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“New Development of Oceans Law and Policy in Asia-Pacific and the Arctic”

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**Recent Precedents of Maritime Boundary Cases
and Their Impact to East China Sea Maritime
Disputes**

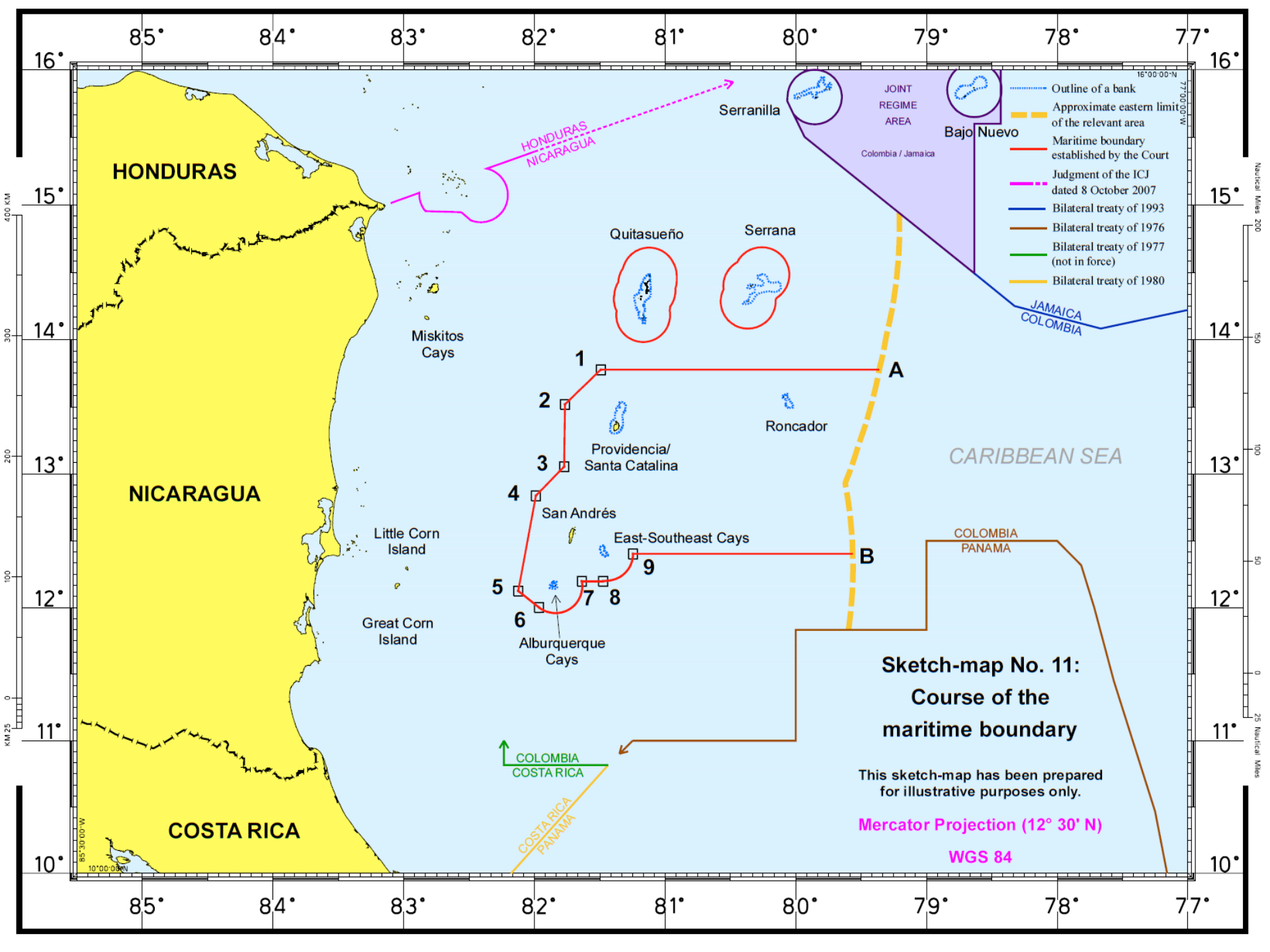
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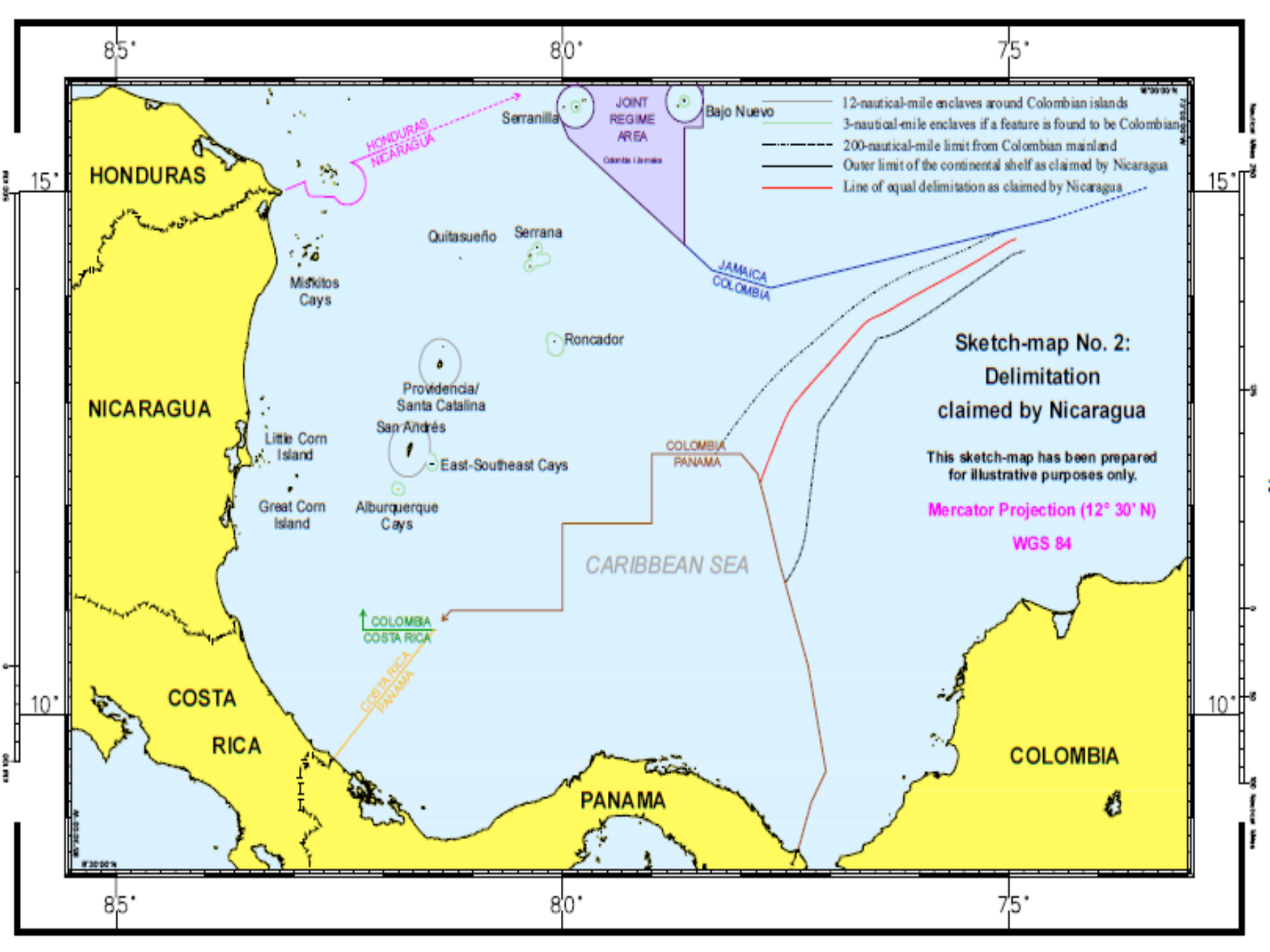
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- 2. Compulsory Conciliation between Timor-Leste and Australia on the Timor Sea (Report of 9 May 2018)**

