ARBITRATION BETWEEN NEWFOUNDLAND AND LABRADOR

AND NOVA SCOTIA

held on the 26th day of November, A.D., 2001, at the Wu Conference Centre, Fredericton, New Brunswick, commencing at 9:30 a.m.

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Tribunal:

Hon. Gerard V. LaForest, Chairman

Mr. Leonard Legault, Q.C.

Professor James Richard Crawford

Appearances:

Professor Donald M. McRae

Mr. L. Alan Willis

Mr. David A. Colson

. . . . . .

CHAIRMAN: Good morning. Professor McRae?

PROFESSOR MCRAE: Thank you, Mr. Chairman. Mr. Chairman, Members of the Tribunal, it is my privilege to open this second round on behalf of Newfoundland and Labrador.

The illustrations that we will be using in this

presentation should, I think, be already in your binders. They are the binders from last week with the addition of the illustrations for this week.

Mr. Chairman, Members of the Tribunal, we now reach the final phase of the oral proceedings in this arbitration. It is, in fact, the culmination of a process that began with the adoption of the Atlantic Accord in 1985 and the Nova Scotia Accord in 1986. For not only did these Accords grant to the provinces management rights and revenue sharing, they set up a process for the determination of the boundary between the provinces in respect of their offshore areas. And, of course, it was that process that led to the establishment of the Terms of Reference and the creation of this Tribunal.

And what that process provided for was the determination of the boundary in the offshore areas by application of the principles of international law governing the delimitation of maritime boundaries. It was a unique process, an unusual context -- having the rights of provinces determined in accordance with international law. But it made sense, because it was the best parallel. That was the body of law that could resolve a dispute over areas of the ocean or seabed between land territories.

And, of course, as Nova Scotia likes to point out, this is not, in fact, a dispute over rights of ownership

over the continental shelf. It is a dispute about a line that will divide access to the revenue from and the management of the oil and gas resources of the continental shelf. And in a sense, this is a dispute over oil and gas resources. Nova Scotia, however, wants to jump from the fact that this is a dispute over resources of the offshore to the proposition that since the Laurentian Sub-basin is a resource of the offshore, then, ergo, this dispute is really only over the Laurentian Sub-basin. Mr. Chairman, the syllogism does not work. It contains a fallacy -- a dispute about a line dividing resources cannot be turned into a dispute over a particular resource.

And it does not make it any less of a fallacy to invoke in support a statement of a Minister in a newspaper article which was obviously a jocular response to an unknown question. That does not turn a case about dividing the resources of an offshore area extending more than 300 nautical miles offshore into a case about a limited portion of that area.

Mr. Chairman, having a boundary determined in accordance with the principles of international maritime boundary law -- the proper application of the principles of international maritime boundary law -- is what Newfoundland and Labrador expected under its Accord, what it is entitled to under its Accord, and what it finally

expects to achieve with the decision of this Tribunal. Not a line imposed on Newfoundland and Labrador because it is in agreement between another province and the federal government -- a line established through a fair and proper process and determined in accordance with law.

However, last week, you heard two diametrically opposed views of what a determination of a boundary in accordance with the principles of international maritime boundary law means in this case.

On the one hand, you heard that the Terms of Reference require you to delimit the offshore areas of the parties as if this were a delimitation between parties of the -- between states of the continental shelf. This requires you to apply the principles of law governing the delimitation of maritime boundaries to the offshore areas of the parties as if the parties were states. Under this approach, it does not matter that the parties are only provinces and it does not matter that the rights that they have over their offshore areas are only rights of management and revenue sharing in respect of oil and gas resources of the continental shelf. The principles of international law governing the delimitation of maritime boundaries are to be applied by analogy.

On the other hand, you heard that the Terms of Reference require you to apply the principles of

international law governing the delimitation of maritime boundaries in a new and unprecedented way. The Terms of Reference, you were told, prevent you from applying the principles that govern the delimitation of the continental shelf to these proceedings because the provinces only have limited rights and not full continental shelf rights. You must create new law and rewrite the principles of international law so that they fit this new sui generis regime. You were invited to be pioneers, but pioneers who, if they stepped off the basis of title track laid out for them, were to be devoured by the dragon of judicial review, Cave, hic dragones.

Mr. Chairman, how are you to proceed faced with such alternatives?

In this second round presentation, we shall set out for you why the first of the two approaches I just mentioned is the only approach that complies with the Terms of Reference. We will address concerns raised by the Tribunal in our first round with respect to the law and its application as put forward by Newfoundland and Labrador, and we will respond to the criticisms levelled at our approach by counsel for Nova Scotia last week.

Mr. Chairman, when we listened to the presentation of the Nova Scotia case, we were struck that it really consisted of two cases. One about which we heard a lot

was a criticism of our case, and one, almost unrelated, and on many points, quite muted, was the statement of the Nova Scotia case. And this, I think, highlights the situation that the Tribunal is now in. Nova Scotia has levelled legal and geographical arguments against our position, but it has offered in exchange essentially nothing apart from a novel interpretation of the Terms of Reference, an unprecedented concept of the relevant area, and the inexorable line based on no agreement that becomes agreement. I think, Mr. Chairman, that's agreement with a little "a".

And I think it's important, Mr. Chairman, to dwell for a moment on precisely what it is that Nova Scotia is asking you to do. For although in these oral proceedings last week it softened some of the edges of its claim, conduct just became a relevant circumstance that had to be taken into account in determining the appropriate method of delimitation. In reality, conduct was the relevant circumstance, method and proof of the equity of the result. The rest was essentially window dressing.

Nova Scotia does not ask you to adopt a line drawn on the basis of geographic considerations, supported by conduct as a relevant circumstance. Nova Scotia does not ask you to adjust a line drawn in accordance with geographic criteria because of the relevant circumstances

of the parties' conduct. It wants a line drawn on the basis of conduct alone.

And so, Nova Scotia has asked this Tribunal to take the line that the Tribunal decided Newfoundland and Labrador had not agreed to and impose it on Newfoundland and Labrador nevertheless. To reverse the result of phase one, if not the law.

The legal mechanism to support this result is the concept of basis of title. As I said last week, in the absence of its basis of title argument, Nova Scotia has nothing to support its line, and it seemed to avoid last week any invitation by the Tribunal to indicate how it would delimit this area if it had to apply the principles of international law governing maritime boundaries as applied to the continental shelf.

Mr. Chairman, last week Nova Scotia had many criticisms of our position. They ranged from the serious, such as how a relevant coast is to be determined and whether the geography of the Gulf of Maine is comparable to the inner concavity of this area to the silly, such as the implication that we were surreptitiously claiming that the provinces actually have continental shelf rights or that we are claiming that Nova Scotia is a laterally aligned feature along the coast of Newfoundland.

Now obviously, we do not intend to rebut all of the

points raised. Indeed, many of them, we feel, have been rebutted already in our written and oral pleadings. Instead, we shall focus on the key aspects of the case in order to provide the Tribunal with assistance as it proceeds to the process or the stage of deliberating and reaching its decision.

But before outlining the key aspects or key issues here, there are two preliminary issues. First, in our view, on many aspects of this case, Nova Scotia has simply provided no answers. Thus, in setting out our rebuttal, we have to assume that we've heard the full Nova Scotia case and that there is nothing new to hear on Wednesday when we no longer have the opportunity to respond. Procedural fairness demands no less.

Second, I want to say a word about the origin of the dispute. We have heard questions about when was the Newfoundland and Labrador claim first made and suggestions that the dispute was initiated by Newfoundland and Labrador because it suddenly discovered the Laurentian Sub-basin and wanted it all. Some facts are, therefore, in order, and they are essentially the facts that were set out in the Memorial to the parties in phase one, but let me retrace them.

Mr. Chairman, I'm not going to go back to 1964 and all of the subsequent events. Mr. Willis will deal with some

of those events in his presentation. Suffice to say that after the collapse of the common front of the provinces in respect of their claims to offshore ownership, the provinces dealt with the federal government bilaterally. They did not deal with each other on offshore issues. Thus, the question of boundaries never came up between Newfoundland and Labrador and Nova Scotia. Indeed, the correspondence surrounding the Doody letter was probably the only bilateral exchange between the provinces on this issue until 1998.

The conclusion of the Accords and their implementing legislation then provided the basis for the way in which the provinces were to deal with the issue of a boundary. It was to be negotiated between them and then, if not settled, resolved through arbitration. But in spite of these provisions, no discussions or negotiations took place between the two provinces. Why was this?

The explanation, I suggest, is quite simple. Until the boundary with France was resolved, there was no incentive for a resolution of an interprovincial boundary. Much of the area was covered by a moratorium, and there was certainly no federal interest in a boundary being settled that would either, as a matter of principle or practice, create difficulties for the resolution of the dispute with France.

PROFESSOR CRAWFORD: Mr. McRae, when was the moratorium instituted?

PROFESSOR MCRAE: 1967.

PROFESSOR CRAWFORD: 1967.

PROFESSOR MCRAE: 67.

PROFESSOR CRAWFORD: As early as that?

PROFESSOR MCRAE: That's the date -- that's the date we have, yes. 1967.

PROFESSOR CRAWFORD: So that while the discussions were going on in the JMRC and so on up until 1973, there was actually a moratorium in a large part of the area. Of course, the two are not inconsistent with each other, but --

PROFESSOR MCRAE: That would be our position. Yes.

PROFESSOR CRAWFORD: What was the mechanism for the introduction of the moratorium?

PROFESSOR MCRAE: It is done through federal -- it's a federal moratorium, and done, as I understand it, through regulation.

PROFESSOR CRAWFORD: So there were federal regulations?

PROFESSOR MCRAE: Federal regulation is the basis of the moratorium, yes.

PROFESSOR CRAWFORD: In the annexes, there is a federal map showing licensed areas which has a big blank area, dated 1970. That's obviously the -- in effect, the moratorium

area.

PROFESSOR MCRAE: It depends which map you are referring to. The map that often was shown certainly -- that is often shown is actually showing federal permits.

PROFESSOR CRAWFORD: Yes.

PROFESSOR MCRAE: I know certainly throughout the whole of the Canada-France case, we used a map that showed federal permits.

PROFESSOR CRAWFORD: That's the map I'm referring to.

PROFESSOR MCRAE: It's not the same as the --

PROFESSOR CRAWFORD: That federal permit map has a gap. Of course, the gap doesn't extend to certain areas of the Nova Scotia claim line.

PROFESSOR MCRAE: No.

PROFESSOR CRAWFORD: So there was not a -- the moratorium didn't extend along the whole of the --

PROFESSOR MCRAE: No, that is correct. No, and I'm not suggesting the moratorium was -- prevented any discussion. I'm just simply saying that there was a reason that no one would have an incentive to discuss the issue at that time.

PROFESSOR CRAWFORD: Okay.

PROFESSOR MCRAE: In March, 1992, after the Canada-France case had been argued, but before the decision was rendered, federal officials met with officials from both provinces to discuss the boundary. At that time, Nova

Scotia asserted that the boundary was the line set out in the Nova Scotia Accord. Newfoundland and Labrador officials at that meeting disagreed. Following the decision in Canada-France --

PROFESSOR CRAWFORD: Sorry, when was that meeting?

PROFESSOR MCRAE: That was the meeting in March, 1992. After the case was -- had been argued, but before the decision in Canada-France.

PROFESSOR CRAWFORD: Are there documents relating to that?

PROFESSOR MCRAE: The material I'm referring to actually comes from the annex 7 to the Nova Scotia Phase One Memorial. Together with our Memorial in phase one, which deals with some of these issues, as well.

And following the decision in Canada-France on June 10th, 1992, the Federal Minister of Energy, Mines and Resources, Jake Epp, wrote to provincial ministers, and that letter was dated August 6th, 1992, proposing that officials be designated to immediately begin discussions regarding the determination of the offshore boundary provided for in the Accord Implementation Acts.

PROFESSOR CRAWFORD: Is that in evidence?

PROFESSOR MCRAE: Again, yes, it is. Again, it's all in the phase one pleadings.

PROFESSOR CRAWFORD: Okay. Sorry, my memory -- I can just about remember what happened last week. But before that,

I'm struggling.

PROFESSOR MCRAE: It's document 109. 110? Okay. Document 110.

PROFESSOR CRAWFORD: Thank you.

PROFESSOR MCRAE: So at a meeting in October, 1992, officials of Newfoundland and Labrador met to discuss the boundary. And Nova Scotia officials, at that time, provided Newfoundland and Labrador officials information relating to the 1964 Stanfield Proposal, and the work of the JMRC.

Now apparently, as far as the record indicates, and as far as we are aware, there were no further meetings between officials until April of 1998. And at that meeting, Newfoundland and Labrador officials, it was a meeting between officials of Newfoundland and Labrador, and Nova Scotia. Newfoundland and Labrador officials provided Nova Scotia officials with an indication of how, in their view, the boundary should be drawn in accordance to the principles of international law governing the delimitation of maritime boundaries. And in July, some two months later, a letter was sent by Newfoundland and Labrador to Nova Scotia, enclosing a map and a description of the line offered without prejudice to any line that Newfoundland and Labrador might put forward in the future. And again, all of this material is in the phase one

pleadings.

Now, in June, 1998, the Federal Minister of Natural Resources had written to the Premiers of the provinces, stating that if they could not reach an agreement on the boundary by 31st of August, 1998, the matter would be referred to arbitration. And in August of 1998, the two Premiers agreed that the issue should be resolved by arbitration. And from that time on, the discussion between provincial officials related only to establishing terms of reference for an arbitration.

And I think that this history of events shows several things.

The first is that following the end of the common front of the provinces, the issue of boundaries was simply not on the table. After the Doody letter, boundaries were not the subject of discussion between the provinces.

Secondly, the process for determining a boundary was set out in the Accords in the implementing legislation. There was no reason to think that there was another way to resolve the boundary.

And thirdly, the first time that the boundary came up as between the provinces, and this is the meeting of October, 1992, Newfoundland and Labrador officials told Nova Scotia officials that they did not accept the Nova Scotia line.

Now fourthly, the impetus for settling the dispute came from the federal government, from the federal Minister to his provincial counterparts, following the resolution of the Canada-France dispute. It was not a case of Newfoundland and Labrador creating a dispute in order to get access to the resources of the Laurentian Sub-basin.

Fifthly, in April, 1998, Nova Scotia officials became fully aware of how Newfoundland and Labrador viewed the appropriate way to draw boundaries. And the sketch map that is in the record in phase one, produced by Nova Scotia, indicates that they did. Nova Scotia's protestations, therefore, that it did not know of the Newfoundland and Labrador position before the filing of the Memorial in phase two, ring rather hollow.

PROFESSOR CRAWFORD: Mr. McRae, two questions. First of all, and we have been shown a map, a Quebec map, of 1998, or 1999, which shows boundaries in the Gulf which look, prima facie, consistent with the 1964 arrangement. And have you had any discussions with Quebec, or has there been any -- I realize that this case -- Quebec is not a party to this case, but I'm just interested as a matter of fact, have you had discussions with Quebec about your interprovincial boundary?

PROFESSOR MCRAE: I believe -- I'll have to get advice on

that. I believe there have been discussion about resources. I'm not clear whether a discussion about the 1964 boundary. But I have to -- the discussion about the boundary. Yes, there have been discussions about the boundary.

PROFESSOR CRAWFORD: The -- I mean we haven't obviously been taken to the regulations, but the appearance on that map is that these boundaries are actually laid down in some Quebec regulations relating to -- to intraprovincial boundaries? Although that may be a false impression. And the second point relates to your 1977 White Paper, which had a series of maps showing a line which was clearly not the Nova Scotialine, but equally clearly, not your line. Now, was there any publication by Newfoundland in between the White Paper of 1977, and 1998, of your boundary in the area which showed any other line than -- or would have showed any line at all, for that matter?

PROFESSOR MCRAE: Not that I'm aware of. The indication, the guidance that was provided for in 1977, the only ones that we've seen on the records are the only ones that we're aware of, in terms of something that indicated some -- indicated what Newfoundland felt about the boundary.

PROFESSOR CRAWFORD: The 1977 map, it's obviously very small scale, but it looks like an unmodified equidistance line?

PROFESSOR MCRAE: That's what it looks like to us, although it -- further out it has some rather strange twists and turns. Whether it's following contours at that point, we're really not sure. But it was a fairly imprecise map, it was hardly drawn on any -- to any scale.

The further point is that, Mr. Chairman, that after -- the first time after 1973, when the boundary became a live issue, Newfoundland and Labrador officials made clear that they did not accept the Nova Scotia line. And in the first meeting, after the federal minister indicated that unless settled, the boundary issue was to go to arbitration, Nova Scotia was informed of Newfoundland and Labrador's view of how a boundary should be drawn in accordance with the principles of international law governing maritime boundary delimitation. And, if after the first of these meetings, Nova Scotia officials were still in doubt over whether Newfoundland and Labrador rejected all aspects of their claimed boundary, it could not have been in doubt after the second meeting.

Mr. Chairman, let me turn now to the key issues in this case. And there are, we consider, five.

The first issue, should Nova Scotia's view that the basis of title for the purposes of applying the principles of international law governing maritime boundary delimitation in this case is different and unique, should

that view be accepted?

Secondly, how do you identify the coasts that are relevant to this delimitation? And consequently, how is the relevant area to be determined?

Third, what are the relevant circumstances, equitable principles and criteria, that are applicable in the context of this dispute? And, of course, a part of that is what weight is to be given to the conduct of the parties?

Fourth, what method or methods are to be used in the particular geographic circumstances of this case?

And fifth, is the line that results from the application of those methods a line that is equitable in all of the circumstances of this case?

Mr. Chairman, following this presentation, Mr. Willis will address issues relating to basis of title, the legal and factual relevance of conduct, and the issue of coasts and their projections. He will be followed by Mr. Colson, who will return to the cases to show that the methods of delimitation we have applied conform with the law. I will then consider the application of those methods in this case, and look at the equity of the result, and then finally, I will make some concluding remarks.

But first, I want to refer briefly to each of these key issues by way of outlining our case in this second

round.

Let me turn to the first of the key issues, that of the basis of title.

Last week, Mr. Fortier gave a detailed presentation of the Terms of Reference to counteract, as he saw it, the attempt of Newfoundland and Labrador to subvert the Terms of Reference. And it was a puzzling presentation, because we seemed to agree that all of the provisions he referred to said exactly what he said they did. So we had difficulty understanding what was being subverted.

And it was puzzling further, because although he said much about the definition of offshore area in the implementing Acts, again something with which we do not disagree, he said little about Article 3 of the Terms of Reference, which require that the Tribunal apply the principles of international law governing the delimitation of maritime boundaries to the parties, two provinces, as if they were states.

And that this was a direction to the Tribunal to apply the principles of international maritime boundary law applicable to the delimitation of the continental shelf, was regarded as so uncontroversial in phase one that the Tribunal noted this in paragraph 3.10 of its Award. And although Mr. Fortier claimed he was not trying to undo this, in fact the force of his submissions, and of the

Nova Scotia argument, do just that. For Nova Scotia does not want the Tribunal to apply the principles of international law governing maritime boundary delimitation in respect of the continental shelf to this case. It wants those principles to be adapted to fit the Nova Scotia view of the basis of title.

Mr. Chairman, Mr. Willis will elaborate on this question shortly, but in our view, Nova Scotia has fundamentally misconstrued both the Terms of Reference, and international law. The requirement of the law of maritime delimitation to have regard to the basis of title is a statement about the foundations of the law. It is a statement that the law of delimitation derives from the legal basis of the title of the state to maritime territory that is the natural prolongation of its coast, and the content of the law can be understood only in the light of the juridical construct of the basis of title.

But, that does not mean that every case on maritime delimitation must make an enquiry into the basis of title. The principles of international law governing maritime boundary delimitation are founded on the fact that the basis of title is the coast from which maritime areas project. If you want to apply the principles of international law governing the delimitation of maritime boundaries, then the basis of title comes as part of the

package.

Mr. Chairman, the fundamental differences between the parties is clear. For Newfoundland and Labrador, the basis of title is found within the body of international law governing maritime delimitation. Title derives from the right of a state to the maritime territory extending from its coasts.

For Nova Scotia the basis of title in this case is to be determined from outside the law relating to maritime delimitation. It is to be derived from the particular facts of the case and in this case that means entitlements of the provinces under the Accords and the implementing legislation.

Mr. Chairman, in our view, the Nova Scotia position is simply contrary to the Terms of Reference which require the tribunal to take the principles of international maritime boundary law governing delimitation in respect of the continental shelf and apply them by analogy to the particular regime that pertains in respect of the provinces under the Accords.

To argue otherwise is to contradict Article 3 of the Terms of Reference, to contradict paragraph 3.10 of the phase one Award and it to invite the Tribunal to take the form of delimitation law devoid of any normative content and apply it arbitrarily.

Mr. Chairman, in applying the principles of international maritime boundary law, both parties have indicted, although for different reasons, that Article 6 of the 1958 convention on the continental shelf, is not applicable. And we made our views clear on this on why we thing that that is so. Last week the Chairman indicated that the Tribunal might itself feel obliged to start with that provision, and if that was so we would simply reiterate our position that delimitation under Article 6 is in no material respect different from delimitation under customary international law. And we would remind the Tribunal also that in our Memorial we tested our line by a provisional equidistance line in the first place.

Let me turn to the second key issue, that of the relevant coasts.

PROFESSOR CRAWFORD: Mr. McRae, just before you do. I mean, one of the puzzles here is to work out why it matters what the relationship is between basis of title and delimitation principles. And there is a risk of adding to the confusing theology of international law a confusing theology of Canadian Law about offshore areas as well. But can I put an argument in these terms. Let's assume -- obviously the legislation itself and the Terms of Reference contain the phrase with such modification as the circumstances require, so clearly the Tribunal has some

capacity to modify principles of international law if the circumstances require that.

