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QUESTION OF THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN NICARAGUA AND COLOMBIA BEYOND 200 NAUTICAL MILES FROM THE NICARAGUAN COAST

(NICARAGUA *v.* COLOMBIA)

General background — Geography — The Court's 2012 Judgment in Territorial and Maritime Dispute (Nicaragua *v.* Colombia) *delimiting the Parties' continental shelves and exclusive economic zones up to a 200-nautical-mile limit from Nicaragua's coast — Application filed by Nicaragua on 16 September 2013 — Request to determine maritime boundary in areas of continental shelf beyond the boundaries determined in 2012 Judgment — Delimitation lines proposed by Nicaragua in its written pleadings — The Court's Order of 4 October 2022 — Certain questions of law to be decided first.*

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First question formulated in the Order of 4 October 2022 — Whether a State's entitlement to a continental shelf beyond 200 nautical miles from its baselines may extend within 200 nautical miles from the baselines of another State — Determination of the existence of overlapping entitlements as a first step in any maritime delimitation — Preliminary character of the first question — Must be answered to ascertain whether the Court may proceed to the delimitation requested by Nicaragua.

Customary international law applicable to the maritime areas at issue — Nicaragua is a party to the United Nations Convention on the Law of the Sea ("UNCLOS"), Colombia is not — Drawing up of UNCLOS at the Third United Nations Conference on the Law of the Sea (the "Conference") —

State practice taken into account during the drafting of UNCLOS — Method of negotiation of UNCLOS — Comprehensive and integrated text forming a package deal — Relationship between Part V of UNCLOS on the exclusive economic zone and Part VI on the continental shelf specified in Article 56, paragraph 3, of UNCLOS — Article 56 of UNCLOS reflects customary rules on rights and duties in the exclusive economic zone — Definition of continental shelf in Article 76, paragraph 1, of UNCLOS forms part of customary international law.

Legal régime governing the exclusive economic zone set out in UNCLOS result of a compromise reached at the Conference — Articles 56, 58, 61, 62 and 73 of UNCLOS on rights and duties of coastal States and other States in the exclusive economic zone reflect customary international law — Interrelated nature of legal régimes that govern the exclusive economic zone and continental shelf within 200 nautical miles from a State's baselines — There cannot be an exclusive economic zone without a corresponding continental shelf — Question of "grey area" — Incidental result of adjustment of equidistance line — Circumstances in Bay of Bengal *cases distinct from situation in the present case — Criteria for determining outer limits of the continental shelf beyond 200 nautical miles were the result of a compromise reached during the final sessions of the Conference — Aim to avoid undue encroachment on maritime areas beyond the limits of national jurisdiction (the "Area") — Text of Article 76 of UNCLOS suggests that States participating in negotiations assumed that extended continental shelf would only extend into maritime areas that would otherwise be located in the Area — Payments in respect of exploitation of the non-living resources of the continental shelf beyond 200 nautical miles — Possibility of one State's extended continental shelf extending within 200 nautical miles from the baselines of another State apparently not debated during the Conference — Vast majority of States parties to UNCLOS that have made submissions to the Commission on the Limits of the Continental Shelf ("CLCS") have not asserted limits that extend within 200 nautical miles of the baselines of another State — Practice of States before the CLCS is indicative of* opinio juris *— Objections where States have asserted a right to an extended continental shelf encroaching on maritime areas within 200 nautical miles of other States — Practice of States sufficiently widespread and uniform — This State practice may be seen as an expression of* opinio juris *— Under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from its baselines may not extend within 200 nautical miles from the baselines of another State.*

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Second question formulated in the Order of 4 October 2022 — Identification of the criteria under customary international law for the determination of the limit of the continental shelf beyond 200 nautical miles of a State's baselines and question whether paragraphs 2 to 6 of Article 76 of UNCLOS reflect customary international law — No need for the Court to address the second question in light of the answer to the first question.

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Consideration of Nicaragua's submissions made in its written pleadings.

Request contained in Nicaragua's first submission — Nicaragua proposes co-ordinates for the continental shelf boundary in the area beyond 200 nautical miles from its baselines but within 200 nautical miles from Colombia's baselines — Nicaragua not entitled to an extended continental shelf within 200 nautical miles from the baselines of Colombia's mainland coast — No area of overlapping entitlement to be delimited — Request contained in Nicaragua's first submission cannot be upheld.

Request contained in Nicaragua's second submission — Nicaragua's contention that maritime entitlements of San Andrés, Providencia and Santa Catalina should not extend east of the 200-nautical-mile limit of its exclusive economic zone — Nicaragua not entitled to an extended continental shelf within 200 nautical miles from the baselines of San Andrés and Providencia — No area of overlapping entitlement to be delimited — Request contained in Nicaragua's second submission cannot be upheld.

Request contained in Nicaragua's third submission — Effect, if any, of the maritime entitlements of Serranilla, Bajo Nuevo and Serrana on any maritime delimitation between the Parties — Two possibilities regarding Serranilla and Bajo Nuevo — Either they are entitled to exclusive economic zones and continental shelves, or they are not — In either case, no area of overlapping entitlement to be delimited — Effect of Serrana's maritime entitlements determined conclusively in the 2012 Judgment — Request contained in Nicaragua's third submission cannot be upheld.

JUDGMENT

Present: *President* DONOGHUE; *Vice-President* GEVORGIAN; *Judges* TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE, CHARLESWORTH, BRANT; *Judges* ad hoc MCRAE, SKOTNIKOV; *Registrar* GAUTIER.

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,

between

the Republic of Nicaragua,

represented by

HE Mr Carlos José Argüello Gómez, Permanent Representative of the Republic of Nicaragua to the international organizations based in the Kingdom of the Netherlands, member of the International Law Commission,

as Agent and Counsel;

Mr Alex Oude Elferink, Director, Netherlands Institute for the Law of the Sea, Professor of International Law of the Sea at Utrecht University,

Mr Vaughan Lowe, KC, Emeritus Chichele Professor of Public International Law, University of Oxford, member of the Institut de droit international, member of the Bar of England and Wales,

Mr Alain Pellet, Emeritus Professor of the University Paris Nanterre, former Chairman of the International Law Commission, President of the Institut de droit international,

as Counsel and Advocates;

Ms Claudia Loza Obregon, Legal Adviser, Ministry of Foreign Affairs of the Republic of Nicaragua,

Mr Benjamin Samson, Centre de droit international de Nanterre (CEDIN), University Paris Nanterre,

as Assistant Counsel;

Mr Robin Cleverly, MA, DPhil, CGeol, FGS, Law of the Sea Consultant, Marbdy Consulting Ltd,

as Scientific and Technical Adviser;

Ms Sherly Noguera de Argüello, Consul General of the Republic of Nicaragua,

as Administrator,

and

the Republic of Colombia,

represented by

HE Mr Eduardo Valencia-Ospina, former Registrar and Deputy-Registrar of the International Court of Justice, former member, Special Rapporteur and Chairman of the International Law Commission,

as Agent and Counsel;

HE Ms Carolina Olarte-Bácares, Dean of the School of Law at the Pontificia Universidad Javeriana, member of the Permanent Court of Arbitration, Ambassador of the Republic of Colombia to the Kingdom of the Netherlands,

HE Ms Elizabeth Taylor Jay, former Ambassador of the Republic of Colombia to the Republic of Kenya, former Permanent Representative of the Republic of Colombia to the United Nations Environment Programme and the United Nations Human Settlements Programme,

as Co-Agents;

HE Mr Álvaro Leyva Durán, Minister for Foreign Affairs of the Republic of Colombia,

HE Mr Everth Hawkins Sjogreen, Governor of San Andrés, Providencia and Santa Catalina, Republic of Colombia,

as National Authorities;

Mr W. Michael Reisman, Myres S. McDougal Professor Emeritus of International Law, Yale University, member of the Institut de droit international,

Sir Michael Wood, KCMG, KC, former member of the International Law Commission, member of the Bar of England and Wales,

Mr Rodman R. Bundy, former *avocat à la Cour d'appel de Paris*, member of the Bar of the State of New York, partner at Squire Patton Boggs LLP, Singapore,

Mr Jean-Marc Thouvenin, Professor at the University Paris Nanterre, Secretary-General of the Hague Academy of International Law, associate member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Ms Laurence Boisson de Chazournes, Professor of International Law and International Organization at the University of Geneva, Professor at the Collège de France (2022-2023), member of the Institut de droit international,

Mr Lorenzo Palestini, Lecturer at the Graduate Institute of International and Development Studies and at the University of Geneva,

as Counsel and Advocates;

Mr Andrés Villegas Jaramillo, Co-ordinator, Group of Affairs before the International Court of Justice at the Ministry of Foreign Affairs of the Republic of Colombia, associate of the Instituto Hispano-Luso-Americano de Derecho Internacional,

Mr Makane Moïse Mbengue, Professor at the University of Geneva, Director of the Department of Public International Law and International Organization, associate member of the Institut de droit international,

Mr Eran Sthoeger, Esq., Adjunct Professor of International Law at Brooklyn Law School and Seton Hall Law School, member of the Bar of the State of New York,

Mr Alvin Yap, Advocate and Solicitor of the Supreme Court of Singapore, Squire Patton Boggs LLP, Singapore,

Mr Gershon Hasin, Visiting Lecturer in Law at Yale University,

Mr Gabriel Cifuentes, adviser to the Minister for Foreign Affairs of the Republic of Colombia,

as Counsel;

Ms Jenny Bowie Wilches, First Secretary, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Ms Viviana Andrea Medina Cruz, Second Secretary, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Mr Raúl Alfonso Simancas Gómez, Third Secretary, Embassy of the Republic of Colombia in the Kingdom of the Netherlands,

Mr Oscar Casallas Méndez, Third Secretary, Group of Affairs before the International Court of Justice,

Mr Carlos Colmenares Castro, Third Secretary, Group of Affairs before the International Court of Justice,

as representatives of the Ministry of Foreign Affairs of the Republic of Colombia;

Rear Admiral Ernesto Segovia Forero, Chief of Naval Operations,

CN Hermann León, Delegate of Colombia to the International Maritime Organization,

CN William Pedroza, National Navy of Colombia, Director of Maritime and Fluvial Interests Office,

as representatives of the Navy of the Republic of Colombia;

Mr Lindsay Parson, Geologist, Director of Maritime Zone Solutions Ltd, United Kingdom, former member and Chair of the United Nations International Seabed Authority's Legal and Technical Commission,

Mr Peter Croker, Geophysicist, Consultant at The M Horizon (UK) Ltd, former Chair of the United Nations Commission on the Limits of the Continental Shelf,

Mr Walter R. Roest, Geophysicist, Director of Roest Consultant EIRL, France, member of the United Nations Commission on the Limits of the Continental Shelf,

Mr Scott Edmonds, Cartographer, Director of International Mapping,

Mr Thomas Frogh, Cartographer, International Mapping,

as Technical Advisers,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 16 September 2013, the Government of the Republic of Nicaragua (hereinafter "Nicaragua") filed in the Registry of the Court an Application instituting proceedings against the Republic of Colombia (hereinafter "Colombia") with regard to a dispute concerning "the delimitation of the boundaries between, on the one hand, the continental shelf of Nicaragua beyond the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and on the other hand, the continental shelf of Colombia".

