COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE LA DÉLIMITATION DE LA FRONTIÈRE MARITIME DANS LA RÉGION DU GOLFE DU MAINE

(CANADA/ÉTATS-UNIS D'AMÉRIQUE)

ARRÊT DU 12 OCTOBRE 1984 RENDU PAR LA CHAMBRE CONSTITUÉE PAR ORDONNANCE DE LA COUR DU 20 JANVIER 1982

1984

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY IN THE GULF OF MAINE AREA

(CANADA/UNITED STATES OF AMERICA)

JUDGMENT OF 12 OCTOBER 1984 GIVEN BY THE CHAMBER CONSTITUTED BY THE ORDER MADE BY THE COURT ON 20 JANUARY 1982

Mode officiel de citation :

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CASE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY IN THE GULF OF MAINE AREA

(CANADA/UNITED STATES OF AMERICA)

Special Agreement between Canada and the United States of America requesting a chamber of the Court to draw, in the Gulf of Maine area, a single line to delimit both the continental shelf and the 200-mile exclusive fishery zone — Delimitation between a predefined point and a predefined area — Jurisdiction of the Chamber.

Delimitation area — Zone between the coasts of the Gulf and outer zone — Local physical and political geography — Rejection of the distinction between primary and secondary coasts — Unity and continuity of the continental shelf — Superjacent water mass and distribution of its fishery resources — Arguments of the Parties concerning human and economic geography.

Origins and development of the dispute — Issue by the Parties of permits for petrol and gas exploration — Divergences apparent in the correspondence between the authorities of the two Governments with regard to the continental shelf — Creation by both States of a 200-mile exclusive fishery zone — Extension of the dispute to this zone — Interim fisheries agreements and unilateral delimitation proposals.

Rules and principles of international law governing the matter — Treaty rules and rules of customary international law — 1958 Convention on the Continental Shelf — Enunciation of a fundamental principle of law and simultaneous prescription of a technical method to be applied to the delimitation in certain circumstances — Basic rule supplied by customary international law and contribution of international jurisprudence to its formation — Convention adopted in 1982 by the Third United Nations Conference on the Law of the Sea — Fundamental norm recognized by the Parties — Redefinition of such norm — Absence in international law of a body of detailed rules concerning the delimitation of the maritime projections of adjacent States.

Equitable criteria and practical methods applicable to the delimitation — Method defined by Article 6, paragraphs 1 and 2, of the 1958 Convention on the Continental

Shelf in force between the Parties — Equitable criterion underlying this method — Application of the method of Article 6 mandatory if the only question were delimitation of the continental shelf — Need in the present case to delimit both the continental shelf and the superjacent water mass — Rejection of the argument that application of the method of Article 6 should be mandatory for any maritime delimitation as particular expression of a general norm of customary international law — Rejection of the argument that the method in question is obligatory in the present case by acquiescence or estoppel — Equitable criteria which could be applied and practical methods which could be used — Selection according to the specific requirements of the case — Application of criteria and methods based primarily on geography.

Examination of the proposed delimitation lines successively put forward by the Parties.

Criteria and methods adopted by the Chamber — Single delimitation line drawn accordingly — Construction of such line in three segments.

Verification of the equitable character of the result — Non-existence in the present case of any real danger of inequitable consequences — Need for co-operation between the Parties.

JUDGMENT

Present: Judge AGO, *President of the Chamber*; Judges GROS, MOSLER, SCHWEBEL; Judge *ad hoc* COHEN; *Registrar* TORRES BERNÁRDEZ.

In the case concerning delimitation of the maritime boundary in the Gulf of Maine area,

between

Canada,

represented by

The Honorable Mr. Mark MacGuigan, P.C., Q.C., M.P., Minister of Justice and Attorney General of Canada,

H.E. Mr. L. H. Legault, Q.C., Ambassador, Legal Adviser, Department of External Affairs,

as Agent and Counsel,

Mr. Blair Hankey, Department of External Affairs,

as Deputy-Agent and Counsel,

Mr. L. Alan Willis, Department of Justice,

as Counsel and Special Adviser,

Mr. W. I. C. Binnie, Q.C., Associate Deputy Minister, Department of Justice,
Mr. Derek W. Bowett, Q.C., Whewell Professor of International Law, Queens' College, Cambridge,

Mr. Ian Brownlie, Q.C., D.C.L., F.B.A., Chichele Professor of Public International Law in the University of Oxford, Fellow of All Souls College, Oxford,
Mr. Yves Fortier, Q.C., Member of the Quebec Bar, Past President of the Canadian Bar Association,
Mr. Gunther Jaenicke, Professor of International Law at the University of Frankfurt-am-Main,
Mr. Ronald St. J. Macdonald, Q.C., Dalhousie University,
Mr. Antonio Malintoppi, University of Rome (deceased, 29 May 1984),

Mr. Prosper Weil, professeur à l'Université de droit, d'économie et de sciences sociales de Paris,

as Counsel,

Mr. Lawrence Herman, Member of the Ontario and Saskatchewan Bars,

Mr. D. M. McRae, Professor, University of British Columbia,
Miss Jan Schneider, Member of the New York and District of Columbia Bars,

as Senior Legal Advisers,

Commander E. J. Cooper, Consultant in Maritime Boundary Delimitation, Ottawa,
Mr. M. Sinclair, Halifax Fisheries Research Laboratory, Department of Fisheries and Oceans,

as Experts,

Mr. A. R. Longhurst, Bedford Institute of Oceanography, Dartmouth,
Mr. R. D. W. Macdonald, Department of Fisheries and Oceans, Ottawa,
Mr. M. P. Shepard, Fisheries Consultant, Victoria,
Mr. D. F. Sherwin, Department of Energy, Mines and Resources, Ottawa,

Ms. Patricia Smith, Department of Fisheries and Oceans, Ottawa,
Mr. R. Trites, Bedford Institute of Oceanography, Dartmouth,

as Scientific and Technical Advisers,

Mr. Ross Hornby, Department of External Affairs,
Ms. Valerie Hughes, Member of the Ontario Bar,
Ms. Sarita Verma, Department of External Affairs,

as Legal Advisers,

Mr. C. Hanson Dowell, Q.C., Special Adviser, Government of Nova Scotia,
Mr. D. A. MacLean, Deputy Minister, Department of Fisheries, Government of Nova Scotia,
Mr. Henri Légaré, Deputy Minister, Department of Fisheries, Government of New Brunswick,

as Advisers,

Ms. Anne Brennan, Department of External Affairs,

as Administrative Secretary,

and

the United States of America,

represented by

The Honorable Davis R. Robinson, Legal Adviser, United States Department of State,

as Agent and Counsel,

Mr. David A. Colson, Assistant Legal Adviser for Oceans, International Environmental and Scientific Affairs, Office of the Legal Adviser, United States Department of State,

as Deputy-Agent and Counsel,

Mr. Bruce C. Rashkow, Director of the Office of Canadian Maritime Boundary Adjudication, Office of the Legal Adviser, United States Department of State,

as Special Counsel,

The Honorable John R. Stevenson, Member of the Bars of New York and District of Columbia, formerly Legal Adviser, United States Department of State, and formerly United States Ambassador to the Third United Nations Conference on the Law of the Sea,

Mr. Mark B. Feldman, Member of the Bars of New York and the District of Columbia, Adjunct Professor of Law, Georgetown University Law Center, Washington, D.C., and formerly Deputy Legal Adviser, Office of the Legal Adviser, United States Department of State,

Mr. Ralph I. Lancaster, Member of the Bars of Maine and Massachusetts, Regent for Canada and the New England States of the American College of Trial Lawyers, and formerly President of the Maine Bar Association,

Mr. John Norton Moore, Member of the Bars of Florida, Illinois, Virginia and the District of Columbia, Walter L. Brown Professor of Law and Director of the Center of Oceans Law and Policy, University of Virginia School of Law, formerly Counselor on International Law, Office of the Legal Adviser, United States Department of State, and formerly United States Ambassador to the Third United Nations Conference on the Law of the Sea,

Mr. Stefan Riesenfeld, Member of the Bar of Minnesota, Professor of Law, University of California, School of Law, Berkeley, California, and the Hastings College of the Law, San Francisco, California, S.J.D. (Harvard), J.U.D. (Breslau), Dott. in Giur. (Milano), and formerly Counselor on International Law, Office of the Legal Adviser, United States Department of State,

as Counsel,

Lieutenant-Commander Peter Ward Comfort, Judge Advocate General's Corps, United States Navy, on detail to the Office of Canadian Maritime Boundary Adjudication, Office of the Legal Adviser, United States Department of State,

Mr. Michael John Danaher, Office of the Assistant Legal Adviser for Oceans, International Environmental and Scientific Affairs, Office of the Legal Adviser, United States Department of State,

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as Attorney-Advisers,

Lieutenant Brian P. Flanagan, United States Coast Guard, on detail to the Office of Canadian Maritime Boundary Adjudication, Office of the Legal Adviser, United States Department of State,

Mr. Richard H. Davis, Supervisory Cartographer, Marine Chart Division, National Ocean Service, National Oceanographic and Atmospheric Administration, United States Department of Commerce,

Mr. William Hezlep, Office of the Geographer, Bureau of Intelligence and Research, United States Department of State,

Mr. Jonathan T. Olsson, Office of the Geographer, Bureau of Intelligence and Research, United States Department of State,

Ms. Sandra Shaw, Chief, Cartography Division, Office of the Geographer, Bureau of Intelligence and Research, United States Department of State,

Mr. Robert W. Smith, Chief, International Boundary and Resource Division, Office of the Geographer, Bureau of Intelligence and Research, United States Department of State,

as Special Advisers,

Mr. Robert L. Edwards, Special Assistant to the Assistant Administrator of Fisheries, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanographic and Atmospheric Administration, United States Department of Commerce,

as Expert,

Assisted by

Mr. Steven J. Burton, Professor of Law, University of Iowa College of Law, Iowa City, Iowa,

Mr. Jonathan Charney, Professor of Law, Vanderbilt University School of Law, Nashville, Tennessee,

Mr. Ralph J. Gillis, Member of the Bars of Massachusetts and the District of Columbia, Plymouth, Massachusetts,

Mr. Bernard H. Oxman, Professor of Law, University of Miami, School of Law, Miami, Florida,

Mr. Ted L. Stein, Professor of Law, University of Washington, School of Law, Seattle, Washington,

as Legal Consultants,

Mr. Geoffrey Bannister, Dean of the College of Liberal Arts and the Graduate School, Boston University, Boston, Massachusetts,
Mr. Louis DeVorsey, Jr., Professor of Geography, University of Georgia, Athens, Georgia,
Mr. K. O. Emery, Henry Bryant Bigelow Oceanographer, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts,
Mr. Richard C. Hennemuth, Laboratory Director, Woods Hole Laboratory, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanographic and Atmospheric Administration, United States Department of Commerce,
Mr. James Kirkley, Woods Hole Laboratory, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanographic and Atmospheric Administration, United States Department of Commerce,
Mr. Kim D. Klitgord, Geophysicist, United States Geological Survey, United States Department of the Interior,
Mr. Daniel McFadden, James R. Killian Professor of Economics, Massachusetts Institute of Technology, Cambridge, Massachusetts,

Mr. Richard B. Morris, Gouverneur Morris Professor of History, Columbia University, New York, New York,
Lieutenant-Commander Robert Pawlowski, Commissioned Corps, Northeast Fisheries Center, National Marine Fisheries Service, National Oceanographic and Atmospheric Administration, United States Department of Commerce,
Mr. Giulio Pontecorvo, Professor of Economics, Graduate School of Business, Columbia University, New York, New York,

Mr. John S. Schlee, Geologist, United States Geological Survey, United States Department of the Interior,
Mr. William L. Sullivan, Jr., Policy Adviser for International Marine Affairs, National Oceanographic and Atmospheric Administration, United States Department of Commerce,
Mr. Manik Talwani, Geological Consultant, Houston, Texas,
Mr. Elazar Uchupi, Senior Scientist, Geology and Geophysics Department, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts,

Mr. James Wilson, Professor of Economics, University of Maine, Orono, Maine,
Mr. Julian Wolpert, Henry G. Bryant Professor of Geography, Public Affairs, and Urban Planning, Woodrow Wilson School of Public and International Affairs, Princeton University, Princeton, New Jersey,

as Advisers,

THE CHAMBER OF THE INTERNATIONAL COURT OF JUSTICE formed to deal with the case above mentioned,

composed as above,

after deliberation,

delivers the following Judgment :

1. By a joint letter dated 25 November 1981, filed in the Registry of the Court the same day, the Ambassador of Canada to the Netherlands and the Ambassador of the United States of America to the Netherlands transmitted to the Registrar a certified copy of a Special Agreement dated 29 March 1979, and subsequently modified, by which Canada and the United States of America agreed to submit to a Chamber of the Court, composed of five persons, to be constituted pursuant to Article 26, paragraph 2, and Article 31 of the Statute of the Court, and in accordance with the Special Agreement, a question as to the course of the single maritime boundary that divides the continental shelf and fisheries zones of the two Parties in the Gulf of Maine area. By the same letter, the Government of Canada also notified the Court, in accordance with Article 35 of the Rules of Court, of its intention to exercise the power conferred by Article 31 of the Statute of the Court to choose a judge *ad hoc*.

2. By a letter dated 18 December 1981, the Acting President of the Court requested the Agents of both Parties to submit to the Court, in writing, supplementary explanations or clarifications on a number of points relating to, *inter alia,* certain provisions of the Special Agreement. The relevant explanations or clarifications were given in a letter from the Ambassadors of both Parties at The Hague, dated 6 January 1982 and filed in the Registry on 8 January 1982.

3. By an Order dated 20 January 1982, the Court, having considered the above-mentioned letter, was of the opinion that the replies contained in it were to be read together with the terms of the Special Agreement for the purposes of this case, and decided to accede to the request of the Governments of Canada and the United States of America to form a special Chamber of five judges to deal with the case, declared that Judges Gros, Ruda, Mosler, Ago and Schwebel had been elected to the Chamber, noted that the Acting President of the Court, in exercise of his powers under Article 31, paragraph 4, of the Statute of the Court, had requested Judge Ruda to give place in due course to the judge *ad hoc* to be chosen by the Government of Canada, and that Judge Ruda had indicated his readiness to do so, and declared that a Chamber to deal with the case had been duly constituted by the Order with the composition indicated therein.

4. By a letter dated 26 January 1982, the Ambassador of Canada at The Hague, referring to Article 31 of the Statute and Article 35 of the Rules of Court, informed the Court that the person chosen by Canada to sit as judge *ad hoc* in the case was Professor Maxwell Cohen ; by a letter from the Agent of the United States dated 26 January 1982 the Court was informed that the United States had no observations to make on that choice.

5. The text of the Special Agreement of 29 March 1979 is as follows:

> "The Government of Canada and the Government of the United States of America,
>
> Recognizing that they have been unable to resolve by negotiation the differences between them concerning the delimitation of the continental shelf and the fisheries zones of Canada and the United States of America in the Gulf of Maine area,
>
> Desiring to reach an early and amicable settlement of these differences,

Have agreed as follows :

Article I

The Parties shall submit the question posed in Article II to a Chamber of the International Court of Justice, composed of five persons, to be constituted after consultation with the Parties, pursuant to Article 26 (2) and Article 31 of the Statute of the Court and in accordance with this Special Agreement.

Article II

1. The Chamber is requested to decide, in accordance with the principles and rules of international law applicable in the matter as between the Parties, the following question :

> What is the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States of America from a point in latitude 44° 11′ 12″ N, longitude 67° 16′ 46″ W to a point to be determined by the Chamber within an area bounded by straight lines connecting the following sets of geographic coordinates : latitude 40° N, longitude 67° W ; latitude 40° N, longitude 65° W ; latitude 42° N, longitude 65° W ?

2. The Chamber is requested to describe the course of the maritime boundary in terms of geodetic lines, connecting geographic coordinates of points. The Chamber is also requested, for illustrative purposes only, to depict the course of the boundary on Canadian Hydrographic Service Chart No. 4003 and United States National Ocean Survey Chart No. 13006, in accordance with Article IV.

3. The Parties shall request the Chamber to appoint a technical expert nominated jointly by the Parties to assist it in respect of technical matters and, in particular, in preparing the description of the maritime boundary and the charts referred to in paragraph 2. The Registrar is requested to provide the expert with copies of each Party's pleadings when such pleadings are communicated to the other Party. The expert shall be present at the oral proceedings and shall be available for such consultations with the Chamber as it may deem necessary for the purposes of this Article.

4. The Parties shall accept as final and binding upon them the decision of the Chamber rendered pursuant to this Article.

Article III

1. South and west of the maritime boundary to be determined by the Chamber in accordance with this Special Agreement Canada shall not, and north and east of said maritime boundary the United States of America shall not, claim or exercise sovereign rights or jurisdiction for any purpose over the waters or seabed and subsoil.

2. Nothing in this Special Agreement shall affect the position of either Party with respect to the legal nature and seaward extent of the continental

shelf, of fisheries jurisdiction, or of sovereign rights or jurisdiction for any other purpose under international law.

Article IV

The Chamber and any technical expert or experts are requested to utilize, and the Parties in their presentations to the Chamber shall utilize, the following technical provisions :

(a) All geographic coordinates of points referred to shall be rendered on the 1927 North American Datum.

(b) All straight lines shall be geodetic lines. Curved lines, including parallels of latitude, if necessary for the judgment, shall be computed on the 1927 North American Datum.

(c) Notwithstanding the fact that the Parties utilize different vertical datums in the Gulf of Maine area, the two datums shall be deemed to be common.

(d) Should reference to the low water baseline of either Party be required, the most recent largest scale charts published by the Party concerned shall be utilized.

(e) If a point or points on a particular chart are not on the 1927 North American Datum, the Chamber shall request the Agent of the appropriate Party to furnish the Chamber with the corrected datum points.

(f) In recognition of the fact that the Parties do not utilize the same standard set of symbols on nautical charts, the Chamber, or any technical expert or experts shall, if necessary, confer with the Agents and their advisers to insure proper interpretation of the symbol or feature.

(g) The Chamber, or any technical expert or experts, is requested to consult with the Parties as may be necessary concerning any common computer programs of the Parties for technical calculations, and to utilize such programs as appropriate.

Article V

1. Neither Party shall introduce into evidence or argument, or publicly disclose in any manner, the nature or content of proposals directed to a maritime boundaries settlement, or responses thereto, in the course of negotiations or discussions between the Parties undertaken since 1969.

2. Each of the Parties shall notify and consult the other prior to introducing into evidence or argument diplomatic or other confidential correspondence between Canada and the United States of America related to the issue of maritime boundaries delimitation.

Article VI

1. Without prejudice to any question as to burden of proof, the Parties shall request the Chamber to authorize the following procedure with regard to the written pleadings :

(a) a Memorial to be submitted by each Party not later than seven months after the Registrar shall have received the notification of the name or names of the judge or judges *ad hoc* ;
(b) a Counter-Memorial to be submitted by each Party not later than six months after the exchange of Memorials ; and
(c) any further pleadings found by the Chamber to be necessary.

2. The Chamber may extend these time-limits at the request of either Party.

3. The written pleadings submitted to the Registrar shall not be communicated to the other Party until the corresponding pleading of that Party has been received by the Registrar.

Article VII

1. Following the decision of the Chamber, either Party may request negotiations directed toward reaching agreement on extension of the maritime boundary as far seaward as the Parties may consider desirable.

2. If the Parties have not reached agreement on the extension of the maritime boundary within one year of the date of such a request, either Party may notify the other of its intention to submit the question of the seaward extension of the maritime boundary for decision by a binding third party settlement procedure.

3. If the Parties are unable to agree on the terms of such a submission within three months of such a notification, either Party may submit the question of the seaward extension of the maritime boundary to the Chamber of five judges constituted in accordance with this Special Agreement.

4. The provisions of this Special Agreement shall be applied, *mutatis mutandis,* to the proceedings under this Article, and the decision of the Chamber shall be final and binding upon the Parties.

Article VIII

This Special Agreement shall enter into force on the date of the entry into force of the Treaty between the Government of Canada and the Government of the United States of America to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area signed this day. It shall remain in force unless and until it is terminated in accordance with the provisions of the said Treaty or until the said Treaty is terminated."

6. Pursuant to Article 40, paragraph 3, of the Statute and to Article 42 of the Rules of Court, copies of the notification and Special Agreement were transmitted to the Secretary-General of the United Nations, the Members of the United Nations and other States entitled to appear before the Court.

7. By an Order made by the Court on 1 February 1982 pursuant to Article 92 of the Rules of Court, and thereafter by Orders made by the President of the Chamber on 28 July 1982, 5 November 1982, and 27 July 1983, time-limits were fixed or extended for the filing of Memorials and Counter-Memorials, and the filing of Replies was found to be necessary and a time-limit fixed therefor. The

Memorials, Counter-Memorials and Replies of the Parties were duly filed within the time-limits so fixed or extended.

8. By an Order made by the Chamber on 30 March 1984 Commander Peter Bryan Beazley was appointed as technical expert to assist the Chamber in respect of technical matters and, in particular, in preparing the description of the maritime boundary and the charts referred to in Article II, paragraph 2, of the Special Agreement. Before taking up his duties, the technical expert made a solemn declaration, the text of which was set out in the Order.

9. On 2-6, 10-13, 16, 18-19 April and 3-5 and 9-11 May 1984, the Chamber held public sittings at which it was addressed by the following representatives of the Parties :

For Canada :	H.E. Mr. L. H. Legault, The Hon. Mr. M. MacGuigan, P.C., Q.C., M.P., Mr. B. Hankey, Mr. W. I. C. Binnie, Q.C., Mr. Y. Fortier, Q.C., Mr. I. Brownlie, Q.C., Mr. D. W. Bowett, Q.C., Mr. P. Weil, Mr. A. Malintoppi, Mr. G. Jaenicke.
For the United States of America :	The Hon. Mr. D. R. Robinson, Mr. J. R. Stevenson, Mr. D. Colson, Mr. M. Feldman, Mr. K. Lancaster, Mr. B. Rashkow, Mr. S. Riesenfeld.

The Government of the United States called an expert, Mr. R. Edwards, who was questioned by Mr. Lancaster, counsel for the United States, and Mr. Fortier, counsel for Canada.

10. In the course of the hearings questions were put to both Parties by members of the Chamber. Prior to the close of the hearings, oral or written replies to those questions were given by the Agents or counsel of the Parties.

11. The Governments of the United Kingdom and Bangladesh, in reliance on Article 53, paragraph 1, of the Rules of Court, asked to be furnished with copies of the pleadings and annexed documents in the case. By letters of 6 and 13 December 1982, after the views of the Parties had been sought, and objection made by them, the Registrar informed those Governments that the President of the Chamber had decided that it would not be appropriate to grant the requests of those two Governments at that time. On 2 April 1984 the Chamber decided, after ascertaining the views of the Parties pursuant to Article 53, paragraph 2, of the Rules of Court, that the pleadings and annexed documents should be made accessible to the public, and available to third States, with effect from the opening of the oral proceedings, and they were thus at the same time made available to the States mentioned above.

*

12. In the course of the written proceedings, the following Submissions were presented by the Parties :

On behalf of Canada,

in the Memorial :

"In view of the facts and arguments set out in this Memorial,

May it please the Court to declare and adjudge that :

The course of the single maritime boundary referred to in the Special Agreement concluded by Canada and the United States on 29 March 1979 is defined by geodetic lines connecting the following geographical coordinates of points :

44° 11′ 12″ N	67° 16′ 46″ W
44° 08′ 51″ N	67° 16′ 20″ W
43° 59′ 12″ N	67° 14′ 34″ W
43° 49′ 49″ N	67° 12′ 30″ W
43° 49′ 29″ N	67° 12′ 43″ W
43° 37′ 33″ N	67° 12′ 24″ W
43° 03′ 58″ N	67° 23′ 55″ W
42° 54′ 44″ N	67° 28′ 35″ W
42° 20′ 37″ N	67° 45′ 36″ W
41° 56′ 42″ N	67° 51′ 29″ W
41° 22′ 07″ N	67° 29′ 09″ W
40° 05′ 36″ N	66° 41′ 59″ W" ;

in the Counter-Memorial :

"In view of the facts and arguments set out in the Canadian Memorial and in this Counter-Memorial,

May it please the Court, rejecting all contrary claims and Submissions set forth in the United States Memorial,

To declare and adjudge that :

The course of the single maritime boundary referred to in the Special Agreement concluded by Canada and the United States on 29 March 1979 is defined by geodetic lines connecting the following geographical coordinates of points :"

[here follows a list of coordinates identical to those in the Memorial] ;

in the Reply :

"In view of the facts and arguments set out in the Canadian Memorial, the Canadian Counter-Memorial and in this Reply,

May it please the Court, rejecting all contrary claims and Submissions set forth in the United States Memorial and Counter-Memorial,

To declare and adjudge that :

The course of the single maritime boundary referred to in the Special Agreement concluded by Canada and the United States on 29 March 1979 is defined by geodetic lines connecting the following geographical coordinates of points :"

[here follows a list of coordinates identical to those in the Memorial].

On behalf of the United States,

in the Memorial :

"*In view of* the facts set forth in Part I of this Memorial, the statement of the law contained in Part II of this Memorial, and the application of the law to the facts as stated in Part III of this Memorial ;

Considering that the Special Agreement between the Parties requests the Court, in accordance with the principles and rules of international law applicable in the matter as between the Parties, to decide the course of the single maritime boundary that divides the continental shelf and fisheries zones of the United States of America and Canada from a point in latitude 44° 11′ 12″ N, longitude 67° 16′ 46″ W to a point to be determined by this Court within an area bounded by straight lines connecting the following sets of coordinates : latitude 40° N, longitude 67° W ; latitude 40° N, longitude 65° W ; latitude 42° N, longitude 65° W ;

May it please the Court, on behalf of the United States of America, *to adjudge and declare* :

A. Concerning the applicable law

1. That delimitation of a single maritime boundary requires the application of equitable principles, taking into account the relevant circumstances in the area, to produce an equitable solution.

2. That the equitable principles to be applied in this case include :

(a) the principle that the delimitation respect the relationship between the relevant coasts of the Parties and the maritime areas lying in front of those coasts, including nonencroachment, proportionality, and, where appropriate, natural prolongation ;

(b) the principle that the delimitation facilitate conservation and management of the natural resources of the area ;

(c) the principle that the delimitation minimize the potential for disputes between the Parties ; and

(d) The principle that the delimitation take account of the relevant circumstances in the area.

3. That the equidistance method is not obligatory on the Parties or preferred, either by treaty or as a rule of customary international law, and that any method or combination of methods of delimitation may be used that produces an equitable solution.

B. Concerning the relevant circumstances to be taken into account

1. That the relevant geographical circumstances in the area include :

(a) the broad geographical relationship of the Parties as adjacent States ;

(b) the general northeastern direction of the east coast of North America, both within the Gulf of Maine and seaward of the Gulf ;

(c) the location of the international boundary terminus in the northern corner of the Gulf of Maine ;
(d) the radical changes in the direction of the Canadian coast beginning at the Chignecto Isthmus, 147 miles northeast of the international boundary terminus ;
(e) the protrusion of the Nova Scotia peninsula 100 nautical miles southeast of the international boundary terminus, creating a short Canadian coastline perpendicular to the general direction of the coast, and across from the international boundary terminus ;

(f) the concavity in the coast created by the combination of the protrusion of the Nova Scotia peninsula and the curvature of the New England coast ;
(g) the relative length of the relevant coastlines of the Parties ; and
(h) the Northeast Channel, Georges Bank, and Browns Bank and German Bank on the Scotian Shelf, as special features.

2. That the relevant environmental circumstances in the area include :

(a) the three separate and identifiable ecological régimes associated, respectively, with the Gulf of Maine Basin, Georges Bank, and the Scotian Shelf ; and
(b) the Northeast Channel as the natural boundary dividing not only separate and identifiable ecological régimes of Georges Bank and the Scotian Shelf, but also most of the commercially important fish stocks associated with each such régime.

3. That the relevant circumstances in the area relating to the predominant interest of the United States as evidenced by the activities of the Parties and their nationals include :

(a) the longer and larger extent of fishing by United States fishermen since before the United States became an independent country ;

(b) the sole development, and, until recently, the almost exclusive domination of the Georges Bank fisheries by United States fishermen ; and
(c) the exercise by the United States and its nationals for more than 200 years of the responsibility for aids to navigation, search and rescue, defense, scientific research, and fisheries conservation and management.

C. Concerning the delimitation

1. That the application of equitable principles taking into account the relevant circumstances in the area to produce an equitable solution is best accomplished by a single maritime boundary that is perpendicular to the general direction of the coast in the Gulf of Maine area, commencing at the starting point for delimitation specified in Article II of the Special Agreement and proceeding into the triangle described in that Article, but adjusted during its course to avoid dividing German Bank and Browns Bank, both of which would be left in their entirety to Canada.

