28. UNGA 45th Session, Report of the Secretary-General, 8 September 1990, A45/459: 2.
29. UNGA 46th. Session. Report of Secretary-General on state of the environment in Antarctica, 25 October 1991, A46/590: 15.
30. UNGA 45th Session, 20 November 1990, 42nd.meeting of the First Committee, A45/C 1/PV42: 9-10.
31. UNGA 45th Session, 27 September 1990, 10th.meeting of the General Assembly, A45/PV10: 68.
32. UNGA 46th. Session. 26th. meeting of General Assembly, 8 October 1991, A46/PV26: 10.

The Gulf of Fonseca and St. Pierre and Miquelon Disputes

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Two recent decisions of international tribunals concerning matters of maritime delimitation are dealt with here, the *Canada/France* boundary delimitation (St. Pierre and Miquelon) decided by an arbitral tribunal in June of 1992[2] and the *El Salvador/Honduras Frontier Dispute* decided by a chamber of the International Court in September.[3] The key elements in these decisions relevant to maritime delimitation were then presented and some implications for the future of maritime delimitation were suggested.

Canada/France

St. Pierre and Miquelon are two small islands under French sovereignty lying a few miles south off the southern coast of Newfoundland. (The general geographical layout, as well as the respective claims of the parties - and the final decision of the tribunal - are shown in Figure 1). There was no controversy concerning the question asked of the Court of Arbitration: it was to draw a single line of delimitation between the Canadian and French territories.

Canada essentially argued that the 1977 English Channel Arbitration should govern and that the islets of St. Pierre and Miquelon - superimposed, it asserted, on to the Canadian continental shelf - should be enclaved in a manner similar to that in which the 1977 Arbitration dealt with the Channel Islands.[4] On its part, France argued that strict equidistance, in the absence of agreement, should be applied to reflect the full entitlement of each party.

The majority of the Court of Arbitration, indicating that in its view the claims of both parties were exaggerated, adopted its own unique approach, resulting in the delimitation indicated on Figure 1. Following a sectoral approach, the Court of Arbitration first recognized the "western seaward projection" from the islands of St. Pierre and Miquelon, stating that the enclave solution urged by Canada would be inequitable because it would not give the islands anything more than their territorial sea. A *"limited extension of the enclave"* was thus indicated, to have the same extent as the contiguous zone of the islands, i.e. extending a total of 24 nautical miles from the baselines.

Next, the Court of Arbitration had to deal with the *"coastal opening* (of the islands) *toward the south,"* and held (para.73) that France was *"fully entitled to a frontal seaward projection towards the south until it reaches the outer limit of 200 n.m., as far as any other segment of the adjacent southern coast of Newfoundland."* This gave rise to a long corridor running south, with the same width as the width of the coastal front of the islands. (This configuration was aptly referred to by a dissenting arbitrator, Professor Prosper Weil, as a "mushroom".)

