

INTERNATIONAL COURT OF JUSTICE

**DISPUTE CONCERNING
MARITIME DELIMITATION IN THE CARIBBEAN SEA AND THE PACIFIC OCEAN
(COSTA RICA V. NICARAGUA)**

COUNTER - MEMORIAL
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CHAPTER I: INTRODUCTION

1.1 The present case was brought before the Court by means of an Application filed by the Republic of Costa Rica (Costa Rica) against the Republic of Nicaragua (Nicaragua) on 25 February 2014, in which it requested the Court to determine the complete course of the single maritime boundary between all the maritime areas appertaining to Costa Rica and to Nicaragua, respectively, in the Caribbean Sea and in the Pacific Ocean, on the basis of international law. Costa Rica further requested the Court to determine the precise geographical coordinates of the single maritime boundaries in the Caribbean Sea and in the Pacific Ocean.

1.2 The title given to the case by the Court is *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*.

1.3 By Order of 1 April 2014, the Court determined that the time limit for the filing of each Party's written pleading was 3 February 2015 for the Memorial of Costa Rica and 8 December 2015 for the Counter-Memorial of Nicaragua. Costa Rica filed her Memorial within the time-limit fixed by the Court and the present Counter-Memorial of Nicaragua is also filed within the time limit so fixed.

1.4 In her Memorial Costa Rica bases the jurisdiction of the Court on Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 (Pact of Bogotá) and on the declarations of acceptance pursuant to Article 36 (2) of the Statue of the Court made by Costa Rica dated 20 February 1973 and by Nicaragua on 24 September 1929, respectively. Nicaragua agrees with Costa Rica and accepts the jurisdiction of the Court.

A. THE SCOPE OF THE DISPUTE

1.5 The issue in the present case is the determination of the complete course of the maritime boundaries between all the maritime areas appertaining, respectively, to Nicaragua and Costa Rica in the Caribbean Sea and in the Pacific Ocean.

B. STRUCTURE OF THIS COUNTER MEMORIAL

1.6 This Counter-Memorial is divided in three Chapters, this first Chapter sets out the Introduction. Chapter II concerning the maritime delimitation in the Pacific Ocean gives a general description of the geographical situation, and identifies the starting point of the delimitation, as well as the relevant coasts and area. It also explains the special circumstances that exist in the Santa Elena Peninsula which mean that the use of strict equidistance, as proposed by Costa Rica, is not justified and does not lead to the delimitation of the territorial sea in a manner that ensures an equitable result in both the territorial sea and the exclusive economic zone (EEZ) and continental shelf delimitation.

1.7 Chapter III deals with the maritime delimitation in the Caribbean Sea and gives a general geographical description of the situation. It also sheds light on the relevance to the present case of previous judgments of the Court and previous treaties concluded by Costa Rica with other states. On the starting point of the delimitation, this section identifies the actual and immovable location of the land boundary terminus where the maritime boundary begins as agreed by the joint commissions, thus rebutting Costa Rica's argument on the alleged new location of this point. The relevant coasts and areas are described in the following section. Finally, this chapter deals with the maritime delimitation in the territorial sea, and the EEZ and continental shelf. With respect to the former, it is explained that the unusual combination of the concave coast in Nicaragua immediately adjacent to a convex coast in Costa Rica creates special circumstances that render a strict

equidistance line inequitable. A truly equitable result entails drawing an equidistance line using simplified coastlines that represent the general direction of the coast. In relation to the EEZ and continental shelf, it will be demonstrated that by abiding for more than thirty years to the 1977 Treaty signed with Colombia, Costa Rica effectively renounced to any entitlement to areas beyond the line agreed in that Treaty, areas that Nicaragua has consistently claimed. As a result of this situation, the delimitation to be effected now is limited to the areas to the west of the 1977 Treaty line, which Nicaragua proposes to delimit in a substantially identical line to the boundary Costa Rica agreed with Colombia.

1.8 Finally, the Submissions of Nicaragua are listed at the end of this Counter-Memorial.

CHAPTER II: DELIMITATION IN THE PACIFIC

A. FACTUAL AND LEGAL BACKGROUND

1. General Description of the Geographical Situation

2.1 On the Pacific side, the general direction of the coast can be depicted by means of a straight line running in a North-West/South-East direction from Punta Cosigüina in Nicaragua to Punta Burica in Costa Rica. The major geographical features are Costa Rica's Cabo Santa Elena in the immediate vicinity of the land boundary terminus and its Nicoya Peninsula, which projects into the sea in a North/South direction.

2.2 The mainland coast of Nicaragua extends from Punta Cosigüina in the north, which marks the entrance of the Gulf of Fonseca, up to the boundary with Costa Rica in the Bay of Salinas in the south. The coastline is smooth; there are no marked protrusions or indentations. The general direction of the coastal façade of Nicaragua can be depicted by means of a straight line running North-West to South-East. The total length of Nicaragua's coastline in the Pacific is 298 km (using a straight line) or 345 km (following the natural configuration of the coast), but only part of it is relevant for the purpose of the present delimitation.

2.3 On the Costa Rican side, at the Bay of Salinas, where the land boundary between the Parties terminates, the coast changes direction and stretches in a North/South direction for approximately 128 km. It passes through Cabo Santa Elena, a marked promontory extending into the sea in a due westerly direction, and the Gulf of Papagayo and Punta Guiones, where the coast turns and follows the Nicoya Peninsula. The coast then runs in a North-West/South-East direction up to Punta Burica, where the land boundary with Panama begins. On the Pacific

side, Costa Rica's total coastal façade measures about 1400 km measured along the sinuosities and 455 km as a straight line. Only part of this coast is relevant for purposes of the present delimitation, however.¹

Figure Ia-1: Pacific: General Geographic Setting



2.4 Costa Rica has signed maritime boundary treaties with all its Pacific neighbours, except Nicaragua:

- Treaty concerning the Delimitation of Marine Areas and Maritime Cooperation between the Republic of Costa Rica and the Republic of Panama of 2 February 1980;²

¹ See below Section B of this Chapter.

- Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica of 6 April 1984;³ and

- Agreement on Maritime Delimitation between the Republic of Costa Rica and the Republic of Ecuador, 21 April 2014.⁴

2. The Starting Point of the Maritime Boundary

2.5 In the Pacific Ocean, the determination of the starting point of the maritime boundary is influenced by the presence of the Bay of Salinas, which is “common to both Republics” in accordance with Article IV of the 1858 Treaty of Limits.⁵ The Parties agree that the starting point of the maritime delimitation in the Pacific Ocean is located on the closing line of the Bay of Salinas.⁶

2.6 As specified in the *Cleveland Award* of 22 March 1888:

“2. The central point of the Salinas Bay is to be fixed by drawing a straight line across the mouth of the Bay and determining mathematically the centre of the closed geometrical figure formed by such straight line and the shore of the Bay at low-water mark.

3. By the central point of Salinas Bay is to be understood the centre of the geometrical figure formed as above stated. *The limit of the Bay towards the ocean is a straight line drawn from the extremity of Punta Arranca Barba, nearly true South to the Westernmost portion of the land about Punta Sacate.*”⁷

² CRM, Vol. II, Annex 2.

³ *Ibid.*, Annex 3.

⁴ *Ibid.*, Annex 5.

⁵ CRM, Vol. II, Annex 1.

⁶ CRM, p. 36, para. 3.13.

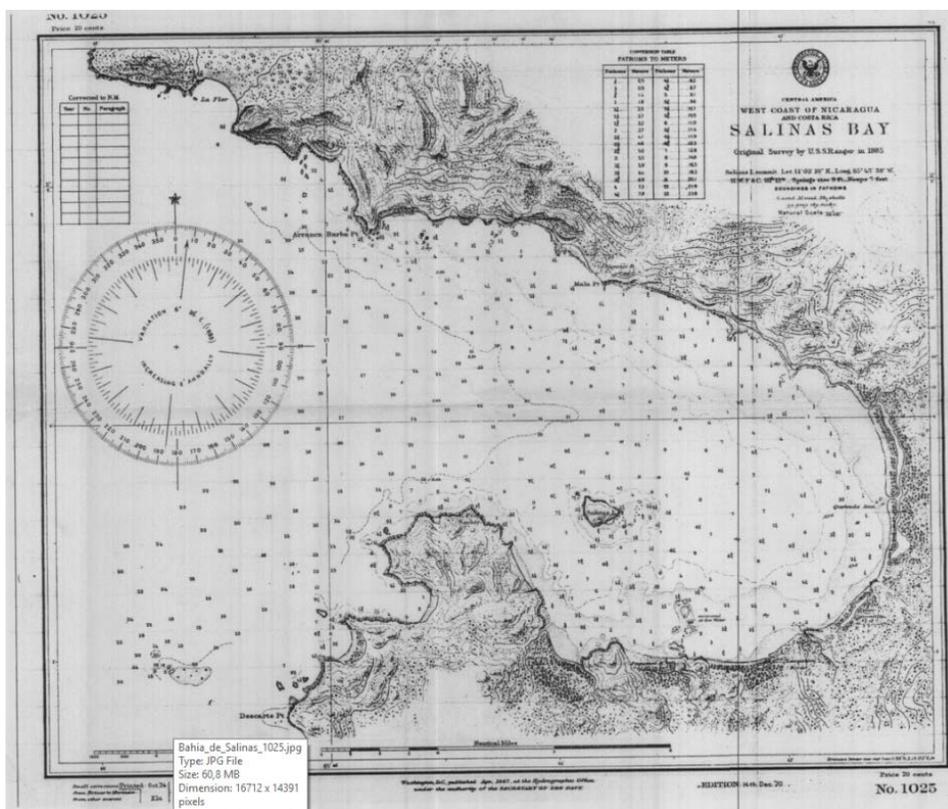
⁷ Award of the Arbitrator, the President of the United States, upon the validity of the Treaty of Limits of 1858 between Nicaragua and Costa Rica, *U.N.R.I.A.A.*, Vol. XXVIII (2006), p. 209 – italics added.

2.7 This was confirmed in the 5th Alexander Award of 10 March 1900. In order to fix the centre of the Bay, he wrote:

“I have supposed, a vessel to enter the Bay from the Ocean, *at a point midway between its headlands*, and to sail a course, as nearly as possible equidistant between the opposite shores, on the right and left, until it has penetrated to the remotest point of the Bay.”⁸

Alexander joined a map illustrating this description, which is depicted below and can be better appreciated in Annex 28.

Figure Ia-2:Map: 5th Alexander Award of 10 March 1900.⁹



⁸ Fifth Award of the Arbitrator E.P. Alexander, 10 March 1900 (excerpt from Proceedings XXIV) (NCM, Annex 2).

⁹ For the text of the Award see Annex 2 of this Counter Memorial.

2.8 More recently, the Sub-Commission on Limits and Cartography of the Binational Commission created in 1991 to strengthen and deepen the bonds of cooperation between the Parties,¹⁰

“considered it necessary to build markers in the point furthest to the West of Punta Zacate in Costa Rica and Punta Arranca Barba in Nicaragua, which will serve to determine the middle point of the closing of the bay, the starting point for the delimitation in the Pacific Ocean.”¹¹

2.9 The end points of that closing line have been identified and marked on the ground by the Parties on the basis of the “Minutes of the Costa Rica-Nicaragua Demarcation Commission (Alexander Commission 1897-1900)”.¹² The demarcation work was carried out “by both countries simultaneously from 22 to 26 April” 2003.¹³ On the Nicaraguan side, the end point is located on Punta Arranca Barba and, on the Costa Rican side, on the “point furthest to the west of the land next to Punta Zacate”.¹⁴ The closing line can be appreciated from Figure Ia-3.

¹⁰ See the the Joint Declaration of the Presidents of the Republics of Costa Rica, Rafael Angel Calderon Fournier and Nicaragua, Mrs. Violeta Barrios de Chamorro, Managua, Republic of Nicaragua, 31 January 1991 (excerpts) (NCM, Annex 10)

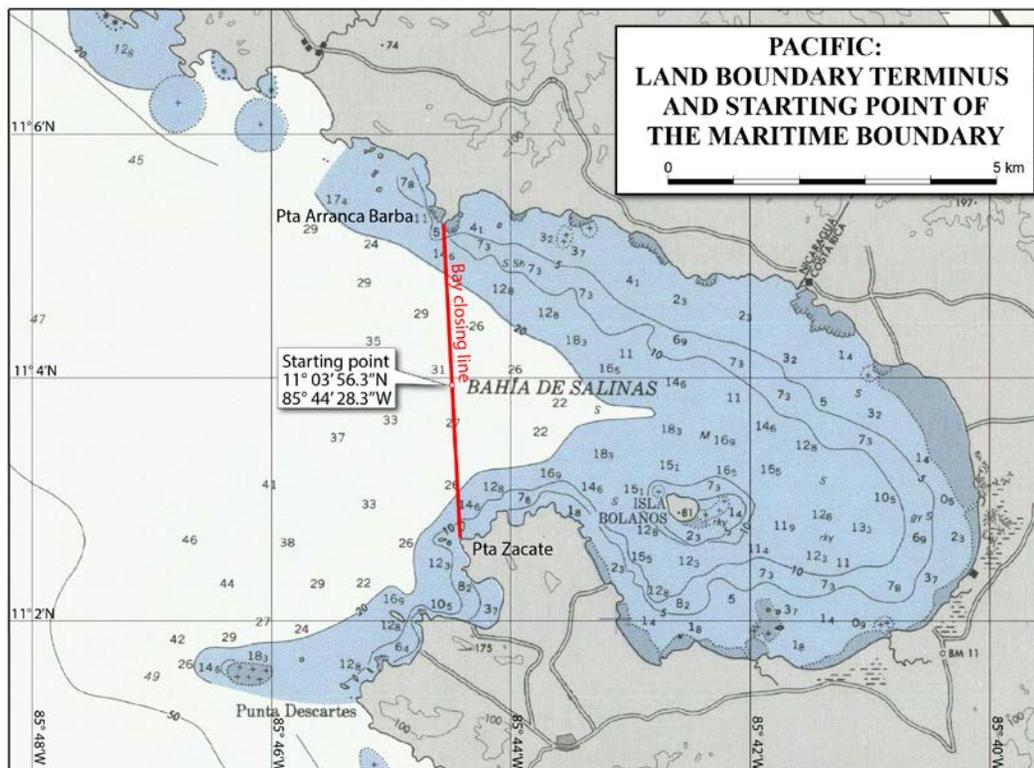
¹¹ Minute of the Second Meeting of the Sub-Commission on Limits and Cartography, 25 March 2003 (NCM, Annex 13).

¹² Minutes of the Third Meeting of the Sub-Commission of Limits and Cartography, 4 September 2003, p 3 (NCM, Annex 14).

¹³ *Ibid.*

¹⁴ *Ibid.*

Figure Ia-3: Pacific: Land Boundary Terminus and Starting Point of the Maritime Boundary



2.10 Costa Rica proposes that the starting point be located at the centre of the closing line.¹⁵ Nicaragua agrees on the principle. However, there exists a slight disagreement between the Parties as to the precise coordinates of that point. According to Costa Rica's calculation, the coordinates of the starting point are 11° 03' 56" N, 85° 44' 28" W.¹⁶ According to Nicaragua's calculation the precise coordinates of the points defining the closing line joining Punta Arranca Barba (Nicaragua) to Punta Zacate (Costa Rica) are 11° 05' 14.448"N, 85° 44' 32.536"W (PAB) and 11° 02' 37.219"N 85° 44' 24.0224"W (PZ), respectively.¹⁷

¹⁵ CRM, p. 36, para. 3.13.

¹⁶ *Ibid.* See also Fourth Meeting of the Sub-Commission of Limits and Cartography, 30 June 2005 (CRM, Vol. II, Annex 36).

¹⁷ See Nicaraguan Institute of Territorial Studies (INETER), Technical Study presented at the Third Meeting of the Sub-Commission of Limits and Cartography, 4 September 2003 (CRM, Vol. II, Annex 39).

This gives a precise midpoint of 11° 03' 56.3"N 85° 44' 28.3"W (WGS84), which is the proper starting point of the maritime delimitation¹⁸.

¹⁸ See Figure Ia-3.

B. THE RELEVANT COASTS AND THE RELEVANT AREA

2.11 Chapter 3.A of Costa Rica's Memorial identifies what it considers the relevant coasts and the relevant area for the delimitation between Nicaragua and Costa Rica in the Pacific Ocean, and sets out Costa Rica's views on the applicable law. This section of the Counter-Memorial presents Nicaragua's views on the relevant coasts and the relevant area in the Pacific Ocean, and also reviews the applicable law. Nicaragua considers that Costa Rica's analysis of the applicable law ignores aspects that are critical to the delimitation between the Parties in both the Pacific Ocean and the Caribbean Sea.

2.12 As regards the actual identification of the relevant coasts in the Pacific Ocean, Nicaragua considers that Costa Rica has artificially extended the relevant coast of the Parties by including parts of their coastlines that do not generate maritime projections that overlap with those of the other Party.

2.13 The Memorial of Costa Rica also misconstrues the relevant area in the Pacific Ocean. This is largely explained by Costa Rica's inclusion of areas that are located off parts of the coast of the Parties that are not part of their relevant coasts.

2.14 Subsection (1) sets out the applicable law for the determination of the relevant coasts, and identifies the relevant coasts of Nicaragua and Costa Rica in the Pacific Ocean in the light of the jurisprudence of this Court and other courts and tribunals. Subsection (2) does the same in relation to the relevant area.

1. The Relevant Coasts

2.15 In paragraph 3.3 of its Memorial, Costa Rica quotes with approval from the Court's Judgment in *Black Sea*, where the Court observes that the relevant coasts are those that "generate projections which overlap with projections from the coast of the other Party".¹⁹ Nicaragua agrees with Costa Rica on the relevance of this observation. At the same time, Nicaragua notes that in paragraph 3.3 of its Memorial, Costa Rica ignores the fact that the Court in *Black Sea* identified the above principle as *one* of the two principles for determining the relevant coasts. Before stating this principle, the Court observed that there are *two* principles underpinning its jurisprudence on the issue of identifying the relevant coasts.²⁰ Those principles are the 'principle of overlapping projections' referred to above, and the principle "that the "land dominates the sea" in such a way that coastal projections in the seaward direction generate maritime claims".²¹

2.16 In its discussion of the Court's statement on the applicable law in *Black Sea*, the Memorial also fails to mention the conclusion that the Court draws from the two principles governing the matter. The Court states:

Consequently "the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration by the Court" (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 61, para. 75).²²

¹⁹ CRM, para. 3.3, quoting *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para 99.

²⁰ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para 99.

²¹ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para 99.

²² *Ibid.*

2.17 Nicaragua agrees with Costa Rica that in the present case only coasts within 200 nautical miles of the other Party's coast have the potential to qualify as part of the relevant coast.²³ But as the Court's findings in *Black Sea* quoted above indicate, it is not enough that a part of the coast lies within 200 nautical miles of the other Party's coast. It is only those parts of the coast of one Party within 200 nautical miles of the coast of the other Party whose seaward projection overlaps with the seaward projection of the coast of that other Party that qualify as part of the relevant coast.²⁴

2.18 Nicaragua's Pacific mainland coast extends from the Gulf of Fonseca, in the north, to the Bay of Salinas, which is held in common by Nicaragua and Costa Rica, in the south. As stated, this mainland coast is smooth. There are no marked protrusions, indentations or sinuosities, and there are no significant islands off this mainland coast.²⁵ The Memorial submits that Nicaragua's entire mainland coast constitutes the relevant coast for the determination of the Parties' maritime boundary in the Pacific Ocean.²⁶ However, the fact that the entire Nicaraguan coast is facing in the same direction does not necessarily imply that this entire coast constitutes relevant coast. As the Court's findings in *Black Sea* indicate, only that part of this coast which in its seaward direction generates maritime claims that overlap with the maritime claims of Costa Rica can constitute part of Nicaragua's relevant coast. In view of the relevant coast of Costa Rica described below at paragraphs 2.21 -2.26, a significant part of Nicaragua's coast does not generate entitlements that overlap with Costa Rica's relevant coast. The part of Nicaragua's coast that does generate overlapping entitlements is located between Punta la Flor on the Bay of Salinas and a point to the north of the town of Corinto

²³ CRM, para. 3.3, referring to *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 101.

²⁴ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para 100.

²⁵ See further above para. 2.2.

²⁶ See CRM, paras 3.3 and 3.10.

(Corinto point). This point has the geographical coordinates 12°35'27"N, 87°18'24"W. Measured along a straight line, the relevant coast of Nicaragua measures 238 kilometers. The relevant coast of Nicaragua is identified in Figure Ib-1 of this Counter-Memorial, at page 15.

2.19 Costa Rica's Memorial not only provides a number for the length of the relevant coast of Nicaragua measured along a straight line, but also a number for the length measured along the natural configuration of that coast.²⁷ Nicaragua considers that this approach to the determination of the relevant coasts is not called for in the present case. While Nicaragua's coast in the Pacific Ocean is straight, Costa Rica's relevant coast in the Pacific is characterized by sinuosities.²⁸ As is explained below, the case law indicates that in a case such as this, in which the coasts of the Parties are markedly different, it is not appropriate to measure the relevant coasts of the Parties along their natural configuration, including all sinuosities. Instead, the relevant coasts are to be measured by one or more straight lines representing the general direction(s) of those coasts.²⁹

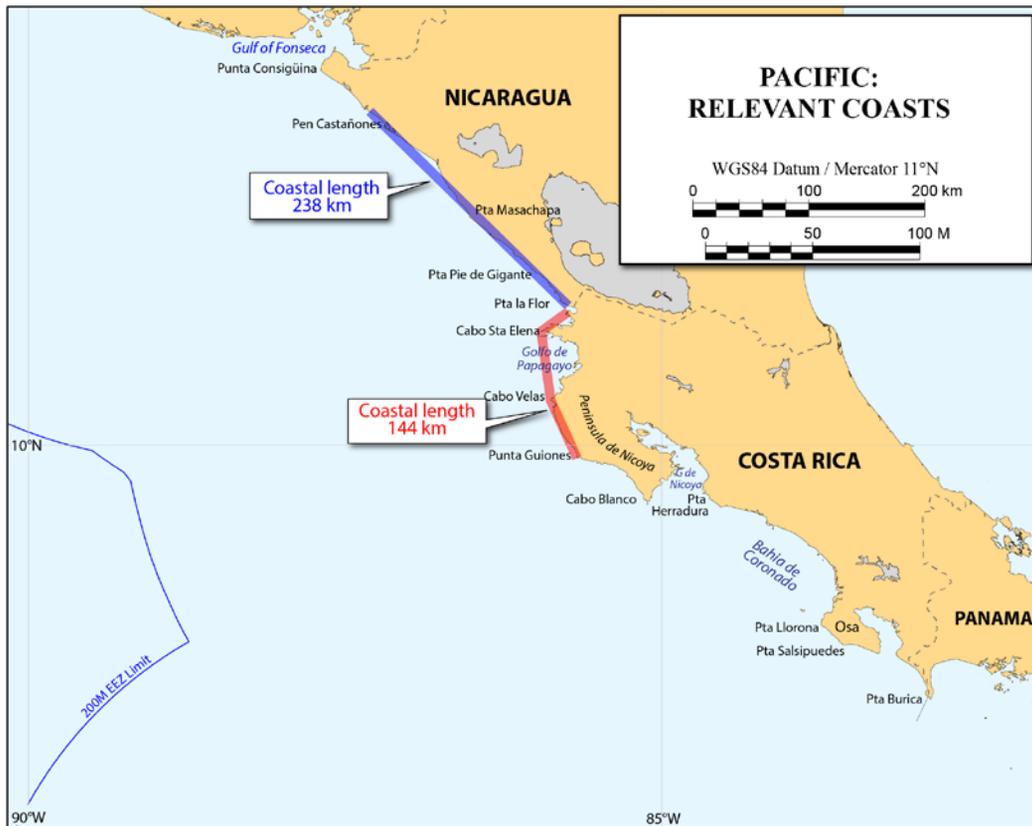
2.20 In its Memorial, Costa Rica identifies its relevant coast as consisting of two segments, one running from the Costa Rican coast south of the Bay of Salinas to Cabo Blanco, the southwestern tip of the peninsula of Nicoya, and the other

²⁷ CRM, para. 3.10.

²⁸ See further para.2.3. below.

²⁹ See para. 2.25. below.

Figure Ib-1. Pacific: Relevant Coast



from Punta Herradura on the Gulf of Nicoya to a point on the Osa Peninsula.³⁰ Costa Rica excludes the coast between Cabo Blanco and Punta Herradura from its relevant coast because in this area one part of Costa Rica's coast faces another part of Costa Rica's coast.³¹ Costa Rica also excludes the southern part of the Osa Peninsula and the coast up to Costa Rica's land boundary with Panama from its relevant coast because they are beyond 200 nautical miles from Nicaragua's relevant coast.³² Nicaragua agrees with Costa Rica that the latter two segments of Costa Rica's coast are not part of its relevant coast. On the other hand, Nicaragua does not agree with Costa Rica that all other parts of its Pacific coast are relevant.

³⁰ For a depiction of this relevant coast see CRM, p. 33, sketch map 3.3.

³¹ CRM, para. 3.6.

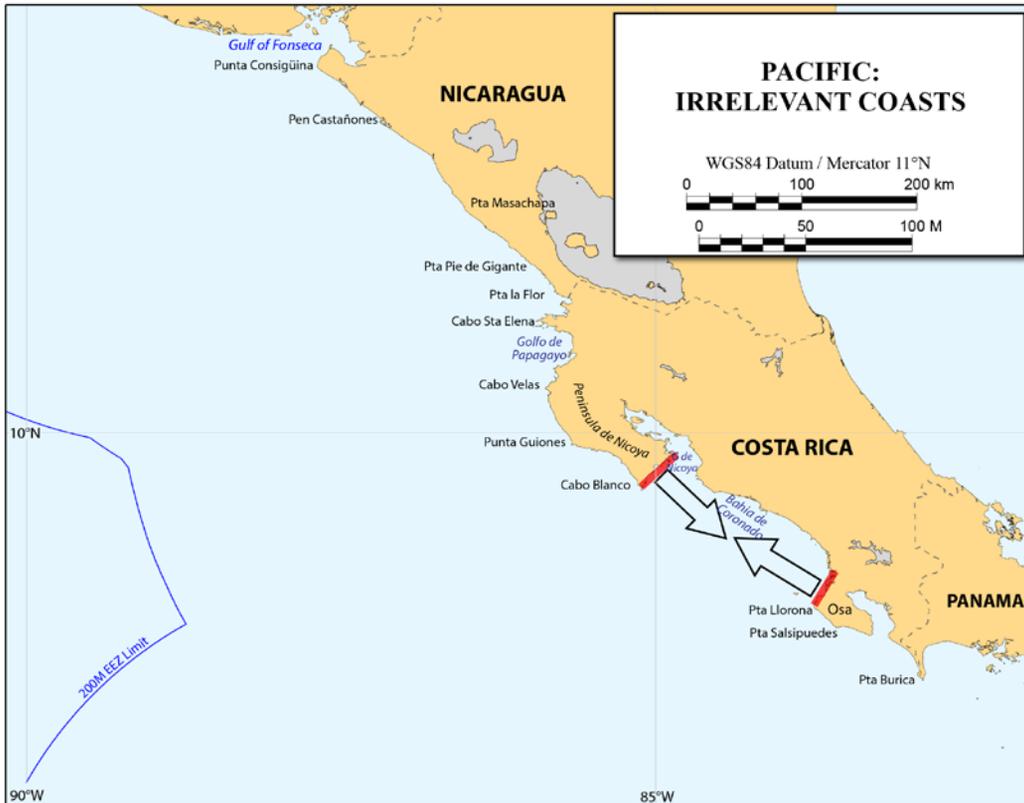
³² CRM, para. 3.3.

2.21 The relevant coast of Costa Rica in the Pacific is constituted only by its coast between Punta Zacate at the entrance of the Bay of Salinas and Punta Guiones on the Peninsula of Nicoya. No part of the coast of Costa Rica south of Punta Guiones is part of Costa Rica's relevant coast. This conclusion follows from principles for determining the relevant coast the Court announced in *Black Sea*.³³ Those principles indicate that one has to look at the seaward projection of the coasts, and that this seaward projection of the coast of one Party must overlap with the seaward projection of the other Party for it to qualify as part of the relevant coast. No segment of the coast of Costa Rica south of Punta Guiones generates seaward projections that overlap with those of the southwestward facing relevant coast of Nicaragua.

2.22 First, the northeastern facing coast of the Osa Peninsula does not face seaward, to the open ocean, but faces the southwestern coast of the Peninsula of Nicoya. The seaward projections of these two coasts thus overlap, and the seaward projection of the northeastern facing coast of the Osa Peninsula does not overlap with the seaward projection of the relevant coast of Nicaragua as is illustrated by Figure Ib-2, below.

³³ See above at paras 2.15 and 2.16.

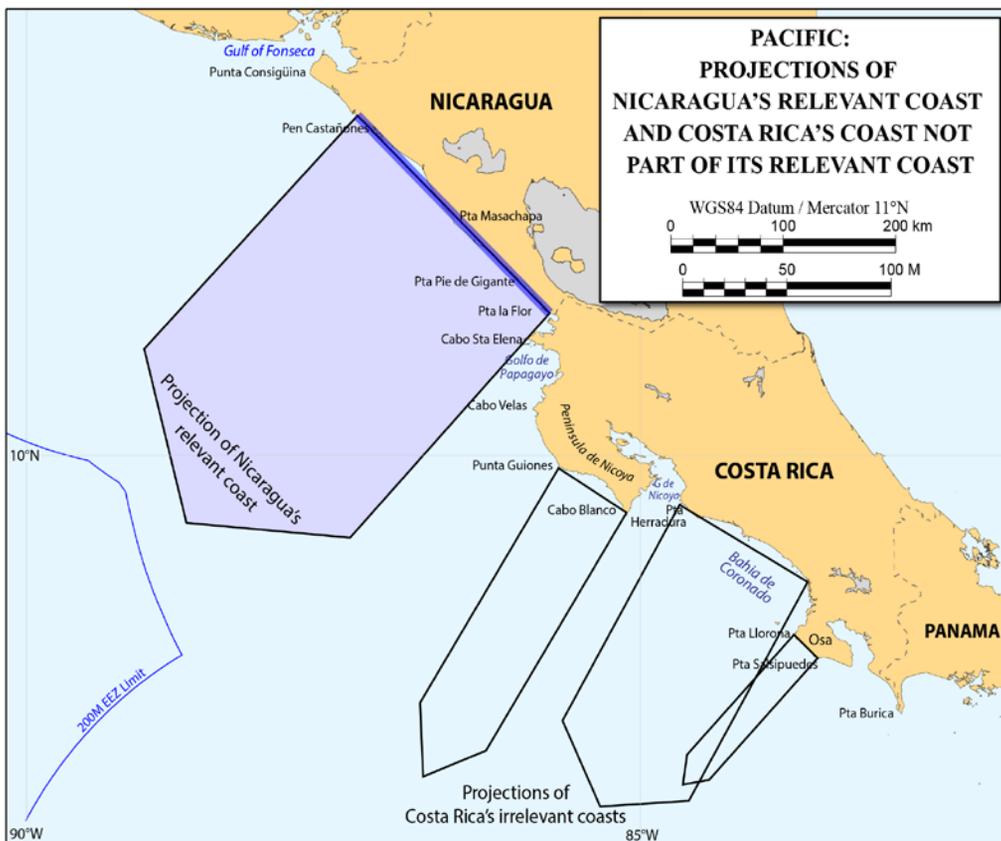
Figure Ib-2 Pacific: Irrelevant Coasts



2.23 The other parts of Costa Rica’s alleged relevant coast that Nicaragua does not consider to genuinely be part of Costa Rica’s relevant coast do, admittedly, face seaward towards the open ocean. However, a glance at a map immediately shows that the seaward projections of those coasts do not overlap with the seaward projection of Nicaragua’s relevant coast . This may be further illustrated by taking a closer look at the stretch of these coasts that is closest to Nicaragua’s relevant coast. This is Costa Rica’s coast between Punta Guiones and Cabo Blanco on the Peninsula of Nicoya. The general direction in which this coast faces is similar to that of the relevant coast of Nicaragua, implying that the seaward projections of these two coasts also extend in a similar direction. As is illustrated by Figure Ib-3, below, at no point do these two projections overlap, and the minimum distance between the Nicaraguan and the Costa Rican projections is

about 100 kilometers. The same applies *a fortiori* to the coast of Costa Rica between Punta Herradura and the northwestern tip of the Osa Peninsula and between Punta Llorona on the Osa Peninsula and Punta Salsipuedes on that Peninsula. These two segments of Costa Rica’s coast face in a general direction that is almost identical to the general direction of the coast between Punta Guiones and Cabo Blanco and their seaward projections are even further distant from the seaward projection of Nicaragua’s relevant coast, as is illustrated by Figure Ib-3.

Figure Ib-3: Pacific: Projections of Nicaragua’s Relevant Coast and Costa Rica’s Coast are not part of its Relevant Coast



2.24 Having determined that Costa Rica's relevant coast is its coast between Punta Zacate and Punta Guiones, it remains to be established how to determine the general direction of this relevant coast and to measure its length. The Memorial submits in this connection that the Papagayo Gulf and the Santa Elena Gulf, which make up most of this relevant coast, may both be measured along the natural configuration of their coast or by straight lines drawn across the entrances of these gulfs.³⁴ In reality, only the latter approach is appropriate in the circumstances of this case. As Costa Rica itself admits, using straight lines instead of following the actual coastline "serves 'to avoid difficulties caused by the sinuosity of the coast and to ensure consistency in measuring the respective coasts of the Parties'".³⁵ This finding is without doubt applicable to determining the relevant coasts of Nicaragua and Costa Rica for the delimitation of their maritime boundary in the Pacific Ocean. While the coast of Nicaragua is smooth and without any marked indentation or sinuosities, the opposite is true for most of the relevant coast of Costa Rica. Costa Rica's relevant coast between Punta Zacate on the Bay of Salinas and Cabo Velas is markedly sinuous.

2.25 In the Memorial, Costa Rica also determines its relevant coast in the Pacific Ocean by the use of a number of straight lines.³⁶ The coast between Punta Zacate and Punta Guiones, which Nicaragua submits is Costa Rica's relevant coast, is measured along three straight lines drawn from Punta Zacate to Cabo Santa Elena to Cabo Velas to Punta Guiones. Nicaragua considers that these three straight lines can be used to represent the relevant coast of Costa Rica between Punta Zacate and Punta Guiones for the purposes of comparing the relevant coasts of the Parties. These lines avoid the difficulties caused by the sinuosity of the

³⁴ CRM, paras 3.9-3.10.

³⁵ CRM, para. 3.9, quoting from ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para 204.

³⁶ See CRM, para. 3.9 and sketch map 3.3.

Costa Rican coast and ensure consistency in measuring the respective coasts of the Parties.

2.26 Costa Rica's relevant coast as measured along the three straight lines between Punta Zacate and Punta Guiones is 144 kilometers. The ratio between the relevant coasts of Nicaragua and Costa Rica for the delimitation in the Pacific Ocean is 1.65:1. These relevant coasts are depicted in Figure Ib-1 included in this Counter-Memorial, at page 15.

2. The Relevant Area

2.27 Costa Rica's starting point for identifying the relevant area for the delimitation in the Pacific Ocean is to determine the entire maritime area that is within 200 nautical miles of both Parties.³⁷ Subsequently, allowance is made for the interests of third States to the north of Nicaragua.³⁸ The Memorial asserts: "With those States in mind, Costa Rica has used a perpendicular to the Chamber's Gulf of Fonseca's closing line to limit the relevant area."³⁹ Nicaragua disagrees with this approach.

2.28 The Court's most systematic consideration of the concept of the relevant area in its recent case law is again found in *Black Sea*. In this connection, the Court observed that:

the legal concept of the "relevant area" has to be taken into account as part of the methodology of maritime delimitation.

³⁷ CRM, para. 3.11.

³⁸ CRM, para. 3.12.

³⁹ CRM, para. 3.12, quoting from *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, I.C.J. Reports 1992, para. 432.

In the first place, depending on the configuration of the relevant coasts in the general geographical context and the methods for the construction of their seaward projections, the relevant area may include certain maritime spaces and exclude others which are not germane to the case in hand.⁴⁰

2.29 As these observations of the Court on the determination of the relevant area indicate, this is an exercise that requires consideration of the coastal geography of the Parties and of how the seaward projections of the coasts of the Parties relate to each other. The implications of the Court's approach become readily apparent from its treatment of the Karkinits'ka Gulf in *Black Sea*. Ukraine maintained that the Gulf formed part of its relevant coast, arguing that the coast of the Karkinits'ka Gulf generates 200-nautical-mile entitlements that overlap with the entitlements of Romania.⁴¹ The Court, however, did not accept that the coast of the Karkinits'ka Gulf was part of the relevant coast of Ukraine because:

The coasts of this gulf face each other and their submarine extension cannot overlap with the extensions of Romania's coast. The coasts of Karkinits'ka Gulf do not project in the area to be delimited.⁴²

2.30 When the Court subsequently determined the relevant area for the delimitation between Romania and Ukraine, the waters of the Karkinits'ka Gulf were not included. Thus, the fact that a maritime area is within 200 nautical miles of the coasts of both Parties does not necessarily imply that it forms part of the relevant area, as Costa Rica maintains.

