

INTERNATIONAL COURT OF JUSTICE

***DISPUTE CONCERNING MARITIME DELIMITATION IN THE
CARIBBEAN SEA AND THE PACIFIC OCEAN***

COSTA RICA v. NICARAGUA

MEMORIAL OF COSTA RICA



VOLUME I

3 FEBRUARY 2015

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CHAPTER 1

INTRODUCTION

A. The Disputes Submitted to the Court

1.1 On 25 February 2014, Costa Rica instituted the present proceedings. By its Application, Costa Rica requests the Court to determine the complete course of the single maritime boundaries between all the maritime areas appertaining, respectively, to Costa Rica and to Nicaragua in the Caribbean Sea and in the Pacific Ocean, applying equitable principles and taking into account relevant circumstances, in order to achieve equitable solutions in accordance with international law. Costa Rica further requests the Court to determine the precise geographical co-ordinates of the single maritime boundaries in the Caribbean Sea and in the Pacific Ocean.

1.2 The Court, by Order of 1 April 2014, fixed 3 February 2015 as the time limit for the filing of the Memorial of the Republic of Costa Rica in the present case. This Memorial is filed with the Court in accordance with that Order.

B. The Court's Jurisdiction

1.3 In its Application, Costa Rica indicated that the Court's jurisdiction is founded on the provisions of Article 36, paragraph 2 of the Court's Statute (by virtue of the operation of the declarations made by Costa Rica on 20 February 1973 and by Nicaragua of 24 September 1929), and Article XXXI of the American Treaty on Pacific Settlement (the *Pact of Bogotá*).¹

1.4 By its Article 36(2) declaration of 20 February 1973, Costa Rica recognized

“as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes of the kinds referred to in Article 36, paragraph 2, of the Statute of the International Court of Justice.”

¹ See *Dispute Concerning Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*, Application Instituting Proceedings, 25 February 2014, paras. 4-5.

1.5 By its Article 36(2) declaration of 24 September 1929, Nicaragua accepted unconditionally the jurisdiction of the Court. It subsequently notified a reservation that is not material to the present proceedings.

1.6 The disputes in the present proceedings are legal disputes on a question of international law, namely the extent and limits of the respective maritime zones of the two States. The two States' Article 36(2) declarations therefore provide a basis for the Court's jurisdiction to determine the present disputes.

1.7 Costa Rica and Nicaragua have ratified the United Nations Convention on the Law of the Sea (*UNCLOS*).² Consistently with Article 282 of UNCLOS, Costa Rica and Nicaragua have agreed to resolution of these disputes through the provisions of Article 36, paragraph 2 of the Court's Statute, and Article XXXI of the Pact of Bogotá. Article XXXI provides:

“In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute the breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.”³

1.8 Costa Rica and Nicaragua ratified the Pact of Bogotá on 27 April 1949 and 21 June 1950, respectively.⁴ Although Nicaragua has made a reservation to the Pact, it is not relevant to the disputes now submitted to the Court. The disputes the subject of

² United Nations Convention on the Law of the Sea, 10 December 1982 (entry into force 16 November 1994), 1833 *United Nations Treaty Series* 3 (*UNCLOS*).

³ American Treaty on Pacific Settlement, 30 April 1948 (entry into force 6 May 1949), 30 *United Nations Treaty Series* 84 (the *Pact of Bogotá*), Article XXXI.

⁴ See <<http://www.oas.org/juridico/english/sigs/a-42.html>>.

these proceedings are disputes of a juridical nature between Costa Rica and Nicaragua concerning a question of international law, namely the extent and limits of the respective maritime zones of the two States. The Court's jurisdiction to determine these disputes is therefore also established by Article XXXI of the Pact of Bogotá.

C. Summary of Costa Rica's Position

1.9 It is necessary to consider separately the maritime delimitation in the Pacific from that in the Caribbean. The two delimitations are discrete and involve different geographical sectors and circumstances, notwithstanding that they involve the same States. Because it is a simple geographical situation, the delimitation in the Pacific sector will be examined first.

1.10 In the Pacific Ocean, the starting point of the maritime delimitation is at the centre point of the Salinas Bay closing line. The maritime boundary in the territorial sea follows the median line from the starting point to the intersection of the outer limits of the territorial seas of the Parties. There are no claims to historic title nor any special circumstances that would necessitate any adjustment of the equidistance line for the territorial sea boundary. The maritime boundary dividing the exclusive economic zones and continental shelves of the Parties follows the equidistance line from the outer limit of the territorial sea to the intersection of arcs measured 200 nautical miles from the mainland Pacific coasts of the Parties. The equidistance line creates an equitable delimitation in the Pacific. There are no relevant circumstances in the Pacific that would require the adjustment of that line in order to achieve an equitable result.

1.11 In the Caribbean Sea, the starting point of the maritime delimitation is on the right bank of the San Juan River at its mouth. The maritime boundary in the territorial sea follows the median line from the starting point to the intersection of the outer limits of the territorial seas of the Parties. There are no claims to historic title nor any special circumstances that would necessitate adjustment of the equidistance line for the territorial sea boundary. The single maritime boundary dividing the exclusive economic zones and continental shelves of the Parties follows the mainland equidistance line from

the outer limit of the territorial sea to the major inflection point where the provisional equidistance line bends markedly eastward to the detriment of Costa Rica. From this point, the equidistance line requires adjustment to account for the relevant circumstance of coastal concavity and the cut-off of Costa Rica’s maritime projection. An equitable result is achieved by connecting the major inflection point and the point of intersection of the notional median line between the mainland coasts of Nicaragua and Panama with Costa Rica’s 200 nautical mile limit, by a geodesic line.

D. Outline of this Memorial

1.12 The structure of this Memorial is as follows: **Chapter 2** sets out the relevant factual and legal background to the dispute; **Chapter 3** explains the delimitation of the single maritime boundary between Costa Rica and Nicaragua in the Pacific Ocean; and **Chapter 4** explains the delimitation of the single maritime boundary between the two States in the Caribbean Sea. Costa Rica’s Submissions are then set out.

1.13 Attached to this Memorial are 45 documentary annexes, provided in Volume II. A list of the annexes is provided at the end of this Volume I.

CHAPTER 2

FACTUAL AND LEGAL BACKGROUND

A. The Geography of the Areas in Dispute

2.1. Costa Rica and Nicaragua share a land boundary spanning the Central American isthmus from the Caribbean Sea to the Pacific Ocean. As such, both States have coastal territory facing both bodies of water. The coasts of the two States generate overlapping entitlements to maritime areas in the Pacific Ocean and, separately, the Caribbean Sea. A map of the region is provided at *Sketch-Map 2.1*.

(1) Pacific Ocean

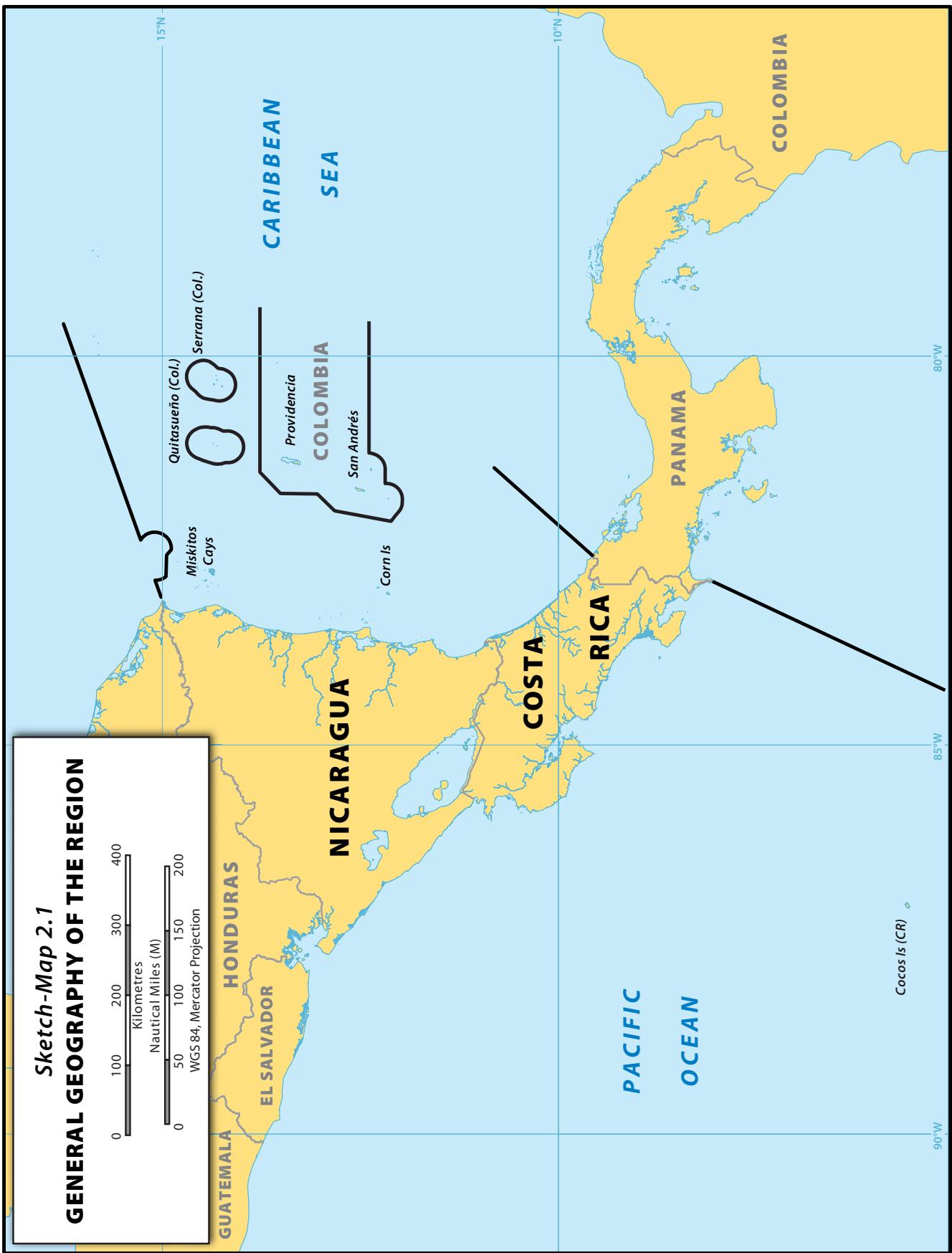
2.2. Costa Rica's Pacific coast stretches from the boundary with Nicaragua at Salinas Bay in the north to the boundary with Panama at Punta Burica in the south. The total length of Costa Rica's Pacific coast following the sinuosities of the coast is some 1200 kilometres.⁵ The general geography of the Pacific coasts of the Parties is provided at *Sketch-Map 2.2*.

2.3. Salient features along Costa Rica's Pacific coast include, from north to south, Punta Zacate, Punta Descartes, Punta Blanca, Punta Santa Elena, Islas Murcielagos, Cabo Velas, Punta Guiones, Cabo Blanco, Punta Herradura, Punta Llorona, Punta Salsipuedes, and Punta Burica. Coastal indentations along this coast include, from north to south, Santa Elena Gulf, Papagayo Gulf, Nicoya Gulf and Dulce Gulf. Costa Rica's Cocos Island sits approximately 270 nautical miles southwest of the Osa Peninsula.

2.4. Costa Rica has delimited maritime boundaries by agreement with all of its Pacific Ocean neighbours except Nicaragua. Costa Rica's delimited boundaries in the

⁵

This length measurement was taken from 1:50,000 scale coastal data measured along the natural configuration of the coast taking account of significant coastal islands but not including the coasts of small inlets, creeks or lagoons.





Pacific include those with Panama,⁶ Colombia⁷ and Ecuador.⁸ The boundaries with Colombia and Ecuador are between Cocos Island and Malpelo Island, and Cocos Island and the Galapagos Islands, respectively.

2.5. Costa Rica established a baseline system along its Pacific coast in 1988 that incorporates both normal baselines and straight baselines.⁹ Costa Rica claims a 12 nautical mile territorial sea, a 200 nautical mile exclusive economic zone measured from its baselines, and a continental shelf in accordance with international law, including from Cocos Island.¹⁰ In 2009 Costa Rica submitted a preliminary information document to the Commission on the Limits of the Continental Shelf regarding areas of continental shelf in the Pacific associated with the Cocos Ridge.¹¹ Nicaragua objected to this preliminary information.¹²

⁶ **Vol. II, Annex No 2**, 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 11 February 1982), reproduced in: J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries* (Dordrecht, Martinus Nijhoff Publishers, 1993), Vol I, p. 547.

⁷ **Vol. II, Annex No 3**, 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 the Treaty signed at San José on 17 March 1977, 6 April 1984 (entry into force 20 February 2001), 2139 UNTS 401.

⁸ **Vol. II, Annex No 4**, Convention on the Delimitation of Maritime and Submarine Areas between the Republics of Costa Rica and Ecuador, 12 March 1985 (not yet in force). This treaty was ratified by Ecuador, but not by Costa Rica. In 2012 Costa Rica and Ecuador began negotiations to conclude a new treaty that complied with the rules and principles of UNCLOS. The new treaty was signed on 21 April 2014, and has not yet been ratified by either party. See **Vol. II, Annex No 5**, Agreement on Maritime Delimitation between the Republic of Costa Rica and the Republic of Ecuador, 21 April 2014 (not yet in force).

⁹ **Vol. II, Annex No 8**, Costa Rica, Decree 18581-RE (concerning straight baselines in the Pacific Ocean), 14 October 1988.

¹⁰ **Vol. II, Annex No 6**, Costa Rica, Political Constitution, 7 November 1949, Articles 5 and 6.

¹¹ **Vol. II, Annex No 39**, Costa Rica, Preliminary Information Indicative of the Outer Limits of the Continental Shelf and Description of the Status of Preparation of Making a Submission to the Commission on the Limits of the Continental Shelf, May 2009.

¹² See **Vol. II, Annex No 17**, Note from the Minister of Foreign Affairs of Nicaragua to the Secretary-General of the United Nations, Reference MRE/DM-AJST/242/3/2010, 25 March 2010.

2.6. Nicaragua's Pacific coast stretches from the boundary with Costa Rica in the south to Punta Cosigüina on the Gulf of Fonseca in the north. The total length of Nicaragua's Pacific coast following the sinuosities of the coast is some 345 kilometres.¹³

2.7. Salient features along this coast include, from south to north, Punta Arranca Barba, Punta la Flor, Frailes Rocks, Punta Sucia, Punta Pie del Gigante, Punta Masachapa, Cabo Desolado, Peninsula Castañones, Isla de Limón, and Punta Cosigüina. The most pronounced coastal indentation along Nicaragua's Pacific coast is the indentation in front of Puerto Somoza.

2.8. Nicaragua has not delimited any of its boundaries in the Pacific Ocean.¹⁴

2.9. It appears that Nicaragua claims a 12 nautical mile territorial sea, a 24 nautical mile contiguous zone, a 200 nautical mile exclusive economic zone, and a 200 nautical mile continental shelf, all measured from normal baselines along its Pacific coast.¹⁵

(2) Caribbean Sea

2.10. Costa Rica's Caribbean coast stretches from the boundary with Nicaragua in the north to the boundary with Panama in the east. The total length of Costa Rica's Caribbean coast following the sinuosities of the coast is some 225 kilometres.¹⁶ The general geography of the Caribbean coasts of the Parties is provided at *Sketch-Map 2.3*.

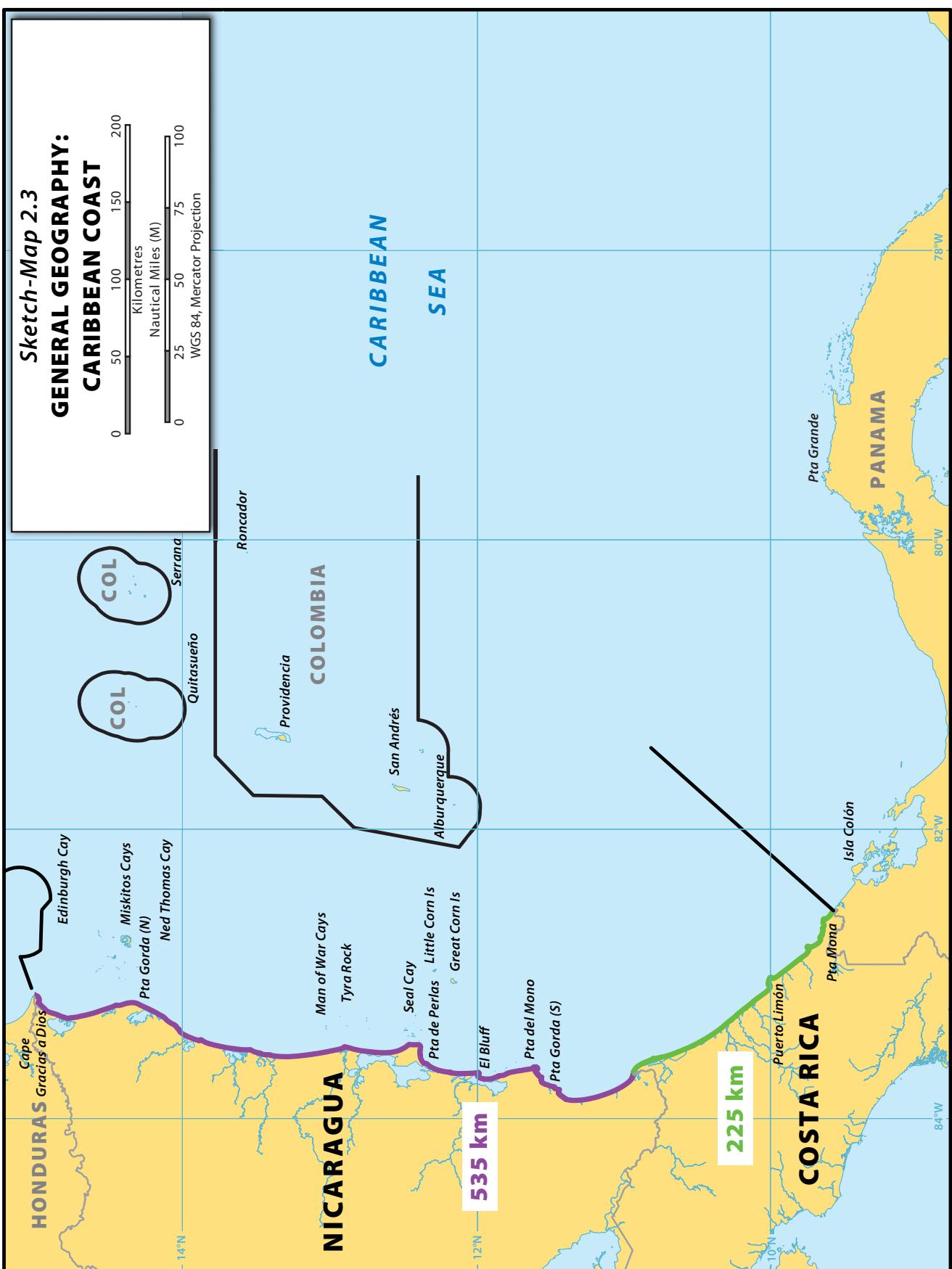
2.11. Salient features along this coast include, from north to south, the mouth of the San Juan River, the promontory at Puerto Limón, and Punta Mona. In the Caribbean,

¹³ See *supra* note 5.

¹⁴ There is a delimitation between Honduras and Nicaragua within the Gulf of Fonseca: see *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, para. 26.

¹⁵ **Vol. II, Annex No 10**, Nicaragua, Law No. 420 on Maritime Spaces, 15 March 2002.

¹⁶ See *supra* note 5.



Costa Rica has two small islands sitting within 0.5 nautical miles of its mainland coast, Isla Pájaros and Isla Uvita.

2.12. Costa Rica has delimited by agreement its Caribbean Sea maritime boundary with Panama.

2.13. In 1977, Costa Rica negotiated and signed a maritime boundary agreement with Colombia in the Caribbean: the 1977 Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Costa Rica and the Republic of Colombia, also known as the 1977 Facio-Fernández Treaty. 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 informed Colombia that, as a result of the Court's Judgment, it considered the 1977 Treaty impracticable and ineffective.¹⁷ 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.

2.14. As in the Pacific, in the Caribbean Costa Rica claims a 12 nautical mile territorial sea, a 200 nautical mile exclusive economic zone, measured from its baselines, and a continental shelf in accordance with international law.¹⁸

2.15. Nicaragua's Caribbean coast stretches from the boundary with Costa Rica in the south to the boundary with Honduras at Cape Gracias a Dios in the north. The total length of Nicaragua's Caribbean coast following the sinuosities of the coast is some 535 kilometres.¹⁹ Salient features along this coast include, from south to north, Punta Gorda (south), Punta del Mono, El Bluff, Punta de Perlas, Punta Gorda (north), and Cape Gracias a Dios. Numerous small islands and cays lie off Nicaragua's Caribbean

¹⁷ **Vol. II, Annex No 18**, Note from the Ambassador of Costa Rica in Colombia to the Coordinator of ICJ issues of the Ministry of Foreign Affairs of Colombia, Reference ECRICOL-13-097, 27 February 2013.

¹⁸ **Vol. II, Annex No 6**, Costa Rica, Political Constitution, 7 November 1949, Article 6.

¹⁹ See *supra* note 5.

coast. They include, from south to north, Isla del Pájaro Bobo, the Palmenta Cays, Silk Grass Cay, French Cay, Cayman Rock, Columbilla Cay, Seal Cay, Tyra Rock, Man of War Cays, Ned Thomas Cays, Miskito Cays, and Edinburgh Cay. Nicaragua's Little Corn Island and Big Corn Island sit approximately 30 nautical miles from the mainland coast. Coastal indentations include, from south to north, the indentation between San Juan del Norte and Punta del Mono and between Punta del Mono and Punta de Perlas.

2.16. Nicaragua has not established any maritime boundaries by agreement in the Caribbean Sea. Its maritime boundaries have been established by decisions of this Court with Honduras, to the north, and Colombia, to the east.

2.17. Nicaragua proclaimed a straight baselines system off its entire Caribbean coast in 2013,²⁰ which claim was manifestly not in accordance with international law and was duly protested by Costa Rica.²¹ As in the Pacific, in the Caribbean Nicaragua claims a 12 nautical mile territorial sea, a 24 nautical mile contiguous zone, a 200 nautical mile exclusive economic zone, and a continental shelf extending to a maximum distance of 350 nautical miles.²² More recently Nicaragua has claimed, through a submission to the Commission on the Limits of the Continental Shelf, sovereign rights to the natural resources of the continental shelf in areas extending more than 500 nautical miles from the nearest Nicaraguan territory and in areas within 200 nautical miles of other States' coasts.²³ In its communication to the Commission, Nicaragua asserted that there are no

²⁰ **Vol. II, Annex No 11**, Nicaragua, Executive Decree No 33-2013, 'Baselines of the Maritime Spaces of the Republic of Nicaragua in the Caribbean Sea', published in CXVII *La Gaceta* No. 161, 19 August 2013. See also **Vol. II, Annex No 43**, United Nations, Circular Communication from the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, Maritime Zone Notification of Nicaragua, 11 October 2013. See further below, para. 2.40.

²¹ **Vol. II, Annex No 25**, Note from the Permanent Representative of Costa Rica to the United Nations to the Secretary-General of the United Nations, Reference MCRONU-559-2013, 23 October 2013. See also **Vol. II, Annex No 26**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-AM-095-14, 24 February 2014.

²² **Vol. II, Annex No 10**, Nicaragua, Law No. 420 on Maritime Spaces, 15 March 2002.

