

CHAPTER V THE EQUITY OF THE RESULT

249. As pointed out in Chapter III above, it is widely accepted that the objective of maritime delimitation is to achieve an equitable result. In measuring the equity of the result, courts and tribunals have looked primarily at geographical circumstances. Non-geographical factors are also considered to determine whether the result achieved by the application of the chosen method is in fact equitable, although such factors are generally of limited relevance.
250. In Chapter III, economic factors and the conduct of the parties were mentioned as non-geographical factors that have been considered in the jurisprudence of maritime boundary delimitation when determining whether the result produced by a line is equitable. However, the line proposed by Newfoundland and Labrador could not be considered inequitable on the basis of either consideration.
251. An area in which resource exploitation is potential rather than actual cannot be an area on which a claim of past dependence is based or where a particular location of a line could produce “catastrophic repercussions.”¹⁸⁷ Thus, economic factors can have no relevance in this case in determining whether the line proposed by Newfoundland and Labrador produces an equitable result, and no further consideration need be given to them.
252. Similarly, the conduct of the parties can play no role in testing the equity of the result in this case. As shown in Chapter III, conduct is only relevant in maritime boundary delimitation if it meets exacting standards of consistency, mutuality and longevity.¹⁸⁸ Further, it must evidence real activity on the ground. As seen throughout Phase One, and as pointed out above,¹⁸⁹ there is no conduct of the parties in this case that satisfies any of these criteria. Thus, there is no

¹⁸⁷ *Gulf of Maine* at p. 342, para. 237. See Authorities # 7.

¹⁸⁸ See Chapter III, paras. 101-105.

¹⁸⁹ See Introduction, paras. 10-17.

basis in the conduct of the parties on which the line proposed by Newfoundland and Labrador could be considered to be inequitable.

253. Since there are no non-geographical considerations in this case that are relevant to determining the equity of the result, it is the primary factor of geography that governs whether the result achieved by the Newfoundland and Labrador line is equitable.
254. In this regard, the appropriateness of a perpendicular to a closing line in the outer area depends on its correlation with the basic structure of the coastal geography. In *Gulf of Maine*, the Chamber noted that the direction of the closing line “corresponds generally to the direction of the coastline at the back of the Gulf.”¹⁹⁰ That criterion could not be applied without some qualification to the present configuration, where the opening of Cabot Strait forms part of the back of the inner concavity. The focus should therefore shift to the coasts outside the inner concavity. Here, although there is no single coastal direction that characterizes the geography, the seaward extensions of each coastal front can be represented by lines at a perpendicular angle to that coastal front.
255. Such perpendiculars were used to depict the relevant area,¹⁹¹ and are shown again on **Figure 23**. From this it can be seen that the logic of a perpendicular to the closing line in the outer area is self-evident. The azimuth representing the average of the two perpendiculars reflecting the seaward extensions of the relevant coastal fronts (163.05 degrees)¹⁹² is essentially the same as the azimuth of the perpendicular to the closing line (163.2 degrees). In short, a perpendicular in the outer area produces an equitable result because it reflects in fact the basic structure of the coastal geography in that area.

¹⁹⁰ *Gulf of Maine* at p. 338, para. 225. See Authorities # 7.

¹⁹¹ See Figure 4.

¹⁹² This is the average of the perpendicular drawn from Cape Race (185.5 degrees) and the perpendicular drawn from Cape Canso (140.6 degrees).

256. Moreover, it is clear that the Newfoundland and Labrador line as a whole, and not just the line in the outer area, produces a proportionate result in the context of the geography of the area. In Chapter III it was pointed out that it was accepted in the cases that a “substantial disproportion” between lengths of coasts and areas allocated would be a circumstance calling for correction. What is required is a “reasonable degree of proportionality” between coastal length and maritime areas, in this case between the length of the relevant coasts of Newfoundland and Labrador and of Nova Scotia and the seabed area appertaining to each.
257. In making such a proportionality calculation, the area allocated as a result of the delimitation has to be defined. In this regard, the relevant area described in Chapter II above provides an appropriate area for the purpose of a proportionality test. That area was defined by extending lines perpendicular from the general direction of the coast from Cape Race and Cape Canso out to the 200 nautical mile limit. While it does not include the small sector in the Gulf of St. Lawrence, that area neither requires nor lends itself to a proportionality test, being a confined area extending indefinitely which cannot be defined because of the existence of potential third-party interests in the Gulf.
258. Perpendiculars were used to define the area within which proportionality was to be tested in *Eritrea v. Yemen*. There, the Court of Arbitration used a line at “right angles” to the general direction of the coast to define both the northern and the southern boundaries of the area for testing proportionality.¹⁹³
259. The result of the application of a proportionality test to the area defined by perpendiculars is set out in **Figure 24**. There it is shown that that the total length of the relevant Newfoundland and Labrador coasts is 319.8 nautical miles, and the total length of the relevant Nova Scotia coasts is 141.3 nautical miles. Thus, Newfoundland and Labrador has 69.4% of the coasts in the relevant area and Nova Scotia has 30.6% of the coasts.

¹⁹³ *Eritrea v. Yemen* at para. 167. See Authorities # 12.

260. As a result of the Newfoundland and Labrador line, Newfoundland and Labrador receives 69.6% of the relevant area and Nova Scotia receives 30.4% of the relevant area. In short, the ratio of areas allocated is almost identical to the ratio of coastal lengths. In such circumstances, clearly there can be no disproportion resulting from the Newfoundland and Labrador line.