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**The US-Canadian Dispute
Over the Georges Bank** [Redacted]

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An Intelligence Memorandum

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GS 81-10157
July 1981

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**The US-Canadian Dispute
Over the Georges Bank** [redacted]

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Summary

The maritime boundaries between the United States and Canada have been in dispute for years but did not become a major issue until 1977, when both countries established 200-mile fishing zones. These zones overlapped, most notably in the Gulf of Maine, which harbors the Georges Bank—the richest fishing grounds off the Atlantic coast of North America and the probable site of large deposits of oil and gas. [redacted]

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After considerable negotiations, in 1979 both sides came up with two treaties dealing with the problem in the Gulf of Maine. The first governed the management and division of fish stocks in the area. The second called for submission of the boundary dispute to the International Court of Justice (ICJ) for arbitration. [redacted]

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To protect the fishing interests of both sides, the two treaties were linked: the boundary dispute would not be submitted to the ICJ until both countries had ratified the fishing treaty. The US Senate, however, deferring to complaints of New England fishermen that the fishing treaty was unfair to them, refused to approve this treaty—although it did approve the decision on how to settle the boundary disagreement. Despite its annoyance over the demise of the fishing treaty, the Canadian Government will probably agree to submit the boundary dispute to ICJ arbitration anyway. [redacted]

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The ICJ is expected to take years to render a decision. Meanwhile, fishing on the Georges Bank continues under a gentlemen's agreement that must eventually be superseded by formal agreements over fish management and catch allocations. The Canadians, reflecting domestic political considerations as well as their irritation over other contentious bilateral issues, will probably be very tough negotiators. [redacted]

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This paper was prepared by [redacted] the Environment and Resource Analysis Division, Office of Geographic and Societal Research. It was coordinated with the Offices of Economic Research and Political Analysis and with the Department of State. Information available as of 17 July was used in its preparation. Comments and queries may be directed to the Chief of the Resource Analysis Branch, ERAD [redacted]

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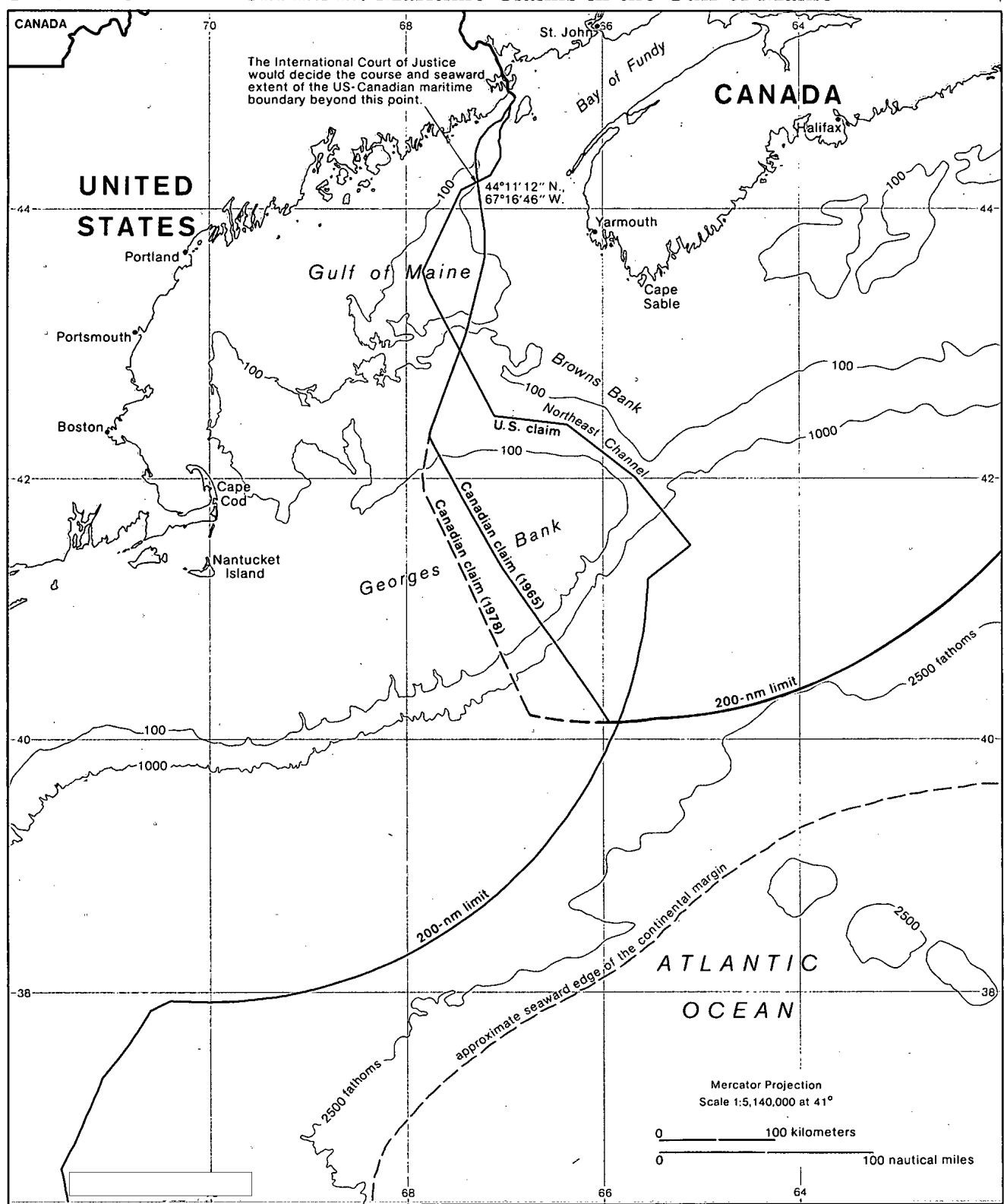
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UNITED STATES-CANADA: Maritime Claims in the Gulf of Maine