²³ **Vol. II, Annex No 42**, Nicaragua, Executive Summary of Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea 1982, June 2013.

unresolved maritime disputes relating to its request. In a response communicated to the Secretary-General of the United Nations, Costa Rica noted that the two States have an unresolved maritime dispute.²⁴ In addition, Colombia, Costa Rica and Panama jointly protested Nicaragua's unfounded claims to continental shelf areas and other maritime areas not belonging to it.²⁵

B. Disagreements between the Parties as to their Delimitations

2.18. As the Court is well aware, Costa Rica and Nicaragua settled their land boundary in the Cañas-Jerez Treaty of Limits in 1858 (the *1858 Treaty of Limits*).²⁶ As part of the territorial settlement between both countries, Article IV of the 1858 Treaty established that both the Bay of Salinas in the Pacific Ocean and the Bay of San Juan del Norte in the Caribbean are common to both Republics.²⁷ However, neither the 1858 Treaty of Limits nor any other instrument delimited the maritime areas of the two States outside the common bays, either in whole or in part. There are unresolved disputes as to the maritime boundaries between the two States in the Pacific Ocean and the Caribbean Sea, as further set out below.

2.19. The earliest discussions between Costa Rica and Nicaragua on the subject of their maritime boundaries date back to the 1970s. Following a bilateral meeting in Nicaragua in 1976, a press release referred to the initiation of such discussions;²⁸ and the minutes of a bilateral meeting on 25 January 1977 indicate that the topic was also

²⁴ **Vol. II, Annex No 22**, Note from the Permanent Mission of Costa Rica to the Secretary-General of the United Nations, Reference MCRONU-438-2013, 15 July 2013.

²⁵ **Vol. II, Annex No 24**, Joint Note from the Presidents of Colombia, Panama and Costa Rica to the Secretary-General of the United Nations, Reference 13.488845, 23 September 2013.

²⁶ **Vol. II, Annex No 1**, Treaty of Limits between Costa Rica and Nicaragua (Cañas-Jerez), San José, 15 April 1858.

²⁷ *Ibid*, Article IV: “The Bay of San Juan del Norte, as well as the Salinas Bay, shall be common to both Republics, and, therefore, both the advantages of their use and the obligation to contribute to their defence shall also be common. ...”

²⁸ **Vol. II, Annex No 27**, Press Release of 26 October 1976, referring to the initiation of discussions of a maritime boundary in the Pacific Ocean, reproduced in Ministry of Foreign Affairs and Worship of Costa Rica, Annual Report 1976-1977, Vol. I, pp. 156-158.

discussed then.²⁹ However, no further action took place before or during the last two civil wars in Nicaragua that lasted for over a decade.

2.20. Twenty years later, at a bilateral meeting on 12-13 May 1997, in the Nicaraguan city of Granada, Costa Rica and Nicaragua discussed the re-establishment of negotiations in order to agree maritime boundaries. In the minutes of that meeting, it was mutually agreed to establish a bilateral Sub-Commission on Limits and Cartography. The Sub-Commission was given tasks preliminary to potential maritime delimitations on both sides of the isthmus. The minutes of the May 1997 meeting record:

“III. Working Group on Limits and Cartography

The Sub-Commission on Limits and Cartography will be in charge of executing the temporary desk studies regarding the possible maritime delimitations in the Pacific Ocean as well as the Caribbean Sea. These delimitation studies are technical and preliminary and do not prejudice the legal position or the sovereign rights of the respective States. Regarding this matter, the following was agreed:

1. The Sub-Commission on Limits and Cartography has established basic cartography that will serve to study the maritime issue:
 - a) Nautical Chart OMEGA No. 21540 for the Pacific Ocean.
 - b) Nautical Chart OMEGA No. 28005 for the Caribbean Sea.
 - c) Chart No. 1025 for Salinas Bay.
 - d) Topographical sheets at a scale of 1:250.000 of the Americas Series for the Pacific Ocean and the Caribbean Sea.
 - e) Topographical sheets at a scale of 1:50.000 of the Americas Series for the Pacific Ocean (Salinas Bay) and the Caribbean Sea (Punta Castilla).
 - f) Topographical sheet (Liberia) at a scale of 1:200.000.
 - g) Topographical sheet at a scales of 1:200.000 (Barra del Colorado) which will be provided by the NGI.
2. This Sub-Commission recommends that the legal documents to support the work that is to be done should be the following:
 - a) Jerez - Cañas Treaty of Limits, Nicaragua-Costa Rica of 1858
 - b) Grover Cleveland Award of 1888.

²⁹

Vol. II, Annex No 27, Minutes of Liberia meeting, Ministry of Foreign Affairs and Worship of Costa Rica, Annual Report 1976-1977, Vol. I, pp. 158-160.

- c) Engineer E.P. Alexander Award (Awards No.1 to 5)
 - d) Internal law of both countries
 - e) International legislation in force for both countries
3. The Sub-Commission on Limits and Cartography must present the study established in this chapter in the month of August of this year, at the latest, and for which a meeting of this Sub-Commission is foreseen for the harmonization of the technical studies and for the submission of the final proposal.
4. Recommend to the Security and Immigration Commission that while the Sub-Commission on Limits and Cartography prepares the necessary material for proposing a technical solution to the maritime issues, mutual cooperation alternatives be explored in order to deal with security and patrol problems along the border zone.”³⁰

2.21. Despite the interest expressed by both States in the commencement of negotiations, none took place until 2002. At that time, Nicaragua published an oil exploration and exploitation map showing concession areas offered by Nicaragua that encroached significantly into Costa Rica’s maritime areas in the Pacific and the Caribbean.³¹ On 26 August 2002, Costa Rica objected to the map and invited Nicaragua to commence negotiations to delimit their maritime boundaries.³² Nicaragua accepted Costa Rica’s invitation.³³

2.22. As a result, on 6 September 2002, the Vice Ministers of Foreign Affairs of Costa Rica and Nicaragua, Elayne Whyte and Salvador Stadthagen, met in San José. They agreed to instruct the bilateral Sub-Commission on Limits and Cartography to

³⁰ **Vol. II, Annex No 28**, Final Minutes of the IV Binational Nicaragua-Costa Rica Meeting, Granada, Nicaragua, 12-13 May 1997.

³¹ **Vol. II, Annex No 37**, Nicaraguan Institute of Energy, Map of areas for exploration and exploitation of hydrocarbons, 2002.

³² **Vol. II, Annex No 13**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-225-2002, 26 August 2002.

³³ **Vol. II, Annex No 14**, Note from the Minister of Foreign Affairs of Nicaragua to the Minister of Foreign Affairs and Worship of Costa Rica, Reference MRE/DM-JI-1221-08-02, 30 August 2002.

begin immediate negotiations.³⁴ In addition, they wrote a joint letter to the United Nations Secretary-General, requesting the assistance of the UN in the negotiation process.³⁵ In its response, the UN offered various forms of assistance, including in the preparation of maps and other technical support.³⁶

2.23. The Sub-Commission held five meetings between 2002 and 2005. As demonstrated by the minutes of the Sub-Commission and as explained further below, the initial meetings principally concerned the exchange of information preliminary to eventual delimitations.³⁷

2.24. There were also technical meetings held between the Costa Rican National Geographic Institute (**IGN**) and Nicaragua's Institute for Territorial Studies (**INETER**), on 16 January 2003,³⁸ on 29-30 September 2004,³⁹ and on 3-4 August 2005.⁴⁰

(1) Pacific Ocean

2.25. Regarding the delimitation in the Pacific Ocean, both countries agreed that before a delimitation proposal could be discussed, it was necessary first to establish the central point on the closing line of the Bay of Salinas.⁴¹ Thus, the work of the Sub-

³⁴ **Vol. II, Annex No 29**, Minute of the meeting of the Vice Ministers of Foreign Affairs of Costa Rica and Nicaragua, 6 September 2002.

³⁵ **Vol. II, Annex No 15**, Joint Note by the Vice Ministers of Foreign Affairs of Costa Rica and Nicaragua to the Secretary-General of the United Nations, 6 September 2002.

³⁶ **Vol. II, Annex No 16**, Note from the Under-Secretary-General of Legal Affairs of the United Nations to the Vice Minister of Foreign Affairs and Worship of Costa Rica, Reference 02-00087, 12 November 2002.

³⁷ **Vol. II, Annexes No 30, 32, 33, 36, 37**, Minutes of the Sub-Commission on Limits and Cartography, 2002-2005.

³⁸ **Vol. II, Annex No 31**, Minutes of the Technical meeting of the Sub-Commission on Limits and Cartography of 16 January 2003.

³⁹ **Vol. II, Annex No 34**, Minutes of the Technical meeting of the Sub-Commission on Limits and Cartography of 29-30 September 2004.

⁴⁰ **Vol. II, Annex No 35**, Minutes of the Technical meeting of the Sub-Commission on Limits and Cartography of 3-4 August 2005.

⁴¹ **Vol. II, Annex No 31**, Minutes of the Technical meeting of the Sub-Commission on Limits and Cartography of 16 January 2003.

Commission and the technical meetings were initially focused on reaching an agreement on the location of that point.

2.26. In 2003, IGN and INETER reached an agreement regarding the exact coordinates of the Bay of Salinas closing line endpoints, in Nicaragua and Costa Rica respectively.⁴² In the same year, the two States jointly erected markers to indicate the two closing line endpoints.⁴³ The midpoint of the closing line drawn from those two endpoints is at coordinates 11° 04' 00" N, 85° 44' 28" W.⁴⁴

2.27. At the fourth meeting of the Sub-Commission in June 2005, the two States exchanged delimitation proposals for the Pacific Ocean.⁴⁵ The proposals were similar regarding the equidistance line for delimitation in the territorial sea. There was, however, a substantial discrepancy between the two proposals insofar as the proposed delimitation line for the exclusive economic zone was concerned. This discrepancy was reflected in the minute of the fifth meeting of the Sub-Commission in August 2005:

“An analysis was carried out on the calculations on the adjacent area and exclusive economic zone presented by both countries. In this regard, it was noted that there continue to be substantial differences between the calculations. In order to advance on the acceptable methodology for both parties, the Technical Institutes were asked to formulate new calculations to try and find points of agreement as per the rules of the United Nations Convention on the Law of the Sea, which can be scientifically supported.”⁴⁶

⁴² **Vol. II, Annex No 39**, Nicaraguan Institute of Territorial Studies (INETER), Technical Study presented at the Third Meeting of the Sub-Commission of Limits and Cartography, 4 September 2003.

⁴³ **Vol. II, Annex No 32**, Minute of the Second Meeting of the Sub-Commission on Limits and Cartography of 25 March 2003; and **Vol. II, Annex No 33**, Minute of the Third Meeting of the Sub-Commission on Limits and Cartography of 4 September 2003.

⁴⁴ The coordinates are based on a Costa Rican proposal made at the Fourth Meeting of the Sub-Commission of Limits and Cartography, 30 June 2005, **Vol. II, Annex No 36**.

⁴⁵ **Vol. II, Annex No 36**, Minute of the Fourth Meeting of the Sub-Commission on Limits and Cartography of 30 June 2005.

⁴⁶ **Vol. II, Annex No 37**, Minutes of the Fifth Meeting of the Sub-Commission on Limits and Cartography of 22 August 2005.

2.28. The delegations of both countries agreed to further discuss the matter in a meeting scheduled to take place in Managua on 10 and 11 October 2005. However, Nicaragua unilaterally terminated the negotiations, asserting that it had done so because Costa Rica had commenced proceedings in the case concerning *Navigational and Related Rights*. Before the Court, the Agent of Nicaragua, Ambassador Argüello stated:

“It is well to recall the circumstances. Costa Rica had been claiming extensive rights in the San Juan River, including policing rights and other jurisdictional rights on the river. After Costa Rica filed an Application against Nicaragua before this Court on 29 September 2005 there was very little incentive to continue with these obviously futile meetings.”⁴⁷

2.29. On 5 March 2013, the Costa Rican Foreign Minister invited Nicaragua to recommence negotiations for maritime delimitation both in the Caribbean Sea and the Pacific Ocean. Costa Rica also proposed that the two States adopt a temporary equidistance line as a provisional arrangement of a practical character, in accordance with Articles 74(3) and 83(3) of UNCLOS.⁴⁸ Nicaragua declined to enter into discussions regarding the application of a provisional equidistance line and asserted that Costa Rica had never claimed a 200 nautical mile exclusive economic zone in the Caribbean.⁴⁹ In its response, Costa Rica reiterated its proposal that the two States adopt a provisional maritime agreement in accordance with UNCLOS.⁵⁰

2.30. In July 2013, Costa Rica became aware of new promotional material that Nicaragua had made available to oil companies for hydrocarbon exploration and exploitation, both in the Caribbean and Pacific.⁵¹ On 19 July 2013, Costa Rica wrote to

⁴⁷ *Territorial and Maritime Dispute (Nicaragua v. Colombia) Application for permission to intervene by Costa Rica*, Oral Proceedings, CR 2010/13, p. 17, para. 26 (Argüello).

⁴⁸ **Vol. II, Annex No 19**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-AM-113-13, 5 March 2013.

⁴⁹ **Vol. II, Annex No 20**, Note from the Minister of Foreign Affairs of Nicaragua to the Minister of Foreign Affairs and Worship of Costa Rica, Reference MRE-DM-205-4-13, 8 April 2013.

⁵⁰ **Vol. II, Annex No 21**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-AM-205-13, 17 April 2013.

⁵¹ **Vol. II, Annex No 41**, Nicaragua, Ministry of Energy and Mines, Petroleum Promotional Folder, 2012 **Vol. II**, See also **Vol II Annex No 42**, Nicaraguan Ministry of Energy and Mines, General information concerning exploration of hydrocarbons, 2012, Map on p 2.

Nicaragua to protest the depiction of hydrocarbon oil exploration and exploitation blocks in Costa Rican maritime spaces. It requested that Nicaragua withdraw the material and requested that Nicaragua re-commence the negotiations with Costa Rica that had been unilaterally suspended by Nicaragua in 2005.⁵² Nicaragua never responded to this request.

(2) Caribbean Sea

2.31. The pattern of negotiations between the two States on maritime delimitation in the Caribbean Sea essentially followed that in the Pacific. Following some earlier discussions, in a Minute of the Meeting signed by the Costa Rican and Nicaraguan Vice Ministers of Foreign Affairs on 6 September 2002, the two States agreed to initiate negotiations to define maritime boundaries in both the Pacific Ocean and Caribbean Sea.

2.32. In the region, there was a long-standing dispute between Nicaragua and Colombia on their maritime limits in the Caribbean, which was the subject of a case before this Court, instituted in December 2001, and resulting in a Judgment on the merits on 19 November 2012.⁵³ Costa Rica indicated that it would await the outcome of that dispute before engaging in bilateral discussions on the maritime boundary between it and Nicaragua in the Caribbean.⁵⁴

2.33. In 2002, when Nicaragua published a hydrocarbon exploration and exploitation map which encompassed areas within Costa Rica's Caribbean maritime zone (as to which, see paragraph 2.21 above), Costa Rica objected to the map and proposed that the two States commence negotiations on the limits in the Caribbean Sea.⁵⁵ Following

⁵² **Vol. II, Annex No 23**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-AM-393-13, 19 July 2013.

⁵³ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012.*

⁵⁴ **Vol. II, Annex No 28**, Final Minutes of the IV Binational Nicaragua-Costa Rica Meeting, Granada, Nicaragua, 12-13 May 1997, p.7.

⁵⁵ **Vol. II, Annex No 13**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-225-2002, 26 August 2002.

Nicaragua's acceptance of that proposal,⁵⁶ the two States commenced negotiations. The negotiations focussed, in the first instance, on the identification of the location on the Caribbean coast of Marker 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 1 is now several hundred meters seaward of the coast. Nicaragua subsequently suspended negotiations in October 2005.⁵⁷

2.34. In 2009, after the Court transmitted to Costa Rica relevant documents appertaining to the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Costa Rica took note of the positions of the parties, and in particular Nicaragua's claim that maritime areas in the Caribbean Sea which pertained to Costa Rica were areas in dispute between Nicaragua and Colombia. Nicaragua's position, reflected through several maps in its Counter Memorial in those proceedings, prompted Costa Rica to request permission to intervene.⁵⁸

2.35. In the hearings on Costa Rica's request to intervene held in October 2010, Nicaragua continued to minimize the area of Costa Rica's entitlements in the Caribbean Sea while claiming vast expanses for itself.⁵⁹ While the Court noted that both Nicaragua and Colombia recognise that Costa Rica has a legal interest in the Caribbean Sea in areas claimed by the parties,⁶⁰ it rejected Costa Rica's request to intervene by nine votes to seven.

⁵⁶ **Vol. II, Annex No 14**, Note from the Minister of Foreign Affairs of Nicaragua to the Minister of Foreign Affairs and Worship of Costa Rica, Reference MRE/DM-JI-1221-08-02, 30 August 2002.

⁵⁷ As noted in paragraph 2.28 above, Nicaragua unilaterally terminated the negotiations, asserting that it had done so because Costa Rica had commenced proceedings in the case concerning *Navigational and Related Rights* before the Court.

⁵⁸ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene by Costa Rica*, 25 February 2010.

⁵⁹ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene by Costa Rica*, Oral proceedings, CR 2010/13, p. 13, para. 14 (Argüello); see also pp. 32-33, paras. 16-17 (Reichler); pp. 36-34, paras. 27-41 (Reichler).

⁶⁰ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2011*, para. 65.

2.36. When Costa Rica invited Nicaragua to re-commence negotiations on 5 March 2013 (as to which see paragraph 2.29 above), Nicaragua responded by noting that Costa Rica had respected the limit agreed with Colombia in the unratified 1977 treaty.⁶¹ Even if the 1977 treaty had entered into force, it would have been *res inter alios acta* between Nicaragua and Costa Rica.⁶² But in fact the treaty was never ratified and it has no status or relevance in the present case.⁶³

2.37. In its 19 November 2012 Judgment on the merits in the *Nicaragua v. Colombia* case, the Court said:

“The Court notes that, while the agreements between Colombia, on the one hand, and Costa Rica, Jamaica and Panama, on the other, concern the legal relations between the parties to each of those agreements, they are *res inter alios acta* so far as Nicaragua is concerned. Accordingly, none of those agreements can affect the rights and obligations of Nicaragua vis-à-vis Costa Rica, Jamaica or Panama; nor can they impose obligations, or confer rights, upon Costa Rica, Jamaica or Panama vis-à-vis Nicaragua.”⁶⁴

2.38. As noted in paragraph 2.30 above, when Costa Rica became aware in 2013 of Nicaragua’s most recent hydrocarbon exploration and exploitation map and promotional materials – which also indicated significant infringements on Costa Rica’s Caribbean maritime area – Costa Rica wrote to Nicaragua to protest this action, and invited Nicaragua again to re-commence the negotiations that had been unilaterally suspended by Nicaragua in 2005.⁶⁵ Nicaragua never responded to this request.

⁶¹ **Vol. II, Annex No 20**, Note from the Minister of Foreign Affairs of Nicaragua to the Minister of Foreign Affairs and Worship of Costa Rica, Reference MRE-DM-205-4-13, 8 April 2013.

⁶² *Territorial and Maritime Dispute (Nicaragua v. Colombia), Application for permission to intervene by Costa Rica*, Oral proceedings, CR 2010/12, p. 25, para. 20 (Brenes).

⁶³ See **Vol. II, Annex No 21**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-AM-205-13, 17 April 2013.

⁶⁴ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, para. 162.

⁶⁵ **Vol. II, Annex No 23**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-AM-393-13, 19 July 2013.

2.39. On 24 June 2013, Nicaragua filed a submission with the Commission on the Limits of the Continental Shelf to establish the alleged outer limits of its continental shelf in the Caribbean Sea in areas beyond 200 nautical miles.⁶⁶ In the executive summary of that submission, Nicaragua stated “that there are no unresolved land or maritime disputes related to this submission.”⁶⁷ Considering that Nicaragua’s claimed continental shelf encompasses areas within Costa Rica’s maritime entitlements, Costa Rica protested the submission, noting the existence of a dispute between Costa Rica and Nicaragua.⁶⁸ In addition, Colombia, Costa Rica and Panama issued a joint protest against Nicaragua’s submission.⁶⁹

2.40. Since that time, Nicaragua has further aggravated the dispute between the two States by declaring straight baselines which extend into Costa Rica’s territorial sea. On 19 August 2013 Nicaragua issued Decree 33-2013 establishing straight baselines off Nicaragua’s Caribbean coast.⁷⁰ The southernmost segment, segment 8-9, would have the effect of converting part of Costa Rica’s territorial sea and exclusive economic zone into Nicaraguan internal waters and appears to attach to Costa Rican land (see *Sketch-Map 2.4*). After Nicaragua submitted its decree to the United Nations on

⁶⁶ **Vol. II, Annex No 45**, Circular Communication from the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, Receipt of the Submission made by the Republic of Nicaragua to the Commission on the Limits of the Continental Shelf, 1 July 2013.

⁶⁷ **Vol. II, Annex No 43**, Republic of Nicaragua, Executive Summary of Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea 1982, June 2013, para. 8, p. 2.

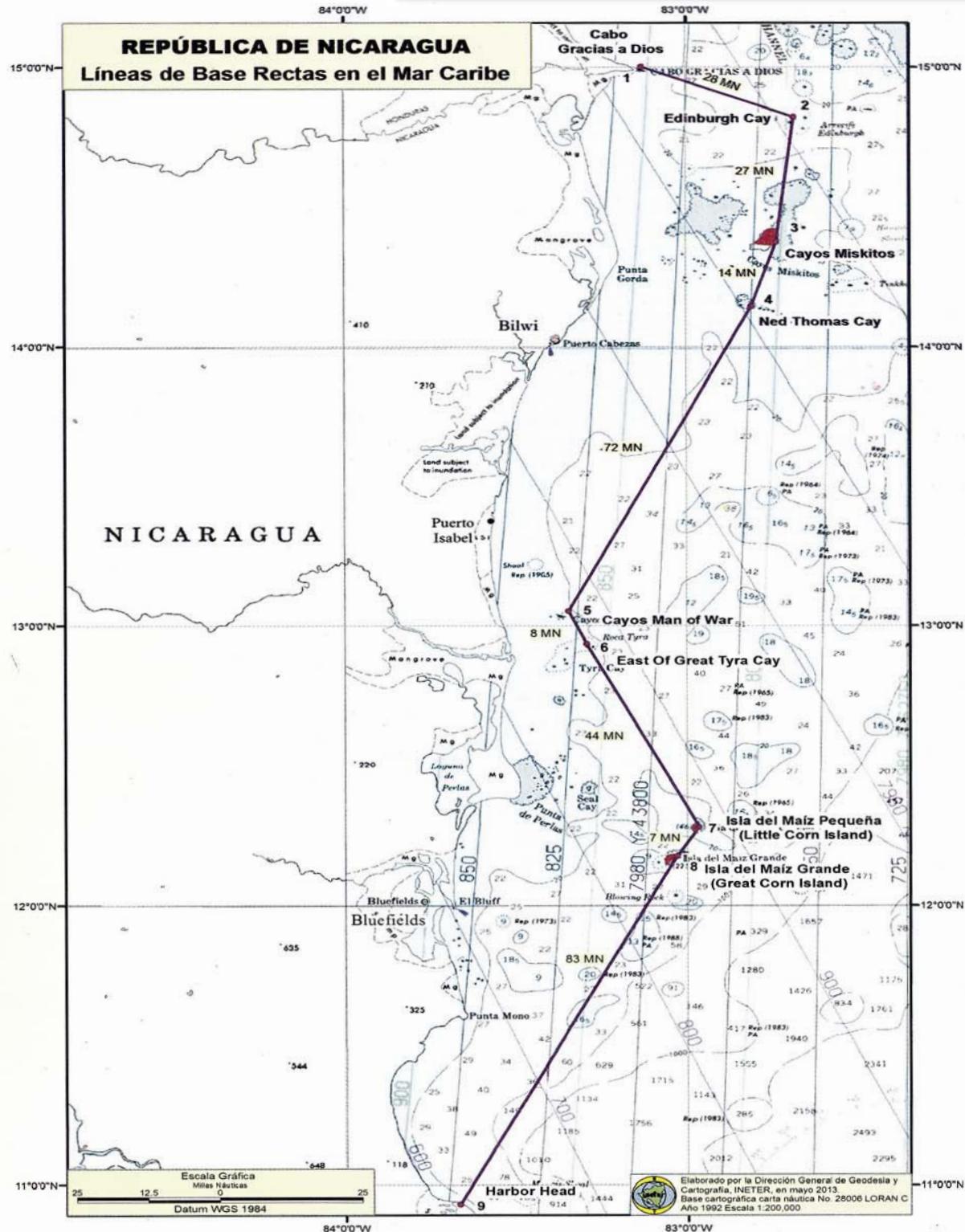
⁶⁸ **Vol. II, Annex No 22**, Note from the Permanent Mission of Costa Rica to the United Nations to the Secretary-General of the United Nations, Reference MCRONU-438-2013, 15 July 2013.