⁴⁰ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 110.

⁴¹ *Ibid.*, para. 94.

⁴² *Ibid.*, para. 100.

2.31 The Court's approach to defining the relevant coasts and the relevant area in *Black Sea* has recently been adopted in the two cases concerned with the delimitation of the continental shelf and EEZ between Bangladesh and its two neighbors, Myanmar and India.⁴³ In both cases, ITLOS and an Annex VII Arbitral Tribunal, respectively, were faced with the question of how to determine the lateral limits of the relevant area. The approach in both cases confirms that the frontal projections of the relevant coasts are the key factor in this respect.

2.32 In *Bangladesh/Myanmar*, ITLOS observed that "the relevant area should include maritime areas subject to overlapping entitlements of the Parties to the present case".⁴⁴ The Tribunal used a parallel of latitude and a meridian to define the lateral limits of the relevant area.⁴⁵ These two lines run seaward from respectively the most southern point of the relevant coast of Myanmar and the most western point of the relevant coast of Bangladesh and are approximately perpendicular to the general direction of the relevant coast of the Parties in the areas concerned.⁴⁶

2.33 In *Bangladesh v. India*, the Arbitral Tribunal determined the southwestern limit of the relevant area by connecting the most southerly point of India's relevant coast at Sandy Point to the outer limit of Bangladesh's continental shelf beyond 200 nautical miles, as submitted to the Commission on the Limits of the Continental Shelf (CLCS), by a straight line.⁴⁷ This straight line is a perpendicular to the general direction of India's relevant coast in the area concerned.⁴⁸

⁴³ ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, judgment of 14 March 2012, paras 185 and 489-495; UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, paras 279 and 299-311.

⁴⁴ ITLOS, *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.

⁴⁵ *Ibid.*, paras 491 and 495.

⁴⁶ See *ibid.*, p. 144, Sketch-map No. 8. See NCM, Annex 26.

⁴⁷ UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 310.

⁴⁸ See *ibid.*, p. 89, Map 4. See NCM, Annex 27.

2.34 The Arbitral Tribunal’s definition of India’s relevant coast in the area of the Andaman Islands provides a further illustration of the role of frontal coastal projections in defining the extent of both the relevant coast and the relevant area. The Tribunal considered that it could only take into account the western coast of the northern half of the Andaman Islands.⁴⁹ According to the Tribunal, the southern half of the Andamans “lie too far to the south to be fairly considered to generate projections that overlap with those of the coast of Bangladesh”.⁵⁰ The reason for this choice becomes apparent from the Tribunal’s definition of the relevant area. The Tribunal held that the southern limit of the relevant area was defined by the outer limit of Bangladesh’s continental shelf beyond 200 nautical miles as submitted to the CLCS.⁵¹ Beyond that outer limit, the entitlements of the Parties no longer overlapped. Map 4 included in the Award, which is reproduced as Annex 27 to this Counter-Memorial, shows the relationship between India’s relevant coast in the Andaman Islands and the relevant area. As Map 4 indicates, the relevant coast projects frontally into the relevant area. The coast of the Andaman Islands further to the south, which also contributes to generating India’s continental shelf entitlement, does not face the relevant area frontally.

2.35 On the basis of the Court’s approach in *Black Sea* and the approach adopted in the two Bay of Bengal cases, Nicaragua submits that the southern limit of the relevant area for the delimitation between Nicaragua and Costa Rica in the Pacific Ocean should be a straight line that is a perpendicular to the general direction of Costa Rica’s coast between Cabo Velas and Punta Guiones and that starts on the coast of Costa Rica at Punta Guiones. The location of this southern limit can be appreciated from Figure Ib-4, as Annex 28 to this Counter-Memorial

⁴⁹ *Ibid.*, para. 304.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, para. 309.

2.36 To define the northern limit of the relevant area, Costa Rica has used a perpendicular to the closing line in the Gulf of Fonseca that was established by a Chamber of the Court in *Land, Island and Maritime Frontier Dispute*.⁵² As a preliminary point, Nicaragua notes that the Chamber in its Judgment on the merits in that case addressed the implications of Nicaragua’s intervention in the case. Having considered the positions of the Parties to that case, neither of which had given any indication that they considered that Nicaragua would be able to rely on the Judgment, the Chamber concluded that “in the circumstances of the present case, this Judgment is not *res judicata* for Nicaragua”.⁵³

2.37 Secondly, Nicaragua observes that the lateral boundary of its maritime zones seaward of the Gulf of Fonseca remains to be determined. The determination of that boundary is not the subject of the present proceedings and Nicaragua’s observations on the definition of the relevant area in the Pacific Ocean are made without prejudice to that determination.

2.38 Costa Rica considers that the entire coast of Nicaragua is Nicaragua’s relevant coast.⁵⁴ However, as discussed, not all of Nicaragua’s coast generates seaward projections that overlap with the seaward projections of Costa Rica’s relevant coast. As explained above,⁵⁵ only the coast of Nicaragua between Punta la Flor on the Bay of Salinas and the Corinto point identified above at para. 2.18 generates such projections. The Court’s approach to determining the lateral limits of the relevant area in *Black Sea*, which was also adopted in the two Bay of Bengal cases, indicates that the northern limit of the relevant area thus should be a perpendicular to the general direction of Nicaragua’s relevant coast starting from the Corinto point. The frontal projection of the coast of Nicaragua up to the

⁵² CRM, para. 3.12.

⁵³ *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, I.C.J. Reports 1992, para. 424.

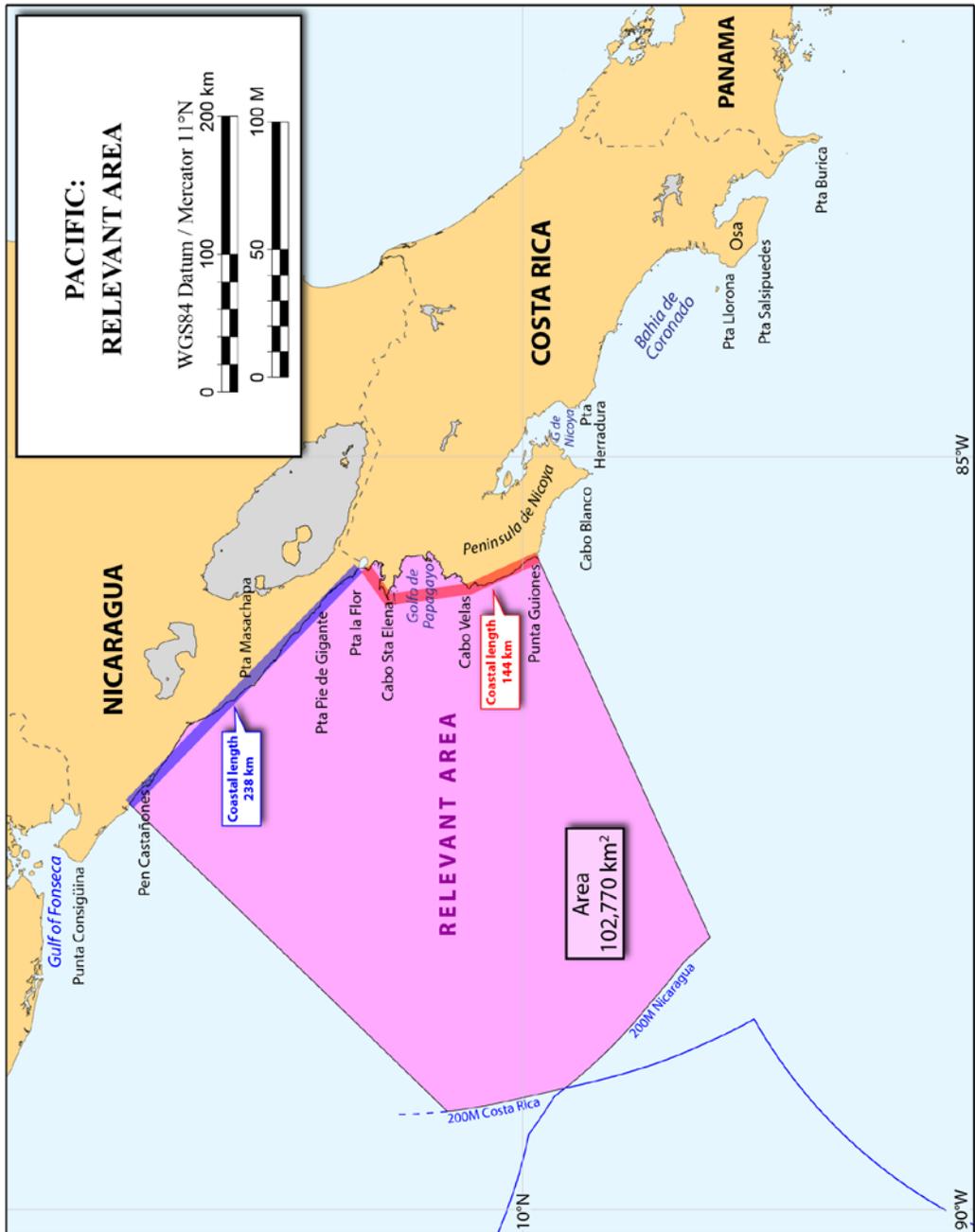
⁵⁴ See CRM, paras 3.3 and 3.10.

⁵⁵ See above para. 2.23.

Corinto point overlaps with the frontal projection of the relevant coast of Costa Rica between the Islas Murcielagos and Cabo Velas. The frontal projection of Nicaragua's coast to the north of the Corinto point does not overlap with the frontal projection of Costa Rica's relevant coast. The location of the relevant area can be appreciated from Figure Ib-4, below.

2.39 Based on the above, the relevant area for the delimitation of the maritime boundary in the Pacific Ocean is bounded by the following lines: the coast of Nicaragua between the point to the north of Corinto with the coordinates 12°35'27"N, 87°18'24"W and Punta la Flor on the Bay of Salinas, the closing line of the Bay of Salinas, the coast of Costa Rica up to Punta Guiones, from that point a perpendicular to the general direction of Costa Rica's relevant coast between Cabo Velas and Punta Guiones, the envelope of Nicaragua's and Costa Rica's overlapping 200-nautical mile entitlements, and from the last point of overlap of these entitlements the perpendicular to the general direction of Nicaragua's coast running to the Corinto point. The relevant area measures 102,770 square kilometers. It is depicted in Figure Ib-4, below.

Figure Ib-4: Pacific: Relevant Area



C. TERRITORIAL SEA

2.40 There is no agreed boundary between Nicaragua and Costa Rica in the Pacific.

2.41 The starting point for the delimitation in the Pacific is at Salinas Bay. That Bay, including Isla Bolaños, is the common property of the two States.⁵⁶ Both Parties accept that for the purposes of this maritime delimitation, the precise location of the starting point should be taken to be the mid-point of the closing line across Salinas Bay.⁵⁷

2.42 Further, it appears to be common ground that the boundary seaward of the starting point on the closing line across Salinas Bay is governed by UNCLOS Articles 15, 74 and 83, which are binding upon both Parties. Article 15, applicable to the territorial sea delimitation, reads as follows:

“Article 15. Delimitation of the territorial sea between States with opposite or adjacent coasts

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to

⁵⁶ Treaty of San José, 15 April 1858, Article IV, (CRM, Annex 1).

⁵⁷ CR-M 2.25. This use of the mid-point on the closing line as a starting point for the maritime delimitation is without prejudice to any other issues, such as questions of status or delimitation, that may arise in respect of areas landward of the closing line across the Bay.

delimit the territorial seas of the two States in a way which is at variance therewith.”

Articles 74 and 83 relate to the delimitation of the exclusive economic zone and the continental shelf. They are materially identical to one another and provide that:

“1. The delimitation of the [exclusive economic zone / 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.”

2.43 As interpreted by the Court in what is now a *jurisprudence constante*, the application of Articles 74 and 83 follows a three-stage approach in which (i) a provisional equidistance line is constructed, (ii) it is considered whether there are relevant circumstances which may call for an adjustment of that line to achieve an equitable result, and (iii) a ‘disproportionality test’ is applied in order to determine if the respective shares of the relevant area are markedly disproportionate to the lengths of the relevant coasts.⁵⁸ The principles underlying the approaches stipulated by Article 15 and by Articles 74 and 83 of the UNCLOS are thus very similar, even though the Articles are differently drafted.⁵⁹ All of them in effect

⁵⁸ *Maritime Dispute (Peru v. Chile)*, Judgment, 27 January 2014, para. 180 (citing *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, pp. 101-103, paras. 115-122; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), pp. 695-696, paras. 190-193).

⁵⁹ Article 15 is framed as a practical limitation on the behaviour of adjacent States, rather than as a principle whose application is mandated in order to achieve a final delimitation (“... neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line...”). Article 15 may be read not to require that an equidistance line has to be *corrected* in case of special circumstances, but rather to require that another method of delimitation be chosen. On this view, the ‘three stage method’ applicable to the exclusive economic zone and continental shelf would not be applicable to a territorial sea delimitation. The Court has, however, said that “[t]he most logical and widely practised approach” to territorial sea delimitations “first to draw provisionally an provisional equidistance line, and then to consider

calling for the application of an equidistance line unless another line is required by special circumstances.⁶⁰ Indeed, as far back as 1956, the ILC, in its preparatory work that led to the 1958 Geneva Conventions, declared that it had “adopted the same principles” for the delimitation of the continental shelf as for the delimitation of the territorial sea.⁶¹ The territorial sea, the EEZ, and the continental shelf thus “all seem to be delimited by common principles regardless of their differing legal nature and legal regime.”⁶² Given that a maritime boundary may separate maritime zones of different juridical characters, such as the territorial sea of one State and the EEZ of a neighbouring State, this convergence is not only unsurprising: it may in some circumstances be a practical necessity.⁶³

2.44 Thus, all three UNCLOS Articles – 15, 74 and 83 – need to be taken into account, and read together in their context within UNCLOS and in light of the object and purpose of UNCLOS.⁶⁴ Accordingly, Article 15 must be interpreted and applied to the delimitation of the territorial sea in such a manner as not to prevent or undermine the achievement of an equitable solution to the delimitation of the EEZ and continental shelf under UNCLOS Articles 74 and 83. It is unsafe to assume that the determination of the maritime boundary can proceed by considering only individual segments of the line in isolation from the remainder of the maritime boundary. This is particularly important in circumstances where

whether that line must be adjusted in the light of the existence of special circumstances ...”: *Qatar / Bahrain*, Judgment of 16 March 2001, *I.C.J. Reports 2001*, p. 40, paragraph 176.

⁶⁰ *Land and Maritime Boundary (Cameroon v Nigeria) Judgment*, 10 October 2002, *I.C.J. Reports 2002*, p. 303, at para. 288.

⁶¹ *Yearbook of the International Law Commission* (1956), Vol. II, at p. 300 ; reprinted in A. Watts, *The International Law Commission 1949-1988*, vol. I, (1999), at p. 106.

⁶² C. Yacouba and D. McRae, ‘The Legal Regime of Maritime Boundary Agreements’, in D.A. Colson and R.W. Smith (eds), *International Maritime Boundaries*, vol. V, (2005), p. 3281, at p. 3920.

⁶³ See *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, *I.C.J. Reports 2009*, paragraph 26. Cf., D. Colson, ‘The Legal Regime of Maritime Boundary Agreements’, in J.I. Charney and L.M. Alexander (eds), *International Maritime Boundaries*, vol. I, (1993), p. 41, at pp. 43-44.

⁶⁴ Vienna Convention on the Law of Treaties, Article 31(1).

consideration of the maritime boundary in the territorial sea in isolation, at the beginning of the process of delimitation, might lead to a starting point for the boundary in the EEZ and continental shelf that will necessarily produce an inequitable or impractical delimitation.

2.45 UNCLOS Article 15 is derived from Article 12 of the 1958 Territorial Sea Convention, which itself derived from a draft prepared by the ILC. The ILC clearly stated its opinion that the equidistance / special circumstances rule “should be very flexibly applied.”⁶⁵ Flexibility is necessary in order to allow room for the exercise of judgement in the use of tiny rocks and islets along a coast as basepoints for the construction of the equidistance line, and also in order to take into account local characteristics of the configuration of the coastline that could drive the equidistance line along a course that departs significantly from the direction of equidistance lines drawn on more extensive maps, not narrowly confined to one small locality, and reflecting the general direction of the coast in the area.

2.46 The configuration of the coasts in the immediate vicinity of Salinas Bay is a good example of a configuration that is a ‘special circumstance’ requiring the adjustment of the equidistance line.⁶⁶ Indeed, Costa Rica has itself referred to the “special configuration” of its Pacific coast, as the reason justifying its use of straight baselines along that coast.⁶⁷

⁶⁵ *Yearbook of the International Law Commission* (1956), Vol. II, at 272; reprinted in A. Watts, *The International Law Commission 1949-1988*, vol. I, (1999), at p. 46. Cf., *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, *I.C.J. Reports 2007*, paragraph 280.

⁶⁶ On the assimilation of ‘special circumstances’ and ‘relevant circumstances’ in international jurisprudence see, e.g., *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, *I.C.J. Reports 2007*, paragraph 271; cf., R. Kolb, *Case Law on Equitable Maritime Delimitation*, (2003), pp. 458-461, 551-552.

⁶⁷ Costa Rican Decree 18581-RE, 14 October 1988, Articles 3-4. (NCM, Annex 18).

2.47 As Figure Ic-1, below, shows, Costa Rica's claimed boundary line veers towards the north about 6 NM from Punta Descartes, as a result of Costa Rica's basepoints on Punta Blanca and the Cabo Santa Elena – each of them projections from the coastline of the Santa Elena peninsula, which is itself a promontory projecting from the general direction of the coast of Costa Rica. This point where the equidistance line veers north may be referred to as the 'Punta Blanca turning point', and the change of direction at that point may be referred to as the 'Santa Elena deflection'. The claimed boundary line then makes a gradual turn southwards as Punta Blanca and Cabo Santa Elena cease to have such a dominant effect upon the course of the equidistance line. This 'kink' in Costa Rica's proposed territorial sea boundary is the result of the localised effect of Costa Rica's Santa Elena peninsula.

2.48 The Santa Elena peninsula – and indeed, the entire Nicoya Peninsula – is, in the words used by the ICJ, "a remote projection of ...[the] coastline ... which, if given full effect, would 'distort the boundary and have disproportionate effects.'"⁶⁸ It deflects the equidistance line significantly – approximately 45° – from the direction that it would follow if the effect of the basepoints on the Santa Elena peninsula is disregarded in order to draw a simplified equidistance line on the basis of the general direction of the coast, such as the ICJ has used in several cases.⁶⁹ The deflection is depicted on Figure Ic-2, below.

⁶⁸ *Qatar / Bahrain*, Judgment of 16 March 2001, *I.C.J. Reports 2001*, p. 40, paragraph 247; citing *Continental Shelf case, France/United Kingdom*, UNRIAA vol. XVIII, p. 114, paragraph 244.

⁶⁹ See, e.g., *Tunisia / Libya*, *I.C.J. Reports 1982*, p. 18, paragraphs 119, 122, 133(B); *Gulf of Maine*, *I.C.J. Reports 1984*, p. 246, paragraph 213; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, *I.C.J. Reports 2007*, paragraphs 294-296.

Figure Ic-1: Pacific: Territorial Sea. Costa Rica's Proposal (Strict Equidistance)

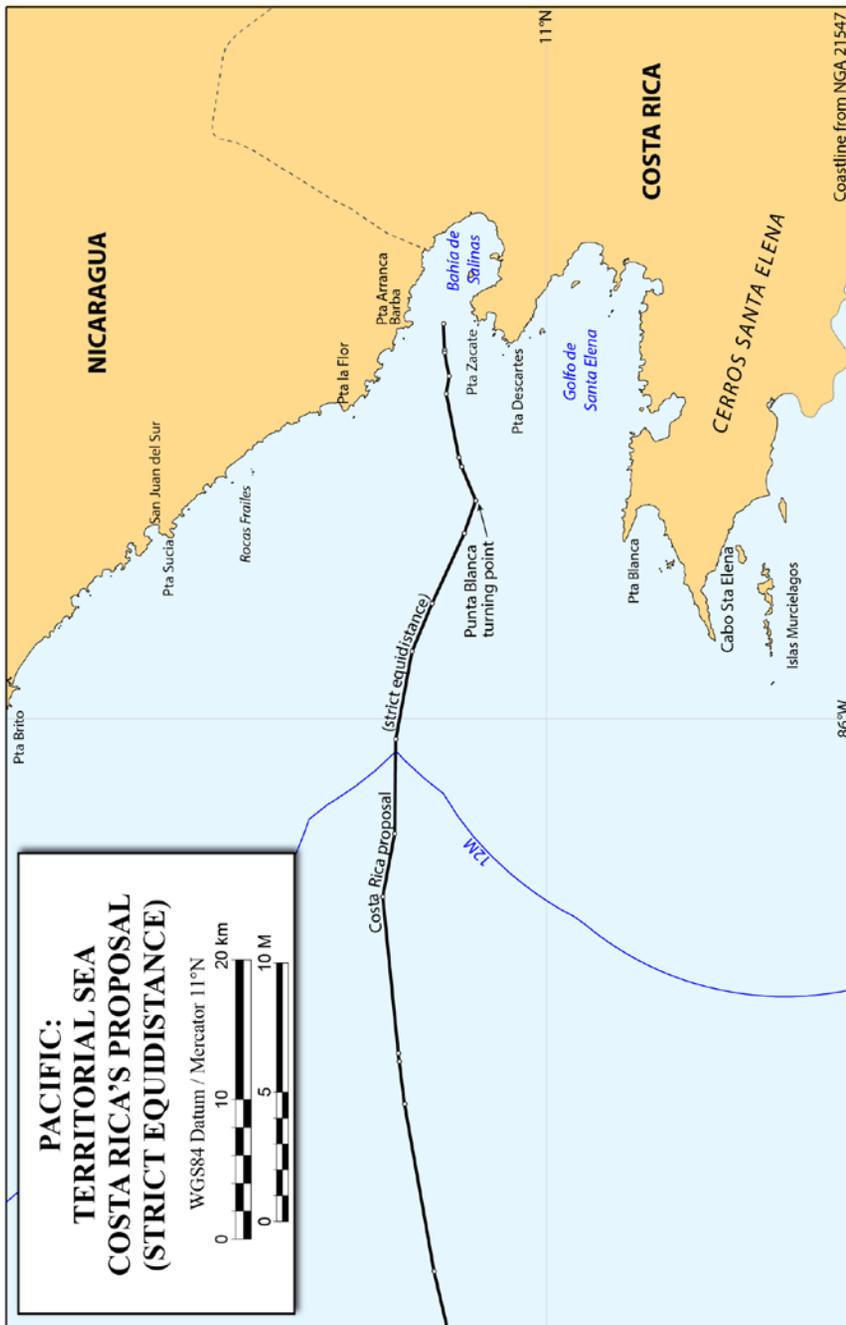
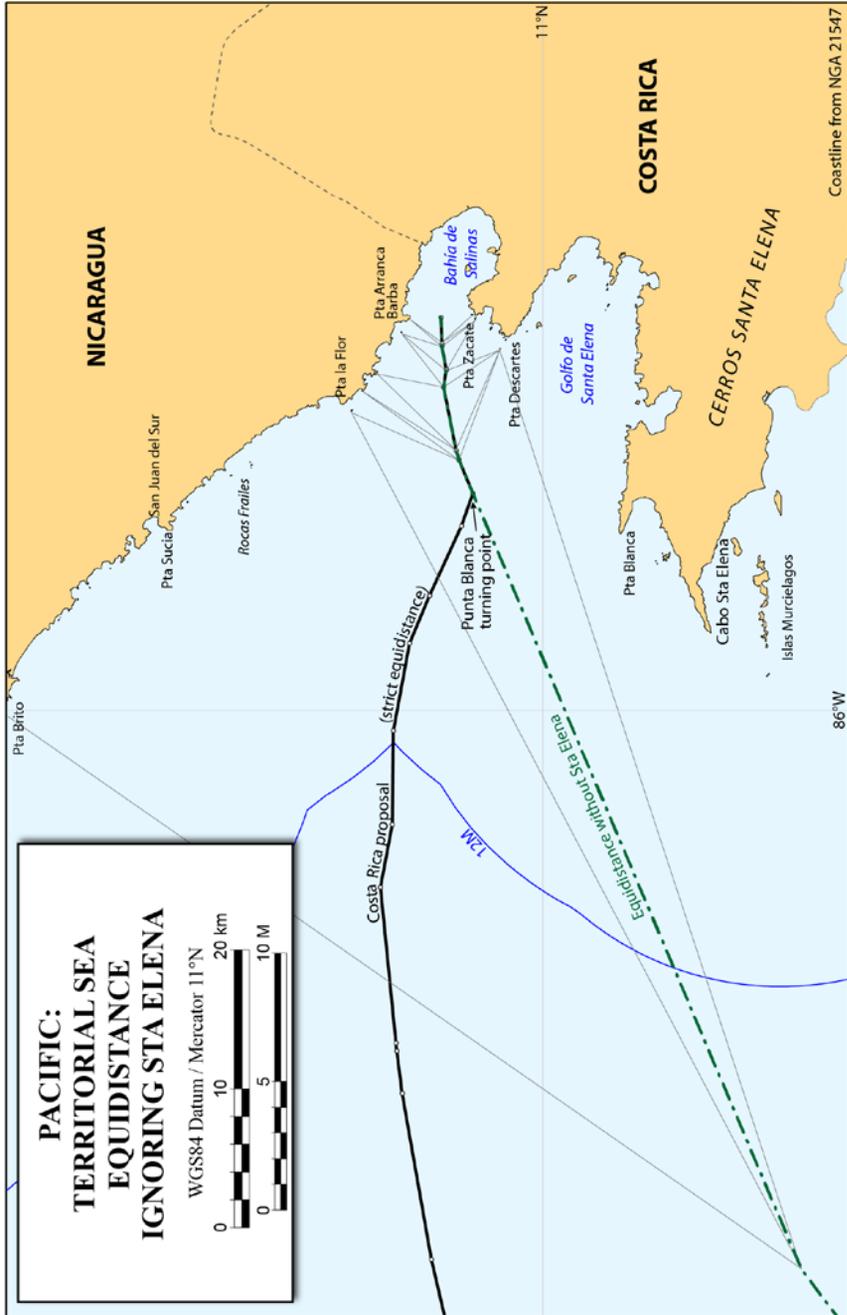
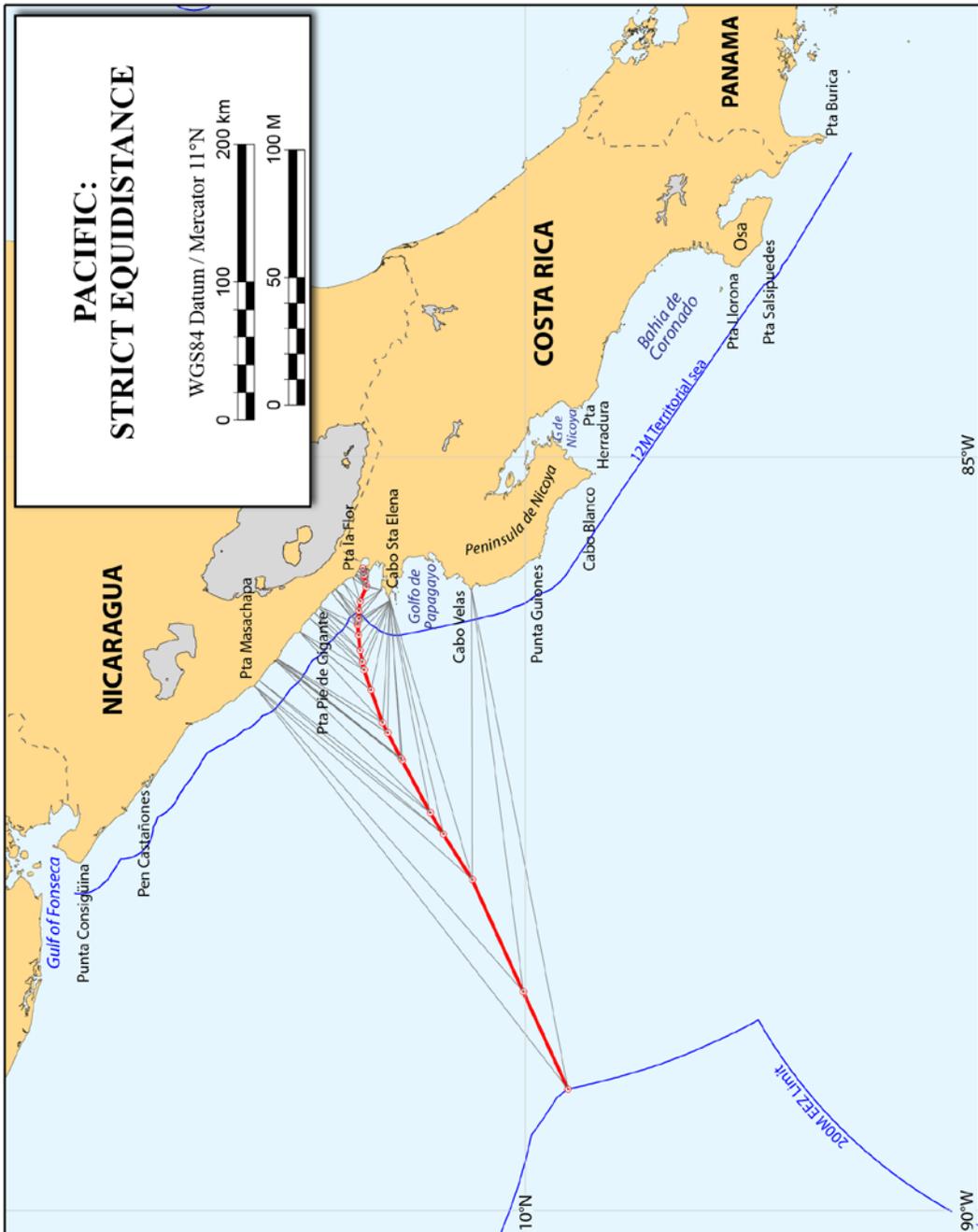


Figure Ic-2: Pacific: Territorial Sea Equidistance ignoring Sta Elena



2.49 This distorting effect of the Santa Elena peninsula is apparent when one moves from the tight focus of Figure Ic-2, above, and looks at the full equidistance line in Figure Ic-3, below. Thus, a mechanical adherence to strict equidistance in the territorial sea creates a patent inequity in the territorial sea delimitation, and is also an obstacle to the establishment of a line that achieves an equitable solution for the delimitation of the exclusive economic zone and continental shelf, seawards of the 12-mile territorial sea limit.

Figure Ic-3: Pacific: Strict Equidistance



2.50 In these circumstances it is appropriate to depart from the mechanical application of the equidistance line in order to take account of the presence of special circumstances and to achieve an equitable and practical result, particularly in the context of the extension of the delimitation line beyond the outer limit of the territorial sea. An adjustment southwards in the deflected ‘outer’ part of the strict equidistance line, west of the Punta Blanca turning point, would take due account of these circumstances and enable the achievement of an equitable result within the territorial sea and beyond.

2.51 The question of what precisely is a reasonable delimitation line in the territorial sea, giving effect to the principles of international law, cannot be answered by considering the maritime boundary in small sections, mile by mile, each in isolation from the rest of the boundary. As was noted above, there is a convergence between the principles of delimitation applicable to the territorial sea, the exclusive economic zone, and the continental shelf. UNCLOS Articles 74(1) and 83(1) both point to the achievement of an ‘equitable result’ overall, as does customary international law and the basic principle that the land dominates the sea, so that a State is entitled to the waters that lie in front of its coasts.⁷⁰ It is the final product of the construction of the whole line that is to be considered for its equitableness.

2.52 The need here is to remove the distorting effect of the Santa Elena deflection upon the delimitation of the territorial sea. Figure Ic-2, above, also depicts an equidistance line which has been drawn, west of the Punta Blanca turning point, ignoring Santa Elena. It can be seen that instead of veering north

⁷⁰ See above, para. 2.15. See also D H Anderson, ‘Maritime boundaries and limits: some basic legal principles’, (2001),

<http://www.iho.int/mtg_docs/com_wg/ABLOS/ABLOS_Conf2/ANDERSON.PDF>, at p. 5.

and cutting the outer limit of the territorial sea in the ‘notch’ formed by the intersection of the 12 NM limits of Costa Rica and Nicaragua, the line drops south at that point, so that the maritime boundary line cuts the outer limit of Costa Rica’s territorial sea almost due west of Cabo Santa Elena.

2.53 The coordinates of the Punta Blanca turning point are 11°02’45.0”N, 85°51’25.2”W; and the coordinates of the intersection of the boundary and the outer limit of Costa Rica’s territorial sea are 10°56’48.5”N, 86°09’20.2”W. The boundary is a [geodesic] connecting those two points. The boundary and its construction are illustrated in Figure Ic-4, below and described in Table 2.1.

2.54 The distances and areas involved are relatively small. The southward drop at the point of intersection with the outer limit of the territorial sea is around 9 NM. The result is to give Nicaragua around 206km² more territorial sea than it would have under strict equidistance line. That figure may be compared with the 7,100km² of Nicaragua’s entire territorial sea in the Pacific, and Costa Rica’s 11,800 km² of Pacific territorial sea.

2.55 This adjustment enables the boundary to continue seaward from the outer limit of the territorial sea in the same general direction, and to merge with an EEZ and continental shelf boundary that is a modified equidistance line giving half-weight to the Nicoya Peninsula, which would otherwise cut off the Nicaraguan EEZ and produce an inequitable result. That line is less generous to Nicaragua than a perpendicular drawn from the general direction of the coast would be but nonetheless moderates the full force of the distorting effects of the Nicoya Peninsula. The boundary in the EEZ and continental shelf is explained further in this Chapter, in Section D below, and is depicted in Figure Id-7 below.

