

## THE UNITED KINGDOM — FRANCE CONTINENTAL SHELF ARBITRATION

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On July 10, 1975, France and the United Kingdom, having failed to agree on the boundaries of their continental shelf in the English Channel and eastern Atlantic, referred the matter to arbitration. By the terms of the Arbitration Agreement,<sup>1</sup> a specially appointed Court of Arbitration, composed of five distinguished international lawyers,<sup>2</sup> was asked to determine the disputed boundary "in accordance with the rules of international law applicable in the matter as between the Parties"<sup>3</sup> and to indicate its course on a chart.<sup>4</sup> After receiving the Parties' written submissions, the Court held hearings, appointed its own hydrographic expert, and pursued clarification of a number of points of detail. In June 1977, the Court delivered its Judgment; following a request by the United Kingdom for the clarification of certain issues, the Court delivered a second Judgment (Interpretation) in March 1978.<sup>5</sup>

The 1977 Judgment is a significant contribution to the contemporary law of the sea and has considerable implications for a wide variety of current disputes concerning continental shelf delimitation. The 1978 Interpretation though less important, provides some useful insights into the Court's original reasoning and raises the notoriously difficult issue of the scope of an international tribunal's power to interpret its own decision.

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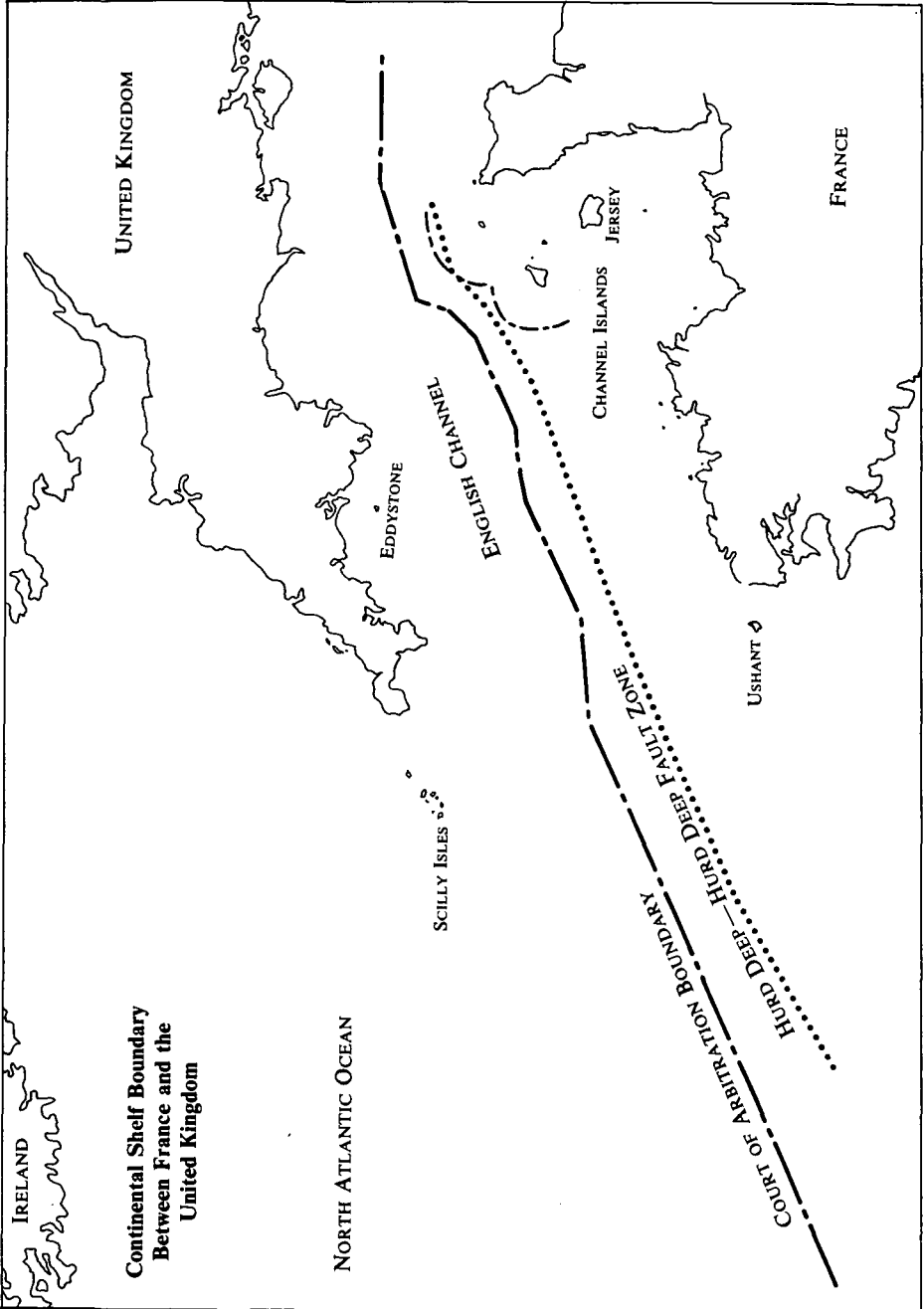
1. [1975] Gr. Brit. T.S. No. 137 (Cmd. 6280) [hereinafter cited as Arbitration Agreement]. The Arbitration Agreement is set forth at the beginning of the Court of Arbitration's decision.

2. The Arbitration Court consisted of Erik Castren, President, Herbert Briggs, Endre Ustor, Sir Humphrey Waldock and Paul Reuter, who was forced to resign for reasons of health and was replaced by M. André Gros. Lucius Cafilisch was appointed Registrar and Georges Malinverni was appointed Deputy-Registrar.

3. Arbitration Agreement, *supra* note 1, art. 2(1).

4. *Id.* art. 9(1).

5. The texts of both the 1977 Award [hereinafter cited as Judgment] and the 1978 Decision [hereinafter cited as Interpretation] can be found in Court of Arbitration, Decisions of 30 June 1977 and 14 March 1978 on the Delimitation of the Continental Shelf, [1978] Misc. No. 15 (Cmnd. 7438).



This article will examine both the 1977 Judgment and the 1978 Interpretation and will discuss the major implications for future continental shelf delimitation.

## I. THE DISPUTED AREA

The area in dispute consisted of the continental shelf between the 1,000-meter isobath in the eastern Atlantic and a line thirty minutes west of the Greenwich Meridian<sup>6</sup> in the English Channel.<sup>7</sup> For the purposes of the case the area can be divided into three distinct regions.

In the eastern part of the disputed area lie the Channel Islands Archipelago, four groups of islands situated off the French coast. The islands are internally self-governing, but are treated as part of the United Kingdom for purposes of defense and foreign relations. Located close to the French coast, the islands' effect on the delimitation of the continental shelf was a matter of profound disagreement. Strict application of the equidistance or median line principle would have reduced the French continental shelf in the region to a narrow coastal strip. While the United Kingdom supported this solution,<sup>8</sup> France argued that it exaggerated the legal significance of the archipelago and that the boundary should be the median line in the Channel itself, with the islands restricted to an enclave of continental shelf within the French zone.<sup>9</sup>

On either side of the Channel Islands region, where the coasts of the two States face each other across the English Channel, the absence of any equivalent complications had enabled the Parties to agree in principle upon a median line delimitation. However, details of the delimitation remained to be settled and the legal significance of two minor geographical features continued to be a matter of dispute. Off the English coast lies the Eddystone Rock,<sup>10</sup> which the United Kingdom maintained was an island and a permissible base-point for establishing the median line.<sup>11</sup> Further south, a geological fault in the sea bed, known as the Hurd Deep,<sup>12</sup> runs for

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6. The Parties had agreed that east of a line 30 minutes west of the Greenwich Meridian the boundary should be the median line in the English Channel.

7. See Judgment, *supra* note 5, at 1, para. 1.

8. *Id.* at 15, para. 5.

9. *Id.* at 11, para. 7.

10. See Map, *supra*, at 316.

11. See Judgment, *supra* note 5, at 22-23, para. 4.

12. See Map, *supra*, at 316.

some eighty nautical miles in a southwesterly direction. The United Kingdom regarded the Hurd Deep as a feature of possible legal significance in the delimitation of the region.<sup>13</sup>

West of the Channel entrance lies the third area, the Atlantic region. The most significant geographical feature in this region is the Scilly Isles,<sup>14</sup> lying twenty-one nautical miles off the United Kingdom mainland and extending almost one degree further west than the island of Ushant, the most westerly part of France. In this region, the equidistance or median line ran in a southwesterly direction, and according to the French submission, resulted in a delimitation unduly favorable to the United Kingdom. A number of geological faults, which the United Kingdom regarded as an extension of the Hurd Deep, and the presence of the Republic of Ireland, whose continental shelf boundary with the United Kingdom was undetermined, were additional features of possible relevance in the Atlantic region.

## II. JURISDICTION

The United Kingdom asserted that part of the disputed boundary lay between the Channel Islands and the coasts of Normandy and Brittany.<sup>15</sup> In that area, however, most of the waters were claimed by the Parties either as territorial sea or as an exclusive fishing zone. In addition, the Parties disagreed on the base-points from which their continental shelf boundaries should be calculated. When asked by the Court for their views on how these factors might affect the Court's jurisdiction, the Parties replied differently. France maintained that the Court was entitled only to delimit the continental shelf and that delimitation within the territorial sea had not been authorized.<sup>16</sup> The United Kingdom, though willing to interpret the Court's mandate more broadly than France, declared that it could regard the Court as having jurisdiction to delimit the area around the British islands of Ecrehos and Minquiers<sup>17</sup> only if

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13. Judgment, *supra* note 5, at 25, para. 12.

14. See Map, *supra*, at 316.

15. Judgment, *supra* note 5, at 27, para. 18.

16. *Id.* at 27, paras. 17, 20.

17. The Islands consist of two groups of rocks and islets situated between Jersey and the French coast. In the *Minquiers and Ecrehos Case*, [1953] I.C.J. 47, the International Court of Justice (ICJ) awarded the Islands to the United Kingdom. Fishing rights around the Islands were dealt with in a separate Anglo-French agreement ratified simultaneously with the special agreement to refer the question of sovereignty to the Court. See Johnson, *The Minquiers and Ecrehos Case*, 3 INT'L & COMP. L.Q. 189 (1954).

the Court did so on the basis of the British view of the islands' territorial sea.<sup>18</sup>

Under these circumstances, the Court concluded that it lacked jurisdiction to determine the boundary between the Channel Islands and the French coast.<sup>19</sup> The Court's jurisdiction was based upon the Parties' consent, which was manifestly absent. Furthermore, practical considerations favored the settlement of this part of the boundary dispute by negotiation, because

[i]n narrow waters such as these, strewn with islets and rocks, coastal States have a certain liberty in their choice of base-points; and the selection of base-points for arriving at a median line in such waters which is at once practical and equitable appears to be a matter peculiarly suitable for determination by direct negotiations between the Parties.<sup>20</sup>

Another preliminary question concerned the Republic of Ireland. Ireland, though not a party to the case, had claims in the northern part of the Atlantic region, which had been referred to in the pleadings and in the Parties' earlier negotiations.<sup>21</sup> Moreover, the United Kingdom had sought to draw a parallel between the effect of French and Irish claims on the British continental shelf and the position of the Federal Republic of Germany in the *North Sea Continental Shelf (North Sea) Cases*.<sup>22</sup>

While it referred to these considerations in a later part of its Judgment,<sup>23</sup> the Court ruled that its decision bound only the Parties, that it had no jurisdiction to discuss Irish claims, and that no inferences should be drawn from its Judgment with respect to the United Kingdom—Republic of Ireland boundary.<sup>24</sup> The Court stated that its determination of the British—French continental shelf boundary in the Atlantic region did not depend on calculations of proportionality, to which Irish claims might be relevant. The Court confined its speculations to the comment that

[i]n so far as there may be a possibility that the two successive delimitations of continental shelf zones in this region, where the three States are neighbours abutting on the same continental shelf, may result in some overlapping of the zones, it is mani-

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18. See Judgment, *supra* note 5, at 27, paras. 18, 20.

19. *Id.* at 28, para. 20.

20. *Id.* at 29, para. 22.

21. *Id.* at 29, para. 24.

22. *Id.* at 29, para. 24; see *North Sea Continental Shelf Cases*, [1969] I.C.J. 3.

23. See Judgment, *supra* note 5, at 111, para. 236.

24. *Id.* at 31, paras. 27, 28.

festly outside the competence of this Court to decide in advance and hypothetically the legal problem which may then arise. That problem would normally find its appropriate solution by negotiations directly between the three States concerned, negotiations which may indeed be called for by the prolongation of their maritime zones beyond the 1,000-metre isobath to 200 nautical miles.<sup>25</sup>

### III. APPLICABLE LAW

#### A. *The Geneva Convention on the Continental Shelf*<sup>26</sup>

After dealing with the preliminary matters described above, the Court addressed the fundamental issue in the case — the law applicable to the delimitation. On this complex question the views of the Parties were diametrically opposed. The United Kingdom contended that the matter was governed by the 1958 Geneva Convention on the Continental Shelf, specifically by Article 6:

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 baseline 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 points of the baselines from which the breadth of the territorial sea of each State is measured.<sup>27</sup>

France asserted that the Convention was irrelevant and that the dispute was governed exclusively by customary international law.<sup>28</sup> The French averred that it was the Court's duty to apply the principles of "equitable delimitation" as defined by the Interna-

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25. *Id.* at 31, para. 28.

26. *Done* April 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 [hereinafter cited as *Continental Shelf Convention*].

27. *Id.* art. 6.

