

CASE CONCERNING THE DELIMITATION OF THE CONTINENTAL SHELF BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE FRENCH REPUBLIC

DECISION OF 30 JUNE 1977

Settlement of the actual delimitation disputes and drawing of the boundaries in a Chart—Decision to constitute a *res inter alios acta*—Applicable law—Limitation of the value of the work of the Third United Nations Conference on the Law of the Sea and affirmation of the view that a court cannot render judgement *sub specie legis ferendae*—No conclusive evidence to the effect that the Continental Shelf Convention of 1958 is considered as already obsolete and note a treaty in force between its parties—Reservations to multilateral treaties distinguished from “interpretive declarations”—Consideration of the concept of “natural prolongation” and its relevance in the delimitation of opposite or adjacent coasts—Consideration of the concept of “proximity” and “absolute proximity” as method of delimitation—Definition of “special circumstances” within the meaning of Article 6 of the Continental Shelf Convention—The question of burden of proof in relation to special circumstances—Consideration of islands and archipelagos as “special circumstances”—The concept of giving partial effect to islands in the delimitation process—Consideration of “Median-equidistance” line as delimitation criterion to opposite or adjacent coasts—Assessment of the relationship between the “Median-equidistance” criteria for delimitation adopted in the Continental Shelf Convention and “equitable principles” criterion as customary international law adopted by ICJ in the *North Sea Continental Shelf Cases*—Emphasis on equitable delimitation relying upon a combined “equidistance-special circumstances” rule of the Continental Shelf Convention and the customary law of “equitable principles”—No legal limits of factors to be taken into account in the application of equitable principles—Consideration of the role of proportionality between the areas of continental shelf and the lengths of the coastlines—Affirmation of the view that delimitation is neither an apportionment nor merely the process of awarding of an equitable “share” of the Continental Shelf to each Party

DECISION

President: Mr. Erik CASTREN;

Members of the Court: Mr. Herbert BRIGGS, M. André GROS, Mr. Endre USTOR, Sir Humphrey WALDOCK;

Registrar: M. L. CAFLISCH,

Deputy-Registrar: M. G. MALINVERNI.

In the case concerning the delimitation of the continental shelf *between* the French Republic, represented by:

M. Guy Ladreit de Lacharrière, Minister Plenipotentiary, Director of Legal Affairs in the Ministry of Foreign Affairs, as Agent; M. Giles Chouraqui, Secretary in the Ministry of Foreign Affairs, Office of the Director of Legal Affairs of the Ministry of Foreign Affairs, as Deputy-Agent;¹ assisted by: M. René-Jean Dupuy, Professor of the Faculties of Law, Uni-

¹Mr. Noël Museux, Legal Counsellor in the Ministry of Foreign Affairs, was appointed Deputy-Agent, commencing on 23 May 1977

versity of Nice, M. Michel Virally, Professor of the Faculties of Law, University of Paris, M. Daniel Bardonnnet, Professor of the Faculties of Law, University of Paris, as Counsel; M. André Guilcher, Professor of Geography in the University of Western Brittany, Brest, M. Félix Hinschberger, Professor of Geography in the University of Caen, M. Guy Pautot, Head of the Scientific Department of the Oceanological Centre of Brittany, Brest, M. Gabriel Turquet de Beauregard, Engineer-General of Mines, Ministry of Industry, M. Jean Hindermeyer, Engineer, Ministry of Industry, M. André Decae, Engineer-General and Geographer, *Institut Géographique National*, M. Jean Denègre, Chief Engineer and Geographer, *Institut Géographique National*, M. Henri Dufour, Chief Engineer and Geographer, *Institut Géographique National*, M. Philippe Houssay, Engineer and Geographer, *Institut Géographique National*, M. André Roubertou, Chief Engineer of Armaments, Hydrographic and Oceanographic Service of the Navy, Captain Guirec Doniol, Secretariat-General of National Defence, M. Marcel Mehl, Superintendent Engineer of the State Geographical and Cartographical Services, Ministry of Foreign Affairs, M. Michel Guyot, Engineer of the State Geographical and Cartographical Services, Ministry of Foreign Affairs, as Expert Advisers;

And the United Kingdom of Great Britain and Northern Ireland, represented by:

The Right Honourable Samuel Silkin, Q.C., M.P., Attorney-General of the United Kingdom, as Leader of the Delegation; Sir Ian Sinclair, K.C.M.G., Legal Adviser to the Foreign and Commonwealth Office, as Agent and Counsel; and Mr. F. D. Berman, Legal Counsellor to the Foreign and Commonwealth Office, as Assistant Agent; assisted by: Mr. C. K. Frosard, Deputy-Bailiff of Guernsey, Mr. V. A. Tomes, Attorney-General of Jersey, Mr. R. Y. Jennings, Q.C., Professor of International Law in the University of Cambridge, Mr. D. W. Bowett, President of Queen's College, Cambridge, as Counsel; Lord McCluskey, Q.C., Solicitor-General for Scotland; and by Sir Peter Kent, D. Sc., Ph.D., F.R.S., Chairman of the Natural Environment Research Council, Commander P. B. Beazley, Office of the Hydrographer, Ministry of Defence, Mr. M. G. de Winton, C.B.E., M.C., Under-Secretary, Law Officers' Department, Mr. Colin Rose, Department of Energy, as Experts and Advisers; and by Mr. E. J. M. Potter, Greffier of the States of Jersey;

THE COURT composed as above, *makes the following Award:*

After an exchange of correspondence and informal contacts which took place in 1964 and 1965, the Parties opened negotiations in October 1970 concerning the delimitation of their respective continental shelves. Since these negotiations, which continued until the beginning of 1974, were unsuccessful, the heads of the two Governments agreed in principle, during discussions held in Paris on 19 July 1974, to submit their dispute to an arbitral tribunal.

For this purpose, the Governments of the French Republic and of the United Kingdom, on 10 July 1975, signed in Paris an Arbitration Agreement in the following terms:

ARBITRATION AGREEMENT SIGNED AT PARIS, 10 JULY 1975

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic,

Considering that agreement in principle has been reached between the two Governments on the delimitation of the portion of the continental shelf in the English Channel eastward of 30 minutes west of the Greenwich Meridian appertaining to each of them;

Considering that differences have arisen between the two Governments concerning the delimitation of the portion of the continental shelf westward of 30 minutes west of that Meridian appertaining to each of them which could not be settled by negotiation;

Considering the urgency of settling these differences by a process of arbitration which should result in a speedy decision on the remaining issues in dispute;

Have agreed as follows:

Article 1

1. The Court of Arbitration (hereinafter called the Court) shall be composed of: Sir Humphrey Waldoock, nominated by the United Kingdom Government, Messrs Paul Reuter, nominated by the French Government; Herbert Briggs; Erik Castren; Endre Ustor.

The President of the Court shall be: Mr Erik Castren

2. Should the President or any other Member of the Court be or become unable to act, the vacancy shall be filled by a new Member appointed by the Government which nominated the Member to be replaced in the case of the two Members nominated by the United Kingdom and French Governments, or by agreement between the two Governments in the case of the President or the remaining two Members

Article 2

1. The Court is requested to decide, in accordance with the rules of international law applicable in the matter as between the Parties, the following question:

What is the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to the United Kingdom and the Channel Islands and to the French Republic, respectively, westward of 30 minutes west of the Greenwich Meridian as far as the 1,000 metre isobath?

2. The choice of the 1,000 metre isobath is without prejudice to the position of either Government concerning the outer limit of the continental shelf

Article 3

1. The Court shall, subject to the provisions of this Agreement, determine its own procedure and all questions affecting the conduct of the arbitration

2. In the absence of unanimity, the decisions of the Court on all questions, whether of substance or procedure, shall be given by a majority vote of its Members, including all questions relating to the competence of the Court, the interpretation of this Agreement, and the decision on the question specified in Article 2 hereof

Article 4

1. The Parties shall, within fourteen days of the signature of the present Agreement, each appoint an Agent for the purposes of the arbitration, and shall communicate the name and address of their respective Agents to each other and to the Court.

2. Each Agent so appointed shall be entitled to nominate an Assistant Agent to act for him as occasion may require. The name and address of an Assistant Agent so appointed shall be similarly communicated

Article 5

The Court shall, after consultation with the two Agents, appoint a Registrar and es-

tablish its seat at a place fixed in agreement with the Parties. Until the seat has been determined the Court may meet at a place provisionally chosen by the President.

Article 6

1. The proceedings shall be written and oral.
2. Without prejudice to any question as to burden of proof, the Parties agree that the written proceedings should consist of.
 - (a) a Memorial to be submitted by each Party not later than six months after signature of the present Agreement,
 - (b) a Counter-Memorial to be submitted by each Party within a time-limit of six months after the exchange of Memorials;
 - (c) any further pleading found by the Court to be necessary
 The Court shall have power to extend the time-limits so fixed at the request of either Party.
3. The Registrar shall notify to the Parties an address for the filing of their written pleadings and other documents
4. The oral hearing shall follow the written proceedings, and shall be held in private at such place and time as the Court, after consultation with the two Agents, may determine
5. The Parties may be represented at the oral hearing by their Agents and by such Counsel and advisers as they may appoint

Article 7

1. The pleadings, written and oral, shall be either in the English or in the French language; the decisions of the Court shall be in both languages
2. The Court shall, as may be necessary, arrange for translations and interpretations and shall be entitled to engage secretarial and clerical staff, and to make arrangements in respect of accommodation and the purchase or hire of equipment

Article 8

1. The remuneration of Members of the Court shall be borne equally by the two Governments.
2. The general expenses of the arbitration shall be borne equally by the two Governments, but each Government shall bear its own expenses incurred in or for the preparation and presentation of its case

Article 9

1. When the proceedings before the Court have been completed, it shall transmit to the two Governments its decision on the question specified in Article 2 of the present Agreement. The decision shall include the drawing of the course of the boundary (or boundaries) on a chart. To this end, the Court shall be entitled to appoint a technical expert or experts to assist it in preparing the chart
2. The decision shall be fully reasoned.
3. If the decision of the Court does not represent in whole or in part the unanimous opinion of the Members of the Court, any Member shall be entitled to deliver a separate opinion.
4. Any question of the subsequent publication of the proceedings shall be decided by agreement between the two Governments

Article 10

1. The two Governments agree to accept as final and binding upon them the decision of the Court on the question specified in Article 2 of the present Agreement

2. 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.

Article 11

1. A Party wishing to carry out, at any time before the Court has rendered its decision on the question specified in Article 2, any activity in a portion of what it considers to be its continental shelf within the area submitted to arbitration shall, subject to the remaining provisions of this Article, obtain the prior consent of the other Party.

2. If such a request for consent is made by one Party the other Party may not withhold its consent for more than one month nor, if it consents within this period, subject its consent to conditions, except on the ground that the proposed activity relates to an area which it intends to claim or might claim as part of its own continental shelf at any stage in the course of the arbitration.

3. The Party withholding consent or subjecting its consent to conditions shall, when notifying the Party making the request, briefly state the grounds upon which it justifies its position.

4. The Party making the request may, if dissatisfied with the justification provided, refer the issue to the Court for a ruling.

5. Without prejudice to paragraph 4, either Party may refer any dispute as to the interpretation or application of this Article to the Court for a ruling.

6. The Court shall give, as soon as possible, a ruling on any issue referred to it pursuant to paragraph 4 or 5, and may order such provisional measures as it considers desirable to protect the interests of either Party.

Article 12

The present Agreement shall enter into force on the date of signature.

In accordance with Article 4 of the Arbitration Agreement, the French Government, on 18 July 1975, appointed M. Guy Ladreit de Lacharrière as its Agent for the case, and the United Kingdom, on 22 July 1975, appointed Sir Ian Sinclair as its Agent.

The Court of Arbitration met first at The Hague on 18 September and 17 November 1975 in the premises of the Permanent Court of Arbitration. Pursuant to an agreement negotiated between the Parties and the Swiss Confederation, the authorities of the Canton and of the City of Geneva having courteously offered their cooperation, the Court then decided that its seat should be in Geneva, in the Palais Eynard. At its meeting on 20 January 1976, it adopted its Rules of Procedure.

M. Paul Reuter having resigned for reasons of health, the French Government, on 6 April 1976, in accordance with Article 1(2) of the Arbitration Agreement, appointed M. André Gros to take his place.

After consulting the Parties, the Court appointed M. Lucius Caflisch as Registrar and M. Georges Malinverni as Deputy-Registrar.

According to Article 6(2) of the Arbitration Agreement, the time-limit for the filing of the Memorials of the Parties was fixed for 10 January 1976 and the time-limit for the filing of the Counter-Memorials for 10 July 1976. By an Order of 6 January 1976, the President of the Court, at the request of the Parties, extended the original time-limits for the filing of the Memorials and Counter-Memorials to 20 January and 20 July 1976, respectively.

A request for an extension of the time-limit for the filing of the United Kingdom's Counter-Memorial was received in the Registry from the Agent of the United Kingdom on 28 June 1976, and no opposition thereto having been expressed by the Agent of the French Republic, the President, by an Order of 5 July 1976, extended that time-limit to 20 August 1976 for both Parties.

On 14 September 1976, the Court made an Order that the Parties should file a Reply by 31 December 1976. It also fixed 26 January 1977 as the date for the opening of the oral proceedings.

The pleadings in the case having been filed within the time-limits thus prescribed, the case was ready for hearing on 31 December 1976.

The Court held twenty-one hearings, from 26 to 28 January, from 31 January to 4 February, from 7 to 10 February, from 16 to 18 February, from 21 to 23 February, and on 26 and 28 February 1977, during which it heard, in the order agreed between the Parties and approved by the Court, the following persons submit oral argument and give expert evidence: M. Ladreit de Lacharrière, Agent, MM. Virally, Bardonnnet and Dupuy, Counsel, and MM. Hindermeyer and Mehl, Expert Advisers, on behalf of the Government of the French Republic; and the Right Honourable Samuel Silkin, Attorney-General, Sir Ian Sinclair, Agent and Counsel, MM. Bowett, Jennings and Frossard, Counsel, and Sir Peter Kent and Commander Beazley, Expert Advisers, on behalf of the Government of the United Kingdom.

The Court put certain questions to the Parties on 4, 11 and 23 February 1977. Further questions were addressed by the Court to the Parties after the completion of the oral proceedings on 28 February 1977. A difference of view between the Parties having then revealed itself after this date in regard to the status of Eddystone Rock and its effect on the delimitation of the boundary in the English Channel, the Court asked the Agents to pursue their examination of this question and to inform it as soon as possible whether they had reached any agreement. The Agents having apprised the Registrar of their inability to reach agreement, the Court requested the French Government to submit its observations on the question in writing before 7 April 1977, and the Government of the United Kingdom to submit in writing prior to 30 April 1977 its comments on the observations of the French Government. The observations thus requested by the Court were submitted within the prescribed time-limits, and the Court decided to convoke the Agents on 10 May 1977 to provide explanations on certain points raised by their above-mentioned written observations, communicating to them four questions for this purpose on 4 May 1977. At the sitting of 10 May 1977, the Court heard the Agents on these questions; and, in connexion with the third question, it also put to them a supplementary question the reply to which was received from the two Agents on 12 May 1977.

The Court appointed as Expert Mr. Hans ERMEL, former Director of Nautical Surveys and Charting, Deutsches Hydrographisches Institut, Hamburg. Mr. Ermel entered upon his duties on 4 March 1977.

In the course of the written proceedings, the following Submissions were made by the Parties:

*On behalf of the Government of the French Republic, in its Reply:*²

May it please the Court to adjudge and declare:

A. *Concerning the law applicable:*

1. That the objections raised by the United Kingdom to the reservations which France attached to its accession to the Convention of 29 April, 1958 on the Continental Shelf (hereinafter referred to as "the Convention") reflect a disagreement between the two States on various articles of the Convention;

That the French reservations are in conformity with the provisions of Article 12 of the Convention and consequently fully permissible; that the objections of the United Kingdom are equally valid;

That by reason of the disagreement established as existing between the two States concerning part of the Convention, the latter, in accordance with the international law in force in 1966, the date of the British objections, is not in force between the two States;

2. That France has not, at any time since 14 June 1965, the date of its act of accession, through its conduct or through the statements of its representatives, let it be understood that it has abandoned its reservations or shown, in clear and unequivocal fashion, that it admitted that the Convention was in force between itself and the United Kingdom in all its provisions, including those which had formed the subject of its reservations;

That the United Kingdom could not have been misled on this point, that the United Kingdom has not, moreover, changed its own position;

That the United Kingdom has maintained its objections and still maintains them today, considering that the French reservations are not opposable to it;

That, consequently, the legal obstacles to the entry into force of the Convention between the two States still persist in their entirety;

3 That the rules of international law applicable in this matter between the Parties are the rules of customary law, as stated in particular by the International Court of Justice in the *North Sea Continental Shelf* cases and confirmed by the subsequent practice of States and the work of the Third Conference on the Law of the Sea;

4 That those rules prescribe that the boundary (or boundaries) between the portions of the Continental Shelf appertaining to the United Kingdom and the Channel Islands and to the French Republic respectively westward of 30 minutes west of the Greenwich Meridian and as far as the 1,000-metre isobath must be drawn in conformity with the principle of the natural prolongation of the territories of each of the two States and with the equitable principles towards the elucidation of which the Court contributed in the aforementioned cases;

5. That, in the alternative, if the Convention is in force between the two States, Article 6 thereof, concerning which they are in disagreement, is not applicable between them;

6. That, in the further alternative, if Article 6 of the Convention be applicable as between the two States, there are special circumstances in the Channel Islands sector and in the Atlantic sector that prohibit recourse to the equidistance method.

B. *Concerning the Delimitation*

(a) *In the Channel*

7. That so far as concerns the Channel sector, where the coasts of the two States are opposite, the median line drawn in relation to the baselines from which the Parties measure the breadth of their territorial sea constitutes an equitable line, having regard to the fact that the two Parties have already agreed as to how that line is to be drawn in the western and eastern parts of the Channel which are submitted to arbitration and it being understood that in the Channel Islands sector this median is to be drawn between the baselines of the French land mass and the British land mass without the islands;

8. That the application of equitable principles to the Channel Islands, having regard to the very particular geographical circumstances in this area, leads to the drawing of a line, which delimits the continental shelf of these islands and the definition of which is as follows:

² This translation, and all those which follow, are made by the Registry.

—facing the French coast:

- (i) as far as longitude 2°29' west of the Greenwich Meridian, the median line drawn between, on the one hand, the low-water line and French straight base-lines laid down in the Decree of 19 October 1967 and, on the other, the low-water line of the Islands of Alderney, Sark and Jersey, it being understood that no account is to be taken of either the Ecrehos and Minquiers or of the Chausey Islands;
- (ii) from longitude 2°29' west of the Greenwich Meridian towards the open sea, the median line drawn between the low-water line of the Roches Douvres and the low-water line of the islands of Jersey and Guernsey;

—facing the open seas:

- (i) around Alderney, Burhou and the Casquets, segments of arcs of circles of six nautical miles in radius, drawn from the low-water lines of these islands or rocks, from the intersection of the arc of the circle of Alderney with the median line between the Cotentin Peninsula and the Channel Islands;
- (ii) around Guernsey, segments of arcs of circles of six nautical miles in radius, drawn from the low-water lines of the island of Lihou and of the Hanois;
- (iii) in the area situated between the Casquets and Guernsey, the tangent joining the arcs of circles of six nautical miles in radius, drawn from the Casquets and from the island of Lihou;
- (iv) in the area situated to the south-west of Guernsey, a straight line drawn from the arc of a circle of six nautical miles in radius, as delimited from the Hanois, until its intersection with the median line, as previously defined, between the Roches Douvres and the Channel Islands;

(b) *In the Atlantic*

9. That so far as concerns the Atlantic sector, where the coasts of the two States are no longer opposite each other, the natural prolongation of their territories, in the absence of relevant geological factors, must be determined by extending into the Atlantic lines expressing the general direction of their Channel coasts;

That the bisector of the angle formed by these two lines, prolonging the median line in the Channel, delimits in equitable fashion those parts of the continental shelf appertaining to the United Kingdom and the French Republic respectively;

10. That the general direction of the coasts of each State is equitably determined by lines representing such general direction through the elimination of salients and re-entrants and drawn from Dungeness to Guethensbras and from Berneval to Pointe Galaite respectively;

That the line of delimitation in the Atlantic is, in consequence, the bisector E of the angle formed by these two lines, prolonging the median line in the Channel as far as the 1,000 metre isobath.

On behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, in its Counter-Memorial:

May it please the Court to adjudge and declare:

1.A. (a) That, neither at the time of the formulation of France's reservations on accession to the Geneva Convention of 1958 on the Continental Shelf nor at the time of the formulation of the United Kingdom's observations on those reservations (nor subsequently), did there exist any rule of international law establishing a presumption (still less an irrebuttable presumption) that, in relation to a treaty containing no provisions regarding reservations, an objection to a reservation precluded the entry into force of the treaty as between the "reserving" and the "objecting" States;

(b) that the rules of general international law on the subject of reservations to multilateral conventions (which in this respect have remained unchanged since the relevant time) require effect to be given in the first instance to the particular régime for reservations contained in the text of the treaty in question; that is to say, in the particular case of the 1958 Convention, Article 12 of the said Convention, which expressly permits reservations to be made to articles thereof other than Articles 1 to 3 inclusive;

(c) that, to the extent that the legal effect of the French Reservations to the 1958 Convention is not specifically provided for by the terms of the said Article 12, the legal effect of the said reservations and of the United Kingdom's observations thereon is determined on the basis of the intention underlying the United Kingdom's observations inferred from the terms thereof and from the surrounding circumstances;

(d) that the clear and unmistakable intention underlying the observations of the United Kingdom on the said French reservations was not to preclude the establishment, or deny the existence of, treaty relations with France on the basis of the 1958 Convention including Article 6 thereof;

(e) that France is, in any event, precluded by her subsequent conduct from denying the applicability of the 1958 Convention as a whole, including Article 6 thereof, as between the United Kingdom and France;

(f) that accordingly the 1958 Convention is in its entirety a treaty in force between the United Kingdom and France.

B. In the alternative, should the Court find, on the basis of Article 12 of the 1958 Convention, that the French reservations to Articles 4 *et seq.* of the said Convention were *ipso jure* effective from the date of France's accession to the 1958 Convention as against all other States parties to that Convention, including the United Kingdom:

(a) that the particular "reservations" to Article 6 of the said Convention, on which France relies in her Memorial submitted to the Court on 20 January 1976, are not true reservations in the sense in which that term is understood in international law, or, to the extent that they are true reservations, are not permissible reservations to the said Article 6;

(b) that the said "reservations" did not have as their object and purpose to exclude Article 6 of the Convention in general, or in its application to the area submitted to the present Arbitration in particular;

(c) that in any event to give effect to any or all of the said "reservations" in accordance with their express terms would have a minimal practical effect in the circumstances of the present Arbitration.

2. (a) The delimitations of the portions of the continental shelf appertaining to the United Kingdom and the Channel Islands and to the French Republic, respectively, in the area comprised in the question submitted to the Court under Article 2 of the Arbitration Agreement is governed by the provisions of Article 1 and paragraph 1 of Article 6 of the said Convention, which constitute the rules of international law applicable between the Parties in the matter

(b) The French "reservations" to Article 6 of the said Convention not being opposable to the United Kingdom, the said Article applies as between the Parties without any modification;

(c) in the alternative, should the Court find that the said "reservations", to the extent that they are true, permissible reservations to that Article, took effect *ipso jure* against the United Kingdom, the said "reservations", even on their most adverse interpretation, would not affect the course of the boundary (or boundaries) upon which the Court is required to decide in accordance with Article 2 of the Arbitration Agreement.

(d) The terms and the manifest intention of the said Article 6 render paragraph 1 thereof applicable to the entire area comprised in the question submitted to the Court under Article 2 of the Arbitration Agreement, since:

- (i) the entire area is part of the same continental shelf and is adjacent to the coasts of the United Kingdom and the Channel Islands and France, respectively;
- (ii) the coasts of the United Kingdom and France in that area and of the Channel Islands and France are indubitably opposite one another;
- (iii) the said Article 6 was in any event intended to cover all questions of the delimitation of the continental shelf arising between immediately neighbouring States;
- (iv) for the purposes of the present Arbitration, the entire area falls or must be deemed to fall within the terms of Article 1 of the 1958 Convention.

3. (a) Accordingly, the Parties having concluded that the delimitation westward of 30 minutes west of the Greenwich Meridian as far as the 1,000 metre isobath cannot be

effected by agreement between them, the applicable rule is that the boundary line in that entire area, as determined by the said paragraph 1 of Article 6, is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea is measured, unless another boundary line is justified by special circumstances.

(b) In so far as it is open to France to claim the existence of special circumstances justifying another boundary in that part of the area lying to the west of approximately 5 degrees 45 minutes west of the Greenwich Meridian, France has not discharged the *onus* of showing that the circumstances of the area constitute special circumstances within the meaning of the said Article 6, nor that they justify a boundary line other than the median line defined above.

(c) France has failed to show what meaning is to be attributed to the geographical expression "baie de Granville" as used in her "reservations" and, neither in relation to the area comprised in that expression (whatever it may be) nor in relation to the area of the Channel Islands as a whole, has France discharged the *onus* of showing that the circumstances constitute special circumstances within the meaning of the said Article 6, nor that they justify a boundary line other than the median line defined above.

(d) The boundary line in the entire area is accordingly the median line as defined above, which is to be measured—

- (i) in relation to the United Kingdom, from the established baselines and bay-closing lines on the south coast of England, including the Scilly Isles and all other islands and relevant low-tide elevations, all such baselines being established in fact and in law as the baselines from which the territorial sea of the United Kingdom in the area is measured;
- (ii) in relation to the Channel Islands, from the established baselines on all the islands, including the groups known as the Casquets, the Ecrehos and the Minquiers and all relevant low-tide elevations, all such baselines being established in fact and in law as the baselines from which the territorial sea of the Channel Islands is measured;
- (iii) in relation to France, from the low water line along the north coast of France, including Ushant, the Iles Chausey and the group known as the Roches Douvres and all relevant low-tide elevations, and including lawful bay-closing lines, but excluding the baselines proclaimed by the Decree of 19 October 1967 and especially the line across the Anse de Vauville, which is not a bay in international law.

The line thus constructed is illustrated on Map 4 at Appendix C(5) to the United Kingdom Memorial.

4 In the alternative, should the Court find that the boundary line in the entire area or in any part of it is to be determined by customary or general international law, the rule is that the boundary line is to be drawn in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other

5 Accordingly:

(a) given the essential geological continuity of the continental shelf throughout the entire area, it can in principle be claimed by both Parties as constituting the natural prolongation of their land territories into and under the sea, and in the absence of agreement can therefore, in law, only be delimited by means of a median line;

(b) no rule of international law requires the displacement of the median line by another boundary line, since the median line, which faithfully reflects the geographical configuration of the coasts of the two States in relation to the sea, produces a result which accords with equitable principles and one which is in no way extraordinary, unnatural or unreasonable as leaving to either State areas of seabed which are uniquely part of the natural prolongation of the land territory of the other; in particular, there is no basis in law nor any objective validity for the drawing of any boundary in the South-Western Approaches

consisting of a modified "median line" constructed by means of an arbitrary revision of the baselines from which it is to be measured.

6. In the further alternative, should the Court decide that, in certain parts of the said area, there exists a major and persistent structural discontinuity of the seabed and subsoil of such a nature as to interrupt the essential geological continuity of the continental shelf and thereby to indicate the limits of those parts of the continental shelf that constitute a natural prolongation of the land territory of the United Kingdom and those parts of the continental shelf that constitute a natural prolongation of the land territory of France, the rule of international law is that the boundary line should be drawn along the axis of this structural discontinuity; this boundary line is more fully described in paragraphs 235 to 238 and 261 of the United Kingdom Memorial and is illustrated on Map 3 at Appendix C(4) hereto.

During the oral proceedings the following Submissions were made by the Parties:

On behalf of the Government of the French Republic, on 2 February 1977:

May it please the Court to adjudge and declare:

A. *Concerning the law applicable*

1. That the objections raised by the United Kingdom to the reservations which France attached to its accession to the Convention of 29 April 1958 on the Continental Shelf (hereinafter referred to as "the Convention") reflects a disagreement between the two States on several articles of the Convention;

That the French reservations are in conformity with the provisions of Article 12 of the Convention and consequently fully permissible; that the objections of the United Kingdom are equally valid;

That by reason of the disagreement established as existing between the two States concerning part of the Convention, the latter, in accordance with the international law in force in 1966, the date of the British objections, is not in force between the two States;

2. That France has not, at any time since 14 June 1965, the date of its act of accession, through its conduct or through the statements of its representatives, let it be understood that it has abandoned its reservations or shown, in clear and unequivocal fashion, that it admitted that the Convention was in force between itself and the United Kingdom in all its provisions, including those which had formed the subject of its reservations;

That the United Kingdom could not have been misled on this point; that the United Kingdom has not, moreover, changed its own position;

That the United Kingdom has maintained its objections and still maintains them to-day, considering that the French reservations are not opposable to it;

That, consequently, the legal obstacles to the entry into force of the Convention between the two States still persist in their entirety;

3. That the recent development of customary law, which was stimulated particularly by the work of the United Nations, the reactions on the part of Governments to this work, the discussions and negotiations at the Third Conference on the Law of the Sea, and the endorsement of this development in the practice of States with respect to economic zones and fishing zones of 200 miles, have rendered the 1958 Conventions obsolete;

4. That the situation of the continental shelf in the Atlantic sector in any event falls outside the scope of paragraphs 1 and 2 of Article 6 of the Convention;

5. That the rules of international law applicable in this matter between the Parties are the rules of customary law, as stated in particular by the International Court of Justice in the North Sea Continental Shelf cases and confirmed by the subsequent practice of States and the work of the Third Conference on the Law of the Sea;

6. That those rules prescribe that the boundary (or boundaries) between the portions of the continental shelf appertaining to the United Kingdom and the Channel Islands and to the French Republic, respectively, westward of 30 minutes west of the Greenwich Meridian and as far as the 1,000 metre isobath must be drawn in conformity with the principle of

the natural prolongation of the territories of each of the two States and with the equitable principles to the elucidation of which the Court contributed in the aforementioned cases;

7. That, in the alternative if the Convention is in force between the two States, Article 6 thereof, concerning which they are in disagreement, is not applicable as between them;

8. That, in the further alternative, if Article 6 of the Convention be applicable as between the two States:

(a) there are special circumstances in the Channel Islands sector which justify a delimitation other than that which would result from application of the principle of equidistance;

(b) the Atlantic sector falls outside the scope of paragraphs 1 and 2 of Article 6;

(c) alternatively there are special circumstances in the Atlantic sector which justify a delimitation other than that which would result from application of the principle of equidistance.

B. *Concerning the Delimitation*

(a) *In the Channel:*

9. So far as concerns the Channel sector, where the coasts of the two States are opposite, the median line drawn by reference to the baselines from which the Parties measure the breadth of their territorial sea constitutes an equitable line having regard to the fact that the two Parties have already agreed as to how that line is to be drawn in the western and eastern parts of the Channel which are submitted to arbitration and it being understood that in the Channel Islands sector this median is to be drawn between the baselines of the French land mass and the British land mass without the islands.

10. That the application of equitable principles to the Channel Islands, having regard to the very particular geographical circumstances in this area, lead to the drawing of a line, which delimits the continental shelf of these islands and the definition of which is as follows:

—facing the French coast:

- (i) as far as longitude 2°29' west of the Greenwich Meridian, the median line drawn between, on the one hand, the low-water line and French baselines laid down in the Decree of 19 October 1967 and, on the other, the low-water mark of the Islands of Alderney, Sark and Jersey, it being understood that no account is to be taken of either the Ecrehos and Minquiers or of the Chausey Islands;
- (ii) from longitude 2°29' west of the Greenwich Meridian towards the open sea, the median line drawn between the low-water line of the Roches Douvres and the low-water line of the islands of Jersey and Guernsey;

—facing the open seas:

- (i) around Alderney, Burhou and the Casquets, segments of arcs of circles of six nautical miles in radius, drawn from the low-water lines of these islands or rocks, from the intersection of the arc of the circle of Alderney with the median line between the Cotentin Peninsula and the Channel Islands;
- (ii) around Guernsey, segments of arcs of circles of six nautical miles in radius, drawn from the low-water lines of the island of Lihou and of the Hanois;
- (iii) in the area situated between the Casquets and Guernsey, the tangent joining the arcs of circles of six nautical miles in radius, drawn from the Casquets and from the island of Lihou;
- (iv) in the area situated to the south-west of Guernsey, a straight line drawn from the arc of a circle of six nautical miles in radius, as it was drawn from the Hanois, until its intersection with the median line, as previously defined, between the Roches Douvres and the Channel Islands.

(b) *In the Atlantic:*

11. That so far as concerns the Atlantic sector, where the coasts of the two States are no longer opposite each other, the natural prolongation of their territories, in the absence of relevant geological factors, must be determined by prolonging into the Atlantic lines expressing the general direction of their Channel coasts;

That the bisector of the angle formed by these two lines, extending the median line in the Channel, delimits in equitable fashion those parts of the continental shelf appertaining to the United Kingdom and the French Republic, respectively:

12. That the general direction of the coasts of each State is equitably determined by lines representing such general direction through the elimination of salients and re-entrants drawn from Dungeness to Guethenbras and from Berneval to Pointe Galaite, respectively.

That the line of delimitation in the Atlantic is, in consequence, the bisector E of the angle formed by these two lines, prolonging the median line in the Channel as far as the 1,000 metre isobath.

On behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, on 9 February 1977:

May it please the Court to adjudge and declare:

I A. (a) That, neither at the time of the formulation of France's reservations on accession to the Geneva Convention of 1958 on the Continental Shelf nor at the time of the formulation of the United Kingdom's observations on those reservations (nor subsequently) did there exist any rule of international law establishing a presumption (still less an irrefutable presumption) that, in relation to a treaty containing no provisions regarding observations, an objection to a reservation precluded the entry into force of the treaty as between the "reserving" and the "objecting" States;

(b) that the rules of general international law on the subject of reservations to multilateral conventions (which in this respect have remained unchanged since the relevant time) require effect to be given in the first instance to the particular régime for reservations contained in the text of the treaty in question; that is to say, in the particular case of the 1958 Convention, Article 12 of the said Convention, which expressly permits reservations to be made to articles thereof other than to Articles 1 to 3 inclusive;

(c) that, to the extent that the legal effect of the French reservations to the 1958 Convention is not specifically provided for by the terms of the said Article 12, the legal effect of the said reservations and of the United Kingdom's observations thereon is determined on the basis of the intention underlying the United Kingdom's observations inferred from the terms thereof and from the surrounding circumstances;

(d) that the clear and unmistakable intention underlying the observations of the United Kingdom on the said French reservations was not to preclude the establishment, or deny the existence of, treaty relations with France on the basis of the 1958 Convention including Article 6 thereof;

(e) that the course of conduct followed by France in her relations with the United Kingdom between 1966 and the date of signature of the Arbitration Agreement constitutes a continuing recognition and acknowledgement that the 1958 Convention, including Article 6, is a treaty in force between the two States; that this continuing recognition and acknowledgement was given in circumstances where France was in good faith bound to have denied that this was the case had that been her true position; and that, the French argument before the Court being fundamentally inconsistent with that course of conduct, the Court ought to hold France to the legal position reflected in her conduct and reject the inconsistent argument now adduced;

(f) that accordingly the 1958 Convention is in its entirety a treaty in force between the United Kingdom and France, and has not been abandoned by the Parties in their mutual relations nor rendered obsolete by subsequent developments in customary law.

B. In the alternative, should the Court find, on the basis of Article 12 of the 1958 Convention, that the French reservations to Articles 4 *et seq.* of the said Convention were *ipso jure* effective from the date of France's accession to the 1958 Convention as against all other States parties to that Convention, including the United Kingdom:

(a) that the particular "reservations" to Article 6 of the said Convention, on which France relies in her Memorial submitted to the Court on 20 January 1976, are not true reservations in the sense in which that term is understood in international law, or, to the extent that they are true reservations, are not permissible reservations to the said Article 6;

(b) that the said "reservations" did not have as their object and purpose to exclude

Article 6 of the Convention in general, or in its application to the area submitted to the present Arbitration in particular;

(c) that in any event to give effect to any or all of the said "reservations" in accordance with their express terms would have a minimal practical effect in the circumstances of the present Arbitration.

2. (a) The delimitation of the portions of the continental shelf appertaining to the United Kingdom and the Channel Islands and to the French Republic, respectively, in the area comprised in the question submitted to the Court under Article 2 of the Arbitration Agreement is governed by the provisions of Article 1 and of paragraph 1 of Article 6 of the said Convention, which constitute the rules of international law applicable between the Parties in the matter.

(b) The French "reservations" to Article 6 of the said Convention not being opposable to the United Kingdom, the said Article applies as between the Parties without any modification;

(c) in the alternative, should the Court find that the said "reservations", to the extent that they are true, permissible reservations to that Article, took effect *ipso jure* against the United Kingdom, the said "reservations", even on their most adverse interpretation, would not affect the course of the boundary (or boundaries) upon which the Court is required to decide in accordance with Article 2 of the Arbitration Agreement

(d) The terms and the manifest intention of the said Article 6 render paragraph 1 thereof applicable to the entire area comprised in the question submitted to the Court under Article 2 of the Arbitration Agreement, since:

- (i) the entire area is part of the same continental shelf and is adjacent to the coasts of the United Kingdom and the Channel Islands and France, respectively;
- (ii) the coasts of the United Kingdom and France in that area and of the Channel Islands and France are indubitably opposite one another;
- (iii) the said Article 6 was in any event intended to cover all questions of the delimitation of the continental shelf arising between immediately neighbouring States;
- (iv) for the purposes of the present Arbitration, the entire area falls or must be deemed to fall within the terms of Article 1 of the 1958 Convention.

3. (a) Accordingly, the Parties having concluded that the delimitation westward of 30 minutes west of the Greenwich Meridian as far as the 1000 metre isobath cannot be effected by agreement between them, the applicable rule is that the boundary line in that entire area, as determined by the said paragraph 1 of Article 6, is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea is measured, unless another boundary line is justified by special circumstances.

(b) In so far as it is open to France to claim the existence of special circumstances justifying another boundary in that part of the area lying to the west of approximately 5 degrees 45 minutes west of the Greenwich Meridian, France has not discharged the *onus* of showing that the circumstances of the area constitute special circumstances within the meaning of the said Article 6, nor that they justify a boundary line other than the median line defined above

(c) France has failed to show what meaning is to be attributed to the geographical expression "baie de Granville" as used in her "reservations" and, neither in relation to the area comprised in that expression (whatever it may be) nor in relation to the area of the Channel Islands as a whole, has France discharged the *onus* of showing that the circumstances constitute special circumstances within the meaning of the said Article 6, nor that they justify a boundary line other than the median line defined above

(d) The boundary line in the entire area is accordingly the median line as defined above, which is to be measured:

- (i) in relation to the United Kingdom, from the established baselines and bay-closing lines on the south coast of England, including the Scilly Isles and all other islands and relevant low-tide elevations, all such baselines being established in fact and in law as the baselines from which the territorial sea of the United Kingdom in the area is measured.