Figure Ic-4: Pacific: Territorial Sea Proposed Delimitation

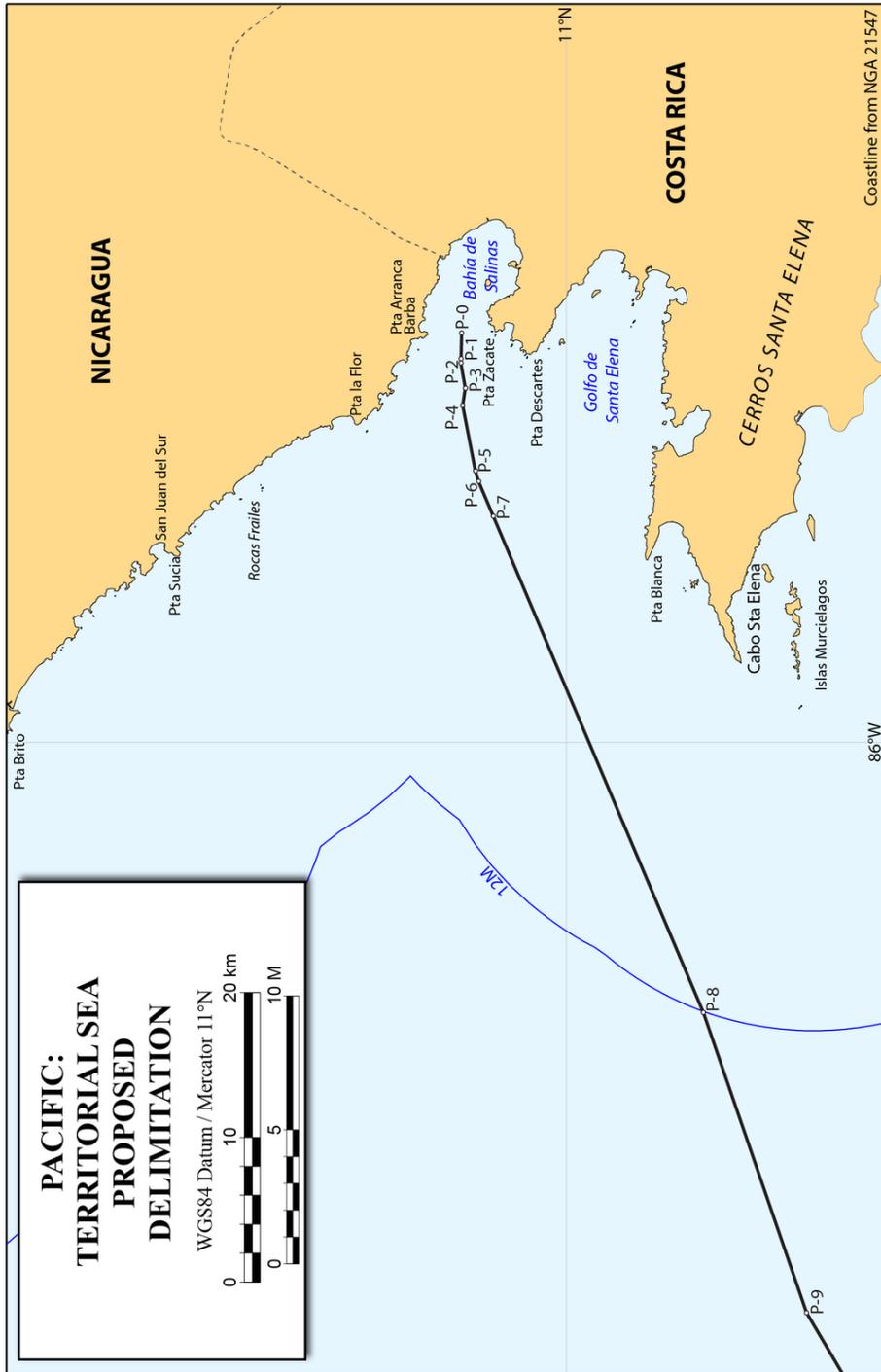


Table 2.1

TABLE OF COORDINATES

Point	Latitude				Longitude			
P-0	11	3	56.3	N	85	44	28.3	W
P-1	11	3	57.6	N	85	45	27.0	W
P-2	11	3	57.8	N	85	45	36.8	W
P-3	11	3	47.6	N	85	46	34.0	W
P-4	11	3	54.0	N	85	47	13.2	W
P-5	11	3	25.0	N	85	49	42.4	W
P-6	11	3	17.7	N	85	50	6.3	W
P-7	11	2	44.8	N	85	51	25.2	W
P-8 (12M)	10	54	51.7	N	86	10	14.6	W

D. DELIMITATION OF THE CONTINENTAL SHELF AND EXCLUSIVE ECONOMIC ZONE IN THE PACIFIC OCEAN

1. Costa Rica’s Provisional Equidistance Line Is Inconsistent with the Dominant Geographic Reality in This Case

2.56 It is common ground between the Parties that the first step in the delimitation process is to construct a provisional equidistance line.⁷¹ The Court has made clear, however, that this is “nothing more than a first step and in no way prejudices the ultimate solution which must be designed to achieve an equitable result.”⁷² Moreover, “[f]ollowing this approach, does not preclude very substantial adjustment to, or shifting of, the provisional line in an appropriate case.”⁷³

2.57 The provisional equidistance line should be constructed using “the most appropriate base points on the coasts of the Parties.”⁷⁴ The Court has explained that the “most appropriate” base points are those which “mark a significant change in the direction of the coast, in such a way that the geometrical figure formed by the line connecting all these points reflects the general direction of the coastlines.”⁷⁵

2.58 As described earlier in this Chapter, in Section A.1⁷⁶, the geographic relationship between Nicaragua and Costa Rica on the Pacific side of the Central American isthmus is defined by two dominant realities. *First*, the Parties have been given broadly equal treatment by nature in terms of their overall coastal

⁷¹ CRM, para. 3.16.

⁷² *Nicaragua v. Colombia*, para.196; *Romania v. Ukraine*, para.118.

⁷³ *Nicaragua v. Colombia*, para. 197.

⁷⁴ *Romania v. Ukraine*, para. 116-117; *Nicaragua v. Colombia*, para.191.

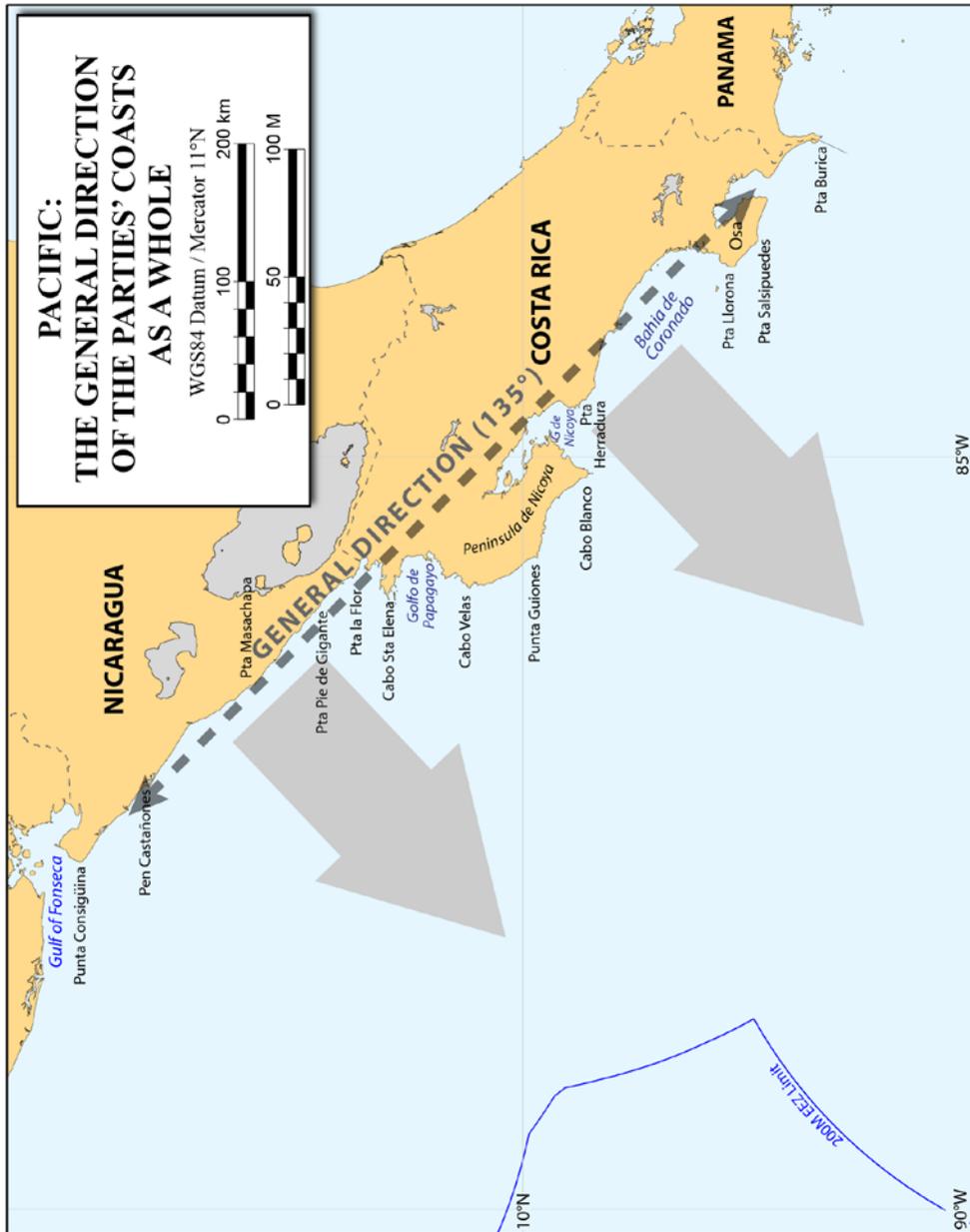
⁷⁵ *Romania v. Ukraine*, para.127.

⁷⁶ See p. 4 above.

length. Measured using straight-line approximations, Nicaragua's coast is some 300 km long and Costa Rica's is 450 km.⁷⁷ *Second*, between the Gulf of Fonseca in the north and Costa Rica's land boundary terminus with Panama in the south, the Parties' coasts are adjacent and aligned along an axis having a general bearing of approximately N135E°, such that their coastal façades project seawards in the same general direction. This latter fact is reflected in Figure Id-1.

⁷⁷ See Chapter II, Section B.1. for the discussion of which segments of the Parties' coastlines are relevant for the purpose of delimitation.

Figure Id-1: Pacific: The General Direction of the Parties' Coasts as a Whole



2.59 Because of the location of the base points used to construct it, Costa Rica's provisional equidistance line does not respect these macro-geographic realities. On Nicaragua's coast, Costa Rica has placed base points at Punta Sucia, Punta Pie del Gigante and Punta Masachapa.⁷⁸ Lying on the same general line, these points faithfully reflect the macro-geography of the area.

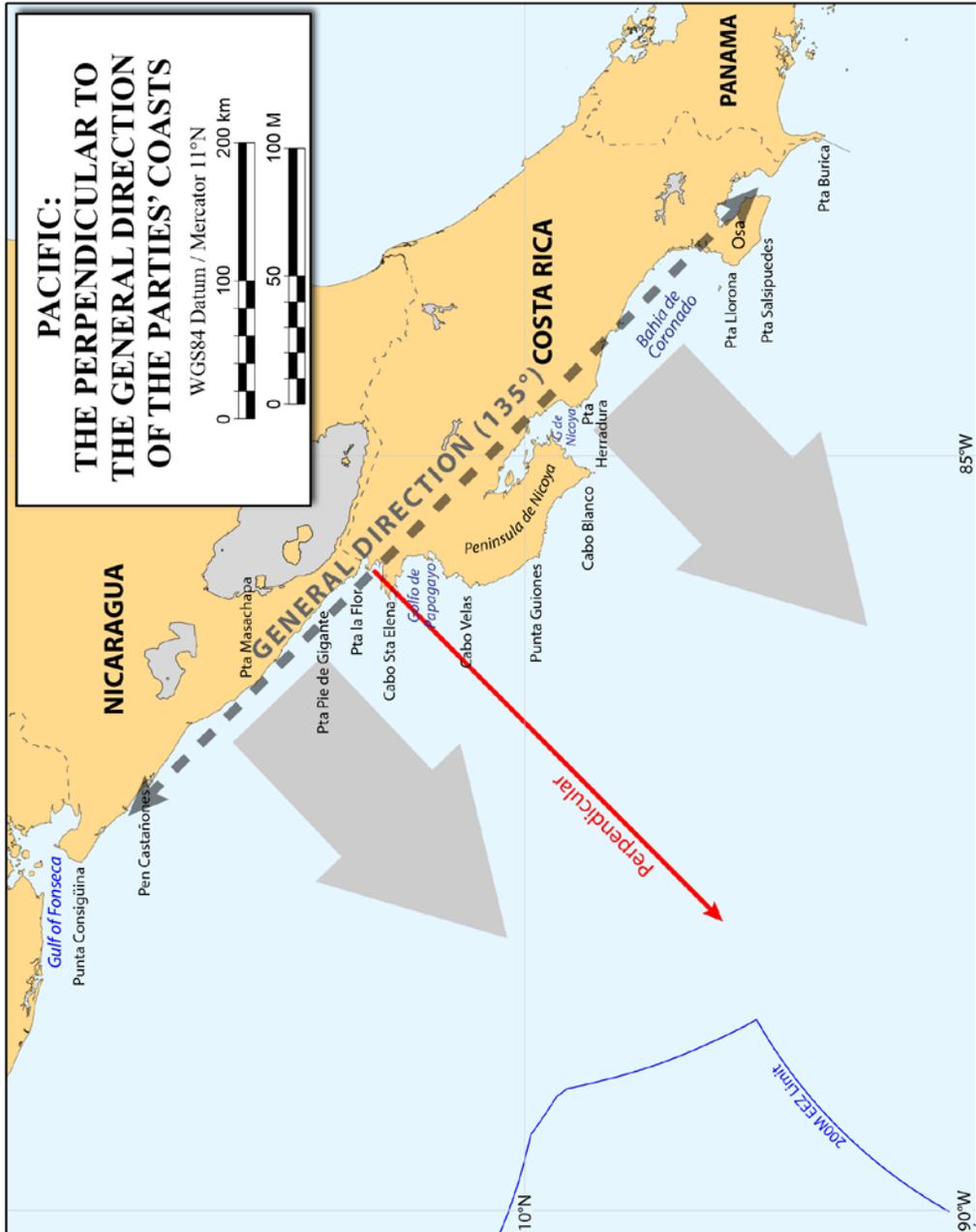
2.60 The same is not true with respect to the base points on its own coast, however. There, Costa Rica identifies just three base points, all of which are located on features—Punta Santa Elena (2) and Cabo Velas (1)—situated in the northern reaches of the Nicoya Peninsula.⁷⁹ This peninsula, which lies close to the land boundary terminus, protrudes sharply seaward relative both to the adjacent Nicaraguan coast and to the general direction of Costa Rica's coast as a whole. As a result, it defines the course of Costa Rica's provisional equidistance line throughout its length. The rest of Costa Rica's coast, which follows a direction consistent with the broader macro-geographic circumstances described above, is rendered effectively irrelevant.

2.61 But for this conspicuous protrusion, the provisional delimitation line would essentially be perpendicular to the Parties' coastal façades. This can be seen in Figure Id-2, below. Costa Rica's provisional equidistance line is thus inconsistent with the dominant geographic realities of this case.

⁷⁸ See Costa Rica Memorial, Sketch-Map 3.7 (on p. 42).

⁷⁹ *Ibid.*

Figure Id-2: Pacific: The Perpendicular to the General Direction of the Parties' Coasts



2. Costa-Rica's Provisional Equidistance Line Produces An Inequitable Cut-Off of Nicaragua's Maritime Projections

2.62 The Parties also agree that the second step of the delimitation process involves determining whether or not there are any “relevant circumstances” calling for the adjustment of the provisional equidistance line in order to achieve an equitable result.⁸⁰

2.63 Costa Rica takes the view that its provisional equidistance line produces an equitable solution and therefore no adjustment is warranted.⁸¹ Nicaragua disagrees. Costa Rica's provisional equidistance line produces a marked and unjustified cut-off of Nicaragua's maritime projections that must be remedied if a truly equitable solution is to be achieved.

2.64 It is now well-established in the jurisprudence of the Court and international tribunals that the relevant circumstances that justify an adjustment to the provisional equidistance line are primarily geographical in nature.⁸² The cut-off effect is one such circumstance. As the Court stated in *Nicaragua v. Colombia*, the “cut-off effect is a relevant consideration which requires adjustment of the provisional median line in order to produce an equitable result.”⁸³ In such a situation, achieving an equitable result “requires that, so far as possible, the line of

⁸⁰ CRM, para. 3.17.

⁸¹ CRM, para.3.19.

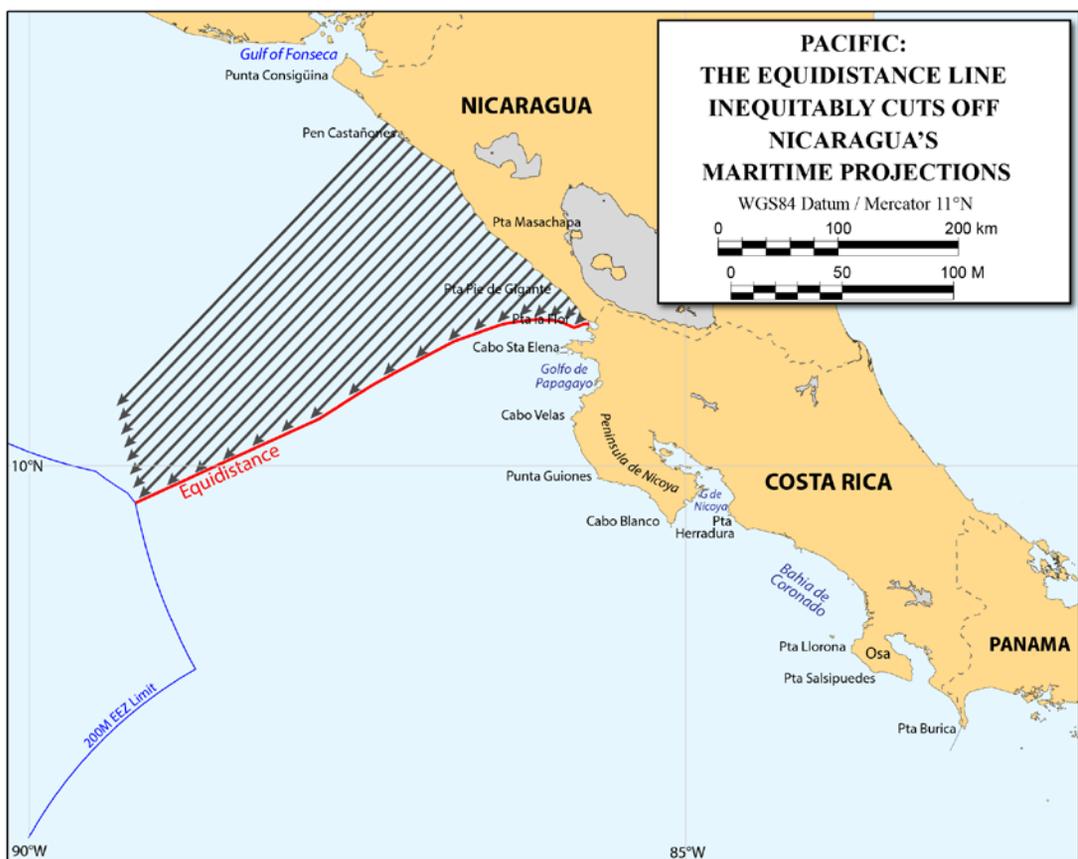
⁸² *Barbados v. Trinidad and Tobago*, para. 233 (“The identification of the relevant circumstances becomes accordingly a necessary step in determining the approach to delimitation. That determination has *increasingly been attached to geographical considerations*, with particular reference to the length and the configuration of the respective coastlines and their characterization as being opposite, adjacent or in some other relationship.”)

⁸³ *Nicaragua v. Colombia*, para.215.

delimitation should allow the coasts of the Parties to *produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way.*”⁸⁴

2.65 Costa Rica’s provisional equidistance line does no such thing. Because it is drawn exclusively from base points located on a pronounced coastal protrusion, Costa Rica’s proposed line juts substantially to the north, significantly cutting off Nicaragua’s maritime projections. This is reflected in Figure Id-3.

Figure Id-3: Pacific: The Equidistance Line Inequitably Cuts off Nicaragua’s Maritime Projections



⁸⁴ *Nicaragua v. Colombia*, para. 215 (emphasis added); *Romania v. Ukraine*, para. 201; *Bangladesh/Myanmar*, para. 325.

2.66 The coastal fronts of Nicaragua and Costa Rica are generally comparable in length and overall direction. The Parties have thus “*been given broadly equal treatment by nature* except that the configuration of one of the coastlines would, *if the equidistance method is used, deny to one of these States [i.e., Nicaragua] treatment equal or comparable to that given the other.*”⁸⁵ This would plainly *not* be an equitable solution.

2.67 The equidistance method’s tendency sometimes to produce unfair results has long been recognized. In the *North Sea Continental Shelf* cases, the Court observed: “It would however be ignoring realities if it were not noted at the same time that the use of th[e] [equidistance] method ... can under certain circumstances produce results that appear on the face of them to be extraordinary, unnatural or unreasonable.”⁸⁶ The Court further explained that “in certain geographical circumstances which are quite frequently met with, the equidistance method, despite its known advantages, *leads unquestionably to inequity, in the following sense: [t]he slightest irregularity in a coastline is automatically magnified by the equidistance line* as regards the consequences for the delimitation of the continental shelf.”⁸⁷

2.68 Such consequences usually manifest themselves in the form of a cut-off effect. The Court elaborated:

[T]he use of the equidistance method would frequently cause areas which are the natural prolongation or extension of the territory of one State to be attributed to another, when the configuration of the latter’s coast makes *the*

⁸⁵ *North Sea Continental Shelf*, para. 91 (emphasis added).

⁸⁶ *North Sea Continental Shelf*, para. 24.

⁸⁷ *North Sea Continental Shelf*, para. 89 (emphasis added).

*equidistance line swing out laterally across the former's coastal front, cutting it off from areas situated directly before that front.*⁸⁸

2.69 Exactly the same pitfall was also underscored in *Libya/Malta*, in which the Court stated that “since an equidistance line is based on a principle of proximity and is therefore controlled only by salient coastal points, it may yield a *disproportionate result* where a coast *is markedly irregular ...*”.⁸⁹

2.70 The pronounced protrusion of the Nicoya Peninsula is exactly the sort of manifest irregularity that the Court referred to in the decisions just cited. Costa Rica's provisional equidistance line is controlled entirely by this pronounced protrusion in the Costa Rican coast that is inconsistent with the general trend of the Parties' coasts viewed as a whole. Although nature has endowed Nicaragua with a substantial coastline, the protrusion of the Nicoya Peninsula in the area immediately abutting the land boundary terminus causes Costa Rica's provisional equidistance line to produce results that appear “unnatural or unreasonable.”⁹⁰

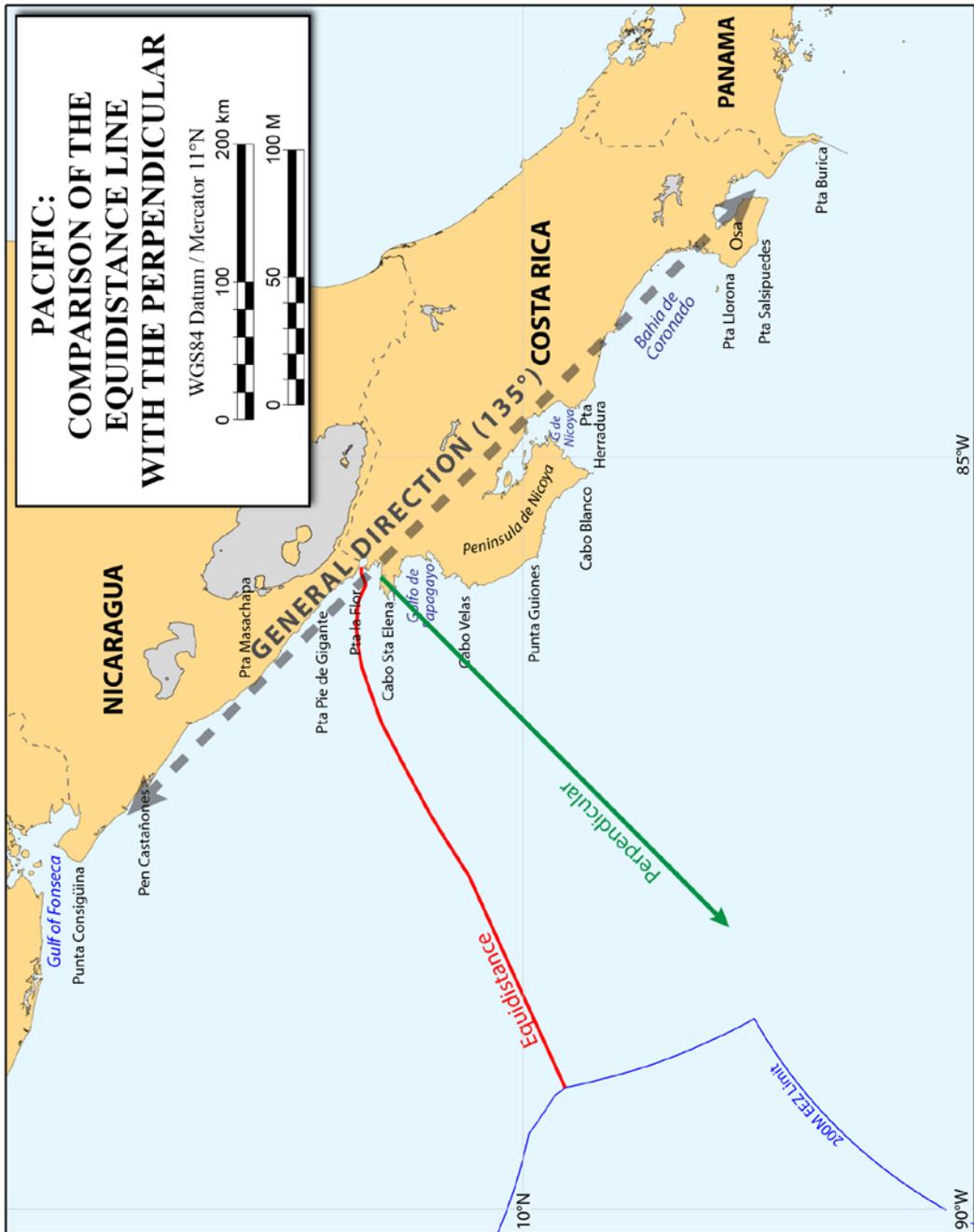
2.71 The extent to which the use of basepoints on the Nicoya Peninsula distorts the course of Costa Rica's provisional equidistance line and cuts Nicaragua off from its maritime projections can be appreciated by comparing the lines depicted in Figures Id-2, above, (showing the perpendicular to the general direction of the coasts) and Figure Id-3, above, (showing the cut-off produced by Costa Rica's provisional equidistance line). The two lines are shown together in Figure Id-4, below. Equitable considerations plainly require the adjustment of the provisional equidistance line so as to abate such obvious inequity.

⁸⁸ *North Sea Continental Shelf*, para. 44 (emphasis added).

⁸⁹ *Libya v. Malta*, para. 56 (emphasis added).

⁹⁰ *North Sea Continental Shelf*, para. 24.

Figure Id-4: Pacific: Comparison of the Equidistance Line with the Perpendicular



2.72 That said, the Nicoya Peninsula is a geographic reality, and Nicaragua does not ask the Court to completely refashion geography by ignoring it altogether. What Nicaragua seeks, in accordance with the Court’s jurisprudence, is the abatement of the effects of a “special feature from which an unjustifiable difference of treatment could result” absent an adjustment.⁹¹

2.73 Nicaragua considers that in these circumstances an equitable result can be achieved by giving half effect to the Nicoya Peninsula. The resulting line is midway between Costa Rica’s proposed equidistance line and a line that eliminates the distorting effects of Nicoya Peninsula altogether.

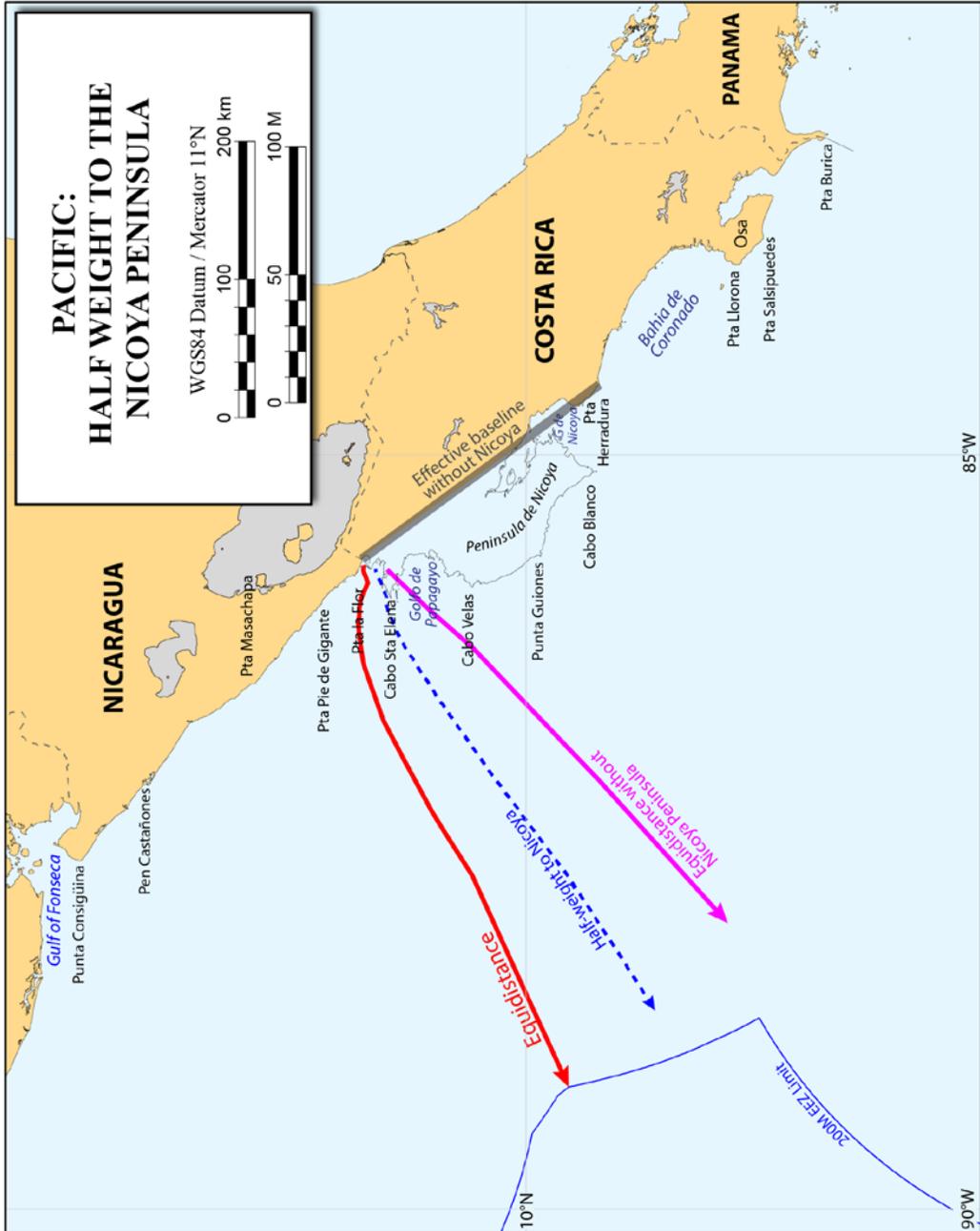
2.74 This proposed boundary is shown in Figure Id-5, below.⁹² As can be appreciated, the adjusted line does not eliminate all of the prejudicial effects of the Nicoya Peninsula. Nicaragua’s maritime projections are still cut off. Nevertheless, Nicaragua’s proposal does abate the worst of the cut-off. At the same time, it produces no significant cut-off of Costa Rica’s maritime projections. Although the potential entitlements of both Parties are inevitably curtailed, the curtailment is shared in a reasonable and mutually balanced way. Neither Party is disproportionately cut-off.

2.75 The equitableness of this result is further confirmed by the disproportionality test, as discussed below.

⁹¹ *North Sea Continental Shelf*, para. 91.

⁹² This half-effect line has been constructed by drawing a line half-way between (1) a strict equidistance line and (2) an equidistance line drawn from the coast of Costa Rican assuming the Nicoya Peninsula did not exist.

Figure Id-5: Pacific: Half-weight to the Nicoya Peninsula



3. Nicaragua's Proposed Delimitation Does Not Produce a Disproportionate Result

2.76 In the third and final step of the delimitation process, the Court considers 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.”⁹³

2.77 The Parties agree 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.”⁹⁴ The Parties also agree that comparing the relevant coastal length 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.”⁹⁵

2.78 Dividing the relevant area as described in Section B.2 above,⁹⁶ by means of the half-effect line described above results in an allocation of 66,840 km² to Nicaragua and 35,930 km² to Costa Rica. This is reflected in Figure Id-6. The ratio is 1.86:1 in favor of Nicaragua. Given that Nicaragua’s relevant coast is longer than Costa Rica’s by a ratio of 1.65:1, the half-effect line creates no significant disproportion, let alone a disproportion so gross as to taint the result and render it inequitable. It therefore achieves the equitable solution the law requires.

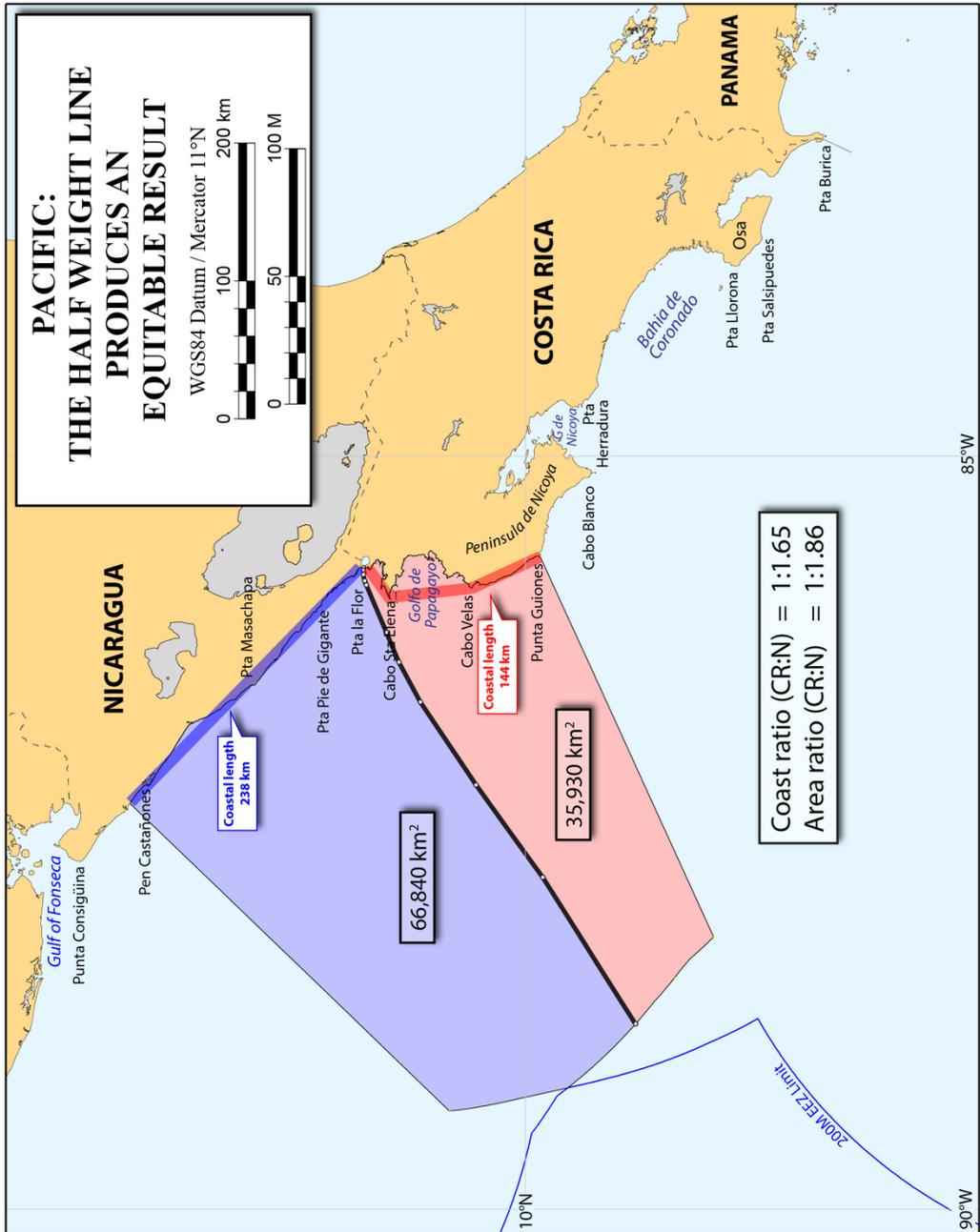
⁹³ *Romania v. Ukraine*, para. 210.

⁹⁴ *Nicaragua v. Colombia*, para. 242.

⁹⁵ *Romania v. Ukraine*, para. 213.

⁹⁶ See paras..2.27-2.39 above.

