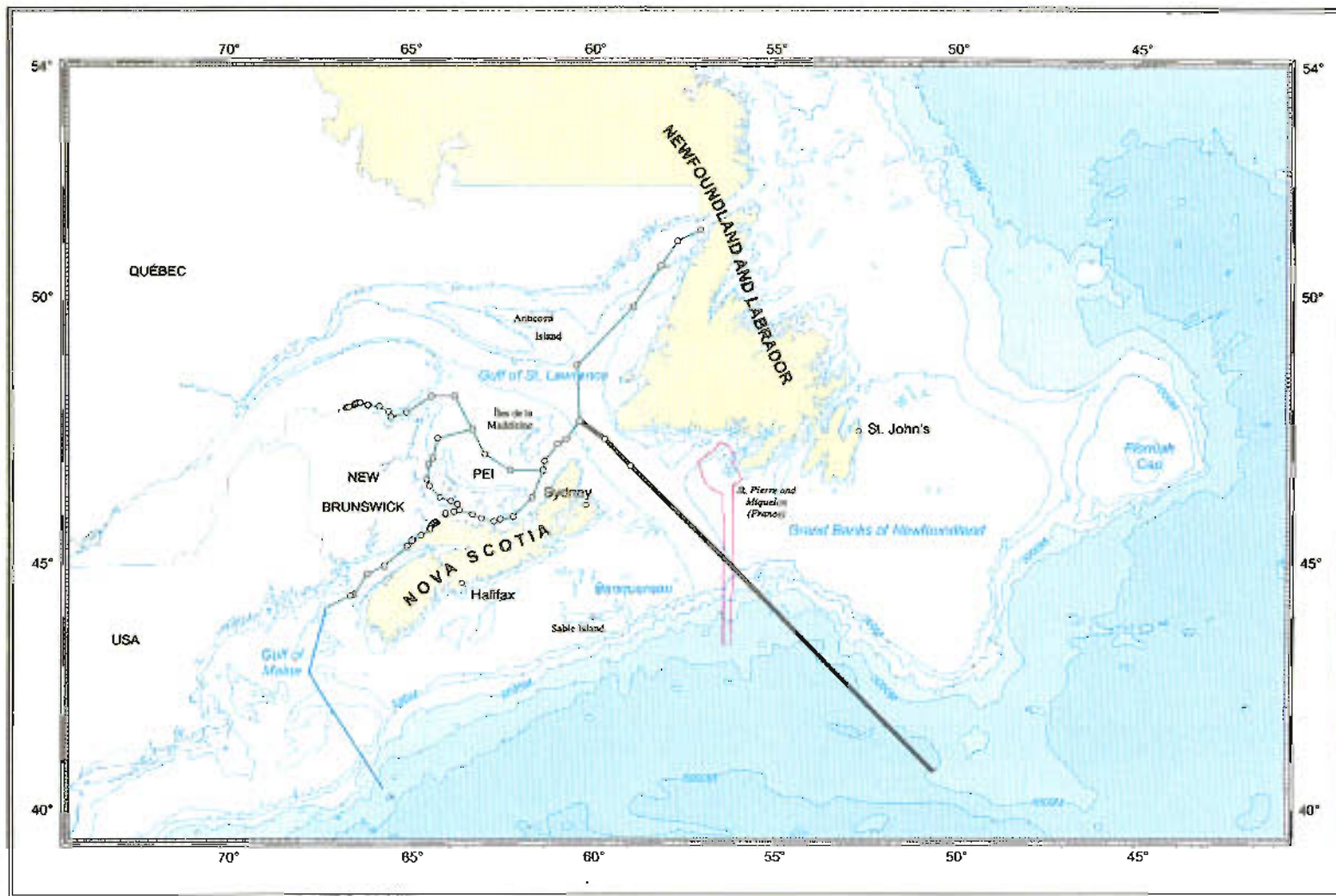


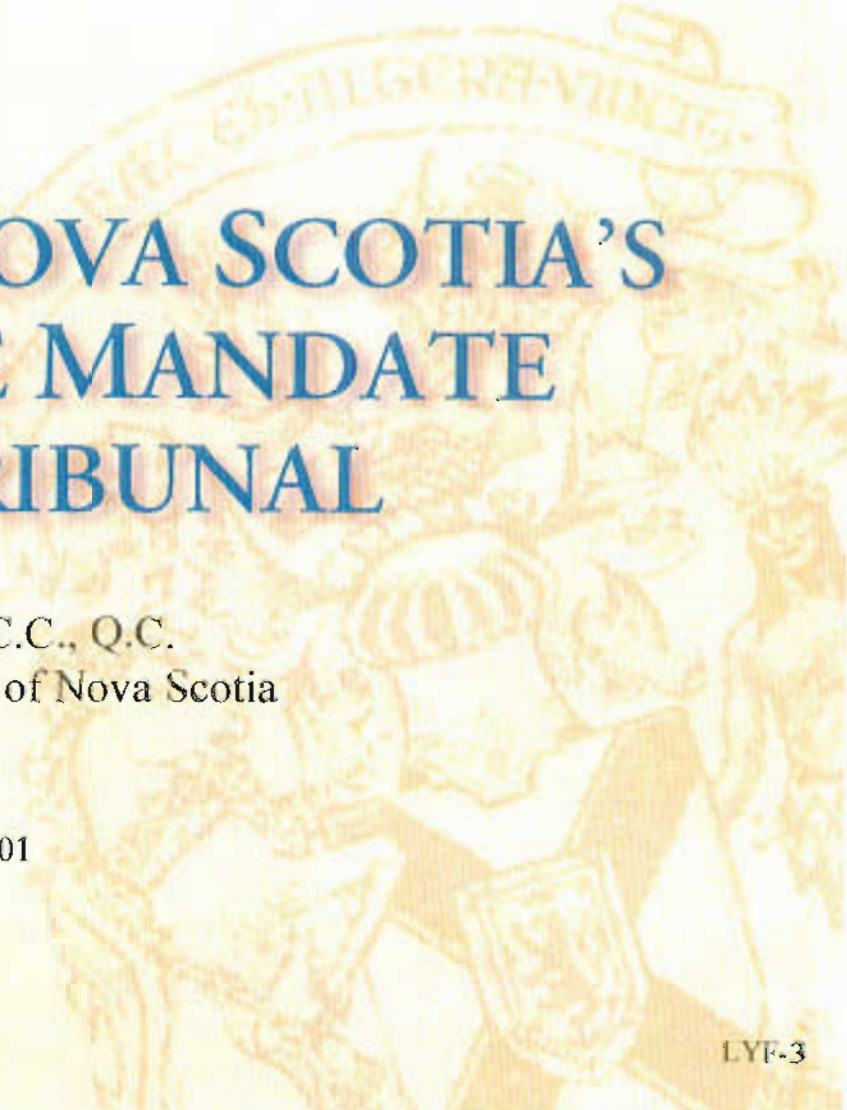



NEWFOUNDLAND AND LABRADOR – NOVA SCOTIA

Case Concerning the Line Dividing
Their Respective Offshore Areas

THE 1964 AGREEMENT BOUNDARY





OVERVIEW OF NOVA SCOTIA'S CASE AND THE MANDATE OF THE TRIBUNAL

L. Yves Fortier, C.C., Q.C.
Agent for the Province of Nova Scotia

12 March 2001

LYF-3



Legislated offshore boundary between Nova Scotia and Newfoundland:

thence northeasterly in a straight line to a point at latitude 47° 45' 40" and longitude 60° 24' 17", being approximately the midpoint between Cape Anguille (Nfld.) and Pointe de l'Est (Que.);

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 (N.S.) and Cape Ray (Nfld.);

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 (N.S.) and Grand Bruit (Nfld.);

thence southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin;



Definition of “offshore area”:

“offshore area”
«zone
extracôtière» ou
«zone»

“offshore area” means those submarine areas lying seaward of the low water mark of the Province and extending, at any location, as far as

- (a) any prescribed line, or
- (b) where no line is prescribed at that location, the outer edge of the continental margin or a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is the greater;



Section 48: Settlement Procedure for Disputes

28 C. 28 *Canada-Nova Scotia Accord*

Settlement Procedure for Disputes

Definition of "agreement"

48. (1) In this section, "agreement" means an agreement between the Government of Canada and the government of a province respecting resource management and revenue sharing in relation to activities respecting the exploration for or the production of petroleum carried out on any frontier lands.

Disputes between neighbouring provinces

(2) Where a dispute between the Province and any other province that is a party to an agreement arises in relation to the description of any portion of the limits set out in Schedule I and the Government of Canada is unable, by means of negotiation, to bring about a resolution of the dispute within a reasonable time, the dispute shall, at such time as the Federal Minister deems appropriate, be referred to an impartial person, tribunal or body and settled by means of the procedure determined in accordance with subsection (3).

