter 3 of this Memorial, Nicaragua has determined the outer limits of its continental shelf in accordance with Article 76 of the United Nations Convention on the Law of the Sea. The outer limits of Nicaragua as submitted to the Commission on the Limits of the Continental Shelf determine the seaward extent of Nicaragua's continental shelf entitlement (see Figure 3.16).

4.23 Colombia is not a party to the United Nations Convention on the Law of the Sea and is not required to identify the exact extent of its continental shelf in accordance with the procedures contained in Article 76 of the Convention. Scientific data in the public domain on the geomorphology of the seabed do, however, make the factual position clear beyond any possible doubt. As far as the continental shelf of Colombia's mainland is concerned, there is no possibility whatever that the outer edge of the continental margin along Colombia's mainland extends at any point to a distance of 200 nautical miles from the baselines from which the breadth of Colombia's territorial sea is measured.<sup>125</sup> As a consequence, the outer limit of the continental shelf of Colombia's mainland coast is defined by the distance limit of 200 nautical miles in accordance with customary

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<sup>124</sup> *Ibid.*; *Maritime Delimitation in the Black Sea (Romania v. Ukraine) case, Judgment, I.C.J. Reports 2009*, p. 100, para. 114.

<sup>125</sup> See Chapter 3 of this Memorial at paragraphs 3.77 and 3.78.

international law as reflected in Article 76, paragraph 1, of the Convention. This continental shelf overlaps with the continental shelf of Nicaragua.

4.24 As far as Colombia's islands of San Andrés and Providencia are concerned, Nicaragua observes that Colombia has made the following statement:

In accordance with customary international law, the Republic of Colombia's continental shelf comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. Also in accordance with customary international law, the Republic of Colombia's islands, regardless of their size, enjoy the same maritime rights as the country's other land territory.<sup>126</sup>

4.25 Nicaragua considers that this Colombian statement implies that Colombia holds that the islands of San Andrés and Providencia have a potential continental shelf entitlement beyond 200 nautical miles to the outer edge of the continental margin. Nicaragua recognizes that San Andrés and Providencia have such a potential entitlement.<sup>127</sup> The islands of San Andrés and Providencia are located on the same continental margin as Nicaragua's mainland and its fringing islands. This implies that the outer edge of the continental margin of Nicaragua and of the continental margin of the islands of San Andrés and Providencia are identical. However, as is discussed in Chapter 5 of the Memorial, as a result of the 2012

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<sup>126</sup> Note S-DM-13-014681 of 22 April 2013 (Annex to the note verbale dated 29 April 2013 from the Permanent Mission of Colombia to the United Nations addressed to the Secretary-General; UN Doc. A/67/852 of 2 May 2013) (*see* NM, Annex 3).

<sup>127</sup> Nicaragua does not agree with Colombia that "Colombia's islands, regardless of their size, enjoy the same maritime rights as the country's other land territory". As explained above at para. 4.18, Nicaragua considers that all of Colombia's mid-sea islands in the Western Caribbean except for San Andrés and Providencia and Santa Catalina are rocks under Article 121(3) of the United Nations Convention on the Law of the Sea, which reflects customary international law.

Judgment, the continental shelf of the islands of San Andrés and Providencia should not extend east of the 200-nautical-mile limit of Nicaragua's exclusive economic zone.<sup>128</sup>

4.26 Colombia has not submitted information to the CLCS on the outer limits of its continental shelf beyond 200 nautical in accordance with Article 76 of the Convention, which it would be required to do if it were to become a party to the Convention. However, Nicaragua considers that the absence of a submission to the CLCS by Colombia in the present case does not prevent the Court from delimiting the continental shelf between Nicaragua and Colombia. As the submission of Nicaragua to the CLCS indicates, the outer limit of Nicaragua's continental shelf overlaps with the 200-nautical-mile continental shelf of Colombia's mainland coast. As a consequence, information on the exact location of the outer limits of the continental shelf of San Andrés and Providencia will not change the area of overlap between the continental shelf of Nicaragua and Colombia, as that outer limit will be located within 200 nautical miles of Colombia's mainland coast and thus is overlapped by a Colombian entitlement to a continental shelf based upon distance from Colombia's mainland coast in any event.

4.27 The present case is concerned with the delimitation of Nicaragua's continental shelf beyond 200 nautical miles and Colombia's continental shelf. The area of overlapping potential continental shelf entitlements is located between the 200-nautical-mile limit of Nicaragua and the outer limits of Nicaragua's continental shelf beyond 200 nautical miles as contained in Nicaragua's submission to the CLCS. The area of overlapping entitlements only comprises a part of the maritime area between the relevant mainland coasts of the Parties. Nicaragua holds that the relevant area includes the entire maritime areas between

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<sup>128</sup> See para. 5.19-5.20 below.

the relevant mainland coasts of the parties, and not only the area of overlapping entitlements.

4.28 Nicaragua submits that its definition of the relevant area is in accordance with the object and purpose of the third-stage proportionality test, which is to ascertain whether the delimitation that is being considered leads to an equitable result.<sup>129</sup> Taking into account the whole maritime area between the relevant coasts of the Parties allows determining whether the overall outcome of the delimitation effected by the Court leads to an equitable result. That approach is also in accordance with the consideration that the present delimitation is a continuation of the delimitation the Court effected through its 2012 Judgment in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. To the contrary, were the Court only to consider the area of overlapping continental shelf entitlements beyond 200 nautical miles from the coast of Nicaragua, the Court would not be looking at how the maritime boundary divides the maritime areas between the relevant coasts of the parties, but only at how one specific part of that maritime area would be divided between the parties. A specific division of that smaller area might seem to be equitable on the basis of the third-stage proportionality test, but does not inform the Court whether the overall result of the delimitation is equitable. The latter can only be determined by considering how the maritime boundary resulting from the second stage of the delimitation divides the entirety of the maritime zones lying between the relevant coasts of the parties.

4.29 Nicaragua's approach to the definition of the relevant area is in accordance with the fundamental notion of delimitation law that the land dominates the sea. As the Court observed in *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*: "The title of a State to the continental shelf and to the exclusive

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<sup>129</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* case, *Judgment*, *I.C.J. Reports 2009*, p. 100, para. 111.

economic zone is based on the principle that the land dominates the sea through the projection of the coasts or the coastal fronts”.<sup>130</sup> As this observation indicates, the seaward projections *from* the coast start *at* the coast. Disregarding a maritime area directly in front of the relevant coasts of the parties would sever the link between the relevant coasts and the relevant area, which would be contrary to the principle that the land dominates the sea through the projection of the coasts.

4.30 The practice of the Court and other courts and tribunals confirms that the law requires taking into account the entire maritime area between the relevant coasts of the parties as the relevant area, including those parts of that area that do not overlap with the maritime zones of the other party.

4.31 In the *Jan Mayen* case, the Court defined the relevant area as the area lying between the relevant coasts of Greenland and the island of Jan Mayen.<sup>131</sup> That case was concerned with the delimitation of the 200-nautical-mile zones of Denmark and Norway. The relevant area in that case included both (1) areas of overlapping entitlements; and (2) areas between the coasts of Greenland or Jan Mayen that are only within 200 nautical miles of one of the parties. This is illustrated by Sketch-map No. 1 included in the Judgment, which is reproduced as Figure 4.7 in this Memorial. The relevant area is bounded by the lines between points A-E-F-B-C-D-G-H-A. The fact that the relevant maritime area does not equal the area of overlapping claims/entitlements is explicitly confirmed by the Judgment of the Court in *Jan Mayen*, which distinguishes between these two areas.<sup>132</sup>

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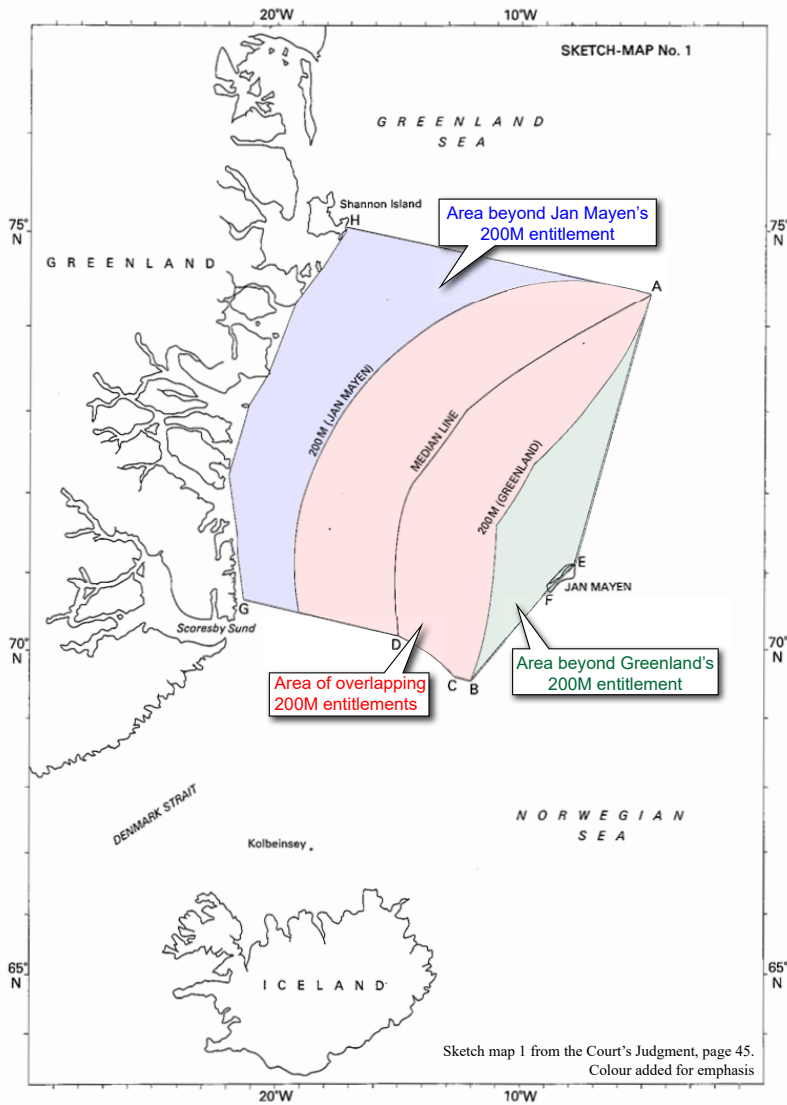
<sup>130</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine) case, Judgment, I.C.J. Reports 2009*, p. 89, para. 77.