- (ii) in relation to the Channel Islands, from the established baselines on all the islands, including the groups known as the Casquets, the Ecrehos and the Minquiers and all relevant low-tide elevations, all such baselines being established in fact and in law as the baselines from which the territorial sea of the Channel Islands is measured;
- (iii) in relation to France, from the low water line along the North coast of France, including Ushant, the Iles Chausey and the group known as the Roches Douvres and all relevant low-tide elevations, and including lawful bay-closing lines, but excluding the baselines proclaimed by the Decree of 19 October 1967 and especially the line across the Anse de Vauville, which is not a bay in international law.

The line thus constructed is illustrated on Map 4 at Appendix C(5) to the United Kingdom Memorial

4. In the alternative, should the Court find that the boundary line in the entire area or in any part of it is to be determined by customary or general international law, the rule is that the boundary line is to be drawn in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.

5. Accordingly:

(a) given the essential geological continuity of the continental shelf throughout the entire area, it can in principle be claimed by both Parties as constituting the natural prolongation of their land territories into and under the sea, and in the absence of agreement can therefore, in law, only be delimited by means of a median line;

(b) no rule of international law requires the displacement of the median line by another boundary line, since the median line, which faithfully reflects the geographical configuration of the coasts of the two States in relation to the sea, produces a result which accords with equitable principles and one which is in no way extraordinary, unnatural or unreasonable as leaving to either State areas of seabed which are uniquely part of the natural prolongation of the land territory of the other; in particular, there is no basis in law nor any objective validity for the drawing of any boundary in the South-Western Approaches consisting of a modified "median line" constructed by means of an arbitrary revision of the baselines from which it is to be measured

6. In the further alternative, should the Court decide that, in certain parts of the said area, there exists a major and persistent structural discontinuity of the seabed and subsoil of such a nature as to interrupt the essential geological continuity of the continental shelf and thereby to indicate the limits of those parts of the continental shelf that constitute a natural prolongation of the land territory of the United Kingdom and those parts of the continental shelf that constitute a natural prolongation of the land territory of France, the rule of international law is that the boundary line should be drawn along the axis of this structural discontinuity; this boundary line is more fully described in paragraphs 235 to 238 and 261 of the United Kingdom Memorial and is illustrated on Map 3 at Appendix C(4) thereto

1. The Parties, by the Arbitration Agreement concluded by them on 10 July 1975, have submitted to this Court certain differences concerning the delimitation of the portions of the continental shelf appertaining to each of them westward of 30' west of the Greenwich Meridian which could not be settled by negotiation. In order to settle these differences by arbitration, the Parties have requested the Court to decide, in accordance with the rules of international law applicable in the matter as between them, the following question:

What is the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to the United Kingdom and the Channel Islands and to the French Republic, respectively, westward of 30 minutes west of the Greenwich Meridian as far as the 1,000 metre isobath?

They have further specified, by Article 9, paragraph 1, of the Arbitration Agreement, that the Court's decision is to include "the drawing of the course of the boundary (or boundaries) on a chart".

2. The area of continental shelf with which the Court is concerned in the present arbitration (hereafter for convenience termed the "arbitration area") forms part of the continental shelf of North-West Europe, which extends over the submarine areas of the North Sea and English Channel (La Manche)³ and of all the waters lying westwards of France and the United Kingdom as far as the furthest limits of the continental shelf in the Atlantic ocean. The arbitration area itself comprises the continental shelf of the Channel westward of 30' west of Greenwich, and the portions of the continental shelf appertaining to France and the United Kingdom in the Atlantic region immediately to the westward of the Channel as far as the 1,000-metre isobath. The continental shelf of this area, as the information before the Court clearly shows and both Parties have stressed in their pleadings, is characterized by the essential continuity of its geological structure.

3. The English Channel stretches westwards from the Straits of Dover (Pas de Calais) in a south-westerly and then in a west-south-westerly direction, separating the south coast of Great Britain from the north coast of France over a distance of some 300 nautical miles. The width of the Channel varies from about 18 nautical miles at the narrowest point of the Straits of Dover to some 100 nautical miles at its western entrances; its average depth similarly increases gradually from about 35 metres at its eastern entrance to about 100 metres where it begins to open into the Atlantic. On the United Kingdom side, the coastline follows a relatively regular west-south-westerly course, marked only by a number of more prominent headlands, notably Dungeness, Beachy Head, Selsey Bill, St. Catherine's Point on the Isle of Wight, Portland Bill, Start Point, the Lizard and Guethensbras at Land's End. It is also for most of its length free of islands, the only considerable ones being the Isle of Wight and the Isles of Scilly.

4. The Isle of Wight, lying at the entrance to the Port of Southampton, is divided from the mainland only by narrow passages and may be said to be comprised within the coastline of the mainland itself. The Scilly Isles, on the other hand, at their nearest point lie some 21 nautical miles westward of Land's End, the westerly extremity of the English mainland, while their furthest point is some 31 nautical miles distant. Channels of up to 60 and 70 metres depth separate the Scillies from the mainland, and between them and the mainland are to be found only the Seven Stones, a group of rocks which submerge at high tide, the Wolf Rock and the Longships. On the other hand, it is common ground between the Parties that, although some distance from the mainland, the Scilly Isles are geologically a natural prolongation of the Cornish peninsula and an integral part of the land mass of the United Kingdom. The Scillies group consists of 48 islands, six of which are inhabited with a total population of 2,428 in the census of 1971. The Eddystone

³ In general, English terminology will be used for geographical features in the English text of the award, and French terminology in the French text.

Rocks, situated in the approaches to the Port of Plymouth, also require mention because of a difference between the Parties as to their significance for the delimitation of the median line in this part of the English Channel. These rocks, on one of which stands the 51.2 metres granite tower of Eddystone Lighthouse, lie eight nautical miles to the southward of Rame Head on the English coast.

5. On the French side of the English Channel the coastline follows a less regular course. From the Straits of Dover, it runs almost due south before turning in a south-westerly direction into the wide Baie de Seine. Thence it turns northwards again for some 30 nautical miles along the east side of the Cherbourg peninsula (le Cotentin) to Pointe de Barfleur from which it runs a similar distance due westwards to Cap de la Hague, the north-western extremity of that peninsula. From the Cap de la Hague the coastline reverses its course sharply to the south-south-east along the west side of the Cherbourg peninsula for a distance of some 60 nautical miles before turning once more westwards at a right-angle to form the gulf termed by the French Government in its pleadings the "Golfe breton-normand". Thereafter, it continues, with a slight west-south-westerly trend to the extremity of the Brest peninsula whence it turns due south to form the broken western coastline of that peninsula. Eastwards of the Cherbourg peninsula the coastline may, for all practical purposes, be described as free of islands. The west coast of the peninsula, however, and the whole coastline westwards to the Atlantic are heavily encrusted with islands, islets and rocks; and in two areas these require to be further described, namely, the Golfe breton-normand and the west coast of the Brest peninsula.

6. In the Golfe breton-normand, that is in the rectangular gulf formed by the coasts of Normandy and Brittany, lies the Channel Islands archipelago, a dependency of the Crown of the United Kingdom. The principal islands are Jersey, Guernsey, Alderney, Sark, Herm and Jethou and there is also a great number of rocks and islets some of which are inhabited. These islands, islets and rocks fall into four main groups:

(1) The northerly Alderney group, consisting of Alderney, Burhou, Ortac, the Casquets, and numerous other islets, lies due west and no more than eight nautical miles distant from Cap de la Hague on the Normandy coast.

(2) The westerly Guernsey group, which is situated furthest from the French coast, comprises Guernsey, Sark, Herm and Jethou together with a few islets.

(3) The Jersey group, consisting of Jersey itself, the Ecrehos and some other clusters of islets and rocks, lies to the south-east of the second group and is separated from the French mainland only by the narrow sea-passages known as La Déroute. The most easterly point of the Ecrehos, it may be added, is no more than 6.6 nautical miles distant from Cap de Carteret on the Normandy coast.

(4) The Minquiers group, composed of numerous islets and rocks, is situated some ten miles due south of Jersey and about 16 miles to the north

of Pointe de Meinga on the north coast of Brittany and only eight miles from the Iles Chausey.

7. The total land area of the four groups is approximately 195 square kilometres and their total population about 130,000. They are divided for governmental purposes into two Bailiwicks, the northerly and westerly groups constituting the Bailiwick of Guernsey, and the Jersey and Minquiers groups the Bailiwick of Jersey. Each Bailiwick has its own legislative Assembly, fiscal and legal systems, courts of law and systems of local administration; but responsibility for foreign relations and external defence is assumed by the United Kingdom. Alderney and the Casquets in the northerly group are distant about 49 miles from Portland Bill, the nearest point on the south coast of England.

8. In the sea-passages situated between the Channel Islands archipelago and the coasts of Normandy and Brittany there are also to be found numerous islets and rocks appertaining to France. This is the case particularly in the waters lying between the Jersey and Minquiers groups and the coast of Normandy from Cap de Carteret southwards to the Baie du Mont St. Michel and westwards from that bay along the coast of Brittany to Les Héaux de Bréhat. In these waters clusters of islets and rocks, such as the Plateau des Trois Grunes, the Chaussée des Boeufs, Iles Chausey, the Grand Léjon and the Roches Douvres, reach out from the French coast, narrowing the waters which separate the Channel Islands from France.

9. Geologically, the Channel Islands archipelago and the seabed and subsoil of the Golfe breton-normand form part of the same armorican structure as the land mass of Normandy and Brittany. This gulf is characterized by the same essential geological continuity as the rest of the English Channel, but the geomorphology of the Channel is here marked by a distinct fault, known as the Hurd Deep (Fosse Centrale). Situated a few nautical miles to the north and north-west of the Alderney and Guernsey groups, that fault or series of faults extends in a south-westerly direction for a distance of some 80 nautical miles, with a width of between one and three nautical miles and a depth of over 100 metres.

10. Off the west face of the Brest peninsula lies Ushant, about ten nautical miles from the mainland, while the Pointe de Pern, the most westerly point both of this island and of France, is situated some 14.1 nautical miles distant from the mainland. The island is fringed with rocks and shoals, and numerous clusters of islets, rocks and shoals stretch across the sea passages that separate it from the mainland. Ushant, which is inhabited with a population of some 2,500, is included in the Department of Finistère.

11. In the Atlantic region, as already indicated, the essential geological continuity of the continental shelf is maintained out to the limits of the arbitration area at the 1,000-metre isobath. The depth of the superjacent waters remains comparatively shallow until it reaches the 200-metre isobath when it descends steeply to 1,000 metres, the average distance between the 200- and 1,000-metre isobath being no more than about ten nautical miles. The contour of the 1,000-metre isobath, if its local meanderings are disregarded, runs from the Gulf of Gascony steadily in a north-westerly direction

until about 12° west of Greenwich where it turns due north to pass to seaward of the west coast of the Republic of Ireland. Its distance from Ushant, taken in a south-westerly direction from the island, is approximately 160 nautical miles, and its distance from the Scilly Isles, again taken in this general south-westerly direction, approximately 180 nautical miles.

12. The information before the Court indicates the presence in the Atlantic region of certain geological faults or groups of faults in the structure of the continental shelf to the west of the Ushant-Scillies line. A series of such faults, which follow the same general south-westerly trend as the English Channel, is to be found in the Atlantic region as far as 6°30' west of Greenwich and others, with a more southerly trend, extend almost as far as the 1,000-metre isobath. The Parties are in accord as to the existence of the faults in the geological structure of this region, and as to their general south-westerly trend. They are also at one in considering that the faults do not detract from the essential geological continuity of the continental shelf. They are not, however, in agreement as to the sufficiency of the scientific information regarding the geological features in question or as to its correct interpretation; nor are they agreed as to the significance of the faults in relation to the geology and geomorphology of the shelf. The French Government considers the faults to constitute, at most, minor and disconnected rifts in the structure of the shelf and is unable to see in them any coherent or continuous fault zone. The United Kingdom Government, on the contrary, considers these geological features, which it denominates the Hurd Deep Fault Zone, to establish the existence of a major and persistent rift in the structure of the shelf constituting a prolongation of the Hurd Deep into the Atlantic region. These differences between the Parties relate to the alternative and subsidiary Submission put forward by the United Kingdom that if a continuous median line should not be adopted as the boundary throughout the arbitration area, the Hurd Deep and Hurd Deep Fault Zone provide the only appropriate dividing line between the natural prolongations of the continental shelves of each country. The Court, for reasons given later in this Decision, does not find it necessary to resolve the differences between the Parties concerning the character and the significance of the geological faults of the continental shelf. The Court, therefore, finds it unnecessary here to set out in detail the facts and evidence placed before it regarding these faults.

13. The task entrusted to the Court by Article 2(1) of the Arbitration Agreement is to decide "what is the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to the United Kingdom and the Channel Islands and to the French Republic" within the arbitration area. The preamble to the Agreement likewise speaks of differences "between the two Governments concerning the delimitation of the portion of the continental shelf . . . appertaining to each of them which could not be settled by negotiation". It is, therefore, clear that the competence conferred on the Court by Article 2(1) of the Agreement relates specifically to the delimitation in the arbitration area of the boundary of the continental shelf. Moreover, the term "continental shelf", as used in international law at the date of the conclusion of the Arbitration Agreement, was a legal term denoting only "the seabed and subsoil of the submarine

areas adjacent to the coast but outside the area of the territorial sea" (Geneva Convention of 1958 on the Continental Shelf, Article 1). It follows, in the opinion of the Court, that the Arbitration Agreement does not confer upon it any competence to settle differences between the Parties regarding the boundary of their respective zones of territorial sea or of their respective fishery zones, and still less to pronounce upon the boundary of the Economic Zone declared by the French Republic in a law of 16 July 1976.

14. The Parties, in their written and oral pleadings, have addressed arguments to the Court regarding the delimitation of a "continental shelf" boundary between them in the sea passages situated between, on the one hand, the Channel Islands and, on the other, the coasts of Normandy and Brittany. However, the narrowness and rock-strewn character of these sea passages, which the Court has already described, brings into question its competence to make any such delimitation in the area in question. Although the United Kingdom at present claims only a three-mile territorial sea around the Channel Islands, the French Republic has established a 12-mile territorial sea off all its coasts, including those of Normandy and Brittany. Again, the United Kingdom claims, and has claimed before the Court, the right to extend its three-mile territorial sea to one of 12 miles; and it already has a 12-mile fishery limit around the Channel Islands, established in conformity with the European Fisheries Convention of 9 March 1964. To this has to be added the fact that many of the French and British islets and rocks scattered along the sea passages provide possible base-points for advancing seawards the limits established or claimed by each Party. As a result, the "continental shelf" boundary which the Parties invite the Court to delimit in the areas between the Channel Islands and the coasts of Normandy and Brittany must traverse over almost its whole length waters either claimed by France as part of its territorial sea or by the United Kingdom as part of its actual or potential territorial sea and of its existing fishery zone.

15. Moreover, although the Parties are agreed that the boundary should, in principle, be the median line in these areas where the coasts of the Channel Islands and those of Normandy and Brittany are opposite each other, the median line boundaries which they propose by no means coincide. On the contrary, the boundaries diverge in a number of places, and these divergencies reflect unresolved differences regarding the conformity with international law of the use of this or that base-point by one or other Party. The United Kingdom, for example, contests the French Republic's use of a straight baseline across the Anse de Vauville, while the French Republic challenges the United Kingdom's use of the Ecrehos and Minquiers groups as base-points for the median line. Again, if the Minquiers are not accepted as constituting a base-point, the United Kingdom challenges the legitimacy of the French Republic's use of the Roches Douvres; and if the Minquiers are used as a base-point, the French Republic asserts a right to the use of the Chausey group for delimiting the median line.

16. Consequently, it is clear that, in order to delimit any form of seabed and subsoil boundary between the Channel Islands archipelago and the coasts of Normandy and Brittany, the Court would have to decide a number

of questions in dispute between the Parties regarding the delimitation of the territorial sea of one or other country. This being so, at the hearing of 4 February 1977 the Court drew the attention of the Parties to the terms of Article 2(1) of the Arbitration Agreement and put to them the following question:

What, if any, functions and powers are to be considered as having been conferred upon the Court by Article 2(1) with respect to the delimitation of the boundary in areas of seabed and subsoil which certainly form part of the territorial sea of one or other Party or in regard to which there is a difference between the Parties regarding their status as territorial sea or continental shelf?

17. Replying to this question at the hearing of 16 February 1977, the Agent for the French Republic stated:

As regards the connexion between the Court's mandate and the delimitation of the territorial waters of the Parties in the area under consideration, the French Government holds the view that, as presently defined, the Court's mandate extends only to the delimitation of the continental shelf, and that shelf can begin only where the seabed and subsoil of the territorial sea end.

The Court can thus delimit the continental shelf only if the boundary line is located beyond the limits of the bed of the territorial sea of one of the Parties or coincides with those limits.

After analysing the position of the Parties in the successive sectors of the boundary proposed by each Party, the French Agent concluded:

It is consequently possible that the competence of the Court will be denied by one or the other Party, in at least an important portion of the area located between the Channel Islands, on the one hand, and the coasts of Normandy and Brittany on the other

At the final hearing of the Court on 28 February 1977, and in response to a further question from the Court, the French Agent formally confirmed his previous statement; and he further indicated that, as the territorial sea forms part of French national territory, any extension of the Court's mandate with respect to the territorial sea would require reference to his Government.

18. The reply of the United Kingdom Agent, given at the hearing of 21 February 1977, and confirmed at the final hearing of the Court on 28 February 1977, was in the following terms:

The view of the United Kingdom is that the Court is empowered, under Article 2(1) of the Arbitration Agreement, to determine the course of the continental shelf boundary throughout the entire arbitration area. In relation to that part of the area which is the subject of the Court's question:

(i) By reason of the fact that at present the United Kingdom claims a territorial sea only three miles in breadth around the Channel Islands, the boundary claimed by the United Kingdom is throughout (with the exception of one small segment off the Ecrehos, . . .) the boundary of the continental shelf adjacent to the Channel Islands;

(ii) Although this boundary, or parts of it, may be, from the point of view of France, the boundary of their territorial sea, the Court is, in our view, nevertheless competent to delimit it as a continental shelf boundary in accordance with Article 2(1) of the Arbitration Agreement, notwithstanding that it may be coincident with a territorial sea boundary from the point of the view of the other Party;

(iii) By reason of the fact that under Article 6 of the 1958 Convention and under customary law, the median line is measured from the same baseline as that from which the territorial sea is measured, the Court is, in any event, in the view of the United Kingdom, competent to determine the relevant base-points for those measurements; and

(iv) The United Kingdom claims, around the island groups of the Ecrehos and Minquiers, a territorial sea on exactly the same principles as around any other part of the Baili-

wick of Jersey and would not, therefore, regard it as legitimate for the Court to draw a boundary which failed to recognise the territorial sea around these island groups.

19. The Court necessarily derives its competence from the consent of both the Parties to the present arbitration. Accordingly, it does not suffice to establish the Court's competence that one Party may consider an area to be continental shelf when the other may not unreasonably maintain that any delimitation of a boundary in that area will inevitably involve a delimitation of its territorial sea. Nor can the difficulty be avoided by saying that, in any event, the Court is competent to determine the base-points relevant for delimiting the median line in the region in question. The Court does not possess any competence to determine base-points as such, but only for the purpose, and in the course, of discharging its task, under the Arbitration Agreement, of delimiting the boundary of the continental shelf as between the Parties within the arbitration area. If competence to delimit such a boundary in any given region is lacking, any competence that the Arbitration Agreement may implicitly be said to have conferred on the Court to determine base-points inescapably falls with it.

20. In these circumstances, the Court does not find itself empowered under the terms of Article 2(1) of the Arbitration Agreement to delimit the seabed and subsoil boundary between the Channel Islands archipelago and the coasts of Normandy and Brittany. Accordingly, it is not open to the Court in the present decision to decide the course of the boundary in this region without a clear and unqualified expression of their consent by both the Parties to these proceedings. As appears, however, from the replies of the French and United Kingdom Agents to the questions put by the Court, such a clear and unqualified expression of the consent of the Parties is lacking. The reply of the French Government is formal and precise as to the Court's present mandate being confined to the delimitation of the boundary of the continental shelf. The reply of the United Kingdom Government, while it accepts the competence of the Court, in general, to delimit the boundary in this region, appears to place a qualification on that competence in so far as concerns the Ecrehos and Minquiers areas; and these are the areas principally in dispute between the Parties.

21. In the light of the foregoing, and having regard to the geographical circumstances, the precise formulation of its competence in Article 2(1) of the Arbitration Agreement and the replies of the Parties to the Court's questions regarding the problem of its competence in the Channel Islands region, the Court considers that it is without competence to delimit any seabed and subsoil boundary in the narrow waters situated between the Channel Islands and the coasts of Normandy and Brittany. In the Channel Islands region, therefore, the Court's Decision must be confined to deciding the course of the boundary of the continental shelf in the areas to the north and the west of the Channel Islands in so far as this does not involve the delimitation of the territorial sea of either Party.

22. The Court, at the same time, recognises the importance to the Parties of settling their maritime boundary in the narrow waters which separate the Channel Islands from the coasts of Normandy and Brittany. It fur-

ther notes that the Parties are agreed that, in principle, their seabed and subsoil boundary in these waters should be the median line. In the light of the geographical evidence submitted to it, the Court feels justified in making the following observations. While the legal positions taken up by the Parties in response to the Court's questions regarding its competence under the Arbitration Agreement oblige the Court to leave the delimitation of the seabed and subsoil boundary in the Channel Islands region to the discretion of the Parties, it believes that certain practical considerations may also favour this course. In 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.

23. Diplomatic and other documents submitted to the Court relating to negotiations between the Parties for the delimitation of their continental shelf boundary show that in those negotiations references were made to possible pretensions on the part of the Republic of Ireland to areas of continental shelf in the vicinity of the 1,000-metre isobath and to a possible meeting of the boundary between the Parties with the boundary, not yet delimited, between the Irish Republic and the United Kingdom (e.g., the French Republic's Note of 7 August 1964, replying to the United Kingdom's Note of 18 February 1964). The Arbitration Agreement, on the other hand, makes no mention of the Irish Republic. Moreover, while Article 2(1) of the Agreement requests the Court to decide the course of the boundary only "between the portions of the continental shelf appertaining to the United Kingdom . . . and to the French Republic, respectively, westward of 30 minutes west of the Greenwich Meridian," it adds expressly "as far as the 1,000-metre isobath".

24. In the pleadings, reference was made in another context to a prospective delimitation of a continental shelf boundary between the United Kingdom and the Irish Republic in the Atlantic region. Invoking the Judgment of the International Court of Justice in the *North Sea Continental Shelf* cases, the United Kingdom contended that, in assessing what would be an equitable delimitation as between itself and the French Republic, account should be taken of "the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region" (I.C.J. Reports 1969, paragraph 101, D(3)). France, the United Kingdom and the Republic of Ireland, it argued, are three States abutting upon the same continental shelf, as were the Netherlands, the Federal Republic of Germany and Denmark in the earlier case; and it asked the Court to draw an analogy between its situation as the middle State compressed between the French and Irish areas of continental shelf and that of the Federal Republic of Germany compressed between the Dutch and Danish areas. As to the French Republic, it contested the validity of the analogy, stressing that neither France and the United Kingdom nor the Republic of Ireland and the United Kingdom are States which have coasts adjacent to each other. It also objected to the idea that the United Kingdom should be allowed to find in the south, and to the detriment of France, compensation for what the United Kingdom might

regard as an insufficient continental shelf in the north resulting from the proximity of the Irish Coast.

25. The Court, during the course of the oral hearings put certain questions to the Parties regarding: (1) the possibility of the continental shelf boundary between France and the United Kingdom meeting the boundary between the United Kingdom and the Republic of Ireland at a tripoint to the east of the 1,000-metre isobath; (2) the power of the Court to delimit a boundary between France and the United Kingdom if the delimitation should appear to touch upon the interests or claims of a third State; and (3) the basis of their calculations of proportionality and equity in so far as concerned the northern limit of the area attributable to the United Kingdom. As to the first question, it suffices to say that the replies of the Parties do not appear to negate altogether the possibility that a boundary delimited between the United Kingdom and the Irish Republic might meet a boundary delimited between France and the United Kingdom at a point in the vicinity, and even a little to the east, of the 1,000-metre isobath.

26. As to the implications for the Court in the present proceedings of the existence of that possibility, the French Government took the position that, the United Kingdom-Irish Republic boundary being today still an unknown quantity, the Court cannot base its decision on what would be pure conjecture. It further observed that, as the Court's decision will be binding only upon the Parties to the present arbitration, the effect of the decision will only be to determine that the United Kingdom has no rights over the continental shelf to the south of the boundary delimited by the Court and the French Republic no rights to the north of that boundary. In its view, if any third State also claims an interest in areas of continental shelf on either side of that boundary, it will be for that third State to settle the matter with the United Kingdom or, as the case may be, with the French Republic. The United Kingdom, on the other hand, took the position that the Court's power to delimit a United Kingdom-French Republic continental shelf boundary would be in question to the westward of a notional meeting point with a United Kingdom-Irish Republic boundary; for at that point the boundary would, it says, cease to be a boundary of the parts of the continental shelf appertaining to France and the United Kingdom respectively. It also informed the Court, that, on 18 February 1977, it had addressed a Note to the Government of the Irish Republic accepting the latter's proposal of 2 April 1976 to refer the delimitation of the continental shelf as between their two countries to an independent settlement of disputes procedure through some form of third party settlement of a judicial nature. The United Kingdom further suggested that, should calculations of proportionality be thought relevant, the proper approach would be to try to identify a distinctive United Kingdom-French sector from a distinctive United Kingdom-Irish sector to the north, and from a distinctive Franco-Spanish sector to the south.

27. The Court, having regard to the views expressed by the Parties, emphasizes that the task entrusted to it in the Atlantic region by the Arbitration Agreement is the precise one of deciding the course of the boundary between the portions of the continental shelf appertaining to the United Kingdom and to the French Republic respectively "as far as the 1,000-metre

isobath''. Furthermore, as will subsequently appear in paragraph 250 of the Decision, the Court does not consider that the course of the boundary between the United Kingdom and the French Republic in that region depends on any nice calculations of proportionality based on conjectures as to the course of a prospective boundary between the United Kingdom and the Republic of Ireland. Nor would it be open to the Court, on the basis of any such conjectures, to pronounce in these proceedings on the position of the tripoint, if any, at which the Irish Republic's boundary with the United Kingdom should be held to meet the latter's boundary with the French Republic. The Court's sole task in the present Decision is, in conformity with Article 2(1) of the Arbitration Agreement, to delimit the continental shelf boundary between the French Republic and the United Kingdom in accordance with the applicable rules of international law, and to delimit it "as far as the 1,000-metre isobath".

28. Even so, the Court thinks it appropriate at the same time formally to state that both its reasoning and its conclusions in this Decision are directed exclusively to the delimitation of the continental shelf boundary between the Parties to the present proceedings. It follows that no inferences may be drawn from this Decision as to views of the Court concerning the prospective course of the continental shelf boundary still to be delimited between the United Kingdom and the Republic of Ireland nor concerning the legal and factual considerations relevant to the delimitation of that boundary. The Court's Decision, it scarcely needs to be said, will be binding only as between the Parties to the present arbitration and will neither be binding upon nor create any rights or obligations for any third State, and in particular for the Republic of Ireland, for which the Decision will be *res inter alios acta*. In 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 manifestly 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.

29. Under Article 2(1) of the Arbitration Agreement, the Court is requested to decide the course of the continental shelf boundary between the French Republic and the United Kingdom in the arbitration area "in accordance with the rules of international law applicable in the matter as between the Parties." Before the Court, however, the Parties have been in basic disagreement not merely as to the application of the rules of international law in the matter but as to the regime of legal rules in force between them governing the delimitation of the continental shelf. The Court has, therefore, first to determine what are the rules and principles of international law in force between the French Republic and the United Kingdom with respect to the delimitation of their continental shelf boundary (or boundaries) in the arbitration area.

30. The basic difference between the Parties as to the applicable law concerns the question whether the Convention on the Continental Shelf concluded at Geneva on 29 April 1958, and in particular Article 6 of that Convention, is in force between them and governs the present matter or whether it is the rules of customary law which apply. Although the French Republic and the United Kingdom are both parties to that Convention, the French Government contends that it has never entered into force between the French Republic and the United Kingdom by reason of the latter's refusal to accept certain reservations formulated by the French Republic when depositing its instrument of accession to the Convention. The question being one of the respective intentions of the French Republic and the United Kingdom in regard to their legal relations under the Convention, it is necessary first to set out the facts indicative of their intentions.

31. By a Note Verbale of 18 February 1964, before either State had ratified the Convention, the United Kingdom Government invited the French Government to enter into preliminary discussions "with a view to arriving at procedures for agreeing a line dividing that part of the Continental Shelf which lies between France and the United Kingdom". It proposed that this line should be calculated on median line principles and the measurements taken, in accordance with Article 6 of the Continental Shelf Convention, from baselines drawn in accordance with the provisions of the 1958 Convention on the Territorial Sea. At the same time, it informed the French Government that the necessary United Kingdom legislation for establishing straight baselines would shortly be submitted to Parliament and that, for reasons of uniformity, the United Kingdom considered it "desirable that the calculations for the median lines on the continental shelf should be made from baselines drawn in accordance with the 1958 Convention rather than from the low-water mark". On 11 May 1964, the United Kingdom ratified the Convention which, under Article 11, then entered into force on 10 June of that year.

32. The French Government, by a Note Verbale of 7 August 1964, accepted the United Kingdom's proposal for preliminary discussions. In doing so, it informed the latter of its intention to accede to the 1958 Convention subject to a number of reservations and an interpretative declaration of Article 1 designed to stress that the term "areas adjacent" in itself excludes an unlimited extension of the continental shelf. In addition, it specified that the French Government considered special circumstances within the meaning of Article 6, paragraph 1, of the Geneva Convention to exist in regard to the continental shelf adjacent to the coasts of France and the United Kingdom. And it further stated that in these circumstances, "an equidistance line determined unilaterally by France or by the United Kingdom, based on straight baselines, such as those referred to in the United Kingdom's Note of 18 February 1964, could not be admitted for the calculation of the dividing line without the agreement of the other Party" (Appendix A(7) to the United Kingdom Memorial).

33. On 14 June 1965 the French Republic deposited its instrument of

accession to the Convention to which was appended the following declaration:⁴

Article 1

In the view of the Government of the French Republic, 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.

Article 2 (paragraph 4)

The Government of the French Republic considers that the expression "living organisms belonging to the sedentary species" must be interpreted as excluding crustaceans, with the exception of the species of crab termed "barnacle"; and it makes the following reservations: . . .

Article 4

The Government of the French Republic accepts this article only on condition that the coastal State claiming that the measures it intends to take are 'reasonable' agrees that if their reasonableness is contested it shall be determined by arbitration.

Article 5 (paragraph 1)

The Government of the French Republic accepts the provisions of Article 5, paragraph 1, with the following reservations:

(a) An essential element which should serve as a basis for appreciating any 'interference' with the conservation of the living resources of the sea, resulting from the exploitation of the continental shelf, particularly in breeding areas for maintenance of stocks, shall be the technical report of the international scientific bodies responsible for the conservation of the living resources of the sea in the areas specified respectively in Article 1 of the Convention for the North-West Atlantic Fisheries of 8 February 1949 and Article 1 of the Convention for the North-East Atlantic Fisheries of 24 January 1959.

(b) Any restrictions placed on the exercise of acquired fishing rights in waters above the continental shelf shall give rise to a right to compensation.

(c) It must be possible to establish by means of arbitration, if the matter is contested, whether the exploration of the continental shelf and the exploitation of its natural resources result in an interference with the other activities protected by Article 5, paragraph 1, which is unjustifiable.

Article 6 (paragraphs 1 and 2)

In the absence 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;

—if it extends beyond the 200-metre isobath;

—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.⁵

⁴ English text reproduced from *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions*. List of Signatures, Ratifications, Accessions, etc. as of 31 December 1976 (ST/LEG/SER.D/10), New York, 1977, p. 518.

⁵ The reservations to this Article being pertinent in the present case, the original text is reproduced below:

"Article 6 (alinéas 1 et 2).

"Le Gouvernement de la République française n'acceptera pas que lui soit opposée,

34. Notification of France's instrument of accession and of its declaration was received by the United Kingdom from the Secretary-General on 30 July 1965, and on 14 January 1966, it addressed a communication to the Secretary-General as depositary of the Convention in the following terms:⁶

Article 1

The Government of the United Kingdom take note of the declaration made by the Government of the French Republic and reserve their position concerning it.

Article 2 (paragraph 4)

This declaration does not call for any observations on the part of the Government of the United Kingdom.

Article 4

The Government of the United Kingdom and The Government of the French Republic are both parties to the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes done at Geneva on the 29th April 1958. The Government of the United Kingdom assume that the declaration made by the Government of the French Republic is not intended to derogate from the rights and obligations of the parties to the Optional Protocol

Article 5 (paragraph 1)

Reservation (a) does not call for any observation on the part of the Government of the United Kingdom:

The Government of the United Kingdom are unable to accept reservation (b);

The Government of the United Kingdom are prepared to accept reservation (c) on the understanding that it is not intended to derogate from the rights and obligations of parties to the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes.

Article 6 (paragraphs 1 and 2)

The Government of the United Kingdom are unable to accept the reservations made by the Government of the French Republic.

35. The above communication does not appear to have been the subject of any observations on the part of the French Government prior to the delivery of its Memorial in the present proceedings. Materials submitted to the Court show that during the negotiations between 1970 and 1974 for an agreed delimitation of the continental shelf boundary both the French and the United Kingdom delegations made frequent reference to the Continental Shelf Convention of 1958 and, in particular, to the provisions of Article 6.

sans un accord exprès, une délimitation entre des plateaux continentaux appliquant le principe de l'équidistance:

"Si celle-ci est calculée à partir de lignes de base instituées postérieurement au 29 avril 1958:

"Si elle est prolongée au-delà de l'isobathe de 200 mètres de profondeur:

"Si elle se situe dans des zones où il considère qu'il existe des "circonstances spéciales", au sens des alinéas 1 et 2 de l'article 6, à savoir : le golfe de Gascogne, la baie de Granville et les espaces maritimes du pas de Calais et de la mer du Nord au large des côtes françaises" (French Memorial, vol. II, Annexe III, p. 39)

⁶ *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions, op cit.*, p. 520.

This Article was invoked by the United Kingdom delegation as pointing to a median line boundary, and by the French delegation as, on the contrary, calling first and foremost for a negotiated solution and allowing recourse to the median line only in the absence both of an agreed solution and of "special circumstances". The French delegation also placed emphasis on the distinction drawn in the two paragraphs of Article 6 between the cases of "opposite" and of "adjacent" States; and, in doing so, put forward the contention that the Atlantic region does not fall within either of these two cases. Mention was made by both Parties of the French Republic's reservation to Article 6, claiming the existence of "special circumstances" in certain areas, and more especially of its reservation regarding "Granville Bay" under which rubric they discussed the delimitation of the boundary in the Channel Islands region. On the other hand, the materials before the Court contain no indication of any reference having been made by either Party to the United Kingdom's communication to the Secretary-General of 14 January 1966 expressing its inability to accept some of the French reservations. Nor is there any indication in those materials that either Party spoke of the Continental Shelf Convention as inapplicable between them, whereas they do show that objection was taken by the French delegation to the United Kingdom's invocation of the Convention on the Territorial Sea and Contiguous Zone on the ground that this Convention had not been ratified by the French Republic.⁷

36. In its Memorial the French Republic contended that the result of the United Kingdom's refusal to accept its reservations to the Continental Shelf Convention of 1958 was that the Convention never became applicable as between them; and it further contends that, even if the Convention itself should be considered as having come into force between the two countries, the United Kingdom's refusal to accept the French reservations to Article 6 operated to prevent this Article from becoming applicable as between them. These contentions gave rise in the subsequent pleadings to extensive arguments concerning the effect on the legal position of the Parties under the Convention of the French Republic's reservations and the United Kingdom's reaction to them in its communication to the Secretary-General of 14 January 1966.

37. The Parties are in accord in considering that this effect has to be determined by reference to the law governing reservations to multilateral treaties in force in the years 1965-1966 when the French Republic formulated its reservations and the United Kingdom transmitted its observations upon them to the Secretary-General. They are also in accord that the law governing reservations to multilateral treaties was then undergoing a major evolution set in train in 1951 by the advisory opinion of the International Court of Justice concerning *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (I.C.J. Reports 1951, p. 15); and they both accept, in general, the account of that evolution given in the Report of the International Law Commission adopted at its 18th Session in

⁷ United Kingdom Memorial, Appendices A(9), A(10), A(14), A(15), A(19), A(20), A(25), A(26)

1966 (Yearbook of the International Law Commission, 1966, vol. II, pp. 203-207). The Parties disagreed, however, not only as to the precise state of the law governing reservations to multilateral treaties in the years in question but also as to the practice followed by each of the Parties themselves in regard to the need for unanimous consent to reservations.

38. The Court shares the opinion of the Parties that the effect of the French reservations and the United Kingdom's refusal to accept them has to be appreciated in the light of the law in force at the time when those acts occurred. Like the Parties, it also recognizes that the law governing reservations to multilateral treaties was then undergoing an evolution which crystallized only in 1969 in Articles 19 to 23 of the Vienna Convention on the Law of Treaties. The Court does not, however, think that any importance attaches in the present case to the precise state which that evolution may have reached in the years 1965-1966. The evolution of the law then in progress related primarily to cases where a treaty does not itself lay down the conditions for the formulation of reservations. But the 1958 Convention does prescribe its own rules for the making of reservations. Article 12 provides that "at the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than Articles 1 to 3 inclusive". Thus the unanimous consent of the Parties to the formulation of reservations to articles other than Articles 1, 2, or 3 is expressed in advance in the treaty itself. Accordingly, the evolution of the law of reservations between 1951 and 1966 has only a marginal interest in the present connexion. The question for the Court is rather one of the interpretation and application of Article 12 of the 1958 Convention; or, more particularly, it is a question of the effect to be given to the French Republic's reservations and the United Kingdom's response to them in the context of Article 12 of the Convention.

39. Article 12, by its clear terms, authorised any contracting State, including the French Republic, to make its consent to be bound by the Convention subject to reservations to articles other than Articles 1 to 3 inclusive. It follows that the United Kingdom, when it ratified the Convention in 1964, gave its express consent to the French Republic's becoming a party to the Convention subject to such reservations as the latter might make to any article other than Article 1, 2, or 3. Under Article 12, in short, the United Kingdom bound itself not to contest the right of the French Republic to be a party to the Convention on the basis of reservations the making of which is authorised by that Article. The responses made by the United Kingdom to the reservations of the French Republic have thus to be appreciated in the light of its previous agreement to the formulation of those reservations. On the other hand, the Court considers the view expressed by both Parties that Article 12 cannot be read as committing States to accept in advance any and every reservation to articles other than Articles 1, 2 and 3 to be clearly correct. Such an interpretation of Article 12 would amount almost to a license to contracting States to write their own treaty and would manifestly go beyond the purpose of the Article. Only if the Article had authorised the making of specific reservations could parties to the Convention be understood as having accepted a particular reservation in advance. But this is not the case with Article 12, which authorises the making of reservations to articles other

than Article 1 to 3 in quite general terms. Article 12, as the practice of a number of States recorded in *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions* confirms, leaves 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.