⁶⁹ **Vol. II, Annex No 24**, Joint Note from the Presidents of Colombia, Panama and Costa Rica to the Secretary-General of the United Nations, Reference 13.488845, 23 September 2013.

⁷⁰ **Vol. II, Annex No 11**, Nicaragua, Executive Decree No 33-2013, ‘Baselines for the maritime spaces of the Republic of Nicaragua in the Caribbean Sea’, published in CXVII *La Gaceta* No. 161, 19 August 2013. See also **Vol. II, Annex No 44**, United Nations, Circular Communication from the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, Maritime Zone Notification of Nicaragua, 11 October 2013.

ANEXO 2

Sketch-Map 2.4
NICARAGUA'S STRAIGHT BASELINE CLAIM



26 September 2013,⁷¹ Costa Rica notified the United Nations of its protest to the decree on 23 October 2013.⁷²

* * *

2.41. Considering these circumstances, it is apparent that there are disputes as to the maritime delimitation between Costa Rica and Nicaragua in the Pacific Ocean and also in the Caribbean Sea, and that the two States are unable to settle these disputes through diplomatic means.⁷³ In that context, Costa Rica has brought the present proceedings, requesting the Court to determine the complete course of the single maritime boundaries between all the maritime areas appertaining, respectively, to Costa Rica and to Nicaragua in the Caribbean Sea and in the Pacific Ocean.

C. Applicable Law

2.42. Both Costa Rica and Nicaragua are parties to UNCLOS. Costa Rica deposited its instrument of ratification on 21 September 1992, and Nicaragua did so on 3 May 2000. In accordance with Article 308(2), UNCLOS entered into force between them on 2 June 2000. Consequently, the principles of maritime delimitation to be applied by the Court in this case are determined by Article 15, and paragraph 1 of Articles 74 and 83 of UNCLOS.

2.43. The law on the delimitation of the territorial sea applicable between Costa Rica and Nicaragua is set out in Article 15 of UNCLOS, which provides as follows:

“Where the coasts of the 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

⁷¹ **Vol. II, Annex No 25**, Note from the Permanent Representative of Costa Rica to the United Nations to the Secretary-General of the United Nations, Reference MCRONU-559-2013, 23 October 2013.

⁷² *Ibid.*

⁷³ See, for example, **Vol. II, Annex No 26**, Note from the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, Reference DM-AM-095-14, 24 February 2014.

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

2.44. Articles 74 and 83 of the Convention govern the delimitation of the exclusive economic zone and continental shelf, respectively. The texts of these articles are identical, save that Article 74 refers to the exclusive economic zone and Article 83 to the continental shelf. Articles 74(1) and Article 83(1) provide, in relevant part:

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

2.45. The Court has played a key role in determining the precise content of these rules and the methodology to apply in maritime delimitation cases in order to achieve the requisite equitable solution. This well-established, three-step methodology was summarised by the Court, for example, in the *Black Sea* case, as follows:

“First, the Court will establish a provisional delimitation line, using methods that are geometrically objective and also appropriate for the geography of the area in which the delimitation is to take place. So far as delimitation between adjacent coasts is concerned, an equidistance line will be drawn unless there are compelling reasons that make this unfeasible in the particular case”;⁷⁴

“the Court will at the next, second stage consider whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result”;⁷⁵

“Finally, and at the third stage, the Court will verify that the line (a provisional equidistance line which may or may not have been adjusted by taking into account the relevant circumstances) does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line...A final check for an equitable outcome

⁷⁴ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 116.

⁷⁵ *Ibid*, para. 120.

entails a confirmation that no great disproportionality of maritime areas is evident by comparison to the ratio of coastal lengths.”⁷⁶

2.46. Subsequent decisions have affirmed this three-step methodology in the delimitation of maritime areas.⁷⁷

2.47. Costa Rica’s delimitation lines both in the Caribbean Sea and in the Pacific Ocean take into account the applicable rules and the methodology to be applied to them, and achieve an equitable solution. As will be explained below, the existence of relevant circumstances requires a shift of the provisional equidistance line in the Caribbean, while in the Pacific Ocean there are no such circumstances requiring an adjustment of the equidistance line.

⁷⁶ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 103, para. 122.

⁷⁷ *Maritime Dispute (Peru v Chile)*, Judgment, 27 January 2014, para. 180; *Territorial and Maritime Dispute (Nicaragua v Colombia)*, Judgment, I.C.J. Reports 2012, para. 190; *ITLOS, Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 233; and UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, paras. 270-276; see also paras. 341-345.

CHAPTER 3

THE DELIMITATION IN THE PACIFIC OCEAN

3.1 This Chapter addresses the delimitation between the adjacent coasts of Costa Rica and Nicaragua in the Pacific Ocean. After identifying the relevant coasts, relevant area, and starting point for the delimitation in the Pacific Ocean, this Chapter describes the appropriate delimitation of the territorial sea, exclusive economic zone and continental shelf.

A. The Relevant Coasts and Relevant Area

(1) *The relevant coasts*

3.2 As noted in Chapter 2, the Pacific mainland coasts of Costa Rica and Nicaragua are some 1,200 kilometres and 345 kilometres in length, respectively, measured in their entirety at the same scale along the natural configuration of the coasts. However, not all of these coasts are relevant to the maritime delimitation requested in the Pacific Ocean in this case.

3.3 As the Court has explained, the coasts that are relevant to the delimitation are those that “generate projections which overlap with projections from the coast of the other Party.”⁷⁸ Where maritime projections are limited to 200 nautical miles, only those parts of the coast within 200 nautical miles of the opposing party’s coast may be counted as relevant.⁷⁹ Here, the portion of Costa Rica’s Pacific coast extending from Punta Zacate to the Osa Peninsula is within 200 nautical miles of Nicaragua’s coast, and all of Nicaragua’s Pacific coast is within 200 nautical miles of Costa Rica’s coast.

3.4 Pure distance from the opposing party’s coast is not the only criterion for determining which part of the coast is relevant. The Court has noted that “[i]dentifying

⁷⁸ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 99. See also para. 77.

⁷⁹ *Ibid*, para. 101 (including as relevant coast Ukraine’s south-facing coast because it is within 200 nautical miles of Romania’s coast).

the relevant coastal geography calls for the exercise of judgment in assessing the actual coastal geography.”⁸⁰ This exercise of judgment has included assessments of coasts in deep indentations; sections of coast that face away from the area of overlapping potential entitlements; and sections of coast that face a third State and therefore would be relevant only for a delimitation with that third State.

3.5 In *Black Sea*, for example, the Court found that the coasts of the deep indentations of Karkinists’ka Gulf, Yahorlyts’ka Gulf and Dnieper Firth were not to be included in the relevant coast of Ukraine because the coasts of those embayments “face each other and their submarine extension cannot overlap with the extensions of Romania’s coast.”⁸¹ These deep indentations may be contrasted with Ukraine’s “less pronounced Gulf of Kalamits’ka”,⁸² and also Bangladesh’s Meghna River Estuary, which was described by the Tribunal as “open to the sea and generat[ing] projections that overlap with those of the coast of Myanmar”.⁸³ The coasts of these shallower indentations were included in the respective relevant coasts.⁸⁴ The maps depicting relevant coasts in these decisions are found at *Sketch-Map 3.1* and *Sketch-Map 3.2*.

3.6 In the instant case, the coasts of Costa Rica’s Nicoya Gulf face each other and fall to be excluded from Costa Rica’s relevant coast. In contrast, the coasts of Costa Rica’s less pronounced Papagayo Gulf and Santa Elena Gulf are open to the sea, generate projections that overlap with Nicaragua’s coastal projections, and must be included in Costa Rica’s relevant coast. Nicaragua’s Pacific coast has no deep indentations that should be excluded.

⁸⁰ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, para. 289

⁸¹ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 100.

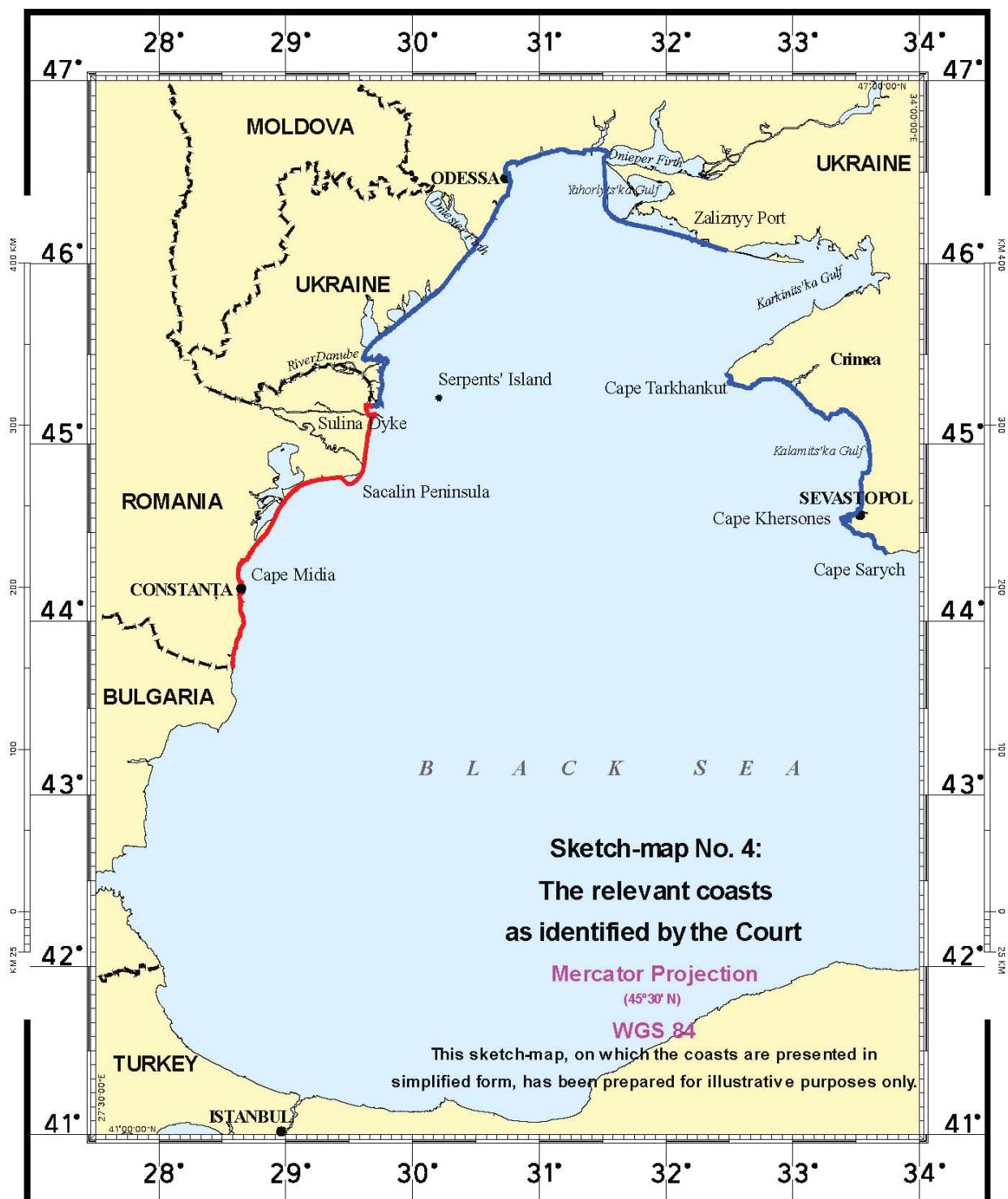
⁸² *Ibid*, para. 94.

⁸³ ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 200.

⁸⁴ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, Sketch Map 4; and also, ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 200.

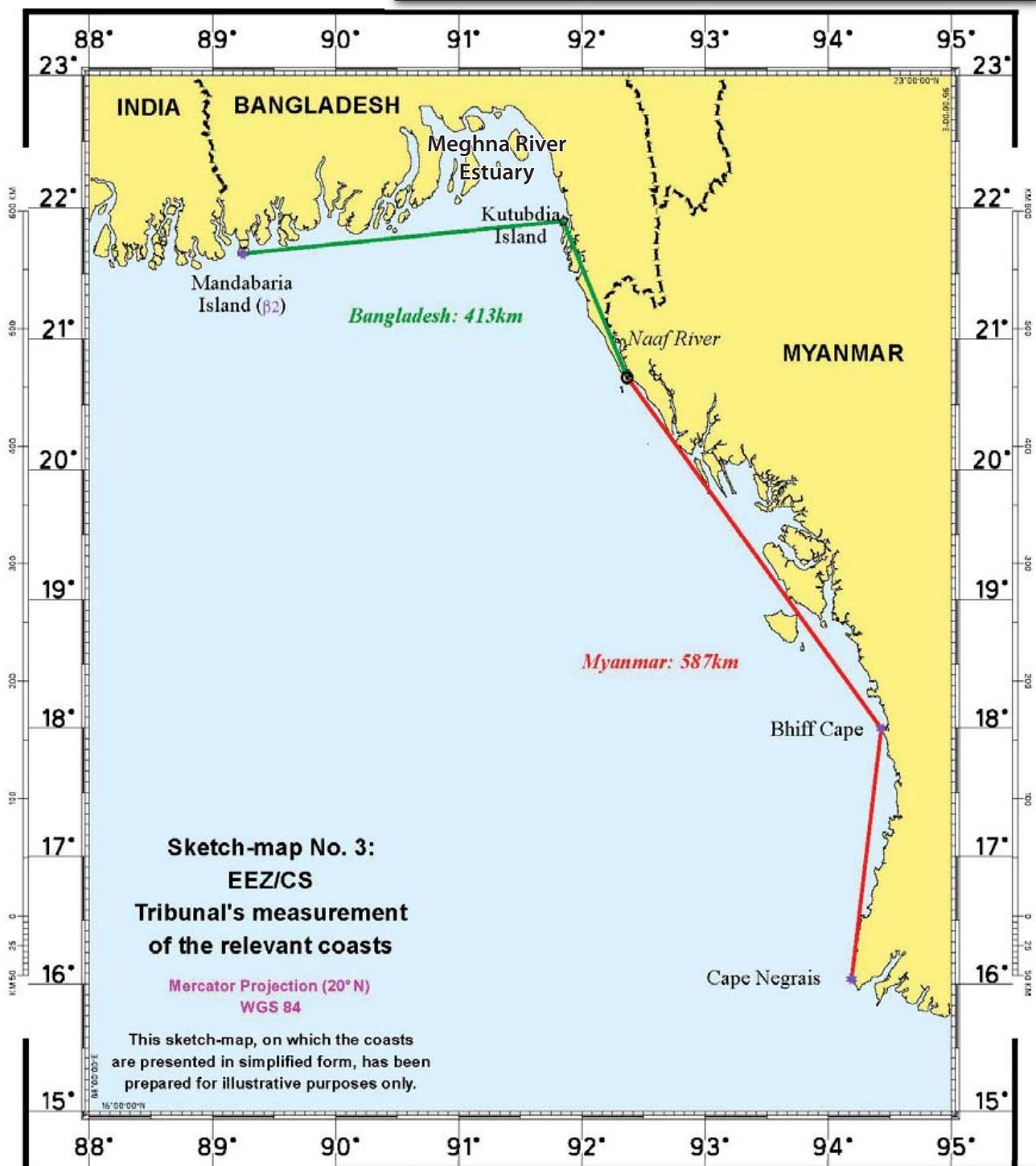
Sketch-Map 3.1
RELEVANT COASTS:
BLACK SEA

*Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment,
I.C.J. Reports 2009, Sketch-map No. 4.*



Sketch-Map 3.2
RELEVANT COASTS:
BANGLADESH/MYANMAR

ITLOS, Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment, 14 March 2012, Sketch-map No. 3.



3.7 In *Nicaragua v. Colombia*, the Court found that “the short stretch of [Nicaragua’s] coast near Punta de Perlas, which faces due south and thus does not project into the area of overlapping potential entitlements,” should be excluded from Nicaragua’s relevant coast in the delimitation with Colombia to the east.⁸⁵ Here, the south-eastern coast of Costa Rica’s Nicoya Peninsula faces southeast, away from Nicaragua’s coast to the northwest. This section of coast is not included in Costa Rica’s relevant coast.

3.8 In the Pacific, no part of the otherwise relevant coast of either Party faces the coast of a third State in such a way that it should be excluded from the relevant coast in this delimitation.

3.9 Traditionally, the Court and international tribunals have used straight-line approximations of coastal length for the purpose of measuring relevant coasts,⁸⁶ sometimes using multiple straight line segments to account for complex geographic configurations.⁸⁷ This approach has the benefit of “establish[ing] the necessary balance

⁸⁵ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, para. 145.

⁸⁶ See, e.g. *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, para. 98; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, para. 131; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, para. 221; *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, Award, 14 February 1985, XIX RIAA 149, para. 97; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, para. 68; *Delimitation of Maritime Areas between Canada and France (St. Pierre and Miquelon)*, Award (1992) 31 ILM 1145, para. 33; *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment, I.C.J. Reports 1993, para. 61 and Sketch Map 2; ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 201, 204 and Sketch Map 3; and UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 281.

⁸⁷ See, e.g. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, para. 131; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, para. 221; *Delimitation of the Maritime Boundary between Guinea and Guinea-Bissau*, Award, 14 February 1985, XIX RIAA 149, para. 97; *Delimitation of Maritime Areas between Canada and France (St. Pierre and Miquelon)*, Award (1992) 31 ILM 1145, para. 33; ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*,

between States with straight, and those with markedly concave or convex coasts, or to reduce very irregular coastlines to their truer proportions.”⁸⁸ This approach also serves “to avoid difficulties caused by the sinuosity of the coast and to ensure consistency in measuring the respective coasts of the Parties.”⁸⁹ For the Pacific coasts of the Parties, the straight line approach yields relevant coastal lengths of 415 kilometres for Costa Rica and 300 kilometres for Nicaragua, or a relevant coast ratio of 1.4 (Costa Rica) : 1 (Nicaragua) (see *Sketch-Map 3.3*).

3.10 More recently, the Court has used the natural configuration of the coast to measure relevant coastal length.⁹⁰ In *Tunisia/Libya*, the Court applied both approaches.⁹¹ There the Court specified that measurement along the natural configuration of the coast would not “tak[e] account of small inlets, creeks and lagoons,” but it did include significant islands situated close to shore as part of the coastline.⁹² When this approach is applied to coasts drawn at the same scale it can provide a fair accounting of the actual lengths of relevant coasts. When applied to the Pacific coasts of the Parties, the natural configuration approach yields relevant coastal lengths of 670 kilometres for Costa Rica and 345 kilometres for Nicaragua, or a relevant coastal length ratio of 1.9 (Costa Rica) : 1 (Nicaragua) (see *Sketch-Map 3.4*).

(2) *The relevant area*

3.11 As with the relevant coasts, only a subset of the total maritime area appertaining to the Parties is relevant for the purpose of delimitation. The relevant area “comprises

Judgment, 14 March 2012, paras. 201, 204; and UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 281.

⁸⁸ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, para. 98.

⁸⁹ 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.

⁹⁰ See, e.g. *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, paras. 145 and 151 and Sketch Map no. 6; *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, paras. 88 and 103 and Sketch Map No. 4.

⁹¹ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, para. 131.

⁹² *Ibid*, para. 131 (including the island of Jerba in the coastline of Tunisia).





that part of the maritime space in which the potential entitlements of the parties overlap.”⁹³ Maritime areas will not be included in the relevant area unless both parties have an entitlement based on international law to sovereign rights and jurisdiction in that area (i.e. the area within 200 nautical miles of the coasts of both parties). Maritime areas in which third States have an interest will also be excluded.⁹⁴ The relevant area is principally relevant to determine, in the third stage of the delimitation process, whether the line developed in the first and second stages would result in a “significant disproportion”⁹⁵ or “gross disproportion”⁹⁶ and to “make a broad assessment of the equitableness of the result”.⁹⁷ Therefore, the calculation of the relevant area need not be precise.⁹⁸ In any event, where the exact interests of third States are not known, it is not possible to attain a high level of precision in calculating the relevant area.⁹⁹

3.12 Here, the relevant area comprises those areas within 200 nautical miles of the coasts of both Parties. There are no agreed or judicially determined boundaries within this area of overlapping entitlements, but some allowance must be made to account for the interests of third States to the north of Nicaragua, specifically Honduras and

⁹³ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, para. 159; see also *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, para. 75 (“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”).

⁹⁴ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, para. 163 (“Accordingly, if either Party has no entitlement in a particular area, whether because of an agreement it has concluded with a third State or because that area lies beyond a judicially determined boundary between that Party and a third State, that area cannot be treated as part of the relevant area for present purposes”).

⁹⁵ *Maritime Dispute (Peru v. Chile), Judgment*, 27 January 2014, para. 194.

⁹⁶ *Barbados v. Trinidad and Tobago, Award*, RIAA, Vol XXVII, para. 238.

⁹⁷ *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, para. 75.

⁹⁸ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, para. 158 (“The calculation of the relevant area does not purport to be precise but is only approximate”).

⁹⁹ The Court faced this situation in *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 114, with respect to Bulgaria and Turkey (“However where areas are included solely for the purpose of approximate identification of overlapping entitlements of the Parties to the case, which may be deemed to constitute the relevant area ..., third party entitlements cannot be affected”).

El Salvador. With those States in mind, Costa Rica has used a perpendicular to the Chamber's Gulf of Fonseca closing line to limit the relevant area.¹⁰⁰ This approach results in a relevant area in the Pacific Ocean measuring approximately 202,800 square kilometres, which is depicted at *Sketch-Map 3.5*.

B. The Starting Point of the Delimitation

3.13 The starting point of the maritime delimitation in the Pacific Ocean is the centre point on the closing line of Salinas Bay at 11° 04' 00" N, 85° 44' 28" W.¹⁰¹ The end points of this closing line on the headlands of Punta Zacate (Costa Rica) and Arranca Barba (Nicaragua) were agreed and demarcated in a joint effort carried out from 22 to 26 April 2003.¹⁰² One of the purposes of this exercise was to allow the calculation of the centre point on the closing line from which the Pacific maritime boundary would begin.¹⁰³ For the sake of clarity, it should be noted that the starting point of the maritime delimitation at the centre of the bay closing line is a different point than the land boundary terminus defined in the 1858 Treaty of Limits. The terminus of the land boundary separating the exclusive territories of the two parties is located on the shore of the common Bay of Salinas. Isla Bolaños, located within the bay and a Costa Rican wildlife refuge,¹⁰⁴ has no effect on the starting point of the delimitation.

