

INTERNATIONAL COURT OF JUSTICE

DISPUTE CONCERNING

MARITIME DELIMITATION IN THE CARIBBEAN SEA AND THE PACIFIC OCEAN

(COSTA RICA v. NICARAGUA)

COUNTER - MEMORIAL

OF THE REPUBLIC OF NICARAGUA

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CHAPTER I: INTRODUCTION

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

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

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

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

A. THE SCOPE OF THE DISPUTE

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

B. STRUCTURE OF THIS COUNTER MEMORIAL

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

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

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

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

CHAPTER II: DELIMITATION IN THE PACIFIC

A. FACTUAL AND LEGAL BACKGROUND

1. General Description of the Geographical Situation

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

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

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

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

Figure Ia-1: Pacific: General Geographic Setting



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

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

¹ See below Section B of this Chapter.

- Treaty on the Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica of 6 April 1984;³ and
- Agreement on Maritime Delimitation between the Republic of Costa Rica and the Republic of Ecuador, 21 April 2014.⁴

2. The Starting Point of the Maritime Boundary

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

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

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

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

² CRM, Vol. II, Annex 2.

³ *Ibid.*, Annex 3.

⁴ *Ibid.*, Annex 5.

⁵ CRM, Vol. II, Annex 1.

⁶ CRM, p. 36, para. 3.13.

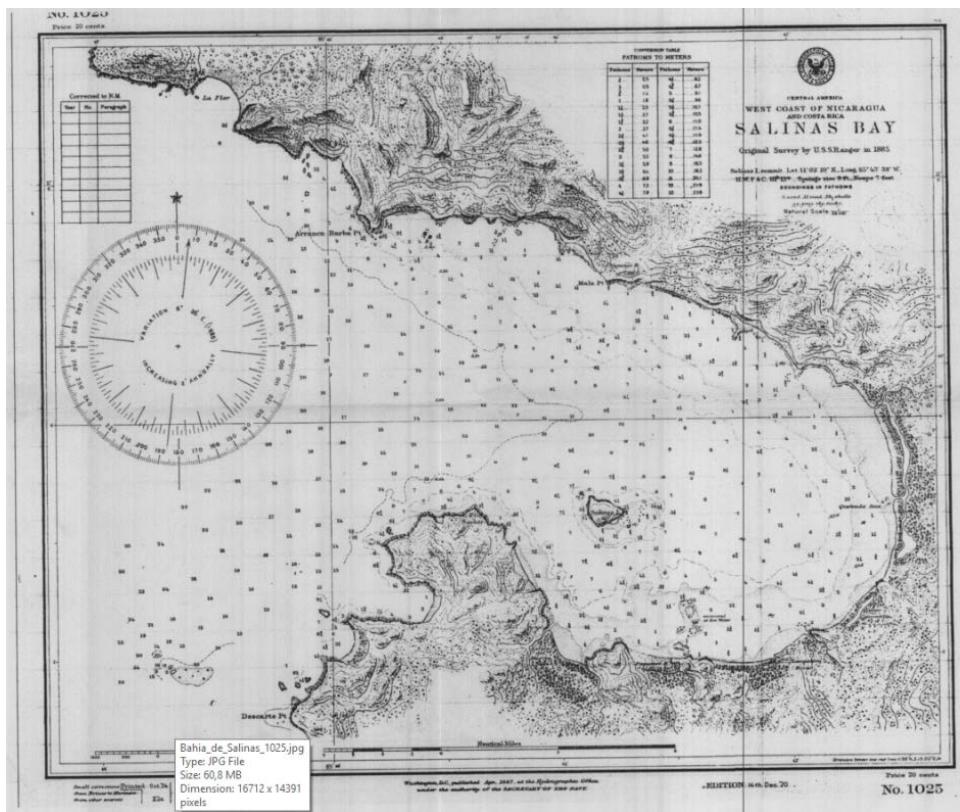
⁷ Award of the Arbitrator, the President of the United States, upon the validity of the Treaty of Limits of 1858 between Nicaragua and Costa Rica, *U.N.R.I.A.A.*, Vol. XXVIII (2006), p. 209 – italics added.

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

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

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

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



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

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

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

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

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

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

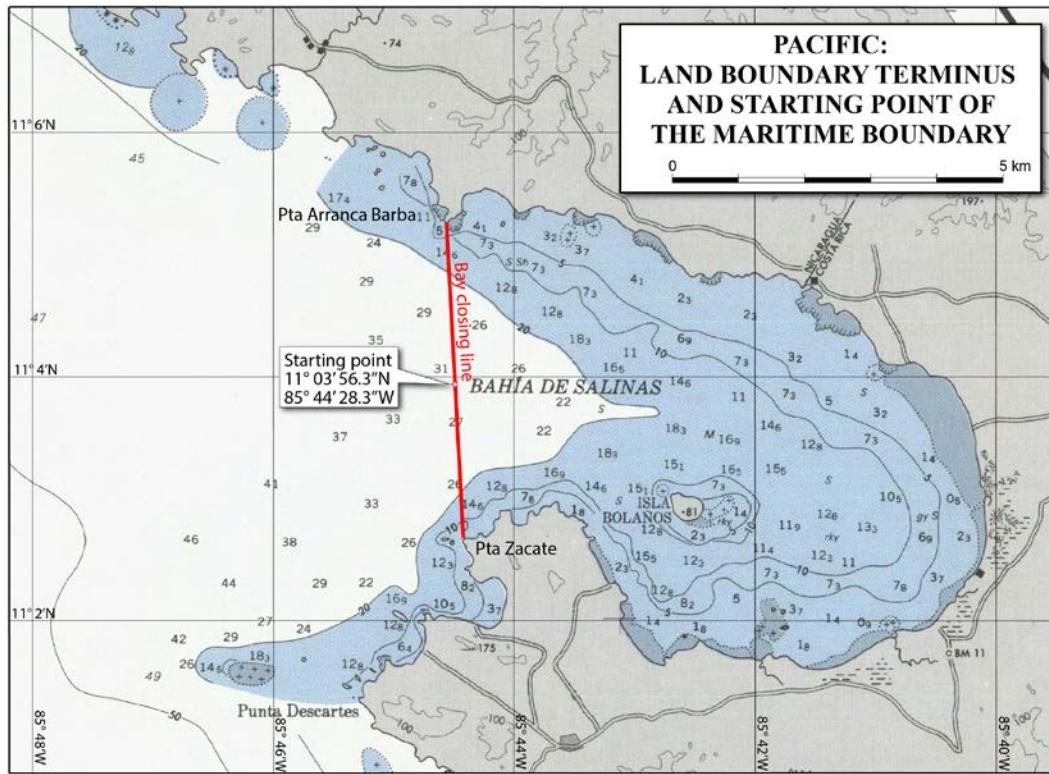
¹¹ Minute of the Second Meeting of the Sub-Commission on Limits and Cartography, 25 March 2003 (NCM, Annex 13).

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

¹³ *Ibid.*

¹⁴ *Ibid.*

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



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

¹⁵ CRM, p. 36, para. 3.13.

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

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

This gives a precise midpoint of $11^{\circ} 03' 56.3''\text{N}$ $85^{\circ} 44' 28.3''\text{W}$ (WGS84), which is the proper starting point of the maritime delimitation¹⁸.

¹⁸ See Figure Ia-3.

B. THE RELEVANT COASTS AND THE RELEVANT AREA

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

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

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

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

1. The Relevant Coasts

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

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

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

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

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

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

²² *Ibid.*

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

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

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

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

²⁵ See further above para. 2.2.

²⁶ See CRM, paras 3.3 and 3.10.

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

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

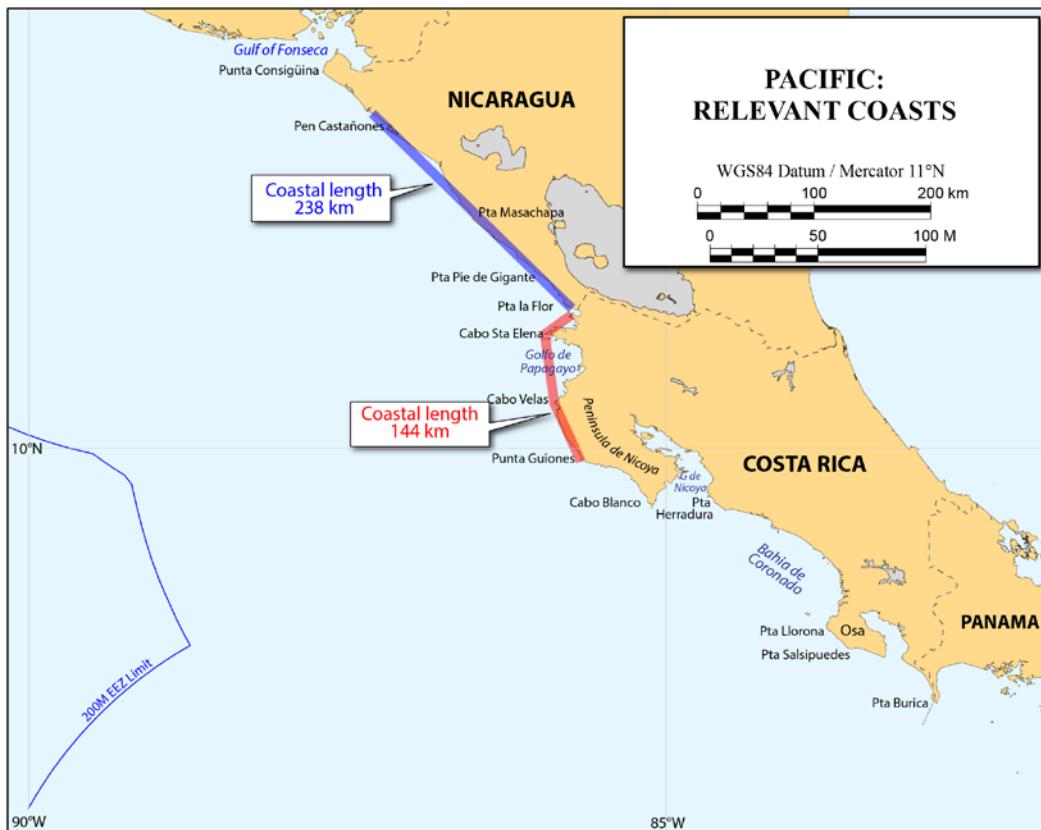
2.20 In its Memorial, Costa Rica identifies its relevant coast as consisting of two segments, one running from the Costa Rican coast south of the Bay of Salinas to Cabo Blanco, the southwestern tip of the peninsula of Nicoya, and the other

²⁷ CRM, para. 3.10.

²⁸ See further para.2.3. below.

²⁹ See para. 2.25. below.

Figure Ib-1. Pacific: Relevant Coast



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

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

³¹ CRM, para. 3.6.

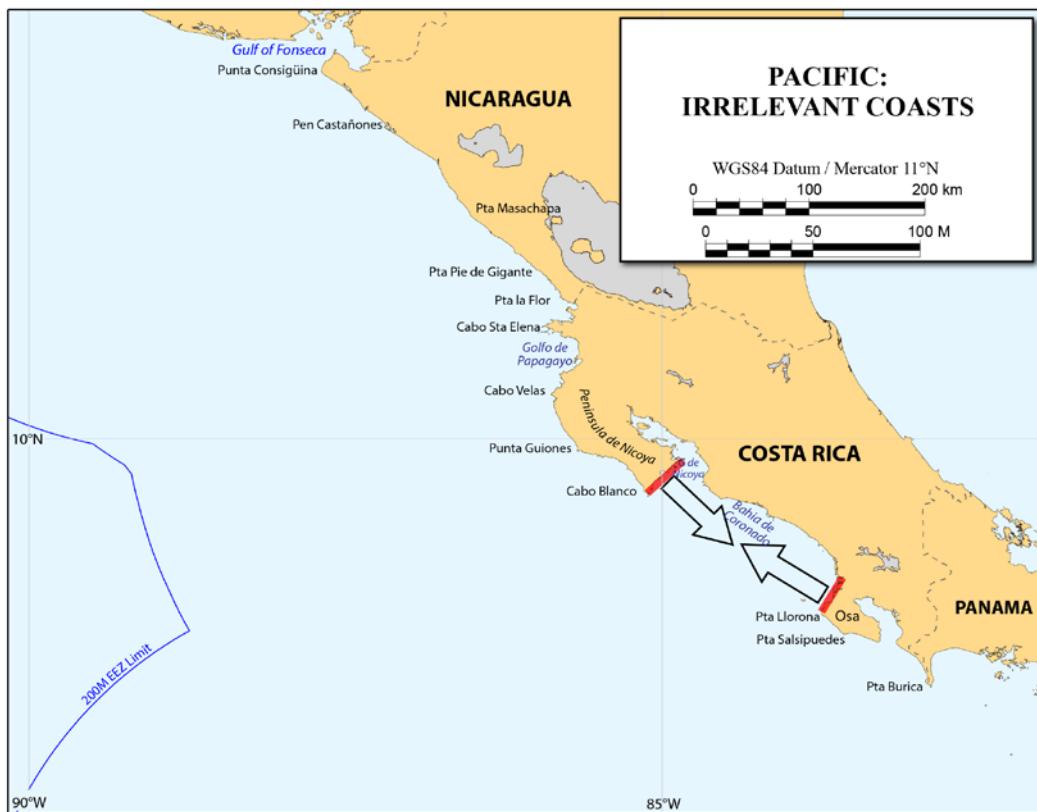
³² CRM, para. 3.3.

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

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

³³ See above at paras 2.15 and 2.16.

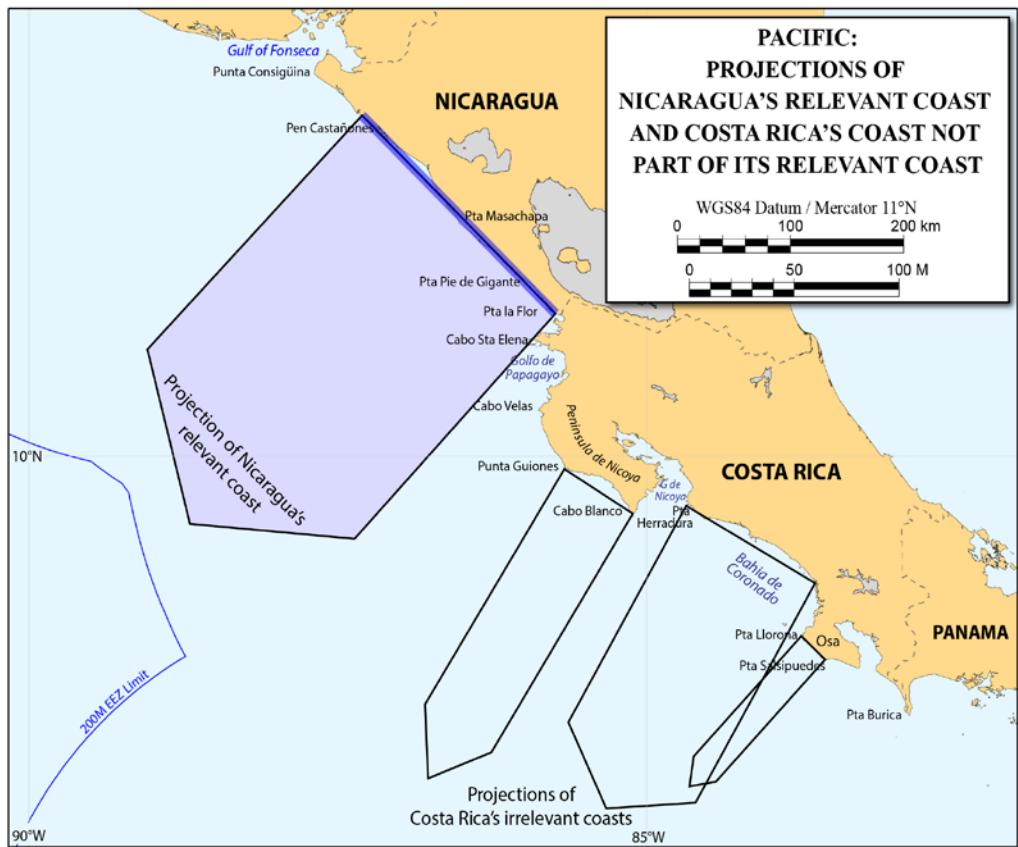
Figure Ib-2 Pacific: Irrelevant Coasts



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

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

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



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

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

³⁴ CRM, paras 3.9-3.10.

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

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

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

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

2. The Relevant Area

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

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

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

³⁷ CRM, para. 3.11.

³⁸ CRM, para. 3.12.

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

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

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

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

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

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

⁴¹ *Ibid.*, para. 94.

⁴² *Ibid.*, para. 100.

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

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

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

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

⁴⁴ ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, judgment of 14 March 2012, para. 493.

⁴⁵ *Ibid.*, paras 491 and 495.

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

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

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

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

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

⁴⁹ *Ibid.*, para. 304.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, para. 309.

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

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

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

⁵² CRM, para. 3.12.

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

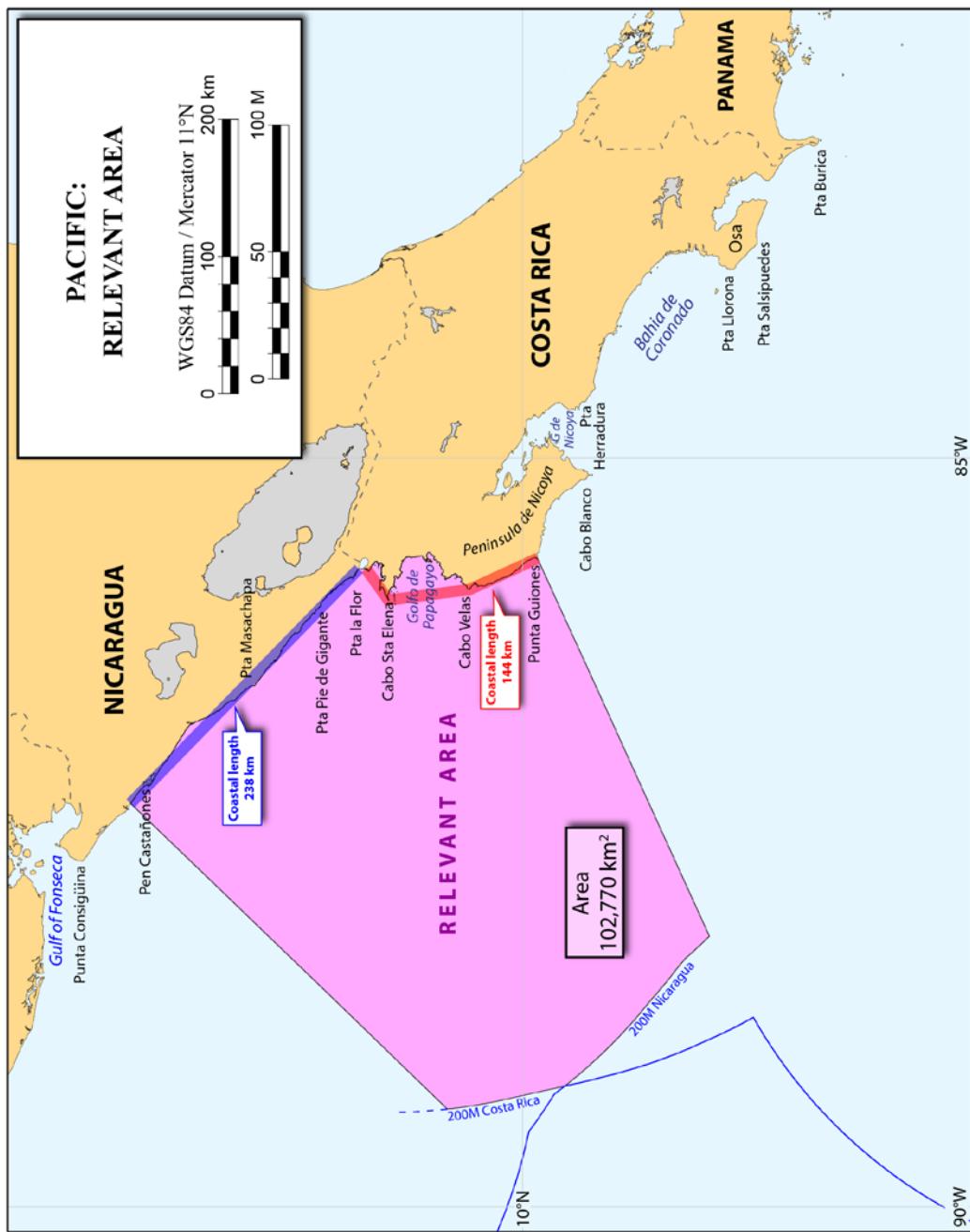
⁵⁴ See CRM, paras 3.3 and 3.10.

⁵⁵ See above para. 2.23.

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

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

Figure Ib-4: Pacific: Relevant Area



C. TERRITORIAL SEA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

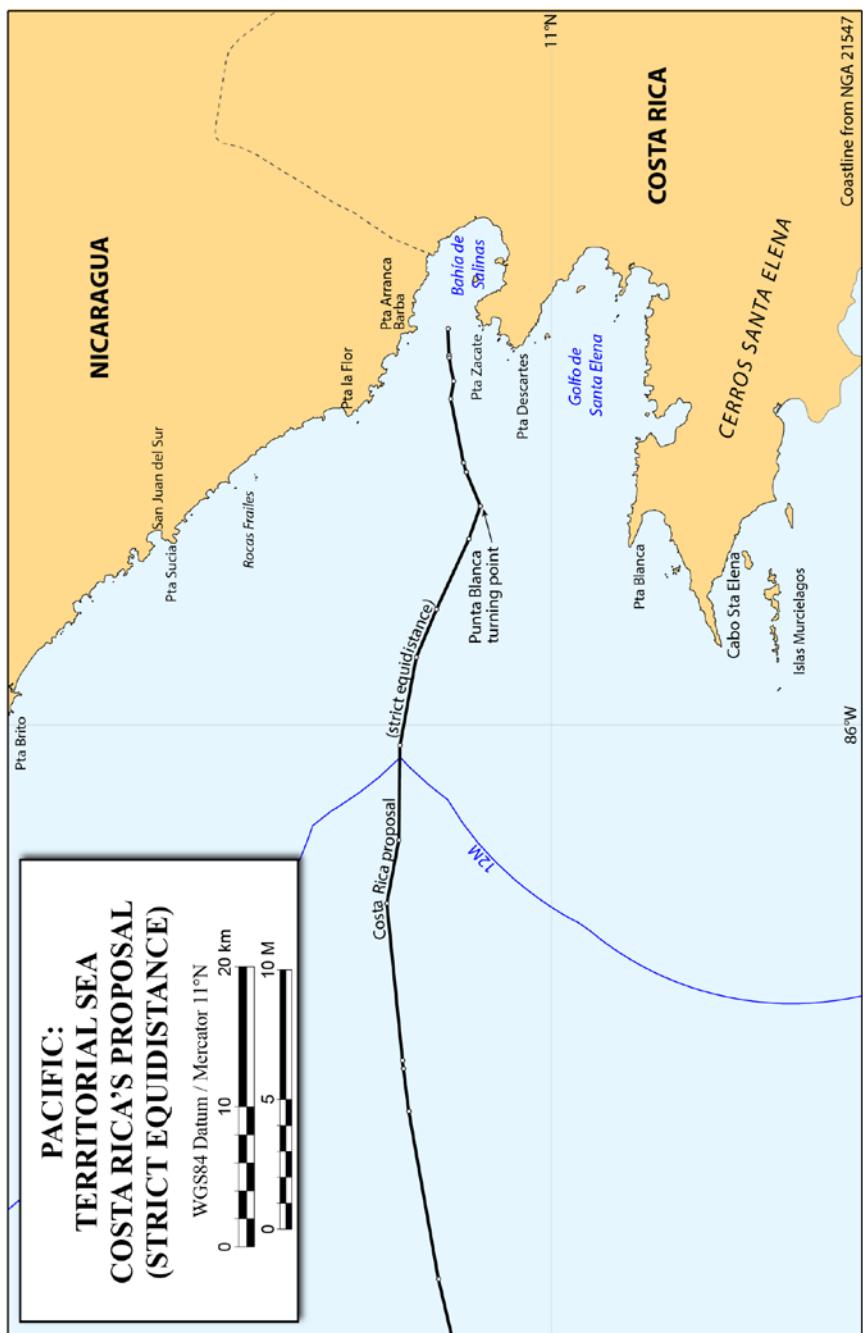
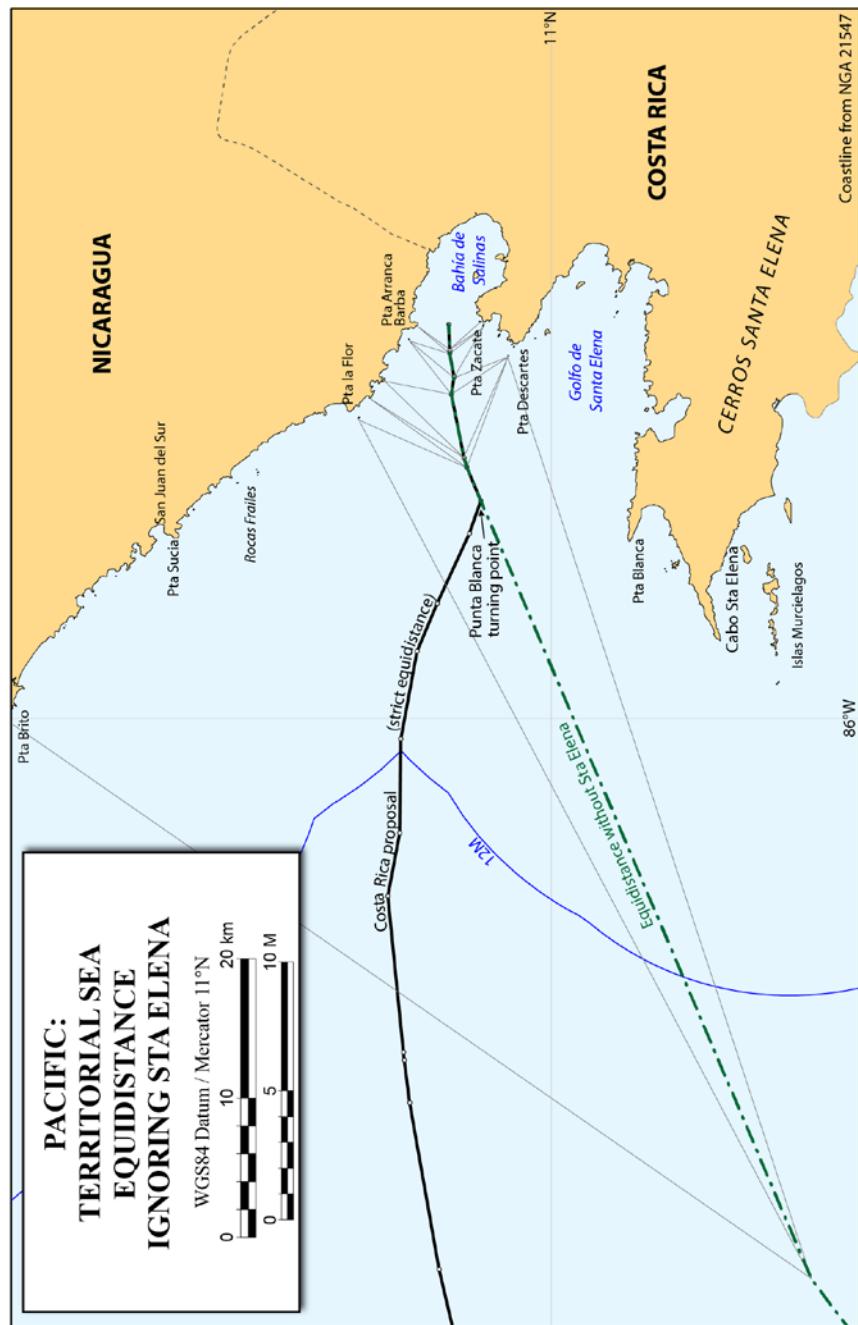
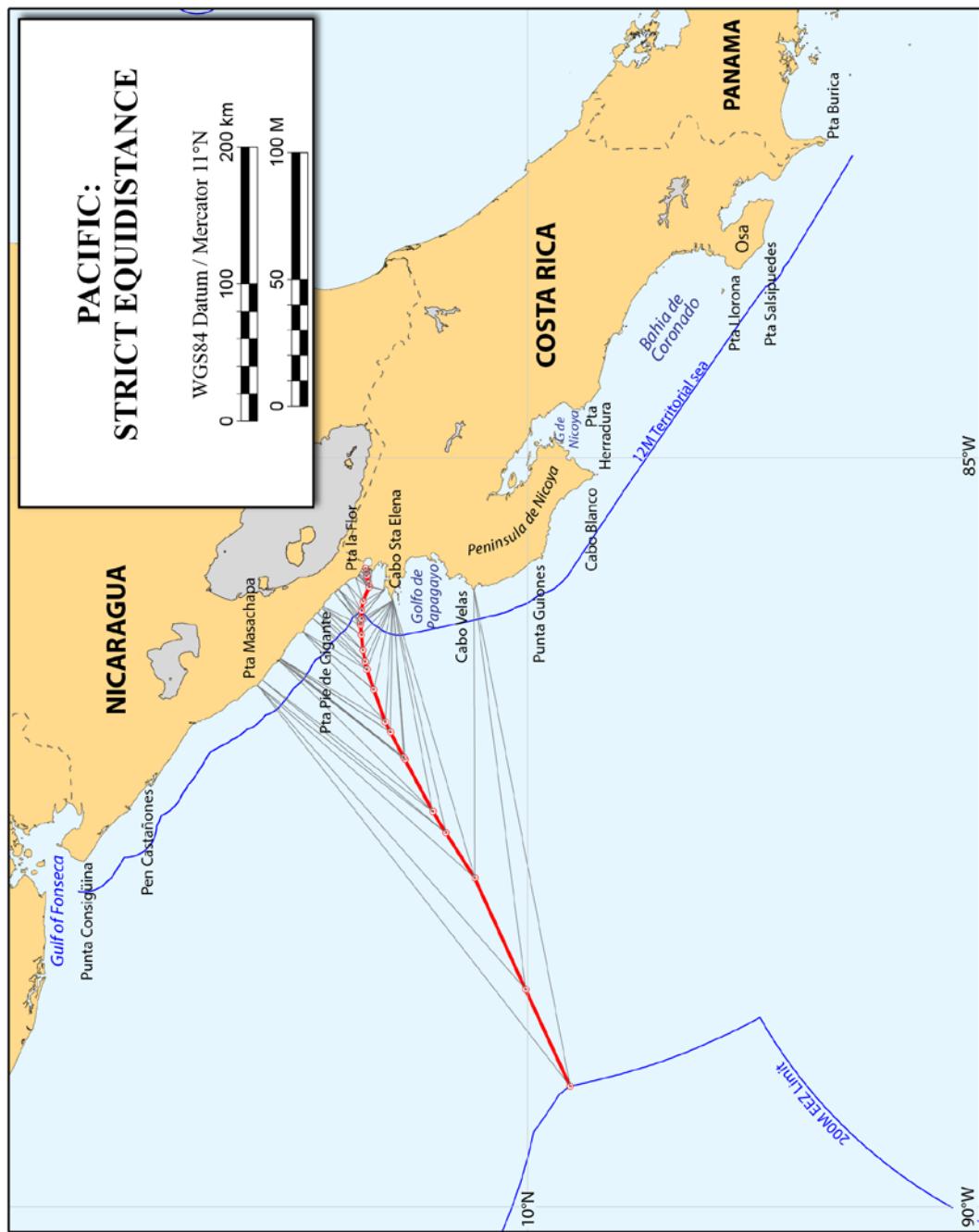


Figure Ic-2: Pacific: Territorial Sea Equidistance ignoring Sta Elena



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

Figure Ic-3: Pacific: Strict Equidistance



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

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

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

⁷⁰ See above, para. 2.15. See also D H Anderson, ‘Maritime boundaries and limits: some basic legal principles’, (2001),
<http://www.ihc.int/mtg_docs/com_wg/ABLOS/ABLOS_Conf2/ANDERSON.PDF>, at p. 5.

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

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

2.54 The distances and areas involved are relatively small. The southward drop at the point of intersection with the outer limit of the territorial sea is around 9 NM. The result is to give Nicaragua around 206km^2 more territorial sea than it would have under strict equidistance line. That figure may be compared with the 7.100km^2 of Nicaragua’s entire territorial sea in the Pacific, and Costa Rica’s $11,800\text{ km}^2$ of Pacific territorial sea.

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

Figure Ic-4: Pacific: Territorial Sea Proposed Delimitation

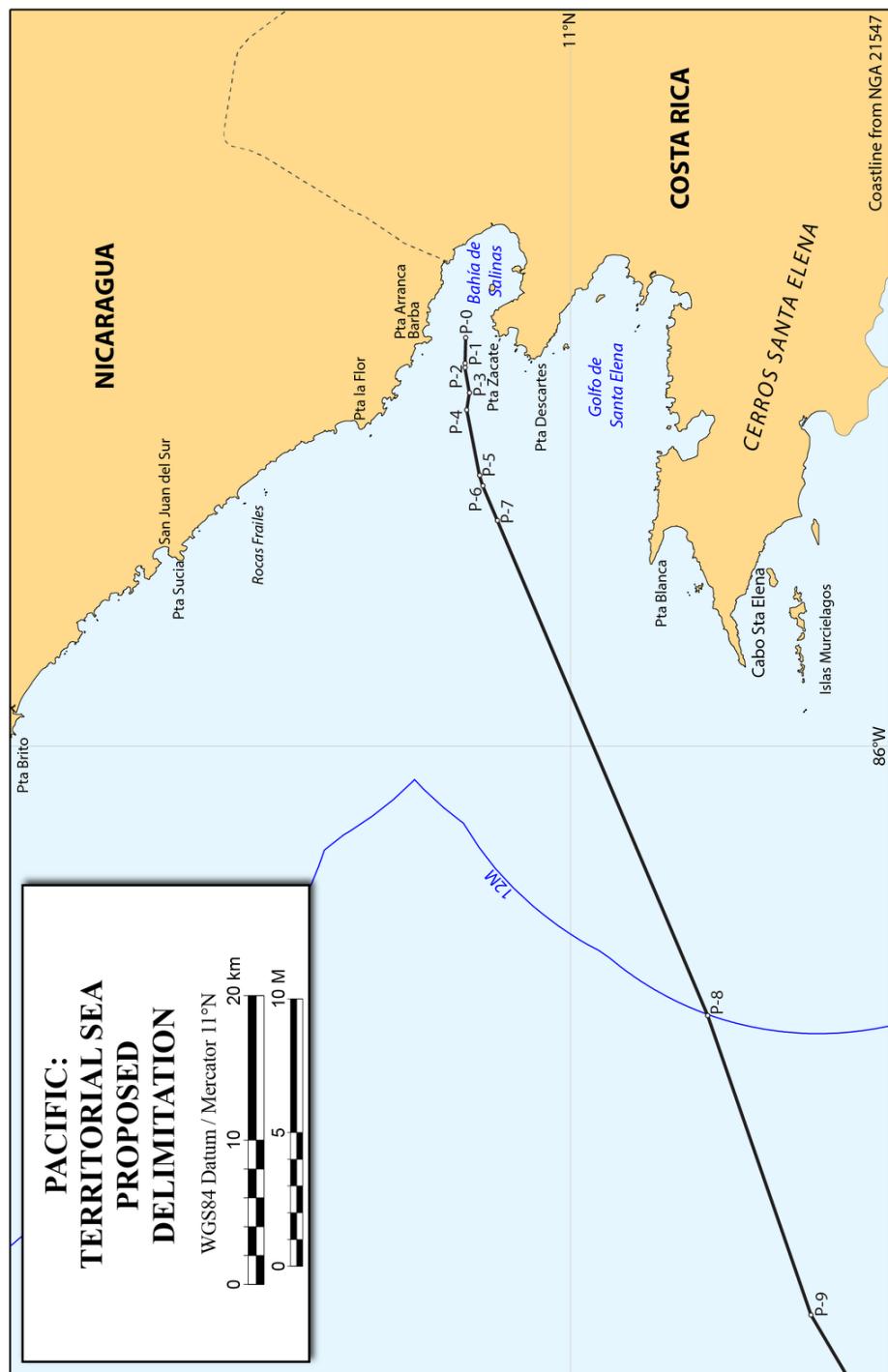


Table 2.1
TABLE OF COORDINATES

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

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

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

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

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

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

⁷¹ CRM, para. 3.16.

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

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

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

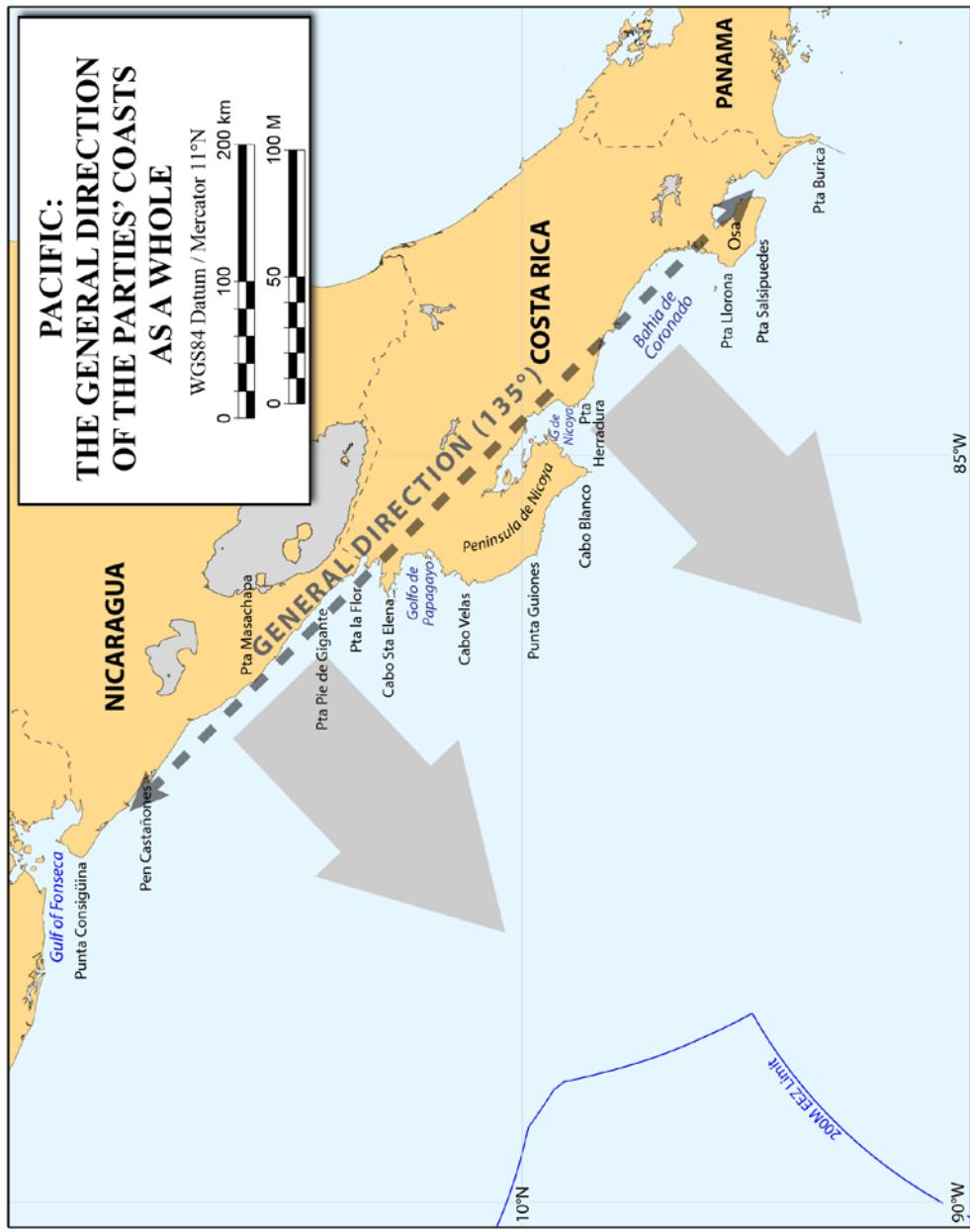
⁷⁵ *Romania v. Ukraine*, para.127.

⁷⁶ See p. 4 above.

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

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

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



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

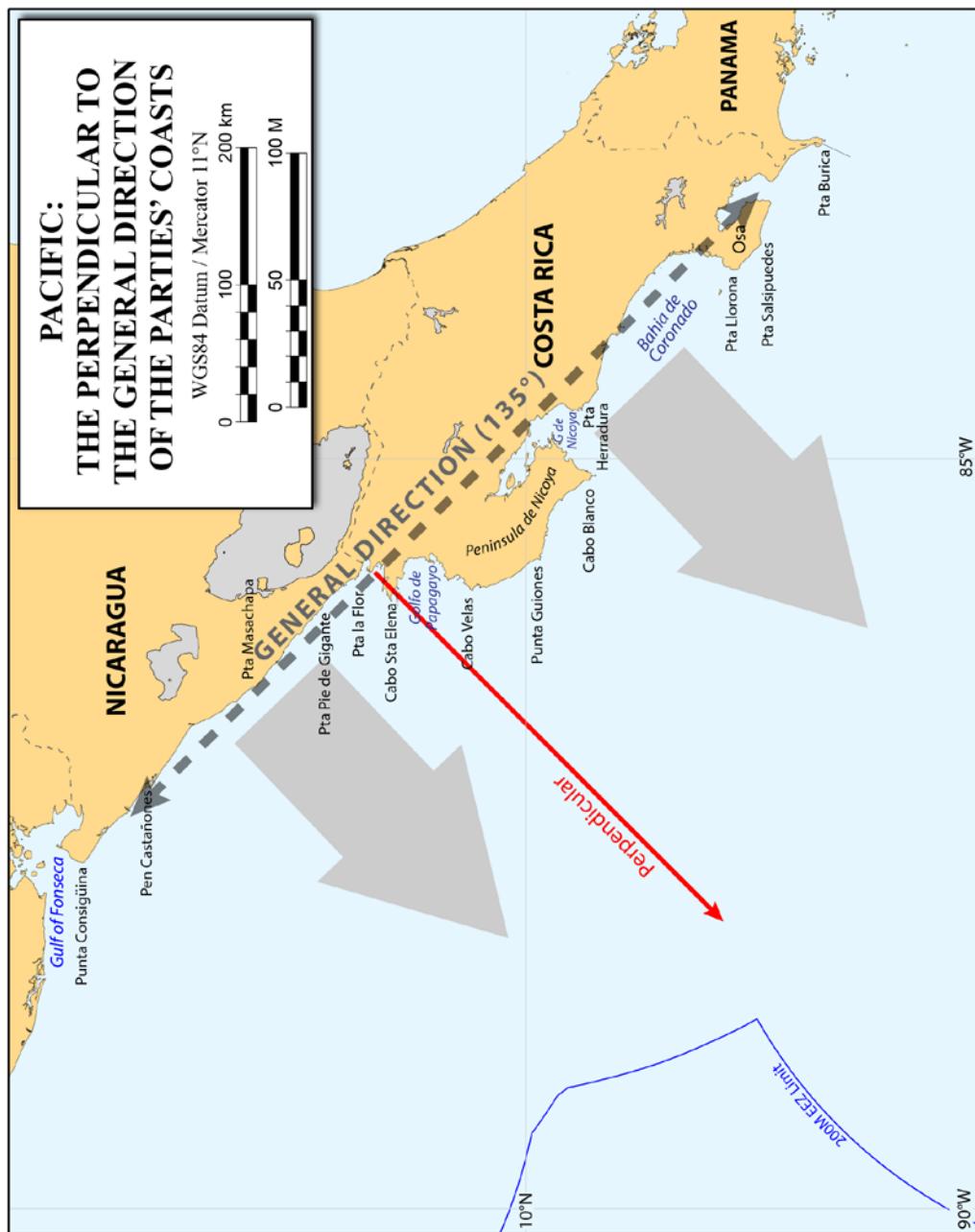
2.60 The same is not true with respect to the base points on its own coast, however. There, Costa Rica identifies just three base points, all of which are located on features—Punta Santa Elena (2) and Cabo Velas (1)—situated in the northern reaches of the Nicoya Peninsula.⁷⁹ This peninsula, which lies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

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

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

⁷⁹ *Ibid.*

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



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

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

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

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

⁸⁰ CRM, para. 3.17.

⁸¹ CRM, para.3.19.

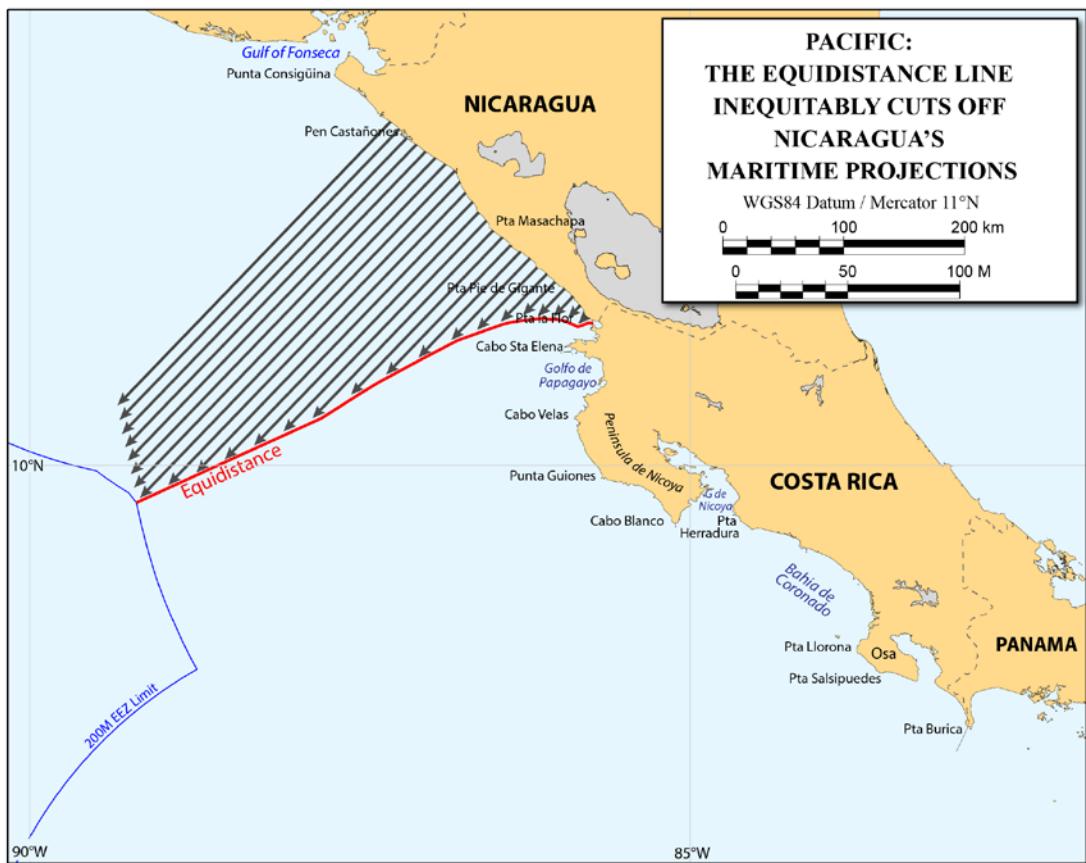
⁸² *Barbados v. Trinidad and Tobago*, para. 233 (“The identification of the relevant circumstances becomes accordingly a necessary step in determining the approach to delimitation. That determination has *increasingly been attached to geographical considerations*, with particular reference to the length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

⁸³ *Nicaragua v. Colombia*, para.215.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

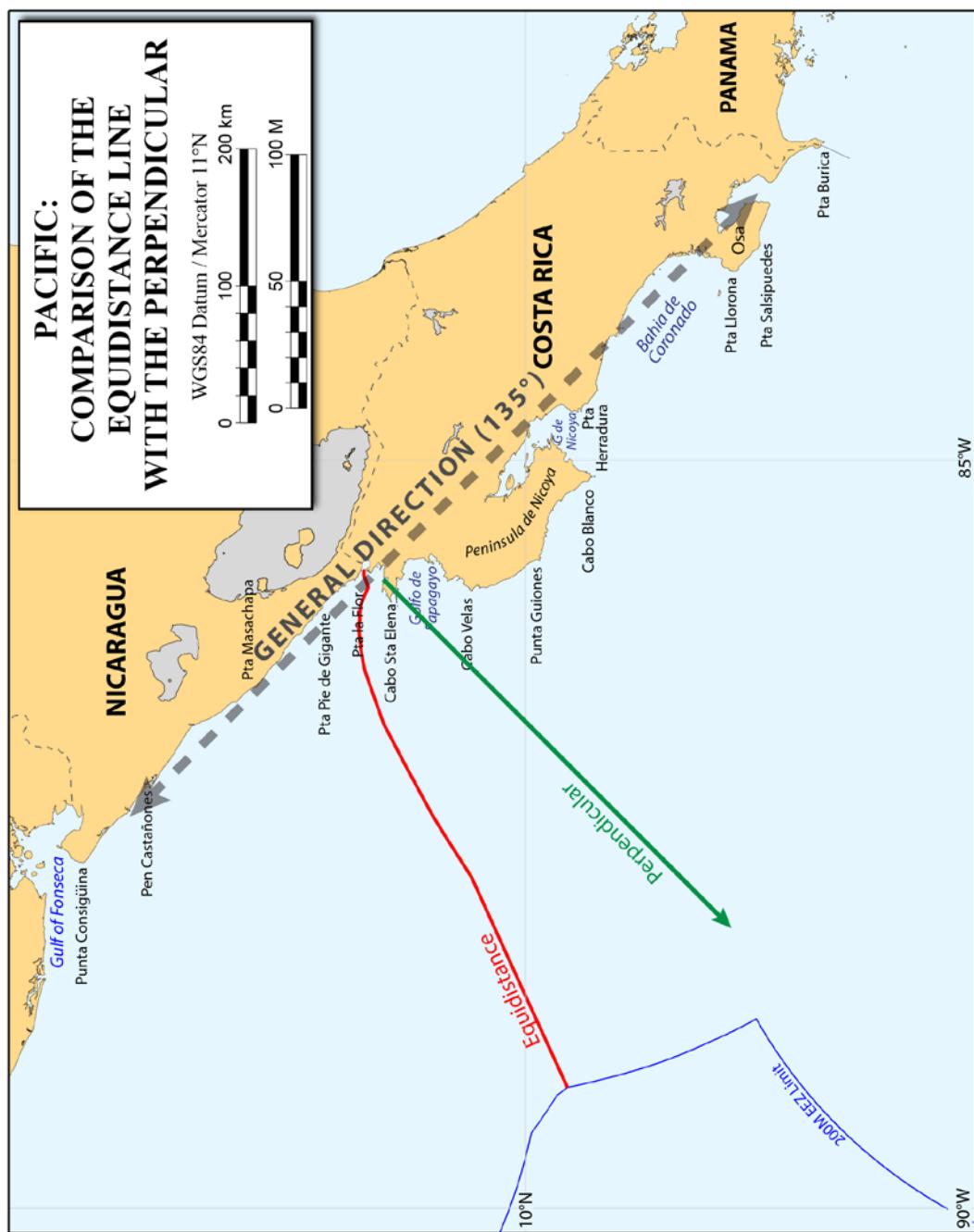
2.71 The extent to which the use of basepoints on the Nicoya Peninsula distorts the course of Costa Rica's provisional equidistance line and cuts Nicaragua off from its maritime projections can be appreciated by comparing the lines depicted in Figures Id-2, above, (showing the perpendicular to the general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

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

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

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

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



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

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

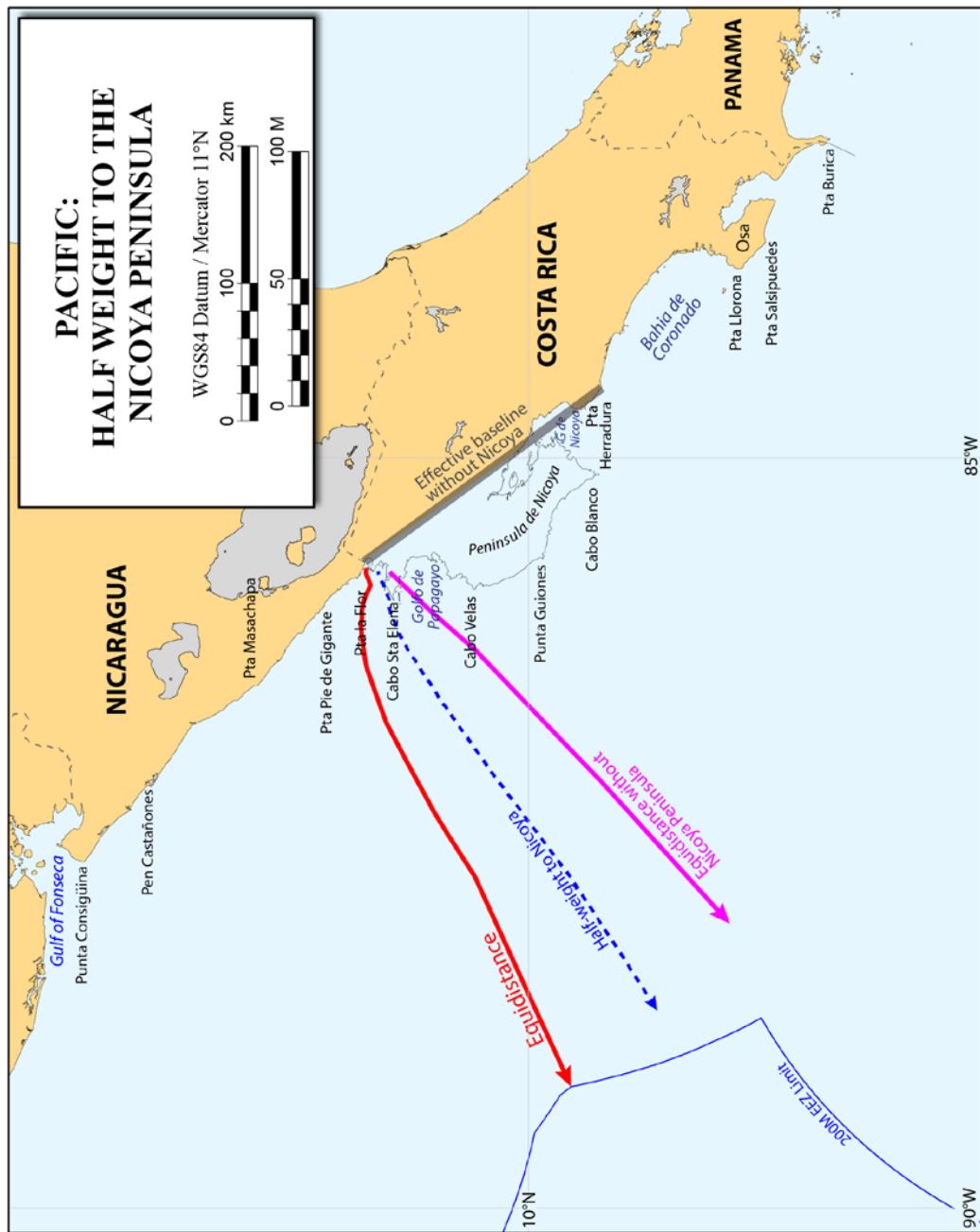
2.74 This proposed boundary is shown in Figure Id-5, below.⁹² As can be appreciated, the adjusted line does not eliminate all of the prejudicial effects of the Nicoya Peninsula. Nicaragua's maritime projections are still cut off. Nevertheless, Nicaragua's proposal does abate the worst of the cut-off.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

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

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

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

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



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

2.76 In the third and final step of the delimitation process, the Court considers whether the delimitation line determined by application of the first two steps “lead[s] to any significant disproportionality by reference to the respective coastal lengths and the apportionment of areas that ensue.”⁹³

2.77 The Parties agree that the purpose of this exercise “is not to attempt to achieve even an approximate correlation between the ratio of the lengths of the Parties’ relevant coasts and the ratio of their respective shares of the relevant area. It is, rather to ensure that there is not a disproportion so gross as to ‘taint’ the result and render it inequitable.”⁹⁴ The Parties also agree that comparing the relevant coastal length ratio with the relevant area ratio “remains in each case a matter for the Court’s appreciation, which it will exercise by reference to the overall geography of the area.”⁹⁵

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

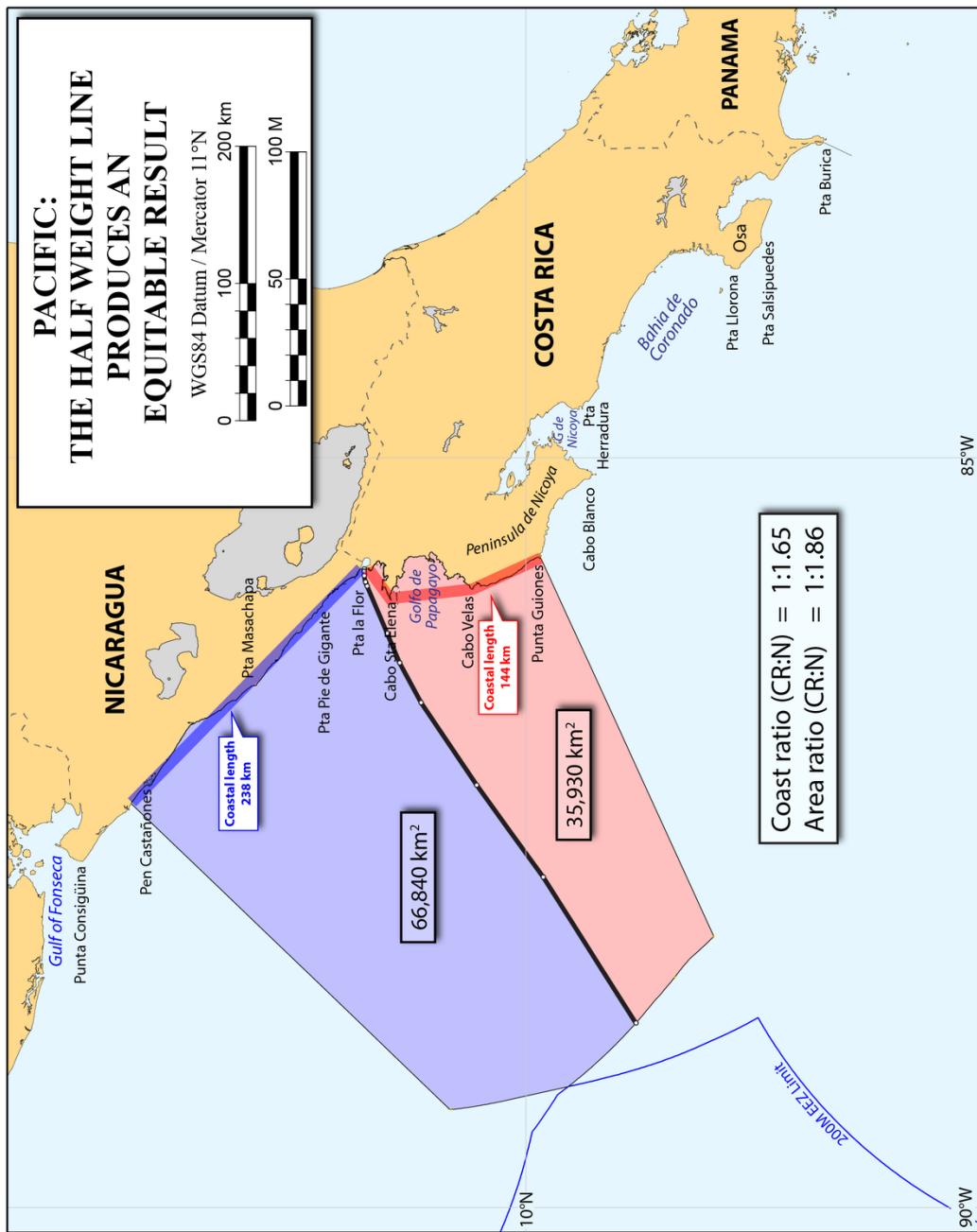
⁹³ *Romania v. Ukraine*, para. 210.

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

⁹⁵ *Romania v. Ukraine*, para. 213.

⁹⁶ See paras. 2.27-2.39 above.