Figure Id-6: Pacific: The Half-weight line produces an Equitable Result



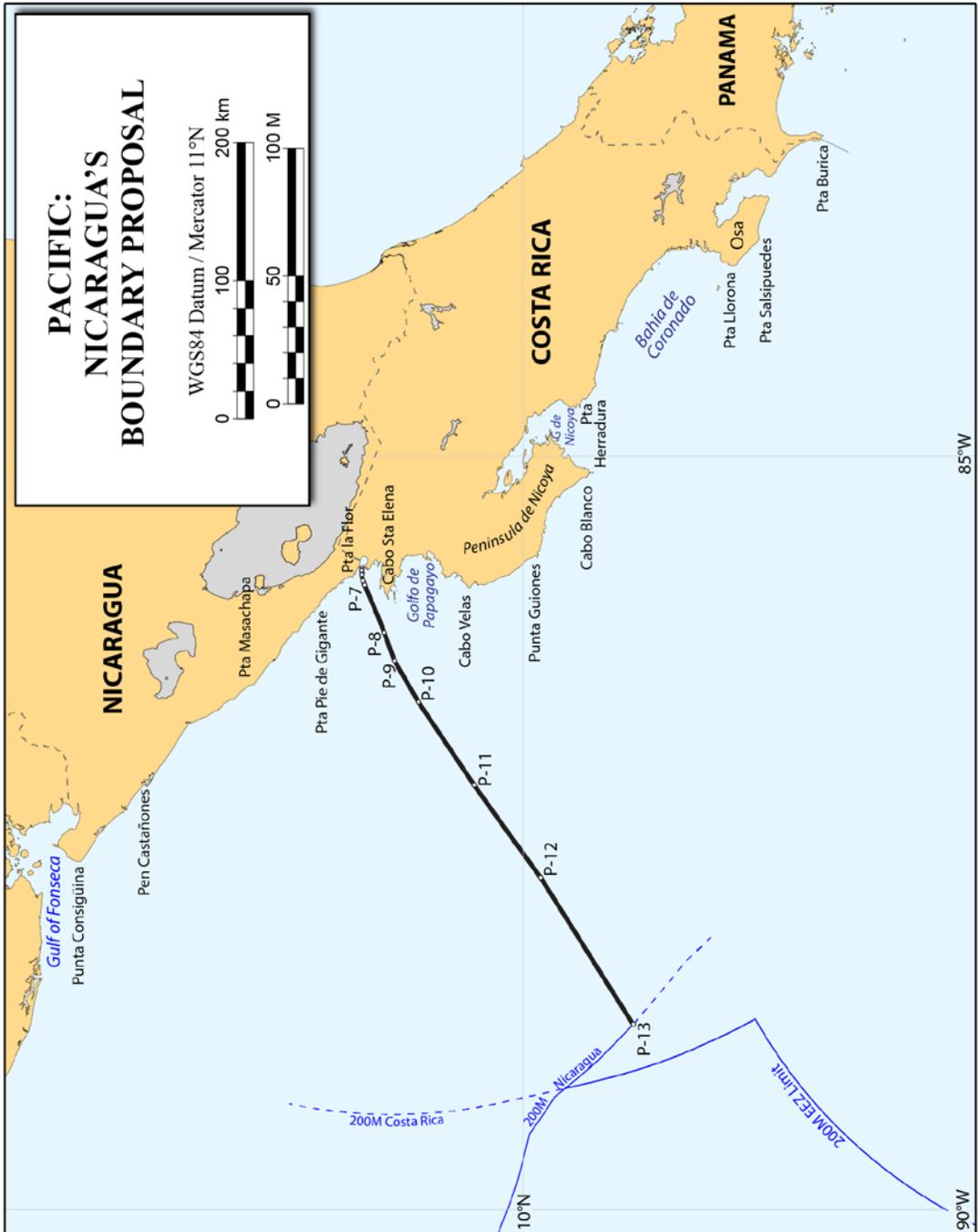
2.79 Accordingly, as depicted in Figure Id-7, the maritime boundary between 12 M and 200 M follows the course with the turning points described in Table 2.2. (referred to WGS 84).

Table 2.2.

Point	Latitude					Longitude			
P-8									
(12 M)	10	54	51.7	N	86	10	14.6	W	
P-9 ⁹⁷	10	50	59.1	N	86	21	37.6	W	
P-10	10	41	24.4	N	86	38	0.8	W	
P-11	10	19	28.3	N	87	11	0.7	W	
P-12	9	53	9.0	N	87	47	48.8	W	
P-13	9	16	27.5	N	88	46	10.9	W	

⁹⁷ Point P-8 represents the intersection of the adjusted equidistance line in the territorial sea as described in Section C of this Chapter, with the 12 M limit (as drawn from Costa Rica). It is connected to point P-9 on the line giving half-effect to the Nicoya Peninsula by means of a geodesic line.

Figure Id-7: Pacific: Nicaragua's Boundary Proposal



CHAPTER III: DELIMITATION IN THE CARIBBEAN SEA

A. FACTUAL AND LEGAL BACKGROUND

3.1 The purpose of this Section is to give an overview of the geographical situation of the area within which the delimitation is to be carried out in the Caribbean (Sub-section 1) and to assess it in view of the relevant Judgments previously rendered by the Court (Sub-section 2) and of the treaties concluded by Costa Rica (Sub-section 3).

1. General Description of the Geographical Situation

3.2 The Caribbean Sea covers more than 2,600,000 km². Nicaragua and Costa Rica are located in the western half of the Caribbean Sea. The size and oval shape of that sea creates a number of overlapping maritime claims.

3.3 Nicaragua has coastal relationships with Honduras, Jamaica, Colombia, Panama and Costa Rica. Its boundaries with Honduras and with Colombia in the territorial sea, the exclusive economic zone and the continental shelf within 200 nautical miles, have been established by the Court, respectively on 8 October 2007⁹⁸ and 19 November 2012.⁹⁹ The delimitation of the boundary with Colombia in the continental shelf beyond 200 NM is the subject of a pending case.¹⁰⁰ Nicaragua's maritime boundaries with Jamaica and Panama have not yet been

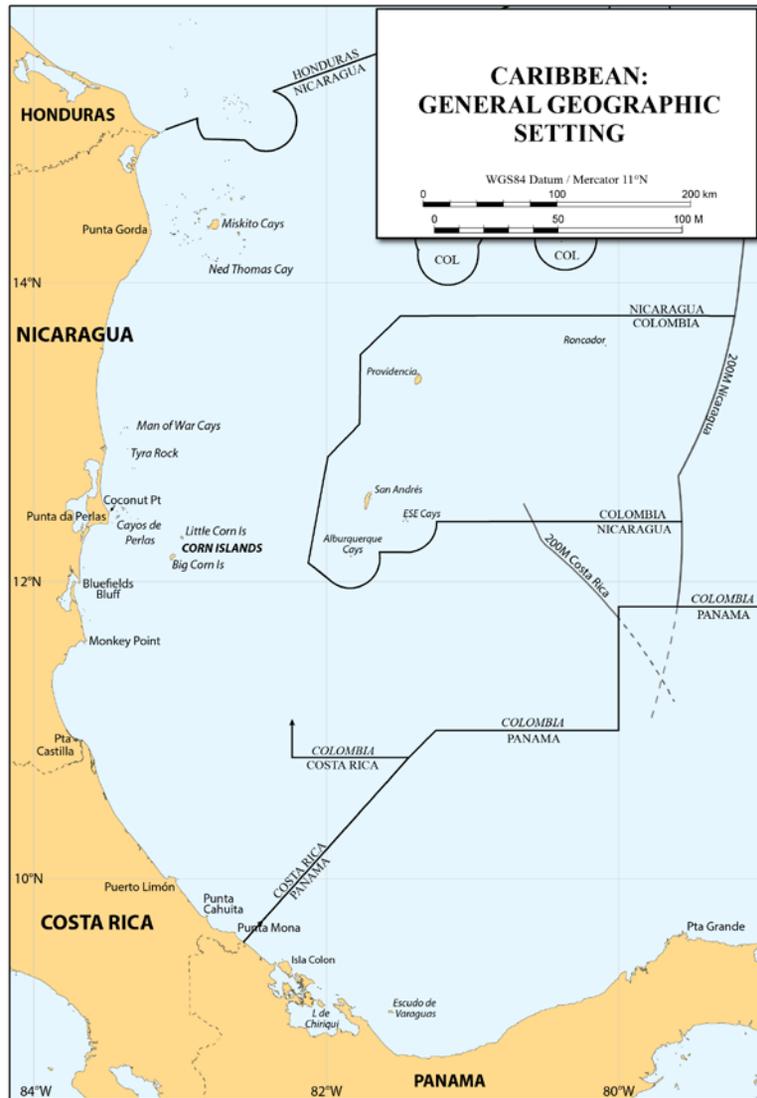
⁹⁸ I.C.J., Judgment, 8 October 2007, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Reports 2007, p. 659.

⁹⁹ I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 624.

¹⁰⁰ *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)* (Application filed on 16 September 2013).

agreed upon, but Nicaragua has notified them that it will accept the delimitation they had agreed with Colombia.¹⁰¹

Figure IIa-1: Caribbean: General Geographic Setting



¹⁰¹ See Annex 25 (A) (B) of this Counter Memorial.

3.4 For its part, Costa Rica delimited its maritime boundary with Panama by treaty in 1980.¹⁰² Costa Rica and Panama agreed that the boundary should follow a strict equidistance line “from the termination of the land boundary between the two countries, at a point located in the mouth of the Sixaola River”.¹⁰³ Costa Rica also signed a maritime delimitation treaty with Colombia in 1977.¹⁰⁴

3.5 The coastal façades of Nicaragua and Costa Rica are very different in terms of length and shape. Nicaragua’s mainland coast measures 535 km¹⁰⁵ – or 453 km when measured by means of a straight line – to which must be added about 50 km of insular coastline, while Costa Rica’s mainland coast stretches over some 226 km (193 km measured by means of a straight line) to which 20 km can be added in respect of its islands.

3.6 The Costa Rican coastline runs in a North-West/South-East direction from the land boundary with Nicaragua to the land boundary with Panama. It presents no marked disruption or feature. The only noticeable features are two small promontories: Puerto Limón, located about 123 km from the starting point of the maritime boundary, and Punta Mona, situated a few kilometres away from the boundary with Panama.

¹⁰² Treaty concerning the Delimitation of Marine Areas and Maritime Cooperation between the Republic of Costa Rica and the Republic of Panama, 2 February 1980 (entry into force on 11 February 1982) (CRM, Vol. II, Annex 2).

¹⁰³ *Ibid.*, Article 1(1).

¹⁰⁴ Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica, additional to that signed in San José on 17 March 1977 (CRM, Vol. II, Annex 3). See Section A.3 below.

¹⁰⁵ In its 2012 Judgment, the ICJ noted: “With the exception of the short stretch of coast near Punta de Perlas, which faces due south and thus does not project into the area of overlapping potential entitlements, the relevant coast is, therefore, the entire mainland coast of Nicaragua (see sketch-map No. 6, p. 681). Taking the general direction of this coast, its length is approximately 531 km.” (I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 678, para. 145).

3.7 The coastal façade of Nicaragua extends in a North/South direction from the boundary with Honduras in the North to the boundary with Costa Rica in the South. There are a number of important features along the coast. In the South, the coastline forms a concavity from the mouth of the San Juan River up to Monkey Point (Punta del Mono). About 160 km North of Punta del Mono, there is a promontory called Punta de Perlas, very close to which lies a group of small islands, the Cayos de Perlas. This group of islands fringes the mainland coast of Nicaragua and for delimitation purposes forms an integral part of that coast. Further seaward, lie the two Corn Islands (Islas del Maíz) which are important islands located approximately 26 nautical miles off Punta de Perlas. Great Corn Island covers an area of 9.6 square km and Little Corn Island an area of 3 square km. The total population of the Corn Islands is approximately 7,400 inhabitants.¹⁰⁶ Going further to the North, the coastline presents two other marked promontories at Punta Gorda (North) and Cape Gracias a Dios; and other features, such as Edinburgh Reef, Muerto Cay, the Miskitos Cays and Ned Thomas Cay, lie off the coast.¹⁰⁷

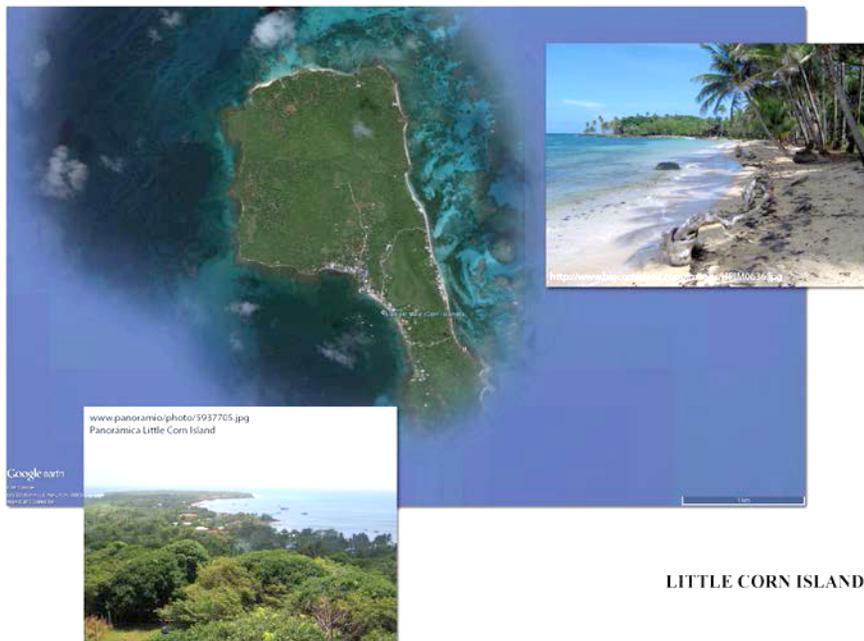
¹⁰⁶ I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 638, para. 21. See also INETER, “Corn Island: A Nicaraguan Island in the Caribbean Sea”, 6 November 2015 (NCM, Annex 20).

¹⁰⁷ *Ibid.*

Figure IIa-2: Big Corn Island



Figure IIa-3: Little Corn Island



2. Relevance of previous Judgments

3.8 The ICJ has been called upon to settle disputes concerning maritime delimitations in the area on several previous occasions:

- in the case concerning the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*;¹⁰⁸

- in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*¹⁰⁹ in which Costa Rica and Honduras filed application for permission to intervene;¹¹⁰

- in the case 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)*;¹¹¹ and

- in the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*.¹¹²

3.9 However, only two of the disputes have so far resulted in judgments from the Court; and only three judgments, dated 13 December 2007, 4 May 2011 and 19 November 2012 and concerning respectively the preliminary objections raised by Colombia, the intervention requested by Costa Rica (and rejected by the Court), and the merits in the *Territorial and Maritime Dispute* between Nicaragua and Colombia, are directly relevant for the present case.

¹⁰⁸ I.C.J., Judgment, 8 October 2007, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Reports 2007, p. 659.

¹⁰⁹ I.C.J., Judgment, 13 December 2007, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Reports 2007, p. 832, and Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Merits, Reports 2012, p. 624.

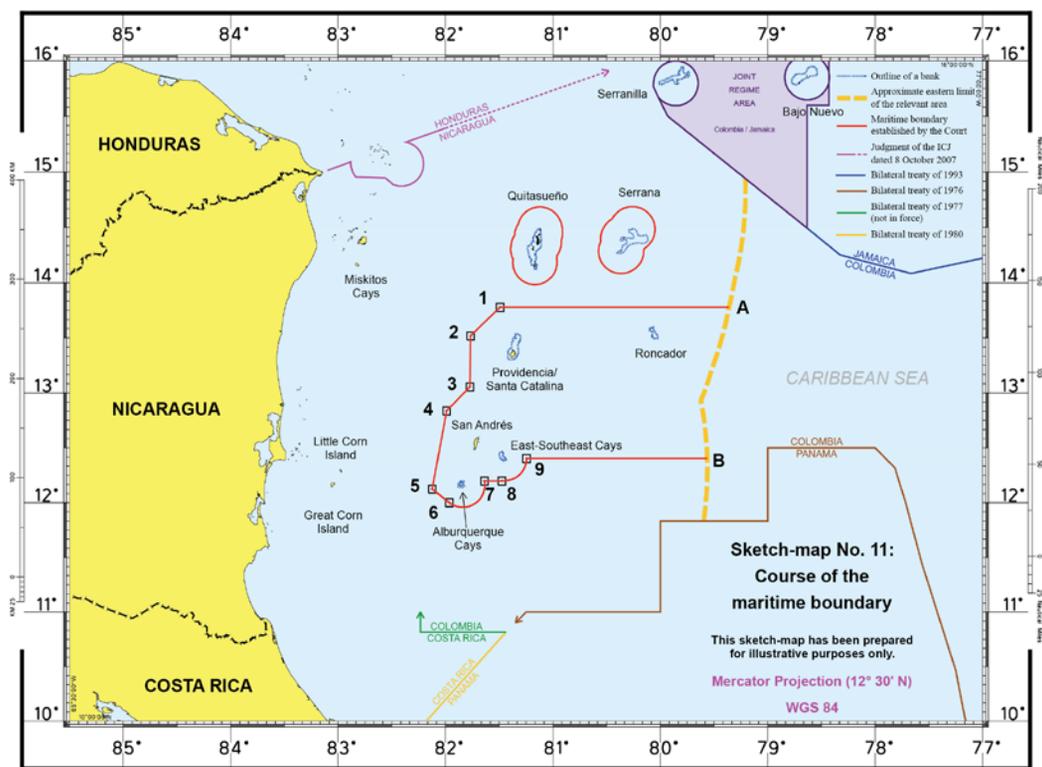
¹¹⁰ I.C.J., Judgments, 4 May 2011, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application for Permission to Intervene, Reports 2011, p. 348 and p. 420.

¹¹¹ Application of 16 September 2013.

¹¹² Application of 26 November 2013.

3.10 In its Judgment of 19 November 2012, the Court found unanimously “that the Republic of Colombia has sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla”¹¹³ and fixed the course of the maritime boundary between Colombia and Nicaragua¹¹⁴ as shown on the illustrative sketch map appearing at page 714 of the *ICJ Reports* for 2012. This sketch map is reproduced below, at Figure IIA-4.

Figure IIA-4: Sketch Map 11 from the Court’s Judgment in Nicaragua/Colombia



3.11 There can be no doubt that Costa Rica is not legally bound by this Judgment and that its rights and interests are fully protected under article 59 of the

¹¹³ I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Merits, Reports 2012*, p. 718, para. 251(1).

¹¹⁴ *Ibid.*, pp. 719-720, para. 251(4) and (5).

Statute. This was recalled by the Court in its previous decisions in the *Territorial and Maritime Dispute* case.¹¹⁵

3.12 However, this certainly does not remove prior judgments concerning the same kind of issues or the general situation from the “legal landscape” in which the Court is called upon to take its decision in the present case. *Mutatis mutandis*, the reasoning must be the same as that followed by the Court concerning the authority of precedents: they are not legally binding as such, but there must be good reasons to depart from them:

“as the Court observed in a previous case in which questions of *res judicata* and Article 59 of the Statute were raised, “[t]he real question is whether, in this case, there is cause not to follow the reasoning and conclusions of earlier cases” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 292, para. 28).”¹¹⁶

“In general the Court does not choose to depart from previous findings, particularly when similar issues were dealt with in the earlier decisions, as in the current case, unless it finds very particular reasons to do so. It is on that basis therefore that the Court will consider the arguments of the Parties on the matters which, it is argued, were covered by those previous decisions.”¹¹⁷

¹¹⁵ See I.C.J., Judgment, 4 May 2011, *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene, Reports 2011*, pp. 372-373, paras. 86 and 89; and I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia), Reports 2012*, pp. 684-685, paras. 161 and 228.

¹¹⁵ I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia), Reports 2012*, p. 707, para. 228.

¹¹⁶ I.C.J., Judgment, 15 December 2004, *Legality of Use of Force (Serbia and Montenegro v. Belgium), Preliminary Objections, Reports 2004*, p. 318, para. 98. See also, appended to that Judgment, the Joint declaration of Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al Khasawneh, Buergenthal and Elaraby, *Reports 2004*, pp. 330-334.

¹¹⁷ I.C.J., Judgment, 14 November 2008, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Reports 2008*, p. 449, para. 104. See also, in the same Judgment, p. 429, para. 54 and, in the same case, the Judgment on the *Merits*, 3 February 2015, para. 125.

3.13 In other words, in the present case, Nicaragua fully accepts that the existing Judgments concerning maritime delimitations in the Caribbean Sea do not bind Costa Rica which was not a Party in those cases, and that the Court itself is not legally bound by those Judgments. However, a departure from its findings would be warranted only if new and compelling elements would justify such a departure.

3.14 In addition, such a challenge to previously judicially settled boundaries would be especially inappropriate given the objective character of boundaries, whether agreed by treaty or decided by a court or tribunal,

“The establishment of this boundary is a fact which, from the outset, has had a legal life of its own, independently of the fate of the [...] Treaty [or the Judgment which has established it]. Once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasized by the Court (*Temple of Preah Vihear, I.C.J. Reports 1962*, p. 34; *Aegean Sea Continental Shelf, I.C.J. Reports 1978*, p. 36).”¹¹⁸

And this holds true whether it concerns a land or a maritime boundary:

“Whether it is a land frontier or a boundary line in the continental shelf that is in question, the process is essentially the same, and inevitably involves the same element of stability and permanence, and is subject to the rule excluding boundary agreements from fundamental change of circumstances.”¹¹⁹

3.15 Although it refers to the Court’s previous judgments, Costa Rica wrongly puts into question their relevance. This is the case for example when it writes that

¹¹⁸ Cf. I.C.J., Judgment, 3 February 1994, *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Reports 1994*, p. 37, para. 72. See also Article 62, para. 2.(a), of the 1969 Vienna Convention on the Law of Treaties.

¹¹⁹ I.C.J., Judgment, 19 December 1978, *Aegean Sea Continental Shelf, Reports 1978*, pp. 35-36, para. 85.

“[t]he Court’s judgment in *Nicaragua v. Colombia* provides some insight into the coastal relationship between the parties to that case”¹²⁰ and proceeds to define (wrongly) the relevant coasts in the present case. Similarly, it writes that, “following the 19 November 2012 Judgment of the Court in *Nicaragua v. Colombia*, Costa Rica informed Colombia that, as a result of the Court’s Judgment, it considered the 1977 Treaty impracticable and ineffective.”¹²¹ The line in question, that is the boundary line established by the 1977 Treaty, appears in green on the sketch-map,¹²² and the legend indicates that the 1977 bilateral treaty is “not in force”. And Costa Rica adds: “In accordance with that Judgment, Costa Rica and Colombia no longer share an area of overlapping maritime entitlement, an indispensable object for the execution of a maritime boundary delimitation treaty”¹²³ This aspect will be discussed in more detail in sub-section 3 below.

3. Relevance of previous treaties concluded by Costa Rica

3.16 Costa Rica addresses briefly the maritime delimitation treaties signed with its neighbors in the Pacific Ocean and Caribbean Sea in Chapter 2 of its Memorial.¹²⁴ As the treaties concerning Costa Rica’s delimitation with Panama, Colombia, and Ecuador in the Pacific do not affect the maritime delimitation with Nicaragua in the Pacific Ocean, Nicaragua did not consider it necessary to refer to them. Nicaragua will, however, deal in this sub-section with those treaties concluded by Costa Rica in respect of maritime boundaries in the Caribbean Sea, namely with those signed with Panama (1980) and Colombia (1977). The paucity of information and the inconsistencies arising from Costa Rica’s Memorial make

¹²⁰ CRM, p. 52, para. 4.8.

¹²¹ CRM, p. 11, para. 2.13.

¹²² See figure IIa-4, at p.63.

¹²³ CRM, *ibid.*

¹²⁴ CRM, “Factual and Legal Background”, par. 2.4 and pars. 2.12-2.13, respectively.

it particularly necessary to set out the treaty framework in the Caribbean Sea correctly.

3.17 As to Costa Rica's delimitation in the Caribbean Sea with Panama, Costa Rica limits itself to noting that the maritime boundary between them has been established by agreement.¹²⁵ This is the only explanation given by Costa Rica in its Memorial – hardly a dozen words.¹²⁶ It should, however, be noted that the relevant treaty was concluded in 1980, and that the first provision of the instrument, Article I.1, sets out a straight line from the termination of the land boundary between Costa Rica and Panama to “[a] point located at latitude 10°49’00” North, longitude 81°26’08.2” West, *where the boundaries of Costa Rica, Colombia and Panama intersect* (emphasis added)”.

3.18 This is a treaty in force which refers to an agreed tripoint boundary involving Costa Rica, Colombia, and Panama. This fact, as will be shown below, is difficult to reconcile with Costa Rica's claim that the Judgment of 19 November 2012 rendered the 1977 Treaty impracticable and ineffective. The terms of the 1980 Treaty are binding and inescapable and must be taken into account and given their due weight.

3.19 We turn to that 1977 Treaty (known as the *Facio-Fernández Treaty*) and to Costa Rica's delimitation in the Caribbean Sea with Colombia. The Memorial devotes only ten lines to the treaty.¹²⁷ According to Costa Rica: “[Costa Rica] has not ratified that Treaty and it never entered into force. Moreover, following the 19 November 2012 Judgment of the Court in *Nicaragua v. Colombia*, Costa Rica

¹²⁵ Literally: “[Costa Rica] has delimited by agreement its Caribbean Sea maritime boundary with Panama”, see CRM, para. 2.12.

¹²⁶ Costa Rica goes so far as to omit even the date of conclusion.

¹²⁷ CRM, par. 2.13.

informed Colombia that, as a result of the Court’s Judgment, it considered the 1977 Treaty impracticable and ineffective. In accordance with that Judgment, Costa Rica and Colombia no longer share an area of overlapping maritime entitlement, an indispensable object for the execution of a maritime boundary delimitation treaty”¹²⁸.

3.20 Costa Rica has not included the text of the 1977 Treaty among the Annexes to its Memorial. Instead, the Memorial reproduces in its Annex no. 18 a Note from the Ambassador of Costa Rica in Colombia to the Coordinator of Affairs before the International Court of Justice of the Colombian Ministry of External Relations.¹²⁹ In this Note, dated 27 February 2013, Costa Rica refers to “[t]he possible signing of a new Maritime Cooperation Treaty” and mentions a “[p]roposal for a Joint Patrolling Agreement”, as well as the evaluation of “[p]ossible agreements of the I High-Level Meeting on Security and Justice (GANSJ), to be held in San José in May 2013”¹³⁰.

3.21 The treatment given by Costa Rica to this treaty in its Memorial is clearly insufficient, and a number of remarks and clarifications are in order. First, and generally, since the Memorial of Costa Rica was deposited on 3 February 2015 — that is two years after the Costa Rican Note referred to above— it is to be regretted that Costa Rica has not considered it necessary to provide further information as to the most relevant among the subsequent events, statements, and proposals made, as well as to Colombia’s reactions to them. The status and meaning of the 1977 Treaty is a relevant factor in the maritime delimitation between Nicaragua and Costa Rica in the Caribbean Sea, and more transparency on the part of Costa Rica would be highly desirable in this context.

¹²⁸ *Ibid.*

¹²⁹ CRM, Annex 18.

¹³⁰ *Ibid.*

3.22 Further, it is worth observing that on the occasion of Costa Rica's Application for permission to intervene in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*¹³¹ the discussion was concerned with the need to establish whether, and to what extent, a legal interest of Costa Rica could be affected by an eventual judicial decision concerning the maritime zones of the Parties in the *Nicaragua v. Colombia* case.

3.23 In that case, Nicaragua asserted that Costa Rica's legal interests were limited by the 1977 Costa Rica–Colombia Treaty and could not be extended beyond the area stipulated by that treaty to belong to Costa Rica. If Costa Rica's Government considered that the 1977 Treaty was consistent with the maritime claims of the Republic, it is logical to infer that this was premised on the idea that both its underpinning principles and the overall outcome were regarded by Costa Rica as being adequate and equitable.

3.24 Moreover, Nicaragua has stated that: “[C]osta Rica's renunciation of entitlement to areas beyond the agreed boundary line in the 1977 Treaty with Colombia is *erga omnes* as to other States...a treaty establishing a boundary gives birth to an objective situation, which becomes in a sense disconnected with the instrument that created it”¹³². This objective character has been enshrined in the existing international law applicable to treaties, as well as constantly underscored in the jurisprudence of this Court.

3.25 Turning now to the recognition of the principle of the stability of boundaries by the International Court of Justice, in the case of the *Territorial Dispute* between Libya and Chad the Court noted that:

¹³¹ Available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=e2&case=124&code=nicol&p3=1>

¹³² CR 2010/16, 15 October 2010, Counsel Reichler, pp. 27-28, para. 32 (Nicaragua).

“[A] boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. The treaty can cease to be in force without in any way affecting the continuance of the boundary...[W]hen a boundary has been the subject of agreement, the continued existence of that boundary is not dependent upon the continuing life of the treaty under which the boundary is agreed.”¹³³

3.26 Relying on the *Temple of Preah Vihear* (I.C.J. Reports 1962, p. 34) and *Aegean Sea Continental Shelf* (I.C.J. Reports 1978, p. 36) cases to support the principle that the establishment of a boundary is a fact which, from the outset, has a legal life of its own, independently of the fate of the treaty establishing it, the Court further noted that:

“Once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasized by the Court”¹³⁴

3.27 A more recent interpretation of this principle may be found in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Preliminary Objections*. In the context of this case the Court recalled the principle as follows:

“[i]t is a principle of international law that a territorial regime established by treaty “achieves a permanence which the treaty itself does not necessarily enjoy” and the continued existence of that regime is not dependent upon the continuing life of the treaty under which the regime is agreed”.¹³⁵

¹³³ I.C.J. Reports 1994, p. 37, para. 72-73.

¹³⁴ *Ibid.*, p. 37, para. 72.

¹³⁵ I.C.J. Reports 2007, p. 861, para.89.

3.28 This principle has been asserted in the context of maritime boundaries. A fine illustration may be found in the terms used by the Arbitral Tribunal in the *Eritrea/Yemen* case declaring that:

“Boundary and territorial treaties made between two parties are *res inter alios acta* vis-à-vis third parties. But this special category of treaties also represents a legal reality which necessarily impinges upon third states, because they have effect *erga omnes*...”¹³⁶

3.29 From this perspective, and contrary to what Costa Rica sought to suggest in the intervention proceedings referred to above¹³⁷, there can have been no vacuum in the areas of the South-Western Caribbean attributed to Colombia in its 1977 Treaty with Costa Rica. If the areas were not claimed by Costa Rica in 1977, they appertained to Colombia: and following the Court’s Judgment of 2012, some of those areas now belong to Nicaragua.

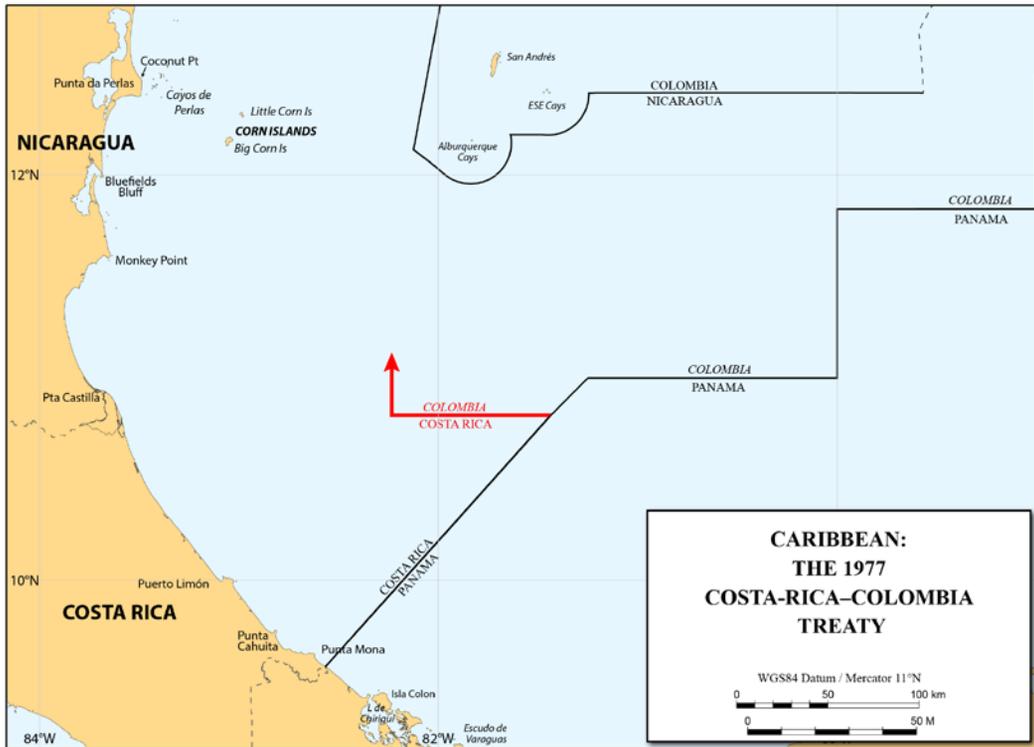
3.30 These areas are clearly not under the jurisdiction of Costa Rica. They belong to Nicaragua, which has always maintained its entitlement vis-à-vis Colombia. Costa Rica was well aware of this fact, as can be appreciated in Costa Rica’s note of 1 March 1996.¹³⁸ Far from adjusting its position, Costa Rica supported Colombia’s position in the proceedings. It is therefore not possible, once the Court has dismissed Colombia’s entitlement that Costa Rica should now seek to claim, and for the first time, a substantial part of those areas as its own.

¹³⁶ Territorial Sovereignty and Scope of the Dispute (*Eritrea and Yemen*), Award, 9 October 1998, R.I.A.A., vol. XXII, p. 250, para. 153.

¹³⁷ CR 2010/15, 14 October 2010, Counsel Lathrop, pp. 15-16, para. 14 (Costa Rica).

¹³⁸ See Diplomatic Note N° 071-96-DVM from the Costa Rican Minister of Foreign Affairs to the Nicaraguan Minister of Foreign Affairs, 1 March 1996 (NCM, Annex 20).

Figure IIA-5: Caribbean: The 1977 Costa Rica–Colombia Treaty



3.31 Article 1 of the 1977 Treaty defines a boundary consisting of a first line of 47 nautical miles from the meridian 81°15'00'' West that continues along parallel 10°49'00'' North to the meridian 82°14'00'' West, and then continues from this point along the said meridian to the point where delimitation should be made with Nicaragua¹³⁹. The 'arrow' of the South-North extreme of the second segment, along the meridian 82°14'00'' West from its intersection with parallel 10°49'00'' North¹⁴⁰, will simply 'hit the mark' where the Court decides to fix the dividing line between Nicaragua and Costa Rica.

3.32 In other words, the 1977 Treaty fixed and limited Costa Rica's interests in the maritime spaces of the Caribbean Sea¹⁴¹. Costa Rica cannot now claim areas over which it renounced any claim in what it accepted as an equitable delimitation, then with Colombia, in 1977. The agreed boundary consolidated Costa Rica's claims regardless of the fate of the treaty itself. Once the maritime delimitation between Nicaragua and Colombia excluded Colombian jurisdiction from the areas North and East of the 1977 Treaty line, those areas necessarily fell within the scope of what has now been determined by the Court to be Nicaraguan sovereign rights. This is the only logical solution according to law and to the

¹³⁹ Article 1.A of the Treaty. (NCM, Annex 3)

¹⁴⁰ Article 1.B of the Treaty. (NCM, Annex 3)

¹⁴¹ It is also significant that the 1977 Treaty is not a stand-alone instrument. Some of its provisions have been incorporated into two other maritime boundary treaties that have been ratified by Costa Rica. The first treaty is Costa Rica's 1980 Treaty with Panama, which was ratified by Costa Rica the following year. In Article 1, paragraph 1, of the 1980 Treaty, Costa Rica's maritime boundary with Panama is defined by a straight line drawn from the land boundary terminus to a point at sea located at 10° 49' N by 81° 26' 08.2" W "where the boundaries of Costa Rica, Colombia and Panama intersect". This tripoint, where the boundaries of Costa Rica, Colombia and Panama intersect, could only be such if there were pre-existing boundaries recognized between Colombia and Costa Rica and between Colombia and Panama. The 1977 boundary line between Costa Rica and Colombia was acknowledged again in the 1984 Treaty between Costa Rica and Colombia defining the maritime boundary in the Pacific Ocean. This latter treaty was ratified by both States and entered into force in 2001. Paragraph 1 of the Preamble to the 1984 Treaty states: "That the 'Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation', signed on 17 March 1977, established [*establació* in Spanish] the maritime boundary between the two States in the Caribbean Sea."

principle of certainty and security that is required by the process of boundary delimitation.¹⁴²

3.33 To conclude, Costa Rica seems to have fallen prey to a paradox that only confirms the scope of its inconsistencies. Costa Rica claims the impracticability and ineffectiveness of the 1977 Treaty as consequence of the Court's Judgment of 19 November 2012. Yet, should its claims against Nicaragua be satisfied, the 1977 Treaty would become 'practicable' again in respect of those areas which, according to the terms of that treaty, belonged to Colombia. And this, it should be added, occurs in a context where Colombia has strongly contended that this Treaty remains binding on Costa Rica as consequence of its subsequent conduct,¹⁴³ and no direct and clear reaction to this Colombian assertion can be found on the part of Costa Rica.

B. THE STARTING POINT OF THE MARITIME BOUNDARY

3.34 According to Costa Rica

"4.13 The starting point of the maritime delimitation between the Parties on the Caribbean side of the isthmus is on the right bank of the San Juan River at its mouth: the point at which the line dividing the land territories

¹⁴² Accordingly, Nicaragua expressly acknowledged in relation to Panama that "[it] does not claim any areas of continental shelf which appertain to Panama in accordance with the Maritime Delimitation Treaty between Panama and the Republic of Colombia in force as of 30 November 1977" ("[Nicaragua] no reclama ningún área de la plataforma continental que pertenezca a Panamá de conformidad con el Tratado de Delimitación Marítima entre Panamá y la República de Colombia vigente desde el 30 de noviembre de 1977"), see Diplomatic Note from the Permanent Mission of Nicaragua to the United Nations to the Secretary General of the United Nations MINIC-NU-050-13, 20 December 2013. (NCM, Annex 25 (A))

¹⁴³ See CR 2010/14, 13 October 2010, Agent Londoño, pp.12-13, para.13-15, 17; Counsel Bundy, pp. 19-27, para. 21-43; p. 28, para. 47-48; Counsel Crawford, pp. 31, para. 7, pp.39-41, para. 29, 37. Colombia reaffirmed its position as regards to the 1977 Treaty in the comments submitted on the occasion of Costa Rica's answer to the question formulated by Judge Bennouna. The Court kept a record of this (*ICJ Reports 2011*, p. 367, para. 63), as well of the Nicaraguan shared opinion on this point (Counsel Reichler, CR 2010/13, 13 October 2010, p. 40, para. 38), as the Judgment of May 4, 2011, also recorded (*ICJ Reports 2011*, p. 365, para. 59).

of the two States intersects the coast. That point is located at the north-western extremity of Costa Rica's Isla Portillos, where Costa Rica's land territory and Nicaragua's waters of the San Juan River meet the Caribbean Sea.”¹⁴⁴

Except for the expression “Costa Rica's Isla Portillos”, Nicaragua can accept this general point. What it cannot accept is the method followed by Costa Rica to determine the location of this point and, therefore, the location itself.

