

Case Study: Nicaragua v. Colombia

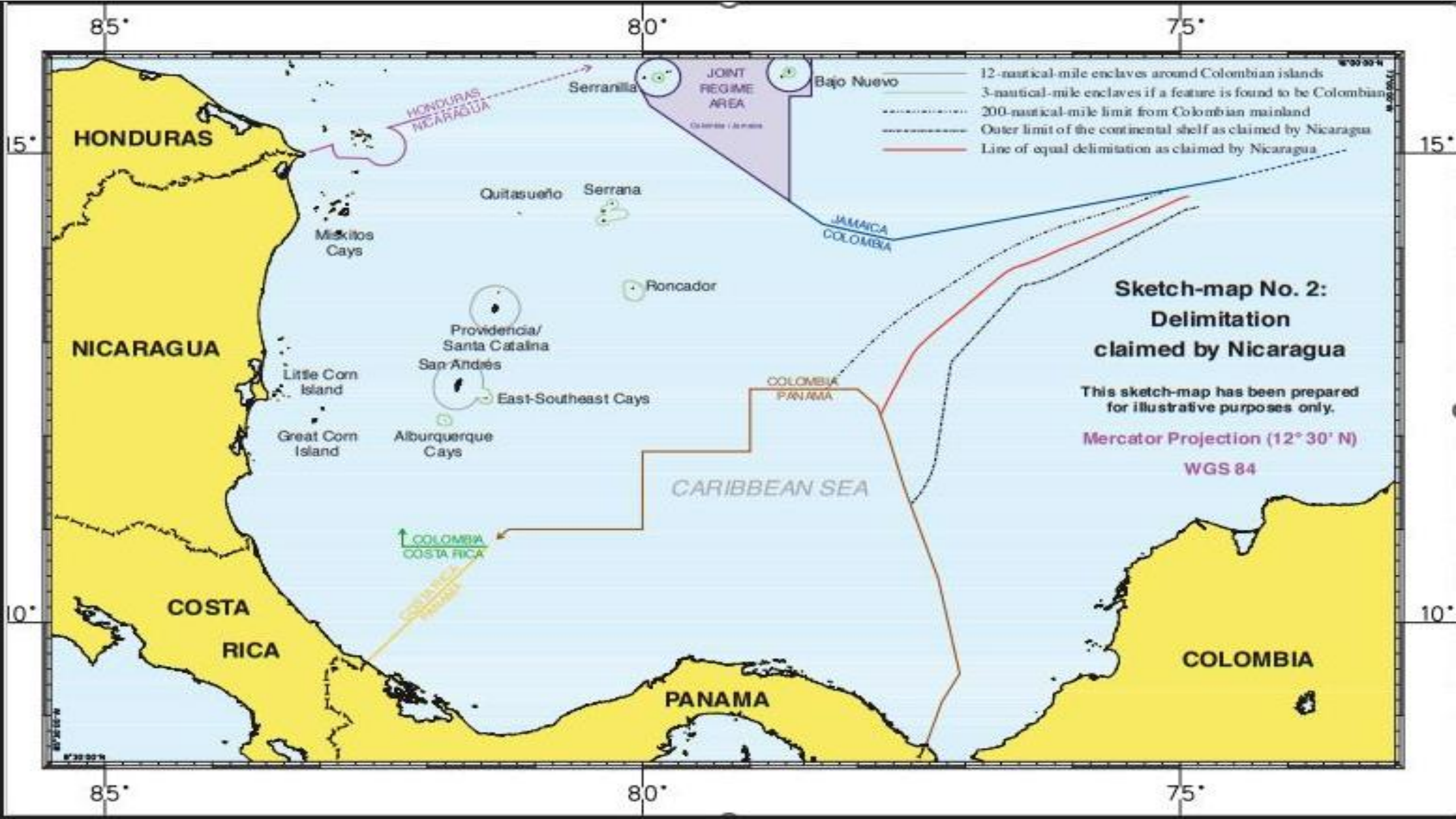
Bjørn Kunoy

Professor of International Law

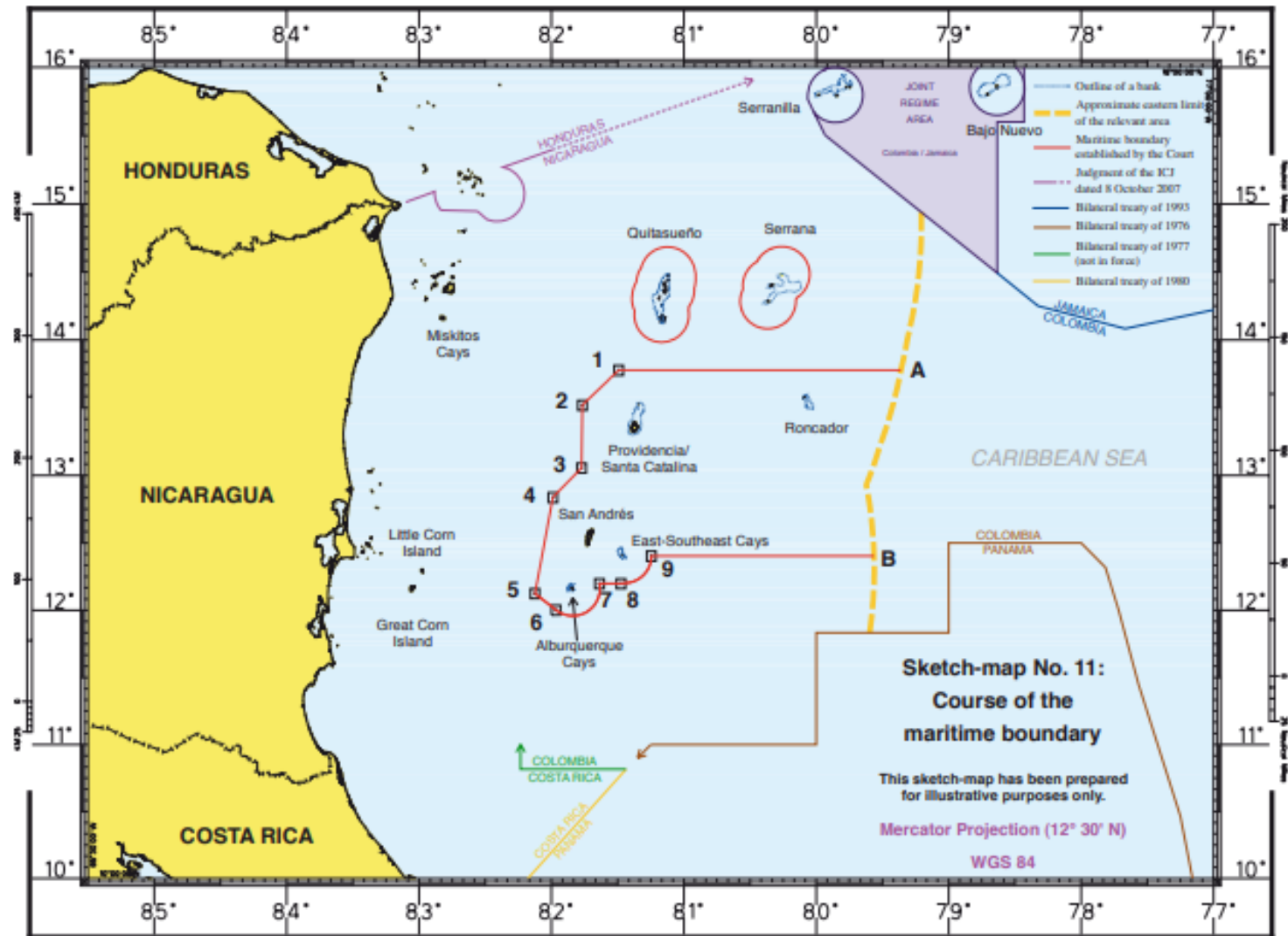
31 October 2023

Final Submission

- “determine the course of the single maritime boundary between the areas of [CS and EEZ] appertaining respectively to Nicaragua and Colombia, in accordance with equitable principles and relevant circumstances” (*Institution of proceedings*)
- Nicaragua requested the Court to define “a [CS] boundary dividing by equal parts the overlapping entitlements to a [CS] of both Parties” (Final submission)
- Nicaragua suggested that “the Court could make that delimitation by defining the boundary in words such as ‘the boundary is the median line between the outer edge of Nicaragua’s continental shelf fixed in accordance with UNCLOS Article 76 and the outer limit of Colombia’s 200-mile zone’”.
- “This formula, Nicaragua suggested, ‘does not require the Court to determine precisely where the outer edge of Nicaragua’s shelf lies’. The outer limits could be then established by Nicaragua at a later stage, on the basis of the recommendations of the Commission”