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



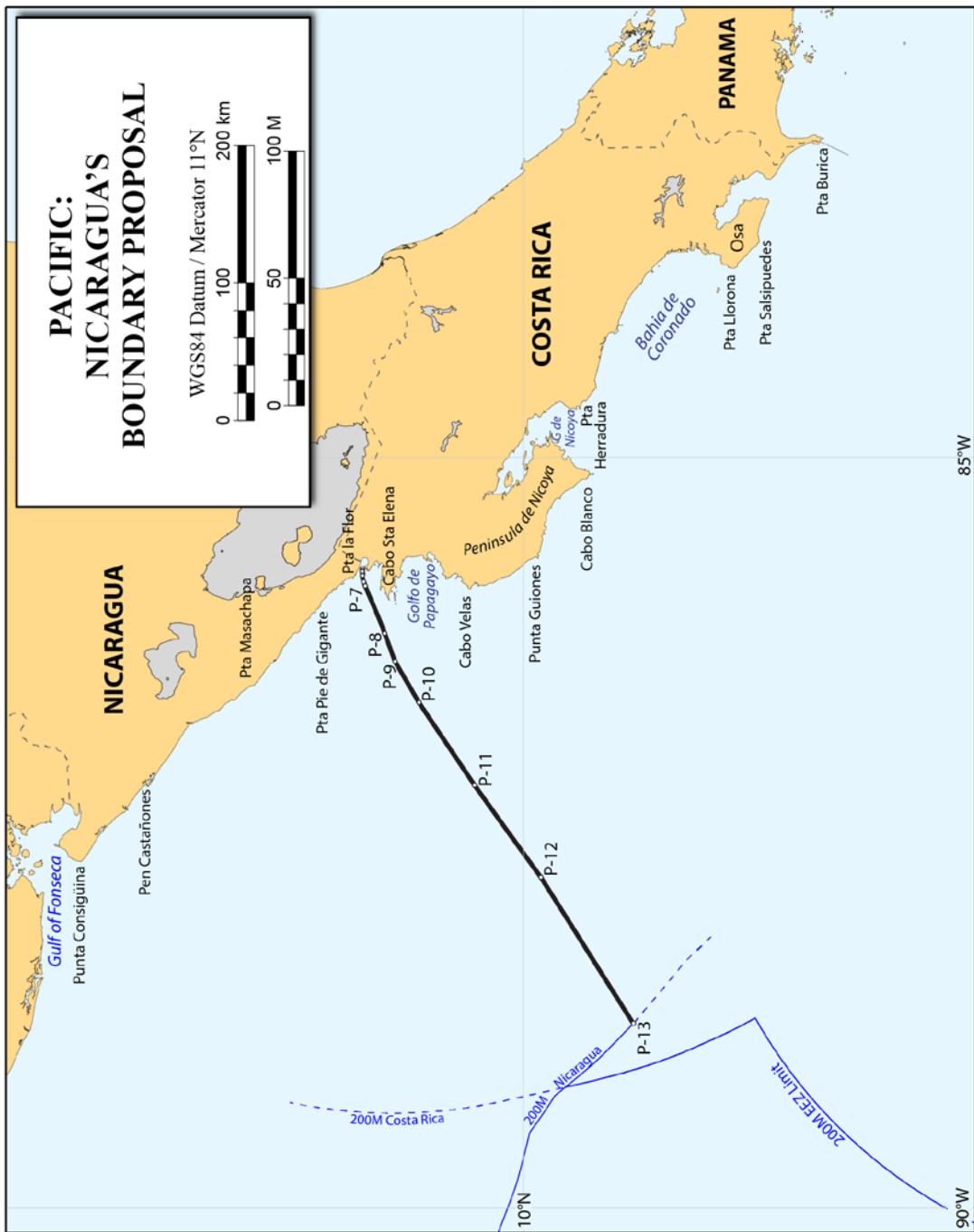
2.79 Accordingly, as depicted in Figure Id-7, the maritime boundary between 12 M and 200 M follows the course with the turning points described in Table 2.2. (referred to WGS 84).

Table 2.2.

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

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

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



CHAPTER III: DELIMITATION IN THE CARIBBEAN SEA

A. FACTUAL AND LEGAL BACKGROUND

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

1. General Description of the Geographical Situation

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

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

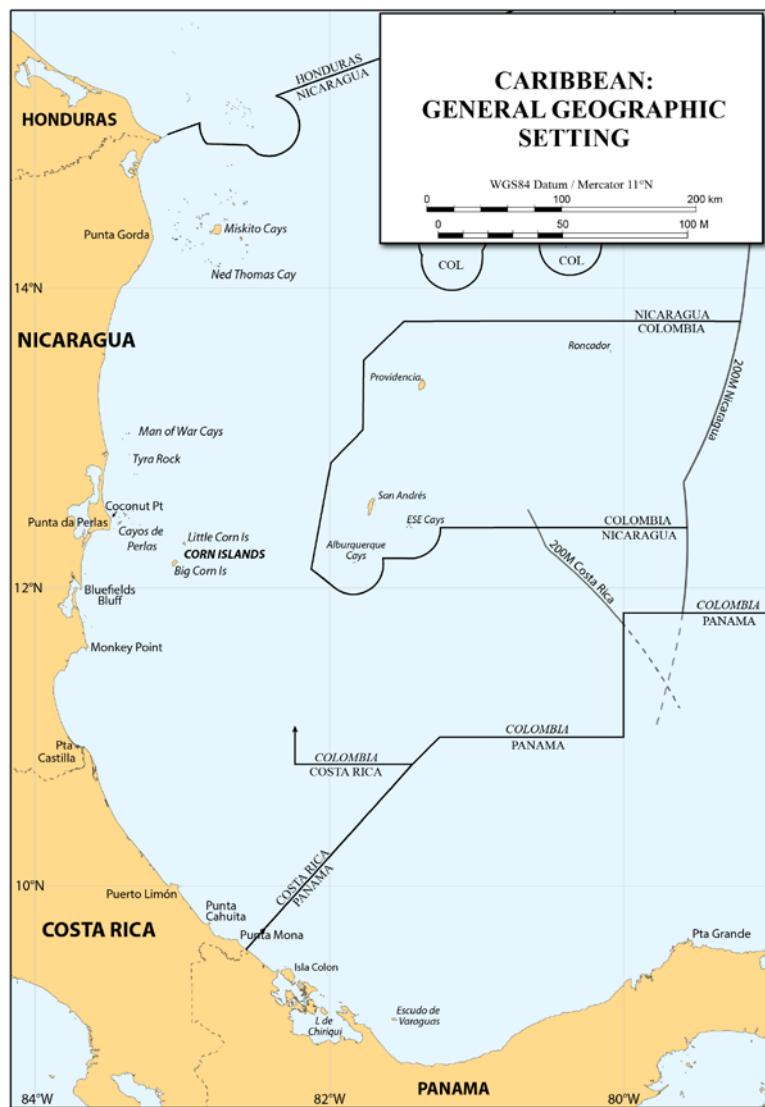
⁹⁸ I.C.J., Judgment, 8 October 2007, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Reports 2007, p. 659.

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

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

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

Figure IIa-1: Caribbean: General Geographic Setting



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

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

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

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

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

¹⁰³ *Ibid.*, Article 1(1).

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

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

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

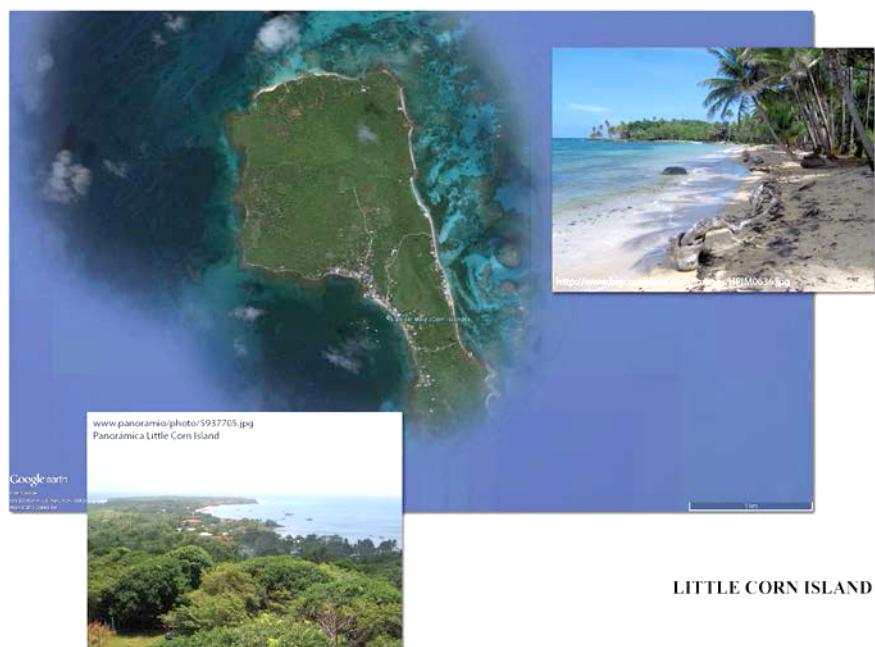
¹⁰⁶ I.C.J., Judgment, 19 November 2012, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Reports 2012, p. 638, para. 21. See also INETER, “Corn Island: A Nicaraguan Island in the Caribbean Sea”, 6 November 2015 (NCM, Annex 20).

¹⁰⁷ *Ibid.*

Figure IIa-2: Big Corn Island



Figure IIa-3: Little Corn Island



2. Relevance of previous Judgments

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

- in the case concerning the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*;¹⁰⁸
- in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*¹⁰⁹ in which Costa Rica and Honduras filed application for permission to intervene;¹¹⁰
- in the case concerning the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)*;¹¹¹ and
- in the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*.¹¹²

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

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

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

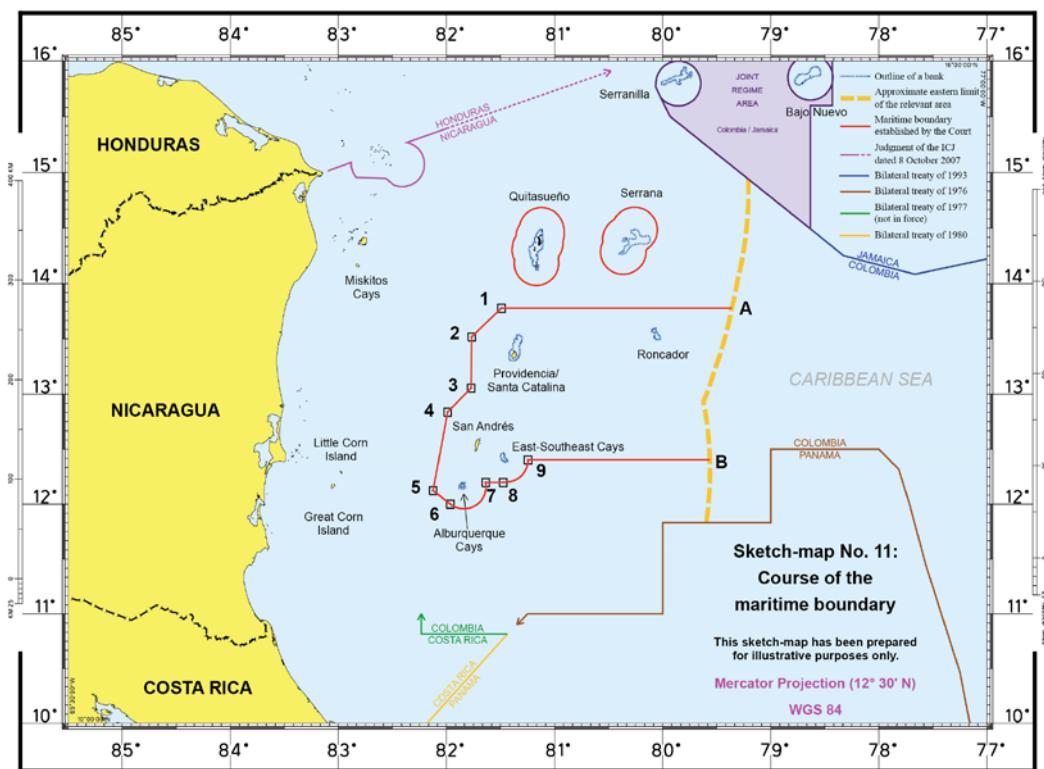
¹¹⁰ I.C.J., Judgments, 4 May 2011, *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, *Application for Permission to Intervene*, Reports 2011, p. 348 and p. 420.

¹¹¹ Application of 16 September 2013.

¹¹² Application of 26 November 2013.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Relevance of previous treaties concluded by Costa Rica

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

¹²⁰ CRM, p. 52, para. 4.8.

¹²¹ CRM, p. 11, para. 2.13.

¹²² See figure IIa-4, at p.63.

¹²³ CRM, *ibid.*

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

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

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

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

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

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

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

¹²⁷ CRM, par. 2.13.

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

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

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

¹²⁸ *Ibid.*

¹²⁹ CRM, Annex 18.

¹³⁰ *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

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

¹³⁴ *Ibid.*, p. 37, para. 72.

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

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

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

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

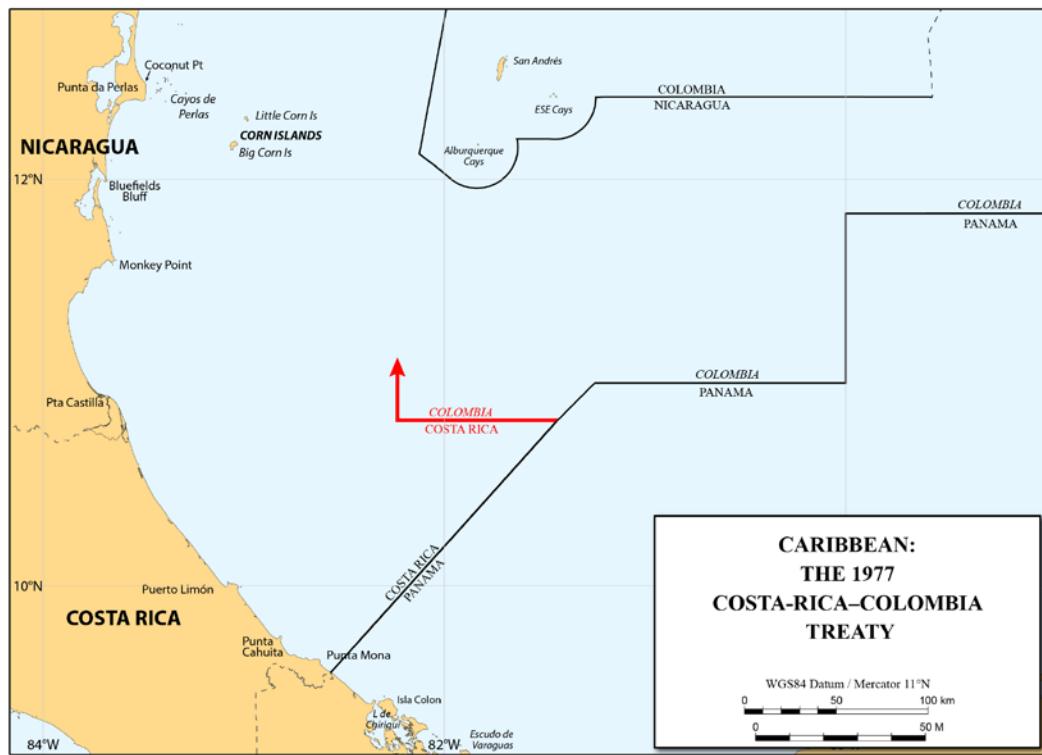
3.30 These areas are clearly not under the jurisdiction of Costa Rica. They belong to Nicaragua, which has always maintained its entitlement vis-à-vis Colombia. Costa Rica was well aware of this fact, as can be appreciated in Costa Rica’s note of 1 March 1996.¹³⁸ Far from adjusting its position, Costa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

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

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

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

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



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

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

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

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

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

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

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

B. THE STARTING POINT OF THE MARITIME BOUNDARY

3.34 According to Costa Rica

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

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

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

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

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

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

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

¹⁴⁴ CRM, p. 57, para. 4.13.

¹⁴⁵ CRM, p. 59, para. 4.14.

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

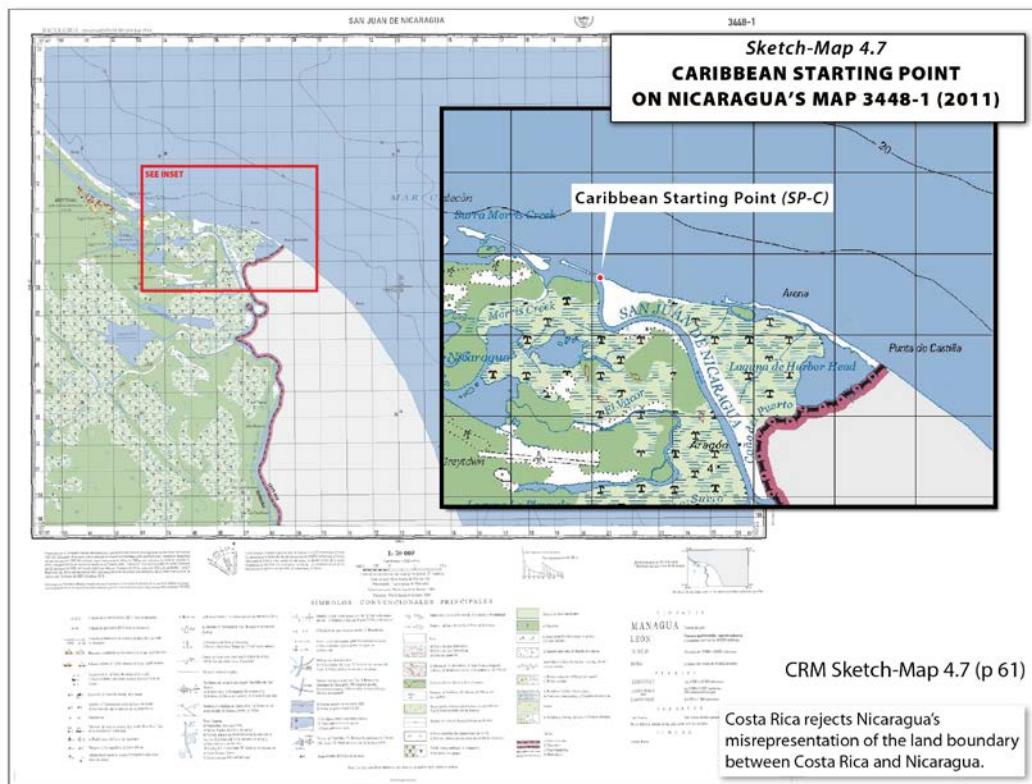
¹⁴⁷ CRM, pp. 59-60, para. 4.15.

¹⁴⁸ Folder 41, Oct. 1897, 4 Oct. 1897, in the Edward Porter Alexander Papers, No. 7, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill, available online

at
<http://memoriacentroamericana.ihnca.edu.ni/uploads/media/Fondo%20Edward%20Porter%20Alexander.%20Expediente%20No.%2041.pdf>.

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

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



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

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

¹⁴⁹ CRM, p. 59, para. 4.14.

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

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

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

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

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

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

[...]

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

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

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

3.42 The crucial points here are:

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

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

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

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

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

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

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

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

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

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

[...]

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

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

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

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

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

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

¹⁵⁴ *Ibid.*, pp. 219-220.

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

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

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

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

¹⁵⁵ *Ibid.*, pp. 220-221.

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

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

¹⁵⁶ See Fn. 153 above at p. 80.

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

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

3.47 As explained in Proceedings X of 2 March 1898:

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

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

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

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

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

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

¹⁶⁰ *Ibid.*

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

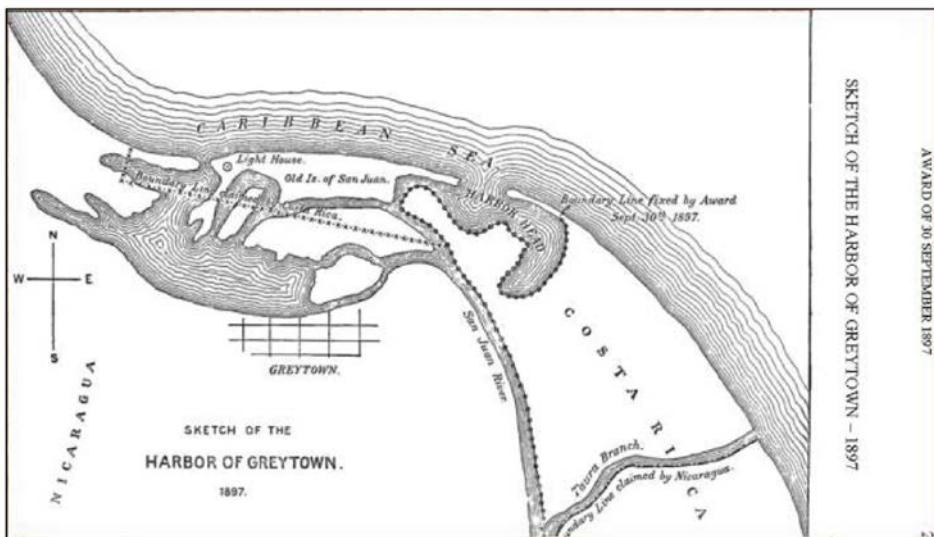
3.49 As of today there have indeed been important changes in the coastal configuration in the region, but the “bank of sand” separating the Caribbean Sea from Harbor Head Lagoon – which the Parties agree to be Nicaraguan¹⁶² – still exists, as is apparent from recent satellite images – including those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

¹⁶¹ See Figure IIb-3 below.

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

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

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



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

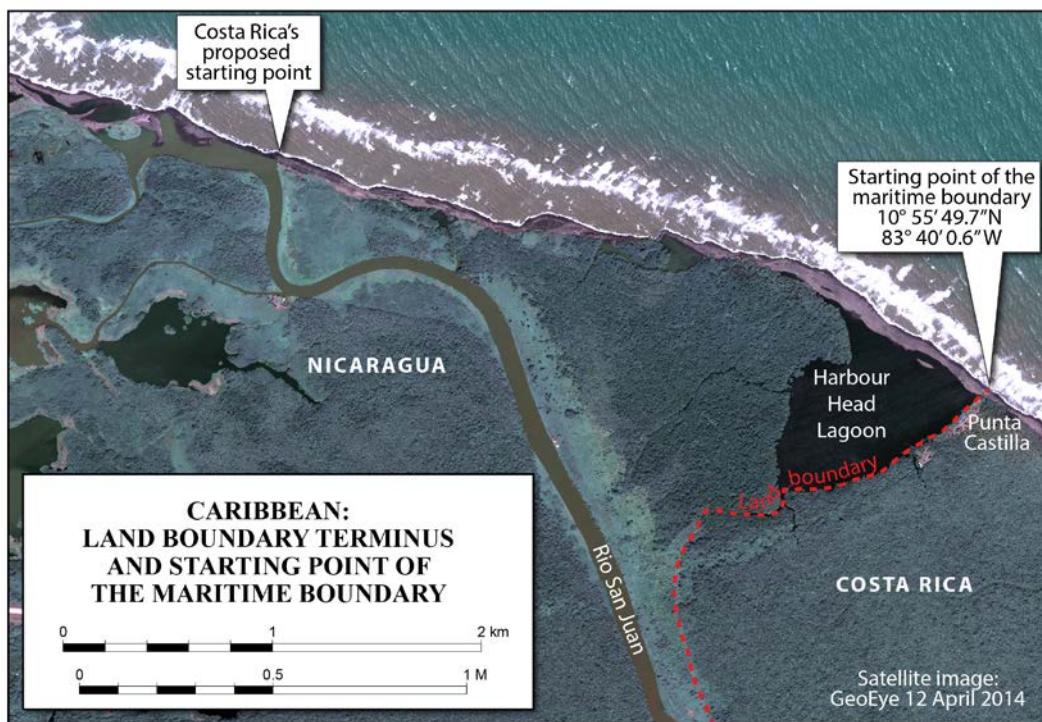
3.51 As a matter of principle, such an approach was agreed between the Parties during their negotiations on maritime delimitation held between 2003 and 2005. As Costa Rica notes: “The negotiations focused, in the first instance, on the identification of the location on the Caribbean coast of Marker n°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

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

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

3.52 Consequently, the starting point of the sea delimitation is located at $10^{\circ} 55' 49.7''$ North and $83^{\circ} 40' 0.6''$ West as shown on Figure IIb-3.

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



¹⁶⁵ CRM, p. 20, para. 2.33.

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

C. THE RELEVANT COASTS AND THE RELEVANT AREA

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

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

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

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

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

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

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

2. The Relevant Coasts

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

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

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

¹⁶⁷ CRM, para. 4.3.

¹⁶⁸ CRM, paras 4.4-4.10.

¹⁶⁹ CRM, paras 4.4-4.7.

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

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

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

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

¹⁷⁰ CRM, para. 4.8.

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

¹⁷² *Ibid.*, para. 159.

¹⁷³ CRM, para. 4.9.

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

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

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

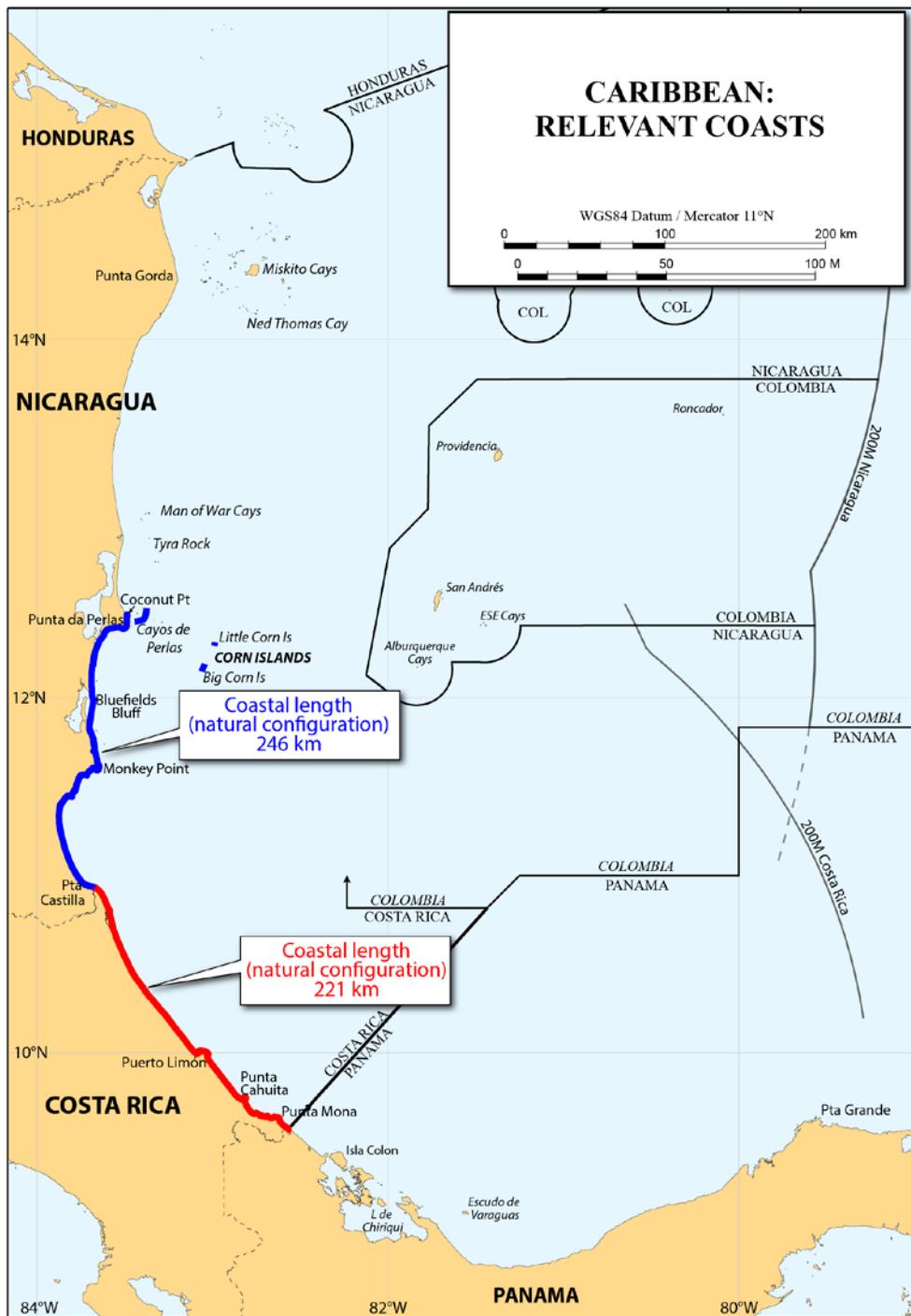
¹⁷⁴ CRM, paras 4.23-4.24.

¹⁷⁵ See above Chapter II.A.1.

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

¹⁷⁶ See CRM, para. 4.10.

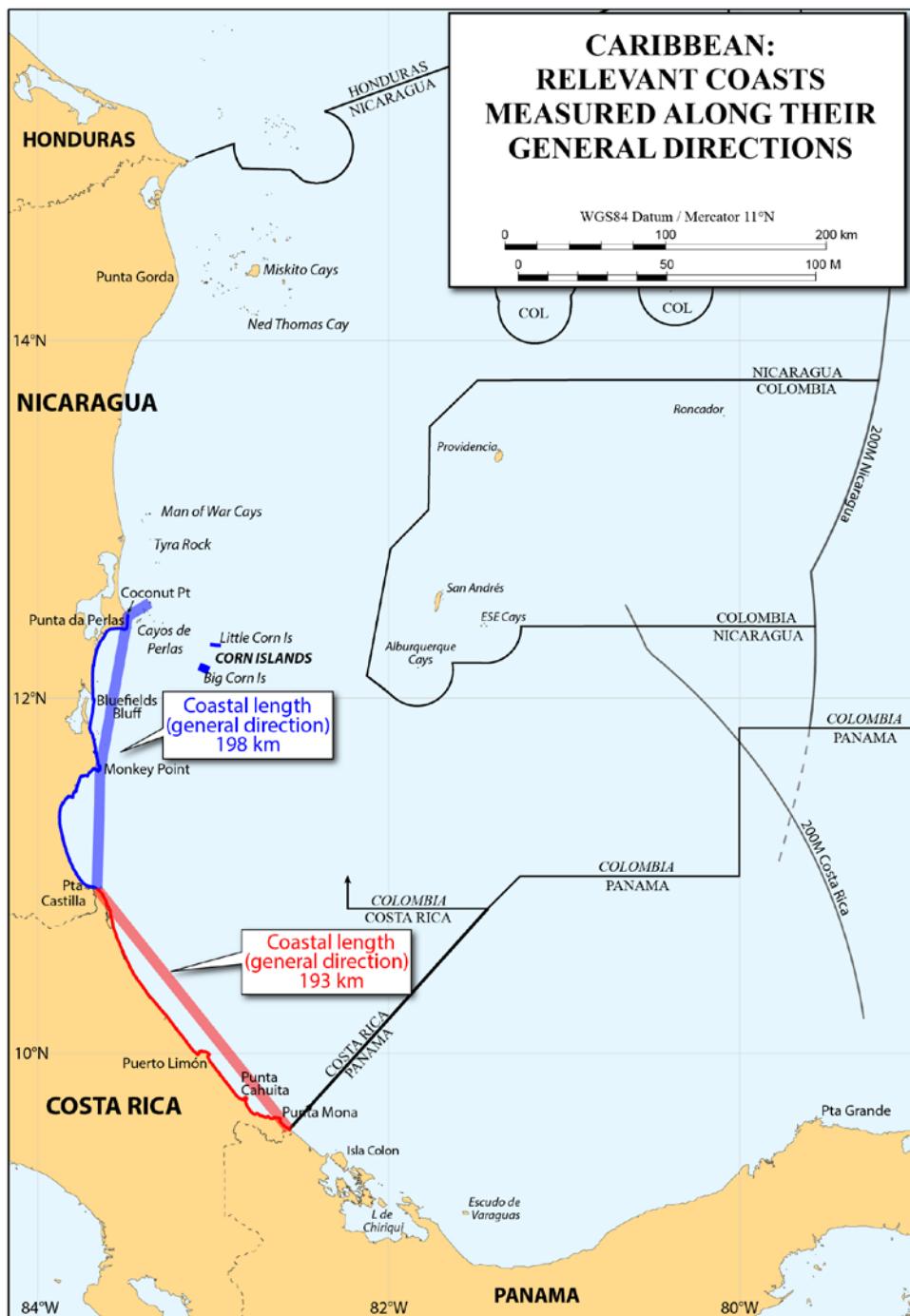
Figure IIc-1: Caribbean: Relevant Coasts



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

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

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



3. The Relevant Area

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

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

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

¹⁷⁷ CRM, para. 4.11.

¹⁷⁸ CRM, para. 4.11.

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

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

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

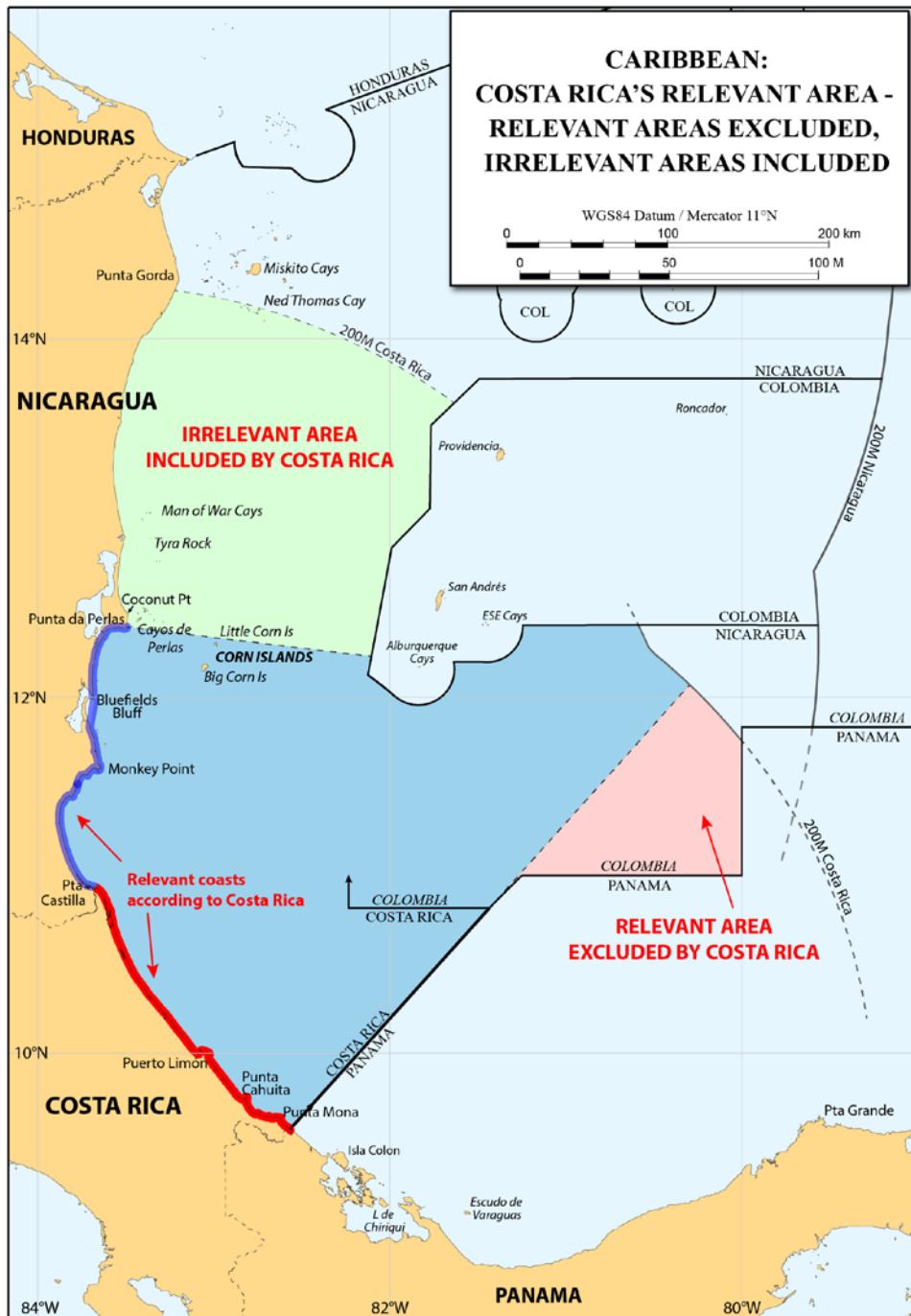
3.73 Nicaragua also disagrees with Costa Rica's definition of the northern limit of the relevant area in the Caribbean Sea. As can be appreciated from a comparison of Sketch-Maps 4.3, 4.4 and 4.5 included in the Memorial, a large part of Costa Rica's relevant area extends far north of Nicaragua's relevant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

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

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

¹⁸² See above paras 2.28-2.35

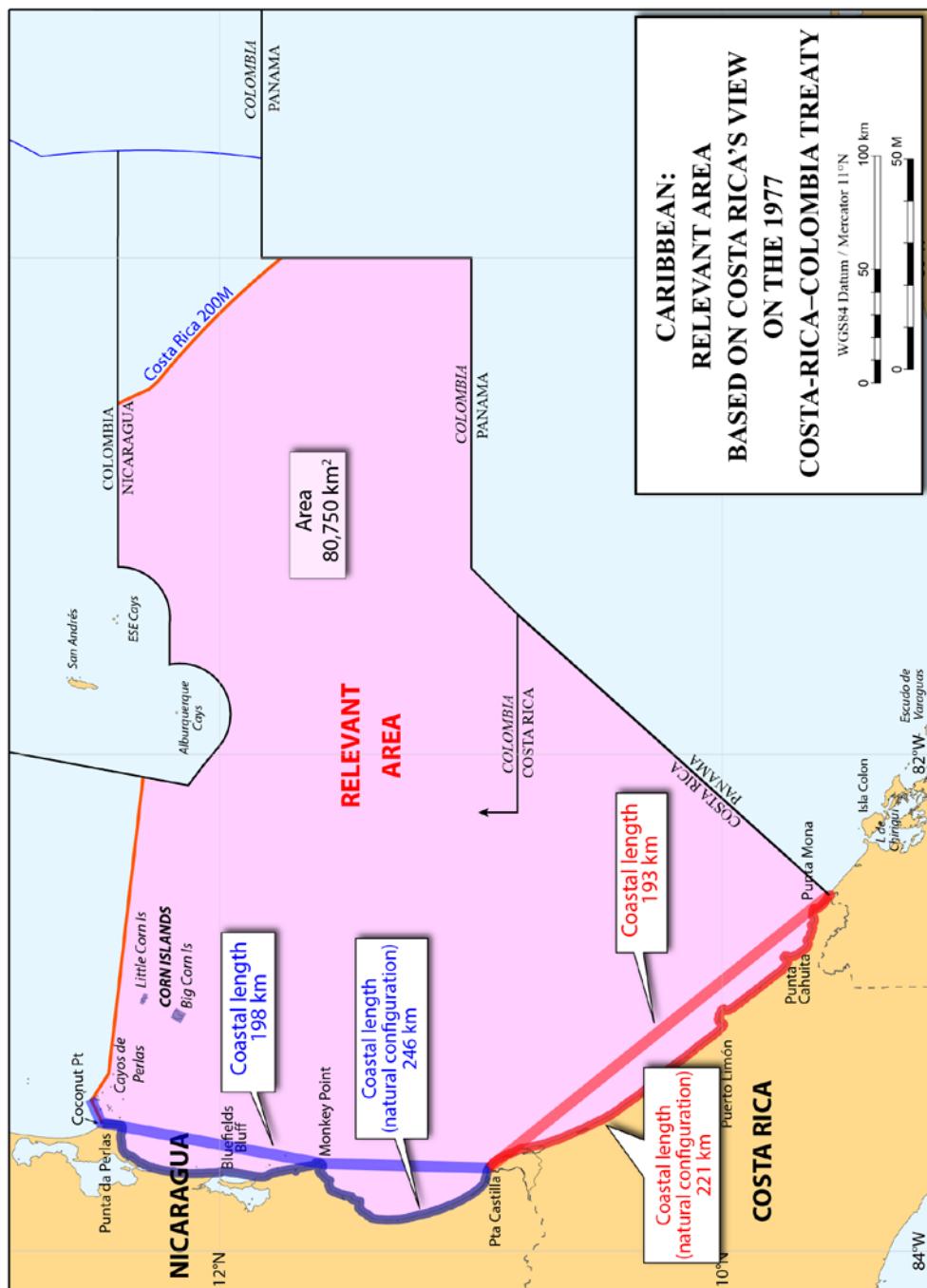
Figure IIc-3: Caribbean: Costa Rica's Relevant Area – Relevant Areas Excluded, Irrelevant Areas Included



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

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

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



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

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

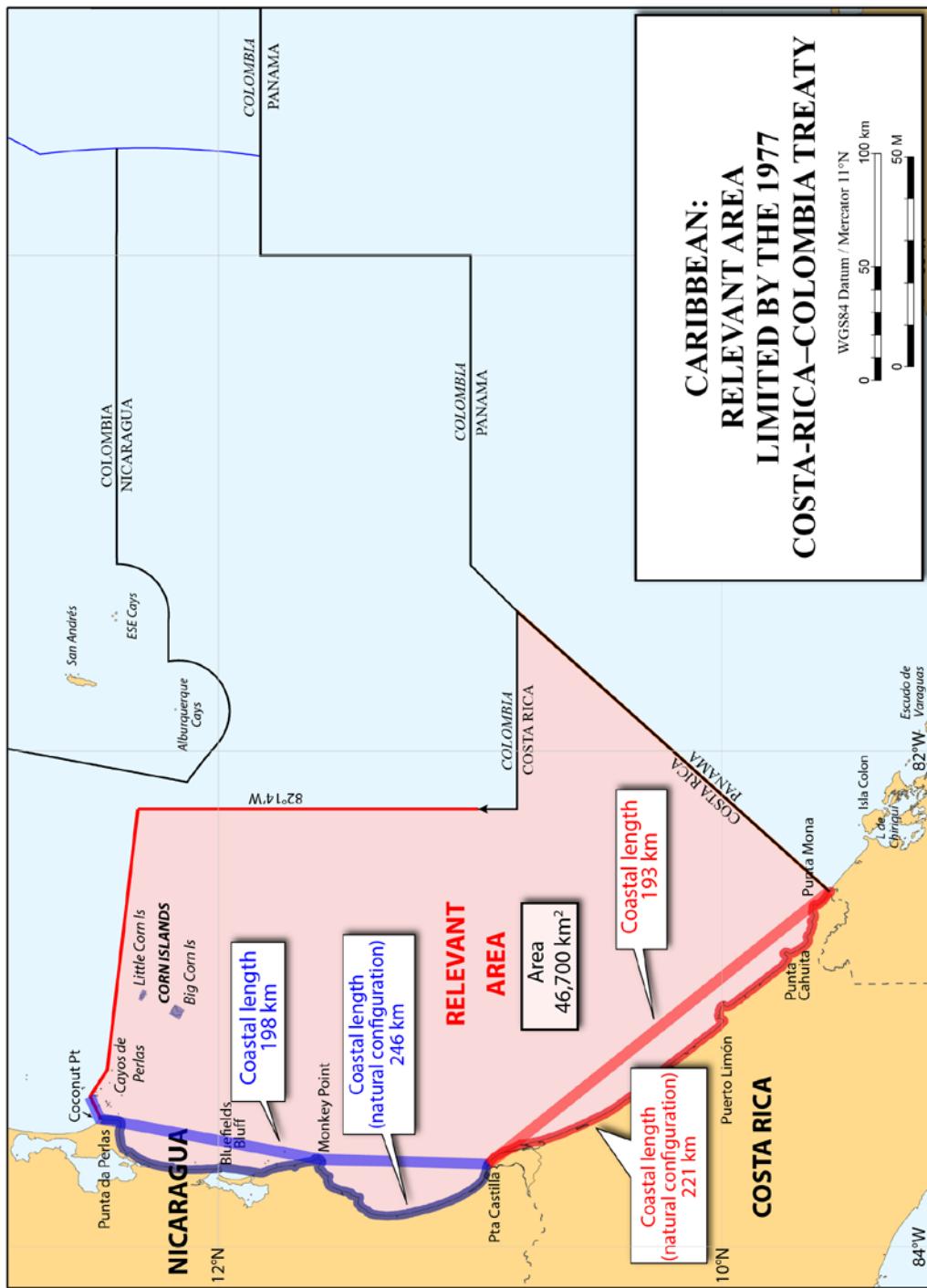
3.77 The relevant coasts of Nicaragua and Costa Rica in the Caribbean Sea are not affected by their difference of views over the continued relevance of the 1977 Treaty between Costa Rica and Colombia. The relevant coasts as described in section C.2 of this Chapter have seaward facing projections that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

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

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

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

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



D. TERRITORIAL SEA

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

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

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

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

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

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

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

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

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

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

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

¹⁸⁷ See Chapter III.B

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

Figure IId-1: Caribbean: Territorial Sea Delimitation – Strict Equidistance

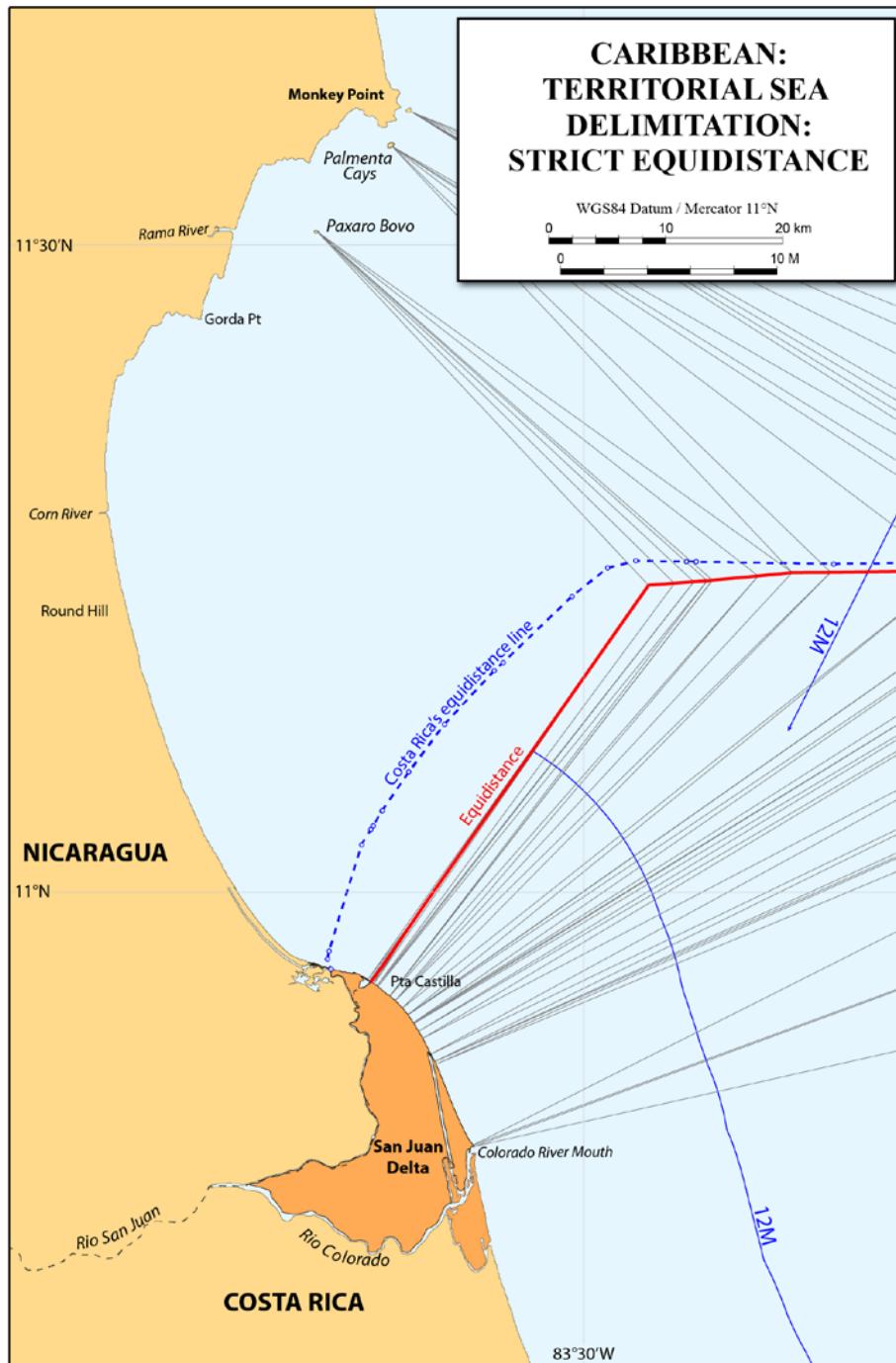
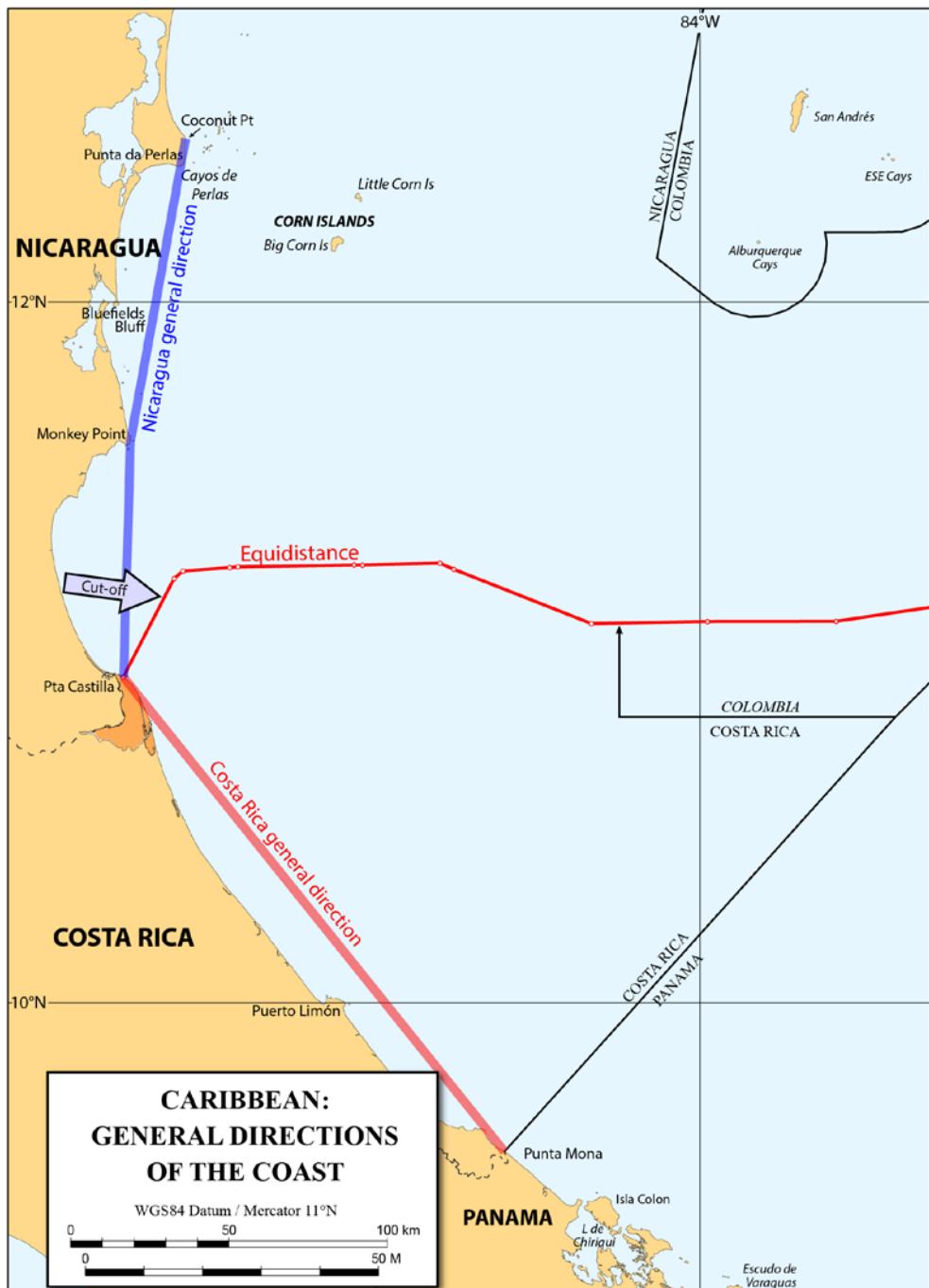


Figure IId-2: Caribbean: General Directions of the Coast



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

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

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

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

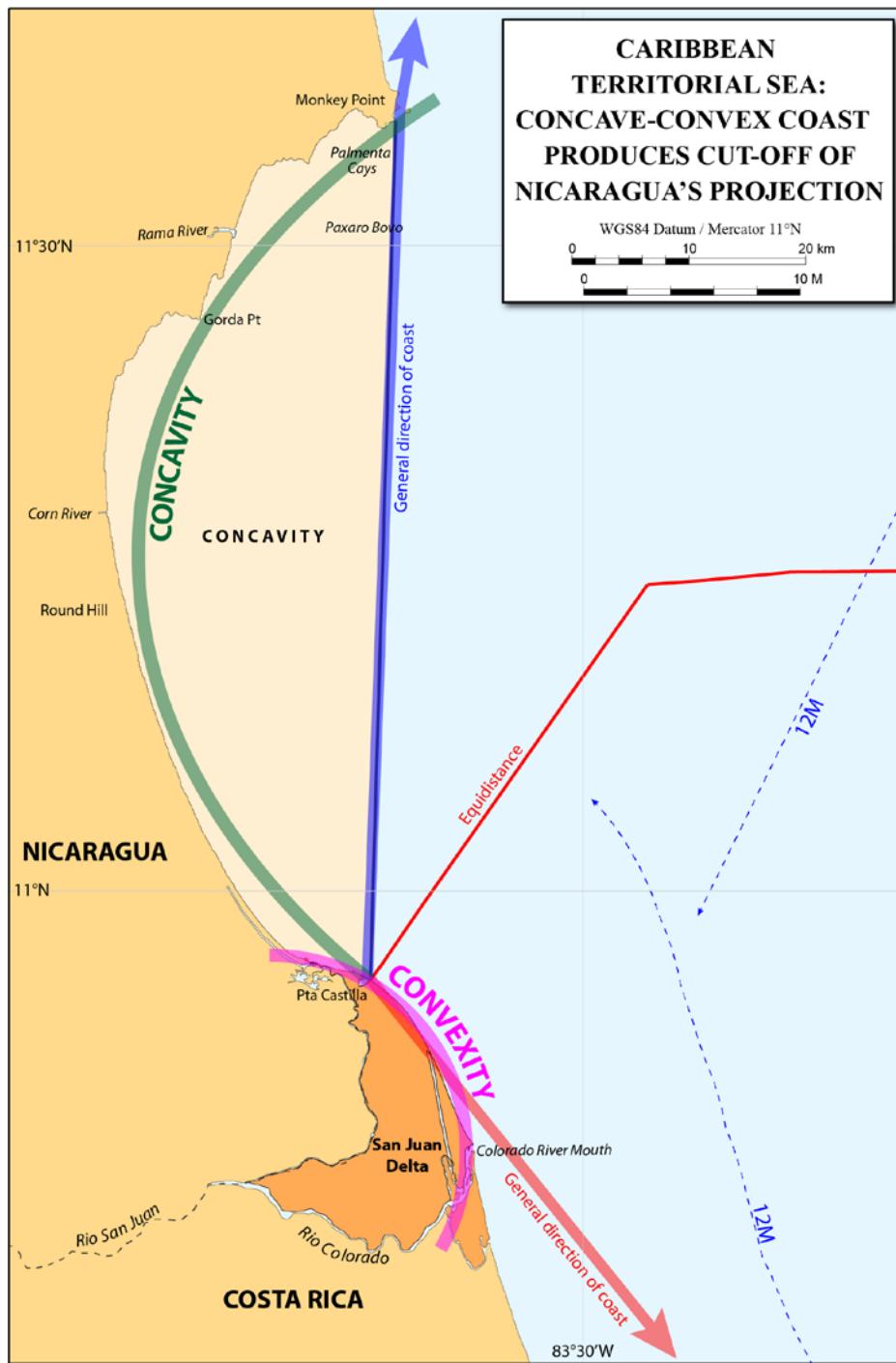
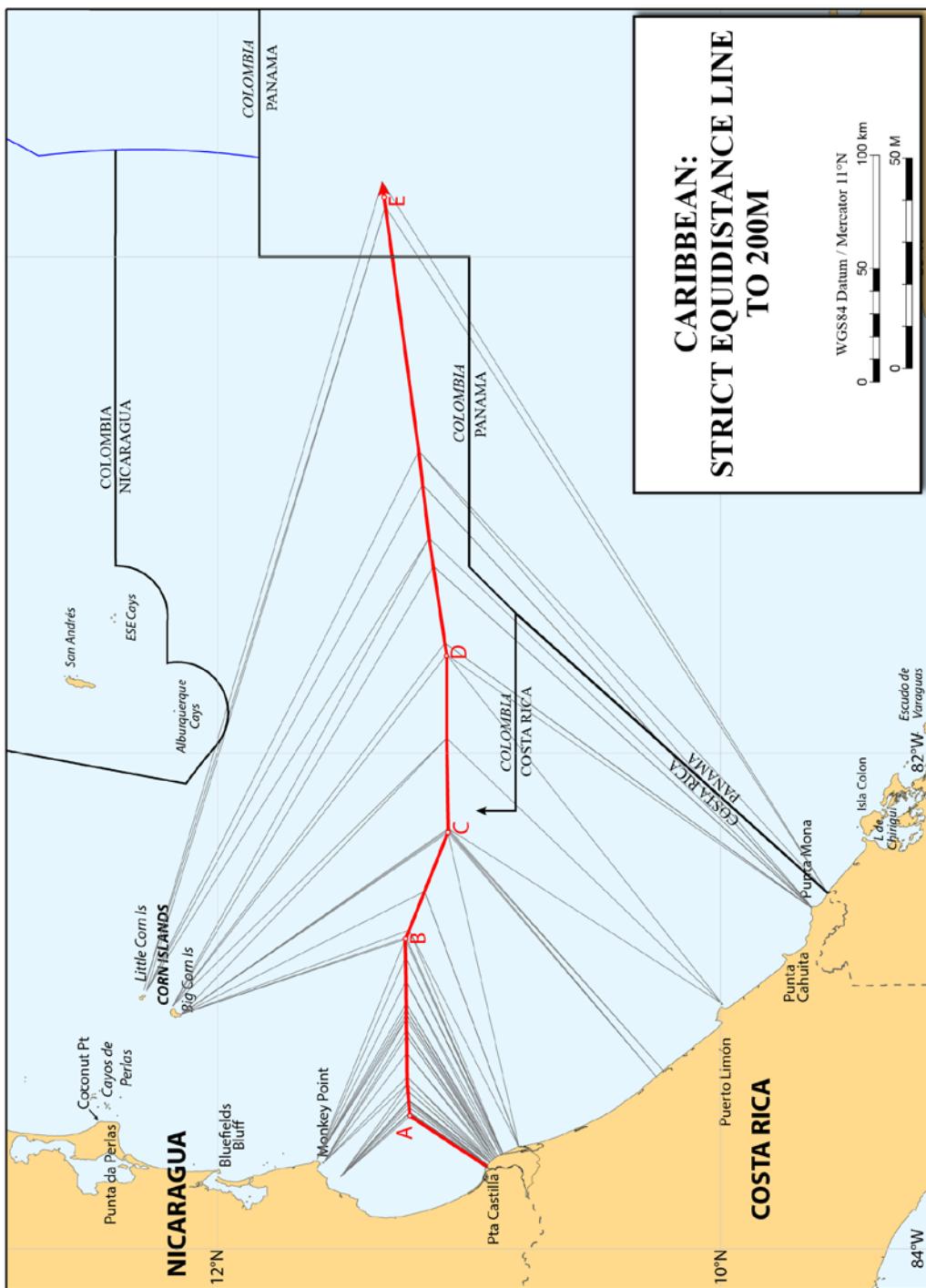


Figure II d-4: Caribbean: Strict Equidistance line to 200M



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

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

¹⁸⁹ See Chapter II.C.

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

¹⁹¹ Article 7(3).

