INTERNATIONAL COURT OF JUSTICE

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Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)

Judgment of the Chamber

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:

	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".”

(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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The...

The Chamber was composed as follows: President Ago, Judges Gros, Mosler, Schwebel, Judge ad hoc Cohen.

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Judge Schwebel appended a separate opinion and Judge Gros a dissenting opinion to the Judgment.

In these opinions the Judges concerned state and explain the positions they adopted in regard to certain points dealt with in the Judgment. A brief summary of these opinions may be found in Annex 1 hereto.

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The printed text of the Judgment and of the separate and dissenting opinions will become available in a few weeks' time. (Orders and enquiries should be addressed to the Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10; the Sales Section, United Nations, New York, N.Y. 10017; or any appropriately specialized bookshop.)

An analysis of the Judgment is given below, followed by the text of the operative paragaph. The analysis has been prepared by the Registry for the use of the press and in no way involves the responsibility of the Court. It cannot be quoted against the actual text of the Judgment, of which it does not constitute an interpretation.

Maps taken from the Judgment are also reproduced herewith in Annex 2 for the convenience of readers. Their only function is to provide simple illustrations of the corresponding passages in the Registry's analysis.

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Analysis of the Judgment

I. 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.

II. The...

II. The delimitation area (paras. 28-59)

The Chamber finds it indispensable to define with greater precision the geographical area - "the Gulf of Maine area" - within which the delimitation has to be carried out. It notes that the Gulf of Maine properly so called is a broad indentation in the eastern coast of the North-American continent, having roughly the shape of an elongated rectangle whose short sides are made up mainly by the coasts of Massachusetts in the west and Nova Scotia in the east, whose long landward side is made up by the coast of Maine from Cape Elizabeth to the terminus of the international boundary between the United States and Canada, and whose fourth, Atlantic side would be an imaginary line, between Nantucket and Cape Sable, agreed by the Parties to be the "closing line" of the Gulf of Maine.

The Chamber emphasizes the quasi-parallel direction of the opposite coasts of Massachusetts and Nova Scotia. It points out that the reference to "long" and "short" sides is not to be interpreted as an espousal of the idea of distinguishing "primary" and "secondary" coastal fronts. The latter distinction is merely the expression of a human value judgment, which is necessarily subjective and may vary on the basis of the same facts, depending on the ends in view. It points out, with reference to certain arguments put forward by the Parties, that geographical facts are the result of natural phenomena and can only be taken as they are.

The delimitation, the Chamber observes, is not limited to the Gulf of Maine but comprises, beyond the Gulf closing line, another maritime expanse including the whole of the Georges Bank, the main focus of the dispute. The Chamber rejects however the arguments of the Parties tending to involve coasts other than those directly surrounding the Gulf so as to extend the delimitation area to expanses which have in fact nothing to do with it.

After noting that it has up to this point based itself on aspects inherent in physical geography, the Chamber goes on to consider the geological and geomorphological characteristics of the area. It notes that the Parties are in agreement that geological factors are not significant and finds that, given the unity and uniformity of the sea-bed, there are no geomorphological reasons for distinguishing between the respective natural prolongations of the United States and Canadian coasts in the continental shelf of the delimitation area: even the Northeast Channel, which is the most prominent feature, does not have the characteristics of a real trough dividing two geomorphologically distinct units.

As regards another component element of the delimitation area, the "water column", the Chamber notes that while Canada emphasized its character of overall unity, the United States invoked the existence of three distinct ecological régimes separated by natural boundaries the most important of which consisted of the Northeast Channel; the Chamber, however, is not convinced of the possibility of discerning, in so fluctuating an environment as the waters of the ocean, any natural boundaries capable of serving as a basis for carrying out a delimitation of the kind requested.

III. Origins and development of the dispute (paras. 60-78)

Beginning with a reference to the Truman Proclamations of 1945, the Chamber summarizes the origins and development of the dispute, which first materialized in the 1960s in relation to the continental shelf, as soon as petroleum exploration had begun on either side, more particularly in certain locations on Georges Bank. In 1976-1977 certain events occurred which added to the continental shelf dimension

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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.