28. *See* Judgment, *supra* note 5, at 35, paras. 35, 36.

tional Court of Justice (ICJ) in the *North Sea Cases*.<sup>29</sup>

The Court, in deciding the applicable law, first had to consider whether the Geneva Convention had entered into force between France and the United Kingdom. The United Kingdom ratified the Convention in 1964.<sup>30</sup> France acceded to the Convention the following year,<sup>31</sup> but appended to her instrument of accession a declaration which included a three-part reservation to Article 6.<sup>32</sup> The Secretary-General of the United Nations notified the United Kingdom of the French accession and declaration. The United Kingdom responded that “[t]he Government of the United Kingdom [was] unable to accept the reservations made by the Government of the French Republic.”<sup>33</sup> The Court had to determine whether the United Kingdom response to France’s reservations prevented the Convention from coming into force between the two Parties.

The Court noted that although the law regarding reservations to multilateral treaties was in the course of evolution at the critical time, the evolving areas were primarily concerned with cases in which a multilateral treaty contained no express provision relating to reservations.<sup>34</sup> Article 12 of the Geneva Convention<sup>35</sup> specifically addressed the question of reservations; consequently the transitional character of this part of the law of treaties was not important to the present case.

Article 12 permits reservations to the Convention with the exception of Articles 1 through 3 inclusive.<sup>36</sup> In the Court’s view, the effect of this provision was to prevent States from contesting a State’s right to be a party to the Convention on the basis of reservations authorized by the Article.<sup>37</sup> On the other hand, Article 12, though quite general in its terms, could not be interpreted as requiring a State to accept every reservation which fell within its terms. That would “amount almost to a license to contracting States to

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29. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 23.

30. *See Judgment, supra* note 5, at 32, para. 31. The English text appears in MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY GENERAL PERFORMS DEPOSITORY FUNCTIONS 538-39 (1977) [hereinafter cited as MULTILATERAL TREATIES].

31. *See Judgment, supra* note 5, at 32, para. 33; MULTILATERAL TREATIES, *supra* note 30, at 538.

32. MULTILATERAL TREATIES, *supra* note 30, at 540.

33. *Id.* at 542.

34. *See Judgment, supra* note 5, at 36, para. 38.

35. Continental Shelf Convention, *supra* note 26, art. 12.

36. *Id.*

37. *See Judgment, supra* note 5, at 36, para. 39.

write their own treaty and would manifestly go beyond the purposes of the Article.”<sup>38</sup> The Court’s view was that Article 12 left contracting States free to react in any way they think fit to a reservation made in conformity with its provisions, including refusal to accept the reservation. Whether any such reaction amounts to a mere comment, a mere reserving of position, a rejection merely of the particular reservation or a wholesale rejection of any mutual relations with the reserving State under the treaty consequently depends on the intention of the State concerned.<sup>39</sup>

France argued that the British refusal to accept its reservations to Articles 6, and 5(1) amounted to an “objection” to these reservations and was intended to prevent the Convention from coming into force between the two States.<sup>40</sup> The United Kingdom denied the French allegations and argued that its acceptance of and observations on other French reservations were clear evidence that treaty relations under the Convention were contemplated.<sup>41</sup> The British maintained that their comments on France’s reservations were not formal objections, but were merely a way of counteracting any presumption that those reservations had been accepted, pending resolution of the complex problem of their admissibility and interpretation.<sup>42</sup>

The Court upheld the British submission on this point after emphasizing that the British comments must be read in light of the express authorization of reservations in Article 12 and supported its conclusion with a reference to the state practice of other Parties to the Convention.<sup>43</sup> Without prejudice to the separate question of the specific status of Article 6, the Court decided that the British response to the French reservations had not prevented the Convention from coming into force between the two States.<sup>44</sup>

The French then argued that regardless of the question of reservations, recent developments in customary international law rendered the Continental Shelf Convention and the three other Geneva Conventions on the Law of the Sea<sup>45</sup> obsolete; therefore,

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38. *Id.*

39. *Id.*

40. *Id.* at 36-37, para. 40.

41. *Id.* at 37, para. 41.

42. *Id.* at 38, para. 43.

43. *Id.* at 38, para. 44.

44. *Id.* at 40, para. 48.

45. Convention on the High Seas, *done* April 29, 1958, 13 U.S.T. 2312, T.I.A.S. No.



the obligations of the Parties to these treaties were governed solely by customary international law.<sup>46</sup> The French argument relied upon the emergence, at the Third United Nations Conference on the Law of the Sea (UNCLOS III), of a consensus on the issue of the 200-mile exclusive economic zone,<sup>47</sup> the adoption of the concept in the Revised Single Negotiating Text<sup>48</sup> and its increasing support in state practice.

Despite these dramatic developments, the Court rejected the French argument that the Convention had been superseded. The Court listed a number of British objections to the French thesis and stated that under Article 2 of the Arbitration Agreement, its task was to decide the course of the boundary "in accordance with the rules of international law applicable in the matter between the Parties."<sup>49</sup> While acknowledging that developments in customary international law could modify or even extinguish treaty rights and obligations, the Court explained that the Convention on the Continental Shelf was a recent treaty which only the most conclusive evidence of the Parties' intentions could overturn.<sup>50</sup> The absence of any such evidence, together with significant counter-indications, convinced the Court that the French argument must be rejected.

After establishing that the Geneva Convention on the Continental Shelf was in force between the Parties, the Court directed its attention to a more difficult question, the scope and effect of the Convention's Article 6. The United Kingdom boldly contended that the French reservations to the Article should be totally disregarded.

France's first reservation to Article 6 stated: "[I]n the absence

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5200, 450 U.N.T.S. 82; Convention on the Territorial Sea and Contiguous Zone, *done* April 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter cited as Territorial Sea Convention]; Convention on Fishing and Conservation of the Living Resources of the High Seas, *done* April 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.

46. See Judgment, *supra* note 5, at 39, para. 45.

47. On the concept of the exclusive economic zone, see generally Fleischer, *The Right to a 200-mile Exclusive Economic Zone*, 14 SAN DIEGO L. REV. 548 (1977); Kanenas, *Wide Limits and "Equitable" Distribution of Seabed Resources*, 1 OCEAN DEV. & INT'L L. 137 (1973); Nelson, *The Patrimonial Sea*, 22 INT'L & COMP. L.Q. 668 (1973); Phillips, *The Exclusive Economic Zone as a Concept in International Law*, 26 INT'L & COMP. L.Q. 585 (1977).

48. U.N. Doc. A/CONF. 62/WP. 8/Rev. 1/pts. I, II & III, V OFFICIAL RECORDS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA 125 (1976). Informal Composite Negotiating Text/Revision I, U.N. Doc. A/CONF. 62/WP. 10/Rev. 1 (1979), reprinted in 18 INT'L LEGAL MATS. 686 (1979) [hereinafter cited as ICNT/Rev. 1].

49. See Judgment, *supra* note 5, at 40, para. 47.

50. *Id.*

of a specific agreement the Government of the French Republic will not accept that any boundary of the Continental Shelf determined by application of the principle of equidistance shall be invoked against it if such boundary is calculated from baselines established after 29 April 1958."<sup>51</sup> The United Kingdom argued that this could not be regarded as a proper reservation to Article 6, because the baselines in question were not defined.<sup>52</sup> For a definition of baselines, it was necessary to refer to Articles 3 and 4 of the 1958 Territorial Sea Convention,<sup>53</sup> or in the case of France, which was not a party to that Convention, to the rules of customary international law. In rejecting the British argument, the Court held that on its natural meaning the French reservation related only to the issue of continental shelf delimitation.<sup>54</sup> It was not, as the United Kingdom had argued, a reservation to the general rules of international law concerning straight baselines, and consequently must be regarded as a true reservation to Article 6.<sup>55</sup>

The second French reservation to Article 6 declared that in the absence of a specific agreement, France would not accept that any continental shelf boundary determined on the equidistance principle could be invoked against it "if it extends beyond the 200 metre isobath."<sup>56</sup> The British insisted that although the reservation was attached to Article 6, it was in substance a reservation to Article 1.<sup>57</sup> The United Kingdom explained that France had always opposed the idea of an unlimited seaward extension of the continental shelf and had affirmed this position in an interpretative declaration to Article 1.<sup>58</sup> The British then argued that France's reservation had been included to support that policy by discouraging claims beyond the 200-meter isobath and must therefore be regarded as a reserva-

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51. *Id.* at 41, para. 50.

52. *Id.*

53. Territorial Sea Convention, *supra* note 45, arts. 3-4.

54. *See* Judgment, *supra* note 5, at 41, paras. 50-51.

55. *Id.* at 41, para. 51.

56. MULTILATERAL TREATIES, *supra* note 30, at 540.

57. For the purpose of these Articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Continental Shelf Convention, *supra* note 26, art. 1.

58. In the view of the French government the expression "adjacent areas" implies a notion of geophysical, geological, and geographical dependence which *ipso facto* rules out an unlimited extension of the continental shelf. *See* MULTILATERAL TREATIES, *supra* 30, at 540.

tion to Article 1 and a contravention of Article 12.<sup>59</sup>

The Court disagreed with the British contention. The Court explained that the reservation must be construed in accordance with the natural meaning of its terms; the motives of the French government in formulating the reservation were irrelevant.<sup>60</sup> The Court held that the reservation only applied to the use of the equidistance principle to effect a delimitation under Article 6.<sup>61</sup> Therefore, the reservation could not be regarded as incompatible with Article 12.

The third French reservation to Article 6 proclaimed that in the absence of a specific agreement, France would not accept that any continental shelf boundary determined on the equidistance principle could be invoked against it

if it lies in areas where, in the Government's opinion there are "special circumstances" within the meaning of Article 6, paragraphs 1 and 2, that is to say: the Bay of Biscay, the Bay of Granville, and the sea areas of the Straits of Dover and of the North Sea off the French coast.<sup>62</sup>

The British challenge to this reservation adopted a different line of attack. The United Kingdom sought to demonstrate that it was not a true reservation at all, but a mere interpretative declaration. The British argued that this "reservation" was no more than a notification by the French government of the areas where it considered special circumstances to exist for the purposes of Article 6.<sup>63</sup> It was, therefore, an application or an invocation of that Article, and not a reservation.

The British argument was rejected. The Court pointed out that the Vienna Convention on the Law of Treaties<sup>64</sup> defined the term "reservation" to cover both attempts to exclude or modify the terms of a treaty and attempts "to exclude or modify the *legal effect* of certain provisions in their application to the reserving State."<sup>65</sup> The Court held that the reservation imposed a specific condition on the French acceptance of the delimitation regime of Article 6,

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59. See Judgment, *supra* note 5, at 42, para. 52.

60. *Id.* at 42, para. 53.

61. *Id.*

62. *Id.* at 42, para. 54.

63. *Id.*

64. *Opened for Signature* May 23, 1969, U.N. Doc. A/CONF. 39/27, reprinted in 63 AM. J. INT'L L. 875 (1969); 8 INT'L LEGAL MATS. 679 (1969) [hereinafter cited as Vienna Convention].

65. Judgment, *supra* note 5, at 43, para. 55.

which made "the application of that regime dependent on acceptance by the other State of the French Republic's designation of the named areas as involving 'special circumstances' *regardless of the validity or otherwise of that designation under Article 6.*"<sup>66</sup>

Since the British attempt to reject the French reservations *in limine* was disallowed, the Court then addressed the effect of the reservations, and the British response to them, upon the status of Article 6. France argued that the reservations imposed conditions on its consent to be bound, and that when the reservations were rejected by the United Kingdom, the Parties' lack of agreement on the scope of Article 6 meant that to resolve issues of delimitation their obligations must be determined by customary international law.<sup>67</sup> The Court rejected this argument and held that since the British rejection of the reservations was directed only toward the reservations, and not the entire Article, the effect of the United Kingdom's action was limited to the reservations.<sup>68</sup>

The Court next considered the effect of the United Kingdom's rejection of the French reservations. The United Kingdom argued that because the French reservations had been rejected, the Parties' legal relations were governed by Article 6 and were unmodified by the conditions France had sought to introduce.<sup>69</sup> This argument was also rejected. Such an approach, said the Court, would allow the British rejection unilaterally to set aside express conditions placed by the French Republic on its consent to be bound by the Article and could not easily be reconciled with the principle of mutuality of consent in the law of treaties.<sup>70</sup>

Having rejected the main contentions of both sides, the Court accepted an alternative British argument and expressed its conclusion on the question of the combined effect of the French reservations and the British rejection of the reservations in the following important passage:

[T]he effect of the rejection may properly, in the view of the

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66. *Id.* (emphasis added). Bowett has expressed doubts regarding the correctness of the Court's conclusion on this point. See Bowett, *Reservations to Non-Restricted Multilateral Treaties*, 48 BRIT. Y.B. INT'L L. 67, 91 n.1 (1976-1977). However, the Court's reasoning has been persuasively defended. See McRae, *Delimitation of the Continental Shelf Between the United Kingdom and France: The Channel Arbitration*, 15 CAN. Y.B. INT'L L. 173, 178 (1977).

67. See Judgment, *supra* note 5, at 44, para. 57.

68. *Id.* at 44, para. 59.

69. *Id.* at 44, para. 58.

70. *Id.* at 45, para. 60.