40. The French Government points to the language used by the United Kingdom in its observation on the French Republic's reservations to Article 5(1): "The Government of the United Kingdom are unable to accept reservation (b)", and to the similar language of its observation on the French Republic's three reservations to Article 6. It maintains that the phrase "are unable to accept" amounted to an "objection" to these French reservations, and that the United Kingdom must be considered to have intended by those objections to prevent the Convention from coming into force as between it and the French Republic. In this connexion, it refers to the fact that the United States, which had made objection in similar terms to reservations made by various States to Conventions on the Law of the Sea, addressed a communication to the Secretary-General on 27 October 1967 specifying that it considered the Convention in force between itself and the States in question. It stresses that the United Kingdom made no such declaration; and it asks the Court to draw from the contrast between the behaviour of the two States the inference that the United Kingdom did not intend the Continental Shelf Convention to be in force vis-à-vis States to whose reservations the United Kingdom had objected. The French Government also explains its references to the Convention during its negotiations with the United Kingdom between 1970 and 1974 on the basis that at the opening meeting its delegation emphasised that the negotiations were taking place in "an open juridical framework"; and it says that the French delegation invoked the 1958 Convention only in its character as a codifying instrument generally expressive of the position in customary law, not as a treaty binding as between the French Republic and the United Kingdom.

41. The United Kingdom denies that the observations which, in its communication to the Secretary-General of 14 January 1966, it made on the French Republic's reservations to Article 5(1) and Article 6 manifested an intention to exclude the application of the Convention as between the two States. It points, first, to United Kingdom letters of 5 November 1959 and 10 August 1960 to the Secretary-General on the subject of reservations to the four Geneva Conventions on the Law of the Sea. And it asks the Court to note that in those letters the United Kingdom drew a clear distinction between the Continental Shelf and Fishing and Conservation Conventions, on the one hand, and the Territorial Sea and High Seas Conventions, on the other, on the very ground that the two first-mentioned Conventions permit reservations to certain articles, whereas the other two Conventions do not. It emphasises that, even in the case of the two Conventions which do not contain provisions expressly permitting reservations, the position taken by the

United Kingdom in those letters was that, while a reservation to which it had made formal objection would not be valid in relation to the United Kingdom, the reserving State would still be a party to the Convention vis-à-vis the United Kingdom. As to the United Kingdom's communication of 14 January 1966 regarding the French Republic's accession to the Continental Shelf Convention, it claims that this communication was, "on its face, framed in terms which are fundamentally incompatible with the notion that it was intended to deny treaty relations between the two countries".

42. The United Kingdom urges that its statements that it was "unable to accept" the French reservations to Article 5(1) and Article 6 have to be read not in isolation but in the context of its communication of 14 January 1966 as a whole; and that then these statements are clearly seen not to have been intended as formal objections negating application of the Convention as between itself and the French Republic. This is shown, it argues, by its consent, whether express or implied, to certain of the reservations. But it calls particular attention to the observations made by the United Kingdom in that communication concerning the French reservation to Article 4 and reservation (c) to Article 5(1) as unmistakable evidence that it regarded the Convention as applying between itself and the French Republic. By these reservations the French Republic had made its acceptance of each of those provisions conditional upon a right, in case of dispute, to submit the matter to arbitration; and the United Kingdom's observation in each case had stated its "assumption" or "understanding" that the reservation was "not intended to derogate from the rights and obligations of the parties to the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes" of 29 April 1958. The United Kingdom underlines that its observation on the French reservation to Article 4 opens with the statement that the United Kingdom and the French Republic "are both parties to the Optional Protocol of Signature"; and it adds that under the terms of the Protocol the two States could be parties thereto in relation to each other only if they were parties to the same Geneva Convention on the Law of the Sea. Pointing out that the Continental Shelf Convention was the only one to which France was a party, the United Kingdom maintains that its observations regarding the Optional Protocol contained in its communication of 14 January 1966 are consistent only with the inference that, notwithstanding its reaction to certain of the French reservations, it considered itself as in treaty relations with the French Republic under that Convention.

43. As to the actual statements that the United Kingdom was "unable to accept" the reservations in question, it insists that these were not formal "objections" but merely declarations of the United Kingdom's inability to accept them. The French reservations, it explains, posed a number of complex problems for the contracting parties, and there was uncertainty as to their admissibility and as to their meaning. Silence, it says, would have been tantamount to implied acceptance, and it was precisely to counteract any such presumption of acceptance that the United Kingdom was obliged to formulate a carefully worded response to the reservations. The United Kingdom also invokes in this connexion the fact that, although Canada formulated similar responses to the French reservations to Article 5(1) and Article

6, and Spain formulated a similar response to the French reservation to Article 6(2), the Convention has in each case been treated as in force between the French Republic and the States concerned. Even if these cases, as the French Government stresses, concern other States having their own particular interests and are thus *res inter alios acta* in regard to the United Kingdom, the latter considers that they support its contention regarding the meaning and effect of its response to the French reservations. The United Kingdom further invokes the conduct of the French Republic in the period between 1966 and the conclusion of the Arbitration Agreement, and more especially during the negotiations for the delimitation of the boundary, as constituting a continuing recognition and acknowledgement that the 1958 Convention, including Article 6, is a treaty in force between these two States.

44. The intention and the effect of the United Kingdom's communication of 14 January 1966, as the Court has already pointed out, have to be appreciated in the light of the express authorisation given by Article 12 of the Convention to contracting States, including the French Republic, to make reservations to articles other than Articles 1 to 3. Having regard to Article 12, the Court considers that the terms of the communication of 14 January 1966, and more especially its references to the Optional Protocol of Signature, indicate that it was not the intention of the United Kingdom to prevent by that communication the entry into force of the Convention as between the two countries. The practice of States in regard to reservations made under Article 12, including that of the French Republic, also appears to confirm, and certainly not to contradict, this view of the meaning and effect of the United Kingdom's communication. This appears to be no less true of the United States' communication to the Secretary-General of 27 October 1967 which is invoked by France as giving rise to a contrary inference. In previous years the United States had made declarations that it did not find acceptable a number of reservations by various States to Law of the Sea Conventions, including those of the French Republic to Articles 4, 5 and 6 of the Continental Shelf Convention. In its communication of 27 October 1967 the United States explained that, in response to an inquiry it wished "to state that *it has considered* and will continue to consider all the Geneva Law of the Sea Conventions of 1958 as being in force between it and all other States that have ratified or acceded thereto . . . with reservations unacceptable to the United States" (emphasis added).⁸ This communication, therefore, serves rather to show that, when declaring the French reservations unacceptable to it, the United States also had assumed that the Conventions would nevertheless be in force as between it and the reserving State.

45. The French Republic, however, further contends that even if the 1958 Convention entered into force between it and the United Kingdom, all the Geneva Conventions on the Law of the Sea, including the Continental Shelf Convention, have been rendered obsolete by the recent evolution of

⁸ *Multilateral Conventions in respect of which the Secretary-General Performs Depositary Functions*, *op.cit.*, pp 504-505, n.6.

customary law stimulated by the work of the Third United Nations Conference on the Law of the Sea. In brief, its argument is that a consensus has been arrived at within the framework of the Conference regarding the right of a coastal State to a 200-mile economic zone comprising rights with respect both to the continental shelf and to fisheries, which is now incorporated in the Revised Single Negotiating Text drawn up by the Chairman of the Second Committee of the Conference.⁹ Furthermore, a certain number of States, of which the French Republic is one, have already declared 200-mile economic zones; and considerably more States, including the French Republic, the United Kingdom and other States of the European Economic Community, have declared 200-mile fishery zones. These 200-mile zones, the French Government maintains, have all been promulgated on the basis of the consensus achieved at the Conference; and, in its view, these developments are clearly not compatible with the continuance in force of the Geneva Conventions on the Law of the Sea of 1958.

46. The United Kingdom, while agreeing that a certain consensus has emerged at the Third Conference on the Law of the Sea in favour of the recognition of 200-mile economic zones, denies that this emerging consensus has yet become law; and it objects that there still remain substantial unresolved problems. The consensus does not, it says, extend to the content of the jurisdiction to be exercised by coastal States within the zone or to the question of the relationship between the economic zone and the high seas; nor does it extend to the rules governing the delimitation of the 200-mile economic zones, which, according to the United Kingdom, is generally recognised to remain a controversial issue. In addition, the United Kingdom draws attention to statements of the President of the Conference emphasising the negotiating and tentative nature of the proposals contained in the Revised Single Negotiating Text,¹⁰ and it asks the Court to conclude that they cannot be taken as an expression of existing positive law. It further states that the recent 200-mile fishery zones have been based on considerations of fisheries conservation rather than on the concept of the economic zone. It also refers to a dictum of the International Court of Justice in the *Fisheries Jurisdiction* cases that "the Court, as a court of law, cannot render judgement *sub specie legis ferendae*, or anticipate the law before the legislator has laid it down" (I.C.J. Reports 1974, paragraph 53). Finally, it points to a number of examples of recent State practice, including the Franco-Spanish Treaty of 1974 and a statement of the French Minister of Foreign Affairs made in the National Assembly on 28 October 1975 concerning negotiations with Canada over the continental shelf of St. Pierre et Miquelon as positive indications of the continued validity of the 1958 Convention.

47. The Court is directed by Article 2 of the Arbitration Agreement to decide the course of the boundary "in accordance with the rules of international law applicable in the matter as between the Parties"; and, as the Parties agree, the rules of international law to be applied by the Court under this

⁹ Third United Nations Conference on the Law of the Sea, Official Records, vol. V, p. 151 (Document A/CONF. 62/WP.8/Rev. 1/PART II).

¹⁰ *Ibid.*, p. 125.

rubric are unquestionably the rules in force today. At the same time, the Court recognises both the importance of the evolution of the law of the sea which is now in progress and the possibility that a development in customary law may, under certain conditions, evidence the assent of the States concerned to the modification, or even termination, of previously existing treaty rights and obligations. But the Continental Shelf Convention of 1958 entered into force as between the Parties little more than a decade ago. Moreover, the information before the Court contains references by the French Republic and the United Kingdom, as well as by other States, to the Convention as an existing treaty in force which are of quite recent date. Consequently, only the most conclusive indications of the intention of the parties to the 1958 Convention to regard it as terminated could warrant this Court in treating it as obsolete and inapplicable as between the French Republic and the United Kingdom in the present matter. In the opinion of the Court, however, neither the records of the Third United Nations Conference on the Law of the Sea nor the practice of States outside the Conference provide any such conclusive indication that the Continental Shelf Convention of 1958 is today considered by its parties to be already obsolete and no longer applicable as a treaty in force.

48. The Court accordingly finds that the Geneva Convention of 1958 on the Continental Shelf is a treaty in force, the provisions of which are applicable as between the Parties to the present proceedings under Article 2 of the Arbitration Agreement. This finding, the Court wishes at the same time to emphasise, does not mean that it regards itself as debarred from taking any account in these proceedings of recent developments in customary law. On the contrary, the Court has no doubt that it should take due account of the evolution of the law of the sea in so far as this may be relevant in the context of the present case.

49. The Court's finding that the 1958 Convention is applicable as between the French Republic and the United Kingdom as a treaty in force does not, in any case, dispose of the question of the effect of the French reservations upon the terms of the Convention applicable between the two countries. Before turning to this question, however, the Court must first examine certain contentions advanced by the United Kingdom that the French Republic's reservations to Article 6 should be left out of consideration altogether as being either inadmissible or not true reservations.

50. In the first reservation to Article 6, it is stated that "in the absence 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". Although this reservation is thus formally expressed to attach to Article 6, the United Kingdom maintains that it is in reality a reservation either to Articles 3 and 4 of the Territorial Sea Convention or to the rules of customary law regarding the use of straight baselines which those Articles embody. Article 6, it says, merely refers to "the baselines from which the breadth of the territorial sea of each State is measured" but does not define them; and it is

Articles 3 and 4 of the Territorial Sea Convention or, in the case of the French Republic, which is not a party to that Convention, the relevant rules of customary law which govern the use of straight baselines. This being so, the United Kingdom contends that, if the reservation is intended to protect France, in a delimitation of the continental shelf, against the use of any straight baselines established after 29 April 1958, whether lawful or unlawful, the reservation is a reservation not to Article 6 but to the rules of customary international law and is inadmissible as a reservation to Article 6. If, on the other hand, it is intended as a protection only against the use of unlawful straight baselines, then it is said by the United Kingdom to be otiose and a mere interpretative declaration, not a true reservation. As to the French Government, it retorts that the first reservation to Article 6 has nothing to do with the legality of straight baselines established after 29 April 1958 but solely with their use in the delimitation of the continental shelf by the equidistance principle under Article 6. In its view, the "reservation" clearly involves a derogation from obligations contained in Article 6 and is, therefore, a true reservation to that Article.

51. The first reservation, construed according to the natural meaning of its terms, appears to the Court to constitute a general reservation designed to protect the French Republic, in the absence of a specific agreement, against a continental shelf boundary delimited by application of the equidistance principle and by reference to straight baselines established after 29 April 1958. It is to the method of delimiting the continental shelf and to the boundary resulting from the method that the French reservation is expressed to relate; and, in the view of the Court, the "reservation" is both a true reservation and a reservation to Article 6 itself, not to the general rules of international law regarding straight baselines. The reservation does not seek to protect the French Republic against the use of straight baselines by other States in any context other than the delimitation of the continental shelf; and, when entering into a new obligation, under an entirely new convention, with respect to the use of the equidistance method in the delimitation of the continental shelf, no rule of international law precluded the French Republic from formulating a reservation regarding the rôle of straight baselines in the application of that method as a condition of its acceptance of that new obligation. The Court is, therefore, unable to see any ground upon which it should hold the first French reservation to Article 6 to be inadmissible.

52. The second reservation to Article 6 similarly states that in the absence of a specific agreement, the French Republic will not accept that any continental shelf boundary determined on the equidistance principle shall be invoked against it "if it extends beyond the 200-metre isobath". According to the United Kingdom, this reservation has to be read in close conjunction with the interpretative declaration attached by the French Republic to Article 1, stating that "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". The United Kingdom recalls that both in 1958 and subsequently the French Republic had consistently opposed the inclusion of the exploitability criterion as part of the definition of the continental shelf in Article 1 of the Convention. It then maintains that,

being aware in 1965 that reservations to Article 1 itself are prohibited, the French Government voiced its continuing opposition to the exploitability criterion in two ways when acceding to the Convention: first, it attached its interpretative declaration to Article 1 and, secondly, it attached the second reservation to Article 6 with the intention of discouraging its neighbours from putting forward continental shelf claims beyond the 200-metre isobath. On this basis the United Kingdom contends that, although attached to Article 6, the second reservation is, in substance, a reservation to Article 1 and, therefore, inadmissible under the terms of Article 12. The French Government, on the other hand, insists that the interpretative declaration attached to Article 1 and the reservation to Article 6 are quite distinct; and that it is only necessary to read the reservation to see that it is not concerned with the rights of States to the continental shelf but exclusively with the question of delimitation by application of the principle of equidistance. The second reservation, it claims, is therefore incontestably admissible under Article 12.

53. The second reservation, like the first, has to be construed in accordance with the natural meaning of its terms. Whether or not any link is thought to exist between the considerations motivating the reservation and those motivating the interpretative declaration attached to Article 1, the reservation and the interpretative declaration are expressed as distinct acts having different objects. The reservation, whatever the motive which inspired it, relates in substance as well as in form to the regime of delimitation prescribed in Article 6; for it is so expressed as to have its effect only in the context of a delimitation by application of the principle of equidistance under Article 6. In these circumstances there does not appear to the Court to be any ground for considering the reservation incompatible with Article 12 of the Convention.

54. The third reservation is not impugned by the United Kingdom as inadmissible; it is rather said not to be a true reservation but an interpretative declaration—a mere advance notice by the French Republic of the areas in which it considers special circumstances to exist. By this reservation, in the absence of specific agreement, the French Republic declines to accept any boundary determined by application of the principle of equidistance “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”; and it then names “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” as such areas. The United Kingdom argues that this is not a true reservation because the object of the “reservation” is already covered by the very terms of Article 6. The rule in Article 6, it insists, “is a combined equidistance-special circumstances rule”, and the third reservation, even in relation to the named areas, does not have the effect of excluding the operation of Article 6. According to the United Kingdom, the reservation is in reality an invocation of Article 6, and even in the named areas is no more than “a positive affirmation of the applicability of Article 6” in those areas. The third reservation, it contends, is therefore simply an interpretative declaration. This view of the third reservation is, however, rejected by the French Government as inconsistent with the clear terms of the text, which do not seek to give any further

definition to the meaning of the expression "special circumstances". The French Republic, it says, by its own unilateral act simply excluded the application of the equidistance principle in the series of areas which it specified, and the effect was not to interpret Article 6 but to modify the scope of its application. The reservation, it argues, took the form of a restriction on the application of the equidistance method in cases not specifically provided for by Article 6, which only contains a general principle and does not enumerate a series of individual and particular cases. The French Government adds that the reservation also had the effect of extending and rendering absolute in the named areas the rule in Article 6 calling for agreement in the determination of the boundary of the continental shelf.

55. The Court thinks it sufficient to say that, although the third reservation doubtless has within it elements of interpretation, it also appears to constitute a specific condition imposed by the French Republic on its acceptance of the delimitation régime provided for in Article 6. This condition, according to its terms, appears to go beyond mere interpretation; for it makes the application of that régime 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. Article 2(1)(d) of the Vienna Convention on the Law of Treaties, which both Parties accept as correctly defining a "reservation", provides that it means "a unilateral statement, however phrased or named, made by a State . . . whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in its application to that State". This definition does not limit reservations to statements purporting to exclude or modify the actual terms of the treaty; it also covers statements purporting to exclude or modify the *legal effect* of certain provisions in their application to the reserving State. This is precisely what appears to the Court to be the purport of the French third reservation and it, accordingly, concludes that this "reservation" is to be considered a "reservation" rather than an "interpretative declaration".

56. The Court will now proceed to examine the effect of the French Republic's reservations on the terms of the Convention applicable as between it and the United Kingdom, and will do so on the basis that the three reservations to Article 6 are true reservations and admissible. Both the Parties have addressed themselves to the question of the effect of the French reservations, should the Court decide, as it has done, that the 1958 Convention is a treaty in force as between them and part of the law to be applied under Article 2(1) of the Arbitration Agreement. They are, however, in complete disagreement as to the effect of the reservations upon the conditions under which the terms of the Convention, particularly those of Article 6, would be applicable as between the Parties to the present proceedings.

57. The French Republic maintains that it is the combined effect of its reservations and their rejection by the United Kingdom which determines the question. In its view, the governing principle is that of the mutuality of consent in the conclusion of treaties. The French Republic's reservations to Article 6, it says, being valid reservations permitted by Article 12, imposed

conditions on its consent to be bound by Article 6, and the United Kingdom's rejection of the reservations means that there is no agreement between the Parties as to the terms of this Article. It follows, according to the French Republic, that Article 6 as a whole cannot be in force as between it and the United Kingdom and is thus inapplicable in the present proceedings.

58. The United Kingdom, on the other hand, takes the position that the effect of its rejection of the French reservations is rather to render them wholly unopposable to the United Kingdom, with the result that Article 6 applies as between the two countries unaffected by the reservations. Its rejection of those reservations, it also says, did not and could not go beyond the reservations themselves and therefore cannot be regarded as a rejection of Article 6 as a whole. It further argues that the French reservations do not even purport to exclude or modify the terms of Article 6 itself but only to guard against certain interpretations and applications of the Article. This being so, it contends that the three reservations, even if considered opposable to the United Kingdom, can at most operate as a partial exclusion or modification of Article 6. It refers in this connexion to Article 19, paragraph 3, of the draft article on the law of treaties adopted by the International Law Commission in 1966, which is now reflected in Article 21, paragraph 3, of the Vienna Convention on the Law of Treaties, and which reads:

When a State objecting to a reservation agrees to consider the treaty in force between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation

Stressing the final phrase "to the extent of the reservation", the United Kingdom maintains that the French reservations cannot render Article 6 inapplicable *in toto*, but at the most "to the extent of the reservations".

59. The Court considers that the answer to the question of the legal effect of the French reservations lies partly in the contentions of the French Republic and partly in those of the United Kingdom. Clearly, the French Republic is correct in stating that the establishment of treaty relations between itself and the United Kingdom under the Convention depended on the consent of each State to be mutually bound by its provisions; and that when it formulated its reservations to Article 6 it made its consent to be bound by the provisions of that Article subject to the conditions embodied in the reservations. There is, on the other hand, much force in the United Kingdom's observation that its rejection was directed to the reservations alone and not to Article 6 as a whole. In short, the disagreement between the two countries was not one regarding the recognition of Article 6 as applicable in their mutual relations but one regarding the matters reserved by the French Republic from the application of Article 6. The effect of the United Kingdom's rejection of the reservations is thus limited to the reservations themselves.

60. To state that conclusion does not, however, suffice to answer the question of the legal effect of the disagreement between the Parties regarding the introduction of the reservations into the application of the Article. The French Government's thesis that the effect is to render Article 6 as a whole inapplicable has to be excluded because, as already indicated, it attributes to the rejection a scope wider than its terms justify. The United

Kingdom's thesis, that the reservations are not opposable to it and that Article 6 applies without any modification, has equally to be excluded because it would allow the rejection unilaterally to set aside express conditions placed by the French Republic on its consent to be bound by the Article. To attribute such an effect to the rejection of the reservations is not easy to reconcile with the principle of mutuality of consent in the conclusion of treaties. The Court also notes that in the negotiations which took place between the Parties during the years 1970-1974 references were made to the third reservation claiming "special circumstances" in named areas without any indication being given of its not being open to the French Republic to invoke the reservation against the United Kingdom.

61. In a more limited sense, however, the effect of the rejection may properly, in the view of the 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.

62. The fact that Article 6 is not applicable as between the Parties to the extent that it is excluded by the French reservations does not mean that there are no legal rules to govern the delimitation of the boundary in areas where the reservation operates. On the contrary, as the International Court of Justice observed in the *North Sea Continental Shelf* cases, "there are still rules and principles of law to be applied" (I.C.J. Reports 1969, paragraph 83); and these are the rules and principles governing delimitation of the continental shelf in general international law.

63. The United Kingdom submits that, "in any event, to give effect to any or all of the (French) 'reservations' in accordance with their express terms would have a minimal practical effect in the circumstances of the present Arbitration" (Final Submission 1 B(c)). Any practical effect that the French reservations may have for the purposes of the present proceedings is a matter to be considered later in deciding the course of the boundary. The Court finds it necessary, however, to notice here a general argument advanced by the United Kingdom and designed to show that all the French reservations to Article 6 are completely without object, now that the delimitation of the boundary is to be effected not by the Parties but by the Court under the Arbitration Agreement. Although this argument is considered by the Court to be without substance, it touches a point of principle on which the Court desires to leave no doubt as to its view. The United Kingdom

stresses that the three reservations to Article 6 are prefaced by the statement that, in the absence of a specific agreement, France will not accept that any boundary of the continental shelf determined by application of the principle of equidistance shall be invoked against it. The argument then proceeds (United Kingdom Counter-Memorial, paragraph 32 (1)):

It will be seen therefore that the French "reservations" to Article 6 do *not* purport to exclude the application of the principle of equidistance even if any one of the three conditions is fulfilled. They seek merely to render a *unilateral* determination of the boundary by another State, based upon the principle of equidistance, "non-opposable" to France. But that is not the position here. The agreement of the two Governments to refer to arbitration the decision as to the course of the boundary in the area specified in Article 2 of the Arbitration Agreement necessarily pre-supposes that there can be no *unilateral* delimitation of the boundary by the United Kingdom, since it is for the Court (and the Court alone) to draw the line. Accordingly, the fact that two Governments have agreed to submit the dispute to arbitration is sufficient in itself to deprive the French "reservations" to Article 6 of their object in the present case. (Emphasis in the original)

This argument appears to the Court to be open to more than one objection.

64. In the pleadings, the French Republic explained the purpose of the three reservations to be to prevent a unilateral delimitation, which applies the equidistance principle in a manner inconsistent with any of the three conditions, from being opposed to the French Republic. Such is the evident intent of the reservations; and it would be somewhat surprising if a reservation were directed to preventing an *agreed* delimitation from being opposable to the reserving State. Consequently, the emphasis which the United Kingdom places on the French Republic's object being to prevent a *unilateral* delimitation from being opposable to it appears to the Court to be mis-conceived. Indeed, the French reservations themselves nowhere refer to a "unilateral" delimitation. Furthermore, the structure and wording of the reservations make it plain that the words "in the absence of a specific agreement" (*sans un accord expres*) relate not to the unilateral character of the delimitation which applies the equidistance principle but to the opposing of the delimitation to the French Republic. In short, 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 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. Indeed, the Court considers that a fundamental question of principle is here involved; for it 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. In the view of the Court, there is nothing in the terms either of the French reservations or of the Arbitration Agreement which could warrant it in arriving at such a novel conclusion in the present case.

65. The Court itself, on the other hand, considers that for a quite different reason the practical significance of the French reservations to Article

6 in the present proceedings is very small. This is because, as stated in paragraph 61, the combined effect of the reservations and of the United Kingdom's rejection of them is to render the rules of customary law applicable where application of the equidistance principle under Article 6 is excluded by one of the French reservations and because, in the circumstances of the present case, the rules of customary law lead to much the same result as the provisions of Article 6. In deference to the very full arguments of the Parties addressed to it concerning the applicability of the 1958 Convention in the present proceedings, the Court has examined in detail each aspect of that question. However, as will now be explained, the effect of applying or of not applying the provisions of the Convention, and in particular of Article 6, will make not much practical difference, if any, to the actual course of the boundary in the arbitration area.

66. Article 6, paragraphs 1 and 2, provides:

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 baselines 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.

The case with which the Court is here concerned is one where, after negotiations for the determination of the boundary by agreement, the States concerned failed to reach agreement, and it is therefore the provisions of these paragraphs applicable in the absence of agreement which come under consideration in the present proceedings. The arguments addressed to the Court by the Parties concerning the applicability or non-applicability of these provisions are directed, on the one side, to accent and, on the other, to minimise the rôle of the equidistance method as a legal criterion for the delimitation of continental shelf boundaries.

67. Thus, in invoking the application of Article 6, paragraph 1, the United Kingdom claims that this paragraph places an onus of proof upon the French Republic to show the existence of any "special circumstances" on which it relies and to show that these circumstances justify a boundary other than the median line as defined by the paragraph. The French Republic, on the other hand, in contesting the applicability of Article 6 and invoking the rules of customary law, claims the governing principle to be that the delimitation must be equitable and the equidistance principle to be merely one of numerous "methods" which may in certain circumstances be used to produce an equitable delimitation. Neither of these views of the equidistance "principle" or "method", however, appears to the Court to place it in its true perspective.

68. Article 6, as both the United Kingdom and the French Republic stress in the pleadings, does not formulate the equidistance principle and

“special circumstances” as two separate rules. The rule there stated in each of the two cases is a single one, a combined equidistance-special circumstances rule. This being so, it may be doubted whether, strictly speaking, there is any legal burden of proof in regard to the existence of special circumstances. The fact that the rule is a single rule means that the question whether “another boundary is justified by special circumstances” is an integral part of the rule providing for application of the equidistance principle. As such, although involving matters of fact, that question is always one of law of which, in case of submission to arbitration, the tribunal must itself, *proprio motu*, take cognisance when applying Article 6.

69. It also follows that the relevance of “special circumstances” in the application of Article 6 does not depend on a claim to invoke special circumstances having been advanced by the interested State when ratifying or acceding to the Convention. That this is the legal position under Article 6 is fully recognised by the United Kingdom, which concedes that the French Republic may put forward a claim to “special circumstances” in these proceedings, whether or not in 1965 it made a reservation with regard to those special circumstances. Clearly, this feature of Article 6 further underlines the full liberty of the Court in appreciating the geographical and 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.

70. The Court does not overlook that under Article 6 the equidistance principle ultimately possesses an obligatory force which it does not have in the same measure under the rules of customary law; for Article 6 makes the application of the equidistance principle a matter of treaty obligation for Parties to the Convention. But the combined character of the equidistance-special circumstances rule means that the obligation to apply the equidistance principle is always one qualified by the condition “unless another boundary line is justified by special circumstances”. Moreover, the *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 rôle 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. In addition, Article 6 neither defines “special circumstances” nor lays down 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.

71. In the present instance, account has in any event to be taken of the French reservations to Article 6 and of the United Kingdom's rejection of them which results in the provisions of Article 6 being displaced by those of customary law "to the extent of the reservations". The first reservation regarding an equidistant line delimited from straight baselines established after 29 April 1958 can, in the view of the Court, be left out of account. Straight baselines are nowhere invoked by the United Kingdom for the purpose of delimiting the median line boundary which it proposes as the boundary throughout the arbitration area. The only question regarding the use of straight baselines which has, indeed, arisen in the present proceedings concerns an objection raised by the United Kingdom to the French Republic's claim to use a straight baseline across the Anse de Vauville situated on the coast of Normandy. This straight baseline, however, is relevant only to the delimitation of a seabed and subsoil boundary in an area of the Channel Islands region where, for the reasons previously given in paragraphs 19-21, delimitation of the boundary falls outside the Court's competence. The Court need not, therefore, concern itself further with the first reservation.

72. The second reservation against a boundary determined by application of the equidistance principle "if it extends beyond the 200-metre isobath" is the subject of differing interpretations by the Parties. The United Kingdom considers that it must be understood as connected with the French Republic's opposition in 1965 to the extension of the concept of the continental shelf beyond the 200-metre isobath through the exploitability criterion, and thus as confined to the sections of an equidistant line actually extending beyond the 200-metre isobath. According to the French Government, on the other hand, there is no basis in the text of the reservation for distinguishing between two delimitations, one up to and the other beyond the 200-metre isobath; and the reservation, on this view, covers any delimitation by equidistance extending beyond the 200-metre isobath.

73. The Court notes that the reservation is a general one not limited to the Atlantic region or to the French Republic's continental shelf boundary with the United Kingdom; and that, if the delimitation extends beyond the 200-metre isobath, the reservation is expressed to apply, regardless of the distance of this isobath from the coast. The reservation, therefore, certainly appears to be connected with the French Republic's original opposition to the extension of continental shelf claims beyond the 200-metre isobath. The Court does not, however, find it necessary to decide which of the meanings given to the reservation by the Parties should be adopted as the correct one. In the negotiations between the Parties that took place in the years 1970-1974, 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. According to the information before the Court, no suggestion was ever made during those negotiations that the extension of the delimitation beyond the 200-metre isobath sufficed to ex-

clude altogether the application of Article 6. In these circumstances, the Court can only interpret the extension of the delimitation to the 1,000-metre isobath as disposing both of the French reservation and of the United Kingdom's objection to it in so far as concerns the Atlantic region. The Court, as will later appear, considers that the course of the boundary in that region will be the same whether the delimitation is made on the basis of Article 6 or of the rules of customary law. The considerations which it has just mentioned lead it to conclude, however, that, notwithstanding the prolongation by the Arbitration Agreement of the delimitation "as far as the 1,000-metre isobath", Article 6 is, in principle, applicable in relation to the Atlantic region.

74. More significance clearly attaches to the third reservation designating areas in which the French Republic considers there are "special circumstances" within the meaning of Article 6 by reason of the inclusion of the "Bay of Granville" amongst those areas. In the pleadings the United Kingdom has contested the French Government's interpretation of the expression "Bay of Granville" as covering the whole Channel Islands region. Tracing the development of the various uses of this expression, the United Kingdom claims that previous uses of the expression have related only to sea areas to the east and south of Jersey; and it maintains that the French Republic has, accordingly, not established that, as used in the reservation, the expression extends to the Channel Islands region as a whole. No doubt, the expression "Baie de Granville" may have normally been used in the past with a more restricted sense. During the negotiations in the years 1970-1974, however, as the Court has already noted in paragraph 35, mention was made by both Parties of the French reservation regarding "Granville Bay", and in the documents before the Court relating to those negotiations they are recorded as having discussed the delimitation of the boundary in the whole Channel Islands region under the rubric "Granville Bay". Nor is there any indication in those documents of the French reservations having been given a more restricted interpretation. As, moreover, it hardly seems probable that the French Government intended to restrict its reservation to the "Baie de Granville" in one of the narrower senses of this expression, the Court considers that this reservation must be viewed as relating to the Channel Islands region as a whole. The reservation having been rejected by the United Kingdom, the delimitation of the continental shelf boundary in the Channel Islands region must accordingly be determined by reference to the rules of customary law.

75. It follows from the foregoing paragraphs that, if the Channel Islands region is excluded as falling under the French reservation, the Court considers that Article 6 is applicable, in principle, to the delimitation of the continental shelf as between the Parties under the Arbitration Agreement. This does not, however, mean that the Court considers the rules of customary law discussed in the judgement in the *North Sea Continental Shelf* cases to be inapplicable in the present case. As already pointed out, the provisions of Article 6 do not define the condition for the application of the equidistance-special circumstances rule; moreover, the equidistance-special circumstances rule and the rules of customary law have the same object—the de-

limitation of the boundary in accordance with equitable principles. In the view of this Court, therefore, the rules of customary law are a relevant and even essential means both for interpreting and completing the provisions of Article 6. Indeed, the Court observes that in the present case, whether discussing the application of Article 6 or the position under customary law, both parties have had free recourse to pronouncements of the International Court of Justice regarding the rules of customary law applicable in the matter. At the same time, the Court also observes that they have tended to lay stress on different elements in the judgement in the *North Sea Continental Shelf* cases; and it is therefore now necessary to refer to some of those pronouncements.

76. The *North Sea Continental Shelf* cases comprised two separate cases brought before the International Court of Justice together, the one between the Federal Republic of Germany and the Netherlands and the other between the Federal Republic and Denmark. They concerned the delimitation of the continental shelf situated off the North Sea coasts of the three countries; and it was owing to the concave character of the coastline formed by the three coasts that the two separate cases were considered by the International Court of Justice to involve a single situation and dealt with as a single problem of delimitation. The Federal Republic not being bound by the 1958 Convention, the Court held Article 6 not to be applicable to the situation; and it further held that the provisions of the Article could not be regarded as expressing rules of customary law and binding on the Federal Republic for that reason. These were the general circumstances under which the Court was led to make its pronouncements concerning the rules of customary law governing delimitation of the continental shelf; and in appreciating the implications of some of those pronouncements it may be necessary to bear in mind that they may have been made in the particular context of the concave geographical configuration in that case involving the coasts of three adjoining States.

77. Many of the Court's pronouncements were, however, evidently of a general character and applicable to a delimitation under Article 6 no less than under customary law. Thus, the Court described the principle that a coastal State has inherent rights in the continental shelf which constitutes the natural prolongation of its land territory as "the most fundamental of all the rules of law relating to the continental shelf" and as "enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it". Under this rule, it explained (I.C.J. Reports 1969, paragraph 19):

the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources

From this fundamental rule the Court drew two conclusions concerning the delimitation of the continental shelf which the Parties to the present proceedings are clearly correct in regarding as equally being of general application.

78. The first of these conclusions was that delimitation of the continental shelf is not a question of apportionment, that is of awarding "just and

equitable'' shares to each State in a common, as yet undelimited, area of shelf. On the contrary, delimitation is essentially a process of ''drawing a boundary line between areas which already appertain to one or other of the States affected'' (I.C.J. Reports 1969, paragraph 20). Accordingly, although the delimitation in the present case must be equitable, it cannot have as its object simply the awarding of an equitable ''share'' in the continental shelf to each Party. The delimitation, when made, will in practice divide the continental shelf in the arbitration area between the French Republic and the United Kingdom in what may then be said to be shares; but this will be only the incidental result of fixing their boundary in the marginal areas where their respective continental shelves converge.

79. The second conclusion was ''that the continental shelf of any State must be the natural prolongation of its land territory and must not encroach upon what is the natural prolongation of the territory of another State'' (*ibid.*, paragraph 85(c)). This conclusion follows directly from the fundamental rule itself and is, indeed, merely an application of that rule to the context of a single area of continental shelf upon which the territories of two or more States abut. So far as delimitation is concerned, however, this conclusion states the problem rather than solves it. The problem of delimitation arises precisely because in situations where the territories of two or more States abut on a single continuous area of continental shelf, it may be said geographically to constitute a natural prolongation of the territory of each of the States concerned. Consequently, it is rather in the rules of customary law discussed in the *North Sea Continental Shelf* cases and which are specifically directed to delimitation that guidance may be sought regarding the principles to be applied in determining the boundary of the continental shelf in such situations.

80. In close relation with the principle of the natural prolongation of the land, the Court examined the rôle of ''proximity'' in determining the apportionment of an area of continental shelf to one State rather than to another. Having observed that there is ''no necessary, and certainly no complete, identity between the notions of 'adjacency' and 'proximity' '', it said that ''the question of which parts of the continental shelf 'adjacent to' a coastline bordering more than one State fall within the apportionment of which of them remains to this extent an open one, not to be determined on a basis exclusively of proximity''. It then continued (I.C.J. Reports 1969, paragraph 42):

Even if proximity may afford one of the tests to be applied and an important one in the right conditions, it may not necessarily be the only, nor in all circumstances the most appropriate one. Hence it would seem that the notion of adjacency, so constantly employed in continental shelf doctrine from the start, only implies proximity in a general sense, and does not imply any fundamental or inherent rule the ultimate effect of which would be to prohibit any State (otherwise than by agreement) from exercising continental shelf rights in respect of areas closer to the coast of another State

The Parties to the present proceedings both appear to accept that these observations were intended to relate generally to the delimitation of the continental shelf, whether under customary law or under the 1958 Convention. The significance which they give to the observations differs, however, in some respects. The French Government lays stress on them as involving a finding by the International Court that ''proximity'' does not confer any title to

rights over the continental shelf. What, in its view, the International Court's observations imply is that it is the principle of the continuity of the coastal State's territory, not of "proximity", which is decisive in giving title to the continental shelf. The United Kingdom, on the other hand, while not questioning the International Court's rejection of proximity as by itself a ground of title to the shelf, insists that the Court "did not thereby reject proximity as a method employable in solving the problem of delimitation". What the Court rejected, the United Kingdom maintains, was "absolute proximity", not proximity as a method of delimitation.

81. The observations of the International Court of Justice appear to speak for themselves. Clearly, the Court did decline to regard proximity as by itself a ground of title to areas of continental shelf. Clearly, however, it did also expressly recognise that proximity "may afford one of the tests to be applied and an important one in the right conditions". This would seem to state explicitly that under certain conditions proximity may be the appropriate test or method for delimiting the boundary of the continental shelf; but that in any given case the value to be attached to proximity as a method of delimitation depends on the individual circumstances of that case. That such was indeed the view taken by the International Court of Justice of the rôle of proximity in the delimitation of the continental shelf is borne out by its further observations regarding the rôle in the delimitation of the shelf of the equidistance principle, which itself is founded upon the criterion of proximity. In any event, this Court of Arbitration sees no reason to adopt a different view of the rôle of "proximity" in the circumstances of the present case. It will, therefore, at once turn to the observations of the International Court of Justice on the rôle of the equidistance principle, since these touch questions that are central to the determination of the course of the continental shelf boundary in the English Channel and the Atlantic region.

