

PART I: INTRODUCTION

A. The Issues Are Joined

1. With the exchange of the parties' Counter-Memorials in Phase Two of the arbitration, the issues will be joined. The Tribunal will have before it abundant material, which will no doubt be supplemented during the hearing in November 2001, supporting the parties' proposed delimitations. Already, however, it is apparent that the Tribunal is faced with two very different approaches to the delimitation to be effected in this case, in terms of legal theory, analysis, strategy and presentation. The contrast is stark.
2. In this Phase Two Counter-Memorial, Nova Scotia reveals the lengths to which Newfoundland has gone to support a claim that, finally, has seen the light of day but which must be seen for what it is: an attempt to "get it all". It also reveals the animating principle of Newfoundland's approach to the arbitration: a belief that equitable delimitation is really a game of "split the difference".
3. Nova Scotia refuses to play that game. In its Phase Two Memorial, Nova Scotia set out a reasoned, coherent case demonstrating that the appropriate delimitation to be effected in the present instance is for the Tribunal to apply the boundary that the parties themselves developed by agreement and other conduct and that Nova Scotia continues to respect to this day. It demonstrated that the existing line is the clearest expression of what the parties considered to be equitable. And it demonstrated that that line in fact reflects an equitable result in the circumstances.
4. What Nova Scotia did not do in its Phase Two Memorial is concoct an exaggerated claim solely for the purpose of this arbitration. Nor has it done so in this Counter-Memorial. Nor will it do so in this arbitration.
5. Nova Scotia's efforts have been and will remain directed to advancing, not an excessive claim, but a balanced, sound and equitable result, one that is grounded

in the legal and factual context in which this case occurs and that encourages the Tribunal to consider all of the circumstances of this unique dispute.

6. Of course, Newfoundland has nothing to lose in this arbitration. It never has. If the current, legislated line is maintained, Newfoundland and Labrador will find itself with the same, equitable boundary it agreed to and applied long ago. But if even a fraction of the areas on Nova Scotia's side of the line that Newfoundland now claims are awarded to it, it will have gained significantly.
7. To this end, Newfoundland does not hesitate to disavow the good faith conduct of its agents, representatives and political leaders of the past, and in fact to reject outright the relevance of its past conduct and practice. It regards geography as the only factor worthy of consideration by the Tribunal, but relies on an idealized perception of the geographic circumstances and a manipulative use of maps to depict its position. It purports to analyse the macrogeography of the region in its discussion of the relevant coasts and areas at stake in the delimitation, but crops its illustrations so that not a single map showing all of Nova Scotia's coastlines in the area is presented. It holds out arguments that are result-driven and analyses that are lacking in many respects, but certainly not in circularity.
8. All of this is demonstrated below.

B. Nova Scotia's Phase Two Counter-Memorial

9. The Nova Scotia Phase Two Counter-Memorial is divided into four Parts, in addition to this Introduction.
10. Part II responds to Newfoundland's presentation of the law applicable to the present delimitation. First, Nova Scotia demonstrates that Newfoundland's case is built upon three fundamental misconceptions regarding the law according to which the delimitation is to be carried out. Second, it examines specific misstatements made by Newfoundland regarding particular aspects of the law. These errors, Nova Scotia submits, amount to Newfoundland's invitation to the

Tribunal to limit unduly the range of circumstances to be taken into account in effecting the delimitation.

11. Part III contains a detailed analysis of the delimitation proposed by Newfoundland, including the process by which its proposed boundary is drawn, from the choice of the equitable criteria and the ensuing method of delineation, to the alleged equitable nature of the result. Nova Scotia submits that Newfoundland's proposed delimitation is so flawed that it should be discarded altogether by this Tribunal.
12. Part IV consists of a restatement of Nova Scotia's position, with emphasis on those elements of the delimitation process that are of particular significance given the legal and factual circumstances of this case.
13. Finally, Part V sets out the conclusions that flow from the above arguments and reiterates Nova Scotia's submission to the Tribunal for adjudication on the line dividing the parties' respective offshore areas.

* * * * *