Now I know you say that the modifications have all been achieved by the Terms of Reference. But one might say we are still after all -- and of course you said in your first round -- we are still after all focusing on provinces operating within the Canadian context and surely whatever the position in the rough and tumble of the outside world in the Canadian context principles of good faith and so on indicate perhaps a higher regard for conduct than might be the case at the international level, is that -- what would your comment be of that argument? It is not precisely -- although I think Mr. Fortier, when I put that argument to him, said it was part of the picture. I would be interested in your views on it.

PROFESSOR MCRAE: We don't -- Mr. Crawford, we don't feel that there is any need in this case for the Tribunal to modify the principles of international maritime boundary law. And certainly if that was considered appropriate, we do not think it would be considered appropriate to modify it because of a perceived contradiction between the definition of offshore area and the Terms of Reference to apply principles of international maritime boundary law. It seems to us that the Terms of Reference take that definition of offshore area and require the Tribunal to

apply principles of international law governing maritime boundary delimitation to the provinces and in respect of that offshore area.

So in our view, there is simply no basis for the Tribunal to use that to deal with the problem which is really nonexistent there.

On the other hand, if the particular circumstance -- and I think this is consistent with what we said in phase one -- that if the particular circumstances of dealing with the provinces make it difficult or impossible to apply the principles of international maritime boundary law or to vary them, that might be an appropriate circumstance. We do not see it here, although I understand your comments in relation to the way in which officials' conduct might be perceived in a provincial context as opposed to an international context.

Again, we see a very narrow scope for that provision in these circumstances.

Let me turn then to the issue of relevant coasts. On Friday, Mr. Chairman, Professor Saunders gave us what was really a quite brilliant expose of the difficulties inherent in the application of the law of maritime boundaries to what he referred to as the primordial ooze of geography.

But, Professor Saunders' critique of the circularity

of the process of ascertaining relevant coasts and determining the relevant area simply leads to an impasse. It leads to the conclusion that the process of defining relevant coasts and ascertaining a relevant area is ultimately subjective and hopeless. It simply does not help a tribunal that has to undertake that process to be told that the task is hopeless. And, the silver bullet provided by Professor Saunders is of itself not helpful, because it consists of applying what we might refer to as the Article 76 plus line of sight theory, which Professor Saunders did not seem to defend on the basis of the law, but on the basis of Nova Scotia's interpretation of the Terms of Reference.

And Mr. Willis is going to deal with Article 76, but, Mr. Chairman, you will understand if we do have some difficulty grasping this line of sight theory. For instance, we are not sure whether it's a conic line of sight or a mercator line of sight that's involved here.

In any event, there is no doubt that there is some subjectivity in the determination of the relevant coasts. It does require the exercise of some judgment. Now Nova Scotia derided the idea of judgment, but I think that they were not deriding the concept of judgment generally. I think they were simply referring to our judgment when they did that.

But let's stand back and ask what it is that we are trying to do in identifying relevant coasts and a relevant area. We are simply trying to get a general sense of the area in which the delimitation is to take place and an appreciation of the geography of that area, so that particular features can be taken into account or disregarded in the application of the delimitation method.

It also provides a basis for the measurement of coasts so that proportionality expressed in terms of the ratio between coastal lengths and areas resulting from the delimitation can be assessed. In order to do this, there has to be some sense of the way in which coasts face, so that only those coasts that face into the area to be delimited can be treated as relevant. And there has to be some sense of the area in which the delimitation is to take place.

Of course, none of this can be determined with mathematical or scientific precision. It's a matter of judgment. And the cases have varied in the ways they have approached it and gone about it. On Friday, Professor Crawford in seeking to get some clarification on this issue, said tell us the coasts that are capable of affecting the delimitation. And again, that does not provide scientific precision but it gives once more, we suggest, a sense of the purpose of the exercise. And in

this regard, concepts of frontal and radial projection have been called in aid to provide guidance. And Mr. Willis will discuss these concepts further this morning.

However, in our view, while the frontal projection directs attention to the coasts that face towards the delimitation, the concept of radial projection simply states the problem rather than solving it. All coasts can project radially, thus there is no basis for distinguishing between those coasts that are capable of affecting the delimitation and those that are not.

And moreover, the concept of coasts that are capable of affecting the delimitation cannot be taken too literally. Viewed from an equidistance perspective, there may be only a limited number of coasts that affect the delimitation. For example, an equidistance line between Newfoundland and Labrador and Nova Scotia, ignoring Sable Island, is governed on the Nova Scotia side by the coasts down to Cape Canso, and not by any further Nova Scotia mainland coasts further to the southeast.

And in fact, in our view, this does frame the area. We included the coast down to Cape Canso. It faces into the area to be delimited. But of course, we have been criticized for not going further. However, as I will point out later today, going further actually makes no difference, either to the determination of the line or to

the equity of the result.

And this, of course, makes the essential point about identification of the relevant coasts. Once the coasts that generally front onto the area have been determined, there is no value in adding or fine-tuning that determination and looking for ultimate and unobtainable precision.

The area framed by the coasts can then be enclosed by some reasonably objective method and the area so enclosed can, provided like is compared with like -- again something I will come back to -- that can be used for the test of proportionality. But as we will show, as I mentioned, adding additional coasts will not necessarily change things.

Once more, Mr. Chairman, the difference between the parties is stark. Newfoundland and Labrador defines the relevant coasts and the relevant area by looking at the coasts that face into the area to be delimited, and that in some general sense could have an impact on the delimitation. Nova Scotia defines the relevant coasts and the relevant area by reference to the Article 76 definition of the continental shelf and its novel and unprecedented line of sight theory.

Let me now turn to the third of the key issues, what I call is a package of relevant circumstances, equitable

principles and criteria. In fact, Mr. Chairman, I think that there is little to be said about relevant circumstances. There is no doubt that the international law of maritime boundary delimitation places geography at the forefront of relevant circumstances. Nova Scotia argues that the sui generis body of delimitation law that it wishes the Tribunal to apply does not. However, it appears that Nova Scotia appears to accept that the law of maritime boundary delimitation applicable to the continental shelf does give primacy to geography. My friend, Mr. Fortier, stated that under Nova Scotia's special body of delimitation law, geography's -- and I quote -- "pride of place has to be ceded."

But Nova Scotia's contention that geography is the only relevant circumstance according to Newfoundland and Labrador cannot be accepted. We have made clear that other factors such as conduct and economic factors can be relevant circumstances. It is just that they do not provide any guidance in the particular circumstances of this case. And again, Mr. Willis will develop further the legal relevance of conduct.

However, one of the most important relevant circumstances in this case is the fact of the delimitation with France over St. Pierre and Miquelon. And as we have argued, both the act of the delimitation and the reasoning

and analysis of the Court of Arbitration have to be given careful consideration by this Tribunal. We made our views clear on this last week and need not repeat them.

And while it insists that other delimitations in the area must be taken into account, Nova Scotia, however, prefers to discount the Canada-France Award, confining it to its facts, inviting the Tribunal to disregard its reasoning. While invoking the line in the Gulf of Maine as having the potential to squeeze it, Nova Scotia also seeks to bury the reasoning of the Chamber. It too must be seen in Nova Scotia's view as relating to unique facts. Indeed for Nova Scotia, everything thing seems to be sui generis.

As far as equitable principles and criteria are concerned, Nova Scotia accuses us of focusing solely on proportionality and non-encroachment. And of course, these are significant factors that derive from the particular geographical relationship of the coasts of the parties. In circumstances where longer coasts face shorter coasts, issues of proportionality arise. In circumstances where the location of coasts can cause a line to veer towards one state or the other raises questions of encroachment or cut-off. Both of those circumstances are present in this case, and thus, both of those factors are relevant.

Indeed, a fundamental question in this case, is whether the coasts of Newfoundland, west of St. Pierre and Miquelon, are to be cut-off from their projection out to the continental margin. Is the Nova Scotia view that its southeast facing coast should be protected from any cut-off to be adopted, or should the Newfoundland and Labrador view that cut-off must be shared, to be followed?

In respect to the factors to which Nova Scotia wishes to give prominence, such as economic factors and other delimitations, indeed conduct, we have already indicated that they, in our view, have little role to play in this delimitation.

In sum, Mr. Chairman, on this issue, Newfoundland and Labrador places primacy on geography as a relevant circumstance, but does not exclude other factors where relevant. In giving effect to the geography of the area, equitable principles, such as the avoidance of cut-off, the avoidance of giving weight to incidental features and proportionality, have important roles to play.

For Nova Scotia conduct plays the primordial role and geographical factors, either as relevant circumstances or equitable principles, are relegated to a secondary, and often, we would suggest insignificant role.

PROFESSOR CRAWFORD: Mr. McRae, on relevant circumstances, you said a moment ago that one of the most important

relevant circumstances in this case was the St. Pierre and Miquelon delimitation. And in particular, the reasoning of the Tribunal. And obviously, we have discussed earlier some aspects of the reasoning. But I made the point in the first round that your method of delimitation, as you have justified it, would be exactly the same whether or not the delimitation existed. Indeed, it would be exactly the same whether or not St. Pierre and Miquelon existed.

Is there some contradiction between that and your saying that it's a relevant circumstance? I mean, let's leave the reasoning aside and just take the fact of the delimitation, which is binding on us all. Assume entirely hypothetically that the Tribunal is going to adopt some version of an equidistance line in this situation, and assume that conduct is irrelevant. Again, entirely hypothetically. How should a Tribunal applying the equidistance principle take into account the delimitation of St. Pierre and Miquelon?

PROFESSOR MCRAE: Professor Crawford, I am going to come later today to look at the application of methods, but just as a preliminary answer to that question, the fact that we regard it as a relevant circumstance doesn't necessarily mean that it has to be part of the method of delimitation. Our method of delimitation takes account of that fact and avoids the disadvantage that is suffered.

If one moved to think about equidistance, an important factor in determining equidistance points would be the fact that that delimitation exists there, and that the area is being taken out of the zone that in the absence of equidistance, would belong to -- in the absence of that area would belong to Newfoundland and Labrador.

PROFESSOR CRAWFORD: Is that -- obviously I see that it may be relevant in determining the method of delimitation, and that's why I put the question in the way I did. But assuming that the Tribunal was to apply some form of equidistance, would you say that there was a sort of compensation principle operating here, or how would you articulate it?

PROFESSOR MCRAE: I think again it's going to come up when I talk about the way in which one chooses a method for the second segment. And that is a fact -- the fact is that one has to recognize the reality of the disadvantage of both the islands and the zone in determining areas that would accrue to Newfoundland and Labrador from base points behind the islands or near the islands.

So, as I will explain later on, our method takes that into account. And again, I would suggest that if one took another method, one would have to take exactly the same consideration into account.

Let me turn to the fourth key issue. The question of

a method of delimitation. Mr. Chairman, the choice of a method or methods of delimitation must be made in the light of the particular characteristics of the area. We identified the delimitation area in this case outside of the Gulf of Lawrence -- Gulf of St. Lawrence as consisting of both an inner concavity and an outer area. And we identified different methods to respond to the different geography of those areas.

In our view, the Gulf of Maine case provides a useful parallel, because in important respects it has similar geography. Again, an issue we will come back to.

Now, Nova Scotia challenges that parallel, and considers that as a result, the methods used by Newfoundland and Labrador are suspect. And again, we will return to this question later in our presentation today. But for the moment, it's sufficient to note that in focusing on the precise geographical relationship, and demanding that only an identical coastal relationship would justify the application of the Gulf of Maine method, Nova Scotia is ignoring, by making that claim -- ignoring what the method in Gulf of Maine was really all about.

The Chamber in Gulf of Maine selected delimitation methods that were responsive to the particular geographic considerations. But it has much more specific implications than this. When one gets beyond the issue of

rectangular configurations, boundaries in the corner, and the Bay of Fundy, there are several lessons from the Gulf of Maine.

First, the Chamber recognized that where a confined geographic configuration emerges into an open area, then the method must change.

Secondly, it recognized that where the coasts of the two states within the confined area are different in length, that difference has to be reflected in the delimitation.

And third, it recognized that where delimitation is changing from an inner to an outer area, the delimitation inside has to be effected with a view to the outside.

And fourth, it recognized that it was the coastal geography of the exit point that must govern the line as it leaves the inner area and as it moves to the transition, to the outer area.

In his presentation on Friday, Professor Saunders, when through the delimitation effected by Newfoundland and Labrador, arguing that the geography was different. There was no concavity comparable to that of the Gulf of Maine. And that Newfoundland and Labrador had not chosen as an explicit criterion, the equal division of overlapping areas.

But with respect, Professor Saunders allowed the trees

to obscure the forest. The fundamental problem of moving from a geographically confined area into an open area is a problem that exists whether or not one designates the confined area as a concavity or as a case of opposite coasts. That is the problem that the Gulf of Maine was addressing, and that is the problem that is before this Tribunal.

Mr. Chairman, both Mr. Colson and I will be developing this issue later in our presentations.

But by way of summary in respect of method of delimitation, Newfoundland and Labrador has applied methods of delimitation that are appropriate in the light of the geographical characteristics, the coasts and the coastal relationships of each of the areas to be delimited.

In our view, Nova Scotia by contrast, has a unidirectional line that has no method other than the conduct on which it is allegedly based.

Let me turn now to the fifth and last of the key issues in this case, that relating to the line and the equity of the result.

Mr. Chairman, we indicated how our line was constructed in the first round. And we will come back to the aspect of the construction later today. But in rejecting our construction of the line, Nova Scotia leaves

a void, because it has no response to the question of how a line ought to be constructed in light of the geography of the area. Its line is based on conduct, not geography.

Thus Nova Scotia has been unable to provide the Tribunal with any guidance on how such a line should be constructed by the Tribunal if its conduct line is rejected. And there were several invitations, as we understood it, from members of the Tribunal to provide that guidance last week, which were not taken up. And again, we heard the basis of title, Article 76, line of sight theory to justify the conduct line.

The only concession that we could discern was that Professor Saunders seemed to say that a line based on the law governing the delimitation of the continental shelf should cut through the French corridor. Now that this will be the position of Nova Scotia since its line does precisely that, comes as no surprise although we had difficulty understanding the principle that was being relied on to achieve that result. Maybe it again is line of sight.

Later today, Mr. Chairman, I will show that the line Newfoundland and Labrador has put forward produces an equitable result, both in the light of the traditional proportionality testing and in the light of other factors that have been raised as relevant to determining the

equity of the result. I will also show that even where objections to the coasts we have used are taken into account, the result is still proportionate.

In summary, Mr. Chairman, the Newfoundland and Labrador line, constructed in accordance with methods that reflect the geography of the area to be delimited meets appropriate tests of the equity of the result.

Nova Scotia's line, constructed on the basis of conduct, is apparently meant to be equitable by reference to the conduct which is the basis of its construction. However, in our view it does not produce an equitable result.

Mr. Chairman, that concludes my opening remarks. I would not ask you to call on Mr. Willis to address you on issues of the applicable law.

CHAIRMAN: Would this be an appropriate time to take a break?

PROFESSOR MCRAE: If that's the wish of the Tribunal, certainly.

(Short Recess)

CHAIRMAN: Before we begin, Mr. Willis, I would like to address a question I think I should address to Professor McRae. Nova Scotia has given us the impression, I think, that they would like a rhumb line, are you thinking in terms of a rum line, or geodetic line?

PROFESSOR MCRAE: Rhumb line, my experts tell me, just to make sure I don't make a mistake here.

CHAIRMAN: Rhumb line?

PROFESSOR MCRAE: Yes.

MR. WILLIS: Good morning Mr. Chairman, and Members of the Tribunal.

Today, I have been asked to come to the podium one last time in this case, to deal with arguments concerning the Terms of Reference, and the basis of title. As well, I will be dealing with the practical consequences of the differences between the two parties on the general approach to this delimitation.

One of these is the role of conduct, which Nova Scotia says must be given a special weight in this case, because of its interpretation of the basis of title.

The other is the matter of the relevant coasts and the relevant area, where again, Nova Scotia takes a position based on its view of the basis of title, which we consider entirely misconceived.

There is, as we noted in the first round, and in the written pleadings, one point on which we are in complete agreement with Nova Scotia; the critical role of the basis of title in the international law of maritime boundary delimitation. It is this that gives form and definition to the law. From this point on, we quickly part company.

Because, on the one hand, Nova Scotia has failed to recognize the practical implications of the basis of title, and on the other hand they have postulated not merely a difference, but an incompatibility between the basis of title in this case, and the basis of title as it exists in international law. And this incompatibility simply does not exist.

As a preliminary remark, we cannot help wondering what all the fuss is about. There is no difficulty conceptual or practical, in applying the international law of the continental shelf to coastal jurisdictions that do not, and cannot, have a continental shelf in their own right. None of this occurred to anyone in the United States in connection with the CEIP legislation, the Coastal Energy Impact Program, which involved applying continental shelf delimitation law to states as if they were sovereign states, despite the fact that the object was not inherent shelf rights, but a purely legislative entitlement to federal funding.

I can deal very briefly with the failure to recognize the practical implications of the basis of title. Nova Scotia has said there is no hierarchy of relevant circumstances. But clearly, there is. And it flows from the basis of title in territorial sovereignty, and more specifically, in sovereignty over the coast adjacent to

the delimitation area. It is the basis of title that gives what we have called pride of place to the coastal geography.

The centrality of the coastal geography has been repeated in case after case. The Tribunal has heard the quotes, and seen the citations. I will not tire you with a renewed recital.

Suffice it to say that this centrality is reflected in the fundamental norm, on which both parties agree as a point of departure, and which singles out the geographical circumstances before referring to the other relevant circumstances as a general residual category.

This hierarchy of relevant circumstances derived from the basis of title is the source of practically everything else of substance in the international law of maritime boundary delimitation. By that I mean the equitable criteria or principles, and the practical methods that are also referred to in the fundamental norm. All of which are, and always have been, grounded in the coastal geography.

And by that I mean not just the raw geography, but the geography interpreted. The geography as seen through the prism of international law, which has developed concepts like coastal fronts, coastal projections, incidental features, and relevant coasts, that translate the maps

into something that has legal meaning and consequences.

In a word, Mr. Chairman, the hierarchy of relevant circumstances and the pride of place given to the coastal geography, are of the essence of the body of law we must apply. Its heart and soul. Set them aside, and we are left with an empty shell, generalities with no practical meaning.

The Nova Scotia conception of a new and different set of principles of international maritime boundary law, no longer based primarily on geography, is really a contradiction in terms.

What they propose is not what the legislation contemplates. It is something new, something unknown to international law, and in short, it does not exist.

One strand of Mr. Fortier's argument was that the fundamental norm is flexible and robust. The expression has resonance, but what does it really mean? What Nova Scotia seems to be saying is that every time we come to a new kind of jurisdiction, the fundamental norm becomes a tabula rasa. Everything can be re-opened. Nothing is settled. It does not take much reflection to see that this leaves the fundamental norm with no real meaning, and no real substance at all. Flexible and robust are positive qualities, but as used by Nova Scotia, what they really mean is vacuous.

We were referred last week to the statement of President Guillaume in the Sixth Committee. Mr. Colson will be dealing with some aspects of his remarks later on in the day.

It is clear, however, that much of what he said undercuts the Nova Scotia position. Mr. Fortier suggested that the fundamental norm takes on a different meaning every time a new kind of jurisdiction is encountered, because there's a new basis of title. President Guillaume talked about a complete reunification of the law, across a variety of different forms of jurisdiction. Shelf, EEZ, and territorial sea. He also talked about special circumstances, and relevant circumstances, as, and I quote, "both essentially geographical in nature", in all these jurisdictional zones.

He talked also about how the Court had moved the law toward greater certainty. None of this lends any credibility to the Nova Scotia view of the law of maritime delimitation as a chameleon, an empty vessel that changes its content every time it encounters something new.

MR. LEGAULT: Excuse me, Mr. Willis. I wonder if I could ask you to go back just a moment or two in your presentation, to where you spoke of the legal basis of title changing in the process of the development of the law. I think what you were referring to was from

continental shelf to economic zone, to single -- you didn't use these terms, but in reference to Mr. Fortier's statement last week, you picked this up. And I wondered if you were saying that Newfoundland and Labrador considers that there was a change in the basis of title in moving say from the 1969 North Sea cases, to the 1984 Gulf of Maine case, to the 1993 Jan Mayen case, where you had a request for two different lines, or two different delimitations, at any rate, for the continental shelf on the one hand, and the fishing zone on the other?

MR. WILLIS: There's not a radical change in the basis of title. At the end of the day it's all based on the coastal geography. The coastal geography is the source of rights of all kind.

MR. LEGAULT: Is it based on coastal geography, or on territorial sovereignty, which you also referred to?

MR. WILLIS: Coastal -- it's territorial sovereignty, ultimately, as expressed through the coastal geography.

MR. LEGAULT: Yes. Thank you, Mr. Willis.

MR. WILLIS: In fact, the closer one looks at how international courts have dealt in practice with new forms, or variations in forms of maritime jurisdiction, the more striking the essential continuity of the case law becomes.

Mr. Fortier referred to Gulf of Maine, which was the

first maritime boundary case dealing with both the shelf and the water column as a single maritime boundary. And he referred to Jan Mayen, where the Court for the first time, dealt with a dual boundary, one for the shelf, and another for the water column, and yet managed to come up with a single line.

Now of course, these variations can have some effect on the relevant circumstances. But not really an effect that is in any way helpful to the Nova Scotia objective of putting the geography in the back seat. If anything, these cases suggest that as the settled principles of international boundary delimitation law are applied to new zones of jurisdiction, geography becomes all the more prominent.

Gulf of Maine, and Jan Mayen, were mostly geography. Canada-France was pretty well all geography. It is the common element or the common denominator that applies to all of the offshore zones. And the other striking thing is the essential continuity of the jurisprudence. The addition of new kinds of jurisdiction, such as the EEZ, has not in fact changed the fundamentals. Geography reigns all the more supreme as the fundamental norm is applied to new situations.

Nova Scotia has also urged that this case is different from a true continental shelf delimitation, because not

every single element of the international continental shelf regime is present. Specifically, there's nothing on sedentary species, and nothing on pipelines.