2. In its Application, Nicaragua sought to found the jurisdiction of the Court on Article XXXI of the American Treaty on Pacific Settlement signed on 30 April 1948, officially designated, according to Article LX thereof, as the "Pact of Bogotá".

3. In accordance with Article 40, paragraph 2, of the Statute of the Court, the Registrar immediately communicated the Application to the Government of Colombia. He also notified the Secretary-General of the United Nations of the filing of the Application by Nicaragua.

4. Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Registrar notified the Members of the United Nations through the Secretary-General of the filing of the Application, by transmission of the printed bilingual text.

5. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Nicaragua chose Mr Leonid Skotnikov. Colombia first chose Mr Charles N. Brower, who resigned on 5 June 2022, and subsequently Mr Donald McRae.

6. By an Order of 9 December 2013, the Court fixed 9 December 2014 and 9 December 2015 as the respective time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Colombia.

7. On 14 August 2014, before the expiry of the time-limit for the filing of the Memorial of Nicaragua, Colombia, referring to Article 79 of the Rules of Court of 14 April 1978 as amended on 1 February 2001, raised preliminary objections to the jurisdiction of the Court and to the admissibility of the Application. By an Order of 19 September 2014, the Court, noting that by virtue of Article 79, paragraph 5, of the Rules of Court the proceedings on the merits were suspended, fixed 19 January 2015 as the time-limit for the presentation by Nicaragua of a written statement of its observations and submissions on the preliminary objections raised by Colombia. Nicaragua filed its statement within the time-limit thus fixed.

8. By a letter dated 10 November 2014, pursuant to the instructions of the Court under Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the Pact of Bogotá the notification provided for in Article 63, paragraph 1, of the Statute of the Court. In accordance with the provisions of Article 69, paragraph 3, of the Rules of Court, the Registrar also addressed to the Organization of American States (hereinafter the "OAS") the notification provided for in Article 34, paragraph 3, of the Statute. By letter dated 5 January 2015, the Secretary-General of the OAS indicated that the Organization did not intend to present any observations in writing within the meaning of Article 69, paragraph 3, of the Rules of Court.

9. By a letter dated 17 February 2015, the Government of the Republic of Chile (hereinafter "Chile"), referring to Article 53, paragraph 1, of the Rules of Court, asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties in accordance with that same provision, the President of the Court decided to grant that request. The Registrar duly communicated that decision to the Government of Chile and to the Parties. Copies of the preliminary objections raised by Colombia and the written statement of its observations and submissions thereon filed by Nicaragua were therefore communicated to Chile.

10. Public hearings on the preliminary objections raised by Colombia were held on 5, 6, 7 and 9 October 2015. In its Judgment of 17 March 2016, the Court found that it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to entertain the first request put forward by Nicaragua in its Application (see paragraph 18 below), asking the Court to determine "[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012" in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, and that this request was admissible (*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 140, para. 126).

11. By an Order of 28 April 2016, the Court fixed 28 September 2016 and 28 September 2017, respectively, as the new time-limits for the filing of a Memorial by Nicaragua and a Counter-Memorial by Colombia. These pleadings were filed within the time-limits thus fixed. Along with its Memorial, Nicaragua also provided to the Court copies of its full submission to the Commission on the Limits of the Continental Shelf (hereinafter the "CLCS" or the "Commission"), explaining that this submission was part of its Memorial and that it was classified as confidential in accordance with the rules contained in Annex II to the Rules of Procedure of the CLCS.

12. By letters dated 6 October 2016 and 22 November 2016, respectively, the Government of the Republic of Costa Rica (hereinafter "Costa Rica") and the Government of the Republic of Panama (hereinafter "Panama"), referring to Article 53, paragraph 1, of the Rules of Court, asked to be furnished with copies of the pleadings and documents annexed in the case. Having ascertained the views of the Parties in accordance with the same provision, the Court granted those requests, with the exception of the submission of Nicaragua to the CLCS, which would not be provided to Costa Rica and Panama. The Registrar duly communicated those decisions to Costa Rica and Panama and to the Parties. A copy of Nicaragua's Memorial, not including said submission, was also made available to Chile (see paragraph 9 above).

13. By an Order of 8 December 2017, the Court authorized the submission of a Reply by Nicaragua and a Rejoinder by Colombia, and fixed 9 July 2018 and 11 February 2019 as the respective time-limits for the filing of those pleadings. The Reply of Nicaragua and the Rejoinder of Colombia were filed within the time-limits thus fixed.

14. In an Order of 4 October 2022, the Court indicated that, in the circumstances of the case, before proceeding to any consideration of technical and scientific questions in relation to the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measured, it was necessary to decide on certain questions of law, after hearing the Parties thereon. Accordingly, the Court decided that,

> "at the forthcoming oral proceedings in the case, the Republic of Nicaragua and the Republic of Colombia shall present their arguments exclusively with regard to the following two questions:
>
> (1) Under customary international law, may a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured extend within 200 nautical miles from the baselines of another State?

(2) What are the criteria under customary international law for the determination of the limit of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured and, in this regard, do paragraphs 2 to 6 of Article 76 of the United Nations Convention on the Law of the Sea reflect customary international law?" (*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Order of 4 October 2022*.)

15. Having ascertained the views of the Parties and in light of the scope of the oral proceedings, the Court decided, pursuant to Article 53, paragraph 2, of the Rules of Court, that copies of the written pleadings and documents annexed would not be made accessible to the public at the time of the opening of the oral proceedings.

16. Public hearings on the two questions formulated by the Court in its Order of 4 October 2022 (see paragraph 14 above) were held on 5, 6, 7 and 9 December 2022, at which the Court heard the oral arguments and replies of:

For Nicaragua: HE Mr Carlos José Argüello Gómez,
Mr Vaughan Lowe,
Mr Alex Oude Elferink,
Mr Alain Pellet.

For Colombia: HE Mr Eduardo Valencia-Ospina,
Sir Michael Wood,
Mr Rodman Bundy,
Mr Lorenzo Palestini,
Mr Jean-Marc Thouvenin,
Ms Laurence Boisson de Chazournes.

17. At the hearings, a Member of the Court put a question to Colombia, to which a reply was given orally in accordance with Article 61, paragraph 4, of the Rules of Court. Nicaragua submitted written comments on the oral reply provided by Colombia on 15 December 2022.

*

18. In the Application, the following claims were made by Nicaragua:

"Nicaragua requests the Court to adjudge and declare:

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

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

19. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,

in the Memorial:

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

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

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

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

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

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

in the Reply:

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

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

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

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

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

3. Serranilla and Bajo Nuevo are enclaved and granted a territorial sea of twelve nautical miles, and Serrana is enclaved as per the Court's November 2012 Judgment."

On behalf of the Government of Colombia,

in the Counter-Memorial:

"[F]or the reasons set out in this Counter-Memorial, and reserving the right to amend or supplement these Submissions, Colombia respectfully requests the Court to adjudge and declare that:

Nicaragua's request for a delimitation of the continental shelf beyond 200 nautical miles from its coast is rejected with prejudice."

in the Rejoinder:

"[F]or the reasons set out in its Counter-Memorial and Rejoinder, and reserving the right to amend or supplement these Submissions, Colombia respectfully requests the Court to adjudge and declare that:

Nicaragua's request for a delimitation of the continental shelf beyond 200 nautical miles from its coast is rejected with prejudice."

20. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Nicaragua,

"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)*, for the reasons explained in the Written and Oral phase, Nicaragua respectfully requests the Court to adjudge and declare that:

I. The response to the questions of law is in the affirmative:

   A. Under customary international law a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured may extend within 200 nautical miles from the baselines of another State.

   B. Paragraphs 2 to 6 of Article 76 of the United Nations Convention on the Law of the Sea reflect customary international law.

II. Nicaragua respectfully requests the Court to proceed to fix a timetable to hear and decide upon all of the outstanding request in Nicaragua's pleadings.

Nicaragua, formally reserves its right to complete its Final Submissions in view of the factual circumstances of the case as decided by the Court in its Order of 4 October 2022."

On behalf of the Government of Colombia,

"With respect to the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)*, having regard to the Order dated 4 October 2022 and the questions of law contained therein, Colombia respectfully requests the Court to adjudge and declare that:

1. In relation to the first question:

   (i) Under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured cannot extend within 200 nautical miles from the baselines of another State.

2. In relation to the second question:

   (i) Under customary international law, there are no criteria for the determination of the limit of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured whenever the outer limit of said continental shelf is located within the 200-nautical-mile zone of another State.