2. That the boundary should consist of geodetic lines connecting the following geographic coordinates:

	Latitude (North)	*Longitude (West)*
(a)	44° 11′ 12″	67° 16′ 46″
(b)	43° 29′ 06″	66° 34′ 30″
(c)	43° 19′ 30″	66° 52′ 45″
(d)	43° 00′ 00″	66° 33′ 21″
(e)	42° 57′ 13″	66° 38′ 36″
(f)	42° 28′ 48″	66° 10′ 25″
(g)	42° 34′ 24″	66° 00′ 00″
(h)	42° 15′ 45″	65° 41′ 33″
(i)	42° 22′ 23″	65° 29′ 12″
(j)	41° 56′ 21″	65° 03′ 48″
(k)	41° 58′ 24″	65° 00′ 00″″ ;

in the Counter-Memorial :

"*In view of* the facts set forth in Part I of the United States Memorial and this Counter-Memorial, the statement of the law contained in Part II of the United States Memorial and this Counter-Memorial, and the application of the law to the facts as stated in Part III of the United States Memorial and of this Counter-Memorial ;"

[here follow the identical submissions set out in the Memorial] ;

in the Reply :

"*In view of* the facts set forth in the United States Memorial, Counter-Memorial, and this Reply, the statement of the law contained in the United States Memorial, Counter-Memorial, and this Reply, and the application of the law to the facts as stated in the United States Memorial, Counter-Memorial, and this Reply ;"

[here follow the identical submissions set out in the Memorial].

13. In the course of the oral proceedings, the following submissions were presented by the Parties :

On behalf of Canada,

at the hearing of 5 May 1984 (afternoon) :

"*In view of* the facts and arguments set out in the Canadian Memorial, Counter-Memorial and Reply, and by Canada in these oral proceedings,

May it please the Court, rejecting all contrary claims and Submissions set forth in the United States Memorial, Counter-Memorial and Reply, and by the United States in these oral proceedings,

To declare and adjudge that :

The course of the single maritime boundary referred to in the Special

Agreement concluded by Canada and the United States on 29 March 1979 is defined by geodetic lines connecting the geographical co-ordinates of points described in the Submission appended to Canada's Memorial, Counter-Memorial and Reply" ;

On behalf of the United States of America,

at the hearing of 11 May 1984 :

"*In view of* the facts, the statement of the law, and the application of the law to the facts set forth in the United States Memorial, Counter-Memorial, Reply, and the oral presentations by United States Counsel ;

Considering that the Special Agreement between the Parties requests the Chamber, in accordance with the principles and rules of international law applicable in the matter as between the Parties, to decide the course of the single maritime boundary that divides the continental shelf and fisheries zones of the United States of America and Canada from a point in latitude 44° 11′ 12″ N, longitude 67° 16′ 46″ W to a point to be determined by this Chamber within an area bounded by straight lines connecting the following sets of coordinates : latitude 40° N, longitude 67° W ; latitude 40° N, longitude 65° W ; latitude 42° N, longitude 65° W ;

May it please the Chamber, on behalf of the United States of America, *to adjudge and declare* :

A. Concerning the applicable law

1. That delimitation of a single maritime boundary requires the application of equitable principles, taking into account the relevant circumstances in the area, to produce an equitable solution.

2. That the equitable principles to be applied in this case include :

(a) the principle that the delimitation respect the relationship between the relevant coasts of the Parties and the maritime areas lying in front of those coasts, including non-encroachment ; proportionality ; and natural prolongation in its geographic sense, or coastal-front extension ;

(b) the principle that the delimitation facilitate conservation and management of the natural resources of the area ;

(c) the principle that the delimitation minimize the potential for disputes between the Parties ; and

(d) the principle that the delimitation take account of the relevant circumstances in the area.

3. That the equidistance method is not obligatory on the Parties or preferred, either by treaty or as a rule of customary international law, and that any method or combination of methods of delimitation may be used that produces an equitable solution in application of these principles, taking account of the relevant circumstances.

B. Concerning the relevant circumstances to be taken into account

1. That the relevant geographical circumstances in the area include :

(a) the extension of the coastal front of Maine and New Hampshire through the Gulf of Maine and beyond ;
(b) the broad geographical relationship of the Parties as adjacent States ;
(c) the general northeastern direction of the east coast of North America, both within the Gulf of Maine and seaward of the Gulf ;
(d) the location of the international boundary terminus in the northern corner of the Gulf of Maine ;
(e) the radical changes in the direction of the Canadian coast beginning at the Chignecto Isthmus, 147 miles northeast of the international boundary terminus ;
(f) the protrusion of the Nova Scotia peninsula 100 nautical miles southeast of the international boundary terminus, creating a short Canadian coastline perpendicular to the general direction of the coast, and across from the international boundary terminus ;

(g) the concavity in the coast created by the combination of the protrusion of the Nova Scotia peninsula and the curvature of the New England coast ;
(h) the relative length of the relevant coastlines of the Parties ; and
(i) the Northeast Channel, Georges Bank, and Browns Bank and German Bank on the Scotian Shelf, as special features.

2. That the relevant environmental circumstances in the area include :

(a) the three separate and identifiable ecological régimes associated, respectively, with the Gulf of Maine Basin, Georges Bank, and the Scotian Shelf ; and
(b) the Northeast Channel as the natural boundary dividing not only separate and identifiable ecological régimes of Georges Bank and the Scotian Shelf, but also most of the commercially important fish stocks associated with each such régime.

3. That the relevant circumstances in the area relating to the predominant interest of the United States as evidenced by the activities of the Parties and their nationals include :

(a) the longer and larger extent of fishing by United States fishermen since before the United States became an independent country ;

(b) the sole development, and, until recently, the almost exclusive domination of the Georges Bank fisheries by United States fishermen ; and
(c) the exercise by the United States and its nationals for more than 200 years of the responsibility for aids to navigation, search and rescue, defense, scientific research, and fisheries conservation and management.

C. Concerning the delimitation

1. That the application of equitable principles taking into account the relevant circumstances in the area to produce an equitable solution is best accomplished by a single maritime boundary that is perpendicular to the general direction of the coast in the Gulf of Maine area, commencing at the starting point for delimitation specified in Article II of the Special Agreement and proceeding into the triangle described in that Article, but adjusted during its course to avoid dividing German Bank and Browns Bank, both of which would be left in their entirety to Canada.

2. That the boundary should consist of geodetic lines connecting the following geographic coordinates :

	Latitude (North)	*Longitude (West)*
(a)	44° 11′ 12″	67° 16′ 46″
(b)	43° 29′ 06″	66° 34′ 30″
(c)	43° 19′ 30″	66° 52′ 45″
(d)	43° 00′ 00″	66° 33′ 21″
(e)	42° 57′ 13″	66° 38′ 36″
(f)	42° 28′ 48″	66° 10′ 25″
(g)	42° 34′ 24″	66° 00′ 00″
(h)	42° 15′ 45″	65° 41′ 33″
(i)	42° 22′ 23″	65° 29′ 12″
(j)	41° 56′ 21″	65° 03′ 48″
(k)	41° 58′ 24″	65° 00′ 00″."

I

14. The case concerning the delimitation of the maritime boundary in the Gulf of Maine area was brought before the Court on the basis of the first of the possibilities envisaged under Article 40, paragraph 1, of its Statute, namely by notification of a special agreement, in this case the Special Agreement signed at Washington on 29 March 1979 by the Governments of Canada and of the United States of America and notified to the Court on 25 November 1981.

15. By an Order of 20 January 1982, the Court in application of paragraph 2 of Article 26 and of Article 31 of its Statute, formed a special Chamber composed of five Members to deal with the case. Under the terms of Article II, paragraph 1, of the Special Agreement, this Chamber is

> "requested to decide, in accordance with the principles and rules of international law applicable in the matter as between the Parties, the following question :
>
> What is the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States of America, from a point in latitude 44° 11′ 12″ N, longitude 67° 16′ 46″ W to a point to be determined by the Chamber within an

area bounded by straight lines connecting the following sets of geographical co-ordinates : latitude 40° N, longitude 67° W ; latitude 40° N, longitude 65° W ; latitude 42° N, longitude 65° W ?"

16. Article II, paragraph 4, declares that : "The Parties shall accept as final and binding upon them the decision of the Chamber rendered pursuant to this Article." Article III, paragraph 1, furthermore confirms the final and binding character of the "single maritime boundary" to be delimited by the Chamber, specifying that south and west of this "maritime boundary" Canada shall not, and north and east of it the United States of America shall not, "claim or exercise sovereign rights or jurisdiction for any purpose over the waters or sea-bed and subsoil". It is also to be noted that Article III, paragraph 2, expressly reserves the positions of each of the two Parties by providing that :

"Nothing in this Special Agreement shall affect the position of either Party with respect to the legal nature and seaward extent of the continental shelf, of fisheries jurisdiction, or of sovereign rights of jurisdiction for any other purpose under international law."

17. The task of delimitation of the maritime boundary within the limits indicated under Article II, paragraph 1, is not the only one for which the Special Agreement makes provision. Article VII, paragraph 1, provides that :

"Following the decision of the Chamber, either Party may request negotiations directed toward reaching agreement on extension of the maritime boundary as far seaward as the Parties may consider desirable."

And the following paragraphs provide that if the Parties do not reach agreement in this connection within specified time-limits, either directly or by submitting the question for decision by a binding third-party settlement procedure, either Party may "submit the question of the seaward extension of the maritime boundary to the Chamber of five judges constituted in accordance with the Special Agreement" (para. 3). The provisions of the Special Agreement are then to be applied, *mutatis mutandis,* to the new proceedings undertaken in this way and the decision of the Chamber therein shall also be "final and binding upon the Parties" (para. 4). This question is, however, unrelated to the determination of the Chamber's jurisdiction in the present case. Such competence can in principle only derive from the provisions of the Statute and Rules governing the Court's jurisdiction ; the application of these provisions is no different whether the Court is sitting in its full composition or as a Chamber. As for the Special

Agreement, it defines no limitation of the jurisdiction of the Chamber other than that resulting from the very terms of the question set forth in Article II, paragraph 1, which will be studied further below.

18. The Special Agreement (Art. II, para. 3) requests the Chamber to appoint a technical expert nominated jointly by the Parties to assist it in respect of technical matters and, in particular, in preparing the description of the maritime boundary and the charts on which its course has to be indicated. The technical expert was in fact appointed by an Order of 30 March 1984 and the conditions laid down for his participation in the work of the Chamber have duly been complied with. Otherwise, the Special Agreement requests the Chamber and the expert to comply with certain technical provisions, set forth under Article IV, *(a)* to *(g)*, and imposes upon the Parties certain restrictions in regard to evidence and argument (Art. V).

19. The Court, and consequently the Chamber, having been seised by means of a special agreement, no preliminary question arises in regard to its jurisdiction to deal with the case. A question might conceivably arise as a result of the use, at least in the French text of the Special Agreement, of the term *frontière maritime* ("maritime boundary"), which might suggest, incorrectly, the idea of a real *frontière* (boundary) between two sovereign States. However, it is clear to the Chamber that the task which it has been given only relates to a delimitation between the different forms of partial jurisdiction, i.e., the "sovereign rights" which, under current international law, both treaty-law and general law, coastal States are recognized to have in the marine and submarine areas lying outside the outer limit of their respective territorial seas, up to defined limits. The rights of third States in the areas in question cannot therefore be in any way affected by the delimitation which the Chamber is required to effect. Apart from this consideration, the only problem which may theoretically arise at the outset in this context could be how far the Chamber is obliged to abide by the provisions of the Special Agreement in regard to the starting-point of the delimitation line to be drawn and the triangle within which this line is to end.

20. According to the information provided by the Parties themselves, the starting-point in question (44° 11′ 12″ north, 67° 16′ 46″ west), called point A, is simply the first point of intersection of the two lines representing the limits of the fishing zones respectively claimed by Canada and the United States when, at the end of 1976, and with effect from the beginning of 1977, they decided upon the extension of their fisheries jurisdiction up to 200 nautical miles. The reason for choosing this point of intersection – rather than the international boundary terminus fixed under the Treaty between the two States dated 24 February 1925, and situate in the Grand Manan Channel, which might have seemed more logical – is that to seaward of this last-mentioned point are Machias Seal Island and North Rock, the sovereignty over which is in dispute, and that the Parties wish to reserve for themselves the possibility of a direct solution

of this dispute. It would seem that the choice of point A was influenced by no other consideration apart from that indicated above.

21. As to the triangle enclosing the area within which the delimitation line to be drawn by the Chamber is to terminate, according to the Parties it was established to avoid the possibility of the Chamber's decision in this case prejudging such questions as that of the determination of the outer edge of the continental margin, questions to be dealt with by negotiations in the first instance. It goes without saying that the position and limits of the triangle were established in the light of the respective claims of the Parties at the time when the Special Agreement was concluded, namely in 1979. But even at present, the lines representing the maximum claims of the two Parties still terminate within the triangle – close to the northeast apex and the southwest apex, respectively.

22. The application of the rules of international law and the methods of delimitation considered the most appropriate in this case might present the Chamber with the temptation to adopt another starting-point of the line to be drawn, or to draw a line terminating at a point outside the triangle. However, even disregarding the somewhat improbable nature of this hypothesis, the decisive reason why such solutions should not be pursued is the fact that for the delimitation of a maritime boundary – whether it concern the territorial sea or the continental shelf or the exclusive economic zone – both conventional and customary international law accord priority over all others to the criterion that this delimitation must above all be sought, while always respecting international law, through agreement between the parties concerned. Recourse to delimitation by arbitral or judicial means is in the final analysis simply an alternative to direct and friendly settlement between the parties.

23. If therefore Canada and the United States of America have chosen to reserve for themselves, as the subject of future direct negotiation with a view to an agreement, the determination of the course of the delimitation line between the international boundary terminus and point A, and the course of the delimitation beyond the end-point of the Chamber's line in the triangle, it must be concluded that their intention otherwise to have recourse to judicial settlement must be taken within the limits in which it was conceived and expressed. The two States have already, by mutual agreement, taken a step towards a solution of their dispute, which does of course require to be supplemented by a decision of the Chamber, but which should nevertheless not be disregarded by it. The Chamber concludes that, in the task conferred upon it, it must conform to the terms by which the Parties have defined this task. If it did not do so, it would overstep its jurisdiction.

24. There is a profound difference, in two important respects, between the requests submitted by the Parties in the cases previously brought before

the Court, namely those relating to the delimitation of the *North Sea Continental Shelf* and the delimitation of the *Continental Shelf (Tunisia/ Libyan Arab Jamahiriya),* and the request currently submitted to the judgment of the Chamber and relating to the delimitation to be effected in the Gulf of Maine area.

25. To begin with, in the other cases just mentioned, the Court was not required to draw a line of delimitation itself, but merely to undertake a task preliminary to the determination of such a line, i.e., to indicate the principles and rules of international law applicable to that delimitation, to which, in the *Tunisia/Libya* case, was added the request that the Court should clarify the practical method for the application of these principles and rules in the specific situation. The Parties had reserved for themselves the final task, namely the determination of the delimitation line, to be undertaken jointly and on the binding basis of the indications received from the Court. However, in the present case, this task is directly entrusted to the Chamber, without any indication being given in the Special Agreement as to the sources from which it should derive its determination of applicable principles and methods. Seen from this first aspect, the request submitted to the Chamber is analogous rather to the request made to the Court of Arbitration which was asked to draw the delimitation line of the continental shelf between France and the United Kingdom.

26. The second aspect which distinguishes this case from all those previously adjudicated is the fact that, for the first time, the delimitation which the Chamber is asked to effect does not relate exclusively to the continental shelf, but to both the continental shelf and the exclusive fishing zone, the delimitation to be by a single boundary. Moreover, during the oral proceedings, the Parties added – by reference to Article III, paragraph 1, of the Special Agreement – that the single boundary line to be drawn should be applicable to all aspects of the jurisdiction of the coastal State, not only jurisdiction as defined by international law in its present state, but also as it will be defined in future. In order to determine this single boundary, the Chamber is only asked to decide "in accordance with the principles and rules of international law applicable in the matter as between the Parties", without there being any additional indication, whether of a formal or substantial character, given in the text of the Special Agreement with regard to these "rules and principles".

27. With regard to this second aspect, the Chamber must observe that the Parties have simply taken it for granted that it would be possible, both legally and materially, to draw a single boundary for two different jurisdictions. They have not put forward any arguments in support of this assumption. The Chamber, for its part, is of the opinion that there is certainly no rule of international law to the contrary, and, in the present case, there is no material impossibility in drawing a boundary of this kind. There can thus be no doubt that the Chamber can carry out the operation requested of it.

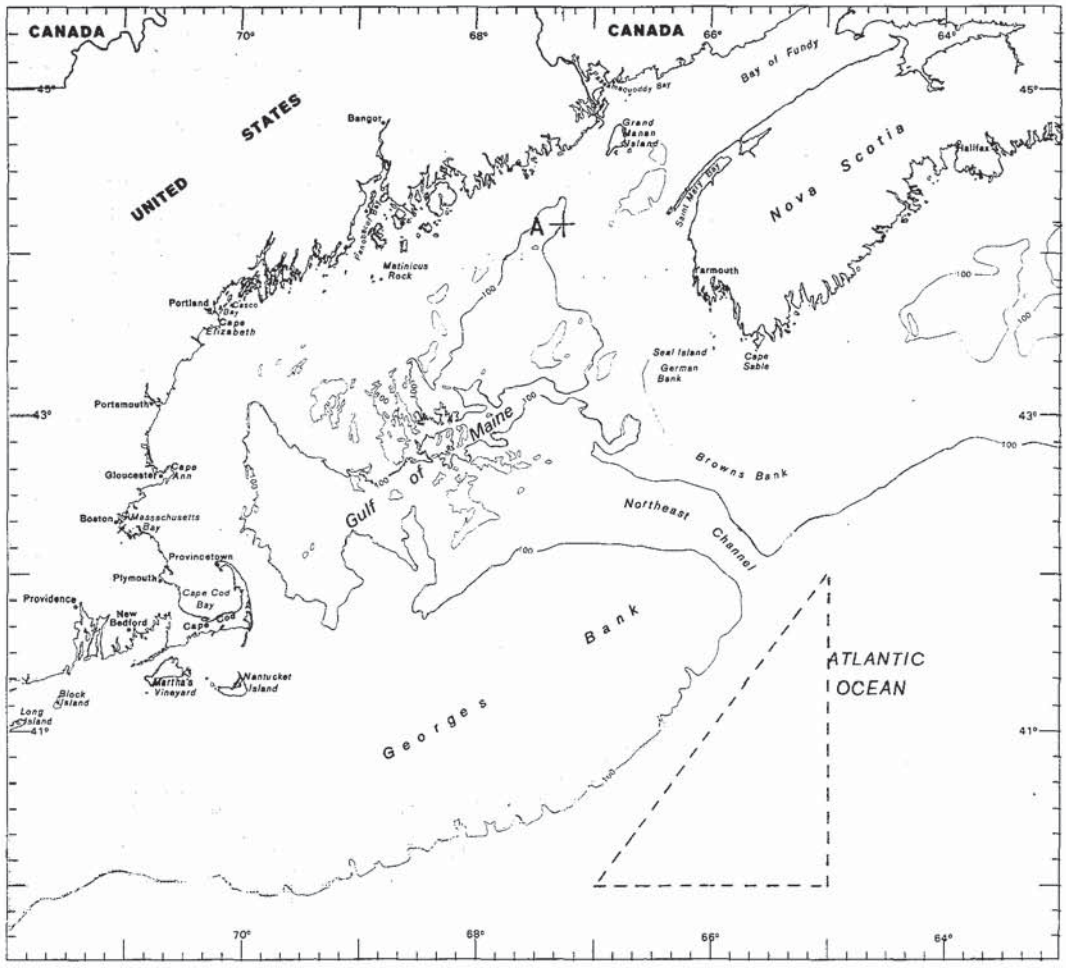
II

28. The area within which the delimitation sought in the present case is to be carried out, in other words, the geographical area directly concerned in this delimitation, lies within the ill-defined limits of what the Parties have, in the title and preamble of the Special Agreement, called the "Gulf of Maine area" – without, however, there giving any definition of this expression. The Chamber considers it indispensable to achieve a greater degree of precision as to the geographical concepts used in this context by way of basis for the operation which it has to perform.

29. As can be seen from the maps inserted or appended to the present Judgment, the Gulf of Maine properly so called is a broad oceanic indentation in the eastern coast of the North American Continent, having roughly the shape of an elongated rectangle. At its southwestern end, once past Nantucket Island, the elbow of Cape Cod is reached ; from here on, the indentation follows the approximately north-south segment at the end of this peninsula. Within the peninsula and the imaginary line linking its tip with Cape Ann further to the north are the two contiguous bays of Cape Cod and Massachusetts. At the back of Massachusetts Bay is the city of Boston. The characteristic of the western side of the above-mentioned rectangle, which is one of its two short sides, is the general south-south-east/north-north-west direction of the Massachusetts coast abutting on the Gulf of Maine.

30. There then follows the short New Hampshire coastline and, with it, the direction of the coast of the Gulf begins slightly to alter course, bending gently towards the north-east. This trend continues with the first segment of the Maine coastline. But soon the coast of this State, which becomes broken and fringed with islands, bends again to pursue a steady course west-south-west/east-north-east. From Cape Elizabeth to the international boundary between the United States of America and Canada, which terminates in the Grand Manan Channel, the coast of Maine forms along this line the first of the long sides of the rectangle. It should be noted that beyond that frontier the adjacent coast of the province of New Brunswick also follows the same direction. But between this coast and the coast of Nova Scotia, which lies opposite and runs almost parallel to it, is the opening of the Bay of Fundy – more or less at the latitude of the international boundary terminus – cutting deep inland. The waters of the Bay of Fundy merge with those of the Gulf in the stretch of sea between Grand Manan Island, off the coast of New Brunswick, and Brier Island, the prolongation of Digby Neck and Long Island, which run along the northern coast of Nova Scotia.

31. The question has been raised whether the Bay of Fundy should be considered to be a part of the Gulf of Maine or whether this bay should be regarded as a closed bay, considered as though it were sealed off by a straight line. The fact that such a line may be taken into consideration in constructing the rectangle within the Gulf to define its geometric form in



MAP NO. 1

GENERAL MAP OF THE REGION, SHOWING THE STARTING-POINT FOR THE DELIMITATION LINE AND THE AREA FOR ITS TERMINATION

*

The maps incorporated in the present Judgment were prepared on the basis of documents submitted to the Court by the Parties, and their sole purpose is to provide a visual illustration of the relevant paragraphs of the Judgment.

order to facilitate the search for a delimitation line does not mean that the closing line is no longer an imaginary line drawn across the waters but becomes a real coastal line. Nor does it mark a separation of the waters on each side of it : judging by the evidence presented, there is no appreciable difference in quality between the waters in the north-east part of the Gulf and the waters in the outer part of the Bay. In fact, the part of the Bay which is closest to its opening into the Gulf is wide, the depth of the waters is the same, and the distance between the mainland coasts exceeds twice the extent of the territorial sea. However, further into the Bay, the water is less deep, and the shores are closer together so that the Bay contains only maritime areas lying no further than 12 miles from the low water mark.

32. Almost opposite the international boundary terminus, the coast of Nova Scotia swings sharply round in an overall south-easterly direction, so that if the line of this direction were extended back in the opposite direction, it would meet the line of the coast of Maine, described in paragraph 30 above, at almost a right angle. The imaginary line which runs from the international boundary terminus across the Canadian island called Grand Manan Island to Brier Island and Cape Sable at the two extremities of Nova Scotia, forms the second – eastern – short side of the rectangle, opposite to the western side formed by the coast of Massachusetts. The quasi-parallel direction of these two opposite coasts is striking ; the distance between Cape Ann and Whipple Point on Brier Island is 206 miles, that between the nearest point on Cape Cod and Chebogue Point on the coast of Nova Scotia is 201 miles, and that between the elbow of Cape Cod and Cape Sable is barely more (219 miles).

33. The second long side of the rectangle does not at any point correspond to a landmass. It is formed only by an imaginary line drawn across the waters from the south-eastern point on Nantucket Island, to Cape Sable at the south-western end of Nova Scotia. The two Parties agree that this is the seaward "closing line" of the Gulf of Maine. Since this line joins the two ultimate points on land on each side in the direction of the Atlantic, it effectively indicates, in the context of the delimitation area, the boundary between the inner zone, or the Gulf of Maine in the true sense, and the outer or Atlantic zone of the area in question.

34. To sum up, the Gulf of Maine takes the form of a large, roughly rectangular indentation, bordered on three sides by land – except where the contiguous bays of Cape Cod/Massachusetts lie along the western side, and the Bay of Fundy opens out at the inner end of the eastern side – and on the fourth side open to the Atlantic Ocean.

35. In the above description of the Gulf of Maine there are several references to the rectangle which appears to afford a good simplified representation of the configuration of that Gulf, as outlined by its coasts. It is on the basis of this approximation to a specific geometrical figure that

the two opposite terrestrial sides of the Gulf, in essence the shores of Massachusetts on the one hand and of Nova Scotia on the other, have thus been presented as the short sides of the rectangle, and the similar terrestrial side formed by the shores of Maine, which connects the other two at the back of the Gulf, as the long side.

36. It must nevertheless be made clear that the use of these appellations, borrowed from the terminology of geometry, must not be interpreted as an espousal of the idea that some of the coastal fronts of the Gulf of Maine should be considered as "primary" fronts and others as "secondary", so that the former would be regarded as of greater importance than the latter for the purposes of the delimitation to be carried out in the waters off these coasts. The very legitimacy of such a distinction which, throughout the case, has been the subject of lengthy debate between the United States, which supports it, and Canada, which is opposed to it, is very dubious. Terminology of this kind may of course be employed to bring out any difference observed between the lengths of certain stretches of coast, when a maritime area is being described. Yet even so, while it might be logical, from one particular aspect, to attach importance to such a difference, there is nothing to preclude the possibility of the so-called "secondary" coasts being of equal if not of even greater importance than the "primary" coasts from other aspects. Above all, geographical facts are not in themselves either primary or secondary : the distinction in question is the expression, not of any inherent property of the facts of nature, but of a human value judgment, which will necessarily be subjective and which may vary on the basis of the same facts, depending on the perspectives and ends in view. The same may be said as regards the idea put forward in the course of the proceedings that certain geographical features are to be deemed aberrant by reference to the presumed dominant characteristics of an area, coast or even continent.

37. As in other previous cases, the Parties have repeatedly charged each other with trying to refashion nature or geography in the case of this or that feature of the area. It is not possible to accept the United States claim that the south-westward protrusion of the Nova Scotian peninsula from the Chignectou isthmus is an anomaly, a geographical distortion to be treated as such, and to be considered an irregular derogation from the general south-south-west/north-north-east trend of the eastern seaboard of the North American Continent. It is likewise not possible to accept Canada's claim that the existence of so substantial a peninsula as Cap Cod may be ignored because it forms a salient on the Massachusetts coast on the western side of the Gulf of Maine. The Chamber must recall that the facts of geography are not the product of human action amenable to positive or negative judgment, but the result of natural phenomena, so that they can only be taken as they are.

38. Up to the present reference has been made only to the great expanse of water within the limits of the Gulf of Maine. Yet that expanse is far from being the whole of what must be regarded as the delimitation area in this case. On the contrary, for the purposes of this operation, the part of this area which includes the whole of the Georges Bank – the main focus of the dispute – is obviously another maritime expanse, one lying over against the Gulf of Maine, outside its closing line.

39. Bearing in mind the existence of the triangle mentioned in the question put to the Chamber in the Special Agreement between the Parties, one must logically deduce that the delimitation area comprises not only the sea areas surrounded by the coasts of the Gulf of Maine, but also those lying to seaward of, and over and against, the Gulf, between bounds converging towards the outer edges of the triangle, for no delimitation by the Chamber may go beyond these bounds.

40. The delimitation area as defined in the foregoing paragraphs is not to be confused with what the Parties – each in their own terms – have called the "Gulf of Maine area". They have designated as part of this "area" some portions of the Canadian and American coasts lying outside the Gulf, portions which they have during the proceedings occasionally described as "coastal wings" of the Gulf, together of course with the related sea areas. Thus the eastern coastal wing of the Gulf of Maine has sometimes been the whole southeastern coast of Nova Scotia as far as Cape Canso, or sometimes merely part of it as far as Halifax or, more modestly, Lunenburg, according to the requirements of the particular arguments being put foward by the one Party or the other. Similarly the name of western coastal wing has been given to the Atlantic coast either of Massachusetts or of Rhode Island as far as Newport, or even beyond. It is easy to see from a map how these extensions tend to produce a shift towards one side or another when it comes to determining the central axis of the so-called "area". The Parties have also referred to these coastal wings, one in order to emphasize the importance for the economy of the neighbouring areas of the fishing resources of the area to be delimited, or even the economic dependence on those resources of the populations of the adjoining coastal areas ; the other for the opposite purpose of highlighting the fact that those areas, their industries and their general economy draw principally upon other sources than the relatively remote ones of the area in question.