82. The International Court of Justice, as already indicated in paragraph 76, held that the equidistance rule laid down in Article 6 of the Convention is not the expression of a rule which is also applicable in customary law. In so holding, the Court took the view that the equidistance principle itself is not inherent in the doctrine of the continental shelf nor a logical necessity of that doctrine derived from any fundamental principle of proximity or adjacency; and it also emphasised the doubts voiced in the International Law Commission as to the possibility that, in certain cases, the geographical configuration of the coast would render a boundary drawn on the basis of equidistance inequitable. So it was that the Court was led to conclude that in customary law the basic principle of delimitation is that, failing agreement, the boundary must be determined in accordance with equitable principles. So it was also that, for the purpose of applying equitable principles, the Court held that "the equidistance method can be used, but other methods exist and may be employed, alone or in combination, according to the areas involved" (I.C.J. Reports 1969, paragraph 85(b)). It said, indeed, 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" (*ibid.*, paragraph 93).

83. These observations are given prominence by the French Republic, which seeks to deduce from them a specific principle of customary law which it terms "plurality of methods, unity of aim". Moreover, it presents this principle as conferring on the States concerned an almost unlimited freedom of choice as to methods of delimitation, provided that they result in an equitable delimitation. The United Kingdom does not dispute the International Court's endorsement of the use of various methods of solving the problem of delimitation or its pronouncement that no particular method is *per se* obligatory, where the situation is between States not parties to the 1958 Convention. But it lays stress on the fact that the cases before the International Court were cases where there were continuing negotiations between the parties for an agreed delimitation; and it claims that the Court's observations were directed only to negotiated agreements. As to the Court's statement that "there is no legal limit on the considerations which States may take account of for the purpose of making sure that they apply equitable procedures", the United Kingdom insists that this has nothing to do with "special circumstances" in the sense of Article 6 of the 1958 Convention.

84. Neither of these interpretations of the judgement in the *North Sea Continental Shelf* cases appears, however, to place in its proper perspective the rôle of the equidistance principle, as explained by the International Court in those cases. The Court there made certain observations, which were of an entirely general character, regarding the differing validity of the equidistance principle as a means of achieving an equitable delimitation in different geographical situations. These observations, to which the present Court of Arbitration in general subscribes, 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 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.

85. As to the Court's observations on the rôle of the equidistance principle, it was far from discounting the value of the equidistance method of delimitation, while declining to regard it as obligatory under customary law. "It has never been doubted", the Court commented, "that the equidistance method is a very convenient one, the use of which is indicated in a considerable number of cases (I.C.J. Reports 1969, paragraph 22); and again it commented "it would probably be true to say that no other method of delimitation has the same combination of practical convenience and certainty of application" (*ibid.*, paragraph 23). The truth of these observations is certainly borne out by State practice, which shows that up to date a large proportion of the delimitations of the continental shelf have been effected by the application either of the equidistance method or, not infrequently, of some variant of that method. But the Court also drew a clear, and even sharp, distinction between the geographical situations where the coasts of States abutting on the same continental shelf are opposite and where they are adjacent to each other (*ibid.*, paragraph 57):

Most of the difficulties felt in the International Law Commission related, as here, to the case of the lateral boundary between adjacent States. Less difficulty was felt over that

of the median line boundary between opposite States, although it too is an equidistance line. For this there seems to the Court to be good reason. The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved. This type of case is therefore different from that of laterally adjacent States on the same coast with no immediately opposite coast in front of it, and does not give rise to the same kind of problem—a conclusion which also finds some confirmation in the difference of language to be observed in the two paragraphs of Article 6 of the Geneva Convention¹¹—as respects recourse in the one case to median lines and in the other to lateral equidistance lines, in the event of absence of agreement.

Further explaining its reason for making this distinction, the Court said (I.C.J. Reports 1969, paragraph 58):

whereas a median line divides equally between the two opposite countries areas that can be regarded as being the natural prolongation of the territory of each of them, a lateral equidistance line often leaves to one of the States concerned areas that are a natural prolongation of the territory of the other

86. The International Court of Justice also singled out an aspect of lateral boundary situations which tends to increase the likelihood that strict application of the equidistance method may be productive of inequitable results in delimitations between States having adjoining coasts. Although its observations on this aspect of "adjacent States" situations were directed to the particular context of a concave coastline formed by the adjoining territories of three States, they reflect an evident geometrical truth and clearly have a more general validity. It pointed out that in the case of lateral boundaries the effect of any irregularity in the coastline on the areas of continental shelf allocated to each State by the equidistance method is automatically magnified, the greater the distance the boundary extends from the shore. Speaking of the case of a concave or convex coastline, it said (I.C.J. Reports 1969, paragraph 89 (a); and cf. paragraphs 8 and 59):

if the equidistance method is employed, then the greater the irregularity and the further from the coastline the area to be delimited, the more unreasonable are the results produced. So great an exaggeration of the consequences of a natural geographical feature must be remedied or compensated for as far as possible, being of itself creative of inequity.

Clearly, this characteristic of the equidistance method marks a material difference between a geographical situation of "opposite States" and one of "adjacent States" in the delimitation of continental shelf boundaries.

87. In the present proceedings, both the Parties have recognised the significance of the distinction drawn by the International Court of Justice between "opposite States" and "adjacent States" situations in relation to the use of the equidistance method, whether under Article 6 or under customary law. They are agreed that throughout the English Channel where the coasts of the French Republic and the United Kingdom are opposite each other the boundary should, in principle, be the median line. They are in radical disagreement as to the appropriate method of delimitation in the Channel Is-

¹¹ The text of the two paragraphs appears in paragraph 66 above

lands region. Even in that region, as already mentioned in paragraph 15, they are agreed that in the areas where the coasts of the Channel Islands and the coasts of Normandy and Brittany are opposite each other, the seabed and subsoil boundary should in principle be the median line. In short, leaving aside the special problem resulting from the position of the Channel Islands off the French coast, they are agreed that the geographical and legal frame of reference for the delimitation of the boundary is that of an "opposite States" situation; and that, in consequence, the appropriate method is, in principle, equidistance. In so agreeing, the French Republic bases itself on the rules of customary law, the United Kingdom on the provisions of Article 6 of the Convention; but the result is the same, which seems to confirm that, under either head, it is the geographical situation which indicates the applicable method of delimitation. In any event, this Court of Arbitration sees no reason to differ from the conclusion of the Parties that, in principle, the method applicable in the English Channel is to draw a median line equidistant from their respective coasts, a conclusion which is in accordance both with Article 6 of the Convention and with the appreciation by the International Court of Justice of the position in customary law.

88. In the Atlantic region, on the other hand, the Parties are in radical disagreement as to the correct characterisation of the geographical situation for the purpose of delimiting the continental shelf. As a consequence, they are also in disagreement regarding the principle and method of delimitation to be applied in the region.

89. The French Republic, independently of its general contention that the 1958 Convention, and in particular Article 6, is wholly inapplicable to the present case, submits that the Atlantic region in any event falls outside both paragraph 1 and paragraph 2 of Article 6. Stressing the phrase "*la délimitation du plateau continental entre ces Etats*" (emphasis added) in the French text of paragraph 1, it asks the Court to treat that paragraph as confined to cases where not only are the coasts of the two States opposite each other but the continental shelf to be delimited is situated "between" those coasts. A mere glance at the map, it argues, shows that this is not the position in the Atlantic region; and it recalls that the United Kingdom in its Memorial (paragraph 239) described the situation in this region as one where "the areas of shelf lie off, rather than between, their two coasts". As to its own view of the situation, the French Government explained, on 2 February 1977:

Moving west at least as far as the Land's End-Porsal line, and even up to the Scillies-Ushant line, one finds coasts which are opposite each other and from which a median line can be drawn. West of the Scillies, however, there are no coasts: this is a fact, and there is no point in denying a geographical fact.

Thus, according to its view of the geographical facts, the two countries cease to have coasts facing each other certainly to the west of the Scillies-Ushant line and perhaps even before that at the Land's End-Porsal line. This being so, the French Government argues that in the region westwards of one or other of those lines there are no coasts *between* which the continental shelf is situated and the case cannot be one of "opposite" States for the purpose either of paragraph 1 of Article 6 or of the rules of customary law.

90. The French Republic went on to observe that, as its territory and that of the United Kingdom do not adjoin each other and do not have a common land frontier, the case cannot be one of a lateral delimitation between "adjacent" States falling under paragraph 2 of Article 6. True, at the same hearing, it recognised that the situation may be said to present some analogy with the case of adjacent States:

Undoubtedly, the shelf to be delimited extends out to sea off the coasts of the two States, so that an analogy can be drawn with a lateral delimitation. This is because the delimitation will be made seawards out to the point fixed by the Parties for defining the extent of the continental shelf to be delimited, that is, out to the 1,000-metre isobath. Hence, the problems to be resolved are more akin to those arising in a lateral delimitation than to those arising in a delimitation between opposite States, where the supposition is that the shelf to be delimited is situated between the two States.

It does not, however, suggest that the Atlantic region should be treated as a case of lateral delimitation between "adjacent" States. On the contrary, the French Republic contends that the situation in this region is neither one of "opposite" States under paragraph 1 of Article 6 nor one of "adjacent" States under paragraph 2 of the Article, but is *sui generis*. The draftsmen of Article 6, it says, failed to appreciate that there may be situations other than those provided for in the two paragraphs of the Article; and on this point it cites the view of the International Court in the *North Sea Continental Shelf* cases that the relation between the Netherlands and Denmark is not that of "adjacent" nor of "opposite" States (I.C.J. Reports 1969, paragraph 36).

91. The position taken by the United Kingdom in its final Submissions is that the coasts of the two countries are "indubitably opposite one another" in the entire arbitration area; and that "the terms and manifest intention of Article 6 render paragraph 1 of the Article applicable throughout the arbitration area, including the Atlantic region". It maintains that Article 6 was intended to deal exhaustively with the law governing delimitation of the boundary between States abutting on the same area of continental shelf; that the wording of the Convention contains no indication that other cases exist which fall outside paragraphs 1 and 2 of the Article; that the *travaux préparatoires* do not disclose any evidence of an intention to allow a third category of cases outside those paragraphs; and that, on the contrary, all the substantive provisions of the Convention were designed to be of general application. State practice, it adds, confirms that the two categories in Article 6 are regarded as exhaustive; moreover, Article 62 and Article 71 of the Revised Single Negotiating Text also adopt the two categories of "opposite" and "adjacent" States, apparently treating them as covering all the delimitations that may arise between neighbouring States.

92. As to the statement of the International Court of Justice that the relation between the Netherlands and Denmark is neither one of "adjacent" nor of "opposite" States, the United Kingdom argues that, when read in its context, it does not support France's contention as to the existence of cases not covered by either paragraph of Article 6. The Court's statement, according to the United Kingdom, was in its very essence based upon the fact that the Netherlands and Denmark are not immediately neighbouring States; for in these circumstances it was not self-evident that they should have a com-

mon boundary on the continental shelf. The statement, the United Kingdom affirms, was merely referring to the point that it cannot be open to States, by ignoring the existence of the continental shelf claims of an intermediate third State, to divide up areas appertaining to the third State.

93. The United Kingdom bases its characterisation of the Atlantic region as a case of "opposite" States on two main propositions. First, the natural meaning of the term "two adjacent States" in paragraph 2 of Article 6 is "two States whose territories are alongside one another and who have a common land frontier at the sea coast"; as France and the United Kingdom are separated in the Atlantic region by the broad area of sea constituted by the south-western approaches to the English Channel, they are scarcely to be regarded as "adjacent". Secondly, throughout the arbitration area and eastwards to the Straits of Dover, the coasts of the United Kingdom and the French Republic are, in its view, a textbook example of coasts which are "opposite each other" within the meaning of paragraph 1 of Article 6. Although, argues the United Kingdom, the areas of shelf in the Atlantic region "lie off", rather than between, their two coasts, "there is no reason for changing the relationship of 'opposite' States which exists for the whole length of the Channel". It considers the French contention to be based on the fallacy that the south-western approaches constitute a separate sector which requires different legal rules from the rest of the Channel. In its view, the entire seabed area is one continuous shelf and the relationship between the coasts of the two countries for the purposes of the entire seabed area is patently one of opposite States.

94. The general character of the provisions of Article 6, and the absence of any contrary indications in the *travaux préparatoires* of the Article or in State practice, appear to the Court to support the view that the Article is to be understood as dealing comprehensively with the delimitation of the continental shelf, and that all situations, in principle, fall under either paragraph 1 or paragraph 2 of the Article. Nor does this view appear to be incompatible with that of the International Court of Justice regarding the effect of the intervention of the coast and continental shelf of the Federal Republic of Germany in preventing the Netherlands and Denmark from being in a relation of "opposite" States. Moreover, in its general discussion of the advantages and disadvantages of the equidistance method of delimitation, to which reference has been made in paragraphs 85-86, the Court itself dwelt on the distinction between the cases of "opposite" and "adjacent" coasts without apparently envisaging any third category of geographical situation as having the same significance in the delimitation of the continental shelf. On the other hand, while stressing the distinction between "situations" where the coasts are "opposite" and where they are "adjacent", the Court observed that this distinction may not always be uniform and clear-cut along the whole length of the boundary (I.C.J. Reports 1969, paragraph 6):

An equidistance line may consist either of a "median" line between "opposite" States or of a "lateral" line between "adjacent" States. In certain geographical configurations of which the Parties furnished examples, a given equidistance line may partake in varying degree of the nature both of a median and of a lateral line

Referring to this statement in the present proceedings, the United Kingdom

likewise remarked that there are many situations where "along the same boundary, the relationship changes from 'adjacent' to 'opposite' States". What this means, in the view of the present Court of Arbitration, is that in determining whether two States are to be considered as "opposite" or "adjacent", for the purpose of delimiting a continental shelf on which each of them abuts, the Court must have regard to their actual geographical relation to each other and to the continental shelf at any given place along the boundary.

95. The observations of the International Court of Justice regarding the difference between the application of the equidistance method in "median line" and "lateral line" boundary situations were, as already stressed, framed in general terms applicable alike to delimitation under the provisions of Article 6 or under the rules of general international law. The reason is clear: the relationship of "opposite" or "adjacent" States is nothing but a reflection of the geographical facts, and the transfer of the legal plane from the Convention to customary law does not modify the geographical facts. It is also clear that the distinction drawn by the Court between the two geographical situations is one derived not from any legal theory but from the very substance of the difference between the two situations. Whereas in the case of "opposite" States a median line will normally effect a broadly equitable delimitation, a lateral equidistance line extending outwards from the coasts of adjacent States for long distances may not infrequently result in an inequitable delimitation by reason of the distorting effect of individual geographical features. In short, it is the combined effect of the side-by-side relationship of the two States and the prolongation of the lateral boundary for great distances to seawards which may be productive of inequity and is the essence of the distinction between "adjacent" and "opposite" coasts situations.

96. In the pleadings mention has been made of Article 62 and 71 of the Revised Single Negotiating Text still under negotiation at the Third United Nations Conference on the Law of the Sea. These Articles make provision for the delimitation, in the one case, of the 200-mile exclusive economic zone and, in the other, of the extended area of continental shelf which it is proposed at the Conference to allow to coastal States; and their texts, which have not yet been adopted by the Conference, are still a matter of discussion. Even so, this Court has examined their provisions and it finds no reason to suppose that, if they were applicable, they would make any difference to the determination of the course of the boundary in the present case. Those texts speak of delimitation between "adjacent" or "opposite" States in accordance with equitable principles as distinct cases; and they envisage that, where appropriate, the equidistance of median line¹² shall be employed, taking account of all the relevant circumstances. Since it is the geographical circumstances which primarily determine the appropriateness

¹² The texts reverse the order of the words "median" and "equidistant"; but it is the "equidistant" line which is appropriate to "adjacent" States and the "median" line to "opposite States". See Third United Nations Conference on the Law of the Sea, Official Records, vol. V (Document A/CONF 62/WP 8/Rev 1/Part II).

of the equidistance or any other method of delimitation in any given case, the Revised Single Negotiating Text would not appear to visualise the solution of cases like the present one on principles materially different from those applicable under the 1958 Convention or under general international law. What the Court thinks evident, however, is that the extension seawards of the maritime zones of States, for which the Revised Single Negotiating Text provides, cannot fail to increase the significance of the effects of individual geographical features in deflecting the course of a lateral equidistance boundary between "adjacent" States.

97. In short, this Court considers that the appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case. The choice of the method or methods of delimitation in any given case, whether under the 1958 Convention or customary law, has therefore to be determined in the light of those circumstances and of the fundamental norm that the delimitation must be in accordance with equitable principles. Furthermore, in appreciating the appropriateness of the equidistance method as a means of achieving an equitable solution, regard must be had to the difference between a "lateral" boundary between "adjacent" States and a "median" boundary between "opposite" States.

98. The French Republic, in its account of the principles and rules applicable in the delimitation of the continental shelf, also invoked two further principles as specific rules of customary law, namely, "proportionality" and the "reasonable evaluation of the effects of natural features". These concepts are clearly inherent in the notion of a delimitation in accordance with equitable principles, and thus form an element in the appreciation of the appropriateness of the equidistance or any other method of delimitation. They hardly seem, however, to have the character of specific principles or rules of delimitation assigned to them by the French Republic.

99. In particular, this Court does not consider that the adoption in the *North Sea Continental Shelf* cases of the criterion of a reasonable degree of proportionality between the areas of continental shelf and the lengths of the coastlines means that this criterion is one for application in all cases. On the contrary, it was the particular geographical situation of three adjoining States situated on a concave coast which gave relevance to that criterion in those cases. In the present case, the rôle of proportionality in the delimitation of the continental shelf is, in the view of this Court, a broader one, not linked to any specific geographical feature. It is rather a factor to be taken into account in appreciating the effects of geographical features on the equitable or inequitable character of a delimitation, and in particular of a delimitation by application of the equidistance method.

100. A State's continental shelf, being the natural prolongation under the sea of its territory, must in large measure reflect the configuration of its coasts. Similarly, when two "opposite" or "adjacent" States abut on the same continental shelf, their continental shelf boundary must in large measure reflect the respective configurations of their two coasts. But particular

configurations of the coast or individual geographical features may, under certain conditions, distort the course of the boundary, and thus affect the attribution of continental shelf to each State, which would otherwise be indicated by the general configuration of their coasts. The 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.

101. In short, it is disproportion rather than any general principle of proportionality which is the relevant criterion or factor. The equitable delimitation of the continental shelf is not, as this Court has already emphasized in paragraph 78, a question of apportioning—sharing out—the continental shelf amongst the States abutting upon it. Nor is it a question of simply assigning to them areas of the shelf in proportion to the length of their coastlines; for to do this would be to substitute for the delimitation of boundaries a distributive apportionment of shares. Furthermore, the fundamental principle that the continental shelf appertains to a coastal State as being the natural prolongation of its territory places definite limits on recourse to the factor of proportionality. As was emphasized in the *North Sea Continental Shelf* cases (I.C.J. Reports 1969, paragraph 91), there can never be a question of completely refashioning nature, such as by rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline; it is rather a question 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. Proportionality, therefore is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf.

102. In the light of the foregoing examination of the rules of international law applicable in the matter as between the Parties, the Court will now consider their concrete application in the delimitation of the continental shelf boundary or boundaries in the present case.

103. In the English Channel, leaving aside the particular situation resulting from the Channel Islands being located off the French coast, the geographical and the legal frame of reference for determining the course of the boundary of the continental shelf is patently that of a delimitation between "opposite" States. As stated in paragraph 87, the Parties themselves are in accord on this point; and, the Channel Islands region apart, they are also agreed that within the English Channel the boundary should, in principle, be the median line. The Court has already indicated that this is also its own

opinion. The effects of irregularities in the coastline of each State are, broadly, offset by the effects of irregularities in the coastline of the other, and a median line boundary will thus result in a generally equitable delimitation as between the Parties. The Court, therefore, considers that its first step should be to determine the course of the median line within the Channel to the east and to the west of the points where the presence of the Channel Islands has to be taken into consideration.

104. Before doing so, however, the Court must refer to paragraph 6 of the United Kingdom's final Submissions in which, in a certain eventuality, it proposes a boundary along the axis of the Hurd Deep and Hurd Deep Fault Zone as an alternative to the median line, and also to an express reservation in that regard made by the United Kingdom during the oral proceedings. The United Kingdom, as previously noted in paragraph 93, insists upon the *geological continuity of the continental shelf throughout the arbitration area*. It further maintains that the geographical and legal relation between the French Republic and the United Kingdom throughout the arbitration area, including the Atlantic region, is that of States whose coasts are opposite each other; and that, in consequence, the appropriate boundary both under Article 6 of the Convention and under customary law is a median line along the whole length of the boundary. The general features of the Hurd Deep-Hurd Deep Fault Zone, which the United Kingdom proposes in paragraph 6 of its Submissions as an alternative to the median line, have already been described by the Court in paragraph 12. The axis of these geological faults neither follows nor approximates to the course of the median line, but runs somewhat to its south both in the Channel and in the Atlantic region. The court is, however, asked by the United Kingdom to envisage the axis of the Hurd Deep-Hurd Deep Fault Zone as a possible alternative to the median line in the event that the Court should decide that in parts of the arbitration area there exists "a major and persistent structural discontinuity of the seabed and subsoil" of such a kind as to "interrupt the essential geological continuity of the continental shelf".

105. During the oral proceedings, in circumstances to be explained in paragraph 111, the Court requested the Parties to confirm their apparent acceptance in the written pleadings of a median line boundary to the east and to the west of the Channel Islands region. In confirming on 21 February 1977 its acceptance of a median line in the western segment of the Channel, the United Kingdom did so subject to the following reservation:

If, however, the median line were not to be regarded as the proper boundary under customary international law, this could, in the submission of the United Kingdom, only be on the basis that the Hurd Deep and Hurd Deep Fault Zone are regarded as marking the limits of the respective natural prolongations of the two States. In these circumstances, the United Kingdom could not regard the segment of the median line west of the Channel Islands as an agreed boundary, since the proper boundary in law would then lie, in their submission, throughout the entire arbitration area west of the Channel Islands, along the axis formed by the Hurd Deep and the Hurd Deep Fault Zone and its prolongation out to the 1,000-metre isobath.

Consequently, it appears that the United Kingdom makes its endorsement of a median line boundary in the Channel to the west of the Channel Islands in some measure conditional upon the median line's being regarded by the

Court as also the appropriate boundary in the Atlantic region outside the Channel.

106. The Court notes that the United Kingdom's reservation regarding its acceptance of the median line in the western segment of the Channel is formulated in terms a little different from those used in the sixth Submission concerning the axis of the Hurd Deep-Hurd Deep Fault Zone as a possible alternative boundary. In the sixth Submission, the Hurd Deep-Hurd Deep Fault Zone boundary is proposed as an alternative to the median line if the Court should decide that those geological faults are such as to "interrupt the essential geological continuity of the continental shelf". In the reservation, on the other hand, the United Kingdom seems to make its endorsement of the median line in the western segment of the Channel conditional upon the median line's being regarded by the Court as the appropriate boundary throughout the arbitration area westwards of the Channel Islands, including the Atlantic region. The reservation is thus not limited to the case of a rejection by the Court of a median line boundary in the Atlantic region on the basis of a breach in the geological continuity of the shelf; it appears to envisage any setting aside of the median line westwards of the Channel Islands on whatever ground.

107. Whichever way the matter is put, the Court does not consider that the Hurd Deep-Hurd Deep Fault Zone is a geographical feature capable of exercising a material influence on the determination of the boundary either in the Atlantic region or in the English Channel. The Court shares the view repeatedly expressed by both Parties that the continental shelf throughout the arbitration area is characterised by its essential geological continuity. The geological faults which constitute the Hurd Deep and the so-called Hurd Deep Fault Zone, even if they be considered as distinct features in the geomorphology of the shelf, are still discontinuities in the seabed and subsoil which do not disrupt the essential unity of the continental shelf either in the Channel or the Atlantic region. Indeed, in comparison with the deep Norwegian Trough in the North Sea, they can only be regarded as minor faults in the geological structure of the shelf; and yet the United Kingdom agreed that the trough should not constitute an obstacle to the extension of Norway's continental shelf boundary beyond that major fault zone. Moreover, to attach critical significance to a physical feature like the Hurd Deep-Hurd Deep Fault Zone in delimiting the continental shelf boundary in the present case would run counter to the whole tendency of State practice on the continental shelf in recent years.

108. In any event, having regard to the essential continuity of the continental shelf in the Channel and the Atlantic region, there does not seem to be any legal ground for discarding the equidistance or any other method of delimiting the boundary in favour simply of such a feature as the Hurd Deep-Hurd Deep Fault Zone. 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 fol-

lows that any alternative boundary would have either 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.

109. The Court is not, therefore, persuaded of the pertinence of the Hurd Deep-Hurd Deep Fault Zone as a significant factor in determining the method of delimitation either in the English Channel or in the Atlantic region. Still less is it persuaded of the existence of any necessary link between the method of delimitation adopted in the Atlantic region and the acceptability of the median line method in the western segment of the English Channel. In the Channel, as is recognised by the United Kingdom itself in company with the French Republic and by the Court, the geographical and legal frame of reference is that of a delimitation between opposite States; and the method of delimitation indicated by Article 6 of the Convention and by customary law alike is the median line. Whether or not the same method is considered appropriate westwards of the Channel, the median line will remain the method indicated by the applicable rules of law in the western segment of the Channel itself. The essential geological continuity of a continental shelf cannot, in the view of the Court, be said automatically to entail the continuous use of the same method of delimitation along the whole length of the shelf; for the mere reference to "special circumstances" in Article 6 rules out any such conclusion.

110. Consequently, while noting the qualification attached by the United Kingdom to its endorsement of the median line in the western segment of the Channel, the Court must now proceed to determine the course of the median line in the Channel both to the east and west of the Channel Islands. When so determined, the median line will, in the opinion of the Court, constitute the continental shelf boundary as between the Parties in these two segments of the English Channel.

111. In the written pleadings the French Republic and the United Kingdom both referred to the fact that during the negotiations in the years 1970-1974 agreement had in fact been reached between their two delegations regarding the tracing and the precise coordinates of the median line, and also of a "simplified"¹³ median line in the English Channel. The natural inference, therefore, was that these coordinates included those relevant to the delimitation of the median line in the areas where the Parties are agreed in thinking that the boundary should in principle, be a median line. Accordingly, at the hearing on 16 February 1977, the Court requested the Agents of the Parties:

(1) formally to confirm that the Court is to treat those segments of the boundary line

¹³A "simplified" median line is one in which, in order to make the line less complicated, the number of its turning points is reduced by using straight lines between the principal points. When this is done, an advantage to one State in one area is usually compensated by a roughly equivalent advantage to the other State in another area.

in the Channel (to the east and to the west of the Channel Islands region) as agreed (between them);

(2) to identify precisely the respective terminal points of each of the agreed segments and to give the relevant coordinates of the median line in those segments of the boundary . . . and

(3) to trace these segments of the line on an appropriate chart or charts

Each Agent confirmed in general terms that the two segments of the boundary to the east and to the west of the Channel Islands region should be treated by the Court as agreed between the Parties to be the median line. Both of them, however, did so subject to reservations or qualifications in regard to the detailed delimitation of the median line.

112. At the hearing of 16 February 1977 the Agent of the French Republic underlined that his confirmation of his Government's acceptance of the delimitations in the two segments was subject to an identical confirmation of those delimitations being given by the United Kingdom. At the same time, he specified that the French Republic's confirmation of the delimitation in the western segment extended westwards only as far as the coordinates of the point which is situated on the line Land's End-Pointe du Raz. He indicated that some differences existed between the precise lines proposed by either Party which, however, he considered that it should be possible to resolve by agreement between their experts. He also expressed his readiness to collaborate with the United Kingdom Agent in the identification of the extreme points of each of the agreed segments, in the determination of the relevant coordinates, and in the tracing of these segments on charts.

113. The Agent of the United Kingdom, on 21 February 1977, dealt first with the eastern segment, confirming its agreement that to the east of the tripoint in the Channel delimited from Cap de la Hague, Alderney and Portland Bill the boundary should in principle be the median line. He added that during the bilateral negotiations an agreement had been reached between the two delegations on precise coordinates defining a simplified line. But that this simplified line does not correspond in every particular with the lines proposed by the two Parties on their respective large-scale maps which, in turn, are not themselves identical. The reasons for these discrepancies, he explained, were:

(a) The 1971 simplified line was based upon the situation obtaining at the time of the original United Kingdom proposal of 1964, that is to say, before the promulgation of the French straight baseline system or the establishment of a French 12-mile territorial sea in 1971,

(b) Computer techniques developed in recent years now permit the location of the true median line with considerably greater accuracy than was possible with the techniques employed at the time; and

(c) It is possible now to refer all positions and base points to a common geodetic datum known as "European datum".

Since the discrepancies between the various lines were, in general, small, the United Kingdom was prepared either to confirm its acceptance of the 1971 simplified line and permit the technical experts of the two Parties to agree upon its tracing or, alternatively, to authorise its expert to reach agreement with the French experts on a fresh set of coordinates defining with the

necessary accuracy this segment of the boundary line and on the tracing of the line on charts.

114. The United Kingdom Agent stated that his reservations regarding the location of the 1971 "simplified" line and the lines drawn on the large-scale maps of the Parties are equally relevant to the segment of the median line to the west of the Channel Islands region. The discrepancies between the various lines were, however, greater than in the eastern segment in consequence chiefly of the different treatment now given by the Parties to the French straight baselines and to Eddystone Rock. The United Kingdom would, even so, be prepared to confirm its acceptance of the 1971 "simplified" line and leave it to the technical experts to agree on the details of its tracing to a suitable point of termination at the western end of the Channel. Alternatively, if the French Republic wished to insist on the use of its straight baselines promulgated in 1967, the United Kingdom would be prepared to accept the use of those baselines on the clear understanding that the same would apply to the Eddystone Rock. In this case, it would also be prepared to authorise its technical experts to reach agreement with those of the French Government regarding the coordinates necessary to define this segment of line and regarding the tracing of the line on charts.

115. The United Kingdom, it is true, also made the more general reservation, relating to the Hurd Deep-Hurd Deep Fault Zone as a possible alternative to the median line in the western segment of the Channel, which has been dealt with by the Court in paragraphs 104-110. The Court has, however, already found that reservation not to be pertinent in connexion with the delimitation of the continental shelf in the western segment of the Channel, and has also found that the appropriate method of delimitation in the western, as in the eastern segment of the Channel is a median line. The reservation does not, moreover, affect the actual tracing of the median line; and the United Kingdom, together with the French Republic, has given the Court every assistance in establishing the precise course of the median line in the Channel to the west, as well as to the east, of the Channel Islands.

116. In response to the Court's request to the Parties to identify precisely the respective terminal points of each of the agreed segments in the Channel and to give the relevant coordinates of the median line in those segments, meetings were held between their respective experts with a view to "agreeing on the course of segments of a continental shelf boundary to the east and to the west of the Channel Islands." The outcome of these meetings, communicated to the Court in identical reports submitted by the Parties on 28 February 1977, is that there is agreement between them on a "simplified" median line in the Channel both to the east of the Channel Islands and to the west, with the exception of one portion of the line in the western segment. Having regard to the disagreement concerning the portion of the line to the west of the Channel Islands, the Court will deal with the two segments separately.

117. East of the Channel Islands, that is to the east of the point in mid-Channel where the presence of the Channel Islands calls for consideration, the Parties are agreed on a "simplified" line based on the median

line. Beginning at longitude 0°30' west, the eastern limit of the arbitration area, this agreed "simplified" line joins the following points:

A: 50°07'29"N 00°30'00"W

B: 50°08'27"N 01°00'00"W

C: 50°09'15"N 01°30'00"W

D: 50°09'14"N 02°03'26"W

These points, and the tracing of the line between them are, for purposes of illustration, shown on Map 1, which appears on page 196.¹⁴ As the Parties themselves explain, Point D represents the equidistant tripoint between the appropriate base-points at Cap de la Hague (on the Cherbourg peninsula), Alderney (in the Channel Islands) and Portland Bill (on the coast of England). In other words, it represents the first point on the median line, travelling westwards, at which the presence of the Channel Islands calls for consideration.

118. West of the Channel Islands, that is to say west of the point in mid-Channel where, travelling westwards, the presence of the Channel Islands ceases to call for consideration, the Parties are agreed on two portions of a "simplified" median line. The first of these portions joins the following two points.

E: 49°32'42"N 03°42'44"W

F: 49°32'08"N 03°55'47"W (see Map 1 on page 196)¹⁴

Point E, as the Parties explain, represents the equidistant tripoint between the appropriate base-points at Les Hanois (off the west coast of Guernsey), Les Sept Iles (off the coast of Brittany) and Prawle Point (on the coast of England). Westwards of Point F there is a gap in the "simplified" line agreed by the Parties owing to a difference of view between them about "the legal status of Eddystone Rock and its consequent effect on the course of the boundary line." Further to the west—at Point G—the Parties were again able to reach agreement, the second portion of the agreed "simplified" boundary being a line joining the following points:

G: 49°27'23"N 04°21'46"W

H: 49°23'14"N 04°32'39"W

I: 49°14'28"N 05°11'00"W

J: 49°13'22"N 05°18'00"W (see Map 1)

Point J thus marks the westerly terminal of the "simplified" median line which has been agreed between the Parties. According to the list of base-

¹⁴ The Court of Arbitration included two maps, on pages 117a and 136a of the Decision it handed down. One map containing all the relevant information is reproduced on page 338 below.

points subsequently transmitted to the Court by the Parties, Point J represents the point equidistant from Basse Vincent (Porsal off the north coast of Finistère) and the Stags (off The Lizard in Cornwall). It follows that the agreement between the Parties regarding the median line in the western segment of the Channel does not extend to the use of Ushant or the Scilly Isles as base-points for delimiting a median line boundary.

119. The Parties also submitted to the Court, in response to its request, a chart on which their respective experts had traced the eastern segment and the two portions of the western segment of the agreed "simplified" line. In a further request, as already indicated in paragraph 116, the Court asked the Parties to supply it with a list of the base-points used by them in determining the agreed portions of the median line to the east and to the west of the Channel Islands. Subsequently, by letters to the Registrar respectively of 1 and 6 April 1977, the United Kingdom and the French Republic each furnished the Court with a complete list of these base-points together with their coordinates, which were stated by the United Kingdom to have been agreed between the Parties' experts.

120. Points A-D, E-F, and G-J are thus points in the English Channel, equidistant from the coasts of the French Republic and the United Kingdom, which are agreed by the Parties to be the appropriate points for constructing a median line in these separate segments of the Channel. The Court, through its own expert, has confirmed the appropriateness of these salient points used by the Parties, and has verified the coordinates given by the Parties for each of the points. Through its own expert, it has also checked the base-points on the respective coasts of the two countries which determine the location of the median line at Points A-D, E-F and G-J, and has at the same time verified the coordinates given by the Parties for each of the base-points. The Court has likewise, through its own expert, verified the course of the median line between Points A-D, E-F and G-J traced by the Parties on charts submitted to the Court. In these circumstances, and since a median delimitation is indicated by the applicable law, the Court considers it appropriate, under Article 2(1) of the Arbitration Agreement, to adopt as the continental shelf boundary in three segments of the English Channel the simplified median line traced between the agreed Points A-D, E-F and G-J. These Points and the lines traced between them are reproduced on the Boundary-Line Chart included with this Decision, the letters used on the Boundary-Line Chart being the same as those given above for the Points of the agreed segments.

121. Two gaps in the continental shelf boundary within the English Channel still remain to be filled: namely, in the Channel Islands region between Points D and E; and to the south of Plymouth, on the coast of Devon, between Points F and G. The course of the boundary in the Channel Islands region raises a major question as to whether it should be a median line joining Point D directly westwards to Point E in mid-Channel or whether it should deviate southwards in a large loop as a median line between the Channel Islands and the coasts of Normandy and Brittany. Between Points F and G, on the other hand, the Parties are agreed that, as in the rest of the

western segment of the Channel, the applicable law indicates that the boundary should be the median line in mid-Channel; and the difference between them is only as to the relevance of the Eddystone Rock for determining its course. The Court will, therefore, first address itself to completing the boundary between Points F and G, that is to the problem of the use of the Eddystone Rock as a base-point for delimiting this segment of the median line.

122. During the first round of the oral arguments, Counsel for the United Kingdom referred to the status of Eddystone Rocks at the hearing on 10 February 1977, while apparently then believing that they were "not directly involved in this case". He underlined that "in the view of the United Kingdom, the Eddystone Rocks do constitute an island, not because of the lighthouse, but because, according to the *Channel Pilot* (1971 ed., p. 108) they 'only cover entirely at high water equinoctial springs' ". This, he said, "by definition, means that they are uncovered at mean high water springs, which is the required definition of an island in the United Kingdom Territorial Waters Order in Council of 1964, and is surely also in accord with international practice". He added that the facts regarding the Eddystone Rocks are shown on the British Admiralty Chart of 1964 and subsequent charts without having provoked any objection from the French authorities.

123. The status of the Eddystone Rock as a base-point did not become a matter of debate in the oral arguments. However, in the identical reports submitted to the Court by the Parties on 28 February 1977, to which the Court has already adverted in paragraph 116, a difference of view existing on this question was explained to be the reason why the Parties were unable to agree upon the course of the simplified median line between Points F and G:

It was not possible to define an agreed line between points F and G . . . by reason of a difference of view about the legal status of Eddystone Rock, and its consequent effect on the course of the boundary line. The French side took note of information provided by the United Kingdom on this subject. The French side wishes to reserve its position for the time being on this question and will make its definite view known within a reasonably brief time. The United Kingdom is willing to accept a line joining points F and G but must, in the circumstances, reserve the right to place written documentation before the Court as to the effect to be attributed to the Eddystone Rock, against the eventuality that the French side should be unable to agree to the United Kingdom view.

After the completion of the oral arguments on 28 February 1977, the Court requested the Parties to proceed with their examination of the status of Eddystone Rock and to inform the Court as soon as possible whether they were able to reach agreement upon the question of its use as a base-point for delimiting the median line in the English Channel. The Parties having advised the Registrar that agreement on this question seemed unlikely to be forthcoming, the Court later fixed certain time limits for the French Government to submit its reasons in writing for objecting to Eddystone Rock's being used as a base-point and for the United Kingdom Government to submit its written comments upon the French objections.

124. In order to expedite matters, the United Kingdom Agent was asked by the Court to communicate at once to the French Agent any relevant data regarding the Eddystone Rocks which might be immediately available.

A document containing geographical data telegraphed by the Hydrographic Department of the British Admiralty was therefore transmitted by the United Kingdom Agent to the French Agent, a copy being later supplied to the Court. The information furnished by the document was as follows. A survey of the rocks carried out in 1858 by Captain Williams R.N. recorded a drying height of 19 feet for the natural rock underneath the old lighthouse, while the height of mean high-water spring tides at Plymouth breakwater is 15.7 feet. The latest survey in 1960 did not record the drying height at the highest point of the rocks because that was occupied by the stump of the old lighthouse; only the height of a *lower* rock, on which the present lighthouse stands, was observed and that was recorded as 17 feet. The present Admiralty Chart No. 1613 shows a drying height of 5.5 metres for the lower rock, exactly the same height as that of mean high-water spring tides above the lowest astronomical tide. The highest rock appears on the Chart under the old lighthouse stump and would otherwise be shown as an islet.