¹⁰⁰ *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, I.C.J. Reports 1992*, para. 432.

¹⁰¹ The coordinates are based on a Costa Rican proposal made at the Fourth Meeting of the Sub-Commission of Limits and Cartography, 30 June 2005, **Vol. II, Annex No 36**.

¹⁰² **Vol. II, Annex No 33**, Minutes of the Third Meeting of the Sub-Commission of Limits and Cartography, 4 September 2003, p. 3 (“In the case of the Pacific, they presented the results of the location of the points, as indicated by the minutes of the Costa Rica-Nicaragua Demarcation Commission (Alexander Commission 1897-1900), both in Punta Arranca Barba (Nicaragua) and in the point furthest to the west of the land next to Punta Zacate (Costa Rica) and the markers erected, work that was performed by both countries simultaneously from 22 to 26 April.”).

¹⁰³ Nicaraguan Institute of Territorial Studies (INETER), Technical Study presented at the Third Meeting of the Sub-Commission of Limits and Cartography, 4 September 2003, **Vol. II, Annex No 39** (“The coordinates of these markers in the World Geodetic System 1984 (WGS-84), will be used to calculate the starting point of the maritime delimitation between Nicaragua and Costa Rica in the aforementioned Bay”).

¹⁰⁴ **Vol. II, Annex No. 7**, Costa Rica, Executive Decree N° 12307-A, 13 February 1981, published in La Gaceta N° 41 of 27 February 1981, see also **Vol. II, Annex No. 9**, Costa Rica, Executive



C. The Territorial Sea Delimitation

3.14 Pursuant to Article 15 of UNCLOS and the maritime delimitation jurisprudence of the Court and international tribunals, the territorial sea boundary will follow the median line unless there is a claim of historic title or other special circumstances which would require a delimitation at variance with the median line. Neither Party claims historic title to maritime areas beyond the Salinas Bay closing line. Nor are there any special circumstances that would require a territorial sea delimitation that does not follow the median line. Special circumstances are most often associated with particular coastal geography or difficulties in determining the location of the starting point of the delimitation. Here, the Parties have agreed that the starting point is at the centre of the Salinas Bay closing line. Moreover there are no unusual or unbalanced coastal features that might constitute special circumstances. Both Parties have a few widely dispersed, very small islets just off their coasts, such as the Costa Rican islets off Punta Zacate and Punta Descartes and Nicaragua's Frailes Rocks and islets off Punta La Flor. All of these small features are within several hundred metres of the mainland coast and have only negligible effects on the course of the median line in the territorial sea. With no claims to historic title beyond the Salinas Bay closing line and no special circumstances, the delimitation of the territorial sea between Costa Rica and Nicaragua follows the median line from the agreed starting point at the centre point of the Salinas Bay closing line to the intersection of the arcs forming the outer limits of the 12 nautical mile territorial seas of the parties. The coordinates of the starting point in the Pacific (SP-P) and the equidistant turning points on the territorial sea median line are provided in Table 3.1. The basepoints used to construct this line are derived from US NGA Chart 21547 as agreed by the Parties.¹⁰⁵ Costa Rican features that influence the direction of this line include islets just off Punta Zacate and Punta Descartes and points on Punta Blanca.

Decree N° 20792-MIRENEM, September 1991, published in La Gaceta N° 212, 6 November 1991.

¹⁰⁵ **Vol. II, Annex 37**, Minutes of the Fifth Meeting of the Sub-Commission of Limits and Cartography, San José, Costa Rica, 22 August 2005, p. 3 ("for the first twelve miles corresponding to the territorial sea both countries would use the nautical chart 21547 with scale 1:75,000").

Nicaraguan features that influence the direction of this line include points on Punta Arranca Barba and Punta La Flor and islets lying offshore these features, Frailes Rocks, and Punta Sucia, the southern headland of the Bay of San Juan del Sur. The median line separating the territorial seas of the Parties in the Pacific Ocean is shown at *Sketch-Map 3.6*.

Table 3.1 Pacific Territorial Sea Median Line Turning Point Coordinates

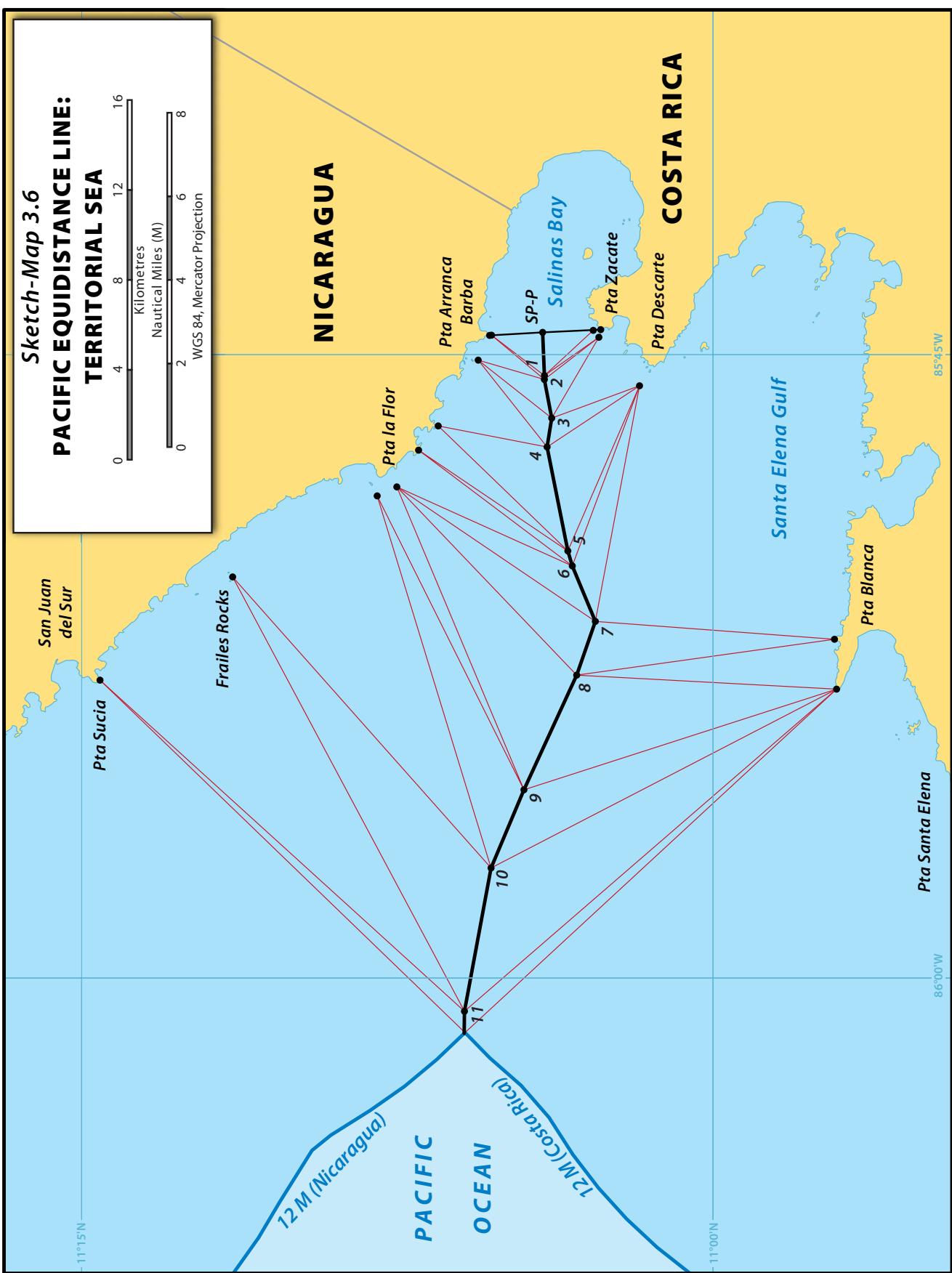
Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
SP-P (starting point – Pacific)	11 04 00.0	85 44 28.0
1	11 03 57.6	85 45 30.3
2	11 03 57.7	85 45 35.9
3	11 03 47.2	85 46 31.7
4	11 03 53.8	85 47 13.4
5	11 03 24.2	85 49 43.5
6	11 03 17.9	85 50 05.1
7	11 02 45.0	85 51 25.2
8	11 03 11.6	85 52 42.8
9	11 04 26.8	85 55 28.3
10	11 05 13.7	85 57 21.2
11	11 05 51.6	86 00 48.1
Intersection of median line with 12 M territorial sea limits		

D. The Delimitation of the Exclusive Economic Zone and the Continental Shelf

3.15 The delimitation of the exclusive economic zone and continental shelf must be effected on the basis of international law in order to achieve an equitable solution. In this section, the three-step method developed by the Court and international tribunals for achieving such an equitable solution is applied as between the Parties in the Pacific Ocean.

(1) The provisional equidistance line in the Pacific Ocean

3.16 The first step involves the construction of a provisional equidistance line between the nearest points on the coasts of the two States. This line “is plotted on



strictly geometrical criteria on the basis of objective data”¹⁰⁶ by applying the equidistance method to “the most appropriate points on the coasts of the two States concerned”.¹⁰⁷ Both Parties have several small insular features along their coasts. Most of these islets and rocks are not capable of generating exclusive economic zone or continental shelf entitlements and have been disregarded in the construction of the provisional equidistance line. Costa Rican coastal features that influence the provisional equidistance line include Punta Santa Elena and Cabo Velas. Nicaraguan coastal features that influence the provisional equidistance line include Punta Sucia, Punta Pie del Gigante, and Punta Masachapa. The resulting line trends north of west from the intersection of the 12 nautical mile territorial sea arcs before curving to south of west as basepoints along more of Nicaragua’s coast begin to influence the direction of the line. The provisional equidistance line ends at the intersection of the outer limits of the Parties’ respective exclusive economic zones. The coordinates of the provisional equidistance line turning points are provided at Table 3.2 and the line is shown on *Sketch-Map 3.7*.

¹⁰⁶ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 118.

¹⁰⁷ *Ibid*, para. 117.

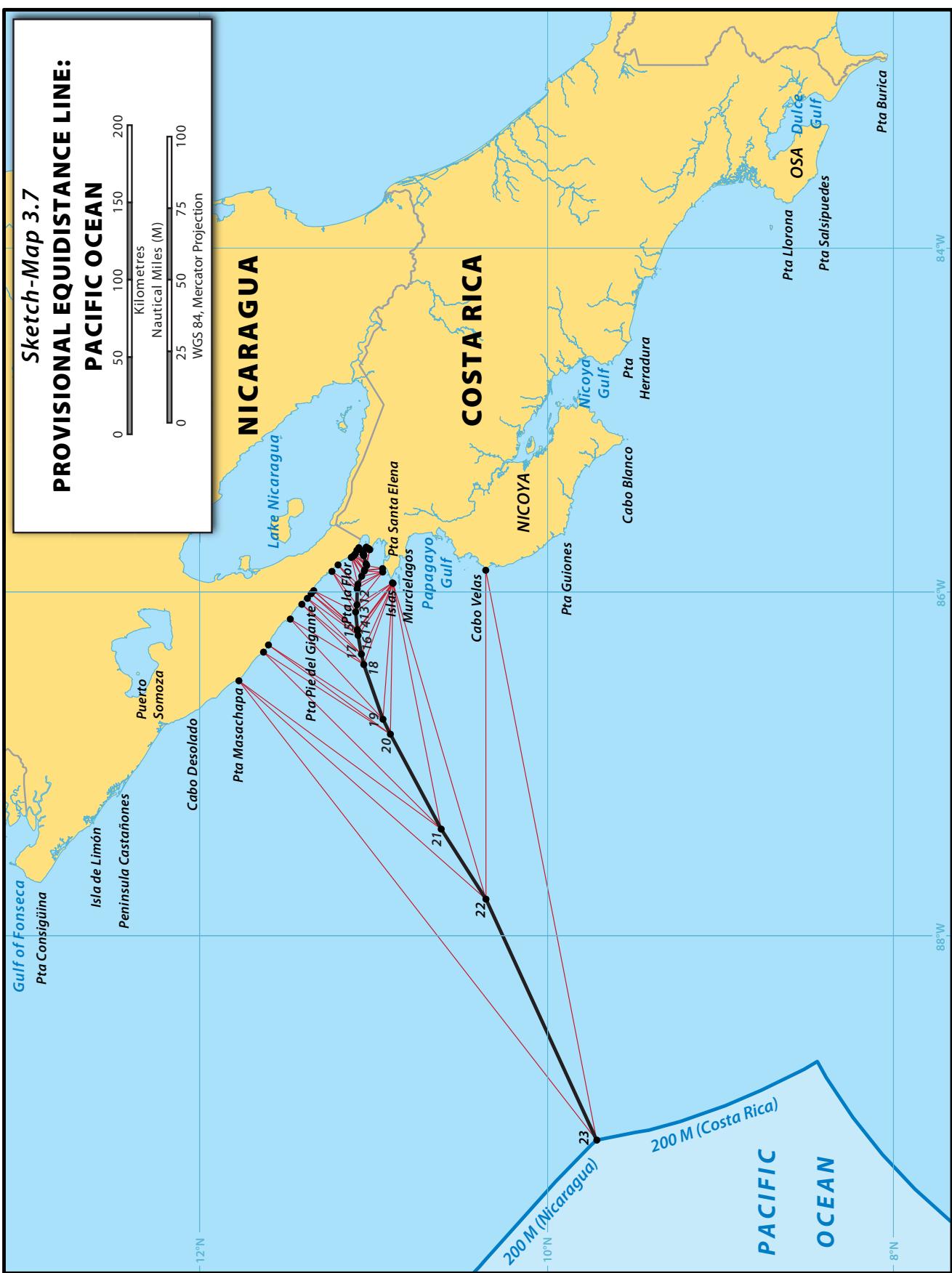


Table 3.2 Pacific Provisional Equidistance Line Turning Point Coordinates

Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
Intersection of median line with 12 M territorial sea limits		
12	11 05 54.2	86 04 31.5
13	11 06 22.0	86 07 00.4
14	11 05 45.4	86 13 10.2
15	11 05 43.7	86 13 28.7
16	11 05 30.9	86 15 09.8
17	11 04 22.2	86 21 43.8
18	11 03 32.6	86 25 21.2
19	10 56 56.3	86 44 27.0
20	10 54 22.7	86 49 39.5
21	10 36 50.6	87 22 47.6
22	10 21 23.2	87 47 15.3
23 (intersection with 200M limit)	09 43 05.7	89 11 23.5

(2) There are no relevant circumstances calling for an adjustment

3.17 The second step involves “consider[ing] whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result”.¹⁰⁸

3.18 To the extent that the Court and international tribunals have considered it necessary to adjust a provisional equidistance line to account for relevant circumstances, those relevant circumstances have largely been related to coastal geography. They have included such circumstances as cut off caused by a coastal concavity;¹⁰⁹ significant

¹⁰⁸ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 120.

¹⁰⁹ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, para. 89; ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 292-293; and UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 408.

disparities in coastal length;¹¹⁰ and small offshore features “which, if given full effect, would ‘distort the boundary and have disproportionate effects’”.¹¹¹

3.19 None of these relevant circumstances are present in the Pacific delimitation in this case. There is no coastal concavity that would create a cut off effect for either Party to this dispute. Nicaragua’s Pacific coastline is notably straight, meeting with the equally straight coast of El Salvador at an obtuse angle more than 170 nautical miles from the maritime delimitation starting point on the Bay of Salinas closing line. Costa Rica has a slightly convex coastal configuration in the Pacific. The provisional equidistance line allows both Parties to enjoy their full 200 nautical mile entitlement. It does not create a cut off effect in the Pacific for either Party.

3.20 Although the lengths of the relevant coasts of the Parties are not equal, the disparity is not sufficiently large to constitute a relevant circumstance. By any measure, Costa Rica’s Pacific coast is longer than Nicaragua’s, with ratios ranging from 1.4:1 to 1.9:1 in Costa Rica’s favour depending on the way coastal length is measured. Although this is the level of disparity that caused the Chamber of the Court to adjust the line in *Gulf of Maine*,¹¹² Costa Rica does not consider that this coastal disparity calls for an adjustment of the provisional equidistance line in its favour in this case. On the other hand, there is a disparity of coastal lengths in favour of Costa Rica, making all allowances, and this powerfully reinforces the conclusion that there should be no adjustment to the provisional equidistance line adverse to Costa Rica.

¹¹⁰ *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment, I.C.J. Reports 1993, para. 69 (coastal length ratio 1:9); *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, paras. 67-68 (coastal length ratio 1:8); but see *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, para. 222 (adjusting boundary to reflect coastal length ratio 1:1.38).

¹¹¹ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Judgment, I.C.J. Reports 2001, para. 247, quoting *Continental Shelf case (France/United Kingdom)*, XVIII RIAA 114, para. 244.

¹¹² *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, para. 222.

3.21 Finally, both Parties have a series of small islets along their coasts, but basepoints on these features were not included in the calculation of the provisional equidistance line and therefore need not be considered in this second step.

3.22 Thus there are no relevant circumstances requiring an adjustment to the provisional equidistance line between Costa Rica and Nicaragua in the Pacific Ocean.

(3) *The requested delimitation does not lead to any marked disproportion*

3.23 In the third and final step, the Court and international tribunals consider whether the delimitation line developed in the first two steps “lead[s] to any significant disproportionality by reference to the respective coastal lengths and the apportionment of areas that ensue.”¹¹³ As the Court noted in *Nicaragua v. Colombia*, “its task, at this third stage, is not to attempt to achieve even an approximate correlation between the ratio of the lengths of the Parties’ relevant coasts and the ratio of their respective shares of the relevant area. It is, rather, to ensure that there is not a disproportion so gross as to ‘taint’ the result and render it inequitable.”¹¹⁴ This *ex post* exercise of comparing the relevant coast ratio with the relevant area ratio “remains in each case a matter for the Court’s appreciation, which it will exercise by reference to the overall geography of the area.”¹¹⁵

3.24 The overall geography of the area in the Pacific in this case is quite straightforward and, not surprisingly under these geographic circumstances, the length and area ratios are nearly identical. The unadjusted provisional equidistance line divides the relevant area 130,700 square kilometres (Costa Rica) to 72,100 square kilometres (Nicaragua) creating a relevant area ratio of 1.8 (Costa Rica): 1 (Nicaragua). The division of the relevant area by the provisional equidistance line is depicted at *Sketch-*

¹¹³ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 210.

¹¹⁴ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, para. 242.

¹¹⁵ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 213.

Map 3.8. The relevant coast ratios in the Pacific range from 1.4 (Costa Rica): 1 (Nicaragua) to 1.9 (Costa Rica): 1 (Nicaragua). Costa Rica's relevant coast is longer than Nicaragua's and the portion of the relevant area retained by Costa Rica is larger than that retained by Nicaragua. There is more than an "approximate correlation" between these ratios, and there is no significant disproportion indicating an inequitable result.

3.25 The unadjusted provisional equidistance line thus achieves the requisite equitable solution in the Pacific Ocean.

3.26 From the starting point of the maritime delimitation at the centre point of the agreed Salinas Bay closing line (Point SP-P) at coordinates $11^{\circ} 04' 00''$ N, $85^{\circ} 44' 28''$ W, the maritime boundary between Costa Rica and Nicaragua in the Pacific Ocean follows the equidistance line until it meets the intersection of 200 nautical mile arcs measured from the coasts of the Parties (Point 23) at coordinates $09^{\circ} 43' 05.7''$ N, $89^{\circ} 11' 23.5''$ W. The complete list of maritime boundary turning point coordinates is provided in Table 3.3 below and the line is shown on *Sketch-Map 3.8*.

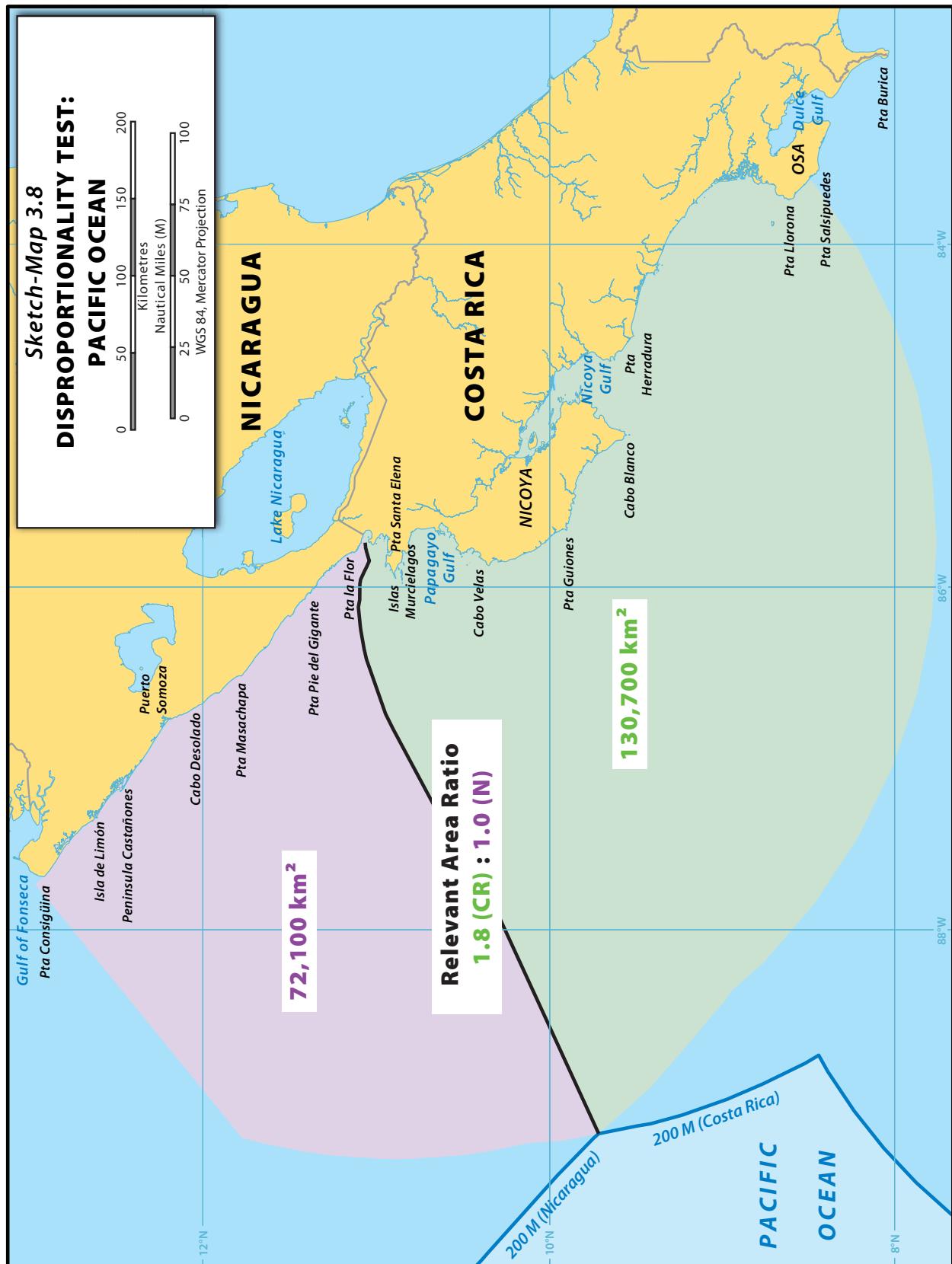


Table 3.3 Pacific Maritime Boundary Turning Point Coordinates

Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
SP-P (starting point – Pacific)	11 04 00.0	85 44 28.0
1	11 03 57.6	85 45 30.3
2	11 03 57.7	85 45 35.9
3	11 03 47.2	85 46 31.7
4	11 03 53.8	85 47 13.4
5	11 03 24.2	85 49 43.5
6	11 03 17.9	85 50 05.1
7	11 02 45.0	85 51 25.2
8	11 03 11.6	85 52 42.8
9	11 04 26.8	85 55 28.3
10	11 05 13.7	85 57 21.2
11	11 05 51.6	86 00 48.1
12	11 05 54.2	86 04 31.5
13	11 06 22.0	86 07 00.4
14	11 05 45.4	86 13 10.2
15	11 05 43.7	86 13 28.7
16	11 05 30.9	86 15 09.8
17	11 04 22.2	86 21 43.8
18	11 03 32.6	86 25 21.2
19	10 56 56.3	86 44 27.0
20	10 54 22.7	86 49 39.5
21	10 36 50.6	87 22 47.6
22	10 21 23.2	87 47 15.3
23 (intersection with 200M limit)	09 43 05.7	89 11 23.5

CHAPTER 4

THE DELIMITATION IN THE CARIBBEAN SEA

4.1 This Chapter addresses the delimitation between Costa Rica and Nicaragua in the Caribbean Sea. Although the coastal and political geography are different in the Caribbean as compared with the Pacific Ocean, the applicable law (discussed in Chapters 2 and 3 above) is the same. In this Chapter, after identifying the relevant coasts, relevant area, and starting point for the delimitation in the Caribbean Sea, the appropriate delimitation of the territorial sea, exclusive economic zone and continental shelf will be described.

