

CHAPTER III GEOGRAPHY

I. Introduction

42. Although it relegates geography to a secondary status, Nova Scotia nevertheless relies on a particular view of geography to support its argument. However, that view is not one that can be justified either as a matter of fact or law.
43. In its Memorial, Newfoundland and Labrador identified the geographical configuration of the area in terms of, first, a portion of the eastern Gulf of St. Lawrence, second, outside the Gulf in terms of an inner concavity framed by the south coast of Newfoundland from Cape Ray to the Burin Peninsula, and the coast of Nova Scotia from Money Point to Scatarie Island and, third, an outer open area of which the south coast of Newfoundland from the Burin Peninsula to Cape Race and the Nova Scotia coast from Scatarie Island to Cape Canso, formed the wings.⁴⁵ **Figure 1.**
44. The inner concavity and the outer area constitute essentially the delimitation area before the Court of Arbitration in *Canada v. France*. The Court of Arbitration described the area in general terms as “south of the Canadian island of Newfoundland and east of the Canadian island of Cape Breton and the coast of mainland Nova Scotia.”⁴⁶ In giving more precision to the coasts within that area, it identified the relevant Newfoundland coasts as lying between Cape Race to the east and Cape Ray to the west. It defined the relevant Nova Scotia coasts as extending from the “north-eastern point of Cape Breton Island” to a point along the mainland coast of Nova Scotia 70 nm southwest of Scatarie Island. These coasts were measured according to lines of general direction based on the geographical framework developed and presented by Canada. The Court of Arbitration then went on to describe the

⁴⁵ Memorial of Newfoundland and Labrador, Phase Two, pp. 11-12, paras. 28-32

⁴⁶ *Canada v. France*, p. 1159, para. 18.

coasts of Newfoundland and Cape Breton Island “from the Burin Peninsula to Scatarie Island” as forming a “marked concavity.”⁴⁷

45. Although Nova Scotia appears to recognize that the delimitation area is in fact essentially the same as that in *Canada v. France* – indeed, it proposes a line that cuts through the boundary determined by the Court of Arbitration – Nova Scotia nevertheless attempts to refashion the geography of the area for the purposes of this case. It ignores the geographical framework adopted by the Court of Arbitration and instead expands the area beyond recognition, including coasts and sea areas that have no relationship to the “area within which the delimitation is to take place.”⁴⁸ In doing so, Nova Scotia treats longstanding principles of maritime boundary delimitation in a completely cavalier fashion.

II. Nova Scotia’s Refashioning of Geography

46. Nova Scotia’s geographical framework is based on three elements: first, the adoption of a distorted macro-geographical perspective; second, the eccentric determination of relevant coasts and coastal projection, and third, the bloated conception of a relevant area.

A. Macro-Geographical Perspective

47. There are two aspects to Nova Scotia’s macro-geographical perspective, neither of which has any relevance to delimitation. The first relates to the claim that Nova Scotia’s position within the North American continent somehow is a relevant circumstance, and the second relates to claims concerning the seaward entitlement of coasts that not only do not face the area to be delimited but, in fact, are hundreds of miles from that area.

⁴⁷ *Canada v. France*, p. 1160, para. 22.

⁴⁸ *Canada v. France*, p. 1159, para. 18.

