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

DECISION OF 14 MARCH 1978

Interpretation of the meaning and scope of decision already rendered—Consideration of claim to ouster court's jurisdiction *ratione temporis*—Consideration of objection to court's jurisdiction *ratione materiae*—The requirement of undue formality such as the exhaustion of diplomatic negotiations in establishing the existence of a dispute is not appropriate in the case of a request for the interpretation of judgment—The concept of *res judicata*—The drawing of "true equidistance line"—interpretation of a judgment distinguished from its modification—the concept of "half-effect line" in delimitation of a boundary involving existence of islands as special circumstances—The practice of delimitation of maritime boundaries by a loxodrome line on a standard navigational chart based on Mercator projection without correction for scale error is neither fatally outmoded nor open to challenge.

DECISION

President: Mr. Erik CASTREN;

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

Registrar: M. Lucius CAFLISCH;

Deputy-Registrar: M. Georges MALINVERNI.

In the case arising from the Application made to the Court of Arbitration on Delimitation of the Continental Shelf on the basis of Article 10, paragraph 2, of the Arbitration Agreement of 10 July 1975, providing for the possibility of an interpretation of its Decision of 30 June 1977 *between* the United Kingdom of Great Britain and Northern Ireland, represented by:

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: Commander P. B. Beazley, Office of the Hydrographer, Ministry of Defence; Mr. D. J. Bunyon, Head of the Geodetic Section, Hydrographic Headquarters, Taunton, as Experts;

And 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. Gilles Chouraqui, Counsellor in the Ministry of Foreign Affairs, Office of the Director of Legal Affairs of the Ministry of Foreign Affairs, as Deputy-Agent; assisted by: M. Michel Virally, Professor of the Faculties of Law, University of Paris, M. Daniel Bardonnet, Professor of the Faculties of Law, University of Paris, as Counsel; M. André Roubertou, Chief Engineer of Armaments, Hydrographic and Oceanographic Service of the Navy, 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 Experts;

THE COURT, composed as above, *delivers the following Decision:*

After the Court of Arbitration had delivered, on 18 July 1977, its Decision of 30 June 1977 in the Case concerning the delimitation of the continental shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic, an Application concerning the meaning and the scope of the Decision of 30 June 1977 was submitted on 17 October 1977 by the Government of the United Kingdom to the Court of Arbitration, pursuant to Article 10, paragraph 2, of the Arbitration Agreement of 10 July 1975.

The Application had been preceded by three diplomatic notes which were appended to it. The first was a Note presented by the Government of the United Kingdom to the Government of the French Republic on 19 September 1977; its text was as follows:

Her Britannic Majesty's Embassy present their compliments to the Ministry of Foreign Affairs and have the honour to refer to the Decision of the United Kingdom/France Court of Arbitration on Delimitation of the Continental Shelf, which was delivered to representatives of the two Parties on 18 July 1977. In accordance with Article 10(1) of the Arbitration Agreement of 10 July 1975, the Decision of the Court on the question specified in Article 2 of that Agreement is accepted by the two Governments as final and binding upon them. Nevertheless paragraph 2 of the same Article 10 provides that either Party may, within three months of the rendering of the Decision, refer to the Court any dispute between the Parties as to the meaning and scope of the Decision.

The Embassy are instructed to convey to the Ministry of Foreign Affairs that Her Majesty's Government, having considered the terms of the Court's Decision and the accompanying chart, together with the Technical Report annexed to the Decision, are of the view that the methods employed for drawing the two boundary lines laid down by the Court of Arbitration in its Decision raise two technical questions as to the meaning, or alternatively the scope, of the Court's Decision.

The first question relates to the manner in which the 12-mile enclave boundary has been drawn to the north and west of the Channel Islands. It is stated by the Court in paragraph 202 of its Decision that the enclave boundary "must not . . . 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", and the Court earlier refers to this fishery zone of 12 miles as "expressly recognised by the French Republic" (paragraph 187 of the Decision): on this basis, the Court decides, in paragraph 202 of the Decision, that the boundary in this area shall be drawn at a distance of 12 miles "from the established baselines of the territorial sea of the Channel Islands" This notwithstanding, the boundary as drawn on the chart accompanying the Decision and as defined in its *dispositif* does not coincide with the description in paragraph 202 or with the outer limit of the 12-mile fishery zone of the Channel Islands; this limit was drawn by the United Kingdom on a large-scale chart at the Court's express request, during the course of the oral hearing A copy of the chart deposited with the Court indicating the 12-mile fishery limit around the Channel Islands was simultaneously made available to the French representatives. The discrepancies between the continental shelf boundary, as defined in the Decision, and the fishery limit, as thus illustrated, occur across a frontage of about 14 nautical miles in the area north of Alderney and the Casquets, and in a further area of about 13 nautical miles in length fronting the north west of Guernsey; in the latter area, the discrepancy amounts to distances of up to 2½ nautical miles. In each case, the discrepancy appears to be due mainly to the fact that the selection of basepoints used by the expert appointed by the Court, and listed in paragraph (11) of his Technical Report—a listing which is also contained in paragraph 203 of the

Court's Decision—does not include certain basepoints, both low-tide elevations and permanently dry features, although these basepoints are relevant for purposes of delimitation, and have consistently been used by the United Kingdom, in accordance with the applicable rules of international law and without protest from other States, for delimiting the territorial sea and the exclusive fishery limit around the Channel Islands.

The second question relates to the techniques used for the drawing of the boundary in the South-Western Approaches westward of point "M" to the terminal point "N" The Court defines the boundary line in this part of the arbitration area in general terms in paragraph 251 of its Decision as being a line drawn mid-way between two equidistance lines, the first of which does not use the off-shore island as a basepoint and the second of which does use the off-shore island as a basepoint. Subsequently, the Court defines the boundary line in this part of the area more precisely in paragraph 254 of its Decision as following the line which bisects the area formed by the equidistance line delimited from Ushant and the Scilly Isles and the equidistance line delimited from Ushant and Land's End. It appears to the United Kingdom, from a study of the boundary-line chart and of the Technical Report by the Court's expert, that the boundary line has been drawn as a straight line on a Mercator chart, and that its course has been arrived at by using the technique of constant bearings based upon the chosen basepoints on the Cornish mainland, the Scilly Isles and Ushant. However, as a result of the scale distortions inherent in charts drawn on the Mercator projection, the line M-N as drawn on the boundary-line chart does not represent a straight line on the surface of the earth, and does not represent the line lying mid-way between, or bisecting the area between, true equidistance lines based on Ushant and the Scilly Isles and on Ushant and Land's End, respectively: at its western-most extremity on the 1.000-metre isobath, the true bisector line would lie approximately 4 nautical miles to the south of the line traced by the Court's expert on the boundary-line chart

Her Majesty's Government take the view that the Court's Decision on the question specified in Article 2 of the Arbitration Agreement is contained in the wording of its award, and in particular in paragraph 202 and in paragraph 251 and the first sentence of paragraph 254, and that the tracing of the boundary line by the Court's expert represents the expert's interpretation of the Court's Decision, and, in Her Majesty's Government's view, is, in the respects described above, an incorrect interpretation of the Decision Moreover, Her Majesty's Government cannot find any indication in the body of the Decision that the expert's technical calculations were, in these respects, specifically endorsed by the Court

Her Majesty's Government therefore consider that these two matters raise questions concerning the meaning, or alternatively the scope, of the Court's Decision. The Embassy are accordingly instructed to propose urgent talks between representatives of the two Governments, accompanied by the appropriate technical experts, at which the above matters might be discussed and at which the United Kingdom representatives would be able to furnish any additional technical information that might be required by the French representatives It would be the hope of Her Majesty's Government that the outcome of these discussions would be agreement between the two Governments on the necessary modifications to the boundary-line chart, which might then be conveyed jointly by the two Parties to the Court of Arbitration. However, should it not prove possible to reach agreement, Her Majesty's Government must reserve the right to refer the disagreement to the Court of Arbitration as provided for in Article 10(2) of the Arbitration Agreement of 10 July 1975

The reply of the French Government to this Note was presented to the British Embassy in Paris on 28 September 1977. It read as follows:[41]

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United Kingdom, and, in reply to the Note presented by the Embassy on 19 September last with regard to the delimitation of the continental shelf between France and the United Kingdom, has the honour to inform the Embassy of the comments which the said Note leads it to make and of the conclusions which it is forced to draw from an examination thereof.

The British Note of 19 September shows that the Government of the United Kingdom

[41] This translation, and all those which follow, were made by the Registry.

only attributes the character of a decision to certain parts of the Arbitral Award to be found in the statement of the reasons for the said Award and, in particular, in paragraph 202, in paragraph 251 and in the first sentence of paragraph 254 The United Kingdom, in consequence, categorically denies the character of a decision to other paragraphs describing the course of the boundary-line, such as paragraphs 252, 253, and 254 (in respect of all the sentences in this last paragraph except the first).

Above all, it denies this character to the whole of the *dispositif* of the Decision as well as to the chart which forms an integral part of that Decision. The references to the course of the boundary-line, and to the chart, are supposed to represent only the views of the expert and not those of the Court.

This position of the United Kingdom is in clear conflict with Articles 2 and 9 of the Arbitration Agreement and with what the Court itself has said.

Article 2 of the Arbitration Agreement makes it clear that the Court's mandate consists in deciding the *course* of the boundary-line or lines dividing the two continental shelves. Article 9 provides that the Court's decision on the question put in Article 2 of the Arbitration Agreement shall include the drawing of the course of the boundary-line or lines *on a chart*.

In executing its mandate, the Court did in fact determine the course of the boundary-lines in question in the *dispositif* of its Award, attaching a chart thereto By preceding the *dispositif* with the words: "For these reasons, [t]he Court, unanimously, decides . . ", the Court, at the same time, indicated, pursuant to paragraph 2 of Article 9 of the Arbitration Agreement, that that which preceded the *dispositif* of its Decision constituted simply the reasons therefor.

It follows that the course of the boundary-lines determined by the Court and the chart included in the Decision are, by virtue of Article 10, paragraph 1, of the Arbitration Agreement, of a final and binding nature for the Parties.

The French Government consequently does not see how the United Kingdom can deem it possible to deny this character to the whole *dispositif* of the Award and to the chart which forms part of the Decision, while on the contrary attributing such character to certain arbitrarily chosen portions of the statement of the reasons for that Decision.

So far as the French Government is concerned, the final and binding nature of the arbitral Award provided for in Article 10 of the Arbitration Agreement obviously applies to the *dispositif* of the Award, that is to say, to the description of the course of the boundary-line which is preceded by the words: "For these reasons, [t]he Court, unanimously, decides . . . " as well as to the chart which forms an integral part of the Decision.

To recognise that the *dispositif* of the Award has this characteristic is an obligation incumbent upon both Parties by virtue of Articles 2, 9 and 10 of the Arbitration Agreement.

The French Government, determined for its part to honour the obligations it assumed in signing the Arbitration Agreement, expects the United Kingdom Government to do the same.

Under these conditions, it is of the view that its concern to carry out its obligations arising out of the Arbitration Agreement does not allow it to take part in negotiations on the subject proposed in the United Kingdom Note of 19 September.

A final Note was presented by the British Embassy in Paris to the French Ministry of Foreign Affairs on 7 October 1977. The text of this Note was as follows:

Her Britannic Majesty's Embassy present their compliments to the Ministry of Foreign Affairs and have the honour, with reference to the Ministry's Note of 28 September in reply to the Embassy's Note of 19 September concerning the Decision of the United Kingdom/France Court of Arbitration on Delimitation of the Continental Shelf, to state the following

In expressing Her Majesty's Government's regret that the French Government decline to meet with representatives of Her Majesty's Government for the talks proposed in the Embassy's Note, the Embassy are instructed to say that Her Majesty's Government neither deny the binding force of the Court of Arbitration's Decision in accordance with Article 10(1) of the Arbitration Agreement of 10 July 1975 nor do they deny binding force to the

dispositif of the Court's Decision. On the contrary, the Embassy's Note identified certain issues of a technical character in relation to which there appears to be a disparity between the boundary lines, as drawn on the chart, in certain specified parts of the arbitration area and the wording and intent of the Court's Decision itself. As a result, the boundary lines in these parts of the arbitration area, as traced on the chart and defined in the Technical Report and the *dispositif* are, in the view of Her Majesty's Government, based upon an incorrect interpretation of the reasoning on which the Court's Decision is founded.

In the light of the Ministry's Note, it is clear that there exists a dispute between the two Governments as to the meaning, or alternatively the scope, of the Court's Decision, and Her Majesty's Government now intend, in accordance with the express terms of Article 10(2) of the Arbitration Agreement, to refer this dispute to the Court of Arbitration. A copy of their Application will be delivered to the Agent for the French Government as soon as it has been deposited with the Registrar of the Court of Arbitration.

The Application of 17 October 1977 instituting the present proceedings reads as follows:

APPLICATION TO THE COURT OF ARBITRATION PURSUANT TO THE PROVISIONS OF ARTICLE 10, PARAGRAPH 2, OF THE ARBITRATION AGREEMENT OF 10 JULY 1975

1. In accordance with the provisions of Article 10, paragraph 2, of the Arbitration Agreement between the Government of the United Kingdom and the Government of the French Republic signed in Paris on 10 July 1975 ("the Arbitration Agreement"), the United Kingdom wish hereby to refer to the Court of Arbitration two questions relating to the meaning, or alternatively the scope, of the Court's Decision of 30 June 1977, which are in dispute between the Parties, namely:

(*1*) the techniques and methods employed for drawing on the boundary-line chart the 12-mile enclave boundary to the north and west of the Channel Islands;

(2) the techniques and methods employed for drawing on the boundary-line chart the portion of the boundary west of point "M" out to the 1,000-metre isobath

2 The reasons justifying this Application are set out below.

A. *General*

3. The Court's Decision dated 30 June 1977 on the question specified in Article 2 of the Arbitration Agreement of 10 July 1975 was delivered to the Parties in Geneva on 18 July 1977 In accordance with Articles 9(1) and (2) of the Arbitration Agreement the Decision is fully reasoned, and includes a navigational chart on which is traced the course of the two boundaries decided upon by the Court. As indicated in the Decision, these boundary lines were drawn on the chart by the technical expert duly appointed by the Court pursuant to Article 9(1) of the Arbitration Agreement There is also annexed to the Decision a Technical Report by the Court's expert entitled "The Boundary-Line Chart and the Tracing of the Boundary Line", which explains the calculations performed in determining the precise co-ordinates defining the boundary lines and in tracing the boundary lines thus defined on the boundary-line chart. The co-ordinates thus calculated are also reproduced in the *dispositif* of the Court's Decision.

4. In the opinion of the United Kingdom, the techniques and methods employed to arrive at these co-ordinates and to trace the corresponding lines on the boundary-line chart in certain parts of the arbitration area give rise to certain technical problems involving contradictions between segments of the boundary lines thus traced and defined and the intentions of the Court set out in the body of its Decision.

5 The problems identified by the United Kingdom and their reasons for characterising them as raising questions relating to the meaning, or alternatively the scope, of the Court's Decision, were explained in detail to France in a Note delivered by the British Embassy in Paris to the French Ministry of Foreign Affairs on 19 September 1977, a copy of which is annexed to this Application as Appendix A.1 This Note proposed that, in view of the time limit laid down in Article 10(2) of the Arbitration Agreement, urgent discussions should be held between representatives of the Parties, accompanied by the appropriate technical experts, in order to see whether it would be possible to reach agreement between the Parties as to the technical issues identified in the Note The Note further stated that,

should agreement not be forthcoming, the United Kingdom reserved the right to refer the matters in question to the Court of Arbitration pursuant to Article 10(2) of the Arbitration Agreement.

6. France's reply to this proposal was contained in a Note from the French Ministry of Foreign Affairs delivered to the British Embassy on 28 September 1977, a copy of which is annexed to this Application as Appendix A.2. In this Note, France declined to enter into discussions of the kind proposed by the United Kingdom or to deal on their merits with the technical issues identified by the United Kingdom, but set out at length the contention of France that the decision of the Court on the question specified in Article 2 of the Arbitration Agreement is to be found in the *dispositif* of the Court's Decision and in the lines traced on the boundary-line chart.

7. It is thus apparent, in the view of the United Kingdom, that there exists a clear difference of view between the Parties as to the proper interpretation of the Court's Decision of 30 June 1977 (and thus as to its *meaning*); and that there exists a clear difference of view between the Parties as to the binding force of certain parts of the Decision in relation to the Decision as a whole (and thus as to its *scope*) Accordingly, the Court has jurisdiction, pursuant to the express terms of Article 10(2) of the Arbitration Agreement, to deal with the disputed issues identified in the British Embassy's Note of 19 September, provided that the Court is seized of the matter within the time limit specified in Article 10(2), that is to say, within three months of 18 July 1977. A copy of the British Embassy's Note delivered to the French Ministry of Foreign Affairs on 7 October 1977, stating the United Kingdom's intention of referring these questions to the Court under the provisions of Article 10(2), is annexed to this Application as Appendix A 3.

B *The 12-mile enclave boundary to the north and west of the Channel Islands*

8. In paragraph 202 of its Decision the Court "decides that this boundary (sc the enclave boundary north and west of the Channel Islands) shall be drawn at a distance of 12 nautical miles from the established baselines of the territorial sea of the Channel Islands" In the United Kingdom's submission, this is the definitive decision of the Court upon this issue.

9. The relevant section of the boundary is subsequently described, in paragraph 203 of the Court's Decision and the *dispositif*, as arcs of circles of the 12-mile radius, and the co-ordinates of the points of intersection of these arcs with the mid-Channel median line and with one another, points X, $X_1 - X_4$ and Y, are listed. A more detailed explanation of these positions is provided in paragraph (11) of the Technical Report referred to in paragraph 3 of this Application. The Technical Report contains a listing of the basepoints which have been used for determining the relevant arcs of circles, the co-ordinates defining each of which are also listed, and these listings are reproduced in paragraph 203 and the *dispositif* of the Court's Decision.

10. Unfortunately, however, the basepoints so listed comprise only an incomplete selection of the relevant points on the established baselines from which the territorial sea of the Channel Islands has consistently been measured by the United Kingdom Accordingly, the boundary line in this part of the arbitration area as traced on the boundary-line chart and as defined in the Decision does not correspond in all respects to a true 12-mile limit north and west of the Channel Islands and does not, for example, correspond accurately to the established 12-mile fishery limit maintained and enforced in this area pursuant to the relevant legislation of the United Kingdom and the Channel Islands. As the Court will recall, in response to specific requests made by the Court to the Agents of the two Parties during the course of the oral hearings, the United Kingdom submitted to the Court a large-scale chart, based upon the maps which had been especially prepared by the United Kingdom for the purpose of the Arbitration, on which was traced the precise course of the 12-mile fishery limit around the Channel Islands. A copy of this chart was also made available to the French Agent. The map at Appendix B.1 to this Application is a fresh version of that chart on which has also been traced the 12-mile enclave boundary as it appears on the boundary-line chart. It will be seen that (apart from certain plotting difficulties which are relatively insignificant) the line traced on the boundary-line chart encroaches on the 12-mile fishery limit across a frontage of about 14 miles north of Alderney and the Casquets, and across a frontage of about 13 miles north-west of Guernsey. As will also be seen from

this map, the discrepancies between the two lines are accounted for by the fact that the line traced on the boundary-line chart omits to use certain basepoints which may be found on the large-scale map submitted to the Court as Appendix C.6 to the United Kingdom Memorial. A full list of the basepoints used by the United Kingdom's experts for the construction of this map (together with their co-ordinates on European Datum) is annexed to this Application as Appendix A.4. These basepoints also appear on large-scale navigational charts: samples of the relevant British Admiralty charts accompany this Application as Appendices B.2 and B.3.

