

Graduations between Land and Sea: Recent Developments and Emerging Clarity



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The Legal Regime of Land Features

- Longstanding legal dictum that “the land dominates the sea”
- Sovereignty over land territory therefore a vital prerequisite for advancing claims to maritime jurisdiction
- Two seemingly straight forward questions arise:
 - What is “land”?
 - Where does the land end and the sea begin?

Defining “Land”

- Taking cues from the Regime of Islands, land should be:
 - Naturally formed
 - Above water at high-tide
- Linked to the question of defining the land/sea interface

Article 121

Regime of islands

1. An island is a **naturally formed** area of **land**, surrounded by water, which is **above water at high tide**.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.



Potential Uncertainties

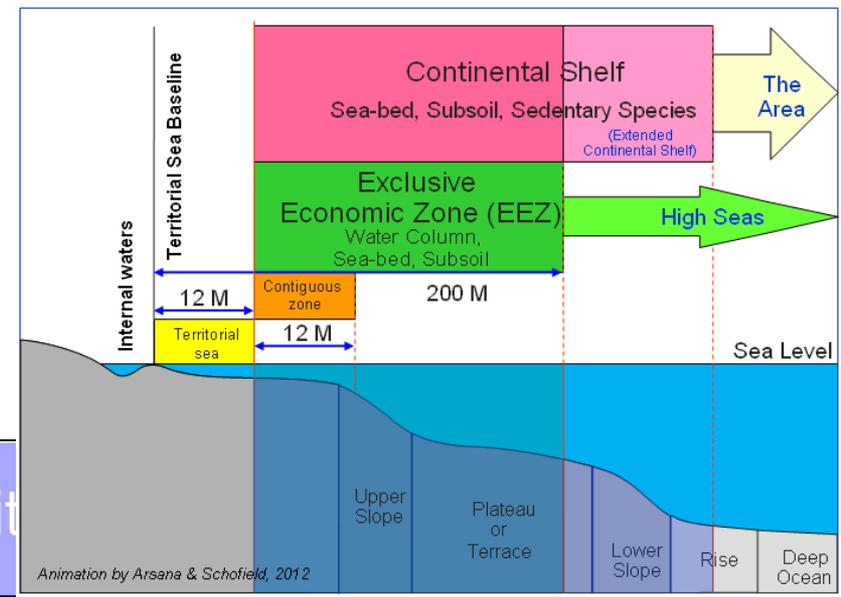
- Question of defining “land” generally uncontroversial but...
- How naturally formed?
 - Limited discussion save for exceptions (e.g. Dinkum Sands)
 - Artificial islands ruled out
 - Reclamation and coastal engineering works long accepted
 - Difficulties on how to discern the naturally formed versus man-made elements to a feature’s elevation
- Permanently or only predominantly above high-tide?
 - Beazley’s (1987) suggestion that a feature be predominantly above high tide save for being overtopped in exceptional circumstances such as a storm surge seems persuasive

Where does the Land End and the Sea Begin? Territorial Sea Baselines

- The obvious answer:
 - At the coast
 - **The land dominates the sea and it dominates it by the intermediary of the coastal front.**

Prosper Weil, 1989

- Baselines:
 - Define the extent of land territory
 - Mark the 'edge' of the land
 - The 'starting line' for maritime claims



Where does the Land End and the Sea Begin?