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

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

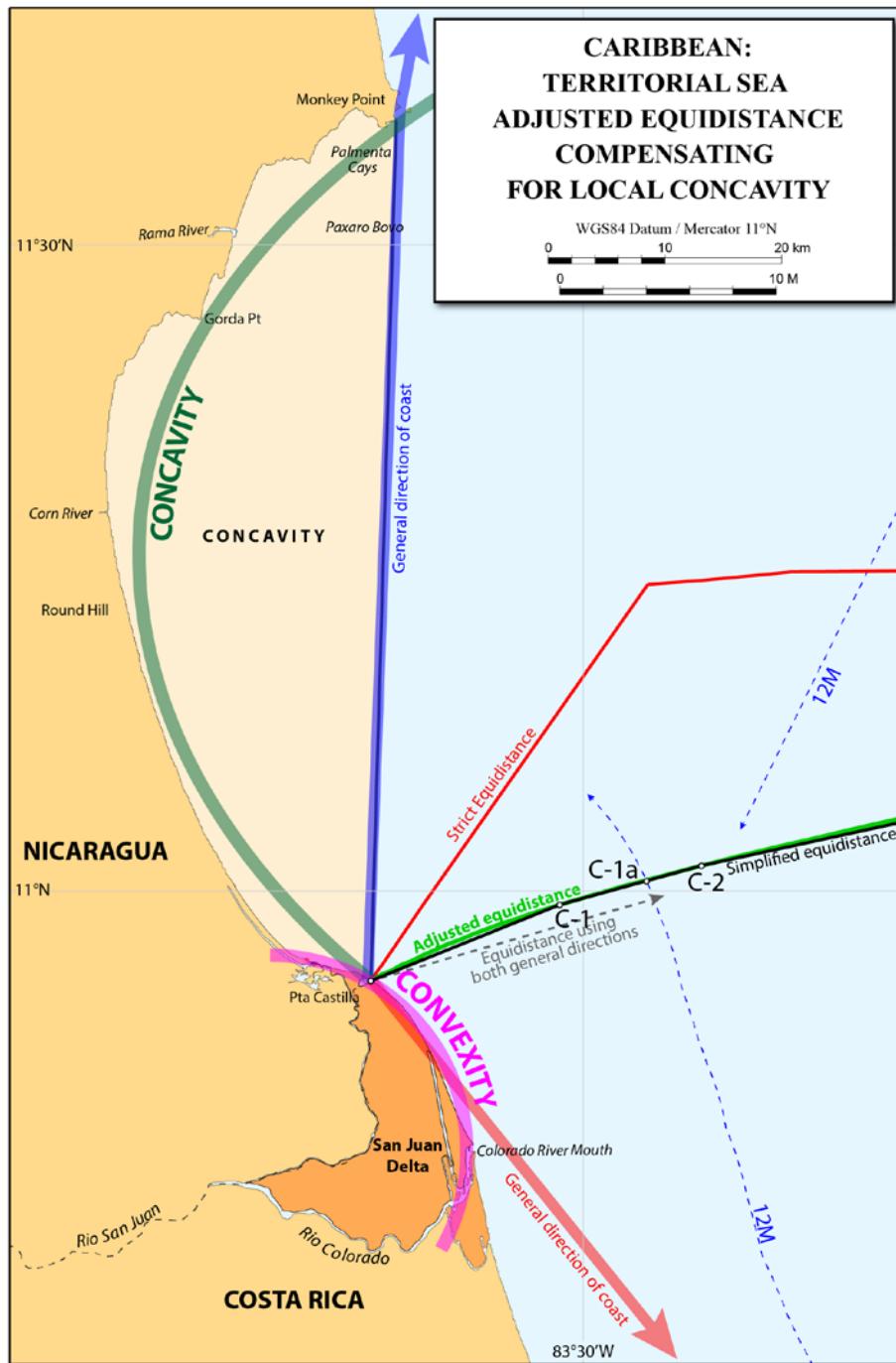
main distorting features of the coastline. Costa Rica has itself acknowledged the utility of this approach.¹⁹⁴

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

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

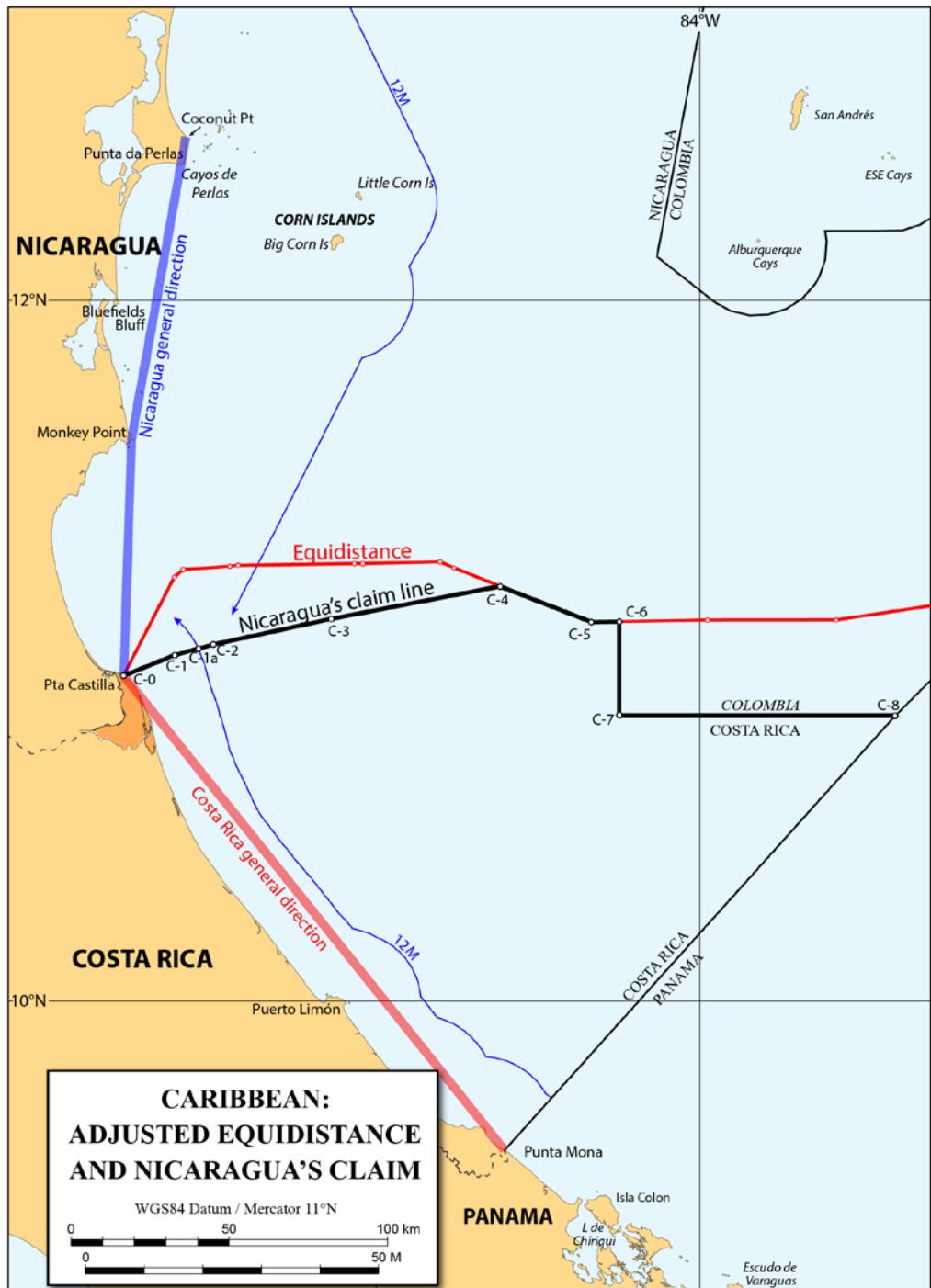
¹⁹⁴ CRM, paragraph 3.9, and cf., paragraphs 4.18 – 4.19.

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



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

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



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

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

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

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

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

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

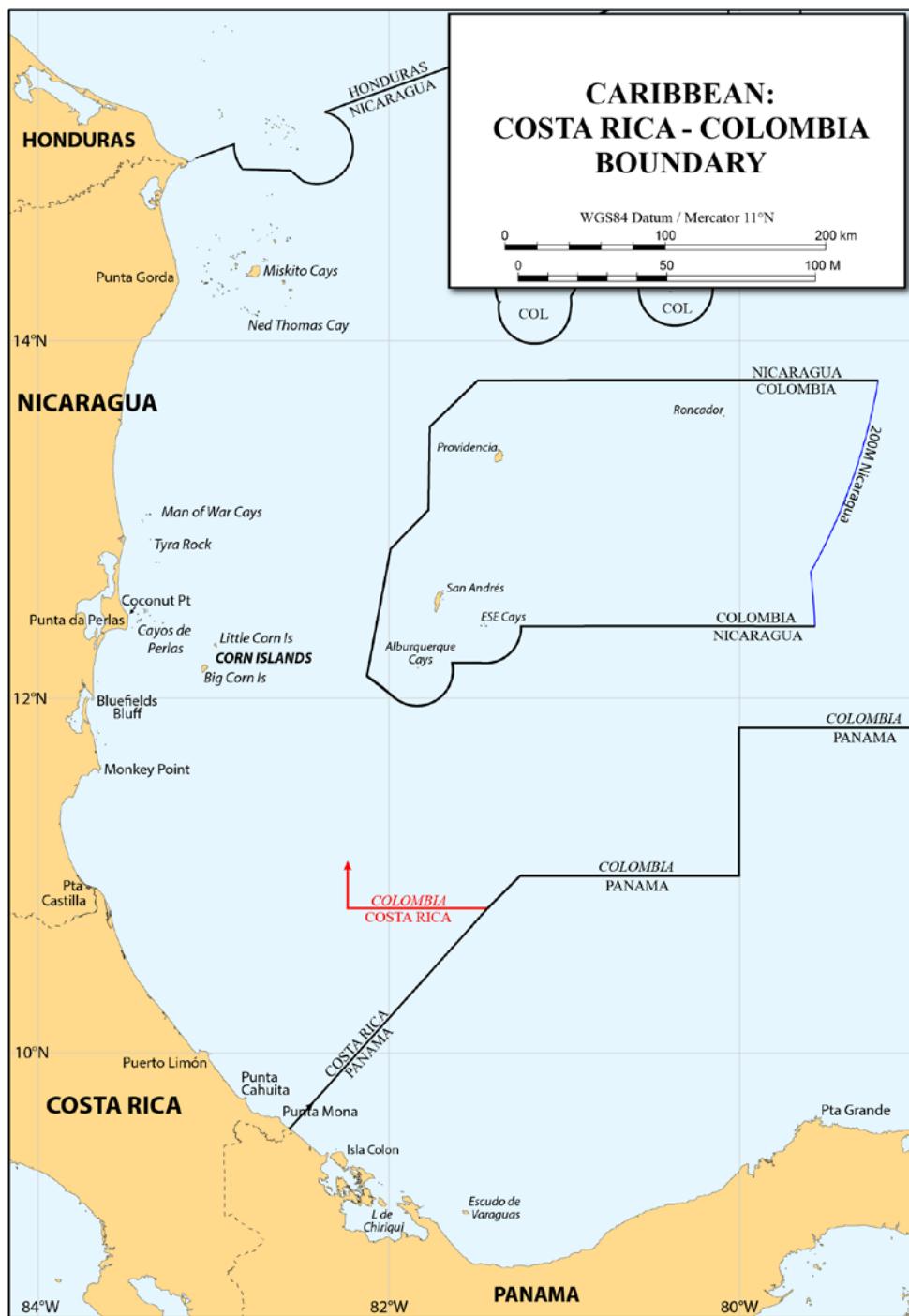
3.97 That boundary is, in effect, a simplified equidistance line. Charney and Alexander observe that the boundary was “negotiated on the basis of equitable principles” with full weight given to Colombia’s southernmost insular possessions in the area, the Alburquerque cays.¹⁹⁷

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

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

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

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



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

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

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

a. *Costa Rica Incorrectly Constructs Its Provisional Equidistance Line*

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

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

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

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

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

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

²⁰⁰ See para. 3.7 and Annex 20, NCM.

²⁰¹ CRM, para. 4.23.

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

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

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

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

²⁰² *Romania v. Ukraine*, para. 149.

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

²⁰⁴ *Bangladesh/Myanmar*, para. 265.

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

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

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

²⁰⁵ *Bangladesh/Myanmar*, para. 265.

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

Figure IIe-2: Alburquerque Cays

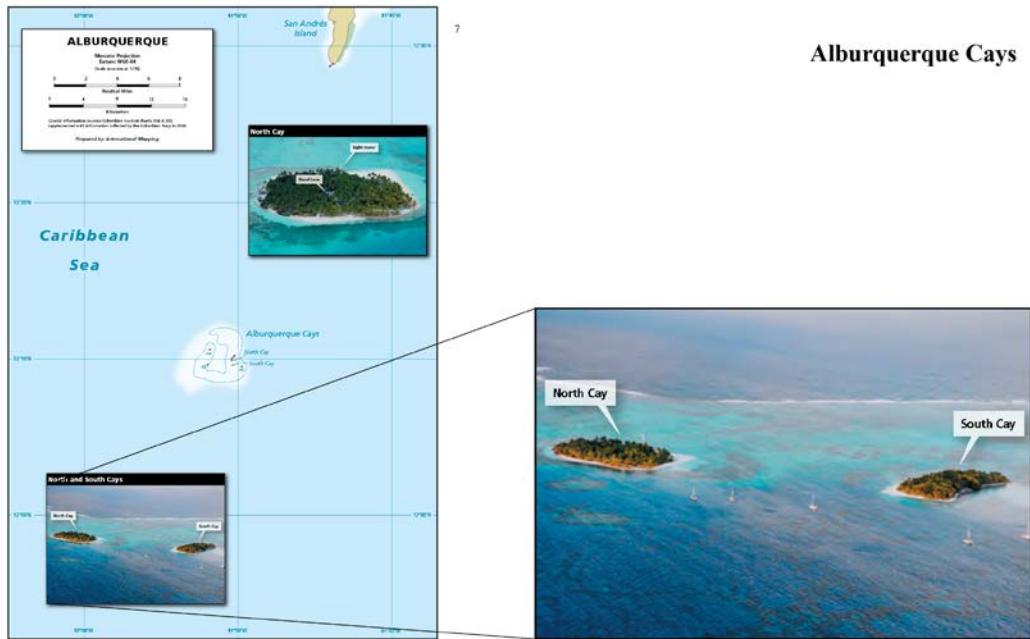


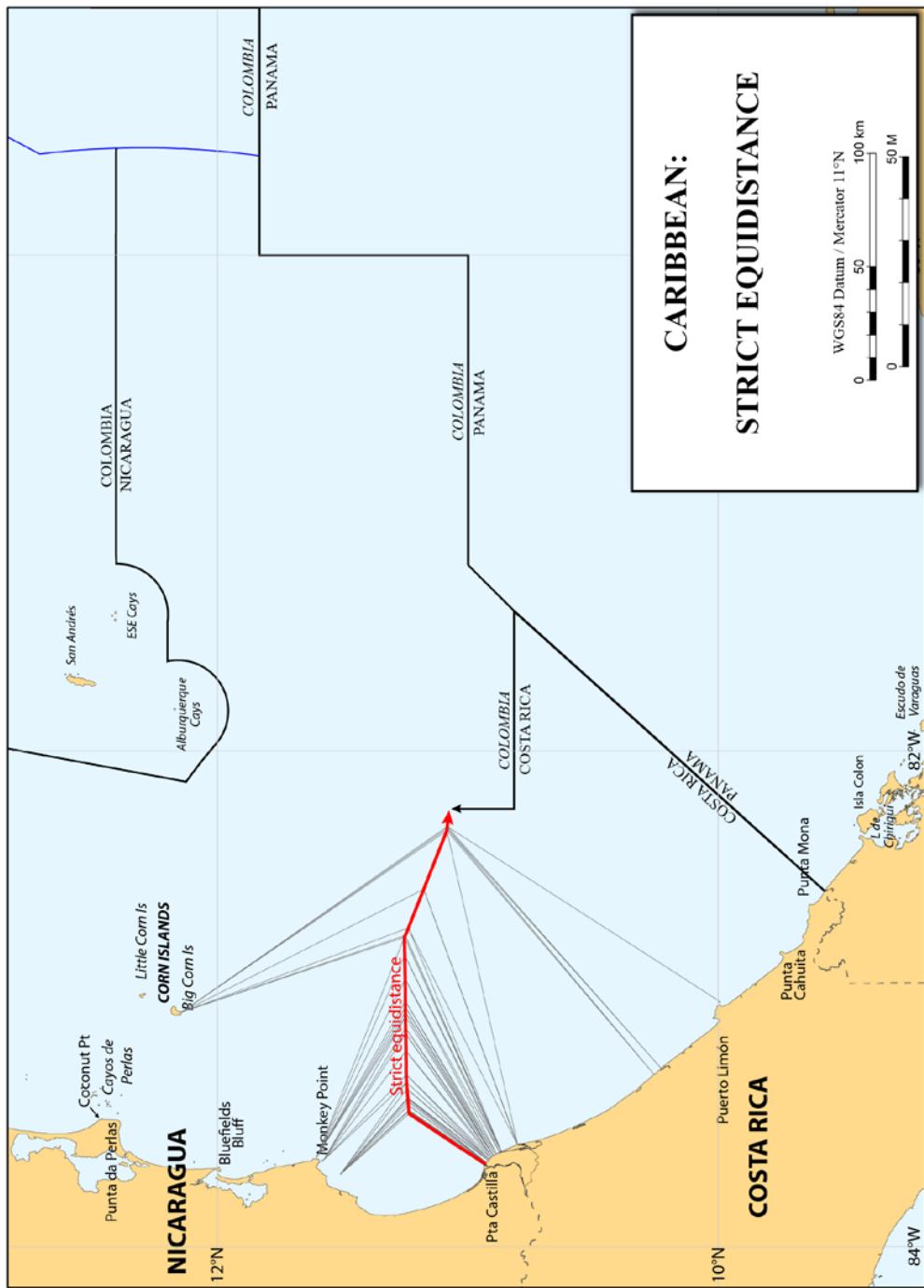
Figure from Nicaragua v Colombia
Colombia Counter-Memorial Figure 2.4

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

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

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

Figure IIe-3: Caribbean: Strict Equidistance



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

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

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

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

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

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

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

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

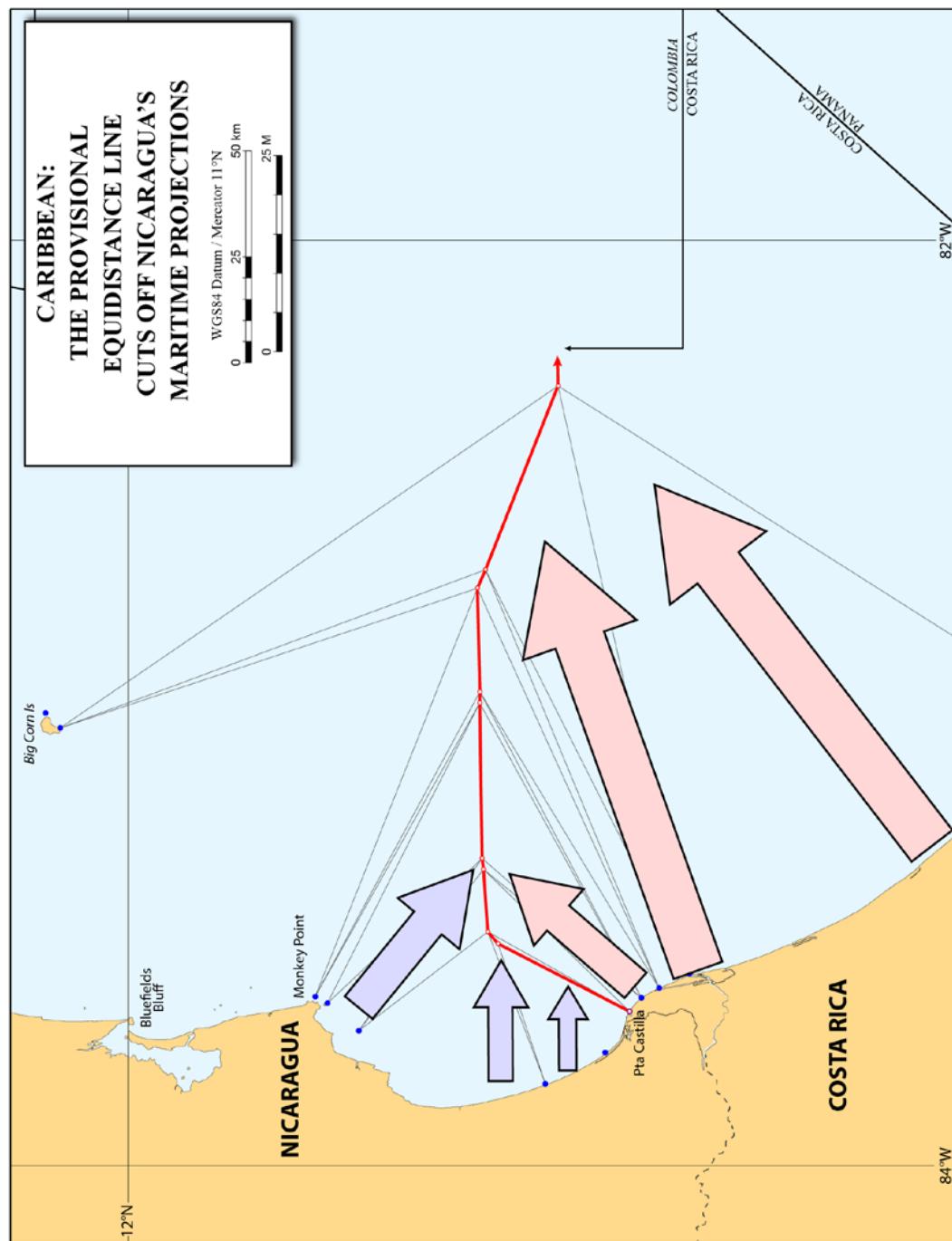


Figure IIe.5: Caribbean: The Adjustment to the Provisional Equidistance Line

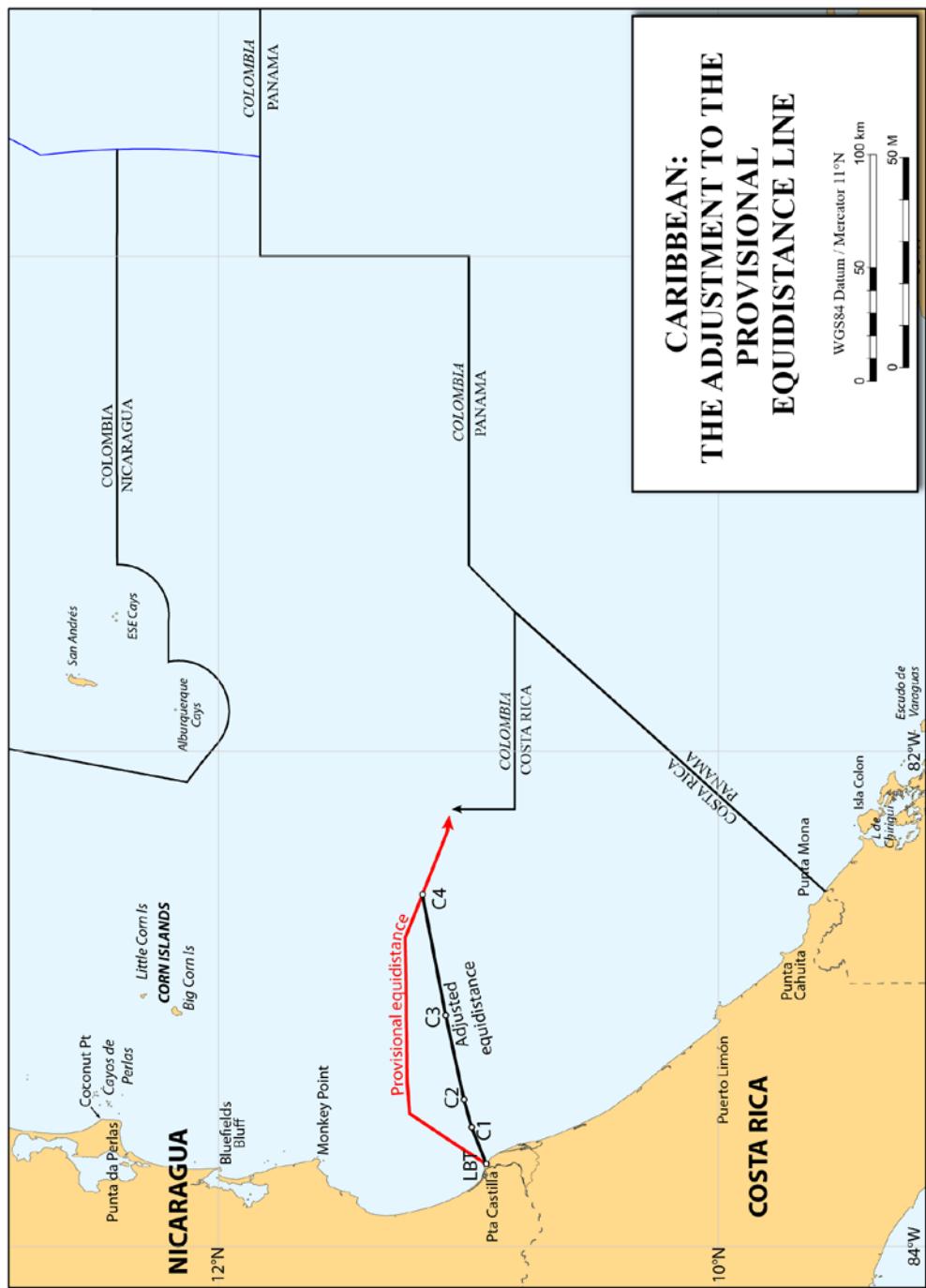
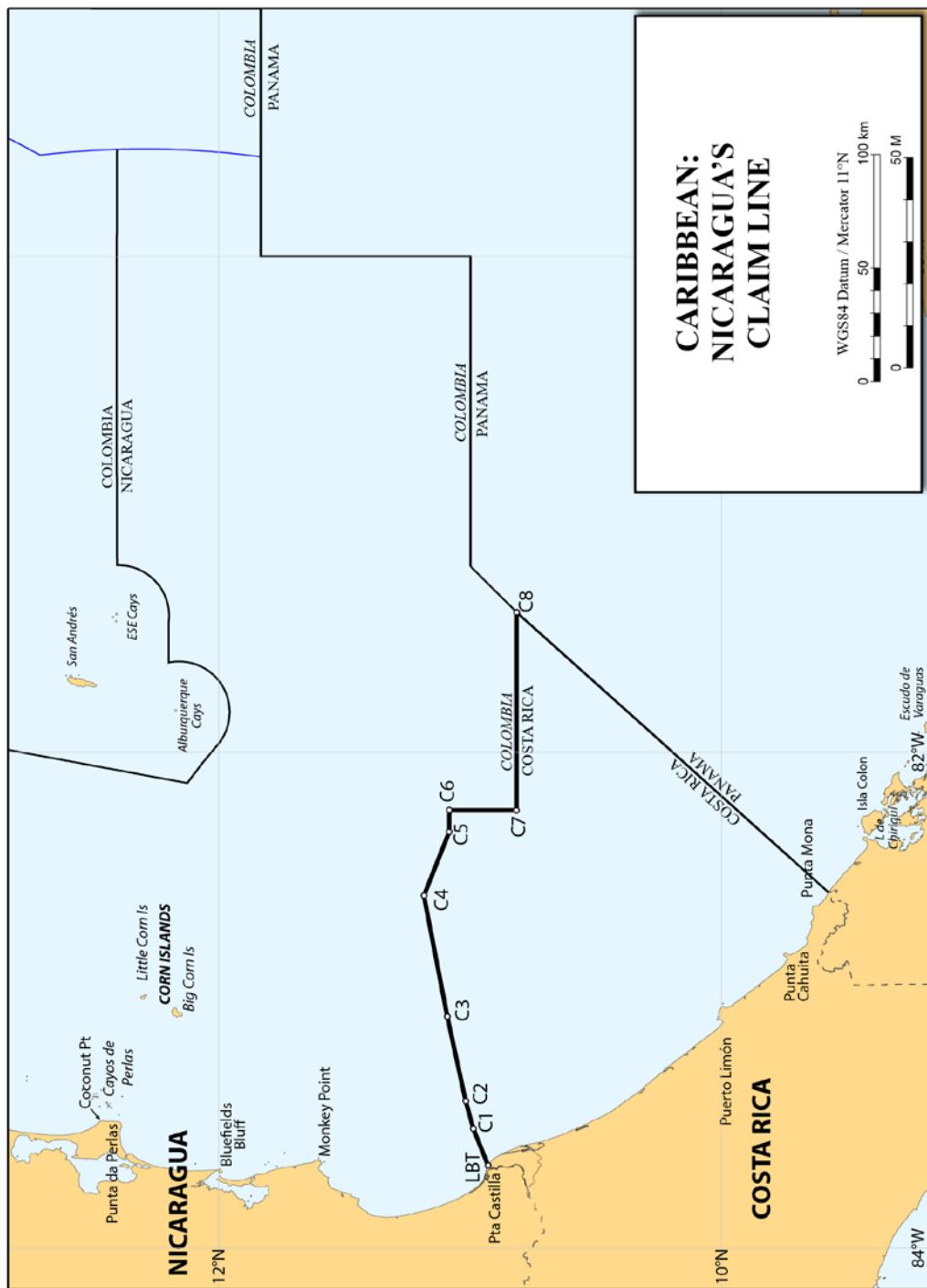


Figure IIe-6: Caribbean: Nicaragua's Claim Line



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

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

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

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

²⁰⁹ See para 3.121 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Note continues:

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

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

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

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

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

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

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

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

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

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

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

²¹⁷ CR, para. 4.30, 4.43.

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

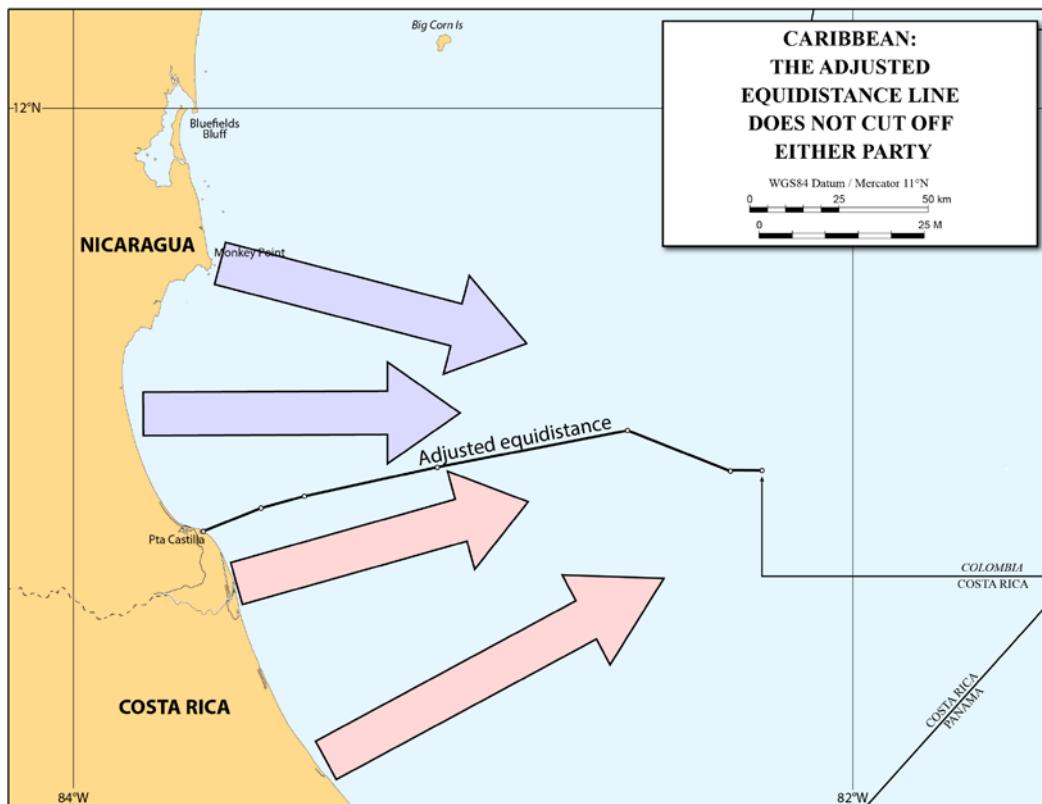
3.128 Similarly here, the 1977 agreed boundary has an objective existence and effect analogous to that of Bioko Island. As a result of Costa Rica's own actions, renouncing any interest in the areas to the north and east, that boundary sits in front of and blocks Costa Rica's maritime projections wholly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

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

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

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

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



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

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

²²⁰ CRM, para. 4.43.

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

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

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

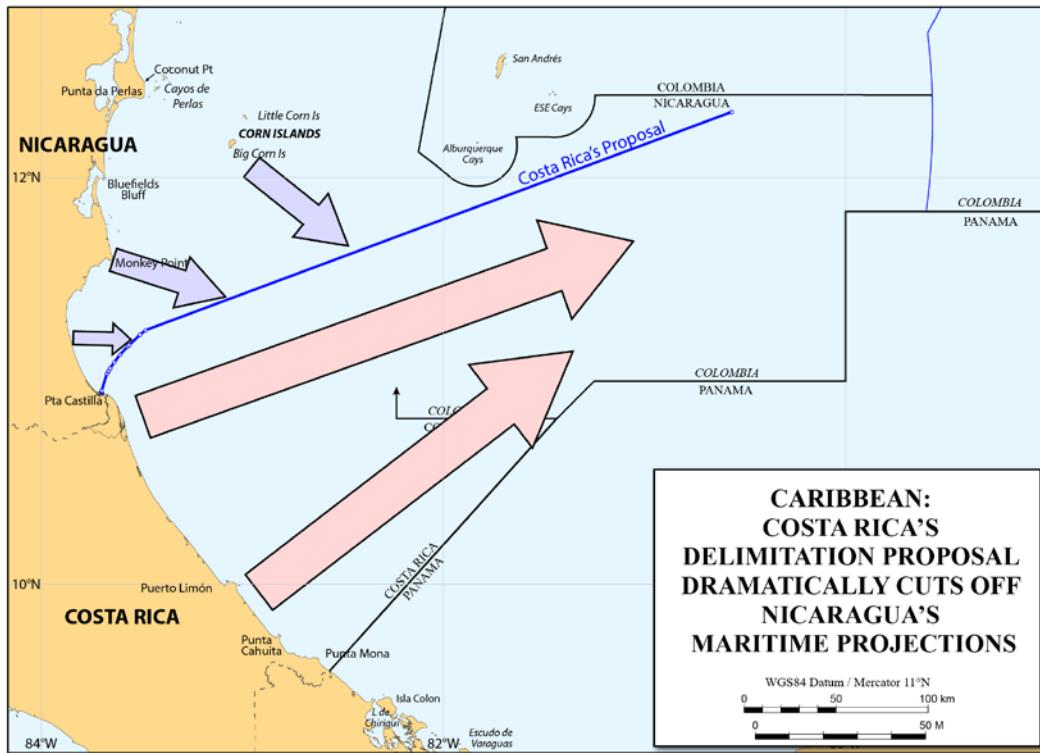
²²¹ *Bangladesh v. India*, para. 469.

²²² *Bangladesh v. India*, para. 411.

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

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

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



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

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

3.135 In the third and final step of the delimitation process, the Court considers whether the delimitation line determined by application of the first two steps “lead[s] to any significant disproportionality by reference to the respective coastal lengths and the apportionment of areas that ensue.”²²⁴

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

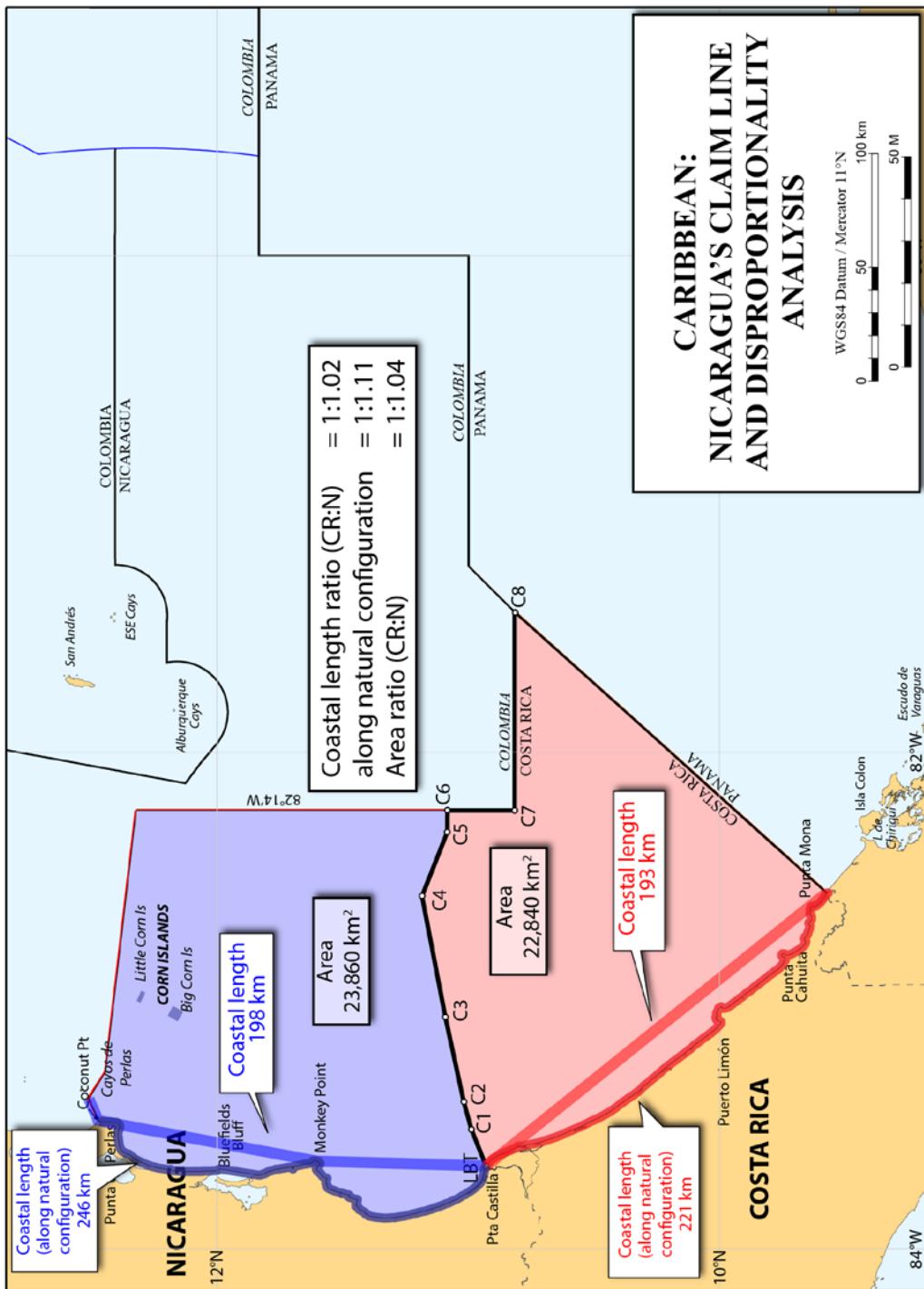
3.137 Dividing the relevant area as described in Section C.3 of this Chapter by means of the proposed delimitation line described above allocates 23,860 km² to Nicaragua and 22,840 km² to Costa Rica. The ratio is 1.04:1 in favor of Nicaragua. Given that the lengths of relevant coasts are nearly the same—1.02:1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

²²⁴ *Romania v. Ukraine*, para. 210.

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

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

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



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

Table 3.1.

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

SUBMISSIONS

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

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

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

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

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

(All coordinates are referred to WGS84 datum)

The Hague, 8 December 2015.

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

CERTIFICATION

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

The Hague, 8 December 2015.

Carlos J. Argüello-Gómez

Agent of the Republic of Nicaragua

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

COUNTER-MEMORIAL
OF THE REPUBLIC OF NICARAGUA
ANNEXES

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ANNEX 1

George Rives' Report to the Arbitrator President G. Cleveland, 1 March 1888 (excerpts)

Source: Arbitration by the President Costa Rica and Nicaragua 1887-88, Costa Rica and Nicaragua Boundary Arbitration, Records Relating to International Arbitrations in Which the United States Acted as an Arbitrator 1716-1946, Box 1, Records of Boundary and Claims Commissions and Arbitrations, Record Group 76.5, National Archives Building, Washington D.C.

Second

If the Treaty of the 15th April, 1858 is valid, what is its true meaning in respect of the various matters submitted for decision?

One question of interpretation is formulated by the Treaty of Arbitration itself, and eleven others are submitted by Nicaragua under the sixth article of the Treaty.

The preliminary question, which is expressly raised by the Treaty of Arbitration, is as follows: "If the Arbitrator's award should determine that the Treaty [of 1858] is valid, the same award shall also declare whether Costa Rica has the right of navigation of the River San Juan with vessels of war or of the revenue service."

The answer to this question depends upon a consideration of Article VI of the Treaty of 1858, which reads as follows:

"Article VI. The Republic of Nicaragua shall possess exclusively the dominion and supreme control (tendrá exclusivamente el dominio y sumo imperio) of the waters of the River San Juan from its outlet from the Lake until it empties into the Atlantic; but the Republic of Costa Rica shall have the perpetual right of free navigation (los derechos perpetuos de libre navegación) on the said waters from the River's mouth to three English miles below Castillo Viejo, for the purposes of commerce, whether with Nicaragua, or with the interior of Costa Rica by way of the Rivers San Carlos or Sarapiquí or any other route proceeding from the tract on the shores of the San Juan which is hereby declared to belong (que.... se establece corresponder) to the last named Republic. The vessels of both countries may indiscriminately approach the shores of the River where the navigation is common; and no charges of any kind or duties shall be collected unless where levied by mutual consent of both Governments."

The foregoing article, it will be observed, is silent as to the right of navigation by public vessels. If such a right exists, it must be by virtue of some general rule and not affected by the Treaty, or must be implied from the general scope and purpose of the Treaty stipulations.

In considering these aspects of the case it must be remembered that the boundary line runs along the right bank of the River from its mouth to a point three English miles below the Castillo Viejo, and that the River above that point runs wholly within Nicaraguan territory. It should also be noted that the San Juan, -besides the mouth above referred to, - had two other mouths, the Colorado and the Taura, both of which run to the sea through Costa Rican territory. The following provisions of the Treaty of 1858 are also important: "Art IV ... Costa Rica shall be bound, as far as the portion of the banks of the San Juan which belongs to her is concerned, as Nicaragua is by treaties, to contribute to its custody in the same way that the two Republics shall contribute to its defence in case of foreign aggression, and this they shall do with all the efficiency within their reach." "Art. IX... Under no circumstances, and even in case the Republic of Costa Rica and Nicaragua should unhappily find themselves in a state of war, shall either of them be allowed to commit any act of hostility against the other ... in the San Juan River."

Upon these facts, it is argued by Costa Rica that the provisions of Art. IX, forbidding acts of hostility on the River, imply a right of using it in peaceful ways; that the stipulations giving Nicaraguan vessels the right to unload on the Costa Rican side presuppose the right of Costa Rica to watch her shores by a river police; that by analogy with ports of free entry which, it is asserted, are always considered to be accessible to foreign men-of-war, a navigable river like the San Juan is to be regarded as open to the men-of-war of friendly nations, that the maxim qui dicit de uno, negat de altero, does not apply here, as the right to navigate with public vessels is not in any respect inconsistent with the right of navigation for purposes of commerce; that by the usage of nations navigation of territorial waters by foreign public vessels can only be forbidden by express stipulation, as in the case of the Dardanelles, and that under Art. IV Costa Rica must be permitted to maintain her vessels on the San Juan in order to guard and defend it with all the efficiency within her reach.

Some of these arguments may be dismissed at once.

The prohibition of acts of hostility on the River, cannot be construed as conferring on Costa Rica a right to maintain upon its waters public vessels in time of peace. The implication, instead would seem to be the other way.

The right of Nicaraguan vessels to land freely on the Costa Rican side confers no right on Costa Rica to maintain a river police. She has undoubtedly the

right to establish Custom Houses along the River, and to maintain a force of revenue officers. But this force need not necessarily patrol the river in boats. This might be a convenient way of preventing smuggling; but it is not so necessary an incident to the rights of Costa Rica to enforce her customs laws as to be inevitably implied *ex necessitate* from the provisions of the Treaty.

The stipulations of Article IV throw no light on this question. All that that article requires is that Costa Rica should repel foreign aggression on the River with all the efficiency within her reach. If, under the terms of the Treaty, Costa Rica is not permitted to maintain vessels of war on the River, she cannot be regarded as derelict if she fails to oppose foreign aggression in that quarter by her naval forces. Impossibilities are not required. Costa Rica would only be bound to contribute to the defence of the stream by land, a mode of defence, it may be added, which seems better adapted to a River of the size and character of the San Juan.

The matter is less clear when we consider the rights conferred by this Treaty in the light of international usage, for the present case appears to be one without exact precedent, which must be governed by analogies more or less remote.

It must not be forgotten that the sovereignty and jurisdiction of Nicaragua extend over all the waters of the San Juan. In the unusual and forcible language of the Treaty, she possesses exclusively the dominion and supreme control of these waters. Costa Rica is bounded, not by the thalweg or middle of the stream, but by its right bank. Any vessel navigating the River is, therefore, within Nicaraguan territory; and upon Nicaragua falls exclusively the duty of policing the stream.

Leaving out of sight, for the present, the fact that Costa Rica owns one bank of the San Juan, and regarding it solely as a Nicaraguan river, we may first enquire whether the right of free commercial navigation granted to Costa Rica necessarily involves the right of navigation by her vessels of war.

The writers upon international law leave the matter in some doubt.

Hall (International Law, Oxford 1880 § 42) says: "The right of innocent passage does not extend to vessels of war. Its possession by them could not be explained upon the grounds by which commercial passage is justified. The interests of the whole world are concerned in the utmost liberty of navigation for the purposes of trade by the vessels of all States. But no general interests are

necessarily or commonly involved in the possession by a State of a right to navigate the waters of other States with its ships of war. Such a privilege is to the advantage only of the individual State; it may often be injurious to third States; and it may sometimes be dangerous to the proprietor of the waters used. A state has therefore always the right to refuse access to its territorial waters to the armed vessels of other States, if it wishes to do so.”

And see also § 55, in which he states that foreign ships of war enjoy complete extra territoriality; and in extreme cases, as when the peace of a nation is seriously threatened or its sovereignty is infringed such a ship may be summarily ordered out of the territory.

Bluntschli (Lardy's Trans, § 321) after stating that foreign men-of-war enjoy complete extra-territoriality when they enter the waters of a State by its permission, adds: “Il faut toujours ‘que le navire de guerre étranger ait reçu l'autorization de pénétrer dans les eaux dépendant du territoire de l'état.” He considers that the usage in respect of extra-territoriality is based, not on courtesy, but on the difficulty and danger to the local police of acting with effect towards the crew of a man-of-war; and he states that in case of violations of the laws of the port, the local authorities have ample power to command a foreign man-of-war to quit the harbor.

Calvo, on the other hand, in his *Dictionnaire de Droit Internationale* (Paris, 1885, tit. *Navire*) says: “A moins de prohibitions et de règlements ou de lois formellement contrains, les ports sont considérés comme libres et ouverts pour les navires de guerre et les corsaires des peuples avec lesquels on est en paix.” The same view is taken by Sir Travers Twiss in his work on the Rights and Duties of Nations in Time of Peace (2nd ed., 1884, § 165)

Reference may also be made to the case of *The Exchange* (7 Cranch, 116) in which the Supreme Court of the U.S. had occasion to enquire as to the jurisdiction of the Courts of this country over foreign ships of war. Chief Justice Marshall, delivering the opinion of the court, after stating the rule applicable to the transit of foreign troops by land, said: “But the rule which is applicable to armies, does not appear to be equally applicable to ships of war entering the ports of a friendly power... A different rule therefore, with respect to this species of military force, has been generally adopted. If for reasons of state, the ports of a nation generally, or any particular ports, be closed against vessels of war generally, or the vessels of any particular nation, notice is usually given of such determination. If there be no

prohibition, the ports of a friendly nation are considered as opened to the public ships of all powers with whom it is at peace... The implied license, therefore, under which such a vessel enters a friendly port, may reasonably be construed, and it seems to the Court ought to be construed, as containing an exemption from the jurisdiction of the sovereign, within whose territory she claims the right of hospitality." See also the opinion of Mr. Cushing in 7 Op Atty. Gen. 122.

The case of the Dardanelles is cited by Costa Rica as illustration of the theory that treaty stipulations alone suffice to exclude foreign ships of war from friendly waters. But Halleck remarks (Backers ed., London., 1878, chap VI §21) that these straits being within the territorial jurisdiction of Turkey "she has a right to exclude all foreign ships of war from entering or passing either the Dardanelles or the Bosphorus", This right, he adds, was "recognized", not created, by the treaties of 1840, 1841, and 1856.

It will thus be seen that there is at least an apparent contradiction between these authorities. But the conclusion may perhaps be fairly deduced from an examination of all the opinions cited, that although a tacit permission, or implied license, to visit a friendly port is usually understood to be granted to foreign men-of-war, yet such permission is always to be regarded merely as an act of comity and hospitality. But this privilege is now so generally accorded, that it is hardly to be distinguished from a right. Except in the case of the Dardanelles, it is understood that civilized nations, at the present day, impose no restriction upon the friendly visits of foreign men-of-war in time of peace; and this general usage may be said to constitute an imperfect right entitling such vessels to claim hospitality.

But it is not important at present to determine precisely the limitations of this privilege.

We are next to enquire whether there is any different rule where the nation owning the visiting vessels also owns territory bordering upon the waters visited. I find no authority upon this point; but in my judgment this circumstance is not material, for all the reasons which apply to one case apply also to the other. The close proximity of two countries, divided only by a navigable stream, may make the frequent passage of public vessels proper, and even necessary; especially where, - as in the present case, - such a stream forms a highway between two parts of the dominion of the State that borders on, but does not own, such waters. But the same fact of proximity also emphasizes the importance of avoiding difficulties

to which the impossibility of control by the local police over foreign national vessels might easily give rise.

It remains to be considered whether vessels of the revenue service stand upon any different footing from vessels of war. It would seem evident, from the reason of the rule, that they do not; and this view is fully sustained by the authorities. In the case of *Le Parlement Belge* (Eng law Rep., 5 P.D.197) the English Court of Appeal decided that the test of extraterritoriality was not the fact that a vessel was an armed ship, but the fact that she was the public property of a foreign state, and destined to its public uses. In the United States the same doctrine, in substance, has been applied to light ships, which have been held exempt from ordinary judicial process. See also *Calvo, Dictionnaire de tit. Navire*, Hall §44; *Twiss* §165.

The preliminary question of interpretation, as to the right of navigation of the San Juan by public vessels of Costa Rica, should, therefore, in my judgment, be answered by saying that the vessels of war and of the revenue service belonging to Costa Rica have the same privileges of navigating the River San Juan as are usually accorded in their territorial waters by civilized nations to the public vessels of friendly powers in time of peace, - but no other or greater privileges.

I shall now take up in order the points submitted for interpretation by the Government of Nicaragua.

“1. Punta de Castilla point having been designated as the beginning of the border line on the Atlantic side, and finding itself, according to the same Treaty, at the mouth of the San Juan River; now that the mouth of the River has been changed, from where should the boundary start?”

The facts in regard to this branch of the inquiry are set forth at length in the reply of Nicaragua.

It appears that long and antecedent to the Treaty of 1858 the River San Juan had established itself in three streams through the delta to the sea - namely the San Juan proper which enters the harbor of Greytown; the Taura, which branches off to the South, six miles above Greytown, entering the sea five miles from

Greytown; and the Colorado, which also branches off to the south, eighteen miles above Greytown, and enters the sea about the same distance South to the port.

The Taura is an unimportant stream, the mouth being invariably closed in the dry season. The Colorado, ever since 1860, has been the main stream. In that year, the waters were diverted from the San Juan proper into the Colorado, and now by far the greater part of the waters of the present stream finds its outlet through that river. In the height of the dry season, at least twenty time as much water goes to the sea by way of the Colorado as by the San Juan proper.

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

In the dry season, at the present time, it is with difficulty that the water of the River can maintain an opening into the sea at Greytown, and the opening is subject to the most capricious changes. Sometimes the entrance closes almost completely in a single day. Sometimes the force of the sea will heap up the sand along the tongue, or mole, so that the waters of the River are entirely shut in, and a channel has to be cut across the bar of sand to allow the pent-up waters to force an opening. The River will sometimes force its way to the sea at one place, sometimes at another; and it will change repeatedly in the course of a single month.

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

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

Two processes are observable in this history of growth and destruction; one the gradual accretion of the sand spit known as the Punta de Castilla, it grew across the mouth of Greytown Harbor from East to West, the other the more or less sudden breaking through of this spit by the action of the sea or by the pressure of the waters of the river, and, as it appears, occasionally by the hand of man.

To these facts, the following rules, adopted in International Law, are applicable:

First: When a river, or one of its banks, forms the boundary between two States, it continues such without regard to changes produced by gradual accretion or gradual erosion. In the event of addition by accretion, these belong to the owner of the bank on which they are formed.

Second: When a river, which serves to mark the boundary between two States, wholly or partially deserts its old channel and forms for itself a new one entirely within the borders of one of the two States, the old channel remains the boundary.

These principles are stated and amplified in numerous works on both International and Municipal Law, among which I refer to the following:

Grotius, Lib. II, Cap III §§ 16,17;
Vattel, Lib. I, Cap XXII, §§268-270;
Rutherford, Book II, Ch IX, §7;
Steffter, §66;
Phillimore, Vol. I pp 342-345 (3rd ed. 1879).
Calvo, Livre V. §§341-2 and authorities there cited (ed. 1887).
Angell on Watercourses §48a 59a;
New Orleans v. U. S. 10 Peters 662, 717;
Banks v. Ogden, 2 Wall.57;
Opinion of Atty. General Cushing, 8 Op. 175.

This last authority relates to the shifting bed of the Rio Grande, forming part of the boundary between the United States and Mexico, and it is understood that the views there expressed have always commanded the assent of both nations in the numerous discussions that the varying character of the Rio Grande has occasioned.

Applying these principles to the facts on the case in hand, I conclude that whatever has added by accretion to the sand spit known as Punta de Castilla, became a part of it, and so a part of the territory of Costa Rica. When the water broke through the spit, the part thereby severed remain Costa Rican territory still. Any growth of or addition to such a severed part, by accretion, did not affect the title. And the breaking through or washing away of a portion of such an island, or its division into two or more smaller parcels, would still leave what remained a part of Costa Rica.

The boundary line, under the Treaty of 1858, must therefore begin at, and include within Costa Rica, the islands which by a process of accretion and disruption have been formed from the sand spit that was originally the extremity of the Punta de Castilla.

“2. How shall the central point of the Salinas Bay, which is the other end of the dividing line, be fixed?

“3. Whether by that central point we are to understand the centre of the figure; and, as it is necessary for its determination to fix the limit of Bay towards the ocean, what shall that limit be?”

These two questions relate to the same subject, and must be considered together.

The Treaty provides, for the western part of the boundary that from a point on the Sapoá River, two miles from its mouth, “an astronomic straight line shall be drawn to the central point (el punto céntrico) of the Salinas Bay in the South Sea, where the line marking the boundary between the two contracting Republics shall end.”

It is admitted by both parties that this bay is correctly delineated on the U.S Hydrographic Office Chart entitled "Salinas Bay. From a Survey in 1885 by the Officers of the U.S.S Ranger."

This chart exhibits the Bay as a deep somewhat irregular sheet of water about four and a half miles long by nearly three miles wide of a horse shoe shape and looking a little to the north of west.

Nicaragua contends that the "central point" is to be formed by treating the mouth of the Bay as marked on either side by Punta Mala and Punta Sacate, and that then a point should be fixed on the shore which – measuring along the shore line – is equidistant from each of these starting points. Such a construction of the Treaty seems to me to be clearly inadmissible. The central point of the Bay cannot, under any ordinary interpretation, mean a point on the shore. The center of the Bay must be the center of the geometrical figure formed by the shore of the Bay and a straight line drawn across its mouth. The centre of a circle is not on its circumference.

The boundary line, it is true, does not run beyond the shores of the Bay, for the Bay, by Article IV of the Treaty, is to be common to both Republics. But this is but an apparent difficulty which can not overcome the plain language of the Treaty. The central point of the Bay is adopted only as fixing the direction of the line. The line ends at the shore, and starting from that extremity, the boundary of Nicaragua runs along the waters of the Bay and the Pacific Ocean in a North westerly direction past Punta Mala and Punta Arranca Barba; while the boundary of Costa Rica runs to the Southward and Westward along the shore, circling round to take in the land above Punta Sacate, and so to the South along the Pacific.

In determining the centre of the Bay, it is first necessary to fix its limits towards the Ocean. Upon this point no dictionary or other authority will serve to define a priori what is the mouth of such a bay, nor can any rule be laid down. It is a matter which must be decided arbitrarily, upon an examination of the natural features laid down on the Chart. After careful reflection, it seems to me that the Bay to Seaward is best defined by a straight line drawn from Punta Arranca Barba to the westernmost part of the land about Punta Sacate. This line will run almost exactly true South.

The problem of finding the centre of the irregular figure thus formed is one which may be worked out by familiar mathematical methods. This has been

carefully done, with the result of fixing as a central point of the Bay a point in Latitude 11°03'48" North, Longitude 85°43'30.4" West from Greenwich, - taking the latitude and longitude of the summit of Salinas Island to be as fixed by the officers of the Ranger, Lat. 11°03'10" N., Long 85°43'58 W.

It may be added, for convenience or reference, that this central point lies nearly on a line from the easterly end of Salinas Island to Punta Mala, and about five – eights of a nautical mile distant from the former.

“4. Nicaragua consented, by Article IV, that the Bay of San Juan, which always belonged to her and over which she exercised exclusive jurisdiction, should be common to both Republics; and by Article VI she consented also that Costa Rica should have, in the waters of the River, from its mouth on the Atlantic up to three English miles before reaching Castillo Viejo, the perpetual right of free navigation for purposes of commerce. Is Costa Rica bound to concur with Nicaragua in the expense necessary to prevent the Bay from being obstructed, to keep the navigation of the River and port free and unembarrassed, and to improve it for the common benefit? If so-

“5. In what proportion must Costa Rica contribute? In case she has to contribute nothing –

“6. Can Costa Rica prevent Nicaragua from executing, at her own expense, the works of improvement? Or, shall she have any right to demand indemnification for the places belonging to her on the right bank, which may be necessary to occupy, or for the lands on the same bank which may be flooded or damaged in any other way in consequence of the said works?”

The representatives of Nicaragua have very earnestly and eloquently pressed upon the consideration of the arbitrator the supposed injurious effects to the future of both countries of a decision that should exempt Costa Rica from contributing to the cost of improvements in the River and Harbor of San Juan, or should declare that Costa Rica was entitled to an indemnity if her territory was occupied or flooded. But with the consequences of his decision, the arbitrator has nothing to do. He can only construe the agreement which the parties have seen fit to make; he can not frame a new agreement for them.

The Treaty of 1858 is confessedly silent upon the questions now under consideration, and it is only by implication that Nicaragua deduces answers favorable for herself.

The first question to be considered is whether Costa Rica is bound to contribute to the expense of improving the navigation of the River or Harbor of San Juan. And this question must be divided, and the facts in regard to the River and the Harbor considered separately.

The River lies wholly within the borders of Nicaragua. Costa Rica, possessing one bank for a portion of his course, has only what may be described as an easement or servitude in its waters. Under the Treaty, she has the right of navigation for purposes of commerce, and, by implication, such other ordinary riparian rights as may be enjoyed without affecting the sovereign rights of Nicaragua. It is, therefore, perfectly clear that if Nicaragua chooses to improve the River, she cannot compel Costa Rica to contribute to this expense, for the River belongs to Nicaragua subject to only to such conventional rights as are secured to Costa Rica by the Treaty.

With regard to the Bay, the facts are different. The Bay is "common to both Republics". It is property owned jointly. But in such a case one owner cannot ordinarily incur expense upon the common property and charge the other with a share of that expense. It is one of the necessary incidents and defects of joint ownership that both parties must concur in dealing with their common property.

It follows, that the question marked 4 must be answered in the negative; and to question number 5 it must be answered that Costa Rica need bear no share of the expenses referred to, unless an agreement shall be made on the subject.

The next point of enquiry is whether Costa Rica can prevent Nicaragua from executing at her own expense, works of improvement. Here again the distinction between the Bay and the River must be borne in mind.

So far as the River is concerned, Costa Rica cannot interfere with any works of improvement if her territory be not invaded and her rights in the River or in the Colorado and Taura be not impaired. If, for example, the work of improvement tended to divert water from the Rio Colorado to the San Juan, Costa Rica might, - if she chose-, interpose a valid objection.