NICOL



“has not established”

- Procedural admissibility
- “since Nicaragua, in the present proceedings, **has not established** that it has a [CM] that extends far enough to overlap with Colombia’s 200-M entitlement to the [CS], the Court is not in a position to delimit the [CS] boundary between Nicaragua and Colombia, as requested by Nicaragua, even using the general formulation proposed by it” (*NICOL*)
- “Finds that it cannot uphold the Republic of Nicaragua’s claim contained in its final submission I (3)” (*id*)

NICOL II PO Judgment

- The ICJ observed that a CLCS recommendation “is not a prerequisite” for the delimitation of the OCS (*NICOL II, 2016*)
- “delimitation of the [OCS] from the Nicaraguan coast was conditional on the submission by Nicaragua of information on the limits of [the OCS]. The Court thus did not settle the question of delimitation in 2012 because it was not, at that time, in a position to do so” (*Id*)
- “while the Court decided, in subparagraph 3 of the operative clause of the 2012 Judgment, that Nicaragua’s claim could not be upheld, it did so because the latter had yet to discharge its obligation, under [Art 76(8)]” (*Id*)
- Therefore, Nicaragua’s application in NICOL II was admissible

Single Continental Shelf

- “[i]n keeping with its view that there is a single continental shelf, [it] **sees no basis for distinguishing between** projections within 200 nm and those beyond that point” (*Bay of Bengal, ITLOS*)
- “Article 76 embodies the concept of a single continental shelf [..] without any distinction being made between the shelf within 200 M and the shelf beyond that limit” (*Bay of Bengal, Annex VII*)

Single Methodology

- “the appropriate method for delimiting the [CS] remains the same, irrespective of whether the area to be delimited lies within or beyond 200 [M]” (*Bay of Bengal Maritime Arbitration*)
- “[a]s far as the methodology for delimiting the [OCS], the Special Chamber recalls its position that there is only one single [CS]. Therefore, it is considered **inappropriate** to make a distinction between the [CS] within and beyond 200 nm as far as the delimitation methodology is concerned” (*Ghana / Cote d’Ivoire*)

Yet..

- “The Court notes that, in contemporary [CIL], there is a single [CS] in the sense that the substantive rights of a coastal State over its [CS] are generally the same within and beyond 200 M from its baselines. However, the basis for the entitlement to a [CS] within 200 M from a State’s baselines differs from the basis for entitlement beyond 200 M” (*NICOL II*)