<sup>131</sup> *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment of 14 June 1993, I.C.J. Reports 1993, p. 47, para. 20.

<sup>132</sup> *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment of 14 June 1993, I.C.J. Reports 1993, p. 47, paras 19-20 and pp. 69-70, paras 71-72.



Figure 4.7 The Relevant Area in *Jan Mayen*

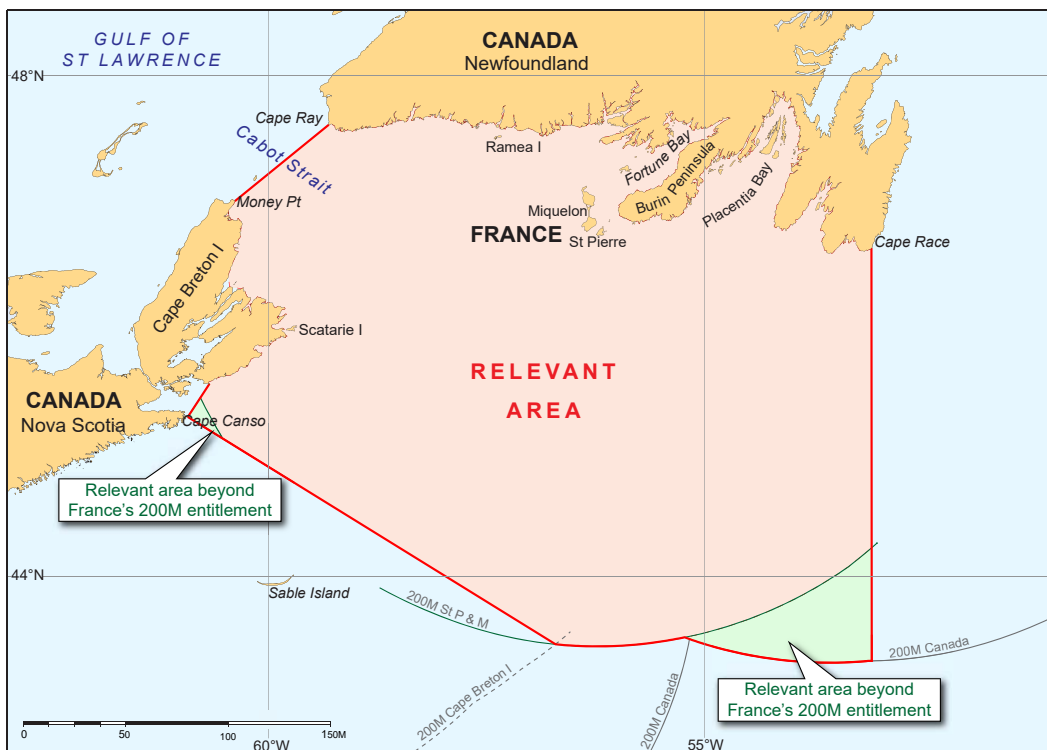


4.32 In the *Case concerning the Delimitation of Maritime Areas between Canada and France*, the arbitral tribunal delimited the 200-nautical-mile zones of the parties. The arbitral tribunal defined the relevant area in paragraph 93 of its award.<sup>133</sup> The relevant area included areas adjacent to the relevant coast of

<sup>133</sup> *Case concerning the Delimitation of Maritime Areas between Canada and France*, award of 10 June 1992, U.N.R.I.A.A. Vol. XXI, pp. 296-297.

Canada that are beyond 200 nautical miles of the coasts of the French islands of Saint Pierre and Miquelon. In other words, the relevant area included maritime areas that are not part of the areas of overlapping entitlements. These areas are identified in Figure 4.8 of this Memorial, which depicts the relevant area defined by the arbitral tribunal in the *Case concerning the Delimitation of Maritime Areas between Canada and France* and that part of the relevant area in which there are no overlapping entitlements of the parties.

Figure 4.8 The Relevant Area in *Canada v France*



4.33 In *Bangladesh/Myanmar*, the International Tribunal for the Law of the Sea delimited the territorial sea, the exclusive economic zone, and the continental shelf within and beyond 200 nautical miles of the parties. Nicaragua considers this case and *Bangladesh v. India*, which is discussed further below, particularly instructive because they are, to date, the only cases to delimit the continental shelf

beyond 200 nautical miles. As a final step in its delimitation of the maritime boundary in *Bangladesh/Myanmar*, the Tribunal defined the relevant area, in order to allow it to carry out the third-stage proportionality test. The Tribunal observed that the parties disagreed on two points in relation to the relevant area: its southern and northwestern parts.<sup>134</sup> In respect of the southern part of the relevant area, the Tribunal observed that:

it has already found that the segment of Myanmar's coast that runs from Bhiff Cape to Cape Negrais is to be included in the calculation of the relevant coast. *Therefore, the southern maritime area extending to Cape Negrais must be included* in the calculation of the relevant area for the purpose of the test of disproportionality.<sup>135</sup>

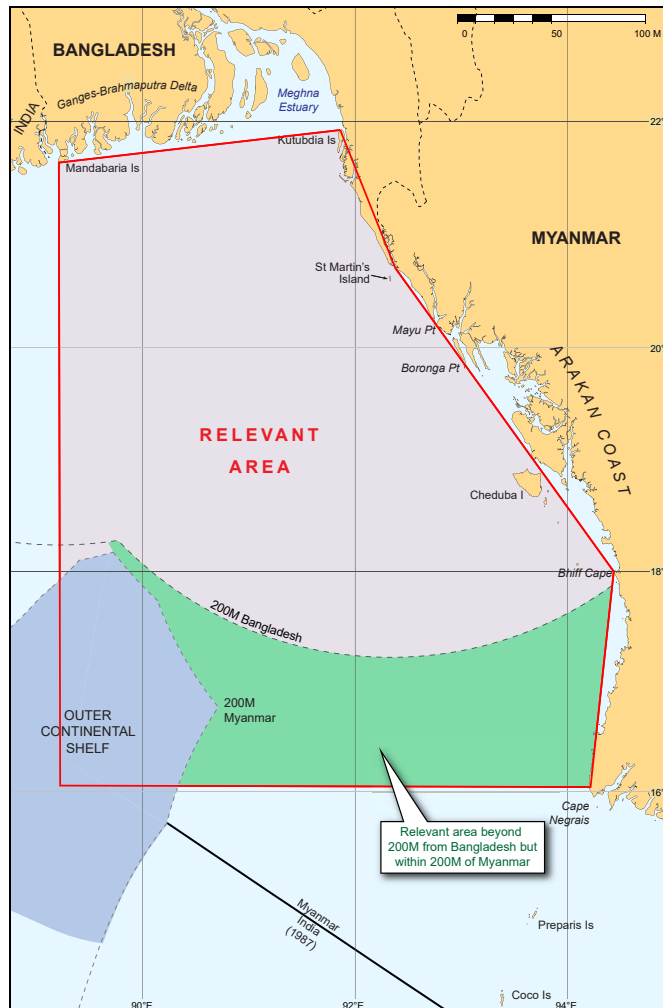
4.34 It may be observed that this southern part of the relevant area is beyond 200 nautical miles from the coast of Bangladesh and is not a part of the continental shelf of Bangladesh beyond 200 nautical miles in relation to which Bangladesh had submitted information to the CLCS (see Figure 4.9).

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<sup>134</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal Bangladesh/Myanmar*, Judgment of 14 March 2012, para. 490.

<sup>135</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal Bangladesh/Myanmar*, Judgment of 14 March 2012, para. 491 (emphasis provided).