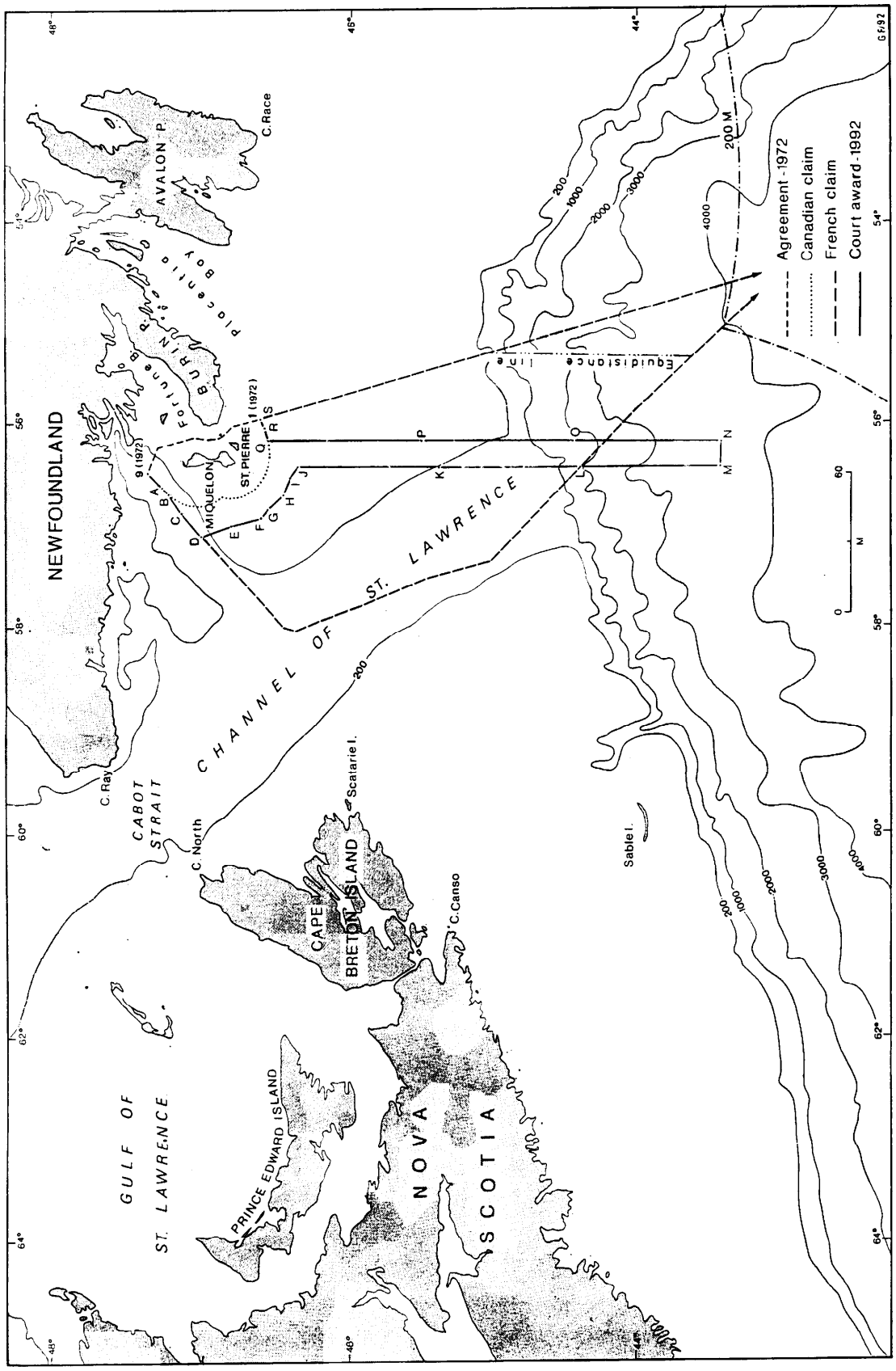
NEWFOUNDLAND
AVALON P.
C. Race
Placentia Bay
Fortune Bay
BURIN P.
ST. PIERRE (1972)
MIQUELON (1972)
ST. PIERRE
MIQUELON
A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
ST. LAWRENCE
CHANNEL OF
Equidistance line
200 M
Agreement-1972
Canadian claim
French claim
Court award-1992
C. Ray
CABOT STRAIT
C. North
Scatarie I.
CAPE BRETON ISLAND
C. Canso
Sable I.
GULF OF ST. LAWRENCE
PRINCE EDWARD ISLAND
NOVA SCOTIA
200
1000
2000
3000
4000
0
60
N
GF/92

Figure 1

The Court of Arbitration, asked to determine the outer entitlement to continental shelf *beyond the 200-n.m. limit,* held that it would not be competent to do so in the absence of representation of the "international community" which, under the modern law of the sea, was an essential party to any such determination.[5]

El Salvador/Honduras

The extraordinary detailed and complex background of this case included matters relating to six separate land boundary disputes and a dispute over sovereignty over islands within the Gulf of Fonseca, as well as to the status of the waters of the Gulf of Fonseca and the rights of the parties seawards from the actual waters of the Gulf.