   (ii) Paragraphs 2 to 6 of Article 76 of the United Nations Convention on the Law of the Sea do not reflect customary international law.

Furthermore, considering that the answers to these two questions govern all of Nicaragua's submissions as set out during the course of the proceedings, Colombia further requests the Court to adjudge and declare that:

3. Nicaragua's request for a delimitation of the continental shelf beyond 200 nautical miles from its coast is rejected with prejudice.

4. Consequently, Nicaragua's request for the fixing of a timetable to hear and decide upon all the outstanding requests in Nicaragua's pleadings is rejected."

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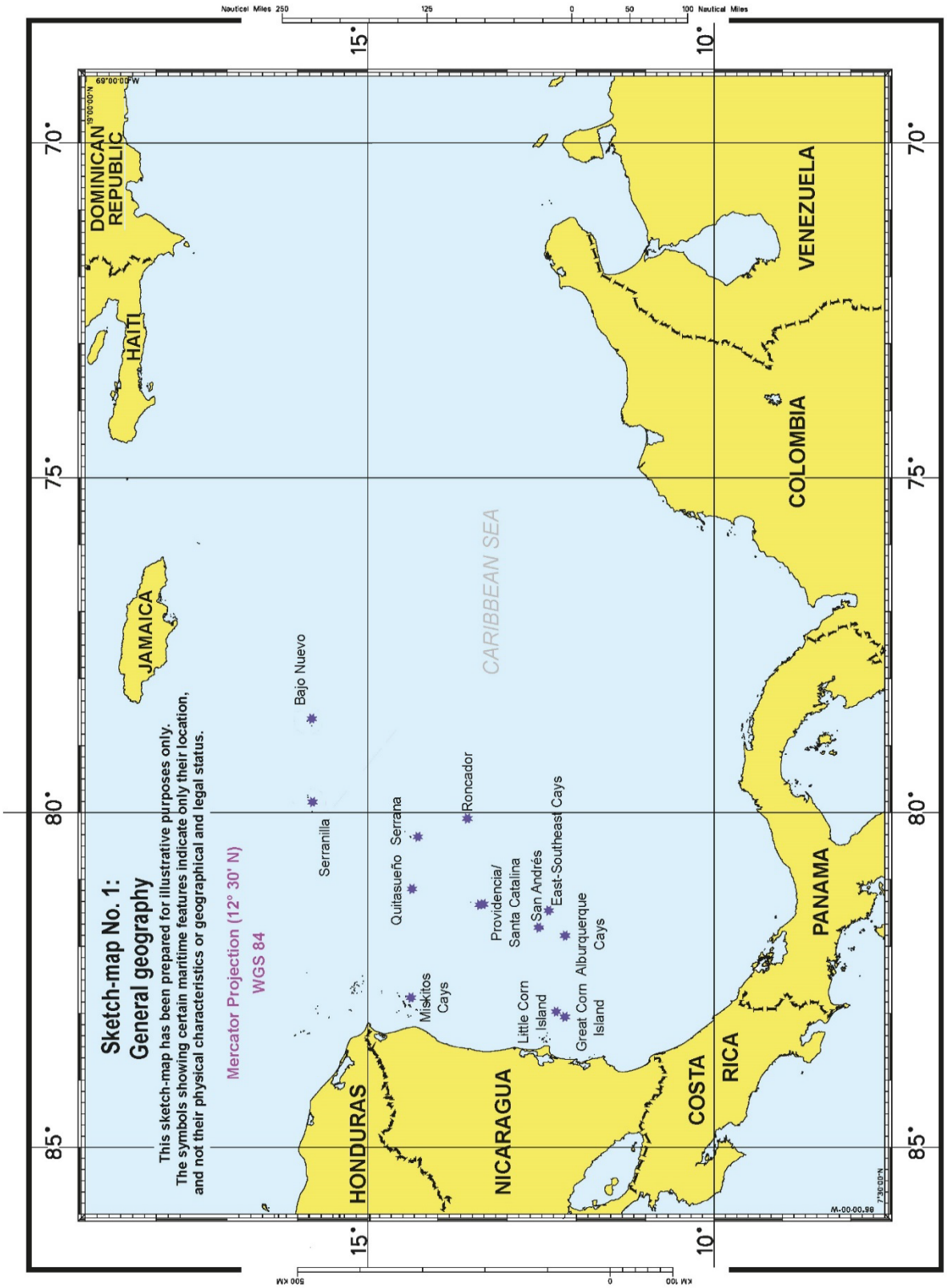
* *

I. GENERAL BACKGROUND

21. The maritime areas with which the present proceedings are concerned are located in the Caribbean Sea, an arm of the Atlantic Ocean partially enclosed to the north and east by a number of islands, and bounded to the south and west by South and Central America. Nicaragua's eastern coast faces the south-western part of the Caribbean Sea. To the north of Nicaragua lies Honduras and to the south lie Costa Rica and Panama. To the north-east, Nicaragua faces Jamaica, and to the east, it faces the mainland coast of Colombia. Colombia is situated to the south of the Caribbean Sea. On its Caribbean front, Colombia is bordered to the west by Panama and to the east by Venezuela. The Colombian islands of San Andrés, Providencia and Santa Catalina lie in the south-west of the Caribbean Sea, approximately 100 to 150 nautical miles to the east of the Nicaraguan coast. (For the general geography of the area, see sketch-map No. 1.)

22. On 6 December 2001, Nicaragua filed in the Registry of the Court an Application instituting proceedings against Colombia in respect of a dispute consisting of "a group of related legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean (case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*).

SKETCH-MAP NO. 1: GENERAL GEOGRAPHY



23. In the Judgment rendered by the Court on 19 November 2012 in the case concerning *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* (hereinafter the "2012 Judgment"), the Court decided that Colombia "has sovereignty over the islands at Alburquerque, Bajo Nuevo, East-Southeast Cays, Quitasueño, Roncador, Serrana and Serranilla" (*I.C.J. Reports 2012 (II)*, p. 718, para. 251, subpara. 1). The Court also established a single maritime boundary delimiting the continental shelf and the exclusive economic zones of Nicaragua and Colombia up to the 200-nautical-mile limit from the baselines from which the territorial sea of Nicaragua is measured (*ibid.*, pp. 719-720, para. 251, subpara. 4). The Court, however, noted in its reasoning that, since Nicaragua had not yet notified the Secretary-General of the United Nations of the location of those baselines under Article 16, paragraph 2, of the 1982 United Nations Convention on the Law of the Sea (hereinafter "UNCLOS" or the "Convention"), the precise location of the eastern endpoints of the maritime boundary could not be determined and was therefore depicted only approximately on the sketch-map included at page 714 of that Judgment (*ibid.*, p. 713, para. 237). (For the course of the maritime boundary established by the Court in its 2012 Judgment, see sketch-map No. 2.)

24. In the 2012 Judgment, the Court further found that it could not uphold Nicaragua's claim contained in its final submission I (3), requesting that the Court adjudge and declare that

> "[t]he appropriate form of delimitation, within the geographical and legal framework constituted by the mainland coasts of Nicaragua and Colombia, is a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties" (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 636, para. 17, and p. 719, para. 251, subpara. 3).

In particular, the Court noted that,

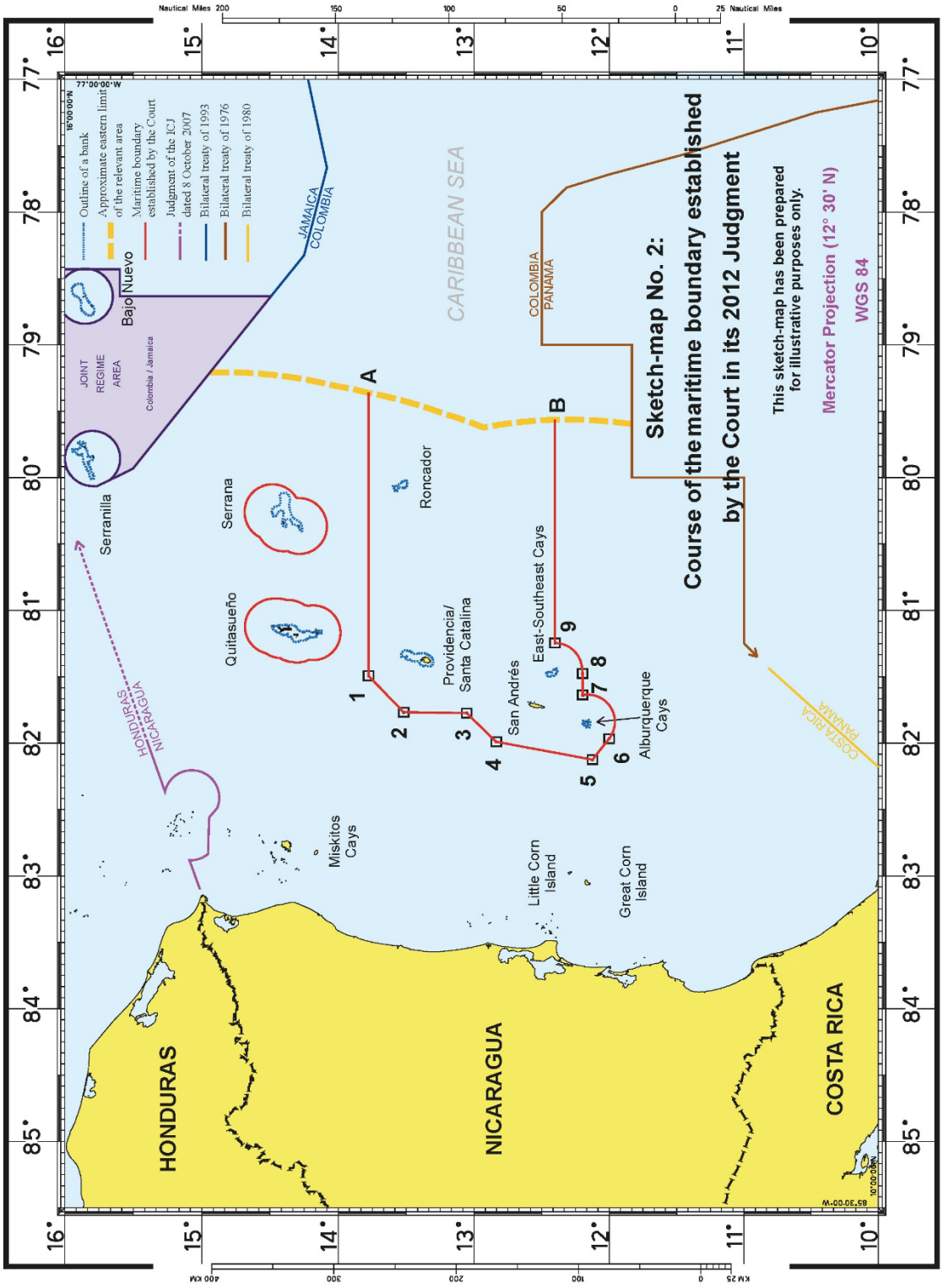
> "since Nicaragua . . . ha[d] not established that it ha[d] a continental margin that extends far enough to overlap with Colombia's 200-nautical-mile entitlement to the continental shelf, measured from Colombia's mainland coast, the Court [was] not in a position to delimit the continental shelf boundary between Nicaragua and Colombia, as requested by Nicaragua, even using the general formulation proposed by it" (*ibid.*, p. 669, para. 129).

