

INTERNATIONAL COURT OF JUSTICE

Canada, the United States of America

Delimitation of the Maritime Boundary in the Gulf of Maine Area*

The following information is made available to the press by the Registry of the International Court of Justice:

Today, 12 October 1984, the Chamber of the Court constituted in the case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America) delivered its Judgment.

The Chamber decides by four votes to one:

"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:

	<u>Latitude North</u>	<u>Longitude West</u>
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"."

(For the location of these points see Annex 2, Map 4.)

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The votes were cast as follows:

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

AGAINST: Judge Gros.

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* (This is the text of a communique No. 84/35 of 12 October 1984 from the Court.)

Analysis of the JudgmentI. The Special Agreement and the Chamber's Jurisdiction (paras. 1-27)

After recapitulating the various stages in the proceedings and setting out the formal submission of the Parties (paras. 1-13), the Chamber takes note of the provisions of the Special Agreement by which the case was brought before it. Under Article II, paragraph 1, of that Special Agreement, it was:

"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?"

(For the location of the starting-point and terminal area of the delimitation, see Ann. 2, Map No. 1.)

The Chamber notes that the Special Agreement imposes no limitation on its jurisdiction other than that resulting from the terms of this question, and that the rights of third States in the marine and submarine areas to which the case related could not in any way be affected by the delimitation. It also notes that, the case having been submitted by special agreement, no preliminary question of jurisdiction arose. The only initial problem that might theoretically arise is whether and to what extent the Chamber is obliged to adhere to the terms of the Special Agreement as regards the starting-point of the line to be drawn - called point A - and the triangular area within which that line is to terminate. Noting the reasons for the Parties' choice of the point and area in question, the Chamber sees a decisive consideration for not adopting any other starting-point or terminal area in the fact that, under international law, mutual agreement between States concerned is the preferred procedure for establishing a maritime delimitation; since Canada and the United States of America had by mutual agreement taken a step towards the solution of their dispute which must not be disregarded, the Chamber must, in performing the task conferred upon it, conform to the terms by which the Parties have defined it.

The Chamber notes that there are profound differences between the case before it and other delimitation cases previously brought before the Court in that (a) the Chamber is requested to draw the line of delimitation itself and not merely to undertake a task preliminary to the determination of a line, and (b) the delimitation requested does not relate exclusively to the continental shelf but to both the shelf and the exclusive fishing zone, the delimitation to be by a single boundary. With regard to (b), the Chamber is of the view that there is certainly no rule of international law, or any material impossibility, to prevent it from determining such a line.

that of the waters and their living resources, for both States proceeded to institute an exclusive 200-mile fishery zone off their coasts and adopted regulations specifying the limits of the zone and continental shelf they claimed. In its account of the negotiations which eventually led to the reference of the dispute to the Court, the Chamber notes that in 1976 the United States adopted a line limiting both the continental shelf and the fishing zones and the adoption by Canada of a first line in 1976 (Ann. 2, Map No. 2).

The Chamber takes note of the respective delimitation lines now proposed by each Party (Ann. 2, Map No. 3). The Canadian line, described like that of 1976 as an equidistance line, is one constructed almost entirely from the nearest points of the baselines from which the breadth of the territorial sea is measured. Those points happen to be exclusively islands, rocks or low-tide elevations, yet the basepoints on the Massachusetts coast which had initially been chosen for the 1976 line have been shifted westward so that the new line no longer takes account of the protrusion formed by Cape Cod and Nantucket Island and is accordingly displaced west. The line proposed by the United States is a perpendicular to the general direction of the coast from the starting-point agreed upon by the Parties, adjusted to avoid the splitting of fishing banks. It differs from the "Northeast Channel line" adopted in 1976 which, according to its authors, had been based upon the "equidistance/special circumstances" rule of Article 6 of the 1958 Geneva Convention. The Chamber notes that the two successive lines put forward by Canada were both drawn primarily with the continental shelf in mind, whereas the United States lines were both drawn up initially on the basis of different considerations though both treated the fishery régime as essential.