Court, be said to render the reservations non-opposable to the United Kingdom. Just as the effect of the French reservations is to prevent the United Kingdom from invoking the provisions of Article 6 except on the basis of the conditions stated in the reservations, so the effect of their rejection is to prevent the French Republic from imposing the reservations on the United Kingdom for the purpose of invoking against it as binding a delimitation made on the basis of the conditions contained in the reservations. Thus, the combined effect of the French reservations and their rejection by the United Kingdom is neither to render Article 6 inapplicable *in toto*, as the French Republic contends, nor to render it applicable *in toto*, as the United Kingdom primarily contends. It is to render the Article inapplicable as between the two countries to the extent, but only to the extent, of the reservations; and this is precisely the effect envisaged in such cases by Article 21, paragraph 3 of the Vienna Convention on the Law of Treaties and the effect indicated by the principle of mutuality of consent.<sup>71</sup>

The Court concluded that Article 6 was inapplicable only to the extent of the French reservations; it was then necessary to determine what their extent was. On this issue the Court was presented with an ingenious British argument, designed to preserve the integrity of Article 6. The United Kingdom indicated that the three French reservations were expressly stated to apply in the absence of a specific agreement to the contrary and argued that the reservations' purpose was to render a unilateral delimitation by another State non-opposable to France.<sup>72</sup> Because delimitation was now the subject of arbitration, the British maintained that there could be no question of a unilateral delimitation; therefore, the Court was free to determine the disputed boundary without reference to the reservations.<sup>73</sup>

The Court briefly acknowledged the British argument, but held that such a construction of the reservations was quite untenable. The Court observed that

what the reservations are directed to prevent is that an equidistance delimitation, which runs counter to one of the three conditions, should be invoked against the French Republic without its specific agreement. The Court is therefore unable to see on what basis the reservations can be considered to have lost their object

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71. *Id.* at 45, para. 61.

72. *Id.* at 46, para. 63.

73. *Id.*

upon the submission of the delimitation to arbitration, the very time at which they would be expected to have their maximum relevance for the reserving State.<sup>74</sup>

Support for this conclusion was found in an important consideration of legal policy.

[I]t is hard to imagine a more serious impediment to recourse to arbitration and judicial settlement than if it were to be supposed that, by the very act of accepting arbitration or judicial settlement, a State might lose the benefit of a reservation which it had specifically formulated for its legal protection in regard to the matter in issue in the proceedings.<sup>75</sup>

The Court next addressed the impact of the three French reservations to Article 6. The first reservation, relating to straight baselines, was found to have no bearing on the question before the Court, because this method of delimitation was not in use in the arbitration area.<sup>76</sup>

The second French reservation, which was directed against a boundary determined by application of the equidistance principle "if it extends beyond the 200-metre isobath," was also found to have no application. In the negotiations preceding the arbitration, "it was the French Republic itself which proposed that the delimitation of its boundary with the United Kingdom should be prolonged beyond the 200-metre to the 1,000-metre isobath."<sup>77</sup> Under these circumstances, the Court held that whatever the intention behind the reservation, the above circumstances excluded its application to the present dispute.<sup>78</sup>

The third French reservation was much more important. At issue was the meaning of the reservation's expression "Bay of Granville." The United Kingdom argued that the reservation covered only the sea areas to the east and south of Jersey.<sup>79</sup> The Court, however, agreed with the French contention that in light of the Parties' earlier negotiations, the expression must be given its broader

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74. *Id.* at 46, para. 64.

75. *Id.*

76. The United Kingdom did not rely on straight baselines. The French claim to use a straight baseline across the Anse de Vauville on the coast of Normandy was disputed by the United Kingdom, but the disputed baseline lay within the part of the Channel Islands region which the Court had earlier held to be outside its jurisdiction. See Judgment, *supra* note 5, at 49, para. 71.

77. *Id.* at 49, paras. 72-73.

78. *Id.* at 49-50, para. 73. For criticism of the Court's conclusion, see *McRae*, *supra* note 66, at 179-80.

79. See Judgment, *supra* note 5, at 50, para. 74.

connotation and be interpreted to cover the entire Channel Islands region.<sup>80</sup>

The result of the extensive argument on the applicable law for the arbitration was a decision from which both sides could derive some satisfaction. By virtue of the Bay of Granville reservation, delimitation in the Channel Islands region would follow customary international law, as France desired. In the Atlantic region and in the English Channel, however, the British view of the Geneva Convention was accepted and in these areas delimitation would be based on Article 6.<sup>81</sup>

*B. The Geneva Convention and Customary International Law:  
The Coextensive Nature of Article 6 and North Sea  
Continental Shelf Cases Principles*

Major attention was devoted to the question of whether the delimitation was governed by the Geneva Convention or by customary international law, because the Parties assumed that the two would lead to different results. In what must be regarded as the most significant part of its Judgment, the Court challenged this premise and sought to demonstrate that for practical purposes the provisions of Article 6 and the principles laid down in the *North Sea Cases* could be regarded as coextensive.

The key to the Court's reasoning was its explanation of the relationship between the equidistance principle and the concept of special circumstances. In the Court's view, Article 6 provided that in the absence of agreement a combined equidistance — special circumstances rule governed the delimitation.<sup>82</sup> Contrary to the British argument, "special circumstances" were not a qualification of the equidistance principle requiring proof but "an integral part of the rule providing for application of the equidistance principle. As such, although involving matters of fact, that question is always

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80. *Id.*

81. In a short declaration appended to the Judgment, one member of the Court examined the status of Article 6 in more detail. While expressing his agreement with the decision as a whole, Judge Briggs indicated his support for a number of arguments which the Court had rejected. Holding that the French reservations were, as the United Kingdom had maintained, intended only to prevent a unilateral delimitation by a neighboring State, he decided that they had no relevance in the present case. Moreover, even if that construction were wrong, Judge Briggs agreed with the British argument that the first and second reservations to Article 6 were invalid and that the Granville Bay provision was not a reservation but an interpretative declaration. *See id.* at 120-26 (Briggs, J., separate opinion).

82. *Id.* at 49, para. 70.

one of law of which, in case of submission to arbitration, the tribunal must itself, *proprio motu*, take cognizance when applying Article 6.”<sup>83</sup>

The United Kingdom conceded that a State could invoke “special circumstances” without having made a reservation to that effect when ratifying or acceding to the Convention.<sup>84</sup> This, said the Court, “further underlines the full liberty of the Court in appreciating the geographical or other circumstances relevant to the determination of the continental shelf boundary, and at the same time reduces the possibility of any difference in the appreciation of these circumstances under Article 6 and customary law.”<sup>85</sup>

In a crucial passage, the Court asserted that the reference to special circumstances had been included in Article 6 to ensure that its application would produce an equitable delimitation:

[T]he *travaux préparatoires* of Article 6, in the International Law Commission and at the Geneva Conference of 1958, show that this condition was introduced into paragraphs 1 and 2 of the Article because it was recognised that, owing to particular geographical features or configurations, application of the equidistance principle might not infrequently result in an unreasonable or inequitable delimitation of the continental shelf. In short, the role of the “special circumstances” condition in Article 6 is to ensure an equitable delimitation; and the combined “equidistance — special circumstances rule,” in effect 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.<sup>86</sup>

This conclusion was reinforced by the absence of any definition of “special circumstances” in Article 6. This the Court regarded as further evidence that equidistance was in no sense an independent method of delimitation, but a way in which an equitable delimitation might in some instances be achieved.

Article 6 neither defines “special circumstances” nor lays down

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83. *Id.* at 48, para. 68. In his separate declaration, however, Judge Briggs expressed his concern that

the Court’s interpretation of Article 6 seems, in effect, to shift “the burden of proof” of “special circumstances” from the State which invokes them to the Court itself, and constitutes some threat that the rule of positive law expressed in Article 6 will be evaded by its identification with subjective equitable principles, permitting attempts by the Court to redress the inequities of geography.

*Id.* at 126 (Briggs, J., separate opinion).

84. *Id.* at 48, para. 69.

85. *Id.* at 48, para. 69.

86. *Id.* at 48, para. 70 (emphasis added).



the criterion by which it is to be assessed whether any given circumstances justify a boundary line other than the equidistance line. Consequently, even under Article 6 the question whether the use of the equidistance principle or some other method is appropriate for achieving an equitable delimitation is very much a matter of appreciation in the light of the geographical and other circumstances. *In other words, even under Article 6 it is the geographical and other circumstances of any given case which indicate and justify the use of the equidistance method as the means of achieving an equitable solution rather than the inherent quality of the method as a legal norm of delimitation.*<sup>87</sup>

Having held that “the rules of customary law are a relevant and even essential means both for interpreting and completing the provisions of Article 6,”<sup>88</sup> the Court next considered the scope and significance of the judgment in the *North Sea Cases*.

The Parties agreed that the ICJ had rejected the view that delimitation involved the apportionment of just and equitable shares of an undivided whole.<sup>89</sup> Thus, the task of the Court of Arbitration was to fix a boundary, not to allocate a common resource. The Parties also agreed that the ICJ’s conception of the continental shelf as the “natural prolongation” of the land territory of a State was fundamental to the present case.<sup>90</sup> The Parties differed, however, on the weight to be attached to “proximity,” that is, the closeness of the disputed continental shelf to the land territory of the claimant States. France, whose claim was for a boundary more favorable than that conferred by the equidistance principle, argued that the ICJ had rejected proximity in favour of “continuity” — the idea that the continental shelf was simply a seaward projection of land territory.<sup>91</sup> The United Kingdom, while recognizing the Court’s refusal to regard proximity as an absolute criterion, argued that it had not been wholly rejected as a possible method of delimitation.<sup>92</sup> The Court of Arbitration supported the British view on this point. Although acknowledging that proximity had been rejected as a basis of title, the Court held that the *North Sea Cases* explicitly endorsed its legitimacy as a means of delimitation in appropriate

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87. *Id.* (emphasis added)

88. *Id.* at 50, para. 75.

89. *Id.* at 51, para. 78.

90. *Id.* at 52, para. 79.

91. *Id.* at 52, para. 80.

92. *Id.*

conditions.<sup>93</sup>

The Court found its conclusion further supported by the ICJ's treatment of the equidistance principle in the *North Sea Cases*. France and the United Kingdom drew very different conclusions from the extensive discussion of this principle in the *North Sea Cases*. By emphasizing the ICJ's statement that "there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures,"<sup>94</sup> France attempted to minimize the significance of equidistance as a criterion of delimitation.<sup>95</sup> By maintaining that the *North Sea Cases* Judgment was there only concerned with the factors to be taken into account by the Parties in negotiating an equitable delimitation, the United Kingdom sought to demonstrate that the importance of equidistance in other contexts had been in no way diminished.<sup>96</sup>

The Court of Arbitration adopted an intermediate position. The Court held that in the *North Sea Cases*, the equidistance principle had been neither approved nor discarded.<sup>97</sup> The Court stated that the *North Sea Cases* decision had been intended to indicate that

the validity of the equidistance method, or of any other method, as a means of achieving an equitable delimitation of the continental shelf is always relative to the particular geographical situation. In short, whether under customary law or under Article 6, it is never a question either of complete or of no freedom of choice as to method; for the appropriateness — the equitable character — of the method is always a function of the particular geographical situation.<sup>98</sup>

Although the ICJ had rejected the argument that the equidistance principle was required by customary law, it had recognized its convenience and general suitability.<sup>99</sup> This sentiment the Court of Arbitration endorsed, adding that the usefulness of the equidistance principle had been demonstrated by recent state practice.<sup>100</sup>

After acknowledging that the equidistance principle occupied

93. *Id.* at 53, para. 81.

94. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 50.

95. *See Judgment, supra* note 5, at 53, para. 83.

96. *Id.*

97. *Id.* at 54, para. 84.

98. *Id.*

99. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 24.

100. *See Judgment, supra* note 5, at 54, para. 85.

a special place in the methodology of continental shelf delimitation, the Court added an important qualification based on the distinction the ICJ had made between “opposite” and “adjacent” States. Denmark, the Netherlands, and the Federal Republic of Germany are, for the purposes of the Geneva Convention and customary international law, adjacent States. The ICJ mentioned that application of the equidistance method to such a situation was far more likely to produce an inequitable result than in the case of opposite States.<sup>101</sup> While in the case of adjacent States the effect of any irregularity in the coastline was automatically magnified, use of the median line between opposite States was a very good way of ensuring that each State was assigned the natural prolongation of its territory.

Both France and the United Kingdom recognized the significance of the distinction between opposite and adjacent States, and the Court focused its attention on the characterization of the disputed area. The English Channel region was not in dispute; the Parties agreed the situation was one of opposite States.<sup>102</sup> In the Channel Islands region, though the legal significance of the Islands was in dispute, the Parties agreed in principle that the situation was again one of opposite States.<sup>103</sup> In the Atlantic region, however, the Parties disagreed.<sup>104</sup>

France argued that even if the Geneva Convention was in force between the Parties, the situation fell outside Article 6(1),<sup>105</sup> because in the area in question there were no coasts “between” which the continental shelf could be said to be situated.<sup>106</sup> Consequently, because the French text of the Convention referred to “la délimitation du plateau continental *entre* ces États,”<sup>107</sup> the situation could not be said to be one of opposite States. Because France and the United Kingdom had no common land frontier, France conceded that they could not be regarded as adjacent States within Article 6(2), but attempted to persuade the Court that there was here a sufficient analogy with the situation of adjacent States to lend rele-

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101. North Sea Continental Shelf Cases, [1969] I.C.J. 3, 37.

102. See Judgment, *supra* note 5, at 55-56, para. 87.

103. *Id.*

104. *Id.* at 56, para. 88.

105. *Id.* at 56, para. 89.