Figure 4.9 The Relevant Area in *Bangladesh v Myanmar*



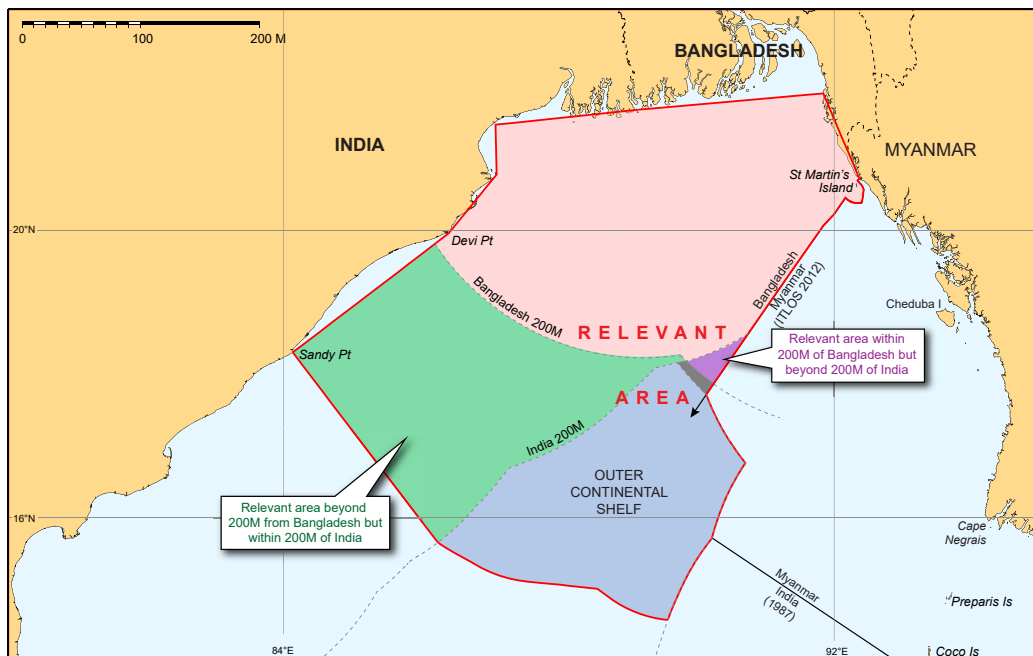
4.35 In relation to the extent of the northwestern part of the relevant area, on which the parties also disagreed, the Tribunal considered that, “for the purpose of determining any disproportionality in respect of areas allocated to the Parties, *the relevant area should include maritime areas subject to overlapping entitlements of the Parties to the present case*”.<sup>136</sup> This approach to defining the relevant area indicates that the Tribunal considered that the area of overlapping entitlements

<sup>136</sup> *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal Bangladesh/Myanmar*, Judgment of 14 March 2012, para. 493 (emphasis provided).

should be part of the relevant maritime area, but that the relevant area is not necessarily limited to the area of overlapping entitlements.

4.36 The arbitral tribunal in *Bangladesh v. India* took a similar approach to the definition of the relevant area. The southwestern part of the relevant area is beyond 200 nautical miles from the coast of Bangladesh and is not a part of the continental shelf of Bangladesh beyond 200 nautical miles in relation to which Bangladesh had submitted information to the CLCS.<sup>137</sup> This southwestern part of the relevant area is identified in Figure 4.10 below.

Figure 4.10 The Relevant Area in *Bangladesh v India*



4.37 The approach of the International Tribunal for the Law of the Sea in *Bangladesh/Myanmar* and the arbitral tribunal in *Bangladesh v. India* to the relevant area and the third-stage proportionality test is also pertinent to the present

<sup>137</sup> In the Matter of the Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award of 7 July 2014, paras, 309 and 310.

case for another reason. The Tribunal and the arbitral tribunal delimited the maritime boundary between the parties in three separate stages. First, the territorial sea, then the continental shelf and exclusive economic zone within 200 nautical miles, and, finally, the continental shelf beyond 200 nautical miles. However, in carrying out the third-stage proportionality test, the Tribunal and the arbitral tribunal did not apply this test to each of the three separate parts of the maritime boundary they had established, but applied the test to the entire relevant area, which covers the territorial sea, the continental shelf and exclusive economic zone within 200 nautical miles, and the continental shelf beyond 200 nautical miles. This approach reconfirms that the third-stage proportionality test is intended to check whether the overall outcome of a delimitation is equitable. In the present case, this requires applying the proportionality test to determine whether the boundary established by the Court in 2012 and the boundary it is requested to establish in the present case, viewed together, achieve an equitable solution.

## **2. The Lateral Limits of the Relevant Area**

4.38 As a final step, the lateral limits of the relevant area remain to be determined. In this respect, Nicaragua observes that the Court in its 2012 Judgment determined the lateral limits of the relevant area between Nicaragua's mainland coast and the 200-nautical-mile limit of Nicaragua. In the north, the lateral limit of the relevant area first followed the maritime boundary between Nicaragua and Honduras that the Court had established through its 2007 Judgment in *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* and then the Joint Regime Area established by the 1993 Treaty between Colombia and Jamaica. In the south, the lateral limit of the relevant area first followed a hypothetical equidistance line

between Nicaragua and Costa Rica and then the boundaries established by treaties between Colombia and Costa Rica, and between Colombia and Panama<sup>138</sup>

4.39 Nicaragua considers that the definition of the relevant area contained in the Court's 2012 Judgment remains pertinent to the definition of the relevant area for the present case, with one exception. Nicaragua considers that the relevant area should include the territorial sea around Serranilla and Bajo Nuevo. These areas of territorial sea are excluded from the Joint Regime Area established by the 1993 Treaty between Colombia and Jamaica and are recognized as being part of the territory of Colombia. Before further explaining Nicaragua's position on this point, it is worth recalling what the Court said about the exclusion of the Joint Regime Area and the territorial sea around Serranilla and Bajo Nuevo in its 2012 Judgment:

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.<sup>139</sup>

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<sup>138</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case Judgment of 19 November 2012, *I.C.J. Reports 2012*, p. 686, paras 164 and 165.

<sup>139</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case Judgment of 19 November 2012, *I.C.J. Reports 2012*, p. 685-686, para. 163.

4.40 A number of points are to be noted about the Court's observations on the Joint Regime Area and the territorial sea around Bajo Nuevo and Serranilla. The Court distinguishes the Joint Regime Area from areas that have been attributed to third states through a delimitation agreement with one of the parties. While in the latter case the area beyond the boundary will not be included in the relevant maritime area, the Court's pronouncement indicates that this is not necessarily the case for a joint regime area. Rather, the Court in its 2012 Judgment provides a number of practical reasons why the Joint Regime Area and the territorial sea around Bajo Nuevo and Serranilla should be excluded from the relevant area. As the Court observes, part of the Joint Regime Area and the territorial sea of Bajo Nuevo are located beyond 200 nautical miles from the baselines of Nicaragua and as a consequence in any event could not be included in the relevant area. The situation obviously is different in the present case, which is concerned with the delimitation of the continental shelf beyond 200 nautical miles from Nicaragua's baselines. Both the Joint Regime Area and the territorial sea around Serranilla and Bajo Nuevo are within the outer limit of Nicaragua's continental shelf beyond 200 nautical miles.

4.41 Neither party in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* argued that the Joint Regime Area and the territorial sea around Serranilla and Bajo Nuevo should be included in the relevant maritime area. Following the 2012 Judgment and the developments relating to the Judgment,<sup>140</sup> Nicaragua has concluded that it is appropriate that the status of the maritime entitlements around Serranilla and Bajo Nuevo should be resolved to the fullest extent possible. In this respect, Nicaragua is mindful of the Court's observation in its 2012 Judgment concerning Jamaica's potential entitlements.

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<sup>140</sup> See further Memorial of Nicaragua in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*.



4.42 Nicaragua considers that the Court is in a position to address the following issues in relation to the maritime entitlements of Serranilla and Bajo Nuevo. First, the Court is in a position to determine the entitlement of the cays on Serranilla and Bajo Nuevo to a territorial sea, continental shelf and exclusive economic zone. Serranilla and Bajo Nuevo are under the sovereignty of Colombia and the determination of their capacity to generate maritime zones is a matter that is in dispute between Nicaragua and Colombia, and a decision on this matter does not require the participation of Jamaica in the present proceedings. While Nicaragua acknowledges that the cays on Serranilla and Bajo Nuevo are islands in the sense of Article 121(1) of the United Nations Convention on the Law of the Sea, and as such are entitled to a territorial sea, Nicaragua submits that all these cays are rocks in the sense of Article 121(3) of the Convention.<sup>141</sup> As such, they are not entitled to an exclusive economic zone and continental shelf. On the basis of this finding it can be concluded that the maritime boundary between Nicaragua and Colombia in this area can only be constituted by the 12-nautical-mile arc measured from the low-water line along the cays. These findings on the maritime entitlements of the cays on Bajo Nuevo and Serranilla imply that Colombia's rights in the Joint Regime Area, beyond the territorial sea of the cays, cannot be derived from those maritime entitlements, but can only stem from the specific regime set up by the 1993 Agreement between Colombia and Jamaica.

