

The Fourth International Workshop
“The South China Sea:
Cooperation for Regional Security and Development”
18-21 November, 2012, Ho Chi Minh City, Viet Nam

Territorial and Maritime Dispute
(Nicaragua v. Colombia)

Robert Beckman
Director, Centre for International Law (CIL)
National University of Singapore

Background

- 2007- Preliminary Objections :
- The Court found that the 1928 Treaty between Colombia and Nicaragua settled the matter of sovereignty over the islands of **San Andrés, Providencia and Santa Catalina**, and that there is no extant legal dispute between the Parties on that question
- These are the 3 largest islands which have population of more than 70,000
- They are located approximately 230 km off the coast of Nicaragua

San Andrés, Providencia & Santa Catalina

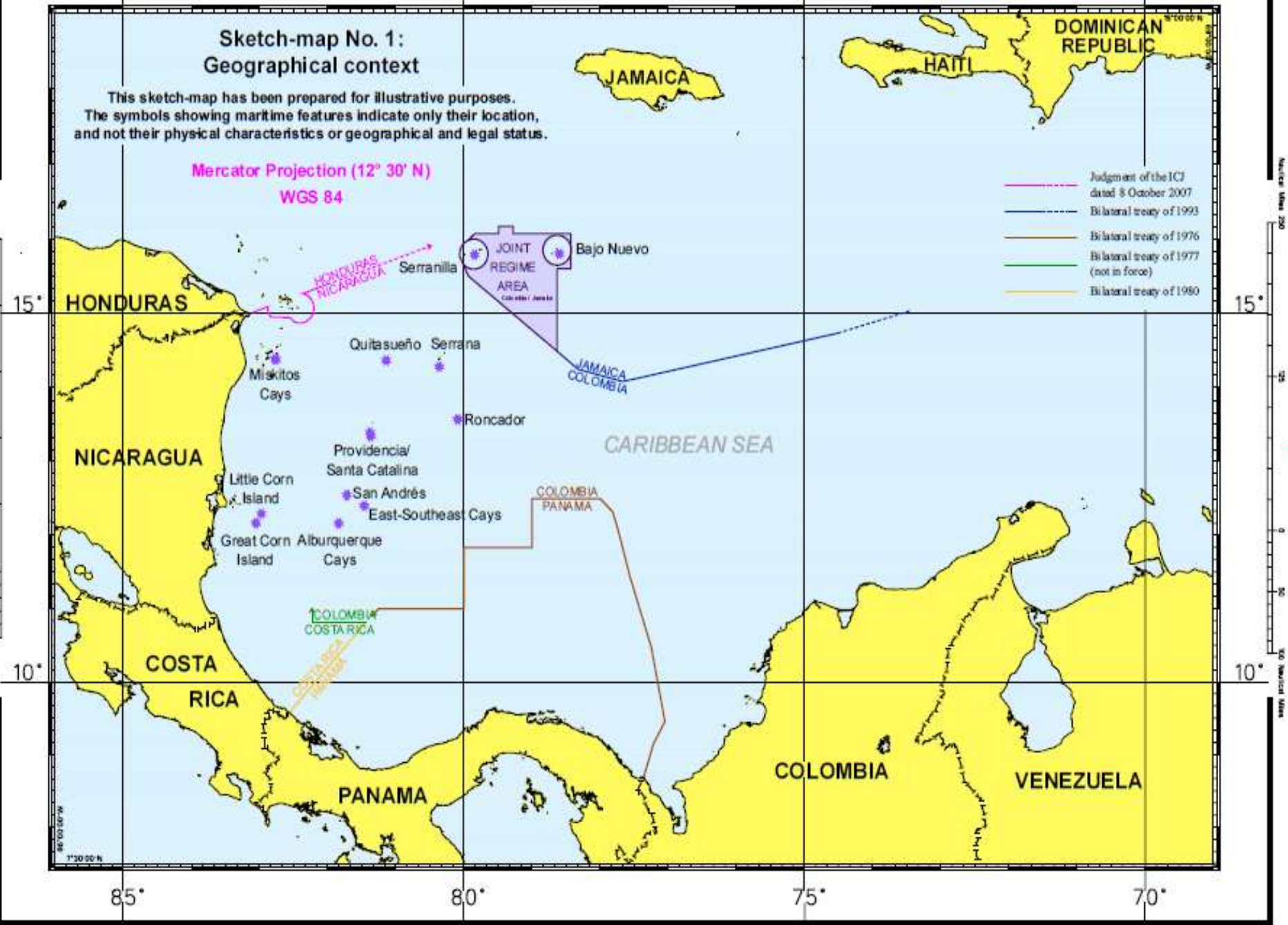
- **San Andrés** has an area of some 26 sq km and a population of 70,000. Its central part is made up of a mountainous sector with a maximum height of 100 metres across the island from north to south.
- **Providencia** is some 17.5 sq km in area and a permanent population of 5,000. It has varied vegetation. On the north, east and south coasts, it is fringed by an extensive barrier reef.
- **Santa Catalina** is located north of Providencia. It is separated from Providencia by the Aury Channel, some 130 metres in width.