In a far-reaching and painstaking opinion, the Chamber of the Court made a number of rulings, based primarily on the rule of *uti possidetis juris,* concerning the land sectors and the island dispute. Turning to the Gulf, bordered by the two party States as well as by Nicaragua which, in an earlier and unprecedented ruling, the Chamber had obtained permission to intervene in the portion of the case relating to the Gulf, the chamber held that the Gulf was a historic bay with the characteristics enunciated in the case decided by the Central American Court of Justice in 1917.[6] The waters within the Gulf, said the Chamber, were to be held in *condominium* amongst the three littoral States, which also possessed the right to a three-n.m. band of "territorial waters" (not territorial sea) along their mainland and island coasts.

The Chamber reasoned that since this was so, the closing line of the Gulf must itself serve as a baseline for the territorial waters lying outside the Gulf - and which must exist under the modern law of the sea. It would not be equitable, the Chamber held, for Honduras to be cut off from the Pacific by reason of its position at the back of the Gulf. Thus, said the Chamber, all three parties must have rights seawards of the closing line of the Gulf. Yet the actual delimitation of the waters of the Gulf, as well as the seaward delimitation of the maritime areas outside the Gulf, was up to the parties (and to Nicaragua as an intervening party) and not for the Chamber to perform, as it manifestly lacked jurisdiction to do so under the terms of the *compromiso* agreed between the two parties in chief.

Novelties in the Decisions

There are some striking similar elements in the two decisions, and some have interesting implications for future delimitations in the Mediterranean region.

1. **The first is the use of a long corridor to represent the seaward entitlement of a narrow coast.** The stem of the "mushroom" in the Canada/France arbitration is very similar to the hypothetical entitlement of Honduras southward into the Pacific: both form a corridor 200 n.m. long and only a few miles wide. (It must of course be clearly understood that Honduras is far from receiving the benefit of any such corridor in any actual delimitation.)[7]

2. **An interesting further question arises as to the practicability of any such narrow corridor,** and thus the likelihood that it may recur. The objection that it could not be of any

assistance in navigational terms can be met by observing that in the Canada/France situation there was a very deliberate recognition of reciprocal fishing rights of the party nationals, thus rendering strict "compliance" with the fisheries zones within the stem of the mushroom somewhat academic.[8] It should be noted that the same freedom of reciprocal fishing applies in the sovereign base area delimitation between the United Kingdom and Cyprus and between France and Monaco. It could well be hazarded that a future tribunal would be less comfortable with imposing a "corridor" solution to the extent that such easy reciprocity of fishing rights did not exist.[9]

3. Another point appears in the Canada/France arbitration: **it is a reluctance to enclave small** islands, even when close to the shore of another State. This portion of the Canada/France decision also indicates that the dependent status of islands has no effect on entitlement. (para.48.)

4. **The "single" line concept for delimitation** was also boosted by the Canada/France decision. (para.47.)

5. **The distinction between entitlement to continental shelf rights** *(ipso jure)* **and exclusive economic zone rights** (by proclamation) was stressed in both decisions (El Salvador/Honduras para.420; Canada/France para. 47.)[10]

6. **The need for an agreement to delimit** is also recognized as being explicit. The States in question must agree on conferring this particular task to the tribunal; a general reference is insufficient. (El Salvador/Honduras paras. 372-80).

7. **Geology as a relevant circumstance has been finally disposed of;** its execution by the Court in Libya/Malta (1985)[11] has been reinforced by a fresh *coup-de-grace* (Canada/France para.47). This may be of particular interest in the Mediterranean, where geological arguments once dominated the field *(Tunisia/Libya;*[12] *Libya/Malta).*

8. **Determinations involving the "broad shelf"** involve the international community as an actor. (Canada/France para.75).

9. The **1982 Law of the Sea Convention** is recognized just as if it were fully in effect. (Canada/France para.79).

10. The Canada/France Tribunal used **the findings of a geographic expert** in relation to its determination of the size and extent of the "relevant areas" (Canada/France para.93). It also went beyond the *Libya/Malta* decision in using proportionality to verify the equitableness of a decision.