106. *Id.*

107. Continental Shelf Convention, *supra* note 26, art. 6(1) (French text) (emphasis added). The English text reads: “[T]he boundary of the continental shelf *appertaining to* such states . . . .” *Id.* (emphasis added).

vance to the ICJ's comments on the unsuitability of the equidistance method.<sup>108</sup>

The British asserted that Article 6 was clearly intended to be exhaustive,<sup>109</sup> that the situation was certainly not one of adjacent States within Article 6(2);<sup>110</sup> and that although in the Atlantic region the continental shelf lay "off" rather than "between" the two coasts, there was no reason to regard this area as a separate sector, requiring a different method of delimitation from the rest of the English Channel.<sup>111</sup>

The Court of Arbitration upheld the British argument that Article 6 was intended to be exhaustive and found support for their decision in the *North Sea Cases*.<sup>112</sup> The characterization of the situation in the Atlantic region as one of opposite or adjacent States was, however, an issue to which the Court refused to attach importance. Although inclined to regard the situation as one of opposite States, the Court stressed that it was the geographical and not the legal relationship of the Parties that was the all-important consideration.<sup>113</sup> The aim of both sections of Article 6 was to achieve an equitable delimitation and this depended on geography, not on which section of the Article applied. Therefore, while generally the equidistance method would achieve an equitable delimitation between opposite States, where States were legally opposite, but geographically adjacent, delimitation by some other method might be required.

The rules of delimitation prescribed in paragraph 1 and paragraph 2 are the same, and it is the actual geographical relation of the coasts of the two States which determine their application. What is important is that, in appreciating the appropriateness of the equidistance method as a means of effecting a "just" or "equitable" delimitation in the Atlantic region, the Court must have regard both to the lateral relation of the two coasts as they abut upon the continental shelf of the region and to the great distance seawards that this shelf extends from those coasts.<sup>114</sup>

The Court next addressed a general consideration arising from the *North Sea Cases*, the question of "proportionality" — the idea

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108. See Judgment, *supra* note 5, at 56-57, para. 90.

109. *Id.* at 57, para. 91.

110. *Id.*

111. *Id.* at 58, para. 93.

112. *Id.* at 58, para. 94.

113. *Id.* at 59, para. 95.

114. *Id.* at 113, para. 242.

that the continental shelves of neighboring States should be approximately proportional to the lengths of their respective coastlines.<sup>115</sup> France argued that the ICJ's emphasis on this principle indicated that the Court regarded it as a principle of customary international law.<sup>116</sup> The Court of Arbitration disagreed. Acknowledging that proportionality was a relevant factor in arriving at an equitable delimitation, the Court declared that proportionality could not be regarded as a general criterion or an independent basis for delimitation.<sup>117</sup> Pointing out that particular configurations of the coast or individual geographical features might sometimes prevent a boundary drawn according to the equidistance principle from reflecting the general configuration of the coast, the Court explained that

[t]he concept of "proportionality" merely expresses the criterion or factor by which it may be determined whether such a distortion results in an inequitable delimitation of the continental shelf as between the coastal States concerned. The factor of proportionality may appear in the form of the ratio between the areas of continental shelf to the lengths of the respective coastlines, as in the *North Sea Continental Shelf* cases. But it may also appear, and more usually does, as a factor for determining the reasonable or unreasonable — the equitable or inequitable — effects of particular geographical features or configurations upon the course of an equidistance line boundary. *In short, it is disproportion, rather than any general principle of proportionality which is the relevant criterion or factor.*<sup>118</sup>

The Court reinforced its conclusion on this point by repeating that an equitable delimitation was distinct from an apportionment of the continental shelf;<sup>119</sup> that the Court was not engaged in dispensing distributive justice;<sup>120</sup> and that, as the ICJ had emphasized, delimitation was not a question of completely "refashioning nature," but "of remedying the disproportionality and inequitable effects produced by particular geographical configurations or features in situations where otherwise the appurtenance of roughly comparable attributions of continental shelf to each State would be indicated by the geographical facts."<sup>121</sup>

115. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 91.

116. *See Judgment, supra* note 5, at 60, para. 98.

117. *Id.* at 61, para. 101.

118. *Id.* at 60, paras. 100-01 (emphasis added).

119. *Id.* at 60, para. 101.

120. *Id.* at 61, para. 101.

121. *Id.*

#### IV. DELIMITING THE ENGLISH CHANNEL

The Parties agreed that in the English Channel the legal situation was one of opposite States, and that in principle, delimitation should follow the median line. The Court of Arbitration concurred, ruling that due to the geographical circumstances, use of the median line would effect an equitable delimitation in accordance with the requirements of Article 6(1) of the Geneva Convention.<sup>122</sup>

During negotiations between 1970 and 1974, the Parties had largely succeeded in agreeing upon the course of the median line in the areas to the east and west of the Channel Islands region and, with the encouragement of the Court, had in the course of the proceedings succeeded in settling a number of outstanding details. Before the Court could confirm these sections of the boundary, however, it had to resolve two matters which the Parties had been unable to agree upon — the United Kingdom claim to use the Eddystone Rock as a base-point for establishing the median line, and the significance of the partial break in the continental shelf, known as the Hurd Deep and Hurd Deep Fault Zone.

The evidence indicated that the highest part of the Eddystone Rock is only slightly above the highest full tides and may be covered by them.<sup>123</sup> The French insisted that if the top of the Rock was not continuously above water, it was, under customary international law, a mere low-tide elevation, or drying rock, and could not be used as a base-point for establishing the median line.<sup>124</sup>

The United Kingdom relied on the fact that, though the Rock may be covered by exceptional tides, it was located above the line of mean high-water spring tides and argued that the Rock should therefore be regarded as an island.<sup>125</sup> The British also argued that whatever the legal status of the Rock, its use as a base-point had been accepted by France during discussions on the protection of French fishing rights and the implementation of the 1964 European Fisheries Convention in 1964-1965, and again between 1970 and 1974 when the negotiations concerning the median line in the Channel had taken place.<sup>126</sup> France answered by challenging the inferences on which the British argument was based and drew at-

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122. *Id.* at 61, para. 103.

123. *Id.* at 69, para. 124.

124. *Id.* at 69, para. 125.

125. *Id.* at 70, para. 127.

126. *Id.* at 71, para. 129.

tention to a number of French statements questioning the significance of the Rock.

The Court of Arbitration declined to decide the general question of where islands end and low-tide elevations begin, but accepted the alternative British argument.<sup>127</sup> The Court concluded that too much use had been made of the Eddystone Rock in dealings between the Parties for the French argument to be sustainable without stronger evidence of French reservations as to its significance.

The Eddystone Rock, as is confirmed by the Court's own expert, was treated as relevant to the delimitation of the median line in the Channel in 1971. Consequently, the French Government's statement, that it has never accepted "officiellement" the coordinates communicated to it so far as concerns the use of Eddystone Rock, does not seem to the Court sufficient to counterbalance the evidence of its use in 1971 by both Parties. This evidence is, moreover, reinforced by the French Government's earlier acceptance of the relevance of the Eddystone Rock in the delimitation of the United Kingdom's fishery limits.<sup>128</sup>

The Court's decision confirmed the use of the Eddystone Rock as a base-point and resolved this section of the disputed boundary in favor of the United Kingdom.<sup>129</sup>

The remaining Channel delimitation issue concerned the British argument regarding the significance of the Hurd Deep and Hurd Deep Fault Zone. While accepting the applicability of the median line in the delimitation of the Channel area, the United Kingdom argued that if for any reason that line was rejected, the boundary should follow the line of the Hurd Deep and Hurd Deep Fault Zone, because this marked a break in the continuity of the continental shelf.<sup>130</sup>

The Court concluded that the geological faults in question could exercise no material influence on the determination of the disputed boundary.<sup>131</sup> It ruled that the Hurd Deep and Hurd Deep Fault Zone did not interrupt the essential continuity of the continental shelf in the relevant area, and that by comparison with the Norwegian Trough, which the United Kingdom did not regard as limiting Norway's continental shelf, they must be regarded as mi-

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127. *Id.* at 74, para. 139.

128. *Id.* at 75, para. 143.

129. *Id.* at 75, para. 144.

130. *Id.* at 62, para. 104.

131. *Id.* at 63, para. 109.

nor features.<sup>132</sup> The Court dismissed the British contention that the fault was a significant geological feature which could be used to define the continental shelf boundary if the equidistance principle were to be rejected.<sup>133</sup> If equidistance had been rejected, the need to establish an equitable delimitation, not this insignificant geological fault, would have determined the course of the revised boundary.

Should the equidistance line not appear to the Court to constitute the appropriate boundary in any area, it will be because some geographical feature amounts to a "special circumstance" justifying another boundary under Article 6 or, by rendering the equidistance line inequitable, calls under customary law for the use of some other method. It follows that any alternative boundary would either have to be one justified by the "special circumstances" or one apt to correct the inequity caused by the particular geographical feature. But the axis of the Hurd Deep-Hurd Deep Fault Zone is placed where it is simply as a fact of nature, and there is no intrinsic reason why a boundary along that axis should be the boundary which is justified by the special circumstance under Article 6 or which, under customary law, is needed to remedy the particular inequity.<sup>134</sup>

## V. DELIMITING THE CHANNEL ISLANDS REGION

The Parties agreed that in the Channel Islands region<sup>135</sup> the legal situation was one of opposite States and that the delimitation of the continental shelf should employ the median line.<sup>136</sup> Where they differed was on the question of how that line should be drawn. The United Kingdom argued that because islands are legally entitled to their own continental shelf, the median line in the English Channel should loop to the south and east and pass between the Channel Islands and the French coast.<sup>137</sup> France, arguing that the special geographical circumstances required a different solution, maintained that throughout its length the median line should be drawn between the mainland of the United Kingdom and the French coast and that the Channel Islands should be accommodated by the creation of a six-mile enclave within the area of conti-

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132. *Id.* at 63, para. 107.

133. *Id.* at 63, para. 108.

134. *Id.*

135. *Id.* at 76, para. 146.

136. *Id.*

137. *Id.* at 79, para. 154.



mental shelf assigned to France.<sup>138</sup>

The Court, as discussed above, held that delimitation of the area between the Channel Islands and the French coast was beyond its competence and that in the remaining Channel Islands area, the issue was governed by customary international law.<sup>139</sup> Therefore, the Court's task was to determine the legal significance of the Channel Islands in light of the principles of equitable delimitation as defined by the *North Sea Cases*.

France asserted that geographically, geologically, and legally the area to the south of the mid-Channel median line was part of the French continental shelf.<sup>140</sup> While it was conceded that islands generally are entitled to a continental shelf of their own, France argued that in the special situation in the Channel, an unmodified application of the equidistance principle would produce a disproportionate division of the continental shelf, detrimental to French navigational, security, and defense interests. In the French view this inequitable result could be avoided only by ignoring the Channel Islands and using the mid-Channel median line,<sup>141</sup> a result in conformity with both Anglo-French practice and state practice generally and one that is further supported by the emphasis in the *North Sea Cases* on the principles of natural prolongation and proportionality.<sup>142</sup>

The starting point of the United Kingdom argument was that under Article 1 of the Geneva Convention and in customary international law, islands are entitled to their own continental shelf.<sup>143</sup> The British viewed exceptions to that principle as irrelevant to the present case, because the Channel Islands were not small and insignificant islands, but, by reason of their special constitutional status, effectively island States.<sup>144</sup> In light of this characterization, their location off the French coast should be regarded as irrelevant to the delimitation of their continental shelf. In regard to equitable considerations, the navigational, security, and defense interests relied on by France were, in the British view, of doubtful relevance and in any case no less important to the United Kingdom.<sup>145</sup> The British

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138. *Id.* at 78, para. 150.

139. *Id.* at 93, para. 195.

140. *Id.* at 79-80, para. 156.

141. *Id.* at 82, para. 164.

142. *Id.* at 82-84, paras. 165-67.

143. *Id.* at 84, para. 168.

144. *Id.* at 85, para. 171.

145. *Id.* at 87, para. 175.

strongly challenged the French interpretation of the concept of natural prolongation and emphasis on proportionality and argued that the enclave solution was inconsistent with state practice.<sup>146</sup> Finally, the United Kingdom declared that if an enclave solution was adopted, a zone of twelve miles rather than six miles should be prescribed, because a twelve-mile fishery zone had been previously established in the region and at some future date the territorial sea might be similarly extended.<sup>147</sup>

The Court of Arbitration began its assessment of these arguments by focusing on the central issue — the status of the Channel Islands. It agreed with the British view that they could not be regarded as mere rocks, or small islands, with no relevance to delimitation.<sup>148</sup> However, a close analysis of the islands' constitutional status, in particular the United Kingdom's responsibility for the islands' foreign affairs, led the Court to reject the British argument that the islands should be regarded as territories distinct from the United Kingdom.

[A]s between the United Kingdom and the French Republic, the Court must treat the Channel Islands only as islands of the United Kingdom, not as semi-independent States entitled in their own right to their own continental shelf *vis-à-vis* the French Republic. The legal framework within which the Court must decide the course of the boundary (or boundaries) in the Channel Islands region is, therefore, that of two opposite States one of which possesses island territories close to the coast of the other State.<sup>149</sup>

Having characterized the issue as one involving two States rather than three, the Court briefly considered whether the Channel Islands might be regarded as a projection or extension of the United Kingdom mainland, an argument not presented by the United Kingdom. The Court concluded that the argument was untenable and observed that such an interpretation of the situation "would be as extravagant legally as it manifestly is geographically."<sup>150</sup>

The Court next examined arguments concerning "natural prolongation." The Court agreed with the British contention that the French argument had placed an inordinate emphasis on the geo-

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146. *Id.* at 87, para. 177.

147. *Id.* at 88, para. 179.

148. *Id.* at 89, para. 184.

149. *Id.* at 90, paras. 186-87.

150. *Id.* at 91, para. 190.

graphical and geological aspects of the concept of natural prolongation.<sup>151</sup> The Court emphasized it was the juridical significance of the concept that required assessment and attempted to explain the relationship between “natural features” and the applicable law, particularly the relevance of natural prolongation to the framing of an equitable delimitation.