The Court observed in this regard that Nicaragua had submitted to the CLCS only "Preliminary Information" which "[fell] short of meeting the requirements for information on the limits of the continental shelf beyond 200 nautical miles" to be submitted under Article 76, paragraph 8, of UNCLOS (*ibid.*, p. 669, para. 127).

25. On 24 June 2013, in accordance with Article 76, paragraph 8, of UNCLOS, Nicaragua presented its full submission to the CLCS regarding the limits of its continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

26. On 16 September 2013, Nicaragua filed the Application instituting the current proceedings, requesting the Court to adjudge and declare the precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its 2012 Judgment (see paragraph 1 above).

SKETCH-MAP NO. 2: COURSE OF THE MARITIME BOUNDARY ESTABLISHED BY THE COURT IN ITS 2012 JUDGMENT



Both Parties have adduced extensive technical and scientific evidence as to whether Nicaragua has established an entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (also referred to as an "extended continental shelf") and, if so, the precise outer limits of that continental shelf.

II. OVERVIEW OF THE PARTIES' POSITIONS

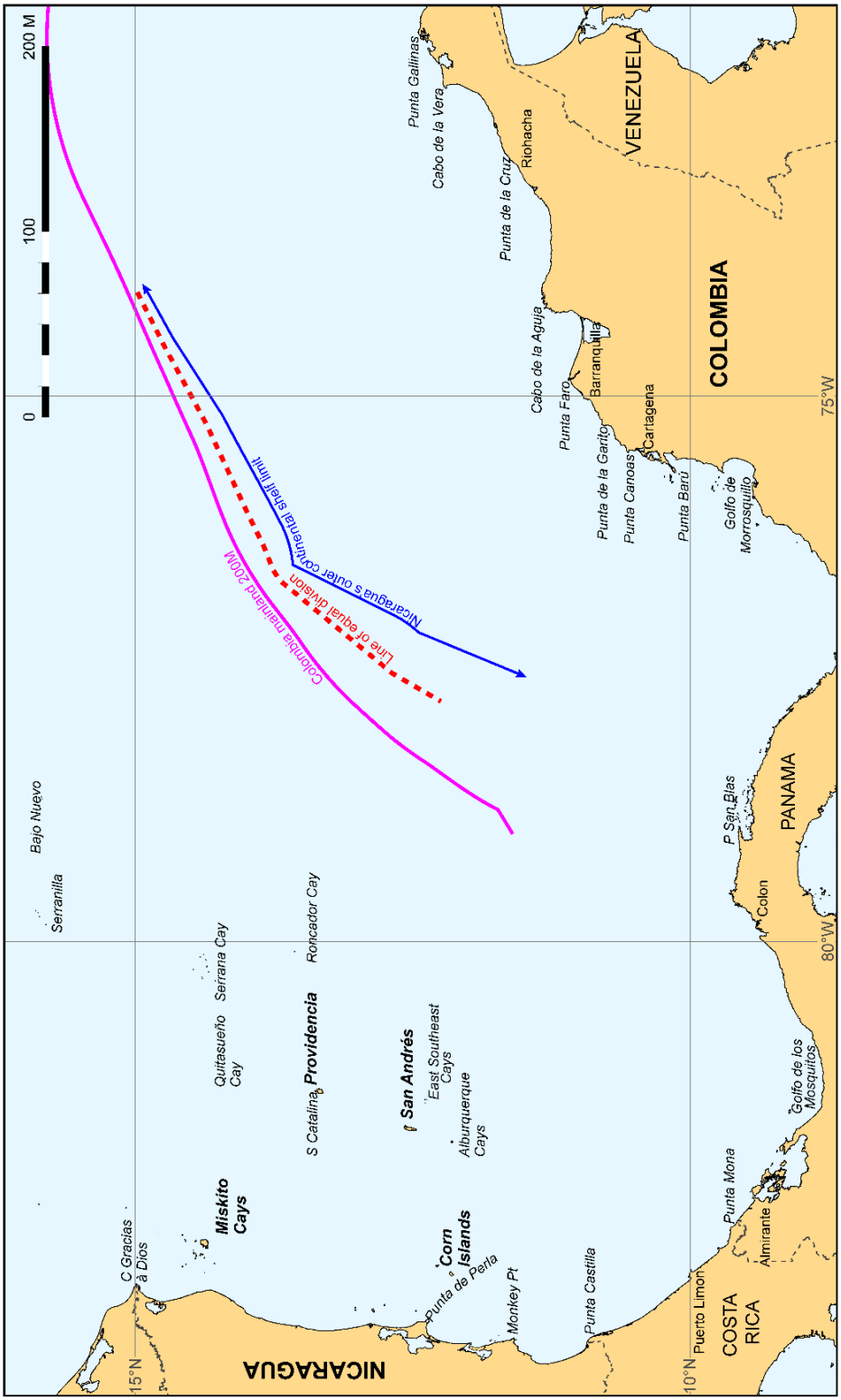
27. Nicaragua argues that it has an entitlement to a continental shelf beyond 200 nautical miles of its coast. In order to substantiate its claim, Nicaragua relies on the submission that it presented to the CLCS on 24 June 2013, which, in its view, contains "complete technical information" that enables the Commission to review that submission and make its recommendations under Article 76, paragraph 8, of UNCLOS on the outer limits of Nicaragua's continental shelf. Nicaragua contends that it has established the existence of a natural prolongation of its land territory up to the outer edge of the continental margin and that there is both geological and geomorphological continuity between its landmass and the sea-bed and subsoil beyond 200 nautical miles from its baselines.

28. Nicaragua defines the outer edge of the continental margin, wherever the margin extends beyond 200 nautical miles of its coast, by reference to the formulae and criteria contained in Article 76, paragraphs 4 to 6, of UNCLOS. It asserts that the CLCS applies these provisions to determine the existence of a State's entitlement to a continental shelf beyond 200 nautical miles. According to Nicaragua, Article 76, paragraphs 2 to 6, of UNCLOS reflect customary international law.

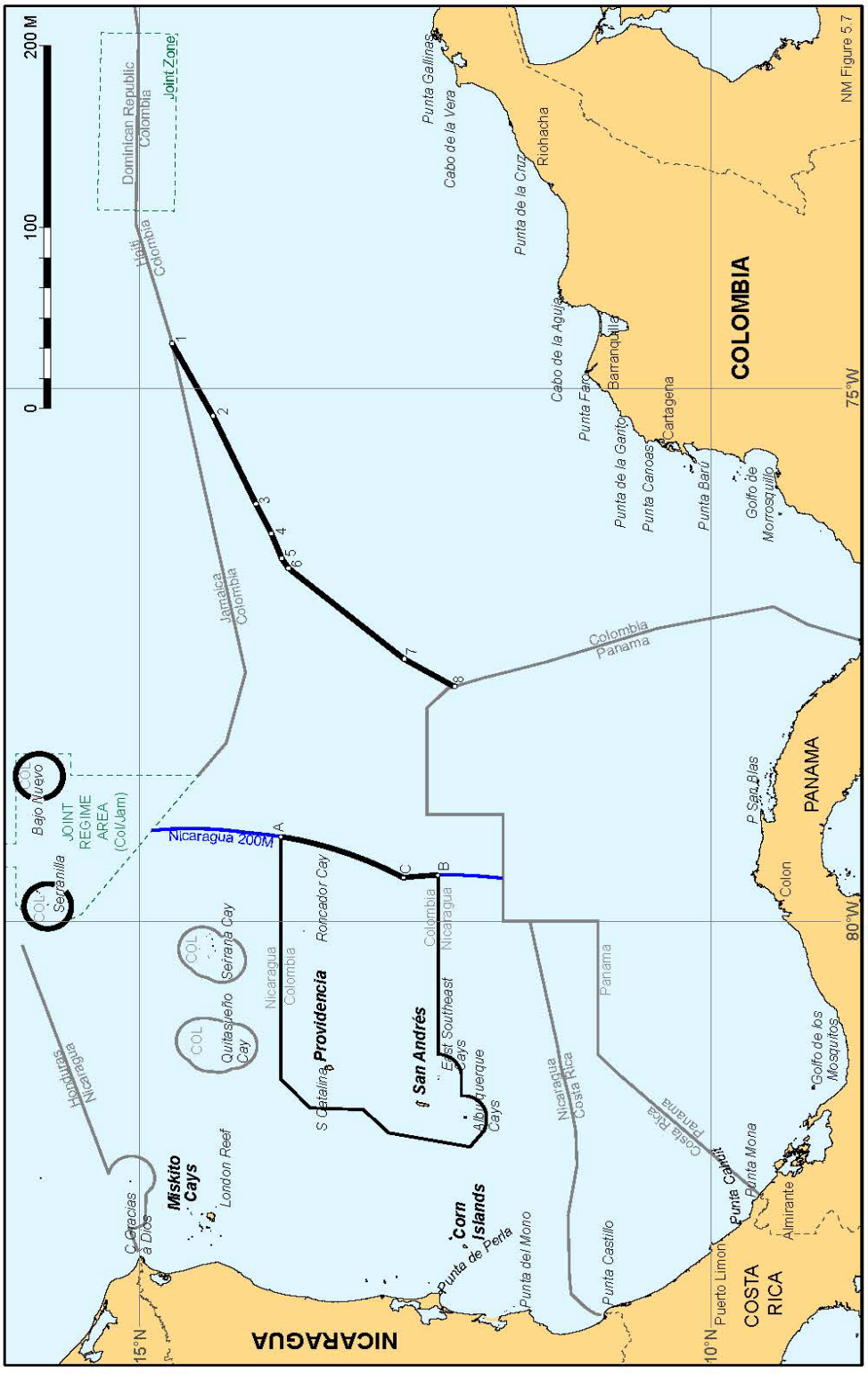
29. Nicaragua notes that Colombia only claims, with respect to its mainland, a continental shelf up to 200 nautical miles from its baselines. Nicaragua proposes, with respect to Colombia's mainland, a provisional delimitation line which Nicaragua refers to as the "provisional mainland-mainland delimitation line". This line divides equally the area of overlap between the 200-nautical-mile limit of the continental shelf entitlement generated by Colombia's mainland coast and the outer limits of the extended continental shelf as described by Nicaragua in its submission to the CLCS. That line is depicted in figure 5.1 of Nicaragua's Memorial, which is reproduced below.