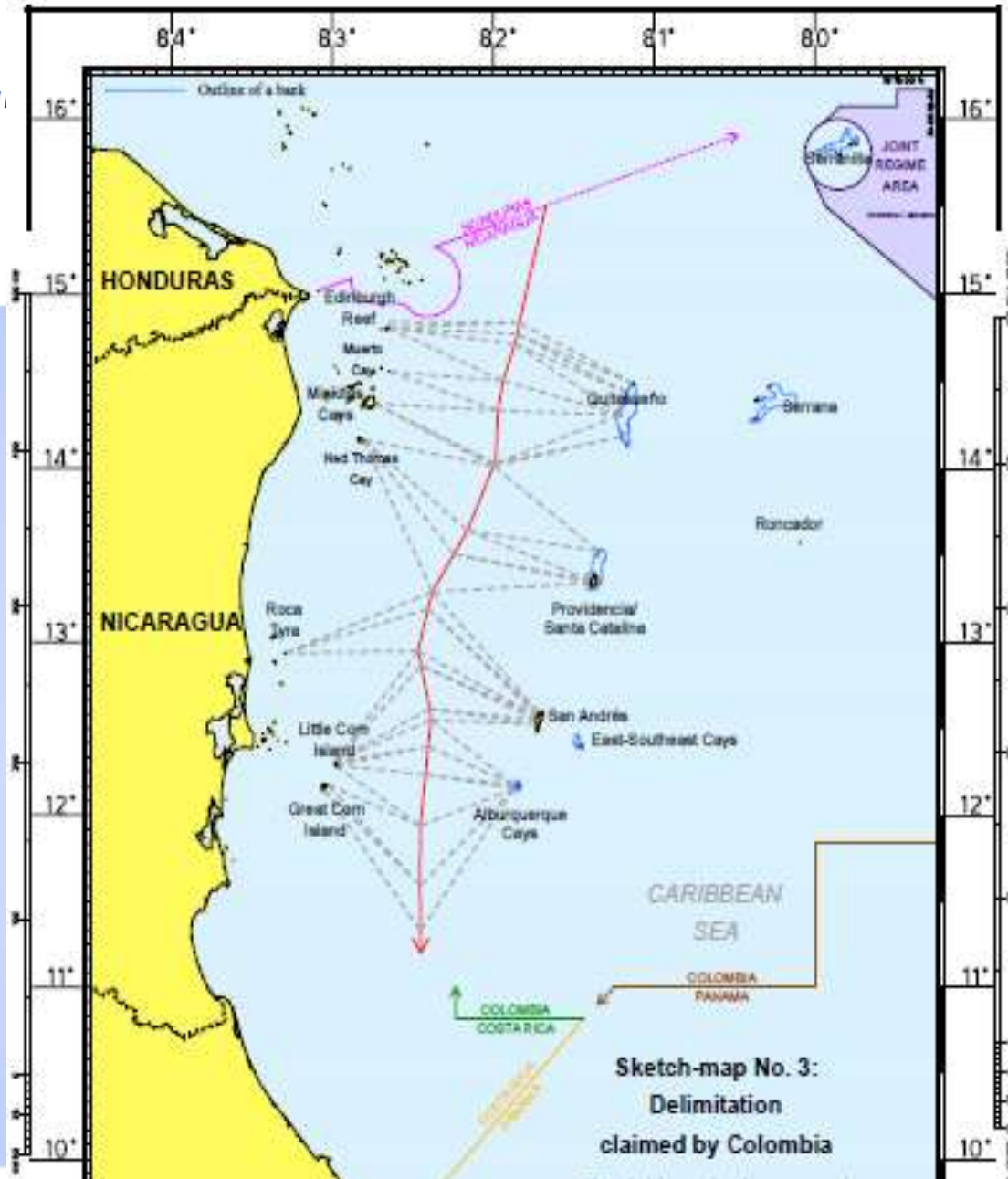
Sketch-map No. 1: Geographical context

This sketch-map has been prepared for illustrative purposes.
The symbols showing maritime features indicate only their location,
and not their physical characteristics or geographical and legal status.

