

CHAPTER VIII THE POSITION OF NEWFOUNDLAND AND LABRADOR:
A RECAPITULATION

278. The Newfoundland and Labrador position in this case starts with the basic proposition of the Terms of Reference that the line dividing the respective offshore areas of the two parties is to be determined by application of the principles of international law governing maritime boundary delimitation. Those principles require the application of equitable criteria and practical methods capable of ensuring that, in the light of the geographic configuration of the area and other relevant circumstances, an equitable result is achieved.
279. Coastal geography plays the primary role in delimitation, because it is the coasts that are the source of title to the continental shelf. Thus, the starting point in delimitation is the determination of the geographical framework of the area in which the delimitation is to take place. **Figure 17.** Within the Gulf of St. Lawrence, the area is one of simplicity. It is the area stretching into the Gulf from the headlands of Cape Ray on the Newfoundland side, and Money Point on the Nova Scotia side.
280. Outside the Gulf, the geography is more complex. Here, the area is framed by the south-facing coast of Newfoundland from Cape Ray to Cape Race, and the east-facing coast of Nova Scotia from Money Point to Scatarie Island, and the southeast-facing Nova Scotia coast from Scatarie Island to Cape Canso. That was the geographical framework adopted by the Court of Arbitration in *Canada v. France*, which had to determine a maritime boundary within substantially the same area.
281. The area within this geographical framework consists of an inner concavity bounded by a closing line from the Burin Peninsula to Scatarie Island, and an outer area of open sea beyond that concavity. **Figure 18.** Within the inner concavity the coastal relationship is one of gradually decreasing oppositeness. In the outer area the coastal relationship is one of adjacency. The relevant Newfoundland coasts are considerably longer than the coasts of Nova Scotia within the inner concavity, and the south coast of Newfoundland dominates the

configuration in the outer area. The total length of the relevant Newfoundland coasts is 319.8 nm and the length of the relevant Nova Scotia coasts is 141.3 nm.

282. On the Nova Scotia side, two incidental geographical features have a potentially distorting effect in any delimitation. They are St. Paul Island in Cabot Strait and Sable Island which lies in the Atlantic ocean, some 88 nm from mainland Nova Scotia. Both features have the potential for creating inequity in delimitation.
283. The delimitation in this case involves the continental shelf in an area where there is a single uninterrupted continental shelf extending beyond the 200 nautical mile limit. Geographical factors constitute, therefore, the principal relevant circumstances. Considerations relating to the economic situation of the parties and their relative wealth have no role in the identification and application of an appropriate delimitation method. The conduct of the parties may be relevant, but it, too, has a limited role and must meet the stringent test that the conduct in question was mutual, sustained, consistent and unequivocal. Notwithstanding Nova Scotia's heavy reliance on conduct in this case and its frequent invocation of considerations relating to relative wealth, it has failed to show that either consideration should be given weight in this case so as to displace a delimitation based on the geography of the area.
284. In giving effect to the seaward projections of the coasts, a principle of fundamental importance is the avoidance of cut-off. That principle was a key factor in both *Gulf of Maine* and *Canada v. France*, and it is of equal importance in the geographical circumstances of this delimitation. Similarly, avoiding giving geographical features undue or disproportionate effect is essential to ensuring an equitable delimitation. Such disproportion can be prevented by not giving incidental features undue weight, or by giving them no weight at all, and by ensuring that disparities in coastal length are taken into account so that the area resulting from the delimitation corresponds broadly to the coastal frontage that forms the basis of title.