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**The US-Canadian Dispute
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In June 1981 the US Senate approved an agreement reached in 1979 between the United States and Canada whereby the delimitation of the eastern maritime boundary between the two countries would be submitted to the International Court of Justice (ICJ) for arbitration. This brings one step closer to resolution an issue that has abraded relations between the two countries for years, but especially since 1977 when both established 200-mile fishing zones. The dispute involves not only the boundary in the Gulf of Maine where the two zones overlap but also management and division of the fishery and hydrocarbon resources in the area. [redacted]

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Origin of the Dispute

Until they established their 200-mile fishing zones, each country had claimed a 12-mile fishing zone. In addition, each had claimed jurisdiction over the resources of the continental shelf (and margin), which extends well beyond 200 miles in this area. [redacted]

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The United States made its continental-shelf claim in 1945 in the Truman Proclamation. Until this time, maritime boundaries between states had seldom been a problem, since most countries had declared only 3-mile limits. In the determination of where to place a boundary that might extend several hundred miles from shore, the Truman Proclamation advocated reliance on a concept of "equitable principles." This concept would take into account the configurations of the respective coastlines, the presence of special physical features, the shape and geological structure of the continental shelf, the nature and extent of the resources, historic uses of the area, and various other considerations—while nevertheless maintaining a reasonable degree of proportionality. Using these principles, the United States could justify drawing a maritime boundary considerably closer to Canadian than to US territory. In fact, it did not at that time propose a specific boundary. In 1969 the concept of equitable principles was given substantial weight in international law when it was used to settle the continental-shelf dispute among the North Sea littoral states. [redacted]

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Canada made its claim in 1965, deriving its justification from the 1958 UN Convention on the Continental Shelf, which codified the exclusive rights of coastal states over the resources of their continental shelves. The Convention left the resolution of boundary disputes to the states involved but recommended the "principle of equidistance" be applied when these states could not agree. (Both the United States and Canada signed the Convention.) Basing its claim on this principle, Canada drew a boundary line that it

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alleged was everywhere equidistant between the closest shores of Canada and the United States (taking islands such as Nantucket into account).¹ [redacted]

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Canada had taken its action after seismic surveys had indicated the possibility of hydrocarbon deposits in the Georges Bank. Its boundary line put the northeastern third of the Bank under Canadian jurisdiction, whereas the United States wanted the entire Bank under US jurisdiction. After Canada began issuing permits to explore for oil and gas in its third of the region, the United States challenged its boundary claim and called for negotiations. These began in 1970 but were eclipsed by the global talks then getting under way that eventually led to the ongoing Third UN Conference on the Law of the Sea (LOS), which is currently in its Tenth Session. [redacted]