11. Although the positions of the basepoints referred to in paragraph (11) of the Technical Report as La Hague, Quénard Point (Alderney), Island of Burhou, the Casquets, Les Hanois and Roches Douvres differ to a certain extent from the equivalent points listed in Appendix A 4, the United Kingdom raise no objection to their use. In the view of the United Kingdom, however, the appropriate basepoints for determining the 12-mile limit north and west of the Channel Islands should also include the following, the co-ordinates for each of which, corrected for European Datum, are also given:

C Grois Rock	49°44′14″ N;	02°10′26″ W;
E. Verte Tête	49°44′18″ N;	02°16′57″ W;
G. Noire Roque	49°43′15″ N;	02°23′01″ W;
H. Hoffets	49°31′10″ N;	02°34′24″ W;
I Les Grunes de L'Ouest	49°30′21″ N;	02°37′59″ W;
J. Le Boin	49°29′15″ N;	02°39′43″ W;
K. Banc des Hanois	49°27′06″ N;	02°42′26″ W.[42]

Points C, H, I, J and K are low-tide elevations lying, respectively, 0.11, 0.59, 1.00 and 0.65 nautical miles from the low-water line of the nearest permanently dry feature and points E and G are on the low-water line of permanently dry features. All of these points are, in the wording used in paragraph 202 of the Court's Decision, points on "the established baselines of the territorial sea of the Channel Islands": "established", because they have consistently been used by the United Kingdom, without protest by France or other States, for the delimitation of the existing 3-mile territorial sea of the Channel Islands[43] and for the delimitation of the 6-mile[43] and 12-mile belts provided for in the London Fisheries Convention of 1964; and, on the territorial sea baseline, because they represent in every case, either points on the low-water line along the coast, or alternatively low-tide elevations lying well within the 3-mile territorial sea of the Channel Islands, and are therefore proper to be used as part of the baseline from which the territorial sea is measured in accordance with the applicable rules of international law It follows, in the submission of the United Kingdom, that the omission of these base points is inconsistent with the practice followed in defining the course of other parts of the boundary lines, and cannot be reconciled with paragraph 202 of the of the Court's Decision.

C *The boundary west of point "M" out to the 1,000-metre isobath*

12. In paragraph 251 of its Decision, the Court discusses the method for implementing its decision (which is not for this purpose in issue) to give half, instead of full, effect to an off-shore island in delimiting the equidistance line. The Court defines this method as follows:

> "The method of giving half effect consists in delimiting the line equidistant between the two coasts, first, without the use of the off-shore island as a base-point and, subsequently, with its use as a base-point; a boundary giving half effect to the islands is then the line drawn mid-way between these two equidistance lines" (at page 219)

The Court goes on to say that "*This method*" (emphasis supplied) appears to it to be a proper and practical way of abating the disproportion and inequity which it found would result from giving full effect to the Scilly Isles as a basepoint for determining the course of the boundary *(ibid)*. In the United Kingdom's submission this is the definitive decision of the Court on this issue. This is confirmed by paragraph 253 in which the Court states that

[42] The lettering corresponds to that used on Appendices B.1—B.3 The basepoints lettered J and K in effect "mask" the point referred to as Island of Lihou in the Technical Report.

[43] For the delimitation of a 3-mile or 6-mile belt various basepoints additional to those listed in Appendix A.4 also come into play.

it has "decided . . (i)n principle" that 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". When proceeding, in paragraph 254, to discuss the actual course of the boundary line westward of point M, the Court similarly defines the boundary as following the line "which bisects the area formed by, on its north [*sic*] side, the equidistance line delimited from Ushant and the Scilly Isles and, on its south [*sic*] side, the equidistance line delimited from Ushant and Land's End, that is, without the Scilly Isles"

13. The Court then proceeds to describe the "direction westward followed by the bisector line". The detailed calculations on which are based this direction and the identification of point "N" (which represents the approximate intersection between the line so defined and the 1,000-metre isobath) are given in paragraphs (7) to (10) of the Technical Report, and the values arrived at are reproduced in paragraph 254 of the Court's Decision and in the *dispositif* In paragraph (7) of the Technical Report, the two equidistance lines used for the construction of the boundary line westward of point M are referred to as equidistance line (a) and equidistance line (b), and each is defined in terms of its direction westwards. In paragraph (8), the course of the bisector is said to be determined by the half angle between equidistance lines (a) and (b), and paragraph (9) states that "the bisector which the Court has decided shall be the boundary westwards of point M" is in turn defined in terms of an angular direction westwards. Th segment of boundary line M-N has been drawn as a straight line on the Mercator navigational chart used for the boundary-line chart, from which it may be inferred that the "equidistance lines" (a) and (b) used to calculate this segment of the boundary line were also conceived of as lines of constant bearing (technically known as rhumb lines or loxodromes) which, when traced on a standard Mercator chart, appear as straight lines The use of lines of constant bearing for calculating and defining this segment of the boundary over so large a distance as 170 nautical miles (Technical Report, paragraph (10)) raises the following technical difficulty.

14. In paragraphs 320–323 of the [United Kingdom] Counter-Memorial, and especially footnote (3) on page 124, a description was given of some of the characteristics of the standard Mercator projection. It was explained that, despite the convenience of standard Mercator charts for the navigator, this map projection contains inherent distortions which require to be corrected if it is to be used for delimitation purposes In particular, it was explained that, because of the curvature of the earth's surface, the horizontal distance scales on a standard Mercator chart are not, in general, constant, but vary according to the latitude at which the distance is measured. Consequently, an equidistance line cannot be directly plotted on to a standard Mercator chart unless an allowance for scale distortions is made for each set of measurements of equal distances [4] In his statement to the Court of Arbitration on 8 February 1977, having mentioned accepted methods for taking account of the earth's spheroidal shape, Cdr Beazley pointed out "that *in terms of plane geometry* an equidistance line consists of a series of perpendicular bisectors of lines joining relevant base-points on the coasts of the two States" (. . emphasis supplied). It follows that, if the surface of the earth were flat, equidistance line (a), the equidistance line based solely on Le Crom (Ushant) and Wingletang (Scilly Isles), would simply be the perpendicular bisector of the straight line joining these two points, and the same would hold for equidistance line (b), the equidistance line based solely on Runnelstone and Le Crom

15 The surface of the earth is, however, curved. A true equidistance line based on a single pair of basepoints would therefore have to be the equivalent of a straight line along the curved surface of the earth. Such a line is known as a geodesic For the reasons explained in the passages in the [United Kingdom] Counter-Memorial cited above, a geodesic, when plotted on a standard Mercator chart, would appear as a curved line (in the particular geographical location of the arbitration area, its curvature would be to the south) and the southward-tending curvature becomes ever more pronounced with the outward projection of the line over larger distances. It follows that the equidistance lines (a) and (b), if conceived of as straight lines on a Mercator chart (lines of constant bearing), their direction being determined by the bearings given in the Technical Report and in paragraph 254 of the Court's Decision, would not represent true equidistance lines between the chosen basepoints: as the lines of constant bearing were projected westward, the points on them would tend progressively closer to the northern (United Kingdom) basepoints and progres-

sively further from the southern (French) basepoint.[44] For the same reason, the line M-N traced as a straight line on a Mercator chart does not represent the line lying mid-way between, or bisecting the area between, true equidistance lines based on Ushant and the Scilly Isles and on Ushant and Land's End, respectively: the true bisector line would appear on a Mercator chart as a line curving progressively southward and, on the meridian 9°36′30″W (the longitude of point "N"), would lie approximately 4 nautical miles to the south of the line M-N The discrepancy would of course increase if the lines in question were projected beyond the 1,000 metre isobath—to about 6 miles at the 200-mile limit, and still further at the outer edge of the continental margin. Annexed to this Application as Appendix B.4 is a navigational chart of the South-Western Approaches (Mercator projection) on which the discrepancy between the two lines is shown.

16. In the view of the United Kingdom, therefore, the segment M-N of the boundary line as drawn on the Boundary-Line Chart and as defined in paragraphs (9) and (10) of the Technical Report and in the *dispositif* of the Court's Decision, cannot in this respect be reconciled with the evident intention of the Court embodied in paragraph 251 and the first sentence of paragraph 254 of the Court's Decision

D. *The interpretation of Article 10(2) of the Arbitration Agreement*

17. Under Article 10(1) of the Arbitration Agreement of 10 July 1975, 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 Agreement. This provision is fully respected by the United Kingdom. Nevertheless, Article 10(2) of the Arbitration Agreement provides that "either Party may, within three months of the rendering of the Decision, refer to the Court any dispute between the Parties as to the meaning and scope of the Decision". As explained in paragraph 5 of this Application and in the Note of 19 September 1977 from the British Embassy in Paris to the French Ministry of Foreign Affairs (Appendix A 1 to this Application), the United Kingdom consider that the technical difficulties discussed in parts B and C of this Application are the results of interpretations of the intentions of the Court which are, in the respects described above, incorrect. This entails, in the view of the United Kingdom, that, as a matter of the proper interpretation of the Court's Decision of 30 June 1977, any internal contradictions in it should be resolved in favour of the evident intention behind the reasoned part of the Court's Decision, since the *dispositif* itself is entirely based upon, and expressly incorporates ("For these reasons . . "), the Court's reasoning In the Note of 28 September 1977 (Appendix A.2 to this Application) France has adopted a different view, and contends that the tracing of the boundary lines on the Boundary-Line Chart constitutes an integral part of the Court's Decision on the question specified in the Arbitration Agreement, and that the *dispositif* of the Court's Decision is final and binding in every respect. Accordingly, France does not share the view of the United Kingdom as to the manner in which the Court's Decision should be interpreted nor the view of the United Kingdom as to which parts of the Decision have the final force conferred by Article 10(1) of the Arbitration Agreement It follows that there is a dispute between the Parties as to the meaning, or alternatively the scope, of the Court's Decision and that the Court has jurisdiction to resolve such a dispute under the express terms of Article 10(2) of the Arbitration Agreement.

18. If, however, France's view is correct to the extent that the tracing of the boundary lines on the Boundary-Line Chart constitutes an integral part of the Court's Decision on the question specified in Article 2 of the Arbitration Agreement, then, for the reasons given, there are conflicts within the Decision itself which can be resolved only by a further decision of the Court as to the true meaning, or alternatively the scope, of the Decision, namely, as to which parts thereof are to prevail

19. For the reasons given above, the United Kingdom asks the Court to adjudge and declare, in accordance with provisions of Articles 2, 9 and 10 of the Arbitration Agreement,

I that the tracing on the boundary-line chart of certain parts of the 12-mile enclave boundary north and west of the Channel Islands and of the boundary line westward of point M, and the formal definition of these parts of the boundary line in

[44] Cf. Hodgson and Cooper, pp. 372-376.

the text of the Court's Decision of 30 June 1977, does not in the respects described above give effect to the express words and evident intention of the Decision as a whole, and that the Decision should be interpreted so as to reconcile the contradiction in favour of the latter;

II. that the boundary-line chart and, as necessary, the text of the Decision should be rectified accordingly

The Application was accompanied by the three Notes quoted above and by a further Appendix (A.4) which listed the co-ordinates of the base-points controlling the limit of 12 nautical miles north and west of the Channel Islands. The text of this Appendix read as follows:

CO-ORDINATES OF BASEPOINTS CONTROLLING A 12-MILE LIMIT NORTH AND WEST OF THE CHANNEL ISLANDS

(All positions are based on European Datum)

Name	*Latitude*	*Longitude*
A Petite Grune	49°44′15″	01°56′17″
B. Sauquet Rocks	49°44′05″	02°09′27″
C. Grois Rock	49°44′14″	02°10′26″
D. Round Rock	49°44′29″	02°14′45″
E. Verte Tête	49°44′18″	02°16′57″
F. L'Auquière	49°43′25″	02°22′47″
G. Noire Roque	49°43′15″	02°23′01″
H. Hoffets	49°31′10″	02°34′24″
I. Les Grunes de l'Ouest	49°30′21″	02°37′59″
J. Le Boin	49°29′15″	02°39′43″
K. Banc des Hanois	49°27′06″	02°42′26″
L. Les Hanois[a]	49°26′31″	02°42′46″
M. Roches Douvres	49°07′16″	02°49′00″

CO-ORDINATES OF POINTS WHERE THE ARCS OF CIRCLES OF 12-MILE RADIUS INTERSECT

Point No.	*Arcs from*	*Latitude N*	*Longitude W*
1	A and B	49°55′23″	02°03′12″
2	B and C	49°55′50″	02°05′41″
3	C and D	49°56′13″	02°10′57″
4	D and E	49°56′16″	02°18′13″
5	E and F	49°55′23″	02°24′02″
6	F and G	49°51′23″	02°36′38″
7	G and H	49°42′15″	02°41′27″
8	H and I	49°42′01″	02°42′16″
9	I and J	49°38′22″	02°51′43″
10	J and K	49°35′44″	02°55′13″
11	K and L	49°30′58″	02°59′51″
12	L and M	49°18′18″	02°56′09″

Intersection points 1 and 12 lie on the median line.

[a] Middle one of three rocks lying within 300 metres of one another.

The Application was immediately communicated by the Registrar to the Agent of the Government of the French Republic; and the President of the Court of Arbitration, by an Order of 5 November 1977, fixed the date of 10 December 1977 for the filing by that Government of written observations on the United Kingdom Government's Application.

These observations were received by the Registrar on 9 December 1977 and immediately communicated by him to the Government of the United Kingdom.

A session of the Court of Arbitration was convened by its President on 14 and 15 December 1977 in Geneva; in the course of that session it was decided, after having consulted the Agents of the Parties, to hold hearings starting on 23 January 1978 in order that the Parties might present their oral observations. In the course of this same session, the following two questions were put to the Agents, who were asked to submit written replies by 14 January 1978:

(1) What is the general practice in regard to the nature of the charts used for the delimitation of continental shelf and other maritime boundaries? Are charts based on Transverse Mercator Projection in general use in Hydrographic Departments?

(2) During the negotiations which took place in the years 1964 and 1970–1974 was there any understanding or discussion between the Parties regarding the use of the Mercator or Transverse Mercator Projection in determining the boundary in the Arbitration Area?

Written replies to these questions were delivered to the Registry within the time-limit laid down.

The Court of Arbitration accordingly met on 23 January 1978 and held six meetings, on 23 and 24 January, on 26 and 27 January and on 30 and 31 January 1978, at which observations were heard: on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, from Sir Ian Sinclair, Agent and Counsel, and, on behalf of the Government of the French Republic, from M. Ladreit de Lacharrière, Agent. After hearing of 27 January 1978, the Court put the following questions to the Agents of the Parties:

(1) Is the Court correct in understanding that the French Government does not contest the status of the geographical features named in Appendix A.4 to the Application as basepoints of the Bailiwick of Guernsey for the purpose of delimiting the 12-mile fishery zone of the Channel Islands, or the technical accuracy of the two series of co-ordinates listed in that document?

(2) Replying to the second of the two questions posed in the Court's Order of 15 December 1977, the French Government has stated that during the Franco-British negotiations of 1964 and 1970–1974 the delegations of the Parties were agreed upon working exclusively on charts based on the Mercator projection. Will the French Government please also inform the Court as to whether during those negotiations there was any understanding between the Parties concerning any need to make corrections on account of the curvature of the earth, and in this connexion will it please take into consideration paragraphs 19 and 20 of the United Kingdom's Response to the above-mentioned question and the documents reproduced at Appendices A(11) and A(23) of the United Kingdom Memorial.

(3) Will the United Kingdom please clarify its submission in paragraph 19.II of its Application, in so far as this relates to the Atlantic region, by including in its final Submissions a precise verbal description, with any relevant co-ordinates, of the rectification which it asks the Court to effect.

These questions were answered at the hearings of 30 and 31 January 1978.

The written Submissions of the Parties were as follows:

On behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, in its Application of 17 October 1977:

[T]he United Kingdom asks the Court to adjudge and declare, in accordance with the provisions of Articles 2, 9 and 10 of the Arbitration Agreement:

I. that the tracing on the boundary-line chart of certain parts of the 12-mile enclave boundary north and west of the Channel Islands and of the boundary line westward of point M, and the formal definition of these parts of the boundary line in the text of the Court's Decision of 30 June 1977, does not in the respects described above give effect to the express words and evident intention of the Decision as a whole, and that the Decision should be interpreted so as to reconcile the contradiction in favour of the latter;

II. that the boundary-line chart and, as necessary, the text of the Decision should be rectified accordingly.

On behalf of the Government of the French Republic, in its written observations of 9 December 1977:

[T]he French Government requests the Court to declare that the Application of the United Kingdom, apart from its having been filed late, is inadmissible by virtue of Article 10, paragraph 2, of the Arbitration Agreement, and that it moreover asks the Court to take a decision which would exceed its powers

Alternatively, and in the event that the Court should decide that it is competent to deal with the merits, the French Government requests the Court to declare that the Application of the United Kingdom must be rejected on the ground that the Decision is clear and contains no obscurity or contradiction.

At the end of their first oral statements, the Agents of the Parties presented the following Submissions:

On behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, at the hearing of 24 January 1978:

We submit that, for the following reasons, the United Kingdom Application is admissible under Article 10(2) of the Arbitration Agreement.

(a) It was filed within the time-limit prescribed in that provision, that is to say, within three months of the rendering of the Court's Decision which must be deemed to have taken place on 18 July 1977;

(b) It refers to the Court a "dispute" between the Parties, the nature of the dispute emerging clearly from the diplomatic Notes annexed to the United Kingdom Application, and, indeed, from the terms of the Application itself;

(c) The "dispute" is one as to the meaning and scope of the Decision since the United Kingdom contends, and France denies, that binding force attaches to certain key paragraphs in the body of the Court's Decision, namely, paragraphs 202, 251 and 254, which paragraphs, in the submission of the United Kingdom, constitute an essential element of the Court's Decision and accordingly form part of the Court's response to the question specified in Article 2 of the Arbitration Agreement.

(d) The primary relief which the United Kingdom seek is a ruling from the Court on the meaning and scope of the Decision which it rendered last summer, given the contradictions to which reference is made in paragraphs 8 to 16 of their Application, and to which I have made reference also in this statement; and the United Kingdom submit that, if the Court is satisfied that the boundary-linhs drawn on the chart and described in the *dispositif* do not, in the respects described in the United Kingdom Application or otherwise, give effect to the express words and evident intention of the Court's Decision read as a whole, the Court has an inherent power under Article 10(2) of the Arbitration Agreement to rectify the chart and the *dispositif* to the extent necessary to give effect to the correct interpretation of its own Decision.

I conclude by stating formally that the United Kingdom affirm in their entirety the linked submissions made in paragraph 19 of their Application . . .

On behalf of the Government of the French Republic, at the hearing of 27 January 1978:

The French Government . . . maintains the Submissions presented to the Court in its observations on the United Kingdom Application, namely:

—that the Application was submitted after the expiry of the period of three months following the Decision, which is provided for in Article 10(2) of the Arbitration Agreement;

— that during this three-months' period, and independently of the determination of the date on which that period commences, no dispute can be shown to have arisen between France and the United Kingdom as to a possible contradiction which, according to the United Kingdom but not according to France, would exist between different parts of a Decision all of which was written by the Court;

— that a dispute on the alleged contradiction was revealed only after the United Kingdom submitted their Application to the Court, *i.e* at a time when the dispute could no longer serve as a ground for seizing the Court under Article 10(2) of the Arbitration Agreement,

— that the only dispute established during the three-months' period relates to an attribution by the United Kingdom of the paternity of different passages of the Decision, some to the Court, others to the Expert—an attribution denied by the United Kingdom, with the result that the dispute on this point would amount to no more than a misunderstanding and would therefore not exist;

— that, in any event, the Court's powers of interpretation under the Arbitration Agreement only entitle it to clarify the meaning of a possible obscurity in the Decision, without empowering it in any manner to modify the contents of the Decision;

— that the measures which the United Kingdom request the Court to take to "reconcile" different parts of the Decision and to "rectify" certain parts of the Decision, including the course of the boundary-line on a chart, exceed the powers conferred on the Court by the Arbitration Agreement;

— that the Court has no "inherent power" entitling it to take measures of the scope of those mentioned in the Submissions of the United Kingdom,

— that, moreover, the Decision of the Court is not inconsistent with the reasoning set out in the Decision;

— that, as regards the request for interpretation submitted by the United Kingdom on 24 January concerning the nature of the segments between turning points of the boundary-line in the Channel and the nature of the geodesic reference system used for the delimitation in the Atlantic sector, the request is inadmissible because it does not relate to a dispute shown to exist between the Parties, nor, *a fortiori,* to a dispute the existence of which has been established within the three-months' period provided for in Article 10, paragraph 2, of the Arbitration Agreement,

— that, accordingly, there is no ground for the Court to give an interpretation of its Decision of 30 June 1977, which stands in its entirety, including the course of the boundary-line drawn on the Chart which constitutes an integral part of the Decision.