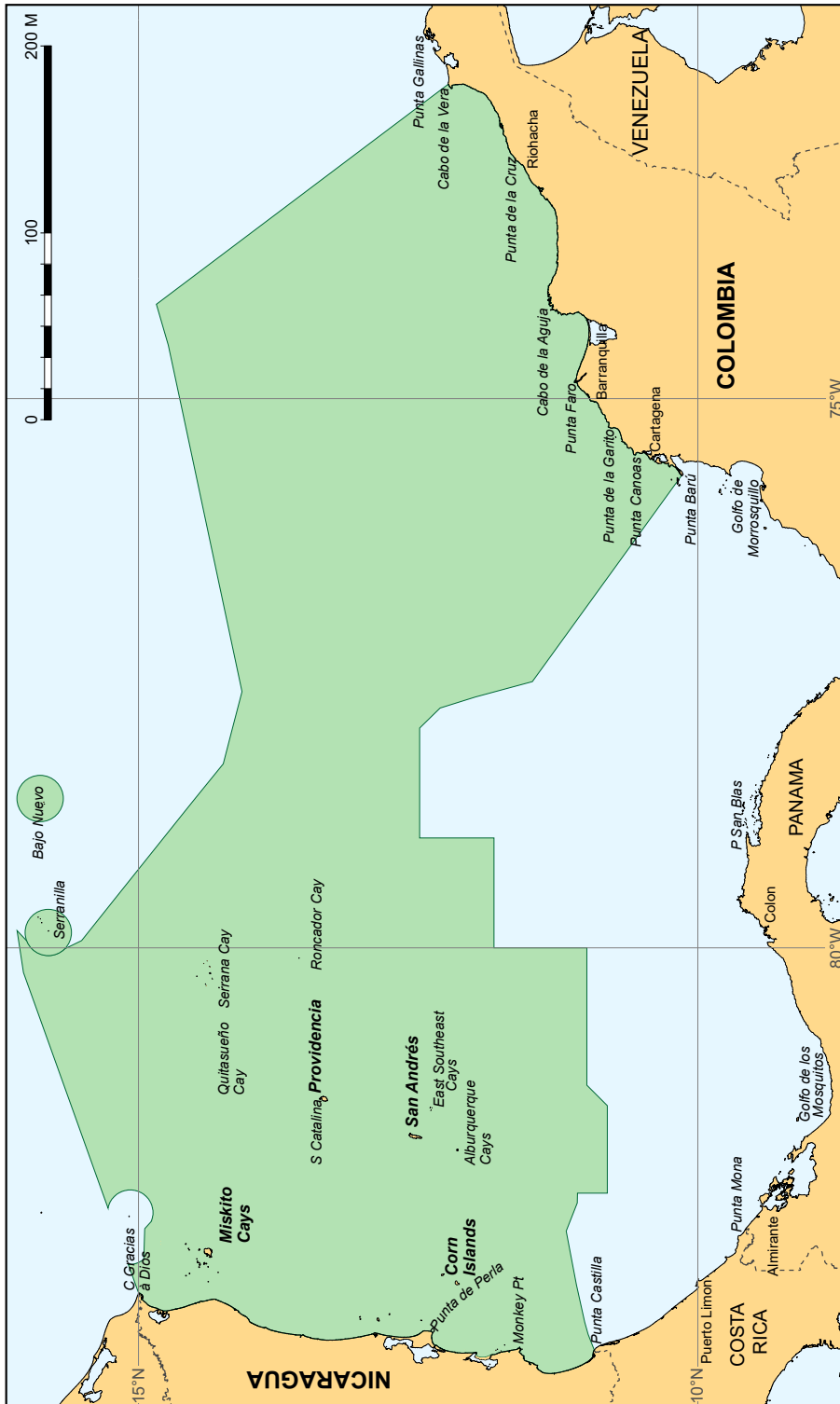
4.43 In view of the fact that Nicaragua is requesting the Court to determine the maritime entitlements of the cays on Bajo Nuevo and Serranilla and their maritime boundary *vis-à-vis* Nicaragua, Nicaragua considers that it is appropriate to take their 12-nautical-mile territorial sea into account in determining the extent of the relevant area for the delimitation involving Nicaragua and Colombia.

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<sup>141</sup> See further paragraph 4.18 above.

4.44 The Court in its 2012 Judgment determined that the relevant area extended up to the 200-nautical-mile limit of Nicaragua, as the Court was only delimiting the maritime boundary between Nicaragua and Colombia up to that limit. In the current case, the relevant area extends beyond that limit, up to the mainland coast of Colombia. The lateral limits of this part of the relevant area are thus constituted by two straight lines perpendicular to the eastern- and westernmost points of Colombia's relevant coast. The two perpendiculars extend to their point of intersection with the outer limit of Nicaragua's continental shelf beyond 200 nautical miles. From those points, the lateral limits of the relevant area follow the maritime boundaries of Colombia with Panama and Jamaica respectively. The relevant area is depicted in Figure 4.11 below.

Figure 4.11 The Relevant Area



## **D. Conclusions**

4.45 The relevant coast of Nicaragua is its entire mainland coast, save a part of that coast south of Punta de Perlas (see Figure 4.4). This coast faces the area of overlapping claims and generates Nicaragua's continental shelf entitlement in the area of overlapping claims. Measured along its natural configuration, the length of this coast is approximately 531 km. Measured along a straight line it is 454 kilometers.

4.46 The relevant coast of Colombia is constituted by its mainland coast between Punta Baru and Cabo de la Vera, excluding two stretches of coast that are not facing the area of overlapping entitlements, and the coasts of Colombia's islands of San Andres and Providencia and the cays of Albuquerque, Bajo Nuevo, East-Southeast Cays, Roncador, Serranilla and Serrana. Colombia's mainland coast measured along its natural configuration is 475 kilometers. Measured along a straight line, the relevant mainland coast of Colombia is 453 kilometers. Nicaragua considers that in the present case, due to the sinuosities and irregularity of the Colombian mainland coast, it is proper to determine the length of that relevant coast by the latter method. The relevant coast of Colombia's islands for the third-stage proportionality test measures 67 kilometers.

4.47 While the entire coast of Colombia's islands is part of the relevant coast for purposes of the third-stage proportionality test, this is not the relevant coast for other aspects of the delimitation process the Court is requested to carry out. In particular, in considering appropriate methods for the delimitation of the continental shelf beyond 200 nautical miles of Nicaragua and the continental shelf of Colombia, only the east-facing coasts of San Andrés and Providencia and Santa Catalina constitute the relevant coasts of Colombia's islands. Along its natural

configuration, this coast measures 27 kilometers. Measured along straight lines this coast measures 20 kilometers.

4.48 The Court is in a position to address two issues in relation to the maritime zones of the cays in the banks of Serranilla and Bajo Nuevo. First, the Court is in a position to determine the entitlement of the cays on Serranilla and Bajo Nuevo to a territorial sea, continental shelf and exclusive economic zone. Nicaragua submits that all these cays are rocks in the sense of Article 121(3) of the United Nations Convention on the Law of the Sea and that, as such, they are not entitled to an exclusive economic zone and continental shelf. Second, on the basis of this finding it can be concluded that the maritime boundary between Nicaragua and Colombia in this area can only be the 12-nautical-mile arc measured from the low-water line along the cays. These findings on the maritime entitlements of the cays on Bajo Nuevo and Serranilla imply that Colombia's rights in the Joint Regime Area, beyond the territorial sea of the cays, cannot be derived from those maritime entitlements, but can only stem from the specific regime set up by the 1993 Agreement between Colombia and Jamaica.

4.49 The relevant area for the delimitation of the continental shelf beyond 200 nautical miles of Nicaragua and the continental shelf of Colombia is formed by the area between the mainland coasts of the Parties. The lateral limits of the relevant area in large part are defined by maritime boundaries between Colombia and third States. The relevant area is depicted in Figure 4.11.

**CHAPTER 5**  
**THE DELIMITATION OF THE CONTINENTAL SHELF BEYOND**  
**200 NM**

5.1 This Chapter sets out Nicaragua's claim in respect of the delimitation of the continental shelf beyond 200 nm.

5.2 For the reasons explained in Chapter 1, this claim must be viewed in conjunction with Nicaragua's claims in the prior proceeding and in light of the Court's 2012 Judgment. Determining what constitutes an equitable solution for the delimitation beyond 200 nm from Nicaragua's coast is not a question that can be answered in isolation.

5.3 With that in mind and in line with the three-step methodology employed by the Court, **Section I** of this Chapter deals with the identification of a provisional delimitation line appropriate to the geographical circumstances of this case. **Section II** addresses the issue of relevant circumstances and shows that there are no reasons that might warrant an adjustment to the provisional delimitation line described in Section I. Finally, **Section III** addresses the disproportionality test and demonstrates that Nicaragua's proposed delimitation plainly yields an equitable solution.

**A. The Identification of the Provisional Delimitation Line**

5.4 Nicaragua showed in Chapter 4 that, viewed against the backdrop of the Court's 2012 Judgment, the relevant area comprises the entirety of the maritime areas lying between Nicaragua's coast and Colombia's mainland coast, but

excluding areas in which the interests of third States may be implicated.<sup>142</sup> That area is depicted in Figure 4.11.

5.5 Figure 4.11 reveals an obvious truth: the land territories that dominate the relevant area are the two Parties' mainland coasts. The principal issue that remains for determination by the Court is therefore the delimitation between (a) Nicaragua's continental shelf beyond 200 nm and (b) the 200 nm continental shelf of Colombia's mainland.

5.6 Colombia's San Andrés and Providencia/Santa Catalina islands also generate continental shelf entitlements that overlap with those of Nicaragua but the Court has, in its 2012 Judgment, already effectively delimited the continental shelf of these small, mid-sea islands by allocating them areas that achieve an equitable solution.<sup>143</sup> The areas the Court previously allocated to Colombia's islands in the 2012 Judgment are more than enough to satisfy the requirements of customary international law, as reflected in Article 83(1) of UNCLOS.

5.7 Nicaragua will therefore focus in the first instance on the delimitation between the respective continental shelf entitlements generated by the Parties' mainland coasts. Secondarily, and as an incident to this primary delimitation, Nicaragua will address the boundary of Nicaragua's continental shelf vis-à-vis San Andrés and Providencia.

5.8 Nicaragua considers that the appropriate first step is, in the words of the *Black Sea* case, to "establish a provisional delimitation line, using methods that

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<sup>142</sup> See Chapter 4 above.