As regards the respective positions of the Parties in the light of those findings, the Chamber notes their agreement as to the existence of a fundamental norm of international law calling for a single maritime boundary to be determined in accordance with the applicable law, in conformity with equitable principles, having regard to all relevant circumstances, in order to achieve an equitable result. However, there is no longer agreement between the Parties when each separately seeks to ascertain whether international law might also contain other mandatory rules in the same field. The Chamber rejects the Canadian argument from geographical adjacency to the effect that a rule exists whereby a State any part of whose coasts is less distant from the zones to be attributed than those of the other State concerned would be entitled to have the zones recognized as its own. The Chamber also finds unacceptable the distinction made by the United States between "primary" and "secondary" coasts and the consequent preferential relationship said to exist between the "principal" coasts and the maritime and submarine areas situated frontally before them.

In concluding this part of its considerations, the Chamber sets out a more precise reformulation of the fundamental norm acknowledged by the Parties:

> "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.
>
> 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." (Para. 112.)

V. The equitable criteria and practical methods applicable to the delimitation (paras. 113-163)

Turning to the question of the criteria and methods which are capable of ensuring an equitable result and whose application is prescribed by the above norm, the Chamber is of the view that they must be looked for not in customary international law but in positive international law, and in that connection it examines those provided for by the 1958 Convention on the Continental Shelf, in Article 6 (median line in the case of opposite coasts, lateral equidistance line in the case of adjacent coasts). The Chamber points out that a treaty obligation concerning the delimitation of the continental shelf cannot be extended so as to apply to the superjacent waters and, after rejecting the Canadian argument that the combined equidistance/special-circumstances rule has become a rule of general international law, finds that Article 6, while in force between the Parties, does not entail either for them or for the Chamber any legal obligation to apply its provisions to the present delimitation.

The Chamber next turns to the question whether any obligation of that kind can have resulted from the conduct of the Parties and whether the conduct of one of them might not have constituted an acquiescence in the application of a specific method or resulted in a modus vivendi with regard to a line corresponding to such

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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.

As for the Canadian proposals, the Chamber considers together the two lines proposed respectively in 1976 and 1977, as they are essentially based on the same criterion, that of the equal division of disputed areas - and the same method - equidistance. Canada described the first line as a strict equidistance line, and the second as an equidistance line corrected on account of the special circumstance formed by the protrusion of Nantucket Island and the Cape Cod peninsula, alleged to be geographical anomalies that Canada is entitled to discount, so that its delimitation line is displaced towards the west. The Chamber notes that in the case before it the difference in the lengths of the two States' coastlines within the delimitation area is particularly marked and would constitute a valid ground for making a correction even if this factor in itself furnished neither a criterion nor a method of delimitation. Furthermore, the Canadian line appears to neglect the difference between two situations clearly distinguished by the 1958 Convention, namely that of adjacent coasts and that of opposite coasts, and fails to take account of the fact that the relationship of lateral adjacency between, on the one hand, part of the coast of Nova Scotia and its prolongation across the opening of the Bay of Fundy and, on the other hand, the coast of Maine, gives way to a relationship of frontal opposition between the other relevant part of the coast of Nova Scotia and the coast of Massachusetts. The Canadian line fails to allow for this new relationship, which is nevertheless the most characteristic feature of the objective situation in the context of which the delimitation is to be effected.

VII. The criteria and methods held by the Chamber to be applicable. Line resulting from their application to the delimitation (paras. 190-229)

The Chamber considers that, having regard to all those considerations, it must put forward its own solution independently of the Parties. It must exclude criteria which, however equitable they may appear in themselves, are not suited to the delimitation of both of the two objects in respect of which the delimitation is requested - the continental shelf and the fishery zones. Inevitably, criteria will be preferred which, by their more neutral character, are best suited for use in a multi-purpose delimitation. The Chamber feels bound to turn in the present case to criteria more especially derived from geography, and it is inevitable that its basic choice should favour the criterion whereby 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. However, some corrections must be made to certain effects of applying that criterion that might be unreasonable, so that the concurrent use of auxiliary criteria may appear indispensable. As regards the practical methods to be used for giving effect to the criteria indicated, the Chamber considers that, like the criteria themselves, they must be basically founded upon geography and be as suitable for the delimitation of the sea-bed and subsoil as to that of the superjacent waters and their living resources. In the outcome, therefore, only geometrical methods will serve.