At the end of their final statements, the Agents of the Parties presented the following Submissions:

On behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, at the hearing of 30 January 1978:

[The United Kingdom Government] invite the Court:

(*a*) to reject the objections which France has raised to the admissibility of the United Kingdom Application under Article 10(2) of the Arbitration Agreement;

(*b*) to declare that Application admissible;

(*c*) to uphold the submissions made in paragraph 19 of that Application, as completed by the reply I have just given to the question put to the United Kingdom by the Court on 27 January.

The Agent of the United Kingdom had given the following reply to question (3) put by the Court on 27 January 1978:

In answer to this question, I must inform the Court that the United Kingdom have calculated the position at which the true half-effect line meets the 1,000-metre isobath, so far as the course of the latter can be ascertained. This position, which I shall call NX, may be defined as:

NX = 48°08′11″ N 09°16′00″ W,

the coordinates being rounded off to the nearest second of arc. The appropriate segment of line is a geodetic line, the azimuth of which, at point M, is the same as the Direction westwards stated in paragraph 254 of the Court's Decision, namely 247°09′37″. For the convenience of the Court I may state that this geodetic line intersects the meridians 6, 7, 8, and 9° West at the following latitudes:

at 6°00′00″ W : 49°06′52″ N;

at 7°00′00″ W : 48°49′44″ N,

at 8°00′00″ W : 48°31′52″ N;

at 9°00′00″ W . 48°13′16″ N.

all the above latitudes being rounded off to the nearest second. All of the above positions are on European Datum.

On behalf of the Government of the French Republic, at the hearing of 31 January 1978:

[T]he French Government maintains its previous Submissions and adds thereto, entirely in the alternative and in the event that the Court should feel itself bound to modify its Decision of 30 June 1977, the following Submission: the Court is requested to replace, as from Point L, the description of the boundary-line between the French and United Kingdom parts of the continental shelf by the following description:

(1) The coordinates of point M, the definition of which remains unchanged, should be corrected to read:

M 49°12′04″ N 5°41′51″ W

(Paragraph 253 of the Award).

(2) Paragraph 254 of the Award should be amended as follows, as from the second sentence ("The direction westwards followed . . ."):

"This line is defined as a series of geodetic arcs joining the points whose coordinates are given below:

M =	49°12′04″ N	5°41′51″ W
P_1 =	49°10′22″ N	5°48′24″ W
P_2 =	49°04′27″ N	6°10′16″ W
P_3 =	49°00′08″ N	6°25′50″ W
Q_1 =	48°56′28″ N	6°39′12″ W
P_4 =	48°50′37″ N	7°00′46″ W
Q_2 =	48°46′22″ N	7°16′04″ W
P_5 =	48°45′18″ N	7°19′47″ W
P_6 =	48°37′53″ N	7°45′23″ W
Q_3 =	48°21′55″ N	8°39′00″ W
N =	48°04′30″ N	9°35′20″ W
(Q_4 =	47°51′44″ N	10°15′37″ W)

The last arc of this line (Q_3–Q_4) cuts the 1000-metre isobath at approximately point N." Commencing with the words "The position of Point N . . . ", the paragraph [254] remains unchanged

(3) The Court's Decision should be amended in order to correct, in accordance with the foregoing, the coordinates of the points M and N, and to introduce between these two points the nine points P_1 to Q_3, the coordinates of which are given above.

(4) The chart annexed to the Decision must accordingly be corrected in conformity with the line drawn on the chart filed by France (chart 3).

1. The United Kingdom founds its Application for interpretation of the Decision on Article 10 of the Arbitration Agreement, the text[45] of which reads as follows:

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.

The French Government, on the other hand, objects that the Application is inadmissible on the grounds that it was not filed within the time-limit laid down in Article 10 and that it is also in other respects not in conformity with the terms of that Article. The Court must accordingly first address itself to the question whether it is precluded from entertaining the Application by reason of any of these objections.

2. The French Government, in alleging that the Application is out of time, invokes the provision in paragraph 2 of the Article which allows reference of a dispute regarding interpretation of the Decision only "dans les trois mois suivant la décision prise", and it points to the fact that the Court's Decision is expressly dated 30 June 1977 whereas the Application was filed only on 17 October 1977. It acknowledges that the Decision was not communicated to the Parties until 18 July 1977 and that, in filing its Application within three months of the latter date, the United Kingdom believed itself to be complying with the time-limit laid down by Article 10, paragraph 2. The French Government insists, however, that the interval between the dates of the Decision and of its communication to the Parties took place with their consent; that, in giving this consent, they did not ask for a corresponding alteration in the three-months' period; and that their silence on this point cannot be understood as implying an automatic postponement of the date from which the period was to run. It concedes that a different view might have had to be taken of the situation if the interval between the dates had been so considerable as virtually to deprive the Parties of any possibility of presenting an application for interpretation of the Decision. But it maintains that the reduction of a ninety-days' period by eighteen days cannot be said to have such an effect. In its view, therefore, the silence of the Parties when consenting to the postponement of the delivery of the Decision by eighteen days must be understood as indicating that they did not consider this period to be important enough to warrant a corresponding postponement of the date specified by the Arbitration Agreement for the running of the three-months' time-limit. It asks the Court to conclude that in these circumstances the Application must be held to have been filed out of time.

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[45] The French text reads:

"1. Les deux Gouvernements sont convenus d'accepter comme définitive et obligatoire pour eux-mêmes la décision du Tribunal relative à la question énoncée à l'article 2 du présent compromis.

"2. Chaque Partie peut, dans les trois mois suivant la décision prise, déférer au Tribunal toute contestation entre les Parties en ce qui concerne l'interprétation et la portée de la décision."

3. This objection appears to the Court of Arbitration to be wholly unfounded. Article 10, paragraph 2, confers upon either Party the right, within the period which it specifies, to refer to the Court any dispute between them as to the meaning and scope of the decision. Such a right can have no reality or object otherwise than in relation to a decision the purport of which has been made known to the Parties. Consequently, when in the French text of the Agreement the paragraph provides that the right may be exercised "dans les trois mois suivant la décision prise", it is logical to suppose that by these words the Parties intended that the three-months' period should begin to run from the date when the decision was taken vis-à-vis the Parties, that is, the date when it was handed down to the Parties. That such was indeed the intention of the Parties is confirmed by the wording of the English text of the paragraph, which speaks expressly of reference to the Court "within three months of the *rendering* of the decision". The natural meaning of "rendering" in the context of Article 10 is, in the opinion of the Court, the handing down or delivering of the decision to the Parties; and that this is the meaning with which it is used in Article 10 is corroborated by the fact that the word "render" unmistakably has this meaning in the very next Article of the Agreement. Since the meaning expressed in the English text of Article 10, paragraph 2, is also the meaning indicated by common sense and fairness, the Court of Arbitration must conclude that the English text accurately expresses the intention of the Parties regarding the date for the commencement of the three-months' period.

4. The Court of Arbitration further observes that Article 40 of its Rules of Procedure specifically provided that the award should be "read out in a formal session of the Court, the Agents and Counsel of the Parties being present or having been duly summoned to appear", while Article 41 further provided that the award should contain an indication that it had been "delivered by the Court" ("rendue par le Tribunal") and also "the date on which it is delivered" ("rendue"). These provisions of the Rules, made by the Court pursuant to Article 3 of the Arbitration Agreement and after consultation with the Parties, only serve to confirm the Court in its opinion that the operative date of the decision vis-à-vis the Parties was understood by them to be its handing down or delivery by the Court to the Agents.

5. The Court of Arbitration having concluded that the date for the commencement of the three-months' period under Article 10, paragraph 2, must be understood to be the date of the delivery of the Decision to the Parties, the French Government's contention regarding the silence of the Parties when consenting to the arrangements for its delivery necessarily ceases to be of any relevance. The Court, however, thinks it right to add that, in any event, this contention also appears unconvincing. It was the Court itself which sought and obtained the agreement of the Parties that the reading of the Decision at a formal session should be dispensed with; and that, when ready, the Decision should instead be simply transmitted to them, a procedure which was clearly in conformity with Article 9, paragraph 1, of the Arbitration Agreement. This the Court did at an early stage in its deliberations for the purpose of avoiding the additional expense to the Parties involved in maintaining the Court in session during the interval while the printing of the

Decision and the reproduction of the Boundary-Line Chart were being carried out. By letters of 7 July 1977, the Parties were informed by the Deputy-Registrar that the delivery of the Decision to them could take place on 18 July, and they agreed to this arrangement. The text of the Decision delivered to the Parties on 18 July 1977 bore the date 30 June 1977, the date of its formal "making" by the Court and a date not previously made known to the Parties. The Court sees no basis in the circumstances just recounted for the suggestion that, in agreeing to the so-called "postponement" of the delivery of the Decision, the United Kingdom implicitly accepted a diminution of the three-months' period by some days. The "silence" of the United Kingdom, whether before or after the delivery of the Decision on 18 July 1977, regarding the question of the three-months' period needs no other explanation than its reliance on the word "rendering" in the English text of Article 10, paragraph 2, as specifying the time of the commencement of the period. Nor can the United Kingdom be assumed to have understood that, by agreeing to a proposal of this kind made by the Court, it might be considered to have reduced its legal rights under Article 10 of the Arbitration Agreement.

6. Accordingly, the Court of Arbitration cannot accept the objection put forward by the French Government that the United Kingdom filed its Application outside the time-limit of three months laid down by Article 10, paragraph 2, of the Arbitration Agreement.

7. The French Government, however, further alleges that the Application does not, in any event, relate to a dispute concerning "the meaning and scope of the decision" which arose within the three-months' period. It says that to fall within Article 10, paragraph 2, the dispute must be one that actually arose during that period and not one that may have manifested itself subsequently during the present proceedings; and that, in determining the subject of the dispute submitted to the Court, the Application must be read in conjunction with the British and French Notes of 19 and 28 September, respectively. It maintains that, while in the Application the United Kingdom puts its request for an interpretation of the decision on two alternative bases, the dispute constituted by the Notes of 19 and 28 September related to only one of these bases, namely the "paternity" of different parts of the Decision; and it submits that this dispute cannot properly be considered as one involving "a dispute as to the meaning and scope of the decision".

8. This objection, therefore, is founded on the proposition that in the Notes of 19 and 28 September the dispute between the Parties related only to contentions of the United Kingdom (*a*) that certain parts of the Decision were attributable to the Expert rather than to the Court and (*b*) that certain passages in the Court's reasoning should prevail over the *dispositif* and the Boundary-Line Chart. Those contentions had been rejected by the French Government, together with the offer by the United Kingdom to discuss the matter and reach agreement upon a modified tracing of the boundary for communication to the Court. According to the French Government, the terms of that offer show that the contention which the United Kingdom was then putting forward was that the question referred to the Court by the Arbitration Agreement had not been replied to by the Court itself but by the Ex-

pert. The disagreement on this point, it maintains, was simply a facet of the dispute between the Parties concerning the value to be attached to the several parts of the Decision and the role played by the Court in regard to them; and this dispute was a dispute not as to the meaning and scope of the Decision but as to the paternity of its several parts.

9. Some passages in the United Kingdom's Note of 19 September 1977, no doubt, lend colour to the French Government's contention that the United Kingdom then framed its case regarding the meaning and scope of the Decision on the basis that the Court's Decision is to be found in certain paragraphs of its reasoning rather than in the *dispositif* and the Boundary-Line Chart. It does not, however, follow that the dispute embodied in that Note and the reply of the French Government of 28 September 1977 related exclusively, or even essentially, to the supposed paternity of the several parts of the Decision. The Note of 19 September 1977 made it clear enough to the French Government that the United Kingdom was canvassing the question of the "paternity" of specified parts of the Decision for the purpose of demonstrating, in two connexions, the existence of alleged contradictions between, on the one hand, certain paragraphs in the Court's reasoning and, on the other, the provisions of the *dispositif* and segments of the line traced on the Boundary-Line Chart corresponding thereto.

10. Thus, in querying the boundary to the north and west of the Channel Islands, the United Kingdom expressly invoked the fact that "the boundary as drawn on the chart accompanying the Decision and as defined in its *dispositif* does not coincide with the description in paragraph 202"; and it went on to indicate the nature of the discrepancies which it alleged between the boundary described in paragraph 202 and the one defined in the *dispositif* and traced on the Chart. In the case of the Atlantic region, the invocation of a discrepancy between the *dispositif* and the Court's reasoning, if less explicit, was no less apparent. The United Kingdom recalled the Court's pronouncement in paragraph 251 of the Decision that between Points M and N and the boundary is to be a line drawn mid-way between two equidistance lines, one of which does and the other of which does not use the Scilly Isles as a base-point. It further recalled the Court's description of the boundary in paragraph 254 as the line which bisects the area formed by those two equidistance lines. Then, noting that the boundary had been drawn as a straight line on a Mercator chart, it said:

> However, as a result of the scale distortions inherent in charts drawn on the Mercator projection, the line M-N as drawn on the boundary-line chart does not represent a straight line on the surface of the earth, and does not represent the line lying mid-way between, or bisecting the area between, true equidistance lines based on Ushant and the Scilly Isles and on Ushant and Land's End, respectively

In addition, the opening paragraph of the Note called the attention of the French Government expressly to Article 10, paragraph 2, while in the concluding paragraph the United Kingdom stated that it considered the two matters which it had specified to "raise questions concerning the meaning, or alternatively the scope, of the Court's Decision".

11. Consequently, in view of the Court of Arbitration, the Note of 19 September 1977 could not fail to be seen by the French Government as dis-

cussing the "paternity" of parts of the Decision essentially in the context of a specific claim that alleged discrepancies between the reasoning and the *dispositif* of the Decision raised questions as to its "meaning or scope". The French Government, in rejecting the United Kingdom's offer to discuss these questions, elected to base the rejection simply and solely on the binding and definitive character of the *dispositif* under Article 10, paragraph 1, of the Arbitration Agreement. Indeed, in its Note of 28 September 1977, it passed over in total silence not only the United Kingdom's invocation of paragraph 2 of Article 10 but also the latter's references to alleged discrepancies in the Decision. Such a reply, however justifiable the French Government might consider its reliance on Article 10, paragraph 1, could scarcely fail to be regarded by the United Kingdom as implying a comprehensive denial of the validity of the considerations which the latter had advanced in invoking Article 10, paragraph 2.

12. The Court of Arbitration, moreover, subscribes to the view taken by the Permanent Court of International Justice in the *Chorzów Factory* case that to require undue formality, such as the exhaustion of diplomatic negotiations, in establishing the existence of a dispute would be out of place in the context of a request for the interpretation of a judgment. Applying Article 60 of its Statute, the wording of which is not for the present purpose materially different from that of Article 10, paragraph 2, of the Arbitration Agreement, the Permanent Court there said (P.C.I.J., Series A, No 13, pp. 10-11):

> It would no doubt be desirable that a State should not proceed to take as serious a step as summoning another State to appear before the Court without having previously, within reasonable limits, endeavoured to make it quite clear that a difference of views is in question which has not been capable of being otherwise overcome. But in view of the wording of the article, the Court considers that it cannot require that the dispute should have manifested itself in a formal way; according to the Court's view it should be sufficient if the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of a judgment of the Court

This reasoning clearly applies *a fortiori* where, as in Article 10, paragraph 2, the right to request an interpretation of a decision has been made subject to a comparatively short time-limit.

13. The Court of Arbitration in the present case has no doubt whatever that the two Governments in fact showed themselves as "holding opposite views in regard to the meaning or scope" of the Decision of 30 June 1977. Their two Notes, respectively, of 19 and 28 September 1977, disclose a complete divergence of view between the Parties concerning the existence of alleged contradictions between the reasoning and the *dispositif* and concerning their alleged implications in regard to the meaning and scope of the Decision. This divergence of view, in the opinion of the Court, constituted a dispute as to the meaning and scope of the Decision for the purposes of Article 10, paragraph 2, and was one which arose within the three-months' period laid down in that paragraph. It follows that the objection in this regard lodged by the French Government to the admissibility of the Application is without any foundation and must be rejected.

14. The French Government, however, contends that the Application is inadmissible on another and more fundamental ground which concerns its

subject matter. This objection it formulates in its Submissions as follows: the powers of interpretation possessed by the Court in virtue of the Arbitration Agreement only permit it to elucidate the meaning of an obscurity in the Decision, without allowing it to modify the content in any way; the measures which the United Kingdom asks the Court to take in order to "reconcile" certain elements in the Judgment and to "rectify" certain elements in the Decision, including the boundary traced on the Chart, exceed those powers; the Court has no "inherent power" to take measures of the scope of those appearing in the United Kingdom's Submissions; and in any event, the Court's Decision is not in contradiction with its reasoning.

15. The United Kingdom, on the contrary, replies in its Submissions that the dispute is one as to the meaning and scope of the Decision. This, it says, is because

> the United Kingdom contends, and France denies, that binding force attaches to certain key paragraphs in the body of the Court's Decision, namely paragraphs 202, 251 and 254,

which, in its view, constitute an essential element of the Court's Decision and accordingly form part of the Court's response to the question specified in Article 2 of the Arbitration Agreement. It insists that the primary relief which it seeks is a ruling from the Court on the meaning and scope of the Decision, given the contradictions in the Decision which it has alleged in paragraphs 8 to 16 of its Application. It claims that

> if the Court is satisfied that the boundary-lines drawn on the chart and described in the *dispositif* do not, in the respects described in the United Kingdom Application or otherwise, give effect to the express words and evident intention of the Court's Decision read as a whole, the Court has an inherent power under Article 10(2) of the Arbitration Agreement to recify the chart and the *dispositif* to the extent necessary to give effect to the correct interpretation of its own Decision

In answer to a question put by the Court, the United Kingdom defined more precisely the actual rectification of the Chart and the *dispositif* which it claims, and which for present purposes can be said to be the continuation westwards of the line from Point M, at the angle of 247°09′37″ prescribed by the Court, by a geodetic line instead of by the loxodrome indicated in the *dispositif* and drawn on the Chart.

16. The submissions of the Parties have only to be stated for it to become apparent that the issue of admissibility raised by the present objection is intimately linked to the merits of the claim which is the subject of the United Kingdom's Application. The issue whether the contradictions alleged by the United Kingdom do indeed exist in the Decision is at the very root of its claim to be entitled to invoke Article 10, paragraph 2, of the Arbitration Agreement; and the same is equally true of the issue whether, if the alleged contradictions exist, they raise a question as to the meaning and scope of the Decision for the purposes of that provision. Similarly, the determination of the issue whether the "rectification" for which the United Kingdom asks falls within the powers of the Court under Article 10, paragraph 2, or amounts to a "modification" of the Decision outside those powers, is in large measure dependent on the conclusions to be reached by the Court on the other issues just mentioned; and this issue also is, therefore, closely connected with the merits of the claim formulated in the Application. It follows,

in the opinion of the Court of Arbitration, that the present objection does not, in the light of the circumstances of this case, possess an exclusively preliminary character; and that it must accordingly be examined within the framework of the merits.