3.35 In effect, taking the pretext of “a coastal change during the intervening century and a half”,¹⁴⁵ Costa Rica attempts to confer upon itself 3.6 kilometres of additional coast: an addition which would give it a very significant additional maritime area.

3.36 According to Costa Rica, what it calls the “Caribbean starting point (SP-C)” – that is the starting point for the maritime delimitation between the Parties in the Caribbean Sea-, would be located “at the base of the sand spit extending northwest from Isla Portillos, because no reliable basepoints can be derived from this ephemeral, low-lying feature. The coordinates of the starting point in the Caribbean selected by Costa Rica (derived from Nicaragua's official map)^[146] are 10°56'26.0"N, 83°41'53.0"W.”¹⁴⁷ This is an unacceptable claim or, to put it in the words of Arbitrator General Alexander, “Costa Rica's claim [is] simply outrageous”¹⁴⁸. Sketch-map 4.7 included in the Costa Rican memorial illustrates

¹⁴⁴ CRM, p. 57, para. 4.13.

¹⁴⁵ CRM, p. 59, para. 4.14.

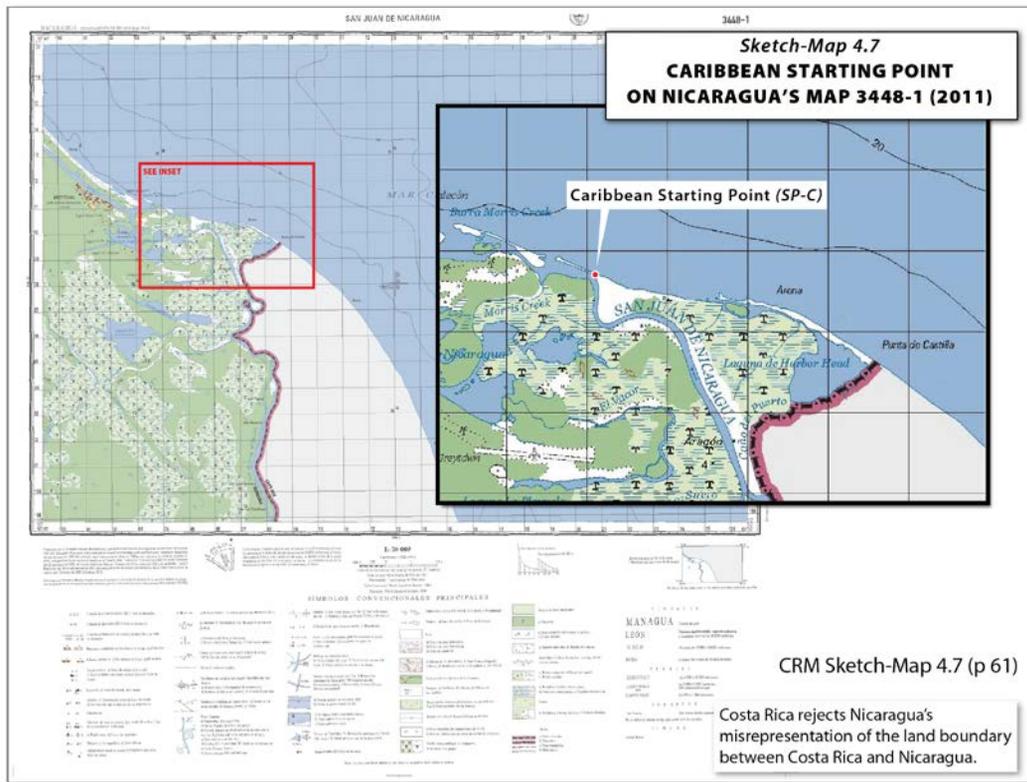
¹⁴⁶ This map, issued by the Nicaragua's Institute for Territorial Studies (INETER) in January 2011 under number 3348-1, is entitled “San Juan de Nicaragua”; it is at scale 1:50,000.

¹⁴⁷ CRM, pp. 59-60, para. 4.15.

¹⁴⁸ Folder 41, Oct. 1897, 4 Oct. 1897, in the Edward Porter Alexander Papers, No. 7, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill, available online at <http://memoriacentroamericana.ihnca.edu.ni/uploads/media/Fondo%20Edward%20Porter%20Alexander.%20Expediente%20No.%2041.pdf>.

the huge difference between the Parties claims. It is reproduced below at Figure IIb-1.

Figure IIb-1: Costa Rica’s View of the Starting Point (Sketch-map 4.7)



3.37 Basing itself on the text of the first sentence of Article II of the Treaty of Limits (Cañas-Jerez) of 15 April 1858, Costa Rica alleges that this provision is no longer applicable and must be set aside or, at least re-interpreted *de novo* in view of what it describes as “the modern geography at the mouth of the San Juan River”.¹⁴⁹ Such a claim wrongly ignores the long “arbitral history” interpreting and applying this provision.

3.38 The first sentence of Article II of the Treaty of Limits (Cañas-Jerez) of 15 April 1858 reads as follows:

¹⁴⁹ CRM, p. 59, para. 4.14.

“The dividing line between the two Republics, starting from the Northern Sea [that is the Caribbean Sea], shall begin at the end of Punta de Castilla, at the mouth of the San Juan de Nicaragua river, and shall run along the right bank of the said river...”

3.39 However, when President Cleveland was called upon to decide on various “points of doubtful interpretation communicated by Nicaragua” he decided, in point 3(1) of his 1888 Arbitral Award, that:

“1. The boundary line between the Republics of Costa Rica and Nicaragua, on the Atlantic side, begins at the extremity of Punta de Castilla at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th day of April 1858. The ownership of any accretion to said Punta de Castilla is to be governed by the laws applicable to that subject.”¹⁵⁰

3.40 The reasons for this decision are apparent from the preparatory Report made by the US Assistant Secretary of State, George L. Rives, who noted:

“Not less serious changes have taken place in the Harbor of Greytown since the date of the Treaty. This Harbor which lies in a bend of the Coast and looks towards the North owes its origin, as well as its destruction, to the gradual extension from East to West of a tongue or bar of sand. In the course of a century or more this mole has steadily grown outwards across the land in which Greytown stands. At first, its effect was to enclose a sheet of sheltered water with an easy entrance, but as the extending tongue approached the main land at the western side of the bay the entrance became difficult and finally closed. This occurred about 1862, since which date none but small coasting vessels and small tugs have been able to enter the Harbor. The great diversion of the waters of the San Juan into the Colorado referred to above is said to have accelerated the closing of the Harbor entrance but not to have been the primary cause of it.

¹⁵⁰ Award of the Arbitrator, the President of the United States, upon the validity of the Treaty of Limits of 1858 between Nicaragua and Costa Rica, *U.N.R.I.A.A.*, Vol. XXVIII, p. 209.

[...]

In 1858 there was still a good entrance to the Harbor, and one side of this entrance was formed by the extremity of the Punta de Castilla. But even at that time this tongue of land was occasionally broken through by the sea; although so long as there was an open entrance to the Harbor, it was through that channel that the waters of the river flowed into the sea.

*Since 1858 that state of things has entirely changed. There is now no such thing as a fixed Harbor entrance or a fixed Harbor mouth. The waters of the river enter the sea at any place where they can easily break through the sand heaped up by the sea; and where there was a single tongue of land, there is now a chain or group of shifting islands.*¹⁵¹

3.41 In spite of the physical disappearance of Punta de Castilla, Rives urged that it be accepted as the starting point of the land boundary by application of the traditional rules applying “to changes produced by gradual accretion or gradual erosion”, by virtue of which the stability of the boundary is maintained.¹⁵²

3.42 The crucial points here are:

- *first* that, contrary to Costa Rica’s claim, the Arbitrator *does not* say that the border follows the mouth of the river: he says that it is located at the extremity of Punta de Castilla at the mouth of the San Juan de Nicaragua River, *as they both existed on the 15th day of April 1858*; and

- *second*, however, the Arbitrator accepts Rives’ suggestion that, while the definition of the point of departure of the land boundary is *unmovable*, the boundary itself could move in accordance with the “laws applicable” to the delimitation of river boundaries in case of accretion.

¹⁵¹ George Rives’ Report to the Arbitrator President G. Cleveland, 1 March 1888 (excerpts) (NCM, Annex 1)

¹⁵² *Ibid.* – Rives quotes several authorities to that effect.

3.43 When Engineer General Alexander was called upon, “to decide finally any points of difference that may arise in tracing and marking out the boundary line between the two republics”, he had to deal, in his first Award dated 30 September 1897, with the first portion of the boundary. At that date, it was plain that Punta de Castilla had disappeared under the sea. This circumstance did not dissuade Alexander from fixing the point of departure of the land boundary by reference to that point. And he clearly explains why. He does this in two steps:

- *First*, he explains at some length why Punta de Castilla has to be retained as the starting point of the land boundary:

“... we come to the proper name applied to the starting point, ‘the extremity of Punta de Castillo’ [*sic*]. This name Punta de Castillo does not appear upon a single one of all the original maps of the bay of San Juan which have been presented by either side, and which seem to include all that were ever published before the treaty or since. This is a significant fact, and its meaning is obvious. Punta de Castillo must have been, and must have remained, a point of no importance, political or commercial, otherwise it could not possibly have so utterly escaped note or mention upon the maps. This agrees entirely with the characteristics of the mainland and the headland on the right of the bay. It remains until today obscure and unoccupied, except by the hut of a fisherman. But the identification of the locality is still further put beyond all question by the incidental mention, in another article of the treaty itself, of the name Punta de Castillo.

In Article V Costa Rica agrees temporarily to permit Nicaragua to use Costa Rica’s side of the harbor without payment of port dues, and the name Punta de Castillo is plainly applied to it. Thus we have, concurring, the general idea of compromise in the treaty as a whole, the literal description of the line in detail, and the verification of the name applied to the initial point by its incidental mention in another portion of the treaty, and by the concurrent testimony of every map maker of every nation, both

before the treaty and since, in excluding this name from all other portions of the harbor. (...).

The great feature in the local geography of this bay, since our earliest accounts of it, has been the existence of an island in its outlet, called on some early maps the island of San Juan. (...).

[...]

But the overwhelming consideration in the matter is that by the use of the name of Punta de Castillo for the starting point, instead of the name Punta Arenas, the makers of the treaty intended to designate the mainland on the east of the harbor (...).

It must be borne in mind that for some years before the making of this treaty Punta Arenas had been by far the most important and conspicuous point in the bay.”¹⁵³

- *Second*, having noted that, in spite of the predominance of Punta Arenas, the Parties had chosen Punta de Castilla as the starting point of the boundary, the Arbitrator endeavours to determine the exact location of this point

“Having then designated generally the mainland east of Harbor Head as the location of the initial point of the boundary line, it now becomes necessary to specify more minutely, in order that the said line may be exactly located and permanently marked. The exact location of the initial point is given in President Cleveland’s award as the ‘extremity of Punta de Castillo, at the mouth of the San Juan de Nicaragua River, as they both existed on the 15th of April 1858’.”¹⁵⁴

General Alexander then notes that “[t]he exact spot which was the extremity of the headland of Punta de Castilla April 15, 1858, has long been swept over by the Caribbean Sea, and there is too little concurrence in the shore outline of the old maps to permit any certainty of statement of distance or exact direction to it from the present headland.” And he, consequently, comes to the following conclusion:

¹⁵³ First Award of the Umpire E.P. Alexander in the boundary question between Costa Rica and Nicaragua, *U.N.R.I.A.A.*, Vol. XXVIII, pp. 217-219.

¹⁵⁴ *Ibid.*, pp. 219-220.

“It was somewhere to the northeastward, and probably between 600 and 1,600 feet distant, but it can not now be certainly located. Under these circumstances it best fulfills the demands of the treaty and of President Cleveland’s award to adopt what is practically the headland of today, or the northwestern extremity of what seems to be the solid land, on the east side of Harbor Head Lagoon.

I have accordingly made personal inspection of this ground, and declare the initial line of the boundary to run as follows, to wit:

Its direction shall be due northeast and southwest, across the bank of sand, from the Caribbean Sea into the waters of Harbor Head Lagoon. It shall pass, at its nearest point, 300 feet on the northwest side from the small hut now standing in that vicinity. On reaching the waters of Harbor Head Lagoon the boundary line shall turn to the left, or southeastward, and shall follow the water’s edge around the harbor until it reaches the river proper by the first channel met. Up this channel, and up the river proper, the line shall continue to ascend as directed in the treaty.”¹⁵⁵

3.44 This passage is well known by the Court since it has been amply discussed between the Parties in the case of *Certain Activities carried out by Nicaragua in the Border Area*. What is of interest for the present case is that, in spite of the disappearance of Punta de Castilla, the Arbitrator stuck to the spirit of the Cleveland Award but interpreted it in such a way as to correspond to an effective land point – a reasonable assumption concerning the delimitation of a land boundary. The Arbitrator’s intention to determine a fixed and unmovable point is confirmed by the fact that while he fixed the location of the starting-point of the border at Punta de Castilla, from that point in the Caribbean Sea the next fixed marker is located more than 120 km away inland: in between the markers, the boundary was to follow first “the first channel met”, then the right bank of “the river proper” in accordance with the changes occurring in their location.

¹⁵⁵ *Ibid.*, pp. 220-221.

3.45 Concerning the starting point of the land boundary, Alexander was not looking for the mouth of the river. His Award goes to great lengths to find where Punta de Castilla was located because that was the fixed starting-point for the border. Alexander was faced with the fact that the original Punta de Castilla in the previous 40 years – since the 1858 Treaty – “has long been swept over by the Caribbean Sea.”¹⁵⁶ Therefore, he went to great pains to establish where it would have been located, because that was the fixed starting-point of the border. If the location of the mouth of the river had been the determining factor, he would have simply decided where the mouth was located at that moment, without the need for establishing a fixed marker. But Alexander was not looking for the mouth of the river, only for Punta de Castilla.

3.46 In accordance with the Award, the Costa Rica-Nicaragua Demarcation Commission “established the spot where the monument that will serve as a boundary marker on the Atlantic Coast should be placed, the aforementioned spot is provisionally marked by a straight line of three hundred English feet measured from the hut referred to in the arbitral award and in the direction that will be stated further on.”¹⁵⁷ So it was done and, as explained in Proceedings VIII of the Commission, dated 31st December 1897, “... the monument that marks the location of the initial point of the boundary line between the State of Nicaragua and the Republic of Costa Rica was considered inaugurated, in light of the visit by both Commissions to its location, accompanied by the Engineer Arbiter, and despite the fact that the granite cube had not yet been emplaced, the Portland cement base had already been erected at the spot designated by the first Arbitral

¹⁵⁶ See Fn. 153 above at p. 80.

¹⁵⁷ Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings VI (NCM, Annex 4).

Award, and when possible the abovementioned cube will be emplaced bearing its related bronze inscriptions...”¹⁵⁸

3.47 As explained in Proceedings X of 2 March 1898:

“...in compliance with the Award issued by the Engineer Arbiter on December the 20th of 1897, the boundary line was measured as described in the Award of September 30th of 1897, starting from the initial marker.”¹⁵⁹

And the Commission went on to give the precise coordinates of the Marker:

“The coordinates of the Monument or initial marker, taking as origin the center of Plaza Victoria in San Juan del Norte, therefore, are = $x = 4268.28$ East; $y = 2004.54$ North; astronomical Meridian; which results that the distance from the above mentioned center of the plaza to the aforementioned (marker) monument is 4715 – 55 (four thousand seven hundred fifteen meters fifty-five centimeters) with a geodetic azimuth of sexagesimal 244° 50’ 23” (two hundred forty-four degrees, fifty minutes, twenty-three seconds) = Therefore the bronze plate mentioned in Proceedings No. VI of October 2nd 1897 shall be sculpted, bearing the marker’s coordinates and the following inscription = “This monument is located at a distance of 4715 - 55 with a geodetic azimuth of sexagesimal 244° 50’ 23” from the center of Plaza Victoria in San Juan del Norte.”¹⁶⁰

3.48 These are more than sufficient indications to identify with a great degree of precision and certainty the location of the point where the land boundary ends at the Caribbean Sea after crossing the bank of sand separating Harbor Head Lagoon from the sea. Taking Punta Castilla as the corner of Harbor Head Lagoon on the edge of the forest, the land boundary must be extended in an approximate

¹⁵⁸ Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings VIII, *Dispute concerning Certain Activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)*, Memorial of Costa Rica, Vol. II, Annex 13.

¹⁵⁹ Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings X, (NCM, Annex 5)

¹⁶⁰ *Ibid.*

North-East direction until it hits the low water line about 50 meters further, which represents the width of the beach. Accordingly, the end point of the land boundary, which is also the starting point of the sea delimitation is located at 10° 55' 49.7"North and 83° 40' 0.6" West¹⁶¹.

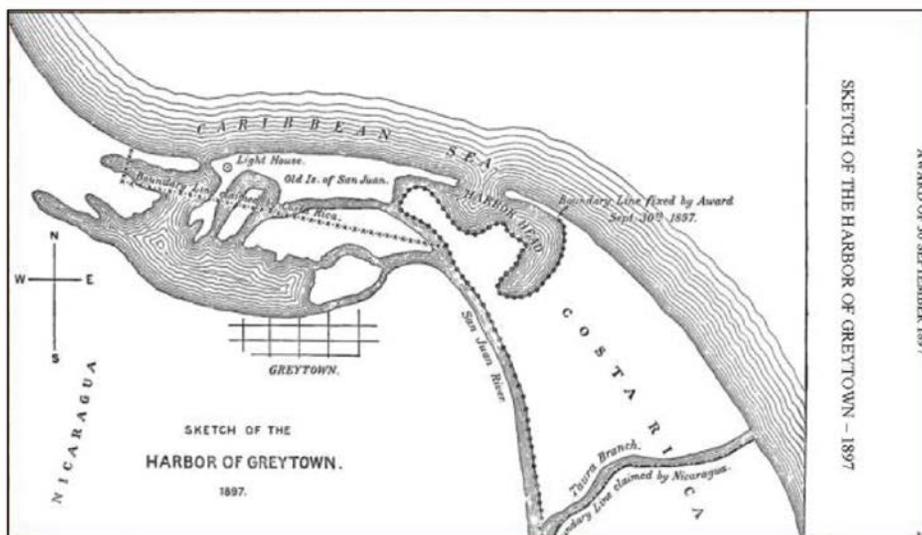
3.49 As of today there have indeed been important changes in the coastal configuration in the region, but the “bank of sand” separating the Caribbean Sea from Harbor Head Lagoon – which the Parties agree to be Nicaraguan¹⁶² – still exists, as is apparent from recent satellite images – including those reproduced by Costa Rica at page 60 of its Memorial¹⁶³ – and it is still located where Alexander had located it. Whatever the accuracy of Alexander’s sketch map annexed to his first Award, there is no doubt that the point of departure of the land boundary that he identified can still be established in today’s situation, as a comparison with a recent satellite Figure IIb-3 shows. Costa Rica’s appetite for territory is seeking to achieve what marine erosion and deposition has not been able to do.

¹⁶¹ See Figure IIb-3 below.

¹⁶² See, the *Certain Activities* case, CR 2015/14, 28 April 2015, p. 33, para. 31 (Mr Kohen) (“31. The sandbar to the seaward side of Harbor Head Lagoon was not considered to be “solid land” in the first Alexander Award. It can only be considered as land capable of appertaining to a State in so far as it remains permanently above water at high tide and, if it does, it appertains to Nicaragua. This is because the feature to the seaward side of the lagoon is Nicaraguan, as follows from the Alexander Award. This of course applies only so far as concerns the feature immediately in front of the lagoon, and does not concern the beach of Isla Portillos, which is Costa Rican”).

¹⁶³ While the paper copies prepared by Costa Rica do not show clearly the bank of sand, it clearly appears on the electronic version.

Figure IIB-2: Sketch Map from 1897 Alexander Award.



3.50 Since the starting point of the land boundary (its end-point, considered from the perspective of the Caribbean Sea) is well established, there is no reason why the starting point of the maritime delimitation should be dissociated from it. In accordance with the usual practice, it is from that point that the Court must proceed in delimiting the maritime boundary between the Parties.¹⁶⁴

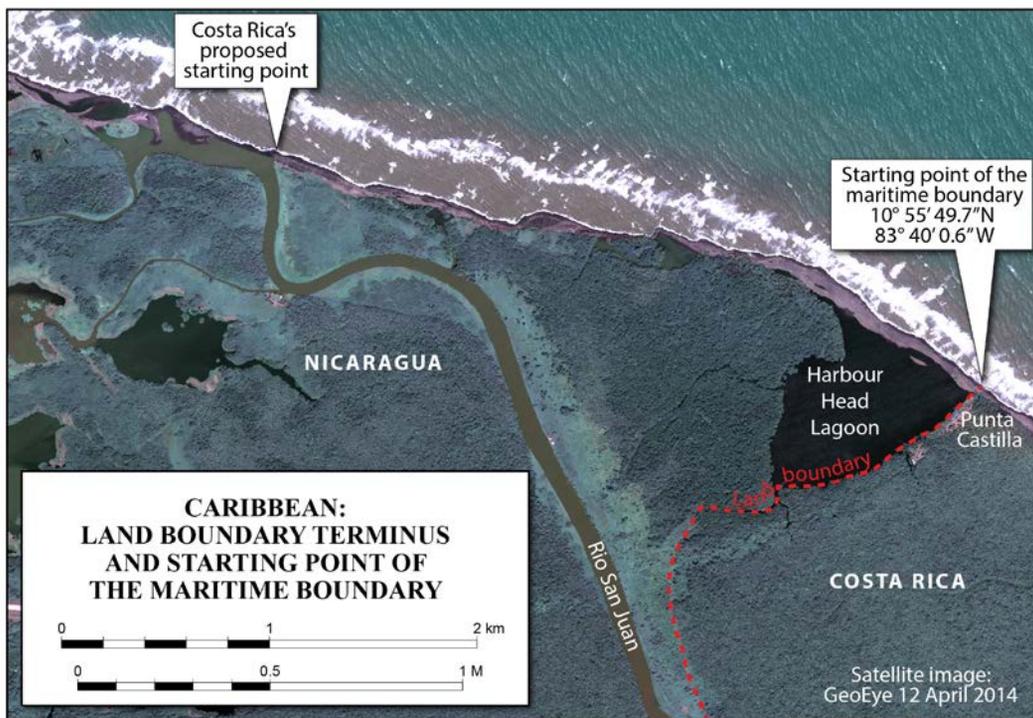
3.51 As a matter of principle, such an approach was agreed between the Parties during their negotiations on maritime delimitation held between 2003 and 2005. As Costa Rica notes: “The negotiations focused, in the first instance, on the identification of the location on the Caribbean coast of Marker n° 1, the demarcated point of the land boundary nearest the Caribbean coast set by Alexander and the boundary commissions in the late 1800s. It was determined that the location of Marker n° 1 is now several hundred meters seaward of the

¹⁶⁴ See e.g.: I.C.J., Judgment, 10 October 2002, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Reports 2002, p. 457, para. 325(IV)(C); I.T.L.O.S., Judgment, 14 March 2012, Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), para. 157 and Arbitral Award, 7 July 2014, *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India)*, para. 84.

coast”.¹⁶⁵ Costa Rica omits to note that while the delegations had not completely agreed on the precise location of Marker n° 1, they had clearly reached a consensus on the fact that the said marker would “be the initial point for maritime delimitation in the Caribbean Sea” as can be seen in the Minutes of the Fourth Technical Meeting held on 24-27 November 2003.¹⁶⁶

3.52 Consequently, the starting point of the sea delimitation is located at 10° 55’ 49.7”North and 83° 40’ 0.6” West as shown on Figure IIb-3.

Figure IIb-3: Caribbean: Land Boundary Terminus and Starting Point of the Maritime Boundary



¹⁶⁵ CRM, p. 20, para. 2.33.

¹⁶⁶ See Minute of the Fourth Technical Meeting of the Sub-Commission on Limits and Cartography, 24-27 November 2003. (NCM, Annex 15)

C. THE RELEVANT COASTS AND THE RELEVANT AREA

3.53 Chapter 4.A of Costa Rica's Memorial identifies the relevant coasts and the relevant area for the delimitation between Nicaragua and Costa Rica in the Caribbean Sea. This section of Nicaragua's Counter-Memorial presents Nicaragua's views on the relevant coasts and the relevant area in the Caribbean Sea. Nicaragua's criticism of Costa Rica's discussion of the applicable law set out above in Chapter II.B is equally applicable in the present context.

3.54 As was explained in Chapter III.A.3 Nicaragua and Costa Rica differ over the relevance for the present proceedings of the 1977 Treaty between Costa Rica and Colombia delimiting their maritime zones in the Caribbean Sea. That difference of views also has implications for the definition of the relevant area for the delimitation of the maritime zones of the Parties in the Caribbean Sea.

3.55 In addition, Nicaragua considers that even if the Court were to accept Costa Rica's position on the 1977 Treaty, *quod non*, it has to be taken into account that the Memorial's definition of the relevant coast of Nicaragua and the relevant area in the Caribbean Sea is seriously flawed. The present section will first set out the reasons why the Memorial is flawed in this respect, even if Costa Rica's position on the 1977 Treaty were to be accepted. Subsequently, it will be explained how the continued relevance of the maritime boundary between Costa Rica and Colombia, defined by their 1977 Treaty, impacts the definition of the relevant area in the Caribbean Sea.

1. Costa Rica's Flawed Approach to the Definition of the Relevant Coast of Nicaragua and the Relevant Area in the Caribbean Sea

3.56 Nicaragua disagrees with the Memorial's definition of both Nicaragua's relevant coast and the relevant area for the delimitation in the Caribbean Sea, even if the Court were to accept Costa Rica's position on its 1977 Treaty with Colombia. First, Nicaragua considers that Costa Rica has disregarded part of Nicaragua's relevant coast which should have been included, as discussed in subsection (2) below.

3.57 Second, the Memorial has artificially extended the relevant area by including maritime areas of Nicaragua that are located north of Nicaragua's relevant coast in the Caribbean Sea, which should not have been included. At the same time, Costa Rica's Memorial has ignored an area that is part of the overlapping seaward projections of the relevant coasts of Nicaragua and Costa Rica according to Costa Rica's position on its 1977 Treaty with Colombia. The latter area is part of the maritime area that would be attributed to Costa Rica if its delimitation proposal were to be accepted by the Court. By artificially extending Nicaragua's part of the relevant area and simultaneously diminishing Costa Rica's part of it, the Memorial is able to suggest that Costa Rica's delimitation proposal leads to an equitable result. If the relevant area is constructed properly, however, it becomes readily apparent that Costa Rica's proposal does not lead to an equitable result.

3.58 Subsection (2) below identifies the relevant coasts of Nicaragua and Costa Rica in light of the jurisprudence of this Court and other tribunals. Subsection (3) does the same in relation to the relevant area.

2. The Relevant Coasts

3.59 Costa Rica submits in its Memorial that the entire coast of Costa Rica in the Caribbean Sea constitutes Costa Rica's relevant coast for the delimitation of the maritime boundary between Costa Rica and Nicaragua in the Caribbean Sea.¹⁶⁷ Nicaragua agrees with that definition. The entire coast of Costa Rica lies within 200 nautical miles of Nicaragua's relevant Caribbean coast, and generates seaward projections that overlap with seaward projections of the relevant coast of Nicaragua.

3.60 Nicaragua does not, however, agree with Costa Rica's definition of Nicaragua's relevant coast in the Caribbean Sea. This does not so much concern the extent of this relevant coast, with which Nicaragua, except for two points, agrees, but rather concerns the Memorial's *reasons* for selecting a specific part of Nicaragua's mainland coast.

3.61 Costa Rica submits in its Memorial that the coast of Nicaragua north of Punta de Perlas is not part of Nicaragua's relevant coast because it faces the coast of a third State, Colombia, and for that reason is only relevant for the delimitation between Nicaragua and Colombia.¹⁶⁸ To justify this approach, the Memorial seeks to draw an analogy between the situation involving Nicaragua, Costa Rica and Colombia and the situation involving Cameroon, Nigeria and the island of Bioko of Equatorial Guinea, which was considered by the Court in *Cameroon v. Nigeria*.¹⁶⁹ Nicaragua considers that this comparison is wholly beside the point. The size of the island of Bioko and its relation to the coasts of Nigeria and Cameroon is entirely different from the size of the island of San Andrés and its dependencies and its relation to the coasts of Nicaragua and Costa Rica.

¹⁶⁷ CRM, para. 4.3.

¹⁶⁸ CRM, paras 4.4-4.10.

¹⁶⁹ CRM, paras 4.4-4.7.

3.62 A much more apposite analogy is provided by the Court's 2012 Judgment in *Nicaragua v. Colombia*. According to the Memorial, the Court found that Nicaragua's coast north of Punta de Perlas did not project beyond Colombia's islands.¹⁷⁰ However, there is actually no support for this proposition in the Court's Judgment. This matter was extensively debated by the Parties, with Colombia arguing for the same position now adopted by Costa Rica.¹⁷¹ The Court explicitly accepted Nicaragua's position that the relevant area extended to the east beyond the islands because Nicaragua's entitlement extended to the east of the islands.¹⁷²

3.63 The correct reason why the northerly part of Nicaragua's coast is not a part of its relevant coast in the context of the present case is that Costa Rica's coast does not generate a seaward projection that overlaps with the seaward projection of that part of the coast of Nicaragua.

3.64 Nicaragua considers that its relevant mainland coast extends some way further north than Punta de Perlas, which the Memorial identifies as the most northern point of Nicaragua's relevant coast.¹⁷³ In Nicaragua's view, its relevant coast includes the coast up to Coconut Point with the coordinates 12°27'49"N 83°29'11"W, which faces almost due east.

3.65 In defining Nicaragua's relevant coast, Costa Rica's Memorial ignores the presence of the islands off Nicaragua's mainland coast. This concerns the Cayos de Perlas and the Corn Islands. The Memorial submits that in light of the relevant jurisprudence, basepoints on the Corn Islands should be excluded in calculating the provisional equidistance line and that most other islands, cays, and rocks do

¹⁷⁰ CRM, para. 4.8.

¹⁷¹ See *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, paras 155-156.

¹⁷² *Ibid.*, para. 159.

¹⁷³ CRM, para. 4.9.

not have a continental shelf entitlement and consequently cannot contribute basepoints for the construction of a provisional equidistance line.¹⁷⁴ As is explained in Chapter III.A.1 and III.E.2, Costa Rica is wrong on both counts. It results from the jurisprudence that the Corn Islands must be taken into account in constructing a provisional equidistance line and that the Cayos de Perlas, being an integral part of Nicaragua's mainland coast, contribute to Nicaragua's entitlement to a continental shelf and an exclusive economic zone. Because the Corn Islands and the Cayos de Perlas generate maritime projections that overlap with the maritime projections of the relevant coast of Costa Rica, their coasts facing in directions between south and southeast are part of the relevant coast of Nicaragua.

3.66 Nicaragua agrees with Costa Rica that in the Caribbean Sea the length of the relevant coasts may be established either by measuring the coast along its natural configuration or by measuring it along one or more straight lines that represent the general direction of the coast. As was explained above, the former approach is not proper for a part of the Pacific coast of Costa Rica, due to its many sinuosities.¹⁷⁵ The Caribbean coast is different. Although the Caribbean coast of Nicaragua is characterized by the two marked indentations between Punta del Mono (Monkey Point) and the terminus of the land boundary between Nicaragua and Costa Rica and between Monkey Point and Punta de Perlas, neither this coast nor that of Costa Rica has any pronounced sinuosities.

3.67 Measured along its natural configuration the relevant coast of Costa Rica is 221 kilometers and the relevant coast of Nicaragua measures 246 kilometers – 226 kilometers for the Nicaraguan mainland coast and about 20 kilometers for the south and south-east facing coasts of the Corn Islands and the Cayos de Perlas. These relevant coasts are identified in Figure IIc-1 of this Counter-Memorial,

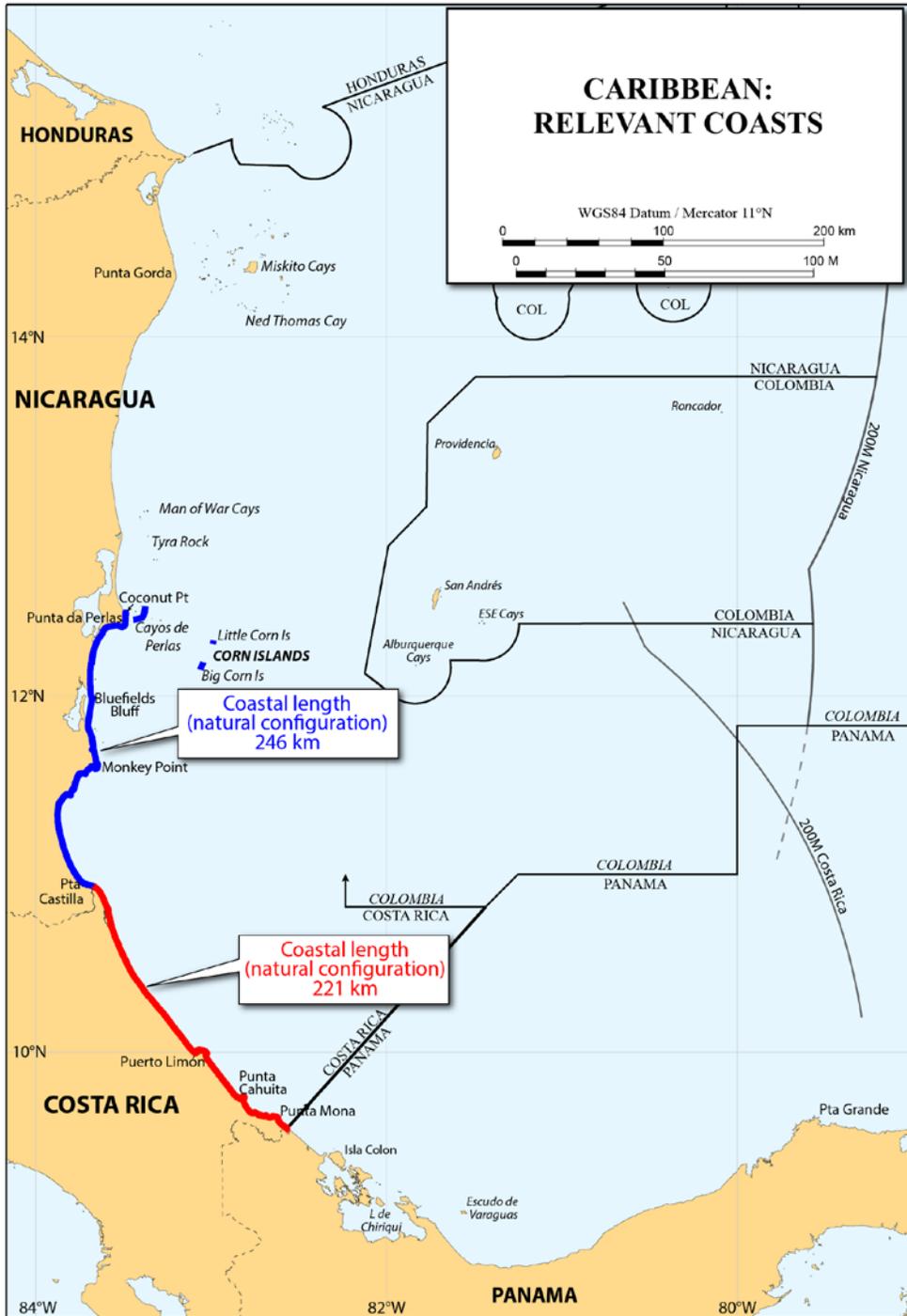
¹⁷⁴ CRM, paras 4.23-4.24.

¹⁷⁵ See above Chapter II.A.1.

below. If straight lines are used, the relevant coast of Costa Rica can be measured by one straight line between the termini of Costa Rica's land frontiers with Nicaragua and Panama. This line measures 193 kilometers. As can be appreciated, the figures for Costa Rica's relevant coast differ from those provided in the Memorial.¹⁷⁶ As is set out in Chapter III.B of this Counter-Memorial, this difference is explained *inter alia* by the fact that Nicaragua and Costa Rica differ over the location of the terminus of their land boundary on the Caribbean coast.

