

PART V: CONCLUSION

1. The facts and the law in this case lead to one fundamental conclusion. In 1964, the Provinces of Nova Scotia and Newfoundland concluded a binding agreement that determined the line dividing their respective offshore areas.
2. The *1964 Agreement* in fact established offshore boundaries as between and among all of Canada's East Coast Provinces, covering the full extent of the continental shelf over which Canada could claim jurisdiction at international law. By the terms of the *1964 Agreement*, and as confirmed by the Provinces' subsequent conduct, each Province undertook to respect and apply its agreed boundaries for all purposes, including in the negotiation of jurisdictional and administrative arrangements with the Government of Canada.
3. The boundaries established in the *1964 Agreement* have been respected and applied by the East Coast Provinces ever since the Agreement was concluded. This includes the Provinces of New Brunswick, Prince Edward Island and Québec, which have applied the agreed boundaries in their own legislation, in their issuance of offshore exploration permits and in their negotiations with the Government of Canada regarding shared administration of offshore mineral rights.
4. For its part, Nova Scotia has conducted itself with the utmost good faith, in all respects. The line dividing its offshore area from that of Newfoundland, as set out in the *Canada-Nova Scotia Accord* and legislated in Schedule I to the *Canada-Nova Scotia Act*, is merely the most recent application of the *1964 Agreement* and conforms in its entirety to the Newfoundland-Nova Scotia boundary established in that Agreement.
5. Of the five parties to the *1964 Agreement*, only the Province of Newfoundland and Labrador has, to Nova Scotia's knowledge, ever suggested that its interprovincial offshore boundaries could be any different than those agreed in

1964, and this suggestion is of remarkably recent origin. In the period from 1964 to 1971, Newfoundland issued offshore exploration permits that entirely respected and applied its boundaries as established in the *1964 Agreement*, including along the line dividing its offshore area from that of Nova Scotia. In 1968 and 1969, Newfoundland engaged in Ministerial-level discussions and in technical work, in cooperation with the other Provinces, with the express purpose of demarcating, with precise geographic coordinates, the turning points of the boundaries agreed to in 1964. In 1972, Premier Moores of Newfoundland confirmed those coordinates in an agreement with the four other East Coast Provinces, and formally announced that agreement to the Newfoundland House of Assembly.

6. In addition to this, and other, positive conduct by Newfoundland actively confirming the *1964 Agreement*, at no time did Newfoundland, to Nova Scotia's knowledge, ever object to or protest the consistent, open and public use of the agreed boundaries by Nova Scotia and the other East Coast Provinces. Nor did it protest the incorporation of those boundaries – in particular, the line dividing the offshore areas of Nova Scotia and Newfoundland – into agreements with the Government of Canada, in 1977, 1982 and 1986, and into federal and provincial legislation, in 1984 and 1988.
7. If Newfoundland ever truly believed that the *1964 Agreement* was not binding, or that Nova Scotia or the other East Coast Provinces had somehow misinterpreted its terms, it had over thirty years in which to make known its objections in definitive terms. Newfoundland failed to do any such thing prior to its initiation of the present dispute. This alone constitutes proof of Newfoundland's understanding of the nature, scope and binding effect of the boundaries established in the *1964 Agreement*, including its boundary with Nova Scotia.
8. The purpose of the *1964 Agreement* was to establish boundaries between and among Canada's East Coast Provinces, extending as far seaward as the outer edge of the continental margin, so as to provide the stability and certainty regarded by the Provinces as necessary for the negotiation of administrative arrangements with

the Government of Canada and the rational development of the mineral resources of the region's seabed and subsoil. The Province of Newfoundland and Labrador has benefited from the stability provided by these boundaries. It has applied the *1964 Agreement*, to its benefit. Having succeeded both in concluding its own jurisdictional and revenue-sharing arrangement with the Government of Canada and in undertaking commercial development of its vast offshore, Newfoundland must not now be permitted to turn around and disavow the *1964 Agreement* or any portion of its boundaries as established by that Agreement. It cannot be permitted to destabilise an entire region. More particularly, in the context of the present dispute, Newfoundland must not be permitted to disavow its obligations toward Nova Scotia, including the agreed boundary between the two Provinces.

9. The *Terms of Reference* for the arbitration, just as the underlying legislation, require that the dispute be decided according to principles of international law, as if Nova Scotia and Newfoundland had been States at all relevant times. There can be no doubt that two States, having concluded an agreement such as the *1964 Agreement*, and having engaged in the subsequent conduct documented in this Memorial, would be found to have resolved the issue of the line dividing their respective offshore areas by binding agreement. Such a finding must therefore apply to Newfoundland in the present case. Nova Scotia is in effect asking the Tribunal to confirm the position succinctly stated by Premier Moores of Newfoundland when he addressed the Newfoundland House of Assembly on June 19, 1972:

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

10. It is submitted, therefore, that the simple question posed in phase one of this arbitration – “*whether the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia has been resolved by agreement*” – must be answered in the affirmative.

Accordingly, and for the reasons expressed in this Memorial, the Province of Nova Scotia requests that the Tribunal, in accordance with Article Thirteen and following of the *Terms of Reference*, DECLARE:

- (1) THAT the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia has been resolved by agreement;
- (2) THAT this finding determines the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia, in accordance with Article Three of the *Terms of Reference*;
- (3) THAT the delineation of that line is correctly set out in the *Canada-Nova Scotia Offshore Petroleum Resources Implementation Act* (S.C. 1988, c. 3), Schedule I, as it relates to the limits of the offshore area of Nova Scotia along the boundary with Newfoundland and Labrador, as follows:
 - from a point at latitude 47° 45' 40" and longitude 60° 24' 17", being approximately the midpoint between Cape Anguille (Newfoundland) and Pointe de l'Est (Québec);
 - thence southeasterly in a straight line to a point at latitude 47° 25' 28" and longitude 59° 43' 33", being approximately the midpoint between St. Paul Island (Nova Scotia) and Cape Ray (Newfoundland);

- thence southeasterly in a straight line to a point at latitude 46° 54' 50" and longitude 59° 00' 30", being approximately the midpoint between Flint Island (Nova Scotia) and Grand Bruit (Newfoundland);
 - thence southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin.
- (4) THAT the Federal Minister of Natural Resources should recommend that the Governor-in-Council, by regulations made pursuant to sections 5(1), 6(5) and 7 of the *Canada-Newfoundland Atlantic Accord Implementation Act*, prescribe the line dividing the parties' respective offshore areas for the purpose of paragraph (a) of the definition of "offshore area" in section 2 of the *Canada-Newfoundland Atlantic Accord Implementation Act* in accordance with the delineation set out in the relevant parts of Schedule I to the *Canada-Nova Scotia Offshore Petroleum Resources Implementation Act*.

THE WHOLE, respectfully submitted by the Province of Nova Scotia.

Montréal, 1 December 2000.



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