125. The French Government's explanations of its objections to the use of Eddystone Rock as a base-point were submitted to the Court in a Note which reached the Registry on 7 April 1977, and was subsequently transmitted to the Agent of the United Kingdom. The French Government said that the information provided by the United Kingdom did not enable it to conclude that Eddystone Rock is today an island. In its view, Eddystone Rock belongs rather to the category of "low-tide elevations" (*hauts-fonds découvrants*) as understood in customary law. No difference is made in customary law, it maintained, between types of tide as the criterion for distinguishing between an island and a low-tide elevation. On the contrary, as soon as a reef does not remain uncovered continuously throughout the year, the French Government claimed that it has to be ranked as a low-tide elevation, not as an island. It also invoked an incident in 1905 when two French lobster boats were arrested for fishing within three miles of Eddystone Rock but subsequently released on the instructions of the British Board of Trade. Citing references to this incident in Fulton's *The Sovereignty of the Sea* (p. 642) and in Gidel's *Le droit international public de la mer* (vol. III, p. 696, note 1), it maintained that the incident shows the British Board of Trade in 1905 to have regarded Eddystone Rock as not having any territorial sea. That Eddystone Rock has not hitherto been treated as an island in British practice is, according to the French Government, also shown by the fact that, in establishing its straight baselines by an Order in Council in 1964, the United Kingdom did not connect Eddystone Rock to the British coast. On those grounds, the French Government declined to accept Eddystone Rock as a base-point for delimiting the median line, unless the United Kingdom were to adduce formal proof that it is an island, rather than a low-tide elevation, as for example by producing the plans of the lighthouse of Eddystone Rock.

126. The United Kingdom's comments on the French Republic's objections to the use of Eddystone Rock as a base-point were sent to the Registrar on 28 April 1977 in the form of a Note accompanied by a number of appendices. In the first part of the Note the United Kingdom set out, historically, factual data regarding the Eddystone Rocks and the four light-

houses which have been built on them. The principal facts emerging from this part of the Note appear to be as follows. The Eddystone group consists of drying reefs and, the United Kingdom claimed, of one natural above-water feature known as House Rock. Early French charts (*Le Neptune François*, 1693) and *La Manche ou le Canal entre la France et l'Angleterre à l'usage de M. le Duc de Bourgogne* (1695) show Eddystone as an island. Likewise, Greenville-Collins' *Coasting Pilot*, published in 1753, states that its north-west part "is above water (at a high spring-tide) about 6 or 7 feet". The first three Eddystone lighthouses were all erected on House Rock, the third of these being Smeaton's Lighthouse. Smeaton published in 1792 a *Narrative of the Building and a Description of the Construction of Eddystone Lighthouse*, and it appears from certain plates in this book that, when preparing the foundations, he may have cut off as much as 4.3 feet from the top of House Rock. At the same time, a statement in his *Narrative* appears to confirm that, before he began the third Lighthouse, House Rock was permanently above high water. Surveys carried out by a Mr. Murdock Mackenzie in the years 1777-1779 recorded that "the westmost rock is always above water, and at high-water even with springs, may be about 6 feet above the level of the sea". The later survey of Captain Williams, R.N., in 1858, the United Kingdom recalled, recorded that the height of the natural rock beneath the base of Smeaton's Lighthouse was 19 feet above mean low-water spring tides. Furthermore, the range of difference between mean high-water spring tides has been constant since that date at 15.5 feet.

127. In connexion with this factual information, the United Kingdom added certain explanations of its views regarding "mean high-water spring tides" as the criterion for determining whether a geographical feature has the legal status of an island or low-tide elevation. It took the position that, whether under customary law or under Article 10 of the 1958 Convention on the Territorial Sea and Contiguous Zone, the relevant high-water line is the line of mean high-water spring tides; and it affirmed that this is also the practice of many other States. It further said that the high-water line shown on all British Admiralty charts is the line of mean high-water spring tides; and it pointed out that under Article 3 of the Territorial Sea and Contiguous Zone Convention it is the line marked on the large-scale charts officially recognized by the coastal State which, in the case of the low-water line, determines the location of that line. Although conceding that other interpretations of the expression "high tide" are possible, it maintained that "mean high-water spring tides" is the only precise one. Today, it said, the height of the natural rock at the base of the stump of the old Smeaton lighthouse is about 2 feet above mean high-water spring tides and 0.2 feet above the highest astronomical tide. In these circumstances the United Kingdom considered that the Eddystone Rocks are not to be ranked as low-tide elevations; and that it need not, therefore, "pursue further the significance of the fact that the Eddystone Rocks would be well within a 12-mile territorial sea measured from the low-water line on the main English coast".

128. In the second part of its Note, the United Kingdom challenged the French contention that the Eddystone Rocks have not hitherto in British practice been treated as an island. The release of the two French fishing ves-

sels in 1905 cannot, it says, be taken as evidence that the United Kingdom did not then, or does not now, regard the Eddystone Rock as constituting an "island"; for "the release could have been motivated by other considerations, such as a desire not to provoke a diplomatic incident". In any event, according to the United Kingdom, "there is clear evidence that *contemporary* British practice treats the Eddystone Rocks as an island for all purposes, including the use of the low-water line around this island for the measurement of maritime zones". It further claimed that this evidence shows the French Republic to have acquiesced in the use of the Eddystone Rock as a base-point for the measurement of United Kingdom territorial waters and fishery zones.

129. The United Kingdom referred to negotiations between the two countries which took place in 1964 and 1965 regarding the preservation of French traditional fisheries in the outer six miles of the British 12-mile fishery zone in conformity with the European Fisheries Convention of 1964. It stated that one of the subjects discussed was French traditional fishing for lobsters, crawfish, escallops and demersal fish off the south coast of England; and that agreement was reached between the two Governments that the eastern limit for this French fishing area within the outer 6-mile belt of the United Kingdom's fishery zone should be a line drawn due south from Eddystone Rock. This line, it explained, was given legislative effect in Schedule 2 to the Fishing Boats (France) Designation Order 1965, the text of which had been agreed between the competent British and French authorities; and it supplied the Court with a copy of the British Admiralty chart illustrating "Foreign Fishing Rights and Concessions within British Fishery limits" on which the line appears. It maintained that the agreement of 1965 regarding these French traditional rights is explicable only on the basis of an agreement between the two countries that the Eddystone Rocks could be used as a base-point for the measurement of British fishery limits; and it said that this had never since been questioned by the French Republic. It further remarked that the British map, which showed a territorial sea surrounding the Eddystone Rocks as well as 6- and 12-mile fishery belts, had been circulated to all interested States without evoking any objection from any of them. This evidence, according to the United Kingdom, "serves as clear proof that contemporary United Kingdom practice did claim the Eddystone Rocks as an island before the commencement of the negotiations on the delimitation of the continental shelf, and that this was accepted by France".

130. The United Kingdom also referred to an exchange of diplomatic Notes between the two Governments in 1966-1967 in which the question of Eddystone Rock's entitlement to a territorial sea had been specifically raised by the French Government. In 1964, contemporaneously with its negotiations in regard to the European Fisheries Convention, the United Kingdom had established certain straight baselines off its coasts in the Territorial Waters Jurisdiction Order in Council of that year, and had circulated to interested States charts illustrating the new baselines. In a Note of the Ministry of Foreign Affairs of 18 January 1965, a copy of which the United Kingdom attached to its Note on the Eddystone Rocks, the French Government commented that it had no observation to make on those charts, but went on to

query the reservation of a territorial sea to Eddystone Rock as marked on a British chart shown to the French delegation during the fishery negotiations. The French Government stated that the Eddystone Rocks were described in French Sailing Directions as “ne couvrant complètement qu’aux pleines mers d’équinoxe”; and that, being therefore low-tide elevations which were outside the territorial sea of the United Kingdom, they did not appear entitled to a territorial sea. In conclusion, the French Government inquired whether the attribution of a territorial sea around the Eddystone Rocks on the chart in question might not be a cartographical error. The United Kingdom’s reply, which has also been supplied to the Court and is dated 20 November 1967, stated that there was no cartographical error, and that it considered Eddystone Rock to be an island as defined in Article 10 of the Territorial Sea and Contiguous Zone Convention. Recalling that under that Article an island is a “naturally formed area of land, surrounded by water, which is above water at high-tide”, it said that “in accordance with general international practice” the United Kingdom took the high-water line to be the line of mean high-water springs. It added that it did not accept the use of equinoctial high-tide as sufficiently precise in this context.

131. The United Kingdom, in its Note on the Eddystone Rocks, observed that there was no record of its arguments having been contested by the French Republic. In its view, therefore, the latter had acquiesced in the use of the Rocks as a base-point.

132. The United Kingdom also asked the Court to find further evidence to the same effect in the agreement reached during the negotiations on the continental shelf in the years 1970-1974 between the experts of the two Governments on the course both of the true median line in the Channel and of a “simplified” line. It recalled that, as agreed between the two delegations, the precise coordinates had been established by the United Kingdom expert and communicated to the French Government, which had never questioned or challenged them. It further claimed that the discussions between the two delegations had been based on the assumption that the Eddystone Rocks were to be treated as an island, and it said that this is reflected in the coordinates.

133. The United Kingdom concluded its Note on the Eddystone Rocks with the submission that, “in all the circumstances, they must be regarded as an island under customary law and the Territorial Sea and Contiguous Zone Convention, and should accordingly be permitted to have a full effect in determining the course of a median line boundary in the Channel west of the Channel Islands”.

134. Since certain matters raised in the United Kingdom’s Note on the Eddystone Rocks had not been previously discussed before the Court nor fully explored in the French Note on this subject, the Court requested the Parties to submit orally to the Court on 10 May 1977 their explanations on specific questions notified to them by the Court. The object of these questions was to elicit whether the French Government should be considered as having acquiesced in the United Kingdom’s view of Eddystone Rock as an island or in its use of the Rock as a base-point either for delimiting its fish-

ery limits or for delimiting a median line in the Channel. One question was raised by the Court itself which had noted that the Parties had both included Eddystone in their lists of the base-points determining the agreed segments of the median line. The Parties, however, were at one in saying that Eddystone had been included not as a "base-point" in the proper sense of the term but merely for the purpose of indicating at what points the median line would begin to be affected by Eddystone. This matter may, therefore, be left aside.

135. The explanations presented by the French Government may be summarized as follows. It concedes that during the negotiations in 1964 and 1965 the French Government did accept the fishery limit to the south of Eddystone Rock that was established by a legislative act, the relevant schedule to which had been agreed between the competent French and British authorities. In accepting that limit, however, the French authorities approved a text where a clear distinction is made between "islands", which figure in Schedule 1, and "demarcation lines, land marks and directions", which figure in Schedule 2, and where Eddystone appears under the latter, not amongst the "islands". The latter explanation, the Court would observe, hardly seems pertinent since certain islands are also to be found in Schedule 2; and it does not, in any event, affect the French Government's acknowledgement of its acceptance of Eddystone Rock as a base-point for determining the United Kingdom's fishery limits in the area concerned.

136. The French Government underlines, however, that in agreeing to the fishery arrangements it was committing itself only in the matter of fisheries; and it states that it has never recognized Eddystone Rock as an island possessing its own territorial sea. In this connexion, it points to its diplomatic Note of 18 January 1966 contesting the right of Eddystone Rock to its own territorial sea. As to the United Kingdom's Note of 20 November 1967 replying to the French contention that Eddystone is merely a low-tide elevation, the French Government acknowledges that it did not then pursue the point of the status of Eddystone Rock. But it maintains that its silence on the point cannot be interpreted as signifying that it abandoned the position which it had previously taken as to Eddystone Rock's being merely a low-tide elevation not entitled to its own territorial sea.

137. The French Government further states that it neither contested nor accepted "officiellement" in March 1971, or afterwards, the precise coordinates prepared by the British expert and communicated to the French Government in March 1971 "in so far as concerns the use of Eddystone Rock for delimiting a median line as a simplified line in the Channel". It maintains that the fact that it did not contest the coordinates in no way implies that it accepted them. It points to the records of the negotiations between 1970-1974 and in particular to the following paragraph in those of the meeting in Paris of 25 and 26 January 1971 [U.K. Memorial, Appendix A(10), paragraph 16]:

The Hydrographers of both delegations then reported that they had reached agreement on both the actual median line and the administrative (i.e. "simplified") line in the Channel proper. It was decided that they should proceed by correspondence to agree the geographical coordinates of the turning points of the administrative line.

This paragraph shows, it says, that the coordinates of the British expert, after being communicated to the French authorities, still remained to be approved by the latter; and it insists that, although never contested, the coordinates have equally never been approved by the French Republic.

138. In addition, the French Government elaborated at some length its reasons for considering that Eddystone Rock is a low-tide elevation, not an island. In brief, it contends that an island is a natural piece of land that stays permanently above high-water; that current British cartography does not by any device indicate that any fragment of Eddystone Rock is an island; that the British concept of "high-water" is very questionable and a large number of States, including France, take it as meaning the limit of the highest tides; and that the information given by the United Kingdom itself indicates that the highest part of the Rocks is only very slightly above the highest full-tides and may be covered by them. It also invoked the fact that the United Kingdom had not made use of Eddystone Rocks in delimiting its straight baselines. These contentions, on which the Court did not invite the United Kingdom Agent to comment, are here referred to only in brief because, for reasons now to be stated, the Court considers that the decision whether the Eddystone Rocks should or should not be used as a base-point for delimiting the course of the median line rests upon other elements in the case.

139. The Court emphasizes that it is not concerned in these proceedings to decide the general question of the legal status of the Eddystone Rocks as an island or of its entitlement to a territorial sea of its own. Indeed, as the Court has pointed out in paragraphs 13-21, the Arbitration Agreement does not invest it with competence to resolve differences between the Parties regarding the delimitation of the territorial sea of either of them. In the present proceedings the Court is concerned with the Eddystone Rocks only as an element in the delimitation of the continental shelf boundary in the English Channel. Thus, what the Court is called upon to decide is not the general question of their legal status as an island but their relevance in the delimitation of the median line in the Channel as between the United Kingdom and the French Republic. No doubt, having regard to the role normally played by the baseline of the territorial sea in the delimitation of a median line, there is a certain connexion between the two questions. But it still remains true that the Court is here concerned with the Eddystone Rocks only in the particular context of the delimitation of the continental shelf by a median line in the Channel as between the Parties now before the Court.

140. The French Government, while acknowledging its acceptance in 1964-1965 of Eddystone Rock as a base-point for the delimitation of the United Kingdom's fishery limits under the European Fisheries Convention of 1964, comments that this does not commit it to accepting the Rock as an island entitled to its own territorial sea. However justified in general this comment may be, the Court cannot fail to note that the six and 12-mile fishery zones provided for by Articles 2 and 3 of that Convention are expressly stated to be zones "measured from the baseline of the territorial sea". In other words, it was in the context of a baseline of the territorial sea, as well

as in the context of fisheries, that the French Republic in 1964-1965 acknowledged the relevance of the Eddystone Rock as a base-point.

141. More directly to the point, clearly, is the evidence relating to the agreement reached between the experts of the Parties in 1971 regarding the tracing of the true median line and a "simplified" line in the English Channel. The record of the meeting of 25 and 26 January 1971, which the French Government itself invokes and the text of which has been given in paragraph 137, states that "the hydrographers of both delegations then reported that they had reached agreement on both the actual median line and the administrative [i.e. 'simplified'] line in the Channel proper". The Court can only understand this unchallenged statement as meaning that the hydrographers had reached agreement on the designation of the relevant starting and turning points of the two lines and the tracing of the lines themselves between the several points. Accordingly, when the record of that meeting further reports the decision of the two delegations that the hydrographers "should proceed by correspondence to agree the geographical coordinates of the turning points of the administrative line", the Court can only interpret this decision as referring simply to the technical operation of the precise definition of points on an already agreed line. That this interpretation of the record is correct is confirmed by the text of the letter of 24 February 1971 [U.K. Memorial, Appendix A(11)] in which the British expert set out his list of the coordinates of the points on the "administrative" line. This letter introduces the list of coordinates with the statement: "It was agreed at the talks with the French in Paris that the positions of the turning points of the agreed 'administrative' line east of the line Scillies-Ushant should be listed and exchanged for checking. I find the positions to be as follows." This statement clearly envisages nothing more than the purely technical operation of defining by exact coordinates positions on a line already agreed between the experts.

142. That the listing of the coordinates was a purely technical operation to define an agreed line seems also to be confirmed by paragraph 147 of the French Memorial:

During the negotiations with the Government of the United Kingdom, the breaking off of which gave rise to the present dispute, the two delegations thus arrived without difficulty at an agreement on the determination of the boundary of the continental shelf, in the western and eastern areas of the Channel, apart from the Channel Islands sector. That agreement concerned the drawing of a median line all the points of which were equi-distant from the baselines from which the two States measure the breadth of their territorial sea; they even agreed on the drawing of a simplified median line which might possibly serve as a more convenient boundary. The British delegation had even handed the French delegation a document stating the exact coordinates of this median line as well as the two British maritime charts No. 2649 and No. 2675 (HW 514/64, 16 June 1964) on which the Hydrographic Department of the Ministry of Defence had traced the "Anglo-French Seabed Boundary", outside the Channel Islands sector.

No reservation is expressed in this paragraph or elsewhere in the French pleadings as to the precise accuracy of the coordinates given by the United Kingdom expert. In any event, even if a doubt existed as to their accuracy, the fact would remain that all the turning points and the tracing of both the true and the "simplified" median lines were agreed between the two delegations in 1971.

143. 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. In these circumstances, the Court need not examine the further question, indicated by the United Kingdom, of the possible relevance of the right which it claims to establish a 12-mile territorial sea that would bring Eddystone within the territorial sea of England.

144. In the light of all the foregoing considerations and without taking any position on the difference between the Parties as to the precise legal status of Eddystone Rock, the Court concludes that it should treat the Rock as a relevant base-point for delimiting the continental shelf boundary in the Channel. It follows that between Points F and G the boundary determined by the Court will be a median line which takes account of Eddystone Rock. As a result, from point F the boundary will run westwards in a straight line to a Point, which the Court will designate F1 and the coordinates of which are:

F1: 49°27'40"N 04°17'54"W

This Point is a point equidistant from, on the United Kingdom side, Eddystone Rock and, on the French side, two base-points off the coast of Brittany, namely, La Fourchie (Plateau des Triagoz) and Le Raoumeur (Ile de Batz). From F1 the boundary will continue westwards in a straight line to the agreed Point G. The position of Point F1 and the tracing of a line from Point F to F1 and thence to Point G are shown, for purposes of illustration, in red on Map 2 which appears on page 208¹⁵. They are reproduced in black on the Boundary-Line Chart included with this Decision, the letter F1 also being used on the Boundary Chart to indicate the Point delimited from Eddystone Rock.

145. The next task of the Court is to determine the boundary (or boundaries) in the Channel Islands region, that is in the region lying between and to the south of Points D and E of the agreed segments of the median line in the Channel. The Court, for the reasons already given in paragraphs 19-22, has decided that it is not empowered by the Arbitration Agreement to delimit the seabed and subsoil boundary in the narrow waters situated between the Channel Islands and the coasts of Normandy and Brittany; and that it must confine itself in this region to delimiting the course of the boundary in the areas to the north and to the west of the Channel Islands, where this does not involve determining the territorial sea limits of either Party. Nevertheless, in deciding the continental shelf boundary to the north and to the west of the Channel Islands, the Court must clearly have regard to the region as a whole and to its relation with the rest of the arbitration area.

¹⁵See map on page 338 and foot-note 14.

146. In this region the Parties remain agreed that the geographical and legal framework for determining the boundary is one of States the coast of which are opposite each other; and that, in consequence, the boundary should, in principle, be the median line. They are, however, in sharp disagreement as to the role which should be allowed to the coasts of the Channel Islands as coasts of the United Kingdom "opposite" to those of France. The French Republic maintains that in this part of the Channel, the relevant "opposite" coasts are those of the mainlands of France and the United Kingdom; and that the Channel Islands should be treated as a separate territory located within the continental shelf of the French mainland. The United Kingdom, on the other hand, insists that in this part of the English Channel the Channel Islands themselves constitute the relevant "opposite" coast of the United Kingdom for the purpose of delimiting the median line. As a result, the boundaries advocated by the Parties in this region bear almost no relation to each other, except in the narrow waters to the east and south of the Channel Islands where the delimitation of the boundary falls outside the Court's competence.

147. Before turning to the Submissions and arguments of the Parties regarding this region, the Court thinks it well to recall the conclusion which it reached in paragraph 74 concerning the French Republic's reservation to Article 6 of the 1958 Convention claiming "Granville Bay" to be an area where there is a "special circumstance" within the meaning of the Article. While considering that the reservation must be understood as relating to the Channel Islands region as a whole, the Court found that the United Kingdom's objection to the reservation prevents it from being invoked against the latter by the French Republic in the context of Article 6. The combined effect of the reservation and objection is to render Article 6 inapplicable as between the Parties "to the extent of the reservation"; and, as a result, the boundary in this region has to be determined by reference to the rules of customary law.

148. In the pleadings, treating Article 6 as inapplicable *in toto*, the French Republic formulates the principal statement of its case in terms of a delimitation in accordance with equitable principles under customary law; but it also contends in the alternative that, if Article 6 is considered to be applicable, the Channel Islands constitute a "special circumstance" justifying a boundary other than the median line. The United Kingdom, on the other hand, treating Article 6 as applicable, formulates the principal statement of its case in terms of the equidistance-special circumstances rule under the 1958 Convention; but it likewise puts its case in the alternative, maintaining that its Submissions regarding this region hold good equally under customary law. The double basis on which both Parties put their case regarding the Channel Islands confirms the Court's conclusion that the different ways in which the requirements of "equitable principles" or the effects of "special circumstances" are put reflect differences of approach and terminology rather than of substance. In the present instance the substantial point at issue is whether the presence of the British archipelago of the Channel Islands close to the French coast is a "special circumstance" or a circumstance creative of inequity that calls for a departure from or variation of the equidis-

tance method of delimitation which the Parties agree to be in principle the applicable method.

149. The final Submissions of the French Republic call for two distinct delimitations in this region (Submissions 9 and 10). One would be a median-line boundary in mid-Channel running westwards from Point D of the eastern agreed segment to Point E of the western agreed segment. This mid-Channel median line is formulated by the French Republic simply as a component part of its more general Submission that, in the Channel where the coasts of the two countries face each other, the continental shelf boundary should be the median line. However, the mid-Channel median line which it proposes in this region is one to be delimited on a different principle from the one used in the remainder of the Channel. To the east and west of the Channel Islands region it envisages a delimitation of the median line by reference to "the baselines from which the breadth of the territorial sea is measured", and thus from any relevant islands; but in the Channel Islands region it proposes that the median line should be "*delimited between the mainlands of France and the United Kingdom from baselines taking no account of islands*" (emphasis added). The practical effects of this Submission would be simply to join Points D and E by a median line which disregards the existence of the Channel Islands, the latter being made the subject of another, and separate, delimitation.

150. The French Republic's other Submission regarding this region is in two parts, the first of which deals with the tracing of a median line between the Channel Islands themselves and the coasts of Normandy and Brittany. This part of the Submission, as it concerns matters outside the Court's competence, must be left aside. The second part, however, concerns the area to the north and to the west of the Channel Islands where they face the open sea and where it is incumbent on the Court under the Arbitration Agreement to delimit a continental shelf boundary (or boundaries) between the Parties. In this part of the Submission the French Government contends that, having regard to the very particular geographical circumstances of the region, the application of equitable principles calls for the continental shelf boundary of the Channel Islands, where they face towards the open sea, to be delimited as follows (Submission 10):

(i) around Alderney, Burhou and the Casquets, segments of arcs of circles of six nautical miles in radius, drawn from the low-water lines of these islands or rocks, from the intersection of the arc of the circle of Alderney with the median line between the Cotentin Peninsula and the Channel Islands;

(ii) around Guernsey, segments of arcs of circles of six nautical miles in radius, drawn from the low-water lines of the island of Lihou and of the Hanois;

(iii) in the area situated between the Casquets and Guernsey, the tangent joining the arcs of circles of six nautical miles in radius, drawn from the Casquets and from the island of Lihou;

(iv) in the area situated to the south-west of Guernsey, a straight line drawn from the arc of a circle of six nautical miles in radius, as it was drawn from the Hanois, until its intersection with the median line, as previously defined, between the Roches Douvres and the Channel Islands.

The effect of this Submission would be to allow to each of the groups of the Channel Islands which it mentions a three-mile zone of continental shelf in

addition to its territorial sea and then to join the resulting six-mile zones by tangents so as to form a continuous boundary and create a coherent continental shelf enclave around the Channel Islands.

151. The French Republic, although basing the proposals on an application of equitable principles under customary law, also maintains in an alternative Submission that, if Article 6 is held to be applicable, they are no less valid under the equidistance-special circumstances rule. Special circumstances exist, it submits, in the Channel Islands region which justify a delimitation otherwise than by application of the equidistance method.

152. The United Kingdom's final Submissions treat the Channel Islands region as covered by its general contention that throughout the arbitration area the situation is one where the coasts of the two countries are "opposite" each other, and that the appropriate boundary is accordingly a median line delimited from their respective coasts. Its principal Submission is formulated in terms of Article 6 which the Court has found not to be applicable in the Channel Islands region. It therefore suffices to mention that, with regard to the equidistance-special circumstances rule, the United Kingdom considers the French Republic not to have shown that the circumstances in this region constitute "special circumstances" or that they justify a boundary other than the median line.

153. The United Kingdom's alternative Submission asks the Court to hold that the same median line boundary, delimited from the respective coasts of the two countries, is also called for by the rules of customary law. The rule which it invokes is that (Submission 4):

the boundary line is to be drawn in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other

The United Kingdom then maintains that accordingly (Submission 5):

(i) given the essential geological continuity of the continental shelf throughout the entire area, it can in principle be claimed by both Parties as constituting the natural prolongation of their land territories into and under the sea, and in the absence of agreement can therefore, in law, only be delimited by means of a median line;

(ii) no rule of international law requires the displacement of the median line by another boundary line, since the median line, which faithfully reflects the geographical configuration of the coasts of the two States in relation to the sea, produces a result which accords with equitable principles and one which is in no way extraordinary, unnatural or unreasonable as leaving to either State areas of seabed which are uniquely part of the natural prolongation of the land territory of the other . . .

While subparagraph (ii) of this Submission continues with a particular reference to the Atlantic region, it makes no specific mention of the Channel Islands region, which is therefore presumably to be taken as covered by the general contention in subparagraphs (i) and (ii).

154. In any event, the clear intention of the alternative Submission is that under customary law, as well as under the 1958 Convention, the Court should adopt the median-line boundary proposed by the United Kingdom in its principal Submission. This boundary, as illustrated on Map 4 at Appendix C(5) to the United Kingdom Memorial, would run from Point A of the Eastern segment to Point D of that segment and then turn almost directly

southwards as a median line between the Channel Islands and the coast of Normandy, thereafter returning northwards between the Channel Islands and the Coast of Brittany to rejoin the mid-Channel median line at approximately Point E of the western segment; and from Point E it would follow the median line of the Channel westwards. Thus, the boundary proposed by the United Kingdom, if a "median" line from end to end of the arbitration area, would treat the Channel Islands as the coast of the United Kingdom opposite to France in that part of the Channel and would form a deep loop around them close to the French coast. It follows that, under this proposal, the French Republic would have an eastern and western segment of continental shelf in the Channel, but between these would intervene a tongue of United Kingdom continental shelf reaching out in this region from its mainland continental shelf to the Channel Islands.

155. The principal considerations and arguments advanced by the Parties in support of their Submissions regarding the Channel Islands region, which were developed at some length in the pleadings, must now be examined. In doing so, however, the Court will pass over those which relate exclusively to the areas between the Channel Islands and the coasts of Normandy and Brittany that the Court considers to be outside its competence. Nor need it again refer to their contentions regarding the meaning and effect of the French Republic's reservation to Article 6 concerning Granville Bay which it has already dealt with in paragraph 74.

156. The principal considerations and arguments advanced by the French Republic in support of a mid-Channel median line, with an "enclave" around the Channel Islands, can be summarized under three main heads: (i) the specific character of the Channel Islands region, geographically, geologically and legally; (ii) the merits or defects of the equidistance method of delimitation when applied in this and analogous situations; and (iii) the State practice and the legal and equitable principles claimed by the French Republic to justify its proposals. But it is what the French Republic terms "*la spécificité du problème des Iles Anglo-Normandes*" that is the essential foundation of its case regarding this region.

157. Geographically, the specific character of the problem is represented by the French Republic as arising from the mere fact of the British archipelago of the Channel Islands being situated within a rectangular bay of the French coast and only a few nautical miles distant from it. In consequence, it says, the Channel Islands and the sea areas between them and the French coast are intrinsically linked with the continental land mass of France. Geologically, it says, the relevant scientific information shows conclusively that the Channel Islands form part of the physical mass of Brittany and Normandy. While recognizing the fundamental unity of the geological structure of the continental shelf of the Channel, the French Republic insists that according to the scientific evidence:

the Channel Islands are, without any possible ambiguity, an integral part of the armorican area and are included, without any possible gap, in the French hercynien shelf

It also cites in this connection a dictum in the Judgment in the *North Sea Continental Shelf* cases referring to geological considerations as potentially

relevant in determining the appurtenance of continental shelf to a territory (I.C.J. Reports 1969, paragraph 95).

158. Legally, the specific character of the Channel Islands is claimed by the French Republic to result from a number of factors. In advancing this claim, it begins by addressing itself to the concept of "islands" in Article 1(b) of the Continental Shelf Convention, which provides that the term "continental shelf", as used in the Convention, refers not only to the seabed and subsoil of submarine areas "adjacent to the coast" but also to those "adjacent to the coasts of islands". It concedes that this provision, when read in combination with Article 10(1) of the Territorial Sea and Contiguous Zone Convention, may appear to contemplate a single concept of "islands". In its view, however, there cannot be any single concept of islands in the law of the continental shelf owing to the almost infinite variation in their geographical circumstances. The French Republic further observes that the legal classification of islands may also have to take account of variable political circumstances; and it insists that here the Court is concerned only with islands or groups of islands not themselves directly responsible for their foreign relations, as distinct from island or archipelago States.

159. The specific character, legally, of the Channel Islands is said by the French Republic to lie first in their close contiguity to the mainland of France, a fact which it considers as distinguishing their status from that of ocean islands resting on their own continental shelf. Their second characteristic is said to be their detachment from the land mass of the United Kingdom which, according to the French Republic, distinguishes their legal status from that of coastal islands belonging to the State to the coast of which they are adjacent. They are, the French Government emphasizes, islands which, in the words of S. W. Boggs, a former geographer of the Department of State, are "on the wrong side of the median line". Again, the fact that in this region the mainland coasts of France and the United Kingdom are opposite each other, in its view, distinguishes the case of the Channel Islands from such a case as that of the islands of St. Pierre et Miquelon, where there is no French coast opposite Newfoundland and where, in consequence, the continental shelf remains largely open both to the south and east. In any event, the French Republic insists that in the present proceedings the Court is not concerned with the effect of islands, in general, on the delimitation of the continental shelf but only with the effect of foreign islands near the coast on a delimitation of the continental shelf between two opposite States.

160. Turning to the merits and defects of the equidistance method, the French Republic observes that, while the United Kingdom asks for its strict application in the Channel Islands region, the latter's practice has been more flexible in other parts of the world, such as the Persian gulf. It cites statements of British lawyers, including one by a member of the International Law Commission to the effect that "special circumstances" are likely to be the rule rather than the exception in the application of the equidistance method. That statement, it says, expresses the view also held by the French Government in regard to the equidistance method. While the advantages of

the equidistance method, especially in narrow waters, are not underrated by the French Government, it considers that the application of the method should never be automatic, but always subordinated to an appreciation of the equitable nature of its results. It accepts that the application of this method may, in principle, give an equitable result in the narrow waters where the Channel Islands face the French coast, but denies that this will be so where they face the open sea.

161. The French Republic objects to the application of the equidistance method proposed by the United Kingdom for the Channel Islands region as inequitable in two important respects. First, it would involve a deep amputation of the French Republic's continental shelf in the Channel, which would result in a reduction of the area appertaining to the Republic and a corresponding gain to the United Kingdom wholly disproportionate to the size of the Channel Islands and the length of their coasts. Secondly, it would involve severing the continental shelf of France in the Channel into two separate zones. In consequence, although the allocation of the intervening area of continental shelf of the United Kingdom would not theoretically affect the legal status of its superjacent waters and airspace, the vital interests of the French Republic in the security and defence of its territory could not fail to be put in doubt. The whole Hurd Deep (Fosse Centrale) would be made subject to the exclusive sovereign rights of the United Kingdom, so that the French maritime authorities would have no right to control activities in that zone; and this would involve serious inconveniences and risks for French submarines stationed at Cherbourg as well as affecting the French Republic's military supervision of the approaches to its territory. These detriments to French security are viewed by the French Government as all the more substantial in that the new law of the sea relating to the exclusive economic zone may include provisions debarring other States from placing any military or other installation on the continental shelf without the consent of the coastal State.

162. The French Government further stresses that the sea areas in question constitute a maritime route which is not only militarily but economically of vital interest to the French Republic, since they serve important commercial ports such as Dunkerque, Le Havre, Antifer and La Basse Seine. It stresses at the same time that a suggestion made by the United Kingdom, that passage through French territorial waters between the coasts of Normandy and Brittany and the Channel Islands might provide an alternative route, is completely untenable owing to the narrow and dangerous character of the passages through the channels of La Déroute.

163. The French Republic cites on this point the opinion expressed at the first Geneva Conference on the Law of the Sea by Commander Kennedy, R.N., on 9 April 1958 that a "special circumstance" may consist in "the presence of a navigable channel". It also adduces as evidence of its vital and superior interests in defence and navigation in this region certain arrangements made between the authorities of the two countries regarding defence, sea rescue, control of navigation, responsibility for lights and buoys, civil air navigation zones and measures against pollution. These various ar-

rangements, which include naval defence plans going back to the eve of the first world war, are stated by the French Republic to have all treated the Channel Islands as falling within the zone of responsibility assigned to the French authorities. This fact alone, it contends, makes the British thesis, that security considerations call for the Channel Islands' continental shelf to be continuous with that of the United Kingdom, difficult of acceptance.

164. The above considerations, in the French Republic's opinion, lead to the conclusion that the automatic application of the equidistance method in the Channel Islands region proposed by the United Kingdom would "produce results that appear on the face of them to be extraordinary, unnatural or unreasonable" (I.C.J. Reports 1969, paragraph 24). This conclusion it claims to be confirmed by a number of precedents of departures from the equidistance method in various complex situations involving islands. At the same time, it maintains that its own proposal for an enclave around the Channel Islands is supported by a number of precedents involving islands situated either "on the wrong side of the median line" or towards the middle of a continental shelf between two "opposite" States. These precedents are said by it to show that, with one exception, no account has been taken of the islands in the delimitation of the continental shelf other than to allow them either their own territorial sea or their own contiguous zone. The one exception, it explains, is the Italo-Tunisian Agreement of 20 August 1971 in which a symbolic extra one mile of continental shelf has been allowed to three Italian islands in addition to their existing 12-mile zones of territorial sea.

165. Further support for its enclave solution is claimed by the French Republic to be found in the principles discussed in the Judgment in the *North Sea Continental Shelf* cases and, in the first place, in the principle of the natural prolongation of the coastal State's land territory. In regard to this principle, the French Republic contends that the geographical and geological considerations which it has invoked establish the existence of natural links between the continental land mass of France and the whole Channel Islands region, including the submarine areas of these islands. Asked by the Court, on what legal basis the principle of "natural prolongation" may admit of the submarine territory of France's mainland being interrupted at least by the dry land of the Channel Islands and by the seabed and subsoil of their territorial sea and then re-emerging beyond them, Counsel for the French Republic stated, *inter alia*, at the hearing of 18 February 1977:

For it is quite true that the prolongation of French territory, which constitutes a whole in the Channel on the French side of the grand median line delimited from the two mainlands, turns in some manner around the Channel Islands

The legal position of the French Government is justified above all by the basic factors underlying the notion of natural prolongation, that is, purely geographical circumstances

France, it must not be forgotten, is a State which abuts on the Channel throughout the entire length of its coasts. The importance of its points of contact with this area of sea is as great as those of the United Kingdom, which also abuts on the Channel throughout the length of its coasts. It is therefore proper, in seeking to achieve an equitable delimitation, to take account of the equality of States.

If the continental shelf of the Channel Islands were attached, as is the British view, to the continental shelf of the United Kingdom, if, in other words, the natural prolongation of

France in the Channel were interrupted, it would be literally cut off—as this chart well shows—from all the central part of the Channel. So, Mr. President, access to the central part of the Channel is a consequence at once of the principle of the equality of States abutting on the Channel and of the principle of natural prolongation. To admit that the entire central part of the Channel belongs exclusively to the United Kingdom is inequitable, for France and the United Kingdom have equal rights in the continental shelf of the Channel as a whole.

Thus, it is not the principle of natural prolongation in isolation which the French Republic invokes but that principle in combination with the principle of the equality of States.

166. Secondly, the French Republic calls in aid the principle of proportionality, which it takes from the Judgment in the *North Sea Continental Shelf* cases and which it says has the advantage of providing an objective basis for the application of equity. This supposed general principle, the true scope of which this Court has already discussed in paragraphs 100-101, the French Republic invokes as requiring in the Channel Islands region a reasonable relation between the extent of continental shelf allowed to each Party and the length of their coasts measured in accordance with their general direction. It suggests four alternative methods of calculating the proportionality, two being “micro-geographical” and limited to the Channel Islands region, and two “macro-geographical” which cover the whole English Channel. The “micro-geographical” and “macro-geographical” calculations are each made twice, once on the basis of the actual length of the coasts and the second time on the basis of the maritime facades. According to the French Republic, under none of these methods of calculation would the area accruing to France from the delimitation advocated by the United Kingdom represent a reasonable and equitable result in terms of the principle of proportionality.

167. In general, the French Republic argues that the Channel Islands constitute a natural geographical feature of a sharply defined character which is productive of unreasonable results in the context of a strict application of the median line as proposed by the United Kingdom. In these circumstances, it contends that the consequences of that geographical feature, in the words used in the Judgment in the *North Sea Continental Shelf* cases, “must be remedied or compensated for as far as possible, being of itself creative of inequity” (I.C.J. Reports 1969, paragraph 89(a)). The United Kingdom’s rigid application of the equidistance method, the French Republic maintains, is not acceptable because it is not based on a reasonable evaluation of the natural features and gives disproportionate effects to a minor geographical accident.