11. **Both decisions expressed a reluctance to deprive ("deny") areas of continental shelf or exclusive economic zone to any State,** by means of enclaving. In terms of the El Salvador/Honduras decision, this element was manifested as a reticence to "close off" or "lock out" a State from its maritime entitlement by reason of a difficult or minor geographical position (See *El Salvador/Honduras* Judgment, para.417).

12. The Canada/France decision expressly **rejected the idea of coastal length as**

governing the "increased or decreased projection" seawards (para.45).

13. The Canada/France arbitration, in effect, preferred the concept of "frontal projection" to the **concept of "radial projection",** thereby creating the stem of the "mushroom".[13]

14. The Canada/France decision also **rejected the argument that the landmass behind the coast resulted in a form of "intensity of projection"** seaward to delimitation.[14]

15. The net effect of Canada/France is **to treat small islands close offshore as if they were part of the mainland coast, as in the France/Monaco delimitation, and** not as they had been treated before: e.g. the Channel Islands in the 1977 Anglo-French Arbitration, the Kerkennahs (and Djerba) in the Tunisia/Libya case, and the Italian islands of Lampedusa, Linosa and Limpione in the Italy/Tunisia delimitation.

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2. Case Concerning the Delimitation of the Maritime Areas Between Canada and France, Decision of 10 June 1992.
3. Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua Intervening), 1992 I.C.J. Rep. (Decision of 11 September).
4. *Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf,* Decisions of the Court of Arbitration dated 30 June 1977 and 14 March 1978, London, HMSO Misc. No.15 (1978), Cmnd. 7438.
5. It could equally well have held that since its terms of reference only empowered it to draw a single line of delimitation, and since the exclusive economic zone did not extend beyond 200 n.m., it was unable to draw a "single line" beyond that limit and thus could not indicate any entitlement to continental shelf beyond that limit.
6. *The Republic of El Salvador v. The Republic of Nicaragua,* Central American Court of Justice, Opinion and Decision of 9 March 1917, trans. at 11 Am.J.Int'L. pp.674-730 (1917). Ironically, this case was brought by El Salvador against Nicaragua to prevent Nicaragua from giving effect to the Bryan-Chamorro Treaty that would have established a major U.S.naval base in the Gulf of Fonseca, Honduras was not a party.
7. This treatment echoes the special treatment given to Monaco by France in their delimitation agreement (Map attached hereto as Annex C) and contains interesting implications for elsewhere in the Mediterranean (the sovereign base areas in Cyprus; the Spanish enclaves in Morocco) (Map attached hereto as Annex D).
.8. The importance of the size of the area controlled by each party, however, related to establishing the overall quotas and not to the actual right to fish in any given area.
9. One may well compare the "mushroom" and its "stem" to the long corridor resulting from the Dominica-France delimitation (map attached hereto as Annex E) or to the wedge-shaped fat corridor represented in the Venezuela-Netherlands Antilles delimitation (Aruba, Curacao, Bonaire) (map attached hereto as Annex F).
10. The importance of the size of the area controlled by each party, however, related to quotas and not to the actual right to fish in any given area.
11. *Continental Shelf* (Libyan Arab Jamahiriya/Mala), 1985 ICJ REP.13 (Judgment of June 3).
12. *Case Concerning the Continental Shelf* (Tunisia/Libyan Arab Jamahiriya), 1982 ICJ REP. 18 (Judgment of Feb. 24).
13. See the Dissenting Opinion of Prosper Weil, paras.9-15).
14. This was a Canadian argument. See the Dissenting Opinion of Prosper Weil, applauding this as being consistent with both Libya/Malta and Guinea/Guinea-Bissau. *(Court of Arbitration for the Delimitation of the Maritime Boundary Between Guinea and Guinea-Bissau,* Award of 14 February 1985 [Translation from official French Text], 25 ILM 252-307 (March 1986).