In respect of the Harbor, Costa Rica being one of the joint owners, would have a right to prevent any work being done without her consent.

Nicaragua then enquires whether Costa Rica can demand indemnity for land occupied or flooded in the course of the improvements. To this the answer must be that Costa Rica has the right of repelling any invasion of her territory, she has also the right of demanding indemnity in case that a portion of her soil is occupied without her consent by structures, such as dikes or dams, or is flooded by a raising of the level of the River.

“7. If, in view of Article V of the Treaty, the branch of the San Juan River known as the Colorado River must be considered as a limit of Nicaragua and Costa Rica, from its origin of its mouth on the Atlantic?”

The Article of the Treaty referred to is as follows:

“Art. V: During the time that Nicaragua may not recover full possession of all her rights in the Port of San Juan del Norte, the Punta de Castilla shall be used and possessed entirely in common by Nicaragua and Costa Rica alike, the whole passage of the Colorado River being designated by as its boundary, so long as this community of use and possession lasts. It is further agreed that as long as the said port of San Juan may exist classified as free, Costa Rica shall not collect from Nicaragua port dues at Punta de Castilla.”

In order fully to understand the scope of this Article, and of the enquiry based upon it, it is necessary to recall the position in which Nicaragua found herself situated, with respect to San Juan del Norte, at the time of the execution of the Treaty of 1858. The circumstances are matters of common historical knowledge, and have formed the subject of voluminous diplomatic correspondence on the part of the United States.

For many years previous to the periods now in question, and as far back indeed as the XVIIth century, relations of some sort had existed between the British Government and the inhabitants of an extensive and ill-defined tract on the Atlantic shores of Central America, known as the Mosquito Coast. It would be unprofitable to examine closely the history and character of these relations; but it may be stated in a general way that they practically ceased for some years after the treaties of 1783 and 1786 between Great Britain and Spain. About 1840,

however Great Britain [...] to advance certain claims, and she asserted the existence of the Mosquito Indians as an independent and sovereign nation under the protection of the British Government. At a later date it was declared that the limits of the Mosquito Kingdom extended as far south as the River San Juan; and on the 1st January 1848, H.B.M. ships Vixen and Alarm, in the name of the Mosquito King, took forceful possession of the Town and Harbor of San Juan del Norte. Against these acts the Government of the United States earnestly protested, denying the existence of the Mosquito Indians as an independence nation, and urging upon Great Britain the restoration of San Juan del Norte to the Nicaraguan authority.

These efforts were, for a long time, unavailing. In 1858 no conclusion had been reached San Juan del Norte, or – as it was then named – Greytown, remained under the nominal sovereignty of the Mosquito King. Its affairs where in fact administered by a local government of the inhabitants, who had adopted a constitution and laws of their own, as whose de facto rule was respected by the United States and Great Britain, pending a final settlement of the various questions in dispute. The Republic of Nicaragua had possession of no part of this district and exercises no authority within it. But negotiations had then been for a long time progressing which look to a restoration of her authority. In these negotiations the question of constituting the Harbor of Greytown or San Juan del Norte as a free port, had always been a great feature.

In 1860 these negotiations were brought to a close by the Zeledón – Wyke Treaty, between Great Britain and Nicaragua, signed at Managua, on the 28th January of that year. By this Treaty, Great Britain withdrew her protectorate, and recognized the sovereignty of Nicaragua over all the Mosquito territory; and it was agreed that a reservation – within which Greytown was not included, - should be set aside for the Mosquito Indians. The important provisions of the Treaty, for present purposes, are the following:

“Article VII. The Republic of Nicaragua shall constitute and declare the port of Greytown or San Juan del Norte, a free port under the sovereign authority of the Republic. But the Republic, taking into consideration the immunities heretofore enjoyed by the inhabitants of Greytown, consents that trial by jury in all cases civil or criminal, and perfect freedom of religious belief and worship, public and private, such as has hitherto been enjoyed by them up to the present moment, shall be guaranteed to them for the future.

“No duties or charges shall be imposed upon vessels arriving in, or departing from, the free port of Greytown, other than such as may be sufficient for the due maintenance and safety of the navigation, for providing lights and beacons, and for defraying the expense of the police of the port; neither shall any duties or charges be levied in the free port on goods arriving therein, in transit from sea to sea. But nothing contained in this Article shall be construed to prevent the Republic of Nicaragua from leaving the usual duties on goods destined for consumption within the territory of the Republic.”

The provisions of the Treaty were duly carried out by the surrender of Greytown to the Nicaraguan authorities, and Nicaragua has for about twenty seven years exercised undisputed authority in that place, subject only to such restrictions as were imposed by the stipulations of the Treaty above referred to.

It is now contended by Nicaragua that, in view of the existence of these restrictions, she has not yet recovered “full possessions of all her rights in the port of San Juan del Norte”, within the meaning of Article V of the Treaty of Limits of 1858.

These restrictions are of two kinds; the provisions as to trial by jury and religious liberty on the one hand, and the provisions as to harbor and custom dues in the other.

So far as the guarantee of trial by jury and religious liberty is concerned, I can find no deprivation of the rights of Nicaragua. There is only a grant of certain privileges to individuals which does not in least impair the sovereign rights of the Republic.

The agreement that Greytown shall be a “free port under the sovereign authority of the Republic” is not a deprivation of rights within the meaning of, the Treaty of Limits. Article V of that Treaty is divided into two sentences. The second sentence creates no difficulties of interpretation. That simply provides that so long as San Juan del Norte remains a free port “Costa Rica shall not collect from Nicaragua port dues at Punta de Castilla”.

But Nicaragua contends that a continuous deprivation of her rights is found in those provisions of the Zeledón- Wyke Treaty which forbid the leaving of dues on Vessels (as distinguished from goods), except for specified purposes.

This contention proceeds upon the theory that the term “free port” does not involve the idea of a restriction of dues upon vessels, but only of dues upon goods. Such, however, is not the view of all authorities, and especially of all Spanish writers. I cite the following definitions from works published shortly before the Treaty of Limits of 1858 and the Zeledón – Wyke Treaty of 1860.

Elementos del Derecho Mercantil Español, by D. Damian de Sogravo y Craibe (Madrid 1846) “Free ports are such commercial towns as enjoy the franchise of importing and exporting every kind of merchandise, domestic or foreign, without other charge thereon than the costs of navigation with respect to the vessel itself (gastos de navegación relativos al buque).”

Mellado, Enciclopedia Moderna, Madrid 1854. Free port.– One in which vessels of all nations of the world may anchor, load and unload, without paying any dues.”

Caballer, Diccionario General de la Lengua Castellana, (Madrid 1856). “Free port.- One in which the ships of any nations whatever may come and go without paying dues.”

Chao, Diccionario Encyclopédico de la Lengua Española, (Madrid 1853-1855): “Free port.- One in which the ships of any nation whatever may come and go without paying dues on themselves or their merchandise”

Domínguez, Diccionario de la Lengua Española (Madrid 1856): “Free port.– One in which the ships of any nations whatever may come and go without paying dues either on the vessels or the cargos or merchandise.”

But even assuming that the words “free port” in the two Treaties referred to were intended to describe a port in which only goods, and not vessels, were free from dues, I am of the opinion that the limitation upon the power of Nicaraguan to impose dues on vessels, is not one of which she can now complain.

When in 1860 the Zeledón-Wyke Treaty was negotiated, Nicaragua might have refused to accept the surrender of Greytown, except unconditionally. If she had so refused, it is possible that the British forces might have still excluded her from Greytown,- but she would then have continued to enjoy the use of Punta de Castilla in common with Costa Rica. Nicaragua instead agreed to receive back Greytown, subject to the limitation that dues on vessels should only be laid for certain purposes. This was the price she voluntarily agreed to pay for the

restoration of her possession and her rights of sovereignty; and having voluntarily agreed to limit the amount of harbor dues, she cannot now insist that she has not yet recovered full possession of all her rights in the port.

The agreement as to freedom of goods in transit, is not a deprivation of any rights.

From an attentive consideration of the historical aspect of the question, as well as of the language of the Treaties, I am convinced that Nicaragua has, within the meaning of Article V of the Treaty of 1858, recovered "full possession of all her rights in the port of San Juan del Norte;" and that the Rio Colorado is not to be held as forming any part of the boundary between Costa Rica and Nicaragua.

"8. If Costa Rica, who, according to Article VI of the Treaty, has only the right of free navigation for the purposes of commerce in the waters of San Juan River, can also navigate with men-of-wars or revenue cutters in the same waters?" This, in a slightly different form, is identical with the question of interpretation put in the Treaty of Arbitration, and has already been disposed of.

"9. The supreme control (sumo imperio) over the San Juan River from its origin in the Lake and down to its mouth on the Atlantic, belonging to Nicaragua according to the text of the Treaty, can Costa Rica reasonably deny the right of deviating those waters?"

The form of this question fails to take into account some of the facts which are of importance in arriving at a conclusion with regard to the rights of Nicaragua; for although the San Juan proper is wholly within Nicaraguan territory, and although Nicaragua is vested with the dominion and supreme control over its waters, yet it must be remembered that the Taura and Colorado mouths lie wholly within Costa Rican territory, that Costa Rica possesses one bank of the San Juan proper for a large part of its course, and that she has "the perpetual rights of free navigation" on the lower waters of the stream.

The rights of Costa Rica are of two kinds: -

1. Such as accrue to her from her ownership over that part of the waters of the San Juan that reach the sea through her territory by way of the Rio Colorado and the Taura,

2. The perpetual right of free navigation in the San Juan proper, as conferred by Article VI of the Treaty of 1858.

With regard to the rights arising from the ownership of the two mouths of the San Juan known as the Colorado and Taura, it seems plain that Nicaragua may not rightfully impair them by any diversion of the waters of the San Juan. As between individual riparian owners, it is believed to be the law of all civilized nations that it is in general illegal to divert a watercourse; for, it is said, every riparian owner is bound, as regards his rights to the water of a stream, to respect the maxim sic utere tuo ut alienum non laedas. The question is much discussed in Angell on Watercourses §§ 97-108. And as between nations, the rule appears to be the same.

The Government of the United States has on more than one occasion asserted the right to interfere in preventing the diversion, in other countries, of streams which flowed through or pass its borders. See Wharton's International Law Digest, § 20.

With respect to an impairment of the right of navigation secured by the Treaty of 1858, the case seems to be equally clear. The rule is thus laid down by Vattel, Chap XXII, §§ 271-273:

“It is not allowable to raise any works on the bank of the river, which have a tendency to turn its course, and to cast it upon the opposite bank, this would be promoting our own advantage at our neighbor's expense... If a river belongs to one nation, and another has an incontestable right to navigate it, the former cannot erect upon it a dam or mill which might render it unfit for navigation. The right which the owners of the river possess in this case is only that of a limited property; and, in the exercise of it, they are bound to respect the rights of others... This right [of navigation] necessarily supposes that the river shall remain free and navigable, and therefore excludes every work that will entirely interrupt its navigation”

These views are not so far, as I am aware, in any respect questioned by other writers on international law; and it may be laid down as a general rule that where

one State has, by treaty or by international law; a right to the free navigation or other use of the waters of the lower part of the river, such a river cannot be obstructed or its waters diverted by another State, having control of the upper waters of the stream, as to destroy or seriously impair the rights of the former State.

It follows, that Nicaragua has not the right of deviating the waters of the San Juan.

“10. If, considering that the reasons of the stipulations contained in Article VIII of the Treaty have disappeared, does Nicaragua, nevertheless, remain bound not to make any grants for canal purposes across her territory without first asking the opinion of Costa Rica as therein provided? What are, in this respect, the natural rights of Costa Rica alluded to by this stipulation, and in what cases must they be deemed injured?”

It is not clear, from this question, what the Government of Nicaragua means by the phrase “considering that the reasons of the stipulation (los motivos de la estipulacion) contained in Article VIII of the Treaty “have disappeared”. On turning to the Treaty itself, we find that Article VII provides that nothing contained in the Treaty shall invalidate obligations previously incurred by Nicaragua in regard to canalization or public transit. Article VIII provides that if the contracts of canalization or transit _theretofore entered into by Nicaragua should happen to be invalidated, she will not enter into any other arrangement without first hearing the opinion of Costa Rica; “and, if the _transaction does not injure the natural rights of Costa Rica, the vote asked for shall be only advisory”.

It will be perceived that no reasons or motives are stated for these stipulations, and everyone may conjecture for himself what they were. I should suppose that sufficient reasons might be found in the strong interest which Costa Rica would necessarily feel if any means of interoceanic transit that lay close to her borders. The representatives of Nicaragua contend that the motives of the stipulation are to be found in the dread of Walker and the filibusters, who had not then been entirely defeated, and who –it is said- might be expected to gain access to Central America under the guise of securing a concession for building a canal. But it is plain that any such surmises, even if the arbitrator thought them probable, could never form the basis for his decision; for they fall far short of the clear proof which alone could justify an application of the maxim, invoked by Nicaragua, cessante ratione, cessat ipsa et lex.

It follows that the provisions of Article VIII must be held to be still in full force.

The second part of the question enquires what are the “natural rights” of Costa Rica, alluded to in this stipulation, and in what cases they must be deemed injured. The words “natural rights” must be considered with reference to the subject matter of the Treaty; and in this light; the answer does not appear difficult. The natural “rights” of Costa Rica are those rights which, in view of the boundaries fixed by the Treaty of Limits, she possesses in the soil thereby recognized as belonging exclusively to her, - in the harbors of San Juan del Norte and Salinas of which she is a joint proprietor, - and in that part of the delta of the River San Juan which she owns or of the portion of the River itself in which she has perpetual rights of free navigation and other riparian rights.

It is impossible to foresee all the cases in which these rights would be impaired; but it may be enough to say generally that, within the meaning of the Treaty, an appropriation or flooding of Costa Rican soil, an encroachment on the harbors above mentioned, or an obstruction or deviation of the waters of the San Juan which should destroy or seriously impair the navigation of the waters of that stream from a point three miles below Castillo Viejo, would “injure the natural rights of Costa Rica”.

“11. Whether the Treaty of April 15, 1858, gives Costa Rica any right to be a party to the grants of inter-oceanic canal which Nicaragua may make, or to share the profits that Nicaragua should reserve for herself as sovereign of the territory and waters, and in compensation of the valuable favors and privileges she may have conceded?”

The Treaty does not, in terms, give Costa Rica any such rights.

Nicaragua, under Article VIII of the Treaty, is bound to consult Costa Rica before entering into any agreement for the construction of an inter-oceanic canal; but is not bound to adopt her views if “the transaction does not injure the natural rights of Costa Rica”. In such cases Costa Rica would be neither in form nor in substance a party to the grants Nicaragua might make, nor entitled to share in the profits reserved in the concessions.

If, on the other hand, the transaction were one which did "injure the natural rights of Costa Rica", the vote asked for would sense to be only "advisory". In that event, Costa Rica would have a right of veto, and, her assent being essential to the validity of the agreement, she would in effect become a party to any complete grant for inter-oceanic transit. Costa Rica would be entitled to demand such compensation as might be just, for the concessions she was asked to make; but she would not be entitled to share in the profits reserved for Nicaragua.

The question, as propounded, is some what ambiguous, but it may be answered thus: The Treaty of April 15, 1858, gives Costa Rica a right to be a party to grants for inter-oceanic canals only in cases where the construction of the canal involves an appropriation or flooding of Costa Rican territory, - or an encroachment on the harbors of San Juan del Norte or Salinas, or the destruction or serious impairment of the miles below Castillo Viejo.

Costa Rica has the right to demand such compensation as may be just for the concessions she is asked to make; but is not entitle to share in the profits that Nicaragua may reserve for herself as a compensation for such favors and privileges as she, in her [...], may concede.

I have thus considered all the questions submitted to the arbitrator, and I respectfully advise that an award be made in accordance with the foregoing views. I submit herewith a form of award which, if my conclusions be approved, maybe executed in triplicate, -one copy to be filed in the Department of State, and the others to be delivered to the representatives of the Governments of Costa Rica and Nicaragua respectively.

G. L. Rives

Department of State
Washington
March 2nd, 1888

ANNEX 2

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

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

[...]

New York, March 10 1900.-

Award No. 5

To the Boundary Commissioners of Costa Rica and Nicaragua.

Gentlemen:- In the discharge of my duties as Arbitrator of whatever differences may arise in your work of tracing and marking the boundary line between the countries you represent, I was called upon in October last, by the Nicaragua Commission, to declare what point in Salinas Bay should be taken as its centre, in laying out the final course of the boundary, from its meeting with the Sapoa River to its ending upon this bay.- The work in the fields, at that time was near San Carlos, with some months of work ahead before it could reach the Sapoa River, but the decision was asked in advance to allow time for argument, and yet avoid any delay when the work arrived at that point.-

The Nicaraguan Commission, along with its request that I should fix the central point of the Bay, submitted a statement of its views in the matter; and some extracts from the proceedings of a former joint Commission which in 1890 considered this subject, and seemed not far from an amicable agreement, but finally dissolved without effective action.-

This exposition of its views by the Nicaraguan Commission was immediately transmitted to the Costa Rican Commission, who were invited to make such reply as they saw fit.-

Both Commissions were also informed that as an amicable agreement seemed possible.- I would delay marking any award in the matter as long as that possibility seemed to exist and I asked to be informed from time to time of progress.-

No such agreement has been arrived at.- Nor has the Costa Rican Commission submitted any statement or comments upon the views of the Nicaraguan Commission above referred to.-

Meanwhile, the working parties in the fields will soon reach the Sapoa River, and must then suspend work until the central point of Salinas Bay is determined, before they can fix the direction of the final course of the boundary line.

To avoid this delay, and its consequent expense to both governments, I can no longer suspend my award in this matter.- But it is proper to point out in this connection, that my award has no effect to prevent amicable agreement for being even get arrive at.-

Power is given the Commissioners, in the Treaty of 1858, “to diverge from the straight astronomical line between Sapoá and Salinas, provided they can agree upon this, in order to adopt natural land marks”.-

This power is no way restricted or abridged by my award which only determines where a straight astronomical line will run.-

Having therefore duty considered the whole matter. I announce my award as follows:

The provisions of the Treaty of 1858 bearing upon this matter are these:

From Article II.- “From the point where the boundary touches the river Sapoá, which, as before said, must be two miles from the lake, a straight astronomical line shall be projected to the central point of the bay of Salinas, in the sea of the South, at which place will terminate the demarcation of the territory of the two contracting Republics”.-

From Article IV. “The bay of San Juan del Norte, as well as that of Salinas, shall be common to both Republics, and consequently their advantages and the obligation to unite for their defense shall be common also”. The interpretation of this treaty upon all doubtful points was submitted to President Cleveland in 1888, and his award upon this matter was in the following very clear provision:

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

“3.By the central point of Salinas Bay is to be understood the centre of the geometrical figure formed as above stated.”

“The limit of the Bay towards the ocean is a straight line drawn from the extremity of Punta Arranca Barba, nearly true South to the westernmost portion of the land about Punta Sacate”.-

In the argument made by the Nicaragua Commission, it is submitted to me that the true limit of the Bay should be a line between Punta Sacate and Punta Mala. This would be between one and two miles inside of the line fixed by President Cleveland's award. It is unnecessary to discuss the merit of this claim.

By the Matus-Pacheco Treaty made at San Salvador, March 24, 1896, this award was adopted as the law for this Commission.-

The first article of that Treaty is as follows: "The contracting Governments are bound to appoint a Commission respectively, each composed of two engineers or surveyors, for the purpose of duly defining and marking out the dividing line between the Republics of Nicaragua and Costa Rica, according to the stipulations of the Treaty of 15th April 1858, and the Award of the President of the United States of North America, Mr. Grover Cleveland."-

The powers of arbitration given me in the second article of this Treaty, "to decide whatever kind of difficulties that may arise", are plainly to be exercised only within the limits set by Article one. Where the meaning of President Cleveland's award is not in question I have no authority to set it aside.-

As to the unfinished work and partial agreements of 1890, they were all set aside by this Treaty of 1895. It may be noted that the territory which would have accrued to Nicaragua by the proposed amicable adoption of the line from Punta Sacate to Punta Mala as the limit of the Bay would be about three-fourths a mile of shore port.

It is further set forth in the Nicaraguan argument that the line from Sapoa to the centre of the Bay loses its character as a dividing or boundary line where it leaves the shore and enters upon the waters of the Bay. This indeed, seems to follow from article IV, of the Treaty of 1858, already quoted, which declares the waters of the Bay to be common and from the fact that the line is terminated as the centre of the Bay, and not extended to the Ocean.-

But, in my opinion, the functions of this Commission are limited to the defining and marking out of the dividing line between the Republics.- The legal character of that portion of the line upon the water, and perhaps some questions of jurisdiction, which might arise, are at least beyond the scope of the present inquiry which is merely the location of the centre of Salinas Bay as described in the Award of President Cleveland.-

The Bay of Salinas was carefully surveyed and mapped by officers of the U. S. Navy in 1885, and a map of the same is published in the U. S. Naval Hydrographic office, N° 1025. I have adopted this map with the consent of both

commissions as correctly representing the out line of the Bay. In shape it is a curved pocket, starting east and bending southward, about five miles long, and about one half of that in average width. Its outline a little resembles the rounded handle or butt of a pistol, with some irregular projections and indentations.-

It is desired to find the mathematical centre of this figure, closed by the straight lines joining the headland of the Bay.

The mathematical centre of an irregular figure is the (did position) mid position of its area.- All mechanical centres, such as the centre of gravity (of) or of equilibrium etc. in which the action of any force is concerned, must be excluded from consideration.

This will readily appear if we consider for a moment the case of a bay in the shape of a crescent. The centre of gravity of its figure would not fall upon the water of the bay at all, but upon the promontory of lands embraced by the water. This, of course, could not be considered as the centre of the bay.

Neither is any general mathematical process applicable, such as that of the method of Least Squares. This method will find the centre of any group of random spots, but were they disposed in crescent form, the centre would be, not among them, but within the convex space which they partially surround.- Other methods must therefore be devised for finding the midposition of irregular and restricted areas, and many might be suggested, more or less applicable to different figures. But it will be sufficient here to indicate only the method which I have adopted as best suited to the figure in hand possessing, as this does, something of a curved or crescent shape.

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

This course, being carefully plotted upon the map, although curved, may be taken as the long axis of the Bay.-

At right angle to it, at different points, I have drawn straight lines reaching across the Bay from shore to shore and by use of a planimeter I have determined the position of such a line which will exactly divide the whole area of the Bay into equal parts. This line may be taken as the corresponding short axis of the Bay and its intersection with the long axis will be the centre of the Bay.-

When at that point, a line drawn across the bow of the supposed vessel, perpendicular to her course, would have one half of the waters of the Bay in front of it and one half behind it.-

Having carefully located the point in this manner, I have determined from the scale of the map its distance from the summit point of the small island in the bay, where latitude and longitude are given upon the map as follows:-

Latitude 11^a 03' 10".-

Longitude 85^a 43' 38".-

It proves to be 37 seconds to the northward and 14 seconds to the eastward of this point.-

I therefore fit the position of the centre of Salinas Bay to be;

Latitude : 11^a 03' 47" North.

Longitude 85^a 43" 52" West

Toward this point the boundary line must run from its meeting with the Sapoa River, unless the two Commissions can agree upon a line with natural landmarks.-

I am Gentlemen, very respectfully, your obedient servant: E. P. Alexander,
Engineer-Arbitrator..

[...]

ANNEX 3

Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica of 1977

Source: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Counter Memorial of the Republic of Colombia, Vol. II-A, Annex; Division for Oceans Affairs and the Law of the Sea, United Nations

<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/COL-CRI1977MC.PDF>

page 1| Delimitation Treaties Infobase | accessed on 13/03/2002

**Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation
between the Republic of Colombia and the Republic of Costa Rica
(17 March 1977)**

The Republic of Colombia and the Republic of Costa Rica,

Realizing that international cooperation and reciprocity constitute the best means to resolve matters of common interest to nations which are friends,

Agreeing on the advisability and need to delimit their marine and submarine areas in the Caribbean Sea,

Concurring on safeguarding the sovereignty and jurisdiction of marine areas belonging to each country and the free and unimpeded transit through them,

Mutually interested in the adoption of adequate means for the preservation, conservation, and exploitation of the resources existing in those areas, and for the prevention, control, and elimination of their pollution, have decided to conclude a Treaty and for that purpose have appointed as their plenipotentiaries:

The President of the Republic of Colombia: Dr. Heraclio Fernández Sandoval, Ambassador Extraordinary and Plenipotentiary in Costa Rica;

The President of the Republic of Costa Rica: Dr. Gonzalo J. Facio, Minister of Foreign Relations,

Who, after exchanging their respective full powers, found in proper and due form, have agreed as follows:

Article 1

To delimit their respective marine and submarine waters which are established or may be established in the future by the following lines:

A. From the intersection of a straight line, drawn with azimuth 225° (45° SW.) from a point located at lat. 11°00'00"N. and long. 81°15'00"W., with the parallel 10°49'00"N.

West along the said parallel to its intersection with the meridian 82°14'00"W.

B. From the intersection of the parallel 10°49'00"N. and the meridian 82°14'00"W., the boundary shall continue north along the said meridian to where delimitation must be made with a third State.

N.B. The agreed lines and points are shown on the nautical chart, signed by the plenipotentiaries, which is annexed to this Treaty, it being understood that in all cases the wording of the Treaty shall prevail.

Article 2

To accept and respect the methods by which each of the two States currently exercises or may in the future exercise its sovereignty, jurisdiction, supervision, control, or rights in the marine and submarine areas adjacent to its coasts, delimited pursuant to this Treaty, in conformity with what each country has established or may establish in the future and with the regulations laid down by its domestic law.

Article 3

To develop the broadest cooperation between the two countries for the protection of the renewable or nonrenewable resources found within the marine or submarine areas over which they exercise or may in the future exercise sovereignty, jurisdiction, or supervision and to use those resources for the welfare of their peoples and their national development.

Article 4

To support the broadest international cooperation in order to coordinate the conservation measures which each State

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page 2| Delimitation Treaties Infobase | accessed on 13/03/2002

applies in the zones of the sea subject to its sovereignty or jurisdiction, particularly as regards species that move beyond its jurisdictional zone, taking into account the recommendations of appropriate regional organizations and the most accurate and current scientific data. The said cooperation shall not impair the sovereign right of each State to adopt, within the framework of its respective maritime jurisdictions, the rules and regulations that it deems pertinent.

Article 5

To offer each other the greatest possible facilities for the purpose of developing activities to exploit and use the living resources of their respective maritime jurisdictional zones through the exchange of information, cooperation in scientific research, technical collaboration, and encouragement of the formation of mixed corporations.

Article 6

Each of the Parties expresses its determination to cooperate with the other, in accordance with its possibilities, in the application of the most adequate measures to impede, reduce, and control any pollution of the marine environment which affects the neighboring State, irrespective of the source of such pollution.

Article 7

To support the broadest cooperation to promote rapid development of international navigation in seas subject to the sovereignty or jurisdiction of each State.

Article 8

This Treaty shall be subject to the constitutional formalities of ratification by the High Contracting Parties and shall enter into force upon the exchange of the instruments of ratification which shall take place at Bogotá, Republic of Colombia.

This treaty is signed in two copies, in the Spanish language, both texts being equally authentic.

Signed at San José, Republic of Costa Rica, on March 17, 1977.

ANNEX 4

Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings VI

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

Proceedings VI

In the City of San Juan del Norte at four o'clock in the afternoon of the second day of October of eighteen ninety-seven.- The Commissions of Limits between Costa Rica and Nicaragua assembled on the usual premises, and with the Arbitrator General E.P. Alexander present, it is certified that having proceeded with a personal inspection of the place designated by the arbiter as the initial point of the boundary line, in accordance with what is stipulated in the Award inserted in the previous act the arbiter established the spot where the monument that will serve as a boundary marker on the Atlantic Coast should be placed, the aforementioned spot is provisionally marked by a straight line of three hundred English feet measured from the hut referred to in the arbitral award and in the direction that will be stated further on.- The following provisional observations were made at the hut:

TABLE

Below the following azimuths were measured; from the above-mentioned hut:

To the highest point of the mountain at Monkey-Point (Punta de Mono)

$89^{\circ}05'$

To the small island in front of Monkey Point

$92^{\circ}24'$

To the islet that resembles a tree in the sea

$93^{\circ}33'$

To the conical hill in the direction of Indio River

$50^{\circ}52'$

To the true initial point of the boundary line that lies 300 feet from the hut

$41^{\circ}09'$

The Commissions agree on the following type of monument to be built at the Hut: on a circular concrete platform two and a half feet thick by diameter of six and a half feet in diameter, that will serve as the base, a cylinder will rise, also made of concrete, of four feet and ten inches in diameter by three feet, four inches high.- A granite cube of one meter in edge length will be placed on top of this cylinder, which will have the following inscriptions in bronze: -on the northwest face -“J. Santos Zelaya, President of Nicaragua- Commissioners- Salvador Castrillo-

William Climie."- On the southeast face- "Rafael Iglesias, President of Costa Rica- Commissioners- Luis Matamoros- Leónidas Carranza."- On the northeast face- "General E.P. Alexander, Engineer Arbitrator", and on the southwest face the geographical coordinates of the spot marked as the initial point of the line, and the date "September 30, 1897."- The edges of the cube will mark the four astronomical cardinal points.- The construction of this monument will be entrusted to Mister Eduardo Kattengell; and the period of time set for its inauguration is from the first to the fifteenth of next November.- And for the record we sign and authorize this act with our seals.- Note,- On the last line of page 12, where it says in parentheses: "(50°.55')" it should say 41°. 09'.- On this page 13, line 7, the "(and)" in parentheses should be eliminated, line 17, the word in parentheses that says "(construction) should read "inauguration."-

E.P. Alexander

Luis Matamoros

W. Climie

Leónidas Carranza

Castrillo

Salvador

ANNEX 5

Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings X

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

Proceedings X

In the Town of San Juan del Norte, at eight o'clock in the morning, on March the second of the year eighteen hundred ninety eight, in the customary place= the Commissioners for the State of Nicaragua being absent, as per their document dated January seventh of year eighteen hundred and ninety-eight, Engineer Andrés Navarrete, Commissioner representing the Government of Costa Rica, requested that, in compliance with Article V of the Matus Pacheco Convention of March the 27th 1896, the Engineer Arbiter participate in the delimitation operations that should be carried out in the absence of those gentlemen= The delimitation Commissions, being reincorporated with the participation of the Engineer Arbiter, proceeded first and foremost to emplace the Monument that determined the Initial Point of the dividing line on the Coast of the Caribbean Sea, linking it with the center of Plaza Victoria in San Juan del Norte= To that end, the following operations were performed= Astronomical observations to determine the azimuths =

San Juan del Norte - January 1898

TABLE

Note= The measurements taken on January the 23rd were recorded using a small Hildebrand theodolite, where the horizontal axis is adjusted directly; while measurements on January the 30th and 31st were recorded using a Salmoraghi tachymeter, where the horizontal axis is adjusted inversely= As geographic position for measuring these azimuths, the one corresponding to triangulation pole M° III [sic] described below was used. Said pole was placed in front of the location once occupied by the Church of San Juan del Norte, for which the Tables of *Connaissance des Temps (bureau des longitudes)*, Paris, 1897, give: latitude: 10°-55'-14" N. and longitude 86°-02'-19". Maxwell-1878-1895)= This Delimitation Commission adopted the above mentioned position, under every reserve, and as mere approximation aimed at deducing, in the various points of the line of operations, the elements needed to guide the alignments= The average of the foregoing calculations gives for the azimuths of the side (Δ -lighthouse) 153° 35' 50", therefore 153°-36' 00 is adopted as sufficient approximation"=These azimuths are measured according to Geodetic Datum in direction S.W.N.E., with

zero at South= Triangulation aimed at linking the Initial Point Monument or first marker with the Center of Plaza Victoria in San Juan del Norte .

**TABLE
CHART
TABLE**

The coordinates of the Monument or initial marker, taking as origin the center of Plaza Victoria in San Juan del Norte, therefore, are = $x = 4268.28$ East; $y = 2004.54$ North; astronomical Meridian; which results that the distance from the above mentioned center of the plaza to the aforementioned (marker) monument is $4715 - 55$ (four thousand seven hundred fifteen meters fifty-five centimeters) with a geodetic azimuth of sexagesimal $244^\circ 50' 23''$ (two hundred forty-four degrees, fifty minutes, twenty-three seconds) = Therefore the bronze plate mentioned in Proceedings No. VI of October 2nd 1897 shall be sculpted, bearing the marker's coordinates and the following inscription = "This monument is located at a distance of $4715 - 55$ with a geodetic azimuth of sexagesimal $244^\circ 50' 23''$ from the center of Plaza Victoria in San Juan del Norte" = It was also agreed to have reference markers emplaced in relation with the first monument, one on the opposite margin of the Harbor Head lagoon, at 1139 meters from the first in a location marked there, with an azimuth of $66^\circ 41' 05''$; and the other in the aforementioned center of Plaza Victoria in San Juan del Norte = The following type was agreed regarding the markers that will serve as reference points for the first monument, that is to say: for the first one on the right margin of the Harbor Head lagoon, an iron pipe, approximately 40 centimeters in diameter (filled with concrete) and two meters in length, buried one and a half meters and filled with concrete; for the second, in the center of Plaza Victoria in San Juan del Norte, the same iron pipe, buried so that its upper end appears at ground level = then, in compliance with the Award issued by the Engineer Arbitrator on December the 20th of 1897, the boundary line was measured as described in the Award of September 30th of 1897, starting from the initial marker, following around the Harbor and through the first channel met up to the river proper, and through this until pole No. 40 next to the source of the Taura River = (then, in compliance with the Award of December 20th of 1897 by the Engineer Arbitrator) Said operations and their results are shown in the following table = Survey of the right margin of the Harbor Head lagoon and of the San Juan River, which constitute the dividing line between Costa Rica and Nicaragua =

**TABLE
CHART
TABLE
TABLE
TABLE
TABLE**

Note: The abscissas or X are considered from East to West, while the Y or ordinates from North to South.= It should be noted that in the columns entitled “Points observed) the Arabic numerals accompanied by the letter “b” (abbreviation of “bis”) correspond to points located in the territory of Nicaragua that were surveyed solely for the purpose of aiding the operations:- points whose numerals are not accompanied by the letter “f” are located on the dividing line between both countries.- The angles were obtained by calculating the average of various observations”.- It was pointed out that, for greater clarity and with the permission of the Engineer Arbitrator, it was agreed to include the results of the dividing line survey in the official records in small segments, instead of daily, which will also facilitate correcting the operations as necessary; and to position each point of the polygonal directrix linking them directly with the initial marker by rectilinear coordinates, whose zero or origin is assumed to be that monument.- And for the purposes of Art. 8 of the Matus – Pacheco Convention, we confirm all of the foregoing in these proceedings, which we sign and approve under our seals.- Corrigendum = On page 28 line 23 between the words “geographic” and “the one corresponding”, read “position of the observation”.- On page 28 line 30, between the words “pole” and “was”, read “No. III”.- And on page 28 line 21 the words “filled with concrete” are void.- On page 31, line 32, up to 34, the words “(then... “ up to “Arbitrator”) are void.- On page 31 line 41 the numerals “365.83” = $323.90 = 170.06$ = written over what was erased are valid. On page 32 line 11 the numeral $66^{\circ}10'00''$ = written over what was erased is valid. On page 32 line 12 the $77^{\circ}13'00''$ written over what was erased is valid = on page 32, line 13, amendment $46^{\circ}37'00''$, is valid.= On page 35 line 26 in the “horizontal angles” column, read “ $189^{\circ}31'40''$ ” = In the following line of the same column read “ $323^{\circ}08'40''$ ”, and in the following line of the same column read $345^{\circ}38'40''$ - On page 36 line 7, 13, 14, of the azimuths column, the crossed out figures are void.****

E.P. Alexander
Andrés Navarrete

ANNEX 6

Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings XIV

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

Proceedings XIV

In the City of San Juan del Norte, at eight o'clock in the morning on June three of the year eighteen hundred and ninety four – having arrived at this port on first day of this month, the gentlemen and engineers Mr. Andrés Navarrete Tejera and Mr. Salvador Gonzalez and Ramirez, Members of the Costa Rican Commission, they now present the appointment that was served to them by the Supreme Government of that Republic, in agreement of last May twenty-first and have consequently incorporated themselves to the Boundary Commission; Mr. Salvador Castillo represents the Nicaraguan Commission given that the Deputy Commissioner Urtecho is implementing the demarcation on the river. – Commissioner Navarrete states that his arrival here was delayed due to an illness he suffered upon entering Costa Rica and also due to the time invested in casting the plates. He also added that in his new character as Proprietary Commissioner he has already brought the piece of granite prepared with the four plates that have the inscriptions provided for in the previous proceedings. - Therefore, it is provided that the piece of granite is placed on the cairn and precise orders should be given to disembark it and transport it until it is affixed on said cairn. – Commissioner Castillo declares that the sketch that appears in these proceedings is the one that corresponds to the topographic work from Colorado up to Tamborcito, Station 108 and last one that was entered in the immediately preceding proceedings. – In the presence of the Arbitrator, we all sign and authorize with our seals. – Note: in the second line of these Proceedings, where it states ninety four, it should read ninety eight.

Andrés Navarrete

E.P. Alexander

J. S. González R.

Salvador Castillo

SEALS

ANNEX 7

Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings XV (excerpts)

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

Proceedings XV

In the City of San Juan del Norte, on December twenty-three of the year one thousand ninety-eight, at the location that serves as the Office of the Boundary Commission between Nicaragua and Costa Rica, the undersigned Commissioners acknowledge that: as of the last day of May of the current year, date of the preceding proceedings, the Commissions have continued their geodesic works without interruption, proceeding harmoniously throughout, from the last point to which Commissioner Castillo extended the work, called Tamborcito, and following the circumvallation of the river up to the point that is three English miles away from Castillo Viejo; all of this is pursuant to the provisions set forth at the end of Proceedings X, of March two of this same year; as the columns titled "Points Observed" contain the analyzed figures and accompanied by the letters "b", abbreviation of "bis", and encompassing the points situated in the territory of Nicaragua, surveyed for the sole purpose of assisting the operations; and the figures not accompanied with such letter "b" are located over the dividing line between the two countries, which in compliance with the provisions set forth in Proceedings XIV, over the starting cairn and its points of reference, the piece of granite was placed with the bronze plates on which the mandated inscriptions were engraved, and the points of reference were built in Harbor Head and in Victoria Square, having fully complied with the resolution of the Arbiter, General E. P. Alexander, on the length of the English mile referred to in the 1858 Treaty, as the mile was given the extension of 5280 English miles, and the three miles were measured from the point at which the outer fortification of El Castillo concludes in the River. The following table contains the result of all of the operations made up the stated point, at a distance of three miles from the exterior fortifications, point where the second dividing cairn will be places and found as seen in the description of the curve:

TABLES

[...]

Andrés Navarrete
Salvador Castrillo

E.P. Alexander

Francisco de la Paz

J. Andrés Urtecho

SEALS

ANNEX 8

Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings XVI (excerpts)

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

Proceedings XVI

In the City of San Juan del Norte, at four p.m. on June thirteenth of the year eighteen hundred and ninety-nine, the undersigned Commissioners met in the residential home of the Arbiter, General E. P. Alexander, who agreed to record and have recorded in these Proceedings, the operations performed by both Commissions since the date of the preceding proceedings and they place the following on the record: [...]

SKETCH MAPS

Finally, given the circumstance that the monument that is the starting point in Harbor Head has been tipped over by the sea and that both Commissions wish to conserve the monument as the sign for beginning the line, they have arranged to rebuild it at a point that can preserve it from invasions by the sea, and connecting it geodetically with the point it previously occupied, in the manner that will be explained in the subsequent Proceedings. With this, these Proceedings conclude, signed by the Commissioners in attendance, and authorizing their signatures with their respective seals.

E.P. Alexander

J. Andrés Urtecho

Francisco de Paz

SEALS

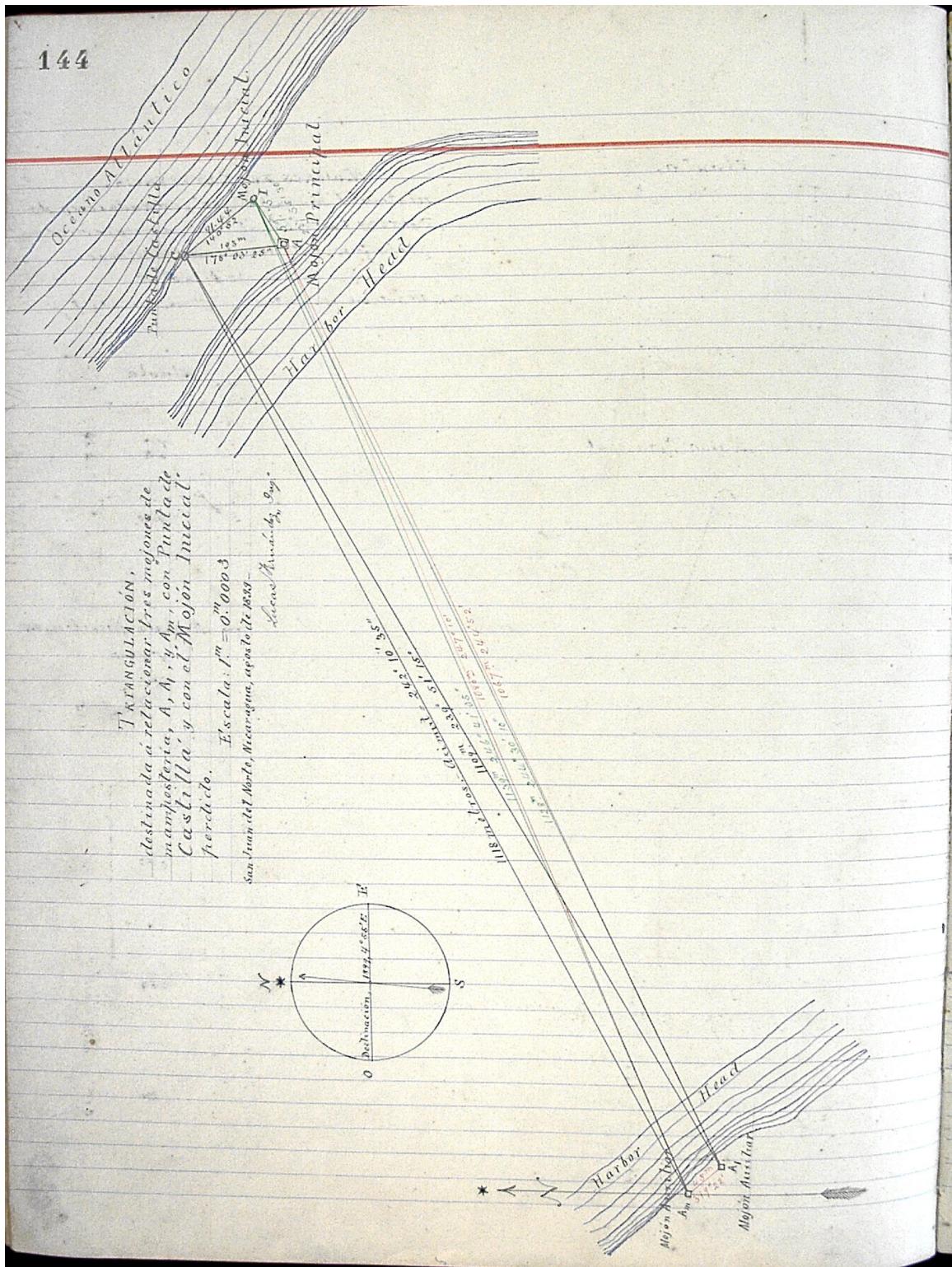
ANNEX 9

Proceedings of the Costa Rica-Nicaragua Demarcation Commission (1897-1900), Proceedings XX

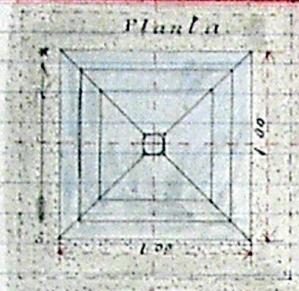
Source: Archives of the Ministry of Foreign Affairs of Nicaragua

Proceedings XX

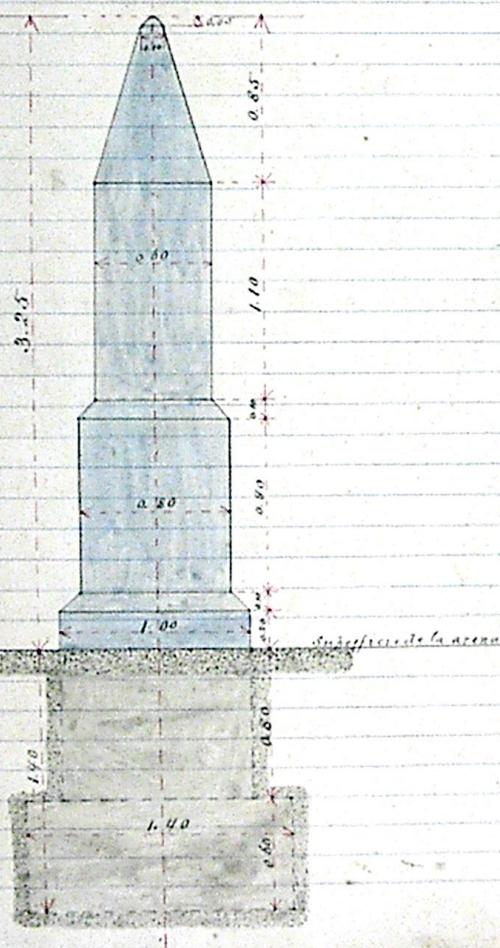
In the City of San Juan del Norte, on the nineteenth day of the month of August of the year eighteen hundred and ninety nine, at eight o'clock in the morning, the undersigned Commissioners met at the usual place, chaired by the gentleman, Engineer and Arbitrator, General E. P. Alexander. – Whereas the initial marker, placed near Punta de Castilla, has completely disappeared due to the force of sea elements and having to preserve the position of said Punta de Castilla and the initial marker by means that facilitate the exact placement of those points at any given time, it is hereby agreed to build three masonry markers according to the map herein copied and in the points marked by the triangulation performed, according to the calculation and map surveyed for such purpose and included in these Minutes. The maps comprise all of the dimensions for the markers that will be built, as well as the lengths and azimuths of all of the triangulation lines. For purposes of abbreviation, Punta de Castilla will be called "C"; I, to the initial marker; A, to the main marker; and A_1 and A_m to the two auxiliary markers. Point A_m , where one of the auxiliary markers that will be built, has the same name that exists in the triangulation destined to relate to the center of Victoria Square of San Juan del Norte, with the initial marker, the point that was affixed by a small cairn of reference and is the one that served as basis for all of the operations. In view of this



145



Modelo A
Un Majón Principal



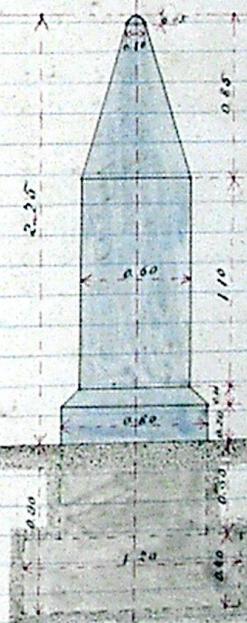
MAJONES DE REFERENCIA,
relativos al 'Majón Inicial', colocado cerca de
'PUNTA DE CASTILLA', el cual ha desaparecido
por la fuerza de los elementos del mar.

Escala 1" = 2.00

San Juan del Norte, N.C., Agosto de 1883. - Lunes 16 de Agosto, 1883.

Modelo B

Modelo B
dos Majones Auxiliares



... all of the points of this new triangulation are hereby related with the marker that exists in the previously referred center of Victoria Square. As basis for all of our operations, we have the following data, as seen in the triangulation map. From Proceedings VI: from the initial marker to Punta de Castilla, azimuth $140^\circ 52'$ ($90^\circ + 50^\circ 52'$) – distance: 300 feet, that is, $91^m.44$. From Proceedings X, A_m to the initial marker; azimuth $246^\circ 41' 05''$ – distance: 1139 meters. The azimuths are counted according to the Geodesic Convention, that is, in the direction southeast to northeast and from 0° up to 360° . In addition, the following observations were made in the field: the distance A_mA_1 was measured, which is equal to 45 meters and the azimuths for A_mA_1 equal $247^\circ 10'$; A_mA_1 equal $319^\circ 22'$. The angle A_mA_1A equals $105^\circ 30'$ and for purposes of verification, angle A_mA_1A was measured equal to $2^\circ 18'$. The result of the calculations appears on the respective map and is also included in the table we copy further below. Engraved in the plaster on the northern face of the monuments, the following entries shall be made: Cairn A_m , from the center of this cairn to Punta de Castilla, azimuth $242^\circ 10' 35''$; distance 118 meters". Cairn A_1 , from the center of this cairn to Punta de Castilla, azimuth $239^\circ 51' 15''$; distance 1109 meters" – Cairn A , from the center of this cairn to Punta de Castilla, azimuth $176^\circ 03' 25''$; distance 103 meters.-----

Triangulation Table

Triangles	Angles		Name	Length – meters	Azimuths	Observations
	Name	Value				
A_mA_1A	A_mA_1A	$2^\circ 18' 00''$	A_mA	1080.00	$247^\circ 10' 00''$	Red line
	A_mA_1A	$105^\circ 30' 00''$	A_mA_1	45.00	$319^\circ 22' 00''$	“ “
	AA_mA_1	$72^\circ 12' 00''$	A_1A	1067.00	$244^\circ 52' 00''$	“ “
A_mIA	A_mIA	$8^\circ 45' 30''$	A_mI	1139.00	$246^\circ 41' 05''$	Green “
	A_mAI	$170^\circ 45' 30''$	A_mA	1080.00	$247^\circ 10' 00''$	Red “
	AA_mI	$0^\circ 29' 00''$	AI	59.75	$237^\circ 55' 30''$	Green “
A_mC_I	A_mC_I	$101^\circ 18' 30''$	A_mC	1118.00	$242^\circ 10' 35''$	Black “
	A_mI_C	$74^\circ 11' 00''$	A_mI	1139.00	$246^\circ 41' 05''$	Green “
	IA_mC	$4^\circ 30'$	IC	91.44	$140^\circ 52'$	Black “

		30"			00"	
AmCA ₁	A _m CA ₁	2° 17' 15"	A _m C	118.00	242° 10' 35"	“ “
	A _m A ₁ C	100° 31' 15"	A _m A ₁	45.00	319° 51' 15"	Red “
	A ₁ A _m C	77° 11' 30"	A ₁ C	1109.00	244° 30' 10"	Black “
A ₁ IA	A ₁ IA	6° 34' 40"	A ₁ I	1128.00	244° 30' 10"	Green “
	A ₁ AI	173° 03' 30"	A ₁ A	1067.00	244° 52' 00"	Red “
	AA ₁ I	0° 21' 50"	AI	59.75	237° 55' 3””	Green “
AIC	AIC	82° 56' 30"	AI	59.75	237° 55' 3””	Green “
	ACI	35° ' 25"	AC	103.00	176° 03' 25"	Black “
	IAC	61° 52' 05"	IC	91.44	140° 52' 00"	Black “

In witness whereof, we sign and authorize these Proceedings with our respective seals –
 Note: On Page 146, line 13, the amount in parenthesis, 105°, does not stay.

E. P. Alexander

Lucas Hernandez

Engineer J. A. Urtecho

SEALS

ANNEX 10

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

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

JOINT DECLARATION

The President of the Republic of Costa Rica, Rafael Angel Calderon Fournier, and the President of the Republic of Nicaragua, Mrs. Violeta Barrios de Chamorro, met in the City of Managua on January 30 and 31, 1991.

[...]

Underscoring their conviction that strengthening their bilateral ties constitutes a factor of singular importance in the process of developing their peoples and in advancing the process of pacification and democratization of Central America, task to which they dedicate their utmost priority efforts:

[...]

VII. – Upon analyzing and assessing the status of the bilateral relations between their countries, they agreed the creation of a Binational Commission between the two countries with the purpose of energizing and deepening the ties of cooperation among their respective Peoples and Governments.

[...]

3. Taking into account the excellent relations of friendship and cooperation existing between the Governments of Costa Rica and Nicaragua and the favorable environment that this creates, they agreed that during the term of their respective presidential mandates, they would work to seek agreements in matters relating to the maritime delimitation.

[...]

ANNEX 11

Cooperation Agreement Between the Governments of Costa Rica and Nicaragua, 31 January 1991 (excerpts)

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

**COOPERATION AGREEMENT BETWEEN THE GOVERNMENTS
OF
COSTA RICA AND NICARAGUA**

The Presidents of Costa Rica and Nicaragua,

[...]

Have agreed to the following:

Article One:

The Presidents agree to strengthen and expand the cooperation and consultation in the following spheres: political issues, security matters, boundary and migration matters, environmental and health matters, treasury and financial affairs, economic and commercial affairs, educational and cultural affairs, as well as tourism affairs. [...]

Article Nine:

This Agreement will be applicable during an initial term of five years and will be automatically prorogated for equal periods without prejudice of the right of the parties to deplore it through written notice, which will be effective six months later.

This Agreement will enter into force sixty days after its date of execution.
[...]

In witness whereof, this Agreement is executed in two original copies equally valid, in the City of Managua, Nicaragua, on January thirty one of the year nineteen hundred and ninety-one.

Illegible Signature
Violeta Barrios de Chamorro
Fournier
President of Nicaragua
Costa Rica

Illegible Signature
Rafael Angel Calderon
President of

ANNEX 12

Joint Statement of the Presidents of the Republics of Costa Rica, Engineer Jose Maria Figueres Olsen, and of Nicaragua, Mrs. Violeta Barrios de Chamorro, 29 May 1994 (excerpts)

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

**JOINT STATEMENT OF THE PRESIDENTS OF THE REPUBLICS
OF COSTA RICA, ENGINEER JOSE MARIA FIGUERES OLSEN,
AND OF NICARAGUA, MRS. VIOLETA BARRIOS DE CHAMORRO,
ON OCCASION OF THEIR MEETING AT THE BOUNDARY TOWNS
OF LA CRUZ AND SAN JUAN DEL SUR**

San Juan del Sur, Rivas, May 29, 1994

In the spirit of further strengthening the happily existing cordial relations of friendship between their peoples and governments, the Presidents of the Republic of Costa Rica, Engineer Jose Maria Figueres Olsen and of Nicaragua, Mrs Violeta Barrios de Chamorro, held a friendly meeting en the boundary locations of La Cruz, Costa Rica and San Juan del Sur, Nicaragua.

The Presidents held a sincere and fraternal dialogue, as corresponds to the friendly relations that unite the two nations, during which they examined the status of the bilateral relations, at the end of which they agreed to undersign the following:

JOINT STATEMENT

[...]

“In this sense, the Presidents instructed their Ministers of Foreign Affairs to immediately reactivate the Binational Commission Costa Rica – Nicaragua in order to address all matters of the bilateral agenda requiring the attention of both Governments, including the land and maritime trans-boundary incidents that may arise, as well as to strengthen communications and coordination actions between the institutions involved in combatting drug-trafficking, piracy, cattle rustling, smuggling, illegal traffic of persons and other criminal activities”.

[...]

The Presidents concurred on the importance for both countries of densified landmarks along the entire common boundary, from Landmark II up to Landmark XX; they renewed their decision to implement it jointly, sharing the

cost for this in equal parts; and instructed their respective Institutes to begin preparations works for the densification. Likewise, the Presidents deemed the utmost importance of the request submitted months earlier by the Governments of Costa Rica and Nicaragua to the Government of The Netherlands for the culmination of this project.

[...]

Both Presidents expressed their decision to proceed with the delimitation of the maritime boundary between both countries, both in the Caribbean Sea and the Pacific Ocean, for which they instructed their respective Ministries of Foreign Affairs and specialized institutions to begin the corresponding conversations within the course of the forthcoming thirty days. The Presidents called upon the International Community to provide technical advice and resources for this objective.

In order to avoid incidents along the maritime boundaries, they agreed to establish an inventory of the vessels from both countries that work and navigate in those areas, with the purpose of sharing such information and to establish an adequate mechanism for control and prevention of illegal activities.

[...]

To ensure due coordination and execution of the material works derived from these agreements, the Presidents concurred in placing it under the framework of the Binational Commission created in the Cooperation Agreement between the Governments of Costa Rica and Nicaragua, in January 1992.

President Figueres and his distinguished retinue thanked President Chamorro and through her, the People and Government of Nicaragua for the warm hospitality and courtesies they received during their visit on Nicaraguan soil.

Illegible Signature

JOSE MARIA FIGUERES OLSEN
BARRIOS DE CHAMORRO

PRESIDENT OF THE REPUBLIC OF COSTA RICA

PRESIDENT OF THE REPUBLIC OF NICARAGUA

Illegible Signature

VIOLETA

ANNEX 13

Minute of the Second Meeting of the Sub-Commission on Limits and Cartography, 25 March 2003

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

MINUTE OF THE SECOND MEETING OF THE SUB-COMMISSION OF
LIMITS AND CARTOGRAPHY
Managua, 25 March 2003

Held at the premises of the Ministry of Foreign Affairs of the Republic of Nicaragua, and in compliance with the agreement reached by the Vice-Ministers of Foreign Affairs of the Republics of Nicaragua and Costa Rica on 6 September 2002 to begin discussions conducive to defining the maritime delimitation between the two countries. The delegations met, comprised of the following individuals:

For the Republic of Nicaragua:

Dr. Julio Saborío Argüello

General Director of Sovereignty, Territory and International Legal Matters

Dr. Edmundo Castillo

Legal Advisor Ministry of Foreign Affairs

Lic. Ligia Margarita Guevara Antón

Ministry of Foreign Affairs

Lic. Cecilia Argüello

Latin America Department

Ministry of Foreign Affairs

Lic. Ricardo de León

Analyst of the Latin America Department

Ministry of Foreign Affairs

Pedro Miguel Vargas, Eng.

General Director of Geodesy and Cartography

Nicaraguan Institute of Territorial Studies

Gonzalo Medina, Eng.

Technical Advisor of Geodesy and Cartography

Nicaraguan Institute of Territorial Studies

Alonso Tórrez Rodríguez, Eng.

Chief of the Maritime Delimitation Project

Nicaraguan Institute of Territorial Studies

Lic. Carlos Arroyo Borgen
International Relations Advisor
Ministry of Defence

For the Republic of Costa Rica:

Dr. Sergio Ugalde Godínez
Coordinator of the Commission on International Law
Ministry of Foreign Affairs

Dr. Arnoldo Brenes Castro
Ambassador
Ministry of Foreign Affairs

Eduardo Bedoya, Geographer
Director of the National Geographic Institute

Master Adriana Murillo Ruin
Officer of the Department of Foreign Affairs
Ministry of Foreign Affairs

For this meeting, the Technical Sub-Commission of Limits and Cartography Nicaragua–Costa Rica, approved the following agenda:

- 1. Presentation of the technical reports of the cartographic institutions of both countries.**
- 2. Determination of aspects that require international cooperation.**
- 3. Inventory of living and non-living natural resources in the maritime delimitation areas.**
- 4. Establishing the timetable for the work of the Sub-Commission of Limits and Cartography Nicaragua –Costa Rica.**

In conformity with this established and agreed agenda, the Sub-commission reached the following agreements to pass on for the consideration of the Vice-Ministers:

- 1. Presentation of the technical reports of the cartographic institutions of both countries.**

Based on the agreements of the First Technical Working Table of the Sub-Commission of Limits and Cartography, adopted on 16 January 162003 in Liberia, Costa Rica, Geographer Eduardo Bedoya and Engineer Pedro Miguel Vargas, presented the corresponding technical reports. The delegations exchanged the documents prepared for that purpose.

Subsequently, following the Agenda, the Sub-Commission approved the Minutes signed in Liberia, Costa Rica on 16 January of this year, and agreed the following:

1.1 Creation of the Integrated Information System

The use of the program ArcGis Deskto pis recommended, which is comprised of three applications: ArcMap, Arc Catalog, Arc Tool box, to ensure greater accuracy of the technical work to be performed. The Delegations consider it timely to acquire these [applications], and commit to obtaining the corresponding quotes in local markets and, if possible, request their donation.

1.2 Construction and installation of the markers in the area of Bahía Salinas in the Pacific:

The Sub-Commission considered it necessary to build markers in the point furthest to the West of Punta Zacate in Costa Rica and Punta Arranca Barba in Nicaragua, which will serve to determine the middle point of the closing of the bay, the starting point for the delimitation in the Pacific Ocean. It was decided that the construction of these markers shall be performed in the period from 21 to 26 April of this year, and that each country shall cover the construction costs of the marker located in its territory.