The same was true of the Canadian 200 mile fishing zones in Gulf of Maine and Canada-France, which lack the complete coverage of the exclusive economic zone in international law.

But the Courts found absolutely no problem with this lack of perfect concordance, or perfect symmetry. And they went ahead with a delimitation based on the same international jurisprudence that applies to zones strictly conforming to the international definitions.

We had understood, from the written pleadings, that Nova Scotia saw an important difference between the basis of title in this case, and the basis of title in the international law of the sea. But it was only last week that the full extent of this contradiction, as Nova Scotia perceives it, was brought to light. We were frankly, surprised to hear that the distinction between the basis of title in this case is not merely different, but antithetical in concept and substance to the continental shelf, as Mr. Fortier expressed it. It is as if the two inhabited different universes. As if they shared no common ground whatsoever.

If this were true, if there were such a chasm between

the continental shelf and the domestic -- domestic offshore areas, then clearly the use of international law would be a conceptual and a practical impossibility. In fact, however, it is anything but true.

I will come in a moment to a reiteration of our basic position that the Terms of Reference and the legislation require us to approach this as a true continental shelf delimitation -- a delimitation of inherent ab initio and ipso facto rights between sovereign states. But even if we set that position aside for a moment, I suggest that a proper reading of the legislative definitions confirms that the subject matter in substance is the same as the continental shelf, and while the basis of title may be legislated, it has precisely the same geographical original as the continental shelf.

What, then, are the elements or the building blocks of the definitions of "offshore area" in the two statutes? Well, the first is the coast. The low water mark along the coast, significantly the same point of departure as that used in international law as the normal base line from which the territorial sea and other zones of jurisdiction are measured. The second element is the idea of a seaward extension from the coast -- again, a close affinity to some of the concepts of international law. And to close the circle and complete the definition, the

legislation adopts, as Nova Scotia never ceases to remind us, the outer limit of the continental shelf as defined by international law.

There is nothing antithetical to international law in any of this. It is, in fact, a domestic borrowing, a domestic implementation of concepts derived from the international law of the sea, and in particular, the continental shelf. Obviously, there is not -- there could be no inherent title in the provinces, either constitutionally or internationally, so it had to be legislated. But the subject matter of the legislation is, transposed to a federal and domestic context, and admittedly, without covering sedentary fishery resources, exactly the same as that addressed by the international law of the continental shelf. And the geographical basis of the rights is written into the very definitions that Nova Scotia invokes to support its argument that the basis of title in this case is not the coastal geography.

Nova Scotia is seemingly oblivious to a contradiction that pervades its argument. On the one hand, Article 76 and its abbreviated incorporation in the legislative definitions is invoked at every turn and for every possible purpose. On the other hand, we are told that the basis of title in this case is fundamentally at odds, and indeed, antithetical to the continental shelf at

international law. Ultimately, both propositions cannot be true. They cannot have it both ways.

Nova Scotia agrees with us ostensibly that the basis of title is the point of departure. But then we found from Mr. Fortier's presentation that there is simply no title of any kind at issue in the present case. He said, and I quote, "No title to areas of any sort is conveyed by these instruments." The words refer only to the geographic area, the spatial zone, and that is the full extent of their so-called title.

So we are back to geography as the only constant, and back to a situation where there is no other aspect of the basis of title that could possibly inform the delimitation exercise.

Even if you accept the premise that we are dealing here with sui generis institutions of Canadian law, the conclusion that the law must be applied in a significantly different way does not follow. Geography is not displaced and conduct does not move to center stage. This is because the content, function and definition of the so-called offshore areas is so closely aligned with the continental shelf as to make the transposition completely free of difficulty. It requires no modification of the principles, no change in the law, or in how it should be applied.

But we do not, on behalf of Newfoundland and Labrador, we do not, in any event, accept the premise. The clear inescapable directive of the legislation is to apply the international law of maritime boundary delimitation. But the provinces are not sovereign states to which international law can apply in its own right. The necessary implication is that we are to treat the parties as if they were states, and on that basis, they would enjoy the inherent ab initio rights that international law automatically confers on all states to the juridical continental shelf, whether they claim them or not.

All this is necessarily implied in the legislation itself and it is spelled out in express terms in the Terms of Reference. For the purpose of this arbitration, we are dealing with the true continental shelf in a delimitation between deemed sovereign states on the basis of public international law.

Mr. Fortier referred to this as a pioneering task to be addressed with boldness and imagination, and to you as the pioneers. The implication is that we have embarked on something exploratory and quite without precedent. The subtext, however, is that the established principles of maritime delimitation are of very limited relevance; that this case can be distanced from all that has gone before to such an extent that we can play fast and loose with the

established principles, that they can be refashioned to suit the needs of this case -- more generally, that we can make it all up as we go along. This should be recognized for what it is, an arbitrary and ad hoc approach that runs directly against the trend of the law which as President Guillaume said in his statement, is moving toward greater certainly, even in the face of variations in the basis of title to particular types of maritime jurisdiction.

There is a related and broader point. There is no doubt that maritime delimitation is a fact intensive exercise; that every case is unique; that we have to be careful about preconceived a priori assertions, and that the applicability of even the most entrenched equitable principles depends upon the geographical situation. On all of this, the Gulf of Maine judgment is eloquent, but it is also intended to be a legal operation, and that involves a reasonable degree of certainty, continuity and predictability. We have to strike a balance. This is missing in the Nova Scotia approach to the law, which says that when new forms of jurisdiction are encountered, we have to adopt a new and different approach; that we have to make it up as we go along. This loses sight of the essential balance. It is totally at odds with the tendency of the Courts to approach the delimitation of all forms of maritime jurisdiction in terms of geography, and

on the basis of a common set of methods and principles, while taking account of recognized distinctions such as the suitability of equidistance close to or far from the coast.

Nova Scotia's version of international law for the purpose of this dispute is a hybrid. It takes the fundamental norm from international law, but uses what it sees as distinctions between the domestic offshore zones and the international continental shelf as a pretext for significantly transforming the substantive content of the law. The result is neither fish nor fowl. It is not the application of the principles of international law which is contemplated by the legislation and the Terms of Reference.

So let us pass on, Mr. Chairman, Members of the Tribunal, to the practical consequences of this debate about the basis of title. What is the fuss all about?

I think it boils down to two issues. The first is the Nova Scotia argument that because the basis of title is a negotiated entitlement only, conduct must be given more weight in this case and geography is less relevant. The second is a definition of relevant coasts and areas that is not sustainable in terms of principles of international law pertaining to maritime boundaries. This second consequence leads, in turn, to a skewed proportionality

test and to an application of the equal division/special circumstances criterion from the Gulf of Maine that the Chamber would not have recognized and that is quite at odds with its emphasis on a narrowly defined delimitation area.

For the moment, I would like to look at the first major consequence -- that conduct is to be put on a higher pedestal than geography. It is far from clear that this flows from the basis of title as seen by Nova Scotia, and even accepting their view for the sake of argument. In fact, there seems to be a missing link in the chain of events and the chain of reasoning. Superficially, one might be inclined to say that if we are dealing with a negotiated title, then the negotiating history should have more weight. But the problem here is that we are dealing with multiple negotiations and changing sets of parties. What Nova Scotia has relied upon in terms of conduct is primarily the negotiations of 1964 and 1972. The problem is that those negotiations did not produce the Accords. They were part of a long political and legal history that led, in a very indirect way, to the eventual conclusion of the Accords. But the Accords themselves did not emerge from the negotiations on which Nova Scotia relies. Nor did they emerge from the permit practice that is said to be referable to a political consensus on the proposed

boundary. There is no causal, not even a chronological link.

Well, then, what conduct does relate to the so-called basis of title in the Accords? That, presumably, would point us toward the negotiation of the Accords themselves, and possibly toward their administration, but that, of course, could not be relevant here and it's not even in evidence. We are dealing with two separate negotiations and two separate agreements, each with different parties, neither of which involved both the parties to this arbitration. And, in any event, while the two Accords took account of the boundary issue, they did so, as the Tribunal noted in phase one, in a scrupulously neutral way. So there is no conduct related to Nova Scotia's so-called basis of title that really leads anywhere in terms of the boundary dispute.

There is another missing link, or perhaps a contradiction is a better word, between the Nova Scotia argument on conduct and the basis of title it posits. The basis of title is said to have its roots in agreements and legislation concluded in the 1980s. The conduct at issue long pre-dates the origin of that basis of title or its negotiation or legislative history.

Mr. Bertrand linked the relevance of practice in the jurisprudence to whether it is referrable to an agreement

of some sort. The conduct relied upon by Nova Scotia is not referable to the Accords, and it is not related to the basis of title, or the purported basis of title, which is so central to the Nova Scotia case.

There are other reasons, both factual and legal, why the Nova Scotia argument on conduct does not hold water. I will leave some of to Mr. Colson, who will be dealing again with Tunisia-Libya, and I will be coming in a few moments to certain specific questions of fact.

But I do have some comments on one other aspect. Mr. Bertrand proposed that conduct has a heightened relevance if it is referable to a prior agreement or consensus between the parties. And he distinguished between the outcomes in Tunisia-Lybia and Gulf of Maine on that basis. This in his argument meant that the permit practice of the parties in the years around 1967 to 1971 should be given weight in this case.

All of this stems from the incorrect premise that in the law of maritime delimitation, a so-called political agreement is an agreement with all the consequences that follow. I will come back to that false premise in a moment.

But essentially what Mr. Bertrand was saying is that legal consequences should flow from conduct that is compliant, or allegedly compliant, with provisional or

conditional understandings reached in an ongoing, but ultimately unsuccessful negotiation. That cannot be right. And in fact, it would be a dangerous proposition that could undermine the negotiating process.

For the moment, I will set aside the factual differences between us on the so-called subsequent practice. What is common ground is that at the time of the permit practice invoked by Nova Scotia, the common front of the provinces was still alive, and the negotiations with the federal government were still alive.

Suppose for the sake of argument, that the permit practice at that time, or any part of it, was indeed intended to be compliant with the proposed boundaries that were part and parcel of that process. That would amount to nothing more nor less than the provisional application of an element of a package deal, a conditional element of the package deal during the course of an active negotiation.

This happens all the time in political negotiations, which are notoriously long, drawn out and complex. The negotiations would go off the rails, politically, if the participants acted inconsistently with what they hoped to be a an emerging agreement. Every consideration of good faith in negotiations, of political comity and political common sense supports this kind of co-operative behaviour

in the course of an active negotiation.

It would be profoundly wrong to penalize it with serious prejudicial consequences if the negotiations should fall through.

The reason given in Tunisia-Libya for taking conduct into account was that it indicated a line which the parties had viewed as equitable. When the concordant conduct is related to a hoped-for package deal, or a conditional agreement, and the package or condition falls through, this inference cannot properly be made. There is no proper basis upon which one can assume that the parties would have regarded the line as equitable or even acceptable in the absence of the full package or the fulfilment of the condition. That would be imputing intentions to them without evidence and doing it retrospectively. The most that could be said is that at one time they regarded the line as acceptable, provided it came within -- with the quid pro quo that was anticipated.

And we know what the quid pro quo was in this case. It was ownership and jurisdiction. It was the big price and nothing less.

PROFESSOR CRAWFORD: Mr. Willis, what was the period within which you would say that the common front including Newfoundland and Labrador existed?

MR. WILLIS: Approximately to -- from approximately 1964 to

1973 at the latest. '72, '73.

PROFESSOR CRAWFORD: Wasn't it clear well before 1973 that the quid pro quo had collapsed?

MR. WILLIS: I don't think it was clear. There were references in the period of 1972 to administrative arrangements and the like, if that's what you are referring to. However, the communiqué, much relied upon by Nova Scotia in phase one, from June of 1972 reaffirmed the provincial claim to ownership.

PROFESSOR CRAWFORD: Yes. And Prime Minister Trudeau said not that old stuff again, in effect?

MR. WILLIS: Yes.

PROFESSOR CRAWFORD: He was pretty peremptory in his dismissal of it, wasn't he?

MR. WILLIS: Yes. The federal government was definitely taking a hard line. And there were varying reactions to that on the provincial side, as to what the logical response would be. And ultimately, this led to the break-up of the common front. But what I think could certainly not be imputed to Newfoundland is any intention to back away from the original claim to ownership. One can speak of, in a very tentative way, all these references to administrative arrangements were very tentative. What was clear -- and what was on the record was the re-affirmation of the claim to ownership.

I don't think Newfoundland and Labrador, and I don't think most of the other provinces ever reached the point where that original objective was repudiated, or where these proposed lines were ever de-linked from that original objective.

PROFESSOR CRAWFORD: When for the first time in public did Newfoundland and Labrador make its claim for a special case based on the different circumstances in which the time in which it joined Confederation and so on?

MR. WILLIS: I really can't answer that question. I would expect that some time after 1967, Newfoundland began to indicate that it thought its case was significantly different. I am not sure when that was first announced. Certainly at the time of the 1972 discussions, Newfoundland still had that conviction.

PROFESSOR CRAWFORD: Still had the conviction that it was different?

MR. WILLIS: That its case was distinguishable from that of British Columbia.

PROFESSOR CRAWFORD: But that isn't expressed in the papers. But, of course, it may be that we haven't got all the papers or something. I was just wondering that at the point of which Newfoundland was in effect going it alone, which I had understood to be after 1973 that there might be practice, which nonetheless retained elements of the

existing lines. After all, even your 1977 White Paper showed a line not very different from the 1964 line. I mean, different certainly, but within broadly the same direction. So presumably the Nova Scotia argument is all right, the quid pro quo, as you say, the prospective rapid federal recognition broke down, but nonetheless, Newfoundland and Labrador maintained, if not the same line, at least broadly the same line in its practice after the breakdown, which certainly occurred not later than 1973, and quite possibly earlier.

MR. WILLIS: Well I think broadly would have to be the word, because I think after that period, of course, we have a very different view of the facts even up to that period. Especially after that period, one has a very impressionistic sketch map in the White Paper, some elements of which may conform to the earlier lines, and some elements of which clearly depart from the earlier lines. And I don't, in any event, think that the White Paper could really be taken as an expression of a specific boundary claim. I think that was just meant to be illustrative, and nothing more or less.

So the context in the quid pro quo, the objective in those years, was as I said, the big prize of ownership and jurisdiction and nothing less. And alluding to a point we have just been discussing, Nova Scotia has returned to its

theme that the 1964 proposed lines were to be lines for all purposes. Nova Scotia cobbles together a pastiche of references to administrative arrangements to shore up this all purposes argument.

There is, however, no evidence that Newfoundland and Labrador ever bought into this. Administrative arrangements by themselves do not imply an abandonment or even a softening of the claim to ownership for all the reasons we gave in phase one. There are many federal-provincial cooperative arrangements where both parties have recognized sources of jurisdiction.

The 1972 communiqué, as I mentioned, reaffirmed the claim to ownership. And there is plausibility at all, in our view, in the notion that the Smallwood letter in 1970 was an abandonment of a position that Newfoundland and Labrador pressed with the utmost vigor right up to 1984. I think the easiest way of reconciling and making sense of the record is that administrative arrangements were not meant as an implied repudiation of a claim that was actually reaffirmed at that time. They were meant to complement it. And perhaps to reassure the federal government that this wouldn't lead to difficulties in the administration of the federal government's very extensive interests in the offshore defence, navigation, and many other -- fisheries, and many other aspects.

At the heart of the Nova Scotia case is the proposition from their Memorial that a political agreement is an agreement for the purposes of international and maritime boundary law, with the result that exactly the same result can flow from a political meeting of minds. Even a conditional meeting of minds, as would flow from a legally binding agreement. And therefore, that phase one was essentially irrelevant. It was an exercise in futility. This, to say the least, is counter-intuitive. Let's consider why.

It is counter-intuitive because it makes a mockery of fundamental legal distinctions. Above all, it makes a mockery of the intentions of the parties. In phase one, the Tribunal considered the condition that implementing legislation would have to be obtained from both the federal Parliament and the provincial legislatures. And it compared that condition to a ratification requirement in an international treaty.

So let's consider whether an unratified treaty could and should be given effect as a relevant circumstance, several decades later, at a time when it has become clear that the treaty is dead letter, and will never be brought into force. I suggest that any international tribunal would recoil from this idea. And rightly so, because it would nullify the requirement of ratification, which the

negotiators agreed to and would have the effect of imposing treaty obligations de facto, where there is no intention to assume them.

PROFESSOR CRAWFORD: Mr. Willis, it's not hypothetical. It's actual. The Court recoiled from it in Libya-Chad, where there was an unratified treaty. Of course, that was land boundary. But also, I think, in terms of the treatment of the Relevé des conclusions in the St. Pierre et Miquelon case, which was -- that's not a treaty, but an agreement, which Canada eventually rejected and the Court said it's irrelevant.

MR. WILLIS: The Court said it was irrelevant, yes.

PROFESSOR CRAWFORD: Yes. So there is no difficulty in the proposition that an unratified treaty doesn't establish a boundary.

MR. WILLIS: Right. So this idea of translating or transforming an unratified agreement into one that nevertheless sticks, has definitive legal consequences, would be unfaithful to the intentions of the parties, and would do indirectly what could not even conceivably be done directly.

But here ratification does not fully capture the analogy. The ratification of an international agreement, of course, is more than a red tape formality because it allows for sober second thoughts and political and

sometimes legislative review and implementation. By itself, however, it does not rise to the level of a substantive condition or a packaged deal.

In this case, on the other hand, the federal and provincial legislation pursuant to the BNA Act 1871, was in the strongest sense a substantive condition and not a mere formality. As we have said more than once, it would have ensured federal recognition of the provincial claims to ownership, as well as enacting the boundaries. And this recognition would have been made effectively irrevocable through its entrenchment in the constitution. It would, in other words, have secured the big prize once and for all.

Well it was not to be. Mr. Chairman, it would make no sense to base this delimitation on counter-factuals. We have no right to assume that the parties might have found the Stanfield lines to be acceptable in the absence of the package deal and the big prize, because no political decisions were ever taken or debated on that basis.

We cannot rewrite their expressed intentions retroactively. And we cannot say what they would have been willing to do or not to do, if the boundary had been proposed as a stand-alone deal.

And, Mr. Chairman, let us never lose sight of the remoteness in time of almost of all the conduct on which

Nova Scotia relies. These unimplemented and unperfected proposals have been dead for over three decades. The permit history that was allegedly referable to them is also over three decades old. This is not something that continued until practically the eve of the proceedings in this case, as it did in Tunisia-Libya. In political terms, it was ancient history even when the Accords were being negotiated.

There would be, Mr. Chairman, no rational basis for a delimitation based on a single non-geographical circumstance that in fact has nothing to do with the basis of title even on the Nova Scotia view. It is anachronistic. It was partial. And it was part of a failed negotiation which was linked to broader objectives.

It provides no cogent evidence of what the parties might have viewed as equitable or acted upon as such in the contemporary context of the existing Accords.

So far, Mr. Chairman, I have been dealing with conduct primarily in terms of its legal relevance and its legal weight, not the multitude of factual specifics that were fully argued in phase one and raised again last week. We do not intend to go over this ground again in any detail. Certainly we will not be attempting a systematic point by point rebuttal of what Mr. Bertrand said last week.

There are however, a few points we would like to make

in response to his presentation, and I apologize for the somewhat haphazard way in which these will be raised.

Nova Scotia says that its Permit Grid Map had been published and the inference they draw is that Newfoundland and Labrador had a duty to protest or react. This is an important part of the lower case "a" version of acquiescence, to which this branch of the Nova Scotia argument has now been demoted.

The evidence of publication is, to say the least, flimsy. Nova Scotia annex 160 simply shows an item entitled "Reservation Grid System for Petroleum Licences Offshore" with no date of publication at all. At best this shows that such a map existed by 1983, the date of the publication list on which it appears.

We were also told that the permits were part of the land registry of Nova Scotia. There would be no realistic expectation that neighboring provinces would be monitoring a property registry of this kind for possible boundary encroachments. Nova Scotia's own submission also confirms that information in its land registry system would require an inquiry by an interested party. It might have been open to public access but that is not publication in a really meaningful sense.

And there is no suggestion, let alone evidence, that the boundary descriptions themselves or the grid map were

part of the land registry of the province. Nor is Nova Scotia's speculation, for that's what it is, that the map was published before 1974 even plausible. If such maps were published prior to 1974 it seems unlikely that every copy has since been destroyed or lost. And of course, by 1974 Newfoundland and Labrador had clearly taken positions inconsistent with any inferred acquiesence with either a lower case "a" or an upper case "a".

Mr. Bertrand also argued that its 1965 to '71 permits along the so-called boundary were not paper permits because significant sums were expended for oil and gas exploration.

Nova Scotia's own figure 20, which clearly shows that by 1970 federal permits blanketed the whole area, which is now in dispute between the parties. Mr. Bertrand conceded that all drilling was conducted by companies who held permits both from the provincial authority and from the federal authority, which of course, is the only important issue.

Nova Scotia's figure 33 shows that all drilling activity was not only done under federal permit areas, but was done far away from the Nova Scotia line, about 35 nautical miles to be exact. As for the suggestion that the --

PROFESSOR CRAWFORD: Mr. Willis, just looking at that map

for a moment, take well D35, do we know when that was drilled?

MR. WILLIS: I will have to take that on notice. And I'm instructed that Mr. Colson will be addressing this.

PROFESSOR CRAWFORD: Oh fine. Okay. Well --

MR. WILLIS: And some of the other drilling issues as well.

PROFESSOR CRAWFORD: -- if he is going to address drilling issues, I will ask him all these questions. He can look forward to it.

MR. WILLIS: Now as for the suggestion that the monies referred to in Nova Scotia's annex 178, show actual work under permits abutting the Nova Scotia line this too fails to stand up. As the Tribunal knows, companies were permitted to group expenditures. It follows that the statements of expenditures in fact do not establish that expenditures were incurred under any particular licence at all.