In international law, as the United Kingdom emphasised in the pleadings, the concept of the continental shelf is a juridical concept which connotes the natural prolongation under the sea not of a continent or geographical land mass but of the land territory of each State. And the very fact that in international law the continental shelf is a juridical concept means that its scope and the conditions for its application are not determined exclusively by the physical facts of geography but also by legal rules. Moreover, it is clear both from the insertion of the “special circumstances” provision in Article 6 and from the emphasis on “equitable principles” in customary law that the force of the cardinal principle of “natural prolongation of territory” is not absolute, but may be subject to qualification in particular situations.<sup>152</sup>

The Court’s treatment of the natural prolongation issue had a dual effect. It undercut the French argument that the Channel Islands were a geographical anomaly located on the natural prolongation of French territory and prevented the British from asserting that the seabed between the Channel Islands and the median line was a natural prolongation of their territory. The Court declared that in the present kind of situation, natural prolongation was a concept which, though not irrelevant to the Parties’ legal rights, was inadequate to define them.<sup>153</sup> The overriding objective of the Court was to achieve an equitable delimitation and for that exercise natural prolongation was a necessary, but not a sufficient, consideration.

The true position, in the opinion of the Court, is that the principle of natural prolongation of territory is neither to be set aside nor treated as absolute in a case where islands belonging to one State are situated on continental shelf which would otherwise constitute a natural prolongation of the territory of another State. The application of that principle in such a case, as in other cases concerning the delimitation of the continental shelf, has to

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151. *Id.* at 92, para. 191.

152. *Id.*

153. *Id.* at 93, para. 194.

be appreciated in the light of all the relevant geographical and other circumstances. When the question is whether areas of continental shelf, which geologically may be considered a natural prolongation of the territories of two States, appertain to one State rather than to the other, the legal rules constituting the juridical concept of the continental shelf take over and determine the question. Consequently, in these cases the effect to be given to the principle of natural prolongation of the coastal State's land territory is always dependent not only on the particular geographical and other circumstances but also on any relevant considerations of law and equity.<sup>154</sup>

The Court next addressed the question of equality and proportionality. France maintained that because the two States had approximately equal lengths of coasts, they should have approximately equal areas of continental shelf.<sup>155</sup> The French submissions also went considerably beyond this and invoked the doctrine of the equality of States as a general justification for the mid-Channel median line.<sup>156</sup> The Court viewed this latter argument as misconceived. While the length of the respective coastlines was highly relevant, the doctrine of the equality of States had no bearing on a decision concerned with delimitation.

The doctrine of the equality of States, applied generally to the delimitation of the continental shelf, would have vast implications for the division of the continental shelf among the States of the world, implications which have been rejected by a majority of States and which would involve, on a huge scale, that refashioning of geography repudiated in the *North Sea Continental Shelf* cases. Any ground of equity, the Court considers, is rather to be looked for in the particular circumstances of the present case and in the particular equality of the two States in their geographical relation to the continental shelf of the Channel.<sup>157</sup>

Among the relevant factors in achieving an equitable delimitation in the Channel Islands region were the size and importance of the islands and the limits of the Parties' coastal fisheries and territorial seas.<sup>158</sup> The navigational, security and defense interests of the Parties were also relevant; however, as the Court explained, both Parties had such interests and the English Channel was a major route of international maritime navigation, therefore such evidence

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154. *Id.*

155. *Id.* at 83, para. 166.

156. *Id.* at 93, para. 195.

157. *Id.*

158. *Id.* at 90-91, para. 187.

was not regarded as decisive.<sup>159</sup> The Court stated that navigational, security, and defense interests must be treated as merely tending “to evidence the predominant interest of the French Republic in the southern areas of the English Channel, a predominance which is also strongly indicated by its position as a riparian State along the whole of the Channel’s south coast.”<sup>160</sup>

The decisive factor in the delimitation of the Channel Islands region was the approximate equality of the States’ mainland coastlines on either side of the Channel and the unequal division of the continental shelf which would follow from an unmodified application of the equidistance principle.

The Court considers that the primary element in the present problem is the fact that the Channel Islands region forms part of the English Channel, throughout the whole length of which the Parties face each other as opposite States having almost equal coastlines. The problem of the Channel Islands apart, the continental shelf boundary in the Channel indicated by both customary law and Article 6, as the Court has previously stated, is a median line running from end to end of the Channel. *The existence of the Channel Islands close to the French coast, if permitted to divert the course of that mid-Channel median line, effects a radical distortion of the boundary creative of inequity.*<sup>161</sup>

In reaching this conclusion, the Court made little reference to State practice and for the most part discussed the issues in terms of legal principle. In the course of argument, however, both Parties referred to the problem of delimiting the continental shelf of the French islands of St. Pierre and Miquelon,<sup>162</sup> and in weighing the equities in the Channel Islands region, the Court referred specifically to that controversy.<sup>163</sup>

France argued that because St. Pierre and Miquelon are located off the coast of Newfoundland, and France and Canada are not opposite States, no comparison could be drawn with the Channel Islands.<sup>164</sup> The suggestion<sup>165</sup> that France might agree with Canada to renounce the equidistance principle in favor of an en-

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159. *Id.* at 91, para. 188.

160. *Id.*

161. *Id.* at 94-95, para. 199 (emphasis added).

162. On the St. Pierre et Miquelon dispute, see Beauchamp, Crommelin & Thompson, *Jurisdictional Problems in Canada’s Offshore*, 11 ALBERTA L. REV. 431 (1973) [hereinafter cited as *Canada’s Offshore*].

163. Judgment, *supra* note 5, at 87, para. 177.

164. *Id.* at 81, para. 159.

165. The *Relève des Conclusions* setting out the terms of a possible settlement of the dis-

clave solution was, however, also advanced as a precedent to support French proposals in the Channel Islands region. The United Kingdom argued that the original French claim for a full and strict application of the equidistance principle for St. Pierre and Miquelon supported the British position on the Channel Islands.<sup>166</sup> The British alleged that France considered renouncing this claim only after Canada recognized special rights for the islands, which France refused to concede in the Channel Islands region.<sup>167</sup>

While the Court declined to examine the legal position of the French islands in any detail, its comments indicated its general support for the French thesis.<sup>168</sup> The case of the French islands was treated as distinguishable, both on the ground that opposite States were not involved and because the open waters to the east of St. Pierre and Miquelon offered more scope for redressing inequities than the English Channel.<sup>169</sup> The Court acknowledged that the proposed enclave solution had included special privileges for the French islands, but here too the islands' location was significant because "for these special privileges there is a counterpart in the considerable extent of continental shelf left to Canada in the Atlantic to seawards of the islands."<sup>170</sup>

Because the Channel Islands were so close to the French coast, the Court refused to consider cases in which islands with a different relationship to the median line were given a full continental shelf.

The case is quite different from that of small islands on the right side of or close to the median line, and it is also quite different from the case where numerous islands stretch out one after another long distances from the mainland. The precedents of semi-enclaves, arising out of such cases, which are invoked by the United Kingdom, do not, therefore, seem to the Court to be in point. *The Channel Islands are not only "on the wrong side" of the mid-Channel median line but wholly detached geographically from the United Kingdom.*<sup>171</sup>

Due to the inequitable consequences that would result from giving the Channel Islands their full legal effect, the Court con-

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pute was erroneously described by the Court as an agreement between France and Canada. See *McRae*, *supra* note 66, at 190 n.60.

166. See Judgment, *supra* note 5, at 87-88, para. 177.

167. *Id.* at 88, para. 177.

168. *Id.* at 95, para. 200.

169. *Id.* at 95, para. 200.

170. *Id.*

171. *Id.* at 95, para. 199 (emphasis added).

cluded that it was necessary to adopt the French solution and delimit this section of the continental shelf by means of the median line in the Channel.<sup>172</sup>

The Court viewed the equitable considerations advanced by the United Kingdom — the size and significance of the islands and their close links with the United Kingdom — as relevant considerations but held that they were not of sufficient importance to displace the mid-Channel median line as the equitable solution.<sup>173</sup> Although the mid-Channel median line was the primary element in the Court's solution, it gave limited recognition to the British equitable considerations by designating that the continental shelf of the Channel Islands be an enclave twelve miles in width, to be delimited from the established baselines of the territorial sea.<sup>174</sup>

## VI. DELIMITING THE ATLANTIC REGION

In the Atlantic region, the Court had decided that the delimitation was governed by the Geneva Convention and not, as France had argued, by customary international law.<sup>175</sup> The Court also decided that the equidistance — special circumstances principle contained in Article 6 was essentially identical to the prescriptions of customary international law in the *North Sea Cases*.<sup>176</sup> Consequently, the existence of special circumstances was dependent upon the question of whether or not the median line provided an equitable delimitation of the area.

France argued that there were indeed special circumstances and sought to justify the use of another method of delimitation. While France was prepared to argue that the British line was not a true equidistance line,<sup>177</sup> the heart of the French case was the proposition that use of the equidistance line in the disputed area would have disproportionate consequences by exaggerating the signifi-

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172. *Id.* at 95, para. 201.

173. *Id.* at 94, para. 198.

174. *Id.* at 95-96, para. 202.

175. *Id.* at 98, para. 205.

176. *Id.* at 98, para. 206.

177. The French argument here was that the British line was constructed by reference to only two base-points, Bishop Rock in the Scillies and Pointe de Pern on Ushant. This assumption and the inferences to be drawn from it were strongly disputed by the United Kingdom. Though the Court's Judgment does not deal with the issue expressly, its use of the British line in applying the "half-effect" method may be regarded as rejecting the French argument by implication.

cance of the Scilly Isles.<sup>178</sup> This argument was supported by reference to observations by the ICJ in the *North Sea Cases* on the analogous case of adjacent States;<sup>179</sup> to the alleged lack of a British Atlantic coast;<sup>180</sup> and to grounds for minimizing the significance of small islands that had already been advanced in relation to the Channel Islands.<sup>181</sup>

France suggested that the Court adopt the bisector of the general direction of the two coastlines and ignore both Ushant and the Scilly Isles.<sup>182</sup> France found support for this method, which produced a more northerly line of demarcation, in the decisions of the ICJ in the *North Sea Cases* and the *Anglo-Norwegian Fisheries Case*,<sup>183</sup> as well as in a recent agreement between Spain and France regarding delimitation in the Gulf of Gascony.<sup>184</sup>

The British maintained that throughout the arbitration area, France and the United Kingdom were opposite States, that Ushant and the Scilly Isles were integral parts of their respective States which could not be ignored, and that there were no special circumstances.<sup>185</sup> The special circumstances concept, it was argued, should be interpreted strictly with much more than a desire to re-fashion nature needed to justify a departure from the equidistance line.<sup>186</sup> The French attempt to substitute the general direction of the coastlines for their actual course was strongly criticized and the *North Sea Cases* distinguished.<sup>187</sup> In conclusion, the United Kingdom argued that if any parallel could be drawn with the *North Sea Cases*, it should be recognized that the United Kingdom, with France to the south and Ireland to the north, was in much the same position as the Federal Republic of Germany and therefore deserved equivalent treatment.<sup>188</sup>

As with its discussion of the Channel Islands region, the Court prefaced its assessment of the rival contentions with a review of the geographical features and other characteristics of the disputed area.

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178. Judgment, *supra* note 5, at 102, para. 215.

179. *Id.* at 103, para. 218.

180. *Id.*

181. *Id.*

182. *Id.* at 99, para. 208.

183. Fisheries Case (United Kingdom v. Norway), [1951] I.C.J. 116.

184. See Judgment, *supra* note 5, at 104, para. 220.

185. *Id.* at 101, para. 212.

186. *Id.* at 107, para. 226.

187. *Id.* at 109, para. 230.

188. *Id.* at 109, para. 231.



After noting that the coasts of the two States were similar — both with peninsulas extended by offshore islands — the Court rejected the French contention that the United Kingdom had no maritime frontage on the region and held that the British Atlantic frontage was broadly similar to that of France.<sup>189</sup> However, in one important respect the coasts were different: the United Kingdom mainland and the Scilly Isles project a good deal farther into the Atlantic than the French mainland and the island of Ushant.<sup>190</sup> The presence of other States with Atlantic coasts was another background element.<sup>191</sup> While the Spanish coast was immaterial, the Irish Republic was a factor of which the Court took cognizance.<sup>192</sup>

The Court's investigation of whether the situation in the Atlantic region was one of opposite or adjacent States is discussed above.<sup>193</sup> Although inclined to characterize the situation as one of opposite States under Article 6(1), the Court decided that whatever the precise characterization, the crucial question was whether or not there were special circumstances in the region that justified an equitable departure from the median line.<sup>194</sup>

The question, the Court emphasized, was not simply the effect of the Scilly Isles on the equidistance line, but whether in light of the overall situation in the region, use of the equidistance line could be regarded as inequitable.<sup>195</sup> Thus, while it was true that the westward projection of the Scilly Isles had the effect of deflecting the equidistance line southwest, this fact alone was not conclusive.

The mere fact . . . that the presence of the Scilly Isles in the position in which they lie has that effect, does not in itself suffice to justify a boundary other than an equidistance line delimited by reference to the Scillies. *The question is whether in the light of all the pertinent geographical circumstances, that fact amounts to an inequitable distortion of the equidistance line producing dispro-*

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189. *Id.* at 110, para. 234.

190. *Id.* at 111, para. 235.

191. *Id.* at 110, para. 236.