41. The involvement of coasts other than those directly surrounding the Gulf does not and may not have the effect of extending the delimitation area to maritime areas which have in fact nothing to do with it. It is ultimately only the concept of the delimitation area which is a legal concept, albeit one developed against the background of physical and political geography. In contrast, the concept of the "Gulf of Maine area",

as used in the present proceedings, seems elastic in extent and arbitrary to a degree, a concept which in any event appertains to what may be called socio-economic or human geography, rather than to pure geography. Without wishing to deny *a priori* that data derived from such domains may be important for certain purposes, it is obvious that, when it comes to determining the boundaries of the delimitation area, material from these fields cannot be substituted for findings dictated on the basis of more appropriate considerations.

42. However, up to this point the Chamber's definition and description of the delimitation area has only brought out aspects inherent in physical geography. Political geography has been employed solely for the purpose of noting the location within the area in question of the international boundary terminus between the United States and Canada. It had merely to be made clear that the boundary between the two States – whose historical development, recounted in the pleadings, is apparently without influence on the issues to be decided – follows in its final stretches the winding course of the Saint-Croix River, ending in the estuary of that river, following which it continues as far as its terminal point in the Grand Manan Channel. It is this latter point which marks the angle between the long and short sides of the rectangle which, as we have seen, can be inscribed within the Gulf of Maine.

43. It should, moreover, be added that the Chamber has only had in mind physical geography to the extent that its purpose is to describe the present-day aspect of the land and water surfaces of the globe. In order to grasp not only the outward aspects but the whole of the characteristic features of the delimitation area, there still remain to be examined various aspects of what lies below the surface, rather under the heading of geomorphology and ecology than that of geology.

44. With regard to geology, the Chamber must observe that, despite the efforts made to argue either that there are geological affinities between the platforms of Georges Bank and Nova Scotia, or that there is a geological continuity between Georges Bank and Massachusetts, both Parties recognize that the geological structure of the strata underlying the whole of the continental shelf of North America, including the Gulf of Main area, is essentially continuous. They are in fact in agreement that geological factors are not significant in the present case.

45. As regards the geomorphological aspects, the conclusion that can be drawn from the studies undertaken and taken into careful consideration by the Parties in their pleadings is, in sum, the unity and uniformity of the whole sea-bed, as regards both the underlying shelf of the Gulf of Maine proper, and the shelf below the ocean beyond the Gulf, right up to the continental margin, its edge, rise and slope. The continental shelf of the

whole of this area is no more than an undifferentiated part of the continental shelf of the eastern seaboard of North America, from Newfoundland to Florida. According to generally accepted scientific findings, this shelf is a single continuous, uniform and uninterrupted physiographical structure, even if here and there it features some secondary characteristics resulting mainly from glacial and fluvial action. In this wider context the continental shelf of the area relevant to the present proceedings may be defined as the natural prolongation of the land mass around the Gulf of Maine ; neither Party disputes the fact that there is nothing in this single sea-bed, lacking any marked elevations or depressions, to distinguish one part that might be considered as constituting the natural prolongation of the coasts of the United States from another part which could be regarded as the natural prolongation of the coasts of Canada. Of course, within this single, uniform expanse of sea-bed it is possible to pick out features described as shelves, banks, basins, channels, and the Parties have given a detailed description of these, occasionally – and very cautiously – seeking in the existence of one or other of these geomorphological features some support for their respective positions. These are ultimately a somewhat insignificant body of rugosities, even if they do influence, and are probably in fact produced by, the water circulation. But the bathymetric differences between one spot and another – differences which do not show up on a drawing unless there is great vertical exaggeration – are not such as to cast doubt on the soundness of the basic finding that the sea-bed of the delimitation area, as of all the neighbouring area – part of which is covered with thick sedimentary layers potentially rich in hydrocarbon resources – does not show any trace of any natural differentiation as between the respective continental platforms of the two Parties.

46. Even the most accentuated of these features, namely the Northeast Channel, does not have the characteristics of a real trough marking the dividing-line between two geomorphologically distinct units. It is quite simply a natural feature of the area. It might also be recalled that the presence of much more conspicuous accidents, such as the Hurd deep and Hurd Deep Fault Zone in the continental shelf which was the subject of the Anglo-French arbitration, did not prevent the Court of Arbitration from concluding that those faults did not interrupt the geological continuity of that shelf and did not constitute factors to be used to determine the method of delimitation. To return to the sea-bed of the area of delimitation in the present case, no really abrupt change in the normal declivity of the sea-bed is found before the vicinity of the hypotenuse of the triangle within which the end-point of the present delimitation is supposed to be located. It is only thereabouts that the continental slope descends more or less in parallel with the general direction of the mainland coast, abruptly at first as far as the 1,000 metres isobath, after which the "rise" continues down-

ward, though much more gradually, towards the 2,000 metres isobath and beyond, towards the abyssal plain.

47. The situation in the present case as regards the sea-bed of the delimitation area is therefore different from the situation that may prevail in areas where a natural separation does exist from the factual viewpoint between the respective continental platforms of the Parties in dispute. From that angle, the present case is closer to other concrete cases, including most recently that of the delimitation of the continental shelf between Tunisia and Libya, i.e., situations characterized, as the Court pointed out in its Judgment of 24 February 1982, by the absence of "any element which interrupts the continuity of the continental shelf" common to both Parties (*I.C.J. Reports 1982*, p. 58, para. 68). When drawing a legal delimitation line on such a shelf, there is no choice but to proceed without reference to any real factor of natural separation of the continental shelf of the two countries, because no such factors are discernible.

48. In addition to the sea-bed itself there is another component element of the delimitation area which, with its characteristics, must especially be taken into account in the present case, namely what the Parties have, in both their pleadings and their oral arguments, called the "water column". This term in fact refers to the enormous mass of water covering the whole of the sea-bed in the area in question. It need hardly be pointed out that this great mass of water is taken into consideration not as some inert mass, but as the habitat of an exceptionally extensive wealth of fauna and flora. Even more, perhaps, than the hydrocarbon potential of the sedimentary basins under the area, it is the fishing resources of the delimitation area which, as appears from the proceedings, have led to the extraordinarily acute divergences of interests of the Parties and the no less strenuous opposition which each puts up against the claim of the other.

49. But, confining itself for the moment to the mere description of the distinctive aspects of the aquatic mass or water column reposing on the sea-bed of the delimitation area, the Chamber considers that it should concentrate on one of those aspects which seems to be of particular importance.

50. As stated above, the Parties are basically in agreement that the sea-bed of the area in question does not feature any genuinely natural divisive element. Both have had to admit that, from the viewpoint of natural characteristics, the sea-bed of the Gulf is a single, uniform-looking shelf, one that also forms part of a larger continental shelf. This concurrence as to the nature of the sea-bed has no counterpart when it comes to the superjacent water column. Here Canada, in its successive pleadings and oral arguments, has laid increasing emphasis on the overall unitary character of the "water column", in particular from the viewpoint of the distribution of fishing resources, even though it rightly stresses the existence on Georges Bank of a main concentration of the biomass and, consequently, of the reserves of several commercially important species.

Canada's pleadings acknowledge that there is a distinct ecosystem on Georges Bank, which is geographically defined by the Greath South Channel and the Northeast Channel. But on the basis of its experts' research it also submits that, despite the particularly congenial conditions favouring the above-mentioned concentration, Georges Bank forms part of a continuous oceanic system belonging to the Nova Scotian biogeographical province. This province, according to Canada, stretches from Newfoundland to the vicinity of the coastal alignment between Cape Cod and Nantucket Island. East of the Great South Channel separating Georges Bank from the Nantucket Shoals the continuity is said to give way to a transition from northern cold-water fauna and flora to southern warm-water varieties typical of a different, Virginian, mid-Atlantic biogeographical province. At any rate, it is only thereabouts that, according to Canada, any kind of oceano-biological boundary is discernible ; that boundary, however, would lie at the extreme western limit of the delimitation area and therefore could not be relevant to the delimitation that has to be carried out within the area itself.

51. For its part, the United States, on the basis of its own detailed analysis, detects three identifiable and different oceanographic and ecological régimes in the waters of the area, each with a particular type of hydrological circulation, temperature, salinity, density and vertical stratification and its own type of tidal activity. At all levels of the food chain, says the United States, distinct ecological communities have developed within these various régimes : that of the Gulf of Maine basin, that of the Scotian Shelf and that of Georges Bank, this last-mentioned being linked to that of the Nantucket Shoals. Thus the three ecological régimes, it is submitted, are divided by natural boundaries, the most important and clearly apparent of which runs along the Northeast Channel, which is sometimes over 200 metres deep and which is said in fact to form a line of separation within the area in the case of most of its commercially important fish stocks.

52. In this respect it should be observed that the United States, realizing that this channel does not possess the characteristics of a geological fault which would make it possible to ascribe to it, under appropriate circumstances, the function of a natural boundary between distinct areas of sea-bed, has expounded the thesis that the Northeast Channel forms a recognizable limit in the marine environment. On that ground, according to the United States, the Northeast Channel must be seen as a natural boundary that can serve as a basis for drawing a single maritime delimitation line valid at one and the same time for the exclusive fishery zone and, if need be, the exclusive economic zone, as well as for the underlying sea-bed and subsoil.

53. During the oral proceedings, each Party put up a spirited defence of its position, one contending for : *(a)* the non-existence of any natural boundary in the marine environment within the delimitation area, or at least up to the south-western limit of that area, and in consequence for the

natural unity of the area's oceanographic and ecological régime ; the other for : *(b)* the existence within the waters of the area of three distinct provinces separated by dividing lines, the most clearly pronounced of which is the Northeast Channel separating Georges Bank from the Scotian Shelf ; however, the result was not such as to clear away all doubt, at least as regards certain of the technical aspects debated.

54. The Chamber is not however convinced of the possibility of discerning any genuine, sure and stable "natural boundaries" in so fluctuating an environment as the waters of the ocean, their flora and fauna. It has thus reached the conviction that it would be vain to seek, in data derived from the biogeography of the waters covering certain areas of sea-bed, any element sufficient to confer the property of a stable natural boundary – and what is more, one serving a double purpose – on a geomorphological accident which influences superadjacent waters but which is clearly inadequate to be seen as a natural boundary in respect of the sea-bed itself.

55. The Chamber accordingly considers that the conclusion to be drawn in respect of the great mass of water belonging to the delimitation area is that it too essentially possesses the same character of unity and uniformity already apparent from an examination of the sea-bed, so that, in respect of the waters too, one must take note of the impossibility of discerning any natural boundary capable of serving as a basis for carrying out a delimitation of the kind requested of the Chamber.

56. It must, however, be emphasized that a delimitation, whether of a maritime boundary or of a land boundary, is a legal-political operation, and that it is not the case that where a natural boundary is discernible, the political delimitation necessarily has to follow the same line. But in any event the problem does not arise in the present instance, since, as we have noted, there are no geological, geomorphological, ecological or other factors sufficiently important, evident and conclusive to represent a single, incontrovertible natural boundary.

57. At this stage the Chamber might consider whether the definition of the outer limits of the area within which it is called upon to delimit the single maritime boundary between Canada and the United States, and the description of its physical aspects as regards both surface and depth, ought not to be followed by taking into consideration other aspects also. What the Chamber has in mind here is the human environment, and more particularly its socio-economic conditions.

58. The Parties did take this course ; they even dealt with those aspects *in extenso.* They exchanged lengthy argument on whether the fishermen of one nationality or the other were first on the scene in the waters of the area. They argued over the importance of the catches of the fisheries, particularly those of Georges Bank, for the port activity, ship-building, food industry and dependent industries of the land areas around the Gulf of Maine, and of the neighbouring areas. They also argued as to their role for the food supplies of their populations and for their exports. Comparative analyses were made of the respective importance of the resources drawn

from those fisheries for what was called the one-dimensional economy of Lunenburg County and for the diversified, urbanized economy of Massachusetts. On either side, statistics, tables and graphics were produced in this connection. On one side, gloomy predictions were put forward regarding the consequences for the Nova Scotian economy of exclusion of Canadian fishermen from the Georges Bank fisheries ; the other side emphasized the deleterious effect on the conservation of the Bank's fish stocks that would result from failure to ensure a system of single-State management. The Chamber is bound to point out that the Parties sometimes gave the impression of over-emphasizing these prospects, for it must not be forgotten that the institution by these two North American States of a 200-mile exclusive fishery zone only dates back eight years, and that previously in that zone, which at the time was still high seas, American and Canadian fishing boats plied their trade alongside large high-sea fishing fleets from distant countries. And the eviction of the latter – the justification given for which was the need to avoid the over-fishing to which their presence contributed – was carried out without apparent concern for the repercussions on certain coastal areas and industries of the countries in question.

59. However, the crux of the matter lies elsewhere. It should be emphasized that these fishing aspects, and others relating to activities in the fields of oil exploration, scientific research, or common defence arrangements, may require an examination of valid considerations of a political and economic character. The Chamber is however bound by its Statute, and required by the Parties, not to take a decision *ex aequo et bono,* but to achieve a result on the basis of law. The Chamber is, furthermore, convinced that for the purposes of such a delimitation operation as is here required, international law, as will be shown below, does no more than lay down in general that equitable criteria are to be applied, criteria which are not spelled out but which are essentially to be determined in relation to what may be properly called the geographical features of the area. It will only be when the Chamber has, on the basis of these criteria, envisaged the drawing of a delimitation line, that it may and should – still in conformity with a rule of law – bring in other criteria which may also be taken into account in order to be sure of reaching an equitable result.

III

60. The dispute between Canada and the United States, now referred to the Chamber for judgment, is of recent origin – although the United States has suggested that the dispute could be traced back to the attitude of the Parties at the time of the Truman Proclamations in 1945. By these proclamations, published on 28 September 1945, the United States asserted its

jurisdiction over the natural resources of the continental shelf under the high seas contiguous to its coasts, and announced the establishment of conservation zones for the protection of fisheries in certain areas of the high seas contiguous to the United States. The United States emphasizes that these Proclamations were shown to Canada in advance of their being issued and Canada made no objection to them, either then or since ; and that the United States made it clear at the time that, in its view, the continental shelf extended to the 100-fathoms depth line. The Chamber will return to this question in paragraphs 153 ff., below.

61. In fact, this dispute first developed in relation to the continental shelf of what is now the delimitation area, and did so as soon as exploration for hydrocarbon resources was begun on each side, particularly in the subsoil of certain parts of Georges Bank. Exploration for hydrocarbon resources of the continental shelf in the Gulf of Maine area began in the 1960s. The United States ratified the 1958 Geneva Convention on the Continental Shelf in 1961 and became a party when it came into force in 1964. Canada, confronted by constitutional difficulties related to its federal structure, did not ratify the Convention until 1970, so that at the time its first exploration permits were issued, it was not a party. The Canadian Government accompanied its ratification by a declaration which the United States did not accept, but which did not prevent the entry into force of the Convention as between the two countries. In 1953, the United States had enacted the Outer Continental Shelf Lands Act, the primary text governing activities on its continental shelf, but because the status of Georges Bank as the principal fishing bank on the East Coast raised important environmental concerns, exploration proceeded slowly and development has been deferred. The first United States permits for geophysical exploration in this area were issued in 1964. On the Canadian side, the first regulations authorizing oil and gas operations in off-shore areas were issued in 1960 (Canada Oil and Gas Regulations), and in 1964 the Canadian Government began to issue exploration permits in the Gulf of Maine area. Canada has made it clear that when issuing such permits, in the absence of any delimitation of the continental shelf agreed with the United States, it treated the equidistance line as a working boundary, drawing its inspiration from Article 6 of the 1958 Convention on the Continental Shelf, at least to the extent of including, in any permits issued extending to areas beyond that line, a caveat to the effect that the permit was issued "subject to the lands contained in the grid areas being Canadian lands". Before the Chamber, Canada described the delimitation line which it had in mind, and considered that it had respected, as a "strict equidistance" line. There is no need to pass comment upon that definition for the time being ; the Chamber will come back to the point when considering directly the various methods that could in principle be applied to the delimitation.

62. The question of the line used by the United States as a working limit in the direction of Canada for the issue of permits in this area is controverted between the Parties. Canada has claimed that a *de facto* equidistance line was used by the United States Bureau of Land Management (the so-called "BLM line") or by companies to whom United States permits were granted (the so-called "company median line"). The United States has denied that these lines had any official status or even existence. The Chamber will return to this point in connection with the arguments as to the relevance of the conduct of the Parties (Section V, paragraphs 126 ff., below).

63. In 1965, the issue of Canadian exploration permits gave rise to an exchange of correspondence, initially between a Mr. Hoffman, whose position was that of Assistant Director for Lands and Minerals of the United States Bureau of Land Management of the Department of the Interior, and a Mr. Hunt, whose position was Chief of the Resources Division of the Department of Northern Affairs and National Resources of Canada. The correspondence began with a request by the Bureau of Land Management for information as to the location of Canadian oil and gas exploratory permits. Reliance has been placed by Canada on this correspondence as constituting or indicating acquiescence by or estoppel against the United States ; however the Chamber will not examine these exchanges at this stage, or discuss the significance attributed to them during the case by Canada, which has been contested by the United States. The Chamber will come back to them when examining the state of the law in force between the Parties. It could not, however, be said that a dispute had at that time already crystallized between the two States.

64. On 16 August 1966, the United States Embassy in Ottawa requested information from the Canadian Department of Mines and Technical Surveys as to Canadian hydrocarbon exploration on the Pacific Coast and in the Gulf of Maine area. On 30 August 1966 a reply from the Under-Secretary of the Canadian Department of External Affairs outlined the relevant Canadian policies and practices and enclosed a map showing the sea-bed area covered by the Canadian permits, but not indicating whether any activity by Canadian permittees was in progress or imminent in that area. After certain diplomatic consultations and contacts in 1966-1968, including a United States aide-mémoire of 10 May 1968 suggesting that negotiations be opened and that there be a temporary suspension of activities on the northern half of Georges Bank, the United States on 5 November 1969 presented a diplomatic Note requesting a moratorium on mineral explorations and exploitation on Georges Bank. That Note contained a formal reservation of United States rights and stated that :

> "until the exact location of the United States-Canada Continental Shelf boundary is agreed upon, the United States cannot acquiesce

> in any Canadian authorization of exploration or exploitation of the natural resources of the Georges Bank Continental Shelf".

On 1 December 1969, Canada replied observing that the United States had not previously protested against Canadian oil and gas permits. While accepting the proposal that negotiations on the delimitation of the continental shelf should be undertaken as suggested by the United States, Canada declined to agree to a moratorium. The Chamber considers that it was at this stage – i.e., after the American diplomatic Note of 5 November 1969 refusing to acquiesce in any authorization given by Canada to explore or exploit the natural resources of Georges Bank, and after Canada's reply of 1 December 1969, refusing, *inter alia,* to agree to any kind of moratorium – that the existence of the dispute became clearly established. It may however be useful to note once again that, at that time, it was still only a dispute relating to the continental shelf.

65. On 21 February 1970, the United States Government recorded in the *Federal Register* that the United States had protested against Canadian authorizations relating to Georges Bank. Formal negotiations between the United States and Canada on the continental shelf boundary began in Ottawa on 9 July 1970. The Canadian position was that no special circumstances existed in the area and the boundary should thus be the equidistance line, as contemplated by Article 6 of the 1958 Geneva Convention on the Continental Shelf to which Canada had just become a party. When ratifying the Convention, Canada had appended a declaration to the effect that, in its view :

> "the presence of an accidental feature such as a depression or channel in a submerged area should not be regarded as constituting an interruption in the natural prolongation".

The United States formally objected to this declaration on 16 July 1970. The United States position in the negotiations asserted the inequitableness of the equidistance line in view of the existence of special circumstances and that the boundary should follow the Northeast Channel. No drilling activities were authorized by either State at this time, but seismic surveys were carried out on Georges Bank by United States companies in 1968, 1969 and 1975.

66. Various exchanges of diplomatic correspondence took place in 1974. On 18 January 1974, the United States informed Canada (among others) of United States legislation concerning the American lobster *(homarus americanus),* based upon Article 2, paragraph 4, of the 1958 Geneva Convention on the Continental Shelf (concerning the living resources of the shelf), and gave notice that fishing for American lobster by foreign nationals on the United States continental shelf was prohibited. The boundary indicated by

the United States for purposes of enforcement of this legislation was the 100-fathom contour of Georges Bank, and this line has been referred to in these proceedings as the "lobster line". In September 1974, however, in order to improve the prospects for negotiation, the United States informed Canada that it would not enforce the requirements of the lobster law against Canadian fishermen. The lobster-protection legislation remained in force until it was superseded by the declaration of the general 200-mile fishery zone (paragraph 68, below). On 17 September 1974 Canada formally notified the United States of its reservation concerning continental shelf exploration activities under a permit (No. OCS E-1-74) issued by the United States to Digicon Inc. In reply, the Department of State referred to its Note of 5 November 1969, and asserted that the areas subject to the permit in question were subject to the jurisdiction of the United States.

67. On 15 May 1975, the United States notified Canada of its plans to issue a Call for Nominations – the first step towards the granting of oil and gas leases – in respect of areas on Georges Bank ; by a Note dated 3 June 1975, Canada took the position that it could not acquiesce in acts by the United States intended to constitute an exercise of jurisdiction in respect of any part of the continental shelf under Canadian jurisdiction. In 1976, 206 tracts of sea-bed on Georges Bank were selected for "intensive study" in the process of preparing the draft environmental impact statement before leasing could be carried out ; 28 of these tracts were on the northeastern part of Georges Bank, in the area claimed as Canadian continental shelf. Canada protested on 2 February 1976, and on 10 February 1976 the United States restated its position that all the tracts being studied were on the United States continental shelf ; however the disputed tracts were temporarily withdrawn in December 1976 from the proposed sale of leases, in order to avoid making the negotiations more difficult. The United States has explained that, under its policy of restraint, the leases granted were restricted to the undisputed portions of Georges Bank. At this time there were also exploratory negotiations in progress, beginning on 15 December 1975 and continuing into 1976, both on continental shelf delimitation and co-operative fisheries arrangements and on zones of shared hydrocarbon resources ; but no basis for solution of the boundary problem was found.

68. The situation thus remained more or less unchanged when, around the turn of the year 1976-1977, some new events occurred and added to the continental shelf dimension of the dispute a new dimension concerning the waters and their living resources. Early in 1977, basing themselves on the consensus meanwhile achieved at the Third United Nations Conference on the Law of the Sea, the two States, at an interval of three months, each proceeded to establish a 200-mile fishery zone off its shores, the United

States on 13 April 1976, with the adoption of the Fishery Conservation and Management Act which came into force on 1 March 1977, and Canada on 1 November by the publication of the text of a proposed Order in Council under the Territorial Sea and Fishing Zones Act, effective 1 January 1977. This Order defined the limits for the future Canadian zone ; a notice in the United States *Federal Register* on 4 November 1976 stated the limits of the United States 200-mile fishery zone and continental shelf in areas bordering Canada. Thus the dispute which had previously been confined to the continental shelf boundary issue was automatically enlarged to include the issue of the boundary to be established in the superjacent waters. That only made the negotiations between the two Parties more arduous. Later, on 10 March 1983, in the course of the present proceedings, the United States was to proclaim an exclusive economic zone, which coincided with the previously constituted fishing zone, but this did not of course modify the terms of the Special Agreement.

69. Negotiations at this time were concentrated on the establishment of interim fishery arrangements, and on 24 February 1977 an Interim Reciprocal Fisheries Agreement was signed, and was provisionally implemented pending its entry into force on 26 July 1977. This Agreement provided for the preservation of the "existing patterns" of fisheries of the east and west coast of each State, both within and beyond the boundary regions ; on the Atlantic coast, the method used in the Agreement was to incorporate the 1976 quotas set by the International Commission for the Northwest Atlantic Fisheries (ICNAF) as the ceiling for trans-boundary fishing privileges. The Agreement expired at the end of 1977, but its terms and conditions were maintained *de facto* pending negotiations on its renewal ; agreement was reached for its renewal in an amended form, but as a result of the occurrence of a number of serious disputes during its provisional implementation, the new Agreement never entered into force. On 2 June 1978 its provisional implementation was suspended, and trans-boundary fishing ceased. The two States have however maintained an interim régime of flag-State enforcement procedures in the boundary regions along the lines of the 1977 Agreement, first pending the entry into force of a 1979 Fisheries Agreement (paragraph 75, below), and subsequently, when that Agreement failed to come into force, pending the present proceedings. On 27 July 1977 special negotiators were appointed by the Governments to report on the principles of a comprehensive settlement on maritime boundaries and related matters as appropriate ; a joint report was presented in October 1977.

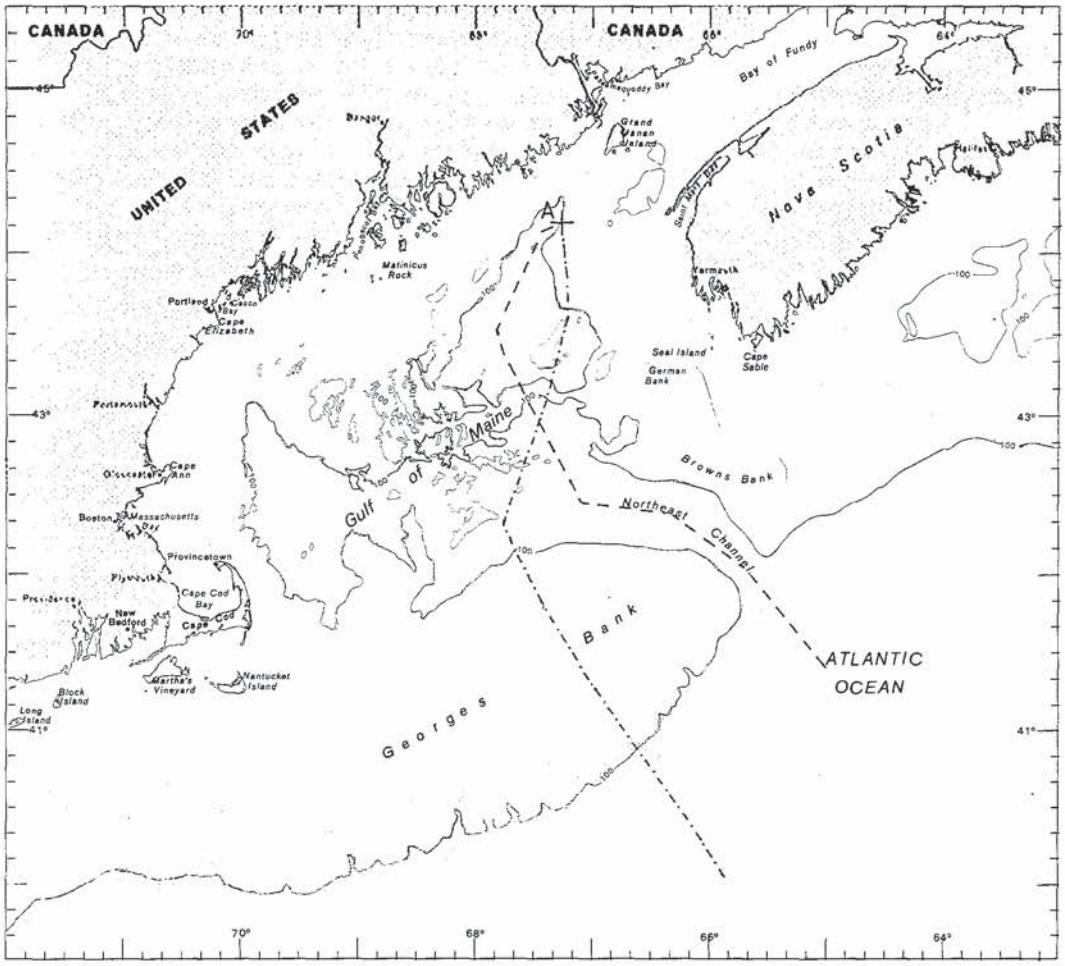
70. It is important to stress that, within the dual dimension characterizing the dispute between the two States following the proclamation by each of them of an exclusive fishery zone, the United States attributed importance in particular to the fishing aspect, whilst Canada long continued to give priority to the original aspect, i.e., the continental shelf. It was

therefore from this double perspective, involving both the delimitation of the continental shelf and, more especially, its new intention to set up a 200-mile exclusive fishery zone, that the United States formalized its position by publishing in the *Federal Register* of 4 November 1976 the co-ordinates of a line delimiting both the continental shelf and the fishery zones. This line generally corresponded to the line of greatest depth ; it carefully separated, in the inner zone of the Gulf of Maine, the fishing grounds of the northeastern part from those of the southwestern part, and in the outer zone, Browns Bank from Georges Bank. Skirting the outer edge of the latter Bank, it thus reached the slope of the continental margin via the Northeast Channel. It is easy to discern the dominant idea underlying this United States line.