Turning to the concrete choice of the methods it considers appropriate for implementing the equitable criteria it has decided to apply, the Chamber notes that the coastal configuration of the Gulf of Maine excludes any possibility of the boundary's being formed by a basically unidirectional line, given the change of situation noted in the geography of the Gulf. It is only in the northeastern sector of the Gulf that the prevailing relationship of the coasts of the

United States and Canada is one of lateral adjacency. In the sector closest to the closing line, it is one of opposiiteness. 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 termninus 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 throughout its length in the open ocean. It appears obvious that the most appropriate geometrical method for this segment is the drawing of a perpendicular to the closing line of the Gulf. One advantage of this method is to give the final segment of the line practically the same orientation as that given by both Parties to the final portion of the respective lines they envisaged. As for the exact point on the closing line from which the perpendicular should be drawn seawards, it will coincide with the intersection of that line with the corrected median line. Starting from that point, the third segment crosses Georges Bank between points on the 100-fathom depth line with the following co-ordinates:

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

The terminus of this final segment will be situated within the triangle defined by the Special Agreement and coincide with the last point it reaches within the overlapping of the respective 200-mile zones claimed by the two States.

VIII. Verification of the equitable character of the result (paras. 230-241)

Having drawn the delimitation line requested by the Parties, the final task of the Chamber is to verify whether the result obtained can be considered as intrinsically equitable in the light of all the circumstances. While such verification is not absolutely necessary where the first two segments of the line are concerned, since the Chamber's guiding parameters were provided by geography, the situation is different as regards the third segment, which is the one of greatest concern to the Parties on account of the presence in the area it traverses of Georges Bank, the principal stake in the proceedings on account of the potential resources of its subsoil and the economic importance of its fisheries.

In the eyes of the United States, the decisive factor lies in the fishing carried on by the United States and its nationals ever since the country's independence and even before, activities which they are held to have been alone in pursuing over the greater part of that period, and which were accompanied by other maritime activities concerning navigational assistance, rescue, research, defence, etc. Canada laid greater emphasis on the socio-economic aspects, concentrating on the recent past, especially the last 15 years, and presenting as an equitable principle the idea that a single maritime boundary should ensure the maintenance of the existing structures of fishing which, according to it, were of vital importance to the coastal communities of the area.

The Chamber explains why it cannot subscribe to these contentions and finds that it is clearly out of the question to consider the respective scale of activities in the domain of fishing or petroleum exploitation 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, unexpectedly, the overall result should appear radically inequitable as entailing disastrous repercussions on the subsistence and economic development of the populations concerned. It considers that there is no reason to fear any such danger in the present case on account of the Chamber's choice of delimitation line or, more especially, the course of its third segment, and concludes that the overall result of the delimitation is equitable. Noting the long tradition of friendly and fruitful co-operation in maritime matters between Canada and the United States, the Chamber considers that the Parties will be able to surmount any difficulties and take the right steps to ensure the positive development of their activities in the important domains concerned.

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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:

	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 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...