48. Nova Scotia's perception of the geography of the area is based on the view that Nova Scotia lies within a concavity of the east coast of the North American continent. This is illustrated in Figure 49 of the Nova Scotia Memorial by a quarter-circle drawn from Cape Hatteras to Cape Race that happens to touch Cape Sable on Southwest Nova Scotia. The location of Nova Scotia viewed in this way is said to constitute a "relevant circumstance" and to "raise the possibility of Nova Scotia's offshore area being 'squeezed' from claims on both sides."⁴⁹
49. As will be pointed out in Chapter V, the use of a macro-geographical perspective as the basis for delimitation has been rejected in the jurisprudence. Beyond this, even as a matter of fact Nova Scotia's macro-geographical perspective is puzzling. Why in Nova Scotia's Figure 49 is the North American coastline projected horizontally? North America is generally shown on maps according to standard North American map projection parameters. Instead, Nova Scotia Figure 49 shows the east coast of North America on southern hemisphere map projection parameters.
50. What Nova Scotia has done is use southern hemisphere map projection parameters to show North America in order to create the illusion of a concavity. As **Figure 2** shows, if the normal North American map projection parameters had been used it would have shown that there is no such concavity. Indeed, the whole of Nova Scotia appears rather as a protrusion.
51. Moreover, putting aside the illusionary elements of the presentation in Figure 49, Nova Scotia's macro-geographical perspective illustrates nothing more than arbitrariness. Why Cape Hatteras to Cape Race? Why not the tip of the Florida Keys to Cape Race? Or from some point in South America? Of course, the answer is that this would not show what Nova Scotia wants. For the choice of Cape Hatteras was engineered to produce a concavity. If Cape Cod had been chosen, for example, Nova Scotia would have appeared as a protrusion into the "concavity," undermining Nova Scotia's claim to being "squeezed."

⁴⁹ Nova Scotia Memorial, Phase Two, pp. 71-72, para. 165

52. Nova Scotia's second macro-geographical claim is that a smaller proportion of Newfoundland and Labrador's coasts are blocked than are those of Nova Scotia. Such a claim serves somehow to make relevant the coasts of Nova Scotia on the Bay of Fundy, all of the coasts of both provinces inside the Gulf of St Lawrence, as well as all of the rest of the coasts of Newfoundland and Labrador including the coasts of Labrador.
53. As will be pointed out in Chapter V as a matter of law there is no basis for taking account of such considerations; indeed, if they were relevant, the validity of countless maritime boundary delimitations would be called into question, including *Gulf of Maine* and *Canada v. France*. More fundamentally, the approach, like all other macro-geographical approaches, is based on taking account of the geography that is completely outside the area to be delimited. As a result, it must be disregarded.

B. Coastal Length and Projection

54. The Nova Scotia characterization of the relevant coasts is completely unjustified because it has no basis in the theory of maritime boundary delimitation. As will be pointed out in Chapter V, it is based on a notion of title drawn from an eccentric reading of the *Accords* legislation and not on the geography of the area. Beyond this, however, to the extent that the Nova Scotia Memorial does consider relevant coasts, its approach is flawed in three major respects.
55. First, the Nova Scotia characterization of the relevant coasts is arbitrary. It departs from the approach in *Canada v. France*, even though this approach represents the Canadian position as adopted by an international tribunal, which had given careful consideration to the geography of the area concerned. Nova Scotia makes no attempt to justify its rejection of the *Canada v. France* approach.
56. Second, the arbitrariness of the selection of coasts is compounded by the inconsistent selection by Nova Scotia throughout its Memorial of different coasts and different points on

the same coasts to achieve a variety of objectives, rather than adopting a consistent assessment of the geography and of the relevant coasts.

57. Third, Nova Scotia has described the coastal relationships in a manner that distorts their real projection and their relationships with each other.

(a) **The Arbitrary Selection of Coasts to Describe the “General Configuration of the Region”**

58. The Court of Arbitration in *Canada v. France* accepted the Canadian view of the coasts that fronted onto the area to be delimited, with the exception of the line across Fortune Bay and the coasts to the north and east of St. Pierre and Miquelon. That exclusion related to coasts that had already been taken into account in a prior delimitation between Canada and France, which is not a relevant consideration here. In *Canada v. France*, the Court of Arbitration based its determination of coastal length on the Newfoundland coasts from Cape Race to Cape Ray and the Nova Scotia coasts from Cape North to Scatarie Island and on to Cape Canso.