71. Canada, on the other hand, having published on 1 November 1976 the co-ordinates of a line which, as has been seen, was described as strictly equidistant, and which was intended to indicate graphically its position in regard to the delimitation of the continental shelf in the area, decided on 14 October 1977 to modify its line. Following the Decision rendered on 30 June 1977 by the Court of Arbitration in the Anglo-French Continental Shelf Delimitation case, while the negotiations referred to in paragraph 69 were in progress, Canada indicated that its boundary claim would be adjusted to reflect what it regarded as the legal significance of that decision ; and it gave formal notice of such adjustment by a diplomatic Note to the United States Government dated 3 November 1977. It was there explained that in the view of Canada the application to the factual situation in the Gulf of Maine area of the principles of law enunciated and elucidated in the Anglo-French Decision justified the drawing of a line other than the strict equidistance line, in view of the existence of "special circumstances" as contemplated by Article 6 of the 1958 Geneva Convention. The circumstances in question were the projections seawards of the exceptionally long peninsula of Cape Cod and the islands of Nantucket and Martha's Vineyard, added to the marked protrusion of the United States coastline southeast of Boston ; the delimitation line should therefore be an equidistance line drawn without reference to these coastal projections. Canada however indicated that pending the then current negotiations, it would not publicly assert or enforce its claim beyond the equidistance line already published in 1976.

72. By a Note of 2 December 1977, the United States Government rejected the Canadian claim ; it reiterated its rejection of the previous Canadian line as not in conformity with equitable principles because of the special circumstances of the area, and expressed the view that a line which accorded with equitable principles was one taking into account the coastal configuration of the area, particularly the distorting effect of the concavity of the United States coastline and the protrusion on the peninsula of Nova Scotia.

73. As for the position of the United States, it was only at the beginning of the present proceedings before the Chamber that it proposed any



MAP NO. 2

LIMITS OF FISHERY ZONES AND CONTINENTAL SHELF CLAIMED BY THE PARTIES, AT 1 MARCH 1977

(see paragraphs 68-70)

United States line – – – – – – –

Canadian line – · – · – · –

correction of its line of 1976. At that time, the United States also thought it advisable to take its stand primarily on a geometrical method, that of the perpendicular to the general direction of the coast. However, as will be seen in greater detail later, the "adjusted perpendicular" then proposed was nonetheless decisively influenced in the adjustments it featured, and in its resulting rather complicated course, by the original intention of separating the "ecological régimes" which the United States regards as distinct in respect of the fishing resources of the area.

74. On 25 January 1978, Canada requested that certain tracts on Georges Bank, over which continental shelf leases were to be offered for sale on 31 January 1978 by the United States, should be withdrawn from the sale ; these tracts lay to the south-west of the original equidistance line claimed by Canada, but on the Canadian side of the revised line of 3 November 1977, which had not yet been made public. On 28 January 1978 the deletion of the tracts in question from the sale was announced, as being "within the area claimed by Canada to be subject to negotiation between the United States and Canada", but the United States made it clear in a Note of 3 February 1978 that it would not give any credence or recognition to the new Canadian position. On 15 September 1978, Canada made public its claim of 3 November 1977, by way of the publication in the *Canada Gazette* of a proposed Order in Council extending the Canadian fishing zone, which Order was published in final form on 25 January 1979. By a Note of 20 September 1978, the United States reiterated its view that the new Canadian claim was without foundation ; it asserted in the Note that Georges Bank is a natural prolongation of United States territory, that in view of the special circumstances in the Gulf of Maine area, the equidistance line would not be in accordance with equitable principles, and that there was no justification in international law for discounting the effect of Cape Cod or Nantucket Island in determining the maritime boundary. The United States objected further that expansion of the Canadian claim in the midst of negotiations was not in keeping with the obligations of States under the 1958 Geneva Convention, and indicated that it would continue to exercise fisheries jurisdiction in the area of the expanded claim.

75. Since the submission, on 15 October 1977, of the joint report of the two special negotiators (approved by both Governments on 21 October 1977), negotiations between them had continued, though only slowly and with difficulty. In March 1979 agreement was reached to submit for the approval of the Governments of Canada and the United States a package of two linked treaties : the Treaty to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine area, and the Agreement on East Coast Fisheries Resources ; these two instruments were signed on 29 March 1979, and it was also agreed that further exchanges of diplomatic correspondence on the legal merits of the posi-

tions of the two Governments were not necessary in view of the package proposed.

76. The two treaties were drawn so as to be interdependent, being expressed to come into force together ; however ratification of them both was not achieved. On 6 March 1981 the Fisheries Agreement was withdrawn by the President of the United States from consideration by the United States Senate, and proposals were made to Canada for amendment of the boundary settlement Treaty so as to enable it to be put into force independently. The United States Government gave the Canadian Government assurances that if the boundary settlement Treaty were ratified, the United States would refrain from enforcement activities against Canadian fishing vessels in all areas claimed by Canada until the boundary was established by adjudication. Instruments of ratification of the boundary settlement Treaty were exchanged on 20 November 1981, and on 25 November 1981 the special agreement for the reference of the case to a chamber of the Court was notified to the Registry.

* *

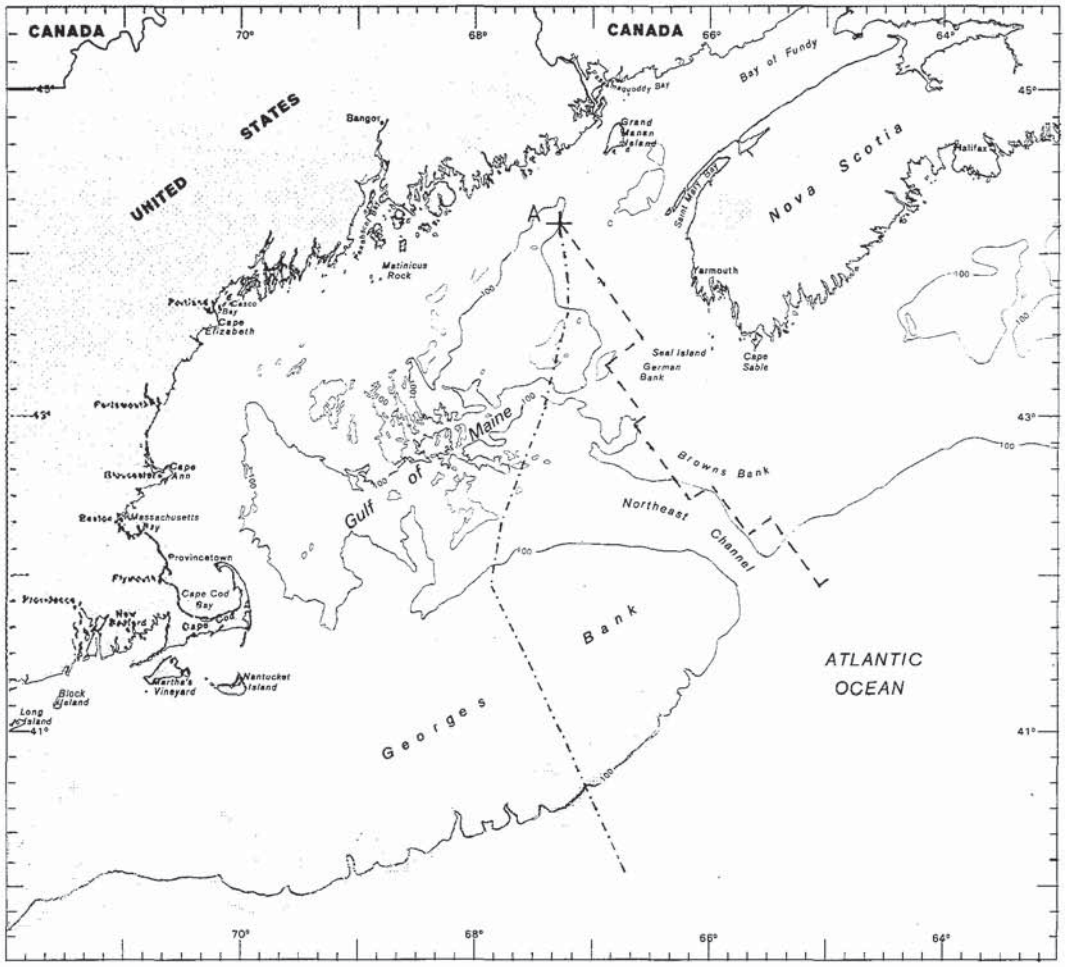
77. The description, in terms of geographic co-ordinates, of the line proposed has constituted part of the formal submissions of each Party (see paragraphs 12 and 13, above). The Canadian line, which Canada describes, as it did the one preceding it, as an equidistance line, consists of a line constructed almost entirely from the nearest points of the baselines from which the breadth of the territorial sea is measured. In this instance, this means solely islands, rocks or low-tide elevations. An exception is however made for the basepoints selected on the coast of Massachusetts, which have been transferred from the outer end of the peninsula of Cape Cod and Nantucket Island, much further to the west, to the eastern end of the Cape Cod Canal. This is the line which Canada notified to the United States on 3 November 1977 and made public in the *Canada Gazette* on 15 September 1978. The line which the United States puts forward as the appropriate boundary is somewhat more complex in its construction, though its justification is simple : it is presented as a perpendicular to the general direction of the coast from the starting-point agreed upon by the Parties, adjusted to take account of the relevant circumstances of the area, i.e., to avoid the splitting of fishing banks. It differs from the "Northeast Channel line" – the line adopted by the United States on 4 November 1976 which, as the United States has explained, generally followed the line of deepest water through the Gulf of Maine basin and the Northeast Channel, and was approximately equidistant between the 100-fathom depth contours there. According to its authors, this initial line was based upon the "equidistance/special circumstances" rule of Article 6 of the 1958 Geneva Convention, taking into account, as special circumstances, the configuration of the coasts, the location of the land boundary, the position of the fishing banks in the area, and the Northeast Channel. In contrast, the

perpendicular to the general direction of the coast, now advanced by the United States, has been substituted for the line of 1976, firstly because the earlier line was not as broad a claim as that to which the United States believed it is legally entitled ; and secondly because of the considerable development of the law between 1976 and the date of filing of the Memorials. In reply to a question by a member of the Chamber, the United States further drew attention to explanations of the line given in Department of State Memoranda of 1976/1977, and explained that the Northeast Channel line – which followed the line of deepest water from the international boundary terminus to the Atlantic Ocean – gave more effect to the geological and geomorphological circumstances of the Gulf of Maine area than proved, in the light of the Court's 1982 Judgment on the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya),* to be warranted.

78. In sum, one may say that the two successive lines put forward by Canada were both proposed delimitation lines drawn primarily with the continental shelf in mind, even if they are both single boundaries which are supposed to apply to the fishery zone also. The Two United States delimitation lines, on the countrary, are both proposals for single-boundary lines drawn up initially on the basis of different considerations, but both treating the fishery régime as essential. In any case, it is certain that the gap between the Parties' respective positions has become noticeably wider between the moment when the dispute appeared in their relations and the moment of its being referred for judgment to the Chamber. There was no sight of any *rapprochement* during the proceedings, except for a certain tendency on each side to stress the merits of its initial proposal and to emphasize the intentions that had lain behind it. The submissions formulated by both Canada and the United States at the end of the oral proceedings only served to confirm the line which each Party had presented in its initial written submissions.

IV

79. As already stated, Article II, paragraph 1, of the Special Agreement provides that "The Chamber is requested to decide [the question submitted to it] *in accordance with the principles and rules of international law applicable in the matter as between the Parties"* (emphasis added). The time has therefore come to begin consideration of the problem of ascertaining the rules of law, in the international legal order, which govern the matter at issue in the present case. In the Chamber's opinion, the association of the terms "rules" and "principles" is no more than the use of a dual expression to convey one and the same idea, since in this context "principles" clearly means principles of law, that is, it also includes rules of international law in



MAP NO. 3

DELIMITATION LINES PROPOSED BY THE PARTIES BEFORE THE CHAMBER

(see paragraphs 71, 77-78)

United States line – – – – – – –

Canadian line – · – · – · –

whose case the use of the term "principles" may be justified because of their more general and more fundamental character.

80. One preliminary remark is necessary before we come to the essence of the matter, since it seems above all essential to stress the distinction to be drawn between what are principles and rules of international law governing the matter and what could be better described as the various equitable criteria and practical methods that may be used to ensure *in concreto* that a particular situation is dealt with in accordance with the principles and rules in question.

81. In a matter of this kind, international law – and in this respect the Chamber has logically to refer primarily to customary international law – can of its nature only provide a few basic legal principles, which lay down guidelines to be followed with a view to an essential objective. It cannot also be expected to specify the equitable criteria to be applied or the practical, often technical, methods to be used for attaining that objective – which remain simply criteria and methods even where they are also, in a different sense, called "principles". Although the practice is still rather sparse, owing to the relative newness of the question, it too is there to demonstrate that each specific case is, in the final analysis, different from all the others, that it is monotypic and that, more often than not, the most appropriate criteria, and the method or combination of methods most likely to yield a result consonant with what the law indicates, can only be determined in relation to each particular case and its specific characteristics. This precludes the possibility of those conditions arising which are necessary for the formation of principles and rules of customary law giving specific provisions for subjects like those just mentioned.

82. The same may not, however, be true of international treaty law. There is, for instance, nothing to prevent the parties to a convention – whether bilateral or multilateral – from extending the rules contained in that convention to aspects which it is less likely that customary international law might govern. In that event, however, the text of the convention must be read with caution. The first thing to remember in examining the text, and sometimes even a single clause, is the distinction, the importance of which has just been indicated, between principles and rules of international law enunciated in the convention and criteria and methods for whose application it might provide in particular circumstances.

83. With these premises established, a chamber of the Court, in its reasoning on the matter, must obviously begin by referring to Article 38, paragraph 1, of the Statute of the Court. For the purpose of the Chamber at the present stage of its reasoning, which is to ascertain the principles and rules of international law which in general govern the subject of maritime delimitation, reference will be made to conventions (Art. 38, para. 1 *(a)*) and international custom (para. 1 *(b)*), to the definition of which the judicial decisions (para. 1 *(d)*) either of the Court or of arbitration tribunals

have already made a substantial contribution. So far as conventions are concerned, only "general conventions", including, *inter alia*, the conventions codifying the law of the sea to which the two States are parties, can be considered. This is not merely because no particular conventions bearing on the matter at issue (apart from the Special Agreement of 29 March 1979) are in force between the Parties to the present dispute, but mainly because it is in codifying conventions that principles and rules of general application can be identified. Such conventions must, moreover, be seen against the background of customary international law and interpreted in its light.

84. Chronologically speaking, the first multilateral convention to be considered is, therefore, the Convention on the Continental Shelf of 29 April 1958, which both Parties have in time ratified and which they acknowledge to be in force between them. The Chamber will examine below the consequences of this finding for the present case. This Convention, as its title indicates, concerns only the sea-bed and its subsoil. The Chamber notes that, at the time of its conclusion, no problem of determining boundaries for the waters superjacent to the continental shelf had yet arisen. It would also point out in this connection that even the 1982 United Nations Convention on the Law of the Sea, which is not yet in force, and which is intended to endorse the institution of an exclusive economic zone, still does not provide for the delimitation of both objects by a single line, an idea of which the present case is the first example.

85. The relevant provisions of the 1958 Convention are paragraphs 1 and 2 of Article 6, which read :

> "1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.
>
> 2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest point of the baselines from which the breadth of the territorial sea of each State is measured."

86. Perusal of these texts discloses a concrete example in practice of something which the Chamber has contemplated above as a theoretical hypothesis. These two paragraphs enunciate at the same time something

which is a principle of international law governing the problem of determining continental shelf boundaries between two or more States and, as indicated in paragraph 80 above, something which appears rather as an equitable criterion backed by a practical method to be used in certain circumstances for effecting the delimitation.

87. The principle of international law stated in the first sentence of each of the two paragraphs is simple, yet its importance must not be underestimated. It must not be seen as a mere "self-evident truth". The thrust of this principle is to establish by implication that any delimitation of the continental shelf effected unilaterally by one State regardless of the views of the other State or States concerned is in international law not opposable to those States. The same principle also entails application of the related rules as to the duty to negotiate with a view to reaching agreement, and to do so in good faith, with a genuine intention to achieve a positive result.

88. As has just been observed, the second sentence of paragraphs 1 and 2 of Article 6 of the 1958 Convention contemplates the use of specified criteria and methods for effecting the delimitation in cases where it has proved impossible to reach agreement. No assessment of their advantages and disadvantages, or of the extent to which they are or are not binding in the present dispute, is necessary at the present stage of the Chamber's deliberations. Such assessment will be appropriate later, when the problem arises of the criteria and methods to be used for delimitation.

89. With regard solely, for the present, to the problem arising at this stage, that is to say that of ascertaining the principles and rules of international law applicable to maritime delimitation, the inevitable conclusion, which is definite, yet simple, is that the Convention clearly affirms a principle the substance and implications of which have already been stated in paragraph 87 above : the principle, in brief, that any delimitation must be effected by agreement between the States concerned, either by the conclusion of a direct agreement or, if need be, by some alternative method, which must, however, be based on consent. To this one might conceivably add – although the 1958 Convention does not mention the idea, so that it entails going a little far in interpreting the text – that a rule which may be regarded as logically underlying the principle just stated is that any agreement or other equivalent solution should involve the application of equitable criteria, namely criteria derived from equity which – whether they be designated "principles" or "criteria", the latter term being preferred by the Chamber for reasons of clarity – are not in themselves principles and rules of international law.

90. In contrast, the principle of international law – that delimitation must be effected by agreement – which, as the Chamber has noted above, is expressed in Article 6 of the 1958 Convention, and additionally, it may be thought, the implicit rule it enshrines, are principles already clearly

affirmed by customary international law, principles which, for that reason, are undoubtedly of general application, valid for all States and in relation to all kinds of maritime delimitation.

91. Following this review of the implications for the present problem of the endeavour made in 1958 to codify the subject, it will now be appropriate to consider the bearing on the same problem of the Court's Judgment of 20 February 1969 in the *North Sea Continental Shelf* cases. That Judgment, while well known to have attributed more marked importance to the link between the legal institution of the continental shelf and the physical fact of the natural prolongation than has subsequently been given to it, is nonetheless the judicial decision which has made the greatest contribution to the formation of customary law in this field. From this point of view, its achievements remain unchallenged. Rehearsing the historical development of general international law on the subject, that Judgment begins by considering the Truman Proclamation of 28 September 1945, which stated that, for the United States and its neighbours, the delimitation of lateral boundaries between the continental shelves of adjacent States should be decided by mutual agreement and "in accordance with equitable principles". "These two concepts" the Court noted, "have underlain all the subsequent history of the subject" (*I.C.J. Reports 1969*, p. 33, para. 47). Turning to the work of the International Law Commission, the 1969 Judgment notes that, according to the Commission, concepts such as that of proximity and its corollaries, and other alleged principles variously advanced, do not comprise mandatory rules of international law. After this the Judgment restates and endorses the dual principle "that delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles" (*ibid.*, p. 46, para. 85). From this it deduces the dual obligation for these States to "enter into negotiations with a view to arriving at an agreement" and to "act in such a way that, in the particular case, and taking all the circumstances into account, equitable principles are applied" (*ibid.*, p. 47, para. 85), no matter what methods are used for this purpose.

92. Subsequently, the Court of Arbitration's Decision of 30 June 1977 on the delimitation of the continental shelf between France and the United Kingdom confirms on this point the Court's conclusions in the *North Sea Continental Shelf* cases and enunciates as follows the general rule of customary international law on the matter : "failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles" (Decision, para. 70).

93. The next relevant decision is the Court's Judgment of 24 February 1982 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. In that case, it should be recalled, the Court had to render a judgment on the basis of a Special Agreement which, besides requesting the Court to determine "the principles and rules of international law" applicable to the delimitation, further requested that the Court take

account of "equitable principles and the relevant circumstances which characterize the area, as well as the recent trends admitted at the Third Conference on the Law of the Sea" (Special Agreement, Art. 1, *I.C.J. Reports 1982*, p. 21, para. 1). Referring back to the earlier Judgment in the *North Sea Continental Shelf* cases, and to the proceedings and conclusions of the Third Conference, the 1982 Judgment stresses the importance of "the satisfaction of equitable principles . . . in the delimitation process" (*ibid.*, p. 47, para. 44).

94. Turning lastly to the proceedings of the Third United Nations Conference on the Law of the Sea and the final result of that Conference, the Chamber notes in the first place that the Convention adopted at the end of the Conference has not yet come into force and that a number of States do not appear inclined to ratify it. This, however, in no way detracts from the consensus reached on large portions of the instrument and, above all, cannot invalidate the observation that certain provisions of the Convention, concerning the continental shelf and the exclusive economic zone, which may, in fact, be relevant to the present case, were adopted without any objections. The United States, in particular, in 1983, that is to say after the Special Agreement had come into force, proclaimed an economic zone on the basis of Part V of the 1982 Convention. This proclamation was accompanied by a statement by the President to the effect that in that respect the Convention generally confirmed existing rules of international law. Canada, which has not at present made a similar proclamation, has for its part also recognized the legal significance of the nature and purpose of the new 200-mile régime. This concordance of views is worthy of note, even though the present Judgment is not directed to the delimitation of the exclusive economic zone as such. In the Chamber's opinion, these provisions, even if in some respects they bear the mark of the compromise surrounding their adoption, may nevertheless be regarded as consonant at present with general international law on the question.

95. In this connection, attention should be drawn to the identical definition, in Article 74, paragraph 1, and Article 83, paragraph 1, relating respectively to the exclusive economic zone and to the continental shelf, of the rule of international law respecting delimitation. That identical definition is as follows :

> "The delimitation of [the exclusive economic zone] [the continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

It is thus limited to expressing the need for settlement of the problem by agreement and recalling the obligation to achieve an equitable solution. Although the text is singularly concise it serves to open the door to continuation of the development effected in this field by international case law.

96. It should be noted that the symmetry of the two texts, relating to the delimitation of the continental shelf and of the exclusive economic zone, is most interesting in a case like the present one, where a single boundary line is to be drawn both for the sea-bed and for the superjacent fishery zone, which is included in the exclusive economic zone concept. The identity of the language which is employed, even though limited of course to the determination of the relevant principles and rules of international law, is particularly significant.

*

97. The Chamber has now to assess the respective positions of the Parties in the present dispute in the light of the findings that have so far been made.

98. While stressing that, unfortunately, the points on which they disagreed were more numerous than those on which they agreed, the Parties were at pains to state, when considering the "rules and principles of international law" which, they held, should govern maritime delimitations, that they were at one in believing in the existence of a "fundamental norm" of international law. According to them, this norm must apply to any delimitation and, *a fortiori*, to the drawing of a single maritime boundary like that sought in the Gulf of Maine area.

99. According to Canada's definition, the "fundamental norm" in question requires that this course be

> "determined according to the applicable law, in conformity with equitable principles, having regard to all relevant circumstances, in order to achieve an equitable result".

According to the United States definition, which recalls those in the Court's Judgments of 1969 and 1982,

> "the delimitation of a single maritime boundary requires the application of equitable principles, taking account of all circumstances prevailing in the area concerned, in order to achieve an equitable solution".

While the difference apparent at first sight due to the absence in the United States definition of the words "according to the applicable law" is not negligible, the oral arguments have shown that it is in fact unimportant, since the United States stated explicitly that it too believed that delimitation should be effected on the basis of the applicable principles and rules of international law.

100. The common conclusion of the Parties as to the "fundamental norm" governing, in their opinion, the question of maritime delimitations seems, therefore, to be closely related to the conclusion reached by analysis of international case law and also, in the end, to that arrived at by the Third Conference on the Law of the Sea.

101. However, if both Parties recognize the existence in international

law of a "fundamental norm" governing maritime delimitations, that is as far as their agreement goes. There is no longer agreement when each of the Parties separately seeks to ascertain whether international law might also contain other rules, possibly accompanied by corollaries, of mandatory application in the same field.

102. In this connection Canada concentrated its efforts on deducing these other rules of maritime delimitation from the concept of geographic adjacency, since it was convinced that this concept constituted the "basis of the title" of the coastal State to the partial extension of its jurisdiction to the continental shelf and the waters of which it formed the bed.

103. This argument calls for several comments. Regarding adjacency, the Chamber acknowledges that in most cases this concept can be credited with the ability to express, perhaps better than that of natural prolongation, the link between a State's sovereignty and its sovereign rights to adjacent submerged land. It can also be acknowledged to express correctly the link between the State's territorial sovereignty and its sovereign rights over waters covering such submerged land. It should not be forgotten, however, that "legal title" to certain maritime or submarine areas is always and exclusively the effect of a legal operation. The same is true of the boundary of the extent of the title. That boundary results from a rule of law, and not from any intrinsic merit in the purely physical fact. In the Chamber's opinion it is therefore correct to say that international law confers on the coastal State a legal title to an *adjacent* continental shelf or to a maritime zone *adjacent* to its coasts ; it would not be correct to say that international law recognizes the title *conferred on the State by the adjacency* of that shelf or that zone, as if the mere natural fact of adjacency produced legal consequences.

104. It might be objected that these remarks are self-evident and that no one seeks to contradict them. The points concerned must, however, be clearly stated in order to show that there is a logical gulf between recognizing the precise and circumscribed legal realities just mentioned and the idea of constructing solely on that basis an alleged legal principle which is sometimes given the name of "adjacency", sometimes "proximity" and sometimes, more especially, "distance", which is, besides, quite another thing. This is because it is from a principle thus established that Canada seeks to deduce the existence in customary international law of rules for delimitation between States whose continental shelves or adjacent maritime zones overlap. Following this line enables the Party in question eventually to assert that international law enshrines a rule that would concretely determine which of the two neighbouring States whose claims are at variance is to be recognized as having a more valid claim than the other to the attribution of certain maritime or submarine areas. Under this rule the State any part of whose coasts is less distant from the zones than

those of the other State would *ipso jure* be entitled to have the zones recognized as its own.

105. The Chamber need not comment on the assertion that such a rule exists, since the Court refused in the *North Sea Continental Shelf* cases to

> "imply any fundamental or inherent rule the ultimate effect of which would be to prohibit any State (otherwise than by agreement) from exercising continental shelf rights in respect of areas closer to the coast of another State" (*I.C.J. Reports 1969*, pp. 30-31, para. 42).

At that time the Court wished to stress that the submarine areas appertaining to the coastal State were not always those closest to its coasts.

106. With regard to the reasoning by which the Party concerned arrived at the conclusion mentioned above, the Chamber merely notes that it amounts to just one more, still unconvincing, endeavour to instil the idea that "equidistance" – rather than "distance" – is a concept endorsed by customary international law, since the objective is to assert that whatever lies less far from the coasts of one State than from those of another should automatically appertain to the former State. It is another attempt to turn equidistance into a genuine rule of law, one to which general international law has supposedly given expression while yet tempering it to take account of special circumstances, and thus into something other than it is in reality: a practical method that can be applied for the purposes of delimitation.

107. It will not be disputed that this method has rendered undeniable service in many concrete situations, and is a practical method whose use under certain conditions could be contemplated and made mandatory by a convention like that of 1958. Nevertheless this concept, as manifested in decided cases, has not thereby become a rule of general international law, a norm logically flowing from a legally binding principle of customary international law, neither has it been adopted into customary law simply as a method to be given priority or preference. The Chamber can best express its thinking on this subject by quoting the comment made by the Court, in its Judgment of 20 February 1969, on the similar contention by Denmark :

> "In the records of the International Law Commission, which had the matter under consideration from 1950 to 1956, there is no indication at all that any of its Members supposed that it was incumbent on the Commission to adopt a rule of equidistance because this gave expression to, and translated into linear terms, a principle of proximity inherent in the basic concept of the continental shelf, causing

every part of the shelf to appertain to the nearest coastal State and to no other, and because such a rule must therefore be mandatory as a matter of customary international law. Such an idea does not seem ever to have been propounded." (*I.C.J. Reports 1969*, p. 33, para. 49.)

