TABLE OF CONTENTSPART I: INTRODUCTION

A.	THE CASE1
B.	NOVA SCOTIA'S MEMORIAL4

TABLE OF CONTENTSPART II: THE FACTS

A.	Introd	luction	1
B.	The Parties' Conduct In Respect Of The Negotiation And Implementation Of The Line Dividing Their Offshore Areas2		
	i)	The Pa	arties Agreed On The Location Of A Boundary Line
		a)	Agreement On The Boundary Was Reached In 1964 And Reaffirmed In 19722
		b)	The Methods For Drawing The Boundary Were Also Agreed5
C.	Offsho	ore Oil	And Gas Permit Issuance5
	i)	Summ	ary Of The Parties' Permit Practice6
		a)	The Permit Practice Of Nova Scotia
		b)	Newfoundland' Permit Practice
			• The 1967 Mobil Permit
			• The Katy Permit of 1971
			Other Newfoundland Permits: Seismic Only9
		c)	Newfoundland's Explanations Regarding The Nova Scotia Permits and Its Failure To Object To Them9
		d)	Newfoundland's Explanations For Its Own Permit Practice
			• The 1967 Mobil Permit
			The Katy Industries Permit of 197111
	ii)	Newfo	undland's Subsequent Conduct Demonstrating Acquiescence12
		a)	The Events Of June To August, 197212
		b)	Newfoundland's Failure To Object To The 1984 Canada-Nova Scotia Legislation
D.	Concl	usion	

TABLE OF CONTENTSPART III: THE APPLICABLE LAW

INTR	ODUC	ΓΙΟΝ	1		
A.	THE (ARBI		ENTIONAL LAW IS OF LIMITED UTILITY IN THIS ION		
	i.		958 Geneva Convention On The Continental Shelf Governs A Zone That s Significantly From The Area To Be Delimited		
	ii.	The 19 Arbitr	282 Convention On The Law Of The Sea Is Not Directly Applicable To This ration		
В.			OMARY LAW OF MARITIME BOUNDARY DELIMITATION HE FUNDAMENTAL NORM7		
	i.	Equita	undamental Norm Of Maritime Delimitation Requires The Application of able Principles Taking Into Account Relevant Circumstances To Achieve An able Result		
	и.	The Essential Characteristics Of The Fundamental Norm Recognize That Each Delimitation Is Unique10			
		a)	Equitable Principles Are Applied Within A Legal Framework		
		ხ)	There Are No Mandatory Relevant Circumstances, Equitable Principles Or Practical Methods Of Delimitation		
		c)	The Equitableness Of The Result Is The Predominant Consideration		
	iii.		risprudence Provides Guidance On The Process For Applying The mental Norm		
	iv.	The L	egal Basis Of Title Is Of Critical Importance19		
		a)	Legal Title Is A Circumstance of Special Relevance		
		b)	Legal Title Affects The Choice Of Equitable Criteria		
		c)	Legal Title Is Critical To Determining The Relevant Area And To Proportionality		
		d)	Summary24		
CON	CLUSIC	DN			

TABLE OF CONTENTS PART IV: THE RELEVANT CIRCUMSTANCES

A.	INT	RODUCTI	ON1		
B.	THE LEGAL ZONE AND THE BASIS OF ENTITLEMENT2				
	i.	The "Offe	shore Area" Regime Is A Negotiated Entitlement4		
	ii.		es Have Only Limited Entitlements To Hydrocarbon Resources In The Areas		
	iíi.	The Offst Jurisdicti	ore Areas Run From The Coast To The Outer Limits Of Canadian on		
C.	THE	AREA RI	ELEVANT TO THE DELIMITATION8		
	i.	Overlapp	ing Entitlements Under The Accord Acts9		
	ij.	The Tota	Offshore Areas Of The Provinces11		
D. THE CONDUCT OF THE PARTIES		CONDUC	CT OF THE PARTIES13		
	i.	The Parti	es Agreed On The Location Of The Boundary15		
		a) î	The Degree of Mutuality17		
		b) T	The Reasons For Non-Implementation		
		c) T	The Intended Finality Of The Agreed Boundary19		
		d) T	The Object And Purpose Of The 1964 Agreement		
		e) T	'he Parties' Conduct Subsequent To The 1964 Agreement26		
	ii. The Parties' Oil And Gas Permit Issuance				
		a) I	he Concordant Practice Revealed By The Permits		
		b) T	The Permits Are Referable To The 1964 Agreement28		
		c) N	lova Scotia's Permits Were Never Protested By Newfoundland		
	iii.	Newlound	lland's Conduct As Demonstrated By Acquiescence		

.

E.

.