<sup>143</sup> See Sketch – map No. 11: Course of the maritime boundary, p.714, I.C.J. Reports 2012, p. 624.

are geometrically objective and also appropriate for the geography of the area in which the delimitation is to take place”<sup>144</sup>

5.9 The critical threshold question is therefore what constitutes the appropriate provisional delimitation line that uses “methods that are geometrically objective and also appropriate for the geography of the area”?

5.10 To answer this question, account must be taken of the two central characteristics that distinguish the geography of the area in which the delimitation is to take place: (a) the dominance of the Parties’ mainland coastal projections; and (b) the fact that Nicaragua’s entitlement in the continental shelf beyond 200 nm overlaps with the 200 nm shelf entitlement of Colombia’s mainland.

5.11 In its 2012 Judgment, the Court observed that:

“the task of delimitation consists in resolving the overlapping claims by drawing a line of separation between the maritime areas concerned.”<sup>145</sup>

5.12 Accordingly, Nicaragua considers that the appropriate provisional delimitation line is an equidistance line that divides the area of overlap between Nicaragua’s continental shelf beyond 200 nm and Colombia’s continental shelf within 200 nm of its mainland. This line is depicted in Figure 5.1, and has been drawn so that it is equidistant from the nearest points on the outer limits of the Parties’ respective continental shelf entitlements.

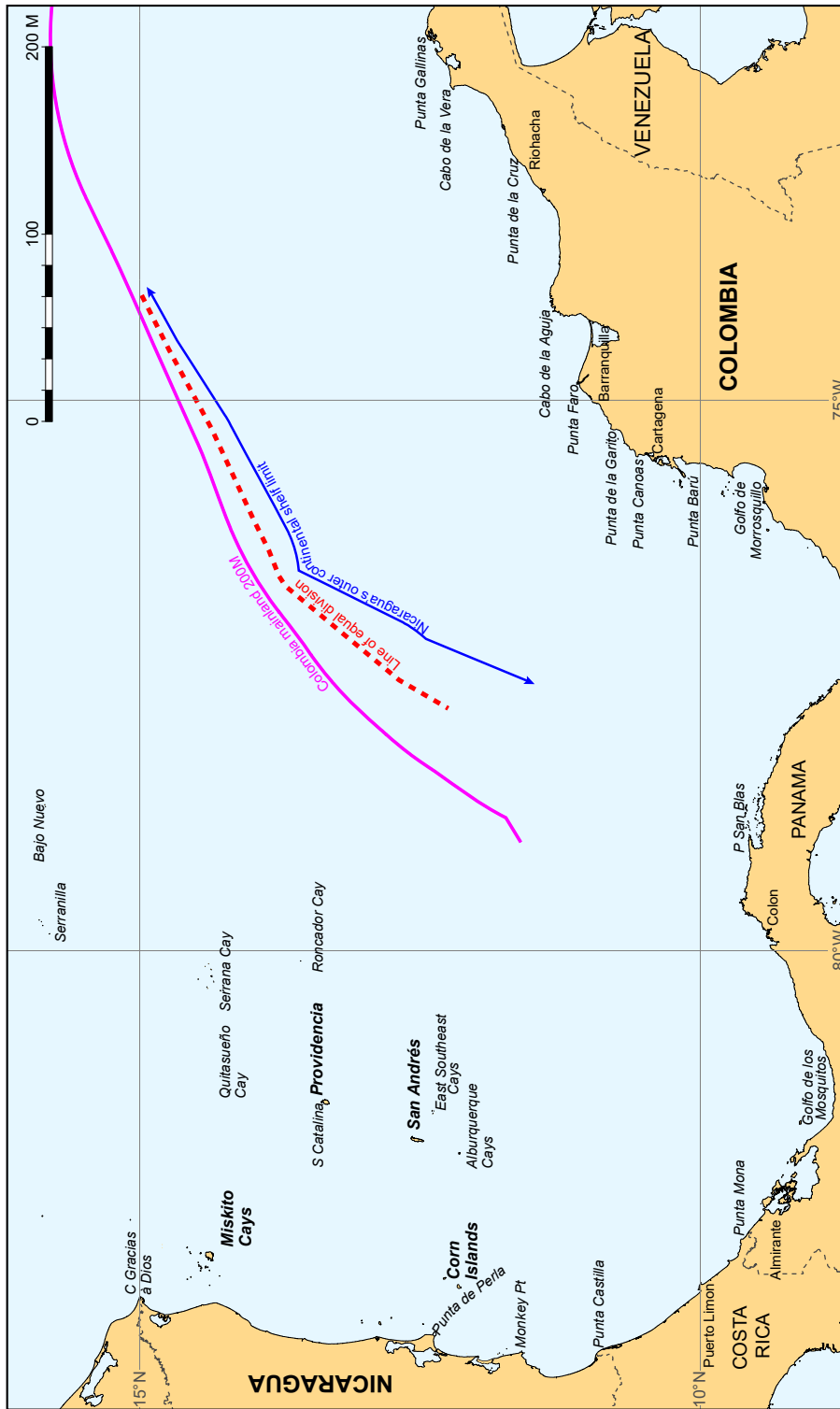
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<sup>144</sup> *Black Sea*, para. 116.

<sup>145</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case Judgment of 19 November 2012, *I.C.J. Reports 2012*, p. 674, para. 141.



Figure 5.1 The Provisional Mainland-mainland Delimitation Line



5.13 In addition to its geometric objectivity, this line has the advantage of according Nicaragua's entitlement in the continental shelf beyond 200 nm equal treatment with Colombia's juridical shelf entitlement to 200 nm. Consistent with Article 76 of UNCLOS, it does not give *a priori* precedence to either Nicaragua's 'natural prolongation' entitlement or Colombia's distance-based entitlement.

5.14 As discussed in Chapter 2, there is, in law, only a single continental shelf.<sup>146</sup> Neither the Convention nor customary international law afford any basis for according primacy to one coastal State's shelf entitlement *within* 200 nm over another coastal States' continental shelf entitlement *beyond* that distance.

5.15 Article 76(1)—which the Court has specifically held constitutes part of customary law<sup>147</sup>—provides:

“The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea [either (1)] throughout the natural prolongation of its land territory to the outer edge of the continental margin, or [(2)] to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

5.16 There are thus two distinct but co-equal criteria for determining the limits of coastal States' entitlement to the continental shelf: (a) the natural prolongation criterion and (b) the distance criterion. Nothing in the text of Article 76 accords priority to one over the other.

5.17 Article 83, which governs the delimitation of the continental shelf, likewise draws no distinction between shelf areas within and beyond 200 nm. It

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<sup>146</sup> See para. 2.21 above.

<sup>147</sup> *Nicaragua v. Honduras*, para. 118 (“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”).

simply requires that any delimitation result in an equitable solution, without regard to basis of the relevant coastal States' entitlements.

5.18 There being no basis for according *de jure* precedence to one Party's shelf entitlement over another, Nicaragua's proposed provisional delimitation line gives effect to the:

“criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States ... converge and overlap.”<sup>148</sup>

5.19 With respect to the incidental issue of Colombia's islands of San Andrés and Providencia/Santa Catalina, Nicaragua considers that the delimitation should not accord the islands a continental shelf beyond Nicaragua's 200 nm limit. In the 2012 Judgment, the Court accorded Colombia's islands very substantial continental shelf rights, extending along a 82 nm-wide corridor out as far as the 200 nm limit measured from Nicaragua's baselines. That limit lies some 124 and 112 nm east of the islands of San Andrés and Providencia, respectively. The total maritime space already accorded to these islands, together with the territorial sea enclaves around Quitasueño and Serrana Cay, measures fully 48,750 sq km in area<sup>149</sup>

5.20 Considering that Colombia's rights in this area emanate from what the Court itself has described as “a few small islands which are many nautical miles apart,”<sup>150</sup> no further enlargement of the continental shelf of San Andrés and Providencia is necessary; it should not extend east of Nicaragua's 200 nm limit.

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<sup>148</sup> *Nicaragua v. Honduras*, para. 287 (quoting *Gulf of Maine*, para. 195)

<sup>149</sup> The measurement excluding the territorial sea enclaves around Quitasueño and Serrana Cay is 42,836 sq km.

<sup>150</sup> *Nicaragua v. Colombia*, para. 215.

5.21 Finally, as discussed in Chapter 4, one issue left undetermined by the Court in its 2012 Judgment relates to the maritime boundary vis-à-vis Colombia's Serranilla Cay and Bajo Nuevo.<sup>151</sup> For the reasons explained, Nicaragua considers it appropriate for the Court now to delimit the maritime boundary between Nicaragua and Colombia in the vicinity of these two features. That boundary should plainly be defined by a 12-nm territorial sea enclave drawn around each of Serranilla and Bajo Nuevo, as these features are rocks as defined in article 121(3) of the Convention.

5.22 Figure 5.2 is a reproduction of photographs of Serranilla and Bajo Nuevo taken from Colombia's Rejoinder in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*<sup>152</sup> The two features are comparable to Roncador and East-Southeast Cays, as Figure 5.3—consisting of photos also taken from Colombia's Rejoinder in the earlier case<sup>153</sup>—makes clear. They are certainly no more significant and no more capable of sustaining human habitation or economic life, than either Roncador or East-Southeast Cays.

