

## PART II: THE FACTS

### A. Introduction

1. Beginning in the late 1950s, the coastal Provinces of Canada, including the five East Coast Provinces of Nova Scotia, Newfoundland and Labrador, Québec, New Brunswick and Prince Edward Island, engaged in a long-running dispute with the Government of Canada regarding the constitutional status of the continental shelf. Provincial claims varied from the assertion of full provincial jurisdiction over the mineral resources of the continental shelf to requests for a share in economic benefits derived from resources under federal jurisdiction. This dispute led to three references to the Supreme Court of Canada,<sup>1</sup> resulting in decisions confirming, *inter alia*, federal jurisdiction over the mineral and other natural resources of the continental shelf.<sup>2</sup>
2. For the Provinces of Newfoundland and Nova Scotia, the dispute culminated in the conclusion of the *Canada-Newfoundland Accord* and the *Canada-Nova Scotia Accord* of the 1980s,<sup>3</sup> by which the federal and provincial governments agreed to share management authority over offshore petroleum development and the benefits derived from such development.<sup>4</sup>

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<sup>1</sup> *Reference Concerning the Ownership of and Jurisdiction Over Offshore Mineral Rights*, [1967] S.C.R. 792 (the “British Columbia Reference”); *Reference Concerning Property In and Legislative Jurisdiction Over the Seabed and Subsoil of the Continental Shelf Offshore Newfoundland*, [1984] 1 S.C.R. 86 (the “Newfoundland Reference”); *Reference Concerning the Ownership of the Bed of the Strait of Georgia and Related Areas*, [1984] 1 S.C.R. 388 (the “Strait of Georgia Reference”).

<sup>2</sup> These decisions concerning the shelf offshore of British Columbia and Newfoundland, as well as in the Strait of Georgia (between the British Columbia mainland and Vancouver Island) are not relevant to this arbitration except insofar as they confirmed federal jurisdiction over the mineral and other natural resources of the continental shelf in those areas.

<sup>3</sup> See Part I A, above.

<sup>4</sup> Other than Nova Scotia and Newfoundland, none of the East Coast Provinces has yet concluded an offshore Accord with the federal government. All of them, however, continue to assert authority over the mineral resources of the continental shelf for purposes of licensing petroleum activities. The practice of the other East Coast Provinces (New Brunswick, Prince Edward Island and Québec) with respect to management of their offshore is discussed in Part II G and following, below.

3. In the context of this constitutional dispute, the East Coast Provinces realised early on that they should first of all agree amongst themselves as to their offshore boundaries, in order to present a strong and united front vis-à-vis the Government of Canada and so as to define the extent of their respective claims, for the purpose of offshore exploration and development. Accordingly, the East Coast Provinces entered into discussions, in the late 1950s and early 1960s, with the intention of concluding an agreement among themselves regarding the boundaries of their respective offshore areas.
4. These negotiations were successful and, on September 30, 1964, the Premiers (Heads of Government) of Nova Scotia, Newfoundland, New Brunswick and Prince Edward Island concluded an agreement on the maritime boundaries dividing their respective offshore areas, an agreement that was later expressly affirmed and acceded to by Québec. The result was an agreement among all regional jurisdictions concerning the boundaries of their offshore areas. As indicated in Part I, that agreement is known as the “*1964 Agreement*”.
5. Since that time, the boundaries agreed and established in the *1964 Agreement* have been respected, applied and relied upon by all of the East Coast Provinces, both in their dealings with each other and with the federal government, and for the purpose of provincial grants of rights to third parties, through offshore exploration permits. This includes Newfoundland, which has issued permits that conform to and, in certain instances, about the boundaries established in the *1964 Agreement*. For its part, until it initiated the present dispute, Newfoundland never sought to disavow the *1964 Agreement*. This is not surprising, since Newfoundland participated actively in the process that led to the *1964 Agreement*, has consistently applied the boundaries established in the Agreement and has benefited enormously over the years from the stability afforded by the Agreement.
6. Even today, notwithstanding Newfoundland’s self-serving attempt to re-draw the boundaries it agreed to in 1964, all of the other parties to the *1964 Agreement* continue to respect and rely upon those boundaries. It is this Agreement that

Newfoundland now refuses to recognise and asks the Tribunal, in effect, to declare void.

7. This Part of Nova Scotia's Memorial sets out the facts surrounding the conclusion of the *1964 Agreement* and its subsequent application by Newfoundland and the other East Coast Provinces, both in agreements with each other and with the federal government, and in their consistent conduct and practice. Part II B traces the key events leading up to and surrounding the conclusion of the *1964 Agreement*, and examines the documentary evidence of each step in that process. Part II C describes the actual boundaries established in the *1964 Agreement*. Parts II D to II I discuss various aspects of the conduct of Newfoundland and the other Provinces subsequent to conclusion of the *1964 Agreement*, providing additional evidence of the parties' application of and reliance on the boundaries established in that Agreement. Part II J provides a summary of the facts of the case.

**B. In 1964 The Five East Coast Provinces Concluded An Agreement Dividing Their Respective Offshore Areas**

8. The *1964 Agreement*, including the line dividing the offshore areas of Newfoundland and Nova Scotia, is evidenced by numerous contemporaneous records that have been obtained by Nova Scotia, for the purpose of this arbitration, from public sources in several Provinces, including Newfoundland. In this Part of Nova Scotia's Memorial, the key events leading up to and surrounding the conclusion of the *1964 Agreement* are reviewed and the evidence of those events is described; from the initial provincial discussions on submarine mineral rights and boundaries during the period 1958 to 1964, to the conclusion of the *1964 Agreement* on September 30, 1964, to the subsequent offer to Québec to accede to the Agreement, and Québec's acceptance, to the formal presentation of the *1964 Agreement* to the Government of Canada in October 1964.

i) **Initial Consideration Of Mineral Rights And Boundaries: 1958-1964**

9. In 1958, at a Conference of Premiers of the Atlantic Provinces, Premier Stanfield of Nova Scotia raised the issue of provincial claims to jurisdiction over submarine mineral rights.<sup>5</sup> The matter was considered further at a meeting of the Atlantic Premiers in 1959,<sup>6</sup> at which the Premiers were presented with a legal opinion (Annex 10) advising them that an argument could be made “that the Maritime Provinces, Newfoundland and Québec own the submarine subsoil under the continental shelf which stretches from the shore to about two hundred miles from Newfoundland.”<sup>7</sup> Further discussions on the issue were held in 1960<sup>8</sup> and 1961.<sup>9</sup> In April 1964, Premier Stanfield raised the question at a Conference of Federal and Provincial First Ministers.<sup>10</sup>
10. From discussions among the Provinces during this period, the fundamental position that emerged, and that remained their position throughout the period leading up to the conclusion of the *1964 Agreement*, was that the East Coast Provinces were entitled to the ownership or control of the minerals of the

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<sup>5</sup> Annex 8: “Department of Attorney General, Interdepartment Memo, From: Deputy to Attorney General” (22 April 1959) at 1.

<sup>6</sup> Annex 9: “Text of remarks – Hon. R. L. Stanfield, Premier of Nova Scotia” at 6, attached to Premiers’ Conference “Agenda” (22 September 1959).

<sup>7</sup> Annex 10: G.V. LaForest, “Report On The Rights of the Provinces Of Nova Scotia, New Brunswick and Prince Edward Island To The Ownership Of Adjacent Submarine Resources” (16 September 1959) at “CONCLUSIONS.”

<sup>8</sup> Annex 11: “Atlantic Premiers’ Conference, Halifax, N.S., September 21, 1960, R.L. Stanfield, Premier of Nova Scotia” at 6. See also Annex 12: Press Release, “Atlantic Premiers’ Conference, Halifax, Nova Scotia” (21 September 1960) at 2.

<sup>9</sup> Annex 13: Letter from B. Graham Rogers, Director of Transportation and Geological Officer, Province of Prince Edward Island to J.A.Y. MacDonald, Deputy Attorney General, Province of Nova Scotia (12 August 1961).

<sup>10</sup> Annex 14: Letter from John A.Y. MacDonald, Deputy Attorney General, Province of Nova Scotia to J. P. Nowlan, Deputy Minister of Mines, Province of Nova Scotia (12 June 1964) at 2. “First Ministers” refers to the Prime Minister of Canada, the Premiers of the ten Provinces and, in more recent years, the leaders of the two federal Territories (the Yukon and the Northwest Territories).

continental shelf adjacent to their respective shores, whether as a matter of law or equity, or on political grounds.<sup>11</sup>

11. Early in this process, the East Coast Provinces realised that they should first of all address and resolve the delimitation of their respective offshore boundaries. It was understood that, while the issues of jurisdiction and boundaries were separate, they were nonetheless intimately related: an agreement regarding **boundaries as between the Provinces** was considered essential to any assertion by them of **jurisdiction over submarine mineral resources** (or any political agreement) vis-à-vis the Government of Canada, and to any granting of rights to industry.
12. Accordingly, at a meeting of the Attorneys-General of the Atlantic Provinces, in Halifax, on June 28, 1961, "it was agreed that we [the Provinces] **should first of all agree among ourselves upon inter-provincial boundaries...**" (emphasis added).<sup>12</sup> The Attorney-General of Nova Scotia, R. A. Donahoe, undertook to his provincial counterparts to have his Department of Mines prepare "a plan and descriptions delineating the boundaries between the several Provinces of Quebec, Newfoundland, New Brunswick, Prince Edward Island and Nova Scotia."<sup>13</sup> As discussed more fully below, the map and descriptions of interprovincial boundaries that were prepared as a result, entitled *Notes Re: Boundaries of*

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<sup>11</sup> In particular, the possibility of political settlement had been raised in the legal opinion presented to the Atlantic Premiers in 1959. See Annex 10 at "CONCLUSIONS", *supra* note 7. Premier Stanfield's presentation at the Federal-Provincial Conference in April 1964 also stressed that there should be "recognition of provincial proprietorship without reference to the courts." See Annex 15: J. Saywell, ed., *Canadian Annual Review for 1964* (Toronto, University of Toronto Press, 1965) at 66-67.

<sup>12</sup> Annex 16: "Department of Attorney General, Interdepartment Memo, from: Deputy to: Attorney General" (11 May 1962) at 2.

<sup>13</sup> Annex 17: Letter from John A.Y. MacDonald, Deputy Attorney General, Province of Nova Scotia to B. Graham Rogers, Geological Officer, Department of Industry and Mineral Resources, Province of Prince Edward Island (7 August 1961).

You will recall also, that arising out of a meeting of the Atlantic Province Premiers, you called a meeting of the Attorneys General in June 1961, at which time **it was agreed that we should first of all agree among ourselves upon inter-provincial boundaries**, assuming that all of the lands under the Bay of Fundy and Northumberland Strait and substantial parts of the Gulf of St. Lawrence were to be owned by the Provinces. At our request, Dr. Nowlan prepared a plan and a verbal description of suggested boundaries between the several provinces of Quebec, Newfoundland, New Brunswick, Prince Edward Island and Nova Scotia. I sent copies of this plan and descriptions to the Attorney General of Newfoundland, the Honourable Premier and Attorney General of New Brunswick and to Mr. B. Graham Rogers of the Department of Industry and Natural Resources of Charlottetown, who had attended the Halifax Conference representing the Attorney General of Prince Edward Island.

(our emphasis)

( **Annex 16:** "Department of Attorney General [Nova Scotia], Interdepartment Memo, from: Deputy to: Attorney General" (11 May 1962) at 2.)

*Mineral Rights as between Maritime Provincial Boundaries*<sup>14</sup> (“*Notes Re: Boundaries*”) (Annex 18), subsequently formed the basis of the boundary discussions among the Provinces throughout the process leading up to the conclusion of the *1964 Agreement* and was, in fact, incorporated into that Agreement.<sup>15</sup>

13. The *Notes Re: Boundaries* and accompanying map, which are discussed in detail in Part II C, below, were provided to the various Attorneys-General on August 7, 1961 along with a letter from the Deputy Attorney-General of Nova Scotia, John A. Y. MacDonald<sup>16</sup> (Annex 17). The *Notes Re: Boundaries* described the boundaries of the various Provinces by metes and bounds,<sup>17</sup> including by means of “midpoints” between opposing coastal features in the various Provinces. The *Notes Re: Boundaries* and map depicting the boundaries were presented to the Atlantic Premiers shortly thereafter, at a meeting held in Charlottetown, Prince Edward Island in August 1961.<sup>18</sup>
14. At some point prior to July 1964, the proposed boundaries were also provided to officials in the Québec Department of Natural Resources, who, by letter dated July 2, 1964, replied that the Minister of Natural Resources “is quite pleased with the idea of fixing the boundary between our provinces and he agrees with your present plan.”<sup>19</sup> (Annex 20) The July 2, 1964 letter from Québec also declared:

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<sup>14</sup> Annex 18: A copy of the original “*Notes Re: Boundaries*”. A more legible version is found in Annex 31 attached to the “Submission on Submarine Rights by the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland.” See *infra* note 41.

<sup>15</sup> See below, Part II B ii).

<sup>16</sup> See Annex 17, *supra* note 13.

<sup>17</sup> “Metes and bounds” refers to “... the boundaries or limits of a tract of land; *specif*: the boundaries of land established by reference to natural or artificial monuments along it (as a stream, ditch, fence, road) as distinguished from those established by beginning at a fixed starting point and running therefrom by stated compass courses and stated distances...” Annex 19: *Webster’s Third New International Dictionary*; 1986, s.v. “metes and bounds.”

<sup>18</sup> See Annex 13, *supra* note 9.

<sup>19</sup> Annex 20: Letter from P.-E. Auger, Deputy Minister, Department of Natural Resources, Province of Quebec to J.P. Nowlan, Deputy Minister, Department of Mines, Province of Nova Scotia (2 July 1964).

At the meeting in Halifax on the 28<sup>th</sup> June last, we undertook to request our Department of Mines to prepare **a plan and descriptions delineating the boundaries between the several Provinces of Quebec, Newfoundland, New Brunswick, Prince Edward Island and Nova Scotia.**

(...)

I am, accordingly, forwarding to you two copies of the map and the verbal descriptions, and I am sending a copy of this letter, along with one copy of the map and one copy of the verbal descriptions to the Attorney General of New Brunswick and the Attorney General of Newfoundland.”

(our emphasis)

(Annex 17: “Letter from John A.Y. MacDonald, Deputy Attorney General, Province of Nova Scotia to B. Graham Rogers, Geological Officer, Department of Industry and Natural Resources, Province of Prince Edward Island” (7 August 1961))



“We had your proposed descriptions transferred on to a plan and we find that all the projected boundary lines coincide almost exactly with the project prepared by the Boundary Commissioner of Quebec.”<sup>20</sup>

15. On September 23, 1964 the Attorneys-General of New Brunswick, Nova Scotia and Prince Edward Island met again, in Halifax, “to discuss the present situation with respect to submarine mineral rights”.<sup>21</sup> (Annex 21) After reiterating, *inter alia*, the position of the Atlantic Provinces concerning jurisdiction over submarine minerals, vis-à-vis the Government of Canada,<sup>22</sup> the meeting turned to the matter of interprovincial offshore boundaries. The official “*Memorandum of Meeting*”, which was provided as well to Newfoundland,<sup>23</sup> set out a number of agreed recommendations to the Governments of the Atlantic Provinces, among which were the following:

(...)