IV. The applicable principles and rules of international law (paras. 79-112)

After observing that the terms "principles and rules" really convey one and the same idea, the Chamber stresses that a distinction has to be made between such principles or rules and what, rather, are equitable criteria or practical methods for ensuring that a particular situation is dealt with in accordance with those principles and rules. Of its nature, customary international law can only provide a few basic legal principles serving as guidelines and cannot be expected also to specify the equitable criteria to be applied or the practical methods to be followed. The same may however not be true of international treaty law.

To determine the principles and rules of international law governing maritime delimitation, the Chamber begins by examining the Geneva Convention of 29 April 1958 on the Continental Shelf, which has been ratified by both the Parties to the case, who both also recognize that it is in force between them. In particular the Chamber examines Article 6, paragraphs 1 and 2, from which a principle of international law may be deduced to the effect that any delimitation of a continental shelf effected unilaterally by one State regardless of the views of the other State or States concerned is not opposable to those States. To this principle may conceivably be added a latent rule that any agreement or other, equivalent solution should involve the application of equitable criteria. The Chamber goes on to consider the bearing on the problem of various judicial decisions and to comment upon the work of the Third United Nations Conference on the Law of the Sea, noting that certain provisions concerning the continental shelf and the exclusive economic zone were, in the Convention of 1982, adopted without any objections and may be regarded as consonant at present with general international law on the question.

an application. Dealing first with a Canadian argument that the conduct of the United States had evinced a form of consent to the application of the equidistance method, especially in the Georges Bank sector, the Chamber finds that reliance on acquiescence or estoppel is not warranted in the circumstances and that the conduct of the Parties does not prove the existence of any such modus vivendi. As for the argument of the United States based on Canada's failure to react to the Truman Proclamation, that amounted to claiming that delimitation must be effected in accordance with equitable principles; consequently, the United States position on that point merely referred back to the "fundamental norm" acknowledged by both Parties. On the basis of that analysis, the Chamber concludes that the Parties, 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 certain methods for the establishment of the single maritime boundary, and that the Chamber is not so bound either.

Regarding possible criteria, the Chamber does not consider that it would be useful to undertake a more or less complete enumeration in the abstract of those that might be theoretically conceivable, or an evaluation of their greater or lesser degree of equity. It also notes, in regard to the practical methods, that none would intrinsically bring greater justice or be of greater practical usefulness than others, and that there must be willingness to adopt a combination of different methods whenever circumstances so require.

VI. The criteria and methods proposed by the Parties and the lines resulting from their application to the delimitation (paras. 164-189)

Once the dispute had taken on its present dual dimension (first the continental shelf and subsequently fisheries) both Parties took care to specify and publish their respective claims, proposing the application of very different criteria and the use of very different practical methods. Each had successively proposed two delimitation lines (Ann. 2, Maps Nos. 2 and 3).

The United States had first proposed, in 1976, a criterion attaching determinative value to the natural, especially ecological, factors of the area. Its line corresponded approximately to the line of the greatest depths, leaving German Bank to Canada and Georges Bank to the United States. The Chamber considers that this line, inspired as it was by the objective of distributing fishery resources in accordance with a "natural" criterion, was too biased towards one aspect (fisheries) to be considered as equitable in relation to the overall problem. In 1982 the United States proposed a second line with the general direction of the coast as its central idea, the criterion applied being that of the frontal projection of the primary coastal front. This application resulted in a perpendicular to the general direction of the coastline, adjusted however to take account of various relevant circumstances, in particular such ecological circumstances as the existence of fishing banks. The Chamber considers it almost an essential condition for the use of such a method that the boundary to be drawn should concern two countries whose territories lie successively along a more or less rectilinear coast, for a certain distance at least. But it would be difficult to imagine a case less conducive to the application of that method than the Gulf of Maine case. The circumstances would moreover entail so many adjustments that the character of the method would be completely distorted.

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United States and Canada is one of lateral adjacency. In the sector closest to the closing line, it is one of oppositeness. In the Chamber's view it is therefore obvious that, between point A and the line from Nantucket to Cape Sable, i.e. within the limits of the Gulf of Maine proper, the delimitation line must comprise two segments.