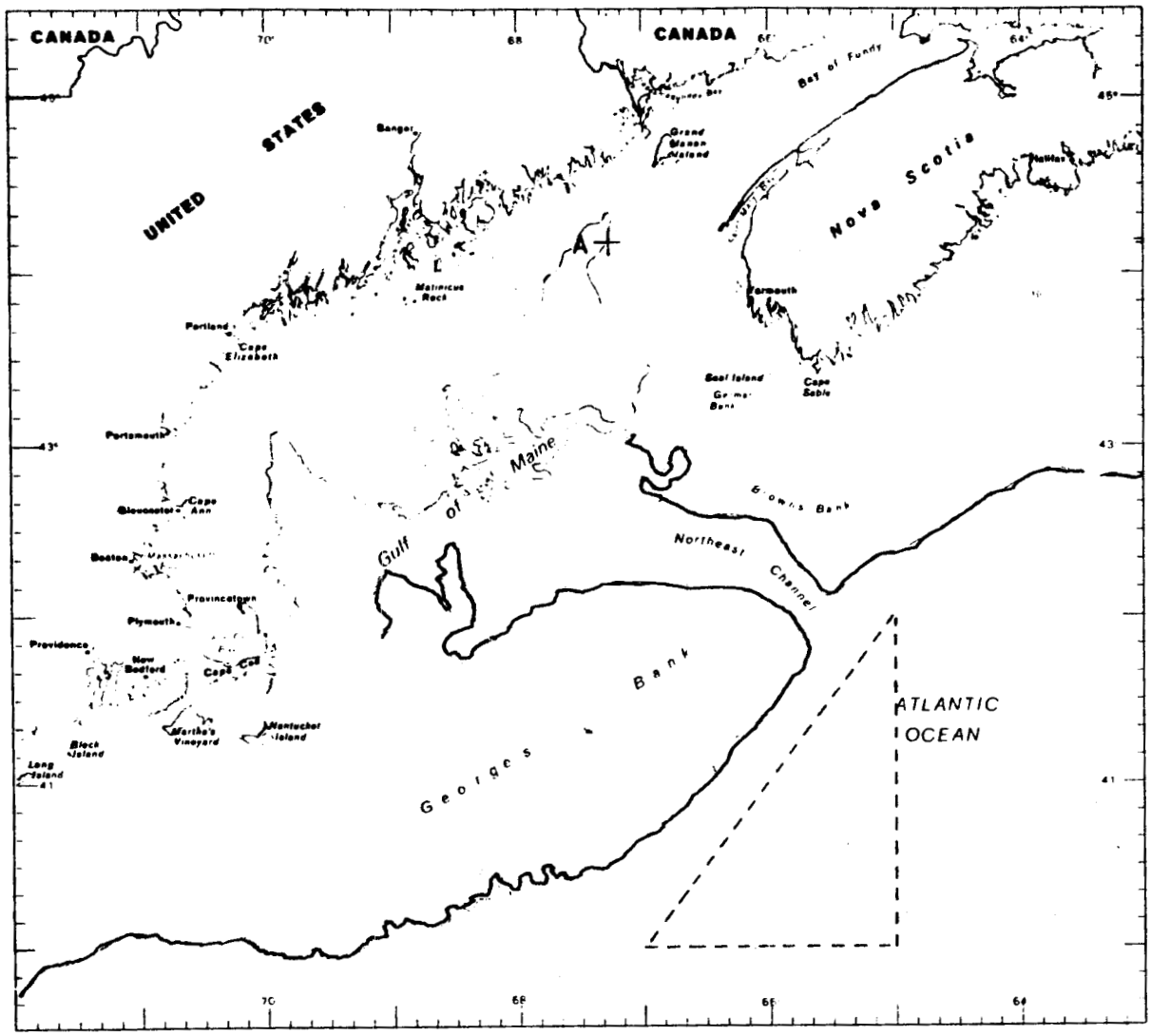
Dissenting Opinion by Judge Gros

Judge Gros points out that the case-law took a new turning when the International Court of Justice gave its Judgment on 24 February 1982 in the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya). That Judgment brought to an end the situation resulting from the 1958 Convention on the Continental Shelf as it had been previously interpreted by the Court, in its 1969 Judgment on the North Sea Continental Shelf, and by the Anglo-French Court of Arbitration in its Decision of 1977.

This new turning, confirmed by the Chamber's Judgment, amounted to exclusive reliance on the work of the Third Conference of the United Nations on the Law of the Sea, but this Conference produced agreement plus equity as its prescription for maritime delimitation, a solution which Judge Gros considers very feeble.

In the eyes of Judge Gros, moreover, a vague conception of equity which departs from the firmly controlled equity of 1969 and 1977 has also resulted in a departure from the way international legal disputes used to be adjudicated - he has in mind the way courts of equity emerged in England. The Chamber's reasoning logically implies, he considers, that there is no longer any legal rule governing maritime delimitation because the principles relied on by the Chamber, the methods employed to put them into practice, and the corrections made to the whole process, transform the entire operation, according to Judge Gros, into an exercise wherein it will henceforth be open to each judge to decide at his discretion what is equitable.