17. The Application seeks from the Court a determination under Article 10, paragraph 2, of the meaning and scope of its Decision of 30 June 1977 in connexion with the two distinct parts of the boundary-line prescribed in the *dispositif* and traced in the Boundary-Line Chart included with the Decision. These are: (*a*) to the north and west of the Channel Islands, the boundary defined in paragraph 2 of the *dispositif;* and (*b*) in the Atlantic region, the boundary running westwards from Point M to Point N and defined in paragraph 1 of the *dispositif* by reference to the coordinates given for those points. The two parts of the boundary-line brought into question by the United Kingdom are quite distinct geographically; they are dealt with in the reasoning of the Decision individually and independently; and the techniques and methods of delimitation the use of which is queried by the United Kingdom are quite different in the case of those two parts. The Court will therefore examine the problems raised by the United Kingdom with respect to the two parts of the boundary in question separately.

18. Before doing so, however, the Court thinks it desirable to make certain general observations regarding the nature and extent of the function entrusted to it by Article 10, paragraph 2, which has been the subject of extensive debate in the pleadings. The Parties are at one in considering that the power of the Court to entertain "any dispute . . . as to the meaning and scope of the decision" comprises and only comprises disputes as to the "interpretation" of the Decision. This opinion is shared by the Court, which also notes that the similar, if not identical, provision in the Statute of the International Court of Justice and of its predecessor ("dispute as to the meaning or scope of the judgment") has uniformly been taken to have that sense. The divergence of view between the Parties arises rather in relation to the following points: What constitutes the "decision" of the Court for the purposes of Article 10, paragraph 2? Under what conditions may the Court's reasoning be said to have binding force and to prevail over parts of the *dispositif* and the Boundary-Line Chart which allegedly are in conflict with it? Whether such a conflict can be considered to raise a question of the "meaning and scope" of the Decision? Supposing such a conflict to exist, what power, if any, has the Court under Article 10, paragraph 2, to make any necessary corrections to the *dispositif* and to the Boundary-Line Chart?

19. The French Government without taking the position that parts of the reasoning may never have the authority of *res judicata*, maintains that in the present case the matter is foreclosed by the Arbitration Agreement itself. Under the Agreement, it says, the authority of *res judicata* indisputably attaches only to the reply given to the question formulated in Article 2, that is, to the delimitation of the boundary, including its drawing on a chart. Moreover, in its view, what is important to determine in the present instance is not to what may attach the authority of *res judicata* but to what relates the right of recourse to the Court provided for by Article 10, paragraph

2; and this provision envisages only an interpretation of the Decision. Under Article 10, paragraph 2, according to the French Government, the decision is the one defined in paragraph 1 of that Article, namely, "the decision of the Court on the question specified in Article 2", while Article 9 prescribes that this decision "shall include the drawing of the course of the boundary (or boundaries) on a chart". The French Government asks the Court then to conclude that the right of recourse allowed under Article 10, paragraph 2, envisages an interpretation in regard only to the decision on the reply to the question formulated in Article 2, including the drawing of the line on a chart, and in regard to nothing else. Article 10, it insists, does not contemplate that the right of recourse should extend to the reasoning of the reply to the question, because the reasoning is not, in its view, the reply, which alone is envisaged by Article 10 as the subject of the right of recourse provided for in paragraph 2.

20. These considerations also lead the French Government to contend that certain allegedly "liberal" pronouncements of the Permanent Court of International Justice in the *Chorzów Factory* case (P.C.I.J., Series A, No. 13), relied on by the United Kingdom, are without pertinence in the present case. Under the Statute of that Court, it argues, the right to seek an interpretation related generally to any dispute as to "the meaning or scope of the judgment", but in the present case the Arbitration Agreement specifies precisely what it is in the judgment that is to have definitive and obligatory force, namely, the delimitation of the boundary and the drawing of its course on a chart. The *Chorzów Factory* case, in its view, also differs from the present one in that the question in that case was whether binding force, the attachment of which to the *dispositif* was not contested, attached *also* to the reasoning; in the present case, on the other hand, the United Kingdom appears to it to be asking that certain parts of the reasoning should be made to prevail over the *dispositif*.

21. On the basis of the above arguments, the French Government asserts that, to be admissible in the present case, the Application must relate exclusively to the interpretation of the "decision", as defined by Articles 2, 9, paragraph 1, and 10 of the Agreement, that is, to the delimitation of the boundary and the drawing of its course on a chart; and not to the judgment as a whole.

22. The United Kingdom does not dissent from the French Government's view that the word "decision" in Article 10, paragraph 2, must be understood in the sense of the decision on the question specified in Article 2, or from the view that it is to this decision that the authority of *res judicata* attaches. It differs fundamentally from the French Government, however, as to where the decision of the Court on the question specified in Article 2 is to be found, and also rejects the latter's thesis that the Court's response to the question is to be found only in the boundary-line as described in the *dispositif* and drawn on the Chart. It likewise rejects the latter's view that the authority of *res judicata* attaches only to "the delimitation of the boundary, including its drawing on a chart". It contends, on the contrary, that

> certain clearly identified passages in the body of the Decision itself constitute essen-

> tial elements of the Award which equally have the authority of *res judicata* and, indeed, form an integral part of the Court's response to the question specified in Article 2.

As to Article 9 of the Agreement, the United Kingdom claims that the inference to be drawn from it is the opposite of that suggested by the French Government; and that, by providing for the decision to "include" the drawing of the line, the Article necessarily implies that the decision is to comprise something more.

23. The United Kingdom's own position on this aspect of the case may be summarized as follows. In conformity with its undertaking in Article 10, paragraph 1, it accepts as final and binding upon it the decision of the Court on the question specified in Article 2 of the agreement. It claims, however, to see "clear contradictions" between, on the one hand, certain "very specific parts" of the *dispositif* and the Chart and, on the other, certain "key paragraphs" in the body of the Decision itself, namely paragraphs 202, 251 and 254. These "key paragraphs" do not, in its view,

> form part of the Court's reasoning but rather embody conclusions reached by the Court as to the course of the relevant boundaries, conclusions which determine and fix the limits within which the boundary lines should be formally defined in the *dispositif* and depicted on the Chart

Their wording, it argues, is consistent only with the view that "they form an integral part of the Court's decision on the course of the boundary lines". As to the *dispositif*, the United Kingdom observes that it indicates the course of the two boundaries by reference to precise coordinates and declares that the two lines are those traced in black on the Boundary-Line Chart included with the Decision; and that this is its entire content. The United Kingdom does not contend that the *dispositif* is not responsive to the question specified in Article 2, or that it lacks binding force, except to the extent that it "is inconsistent with the principles laid down in the Decision as to the manner in which these boundary-lines should be drawn". It states, however, that the list of coordinates spelt out in the *dispositif* represents no more than the Court's *application* of the principles clearly set out in the body of the Decision, notably in paragraphs 202, 251 and 254, for the construction of the boundary-line. It then contends that, in such a case, the legal principles or considerations laid down by the Court for the construction of the boundary-lines form the essential basis of the Court's Decision on the question specified in the Agreement and cannot be divorced from the *dispositif* and the Chart.

24. In support of its position on the matter, the United Kingdom mentions certain previous cases in which the relative significance of the *dispositif* and the reasoning in determining what is the *res judicata* of a judgment or award was discussed; and it invokes, in particular, pronouncements of the Permanent Court of International Justice in the *Chorzów Factory* case (P.C.I.J., Series A, No. 13), to which the Court will make further reference in paragraph 28 below. The United Kingdom maintains that there is no material difference between the terms of Article 60 of the Statute of that Court and the terms of Article 10 of the Arbitration Agreement and rejects the French Government's attempt to distinguish the *Chorzów Factory* case on the ground of a supposed difference between the two provisions. The United

Kingdom also rejects the distinction drawn by the French Government between the two cases on the ground that in the present case the United Kingdom is asking for certain parts of the reasoning to be made to prevail over the *dispositif*. The suggested distinction, it says, is based on a fundamental misconception of the nature of the United Kingdom Application, which it characterises as seeking rather a reconciliation of the *dispositif* with the legal principles and considerations decided in the reasoning for the construction of the boundary.

25. The Court of Arbitration sees nothing in the language of Articles 2, 9 and 10 of the Arbitration Agreement to limit the meaning of the word "decision" in paragraph 2 of Article 10 to the delimitation of the boundary in the *dispositif*, plus the drawing of its course on a chart, as the French Government has claimed in these proceedings. Certainly, and there is no disagreement between the Parties on the point, Articles 2, 9, paragraph 1, and 10, paragraph 1, make it crystal clear that "the decision of the Court" for the purposes of the Agreement is its decision on the question specified in Article 2. No doubt, those provisions of the Agreement also envisage the decision on the course of the boundary (or boundaries), together with its drawing on a chart as the operative part—the kernel—of the decision to which the authority of *res judicata* would in law attach. But it by no means follows that the "decision" referred to in those Articles is to be considered as denoting a disembodied *dispositif* and chart wholly detached from the reasoning leading up to and justifying the provisions of the *dispositif* and the course of the boundary drawn on the chart. Such a view of the effect of Articles 2, 9 and 10 would be so contrary to the accepted concepts in international procedure that it could not be adopted without the clearest indication that such was indeed the intention of the Parties.

26. So far from those Articles furnishing such an indication, Article 9 appears to the Court of Arbitration to point in the opposite direction from that suggested by the French Government. Article 9, paragraph 2, prescribes that the decision is not merely "to state the reasons on which it is based", as is required of a judgment of the International Court of Justice (Statute, Article 56), but to be "fully reasoned"; and this provision scarcely appears consistent with an intention to detach the decision completely from its reasoning. Paragraph 3 of the Article also echoes—indeed reproduces almost word for word—a provision found in the Statute of the International Court of Justice by providing:

> 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.

That the words "the decision of the Court" should have been intended by the Parties in this provision to refer only to the *dispositif* and the drawing of the course of the boundary on a chart is really inconceivable. To interpret the paragraph in such a way would run directly counter not only to the consistent and long established practice of the International Court of Justice but also to the object and purpose of the provision itself. Nor did even the possibility of such a novel interpretation of paragraph 3 occur to the present Court when it appended to its Decision of 30 June 1977 a declaration by one

of its Members devoted exclusively to aspects of the reasoning. The regularity of that "declaration" under paragraph 3 has not been questioned and, in the view of the Court of Arbitration, is beyond question in the light of the object and purpose of the paragraph and of the settled practice in the matter.

27. Accordingly, the Court of Arbitration must reject the thesis of the French Government that Articles 2, 9 and 10 establish a particular concept of "the decision of the Court", having the effect of detaching altogether the Court's reasoning from its delimitation of the boundary (or boundaries) in the *dispositif* and drawing of the line (or lines) on a chart. The Court finds nothing in these Articles to indicate that, by using the words "any dispute . . . as to the meaning or scope of the decision" in Article 10, paragraph 2, the Parties intended the paragraph to apply exclusively to the reply to the question posed in Article 2 which the Court would give in the *dispositif* and by drawing the course of the boundary on a chart, taken in complete isolation from the reasoning in the body of the reply. It follows that the Parties are to be understood as having intended the generally recognized principles governing the relation between the *dispositif* and the reasoning of a decision in international proceedings to be applicable in the operation of Article 10, paragraph 2. It is these principles, therefore, and their application in the context of the present case that must now be examined by the Court.

28. The Court of Arbitration considers it to be well settled that in international proceedings the authority of *res judicata*, that is the binding force of the decision, attaches in principle only to the provisions of its *dispositif* and not to its reasoning. In the opinion of the Court, it is equally clear that, having regard to the close links that exist between the reasoning of a decision and the provisions of its *dispositif*, recourse may in principle be had to the reasoning in order to elucidate the meaning and scope of the *dispositif*. From this it follows that under certain conditions and within certain limits, the reasoning in a decision may properly be invoked as a ground for requesting an interpretation of provisions of its *dispositif* (*cf. Chorzów Factory* case, P.C.I.J., Series A, No. 13). But the subject of a request for interpretation must genuinely be directed to the question of what it is that has been settled with binding force in the decision, that is in the *dispositif* (*ibid.*, p. 11; *Asylum (Interpretation)* case, I.C.J. Reports 1950, p. 402); the reasoning cannot therefore be invoked for the purpose of obtaining a ruling on a point not so settled in the *dispositif*. A request for interpretation may, on the other hand, be directed to obtaining a ruling on the question whether a certain point has or has not been settled with binding force in the decision (*Chorzów Factory* case, P.C.I.J., Series A, No. 13 pp. 11–12); and the reasoning of a decision may accordingly be referred to for this purpose. Furthermore, if findings in the reasoning constitute a condition essential to the decision given in the *dispositif*, these findings are to be considered as included amongst the points settled with binding force in the decision (*ibid.*, p. 20).

29. At the same time, account has to be taken of the nature and limits of the right to request from a Court an interpretation of its decision. "Interpretation" is a process that is merely auxiliary, and may serve to explain

but may not change what the Court has already settled with binding force as *res judicata*. It poses the question, what was it that the Court decided with binding force in its decision, not the question what ought the Court now to decide in the light of fresh facts or fresh arguments. A request for interpretation must, therefore, genuinely relate to the determination of the meaning and scope of the decision, and cannot be used as a means for its "revision" or "annulment", processes of a different kind to which different considerations apply. Where, as in the present case, the request for interpretation must, if upheld, entail some adjustment—to use a neutral term—of the *dispositif*, the task of determining whether the remedy sought in the request falls within the ambit of the process of "interpretation" or amounts to a demand for "revision" may be a difficult one. The determination of this question necessarily depends on the particular facts of each case and will therefore be examined later in connexion with the facts relating to each of the two problems raised in the United Kingdom's Application. It suffices here for the Court of Arbitration to note that the United Kingdom explicitly disclaims that it has any right to seek or to obtain a "revision" of the Decision of 30 June 1977.

30. The basis of the United Kingdom's request for interpretation of the Decision of 30 June 1977 is the contention that, both in the case of the boundary to the north and west of the Channel Islands and in the case of the Atlantic region, there is a contradiction between "decisions" stated by the Court in passages of its reasoning setting out the principles and methods for delimiting the boundary and the corresponding provisions of the *dispositif* applying those principles and methods. As to this, it is undoubtedly the fact that in passages of its reasoning relating to each of the regions the Court in express terms either "decides" or "finds" that the boundary is to be drawn in conformity with certain principles and by certain methods; and that the corresponding provisions of the *dispositif* are no more than the Court's application of those principles and methods. It is therefore evident that the express findings of the Court in those passages of the reasoning "constitute a condition essential to the Court's decision", and that the United Kingdom is justified in its contention that they should be considered as included amongst the points settled with binding force in the decision (see paragraph 28 above). It follows that recourse to the paragraphs containing these findings may properly be invoked by the United Kingdom as a basis for determining the meaning and scope of the *dispositif*. The Court must, however, observe that the "findings" incorporated in those paragraphs of the reasoning are themselves conclusions drawn by the Court from its examination in previous paragraphs of the considerations of fact and law held by it to be pertinent to the determination of the course of the boundary in each region. Consequently, it is not only the reasoning of the paragraphs embodying the findings invoked by the United Kingdom to which reference has to be made in interpreting the relevant provisions of the *dispositif;* account may at the same time also have to be taken of the reasoning in other paragraphs by process of which the Court arrived at those findings "essential" to its decisions in the *dispositif*.

31. The Court is now in a position to consider the United Kingdom's

Application for an interpretation of the Decision of 30 June 1977 in respect of the boundary to the north and west of the Channel Islands. The case which it presents is that there is a manifest discrepancy between the Court's "decision" in paragraph 202 regarding the principle and method to be applied in delimiting this boundary and the actual delimitation of the boundary in paragraph 2 of the *dispositif*. The discrepancy, it says, arises from the fact that in paragraph 202 the Court decided that the boundary should "be drawn at a distance of 12 nautical miles from the established baselines of the territorial sea of the Channel Islands", whereas the definition of the boundary in the *dispositif*, by use of arcs of circles and coordinates, does not correspond in all respects with a 12-mile boundary drawn "from the established baselines of the territorial sea of the Channel Islands". It adds that the same divergence from the "decision" in paragraph 202 appears also in paragraph 203 and in the Expert's Technical Report, in both of which places the description of the boundary does not, it says, conform in all respects with a 12-mile boundary drawn "from the established baselines of the territorial sea of the Channel Islands".

32. As proof of the discrepancy, the United Kingdom refers to a large-scale chart submitted to the Court, at the Court's request, during the oral hearings in 1977, on which it had traced the precise course of the 12-mile fishery limit of the Channel Islands. It has furnished the Court with a fresh version of that chart in the form of the map at Appendix B.1 to its Application, and on the map has also marked the 12-mile "enclave" boundary as this appears on the Court's Boundary-Line Chart. And it has drawn the attention of the Court to the fact that in an area to the north of Alderney and the Casquets and in another area to the north-west of Guernsey, the line on the Boundary-Line Chart encroaches on the 12-mile fishery limit of the Channel Islands. It says that this map and certain further large scale charts, included as Appendices B.2 and B.3 to the Application, show that the discrepancies in the delimitation of the 12-mile limit on the Boundary-Line Chart are accounted for by the omission to make use of five low-tide elevations and two dry-land low-water features as relevant base-points. In paragraph 11 of the Application, the United Kingdom names these additional base-points the use of which it considers justified in delimiting the 12-mile limit to the north and west of the Channel Islands. In Appendix A.4, moreover, it gives a full list of the base-points which it says control the delimitation of a 12-mile limit in this region, together with the coordinates of each base-point corrected for European Datum. It claims that these base-points have been consistently used by the United Kingodm, without protest by France or other States, for the delimitation of the existing three-mile territorial sea of the Channel Islands, and that they must accordingly be considered points on "the established baselines of the territorial sea of the Channel Islands".

33. The French Government did not, either in its written observations or in the first round of its oral argument, make any comment whatsoever on the United Kingdom's statements regarding the boundary to the north and west of the Channel Islands. The natural inference, therefore, for the Court to draw from the silence of the French Government on this question was

that, while maintaining its general contentions regarding the inadmissibility of the Application and the limits of the court's competence under Article 10, paragraph 2, of the Agreement, the French Government did not dispute the statements of the United Kingdom with respect to the "discrepancy" in this region. Accordingly, at the conclusion of the first round of the oral arguments, the Court of Arbitration put the following question to the French Government:

> Is the Court correct in understanding that the French Government does not contest the status of the geographical features named in Appendix A 4 to the Application as base-points of the Bailiwick of Guernsey for the purpose of delimiting the 12-mile fishery zone of the Channel Islands, or the technical accuracy of the two series of coordinates listed in that document?

In replying to this question on 31 January 1978, the French Government first observed that, after careful checking, it had noted a few small differences between the coordinates given in Appendix A.4 and those taken on French charts, but that these were "minimal" and explicable by the difference in the geodesic systems used in the marine charts of the two countries. It then stated:

> The French Government has not contested and does not contest that the identification of the basepoints relevant for the determination of the 12-mile limit from the baselines of the territorial sea has been carried out correctly by the British Government. It likewise accepts as correct the positions given for these points by the British Government, despite the differences already mentioned which it does not consider to be material

34. The Court of Arbitration, having regard to the French Government's statement on 31 January 1978, finds that there is no dispute between the Parties as to the base-points relevant for the delimitation of a 12-mile boundary from the baselines of the Bailiwick of Guernsey. Consequentially, it also finds that there is no dispute between the Parties that there is indeed a "discrepancy" between the 12-mile boundary on the continental shelf to the north and west of the Channel Islands, defined in paragraph 2 of the *dispositif* and traced in black on the Boundary-Line Chart, and a 12-mile boundary delimited from the established baselines of the Bailiwick of Guernsey. During its session of 14/15 December 1977, the Court moreover, through its own Expert, verified the status of the geographical features named by the United Kingdom in Appendix A.4 to the Application and the coordinates there given for each base-point. It follows that the Court of Arbitration finds the contention of the United Kingdom regarding the existence of a discrepancy between the boundary indicated by the Court in paragraph 202 of its reasoning and the boundary defined in paragraph 2 of the *dispositif* and traced in black on the Boundary-Line Chart to have been established. The position before the Court thus is that there is a contradiction between the expression of the Court's intention regarding the boundary to the north and west of the Channel Islands in paragraph 202 of the reasoning and its expression in paragraph 2 of the *dispositif* and on the Boundary-Line Chart. It remains only to consider what consequences follow from that finding.