192. It will be recalled, however, that when discussing the scope of its jurisdiction earlier in the Judgment, the Court had both denied that inferences as to the course of the British-Irish boundary could be drawn from its decision and held that its conclusions did not depend on calculations of proportionality, to which Irish claims might be relevant. *Id.* at 31, para. 28.

193. *Id.* at 111-113, paras. 237-42.

194. *Id.* at 114, para. 243.

195. *Id.*

*portionate effects on the areas of shelf accruing to the two States.*<sup>196</sup>

The Court again emphasized it was not concerned with refashioning nature or amending geography.<sup>197</sup> In the present situation, however, the general similarity of the coasts of the two States raised doubts regarding the suitability of the equidistance principle.

[W]hen account is taken of the fact that in other respects the two States abut on the same continental shelf with coasts not markedly different in extent and broadly similar in their relation to that shelf, a question arises as to whether giving full effect to the Scilly Isles in delimiting an equidistance boundary out to the 1000-metre isobath may not distort the boundary and have disproportionate effects as between the two States.<sup>198</sup>

The Court concluded that the equidistance principle did have inequitable effects and therefore special circumstances existed in the Atlantic region.<sup>199</sup> The situation, as the Court saw it, was analogous to one in which an equidistance line was unduly influenced by a long promontory.

In the view of the Court, the further projection westwards of the Scilly Isles, when superadded to the greater projection of the Cornish mainland westwards beyond Finistère, is much of the same nature for present purposes, and has much the same tendency to distortion of the equidistance line, as the projection of an exceptionally long promontory, which is generally recognised to be one of the potential forms of "special circumstance." In the present instance, the Court considers that the additional projection of the Scilly Isles into the Atlantic region does constitute an element of distortion which is material enough to justify the delimitation of a boundary other than the strict median line envisaged in Article 6, paragraph 1, of the Convention.<sup>200</sup>

A special solution was required to achieve an equitable delimitation, and the equidistance line would not do. The Court prefaced its discussion of French proposals by stating that its decision must be based on legal criteria and that it would neither apportion the disputed area nor decide the case *ex aequo et bono*.<sup>201</sup>

France had argued that the Court's delimitation should be

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196. *Id.* at 114, para. 243 (emphasis added).

197. *Id.* at 114, para. 244.

198. *Id.*

199. *Id.*

200. *Id.* at 114, para. 244.

201. *Id.* at 115, para. 245.

based upon the general direction of the two States' coastlines.<sup>202</sup> The Court rejected the French solution, because it detached the process of delimitation from the actual Atlantic coastlines and was therefore difficult to reconcile with the concept of the continental shelf as a natural prolongation of land territory.<sup>203</sup>

The solution must, therefore, be related to the actual coasts and this led back to the equidistance method, or at least a variant of it.

[I]t seems to the Court to be in accord not only with the legal rules governing the continental shelf but also with State practice to seek the solution in a method modifying or varying the equidistance method rather than to have recourse to a wholly different criterion of delimitation. The appropriate method, in the opinion of the Court, is to take account of the Scilly Isles as part of the coastline of the United Kingdom but to give them less than their full effect in applying the equidistance method.<sup>204</sup>

Why, it may be asked, since the Court held that the Scilly Isles were a special circumstance, did it take them into account at all? Although the Isles' effect was to deflect the equidistance line in an inequitable way, they were, like the French island of Ushant, an integral part of the coast by reason of their political status, size, population, and location.<sup>205</sup> While their legal significance could be modified, they could not be completely ignored.

Just as it is not the function of equity in the delimitation of the continental shelf completely to refashion geography, so it is also not the function of equity to create a situation of complete equity where nature and geography have established an inequity. Equity does not, therefore, call for coasts, the relation of which to the continental shelf is not equal, to be treated as having completely equal effects. What equity calls for is an appropriate abatement of the disproportionate effects of a considerable projection onto the Atlantic continental shelf of a somewhat attenuated portion of the coast of the United Kingdom.<sup>206</sup>

The Court, in determining the appropriate abatement, refused to invest the principle of proportionality with any special significance. Considerations of proportionality produced the conclusion that the Scilly Isles were to be considered a special circumstance;

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202. *Id.* at 115, para. 246.

203. *Id.*

204. *Id.* at 116, para. 249.

205. *Id.* at 116, para. 248.

206. *Id.* at 116-17, para. 249.

there the significance of proportionality ended. State practice employs a variety of solutions to the problem of off-shore islands; the Court selected the "half-effect" method as the appropriate solution in this case.

The method of giving half-effect consists in delimiting the line equidistant between the two coasts, first, without the use of the offshore island as a base-point and, secondly, with its use as a base-point; a boundary giving half-effect to the island is then the line drawn mid-way between those two equidistance lines.<sup>207</sup>

This method of delimitation was suitable because of two significant facts: the Scilly Isles were approximately twice as far from the mainland as Ushant, and the designated boundary followed the slight southwesterly trend of the Parties' coastlines.<sup>208</sup> Apart from a small area in the Atlantic region, where the Court employed an unmodified median line because the Parties were indisputably opposite States, the Court's delimitation in the Atlantic region utilized the modified median line described above.<sup>209</sup>

## VII. THE DISPUTE REGARDING THE MEANING AND SCOPE OF THE 1977 JUDGMENT

In accordance with customary practice, the Arbitration Agreement provided for the possibility of further recourse to the Court in the event of doubts regarding the interpretation of the Judgment. Article 10(2) of the Arbitration Agreement provided that "either Party may, within three months of the rendering of the Decision, refer to the Court any dispute between the Parties as to the meaning and scope of the Decision."<sup>210</sup> On October 17, 1977, the United Kingdom invoked this provision and applied to the Court to correct what it regarded as technical errors in the Judgment. The alleged errors concerned the definitions of two parts of the boundary and

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207. *Id.* at 117, para. 251. The Court pointed out that the half-effect method had been employed "in one instance, at least" in previous practice. *Id.* Presumably this is a reference to the 1965 agreement between Iran and Saudi Arabia delimiting the continental shelf around Kharg Island in the Persian Gulf. See Young, *Equitable Solutions for Offshore Boundaries: The 1968 Saudi Arabia — Iran Agreement*, 64 AM. J. INT'L L. 152 (1970). That agreement was never ratified and the matter was ultimately resolved in 1968 by a new treaty providing for a revised line. Consequently, the *United Kingdom—France Continental Shelf Arbitration* appears to be the first case of the actual use of the half-effect method.

208. Judgment, *supra* note 5, at 117, para. 251.

209. *Id.* at 119, para. 255. For criticism of the Court's application of the half-effect method, see McRae, *supra* note 66, at 194-95.

210. Interpretation, *supra* note 5, at 134.

the drawing of these parts on the Boundary-Line Chart, which formed part of the 1977 Judgment.<sup>211</sup>

The boundaries in question were the arcs to the north and west of the Channel Islands, where the Boundary-Line Chart and the specification in the *dispositif* of the Judgment failed to take account of all the base-points from which the islands' territorial sea was measured, and the delimitation in the Atlantic area, where the United Kingdom maintained that the Boundary-Line Chart had distorted the half-effect principle by failing to take into account the curvature of the earth, thereby depicting the boundary as a straight, instead of a curved, line.<sup>212</sup>

The Court delivered its Interpretation in March 1978, following oral hearings in which France disputed the admissibility, as well as the substance, of the British claim.<sup>213</sup> The 1978 Interpretation included an extended account of the Parties' arguments and evidence; because the account consisted of a detailed review of current techniques of marine cartography, no repetition is called for here. However, argument was also directed to the meaning of the 1977 Judgment and the extent of the Court's powers to interpret it. It is in these issues that the legal interest of the case is to be found.

The first French argument was that the United Kingdom application to the Court was inadmissible, because it had been filed after the three-month time limit of Article 10(2).<sup>214</sup> The Court had little difficulty in disposing of this objection. Although the initial Judgment was dated June 30, 1977, it had not been communicated to the Parties until July 18, 1977.<sup>215</sup> Under these circumstances, the Court unhesitatingly endorsed the British view that, for the purposes of Article 10, the Judgment was rendered on July 18, 1977.<sup>216</sup>

A second French objection was that no dispute regarding "the meaning and scope" of the 1977 Judgment had arisen within the three-month period.<sup>217</sup> The French argued that the diplomatic exchanges following the 1977 Judgment had concerned only its "paternity" — the value to be attached to the various parts of the Judgment — where these were in apparent contradiction, and the

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211. *Id.*

212. *Id.* at 135.

213. *See generally id.* at 133-95.

214. *Id.* at 151.

215. *Id.* at 138, para. 3.

216. *Id.* at 152, para. 3.

217. *Id.* at 153, para. 7.

respective roles of the Court and its Expert.<sup>218</sup> Thus, the French contended, it was only after the British application in October 1978, and in later exchanges between the Parties, that a broader dispute about the meaning and scope of the Judgment arose.

The Court gave two reasons for rejecting this objection. First, the early diplomatic exchanges indicated that the paternity of the Judgment was intimately linked with the dispute regarding the Judgment's meaning and scope.<sup>219</sup> Second, the Court cited the observations of the Permanent Court of International Justice in the *Chorzów Factory Case*,<sup>220</sup> and held that "to require undue formality, such as the exhaustion of diplomatic negotiations, in establishing the existence of a dispute would be out of place in the context of a request for the interpretation of a judgment."<sup>221</sup> The Court of Arbitration added that this was an even more forceful consideration in this case, where the right to request an interpretation was subject to a comparatively short time limit.<sup>222</sup>

The final and most substantial French objection declared that the United Kingdom application requested a rectification or a modification, of the Judgment, not an interpretation; therefore, France insisted, the British application was beyond the scope of Article 10(2).<sup>223</sup> On this point, the Court held that the objection was not of an "exclusively preliminary character."<sup>224</sup> As a result, the French objection could be examined only within the framework of the merits of the case, to which the Court then turned.

The Court first reviewed the delimitation of the Channel Islands region. It began by considering the relationship between the passages in the 1977 Judgment expressing its reasoning and the corresponding provisions of the *dispositif*. The Court found that the *dispositif* was no more than an application of the principles and methods set out in the earlier passages.<sup>225</sup> The Court held that these earlier passages contained points settled with binding force in the Judgment, and could therefore be examined to determine the meaning and scope of the *dispositif*.<sup>226</sup>

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218. *Id.* at 154, para. 8.

219. *Id.* at 155, para. 11.

220. [1928] P.C.I.J., ser. A., No. 13.

221. Interpretation, *supra* note 5, at 155, para. 12.

222. *Id.*

223. *Id.* at 156, para. 14.

224. *Id.* at 157, para. 16.

225. *Id.* at 162, para. 30.

226. The Court added, however, that

The Court concluded that the discrepancy alleged by the United Kingdom did indeed exist. The failure in the *dispositif* to make use of five low-tide elevations and two dry-land, low-water features meant that in two places the line on the Boundary-Line Chart encroached on the twelve-mile fishery limit of the Channel Islands.<sup>227</sup> Therefore the line could not be said to have been drawn “from the established baselines of the territorial sea of the Channel Islands,” as the Court had previously specified in the 1977 Judgment.<sup>228</sup>

The Court found that the existence of the above discrepancy was not in dispute, because France did not dispute the base-points relied on by the United Kingdom.<sup>229</sup> The Court then assessed the legal significance of the discrepancy and concluded that since the *dispositif* had manifestly failed to implement the Court’s intention, rectification on the grounds of material error was required.

The discrepancy between the *dispositif* and the Court’s findings in the reasoning arises purely and simply from technical causes resulting in a mis-application of those findings, a discrepancy not detected by the Court owing to the differences in character and scale between the Boundary-Line Chart and the relevant charts submitted during the proceedings in 1977. The discrepancy is therefore one which is properly characterised as a “material error,” analogous to one resulting from a “slip of the pen” or from the miscalculation or miscasting of arithmetical figures. The power of a court to rectify such a discrepancy where in the interests of good administration of justice it is necessary to correct a material error that appears on the face of its decision, is considered by the Court of Arbitration to be generally accepted.<sup>230</sup>

The Court noted that while Article 10(2) provided the basis for investigating the scope and meaning of the 1977 Judgment, the Court also had an inherent power to rectify a material error re-

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the “findings” incorporated in those paragraphs of the reasoning are themselves conclusions drawn by the Court from its examination in previous paragraphs of the considerations of fact and law held by it to be pertinent to the determination of the course of the boundary in each region. Consequently, it is not only the reasoning of the paragraphs embodying the findings invoked by the United Kingdom to which reference has to be made in interpreting the relevant provisions of the *dispositif*; account may at the same time also have to be taken of the reasoning in other paragraphs by process of which the Court arrived at those findings “essential” to its decision in the *dispositif*.

*Id.* at 162, para. 30.

227. *Id.* at 164, para. 35.

228. *Id.*

229. *Id.* at 163-64, paras. 33-34.

230. *Id.* at 165, para. 36.

vealed by such an investigation.<sup>231</sup> Because this power did not need to be expressly provided for in the Arbitration Agreement, it could be exercised in the present case. Accordingly, the Court decided that the erroneous section of the *dispositif* should be corrected to include the omitted base-points and that the Parties themselves should make the appropriate correction to the relevant portion of the Boundary-Line Chart.<sup>232</sup>

In the Atlantic region, the problem was more complex. Confronted with a mass of technical evidence regarding contemporary practice on the delimitation of marine boundaries, the Court had one intricate issue to resolve: whether or not the Expert's implementation of the Court's 1977 Judgment by means of a straight-line boundary (loxodrome) on a Mercator chart was compatible with the method of delimitation the Court had prescribed?