30. With respect to the entitlement derived from Colombian islands, Nicaragua contends that only the maritime features of San Andrés, Providencia and Santa Catalina qualify as islands entitled to a continental shelf in accordance with the customary rule reflected in Article 121, paragraph 2, of UNCLOS, whereas Quitasueño, Alburquerque, Bajo Nuevo, East-Southeast Cays, Roncador, Serrana and Serranilla fall under the definition of "rocks" under customary international law reflected in Article 121, paragraph 3, of UNCLOS and do not generate any entitlement to a continental shelf. Nicaragua considers that San Andrés, Providencia and Santa Catalina are situated on the same continental margin as Nicaragua's mainland and hence could have a potential continental shelf entitlement beyond 200 nautical miles to the edge of that continental margin. In Nicaragua's view, however, the continental shelf of these islands should not extend east of the 200-nautical-mile limit from Nicaragua's baselines because the 2012 Judgment already allocated these islands continental shelf rights that are very substantial in relation to their limited size. Thus, Nicaragua is of the view that these islands are entitled to a continental shelf up to a line consisting of 200-nautical-mile arcs from the baselines from which the territorial sea of Nicaragua is measured connecting points A, C and B, the co-ordinates of which are indicated in the submissions presented by Nicaragua in its Memorial and reiterated in its Reply (see paragraph 19 above). Nicaragua also considers that the Colombian maritime features of Serranilla Cay and Bajo Nuevo should be afforded only a 12-nautical-mile territorial sea. The final delimitation proposed by Nicaragua is depicted in figure 7.1. of its Reply, which is reproduced below.

MAP SHOWING THE "PROVISIONAL MAINLAND-MAINLAND DELIMITATION LINE" PROPOSED BY NICARAGUA
(*Source:* Nicaragua's Memorial, figure 5.1, p. 128)



MAP SHOWING THE FINAL DELIMITATION PROPOSED BY NICARAGUA
(*Source:* Nicaragua's Reply, figure 7.1, p. 208)



*

31. Colombia asks the Court to reject Nicaragua's request for a delimitation of the continental shelf beyond 200 nautical miles of the latter's coast. It argues in particular that, as a matter of customary international law, a State may not claim a continental shelf beyond 200 nautical miles from its baselines that encroaches on another State's entitlement to a 200-nautical-mile exclusive economic zone and continental shelf measured from its mainland coast and islands.

32. With respect to the alleged entitlement of Nicaragua to a continental shelf beyond 200 nautical miles of Nicaragua's coast, Colombia argues that the Applicant erroneously assumes that its submission to the CLCS is in itself proof of the existence of its extended continental shelf. According to Colombia, Article 76, paragraphs 2 to 6, which set out precise scientific and technical formulae for fixing limits beyond which an extended continental shelf may not be claimed, do not reflect customary international law. The Respondent contends that a coastal State's entitlement to a continental shelf beyond 200 nautical miles must be based on the natural prolongation of its land territory as evidenced by the physical characteristics of the shelf based on geological and geomorphological factors. In this regard, Colombia argues that Nicaragua fails to demonstrate with scientific certainty the existence of the natural prolongation of its land territory beyond 200 nautical miles of its coast. Colombia claims that there are a number of fundamental geomorphological disruptions and geological discontinuities in the physical continental shelf that terminate the natural prolongation of Nicaragua's land territory well before the 200-nautical-mile limit from the Nicaraguan coast is reached.

33. Turning to its own entitlements, Colombia alleges that, in conformity with customary international law, both its mainland and its islands are entitled to a 200-nautical-mile exclusive economic zone with its "attendant" continental shelf. It recalls that, in the 2012 Judgment, the Court ruled that San Andrés, Providencia and Santa Catalina generated a territorial sea, an exclusive economic zone and a continental shelf, and that they possessed substantial entitlements to the east of the 200-nautical-mile line from Nicaragua's baselines. Colombia further asserts that Roncador, Serrana, Serranilla and Bajo Nuevo are not rocks and are thus entitled to an exclusive economic zone with its "attendant" continental shelf, including in areas lying more than 200 nautical miles from Nicaragua's baselines. It contends that all these islands are capable of sustaining human habitation or economic life of their own. It adds that, even if Serrana, Roncador, Serranilla and Bajo Nuevo were deemed not to be entitled to an exclusive economic zone and continental shelf, Nicaragua's claim would still fail because its extended continental shelf cannot "leapfrog" over or "tunnel" under the exclusive economic zone and "attendant" continental shelf of San Andrés, Providencia and Santa Catalina.

* *

34. In its Order of 4 October 2022, the Court stated that, in the circumstances of the case, it was first necessary to decide on certain questions of law, after hearing the Parties thereon, and thus posed two questions to the Parties (see paragraph 14 above). The Court will examine the first question (Part III) before turning to the second question (Part IV). It will then consider the requests contained in Nicaragua's submissions (Part V).

III. First question formulated in the Order of 4 October 2022

35. The Court recalls that the first question formulated in the Order of 4 October 2022 (hereinafter the "first question") is worded as follows:

> "Under customary international law, may a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured extend within 200 nautical miles from the baselines of another State?" (*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Order of 4 October 2022.*)

36. The Court will begin by considering the preliminary character of the first question (Section A). It will then determine the customary international law applicable in this case to the maritime areas at issue (Section B), before responding to the first question (Section C).

A. The preliminary character of the first question

37. The Court recalls that, in its Application of 16 September 2013, Nicaragua instituted proceedings against Colombia with regard to a dispute concerning

> "the delimitation of the boundaries between, on the one hand, the continental shelf of Nicaragua beyond the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and on the other hand, the continental shelf of Colombia".

38. In its Order of 4 October 2022, the Court considered that, in the circumstances of the case,

> "before proceeding to any consideration of technical and scientific questions in relation to the delimitation of the continental shelf between Nicaragua and Colombia beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of Nicaragua is measured, . . . it [was] necessary to decide on certain questions of law, after hearing the Parties thereon" (*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Order of 4 October 2022*).

39. The Court notes that, while the Parties agree that the first question posed by the Court arises in the particular factual context of the present case, the Parties have approached this question differently.

40. Nicaragua contends that there is an overlap between its own entitlement to an extended continental shelf and Colombia's entitlement to a continental shelf within 200 nautical miles of the latter's coast and that, therefore, the Court must proceed to an equitable delimitation. According to Nicaragua, it is this overlap that necessitates the delimitation of maritime zones in the area in which the Parties have competing entitlements.

41. Colombia, for its part, considers that a State must first establish that it has a legal title to a certain maritime area that overlaps with an area that may be claimed by another State, before the principles and rules of maritime delimitation come into play. In Colombia's view, it is not delimitation that generates a legal title, but rather a legal title that gives rise to the need for delimitation.

42. As the Court has indicated previously, "[a]n essential step in any delimitation is to determine whether there are entitlements, and whether they overlap" (*Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment, I.C.J. Reports 2021*, p. 276, para. 193; see *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 42, para. 34). Determining whether there is any area of overlap between the entitlements of two States, each founded on a distinct legal title, is the first step in any maritime delimitation, because "the task of delimitation consists in resolving the overlapping claims by drawing a line of separation of the maritime areas concerned" (*Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 89, para. 77).

43. Therefore, the first question has a preliminary character in the sense that it must be answered in order to ascertain whether the Court may proceed to the delimitation requested by Nicaragua and, consequently, whether it is necessary to consider the scientific and technical questions that would arise for the purposes of such a delimitation.

44. The Court asked the Parties to base their arguments on customary international law, which is applicable to the present case because, unlike Nicaragua, Colombia is not a party to UNCLOS.

45. The Court will now determine the customary international law applicable to the maritime areas at issue, namely the exclusive economic zone and the continental shelf.

B. The customary international law applicable to the maritime areas at issue

46. The Court recalls that "the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States", and that "multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them" (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, pp. 29-30, para. 27; see also *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 42, para. 73).