¹⁷⁶ See CRM, para. 4.10.

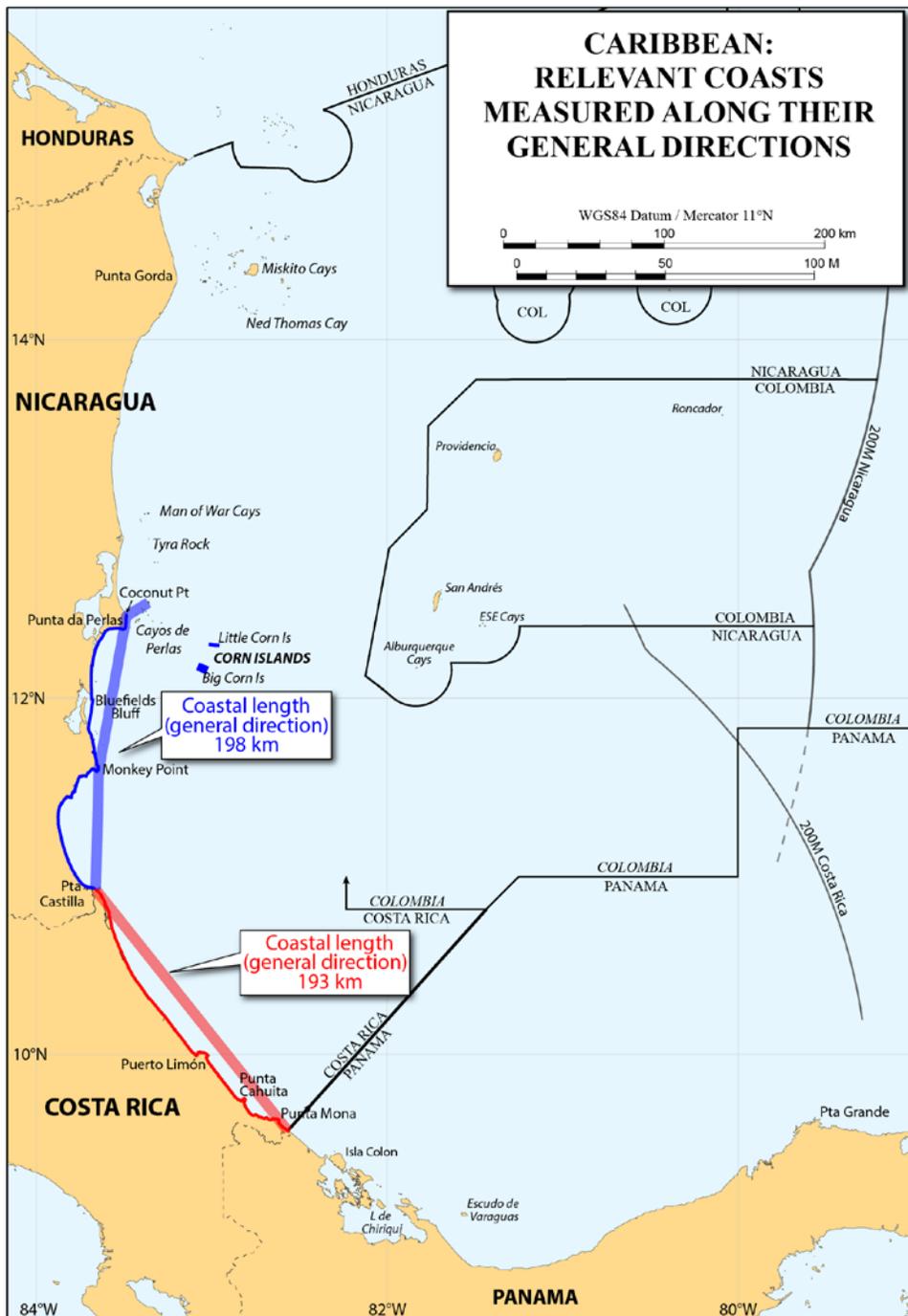
Figure IIc-1: Caribbean: Relevant Coasts



3.68 Nicaragua considers that its mainland coast between the terminus of its land boundary with Costa Rica and Coconut Point can be represented by two straight lines, rather than the one line that is used in Costa Rica's Memorial. These two lines are drawn across the two separate indentations on Nicaragua's relevant coast. The straight lines across the indentation between Punta del Mono (Monkey Point) and the terminus of the land boundary between Nicaragua and Costa Rica and across the indentation between Monkey Point and Punta de Perlas measure respectively 74 and 97 kilometers. The relevant coast of the Cayos de Perlas can be represented by a straight line between Moon Cay and Seal Cay, which measures 19 kilometers. The relevant coast of the Corn Islands can be represented by two straight lines along Big and Little Corn Islands, which measure respectively 5 and 3 kilometers. The total length of Nicaragua's relevant coast represented by these straight lines measures 198 kilometers. These relevant coasts are identified below in Figure IIc.2 of this Counter-Memorial.

3.69 On the basis of the above calculations, the coastal length ratio between Nicaragua and Costa Rica is 1.11:1, using relevant coasts of respectively 246 and 221 kilometers, as measured along their natural configurations. That ratio is 1.03:1 on the basis of the relevant coasts of respectively 198 and 193 kilometers, as measured along straight line segments.

Figure IIc-2: Caribbean: Relevant Coasts Measured along their General Directions



3. The Relevant Area

3.70 Costa Rica's starting point for identifying the relevant area in the Caribbean Sea is to determine the entire maritime area that is within 200 nautical miles of both Parties.¹⁷⁷ Costa Rica takes this approach because "the area of overlapping entitlements does not extend beyond 200 nautical miles".¹⁷⁸ Nicaragua takes note of this position of Costa Rica, which implies that for the delimitation in the Caribbean Sea between the Parties, it is not necessary to take into account Nicaragua's entitlement to a continental shelf beyond 200 nautical miles, the outer limits of which have been submitted to the CLCS in accordance with Nicaragua's obligations under the UNCLOS¹⁷⁹.

3.71 According to Costa Rica, the seaward extent of the relevant area to the north is bounded by a line drawn between Nicaragua's mainland coast and the maritime boundary between Nicaragua and Colombia established by the Court's 2012 Judgment in *Nicaragua v. Colombia*, at a distance of 200 NM from the Costa Rica–Nicaragua land boundary in the Caribbean, thus including all the waters in front of Nicaragua's coast that are also within 200 NM of Costa Rica. The 2012 maritime boundary then limits the relevant area as far as the point at which it intersects Costa Rica's 200 NM limit. The southern limit of Costa Rica's proposed relevant area is constituted by Costa Rica's maritime boundary with Panama and the notional extension of that line to its intersection with Costa Rica's 200 NM.¹⁸⁰

3.72 Nicaragua agrees with Costa Rica that in the light of the jurisprudence it is proper to limit the relevant area using boundaries with third States. On the other

¹⁷⁷ CRM, para. 4.11.

¹⁷⁸ CRM, para. 4.11.

¹⁷⁹ Available at https://www.un.org/depts/los/clcs_new/submissions_files/submission_nic_66_2013.htm

¹⁸⁰ CRM, para. 4.14. The relevant area is depicted in Sketch-Map 4.5 at p. 58 of the CRM.

hand, Nicaragua objects to Costa Rica using the notional extension of its maritime boundary with Panama to define the relevant area. That line actually excludes a maritime area to which only Nicaragua and Costa Rica can have a claim if Costa Rica's position that its maritime area is not limited by the boundary defined in its 1977 Treaty with Colombia were to be correct. This is the area between the line that is a notional extension of Costa Rica's maritime boundary with Panama and the maritime boundary between Colombia and Panama, which was established through an agreement concluded on 20 November 1976.¹⁸¹ This area is identified in Figure II-c3 of the Counter-Memorial. Panama does not have a claim to this area because such a claim would be incompatible with its maritime boundary treaty with Colombia. Colombia does not have a claim to this area, because the area is located beyond its maritime boundary with Nicaragua established by the Court in its 2012 Judgment in *Nicaragua v. Colombia* and beyond 200 nautical miles of the mainland coast of Colombia. Consequently, only Nicaragua and Costa Rica can have a claim to this area. This implies that, first, this area can be included in the relevant area without affecting the rights of third parties, and should be so included. Second, it is appropriate to include this area in the relevant area because it is part of the seaward projection of Nicaragua's relevant coast.

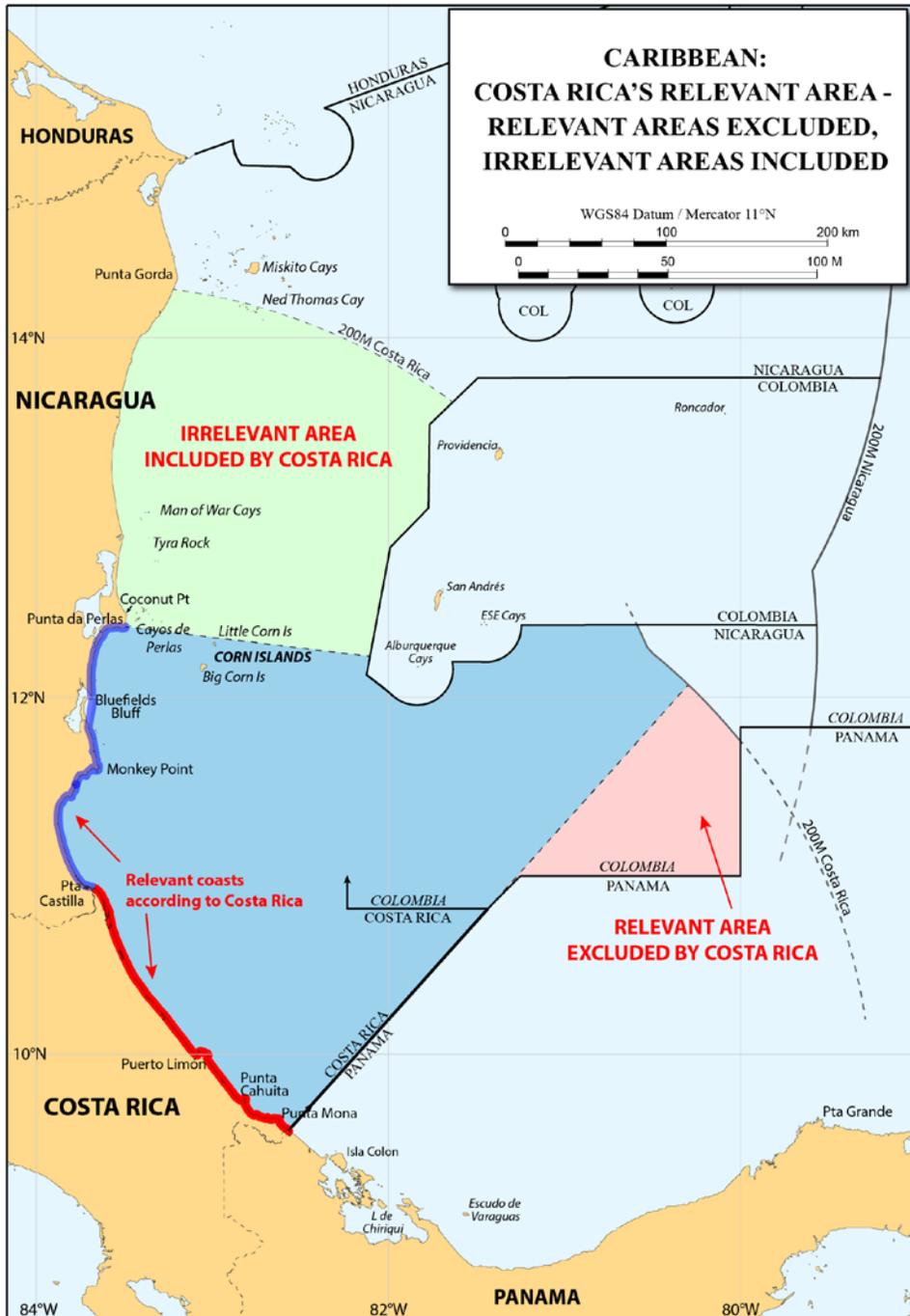
3.73 Nicaragua also disagrees with Costa Rica's definition of the northern limit of the relevant area in the Caribbean Sea. As can be appreciated from a comparison of Sketch-Maps 4.3, 4.4 and 4.5 included in the Memorial, a large part of Costa Rica's relevant area extends far north of Nicaragua's relevant coast as defined by Costa Rica. This area is identified in Figure IIc-3 of the Counter-Memorial. Costa Rica's approach is in obvious contradiction of the Court's approach in defining the relevant area in *Black Sea* and subsequent cases as

¹⁸¹ Treaty on the Delimitation of Marine and Submarine Areas and Related Matters between the Republic of Colombia and the Republic of Panama (1074 UNTS 221).

discussed above.¹⁸² As was also explained in more detail above, the case law indicates that the lateral limit of the relevant area in an instance like this can be defined by a perpendicular to the general direction of the coast. Such a perpendicular ensures that the relevant area comprises the frontal seaward projections of the relevant coasts. Costa Rica's relevant area to the north includes an area that has no relation to Nicaragua's relevant coast and consequently must be excluded from the relevant area.

¹⁸² See above paras 2.28-2.35

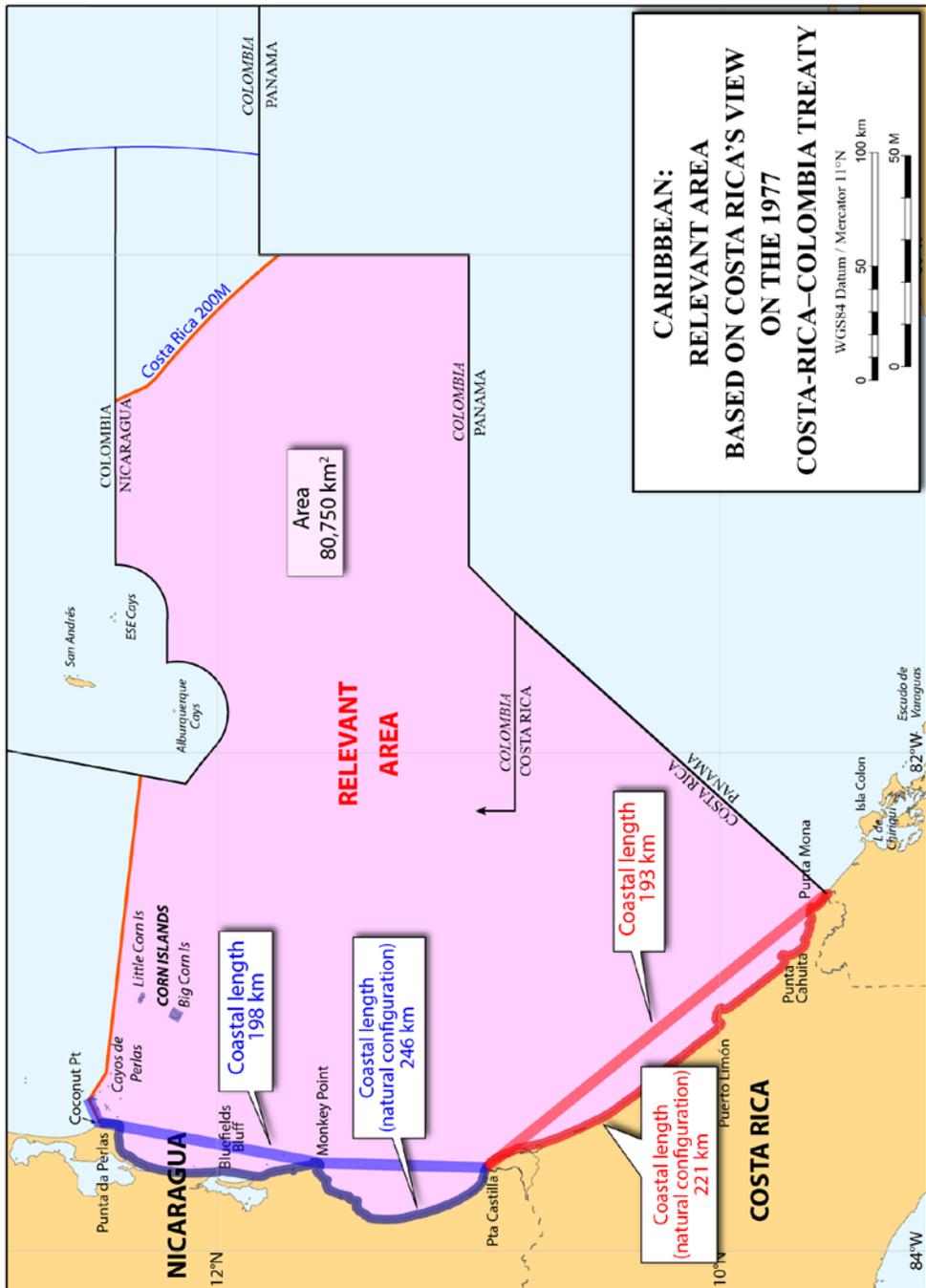
Figure IIc-3: Caribbean: Costa Rica's Relevant Area – Relevant Areas Excluded, Irrelevant Areas Included



3.74 In addition, the northern limit of the relevant area also has to be defined taking into account the fact that the Cayos de Perlas are part of Nicaragua's relevant coast. Nicaragua considers that this can be achieved by drawing a straight line from Coconut Point to the northernmost of the Cayos de Perlas. From that latter point, the northern limit can follow a straight line that is perpendicular to the line of the general direction of Nicaragua's mainland coast between Punta del Mono (Monkey Point) and Coconut Point until it reaches the boundary between Nicaragua and Colombia established by the Court's 2012 Judgment. The location of this northern limit can be appreciated from Figure IIc-4 below.

3.75 The relevant area as discussed above can thus be described as follows. Starting from the land boundary terminus of Costa Rica and Panama, the limit of the relevant area follows the coastlines of Costa Rica and Nicaragua, until it reaches the parallel of Coconut Point at 12°27'49"N. From that latter point, the northern limit of the relevant area is constituted by the line described in the preceding paragraph until its intersection with the maritime boundary between Nicaragua and Colombia established by the Court in its 2012 Judgment in *Nicaragua v. Colombia*. From that point, the limit follows this 2012 boundary south and east until it reaches the intersection with the 200-nautical-mile limit of Costa Rica. The relevant area is then bounded by this outer limit until its intersection with the maritime boundary between Panama and Colombia. The final segment of the limit of the relevant area is constituted by this boundary and the maritime boundary between Panama and Costa Rica. The relevant area measures 80,750 square kilometers. It is depicted in Figure IIc-4, below.

Figure IIC-4: Caribbean: Relevant Area Based on Costa Rica's View on the 1977 Costa Rica-Colombia Treaty



4. The Relevant Coasts and the Relevant Area Defined in Accordance with Nicaragua's Position on the 1977 Treaty

3.76 As is set out in Chapter III.A.3 of the Counter-Memorial, Nicaragua submits that Costa Rica remains bound by the position it agreed upon in its 1977 Treaty with Colombia. The 1977 Treaty established a maritime boundary between Colombia and Costa Rica that is defined by a parallel of latitude and a meridian. Costa Rica has for almost 40 years recognized as Colombian the maritime areas that are located to the east of that meridian and to the north of that parallel, and has maintained this position *vis-à-vis* Nicaragua consistently.

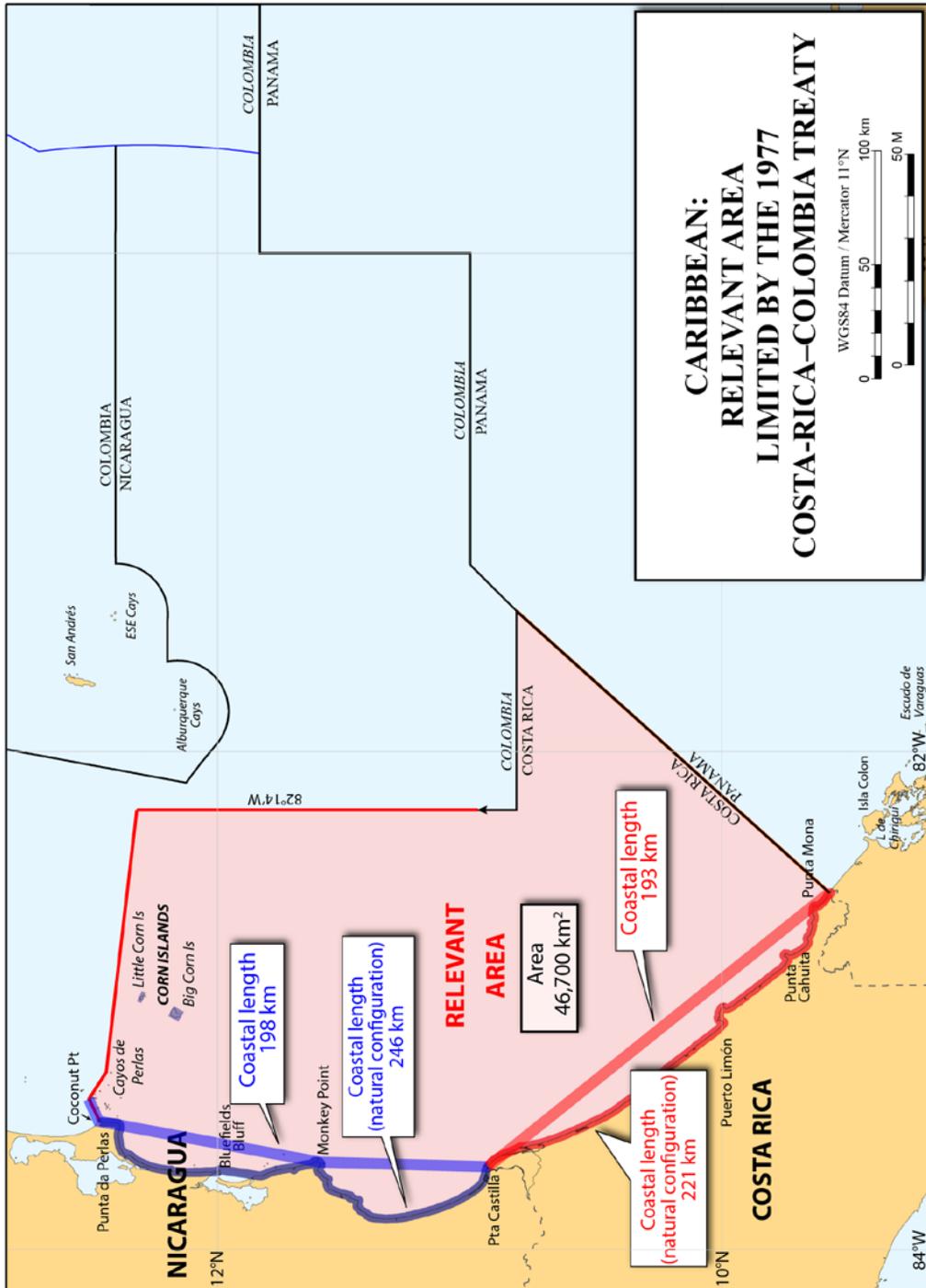
3.77 The relevant coasts of Nicaragua and Costa Rica in the Caribbean Sea are not affected by their difference of views over the continued relevance of the 1977 Treaty between Costa Rica and Colombia. The relevant coasts as described in section C.2 of this Chapter have seaward facing projections that overlap throughout the relevant area that is bounded in its seaward direction by the boundary established by the 1977 Treaty. These relevant coasts are identified in Figure IIc-1 and Figure IIc-2 included in this Counter-Memorial.

3.78 In view of the approach of the case law to the definition of the relevant area, however, areas that Costa Rica has previously recognized as Colombian cannot be part of the relevant area for the delimitation between Nicaragua and Costa Rica. As a consequence, the relevant area in the Caribbean Sea is limited in the east by the boundary line defined in the 1977 Treaty between Costa Rica and Colombia.

3.79 The relevant area for the delimitation between Nicaragua and Costa Rica in the Caribbean Sea taking into account the effects of the 1977 Treaty can accordingly be described as follows. Starting from the land boundary terminus of

Costa Rica and Panama, the limit of the relevant area follows the coastline of Costa Rica and then that of Nicaragua, until it reaches the parallel of Coconut Point at 12°27'49"N. From that latter point, it is constituted by a straight line from Coconut Point to the northernmost of the Cayos de Perlas. From the latter point, the northern limit follows a straight line that is perpendicular to the line of the general direction of Nicaragua's mainland coast between Punta del Mono (Monkey Point) and Coconut Point until it reaches the boundary between Costa Rica and Colombia as defined in their 1977 Treaty. From that point, the limit of the relevant area follows that boundary south and east until it reaches the tripoint between Costa Rica, Colombia and Panama established by the 1980 Treaty between Costa Rica and Panama. The final segment of the limit of the relevant area is constituted by the maritime boundary between Panama and Costa Rica. The relevant area thus defined measures 46,636 square kilometres. It is depicted below at Figure IIc-5.

Figure IIc-5 Caribbean: Relevant Area Limited by the 1977 Costa Rica–Colombia Treaty



D. TERRITORIAL SEA

3.80 The starting point for the delimitation in the Caribbean is Punta Castilla, as was explained in Section A of this Chapter.¹⁸³ The coordinates of the starting point are 10° 55' 49.7"N, 83° 40' 00.5"W (WGS84).

3.81 The principles set out in Chapter II, Section C of this Counter Memorial dealing with the delimitation in the Pacific are equally applicable to the delimitation of the territorial sea in the Caribbean.

3.82 Nicaragua promulgated a straight baseline system in the Caribbean in August 2013, in light of the Court's judgment of 19 November 2012.¹⁸⁴ Costa Rica protested against that baseline,¹⁸⁵ even though the construction of the baseline is consistent with the practice of other UNCLOS States Parties, including Costa Rica, in the construction of straight baseline systems along their coasts,¹⁸⁶ and is consistent with the provisions of UNCLOS Article 7.

3.83 UNCLOS Article 15 stipulates that in the delimitation of the territorial sea, equidistance is measured from the "nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured." Nevertheless, as is evident from Figure IId-1 Nicaragua bases its case in these proceedings only upon basepoints that are on dry land, starting with the land boundary terminus at Punta Castilla, and not upon any points that lie upon straight baselines but not upon land. There should, therefore, be no controversy concerning the basepoints

¹⁸³ And see Nicaragua's Counter-Memorial dated 06 August 2012 in the case concerning *Certain Activities carried out by Nicaragua in the Border Area*, paragraph 6.8

¹⁸⁴ Decree No. 33-2013, 27 August 2013: CR-11.

¹⁸⁵ Note to the Secretary-General of the United Nations, 23 October 2013: See CRM, Vol. II, Annex 25.

¹⁸⁶ See, e.g., T. Scovazzi et al, *Atlas of the Straight Baselines*, 2d ed., (1989), *passim*.

that are to be used, or concerning the construction of the provisional equidistance line. There are, however, two aspects of the matter that appear to be in dispute.

3.84 First, there is the dispute over the starting point of the maritime boundary, which was discussed above.¹⁸⁷ Second, in constructing its provisional equidistance line in the territorial sea, Costa Rica has chosen to ignore what it calls “several small insular features” along Nicaragua’s coast. In particular, Costa Rica has ignored Paxaro Bovo and Palmenta Cays, which affect the course of the equidistance line but are omitted as basepoints from Costa Rica’s Sketch-Map 4.9.¹⁸⁸ These Nicaraguan features cannot simply be ignored in the construction of the provisional equidistance line. They are features that are entitled to a territorial sea under UNCLOS; Nicaragua claims a territorial sea measured from them; and there is no legal basis for disregarding Nicaragua’s entitlement. When the correct starting point is used, and those basepoints are not ignored, the course of the line is as depicted in Figure IId-1, below. It is a relatively small difference, evident from a comparison of the Costa Rican equidistance line depicted as a dotted blue line on that Figure and the Nicaraguan strict equidistance line depicted in red.

3.85 As will be seen from Figure IId-1, below, the provisional equidistance line heads in a north-easterly direction, before turning sharply east after about 25 NM. The first part of that line lies in front of Nicaragua’s coast, creating a severe cut-off effect. This is the result of a local anomaly, not immediately evident on small-scale maps, but clearly visible on larger-scale maps (*see* for example Figure IId-2, below).

¹⁸⁷ *See* Chapter III.B

¹⁸⁸ CRM, paragraph 4.19; and *see* the use of, e.g., Frailes Rocks by Costa Rica: *ibid.* paragraph 3.14.

Figure II d-1: Caribbean: Territorial Sea Delimitation – Strict Equidistance

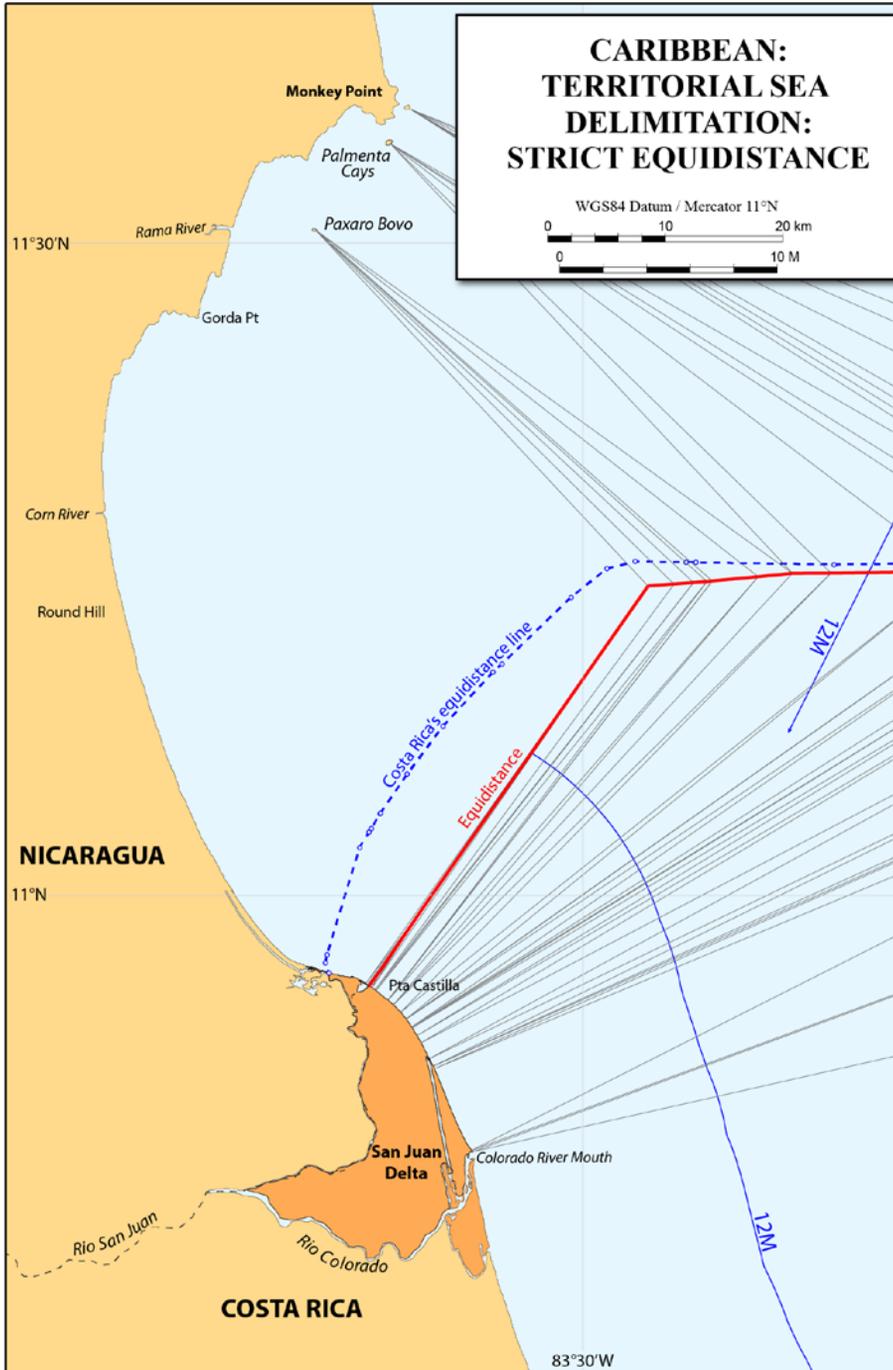
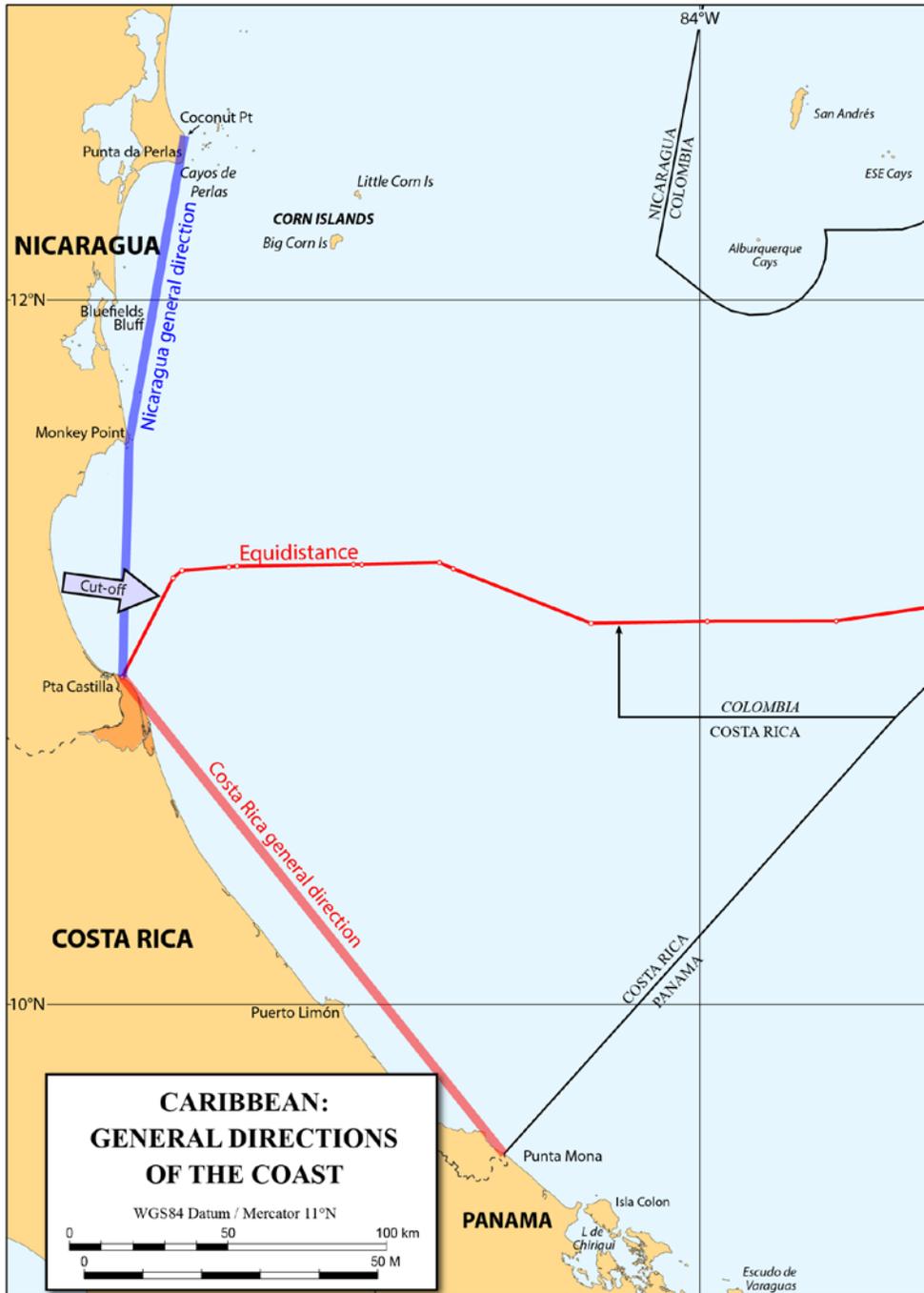


Figure IId-2: Caribbean: General Directions of the Coast



The land boundary terminus is located at the point where the coast flexes, losing its concavity and becoming convex: see Figure IId-3, below. This unusual combination of a concave coast in Nicaragua immediately adjacent to a convex coast in Costa Rica generates a provisional equidistance line whose first, near-shore segment has no relationship with the general direction of the coastline.

3.86 As in the Pacific, the result of this anomaly in the configuration of the coastline is to drive the provisional equidistance line in the Caribbean Sea far away from the course of an equidistance line that reflects the general direction of the coast. The deviation persists for a significant part of the length of the equidistance line— around 25 NM from the starting point on the coast. This is apparent from Figure IId-4, below, where it can be seen that it is the concavity of the Nicaraguan coast that produces a line heading northeast across Nicaragua's coastal frontage out to point A, before turning through approximately 60° in order to head towards the Caribbean Sea.