Mr. Bertrand himself conceded that grouping occurred. So what annex 178 really shows is that companies were planning to allocate expenditures incurred in other areas to groups that included permits along the boundary. It does not show that work was actually conducted under Nova Scotia permits along the boundary.

In submissions on Friday, Mr. Bertrand asserted with respect to the duration of the permits -- and I

quote -- "that there is no evidence other than the fact that these permits were eventually subsumed by a new regime that came about in the late 1980s, the permits were actually -- actually ended... that they lapsed..." In fact, as our Counter-Memorial pointed out, the majority of Nova Scotia permits were surrendered by the companies in the mid-1970s, not the late 1980s.

It is on record in this case that any surviving Nova Scotia permits were terminated by the 1984 legislation implementing the 1982 Canada-Nova Scotia Agreement. With respect to the Newfoundland and Labrador permits, the Katy and Mobil permits, these were terminated at the latest by the coming into force of the 1977 regulations.

I do not propose to spend any time on the technicalities of the delineation of the Katy permit. We do note that Nova Scotia has backed away considerably from its theory of perfectly matching practice, and now submits only that the Katy permit is in the vicinity of the 135 degree line.

According to our measurements, the distance between the western edge of the Katy permit and the 135 degree line at the southern limit of the permit, was 39 nautical miles. At the northern limit of the permit area it was 10.1 nautical miles. This is not in the vicinity of the 135 degree line, much less perfectly matching practice.

Nor do I propose to go over the continuing differences between the parties as to the significance of Newfoundland and Labrador's permits between 1973 and 1976, which obviously did cross the Nova Scotia line.

The only important point in this connection is that Nova Scotia is simply trying to have its cake while eating it too, as Mr. Currie pointed out last week. It wants to rely on any permits which it can gerrymander into looking as if they were in the vicinity of its line, but it prefers to ignore all the others. Our point is simple. There is no reason to consider only part of the record. If permits are relevant, then they should all be considered.

And, Mr. Chairman, in this light, there is only one important fact about the 1973 to 1976 Newfoundland and Labrador permits. They were issued under provincial legislation that only authorized the issuance of permits of whatever sort for areas in the province. They disclose a conviction by the province that the areas they cover are in the province and not in another province. So much then, once again, for the perfectly matching practice respecting the Nova Scotia boundary.

Mr. Chairman, what all this shows is that the permits on which Nova Scotia places such great reliance were ultra vires from the beginning and they have been extinguished

for years. They effect no vested rights. They were ephemeral from the outset, they are now remote in time. The period of their validity was, in the words of Gulf of Maine, "too brief to produce legal effects". There is no legal or equitable reason, setting aside the differences on facts, why these permits could be given the slightest weight.

Turning now from permits to the political conduct of the parties for a moment. Mr. Bertrand said that a number of instances of conduct of 1971 confirmed the views of the parties on a 135 degree line. With respect, all this has already been addressed and decided. What is significant here are the phase one findings of the Tribunal, which are clearly dispositive as to what happened factually after 1972. There are many but I will refer only to two.

The Tribunal held that it became clear relatively soon after the 1972 that Newfoundland and Labrador did not endorse the 135 degree line, and that quite apart from the Doody letter and its sequel, subsequent indications were that Nova Scotia knew that Newfoundland and Labrador disputed the line. And I refer to the Award at paragraph 615.

In 1973, and this is the second allusion I will make to the Award, in 1973 Newfoundland and Labrador withdrew from the common front and made a direct approach to

Canada. After that point, the record reveals a number of references to disagreement over the boundary. Eight or nine specific instances are, in fact, described by the Tribunal covering the period 1974 to 1980, and the relevant paragraphs of the Award in connection with those matters is 526 and 6.6.

These are the factual findings of the Tribunal, and they speak for themselves as to any alleged recognition with either an uppercase or a lowercase "r" by Newfoundland and Labrador of the 135 degree line.

PROFESSOR CRAWFORD: Accepting that, there is the point that the -- Newfoundland and Labrador's insistence was on the outer line, the 135 degree line, if there's a line on a piece of paper which I have previously agreed to, albeit that the agreement was for the purposes of a negotiation with the federal government that's failed, and if, later on, after the failure I go to the other party and say, oh, incidentally, we don't accept this part of the line, isn't the implication that you accept the rest?

MR. WILLIS: Well, I really -- with respect, I don't think there is. I think the logical assumption was that once the common front had been dissolved, as it were, all of the proposals on the table were considered no longer to be on the table, and that there was no need to be explicit. I think it's as simple as that. A mere focus on the outer

portion of the line in some subsequent correspondence doesn't implicitly recognize in the wake of a failed negotiation that there is a commitment to maintaining the other portions in all circumstances.

Now a final point about the political relations between the parties is that Mr. Bertrand and Nova Scotia's written pleadings refer to the failure of Newfoundland and Labrador to protest the 1982 Canada-Nova Scotia Agreement and the 1984 Canada-Nova Scotia legislation. But, Mr. Chairman, the Agreement itself provided all the assurance Newfoundland and Labrador could have sought. The boundary schedule included the caveat "provided that if there is a dispute as to these boundaries with any neighbouring jurisdiction, the federal government may redraw the boundaries after consultation with all the parties concerned." This was the conduct -- this was the context in which the 1984 legislation was enacted and perceived. And, of course, very shortly thereafter it was overtaken by events. The Atlantic Accord with Newfoundland and Labrador was concluded, as was the second Nova Scotia Accord, both anticipating this dispute and this arbitration.

In sum, Mr. Chairman, the relevant history of past conduct is accurately set forth in the Phase One Award and no new evidence has been put forward by Nova Scotia to

support its "lower case" case in phase two.

My final topic, Mr. Chairman, takes me back to the metaphysics of maritime delimitation -- the determination of relevant coasts, relevant areas and the maritime projections of coasts. It's a territory I enter with great trepidation, but it cannot be avoided.

I will deal first with the Nova Scotia relevant area, which Professor Saunders discussed at length last Friday. I don't know which of the adjectives in the smorgasbord of pejoratives from our pleadings I ought to choose, but I'll settle for grotesquely inflated. What I can say is that the shock which those adjectives express on the Newfoundland and Labrador side was entirely genuine. And natural, when we saw that Nova Scotia sees all the Grand Banks and Hibernia and even in the inland bays of Newfoundland as part of its statutory entitlement whose division is at issue in this case.

The explanation of this relevant area by Nova Scotia is based exclusively on Article 76 of the 1982 Convention, the definition of the continental shelf in contemporary international law. Now that in itself should raise eyebrows because we had understood that the basis of title in this case, according to Nova Scotia, has nothing to do with the continental shelf at international law. Indeed, that the two were not only fundamentally at odds, but

antithetical in structure and concept. So the puzzlement starts on very early in the analysis.

A word about the extraordinary significance Nova Scotia has attached to Article 76 in this case. It is important to recognize that we do have a broad shelf situation in this area, but it's also important not to overstate its practical impact. There is no reason to assume that the method should change when you cross the 200-mile limit and enter the extended broad shelf area. On the contrary, there is every reason to assume that the method which is equitable within 200 miles will also be appropriate for the area beyond. That is the only practical approach, and it suggests that the relevant coasts are the same in a broad shelf situation as they are in the more frequent cases of 200-mile zones.

Another preliminary observation is that if Nova Scotia took its overlapping statutory entitlements theory at face value, then clearly it ought to be claiming that the two statutes in question have been improperly administered ever since they were passed in the 1980s. If the whole area is part of the Nova Scotia offshore area and has been for upwards of 15 years, then its board should have been deeply involved in every decision relating to Hibernia. And the Newfoundland and Labrador board should have been deeply involved in the Sable field and, no doubt, much

else.

But, of course, a moment's reflection shows how far from reality all this is. Nova Scotia does not and could not take any of this seriously because if they did, we would have known about it long before the Memorials were filed. The Nova Scotia relevant area has nothing to do with overlapping entitlements under the two federal statutes. It's a legal fantasy aimed at an apportionment of the Canadian continental shelf, not a delimitation based on international law, contrary to the doctrine of the North Sea cases of 1969.

Since Nova Scotia's relevant area is based entirely on the international definition of the continental shelf, it can be assessed in terms of the international law of the continental shelf. The question is, therefore, assuming that Nova Scotia and Newfoundland and Labrador were sovereign states, would they each enjoy inherent continental shelf rights throughout the area depicted on this map? And I apologize if I sound like a cracked record, but the answer is to be found in the North Sea cases.

If Nova Scotia is right, that judgment must either be wrong or else it is inconsistent with the 1982 Convention, which I have never heard suggested.

We have already quoted the parts of the decision where

the Court dealt with the German argument that the North Sea was to be divided into what they called just and equitable shares based on coastal frontage, and held that delimitation is not the apportionment of something that previously consisted of an undivided whole.

The Court rejected the notion of an undivided whole in the most emphatic terms. It said, and this is from paragraph 20 of the judgment, "That the notion of apportioning an as yet undelimited area considered as a whole, is quite foreign to and inconsistent with the basic concept of continental shelf entitlement, according to which the process of delimitation is essentially one of drawing a boundary between areas which already appertain to one or the other of the states affected. The fundamental concept involved does not admit of there being anything undivided to share out."

And then the Court pointed out that, of course, there could be disputed marginal or fringe areas without detracting from this general principle. The situation is not far from land sovereignty cases where there may be vast frontier zones that have never been delimited without making those zones terra nullius.

The Nova Scotia relevant area is not consistent with this North Sea doctrine. Nothing, in fact, could illustrate more vividly what the International Court

thought delimitation is not about. The Nova Scotia relevant area depicts a vast undivided whole and then misuses Gulf of Maine to seek an apportionment, a divvying up of that undivided whole. Nothing could be further from the marginal or fringe area to which the Court referred as the proper focus of a delimitation.

Nova Scotia says all this flows logically, indeed, inexorably from Article 76. In fact, it does not. If it did, the law of delimitation would have been completely transformed by the adoption of that new definition. Take the case -- and we made this point in the Counter-Memorial, I believe, but take the case of a delimitation between Uruguay and Argentina. Since that is a geologically continuous continental shelf, the relevant area on Nova Scotia's view would extend all the way down to Patagonia. And if there were no boundary with Brazil, and I think these are all counter-factuals, then, presumably it might extend the whole way up the coast. That would mean that everything the Court said in the passage I just cited has to be reconsidered and that delimitation and apportionment are, indeed, exactly the same in every respect.

It was in 1969 in the North Sea judgment the admittedly vague and somewhat metaphysical notion of natural prolongation that the Court invoked to justify its

conceptual approach. That notion is now included. It's written into paragraph 1 of Article 76, which refers to the seabed and subsoil beyond the territorial sea, throughout the natural prolongation of its land territory. And the same concept is echoed in paragraph 3, which refers to the submerged prolongation of the land mass of the coastal state. This puts certain implicit limits -- even in the absence of a delimitation -- on how far an area up and down a continuous continental shelf could be considered subject to the inherent rights of any coastal state fronting on that shelf. Patagonia would never be considered part of the natural prolongation or submerged prolongation of Uruguay. Nor, to come back to the Nova Scotia relevant area, would Georges Bank be considered part of the natural prolongation of Newfoundland and Labrador, or would Hibernia be considered part of the natural prolongation of Nova Scotia.

Nova Scotia has relied, and relied heavily, on the scientific aspects of Article 76. It has ignored the legal concepts that put some limits on how far an undelimited single continental shelf can be considered the common property of all the adjacent states. It is not the case that if North Sea were to be relitigated today, Germany could persuade the Court to overturn the entire theory of its decision, and to treat the entire North Sea

as a condominium all by virtue of Article 76.

Nova Scotia may have assumed natural prolongation is an exclusively geological concept. It is not. There is, in fact, very little, if any geology in the reasoning of the North Sea cases. In fact, it is all geography. Paragraph 43 describes this notion of natural prolongation in almost purely juridical terms, as the continuation of the land territory or domain, or land sovereignty of the coastal state, into and under the high seas, via the bed of its territorial sea which is under the full sovereignty of that state.

Nova Scotia's application of Article 76 is also inconsistent. It has to include the line of sight limitation on the north, because otherwise its construction would be reduced to an absurdity. Or I should say, an even greater absurdity. There is nothing in the Article 76 definition that reflects this line of sight criterion. Professor Saunders explained, as I understood him, that natural prolongation could not go through land, which we certainly accept. By implication, however, that opens the door to implied geographical limits on how far the natural prolongation of either party can be considered to extend. Once that door is open, nothing can possibly salvage the Nova Scotia relevant area, in whole or in part.

Simply put, there is no way on a reasonable reading of Article 76, that the entire Nova Scotia relevant area can be considered the natural prolongation of both parties. Which would leave the reasoning of the North Sea cases in shreds. I have based my criticism on Nova Scotia's own terms, which are focused entirely on Article 76.

But even if we approach it in terms of giving a reasonable interpretation to the two statutes, we have also -- we have already argued in our written pleadings, that the language must be read in terms of an implied concept of geographical adjacency, ruling out an interpretation of offshore areas that takes the entitlements of Newfoundland and Labrador not only to Georges Bank, but into the internal bays of Nova Scotia.

One comment on Jan Mayen. The Court did identify an area of overlapping potential entitlements in paragraph 19. But when it came to the actual delimitation method at paragraphs 89, and following, the focus was on the actual area of overlapping claims, which it divided into three sectors by joining up turning points in the median line and the Danish 200 mile claim. In paragraph 59, the Court referred to an area of overlapping entitlements, and I quote, "in the sense of overlap between the area which each state would have been able to claim, if it had not been for the presence of the other state." And it linked

this to non-encroachment, without however, drawing any practical consequences from this statement.

In any event, it was a simple matter to depict what Greenland would have been able to claim if Jan Mayen had not been there, in this 200 mile opposite coast setting, and vice-versa. It would be, to say the least, difficult, probably impossible, to determine what physical continental shelf there is, either party in this case could claim if the other were not there, because the existence of the physical continental shelf depends on the existence of the adjacent state. Take Jan Mayen off the map, and the effect on Greenland's 200 mile claim is clear. Take Newfoundland off the map, and what happens to the physical shelf that constitutes the natural prolongation of Newfoundland territory? Presumably, it disappears as well.

Before turning to our own notions of relevant coasts, in relevant areas, I would like to add a few remarks about Professor Saunders' arguments on this topic. He seemed to restrict the practical application of these concepts to an ex post facto proportionality test. In our view, this is too narrow a role. A significant discrepancy of coastal lengths has been a factor in the choice of a delimitation method, in several of the leading cases.

Professor Saunders also suggested that the relevant

area should be identified first, on the basis of overlapping entitlements, and then you work back from there to the relevant coasts. This approach is not really consistent with an analysis that sees the coast as the source of the competing rights. And it doesn't work at all if the relevant area is defined as the area in which the maritime projections of certain coasts can overlap, which is the judicially accepted mode of analysis.

Professor Saunders also seemed to be saying that it's wrong to identify the irrelevant coasts and areas early in the analysis, because this could assume a pre-determined method of delimitation. In fact, unless one assumes with Nova Scotia that the only real purpose of the analysis is the quantitative proportionality test, this cannot be right. The purpose of identifying the relevant coasts and area is to establish a framework for the geographical analysis. Something that by definition should be done as one of the first steps. In other words, there's nothing wrong or circular about making some of the delimitation decisions before you do the actual delimitation. This is what a step by step systematic analysis implies.

Perhaps the most interesting and revealing perspective was the notion that the relevant area, and the relevant coast should be large. A point Professor Saunders came back to on a number of occasions. The danger here, of

course, is that by expanding the relevant area and coast, the degree of disproportion involved in any given method is progressively understated. The bigger the area, the less any method of delimitation will affect the overall figures. The use of an unnecessarily large proportionality area can therefore mask the disproportion caused by an inappropriate method. And it is clear in any event that the practice of Courts and tribunals in identifying delimitation areas, or relevant areas, has been to narrow the focus, not the other way around. To narrow the focus to something that relates to actual or reasonably conceivable boundary claims.

So much for the Nova Scotia approach, and its irrelevant relevant area.

My last topic today, Mr. Chairman, will be our response to the comments by Nova Scotia on our own general approach to the identification of relevant coasts, and relevant areas, and how coasts generate maritime projections.

We had a good deal of discussion last week about frontal projection and radial projection. And also about the possibly better notion of the coast that affect, or are capable of affecting the delimitation. I will add some comments about that later on. For the moment I would just like to return for a few moments to the frontal

versus radial theme by way of recapitulation.

The concept of frontal projection, properly applied, is genuinely useful. Provided it's approached as a concept and not as a mathematical all or nothing formula. It is a tool for assessing the relative weight of competing claims to the same area. It is not, obviously, a rule on outer limits, or a rule on entitlement. It does not absolutely rule out lateral or angular projections in the absence of competing claims. This is why the point made about the gaps in a frontal projection scheme where the coast changes direction, is not in the end decisive. It depicts frontal projection in too rigid a fashion, and disregards the fact that it is not a pre-condition of entitlement, but rather a measure of the weight of claims in a delimitation situation.

We were taken to task last week for making too many judgment calls with the element of subjectivity that judgment entails. Fair enough. But I suggest that this is inherent in the very nature of equitable criteria that have to be applied to infinitely variable situations. It is why the Courts have warned against over conceptualization, and pre-determined rules. And it is why they have specifically warned against nice calculations of proportionality, and mathematical formulae that are only suitable for ex post facto tests. That does

not mean we should simply throw up our hands, and either surrender to a purely ad hoc approach to delimitation, or go to the other extreme, and confer a legal presumption, or obligation, on a pre-determined method.

Frontal projection is part of the legacy of the jurisprudence. An important part. At the heart of the North Sea cases was the idea that natural prolongation rules out equidistance in cases where the equidistance line swings out laterally across the state's coastal front, cutting it off from areas situated directly before that front. It was equally at the heart of Canada-France. It was the rationale of the baguette. The dissent of Professor Weil leaves no doubt about that.

The important point, most important point, is that frontal projection is the basis of the idea of cut-off, which is the most important practical application of the perhaps broader notion of non-encroachment.

Now last week Professor Saunders conceded that non-encroachment was not yet dead, though he seemed to wish it were. But he suggested that it should be used only as a test of equity, and not as the basis of the line. And there was also a suggestion based on a quote from Judge Jiminez de Arechega that it related to areas close to the coast.

Let me respond to the concept of non-encroachment and

cut-off is alive and kicking. And that the practice of Courts and tribunals bears absolutely no resemblance to the very marginal role that Professor Saunders has described. It has been used to control the method of delimitation, not as an ex post facto test. It has been decisive in a significant number of important cases, and it has not been restricted to areas close to the coast.

In his argument, Professor Saunders suggested that the North Sea judgment had allowed concepts of territorial sovereignty, territorial sea reasoning, to creep into its analysis. That simply assumed that non-encroachment should be limited to security concerns in areas close to the coast. The International Court of Justice has assumed the opposite. The concept applies first and foremost to delimitations concerned with spatial equities on a broad geographical scale, and to delimitations concerned with natural resources. That is what North Sea was all about.

The Canada-France case, presided over by Judge Jiminez de Arechega, also refutes the idea that non-encroachment or cut-off relates only to areas close to the shore. The baguette was expressly based on the imperative of avoiding non-encroachment on the southward projection of the Newfoundland coast. This was not limited to areas close to the coast. The baguette was not allowed to broaden out as it moved seaward. The non-encroachment criterion,

therefore, applied throughout the area of the delimitation, close to and far from the coast.

Guinea-Guinea Bissau is the very direct application of the North Sea approach, and it demonstrates the continued vitality of these concepts.

The Tribunal ruled out an equidistance approach because the equidistance line would have enclaved Guinea, which was the state in the middle. So this was a cut-off case and the reasoning was by no means limited to a concern with areas close to the shore. It said at paragraph 104, and this is my own free translation, because I only have the French copy, but it said at paragraph 104 that Guinea would be enclaved by such an equidistance line and prevented from projecting its maritime territory as far out to sea as international law would permit. And the delimitation was based on a method designed to prevent that outcome.

An approach centred conceptually on radial projection, on the other hand, has a very limited utility. Just to recapitulate some of the reasons we gave last week, it provides no benchmark other than distance for evaluating the relative weight of claims. It does not reflect the practical approach the Courts have taken in cases like Tunisia-Libya and Gulf of Maine. It would produce anomalous relevant areas in many situations if it were

expressed by simply drawing 200 mile arcs from the land boundary terminus.

And finally, this notion of radial projection really has no place in a broad shelf framework. And focused, as Nova Scotia insists, on Article 76. Article 76, in other words, does not lend itself to a radial conception in the way that a 200 mile framework does. Professor Saunders referred to the 350 mile element as a constraint. I have no quarrel with that. But the constraint is not the basis of a broad shelf title, which is linked primarily to distances measured from the foot of the continental shelf and not to fixed distances from the coast. And it's only one element in a formula that as a whole reflects the species of platform conception of the continental shelf far more than anything of a radial nature.

An alternative definition of relevant coasts was discussed the other day. The coasts that affect, or have the potential of affecting, the delimitation. This may be the only way, or the best way of cutting the Gordian knot. It has support in the approach of Jan Mayen at paragraph 67, where the Court treated as relevant the coasts that generated the provisional median line used in that delimitation. Professor McRae's first presentation has illustrated how this approach might work in our situation. And as he explained, we think it just works just fine.

Mr. Chairman and Members of the Tribunal, that brings my presentation to a close. I thank you once again for your patience and attention and your questions.

And in closing, I would seek the advice of the Chairman, is this the time which would be appropriate to break for lunch, or would you like for me to call on Mr. Colson to continue?

CHAIRMAN: How much time will we be needing this afternoon?

PROFESSOR MCRAE: Mr. Chairman, I think that we are going to finish within the appropriate time. I think if we took the normal one hour now and came back, that would allow Mr. Colson to give his presentation without interruption. But I don't anticipate we will go beyond 4:30. In fact, we will probably finish somewhat earlier than that.

CHAIRMAN: If we could come back at 1:15.

PROFESSOR MCRAE: That would be fine, yes.