35. The terms in which the Court's finding regarding this boundary is stated in paragraph 202 appear to the Court of Arbitration to leave no shadow of doubt that its intention is to be found in that paragraph of the rea-

soning. The definition of the boundary in paragraph 2 of the *dispositif* is no more than a simplified and formal reiteration of the definition already given in paragraph 203; and the latter definition was itself no more than the technical application—incorrect as it has turned out—of the principle and method explicitly "decided" by the Court in paragraph 202 to be the ones governing the delimitation of this boundary. Furthermore, the principle laid down by the Court in paragraph 202 states in the most absolute terms that the boundary "must not . . . 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"; and it was to respect this principle that the Court decided that the 12-mile boundary should be delimited "from the established baselines of the territorial sea of the Channel Islands". Since the boundary defined in paragraph 2 of the *dispositif* and traced in black on the Boundary-Line Chart does not respect the principle stated by the Court to be a cardinal element in its decision, it clearly does not give effect to the intention of the Court in its Decision of 30 June 1977.

36. The contradiction between the express findings of the Court in paragraph 202 of the reasoning and the delimitation of the boundary in paragraph 2 of the *dispositif* must, therefore, be resolved in favour of the findings in the reasoning, if the intention of the Court in its Decision of 30 June 1977 is not to be defeated. This involves some rectification of the definition of the boundary in paragraph 2 of the *dispositif* in order to effect a reconciliation of its provisions with the findings of the Court in paragraph 202, and the question arises whether such a rectification of the *dispositif* falls within the scope of the Court's competence under Article 10, paragraph 2, of the Arbitration Agreement. As to its having the power under Article 10, paragraph 2, to effect such a rectification of the *dispositif*, the Court is not in doubt. The discrepancy between the *dispositif* and the Court's findings in the reasoning arises purely and simply from technical causes resulting in a mis-application of those findings, a discrepancy not detected by the Court owing to the differences in character and scale between the Boundary-Line Chart and the relevant charts submitted during the proceedings in 1977. The discrepancy is therefore one which is properly characterized as a "material error", analogous to one resulting from a "slip of the pen" or from the miscalculation or miscasting of arithmetical figures. The power of a court to rectify such a discrepancy, where in the interests of good administration of justice it is necessary to correct a material error that appears on the face of its decision, is considered by the Court of Arbitration to be generally accepted. Where, as in the present case, a contradiction between different parts of a decision is said to exist by reason of an alleged material error, the question of rectification necessarily arises only after the question of interpretation has been decided and the contradiction has been found to exist. A compromissory clause, such as that in Article 10, paragraph 2, of the Arbitration Agreement, may then furnish the basis for obtaining a rule as to the true meaning and scope of the decision and as to the existence of the contradiction alleged. The power of the Court to rectify the resulting error remains, however, its inherent power to rectify a material error found to exist in its decision. The power to rectify need not, therefore, be stated in the

compromissory clause; but equally the compromissory clause does not enlarge the Court's power to rectify its decision, unless expressly so provided in the clause. In the present instance, at any rate, the material error alleged with respect to the provisions of paragraph 2 of the *dispositif* concerning the boundary to the north and west of the Channel Islands having been established, it follows that the Court has the power to effect the necessary rectification of the error.

37. The function of the Court under Article 10, paragraph 2, is to declare definitively the meaning and scope of its Decision of 30 June 1977, rather than to decide anew the course of the boundary. This function the Court of Arbitration considers it will duly discharge if it now prescribes, with binding effect, the nature of the rectification required to harmonize paragraph 2 of the *dispositif* with the Court's findings in paragraph 202 of the Decision. The required rectification is that to the north and west of the Channel Islands the boundary defined in paragraph 2 of the *dispositif* should now be corrected so as to follow the line composed of segments of arcs of circles of a 12-mile radius drawn from the base-points A to M on the baselines of the Bailiwick of Guernsey which are listed in Appendix A.4 to the Application and joining the 12 points of intersection of these arcs of circles which are likewise listed in that Appendix. These base-points and points of intersection of arcs of circles, as the Court has already stated in paragraph 34, are not in dispute between the Parties and have been verified through the Court's Expert. The Court, therefore, finds no reason to anticipate any difficulty in leaving it to the Parties themselves to effect a corresponding correction of the boundary traced in black on the Boundary-Line Chart to the north and west of the Channel Islands.

38. In the Atlantic region the case presented by the United Kingdom for an interpretation of the Decision is an alleged contradiction between the principles and method decided upon by the Court in paragraphs 251, 253 and 254 for the delimitation of the boundary westwards of Point M and the course of the line between Points M and N defined in the *dispositif* and traced in black on the Boundary-Line Chart. In the Application, it begins by recalling the Court's definition in paragraph 251 of the method of giving half-effect to an off-shore island:

> 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 equidistant lines. This method appears to the Court to be an appropriate and practical method of abating the disproportion and inequity which otherwise results from giving full effect to the Scilly Isles as a base-point for determining the course of the boundary

It argues that the Court's definitive decision on this part of the case is to be found in that passage, and considers this to be confirmed by a further statement of the Court in paragraph 253:

> 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.

It further cites the Court's description, in paragraph 254, of the resulting course of the boundary westwards of Point M:

From Point M, as indicated in paragraph 251, the boundary follows the line which bisects the area formed by, on its south[46] 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, whthout 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 three passages from the Court's reasoning set out above, according to the United Kingdom, embody the Court's "decision" as to the principle and method to be applied in delimiting the course of the boundary from Point M westwards to the 1,000-metre isobath.

39. The contradiction, in its view, arises from the fact that the segment of the boundary-line M-N has been drawn by the Court as a "loxodrome" or straight line on the Mercator navigational chart used for the Boundary-Line Chart. This means, it says, that the two "equidistance lines", one giving full and the other no effect to the Scilly Isles, which the Court used to calculate this segment of the boundary must also have been conceived of as lines of constant bearing, appearing as straight lines on a standard Mercator chart. Calling attention to certain explanations of the technique of the delimitation of equidistance lines given by its expert at the hearing on 8 February 1977, the United Kingdom stresses that the Mercator map projection depicts the geographical facts in terms of "plane geometry" which do not make any allowance for the curvature of the earth. It observes that this map contains, in consequence, inherent distortions which require to be corrected if it is to be used for delimitation purposes; for the horizontal distance scales on a standard Mercator chart are not, in general, constant, but vary with the latitude. The result, according to the United Kingdom, is that an equidistance line cannot be directly plotted on to a standard Mercator chart unless an allowance for scale distortions is made for each set of measurements of equal distances. A "true" equidistance line based on a single pair of base-points ought, it says, to be "the equivalent of a straight line along the curved surface of the earth", in other words a geodesic line. It points out that such a geodesic line, when plotted on a standard Mercator chart in the latitudes of the Atlantic region, appears as a curved line having a southward-tending curvature that becomes ever more pronounced with its further projection westwards. When, on the other hand, the equidistance lines stated in paragraph 7(*a*) and (*b*) of the Expert's Technical Report to be the bases for the calculation of the line M-N are drawn as straight lines on a Mercator chart, they give positions for the respective courses of these lines which, on the earth's actual surface, are progressively nearer to the United Kingdom and further from the French base-point as the lines are projected westwards. It follows, in the view of the United Kingdom, that the two "equidistance" lines by reference to which the half-effect line M-N has been defined in the Decision of 30 June 1977 are not "true" equidistance lines.

[46] Inadvertently stated in the reverse manner in the text of the Expert's Report and in the Decision

40. It further follows, in the view of the United Kingdom, that, for the same reason.

> the line M-N traced as a straight line on a Mercator chart does not represent the line lying mid-way between, or bisecting the area between, true equidistance lines based on Ushant and the Scilly Isles and on Ushant and Land's End, respectively

The "true" bisector line, it maintains, would appear on a Mercator chart as a line curving progressively southward and on the longitude of Point N would lie approximately four nautical miles to the south of the line M-N. The discrepancy, it adds, would increase to about six miles if the lines in question were projected beyond the 1.000-metre isobath to the 200-mile limit, and still more at the outer edge of the continental margin. On a Mercator chart attached as Appendix B.4 to the Application it depicts what it considers to be the discrepancy between the line M-N and the line resulting from the application on geodesic techniques of the half-effect method adopted by the Court for the delimitation of the boundary in this region.

41. The United Kingdom asks the Court, in the light of the above considerations, to hold that the segment M-N of the boundary line, as drawn on the Boundary-Line Chart and as defined in the Technical Report and in the *dispositif*, cannot "be reconciled with the evident intention of the Court embodied in paragraphs 251 and 254 of the Court's Decision". It further asks that the Decision should be interpreted so as to resolve the contradiction in favour of the evident intention embodied in these paragraphs; and that "the Boundary-Line Chart and, as necessary, the text of the Decision should be rectified accordingly".

42. The French Government's written Observations on the Application are directed mainly to the issue of its admissibility. In the case of the Atlantic region, however, it also contests the United Kingdom's claim as to the existence of a contradiction between the Court's decision in the reasoning regarding the boundary and the line defined in the *dispositif* and traced on the Boundary-Line Chart. It argues that the only method of delimitation by strict equidistance is one which produces a dividing line exactly defined, whatever the desired precision, as soon as the base-points are known. All other methods, it says, and particularly those in which the concept of "equitable principles" has a place, allow a greater or lesser latitude in the delimitation, representing the margin of the lack of precision inherent in the notion of equity. The expressions "half-effect" and "mid-way" cannot, according to the French Government, be understood as meaning that the Court had in mind a division formulated in terms of absolute mathematical equality. The question simply being one of correcting the effect of the inequitable distortion due to the position of the Scilly Isles, the French Government argues that the Court chose to attribute to the United Kingdom about half of the area which it would have lost by a strict application of the equidistance method taking no account of those islands. It further argues that the considerations leading the Court to speak in terms of a half-effect cannot justify the conclusion, either on geographical or logical grounds, that the factor for its application must be exactly 0.500. Consequently, a boundary which corresponds to a factor sufficiently close to a half is, in the view of the French Government, in perfect accord with the Court's reasoning in paragraphs

249-251 of the Decision. This is particularly evident, it maintains, in regard to the line M-N in the *dispositif*, the description of which is a materialization of the manner chosen by the court itself for giving effect to the principles of division which it defined.

43. The French Government, while recognizing that the line M-N has been arrived at by plane geometry on a Mercator projection without the use of corrections, observes that all projections involve distortions. It considers, however, that the distortions on a Mercator chart remain sufficiently slight to be perfectly consistent with the standard of precision of the corrective process intended by the Court; and that the choice of the Mercator projection has the advantage that it accords with the practice of users of the sea. So far from being an anomaly, the fact that line M-N is a loxodrome is regarded by the French Government as a merit in that it simplifies the precise drawing of the line on charts of any scale and also makes easier the choice of the precise position of Point N.

44. The French Government further maintains that the "geodesic" line westwards of Point M proposed in the Application is itself not a "strict", mathematical rendering of the equidistance method because its choice of base-points, although correct enough for a simplified, is inadequate for a strict application of the equidistance method. A strict application of the method, it says, requires the use of all relevant base-points; and the lines would not be simple middle lines drawn from only a single pair of base-points but would be complex lines involving several arcs of circles and having "turning points" reflecting changes in the base-points. These features of a strict equidistance line, it recalls, were much insisted on by the United Kingdom expert at the hearing on 8 February 1977. Then, it proceeds to list the base-points on Ushant, on the one side, and on Land's End and the Scilly Isles, on the other side, which it considers to be the correct ones for a strict determination of the two equidistance lines, one not taking into account and the other taking into account the Scilly Isles; and it lists at the same time the coordinates of the "turning points" on each of the two lines. Moreover, on a Mercator chart annexed to its Observations as Map 1 it traces the courses of the two equidistance lines, one to the north and the other to the south, which it considers to result from such a "strict" application of the equidistance method.

45. Addressing itself ultimately to the tracing of the "median" line which has to divide the area situated between the north and south equidistance lines into two parts, the French Government states that this line must inevitably be in some degree arbitrary; for an almost infinite number of lines could be said to accord with a definition of this line, if a "strict" construction is sought. It describes the method of constructing the "median" line which it considers most natural as well as producing a very high degree of precision; and it gives the coordinates of eleven points constituting the "turning points" of the geodesic segments of its construction of the "strict" median line. It comments at the same time that it is the standard practice, in drawing lines based on the equidistance method, not to adopt the strict equidistance line, which is usually too complex, but to use a "simplified"

delineation of the line, as being practically more convenient. The easterly starting point of the French Government's version of a "strict" median line giving half-effect to the Scilly Isles — the point on this line corresponding to Point M — it designates Point O; and the most westerly point, corresponding to Point N, it designates Point Q. On Map 2 annexed to its Observations, the French Government traces the course of the line O-Q, and also the courses both of the line M-N specified in the Decision and of the line — denominated M-R — put forward by the United Kingdom in the Application. The result, it maintains, is to demonstrate that the Court's line M-N is an excellent "simplification" of the "strict" mathematical line O-Q, whereas the line M-R advocated by the United Kingdom diverges appreciably from the "strict" line.

46. Finally, the French Government argues that the very fact that the Court did not think it necessary to define the geodesic system in which the coordinates of the boundary line are expressed shows that it was not aiming at absolute geographical precision. The absence of a definition of the geodesic system leaves a margin of uncertainty, it says, of the order of 300 metres; and this it considers to be another indication of the Court's tendency to look for a "rounded-off" solution.

47. Having regard to the issues of hydrographical technique raised by the Parties in their arguments regarding the boundary in the Atlantic region, the Court at its session in December put to them the questions already set out on page 20 of the present Decision. The object of these questions was to ascertain their views: (*a*) as to the nature of the charts generally used in the delimitation of maritime boundaries and the extent of the use of Transverse Mercator charts in Hydrographic Departments; and (*b*) as to the existence of any understanding between them in 1964 and 1970-1974 regarding the use of the Mercator or Transverse Mercator projection in determining the boundary in the Arbitration Area. The positions taken by the Parties on these technical matters must therefore now be stated.

48. The United Kingdom draws a distinction between three processes in the establishment of an equidistance line: (*a*) the determination of the course of the line, (*b*) its definition, and (*c*) its depiction on a chart. While noting that in treaties maritime boundaries are sometimes defined by being depicted on a chart formally adopted and given binding force, it says that verbal definition is an incomparably better method which has consistently been used by the United Kingdom for the establishment of the continental shelf boundaries around its coasts by agreement with other States. This method it considers to be both practical and convenient, demanding merely a list of turning points defined by coordinates and a specification of the nature of the lines joining those points. Defining the course of a boundary solely by means of lines drawn on a chart, on the other hand, it considers to have the drawback that the very act of plotting the turning points by hand on the chart and its subsequent reproduction involves the risk of a degree of inaccuracy, a risk which is magnified the smaller the scale of the chart. Moreover, lines drawn on a chart will seldom, it observes, enable the user to infer what is the true nature of the lines joining the turning points; indeed, even the thick-

ness of the line drawn may represent an appreciable distance on the surface of the earth, in the case of the line on the Boundary-Line Chart about 400 metres.

49. The United Kingdom stresses that any maritime boundary, once verbally defined, can be depicted on any chart, irrespective of the projection or scale of the chart, for purposes simply of visual illustration. The accuracy of the illustration, it says, will depend on factors such as the scale of the chart, but any maritime boundary can be depicted on any map projection; although a boundary defined in terms of loxodromes can be depicted more easily on Mercator projection and one defined in terms of geodesics on a conical or Transverse Mercator projection, this is a matter of pure convenience. Whatever the projection of the chart used, insists the United Kingdom, it will be possible to depict any maritime boundary upon that chart by the use of recognized techniques.

50. The United Kingdom further states that in its own practice the function of charts in the determination of a maritime boundary is merely to assist the parties in arriving at its precise definition; in other words, they are essentially working documents and will not have a primary or controlling effect upon the definition of the boundary. The determination of an equidistance boundary, it says, may be arrived at either by plotting or by computation; and it gives a description of both methods. Plotting it refers to as a purely manual process carried out on suitable charts and involving first the precise identification of the base-points, commonly by the use of large-scale charts and after "adjustments" to convert the coordinates to a uniform "datum". The remaining processes for the plotting of the equidistance line, it observes, are dependent on accurate measurements of distance, and for this account has to be taken of the curvature of the earth. The consequence of this, according to the United Kingdom, is that the technical expert has a choice: he can either choose a chart which has been produced on a projection designed to reduce scale distortions sufficiently to allow him, within acceptable limits of accuracy, to take his measurements and make his geometrical constructions directly on the chart; or he may make use of a chart embodying greater distortions but apply a correction to all his measurements so as to compensate for scale distortion. This procedure, it adds, is illustrated by a chart, on Mercator projection, transmitted by the United Kingdom to the French Government in 1964 as a working document and now annexed to its Response to the Court's questions; for on that chart is shown a "corrected" line curving away from the line delimited by plane geometry. Such a "corrected" line, it says, will within the limitations of plotting be the "true" equidistance line, and not a loxodrome.

51. As to the method of calculation, this the United Kingdom describes as a purely mathematical technique too laborious to be undertaken except by computer, the facilities for which it refers to as now more widely available and in use amongst major maritime States. Calculation of an equidistance boundary, it says, begins with the identification of relevant base-points on charts in the same manner as in plotting; but thereafter all further operations are carried out mathematically by the computer without

reference to any charts whatsoever, the computer being programmed to take account of the spheroidal shape of the earth's surface. The resulting coordinates supplied by the computer may, it explains, be used to define the turning points, and the exact equidistance line is most easily defined as the line which proceeds by means of geodesics from each defined turning point to the next. The United Kingdom adds that at this stage in the operation, the line may be "simplified" by reducing the number of turning points while preserving a balance between areas lost and gained by each of the two States; and finally, if desired, the line can be drawn on a chart of any chosen projection either manually or by automated processes.

52. The United Kingdom refers to its continental shelf Agreement of 1965 with Norway and its subsequent Agreements with Denmark, the Federal Republic of Germany and the Netherlands as examples of equidistance boundaries determined by the "manual plotting" process which it describes. As examples of computer-determined equidistance boundaries, it refers to current negotiations with Norway for the northward extension of the boundary agreed in 1965 and also to the agreement between the Parties in the present case relating to segments of the boundary in the Channel and communicated to the Court in the Joint Report of 28 February 1977.

53. Addressing itself to the practice in use of charts for the delimitation of continental shelf and other maritime boundaries, the United Kingdom states that this varies. In many case, it observes, the selection of the charts to be used may be based entirely on what charts are readily available, but may also turn upon the position on the earth's surface of the area to be delimited. By way of example, it explains that in high latitudes the distortion inherent in a Mercator chart becomes so great as to exclude its use *a priori;* and that in very high latitudes special polar projections may have to be chosen. Charts will only be used, it says, for the actual "delimitation" when the course of a boundary is to be determined by manual plotting. In that event, the United Kingdom considers it to be

> general practice to make appropriate corrections for the scale distortions inherent in the map projection used, so as to arrive at an acceptably accurate equidistance line.

It maintains that this is specially true for lengthy segments of the boundary-line which often magnify the error introduced by scale distortion. The United Kingdom adds, however, that according to the best modern practice equidistance boundaries are not plotted manually but computed, making no use of charts except for the purpose of identifying the relevant base-points.

54. In the view of the United Kingdom, the mapping of a maritime boundary is, according to the general practice, simply a matter of providing a visual illustration of a line already precisely defined in a treaty; and in most cases recourse is had to existing navigational charts, frequently though not always charts on Mercator projection. The type of map, it says, will depend largely on the use to which it is put: while Mercator charts are the indispensable tool of mariners, their navigational convenience has little relevance to a continental shelf boundary, and they have no particular advantages for licensees of continental shelf concessions. According to the United Kingdom, the licensee's principal interest is in accurate position-

finding by reference to the geodetic system in which his license area is defined, including the precise location of the continental shelf boundary where it serves as the boundary of his license area; and this demands an accuracy beyond that possible on a conventional navigational chart.

