

CHAPTER VIII CONCLUSIONS AND SUBMISSION

309. Whether "the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia has been resolved by agreement" depends on whether the parties have concluded a legally binding agreement to resolve the matter. The parties are in agreement on this.
310. The test for determining whether such an agreement has been concluded is whether the parties intended to enter into a legally binding agreement. Nova Scotia has failed to provide evidence of such intent.
311. In considering the parties' intent, the Tribunal must take into account that the parties are provinces that operate within the framework of the law of Canada. The intent of the government representatives who are alleged to have entered into a legally binding agreement must be considered in the light of the legal framework in which they operated. Nova Scotia has failed to address the implications of the law of Canada for the claim that there is a binding agreement between Newfoundland and Labrador and Nova Scotia.
312. The application of the domestic law of Canada to determine whether the two provinces entered into a legally binding agreement is required under the Terms of Reference, whether that result is reached directly or by *renvoi* through the relevant principles of international law. By artificially focusing solely on the principles of international law governing the conclusion of treaties, Nova Scotia has failed to apply the applicable law in accordance with the Terms of Reference.
313. No legally binding agreement was ever entered into by Newfoundland and Labrador and Nova Scotia to determine the boundary in their respective offshore areas. Nova Scotia is unable to provide a written document evidencing an agreement and is forced to rely on statements taken out of context and on events subsequent to date of the alleged agreement to prove its terms.

314. The negotiations in 1964, out of which Nova Scotia seeks to find a "1964 Agreement," resulted in nothing more than a proposal to the government of Canada as part of the provinces' position on ownership of the offshore. The boundaries contained in the proposal on offshore ownership related primarily to the area inside the Gulf of St. Lawrence, and boundaries outside the Gulf were never defined with any precision.
315. The proposal of the provinces was dependent on federal acceptance and constitutional implementation. However, the federal government rejected the position of the provinces, and the proposal came to nothing.
316. The proposal was renewed again in 1972, but was again rejected by the federal government.
317. The subsequent conduct of Newfoundland and Labrador in its dealings with the other Atlantic provinces and the federal government, or in issuing permits in respect of the offshore, do not disclose any antecedent intent that the proposal in 1964 was in fact a legally binding agreement.
318. Furthermore, the federal-provincial Accords and the implementing legislation, which provide for the line to be determined by arbitration, are inconsistent with there being any agreement between Newfoundland and Labrador and Nova Scotia resolving the boundary.
319. Although Nova Scotia's arguments based on acquiescence and estoppel are legally irrelevant to the question of whether a line has been resolved by agreement, in fact, the conduct of Newfoundland and Labrador does not constitute acquiescence in the 135° line claimed by Nova Scotia. Nor does the conduct of Newfoundland and Labrador give rise to any estoppel.
320. Thus, Nova Scotia has failed to discharge the burden placed on it in Phase One of this arbitration to show that the line dividing the respective offshore areas of Newfoundland and Labrador and Nova Scotia has been resolved by agreement.

321. Accordingly, Newfoundland and Labrador renews its submission that this Tribunal determine that the line dividing the respective offshore areas of Newfoundland and Labrador and Nova Scotia has not been resolved by agreement.

All of which is respectfully submitted.

A handwritten signature in black ink, appearing to read "D. McRae", is written above a horizontal line.

Donald M. McRae
Agent for Newfoundland and Labrador

February 15, 2001