In the case of the first segment, the one closest to the international boundary terminus, there is no special circumstance to militate against the division into, as far as possible, equal parts of the overlapping created by the lateral superimposition of the maritime projections of the two States' coasts. Rejecting the employment of a lateral equidistance line on account of the disadvantages it is found to entail, the Chamber follows the method of drawing, from point A, two perpendiculars to the two basic coastal lines, namely the line from Cape Elizabeth to the international boundary terminus and the line running thence to Cape Sable. At point A, those two perpendiculars form an acute angle of 278° . It is the bisector of this angle which is prescribed for the first sector of the delimitation line (Ann. 2, Map No. 4).

In turning to the second segment, the Chamber proceeds by two stages. First, it decides the method to be employed in view of the quasi-parallelism between the coasts of Nova Scotia and Massachusetts. As these are opposite coasts, the application of a geometrical method can only result in the drawing of a median delimitation line approximately parallel to them. The Chamber finds, however, that, while a median line would be perfectly legitimate if the international boundary ended in the very middle of the coast at the back of the Gulf, in the actual circumstances where it is situated at the northeastern corner of the rectangle which geometrically represents the shape of the Gulf, the use of a median line would result in an unreasonable effect, in that it would give Canada the same overall maritime projection in the delimitation area as if the entire eastern part of the coast of Maine belonged to Canada instead of the United States. That being so, the Chamber finds a second stage necessary, in which it corrects the median line to take account of the undeniably important circumstance of the difference in length between the two States' coastlines abutting on the delimitation area. As the total length of the United States coastlines on the Gulf is approximately 284 nautical miles, and that of the Canadian coasts (including part of the coast of the Bay of Fundy) is approximately 206 nautical miles, the ratio of the coastlines is 1.38 to 1. However, a further correction is necessitated by the presence of Seal Island off Nova Scotia. The Chamber considers that it would be excessive to consider the coastline of Nova Scotia as displaced in a southwesterly direction by the entire distance between Seal Island and that coast, and therefore considers it appropriate to attribute half effect to the island. Taking that into account, the ratio to be applied to determine the position of the corrected median line on a line across the Gulf between the points where the coasts of Nova Scotia and Massachusetts are closest (i.e. a line from the tip of Cape Cod to Chebogue Point) becomes 1.32 to 1. The second segment of the delimitation will therefore correspond to the median line as thus corrected, from its intersection with the bisector drawn from point A (first segment) to the point where it reaches the closing line of the Gulf (Ann. 2, Map No. 4).

As for the third segment of the delimitation, relating to that part of the delimitation area lying outside the Gulf of Maine, this portion of the line is

situated...

For these reasons, the Chamber renders the decision couched in the following terms:

Operative provisions of the Chamber's Judgment

"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:

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

AGAINST: Judge Gros."

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(For the location of the co-ordinates given above, see Ann. 2, Map No. 4.)

