

9th Conference of the IHO-IALAG Advisory Board on the Law of the Sea

10-11 October 2017

**International Hydrographic Organization
4b quai Antoine 1er
Principauté de Monaco**

Session 4

***Jurisdiction to decide a continental shelf boundary beyond
200 miles from the Baseline in Nicaragua v. Colombia (No 2):
Do Two Wrongs Make a Right?***

Andrew Serdy
Professor of Public International Law & Ocean Governance
University of Southampton, UK

*Question of the Delimitation of the
Continental Shelf between Nicaragua
and Colombia beyond 200 nautical
miles from the Nicaraguan Coast
(Nicaragua v. Colombia)*

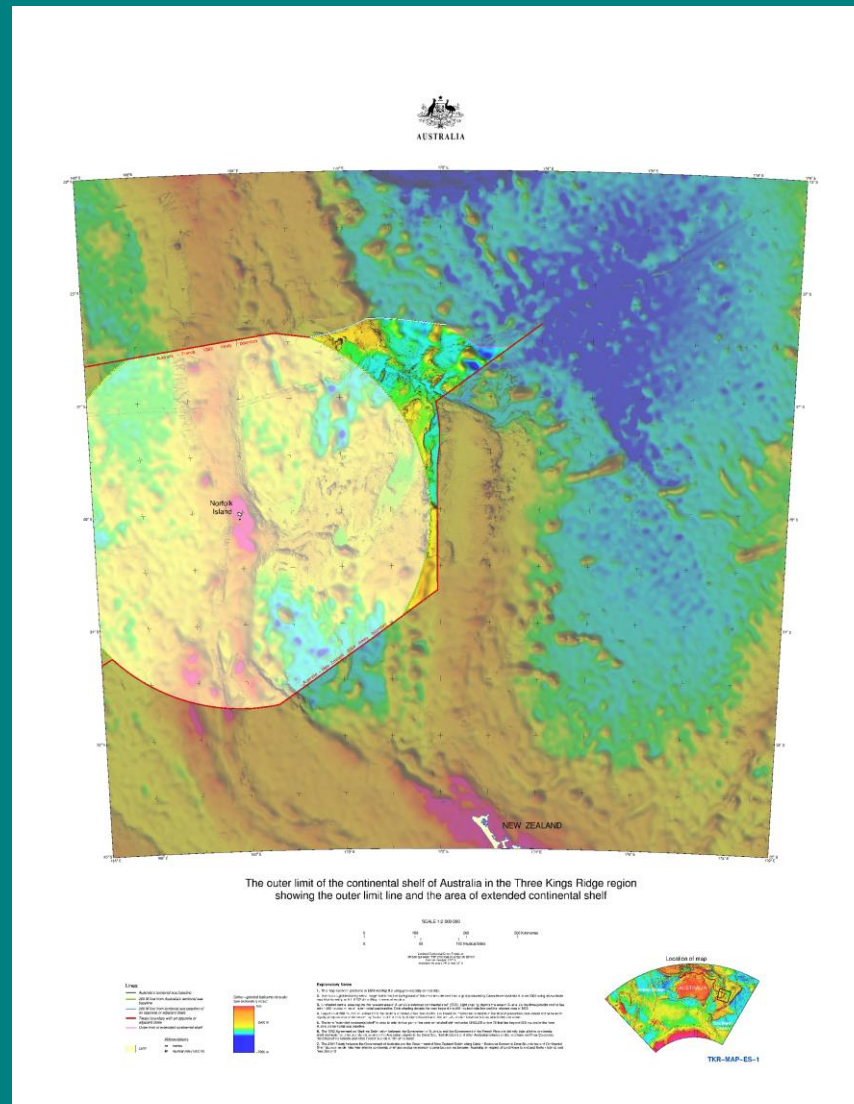
...is the full title of the case.

3 previous decided cases delimiting a continental shelf boundary beyond 200 miles from the baseline

- *Bangladesh v. Myanmar* (ITLOS, 2012)
- *Bangladesh v. India* (Annex VII arbitral tribunal, 2014)
- *Ghana v. Cote d'Ivoire* (Special Chamber of ITLOS, September 2017)