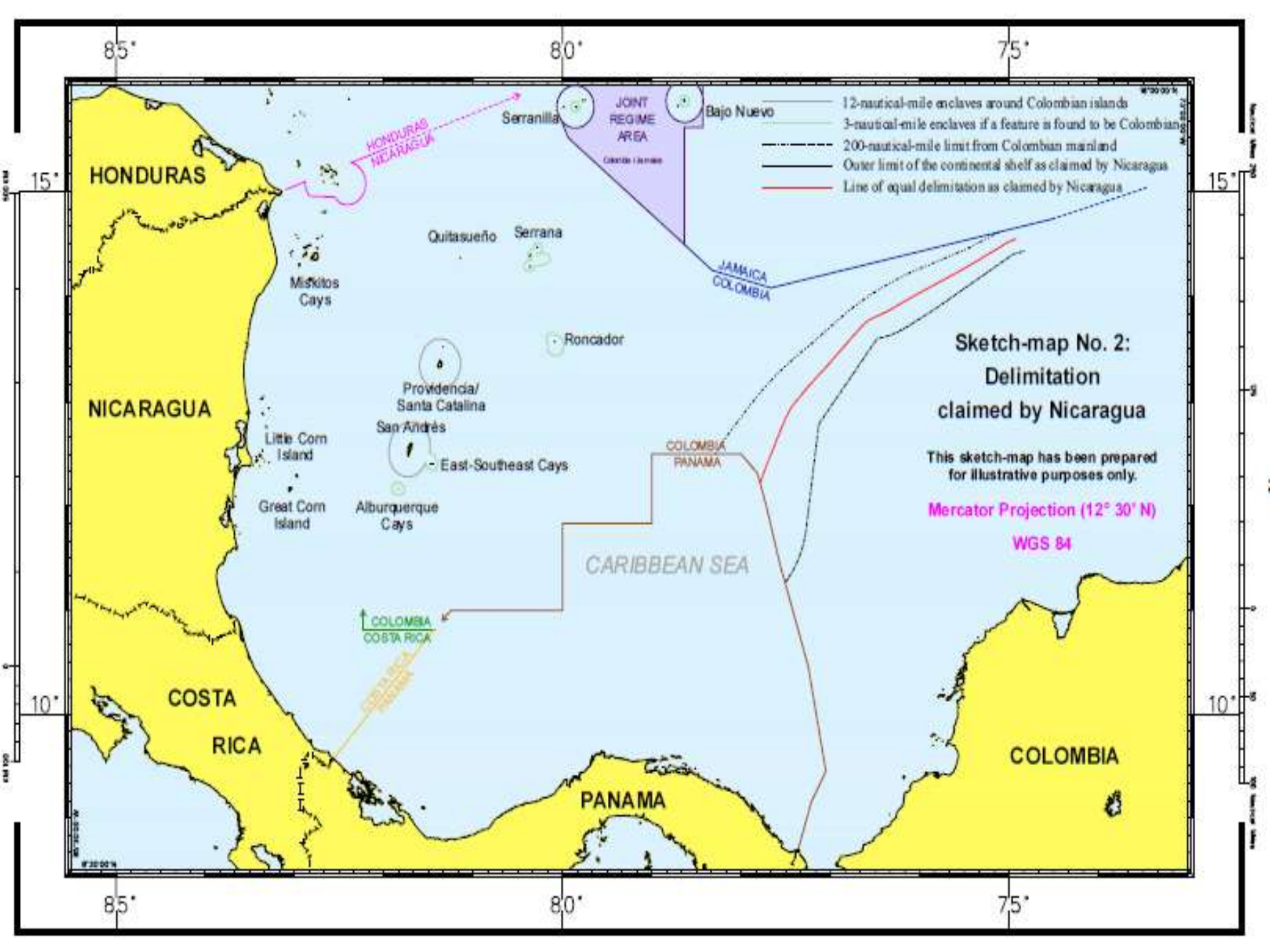
Mercator Projection (12° 30' N)
WGS 84

- Judgment of the ICJ dated 8 October 2007
- Bilateral treaty of 1993
- Bilateral treaty of 1976
- Bilateral treaty of 1977 (not in force)
- Bilateral treaty of 1980





Sketch-map No. 3:
Delimitation
claimed by Colombia



85° 80° 75°

15°

15°

HONDURAS

NICARAGUA

COSTA RICA

PANAMA

COLOMBIA

HONDURAS
NICARAGUA

JOINT
REGIME
AREA

Bajo Nuevo

- 12-nautical-mile enclaves around Colombian islands
- 3-nautical-mile enclaves if a feature is found to be Colombian
- - - 200-nautical-mile limit from Colombian mainland
- Outer limit of the continental shelf as claimed by Nicaragua
- Line of equal delimitation as claimed by Nicaragua

Quitasueño Serrana

Miskitos
Cays

JAMAICA
COLOMBIA

Roncador

Providencia/
Santa Catalina

San Andrés

East-Southeast Cays

Albuquerque
Cays

COLOMBIA
PANAMA

COLOMBIA
COSTA RICA

CARIBBEAN SEA

**Sketch-map No. 2:
Delimitation
claimed by Nicaragua**

This sketch-map has been prepared
for illustrative purposes only.