(Recess - 12:10 p.m. to 1:15 p.m.)

MR. COLSON: Thank you, Mr. Chairman. It is again an honor and a privilege to appear before this Tribunal on behalf of Newfoundland and Labrador.

My assignment, as it was the last time, is to address the subject of delimitation methods as they pertain to this case. I hope to answer some of the questions raised by the Tribunal in this regard, respond to some of the contentions of Nova Scotia's counsel, and address, if I

might, the points made in the recent speech by Judge Guillaume, President of the International Court of Justice, that was called to our attention by Professor Crawford during Professor Russell's presentation last week.

As to the organization of the presentation, I propose to begin by reviewing the Guillaume presentation, if I might call it that, with specific regard to the maritime delimitation cases decided by the International Court of Justice. They are, of course, six in number. Working backwards in time, the Qatar-Bahrain case, the Jan Mayen case, the Libya-Malta case, the Gulf of Maine case, Libya-Tunisia, and the North Sea case.

At the end of the review, I will return for a moment to the El-Salvador-Honduras case, which has been mentioned in these proceedings, as it does have some relevance and implications for maritime delimitation and the status of maritime areas.

Having looked at the work of the Court, I will then briefly review the four arbitrations. Again, going back in time, Yeman Eritrea, Canada-France, Guinea-Guinea Bissau and UK-France.

In the second part of the presentation, I will return to the Libya-Tunisia case. Hopefully, throughout, I will address the questions that have been raised in this regard

and respond to arguments that have been made by opposing counsel concerning delimitation method.

Professor Crawford drew our attention to a recent speech given by President Guillaume of the International Court of Justice before the Sixth Committee of the United Nations. The subject it the law governing the delimitation of maritime area. The essence of this speech is the idea that the international law of maritime delimitation has become consolidated, providing, as he says, a new level of unity and certainty whilst conserving the necessary flexibility.

The President of the Court quotes from the judgment, the recent judgment of the Court in Qatar-Bahrain to the effect that the various rules of international law pertaining to maritime delimitation, as it said, are closely interrelated.

Mr. Willis spoke of this consolidation in the law earlier this morning. And I want to focus on these words from the point of view of method.

President Guillaume states, "In all cases the Court, as states must do, must first determine provisionally the equidistance line. It then must ask itself whether there are special or relevant circumstances requiring this line to be adjusted with a view to achieving equitable results. The legal rule is now clear. However, each case

nonetheless remains an individual one, in which the different circumstances invoked by the parties must be weighed with care."

At the end of my presentation last week, I was asked by Professor Crawford how the Gulf of Maine method had fared with particular reference to the Qatar-Bahrain case. My response essentially was that Qatar-Bahrain is a case about the selection of base points used in the construction of an equidistance line and that it has little to do with the Gulf of Maine method. I did note in response to that question that there does appear to be a substantial difference between the method employed in the Qatar-Bahrain case and the Anglo-French case, in respect to the Hawar Islands of Bahrain and the Channel Islands of the United Kingdom.

Then Professor Crawford asked whether I would regard Qatar-Bahrain as holding that there is a presumption in favor of equidistance unless there are very good reasons not to apply it. And after a few detours, I said that it now seemed that if you want to beat equidistance, you have to demonstrate that there is good reason not to apply equidistance. And I said that I hoped that we had been able to show the Tribunal that there is good reason not to apply equidistance in this case.

Certainly, Newfoundland and Labrador has appreciated

this point from the outset. That is why chapter IV of the Newfoundland and Labrador Memorial, entitled, "The Choice of Method", after an introduction, begins with a major analysis of this specific point in a section entitled, "Equidistance is Not Appropriate in this Case." That is why a large part of my presentation last week was devoted to the five reasons Newfoundland and Labrador gives for finding that equidistance is not appropriate.

I won't go into these reasons again, but let me simply list them. They are the prevalence of distorting incidental features in the delimitation area, a substantial disparity in coastal lengths, an inequitable cut-off of the coast of southwestern Newfoundland, encroachment of the seaward projections of southeastern Newfoundland, and the unique political geography.

Now we have the speech by President Guillaume. President Guillaume suggests that following the first three cases, the North Sea, the Libya-Tunisia, and the Gulf of Maine cases, as he says, "At this stage, case law and treaty law had become so unpredictable that there was extensive debate within the doctrine on whether there still existed a law of delimitations, or whether in the name of equity, we were not ending up with arbitrary solutions." He then says "sensitive to these criticisms, in subsequent years the Court proceeded to develop its

case law in the direction of greater certainty." And I suppose there is little doubt that insofar as legal propositions go, we now see the consolidation of the law.

But the question really is whether the greater certainty he speaks of is a certainty that pertains to process, or whether it is a certainty that pertains to the substantive result at the end of that process.

We cannot know for sure what may be in President Guillaume's mind in this regard. And perhaps it is a bit of both. But in my view, if we review the cases, what we find has happened is that the process is now clearer, but it remains to be seen whether there is any weight to the supposed presumption.

The equidistance line will be examined in the first instance. And if a party does not like the equidistance line, that party must convince the decision maker of the reasons therefore. And I submit the reasons therefore are the reasons given by Newfoundland and Labrador in this case, the effect of incidental features, coastal proportionality and an inequitable cut-off or encroachment on the seaward extension of the relevant coasts of the parties.

Now if we had to litigate the Gulf of Maine all over again, Canadian counsel would quote these words against me over and over, far into the night. We on the US side were

scared to death of any hint of a presumption in favor of equidistance from either the substantive or procedural point of view. We tried to stamp out this notion wherever it might raise its ugly head.

And if you go back to Libya-Tunisia, there neither party claimed equidistance before the Court and of course, the North Sea cases amounted to a rejection of equidistance, at least in the geographic circumstances of that case.

When we consider Libya-Tunisia, particularly, we need to recall the fact that this case was being played out in the backdrop of the Third United Nations Conference on the Law of the Sea. One of the most contentious issues facing the conference pertained to the delimitation provisions for the exclusive economic zone and continental shelf. It should not be surprising that every state that had a maritime delimitation issue with a neighbor tried to use the venue of the multilateral treaty making process to get a leg up, to score a point, in the bilateral debate with its neighbor.

And of course, since the neighboring state was at the conference too, there was a lot of thrust and parrying going on but not many points were being scored. The debate divided states into two camps, the equidistance camp and the equitable principles camp, as if equidistance

cannot lead to an equitable solution, which of course, it can and does in many cases.

But as we know, there is no reference in Articles 74 and 83, the Articles pertaining to the delimitation of the exclusive economic zone and continental shelf, to equidistance or to equitable principles. They were hot potatoes at the time. What is called for is an equitable solution.

Much of the confusion, of course ,arose from the various interpretations of the meaning of the Court's words in the North Sea Continental Shelf Cases, combined with the interrelationship with Article 6 of the Continental Shelf Convention. The Court's words in its 1969 judgment are widely quoted, including by both parties in this case. And as the discussion of the last week demonstrates, these words from the Court are not always easy to apply. The Court's words in the 1969 judgment concerning natural prolongation led to a great deal of effort to prove geologic or geomorphological boundaries until the Court began to clearly back away from the natural perspective of natural prolongation in its 1982 judgment.

Likewise, there can be no doubt that the Court, following the conclusion of the Third UN Conference, in its first opportunity to provide guidance as a full Court,

began to do so in the Libya-Malta case as to the relationship of equidistance and equitable principles.

About Libya-Malta President Guillaume says, "The Court took the equidistance line as the point of departure and moved it northwards, having regard to the equitable principles to be applied in the case, namely the configuration of the coasts and their different lengths. Thus equidistance was reinstated as a provisional line open to possible correction in order to achieve an equitable result."

For a moment let me reexamine what the Court did in applying its method in that case. We have on the screen map 3 from the Court's judgment. You can see the dotted line is referred to as the median line and the solid line is referred as the adjusted line.

Please not also the little dot south of Malta's main island and that is Filfia. A little island that President Guillaume called a "deserted islet".

The Court in Libya-Malta certainly did begin its methodology with reference to the equidistance method. But the line referred to on this map as a median line is not a strict equidistance line, because this equidistance line doesn't use Filfia as a bas point. The Court, citing language from the North Sea cases about islets and rocks and minor coastal projections, chose to drop a part of

Malta's coast as a basepoint before it ever got into the swing of its methodology. Thus the provisional line, the provisional equidistance line, which the Court would later adjust, was itself not a strict equidistance line.

The Court chose to adjust the provisional line for two reasons. First, it said because the islands of Malta are relatively small features in a semi-enclosed sea, and second, it said because of the disparity in coastal length. And so the Court decided the adjusted line should fall closer to Malta than to Libya.

Now how did it adjust the line northward? The Court first hypothesized about what might be the extreme limit of any such northward shift and concluded that the most extreme possibility would be the scenario if Malta did not exist. It determined then an equitable boundary would lie between an equidistance line constructed between Libya and Sicily as if Malta did not exist and the provisional median line determined by the Court to be the point of departure.

The Court then constructed these two lines and found at longitude 15 degrees 10 minutes east that the two lines are 24 minutes of latitude apart.

The Court therefore, had to determine the extent of the northern shift of the provisional median line within the 24 minute range of latitude that it had established.

It could have chose, I suppose, to apply the coastal proportionality ratio to the 24 minutes of latitude, but it did not do so. It did indicate that there was a considerable distance between the Libyan and Maltese coasts and thus room for a substantial and significant shift northward.

So up and to this point the Court had started with an equidistance line but made the determination to drop Filfia as a basepoint from the outset, then it decided to determine its next step by a method involving, frankly the refashioning nature, by pretending Malta did not exist, and using the geographic features of a third state in its methodology. But it still had to deal with the tough question, and that was how far north was it going to shift the line. And this is what the Court said at paragraph 73 of its judgment. "Weighing up these several considerations in the present kind of situation is not a process that can infallibly be reduced to a formula expressed in actual figures. Nevertheless, such an assessment has to be made."

And with those words, and without using any formula, the Court decided to move the provisional equidistance line northward through 18 minutes of longitude to establish its boundary.

Now surely equidistance was a point or a line of

departure in the case. And by application of the law, the Court's line produced an equitable result. However, I submit that the method employed to reach that result, to determine the extent of the adjustment of the provisional equidistance line, well let me just call it unpredictable. And I also submit that other geometric models within this geographic framework could have gotten the Court to the same place.

At the end of the day, what is important is that the boundary was placed closer to Malta than to Libya, because of the Court's appreciation of the coastal configuration and the disparity in the length of relevant coasts, these features of the coastal geography were the reason that the Court found it necessary to adjust the provisional equidistance line.

The next case for the Court was Jan Mayen, between Denmark on behalf of Greenland and Norway the sovereign over Jan Mayen. President Guillaume in his speech reviews the Court's analysis of the applicable law in this case, and points out that the Court found it appropriate to start from the equidistance line and adjust it, in this case, as he says, taking into account of the length of the coasts of both parties and the zone's fishery resources.

What is interesting about this statement, among other things, is it reminds us that the law applicable to the

delimitation of the continental shelf in this case, was Article 6 of the 1958 Convention. And the Court there found that coastal proportionality is a special circumstance to be incorporated into the method.

That finding is found at paragraph 68 of the judgment, just following a sentence referring to Gulf of Maine. It says, "It should be recalled that in the Gulf of Maine case, the Chamber considered that a ratio of 1 to 1.38 calculated in the Gulf of Maine, as defined by the Chamber, was sufficient to justify correction of a median line delimitation." And here there are cites to that portion of the Chamber's judgment that relate to the second segment of the Gulf of Maine line. The disparity between the lengths of coasts thus constitutes a special circumstance within the meaning of Article 6, paragraph 1 of the 1958 Convention.

The Court goes on to say "A disparity in coastal lengths is also a relevant circumstance in customary international law." All that I would add is that if coastal proportionality is a special circumstance under paragraph 1 of Article 6 of the 1958 Convention, it can only be the case that it is also a special circumstance under paragraph 2. And as we will see, the Court used coastal proportionality as a reason for adjustment of the provisional equidistance line in Jan Mayen, but it did not

in this case use it in its method and it did not conduct a proportionality test.

Now let us examine what the Court did. On the screen is a map from the judgment. This is a different map than Mr. Willis showed you this morning. First, please note points H and G on the Greenland coast. Point H is the northernmost point on the Greenland coast that would come into play as a basepoint in the construction of a median line extending to 200 mile -- to the 200-mile limit of both countries. Likewise, point G is the southernmost point on the Greenland coast that determines the Greenland Jan Mayen equidistance line outside of any areas Iceland claims. The parties in this case were in agreement that the Court should not delimit in any area that Iceland might claim.

The Court also, at paragraph 20 of its judgment, noted that these points were not arbitrary and they -- and the Court referred to additional characteristics.

Now this map of the Court's judgment does not show the so-called area of overlapping entitlements, but it does show the area of overlapping claims and the area relevant to the delimitation.

Now Norway's claim was a median line. That is the line that connects points D, L, K and H, and I just might note in passing that, indeed, this median line had served

as a de facto boundary for at least a year or 15 months in the period 1980 to 1981 where both sides' fisheries limits had been determined as a median line.

Denmark's claim was for a full 200-mile limit, and that's defined by points A, I, J and B. Thus, those claims overlapped, as shown, and the Court in its method determined that there were points on both the median line and the Greenland 200-mile limit that constituted changes in direction and it connected those points. Thus, it connected point L and J and K and I, thus dividing the zone of overlap into three sectors.

The Court determine that the southern sector, zone 1, which was an important fishing area, should be divided so that each party should enjoy equitable access to the fishing resources of this zone. On that basis, it essentially divided zone 1 in half, placing point M halfway between points D and B and identifying point N so as to divide zone 1 into two parts of equal area. As for zone 2, the Court found that point O should fall on line K-1 so as to divide it with two-thirds falling on the Jan Mayen side and one third falling on Greenland's side. Then a line could connect point O to point A, completing the delimitation. This is quite a method.

Now it's true that equidistance did serve as a place to start, but the resulting line was constructed using a

combination of methods, and that is really simply my basic point. It may be that as procedural matter equidistance is a starting point and it may even be that there is some substantive presumption in favour of equidistance that must be overcome, but in both Jan Mayen and Libya-Malta, the Court quickly moved from the equidistance line initially examined into an adjustment of that line in a way using methodology that, frankly, is not predictable, at least in my view.

I want to emphasize that the resulting line in both cases may be perfectly reasonable and an equitable solution, but I find it hard to accept that the Court's method in getting to an equitable solution in either Jan Mayen or Libya-Malta is any more certain or clear or confidence building than the methods employed in Libya-Tunisia or Gulf of Maine.

The most recent case, Qatar-Bahrain, is interesting because, as President Guillaume said, the two previous cases -- Jan Mayen and Libya-Malta -- had dealt with an opposite state situation. Now in Qatar-Bahrain, in the part of the case concerning the continental shelf and exclusive economic zone, the Court would confront an adjacent state situation, as the boundary must extend north into the Persian/Arabian Gulf leaving the confines of the opposing coasts of Qatar and Bahrain. And you have

the map before you, and that map shows you the adjustment that the Court made to the equidistance line.

The Court here took note of the equidistance line -- the full effect equidistance line, and it adjusted that full effect line in, shall I say, a more traditional way. It found that the Bahraini feature of Fasht al Jarim should not be used as a basepoint. Thus, the Court's boundary in this area of adjacency is the no-effect to Fasht al Jarim equidistance line. Fasht al Jarim is an extensive low water feature in Bahrain's territorial sea north of Bahrain's main islands. The Court at paragraph 247 referred to the feature as a remote projection of Bahrain's coastline, which would have disproportionate effects. Same paragraph, it said, "Such a distortion due to a maritime feature located well out to sea and of which at most a minute part is above water at high tide, would not lead to an equitable solution."

All in all, this appears to be a perfectly reasonable result, but in my view, it is hardly precedent making insofar as it pertains to basepoint selection. It is a result reached in the geographical circumstances, but geographical circumstances hardly comparable to the geographical circumstances of Libya-Tunisia or Gulf of Maine or those present in this case.

Thus, Mr. Chairman, while accepting that there is a

willingness, and indeed, an imperative to examine equidistance in every case -- something that I would not have conceded in Gulf of Maine, I remain sceptical that this has really changed the need for courts and tribunals to examine the geography and identify or construct a method that makes sense in the circumstances of the case.

Last week I reviewed the methodology employed by the Chamber in the Gulf of Maine case because we believe on our side that the same method may be employed in this case to produce an equitable result. And it might be that President Guillaume's Court would not analyze the Gulf of Maine case as the Chamber did. But, I submit that even if the Guillaume Court examined the equidistance line first, if it had any appreciation -- any appreciation for the fact that there was a substantial difference in the lengths of the coasts of the parties in the Gulf of Maine Case, it would end up adjusting that line in such a way that its line and the Chamber's line would not look much different.

Let me demonstrate that it is quite easy to replicate the Chamber's line using the equidistance method, but with an adjustment for coastal proportionality. This map shows an equidistance line constructed from mainland points only. As the decision maker, we choose to make a proportionality adjustment, and it will be modest --

simply that 1.38 to 1 ratio that the Chamber found which included the use of coasts in the Bay of Fundy and apply that ratio to the Cape Sable-Nantucket Island closing line. Thus, we shift the final segment of the mainland-to-mainland equidistance line over to the point of the Gulf of Maine closing line that respects that ratio. That result is as shown, and this comes out worse for Canada than the Chamber's line.

Now the only point I am trying to make is that it's not beyond the minds of judges to find more than one way to place a boundary in a position that produces an equitable solution, using geometric methods and techniques including equidistance applied to the geographical facts of the case. The real consideration is the analysis of the geographical circumstances that leads the judge to say the equidistance line ought to be adjusted and it ought to be adjusted by so much.

That leads me to another point about the Gulf of Maine and Newfoundland and Labrador's choice of method in this case. We have made an analogy to the geography of the area before the Tribunal in this case and the Gulf of Maine case, and we have taken guidance from the method employed by the Chamber in the Gulf of Maine case and applied it to the circumstances of this case. We have called the inner area in this case a concavity, to point

out the similarities with the coastal concavity in the Gulf of Maine.

Now some are having difficulty calling the inner area here a concavity. At the end of the day, I don't suppose the label is important, the fact is that in this inner area, and the parties agree that there is an inner area, albeit with differences about its dimensions, that within this inner area there are three separate coasts which face this area, and must all be given equitable treatment outside the inner area. The inward facing Cape Breton coast, the westward facing coast of Newfoundland at Connaigre Head, and the long southward facing coast of Newfoundland. All in all, however you measure this, the Nova Scotia coast is much shorter than the Newfoundland coast.

The boundary must extend through this inner area, and pass between the headlands of the inner area, at Scatarie Island and the Burin Peninsula, and then the boundary begins a long seaward reach.

Our point is that the geographic characteristics are comparable, obviously not identical, to those in the Gulf of Maine. Facing on the inner area, the coast of the parties are of substantially different lengths, and the delimitation method to be employed in this case must reflect that difference. Just as it must reflect the

difference in coastal lengths of the parties which face the outer area.

Call it what you will, here the delimitation must begin deep within the inner concavity, or within the inner area, if you will, and it must emerge from the inner area and extend into an outer area. In this case, just as in the Gulf of Maine case, we believe the first segment of the delimitation will have to be stopped, and a transitional segment created that respects the geographical circumstances, so that the final segment in the outer area extends to the seaward edge of the continental margin, creating an equitable solution which respects the coastal relationships of the parties. Mr. McRae, Professor McRae, will have more to say on this point in a few moments.

Now, before reviewing briefly the methodology used in the four arbitration cases, let me refer to the El Salvador-Honduras case, which has been discussed here with reference to the Gulf of St. Lawrence.

The issue is, setting aside the question of estoppel, would a hypothetical third state's interests at the back of the Gulf be analogous to those of Honduras, which the Court found to exist at the closing line to the Gulf of Fonseca. The answer, in our view, is no.

You have now a map on the screen from the Court's

judgment which shows the Gulf of Fonseca, with El Salvador, Honduras, and Nicaragua, El Salvador and Honduras -- or El Salvador and Nicaragua at the headlands of the Gulf, and Honduras at the back of the Gulf.

There's no formal closing line across this Gulf, but the Court found that the notional closing line of the Gulf of Fonseca constitutes the base line of the territorial sea from which to measure the territorial sea, exclusive economic zone, and continental shelf of all three states that border this Gulf; Nicaragua, Honduras, and El Salvador.

It found that Nicaragua was entitled to the exclusive benefits of that base line for three miles from its coast, and that El Salvador was similarly entitled for three miles from its coast. But that leaves a section in the middle, 12 to 13 miles long, which the Court found to appertain to all three states, implying that it was open for the three states to agree on a division of that base line with corresponding offshore rights, or that the offshore rights would be held in common, as are the central waters of the Gulf of Fonseca.

But presumably, only to exercise the rights and jurisdiction international law provides for in the territorial sea, exclusive economic zone and continental shelf. I note that if there is ever a seaward

delimitation between the three states, it is hard to imagine anything other than the use of perpendiculars to the closing line.

Now the only reason for the result reached by the Court was the juridical status of the waters of the Gulf of Fonseca. There is a special regime in those waters, very different from Canada's internal waters of the Gulf of St. Lawrence. The special regime arises from the historic fact that a previous Court had already pronounced upon this area the 1917 judgment of the Central American Court of Justice.

The special juridical status of the Gulf of Fonseca is not present in the Gulf of St. Lawrence. In the Gulf of Fonseca, there is a three mile belt under the exclusive jurisdiction of each littoral state, subject to delimitation and subject to innocent passage. And the waters outside that belt, in the Gulf -- in the middle of the Gulf of Fonseca, beyond the three mile belt, are held in sovereignty jointly, subject to innocent passage.