2. The meeting felt that it was desirable that the boundaries as between the several Atlantic Coast Provinces should be agreed upon by the Provincial authorities and the necessary steps should be taken to give effect to that agreement. In this respect, a plan was prepared by the Nova Scotia Department of Mines, setting forth graphically and by metes and bounds suggested boundary lines covering the Bay of Fundy, Northumberland Strait, the Gulf of St. Lawrence, including the Bay of Chaleur and the Strait of Belle Isle and Cabot Strait. These suggested boundaries have had the tentative approval of New Brunswick, Prince Edward Island, Newfoundland and Nova Scotia and, it is understood, are also

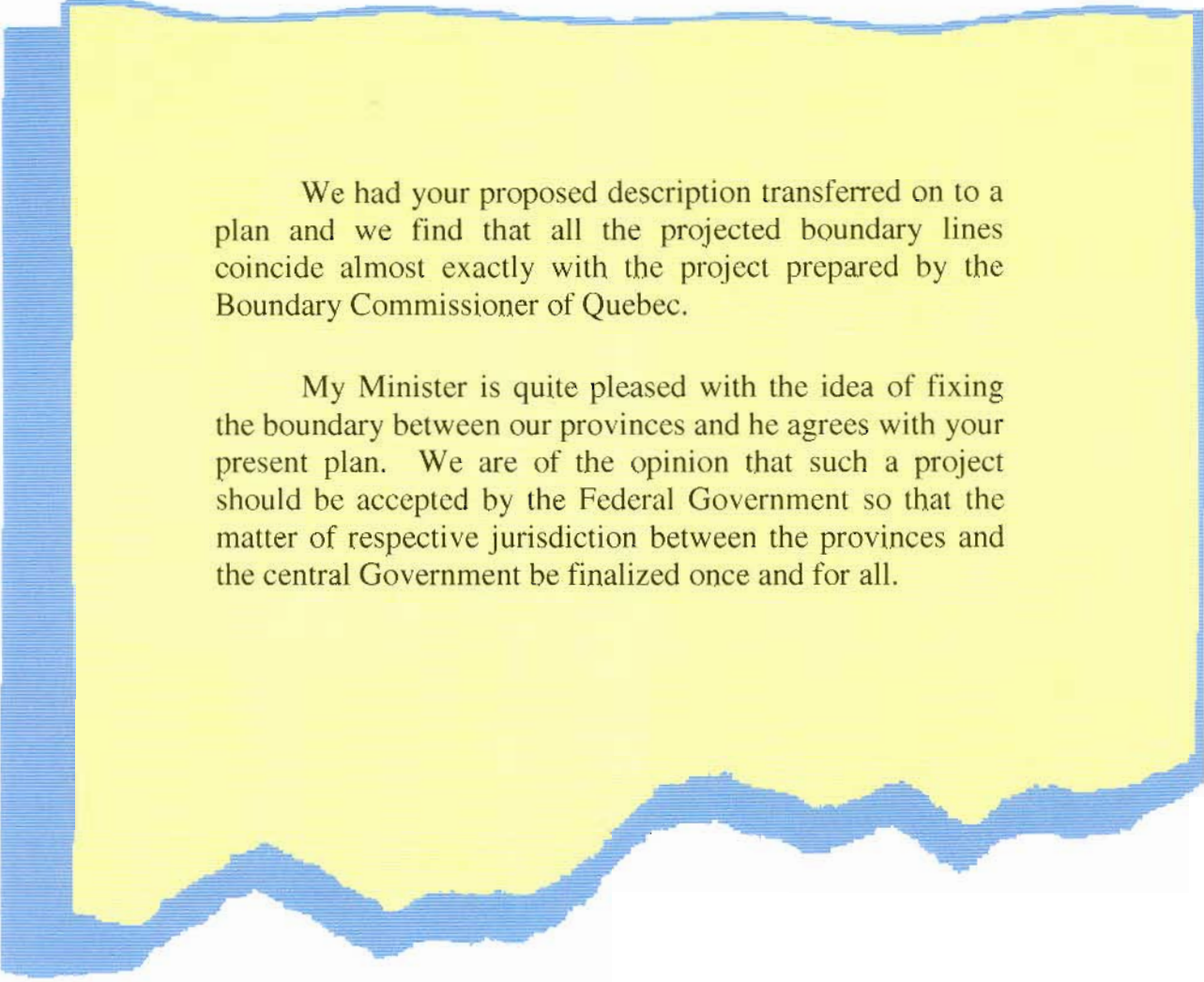
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<sup>20</sup> *Ibid.* (Annex 20).

<sup>21</sup> Annex 21: “MEMORANDUM OF MEETING the 23<sup>rd</sup> September, 1964, at which were present Mr. H.W. Hickman, New Brunswick, Mr. Graham Rogers, Prince Edward Island, Messrs. I.G. MacLeod, M.C. Jones and John A.Y. MacDonald, Nova Scotia” (hereinafter “*Memorandum of Meeting*”). Nova Scotia has found nothing in the files to explain Newfoundland’s absence from the meeting. In any event, as discussed in note 23 below, a copy of the “*Memorandum of Meeting*” was forwarded to Newfoundland.

<sup>22</sup> *Ibid.*, para. 1. (“The Provincial Governments are entitled to ownership and control of submarine minerals underlying coastal waters on legal, equitable and political grounds.”) (Annex 21)

<sup>23</sup> The “*Memorandum of Meeting*” was obtained by Nova Scotia from the Centre for Newfoundland Studies, the repository for the collected papers of former Newfoundland Premier Joseph Smallwood (hereinafter the “Smallwood papers”).



We had your proposed description transferred on to a plan and we find that all the projected boundary lines coincide almost exactly with the project prepared by the Boundary Commissioner of Quebec.

My Minister is quite pleased with the idea of fixing the boundary between our provinces and he agrees with your present plan. We are of the opinion that such a project should be accepted by the Federal Government so that the matter of respective jurisdiction between the provinces and the central Government be finalized once and for all.

(Annex 20: "Letter from P.-E. Auger, Deputy Minister, Department of Natural Resources, Province of Quebec to J.P. Nowlan, Deputy Minister, Department of Mines, Province of Nova Scotia" (2 July 1964) at 1)

acceptable to Quebec. It is recommended that these boundaries should have the more formal approval of the several Governments concerned. It is further recommended that Parliament be asked to define the boundaries as so approved by the Provinces, under the provisions of Section 3 of the British North America Act, 1871;

(...)

6. If agreement is reached by the Atlantic Provinces, an immediate approach should be made to the Province of Quebec, so that a united presentation might be made to the Federal authorities.<sup>24</sup>

(emphasis added)

16. These recommendations were acted upon exactly one week later, when, on September 30, 1964, the Premiers of the Atlantic Provinces concluded an Agreement regarding their respective offshore boundaries.

ii) **The Agreement of September 30, 1964**

17. On September 30, 1964, at a Conference of Premiers of the Atlantic Provinces held in Halifax, Premier Stanfield of Nova Scotia, Premier Smallwood of Newfoundland, Premier Shaw of Prince Edward Island and Premier Robichaud of New Brunswick concluded an agreement on the offshore boundaries between their Provinces. The *1964 Agreement* is evidenced in numerous documentary records, including: official minutes and other records from the September 30, 1964 Conference; correspondence between the Atlantic Premiers and the Premier of Québec, immediately afterward, seeking Québec's accession to the Agreement, and Québec's acceptance; and a Joint Submission made by the four Atlantic Provinces to the Prime Minister of Canada at a Federal-Provincial Conference held two weeks after the conclusion of the *1964 Agreement*, on October 14 – 15, 1964, setting out the terms of the *1964 Agreement* in detail. These constitute

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<sup>24</sup> *Ibid.*, paras. 2 and 6. Note also para. 5, which states that "the principles stated above with respect to inland waters would, and should, extend to coastal waters including, subject to International Law, the areas in the Banks off Newfoundland and Nova Scotia." (Annex 21)

unequivocal proof that, in the *1964 Agreement*, the line dividing the respective offshore areas of Newfoundland and Nova Scotia was determined by agreement of the two Provinces.

a) The Conference Of Premiers Of The Atlantic Provinces Of September 30, 1964

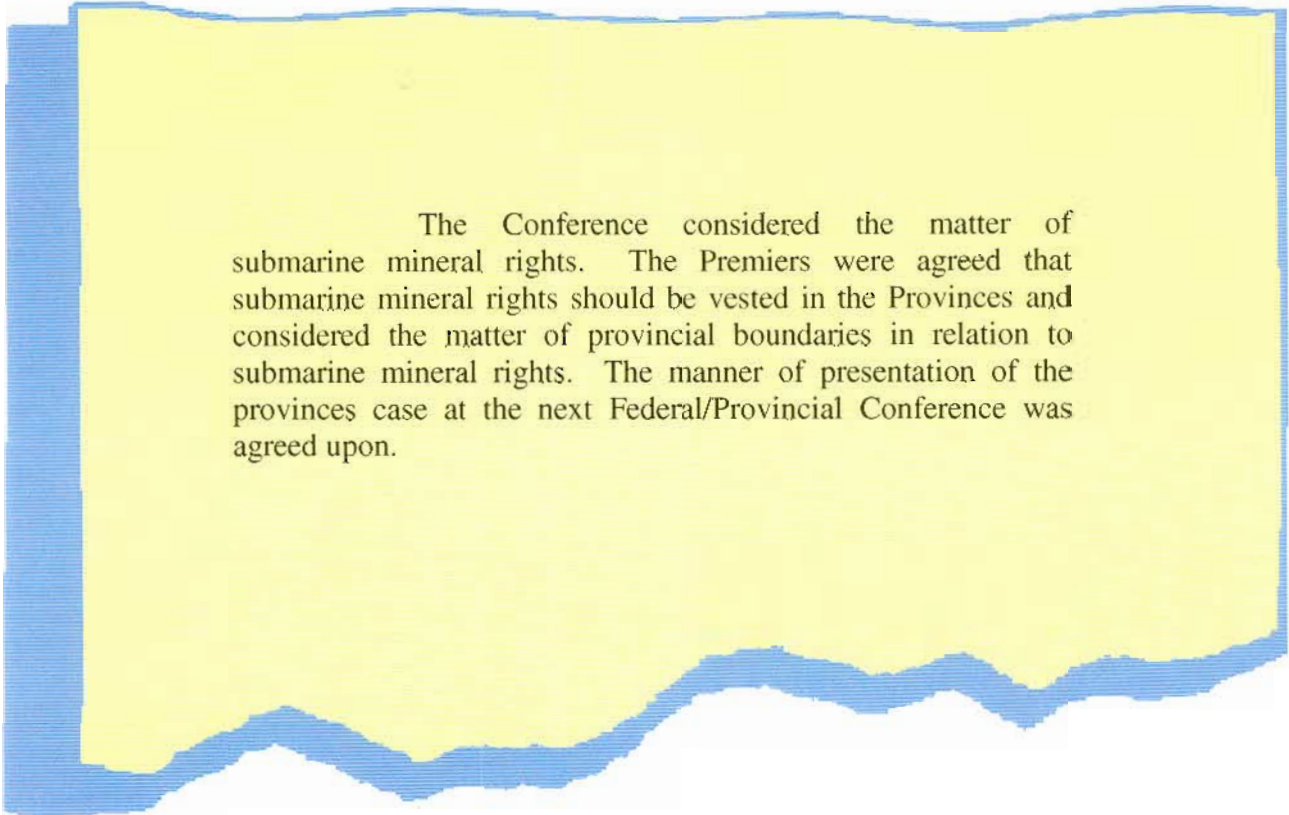
18. Proof of the *1964 Agreement* is found, first, in contemporaneous records of the Atlantic Premiers' Conference of September 30, 1964, which was, as mentioned, attended by Premier Smallwood of Newfoundland and Premier Stanfield of Nova Scotia, as well as by the Premiers of New Brunswick and Prince Edward Island.<sup>25</sup> (Annex 22) The second item on the agenda for the Conference of September 30, 1964 was "Submarine Mineral Rights and Provincial Boundaries"; this was divided (as the item itself suggests) into two issues: (a) "Constitutional questions"; and (b) "Agreed boundaries".<sup>26</sup> (Annex 23) In the joint *Communiqué* released at the conclusion of their Conference (Annex 24), and subsequently provided to Québec, the Atlantic Premiers declared that they "unanimously agreed" on both of these issues.<sup>27</sup>
19. As regards provincial claims to jurisdiction over submarine minerals, paragraphs 1 to 3 of the Premiers' *Communiqué* reiterated, *inter alia*, their traditional position "[t]hat the provincial governments are entitled to the ownership and control of submarine minerals underlying territorial waters including, subject to International Law, the areas in the Banks of Newfoundland and Nova Scotia, on

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<sup>25</sup> Annex 22: "Atlantic Premiers Conference, Halifax, Nova Scotia, September 30, 1964" (30 September 1964) at 1.

<sup>26</sup> Annex 23: "Atlantic Premiers Conference, Halifax, Nova Scotia, September 30, Agenda."

<sup>27</sup> Annex 24: *Communiqué* (30 September 1964). That Québec had the *Communiqué* before it at some point shortly after the Atlantic Premiers' Conference is evidenced by the use of the boundary descriptions in the *Notes Re: Boundaries* both in subsequent correspondence with Premier Lesage of Québec and in the *Joint Submission* to the Federal-Provincial Conference in October, 1964. These matters are discussed below, in Part IJ B ii) b) and c).



The Conference considered the matter of submarine mineral rights. The Premiers were agreed that submarine mineral rights should be vested in the Provinces and considered the matter of provincial boundaries in relation to submarine mineral rights. The manner of presentation of the provinces case at the next Federal/Provincial Conference was agreed upon.

(**Annex 22:** “Atlantic Premiers Conference, Halifax, Nova Scotia, September 30, 1964” (30 September 1964 at 1))

legal, equitable and political grounds.”<sup>28</sup> With respect to interprovincial offshore boundaries, the *Communiqué* declared the Premiers’ unanimous agreement with the boundaries set out in the *Notes Re: Boundaries* prepared for the Attorneys-General and Premiers of the Atlantic Provinces in August 1961 (referred to in Part II B i, above) and with the recommendations of the Attorneys-General as recorded in the September 23, 1964 *Memorandum of Meeting*. Paragraphs 4 to 7 of the Premiers’ *Communiqué* declared as follows:

The Atlantic Premiers Conference held in Halifax on September 30, 1964, with Premier Stanfield of Nova Scotia, Premier Robichaud of New Brunswick, Premier Shaw of Prince Edward Island, and Premier Smallwood of Newfoundland in attendance unanimously agreed:

(...)

4 That it is desirable that the marine boundaries as between the several Atlantic Coast Provinces should be agreed upon by the provincial authorities and the necessary steps taken to give effect to that agreement.

5 That the boundaries described by **Metes and Bounds** in Schedule A<sup>29</sup> and shown graphically on Schedule B<sup>30</sup> be the marine boundaries of the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland.

6 That the Parliament of Canada be asked to define the boundaries as approved by the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland

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<sup>28</sup> *Ibid.*, para. 1. It is significant to note that the Provinces considered that the extent of the offshore area to which they were entitled vis-à-vis the federal government, and hence the extent of the area which they agreed to divide amongst themselves for the purpose of interprovincial boundaries, comprised all of the seabed and subsoil to which Canada was entitled “subject to International Law,” including, specifically, the Banks lying offshore of Newfoundland and Nova Scotia (Annex 24).

<sup>29</sup> Schedule A is the August 1961 *Notes Re: Boundaries* (Annex 18).

<sup>30</sup> Schedule B is the map accompanying the *Notes Re: Boundaries* (Annex 18).

under the provisions of Section 3 of the British North America Act, 1871.<sup>31</sup>

7 That an immediate approach should be made to the Province of Québec so that a united presentation may be made to the Government of Canada.<sup>32</sup>

(emphasis added)

20. Two days later, on October 2, 1964, Premier Stanfield of Nova Scotia wrote to the Atlantic Premiers, enclosing a document entitled "Matters Discussed At The Atlantic Premiers Conference in Halifax September 30, 1964 Requiring Further Action" ("*Matters Discussed*") (Annex 26).<sup>33</sup> As regards the Premiers' Agreement on their respective offshore boundaries, the document stated:

3 Submarine Mineral Rights and Provincial Boundaries

The Conference agreed on the marine boundary lines between each of the provinces. The Conference further agreed that the Parliament of Canada should continue to assert the status of the Gulf of St. Lawrence, including the Strait of Belle Isle and Chaleur Bay, Cabot Strait, Northumberland Strait and the Bay of Fundy, as in-land or territorial waters. The Conference further agreed that the Province of Quebec should be kept advised of the action of the four Atlantic Provinces and its concurrence in that action solicited.