55. As to Transverse Mercator charts, the United Kingdom considers them to be in general use, and states that detailed hydrographic surveys conducted for charting purposes are almost invariably produced on Transverse Mercator, Lambert Conformal or some other conformal projection.

56. Turning to the negotiations between the Parties in the years 1964 and 1970-1974, the United Kingdom refers to the set of charts which it handed over to the French Government in 1964. Those charts, it says, were based on standard navigational charts of the Channel and Atlantic region; but the median line drawn on them had been determined after correcting for the scale distortion inherent in the charts so as to arrive at acceptably accurate positions for the turning points of the line. It maintains that subsequent discussion of the boundary during 1970-1971 was based on the charts; and that, although there was no specific discussion of map projections, the fact that corrections had been made for scale error was specifically commented on and accepted during the discussion between the technical experts on 22 December 1970.

57. The United Kingdom adds that during the hearings in 1977 the technical experts of the Parties took advantage of modern computer methods in locating the agreed segments of the median line in the Channel for incorporation in the Joint Report of 28 February 1977. The turning points of these segments, it states, were arrived at by computer calculations, making use of a portable computer which had been appropriately programmed by the French experts before the hearings commenced. It further states that the experts were agreed that, although the portable computer was only capable of making calculations on the surface of the sphere, and not the rather more sophisticated calculations on a spheroid, the difference between the two for those parts of the arbitration area would not be significant. And it lays particular stress on the terms of the Joint Report recording the agreement of the Parties on the depiction in chart form of the agreed segments:

> The coordinates defining the points mentioned above are on the geodetic system Europe 50 (European datum) and the lines joining those points are geodesics. Nevertheless, the distance between these points is sufficiently small that the Parties are in agreement that, *simply for the purposes of a graphic illustration of the boundary line*, straight line segments may be drawn from one point to the next irrespective of the map projection used [emphasis added by the United Kingdom].

The United Kingdom then asks the Court to conclude that the dealings between the Parties since 1964 have proceeded upon the general acceptance:

> (*a*) that any determination of equidistance lines by plotting on charts drawn on Mercator projection would have to incorporate appropriate corrections so as to take account of scale distortions;
>
> (*b*) that the boundary line should, if possible, be established to a degree of accuracy consistent with modern computational techniques; and
>
> (*c*) that the course of the segments of boundary line between turning points should be specified in a manner which accords with (*a*) and (*b*) above.

In addition, the United Kingdom provides: in Appendix I to its Response, an

analysis of the definitions of maritime boundaries in 33 agreements concluded by various States between 1942 and 1977; in Appendix II, the texts of the several continental shelf boundary agreements concluded by the United Kingdom with other States bordering on the North Sea; and in Appendix IV a list of some projections other than Mercator used for certain types of government charts published by a number of States.

55. The French Government, in its Response to the questions posed in the Court's Order of 15 December 1977, observes that to establish with precision the general practice in regard to the nature of the charts used for delimiting maritime boundaries would require a complete documentation not only of the texts of the agreements and their annexes but also of the records of the negotiations, much of which is not available. Even so, it considers the available evidence to permit the conclusion that the use of navigational charts, which are universally based on Mercator projection, is extremely general. It suggests the reasons for their general use to be: (i) at the scales used for boundary delimitation no other maritime charts exist and, if a different chart is desired, it has to be specially prepared; (ii) they have in any case to be used in the negotiations in connexion with the choice and siting of base-points and base-lines under a practice universally accepted; (iii) their use in boundary delimitation is only natural having regard to their being employed very generally by users of the sea and almost exclusively by navigators. France, it says, has for this reason never used any other charts in its maritime boundary agreements (e.g. France-Spain, France-Canada), and it believes this view to be very generally shared as some agreements go so far as to refer expressly to these advantages of navigational charts (e.g. Sweden-Finland); and it adds that a number of agreements mention in their texts the use made of these charts (e.g. Senegal-Gambia, Sweden-Finland, Poland-U.S.S.R., Poland-German Democratic Republic).

59. The French Government at the same time comments that the choice of chart for maritime boundary delimitation raises no question of principle. This is obvious, it says, when the chart is used merely for the illustration of a line already independently defined by other means, but the same is true when it is used for the construction of the line by cartographic methods. These constructions, it points out, can be made on any chart of whatever projection by applying in each case the cartographic methods corresponding to the objective and to the precision desired; and the precision attained is limited only by cartographical error, that is in practice by the scale of the chart. It further comments that, similarly, the nature of the boundary-lines traced from turning point to turning point is not necessarily linked to the nature of the chart employed. The nature of these lines may, it says, be defined in the agreement, the definitions taking various forms: arcs of great circle, that is geodesic lines if the flattening of the earth is disregarded (e.g. the North Sea agreements); loxodromes, that is rhumb lines (e.g. Brazil-Uruguay, Senegal-Gambia). The nature of the line, it adds, may even appear by implication from the terms of the agreement (e.g. Senegal-Guinea-Bissau). It also cites the Treaty of Tlatelolco concerning the prohibition of nuclear weapons in Latin America as a treaty defining the zone of its application by means of loxodromes.

60. Not infrequently, the French Government continues, the nature of the lines is defined, at least implicitly, by reference to the chart employed, as in the case of the numerous agreements which speak of straight lines or of an extension in a straight line, etc. Since there is no such thing as a straight line on the surface of the earth, it says that these expressions necessarily relate to the cartographical tracing of the lines, the nature of which is thus a function of the system of projection of the particular chart; and this means that they will be loxodromes in all cases where the chart is a navigational chart on Mercator projection.

61. Addressing itself to the use of Transverse Mercator charts in Hydrographic Departments, the French Government states that charts published by these Departments, being intended essentially for maritime navigation, are based universally on Mercator projection. It mentions as exceptions certain charts of special scale, certain charts of very high latitudes, and in some countries, including the United Kingdom, charts on a very large scale. But it adds that the difference between these large scale charts and charts on Mercator projection is at the very limit of cartographical precision and almost undetectable. As to the charts used in Hydrographical Departments in the course of their work, it describes the practice as being extremely varied. Charts constituting source documents, it explains, have naturally to be taken as they are; and for land maps in particular a great variety of projections are employed which are as a rule linked to the geodesic systems in use in the country concerned. Amongst these projections, it observes, the Transverse Mercator occupied an honourable but by no means universal place, despite a progressive tendency to adopt it in the interests of uniformity. Cartographic documents made by Hydrographic Departments for maritime purposes, according to the French Government, also employ a great variety of projections. French practice, it states, is to employ the projection linked to the geodesic system of the near-by coast when working inshore (the Lambert Conformal projection), and to use the Mercator projection when working further to seawards.

62. The French Government adds the comment that the Transverse Mercator projection is employed essentially in the form Universal Transverse Mercator, the advantage and justification of which, in its view, is its effort at international uniformity. Apart from that, it does not see any particular quality in this projection to render it superior to other projections, while it considers this projection itself to have its own drawbacks; in particular, it does not think this projection well suited to depict zones which are extensive in longitude. It further maintains that, if a projection other than Mercator had been thought necessary for the study of the course of the boundary in the present instance, the Lambert (North France) system would have been much more appropriate than the Transverse Mercator projection.

63. Answering the Court's question as to the existence of any understanding between the Parties about the use of charts during the negotiations of 1964 and 1970-1974, the French Government states that none of those who participated on the French side has any recollection of any document having been communicated or presented other than navigational charts. Nor

do they recall, it further states, that the question of the projection to use for the study of the boundary-line in the arbitration area was ever raised in the negotiations, a point which it claims to be confirmed by the records of the negotiations annexed to the United Kingdom Memorial. It adds that one of the documents in those records makes mention of an agreement between the French and British Experts on the charts to be used by the Parties in future (Appendix A(22) to the Memorial), and that these were navigational charts. This makes it possible, in its view, to conclude that at the date of the negotiations the two delegations were in full agreement as to working exclusively with documents on Mercator projection.

64. The United Kingdom in its oral argument maintains the position taken by it in the Application and in its Response to the questions posed in the Court's Order of 15 December 1977. In general, it urges that, where the course of the continental shelf boundary between two leading maritime nations is in issue, it is incumbent on the Court to apply the highest standards of accuracy and the most sophisticated techniques of measurement. At the same time, it stresses what it considers to be a particular need for precision in the delimitation of the continental shelf owing to the nature of the operations for the exploitation of its resources. Using the most modern techniques, it says, the position of a fixed platform even far out to sea can today be reliably determined within five metres, and the greater degree of accuracy now attainable is reflected in State practice. Referring to its analysis of maritime boundary agreements in Appendix I to its Response to the Court's questions, the United Kingdom claims that they demonstrate an increasing order of precision in the determination and definition of continental shelf boundaries.

65. The United Kingdom cites in particular the various North Sea agreements in which the calculation of the turning points is based on a conic projection, and the segments of boundary are expressly defined as great circle lines joining those points; and also various Persian Gulf agreements concluded between 1969 and 1974 in which the segments of the boundary-lines are expressly defined as geodesics. Two of these Persian Gulf boundaries, it asks the Court to note, terminate in what it calls open-ended segments, the last segment of which is defined only in terms of its direction, that direction being specified as a geodetic azimuth thus ensuring that it follows a strict equidistance course. As a further example of modern practice, it mentions the long Canada-Greenland boundary established in 1973, the course of which, it says, was computed and then defined in terms of geodesics, being afterwards illustrated partly on charts on the Lambert Conformal projection. It adds that the recent tendency to make use of increasingly sophisticated techniques is evidenced by the practice of the Parties themselves in the negotiations of 1964 and 1970–1974 and in the preparation of the Joint Report to the Court in February 1977; and it refers to the relevant paragraphs of its Response to the questions posed by the Court.

66. Having invoked what it considers to be an increasing tendency to precision in the modern practice, the United Kingdom challenges the French Government's thesis that in adopting the half-effect method the Court in-

tended only an approximately half-effect equidistance line. The Decision, it insists, speaks in paragraph 250 of "*the*" line drawn mid-way between two equidistance lines, and in paragraph 254 of "*the*" line bisecting a specified area. It then places particular emphasis on what it terms the open-ended situation of the boundary in the Atlantic region: namely, the fact that in accordance with the Court's Decision, the entire final stretch of the boundary, westward of Point M out to the 1,000-metre isobath, is a single segment, controlled by a single set of coastal base-points (Runnelstone, Wingletang and Le Crom). The final Point N, it explains, although part of the definition of the boundary, is not a primary but a "derived" Point, in the sense that the line was first defined and drawn and then the coordinates of Point N were calculated.

67. The distinctive feature of the situation, according to the United Kingdom, is that the boundary extends further and further out to sea from the coast without any further coastal feature intervening to influence its course. In consequence, and it recalls that this point was stressed by the French Government itself in the proceedings in 1977, a small deflection or deviation of the boundary-line may have a minor, even negligible, effect over small distances, but is magnified the greater the distance the boundary continues out from the shore; and in the present case, it recalls, that distance is approximately 170 nautical miles. This situation is considered by the United Kingdom to constitute a case which is different in kind from the one in which a large distance separates two equidistance turning points. In the latter case, it says, parties to an agreement may be content to define the boundary segment as a loxodrome because the segment begins at a precise equidistance point and ends at another precise equidistance point, so that any deviation from true equidistance is strictly limited.

68. The open-ended character of the situation means, the United Kingdom emphasises, that the small technical discrepancy between departing from Point M via a loxodrome on the bearing calculated in paragraph 8 of the Expert's Technical Report or via a geodesic amounts 170 miles away to a discrepancy of as much as four miles. It adds that, since there are no further turning points which come into play and therefore no further correcting factors, the discrepancy becomes even greater if the lines are extended beyond the 1,000-metre isobath, its amount being indeed doubled by the 200-mile limit. The conclusion which it asks the Court to draw from this situation is that what is in issue in the Atlantic region is the course of a line westwards from Point M, not the course of the line between Point M and the Point N specified in the Decision. In the view of the United Kingdom, it is essentially the position of Point N itself that is in issue.

69. In the circumstances of the present case, the United Kingdom rejects the view of the French Government that the errors due to the use of the Mercator chart are slight enough to be ignored. The only test, it says, is to measure the degree of error at the 1,000-metre isobath; for the case is not one of simplification by agreement based on a balance of gains and losses; nor is it one of a segment so short that loxodromes might be thought to be indistinguishable from great circle lines or geodesics. It reaffirms that the

cumulative error resulting from the use of a loxodrome on a Mercator chart has the effect of placing Point N approximately four miles to the northwards, and stresses that this calculation has not been challenged by the French Government. The United Kingdom then asks the Court to find that an error of four miles at the 1,000-metre isobath is not slight enough to be ignored. It would then follow, according to the United Kingdom, that

> a segment of boundary-line drawn as a loxodrome 170 miles long from Point M is not, within an acceptable limit of approximation, what the Court intended by a half-effect boundary as defined in paragraphs 251 and 254 of the Court's Decision

70. At the same time, in refutation of a criticism made by the French Government, the United Kingdom is at pains to disclaim the idea that it is insisting that the Court was under an obligation to employ the most modern and sophisticated techniques for determining the boundary-line The United Kingdom's contention, it states, is simply that, save in certain very exceptional cases not here relevant, a loxodrome cannot represent a true equidistance line; and that the map projection used does not itself have any effect on the course of the boundary. It has referred to computers, it explains, merely in order to show that methods have now been developed which are in common use among major maritime States and liberate the calculation of an equidistance line from maps or charts entirely. It adds in this connexion that the several North Sea agreements which it has particularly invoked were arrived at by manual plotting, precautions having been taken to eliminate scale error to the necessary degree. It also insists that there is nothing fanciful or unrealistic in its references to the use of computers in the determination of boundaries, and gives as an example the use of a pocket computer in the discussions between the Parties in February 1977 on the agreed segments of the median line in the Channel. This pocket computer, it stresses, was furnished by the French experts who arrived for the discussions equipped with it and with a "programme" already written so as to permit the automatic computation of equidistance turning points on the sphere. The United Kingdom further observes that, at French suggestion, the Parties agreed to use the electronic computers in order to achieve greater accuracy in an area in which the *maximum* possible error caused by direct plotting would be about 0.4 nautical miles or about one *tenth* of the error which it considers to be caused in the position of Point N. This shows, in the United Kingdom's view, that both Parties treated it as virtually axiomatic that they should use techniques that would bring a potential error of a maximum of 0.4 nautical miles in the Channel down to one of an order of 0.1 nautical miles; and that they had recourse to those techniques spontaneously without pausing to consider whether any rule of law obliged them to do so.

71. The United Kingdom subscribes to the view expressed by the French Government that under the Arbitration Agreement the Parties must accept that the Court should accomplish its task with the means placed at its disposal. It rejects, however, the suggestion that the Parties had not placed at the Court's disposal the technical means necessary to arrive at what the United Kingdom considers would constitute a correct implementation of the half-effect boundary which the Court intended. Amongst the most important means placed at the Court's disposal, in its view, are the charts furnished by

the Parties, especially those produced to assist the Court in determining the boundary-line (or lines). It draws attention, in particular, to a set of the five maps specially produced on Transverse Mercator projection for the purposes of the arbitration and included with the United Kingdom Memorial as Appendices C(1), C(2) and C(4), (5) and (6). These maps, it states, were submitted to the Court with the idea of putting at its disposal a base chart so drawn that scale errors and projection distortions in the arbitration area were reduced to a minimum. It also invokes the fact that in its Counter-Memorial, in criticising the arbitrary nature of certain lines constructed by the French Government, it drew attention to the distortions inherent in the Mercator projection and the suitability of Transverse Mercator maps for direct construction of equidistance lines. And it maintains that the use of simple geometrical techniques on the Transverse Mercator maps furnished by the United Kingdom would have produced a result to all intents and purposes identical with the line which it now proposes and which it has illustrated on the map in Appendix B.4 to the present Application.

72. Given, however, that the Boundary-Line Chart is on Mercator projection, the United Kingdom, as previously indicated, asks for the line westwards of Point M to be rectified so as to become a geodetic line taking account of the curvature of the earth. In response to the Court's request, the United Kingdom supplied the Court at the hearing on 30 January 1978 with a verbal definition, together with the relevant coordinates, of the rectified line westwards of Point M for which it contends. This would, in effect, take the form of a geodetic line following the same bearing westwards as that stated in the Court's Decision, namely 247°09′37″, and meeting the 1,000-metre isobath at a point the approximate coordinates of which are 48°08′11″ N 09°16′00″ W.

73. The French Government likewise maintains in its oral argument the position taken by it in its written Observations and in its Response to the questions posed in the Court's Order of 15 December 1977. In general, moreover, it contests the validity of the United Kingdom's criticisms of the techniques used by the Court in drawing the course of the boundary in the Atlantic region. The Responses of both Parties to the Court's questions, it says, show that the use of charts on Mercator projection is absolutely routine in maritime cartography, whereas the use of Transverse Mercator projections is much more restricted. As to the proposition that the Court ought to have used the most modern and sophisticated scientific techniques to calculate the boundary before delimiting it, the French Government states that this might have been a proper subject of discussion before the Court's Decision but not now when it has given its judgment. In its view, the Court can today concern itself with that question only from the point of view of whether its Decision of 30 June 1977 involved any failure to discharge a legal obligation, but no rule of international law required the Court to have recourse to the technique indicated by the United Kingdom. It says that even the hydrographers whose opinions are cited by the United Kingdom speak of these techniques only as the best solutions in the future and refer to loxodromes upon a Mercator chart as a method of delimitation which, if not the most refined, is still amongst the best.

74. The French Government, furthermore, emphasises the difference between a delimitation carried out between States and one decided by a tribunal. Whereas States, it observes, have almost unlimited scientific means and materials available to them, an arbitral tribunal has only the means placed at its disposal by the Parties. In the present instance, according to the French Government, the terms of the Arbitration Agreement do not admit of the interpretation that the Parties intended to oblige the Court to follow the method now expounded by the United Kingdom. It recalls that under the Agreement the decision must include the drawing of the course of the boundary on a chart, and it argues that this is incompatible with the idea of a purely secondary, ancillary tracing on a chart put forward by the United Kingdom. Similarly, it considers the role given by the Agreement to the Expert merely to be to assist the court in preparing the chart, and it points to the absence of any provision in the Agreement for the Court to have the assistance of an expert in calculating the course to be taken by the boundary. It adds that nothing was said by the United Kingdom of any such special requirement either when the Agreement was being drafted or when the Court consulted the Agents regarding the nomination of an expert. At the same time, the French Government stresses that it was the United Kingdom itself which proposed that the Court's task should include the drawing of the course of the boundary; and that, in order to ensure the quality of its work, the Court had obtained the express agreement of the Parties to the nomination of its expert. In conclusion, it argues that, in deciding the course of the boundary on the basis of the applicable rules of international law and in using the means placed at its disposal, the Court has carried out the Agreement with exactitude; and that these means led, on the technical plane, to a simple solution which, in its view, conforms to the general spirit of the decision.

75. Referring to the United Kingdom's contention as to the importance of precision in the delimitation of a continental shelf boundary, the French Government maintains that the precision of the court's definition of the boundaries in the present case is quite sufficient for their practical application. The turning points of the line, it observes, are defined in the *dispositif* independently of any tracing on a chart. As to the segment between Points M and N, it considers this to be perfectly defined since the Chart, an integral part of the Decision, shows that it is a loxodrome, and a loxodrome between two defined points is itself a quite precisely defined line. The most that can be said, in its view, is that the geodesic system to which the coordinates are referred is not expressly stated; but even so the precision of the Decision is quite sufficient for its practical application. Clearly, it insists, application of the boundary involves a certain measure of collaboration between the Parties, and no one could expect that its delimitation would necessarily settle technical points such as the geodesic system of reference. It follows, according to the French Government, that what the United Kingdom is seeking is not that the course of the line should be made more precise but that it should be modified.

