

## PART VII: CONCLUSIONS AND SUBMISSION

### A. Conclusions

1. The fundamental norm of international law governing maritime delimitation requires the application of equitable principles, taking into account all the relevant circumstances, in order to produce an equitable result. The ultimate goal, to which all other considerations are subordinate, is to achieve an equitable result in the circumstances of the case.
2. In applying this norm, the International Court of Justice and other tribunals have emphasized the critical importance of the legal basis of title. This affects the definition of the relevant area as well as the determination of other relevant circumstances in the light of which the delimitation is carried out and the equitableness of the result is tested.
3. In this case, the conventional law relating to maritime boundary delimitation, including the *GCCS* and the *LOS 1982*, is of limited utility. The *Terms of Reference* define the present dispute exclusively as concerning portions of the limits of the parties' respective "offshore areas", as these areas are defined in the *Accord Acts*. The conventional law, however, governs zones, uses and resources that differ significantly from the area and entitlements described in those statutes. Therefore, it is to the customary law of maritime boundary delimitation – that is, to "the fundamental norm of maritime delimitation", as articulated in the jurisprudence of the ICJ and other tribunals – that the Tribunal must turn in order to carry out the delimitation in this case. This in turn requires consideration of the circumstances relevant to this particular delimitation.
4. The unique legal nature and origin of the "offshore areas" that are the object of the delimitation, and the parties' limited, negotiated entitlements in those areas distinguish this case from all others. These factors not only constitute relevant

circumstances in their own right, they must assist in determining, among other things, which other circumstances are relevant to the delimitation.

5. The seaward extent of the Provinces' offshore area entitlements are defined in the *Accord Acts* as running to the outer edge of the continental margin, a definition that engages the provisions of Article 76 of the *LOS 1982*. This circumstance leads to a determination of the area relevant to the delimitation based on the overlapping areas of potential entitlement of the Provinces.
6. The conduct of the parties is also a consideration of central importance in this case. This conduct included: actual agreement on the location of interprovincial boundary lines in 1964 and 1972; extensive and unprotested oil exploration permits issued by Nova Scotia in precise conformity with a *de facto* line; additional exploration permits issued by Newfoundland and Labrador in conformity with that same line; and acquiescence by Newfoundland and Labrador in the reliance on and application of the line by Nova Scotia and the Government of Canada.
7. On the division effected by the line established by the parties – which line is the boundary currently implemented in legislation – Newfoundland and Labrador receives by far the greatest share of the hydrocarbon resources of the offshore areas. Indeed, access to hydrocarbon resources was the objective of the division effected by the parties' agreement and other conduct in the past, and hydrocarbons remain the sole resource to which the parties are entitled in the offshore areas to be delimited in this arbitration.
8. Other delimitations in the region, actual and prospective, are also relevant to the delimitation. The overall effect of these delimitations is such that the seaward extent of Nova Scotia's offshore area is blocked by the presence of other jurisdictions in both the North and the South. Moreover, it is possible that Nova Scotia could eventually stand to lose a portion of its offshore area, depending on the outcome of an eventual French broad shelf claim. Finally, the geographic

circumstances of the parties are such that Nova Scotia is in a generally disadvantaged situation, relative to Newfoundland and Labrador, arising from the general concavity of its coast and the respective orientations of the Nova Scotia and Newfoundland coasts.

9. In the light of these circumstances, two “primary” and three “auxiliary” equitable criteria must govern the delimitation.
10. First, the delimitation should give effect to the methods and actual lines which the parties, as demonstrated by their prior conduct, themselves “considered equitable or acted upon as such”.<sup>1</sup> Second, the delimitation should also generally reflect an equal division of the area of the parties’ overlapping legal entitlements to the zone at issue.
11. The delimitation should also take account in assessing the result of the application of the primary criteria, of three additional considerations: a reasonable degree of proportionality of maritime area to coastal length; access to relevant resources; and recognition of the macrogeographic situation, and particularly the avoidance of “cut-off”.
12. Delimiting the boundary according to these criteria requires, as a practical method, that the Tribunal draw a line that reflects the line effectively drawn by the parties themselves, in their 1964 agreement and their other conduct. Not only does this practical method of delimiting the provinces’ respective offshore areas respect the parties’ conduct and effect a relatively equal division of the area of overlapping entitlements, it also renders a result that is entirely proportional, equitably shares the resources of the area and avoids any “cut-off” or “\squeezeing” of Nova Scotia’s offshore area.
13. Moreover, both by its silence in the face of Nova Scotia’s conduct and by its active participation in the establishment of the line put in place by the parties and

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<sup>1</sup> Annex 189: *Tunisia/Libya*, *supra* Part III, note 25 at 84.

currently implemented in the *Canada-Nova Scotia Accord Act*, Newfoundland has acquiesced in and is estopped from denying that boundary.

14. By delimiting the parties' respective offshore areas in a manner that respects what they themselves agreed to and applied, in the absence of any binding legal constraint, the result cannot but be equitable. Indeed, the delimitation effected by the parties was not only regarded by them as equitable at the time, it was and remains, by any reasonable test, an equitable delimitation in the circumstances.
15. The line that both provinces applied for many years and that Nova Scotia applies to this day, the line that is defined in the statutory régime by which the parties' "offshore areas" were created and which forms the exclusive and entire basis of the entitlements that are at issue in this case, the line that Newfoundland and Labrador now seeks to repudiate, is the same line that the two provinces established by their own conduct in good faith negotiations and in *de facto* respect for that line in their practice.

## **B. Submission**

16. In the light of the above, and in view of the facts and arguments set out in this Memorial, *may it please the Tribunal to determine and adjudge, in accordance with Article Three and Article Thirteen of the Terms of Reference:*

(1) THAT the line dividing the respective offshore areas of the Province of Nova Scotia and the Province of Newfoundland and Labrador is delimited as follows:

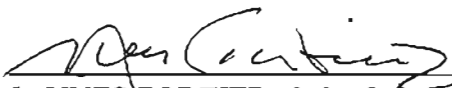
- From a point at latitude 47° 45' 40" and longitude 60° 24' 17", being approximately the midpoint between Cape Anguille (Newfoundland) and Pointe de l'Est (Québec);


- 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 (Nova Scotia) and Cape Ray (Newfoundland);
- 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 (Nova Scotia) and Grand Bruit (Newfoundland);
- Thence southeasterly in a straight line and on an azimuth of 135° 00' 00" to the outer edge of the continental margin;

(2) THAT the line defined in sub-paragraph (1) above is correctly set out in the *Canada-Nova Scotia Offshore Petroleum Resources Implementation Act* (S.C. 1988, c. 3), Schedule I, as it relates to the limits of the offshore area of Nova Scotia along the boundary with Newfoundland and Labrador;

THE WHOLE, respectfully submitted by the Province of Nova Scotia.

August 17, 2001.

  
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L. YVES FORTIER, C.C., Q.C.  
Agent for the Province of Nova Scotia

  
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STEPHEN L. DRYMER  
Deputy-Agent for the Province of Nova Scotia