3.87 The effect of that initial near-coast deviation is subsequently compounded by the effect of the convexity of the coast of Costa Rica in the San Juan delta (see Figure IId-3). That convexity maintains the displacement of the equidistance line to the north, in a manner that persists through points B and C, with the course of the strict equidistance line only gaining the natural direction resulting from the general configuration of the coasts when it reaches the area beyond point C, as is evident from Figure IId-4, below.

Figure IId-3: Caribbean: Territorial Sea. Concave-Convex Coast Produces Cut-off of Nicaragua's Projection

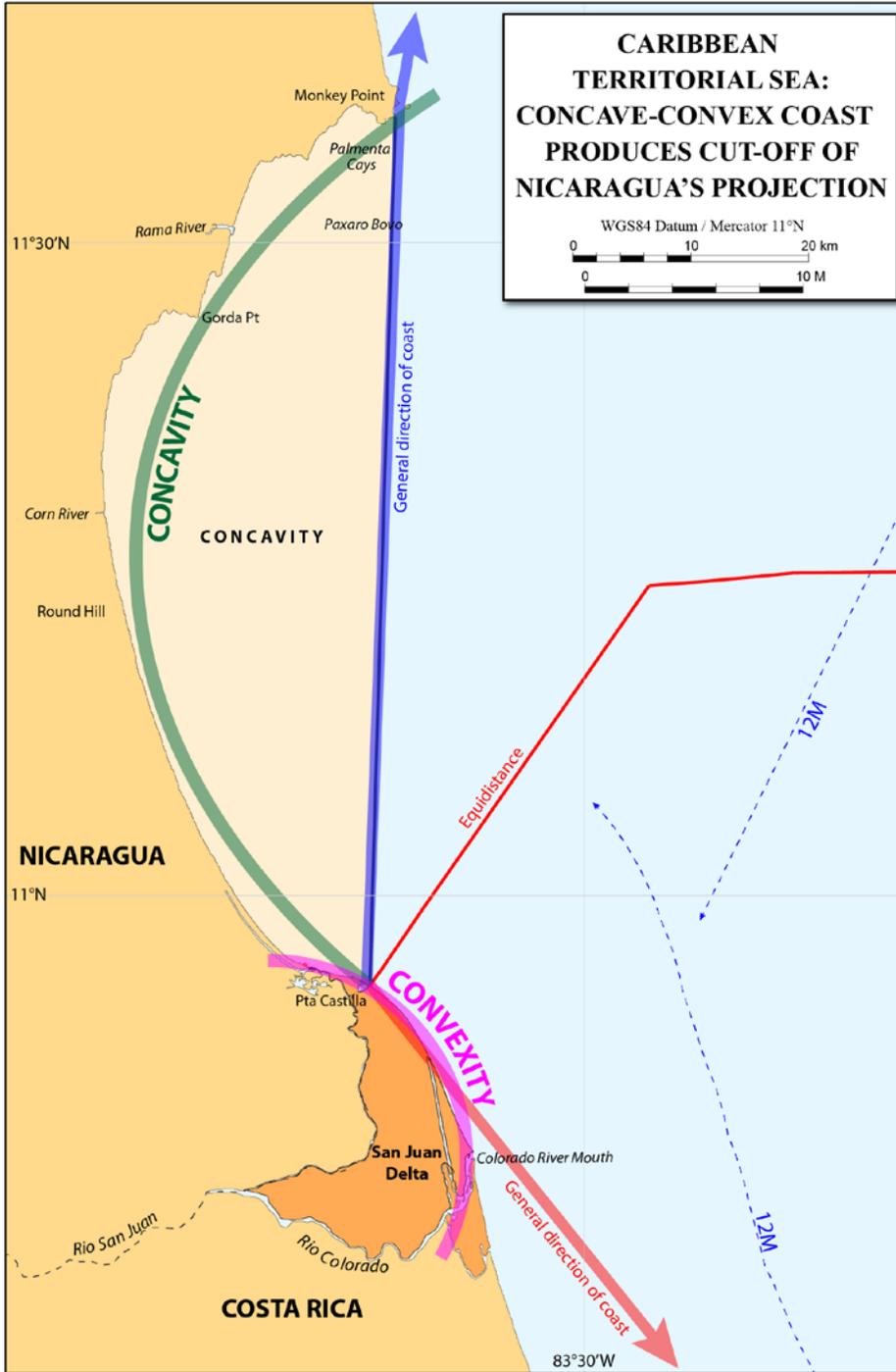
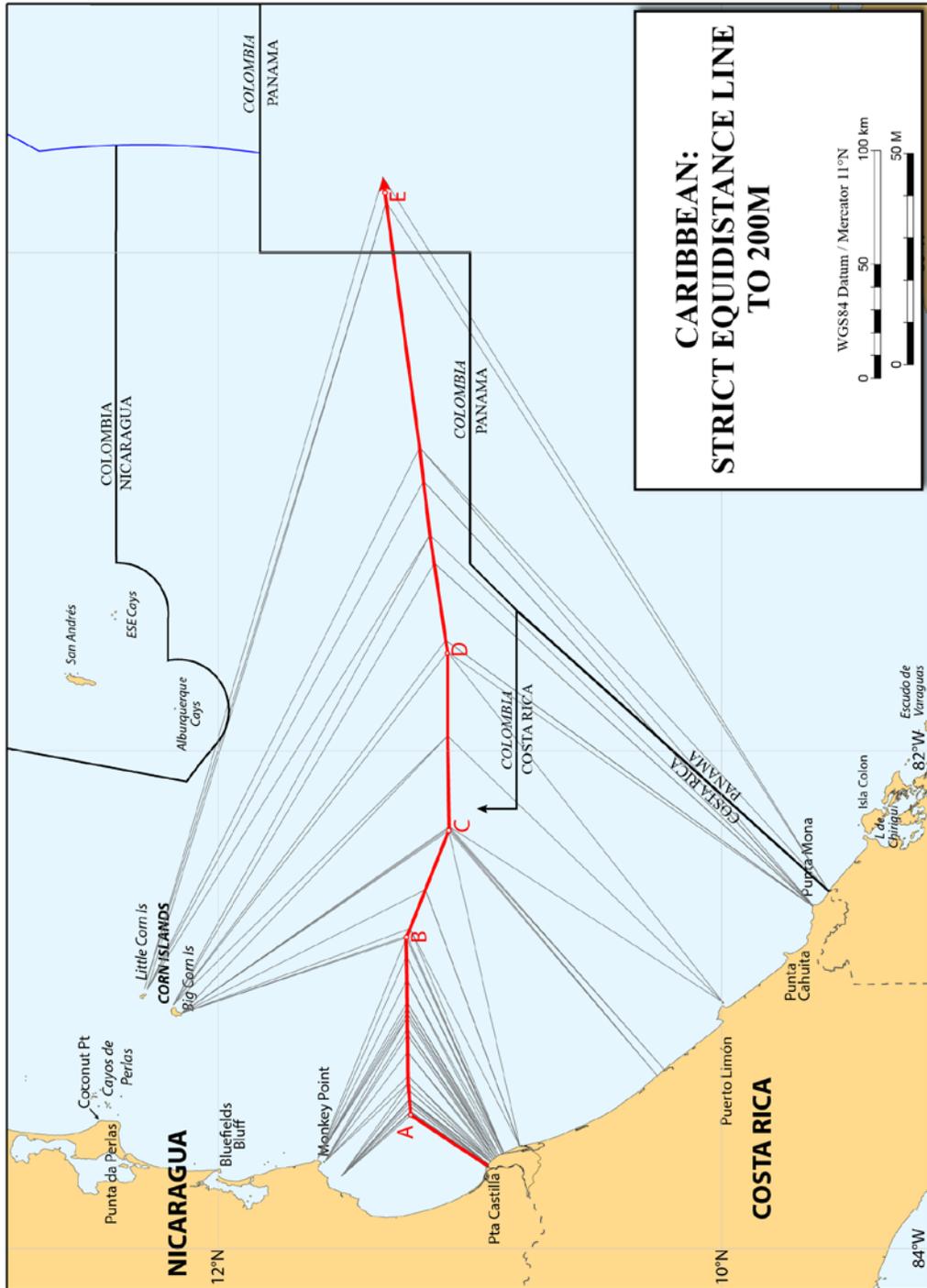


Figure IId-4: Caribbean: Strict Equidistance line to 200M



3.88 As was noted in the section addressing delimitation in the Pacific,¹⁸⁹ under UNCLOS Article 15 the median or equidistance line is not applicable where special circumstances render it necessary to apply a different method of delimitation. Special circumstances exist here. At the land boundary between Costa Rica and Nicaragua on the coast of the Caribbean Sea, the peculiar combination of the concavity and convexity of the adjacent coasts causes the course of the maritime boundary to be extraordinarily sensitive to the precise point on the coast at which it begins. A small movement of the starting point to the west or east would have a very great effect upon the course of the maritime boundary. Moreover, the configuration of the coastline immediately adjacent to Punta Castilla gives rise to a strict equidistance line which creates a significant cut-off effect on Nicaragua's entitlement. A more appropriate method of delimitation than the strict equidistance line is needed.

3.89 The need is to moderate the severe distortion and cut-off caused by the coastal configuration, by adjusting the strict (or 'provisional') equidistance line.¹⁹⁰ A modification that implements established principles of international law (including the equidistance principle) and forms the basis of an equitable solution to this delimitation dispute can be achieved by following the approach of UNCLOS,¹⁹¹ and of the Court and arbitral tribunals,¹⁹² and the practice of States,¹⁹³ in simplifying the equidistance line so as to iron out the effects of the

¹⁸⁹ See Chapter II.C.

¹⁹⁰ See, e.g., *Qatar v Bahrain, Judgment of 16 March 2001*, paragraphs 176, 217, 231.

¹⁹¹ Article 7(3).

¹⁹² See, e.g., *Gulf of Maine, Judgment of 12 October 1984*, paragraphs 187, 189; *Tunisia / Libya, Judgment of 24 February 1982*, paragraphs 122, 133 C; *Nicaragua v Honduras, Judgment of 8 October 2007*, paragraphs 287-289. Cf., *Guinea v Guinea Bissau, Award of 17 February 1985*, paragraphs 108-110.

¹⁹³ See, e.g., the agreements between Argentina and Uruguay, Brazil and Uruguay, Lithuania and Russia, Estonia and Latvia. [References from Bangladesh/Myanmar, ITLOS PV.11/5/Rev.1.

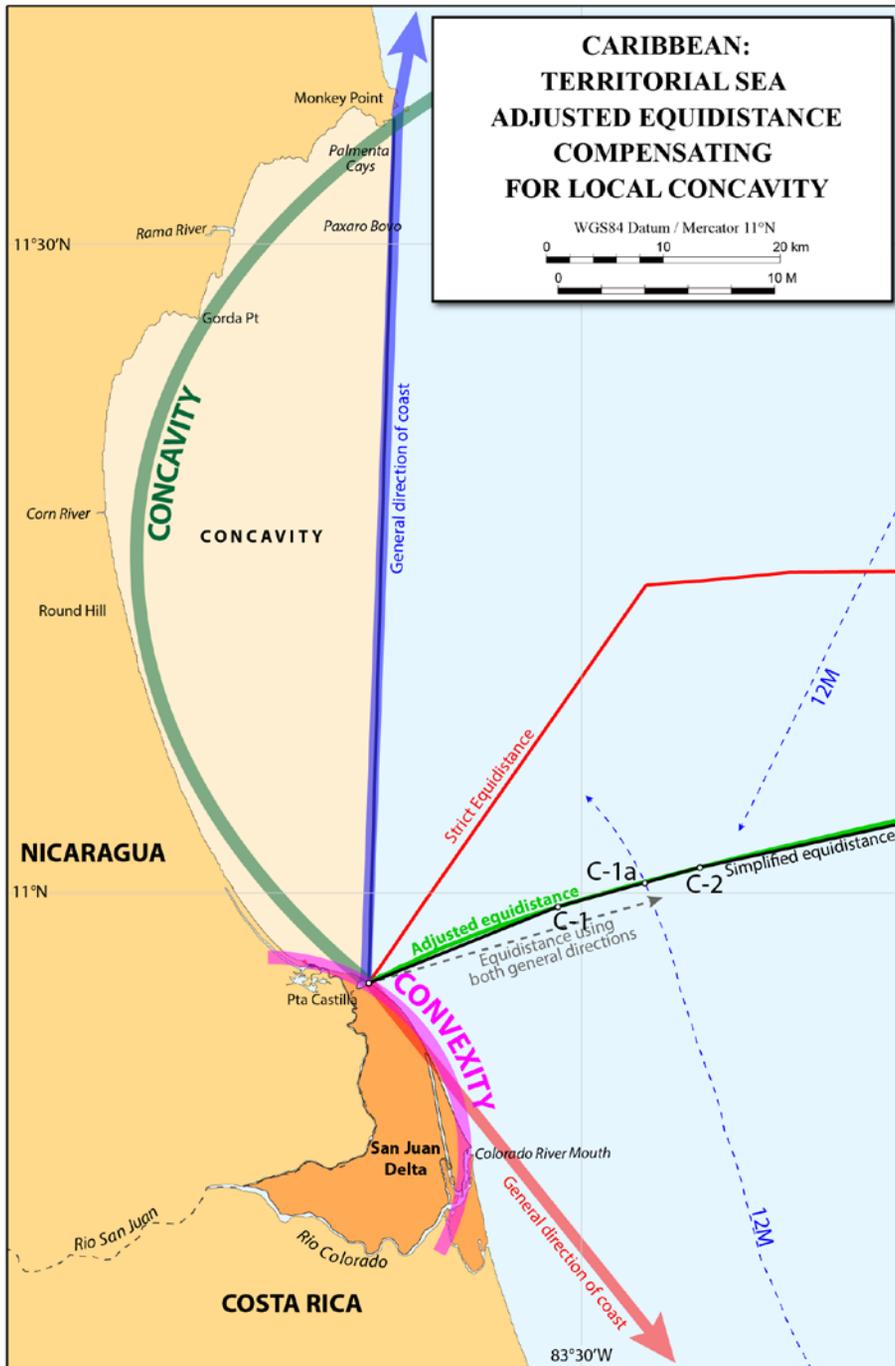
main distorting features of the coastline. Costa Rica has itself acknowledged the utility of this approach.¹⁹⁴

3.90 Such an adjustment of the equidistance line can be achieved by drawing an equidistance line using simplified coastlines. The distorting effect of the concavity of the coastline of Nicaragua is eliminated by simplifying that coastline to a straight line drawn from Monkey Point to Punta Castilla.

3.91 A straight-line simplification of Costa Rica's coastline representing its general direction, such as a line from Punta Castilla to Punta Mona, would also be justifiable as a matter of law. The construction of such a line is, however, more difficult, and would have much less impact than the Nicaraguan simplified line. The difference between the adjusted equidistance line drawn using Nicaragua's 'general direction of coast' line and an equidistance line drawn using straight 'general direction of coast' lines both for Nicaragua and for Costa Rica, is depicted on Figure IId-5, below. It can be seen that the difference is not great. Accordingly, Nicaragua has rested its claim on the line drawn using its own 'simplified coastline' and the actual coastline of Costa Rica.

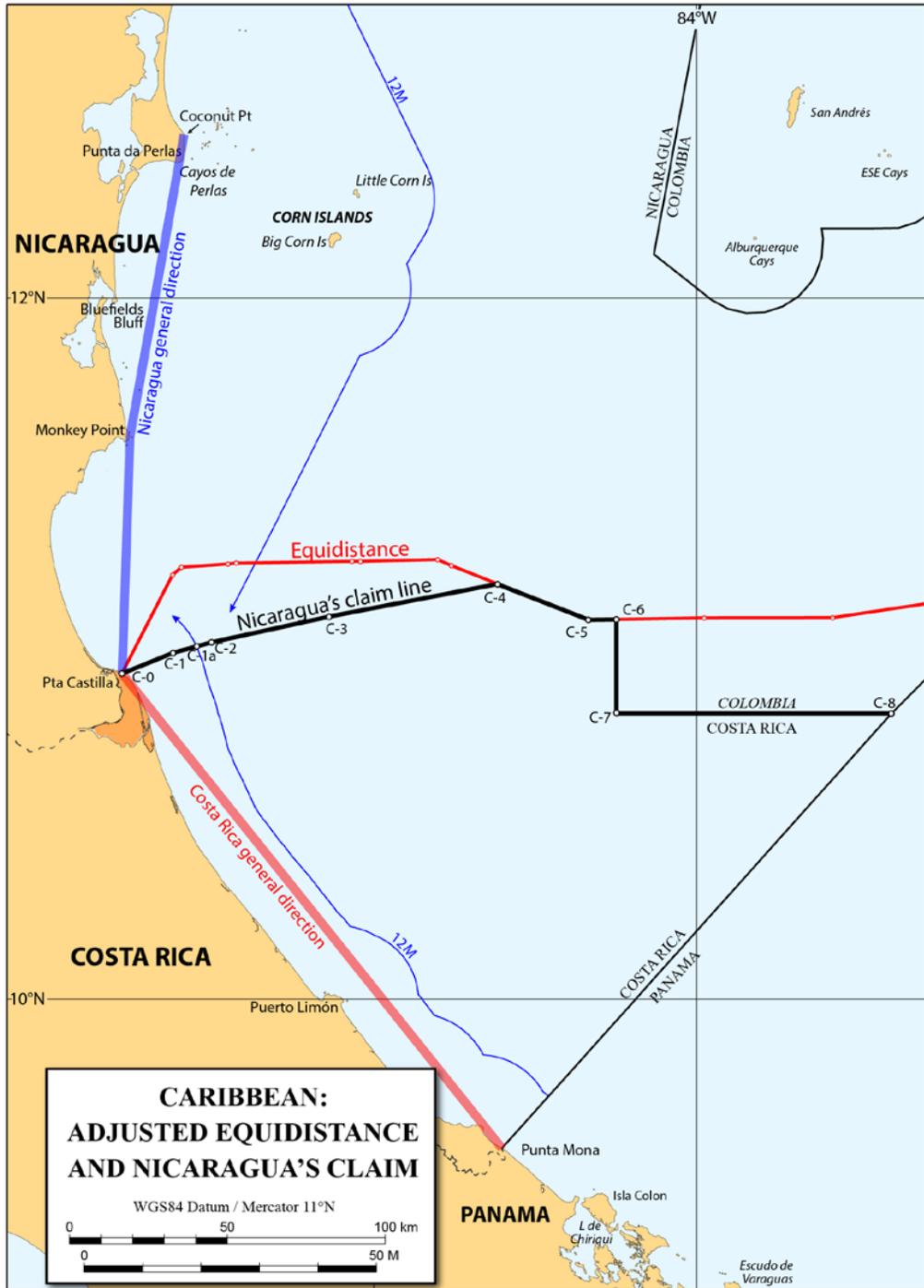
¹⁹⁴ CRM, paragraph 3.9, and cf., paragraphs 4.18 – 4.19.

Figure IId-5: Caribbean: Territorial Sea Adjusted Equidistance Compensating for Local Concavity



3.92 Nicaragua's claim line is depicted on Figure IId-6, below. As that Figure shows, this adjusted equidistance line runs from Punta Castilla, shown in the Figure as point C-0, through point C-1 to point C-2. The line cuts the 12 NM territorial sea limit, as drawn from Punta Castilla, at point C-1a. Point C-4 is the point at which the adjusted equidistance line joins the strict equidistance line, measured from the basepoints on land – in this case, from Nicaragua's Big Corn Island and from Costa Rica's mainland coastline at Puerto Limon. In other words, the adjusted equidistance line runs to the point at which the anomaly created by the concave/convex coastline exhausts its effect, and Nicaragua's claim line comes to coincide with the strict equidistance line. That point lies at 11°11'8"N, 82°34'42"W.

Figure IId-6: Caribbean: Adjusted Equidistance and Nicaragua's Claim



3.93 There is a small technical adjustment to be made in order to define the precise course of Nicaragua's claimed maritime boundary with Costa Rica in the Caribbean Sea. The adjusted equidistance line described in the previous paragraph is slightly curved: it is a paraboloid. For practical purposes it is much easier to draw the maritime boundary as a few turning points joined by straight, rather than paraboloid, lines. This 'simplified equidistance line' is depicted on Figure IId-5, below. On that Figure the adjusted equidistance line is marked in green, and the simplified equidistance line is marked in black. As the Figure shows, the difference between the adjusted equidistance line and the simplified equidistance line is negligible, particularly within the territorial sea: but the practical gain in convenience to mariners from the use of the simplified equidistance line is considerable.

3.94 Nicaragua accordingly considers that it is entitled to a maritime boundary in the territorial sea that follows the simplified equidistance line connecting Punta Castilla and points C-1 ($10^{\circ} 59' 21.3''$ N; $83^{\circ} 31' 6.9''$ W) and C-2 ($11^{\circ} 01' 9.9''$ N; $83^{\circ} 24' 26.9''$ W), and cutting the 12 NM territorial sea limit as drawn from Punta Castilla at point C-1a ($11^{\circ} 00' 18.9''$ N; $83^{\circ} 27' 38.0''$ W) as depicted on Figure IId-6, below. That line also constitutes the first part of the maritime boundary in the exclusive economic zone. The remainder of the exclusive economic zone boundary is explained in Section E below.

E. DELIMITATION OF THE CONTINENTAL SHELF AND EXCLUSIVE ECONOMIC ZONE IN THE CARIBBEAN SEA

1. The Delimitation Between Nicaragua and Costa Rica in the Caribbean Must Be Effected in Light of the 1977 Treaty between Costa Rica and Colombia

3.95 For the reasons explained in Section A.3 of this Chapter above, the delimitation of the EEZ/continental shelf boundary between the Parties in the Caribbean Sea must be effected in light of the 1977 Treaty between Costa Rica and Colombia establishing the maritime boundary between them in the same area.

3.96 The Costa Rica-Colombia boundary established in 1977 follows a straight line westward from the tri-point with Panama along the 10°49'N parallel for 47 M until it intersects the 82°14'W meridian.¹⁹⁵ From that point, the boundary “continue[s] north along the said meridian to where delimitation must be made with a third State.”¹⁹⁶ The boundary so established is depicted in Figure IIe-1, below.

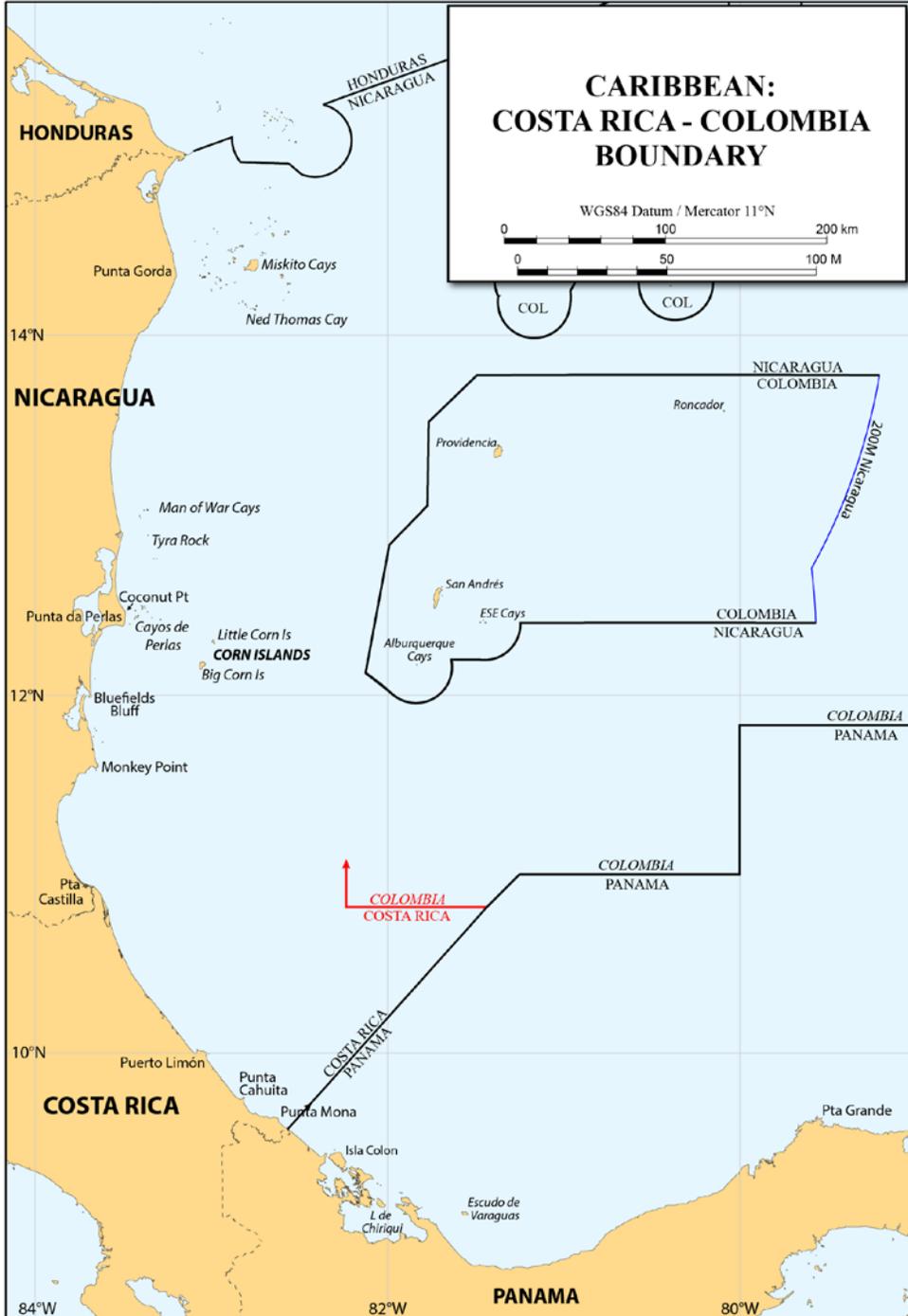
3.97 That boundary is, in effect, a simplified equidistance line. Charney and Alexander observe that the boundary was “negotiated on the basis of equitable principles” with full weight given to Colombia’s southernmost insular possessions in the area, the Alburquerque cays.¹⁹⁷

¹⁹⁵ Article I(A) of the Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica of 1977. (NCM, Annex 3)

¹⁹⁶ Article I(B) of the Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica of 1977. (NCM, Annex 3)

¹⁹⁷ Charney and Alexander, *International Maritime Boundaries*, Vol. I, pp.468-469.

Figure IIe-1: Caribbean: Costa Rica–Colombia Boundary



3.98 The boundary to which Costa Rica and Colombia have agreed defines—and limits—the extent of Costa Rica’s maritime areas in the Caribbean Sea. Put simply, Costa Rica no longer has any claim to the areas north and east of the agreed line.

3.99 That being the case, it follows that the only issue remaining for determination in this case is the delimitation of the maritime boundary between Nicaragua and Costa Rica to the west of the 1977 agreed boundary, including the question of how to connect the Nicaragua-Costa Rica boundary in the exclusive economic zone and the continental shelf with the 82°14’W meridian that is part of the 1977 agreed boundary. The answer to that question is the subject of the Section that follows.

2. Application of the Three-Step Delimitation Method in the Caribbean

a. Costa Rica Incorrectly Constructs Its Provisional Equidistance Line

3.100 As stated in connection with the delimitation in the Pacific, the Parties agree that the first step in the delimitation process involves the construction of a provisional equidistance line. That line is to be “plotted on strictly geometrical criteria on the basis of objective data.”¹⁹⁸ The Parties have different views, however, on the manner in which the provisional equidistance line is to be constructed in the Caribbean Sea because they disagree on the location of the appropriate base points.

¹⁹⁸ *Romania v. Ukraine*, para. 118; CRM, para. 4.22.

3.101 In constructing the provisional equidistance line that it proposes beyond the territorial sea, Costa Rica has conspicuously ignored critical “base points ... which the geography of the coast identifies as a physical reality.”¹⁹⁹ In addition to Paxaro Bovo and the Palmenta Cays (as described in Section D above on the Territorial Sea), Costa Rica has also unjustifiably ignored Nicaragua’s Corn Islands. As discussed in Chapter III.C.2/3, the Corn Islands are significant features that form an integral part of the physical reality of Nicaragua’s coast.²⁰⁰ They must therefore be taken into account in plotting an appropriate provisional equidistance line.

3.102 Costa Rica seeks to justify its decision to ignore the Corn Islands by reference to cases relating to features that bear no similarity to them. It cites, for example, *Romania v. Ukraine* and argues that since the Court declined to use Serpents’ Island as a base point in that case, the same approach should be applied to the Corn Islands here.²⁰¹

3.103 The analogy is inapt. Serpents’ Island is a tiny, lone rock measuring just 0.17 km² that is wholly separate from the Ukrainian coastline and any other coastal features. It is, moreover, devoid of natural water sources, and has only the most scant soil, vegetation and fauna. The island’s “residents” are military and border guard personnel kept there to perform strictly governmental activities. Their survival is entirely dependent on supplies from the outside. The island’s natural conditions do not support the development of an economic life of its own. These geographical realities supported the Court’s conclusion that using Serpents’

¹⁹⁹ *Romania v. Ukraine*, para. 131 (“In this respect, the Court observes that the geometrical nature of the first stage of the delimitation exercise leads it to use as base points those which the geography of the coast identifies as a physical reality at the time of the delimitation.”)

²⁰⁰ See para. 3.7 and Annex 20, NCM.

²⁰¹ CRM, para. 4.23.

Island as a base point would “amount to grafting an extraneous element onto Ukraine’s coastline”.²⁰²

3.104 By contrast, Big and Little Corn Islands (which lie approximately 26 M from the Nicaraguan mainland) are significant insular features, measuring 9.6 km² and 3 km² in size, respectively (more than 75 and 35 times the size of Serpents’ Island). Each also has a significant population. According to the 2005 census, the islands had a combined population of over 6,600. By 2009, the population had grown to 7,410.²⁰³ They also sustain a vibrant economic life. During the 1960s and 1970s, fishing became the economic mainstay. More recently, tourism has grown considerably. The islands’ surrounding coral reefs make them a popular destination for snorkelling and scuba diving.

3.105 Moreover, unlike Serpents’ Island, the Corn Islands are connected to the mainland by the Cayos de Perlas in their immediate vicinity. To ignore the Corn Islands as base points would therefore effectively erase an integral component of Nicaragua’s coast from the map.

3.106 Costa Rica also attempts to justify its attempt to ignore the Corn Islands by reference to *Bangladesh/Myanmar*, in which ITLOS decided not to place a base point on Bangladesh’s St. Martin’s Island.²⁰⁴ Costa Rica’s reliance on that case is equally misplaced. ITLOS justified its decision to ignore St. Martin’s Island in the construction of the provisional equidistance line as a result of its unusual location. The Tribunal stressed that “because it is located *immediately in front of the mainland on Myanmar’s side of the Parties’ land boundary terminus*,” putting a

²⁰² *Romania v. Ukraine*, para. 149.

²⁰³ INETER, Corn Island: A Nicaraguan Island in the Caribbean Sea, 6 November 2015 (Annex 20, NCM).

²⁰⁴ *Bangladesh/Myanmar*, para. 265.

base point on St. Martin's would have resulted in "an unwarranted distortion of the delimitation line."²⁰⁵

3.107 The location of Nicaragua's Corn Islands is not at all comparable to that of St. Martin's Island. Whereas St. Martin's Island was located just 5 NM in front of Myanmar's coast, the Corn Islands are approximately 80 NM from Costa Rica and lie entirely on Nicaragua's side of any conceivable delimitation line.

3.108 Costa Rica's argument that the Corn Islands should be ignored in the drawing of the provisional equidistance line is also refuted by its own conduct. In particular, as Charney and Alexander note²⁰⁶, Costa Rica agreed to place base points on, and effectively give full weight to, Colombia's Albuquerque cays (consisting of Cayo Norte and Cayo Sur) in drawing the agreed delimitation line with Colombia in 1977. As depicted in Figure IIe-2, below, those are truly miniscule features. Cayo Norte measures just 0.04 km² and is "home" only to a small detachment of Colombian marines. Cayo Sur is half the size of Cayo Norte (0.02 km²) and has no population whatsoever.

²⁰⁵ *Bangladesh/Myanmar*, para. 265.

²⁰⁶ Charney and Alexander, *International Maritime Boundaries*, Vol. I, p.468.

Figure IIe-2: Albuquerque Cays

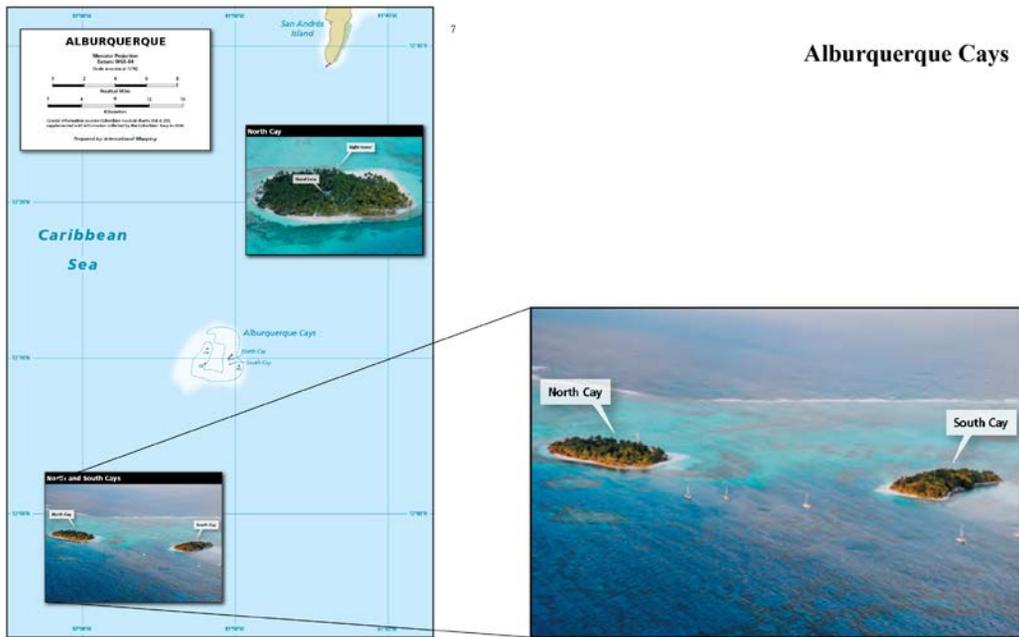


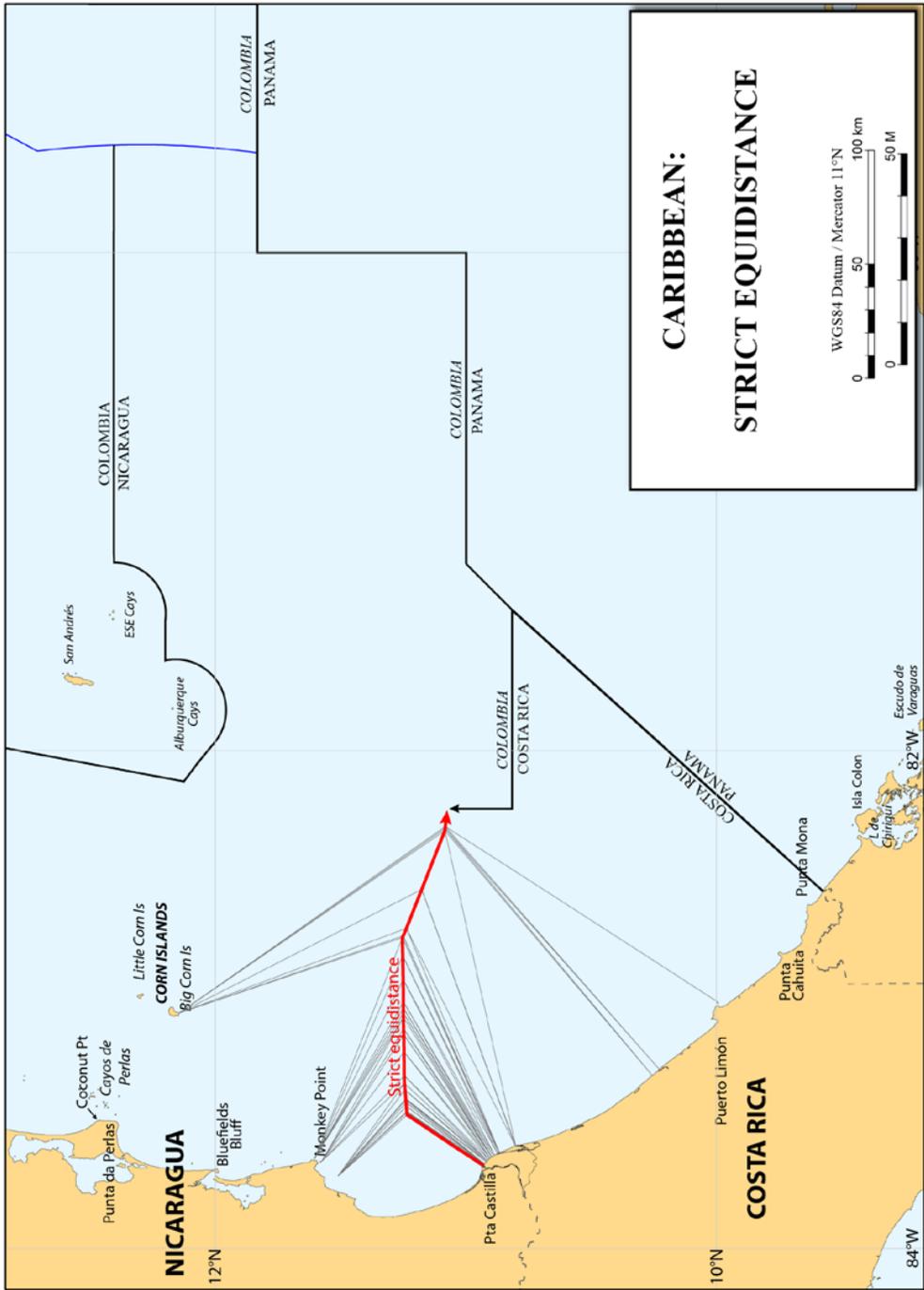
Figure from Nicaragua v Colombia
Colombia Counter-Memorial Figure 2.4

3.109 Nevertheless, Costa Rica agreed that these two features should be given full weight in drawing the boundary with Colombia. Having previously accepted Colombia's Albuquerque cays as valid base points, Costa Rica cannot now plausibly argue that Nicaragua's Corn Islands, which are hundreds of times larger, should be ignored.