Action

Premier Stanfield of Nova Scotia will forward to the Minister of Resources in the Province of Quebec a copy of the proposed marine boundaries and a copy of the map showing those boundaries. Premier Stanfield will ask the Province of Quebec to support the stand of the four Atlantic Provinces and

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<sup>31</sup> Annex 25: Section 3 of the *British North America Act, 1871*, 34-35 Vict., c. 28 (U.K.) (now the *Constitution Act, 1871*) states that : "The Parliament of Canada may, with the consent of the Legislature of any Province... increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature ...".

<sup>32</sup> These conclusions essentially reiterate the recommendations of the Attorneys-General at their meeting of September 23, 1964. *Supra* note 21.

<sup>33</sup> Annex 26: "Matters Discussed at the Atlantic Premiers Conference in Halifax September 30, 1964 Requiring Further Action" and, by way of example, letter of transmission from R.L. Stanfield, Premier, Province of Nova Scotia to L.J. Robichaud, Premier, Province of New Brunswick (2 October 1964).

seek the approval of the Provinces of Quebec and British Columbia as to the proposed marine boundary lines.

**Premier Stanfield of Nova Scotia will prepare a presentation for the pending Federal/Provincial Conference setting out the position of the four Atlantic Provinces with respect to submarine mineral rights and the agreed marine boundaries. He will forward copies of the presentation to the other Atlantic Premiers and also to the Premiers of the Provinces of Quebec and British Columbia.**<sup>34</sup>

(emphasis added)

b) Accession Of Québec To The 1964 Agreement

21. As agreed at the September 30, 1964 Conference, on October 2, 1964 Premier Stanfield sent a letter to Premier Lesage of Québec (**Annex 27**), on behalf of the four Atlantic Provinces and copied to the other Atlantic Premiers, in which he stated: “The Conference agreed that I should advise the Government of the Province of Quebec of our stand on the matter of submarine mineral rights and of **the marine boundaries agreed upon by the Atlantic Provinces.**”<sup>35</sup> (emphasis added) The letter went on to declare:

I was directed further to seek the concurrence of the Government of the Province of Quebec in our course of action.

This is a matter of great importance and it will certainly strengthen our position if the four Atlantic Provinces and the Province of Quebec are in agreement.<sup>36</sup>

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<sup>34</sup> *Ibid.* at 2-3 (**Annex 26**). The support of British Columbia was sought so as to preserve a common “coastal Provinces” front in the constitutional battle with the Government of Canada. See above, Part II A and note 1.

<sup>35</sup> **Annex 27**: Letter from R. L. Stanfield, Premier, Province of Nova Scotia to J. Lesage, Prime Minister, Province of Québec (2 October 1964), enclosing the report on the September 30, 1964 Conference of the Atlantic Premiers held in Halifax, Nova Scotia. This letter was obtained from the Smallwood papers. It is addressed to “Prime Minister, Province of Quebec”. This is a literal translation from French, in which the same designation, “*Premier Ministre*” is used for both a federal Prime Minister and a provincial Premier.

<sup>36</sup> *Ibid.* at 1-2 (**Annex 27**).



22. Enclosed with the letter to Premier Lesage were the *Communiqué* from the September 30, 1964 Conference, setting out the points “unanimously agreed” by the Atlantic Premiers, the description of the marine boundaries agreed by the Atlantic Provinces and the map representing those boundaries.<sup>37</sup>
23. On October 7, 1964, Premier Lesage answered by telegram, as follows (Annex 28):

HON R L STANFIELD  
PREMIER OF NOVA SCOTIA PARLIAMENT BLDG HFX

FURTHER TO YOUR LETTER OF OCTOBER SECOND I AM  
HAPPY TO LET YOU KNOW THAT THE PROVINCE OF  
QUEBEC IS IN AGREEMENT WITH THE ATLANTIC  
PROVINCES ON THE MATTER OF SUBMARINE MINERAL  
RIGHT AND OF THE MARINE BOUNDARIES AGREED UPON  
BY THE ATLANTIC PROVINCES

YOURS TRULY

JEAN LESAGE<sup>38</sup>

24. The following day, Premier Stanfield replied with “a note to acknowledge your telegram of October 7<sup>th</sup> expressing agreement with the Atlantic Provinces in the matter of submarine minerals and the marine boundaries agreed upon by the Atlantic Provinces.” (Annex 29)<sup>39</sup>
25. The conclusive and binding nature of the *1964 Agreement*, including the agreed line dividing the offshore areas of Nova Scotia and Newfoundland, was further confirmed, one week later, when the Provinces presented their Agreement to the Government of Canada.

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<sup>37</sup> *Ibid.* at attachments (Annex 27). The letter to Premier Lesage also stated that the boundaries had been “referred previously to the Province of Quebec...”. *Ibid.* at 1. This refers to earlier correspondence with Quebec in this regard, including the letter from P.-E. Auger (2 July 1964) (Annex 20, *supra* note 19) noting that the Minister of Natural Resources is “quite pleased with the idea of fixing the boundary between our provinces and he agrees with your present plan.”

<sup>38</sup> Annex 28: Canadian Pacific Telegram, World Wide Communications, RAA268-BA XA208 46, Quebec.

<sup>39</sup> Annex 29: Letter from R.L. Stanfield, Premier, Province of Nova Scotia to J. Lesage, Prime Minister, Province of Québec (8 October 1964).

I am enclosing:

- (a) a statement setting out the position of the four Atlantic Provinces on this question.
- (b) a description by Metes and Bounds of proposed marine boundaries of the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland.
- (c) a map showing the proposed boundaries referred to in (b).

(Annex 27: "Letter from R. L. Stanfield, Premier, Province of Nova Scotia to J. Lesage, Prime Minister, Province of Québec" (2 October 1964) at 1)

c) Joint Submission To The Federal-Provincial Conference Of  
October 14-15, 1964

26. On October 14, 1964 a “Federal–Provincial Conference of Prime Ministers” was convened, attended by the Prime Minister of Canada and the Premiers of all ten Provinces (including Premier Stanfield of Nova Scotia and Premier Smallwood of Newfoundland), as well as other federal and provincial Ministers and senior officials.<sup>40</sup> Pursuant to the September 30, 1964 *Agreement*, Premier Stanfield delivered to the Prime Minister of Canada on behalf of the Atlantic Premiers a “Submission On Submarine Mineral Rights by the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland”<sup>41</sup> (the “*Joint Submission*”) (Annex 31). In their *Joint Submission*, the Atlantic Premiers declared explicitly:

This submission is presented on behalf of the four Atlantic Premiers pursuant to agreement reached at the Atlantic Premiers’ Conference held in Halifax on the 30<sup>th</sup> of September last.<sup>42</sup>

(emphasis added)

27. The issues addressed in the *Joint Submission* were: (a) “proprietary rights in submarine minerals as between Canada and the Provinces, whatever the extent and nature of those rights may be” and (b) “boundary lines between Provinces”.<sup>43</sup> (emphasis added)
28. Annexed to the *Joint Submission* were the August 1961 *Notes Re: Boundaries* that were the basis for the 1964 *Agreement*, and a map of the agreed boundaries on

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<sup>40</sup> Annex 30: “Federal-Provincial Conference of Prime Ministers (October 14 and 15), Conference of Attorneys-General, (October 13), Tax Structure Committee, (October 13), General Arrangements” and Appendix A, a list of “Federal and Provincial Representatives and Advisers” in attendance.

<sup>41</sup> Annex 31: “Submission on Submarine Mineral Rights by the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland” with Annex entitled “*Notes Re Boundaries of Mineral Rights as between Maritime Provincial Boundaries.*”

<sup>42</sup> *Ibid.* at last paragraph of the *Joint Submission* (Annex 31).

<sup>43</sup> *Ibid.* at 16 (Annex 31).

Canadian Hydrographic Services ("CHS") Chart No. 4490 (see **Figure 4** for a reproduction of this map).<sup>44</sup> (Annex 32)

29. The section in the *Joint Submission* dealing with "(b) boundary lines between Provinces" provides yet further compelling evidence of the nature and scope of the *1964 Agreement*. It declares:

Reference has been made in this submission to Provincial boundaries but I do not think that that general question need be discussed at length or decided at this Conference. Section 3 of the British North America Act, 1871, provides the procedure for changing boundaries and in effect it is primarily a matter for agreement between the Provinces concerned. I can say, however, that the Atlantic Provinces have discussed this question among themselves and have agreed upon tentative boundaries of the marine areas adjoining those Provinces. These boundaries have been set out by metes and bounds and have been graphically delineated on a map. Hereto attached is a copy of the map and the description of the boundaries by metes and bounds. **Speaking on behalf of the Province of Nova Scotia and as authorized by the Premiers of the Provinces of New Brunswick, Prince Edward Island and Newfoundland, I request the Federal authorities to give effect to the boundaries thus agreed upon by legislation, pursuant to Section 3 of the British North America Act, 1871. It may be that before actual legislation is prepared the description by metes and bounds should be reviewed and revised and the attached map, if necessary, varied accordingly, but, for all practical purposes, the attached description of the boundaries and map represent the agreement of the Atlantic Provinces.**

(...)

... We are asking you to put in motion the steps necessary to define the marine boundaries between the several Atlantic

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<sup>44</sup> **Annex 32: 1964 Agreement: Graphical Representation on Canadian Hydrographic Services Chart, No. 4490. Figure 4: The 1964 Agreement as Depicted on Canadian Hydrographic Service Chart 4490 and Presented to the Federal-Provincial Conference.**

Provinces as set out on the map and in the description accompanying this submission, subject to review in detail.<sup>45</sup>

(emphasis added)

30. It is significant that, as part of the Atlantic Provinces' position on "...proprietary rights in submarine minerals as between Canada and the Provinces, whatever the extent and nature of those rights may be," the *Joint Submission* stated: "Even if, therefore, there were a real question as to ownership of proprietary rights in submarine minerals, it is submitted that it would be only just and equitable to vest those rights in the Atlantic Provinces."<sup>46</sup> This was, of course, entirely consistent with the Provinces' traditional view regarding both the nature of their offshore rights (legal, equitable and political) and the geographical extent of those rights, which was defined expressly so as to include **the full extent of the continental shelf subject to Canadian jurisdiction under international law**. This position was stated in the penultimate paragraph of the *Joint Submission*, as follows:

... the Provinces are entitled to the ownership and control of submarine minerals underlying territorial waters, including, subject to International Law, areas in the Banks off Newfoundland and Nova Scotia, on legal and equitable grounds.<sup>47</sup>

(emphasis added)

31. Two points are clear. First, the Premiers considered that any vesting of submarine mineral rights in the Provinces would first require agreed interprovincial boundaries. Second, the area claimed by the Atlantic Premiers and divided among them by virtue of the *1964 Agreement* included any and all submarine areas that might be subject to Canadian jurisdiction under international law.

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<sup>45</sup> *Supra* note 41 at 18. The reference to "tentative", "reviewed and revised" and "review in detail" refer to the technical exercise of plotting the precise latitude and longitude of the "turning points" of the agreed boundaries. The nature of these "turning points" is explained immediately below, in Part II C, and the technical work leading to an Agreement among the East Coast Premiers on the precise coordinates of those turning points is reviewed in Part II D.

<sup>46</sup> *Ibid.* (Annex 31).

<sup>47</sup> *Ibid.* at 19 (Annex 31).

**C. The Boundaries Established In The *1964 Agreement* Are Described In The Annex To The *Joint Submission* To The Federal-Provincial Conference Of October 14-15, 1964**

32. The description of the boundaries established by the *1964 Agreement* is contained in the Annex to the *Joint Submission* made to the October 14-15, 1964 Federal-Provincial Conference (the "*Annex*"), which comprises, as mentioned, the *Notes Re: Boundaries* prepared at the request of the Atlantic Provinces in 1961 and applied by them ever since.
33. The *Annex / Notes Re: Boundaries* sets out four general principles according to which the boundaries dividing the offshore areas of the Atlantic Provinces were established, including three technical points relating to methodology (points 2, 3 and 4), and then goes on to describe the boundaries of each Province.
34. The general principles laid down by the Provinces to establish their boundaries are as follows:
1. Mineral deposits under shelf waters between Provinces pertain to one or another Province.
  2. Islands lying between Provinces and belonging to one or another Province are considered as if they were peninsulas.
  3. Mineral right boundaries are so drawn as to join median points between prominent landmarks selected so far as possible along parallel shores.
  4. In cases where three provinces meet but boundaries for one pair would overlap on the third [i.e., such that the median point between any two Provinces overlaps on the area of a third] a N-S or other prime directional line is used to connect the closest point definable from the considerations in paragraph 3 above [i.e., from the median point between the two 'overlapping' Provinces] to the conflicting boundary [i.e., to 'tri-junction' point].<sup>48</sup>

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<sup>48</sup> *Ibid.* at 20 (Annex 31).

35. With these general principles as a basis, each Province's boundaries are described as a series of **turning points** and **straight lines** joining those turning points – that is, by “metes and bounds”. The majority of the turning points are defined as “midpoints” between identified coastal features, although some other points (e.g., land boundary terminus points or river mouths) are used where appropriate. For each Province, its boundaries are described relative to every other Province with which it shares a boundary. For example, section I of the *Annex / Notes Re: Boundaries*, entitled “Boundary of Nova Scotia”, describes the boundary of Nova Scotia with New Brunswick, Prince Edward Island, Québec and Newfoundland respectively. Nova Scotia's boundary with Newfoundland is described as follows (**Annex 31**, at p. 21):

From this mutual corner [the ‘tri-junction’ point, or three-way boundary, between Québec, Nova Scotia and Newfoundland] the boundary with Newfoundland runs southeasterly to the midpoint between St. Paul Island (Nova Scotia) and Cape Ray (Newfoundland); thence to a point midway between Flint Island (Nova Scotia) and Grand Bruit (Newfoundland); thence southeasterly to International waters.

36. Similarly, section VI, “Boundary of Newfoundland”, describes Newfoundland's boundary with Nova Scotia as follows (**Annex 31**, at p. 25):

From the above common point [the tri-junction point with Nova Scotia and Québec], southeasterly to the midpoint between St. Paul Island and Cape Ray; thence southeasterly to the midpoint between Flint Island and Grand Bruit; thence S.E. to International waters.

37. The agreed line dividing the offshore areas of Nova Scotia and Newfoundland, as described in the *Annex / Notes Re: Boundaries*, showing the turning points mentioned in the above descriptions (and the coastal points used to determine the

turning points), is depicted in **Figures 5** and **6**, respectively.<sup>49</sup> While the graphic representation on Chart 4490 showed the line terminating at an undefined point (see **Figure 4**, above), in **Figures 5** and **6** the line is shown to be consistent with the metes and bounds descriptions, cited above, and runs southeast “to International waters”,<sup>50</sup> that is, to the limits of Canadian continental shelf jurisdiction.<sup>51</sup>

#### **D. In 1972, The Technical Coordinates Of The Agreed Boundaries Were Fixed**

38. As demonstrated, the *1964 Agreement* established interprovincial boundaries, including the line dividing the offshore areas of Newfoundland and Nova Scotia, on the basis of a description by metes and bounds represented on an accompanying map. It remained to fix the precise technical coordinates of the boundaries, by plotting the latitude and longitude of the turning points along the agreed boundaries. This technical exercise was necessary, *inter alia*, so as to facilitate the granting and precise location of offshore exploration permits.<sup>52</sup> It is, as well, typical of the two-stage process by which boundaries are often established between States, whereby the technical plotting of coordinates follows

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<sup>49</sup> **Figure 5: The 1964 Agreement Boundaries. Figure 6: The 1964 Agreement: The Boundary Between Nova Scotia and Newfoundland and Labrador to the Outer Limits of State Jurisdiction.** The coordinates used to define the turning points in **Figures 5** and **6** are those later prepared by the Joint Mineral Resources Committee in 1968-1969. See Part II D, below.