168. The United Kingdom, in seeking to justify its proposal for a median line forming a loop around the Channel Islands close to Normandy and Brittany, starts from the proposition that, in principle, every island is entitled to its own continental shelf. This proposition it founds on Article I of the 1958 Convention, which it emphasizes was recognized in the *North Sea Continental Shelf* cases “as reflecting, or as crystallizing, received or at least emergent rules of customary law” (I.C.J. Reports 1969, paragraph 63). Pointing out that Article I provides for the continental shelf not only of

mainlands but also of islands, it adds that under Article 2(3) the shelf attaches as a natural appurtenance of their land territory. The principle of the inherent nature of the rights over the continental shelf embodied in Article 2(3) was likewise recognized in the *North Sea Continental Shelf* cases "as reflecting, or as crystallizing, received or at least emergent rules of customary international law." In its view, therefore, the proposition that both mainland and islands have continental shelves as a natural appurtenance to the land territory is based both on the Convention and on customary international law and cannot be affected by any reservations which parties to the 1958 Convention may have made.

169. The United Kingdom, in short, puts its case regarding the Channel Islands region, not on the basis of an extension of the continental shelf of its mainland in consequence of the effect of offshore islands, but on the basis of islands that have their own continental shelf which, in fact, joins with that of its mainland. Replying to a question from the Court on this point, the Agent of the United Kingdom stated at the hearing on 21 February 1977:

the United Kingdom considers that there is a portion of continental shelf appertaining to the south coast of England and a portion of continental shelf appertaining to the Channel Islands. These separate portions merge together in mid-Channel.

170. While thus resting its case regarding the Channel Islands on the right of islands to their own continental shelf, the United Kingdom does not contest that in the application of the equidistance-special circumstances rule there may be some difference in the treatment given to islands in consequence of their differing geographical situations and importance. On the contrary, it specifically invokes a statement made by Commander Kennedy, R.N., as a United Kingdom delegate to the Geneva Conference in which he said that: "for the purposes of drawing a boundary, islands should be treated on their merits, very small islands or sand cays on a continuous continental shelf and outside the belts of territorial sea being neglected as base-points for measurement and having only their own territorial sea" (Committee IV, Thirty-second Meeting, on 9 April 1958). The United Kingdom is concerned rather to show that, in the context of the equidistance-special circumstances rule, it is only very small islands which, in certain circumstances may not be given full effect. As support for this concept of islands as "special circumstances", it invokes various other statements in the *travaux préparatoires* of Article 6, reviews extensively the existing State practice in regard to delimitations involving islands, and refers to the opinions of a number of writers who have discussed this question. This evidence, it maintains, justifies the conclusion: that all true islands generate their own continental shelf, irrespective of their location; and that for boundary purposes there is no difference between islands and mainland and, therefore, the median line is the proper boundary with any opposite State in the absence of agreement or special circumstances. In regard to "special circumstances", the evidence is said by the United Kingdom also to lead to the following conclusions (U.K. Memorial, paragraph 143(IV)):

the *travaux préparatoires* disclose that islands would constitute "special circumstances" only where very small islands produce an excessively complicated median line

which might be straightened out in the interests of simplicity, but compensating a loss of shelf in one area with a gain in another. State practice has rarely recognized that such a situation has arisen To the extent that some juristic writings tend towards a wider view of the exception of "special circumstance", these writings are concerned to make distinctions *de lege fenda*, not embodied in the 1958 Convention, or based upon the practice of States not parties to the 1958 Convention.

It also emphasizes that in the Judgment in the *North Sea Continental Shelf* cases, it is only "islets, rocks and minor coastal projections" which are spoken of as having a "disproportionately distorting effect" on the course of median line.

171. The United Kingdom, accordingly, seeks to convince the Court that the Channel Islands cannot be characterised as very small islands for the purpose of considering their effect on the delimitation of a median line between "opposite" States; and it invokes in this regard certain facts concerning the legal and economic circumstances of the Channel Islands. The total area of the islands, it states, is approximately 75 square miles, their total population about 130,000; the volume of their sea and air traffic and their commerce is substantial; and they are today highly developed, busy territories which provide financial facilities of international repute. Legally, it adds, they are part neither of the United Kingdom nor of the Colonies but have for several hundred years been direct dependencies of the Crown; they have their own legislative assemblies, fiscal and legal systems, Courts of law and systems of local administration, as well as their own coinage and postal service. The United Kingdom, indeed, claims that, although it assumes responsibility for the foreign relations of the Channel Islands, they are in effect "island States enjoying an important degree of political, legislative, administrative and economic independence of ancient foundation". It follows, according to the United Kingdom, that in this region "it is not just a question of the continental shelf boundary between the United Kingdom and France, but also, as the very terms of the Arbitration Agreement make clear, it is a question of the Channel Islands boundary with France."

172. In response to a question from the Court, additional information was provided by the Agent of the United Kingdom at the hearing on 21 February 1977 concerning the legal position of the Channel Islands in regard to maritime jurisdiction:

Under the relevant laws and constitutional usage of the United Kingdom and the Channel Islands, the Channel Islands exercise jurisdiction in and over the territorial sea adjacent to the Islands. This jurisdiction is exercised by the Channel Islands authorities pursuant to legislation enacted by the Parliaments of the Islands, that is to say, the States of Jersey and the States of Guernsey. Moreover, by virtue of United Kingdom laws, which apply to, or have been extended to, the Channel Islands, the Island authorities exercise jurisdiction over fisheries within a 12-mile limit. No specific arrangements have been made in regard to the exploration and exploitation of the continental shelf adjacent to the Channel Islands, but the United Kingdom Continental Shelf Act, 1964, pursuant to which jurisdiction is exercised by the authorities of the United Kingdom, extends to such areas.

This information appears to indicate that, although the Channel Islands may enjoy some measure of autonomous maritime jurisdiction, this autonomy is incomplete and does not extend to jurisdiction over the continental shelf for the purpose of exploring it and exploiting its natural resources.

173. As to the fact that the Channel Islands are islands "on the wrong

side of the median line", the United Kingdom accepts that this may in some cases be material to the delimitation of a boundary between "opposite" States. "Doubtless it may be possible", it concedes, "to plead as special circumstances justifying a boundary other than the median line the presence of islets or small islands belonging to one country but nearer the coast of an opposite country, when those islets or islands are not of sufficient importance as to warrant the influence they bear upon the course of the median line merely by their presence in a particular location." In its view, however, the matter is quite different when the islands in question are of such political and economic importance as clearly to warrant the influence they have upon the course of the boundary. This, the United Kingdom maintains, is precisely the case of the Channel Islands, having regard to the historical, political and economic position of these island communities.

174. The United Kingdom contests the French Government's thesis that the whole Channel Islands region forms part of the natural prolongation of the land mass of France. That thesis, according to the United Kingdom, confuses the geological with the juridical concept of the continental shelf. It refers to a statement in the Judgment in the *North Sea Continental Shelf* cases (paragraph 95) in which, after observing that the institution of the continental shelf "has arisen out of the recognition of a physical fact", the Court continued: "and the link between this fact and the law, without which that institution would never have existed, remains an important element for the application of its legal régime". This means, the United Kingdom says, that the principle of natural prolongation is not of a prolongation under the sea of a continent or geographical land mass but of the land territory of a particular State. The limits of that territory, it adds, are not a product of natural but of political history. Again, when the Judgment in those cases states that there can be no question of totally refashioning nature, the United Kingdom maintains that what it means is that there can be no refashioning of a particular State's geographical situation within its particular boundaries. In short, argues the United Kingdom, "the continental shelf of a State in the juridical sense is—and can only be—that which constitutes a natural prolongation of its land territory such as it has been fashioned by its history".

175. As to the security, defence and navigational considerations invoked by the French Republic, the United Kingdom objects that these considerations may equally be urged in favour of a continuous continental shelf between its mainland and the Channel Islands for the defence of which the United Kingdom is responsible. The French Republic's reference to defence arrangements made between the competent French and British authorities, delimiting their respective zones of responsibility in the Channel, it considers to be without any pertinence. Zonal defence arrangements, it insists, have little or nothing to do with national frontiers, and much less with continental shelf boundaries. Similarly, it insists that dividing lines of responsibility in the Channel adopted in a recent plan for pollution control and in other arrangements for air traffic control and sea rescue are purely for administrative convenience and are irrelevant to the matter before the Court.

176. The United Kingdom maintains that for a number of reasons the

French Republic's preoccupations regarding its security, defence and navigational interests are, in any event, not entitled to be given weight. It states that, *inter alia*, they do not take account of the legal protection given to those interests by the régime of the continental shelf itself, in particular by Articles 3-5 of the Convention; and that they also take no account of the fact that the areas in question to the north and north-west of the Channel Islands constitute an international channel of navigation of major importance—indeed the busiest shipping lane in the world. The traffic on this route, it observes, is not exclusively or even predominantly British or French, being used as an essential shipping lane by the navies and merchant marines of the countries of the North Sea and Baltic; and no delimitation of the continental shelf between the United Kingdom and the French Republic will change this situation. Nor does it accept that any British installations which might conceivably be constructed in the Hurd Deep could constitute a serious hindrance to the exercises of French submarines stationed at Cherbourg; moreover, even if that should prove to be the case there are other suitable waters, it says, in the Celtic Sea and the Bay of Biscay which are already used for submarine exercises by the French and British navies. As far as the movement of warships is concerned, the United Kingdom adds, there is a broad expanse of sea between Brest and Cherbourg providing suitable passage both above and below water; and there is, accordingly, no question of the route's being confined to narrow channels where awkwardly placed installations might create a serious obstacle.

177. The precedents for enclave solutions invoked by the French Republic are stated by the United Kingdom almost all to be in fact precedents for semi-enclaves, joining the continental shelf of the island directly to that of its coastal State; and this, it observes, is the very result produced by the United Kingdom's proposal for a median line boundary looping southwards between the Channel Islands and the French coast. The few exceptions, it says, have special explanations, such as the fact that the delimitation involved the continental shelf of islands the sovereignty of which was in dispute between the States concerned. The United Kingdom accepts that the case of the islands of St. Pierre et Miquelon presents some analogy with that of the Channel Islands. But it points out that at the outset of the French Republic's negotiations with Canada the French Republic claimed for those islands a continental shelf boundary delimited by full and strict application of the equidistance principle. This claim, the United Kingdom recognizes, has now been renounced by the French Republic in a provisional agreement reached with Canada on 26 May 1972, in the form of a *Relevé des Conclusions* which limits the continental shelf of St. Pierre et Miquelon to an enclave. It maintains, however, that in the *Relevé des Conclusions* the French Republic has obtained for these islands special rights of a very substantial character in return for renouncing their claim to the strict application of the equidistance principle. As a result, says the United Kingdom, the solution provisionally agreed for St. Pierre et Miquelon appears very advantageous to the French Republic when compared with the solution which it advocates for the Channel Islands.

178. In general, the United Kingdom claims that the specific features

of the Channel Islands region actually militate against an enclave solution and in favour of attributing a substantial continental shelf to these islands. The very fact that the French coast embraces and contains the Channel Islands, it argues, means that in the narrow waters to their east and south they cannot have "anything more than the very minimum of continental shelf"; it is only to the west and north, where they face the more open waters of the English Channel, that there can be any substantial area of continental shelf for the Channel Islands. In the view of the United Kingdom, "a division of this still quite modest area by a median line between the Channel Islands and France cannot on any reasonable assessment be regarded as inequitable in regard to France"; nor can there, it maintains, be any question of "disproportion or exaggeration".

179. The United Kingdom finally contends that, if there were to be considered any justification for an enclave around the Channel Islands, there could in any event be no justification for an enclaved zone of six miles. International law, it observes, has now clearly accepted the 12-mile territorial sea as a right of coastal States, and any determination of the continental shelf around the Channel Islands should at least allow for that possibility; moreover, the Channel Islands already possess an existing fishery zone of 12 miles delimited from the baselines of their coasts.

180. In the view of the Court, it is manifest from a mere glance at the map that, with respect to the delimitation of the continental shelf as between the French Republic and the United Kingdom, the Channel Islands region presents particular features and problems. The Parties themselves both recognize that this region has particular features. But they disagree as to which of its features are to be considered particular and as to how far any of them may constitute a "special circumstance" justifying a boundary other than the median line or a circumstance creative of inequity. The Parties likewise base opposing considerations of law and equity upon the features which one or other of them alleges to be particular. The Court, accordingly, finds it necessary first to identify the features and considerations which, in its view, may in varying degrees require to be evaluated in deciding upon the course of the boundary (or boundaries) in the Channel Islands region.

181. The Court will begin with the facts which determine the geographical and legal framework for its decision regarding the delimitation of this part of the boundary. The region forms an integral part of the English Channel the general features of which the Court has described in paragraphs 3-9; and for the purpose of delimiting its continental shelf the region has clearly, in the opinion of the Court, to be viewed in its context as part of that whole maritime area. From its eastern end at the Straits of Dover, the English Channel stretches in a generally west-south-westerly direction for a distance of about 300 nautical miles, its width gradually widening from about 18 nautical miles at the Straits of Dover to some 100 nautical miles at its western end. Along with the whole 300 miles of the south coast of the Channel runs the mainland coast of the French Republic; along the whole 300 miles of the north coast of the Channel runs the mainland coast of the United Kingdom. Each country has some promontories on its coast and the

general result is that the coastlines of their mainlands face each other across the Channel in a relation of approximate equality.

182. Between opposite States, as this Court has stated in paragraph 95, a median line boundary will in normal circumstances leave broadly equal areas of continental shelf to each State and constitute a delimitation in accordance with equitable principles. It follows that where the coastlines of two opposite States are themselves approximately equal in their relation to the continental shelf not only should the boundary in normal circumstances be the median line but the areas of shelf left to each Party on either side of the median line should be broadly equal or at least broadly comparable. Clearly, if the Channel Islands did not exist, this is precisely how the delimitation of the boundary of the continental shelf in the English Channel would present itself.

183. The Channel Islands, however, do exist and are situated not only on the French side of a median line drawn between the two mainlands but practically within the arms of a gulf on the French coast. Inevitably, the presence of these islands in the English Channel in that particular situation disturbs the balance of the geographical circumstances which would otherwise exist between the Parties in this region as a result of the broad equality of the coastlines of their mainlands. The question then is whether and, if so, in what manner this affects the legal framework within which the boundary has to be delimited in the Channel Islands region. Before this question can be answered, however, a number of other facts concerning the islands themselves have to be taken into account, and in particular their political relation to the United Kingdom.

184. The case of the Channel Islands must, in the view of the Court, be differentiated from that of the rocks or small islands which figure in some of the precedents canvassed by the Parties in their pleadings. Possessing a considerable population and a substantial agricultural and commercial economy, they are clearly territorial and political units which have their own separate existence, and which are of a certain importance in their own right separately from the United Kingdom. According to the information before the Court, the two Bailiwicks of Jersey and Guernsey which compose the Channel Islands are not, constitutionally, part of the United Kingdom itself but direct dependencies of the British Crown, and have been so for several hundred years. According to this information they undoubtedly enjoy a very large measure of political, legislative, administrative and economic autonomy; so much so that the United Kingdom asks the Court to regard them as, in effect, distinct island States for the purpose of determining the continental shelf appurtenant to them.

185. Under Article 2(1) of the Arbitration Agreement, the Court is requested to decide "the course of the boundary (or boundaries) between the portions of the continental shelf appertaining to the United Kingdom and the Channel Islands and to the French Republic respectively". The Court does not understand these words as foreclosing one way or the other the question whether the Channel Islands are to be considered as political units distinct from the United Kingdom and separately entitled under international law to

portions of continental shelf vis-à-vis France. These words appear designed rather to name comprehensively the territories the continental shelf boundaries of which the Court is requested to decide, and to leave open the question whether this would entail the delimitation of one or more boundaries. The political status of the Channel Islands vis-à-vis France for the purpose of the delimitation of the continental shelf is, therefore, a matter to be appraised by this Court itself.

186. Responsibility for the foreign relations of the Channel Islands indisputably rests with the United Kingdom; and the Court notes that the Continental Shelf Convention of 1958 was ratified by the United Kingdom simply in its own name and on its own behalf, without separate mention of the Channel Islands. It also seems from the diplomatic correspondence and from the record of the meetings in the years 1970-1974 that the abortive negotiations between the two countries for an agreed delimitation of their continental shelf boundary were conducted by the United Kingdom without the participation of the Channel Islands authorities in its delegation. Similarly, the Court notes that the Arbitration Agreement itself was concluded by the Government of the United Kingdom in its own name alone without mention of the Channel Islands otherwise than in the definition in Article 2 of the question submitted to the Court. Furthermore, as the Court has pointed out in paragraph 172, the specific information given to the Court concerning the legal position of the Channel Islands in regard to maritime jurisdiction appears to confirm that, in matters relating to the continental shelf, it is the United Kingdom Government which is the responsible authority, both internally and externally. It follows that, as 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.

187. 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. To state this conclusion is not, however, to deny all relevance to the size and importance of the Channel Islands which, on the contrary, may properly be taken into account in balancing the equities in this region. Part also of this legal framework are the limits of the territorial seas and coastal fisheries of the French Republic and the United Kingdom in the Channel Islands region. The French Republic established a 12-mile zone of coastal fisheries off the coasts of France in 1964 in pursuance of the European Fisheries Convention of that year, and in 1971 also extended its zone of territorial seas to 12 miles. In 1964 the United Kingdom likewise established 12-mile fishery zones off the coasts both of the mainland and of the Channel Islands in conformity with the European Fisheries Convention; but it still retains a territorial sea of three miles. On the other hand, the United Kingdom took the position before the Court that coastal States today have a right under international law to extend their territorial sea to 12 miles, and repeatedly referred in the pleadings to the possibility of its doing so. Consequently, the Court has to take account of the fact that, apart from their three-mile zone of territorial sea the Channel Islands

have an existing fishery zone of 12 miles, expressly recognized by the French Republic, and the potentiality of an extension of their territorial sea from three to 12 miles.

188. Other elements in the framework are the various equitable considerations invoked by the Parties regarding their respective navigational defence and security interests in the region. These considerations may be, and have been, urged by both Parties as supporting the solutions which they advocate: by the French Republic in favour of a continuous link between the eastern and western parts of its continental shelf in the Channel; and by the United Kingdom in favour of a continuous link between the continental shelf of the Channel Islands and that of the mainland. Moreover, the weight of such considerations in this region is, in any event, somewhat diminished by the very particular character of the English Channel as a major route of international maritime navigation serving ports outside the territories of either of the Parties. Consequently, they cannot be regarded by the Court as exercising a decisive influence on the delimitation of the boundary in the present case. They may support and strengthen, but they cannot negative, any conclusions that are already indicated by the geographical, political and legal circumstances of the region which the Court has identified. As to the conclusion to be drawn from those considerations in connexion with the delimitation of the continental shelf, the Court thinks it sufficient to say that, in its view, they tend 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.

189. The Court will now turn to the basic question, which it posed in paragraph 183; whether, and if so in what manner, the presence of the British Channel Islands close to the coasts of Normandy and Brittany affects the legal framework of a median line delimitation in mid-Channel which would otherwise be indicated by the opposite and equal coastlines of the mainlands of the two countries. In setting out to answer this question the Court has first to determine whether the Channel Islands should be considered to be a projection, as it were, from the United Kingdom's mainland which constitutes its "opposite" coast vis-à-vis France in this region. If this interpretation of the geographical situation were to be accepted by the Court as correct, there would be little more to be discussed; the mid-Channel median line would automatically deviate southwards in a long loop around the Channel Islands in the manner proposed by the United Kingdom.

190. In the opinion of the Court, however, such an interpretation of the situation in the Channel Islands region would be as extravagant legally as it manifestly is geographically; nor does the United Kingdom, in fact, ask the Court to view the situation in that way. As recalled in paragraph 169, it specifically puts its case on the basis that "there is a portion of continental shelf appertaining to the south coast of England and a portion of continental shelf appertaining to the Channel Islands". These two separate portions, it claims, "merge together in mid-Channel". Thus, in the view of the United Kingdom itself, the question raised by the presence of the Channel Islands

close to the coasts of Normandy and Brittany is not, strictly speaking, the question of their effect in this region on the delimitation of the median line between *England* and France. It is rather the question of the extent of their own entitlement to continental shelf as islands separate from the United Kingdom. This view of the matter appears to the Court to be correct, subject to its previous finding that, as between the United Kingdom and the French Republic and for present purposes, the Channel Islands are separate islands of the United Kingdom, not separate States.

191. The continental shelf of the Channel Islands and of the mainlands of France and of the United Kingdom, in law, appertains to each of them as being the natural prolongation of its land territory under the sea. The physical continuity of the continental shelf of the English Channel means that geographically it may be said to be a natural prolongation of each one of the territories which abut upon it. The question for the Court to decide, however, is what areas of continental shelf are to be considered as *legally* the natural prolongation of the Channel Islands rather than of the mainland of France. In international law, as the United Kingdom emphasized 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 of 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.

192. Accordingly, in the opinion of the Court, the principle of natural prolongation of territory cannot be said to require that the continental shelf to the north and north-west of the Channel Islands should be considered as automatically and necessarily appurtenant to them rather than to the French Republic. The United Kingdom itself, as the Court has noted in paragraph 173, does not contest that in the application of the equidistance-special circumstances rule there may be some difference in the treatment of islands by reason of their geographical situations, size and importance. Nor, in particular, does it contest the possibility of pleading special circumstances justifying a boundary other than the median line where islets or small islands belonging to one country are nearer to the coast of an opposite country. Yet, if the force of the principle of natural prolongation of territory were absolute, a small island would block the natural prolongation of the territory of the nearby mainland in the same way, if not always to the same extent, as a larger island. The question of the appurtenance to the Channel Islands of the areas of continental shelf extending to their north and north-west is not therefore resolved merely by referring to the principle of natural prolongation of territory.

193. At the same time, the theory advanced by Counsel for the

French Republic to reconcile its claim to those areas with the principle of natural prolongation of territory is altogether unconvincing. This explanation, the text of which is set out in paragraph 165, that the natural prolongation of France's mainland in some way turns around the Channel Islands, simply states the result which would follow from the Court's acceptance of the French Republic's claim; it does nothing to reconcile that claim with the right of the Channel Islands also to the application of the principle of the natural prolongation of their territories under the sea. Similarly, the general geological argument advanced by the French Republic that the Channel Islands region, including the Channel Islands themselves, form part of the armorican structure of the French mainland does nothing to resolve the problem. It, in effect, begs the question by simply passing over the fact that the Channel Islands themselves have their own individual existence and are under the sovereignty of the United Kingdom, not the French Republic.

194. 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 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.

195. The legal rules to be applied in the Channel Islands region, the Court has held, are those of customary international law, rather than of Article 6 of the Convention. Under customary law, the method adopted for delimiting the boundary must, while applying the principle of natural prolongation of territory, also ensure that the resulting delimitation of the boundary accords with equitable principles. In other words, the question is whether the Channel Islands should be given the full benefit of the application of the principle of natural prolongation in the areas to their north and north-west or whether their situation close to the mainland of France requires, on equitable grounds, some modification of the application of the principle in those areas. In the opinion of the Court, the doctrine of the equality of States which, *inter alia*, the French Republic invokes as justifying a curtailment of the continental shelf attributable to the Channel Islands, cannot be considered as constituting such an equitable ground. 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.

196. In paragraph 181, the Court has already drawn attention to the approximate equality of the mainland coastlines of the Parties on either side of the English Channel, and to the resulting equality of their geographical relation to the continental shelf of the Channel, if the Channel Islands themselves are left out of account. The presence of these British islands close to the French coast, if they are given full effect in delimiting the continental shelf, will manifestly result in a substantial diminution of the area of continental shelf which would otherwise accrue to the French Republic. This fact by itself appears to the Court to be, *prima facie*, a circumstance creative of inequity and calling for a method of delimitation that in some measure redresses the inequity. If this conclusion is tested by applying the equidistance-special circumstances rule of Article 6, instead of the rules of customary law, it appears to the Court that the presence of the Channel Islands close to the French coast must be considered, *prima facie*, as constituting a "special circumstance" justifying a delimitation other than the median line proposed by the United Kingdom.

197. The Court refers to the presence of the Channel Islands close to the French coast as constituting a circumstance creative of inequity, and a "special circumstance" within the meaning of Article 6, merely *prima facie*, because a delimitation, to be "equitable" or "justified", must be so in relation to both Parties and in the light of all the relevant circumstances. The United Kingdom, moreover, maintains that the specific features of the Channel Islands region militate positively in favour of the delimitation it proposes. It invokes the particular character of the Channel Islands as not rocks or islets but populous islands of a certain political and economic importance; it emphasizes the close ties between the islands and the United Kingdom and the latter's responsibility for their defence and security; and it invokes these as calling for the continental shelf of the islands to be linked to that of the United Kingdom. Above all, it stresses that at best it is only in the open waters of the English Channel to their west and north that they have any possibility of an appreciable area of continental shelf. In the light of all these considerations, it submits that to divide this area to the west and north of the islands between the Channel Islands and the French Republic by the median line which it proposes does not involve any "disproportion or exaggeration".

198. The Court accepts the equitable considerations invoked by the United Kingdom as carrying a certain weight; and, in its view, they invalidate the proposal of the French Republic restricting the Channel Islands to a six-mile enclave around the islands, consisting of a three-mile zone of continental shelf added to their three-mile zone of territorial sea. They do not, however, appear to the Court sufficient to justify the disproportion or remove the imbalance in the delimitation of the continental shelf as between the United Kingdom and the French Republic which adoption of the United Kingdom's proposal would involve. The Court therefore concludes that the

specific features of the Channel Islands region call for an intermediate solution that effects a more appropriate and a more equitable balance between the respective claims and interests of the Parties.

199. 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. 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.

200. The case of *St. Pierre et Miquelon*, although it clearly presents some analogies with the present case, also differs from it in important respects. First, that case is not one of islands situated in a channel between the coasts of opposite States, so that no question arises there of a delimitation between States, whose coastlines are in an approximately equal relation to the continental shelf to be delimited. Secondly, there being nothing to the east of *St. Pierre et Miquelon* except the open waters of the Atlantic Ocean, there is more scope for redressing inequities than in the narrow waters of the English Channel. Even so, it appears from the *Relevé des Conclusions* that a delimitation according no more than a 12-mile zone of territorial sea to *St. Pierre et Miquelon* has been agreed between the French Republic and Canada. True, it also appears that this agreement includes a reservation of certain special privileges for *St. Pierre et Miquelon*; but 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.

201. In the actual circumstances of the Channel Islands region, where the extent of the continental shelf is comparatively modest and the scope for adjusting the equities correspondingly small, the Court considers that the situation demands a twofold solution. First, in order to maintain the appropriate balance between the two States in relation to the continental shelf as riparian States of the Channel with approximately equal coastlines, the Court decides that the primary boundary between them shall be a median line, linking Point D of the agreed eastern segment to Point E of the western agreed segment. In the light of the Court's previous decisions regarding the course of the boundary in the English Channel, this means that throughout the whole length of the Channel comprised within the arbitration area the primary boundary of the continental shelf will be a mid-Channel median

line. In delimiting its course in the Channel Islands region, that is between Points D and E, the Channel Islands themselves are to be disregarded, since their continental shelf must be the subject of a second and separate delimitation.

202. The second part of the solution is to delimit a second boundary establishing, vis-à-vis the Channel Islands, the southern limit of the continental shelf held by the Court to be appurtenant to the French Republic in this region to the south of the mid-Channel median line. This second boundary must not, in the opinion of the Court, be so drawn as to allow the continental shelf of the French Republic to encroach upon the established 12-mile fishery zone of the Channel Islands. The Court therefore further decides that this boundary shall be drawn at a distance of 12 nautical miles from the established baselines of the territorial sea of the Channel Islands. The effect will be to accord to the French Republic a substantial band of continental shelf in mid-Channel which is continuous with its continental shelf to the east and west of the Channel Islands region; and at the same time to leave to the Channel Islands, to their north and to their west, a zone of seabed and subsoil extending 12 nautical miles from the baselines of the two Bailiwicks. The result, so far as the Channel Islands are concerned, is to enclose them in an enclave formed, to their north and west, by the boundary of the 12-mile zone just described by the Court and, to their east, south and south-west by the boundary between them and the coasts of Normandy and Brittany, the exact course of which it is outside the competence of the Court to specify.

203. The decision of the Court concerning the delimitation of the continental shelf in the Channel Islands region thus requires it to define the course of two boundaries, one in mid-Channel and the other to the north and west of the Channel Islands. The mid-Channel boundary is formed by a line drawn westwards from the agreed Point D to the agreed Point E through four Points which are equidistant from the coasts of France and the United Kingdom, disregarding the Channel Islands. The coordinates of these Points, which the Court will designate Points D1, D2, D3 and D4 are as follows:

D1: 49°57'50"N 02°48'24"W
D2: 49°46'30"N 02°56'30"W
D3: 49°38'30"N 03°21'00"W
D4: 49°33'12"N 03°34'50"W

Point D1 is delimited from, on the French side, La Hague and, on the United Kingdom side, Start Point and Portland Bill; Point D2 from, on the French side, La Hague and Roches Douvres and, on the United Kingdom side, Start Point; Point D3 from, on the French side, Roches Douvres and, on the United Kingdom side, Start Point and Prawle Point; and Point D4 from, on the French side, Roches Douvres and Les Sept Iles and, on the United Kingdom side, Prawle Point. The boundary to the north and west of the Channel Islands is formed by a line which follows segments of arcs of circles of 12-mile radius delimited from the relevant base-points, at low-water, in the Bailiwick of Guernsey. The eastern terminal of this boundary is therefore the point of intersection of the arcs of circles of a 12-mile radius delimited from Quénard Point on Alderney and from Cap La Hague on the Cherbourg pe-

ninsula; and its western terminal is likewise the point of intersection of circles of a 12-mile radius delimited from Les Hanois (off the west coast of Guernsey) and from Roches Douvres off the coast of Brittany. These eastern and western terminals of the boundary will be designated by the Court respectively Point X and Point Y. The segments of the arcs of circles of a 12-mile radius along which the boundary is drawn westwards from Point X to Point Y are formed by the intersection of such arcs delimited from Quénard Point on Alderney, the island of Burhou (west of Alderney), the Casquets, the island of Lihou (north of Guernsey) and Les Hanois (off the west coast of Guernsey). The four Points where the arcs of circles of a 12-mile radius intersect will be designated by the Court respectively X1 (Quénard Point and Burhou), X2 (Burhou and the Casquets), X3 (the Casquets and Lihou) and X4 (Lihou and Les Hanois). The coordinates of the six points which thus constitute the salient points of the boundary to the north and west of the Channel Islands are as follows:

X:	49°55'05"N	02°03'26"W
X1:	49°55'40"N	02°08'45"W
X2:	49°55'15"N	02°22'00"W
X3:	49°39'40"N	02°40'30"W
X4:	49°34'30"N	02°55'30"W
Y:	49°18'22"N	02°56'10"W

The two boundaries described above and the letters which mark their respective salient Points are, for purposes of illustration, shown in red on Map 2 which appears on page 208.¹⁶ These boundaries are reproduced in black on the Boundary-Line Chart included with this Decision, the letters used to mark their salient Points being the same as those given above.

204. The remaining task of the Court is to determine the course of the boundary to the west of Point J, the most westerly point of the mid-Channel median line which the Court has decided shall be the primary continental shelf boundary between the Parties in the arbitration area from that point eastwards. Point J is situated on longitude 05°18'00" West, and purely for convenience the Court will hereafter refer to the whole of the arbitration area westwards of this line of longitude as "the Atlantic region". Its use of this expression does not, however, imply any assumption as to what, geographically, is the true dividing line between the English Channel and the Atlantic Ocean, or as to where, geographically or legally, the coasts of France and the United Kingdom are to be considered as ceasing to be "opposite" coasts. During the negotiations in the years 1970 to 1974, the Parties treated their difference of opinion regarding the boundary westwards of the English Channel as relating to the region lying to the west of approximately the Scillies-Ushant line. Before the Court, however, the difference between the Parties has manifested itself in regard to all the region westwards of longitude 05°18'00" West, that is of Point J. In the whole of that region the Parties are in deep disagreement both as to whether the situation is, legally, to be con-

¹⁶ See map on page 338 and foot-note 14

sidered one of "opposite" States and as to what may be the proper method of delimiting the boundary. But whether or not some small part of this region should be regarded as geographically within the English Channel, it is convenient for the purposes of this Decision to refer to the whole region westwards of Point J under the general title of the Atlantic region. In the pleadings, it is true, the Parties engaged in some debate regarding the correct nomenclature to be applied to the various maritime areas of which this region is composed. In the view of the Court, however, the precise system of toponymy adopted for these various areas is without any legal relevance in the present proceedings; it is the physical facts of geography, not nomenclature, with which this Court is concerned.

205. Before examining the substantive Submissions of the Parties concerning the boundary in the Atlantic region, the Court must recall its previous conclusions, stated in paragraphs 48 and 61, concerning the rules of international law applicable in the present case, in so far as these conclusions have a bearing upon the determination of the boundary in this region. In those paragraphs the Court has decided, *inter alia*, that the Continental Shelf Convention of 1958 is a convention in force as between the French Republic and the United Kingdom; and that its provisions, including those of Article 6, are consequently applicable in the present case except to the extent of the reservations made to certain of these provisions by the French Republic in its instrument of accession. In paragraph 73, the Court has also decided that the French reservation regarding the application of the equidistance principle if the boundary extends beyond the 200-metre isobath is inapplicable. Accordingly, as no other reservation was made by the French Republic with respect to the application of Article 6 in the Atlantic region, it follows that, in principle, the provisions of that Article are applicable to the delimitation of the boundary in this region.

206. The Court must likewise, and in particular, recall its previous discussion, in paragraphs 89-94, of an argument advanced by the French Republic that the Atlantic region is neither a case of "opposite" nor of "adjacent" States but a *casus omissus* which falls completely outside Article 6. The Court has there held that the provisions of Article 6 are to be understood as dealing comprehensively with the delimitation of the continental shelf; and that all situations, in principle, fall under either paragraph 1 covering that of "opposite" States or paragraph 2 covering that of "adjacent" States. In so holding, however, the Court has underlined that the distinction between the two situations is not always uniform and clear-cut along the whole length of a boundary. In certain geographical configurations the relationship between the States may change from one situation to the other with the result that, as was observed in the Judgment in the *North Sea Continental Shelf* cases (paragraph 6), "a given equidistance line may partake in varying degree of the nature both of a median and of a lateral line". What that means, this Court of Arbitration has held, is that, in determining whether the French Republic and the United Kingdom are to be considered as "opposite" or "adjacent" States for the purpose of delimiting their continental shelf, the Court must have regard to their actual geographical relation to each other and to the continental shelf at each position along the boundary.

207. The French Republic in its final Submissions [paragraphs 4, 8(b) and 8(c)] asks the Court to discard the equidistance method of delimitation altogether in the Atlantic region, either on the ground that the region falls outside both paragraph 1 and paragraph 2 of Article 6 or on the ground that “special circumstances” exist which justify a method of delimitation other than that of equidistance. On the supposition that both paragraphs of Article 6 are totally inapplicable to the Atlantic region, the French Republic contends that the boundary has to be determined by reference to the rules of customary law; and that under the latter the Court is free to select any method of determining the boundary which it considers will result in an equitable delimitation. As the Court has already recalled, the supposition on which this contention is based is not one that the Court can accept. However, precisely the same position is claimed by the French Republic to result from application of the “equidistance-special circumstances” provisions of Article 6. In other words, should the Court be satisfied that special circumstances exist in the Atlantic region justifying a boundary other than one determined by equidistance, the French Republic contends that the Court is free to select any method which it considers will produce an equitable boundary.

208. Thus, whether under customary international law or Article 6, the French Republic submits that the Atlantic region calls for a method of delimitation other than that of equidistance from the nearest points of the baselines from which the territorial sea of each State is measured. Starting from that basis, it formulates its substantive submissions regarding the method to be adopted for delimiting the boundary in the Atlantic region as follows (final Submissions, paragraphs 11 and 12):

11 That so far as concerns the Atlantic sector, where the coasts of the two States are no longer opposite each other, the natural prolongation of their territories, in the absence of relevant geological factors, must be determined by prolonging into the Atlantic lines expressing the general direction of their Channel coasts.

That the bisector of the angle formed by these two lines, extending the median line in the Channel, delimits in equitable fashion those parts of the continental shelf appertaining to the United Kingdom and the French Republic, respectively;

12 That the general direction of the coasts of each State is equitably determined by lines representing such general direction through the elimination of salients and re-entrants drawn from Dungeness to Guethensbras and from Berneval to Pointe Galaite, respectively;

That the line of delimitation in the Atlantic is, in consequence, the bisector E of the angle formed by those two lines, prolonging the median line in the Channel as far as the 1,000-metre isobath.

209. In essence, the method of delimitation proposed in these Submissions is a median line prolonging the Channel median line out to the 1,000-metre isobath but no longer drawn from the baselines of the territorial sea. Instead, it is drawn midway between the two straight lines, which are said to represent the general direction respectively of the French and British coasts on either side of the English Channel. The line on the French side, marked D.G.F. (*direction générale française*) on maps and charts submitted by the French Republic, commences at Berneval, slightly to the east of Dieppe, passes across the Baie de Seine, the Cherbourg peninsula, the island of Jersey and the Golfe breton-normand and then finishes at Pointe Galaite

on the north coast of the mainland of Finistère. The line on the British side of the Channel, marked D.G.B. on the French Republic's maps and charts, commences at the headland of Dungeness some miles to the west of Dover, passes across the promontory of Beachy Head, the open waters of Poole and Lyme bays, the promontory inland of Start Point, the expanse of Plymouth Bay and the promontory of the Lizard, and then finishes at the southernmost point of Land's End. Neither the island of Ushant on the French side nor the Scilly Islands on the British side are taken into account in delimiting these straight lines, the lengths of which are given in the pleadings as approximately 455 kilometres for D.G.F. on the French side and approximately 480 kilometres for D.G.B. on the British side. The boundary which the French Republic proposes and which is marked "E" on French charts and maps is a median line that, starting from Point J, bisects the area situated between the prolongations of the lines D.G.F. and D.G.B. westwards to the 1,000-metre isobath.

210. The United Kingdom, on the other hand, in its final Submission starts from the basis that the rules applicable to the delimitation of the continental shelf in the Atlantic region are those contained in Article 6. On this basis, it submits that the entire arbitration area, including the Atlantic region, is part of the same continental shelf; that in this entire area the coasts of the United Kingdom and France "are indubitably opposite one another"; and that Article 6 was "in any event intended to cover all questions of the delimitation of the continental shelf arising between immediately neighbouring States". It asks the Court to conclude that, in consequence, "the terms and manifest intention" of Article 6 render paragraph 1 of the Article applicable to the entire area, including the Atlantic region (Submission 2). It follows, according to the United Kingdom, that, in the absence of an agreement, the boundary in the Atlantic region is "the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea is measured, unless another boundary line is justified by special circumstances" (Submission 3(a)). As for "special circumstances", the United Kingdom submits (Submission 3(b)):

In so far as it is open to France to claim the existence of special circumstances justifying another boundary in that part of the area lying to the west of approximately 5 degrees 45 minutes west of the Greenwich Meridian, France has not discharged the onus of showing that the circumstances of the area constitute special circumstances within the meaning of the said Article 6, nor that they justify a boundary line other than the median line defined above.