3.110 Placing base points on Paxaro Bovo, the Palmenta Cays and the Corn Islands results in the provisional equidistance line depicted on Figure IIe-3, below. This line connects with the 82°14'W meridian that defines the western limit of the 1977 agreed boundary between Costa Rica and Colombia at the point with coordinates 11°5'5.2''N - 82°14'0.0''W.

3.111 Nicaragua submits that this is the appropriate provisional delimitation line from which to start the analysis in this case.

Figure II-3: Caribbean: Strict Equidistance



b. The Provisional Equidistance Line Produces an Inequitable Cut-Off on Nicaragua's Maritime Projections

3.112 The second step of the delimitation process involves considering whether or not there are “relevant circumstances” calling for the adjustment of the provisional delimitation line.²⁰⁷

3.113 As explained in Section D of this Chapter, the convex and north-facing nature of Costa Rica's coastline at Punta Castilla immediately adjacent to Nicaragua's concave coastline causes the provisional equidistance line to swing sharply northwards across Nicaragua's coast, significantly cutting off its maritime projections. This cut-off effect, shown in Figure IIe-4, below, persists well beyond the territorial sea out at least to 65 M from Nicaragua's coast, and therefore calls for adjustment to reach the equitable solution the law requires.²⁰⁸

3.114 This evident cut-off can be abated by eliminating the effect of concavity in drawing the equidistance line from the outer limit of the territorial sea at point C-1 until the point C-4, located equidistant from Nicaragua's Big Corn Island and Costa Rica's coast, where the distorting effect of the concavity exhausts itself. This is shown in Figure IIe-5. Thence, the delimitation follows Nicaragua's proposed provisional equidistance line until it intersects with the 82°14'W meridian at point C-6, with coordinates 11°5'5.2''N - 82°14'0.0''W.

3.115 Thereafter, the delimitation follows the contours of the boundary agreed as between Costa Rica and Colombia in 1977. This is reflected in Figure IIe-6, below.

²⁰⁷ CRM, para. 4.26, citing to *Romania v. Ukraine*, para.120.

²⁰⁸ See Chapter II, Section D.1 and D.2 on the Pacific side.

Figure II-4: Caribbean: The Provisional Equidistance Line Cuts off Nicaragua's Maritime Projections

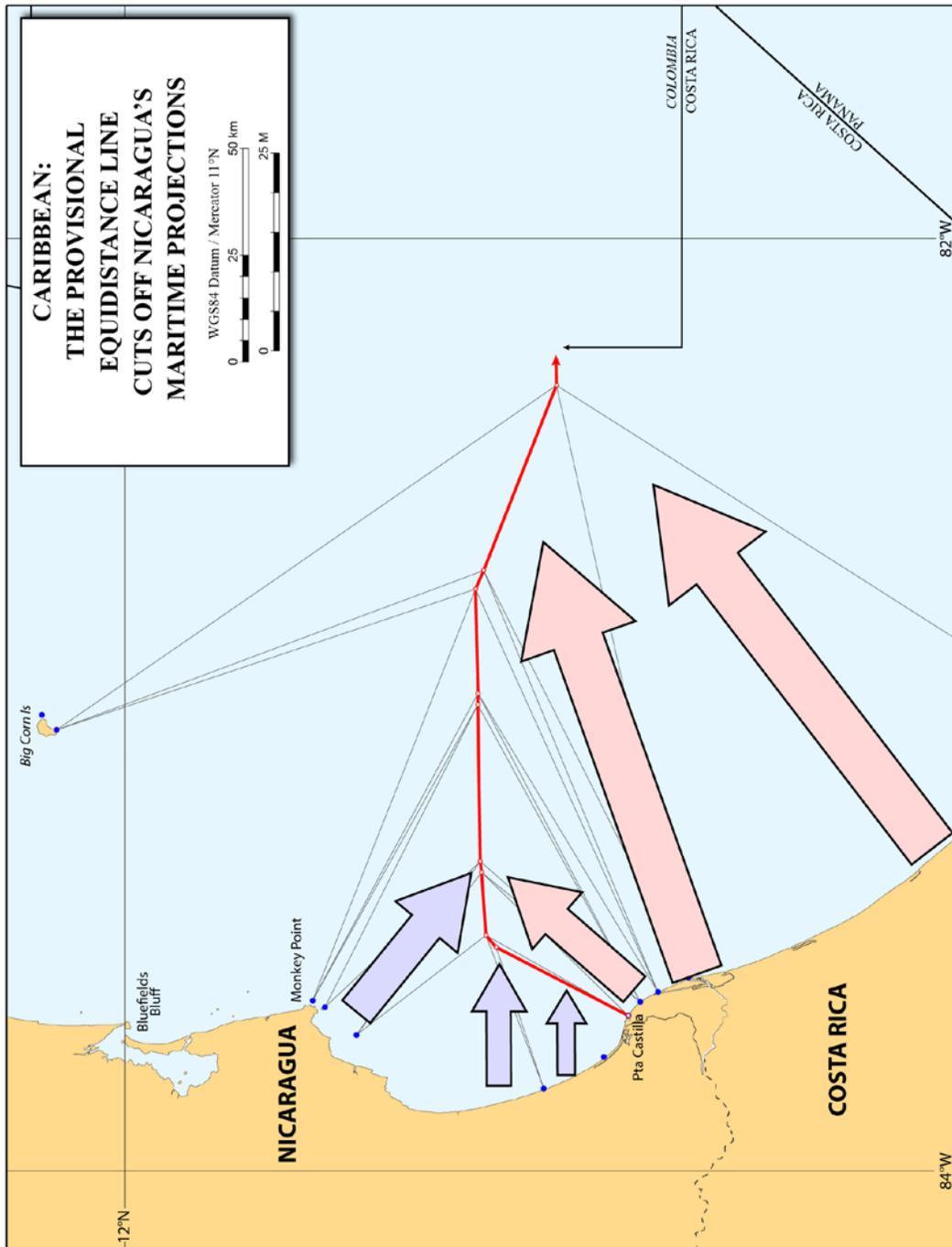
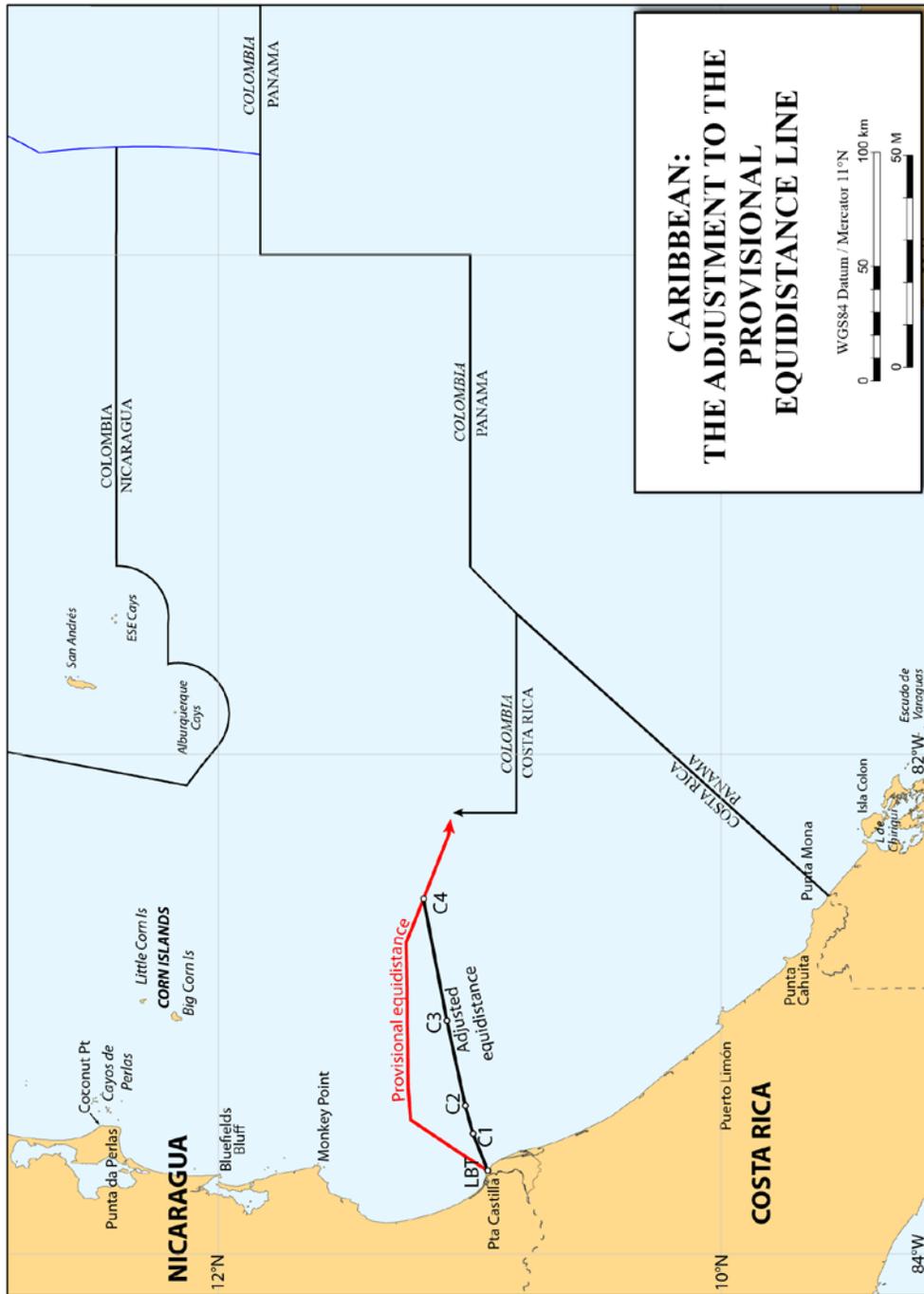


Figure IIe.5: Caribbean: The Adjustment to the Provisional Equidistance Line



3. Nicaragua's Boundary Proposal Is Entirely Equitable to Costa Rica

a. Nicaragua's Boundary Proposal Is Substantially Identical to the Boundary Costa Rica Agreed to with Colombia

3.116 The resulting delimitation line is consistent with what Costa Rica considered to be an equitable solution in its 1977 agreement with Colombia. If Costa Rica considered equitable what it achieved in 1977 as against Colombia, it cannot be heard now to argue that the same result as against Nicaragua somehow becomes inequitable. The geography is unchanged; and equity does not depend on the identity of the party with which a State shares its maritime boundary.

3.117 Nor can Costa Rica be heard to argue that its 1977 delimitation with Colombia is somehow irrelevant. To the contrary, it is very relevant. Quite apart from the fact that Costa Rica renounced any entitlement to the areas beyond the agreed line, the 1977 agreement also disproves any argument Costa Rica might make about the inequitableness of the delimitation Nicaragua proposes. Costa Rica has repeatedly affirmed that the 1977 line is "beneficial".²⁰⁹ Costa Rica never took the view that the 1977 Treaty should not be ratified. To the contrary, it gave assurances that it would ratify the Treaty, and indeed it complied with it in good faith for more than 30 years.²¹⁰ Both these facts are confirmed by the statements of senior Costa Rican officials.

²⁰⁹ See para 3.121 below.

²¹⁰ Indeed, as stated in footnote 140 above, the 1977 Treaty was subsequently incorporated by reference into two additional treaties that Costa Rica has ratified: the 1980 Treaty with Panama defining the two States' maritime boundary in the Caribbean Sea and the 1984 Treaty between Costa Rica and Colombia defining their maritime boundary in the Pacific Ocean.

3.118 For example, on 14 May 1996, nearly 20 years after the Colombia-Costa Rica Treaty had been signed, Costa Rica's then-Foreign Minister, Mr. Fernando Naranjo, in reply to a Colombian Diplomatic Note, stated:

[I] inform Your Excellency that in the Government of Costa Rica's view, in full harmony with international norms as embodied in the Vienna Convention on the Law of Treaties, the Treaty on Maritime Delimitation between Colombia and Costa Rica has been complied with, is being complied with and will continue to be complied with, as a show of good faith of the Parties. The terms of that Treaty are clear, unequivocal and the absence of incidents or difficulties between both countries in this matter evidences the beneficial character of that legal instrument.²¹¹

3.119 Similarly, by diplomatic note dated 23 March 1997, Costa Rica's then-Vice-Minister of Foreign Affairs, Mr. Rodrigo Carreras, wrote to the Ambassador of Colombia to Costa Rica to inform him of Costa Rica's official position concerning the 1977 Treaty. The letter followed a press report relating to Costa Rica's non-ratification of the Treaty. The note stated:

I was surprised to read this article that completely distorts the position of the Government of Costa Rica with respect to the Treaties on Maritime Limits between the Republic of Costa Rica and the Republic of Colombia, signed in 1977 and in 1984, and that erroneously states that Costa Rica has decided not to ratify these instruments. In this regard, my Government reiterates what has been already stated in previous notes with respect to our

²¹¹ Diplomatic Note N° DM. 172-96 from the Costa Rican Minister of Foreign Affairs to the Colombian Minister of Foreign Affairs, 14 May 1996. (NCM, Annex 22)

interest in having those treaties ratified by our Legislative Assembly, both of them being in its agenda. The Government of Costa Rica, in accordance with the Law of Treaties, shall continue to comply with what was agreed without acting against it.²¹²

3.120 At a conference held on 27 August 1998 at the Costa Rican Foreign Ministry, the Costa Rican signatory of the 1977 Treaty, former Foreign Minister Gonzalo J. Facio, stated in the presence of the diplomatic corps:

[T]here is no reason whatsoever why the Legislative Assembly should not approve the ‘Fernández-Facio’ Treaty that duly delimited the maritime boundaries in the Atlantic Ocean between the Republics of Colombia and Costa Rica, on the premise that the San Andrés Archipelago belonged to Colombia.²¹³

3.121 In a subsequent diplomatic note dated 29 May 2000, Costa Rica’s Foreign Minister at the time wrote the following to his Colombian counterpart, as follows:

As the Costa Rican Legislative Assembly is setting out to consider, for its approval, the Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation signed between our two countries on 6 April 1984”—that is the Pacific Treaty—, “I am pleased to convey to Your Excellency that my country, always observant of the principles and rules of international law and in particular those framing the conclusion of international treaties, has complied with and will continue to comply with that instrument in

²¹² Diplomatic Note N° DVM 103 from the Costa Rican Vice-Minister of Foreign Affairs to the Colombian Ambassador in Costa Rica, 23 March 1997. (NCM, Annex 23).

²¹³ Statement given by Mr. Gonzalo J. Facio, Costa Rican signatory of the 1977 Treaty and former Foreign Minister, at the Costa Rican Foreign Ministry, 27 August 1998. (NCM, Annex 19)

good faith, as well as the Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation of 17 March 1977.²¹⁴

The Note continues:

It is evident that throughout these years, both treaties have shown their beneficial character, have facilitated cooperation and contributed to mutual understanding, the preservation of peace and trust between our two States, becoming an example for the region and the continent. The Government of Costa Rica, therefore, will continue the required procedures for the ratification and exchange of corresponding instruments, once approved by the Legislative Power.²¹⁵

3.122 Costa Rica has thus repeatedly and formally expressed its official position as to the beneficial character of the 1977 Treaty. These admissions are of direct relevance in the present case. In *Tunisia/Libya*, the Court stated:

The aspect now under consideration of the dispute which the Parties have referred to the Court, as an alternative to settling it by agreement between themselves, is what method of delimitation would ensure an equitable result; and it is evident that the Court must take into account whatever indicia are available of the lines or lines which the Parties themselves may have considered equitable or acted upon as such....²¹⁶

²¹⁴ Diplomatic Note N° DM 073-2000 from the Costa Rican Minister of Foreign Affairs to the Colombian Minister of Foreign Affairs, 29 May 2000. (NCM, Annex 24)

²¹⁵ Diplomatic Note N° DM 073-2000 from the Costa Rican Minister of Foreign Affairs to the Colombian Minister of Foreign Affairs, 29 May 2000. (NCM, Annex 24)

²¹⁶ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, 1982 I.C.J. 83-84, para. 118.

3.123 Costa Rica's considered and repeatedly expressed view has been that the 1977 agreement produced an equitable result in accordance with international law. If Costa Rica has long considered that line equitable, it cannot now seriously contend that Nicaragua's proposed delimitation line is inequitable.

b. The Alleged Cut-Off Effect Costa Rica Invokes Does Not Exist

3.124 As stated, Costa Rica bypasses a properly drawn equidistance line altogether, and starts with a so-called equidistance line that has been drawn ignoring Nicaragua's Paxaro Bovo, the Palmenta Cays and the Corn Islands. But even that is not enough for Costa Rica. It then proceeds to argue for a substantial adjustment of that line in its favour, which entirely ignores its accepted boundary with Colombia.

3.125 Costa Rica's principal argument is that it suffers an excessive cut-off as a result of the supposed concavity in which it sits, and of the interplay between the delimitation with Nicaragua, on the one side, and the notional delimitation with Panama, on the other.²¹⁷ Costa Rica's "cut-off" argument fails for several reasons.

3.126 In the first place, the cut-off about which Costa Rica complains, if any, would be located in the area beyond the limits of the boundary between Costa Rica and Colombia that Costa Rica has accepted since 1977. The would-be intersection of the Nicaragua-Costa Rica equidistance line and the Costa Rica-Panama equidistance line is fully 65 NM beyond the limits of the 1977 agreed boundary. The effects of this intersection are of no relevance in this delimitation.

²¹⁷ CR, para. 4.30, 4.43.

3.127 This situation can be analogized to that present in *Cameroon v. Nigeria*. There, Cameroon contended that the presence of Equatorial Guinea’s Bioko Island in front of its coast was relevant to the delimitation between Cameroon and Nigeria because that large island, Cameroon argued, blocked the seaward projection of its coast. The Court rejected Cameroon’s argument, holding that “the effect of Bioko Island on the seaward projection of the Cameroonian coastal front is an issue between Cameroon and Equatorial Guinea and not between Cameroon and Nigeria, and is not relevant to the issue of delimitation before the Court.”²¹⁸

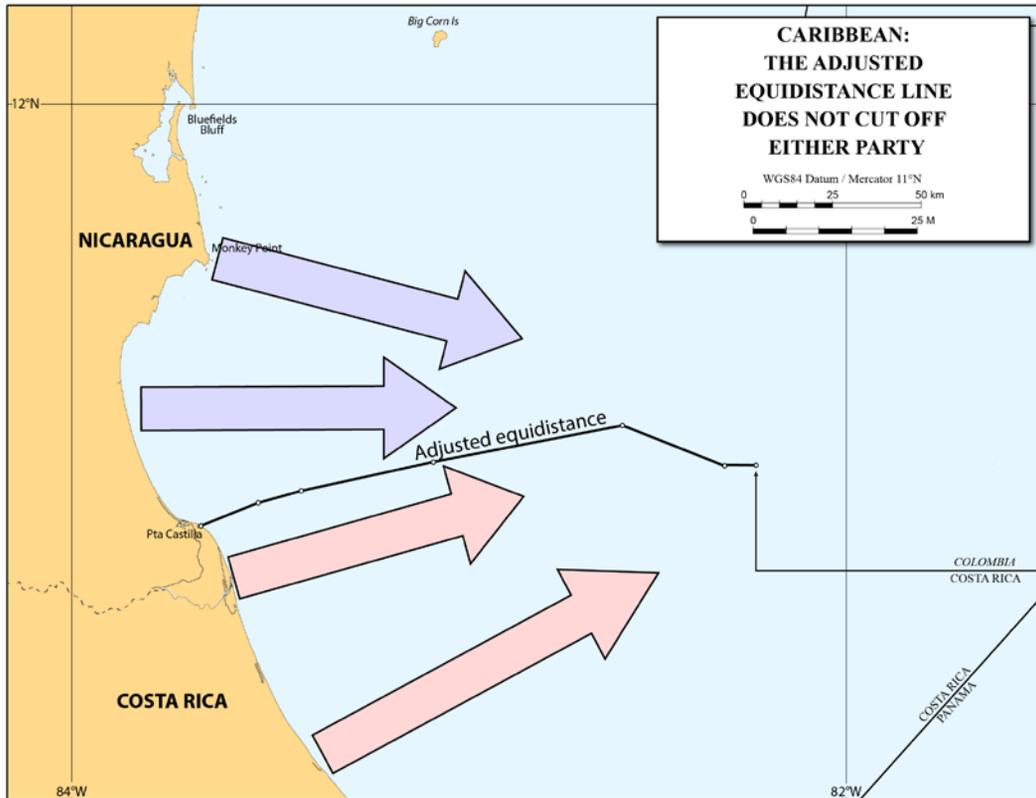
3.128 Similarly here, the 1977 agreed boundary has an objective existence and effect analogous to that of Bioko Island. As a result of Costa Rica’s own actions, renouncing any interest in the areas to the north and east, that boundary sits in front of and blocks Costa Rica’s maritime projections wholly independent of any equidistance line drawn with Nicaragua. The putative effects of the interaction between the Nicaragua-Costa Rica and Costa-Rica-Panama equidistance lines are therefore equally “not relevant to the issue of delimitation before the Court.”

3.129 In the area that is relevant to the delimitation issue before the Court—namely, the area to the south and west of the 1977 agreed boundary—Nicaragua’s proposed delimitation line produces no appreciable cut-off for either party. To the contrary, it allows “the coasts of the Parties to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way.”²¹⁹ This can be seen in Figure IIe-7, below.

²¹⁸ *Cameroon v. Nigerian*, para. 299.

²¹⁹ *Nicaragua v. Colombia*, para. 215; *Romania v. Ukraine*, para. 201; *Bangladesh/Myanmar*, para. 325.

Figure IIe-7: Caribbean: The Adjusted Equidistance Line does not Cut-off Either Party



3.130 Costa Rica also attempts to support its argument in favour of adjusting the provisional equidistance line by contending that it must be “allow[ed] it to reach its full 200 nautical mile entitlement.”²²⁰ This argument fails in the first instance because it ignores the fact of the 1977 agreed boundary. Costa Rica itself previously agreed that it would not reach its full 200 NM entitlement, and Nicaragua has acted on this understanding for more than 35 years. Costa Rica cannot now be heard to argue that that result is not equitable, nor relevant to this delimitation.

3.131 Moreover, Costa Rica’s argument ignores the fact that the jurisprudence “does not recognize a general right of coastal States to the maximum reach of

²²⁰ CRM, para. 4.43.

their entitlements, irrespective of the geographical situation and the rights of other coastal States.”²²¹ In the *Bay of Bengal* cases, for example, Bangladesh cited what it called “the principle of maximum reach” and argued that the final delimitation lines should allow it to reach to the outer limit of its entitlement in the continental shelf beyond 200 NM (at around 380 NM from its coast). Both ITLOS (in the Myanmar case) and the Annex VII arbitral tribunal (in the India case) specifically rejected Bangladesh’s argument, using the language quoted just above. The final delimitation lines intersected 290 NM in front of the Bangladesh coast, some 75% of its maximum reach.

3.132 Costa Rica further attempts to argue for an adjustment to the provisional equidistance line by reference to its as-yet unresolved delimitation with Panama in the areas beyond 100 NM. That attempt also fails. That delimitation is of no relevance to this one, which must be based “solely on consideration of the relationship between” Nicaragua and Costa Rica and “their respective coastlines.”²²² Whatever the implications of the Costa Rica-Panama delimitation may be, they have nothing to do with Nicaragua, and cannot inform the Court’s assessment of the equitableness of the provisional equidistance line as between Nicaragua and Costa Rica.

3.133 A final reason why Costa Rica’s claimed adjustment should be denied is because it fails the requirement that “any adjustment or shifting of the provisional median line must not have the effect of cutting off” another State.²²³ That is precisely the effect of Costa Rica’s line. It veers across Nicaragua’s coastal front, substantially blocking its maritime projections, and then it passes just 5 NM below the enclaves the Court established around Colombia’s Alburquerque Cays. From there, it continues along the same bearing until it reaches the 200 NM limit,

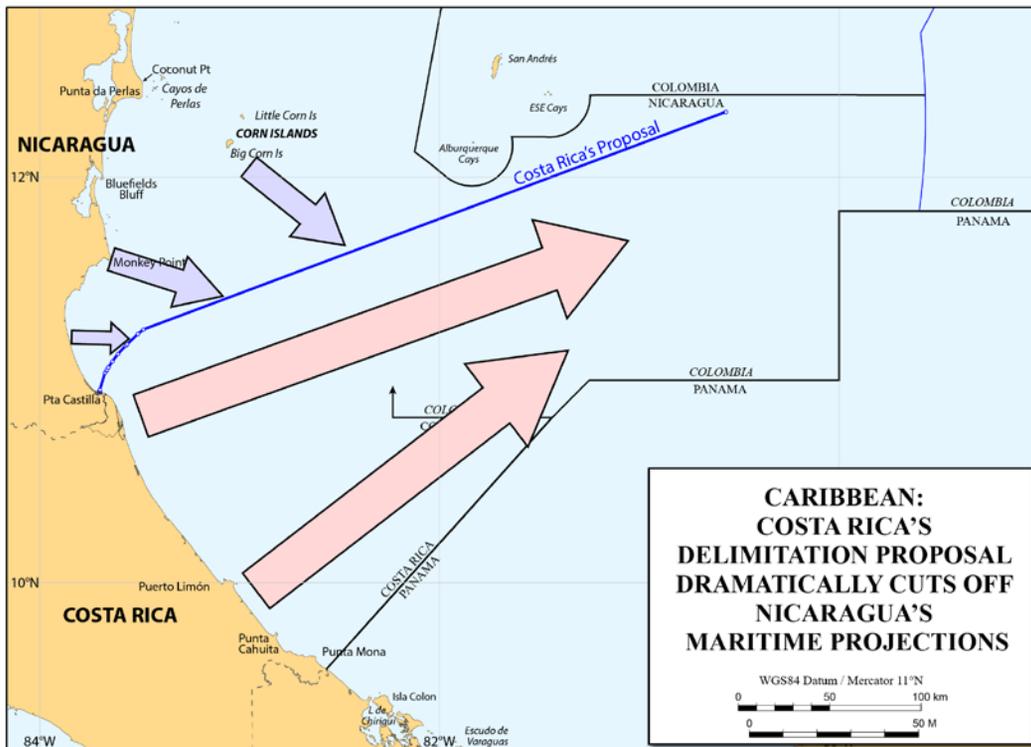
²²¹ *Bangladesh v. India*, para. 469.

²²² *Bangladesh v. India*, para. 411.

²²³ *Nicaragua v. Colombia*, para. 216.

again just 5 NM below the parallel of latitude that delimits the boundary between Nicaragua and Colombia. The cut-off Costa Rica's proposed delimitation would work on Nicaragua is reflected in Figure Iie-8, below. The effect of this line is thus to reinstate the cut-off from which the Court relieved Nicaragua in its 2012 Judgment.

Figure Iie-8: Caribbean Costa Rica's Delimitation Proposal Dramatically cuts off Nicaragua's Maritime Projections



3.134 By contrast, Nicaragua's proposed delimitation line does not create any inequity because it is integrated with the agreed delimitation line that Costa Rica has repeatedly and for decades recognized as equitable. Moreover, Nicaragua's proposed line easily passes the non-disproportionality test, as discussed immediately below.

4. Nicaragua's Provisional Equidistance Line Does Not Produce a Disproportionate Result

3.135 In the third and final step of the delimitation process, the Court considers 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.”²²⁴

3.136 As discussed in connection with the delimitation in the Pacific, the Parties agree that the purpose of this exercise is not to ensure a proportionate result but rather to provide a final check against a disproportion so gross as to render the proposed delimitation line inequitable.²²⁵ The parties also agree that it “remains in each case a matter for the Court’s appreciation, which it will exercise by reference to the overall geography of the area.”²²⁶

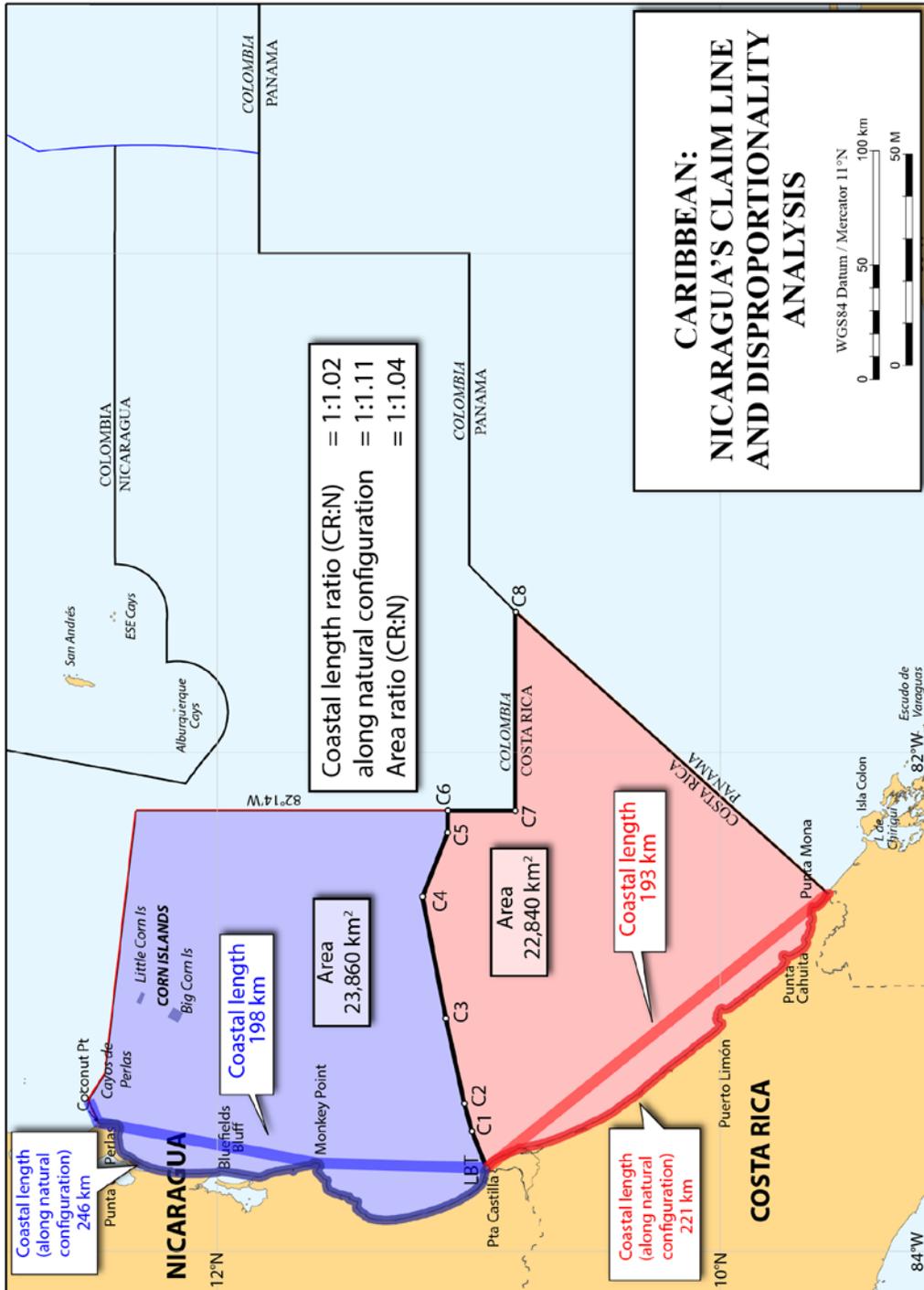
3.137 Dividing the relevant area as described in Section C.3 of this Chapter by means of the proposed delimitation line described above allocates 23,860 km² to Nicaragua and 22,840 km² to Costa Rica. The ratio is 1.04:1 in favor of Nicaragua. Given that the lengths of relevant coasts are nearly the same—1.02:1 in favor of Nicaragua—the proposed line creates no significant disproportion and thus achieves the equitable solution the law requires. The results of the disproportionality test are illustrated in Figure IIe-9, below.

²²⁴ *Romania v. Ukraine*, para. 210.

²²⁵ CRM, para.4.45, citing to *Nicaragua v. Colombia*, para. 242.

²²⁶ CRM, para. 4.45, citing to *Romania v. Ukraine*, para. 213.

Figure II-9 Caribbean: Nicaragua's Claim Line and Disproportionality Analysis



3.138 Accordingly, the maritime boundary from 12 NM (C-1a) up to the point where it meets the maritime boundary between Costa Rica and Panama follows the course with the turning points described in Table 3.1. below (referred to WGS 84).

Table 3.1.

Point	Latitude			Longitude			
C-1a (12M)	11	00	18.9 N	83	27	38.0	W
C-2	11	1	9.9 N	83	24	26.9	W
C-3	11	5	33.7 N	83	3	59.2	W
C-4	11	11	8.4 N	82	34	41.8	W
C-5	11	5	0.7 N	82	18	52.3	W
C-6	11	5	5.2 N	82	14	0.0	W
C-7	10	49	00.0 N	82	14	0.0	W
C-8	10	49	00.0 N	81	26	8.2	W

SUBMISSIONS

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

1. In the Pacific Ocean, the maritime boundary between the Republic of Nicaragua and the Republic of Costa Rica starts at a point with co-ordinates 11° 03' 56.3" N 85° 44' 28.3" W and follows geodetic lines connecting the points with co-ordinates:

Points	Latitude	Longitude
P-1	11° 03' 57.6" N	85° 45' 27.0" W
P-2	11° 03' 57.8" N	85° 45' 36.8" W
P-3	11° 03' 47.6" N	85° 46' 34.0" W
P-4	11° 03' 54" N	85° 47' 13.2" W
P-5	11° 03' 25" N	85° 49' 42.4" W
P-6	11° 03' 17.7" N	85° 50' 06.3" W
P-7	11° 02' 44.8" N	85° 51' 25.2" W
P-8 (12 nm)	10° 54' 51.7" N	86° 10' 14.6" W
P-9	10° 50' 59.1" N	86° 21' 37.6" W
P-10	10° 41' 24.4" N	86° 38' 0.8" W
P-11	10° 19' 28.3" N	87° 11' 0.7" W
P-12	9° 53' 9.0" N	87° 47' 48.8" N
P-13 (200 NM)	9° 16' 27.5" N	88° 46' 10.9" W

2. In the Caribbean Sea, the maritime boundary between the Republic of Nicaragua and the Republic of Costa Rica starts at a point with co-ordinates 10° 55' 49.7" N and 83° 40' 0.6" W and follow geodetic lines connecting the points with co-ordinates:

Points	Latitude	Longitude
C-1	10° 59' 21.3" N	83° 31' 6.9" W
C-1a (12 nm)	11° 00' 18.9" N	83° 27' 38.00" W
C-2	11° 01' 9.9" N	83° 24' 26.9" W
C-3	11° 05' 33.7" N	83° 03' 59.2" W
C-4	11° 11' 8.4" N	82° 34' 41.8" W
C-5	11° 05' 0.7" N	82° 18' 52.3" W
C-6	11° 05' 5.2" N	82° 14' 0.0" W
C-7	10° 49' 0.0" N	82° 14' 0.0" W
C-8	10° 49' 0.0" N	81° 26' 8.2" W

(All coordinates are referred to WGS84 datum)

The Hague, 8 December 2015.

Carlos J. Argüello-Gómez
Agent of the Republic of Nicaragua

CERTIFICATION

I have the honour to certify that this Counter-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, 8 December 2015.

Carlos J. Argüello-Gómez

Agent of the Republic of Nicaragua