The Sub-Commission agreed that the design of the marker will be that presented in the Technical Report of the Nicaraguan Institute of Territorial Studies.

It is recommended for the final Minutes regarding the construction of the marker to be signed by the Presidents of both countries. In this regard, the Sub-Commission will propose that the Presidents perform a visit in situ on the week of 19 May of this year, or on the dates deemed suitable.

The Sub-Commission agreed that both Ministries of Foreign Affairs shall request the corresponding immigration and customs authorities for the permits for the technical teams that will carry out various works in relation to the construction of the markers.

1.3 Work for delimitation on the Caribbean Sea

The Sub-Commission considered it necessary to work on documents to calculate with modern procedures the coordinates of marker number one, based on the topographic survey created by Engineer Alexander in 1900.

It was established that INETER and the National Geographic Institute of Costa Rica shall begin the deskwork as of this date, which shall be concluded at the latest on 26 May of this year, the date on which the work for restitution of the position of marker one on the land shall begin.

The Sub-Commission authorizes INETER and the National Geographic Institute of Costa Rica to hold the meetings and consultations considered necessary for the success of the activity assigned.

1.4 Large-scale cartography of the area surrounding the starting points for the delimitation:

It was considered necessary for INETER and the National Geographic Institute of Costa Rica to prepare a large-scale cartography, on the basis of aerial photographs. In this regard, Costa Rica reported that in the following months they will have this material, and they will make it available to Nicaragua to prepare the aforementioned cartography.

The materials will be sent at the beginning of June at the latest. If they are inappropriate, it will be managed jointly with the United States of America in order to request satellite images from NASA.

2. Determination of aspects that require international cooperation

Both delegations took cognizance of the communication dated 13 November 2002 sent by Mr. Hans Correll, General Sub-Secretary of the Division for Ocean Affairs and the Law of the Sea of the United Nations.

3. Inventory of living and non-living natural resources in the maritime delimitation areas.

Both Delegations highlighted the importance of the topic and considered that a discussion in this regard should be held with the corresponding information. They believed it would be adequate to identify in each country the public and private institutions that may have illustrative material, and to keep the topic on the Agenda for the next meeting of the Sub-Commission.

4. Establishing the timetable for the work of the Sub-Commission of Limits and Cartography Nicaragua – Costa Rica

The Sub-Commission considered that it would be appropriate to determine in the first stage of its mandate that it shall conclude with the preparation, on the part of each country, of a delimitation proposal reflected in the projection of a specific proposal. In this regard, the following work schedule was agreed:

1. Construction of Markers in Punta Zácate and Arranca Barca: 21 to 26

April

2. Calculation of the coordinates and restitution of Marker Number 1: 26

March to 26 May.

3. Technical meeting (if required) on 16 May at Peñas Blanca

4. Visit of the Presidents to the Markers on the Pacific Ocean: week of 19

May.

5. Field work in the Caribbean Sea: 26 May to 7 June

6. Preparation of large-scale maps: June, July and August.

7. Third Meeting of the Sub-Commission: First week of July.

8. Preparation of delimitation projections: September, October and

November.

9. Exchange of delimitation projections: December.

Having no further issues to address, the Delegations express their agreement by means of these Minutes

[signed]

[signed]

ANNEX 14

Minute of the Third Meeting of the Sub-Commission on Limits and Cartography, 4 September 2003

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

MINUTE OF THE THIRD MEETING OF THE SUB-COMMISSION OF LIMITS AND CARTOGRAPHY

San José, Costa Rica, 4 September 2003

Held at the premises of the Ministry of Foreign Affairs of the Republic of Costa Rica, in San José, and in compliance with that agreed in the Second Meeting of the Sub-Commission of Limits and Cartography, held in Managua on 25 March 2003, the delegations of both countries met, which were comprised of the following individuals:

Republic of Nicaragua:

For the Ministry of Foreign Affairs

Dr. Julio Saborío Argüello General Director of Sovereignty, Territory and International Legal Matters

Dr. Alejandro Montiel Argüello
Legal Advisor

Lic. Idayda Aguilar Roa
Legal Analyst General Department of Sovereignty, Territory and International Legal Matters

Colonel Ricardo Wheelock Román
Representative of the Nicaraguan Army

Lic. Carlos Arroyo International Relations Advisor
Ministry of Defence

For the Nicaraguan Institute of Territorial Studies (INETER)

Gonzalo Medina Pérez, Eng.
Technical Director of the Geodesy and Cartography
Nicaraguan Institute of Territorial Studies

Ramón Alonso Torres Rodríguez, Eng.
Chief of the Unit of Territorial Limits
Geodesy and Cartography
Nicaraguan Institute of Territorial Studies

Republic of Costa Rica:

Dr. Carlos Alvarado
National Director of the Coastguards
Ad-hoc Advisor to the Ministry of Foreign Affairs

Eduardo Bedoya, Eng.
Director of the National Geographic Institute

For the Ministry of Foreign Affairs:

Ambassador Rodrigo X. Carreras
Ambassador of Costa Rica in Nicaragua

Msc. Sergio Ugalde Coordinator of the Commission on International Law
Advisor to the Minister

Msc. Arnoldo Brenes Commission on International Law
Advisor to the Minister

Msc. Jorge Aguilar
Head of the Treaty Advisory Office

Msc. Adriana Murillo
Commission on International Law

Msc. Marcela Calderón
Treaty Advisory Office

The meeting began with the delegation of Costa Rica welcoming the delegation of Nicaragua, and the presentation of their members. The proposed agenda was read, approved and followed:

I. Reports on the advances of the National Geographic Institute and the Nicaraguan Institute of Territorial Studies

The Nicaraguan Institute of Territorial Studies presented the report corresponding to the progress and results of the fieldwork in the Pacific and Caribbean.

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 Zárate (Costa Rica) and the markers erected, work that was performed by both countries simultaneously from 22 to 26 April. The location was also presented in a topographic map with the scale 1:50,000.

They also presented the progress achieved in the Caribbean. According to the report, in the XXth Minutes of the Alexander Commission of 1899, it is clear that Marker One had disappeared because of the sea, thus a triangulation of markers was ordered to locate the initial point. During the visit of 21 February 2013, both delegations found a marker at that triangulation, and it is not clear whether it is the Main Marker or Punta Castilla. More field measurements are required, and to determine which other markers can be built subsequently as a symbol and to be useful to users.

Since Alexander took the centre of Plaza Victoria in San Juan del Norte to reference the markers, it is considered important to locate this point, which is marked by a metallic cylinder, 40 centimeters in diameter by two metres long, filled with concrete and fully embedded into the ground.

The Delegation of Nicaragua provided a copy of the technical report, and the electronic presentation, for which the Costa Rican delegation expressed thanks.

For its part, the National Geographic Institute of Costa Rica indicated that the report was in agreement, since the works in Bahía de Salinas had been performed jointly, and noted the good collaboration achieved.

2. Evaluation of the technical progress according to the Sub-Commission's timetable of activities, as per the minutes of the second meeting

The National Geographic Institute of Costa Rica indicated that point 1 regarding the construction of markers had been performed.

With respect to point 2, the calculation of the coordinates had also been performed. As could be seen, the accuracy of the coordinates of the measurement complies with the standards established for this type of work. Regarding the restitution of Marker One, the situation is explained in the previous point.

For logistical reasons, the technical meeting contemplated in point 3 was not held. Further, no visit to the markers in the Pacific Ocean had taken place, but the importance of carrying out such a visit was underscored.

3. Chapter regarding maritime cooperation and sustainable development:

A proposal was made and accepted to modify the order of the agenda, so as to hear the valuation of the topics first and the participating institutions subsequently.

a. Possible topics to include in the chapter:

Both countries noted the importance of these works, and the interest in concluding with abroad Treaty of Limits that includes cooperation topics and may even serve as an example for other nations.

It was agreed to assess topics relating to:

1. Protection and preservation of marine resources and species, as well as the possibility of eventually declaring areas of binational protection or binational regulation. The competent authorities shall be consulted regarding the possible areas and levels of the management regime.
2. Cooperation in maritime surveillance and security regarding the resources and new security threats.
3. Rights of other States, such as innocent passage and other.
4. Fishing regulations and possibility of establishing convergence zones.
5. Regulation of non-living resources such as petroleum .
6. Marine scientific investigation.
7. Tourism and sports.
8. Humanitarian actions.
9. Conflict resolution system.
10. All other topics the inclusion of which is subsequently deemed necessary.

It is agreed that each of the competent institutions shall determine the specific contents of each topic.

Regarding point 5, it was not possible to advance in the fieldwork in the Caribbean Sea; however, each institution has studied the way to execute the work. It was estimated that it would be very difficult to enter the area until November or December due to weather issues.

Regarding the preparation of maps contemplated in point 6, it depended on the delivery of the images by NASA, from plane WB57 (Mission Map 2003). The Costa Rican delegation reported that the aerial photographs had been delivered up until yesterday, and today presented an example of the product corresponding to Punta Castilla.

The Delegation of Costa Rica gave the Delegation of Nicaragua a first version of the material, and agreed that the full material would be delivered next week. The Nicaraguan delegation thanked them in advance for the delivery of the material.

Regarding point 7, during the meeting of the Sub-Commission, it was indicated that it was being complied with, although with delay, and that points 8 and 9 would be programmed again according to progress made.

According to the agreed agenda, the Sub-Commission reached the following agreements regarding the timetable for the pending activities:

1. Program the works in the Caribbean Sea from 24 to 28 November, without detriment to being able to achieve progress in other work on documents. The Nicaraguan Army offers a helicopter, two speedboats and metal detectors. In addition, the National Coast Guard of Costa Rica offers its collaboration in anything necessary.
 2. Review the presidential agenda and that of the Ministry of Foreign Affairs to explore the possibility of inaugurating the markers in the Pacific between 9 and 12 December of the current year.
 3. Progress will be made regarding point 6 of the previous minutes on the preparation of large-scale maps, beginning with the preparation of orthophotos during the following weeks. It is agreed to hold a prior meeting of the geographical institutes, on 16 January 2004 in Peñas Blancas, to review the progress on this matter.
 4. During the meeting of 16 January in Peñas Blancas, it is agreed to also analyze the review of the calculations of the position of Marker I.
 5. The full Sub-Commission shall meet in Nicaragua on Thursday 29 and Friday 30 January 2004
 6. Each country shall make progress in the preparation of the projections, and shall exchange delimitation proposals at the meeting of 29 and 30 January, which shall be established as a point in the Agenda for said meeting.
- b. Definition of the institutions that shall participate in the discussion of the chapter.

The institutions which may participate in the discussion are: MINAE and Marena, Ministry of Public Security and Ministry of Defence, INCOPESCA and ADPESCA, Costa Rican Institute of Tourism, Nicaraguan Institute of Tourism, RECOPE and Nicaraguan Energy Institute, Hydrocarbons Department, Universities and Centre for Research and technical education.

Notwithstanding the foregoing, it is agreed that each of the countries shall define the Institutions that will participate.

Finally, the Sub-Commission agreed that as of 1 December 2003 at the latest specific proposals on each of the topics shall be exchanged, prepared by the

competent institutions, so they can be studied during the following meeting in January 2004.

Having no further issues to address, the work of the third meeting of the Sub-Commission is considered concluded, and the meeting is adjourned.

San José, Costa Rica, 4 September 2003.

(signed)

(signed)

ANNEX 15

Minute of the Fourth Technical Meeting of the Sub-Commission on Limits and Cartography, 24-27 November 2003

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

MINUTE OF THE FOURTH TECHNICAL MEETING

San Juan del Norte de Nicaragua, November 24 to 27, 2003

In compliance with the agreements of the Third Meeting of the Subcommittee on Limits and Cartography, held in San Jose, Costa Rica, on September 4, 2003, the Technical Groups of Nicaragua and Costa Rica proceeded with the field Works to determine the modern coordinates for Marker 1, which disappeared in 1899 due to the force of the sea and which in the future, will be the initial point for maritime delimitation in the Caribbean Sea.

Following are the names and surnames of the technical teams from both countries.

For Nicaragua:

Idayda Aguilar (Ministry of Foreign Affairs)
 Alonso Torrez (Nicaraguan Institute for Territorial Studies)
 Armando Piche (Nicaraguan Institute for Territorial Studies)
 Leonel Reyna (Nicaraguan Institute for Territorial Studies)

For Costa Rica:

Victor Guerrero Cruz (National Geographical Institute)
 Victor Chacon Mena
 Jesus Herrera Alvarez
 Gonzalo Melendez Umaña
 Juan Rafael Araya Lizano

MONDAY, NOVEMBER 24, 2003

The Nicaraguan Delegation – technical team – left the Air Force facilities at 7:30 am, in a helicopter with support from the Nicaraguan Air Force, as agreed in the Minutes of the Third Meeting of the Subcommittee on Limits and Cartography and having reached San Juan de Nicaragua at 9:40 am.

At 11:00 am, the Nicaraguan delegation, accompanied by a guide – Mr. Hedly Thomas, who is familiar with the place and guarded by personnel from the Army and Air Force, went toward San Juan del Norte (Greytown), to locate one of the key points of the triangulation that Engineer and Arbiter Alexander, carried out in 1897; this point was called by the Arbiter “The Center of Victoria Square”, and was marked at such time with a 40 cm diameter iron rod filled with concrete and buried 2 meters deep, leaving one

of the ends of said rod at surface level. Once in the area, the guide assured that the rod is covered by very thick undergrowth; therefore, 4 local persons were hired to cleanse the areas with machetes, leaving work with the mine detection equipment for the next day.

The Costa Rican delegation was not present in the search for “The Center of Victoria Square” due to logistical matters.

TUESDAY, NOVEMBER 25, 2003

Starting at San Juan de Nicaragua toward “Punta de Castilla” at 7:00 am, the First Marker was located and measurement with the GPS was performed at 10:00 am, during 2:50 hours and an excavation was also performed around the landmark, where one of the sides was marked with a letter “A” accompanied by another illegible symbol, confirming that the dimensions are the same as the illegible symbol as the design of the Type A boundary landmarks for the demarcation of limits between Nicaragua and Costa Rica of 1897, pursuant to the Minutes of Arbitrator E. P. Alexander. This Marker is the same one located during the first technical visit to Punta Castilla, which took place on February 21, 2003.

At 11:30 pm, the Costa Rican delegation incorporated itself, and proceeded to begin searching for the other landmarks located on the right bank of Portillo Lagoon. Another Marker of the same model Type A was found at 12:30 pm, which has engraved on one of its sides the letter “A2”. This Marker is under thick vegetation, reason for which it was impossible to locate it directly with the GPS; for this reason, a triangulation with two auxiliary points and said Marker was performed. Once the measurements of the triangulation were carried out, the Marker was radioed with the Total Station from the two points where it was measured with the GPS.

Likewise, it was radioed with the Total Station from the first Marker found toward the Marker of the right bank of Los Portillos Lagoon and afterwards, from the first Marker toward the two stations of the auxiliary GPS, located to form the triangulation. It was not possible to visit the Victoria Square area again because the day was practically over.

WEDNESDAY, NOVEMBER 26, 2003

Two groups integrated by members of both delegations were formed, which parted at 7:00 am: the first group parted toward Los Portillos Lagoon and

the other to Victoria Square.

Group One (Los Portillos Lagoon)

The guide – Julio Vargas – led to the location of a third Marker, Model Type A, which is inclined and submerged in Los Portillos Lagoon by approximately 98 mt, to the south of the first Marker found on the coast on Tuesday, November 24; they proceeded to measure its angle and distance as of the Marker that was first found and one of the auxiliary GPS positions. Afterwards, the guide tried to locate two Markers of the same Model Type A that he had seen in previous years but was not able to find it.

Group Two (Center of Victoria Square)

The entire delegation (NIC/CR) began searching at 8:30 am with the assistance of three sappers under Captain Denis Martin Pastrano Obando of the Corp of Engineers and three members of the Navy, throughout the entire perimeter that was cleansed on Monday, November 24, without any success whatsoever. In view of the above, a cleaning crew was hired once again and to expand the location area, according to Mr. Hedly Thomas.

Afterwards, a new search began at 2:30 pm, with the support of two metal detectors, without achieving the objective.

Suggestions:

1. As to the Marker in the center of Victoria Square in the old population of San Juan del Norte, we recommend a new visit in two sections; one of them should involve at least seven (7) sappers with three teams for due location of the Marker together with the procurement of a cleaning crew whose cleaning area should involve five square meters; the purpose of this is to ensure sweeping an area where it is possible to find the center of Victoria Square and afterwards have technical experts arrive to perform a measuring campaign with GPS equipment over the point during 2.5 hour, at least.
2. We recommend that the respective mathematical-geodesic analysis be performed on everything that was found in Los Portillos Lagoon in order to establish some relation with the original data.

THURSDAY, NOVEMBER 27, 2003

The Fourth Technical Meeting began at 12:30 pm at the Hotel Indio Maiz, with the delegations:

For Nicaragua:

Julio Saborío, Ministry of Foreign Affairs
Idayda Aguilar, Ministry of Foreign Affairs
Colonel Ricardo Wheelock Roman, Representative of the Army of Nicaragua
Carlos Arroyo, Ministry of Defense
Gonzalo Medina, Nicaraguan Institute for Territorial Studies
Alonso Torrez, Nicaraguan Institute for Territorial Studies

For Costa Rica:

Sergio Ugalde, Coordinator of the International Law Commission, Ministry of Foreign Affairs
Arnold Brenes Castro, Ministry of Foreign Affairs
Adriana Murillo Ruin, International Law Commission
Eduardo Bedoya, Director of the National Geographical Institute
Victor Chacón Mena
Jesus Herrera Alvarez
Gonzalo Melendez Umaña

The meeting began with a welcoming to the Costa Rican Delegation by Attorney Julio Saborio.

The representative of the Nicaraguan Institute for Territorial Studies, Mr. Torrez, informed about all of the field work performed from Monday the 24th to Wednesday the 26th of November and concluded by reading the minutes.

Finally, both delegations agreed to the following:

1. The Army of Nicaragua will coordinate with the Nicaraguan Ministry of Foreign Affairs, the procurement of a cleaning crew (10 men) to clean the Los Portillos Lagoon area and the Center of Victoria Square so that location work can be carried out by a member of INETER together with seven (7) sappers during the **week of December 8 to 12**.
2. The Nicaraguan and Costa Rican technical experts of the delegations will travel during January 19 and 20 to measure the points found with the GPS so that they hold the Fifth Technical Meeting at the Hotel Indio Maiz on January 21 together with the rest of the

delegations from both countries.

3. Upon request of the Costa Rican Delegation, it was agreed that the Fourth Meeting of the Subcommittee on Limits and Cartography, scheduled for the month of January 2004, will be carried out during the month of February; it was agreed that the dates of the meeting would be scheduled according to the results of the field work scheduled for January 19 to 21.
4. Colonel Wheelock will coordinate all of the logistics with the Nicaraguan Ministry of Foreign Affairs.

ANNEX 16

Minute of the Second Meeting of the Sub-Commission on Limits and Cartography, 29-30 September 2004

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

**Aide Memoire Technical Meeting on Topographic and Cartographic Matters
-Costa Rica -Nicaragua
Liberia, Costa Rica, 29 -30 September 2004**

At Hotel Las Espuelas, city of Liberia, Costa Rica, in compliance with the agreements of the Sub-Commission on Limits and Cartography, the following technical meeting took place between the delegations of both countries:

Republic of Nicaragua:

Lic. Idayda Aguilar Roa,
Legal Advisor, General Directorate of Sovereignty, Territory and International Legal Matters of the Ministry of Foreign Affairs

Ing. Gonzalo Medina Pérez, Technical Director of Geodesy and Cartography of the Nicaraguan Institute of Territorial Studies (INETER)

Ing. Ramón Alonso Torres Rodríguez, Head of the Unit of Territorial Limits, Geodesy and Cartography of the Nicaraguan Institute of Territorial Studies

Republic of Costa Rica:

Lic. Adolfo Constenla Arguedas,
Advisory Office of Treaties of the Ministry of Foreign Affairs

Geog. Eduardo Bedoya Benítez,
Director of the National Geographic Institute

The meeting began with the welcoming of the delegation of Nicaragua by the delegation of Costa Rica, and the presentation of its members. Both delegations expressed their willingness to continue contributing toward the proposed goals. At this time it referred to the technical aspects developed by the official entities on topographic and cartographic matters.

The proposed agenda was read, submitted for consideration and approved, as follows:

1. Basis for the efforts of maritime delimitation in the Pacific Ocean -Costa Rica.

2. Geodetic position of the initial marker at the land boundary between both countries.

3. Review of the technical part to be included in the Minutes of Densification of the Land Boundary created jointly by the cartographic institutions of both countries from 1996 to 2004.

BILATERAL TOPICS

4. Perform cartographic work jointly in the land border area within the framework of spatial data infrastructure (IDE) and the automatic editing of topographic maps.
5. Establish the general aspects of the joint work to be performed in relation to geodetic densification and other related work concerning the land border for 2005.

VARIOUS TOPICS

6. Suggest a date and time for the IV Meeting of the Sub-Commission of Limits and Cartography to be held in Managua.

7. Disconformity of the inhabitants of the border area regarding the location of the markers, result of the densification work performed jointly by INETER and IGN.

The topics addressed in this meeting, according to the agenda, are detailed below:

Point 1: Regarding this point on the agenda, the Delegation of Costa Rica requested that this topic be addressed during the meeting of the Sub-Commission scheduled to be held in Managua. The delegation of Nicaragua accepted the proposal; however, it expressed its wish to share the technical and methodological aspect that the Instituto Nicaragüense de Estudios Territoriales (INETER) has performed for the preparation of attempts for the maritime delimitation in the Pacific Ocean. The Costa Rican delegation expressed its willingness to hear what the INETER specialists wished to express.

Point 2: The Nicaraguan representatives gave a full presentation of the methodological procedure to determine the geodetic position of the initial marker on the land border. The first part of the presentation analyzed the geodetic aspect established in the Minutes of E.P. Alexander, which are used to deduce, with the help of modern measurements, a method to establish the position of initial Marker 1. Subsequently, the methodological procedure for the aforementioned calculation was described, using the method of least squares adjustment and transformation of

the WGS84 coordinates system, for which INETER reported that it has 75% progress in the preparation of the (software), that will serve to finally calculate the geodetic position of the initial marker, due to the inability of locating it on land, given that according to modern measurements the point is located in the sea.

In this regard, IGN expressed that due to INETER's progress on this topic IGN should not duplicate this work, and considered it would be adequate for INETER to provide the technical document through the official means once it had been concluded, for evaluation and acceptance, with the purpose of presenting it jointly during the IV Meeting of the Sub-Commission on Limits and Cartography in Managua.

Point 3: Both delegations agreed on the need to review separately the contents of the technical part to be included in the Minutes of the Densification of the Land Border created jointly by the cartographic institutions of both countries from 1996 to 2004.

The following aspects were considered:

>INETER delivered a CD with information for IGN to make pertinent observations.

>It was agreed that on October 15 IGN will return the proposal with observations to unify it and present it officially to the members of the Sub-Commission on Limits, so that the Ministries of Foreign Affairs could consider the protocol modifications and determine the signing mechanism. >We recommend that the model of the Minutes be adjusted to the Minutes signed in 1994, corresponding to the densification works of the same year.

BILATERAL TOPICS

Point 4: Regarding performing cartographic work jointly of the land border area within the framework of the infrastructure of spatial data (IDE) and the automatic editing of a topographic map, the Nicaraguan delegation expressed that in the border area of Peñas Blancas INETER was carrying out the works to prepare anew topographic map with a scale of 1:50 000 which would include part of the border area of Costa Rica. Thus, it requested IGN to provide all data necessary to be included in the new map. The Costa Rican delegation expressed that, similarly, IGN is preparing the topographic sheet 1:50000, Upala, and requests the same of

Nicaragua. Furthermore, they expressed that, as previously done, the required information shall be shared.

Furthermore, INETER proposed to IGN the preparation of the cartography at a large scale of the land border. The planning of this work shall be addressed in a future meeting between both institutions. The Costa Rican delegation expressed that it agreed, and that in addition Costa Rica will define the budget aspects to fully comply with that proposed.

Point 5: Establish the general aspects of the joint work to be performed in relation to the geodetic densification and other related work of the land border for 2005, as follows:

>Establish 10 auxiliary markers between the Boundary Markers where there is a need for the inhabitants to identify them.

>Adjustment of the geodetic network of all auxiliary markers established from 1994 to date, and for the preparation of the technical report.

>Planning to prepare the large-scale cartography of the land border.

Regarding this point, it was agreed to hold a meeting in Peñas Blancas on Friday 28 January 2005, to address the aforementioned topics.

VARIOUS TOPICS

- According to the work process at the technical level, both delegations considered that the next meeting of the members of the Sub-Commission of Limits and Cartography to be held in Managua could be held during the last two weeks of January 2005, submitting this for consideration of the Sub-Commission, who will determine the specific dates.
- Regarding this last point, the delegations expressed their concern regarding the publications in the media about the disconformity expressed by the inhabitants of the border area with the location of the markers, result of the densification work performed jointly by IGN and INETER.

In this regard, the delegations jointly submit for consideration of the members of the Sub-Commission of Limits and Cartography the possibility of creating a commission or work table, including the institutions that work directly with the border municipalities or other institutions, to hold a series of conferences or

workshops where the Mayors are informed of the work performed jointly, with the purpose of informing and carrying out an awareness campaign of the transparency and compliance of the works from 104 years ago by Arbitrator E. P. Alexander.

In addition, they jointly propose explaining at the next meeting in Managua the concern over the legal situation of farm owners in the border area.

Having covered all topics on the agenda, the technical meeting is concluded.
Liberia, Costa Rica 30 September 2004

ANNEX 17

Final Minute of the Fifth Binational Commission Nicaragua-Costa Rica, 19-20 October 2006 (excerpts)

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

FINAL MINUTES OF THE FIFTH BINATIONAL COMMISSION**NICARAGUA – COSTA RICA****SAN JOSE, OCTOBER 19 AND 20, 2006**

The Governments of the Republic of Nicaragua and of the Republic of Costa Rica held the Fifth Meeting of the Binational Commission on October 19 to 20, 2006 in the City of San José, Costa Rica, with the purpose of continuing to strengthen the ties of cordial friendship that unite them and to strengthen the political understanding that characterizes the bilateral relations between both countries.

The Delegations reaffirmed the importance of resuming this Binational Commission as it is the mechanism that by excellence allows for the analysis of several aspects that encompass the bilateral relations between Nicaragua and Costa Rica as a whole, as well as to exchange points of view about high priority affairs for both nations within the regional and global scope.

[...]

The Fifth Meeting of the Binational Commission was held in the facilities of the Ministry of Foreign Affairs and Cult and was chaired by the gentlemen Bruno Stagno Ugarte, Minister of Foreign Affairs and Cult of the Republic of Costa Rica and Norman Caldera Cardenal, Minister of Foreign Affairs of the Republic of Nicaragua, and their respective delegations.

[...]

3. SUBCOMMITTEE FOR BOUNDARY AFFAIRS

The Delegations agreed on the need to organize, within the first semester of 2007, a work program to restore and replace the basic boundary milestones, as well as the reference milestones of the boundary installed pursuant to the 1858 Boundary Treaty Jerez-Cañas and the Alexander Awards.

Likewise, the Delegations convened the support to the National Geographical Institute (IGN for its Spanish acronym) and the Nicaraguan Institute for Territorial Studies (INETER for its Spanish acronym) to establish agreements for the exchange of geospatial

data and issues of the geographical environment, roughly delimited by the municipalities neighboring the boundary, or part of these, as convenient, based on the standards and specifications of the infrastructure of the spatial data sponsored by the the Pan-American Institute of Geography and History (PAIGH), the Permanent Committee of Data Infrastructure of the Americans and the Global Spatial Data Infrastructure (GSDI), of which both countries are members.

Both Delegations agreed that the IGN and INETER should continue the geodesic works for determination of the exact position of Milestone I, for which they will implement the necessary coordination during the first quarter of 2007.

Upon conclusion, the Nicaraguan Delegation thanked the Government of the Republic of Costa Rica for the attentions received during the stay in their country, with which we concluded in a satisfactory manner.

Undersigned in San Jose on October twenty of the year 2006

Illegible Signature

Norma Caldera Cardenal

Minister of Foreign Affairs
and Cult

Republic of Nicaragua

Illegible Signature

Bruno Stagno Ugarte

Minister of Foreign Affairs

Republic of Costa Rica

ANNEX 18

Costa Rican Decree 18581-RE, 14 October 1988

Source: Division for Oceans Affairs and the Law of the Sea, United Nations; Congress of Costa Rica

http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CRI_1988_Decree18581.pdf

http://www.asamblea.go.cr/Centro_de_informacion/Comisiones_Legislativas/Expedientes/BAULAS%20Y%20MINAET/Estudio%20T%C3%A9cnico%20Jur%C3%ADcico%20MINAET/Decreto%20Ejecutivo%20N%2018581.pdf

Page 1

Decree 18581-RE (concerning straight baselines in the Pacific Ocean, 14 October 1988)

The First Vice President and Acting President of the Republic and the Minister of Foreign Relations and Worship

Whereas

1. Article 6 of our Constitution establishes the complete and exclusive sovereignty of the Costa Rican State over its territorial waters to a distance of 12 miles from the low-water line along its coasts, In accordance with the principles of International law.
2. The principles and standards of international law in force recognize the right of the coastal States to establish the breadth of their territorial sea from the normal low-water line or from straight baselines that join the most salient points of the coast.
3. Our coasts on the Pacific Ocean present a special configuration because of the presence of Islands and deep inlets that have historically constituted areas of great economic significance to the country.
4. This special configuration of our coasts on the Pacific Ocean makes it possible, with the application of the new principles of the Law of the Sea, to draw straight baselines that, joining the most salient points of the coast, create a region whose reality and economic significance are clearly demonstrated by its prolonged use. This region coincides in general with the superjacent waters of the continental shelf of our Pacific coast, i.e., with the 200-meter isobath.
5. The Ministry of Foreign Relations and Worship has already sent to the Legislative Assembly for processing and subsequent approval the United Nations Convention on the Lay of the Sea, signed at Montego Bay, Jamaica, on December 19, 1982, by a vast majority of the countries that represent all the legal and political systems in the world.
6. The regulations of the Convention that refer to the zones of national jurisdiction, including the system of drawing straight baselines, reflect contemporary International practice and have been considered to derive from prevailing International customary law.
7. In accordance with international law, the coastal State may determine the baselines from which the breadth of its territorial sea is measured, combining normal baselines with straight baselines depending on the circumstances.

Decrees

Article I - The width of the territorial sea of the Republic will be measured, in the Pacific Ocean, from the following baselines:

- A. In accordance with the normal baseline method: from San Francisco Point, also known as Medero ($10^{\circ} 17' 36''$ N., $85^{\circ} 51' 19''$ W), to Punta Guiones ($9^{\circ} 54' 18''$ N., $85^{\circ} 40' 15''$ W), and from Punta Llorona ($8^{\circ} 35' 03''$ N., $83^{\circ} 43' 25''$ W.) to Punta Salsipuedes ($8^{\circ} 26' 32''$ N., $83^{\circ} 34' 13''$ W.).
- B. In accordance with the straight baselines method: from a point that coincides with the southern extreme of the line that encloses the mouth of Salinas Bay, the line, as determined by the Cleveland Award, to Punta Descartes ($11^{\circ} 01' 25''$ N., $85^{\circ} 45' 25''$ W) to Punta Blanca ($10^{\circ} 57' 02''$ N., $85^{\circ} 53' 16''$ W); from Punta Blanca to Punta Santa Elena

Page 2

(10° 53' 29" N., 85° 57' 11" W); from Santa Elena to the westernmost key of the Murcielago Islands Group (10° 51' 16" N., 85° 58' 50" W.); from the westernmost key of the Murcielago Islands to Cabo Velas or Morro Hermoso (10° 21' 25" N., 85° 52' 39" W.); from Cabo Velas or Morro Hermoso to Punta San Francisco (10° 17' 36" N., 85° 51' 19" W.); from Punta Guiones (9° 54' 18" N., 85° 40' 15" W) to the southwest tip of Cabo Blanco Island (9° 32' 20" N., 85° 06' 54" W.); from the southwest tip of Cabo Blanco Island to the southwest tip of Isla Del Cano (8° 42' 24" N., 83° 53' 30" W.); from the southwest tip of Isla Del Cano to Punta Llorona on the Osa Peninsula (8° 35' 03" N., 83° 43' 25" W.); from Punta Salsipuedes (8° 26' 32" N., 83° 34' 13" W.) to the extreme southern end of the international border line with Panama at Punta Burica.

Article 2 - The National Geographic Institute will draw these lines to adequate scale or scales to make the locations clear on maps, in accordance with the geographic coordinates corresponding to the geodesic datum known as "Ocotepeque". The State will make such maps public.

Article 3 - Waters situated inside these straight baselines form part of the internal waters of the Republic. However, taking into account that in these waters are located several Important ports on the Pacific coast, the right of innocent passage to ships of all nations is permitted, in accordance with the principles and norms of international law.

Article 4 - The locations of normal and straight baselines described above are indicated on a map at 1: 500,000 scale prepared by the Geographic Institute of Costa Rica. This map, duly authenticated by the Ministry of Foreign Relations and Worship, forms an Integral part of this decree.

Article 5 - This Decree is valid from the 15th of November 1988, inclusive.

Given in the Presidency of the Republic, San Jose, on the 14th of October 1988

Jorge Manuel Dengo

The Minister of Foreign Relations and Worship, A.I.

Carlos Rivera Bianchini

ANNEX 19

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

Source: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Counter Memorial of the Republic of Colombia, Vol. II-A, Annex 217.

Conference of Ambassador Gonzalo J. Facio (former Foreign Minister), addressed to the Diplomatic Corps in Costa Rica.

Casa Amarilla, seat of the Costa Rican Foreign Ministry, at 09:00 hrs., on 27 August 1998.

“The ‘Fernández-Facio’ Treaty of 1977 on Delimitation of Maritime Areas between Colombia and Costa Rica in the Atlantic Ocean, and Nicaragua’s purported sovereignty over the Archipelago of San Andrés and Providencia”

Mr. Foreign Minister

(...)

I do not believe that the Government of President Aleman will dare to repeat now the main argument that the Sandinistas used to declare, unilaterally, the nullity of a duly concluded bilateral treaty, such as the Bárcenas-Esguerra Treaty, on the basis that the United States forced “the puppet government at the time” to cede to Colombia the purported rights of sovereignty over the Archipelago of San Andrés that Nicaragua has never had.

In any case, the nullity of a treaty cannot be declared unilaterally, just as there is no way to unilaterally annul any kind of contract, public or private, duly concluded by the parties. To achieve the nullification of the Bárcenas-Esguerra Nicaragua would have to resort to the International Court of Justice, or to an arbitral or world tribunal to request it to declare that nullity provided of course, that the Colombian counterpart is heard. Due to the reasons I have explained, I do not believe that Nicaragua would have had or has the slightest possibility of succeeding in its attempt to properly nullify the Bárcenas-Esguerra Treaty.

In view of the above, there is no reason whatsoever why the Legislative Assembly should not approve the ‘Fernández-Facio’ Treaty that duly delimited the maritime

boundaries in the Atlantic Ocean between the Republics of Colombia and Costa Rica, on the premise that the San Andrés Archipelago belonged to Colombia.

Nor should our Legislative Assembly refrain from granting its approval of the “Fernández-Facio” Treaty of 1977, because the Government of Nicaragua, that violates our rights to free navigation on the San Juan River, holds that such an approval would constitute a violation of its invented and non-existent sovereignty over the Archipelago of San Andrés.

On the other hand, to declare, unilaterally, the nullity of a Treaty, arguing that it is the result of the United State’s imposition (that was and is a third party with respect to that Treaty), or else, to argue that such a Treaty is contrary to the Nicaraguan Constitution in force at the time of its signature and ratification, has no effect whatsoever, either for the international community or -much less- for Colombia.

That republic has no reason to abide by the statement of the Nicaraguan Government, declaring the nullity of a valid treaty and, with or without it, Colombia will continue to exercise the sovereignty it has always exercised over the San Andrés Archipelago, for over a century prior to the recognition of that legal fact by the Government of Nicaragua by the “Bárcenas-Esguerra” Treaty.

Consequently, the Government of Nicaragua cannot reproach us with anything since, on signing the Fernández-Facio Treaty of 1977, we acted in accordance with the existing legal situation that has the San Andrés Archipelago as an integral part of the Colombian territory.

ANNEX 20

INETER, Corn Island: A Nicaraguan Island in the Caribbean Sea, 6 November 2015.

Source: Nicaraguan Institute for Territorial Studies



CORN ISLAND; A NICARAGUAN ISLAND IN THE CARIBBEAN SEA

In response to instructions from the Superior Management of the Nicaraguan Institute for Territorial Studies, **INETER**, and in response to the request from the Ministry of Foreign Affairs, **MINREX**, the Department of Geodesy and Cartography prepared this technical document containing general information about Corn Island and to this end, diverse sources of information were consulted, the results of which are shown below:

Corn Island is a Nicaraguan island located in the Caribbean Sea with geodesic position at Latitude North 12°10'10" and Longitude West 83°03'12"; it is located at approximately 71 km to the northeast of the capital city of Bluefields and is slanted towards the southeast – northeast with 4.98 km long and 3.28 km wide with an approximate area of 9.60 km² and together with Little Corn Island, conforms Corn Island Municipality, which pertains to the South Caribbean Autonomous Region. According to projections by the National Institute of Development Information, **INIDE**, the population of this municipality was 7,410 inhabitants for the year 2014.

There are two elevations with steep slopes at the extremes of the Island, one southeast called Queen Hill with a maximum height of 55 masl and the other in the northeast corner called Mount Pleasant Hill with a maximum height of 96.35 masl.

The Island's hydrography lacks rivers but the high levels of rainfall in the area produce streams that drain in the sea and also create wetlands areas in lowlands. There are a total of 27 wetland areas encompassing 1.65 km² (17.18% of the Island's total territory).

The 1969 cartography (Annex 1), prepared by the Department of Cartography of Nicaragua (DGC) in collaboration with the Inter-American Geodesy Service (IAGS), there are different civil works that shelter a population organized in several population centers; there is also an airport, all-weather roads, internal roads that connect the populations among themselves, topographical features of the terrain and geodesic information of such time and still effective to date, as represented by the Great Corn Island Geodesic Station (Geodesic Office – IAGS), 1955, located on Mount Pleasant Hill and current station 3552-I-1, located at the airport.

INETER recently installed a satellite transmission (telemetric) tide gauge station on the Island in order to monitor and record variations in sea level, seawater temperatures, rainfall and the speed and direction of the winds. These recordings are transmitted every hour via satellite to INETER's land station. Annex 3 shows the report from the Water Resources Authority, containing a sample of the records in question and general data about the indicated station.

Currently, the Island is under extensive development, mainly for the tourism sector. The image in Annex 4, which corresponds to the year 2015, shows the growth of the inhabited areas and the infrastructure. Different tour operators promote this site as a tourism destination (Annex 5) and with the development programs fostered by the Government of National Reconciliation and Unity for the entire country, sustained growth is expected for upcoming years.

Managua, November 06, 2015

Prepared by: Engineer Noel Ramirez R
& Engineer Gonzalo Medina P



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(The above map) was prepared by the Department of Cartography (DGC), Ministry of Public Works, Managua, Nicaragua, in collaboration with the Inter-American Geodesic Service (IAGS); compiled in 1969 through the stereo-photogrammetric method (Multiplex), based on aerial photographs taken in 1966, revised in the field in 1967, and Charter No 1517 of the year 1892 of the Hydrographic Office of the Navy of the United States of America. The horizontal and vertical control established by the DGC and the IAGS. This map is not fully verified in the field.

DESCRIPTION OF HORIZONTAL CONTROL STATION					
Country	Type of	Station	ANNEX 2		
NICARAGUA	Stamping on Mark	Great Corn Island (O. de G.-IAGS) 1955			
Locality	Agency (Cast in Mark)				
Latitude 12° 10' 19" 469	Longitude 83° 02' 52" 589	Datum 1927 North American	Elevation (Meters)		
Northing	Easting	Grid and Zone	Order	Established by	
Northing	Easting	Grid and Zone	Datum		
GEODETIC AZIMUTH, BACK AZIMUTH LOG. METERS					
Object-	Direction	Map-Bearing	Geod. Azimuth	Distance (M)(Ft.)	
CUKRA Colombia	96° 19' 49" 6	276° 10' 40" 1	4.897 5644	79,005.0	
	121° 41' 38.3"	301 37 16.74	4.640 2775	43,679.5	
Sketch					
<p>N: 1346339.6790 E: 277159.110 ELEV. 96.35</p> <p>Z-17</p> <p>N = 1348476.222 E = 930263.382 EL = 96.35</p> <p>Mount Pleasant Hill</p>					
(Described) or (Recovered) by: _____ Agency: _____ Date: _____					
AMS FORM 3-264 7 SEPT 54					



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NICARAGUAN INSTITUTE FOR TERRITORIAL STUDIES
DESCRIPTION OF THE GEODESIC STATION

DEPARTMENT: R.A.A.S.	NOMENCLATURE GEODESY AND CARTOGRAPHY, INETER 13552-1-1 BM INETER	COORDINATES (WGS 84) LAT: 12° 11' 00.528" N Ellipsoidal Height: 11.778 m
LOCATION: CORN ISLAND	MARKED IN BRONZE PLATE ON CONCRETE CYLINDER	
ROUTE: FIDUCIALLY	BM BF08	

LOCATION:

THE STATION IS LOCATED ON THE EAST HEAD OF THE CORN ISLAND AIRPORT RUNWAY, 270 MT FROM THE BEGINNING OF THE RUNWAY OVER THE CENTRAL LINE IN THE DIRECTION OF THE COASTLINE.

THE STATION WAS SET UP BY EMBEDDING THE BRONZE METAL SHEET ON A ROCK AND SET WITH EPOXYIMIL (SUPER BONDER FLEX GEL)

SKETCH

ATLANTIC OCEAN

P.E

CASA

/

SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION	SYMBOL	DESCRIPTION
&	GEODESY STATION	—	BARBED WIRE FENCES		TELEPHONE LINE
	TREE	[61]	MILEAGE CAIRN	P.T@	TELEPHONE POST
	POWER LINES	BRIDGE	P.E.	MARKED ELECTRICAL POST
O	MARKED POST	---@---	HIGH VOLTAGE LINE	D	BENCHMARK



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ANNEX No 3

NICARAGUAN INSTITUTE FOR TERRITORIAL STUDIES (INETER)

Department of Water Resources

Corn Island Tide Gauge Station, South Caribbean Autonomous Region

Corn Island Municipality is formed by two islands, Great Corn Island and Little Corn Island, located in the South Caribbean Autonomous Region (RACS), specifically in the Caribbean Sea. It does not have any rivers but given the high levels of rainfall on the island produce streams that drain to the sea and form wetland areas in the lowlands that cover 27 wetland sites encompassing a total area of 165.29 ha.

In order to strengthen the country's hydro-meteorological monitoring, a tide gauge station was established in the Great Corn Island, the purpose of which is to monitor and record variations in sea level (every ten minutes), seawater temperature (every half hour), rainfall (every ten minutes), as well as wind speed and direction (every ten minutes).

INETER in coordination with MARENA and the Municipal Port Services Company of Corn Island (EMUSEPCI) set up the station at the end of June 2014, at the Municipal Port in order to ensure protection of the equipment.



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Station location at the pier

The satellite transmission tide gauge station (telemetry) consists of a data collection platform, which records sensor logs, then transmits them via satellite to the earth station installed at INETER (every hour).

A pressure sensor measures the variations of the sea level and another sensor measures seawater temperatures. Both sensors are submerged underwater, affixed to a high pressure plastic tube and in turn it is affixed to the pier with a clamping system.

The metal box that contains the station's data gathering platform is attached to a 6 meter high metallic tower and a 12 volt battery supplies the required energy. In the same manner, the satellite transmission antennae, the GPS antennae and the solar panel that charges the battery are on the tower.



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Corn Island Tide Gauge Station installed in June 2014

The data obtained will also strengthen the processes to elaborate tide forecasts, tsunami studies, navigation safety, and determination of tide reference drawings for land and nautical cartography purposes, determination of the coastal boundaries, among other applications.

To ensure the synergy with INETER's national surveillance network and the competent environmental surveillance agencies (MARENA, ADPESCA, the National Port Authority, ANA and the Municipal Hall), there is access to data gathered by the station through the website www.ineter.gob.ni, enabling and simplifying data exchange processes to monitor monitoring the behavior of the sea level as well as for various other purposes of social and economic interest in the Island. INETER performs quarterly monitoring and maintenance of the station.



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Following, is a simple of the data recorded by the Corn Island Tide Gauge Station on October 23, 2015 between 00:00 and 02:00 am:

10/23/2015, 00:00:00	Rain	0.00,mm,G
10/23/2015, 00:00:00	Water Temperature	30.3,C,G
10/23/2015,00:00:00	Wind Direction	130,,G
10/23/2015,00:00:00	Wind Speed	1.7,MPS,G
10/23/2015,00:00:00,	Sea Level	1.52,m,G
10/23/2015,00:10:00,	Rain	0.00,mm,G
10/23/2015,00:10:00,	Wind Direction	125,,G
10/23/2015,00:10:00,	Wind Speed	2.4,MPS,G
10/23/2015,00:10:00,	Sea Level	1.55,m,G
10/23/2015,00:20:00,	Rain	0.00,mm,G
10/23/2015,00:20:00,	Wind Direction	126,,G
10/23/2015,00:20:00,	Wind Speed	2.8,MPS,G
10/23/2015,00:20:00,	Sea Level	1 .47,m,G
10/23/2015,00:30:00,	Rain	0.00,mm,G
10/23/2015,00:30:00,	Wind Direction	118,,G
10/23/2015,00:30:00,	Water Temperature	30.2,C,G
10/23/2015,00:30:00,	Wind Speed	2.9,MPS,G
10/23/2015,00:30:00,	Sea Level	1.54,m,G
10/23/2015,00:40:00,	Rain	0.00,mm,G



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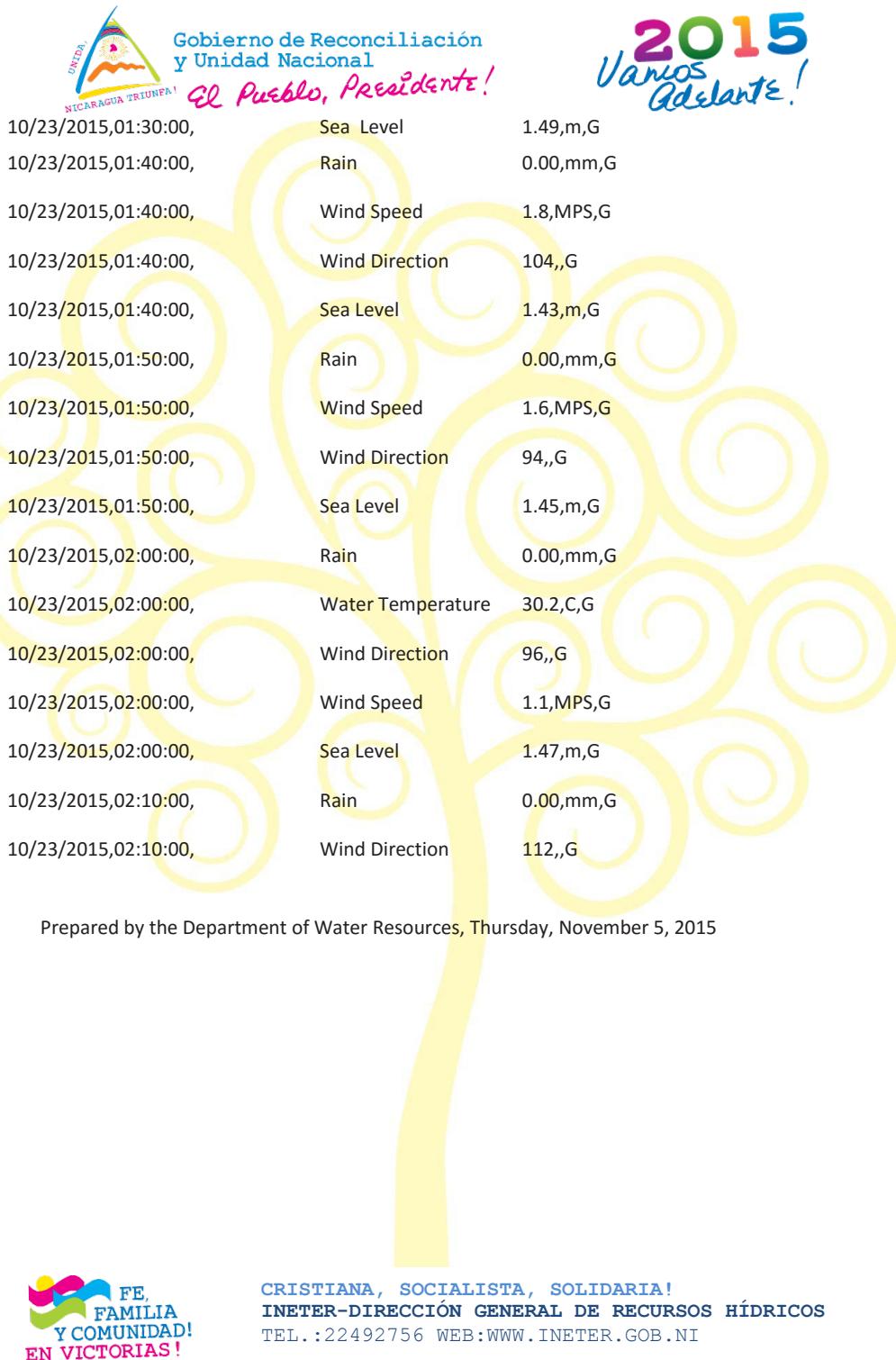
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10/23/2015,00:40:00,	Wind Direction	126,,G
10/23/2015,00:40:00,	Wind Speed	2.7,MPS,G
10/23/2015,00:40:00,	Sea Level	1.51,m,G
10/23/2015,00:50:00,	Rain	0.00,mm,G
10/23/2015,00:50:00,	Wind Direction	125,,G
10/23/2015,00:50:00,	Wind Speed	2.5,MPS,G
10/23/2015,00:50:00,	Sea Level	1.46,m,G
10/23/2015,01:00:00,	Water Temperature	30.2,C,G
10/23/2015,01:00:00,	Rain	0.00,mm,G
10/23/2015,01:00:00,	Wind Direction	132,,G
10/23/2015,01:00:00,	Wind Speed	3.0,MPS,G
10/23/2015,01:00:00,	Sea Level	1.50,m,G
10/23/2015,01:10:00,	Rain	0.00,mm,G
10/23/2015,01:10:00,	Wind Direction	118,,G
10/23/2015,01:10:00,	Wind Speed	2.6,MPS,G
10/23/2015,01:10:00,	Sea Level	1.44,m,G
10/23/2015,01:20:00,	Rain	0.00,mm,G
10/23/2015,01:20:00,	Wind Speed	2.2,MPS,G
10/23/2015,01:20:00,	Wind Direction	126,,G
10/23/2015,01:20:00,	Sea Level	1.45,m,G
10/23/2015,01:30:00,	Rain	0.00,mm,G
10/23/2015,01:30:00,	Water Temperature	30.2,C,G
10/23/2015,01:30:00,	Wind Speed	2.1,MPS,G
10/23/2015,01:30:00,	Wind Direction	98,,G



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ANNEX No. 4



Imagen de Google Map. Año 2015
Descargada con Software
SAS.Planet 151007.9117 Nightly
https://bitbucket.org/sas_team/sas.planet/bin/downloads



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ANNEX No. 5

VISIT CORN ISLAND

TripAdvisor:

http://www.tripadvisor.com.mx/Tourism-g612404-Corn_Islands_Southern_Atlantic_Autonomous_Region-Vacations.html

Opinions and advice on hotels, resorts, flights, vacation rentals, travel packages and much more so that you can plan and make reservations for your ideal trip to Corn Island

The fastest, most convenient but also the most expensive way is the flight from Managua to Big Corn Island; you land on the Island's runway in one hour and 45 minutes for a price of approximately **US\$ 170** per ticket. Atlantic Airlines and La Costeña have several flights on a daily basis. The ferry is another alternative to arrive at the Greater Island on a weekly basis from El Rama. El Rama is a small port city located at the birth of Escondido River (which arrives at Bluefields) and has a decent connection with Managua by road. This option is at least three times cheaper but requires more than one day on less comfortable conditions. The adventure is guaranteed during this trip and is certainly an unforgettable experience. The round-trip ferry between El Rama and Bluefields is called Ferry 1.

List of hotels in Corn Island

- 1-Yemaya Island Hideaway & Spa
- 2-Mimundo Corn Island Hostel
- 3-Arenas Beach Hotel
- 4-Paraiso Beach Hotel
- 5-Carlito's Sunrise Paradise
- 6-Hotel Bellavista
- 7-Derek's Place
- 8-La Princesa de la Isla
- 9-Sunshine Hotel





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10-Casa Canada

11-Little Corn Beach and Bungalow

12-Lobster Inn

13-Hospedaje Los Escapados

14-Martha's Bed and Breakfast

15-Yellowtail House

16-Hotel Los Delfines

Vacation homes in Corn Island

1-Treehouse_Overlooking_Beach

2-Crows_Nest_Studio_Apartment_on_the_Beach

Tours and activities in Corn Island

1- Diving and snorkel

2- Fishing tours and charters

3- Water sports

4- Water skiing and jet skiing

5-Rafting swimming with life jackets

6- Standup paddle-boarding

7-Surf , Wind-Surf , Kite-Surf

8-Tourist tours

List of Attractions in Corn Island

1-Activities in Big Corn Island

2- Diving in Corn Island

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3-Georges Cay

4-The Soul of the World Monument

5-Boat tour around Corn Island

6-Brig Bay Beach

7-Coral Beach

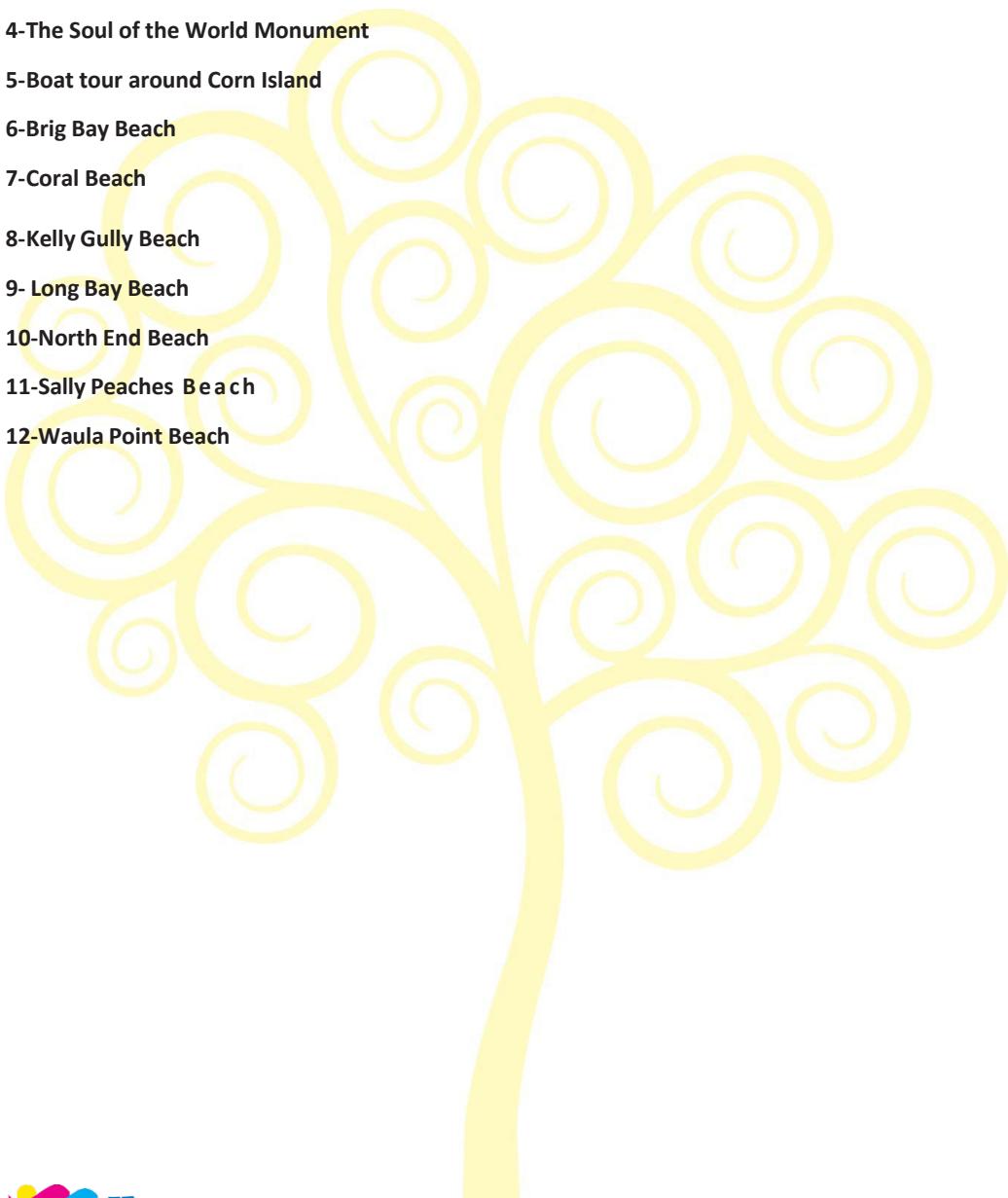
8-Kelly Gully Beach

9- Long Bay Beach

10-North End Beach

11-Sally Peaches Beach

12-Waula Point Beach



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ANNEX 21

Diplomatic Note N° 071-96-DVM from the Costa Rican Minister of Foreign Affairs to the Nicaraguan Minister of Foreign Affairs, 1 March 1996

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

Ministry of Foreign Affairs and Cult

OFFICE OF THE DEPUTY MINISTER

#071-96-DVM

San Jose, March 1, 1996

His Excellency the Minister:

I am pleased to address Your Excellency with the purpose of confirming Note #950575 from that Ministry of Foreign Affairs, dated December 11th of last year, which I allow myself to under the following terms:

In the referred note you state your deep concern about the statements published in the Newspaper La Prensa Libre of Costa Rica, dated October 16th and 17th of last year, which attributes to the undersigned, the statement in the sense that [he] "considers the need to ratify the treaties on maritime boundaries with Colombia and Ecuador as soon as possible because they are highly beneficial for the country".

What I declared to the journalist Berlioth Herrera on occasion of the press articles published in La Prensa Libre, to which that Ministry of Foreign Affairs alludes, is that the undersigned considers that the treaties with Ecuador and Colombia are extremely beneficial for the country, given that such Treaties constitute the first acknowledgement for other States, of the jurisdiction of 200 miles as of Coco Island in the Pacific Ocean, which allows Costa Rica to possess, without international containment, an economic zone ten times the size of its continental territory. Such acknowledgement is important, I add now, because this deals with two States that in turn, reclaim jurisdictional waters in the Eastern Pacific.

The note from that Ministry of Foreign Affairs also includes a paragraph that textually states:

"My Government wishes to reiterate its invariable position that the Draft Treaty undersigned between Costa Rica and Colombia constitutes a serious threat to the sovereignty, rights and jurisdiction of Nicaragua, considering it unacceptable from every point of view.

Such thesis compels us to recall that the Maritime Boundary Treaty between Costa Rica and Colombia in relation to the Caribbean Sea, was signed in the year 1977, that is, long before there was a dispute between Nicaragua and Colombia with the "Declaration over the San Andres and Providencia

Islands and its surrounding territories”, issued on February 4, 1980 by the Government Junta of Nicaragua.

According to universally accepted principles of international law, “a treaty does not create obligations or rights for a third State without its consent” (doctrine now gathered in Article 34 of the Vienna Convention on the Law of Treaties).

It is then clear to the community of nations that the Treaty signed by Costa Rica with the Republic of Colombia is not capable to damaging the rights that, pursuant to International Law, Nicaragua may have against Colombia in the Caribbean Sea.

Therefore, this Ministry of Foreign Affairs cannot accept, as it does not accept, the allegations in the note we are responding. The Republic of Costa Rica reserves the sovereign right to sign and ratify the International Treaties and Conventions that are beneficial to the country and its people.

Notwithstanding this, this Ministry of Foreign Affairs, as a good will gesture toward the sister people of Nicaragua, will not act in its boundary position in the North Caribbean, until the Government of Nicaragua and Colombia reach an agreement that enables overcoming the dispute that arose in those two friendly nations, just as publicly expressed by the Minister of Foreign Affairs, Mr. Fernando Naranjo Villalobos on occasion of his visit to Managua during last August.