Nicaragua v Colombia Case





Colombia's Objections

1. Colombia had denunciate the Pact of Bogota before Nicaragua filed its Application
2. The Court does not possesses continuing jurisdiction over the subject-matter
3. The Court has already adjudicated on Nicaragua's requests in its 2012 Judgment
4. Nicaragua was seeking to "appeal" the previous Judgment, or to have it revised
5. **In the alternative:**
 - **Nicaragua has not secured the requisite recommendation from the CLCS**
 - The decision of the Court would be inapplicable and would concern a non-existent dispute

Extended Continental Shelf Claims

- **Article 76 of UNCLOS permits states to make continental shelf claims beyond 200 nm**
- **Claim to extended CS must be made by submitting technical information to the Commission on the Limits of the Continental Shelf (CLCS)**

The Court's Decision

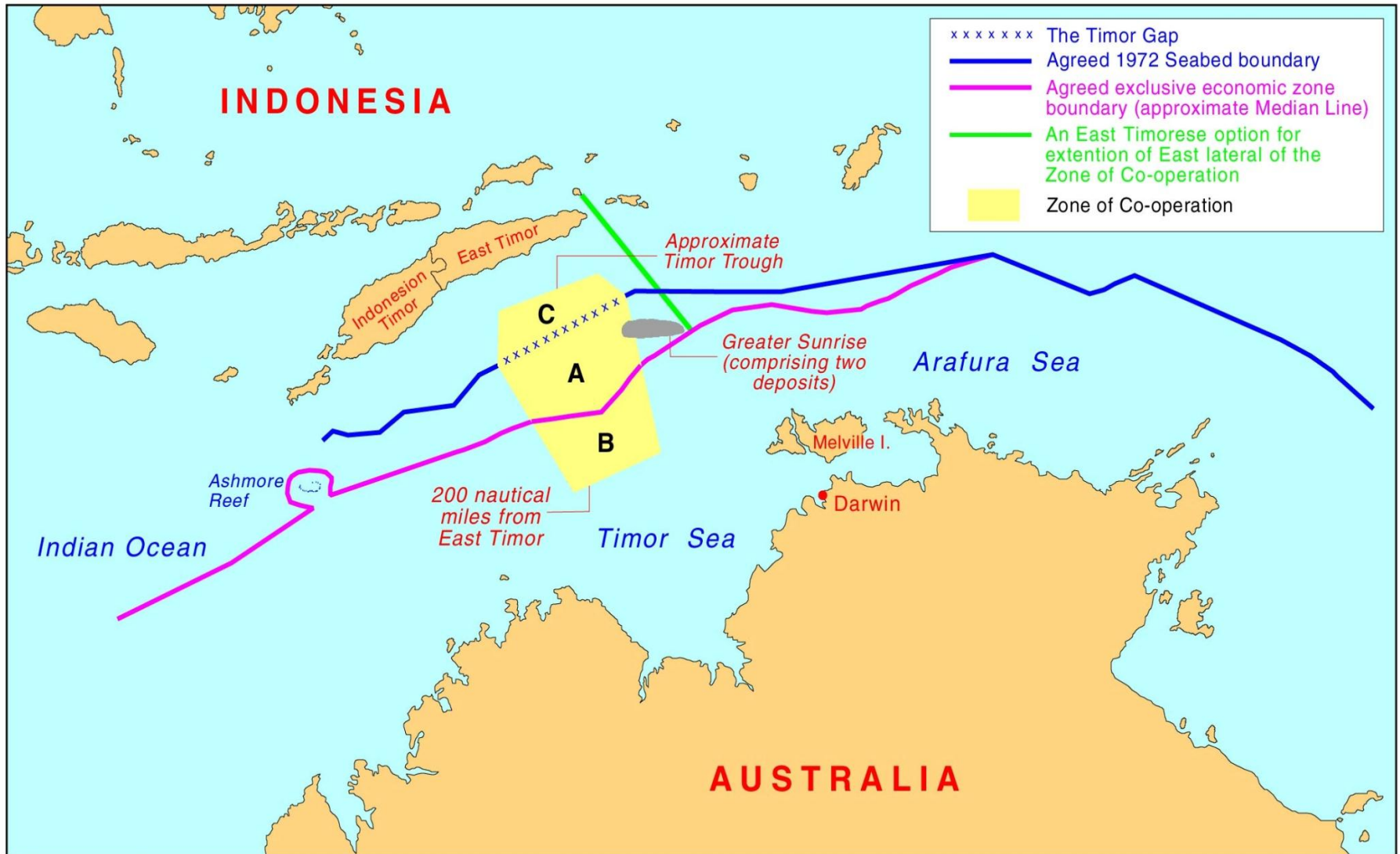
- Nicaragua had to submit information to the CLCS as a prerequisite for the delimitation of the continental shelf beyond 200 M; whilst **the making of a recommendation is a prerogative of the CLCS**
- The role of the CLCS relates only to the delineation of the outer limits of the continental shelf, **and not delimitation**
- The delimitation of the continental shelf beyond 200 M can be undertaken **independently** of a recommendation from the CLCS