Mercator Projection (12° 30' N)
WGS 84

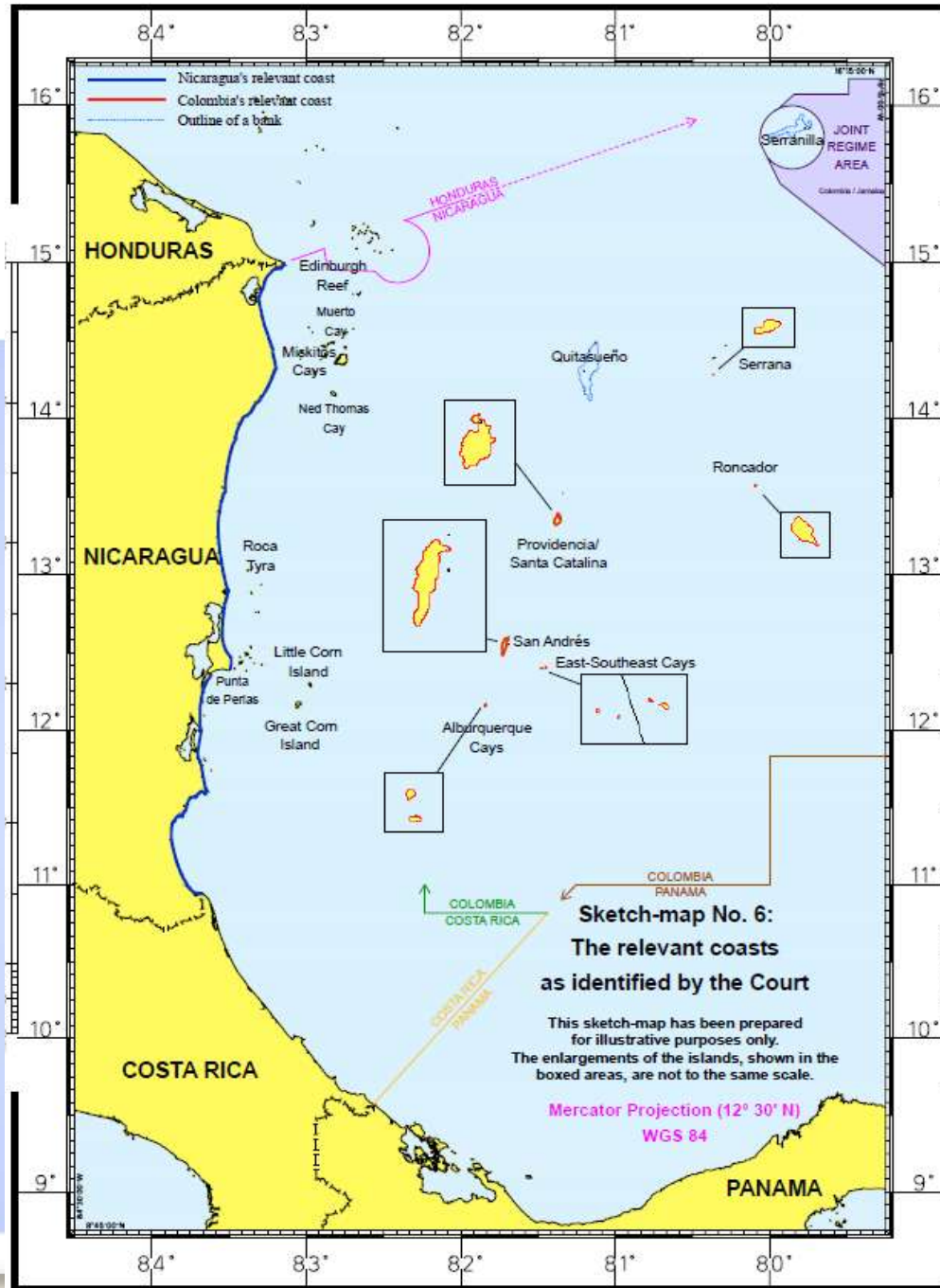
10°

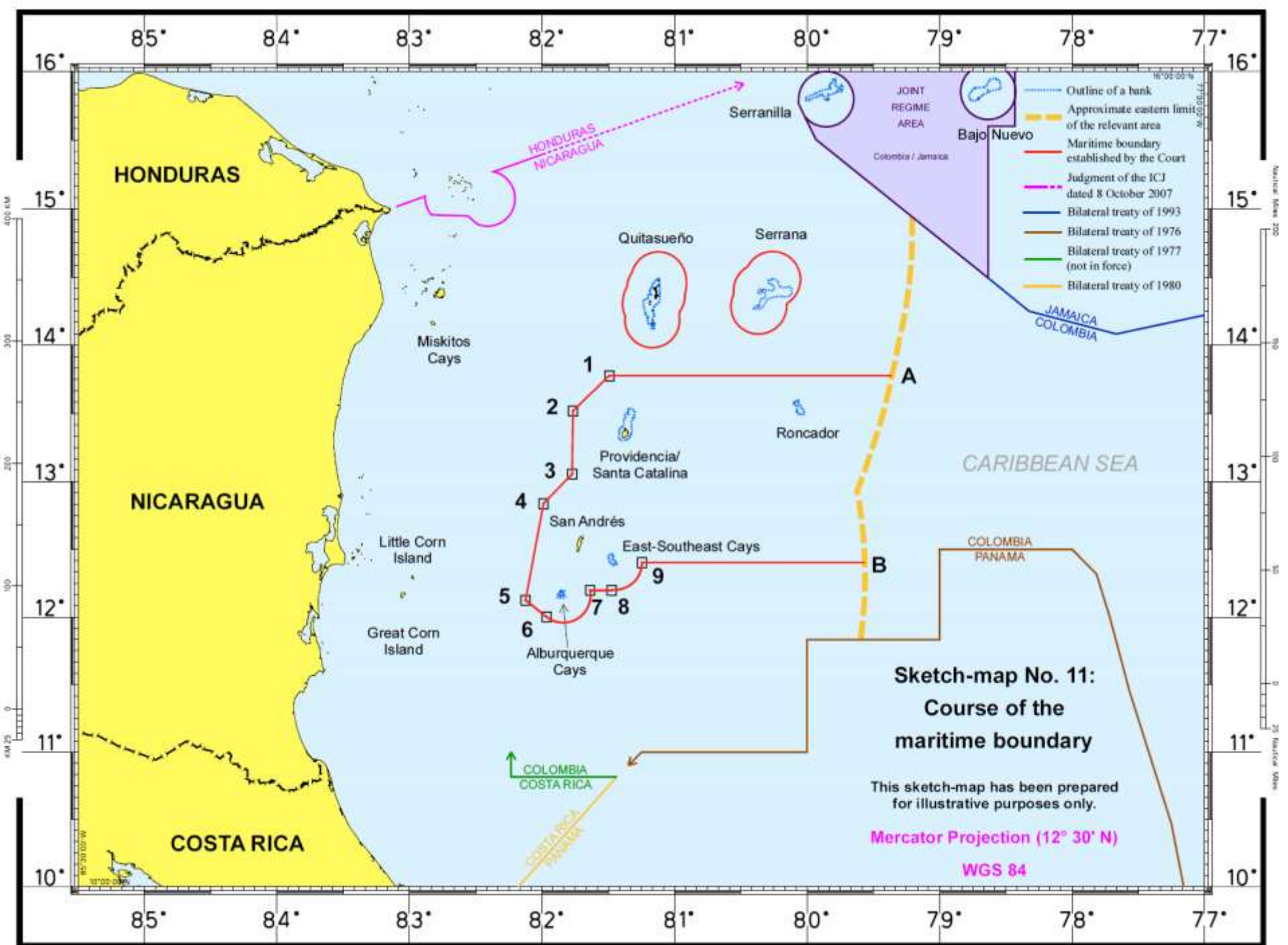
10°

85°

80°

75°





Quitasueño

- The Parties differ about the geographical characteristics of Quitasueño (a large bank approximately 57 km long and 20 km wide)
- It is located 45 nautical miles west of Serrana, 38 nautical miles from Santa Catalina, 90 nautical miles from the Miskitos Cays and 40 nautical miles north of Providencia
- A number of features are located on the bank, the legal status of which is disputed.
- Quitasueño is rich in fishing and has two lighthouses, operated by Colombia Navy.