Without going so far as to maintain that the line drawn by the Chamber is inequitable, Judge Gros asks whether it has really been demonstrated to be more equitable than any of the other lines considered in the course of the proceedings.



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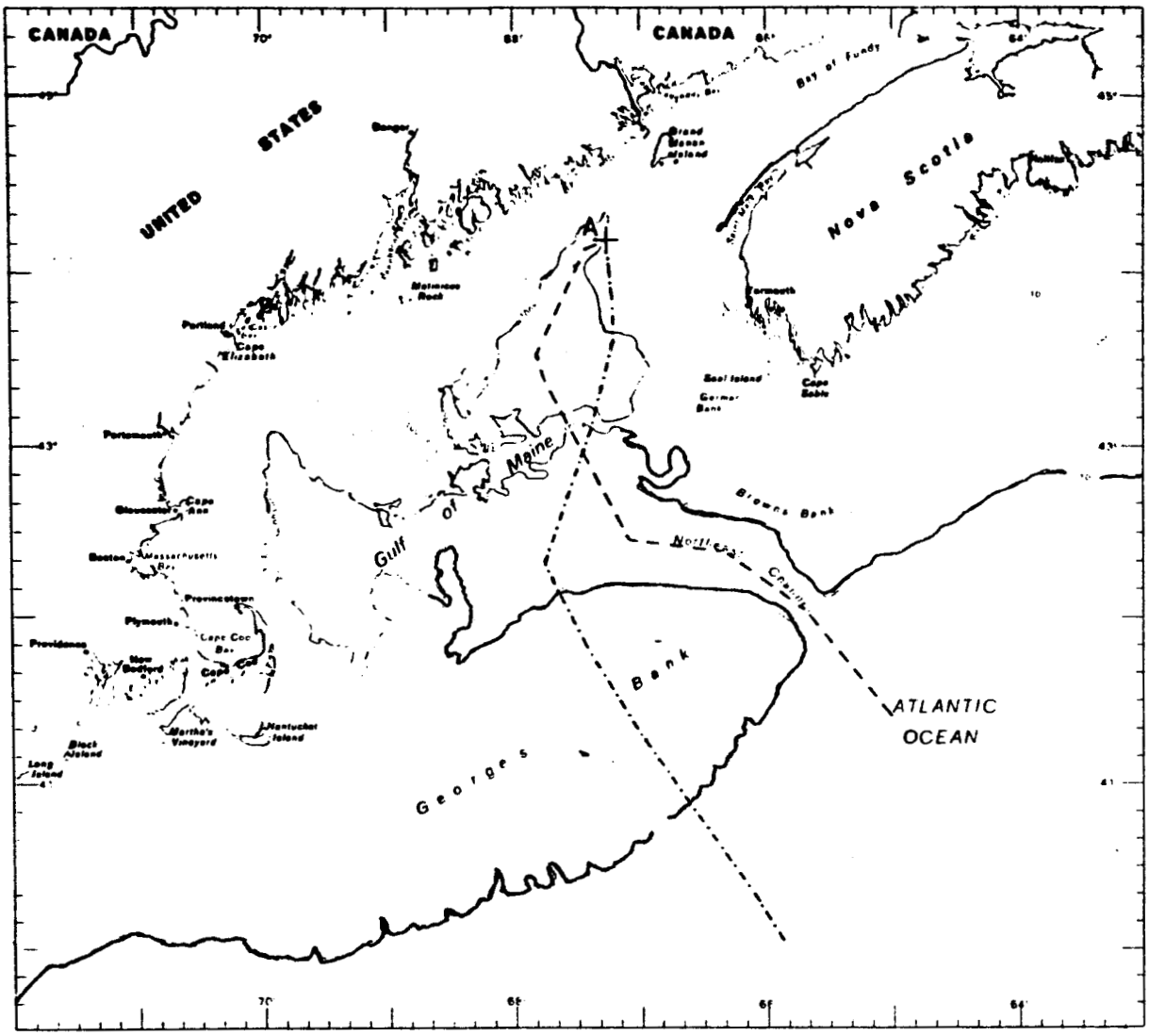
The maps incorporated in the present Judgment were prepared on the basis of documents submitted to the Court by the Parties, and their sole purpose is to provide a visual illustration of the relevant paragraphs of the Judgment.