<sup>50</sup> Annex 31, *supra* note 41 at 25. A similar formulation was used for the only other portion of the boundary that extended seaward towards the high seas or potential areas of another State's jurisdiction. The final segment of the Nova Scotia-New Brunswick boundary off the mouth of the Bay of Fundy was defined as running “generally southwest to International waters.” *Ibid.* at 21 (Annex 31).

<sup>51</sup> See above, para. 27. The definition of the outer segment of the boundary is discussed further in Part IV, below.

<sup>52</sup> The issuance of exploration permits by the Provinces in accordance with the 1964 Agreement is discussed in Part II G and H.



the initial determination of the boundary or of the principles according to which the boundary is to be demarcated.<sup>53</sup>

**i) Specification Of Coordinates For The 1964 Agreement: 1968-1969**

39. Pursuant to a Memorandum of Agreement signed in Halifax on July 16, 1968, the five East Coast Provinces formed the “Joint Mineral Resources Committee” (“JMRC”) to facilitate continuing cooperation in mineral resource-management both in the offshore and within the Provinces’ land borders.<sup>54</sup> The Memorandum of Agreement required that each Province appoint a member of its “Executive Council” (the Provincial Cabinet), to the JMRC. The initial membership of the JMRC included Hon. C. Max Lane, Minister of Mines, Agriculture and Resources of Newfoundland, and Hon. Donald M. Smith, Minister of Mines of Nova Scotia.<sup>55</sup>

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<sup>53</sup> See, for example, Annex 33: *The North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, where the parties asked the International Court of Justice to decide only the principles and rules of international law applicable to the delimitation, after which the governments involved would delimit the continental shelf by agreement. [1969] I.C.J. Rep. 3 at 6. In Annex 34: *The Case Concerning the Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, the parties asked the Court to determine the “principles and rules of international law which may be applied for the delimitation” and was “further requested to specify precisely the practical way in which the aforesaid principles and rules apply in this particular situation so as to enable the experts of the two countries to delimit these areas without any difficulties.” [1982] I.C.J. Rep. 18 at 21. See also Annex 35: *Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya v. Chad)* (hereinafter the “*Lybia-Chad*” case) where the Court said: “It is clear from these minutes that the Libyan Prime Minister expressly accepted the agreement of 1919, the ‘implementation’ of the agreement to be left ‘to the near future’; and in this context, the term ‘implementation’ can only mean operations to delimit the frontier on the ground. The Prime Minister spoke also of an agreement on ‘demarcation’, which presupposes the prior delimitation – in other words definition – of the frontier. Use of the term ‘demarcation’ creates a presumption that the parties considered the definition of the frontiers as already effected ...” [1994] I.C.J. Rep. 6 at 28.

<sup>54</sup> Annex 36: “Minutes of Meeting of Joint Mineral Resources Committee Held at the Board Room, Provincial Building, Halifax, Nova Scotia, July 16, 1968”; the Memorandum of Agreement is attached to the Minutes, at Schedule “A.”

<sup>55</sup> *Ibid.* Schedule “A” at 2 (Annex 36). Nova Scotia researchers have been unable to find any documentary reference to boundary-related discussions between the parties during the period 1964-1968. However, as discussed below, the parties clearly applied and relied upon their agreed boundaries during this period, including in the issuance of exploration permits in the immediate vicinity of those boundaries. See below, Part II G and H.

40. At its first meeting, on July 16, 1968, the *JMRC* established a Technical Committee (the “Technical Committee”), chaired by the Assistant Deputy-Minister of Natural Resources of New Brunswick, John C. Smith, with the mandate to fix the precise “[d]elineation and description of the boundaries of the participating Provinces in submarine areas” as those boundaries had been described by metes and bounds in the *1964 Agreement*.<sup>56</sup> (Annex 36) As the Report eventually prepared by the Technical Committee demonstrates (see below), the mandate of the Technical Committee was limited to carrying out the technical exercise of plotting the coordinates of the turning points of the boundaries that had been agreed by the Provinces in 1964.
41. On August 30, 1968, Mr. Smith wrote to the other members of the Technical Committee, including Frederick Gover, Deputy Minister of Mines of Newfoundland, to report that, as requested, New Brunswick’s Department of Natural Resources “... has completed plotting of turning points **as described in the Agreement reached by Atlantic Premiers**. These points have been calculated in latitude and longitude using a computer program.”<sup>57</sup> (Annex 37) (emphasis added) The computer printout of latitude/longitude coordinates was distributed to the members of the Technical Committee on September 5, 1968, for their review and approval.<sup>58</sup> Newfoundland, like the other four East Coast

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<sup>56</sup> Annex 36: *Supra* note 54 at 2.

<sup>57</sup> See, for example, Annex 37: Letter from J.C. Smith, Chairman, Sub-Committee on Delineation and Description of Provincial Boundaries of Participating Provinces in Submarine Areas, to H. B. Robertson, Director of Surveys, Department of Lands and Forests, Province of Nova Scotia (30 August 1968). Attached to the letter is a memorandum from J.C. Smith to W. Roberts (30 August 1968) stating that the same letter was also sent to several persons including F. Gover, Deputy Minister of Mines, Department of Mines, Agriculture and Resources, Government of Newfoundland.

<sup>58</sup> See, for example, Annex 38: Letter from A.W. McLaughlin, Assistant Director of Surveys, Department of Natural Resources, Government of New Brunswick to H.B. Robertson, Director of Surveys, Department of Lands and Forests, Government of Nova Scotia (5 September 1968). Each Province received with the letter the following items as enumerated in the letter: a list of points named in the *1964 Agreement*; a copy of the computer print out with the turning points, or “stations”, with identifying numbers and latitude/longitude coordinates; and a map on which the turning points had been plotted. See Annex 39 for a copy of the computer printout.

The Lands Branch of our Department has completed plotting of turning points **as described in the Agreement reached by Atlantic Premiers**. These points have been calculated in latitude and longitude using a computer program.

It is anticipated that a meeting of the Joint Mineral Resources Committee will be held in Quebec City on Sunday evening, September 15, immediately preceding the Mines Ministers Conference. At that time, I would hope that our recommendations regarding the establishment of the Boundaries will be presented.

(our emphasis)

(**Annex 37:** "Letter from J. C. Smith, Chairman, Sub-Committee on Delineation and Description of Provincial Boundaries of Participating Provinces in Submarine Areas, to H. B. Robertson, Director of Surveys, Department of Lands and Forests, (30 August 1968))

Provinces, verified that the latitude/longitude coordinates conformed to the verbal description of its boundary in the *1964 Agreement*, and, in a memorandum to Mr. Gover dated January 7, 1969, F.J. Lukins, Chief Engineer of Newfoundland, confirmed that the coordinates: "... agrees [sic] with the points as referred to in the description of the Boundary of Newfoundland."(Annex 40)<sup>59</sup>

42. Accordingly, on January 17, 1969, the "Report of the Technical Committee On Delineation and Description of the Boundaries of the Participating Provinces in Submarine Areas" (the " Report of the Technical Committee ") was presented to the *JMRC*. The Report of the Technical Committee declared: (Annex 41)<sup>60</sup>

Upon the instructions of the Joint Mineral Resources Committee, the technical committee has determined and agreed upon the location and methodology for defining the turning points as described in 'Notes re: Boundaries of Mineral Rights as between Maritime Provincial Boundaries', as set forth by the Atlantic Provinces Premiers in 1964.

The Technical Committee has not discussed the merits of such definition of boundaries but have precisely located those mid-points described therein.

(...)

43. The Report of the Technical Committee included a list of the turning points as described in the *1964 Agreement*, matched with their latitude/longitude coordinates as plotted by the Technical Committee, and a map depicting the results of the exercise. The list of turning points with coordinates is reproduced in

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<sup>59</sup> Annex 40: Memorandum from F.J. Lukins, Chief Engineer, Department of Mines, Agriculture and Resources, Government of Newfoundland to F. Gover, Deputy Minister of Mines, Government of Newfoundland (7 January 1969).

<sup>60</sup> Annex 41: "Minutes of Meeting of Joint Mineral Resources Committee Held at the Board Room, Provincial Building, Halifax, Nova Scotia, January 17, 1969" at attachment "A".

**Table I**

**TURNING POINTS IN INTERPROVINCIAL MINERAL RIGHTS BOUNDARIES**

NO.	NORTH LATITUDE	WEST LONGITUDE	DESCRIPTION	
100	45-59-36	64-02-34	Mouth of Tidnish River	1
101	46-01-10	64-02-34	Center Line Baie Verte	2
2000	46-02-18	63-49-09	Mid Pt. Coldspring Head-Cape Tormentin	
2001	46-04-30	63-39-34	Mid Pt. Coldspring Head-Brocklesby Head	
2003	45-59-45	63-19-41	Mid Pt. Cape Cliff – Rice Point	3
2004	45-55-38	63-05-06	Mid Pt. Cape John – Prim Point	
2005	45-51-30	62-43-30	Mid Pt. Caribou Island – Wood Island	
2006	45-53-51	62-33-31	Mid Pt. Pictou Island-Southerly Point Cape Bear Peninsula	
2007	45-56-43	61-13-06	Mid Pt. Murray Head-Livingstone Cove	4
2008	46-19-09	61-41-56	Mid Pt. East Point – Sight Point	
2048	46-50-24	61-24-01	Jet. P. E. I. Que. N.S.	
2012	47-00-35	61-21-05	Mid Pt. S.E. Cor. Amherst Island – White Capes	
2013	47-19-46	60-59-34	Mid Pt. Cape St. Lawrence – East Point	
2014	47-25-24	60-45-49	Mid Pt. St. Paul Is. – East Point	
2015	47-45-40	60-24-17	Mid Pt. Cape Anguille - East Point Mutual Cor. Newfoundland, N.S., P.Q.	
2016	47-25-28	59-43-33	Mid Pt. St. Paul Island - Cape Ray	
2017	46-54-50	59-00-30	Mid Pt. Flint Island – Grand Bruit	
129	45-49-58	64-16-49	Mouth of Missaguash River	
1291	45-49-39	64-17-25	Point in Center Line Cumberland Basin	
1292	45-50-21	64-18-31	Point in Center Line Cumberland Basin	
1293	45-50-40	64-19-15	Point in Center Line Cumberland Basin	
1294	45-50-36	64-19-59	Point in Center Line Cumberland Basin	
1295	45-49-36	64-21-29	Point in Center Line Cumberland Basin	
1296	45-48-20	64-23-41	Point in Center Line Cumberland Basin	
1297	45-47-36	64-24-17	Point in Center Line Cumberland Basin	
1298	45-45-52	64-26-25	Point in Center Line Cumberland Basin	
1299	45-44-18	64-27-57	Point in Center Line Cumberland Basin	
130	45-42-44	64-28-28	Center Line Opposite Joggins	
2018	45-35-14	64-42-55	Mid Pt. Cape Enrage – A Promontory West of the Shulie River	
2019	45-30-26	64-56-25	Mid Pt. Cape Capstan – Point Wolfe	
2020	45-29-09	64-58-07	Mid Pt. Squally Point – Point Wolfe	
2021	45-22-19	65-05-31	Mid Pt. Martin Head – Ile Haute	
2022	45-00-14	65-43-36	Mid Pt. West Promontory of Parker Cove Cape Spencer	
2023	44-50-16	66-11-39	Mid Pt. Gulliver Pt. – Point Lepreau	
2024	44-26-09	66-32-32	Mid Pt. White Head Is. – Brier Island	
2025	44-25-03	66-38-47	Mid Pt. Whipple Point – Southwest Head	
2010	46-50-24	62-18-03	Mid Pt. South Cape – Cable Head	

Table I (cont'd)

NO.	NORTH LATITUDE	WEST LONGITUDE	DESCRIPTION
2026	47-08-23	62-59-14	Mid Pt. South Cape – North Point
2027	47-36-21	63-19-56	Mid Pt. Miscou Is. (N.B.) – Deadman Is. (Magdalen)
2028	47-26-04	64-16-00	Mid Pt. North Pt. – Mid Point of Eastern shore of Shippegan
2029	47-04-01	64-23-53	Mid Pt. North Pt. – Point Escuminae
2030	46-56-08	64-31-10	Mid Pt. Cape Gage – Point Sapin
2031	46-39-57	64-33-40	Mid Pt. Cape Luminere – P.E.I. shore due due East of that Cape
2032	46-32-17	64-29-46	Mid Pt. West Point – Buotoche Spit
2033	46-19-10	64-12-20	Mid Pt. Cape Eqmont – Cape Bald
2034	46-14-55	63-53-40	Mid Pt. Seacow Head – Cape Bruin
2035	46-11-20	63-43-50	Mid Pt. Cape Traverse – Cape Jourmain
163	48-00-10	66-45-41	Mouth of Matapedia River
1631	48-00-31	66-43-54	Point in Center Line Restigouche River
1632	48-00-25	66-41-44	Point in Center Line Restigouche River
1633	48-00-44	66-40-39	Point in Center Line Restigouche River
1634	48-03-01	66-31-32	Point in Center Line Restigouche River
1635	48-04-40	66-30-05	Point in Center Line Restigouche River
1636	48-05-11	66-27-39	Point in Center Line Restigouche River
1637	48-05-18	66-23-00	Point in Center Line Restigouche River
2036	48-02-57	66-09-48	Mid Pt. Heron Is. – Carleton Pt.
2037	48-01-20	65-51-32	Mid Pt. Little Belledune Pt. – Pt. S.E. of New Richmond
2038	47-56-01	65-36-26	Mid Pt. Green Pt. – Bonaventure Point
2039	47-49-43	65-32-13	Mid Pt. Bonaventure Pt. – Entrance Bathurst Har.
2040	47-55-16	65-06-45	Mid Pt. Paspebiac Pt. – Maisonnette Pt.
2041	48-13-14	64-25-22	Mid Pt. Miscou Pt. – Cap d'Espoir
2042	48-13-14	63-47-33	Due East from 2041 a distance equal to that from Birch Pt. (Miscou Pt.) – Cap d'Espoir
2043	48-46-53	60-28-40	Mid Pt. Heath Pt. – Cape St-George
2044	49-50-55	58-56-29	Mid Pt. St. Mary Is. – Cape St. George
2045	50-34-27	58-11-27	Mid Pt. Macatina Is. – Table Pt.
2046	50-59-55	57-44-14	Mid Pt. Port St. Servon – Pt. Riche
2047	51-11-56	57-07-11	Mid Pt. Isle au Bois – Ferolle Point

<sup>1</sup> Boundary of N. S. is west bank of Tidnish River. Point moved from center of river to west bank.

<sup>2</sup> Longitude of point changed to agree with point No. 100.

<sup>3</sup> St. Peters Island, Latitude 46-06-47.5, Longitude 63-11-17.3, was used instead of Rice Point, Latitude 46-07-51.6, Longitude 63-13-19.7, as the point on P. E. I. in computing the mid point in conformity with para 2 of the Draft Agreement.

<sup>4</sup> The value for Livingstone Cove used to determine the mid point was changed from Latitude 45-52-28.3, Longitude 61-58-44.0 as determined by N. B. to Latitude 45-52-16.6, Longitude 61-58-55.0 as determined by Nova Scotia.