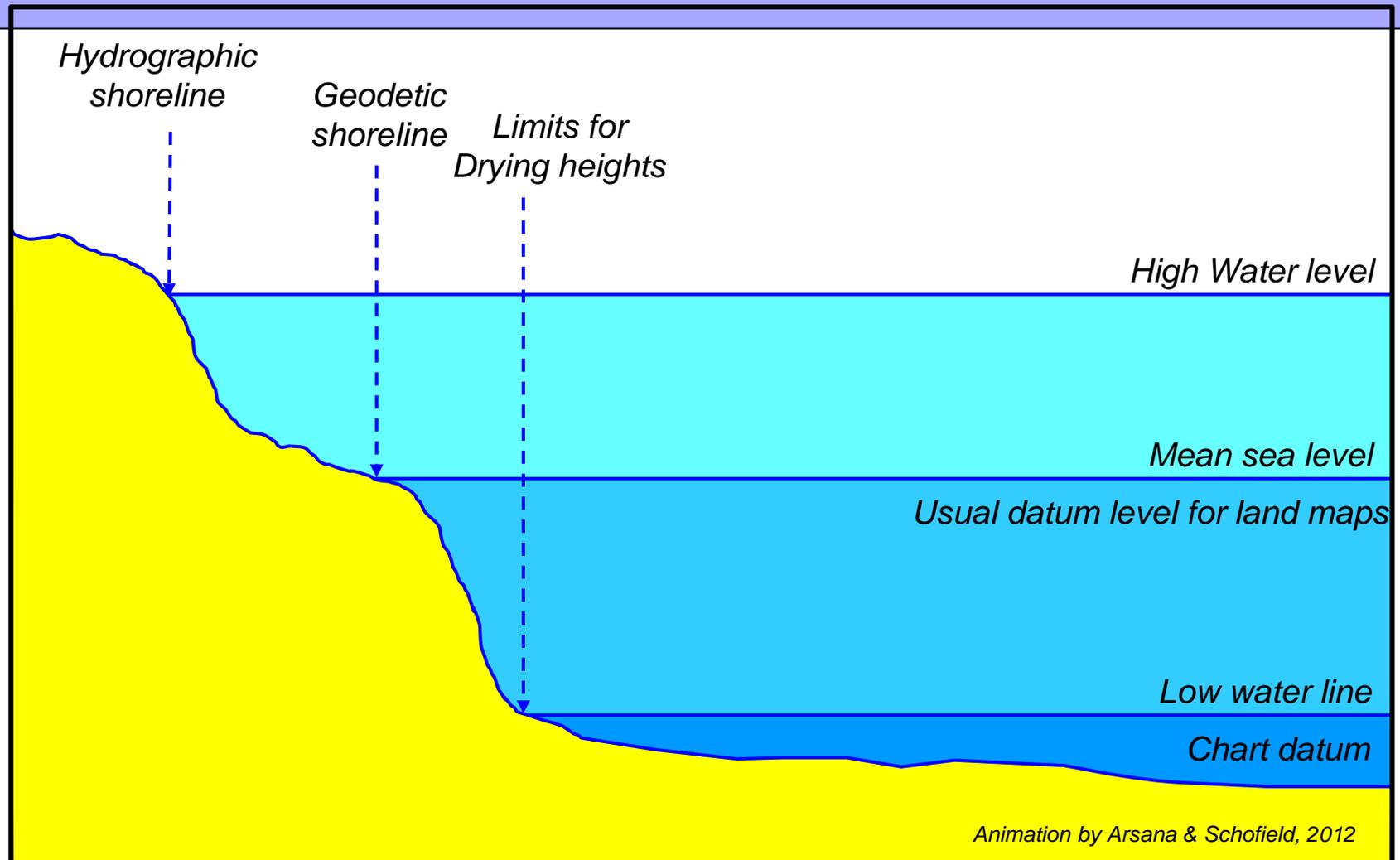
“Normal” Baselines

Article 5 of the LOSC states:

Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the **low-water line along the coast as marked on large-scale charts officially recognised by the coastal State.**

- In effect a State’s default baseline
- Fundamental to maritime claims
- Other types of baselines also need to tie-back to normal baselines
- Key issue: what is meant by the term **“low-water line”**?
- **Many low (and high) water lines to choose from...**