The British argument that it was incompatible was based on the fact that the Court's solution to the problem of delimitation in the Atlantic region — the half-effect method — was a modification of the equidistance principle, and that any demarcation based on that principle which failed to allow for the curvature of the earth so distorted the boundary as to contradict its whole rationale.<sup>233</sup> The United Kingdom explained that the straight-line boundary in the present case met the 1,000-meter isobath at a point approximately four nautical miles to the north of the point where a true boundary, corrected for scale error, would do so.<sup>234</sup> This was a significant discrepancy, which the extension of the continental shelf to 200 miles or to the edge of the continental margin would magnify.

The Court decided that the success of the British argument for modifying the delimitation hinged on two propositions. The first proposition was that the half-effect boundary had been envisaged by the Court as the bisector of two lines each of which must be truly equidistant from the selected base-points — that is, that the equidistance principle lay at the root of the Court's decision and that the half-effect method was nothing more than a variant, entirely dependent on proper calculations of equidistance.<sup>235</sup> The Court accepted this proposition, holding that it was clear from the language of the Judgment that the foundation of the half-effect

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231. *Id.*

232. *Id.* at 166, para. 37.

233. *Id.* at 166-68, paras. 38-41.

234. *Id.* at 167, para. 40.

235. *Id.* at 189-90, para. 101.



method was the equidistance principle.<sup>236</sup>

The second proposition was more difficult: that the lines specified in the Expert's technical report, from which the half-effect line had been calculated, were not "either geographically or legally" true equidistance lines, because no correction for scale error had been made.<sup>237</sup>

The Court noted that in practice the application of the equidistance principle was often simplified by the use of a limited number of base-points.<sup>238</sup> Moreover, it was quite common to plot equidistance lines on Mercator charts without correction for scale error.<sup>239</sup> However, the Atlantic region boundary was not a simplified equidistance line and the United Kingdom had demonstrated that the need for long boundary lines to accommodate recent claims to extended maritime jurisdiction had produced a trend in state practice towards the correction of scale error in demarcation.<sup>240</sup>

In a key passage, the Court explained that the half-effect solution had been devised within a simplified frame of reference. It regarded the crucial issue in the case as the compatibility of the disputed line with this frame of reference.

[T]he half-effect solution was adopted by the Court as an equitable variant of the equidistance principle expressing a necessarily approximate appreciation of diverse considerations; and . . . the method for implementing it was devised as a modified rather than a strict application of the equidistance method. This method . . . was selected *ad hoc*, after a study of various possibilities and of several factors considered by it to be pertinent. The *ad hoc* character of the device and the fact that it is a special application of the equidistance method is, indeed, evidenced by the Court's selection of two particular pairs of base-points for the calculation of the lines determining the half-effect boundary rather than all the potentially relevant points on the respective coastlines. *The question for decision, therefore, is whether the Expert's construction of the course of the boundary by reference to the two loxodromes, correctly calculated on Mercator projection from the specified base-points is compatible with the simplified frame for applying the half-effect solution which has just been described; or whether his omission to allow for the scale of error inherent in that*

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236. *Id.* at 189, para. 102.

237. *Id.* at 188-89, para. 101.

238. *Id.* at 190-91, para. 105.

239. *Id.*

240. *Id.*

*projection renders it incompatible with this frame.*<sup>241</sup>

The Court examined state practice, which indicated that despite an emerging contrary trend, delimitation without correction for scale error was not yet obsolete.<sup>242</sup> The Court concluded that the United Kingdom had failed to demonstrate that delimitation without correction for scale error was "either inadmissible in law or . . . so outmoded in practice as to make its use open . . . to challenge."<sup>243</sup>

The Court added that since the disputed boundary had been arrived at after an extensive review of a variety of pertinent factors and considerations, to reopen the issue and decide upon a new boundary line would require a fresh examination of the situation. This fresh examination would go beyond both the interpretation function conferred upon the Court by Article 10(2) and the Court's inherent power to rectify a material error.<sup>244</sup>

The Court concluded that in the Atlantic region, the United Kingdom had failed to establish that the course of the line defined in the *dispositif* and shown on the Boundary-Line Chart was in such contradiction with the earlier findings of the Court as to be incompatible with the prescribed method of delimitation.<sup>245</sup> Accordingly, the British request for the rectification of this segment of the boundary was rejected.<sup>246</sup>

## VIII. CONCLUSION: THE SIGNIFICANCE OF THE DECISION

The ICJ's decision in the *North Sea Cases* has been the subject of extensive commentary and analysis.<sup>247</sup> The Court of Arbitra-

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241. *Id.* at 192-93, para. 110 (emphasis added).

242. *Id.* at 191, para. 105.

243. *Id.* at 193, para. 111.

244. *Id.* at 193, para. 112.

245. *Id.* at 193-94, para. 113.

246. *Id.* In its rulings on the admissibility of the claim and the rectification of the boundary in the Channel Islands area, the Court was unanimous. However, in relation to the Atlantic region it reached its decision by a majority of four-to-one. The dissenter, Judge Briggs, expressed his support for the British position. *Id.* at 202-03 (Briggs, J., dissenting). The Court's ruling on the Atlantic region was also the subject of a short separate opinion in which Judge Waldock explained that his concurrence was based on his view of the Court's powers under Article 10(2), rather than the substantive merits of the British claim on which he agreed with Judge Briggs. *Id.* at 197-201 (Waldock, J., separate opinions).

247. See generally Grisel, *The Lateral Boundaries of the Continental Shelf and the Judgment of the International Court of Justice in the North Sea Continental Shelf Cases*, 64 AM. J. INT'L L. 562 (1970); Jennings, *The Limits of Continental Shelf Jurisdiction: Some Possible Implications of the North Sea Case Judgment*, 18 INT'L & COMP. L.Q. 819 (1969); Nordquist,

tion's decisions in the United Kingdom — France Continental Shelf Arbitration seem likely to provoke a similar response.<sup>248</sup>

A common reaction to the 1978 Interpretation is surprise that these further proceedings were necessary. While the United Kingdom was justified in seeking a clarification of the original Judgment, the enormous expenditure of time and effort which this involved should never have been necessary. In the Channel Islands region, the original Judgment's failure to utilize base-points which were not only required by the Judgment, but actually before the Court on maps forming part of the British case, was inexcusable. In the Atlantic region, although the issue was less clear cut, it is astonishing that when the Court's Expert calculated the boundary-line "the Court did not appreciate that the boundary-line he depicted . . . was a loxodrome which, over its course of about 170 nautical miles, disregarded the sphericity of the earth, instead of a geodesic conforming to the earth's curvature."<sup>249</sup>

The Court's correction of the Channel Islands delimitation was obviously justified and its reasoning, though a useful addition to the sparse jurisprudence on the issue of material error,<sup>250</sup> is unlikely to be controversial. That the Atlantic region delimitation presented a more debatable issue is indicated by the disagreement within the Court.<sup>251</sup> Without access to the record of the Parties' pleadings, it will be difficult for critics to express a view on this aspect of the case. On the basis of accessible evidence, however, many may be inclined to agree with Judge Waldock<sup>252</sup> that the *admissibility* of the British claim should have been regarded as the key issue.<sup>253</sup>

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*The Legal Status of Articles 1-3 of the Continental Shelf Convention According to the North Sea Cases*, 1 CALIF. W. INT'L L.J. 60 (1970); notes 262, 270, 286 & 295 *infra*.

248. Commentaries to date include: Blecher, *Equitable Delimitation of Continental Shelf*, 73 AM. J. INT'L L. 60 (1979); Bowett, *supra* note 66; Brown, *The Anglo-French Continental Shelf Case*, 33 Y.B. WORLD AFF. 304 (1979) [hereinafter cited as Brown Article]; Brown, *The Anglo-French Continental Shelf Case*, 16 SAN DIEGO L. REV. 461 (1979); Colson, *The United Kingdom—France Continental Shelf Arbitration*, 72 AM. J. INT'L L. 95 (1978); McRae, *supra* note 66.

249. Interpretation, *supra* note 5, at 202 (Briggs, J., dissenting opinion).

250. See W. REISMAN, NULLITY AND REVISION 186-92 (1971); J. SIMPSON & H. FOX, INTERNATIONAL ARBITRATION 241-42 (1959).

251. See note 246 *supra*.

252. *Id.*

253. See Judge Waldock's statement in Interpretation, *supra* note 5, at 197-201. On the power of international tribunals to interpret their judgments, see REISMAN, *supra* note 250, at 192-208.

Thus, there is much in the 1978 Interpretation of substantive and procedural interest. However, it is the original Judgment that will attract the most intense attention, and here the international lawyer is presented with an almost embarrassing abundance of material.

The Court's discussion of the significance of the Geneva Convention is clearly a constructive contribution to a notoriously difficult aspect of the law of treaties. Reservations to multilateral treaties are now generally permitted in the interests of encouraging participation; therefore, the status and effect of reservations raise theoretical issues of great practical importance. These questions are fully explored in the discussion of the French and British positions on Article 6,<sup>254</sup> where the Court's reasoning sheds light on Article 21 of the Vienna Convention, as well as on customary international law.<sup>255</sup>

The Court's review of this aspect of the case is, however, much more than a contribution to the law of treaties. Over fifty States are currently parties to the Geneva Convention, several with reservations or with comments on the reservations of other parties.<sup>256</sup> Not surprisingly, where questions of delimitation between parties to the Convention are still unresolved, as in the case of Canada, France, and the United States,<sup>257</sup> the legal effect of such acts may be a critical issue. While the Court's treatment of the legal relations between France and the United Kingdom was necessarily based on their particular responses to the Convention, the way in which the Court approached that issue is bound to be seen as directly relevant elsewhere.

Substantively, the Court's identification of the provisions of the Geneva Convention with customary international law is a step of major significance. In the *North Sea Cases*, the ICJ avoided the

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254. See generally Judgment, *supra* note 5, at 32-50, paras. 33-74.

255. Bowett, *supra* note 66, at 67.

256. Continental Shelf Convention, *supra* note 26.

257. See generally *Canada's Offshore*, *supra* note 162; B. JOHNSON & M. ZACHER, CANADIAN FOREIGN POLICY AND THE LAW OF THE SEA 37-43 (1977). Canada has reserved its position on, or declared unacceptable, the French declarations and reservations relating to Articles 1, 2(4), 4, 5(1), 6(1), and 6(2). With respect to Article 1, Canada has declared that "in the view of the Canadian Government the presence of an accidental feature such as a depression or a channel in a submerged area should not be regarded as constituting an interruption in the natural prolongation of the land territory of the coastal state into and under the sea. *Id.* at 40. The United States has declared the Canadian declaration to be unacceptable. See MULTILATERAL TREATIES, *supra* note 30, at 542.

Convention by basing its decision on customary law.<sup>258</sup> The ICJ's avoidance of the Convention could be argued to have implied that the equidistance—special circumstances rule was not guaranteed to achieve a delimitation in accordance with equitable principles.<sup>259</sup> The Court of Arbitration has repudiated this view in favor of the opinion of Judge Ammoun and others, that the relationship between equidistance and special circumstances is not subordination but symbiosis.<sup>260</sup>

Whether this conclusion is correct is as much a question of principle as one of practice. The individual opinions in the *North Sea Cases* suggest that whether equity is regarded as relevant to delimitation depends on whether international law is perceived as a normative or a policy-oriented system.<sup>261</sup> Influenced no doubt by the predilection for equitable principles so evident at recent sessions of UNCLOS III, the Court of Arbitration has made its choice. Those who are of the opinion that clear and relatively mechanical principles of delimitation provide a better way of avoiding disputes will perhaps remain unconvinced.<sup>262</sup>

One thing is clear — if the equitable approach is to be universal, it must be workable. This means that guidance as to its meaning and application must be provided — a consideration which derives added significance from the fact that equitable principles form the basis of the delimitation provisions for the continental shelf and the exclusive economic zone under discussion at UNCLOS III.<sup>263</sup> In addition, the relevant provisions of the Re-

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258. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 42-46.

259. This is particularly apparent in those dissenting opinions which interpret Article 6 as laying down equidistance as the primary principle of delimitation and "special circumstances" as a qualification designed to cater to exceptional situations. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 161-63 (Koretsky, V.P., dissenting); *id.* at 184-87 (Tanaka, J., dissenting); *id.* at 238-40 (Lachs, J., dissenting).

260. *Id.* at 141-52 (Ammoun, J., separate opinion); *see also id.* at 87-89 (Nervo, J., separate opinion).

261. Merrills, *Images and Models in the World Court: The Individual Opinions in the North Sea Continental Shelf Cases*, 41 MODERN L. REV. 638 (1978).

262. *See* Brown Article, *supra* note 248, at 308-14. For criticism of the *North Sea Cases* on this ground, *see* Brown, *The North Sea Continental Shelf Cases*, 23 CURRENT LEGAL PROB. 187 (1970); Foighel, *The North Sea Continental Shelf Case*, 39 NORDISK TID. INT'L RET. 109 (1969).