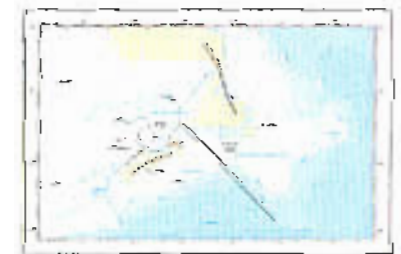
(4) Where the procedure for the settlement of a dispute pursuant to this section involves arbitration, the arbitrator shall apply the principles of international law governing maritime boundary delimitation, with such modifications as the circumstances require.

Principles of international law to apply

THE 1964 AGREEMENT



The *1964 Agreement* delimited the entire area of the sea bed adjacent to the East Coast Provinces that might be claimed by Canada under international law.



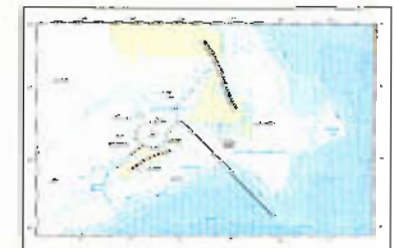
1964 Agreement
Boundary

LYF-7

THE 1964 AGREEMENT



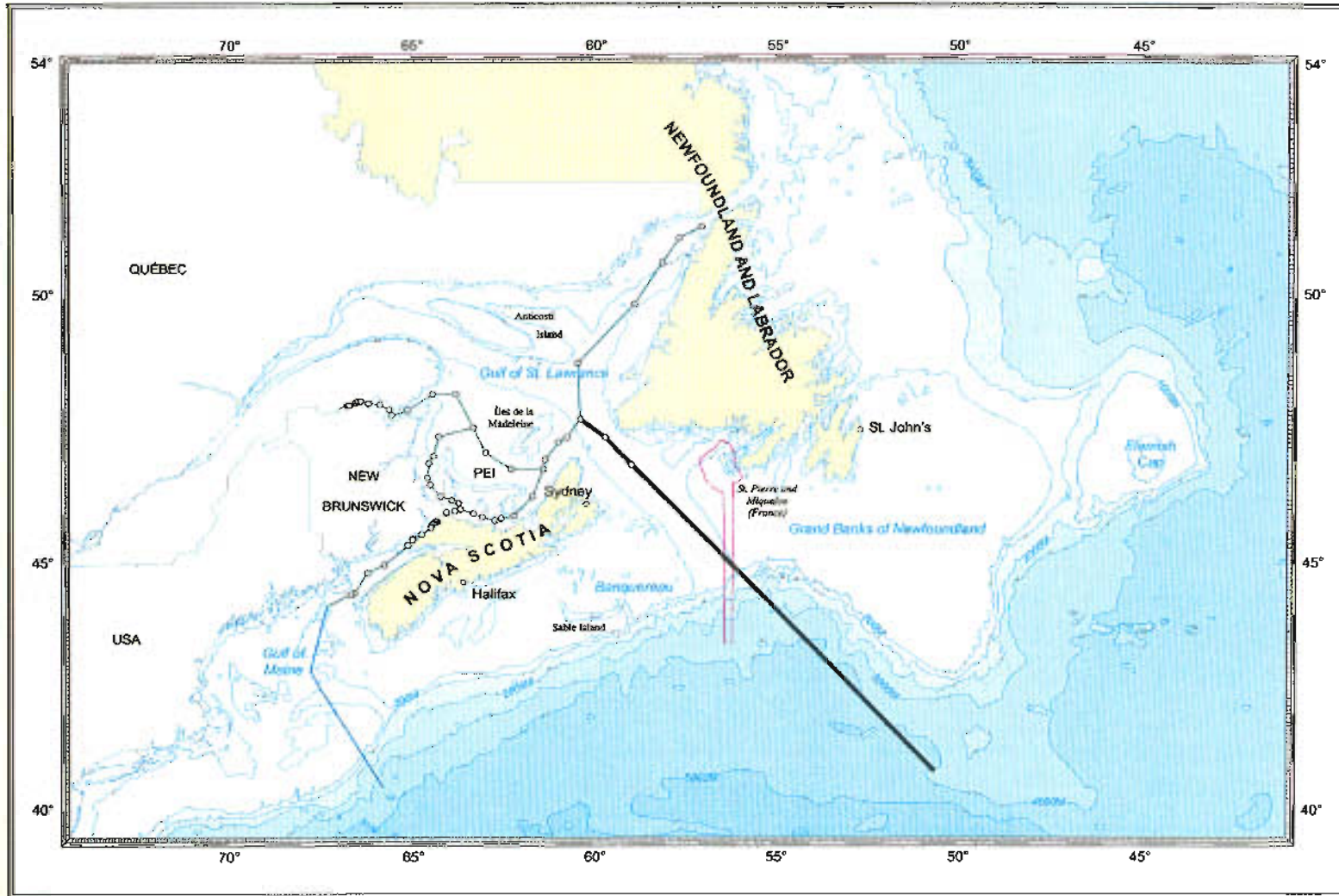
The *1964 Agreement* established, accurately and completely, the boundary lines as between the five East Coast Provinces for all purposes relating to the exploration and development of offshore minerals, including arrangements with the federal government for jurisdiction and benefits, such as the *Canada-Newfoundland Accord* of 1985 and the *Canada-Nova Scotia Accord* of 1986.