108. The United States, for its part, has not merely disputed the determining force in international law of any principle of adjacency, proximity or distance, or of any legal rule allegedly derived therefrom. It has sought support for its contentions in the distinction, which the Chamber has already called unacceptable both in geography and in law, between coasts defined as "primary", simply because they follow the general direction of the mainland coastline as a whole, or are parallel to it, and coasts defined as "secondary", simply because they deviate from that direction. Answering the objection, made by reference to case-law, that the equality of all coasts must be measured "in the same plane", the United States argued that only "comparable" coasts are entitled to comparable treatment and that not all coasts are comparable. On this basis, therefore, which Canada has described as an "*ad hoc* construction", the United States has purported to establish the principle of the preferential nature of the relationship between "primary" coasts and the maritime and submarine areas situated frontally before them. In terms of practical consequences, this preferential relationship should allegedly prevail over the relationship with "secondary" coasts, even if these are closer. The maritime areas lying off the primary coast should therefore be reserved to that coast and not to the secondary coast, irrespective of the latter's proximity. The "proximity" concept should therefore yield to that of the "geographic natural prolongation" of the principal coasts and that of the "extension of the coastal front" of the State to which they belong.

109. In the Chamber's opinion, the *a priori* nature of these premises and these deductions is as patent as that of the thesis elaborated by the other Party. In both cases the outcome of the Parties' efforts can be said to have been preconceived assertions rather than any convincing demonstration of the existence of the rules that each had hoped to find established by international law.

110. Each Party's reasoning is in fact based on a false premise. The error lies precisely in searching general international law for, as it were, a set of rules which are not there. This observation applies particularly to certain "principles" advanced by the Parties as constituting well-established rules of law, e.g., the idea advocated by Canada that a single maritime boundary should ensure the preservation of existing fishing patterns which are vital to the coastal communities in the area concerned, or the idea advocated by the United States that such a boundary should make it possible to ensure the optimum conservation and management of living resources and at the same time reduce the potential for future disputes between the Parties. One could add to these the ideas of "non-encroachment" upon the coasts of

another State or of "no cutting-off" of the seaward projection of the coasts of another State, and others which the Parties put forward in turn, which may in given circumstances constitute equitable criteria, provided, however, that no attempt is made to raise them to the status of established rules endorsed by customary international law.

111. A body of detailed rules is not to be looked for in customary international law which in fact comprises a limited set of norms for ensuring the co-existence and vital co-operation of the members of the international community, together with a set of customary rules whose presence in the *opinio juris* of States can be tested by induction based on the analysis of a sufficiently extensive and convincing practice, and not by deduction from preconceived ideas. It is therefore unrewarding, especially in a new and still unconsolidated field like that involving the quite recent extension of the claims of States to areas which were until yesterday zones of the high seas, to look to general international law to provide a ready-made set of rules that can be used for solving any delimitation problems that arise. A more useful course is to seek a better formulation of the fundamental norm, on which the Parties were fortunate enough to be agreed, and whose existence in the legal convictions not only of the Parties to the present dispute, but of all States, is apparent from an examination of the realities of international legal relations.

112. The Chamber therefore wishes to conclude this review of the rules of international law on the question to which the dispute between Canada and the United States relates by attempting a more complete and, in its opinion, more precise reformulation of the "fundamental norm" already mentioned. For this purpose it will, *inter alia,* draw also upon the definition of the "actual rules of law . . . which govern the delimitation of adjacent continental shelves – that is to say, rules binding upon States for all delimitations" which was given by the Court in its 1969 Judgment in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969,* pp. 46-47, para. 85). What general international law prescribes in every maritime delimitation between neighbouring States could therefore be defined as follows :

(1) No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result. Where, however, such agreement cannot be achieved, delimitation should be effected by recourse to a third party possessing the necessary competence.

(2) In either case, delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result.

V

113. The function of the foregoing discussion has been to define, in the light of the sources examined, the principles and rules of international law or, more precisely, the fundamental norm of customary international law governing maritime delimitation. As has been shown, that norm is ultimately that delimitation, whether effected by direct agreement or by the decision of a third party, must be based on the application of equitable criteria and the use of practical methods capable of ensuring an equitable result. The Chamber must now proceed to consider these equitable criteria and the practical methods which are in principle applicable in the actual delimitation process.

114. On the basis of the conclusions already reached, the Chamber has found that general customary international law is not the proper place in which to seek rules specifically prescribing the application of any particular equitable criteria, or the use of any particular practical methods, for a delimitation of the kind requested in the present case. As already noted, customary international law merely contains a general requirement of the application of equitable criteria and the utilization of practical methods capable of implementing them. It is therefore special international law that must be looked to, in order to ascertain whether that law, as at present in force between the Parties to this case, does or does not include some rule specifically requiring the Parties, and consequently the Chamber, to apply certain criteria or certain specific practical methods to the delimitation that is requested.

115. The starting point for this analysis may once again be an examination of the 1958 Convention on the Continental Shelf, more specifically of the second sentence of each of paragraphs 1 and 2 of Article 6 which, as we have seen, do not, like the first sentence, enunciate a principle or rule of international law, but contemplate, *inter alia,* the use of a particular practical method for the actual implementation of the delimitation process. As already stated, this method employs a single technique for continental shelf delimitation, but in the form of a median line in maritime areas between opposite coasts, and a lateral equidistance line where the coasts of the two States are adjacent. This method is inspired by and derives from a particular equitable criterion : namely, that the equitable solution, at least prima facie, is an equal division of the areas of overlap of the continental shelves of the two litigant States. The applicability of this

method is, however, subject to the condition that there are no special circumstances in the case which would make that criterion inequitable, by showing such division to be unreasonable and so entailing recourse to a different method or methods or, at the very least, appropriate correction of the effect produced by the application of the first method.

116. In the light of these explanations the question therefore arises whether the fact (already noted by the Chamber) that the 1958 Convention on the Continental Shelf is in force between the Parties does or does not make it obligatory to use, for the delimitation requested in the present case, the method specified in Article 6 of that Convention and, by implication, the application of the criterion on which it is based.

117. No doubts have been expressed on either side as to the fact that both Parties regard themselves as bound by the Convention to which they have both acceded. This case does not involve any problems of the kind which arose in the case concerning the delimitation of the continental shelf between France and the United Kingdom because of reservations expressed by the former country but not accepted by the latter. The declaration made by Canada at the time of becoming party to the Convention, and objected to by the United States, is not such as to prevent the application of the Convention to a particular situation concerning the two States, nor has the United States claimed otherwise.

118. The Chamber therefore takes the view that if a question as to the delimitation of the continental shelf only had arisen between the two States, there would be no doubt as to the mandatory application of the method prescribed in Article 6 of the Convention, always subject, of course, to the condition that recourse is to be had to another method or combination of methods where special circumstances so require.

119. The purpose of the present proceedings is not, however, to obtain a delimitation of the continental shelf alone, as it might have been if they had taken place prior to the adoption by the two Parties of an exclusive fishery zone and the consequent emergence of the idea of delimitation by a single line. Their purpose is – and both Parties have abundantly emphasized the fact – to draw a single delimitation line for both the continental shelf and the superjacent fishery zone. It is doubtful whether a treaty obligation which is in terms confined to the delimitation of the continental shelf can be extended, in a manner that would manifestly go beyond the limits imposed by the strict criteria governing the interpretation of treaty instruments, to a field which is evidently much greater, unquestionably heterogeneous, and accordingly fundamentally different. Apart from this formal, but important, consideration, there is the more substantive point that such an interpretation would, in the final analysis, make the maritime water mass overlying the continental shelf a mere accessory of that shelf. Such a

result would be just as unacceptable as the converse result produced by simply extending to the continental shelf the application of a method of delimitation adopted for the "water column" only and its fish resources.

120. In this connection, the Chamber would also observe that it is not possible to employ, in refutation of the foregoing, the argument that the method contemplated by Article 6 of the Convention on the Continental Shelf is also provided for, in similar terms, in Article 12 and Article 24, paragraph 3, of the Convention of the same date on the Territorial Sea and the Contiguous Zone. The situation of the territorial sea and the contiguous zone, conceived as subject to the sovereignty of the coastal State, or subject to the exercise of customs controls and similar measures, intended to prevent violations of its territorial sovereignty, cannot be treated as an analogy. There is nothing here which is comparable with the reservation of the exclusive rights of exploitation of resources of a maritime area extending to 200 miles ; there is therefore nothing which could justify the idea of an extension thereto of criteria and delimitation methods expressly contemplated for the narrow strip of sea defined for a quite different purpose.

121. Furthermore the Chamber cannot accept the arguments of Canada that, when a single maritime boundary is to be determined, the provisions of Article 6 of the 1958 Convention apply directly, i.e., as treaty-law, "to the continental shelf as a component of the single maritime boundary", and also, but as a "particular expression of a general norm", to the superjacent fishery zone, as the other component.

122. Leaving aside the substantive point made at the end of paragraph 119 above, the Chamber is bound to note that the assertion that, even for the delimitation of an exclusive maritime fishery zone, by virtue of a general norm of international law "the equidistance method is to be used in those cases where it produces an equitable result", i.e., in so far as special circumstances do not require its use to be abandoned, has no convincing basis. To accept this idea would amount to transforming the "combined equidistance-special circumstances rule" into a rule of general international law, and thus one capable of numerous applications, whereas there is no trace in international custom of such a transformation having occurred.

123. The Chamber cannot but note in this connection that although it was proper for Canada to derive from the Decision of the Court of Arbitration on the Delimitation of the Continental Shelf between France and the United Kingdom the expression combining in one concise definition all the different ideas found in Article 6 of the 1958 Convention, it would be straining the scope of that Decision to interpret it as meaning that the "combined equidistance-special circumstances rule" (Decision, para. 68)

is in the process of becoming a norm of general application. What that Decision did state is that the rule in question

> "gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles" (Decision, para. 70),

which is a different matter. On the contrary, the finding of the Court of Arbitration clearly shows the different levels at which the various rules concerned are situated : the provisions of Article 6 of the 1958 Convention at the level of special international law, and, at the level of general international law, the norm prescribing application of equitable principles, or rather equitable criteria, without any indication as to the choice to be made among these latter or between the practical methods to implement them. The Chamber considers that such is the current state of customary international law.

124. In short, the Chamber does not believe that there is any argument to justify the attempt to turn the provisions of Article 6 of the 1958 Convention into a general rule applicable as such to every maritime delimitation. The treaty provisions in question, as the 1969 Judgment of the Court pointed out, can have no mandatory force as regards delimitation, even delimitation of the continental shelf alone, between States which are not parties to the 1958 Convention. Similarly, they cannot have such mandatory force even between States which are parties to the Convention, as regards a maritime boundary concerning a much wider subject-matter than the continental shelf alone.

125. The Chamber must therefore conclude in this respect that the provisions of Article 6 of the 1958 Convention on the Continental Shelf, although in force between the Parties, do not entail either for them or for the Chamber any legal obligation to apply them to the single maritime delimitation which is the subject of the present case.

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126. The Chamber, having reached this conclusion as to the absence between the Parties of any legal obligation deriving from treaty to apply specific practical methods to the determination of the single boundary between their respective maritime zones, must also examine a related question. It must ascertain whether, as between the Parties, any other factors have intervened which might, independently of any formal act creating rules or instituting relations under special international law, nevertheless give rise to an obligation of this kind. The question, which the Parties have argued at length during the present case, is whether the conduct of the Parties over a given period of their relationship constituted

acquiescence by one of them in the application to the delimitation of a specific method advocated by the other Party, or precluded it from opposing such action, or whether such conduct might have resulted in a *modus vivendi,* respected in fact, with regard to a line corresponding to such an application.

127. It was more specifically Canada which argued that the conduct of the United States involved a kind of substantive consent by that country, in one of these forms, to the application of the equidistance method, particularly as regards the delimitation to be effected in the Georges Bank sector. The Chamber will therefore begin its examination of this aspect of the question by looking at this argument.

128. According to Canada the conduct of the United States may be taken into consideration in three ways, of varying importance : first, as evidence of genuine acquiescence in the idea of a median line as the boundary between the respective maritime jurisdictions, and of a resultant estoppel against the United States ; secondly, as an indication, at least, of the existence of a *modus vivendi* or of a *de facto* boundary, which the two States have allowed to come into being ; and, thirdly and lastly, as mere indicia of the type of delimitation that the Parties themselves would have considered equitable. It should be noted that this Canadian argument concerned, at the time of the conduct in question, the continental shelf proper and, *inter alia,* that of Georges Bank. The United States strongly disputes the contention that its conduct could have the legal or other consequences attributed to it by Canada.

129. In the Canadian argument the terms "acquiescence" and "estoppel" are used together and practically for the same purposes. Canada defines as follows the rules relating to acquiescence, regarded as a recognition of rights :

> "One government's knowledge, actual or constructive, of the conduct or assertion of rights of the other party to a dispute, and the failure to protest in the face of that conduct, or assertion of rights, involves a tacit acceptance of the legal position represented by the other Party's conduct or assertion of rights." (Hearing of 4 April 1984, afternoon.)

In the case of estoppel, Canada acknowledges that in international law the "doctrine" is still developing. According to Canada, however, all conditions permitting the invocation of that principle are satisfied in the present case, even if only the strictest are selected. Canada stated in the oral proceedings that estoppel is "the *alter ego* of acquiescence", though it added that even if it were to be held that the conditions for the recognition of an estoppel were more stringent than those for acquiescence (the United States argues that a party wishing to invoke this form of preclusion must have relied on the other party's statements or conduct either to its own

detriment or to the other's advantage), this latter criterion must be regarded as satisfied in the present case.

130. The Chamber observes that in any case the concepts of acquiescence and estoppel, irrespective of the status accorded to them by international law, both follow from the fundamental principles of good faith and equity. They are, however, based on different legal reasoning, since acquiescence is equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent, while estoppel is linked to the idea of preclusion. According to one view, preclusion is in fact the procedural aspect and estoppel the substantive aspect of the same principle. Without engaging at this point on a theoretical debate, which would exceed the bounds of its present concerns, the Chamber merely notes that, since the same facts are relevant to both acquiescence and estoppel, except as regards the existence of detriment, it is able to take the two concepts into consideration as different aspects of one and the same institution.

131. The relevant facts may be summarized as follows. Canada began in 1964 to issue, on its own side of what it regarded as the median line dividing Georges Bank, long-term options (permits) for the exclusive exploitation of hydrocarbons. From 1964 onwards seismic research was carried out under the authority of Canada in the northeastern portion of the Bank. Canada alleges that it was known to the United States authorities that it had issued permits relating to the northeastern portion of Georges Bank. The Canadian Government had, moreover, published information on the subject in the *Monthly Oil and Gas Report.* The United States replies that the issue of offshore permits under Canadian legislation was not common knowledge, and merely constituted an internal administrative activity incapable of forming the basis of acquiescence or estoppel at the international level. Before any effect could result at this level it would, at least, have been necessary for the Canadian Department of External Affairs to send a diplomatic communication to the United States Department of State.

132. According to Canada, however, the United States authorities were aware of the facts in question by 1 April 1965 at the latest. At that date the Bureau of Land Management of the United States Department of the Interior wrote to the Canadian Department of Northern Affairs and National Resources enquiring as to the location of two Canadian offshore permits with reference to the median line referred to in Article 6 of the Geneva Convention on the Continental Shelf. The Canadian Department replied by sending it documents showing the areas for which the permits had been issued. By a letter dated 14 May 1965, known as the "Hoffman letter" from the name of its signatory, the Bureau of Land Management acknowledged receipt of the documents and mentioned, *inter alia,* the question of the exact position of a median line, and the Department of Northern Affairs replied on 16 June 1965 that the median line used was

constructed in accordance with Article 6 of the Convention on the Continental Shelf. This was followed by correspondence, now at diplomatic level, between the United States Embassy in Ottawa and the Canadian Department of External Affairs, which supplied certain items of detailed information. A letter written on behalf of the Canadian Under-Secretary of State for External Affairs, in which the median line was explicitly mentioned, is dated 30 August 1966, but the United States did not take this opportunity to protest or reserve its rights. It did so only in its aide-mémoire dated 5 November 1969, which does not refer to any previous reservation. Canada also affirms that it was only on 18 February 1977 that mention was first made in diplomatic correspondence of the claim advanced by the United States in 1976 to a boundary along the Northeast Channel.

133. The United States argues in reply that the authors of the 1965 correspondence were mid-level government officials who had no authority to define international boundaries or take a position on behalf of their Governments on foreign claims in this field. The United States disputes especially the argument that the "Hoffman letter" can be regarded as constituting explicit or tacit acquiescence in the Canadian claims. As Mr. Hoffman explained in his letter, he had no authority to commit the United States as to the position of a median line. Moreover, the United States aide-mémoire of 5 November 1969 explicitly referred to the previous one, of 10 May 1968, whereby the United States proposed that the Governments should undertake discussions at an early date on the delimitation of the continental shelf in the Gulf of Maine and in the area of the Straits of Juan de Fuca. This aide-mémoire said nothing about a median line or about any other principle or method of delimitation.

134. According to the United States, Canada never issued an official proclamation or any other publication for the purpose of making its claims known internationally ; the United States could not, therefor infer the existence of such claims by such indirect means. By 1964 Canada had not published any official claim to the continental shelf under its own legislation. On the contrary, if had not even taken an official stand on the Truman Proclamation and its possible implications for the continental shelf in the Georges Bank area which, according to the United States, was included in its entirety therein.

135. Canada argues that, in the practice followed from 1964 until the end of 1970, the United States did not oppose the Canadian contention and did not implement a boundary based on the Northeast Channel. The permits issued by the United States authorities did not relate to areas north of a median line on Georges Bank. Canada further quotes the aide-mémoire of 5 November 1969, which shows that the United States had refrained from authorizing the exploitation of minerals in the northern continental shelf of Georges Bank.

136. The United States replies that at the time in question it was con-

fronted on Georges Bank with Canadian seismic exploration of minor importance, which involved neither drilling nor the extraction of petroleum. No special action was therefore necessary on its part. Moreover, from 1965 onwards United States exploration permits had been issued for the northeastern part of Georges Bank, beyond a median line, e.g., permit EL/65 issued to Shell. The aide-mémoire of 5 November 1969 already mentioned, clearly constituted opposition to the Canadian programme for the Bank : it stated specifically that the United States :

> "cannot acquiesce in any Canadian authorization of exploration or exploitation of the natural resources of the Georges Bank continental shelf".

137. The facts being as described, the Chamber does not feel able to draw the conclusion that the United States acquiesced in delimitation of the Georges Bank continental shelf by a median line, setting aside for the moment both the fact that the platform of Georges Bank is only a limited portion of the continental shelf of the area to be delimited, and the fact that at the present time the continental shelf is only one of the two subjects of the delimitation requested of the Chamber.

138. In the view of the Chamber, it may be correct that the attitude of the United States on maritime boundaries with its Canadian neighbour, until the end of the 1960s, revealed uncertainties and a fair degree of inconsistency. Notwithstanding this, the facts advanced by Canada do not warrant the conclusion that the United States Government thereby recognized the median line once and for all as a boundary between the respective jurisdictions over the continental shelf ; nor do they warrant the conclusion that mere failure to react to the issue of Canadian exploration permits, from 1964 until the aide-mémoire of 5 November 1969, legally debarred the United States from continuing to claim a boundary following the Northeast Channel, or even including all the areas southwest of the "adjusted perpendicular".

139. The Chamber considers that the terms of the "Hoffman letter" cannot be invoked against the United States Government. It is true that Mr. Hoffman's reservation, that he was not authorized to commit the United States, only concerned the location of a median line ; the use of a median line as a method of delimitation did not seem to be in issue, but there is nothing to show that that method had been adopted at government level. Mr. Hoffman, like his Canadian counterpart, was acting within the limits of his technical responsibilities and did not seem aware that the question of principle which the subject of the correspondence might imply had not been settled, and that the technical arrangements he was to make with his Canadian correspondents should not prejudge his country's position in subsequent negotiations between governments. This situation, however, being a matter of United States internal administration, does not

authorize Canada to rely on the contents of a letter from an official of the Bureau of Land Management of the Department of the Interior, which concerns a technical matter, as though it were an official declaration of the United States Government on that country's international maritime boundaries.

140. Furthermore, while it may be conceded that the United States showed a certain imprudence in maintaining silence after Canada had issued the first permits for exploration on Georges Bank, any attempt to attribute to such silence, a brief silence at that, legal consequences taking the concrete form of an estoppel, seems to be going too far.

141. From 1965 onwards, as we have seen, the United States also issued exploration permits for the northeastern portion of Georges Bank, that is to say in the area claimed by Canada. Here again it would have been prudent of the United States to inform Canada officially of those activities, but its failure to do so does not warrant the conclusion that it thereby gave Canada the impression that it accepted the Canadian standpoint, and that legal effects resulted. Once again the United States attitude towards Canada was unclear and perhaps ambiguous, but not to the point of entitling Canada to invoke the doctrine of estoppel.

142. When Canada, at the level of its Department of External Affairs and of the United States Embassy in Ottawa, clearly stated its claims for the first time (letter of 30 August 1966), it might admittedly have expected a reaction on the part of the United States Department of State. The United States concedes that it was thus officially informed of Canada's views on the problem of delimitation. Even though the correspondence was conducted, not between the Secretary of State for External Affairs personally and the United States Ambassador personally, but between civil servants subordinate to them, the letter did in fact emanate from the administrative service competent for the conduct of foreign relations and was in fact addressed to the Ambassador representing the Government of the United States. In waiting until 10 May 1968 before suggesting, through diplomatic channels, the opening of discussions, while the question remained pending, and then waiting a further year and a half, until November 1969, before stating clearly that no Canadian permit for the exploration or exploitation of the natural resources of the Georges Bank continental shelf would be recognized, the United States cannot be regarded as having endeavoured to keep Canada sufficiently informed of its policy. It is even possible that Canada was reasonably justified in hoping that the United States would ultimately come round to its view. To conclude from this, however, in legal terms, that by its delay the United States had tacitly consented to the Canadian contentions, or had forfeited its rights is, in the Chamber's opinion, overstepping the conditions required for invoking acquiescence or estoppel.

143. Canada has referred, in support of its arguments, to a number of precedents and in particular to certain judgments of the Court. The United

States argues that such case law, and the reasoning therein, do not strengthen Canada's arguments. The Chamber will not discuss this subject in any great detail but will merely show that these precedents are inconclusive with respect to the present case.

144. To support the argument that a State's conduct may produce legal consequences in its relations with other States, Canada has availed itself, in particular, of the Judgment in the Anglo-Norwegian *Fisheries* case. It is true that in that Judgment the Court found that the Norwegian authorities had applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose and that general toleration of that Norwegian practice was an unchallenged fact (*I.C.J. Reports 1951,* p. 138). The Court found that such general toleration, combined with other factors, warranted Norway's enforcement of its system against the United Kingdom (*ibid.,* p. 139). The Chamber considers that the elements of fact and of law in the *Fisheries* case and those in the present dispute are clearly too dissimilar for a comparison thereof to produce legal consequences valid for the present case. Neither the long duration of the Norwegian practice (70 years), nor Norway's activities in manifestation of that practice, warrant the drawing of conclusions from the 1951 Judgment that would be relevant in the present case.

145. It is apparently the Judgment in the *North Sea Continental Shelf* cases that gave the most precise definition of the conditions for invoking the doctrine of estoppel ; but even disregarding the element of detriment or prejudice caused by a State's change of attitude, which distinguishes estoppel *stricto sensu* from acquiescence, it nevertheless presupposes clear and consistent acceptance (*I.C.J. Reports 1969,* p. 26). In the present case the conduct of the United States, because of its unclear nature, does not satisfy the conditions prescribed in the 1969 Judgment, either for estoppel or for acquiescence.

146. In the *Grisbadarna* case concerning the delimitation of fishing grounds between Norway and Sweden, the conduct of the two States did play a major part ; the relevance of that case to the present one is however debatable, since the problems of rights over maritime areas differed in many respects from those of the present day. That case concerned territorial waters, whereas the present one concerns vast areas of sea that have only recently come under the jurisdiction of the adjacent States. The differences between the two cases are so great that it is difficult to establish a parallel between them. Even if these differences are minimized, it is not possible to conclude, on the basis of the *Grisbadarna* precedent, from a comparison of the conduct of Sweden and Norway with that of the Parties to the present case, that the conduct of the United States was sufficiently clear, sustained and consistent to constitute acquiescence.

147. The facts of the *Temple of Preah Vihear* case (cf. *I.C.J. Reports*

1962, pp. 22, 23 and 32) differ so much from those of the present case that the conclusions drawn from it are – it would seem – inapplicable. Nor is the Judgment in the case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906* a valid precedent. Acquiescence did play a part in that case, but in reaching that conclusion the Court relied on explicit declarations of Nicaragua, and on conduct that had continued over a very long period, something which does not apply in the present case.

148. On the basis of all the foregoing considerations the Chamber finds, therefore, that in the present case the conditions have not been met for an acquiscence on the part of the United States which would, even in the absence of other bases, have the effect, in the bilateral relations between the United States and Canada, of making the application of the median line to the determination of their respective maritime jurisdictions mandatory. The same is true as regards the possibility of an estoppel, without prejudice to the problems that the application of this concept in international law may raise generally.

149. Independently of the arguments derived from the conduct of the Parties for the purpose of establishing the existence of acquiescence or estoppel, Canada has also requested the Chamber to find that the conduct of the Parties proved at least the existence of a "*modus vivendi* maritime limit" or a "*de facto* maritime limit" based on the coincidence between the Canadian equidistance line (the "strict equidistance" line) and the United States "BLM line", which it is claimed was respected by the two Parties and by numerous oil companies from 1965 to 1972, at least. Canada bases this conclusion on the reasoning and pronouncements of the Court in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case (*I.C.J. Reports 1982,* pp. 83-85). The United States not only denies that its petroleum and gas permits respected any particular line (see the analysis of the facts relating to acquiescence and estoppel above), but also denies the very existence of the "BLM line".

150. Without going into these differences of detail, the Chamber notes that, even supposing that there was a *de facto* demarcation between the areas for which each of the Parties issued permits (Canada from 1964 and the United States from 1965 onwards), this cannot be recognized as a situation comparable to that on which the Court based its conclusions in the *Tunisia/Libya* case. It is true that the Court relied upon the fact of the division between the petroleum concessions issued by the two States concerned. But it took special account of the conduct of the Powers formerly responsible for the external affairs of Tunisia – France – and of Tripolitania – Italy –, which it found amounted to a *modus vivendi,* and which the two States continued to respect when, after becoming independent, they began to grant petroleum concessions.

151. Moreover, in the Chamber's opinion the period from 1965 to 1972,

"at least", which, according to Canada, is the one in which the *modus vivendi* was instituted, is too brief to have produced a legal effect of this kind, even supposing that the facts are as claimed. In addition, Canada's efforts to extend this period by attaching it to the preceding period encounter the objections to it which the Court has already formulated with regard to acquiescence, and which would obviously hold good for the *modus vivendi* too.

152. Canada invokes the conduct of the Parties finally in support of its arguments that both in fact regarded the use of an equidistance line as an equitable culmination of the delimitation process. This argument is based, in the final analysis, on the facts already advanced in support of the acquiescence, estoppel and *modus vivendi* claims : in the view of the Chamber these facts cannot support this idea any more than the others. Each Party has adopted a clear position on what it would consider a just or equitable balance between their respective interests, and the Chamber cannot but take note of this. By way of conclusion it can merely reconfirm its previous comment on the reliance placed on the conduct of the Parties for the purposes examined above.

153. Finally, the Chamber cannot fail to mention the fact that the United States, for its part, has invoked Canada's conduct in relation to its own claims to the continental shelf. It has emphasized that at the time of the Truman Proclamation in 1945 Canada was informed, first, of the intention of the United States to carry out the delimitation of the continental shelf by agreement and in accordance with equitable principles and, secondly, of its determination to regard the 100-fathom depth line as the boundary of its continental shelf zone – a boundary which includes Georges Bank. Canada argues in reply that the Truman Proclamation did not mention the 100-fathom depth, but the United States counters that argument by pointing out that the depth in question was mentioned in a Department of State press communiqué which accompanied the Proclamation. A copy of the latter, together with an explanatory memorandum, had been communicated to Canada for comments approximately five months before the publication of the Proclamation. Canada did not react. While not arguing from this that Canada consented to a boundary along the 100-fathom depth line, the United States does claim that Canada acquiesced in the requirement for delimitation by agreement in accordance with equitable principles. In addition Canada was aware, it is argued, that any unilateral measure it might take within the 100-fathom line would be unacceptable to the United States. Canada disputes this, claiming that it had not been informed of the reference to the 100-fathom depth line, which was not contained in the Proclamation itself, and that the explanatory memorandum received at the same time merely indicated that questions of delimitation could be left until some future time.