Existence of a CIL rule

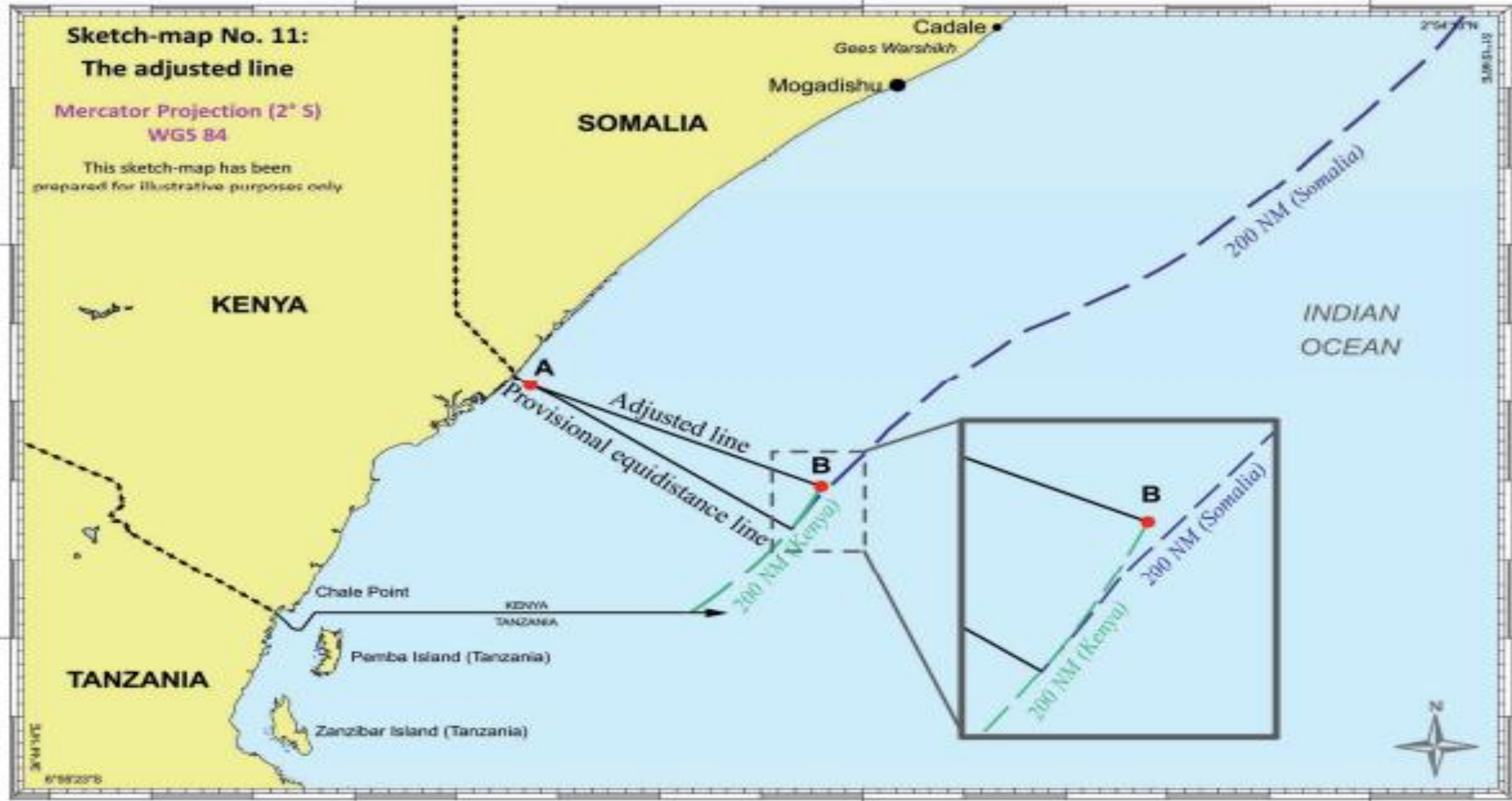
- “The Court notes that, in practice, the vast majority of States parties to the Convention that have made submissions to the CLCS have chosen not to assert, therein, outer limits of their extended [CS] within 200 M of the baselines of another State” (*NICOL II*)
- “The Court considers that the practice 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” (*id*)
- “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 [CIL]. Indeed, this element may be demonstrated ‘by induction based on the analysis of a sufficiently extensive and convincing practice’ [and not by deduction from preconceived ideas]”
- “Under [CIL], a State’s entitlement to [OCS] may not extend within 200 M from the baselines of another State” (*id*)

Sketch-map No. 11:

The adjusted line

Mercator Projection (2° S)
WG5 84

This sketch-map has been prepared for illustrative purposes only



KENYA

SOMALIA

TANZANIA

INDIAN OCEAN

Chale Point

Pemba Island (Tanzania)

Zanzibar Island (Tanzania)