263. *See* Declaration of Principles Governing the Sea-Bed and the Ocean Floor And the Subsoil Thereof, Beyond the Limits of National Jurisdiction, G.A. RES. 2749, 25 U.N. GAOR, Supp. (No. 28) 24, U.N. Doc. A/8097 (1970); VIII OFFICIAL RECORDS OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA I, U.N. Doc. A/CONF. 62/WP. 10 (1977).

vised Informal Composite Negotiating Text were regarded by the Court of Arbitration as virtually identical to its own approach.<sup>264</sup>

In the *North Sea Cases*, the ICJ drew a sharp distinction between delimitation and apportionment of the continental shelf.<sup>265</sup> The Court of Arbitration reemphasized that point in its Judgment.<sup>266</sup> Though the distinction between delimitation according to equitable principles and apportionment may not be obvious, its importance is considerable. The main difficulty with the equitable approach to delimitation is its inherent uncertainty. Judicial decisions, like the Judgment of the Court of Arbitration in the present case, can help remove the uncertainty by providing examples of the application of the equitable approach to particular situations. International adjudication only occurs occasionally, however, and such decisions will be infrequent. As a consequence, general indications of the outer limits of the equitable approach are at least as important as specific examples of its use. The importance of the distinction between delimitation and apportionment is its contribution to this "equitable frame of reference." Distinguishing delimitation from apportionment helps keep the issues manageable by enabling some broad discriminations to be made between relevant, partially relevant, and wholly irrelevant considerations. Moreover, as the Court of Arbitration noted, differentiating a decision based on broad but recognizably *legal* criteria from a decision *ex aequo et bono* has the salutary effect of elucidating the arbitral role of the tribunal.<sup>267</sup>

The renunciation by the ICJ and the Court of Arbitration of any pretensions to "refashion nature"<sup>268</sup> contributes to the equita-

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264. See Colson, *supra* note 248, at 111. It is of particular interest in this connection that the International Court of Justice has recently been asked to decide:

What are the principles and rules of international law which may be applied for the delimitation of the area of the continental shelf appertaining to the Republic of Tunisia and the area of continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and, in rendering its decision, to 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 between the Republic of Tunisia and the Socialist People's Libyan Arab Jamahiriya, for the Submission of the Question of the Continental Shelf between the Two Countries to the International Court of Justice, *notified to the Court*, December 1, 1978, reprinted in 18 INT'L LEGAL MATS. 51 (1979).

265. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 22-24.

266. See notes 175-209 *supra*, and accompanying text.

267. Judgment, *supra* note 5, at 115, para. 245.

268. See *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 50; Judgment, *supra* note 5, at 115, para. 246.

ble frame of reference in a similar way. By emphasizing that the tribunal's starting point must be the situation as it exists, this self-denying ordinance circumscribes in an imprecise, but immediate way, the argument as to whether the equidistance line should be modified in any particular case.

In rejecting the notion of apportionment, the ICJ in the *North Sea Cases* emphasized the continental shelf as the natural prolongation of a State's land territory.<sup>269</sup> The vagueness of the ICJ's comments on this issue soon attracted criticism.<sup>270</sup> The Court of Arbitration, to its merit, gave assiduous attention to this concept.<sup>271</sup> In light of the Court's comments and discussion of the related issues of proximity<sup>272</sup> and proportionality,<sup>273</sup> the significance of natural prolongation can now be appreciated. Such geological considerations, far from defining the Parties' legal rights, do no more than provide the setting for the application of equitable principles.

The Court's treatment of the issue of natural prolongation<sup>274</sup> is typical of its generally pragmatic approach to delimitation. Another useful clarification of the *North Sea Cases* Judgment is found in the Court of Arbitration's discussion of the distinction between opposite and adjacent States.<sup>275</sup> The British attempt to attach critical significance to the characterization of the situation in the Atlantic region must be regarded as a sterile piece of legal conceptualism. There can be little doubt that by emphasizing the geographical rather than the legal relationship of the Parties in the region,<sup>276</sup> the Court interpreted the comments of its predecessor correctly and perceived the true relationship between the delimitation provisions of the Geneva Convention.<sup>277</sup>

The Court's treatment of the French attempt to capitalize on the general direction of the Parties' coastlines is another helpful clarification. The Federal Republic of Germany's reliance on the concept of the "coastal front" in the *North Sea Cases* raised a simi-

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269. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 22-23.

270. See Friedman, *The North Sea Continental Shelf Cases — A Critique*, 64 AM. J. INT'L L. 229 (1970); note 262 *supra*.

271. Judgment, *supra* note 5, at 115, para. 246.

272. *Id.* at 52-53, paras. 80-81.

273. *Id.* at 60-61, paras. 98-101.

274. *Id.* at 52, para. 79.

275. *Id.* at 55-60, paras. 87-98.

276. *Id.* at 113, para. 242.

277. Continental Shelf Convention, *supra* note 26.

lar issue.<sup>278</sup> While the ICJ rejected the German submissions on this point,<sup>279</sup> its Judgment could be regarded as broadly sympathetic to their underlying rationale.<sup>280</sup> The Court of Arbitration's approach to the French argument is essentially the same. The French concept of the general direction of the coast, like the German concept of the coastal front,<sup>281</sup> is rejected as a criterion of delimitation, because it dissociates delimitation from the course of the actual coastlines.<sup>282</sup> However, as in the *North Sea Cases*, the general direction of the coast is, together with other elements, held to be relevant to equitable delimitation.<sup>283</sup> Thus, what is rejected is not the concept of the general direction of the coast, but the attempt to invest the concept with a more specific and perhaps a more conclusive significance than its importance justifies.

Criticism of the Court's application of the half-effect method of delimitation to the Scilly Isles has been discussed above.<sup>284</sup> The Court's treatment of the Channel Islands has recently provoked the comment that, while the finding that the islands were a factor creating inequity is unlikely to be controversial,

it seems difficult to regard as other than the creation of a different inequity, a decision which adopts a median line, unmodified to compensate the United Kingdom for its virtual loss of all the continental shelf around the islands, and at the same time purports to reflect equitable considerations invoked by the United Kingdom by awarding the islands an area of continental shelf which the United Kingdom could have secured, independently of the arbitration, by claiming the same breadth of territorial sea as has been claimed by France since 1971.<sup>285</sup>

The Court's detailed treatment of the islands issue is, nevertheless, a specific application of equitable principles which will have

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278. Germany argued that instead of being determined by the shape of its coast, each State's continental shelf should be calculated by reference to the general direction of the coasts of all the States concerned. In the German situation, it was argued, the general direction of the coasts in question lay northeast-southwest. Hence the coastal front was a straight line with this orientation linking the extremities of the German coast and effectively neutralizing the concavity of the actual coast. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 22.

279. *Id.* at 23.

280. *Id.*

281. *Id.* at 22.

282. Judgment, *supra* note 5, at 115, para. 246.

283. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 53.

284. See note 209 *supra*.

285. Brown Article, *supra* note 248, at 324-25. See also Brown, *supra* note 248, at 514-18.



repercussions.<sup>286</sup> Islands were not an issue in the *North Sea Cases*.<sup>287</sup> Consequently, much of the Judgment of the Court of Arbitration concerns the inference to be drawn from the earlier cases. Discussions of the legal significance of islands, whether in argument before legal tribunals or in diplomatic negotiations, will now begin by examining the reasoning of the Court of Arbitration.

It should be noted, however, that the latest Judgment will be a starting point, but no more. The Court's confirmation of the legal insignificance of rocks and islets<sup>288</sup> is useful, and the ruling may have a direct and practical significance to islands such as the Senkaku Islands.<sup>289</sup> However, as the Court clearly stated, the kinds of problems presented by the case were far from exhaustive; several current disputes feature situations for which the Court's decision provides no direct guidance. In the Aegean,<sup>290</sup> for example, the numerous Greek islands scattered off the coast of Turkey can scarcely be compared with the small and tightly grouped Channel Islands archipelago, and the location of the Parcel and Spratly Islands in the middle of the South China Sea poses a still different problem.<sup>291</sup> Similarly, while the Court's comments on St. Pierre and

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286. On the significance of islands in continental shelf delimitation, see Delin, *Shall Islands Be Taken Into Account When Drawing the Median Line According to Art. 6 of the Convention on the Continental Shelf?*, 41 NORDISK TID. INT'L RET. 205; Ely, *Seabed Boundaries Between Coastal States: The Effect to be Given Islets as "Special Circumstances,"* 6 INT'L L. 219 (1972); Goldie, *The International Court of Justice's "Natural Prolongation" and the Continental Shelf Problem of Islands*, 4 NETHERLANDS Y.B. INT'L L. 237 (1973); Karl, *Islands and the Delimitation of the Continental Shelf: A Framework for Analysis*, 71 AM. J. INT'L L. 642 (1977).

287. Despite the fact that islands lay off the coasts of all three States, islands were not an issue. For discussion of their potential significance, see Goldie, *supra* note 286, at 245; Karl, *supra* note 286, at 647 n.22.

288. On the problem of characterizing such islands, see Blecher, *supra* note 248, at 77.

289. See Cheng, *The Sino-Japanese Dispute Over the Tiao-yu-tai (Senkaku) Islands and the Law of Territorial Acquisition*, 14 VA. J. INT'L L. 221 (1974); Li, *China and Off-Shore Oil: The Tiao-yü Tai Dispute*, 10 STAN. J. INT'L STUD. 143 (1975); Note, *International Law and the Sino-Japanese Controversy Over Territorial Sovereignty of the Senkaku Islands*, 52 B.U.L. REV. 763 (1972); Note, *The Senkaku Islands*, 10 SAN DIEGO L. REV. 664 (1973); note 293 *infra*.

290. On the Aegean Sea dispute, see Gross, *The Dispute Between Greece and Turkey Concerning the Continental Shelf in the Aegean*, 71 AM. J. INT'L L. 31 (1977); Merrills, *Oil Exploration in the Aegean*, 93 L.Q. REV. 29 (1977); Phylactopoulos, *Mediterranean Discord: Conflicting Greek-Turkish Claims in the Aegean Seabed*, 8 INT'L L. 431 (1974). After refusing a request by Greece for interim measures of protection, the ICJ has recently held that it lacks jurisdiction to adjudicate the dispute. See *Aegean Sea Continental Shelf Case*, [1978] I.C.J. 3.

291. See Park, *The South China Sea Disputes: Who Owns the Islands and the Natural Resources?*, 5 OCEAN DEV. & INT'L L. 27 (1978).

Miquelon<sup>292</sup> will be closely studied in Ottawa and Paris, the Court explicitly states that those islands present yet another special case.

Where parallels can be drawn, a degree of caution is still required. In the East China Sea, the situation of the Ryukyu Islands<sup>293</sup> off the southern tip of Japan invites comparison with the Scilly Isles, and in the Gulf of Thailand,<sup>294</sup> several offshore islands bear more than a passing resemblance to the Channel Islands group. It would, however, be quite inconsistent with the Court's approach to press these parallels very far. The whole thrust of the Judgment is that an equitable delimitation can be achieved only by taking into account the situation in the disputed area *in its entirety*, and by paying special attention to its unique features. Therefore, while it is legitimate, and indeed essential, to characterize situations by reference to their similarities or differences, it must also be recognized that an equitable delimitation in any given case will ultimately depend upon its own peculiar features.

Similar considerations apply to the interpretation of the Court's treatment of breaks in the surface of the continental shelf.<sup>295</sup> The Court's discussion of the significance of the Hurd Deep and Hurd Deep Fault Zone,<sup>296</sup> and its comments on the Norwegian Trough,<sup>297</sup> are certainly helpful. It cannot be assumed, however, that as a result of the Court's decision, all such features can now be disregarded. In the delimitation of the Gulf of Maine<sup>298</sup> or the East China Sea,<sup>299</sup> such features may be relevant.

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292. Judgment, *supra* note 5, at 95, para. 200.

293. See Allen & Mitchell, *The Legal Status of the Continental Shelf of the East China Sea*, 51 OREGON L. REV. 789 (1972); Park, *Oil Under Troubled Waters: The Northeast Asia Sea-Bed Controversy*, 14 HARV. INT'L L.J. 212 (1973); Park, *The Sino-Japanese-Korean Sea Resources Controversy and the Hypothesis of a 200-Mile Economic Zone*, 16 HARV. INT'L L.J. 27 (1975).

294. See Ely & Pietrowski, *Boundaries of Sea-Bed Jurisdiction Off the Pacific Coast of Asia*, 8 NAT. RESOURCES L. 611 (1975).

295. On the significance of such breaks in continental shelf delimitation, see Note, *Delimitation of Continental Shelf Jurisdiction Between States: The Effect of Physical Irregularities in the Natural Continental Shelf*, 17 VA. J. INT'L L. 77 (1976) [hereinafter cited as *Delimitation*].

296. Judgment, *supra* note 5, at 61-64, paras. 104-10.

297. *Id.* at 62-63, para. 107.

298. See *Delimitation*, *supra* note 295, at 89-96; Swan, *The Gulf of Maine Dispute: Canada and the United States Delimit the Atlantic Continental Shelf*, 10 NAT. RESOURCES L. 405 (1977). The Canadian declaration is set out in note 257 *supra*. On March 29, 1979, Canada and the United States signed an agreement to submit the Gulf of Maine dispute either to the ICJ or to arbitration. See Nash, *Contemporary Practice of the United States Relating to International Law*, 73 AM. J. INT'L L. 476, 478 (1979).

299. See *Delimitation*, *supra* note 295, at 96-104; note 293 *supra*.

Everything depends on the circumstances. In some situations, the dimensions or geological significance of a trench may raise the issue of natural prolongation. In other situations, the emphasis in the *North Sea Cases* on maintaining the unity of deposits<sup>300</sup> may make it possible to argue that delimitation along the axis of a trench is no less equitable than the half-effect method or some other variant of the median line.

However much the Court of Arbitration Judgment has left open,<sup>301</sup> there is much that it has clarified. Moreover, the decision, as interpreted by the Court in 1978, settled the dispute. In a period when the limitations of international courts and tribunals are often more conspicuous than their achievements, the United Kingdom — France Continental Shelf Arbitration is both a constructive contribution to the law of the sea and a timely reminder of the continuing value of international adjudication.

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300. *North Sea Continental Shelf Cases*, [1969] I.C.J. 3, 52.

301. Blecher is particularly critical of what he sees as the Court's lack of precision. See Blecher, *supra* note 248.