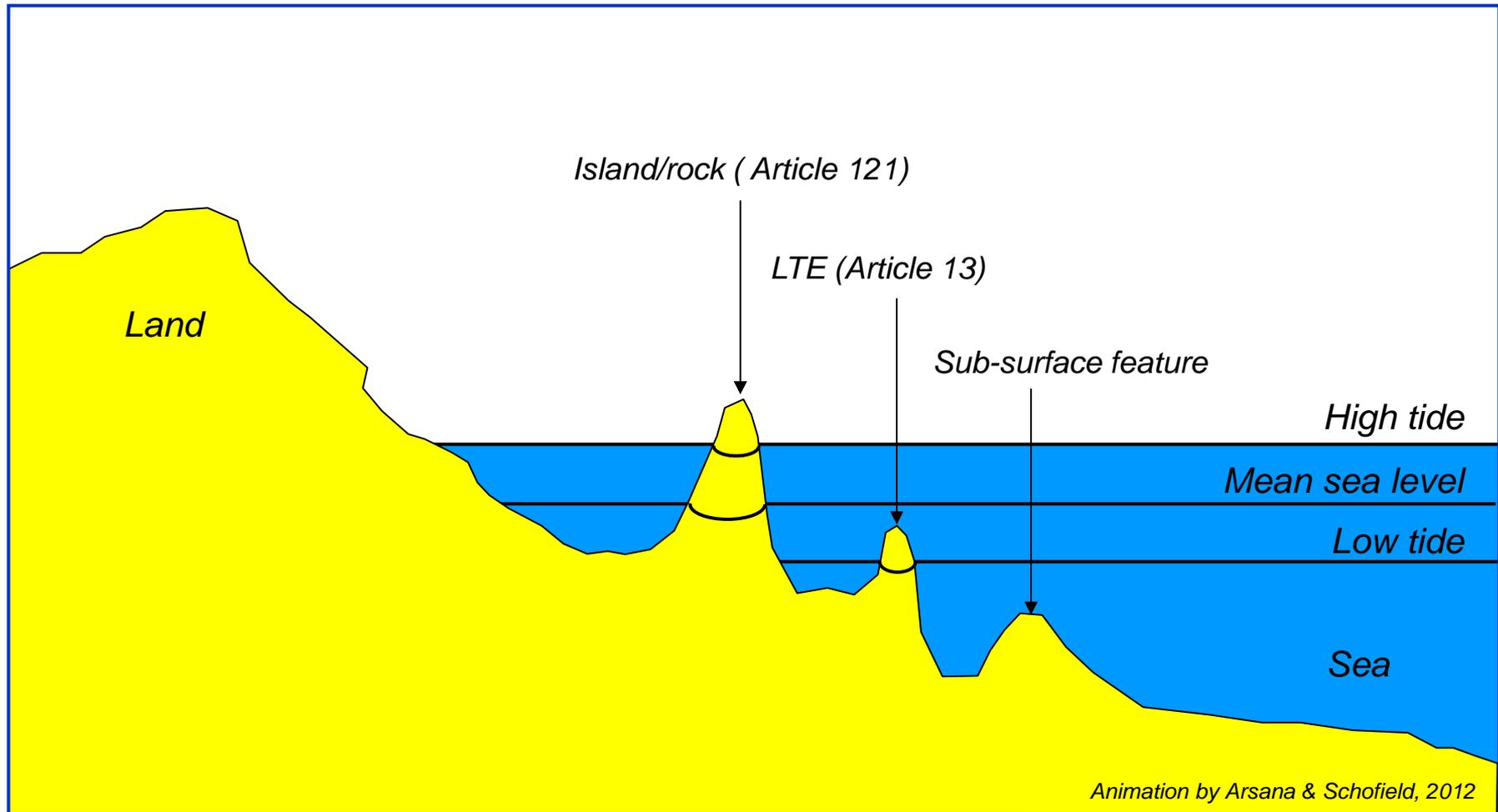
Chart Datum: A Very Low Low Water Line



Problematic Issues

- Low and high-water lines can be difficult to define where:
 - Waters are very shallow
 - Features exhibit little elevation
 - In complex tidal environments
 - i.e. in waters such as the South China Sea...
- Impacts on the classification of insular features
- Coastlines **dynamic** and move over time
- Normal baselines potentially “**ambulatory**” – unstable and potentially subject to rapid change