211. The United Kingdom, like the French Republic, puts its case on a double basis by resting it on customary law as well as on Article 6. In an alternative Submission (Submission 4) it maintains that, if the boundary is to be determined by customary law, "the rule is that the boundary line is to be drawn in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other". It then submits (Submission 5) that from this rule the Court should draw the following conclusions:

(a) given the essential geological continuity of the continental shelf throughout the entire area, it can in principle be claimed by both Parties as constituting the natural prolon-

gation of their land territories into and under the sea, and in the absence of agreement can therefore, in law, only be delimited by means of a median line;

(b) no rule of international law requires the displacement of the median line by another boundary line; since the median line, which faithfully reflects the geographical configuration of the coasts of the two States in relation to the sea, produces a result which accords with equitable principles and one which is in no way extraordinary, unnatural or unreasonable as leaving to either State areas of seabed which are uniquely part of the natural prolongation of the land territory of the other; in particular, there is no basis in law nor any objective validity for the drawing of any boundary in the South-Western Approaches, consisting of a modified "median line" constructed by means of an arbitrary version of the baselines from which it is to be measured.

212. Specifying the method by which the median line boundary which it proposes should be delimited, whether under Article 6 or customary law, the United Kingdom submits that, so far as concerns the Atlantic region, this median line should be measured (Submission 3(d)(i) and (iii):

(i) in relation to the United Kingdom, from the established baselines and bay-closing lines on the south coast of England, *including the Scilly Isles* and all other islands and low-tide elevations, all such baselines being established in fact and in law as the baselines from which the territorial sea of the United Kingdom in the area is measured;

(iii) in relation to France, from the low-water line along the North coast of France, *including Ushant, the Iles Chausey and the group known as the Roches Douvres* and all relevant low-tide elevations, and including lawful bay-closing lines (emphasis added)

In short, the method of delimitation proposed by the United Kingdom in its Submissions is the one prescribed by paragraph 1 of Article 6 in the absence of special circumstances, namely a median line equidistant from the baselines of each country; and it emphasizes that, in its view, Ushant and the Scilly Isles should each be taken into account as part respectively of the baselines of France and of the baselines of the United Kingdom.

213. The principal considerations and arguments invoked by the Parties in support of their Submissions regarding the Atlantic region must now be examined. In doing so, however, the Court will not revert to those parts of their arguments which relate specifically to the question whether it is under the regime of Article 6 or of customary law that the boundary has to be delimited in this region; for the Court has already dealt with that question and decided that it is Article 6 which applies. Those arguments will, accordingly, be referred to here only in so far as they may throw light on the substantive question which still remains for decision, namely, the appropriate method to be employed in this region for delimiting the continental shelf as between the French Republic and the United Kingdom.

214. The considerations and arguments invoked by the French Republic are, in part, of a negative character designed to establish the inappropriateness of the equidistance method in the Atlantic region and, in part, of a positive character designed to justify the method of delimitation which it proposes. Its main negative argument is that special circumstances exist in this region which call for a method of delimitation other than that of equidistance. In 1965, in formulating its reservations to Article 6, the French Republic did not mention the Atlantic region among the "areas where, in its opinion, there are 'special circumstances' within the meaning of Article 6,

paragraphs 1 and 2''. As soon as the negotiations concerning the boundary began in 1970, however, the French delegation raised the question of the existence of special circumstances in this region (U.K. Memorial, Appendix A(9), pp. 3-4). In fact, during the course of the negotiations it put its claim to regard the Atlantic region as a case of special circumstances on more than one ground. First, it seems to have considered this to be a corollary of its general thesis that the situation westwards of the Scillies-Ushant line is neither one of "opposite" nor one of "adjacent" States. Secondly, it seems then to have considered the existence in the Atlantic of an ill-defined area, thought to hold out favourable prospects of exploitation and to which it gave the name Bassin d'Iroise,¹⁷ as a "special circumstance". At a meeting in 1971, however, it referred more specifically to "the effect of the small islands in the Scillies and Ushant on the general direction of the English and French coasts" as constituting special circumstances; and it added that "the disproportionate effect at the western end of the line of the Scillies and Ushant was another indication that the delimitation agreement should take account of these islands as a particular feature" (U.K. Memorial, Appendix A(15), pp. 3-4).

215. Subsequently, and before the Court, the French Government has placed the emphasis on the particular geographical relation of the coasts of the two countries in the Atlantic region and the allegedly distorting effect of the respective positions of the Scilly Isles and the island of Ushant, if the equidistance method is employed to delimit the boundary. Thus, in a letter of 12 April 1972 the chief French delegate wrote to the Chief United Kingdom delegate as follows (U.K. Memorial, Appendix A(16), pp. 1-2):

If the drawing of an equidistance line appears to be the most natural solution in the area where the coasts of France and of the United Kingdom are opposite each other—and here our two delegations are in full agreement—the same cannot be said for the Iroise area, where the absence of adjacent coasts makes a median-line delimitation completely arbitrary, deflected by the slightest geographical feature, in particular islands and projections of the coast. *In the Iroise area, the problem is in fact a problem of delimitation similar to that which arises between adjacent States. It is a case akin to that which in 1969 the International Court of Justice gave its judgment and enumerated the geographical, geological or economic reasons of a kind to justify a boundary other than the equidistance line (emphasis added).*

In a further letter of 20 November 1972, after repeating the French contention that the Atlantic region falls outside both paragraphs of Article 6, the chief French delegate expressly invoked the observation in the Judgment in the *North Sea Continental Shelf* cases as to the distorting effect of certain geographical features in the case of a lateral delimitation between adjacent States on the basis of equidistance. He then continued (U.K. Memorial, Appendix A(19), p. 2):

This observation, which refers to the case of adjacent States is still more pertinent in the present case, where the distances out from the coasts are considerable. *This "geographical feature" resulting from the respective positions of the Scilly Islands and Ushant*

¹⁷ This expression was a neologism, the existing designation "Mer d'Iroise" referring to a different sea area to the south and south-east of Ushant.

involves a deviation of the dividing line which becomes all the more important and unjustified as one moves seawards (emphasis added).

216. Before the Court, while invoking the existence of special circumstances in the Atlantic region only as an entirely subsidiary argument, the French Republic has furnished further explanations as to what it regards as those special circumstances (French Reply, paragraphs 238-244). It argues that the existence respectively of the Scilly Isles and the Island of Ushant and their effect on the course of the equidistance line constitute a typical case of a special circumstance. To apply the equidistance principle by delimiting the line from two points situated respectively on a far rock in the Scilly Isles and on the island of Ushant produces, in its opinion, a considerable deviation of the line, quite disproportionate to the importance of these geographical features in comparison with an equidistance line calculated from the land masses of England and France. It stresses that at the Geneva Conference of 1958 the United Kingdom itself insisted upon the problem raised by small islands. Nor does it accept the United Kingdom's thesis of the symmetry in the present instance of the respective positions of the Scilly Isles and the island of Ushant. The Scilly Isles, it says, are situated at a distance from the mainland of England twice as great as that which separates Ushant from the French coast; and the distance between Bishop Rock and the Scillies and the mainland (31 nautical miles) is, in fact, rather more than twice that between Pointe de Pern on Ushant and the French coast (14 nautical miles). This difference in the positions of the two points, according to the French Republic, results in a distortion of the boundary which requires to be corrected by application of equitable principles.

217. The mere fact that, as the French Republic maintains, the situation in the Atlantic region is neither one where the two coasts are opposite each other nor one where they are adjacent to each other is further said by it to constitute a quite extraordinary "special circumstance". But it also claims to find in the Atlantic region another feature negating the use of the equidistance method. Alleging that the line proposed by the United Kingdom is constructed by reference to only two base-points, Bishop Rock in the Scillies and Pointe de Pern on Ushant, it contends that this is not an equidistance line as commonly understood either in customary international law or in the 1958 Convention, and is certainly not a "median" line. In its view, since both paragraphs of Article 6 speak of equidistance from the nearest points of the baselines, an equidistance line, if it is not to be an arbitrary line, must be drawn from sufficient portions of the two coasts and not from single points on those coasts. An equidistance line which does not satisfy this condition does not conform, it maintains, to the method of delimitation prescribed in Article 6. Commenting upon certain precedents invoked by the United Kingdom as showing median lines prolonged beyond the point where the coasts of the States concerned are no longer "opposite" each other, the French Republic accepts the existence of such cases. But it argues that a boundary prolonged beyond the position where the coasts face each other can be considered a delimitation between "opposite" States only where it is delimited from a plurality of points on the opposing coasts. The French Republic also explains that, if it does not designate the absence of a plurality of

base-points in the Atlantic region as a "special circumstance", this is only because it considers that the rules laid down in Article 6 cannot have any application in that region.

218. The affirmative arguments advanced by the French Republic in support of its line E, delimited by reference to the general directions of the two coasts, draw largely upon principles and analogies derived from the Judgment in the *North Sea Continental Shelf* cases. Article 6 being, in its view, inapplicable to the Atlantic region, it maintains that the Court is free to adopt any method or methods for determining the boundary provided that the resulting delimitation accords with the principle of the natural prolongation of the land territory and with equitable principles. It takes the position that, although the Atlantic region may be said to be "adjacent" to the coasts of the United Kingdom, as also of the French Republic, the United Kingdom possesses no maritime facade on the Atlantic; and that even its own maritime facade is small. From this absence of relevant maritime facades it asks the Court to conclude that some other basis for determining the application of the principle of natural prolongation of the land territory in the Atlantic region must be looked for than the coasts of the two countries abutting on that region. Such a basis, it contends, can be found only in the coasts of the two countries in the Channel. It emphasizes that its proposal does not envisage the use of the actual coasts in the Channel as a means of effecting a delimitation in the Atlantic region; for they have already been used once in delimiting the boundary in the Channel. What it envisages is that they should be used to determine the natural prolongation of the land territory of the two countries into the Atlantic.

219. The French Republic also asks the Court to have regard to other elements in the Judgment in the *North Sea Continental Shelf* cases. It refers to the emphasis placed in that case on the factor of distance in appreciating the inequitable effects of a minor geographical feature and on the particular significance of this factor in lateral delimitations between "adjacent" States. Moreover, while denying that the French Republic and the United Kingdom can be regarded as "adjacent" States in the Atlantic region, it suggests that the situation has some analogies with that of a lateral delimitation between "adjacent" States. In particular, the French Republic invokes the use in the *North Sea Continental Shelf* cases, and previously in the *Fisheries* case (I.C.J. Reports 1951) of straight lines following the general direction of the coast, and it maintains that those cases establish the concept of "the general direction of the coast" as a criterion of general validity in the delimitation of maritime areas. In putting forward the lines D.G.F. and D.G.B. as constituting the general directions of the French and British coasts in the Channel, it provides detailed explanations of the methods which it has used in arriving at the construction of those lines. For reasons which appear in paragraphs 246-247, however, the Court does not find it necessary to enter into those aspects of the French argument regarding the general directions of the two coasts.

220. The French Republic does not propose that the concept of the general direction of the coast should be applied simply as such; it proposes

rather that the concept should be applied in combination with, and in the context of, "proportionality", which it puts forward as a general principle. This principle it likewise derives from the Judgment in the *North Sea Continental Shelf* cases, where "proportionality" figures in the Judgment as a criterion applied in conjunction with the use of straight lines for constructing the maritime facades of the three States concerned, that is their coastal frontages abutting on the continental shelf of the North Sea. The French Republic also cites a recent Convention concluded between it and Spain for the delimitation of their continental shelf boundary in the Gulf of Gascony as a case where these two concepts had been applied in a similar manner. Applying the two concepts to the situation in the Channel and Atlantic region, the French Republic contends that at the least "proportionality" requires that France which has some maritime facade in the Atlantic region should not be given worse treatment than the United Kingdom which, in its view, has none. It also contends that in determining the lengths of the two coasts in the Channel to be taken into account for the purpose of delimiting the boundary in the Atlantic region, proportionality requires that they should be comparable to the lengths of the prolongation of their general directions into the Atlantic.

221. The considerations and arguments advanced by the United Kingdom in support of the median-line boundary which it proposes are less complex than those invoked by the French Republic and can be stated more briefly. Both in the negotiations in the period 1970-1974 and before the Court, the United Kingdom has taken the position that in the Atlantic region the legal situation is that of a delimitation between two "opposite" States. It has likewise taken the position in the negotiations and before the Court that the location of the Scilly Islands some miles to the west of the Cornish peninsula does not constitute a "special circumstance" within the meaning of Article 6 or justify a boundary other than the median line.

222. The United Kingdom, as previously mentioned in paragraph 93, bases its characterisation of the Atlantic region as a case of "opposite" States on two main propositions, one negative and one positive. First, it says that the natural meaning of the expression "two adjacent States" in paragraph 2 of Article 6 is "two States whose territories are alongside one another and who have a common land frontier"; and that, as France and the United Kingdom are separated by a wide area of sea, they cannot be considered as having "adjacent" coasts. Secondly, it says that throughout the entire arbitration area, and indeed further eastwards to the Straits of Dover, the coasts of the United Kingdom and France constitute a "textbook example" of coasts which "are opposite each other" within the meaning of paragraph 1 of Article 6; and that although in the Atlantic region the areas of shelf "lie off, rather than between, their two coasts, there is no reason for changing the relationship of 'opposite' States which exists for the whole length of the Channel". In support of this proposition, it stresses the essential continuity of the continental shelf of the Channel and the Atlantic region, as well as the absence of any exceptional geographical configurations which might warrant the latter being treated as a separate sector. It cites, in this regard, a statement in the French Republic's Reply: "The French and British coasts are

neither very irregular nor differ very much from each other even if the French coast is more broken." Endorsing that statement, it contends that "precisely for that reason the median line in consequence follows the line of thrust of the two land masses, in a south-westerly direction, out into the Atlantic".

223. At the same time, the United Kingdom rejects the French Republic's thesis that the United Kingdom has no maritime facade in the Atlantic region and projects into it only at Bishop Rock in the Scilly Isles. It maintains that, on the contrary (U.K. Counter-Memorial, paragraph 270):

the thrust of the United Kingdom into the South-Western Approaches, far from being simply that of Bishop Rock, is constituted by the whole of south-west England (including the Scilly Isles) and part of Wales. In reality, however, what actually projects under the sea in the South-Western Approaches is part of the same continental shelf which underlies the English Channel (and the Irish and Celtic Seas). The concept of the continental shelf is that, whatever be the points of measurement, the continental shelf attaches to, and as a matter of apportionment reflects, the adjacent land mass. The fallacy in the French argument is the assumption that what has to be reflected is Bishop Rock. Bishop Rock is not the land mass of the United Kingdom adjacent to the continental shelf, it is simply a point of measurement, the most extreme westerly point on the United Kingdom baseline

As a matter of actual fact, the United Kingdom observes, the westerly extremity of the baseline of the United Kingdom is not Bishop Rock but another rock in the Scilly Isles called the Crebinicks.

224. The United Kingdom likewise rejects the French Republic's contention that an equidistance line prolonged on by reference to one base-point does not conform to the concept of an equidistance line as envisaged in Article 6. In the first place, it dissents from the French Republic's interpretation of the expression "the nearest points" in paragraph 1 of the Article (U.K. Counter-Memorial, paragraph 273):

Neither the English nor the French language text of that paragraph leaves any room for doubt that what the negotiating States had in mind was the truism that *each point* on the median line is determined by the fact that it is equidistant from the *nearest points* on the baselines of the two States; that is to say, equidistant from the nearest *point* on one baseline and the nearest *point* on the other; hence the use of the plural. In its very essence, therefore, the paragraph is based upon the idea of only two points, one on each baseline, determining a third point or series of points on the median line. Practical experience shows that, for the construction of any delimitation by way of a median line as between opposite States, only a relatively small number of coastal points come into play and these points, between themselves, determine the entire course of the boundary which may stretch over several hundred miles. Even then, however, these points constitute a series of points all along each coast, just as there is such a series of points along each coast in the present case. A whole series of points all along the South coast of England has been used to determine the median line, of which Bishop Rock [the Crebinicks] is the last (just as, on the French side, the Pointe de Pern on Ushant is the last). Logically, there must be a last point, a most extreme point. But it does not make it the only point, nor does it make it "arbitrairement choisi"; the choice is the product of geographical fact and not in the least arbitrary" (emphasis in the original).

Describing the operation of this technical process in the Atlantic region in greater detail during the oral proceedings, the United Kingdom stated (Hearing of 8 February 1977):

The British base-points move from Lizard Head to a point on the south coast of the Scillies and thence gradually some eight kilometres further to the western end of the Scilly Isles to a rock there . . . whilst a single point on the north coast of Ushant controls the same 45-mile stretch of the equidistance line. It controls the whole of that length. The

Ushant base-point then moves in stages some five kilometres to the westernmost rocks, and the westernmost points of Ushant and the Scillies do not fully determine the equidistance line until a position over 60 miles, or 111 kilometres, beyond the line joining them, and after that the Ushant point still moves slightly further south.

The United Kingdom concedes that in this instance the movements of the base-points do not result in any significant change in the course of the equidistance line out to the 1,000-metre isobath. But it claims that they demonstrate that the French Republic's contention is an oversimplification which is misleading.

225. The United Kingdom asks the Court, in the light of the above considerations, to conclude that there is no substance in the French thesis that an equidistance line loses its logical foundation if it is not based on a series of points on each of the two coasts in question. It also refers the Court to a number of examples in State practice of equidistance line boundaries determined for part of their length by a single or by very few base-points. Amongst these it mentions in particular the continental shelf boundaries in the North Sea between Norway and the United Kingdom and between Norway and Denmark.

226. As for the French Republic's contention that the respective situations of the Scilly Isles and the island of Ushant amount to a "special circumstance", the United Kingdom concedes that nothing prevents the French Republic from arguing that some geographical feature constitutes a special circumstance in the Atlantic region, even though it made no reservation with regard to that circumstance in acceding to the Convention (U.K. Counter-Memorial, paragraph 94). On the other hand, it asks the Court to take a strict view of the conditions under which a case of special circumstances justifying a boundary other than the median line may be established. *Inter alia*, it contends that (Hearing of 7 February 1977):

Special circumstances can only mean an exceptional geographical configuration in the sense of a geographical feature which is highly unusual;

Such a feature may justify another boundary on ground of convenience, practicality, or equity;

Where an "equitable" justification is advanced, it must be shown that the exceptional geographical feature distorts the boundary in a manner totally disproportionate to its importance;

By definition, therefore, such a distortion can only arise from very minor features

In applying these criteria to the Atlantic region, the United Kingdom invokes a passage in the Judgment in the *North Sea Continental Shelf* cases which it claims to fit the situation in the region exactly. In this passage, the full text of which has already been set out in paragraph 85, the International Court of Justice spoke of each State, in a case of "opposite" States, being able to claim the continental shelf as a natural prolongation of its territory and then continued:

These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and ignoring the presence of islets, rocks and minor coastal projections, the disproportionately distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved (emphasis added)

This passage is invoked by the United Kingdom as indicating what the International Court of Justice understood by "special or unusual features".

Both Ushant and the Scilly Isles, it maintains, "are islands of considerable size", and under no circumstances could either be classed as an islet or rock and on that basis ignored.

227. In regard to the Scilly Isles, the United Kingdom stresses the facts that, geologically, they form an integral part of the land mass of the United Kingdom; that they consist of a group of some 48 islands of which six are inhabited; that they have a sizeable population, and have for centuries been regarded as an integral part of the United Kingdom. In these circumstances, it says, the Scilly Isles clearly constitute "islands" for the purpose of Article 1(b) of the 1958 Convention and, as such, "generate their own shelf". Stressing also that at their furthest point they lie no more than 31 nautical miles and at their nearest point only 21 miles from the Cornish coast, it claims that they are indisputably offshore islands of the United Kingdom. As for the continental shelf "generated" by the islands, the United Kingdom says that "on the landward side, facing the Cornish coast, there is no purpose in attempting to distinguish between the continental shelf of the United Kingdom and that of the Isles of Scilly in view of the geological unity between the islands and the Cornish peninsula and the fact that the islands are an integral part of the United Kingdom". On the seaward side, it says that the Scilly Isles represent a continuation of the Cornish peninsula, thrust out into the Atlantic region and continuing the same south-westerly trend or direction as the peninsula; and that in its view "there is no possible basis for denying to the islands their full effect for purposes of drawing the median line between the United Kingdom and France".

228. Similarly, the United Kingdom observes that Ushant is geologically an integral part of the French land mass, and is manifestly an offshore island which forms part of the coast of France. Pointing out that Ushant is included within the straight baselines promulgated by the French Republic in 1967 for the delimitation of its territorial sea, it states that this could only have been because the French Republic quite properly regarded Ushant as essentially part of its coast. Adding that the legality of using Ushant as a base-point for delimiting the continental shelf is beyond doubt, the United Kingdom suggests that the French Republic chooses not to do so and to treat Ushant as a "special or unusual feature" only because the logic of the situation would otherwise compel it to concede similar treatment for the Scilly Isles.

229. In general, the United Kingdom maintains that the median line which it proposes in the Atlantic region, measured from points both on the Scilly Isles and on Ushant, does not have the effect of attributing to the United Kingdom any areas of continental shelf which can be said to be *uniquely* a natural prolongation of the continental shelf of France. On the contrary, it says, the situation is one of overlap and the appropriate boundary is the median line. It invokes at the same time a statement in the Judgment in the *North Sea Continental Shelf* cases regarding the function of equity (paragraph 91):

Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question

of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline. Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy.

The fact that the Cornish peninsula and the Scilly Isles reach further into the Atlantic than the Breton peninsula and Ushant is, it insists, simply a fact of nature and to ignore the Scillies would be to refashion nature.

230. The United Kingdom addresses a number of criticisms to the French Republic's proposal of a median line delimited by reference to the prolongations of the general directions of the coasts of the two countries. *Inter alia*, it contests the analogies drawn by the French Republic from the Judgment in the *North Sea Continental Shelf* cases. It maintains that the geographical situation in those cases, where there was a conclave coastline formed by the coasts of three States, differed fundamentally from the situation in the Atlantic region; and that the International Court's application of the concepts of maritime facades and of proportionality of areas of shelf in relation to the lengths of the facades is explained by the special facts of the North Sea cases. In addition, it contests both the scientific basis and the relevance of the particular "lignes de lissage", that is of the particular straight lines along the two coasts chosen by the French Republic as representing their general directions. The construction of these lines it alleges is purely arbitrary and other, equally valid, methods can be suggested that give quite different results. Amongst other objections to the relevance of the French "lignes de lissage", the United Kingdom considers that (U.K. Counter-Memorial, paragraph 329):

there is no consistency in a position which accepts that the boundary line is determined by the actual features as they lie off the two coastlines, *including the Scilly Islands and Ushant*, for the areas to the East of these islands, but formally denies to these features the same relevance further west *while nevertheless claiming to substitute for them in this latter region artificial lines which are said to be based upon the self-same features* (emphasis in the original)

231. As for "proportionality", in addition to contesting the relevance in the present case of combining it with the length of the maritime facades, the United Kingdom challenges the bases on which the French Republic makes its calculations of proportionality. Indeed, it claims that, if other bases which it regards as more appropriate are used, the calculations of "proportionality" serve only to support the equitable character of the median line boundary proposed by the United Kingdom. In any event, as the Court has already pointed out in paragraph 24, the United Kingdom claims that any assessment of what would be an equitable delimitation as between itself and the French Republic must, in the words of the International Court of Justice, take account of "the effects, actual or prospective, of any other continental shelf delimitation between adjacent States in the same region". In the Atlantic region, it maintains, the French Republic, the United Kingdom and the Republic of Ireland are three States abutting upon the same continental shelf, as were the Netherlands, the Federal Republic of Germany and Denmark in the *North Sea Continental Shelf* cases. It asks this Court, in consequence, to see an analogy between its position as the middle State compressed between the French and Irish areas of continental shelf and that of the Federal Republic. If the Scilly Isles were to be disregarded in the de-

limitation of its boundaries both with French and Irish Republics, the resulting compression of the United Kingdom's continental shelf by those of its two neighbours would, in its view, constitute a serious injustice to the United Kingdom.

232. The Court, as in the Channel Islands region, will begin by identifying the geographical and other features which establish the legal framework for its decision regarding the course of the continental shelf boundary in the Atlantic region. The essential continuity of the continental shelf of the English Channel and Atlantic region has already been emphasized repeatedly in the present Decision. It is also common ground between the Parties that, geologically, the slight south-westerly trend of the continental shelf of the Channel extends westwards into the Atlantic region along the line of the faults referred to in the pleadings as the Hurd Deep Fault Zone. They are likewise agreed that, geologically, the island of Ushant forms an integral part of the land mass of France, and the Scilly Isles part of the land mass of the United Kingdom; and in the western region of the Channel the coast of France, including the island of Ushant, and the coast of the United Kingdom, including the Scilly Isles, have the same south-westerly trend as the continental shelf of the Channel and the Atlantic region. In these various respects, therefore, the United Kingdom's insistence that the Atlantic region may not be considered a separate sector of the arbitration area has a certain justification. Nevertheless, in the view of the Court, this region has characteristics which distinguish it geographically and legally from the region within the English Channel.

233. The chief of these distinguishing characteristics consists in the fact that the continental shelf of the Atlantic region is not one confined within the arms of a comparatively narrow channel but one extending seawards from the coasts of the two countries into the open spaces of the Atlantic Ocean. In consequence, the areas of continental shelf to be delimited, in the phrase used by the United Kingdom, lie off, rather than between, the coasts of the two countries. A further consequence is that the continental shelf across which the Court has to decide the course of the boundary extends to seawards of the coasts of the two countries for great distances. In fact, as already noted in paragraph 11 of this Decision, the distance from Ushant to the limit of the arbitration area at the 1,000-metre isobath, taken in a south-westerly direction, is of the order of 160 nautical miles; and the distance from the Scilly Isles, taken in the same general direction, is of the order of 180 nautical miles. Other distinguishing characteristics are that the actual coastlines of the two countries abutting on the continental shelf to be delimited are comparatively short; and that, although separated by some 100 miles of sea, their geographical relation to each other vis-à-vis the continental shelf to be delimited is one of lateral rather than opposite coasts.

234. Whether these differences in the geographical situation in the Atlantic region alter the legal framework for the delimitation of the continental shelf in this part of the arbitration area will shortly be examined by the Court. The Court considers it convenient, however, first to identify any other features which may form part of the geographical and legal framework

of the delimitation. First, although the coasts of the two countries abutting on the continental shelf to be delimited are of somewhat different shapes, they exhibit certain similarities. Both are peninsulas which constitute the ultimate reach of their respective territories into the Atlantic region; both have offshore islands which project their respective territories still further into the region; nor can the court accept the thesis of the French Government that, while France has a small maritime frontage facing the region, the United Kingdom has none. To deny that the latter possesses a maritime frontage upon the region is to mistake form for substance. Although more complex in form and less easy perhaps to define, the United Kingdom possesses a frontage upon the region which is comparable broadly in its extent with that of the French Republic, as well as having the same relation to the continental shelf to be delimited.

235. The pertinent dissimilarity between the two coasts, for the purpose of delimiting the boundary of their continental shelf, is rather the one invoked by the French Republic as a "special circumstance" calling for a boundary other than the equidistance line. This is the circumstance, not that the United Kingdom has no coastal frontage upon the Atlantic region, but that its coastal frontage projects further into the Atlantic than that of the French Republic. The greater projection of the United Kingdom coast into the Atlantic region is due in part to the fact that the most westerly point of its mainland is situated almost one degree further to westward than that of the French mainland. But it is also due to the greater extension westwards of the Scilly Isles beyond the United Kingdom mainland than that of Ushant beyond the French mainland. Thus, at its nearest point, Ushant is only about 10 miles and at its most westerly point no more than 14.1 nautical miles from the coast of Finistère; the nearest point of the Scilly Isles, on the other hand, is some 21 nautical miles and their most westerly point some 31 miles distant from Land's End. As a result, even when account is taken of the slight south-westerly trend of the English Channel, the further extension south-westwards of the United Kingdom's coast has a tendency to make it obtrude upon the continental shelf situated to seawards of the more westerly facing coast of the French Republic in that region.

236. An additional feature of the Atlantic region, already referred to in paragraphs 23-28 of this Decision, also needs to be recalled, namely the fact that the French Republic and the United Kingdom are not the only States which abut upon the continental shelf in the Atlantic westwards of France and the United Kingdom. The existence of the Spanish coast far to the south-west is not material in the present arbitration. But the possible impact of the claims of the Irish Republic in the north upon the areas of continental shelf accruing to the United Kingdom in the Atlantic region has been invoked by the latter and discussed by the French Government in the pleadings. Accordingly, the Court has necessarily taken cognizance of this feature of the Atlantic region although, as indicated in paragraphs 23-28, it does not itself consider that the abutting of the Irish Republic on the same continental shelf in the north affects its decision regarding the boundary between the United Kingdom and the French Republic in these proceedings.

237. What then is the legal framework for the delimitation of the

boundary in the Atlantic region, having regard to the various features of the situation in the region to which the Court has drawn attention? The Court has already held both that Article 6 governs the delimitation in the Atlantic region and that there is no question of any *casus omissus* which does not fall within the scope of either paragraph 1 or paragraph 2 of the Article. The question, therefore, is whether it is paragraph 1, dealing with "opposite" States, or paragraph 2, dealing with "adjacent" States, which is applicable. In the pleadings both Parties have taken it for granted that, owing to the wide expanse of sea separating the two coasts at the entrance to the Channel, the situation cannot be considered one of "adjacent" States within the meaning of paragraph 2 of Article 6. The controversy between them has been as to whether the "opposite" States relationship, which certainly exists within the entrances to the Channel, should be considered as continuing into the Atlantic region or whether, owing to the cessation of the "opposing" coasts of the entrances to the Channel, the situation should be considered to fall outside paragraph 1, as well as paragraph 2, of Article 6. The United Kingdom assumes that, if the situation is legally one of "opposite" States governed by paragraph 1, the pronouncement in the *North Sea Continental Shelf* cases that the shelf can then only be delimited by means of a median line automatically applies; and that "ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved" (I.C.J. Reports 1969, paragraph 57). The French Republic assumes that, in the absence of coasts beyond Ushant and the Scilly Isles, the method of delimitation by equidistance from the baselines of the coasts of the two countries loses all its validity. Both these assumptions appear to the Court to oversimplify the legal situation.

238. The rules of delimitation laid down in the two paragraphs of Article 6 are essentially the same. In the absence of agreement, and unless another boundary is justified by special circumstances, the boundary is to be the line which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured. In paragraph 1 the line is designated "the *median* line every point of which is equidistant from the nearest points of the baselines" etc.; in paragraph 2 it is simply referred to as the boundary "determined by application of the principle of equidistance from the nearest points of the baselines" etc. But both the legal rule and the method of delimitation prescribed in the two paragraphs are precisely the same. Consequently, there is nothing in the language of Article 6 to imply that in situations falling under paragraph 1 the virtues of the equidistance principle as a method of effecting an equitable delimitation are in any way superior to those which it possesses in situations falling under paragraph 2. The emphasis placed in the *North Sea Continental Shelf* cases on the difference between the situations of "opposite" and "adjacent" States reflects not a difference in the *legal* régime applicable to the two situations but a difference in the *geographical* conditions in which the applicable legal régime operates.

239. As this Court of Arbitration has already pointed out in paragraphs 81-94, the appropriateness of the equidistance or any other method

for the purpose of effecting an equitable delimitation in any given case is always a function or reflection of the geographical and other relevant circumstances of the particular case. In a situation where the coasts of the two States are opposite each other, the median line will normally effect a broadly equal and equitable delimitation. But this is simply because of the geometrical effects of applying the equidistance principle to an area of continental shelf which, in fact, lies between coasts that, in fact, face each other across that continental shelf. In short, the equitable character of the delimitation results not from the *legal* designation of the situation as one of "opposite" States *but from its actual geographical character as such*. Similarly, in the case of "adjacent" States it is the lateral geographical relation of the two coasts, when combined with a large extension of the continental shelf seawards from those coasts, which makes individual geographical features on either coast more prone to render the geometrical effects of applying the equidistance principle inequitable than in the case of "opposite" States. The greater risk in these cases that the equidistance method may produce an inequitable delimitation thus also results not from the *legal* designation of the situation as one of "adjacent" States *but from its actual geographical character as one involving laterally related coasts*.

240. What is, moreover, evident is that the relevance of the distinction between opposite and adjacent coasts is in regard to the operation of the "special circumstances" element in the "equidistance-special circumstances" rule laid down in Article 6 for both situations. What is also evident in the view of the Court, is that the answer to the question whether the effect of individual geographical features is to render an equidistance delimitation "unjustified" or "inequitable" cannot depend on whether the case is *legally* to be considered a delimitation between "opposite" or between "adjacent" States. The appreciation of the effect of individual geographical features on the course of an equidistance line has necessarily to be made by reference to the actual geographical conditions of the particular area of continental shelf to be delimited and to the actual relation of the two coasts to that particular area.

241. Clearly, there is considerable force in the contention, put forward by both Parties, that, owing to the separation of the two coasts by a wide expanse of sea, the situation in the Atlantic region cannot be categorized as, legally, a case of "adjacent" States governed by paragraph 2 of Article 6. If that view is accepted, it follows that the situation is to be considered as, legally, a case of "opposite" States and therefore one governed by paragraph 1 of that Article. It is, on the other hand, certain that in the Atlantic region the situation *geographically* is one of two laterally related coasts, abutting on the same continental shelf which extends from them a great distance seawards into the Atlantic Ocean. Indeed, the Court notes that so evident is this lateral relation of the two coasts, *geographically*, that both Parties in their pleadings saw some analogy between the situation in the Atlantic region and the situation of "adjacent" States. Accordingly, whether the Atlantic region is considered, legally, to be a case of "opposite" States governed by paragraph 1 or a case of "adjacent" States governed by paragraph 2 of Article 6, appreciation of the effects of any special geographical

features on the equidistance line has to take account of those two geographical facts: the lateral relation of the two coasts and the great distance which the continental shelf extends seawards from those coasts.

242. In so far as the point may be thought to have importance, the Court is inclined to the opinion that the Atlantic region falls within the terms of paragraph 1 rather than paragraph 2 of Article 6. As the United Kingdom emphasizes, there are a number of precedents in which equidistance boundaries between "opposite" States are prolonged seawards beyond the point where their coasts are geographically "opposite" each other; and the assumption seems to be that these are prolongations of median lines. Another view of the matter might be that, beyond the point where the coasts are geographically opposite each other, the legal situation changes to one analogous to that of adjacent States. In certain geographical configurations, as was stated in the *North Sea Continental Shelf* cases in an observation recalled by the United Kingdom itself, "a given equidistance line may partake in varying degree of the nature both of a median and of a lateral line" (paragraph 6). But to fix the precise legal classification of the Atlantic region appears to this Court to be of little importance. 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.

243. The essential point, therefore, is to determine whether, in the actual geographical circumstances of the Atlantic region, the prolongation of the Scilly Isles some distance further westwards than the island of Ushant renders "unjust" or "inequitable" an equidistance boundary delimited from the baselines of the French and United Kingdom coasts. The effect of the presence of the Scilly Isles west-south-west of Cornwall is to deflect the equidistance line on a considerably more south-westerly course than would be the case if it were to be delimited from the baseline of the English mainland. The difference in the angle is $16^{\circ}36'14''$; and the extent of the additional area of shelf accruing to the United Kingdom, and correspondingly not accruing to the French Republic, in the Atlantic region eastwards of the 1,000 metre isobath is approximately 4,000 square miles. The mere fact, however, 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 disproportionate effects on the areas of shelf accruing to the two States.

244. The projection of the Cornish peninsula and the Isles of Scilly, further seawards into the Atlantic than the Brittany peninsula and the island of Ushant, is a geographical fact, a fact of nature; and, as was observed in the *North Sea Continental Shelf* cases, there is no question of equity "com-

pletely refashioning nature” or “totally refashioning geography” (Judgment, paragraph 91). It may also be urged that the very fact of the projection of the United Kingdom land mass further into the Atlantic region has the natural consequences of rendering greater areas of continental shelf appurtenant to it. Nevertheless, when 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 1,000-metre isobath may not distort the boundary and have disproportionate effects as between the two States. 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 of much 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 recognized 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.

245. The Court thus recognizes that the position of the Scilly Isles west-south-west of the Cornish peninsula constitutes a “special circumstance” justifying a boundary other than the strict median line. It does not, however, consider that the existence of this “special circumstance” in the Atlantic region gives it carte blanche to employ any method that it chooses in order to effect an equitable delimitation of the continental shelf. The French Republic, it is true, has impressed upon this Court certain observations in the Judgment in the *North Sea Continental Shelf* cases to the effect that, in order to achieve an equitable solution, “it is necessary to seek, not one method of delimitation but one goal” (Paragraph 92), and 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” (paragraph 93). But in these cases the Parties had retained the actual delimitation of the boundary in their own hands for further negotiation in the light of the principles and rules to be stated by the International Court of Justice; and in any event the observations invoked by the French Republic have to be read in the light of certain other observations of the International Court in the same Judgment. In these other observations, it was stressed that any recourse to equitable considerations must be to considerations “lying not outside but within the rules” of law, and that there is no question of any decision *ex aequo et bono* (paragraph 88); and, as already noted, it was also stressed that “there can never be any question of completely refashioning nature” (paragraph 91). Furthermore, at the outset of the Judgment it was underlined that delimitation of the continental shelf is not a process of dividing it up into equitable “shares” but of delimiting a boundary in areas which, in principle, are already appurtenant to one or the other State; and that the notion of “the just and equitable share” is wholly at variance with the funda-

mental principle that the continental shelf appertains to the coastal State as the natural prolongation of its land territory (paragraphs 18-20).

246. The "equitable" method of delimitation which is advocated by the French Republic, and which invokes a median line delimited by reference to prolongation of the general directions of the Channel coasts of the two countries, does not appear to the Court to be one that is compatible with the legal régime of the continental shelf. It detaches the delimitation almost completely from the coasts which actually abut on the continental shelf of the Atlantic region, and is thus not easily reconciled with the fundamental principle that the continental shelf constitutes the natural prolongation of a State's territory under the sea. In so far as that method may have relation to the respective land masses of the Parties, it is not apparent why the general directions of their Channel coasts alone should be considered to represent either the totality or any particular part of their land masses. In addition, there appears to be a radical inconsistency in the French Republic's recourse to the general directions of the two Channel coasts as the criterion for delimiting the continental shelf of the Atlantic region. In the pleadings, the French Republic has insisted that the coasts of the two countries within the Channel are irrelevant for the purpose of determining whether the situation in the Atlantic region is one of "opposite" States, for which a median line delimitation is indicated both by Article 6, paragraph 1 of the Convention and by customary law unless another boundary is justified by special circumstances. It is not, therefore, obvious how or why the coasts within the Channel should, on the contrary, acquire an absolute relevance in determining the course of the boundary itself in the Atlantic region. Nor is this inconsistency removed by invoking an alleged principle of proportionality by reference to length of coastlines; for the use of the Channel, rather than the Atlantic, coastlines is still left unexplained. Moreover, as the Court has already stated in paragraphs 98-101, "proportionality" is not in itself a source of title to the continental shelf, but is rather a criterion for evaluating the equities of certain geographical situations.

247. The Court, for the above reasons, finds itself unable to accept the prolongations of the general directions of the Channel coasts of the two countries as a relevant basis for determining the course of the boundary in the Atlantic region. It need not, therefore, explore the further difficulties which the application of that method would involve in determining the precise lines that should be considered as the appropriate representation of the general directions of the two coasts.