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No further bilateral negotiations were held until after the 1977 declarations of 200-mile fishing zones. Those declarations brought under national jurisdiction rich fishing grounds—especially the Georges Bank—that until then had been in international waters and were being managed by the 18-nation International Commission for the Northwest Atlantic Fisheries. Canada used the previous, disputed boundary of its continental shelf as the boundary of its new fishing zone. Again, the United States objected. Because the International Commission was no longer responsible for the management of the fishing grounds, it became necessary for the two countries to decide themselves how the harvest should be allocated and the fishery protected. This necessitated coming to an agreement over the boundary, and to that end negotiations began anew. [redacted]

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The Economic Stake

The Georges Bank harbors the richest fishery off the Atlantic coast of North America. In 1976 Canadian fishermen took 87,800 tons of fish from the Bank, 10 percent of their Atlantic catch, while US fishermen took 7 percent of their slightly larger Atlantic catch. Scallops, cod, and haddock accounted for most of the harvests. [redacted]

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The US Geological Survey estimates, moreover, that recoverable hydrocarbon reserves in the Georges Bank amount to some 900 million barrels of oil and 4.4 trillion cubic feet of natural gas—3 percent of the oil and 4 percent of the gas estimated to be recoverable from the whole US outer continental shelf.² These amounts are small in comparison with US and Canadian

¹ The Convention did not affect the international status of the waters above the continental shelf and even guaranteed other nations certain rights on the shelf, such as the right to lay cables and pipelines. Thus, neither the United States nor Canada had made any claims to jurisdiction over the waters above their continental shelves, although the United States had separately asserted its right to manage certain fish stocks there. [redacted]

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² The US Geological Survey estimates are based on inferences from geologic structure rather than extensive exploratory drilling. [redacted]

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consumption levels—the United States, for example, would go through 900 million barrels of oil in some two months—but large enough to be commercially very attractive. [redacted]

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The Negotiations

In 1977 the two sides entered into negotiations with the goal of producing two treaties, one to delimit their mutual eastern fishing-zone and continental-shelf boundary, the other to deal with managing the fishery and allocating catch quotas. Several interim agreements allowed fishermen from each country to continue fishing in the other's zone during the negotiations, except briefly in 1978 when Canada closed its zone to US fishermen, because of their alleged overfishing. Ottawa may also have wanted to show displeasure over the slow pace of the negotiations. Canada backed down, however, after the United States responded in kind by banning Canadian fishermen from its waters—including the Great Lakes. [redacted]

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In 1979 the two negotiating teams produced a long-term fishing treaty that established catch quotas and provided for the joint management of fish stocks in the Gulf of Maine, including those on the Georges Bank. The fishing industries in both countries grumbled, especially about the allocation plan for scallops, the most valuable species on the Bank. The proposed treaty gave Canadian fishermen 73 percent of the total allowable scallop catch, but they demanded more, pointing to their 1971-76 average of 85.5 percent. For their part, the US fishermen objected to their 23 percent, pointing out that until 1950 they had dominated the scallop fishery. The proposed treaty allocated 83 percent of the cod fishery and 79 percent of the haddock fishery to the United States, with the rest going to Canada, but these allocations aroused no complaint from either side because they merely reflected the status quo. [redacted]

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The boundary negotiations were another story. Canada continues to insist that the boundary be drawn according to the principle of equidistance, which would give it jurisdiction over the northeastern third of the Georges Bank. Moreover, probably to increase its bargaining room as well as to highlight its determination, in 1978 it increased the size of its claim by publishing a new boundary southwest of its 1965 line. Ottawa arrived at this new boundary by discounting the existence of Nantucket and Cape Cod (which it called a geographic "aberration") and using instead the coastline of Massachusetts as the closest US territory. [redacted]

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The United States continued to demand that the boundary be drawn according to the concept of equitable principles, which it interpreted to justify US jurisdiction over the entire Bank. Specifically, the United States recommended that the boundary follow the Northeast Channel, which

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passes just north of the Georges Bank. The United States made the following assertions in support of its position:

- The Northeast Channel, which separates the Georges Bank from the Nova Scotia shelf, is a natural break in the continental shelf; thus, the Bank is a natural prolongation of US territory.
- The inward curve of the New England coastline and the outward bulge of the Nova Scotia coastline would push an equidistant line inequitably close to the United States.
- The US coastline along the Gulf of Maine is four times as long as the Canadian coastline.
- The fish stocks of the Georges Bank are biologically more closely related to fish stocks farther south than to those farther north.