Table I. The map depicting the results of the technical delineation and description is reproduced in Figures 7 and 8.<sup>61</sup>

44. On May 12, 1969, Paul-E. Allard, Minister of Natural Resources of Québec and Vice-Chair of the *JMRC*, wrote to the Ministers of the five Provinces who were members of the *JMRC*.<sup>62</sup>
45. In his letter, Minister Allard noted that “[t]o guide the technical committee in its task,” (Annex 43)<sup>63</sup> it had been provided with a copy of the October 1964 *Joint Submission*, including the *Notes Re: Boundaries* and accompanying map, and he quoted extensively from the crucial passage of the *Joint Submission* (reproduced in full in Part II B ii, above) regarding the boundaries agreed by the Premiers. Confirmation of the coordinates plotted for the turning points of the boundaries established in the *1964 Agreement* was provided by the Premiers of the five East Coast Provinces themselves, at a Conference of First Ministers in June 1972.

ii) **Approval Of Technical Coordinates By The Five Premiers: June 1972**

46. On May 24, 1972, a meeting of the *JMRC* was convened “at the request of the Honourable C. William Doody [Minister of Mines of Newfoundland],” (Annex 44)<sup>64</sup> in order “to see where we now stand with respect to our Agreement, and to explore the possibility of making some further progress towards our objectives [regarding a common approach to the federal government on

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<sup>61</sup> Figure 7: Boundary Turning Points as Approved by the Premiers in 1972. Figure 8: The 1964 Agreement with Defined Turning Points Approved in 1972. A copy of the original map is found at Annex 42: Turning Points of 1964 Agreement as Prepared by Joint Mineral Resources Committee and Approved by Premiers in 1972.

<sup>62</sup> Annex 43: See, for example, letter from P.-E. Allard, Vice-Chairman, Joint Mineral Resources Committee to P. Gaum, Minister of Mines, Government of Nova Scotia (12 May 1969).

<sup>63</sup> *Ibid.* at 1 (Annex 43).

<sup>64</sup> Annex 44: “Minutes of Joint Meeting of Committee and Sub-Committee of the Joint Mineral Resources Committee Held in the Red Room, Province House, Halifax, Nova Scotia, May 24, 1972” (hereinafter “Minutes of Joint Meeting, May 24, 1972”) at 2. See also letter from C.W. Doody, Minister, Department of Mines, Government of Newfoundland to G.D. Walker, Secretary, Joint Mineral Resources Committee (30 May 1972) wherein Minister Doody approved the draft minutes of the meeting at para. 2.

submarine mineral rights].” (Annex 45)<sup>65</sup> The *JMRC* agreed on eight principles relating to various aspects of the common Provincial position on the offshore, all of which were to “be conveyed by each member of the Committee to his respective Premier or Prime Minister for consideration at a meeting of those Premiers or Prime Ministers in June [1972].” (Annex 44)<sup>66</sup>

47. On June 16, 1972, the Secretary of the *JMRC*, Graham Walker, addressed a letter to each of the five East Coast Premiers, attaching the minutes of the May 24 *JMRC* meeting and reiterating the eight principles adopted. As the letter to Premier Moores of Newfoundland reveals, the principles included the following (Annex 46)<sup>67</sup>:

- (4) The Governments of the four Atlantic Provinces and the Province of Quebec should confirm the delineation and description of the boundaries of the said five Provinces in the submarine areas and the turning points in longitude and latitude relating thereto as was requested by the Honourable Paul E. Allard on May 12, 1969, then Vice-Chairman of the Joint Mineral Resources Committee. A copy of the map showing the delineation and description of the said boundaries and the turning points is attached to the Minutes.

48. Premier Moores was already fully aware of the status of the *1964 Agreement* and the boundaries it established, even before he received the June 16, 1972 letter. The matter had in fact arisen during a meeting held in Ottawa the previous month, on May 9, 1972, between Donald MacDonald, Canada’s Minister of Energy,

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<sup>65</sup> Annex 45: Letter from C.W. Doody, Minister of Mines, Government of Newfoundland to G.D. Walker, Secretary, Joint Mineral Resources Committee (11 April 1972).

<sup>66</sup> “Minutes of Joint Meeting, May 24, 1972,” *supra* note 64 at 3.

<sup>67</sup> Annex 46: Letter from G.D. Walker, Secretary, Joint Mineral Resources Committee to F. D. Moores, Premier, Province of Newfoundland (16 June 1972) at 2.



Mines and Resources, and Premier Moores,<sup>68</sup> at which the issue of federal-provincial jurisdiction over offshore mineral rights was discussed in some detail.<sup>69</sup> According to the report on the meeting prepared by J. Austin, Minister MacDonald's Deputy Minister, Premier Moores referred to the upcoming meeting of the *JMRC* (which, as discussed above, took place on May 24, 1972) and to the meeting of the Premiers of the Atlantic Provinces that was to follow (as discussed below, the Atlantic Premiers' meeting was held on June 17-18, 1972).<sup>70</sup> Deputy Minister Austin's report records the following exchange between Premier Moores and his Minister of Mines regarding the issue of interprovincial offshore boundaries:

7) Premier Moores raised the question of the distribution of the Provincial portion of offshore revenues amongst the Provinces, and was reminded by Mr. Doody that the five Atlantic Provinces had, some years ago, agreed on boundary lines and spheres of interest. (Annex 47)<sup>71</sup>

(emphasis added)

49. From the report of the May 9, 1972 meeting between Premier Moores and Minister MacDonald, it is clear that Premier Moores was well aware, prior to his meeting with the other East Coast Premiers, in June, 1972, that the Provinces'

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<sup>68</sup> Annex 47: Memorandum from J. Austin, Deputy Minister of Energy Mines and Resources, Government of Canada to Donald MacDonald, Minister of Energy Mines and Resources, Government of Canada (15 May 1972). The meeting was also attended, on behalf of Newfoundland, by: John Crosbie, Minister of Finance and Economic Development; William Doody, Minister of Mines; R.L. Cheeseman, Minister of Fisheries; and S. Peters, Executive Assistant to Premier Moores.

<sup>69</sup> *Ibid.* (Annex 47).

<sup>70</sup> *Ibid.* (Annex 47).

<sup>71</sup> *Ibid.* at 2 (Annex 47). Premier Moores and his officials were further briefed on the offshore situation on June 6, 1972, by Dr. Donald Crosby, Director of the Resource Management and Conservation Branch of the federal Department of Energy, Mines and Resources, including regarding the likely extent of Canadian jurisdiction over the shelf and the current state of knowledge of offshore resources and exploration. Annex 48: "Memorandum to the Minister: Offshore Mineral Rights, Federal Provincial Meeting in St. John's Newfoundland, June 6, 1972" from J. Austin, Deputy Minister, Energy Mines and Resources Canada to Minister of Energy Mines and Resources Canada (15 June 1972) with attached "Note For File: Offshore Mineral Rights, Federal Provincial Meeting in St. John's Newfoundland, June 6, 1972" (14 June 1972) detailing the matters discussed at the meeting.

interprovincial offshore boundaries had already been “agreed”. It is also clear that Newfoundland regarded the agreed boundaries as applying to federal-provincial jurisdictional and revenue-sharing arrangements of the type being considered by the federal government and the Provinces.

50. In accordance with the recommendations of the *JMRC*, the first item on the Agenda of the “Meeting of First Ministers of The Atlantic Provinces and Quebec” held in Halifax on June 17-18, 1972 was: “Letter to First Ministers from Joint Mineral Resources Committee / Lettre du Comité Cojoint [*sic*] des Ressources Minérales aux Premiers Ministres.” (Annex 49)<sup>72</sup> In addition to the map and Minutes referred to in the June 16 letter from the *JMRC* to the Premiers, the Premiers had before them at the meeting the list of turning points and the map showing those turning points (see Figure 6, *supra*). They also had before them a map entitled “Provincial Offshore Areas Accruing to the Provinces”, which was based on the *1964 Agreement* and depicted the offshore out to a distance which

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<sup>72</sup> Annex 49: “Agenda/Ordre du Jour, Meeting of First Ministers of the Atlantic Provinces and Quebec/Réunion des premiers ministres des provinces de l’Atlantique et Québec.”

was believed to approximate the “base of [the] continental slope”. (Annex 50)<sup>73</sup>  
This map is reproduced in **Figure 9**.<sup>74</sup>

51. To Nova Scotia’s knowledge, no minutes were kept of the June 17-18, 1972 meeting, but the Premiers’ agreement with the technical delineation and description of the boundaries established in 1964 is clearly evidenced in a number of contemporaneous documents.
52. In the “Communiqué Issued Following Meeting Of The Premiers Of Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, And The Vice Premier Of Quebec”, the following was declared: (Annex 54)<sup>75</sup>

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<sup>73</sup> A description of the origin of the map is found in Annex 50: Letter from I.G. McLeod, Deputy Attorney-General, Government of Nova Scotia to G.A. Regan, Premier, Province of Nova Scotia (13 May 1971) at 1, where it is stated that this map was originally provided to Nova Scotia by Dr. D.G. Crosby (Director, Resource Management and Conservation Branch, Energy, Mines and Resources Canada) in April 1971. The areas in square miles quoted by Mr. MacLeod in his letter are the same as those on the map shown in Figure 9 (East Coast Offshore Map Presented to Premiers in 1972) and provided in original form at Annex 51: East Coast Offshore Areas, prepared by Federal Department of Energy Mines and Resources and Presented to East Coast Premiers in 1972. A version of this map, showing the boundary, was also provided to the Government of Newfoundland by Dr. Crosby during his briefing of Premier Moores on June 6, 1972. See *supra* note 71 (Annex 48). See also Annex 52: “Notes Related To Revenue-Sharing Map For Briefing Session With Premier Moores,” D.G. Crosby (19 May 1972). These notes show that the respective provincial areas on the version given to Newfoundland are slightly less due to the exclusion of some areas inside federally-proposed “m. r. a.” (mineral resource administration) lines. However, the identical areas are shown for provincial shares on the outer “continental slope,” demonstrating that the same boundary line was used for this calculation as was used for the map provided to Nova Scotia.

<sup>74</sup> **Figure 9:** East Coast Offshore Map Presented to Premiers in 1972. The Premier’s use of this map is confirmed by the fact that the provincial areas designated on the map were the basis for discussion of provincial offshore areas at the subsequent meeting of Premiers held August 2, 1972 (discussed below). See Annex 53: Letter from G.D. Walker, Legislative Counsel, Government of Nova Scotia to L.L. Pace, Attorney General, Government of Nova Scotia, attaching material for the August 2, 1972 meeting of First Ministers (1 August 1972). The letter refers to an attachment entitled “Map showing boundaries between the Provinces and the Offshore Areas.” See also material provided at Agenda Item (3) referring to areas “within the boundaries delineated and described,” and at Agenda Item (6), referring to the offshore areas under discussion, which are the same as on the map shown in Figure 9, *supra* note 73.

<sup>75</sup> Annex 54: “Communiqué Issued Following Meeting of the Premiers of Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, and the Vice-Premier of Quebec” (18 June 1972) at 1, 2. The delegation list for the meeting is also attached.

THE FIRST MINISTERS AGREED THAT:

(...)

THE GOVERNMENTS OF THE FIVE EASTERN PROVINCES HAVE AGREED TO THE DELINEATION AND DESCRIPTION OF THE OFFSHORE BOUNDARIES BETWEEN EACH OF THESE FIVE PROVINCES.

53. On June 18, 1972, Premier Regan of Nova Scotia (Chairman of the meeting) sent a telegram to Pierre Trudeau, the Prime Minister of Canada, informing him of the results of the Premiers' meeting. The telegram repeated *verbatim* the terms of the *Communiqué* quoted above, and also noted that "copies of the above have been sent to each of the Premiers of the Provinces of Quebec, New Brunswick, Prince Edward Island and Newfoundland." (Annex 55)<sup>76</sup>
54. It is interesting to note that, on August 2, 1972, the five Premiers met again, in Halifax. The minutes of this meeting record that, on the issue of interprovincial offshore boundaries, the "delineation and description was agreed upon by the First Ministers at their meeting on June 17 and 18," (emphasis added) and further noted the Premiers' agreement that "the position concerning boundaries should be that taken at the meeting of June 17 and 18." (Annex 56)<sup>77</sup>
55. Meanwhile, on June 20, 1972, after the conclusion of the Premiers' June 17-18, 1972 Meeting, Dr. Crosby (Director of the Resource Management and Conservation Branch of the federal Department of Energy, Mines and Resources, and a central participant in the offshore negotiations with the Provinces) sent a Memorandum to his Deputy Minister, Mr. Austin, enclosing "notes of telephone conversations with Innis MacLeod [Deputy Attorney General] of Nova Scotia and

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<sup>76</sup> Annex 55: Telegram from G.A. Regan to P. E. Trudeau (18 June 1972).

<sup>77</sup> Annex 56: "Minutes of Meeting of First Ministers of the Five Eastern Provinces on Offshore Minerals held in Halifax in the Cabinet Room, Province House, Halifax, Nova Scotia, August 2, 1972" at 1. The delegation list and agenda for the meeting as well as the communiqué issued following the meeting are also attached.

Stu Peters [Executive Assistant to Premier Moores] of Newfoundland, along with the telex sent to the Prime Minister by Premier Regan on Sunday ...". (Annex 57)<sup>78</sup> The "notes" referred to were each entitled "*Note For File*" and recorded Mr. Crosby's telephone conversations with Mr. MacLeod and Mr. Peters the day before, on June 19.

56. As the June 20 Memorandum and attached *Notes For File* reveal, Mr. Crosby called Mr. MacLeod and Mr. Peters to learn the outcome of the meeting of East Coast Premiers that had ended the previous day. Both Mr. MacLeod and Mr. Peters had been present at the June 17-18 Premiers' meeting; as mentioned above, Mr. Peters had also attended the May 9 meeting between Premier Moores and Minister MacDonald. Mr. Crosby's *Notes For File* leave no doubt as to the views of the two Provinces regarding the results of the Premiers' meeting and the nature of the agreements reached by them.
57. In addition to telling Mr. Crosby, *inter alia*, that the Premiers "had agreed on interprovincial offshore boundary lines ...", (Annex 57)<sup>79</sup> Mr. MacLeod explicitly confirmed **what Mr. Crosby himself knew**, that is, that the technical agreement concluded by the Premiers at the June 17-18, 1972 meeting was but a **reconfirmation of the 1964 Agreement**. As recorded by Mr. Crosby: (Annex 57)<sup>80</sup>

He said they had agreed on interprovincial offshore boundary lines, and *in response to my direct question* confirmed that these were the same offshore boundaries that had been presented to the Federal Government by the then Premier of Nova Scotia, Mr. Stanfield, at the Federal-Provincial Conference of October 14, 1964 (*in other words, the Premiers*

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<sup>78</sup> Annex 57: "Memorandum to the Deputy Minister: Offshore Mineral Rights" from D.G. Crosby, Director, Resource Management and Conservation Branch, Department of Energy Mines and Resources Canada to Deputy Minister, Department of Energy, Mines and Resources Canada (20 June 1972).

<sup>79</sup> *Ibid.* at attachment "Note for File, Telephone Conversation with Innis MacLeod Monday Morning, June 19" at 1 (Annex 57).

<sup>80</sup> *Ibid.* (Annex 57).

*simply reconfirmed the same offshore boundaries that had been negotiated amongst their predecessors some years before for the purpose of sub-dividing respective so-called areas of provincial jurisdiction in the East Coast Offshore).*

(emphasis added)

58. Mr. Peters, for his part, “corroborated the information received from Innis MacLeod”. (Annex 57)<sup>81</sup> Again, as recorded by Mr. Crosby: (Annex 57)<sup>82</sup>

In summary, the seven points agreed upon [by the Premiers on June 17-18] were as follows:

(...)

2. The Premiers agreed to mutual interprovincial boundaries in the Offshore.

(...)

There is nothing startlingly new as concerns points 1 through 4. ... **point 2 involves jurisdictional offshore boundaries that were agreed upon by Provincial Governments years ago and presented to the Federal Government in 1964.**

(emphasis added)

59. Of all the records evidencing Newfoundland’s agreement regarding the line dividing its offshore area from that of Nova Scotia, as established in the *1964 Agreement* and technically demarcated in 1972, none is as compelling and dispositive of the issue as the opening statement made by Premier Moores to the Newfoundland House of Assembly on June 19, 1972, on his return home from the

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<sup>81</sup> *Ibid.* at attachment “Note for File, Telephone Conversation with Stu Peters Monday Afternoon, June 19” at 1 (Annex 57).