Mogadishu

Gees Warshikh

Cadale

A

B

B

Provisional equidistance line

Adjusted line

200 NM (Kenya)

200 NM (Kenya)

200 NM (Somalia)

200 NM (Somalia)

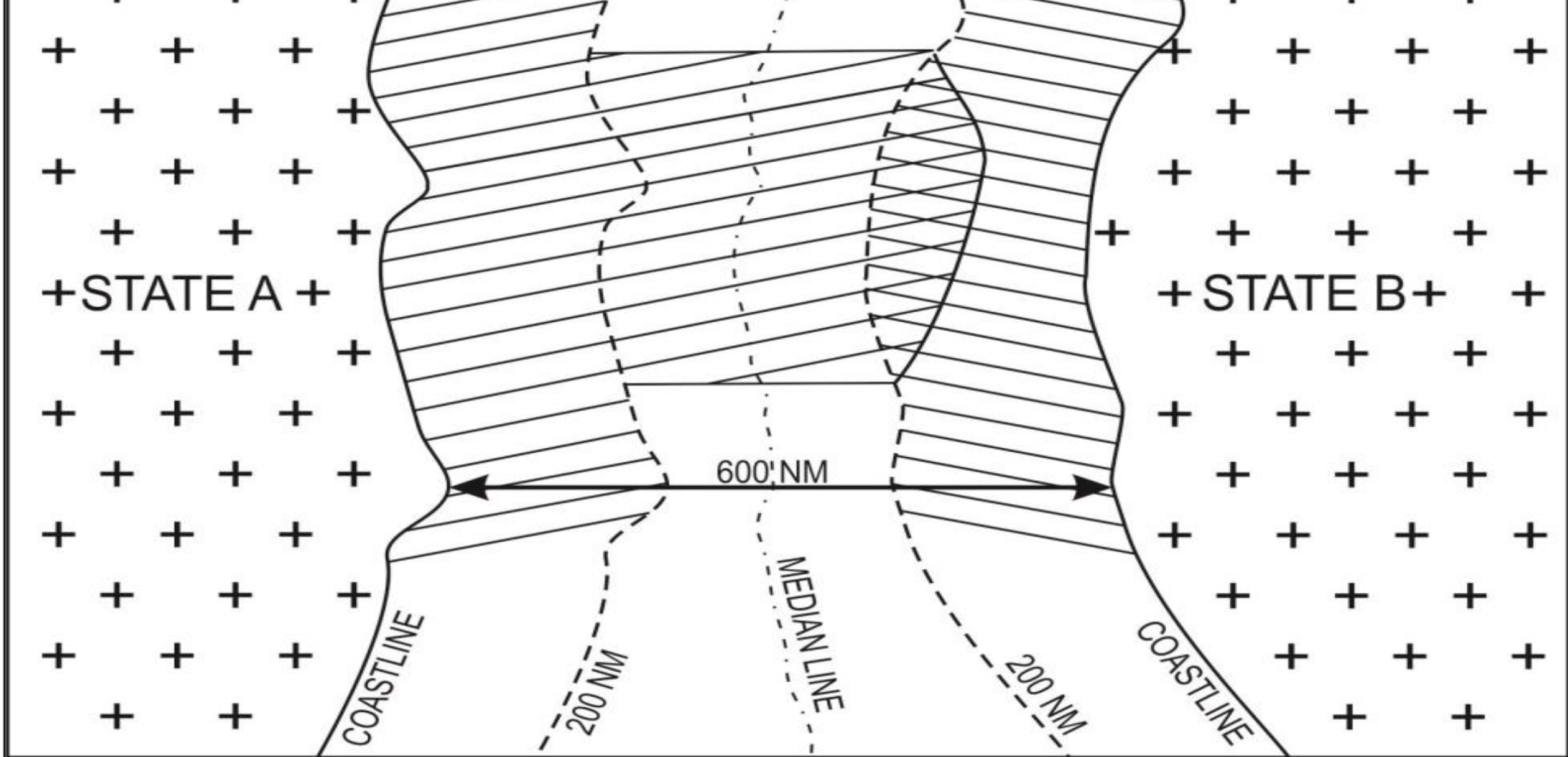


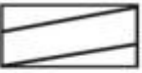
Nautical Miles 400 350 300 250 200 150 100 50 0 50 100