I believe it is instructive that the International Court of Justice found that the judgment of the Central American Court was not res judicata, in that case binding upon it, or binding upon the parties. The Central American Court's case was between El Salvador and Nicaragua, and the ICJ case was between Honduras and El

Salvador. But the Court, the International Court of Justice, emphasized the relevance to it of a precedent of a competent Court, concerned with same issues. And it is noteworthy that there is nothing in the Court's 1992 judgment that suggests a departure from the 1917 judgment.

Now let me go on to look briefly at the arbitration cases, taking the most recent one first, Yemen-Eritrea. There is just one thing I wanted to point out. This is a judgment consistent with President Guillaume's approach, equidistance with adjustments. And again, in this case, it's equidistance with adjustments due to the presence of islands. It's hard to see how one could adopt any other method in this case. Perhaps base point selections would be different. Perhaps different choices would be made as to what to use or not to use as a base point to determine the equidistance line. Certainly, any use of the mid-sea islands as full effect equidistance base point would distort the equidistance line too much. The geographical circumstances of this case left little choice as to where an equitable solution boundary would be placed.

Next, moving back in time, there is Canada-France. I know that President Guillaume has a track record with Canada on St. Pierre Miquelon issues. Presumably, this is one where he would see no reason to adjust the equidistance line.

Seriously, there is one point that has come up in the questioning that I want to try to answer. The question has been raised why did we not use St. Pierre and Miquelon in our delimitation methodology? Why did we not use the French Islands as Newfoundland and Labrador geographic features? Of course, there is precedent for doing so. In the very excellent chapter, entitled "Method, Oppositeness and Adjacency and Proportionality in Maritime Boundary Delimitation", by the Agent and Deputy Agent for Canada in the Gulf of Maine case, found at volume I of the ASIL series, International Maritime Boundaries. It is noted that there are at least four negotiated boundary agreements that use basepoints on a third state, in a construction line, in the construction of a boundary line between two other states. So there is precedent. We could have done so. The Court certainly did so in its method in Libya-Malta. And we considered doing so.

Our reason for not doing so was that if we used the French Islands as geographic features attributable to Newfoundland in the application of the method that we had chosen, which we felt more clearly set out, and was consistent with the equitable principles and relevant circumstances in the case, the result would move our line closer to Nova Scotia. We chose, therefore, to stay with a choice of method that uses only Newfoundland geographic

features, and that can be defended as an equitable solution.

The next arbitration working backwards is Guinea-Guinea Bissau. And I only note there that the methodology employed in that case clearly used geographic features on third states in application of its method, because the Tribunal used a method based on a perpendicular to the general direction of the coast, with the coast determined by reference to points in Senegal and Sierra Leone.

Finally, I come to UK-France, which we have discussed previously, and I only have one thing to add. As we battle through the metaphysics, or the theology, or the primordial ooze of maritime boundary law, we tried to demonstrate that certain maritime areas are attributable to certain coasts. Now, last week in discussing the Anglo-French case, Professor Saunders took issue with our point that the French maritime area that forms a band between the Channel Islands, and the median line in mid Channel, is attributable to the French coasts that face that area. Which is the French coast in the Gulf of St. Malo, which also faces the Channel Islands themselves. On this basis, we said the French coastal front projected through the Channel Islands, just as we say the Newfoundland coastal front projects through the Islands of St. Pierre and Miquelon.

Professor Saunders provided a map showing the specific basepoints used to construct the mid channel median line, and the map that he used identified the French basepoints on French promontories and rocks, largely to the west and east of the Channel Islands, and he says at page 681 of the transcript, that the case involved equidistance construction lines, and not a frontal projection.

I submit that mixes apples and oranges. Equidistance is a geometric method. A line results by application of that method. And the line attributes areas, perhaps indirectly, but it attributes areas to coasts. France gets the band because the Tribunal in that case thought there was an approximate equality in the mainland coasts of the parties on either side of the English Channel. That's found at paragraph 196 of the Tribunal's Award. Therefore, it determined to apply a mid-channel equidistance line. And having reached those decisions, it turned to enclaving the Channel Islands.

In the metaphysics of our work, the band of French jurisdiction beyond the Channel Islands is attributable to the coast of France in the Gulf of St. Malo, albeit, that basepoints on rocks and promontories are used in the construction of the median line.

We continue to submit that this precedent clearly demonstrates that there is no rule that prevents the

coasts of Newfoundland in the inter concavity or the inner area, if you will, from projecting through the French Islands and the French waters.

Having reviewed the cases, we can see that the geographic --

PROFESSOR CRAWFORD: Sorry, Mr. Colson --

MR. COLSON: Yes.

PROFESSOR CRAWFORD: -- can I just ask you a question about the case? Do you attach any significance to the fact that the Court of Arbitration in this case didn't carry out any proportionality or second phase test? It made determinations of approximate coastal lengths and of disproportionate effects of islands and so on.

Having made those adjustments it basically declared that the delimitation was equitable without doing anything else. Is that significant for our case, bearing in mind that we are also in a situation of having to draw a long outer line, though from more points than were drawn here, but nonetheless, one which goes out a long way with nothing very close to it?

MR. COLSON: Well I think that the point you raise is one that may or may not be related to the longer line problem, the Court really didn't construct a proportionality test in Qatar-Bahrain, where the line was much shorter. In fact, I think we all as counsel in cases, spend a great

deal of time trying to work with both the methodology and the proportionality tests and go through the discussions that we have had about relevant coasts and relevant area, both having in mind method and having in mind a proportionality test for the purposes of testing the result.

I think what we find is, if we look back in the cases recently, there haven't been many cases that have applied a proportionality test as we have spent so much time perhaps using 20 years ago creating proportionality tests.

I found it surprising personally that they even tried to do that in Yemen-Eritrea. And I have tried frankly personally to reconstruct the test and come up with the numbers that they came up with, and I can't do it. That's neither here nor there, but the Qatar-Bahrain didn't have a standard proportionality test, if I might call it that, Jan Mayen didn't have one. Libya-Malta didn't have one. Gulf of Maine didn't have one. So we are really left, unless I'm mistaken, with just Libya-Tunisia where there was some rough judgment, and Yemen-Eritrea. Yes?

MR. LEGAULT: Simply to point out, Mr. Colson, you have already mentioned the cases, but just to bring out the fact that none of the cases in which proportionality was a relevant factor has involved a proportionality test. The three cases you named.

MR. COLSON: I'm glad you pointed that out, because I was thinking of that earlier in the day. There is almost an inconsistency, I suppose, with a Court determining to use proportionality methods in its -- or proportionality constructions in its method and then deciding that it also had to create a geometric proportionality test as a test of equity. So I think there is some logic to not doing a proportionality test in those circumstances. And I take your point.

So just to conclude my review of the cases very briefly before turning to Libya-Tunisia. We have looked at them. We can see that the geographic circumstances are key to the choice and application of method. We have also seen that even using equidistance as a starting point, while it certainly proves helpful in the analysis of a boundary problem, it doesn't get you away from dealing with the problems created by incidental features, disparities in coastal length, perceptions of cut-off and encroachment and a unique political geography. All of them are present here.

President Guillaume's presentation certainly focuses our mind, and it gives us food for thought and confirms what we have known and what we have said, and that is that equidistance is a starting point for the analysis of a boundary problem. And on our side we have undertaken that

analysis and demonstrated the five reasons why we believe equidistance is not applicable here due to the geographic circumstances of the case. And we stand by those reasons.

If I might now, Mr. Chairman, I would like to turn to a closer examination of Libya-Tunisia, taking into account the questions we received from members of the Tribunal and comments that were directed our way by opposing counsel.

Turning first to Libya-Tunisia, I will answer a question put to me by Professor Crawford concerning Tunisian activity in its expanded claim area. Then I will briefly respond to several statements of opposing counsel. Then I would like to provide a brief summary, commentary comparing the oil and gas facts in this case to those present in Libya-Tunisia.

Professor Crawford asked me in the first round last week whether there had been any drilling or other activity on the basis of Tunisian permits to the east of what was called the oil practice line. You will recall that we showed that the oil practice line, if you want to call it that, current from 1968 to 1976, reached only to 33 degree, 55 degrees north latitude, 12 degrees east longitude, well short of the northern limit of the Court's first boundary segment.

This practice had held to 1976, when it was breached by a new Tunisian concession that included a large portion

of Libya's block 137. And I understand Professor Crawford's question to be whether there was any Tunisian activity pursuant to its permit in Libya's block 137? And the answer so far as we can tell is no, not in that specific area.

You may also recall that in my response last week I refer to the possibility that some Tunisian marker buoys -- those were marker buoys placed for seismic purposes at that stage of technology -- that some Tunisian marker buoys had been placed in that area, but again from the record that we have, that does not appear to be the case either.

Let me, however, indicate to you specifically what the Court in Libya-Tunisia had in front of it in terms of Libyan and Tunisian activity. This map from Libya's oral argument, it is map 122 from volume 6 of the Court's documents, shows the location of Libyan drilling activity. This map shows Tunisia's sheaf of lines cutting through that area of Libyan concession and Libyan activity. And the western limit of those Libyan concessions is the 26 degree line extending far to the north up past Lampedusa Island.

Now I note here that Professor Saunders last week speculated that perhaps the reason the Court continued the 26 degree line north of 33 degrees, 55 north, 12 degrees

east, was possibly as he suggested, the Court simply extended the method already shown in practice and conduct onward to a convenient point.

I think we can find that doubtful simply because had the Court been doing that, it really would have been endorsing the unilateral conduct of Libya in this matter, which is shown clearly on this map as the 26 degree line extends northward.

Now let me turn to Libya's map of the Tunisian oil and gas activities. And this is a map from Libya's Counter-Memorial, and it is map 65 in volume 6 of the Court's documents. Just simply to note the reason we are not using the Tunisian maps is that they are simply hard to read.

The red line here on this map is the 26 degree line marking the western limit of Libya's concessions, which we also saw in the previous map. Now you will note that there are numerous symbols depicting Tunisian activities west of the 26 degree line. There are some in close proximity to it. You will note six symbols depicting Tunisian activities east of the 26 degree line. And you have a legend on the screen and in the map before you that depicts the meaning of those various symbols. And you can see some are actually wells, some are gas wells, some depict dry holes, some depict buoys.

Now let me review the six symbols, six Tunisian symbols that are on Libya's side of that 26 degree line. The southern most symbols, the little triangle that denotes a marker buoy. As far as we can tell its location is just outside of Libya's block 137. Further north there are four symbols denoting the Isis and Zohra wells.

Now there are three Isis wells. Isis-1 was completed in 1974 and oil was discovered in that well. Libya protested to the company and work stopped. This is all referred to in the pleadings of the parties before the Court.

Isis-2 was completed in 1975, and oil was also discovered in that well. The record of the proceedings does not tell us whether this particular well was protested or whether work stopped.

Isis-3 was completed also in 1975. It was a dry hole. And there is no record in the pleadings of a Libyan protest. But what we can see is that there was significant Tunisian interest in activity around the Isis wells.

The Zohra well, just to the south was drilled in 1997, and it was a dry hole. Excuse me, 1977. 1977, and was a dry hole. And we know Libya protested.

Now you can see on the screen another symbol to the east that denotes a dry hole. And this is the Jaraffa

well that was completed in 1975. The pleadings do not tell us whether this was protested by Libya.

Now let me ask that we show this same map with the Court's line on it. We can see that the Court's line left the Isis and Zohra wells to Tunisia. But the Jaraffa well, which was drilled, of course, pursuant to Tunisian authorization, was placed on the Libyan side of the Court's boundary in the second segment.

Let me now turn to a few comments that I would like to make in response to some of the arguments put forward by Nova Scotia counsel about the facts about Libya-Tunisia. And there are really only two.

One item that arose during last week's questioning related to our point that the conduct alleged by Nova Scotia to be relevant in this case is conduct that was equivocal. Our point is that the oil conduct in Libya-Tunisia was unequivocal. This arose in questioning between Professor Crawford and Professor Russell. And in response, Professor Russell perhaps suggested that there were protests and equivocation with respect to the Libya-Tunisia situation.

Let me just point out that there were protests, certainly, in the Libya-Tunisia situation, but all with respect to areas concerned only with overlapping concessions. There were no protests about the concession

limits and the activities therein, south of 33 55, 12 degrees east until 1976. In fact, the Court itself tells us that. It tells us that in paragraph 117 of its judgment. That's the paragraph with the words, highly relevant, in it that Nova Scotia is so fond of.

The Court says "The result was the appearance on the map of the de facto line dividing concession areas which were the subject of active claims in the sense that exploration activities were authorized by one party without interference or until 1976 protests by the other."

The conduct referenced to the abutting concessions in Libya-Tunisia was unequivocal. Here in this case, it is not.

The second item relates to Professor Saunders' reference that Judge Ago wrote a separate opinion in Libya-Tunisia. Professor Saunders' argument is that the Court was really focused on the oil concession conduct, not the historical conduct, or the geographical relationships between the coasts of the parties. And in his scheme, the Nova Scotia scheme, it is important to determine the comparative importance of the historic conduct versus the oil concession conduct, leaving the geographical relationships out of the picture, or at least to take up the rear. And he refers to the Judge Ago's separate opinion for the proposition that since Judge Ago

believed the colonial conduct was more important than the oil concession conduct, and since Judge Ago believed the historical conduct should have received pride of place in the judgment, that is therefore proof of the comparative importance given to the oil concession conduct by the Court.

Of course, Judge Ago, if you go further into his separate opinion, is really arguing his position that there was a boundary, a boundary based on acquiesence. Thus it is not surprising that a judge, who is looking at the historical conduct from the perspective of its relevance, not as a circumstance to be taken into account, but from the perspective that a boundary exists based on acquiescence, believes the historical conduct should have been given a recognized foundation in the Court's judgment. And it is understanding that he therefore expresses his dismay by the fact that the Court didn't see things his way.

Judge Ago's separate opinion is rather short. And it has a number of interesting points in it. Paragraph 4 begins, "In my view all of these facts go to prove the undeniable existence at the time, on the part of those authorities, Italy and France of an acquiescence in the proper sense of the term." And then he goes on and he quotes MacGibbon, and he quotes Sperduti. And he refers

to the fact that this is all hardly surprising, as he says, a perpendicular to the coast, and I quote, "indisputably constitutes, in relation to a coast line with the characteristics of the African coast on either side of Ras Ajdir, the most equitable method of delimitation and the one which best safeguards the equality of the rights of the two adjacent countries."

In the following paragraph, he makes allusions to the principle of uti posidatis juris, and he sets forth why his genuine boundary, as he calls it, was binding on Libya and Tunisia in the post-colonial era.

And we also know that Judge Ago wasn't finished with this, because he was, after all, the President of the Chamber in the Gulf of Maine case. And last week I quoted what the Chamber had to say about conduct in the Gulf of Maine case as compared to Libya-Tunisia with reference to paragraphs 149 to 151 of the Chamber's judgment. And I will only note the last two sentences in paragraph 150 where he says -- or at least the Chamber says, "It is true that the Court relied upon the facts of the division between the petroleum concessions issued by the two states concerned. But it took special account of the powers formally responsible for the external affairs of Tunisia-France and Tripolitania-Italy, which it found amounted to a modus vivendi." And here is what, I would submit, is

the Ago twist, "and which the two states continued to respect, after becoming independent, they began to grant petroleum concessions."

Now all of this leads back to our conclusion about Nova Scotia's conduct base method, arguably founded in the method employed by the Court for part of the first segment of the Libya-Tunisia boundary. Nova Scotia simply doesn't have the facts. It doesn't have a colonial modus vivendi, or anything closely resembling that in place from 1930 onward -- 1913 onward, amounting, at least in Judge Ago's view, not just to a modus vivendi, but to an established boundary through acquiescence. It doesn't have the unequivocal and substantial corresponding oil and gas-related conduct over an eight year period leading right up to the case. And it doesn't have a method it conforms to the geographical relationships between the coasts of the parties.

Now let me turn in closing to a comparison, if I might, of the characteristics of the oil and gas activity present in this case and that found in Libya-Tunisia. Nova Scotia wishes the Tribunal to draw an analogy between the abutting oil concession practice in Libya-Tunisia south of 33 55 north, 12 degrees east, and that which pertains to the provincial permits issued to Mobil and Katy. Permits that have been thoroughly discussed in this

case.

Mobil, of course, received a federal permit that extended beyond the 135 degree line on both sides of that line. Mobil took out provincial permits from both Newfoundland and Nova Scotia to cover the federal permit.

The Katy permit was issued by Newfoundland. As I understand it, there was no activity conducted pursuant to either the Mobil or Katy permit on the Newfoundland side.

On the Nova Scotia side, the Mobil permit was issued in February of 1967. The Tribunal will recall that much of the area of concern in this case between 44 and 47 north and 55 and 58 west, with an exception in the southwest corner, known as the Banquereau Block, became subject to a Canada-France moratorium in that same year, 1967. Thus, it seems that no seismic activities were conducted in the moratorium block on the Nova Scotia side, certainly in the vicinity of the 135 degree line between the time Nova Scotia issued its Mobil permit and the time the moratorium became effective. We can't state that with certainty, but Nova Scotia has presented no evidence to the contrary which shows specifically that seismic lines were shot near the 135 degree line during the period the Nova Scotia permit given to Mobil was in force.

Nova Scotia has proffered that the company spent monies pertaining to activities in its blocks. And they

undoubtedly did so, but since these expenditures are identified by a group of blocks, this point is not really of any use in trying to pinpoint the geographical location of relevant activity.

Further, there was no drilling in this area on the Nova Scotian side anywhere close to its claim line in this case.

I will come to the drill site locations referred to by Nova Scotia in a moment.

Thus, the permits that are alleged to abut in this case and to amount to a de facto line are provincial permits played out and brought forward in the provincial battle with the federal government for recognition of offshore rights for the provinces, under which no activity occurred of any consequence.

The parties here disagree whether or not the limits of those permits overlapped or were perfectly aligned. That remains a source of disagreement, although it appears that it is now acknowledged that there was no perfect alignment, at least with respect to the Katy permit. In all events, these provincial permits of Nova Scotia and Newfoundland disappeared a long time ago.

Now that's quite different --

PROFESSOR CRAWFORD: Mr. Colson --

MR. COLSON: Yes.

PROFESSOR CRAWFORD: -- the Texaco -- that's a federal permit presumably granted in 1971.

MR. COLSON: Yes.

PROFESSOR CRAWFORD: Why was that granted within the moratorium block? I thought the moratorium was still in force.

MR. COLSON: Professor Crawford is sneaking ahead to the maps that haven't been appeared -- let's put the map up. Can we put the map up?

PROFESSOR CRAWFORD: I apologize.

MR. COLSON: Can I get to that in a moment?

PROFESSOR CRAWFORD: That's fine.

MR. COLSON: Or well -- the answer to your question is we don't know on this side. We are speculating. I will speculate with you, and this is only speculation -- that in that that moratorium block had been, and as best we can tell, it was largely an informal agreement between Canada and France, that I would not be surprised that maybe France did something in its activities in that area and Canada felt that it should do something itself, but that is speculation. We don't know the answer.

Now I will get to these well locations in a moment. I was saying that the permits -- the provincial permits have disappeared long ago that have been discussed in this case, and that's quite different from the situation

pertaining to the relevant Libyan and Tunisian permits south of 33 55 north 12 degrees east. There was deliberate and stated intent on the part of Libya to align its permit with that of Tunisia. There was a great deal of activity conducted by both Tunisia and Libya in their respective permit areas and previous figures have demonstrated that. Not just seismic, but the drilling of wells, and indeed, the finding of oil. They had not expired, long go; they were still active, as the case was before the Court.

Now beyond the issue of the alignment of provincial permits, Nova Scotia has also noted specific wells that it says were authorized under Nova Scotia permits that are now encompassed by Newfoundland and Labrador's line. I think we are now clear that no drilling activity on Canada's continental shelf, just as no seismic activity on Canada's continental shelf was conducted without federal authorization. We do not contest there were permits issued by Nova Scotia just as by other provinces that companies took out for one reason or another, and that were parts of political campaigns -- a campaign that ultimately failed to receive federal recognition of the provincial claimed offshore rights.

The figure that is on the screen now is a figure that had its genesis first in a figure 33 of the Nova Scotia

Memorial. The well holes are from that figure. The location of the well holes are from that figure. And in a figure 6 in our Counter-Memorial, we pointed out that all of those wells had been drilled in areas covered by federal permits. That was the essence of the map shown this morning.

What I have put on the screen and what we have added to this map is the outline of the moratorium block which was, while perhaps informal, widely understood, and some of the other federal permits that are, shall I say, current in the period of time.

Now let me focus on the four wells, and these are really drill sites that would now fall under Newfoundland and Labrador's -- within Newfoundland and Labrador's claimed area. They are all located in something that is called the Banquereau Block and it was a part of -- it had been issued prior to the moratorium by the federal government, and was excised, then, if you will -- that's the reason for the step line from the agreed moratorium -- with France. So what do these red dots mean? And they are labelled L-80, H-52, D-76 and D-35.

Well, in all cases, they represent dry holes. Dry holes that were drilled by Mobil, dry holes that today are plugged with cement, dry holes that cannot be reentered or reused in any particular way, dry holes that probably, at

the time, produced some data, and I am advised that all of that data that would have been produced from those wells under Canadian law has been publicly available for a long time. No particular proprietary interest, if you will, in those wells.

The D-35 well is named Dauntless, and it was spudded or that drilling started in April of 1971. The F-80 well, known as Adventure, was spudded in January of 1975. The D-76 well, known as Sachem, was spudded in May of 1975, and the H-52 well, which we believe is more correctly named the Hesper I-52 well, was spudded on May 8th of 1976. All of them were dry holes, long since abandoned, drilled under a federal permit, and the federal and provincial permits have long since expired.

Now we have seen that in Libya-Tunisia, the Court, first, southwest of 33 55 12 east respected the line of abutting concessions that the parties had imposed on themselves, a line inherited from colonial times, a line perpendicular to the general direction of the coast. In those adjoining concessions, substantial unprotested oil and gas activities had occurred, including significant discoveries.