47. UNCLOS was drawn up at the Third United Nations Conference on the Law of the Sea, which was held over a period of nine years, from December 1973 until the adoption of the Convention in Montego Bay on 10 December 1982. As is indicated in the preamble of UNCLOS, the objective of the Convention was to achieve "the codification and progressive development of the law of the sea". Even prior to the conclusion of the negotiations, certain aspects of the legal régimes governing the maritime areas of coastal States, notably the continental shelf and the exclusive economic zone, were reflected in State practice, primarily through declarations, laws and regulations. This practice was taken into account during the drafting of the Convention. A very large number of States have since become parties to UNCLOS, which has significantly contributed to the crystallization of certain customary rules.

48. As recognized in the preamble to the Convention, "the problems of ocean space are closely related and need to be considered as a whole". The method of negotiation at the Conference was designed against this background and had the aim of achieving consensus through a series of provisional and interdependent texts on the various questions at issue that resulted in a comprehensive and integrated text forming a package deal.

49. The integrated character of the various parts of the Convention is particularly evident in relation to Part V of UNCLOS, which concerns the exclusive economic zone, and Part VI, which concerns the continental shelf. The relationship between these two parts is specified in Article 56, paragraph 3. This Article provides:

> "1. In the exclusive economic zone, the coastal State has:
>
> *(a)* sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
>
> *(b)* jurisdiction as provided for in the relevant provisions of this Convention with regard to:
>
> (i) the establishment and use of artificial islands, installations and structures;
>
> (ii) marine scientific research;
>
> (iii) the protection and preservation of the marine environment;
>
> *(c)* other rights and duties provided for in this Convention.
>
> 2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
>
> 3. The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI."

50. In the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, the Court concluded that Article 56 reflects customary rules on the rights and duties in the exclusive economic zone of coastal States (*Judgment of 21 April 2022*, para. 57).

51. The Court turns next to the continental shelf, which is defined in Article 76, paragraph 1, of UNCLOS:

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

52. The Court recalls that this definition forms part of customary international law (*Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 666, para. 118).

53. In view of the foregoing, the Court will consider whether, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may extend within 200 nautical miles from the baselines of another State.

C. Under customary international law, may a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured extend within 200 nautical miles from the baselines of another State?

54. The Parties disagree as to whether a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may extend within 200 nautical miles from the baselines of another State.

55. Nicaragua argues that a State's entitlement to a continental shelf beyond 200 nautical miles may extend within 200 nautical miles from the baselines of another State.

56. Nicaragua asserts that the continental shelf and the rights relating to it automatically appertain to the coastal State, without there being any need for that State to exercise or declare those rights, which is not the case for the exclusive economic zone. According to the Applicant, there is no rule in customary international law, or in UNCLOS, that makes an exclusive economic zone an *ipso facto* and *ab initio* appurtenance of every coastal State.

57. Nicaragua acknowledges that, where there is an overlap between a State's continental shelf based on natural prolongation and another State's 200-nautical-mile zone, States have in general preferred to have a single maritime boundary rather than have any part of the continental shelf of one State lie within the 200-nautical-mile zone of the other. It adds, however, that this practice is not proof of a customary norm in this regard, given the lack of *opinio juris*. Nicaragua argues that the practice of States that refrain from asserting, in their submissions to the CLCS, outer limits of their extended continental shelf that extend within 200 nautical miles from the baselines of another State is motivated by considerations other than a sense of legal obligation, in particular a desire to avoid the possibility of their submission giving rise to a dispute with the result that the Commission would not consider it. Nicaragua also refers to certain examples of States which have made submissions to the CLCS that included the extension of their continental shelf within 200 nautical miles of another State, and notes that this practice supports the argument that the continental shelf beyond 200 nautical miles may extend within 200 nautical miles from the baselines of a neighbouring State.

58. Nicaragua also refers to the two cases concerning delimitation in the Bay of Bengal: *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, pp. 64-68, paras. 225-240, and *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India), Award of 7 July 2014*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XXXII, pp. 104-106, paras. 336-346 (hereinafter the "*Bay of Bengal* cases"). According to Nicaragua, the decisions in these two cases mean that, when a State's continental shelf

beyond 200 nautical miles from its baselines extends within the exclusive economic zone of another State, this gives rise to a "grey area" in which the two States must co-operate. It follows, in Nicaragua's view, that there is no rule of customary international law extinguishing the entitlement of one State to an extended continental shelf that overlaps with another State's entitlement to a continental shelf within 200 nautical miles from the latter's baselines.

59. Nicaragua contends that there can be no difference in law between a State's entitlement to a continental shelf based on the natural prolongation criterion and one founded on the distance criterion. Nicaragua argues that there is a single continental shelf within and beyond 200 nautical miles from the baselines of the coastal State and that the same legal régime applies to all of it. While recognizing that States parties to UNCLOS are obligated to make contributions in return for the exploitation of the non-living resources of their continental shelf beyond 200 nautical miles, Nicaragua argues that the juridical nature of the rights of the coastal State is the same throughout its entire continental shelf. It adds that the unity of the continental shelf was confirmed in the 2006 arbitral award in the *Barbados* v. *Trinidad and Tobago* case (*Award of 11 April 2006, RIAA,* Vol. XXVII, pp. 208-209, para. 213), the decision of the International Tribunal for the Law of the Sea (ITLOS) in the case between Bangladesh and Myanmar (*Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, pp. 96-97, paras. 361-362) and the decision of the Special Chamber of ITLOS in *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)* (*Judgment, ITLOS Reports 2017*, p. 136, para. 490, and p. 142, para. 526).

60. According to Nicaragua, natural prolongation is the source of the coastal State's legal title both within and beyond 200 nautical miles. It considers that no "distance" criterion has been introduced to limit the scope of continental shelf claims, except in the provisions of UNCLOS concerning the determination of the outer edge of the continental margin, and that such is the situation at present. Recalling the historical origins of the concept of the continental shelf, Nicaragua asserts that, in the *North Sea Continental Shelf* cases, the Court confirmed that every coastal State has sovereign rights over the exploitable natural resources of the sea-bed that constitutes a natural prolongation of its land territory into and under the sea, with no "distance" criterion to be applied.

*

61. Colombia, for its part, considers that the continental shelf of a State beyond 200 nautical miles may not extend within 200 nautical miles from the baselines of another State.

62. Colombia argues that Article 56, paragraph 3, in Part V of UNCLOS, which concerns the exclusive economic zone, provides that the rights with respect to the sea-bed and its subsoil are to be exercised in accordance with Part VI of the Convention, which concerns the continental shelf, and that the rules of Part VI are thus incorporated by reference into the legal régime that governs the exclusive economic zone.

63. The Respondent asserts that the delimitation Nicaragua seeks would entail the vertical superimposition of two distinct national jurisdictions for distinct layers of the sea. According to

Colombia, Nicaragua's claim in this case bears no relation to the "grey areas" created in the delimitation decisions in the *Bay of Bengal* cases. Colombia argues that such grey areas are a by-product of the adjustment made to the equidistance line in plotting the single maritime boundary between two States with adjacent coasts. It adds that the existence of a grey area cannot be upheld in this case without calling into question the very notion of the exclusive economic zone, which, it claims, was meant to join all the physical layers of the sea under one national jurisdiction in which the coastal State would exercise sovereign rights over both the living and non-living resources. Colombia concludes on this matter that the two *Bay of Bengal* decisions are irrelevant in this case, since those proceedings did not involve a delimitation between the 200-nautical-mile entitlement of one State and the extended continental shelf claim of another.

64. Colombia emphasizes that the legal régime that governs the exclusive economic zone is the result of a compromise reached at the Third United Nations Conference on the Law of the Sea, taking into account the proposals made by a number of Latin American and African countries regarding the creation of a new *sui generis* 200-nautical-mile zone. In this zone, which was to have a "specific legal regime" and that would be neither territorial sea nor high seas, the coastal State would have exclusive sovereign rights over all the living and non-living resources of the water column, the sea-bed and the subsoil. The Respondent thus contends that an exclusive economic zone the water column of which is divorced from the sea-bed and subsoil is no longer an exclusive economic zone.

65. With regard to the continental shelf, Colombia recalls that, within 200 nautical miles, legal title depends on distance and that geology and geomorphology are not pertinent in this regard. While recognizing that the substantive content of the institution of the continental shelf is generally the same within and beyond 200 nautical miles from a State's baselines, Colombia maintains that the idea of the single continental shelf put forward by Nicaragua is irrelevant because the rules to be followed in determining a coastal State's entitlement to a continental shelf are different depending on whether the area in question is within or beyond 200 nautical miles.

66. According to Colombia, the package deal reflected in UNCLOS results from the negotiators' concerns about defining the outer limits of the continental margin in relation to the international sea-bed area (hereinafter the "Area"), considered the common heritage of mankind. In its view, this is confirmed by the obligation incumbent on the coastal State to make certain payments and contributions in respect of minerals taken from the area beyond 200 nautical miles.

67. According to the Respondent, in certain circumstances, State practice may be evidence of *opinio juris* and an examination of the extended continental shelf submissions filed by States with the CLCS clearly shows that the vast majority of those States do not claim a continental shelf that would encroach on maritime areas within 200 nautical miles from the baselines of another State. Colombia adds that the great majority of delimitations by way of agreement between States have disregarded geological and geomorphological features within 200 nautical miles of any coast.

* *

68. In support of their respective positions, the Parties have set out their views both on the relationship between the régime governing the exclusive economic zone and that governing the continental shelf and on certain considerations relevant to the régime governing the extended continental shelf. The Court considers each of these in turn.