Quitasueño – Island or LTE ?

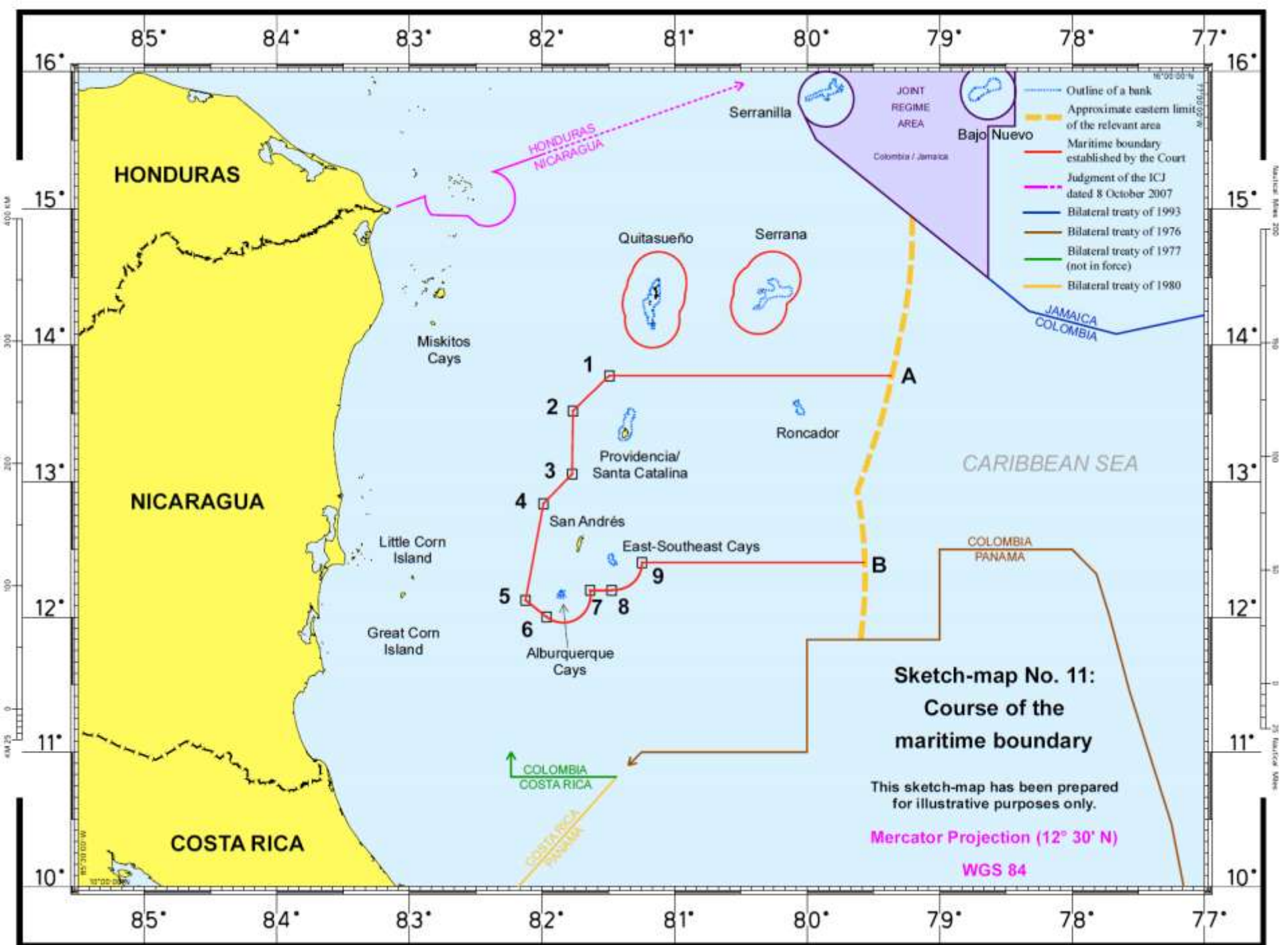


Quitasueño

- One of the features at Quitasueño, namely QS 32, is above water at high tide and thus constitutes an island within the definition embodied in Article 121, paragraph 1, of UNCLOS
- The other **53 features** identified at Quitasueño are **low-tide elevations**
- Colombia is entitled to use those low-tide elevations within 12 nautical miles of QS 32 for the purpose of measuring the breadth of its territorial sea.

Quitasueño

- Quitasueño is a **rock** incapable of sustaining human habitation or an economic life of its own and thus falls within the rule stated in **Article 121(3)** of UNCLOS, it is not entitled to a continental shelf or EEZ.
- Accordingly, the boundary between the continental shelf and EEZ of Nicaragua and the Colombian territorial sea around Quitasueño will follow a 12-nautical-mile envelope of arcs measured from QS 32 and from the low-tide elevations located within 12 nautical miles from QS 32