Naturally, our country will continue marking its delimitation with the territorial waters adjacent to Nicaragua, applying the traditional midline or equidistant line, according to the accepted practice in International Law and now gathered in the text to Article 15 of the United Nations Convention on the Law of the Sea.

I take this opportunity to renew to the Minister, the assurances of my most distinguished and fraternal consideration.

Illegible Signature
Rodrigo X. Carreras
Acting Minister
Illegible Stamped Seal Affixed

His Excellency
ERNESTO LEAL
Minister of Foreign Affairs of
Nicaragua

ANNEX 22

Diplomatic Note N° DM. 172-96 from the Costa Rican Minister of Foreign Affairs to the Colombian Minister of Foreign Affairs, 14 May 1996

Source: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Counter Memorial of the Republic of Colombia, Vol. II-A, Annex 67.

(The Minister of Foreign Affairs and Religious Observance)

DM - 172-96

San José, 14th May 1996

Your Excellency:

I have the honor to address Your Excellency on the occasion of acknowledging receipt and referring to the note numbered DM-00037 that you addressed to me on 11th April last, by means of which you let me know the position of the Illustrious Government of Colombia with regard to the Treaty on the Delimitation of Marine and Submarine Waters signed on the 17th of March 1977 by both countries.

With regard to the content of the said note, first I must express to Your Excellency that the Government of Costa Rica took note that for the Illustrious Government of Colombia there is no dispute whatsoever with the Republic of Nicaragua regarding the sovereignty, possession and control that the former exercises over the entire Archipelago of San Andres and Providencia.

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

Finally, I take the liberty of confirming to Your Excellency that the said Treaty is, currently, being submitted to the process of approval by the Legislative Assembly, in accordance with the provisions of the political Constitution of Costa Rica.

I avail myself of the opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished esteem.

(Signed)
FERNANDO E. NARANJO V.

To His Excellency
Camilo Reyes Rodríguez
Minister of Foreign Affairs a.i.
Santa Fe de Bogota, Colombia

ANNEX 23

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

Source: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Counter Memorial of the Republic of Colombia, Vol. II-A, Annex 69.

The Vice-Minister of Foreign Affairs and Religious Observance

DVM. No. 103

San José, 23 March 1997

Your Excellency
Jorge Michelsen
Colombian Ambassador in Costa Rica

Your Excellency Mr. Ambassador:

I have the honor to address Your Excellency in reference to the article of Freddy Pacheco published last week in the journal *La Prensa Libre*.

I was surprised to read this article that completely distorts the position of the Government of Costa Rica with respect to the Treaties on Maritime Limits between the Republic of Costa Rica and the Republic of Colombia, signed in 1977 and in 1984, and that erroneously states that Costa Rica has decided not to ratify these instruments.

In this regard, my Government reiterates what has been already stated in previous notes with respect to our interest in having those treaties ratified by our Legislative Assembly, both of them being in its agenda. The Government of Costa Rica, in accordance with the Law of Treaties, shall continue to comply with what was agreed without acting against it.

I avail myself of the opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished esteem.

(Signed)
Rodrigo X. Carreras J.
Vice-Minister

ANNEX 24

Diplomatic Note N° DM 073-2000 from the Costa Rican Minister of Foreign Affairs to the Colombian Minister of Foreign Affairs, 29 May 2000

Source: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Rejoinder of the Republic of Colombia, Vol. II, Annex 2.

The Minister of Foreign Affairs and Worship

San José, 29 May 2000.

DM 073-2000

Your Excellency:

As the Costa Rican Legislative Assembly is setting out to consider, for its approval, the Treaty on Delimitation of Marine and submarine Areas and Maritime Cooperation signed between our two countries on 6 April 1984, I am pleased to convey to Your Excellency that my country, always observant of the principles and rules of international law and in particular those framing the conclusion of international treaties, has complied with and will continue to comply with that instrument in good faith, as well as the Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation of 17 March 1977.

It is evident that throughout these years, both treaties have shown their beneficial character, have facilitated cooperation and contributed to mutual understanding, the preservation of peace and trust between our two States, becoming an example for the region and the continent.

The Government of Costa Rica therefore, will continue the required procedures for the ratification and exchange of corresponding instruments, once approved by the Legislative Power.

May this serve to state to Your Excellency, the assurances of my utmost consideration and esteem, sincerely.

[signed illegibly]

Roberto Rojas

His Excellency

Guillermo Fernández de Soto
Minister of Foreign Affairs
Republic of Colombia

ANNEX 25

**A- Diplomatic Note from the Permanent Mission of Nicaragua to the
United Nations to the Secretary General of the United Nations**

MINIC-NU-050-13, 20 December 2013

**B- Diplomatic Note from the Permanent Mission of Nicaragua to the
United Nations to the Secretary General of the United Nations**

MINIC-NU-049-13, 20 December 2013

Source: Archives of the Ministry of Foreign Affairs of Nicaragua

Non Official Translation

MINIC-NU-050-13

The Permanent Mission of Nicaragua to the United Nations presents its compliments to the Secretary General of the United Nations and has the honour to refer to the communication submitted by the Permanent Mission of Panama to the United Nations on 30 September 2013 regarding Nicaragua's Submission to the Commission on the Limits of the Continental Shelf, in which Panama advises of an affectation to its maritime space.

In that respect, Nicaragua recalls that its Submission to the Commission on the Limits of the Continental Shelf was made pursuant to Nicaragua's obligations as a State Party to the United Nations Convention on the Law of the Sea.

Furthermore, Nicaragua's Submission does not in any way encroach upon any rights over maritime areas to which Panama is entitled under international law. As Nicaragua observes in the Executive Summary of its Submission, in accordance with article 76(10) of the United Nations Convention on the Law of the Sea, the Submission is made without prejudice to the question of the delimitation of the continental shelf between Nicaragua and neighbouring States. Nicaragua does not claim any areas of continental shelf which appertain to Panama in accordance with the Maritime Delimitation Treaty between Panama and the Republic of Colombia in force as of 30 November 1977.

Nicaragua remains committed to delimiting its maritime boundaries, including its continental shelf boundaries with neighbouring States in accordance with international law, including the judgments of the International Court of Justice.

The Permanent Mission of Nicaragua to the United Nations avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

New York, 20 December 2013

H.E. Ban Ki-Moon
 Secretary General
 to the United Nations
 United Nations
New York



Non Official Translation

MINIC-NU-049-13

The Permanent Mission of Nicaragua to the United Nations presents its compliments to the Secretary General of the United Nations and has the honour to refer to the communication submitted by the Permanent Mission of Jamaica to the United Nations on 12 September 2013 regarding Nicaragua's Submission to the Commission on the Limits of the Continental Shelf, in which Jamaica, having regard to the potential areas of continental shelf that Nicaragua is seeking to establish through that Submission, advises of the overlapping claims in the areas of exclusive economic zone appertaining to Jamaica.

In that respect, Nicaragua recalls that its Submission to the Commission on the Limits of the Continental Shelf was made pursuant to Nicaragua's obligations as a State Party to the United Nations Convention on the Law of the Sea.

Furthermore, Nicaragua's Submission does not in any way encroach upon any rights over submarine areas to which Jamaica is entitled under international law. As Nicaragua observes in the Executive Summary of its Submission, in accordance with article 76(10) of the United Nations Convention on the Law of the Sea, the Submission is made without prejudice to the question of the delimitation of the continental shelf between Nicaragua and neighbouring States. Nicaragua does not claim any areas of continental shelf which appertain to Jamaica in accordance with the Maritime Delimitation Treaty between Jamaica and the Republic of Colombia, dated 12 November 1993.

Nicaragua remains committed to delimiting its maritime boundaries, including its continental shelf boundaries with neighbouring States in accordance with international law, including the judgments of the International Court of Justice; and to the operation of fair, practical and stable arrangements for the exploitation of seabed resources that straddle continental shelf boundaries.

The Permanent Mission of Nicaragua to the United Nations avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

New York, 20 December 2013

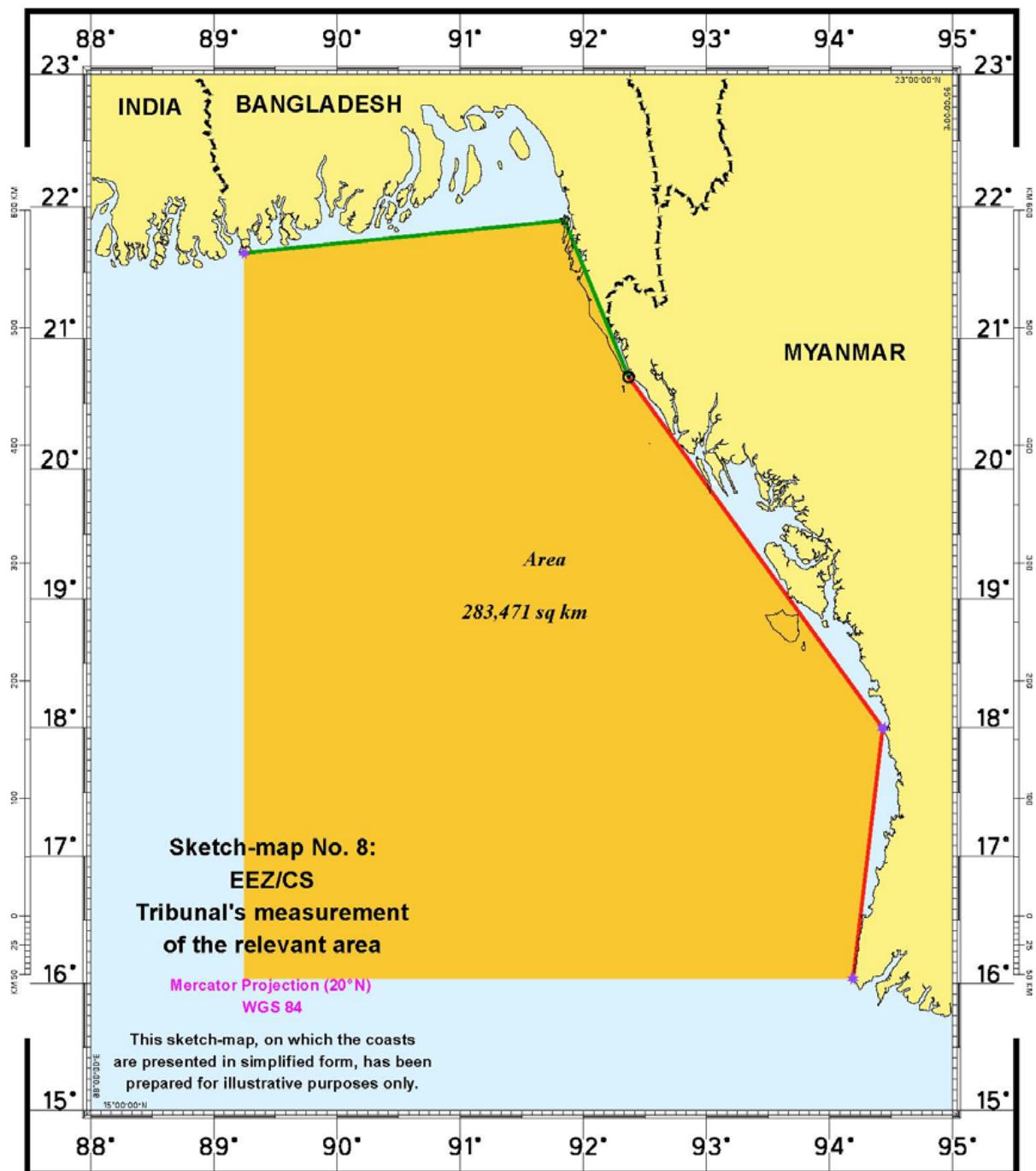
H.E. Ban Ki-Moon
Secretary General
to the United Nations
United Nations
New York



ANNEX 26

Sketch Map 8 from the ITLOS' Bangladesh–Myanmar Award

Source: ITLOS, *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, judgment of 14 March 2012, p. 144, Sketch-map No. 8.

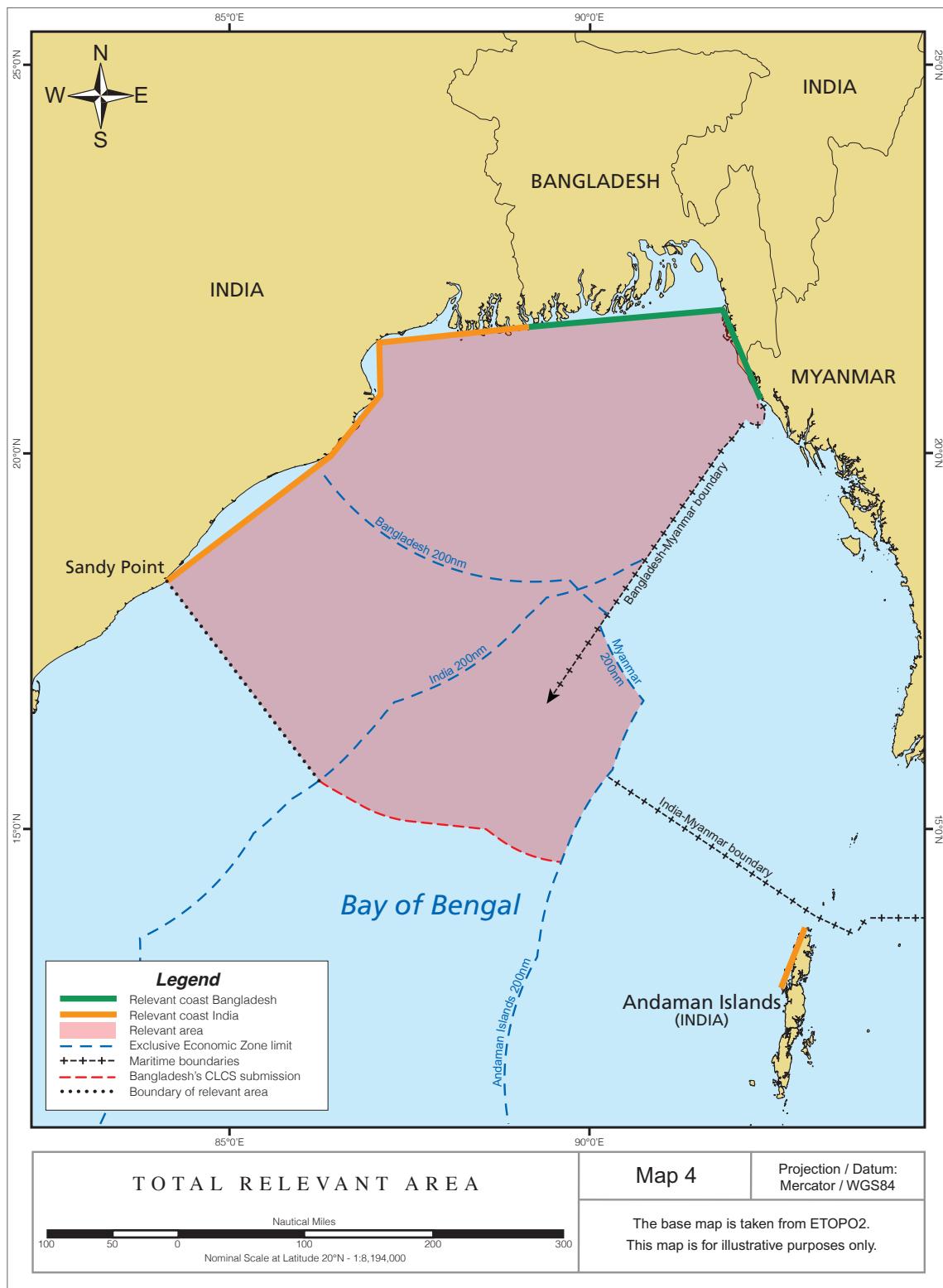


Sketch Map 8 from the ITLOS' Bangladesh-Myanmar Award

ANNEX 27

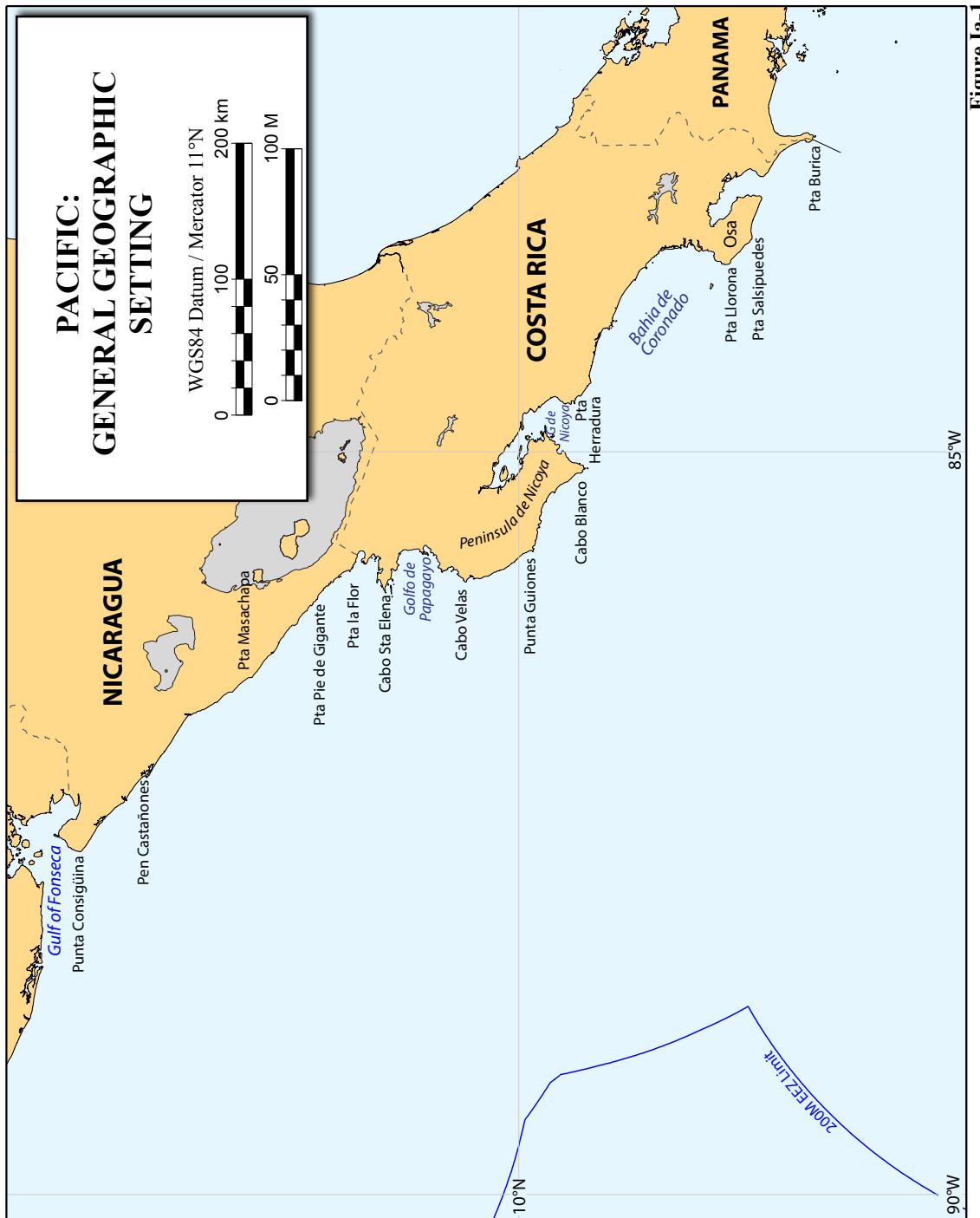
Sketch Map 4 from the Bangladesh–India Award

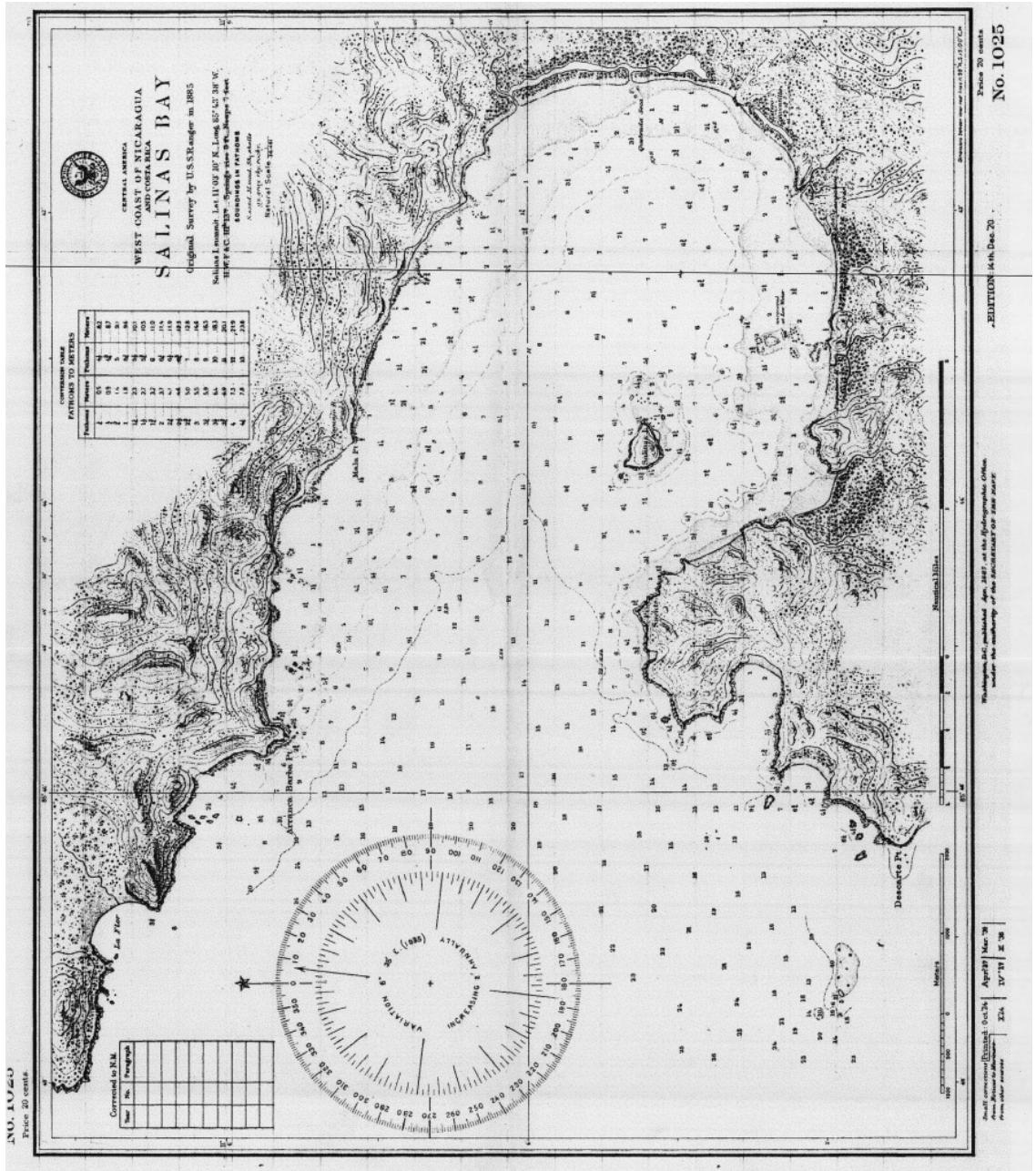
Source: UNCLOS Annex VII Tribunal, *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India), Award*, 7 July 2014, p. 89, Map 4.



ANNEX 28

Figures of the Pacific Ocean





5th Alexander Award of 10 March 1900 **Figure Ia-2**

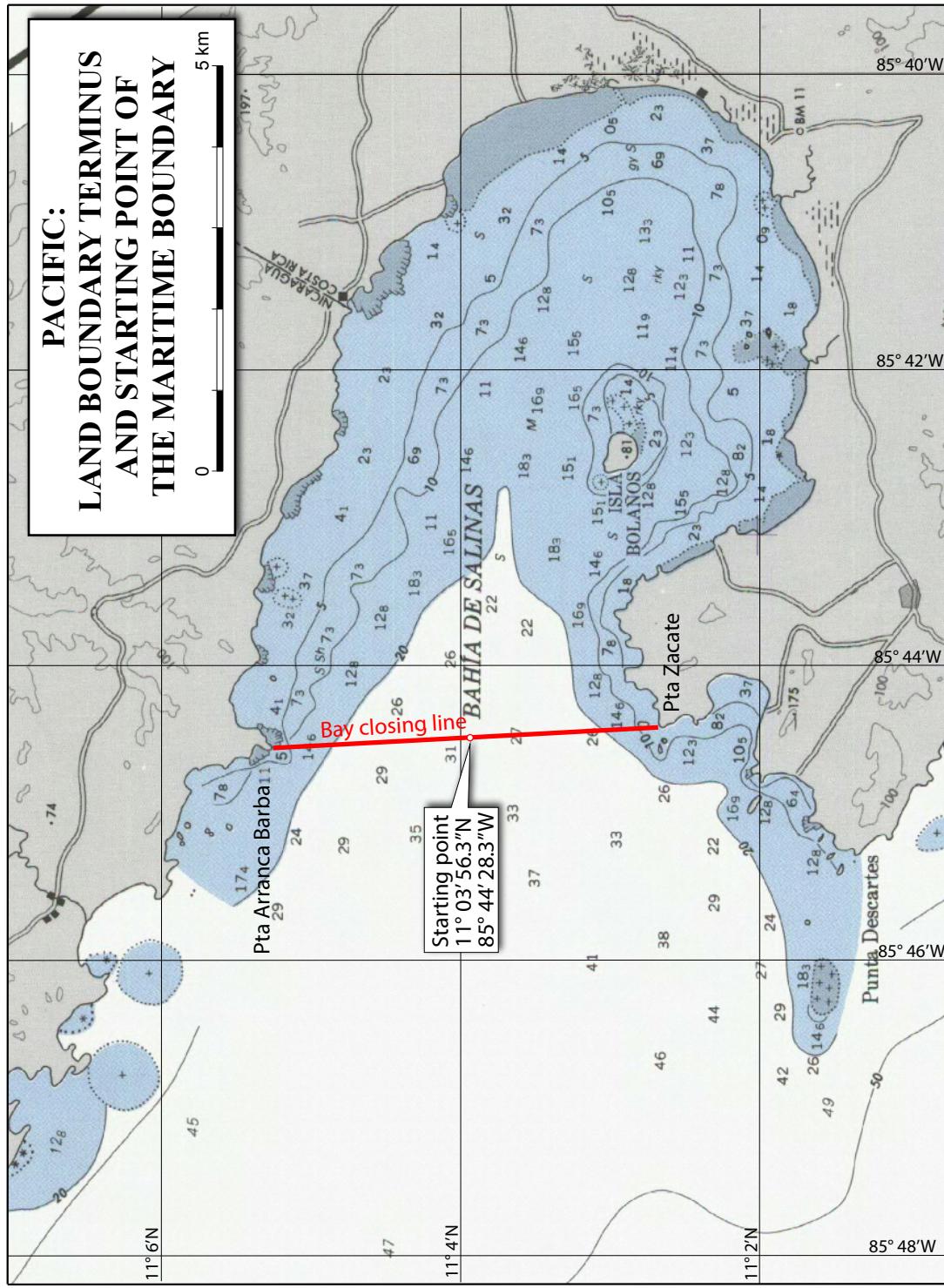
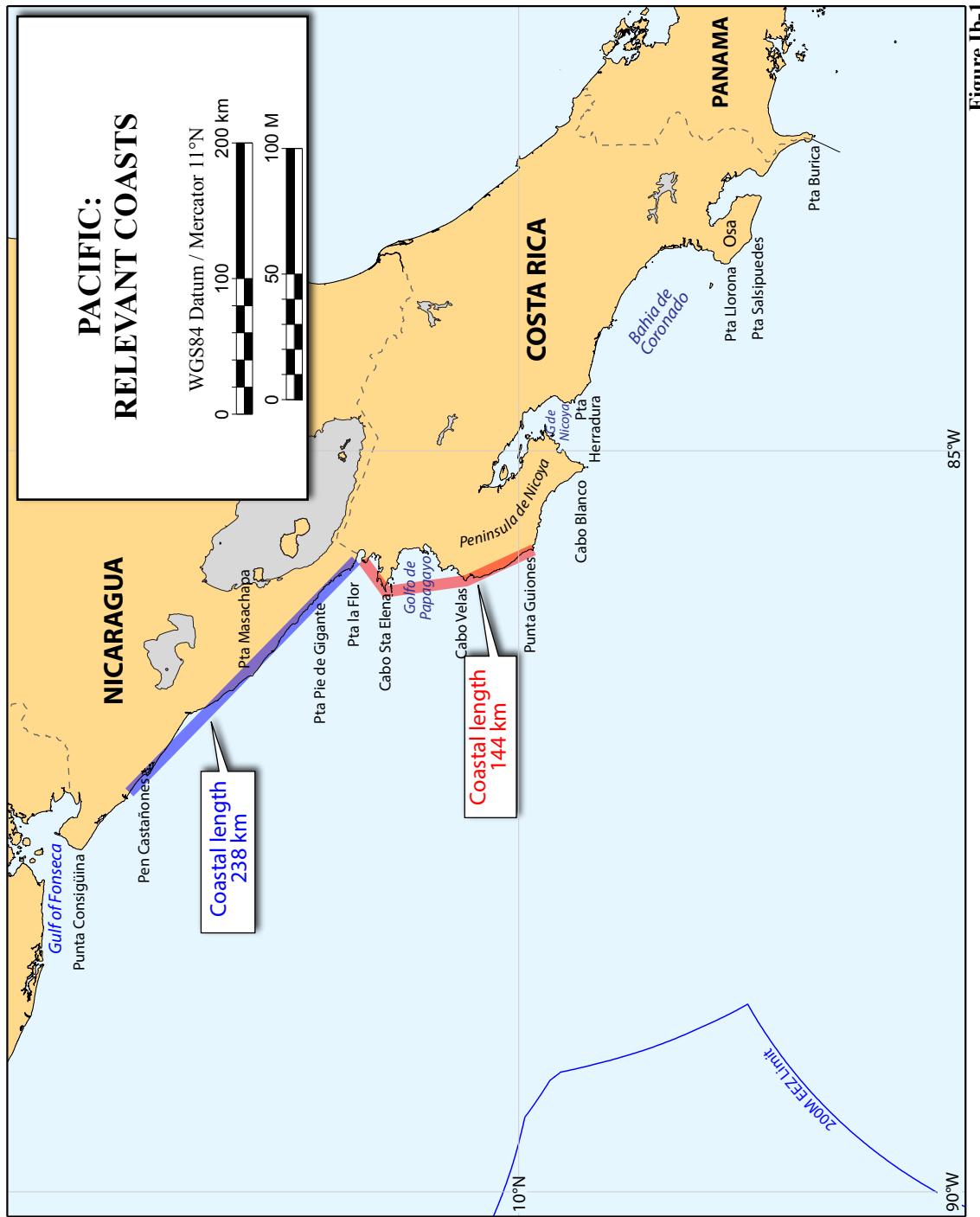


Figure Ia-3



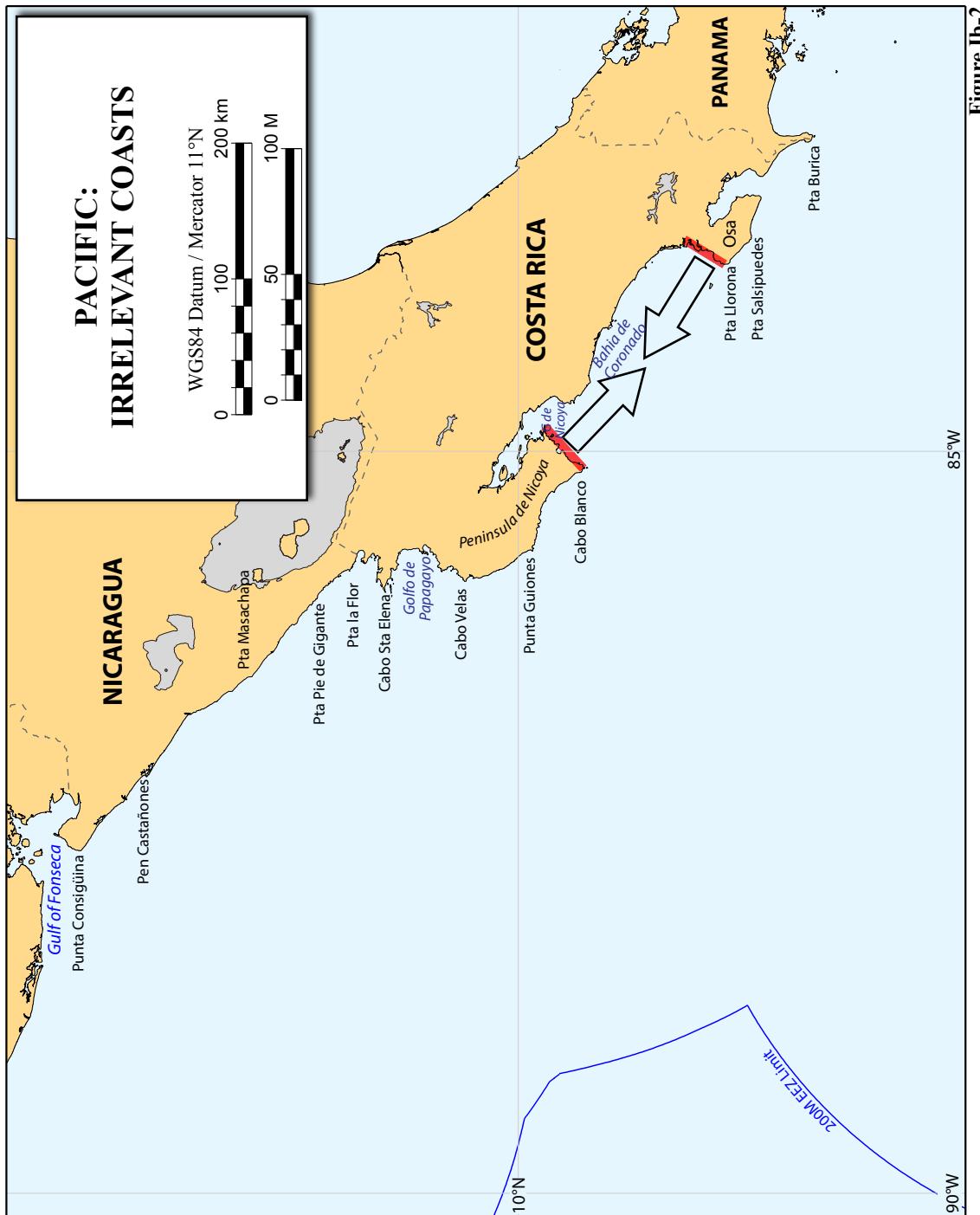


Figure 1b-2

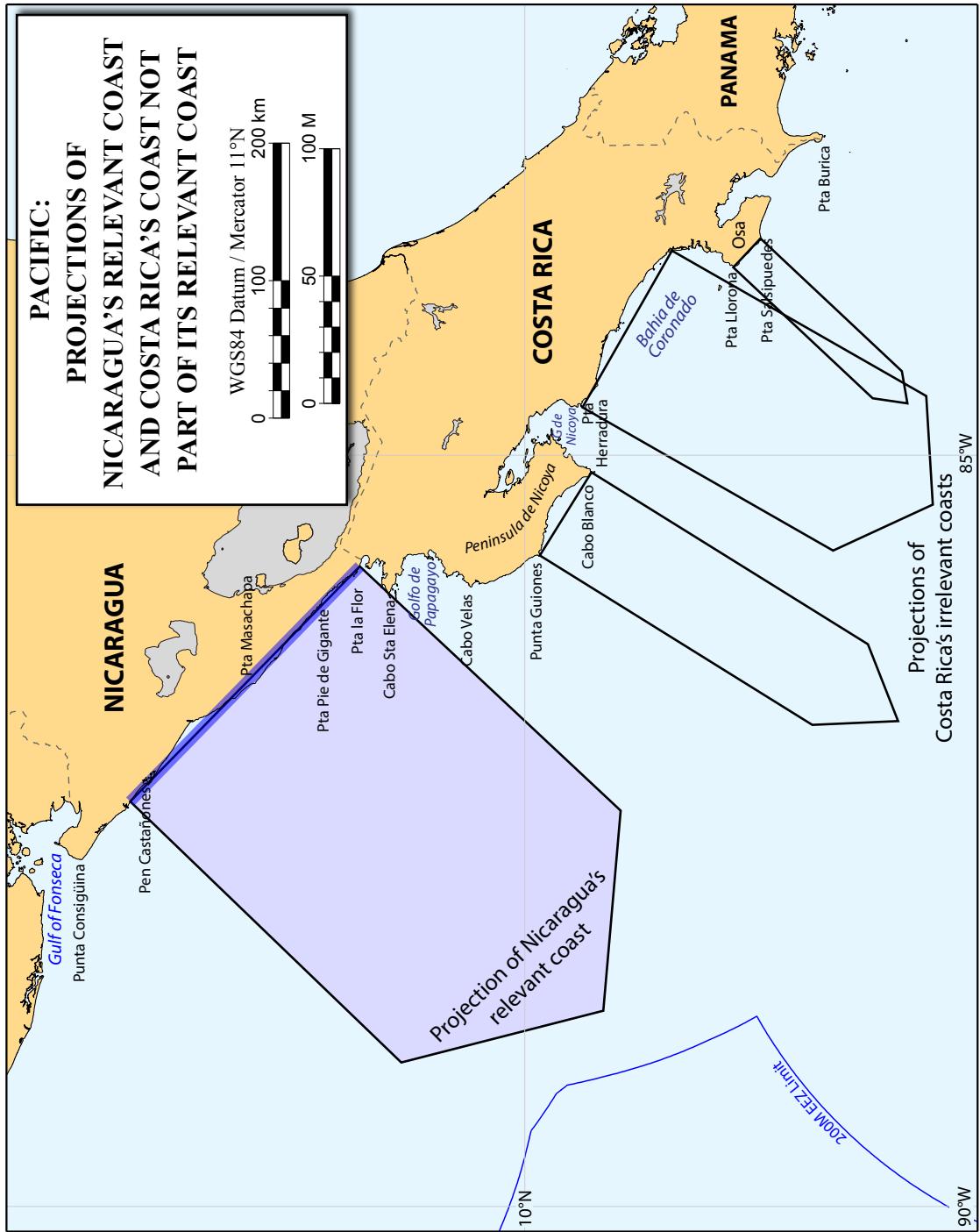


Figure 1b-3

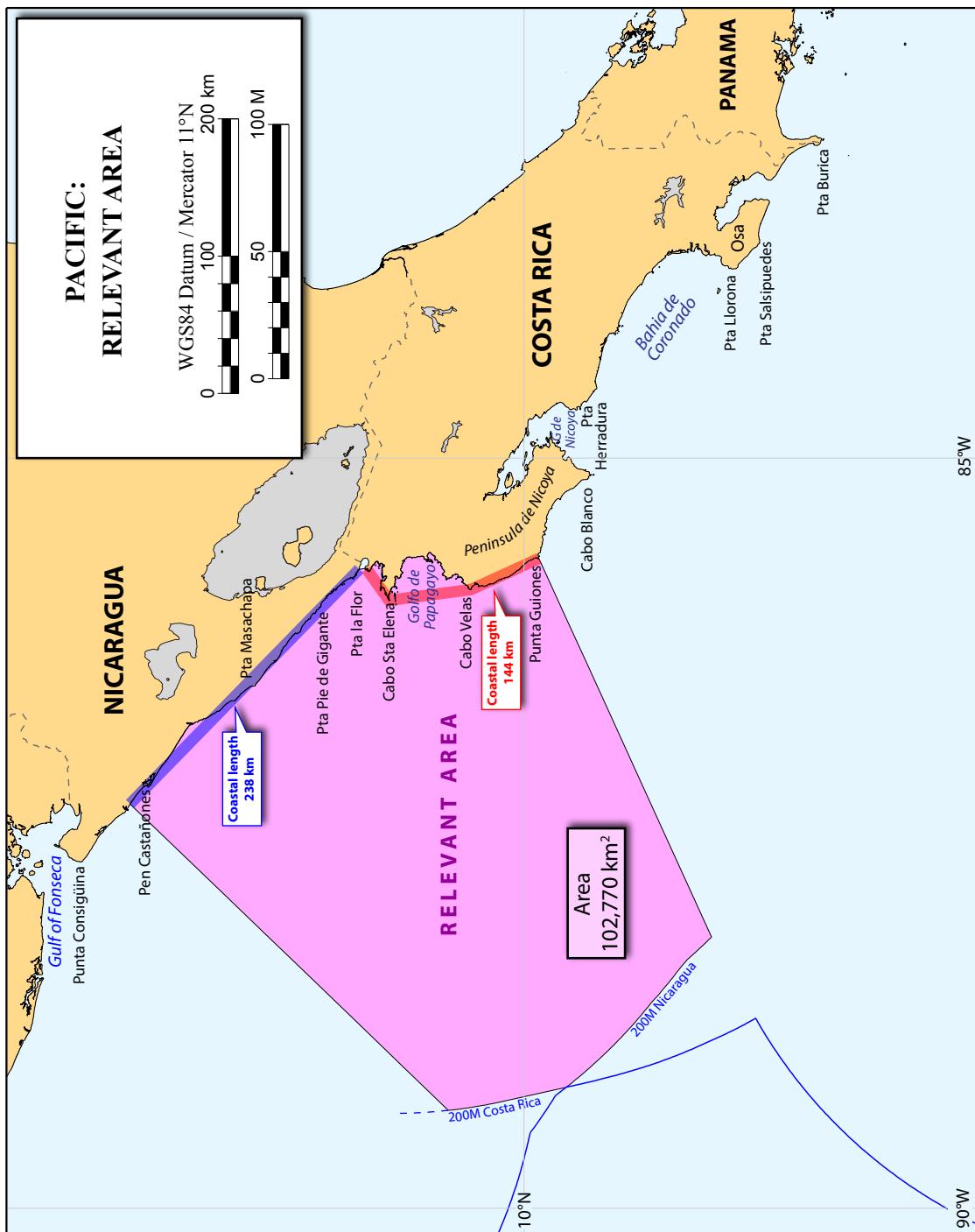


Figure Ib-4

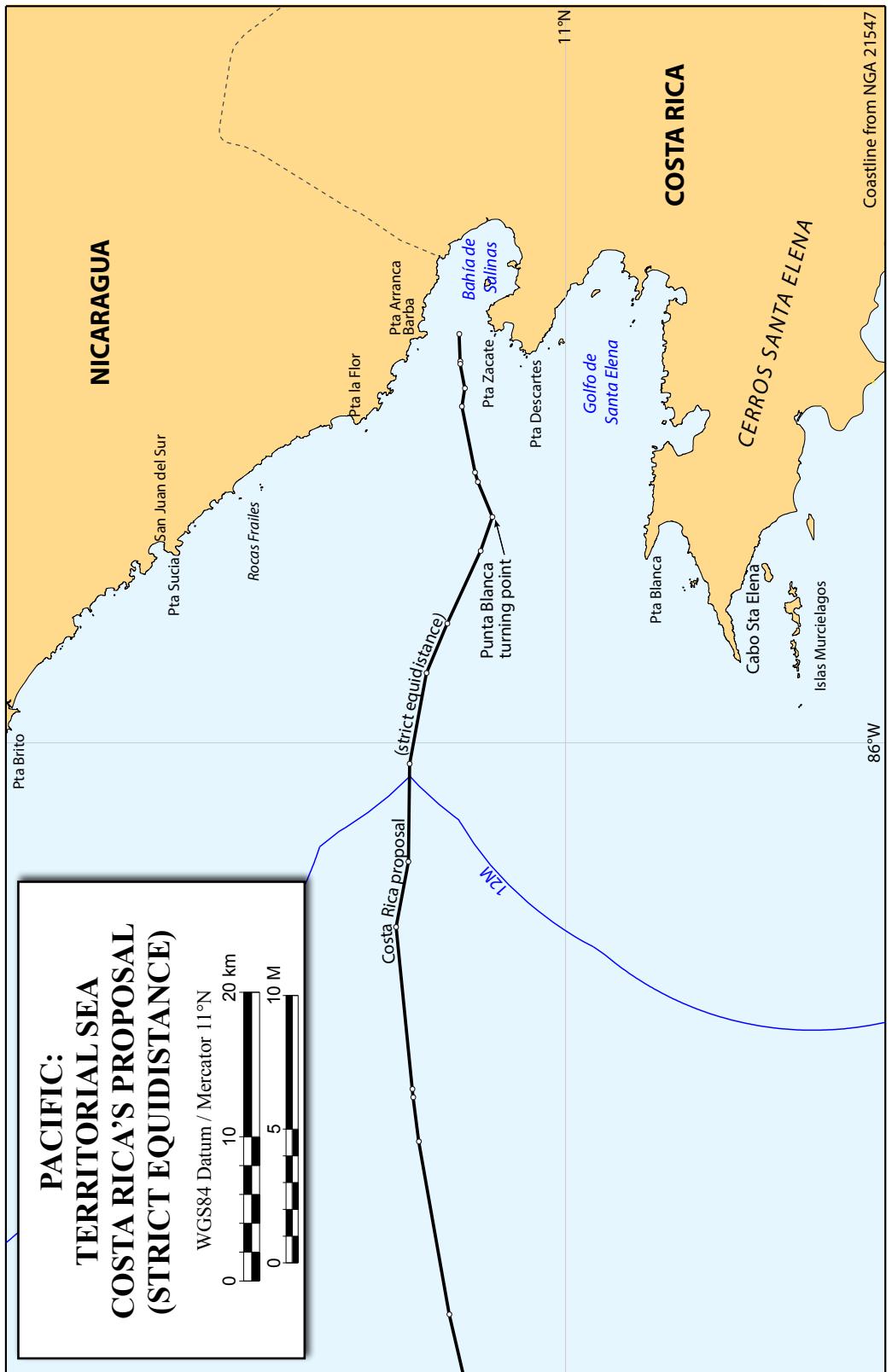
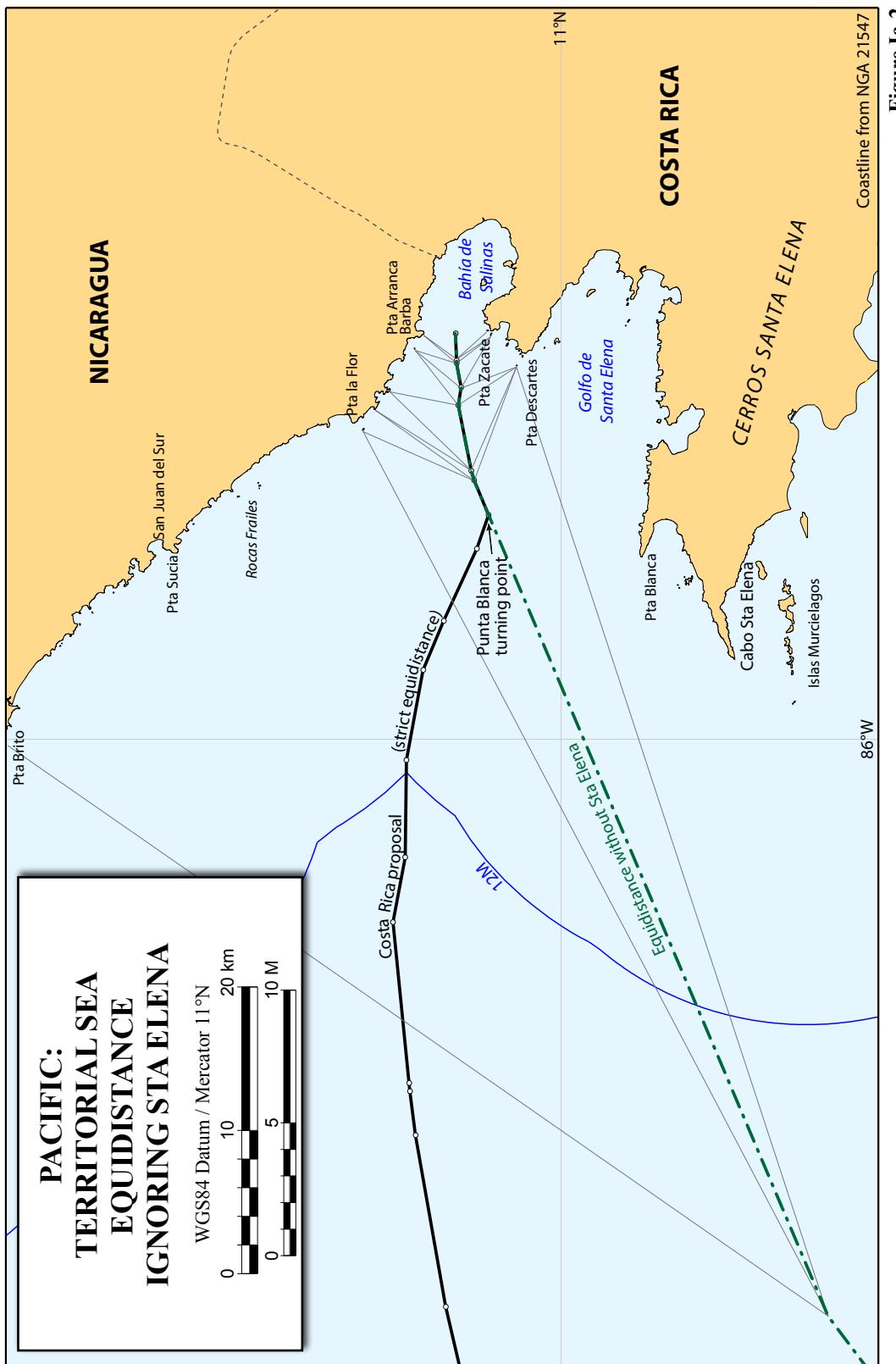


Figure 1c-1



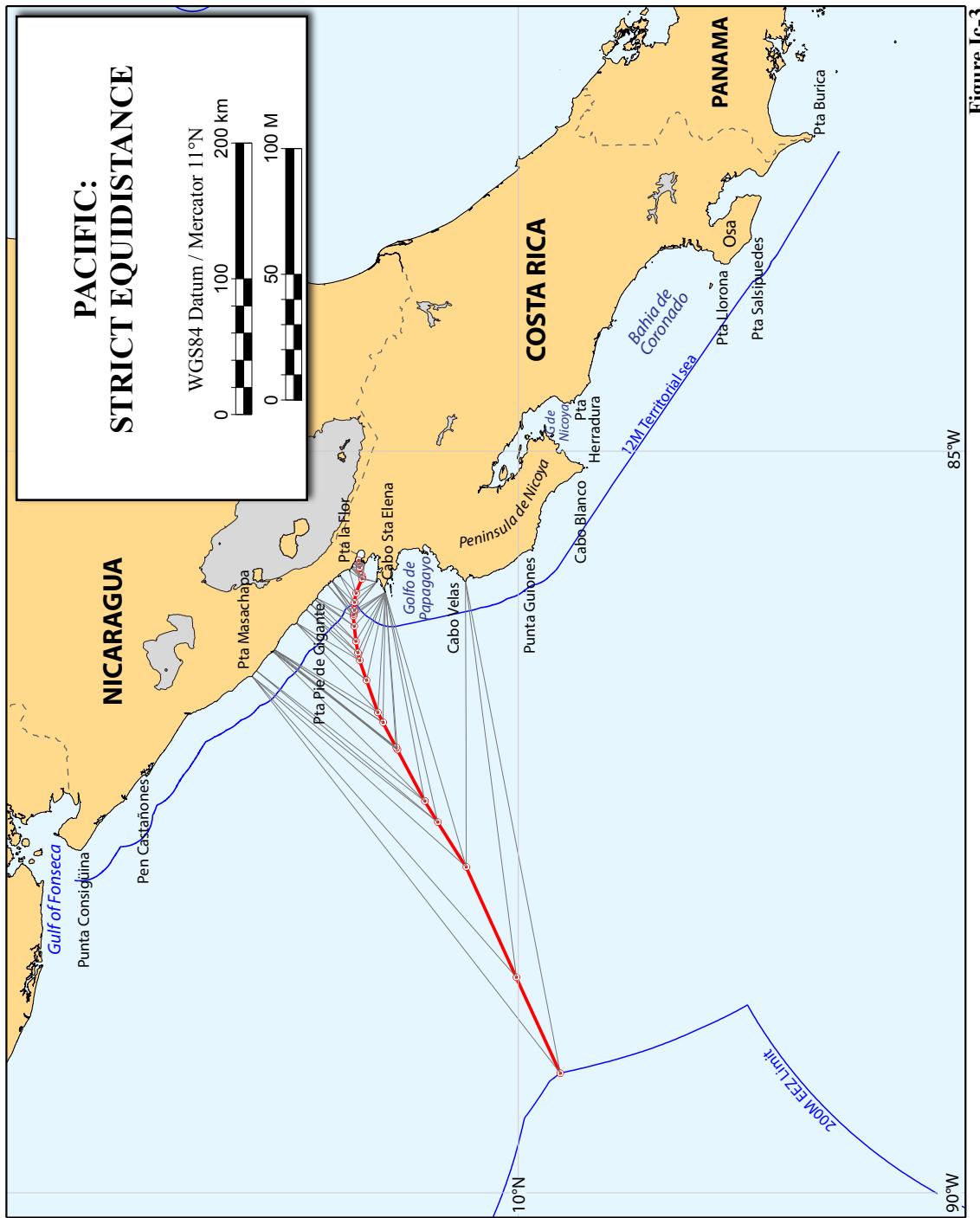


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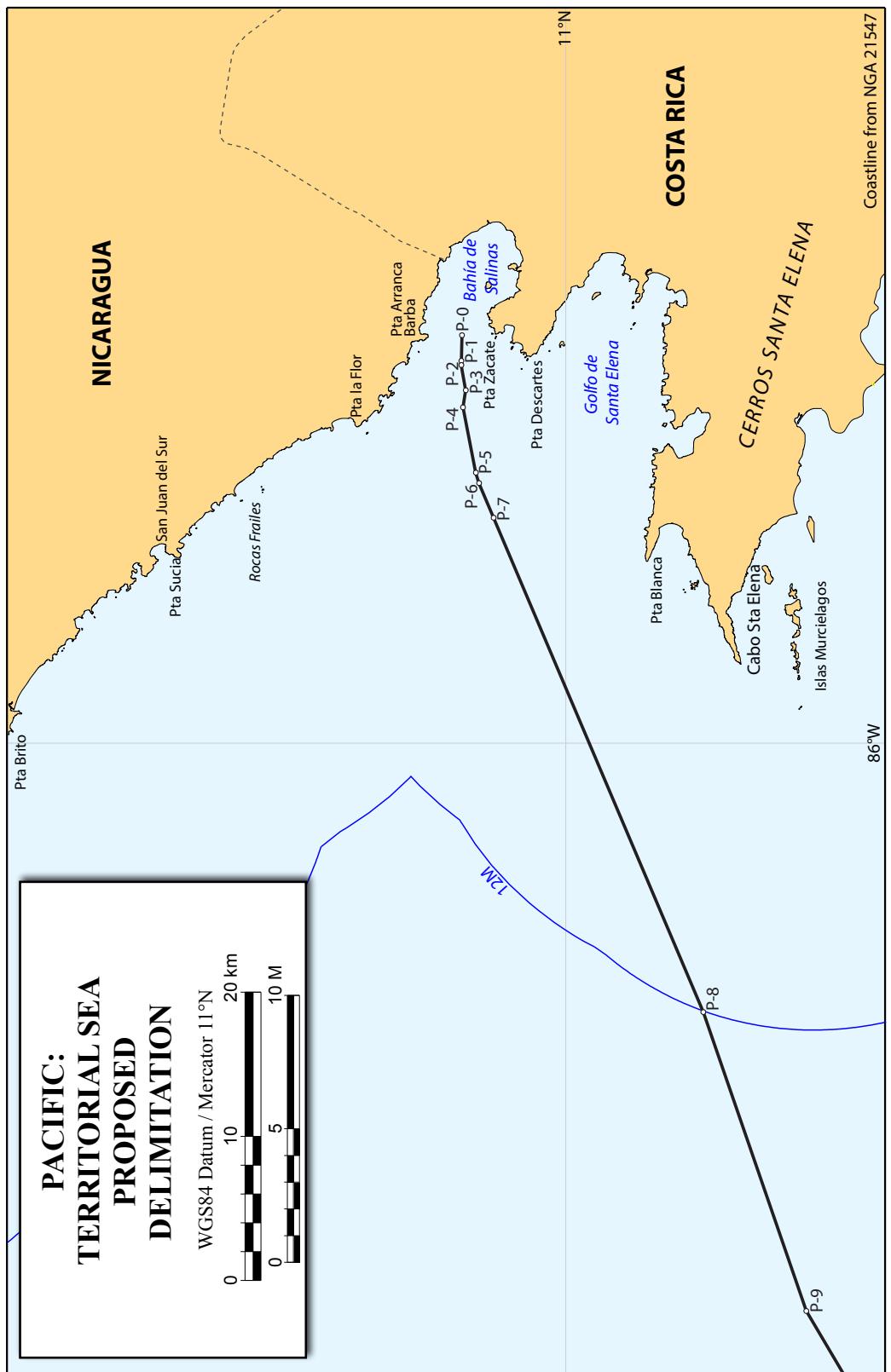