<sup>82</sup> *Ibid.* at 1, 2 (Annex 57).

June 17-18 Premiers' Meeting. As recorded in the *Verbatim Report* of the Newfoundland House of Assembly for Monday, June 19, 1972: (Annex 58)<sup>83</sup>

The House met at 3:00 P.M.

Mr. Speaker in the Chair

Mr. SPEAKER: Order!

HONOURABLE FRANK D. MOORES (PREMIER):  
Mr. Speaker, I would like to make a statement to the members of the House regarding the meetings in Halifax over the weekend of the five Eastern Provinces with the four Atlantic Premiers and the Vice-Premier of Quebec.

The result of those meetings was a seven-point agreement outlining the areas of co-operation between the provinces. In arriving at the seven points, a number of topics related to offshore resources were discussed including ownership, financial arrangements and development.

The seven points are:

(...)

2. **The Governments of the five Eastern Provinces have agreed to the delineation and description of the offshore boundaries between each of these five Provinces.**

(...)

(emphasis added)

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<sup>83</sup> Annex 58: Newfoundland, 36<sup>th</sup> General Assembly, "Statement by Premier Moores" in *Verbatim Report*, 1<sup>st</sup> Session, Vol. 1, No. 33 (19 June 1972) at 2491. The statement was widely reported in the press the following day. See, for example, Annex 59: "Agreement on offshore rights outlined" [*St. John's*] *Evening Telegram* (20 June 1972) at 1.

A seven-point agreement outlining the areas of co-operation between the four Atlantic provinces and Quebec in the development of offshore mineral resources was announced Monday in the legislature by Premier Frank Moores.

(...)

The seven-points in a ministerial statement by the premier, are:

(...)

- the governments of the five eastern provinces have agreed to the delineation and description of the offshore boundaries between each of these five provinces.

**(Annex 59 : "Agreement on offshore rights outlined"**  
*[St. John's] Evening Telegram (20 June 1972) at 1)*



**E. In 1973, Newfoundland Initiated Separate Negotiations With The Federal Government Regarding Jurisdiction Over Submarine Minerals While Confirming The Interprovincial Boundaries Established In The 1964 Agreement**

60. In concluding his June 19, 1972 statement to the Newfoundland House of Assembly, Premier Moores made a stirring peroration, which was widely reported in the press, regarding Newfoundland's special status within the Canadian federation and its "unique" claim to jurisdiction over its offshore: (Annex 58)<sup>84</sup>

(...)

Newfoundland has a unique case, Mr. Speaker, regarding offshore ownership. All of the five Provinces in Eastern Canada have claims to offshore resources, but Newfoundland has a claim in writing, drafted and signed by Federal Authorities and that is Term 37 of the Terms of Union.

Legally and constitutionally, Newfoundland has the strength to fight any attempt to take these resources away.

(emphasis added)

61. Premier Moores' statement in this regard signalled a reassertion of Newfoundland's long-held view that it was in a stronger legal position than other Provinces to assert a claim for jurisdiction, as against the Government of Canada, over the offshore. It also presaged its decision to go it alone in negotiations with the federal Government.
62. It will be recalled that in the May 12, 1969 letter from Minister Allard, provided to the Premiers as background in advance of their June 17-18, 1972 meeting,<sup>85</sup> the possibility of individual Provinces seeking different degrees of control over their offshore, once their interprovincial boundaries were agreed, had been

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<sup>84</sup> "Statement by Premier Moores," *ibid.* at 2493 (Annex 58); "Agreement on offshore rights outlined," *ibid.* (Annex 59).

<sup>85</sup> See above, Part II D i), paras. 44-45; *supra* note 62.

explicitly put before the Premiers.<sup>86</sup> In 1973, Newfoundland in fact chose to distance itself from the continuing efforts of the other Provinces to negotiate an acceptable compromise on offshore jurisdiction, in order to press what it perceived to be its “unique case ... regarding offshore ownership”. (Annex 58)<sup>87</sup>

63. As the facts demonstrate, Newfoundland’s decision was entirely unrelated to the question of interprovincial boundaries. On the contrary, its decision was made possible, at least in part, by the fact that its boundaries had been agreed and precisely delineated. Not only did Newfoundland never disavow the boundaries established in the *1964 Agreement*, it continued to respect and to apply those boundaries.

i) **Newfoundland’s Reasons For Initiating Separate Negotiations With The Government Of Canada In 1973 Did Not Relate To Interprovincial Boundaries**

64. At a meeting of First Ministers of the five Eastern Provinces and the Government of Canada held on April 9, 1973, senior officials representing each of the Governments were directed to meet “... for the purpose of examining in a critical fashion Federal and Provincial proposals ... in order to prepare a memorandum making as clear as possible those principal issues regarding offshore resources administration on which there was general agreement and on which there was disagreement.” (Annex 60)<sup>88</sup> (emphasis added) The designated officials met over four days, on April 25, April 26, May 3, “and a final day of discussion for the preparation of this memorandum was held on May 7 in Ottawa.” (Annex 60)<sup>89</sup>

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<sup>86</sup> *Supra* note 62 at 3 (Annex 43).

<sup>87</sup> *Supra* note 83 at 2493 (Annex 58). This decision ultimately led to a constitutional reference before the Supreme Court of Canada: The “Newfoundland Reference,” *supra* note 1. Newfoundland’s “unique case” was rejected by the Court.

<sup>88</sup> Annex 60: “Memorandum to First Ministers Re Discussions By Officials on Atlantic Offshore Mineral Resource Administration Arrangements” (8 May 1973) J. Austin and M. Kirby, Co-chairmen, at 1.

<sup>89</sup> *Ibid.* (Annex 60).

65. The 12-page memorandum produced by this group, dated May 8, 1973 (Annex 60), comprised detailed and comprehensive statements of the positions of the various Provinces, including Newfoundland, on a wide range of “issues” and “particular concerns” regarding jurisdiction and administration of submarine mineral resources. It also discussed the “Newfoundland Proposal for Provincial Responsibility in Administration.” Nowhere in the memorandum is there the slightest reference to the question of interprovincial boundaries. Nowhere is there the least indication that the “issues” or “particular concerns” expressed by the Provinces included problems relating to interprovincial offshore boundaries. Indeed, as both the memorandum and the “Newfoundland Proposal” summarized in the memorandum clearly record, Newfoundland’s concerns were focused exclusively on the nature of the joint administrative regimes being considered by the other Provinces and the federal government, and related to matters such as benefit-sharing and administrative decision-making.<sup>90</sup>
66. Indeed, had Newfoundland raised any objection to the agreed offshore boundaries, this would have come as a considerable surprise to the other participants in the light of Newfoundland’s acceptance of the boundaries since their establishment in the *1964 Agreement*.
67. The record, as it is known to Nova Scotia, reveals that following Premier Moores’ June 19, 1972 announcement to the House of Assembly, a Newfoundland official made a technical inquiry regarding the “precise demarcation of our two respective shelf areas” and “the principles and methodology used to determine the points

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<sup>90</sup> *Ibid.* at 2, 5, 10-11 (Annex 60). Mr. Barry, the Newfoundland Minister of Mines, listed six concerns, including control over acquisition of exploration rights and the setting of royalty rights. More generally, he pointed out that Newfoundland wanted “to be able to influence the direction and pace of development and therefore requires the administrative and management levers.” *Ibid.* at 10-11 (Annex 60).

shown on the map...” (Annex 61)<sup>91</sup> There is no suggestion, however, that that this inquiry related to any disagreement with “the precise demarcation” or “the principles and methodology used.”

68. In the Spring of 1973, the same official remarked at a federal-provincial meeting convened to discuss offshore resource administration matters unrelated to boundaries, that “the Newfoundland Premier had not participated in the interprovincial conference at which the boundary lines were accepted [and] that Newfoundland did not accept the actual lines, which appeared to have been drawn using strange baseline criteria.” (Annex 62)<sup>92</sup> The official, who was employed by Newfoundland beginning in July 1972, obviously had not attended the June 17-18 Premiers’ meeting. He was, moreover, quite evidently unaware of the conclusion of the *1964 Agreement* and ignorant of both the details of the boundaries agreed to by the Provinces and the means used to determine them. As demonstrated, Premier Smallwood of Newfoundland **had** attended the September 30, 1964 Atlantic Premiers’ Conference at which the *1964 Agreement* was concluded (not to mention the October 14-15, 1964 Federal-Provincial Conference at which the *Joint Submission* describing the Agreement was presented to the Prime Minister of Canada), and the boundaries agreed by the Provinces had **not** in fact been drawn using baselines.

ii) Newfoundland’s 1973 Proposal Affirmed The *1964 Agreement*

69. In September 1973, Premier Moores wrote to the other East Coast Premiers, stating his intention to submit his own proposal to the federal government

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<sup>91</sup> Annex 61: Letter from C. Martin, Legal Adviser to the Minister of Mines, Government of Newfoundland to M.J. Kirby, Principal Secretary to the Premier of Nova Scotia (17 November 1972).

<sup>92</sup> Annex 62: “Minutes of Meeting of Federal-Provincial Officials to Discuss East Coast Offshore Mineral Resource Administration – Arrangement of April 9 -- Thursday, May 4, 1973” at 12-13.

regarding the issue of submarine mineral rights.<sup>93</sup> There is no mention, either in Premier Moores' letter or in Premier Regan's reply,<sup>94</sup> of any attempt to revisit, let alone renegotiate, either the *1964 Agreement* or the 1972 technical delineation and description. Indeed, the circumstances surrounding Newfoundland's decision to negotiate separately with the Government of Canada illustrate that Newfoundland considered the boundaries to be applicable and that the reasons for its withdrawal from the provincial common front had nothing to do with those boundaries.

70. Section 2 (ii) (a) of Newfoundland's proposal defined the Newfoundland offshore area for the purposes of the proposed agreement with the Government of Canada in the following terms: (**Annex 63**)<sup>95</sup>

2. (...)

(ii) In this Agreement

(a) "adjacent submarine area" means all that area seaward of the mean low water mark lying off the coast of Newfoundland as defined in term 2 of the Terms of Union between Newfoundland and Canada to which Canada as a sovereign state may claim exclusive rights for the purpose of exploring for and the exploitation of the mineral resources of the seabed and sub-soil thereof *subject to any lines of demarcation agreed to by the Province of Newfoundland with respect to the submarine areas within the sphere of interest of other Provinces.*

(emphasis added)

71. This explicit acknowledgement of "lines of demarcation agreed to by the Province of Newfoundland ..." coming just fifteen months after Premier Moores rose in the

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<sup>93</sup> Annex 63: Letter from F. Moores, Premier, Province of Newfoundland to G. Regan, Premier, Province of Nova Scotia (11 September 1973) and Appendix I: setting out Newfoundland's proposal to the Federal government on the issue of submarine minerals. See also Annex 64: Letter from F. Moores, Premier, Province of Newfoundland, to R. Hatfield, Premier, Province of New Brunswick (11 September 1973).

<sup>94</sup> Annex 65: Letter from G. Regan, Premier, Province of Nova Scotia to F. Moores, Premier, Province of Newfoundland (24 September 1973).

<sup>95</sup> Attachment to letter from Moores to Regan, *supra* note 93 at 2 (Annex 63).

House of Assembly to announce proudly that he and his fellow Premiers had finally “agreed to the delineation and description of the offshore boundaries between each of these five Provinces” (**Annex 58**)<sup>96</sup> yet again confirms the binding and definitive nature of the boundary established in the *1964 Agreement* and belies Newfoundland’s efforts to disavow that Agreement today.

**F. The 1964 Agreement Has Been Consistently Applied By Nova Scotia In Intergovernmental Agreements And In Legislation**

72. For its part, Nova Scotia has consistently acted in good faith by relying on, respecting and applying the boundaries established in the *1964 Agreement*. It has done so in all of its subsequent agreements with the Government of Canada and the other parties to the *1964 Agreement*, and in its own legislation defining the limits of its offshore, including the *Canada-Nova Scotia Act*. Nova Scotia’s issuance of exploration permits to third parties, which has also at all times conformed to the *1964 Agreement*, is described in a separate Part of this Memorial, Part II H, below.

**i) The 1977 MOU**

73. In view of Newfoundland’s decision in 1973 to go it alone in negotiations with the Government of Canada, on August 4, 1976, Prime Minister Trudeau wrote to Premier Regan of Nova Scotia (as Chairman of the “Council of Maritime Premiers”), proposing an arrangement for the joint administration and sharing of revenues from the offshore areas of the Provinces of Nova Scotia, Prince Edward

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<sup>96</sup> See above, Part II D ii) and *supra* note 83.

Island and New Brunswick.<sup>97</sup> In an Annex setting out the details of his proposal, Prime Minister Trudeau wrote, in part: (Annex 66)<sup>98</sup>

As regards the limits of the areas to be covered by the arrangement, the interprovincial lines of demarcation agreed upon by the five eastern provinces in 1964 would be accepted as a basis for settlement.

(emphasis added)

74. In the “*Federal-Provincial Memorandum of Understanding In Respect of The Administration And Management Of Mineral Resources Offshore Of The Maritime Provinces*”, signed on February 1, 1977<sup>99</sup> (the “1977 MOU”), which concluded the proposed arrangement, “the interprovincial lines of demarcation agreed upon by the five eastern provinces in 1964” were in fact applied, though reference to “the five eastern provinces” was amended to reflect the fact that Newfoundland and Québec were not party to this administrative arrangement: (Annex 67)<sup>100</sup>

#### THE AREA

2. The Area to be covered by the Agreement will be the seabed and subsoil seaward from the ordinary low water mark on the coasts of Nova Scotia, New Brunswick, and Prince Edward Island to the continental margin, or to the limits of Canada’s jurisdiction to explore and exploit the seabed and subsoil off Canada’s coast, whichever may be farther, and where applicable, to the Interprovincial Lines of Demarcation agreed upon in 1964 by Nova Scotia, New Brunswick and Prince Edward Island.

(emphasis added)

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<sup>97</sup> Annex 66: Letter from P.E. Trudeau, Prime Minister of Canada to G. Regan, Premier, Province of Nova Scotia (4 August 1976) and attached Annexes I and II. Nova Scotia researchers have found no records indicating why the Province of Québec was not included in Prime Minister Trudeau’s initiative.

<sup>98</sup> *Ibid.* at Annex I at 4 (Annex 66).

<sup>99</sup> Annex 67: “Federal-Provincial Memorandum of Understanding in Respect of the Administration and Management of Mineral Resources Offshore of the Maritime Provinces” (1 February 1977).

<sup>100</sup> *Ibid.* at 1-2. The 1977 MOU was never implemented by legislation as its terms required (Annex 67).

ii) *The 1982 Canada – Nova Scotia Agreement*

75. The 1977 MOU was eventually superseded, as regards Nova Scotia, on March 2, 1982, when Canada and Nova Scotia signed the 1982 “*Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing*”<sup>101</sup> (the “1982 Canada-Nova Scotia Agreement”). Schedule I to 1982 *Canada-Nova Scotia Agreement*, entitled “Area Covered By This Agreement”, specifies “outer limits of the offshore areas within which this agreement applies.” The boundaries between Nova Scotia and each of its provincial neighbours are described using the metes and bounds from the 1964 *Agreement*. As the following passage makes clear, the line dividing the offshore areas of Nova Scotia and Newfoundland is described in Schedule I in terms identical to those of the 1964 *Agreement*: (Annex 68)<sup>102</sup>

From this point [the ‘tri-junction’ point, or three-way boundary, between Québec, Nova Scotia and Newfoundland] the boundary runs southeasterly to the midpoint between St. Paul Island (Nova Scotia) and Cape Ray (Newfoundland); thence to a point midway between Flint Island (Nova Scotia) and Grand Bruit (Newfoundland); thence southeasterly to the outer edge of the continental margin.