Separate Opinion of Judge Bhandari

- No proof on record that Nicaragua has furnished **complete and sufficient information** to the CLCS
- The CLCS and the Court could reach **incompatible conclusions** regarding Nicaragua's continental shelf claim
- “[A]ny claim of continental shelf rights beyond 200 miles . . . must be in accordance with Article 76 of UNCLOS and **reviewed** by the [CLCS] thereunder”

Conciliation between Timor-Leste and Australia

Maritime Boundaries in the Timor Sea



Article 298: Optional exceptions to applicability of section 2

1. ... a State may ... declare ... that it does not accept any ... of the procedures provided for in section 2 with respect to ...:
 - (a) (i) disputes concerning the **interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations**, or those involving historic bays or titles, provided that a State having made such a declaration shall, when **such a dispute arises subsequent to the entry into force of this Convention** and where **no agreement within a reasonable period of time is reached** in negotiations between the parties, at the request of any party to the dispute, accept **submission of the matter to conciliation under Annex V, section 2**; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

- Australia invoked that **the dispute date back to Timor-Leste's independence in 2002**, prior to the entry into force of the Convention *as between the Parties in 2013*
- For the Commission, the ordinary meaning of the unqualified phrase favours the former interpretation regarding **entry into force of the Convention as a whole.**

- Australia asserted that **the provision requires that the Parties negotiate for a “reasonable period of time”** before submitting a dispute to compulsory conciliation
- The Commission viewed that Article 298(1)(a)(i) does not expressly require that prior negotiations actually take place.
- Such a requirement would effectively grant a party the right to veto any recourse to compulsory conciliation by refusing to negotiate
- The provision merely requires that **no agreement be reached within a reasonable period of time** in any such negotiations.

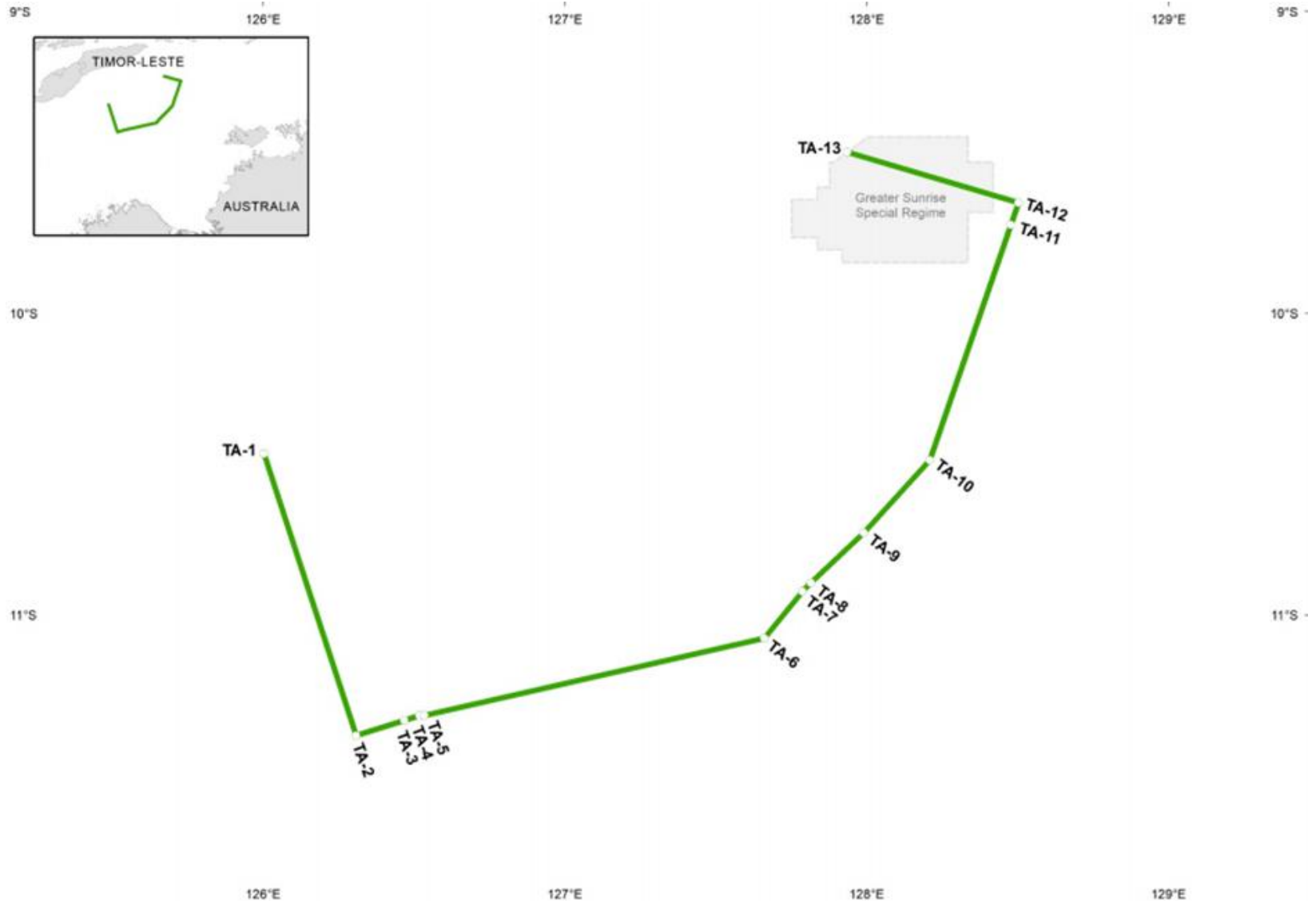
1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention **have agreed to seek settlement of the dispute by a peaceful means of their own choice**, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.