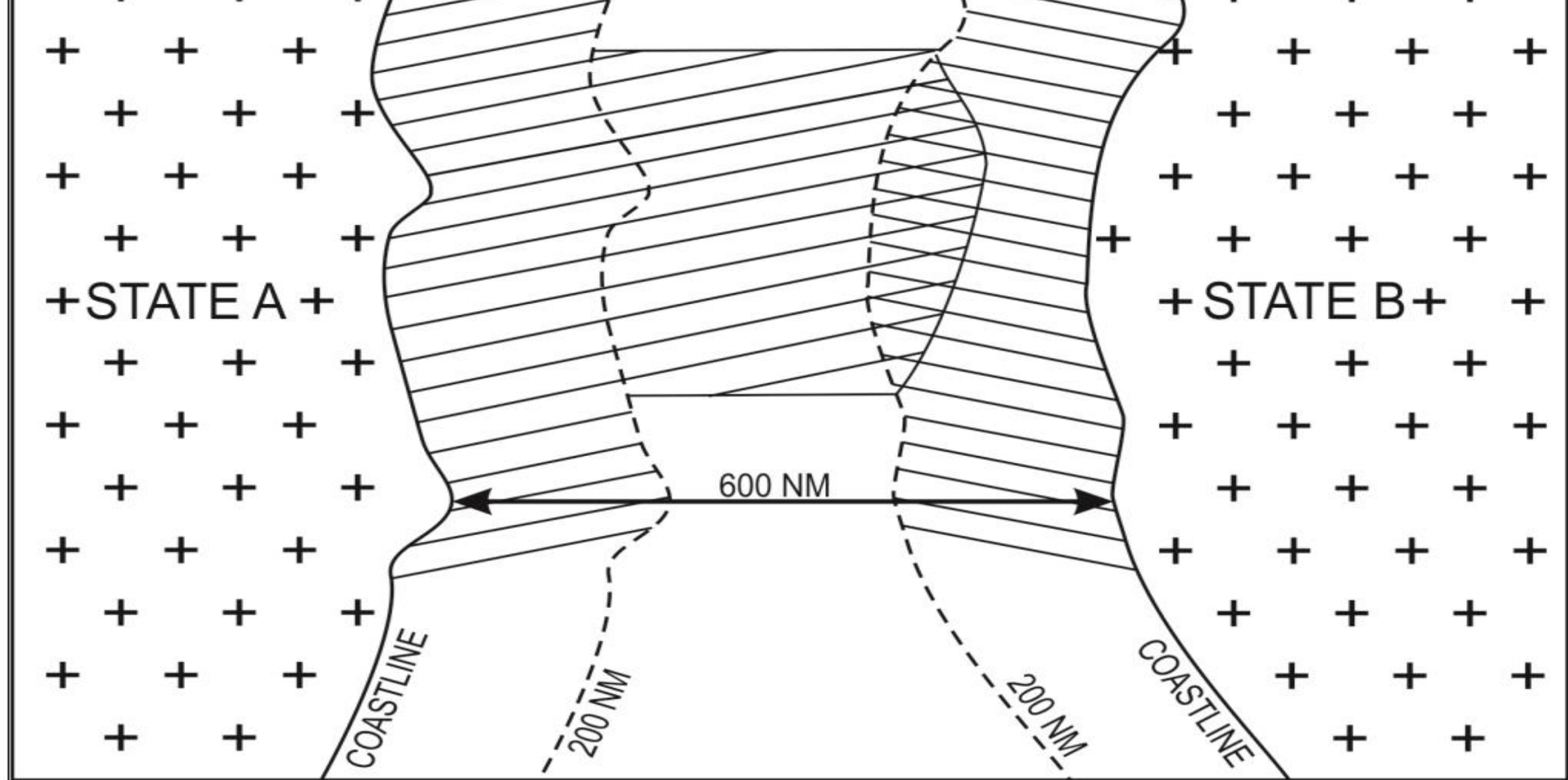
3°41'N
E 8°20'00"

Location of Median Line

- “When applied to States with opposite coasts lying further than 400 M apart, the provisional equidistance line ensures that each coastal State is granted a [CS] of at least 200 M. It is not obvious why the provisional equidistance line should be drawn differently in a situation involving [OCS] entitlements [..], including those of States with opposite coasts” (*DissOp Charlesworth*)
- preservation of the 200 M zone to the relevant State party to a delimitation dispute “may constitute a relevant circumstance warranting the **adjustment** of the provisional equidistance line at the 200-nautical-mile” (*DissOp Charlesworth*)



