

## CHAPTER II THE QUESTION BEFORE THE TRIBUNAL

8. The question before the Tribunal is set out in Article 3 of the Terms of Reference.
  - 3.1 Applying the principles of international law governing maritime boundary delimitation with such modification as the circumstances require, the Tribunal shall determine the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia as if the parties were states subject to the same rights and obligations as the Government of Canada at all relevant times.)
9. The wording of this question is derived from section 6.2 of the *Canada-Newfoundland Act* which gave effect to the 1985 *Atlantic Accord* between Canada and Newfoundland and Labrador, and section 48.2 of the *Canada-Nova Scotia Act* which gave effect to the 1986 *Nova Scotia Accord* between Canada and Nova Scotia (the “implementing legislation”).
10. The “respective offshore areas” of Newfoundland and Labrador and Nova Scotia are those areas defined in section 2 of the *Canada-Newfoundland Act* and in section 2 of the *Canada-Nova Scotia Act*. These offshore areas extend from within the Gulf of St. Lawrence to the outer limits of Canada’s continental margin. Both Acts provide that if there is a dispute between the provinces over the location of any line dividing their offshore areas, then in the absence of an agreed solution through negotiation, the federal Minister may establish an arbitration tribunal to resolve the matter. As stated in Article 1.1 of the Terms of Reference, there exists a dispute between Newfoundland and Labrador and Nova Scotia within the meaning of the implementing legislation. The dispute has not been resolved through negotiation and is now before this Tribunal.
11. In accordance with Article 3.1 of the Terms of Reference, the line to be determined by the Tribunal is the line dividing the offshore areas of Newfoundland and Labrador and Nova Scotia, extending from the inner limits of the provinces’ respective offshore areas within the

Gulf of St. Lawrence to the outer limits of their respective offshore areas coinciding with the outer limits of Canada's continental margin.

12. The determination of the line by the Tribunal is divided into two phases. Article 3.2 provides:

3.2 The Tribunal shall, in accordance with Article 3.1 above, determine the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia in two phases.

(i) In the first phase, the Tribunal shall determine 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.

(ii) In the second phase, the Tribunal shall determine how in the absence of any agreement the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and Labrador and the Province of Nova Scotia shall be determined.

13. Thus, the mandate of the Tribunal in Phase One is to determine whether the line dividing the respective offshore areas of Newfoundland and Labrador and Nova Scotia "has been resolved by agreement."
14. At the meeting between the Tribunal and the parties on 5 September 2000, counsel for Nova Scotia indicated that the division of the arbitration into two phases was regarded by Nova Scotia as "crucial".<sup>5</sup> For its part, Newfoundland and Labrador has always seen the division into two phases as unnecessary.

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<sup>5</sup>Transcript of Meeting of the Arbitration Tribunal (September 5, 2000), at 10, 13, Doc. # 118.

15. The position of Newfoundland and Labrador is that there is no agreement resolving the line dividing the offshore areas of Newfoundland and Labrador and Nova Scotia. Nova Scotia takes the opposite position although it has never explained its case in detail or identified the specific document or documents which it claims constitute an agreement binding on Newfoundland and Labrador.
16. Since Article 4.1 of the Terms of Reference provides for the simultaneous filing of written pleadings, Newfoundland and Labrador must anticipate a case that is yet to be articulated by Nova Scotia. Thus, this Memorial has to proceed on the basis of assumptions about what the Nova Scotia case might be and must necessarily be of a preliminary character.
17. For the purpose of this Memorial, Newfoundland and Labrador assumes that the agreement alleged by Nova Scotia is based on a set of lines originally proposed in 1964 by the Atlantic Provinces in support of their claim for offshore ownership. This apparently was the position of Nova Scotia officials in 1992.<sup>6</sup> Moreover, on May 31, 2000, in a statement to the Nova Scotia legislature, Premier Hamm said that "the line defining provincial jurisdiction on the sub-basin was drawn back in 1964."<sup>7</sup> The Nova Scotia Petroleum Directorate in its web site refers to a "consensus agreement on inter-provincial boundaries" reached by the Atlantic Provinces in 1964 which became known as the "Stanfield Line."<sup>8</sup>
18. A full response to the Nova Scotia position will be made in later pleadings once Nova Scotia has stated its case.

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<sup>6</sup> Letter from P. Carey Ryan, Nova Scotia ("NS") to M. Sheppard, Newfoundland and Labrador ("N&L") (November 3, 1992), Doc. # 112.

<sup>7</sup> NS House of Assembly Debates (May 31, 2000), Doc. # 116.

<sup>8</sup> NS Petroleum Directorate Fact Sheet and Press Release (May 31, 2000), Doc. # 117.