76. The French Government further maintains that the uses of a loxodrome for the segment M-N has certain advantages in comparison with a geodesic line. One reason, it explains, is the simplicity as well as the conven-

ience of the calculations required to describe the line; and another is that a loxodrome is the simplest line to depict cartographically, the boundary being delineated by a straight line on a Mercator chart such as is in universal use at sea. None of these advantages, it states, obtain in the case of geodesics. It explains that, although one projection—the gnomonic—does exist where the geodesic are represented by straight lines, this is only on the basis of treating the earth as a sphere and not if account is taken of the flattening of the earth. It adds that this projection introduces considerable local distortions, and the calculations associated with it are much less simple than with a Mercator projection. It observes that geodesics are also represented by lines seemingly straight on local conformal projections, such as Transverse Mercator, but this is only an approximation which does not hold good except over very short distances.

77. A loxodrome, in the view of the French Government, also has advantages in regard to the practical application of a maritime boundary. To determine where a given point is in relation to a loxodrome merely requires, it says, comparatively simple calculations on the basis of certain tables of figures, and is easily done manually, but if the line is a geodesic, very complex calculations are needed. The simplicity of a loxodrome on Mercator projection is considered by the French Government to make it the ideal arc for a maritime boundary from a practical point of view. Furthermore, it says, the loxodrome is universally the arc of mariners who navigate by constant bearings every kind of vessel, including those employed in exploration and exploitation of the continental shelf.

78. The French Government asserts in this connexion that the areas of mineral concessions granted by States in their economic zones take the form of rectangles, step-like blocks, etc. and are defined by loxodromes. This is true, in its view, of all such concessions, including those in the North Sea, for they are defined by meridians and by parallels of latitude; and even if meridians may be said to be orthodromes as well as loxodromes, this is not the case with the parallels of latitude which are not arcs of great circle but loxodromes. It therefore considers itself justified in insisting that the boundaries of all these continental shelf concessions are expressed as loxodromes. Underlining that its previous assertion on this point had not been rebutted by the United Kingdom, the French Government also draws the Court's attention to decrees of France, the United Kingdom and Norway evidencing that the boundaries of concessions are indeed defined by meridians and parallels.

79. In the course of the oral argument the Court referred the French Government to the statement in its written Response that in the negotiations of 1964 and 1970-1974 the delegations of the Parties were agreed upon working exclusively on the Mercator projection, and asked it also to inform the Court:

> whether during those negotiations there was any understanding between the Parties concerning any need to make corrections on account of the curvature of the earth.

The French Government was further requested to take into account in its reply the paragraphs of the United Kingdom's written Response relating to this question, together with certain records of the negotiations reproduced as Ap-

pendices A(11) and A(23) of the United Kingdom's Memorial. The French Government, in its reply, says that the first requirement is to define what is meant by "need" to make corrections. There is no dispute between the Parties, it declares, on the point that, the earth being spherical, a proper use of charts requires that account should be taken of the fact that they represent only imperfectly the sphere depicted on them; nor as to the need for any calculation on a chart to be suitably corrected in order to arrive at a value correct on the surface of the globe. The present question, however, it supposes to be whether the Parties reached an understanding on a more concrete application of these elementary propositions, and to refer to an understanding not as to the appropriateness of taking account of the earth's curvature but as to an *obligation* to do so.

80. The acceptance given by the French experts in 1970-1971 to corrections on Mercator charts related, according to the French Government, only to errors of scale. A characteristic of Mercator projection, it explains, is that its scale increases with the latitude, so that distances measured on a chart must undergo slight correction to harmonize them with distances on the earth's surface. Likewise, it says, the construction on a chart of a tripoint equidistant from three base-points calls for precautions; for a tripoint correctly constructed cannot be strictly equidistant from the three base-points *on the chart*. The French Government maintains that it was simply this factor which the experts of the Parties wanted to take into account in plotting the boundary in the Channel, since it was agreed that this should be a strict equidistance line. It insists that its acceptance of those corrections did not extend to the nature of the line (geodesic or loxodrome) to be drawn between the tripoints; and that an agreement to correct scale errors is something quite different from an agreement that the boundary should be a geodesic line. The Parties, it adds, did not specify whether this agreement arose from any compelling need or was simply considered to be appropriate in the light of the particular operation in hand.

81. The French Government, in general, takes the position that the agreement between the experts did not in any way relate to the delimitation of the boundary in the Atlantic region. It states, moreover, that the records of the meetings show that at that date the Parties were very far from agreement on a point as precise as that of the nature of the boundary-line in that region; for they were not then in agreement on the most fundamental aspects of the problem—division on equitable principles or by equidistance, the significance to be given to the "Iroise geological basin", base-points, etc. The only document, it says, suggesting the use of geodesic lines was a letter from the British expert, internal to the United Kingdom, which does not reveal either that the suggestion was adopted by the United Kingdom or that it was accepted by France. What this letter does show, the French Government argues, is that there was not then any understanding between the Parties as to the "need" to employ geodesics.

82. The French Government explains that a letter of the French delegate in 1973, to which the Court had drawn attention, dealt with the calculation of areas that would result from the lines being proposed by either Party.

These calculations had to be precise, it says, because they were to serve as the basis for measuring the concessions offered by each Party in the so-called "area of compromise"; and the method used by the French delegation was to make the calculations directly onto the sphere and independently of any chart. The letter, on the other hand, is considered by the French Government to show that the United Kingdom then made its measurements on a chart without applying corrections; and also that there was then no agreement between the Parties as to the need for identical corrections to take account of the curvature of the earth.

83. Indeed, the French Government asserts, though this is contested by the United Kingdom, that the charts used in the negotiations show clearly that all the lines proposed, whether by France or the United Kingdom, were straight lines or segments of straight lines on Mercator projection, in other words loxodromes; and that the "area of compromise" was likewise defined exclusively by straight lines. In particular, it maintains that a certain line proposed by the United Kingdom and named by it GB 1 was a loxodrome, and that the United Kingdom abandoned a loxodrome in favour of a geodesic for the first time in its Submissions before the Court. In its view, therefore, if any understanding during the negotiations is to be discerned, it is an understanding in favour of loxodromes; and in support of this contention, it supplied the Court with an original chart showing lines proposed by France and the United Kingdom marked upon it.

84. The interpretation put by the French Government on the line GB 1 proposed by the United Kingdom during the negotiations is, however, *a matter of dispute*. The United Kingdom states that, as it explained in the oral proceedings in 1977, the line GB 1 passed through a number of turning points; and that this can easily be seen from the copies of the original charts then made available to the Court. The United Kingdom insists that, although it is not easy to observe visually the difference between a loxodrome and a geodesic over relatively short distances because of the scale of the charts, it can quite easily be seen even on those charts that the composite line GB 1 differs noticeably from a loxodrome drawn from the Scillies-Ushant line out to the 1,000-metre isobath. It adds that the very fact that corrections had been made in 1964 for scale error, as evidenced by the working document attached as Appendix 3 to the United Kingdom written Response, necessarily means that the resulting line is not a loxodrome. The French Government, for its part, retorts that the line shown on the charts was nevertheless composed of segments of straight lines drawn on Mercator projection, and that these segments were accordingly loxodromes.

85. The Court has examined at length the arguments of the Parties regarding the technical aspects of the delimitation of the boundary in the Atlantic region for the sole reason that these aspects constitute a pertinent part of the framework within which it has to decide the question of interpretation referred to it in the United Kingdom's Application. The Court of Arbitration stresses however that these aspects can be of concern to it at this stage of the case only in so far as they may assist it in determining definitively the meaning and scope of its Decision of 30 June 1977 with respect to this region. In

the light, moreover, of the extensive arguments addressed to it on this part of the case, the Court thinks it necessary to recall what it has said in paragraph 29 about the nature and limits of its present task. "Interpretation", the Court there stated, is a process that is merely auxiliary, and may serve to explain but may not change what the Court has already settled with binding force as *res judicata*. The issue before the Court with respect to the Atlantic region is not, therefore, what in the light of fresh facts and fresh arguments ought to have been the Court's decision regarding the boundary in that region. It is, and is exclusively, the course of the boundary that was laid down by the Court in the Decision of 30 June 1977. The resolution of the issue thus turns essentially on the determination of the correct meaning to be given to the relevant pronouncements of the Court in its Decision. The Court will therefore now address itself to those pronouncements, taking such account of the technical considerations adduced by the Parties as it considers appropriate.

86. The essential points in dispute between the Parties regarding the meaning and scope of the Decision of 30 June 1977 with respect to the Atlantic region can now be identified. The United Kingdom, in effect, maintains that the relevant provision in the *dispositif* was viewed by the Court as merely the translation into technical cartographical terms of the course of the boundary, the principles and method for delimiting which had been settled by the Court in paragraphs 251, 253 and 254 of the Decision. It states, as is undeniable, that in paragraph 253 the Court decided that, in principle, the boundary from Point M westwards should "be determined by the equidistance method but giving only half-effect to the Scillies". It invokes the fact that in paragraphs 251 and 254 the Court defined the specific manner in which that equidistance method giving half-effect to the Scillies was to operate, and also the exact course of the boundary resulting from its application in the Atlantic region. These two paragraphs, it stresses, speak expressly of the resulting boundary as being the line "drawn mid-way between", and as the line "bisecting the area formed by", two lines equidistant between the two coasts, one delimited with, and the other without, the use of the Scillies as a base-point. The United Kingdom next refers to the more precise identification of those two lines in paragraph 7 of the Expert's Report as equidistance lines delimited specifically from, in the one case, Runnelstone (south of Land's End) and Le Crom (Ushant) and, in the other, Wingletang (Scilly Isles) and Le Crom (Ushant). It was those equidistance lines with those particular base-points, the United Kingdom stresses, which the Court decided should determine the direction and course of the "mid-way", bisector, line westwards from Point M, and thus ultimately the position also of Point N. The validity of these premisses on which the United Kingdom founds its case is corroborated, it says, by the statements of the Court in paragraphs 251, 253 and 254, and is not challenged by the French Government. What the French Government contests is the conclusions which the United Kingdom seeks to draw from those premisses.

87. That the use of marine charts on Mercator projection is very general is common ground between the Parties; and although the United Kingdom's original proposals regarding the boundary were illustrated on

Transverse Mercator projection, it does not call in question the adoption by the Court of British navigational charts on Mercator projection as the basis for the construction of the Boundary-Line Chart. It is also common ground between the Parties that, the earth being spherical, some scale distortion—scale error—is inherent in Mercator projection, depicting as it does the spheroid earth by plane geometry. Similarly, it is common ground that a proper use of charts requires that account should be taken of the fact that they represent only imperfectly the sphere depicted on them; and that any calculation on a chart needs to be suitably corrected in order to arrive at a value correct on the earth's surface. The Parties differ radically, however, as to what inferences may properly be drawn from these cartographical considerations in interpreting the relevant findings of the Court in its Decision of 30 June 1977.

88. The United Kingdom asks the Court to conclude that, since no corrections were made for scale error in calculating the courses of the two "equidistance" lines defined in paragraph 7 of the Expert's Technical Report, these lines are not truly equidistance lines at all. It is clear from the Report, the United Kingdom says, that these lines were envisaged as straight lines—loxodromes—drawn westwards from Point M. In its view, however, a loxodrome drawn on a Mercator chart can never, owing to the effects of scale error, be considered an "equidistance line", for the scale error inherent in that projection necessarily causes the line to be nearer on the earth's surface to the base-point on one coast than to the base-point on the other. On this premiss, it contends that the two lines defined in paragraph 7 of the Technical Report and there designated "equidistance" lines are not in truth "equidistance" lines, and are not therefore in conformity with the findings of the Court in paragraphs 251, 253 and 254 as to the principle and method to be applied in the Atlantic region. The course of the bisector line, it further contends, being determined by the two equidistance lines defined in the Report, is not compatible with the principles and method decided upon by the Court in those paragraphs. It then follows, according to the United Kingdom, that the relevant provision of the *dispositif* and the tracing of the line M-N on the Boundary-Line Chart are in contradiction with the Court's findings as to the principles and method to be applied in delimiting this segment of the boundary. In its view, as in the case of the boundary to the north and west of the Channel Islands, the contradiction calls for an interpretation of the Decision by the Court to determine its true meaning and scope, and for the rectification of the *dispositif* and the Boundary-Line Chart so as to harmonize them with the Court's findings in paragraphs 251, 253 and 254. The rectification should, it submits, take the form of calculating the two equidistance lines specified in paragraph 7 of the Technical Report by a geodetic system instead of by loxodromes, and thus also tracing the bisector line westwards from Point M by a geodesic instead of by a loxodrome.

89. The French Republic opposes two main objections to the case presented by the United Kingdom, and also objects that the rectification asked for by the United Kingdom would constitute a revision or modification of the Decision, and not such a correction of material error as might be considered to be within the scope of the process of interpretation. The first

objection is a fundamental one: that the relevant passages in the Court's reasoning show that the principle of giving half-effect to the Scilly Isles and the method chosen for applying it were intended only to provide an "approximate" solution to abate a distortion of the normal equidistance line that would be caused by the particular location of those islands. According to the French Government, the method chosen by the Court, as described in paragraphs 251 and 254 of the Decision and in the Technical Report, was in perfect conformity with the concept of a simplified, approximate, solution adopted to remedy, in accordance with equitable principles, the effects of that distortion. Any small divergence from a strict half-effect boundary, even over the length of the line M-N, resulting from the scale error inherent in Mercator projection is, it maintains, entirely compatible with the "approximate" nature of the solution adopted for the Atlantic region.

90. The parties being in dispute as to the nature of that solution, the Court must recall its principal elements. First, the Court held that, in principle, the law to be applied in the Atlantic region is that laid down in Article 6 of the Geneva Convention on the Continental Shelf of 1958 under which:

> 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.

It also held 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 to both the lateral relations of the two coasts as they abut on the continental shelf of the region and to the great distance seawards that this shelf extends from those coasts (paragraph 242).

It then stressed two further geographical facts: *(a)* 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, and *(b)* the tendency of this extension south-westwards of the United Kingdom coast to make it obtrude upon the continental shelf situated to seawards of the more westerly facing coast of the French Republic in that region (paragraph 235). The combination of these several geographical facts was found by the Court to constitute "a special circumstance" and an element of distortion material enough to justify the delimitation of a boundary other than the strict equidistance line envisaged in the Convention (paragraphs 244-245).

91. Next, the Court held that the method of delimitation to be adopted must be one having relation to the coasts of the Parties actually abutting on the continental shelf of the region; and that both the Scilly Isles and Ushant must be treated as part of the coasts of their respective countries for this purpose. The problem, it said, was

> 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 (paragraph 248)

The Court went on to say that it appeared

> 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.

This appropriate method, it decided, was to give less than full effect to the Scilly Isles in applying the equidistance method. In so holding, the Court observed:

> 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 . . What equity calls for is appropriate abatement of the disporportionate effects of a considerable projection onto the Atlantic continental shelf of a somewhat attenuated portion of the coast of the United Kingdom. (Paragraph 249.)

The Court then proceeded to its finding that, in the particular circumstances of the present case, giving half-effect to the Scillies would serve to achieve that appropriate abatement of their otherwise inequitable effects on the course of the boundary (paragraph 251).

92. The French Government is therefore justified in concluding that the half-effect solution is not an application but a variant of the equidistance principle provided for in Article 6 of the Convention. It is likewise justified in concluding that this solution has in it elements of equity and of approximation in the appreciation of the effects of the particular geographical circumstances. But these conclusions, although having a certain relevance as indications of the nature of the solution intended by the Court, do not in themselves suffice to invalidate the United Kingdom's contentions. The Court, as the United Kingdom has insisted, went on to define its concept of the half-effect variant of the equidistance principle as well as the method by which the half-effect boundary should actually be constructed in the present case. In consequence, the concept of the half-effect boundary and the method for its implementation were given a more concrete and precise form. And it is essentially the Court's definition of the concept and of the method for its application with which the *dispositif* and the tracing of the line M-N on the Boundary-Line Chart are said by the United Kingdom to be in conflict.

93. Even so, a further objection is raised by the French Government to the case put forward by the United Kingdom. The proposition, it says, that the Court's decision regarding the half-effect method to be applied in the Atlantic region is founded upon the principle of equidistance is misconceived. Recalling that the Court itself characterised this method as one "modifying or varying the equidistance method", the French Government maintains that the half-effect method defined in paragraphs 251 to 254 and the Technical Report cannot be considered a delimitation applying the equidistance principle. In its view, that method is characterised by the Decision rather as a delimitation on equitable principles or on a qualified or adjusted equidistance principle. This particular variant of the equidistance principle, it argues, involves a "small but distinct margin of doubt which it was for the *dispositif* to resolve". It considers that any line which keeps within this margin and can legitimately be said to give half-effect to the Scilly Isles is in perfect accord with the Court's reasoning and with the kind of simple

solution which the French Government represents to have been the Court's general objective.

94. The French Government observes in this regard that a strict and scientifically constructed equidistance line requires a delimitation equidistant from all relevant base-points on the coasts of the countries concerned. It is usual, the French Government continues, to simplify an equidistance line by selecting amongst the resulting turning points of the line only a few of them so chosen as to even out the gains and losses. This practice, it says, justified the Court in its choice of only one base-point on the Scillies, one on Land's End and one on Ushant; and it represents that the Court made such a simplified selection of base-points because it had from the beginning opted for a simple operation.

95. The French Government, on the same grounds, challenges the assumption of the United Kingdom that the lines which it proposes would constitute "true" equidistance lines. Since those lines also are delimited from the Court's simplified selection of base-points, according to the French Government, they cannot be considered strict equidistance lines any more than can the lines which determine the line M-N itself. In its view, the United Kingdom tries to have it both ways by keeping the Court's simplified base-points and yet asking for a complex method to be adopted for delimiting the half-effect boundary.

96. The French Government has at the same time presented the Court with its own version of how the half-effect method would operate on a strict application of the equidistance principle using all the relevant base-points. It claims that in calculating geodetically the two equidistance lines, one taking and the other not taking into account the Scillies, it has used the base-points dictated by geometry and the geography of the respective coasts The resulting line would, it maintains, begin a little to the north of the Court's Point M, run for a considerable length to the north and then to the south of the line M-N and then reach the 1,000-metre isobath very slightly to the south of the Court's Point N (see paragraph 45). This shows, in its view, that the Court's line M-N accords perfectly well with the concept of a simplified half-effect delimitation; and also that the line proposed by the United Kingdom is not in truth the one dictated by a strict application of the equidistance principle. On these premisses the French Government asks the Court to conclude that there is no contradiction between the line M-N and the Court's reasoning, and that what the United Kingdom is claiming is a modification of the Decision of 30 June 1977.

97. Indeed, in its final Submissions, the French Government included, as a purely subsidiary submission, the request that, if the Court were to consider that it must modify its Decision, it should adopt the version of a strict application of the half-effect method previously outlined. This purely subsidiary submission formulated explicitly in the context of a "modification" of the Court's Decision and presented at the last moment after the conclusion of the United Kingdom's argument is not one which the Court can take into consideration, quite apart from any other objection that might be raised under Article 10, paragraph 2, of the Arbitration Agreement. The in-

admissibility of the submission does not, however, apply to the argument on which it is based and of which, accordingly, the Court will take due account.

98. The French Government's version of a strict application of the half-effect method in the Atlantic region is contested by the United Kingdom, which does not accept the former's selection of the relevant base-points. In particular, it objects to the use of Longships, lying northwards off Land's End, as one of the base-points for determining the strict equidistance line without taking the Scilly Isles into account. This is not, in its view, one of the relevant base-points, and the effect of its use is to give the line a more northward course favourable to the French thesis. The arguments of the Parties regarding the correct method of delimiting the course of the French Government's version of a strict half-effect line were developed in detail, but the Court does not find it necessary to resolve the differences between them on this question. Neither Party challenges the Court's selection of Wingletang, Runnelstone and Le Crom as the three base-points for applying the half-effect method in the particular circumstances of the Atlantic region.