69. The Court recalls that the régime that governs the exclusive economic zone set out in UNCLOS is the result of a compromise reached at the Third United Nations Conference on the Law of the Sea. Notably, this régime confers exclusively on the coastal State the sovereign rights of exploration, exploitation, conservation and management of natural resources within 200 nautical miles of its coast, while specifying certain duties on the part of the coastal State (Article 56), as well as the rights and duties of other States in that zone (Article 58). The Court has stated that the rights and duties of coastal States and other States in the exclusive economic zone set out in Articles 56, 58, 61, 62 and 73 of UNCLOS reflect customary international law (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment of 21 April 2022*, para. 57).

70. As stated above (see paragraph 49), the legal régimes governing the exclusive economic zone and the continental shelf of the coastal State within 200 nautical miles from its baselines are interrelated. Indeed, within the exclusive economic zone, the rights with respect to the sea-bed and subsoil are to be exercised in accordance with the legal régime that governs the continental shelf (UNCLOS, Article 56, paragraph 3) and the coastal State exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources (UNCLOS, Article 77, paragraphs 1 and 2). The Court stated in its 1985 Judgment in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case that

> "[a]lthough the institutions of the continental shelf and the exclusive economic zone are different and distinct, the rights which the exclusive economic zone entails over the sea-bed of the zone are defined by reference to the régime laid down for the continental shelf. Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf." (*Judgment, I.C.J. Reports 1985*, p. 33, para. 34.)

71. As regards the *Bay of Bengal* cases, the Court recalls that, in the case between Bangladesh and Myanmar, ITLOS delimited the 200-nautical-mile zones of two adjacent States by constructing a provisional equistance line, which it then adjusted. The Tribunal determined that both parties had entitlements to an extended continental shelf and it continued the course of the adjusted equidistance line beyond the 200-nautical-mile limit of Bangladesh (*Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 118, paras. 460-462). The use of an adjusted equidistance line produced a wedge-shaped area of limited size located within 200 nautical miles of the coast of Myanmar but on the Bangladesh side of the line delimiting the parties' continental shelves. As the Tribunal noted, this "grey area ar[ose] as a consequence of delimitation" (*ibid.*, pp. 119-120, paras. 463 and 472). Likewise, in the case between Bangladesh and India, the arbitral tribunal found both parties to have entitlements to an extended continental shelf and followed an adjusted equidistance methodology, which produced a "grey area" of limited size lying within the extended continental shelf of Bangladesh and the 200-nautical-mile zone of India (*Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014, RIAA*, Vol. XXXII, p. 147, para. 498). Each tribunal specified that, within the "grey area", the maritime boundary determined the rights that the parties had over the continental shelf pursuant to Article 77 of UNCLOS, but did not otherwise limit the rights of Myanmar and India, respectively, to the exclusive economic zone, as set out in Article 56 of UNCLOS, notably those with respect to the

superjacent water column. Both tribunals underlined that it was for the parties to take measures they considered appropriate with regard to the maritime areas in which they had shared rights, including through the conclusion of further agreements or the creation of a co-operative arrangement (*ibid.*, pp. 148-149, paras. 505 and 507-508; *Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 121, paras. 474-476).

72. In the two *Bay of Bengal* cases, the use of an adjusted equidistance line in a delimitation between adjacent States gave rise to a "grey area" as an incidental result of that adjustment. The circumstances in those cases are distinct from the situation in the present case, in which one State claims an extended continental shelf that lies within 200 nautical miles from the baselines of one or more other States. The Court considers that the aforementioned decisions are of no assistance in answering the first question posed in the present case.

73. In the *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)* case, the Court adopted an adjusted equidistance line as the single maritime boundary within the parties' 200-nautical-mile zones. The delimitation line continued on that course beyond 200 nautical miles from the baselines of both parties. The Court observed that the delimitation might give rise to an area of limited size lying within 200 nautical miles of the coast of Somalia but on the Kenyan side of the boundary. However, unlike the situation in the two *Bay of Bengal* cases, the Court considered that the existence of a "grey area" was only a possibility, depending on the extent of Kenya's entitlement to an extended continental shelf. The Court therefore did not consider it necessary to pronounce on the legal régime that would apply in this possible "grey area" (*Judgment, I.C.J. Reports 2021*, p. 277, para. 197).

74. The Court turns next to certain considerations relevant to the régime that governs the extended continental shelf.

75. The Court notes that, in contemporary customary international law, there is a single continental shelf in the sense that the substantive rights of a coastal State over its continental shelf are generally the same within and beyond 200 nautical miles from its baselines. However, the basis for the entitlement to a continental shelf within 200 nautical miles from a State's baselines differs from the basis for entitlement beyond 200 nautical miles. Indeed, in customary international law, as reflected in Article 76, paragraph 1, of the Convention, a State's entitlement to a continental shelf is determined in two different ways: the distance criterion, within 200 nautical miles of its coast, and the natural prolongation criterion, beyond 200 nautical miles, with the outer limits to be established on the basis of scientific and technical criteria.

76. The Court further notes that the substantive and procedural conditions for determining the outer limits of the continental shelf beyond 200 nautical miles were the result of a compromise reached during the final sessions of the Third United Nations Conference on the Law of the Sea. The aim was to avoid undue encroachment on the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, considered the "common heritage of mankind" and referred to in UNCLOS as the "Area" (Article 1, paragraph 1, of the Convention). The text of Article 76 of UNCLOS, in particular the rules in paragraphs 4 to 7 thereof, the role given to the CLCS in paragraph 8, and the obligation to deposit charts and relevant information in paragraph 9,

suggests that the States participating in the negotiations assumed that the extended continental shelf would only extend into maritime areas that would otherwise be located in the Area. In this regard, the Court has emphasized that the main role of the CLCS

> "consists of ensuring that the continental shelf of a coastal State does not extend beyond the limits provided for in paragraphs 4, 5 and 6 of Article 76 of UNCLOS and thus preventing the continental shelf from encroaching on the 'area and its resources', which are 'the common heritage of mankind' (UNCLOS, Article 136)" (*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 136, para. 109).

On the basis of the above-mentioned assumption, Article 82, paragraph 1, of the Convention makes provision for payments or contributions to be made through the International Seabed Authority in respect of the exploitation of "the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured". Such a payment would not serve the purpose of this provision in a situation where the extended continental shelf of one State extended within 200 nautical miles from the baselines of another State. Furthermore, although the Parties have referred extensively to the *travaux préparatoires* of UNCLOS, it appears that the possibility of one State's extended continental shelf extending within 200 nautical miles from the baselines of another State was not debated during the Third United Nations Conference on the Law of the Sea.

77. The Court notes that, in practice, the vast majority of States parties to the Convention that have made submissions to the CLCS have chosen not to assert, therein, outer limits of their extended continental shelf within 200 nautical miles of the baselines of another State. The Court considers that the practice of States before the CLCS is indicative of *opinio juris*, even if such practice may have been motivated in part by considerations other than a sense of legal obligation. Furthermore, the Court is aware of only a small number of States that have asserted in their submissions a right to an extended continental shelf encroaching on maritime areas within 200 nautical miles of other States, and in those instances the States concerned have objected to those submissions. Among the small number of coastal States that are not States parties to the Convention, the Court is not aware of any that has claimed an extended continental shelf that extends within 200 nautical miles from the baselines of another State. Taken as a whole, the practice of States may be considered sufficiently widespread and uniform for the purpose of the identification of customary international law. In addition, given its extent over a long period of time, this State practice may be seen as an expression of *opinio juris*, which is a constitutive element of customary international law. Indeed, this element may be demonstrated "by induction based on the analysis of a sufficiently extensive and convincing practice" (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 299, para. 111).

78. The Court notes that the reasoning set out above is premised on the relationship between, on the one hand, the extended continental shelf of a State and, on the other hand, the exclusive economic zone and continental shelf, within 200 nautical miles from the baselines of another State.

79. In view of the foregoing, the Court concludes that, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may not extend within 200 nautical miles from the baselines of another State.

IV. SECOND QUESTION FORMULATED IN THE ORDER OF 4 OCTOBER 2022

80. The Court recalls that the second question formulated in the Order of 4 October 2022 is worded as follows:

> "What are the criteria under customary international law for the determination of the limit of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured and, in this regard, do paragraphs 2 to 6 of Article 76 of the United Nations Convention on the Law of the Sea reflect customary international law?"

81. The Court concluded, in response to the first question, that a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may not extend within 200 nautical miles from the baselines of another State (see paragraph 79 above). Therefore, even if a State can demonstrate that it is entitled to an extended continental shelf, that entitlement may not extend within 200 nautical miles from the baselines of another State.

82. It follows from the Court's answer to the first question that, regardless of the criteria that determine the outer limit of the extended continental shelf to which a State is entitled, its extended continental shelf cannot overlap with the area of continental shelf within 200 nautical miles from the baselines of another State. In the absence of overlapping entitlements over the same maritime areas, the Court cannot proceed to a maritime delimitation (see paragraph 42 above). Consequently, there is no need for the Court to address the second question.

V. CONSIDERATION OF NICARAGUA'S SUBMISSIONS

83. Based on the conclusion reached above (see paragraph 79), the Court now turns to the requests contained in Nicaragua's submissions.

84. In this regard, the Court recalls that Nicaragua's Application asks the Court to determine "[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in [the 2012 Judgment]". Throughout the proceedings in the present case, Nicaragua has maintained that the object of its request consists in the delimitation of that maritime boundary. During the oral proceedings, Nicaragua explained that the submissions in its Memorial and Reply merely add precision to the request made in its Application. The Court considers that Nicaragua's submissions must be examined against this background.

A. The request contained in the first submission made by Nicaragua

85. The request contained in Nicaragua's first submission, which was presented in the Memorial and reiterated in the Reply (see paragraph 19 above), proposes co-ordinates for the continental shelf boundary between Nicaragua and Colombia in the area beyond 200 nautical miles from the baselines of Nicaragua's coast but within 200 nautical miles from the baselines of Colombia's mainland coast.