Sea Level and Insular Features



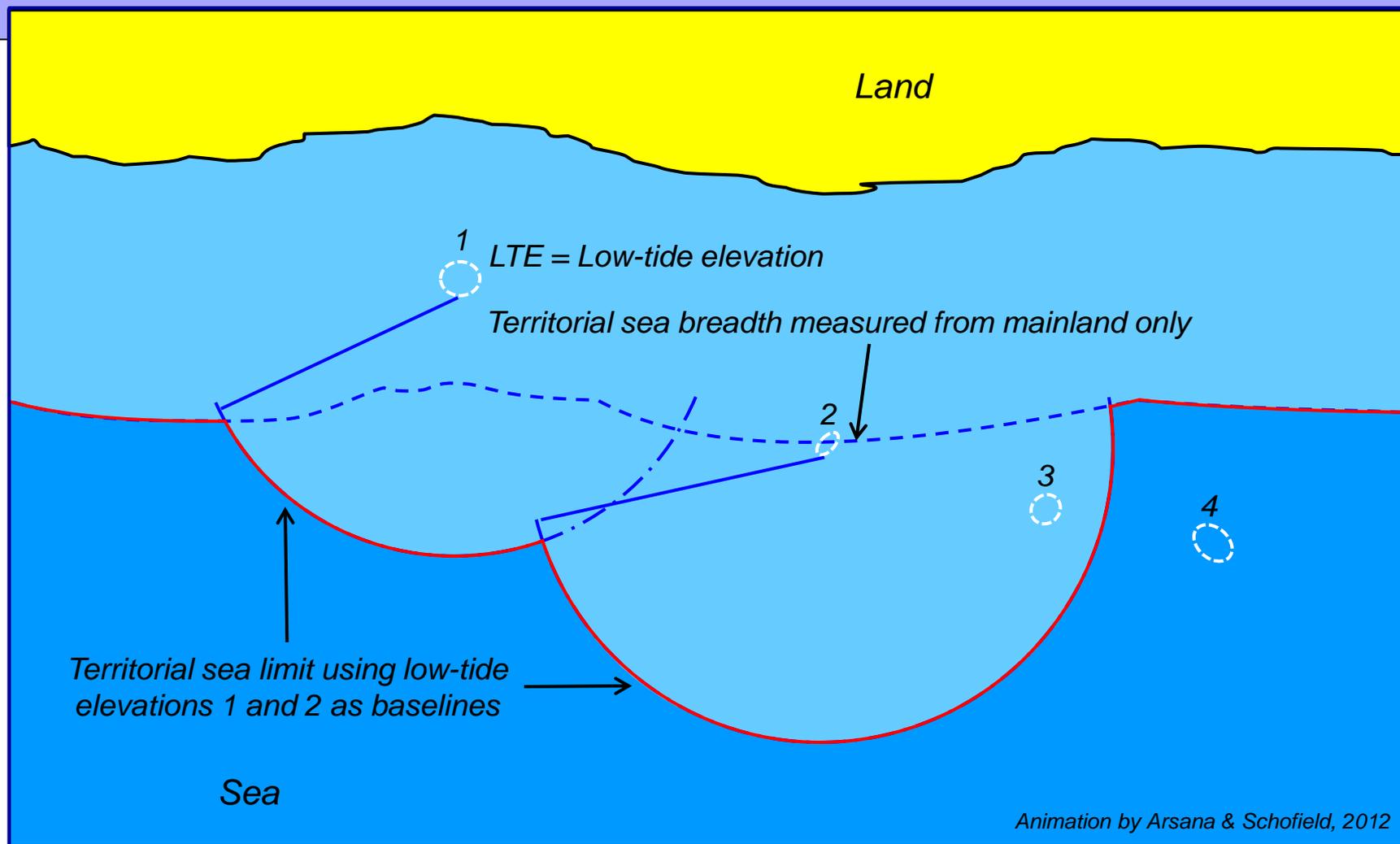
Source: TALOS Manual (5th edition, forthcoming 2013)

Low-tide Elevations (LTEs)