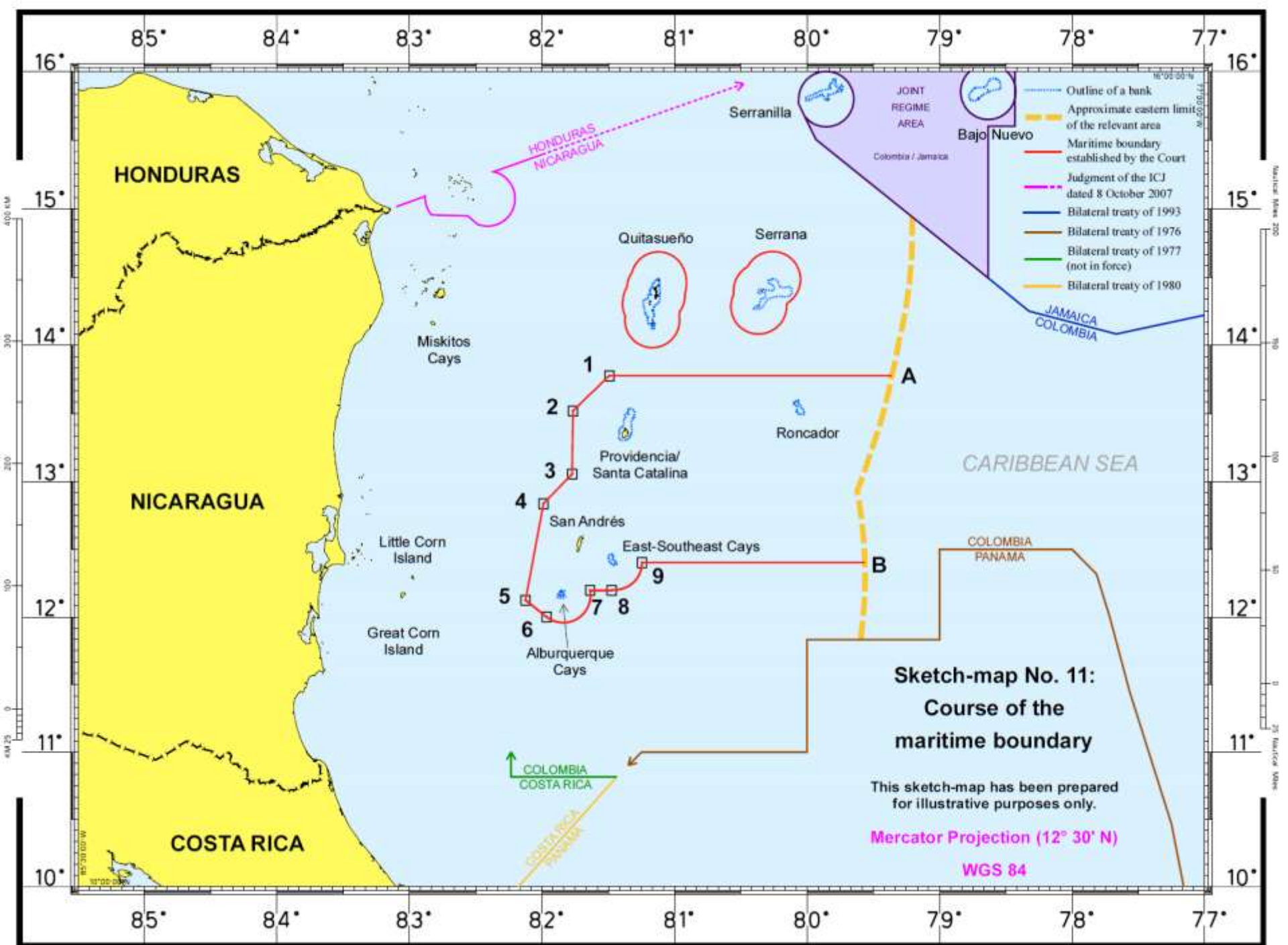


Serrana

- Although larger than Quitasueño, Serrana is also a comparatively small feature, whose considerable distance from any of the other Colombian islands means that placing a base point upon it would have a marked effect upon the course of the provisional median line which would be out of all proportion to its size and importance.
- In the Court's view, no base point should be placed on Serrana.

Serrana

- The Court recalls that it has already concluded that it is **unnecessary to decide** whether or not Serrana falls within the rule stated in **Article 121 (3)**
- Its 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.