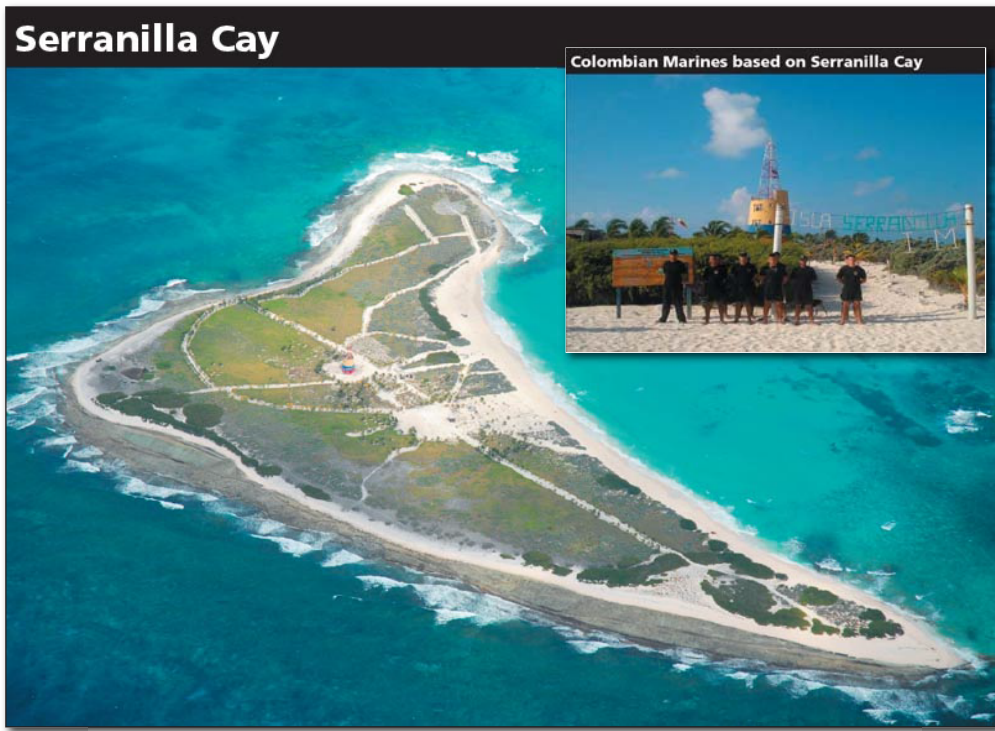
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<sup>151</sup> See para. 4.16 above.

<sup>152</sup> See Colombia's Rejoinder p.176.

<sup>153</sup> See Colombia's Rejoinder p.174.

Figure 5.2 Serranilla and Bajo Nuevo Cays



Reproduced from Colombia's Counter Memorial in *Territorial and Maritime Dispute (Nicaragua v Colombia)* Figures 2.9 and 2.10



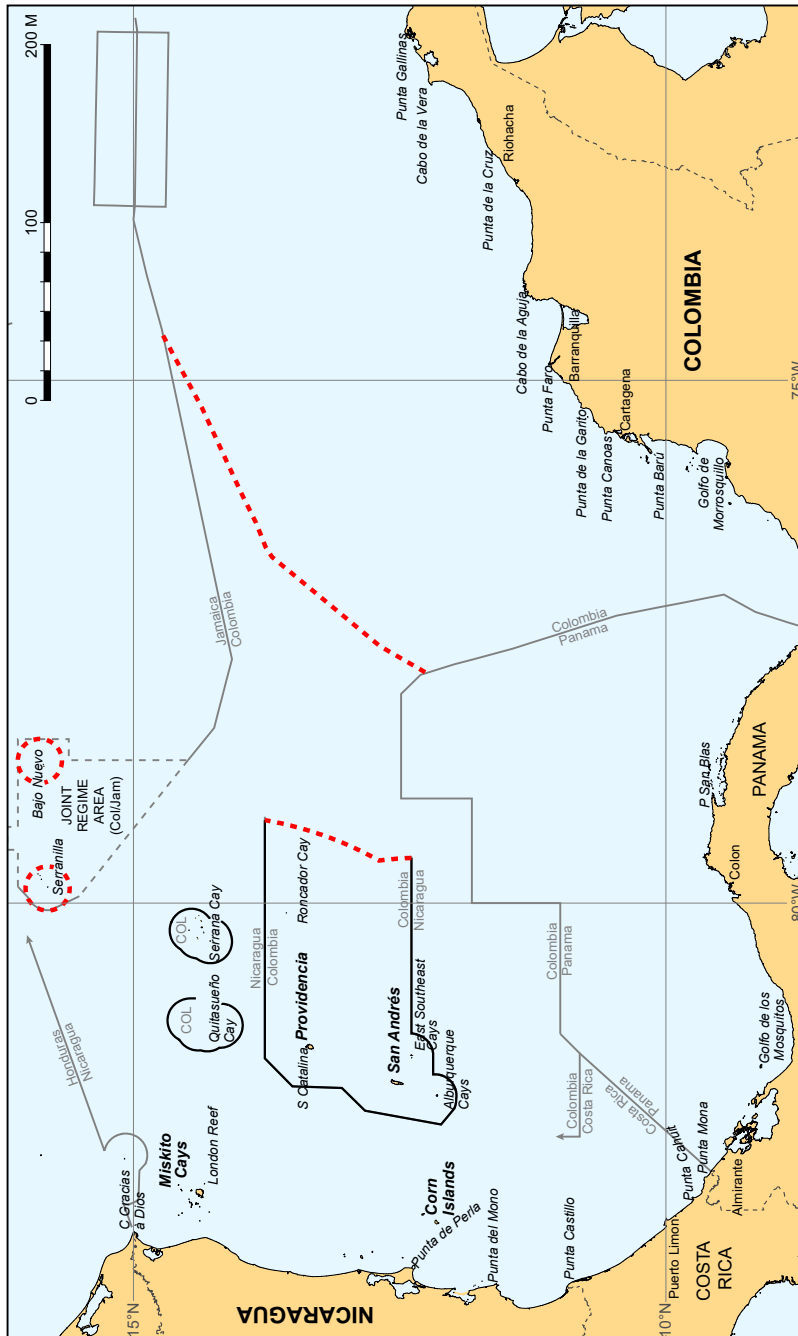
Figure 5.3 Roncador and East-southeast Cays



Reproduced from Colombia's Counter Memorial in *Territorial and Maritime Dispute (Nicaragua v Colombia)* Figures 2.5 and 2.6

5.23 The provisional delimitation of the continental shelf between Nicaragua and Colombia in the relevant area as described above is depicted in Figure 5.4.

Figure 5.4 Provisional Delimitation



## B. Relevant Circumstances

5.24 Having identified the provisional delimitation line, the next question is whether there are any relevant circumstances that justify an adjustment to or shifting of that line. The answer is plainly “no”. There is no substantial disparity in the length of the Parties’ relevant coasts, or unfair cut-off effect or any other circumstance that might render the provisional delimitation line described above inequitable.

5.25 Any putative cut-off resulting for the provisional delimitation line is shared out equitably between the Parties. To be sure, Colombia is prevented from extending its continental shelf out to the full extent of its 200 nm entitlement from its mainland. But Nicaragua too is equally prevented from reaching the full extent of its continental shelf entitlement, as defined by the outer limits of its continental shelf beyond 200 nm.

5.26 The Court in the *Black Sea* case observed that “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.”<sup>154</sup> The provisional delimitation line satisfies this requirement.

5.27 Neither is there any cut-off in the region of Colombia’s islands that might raise concerns about the equity of limiting those islands to the rights the Court accorded them in its 2012 Judgment.

5.28 As stated, these small, widely separated islands have already been given rights in the continental shelf encompassing an area of 48,750 sq km. Adding territorial sea enclaves around Serranilla and Bajo Nuevo increases the figure to

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<sup>154</sup> *Black Sea*, para. 201.



51,850 sq km. This is much more than adequate. In assessing the equity of this result, it is useful to compare it to that achieved in the two most nearly analogous cases in the jurisprudence: the *St. Pierre and Miquelon* case and the *Channel Islands* arbitration.

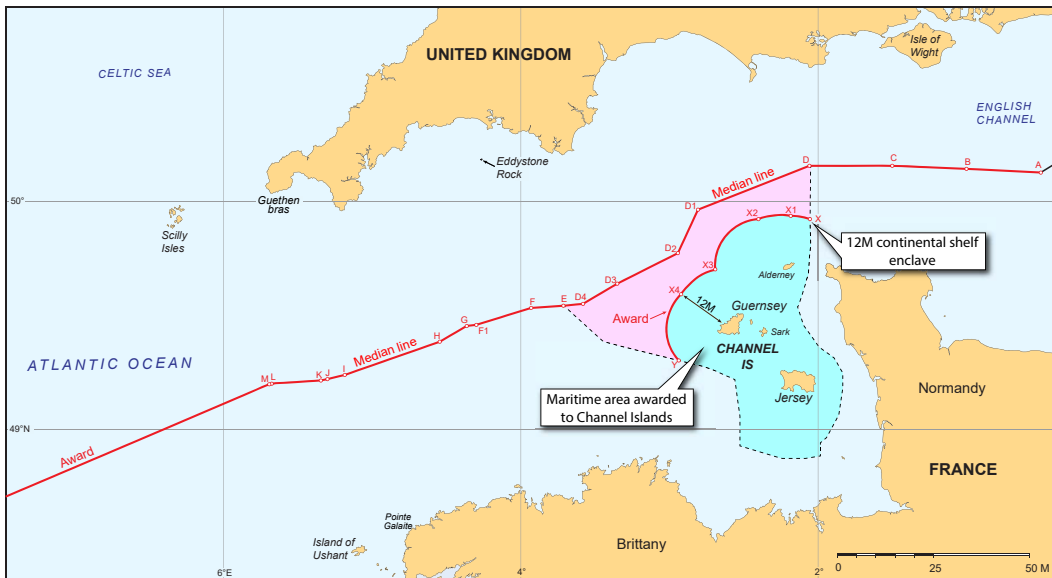
5.29 San Andrés and Providencia (including Santa Catalina) together measure just 51 sq km in area. Even including Colombia's Alburquerque Cays, East - Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo to in this measurement adds only 2 sq km, for a total of 53 sq km of land territory. The resulting ratio of sea to land areas is nearly 1,000:1.