285. The law has no mandatory method for delimitation. The requirement is rather that whatever method is used it must achieve an equitable result. Thus, in more complex geographical circumstances a combination of methods may be necessary to ensure that such a result is reached.
286. Equidistance is frequently used as a provisional first step in delimitation. It is a method that can produce an equitable result in cases of opposite coasts, provided that an appropriate adjustment is made to account for the effect of incidental features, or to account for significant disparities in relative lengths of coasts. In cases where coasts are adjacent, equidistance is less likely to produce an equitable result and thus other methods have to be resorted to.
287. Whatever method is adopted, it should avoid disproportion in its treatment of particular features. In this regard, islands have traditionally been regarded as a source of inequity. A method that fails to take this into account will produce a result that is disproportionate and therefore not equitable.
288. Methods relying on coastal fronts have been well recognized in the jurisprudence. They include the use of perpendiculars – which played an important role in both *Gulf of Maine* and *Canada v. France* – and bisectors – which also featured in *Gulf of Maine*. A particular characteristic of these methods is that they minimize or avoid encroachment or cut-off.
289. A provisional application of equidistance in this case shows that it is not an appropriate method. An equidistance line responds to distorting incidental features in the delimitation area, such as St. Paul Island and Sable Island, and it ignores the substantial disparity that exists in the lengths of the coasts of the parties. It results in a line that cuts off the seaward projection of the south coast of Newfoundland and that hurdles the French corridor south of the islands of St. Pierre and Miquelon in a manner unheard of in maritime boundary delimitation.

290. An equitable line in this case should be constructed on the broad patterns of the geography of the area. Thus, it should employ coastal fronts rather than individual and isolated basepoints. It should not respond to protruding incidental features or veer toward the coast of either party as it proceeds towards the outer limit of the continental shelf. It should, as well, reflect the overall disparity in the coastal lengths of the parties in terms of the areas that it allocates to either party.
291. In the circumstances of this case, a sector-by-sector approach to delimitation is appropriate. Thus, the inner concavity, the outer area, and the area inside the Gulf of St. Lawrence all have to be considered separately. **Figure 19.**
292. In the area of Cabot Strait, a bisector of the coastal fronts of Newfoundland and Nova Scotia starting from the mid-point between Cape Ray and Money Point avoids the distorting effect of incidental features and avoids cut-off and encroachment. This forms the first segment of the delimitation.
293. However, cut-off would occur if the line in the first segment were not turned south before it leaves the approaches to Cabot Strait. Such a turn responds to the geography of the area where the coastal front of Newfoundland changes from east-west to north-south from Connaigre Head to Lamaline Shag Rock. It is this coastal front and the opposite coastal front of Cape Breton Island that form the “jaws” of the inner concavity. Thus, a bisector of the angle formed by these opposite coasts determines the direction of the line in this second segment.
294. In determining the precise location of this second segment of the line, a method has to be employed to ensure that the line exiting the concavity reflects the coasts within the concavity rather than the headlands at the mouth of the concavity. In this regard, the method used in *Gulf of Maine* provides guidance. The line should intersect the closing line from Lamaline Shag Rock to Scatarie Island at a point that reflects the ratio of the coasts of the provinces

within the concavity. The line should then be extended back to meet the line established in the first segment.

295. The final segment in the outer area should respond to the fact that from the closing line the delimitation area is no longer enclosed and the coastal relationship shifts from oppositeness to adjacency. Moreover, this outer area lies directly in front of the Newfoundland coasts, while the Nova Scotia coasts lie to the west and face in a more southerly direction. Thus, in order to minimize cut-off, a perpendicular extended from the closing line to the limit of the Canadian continental shelf would continue in a constant direction and not swing toward the coast of either province.
296. Within the Gulf of St. Lawrence, the lack of geographical complexity makes delimitation relatively simple. In this area, a perpendicular to the Cabot Strait closing line is both consistent with the delimitation in the areas outside the Gulf, and would reflect the general direction of the Newfoundland and Nova Scotia coasts in the area. This completes the Newfoundland and Labrador line. **Figure 20.**
297. A delimitation determined as set out above produces an equitable result. The lines in each segment respond to the particular coastal geography of each area. Moreover, the resulting boundary produces a reasonable degree of proportionality between the coastal lengths and the areas of continental shelf appertaining to the provinces as a result of the delimitation. A proportionality test applied to the relevant area, by drawing perpendiculars from the outer limits of the relevant coasts of the two provinces to the 200 nautical mile limit, confirms the equity of the result. **Figure 21.**
298. There is nothing in the Nova Scotia Memorial that would require a reconsideration of the approach and line set forward by Newfoundland and Labrador. Thus, the position set out in the Memorial of Newfoundland and Labrador is reconfirmed.