2006 TREATY ON CERTAIN MARITIME ARRANGEMENTS IN THE TIMOR SEA

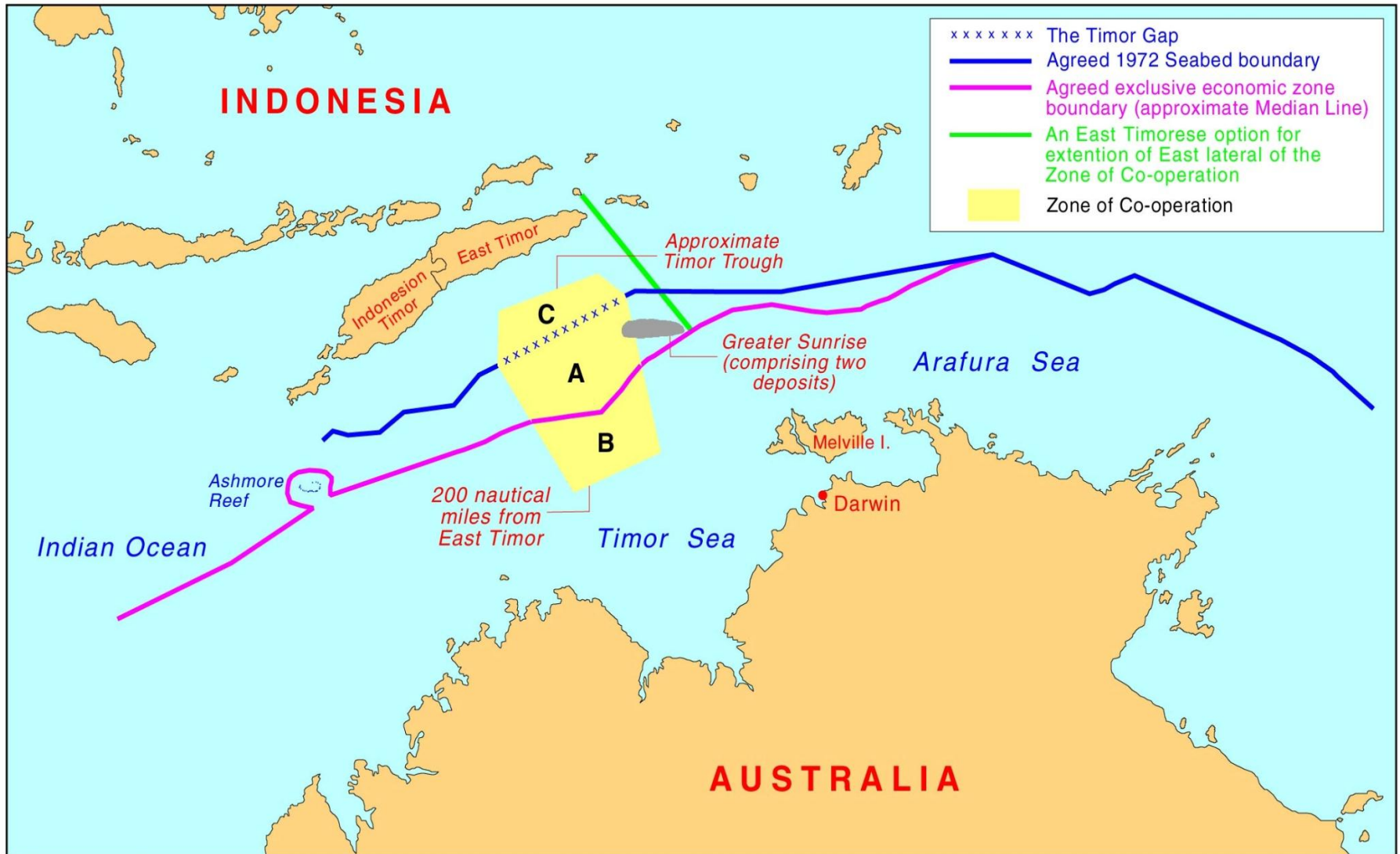
4(4) Notwithstanding any other bilateral or multilateral agreement binding on the Parties, or any declaration made by either Party pursuant to any such agreement, **neither Party shall commence or pursue any proceedings against the other Party** before any court, tribunal or other dispute settlement mechanism that would raise or result in, either directly or indirectly, issues or findings of relevance to maritime boundaries or delimitation in the Timor Sea.