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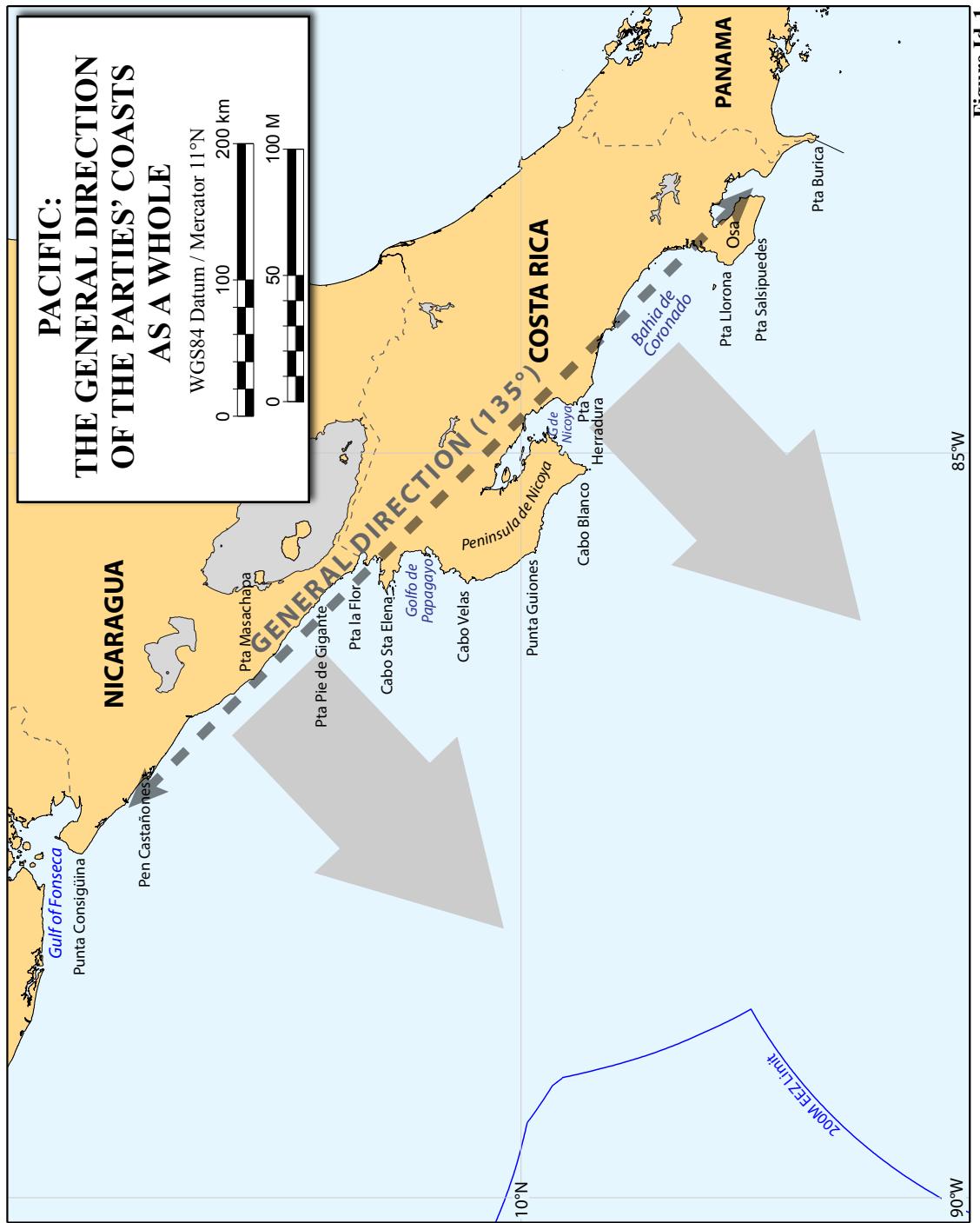
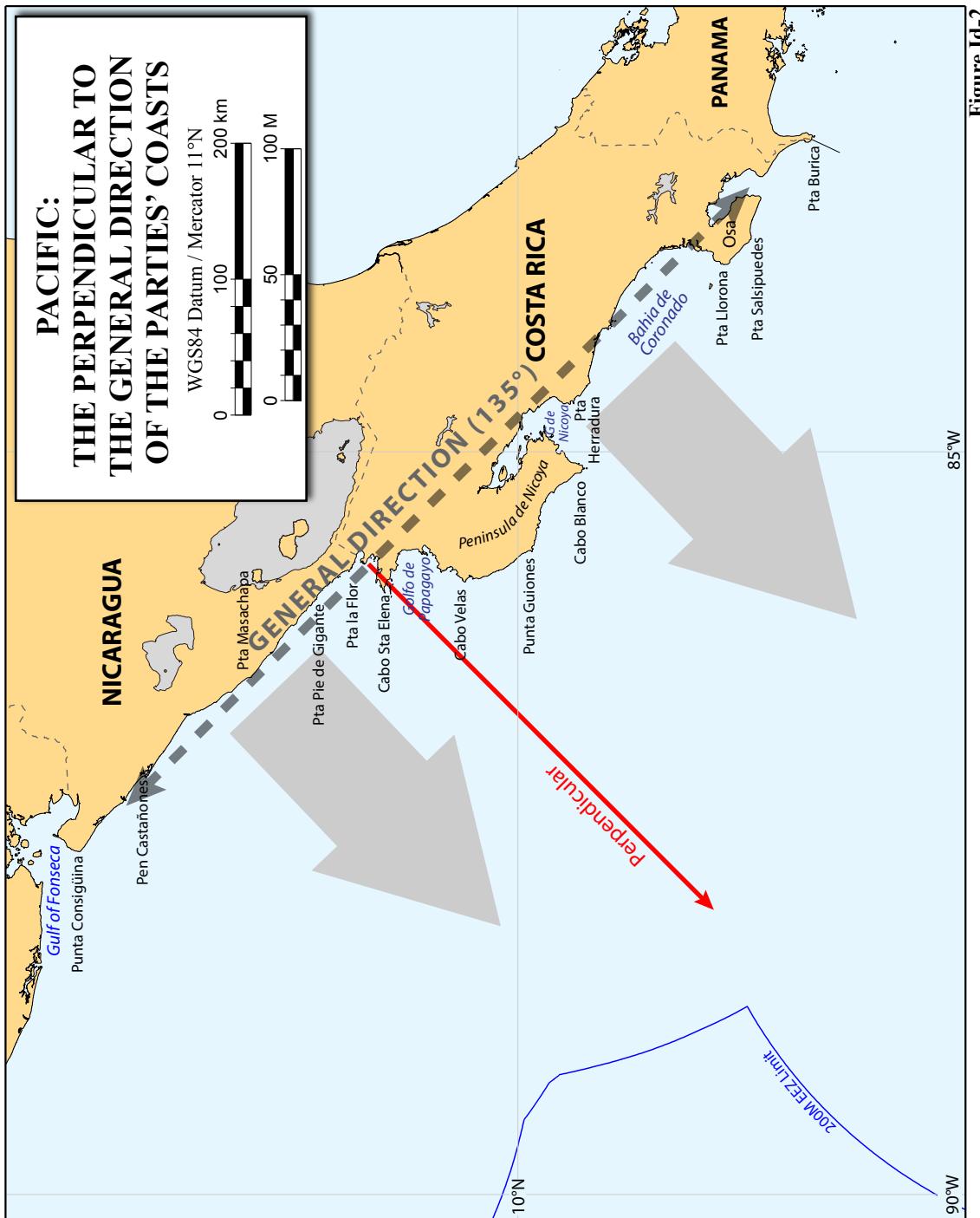


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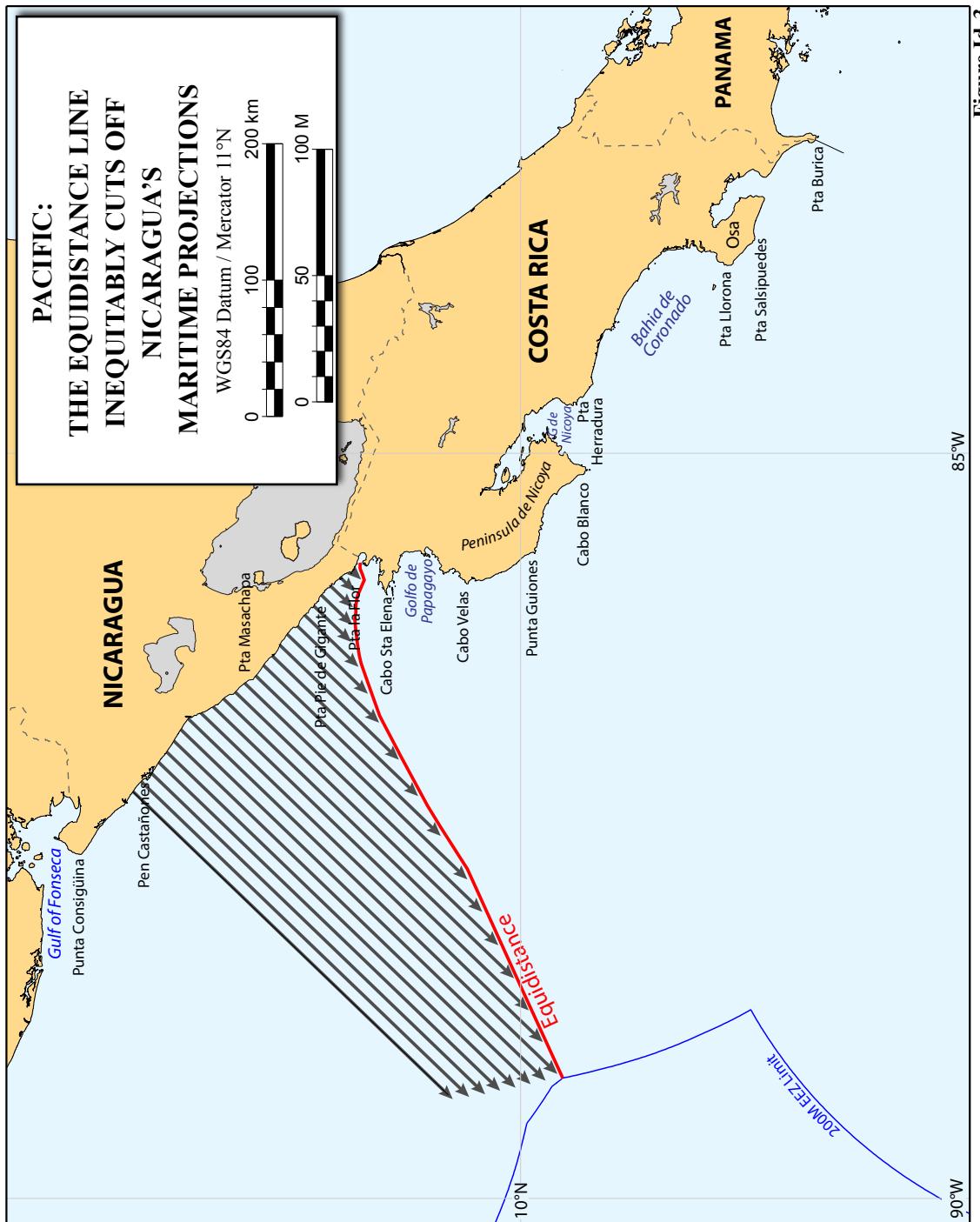


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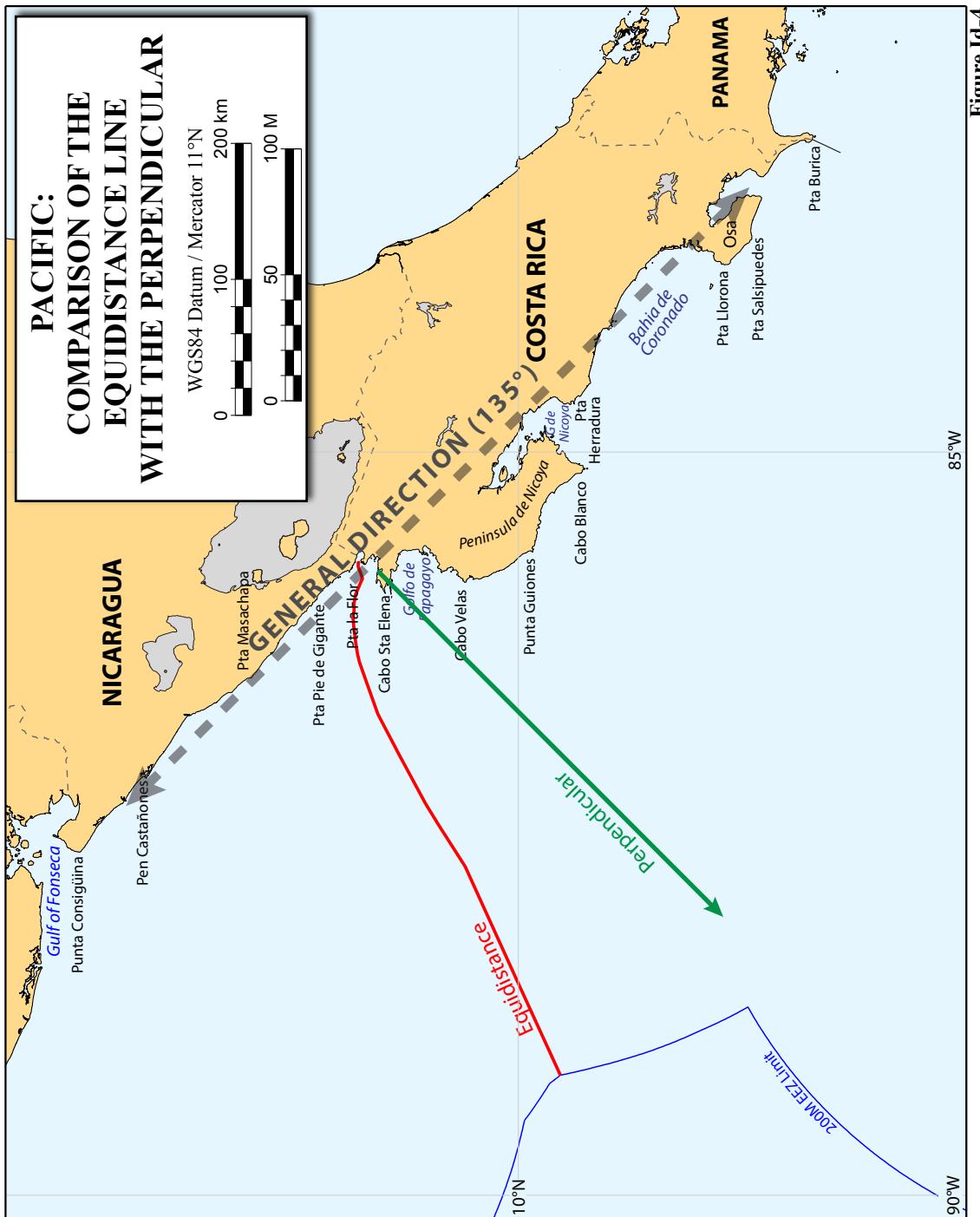


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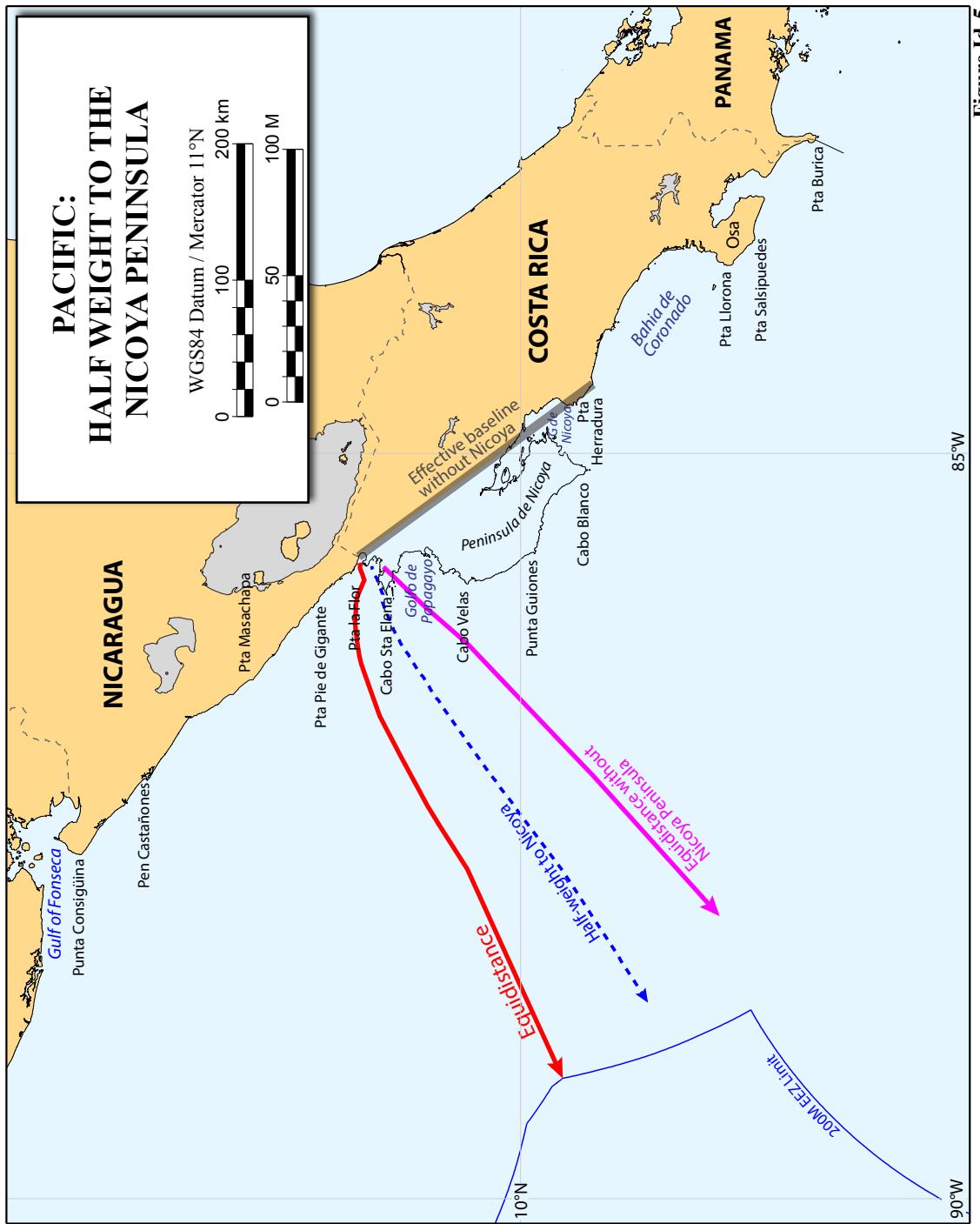
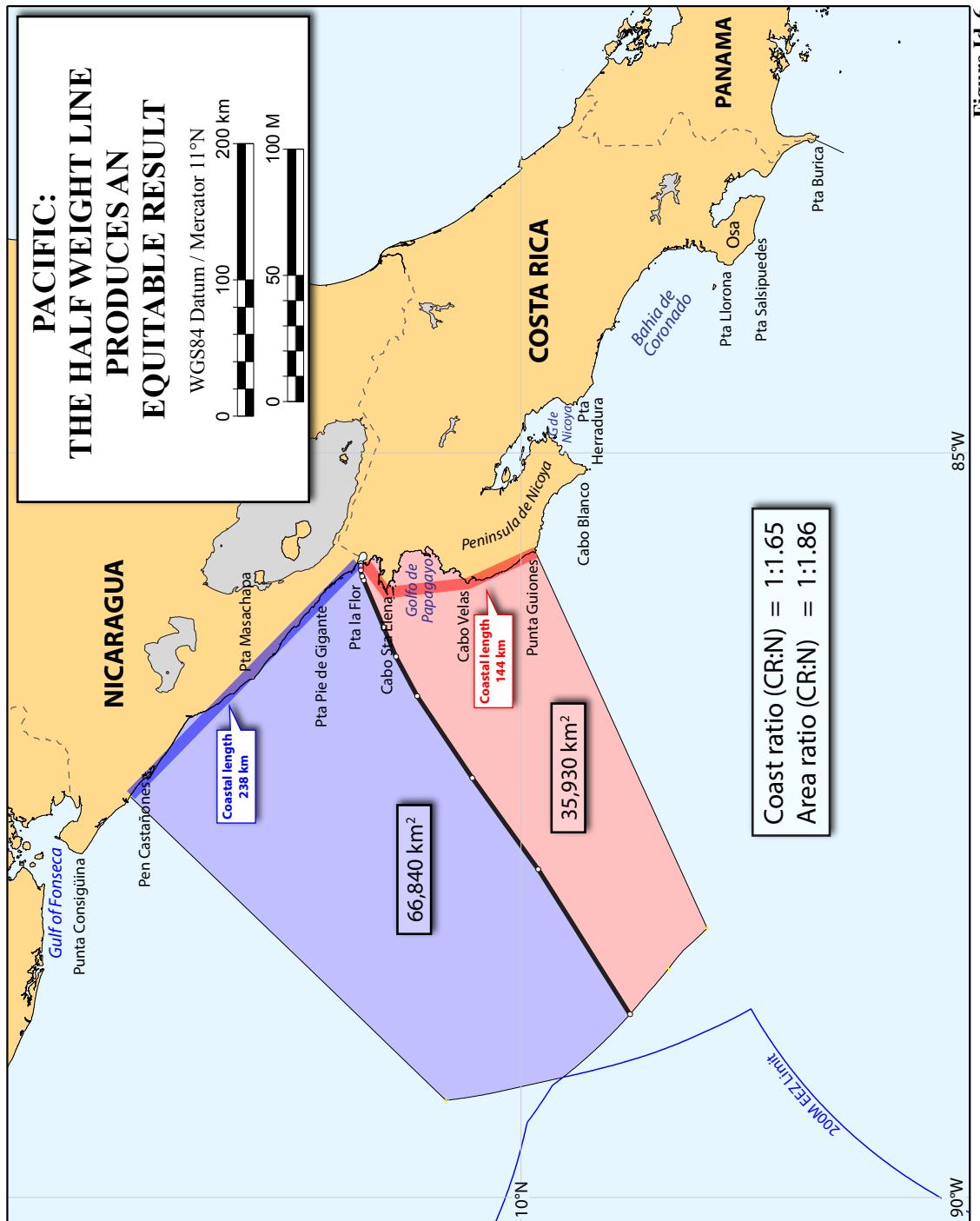


Figure 1d-5



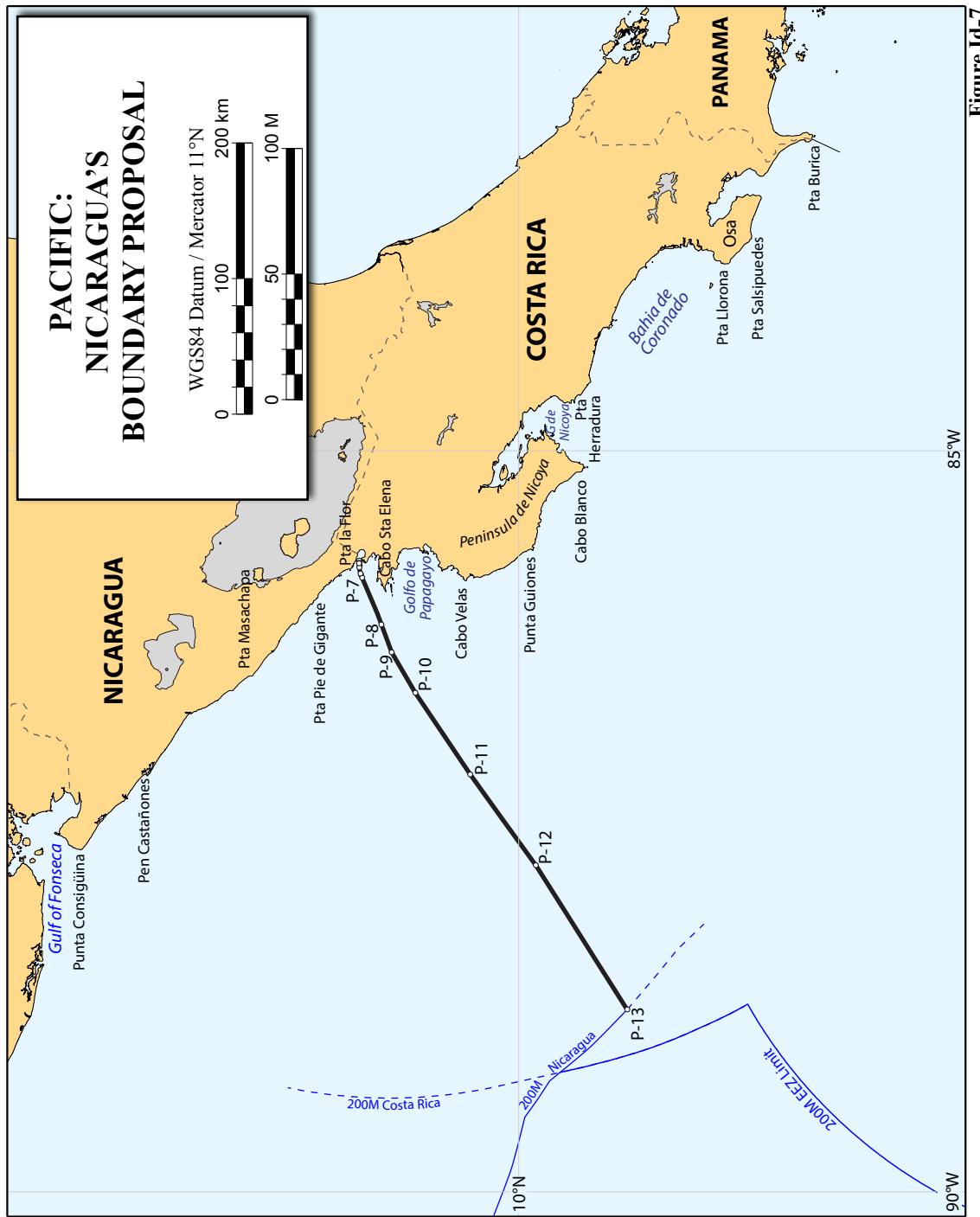


Figure Id-7

ANNEX 29

Figures of the Caribbean Sea

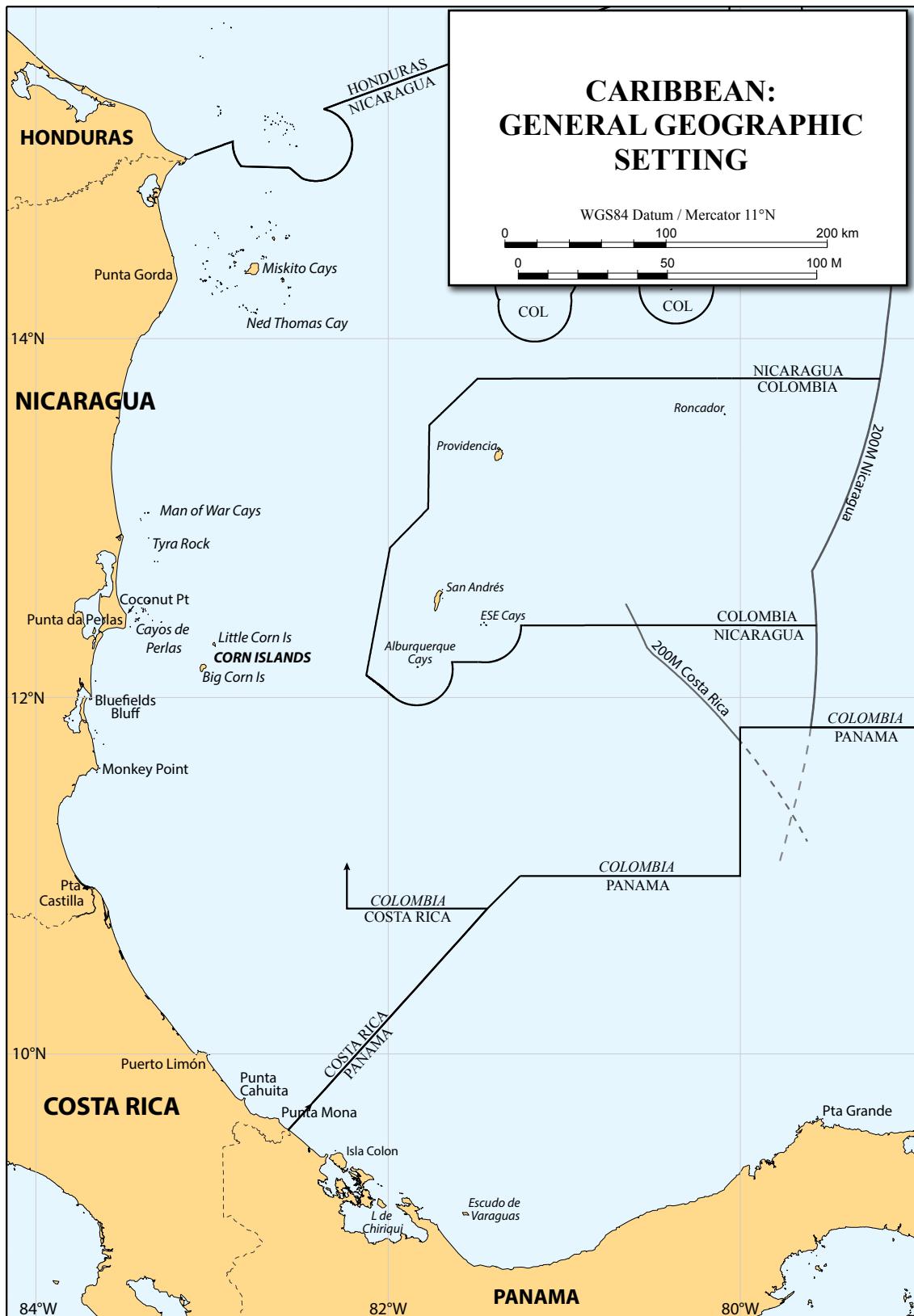
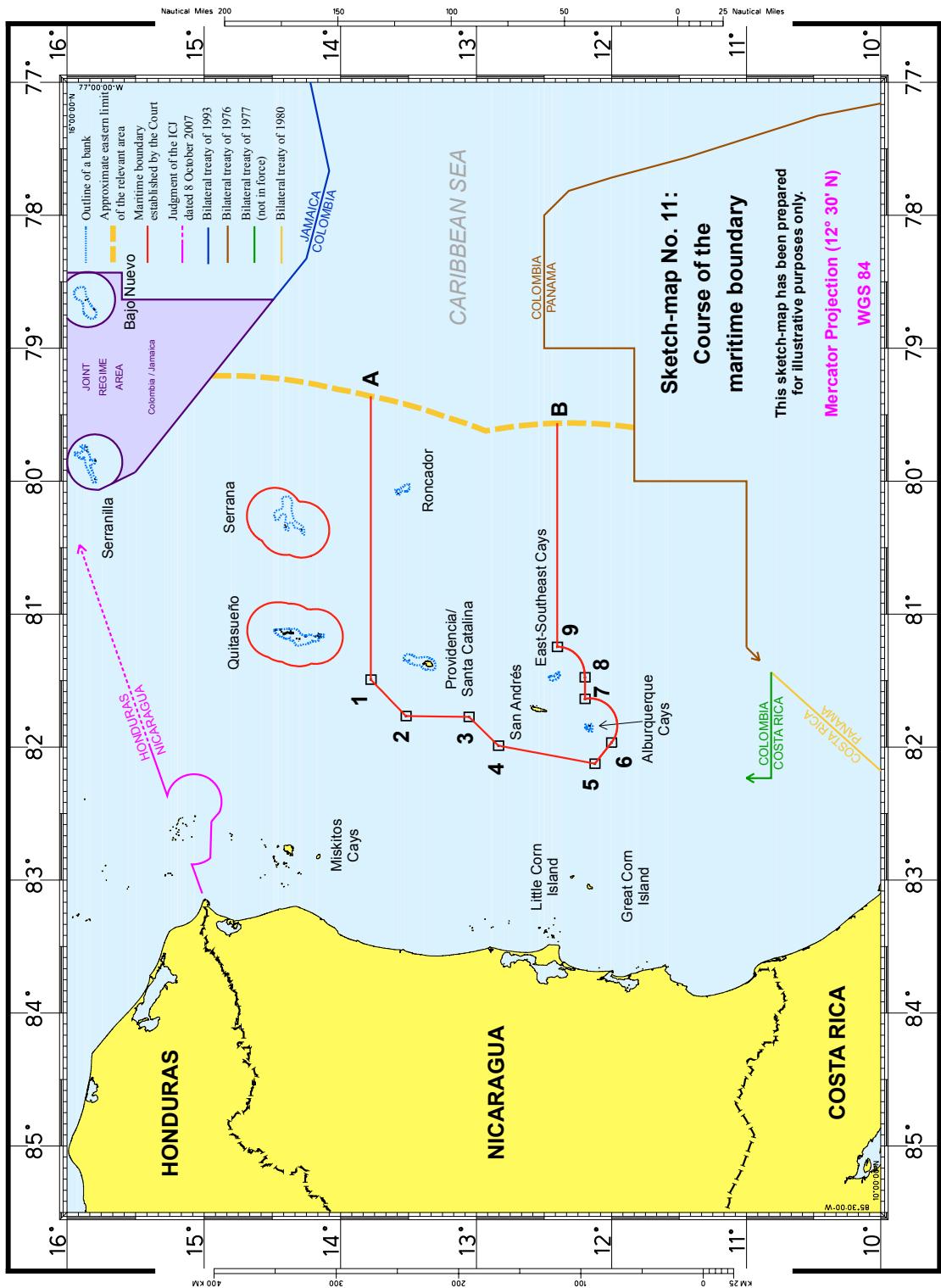


Figure IIa-1



Figure IIa-2





Sketch Map 11 from the Court's Judgment in *Nicaragua/Colombia* Figure IIa-4

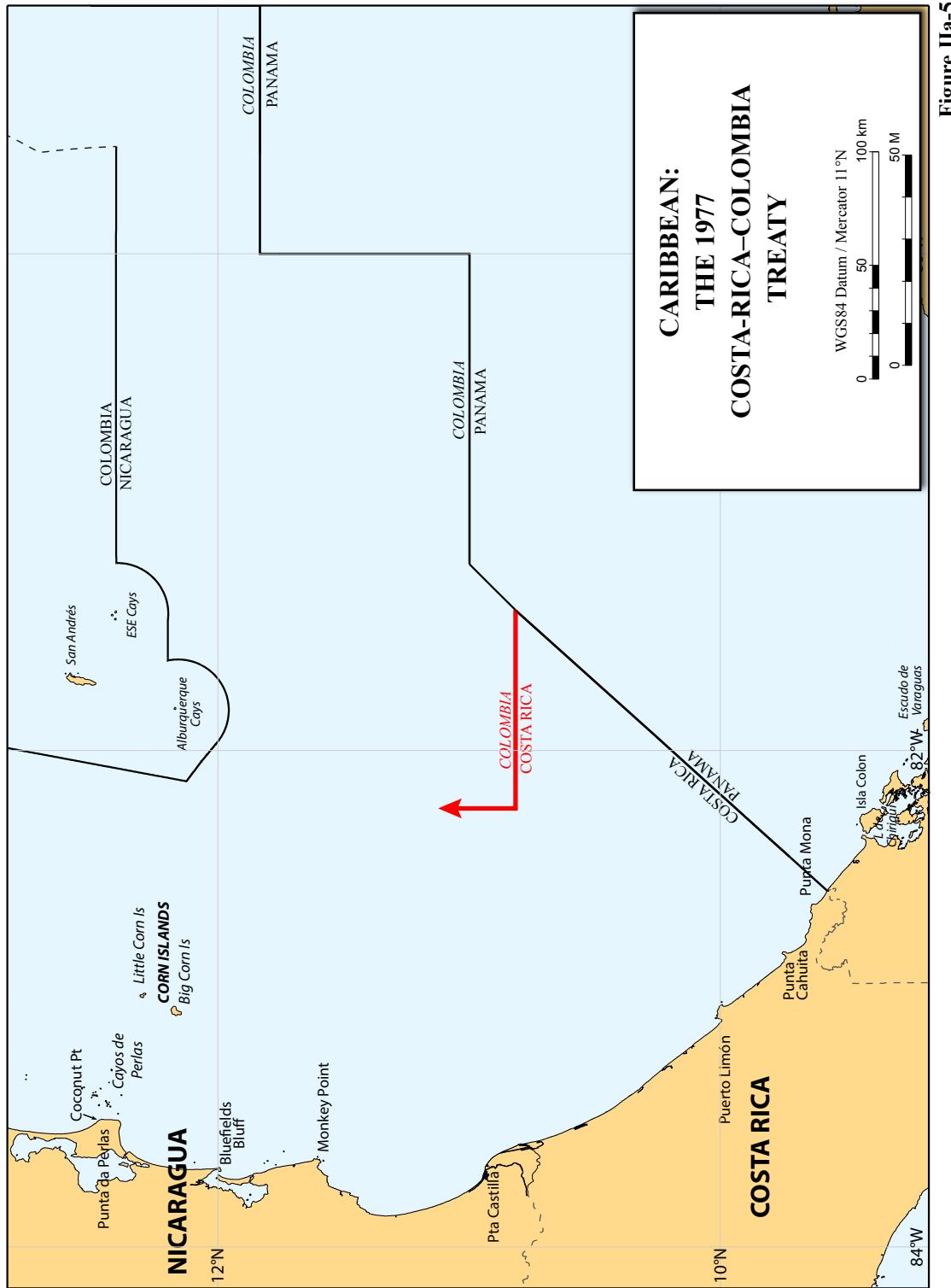
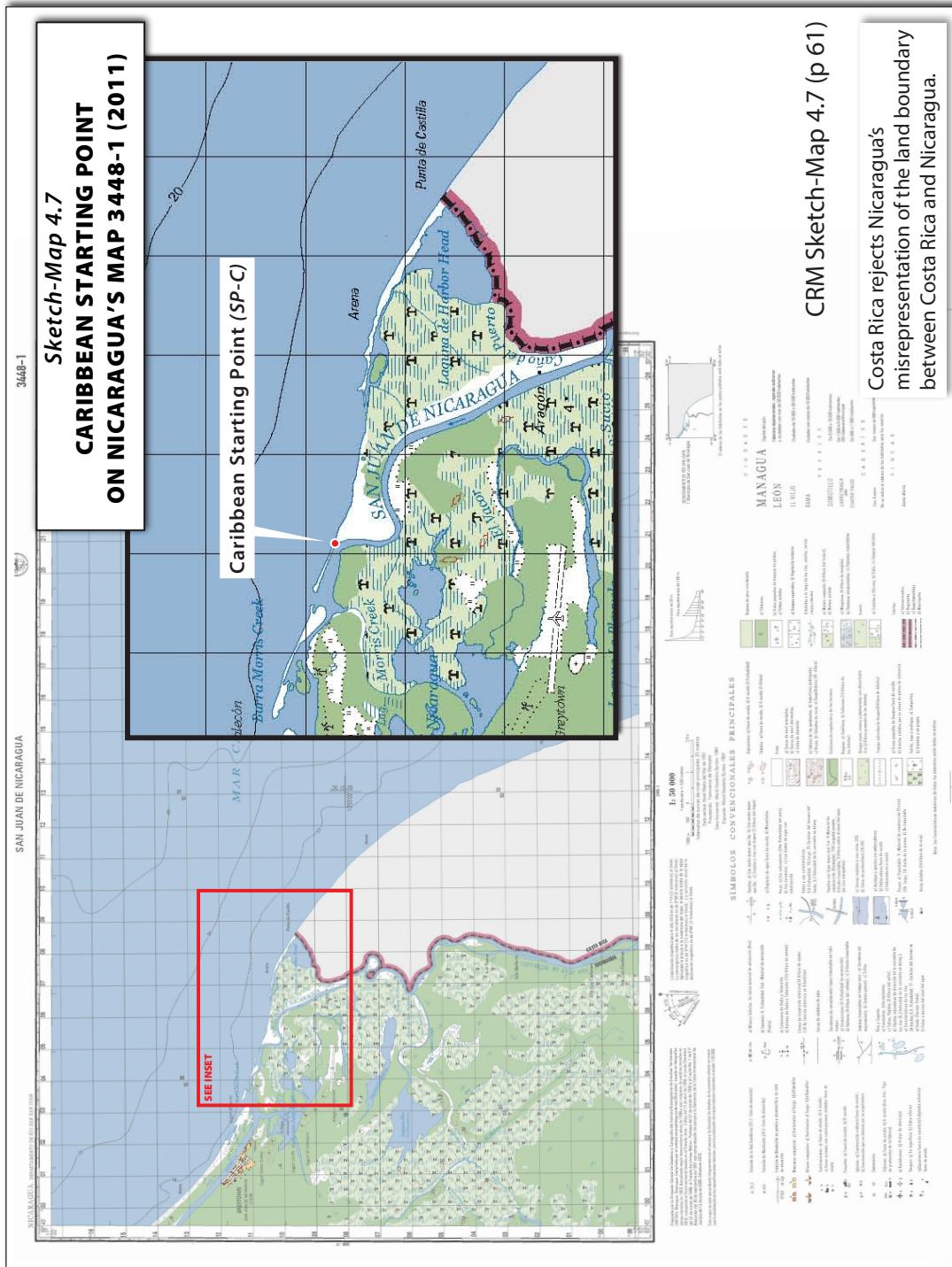
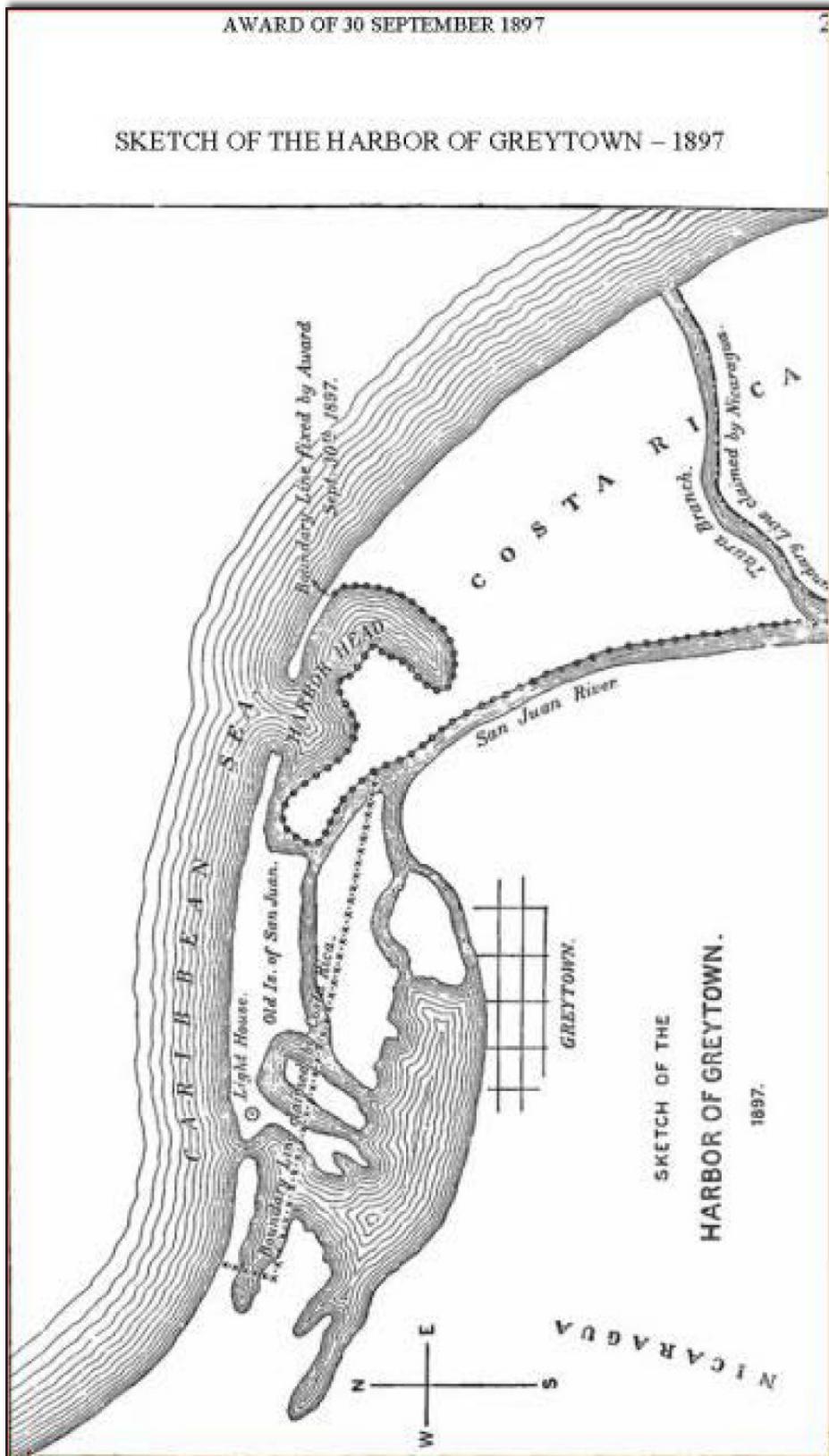


Figure IIa-5



Sketch Map from the 1897 Alexander Award



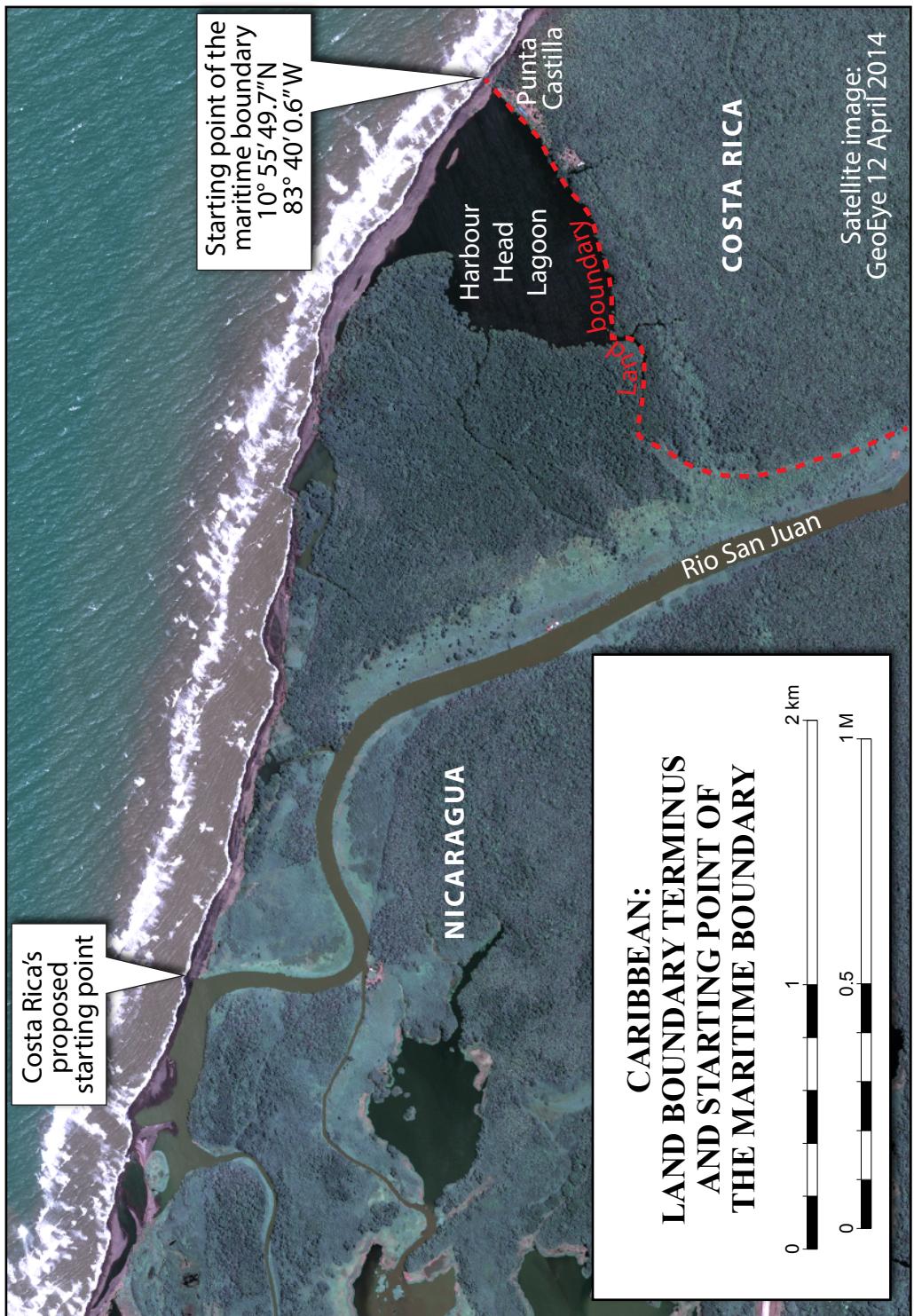


Figure IIb-3

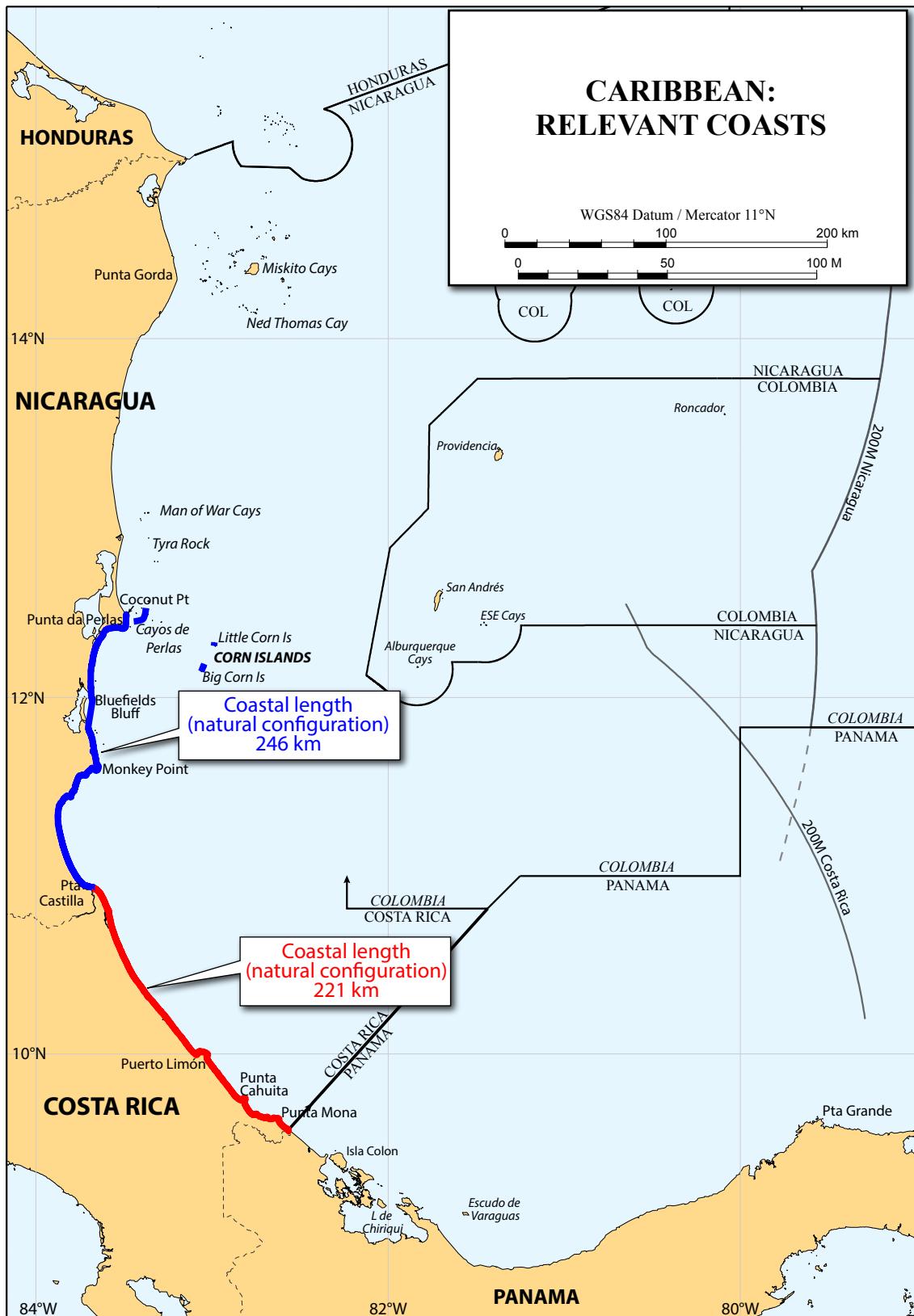


Figure IIc-1

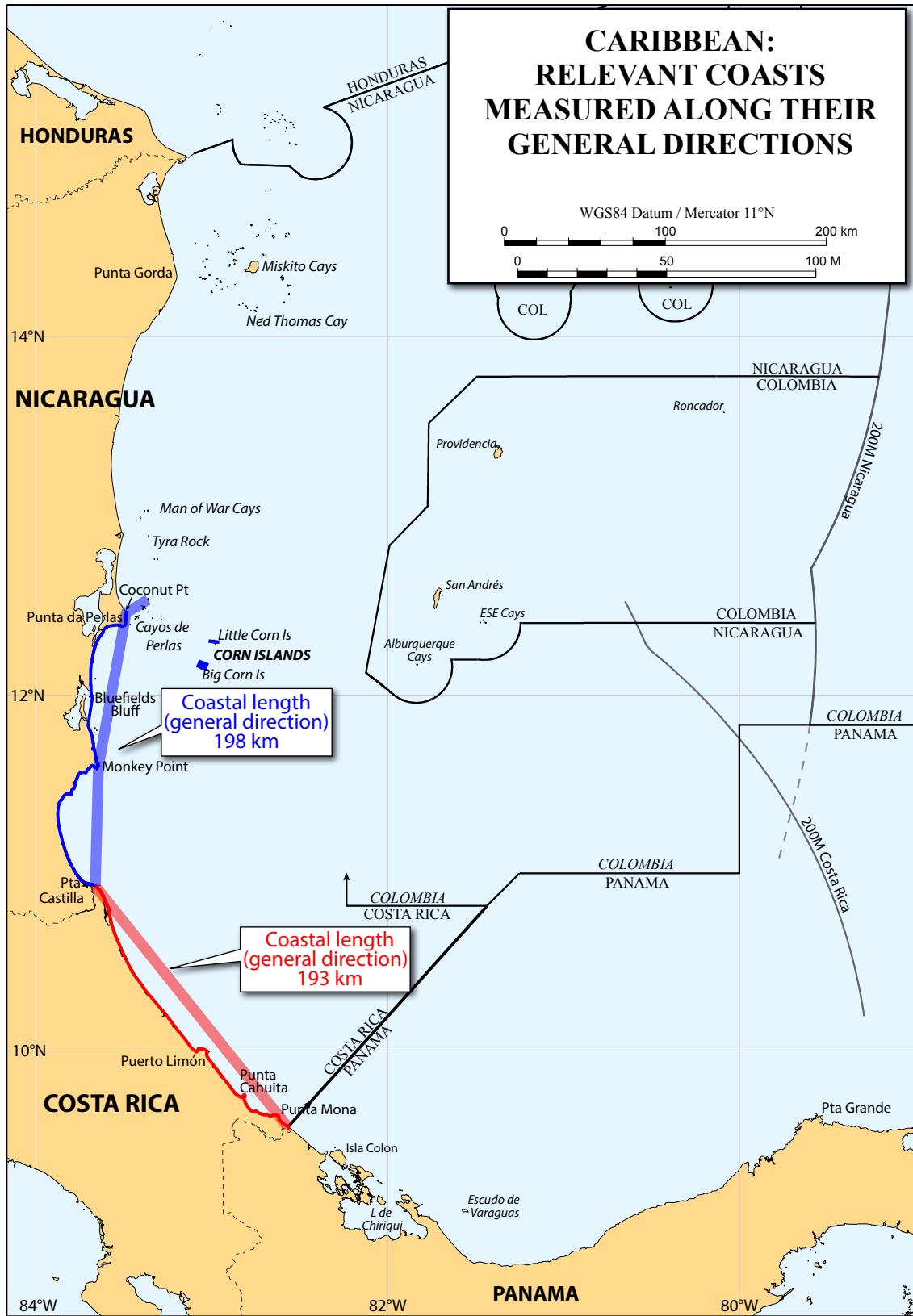


Figure IIc-2

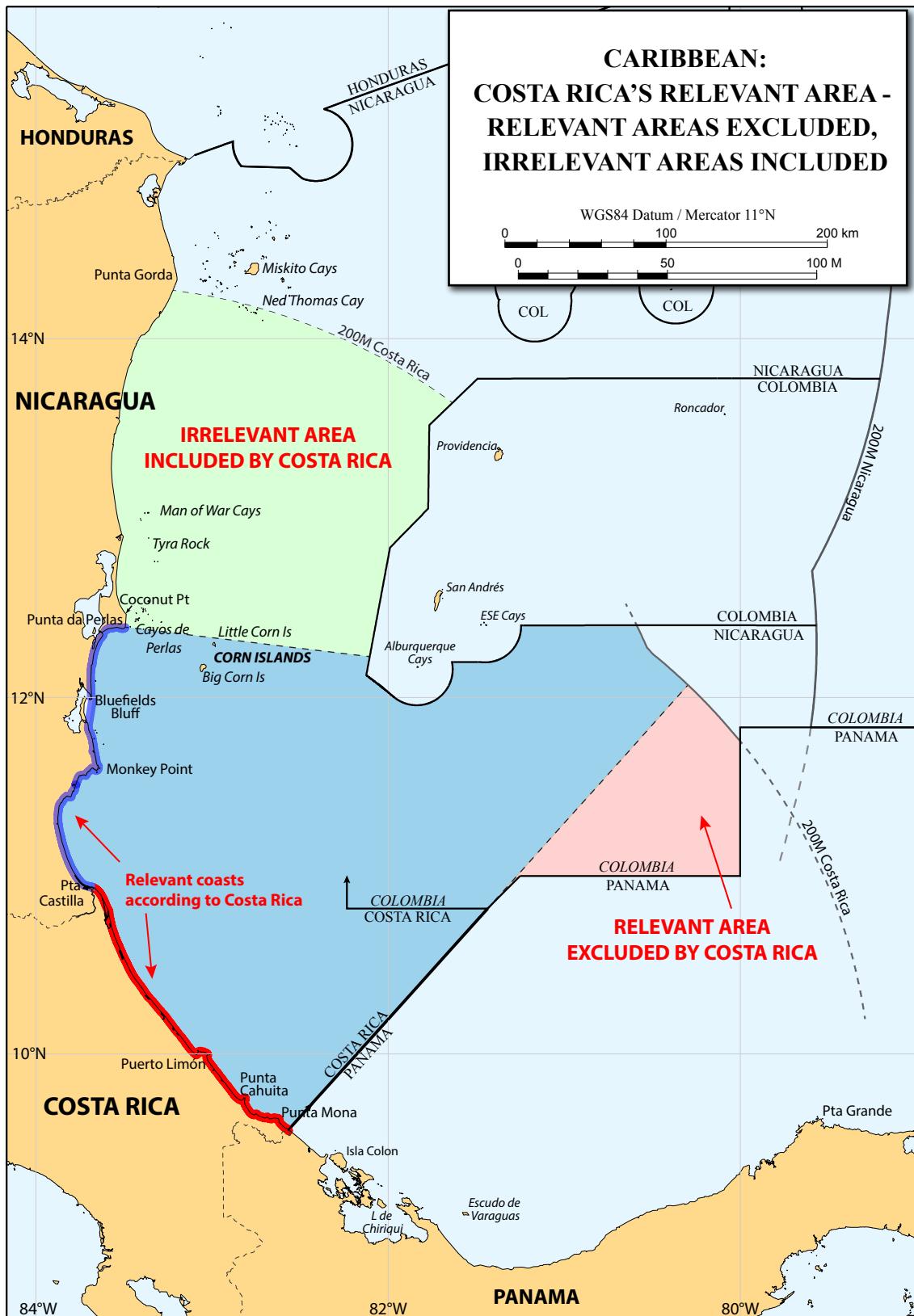


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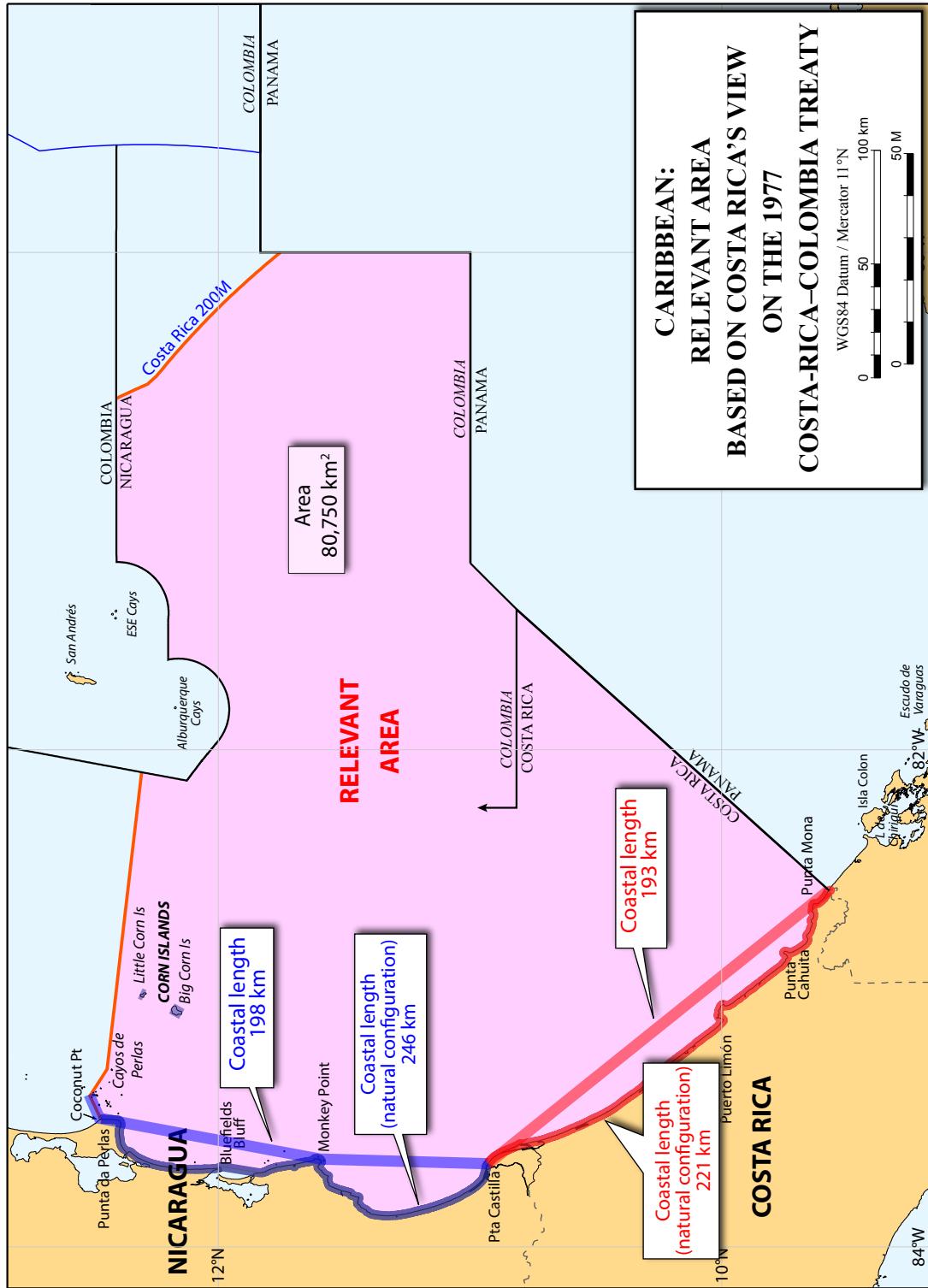