76. These lines were “generally” depicted on an attached sketch (reproduced in **Figure 10**).<sup>103</sup> As the document itself reveals, the turning points, which are based on metes and bounds descriptions, without coordinates, are identical to those found in the 1964 *Agreement*, with the final stage of the boundary specified as a

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<sup>101</sup> Annex 68: “Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing” (2 March 1982).

<sup>102</sup> *Ibid.*, Schedule I at 1-2 (Annex 68). The description of the boundary in the 1964 *Agreement* is as follows: “From the above common point [the tri-junction point with Nova Scotia and Québec], southeasterly to the midpoint between St. Paul Island and Cape Ray; thence southeasterly to the midpoint between Flint Island and Grand Bruit; thence S.E. to International waters.” See above, Part II C, para. 36.

<sup>103</sup> **Figure 10**: Map Accompanying 1982 Canada-Nova-Scotia Agreement Showing 1964 Agreement Boundary to Limits of Continental Margin. A copy of the original map is found at Annex 69: Map attached to Schedule I to the Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing of March 2, 1982



Boundary with (P.Q.)

VI – Boundary of Newfoundland

(...)

thence southerly to the midpoint between East Point (Magdalen Islands) and Cape Anguille, which is the mutual corner of Quebec, Nfld. and N.S.

Boundary with (N.S.)

From the above common point, southeasterly to the midpoint between St. Paul Island and Cape Ray; thence southeasterly to the midpoint between Flint Island and Grand Bruit; thence S.E. to International waters.

(Annex 31 : “Notes Re: Boundaries” at 24-25)

directional line running “to the outer edge of the continental margin” rather than “to International waters” (Annex 68)<sup>104</sup>

77. In 1984, Nova Scotia passed three Acts<sup>105</sup> intended to implement the 1982 *Canada – Nova Scotia Agreement*; contemporaneously, the federal government enacted its own implementing legislation, in the *Canada-Nova Scotia Oil and Gas Agreement Act*.<sup>106</sup> All of these Acts shared a common Schedule I, which defined the offshore area for the purposes of the legislation.<sup>107</sup> Schedule I to the various Acts reproduced the provisions in Schedule I of the 1982 *Canada – Nova Scotia Agreement*, with the inclusion of latitude and longitude coordinates for the turning points described in that Agreement. These coordinates precisely matched the coordinates assigned to the turning points and agreed by the Premiers of the five East Coast Provinces in 1972. As well, the portion of the Nova Scotia – Newfoundland boundary running southeast to the edge of the continental margin was specified to be a line running “southeasterly in a straight line and on an

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<sup>104</sup> See also Table II, *infra* at para. 79. The Bay of Fundy, the limits of which were described in Schedule II of the *Agreement*, was not included in Schedule I, so that the 1964 Agreement turning points for that area did not appear. It is unclear why this was so; however, and in any event, these limits found their way back into the eventual implementing legislation. (*Canada-Nova Scotia Oil and Gas Agreement Act*, S.C. 1984, c. 29 at Schedule II.) In addition, a new definition was inserted for that section of Nova Scotia’s offshore in the general area of the Gulf of Maine, defining the boundary as intersecting and then following “the Single Maritime Boundary” with the United States. This change was to accommodate the anticipated result from the *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America)*, [1984] I.C.J. Rep. 246 [hereinafter the *Gulf of Maine case*], which was then pending before the International Court of Justice.

<sup>105</sup> *Canada-Nova Scotia Oil and Gas Agreement (Nova Scotia) Act*, S.N.S. 1984, c. 2; *Offshore Oil and Gas Act*, S.N.S. 1984, c. 8; *Oil and Gas Production and Conservation (Nova Scotia) Act*, S.N.S. 1984, c. 9.

<sup>106</sup> Annex 70: S.C. 1984, c. 29.

<sup>107</sup> *Ibid.*, Schedule I (Annex 70).

azimuth of 135° 00' 00" to the outer edge of the continental margin".  
(Annex 70)<sup>108</sup>

iii) *The 1986 Canada – Nova Scotia Accord And 1988 Canada-Nova Scotia Act*

78. In 1986, Nova Scotia re-negotiated its Agreement with the Government of Canada, to incorporate certain administrative features recently adopted in the bilateral Accord that had been signed by Newfoundland and the Government of Canada in 1985 (the *Canada-Newfoundland Accord* is discussed further, below, in Part II I). The resulting *1986 Canada – Nova Scotia Accord*<sup>109</sup> and the federal and provincial implementing Acts (which are still in force)<sup>110</sup> all reproduce the language used in Schedule I to the 1984 legislation (Annex 2) regarding the limits of Nova Scotia's offshore area, including the line dividing its offshore from that of Newfoundland.<sup>111</sup>
79. As illustrated in Table II, the overall result of the historical events described above is that the current legislated limits of the Nova Scotia offshore area, in

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<sup>108</sup> *Ibid.* (Annex 70). 135 degrees is precisely "southeast." Certain minor modifications were also made. A more precise definition of the intersection of the offshore boundary with the Canada-United States boundary in the Gulf of Maine area was included, specifying an intersection between that boundary and an azimuth drawn from a defined midpoint, and adding a new coordinate between the boundary with the United States and the interprovincial boundary in the Bay of Fundy. As well, the interprovincial boundary in the Bay of Fundy was included. In addition, the name "Amherst Island" was changed to "Ile du Havre Aubert" in the Magdalen Islands. The boundary matched that in the *1964 Agreement*, and the 1972 coordinates, point for point, with the exception that the "inner limit" along the coast of Nova Scotia is defined differently in recognition of the extent of the Agreement's coverage of federal lands only, and not waters belonging exclusively to the provinces. Finally, certain coastal areas in bays and harbours were excluded from the effect of the legislation. *Supra* note 104.

<sup>109</sup> Annex 2: *Canada-Nova Scotia Offshore Petroleum Resources Accord* (26 August 1986). See above, Part I A, para. 9.

<sup>110</sup> Annex 2: *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* and *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*. See above, Part I A, para. 9.

<sup>111</sup> Annex 2: See, for example, *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, Schedule I (Annex 2). The one exception is the more precise definition of the single maritime boundary with the United States, inserted to take account of the 12 October 1984 decision of the International Court of Justice in the *Gulf of Maine* case. *Supra* note 104.

TABLE II

**CONSISTENT APPLICATION OF THE 1964 AGREEMENT  
IN FEDERAL-PROVINCIAL AGREEMENTS AND IN LEGISLATION: 1964-1988**

AGREEMENTS AND LEGISLATION	DEFINITIONS OF BOUNDARIES AND LIMITS OF OFFSHORE AREAS
<i>1964 Agreement</i>	Offshore areas described by metes and bounds, i.e., <b>turning points and straight lines between turning points.</b> Final, seaward (outer) segment of agreed Nova Scotia – Newfoundland boundary defined as <b>southeast or southeasterly “to international waters”</b> .
<i>1972 Coordinates Approved By Premiers</i>	Latitude/longitude coordinates plotted for <b>previously agreed turning points described in 1964 Agreement.</b>
<i>1977 MOU</i>	Adoption of <b>“Interprovincial Lines of Demarcation agreed upon in 1964”</b> . Offshore areas described by <b>turning points and straight lines between turning points.</b> Final seaward (outer) segment of Nova Scotia – Newfoundland boundary defined as <b>southeast or southeasterly “to international waters”</b> .
<i>1982 Canada – Nova Scotia Agreement</i>	Offshore area described by metes and bounds, using <b>turning points from 1964 Agreement.</b> Final segment of Nova Scotia – Newfoundland boundary defined as <b>“southeasterly to the outer edge of the continental margin”</b> . <sup>1</sup>
<i>1984 Canada-Nova Scotia Agreement Implementing Legislation</i>	Offshore area described by metes and bounds, using <b>turning points from 1964 Agreement matched with coordinates approved by Premiers in 1972.</b> Final segment of Nova Scotia – Newfoundland boundary defined as <b>“southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin”</b> . <sup>2</sup>
<i>1986 Canada-Nova Scotia Accord</i>	Offshore area as defined in <b>1984 Implementing Legislation:</b> offshore areas described by metes and bounds, using <b>turning points from 1964 Agreement matched with coordinates approved by Premiers in 1972.</b> Final segment of Nova Scotia – Newfoundland boundary defined as <b>“southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin”</b> .
<i>1988 Canada-Nova Scotia Accord Act</i>	Offshore area described by metes and bounds, using <b>turning points from 1964 Agreement matched with coordinates approved by Premiers in 1972.</b> Final segment of Nova Scotia – Newfoundland boundary defined as <b>“southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin”</b> .

<sup>1</sup> Adjustments to the description of Nova Scotia's offshore area in the Gulf of Maine were made in anticipation of the decision in the *Gulf of Maine* case; also the Bay of Fundy was excluded from the Agreement.

<sup>2</sup> Further adjustments were made pursuant to the *Gulf of Maine* decision; Bay of Fundy included in Agreement.

both federal and provincial legislation, as indeed **all previous iterations of those limits**, derive from, rely on, respect and apply the *1964 Agreement* and the coordinates plotted and agreed in 1972.

**G. The 1964 Agreement Has Also Been Applied By Prince Edward Island, New Brunswick And Québec**

80. Although New Brunswick, Prince Edward Island and Québec have not concluded offshore accords with the Government of Canada,<sup>112</sup> they have consistently applied the *1964 Agreement*, in good faith, and have relied on it to define their offshore boundaries, both in legislation and on official maps.

**i) New Brunswick**

81. New Brunswick was a party to the *1977 MOU* with Nova Scotia, Prince Edward Island and the Government of Canada. This agreement, as noted above, explicitly applied the interprovincial boundaries established in the *1964 Agreement*. More recently, New Brunswick has asserted its jurisdiction over offshore exploration activities in the *Oil and Natural Gas Act*.<sup>113</sup> Regulations under the Act establish the New Brunswick Standard Oil and Natural Gas Grid Map (the "*New Brunswick Map*"), which is shown in **Figure 11**, and which depicts the **boundaries of the New Brunswick offshore as those established in the 1964 Agreement**.<sup>114</sup>

**ii) Prince Edward Island**

82. Prince Edward Island was also a party to the *1977 MOU*, which applied the *1964 Agreement*. In its own legislation, as well, Prince Edward Island provides for the

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<sup>112</sup> As mentioned above (*supra* note 100), the *1977 MOU* with the Government of Canada, to which New Brunswick, Prince Edward Island and Nova Scotia were parties, was never implemented in legislation as its terms required.

<sup>113</sup> S.N.B. 1976, c. O-2.1. [formerly R.S.N.B. 1952, c. 162 and R.S.N.B. 1973, c. O-2].

<sup>114</sup> **Figure 11: Implementation of the 1964 Agreement by New Brunswick: Standard Oil and Natural Gas Grid Map. Annex 71: Survey System Regulation - Oil and Natural Gas Act, N.B. Reg. 86-190. Section 3(2) refers to the Grid Map, which is found at Schedule A. A copy of the original New Brunswick Standard Oil and Natural Gas Grid Map is found in Annex 71.**

issuance of offshore exploration permits under the *Oil and Natural Gas Act*.<sup>115</sup> As shown in **Figure 12**,<sup>116</sup> the official, published map depicting the limits of Prince Edward Island's permit areas **fully respects and applies the boundaries established in the 1964 Agreement** (the "*Prince Edward Island Map*"). Indeed, the *Prince Edward Island Map* adopts the actual turning point numbers specified by the *JMRC* and approved by the East Coast Premiers in 1972.

### iii) Québec

83. For its part, Québec does not specify its offshore limits in legislation, but it does publish official maps that depict its offshore boundary as that established in the *1964 Agreement*. **Figure 13** reproduces a map prepared by Québec in 1968 (prior to the *JMRC* determination of coordinates) that was clearly intended to define a boundary line based on the *1964 Agreement*. A more recent Québec map, reproduced in **Figure 14**, shows the boundaries of Québec's offshore as those established in the *1964 Agreement* and precisely plotted in 1972.<sup>117</sup> Québec has also issued at least one exploration permit that directly abuts the agreed boundary with Newfoundland, and has published summary permit maps clearly

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<sup>115</sup> **Annex 72:** R.S.P.E.I. 1988, c. O 5, s. 30 (originally enacted as the *Oil, Natural Gas and Minerals Act*, S.P.E.I. 1971, c. 27). Section 30 provides for the use of a grid system similar to Nova Scotia's, although it is based on a 100 section system rather than on the 108 section system used by Nova Scotia.

<sup>116</sup> **Figure 12:** Implementation of the 1964 Agreement by Prince Edward Island: Petroleum Exploration Permit Grid Map. A copy of the original map is found in **Annex 73:** Prince Edward Island Oil and Natural Gas Map: Permit Areas.

<sup>117</sup> **Figure 13:** Application of the 1964 Agreement Boundaries by Québec: 1968. **Figure 14:** Application of the 1964 Agreement Boundaries by Québec: 1998. Copies of the original maps are found in **Annex 74:** Découpage des juridictions sous-marines interprovinciales dans le golfe St-Laurent and Le Québec et ses limites administratives. The only exception to the *1964 Agreement* boundary is a straight line drawn from the terminus of the 1964 line to the land boundary with Labrador, so as to provide a "closing" of the zone.

showing this permit situated along the interprovincial boundary established in the 1964 Agreement. This map is reproduced in Figure 15.<sup>118</sup>

**H. The 1964 Agreement Has Been Applied As Well By Newfoundland And Nova Scotia In Issuing Offshore Exploration Permits**

84. As the contemporaneous records establish, and as is discussed above, the purpose of the *1964 Agreement* was to establish the certainty and stability required by the East Coast Provinces in order for them to develop and benefit as fully as possible from the mineral resources of the seabed and subsoil within their respective offshore areas. Mutually agreed boundaries were regarded by the Provinces as a *sine qua non* of their efforts to secure recognition of their claims to some form of jurisdiction over their respective offshore areas, and were essential to the orderly issuance by them of exploration permits to oil and gas companies. This was particularly the case in areas of the offshore which might have been the subject of competing provincial claims.
85. The critical importance of defined and secure boundaries to the allocation of exploration rights, which was well understood by the Provinces, makes the subsequent conduct of the parties regarding the issuance of permits in the area of the agreed boundaries particularly relevant to the determination of their intentions in concluding the *1964 Agreement*. Simply put, if Newfoundland issued permits along its boundaries so as to conform to the agreed line, it can only have been because it viewed those boundaries as settled and binding.
86. Nova Scotia and Québec have both issued offshore exploration permits in the immediate vicinity of their agreed boundaries with Newfoundland in the 36 years

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<sup>118</sup> Figure 15: Québec Exploration Permits in the Gulf of St. Lawrence: 1999. A copy of the original map is found in Annex 75: Permis de recherche de réservoir souterrain et de pétrole et de gaz naturel en vigueur Gaspésie-Anticosti-Estuaire et Golfe du Saint-Laurent.

since the *1964 Agreement* was concluded.<sup>119</sup> While Newfoundland now wishes to disavow the *1964 Agreement*, it too issued such permits, in reliance upon – in fact, lying right up on – its agreed boundaries with Nova Scotia and Québec.

87. The practice of New Brunswick, Prince Edward Island and Québec has been addressed above, in Part II G, and demonstrates that, from 1964 to the present day, all three Provinces have consistently abided by the *1964 Agreement* in defining their offshore areas, *inter alia*, for the purposes of permit issuance. This Part II H addresses the relevant practice of Nova Scotia and Newfoundland in the issuance of exploration permits. Additional details on the permits referred to below, and an explanation of Nova Scotia's permit system, may be found in **Appendix A: "Provincial Offshore Exploration Permits"**.