5.30 In comparison, St. Pierre and Miquelon together cover an area of 236 sq km, *more than four times larger* than Colombia's insular possessions in the Caribbean. Yet, in the final result in that case, the French islands were accorded maritime rights over an area measuring just 12,402 sq km, roughly one-quarter of that accorded to San Andrés and Providencia. The sea to land ratio was 53:1, *more than 18 times less* than in the case of Colombia's islands.

5.31 The comparison with the Channel Islands arbitration is even more stark. The land area of the Channel Islands is 205 sq km. Yet, in its Award, the Court of Arbitration decided that an equitable solution entailed giving them maritime rights over an area measuring just 6,017 sq km. The resulting sea to land ratio was 29:1, *more than 30 times less* than in the case of Colombia's small, mid-sea islands.

5.32 Nicaragua observes further that the maritime rights of the Channel Islands were limited to 12 nm in the northwest where they faced toward the U.K. and away from France. The Court of Arbitration came to this result even though the 12 nm enclave around the islands was separated from the mainland-to-mainland equidistance line that otherwise defined the Parties' continental shelf boundary by just 7.5 nm at its closest point. This is shown in Figure 5.5.

Figure 5.5 Continental Shelf awarded to the Channel Islands in *UK v France*



5.33 An analogous result is entirely appropriate in this case. Confining the maritime rights of San Andrés and Providencia in the east to Nicaragua’s 200 nm limit is more than equitable.

5.34 The most basic precept of maritime delimitation, first articulated by the Court in the *North Sea* cases and repeated in virtually every adjudicated delimitation since, is that “the land dominates the sea.”<sup>155</sup> States acquire rights to maritime areas as a result of the projection of their land territory seaward.<sup>156</sup> Equally fundamental is the principle that shorter coasts should generate smaller areas of maritime rights.<sup>157</sup>

<sup>155</sup> *I.C.J. Reports* 1969, p.52, para. 96.

<sup>156</sup> See *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, *I.C.J. Reports* 2009, p. 89, para. 77. *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” (*Application for Permission to Intervene*, Judgment, *I.C.J. Reports* 1982, p. 61, para. 73).

<sup>157</sup> *I.C.J. Reports* 1969, p.50, para 91,

5.35 Here, Colombia's 53 sq km of land territory already dominates a huge portion of the western Caribbean Sea. These "few small islands which are many nautical miles apart"<sup>158</sup> warrant no more of the continental shelf than they have already been given; they already "enjoy reasonable entitlements in the areas into which [they] project."<sup>159</sup> Adopting any other approach and giving them an additional portion of the continental shelf would be inequitable to Nicaragua.

5.36 As to the issue of the comparative coastal lengths, Nicaragua observes that the relevant coasts of the two States are roughly equal in length. As discussed in Chapter 4, Nicaragua's mainland coast measures approximately 531 km along its natural configuration and 454 km when measured by means of a straight line that eliminates all sinuosities.<sup>160</sup> For its part, Colombia relevant mainland coast is 475 km in length measured along its natural configuration and 453 km using a straight line. The ratio is thus very nearly 1:1. Even if Colombia's islands are included as part of its relevant coast, the result does not change appreciably.<sup>161</sup>

5.37 Given the approximate equality of the Parties' relevant coastal lengths, there is no issue of a disparity that might warrant an adjustment to the provisional delimitation line. In this respect, Nicaragua observes that in the *Black Sea* case, the Court concluded that the disparity in coastal length between Ukraine and Romania, which was 2.8:1 in favor of Ukraine, was not sufficient to constitute a relevant circumstance.<sup>162</sup> *A fortiori*, neither is the much smaller difference in this case.

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<sup>158</sup> *Nicaragua v. Colombia*, para. 215.

<sup>159</sup> *Nicaragua v. Colombia*, para. 216.

<sup>160</sup> See para. 4.8 and figure 4.4 above. See also *Nicaragua v. Colombia*, para. 145.

<sup>161</sup> As was set-out in paragraph 4.17 above only the east-facing coasts of San Andrés and Providencia and Santa Catalina constitute the relevant coasts for the second stage of the delimitation process. The length of these coasts of these islands along their natural configuration measures approximately 27 kilometres and measured along a straight line approximately 20 kilometres.

<sup>162</sup> *Black Sea*, paras. 168, 215.

5.38 Thus, there are no relevant circumstances that might justify the expansion of the area already allocated to Colombia's islands by the Court in its 2012 Judgment.

### **C. The Disproportionality Test**

5.39 The third and final step of the delimitation process requires the Court to consider whether the delimitation line determined by application of the first two steps "lead[s] to any significant disproportionality by reference to the respective coastal lengths and the apportionment of areas that ensue."<sup>163</sup>

5.40 It is well-established that the purpose of this exercise:

"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."<sup>164</sup>

It is equally well-established that comparing the relevant coast ratio with the relevant area ratio "remains in each case a matter for the Court's appreciation, which it will exercise by reference to the overall geography of the area."<sup>165</sup>

5.41 Dividing the relevant area by means of Nicaragua's proposed delimitation results in an allocation of 229,500 sq km of continental shelf to Nicaragua and 233,600 sq km to Colombia, including its mid-sea islands.<sup>166</sup> The ratio is, for practical purposes, 1:1. Given the approximate equality in the length of the Parties' relevant coasts, Nicaragua's proposed delimitation creates no

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<sup>163</sup> *Black Sea*, para. 210.

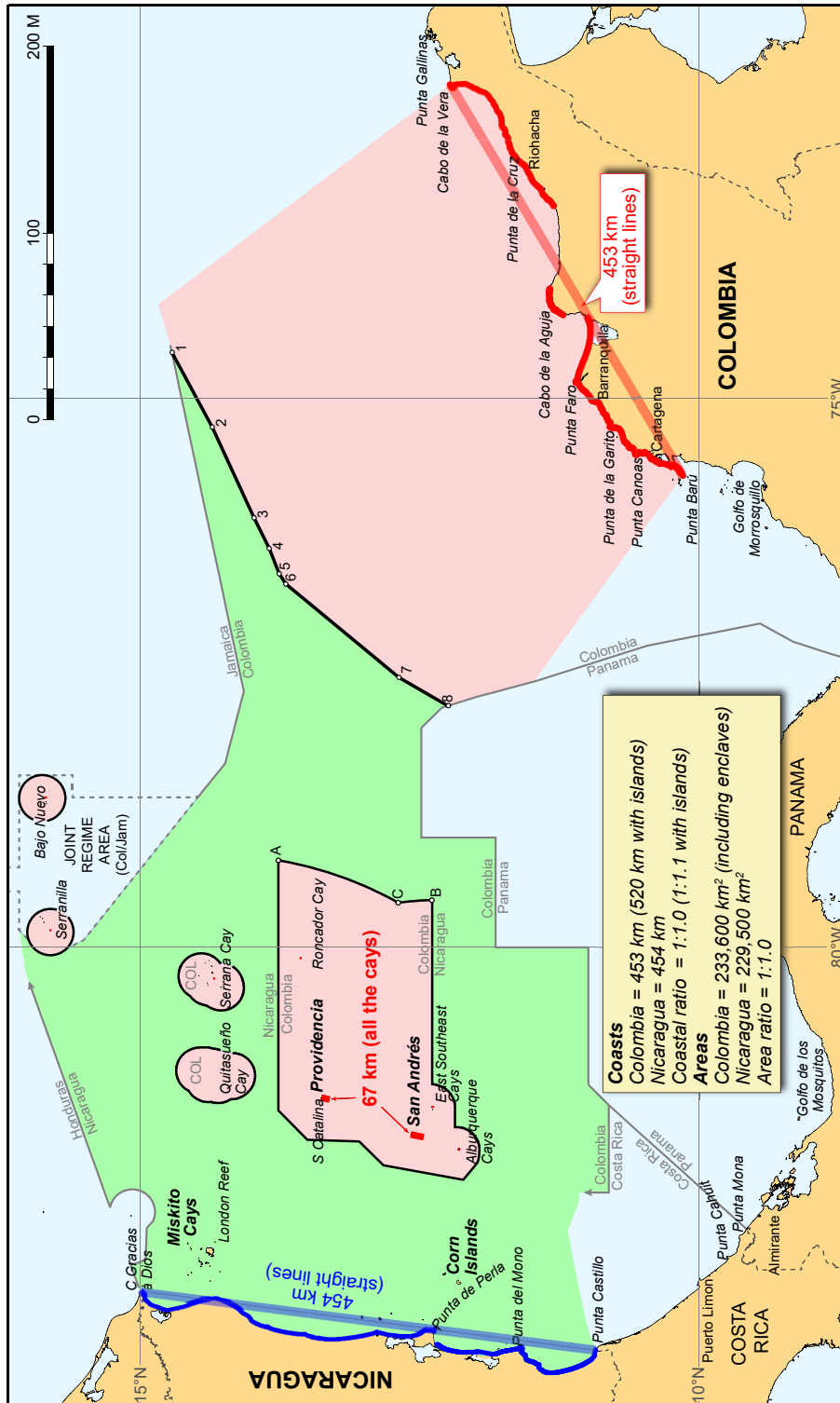
<sup>164</sup> *Nicaragua v. Colombia*, para. 242.