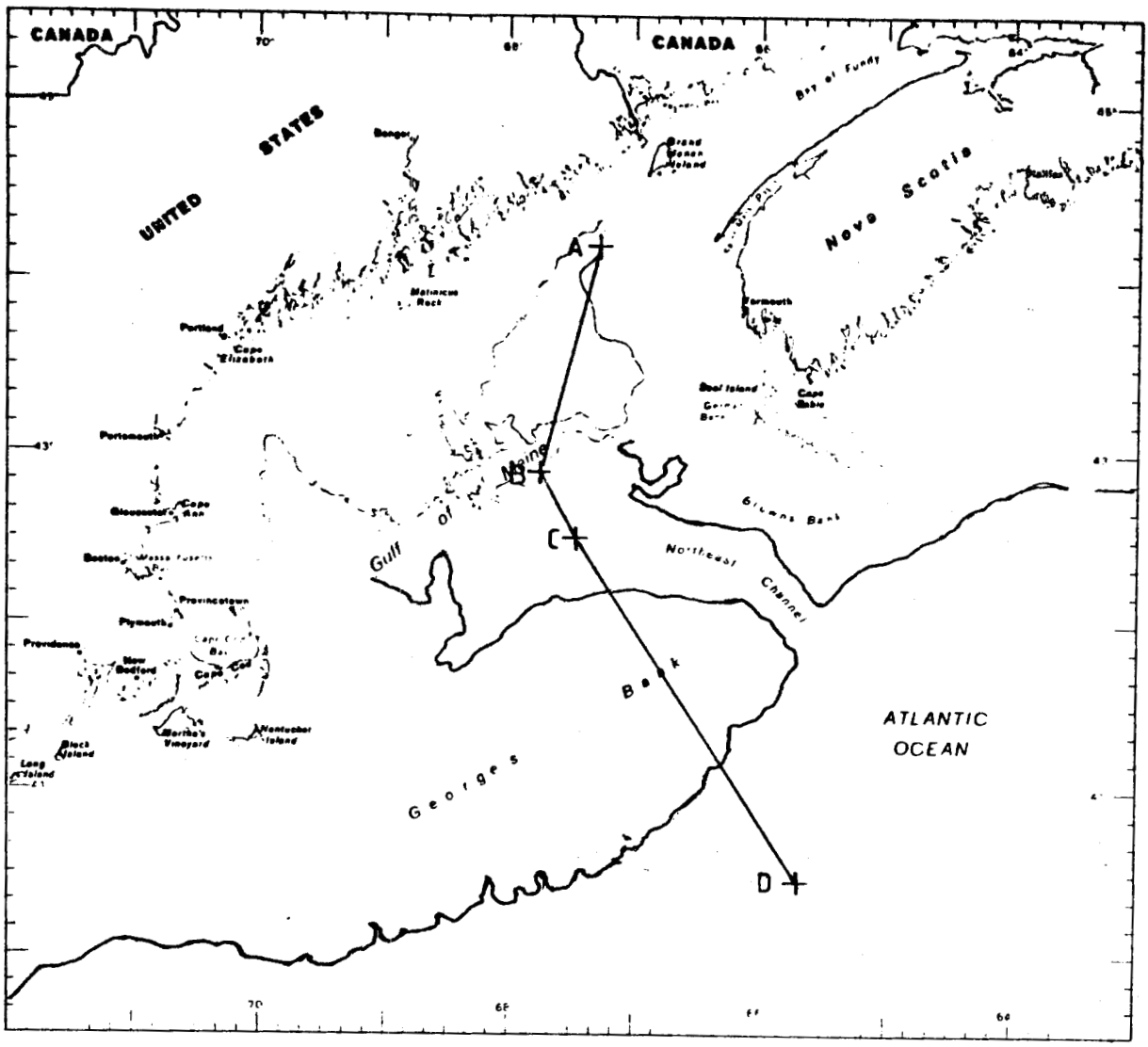
MAP No. 2

Limits of fishery zones and continental shelf claimed by the Parties, at 1 March 1977

(see paras. 68-70)