1964 Agreement
Boundary

LYF-8

THE 1964 AGREEMENT BOUNDARY





The Mandate of the Tribunal

“3.1 Applying the principles of international law governing maritime boundary delimitation with such modification as the circumstances require, the Tribunal shall determine the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia, as if the parties were states subject to the same rights and obligations as the Government of Canada at all relevant times.”



The Mandate of the Tribunal

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

- (i) In the first phase, the Tribunal shall determine whether the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia has been resolved by agreement.”



The Mandate of the Tribunal

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



The Mandate of the Tribunal

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

(i) In the first phase, the Tribunal shall determine **whether the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia has been resolved by agreement.**”



The Mandate of the Tribunal

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The Mandate of the Tribunal

“3.1 Applying the principles of international law governing maritime boundary delimitation with such modification as the circumstances require, the Tribunal shall determine the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia, **as if the parties were states subject to the same rights and obligations as the Government of Canada at all relevant times.**”



Section 48: Settlement Procedure for Disputes

28 C. 28 Canada-Nova Scotia Accord

Settlement Procedure for Disputes

Definition of "agreement"

48. (1) In this section, "agreement" means an agreement between the Government of Canada and the government of a province respecting resource management and revenue sharing in relation to activities respecting the exploration for or the production of petroleum carried out on any frontier lands.

Disputes between neighbouring provinces

(2) Where a dispute between the Province and any other province that is a party to an agreement arises in relation to the description of any portion of the limits set out in Schedule I and the Government of Canada is unable, by means of negotiation, to bring about a resolution of the dispute within a reasonable time, the dispute shall, at such time as the Federal Minister deems appropriate, be referred to an impartial person, tribunal or body and settled by means of the procedure determined in accordance with subsection (3).

(4) Where the procedure for the settlement of a dispute pursuant to this section involves arbitration, the arbitrator shall apply the principles of international law governing maritime boundary delimitation, with such modifications as the circumstances require.

Principles of international law to apply



Section 6: Settlement Procedure for Disputes

Disputes
between
neighbouring
provinces

(2) Where a dispute between the Province and any other province that is a party to an agreement arises in relation to a line or portion thereof prescribed or to be prescribed for the purpose of the definition "offshore area" in section 2 and the Government of Canada is unable, by means of negotiation, to bring about a resolution of the dispute within a reasonable time, the dispute shall, at such time as the Federal Minister deems appropriate, be referred to an impartial person, tribunal or body and settled by means of the procedure determined in accordance with subsection (3).

Procedures
determined by
Federal
Minister

(3) For the purposes of this section, the person, tribunal or body to which a dispute is to be referred, the constitution and membership of any tribunal or body and the procedures for the settlement of a dispute shall be determined by the Federal Minister after consultation with the provinces concerned in the dispute.

Principles of
international
law to apply

(4) Where the procedure for the settlement of a dispute pursuant to this section involves arbitration, the arbitrator shall apply the principles of international law governing maritime boundary delimitation, with such modifications as the circumstances require.

THE FUNDAMENTAL NORM



“No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States. Such delimitation must be sought and effected **by means of an agreement**, following negotiations conducted in good faith and with the genuine intention of achieving a positive result.”

Gulf of Maine Case



The Mandate of the Tribunal

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

- (i) In the first phase, the Tribunal shall determine whether the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia has been resolved by agreement.
- (ii) In the second phase, the Tribunal shall determine how in the absence of any agreement the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia shall be determined.”



The Mandate of the Tribunal

“3.1 Applying the principles of international law governing maritime boundary delimitation with such modification as the circumstances require, the Tribunal shall determine the line dividing the respective offshore areas of the Province of Newfoundland and Labrador and the Province of Nova Scotia, **as if the parties were states** subject to the same rights and obligations as the Government of Canada at all relevant times.”

THE 1964 AGREEMENT BOUNDARY