A. The Relevant Coasts and Relevant Area

(1) *The relevant coasts*

4.2 As noted in Chapter 2, the Caribbean mainland coasts of Costa Rica and Nicaragua are approximately 225 kilometres and 535 kilometres in length, respectively, measured in their entirety at the same scale along the natural configuration of the coasts. However, not all of these coasts are relevant to the maritime delimitation requested in the Caribbean Sea in this case.

4.3 The entire Costa Rican Caribbean coast is within 200 nautical miles of Nicaragua's coast, but only that portion of Nicaragua's coast south of Punta Gorda (N) is within 200 nautical miles of Costa Rica's coast.

4.4 As noted in Chapter 3, pure distance from the opposing party's coast is not the only criterion for determining which coast is relevant. In order to identify the relevant coasts, it is also necessary to assess coastlines within deep indentations, sections of coast that face away from the area of overlapping potential entitlements, and sections of coast that face a third State and therefore are relevant only for delimitation with that third State.

4.5 The Caribbean coasts of the Parties have no deep indentations, and therefore no part of either coast should be excluded on this basis. Nor do any parts of the Caribbean coasts of the Parties face away from the area of overlapping potential entitlements. However, a significant section of Nicaragua’s Caribbean coast faces, and is only relevant for delimitation with, a third State: Colombia.

4.6 In *Cameroon v. Nigeria*, the Court defined the relevant coasts of the adjacent parties. Cameroon argued that its entire coastline should be considered relevant to the delimitation with Nigeria, but the Court found that “[t]he part of the Cameroon coastline beyond Debundsha Point faces Bioko. It cannot therefore be treated as facing Nigeria so as to be relevant to the maritime delimitation between Cameroon and Nigeria”.¹¹⁶ The red arrows that have been added to the Court’s map at *Sketch-Map 4.1* indicate those parts of the Cameroon coastline that do not face Bioko (long arrows) and those parts of the coastline that do face Bioko and that are, therefore, not relevant to the delimitation between Cameroon and Nigeria (short arrows). The Court’s reasoning was based on the fact that “the presence of Bioko makes itself felt from Debundsha, at the point where the Cameroon coast turns south-south-east.”¹¹⁷ The Court continued: “Bioko is not an island belonging to either of the two Parties. It is a constituent part of a third State, Equatorial Guinea.”¹¹⁸ In the absence of Equatorial Guinea’s territory, Cameroon’s coastline east of Debundsha Point would have been included in Cameroon’s relevant coast: Cameroon’s entire coast is within 200 nautical miles of Nigeria’s and all of it projects into the area of overlapping entitlements. However, the presence of the territory of a third State facing Cameroon’s coast resulted in approximately three quarters of Cameroon’s coast being excluded from the coast relevant to the delimitation between Cameroon and Nigeria.

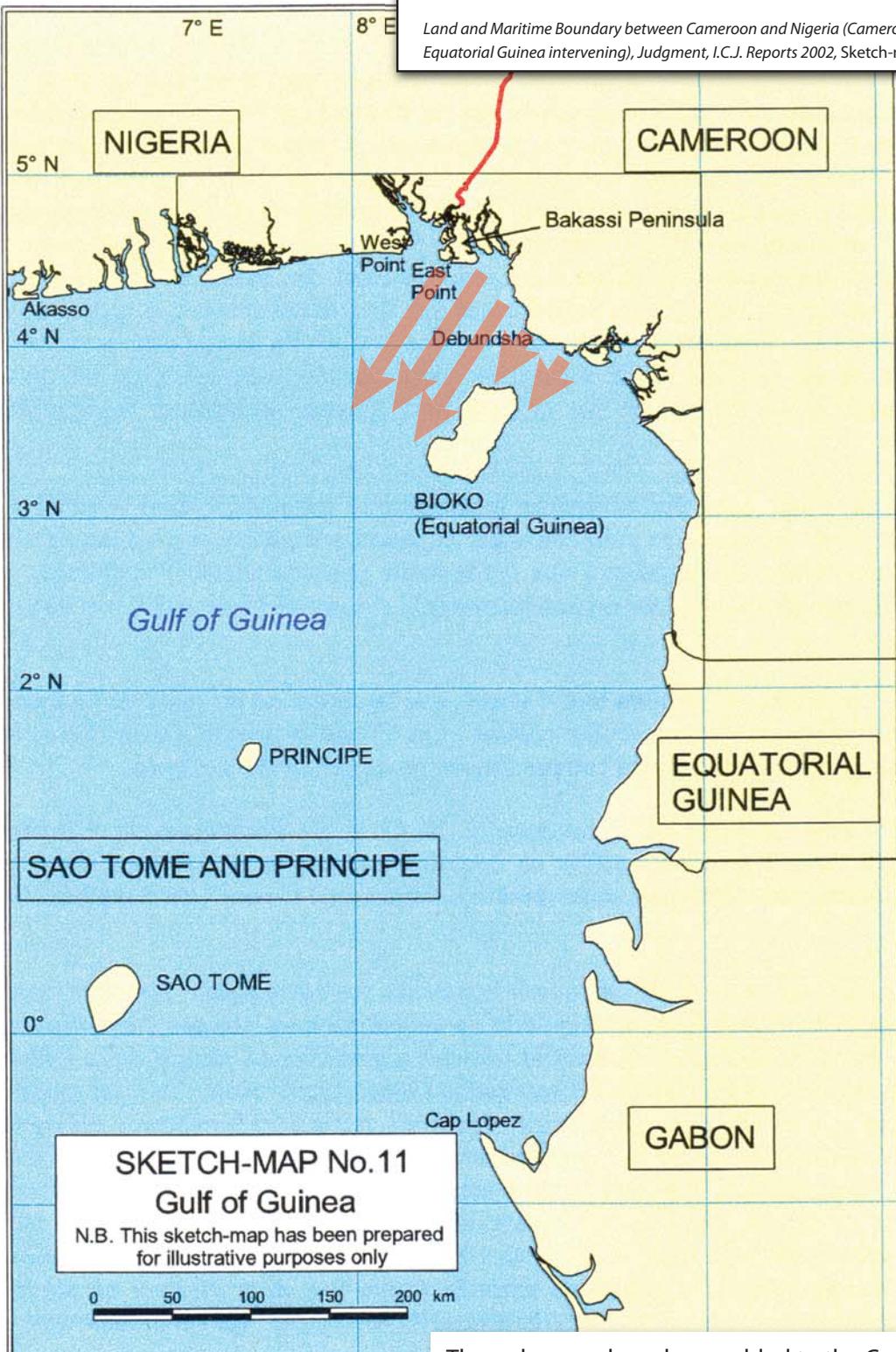
¹¹⁶ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, para. 291.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

Sketch-Map 4.1
CAMEROON'S COASTAL PROJECTION:
CAMEROON v. NIGERIA

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, Sketch-map No. 11.



The red arrows have been added to the Court's map.

4.7 As in *Cameroon v. Nigeria*, the coastal relationship between the Parties in the Caribbean is one of adjacency, with the territory of a third State, Colombia, including its islands of San Andrés, Providencia and Santa Catalina “situated opposite the mainland coast of Nicaragua.”¹¹⁹

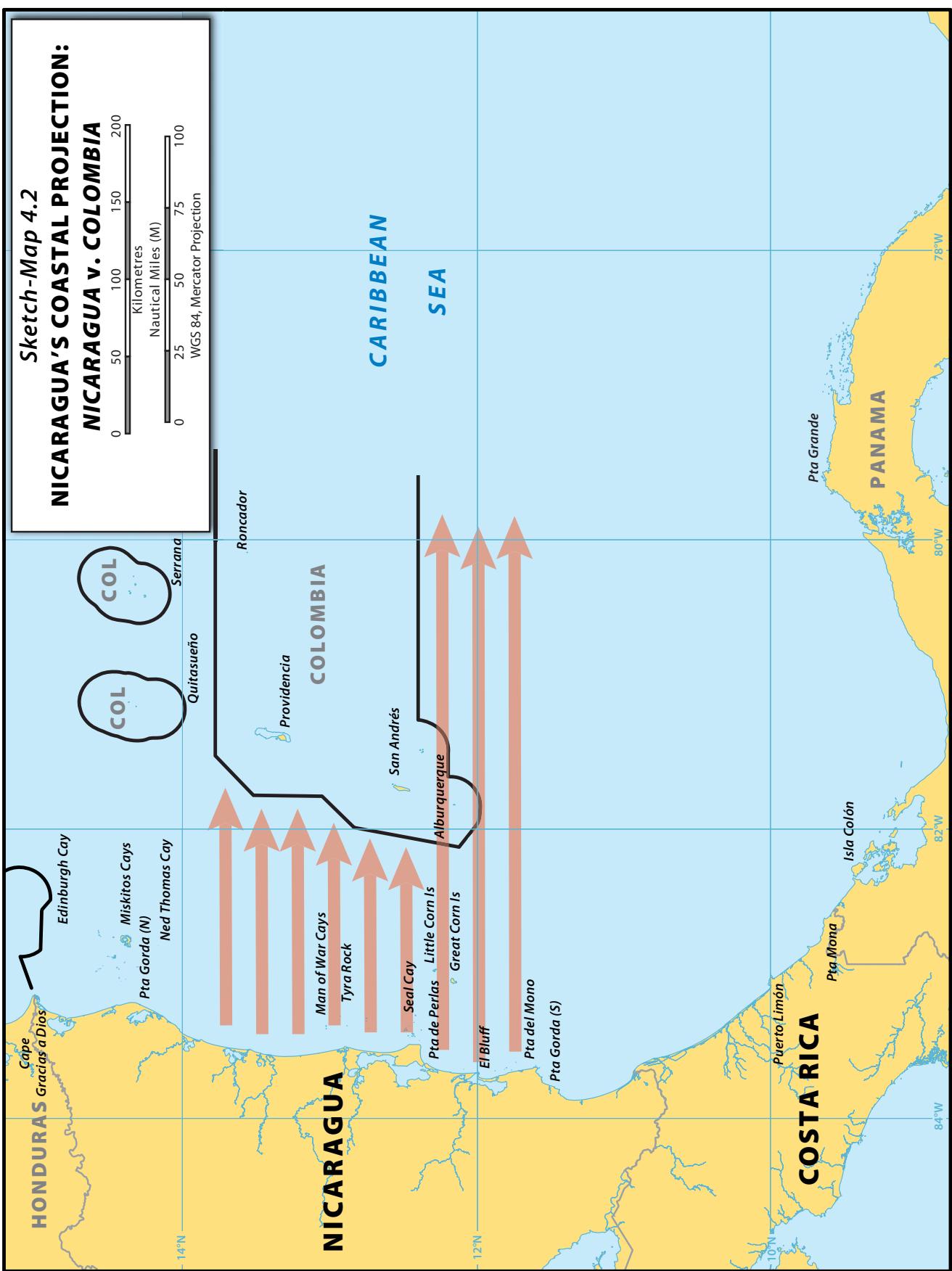
4.8 The Court’s judgment in *Nicaragua v. Colombia* provides some insight into the coastal relationship between the parties to that case. First, with the exception of the short south-facing section of Nicaragua’s coast near Punta de Perlas, Nicaragua’s entire coast was found to be relevant in the delimitation with Colombia. Second, the overall geographical context was held to be an important consideration, especially insofar as cutting off the projections of the parties’ coasts was concerned. Third, in an attempt to find “a solution in which neither Party is cut off from the entirety of any of the areas into which its coasts project”,¹²⁰ the Court is understood to have found that the part of Nicaragua’s Caribbean coast north of approximately 12° 24' 09" N latitude (the southern latitude of the boundary between Nicaragua and Colombia) did not project beyond Colombia’s islands.¹²¹ This is the approximate latitude of Punta de Perlas, Nicaragua. The Court’s approach to Nicaragua’s coasts is illustrated at *Sketch-Map 4.2*. As in *Sketch-Map 4.1*, the red arrows indicate those parts of the Nicaragua coastline that do not face Colombia (long arrows) and those parts of the coastline that do face Colombia and that are not relevant to the delimitation between Costa Rica and Nicaragua (short arrows).

4.9 Nicaragua’s coastline north of Punta de Perlas faces Colombia. It cannot be treated as facing Costa Rica so as to be relevant to the maritime delimitation between Costa Rica and Nicaragua. While Costa Rica’s entire Caribbean coast should be

¹¹⁹ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, para. 22.

¹²⁰ *Ibid*, para. 229.

¹²¹ See *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, Sketch Map 11 and dispositif at para. 251.



considered relevant coast, Nicaragua's coast north of Punta de Perlas should be excluded from the relevant coast for this delimitation.

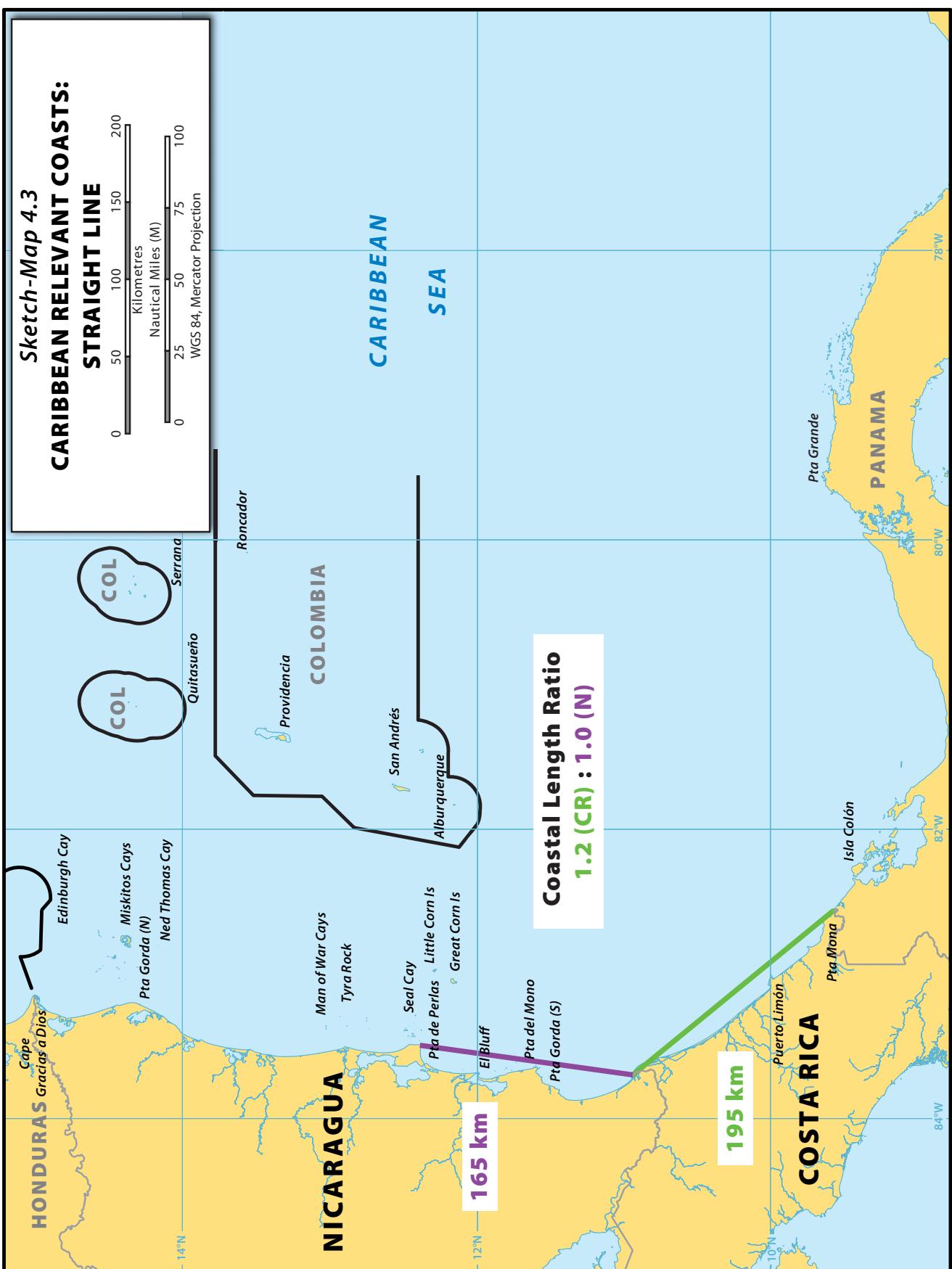
4.10 As noted in Chapter 3, the Court and international tribunals have used two different methods for measuring the length of relevant coasts once the extent of those coasts has been determined: measuring straight line approximations of the relevant coast; and measuring along the natural configurations of the relevant coast. For the Caribbean coasts of the Parties, the straight-line approach yields relevant coastal lengths of 195 kilometres for Costa Rica and 165 kilometres for Nicaragua, which produces a relevant coast ratio of 1.2:1 in favour of Costa Rica (see *Sketch-Map 4.3*). Alternatively, the natural configuration approach yields relevant coastal lengths of 225 kilometres for Costa Rica and 215 kilometres for Nicaragua, producing a relevant coastal length ratio of slightly more than 1:1 in favour of Costa Rica (see *Sketch-Map 4.4*).

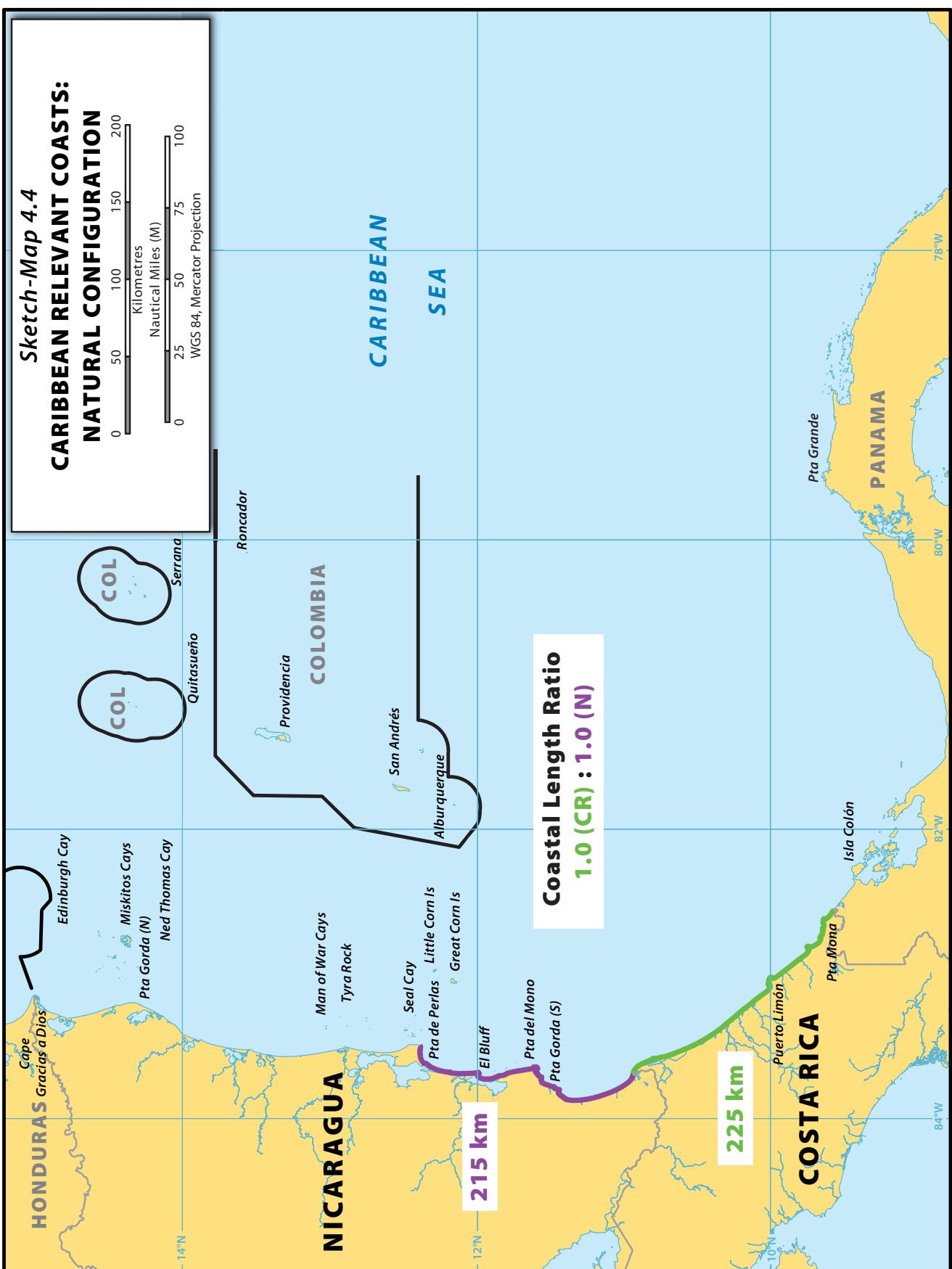
(2) *The relevant area*

4.11 The relevant area is determined by using the same approach as that taken in the Pacific, which is described in Chapter 3 above. Any area in which one of the Parties has no entitlement will be excluded from the relevant area. A State may have no entitlement to maritime area either because that area is beyond the outer limits of any claim in accordance with international law to sovereign rights and jurisdiction, or because it is beyond a boundary delimited with a neighbouring State.¹²²

4.12 Here, like in the Pacific, the relevant area comprises those areas within 200 nautical miles of the coasts of both Parties, because the area of overlapping entitlements does not extend beyond 200 nautical miles. However, unlike in the Pacific, there are established maritime boundaries with third States which affect the relevant area: one judicially-determined boundary (between Nicaragua and Colombia) and one

¹²² *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, para. 163 (“Accordingly, if either Party has no entitlement in a particular area, whether because of an agreement it has concluded with a third State or because that area lies beyond a judicially determined boundary between that Party and a third State, that area cannot be treated as part of the relevant area for present purposes”).





agreed boundary (between Costa Rica and Panama). As a result of the Court’s Judgment in *Nicaragua v. Colombia*, Nicaragua can have no rights in the area adjudged to be Colombia’s,¹²³ and therefore Colombia’s maritime area should not be included in a calculation of the relevant area in this case. Similarly, the maritime boundary agreed between Costa Rica and Panama defines the limit of Costa Rica’s maritime area to the southeast. Areas beyond that agreed line fall outside the relevant area. Costa Rica adopts, for the purpose of defining the relevant area in this case, a line that continues along the direction of the agreed boundary between Costa Rica and Panama in order to close the relevant area. This notional line, used solely for the purpose of defining the relevant area in this case, cannot affect the rights of Panama, nor prejudice Costa Rica in its relations with Panama.¹²⁴ The resulting relevant area in the Caribbean Sea measures approximately 104,700 square kilometres and is depicted on *Sketch-Map 4.5*.