154. However that may be, the Chamber reiterates that the primary rule for the delimitation of maritime areas between neighbouring States is that

it must be effected by agreement and that, in as much as the argument of the United States based on Canada's failure to react to the Truman Proclamation amounts to claiming that delimitation must be effected in accordance with equitable principles, the United States position on that point merely refers back to the "fundamental norm" which Canada also relies on in the case. This comment does not derogate in any way from the observation made above that it is impossible to conclude from the conduct of the Parties that there is a binding legal obligation, in their bilateral relations, to make use of a particular method for delimiting their respective maritime jurisdictions.

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155. Having concluded the two-stage analysis carried out in the foregoing paragraphs, the Chamber is now able to give a definitive answer to the question posed in paragraph 114 above. It has just been noted that the Parties to the present case, in the current state of the law governing relations between them, are not bound, under a rule of treaty-law or other rule, to apply certain criteria or to use certain particular methods for the establishment of a single maritime boundary for both the continental shelf and the exclusive maritime fishery zone, as in the present case. Consequently, the Chamber also is not so bound.

156. The Chamber may therefore begin by taking into consideration, without its approach being influenced by predetermined preferences, the criteria and especially the practical methods that may theoretically be applied to determining the course of the single maritime boundary between the United States and Canada in the Gulf of Maine and in the adjacent outer area. It will then be for the Chamber to select, from this range of possibilities, the criteria that it regards as the most equitable for the task to be performed in the present case, and the method or combination of practical methods whose application will best permit of their concrete implementation.

157. There has been no systematic definition of the equitable criteria that may be taken into consideration for an international maritime delimitation, and this would in any event be difficult *a priori*, because of their highly variable adaptability to different concrete situations. Codification efforts have left this field untouched. Such criteria have however been mentioned in the arguments advanced by the parties in cases concerning the determination of continental shelf boundaries, and in the judicial or arbitral decisions in those cases. There is, for example, the criterion expressed by the classic formula that the land dominates the sea ; the

criterion advocating, in cases where no special circumstances require correction thereof, the equal division of the areas of overlap of the maritime and submarine zones appertaining to the respective coasts of neighbouring States ; the criterion that, whenever possible, the seaward extension of a State's coast should not encroach upon areas that are too close to the coast of another State ; the criterion of preventing, as far as possible, any cut-off of the seaward projection of the coast or of part of the coast of either of the States concerned ; and the criterion whereby, in certain circumstances, the appropriate consequences may be drawn from any inequalities in the extent of the coasts of two States into the same area of delimitation.

158. With regard to these and other possible criteria, the Chamber does not think it would be useful to undertake a more or less complete enumeration in the abstract of the criteria that are theoretically conceivable, or an evaluation, also in the abstract, of their greater or lesser degree of equitableness. As the Chamber has emphasized a number of times, their equitableness or otherwise can only be assessed in relation to the circumstances of each case, and for one and the same criterion it is quite possible to arrive at different, or even opposite, conclusions in different cases. The essential fact to bear in mind is, as the Chamber has stressed, that the criteria in question are not themselves rules of law and therefore mandatory in the different situations, but "equitable", or even "reasonable", criteria, and that what international law requires is that recourse be had in each case to the criterion, or the balance of different criteria, appearing to be most appropriate to the concrete situation.

159. Unlike the equitable criteria by which the delimitation must be guided, the practical methods that can be used for effecting the material delimitation have of course been the subject of certain *a priori* analyses. In this connection, mention may be made of the observations in the Court's Judgment in the *North Sea Continental Shelf* cases regarding the work done on the subject by the International Law Commission and its request for advice from a Committee of Experts (*I.C.J. Reports 1969*, p. 35, para. 53). During the course of that work mention was made of the use, according to circumstances, of the method of the lateral equidistance line or the median line, the method which was finally adopted by the Commission (and later by the 1958 Convention) as applicable, provided always that special circumstances do not justify the use of another method. But, as the Court also recalled, mention was then made concurrently of other possible methods : that of drawing a line perpendicular to a coast, or to the general direction of a coast ; that of drawing a boundary prolonging an existing division of territorial waters, or the direction of the final segment of a land boundary, or the overall direction of such boundary. This list was moreover by no means exhaustive. These different methods, and others, have been used in turn in different delimitations effected by direct agreement between neighbouring States ; in this connection statistical considerations afford no indication either of the greater or lesser degree of appropriateness of any

particular method, or of any trend in favour thereof discernible in international customary law.

160. The Chamber nevertheless considers that it must repeat, with reference to these practical methods, the observation already made with reference to the equitable criteria whose effective application should be by the use of these methods. This is another area in which comparisons in the abstract are most unlikely to yield useful results. On the general level all that can be done is to comment on the possible consequences of the rapid changes that have taken place in what is the very subject-matter of a maritime delimitation. The methods taken into consideration in a still relatively recent past – in this particular field ideas age very quickly – were few in number and of very similar inspiration. This limited choice was justifiable when these methods had to be applied over small distances, e.g., along boundaries between the territorial seas of adjacent States ; but the same choice may seem less justifiable when boundaries have to be established which cover hundreds of nautical miles and are intended, not to delimit jurisdiction over the waters immediately abutting on the coast, but in fact to share out the potential mineral wealth of continental shelves extending to the continental margin, or the biological resources of maritime and ocean areas of hitherto unimagined proportions. Obviously the preference given to a particular method for drawing a boundary over a very short distance from the coasts may no longer be justifiable where the delimitation has to extend a great distance from its starting-point and where different factors have to be taken into account.

161. It is true that, until the emergence of the present dispute, the problem of "long distance" delimitation, so to speak, had only come before an international judicial or arbitral body in relation to the continental shelf. This is the first time that a delimitation has been sought by requesting a chamber of the Court to draw a single line which will be valid both for the continental shelf and for the superjacent waters. It is, of course, quite possible, even at the theoretical level, that one method may seem preferable for the delimitation of the continental shelf, whereas another would be appropriate for the delimitation of an exclusive fishery zone or an exclusive economic zone. It will be remembered that a question put to the Parties during the hearings in the present case was : in the event that one particular method, or set of methods, should appear appropriate for the delimitation of the continental shelf, and another for that of the exclusive fishery zone, what they considered to be the legal grounds that might be invoked for preferring one or the other in seeking to determine a single line. In its reply, the United States noted that in such circumstances there appeared to be no legal grounds to be invoked *a priori* for preferring one or another method, and that the applicable principles and relevant circumstances should be

considered as an integrated whole. In the view of the United States, circumstances relevant to the functional effectiveness of a boundary relating to both the water column and the sea-bed should be given greater weight than circumstances relating to only one of them. Canada expressed the opinion that preference as to method should depend on the degree of relevance to be attached to a given factor in relation to the delimitation of all or any part of the boundary. It explained that such degree might differ in each of the two areas under consideration : the Gulf of Maine itself, as far seaward as the Cape Sable-Nantucket closing line, and the outer area that includes Georges Bank. It concluded that preference as to method should be dictated by the relevant circumstances of each of the two areas.

162. Here again the essential consideration is that none of the potential methods has intrinsic merits which would make it preferable to another in the abstract. The most that can be said is that certain methods are easier to apply and that, because of their almost mechanical operation, they are less likely to entail doubts and arouse controversy. That explains to a certain extent why they have been used more frequently or why they have in many cases been taken into consideration in preference to others. At any rate there is no single method which intrinsically brings greater justice or is of greater practical usefulness.

163. The Chamber considers, therefore, that there are not two kinds of methods, those which are intrinsically appropriate, on the one hand, and those which are inappropriate or less appropriate, on the other. The greater or lesser appropriateness of one method or another can only be assessed with reference to the actual situations in which they are used, and the assessment made in one situation may be entirely reversed in another. Nor is there any method of which it can be said that it must receive priority, a method with whose application every delimitation operation could begin, albeit subject to its effects being subsequently corrected or it being even discarded in favour of another, if those effects turned out to be clearly unsatisfactory in relation to the case. In each specific instance the circumstances may make a particular method seem the most appropriate at the outset, but there must always be a possibility of abandoning it in favour of another if subsequently this proved justified. Above all there must be willingness to adopt a combination of different methods whenever that seems to be called for by differences in the circumstances that may be relevant in the different phases of the operation and with reference to different segments of the line.

VI

164. Bearing in mind the considerations set forth in the preceding section, the Chamber now proposes, before turning to the concluding phase of its work, to examine the respective criteria and methods whose application to the delimitation is proposed by each of the Parties, and to undertake a comparative analysis of the four lines resulting from the application by them of these criteria and methods.

165. The review carried out in previous paragraphs of the origin and development of the dispute between the Parties showed that when the dispute definitively acquired its present dual dimension the two Parties took care to specify and publish their respective claims. To support those claims they proposed the application of very different criteria and the use of very different practical methods. On these bases each Party proposed two delimitation lines, one after the other, constructed according to entirely or partially different methods, although each, in its new choice, showed continuity with its previous approach.

166. The Chamber would first recall that the United States, whose particular interest in the "maritime" or "fisheries" aspect of the subject of the dispute it has already emphasized, originally proposed in 1976 the application of a criterion which, as appears particularly from the recent explanations given by that Party, accorded decisive importance, for the purposes of delimitation, to natural factors, that is, the geomorphological, and, indeed especially, the ecological aspects of the area. The method proposed by that Party for the practical implementation of this criterion amounted, therefore, to adopting a line which corresponded approximately to a line of the greatest depths. The main objective thus pursued was to keep intact the unity of each of the various ecosystems which, according to that Party, were clearly distinguishable throughout the area to be delimited. The line resulting from the use of this method remained more or less equidistant throughout its entire length from the 100-fathom lines. It ran first in a south-south-westerly, then a south-south-easterly direction in the inner part of the Gulf in such a way that on the left Canada would receive German Bank on the Scotian Plateau, and the United States the Gulf of Maine basin, on the right. On reaching the closing line of the Gulf in Georges Basin it curved to follow the Fundian Channel, and then the Northeast Channel, as far as the continental margin.

167. The United States, when reiterating in the oral proceedings the merits it discerned in that line, also repeated that it was in conformity with Article 6 of the 1958 Convention. In so doing it obviously emphasized not so much its own endorsement of the method referred to in that Article, but primarily the importance to be attached, in the present case, to the correction of that method, which is also provided for in that Article and which, in its opinion, is made necessary in the present case by the special circumstances of the area. In the Chamber's opinion, this reference to the 1958 Convention seems to be a courteous gesture in the direction of an

instrument recognized as being still in force between the Parties rather than a manifestation of any intention to implement its substance. In actual fact, the 1976 line was not inspired by the idea of a delimitation primarily concerning the continental shelf, which is the sole purpose of Article 6, or indeed by the idea of a delimitation resulting from any particular geometrical method, but by the objective of a distribution of fishery resources according to a "natural" criterion.

168. The possibility of applying this criterion, which was originally advocated by the United States and to which it is still, to a certain extent, attached, and especially of applying it so exclusively to the present delimitation, prompts serious reservations. In so saying, the Chamber leaves aside any consideration as to the uncertainty of the distribution of the fish resources of the area according to the different ecosystems identified by the United States experts, and the reservations that may be prompted by the thesis of single-State management as justifying the award to one Party *in toto* of the resources of Georges Bank, which is the real subject of the dispute. The fundamental fact remains that the criterion underlying the United States line of 1976 was too much geared to one aspect of the present problem for it to be capable of being considered equitable in relation to the characteristics of the case. This criterion may have been justified for a delimitation concerning exclusive fishery zones alone, but less so for a "single" delimitation, in whose purpose the continental shelf and especially the resources of its subsoil also play a most important part. When such a delimitation is made it is just possible that the choice of a criterion and a practical method that are manifestly appropriate for fishery delimitation may be the right one for determining a particular segment of the line, were it to appear that, in the area delimited by that segment, the continental shelf is not of decisive importance. The exceptional aspect of such a solution must, however, be acknowledged, and it is obviously impossible to employ, for the determination of the entire length of a single delimitation line which, as in the present case, simultaneously concerns two distinct and important objects, a criterion and a method that would be suitable for delimiting the one but not for delimiting the other.

169. The new line proposed when the Memorial of the United States was filed in September 1982 seems, especially at first sight, to be based on an entirely different conception. This conception belongs to a more recent context, comprising the recent important arbitral and judicial decisions of 1977 and 1982 on the delimitation of the continental shelf, together with important delimitations effected by agreement, such as that of the Franco-Spanish maritime boundary in the Bay of Biscay and, latterly, the adoption by the Third United Nations Conference on the Law of the Sea of the new codification convention which covers, and extends, the field of the 1958 Conventions, and departs substantially from them in the content of the relevant articles.

170. An effort was clearly made by the United States to remedy the earlier omission of other important geographical aspects, and by a new approach to the problem which the other Party has criticized as macro-geography. The United States thus fixed its final position on the central idea of the general direction of the coast, on which it has based a series of observations and distinctions which may be summarized as follows :

(a) recognition of the priority to be given, in all respects, to consideration of the general southwest and northeast direction of the eastern seaboard of the American Continent ;
(b) a distinction – already mentioned above – between "primary coasts" and "secondary coasts", according as they follow the general direction of the coast or, on the contrary, deviate from it ;
(c) the classification, *inter alia*, of the Atlantic coast of Nova Scotia as one of the "primary" coasts and of the coast of Nova Scotia abutting on the Gulf of Maine – like the coast of Massachusetts abutting on that Gulf – as "secondary" coasts ;
(d) a finding that the coast of Maine abutting on the Gulf follows a direction corresponding to the "general direction" and is, therefore, a "primary" coast ; and that Georges Bank, situated off and opposite the coast of Maine, is oriented in the same direction.

The "equitable criterion" that must be applied in delimiting the single maritime boundary in the area thus becomes that of the projection or frontal extension of the primary coastal front, which the United States identifies with that of natural prolongation, not in the geological or geomorphological sense, but "in the geographical sense". As has also been pointed out, the United States puts forward, as additional equitable criteria, those of avoidance of encroachment and cut-off and that of proportionality.

171. Using this set of criteria, the dominant one now being that of the frontal projection of the primary coastal front, the United States therefore proposes, as a method for determining the course of the boundary line, the vertical line, perpendicular to the general direction of the coast. To be consistent with the system, this perpendicular would have to be drawn from the terminal point of the international boundary, thus being a perpendicular to the continuous horizontal line formed by the coasts designated as principal coasts of Maine and New Brunswick. This is impracticable, however, since the perpendicular drawn from this point would intersect Grand Manan Island and what is more the Nova Scotia peninsula, cutting off part of its territory. Moreover, if the United States were to adopt a line of this kind it would infringe the express clause of the Special Agreement which provides that the starting-point of the line of delimitation to be drawn shall be a particular point situated about 39 miles from the terminal point of the international boundary. The United States therefore declares its willingness to accept an initial adjustment of the line originally drawn in accordance with the criterion theoretically selected – an initial

adjustment that is necessary, in its opinion, for adaptation to the relevant circumstances of the area. It therefore accepts that the vertical line, perpendicular to the coast, be drawn from point A.

172. It becomes clear that other adjustments are also necessary, however, to deal with another relevant circumstance, the circumstance which principally inspired the line first proposed by the United States in 1976, namely, total respect for the unity of the ecosystems or ecological régimes identified in the delimitation area. Two additional modifications of the perpendicular, now starting at point A, are therefore proposed. Their purpose is to ensure that jurisdiction over the two fishing banks on the Nova Scotia plateau (German Bank and Browns Bank), should belong entirely to Canada, and so to affirm and confirm the principle that a single State should be entrusted with the management of the fish resources of the principal banks of the area. This also creates the basis for the parallel award to the United States of exclusive jurisdiction over Georges Bank. It is also apparent that the new line no longer follows the *thalweg* of the Northeast Channel, as did the previous one, but is situated in proximity to its northeastern edge.

173. This results in the double-stepped configuration of the present United States proposal for the delimitation of the single maritime boundary with Canada. Rather than being an application of the "adjusted perpendicular" method, as defined by its proponent, this proposal in fact represents a compromise solution between two fundamentally different methods : the geometrical method of the perpendicular to the general direction of the coast and the ecological method, so to speak, of respect for the unity of the distinct ecosystems, which, it is held, are identifiable in the delimitation area, and distribution on that basis between the two neighbouring States.

174. The Chamber has already expressed its views on the criterion which, irrespective of how it is presented, is essentially ecological or, if one so prefers, ecogeographical. The criterion and method more recently advanced, and which are intended to be combined in some way with the first, prompt an entirely different comment. Compared with the criterion of recognizing the predominant influence, for the purposes of a maritime delimitation, of seaboards which, in the delimitation area, follow the general direction of the mainland coast, and with the resulting method involving the use, at least at the outset, of the perpendicular to the general direction of the coast, the present case seems to the Chamber a clear illustration of the soundness of the observation made at the start, namely, that the advantages and disadvantages of a particular criterion and a particular method cannot be assessed and judged in the abstract but only with reference to their application to a specific situation.

175. On the subject of the method, and of that only, the method of the perpendicular to a coast on which the territories of two States meet and the other method, which is really a variation of the first, of the perpendicular to

the general direction of the coast, are, as has been seen, two of the four methods on which the International Law Commission asked the Committee of Experts for its views. The method of the perpendicular was probably the oldest method to come to mind when problems arose in the delimitation by adjacent States of their territorial sea. The same method was also found to be conveniently, though only partially, applicable to the delimitation of the continental shelf in some bilateral agreements.

176. It is almost an essential condition for the use of such a method in a specific case that the boundary to be drawn in the particular case should concern two countries whose territories lie successively along a more or less rectilinear coast, for a certain distance at least. The ideal case, so to speak, would be one in which the course of the line would leave an angle of 90° on either side. On the other hand, it is hard to imagine a case less conducive to the application of this method of delimitation than the Gulf of Maine case, in which the starting-point of the line to be drawn is situated in one of the angles of the rectangle in which the delimitation is to be effected. This situation cannot be remedied by introducing as a criterion the abstract concept of the "general direction" of the coast, which may indeed be used as a corrective where the real direction of the coast at which the land boundary ends deviates only insignificantly from this "general direction". It is not in fact apparent how the method of the perpendicular drawn with reference to the general direction of the coast of a continent could be applied to a portion, a limited but nevertheless substantial portion, of that coast, where the real geographical configuration differs so markedly from such general direction.

177. That being so, an argument ignoring even the existence of real coasts, and disregarding them on account of their allegedly "secondary" character, cannot resolve the insurmountable difficulties that result from the forced application of a criterion and of a method which are not at all appropriate having regard to the real geographical configuration of the area. Nor will alterations made *a posteriori* in the perpendicular in order to convert it into an exclusively maritime boundary line, and make it more compatible with ecology, make this criterion and this method any less markedly unsuited to the present case. In a word, the method of delimitation by the perpendicular to the coast or to the general direction of the coast might possibly be contemplated in cases where the relevant circumstances lent themselves to its adoption, but is not appropriate in cases where these circumstances entail so many adjustments that they completely distort its character.

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178. The Chamber will now examine the lines proposed successively, at the end of 1976 and at the end of 1977, thus in quick succession, by Canada. The Chamber believes they can be considered together, since the two lines

are essentially based on the same criterion and both purport to be the result of applying a single method. This criterion, already mentioned above, has been defined as that of the equal division of the disputed areas, and the method is that broadly designated by the term "equidistance".

179. It should first be considered whether, just as it was right to express reservations as to whether a criterion and a method that are manifestly appropriate for only the water portion of the complex object to be delimited can be applied to the determination of a single boundary, there may not also be some doubt about the application to the determination of such single boundary of a criterion – and especially of a method – which had been intended to be applied only to the land portion of the object to be delimited. The Chamber may, however, disregard this aspect of the matter, as it will have an opportunity to comment on it elsewhere (see paragraph 202, below).

180. The Chamber has already demonstrated, in paragraphs 121 ff., the unacceptability of the Canadian argument that the application to the delimitation between the United States and Canada of the "equidistance method", is mandatory. As we have seen, this method is claimed to be mandatory, under Article 6 of the 1958 Convention as regards the portion of the delimitation concerning the continental shelf and, in the case of the superjacent fishery zone, under what is alleged to be a practically identical rule of customary international law prescribing the application of the same method to every maritime delimitation, except in so far as special circumstances warrant the use of a different method. The only further comment the Chamber has on this question is that, while it is of the opinion that Canada has relied on a false premise in successively proposing two different lines, one called a strict equidistance line and the other a corrected equidistance line, this does not imply that Canada was bound to refrain from using any such method for drawing the boundary line that it intended to propose. The absence of an obligation to do something must not be confused with an obligation not to do it. Each Party has the undeniable right to propose the free adoption of the method or methods it considers most appropriate for delimiting the single maritime boundary which is the subject of this case. The Party must merely meet two conditions : *(a)* it must show that the use of the method chosen, while in no way mandatory, is nevertheless specially recommended by its equity and by its adaptability to the circumstances of the case ; *(b)* it must ensure that the application of that method which is proposed in concrete terms has due regard to those circumstances and is, moreover, correctly carried out.

181. That being so, the way in which Canada believes it can apply the method chosen to the specific circumstances must be examined more closely. It has been said that Canada, when first drawing the delimitation line that it thought appropriate to the present case, manifested the inten-

tion to keep to a line which it defined as a line of strict equidistance. One year later, however, it changed its position because it had in the meantime discerned the possibility of taking certain special circumstances into account and modifying accordingly the line already put forward.

182. Canada, however, instead of taking into account other special circumstances which might be present in the area to be delimited and which might – with perhaps greater justification – have suggested the desirability, or even the necessity, of correcting the original line by displacing it towards the Nova Scotia coast, only took into account a special circumstance which might operate in its favour and enable it to displace the line still more towards the opposite coast of Massachusetts. In Canada's opinion, the special circumstance of decisive significance was the protrusion formed by the island of Nantucket, and more especially by the peninsula of Cape Cod. To establish the course of its corrected equidistance line, Canada therefore felt justified in removing these alleged geographical anomalies and substituting the Cape Cod Canal for the outer coast of the peninsula of the same name as western basepoint for calculating equidistance. Nor did Canada feel obliged also to displace the eastern basepoint for the calculation of the same line from Seal Island to the coast of Nova Scotia. The effect of this alteration on the Georges Bank dividing line need not be emphasized ; the effect is considerable, which does not mean it is justified.

183. These are not, however, the only reservations to be suggested in this context by an examination of the line proposed by Canada, since, in the Chamber's opinion, merely reverting from a corrected equidistance line to a strict equidistance line like that originally proposed by the same Party would not be enough automatically to make the Canadian suggestion suited to the geographical configuration of the area, or even convert it into a correct application of the method which Canada carefully derived from the text of Article 6 of the 1958 Convention.

184. An initial comment immediately suggests itself. When the configuration of the Gulf of Maine was described above, as were the features of the elongated rectangle representing that configuration in simplified geometrical form, attention was drawn to the fact that the only part of that rectangle to be formed by a Canadian coast is the short right side, as viewed by an observer from outside, whereas the short left side and the entire long side connecting the other two are formed by coasts of the United States. If we then move from geometrical figures to geographical realities it is also obvious that the length of the coasts belonging to the United States, as measured on the perimeter of the Gulf, is considerably greater than that of the coasts belonging to Canada, even if part of the Bay of Fundy coasts is included in the calculation of this perimeter. This difference in length is a special circumstance of some weight, which, in the Chamber's view, justifies a correction of the equidistance line, or of any other line. In several specific cases the respective lengths of the coasts of the two Parties in the

delimitation area have been taken into consideration as a ground for correcting a line basically derived from the application of a given method. Some cases involved settlement by agreement (e.g., that of the shelf boundary between France and Spain in the Bay of Biscay) while others were submitted to judicial decision (e.g., that of the delimitation of the continental shelf between Tunisia and Libya). Yet, in comparison with these various cases, in the present case the difference in the length of the coasts of the two States within the delimitation area is particularly notable.

185. In making this comment the Chamber remains aware of the fact that to take into account the extent of the respective coasts of the Parties concerned does not in itself constitute either a criterion serving as a direct basis for a delimitation, or a method that can be used to implement such delimitation. The Chamber recognizes that this concept is put forward mainly as a means of checking whether a provisional delimitation established initially on the basis of other criteria, and by the use of a method which has nothing to do with that concept, can or cannot be considered satisfactory in relation to certain geographical features of the specific case, and whether it is reasonable or otherwise to correct it accordingly. The Chamber's views on this subject may be summed up by observing that a maritime delimitation can certainly not be established by a direct division of the area in dispute proportional to the respective lengths of the coasts belonging to the parties in the relevant area, but it is equally certain that a substantial disproportion to the lengths of those coasts that resulted from a delimitation effected on a different basis would constitute a circumstance calling for an appropriate correction. In the Chamber's opinion, the need to take this aspect into account constitutes a valid ground for correction, more pressing even than others to which the United States has attached great importance when criticizing the Canadian position and the proposed delimitation reflecting that position, even if the Chamber cannot deny, or at any rate not as radically as Canada has done, that those criticisms may be justifiable.

186. In the Chamber's opinion, however, the delimitation line proposed by Canada prompts other objections. In this connection one preliminary comment is necessary. Paragraphs 1 and 2 of Article 6 of the 1958 Convention on the Continental Shelf contemplate two distinct hypothetical situations. As the Chamber has already observed (Section V, paragraph 115 above), this does not mean that the basic criterion, that of equal division, which underlies these provisions is not one and the same, or that the method by which this criterion is applied does not involve the use of the same technique. The distinction between the two hypotheses in question is due to the difference between the geographical situations to which the two texts refer. In the case of a delimitation between two adjacent coasts, the application of the technique referred to produces a lateral equidistance

line, whereas in cases where the two coasts are opposite, the application of the same technique produces a median line.

187. The authors of the 1958 text were right to make a precise distinction between two different situations. Subsequently, international jurisprudence has done much to clarify the necessary distinction between the situations to which the method in question may be applied. While noting that the various methods used shared the same inspiration, that jurisprudence, including the Decision of the Court of Arbitration on the Delimitation of the Continental Shelf between France and the United Kingdom, emphasized this point. By reference to an observation in the 1969 Judgment of the Court in connection with one characteristic of the equidistance method, the Court of Arbitration found that that characteristic of the method emphasized the "difference between a geographical situation of 'opposite' States and one of 'adjacent States' in the delimitation of continental shelf boundaries" (Decision, para. 86). Further on, in the final summing-up of its theory, the Court of Arbitration concluded :

> "Furthermore, in appreciating the appropriateness of the equidistance method as a means of achieving an equitable solution, regard must be had to the difference between a 'lateral' boundary between 'adjacent' States and a 'median' boundary between 'opposite' States." (*Ibid.*, para. 97.)

It is also obvious – but this point merits particular emphasis because of its relevance to the present case – that, as the jurisprudence referred to, and in addition the Court's Judgment in the *Continental Shelf (Tunisa/Libyan Arab Jamahiriya)* case, has shown, the coasts of two States may be adjacent at certain places and opposite at others. On this latter hypothesis, however, difficulties might arise, of a practical nature in particular, since every effort should be made to prevent the partial relationship of adjacency from ultimately predominating over the partial relationship of oppositeness, or vice-versa. It might become apparent that adjustments were necessary for this purpose, or even, as a last resort, recourse to a different method, since in some cases a radical change in the mutual relationship between the coasts of the two States concerned might be one of the special circumstances contemplated by Article 6 itself as a ground for having recourse to a method of delimitation other than that indicated as priority method by that text.

188. In the light of the foregoing considerations, it is clear how important it is that Canada seems not to have appreciated the significance of the change in the respective positions of the coasts of the United States and Canada which occurs at a particular point within the Gulf. The description of the delimitation area, in Section II (paragraph 32) above, shows that in the innermost part of the Gulf of Maine the straight line running along the

Maine coast from Cape Elizabeth to the international boundary terminus, and the equally straight line along the Nova Scotia coast and extending it across the waters and across Grand Manan Island to that terminus, meet almost at right angles. It was therefore correct to regard the coasts of the two States at that place as "adjacent" coasts, between which it was quite conceivable to consider drawing a lateral equidistance line, the problem being however how far such line should go.

189. But in putting forward its proposals for the delimitation, Canada has failed to take account of the fact that, as one moves away from the international boundary terminus, and approaches the outer opening of the Gulf, the geographical situation changes radically from that described in the previous paragraph. The quasi-right-angle lateral adjacency relationship between part of the Nova Scotia coasts, and especially between their extension across the opening of the Bay of Fundy and Grand Manan Island, and the Maine coasts, gives way to a frontal opposition relationship between the remaining coasts of Nova Scotia and those of Massachusetts which now face them. It is this new relationship that is the most characteristic feature of the objective situation in the context of which the delimitation is being effected. Moreover, when the geographical characteristics of the delimitation area were described it was shown that the relationship between the lines that can be drawn, between the elbow of Cape Cod and Cape Ann (on the United States side), and between Cape Sable and Brier Island (on the Canadian side), is one of marked quasi-parallelism. In this situation, even a delimitation line on the basis of the equidistance method would have to be drawn taking into account the change in the geographical situation, which Canada did not do when it was necessary. In any event what had to be avoided was to draw, the whole way to the opening of the Gulf, a diagonal line dominated solely by the relationship between Maine and Nova Scotia, even where the relationship between Massachusetts and Nova Scotia should have predominated.