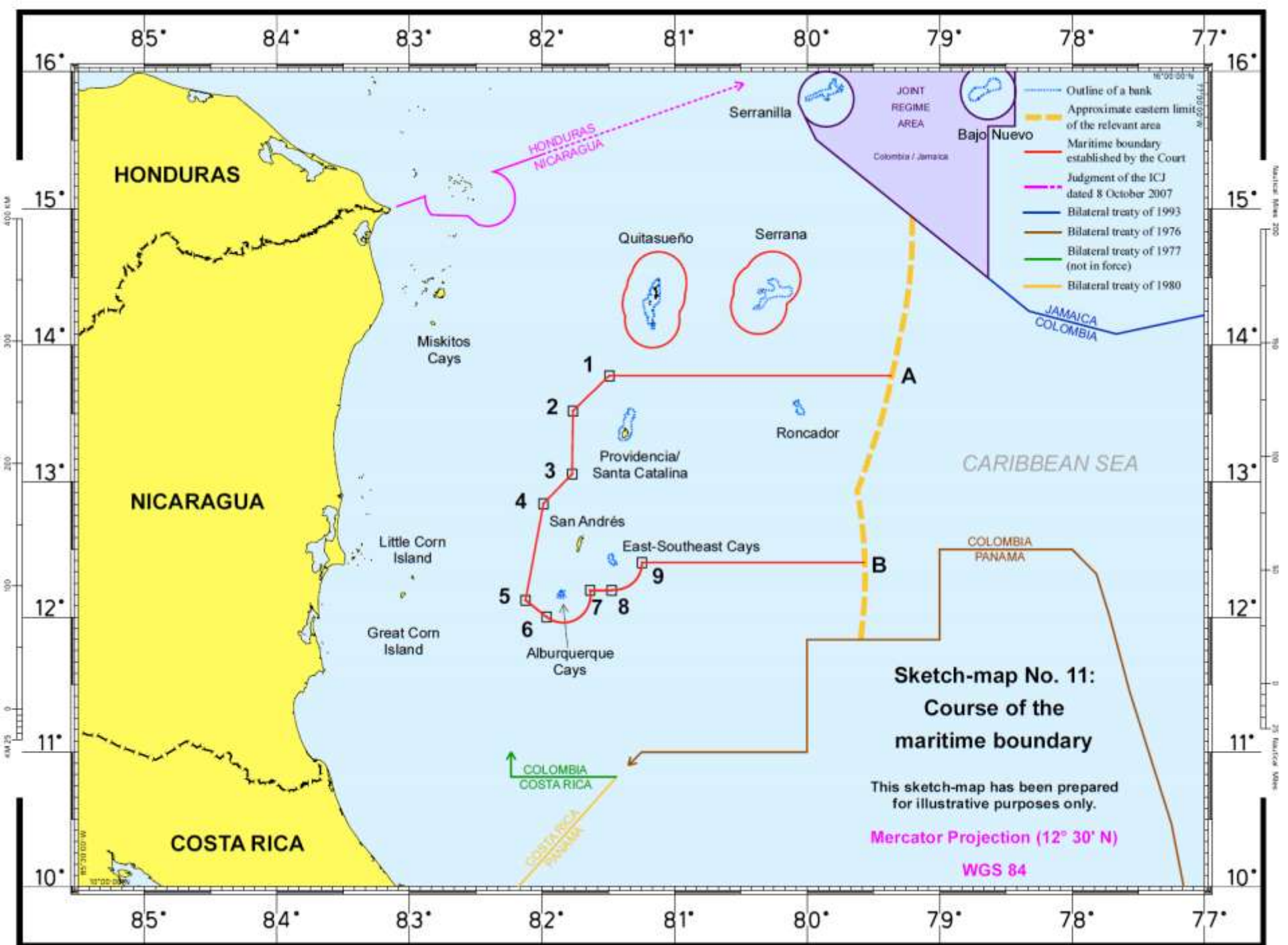


East Southeast Cays

- The East-Southeast Cays (East Cay, Bolivar Cay (also known as Middle Cay), West Cay and Arena Cay) are located on an atoll extending over some 13 km in a north-south direction.
- The East-Southeast Cays lie 120 nautical miles from the mainland of Nicaragua, 90 nautical miles from the Corn Islands, 360 nautical miles from the mainland of Colombia, 16 nautical miles south-east of the island of San Andrés and 26 nautical miles from Alburquerque Cays.