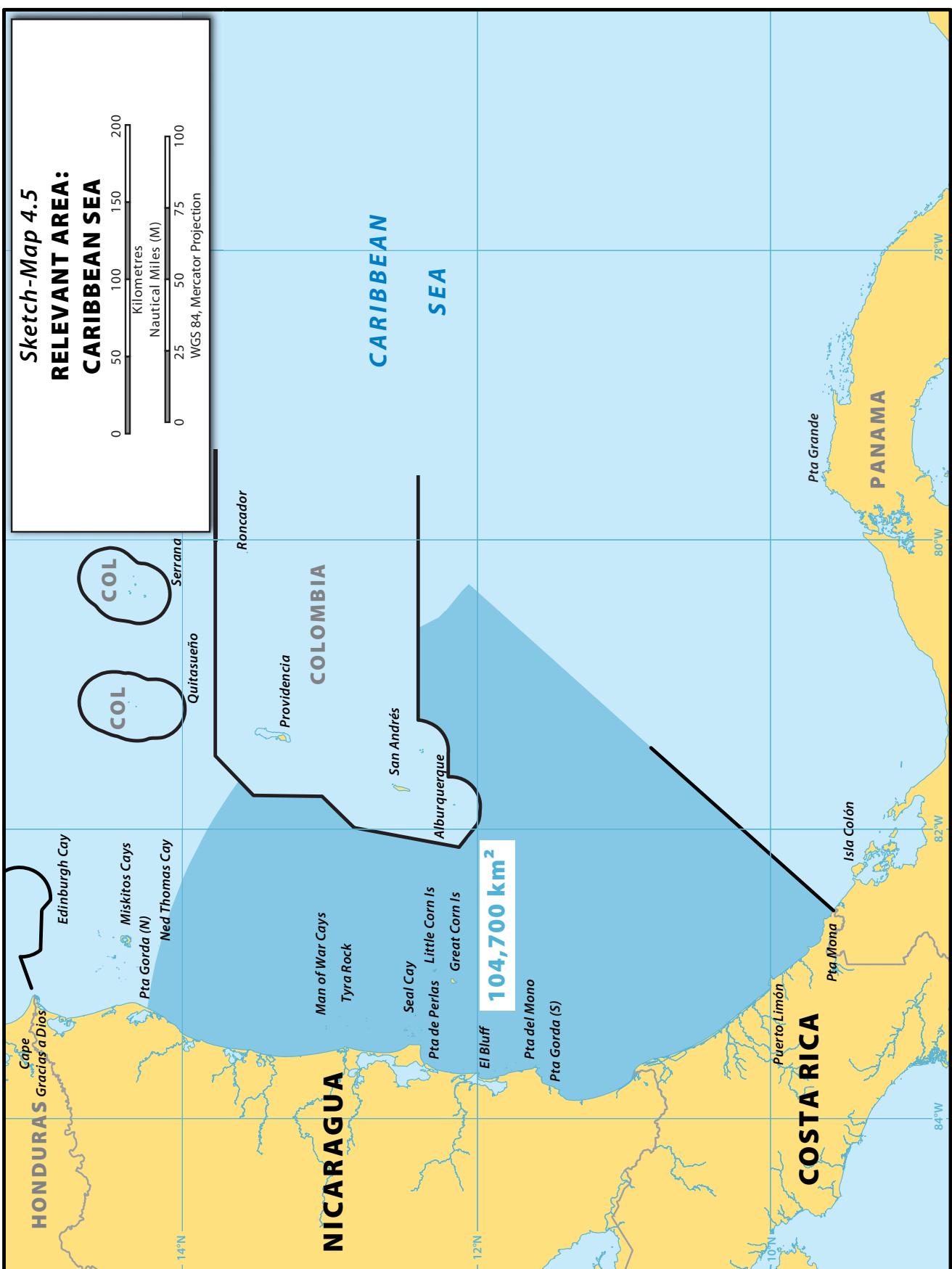
B. The Starting Point of the Delimitation

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 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.

4.14 The land boundary dividing the territories of the two States was delimited by agreement in the 1858 Treaty of Limits. Article II of the 1858 Treaty established that “The dividing line between the two Republics, starting from the Northern Sea

¹²³ See *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, para. 162 (with respect to the Court’s 2007 Judgment between Nicaragua and Honduras in the context of defining relevant area “Nicaragua can have no rights to the north of that line and Honduras can have no rights to the south”).

¹²⁴ The Court faced an analogous situation in *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 114, with respect to Bulgaria and Turkey (“However where areas are included solely for the purpose of approximate identification of overlapping entitlements of the Parties to the case, which may be deemed to constitute the relevant area . . . , third party entitlements cannot be affected”).



[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".¹²⁵ As a result of coastal change during the intervening century and a half, Punta de Castilla, which was once a prominent feature in the landscape, is now much diminished, and the San Juan River, which once flowed into the Bay of San Juan del Norte, now flows directly into the Caribbean Sea.¹²⁶

4.15 The Caribbean starting point (SP-C) and the modern geography at the mouth of the San Juan River are illustrated on *Sketch-Map 4.6* which is composed of two satellite images captured in September 2013¹²⁷ and September 2014.¹²⁸ This same area is depicted on the most recent 1:50,000 scale map produced by Nicaragua's Institute for Territorial Studies (**INETER**) (see *Sketch-Map 4.7*). The INETER map, numbered 3448-1 and titled "San Juan de Nicaragua", first appeared in January 2011, when Nicaragua claimed sovereignty over part of Isla Portillos for the first time.¹²⁹ Irrespective of the incorrect depiction of the land boundary, which Costa Rica has disclaimed,¹³⁰ Nicaragua's official map is broadly consistent with the coastal geography shown in the two more recent satellite images. Costa Rica has placed the starting point for the maritime delimitation in the Caribbean 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

¹²⁵ **Vol. II, Annex No 1**, Treaty of Limits between Costa Rica and Nicaragua (Cañas-Jerez), San José, 15 April 1858, Article II (original Spanish: "La línea divisoria de las dos Repúblicas, partiendo del mar del Norte, comenzará en la extremidad de Punta de Castilla, en la desembocadura del río de San Juan de Nicaragua, y continuará marcándose con la margen derecha del expresado río, ...").

¹²⁶ "[T]he main course of the San Juan River presently flows directly out to the sea ...": see *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Counter-Memorial of Nicaragua, para. 6.152.

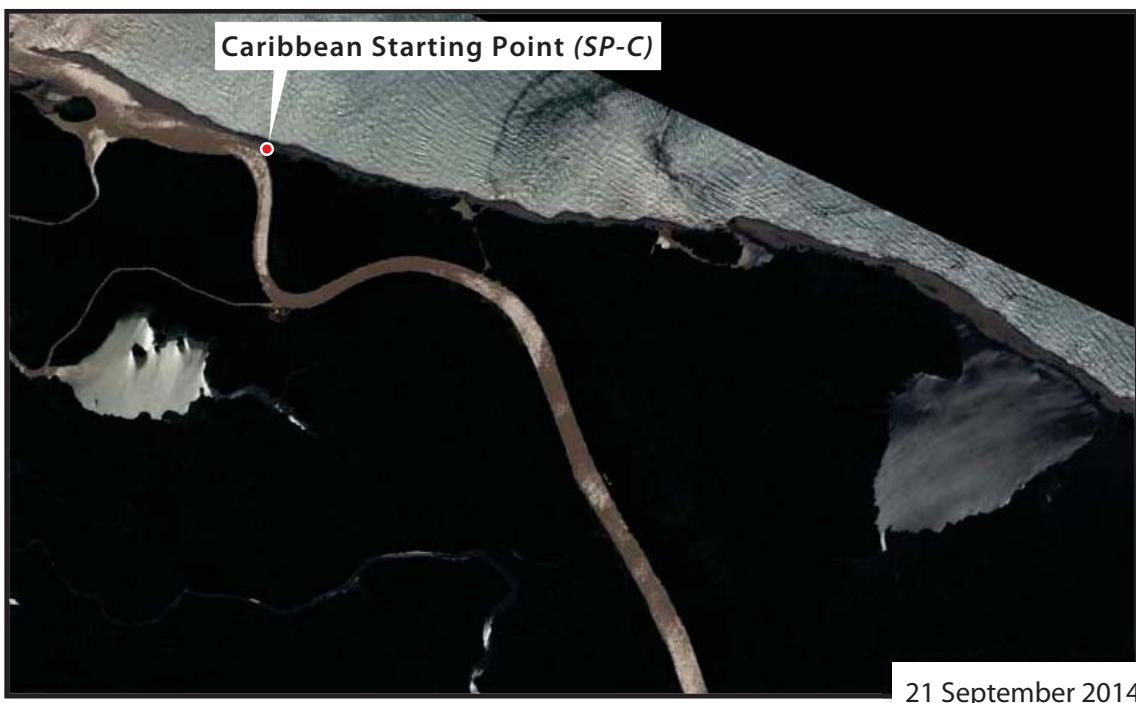
¹²⁷ This image is a natural colour composite produced from panchromatic and multispectral sensor data acquired by the WorldView-2 earth observation satellite on 14 September 2013.

¹²⁸ This image is a natural colour composite produced from panchromatic and multispectral sensor data acquired by the WorldView-2 earth observation satellite on 21 September 2014.

¹²⁹ *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Memorial of Costa Rica, para. 2.55.

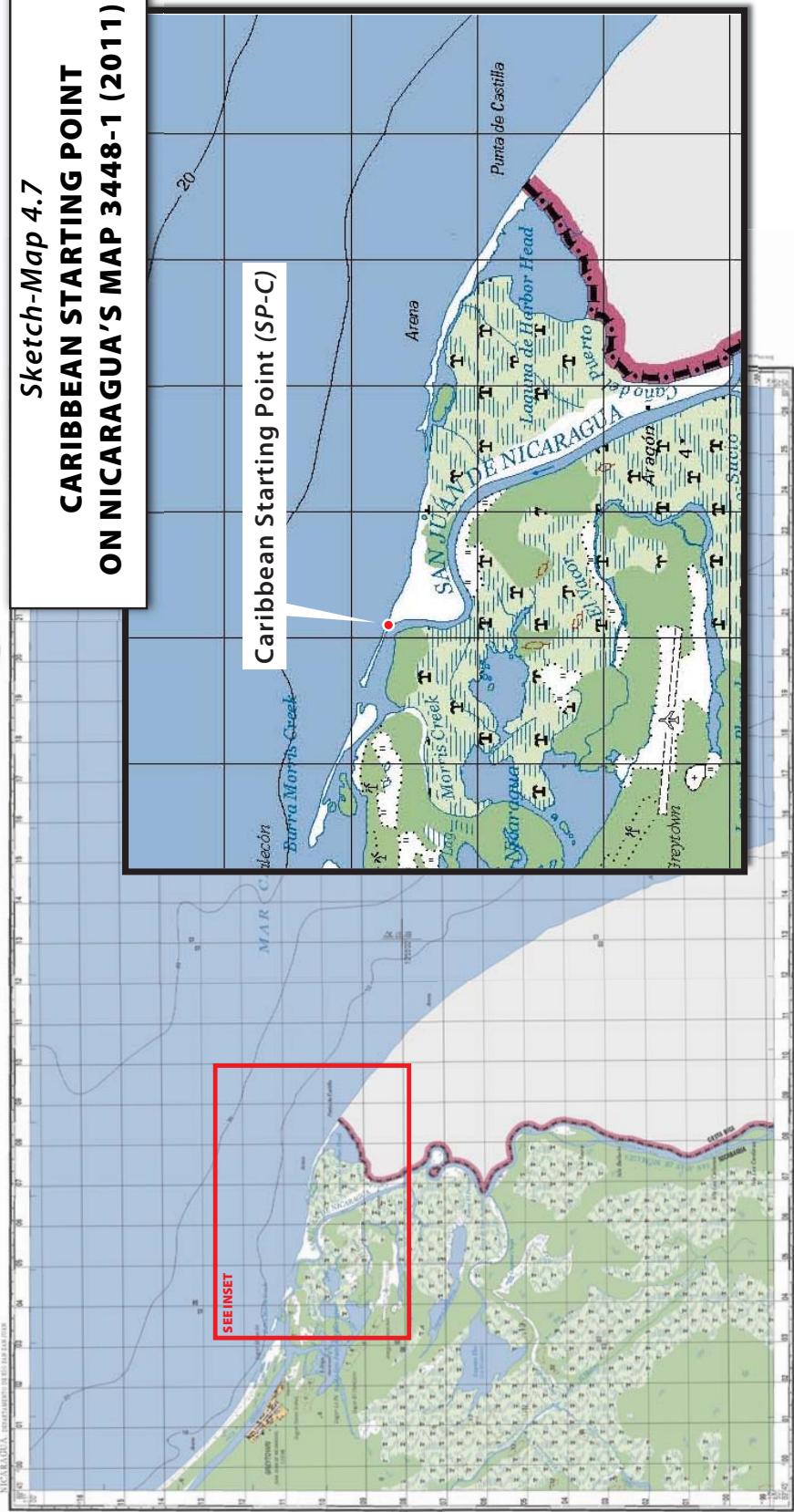
¹³⁰ *Ibid*, paras. 4.20-4.25.

Sketch-Map 4.6
**CARIBBEAN STARTING POINT
ON SATELLITE IMAGERY**





**Sketch-Map 4.7
CARIBBEAN STARTING POINT
ON NICARAGUA'S MAP 3448-1 (2011)**



SEE INSET



Costa Rica rejects Nicaragua's misrepresentation of the land boundary between Costa Rica and Nicaragua.

(derived from Nicaragua’s official map) are $10^{\circ} 56' 26.0''\text{N}$, $83^{\circ} 41' 53.0''\text{W}$. These coordinates may require correction in accordance with more accurate mapping.

C. The Territorial Sea Delimitation

4.16 The law applicable to territorial sea delimitation in the Caribbean Sea is Article 15 of UNCLOS and the rules that may be derived from decisions of the Court and international tribunals. As noted in Chapter 3 above, these rules of delimitation dictate that the territorial sea boundary will follow the median line unless there is a claim of historic title or there are special circumstances which would require a delimitation at variance with the median line.

4.17 Neither Party claims historic title in waters beyond their commonly-held Bay of San Juan del Norte. Nor are there any special circumstances which require a delimitation of the territorial sea other than on the basis of equidistance.

4.18 The coastline in the vicinity of the land boundary terminus has undergone some change over the decades. In accordance with international law coastal instability does not constitute a special circumstance under Article 15 of UNCLOS.¹³¹ It does, however, complicate the choice of appropriate basepoints from which to construct an equidistance line. As the Court noted in *Black Sea*, it would “use as base points those which the geography of the coast identifies as a physical reality *at the time of the delimitation*.¹³² The tribunal in *Bangladesh v. India* followed the Court’s approach when identifying basepoints along one of the world’s most unstable coastlines, the deltaic coasts of Bangladesh and India in the northern Bay of Bengal. That tribunal firmly rejected coastal instability as a special circumstance.¹³³ It reasoned “[t]he issue is not whether

¹³¹ UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 248 (Annex VII tribunal rejecting coastal instability in the Bay of Bengal as a special circumstance).

¹³² *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 131 (emphasis added).

¹³³ UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 399.

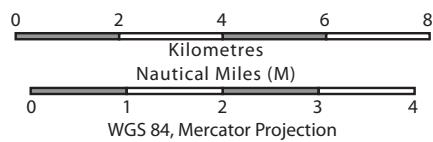
the coastlines of the Parties will be affected by climate change in the years or centuries to come. It is rather whether the choice of base points located on the coastline and reflecting the general direction of the coast is feasible in the present case and at the present time.”¹³⁴

4.19 Costa Rica has selected basepoints on the coasts of both Parties that reflect the general direction of the coast at the present time. In so doing, Costa Rica has ignored basepoints on ephemeral, sandy, unstable features including the Barra Morris Creek sand bar on the left bank of the San Juan River at its mouth; the sand spit extending northwest from Isla Portillos; the sand beach extending from Isla Portillos; and the sand bar currently extending in front of Laguna Los Portillos (Harbour Head Lagoon). Costa Rica relies instead on the coasts of relatively permanent features.

4.20 The delimitation of the territorial sea between Costa Rica and Nicaragua starts at Point SP-C, connects to the first equidistance point, Point 1, and follows the median line to the intersection of the arcs forming the outer limits of the 12 nautical mile territorial seas of the Parties. The coordinates of the median line turning points are provided in Table 4.1, and the median line, turning points, basepoints, and construction lines are shown at *Sketch-Map 4.8*.

¹³⁴ UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 214.

Sketch-Map 4.8
**CARIBBEAN EQUIDISTANCE LINE:
TERRITORIAL SEA**



CARIBBEAN
SEA

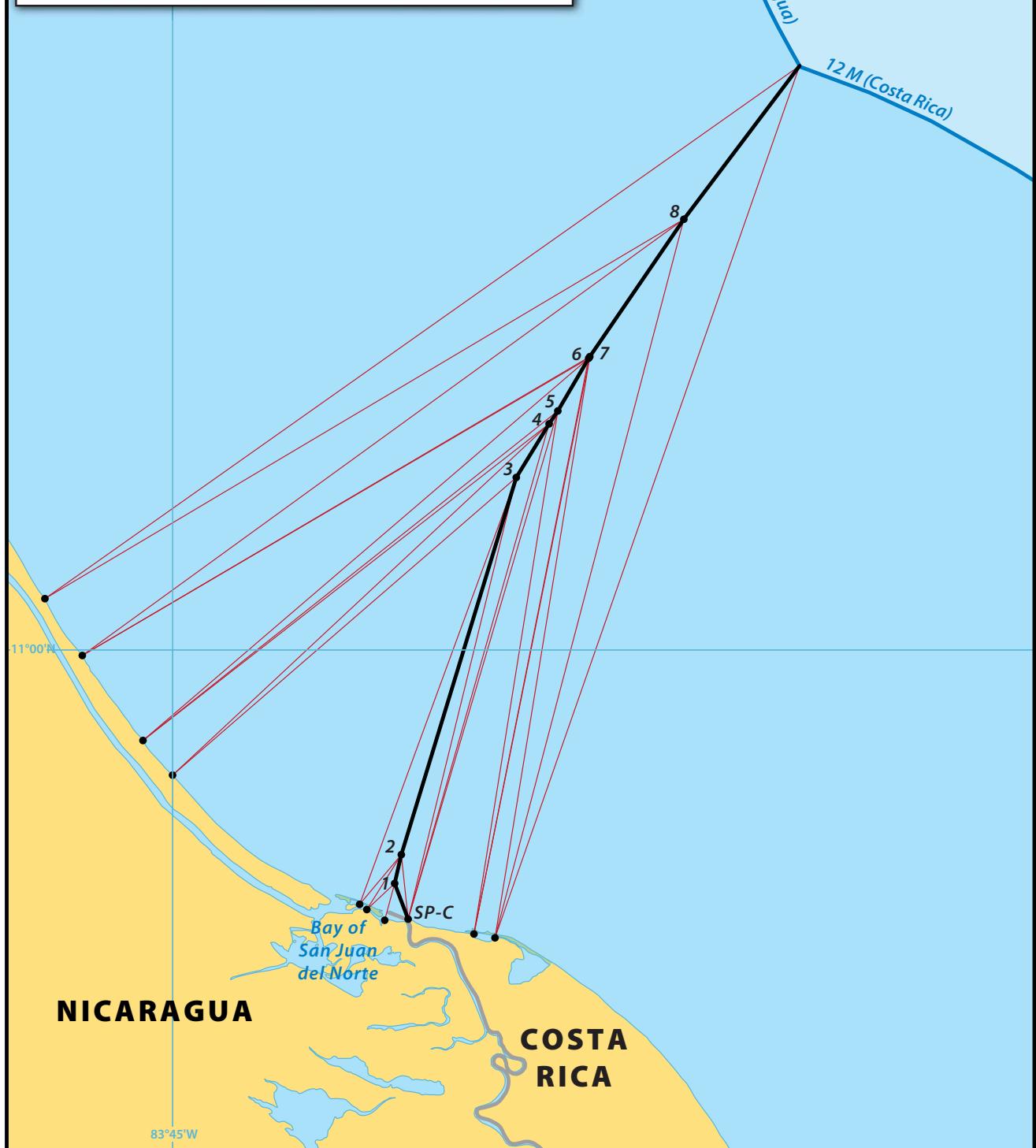


Table 4.1 Caribbean Territorial Sea Median Line Turning Point Coordinates

Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
SP-C (starting point – Caribbean)	10 56 26.0	83 41 53.0
1	10 56 54.0	83 42 03.7
2	10 57 16.6	83 41 58.4
3	11 02 12.6	83 40 27.1
4	11 02 54.7	83 40 01.0
5	11 03 04.8	83 39 54.1
6	11 03 46.1	83 39 29.6
7	11 03 47.4	83 39 28.7
8	11 05 35.2	83 38 14.0
Intersection of median line with 12 M territorial sea limits		

D. The Delimitation of the Exclusive Economic Zone and the Continental Shelf

4.21 The delimitation of the exclusive economic zone and continental shelf must be effected on the basis of international law in order to achieve an equitable solution. In this section, the three-step method developed by the Court and international tribunals for achieving such an equitable solution is applied as between the Parties in the Caribbean Sea.

(1) *The provisional equidistance line in the Caribbean Sea*

4.22 The first step involves the construction of a provisional equidistance line between the nearest points on the coasts of the two States. This line “is plotted on strictly geometrical criteria on the basis of objective data,”¹³⁵ namely equidistance applied to coastal basepoints. In *Black Sea*, the Court added that “[e]quidistance and median lines are to be constructed from the most appropriate points on the coasts of the two States concerned”.¹³⁶

¹³⁵ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 118.

¹³⁶ *Ibid*, para. 117.

4.23 In practice, this has resulted in ignoring otherwise valid basepoints in the first-stage construction of the provisional equidistance line. In *Black Sea*, basepoints on Ukraine’s Serpents’ Island, “lying alone and some 20 nautical miles away from the mainland,”¹³⁷ were not used to construct the provisional equidistance line because including these basepoints “would amount to grafting an extraneous element onto Ukraine’s coastline”.¹³⁸ Bangladesh’s St. Martin’s Island, lying just offshore the mainland coast of Bangladesh, was also excluded as a source of basepoints in this first step in the delimitations between Bangladesh and Myanmar¹³⁹ and between Bangladesh and India.¹⁴⁰

4.24 In accordance with this jurisprudence, basepoints on Nicaragua’s Corn Islands, lying alone approximately 30 nautical miles from the Nicaraguan mainland, should be excluded from the calculation of the provisional equidistance line.¹⁴¹ In addition, both Parties have several small insular features along their coasts. Most of these islets, cays, and rocks are not capable of generating exclusive economic zone or continental shelf entitlements and have been disregarded in the construction of the provisional equidistance line.¹⁴²

¹³⁷ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 149.

¹³⁸ *Ibid.*

¹³⁹ ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 265.

¹⁴⁰ UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 367 (“As both Parties decided not to locate a base point on Saint Martin’s Island, the Tribunal will not address the issue”).