VII

190. The consideration set forth in Section V as regards the equitable criteria and practical methods applicable in the abstract to maritime delimitation, and the critical assessment in Section VI of the particular criteria and methods proposed by the Parties for application to the delimitation at present required, will now serve the Chamber as a guide in approaching its task of carrying out that delimitation. The conclusion reached by the Chamber shows clearly that it must undertake this final stage of the task entrusted to it and formulate its own solution independently of the proposals made by the Parties.

191. That being so, the Chamber has evidently to keep in mind its obligation to comply with the fundamental norm provided by general international law where this subject-matter is concerned. In this final phase of the decision-making process, the Chamber must therefore arrive at the concrete determination of the delimitation line that it is required to draw *(a)* while basing itself for the purpose on the criteria which it finds most likely to prove equitable in relation to the relevant circumstances of the case and *(b)* while making use, in order to apply these criteria to the case, of the practical method or combination of methods which it deems the most appropriate ; all this with the final aim in view of reaching an equitable result in the above circumstances.

192. Hence as regards, in the first place, the choice of the criteria on which the Chamber should base its decision, all the foregoing considerations point to the advisability of its formally precluding the application of any criteria, however apparently equitable in themselves, which can now be seen as inappropriate to the delimitation of one or other of the two objects that the Parties' Special Agreement requests it to delimit. In this connection, the Chamber must again stress the responsibility laid upon it by the fact that the delimitation that it is required to carry out is, for the first time in international judicial or arbitral practice, a delimitation of two distinct elements by means of a single line. This is an unprecedented aspect of the case which lends it its special character and accordingly differentiates it from those that were the subject of previous decisions. To note this fact does not of course in any way imply that the criteria applied in those decisions must *ispo facto* be held inapplicable to the present case ; all that is meant is that the fact that the criteria in question were then found equitable and appropriate for the delimitation of the continental shelf does not imply that they must automatically possess the same properties in relation to the simultaneous delimitation of the continental shelf and the superjacent fishery zone. It is necessary that the adaptability of those criteria to this essentially different operation should first be verified in relation to its specific requirements.

193. In other words, the very fact that the delimitation has a twofold object constitutes a special aspect of the case which must be taken into consideration even before proceeding to examine the possible influence of other circumstances on the choice of applicable criteria. It follows that, whatever may have been held applicable in previous cases, it is necessary, in a case like the present one, to rule out the application of any criterion found to be typically and exclusively bound up with the particular characteristics of one alone of the two natural realities that have to be delimited in conjunction. In commenting on the delimitation criteria proposed by the Parties, the Chamber has already pointed out the difficulty, if not the impossibility, of adopting, for the purpose of such a dual delimitation, a criterion disclosed by objective analysis to be essentially ecological. It so described the criterion initially proposed by the United States, whereby it should take as its main guideline the idea of a correspondence between the line to be drawn and the natural separation of the various ecosystems

formed by the aquatic fauna of the delimitation area. As the Chamber then observed, a criterion of this kind could scarcely be adapted also to a delimitation which had not only to divide a volume of water but had also to effect a division of the underlying continental shelf, in respect of which the criterion in question could not be appropriate. Conversely, it may be remarked that, in a concrete situation where distinctive geological characteristics can be observed in the continental shelf, such as might have special effect in determining the division of that shelf and the resources of its subsoil, there would in all likelihood be no reason to extend the effect of those characteristics to the division of the superjacent volume of water, in respect of which they would not be relevant. These are merely two of many examples that could be cited.

194. In reality, a delimitation by a single line, such as that which has to be carried out in the present case, i.e., a delimitation which has to apply at one and the same time to the continental shelf and to the superjacent water column can only be carried out by the application of a criterion, or combination of criteria, which does not give preferential treatment to one of these two objects to the detriment of the other, and at the same time is such as to be equally suitable to the division of either of them. In that regard, moreover, it can be foreseen that with the gradual adoption by the majority of maritime States of an exclusive economic zone and, consequently, an increasingly general demand for single delimitation, so as to avoid as far as possible the disadvantages inherent in a plurality of separate delimitations, preference will henceforth inevitably be given to criteria that, because of their more neutral character, are best suited for use in a multi-purpose delimitation.

195. To return to the immediate concerns of the Chamber, it is, accordingly, towards an application to the present case of criteria more especially derived from geography that it feels bound to turn. What is here understood by geography is of course mainly the geography of coasts, which has primarily a physical aspect, to which may be added, in the second place, a political aspect. Within this framework, it is inevitable that the Chamber's basic choice should favour a criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap.

196. Nevertheless, it is not always the case that the choice of this basic criterion appears truly equitable when it, and it alone, is exclusively applied to a particular situation. The multiplicity and diversity of geographical situations frequently call for this criterion to be adjusted or flexibly applied to make it genuinely equitable, not in the abstract, but in relation to the varying requirements of a reality that takes many shapes and forms. To mention only the situation involved in the present proceedings, it is a fact that the Parties, and one of them in particular, with the aid of comparisons with situations considered in previous cases, persistently empha-

sized the importance they attached to one concrete aspect or another of the geographical situation in the present case. The Chamber cannot but recognize, to a certain extent, that the concerns thus expressed were not wholly unfounded. It does not here intend to enter into detailed considerations, for it will be sufficient to note in general at this stage that, in the present case, the situation arising out of the physical and political geography of the delimitation area does not present ideal conditions for the full, exclusive application of the criterion specified at the end of the previous paragraph. Some corrections must be made to certain effects of its application that might be unreasonable, so that the concurrent use of auxiliary criteria may appear indispensable. Having regard to the special characteristics of the area, the auxiliary criterion which the Chamber has particularly in mind is that whereby a fair measure of weight should be given to a by no means negligible difference within the delimitation area between the lengths of the respective coastlines of the countries concerned. It also has in mind the likewise auxiliary criterion whereby it is held equitable partially to correct any effect of applying the basic criterion that would result in cutting off one coastline, or part of it, from its appropriate projection across the maritime expanses to be divided, or then again the criterion – it too being of an auxiliary nature – involving the necessity of granting some effect, however limited, to the presence of a geographical feature such as an island or group of small islands lying off a coast, when strict application of the basic criterion might entail giving them full effect or, alternatively, no effect.

197. At this point, accordingly, the Chamber finds that it must finally confirm its choice, which is to take as its starting-point the above-mentioned criterion of the division – in principle, equal division – of the areas of convergence and overlapping of the maritime projections of the coastlines of the States concerned in the delimitation, a criterion which need only be stated to be seen as intrinsically equitable. However, in the Chamber's view, the adoption of this starting-point must be combined with the parallel and partial adoption of the appropriate auxiliary criteria in so far as it is apparent that this combination is necessitated by the relevant circumstances of the area concerned, and provided they are used only to the extent actually dictated by this necessity. By this approach the Chamber seeks to ensure the most correct application in the present case of the fundamental rule of international law here applicable, which requires that any maritime delimitation between States should be carried out in accordance with criteria that are equitable and are found more specifically to be so in relation to the particular aspects of the case under consideration.

198. The equitable nature of the criteria adopted in the light of the circumstances of the case will emerge the more convincingly – one might almost say tangibly – after the transition from the preliminary phase of choosing equitable criteria to the next phase, in which these criteria are to

be reflected in the drawing of a particular delimitation line with the aid of appropriate practical methods.

199. As regards these practical methods, it can be said at the outset that, given the equitable criteria which the Chamber feels bound to apply in the case referred to it for judgment, the choice to be made is predetermined. Methods must be chosen which are instruments suitable for giving effect to those criteria and not other criteria of a fundamentally different kind. Just as the criteria to which they must give effect are basically founded upon geography, the practical methods in question can likewise only be methods appropriate for use against a background of geography. Moreover, like the underlying criteria, the methods employed to give them effect must, in this particular case, be just as suitable for the delimitation of the sea-bed and its subsoil as for the delimitation of the superjacent waters and their fishery resources. In the outcome, therefore, only geometrical methods will serve.

200. It would however be going too far to infer from this finding that the practical methods suitable for use in the present case must necessarily be identifiable with the method adopted in Article 6 of the 1958 Convention, so that all that the Chamber need do (even if, as already stressed, it has no obligation so to proceed) is to make use of that method, subject to the correction of certain effects as required by any special circumstances. In fact there are also other methods, differing from it in varying degree even while prompted by similar considerations, which may prove equally appropriate or even distinctly preferable, given that the task is to delimit not only a continental shelf, as provided for in the 1958 Convention, but also the volume of superjacent waters. Nor should one overlook the possibility that, over the whole course of a long delimitation line, various, though related, methods may successively appear more appropriate to the different segments.

201. In this connection, the Chamber would emphasize the necessity of not allowing oneself to be too easily swayed by the perfection which is apparent *a priori,* from the viewpoint of equally dividing a disputed area, in a line drawn in strict compliance with the canons of geometry, i.e., a line so constructed that each point in it is equidistant from the most salient points on the respective coastlines of the parties concerned. In an apposite passage of the 1969 Judgment on the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969,* p. 36, para. 57), the Court showed how, in determining the course of a delimitation line intended to "effect an equal division of the particular area involved" between two coasts, no account need be taken of the presence of "islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means". In pursuance of this remark, the Chamber likewise would point out the potential disadvantages inherent in any method which takes tiny islands, uninhabited rocks or low-tide elevations, sometimes lying at a considerable distance from terra firma, as basepoint for the drawing of a line

intended to effect an equal division of a given area. If any of these geographical features possess some degree of importance, there is nothing to prevent their subsequently being assigned whatever limited corrective effect may equitably be ascribed to them, but that is an altogether different operation from making a series of such minor features the very basis for the determination of the dividing line, or from transforming them into a succession of basepoints for the geometrical construction of the entire line. It is very doubtful whether a line so constructed could, in many concrete situations, constitute a line genuinely giving effect to the criterion of equal division of the area in question, especially when it is not only a terrestrial area beneath the sea which has to be divided but also a maritime expanse in the proper sense of the term, since in the latter case the result may be even more debatable.

202. Furthermore, a line which, on account of the refinements in the technical method used to determine its course, follows a complicated or even a zigzag path, made up of a succession of segments on different bearings, might, if need be, seem acceptable as a boundary dividing the sea-bed alone, i.e., a boundary to be observed in the exploration and exploitation of the resources located in given areas of the subsoil. But there would seem to be far less justification for adopting such a line as a limit appropriate to maritime fishery zones, i.e., areas whose exploitable resources are not, for the most part, resources attached to the soil. Exploitation of the sea's fishery resources calls for the existence of clear boundaries of a constant course, that do not compel those engaging in such activity to keep checking their position in relation to the complicated path of the line to be respected.

203. In sum, just like the criteria to be applied to the delimitation, the methods to be used for the purpose of putting those criteria into practice cannot fail to be influenced by the special characteristics and requirements pertaining to the delimitation by a single boundary of both the continental shelf and the superjacent water column which, far from being a genuine column of definite shape, is in reality a volume of liquid in movement, forming the habitat of mobile fauna. Undeniably, a degree of simplification is an elementary requisite to the drawing of any delimitation line in such an environment.

204. The correctness of the foregoing observations will appear even more evident as the Chamber now passes from abstract considerations to the concrete choice and practical application of the methods it deems appropriate for use in the case referred to it for judgment, thereby effectively implementing the equitable criteria by which it has resolved to be guided.

205. Regarding the choice and use of methods, one general observation must be made. The delimitation line to be drawn in a given area will depend upon the coastal configuration. But the configuration of the Gulf of Maine coastline, on which the delimitation to be effected between the maritime and submarine zones of the two countries depends throughout its

length, is such as to exclude any possibility of the boundary's being formed by a basically unidirectional line, either over the whole distance between the point of departure and the terminal triangle or even over the sector between the point of departure and the closing line of the Gulf.

206. The Chamber has already considered this aspect in Section VI, paragraphs 188-189, in commenting on the delimitation line proposed by Canada. It then expressed its disagreement precisely in relation to the fact that the Party in question had proposed a delimitation that failed to take account of the fact that a change in the geographical perspective of the Gulf is to be noted at a certain point. Given the importance of this aspect, the Chamber considers that it will here be apposite, by way of reminder, to repeat its observation that it is only in the northeastern sector of the Gulf that the prevailing relationship of the coasts of the United States and Canada is that of lateral adjacency as between part of the coast of Maine and part of the Nova Scotian coast. In the sector closest to the closing line, the prevailing relationship is, on the contrary, one of oppositeness as between the facing stretches of the Nova Scotian and Massachusetts coasts. Accordingly, in the first sector, geography itself demands that, whatever the practical method selected, the boundary should be a lateral delimitation line. In the second, it is once again geography which prescribes that the delimitation line should rather be a median line (whether strict or corrected remains to be determined) for delimitation as between opposite coasts, and it is moreover geography yet again which requires that this line, given the almost perfect parallelism of the two facing coasts involved, should also follow a direction practically parallel to theirs.

207. In the Chamber's view it is therefore obvious that, between point A and the line from Nantucket to Cape Sable, considered as the closing line of the Gulf, the delimitation line cannot be unidirectional. A line of that nature would inevitably have the effect of neglecting either the coast of Massachusetts or that part of the Nova Scotian coast which abuts upon the Gulf. Either way, this would be unacceptable. In the view of the Chamber, the conclusion imposed by geography is, therefore, that the part of the delimitation line which is to be drawn within the limits of the Gulf of Maine proper must be a line with two segments, meeting at a pivotal point the most appropriate location of which remains to be determined.

208. It is therefore on the basis of this conclusion that the Chamber will now apply itself to successively determining the two segments of that part of the line which will run between point A and the closing line of the Gulf. It will then go on to determine the third segment, which will remain to be drawn between that line and the terminal triangle.

209. The first of the two segments is, then, the one belonging to the innermost sector of the Gulf, the sector closest to the international boundary terminus. As regards this sector, the Chamber is convinced that it constitutes the most appropriate location for effecting as far as possible – since there is no special circumstance standing in the way – an equal

divison of the area of overlapping created by the lateral superimposition of the maritime projections of the coasts of the two States.

210. As it indicated in its comment on the line proposed by Canada, the Chamber has objections as to the advisability – or even the possibility – of making use, were it only in this sector, of the technical method whereby a lateral equidistance line, as defined by geometry and by the terms of paragraph 2 of Article 6 of the 1958 Convention on the Continental Shelf, would be drawn between the two adjacent coasts, and it has two grounds for these objections. In the first place, the Chamber must point out that a line drawn in accordance with the indications given by that provision ("equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured") might well epitomize the inherent defects of a certain manner of interpreting and applying the method here considered, as stressed in paragraph 201 above ; inasmuch as the likely end-result would be the adoption of a line all of whose basepoints would be located on a handful of isolated rocks, some very distant from the coast, or on a few low-tide elevations : these are the very type of minor geographical features which, as the Court and the Chamber have emphasized, should be discounted if it is desired that a delimitation line should result so far as feasible in an equal division of the areas in which the respective maritime projections of the two countries' coasts overlap.

211. In the second place – and here is the main reason for the Chamber's objections – the determination in the sector envisaged of the course of a lateral equidistance line, from whatever basepoints established, would encounter the difficulty of the persistent uncertainty as to sovereignty over Machias Seal Island and the Parties' choice of point A as the obligatory point of departure for the delimitation line. Point A was taken into consideration for the purposes of the Special Agreement only as the point where the lines then representing in graphical terms the Parties' respective claims happened to intersect. Hence it is not, as it should be in order to constitute an equidistant point, derived from two basepoints of which one is in the unchallenged possession of the United States and the other in that of Canada. And it is equally certain that point A is not a point that can be located on the path of any equidistance line traced by the Chamber or constitute the starting-point of any such line.

212. The Chamber is therefore of the opinion that, on these grounds, and the better, moreover, to ensure the effective implementation of the criterion by which it has every reason to be guided, it is necessary to renounce the idea of employing the technical method of equidistance. It considers that preference must be given to a method which, while inspired by the same considerations, avoids the difficulties of application pointed out above and is at the same time more suited to the production of the desired result. The essential premise of the operation, as the Chamber sees it, is to take note of the fact that the point of departure of the delimitation

line to be drawn, and hence of its first segment, must be point A and no other point, whatever its justification. That understood, the Chamber considers that the practical method to be applied must be a geometrical one based on respect for the geographical situation of the coasts between which the delimitation is to be effected, and at the same time suitable for producing a result satisfying the repeatedly mentioned criterion for the division of disputed areas.

213. Accordingly, to put the above requirements into practice, one may justifiably draw from point A two lines respectively perpendicular to the two basic coastal lines here to be considered, namely the line from Cape Elizabeth to the international boundary terminus and the line from that latter point to Cape Sable. These perpendiculars form, at point A, on one side an acute angle of about 82° and on the other a reflex angle of about 278°. It is the bisector of this second angle which the Chamber considers that it should adopt for the course of the first segment of the delimitation line. The Chamber believes that this practical method combines the advantages of simplicity and clarity with that of producing, in the instant case, a result which is probably as close as possible to an equal division of the first area to be delimited. It also believes that, in relation to the sector under consideration, the application of this equitable criterion is not open to any serious objections.

214. The Chamber has thus fixed the direction of the first of the two segments of the delimitation line to be drawn within the Gulf of Maine, and has done so from the starting-point given by the Parties. As for this segment's finishing point, this will be automatically determined by the intersection of the line carrying it with the line which is to contain the next segment. Accordingly the Chamber will now turn its attention to the establishment of this second segment, which, though it may be the shortest, will certainly be the central and most decisive segment for the whole of the delimitation line.

215. For the purpose of this operation, the Chamber considers, on account of the considerations already set forth, that it has first to make its choice of an appropriate practical method for use in provisionally establishing a basic delimitation, and that it must then ascertain what corrections to it are rendered indispensable by the special circumstances of the case. A two-stage operation is therefore entailed.

216. The first stage involves the choice and concrete utilization of the practical method to be applied for the above-mentioned purposes. In that connection, the Chamber has found repeated occasion to express its conviction that the choice of method to be used is essentially dependent upon geography. In this context, it need only recall the reiterated emphasis it has laid on the necessity of according full weight to the relationship now confronting the Chamber – a distinctly different one from that which existed between part of the coast of Nova Scotia and the coast of Maine – namely the relationship between the coasts abutting on the Gulf of Maine, of Massachusetts on the one hand and of Nova Scotia on the other. More

specifically, the Chamber would once again stress the quasi-parallelism between the line which, on the Massachusetts coast, links the promontory of Cape Ann to the elbow of Cape Cod and the line which, on the coast of Nova Scotia, joins up Brier Island and Cape Sable. To use once more the terminology to be found in conventions and case law, there can be no doubt, in the Chamber's opinion, that, in the locations indicated, the coasts of the two States are opposite coasts. Here they do not possess that relationship of lateral adjacency which underlay the determination of the first segment of the delimitation line but face each other in confrontation. In such a geographical situation, the application of any method of geometrical origin, no matter which, including that propounded in paragraph 1 of Article 6 of the 1958 Convention, can in practice only result in the drawing of a median delimitation line. In this specific case, such a line can only be one approximately parallel to the approximately parallel lines of the two opposite coasts.

217. The second stage calls perhaps for more thorough examination. To adopt the actual median line as final without more ado would be simple and might at first sight appear very plausible in the light of the equitable criterion, so abundantly endorsed by the Chamber, of the equal division – so far as feasible – of areas where the maritime projections of the coasts of the two States overlap. Indeed it would be difficult to imagine a better opportunity for applying this criterion than that offered by the existence of two opposite and practically parallel coasts, midway between which it is proposed to draw a median line. However, this would be to cling to a very superficial view of the matter. A solution of that kind would be absolutely legitimate if the international boundary between the United States and Canada ended in the very middle of the coast at the back of the Gulf, in Penobscot Bay for example, when the starting-point of the line would accordingly have been situated offshore from that bay and practically opposite the midpoint of the distance between the coasts of Massachusetts and Nova Scotia. It could then have been said that the prolongation of the median line between those coasts to the point where it met the coast at the back of the Gulf definitively represented the perfect delimitation line between the respective maritime areas of the two countries in the Gulf.

218. However, it is a far cry from this hypothesis to geographical reality. The back of the Gulf is entirely occupied by the continuous coast of Maine, i.e., a component state of the United States, and the terminal point of the international boundary with Canada is situated much farther to the north-east, in the Grand Manan Channel, at a corner of the rectangle which geometrically represents the shape of the Gulf proper. That being so, it is in the Chamber's view impossible to disregard the circumstance, which is of undeniable importance in the present case, that there is a difference in length between the respective coastlines of the two neighbouring States which border on the delimitation area. Not to recognize this fact would be a denial of the obvious. The Chamber therefore reaffirms the necessity of applying to the median line as initially drawn a correction which, though

limited, will pay due heed to the actual situation. In Section VI, paragraph 157, the Chamber has recognized in principle the equitable character of the criterion whereby appropriate consequences may be deduced from any inequalities in the lengths of the two States' respective coastlines abutting on the delimitation area. As the Chamber has expressly emphasized, it in no way intends to make an autonomous criterion or method of delimitation out of the concept of "proportionality", even if it be limited to the aspect of lengths of coastline. However, this does not preclude the justified use of an auxiliary criterion serving only to meet the need to correct appropriately, on the basis of the inequalities noted, the untoward consequences of applying a different main criterion.

219. The auxiliary criterion in question is, moreover, not the only one that could equitably be employed for that purpose. The United States has endeavoured particularly to secure acceptance of its contention that it is necessary, in the present instance, to reject the applicability of any criterion or method likely – as in the case of equidistance, in particular – to have the effect of cutting off a given coast or part of a coast from the seaward projection to which it is said to be entitled. The Chamber is able to concur only in some measure with the argument of the United States. It cannot so concur when the United States seeks to draw a parallel between the detrimental effects upon its interests that would in its view be produced by any application of the equidistance method in the present case owing to the "concavity" of the coast of the United States, and those that such an application would have produced for the Federal Republic of Germany on account of the concavity of the German coast, if the Court in 1969 had not adopted another solution. In fact, the Chamber considers that there are appreciable differences between the two situations. Be that as it may, however, in the view of the Chamber, the facts of the present case must be considered in themselves.

220. That said, the Chamber cannot endorse Canada's refusal to acknowledge that there is any substance in the concern to which the United States has given expression. Even a division by median line – which as such would be more acceptable than a division by lateral equidistance line where such a line is not called for – might produce an unreasonable effect if uncorrected, in that it would attribute to Canada, simply because the coast of Nova Scotia abuts upon the Gulf, precisely the same overall maritime projection in the delimitation area as that country would obtain if the entire eastern side of the Maine coast belonged to Canada instead of the United States. Here the Chamber, in noting this fact, does not intend to draw from it any direct conclusions, for it naturally does not propose to double, on the basis of a new criterion, the correction which it considers that it has already to make to the median line on account of the difference noted in the respective lengths of the coastlines of the two countries. The point in question does however serve to strengthen its conviction of the need to make that correction.

221. To return to this specific task of correction, the Chamber notes that, according to the technical information at its disposal, the total length

of the United States coastline in the Gulf, as measured along the coastal fronts from the elbow of Cape Cod to Cape Ann, from Cape Ann to Cape Elizabeth and from the latter to the international boundary terminus, is approximately 284 nautical miles. The overall length of the Canadian coastline, as similarly calculated along the coastal fronts from the terminal point of the international boundary to the point on the New Brunswick coast off which there cease to be any waters in the bay more distant than 12 miles from a low-water line (45° 16′ 31″ N and 65° 41′ 01″ W), then from that point across to the corresponding point on the Nova Scotian coast (44° 53′ 49″ N and 65° 22′ 47″ W), thence to Brier Island, and from there to Cape Sable, is approximately 206 nautical miles. In this respect, the Chamber wishes to emphasize that the fact that the two coasts opposite each other on the Bay of Fundy are both Canadian is not a reason to disregard the fact that the Bay is part of the Gulf of Maine, nor a reason to take only one of these coasts into account for the purpose of calculating the length of the Canadian coasts in the delimitation area. There is no justification for the idea that if a fairly substantial bay opening on to a broader gulf is to be regarded as a part of it, its shores must not all belong to the same State. The Chamber would also recall that in the 1982 Judgment in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya),* the Court was not deterred from including in its calculation of the length of the coasts of Tunisia in the delimitation area the whole of the coastal fronts of Tunisia on that area, including those of the Gulf of Gabes, by the fact that the coasts of the Gulf are wholly Tunisian.

222. The ratio between the coastal fronts of the United States and Canada on the Gulf of Maine as defined in the previous paragraph, is thus 1.38 to 1. In the view of the Chamber, this ratio should be reflected in the location of the second segment of the delimitation line. For this purpose, the Chamber considers that the appropriate method should be to apply the ratio selected to a line drawn across the Gulf where the coasts of Nova Scotia and Massachusetts are nearest to each other, i.e., between a point near the northeastern tip of Cape Cod, at 42° 00′ 31″ N, 70° 01′ 36″ W, and Chebogue Point, Nova Scotia (43° 43′ 57″ N, 66° 07′ 18″ W). In the view of the Chamber it would then be proper to shift the median line drawn initially between the opposite and quasi-parallel lines mentioned in paragraph 216 above, which join, on the Massachusetts coast, the elbow of Cape Cod to Cape Ann and, on the coast of Nova Scotia, Cape Sable to Brier Island, in such a way as to reflect this ratio along the line Cape Cod-Chebogue Point. Here, however, the Chamber has employed the conditional tense because there still remains one aspect which, though minor, might have some influence on the calculations. This is the presence off Nova Scotia of Seal Island and certain islets in its vicinity. The Chamber considers that Seal Island (together with its smaller neighbour, Mud Island), by reason both of its dimensions and, more particularly, of its geographical position, cannot be disregarded for the present purpose.

According to the information available to the Chamber it is some two-and-a-half miles long, rises to a height of some 50 feet above sea level, and is inhabited all the year round. It is still more pertinent to observe that as a result of its situation off Cape Sable, only some nine miles inside the closing line of the Gulf, the island occupies a commanding position in the entry to the Gulf. The Chamber however considers that it would be excessive to treat the coastline of Nova Scotia as transferred south-westwards by the whole of the distance between Seal Island and that coast, and therefore thinks it appropriate to give the island half effect, so that, as explained in the Report of the technical expert, the ratio to be applied for the purposes of determining the location of the corrected median line will be approximately 1.32 to 1 in place of 1.38 to 1. Since it is only a question of adjusting the proportion by reference to which the corrected median line is to be located, the result of the effect to be given to the island is a small transverse displacement of that line, not an angular displacement ; and its practical impact therefore is limited.

223. The central segment of the delimitation line will thus correspond, over its entire length, with the corrected median line as so established. It will begin where this line intersects, within the Gulf, the bisector drawn from point A and constituting the first segment, and end on reaching the oft-mentioned closing line of the Gulf. It will be noted that the meeting-point of the first and second segments of the delimitation line, i.e., the pivotal point where this line changes direction, is located about as far into the Gulf as Chebogue Point, a feature of the Nova Scotian coast which marks the transition from the part of this coast in an adjacency relationship with the coast of Maine to the part facing the Massachusetts coast in a relationship of oppositeness.

224. There now remains to be determined the course of the third segment of the delimitation line, i.e., the longest portion of its entire course. This is the segment concerning that part of the delimitation area which lies outside and over against the Gulf of Maine. Nevertheless, it appears beyond question that, in principle, the determination of the path of this segment must depend upon that of the two previous segments of the line, those segments within the Gulf which have just been described and whose path so obviously depended on the orientation of those coasts of the Parties that abut upon the waters of the Gulf. In fact, the portion of the line now to be determined will inevitably, throughout its length, be situated in the open ocean. From the geographical point of view, there is no point of reference, outside the actual shores of the Gulf, that can serve as a basis for carrying out the final operation required. That being so, it appears obvious that the only kind of practical method which can be considered for this purpose is, once again, a geometrical method. Within the range of such

methods, the most appropriate is that recommended above all by its simplicity, namely in this instance the drawing of a perpendicular to the closing line of the Gulf.