Figure 2.5

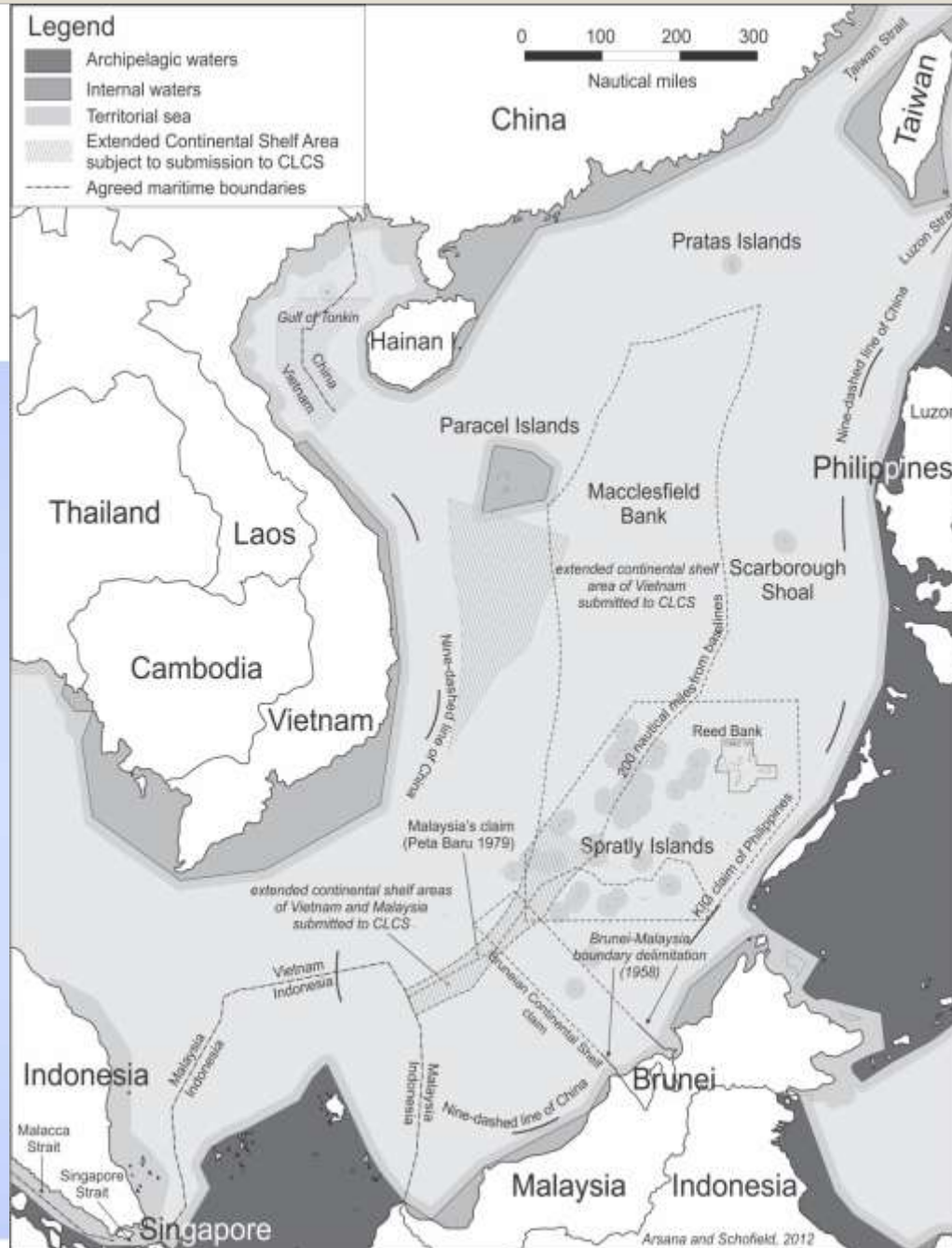


Conclusions from the Case

1. Confirmed that LTEs not entitled to Territorial Sea
2. ICJ seems very reluctant to interpret Art 121(3)
3. ICJ seems willing to declare that almost all small islands are entitled “in principle” to an EEZ and continental shelf
4. Practical effect was to treat all the small islands as “rocks”
5. Suggests that if the EEZ from a small island overlaps with the EEZ of a mainland territory, the island will only get a 12 nm TS
6. Query: Will the court allow an EEZ from a very small uninhabited island when there is no overlap with any EEZ?

Implications for South China Sea

1. If the reasoning of the case is applied to the SCS, it can be very helpful in identifying the areas of overlapping claims
2. In **direction of mainland coasts** of claimants, islands are likely to be given only a 12 nm territorial sea
3. **Scarborough Shoal** rocks would only get 12 nm TS
4. In **direction of high seas**, islands may be given an EEZ & CS
5. Maritime features must be examined to determine if there are **low-tide elevations within 12 nm of islands**
6. **Query:** Will small islands outside the EEZ limit of the Philippines be given a EEZ and CS?



Scarborough Shoal –





SPRATLY ISLANDS

Philippine (Kalayaan) claim

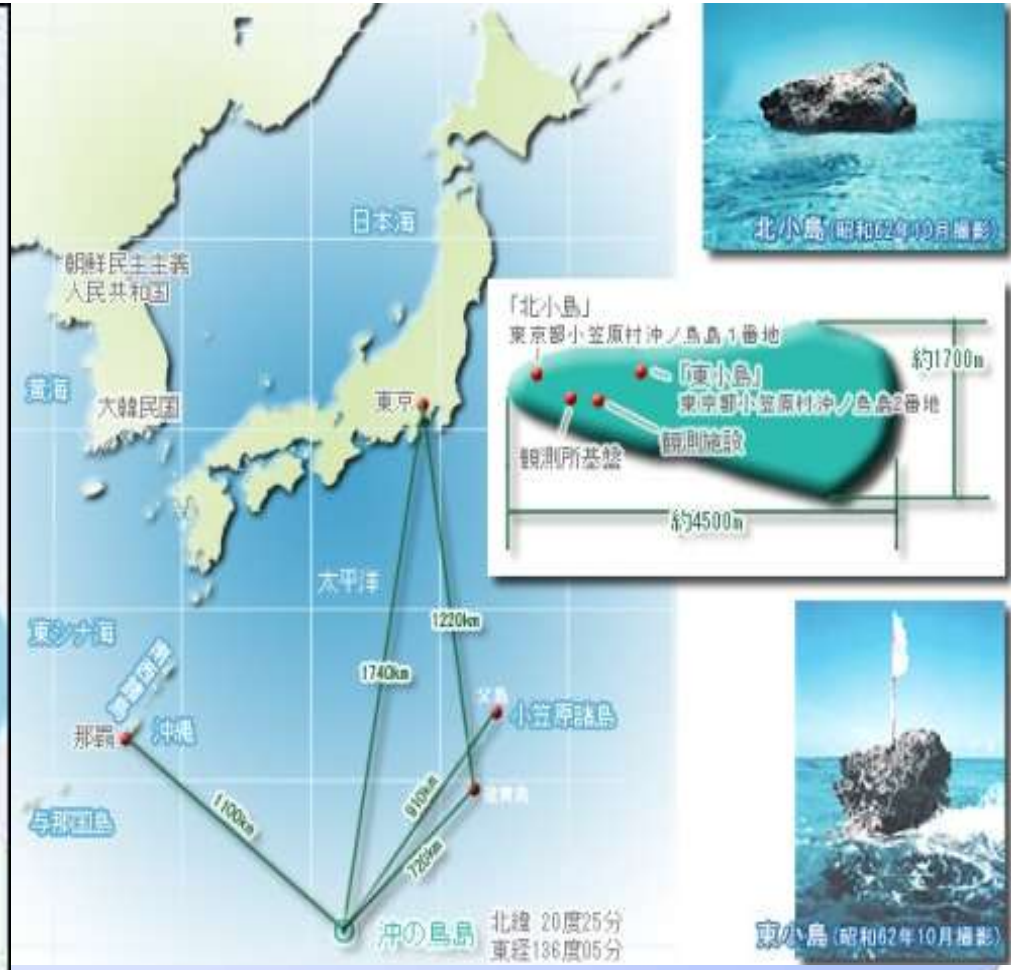
1979 Malaysian-claimed continental shelf limit

Narciso Del Rosario/Balabac

Implications for Very small islands ? Okinotorishima



Okinotorishima



Japan's Okinotorishima policy and its implication

- Japan introduced a hydrographic observation radar station in 2005
- Japanese Fishery Agency started the breeding of coral in 2006.
- Japan Coast Guard constructed a lighthouse and started its operation in March 2007
- Tokyo Metropolitan government conducts several projects to create fishing grounds around Okinotorishima.
- The Tokyo government placed an official titanium address plaque in Okinotorishima.



Okinotorishima



Thanks for Your Attention

Prof Robert Beckman

Director, Centre for International Law (CIL)

National University of Singapore

Email: CILDIR@NUS.EDU.SG

Website: WWW.CIL.NUS.EDU.SG