59. In describing the “general configuration of the region,”⁵⁰ Nova Scotia ignores this approach.⁵¹ In respect of the area outside of Cabot Strait, it seeks to include coasts that go well beyond those identified by the Court of Arbitration in *Canada v. France* as framing the relevant area. **Figure 3.** The Newfoundland coasts do not stop at Cape Race. They turn north and continue up to a point identified as Cape Broyle. And, the Nova Scotia relevant coasts do not stop at Cape Canso. They continue for the whole length of the Nova Scotia mainland down to Cape Sable and then turn northwesterly and run to Chebogue Point.

⁵⁰ Nova Scotia Memorial, Phase Two, IV-65, heading G(ii).

⁵¹ Nova Scotia Memorial, Phase Two, V-21-22, para 51.

60. Moreover, in drawing lines of direction, Nova Scotia seems to have abandoned the approach of the Court of Arbitration in *Canada v. France* by drawing straight lines across areas of water to represent coastal frontage in place of lines more accurately representing coastal direction that had been used in *Canada v. France*. In Nova Scotia's description of the general configuration of the region, new points on coasts have been selected replacing those used in *Canada v. France*. Connaigre Head has been replaced by Boxey Point. Lamaline Shag Rock disappears and other points on the Burin Peninsula are selected. The lines representing the coastal direction within Placentia Bay have been replaced by a straight line from Point au Gaul to Cape Pine.⁵²
61. On the Nova Scotia side, the same pattern occurs. The lines representing actual coastal directions from Money Point to Scatarie Island have been replaced by a straight line from Money Point to Scatarie Island, a line that happens to pass through Flint Island. And an even greater leap of imagination occurs with a single line from Cape Canso to Cape Sable to represent the whole of the coast of mainland Nova Scotia.⁵³
62. These macro-geographical leaps are curiously interspersed with micro-geographical minutiae. As a result, Cape Ray is no longer the starting point for the line of direction for the south coast of Newfoundland. There has to be a short line from Cape Ray to Enragée Point. And the line from Cape Pine cannot go to Cape Race. It has to stop short at Mistaken Point, and then proceed in a short stretch to Cape Race. How can a method that sees no difficulty in leaping right across the vast indentation of Placentia Bay find it necessary to define a minute direction such as that from Cape Ray to Enragée Point, or from Mistaken Point to Cape Race?
63. And, of course, the answer is that there is no method here. Nova Scotia does not explain why it rejects the Court of Arbitration's description of the geography of the area, because it

⁵² Nova Scotia Memorial, Phase Two, Figure 44 (after IV-65); IV-66-67, paras. 150-151.

⁵³ Nova Scotia Memorial, Phase Two, Figure 44 (after IV-65), IV-66, paras. 147-149.

has no principled basis for doing so. It has an objective, and that is to reject the area in which the delimitation takes place used in *Canada v. France*, and replace it with an area on a much grander scale. As a result, Nova Scotia's identification of the coasts and their frontage is not based on principle at all. It is engineered to reach a result that will justify a grandiose claim to an area that cannot be justified on the basis of coastal geography.

(b) Inconsistency in the Selection of Coasts

64. The arbitrariness of the Nova Scotia approach is even more apparent when Nova Scotia claims that its line is proportional. Here, it appears that the drafters of Part V of the Nova Scotia Memorial forgot to speak to the drafters of Part IV. Because now some of the carefully selected points and lines for the "general geographic configuration of the region"⁵⁴ are abandoned.⁵⁵ New lines appear and new points are identified.⁵⁶ Cape Broyle disappears and the Newfoundland coast goes all the way to Cape Spear. Lines appear in Placentia Bay after all, although not those that were used in the *Canada v. France* arbitration. Cape Pine and Mistaken Point are forgotten and the line goes straight from Cape St. Mary's to Cape Race.⁵⁷
65. On the Nova Scotia side, the same thing occurs. The line from Cape Canso to Cape Sable detours via Cape Sambro, no doubt to gain a few extra kilometres. And apparently Chebogue Point was an unsatisfactory stopping point for the line, so Cape Fourchu has been chosen instead.⁵⁸

⁵⁴ Nova Scotia Memorial, Phase Two, Figure 44 (after IV-65)

⁵⁵ Nova Scotia Memorial, Phase Two, Figure 55 (after V-21)

⁵⁶ See Figure 4, *infra*, after para 74

⁵⁷ Nova Scotia Memorial, Phase Two, V-21, para. 50.