- In the Commission's view, CMATS is an agreement *not* to seek settlement of the Parties' dispute over maritime boundaries for the duration of the moratorium.
- What CMATS is not—and what Article 281 requires—is an agreement to seek settlement of the dispute by a peaceful means of the Parties' own choice.

Maritime Boundary between Timor-Leste and Australia



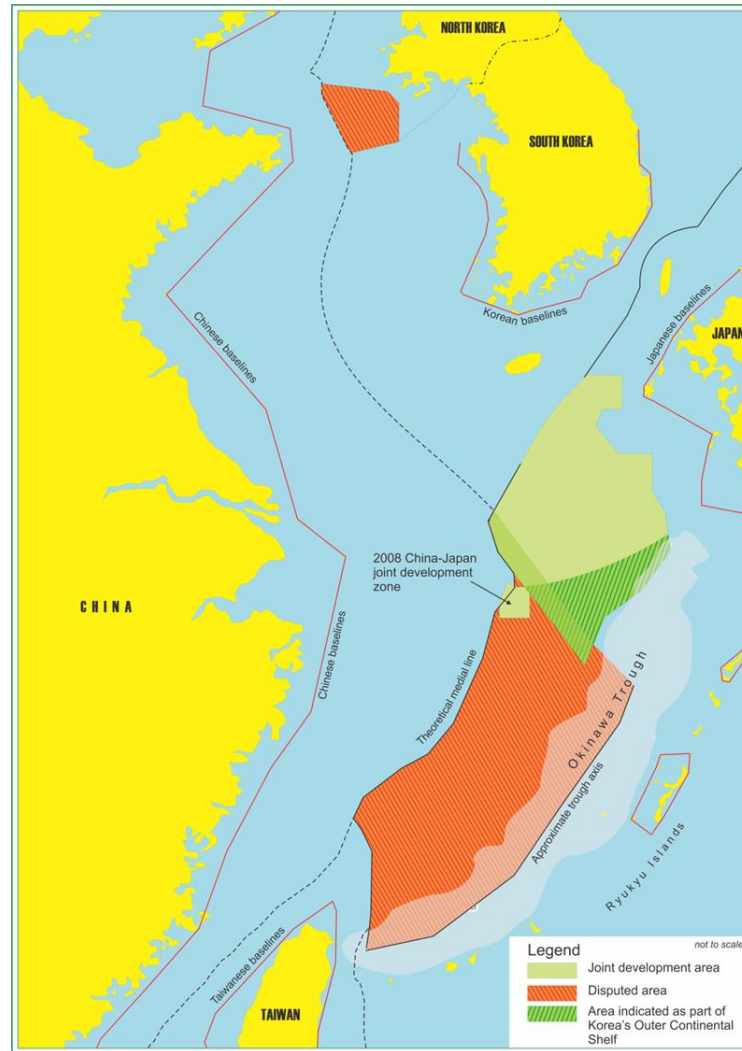
Maritime Boundaries in the Timor Sea



Conclusion

1. Dispute on boundary of extended continental shelf can be brought in front of courts/tribunals without recommendation from the CLCS.
2. Even if a State excludes boundary dispute from compulsory adjudication under UNCLOS, it is still subject to compulsory conciliation.
3. State practice upholds the precedent set by ICJ for delimitation of EEZ/CS in area less than 400 M apart

Potential Impact of the Ruling



Questions?

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