<sup>165</sup> *Black Sea*, para. 213.

<sup>166</sup> This figure includes the territorial sea enclaves around Serranilla and Bajo Nuevo.

disproportion at all, let alone a disproportion that might taint the result and render it inequitable. The detailed results of the disproportionality analysis are presented in Figure 5.6. Nicaragua's proposed delimitation therefore easily passes the disproportionality test and achieves the equitable solution the law requires.

Figure 5.6 Final Delimitation and Disproportionality Analysis



5.42 Accordingly, the continental shelf boundary between Nicaragua and Colombia in the area beyond 200 nm from Nicaragua’s coast but within 200 nm of Colombia’s mainland consists of geodesic lines connecting the turning points listed in Table 5.1 (all coordinates are referred to WGS 84).

**Table 5.1**

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>
1	14° 43’ 20.6’’ N	74° 34’ 49.1’’ W
2	14° 21’ 53.4’’ N	75° 15’ 39.3’’ W
3	13° 59’ 29.8’’ N	76° 5’ 15.6’’ W
4	13° 51’ 26.0’’ N	76° 21’ 57.1’’ W
5	13° 46’ 6.1’’ N	76° 35’ 44.9’’ W
6	13° 42’ 31.1’’ N	76° 41’ -20.33’’ W
7	12° 41’ 56.9’’ N	77° 32’ 27.4’’ W
8	12° 15’ 38.3’’ N	77° 47’ 56.3’’ W

5.43 As to the continental shelf limits of San Andrés and Providencia, those follow the 200 nm limit measured from Nicaragua’s territorial sea baseline. Two 200 nm arcs define the delimitation line respectively measured from the following points on the low-water line of Nicaragua’s London Reef in the north and Little Corn Island in the south:

<u>London Reef</u>	14° 19’ 10.1’’ N	82° 35’ 25.3’’ W
<u>Little Corn Island</u>	12° 16’ 31.9’’ N	82° 58’ 15.8’’ W

5.44 The resultant line consists of 200 nm arcs joining the points listed in Table 5.2 (Points A and B are those indicated by the Court in its 2012 Judgment as being the end points on the lines drawn to indicate the northern and southern

limits of the maritime area attributed to Colombia by virtue of its mid-sea islands; point C is where those 200 nm arcs intersect.<sup>167</sup>):

**Table 5.2**

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>
A	13° 46' 35.7" N	79° 12' 23.1" W
C	12° 42' 24.1" N	79° 34' 4.7" W
B	12° 24' 9.4" N	79° 34' 4.7" W

5.45 Finally, the 12-nm territorial sea enclaves around Serranilla and Bajo Nuevo are measured as 12 nm arcs centred on the points 15° 47' 50"N, 79° 51' 20"W, and 15° 51' 00"N, 78° 38' 00"W respectively. All coordinates are referred to WGS84.

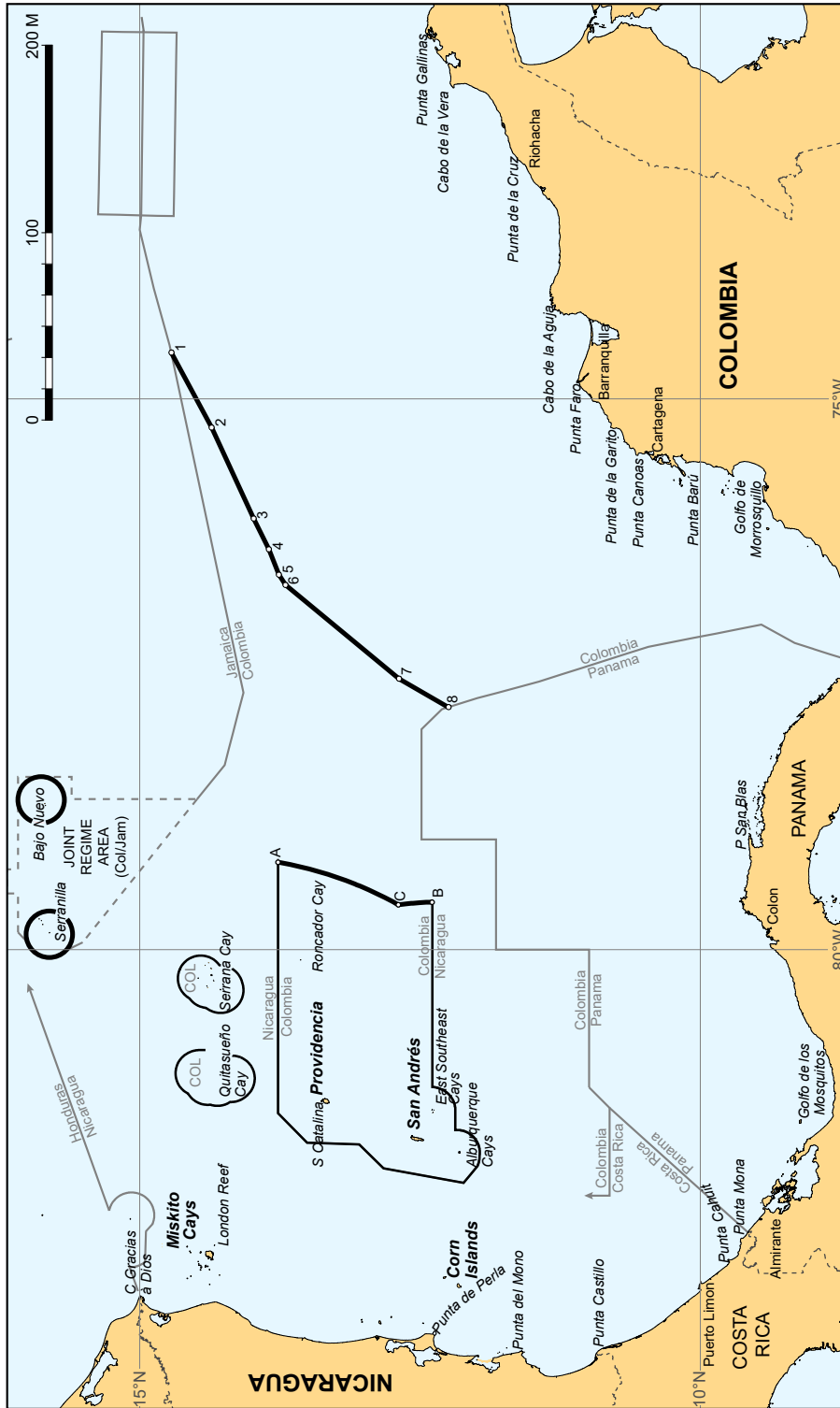
5.46 The resulting delimitation, labelled with all relevant points, is depicted in Figure 5.7.

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<sup>167</sup> At the time of the 2012 Judgment, Nicaragua had not adopted legislation identifying the base lines from which the breadth of the territorial sea should be measured. It was therefore not possible for the Court to define the location of Points A and B with precision. Nicaragua has since enacted legislation identifying its base lines. The coordinates for Points A and B in the table above have been determined on the basis of those baselines.



Figure 5.7 Final Delimitation



## SUBMISSIONS

For the reasons given in the present Memorial, the Republic of Nicaragua requests the Court to adjudge and declare that:

1. The maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundary determined by the Court in its Judgment of 19 November 2012, follows geodetic lines connecting the points with the following co-ordinates:

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>
1	14° 43' 20.6" N	74° 34' 49.1" W
2	14° 21' 53.4" N	75° 15' 39.3" W
3	13° 59' 29.8" N	76° 5' 15.6" W
4	13° 51' 26.0" N	76° 21' 57.1" W
5	13° 46' 6.1" N	76° 35' 44.9" W
6	13° 42' 31.1" N	76° 41' -20.33" W
7	12° 41' 56.9" N	77° 32' 27.4" W
8	12° 15' 38.3" N	77° 47' 56.3" W

2. The islands of San Andrés and Providencia are entitled to a continental shelf up to a line consisting of 200 nm arcs from the baselines from which the territorial sea of Nicaragua is measured connecting the points with the following co-ordinates:

<u>Point</u>	<u>Latitude</u>	<u>Longitude</u>
A	13° 46' 35.7" N	79° 12' 23.1" W
C	12° 42' 24.1" N	79° 34' 4.7" W
B	12° 24' 9.4" N	79° 34' 4.7" W

3. Serranilla and Bajo Nuevo are enclaved and granted a territorial sea of twelve nautical miles.

All coordinates are referred to WGS84.

The Hague, 28 September 2016

Carlos J. Argüello-Gómez

Agent of the Republic of Nicaragua

## **CERTIFICATION**

I have the honour to certify that this Memorial and the documents annexed are true copies and conform to the original documents and that the translations into English made by the Republic of Nicaragua are accurate translations.

The Hague, 28 September 2016.

Carlos J. Argüello-Gómez

Agent of the Republic of Nicaragua