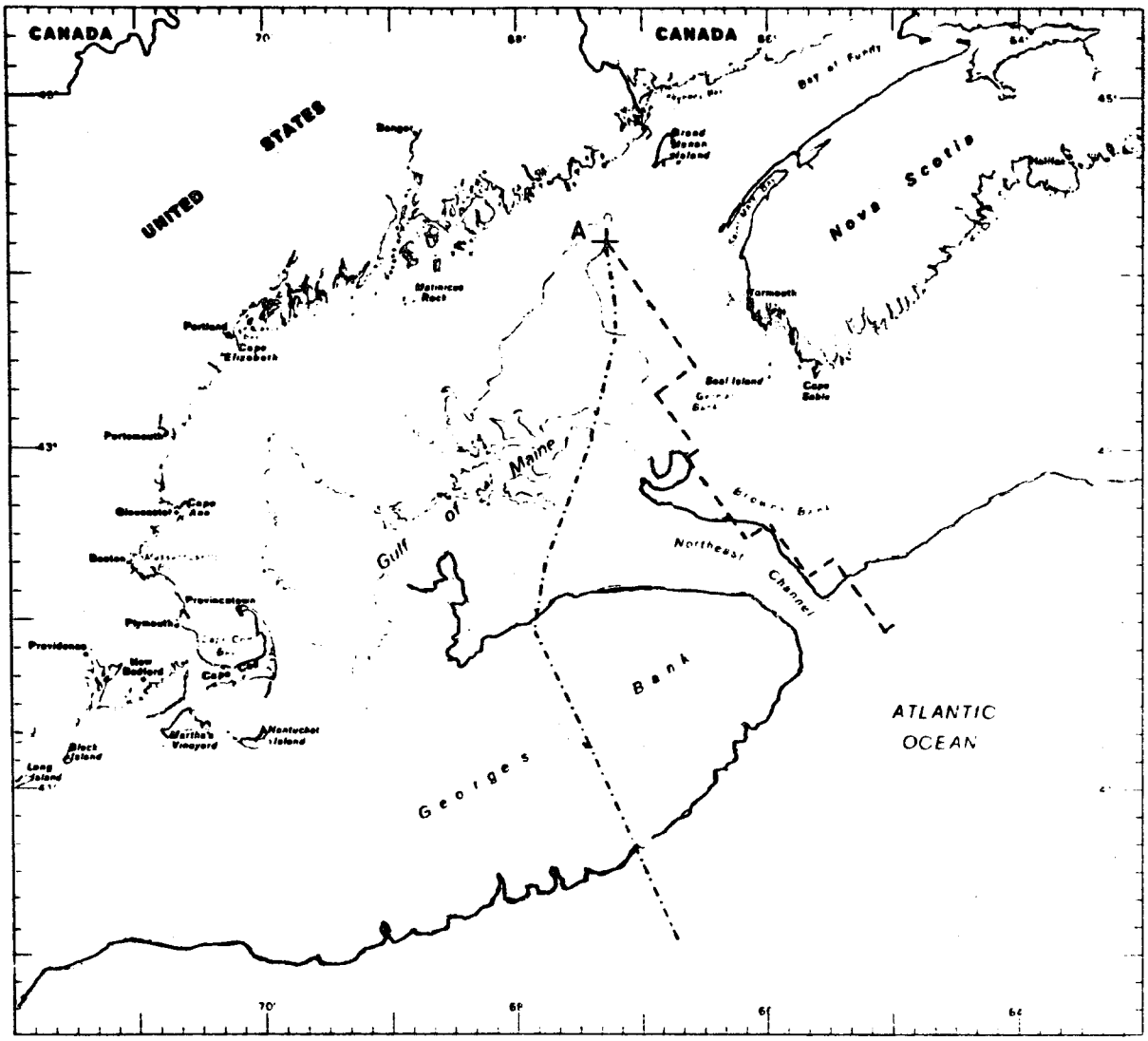
United States line _ _ _ _ _ _ _ _ _ _ _ _ _