**i) Nova Scotia**

88. From 1965 to 1971, Nova Scotia issued a number of exploration permits along its boundaries with the Provinces of Newfoundland, Québec and Prince Edward Island. These permits are shown on **Figure 16**,<sup>120</sup> which is a reproduction of the official, published Nova Scotia map that establishes the petroleum licence "grid" system.<sup>121</sup> (The relationship of this map to the location of individual permits is explained in **Appendix A**.) **Figure 17** shows a consolidation of these permits, by

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<sup>119</sup> Of course, the Provinces have also issued permits in areas not adjacent to the boundaries established in the *1964 Agreement*. While Nova Scotia submits that these, too, were issued on the basis of the boundaries agreed in 1964, only those permits issued in the immediate vicinity of the established boundaries are discussed here. A more complete explanation and depiction of the numerous offshore oil and gas permits issued by the Provinces within the full extent of their respective offshore areas can be provided to the Tribunal by Nova Scotia, should the Members of the Tribunal consider that such information would be helpful to their determination of the present dispute.

<sup>120</sup> **Figure 16: Implementation of the 1964 Agreement by Nova Scotia: Offshore Exploration Permits 1965-1971. Figure 17: Nova Scotia Offshore Exploration Permits Consolidated by Exploration Company.**

Sample permits are found in **Annex 76: Nova Scotia Licenses to Explore for Petroleum Nos 174, 209, 210, 212, 218, 222, 223, 267, 268, 269, 273, 276, 287, and 372.**

<sup>121</sup> By 1971, the grid system maps included the turning points as numbered by the JMRC in 1969, and as later agreed by the Premiers in 1972. A copy of the original map is found in **Annex 77: Nova Scotia Reservation Grid System for Petroleum Licenses. See also Appendix A.**



- permit holder (that is, individual permits issued to the same company are grouped together).
89. The details of the permits are, as noted above, explained in **Appendix A**, and samples of permits along the boundary are provided in **Annex 76**. What is strikingly clear from **Figure 17**, however, is that Nova Scotia openly applied the boundaries established in the *1964 Agreement* to determine precisely where it would, and would not, issue exploration rights. Permits were defined in such a manner as to limit all rights granted by Nova Scotia to areas within its agreed boundary with Newfoundland. In sum, Nova Scotia's consistent conduct in the period from 1964-1971 demonstrates a reliance on and application of the *1964 Agreement* in the granting of all exploration permits. In fact, **no permits contravening Nova Scotia's agreed boundaries have ever been issued by Nova Scotia or (in more recent years) by the Canada–Nova Scotia Board.**

ii) **Newfoundland**

90. Newfoundland's permit issuance in the period immediately following the *1964 Agreement* was characterised by a rather opaque process in which interim permits were issued with little or no specifications and with unusual secrecy (see **Appendix A**).<sup>122</sup> It is, however, possible to reconstruct the general framework within which permits were issued by the Province at that time and, more particularly, to demonstrate that the permits of greatest interest in the arbitration – those abutting the boundaries established in the *1964 Agreement* – were in fact issued by Newfoundland in conformity with those boundaries.
91. Although Newfoundland had issued exploration permits in inshore areas prior to 1964, its offshore permit activity expanded rapidly in 1965, once the agreed

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<sup>122</sup> See also **Annex 78**: Newfoundland, 36<sup>th</sup> General Assembly, 2<sup>nd</sup> session, "Budget 1973" (J.C. Crosbie, Minister of Finance and President of the Treasury Board, Government of Newfoundland) at 40-41.

boundaries were in place.<sup>123</sup> Permits were issued as far as 300 miles from shore, covering millions of acres of the continental shelf. Additional permits were issued in 1966, 1967 and 1971 (all of which are examined in **Appendix A**). For the purpose of the present arbitration, the most relevant of the permits issued by Newfoundland are those issued, in 1967 and 1971, along its agreed boundaries with Nova Scotia and Québec. Those permits are discussed below.

92. **Figure 18** shows permits issued by Newfoundland to Mobil Oil Canada Limited (“Mobil Oil”), in 1967, and to Katy Industries, Inc. (“Katy Industries”) in 1971.<sup>124</sup> As can be readily seen, the permit issued to Mobil Oil in 1967 **precisely tracks the Newfoundland-Nova Scotia boundary as established in the 1964 Agreement**, lying just within Newfoundland’s offshore area. Similarly, the permit area granted to Katy Industries in the Gulf of St. Lawrence in 1971 **respects the agreed boundary with Québec**.
93. The only permit area that appears not to respect the boundaries established in the *1964 Agreement* is the large area depicted on the map attached to the Katy Industries permit abutting the 135° directional line (azimuth) dividing the offshore areas of Newfoundland and Nova Scotia, as shown in **Figure 18**. This

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<sup>123</sup> See **Annex 79**: Memorandum from E.A. Côté, Deputy Minister, Energy, Mines and Resources Canada to Minister, Energy, Mines and Resources Canada (27 May 1965) and Map depicting Newfoundland permits issued up to 1971.

<sup>124</sup> **Figure 18**: Newfoundland and Labrador Exploration Permits Issued Along the 1964 Agreement Boundary: 1967 and 1971. **Annex 80**: “Government of Newfoundland and Labrador Department of Mines, Agriculture and Resources Interim Permit” issued to Katy Industries, Inc. (May 19, 1971) with correspondence (May 11, 1971) and map, as well as “Interim Permit” issued to Mobil Oil Canada Limited (September 15, 1967) with correspondence (August 1, 1967) and map. The permit issued to Katy Industries Inc. granted the company permission “to search, prospect and explore for petroleum, including natural gas, in five areas located offshore of the Province of Newfoundland as shown coloured yellow on the plan attached hereto (which plan is hereby made part and parcel of the Interim Permit)” (emphasis added). Unlike other permits issued by Newfoundland at the time, the Katy Industries permit did not include any description or coordinates of the permit areas in question, referring merely to an attached, roughly executed “plan.” See, for example, the permit issued to Mobil Oil, which grants permission “to search, prospect and explore for petroleum, including natural gas, in an area located to the south of the Island of Newfoundland and described in the Schedule hereto ...” (emphasis added). This permit, like many others, also includes a sketch depicting the area precisely described in the Schedule.

apparent “overlap”, however, is without question the result of inadequacies in the plan itself and in the drawing of the permit boundaries. This fact is explained in detail in **Appendix A**, where the flawed method used to draw the line in question is re-constructed, and the *correct* method of showing the permit area granted to Katy Industries is explained and illustrated. Two points can briefly be mentioned, here. First, the original plan was based on a chart that was inappropriate for the use to which it was put, especially given that no coordinates were specified for the permit area. Second, the drafter’s intent was clearly to follow the 135° azimuth line, although the line itself is slightly flawed (though well within the range of manual error on the original chart utilized).

94. In the end, what is clear is that all of the permits issued by Newfoundland on or near the boundaries established in the *1964 Agreement* were intended to conform to those boundaries. There could be no explanation for the placement and limits of these permits other than that they were issued in reliance upon and with the intent of respecting the boundaries agreed by the five East Coast Provinces. These permits, therefore, furnish additional proof of Newfoundland’s recognition of the existence, location and binding effect of the boundaries established in the *1964 Agreement*, including, of course, the Nova Scotia–Newfoundland boundary.
95. Nova Scotia is not aware of any permits, other than those described above, issued by Newfoundland in the area of the two Provinces’ mutually agreed boundary. Recent developments in the permit issuance process for Newfoundland’s offshore, however, provide strong evidence of Newfoundland’s continuing recognition of the boundaries established in the *1964 Agreement*. In 2000, the Canada-Newfoundland Board issued “Call for Bids No. NF00-1” (closing date December 11, 2000), a preparatory step in the issuance of exploration permits for the areas defined in the Call.<sup>125</sup> Call for Bids NF00-1 includes an area identified as “Parcel

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<sup>125</sup> Annex 81: Call For Nominations No. NF 00-1, downloaded from the Canada-Newfoundland Offshore Petroleum Board web site (<http://www.cnopb.nfnct.com>).

14", shown in **Figure 19**, which is adjacent to Newfoundland's agreed boundary with Québec,<sup>126</sup> directly opposite the Québec permit discussed above and depicted in **Figure 15**. As with all such calls for bids issued by the Canada-Newfoundland Board, under the provisions of the *Canada-Newfoundland Act* the issuance of Call for Bids NF00-1 required the consent of the Government of Newfoundland and Labrador.<sup>127</sup> As with the permits discussed in the preceding paragraph, the placement and limits of this parcel demonstrate graphically the tacit recognition by the Government of Newfoundland, *and* the Canada-Newfoundland Board, of the Québec-Newfoundland boundary established in the *1964 Agreement*. This is particularly significant in that there is no legislation, either federal or provincial, defining that boundary, the only basis for which is the *1964 Agreement*.

96. The combined effect of the various boundary-area permits issued by Newfoundland demonstrates that in its practice and conduct, Newfoundland has respected and applied its agreed boundaries. Newfoundland's permits effectively trace the location and direction of the boundaries established in the *1964 Agreement*, as do those of Nova Scotia and Québec, and as do the New Brunswick and Prince Edward Island legislation relating to those Provinces' offshore areas. It is these boundaries that Newfoundland asks the Tribunal, in effect, to erase, calling into question the validity of the rights granted to third parties in the vicinity and disrupting the stability that the five East Coast Provinces explicitly sought to create, and did in fact create, by establishing agreed boundaries in 1964.

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<sup>126</sup> *Ibid.* **Figure 19**: Canada-Newfoundland Offshore Petroleum Board Call for Bids NF-001, Parcel 14. According to Nova Scotia's calculations, Parcel 14, which encompasses 31, 068 hectares, extends to within approximately 1.185 Km of the Québec-Newfoundland boundary established in the *1964 Agreement*. The official "land plat" (map) of Parcel 14 has been downloaded from the Canada-Newfoundland Offshore Petroleum Board web site at [http://www.cnoph.nfnet.com/land/cfb00\\_1/cal00\\_1b.htm](http://www.cnoph.nfnet.com/land/cfb00_1/cal00_1b.htm), and is found at Annex 81. The "land description," including geographic coordinates and acreage, has been downloaded from [http://www.cnoph.nfnet.com/land/cfb00\\_1/cal00\\_1d.htm](http://www.cnoph.nfnet.com/land/cfb00_1/cal00_1d.htm) and is found at Annex 81.

<sup>127</sup> Annex 1: *Canada-Newfoundland Atlantic Accord Implementation Act*, *supra* Part I A, note 4 at ss. 31-40.

iii) **Summary Of The Parties' Permit Activity**

97. The practice of Nova Scotia and Newfoundland in the issuance of offshore exploration permits provides further eloquent proof of the nature and effect of the *1964 Agreement*. From 1965 onwards, long before the agreed line dividing their respective offshore areas was incorporated into federal and provincial legislation, both Nova Scotia and Newfoundland acted in recognition of their obligations under the *1964 Agreement*, by issuing permits up to and not beyond the boundary mutually agreed. The existence of the boundary, in fact, enabled the two Provinces to issue permits in what might otherwise have been disputed areas, and allows them to do so still.
98. Similarly, Prince Edward Island, New Brunswick and Québec, though at no time bound by any legislative requirement to respect their boundaries as established in the *1964 Agreement*, nonetheless did so, and continue to do so up to the present day.
99. This practice admits of only one conclusion. Newfoundland, as indeed all the East Cost Provinces, clearly considered that it was bound by the *1964 Agreement*, and it acted accordingly. Newfoundland would now reject the boundaries which it has recognized and used to its benefit. That rejection seems to be selective, however, in that Newfoundland apparently still respects its agreed boundaries where it considers it advantageous to do so, in the Gulf of St. Lawrence, bordering Québec.

**I. In 1985 Newfoundland Finally Concluded An Accord With The Government Of Canada**

100. In 1985, Newfoundland finally concluded its own arrangement with the Government of Canada regarding management of offshore mineral resources and

sharing of benefits: the *Canada-Newfoundland Accord*.<sup>128</sup> That deal represented the culmination of Newfoundland's 1973 decision to "go it alone" in seeking federal recognition of its perceived "unique case" regarding ownership of offshore mineral resources. Whether or not Newfoundland was successful in its bid – that is, whether or not it succeeded in wresting from the Government of Canada greater administrative control over its offshore than was granted to Nova Scotia (the only other Province that has concluded an offshore Accord) – is not at issue, here. What is relevant in the context of this arbitration is that Newfoundland did not specify its boundaries in its bilateral deal with the Government of Canada or the implementing legislation that followed.

101. Not only do the terms of the *Canada-Newfoundland Accord* and its implementing legislation not disavow the boundaries established in the *1964 Agreement* but Newfoundland's consistent conduct, and that of officials, up to, during and after the negotiation of the *Canada-Newfoundland Accord* shows that they fully understood that the question of interprovincial boundaries – in particular, the line dividing the offshore areas of Nova Scotia and Newfoundland – had been resolved by a binding agreement that could not be overridden.

## **J. Summary Of The Facts**

102. On September 30, 1964, following approximately three years of consideration of a detailed proposal, the four Atlantic Provinces concluded the *1964 Agreement*, in which they established their offshore interprovincial boundaries. Québec acceded to the *1964 Agreement* immediately thereafter and, on October 14-15, 1964, the *1964 Agreement* was formally presented to the Prime Minister of Canada. The *1964 Agreement* was regarded by the Provinces as an essential element both of any political deals (with the Government of Canada) regarding jurisdiction over

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<sup>128</sup> See above, Part I A.

the offshore, and of any commercial deals (with industry) regarding offshore exploration and development.

103. In 1968-1969, the boundaries established in the *1964 Agreement* were precisely plotted and verified by the chief engineers/surveyors of the five East Coast Provinces, with coordinates of latitude and longitude assigned to the previously agreed "turning points". This precise technical delineation and description was formally confirmed by the five Provinces at a Conference of Premiers on June 17-18, 1972. Their agreement was announced in an official *Communiqué* as well as in a telegram to the Prime Minister of Canada on June 18. The following day, June 19, 1972, the Premier of Newfoundland stood in the Newfoundland House of Assembly to proclaim this agreement on the "delineation and description" of Newfoundland's agreed boundaries with the other Provinces.
104. The Provinces of Nova Scotia, New Brunswick, Québec and Prince Edward Island have applied the boundary consistently since 1964, in negotiations and agreements with the Government of Canada, in legislation defining their offshore areas, in official maps and in permits issued to industry.
105. Newfoundland, as well, has applied the boundaries established in the *1964 Agreement* for the purpose of permit issuance, in particular along the line dividing its offshore from that of Nova Scotia, as well as along its agreed boundary with Québec. In 1985, Newfoundland chose not to define its boundary in its bilateral Accord with the federal government, but in 2000 it consented to a Call for Bids issued by the Canada-Newfoundland Board directly opposite a permit issued by Québec and abutting the Provinces' agreed boundary in the Gulf of St. Lawrence.
106. Newfoundland would ask the Tribunal to ignore this practice, sanction its disavowal of an Agreement that it voluntarily entered into for its own benefit and on which it and the other East Coast Provinces have relied, and throw into disarray a regime based on over three and one-half decades of stability brought about by that same Agreement.

107. In 1973, Newfoundland parted ways with the other Provinces in a bid to assert what it perceived as its “unique case”, entitling it not to a larger offshore but to greater jurisdiction within its offshore than other Provinces. In doing so, and in granting to third parties exploration and development rights within its agreed boundaries over the years, Newfoundland continued to rely on and to benefit from the *1964 Agreement*. In 1985, Newfoundland finally succeeded in concluding an offshore Accord with the Government of Canada, the culmination of its efforts dating back to the late 1950s and early 1960s; moreover, in the intervening years, Newfoundland also succeeded in establishing a thriving offshore oil and gas industry. These are the prizes on which Newfoundland had set its sights for over 40 years. Now, Newfoundland apparently feels that it has nothing to lose by abandoning the *1964 Agreement*. In this, it should not be allowed to succeed.

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