248. The Court considers that the method of delimitation which it adopts for the Atlantic region must be one that has relation to the coasts of the Parties actually abutting on the continental shelf of that region. Essentially, these are the coasts of Finistère and Ushant on the French side and the coasts of Cornwall and the Scilly Isles on the United Kingdom side. The island of Ushant not only forms part, geologically, of the land mass of France but lies no more than ten nautical miles from the French coast within the territorial sea of the French mainland. Indeed, the island forms one of the links in the system of straight baselines along the French coast established by the

French Republic in 1964. The Scilly Isles likewise form part of the land mass of the United Kingdom and, although some 21 miles distant from the mainland, they are unquestionably islands offshore of the United Kingdom which, both geographically and politically, form part of its territory. In fact, the existing 12-mile fishery zones of the mainland and of the Scilly Isles merge into one and, if the United Kingdom exercises the right which it claims to establish a 12-mile territorial sea, the same will be the case with their territorial sea. Both Ushant and the Scilly Isles are, moreover, islands of a certain size and populated; and, in the view of the Court, they both constitute natural geographical facts of the Atlantic region which cannot be disregarded in delimiting the continental shelf boundary without "refashioning geography". The problem therefore is, without disregarding Ushant and the Scillies, to find a method of remedying in an appropriate measure the distorting effect on the course of the boundary of the more westerly position of the Scillies and the disproportion which it produces in the areas of continental shelf accruing to the French Republic and the United Kingdom.

249. The Court notes that in a large proportion of the delimitations known to it, where a particular geographical feature has influenced the course of a continental shelf boundary, the method of delimitation adopted has been some modification or variant of the equidistance principle rather than its total rejection. In the present instance, the problem also arises precisely from the distorting effect of a geographical feature in circumstances in which the line equidistant from the coasts of the two States would otherwise constitute the appropriate boundary. Consequently, it 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. 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 on to the Atlantic continental shelf of a somewhat attenuated portion of the coast of the United Kingdom.

250. The abatement of these disproportionate effects, as previously indicated in paragraph 27, does not entail any nice calculations of proportionality in regard to the total areas of continental shelf accruing to the Parties in the Atlantic region. This is because, as pointed out in paragraphs 99-101, the element of "proportionality" in the delimitation of the continental shelf does not relate to the total partition of the area of shelf among the coastal States concerned, its rôle being rather that of a criterion to assess the distorting effects of particular geographical features and the extent of the resulting inequity. In the present instance, "proportionality" comes into ac-

count only in appreciating whether the Scilly Isles are to be considered a "special circumstance" having distorting effects on the equidistance boundary as between the French Republic and the United Kingdom and, if so, the extent of the adjustment appropriate to abate the inequity. These questions do not therefore require nice calculations of the areas of continental shelf appertaining to the United Kingdom in the north under a prospective delimitation of its continental shelf boundary with the Irish Republic. The point here at issue is simply whether the geographical situation of the Scilly Isles in relation to the French coast has a distorting effect and is a cause of inequity as between the United Kingdom and the French Republic.

251. A number of examples are to be found in State practice of delimitations in which only partial effect has been given to offshore islands situated outside the territorial sea of the mainland. The method adopted has varied in response to the varying geographical and other circumstances of the particular cases; but in one instance, at least, the method employed was to give half, instead of full, effect to the offshore island in delimiting the equidistance line. 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. This method appears to the Court to be an appropriate and practical method of abating the disproportion and inequity which otherwise result from giving full effect to the Scilly Isles as a base-point for determining the course of the boundary. The distance that the Scilly Isles extend the coastline of the mainland of the United Kingdom westwards onto the Atlantic continental shelf is slightly more than twice the distance that Ushant extends westwards the coastline of the French mainland. The Court, without attributing any special force as a criterion to this ratio of the difference in the distances of the Scillies and Ushant from their respective mainlands, finds in it an indication of the suitability of the half-effect method as a means of arriving at an equitable delimitation in the present case. The function of equity, as previously stated, is not to produce absolute equality of treatment, but an appropriate abatement of the inequitable effects of the distorting geographical feature. In the particular circumstances of the present case the half-effect method will serve to achieve such an abatement of the inequity. At the same time, the Court notes that the boundary resulting from the use of this method will follow the slight south-westerly trend of the coastlines of the Parties and of the continental shelf in the region.

252. The Court is now in a position to decide the actual course of the boundary in the Atlantic region, that is, to the west of Point J. This point is the most westerly position at which the Parties are in agreement that the situation is one of "opposite" States and that the equitable boundary is therefore the median line. In the view of the Court, however, this situation obtains also for a short distance to westwards of Point J where the coasts of the two Parties are still to be considered as in an "opposite" rather than lateral relation to the continental shelf. It accordingly decides that the course of the boundary immediately to the westwards of Point J shall be the median line joining:

Point J: 49°13'22"N 05°18'00"W

Point K: 49°13'00"N 05°20'40"W

Point L: 49°12'10"N 05°40'30"W (see Map 2 on page 208).

The base-points on the two coasts from which point J is delimited have already been specified in paragraph 118. Those from which Point K is delimited are, on the French side, Basse Vincent (Roches de Porsal) and Le Crom (Ushant) and, on the United Kingdom side, the Stags (The Lizard); and those from which Point L is delimited are, on the French side, Le Crom (Ushant) and, on the United Kingdom side, The Stags (The Lizard) and Wingletang (Scilly Isles). Point L is the median point which is equidistant from the points on Ushant (Le Crom) and the Scilly Isles (Wingletang) that are nearest each other.

253. Westwards of Point L, a point equidistant from Ushant and from the Scilly Isles, the Court considers that the relation between the respective coasts of the Parties and the continental shelf which is to be delimited begins to be one where the coasts face the continental shelf side by side, rather than face it opposite each other. From Point L westwards, therefore, account has to be taken of the distorting influence exercised by the Scilly Isles on the course of the boundary in the Atlantic region if those islands are given full effect in applying the equidistance method. In principle, as the Court has decided, the boundary in the remainder of the Atlantic region is to be determined by the equidistance method but giving only half-effect to the Scillies. Accordingly, the line running from Point K to Point L, at which latter point the Scilly Isles exercise their full effect, is prolonged for no more than a brief distance westwards until at Point M it meets the equidistance line which allows only half-effect to the Scilly Isles. The precise coordinates of Point M, where the prolongation of the line K-L intersects the equidistance line giving half-effect to the Scilly Isles, are:

M:49°12'00"N 05°41'30"W.

254. From Point M, as indicated in paragraph 251, the boundary follows the line which bisects the area formed by, on its south side, the equidistance line delimited from Ushant and the Scilly Isles and, on its north side, the equidistance line delimited from Ushant and Land's End, that is, without the Scilly Isles. The direction westwards followed by the bisector line, which thus constitutes the boundary westwards of Point M, is at the angle of 247°09'37"; and it meets the 1,000-metre isobath approximately at Point N, the coordinates of which may be stated as:

N:48°06'00"N 09°36'30"W.

The position of Point N, the terminal point of the boundary in the arbitration area, is given by the Court only approximately, because the meanderings of the contour of the 1,000-metre isobath make it difficult to fix the point of intersection between the boundary and the isobath with absolute precision. The distance that the line drawn from Point M to Point N extends the boundary seawards to the 1,000-metre isobath is approximately 170 nautical miles.

255. The positions of Points K, L, M and N and the lines joining Points J, K, L, M and N are shown in red on Map 2. These segments of the

boundary are reproduced in black on the Boundary-Line Chart included with this Decision, the letters used to mark the Points in question being the same as those given above.

For these reasons,

THE COURT, unanimously, decides, in accordance with the rules of international law applicable in the matter as between the Parties, that:

(1) Except as provided in paragraph (2) below, the course of the boundary between the portions of the continental shelf appertaining to the United Kingdom and to the French Republic respectively, westward of 30 minutes west of the Greenwich Meridian as far as the 1,000-metre isobath shall be the line traced in black on the Boundary-Line Chart included with this Decision between Points A, B, C, D, D1, D2, D3, D4, E, F, F1, G, H, I, J, K, L, M and N, the coordinates of which Points are as follows:

Point A:	50°07'29"N	00°30'00"W
Point B:	50°08'27"N	01°00'00"W
Point C:	50°09'15"N	01°30'00"W
Point D:	50°09'14"N	02°03'26"W
Point D1:	49°57'50"N	02°48'24"W
Point D2:	49°46'30"N	02°56'30"W
Point D3:	49°38'30"N	03°21'00"W
Point D4:	49°33'12"N	03°34'50"W
Point E:	49°32'42"N	03°42'44"W
Point F:	49°32'08"N	03°55'47"W
Point F1:	49°27'40"N	04°17'54"W
Point G:	49°27'23"N	04°21'46"W
Point H:	49°23'14"N	04°32'39"W
Point I:	49°14'28"N	05°11'00"W
Point J:	49°13'22"N	05°18'00"W
Point K:	49°13'00"N	05°20'40"W
Point L:	49°12'10"N	05°40'30"W
Point M:	49°12'00"N	05°41'30"W
Point N:	48°06'00"N	09°36'30"W

(2) To the north and west of the Channel Islands, the boundary between the portions of the continental shelf appertaining to the United Kingdom (Channel Islands) and to the French Republic respectively shall be the line composed of segments of arcs of circles of a 12-mile radius drawn from the baselines of the Bailiwick of Guernsey and traced in black on the Boundary-Line Chart included with this Decision between Points X, X1, X2, X3, X4, and Y, the coordinates of which Points are as follows:

Point X:	49°55'05"N	02°03'26"W
Point X1:	49°55'40"N	02°08'45"W
Point X2:	49°55'15"N	02°22'00"W
Point X3:	49°39'40"N	02°40'30"W
Point X4:	49°34'30"N	02°55'30"W
Point Y:	49°18'22"N	02°56'10"W

DONE in English and in French at the Palais Eynard, Geneva, this 30th

day of June 1977, both texts being equally authoritative, in three copies, of which one will be placed in the archives of the Court and the others transmitted to the Government of the French Republic and to the Government of the United Kingdom of Great Britain and Northern Ireland, respectively.

Mr. Herbert W. BRIGGS makes the following declaration:

With the course of the boundaries delimited by the Court I am in complete agreement; the decision is thus unanimous.

However, for reasons set forth below, I must regretfully differ from my distinguished colleagues in their evaluation of the French reservations to Article 6 of the 1958 Geneva Convention on the Continental Shelf. These reservations have called for comment because final French Conclusions A.1 and A.7 are to the effect that, even if that Convention is in force between France and the United Kingdom, Article 6 thereof cannot provide the applicable law in this Arbitration because there is no agreement between the Parties to this Arbitration as to its text, the United Kingdom not having accepted the French reservations.

The specific conditions by which France, in acceding to the Geneva Convention on 14 June 1965, sought to limit the application of Article 6 were expressed in the form of three reservations, as follows (French Memorial, 1976, Annex III):

En déposant cet instrument d'adhésion le Gouvernement de la République française déclare: . .

Article 6 (alinéas 1 et 2)

Le Gouvernement de la République française n'acceptera pas que lui soit opposée, sans un accord exprès, une délimitation entre des plateaux continentaux appliquant le principe de l'équidistance;

Si celle-ci est calculée à partir de lignes de base instituées postérieurement au 29 avril 1958;

Si elle est prolongée au-delà de l'isobathe de 200 mètres de profondeur;

Si elle se situe dans des zones où il considère qu'il existe des "circonstances spéciales", au sens des alinéas 1 et 2 de l'article 6, à savoir: le golfe de Gascogne, la baie de Granville et les espaces maritimes du pas de Calais et de la mer du Nord au large des côtes françaises ¹⁸

Each of these three reservations to Article 6 is based upon the same premise, namely that the Government of the French Republic will not accept that there be invoked against it, in the absence of an express agreement, any delimitation between continental shelves which applies the principle of equidistance. The phrase "entre des plateaux continentaux" can only refer, in the context, to a delimitation made between the continental shelves of France and a neighbouring State; and the words "sans un accord exprès" clearly indicate that the purpose of the three reservations was to prevent a

¹⁸ For an English translation, see the Court's Decision, paragraph 33. In that translation, the word "exprès" is translated as "specific"; and the phrase "une délimitation entre des plateaux continentaux" is mistranslated as "any boundary of the continental shelf". I can find no evidence that either Party to this Arbitration relied on the English translation set forth by the Court; both Parties quoted the French text in the original. In this Declaration, all quotations are in the original.

neighbouring State from unilaterally establishing or claiming against France a delimitation based upon equidistance.

This intent to prevent unilateral delimitations by States based upon equidistance was foreshadowed even before French accession to the Geneva Convention, and prior to the formulation of the French reservations, in the French Note of 7 August 1964 to the United Kingdom Government in which the French Government, after expressing its intention to accede to the Geneva Convention on the Continental Shelf with a number of reservations, observed in part [United Kingdom Memorial, 1976, Appendix A(7)]:

une ligne d'équidistance déterminée unilatéralement par la France ou le Royaume-Uni, en se fondant sur les lignes de base droites, telles que celles auxquelles se réfère la note du Royaume-Uni du 18 février 1964, ne saurait dans ces conditions être retenue pour le calcul de la ligne de partage sans l'accord de l'autre Partie.

After France acceded to the Geneva Convention in 1965 with the reservations, *inter alia*, quoted above, it has been the consistent and unvarying interpretation of the French Government that the intended purpose of the reservations to Article 6 was to prevent unilateral delimitations of continental shelves in relation to France by another State, if based upon equidistance.

Thus, referring to the first French reservation to Article 6, the French Counter-Memorial, paragraph 28, observes:

Les raisons qui ont pu motiver une telle réserve se laissent deviner assez facilement. La France n'a pas voulu que puisse lui être imposée une délimitation qui résulterait d'un double acte unilatéral d'un autre Etat: la fixation de nouvelles lignes de base, d'abord, suivant des critères définis par cet Etat, la détermination d'une ligne d'équidistance ensuite, calculée à partir de ces lignes de base;

and the same paragraph 28 concludes that France "a voulu, en formulant une réserve, se prémunir contre une mauvaise surprise".

In paragraph 30, the French Counter-Memorial complains that the interpretation given to the first French reservation in the United Kingdom Memorial:

omet la phrase qui introduit l'ensemble des réserves françaises à l'article 6: "Le Gouvernement français n'acceptera pas que lui soit opposée, sans un accord exprès, une délimitation entre des plateaux continentaux appliquant le principe de l'équidistance"

and continues:

Cette phrase définit exactement et, de ce fait même, limite la portée de la réserve. Il s'agit seulement du refus d'une délimitation opérée unilatéralement d'après la méthode de l'équidistance dans les hypothèses énumérées plus loin, ici dans l'hypothèse d'une délimitation "calculée à partir de lignes de base instituées postérieurement au 29 avril 1958"

With regard to the second French reservation to Article 6, the French Counter-Memorial, in paragraph 34, again complains that it appears that "le Mémoire britannique ait négligé la phrase qui introduit l'ensemble des réserves françaises à l'article 6;" and in paragraph 39, rejecting the United Kingdom interpretations of this second reservation, it states, in part:

On voit mal comment l'une ou l'autre de ces délimitations opérées par acte unilatéral pourrait être opposée au Gouvernement français, alors que celui-ci déclare qu'il "n'acceptera pas que lui soit opposée, sans un accord exprès, une délimitation . . . appliquant le principe de l'équidistance si elle est prolongée au-delà de l'isobathe de 200 mètres de profondeur".

Referring to the third French reservation to Article 6, the French

Counter-Memorial, in paragraph 49, notes a third time that the United Kingdom Memorial appeared to have forgotten "la phrase introductive de la réserve" and adds that in its third reservation, the French Government:

se borne à indiquer un certain nombre de zones où ses intérêts lui semblent assez clairement déterminés, en fonction de la situation particulière des régions considérées, pour qu'il estime ne pouvoir accepter qu'on lui oppose unilatéralement une ligne d'équidistance et où, en conséquence, il considère qu'il existe des "circonstances spéciales" justifiant une autre délimitation. Il indique qu'il ne ratifie la Convention qu'à la condition que cette manière de voir soit acceptée par les autres parties.

Denying, in paragraph 56, that the purpose of the French reservation was to *interpret* the expression "special circumstances", the French Counter-Memorial asserts that the purpose of the third reservation was to *apply* Article 6:

C'est d'*appliquer* cette expression, avec toutes les conséquences de droit qu'en tire l'article 6, à un certain nombre de situations concrètes et identifiées, et de faire de cette application la *condition* de l'acceptation de la Convention par le Gouvernement français. (Emphasis in the original.)

Thus, each of the three French reservations to Article 6 is intended, according to explicit statements in the French Counter-Memorial, to prevent *unilateral* delimitations based on the principle of equidistance, by *other States*, of the continental shelf boundaries between them and France. It is not straight baselines as such, nor boundaries extended beyond the 200 metre isobath, nor special circumstances, nor even equidistance lines as such against which the French reservations are directed; according to repeated official French statements, the reservations were directed against *unilateral* action by another State to establish or claim against France any delimitation based upon equidistance.

This conclusion is reinforced by the words of Professor Virally, when, as counsel for France, speaking at the oral hearing of 27 January 1977 before this Court on the first French reservation to Article 6, he said:

Dans cette réserve lue sans préjugé, il apparaît que la France refuse seulement de se voir imposer unilatéralement une ligne d'équidistance, établie d'après les lignes de base définies après la signature de la Convention de 1958.

Of the third French reservation, Professor Virally observed at the same oral hearing:

Simplement, la France exclut l'application de la méthode de l'équidistance par acte unilatéral donc telle que prescrite dans l'article 6, dans une série de zones qu'elle définit et, par là-même, elle modifie la portée d'application de l'article 6 et non pas en interprète le sens.

The consistent French statements equating "sans un accord exprès" with "unilatéralement" cannot be attributed to error or to careless drafting: they must be taken as expressive of the very purpose of the French reservations to Article 6.

The United Kingdom Counter-Memorial draws the correct conclusion in paragraph 32(1):

The French reservations to Article 6 are prefaced by the statement that, in the absence of a specific agreement, France will not accept that any boundary of the continental shelf determined by application of the principle of equidistance "shall be invoked against it" if certain conditions are fulfilled. It will be seen therefore that the French "reservations" to Article 6 do *not* purport to exclude the application of the principle of equidistance even if

any one of the three conditions is fulfilled. They seek merely to render a *unilateral* determination of the boundary by another State, based upon the principle of equidistance, "non-opposable" to France. But that is not the position here. The agreement of the two Governments to refer to arbitration the decision as to the course of the boundary in the area specified in Article 2 of the Arbitration Agreement necessarily presupposes that there can be no *unilateral* determination of the boundary by the United Kingdom, since it is for the Court (and the Court alone) to draw the line. Accordingly, the fact that the two Governments have agreed to submit the dispute to arbitration is sufficient in itself to deprive the French "reservations" to Article 6 of their object in the present case.¹⁹ (Emphasis in the original)

The explicit and consistent interpretation, set forth above, by counsel for France that the reservations to Article 6 were intended to prevent unilateral delimitations based on equidistance by other States to the detriment of France, and the agreement of the Parties, which effectively prevents unilateral delimitation by submitting to this Court the determination of the boundary in accordance with the applicable rules of international law, have thus deprived the French reservations to Article 6 of the Geneva Convention of any relevance before this Court: there can be no unilateral aspect in the Court's decision.

In any event, the first French reservation would be irrelevant in this Arbitration because, as the United Kingdom Agent observed at the oral hearing of 7 February 1977, "there do not exist in any part of the arbitration area United Kingdom baselines established after 29 April 1958 from which the median line has been measured or is sought to be measured." Moreover, the French Government has itself established straight baselines after 29 April 1958. The second reservation lacks any relevance in this Arbitration, if only because the 1,000 metre isobath limit was first proposed by France during the negotiations of 1970-1974, and agreed to by her in the Arbitration Agreement. As for the third reservation, claiming the application of special circumstances with all the legal consequences derived from Article 6²⁰ is not a reservation at all: it neither excludes nor modifies the legal effect of any provisions of Article 6. The gloss later placed by counsel for France on the words of the third reservation is that other States, parties to the Convention, must accept the unilateral designations by France of the areas where she considers special circumstances to exist so as to prevent any unilateral delimitations by those other States of continental shelf by equidistance lines in the areas specified. However, before this Court, no situation arises in which the United Kingdom is making any unilateral claim to an equidistance line: the boundaries throughout the entire area covered by the Arbitration are submitted to the decision of the Court.

Consequently, there is a certain sterility in discussing whether reservations which are not relevant were really reservations or admissible as reservations. Even if, following the method of the Court, I were to examine the legal nature of the French reservations to Article 6, I would have to find the first and second reservations invalid as reservations to Article 6 because,

¹⁹ See also United Kingdom Reply, 1977, paragraphs 23 and 28, and United Kingdom Memorial, 1976, paragraph 181

²⁰ See above for quotation from paragraph 56 of the French Counter-Memorial

whatever modifying effect they purport to have on delimitations based upon equidistance, they attempt to exclude or modify rights not dependent upon Article 6, but upon Articles 1 and 2 of the Geneva Convention on the Continental Shelf, to which no such reservations are permitted, or upon rules of customary international law, the rights deriving from which cannot, in my opinion, be excluded collaterally by another State through incidental reservations to a treaty which merely refers to such established rules of international law.

The third reservation I have found to be no reservation at all. If, however—disregarding for the moment the explicit statements of counsel for France set forth above that it was intended to prevent unilateral delimitations based upon equidistance—the third reservation is treated as really a reservation because, after invoking the “special circumstances” provision of Article 6 with all its legal consequences, it additionally makes a peremptory determination that Granville Bay is a special circumstance (whether or not it can be justified as such under Article 6)—even on that assumption, this Court would not, in my opinion, be barred by the alleged reservation from deciding for itself whether or not the Channel Islands constitute a “special circumstance” within the terms of Article 6, justifying another line than an equidistance line.

I reach this conclusion for two reasons—one of fact and one of law. As for the facts: the French Counter-Memorial, starting from the premise (paragraph 170) that as a geographical concept the “Bay of Granville does not exist”, proceeds (paragraphs 170 to 238) to analyze half a dozen meanings of the term, each covering for differing purposes a different territorial area, but none of which, prior to the present controversy over the continental shelf, embraced the entire area of the Channel Islands, in particular, any areas to the north or northwest of those islands. Since the Court has found that it lacks competence to delimit a boundary in any area historically or traditionally covered by the concept “Granville Bay”, it stretches credulity to retain the Granville Bay reservation “to the extent of the reservation” as a disabling reservation to prevent the application of Article 6 in areas north and northwest of the Channel Islands, even if the negotiators of 1970-1974 sometimes discussed the Channel Islands under the rubric of “Granville Bay”.

On the point of law, I submit the following observations. The Court appears to be holding that the applicable law which the Parties have agreed should govern its delimitation cannot include Article 6 of the Geneva Convention on the Continental Shelf to the extent of the third French reservation because that reservation was not accepted by the United Kingdom. This suggests the importance of re-examining the formulation of the third reservation and its legal consequences.

In formulating its third reservation, France availed itself of the right to invoke special circumstances under Article 6, explicitly referring thereto, and counsel for France have declared this to be an application of Article 6. The United Kingdom has in this case consistently recognized the right of

France to invoke special circumstances under Article 6, with or without a reservation.

In invoking special circumstances under the terms of Article 6, however, the French Government additionally stipulated, according to counsel for France (French Counter-Memorial, paragraphs 49, 56 and 57), that other parties to the Convention must accept the French application of "special circumstances" to specified areas as a condition of French accession to the Convention, whether or not such designations are justified under the terms of Article 6. This additional claim the United Kingdom has not accepted, since it regards the third reservation as being merely an interpretative declaration which, in case of dispute, is a matter for the Court to decide (United Kingdom Memorial, paragraph 99; United Kingdom Counter-Memorial, paragraph 87; United Kingdom Reply, paragraphs 33ff).

The fact that the United Kingdom has not fully accepted the ambiguous interpretation placed by counsel for France on the third reservation cannot, in my opinion, operate automatically to exclude Article 6 as "international law applicable in the matter as between the Parties" in the Channel Islands area, by reasoning that the United Kingdom rejected a condition set by France to her accession to the Continental Shelf Convention. The matter is more complex. It is difficult to regard the third French reservation as intended to eliminate application of the Article whose benefits it invoked specifically in an area now claimed by counsel for France to include the entire Channel Island area. This Court has rightly rejected French contentions that because the United Kingdom did not accept some of the French reservations to Article 6, therefore that Article in its entirety must be excluded as part of the applicable law in this Arbitration. Nor could a peremptory determination by France that other States must accept its designation of areas constituting special circumstances within the terms of Article 6 be conclusive on this Court.

Even following the Court in examining the validity of the French reservations to Article 6, I must therefore conclude that all three reservations are invalid as reservations to Article 6.

Careful study of the French reservations to Article 6 suggests that perhaps all of them were intended to prevent a possible interpretation of Article 6 as permitting an automatic delimitation by another State on equidistance principles in the absence of agreement, i.e., unilaterally. Thus, one inevitably comes back to the conclusion that in the particular circumstances of this Arbitration, the French reservations have no object or relevance.

The conclusion, therefore, is that "the rules of international law applicable in the matter as between the Parties" are to be found in the 1958 Geneva Convention on the Continental Shelf, including Article 6, supplemented, where required, by customary international law.

The view that Article 6 is expressive of customary international law—a view already held by some Judges of the International Court of Justice in 1969 in the *North Sea Continental Shelf* cases—has been substantially strengthened by the subsequent practice of States, which has been elaborately analyzed by counsel in this Arbitration. The fact that both Parties

have, with qualifications, placed reliance alternatively on principles derived from customary international law and on those set forth in Article 6 leads me to agree with the Court that little practical effect on the delimitation which the Court is required to make would result from applying one or the other in the circumstances of this case.

My principal concern in this respect is 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 eroded by its identification with subjective equitable principles, permitting attempts by the Court to redress the inequities of geography.

With these qualifications, and others which it would serve no helpful purpose to elaborate, I am in accord with much, perhaps most, of the reasoning of the Court.

ANNEX

THE BOUNDARY-LINE CHART AND THE TRACING OF THE BOUNDARY LINE

Technical Report to the Court by Mr. H. R. Ermel

(1) The principal Charts consulted are those specified in the explanatory note which appears on the Boundary Line Chart included with the Court's Decision. The following large-scale charts were also consulted:

French Marine Chart. No. 5567 "De l'île de Molène à l'île D'Ouessant. Passage de Fromveur".

scale 1:20,000

Published 1950

British Admiralty Chart. No. 34 "Isles of Scilly"

scale 1:25,000

Published 1972

(2) French charts have been accepted as authoritative in regard to the existence or nature of features that lie on the south side of the English Channel and British charts as authoritative in regard to features that lie on the north side.

(3) The method used for the construction of the median line, which the Court has decided shall be the boundary in parts of the arbitration area, is the one in general use today in delimiting maritime boundaries by application of the principle of equidistance. The actual course of this boundary is determined by construction lines of equal length drawn from opposing points on the two coasts. It is, in principle, a median line, but is one adjusted in certain respects, relatively unimportant, so as to form a more convenient, simplified, boundary based on the true median line.

(4) Construction lines are shown as pecked green lines. They indicate in every case the precise points on the respective baselines which determine the equidistance line. These lines are shown, in general, wherever the equidistance line changes direction, and so indicate the features which control any section of the line.

(5) The following are the Points, together with their coordinates, by reference to which the simplified median line in mid-Channel laid down by the Court is traced on the Boundary-Line Chart:

1. *East of the Channel Islands*

- A: 50°07'29"N 00°30'00"W
equidistant from
(i) Jetee (Antifer) 49°40'16"N 00°07'30"E
(ii) The Mixon (Selsey Bill) 50°42'23"N 00° 46'13"W
- B: 50°08'27"N 01°00'00"W
equidistant from
(i) Les Equets (Barfleur) 49°42'56"N 01°18'18"W
(ii) Woody Point (Ventnor) 50°35'01"N 01°14'23"W
- C: 50°09'15"N 01°30'00"W
equidistant from
(i) Le Renier (Barfleur) 49°43'25"N 01°21'43"W
(ii) Jeremy Rock (St Catherine Point) 50°34'31"N 01°18'10"W
- D: 50°09'14"N 02°03'26"W
Tripoint equidistant from
(i) Grois Rocks (Alderney) 49°44'14"N 02°10'26"W
(ii) St. Albans 50°34'38"N 02°03'13"W
(iii) La Hague 49°44'15"N 01°56'27"W

2. *Channel Islands Region*

- D 1: 49°57'50"N 02°48'24"W
Tripoint equidistant from
(i) Start Point 50°13'02"N 03°38'15"W
(ii) La Hague 49°44'15"N 01°56'17"W
(iii) Portland Bill 50°30'40"N 02°27'18"W
- D 2: 49°46'30"N 02°56'30"W
Tripoint equidistant from
(i) La Hague 49°44'15"N 01°56'17"W
(ii) Start Point 50°13'02"N 03°38'15"W
(iii) Roches Douvres 49°07'16"N 02°49'00"W
- D 3: 49°38'30"N 03°21'00"W
Tripoint equidistant from
(i) Start Point 50°13'02"N 03°38'15"W
(ii) Roches Douvres 49°07'16"N 02°49'00"W
(iii) Prawle Point 50° 12'08"N 03°43'18"W
- D 4: 49°33'12"N 03°34'50"W
Tripoint equidistant from
(i) Roches Douvres 49°07'16"N 02°49'00"W
(ii) Prawle Point 50°12'08"N 03°43'18"W
(iii) Les Cochons (Les Sept Iles) 48°54'28"N 03°27'57"W

3. *West of the Channel Islands*

- E: 49°32'42"N 03°42'44"W
Tripoint equidistant from
(i) Les Hanois (Guernsey) 49°26'31"N 02°42'46"W
(ii) Prawle Point 50°12'08"N 03°43'18"W
(iii) Les Cochons (Les Sept Iles) 48°54'28"N 03°27'57"W
- F: 49°32'08"N 03°55'47"W
Tripoint equidistant from
(i) Prawle Point 50°12'08"N 03°43'18"W
(ii) La Fourchie (Triagoz) 48°52'53"N 03°38'49"W
(iii) Eddystone Rock 50°10'50"N 04°15'52"W
- F 1: 49°27'40"N 04°17'54"W
Tripoint equidistant from
(i) Eddystone Rock 50°10'50"N 04°15'52"W
(ii) La Fourchie (Triagoz) 48°52'53"N 03°38'49"W
(iii) Le Raoumeur (Ile de Bas) 48°45'48"N 04°01'52"W
- G: 49°27'23"N 04°21'46"W
Tripoint equidistant from
(i) Eddystone Rock 50°10'50"N 04°15'52"W

	(ii) Black Head (The Lizard)	50°00'14"N	05°06'02"W
	(iii) Le Raoumeur (Ile de Bas)	48°45'48"N	04°01'52"W
H:	49°23'14"N 04°32'39"W		
	Tripoint equidistant from		
	(i) The Stags (The Lizard)	49°57'11"N	05°12'10"W
	(ii) Le Raoumeur (Ile de Bas)	48°45'48"N	04°01'52"W
	(iii) Carrec Ar Ploum (Pontusval)	48°41'20"N	04°21'37"W
I:	49°14'28"N 05°11'00"W		
	Tripoint equidistant from		
	(i) The Stags (The Lizard)	49°57'11"N	05°12'10"W
	(ii) Le Libenter	48°37'50"N	04°37'19"W
	(iii) Basse Vincent (Porsal)	48°35'32"N	04°43'57"W
J:	49°13'22"N 05°18'00"W		
	equidistant from		
	(i) The Stags (The Lizard)	49°57'11"N	05°12'10"W
	(ii) Basse Vincent (Porsal)	48°35'32"N	04°43'57"W
K:	49°13'00"N 05°20'40"W		
	Tripoint equidistant from		
	(i) The Stags (The Lizard)	49°57'11"N	05°12'10"W
	(ii) Basse Vincent (Porsal)	48°35'32"N	04°43'57"W
	(iii) Le Crom (Ushant)	48°29'14"N	05°04'20"W
L:	49°12'10"N 05°40'30"W		
	Tripoint equidistant from		
	(i) The Stags (The Lizard)	49°57'11"N	05°12'10"W
	(ii) LeCrom (Ushant)	48°29'14"N	05°04'20"W
	(iii) Wingletang (Scilly Isles)	49°52'56"N	06°20'15"W

(6) To the west of Point L, as decided by the Court, the boundary ceases to be a median line giving full effect to the Scilly Isles and continues westwards to the 1,000 metre isobath as a line which, though determined by application of the method of equidistance, gives only half effect to the Scilly Isles. This part of the boundary line is therefore constructed by prolonging almost directly westwards the median line K-L for a brief distance (00°01'00" of longitude) until Point M, at which point it meets the equidistance line giving half-effect to the Scilly Isles, Point M is thus the point of intersection of the prolongation of the line K-L almost due west with the equidistance line giving half-effect to the Scilly Isles, the precise coordinates of Point M being:

M: 49°12'00"N 05°41'30"W

(7) The line drawn westwards of Point M to the 1,000-metre isobath, giving half-effect to the Scilly Isles, is the bisector of the area formed by:

- (a) on the south side, the equidistance line delimited from
 - (i) Le Crom (Ushant)
 - (ii) Wingletang (Scilly Isles)
- (b) on the north side, the line delimited as equidistant from
 - (i) Runnelstone (south of Land's End)
 - (ii) Le Crom (Ushant).

The direction westwards of the course followed by equidistance line (a) is 238°51'30"

The direction westwards of the course followed by equidistance line (b) is 255°27'44"

The total area comprised within the two equidistance lines, taken as far as the 1,000-metre isobath, is approximately 4,000 square miles.

(8) The angle formed at Point M by the two equidistance lines delimited respectively with and without the use of the Scilly Isles as a base-point is therefore the difference between 255°27'44" and 238°51'30", that is 16°36'14".

The half angle which determines the course of the bisector is thus: 8°18'07"

(9) The direction followed by the bisector which the Court has decided shall be the boundary westwards of Point M is consequently: $238^{\circ}51'30''$ plus $8^{\circ}18'07''$, that is $247^{\circ}09'37''$

(10) This bisector intersects the 1,000-metre isobath approximately at Point N, the coordinates of which are

$48^{\circ}06'00''\text{N}$ $09^{\circ}36'30''\text{W}$.

The length of the line M-N is approximately 170 nautical miles.

(11) The line joining X, X1, X2, X3, X4, Y, decided by the Court as the boundary separating the continental shelf of the French Republic from that of the Channel Islands to the north and west of these Islands is formed by the segments of arcs of circles of a 12-mile radius delimited from the following base-points:

La Hague	$49^{\circ}44'15''\text{N}$	$01^{\circ}56'17''\text{W}$
Quénard Point (Alderney)	$49^{\circ}43'45''\text{N}$	$02^{\circ}09'30''\text{W}$
Island of Burhou	$49^{\circ}44'00''\text{N}$	$02^{\circ}14'50''\text{W}$
The Casquets	$49^{\circ}43'20''\text{N}$	$02^{\circ}22'45''\text{W}$
Island of Lihou (north of Guernsey)	$49^{\circ}27'45''\text{N}$	$02^{\circ}40'00''\text{W}$
Les Hanois (west of Guernsey)	$49^{\circ}26'31''\text{N}$	$02^{\circ}42'46''\text{W}$
Roches Douvres (off Brittany)	$49^{\circ}07'16''\text{N}$	$02^{\circ}49'00''\text{W}$

The coordinates of the points where the arcs of circles of a 12-mile radius intersect, that is of Points X, X1, X2, X3, X4, and Y, are:

X :	$49^{\circ}55'05''\text{N}$	$02^{\circ}03'26''\text{W}$
X1:	$49^{\circ}55'40''\text{N}$	$02^{\circ}08'45''\text{W}$
X2:	$49^{\circ}55'15''\text{N}$	$02^{\circ}22'00''\text{W}$
X3:	$49^{\circ}39'40''\text{N}$	$02^{\circ}40'30''\text{W}$
X4:	$49^{\circ}34'30''\text{N}$	$02^{\circ}55'30''\text{W}$
Y :	$49^{\circ}18'22''\text{N}$	$02^{\circ}56'10''\text{W}$.

AFFAIRE DE LA DÉLIMITATION DU PLATEAU CONTINENTAL ENTRE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD ET RÉPUBLIQUE FRANÇAISE

DÉCISION DU 30 JUIN 1977²¹

Règlement des différends relatifs à la délimitation actuelle et établissement du tracé de la ligne sur la carte—La décision du tribunal arbitral constitue une *res inter alios acta*—Droit applicable—Limite de la valeur des travaux de la Troisième Conférence des Nations Unies sur le droit de la mer: un tribunal ne saurait rendre de décision *sub specie legis ferendae*—Absence de preuve concluante que la Convention sur le plateau continental de 1958 doive être considérée comme déjà désuète et comme n'étant plus en vigueur entre les Etats qui y sont parties—Distinction à établir entre les réserves aux conventions multilatérales et les "déclarations interprétatives"—Examen du principe du "prolongement naturel" et de son importance dans la délimitation des côtes se faisant face ou des côtes limitrophes—Examen du principe de la "proximité" et de la "proximité absolue" en tant que méthode de délimitation—Définition des "circonstances spéciales" au sens de l'article 6 de la Convention sur le plateau continental—Question du fardeau de la preuve de l'existence de circonstances spéciales—Les îles et les archipels en tant que "circonstances spéciales"—Principe de l'attribution d'un effet partiel aux îles dans le processus de délimitation—Examen de la "ligne médiane-ligne d'équidistance" en tant que critère de délimitation des côtes se faisant face ou des côtes limitrophes selon le cas—Evaluation du rapport entre le critère "ligne médiane-ligne d'équidistance" pour la délimitation adoptée dans la Convention sur le plateau continental et le critère des "principes équitables" en tant que règle de droit coutumier international adopté par la C I J. dans les affaires du plateau continental de la mer du Nord—Accent mis sur une délimitation équitable reposant sur une combinaison de la règle "équidistance-circonstances spéciales" de la Convention sur le plateau continental et des "principes équitables" du droit coutumier—Pas de limites juridiques aux facteurs à prendre en considération dans l'application des principes équitables—Examen du rôle de la proportionnalité entre l'étendue du plateau continental et la longueur des lignes côtières—La délimitation n'est ni une opération de partage ni une simple attribution de parts proportionnelles du plateau continental à chaque partie

DÉCISION²²

M. Erik CASTREN, Président;

M. Herbert BRIGGS, M. André GROS, M. Endre USTOR, Sir Humphrey WALDOCK, *Membres du Tribunal*;

M. L. CAFLISCH, *Greffier*;

M. G. MALINVERNI, *Greffier adjoint*.

En l'affaire de la délimitation du plateau continental *entre la République française, représentée par*

²¹ Extrait de texte fourni à la Bibliothèque de l'ONU par la Mission permanente de la France auprès de l'Organisation.

²² M. Noël Museux, conseiller juridique auprès du Ministère des affaires étrangères, a été désigné comme agent adjoint, à partir du 23 mai 1977.