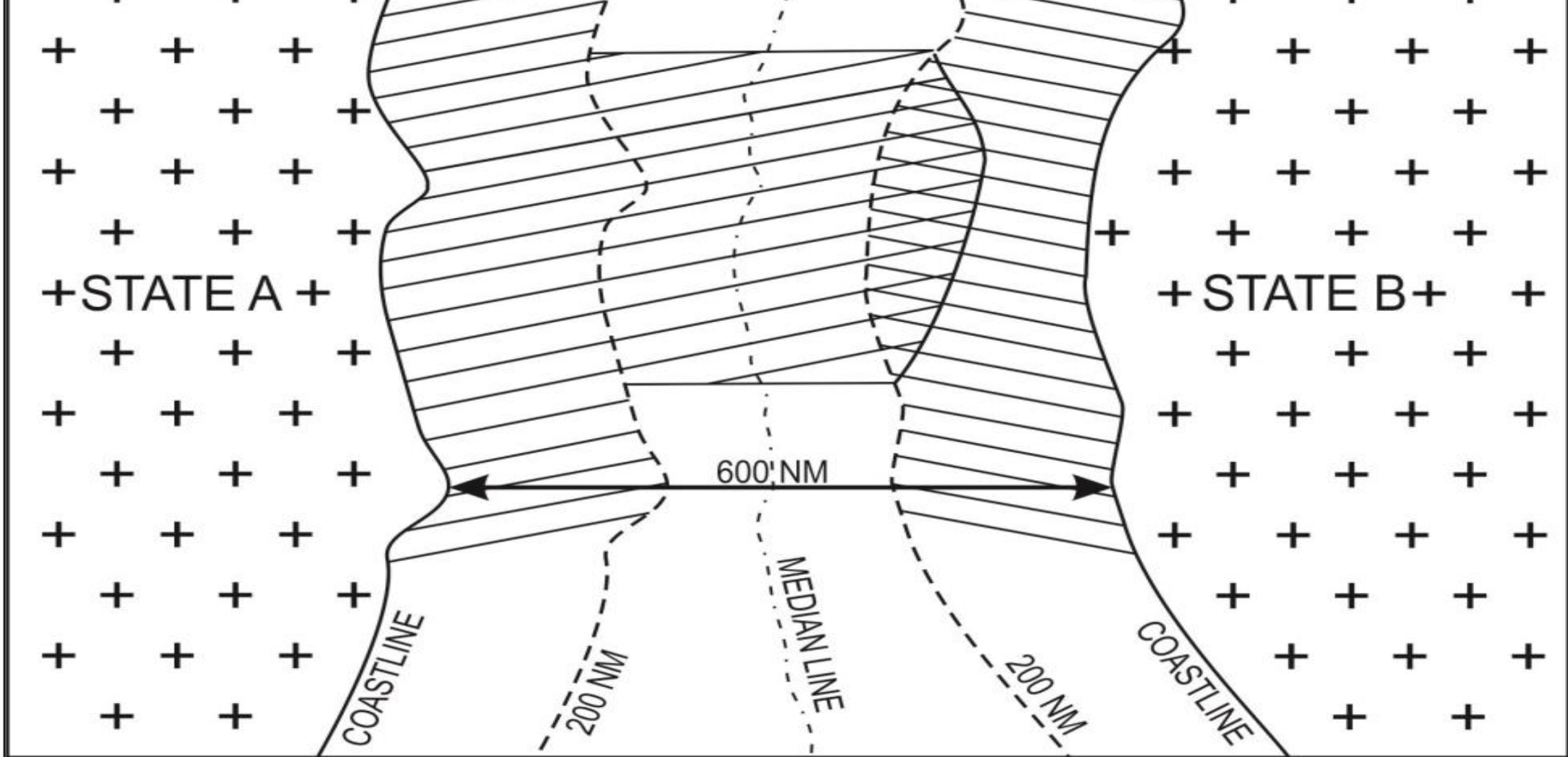
- 200 Nautical Miles Distance Lines
-  Area of Overlapping Entitlements to Continental Shelf
- . - . - Median Line
-  Area of Entitlement of State A
-  Area of Entitlement of State B

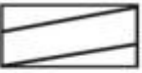


- 200 Nautical Miles Distance Lines
-  Area of Overlapping Entitlements to Continental Shelf

Object of Delimitation

- “the task of delimitation consists in resolving the overlapping claims by drawing a line of separation of the maritime areas concerned” (*Black Sea*)
- Delimitation “consists in resolving the *overlapping claims* by drawing a line of separation between the maritime areas” (*NICOL*)



- 200 Nautical Miles Distance Lines
- Median Line
-  Area of Overlapping Entitlements to Continental Shelf
-  Area of Entitlement of State A
-  Area of Entitlement of State B

Circular Reasoning?

- “In view of the above, the Court need not address any other arguments developed by the Parties, including the argument as to whether a delimitation of overlapping entitlements which involves an extended [CS] of one party can affect a 200-nautical-mile entitlement to the [CS] of another party” (*NICOL*)
- “delimitation of the [OCS] from the Nicaraguan coast was conditional on the submission by Nicaragua of information on the limits of its continental shelf beyond 200 nautical miles, provided for in [Art 76(8)] to the CLCS. The Court thus did not settle the question of delimitation in 2012 because it was not, at that time, in a position to do so” (*NICOL II, 2016*)
- “Under [CIL], a State’s entitlement to [OCS] may not extend within 200 M from the baselines of another State” (*NICOL II, 2023*)

CONCLUDING REMARKS