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At the conclusion of the 1979 round of negotiations the two sides agreed to disagree. They drew up a treaty binding themselves to send the boundary dispute to the ICJ for resolution—but only after both parties had ratified the fishing treaty. By linking the two treaties in this way, each side sought to preserve its historic fishing rights in the area regardless of the court's ruling on the boundary.

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The two treaties were sent to the US Senate in 1979. The boundary agreement encountered no difficulty, but the fishing treaty ran into stiff opposition from New England Senators, to whom the aggrieved US fishermen had appealed. These senators charged that the draft fishing treaty gives US fishermen unfairly low catch allocations, that the management mechanism established by the treaty is too cumbersome, and that the treaty provides only minimal opportunities for change, since it has no termination date. Their proposed amendments were unacceptable to Canada, so the fishing treaty languished until the administration withdrew it from Senate consideration on the eve of President Reagan's meeting with Prime Minister Trudeau in March 1981. At the President's request, however, the Senate did approve the boundary treaty.

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Outlook

Despite its annoyance over the US Senate's refusal to approve the fishing treaty, and although this refusal frees it from its obligation to do so, the Canadian Government will probably submit the boundary treaty to Parliament anyway. Approval seems assured. Subsequently, the issue will go to the ICJ for adjudication by a specially selected chamber of five judges acceptable to both Canada and the United States. Even after the chamber begins its hearings and deliberations, years may pass before it renders a decision. The court took two years to decide the North Sea case and five years to render a decision in the dispute between Argentina and Chile over the Beagle Channel.

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Judging by its decisions in similar recent cases, the ICJ is likely to impose a compromise. Because of its well-established history of fishing in the area, Canada will probably be granted jurisdiction over part of the Georges Bank. Nevertheless, the court is likely to bow to the concept of equitable principles by establishing a boundary farther northeast than either of the Canadian-drawn "equidistant" boundaries—if not as far northeast as the United States would prefer.

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Meanwhile, fishing continues on the Georges Bank according to a gentlemen's agreement that allows fishermen from both countries to operate in the disputed area where the 1965 Canadian claim and the US claim overlap. Canada will probably continue to charge that US fishermen are overharvesting the scallop stock until the United States comes up with at least an interim scallop management plan. Once the ICJ renders a decision, however, formal fishing agreements will be required to provide for joint management and reciprocal fishing rights.

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Canada will continue to hang tough in any new fishing negotiations. The government is under pressure from powerful political interests that speak for Canada's fishing industry, and it must accommodate these interests to get their support for other controversial government policies. Furthermore, with one of the longest coastlines in the world, Canada is among the most ardent advocates of strong coastal state control of marine resources, including those extending beyond its claimed maritime zone. At the current LOS Conference, for example, Canada is pushing for increased coastal state jurisdiction over fish stocks that straddle the seaward boundary of the coastal fishing zone, a proposal the United States firmly opposes.

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Finally, this and the other maritime boundary disputes with the United States³ constitute but one among a substantial array of contentious bilateral issues. It is probably inevitable that annoyance on the part of one side or the other over a lack of progress in resolving one issue will lead to recalcitrance in addressing other, essentially unrelated issues. In other words the resolution of the dispute in the Gulf of Maine will depend partly on the general state of relations between the two countries as influenced by the status of other mutual problems.

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³ All but forgotten in the row over the eastern maritime boundary has been the fact that the western maritime boundaries between the United States and Canada are also in dispute. The boundaries off the Strait of Juan de Fuca northwest of Washington, in the waters off the southern tip of the Alaskan panhandle, and in the Beaufort Sea north of Alaska have yet to be agreed on. Meanwhile, the waters in these areas are the subjects of overlapping claims just like those in the Gulf of Maine.

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