225. Indeed, a line on an azimuth thus determined offers a number of advantages in the present case. The direction of the closing line of the Gulf, with which that line would form a right angle, corresponds generally to the direction of the coastline at the back of the Gulf, and it will be recalled that the United States had proposed, as a basis of departure for the second delimitation line it advanced, a perpendicular to the direction of that coast. As for Canada, attention may be drawn to the fact that the strict equidistance line for which it originally contended, before falling back on the proposal of a new corrected equidistance line using Cape Cod Canal as a basepoint, would necessarily have been eventually governed by the two most advanced basepoints consisting of the southeastern tip of Nantucket Island, on the one hand, and Cape Sable on the other. The final segment of the line would therefore have exactly coincided with a perpendicular to the closing line of the Gulf. More generally, it is noteworthy that the Deputy-Agent of Canada stated at the hearing of 4 April 1984 (morning) :

> "The line in the outer area is roughly perpendicular to the closing line of the Gulf, to the coasts of Maine and New Brunswick at the back of the Gulf, and to the average general direction of the Atlantic coasts of Nova Scotia and Massachusetts and Rhode Island on either side of the Gulf."

The orientation of the final segment of the line proposed by the Chamber is therefore practically the same as the orientation given by the two Parties to the final portion of the lines they respectively envisaged. Hence the Chamber can see no reason for adopting a different orientation.

226. Such being the Chamber's choice, the essential question remains to be resolved, namely that of determining the precise point on the closing line of the Gulf from which the perpendicular to that line should be drawn seawards. However, if it is considered necessary to remain guided by geography, all the considerations already set forth in regard to the determination of the final segment of the line militate in favour of having this new choice coincide with the very point where the corrected median line encounters the closing line of the Gulf. Indeed the Chamber has borne constantly in mind the problem of determining the final segment of the delimitation line when applying itself so meticulously to the task of establishing the previous segments. It would be unthinkable that, in that part of the delimitation area which lies outside and over against the Gulf, the dividing line should not follow or continue the line drawn within the Gulf by reference to the particular characteristics of its coasts. If one were to seek for a typical illustration of what is meant by the adage "the land dominates the sea", it is here that it would be found.

227. Starting from the point indicated in the previous paragraph, the envisaged segment of the delimitation line crosses Georges Bank between points on the 100-fathoms depth line with the following co-ordinates :

42° 11'.8 N	67° 11'.0 W
41° 10'.1 N	66° 17'.9 W

The Chamber will return in Section VIII below (paragraphs 238 ff.) to the consequences of this line for the division of the fishing and mineral resources of the Bank.

228. As for the *terminus ad quem* of this final segment of the delimitation line, a point which has to be situated within the triangle defined by the Special Agreement between the Parties, the decisive criterion, in the Chamber's view, should be recognition of the fact that the delimitation to be drawn must equitably divide the areas in which the maritime projections of the two neighbouring countries' coasts overlap. It will therefore coincide with the last point the perpendicular reaches within the overlapping of the respective 200-mile zones claimed by the two States and established from appropriate basepoints on their coastlines.

229. In conclusion, taking point A as a fixed point and assigning letter B to the meeting-point between the first two segments as above defined, letter C to the meeting-point between the second and third segments on the closing line of the Gulf, and letter D to the point where the first segment reaches, to seaward, the last place on its path where the claims of the two Parties overlap, the delimitation line fixed by the Chamber between the maritime jurisdictions of Canada and the United States will be the line successively connecting points A, B, C and D.

VIII

230. The fundamental rule of general international law governing maritime delimitations, the rule which provided the Chamber with its starting-point for the reasoning so far followed, requires that the delimitation line be established while applying equitable criteria to that operation, with a view to reaching an equitable result. It is precisely by the adoption of a basic criterion whose equitable character is generally admitted and has been sanctioned by the authority of the Court, and by also resorting, where necessity arose, to auxiliary criteria which are also equitable, and, finally, by putting those criteria into practice through the methods judged most appropriate to that end, that the Chamber has succeeded in drawing the delimitation line requested of it by the Parties. Its last remaining task before formulating its final decision will be to ascertain whether the result thus arrived at may be considered as intrinsically equitable, in the light of

all the circumstances which may be taken into account for the purposes of that decision.

231. In fact, such verification is not absolutely necessary where the first two segments of the line are concerned. Within the Gulf, i.e., landward of its closing line, it would scarcely be possible to assess the equitable character of the delimitation there carried out on the basis of any other than the dominant parameters provided by the physical and political geography of the area. And it is precisely those parameters which served the Chamber as a guide in determining the parts of the line which are to take effect in this portion of the delimitation area. Moreover, attention may be drawn to the fact that the Parties did not make any special reference to the fishing resources of this portion of the delimitation area when pointing out the general importance of those resources for their economies ; neither did the Parties refer to any explorations carried out in this sector with a view to the discovery and exploitation of petroleum resources.

232. The question may take on a different complexion, however, in regard to the third segment of the line, whose effect will be felt in that part of the delimitation area which lies outside and far from the shores of the Gulf and which, not so long ago, was part of the high seas. For present purposes, it must be borne in mind that this final segment of the line is the one of greatest interest to the Parties, on account of the presence of Georges Bank. This Bank is the real subject of the dispute between the United States and Canada in the present case, the principal stake in the proceedings, from the viewpoint of the potential resources of the subsoil and also, in particular, that of fisheries that are of major economic importance. Some enquiry whether, in addition to the factors provided by the geography of the Gulf itself, there are no others that should be taken into account, is therefore an understandable step. It might well appear that other circumstances ought properly to be taken into consideration in assessing the equitable character of the result produced by this portion of the delimitation line, which is destined to divide the riches of the waters and shelf of this Bank between the two neighbouring countries. These other circumstances may be summed up by what the Parties have presented as the data provided by human and economic geography, and they are thus circumstances which, though in the Chamber's opinion ineligible for consideration as criteria to be applied in the delimitation process itself, may – as indicated in Section II, paragraph 59, above – be relevant to assessment of the equitable character of a delimitation first established on the basis of criteria borrowed from physical and political geography.

233. In the eyes of the United States, the main consideration here is the historical presence of man in the disputed areas. It believes the decisive factor here to be the activities pursued by the United States and its nationals since the country's independence and even before, activities which they claim to have been alone in pursuing over the greater part of that long period. This reasoning is simple and somewhat akin to the

invocation of historic rights, though that expression has not been used. This continuous human presence took the form especially of fishing, and of the conservation and management of fisheries, but it also included other maritime activities concerning navigational assistance, rescue, research, defence, etc. All these activities, said greatly to exceed in duration and scale the more recent and limited activities of Canada and its nationals, must, according to the United States, be regarded as a major relevant circumstance for the purpose of reaching an equitable solution to the delimitation problem.

234. On the other hand it was Canada which, in the course of the proceedings, laid the greater emphasis on what it considered to be the decisive importance of socio-economic aspects. However, it was not a question, in its view, of invoking any historic rights such as might compete with those rights on which the United States was in effect relying. The only period which in Canada's eyes should be regarded as relevant was the recent one leading up to, or even continuing beyond, the time when both States finally decided to go ahead with the institution of exclusive fishery zones. Canada was of the view that attention should be especially concentrated on two aspects : the distribution of fish stocks in the various parts of the area, and the fishing practices respectively established and followed by the two Parties. As already noted in Section IV, paragraph 110, it sought to erect into an equitable principle, of determining force for the purposes of delimitation, the idea that any single maritime boundary should ensure the maintenance of the existing fishing patterns that are in its view vital to the coastal communities of the region in question. In other words, the Chamber, in carrying out the delimitation, should aim to avoid in any way harming the economic and social development of the centres of population in Nova Scotia, bearing in mind that that development had been possible thanks to the contribution made by the product of the Canadian fisheries established on the Georges Bank, especially in the last 15 years.

235. The Chamber cannot adopt these positions of the Parties. Concerning that of the United States, it can only confirm its decision not to ascribe any decisive weight, for the purposes of the delimitation it is charged to carry out, to the antiquity or continuity of fishing activities carried on in the past within that part of the delimitation area which lies outside the closing line of the Gulf. Until very recently, as the Chamber has recalled, these expanses were part of the high seas and as such freely open to the fishermen not only of the United States and Canada but also of other countries, and they were indeed fished by very many nationals of the latter. The Chamber of course readily allows that, during that period of free competition, the United States, as the coastal State, may have been able at certain places and times – no matter for how long – to achieve an actual predominance for its fisheries. But after the coastal States had set up exclusive 200-mile fishery zones, the situation radically altered. Third States and their nationals found themselves deprived of any right of access

to the sea areas within those zones and of any position of advantage they might have been able to achieve within them. As for the United States, any mere factual predominance which it had been able to secure in the area was transformed into a situation of legal monopoly to the extent that the localities in question became legally part of its own exclusive fishery zone. Conversely, to the extent that they had become part of the exclusive fishery zone of the neighbouring State, no reliance could any longer be placed on that predominance. Clearly, whatever preferential situation the United States may previously have enjoyed, this cannot constitute in itself a valid ground for its now claiming the incorporation into its own exclusive fishery zone of any area which, in law, has become part of Canada's.

236. In any case, the purpose of the delimitation cannot conceivably be held to lie in the maintenance of such a position, or even of its restoration in the event of its having weakened in the course of time. To a certain extent, moreover, the same considerations hold good as regards the position of Canada, even if it appears undeniable that, from some aspects, the development of this country's fisheries is more notably a phenomenon of the present day and has been having an obvious socio-economic impact on the communities inhabiting certain counties of Nova Scotia. But the fact remains that Canada, like the United States, has preferred the policy of reserving for itself an "exclusive" fishery zone to that of free-for-all competition in the exploitation of an open sea. To take such a step may give rise to drawbacks alongside the unquestionable advantages. However, there is no reason to consider *de jure* that the delimitation which the Chamber has now to carry out within the areas of overlapping apparent as between the respective exclusive fishery zones must result in each Party's enjoying an access to the regional fishing resources which will be equal to the access it previously enjoyed *de facto*. Neither is there any reason why the delimitation should provide a Party in certain places with a compensation equivalent to what it loses elsewhere.

237. It is, therefore, in the Chamber's view, evident that the respective scale of activities connected with fishing – or navigation, defence or, for that matter, petroleum exploration and exploitation – cannot be taken into account as a relevant circumstance or, if the term is preferred, as an equitable criterion to be applied in determining the delimitation line. What the Chamber would regard as a legitimate scruple lies rather in concern lest the overall result, even though achieved through the application of equitable criteria and the use of appropriate methods for giving them concrete effect, should unexpectedly be revealed as radically inequitable, that is to say, as likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned.

238. Fortunately, there is no reason to fear that any such danger will arise in the present case on account of the Chamber's choice of delimitation line or, more especially, the course of its third and final segment. This crosses the waters covering Georges Bank at such a distance from that feature's extremity in the direction of the Northeast Channel as to leave on the Canadian side the greater part of the "Northern Edge and Peak" of the Bank, where the greatest concentrations of the sedentary species – in particular scallop – exploited by Canadian fishermen are to be found. In fact, according to the information furnished by Canada, in the period 1972-1976, i.e., prior to the two neighbouring countries' institution of their exclusive fishery zones, Canadian fishermen were responsible for the major part of scallop landings ; the Canadian catches were taken mainly from the "Northern Edge and Peak" of Georges Bank, while those of the United States came mainly from the vicinity of the Great South Channel. Thus Canada may still be sure of very nearly all the major locations of its catches ; and it will be remembered that it is precisely the product of these fisheries that Canada regards as important for the economy of Nova Scotia and its ports. Conversely, the localities in which the same sedentary species have been traditionally fished by the United States, which are clustered mainly in the vicinity of the Great South Channel, will lie entirely on the United States side of the dividing line. As regards lobster-fishing, the Canadian fisheries are mainly concentrated in Corsair Canyon, on the northeastern side of the line, whereas those of the United States are concentrated rather on its southwestern side. In the case of other fisheries, more particularly those concerning free-swimming fish, the calculation is not so simple, and is necessarily less precise. By and large, however, an examination of the statistics, which are sometimes difficult to compare, leads the Chamber to the conclusion that nothing less than a decision which would have assigned the whole of Georges Bank to one of the Parties might possibly have entailed serious economic repercussions for the other.

239. As regards the other major aspect to be viewed from the same angle, it may be pointed out that the delimitation line drawn by the Chamber so divides the main areas in which the subsoil is being explored for its mineral resources as to leave on either side broad expanses in which prospecting has been undertaken in the past and may be resumed to the extent desired by the Parties.

240. Moreover the Chamber considers that there is no need to overestimate any difficulties that may arise from the division of Georges Bank, with the resources of its waters and subsoil, resulting from the delimitation line which it has drawn in accordance with law and with the equitable criteria whose application is called for by the law itself. It is unable to discern any inevitable source of insurmountable disputes in the fact that its decision has not endorsed the single management of this Bank's fisheries, and the assignment to one country of the task of conserving them, which the United States would have preferred to see instituted. Nor can it imagine that incidents due to navigational errors or possible infringements

occurring after the establishment of the delimitation line could not be settled directly and adequately. Canada and the United States have to their credit too long a tradition of friendly and fruitful co-operation in maritime matters, as in so many other domains, for there to be any need to fear an interruption of that co-operation, which clearly now becomes all the more necessary, not only in the field of fisheries but also in that of hydrocarbon resources. By once more joining in a common endeavour, the Parties will surely be able to surmont any difficulties and take the right steps to ensure the positive development of their activities in the important domains concerned.

241. In short, the Chamber sees in the above findings confirmation of its conviction that in the present case there are absolutely no conditions of an exceptional kind which might justify any correction of the delimitation line it has drawn. The Chamber may therefore confidently conclude that the delimitation effected in compliance with the governing principles and rules of law, applying equitable criteria and appropriate methods accordingly, has produced an equitable overall result.

* * *

242. In accordance with Article II, paragraph 2, of the Special Agreement, the course of the boundary is defined below, in the operative clause of the present Judgment, in terms of geodetic lines connecting geographic co-ordinates of points. Furthermore, as requested in that paragraph, the course of the boundary has been depicted, for illustrative purposes only, on copies of Canadian Hydrographic Service Chart No. 4003, and United States National Ocean Survey Chart No. 13006, which have been supplied by the Parties respectively [1]. An explanatory Report by the technical expert is annexed to the Judgment. In accordance with Article IV of the Special Agreement, the said geographic co-ordinates of points are rendered on the 1927 American Datum.

* * *

[1] Copies of these charts, reproduced in black and white and reduced in size for ease of handling, will be found in a pocket at the back of the fascicle containing this Judgment, or inside the back cover of the volume of *I.C.J. Reports 1984*, as the case may be. For clarity, the delimitation line is reproduced on these copies as a red line. *(Note by the Registry.)*

243. For these reasons,

THE CHAMBER,

By four votes to one,

Decides

That the course of the single maritime boundary that divides the continental shelf and the exclusive fisheries zones of Canada and the United States of America in the area referred to in the Special Agreement concluded by those two States on 29 March 1979 shall be defined by geodetic lines connecting the points with the following co-ordinates :

	Latitude North	*Longitude West*
A	44° 11′ 12″	67° 16′ 46″
B	42° 53′ 14″	67° 44′ 35″
C	42° 31′ 08″	67° 28′ 05″
D	40° 27′ 05″	65° 41′ 59″

IN FAVOUR : *President* Ago ; *Judges* Mosler, Schwebel ; Judge *ad hoc* Cohen ;

AGAINST : Judge Gros.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twelfth day of October one thousand nine hundred and eighty-four, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Canada and the Government of the United States of America respectively.

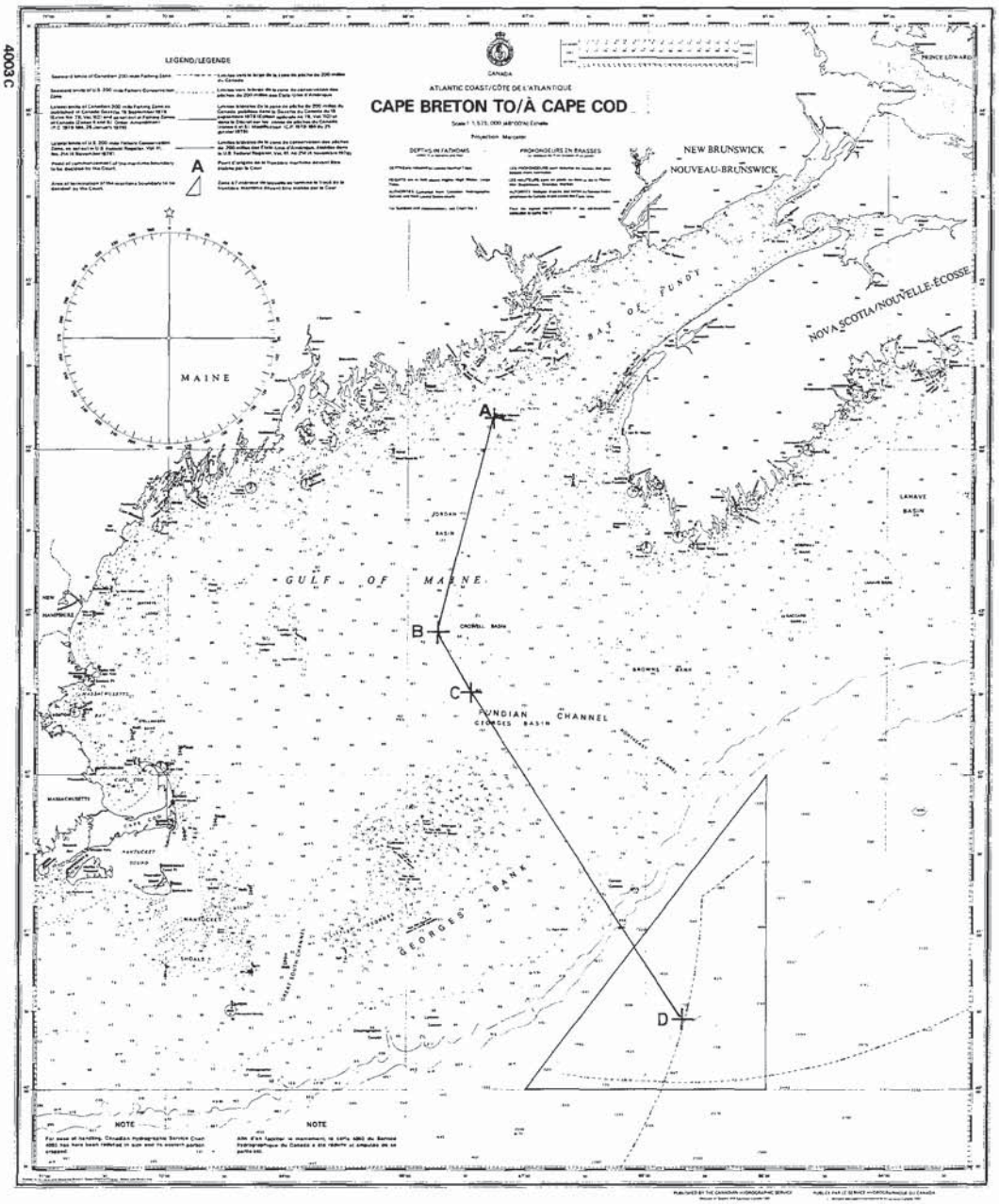
(Signed) Roberto AGO,
President of the Chamber.

(Signed) Santiago TORRES BERNÁRDEZ,
Registrar.

Judge SCHWEBEL appends a separate opinion to the Judgment of the Chamber.

Judge GROS appends a dissenting opinion to the Judgment of the Chamber.

(Initialled) R.A.
(Initialled) S.T.B.



DELIMITATION LINE DRAWN BY THE CHAMBER

Delimitation of the Maritime Boundary in the Gulf of Maine Area

TECHNICAL REPORT

PRESENTED TO THE CHAMBER OF THE COURT BY COMMANDER PETER BRYAN BEAZLEY, O.B.E., F.R.I.C.S., R.N. (RETD.), THE TECHNICAL EXPERT APPOINTED, PURSUANT TO ARTICLE II, PARAGRAPH 3, OF THE SPECIAL AGREEMENT, BY THE ORDER OF THE CHAMBER DATED 30 MARCH 1984

1. To conform to Article II (2) and Article IV *(b)* of the Special Agreement, and to achieve consistency between the delimitation line and the method of its construction, all lines are taken to be geodetic lines.

2. For practical application of the methods described in the Judgment for determination of the first two segments of the line calculations have been made on the Universal Transverse Mercator grid using a Central Meridian of 68° West. The course of the closing line of the Gulf and the perpendicular to it have been determined using geodetic azimuths. Computations were based on the Clarke 1866 spheroid. The basepoints having been determined to a second of arc the final positions of the delimitation line have been defined in whole seconds of arc also.

3. *Positions of the various coastal points* were found to be as follows :

Name	*Latitude N*	*Longitude W*	*Chart*
SE tip of Nantucket Island	41° 15′ 04″	69° 58′ 01″	13241 US
LWL position for determining 200′ limit	41° 15′ 56″	69° 57′ 37″	13241 US
Cape Cod elbow	41° 38′ 35″	69° 57′ 15″	13248 US
Position on Cape Cod nearest to Chebogue Point	42° 00′ 31″	70° 01′ 36″	13246 US

Name	*Latitude N*	*Longitude W*	*Chart*
Cape Ann	42° 38′ 12″	70° 34′ 27″	13279 US
Cape Elizabeth	43° 33′ 41″	70° 12′ 02″	13290 US
International Boundary Terminus (TP15)	44° 46′ 35″.3	66° 54′ 11″.3	
North coast of Bay of Fundy	45° 16′ 31″	65° 41′ 01″	4010 Canadian
South coast of Bay of Fundy	44° 53′ 49″	65° 22′ 47″	4010 Canadian
Brier Island (Whipple Point)	44° 14′ 11″	66° 23′ 50″	4324 Canadian
Chebogue Point	43° 43′ 57″	66° 07′ 18″	4326 Canadian
Cape Sable	43° 23′ 22″	65° 37′ 23″	4216 Canadian
Seal Island (SW point)	43° 23′ 33″	66° 01′ 21″	4330 Canadian

4. All positions are on 1927 North American Datum. Corrections have been applied to positions from the Canadian charts as indicated in the Agent for Canada's letter to the Registrar dated 18 April 1984. The Annex lists the rectangular UTM co-ordinates of some of these positions.

5. The two positions in the Bay of Fundy were determined by plotting taking account of the fact that the most easterly point of a 12-mile limit (depending on the low-water lines of Quaco Ledge and the southern shore of the Bay) was found to be at 45° 04′ 21″ N, 65° 31′ 11″ W approximately.

6. *For calculation of the ratio of coastal lengths* the following true distances in nautical miles were determined :

Cape Cod Elbow to Cape Ann	65.7	
Cape Ann to Cape Elizabeth	57.9	
Cape Elizabeth to Boundary Terminus	160.0	
TOTAL United States coastline	*283.6*	(284)
Boundary terminus to N coast of Bay of Fundy	59.9	
N coast to S coast of Bay of Fundy	26.1	
S coast of Bay of Fundy to Whipple Point	59.0	
Whipple Point to Cape Sable	60.9	
TOTAL Canadian coastline	*205.9*	(206).

Therefore the ratio of coastline lengths United States : Canada is

1.38 : 1

7. *To determine the course of the bisector,* forming the first segment of the line, UTM grid bearings were determined :

Boundary terminus to Cape Elizabeth	243° 16′ 24″
Boundary terminus to Cape Sable	145° 09′ 30″.

Therefore the perpendiculars from A to these lines are, respectively,

333° 16′ 24″
055° 09′ 30″

and the course of the bisector lies along the grid bearing

194° 12′ 57″.

8. *To determine the direction of the median line,* which forms the basis of the second segment of the delimitation line, it is necessary to make allowance for a change of scale factor between the southeastern and northwestern ends of the two controlling lines. The grid bearings of the controlling lines are :

Cape Cod Elbow to Cape Ann	336° 36′ 32″.5
Cape Sable to Whipple Point	325° 07′ 14″.9.

9. A mid-point between Whipple Point and the Cape Ann to Cape Cod line will lie on a grid bearing from Whipple Point of

240° 51′ 53″.7

and will intersect the line at position

(1) 42° 32′ 29″.6 N 70° 30′ 49″.8 W.

The mid-point of this line after correcting for scale factor is

(2) 43° 24′ 27″.0 N 68° 29′ 03″.0 W.

10. Similarly a mid-point between Cape Cod Elbow and the Whipple Point to Cape Sable line lies on the reciprocal bearing which intersects at

(3) 43° 24′ 38″.4 N 65° 38′ 31″.7 W

and the corrected mid-point is

(4) 42° 32′ 50″.1 N 67° 49′ 42″.9 W

11. The grid bearing between these two corrected mid-points is the direction of the median line which is

150° 52′ 34″.3

12. *To determine the location of the second segment* of the line I understand my instructions from the Chamber to be to give half-effect to Seal Island when applying the ratio in which the line from Chebogue Point to the nearest point on Cape Cod (the location line) is to be divided. To effect this, Seal Island must be related to Chebogue Point and the location line rather than to the coast nearest to the island.

13. The true (geodetic) length of the location line was found to be

372 088 metres

and the grid bearing from Chebogue Point is

239° 04′ 36″.1.

A line parallel to the line from Cape Sable to Whipple Point (representing the coastal front of Nova Scotia) drawn from the southwestern point of Seal Island intersects the location line at a true distance of 14 234 metres from Chebogue Point. A position 7 117 metres along the location line from Chebogue Point would then represent a notional half-effect position for the island. Applying the ratio of 1.38:1 on the location line between Cape Cod and the half-effect position of the island divides the line at a position 153 349 metres from the half effect position, or

160 466 metres (grid distance 160 418 metres)

from Chebogue Point. This represents a division of the whole location line in the ratio 1.319:1 (1.32:1). The co-ordinates of this point are

(5) 43° 00′ 19″.8 N 67° 49′ 56″.7 W.

14. A line of grid bearing 150° 52′ 34″.3 from this point intersects the bisector from A at position

B 42° 53′ 14″ N 67° 44′ 35″ W

which is the first turning point on the line of delimitation. A line on the same grid bearing intercepts the geodetic line (geodesic) between Nantucket and Cape Sable at position

C 42° 31′ 08″(.35) N 67° 28′ 05″(.33) W

which is the second turning point on the line of delimitation.

15. The azimuth of the geodetic line between Nantucket and Cape Sable at position C is

N E
56° 39′ 49″
S W

so that the required perpendicular has an azimuth of

S 33° 20′ 11″ E.

The last place on the path of this perpendicular where the 200-mile zones claimed by the two Parties overlap is a point 200 nautical miles from the nearest point of the low-water line of the United States of America. The relevant point of the low-water line is given at paragraph 3 above, and the point of intersection between the perpendicular and a 200-nautical mile arc drawn from that point is position

D 40° 27′ 05″N 65° 41′ 59″W

which also lies within the area laid down in Article II of the Special Agreement.

16. The delimitation line is therefore defined by geodetic lines joining in succession the following positions the co-ordinates of which are given in 1927 North American Datum :

A	44° 11′ 12″ N	67° 16′ 46″ W
B	42° 53′ 14″ N	67° 44′ 35″ W
C	42° 31′ 08″ N	67° 28′ 05″ W
D	40° 27′ 05″ N	65° 41′ 59″ W.

This line crosses Georges Bank, as defined by the 100-fathom contour on Canadian chart 8005, at positions

42° 11′.8 N	67° 11′.0 W
and 41° 10′.1 N	66° 17′.9 W

but these positions do not form part of the definition of the delimitation line.

Done in one copy, in English, at The Hague, 3 October 1984.

(Signed) P. B. BEAZLEY.

ANNEX TO THE TECHNICAL REPORT

List of UTM rectangular co-ordinates of certain positions mentioned in the Report. Central Meridian 68° W ; Clarke's 1866 spheroid.

Position	*Easting*	*Northing*
Cape Cod Elbow	337 251.1	4 611 778.0
Position on Cape Cod nearest to Chebogue Point	332 170.6	4 652 505.7
Cape Ann	288 940.0	4 723 466.6
Cape Elizabeth	322 270.6	4 825 296.1
TP15	586 787.5	4 958 487.9
Whipple Point	627 994.2	4 899 161.2
Chebogue Point	651 274.2	4 843 661.5
Cape Sable	692 521.4	4 806 592.0
Seal Island	660 159.4	4 806 086.4
A	557 590.2	4 892 641.9
(1)	293 572.8	4 712 756.3
(2)	460 796.9	4 805 966.2
(3)	690 908.9	4 808 905.2
(4)	514 074.6	4 710 338.6
(5)	513 658.6	4 761 224.3
B	520 972.0	4 748 097.5
C	543 688.4	4 707 324.0

(position C is on the geodesic between Cape Sable and Nantucket about 7 metres from the grid line joining those points).