Article 13 *Low-tide Elevations*

1. A low-tide elevation is a **naturally formed area of land** which is **surrounded by and above water at low tide but submerged at high tide**. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.
 2. Where a low-tide elevation is situated at a distance exceeding the territorial sea from the mainland or an island, it has no territorial sea of its own.
- So-called “**parasitic basepoints**” (Clive Symmons, 1995)
 - Can be used as basepoints if wholly or partially within 12 nautical miles of an above high-tide feature
 - Ephemeral features? Especially vulnerable to change
 - **Uncertain whether they can be regarded as “land”**
 - N.B. ICJ rulings in *Qatar/Bahrain* (2001) and *Pedra Branca* (2008) Cases

Influence of LTEs



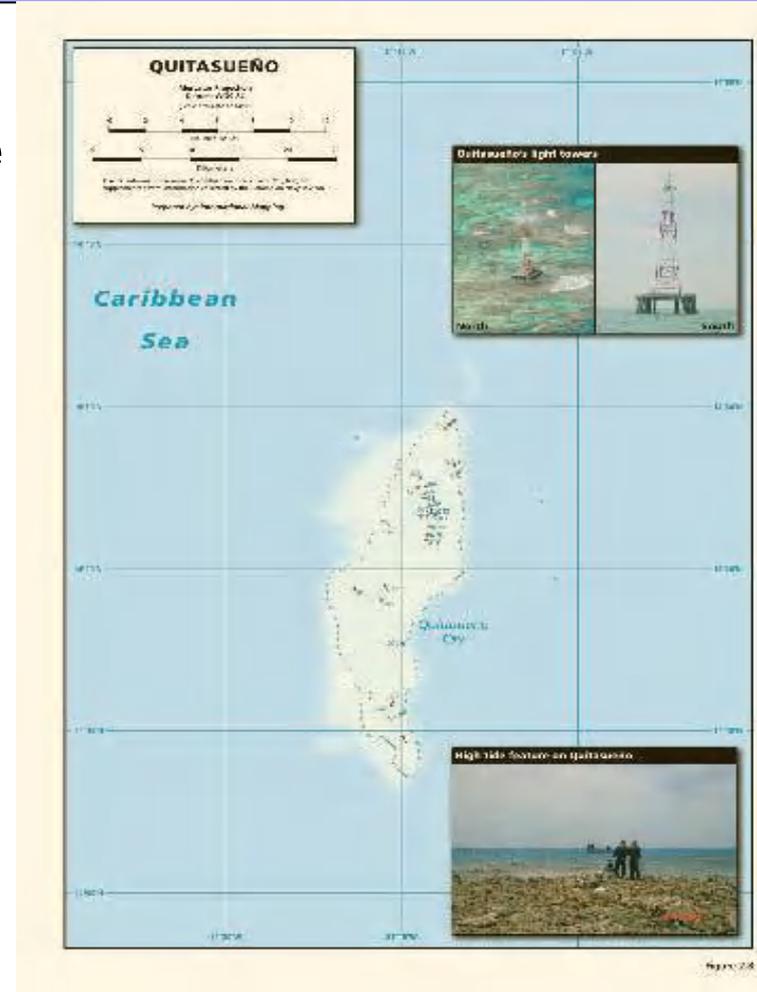
Recent Developments and Emerging Clarity