⁵⁸ Nova Scotia Memorial, Phase Two, V-22, para. 51.

66. On its face, all of this is arbitrary, as if points had been selected at random. Coasts have been included that do not project into the area to be delimited. Nova Scotia has included these coasts in order to expand the area to be considered by the Tribunal, no doubt to bolster its erroneous claim based on the non-existent principle of a “division of overlapping entitlements.”⁵⁹

(c) The Distortion of the Coastal Relationship

67. Not only does Nova Scotia distort the geography of the area when determining the coasts that face the area of delimitation, it also distorts the relationship of the coasts that do in fact face onto the area in which the delimitation is to take place. Nova Scotia correctly identifies a distinction between a relationship of oppositeness and a relationship of adjacency between coastlines, but then goes on to claim oppositeness in an area of adjacency.

68. Nova Scotia’s distinction between oppositeness and adjacency is based on the schematic depiction of the distinction formulated by Canada in *Gulf of Maine*.⁶⁰ The distinction was not adopted by the Chamber as the basis for its decision, and no subsequent case has ever introduced any such mathematical distinction between oppositeness and adjacency.

69. More important, however, is that Nova Scotia then seeks to continue a relationship of oppositeness between the coasts of Newfoundland and Nova Scotia into an area where the coasts are clearly adjacent. And it does so simply by bootstrapping. In an area of oppositeness, Nova Scotia says, a median line “is more likely to provide an equitable result than it would in the case of adjacent coasts.”⁶¹ The proposition is, of course, uncontroversial. It means that once a relationship of oppositeness has been identified, a median line should normally be considered

⁵⁹ Nova Scotia Memorial, Phase Two, V-18, paras. 42-43, Figure 54 (after V-18).

⁶⁰ Nova Scotia Memorial, Phase Two, IV-67, para. 152; Figure 45 (after IV-67).

70. But that is not what Nova Scotia does. It reverses the order. It defines the area of opposition by drawing an equidistance line. It identifies controlling points for an equidistance line southeast of Cabot Strait out to 46 degrees N, and then says that the coasts within that area must be in a relationship of oppositeness. In short, if you can draw an equidistance line between coasts, the relationship of coasts must be one of oppositeness. Nova Scotia has in effect turned on its head the very principle on which it relies.
71. It is possible to draw an equidistance line between any coasts. So, why stop at 46 degrees N? According to the Nova Scotia “method,” the whole of the relationship between the coasts of Newfoundland and Nova Scotia is one of oppositeness. Yet, in a curious way, the Nova Scotia argument simply reinforces the point made in the Memorial of Newfoundland and Labrador. There can be no automatic resort to equidistance as a method of delimitation. The method must respond to the actual geography of the area being delimited.

C. Relevant Area

72. Perhaps the most astounding part of Nova Scotia’s perception of the geography of this case lies in its definition of the relevant area. And to be fair, Nova Scotia does not make even the pretence that its relevant area is derived from the geography. The relevant area is not discussed under geographical considerations. Departing from the approach used in maritime boundary delimitations settled in accordance with international law, Nova Scotia seeks to derive a relevant area based on notional “entitlements” drawn from a capricious interpretation of the *Accords* legislation. And these entitlements then provide a basis for a definition of a relevant area when the equity of the result is being assessed.
73. Yet, geography seems to have a role to play. The extension of the coasts beyond Cape Race was undoubtedly intended to give an aura of plausibility to a claim that the relevant area extended to the northeast of Cape Race, and the inclusion of the coast of the Nova Scotia

⁶¹ Nova Scotia Memorial, Phase Two, IV-68, para. 153.

relevant coast. Newfoundland and Labrador has no difficulty with that. Nova Scotia also identifies the coasts from Money Point to Enragée Point as being relevant. However, not all of these coasts face the area to be delimited. Although the coast from Money Point to Cape St. Lawrence faces into the area, the coast from Cape St. Lawrence to Enragée Point does not.