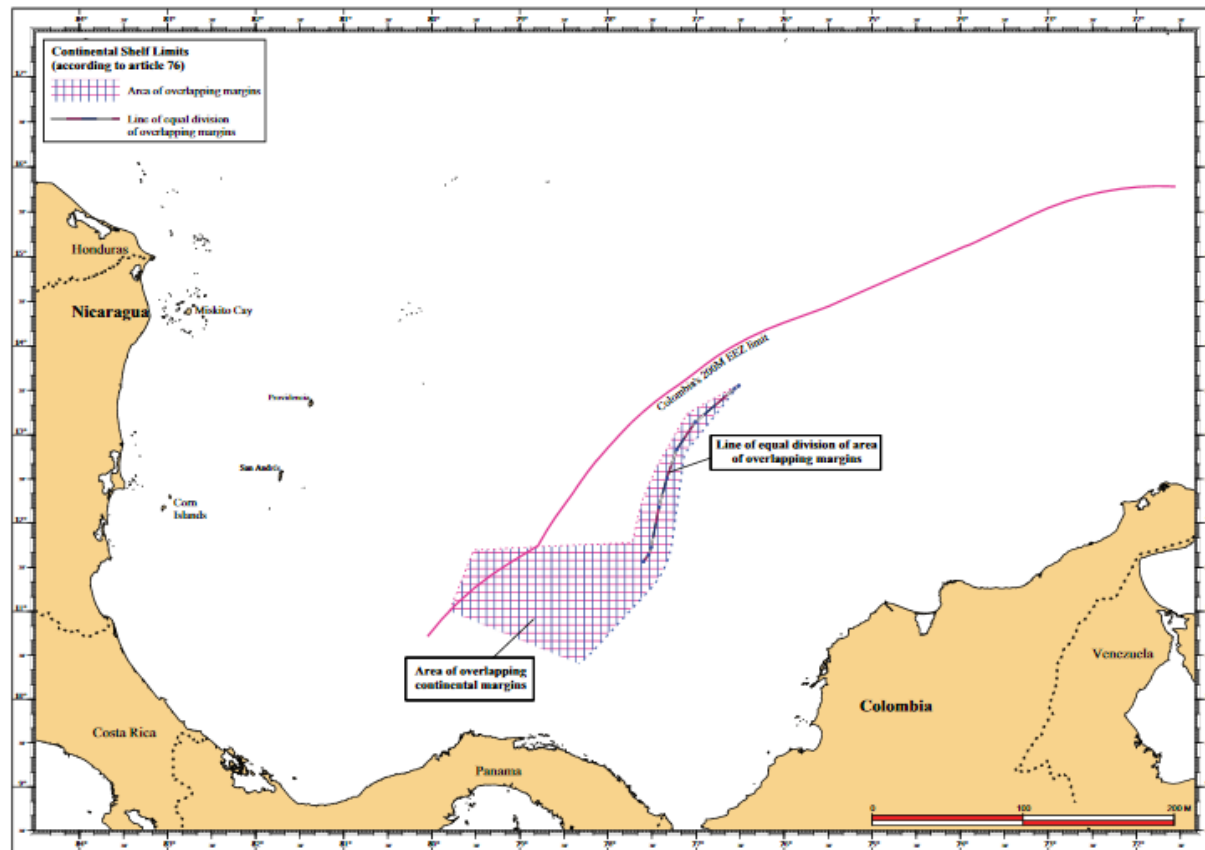
but these were all between adjacent, not opposite States

The Three Kings Ridge region in Australia's 2004 submission to the CLCS



Nicaragua's request for a continental shelf boundary within 200 miles of Colombia in its 2009 Reply

FIGURE 3-11



UN doc SPLOS/183 (20 June 2008), Decision regarding...the ability of States...to fulfil the requirements of article 4 of annex II to [UNCLOS], as well as the decision contained in SPLOS/72, paragraph (a)

The Meeting of States Parties:

1. Decides that:

- (a) It is understood that the time period referred to in article 4 of annex II to the Convention and the decision contained in SPLOS/72, paragraph (a), may be satisfied by submitting to the Secretary-General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf;
- (b) Pending the receipt of the submission...preliminary information submitted in accordance with subparagraph (a) ...shall not be considered by the Commission;
- (c) Preliminary information submitted by a coastal State in accordance with subparagraph (a) is without prejudice to the submission in accordance with the requirements of article 76 of the Convention and...the consideration of the submission by the Commission;

The Court's judgment in *Nicaragua v. Colombia* (No 1), ICJ Reports 2012, p. 624 at 718-719

251.

For these reasons,

The Court,

(1) [...];

(2) By fourteen votes to one,

Finds admissible the Republic of Nicaragua's claim contained in its final submission I (3) requesting the Court to 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";

[listing of judges in favour and against omitted]

(3) Unanimously,

Finds that it **cannot uphold** the Republic of Nicaragua's claim contained in its final submission I (3);

UNCLOS Article 77, paragraph 3 (identical to Article 2(3) of the 1958 Convention on the Continental Shelf)

The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

9th Conference of the IHO-IAAG Advisory Board on the Law of the Sea

10-11 October 2017

**International Hydrographic Organization
4b quai Antoine 1er
Principauté de Monaco**

Session 4

***Jurisdiction to decide a continental shelf boundary beyond
200 miles from the Baseline in Nicaragua v. Colombia (No 2):
Do Two Wrongs Make a Right?***

**Andrew Serdy
Professor of Public International Law & Ocean Governance
University of Southampton, UK**