¹⁴¹ These same Nicaraguan features were given full effect in the delimitation with Colombia. The key distinction is that the delimitation between Nicaragua and Colombia was a delimitation between the opposite coasts of opposing islands. Here, the delimitation between Costa Rica and Nicaragua is a delimitation between adjacent mainland coasts (as it was in *Black Sea*). With respect to the potentially distorting effects of coastal configurations and features on an equidistance line, the Court has long recognized the distinction between opposite and adjacent delimitations.

¹⁴² Such Costa Rican features include tiny Isla Pájaros and Isla Uvita (just off Puerto Limón). Nicaraguan features include Isla Pájaro del Bobo, Little Palmenta Cay, Great Palmenta Cay, Silk Grass Cay, French Cay, Pigeon Cay, Guano Cay, Cayman Rock, Columbilla Cay, and Seal Cay.

4.25 Costa Rican basepoints that influence the provisional equidistance line include a series of points along the coast between the San Juan River and the Colorado River, a point at Puerto Limón, and a point on Punta Mona. Nicaraguan basepoints that influence the provisional equidistance line include a series of points along the coast west and north of the San Juan River, a point on Punta Gorda (S), several points on Punta del Mono, and a point on Punta de Perlas. The resulting line trends northeast from the intersection of the 12 nautical mile arcs of the Parties for approximately 11 nautical miles before turning abruptly eastward as basepoints on Nicaragua's Punta Gorda (S) and Punta del Mono begin to influence the direction of the line. From that major inflection point the line runs in an easterly direction for approximately 140 nautical miles before ending at the equidistant tripoint with Panama at $11^{\circ} 34' 43.2''$ N, $81^{\circ} 07' 01.0''$ W where basepoints on Panama's coast begin to influence the line. The coordinates of the provisional equidistance line turning points are provided at Table 4.2 and the line is shown on *Sketch-Map 4.9*.

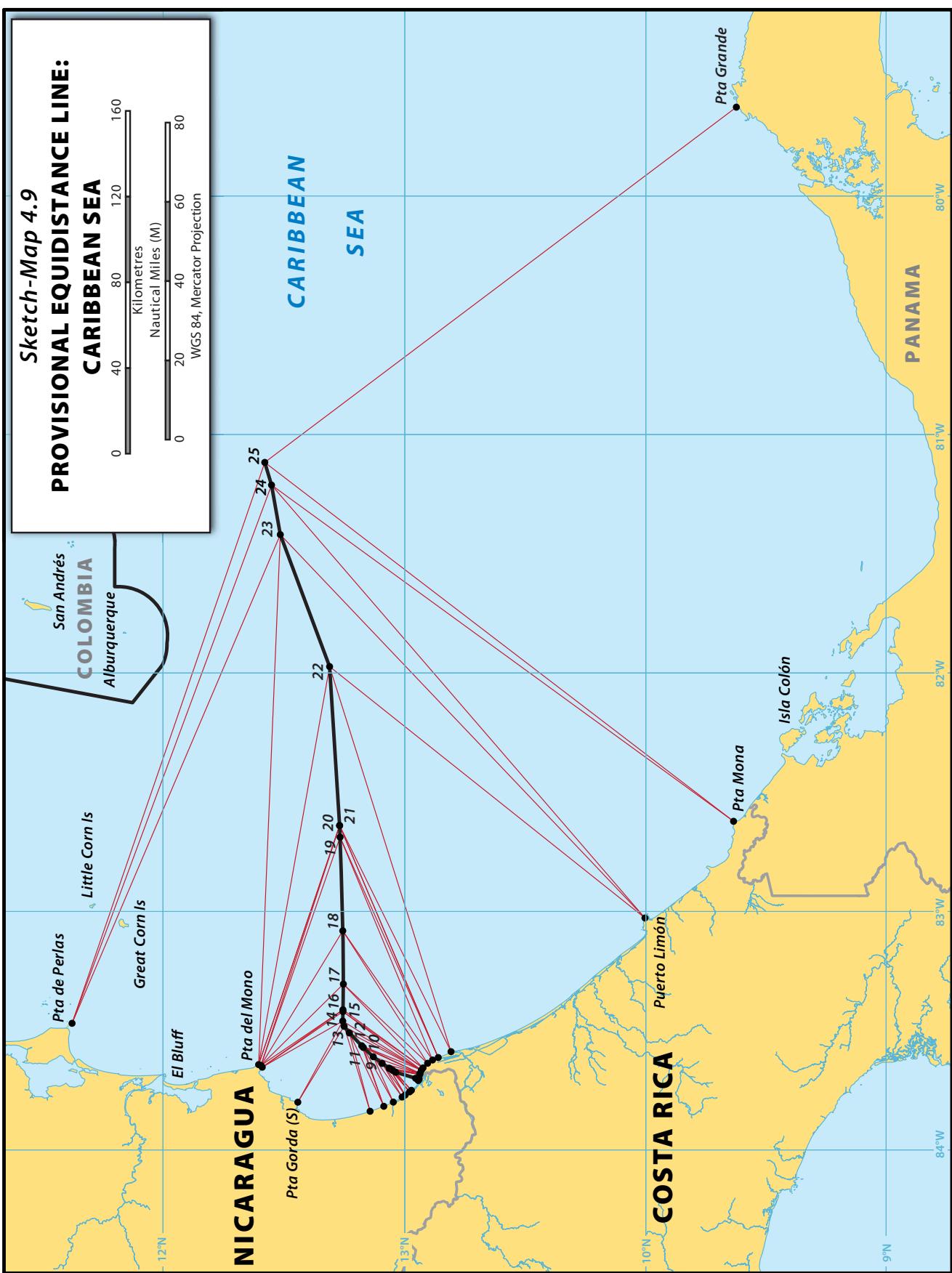


Table 4.2 Caribbean Provisional Equidistance Line Turning Point Coordinates

Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
Intersection of median line with 12 M territorial sea limits		
9	11 07 47.2	83 36 33.2
10	11 10 16.0	83 34 13.2
11	11 10 39.2	83 33 47.3
12	11 13 42.6	83 30 33.9
13	11 15 02.0	83 28 53.6
14	11 15 22.2	83 27 34.2
15	11 15 19.5	83 25 11.4
16	11 15 19.4	83 24 43.9
17	11 15 13.0	83 18 16.0
18	11 15 21.8	83 04 52.0
19	11 16 02.1	82 41 18.2
20	11 16 09.1	82 38 25.6
21	11 16 09.3	82 38 21.3
22	11 18 38.2	81 58 23.1
23	11 30 52.0	81 25 11.2
24	11 33 02.6	81 12 42.8
25 (equidistance tripoin with Panama)	11 34 43.2	81 07 01.0

(2) *There are relevant circumstances calling for an adjustment of the provisional equidistance line*

4.26 The second step in the well-established delimitation methodology involves “consider[ing] whether there are factors calling for the adjustment or shifting of the provisional equidistance line in order to achieve an equitable result.”¹⁴³

4.27 To the extent that the Court and international tribunals have considered it necessary to adjust a provisional equidistance line to account for relevant circumstances, those relevant circumstances have been primarily related to coastal geography. They

¹⁴³ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 120, applying *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, para. 288.

have included such circumstances as significant disparities in coastal length,¹⁴⁴ offshore features “which, if given full effect, would ‘distort the boundary and have disproportionate effects’”,¹⁴⁵ and coastal concavity,¹⁴⁶ which, especially when combined with existing or potential delimitations with third States,¹⁴⁷ can contribute to the cut off effect.¹⁴⁸

4.28 The lengths of the relevant coasts of the Parties are nearly equal in the Caribbean with relevant coast ratios ranging from 1.2:1 to just over 1:1 in favour of Costa Rica. This level of coastal length disparity is not sufficient to be considered a relevant circumstance calling for an adjustment of the provisional equidistance line in the Caribbean.

4.29 Nicaragua’s Corn Islands would be distorting insular features if they were included in the construction of the provisional equidistance line. Because they were not, their effect on the line need not be considered in this stage of the delimitation process.

¹⁴⁴ *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment, I.C.J. Reports 1993, para. 69 (coastal length ratio 1:9); and *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, paras. 67-68 (coastal length ratio 1:8). Cf. *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, paras. 221-222 (coastal length ratio 1:1.38).

¹⁴⁵ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Merits, Judgment, I.C.J. Report 2001, para. 247, quoting *Continental Shelf case (France/United Kingdom)*, XVIII RIAA 114, para. 244.

¹⁴⁶ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, para. 89(a); ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 292-293; and UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 408.

¹⁴⁷ For consideration of delimitation with third States, see *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, paras. 224 et seq; and *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, paras. 169 et seq.

¹⁴⁸ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, para. 212 et seq; *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 199 et seq; ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 279 et seq.

4.30 In contrast, coastal concavity and the cut off created by that concavity in conjunction with a notional delimitation with a third State¹⁴⁹ is a relevant circumstance requiring an adjustment of the provisional equidistance line in order to achieve an equitable result in this delimitation.

4.31 In the seminal maritime delimitation decision of the modern era, the *North Sea Continental Shelf* cases, in which Germany found itself at the back of a coastal concavity pinched between the adjacent coasts of Denmark to the north and the Netherlands to the west, the Court enumerated a list of factors to be taken into account in any maritime delimitation. The first of these was “the general configuration of the coasts of the Parties.”¹⁵⁰ The general configuration of the coasts was a factor because:

“[I]n the case of a concave or recessing coast such as that of [Germany] on the North Sea, the effect of the use of the equidistance method is to pull the line of the boundary inwards, in the direction of the concavity. Consequently, where two such lines are drawn at different points on a concave coast, they will, if the curvature is pronounced, inevitably meet at a relatively short distance from the coast, thus causing the continental shelf area they enclose, to take the form approximately of a triangle with its apex to seaward and, as it was put on behalf of [Germany], ‘cutting off’ the coastal State from the further areas of the continental shelf outside of and beyond this triangle.”¹⁵¹

The Court illustrated this geographic situation with the sketches reproduced here at *Sketch-Map 4.10*.¹⁵²

4.32 The Court noted that it takes three States and two maritime boundaries to create this situation. Considering the two individual boundaries separately, the Court observed “that neither of the lines in question, taken by itself, would produce this effect, but only

¹⁴⁹ As noted above, any notional delimitation with a third State is without prejudice to the eventual delimitation between the relevant States.

¹⁵⁰ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, para. 101(D)(1).

¹⁵¹ *Ibid*, para. 8.

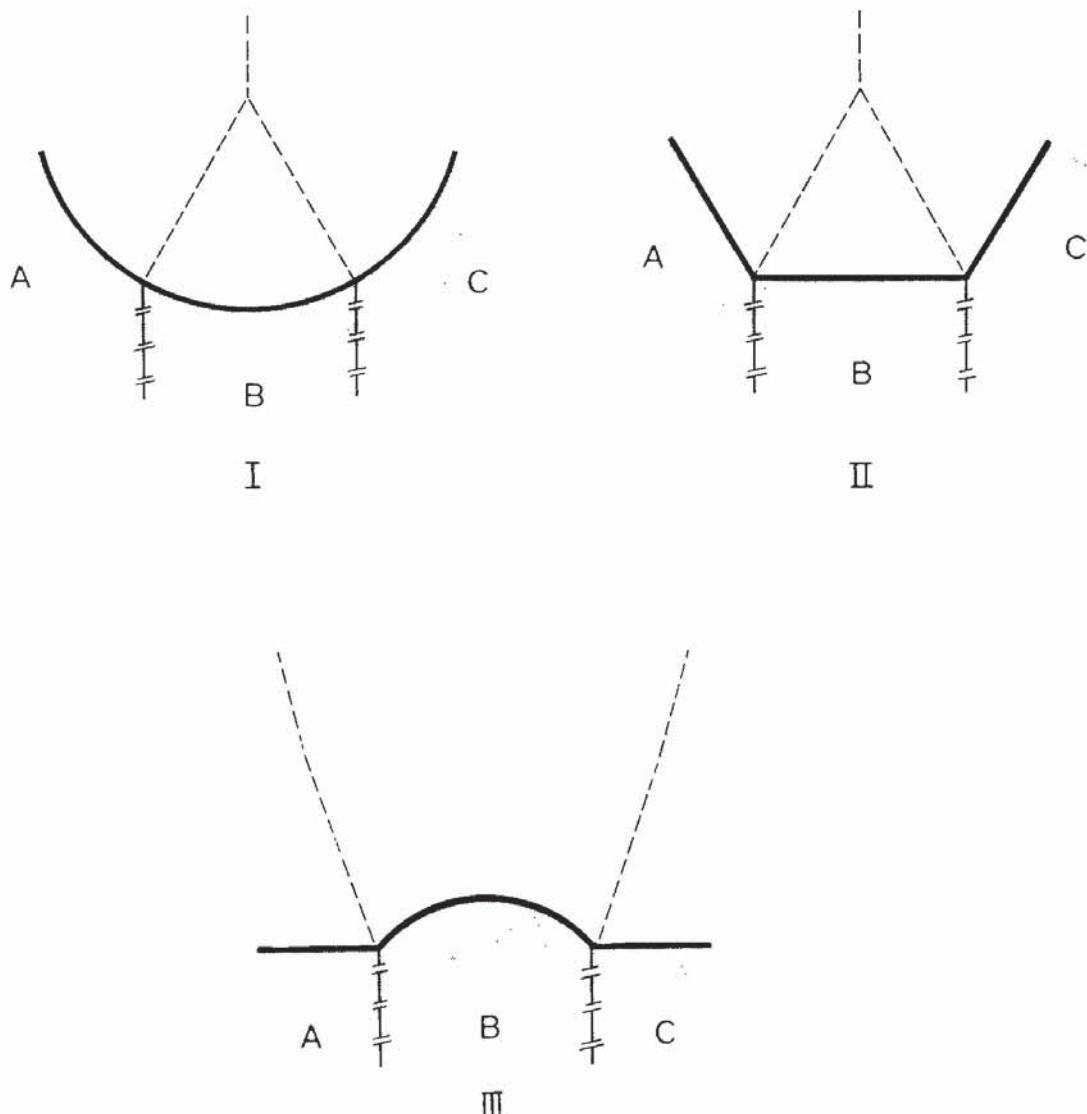
¹⁵² *Ibid*, p. 17.

Sketch-Map 4.10
EQUIDISTANCE AND CONCAVITY:
NORTH SEA CONTINENTAL SHELF

North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969, p. 16.

PLATEAU CONTINENTAL (ARRÊT)

16



Sketches illustrating the geographical situations described in paragraph 8 of the Judgment

Croquis illustratifs des situations géographiques décrites au paragraphe 8 de l'arrêt

both of them together”,¹⁵³ and continued “it must be noted that although two separate delimitations are in question, they involve – indeed actually give rise to – a single situation.”¹⁵⁴

4.33 In the geography of *North Sea*, the “relatively short distance from the coast” at which the two lateral equidistance boundaries would “inevitably meet”¹⁵⁵ was within 100 nautical miles of the German coast.

4.34 The Court elaborated on the use of equidistance under these circumstances, noting that:

“the 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 equidistance line swing out laterally across the former’s coastal front, cutting it off from areas situated directly before that front.”¹⁵⁶

4.35 Based upon the Court’s Judgment in *North Sea*, the parties returned to the negotiating table and crafted two boundary agreements – one between Germany and Denmark and one between Germany and the Netherlands. These negotiated solutions affected 6,350 km² and 4,850 km² of maritime area, respectively, by reference to delimitations based on equidistance. The adjustments implemented by these agreements took effect at points 30 to 40 nautical miles from the coasts of the parties. The equitable solutions achieved among Germany, Denmark and the Netherlands (black lines) and the inequitable equidistance lines they adjusted by agreement (red lines) are depicted on *Sketch-Map 4.11*.

4.36 The concept of cut off was first enunciated in the *North Sea Continental Shelf* cases. It has continued to guide the decisions of the Court and international tribunals in

¹⁵³ See *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, para. 7.

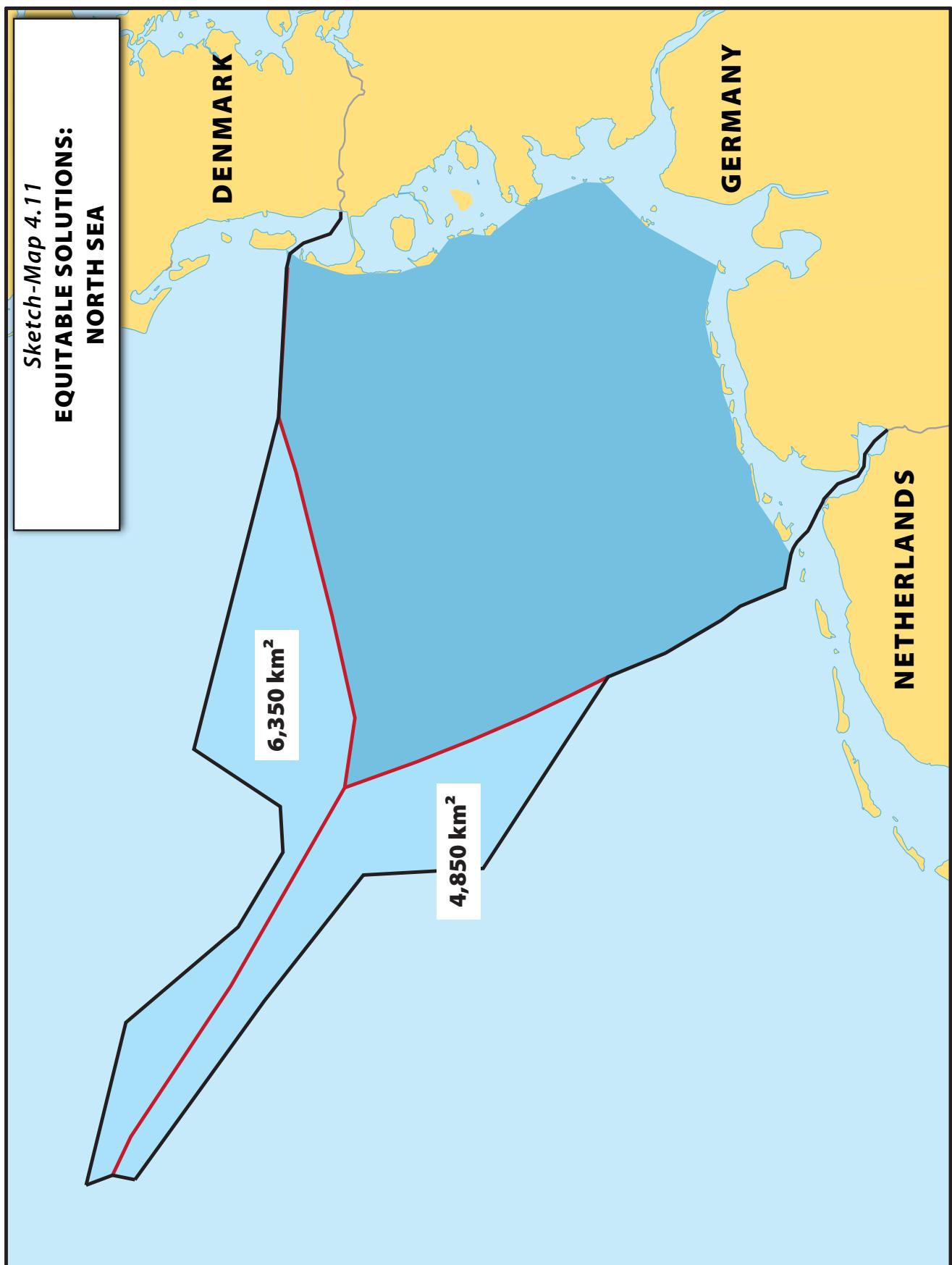
¹⁵⁴ *Ibid*, para. 11.

¹⁵⁵ *Ibid*, para. 8.

¹⁵⁶ *Ibid*, para. 44

Sketch-Map 4.11

**EQUITABLE SOLUTIONS:
NORTH SEA**



maritime delimitation cases. In the first maritime delimitation case of the International Tribunal for the Law of the Sea, *Bangladesh/Myanmar*, the Tribunal followed the precedent set by the Court, noting that “when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States, as a result of the concavity of the coast, then an adjustment of that line may be necessary in order to reach an equitable result.”¹⁵⁷ In *Bangladesh/Myanmar*, the point at which the provisional equidistance line would “inevitably meet” a similar line drawn between Bangladesh and India was approximately 185 nautical miles from the coast of Bangladesh. Even at this great distance, the Tribunal found “that the concavity of the coast of Bangladesh is a relevant circumstance in the present case, because the provisional equidistance line as drawn produces a cut-off effect on that coast requiring an adjustment of that line.”¹⁵⁸ The adjustment shifted the provisional equidistance line starting at a point within 50 nautical miles of the coasts of the parties. The Tribunal’s adjustment affected approximately 15,000 km² of maritime area by reference to a delimitation based on the provisional equidistance line.

4.37 Finally, in the most recent maritime delimitation decision – *Bangladesh v. India* – the Arbitral Tribunal followed earlier cases concerning delimitations among States in a three-state concavity. The Tribunal found that the provisional equidistance line produced a cut off effect on the maritime projection of Bangladesh¹⁵⁹ and adjusted the provisional equidistance line accordingly. The Tribunal formulated a two-part test for determining whether cut off merits adjustment, as follows:

“[A] cut-off produced by a provisional equidistance line must meet two criteria to warrant adjustment of the provisional equidistance line. First, the line must prevent a coastal State from extending its maritime boundary as

¹⁵⁷ ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 292.

¹⁵⁸ *Ibid*, para. 297.

¹⁵⁹ The Tribunal reached this conclusion even though the point at which the provisional equidistance line met the line awarded in Bangladesh/Myanmar was approximately 235 nautical miles from the coast of Bangladesh: see UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 381, quoting Bangladesh’s Reply.

far seaward as international law permits. Second, the line must be such that – if not adjusted – it would fail to achieve the equitable solution required by articles 74 and 83 of the Convention.”¹⁶⁰

4.38 The Tribunal proceeded to adjust the provisional equidistance line from its point “Prov-3” located less than 30 nautical miles from the Bangladesh coast.¹⁶¹ The Tribunal noted that “from point Prov-3 the provisional equidistance line bends markedly eastward to the detriment of Bangladesh.”¹⁶² From this major inflection point in the provisional equidistance line, the Tribunal drew a straight line extending over 260 nautical miles from shore before intersecting the line delimited by ITLOS in the earlier case between Bangladesh and Myanmar. The point of intersection between these two judicially established lines is coincident with the equidistance line between the opposite coasts of India and Myanmar as reflected in the outer limit claimed by India before the Commission on the Limits of the Continental Shelf.¹⁶³ The Tribunal’s adjustment affected approximately 17,700 km² of maritime area by reference to a delimitation based on the provisional equidistance line.

4.39 The equitable solutions developed by ITLOS and the *Bangladesh v. India* Annex VII Arbitral Tribunal (black lines), and the provisional equidistance lines that required adjustment (red lines) are depicted on *Sketch-Map 4.12*.