⁶² Memorial of Newfoundland and Labrador, Phase Two, pp. 14-21, paras. 39-59; p. 92, para. 248.

mainland southwest from Cape Canso was intended to aggrandize the lengths of the Nova Scotia coast in order to fit the Nova Scotia claim that its line produces a proportionate result.

74. Nova Scotia's bloated relevant area has no relationship to the geography of the area to be delimited. It is drawn from coasts whose projections do not converge. **Figure 4.** It provides no basis for determining relative coastal lengths or for assessing the proportionality of lines in order to determine whether a line produces an equitable result. Therefore, it must be rejected.

III. The Proper Geographical Framework

75. Nova Scotia has advanced no reason why this Tribunal should adopt a geographical framework for this dispute other than the one adopted by the Tribunal in *Canada v. France*. As Newfoundland and Labrador set out in its Memorial, this consists of focusing on the geography of the area to be delimited rather than invoking a macro-geographical, continental perspective.⁶²
76. Within the Gulf of St. Lawrence the area has little complexity. The area is dominated by the opposite promontories of Cape Ray, on the Newfoundland side, and Money Point, on the Nova Scotia side. Nova Scotia has identified the coast from Cape Ray to Cape Anguille as a relevant coast. Newfoundland and Labrador has no difficulty with that. Nova Scotia also identifies the coasts from Money Point to Enragée Point as being relevant. However, not all of these coasts face the area to be delimited. Although the coast from Money Point to Cape St. Lawrence faces into the area, the coast from Cape St. Lawrence to Enragée Point does not.

⁶² Memorial of Newfoundland and Labrador, Phase Two, pp 14-21, paras. 39-59; p. 92, para 248.

77. Outside the Gulf, the coasts of the two provinces frame an inner concavity bounded by a closing line from Scatarie Island to Lamaline Shag Rock. Beyond that closing line the area extends out into the broad, open-sea area of the Atlantic, described in the Memorial of Newfoundland and Labrador as the “outer area.”⁶³
78. The relevant coasts bounding the inner concavity on the Newfoundland side are represented by straight lines from Cape Ray to Connaigre Head and from Connaigre Head to Lamaline Shag Rock. **Figure 5.** The relevant coasts bounding the inner concavity on the Nova Scotia side are represented by a series of straight lines from Money Point to Cape Smokey, from Cape Smokey to Low Point, and from Low Point to Scatarie Island.
79. The relevant coasts in the outer area on the Newfoundland side are represented by straight lines from Lamaline Shag Rock to Ferryland Head, and then to reflect Placentia Bay, from Ferryland Head to Great Paradise, from Great Paradise to St. Bride’s and from St. Bride’s to Cape St. Mary’s, and then from Cape St. Mary’s to Cape Race. The relevant coasts in the outer area on the Nova Scotia side are represented by a straight line from Scatarie Island to Cape Canso.
80. The total length of the relevant Newfoundland and Labrador coasts is 319 nm, and the total length of the relevant Nova Scotia coasts is 141 nm.⁶⁴
81. Moreover, as the Memorial of Newfoundland and Labrador pointed out, having identified the relevant coasts in this way, the relevant area outside the Gulf can be readily defined by extending lines perpendicular to the general direction of the coasts from the outer coastal

⁶³ Memorial of Newfoundland and Labrador, Phase Two, p. 13, para. 38; Figure 2 (after p. 13).

⁶⁴ Memorial of Newfoundland and Labrador, Phase Two, Figure 16 (after p. 81).

points of Cape Race and Cape Canso to the 200-mile limit.⁶⁵ Such a relevant area can also be used for testing the equity of the result by the application of proportionality models.

⁶⁵ Memorial of Newfoundland and Labrador, Phase Two, pp 21-22, para. 62.