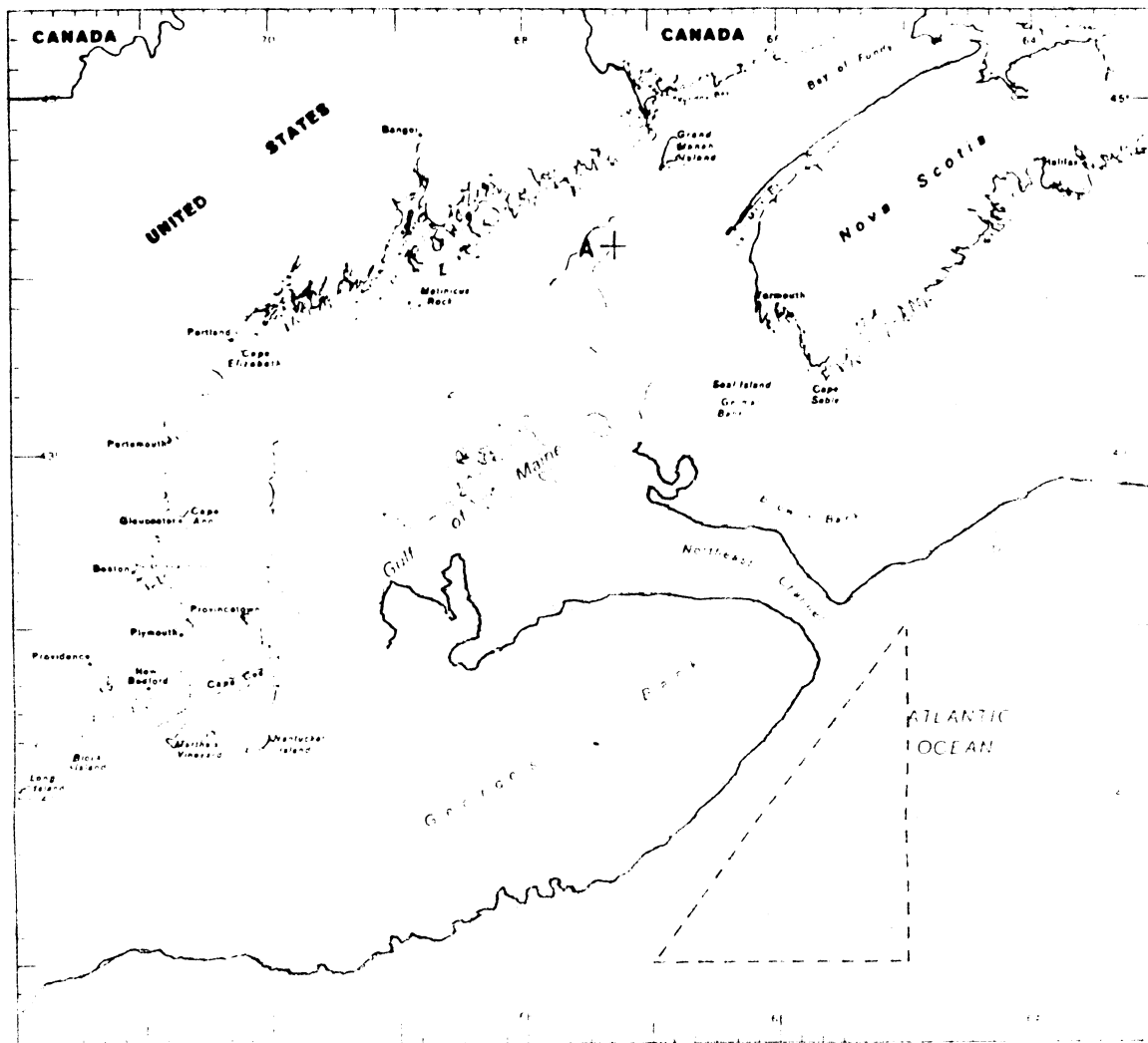
Summary of Opinions appended to the
Judgment of the Chamber

Separate Opinion by Judge Schwebel

Judge Schwebel voted for the Chamber's Judgment because he agreed with the essentials of its analysis and reasoning and found the resultant line of delimitation to be "not inequitable". In his view, the Chamber was right to exclude both the claims of Canada and of the United States, not with a view towards "splitting the difference" between them but because those claims were insufficiently grounded in law and equity. It was right - contrary to the United States position - to divide Georges Bank between the United States and Canada. However, Judge Schwebel maintained that the line of delimitation drawn by the Chamber was open to challenge.

The line was correctly based on dividing the areas of overlapping United States and Canadian jurisdiction equally, subject, however, to a critical adjustment designed to take account of the fact that the bulk of the Gulf of Maine is bordered by territory of the United States. In Judge Schwebel's view, the adjustment applied by the Chamber was inadequate, because it treated the lengths of the coasts of the Bay of Fundy up to the limit of Canadian territorial waters as part of the Gulf of Maine. In his opinion, only that portion of the Bay of Fundy which faces the Gulf of Maine should have been included in that calculation of proportionality. Had that been done, the delimitation line would have been shifted towards Nova Scotia so as to accord the United States a significantly larger zone. Nevertheless, Judge Schwebel acknowledged that the equitable considerations which led the Chamber and him to differing conclusions on this key issue were open to more than one interpretation.

Dissenting...



MAP No. 1

General map of the region, showing the starting-point for the delimitation line and the area for its termination.

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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.