86. The Court has concluded that, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may not extend within 200 nautical miles from the baselines of another State (see paragraph 79 above). It follows that, irrespective of any scientific and technical considerations, Nicaragua is not entitled to an extended continental shelf within 200 nautical miles from the baselines of Colombia's mainland coast. Accordingly, within 200 nautical miles from the baselines of Colombia's mainland coast, there is no area of overlapping entitlement to be delimited in the present case.

87. For these reasons, the request contained in Nicaragua's first submission cannot be upheld.

B. The request contained in the second submission made by Nicaragua

88. The request contained in Nicaragua's second submission, which was presented in the Memorial and reiterated in the Reply (see paragraph 19 above), proposes co-ordinates to delimit the area of the continental shelf in which, according to Nicaragua, its entitlement to an extended continental shelf overlaps with Colombia's entitlement to a continental shelf within 200 nautical miles from the baselines of the coasts of San Andrés and Providencia. Nicaragua accepts that, in principle, San Andrés and Providencia are each entitled to a continental shelf extending at least up to 200 nautical miles. It contends, however, that the continental shelf of these islands should not extend east of the 200-nautical-mile limit of Nicaragua's exclusive economic zone, due to their small size and their already "much more than adequate" maritime areas resulting from the 2012 Judgment.

89. For its part, Colombia considers that the maritime entitlements of San Andrés and Providencia project in all directions from their baselines, and that they therefore extend to the east of the line lying 200 nautical miles from the Nicaraguan baselines. Colombia adds that Nicaragua's claim contradicts the 2012 Judgment in so far as it would result in the islands being cut off from their maritime entitlements to the east.

90. In its 2012 Judgment, the Court observed that the Parties agreed on the potential maritime entitlements of San Andrés, Providencia and Santa Catalina, in particular on the fact that those islands "are entitled to a territorial sea, exclusive economic zone and continental shelf" (*I.C.J. Reports 2012 (II)*, p. 686, para. 168). The Court added that "[i]n principle, that entitlement is capable of extending up to 200 nautical miles in each direction" and, in particular, that it extends to the east "to an area which lies beyond a line 200 nautical miles from the Nicaraguan baselines" (*ibid.*, pp. 686 and 688, para. 168; see also *ibid.*, p. 716, para. 244). In the present case, Nicaragua claims that this area lies within its extended continental shelf.

91. The Court notes that the maritime entitlements of San Andrés and Providencia extend to the east beyond 200 nautical miles from Nicaragua's baselines and therefore into the area within which Nicaragua claims an extended continental shelf. The Court has concluded however that, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may not extend within 200 nautical miles from the baselines of another State (see paragraph 79 above). It follows that

Nicaragua is not entitled to an extended continental shelf within 200 nautical miles from the baselines of San Andrés and Providencia. Accordingly, within 200 nautical miles from the baselines of San Andrés and Providencia, there is no area of overlapping entitlement to be delimited in the present case.

92. For these reasons, the request contained in Nicaragua's second submission cannot be upheld.

C. The request contained in the third submission made by Nicaragua

93. The request contained in Nicaragua's third submission, as presented in its Reply (see paragraph 19 above), concerns the maritime entitlements of Serranilla, Bajo Nuevo and Serrana. Specifically, Nicaragua requests the Court to declare that "Serranilla and Bajo Nuevo are enclaved and granted a territorial sea of twelve nautical miles, and [that] Serrana is enclaved as per the Court's November 2012 Judgment".

94. In support of its request, Nicaragua invokes the Court's conclusion in the 2012 Judgment that the legal régime over islands set out in Article 121 of UNCLOS forms an indivisible whole, which has the status of customary international law in its entirety (*I.C.J. Reports 2012 (II)*, p. 674, para. 139). According to that régime, if an island qualifies as a rock that cannot sustain human habitation or economic life of its own, it shall have no exclusive economic zone or continental shelf.

95. Nicaragua contends that, on that basis, Serranilla and Bajo Nuevo are not entitled to an exclusive economic zone or a continental shelf. Nicaragua observes that Serrana was enclaved in the 2012 Judgment and asserts that, in any event, it is a rock incapable of sustaining human habitation or economic life of its own. In Nicaragua's view, therefore, Serrana cannot generate entitlements to an exclusive economic zone or a continental shelf.

96. Colombia maintains that the three maritime features, being islands of the San Andrés Archipelago that are capable of sustaining human habitation or economic life, are each entitled to an exclusive economic zone with its "attendant" continental shelf up to 200 nautical miles, extending east of the line lying 200 nautical miles from the Nicaraguan baselines.

97. The Court recalls that, in its 2012 Judgment, it found that Colombia has sovereignty over the islands at Serranilla, Bajo Nuevo and Serrana (*I.C.J. Reports 2012 (II)*, p. 718, para. 251, subpara. 1). It also observes that, through the request presented in its Application, as further specified in its written pleadings, Nicaragua sought the delimitation of the maritime boundary between the Parties in the areas of the continental shelf that appertain to each of them beyond the boundaries determined by the Court in the 2012 Judgment. Therefore, Nicaragua's third submission, which it described as adding precision to the delimitation request contained in its Application (see paragraph 84 above), must be understood as seeking a specific finding regarding the effect, if any, that the maritime entitlements of Serranilla, Bajo Nuevo and Serrana would have on any maritime delimitation between the Parties.

98. In its 2012 Judgment, the Court found that it was not called upon to determine the scope of the maritime entitlements of Serranilla and Bajo Nuevo, because they fell outside the area of delimitation identified in that Judgment (*I.C.J. Reports 2012 (II)*, p. 689, para. 175).

99. The Court observes that there are two possibilities with regard to the potential maritime entitlements of Serranilla and Bajo Nuevo. If Serranilla and Bajo Nuevo are entitled to exclusive economic zones and continental shelves, then, in view of the Court's conclusion above (see paragraph 79), any extended continental shelf that Nicaragua claims may not extend within the 200-nautical-mile maritime entitlements of these islands. If, on the other hand, Serranilla or Bajo Nuevo are not entitled to exclusive economic zones or continental shelves, then they do not generate any maritime entitlements in the area in which Nicaragua claims an extended continental shelf. In either case, as a consequence of the Court's conclusion in relation to the first question (see paragraph 79 above), within 200 nautical miles from the baselines of Serranilla and Bajo Nuevo, there can be no area of overlapping entitlement to a continental shelf to be delimited in the present proceedings.

100. The Court therefore considers that it does not need to determine the scope of the entitlements of Serranilla and Bajo Nuevo in order to settle the dispute submitted by Nicaragua in its Application.

101. The Court further recalls that the 2012 Judgment has already determined the effect produced by Serrana's maritime entitlements. Having found that Serrana is entitled to a territorial sea, the Court concluded that

> "[i]ts small size, remoteness and other characteristics mean that, in any event, the achievement of an equitable result requires that the boundary line follow the outer limit of the territorial sea around the island. The boundary will therefore follow a 12-nautical-mile envelope of arcs measured from Serrana Cay and other cays in its vicinity." (*I.C.J. Reports 2012 (II)*, p. 715, para. 238.)

In the operative paragraph of that Judgment, the Court decided that the maritime boundary between the Parties around Serrana followed a 12-nautical-mile envelope of arcs measured from Serrana Cay and the other cays in its vicinity (*ibid.*, p. 718, para. 251, subpara. 5). As the effect produced by Serrana's maritime entitlements was determined conclusively in the 2012 Judgment, there is no need for the Court to reaffirm it in the present case.

102. For these reasons, the request contained in Nicaragua's third submission cannot be upheld.

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103. In light of the above, the Court has no need to fix a timetable for further proceedings in this case, as requested by Nicaragua in its submissions at the oral proceedings.

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104. For these reasons,

THE COURT,

(1) By thirteen votes to four,

Rejects the request made by the Republic of Nicaragua that the Court adjudge and declare that the maritime boundary between the Republic of Nicaragua and the Republic of Colombia in the areas of the continental shelf which, according to the Republic of Nicaragua, appertain to each of them beyond the boundary determined by the Court in its Judgment of 19 November 2012 follows geodetic lines connecting the points 1 to 8, the co-ordinates of which are referred to in paragraph 19 above;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Brant; *Judge* ad hoc McRae;

AGAINST: *Judges* Tomka, Robinson, Charlesworth; *Judge* ad hoc Skotnikov;

(2) By thirteen votes to four,

Rejects the request made by the Republic of Nicaragua that the Court adjudge and declare that the islands of San Andrés and Providencia are entitled to a continental shelf up to a line consisting of 200-nautical-mile arcs from the baselines from which the breadth of the territorial sea of Nicaragua is measured connecting the points A, C and B, the co-ordinates of which are referred to in paragraph 19 above;

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Brant; *Judge* ad hoc McRae;

AGAINST: *Judges* Tomka, Robinson, Charlesworth; *Judge* ad hoc Skotnikov;

(3) By twelve votes to five,

Rejects the request made by the Republic of Nicaragua with respect to the maritime entitlements of Serranilla and Bajo Nuevo.

IN FAVOUR: *President* Donoghue; *Vice-President* Gevorgian; *Judges* Abraham, Bennouna, Yusuf, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Brant; *Judge* ad hoc McRae;

AGAINST: *Judges* Tomka, Robinson, Nolte, Charlesworth; *Judge* ad hoc Skotnikov.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirteenth day of July, two thousand and twenty-three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Nicaragua and the Government of the Republic of Colombia, respectively.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judge TOMKA appends a dissenting opinion to the Judgment of the Court; Judge XUE appends a separate opinion to the Judgment of the Court; Judge BHANDARI appends a declaration to the Judgment of the Court; Judge ROBINSON appends a dissenting opinion to the Judgment of the Court; Judges IWASAWA and NOLTE append separate opinions to the Judgment of the Court; Judge CHARLESWORTH appends a dissenting opinion to the Judgment of the Court; Judge *ad hoc* SKOTNIKOV appends a dissenting opinion to the Judgment of the Court.

(Initialled) J.E.D.

(Initialled) Ph.G.

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