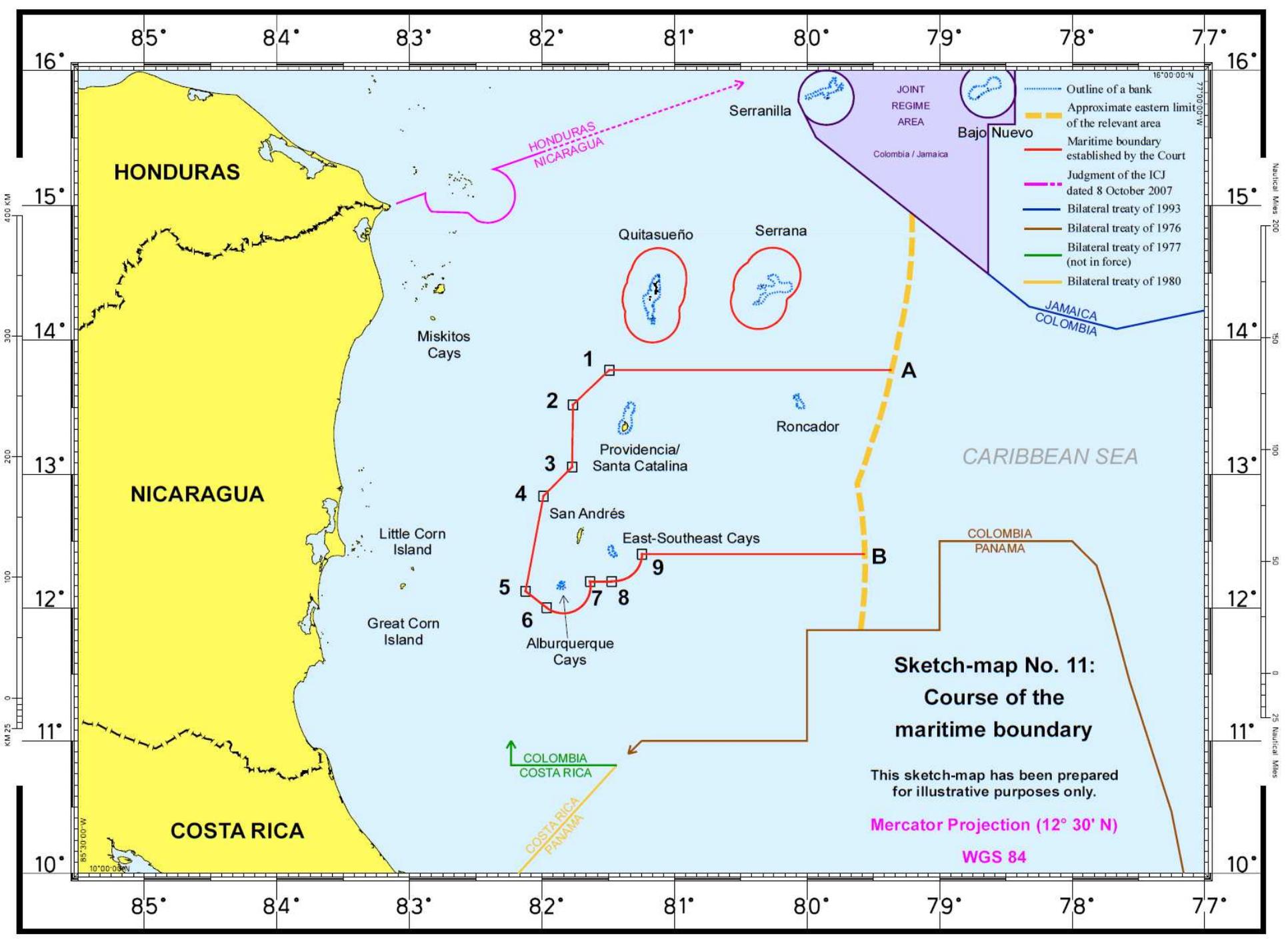
- *Territorial and Maritime Dispute Case* (Colombia/Nicaragua, November 2012)
- **Quitasueño** – a substantial bank
 - numerous small features located on it close to tidal levels
- Appropriate tidal level?
- Composition:
 - Only “coral debris” and not “a naturally formed area of land”
- Size:
 - Very small area above high tide



ICJ Decision on Quitasueño

- Above high tide:
 - **Conservative view** adopted but one feature, **QS32** determined to be above high tide
- Composition:
 - **“The fact that the feature is composed of coral is irrelevant”**
- Size:
 - The fact that the feature **“is very small does not make any difference”**
- Parties in agreement that **Quitasueño** a rock





Conclusions

- Defining land features crucial:
 - Determines what features at stake in sovereignty disputes
 - Implications for insular status
 - Intrinsic link between land/sea interface and the limits of maritime claims
- Defining low-water lines especially difficult in South China Sea context
 - Scope for cooperative surveys?
- Some incremental progress evident
 - **BUT**: ICJ rulings characterised by **caution**
 - Distinguishing between islands capable of 200nm claims and mere “rocks” which cannot remains problematic