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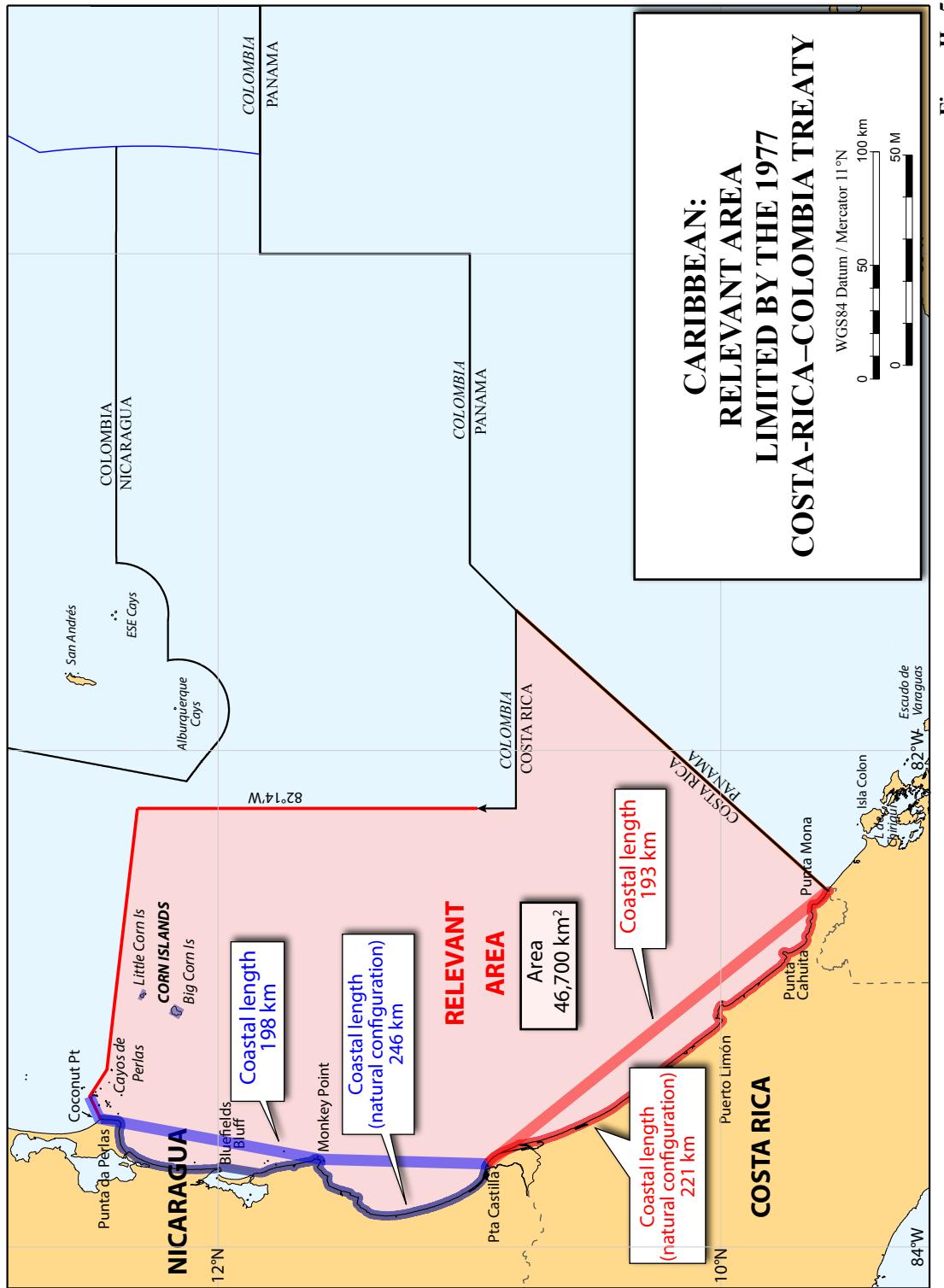


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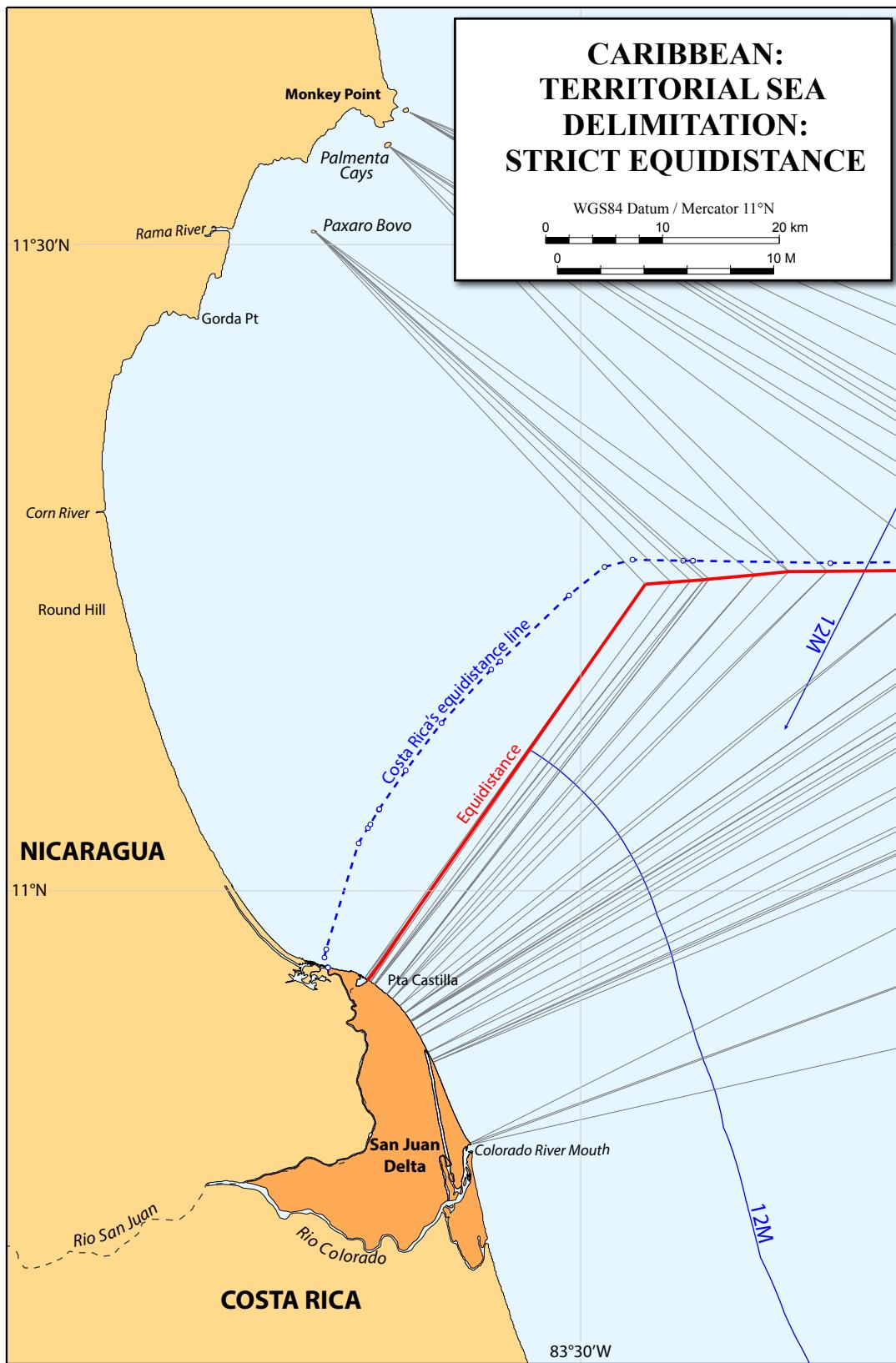


Figure IIId-1

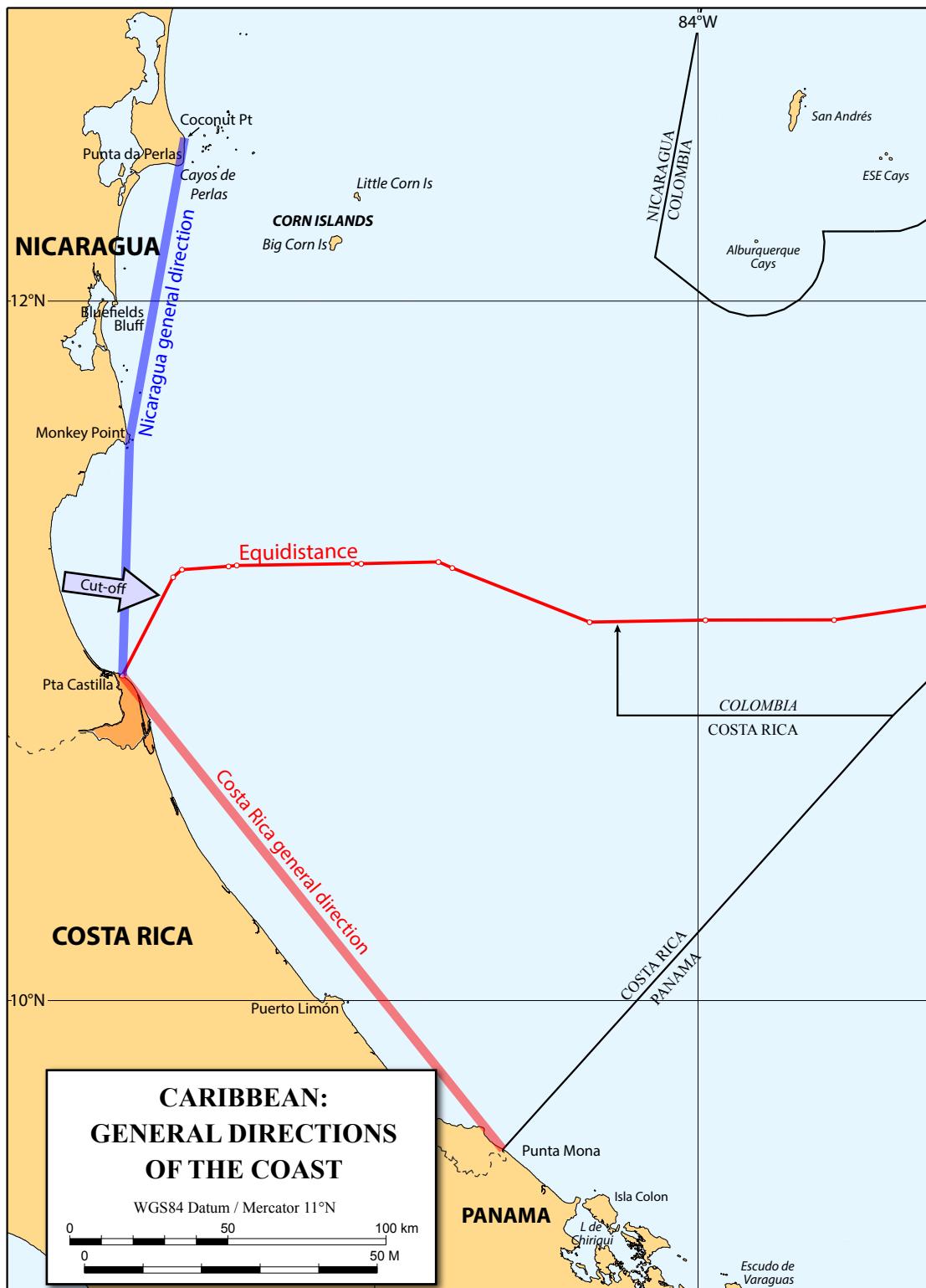


Figure IIId-2

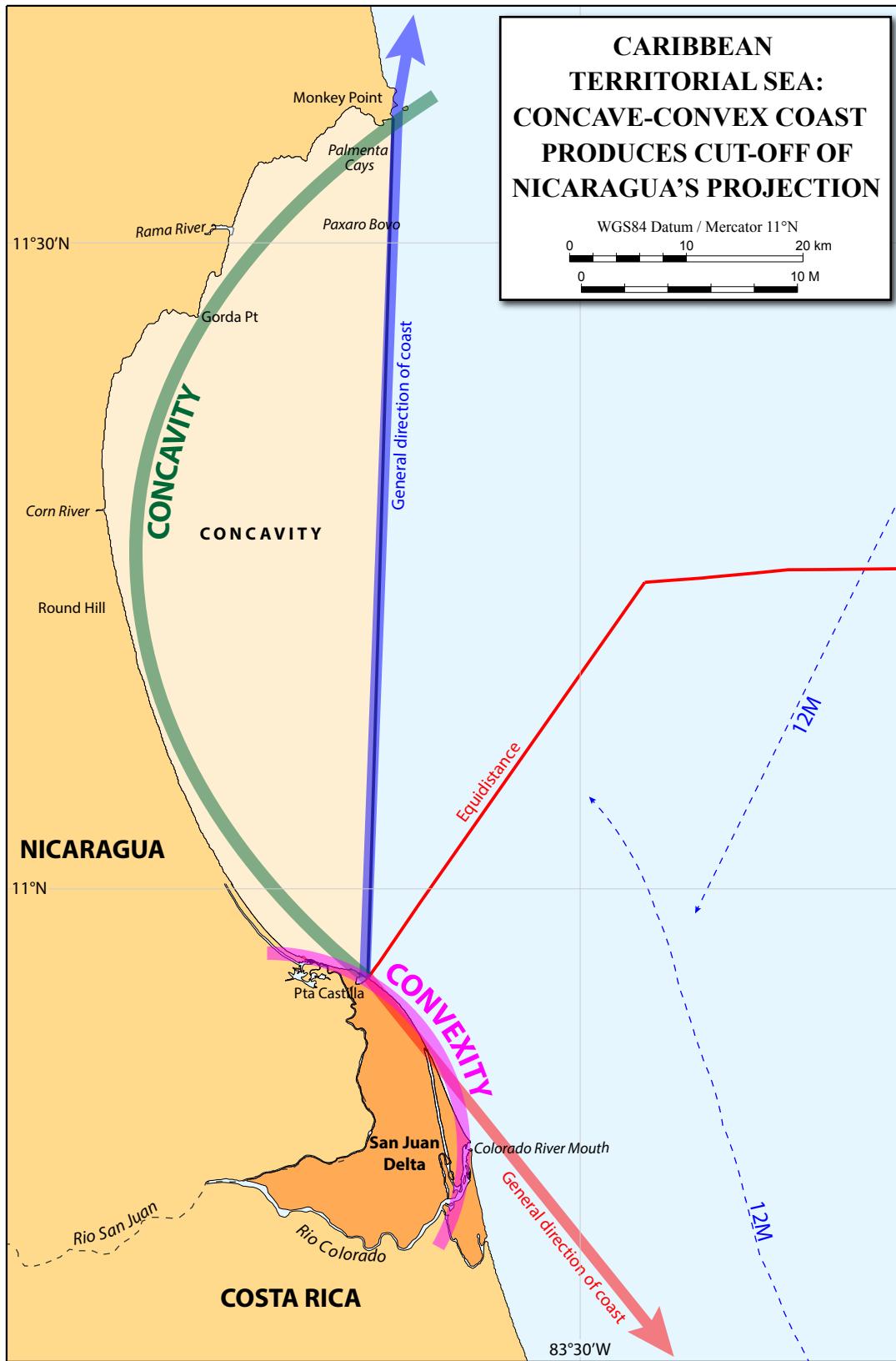


Figure IIId-3

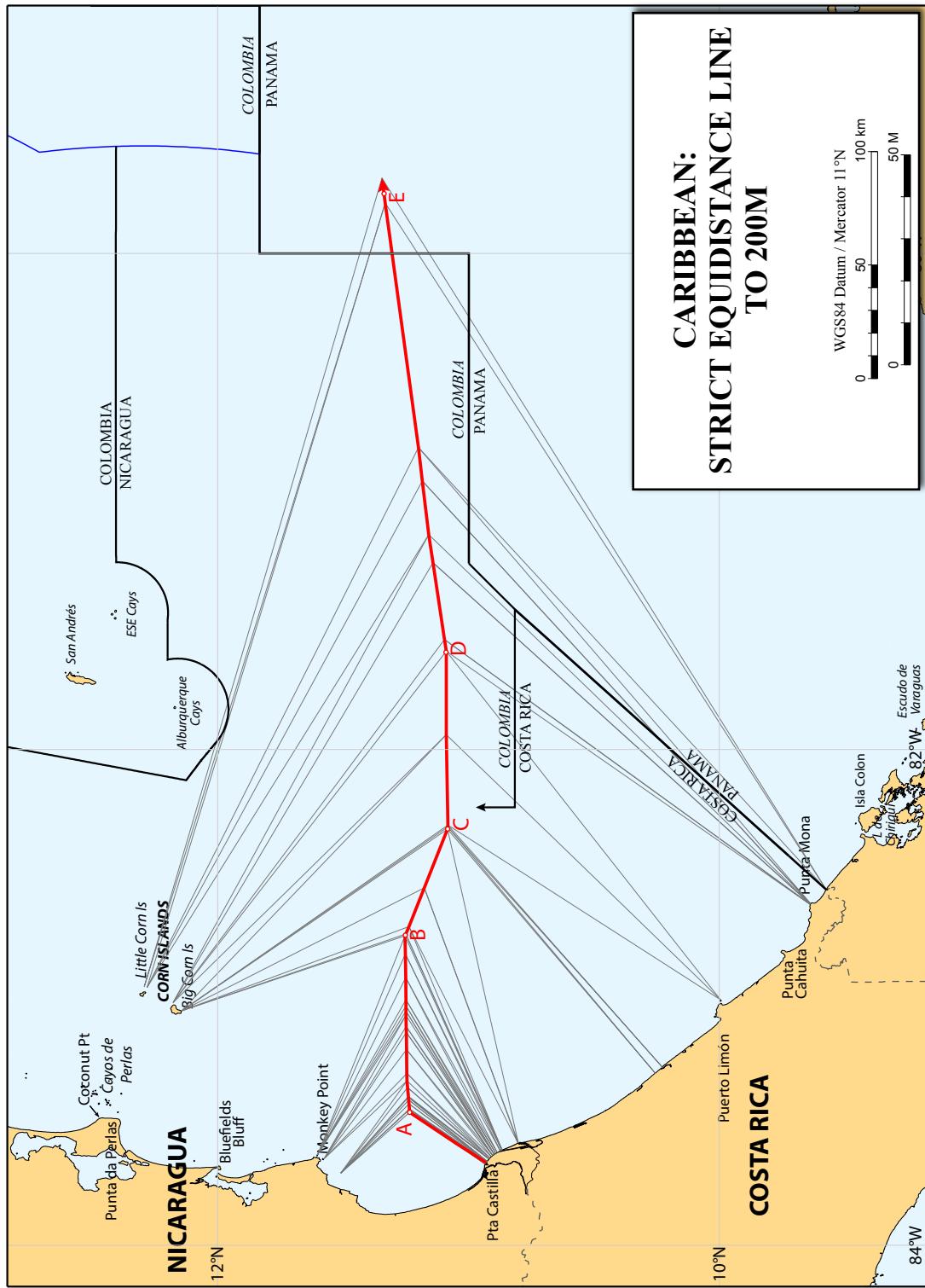


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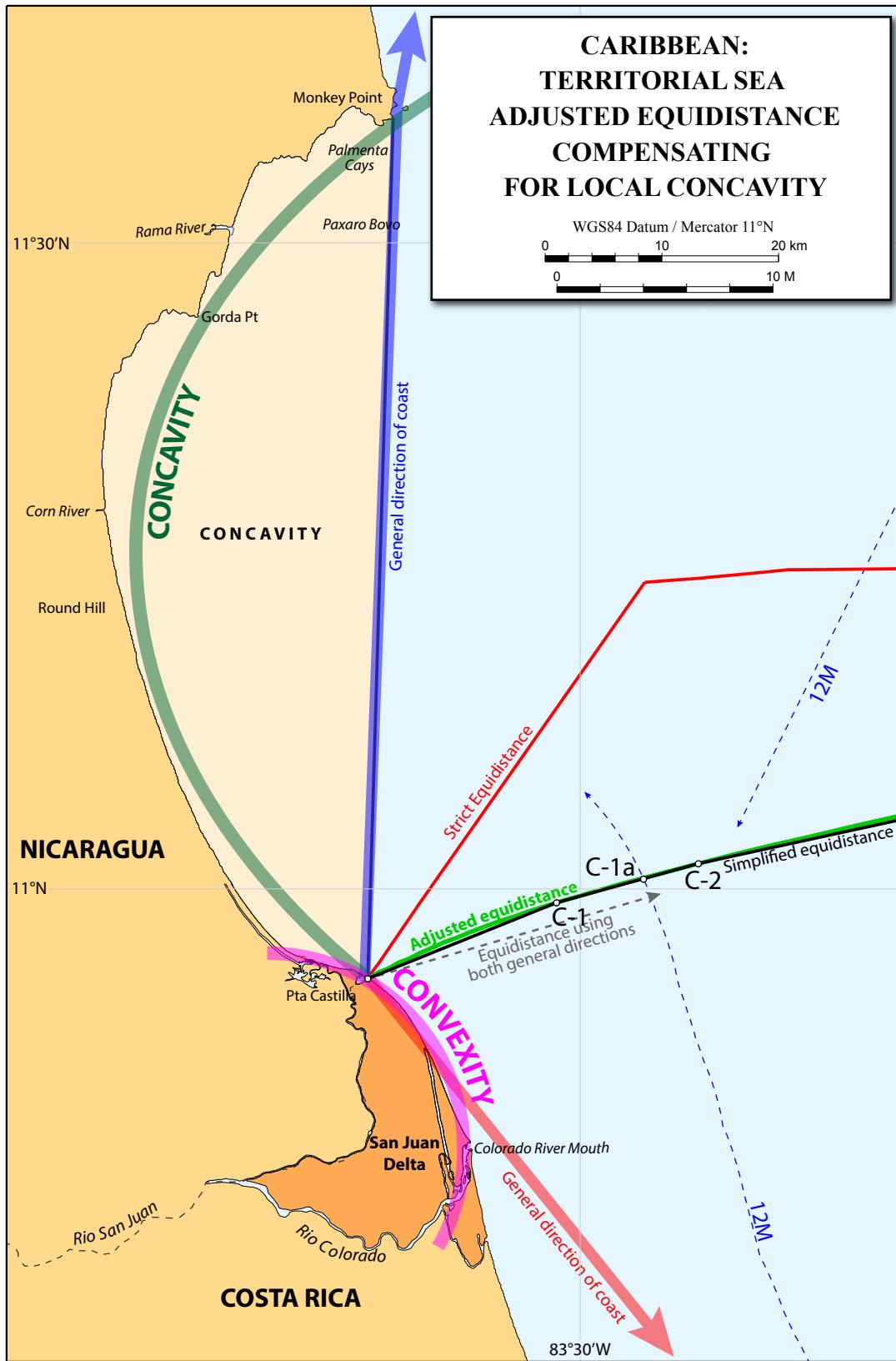
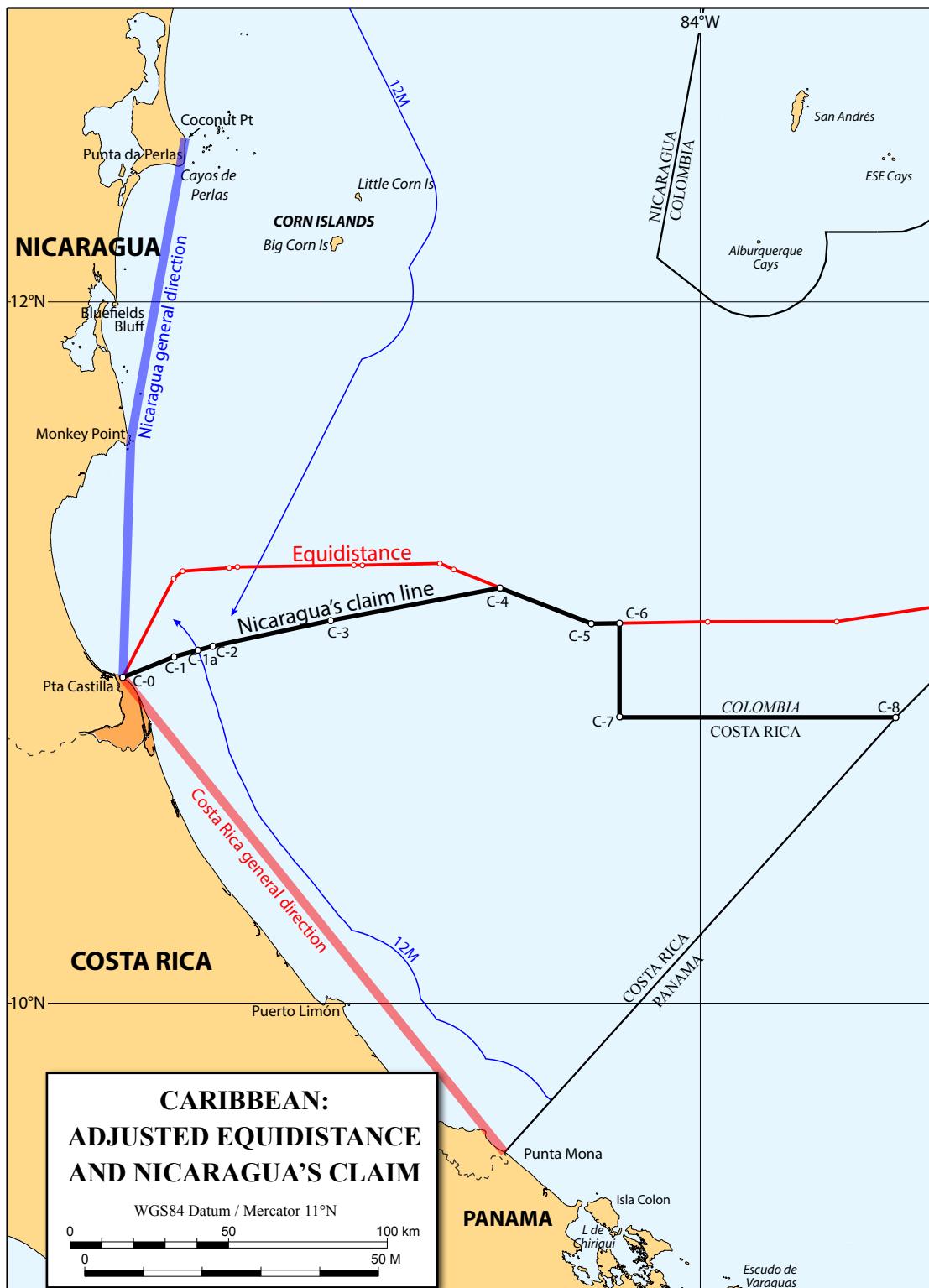


Figure IIId-5



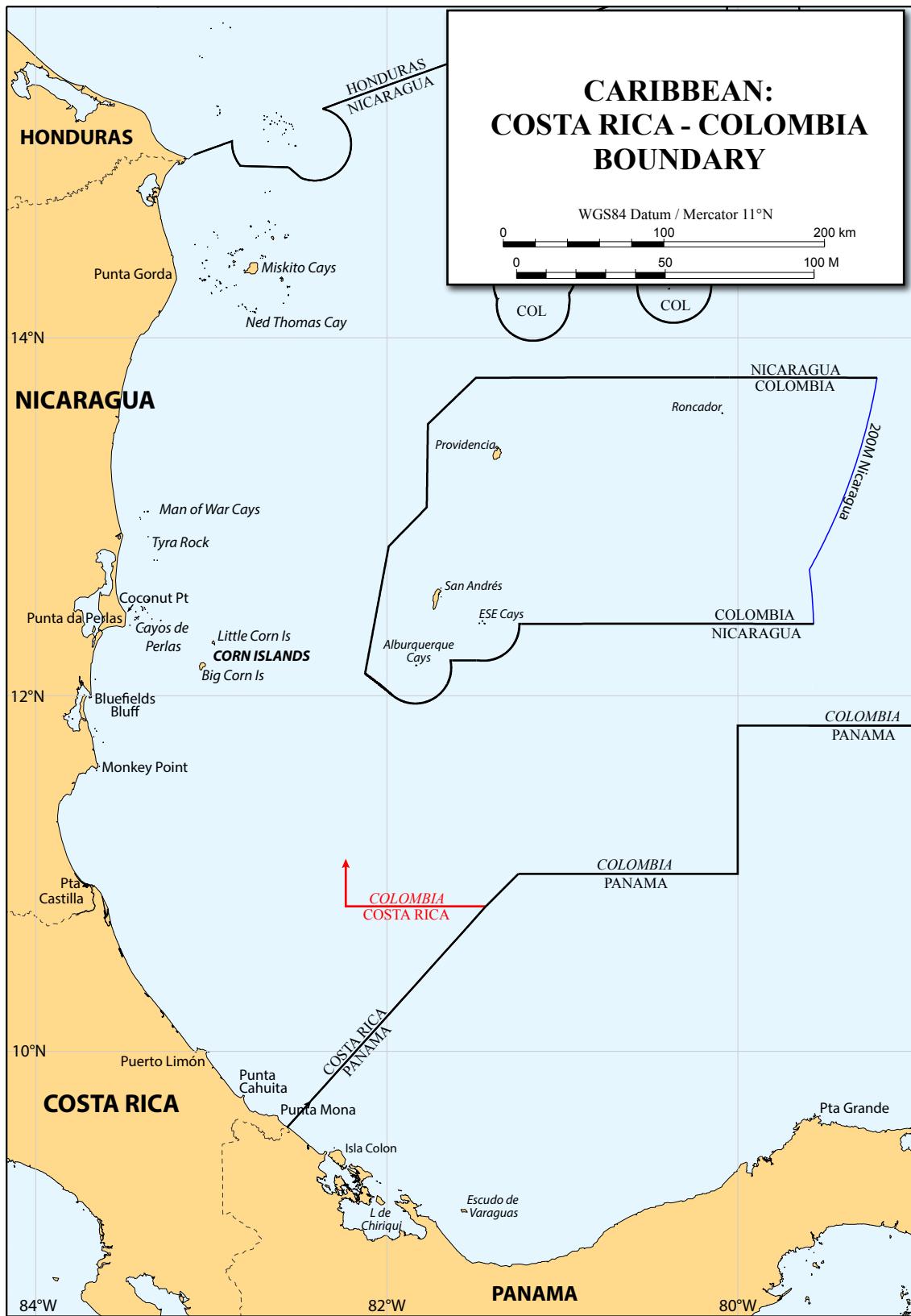


Figure IIe-1

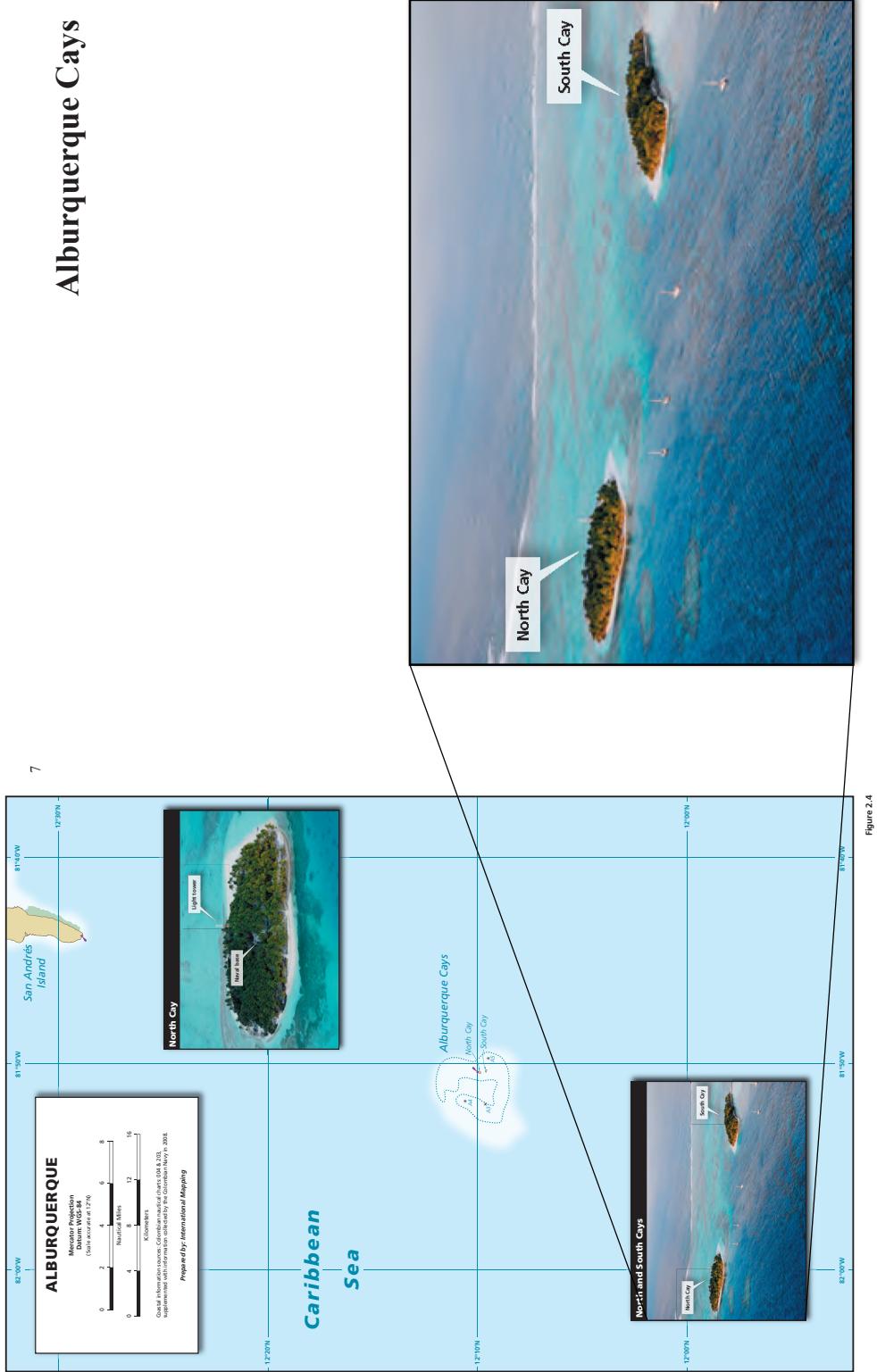


Figure from Nicaragua v Colombia
Colombia Counter-Memorial Figure 2.4

Figure IIe-2

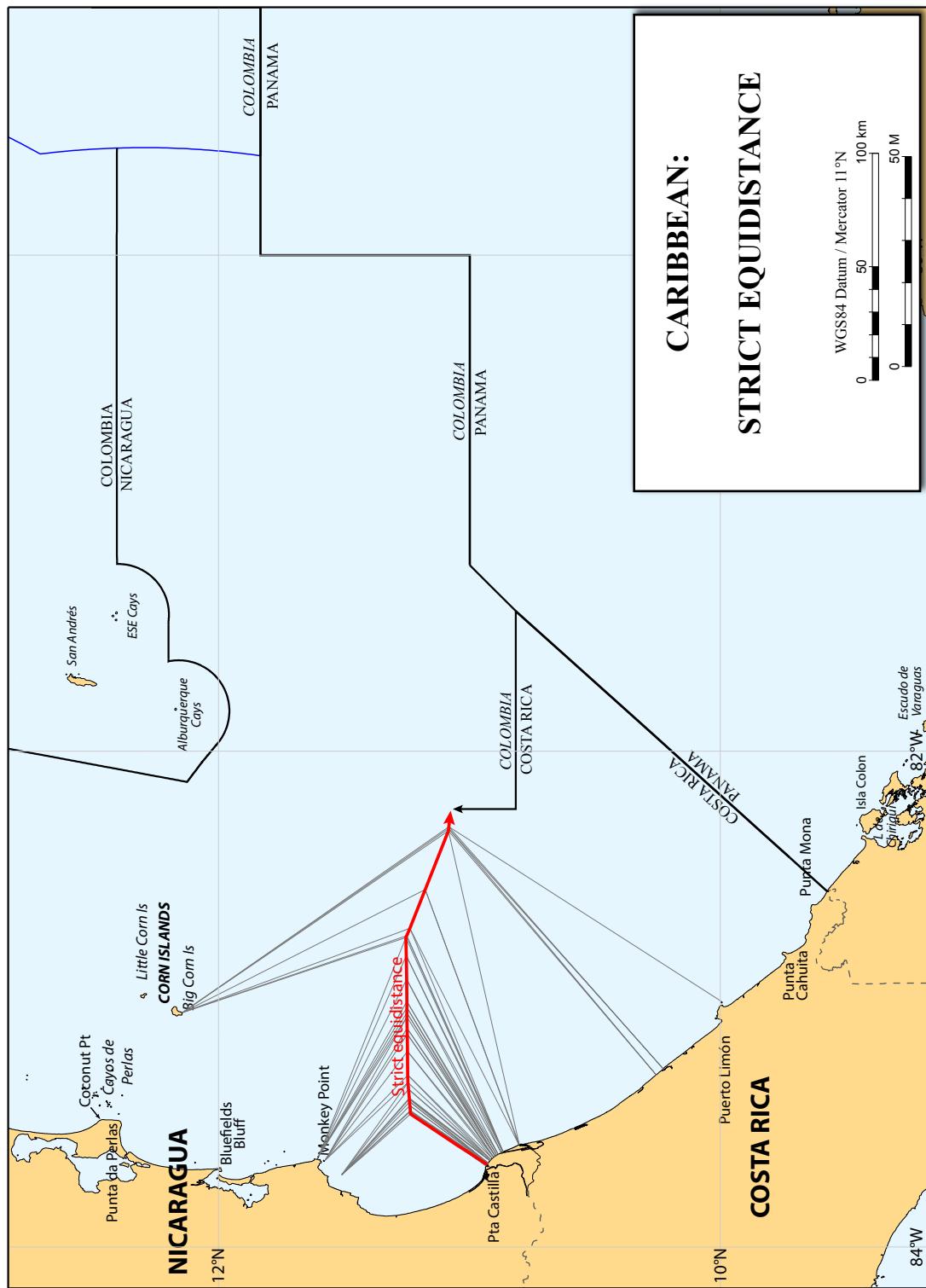


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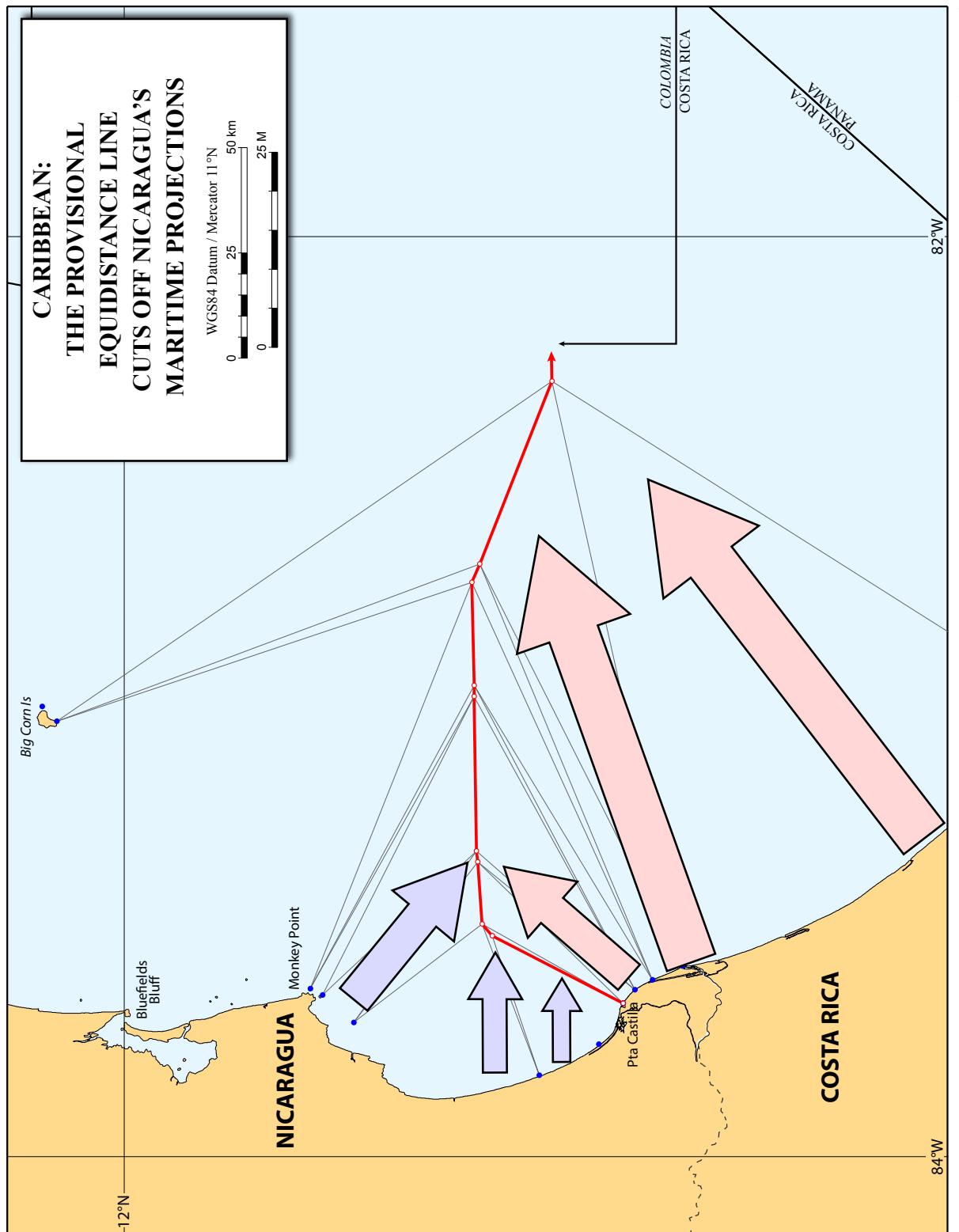


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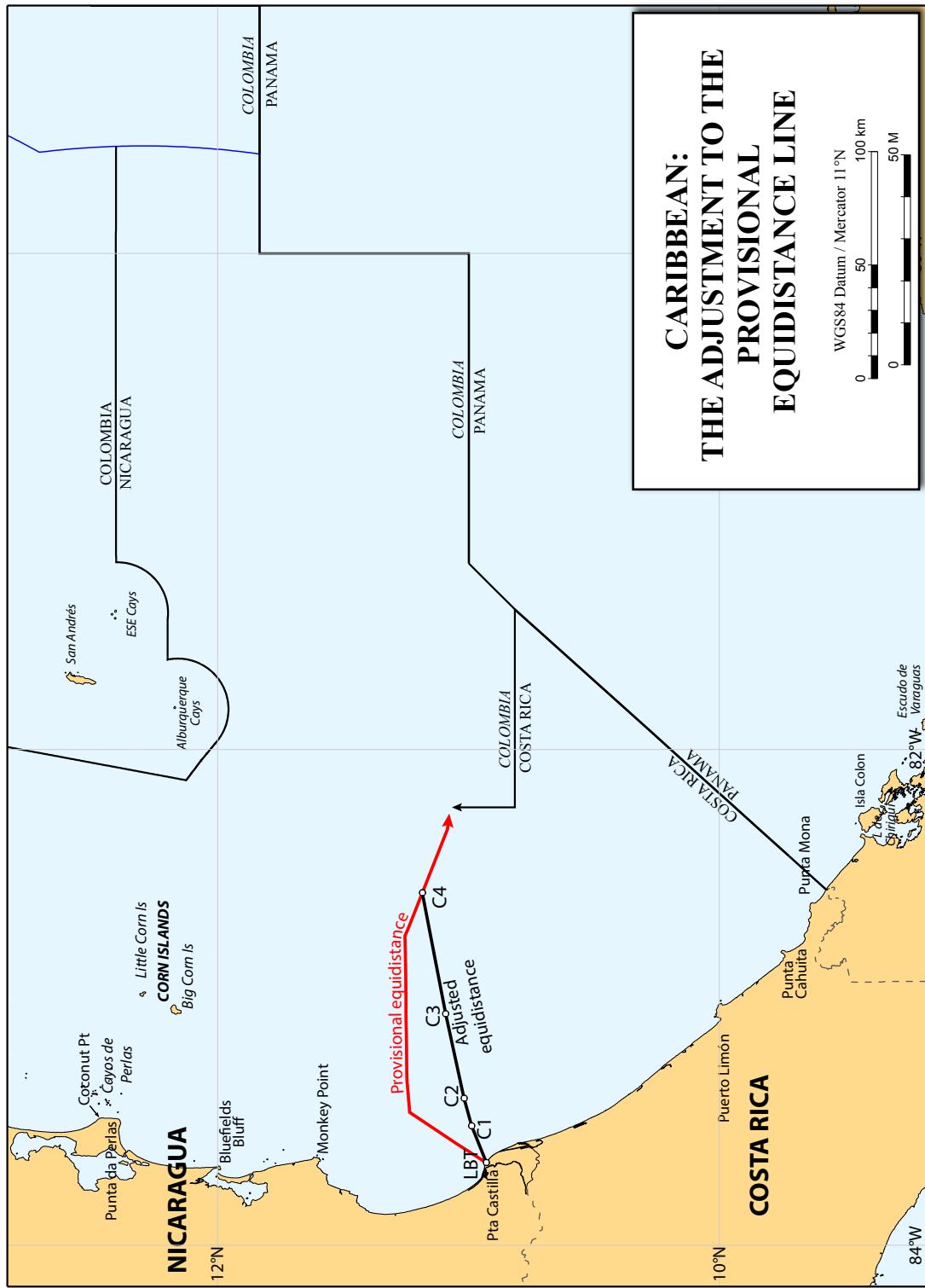


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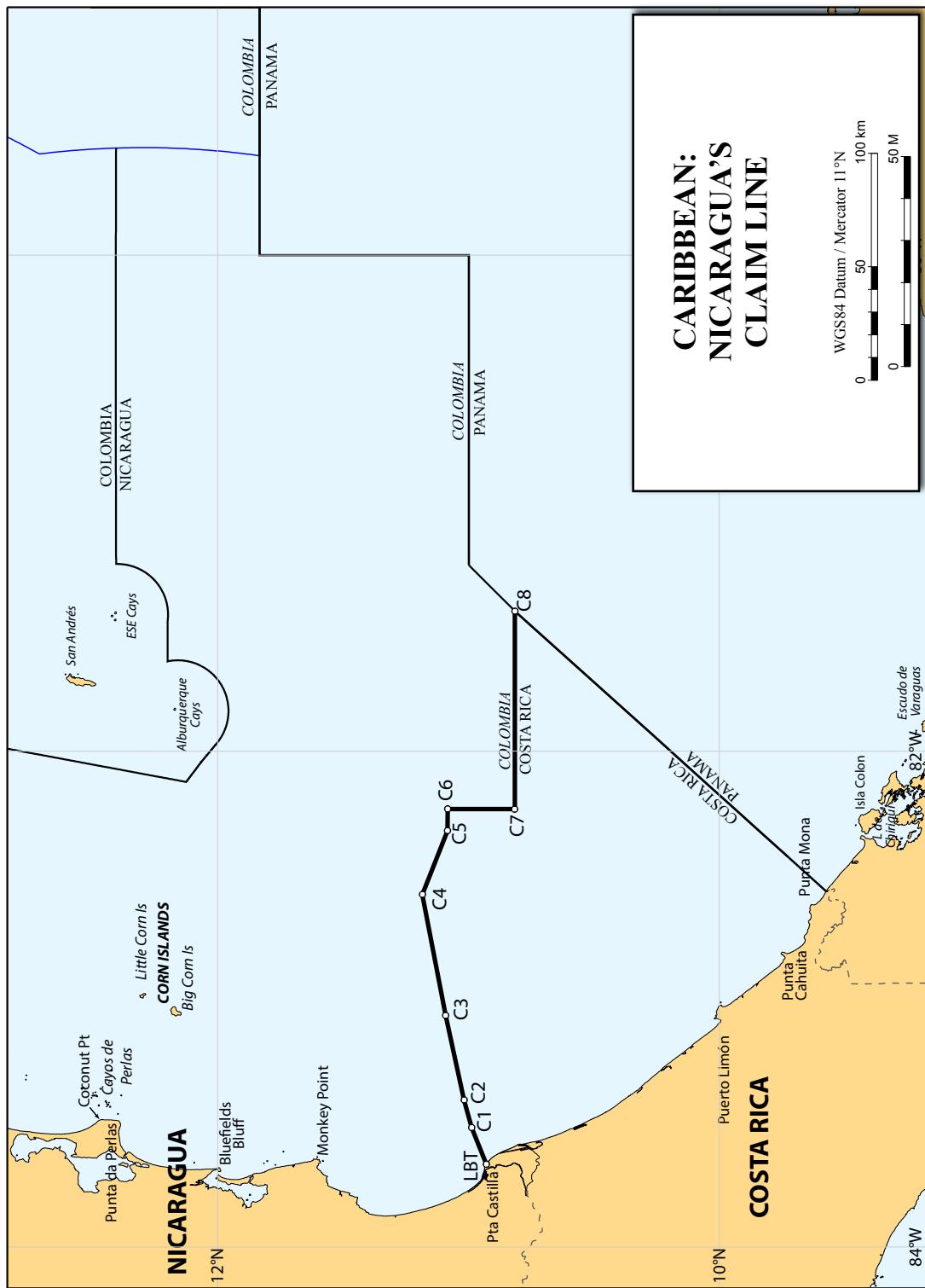


Figure IIe-6

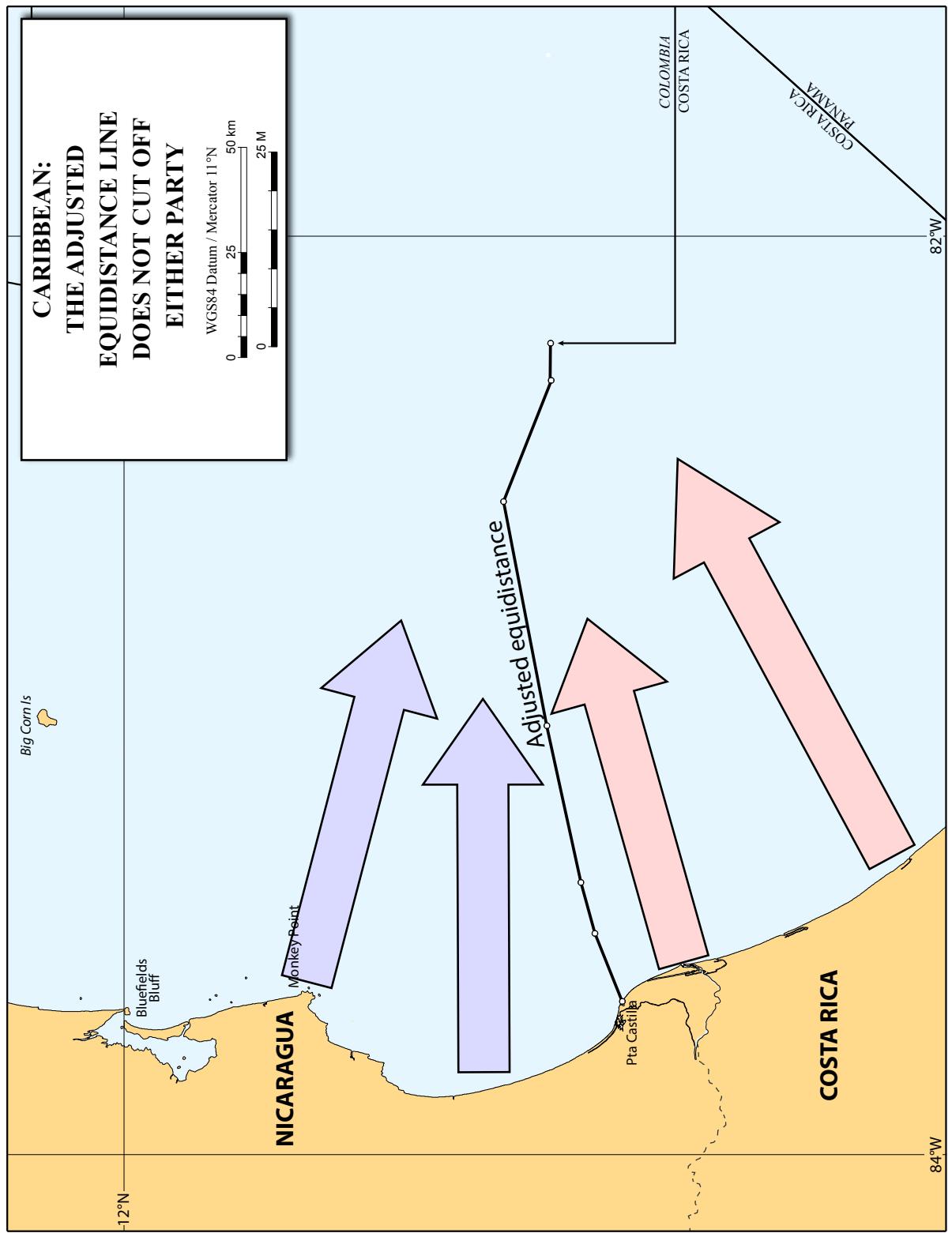


Figure II-7

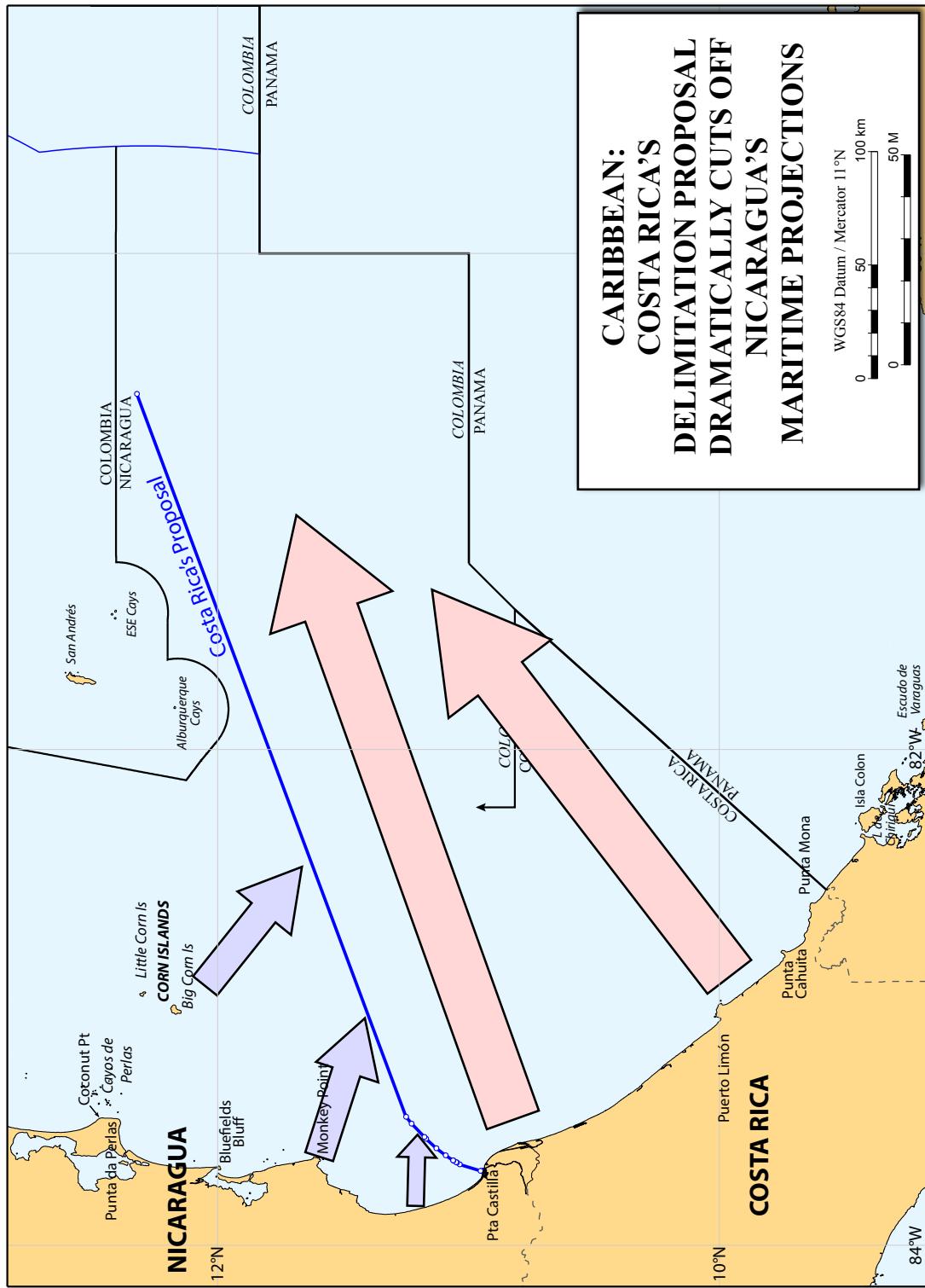


Figure IIe-8

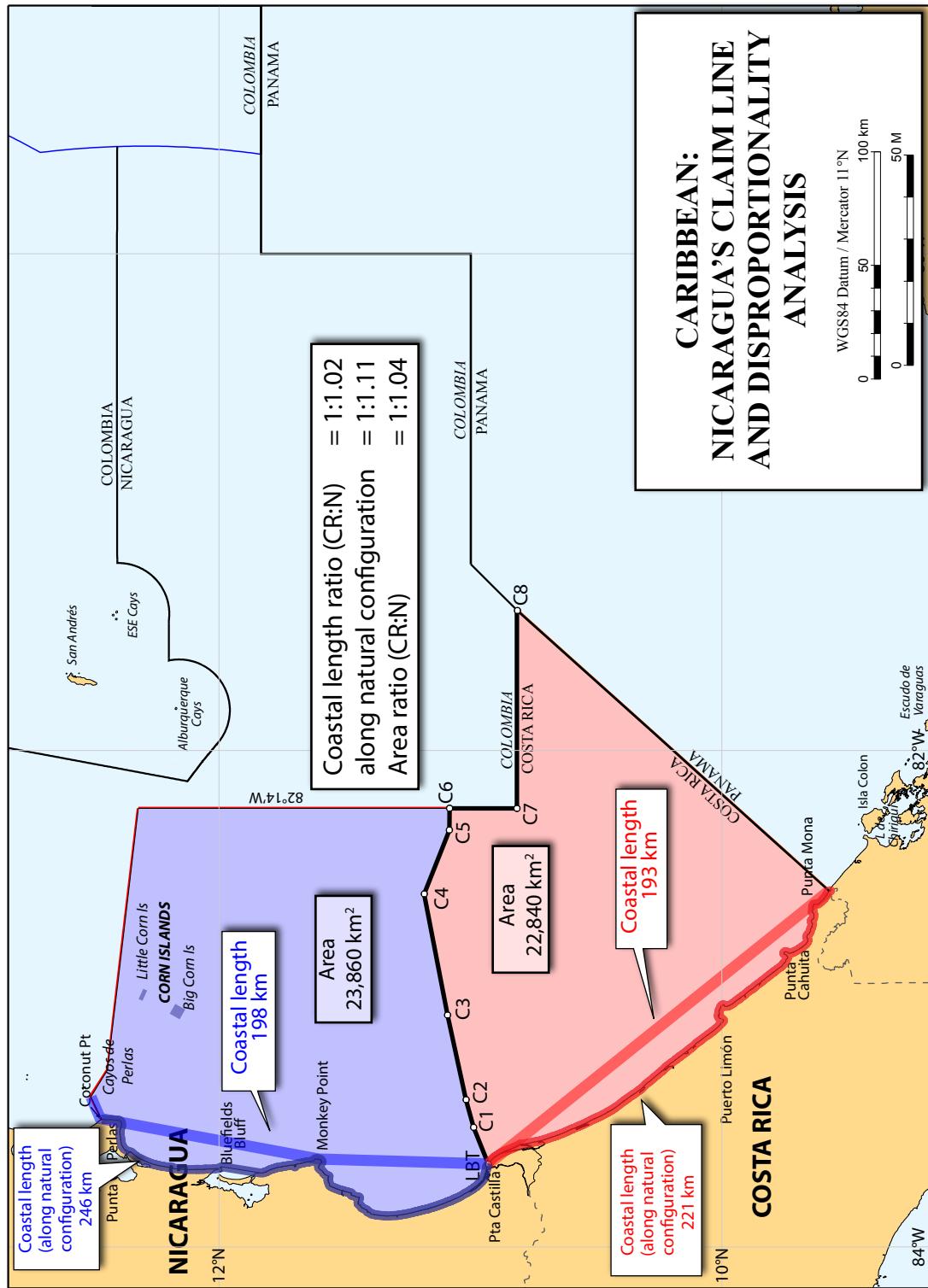


Figure IIe-9