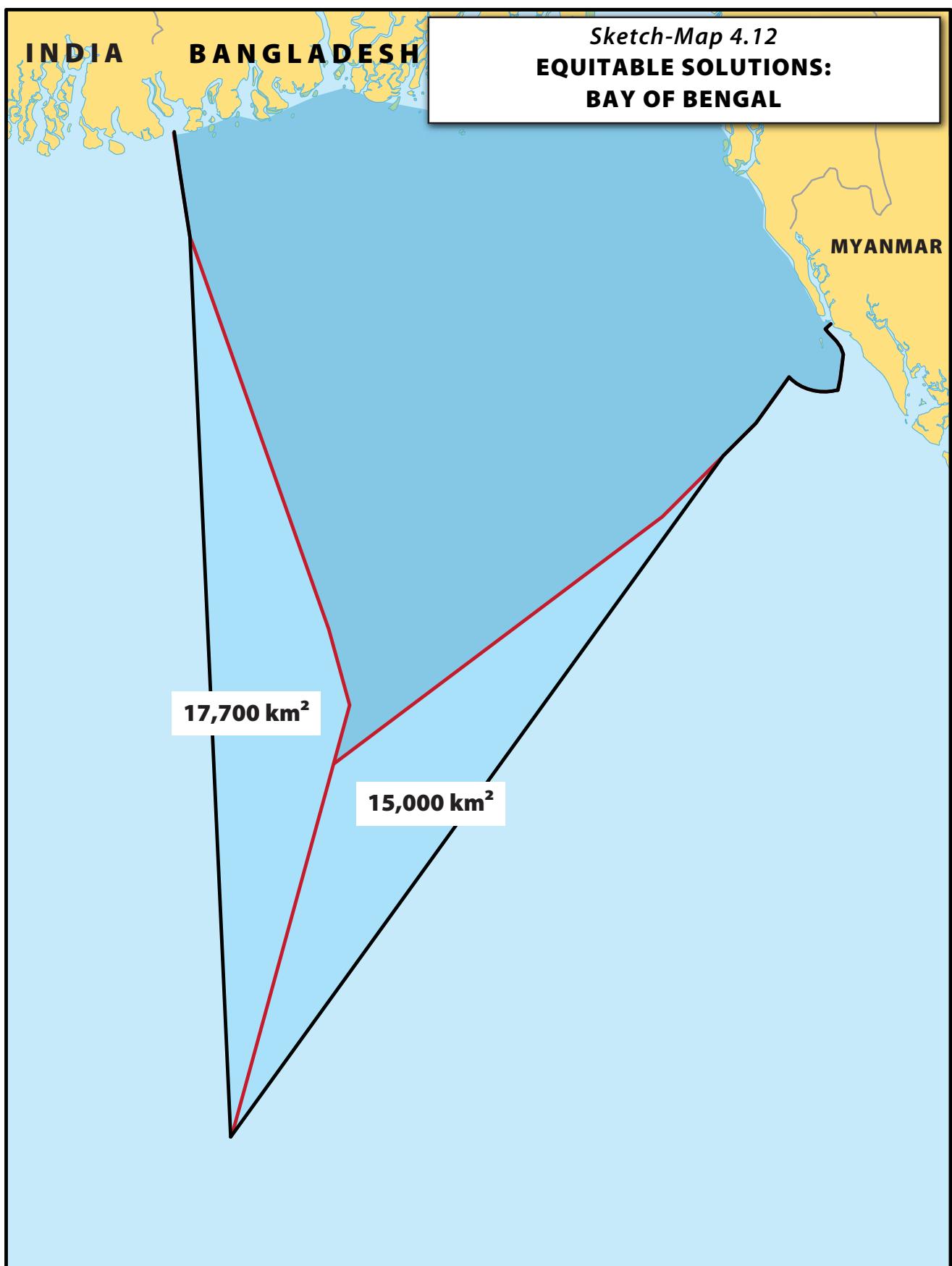
4.40 In these three cases, the application of equidistance in the context of a three-State coastal concavity produced a line that was found to be inequitable because it resulted in a cut off of one State’s coastal projection. The inequitable cut off effect was produced when concavity and equidistance were combined with the presence of a third State. All three of these elements were present in *North Sea, Bangladesh/Myanmar* and

¹⁶⁰ UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 417.

¹⁶¹ *Ibid*, para. 478.

¹⁶² *Ibid*, para. 418.

¹⁶³ UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, Map 10; see also UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, Concurring and Dissenting Opinion of Judge Rao, para. 21.

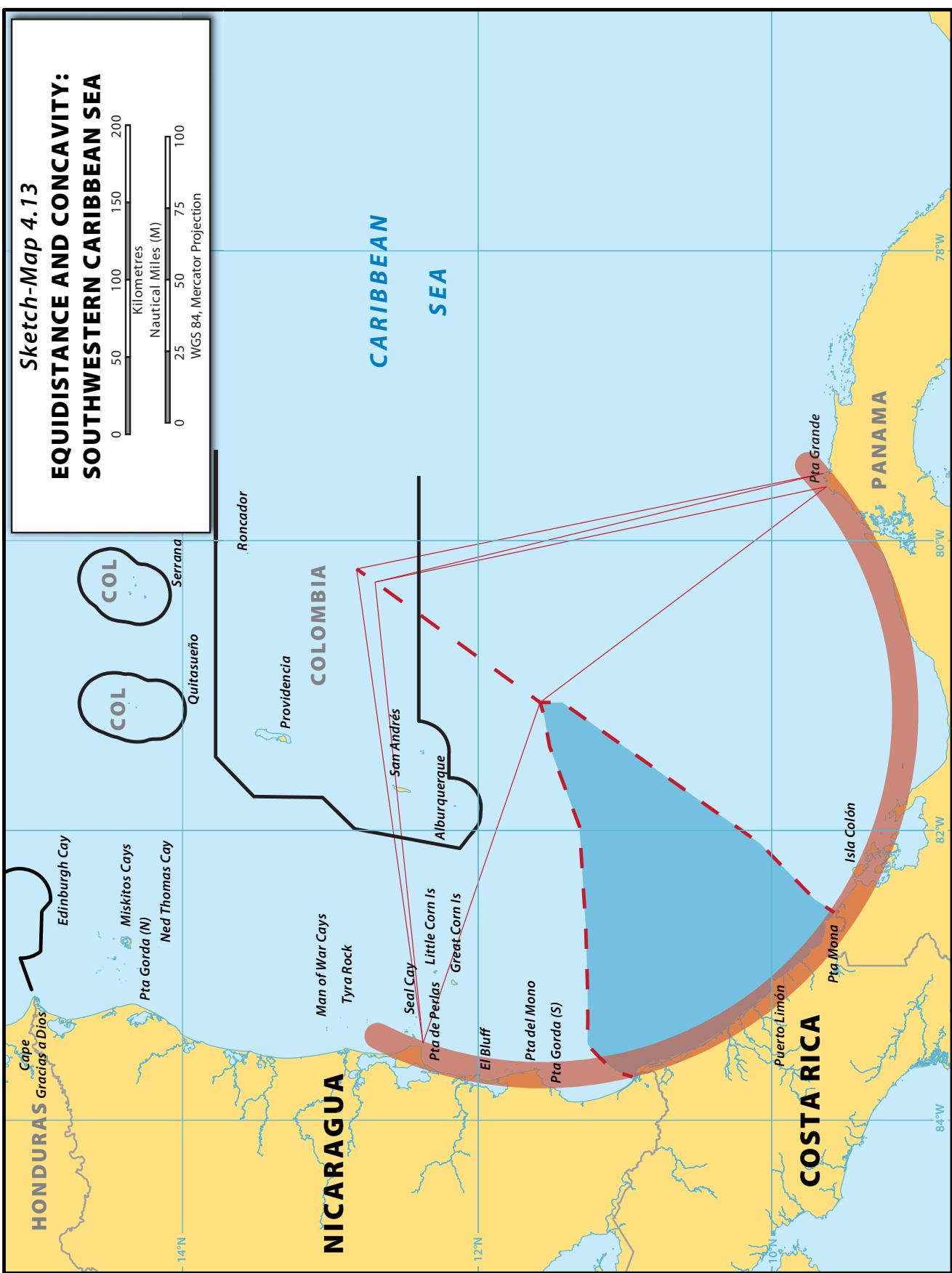


Bangladesh v. India and these elements together created a cut off effect severe enough to be considered a relevant circumstance impacting the State at the back of the concavity and requiring the adjustment of the provisional equidistance line in favour of that State. This is also the situation in which Costa Rica finds itself in the south-western Caribbean Sea.

4.41 Costa Rica's Caribbean coast is purely concave. To the north and east, the adjacent coasts of Nicaragua and Panama exhibit convex characteristics, with the convexities being most pronounced at Punta de Perlas and Punta Grande, respectively. The equidistance lines generated from those two convex coasts, one on either side of Costa Rica, produce the cut off effect in this case. The three-State concavity of the south-western Caribbean and the cut-off produced by equidistance are illustrated on *Sketch-Map 4.13*.

4.42 If the provisional equidistance line were not adjusted, it would result in a severe cut off of Costa Rica's maritime projection starting at the major inflection point 22 nautical miles from the coasts of the Parties. The provisional equidistance line intersects an equidistance line drawn between the coasts of Costa Rica and Panama less than 150 nautical miles from Costa Rica, preventing Costa Rica from extending its maritime boundary as far seaward as international law permits.

4.43 The provisional equidistance line between Costa Rica and Nicaragua in the Caribbean Sea requires adjustment in order to achieve an equitable solution because of the cut off effect caused by the combination of Costa Rica's concave Caribbean coast situated in the context of the larger coastal concavity of the south-western Caribbean Sea in the presence of third States, which cut off effect constitutes a relevant circumstance. The appropriate adjustment to the provisional equidistance line begins at the major inflection point 22 nautical miles from the coasts of the Parties and continues to the intersection of the notional median line between the mainland coasts of Nicaragua and Panama with the limit of Costa Rica's 200 nautical mile exclusive economic zone. This adjustment affects approximately 11,800 km² by reference to a delimitation based



on the provisional equidistance line. It would also allow Costa Rica to reach its full 200 nautical mile maritime entitlement while avoiding areas of third State interest.

4.44 The coordinates of the adjusted line are provided in Table 4.3 and the line is depicted on *Sketch-Map 4.14*.

Table 4.3 Caribbean Adjusted Provisional Equidistance Line Turning Point Coordinates

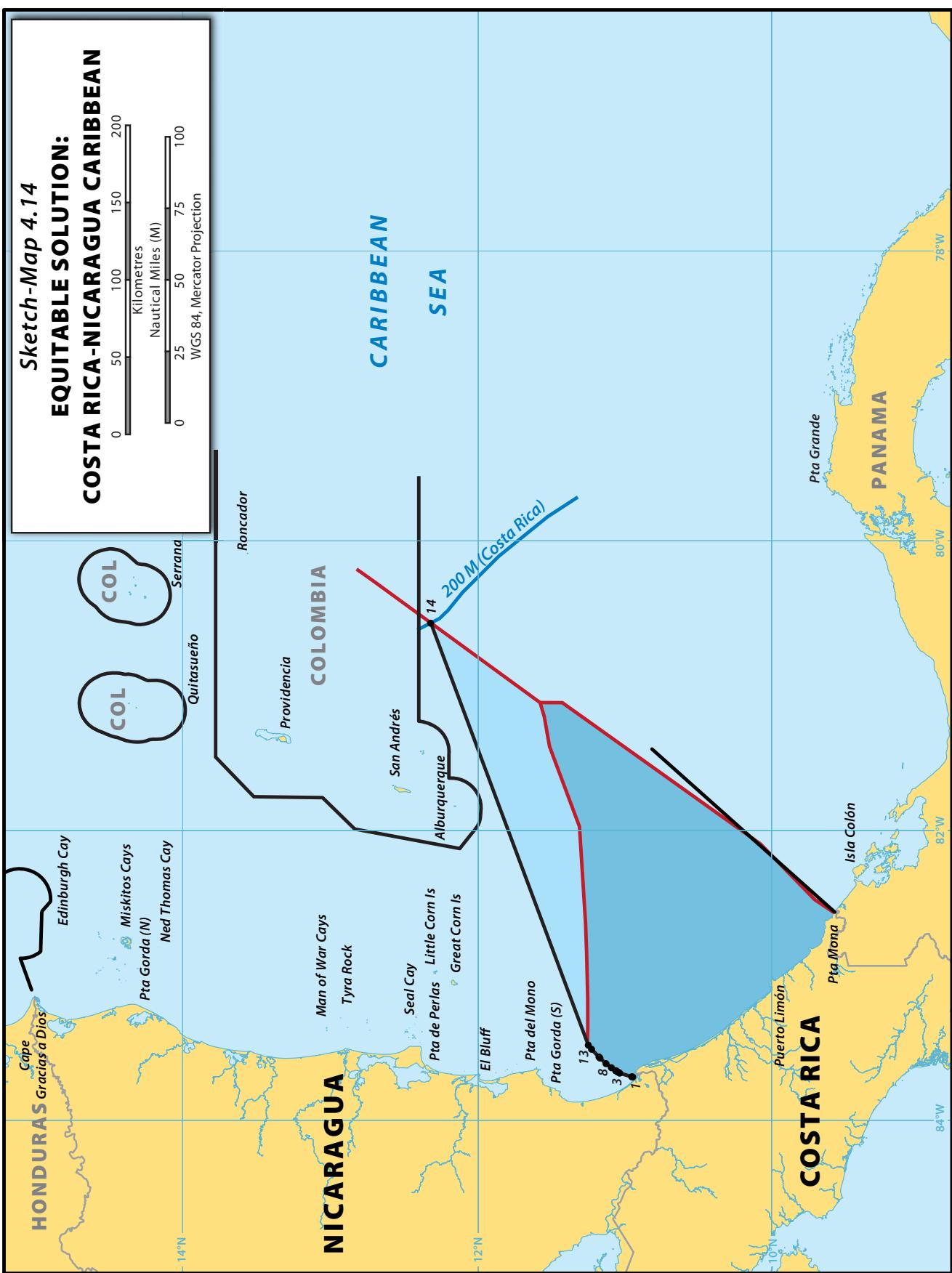
Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
Intersection of median line with 12 M territorial sea limits		
9	11 07 47.2	83 36 33.2
10	11 10 16.0	83 34 13.2
11	11 10 39.2	83 33 47.3
12	11 13 42.6	83 30 33.9
13	11 15 02.0	83 28 53.6
14 (intersection with Costa Rica 200 M limit)	12 19 15.9	80 33 59.2

(3) The requested delimitation does not lead to any marked disproportion

4.45 In the third and final step of the delimitation process, the Court and international tribunals review the delimitation line developed in the first two steps and query whether it “lead[s] to any significant disproportionality by reference to the respective coastal lengths and the apportionment of areas that ensue.”¹⁶⁴ As the Court noted in *Nicaragua v. Colombia*, “its task, at this third stage, is not to attempt to achieve even an approximate correlation between the ratio of the lengths of the Parties’ relevant coasts and the ratio of their respective shares of the relevant area. It is, rather, to ensure that there is not a disproportion so gross as to ‘taint’ the result and render it inequitable.”¹⁶⁵ This *ex post* exercise of comparing the relevant coast ratio with the relevant area ratio

¹⁶⁴ *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, para. 210.

¹⁶⁵ *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, para. 242.



“remains in each case a matter for the Court’s appreciation, which it will exercise by reference to the overall geography of the area.”¹⁶⁶

4.46 Here, the lengths of relevant coasts are nearly identical and the length and area ratios are nearly the same. The appropriately adjusted provisional equidistance line divides the relevant area 49,200 square kilometres (Costa Rica) to 55,500 square kilometres (Nicaragua), creating a relevant area ratio of 1:1.1 in favour of Nicaragua. Notwithstanding that Costa Rica’s relevant coast is longer than Nicaragua’s, there is no significant disproportion indicating an inequitable result. The results of the disproportionality test are illustrated at *Sketch-Map 4.15*.

4.47 The adjusted provisional equidistance line achieves the requisite equitable solution in the Caribbean Sea.

4.48 To conclude, from the starting point of the maritime delimitation on the right bank of the San Juan River at its mouth at coordinates $10^{\circ} 56' 26.0''\text{N}$, $83^{\circ} 41' 53.0''\text{W}$, the maritime boundary between Costa Rica and Nicaragua in the Caribbean Sea follows the equidistance line through the territorial sea to Point 13, the major inflection point, with coordinates $11^{\circ} 15' 02.0''\text{N}$, $83^{\circ} 28' 53.6''\text{W}$. From this point, the adjusted line continues in a straight line to Point 14 at the 200 nautical mile limit of Costa Rica with coordinates $12^{\circ} 19' 15.9''\text{N}$, $80^{\circ} 33' 59.2''\text{W}$. The complete list of boundary turning point coordinates is provided in Table 4.4 below.

¹⁶⁶ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, para. 213.

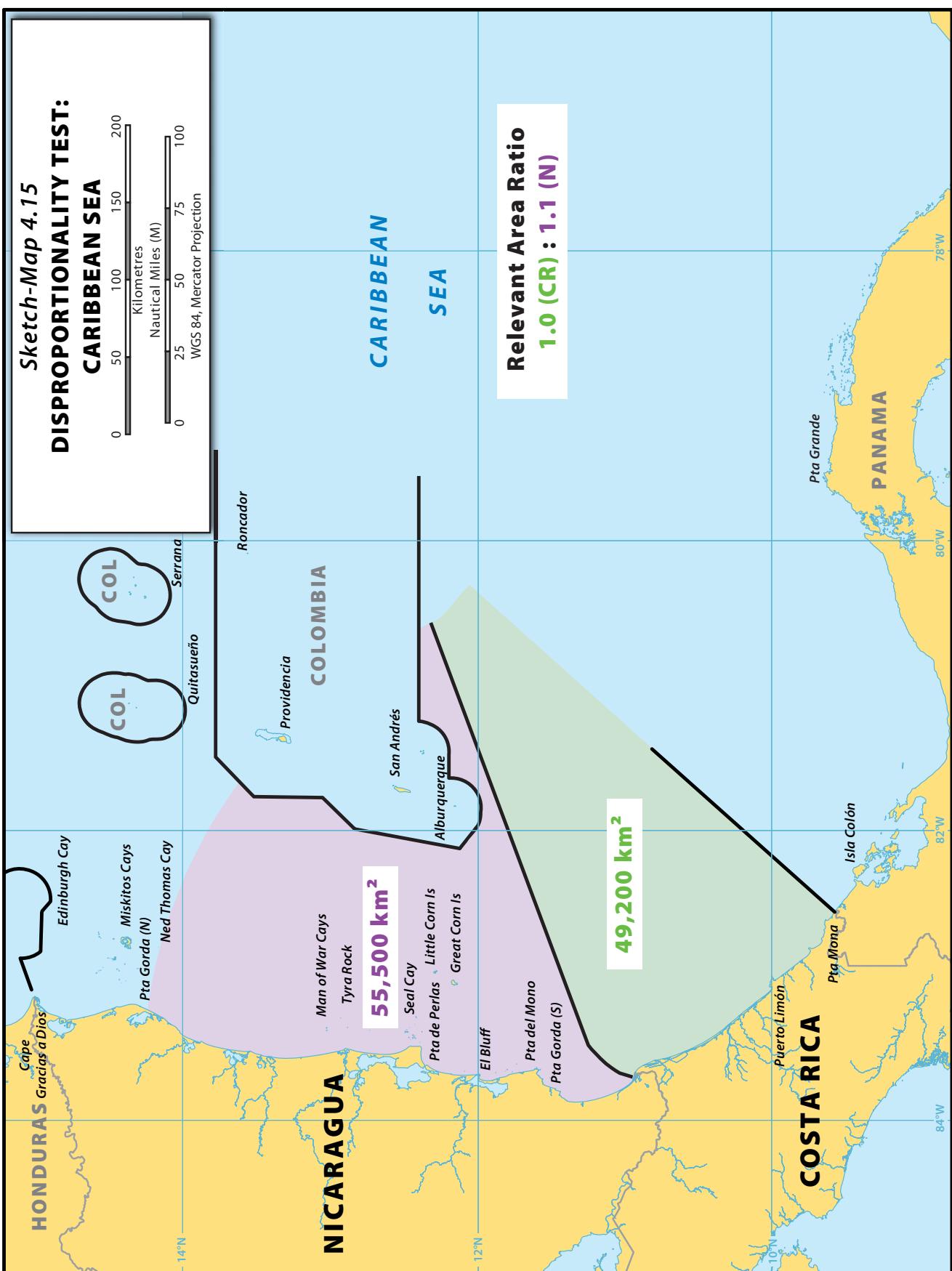


Table 4.4 Caribbean Maritime Boundary Turning Point Coordinates

Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
SP-C (starting point – Caribbean)	10 56 26.0	83 41 53.0
1	10 56 54.0	83 42 03.7
2	10 57 16.6	83 41 58.4
3	11 02 12.6	83 40 27.1
4	11 02 54.7	83 40 01.0
5	11 03 04.8	83 39 54.1
6	11 03 46.1	83 39 29.6
7	11 03 47.4	83 39 28.7
8	11 05 35.2	83 38 14.0
9	11 07 47.2	83 36 33.2
10	11 10 16.0	83 34 13.2
11	11 10 39.2	83 33 47.3
12	11 13 42.6	83 30 33.9
13	11 15 02.0	83 28 53.6
14 (intersection with Costa Rica 200 M limit)	12 19 15.9	80 33 59.2

SUBMISSIONS

Costa Rica respectfully requests the Court to determine the complete course of single maritime boundaries between all the maritime areas appertaining, respectively, to Costa Rica and to Nicaragua in the Pacific Ocean and in the Caribbean Sea, on the basis of international law.

Costa Rica further requests the Court to determine the precise geographical co-ordinates of the single maritime boundaries in the Pacific Ocean and in the Caribbean Sea, as follows:

- (1) to delimit the maritime areas of Costa Rica and Nicaragua in the Pacific Ocean by a boundary connecting with geodetic lines the points with the following coordinates:

Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
SP-P (Starting Point – Pacific)	11 04 00.0	85 44 28.0
1	11 03 57.6	85 45 30.3
2	11 03 57.7	85 45 35.9
3	11 03 47.2	85 46 31.7
4	11 03 53.8	85 47 13.4
5	11 03 24.2	85 49 43.5
6	11 03 17.9	85 50 05.1
7	11 02 45.0	85 51 25.2
8	11 03 11.6	85 52 42.8
9	11 04 26.8	85 55 28.3
10	11 05 13.7	85 57 21.2
11	11 05 51.6	86 00 48.1
12	11 05 54.2	86 04 31.5
13	11 06 22.0	86 07 00.4
14	11 05 45.4	86 13 10.2
15	11 05 43.7	86 13 28.7
16	11 05 30.9	86 15 09.8
17	11 04 22.2	86 21 43.8
18	11 03 32.6	86 25 21.2
19	10 56 56.3	86 44 27.0
20	10 54 22.7	86 49 39.5
21	10 36 50.6	87 22 47.6
22	10 21 23.2	87 47 15.3
23 (intersection with 200M limit)	09 43 05.7	89 11 23.5

(2) to delimit the maritime areas of Costa Rica and Nicaragua in the Caribbean Sea by a boundary connecting with geodetic lines the points with the following coordinates:

Point number	Latitude North (DMS) (WGS-84)	Longitude West (DMS) (WGS-84)
SP-C (Starting Point – Caribbean)	10 56 26.0	83 41 53.0
1	10 56 54.0	83 42 03.7
2	10 57 16.6	83 41 58.4
3	11 02 12.6	83 40 27.1
4	11 02 54.7	83 40 01.0
5	11 03 04.8	83 39 54.1
6	11 03 46.1	83 39 29.6
7	11 03 47.4	83 39 28.7
8	11 05 35.2	83 38 14.0
9	11 07 47.2	83 36 33.2
10	11 10 16.0	83 34 13.2
11	11 10 39.2	83 33 47.3
12	11 13 42.6	83 30 33.9
13	11 15 02.0	83 28 53.6
14 (intersection with Costa Rica 200 M limit)	12 19 15.9	80 33 59.2

Ambassador Sergio Ugalde
Co-Agent of Costa Rica
The Hague, 3 February 2015

CERTIFICATION

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

Ambassador Sergio Ugalde
Co-Agent of Costa Rica
The Hague, 3 February 2015

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