ív.	Newfoundland's Later "Objections" Do Not Displace Its Prior Conduct				
	a)	The Doody Letter Of 1972	.37		
	b)	Newfoundland's Seismic Permits: 1973-1975	40		
	c)	The 1977 Newfoundland White Paper And Petroleum Regulations	41		
	d)	Other Purported Objections By Newfoundland	.43		
v.	The Re	levance Of The Parties' Conduct	.44		
vi.	The Ov	verall Impact Of The Parties' Conduct	.45		
	a)	From The "Tri-junction" To Turning Point 2017	46		
	b)	From Turning Point 2017 Southeast To 46° N	47		
	c)	From 46° N To 45° N	48		
	d)	From 45° N To 43° N	48		
	e)	Conduct Applicable To The Entire Boundary	48		
vii.	Conclu	sions: By Their Conduct The Parties Established A De Facto Boundary	50		
RESOURCE DISTRIBUTION					
i.	The Re	levance Of Resource Location And Access	51		
	a)	Resource Location And Access Are Potentially Relevant Circumstances	51		
	b)	The Relevance Of Resource Location And Access In This Case	54		
ii.	Distrib	ution Of The Relevant Resources	55		
	a)	Total Potential Resources	55		
	b)	Discovered Resources	56		
	c)	Conclusion: The Nature of Newfoundland's Deal	57		

Phase Two Memorial of Nova ScotiaPage IV - iiiPart IV: THE RELEVANT CIRCUMSTANCESAugust 17, 2001				
F.	OTHER DELIMITATIONS IN THE REGION			58
	ì.	The Rc	levance Of Other Delimitations	58
	ii.	The Im	pact Of Other Delimitations In This Case	58
		a)	The Gulf Of St. Lawrence And Bay Of Fundy	59
		b)	North Of Labrador	60
		c)	The Single Maritime Boundary With The United States	61
		d)	St. Pierre And Miquelon	61
G.	GEO	GRAPH	HIC CIRCUMSTANCES	63
	i.	The Un	ity Of The Continental Shelf Of The East Coast	64
	íì.	Genera	l Geographic Configuration Of The Region	65
	iii. The Relationship Of The Relevant Coasts		67	
		a)	Opposition And Adjacency	67
		b)	In The "Inner" Segment The Coasts Are Primarily Opposite	69
		c)	The "Outer" Segment Presents Mixed Adjacency and Opposition, But Are Primarily Adjacent	69
		d)	The Extent Of The "Zone Of Opposition"	70
	iv.	The Ov	verall Impact Of The Macrogeographic Situation	71
H.	CON	CLUSI	ON: THE RELEVANT CIRCUMSTANCES	72

TABLE OF CONTENTSPART V: EFFECTING THE DELIMITATION

A.	INT	INTRODUCTION1					
B.	THE	THE APPLICABLE EQUITABLE CRITERIA					
	i.	The Conduct Of The Parties					
	ii.	The Equal Division Of Overlapping Entitlements7					
C.	PRA	PRACTICAL METHODS OF DELIMITATION10					
	i.	Methods Based On The Conduct Of The Parties10					
		a) The Line Drawn By The Parties					
		b) Applying The Methods Used By The Parties In The Inner Segment To Delimit The Outer Segment Of The Boundary11					
		c) The Result					
	ìi.	Methods Based On The Equal Division Of Overlapping Entitlements					
	jii.	The Appropriate Technical Method Is A Loxodrome16					
D.	THE	THE EQUITABLENESS OF THE RESULT17					
	i.	The Conduct Of The Parties					
	ii.	Equal Division Of Overlapping Entitlements18					
	iii.	Proportionality Of The Result1					
		a) The Role Of Proportionality					
		b) The Application Of Proportionality In This Case					
		 The Relevant Area					
	iv.	Consideration Of Possible Cut-Off And Macrogeography					
	٧.	Resource Division And Access					
E.	CON	CONCLUSION – THE BALANCING UP					

.

TABLE OF CONTENTS

PART VI: ACQUIESCENCE AND ESTOPPEL

A .	INTRODUCTION1
B.	THE PRINCIPLES OF ACQUIESCENCE AND ESTOPPEL ARE WELL SETTLED
C.	NEWFOUNDLAND HAS ACQUIESCED IN THE LINE AND IS ESTOPPED FROM ESPOUSING AN ALTERNATIVE DELIMITATION
D.	THE CASE LAW CONFIRMS THAT THE CONDITIONS NECESSARY FOR ESTABLISHING ACQUIESCENCE AND ESTOPPEL HAVE BEEN MET IN THIS CASE
E.	CONCLUSION

Phase Two Memorial of Nova Scotia Part VII: CONCLUSIONS and SUBMISSION

- -

Page VII - 1 August 17, 2001

TABLE OF CONTENTS

PART VII: CONCLUSIONS AND SUBMISSION

Signature Page......5

August 17, 2001

TABLE OF CONTENTS

APPENDIX B:

POTENTIAL OFFSHORE ENTITLEMENTS OF NOVA SCOTIA AND NEWFOUNDLAND

А.	INTR	ODUC	TION1
B.	ARTICLE 76 OF THE 1982 LAW OF THE SEA CONVENTION		
	i.	Outer I	Limit Formulae
	ii.	Outer I	Limit Constraints4
	iii.	Applics	ation of the Formulae and Constraints5
		a)	Application of the Formulae
		b)	Application of the Constraints
		c)	Application of the Constraints to the Potential Entitlement
C.			ON OF THE METHOD TO NOVA SCOTIA AND DLAND
	í.	Newfou	Indland's Potential Entitlement
	ii.	Nova S	cotia's Potential Entitlement8