Seaward of 33 55 north and 12 degrees east where the Libyan and Tunisian concessions had always overlapped, we see that significant Tunisian activity had occurred and we

see that the Court's line left the Isis and Zohra wells to Tunisia, which included two wells where Tunisia had discovered oil, but the Jaraffa well location, that drill site was transferred to Libya in an area where geography alone determined the Court's boundary.

Mr. Chairman and Members of the Tribunal, that concludes my presentation. I want to thank -- yes, sir? Thank you for your attention, and I want to again reiterate that it has been an honor and a privilege to appear here in this Tribunal on behalf of Newfoundland and Labrador, and I now ask you to call on Professor McRae, the Agent for Newfoundland and Labrador.

CHAIRMAN: Just before, I think we will call a break, if you don't mind. Fifteen minutes alright?

PROFESSOR MCRAE: In order to make sure we can be done on time, we start again at three? I think that would be plenty of time for us to --

CHAIRMAN: At three?

PROFESSOR MCRAE: Yes.

CHAIRMAN: Thank you very much.

MR. FORTIER: Mr. Chairman, could I address a request to my friend, Mr. Colson, through you at this point? If you turn to figures 100, 101 and 102 of Mr. Colson's presentation this afternoon, an equidistance -- equidistance and modified equidistance line constructed by

Newfoundland and Labrador, you will note that there are no basepoints which are identified. If we, on behalf of Nova Scotia, are to respond to these figures on Wednesday, we require an identification of the basepoints. So I wonder if maybe during the recess, my friend, Mr. -- Professor McRae, in consultation with his colleagues, could agree that they will provide the basepoints later today or this evening at the latest, or failing which, I would ask for a direction from the Tribunal in the circumstances. Thank you, Mr. Chairman.

MR. COLSON: I'm told that there is no difficulty technically in providing these by the end of the day. I would simply just reiterate, it's a fairly simple mainland equidistant line using mainland basepoints. Thank you.

PROFESSOR CRAWFORD: It doesn't use Seal Island?

MR. COLSON: No, I hope not.

CHAIRMAN: Thank you very much. We will recess, then.

(Brief recess)

CHAIRMAN: Professor McRae.

PROFESSOR MCRAE: Thank you, Mr. Chairman. Mr. Chairman, Members of the Tribunal, in this presentation, which is the last of Newfoundland and Labrador this afternoon, I will deal with some aspects of the geography of the area not already dealt with in our earlier presentations today. I will deal with certain issues concerning the

construction of our line that have arisen during the proceedings last week. I shall also turn to testing -- the question of testing the equity of the line to determine the equity of the result. And in the course of this, I shall illustrate that even viewing geography of the area differently or by using different methods, the result is still essentially the same as that put forward by Newfoundland and Labrador in this case.

Let me turn first to the question of coastal projection and its implications. There was much discussion last week about coastal projection and coastal fronts, frontal projection and radial projection. Mr. Willis has dealt with some of this today.

I would simply like to provide some illustrations of the basic propositions about projection that underlie our case.

I will show also that sometimes things in the Nova Scotia illustrations are not exactly as they appear to be, and I will show that at the end of the day, concerns about Newfoundland and Labrador's determination of the relevant coasts are ill-founded. They simply do not matter.

We have, as you know Mr. Chairman, argued that the way coasts face can best be represented by coastal fronts. And the coastal front of the south coast of Newfoundland generally projects southwards. Although as we have argued

that this is a projection of the whole coast, regardless of the interruption of the French corridor, if we were to depict the coastal projections from the outer wings only of what we have identified as the relevant coasts, they would converge and overlap south of the French corridor.

Now, this depiction of the convergence and overlap might provide some insight into the statement of the Court of Arbitration in Canada-France, where it said, in what is now becoming infamous, paragraph 73, that in the hypothesis of a delimitation between Nova Scotia and St. Pierre Miquelon, it is likely that corrected equidistance will be resorted to, the coasts being opposite. It then went on to say, and I quote, "In that event, it is questionable whether the area hypothetically corresponding to Nova Scotia would reach the maritime areas towards the south appertaining to St. Pierre and Miquelon."

Now we have plotted an equidistance line between Nova Scotia and St. Pierre Miquelon, and although we have not corrected it, as the Court of Arbitration suggested would be done, in our view, it bears out generally what the Court of Arbitration is saying. On the assumption, even of corrected equidistance, it is questionable whether the projection of the coastal front of Nova Scotia reaches the south of the French corridor.

Now, as we have said, we view the projection of the

south coast of Newfoundland as a unified projection. Thus the convergence and overlap of the relevant coasts, as we have identified them, involves the whole of the south coast, overlapping with the projection of the coastal front, from Scatarie Island to Cape Canso.

Now, there are two comments I wish to make about this convergence. First, Nova Scotia accuses us of adopting the primary and secondary coasts argument of the United States in the Gulf of Maine case. But, Nova Scotia misunderstands that argument. A primary coast, according to the United States theory, was a coast that conformed to the continental coastal direction, and a secondary coast was one that did not. Thus, the coast of Maine facing out into the Atlantic was a primary coast, and the coast of southwest Nova Scotia facing into the Gulf of Maine, was not. Thus, this depiction of coastal convergence is not a depiction of primary and secondary coasts. Both coasts here are primary coasts. It is instead a depiction of the convergence of a shorter coast with that of a longer coast.

PROFESSOR CRAWFORD: Well, looking at that graphic, and ignoring for the moment the effect of Sable Island, there would still be a convergence of coastline to the south of Cape Canso, wouldn't there?

PROFESSOR MCRAE: I will come to that shortly --

PROFESSOR CRAWFORD: Oh, sorry.

PROFESSOR MCRAE: -- Professor Crawford.

As I say, this is a convergence between shorter and longer coasts, and the longer and shorter coasts distinction was, of course, an important part of the decision in the Gulf of Maine.

Now, second, clearly the coast of Newfoundland west of St. Pierre and Miquelon projects out to the continental margin in exactly the same manner as the coasts to the east to the islands do, although it converges and overlaps with the projection of the coastal front of Nova Scotia, near the southern tip of the French zone. And last week we were asked about the projection from the coast as far west as Cape Ray, and we have depicted that, too.

These coasts converge and overlap with the projection of the coastal front Scatarie Island to Cape Canso, although as Mr. Willis pointed out, that convergence is weaker, because of the location and orientation of these coasts. And I think that responds to the point, Professor Crawford, you were raising.

But there is a further point about these coasts. Last week, when I was showing how Nova Scotia itself had illustrated that the Nova Scotia line cut off the projection of the south coast of Newfoundland, Mr. Legault asked whether the image did not portray, in fact, the

projection of the Nova Scotia coasts south of Cape Canso into the area to be delimited. And no doubt, that was what Nova Scotia intended their image to do.

But there's a peculiar thing about this image. Note that the projection of the Nova Scotia coasts seems to be parallel to the 135 degree line.

So we asked ourselves, what sort of coastal front would project out at 135 degrees? And we found the answer. Certainly not the Nova Scotia from Cape Canso to Cape Sambro. Just a little more cartographic creativity. Coasts that lie on a bearing of 246 degrees were made to look as if they run on a bearing of 225 degrees. And all of this to make it appear as if the 135 degree line was somehow consistent with the coastal projection of the mainland coasts of Nova Scotia. But of course, it is consistent neither with the projection of the coastal front, from Scatarie to Cape Canso, nor with the projection of the coastal front from Cape Canso to Cape Sambro.

The real point that we were making about the Nova Scotia image was that the 135 degree line cuts off the south coast of Newfoundland without effecting any cut-off of the southeast facing Nova Scotia coasts. By contrast, the Newfoundland and Labrador line reduces that cut-off. And in fact, it shares the cut-off with the coastal

projection of the Scatarie, Cape Canso coasts, and only with the properly adjusted projection of Canso, Cape Sambro coast much further out.

But all of the concern about the coasts from Cape Canso to Cape Sambro, if we are to step back and ask, why is it an issue? It does not make any difference to the perception of the general area in which the delimitation is to take place. Its coastal features could never have an effect on the drawing of an equidistance line, as I pointed out early this morning.

But Professor Saunders said that the exclusion of the coasts from Cape Canso south has massive effects. Well, what is the nature of those massive effects? The only effects of adding coastal length on the Nova Scotia side could be that it might affect a test of proportionality of our line based on a comparison of coastal lengths, and areas appertaining to the parties. So, we took our proportionality model, and tested it, by adding the coasts from Cape Canso to Cape Sambro. But that did not produce any massive effects. Instead, it seemed that Nova Scotia was better off.

So we extended the coasts down to Cape Sable. Again, no effects, Nova Scotia may be even better off with that coastal ratio.

So by now we were rather desperate to see what these

massive effects were, so against our better judgment, we tested both models by reference to the outer limit of the continental margin, as defined by Nova Scotia. But neither of these tests resulted in any disproportion that negatively affected Nova Scotia.

Mr. Chairman, there simply are no effects, massive or otherwise, in testing proportionality from including the coasts from Cape Canso southwest.

Now further, on the subject of proportionality, last week Mr. Legault questioned whether we were justified in including the coast line from Lamaline Shag Rock to Cape Race as relevant coasts because of the barrier of the French zone. We said that we believed that it was appropriate to do so. And we still adhere to that position. Nevertheless, we thought it might be appropriate to test the implication of Mr. Legault's query.

Once again, the impact of the exclusion of such coasts would have -- once again the impact of the exclusion of such coasts would be on tests of proportionality. So, we eliminated the coasts from Lamaline Shag Rock to Cape Race. Now, recognizing that there was some degree of arbitrariness in finding an eastern extremity for this new area for proportionality test, we simply followed the western edge of the French corridor. The result, once

again, demonstrated that the Newfoundland and Labrador line met the test of proportionality. And extending the coasts to Cape Sambro did not change this. Nor did the further extension to Cape Sable.

Mr. Chairman, what does all of this mean? Now we are the first to admit that tests of proportionality must be treated with caution. We are mindful of the difficulty of enclosing open sea areas for the purposes of proportionality. And as we have pointed out, proportionality models have to be constructed so that like is compared with like. It is for that reason that where the extent of the continental shelf in front of two states is different, then testing for proportionality by reference to the continental margin is simply not testing like with like.

I would just like to note that in their criticisms of Newfoundland and Labrador's approach to the testing of proportionality last week, neither Dean Russell nor Professor Saunders acknowledged or addressed this issue.

But, we would suggest that what these tests show is that where the projections of coastal fronts are enclosed by perpendiculars, as they have been in the Newfoundland and Labrador models and perpendiculars reflect, of course, the frontal projection of both of the coasts so enclosed, then, the model will provide a consistent result. And the

result in this case is that the Newfoundland and Labrador line meets the test of proportionality.

But, of course, Nova Scotia's rejection of the frontal projection of coasts, and its adherence to the view that coasts project radially makes it reject a proportionality model based on a projection of coastal fronts.

But how inappropriate is the area within which we have tested proportionality? We tested this by drawing 200 nautical mile arcs from the mainland coasts of both Nova Scotia and Newfoundland. And what this shows is that the area of overlap of the two zones falls within the area we have been using for testing proportionality. And again, the result is proportional.

And equally, by moving from the 200 nautical mile limit, to the limit of continental shelf jurisdiction, and drawing in this case 350 nautical mile arcs from the coasts, an area of overlap can be identified. Again, the area corresponds to the area in which we have tested proportionality, it simply enlarges it, including on the Nova Scotia side, the coast from Scatarie Island to somewhere around Cape Sambro.

However, as we have pointed out, the inclusion of that coast does not affect the proportionality results achieved by the Newfoundland and Labrador line, and this test shows essentially the same thing.

Now these tests confirm, in our view, that what we have selected -- what were done is selected a reasonably objective basis for testing of the equity of the result in this case. And, according to that test, the line put forward by Newfoundland and Labrador is proportionate. But, of course, the Nova Scotia line, on the basis of those proportionality models, clearly does not meet the test.

Before leaving the subject of proportionality, there is one, I think, other issue that I should mention. I think last week, Professor Crawford, asked what the impact would be of including the French zone within our proportionality area. And the effect is to attribute about two percent more area to Newfoundland and Labrador.

Let me turn now to the construction of the Newfoundland and Labrador line. Mr. Chairman, last week, I took you through that construction, and I won't go over all of it again. But I will respond to concerns and criticisms that have been raised, particularly in the presentation of Professor Saunders. To start with, as Mr. Colson pointed out, we believe the geographic configuration of the area outside Cabot Strait is similar to that of the Gulf of Maine. But I think we have discussed that and do not need to pursue it. The point is that whether the area is perceived as a concavity, or as

opposite coasts, similar considerations apply and similar methods have to be considered.

Now if we start with the area itself, Professor Saunders says that because there is water and not a coastline in Cabot Strait, and because the coastlines of Newfoundland and Nova Scotia, are not at right angles at this point, then a bisector cannot be used for the first segment. But why not? Professor Saunders says that we cannot use a bisector, because we did not articulate an objective of achieving an equal division of overlapping areas. But does not a bisector essentially achieve this?

A method such as a bisector, is in some sense a simplified form of equidistance or median line, based on the generalized coastal features and bisecting the angle of the coasts. You can achieve much the result as a median or equidistant line without giving undue effect to incidental features.

In Professor Saunders' chart of the ratios allocated, which he demonstrated last week, seemed to suggest the result achieved by those lines were essentially the same. It was I think in his visual presentation, PS-29. And under it, it showed that the bisector ratio in the unit area was 1.8 to 1, and equidistance, it was 1.6 to 1.

In any event, as we have pointed out already, the sound and fury really leads to nothing. Provided that St.

Paul Island is not allowed to distort the result, there is little difference that results from the application of any of the methods in respect of this particular segment.

Which brings us, of course, to the touchy point of St. Paul Island. Now, Professor Saunders, was at his most colourful when he referred last week to what I had had to say about St. Paul Island earlier. And if I understand him, what he said correctly, I think he said two things. First, he said the shipwreck problem has been solved. So that if ships heading for the Gulf are not bumping into the islands, then the islands much be much closer to the coast than we originally thought. And second, he said that Nova Scotia is just using St Paul's Island to take only 637 square kilometres away from Newfoundland, so "get over it."

And, of course, none of this addresses the fundamental problem that St. Paul Island protrudes out into Cabot Strait.

PROFESSOR CRAWFORD: Mr. McRae, you seem to be very emotional about St. Paul Island.

PROFESSOR MCRAE: Well, Professor Crawford, I think Professor Saunders has some liking for this island. In phase one, he got concerned about it. And perhaps he and I should see if we can engage in some sort of land sale of the island when this is all over and put our cottages on

those two lakes that are on the island.

PROFESSOR CRAWFORD: Have a population of two, I would imagine.

PROFESSOR MCRAE: That, Professor Crawford, is precisely our point. As I say, none of this addresses the fundamental problem that St. Paul Island protrudes out into Cabot Strait with the effect of reducing the distance between the provinces by one-quarter.

Mr. Chairman, the actual Nova Scotia coastline goes from Money Point, southwest into St. Annes Bay.

PROFESSOR CRAWFORD: Seriously, Mr. McRae, if you don't mind, on the subject of St. Paul Island, are there examples of islands in opposite coasts situations, and I don't mean tiny rocks or things like, whatever the name of the thing was in Qatar-Bahrain that was hardly above water, if it was an island, it was only just an island. St. Paul Island is an island. Which cases can you point to where islands of that kind have been given nil effect in an equidistance limitation in opposite coasts?

PROFESSOR MCRAE: I don't think we have any examples of no effect completely of an island. But, of course, in some instances, islands are essentially disregarded when a generalized coastal direction is taken into account. And the problem with St. Paul Island is --

PROFESSOR CRAWFORD: And in this case Seal Island.

PROFESSOR MCRAE: Well Seal Island was given reduced effect. We have mentioned that already. I think you said no effect at all in --

PROFESSOR CRAWFORD: Making the point that on the logic of the sort of construction of the Gulf of Maine, it was very difficult to defend it, but I said that before. But I won't say it again. Very difficult to defend giving Seal Island any effect. But it was given some effect. In the event that a Tribunal was to apply an equidistance formula in this situation, one would have thought there was a fortiori that you would give an island of some size some effect.

PROFESSOR MCRAE: The question is how one treats this effect. In equidistance, it would depend on the other characteristics, whether how much effect was given to it. Of course, Seal Island was much bigger -- is a much more significant feature, as described by the Court -- by the Chamber than St. Paul Island is in fact.

The problem with St. Paul Island, and this is the illustration that is going to show, that the effect is to change the coastal direction. Because of its location, if effectively changes the coastal direction. As I said, what it does is to move effectively the coast of Nova Scotia out in that direction, when for all other purposes we treat the coast of Nova Scotia as essentially a line

from Scatarie Island to Money Point. And that is the fundamental problem with St. Paul Island in this particularly confined location.

Mr. Chairman, perhaps I should move on to the second segment before I become far too emotional on the question of St. Paul Island. Let me turn to the second segment.

Professor Saunders quibbled with the change in direction of Connaigre Head, but the geography is the geography and the coastal direction does change. I suppose we could have represented that change by a perpendicular, but that would have been even less favourable to Nova Scotia. But this change in coastal direction is one of the facts that we are dealing with here. The other fact is the Newfoundland coasts inside the closing line are longer than the Nova Scotia coasts inside the closing line.

The method employed by Newfoundland and Labrador tries to take account of those facts, mindful of the further fact that the point at which the second sector crosses the closing line is going to be the starting point for the line in the outer sector.

And, of course, there is a further complication here. The islands of St. Pierre and Miquelon. And we have explained the approach, the Anglo-French case to using basepoints behind the Channel Islands, on the coast behind

the Channel Islands, for the boundary with the United Kingdom beyond the concavity, and Mr. Colson dealt with this earlier this afternoon.

But beyond the placement of the islands, there is the further factor that the zone of St. Pierre and Miquelon straddles the closing line. Last week as Mr. Colson pointed out, Professor Crawford raised questions about the use and non-use of the islands in the zone of construction in the second segment. And Mr. Colson has mentioned what we did in these particular circumstances. And perhaps I thought it would be useful to illustrate it, because in constructing our line, we did give serious thought to this question.

And, of course, there are a number of options, one of which Mr. Colson mentioned, using the islands as a basepoint themselves, as has been done in other delimitations. And we also considered adjusting the line in the second segment along the closing line to take account of the fact that a considerable portion of the area on the Newfoundland side falls within the St. Pierre and Miquelon zone.

So we looked at no effect. We looked at one-third effect, two-thirds effect and full effect. But, of course, the problem with each of these scenarios is that it simply places the line closer to the coast of Nova

Scotia.

And that, Mr. Chairman, really highlights the problem dealing with the second segment. We can obtain a line of direction by reference to the opposite coasts, which, of course, is what we did. But in determining the location, we have two factors to take into account, the length of the coasts, opposite coasts, or coasts surrounding a concavity, whichever you wish, and the effect of St. Pierre and Miquelon.

An equidistance line, which would run to the mid-point, simply ignores both of those factors. An adjusted median line, as constructed in the Gulf of Maine case, can take account of both. But given the distance involved, and the amount of area that the St. Pierre and Miquelon zone subtracts, to deal with both of these lines, or deal with both of these factors at once, would really produce a line that constituted an unreasonable cut-off of the Nova Scotia coasts. So we opted for dealing only with the difference in coastal lengths in the construction of the second segment.

PROFESSOR CRAWFORD: Mr. McRae, my understanding is that an equidistance line does not run to the mid-point. That it runs some distance on the Nova Scotian side of it. It's also my understanding that an equidistance line is constructed from points which are to the northwest of St.

Pierre and Miquelon.

PROFESSOR MCRAE: Yes. I should -- when I said the mid-point, I would say the equidistance line really runs to a mid-point determined without reference to the island. So it would be dependent on the base points. But it will have no regard to the existence of St. Pierre and Miquelon. It's the basepoints that determine -- I should not have indicated it was that particular mid-point that was --

MR. LEGAULT: But the mid-point that you have illustrated there is the mid-point of the closing line?

PROFESSOR MCRAE: It is the mid-point of the closing line.

MR. LEGAULT: Lamaline Shag Rock to Scatarie Island?

PROFESSOR MCRAE: Right. And that was the basis for the adjustment in accordance with the proportion of coastal lengths for our line. And then the further adjustment, if one was to consider the question of St. Pierre and Miquelon at that particular point.

So as I said, what we did was we opted for dealing only with an adjustment for the difference in coastal lengths in the construction of our line, and put aside the impact of St. Pierre and Miquelon. But, of course, this does not mean that the encroachment of St. Pierre and Miquelon zone should be ignored. It's a factor that has to carry over and be taken account of in the outer area.

But, of course, the Nova Scotia line recognizes none of this, because neither north nor south -- because it cuts off the coastal projection of Newfoundland before it even gets to the 200 mile limit. What is meant to say there is the Nova Scotia line pays no attention to the effect of St. Pierre and Miquelon. It's as if it wasn't there and it cuts right through the zone.

Professor Crawford asked earlier on how one adjusts for the Islands of St. Pierre and Miquelon in this particular circumstance with equidistance. Well there one has to deal with the same kind of approach that we dealt with here, the adjusted median does that. And whether the adjusted median starts from where the equidistance line crosses, or whether it starts from the mid-point, is simply a matter depending where your equidistance line starts. So the method that we have suggested here is one way of dealing with any line as it crosses the mid-point to take account of the islands.

Let me turn, Mr. Chairman, to the construction of the third segment of the line. And we have used a perpendicular in these circumstances. And we were criticized because it was said that our perpendicular is not a perpendicular to the coasts at the back of the inner concavity as the perpendicular was in Gulf of Maine. But why does that matter? Let's put aside Gulf of Maine for

the moment. Why is the perpendicular not appropriate in the outer area? It ignores incidental features. it minimizes cut off and indeed as we have pointed out, it shares cut off.

But there was a point about the perpendicular that wasn't mentioned in Professor Saunder's presentation. It is essentially the same as a bisector of the direction of the coastal wings of Newfoundland and Nova Scotia. So therefore a perpendicular in these circumstances is a line that reflects the actual geography of the outer area.