Canadian line _._._._._._._._._._._._._



MAP No. 4

Delimitation Line drawn by the chamber



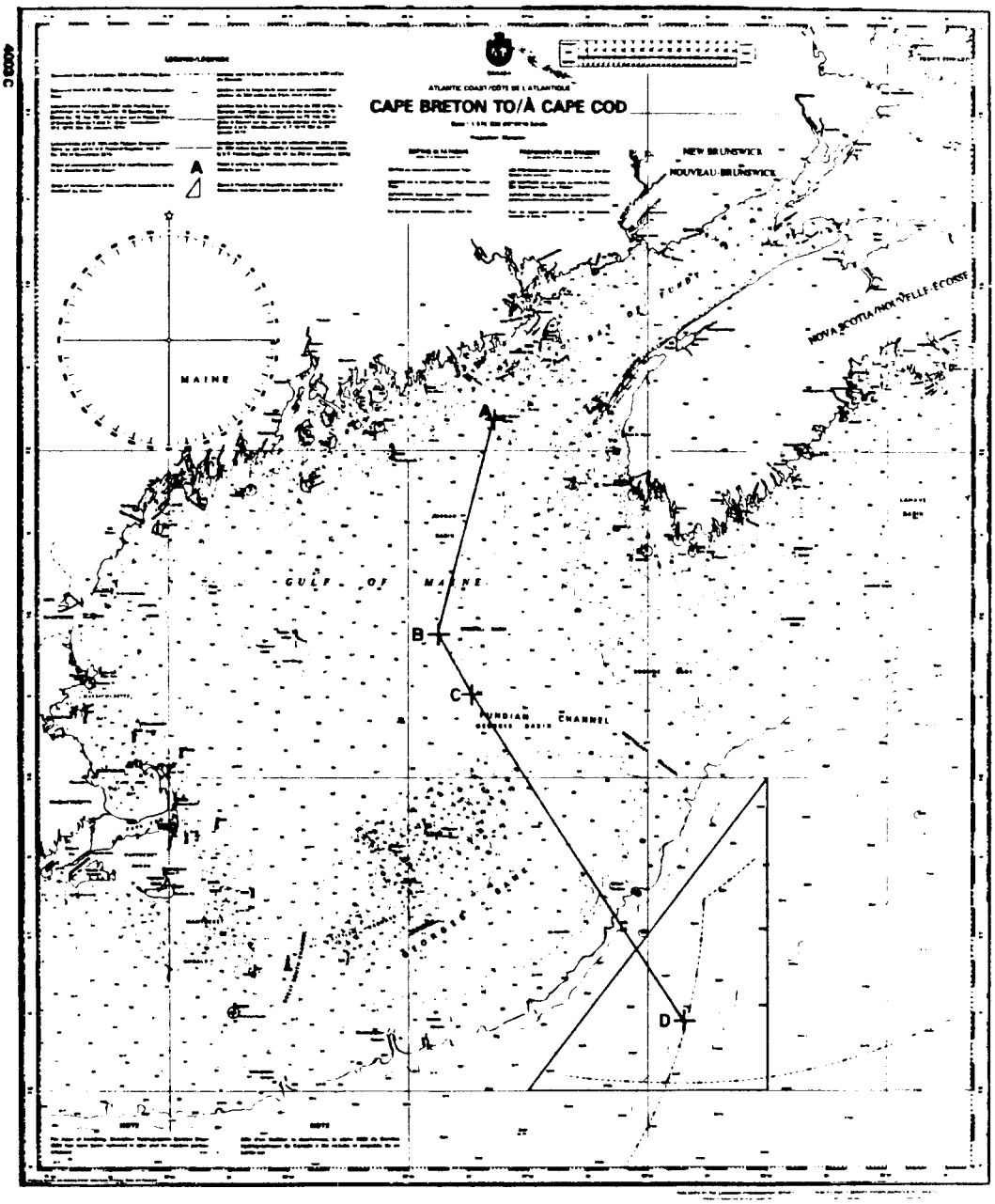
MAP No. 3

Delimitation lines proposed by the Parties before the Chamber

(see paras. 71, 77-78)

United States line — — — — — — — — — —

Canadian Line —.—.—.—.—.—.—.—.—.—.



Ligne de délimitation tracée par la chambre.

Delimitation line drawn by the Chamber.