Now an essential part of Nova Scotia's rejection of the Newfoundland and Labrador line is its rejection of any real substantive content for the notion of nonencroachment or cut-off. And Mr. Willis has mentioned this, but let me elaborate as well, Nova Scotia suggests, and we heard this last week, that because the line cuts off the southward projection of the Newfoundland coast some 270 kilometres from the coast, there really is no problem. Cut-off according to that view occurs only to the -- close to the coast. And the citation was to what Judge de Arechega said. But as Mr. Willis pointed out, what Judge de Arechega said in the different geographic circumstances of Tunisia-Libya is really not as useful as looking at what Judge de Arechega did in the same geographic circumstances in Canada-France.

And if Judge de Arechega had concluded that cut-off occurred only close to the coast of Newfoundland or close to the coast of St. Pierre then the stem of the mushroom, could not have seen the light of day.

Nor I suggest is it useful in considering the outer area to draw analogies with cases involving opposite coasts.

In the case of opposite coasts the notion of modern encroachment states rather than solves the problem. Here we are dealing with a relationship of adjacency, not oppositeness. We are dealing with the circumstance of a line cutting across in front of the coastal projection of another state. There is no requirement that nonencroachment or cut-off be completely eliminated. In fact, in most geographic situations, that's going to be impossible. But nonencroachment or cut-off can't be ignored and the avoidance of cut-off clearly has the status of an equitable principle or criterion in the law of maritime delimitation.

And more importantly, cut-off cannot be one sided. The burden of avoiding nonencroachment cannot be placed on one state with the other state being relieved from it. And that is precisely, as we have pointed out, what the Nova Scotia line does. It cuts off the Newfoundland coast and frees the southeast facing Nova Scotia coast from

being cut-off at all.

And by contrast, as we have pointed out, the Newfoundland and Labrador line shares the cut-off between the coast of Newfoundland and the coast of Nova Scotia and it does not prevent the coast of Newfoundland to the west of St. Pierre and Miquelon from projecting out to the limits of the continental margin.

And we would suggest that in this way the Newfoundland and Labrador line both reflects the geography of the area and is consistent with the decision of the Court of Arbitration in Canada-France.

Mr. Chairman, before moving to consider the equity of the result achieved by the Newfoundland and Labrador line, let me turn to the question of Sable Island, and this time I will try and keep my emotions in check.

We have set out in our written pleadings why, in our view, the location, status and characteristics of Sable Island disentitle it to be given any weight in delimitation. But two additional points were raised. The first Sable Island was compared with Jan Mayen. Of course the parallel cannot be sustained. We are not dealing here with an island on its own in a delimitation with another state. We are dealing with the effect to be granted to an island that lies a considerable distance from the coast to the state. And the question here is whether that island

can be allowed to change the coastal configuration in the area by being treated as if it were part of the coast. And of course, we say that it cannot.

Now there was another quite noble argument raised. It was said that somehow Sable Island is the mirror image of peninsulas on the south coast of Newfoundland. But this misconceives the way that peninsula features are to be treated in maritime delimitation. A peninsula that protrudes from a general coastal direction may be treated as a feature capable of distortion. But when a feature -- when a peninsula is in conformity with the coastal direction, no question of distortion can arise.

And in the case of the geographical features of the Avalon Peninsula, which is presumably what Nova Scotia was referring to, they form the coastal direction itself. They do not protrude from or deviate from that coastal direction. And they certainly do not in any way parallel a feature that lies 88 nautical miles from the coast that it is said to represent and which attributes to Nova Scotia substantial seabed areas.

Mr. Chairman, Nova Scotia's argument is rather like saying that in its relationship to the coasts of Maine and Massachusetts, Nova Scotia, framed by the Bay of Fundy in the Atlantic Ocean should have been treated as a distorting peninsula by the Chamber in Gulf of Maine.

Now before leaving Sable Island, last week I believe Professor Crawford asked if Sable Island has any impact on continental shelf entitlement. And the answer is no. According to the Nova Scotia depiction of the outer limits of the continental shelf, all of the continental shelf lies beyond 200 nautical miles measured from Sable Island.

Let me turn to the equity of the result. Mr. Chairman, in considering whether the Newfoundland and Labrador line produces a result that is equitable --

PROFESSOR CRAWFORD: In fairness, I think I should say that our technical advisor takes the view that there is some slight effect of Sable Island because of the combined operation of the two requirements in Article 76. And because there are some bits of the coast that are beyond 350 miles from the mainland but not 300 -- beyond 350 miles from Sable Island. It probably doesn't matter but I just thought I would point that out.

PROFESSOR MCRAE: Put us in the difficult position of perhaps following my friend Mr. Fortier and asking for the criteria on which that was based. But I think I will leave it and not ask for that information. Thank you, Professor Crawford.

Let me turn now to the equity of the result. I will say we will consider that and if we have any further response we will try and provide that. But I don't know

that, as you say, is a matter of great significance.

Mr. Chairman, in considering whether the Newfoundland and Labrador line produces a result that is equitable, I do not plan to return to the models I dealt with earlier to test proportionality and nor do I see any need to traverse the arguments that have been covered by Mr. Willis and Mr. Colson regarding the conduct of the parties.

As we have said, the conduct invoked by Nova Scotia relating to the area inside Point 2017 to the extent that it supports the lines proposed by Nova Scotia, does not suggest that the Newfoundland and Labrador lines in those areas, which in fact differ little in result, are not equitable. And outside Point 2017, in our view, there is no conduct that could provide any guidance on the drawing of a line or would indicate that the Newfoundland and Labrador line produces an inequitable result.

There are, however, two factors I wish to refer to in assessing the equity of result. They consist of economic considerations and geographical considerations. But before doing so, I wish to say a word about the Nova Scotia line.

Now we showed in figure 15 of our Counter-Memorial, that tested according to this model of proportionality, the Nova Scotia line does not produce a result that is

proportionate. And Nova Scotia's test of proportionality is based on its area of entitlements and not on an area framed by the coasts that are capable of affecting the delimitation.

Moreover, in considering the Nova Scotia line, it is important to note how it is made up. Professor Saunders said that the line was -- and I quote -- "not entirely a one-trick pony". And he was right. It is not a line based on conduct, it is a series of lines tacked together on the basis of separate items of even imaginary conduct.

Consider figure PS-45, which appeared in the Nova Scotia phase two Memorial as figure 40. What this figure shows is that different pieces of conduct are used to justify different parts of the line. Without the re-imagined Katy, the line could go presumably no further than the end of the Mobil permit. And so on. And that of course raises the question of what is the conduct basis for extending the line out to the continental margin.

But all of this, of course, is nothing more than a repeat of our essential submission that there is no basis in conduct, let alone in law, for the line proposed by Nova Scotia.

Mr. Chairman, I wish to turn now to the question of economic considerations affecting the equity of the result. Nova Scotia has made much of the Laurentian

Sub-basin although it wants ever so much to say that it was Newfoundland and Labrador that is making an issue out of the Laurentian Sub-basin.

The Laurentian Sub-basin emerged in Nova Scotia's phase two Counter-Memorial with a claim that the Newfoundland and Labrador line placed virtually the entire sub-basin on the Newfoundland and Labrador side. And the evidence for this was an impressionistically shaded area on figure 40 from the Nova Scotia phase two Counter-Memorial.

This depiction itself is somewhat mystifying. It is headed "approximate location", so Nova Scotia must be claiming that it is not necessarily accurate. So it must have been one of those coincidences that Professor Saunders was talking about that the area is colored so as to make it appear that the Nova Scotia -- that the Newfoundland and Labrador line would encompass most of the sub-basin.

It appears from the sketch the shading follows the 20 kilometre line, but no information is given either of a definition of the sub-basin, nor why that contour was followed. Why not a 16 kilometre, or an 18 kilometre contour? Although neither of those would have given the same impression about the Newfoundland and Labrador line.

And the information provided about the sub-basin was equally opaque. Nova Scotia says that, I quote, "The current state of exploration information does not permit detailed precise location of resources within that structure." And last week Mr. Bertrand conceded that the evidence is sparse. He referred to a well being drilled in the French corridor, but he did not mention -- I think it was Mr. Willis did earlier in the week, that the well had come up dry.

Now, Mr. Chairman, the law of maritime boundary delimitation has recognized that the location of resources is a factor that can be taken into account in determining a line, or checking the equity result. But, of course, it also recognizes that that must be treated with caution. What may be regarded as prospective today may not be regarded as prospective tomorrow. The Tribunal has not been provided with any information about the state of prospectivity in the general area between the claims. Indeed it has not been provided with such information in respect of the Laurentian Sub-basin.

To determine the location of a boundary on the basis of where one side says resources may possibly be located in the future would be to be guided by speculation and not by law. Two, five or ten years from now, the Laurentian Sub-basin may be forgotten, and talk may be of some other

area. In such circumstances, delimitation would have been based on a completely unreliable premise.

And that, Mr. Chairman, is why maritime boundary law places limited weight on economic considerations, and then only in respect of known or ascertainable resources. And of course, we are not dealing here with an established fishery, it's not an area of established resources that are being, or could be exploited, it simply does not warrant being taken into account by the Tribunal.

Mr. Chairman, I'm now at the final consideration that in our view should be taken into account by the Tribunal in assessing the equity of the result of the Newfoundland and Labrador line. Our line is constructed on the basis of geography. We have discussed over the past week some of the questions of judgment that have to be taken into account in considering that geography, in determining coasts, coastal fronts, and the like.

Now we have constructed our line on the basis of the coastal fronts and directions identified in our arguments. And we think that we have assessed the geographical framework and the geography of the area correctly. And, we are reinforced in this view because if even if different coastal directions are taken within that area on a more macro-geographical scale, the results change little.

Let me demonstrate this. But in showing this, Mr. Chairman, I want to be clear. Because I know my friends have the opportunity to speak on Wednesday. The lines I will show are not, I repeat, not alternative boundaries proposed by Newfoundland and Labrador. They are indications that the Newfoundland and Labrador line properly reflects the coastal geography of the area, and thus, is a line drawn in accordance with the law.

Let me start with the first scenario. The line in the inner concavity is drawn as a bisector of the coastal front from Money Point to Scatarie Island, and from the coastal front from Cape Ray to Lamaline Shag Rock. This gets rid of the direction change that was worrying Professor Saunders. The line in the outer area is a bisector of the coastal front of the south coast of Newfoundland, from Cape Ray to Cape Race, and of the Nova Scotia coast from Scatarie to Cape Sable. No one can accuse us of ignoring the coast of Nova Scotia. The resulting line is to the east of the Newfoundland and Labrador line at the closing line, and to the west of the line in the outer area.

A second scenario. This involves using the same bisector in the inner concavity as the previous scenario, and joining it at the closing line to a bisector of the outer coastal wings. And such a line lies to the east of

the Newfoundland and Labrador line, particularly in the outer area. And of course, the reason for that is obvious, it makes no adjustment for coastal direction change. We've eliminated the coastal direction change in the inner area and there's no adjustment for it.

Let me turn to a third scenario. Again, the same line in the inner concavity. But the outer area assumes the amputation of the coast from Lamaline Shag Rock to Cape Race raised by Mr. Legault last week. As a result, the outer area has to be determined on the basis of a bisector of the inner macro-geographical coast line from Cape Ray to Lamaline Shag Rock, with the surviving Nova Scotia coastal wing. We call this the "broken wing approach". In this case the line in the outer area is to the east of the Newfoundland and Labrador line in the north, and to the west in the south.

A final scenario, Mr. Chairman. And I am embarrassed to admit I am coming back to St. Paul Island. Because this scenario tests the consequences of Nova Scotia's contention that St. Paul Island should be given full weight, and the coast of Nova Scotia continued down to Cape Sambro. And refashioning Professor Crawford's somewhat less palatable metaphor, we have dubbed it "St. Paul's cake and ice cream."

Now, as you can see, in the inner concavity, the line

is a bisector of the coastal directions from Cape Ray to Lamaline Shag Rock on the Newfoundland side, of St. Paul to Scatarie Island on the Nova Scotia side. And in the outer area, the line is the bisector of the outer wings, with the Nova Scotia outer wing being extended down to Cape Sambro.

Mr. Chairman, all of these lines show that if incidental or distorting features are ignored, if broad coastal directions are taken as the basis for constructing a line, then the results achieved are remarkably similar. Whether the full coastal lengths are taken into account, or whether the coasts are more abbreviated. But, of course, they all differ from equidistance, because they are not driven by particular or often distorting features. And that, of course, too, answers the justification for using such coastal fronts. They more accurately reflect the geography of the area.

And although those lines deviate in different ways than Newfoundland and Labrador line, in fact, in our view, they reinforce it. They show that the Newfoundland and Labrador line is a line that is properly constructed in accordance with the geography of the area. And thus is constructed by the proper application of the principles of international law governing maritime boundary delimitation.

And Mr. Chairman, that concludes the presentation on this aspect of the case. And with your permission, I will now proceed to make a few closing remarks.

Mr. Chairman, Members of the Tribunal, it is now time to bring the oral presentation of Newfoundland and Labrador in phase two of this arbitration, to a close.

You have before you, I believe, a comprehensive treatment of the Newfoundland and Labrador case. We have presented to you a line that divides the offshore area of Newfoundland and Labrador, and Nova Scotia, that is drawn in accordance with the principles of international law governing the delimitation of maritime boundaries. That is what the Terms of Reference mandate, and that is what is provided for in the agreement of the Government of Canada and the Province of Newfoundland and Labrador, in the Atlantic Accord.

The process, as I said this morning, is simply a culmination of what was agreed to by the Province and the Federal Government. What was agreed was that the boundary in the offshore with another province would be settled by negotiation, and if not by negotiation, then by arbitration. And, of course, it is the same in respect of Nova Scotia. Under its Accord, as well, ultimately the issue of the boundary with a neighbouring province was to be settled by arbitration in accordance with the

principles of international maritime boundary law.

Now, Nova Scotia has, perhaps understandably, sought both in this phase and in the last phase, to use this process to support the line in its legislation. But this long and expensive process was not established just as a means of imposing on Newfoundland and Labrador the line that is set out in the Nova Scotia legislation. The test of any line is whether it has been drawn on the basis of the principles of international law governing the delimitation of maritime boundaries.

We are confident that you, as a Tribunal, will apply those principles of international law as the Terms of Reference require. But we have noted that throughout this case you have been invited to do much more. Be pioneers, you were told. Chart the new waters of the international law for the delimitation of maritime entitlements in respect of management rights and revenue sharing. Be bold, creative, be fearless. No, Mr. Chairman, just apply the law. That will do very well, thank you.

You have been invited to endorse the new law of Article 76 in the line of sight theory for determining relevant coasts in the relevant area. Now, Mr. Chairman, there's no need to do. The existing law relating to the determining coastal projections and relevant areas has been developing incrementally, and not without difficulty

to be sure. But there is no need for the novel and the unprecedented. And, of course, at the same time, there is no need to determine the outer limit of Canada's continental shelf. The Canadian Government will no doubt do that in due course.

And you have been invited to do more than this. To take the law of maritime boundary delimitation as it has been developed, and turn it on its head. To turn the limited and qualified reliance on conduct in Tunisia-Libya, into the sine qua non of maritime delimitation. So that conduct trumps geography. This, of course, would entail a massive rewriting of the law of maritime delimitation, as Mr. Willis has pointed out. Of course, the place of geography in maritime delimitation is a epitomized by the developing requirement discussed today to test the line by the provisional application of equidistance. Equidistance is first and foremost a geographically based method. If conduct is more important than geography, does this mean that delimitation is to now be tested by provisional conduct line? No, Mr. Chairman, there is no need to follow that route.

And there is, of course, the more subtle sub-text of invitation to apportion. To take account of the size and extent of the offshore areas of each of the provinces, and draw a line that apportions.

Not a decision based on just and equitable shares, but providing just and equitable shares, nevertheless. The code, I think, in the Nova Scotia written pleadings, was the term "squeezed". It was meant to signify that Nova Scotia was potentially disadvantaged and it needed an appropriate share of the resources. But no, Mr. Chairman, there is no need to apply the new law of squeeze unless it fits the old law of cut-off or non-encroachment, concepts about which Nova Scotia seems much less enthusiastic.

And on a broader scale, you're being asked to do much more than that. Effectively, you're being asked to do what you explicitly refused to do in phase one. For as I mentioned this morning, you're not being asked to find that the line proposed by Nova Scotia is justified on the basis of some standard in the law of maritime boundary delimitation in which the conduct of parties plays a supporting role. You're not being asked to endorse the Nova Scotia line because it represents a modification of some method of delimitation in the light of the parties' conduct. You're being asked to draw a line because it is said the line exists because of conduct, and essentially conduct alone.

Mr. Chairman, it would be a mockery of this arbitration process if, after the decision in phase one, that the Nova Scotia line was not binding on Newfoundland

and Labrador as a matter of agreement, we were to find that the very same line was nevertheless binding on Newfoundland and Labrador by virtue of the application of a standard less stringent than that of agreement. We are confident, therefore, that the Tribunal will not accept Nova Scotia's invitation to undo its phase one decision.

And there is a final invitation made to you by Nova Scotia, Mr. Chairman. That relates to the decision of the Court of Arbitration in Canada-France, and to a certain extent, to the decision of the Chamber in Gulf of Maine. These were important arbitrations for Canada. They were important victories for Canada. The Gulf of Maine case was an important victory for Nova Scotia and for the communities in southwest Nova Scotia. But you are being invited to undo them. To ignore their reasoning, to avoid applying their reasoning even where the geography or other relevant factors are similar, if not identical.

Now this, of course, we understand, places the Tribunal in a delicate position, and in the first round we were tempted to provide the Tribunal with our views on how it should approach those prior decisions, particularly, the decision in Canada-France. Mr. Colson, today, gave another example of how tribunals have got to deal with this issue. And the approach we have outlined is, we think, consistent with what other tribunals in similar

situations have done. But it is not simply a question of giving respect to the actual decision and its reasoning. It has implications for what you do, where you draw the line.

If you draw a line that is, in fact, contrary to what was done in these cases, or a line whose placement indicates that the approach or reasoning of these cases was wrong, then you will have cast doubt on the very delimitations that those cases effected. And a decision on delimitation between provinces should not and need not, we say, have such drastic implications.

So Mr. Chairman, we would like to issue our own invitation to you and the members of the Tribunal. We invite you to resist the siren call to be a pioneer, resist the siren call to embrace new concepts hitherto unknown in the law of maritime delimitation, and resist the siren call to invert the law of relevant circumstances or to apportion instead of delimit. And we invite you, as well, to resist the invitation to reverse the result of your decision in phase one, or to undermine those decisions on maritime boundary delimitation affecting Canada and having implications for the area you are to delimit.

Finally, Mr. Chairman, let me conclude by summarizing very briefly the issues before you. Earlier today, I

identified five key issues. They related to basis of title, the relevant coasts and area, relevant circumstances and equitable principles and criteria, the method of delimitation, and, of course, the determination of the line and the equity of the result. I identified then the fundamental differences between the parties.

In respect to the basis of title, in our view, the basis of title is to be found within the body of international law governing maritime delimitation, deriving from the right of a state to the maritime territory that extends from its coasts. The Tribunal should, therefore, reject Nova Scotia's arguments that title is to be derived in this case from entitlements under the Accords and the implementing legislation.

In respect of the relevant coasts and the relevant area, they are to be determined by reference to the coasts that face the area to be delimited, as we've set out in our pleadings. Nova Scotia's definition of coasts and area, based on Article 76 and the line of sight theory, cannot be accepted.

In determining relevant circumstances, primacy must be given to geography, and account must be taken of factors such as non-encroachment, the avoidance of cut-off and proportionality. Weight should not be given to incidental and distorting features. Nova Scotia's elevation of

conduct over geography cannot be supported and its reliance on extraneous factors such as resource apportionment or other delimitation outside the area has to be rejected.

In selecting the appropriate methods of delimitation, account must be taken of the fact that the delimitation is occurring in areas where the geography changes, and thus methods must be chosen that are appropriate to the particular geographic configuration of each area. In this regard, the unidirectional line proposed by Nova Scotia based on conduct rather than geometrical method, simply cannot be appropriate in an area of such geographical shift and change.

And finally, the line constructed in accordance with the appropriate methods must meet the test that it produces an equitable result, or does not cause inequity, both in terms of proportionality and other factors. In this respect, the Newfoundland and Labrador line meets the test of equity, and the Nova Scotia line, in our submission, does not.

In light of this, Mr. Chairman, we are confident that once you have addressed these key issues you will conclude that applying the principles of international law governing the delimitation of maritime boundaries, that the line dividing these respective offshore areas of

Newfoundland and Labrador and Nova Scotia is the line defined by the coordinates set out in the Phase Two Memorial of Newfoundland and Labrador at paragraph 261, and as Agent for Newfoundland and Labrador, I hereby renew the submission set out in that paragraph.

It remains only for me, Mr. Chairman, Members of the Tribunal, to reaffirm all of the arguments and submissions in both our written and oral pleadings and to thank the Tribunal for the attentive and courteous attention you have given me and my colleagues, both today and in all phases of this arbitration.

Mr. Chairman, Members of the Tribunal, if there are no questions, that concludes the oral presentation of Newfoundland and Labrador.

CHAIRMAN: Thank you very much, Professor McRae.

MR. FORTIER: Mr. Chairman, could I respectfully ask you to start the Nova Scotia rebuttal at 9:00 on Wednesday morning? Not so as to go beyond 4, because the Agent for Nova Scotia has a plane to catch at 5:15, and I'd be grateful if we could go from -- if necessary, go from 9 to 4, if --

CHAIRMAN: That's fine.

MR. FORTIER: Thank you very much.

CHAIRMAN: Nine on Wednesday.

MR. FORTIER: Thank you.

(Adjourned)

Certified to be a true transcript of the proceedings of this Arbitration, as recorded by me, to the best of my ability.

Reporter

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