99. In the opinion of the Court of Arbitration, all that those arguments can be said to show for present purposes is that the technique for applying the half-effect method adopted by the Court was not the only one that was possible, and that some other selection of base-points might be argued to be closer to a strict application of the equidistance principle as envisaged in Article 6 of the Continental Shelf Convention. This does, no doubt, serve to confirm the French Government's thesis that the half-effect method adopted in the Decision was envisaged by the Court as a modification or variant of the equidistance principle, though the Court itself had already made that clear in paragraphs 249-251 of its Decision. No doubt, also those arguments serve to confirm that, as the French Government maintains, there is an element of simplification, so far as concerns the selection of base points, in the technique employed by the Court for applying its half-effect variant of the equidistance principle. But the twin facts remain that the half-effect method was adopted by the Court as a variant of the equidistance principle and that the course of the boundary was defined by the Court as the bisector between two specific equidistance lines delimited from three specific base-points. The question, therefore, has still to be asked whether the construction in the *dispositif* and on the Boundary-Line Chart of the intended half-effect boundary by reference to loxodromes drawn on Mercator projection is or is not compatible with the method of delimitation defined and adopted in paragraphs 251, 253 and 254.

100. The contentions of the United Kingdom regarding a special need for precision in defining the course of continental shelf boundaries to facilitate their application in practice are noted by the Court, as are also its contentions regarding an increasing tendency in modern continental shelf agreements to calculate and define the boundary geodetically. It observes, however, that the special need for precision alleged by the United Kingdom is disputed by the French Government which gives its reasons for considering that, in any case, a loxodrome on Mercator projection possesses the nec-

essary precision and that it may even be easier than a geodesic to operate in practice. It also observes that, as pointed out by the French Government, among the modern maritime boundary agreements there are some which employ loxodromes on Mercator charts. Nor has it been suggested by the United Kingdom that the modern treaty practice yet provides evidence of any generally accepted rule of law in the matter. In consequence, the contentions of the United Kingdom as to a need for precision and as to the trend in modern practice appear to the Court to concern the general technical background against which the present question has to be examined rather than to provide directly relevant criteria for the determination of the meaning and scope of its Decision of 30 June 1977. The Court does not, therefore, find it necessary to pursue further the differences between the Parties regarding the technical problems in question.

101. The case presented by the United Kingdom in regard to the Atlantic region thus rests on two main propositions both of which it has to make good in order to establish the existence of a contradiction between the findings of the Court in its reasoning and the corresponding provision of the *dispositif*. The first is that, according to the terms of paragraphs 251 and 254 of the Decision, the half-effect boundary decided by the Court is the line bisecting the area formed by two "equidistance lines" which must each be truly equidistant from the two base-points specified for its delimitation in paragraph 7 of the Expert's Technical Report. The second is that any loxodrome delimited from only two base-points on Mercator projection without correction for error cannot be considered, either geographically or legally, to be lines truly equidistant from those base-points; and that the two "equidistance lines" specified in paragraph 7 of the Technical Report, being so delimited, are not in truth "equidistance lines" at all and are not, therefore, the equidistance lines decided on by the Court in paragraphs 251 and 254 of its reasoning. If these two propositions are made good, the logical consequence must be, according to the United Kingdom, that the course of the bisector line M-N and the position of Point N itself are not those decided on by the Court in those paragraphs.

102. The language of paragraphs 249-254 of the Decision leaves no doubt whatever that the half-effect method decided on by the Court, if "a modification or variant of the equidistance principle", is at the same time based upon that principle. Indeed, the Court decided in express terms that the boundary westwards from Point M "is to be determined by *the equidistance method* but giving only half-effect to the Scillies", and referred to this segment of the boundary as "*the equidistance line* which allows only half-effect to the Scilly Isles" (emphasis added). Moreover, as appears from the passages cited by the United Kingdom, the definition of the half-effect method itself, given by the Court in paragraphs 251 and 254, is expressly formulated in terms of a line "mid-way between" or "bisecting" two "equidistance lines", one equidistant from the Scilly Isles and Ushant and the other equidistant from Land's End and Ushant. The United Kingdom is thus evidently justified in drawing the conclusion that the course of the line M-N is intended by the Court to be determined by reference to two

"equidistance lines", the precise base-points of which are those designated and defined in paragraph 7 of the Expert's Technical Report.

103. The question, therefore, is whether the two "equidistance lines" prescribed by the Court as determining the course of the line M-N are to be understood as equidistance lines of the "true" or "strict" character presumed by the United Kingdom. The Court in this regard recalls that, as appears from paragraphs 73, 205 and 213, it was expressly within the framework of Article 6 of the Continental Shelf Convention of 1958 that the half-effect solution was decided upon; and that it was in the context of the proviso "unless another boundary line is justified by special circumstances" that the Court decided that full effect should not be allowed to the Scilly Isles. Article 6, in paragraph 1 formulates the equidistance principle in terms of a 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", and in paragraph 2 it speaks of "the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea is measured". In the view of the Court, the "equidistance" to which these provisions refer is the mathematical and geometrical concept of equal distance from a given point, as generally understood in the delimitation of maritime boundaries; consequently, it is in this sense that, in the Atlantic region as well as in the Channel, the expressions "equidistance principle" and "equidistance line" in the Court's Decision are likewise to be understood. In maritime practice, as both Parties recognize, an equidistance boundary is not normally constructed as a line mathematically and geometrically equidistant from the baselines of the two countries throughout its length. Their disagreement is as to the degree of divergence from such an equidistance line that may be permitted before the line ceases to qualify as an equidistance line. In the present case, the two "equidistance lines" which determine the course of the segment M-N have been calculated over their whole length as lines mathematically and geometrically equidistant, on Mercator projection, from their respective pairs of base-points specified in the Expert's Technical Report; and it is not disputed that they have been so calculated correctly. Nor is the Court's selection of those base-points in question in the present proceedings, except in regard to the argument of the French Government mentioned in paragraphs 95-96. The divergence from the equidistance principle which the United Kingdom invokes relates, and exclusively relates, to the effects of the scale error inherent in Mercator projection; the divergence, in short, results exclusively from the difference between the two lines governing the course of the segment M-N and the lines which on the actual surface of the earth are the lines truly equidistant from the base-points in question.

104. There can be no doubt, in the opinion of the Court of Arbitration, that in maritime boundary delimitations the equidistance principle is generally applied in a somewhat qualified manner. Article 6 itself, when prescribing the application of the equidistance principle, qualifies that prescription by the proviso already mentioned "unless another boundary is justified by special circumstances". Moreover, as was stressed by the Court in paragraph 68 of its Decision of 30 June 1970, the rule stated in each of the

two paragraphs of the Article is a single, combined one: a combined equidistance-special circumstances rule. It follows, the Court observed, 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

And in paragraph 70 it added that 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 is justified by special circumstances". Stressing that the role of the special circumstances condition in Article 6 is to ensure an equitable delimitation, the Court further observed in that paragraph:

> 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 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

105. The application of the equidistance principle in maritime boundary delimitations is also frequently qualified in another and different manner. Equidistance lines, which are in principle equidistance lines, are very often given a more simplified form by reducing the number of their turning points and by consequentially also disregarding the effects of some basepoints that would otherwise be relevant. It is at the same time a quite common practice to delimit equidistance boundaries dividing the territorial sea or internal waters on standard navigational charts on Mercator projection, without correction for scale error. The Court recognizes that in many cases, though not all, the distances involved are comparatively short, so that the effects either of a "simplification" of an equidistance line or of scale error in modifying the strict application of the principle may be found negligible. It also recognizes that the emergence of claims to the continental shelf and now to the 200-mile economic zone has introduced a new dimension into the delimitation of maritime boundaries, more especially where two laterally situated States face outwards onto the same extensive continental shelf, as was emphasised in the *North Sea Continental Shelf* cases (I.C.J. Reports 1969, paragraph 59). This development, as appears from the information before the Court, has led to increasing attention being paid by some States to the use in some latitudes of methods of delimitation designed to compensate for the distortion—the scale error—inherent in the plane-geometry of standard marine charts. In the light of this information, the Court of Arbitration accepts that there is today some trend towards a greater use of charts on Transverse Mercator or other conformal projections, as well as of geodesic techniques, in the delimitation of maritime boundaries. Even so, the information before the Court regarding the State practice does not by any means appear to permit the conclusion that the delimitation of maritime boundaries by loxodrome on Mercator projection is obsolete; and the Court's attention has been drawn to some modern examples of an equidistance boundary extending a considerable distance to seawards and yet delimited by loxodrome on Mercator projection.

106. In the present instance, the Court found as a fact that, in the light of the particular geographical circumstances of the Atlantic region the

projection seawards of the Scilly Isles and their tendency to obtrude upon the continental shelf lying off the more westerly facing French coasts constituted a "special circumstance" having a distorting effect on the delimitation of an equidistance boundary. From this it concluded that it must adopt a method of delimitation that would abate the effects of the distortion and remedy the inequity resulting from the particular location of those islands. Having made its appreciation of the various elements of the geographical situation, it further concluded that, in principle, it should adopt a method of delimitation based upon the use of the equidistance principle but giving only half-effect to the Scilly Isles. The Court then consulted its Expert, as appears from the Decision and the Technical Report, regarding the possible techniques for applying the concept of giving half-effect to the Scillies and at the same time taking account of the change in the problem of delimitation from that of median line between "opposite" States in the Channel to that of a delimitation between laterally related States in the Atlantic region giving half-effect to those islands. After considering illustrations of the possible techniques and their results presented to it on standard navigational charts, the Court adopted the technique, including the specific base-points to be used, which is defined in paragraph 254 of the Decision and in paragraphs 7 to 10 of the Expert's Technical Report.

107. Paragraphs 251, 253 and 254 do not specify either the projection used in constructing the boundary or whether the course of the bisector line forming it should be calculated by reference to "equidistance" lines delimited as loxodromes or as geodesics; nor did the Court give any directions to the Expert on these technical aspects of the problem. However, as the United Kingdom stresses, the three lines in question were, in fact, calculated by the Expert on standard navigational charts and as loxodromes without correction for scale error. The bisector line resulting from the Expert's calculations and drawn as a loxodrome on a standard navigational chart—British Admiralty Chart No. 1598—on Mercator projection was then examined and adopted by the Court. This line, together with the position and coordinates of its point of intersection with the 1,000-metre isobath (Point N), was accordingly endorsed and defined in paragraph 254 of the Decision and paragraph 1 of the *dispositif*, and finally reproduced on the Boundary-Line Chart.

108. It is in the above-mentioned circumstances that the Court has to consider the United Kingdom's contention that there is a contradiction between the findings of the Court in regard to the principle and method of delimitation in the Atlantic region and the actual course of the boundary defined in the *dispositif* and traced on the Boundary-Line Chart.

109. The Court has taken full account of the arguments, presented with much more force by the Agent of the United Kingdom, in support of the proposition that the two loxodromes defined in paragraph 7 of the Expert's Technical Report cannot be considered as "true" or "strict" equidistance lines. Each of the loxodromes, it is true, diverges at every point of its course westwards from Point M from the course of an equidistance line drawn geodesically to reflect the curvature of the earth. If for some dis-

tance along the line the divergence may be minimal and negligible, it increases continuously as the loxodromes diverge northwards further and further from geodesic lines over distances respectively of some 160 and 180 nautical miles. Moreover, the divergence is all one way in favour of one party and there is no question of the balancing of gains against losses, so that the two loxodromes are not "simplified" equidistance lines of the kind normally found in maritime boundary practice. In addition, a "simplified" equidistance line normally has a succession of "turning points", constructed from the nearest base-points on the two coasts, which serve to keep the line in some measure controlled by "strict" equidistance. Although this is true, it is also the fact that, as stressed by the United Kingdom in the proceedings in 1977, examples of long, open-ended, reaches of an equidistance line stretching seawards and governed by only one pair of base-points are not uncommon.

110. The question before the Court is not, however, whether the two loxodromes employed in the Expert's calculations may be considered as a simplified form of "strict" or "true" equidistance lines. It is whether they can and ought to be considered as "equidistance lines" within the meaning, and for the purpose, of the half-effect method of delimitation adopted and defined in paragraphs 251, 253 and 254 of the Decision. In answering this question the Court has necessarily to take as its starting point the fact, which is undisputed, that the calculation by the Expert, on the standard navigational charts employed by him, of the two loxodromes as lines equidistant from the specified base-points is meticulously exact. It has also necessarily to take as another starting point the fact that the half-effect solution was adopted by the Court as an equitable variant of the equidistance principle expressing a necessarily approximate appreciation of diverse considerations; and that the method for implementing it was devised as a modified rather than as a strict application of the equidistance method. This method, the Court has in addition to recall, was selected *ad hoc*, after a study of various possibilities and of several factors considered by it to be pertinent. The *ad hoc* character of the device and the fact that it is a special application of the equidistance method is, indeed, evidenced by the Court's selection of two particular pairs of base-points for the calculation of the lines determining the half-effect boundary rather than all the potentially relevant points on the respective coastlines. The question for decision, therefore, is whether the Expert's construction of the course of the boundary by reference to the two loxodromes, correctly calculated on Mercator projection from the specified base-points, is compatible with the simplified frame for applying the half-effect solution which has just been described; or whether his omission to allow for the scale of error inherent in that projection renders it incompatible with this frame.

111. The information available to the Court, as already indicated, does not appear to it to establish that the delimitation of maritime boundaries by a loxodrome line on a standard navigational chart based on Mercator projection without correction for scale error is either inadmissible in law or as yet so outmoded in practice as to make its use open, in general, to challenge. The Court, therefore, finds itself bound to conclude that the tech-

niques used in the calculation of the half-effect boundary may not be considered as incompatible with the method for its delimitation laid down in paragraphs 251, 253 and 254 of its Decision of 30 June 1977.

112. Although so concluding, the Court is very sensible of the delimitation problems which may arise from the combination of the lateral relation of the coasts of different countries abutting on the same continental shelf and a great extension of the continental shelf seawards; indeed, this was one of the cardinal elements in its decision to allow only half-effect to the Scilly Isles. But even if the techniques used in the calculation of a half-effect boundary were to be considered as incompatible with the method prescribed by the Court and it were open to the Court to review the problem of appropriate techniques for applying the half-effect solution, this could only be done after a fresh examination of all pertinent factors and considerations as well as of the several possible techniques and the courses of the boundaries resulting from their use. The Decision of 30 June 1977 regarding the Atlantic region was a particular one, on the basis of the applicable rules of international law providing a particular equitable solution and after studying the boundaries resulting from the application of other techniques. To reopen the question of the method applied by the Expert and the Court in the proceedings in 1977 appears, in consequence, to go beyond the function of interpretation entrusted to the Court under Article 10 of the Arbitration Agreement as well as beyond its inherent power to rectify a material error.

113. The method of calculating the course of the line M-N employed by the Expert and adopted by the Court in the proceedings in 1977 has not therefore been found by the Court to be incompatible with its findings in paragraphs 251, 253 and 254 as to the principles and method to govern the delimitation of that segment of the boundary. Thus no such contradiction has been established between the relevant provision in the *dispositif* and the Court's findings in those paragraphs as to render the course of the line M-N incompatible with the method of delimitation prescribed in these findings. It follows that the principle of *res judicata* applies, and that it is not open to the Court to entertain the request of the United Kingdom for the rectification of this segment of the boundary.

114. For these reasons,

THE COURT OF ARBITRATION, in regard to the questions raised by the Application filed by the United Kingdom on 17 October 1977 under Article 10, paragraph 2, of the Arbitration Agreement,

Decides unanimously that:

(1) The objection to the admissibility of the Application put forward by the French Government in its written Observations that the Application was filed outside the time-limit of three months laid down by Article 10, paragraph 2, of the Agreement is not well-founded and must be rejected.

(2) The objection to the admissibility of the Application put forward by the French Government in its written Observations that the Application does not relate to a dispute concerning "the meaning and

scope of the decision" which arose within the three-months' period is also not well-founded and must be rejected.

(3) The objection to the admissibility of the Application put forward by the French Government in its written Observations that the subject matter of the Application does not fall within the competence of the Court under Article 10, paragraph 2, of the Arbitration Agreement does not possess an exclusively preliminary character and must accordingly be examined within the framework of the merits.

(4) In relation to the boundary to the north and west of the Channel Islands,

a. the course of the boundary for this region defined in paragraph 2 of the *dispositif* of the Decision of 30 June 1977 is not a correct application of the express findings of the Court in paragraph 202 of that Decision regarding the principles to be applied in delimiting the said boundary;

b. paragraph 202 of the Decision of 30 June 1977 expresses the intention of the Court, and the definition of the boundary to the north and west of the Channel Islands shall, therefore, now be rectified so as to follow the line composed of segments of arcs of circles of a 12-mile radius, drawn from the base-points A to M on the baselines of the Bailiwick of Guernsey listed in Appendix A.4 to the Application, which is reproduced on page 19 of this Decision, and joining the 12 points of intersection of these arcs of circles also listed in that Appendix;

c. the coordinates of the base-points A to M and of the 12 points of intersection of arcs of circles listed in the said Appendix are to be taken as referred to European datum (1950) in the same manner as all the coordinates given in the Decision of 30 June 1977.

By four votes to one further decides that:

(5) In relation to the course of the boundary westwards from Point M,

a. it has not been established that the course of the line M-N defined in the *dispositif* and traced on the Boundary-Line Chart is in such contradiction with the findings of the Court in paragraphs 251, 253 and 254 of the Decision of 30 June 1977 as to be incompatible with the method of delimitation prescribed in those findings;

b. the United Kingdom's request for the rectification of this segment of the boundary is, therefore, not well-founded and must be rejected.

DONE in English and in French at the Graduate Institute of International Studies, Geneva, this 14th day of March 1978, 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.

SEPARATE OPINION OF SIR HUMPHREY WALDOCK

Although I agree with a very large part of the reasoning of the Court in the present Decision, I have felt considerable doubts regarding the conclusion with respect to the course of the boundary westwards of Point M which, finally, it draws from that reasoning; and these doubts I think it right to express.

I accept that the solution prescribing a boundary based upon equidistance but giving only half-effect to the Scilly Isles was adopted by the Court in the context of a decision that the particular location of the Scillies, in the light of all the geographical circumstances, constituted a "special circumstance" having a distorting effect on the delimitation of an equidistance boundary. I also accept that this method of delimitation was decided upon by the Court *ad hoc* as a device to abate the effects of a particular "special circumstance" and remedy a particular inequity resulting from that particular "special circumstance". It follows that I likewise accept that the half-effect solution was adopted by the Court as an equidistable variant of the equidistance principle expressing a necessarily approximate appreciation of diverse considerations; and that the method for implementing it was devised as a modified, rather than as a strict, application of the equidistance method. The *ad hoc* character of the device, as the Court states, is evidenced by the Court's selection of two particular pairs of base-points for the calculation of the equidistance lines determining the half-effect boundary rather than all the potentially relevant points on the respective coastlines. When all is said, however, after making its appreciation of all the pertinent geographical and other circumstances, the Court did decide not only upon the half-effect solution but upon a specific method for its implementation, which it in large measure defined. In consequence, whatever element of approximation there may have been in the Court's appreciation of the pertinent geographical and other circumstances ultimately crystallized into a specific method and one that it had in large measure defined.

This method specifies as the course of the boundary from Point M westwards a line bisecting the area formed by two equidistance lines, one to give full effect and the other no effect to the Scilly Isles, and each line being delimited from a prescribed pair of base-points, specifically named and identified. It is, therefore, a quite specific frame of reference for the calculation and delimitation of the boundary from Point M westwards, though with the important exceptions of the projection of the charts and the system of calculation and delimitation—geodesic or loxodrome—to be used in its application. These technical elements are not specified in the Decision; moreover, taking them to fall essentially within the domain of hydrographical technique and not appreciating their possible implications for the course of the boundary, the Court did not itself examine them or give directions to the Expert regarding them.

I agree with the Court that the question for decision is not whether the two loxodromes in fact employed in the Expert's calculations may be considered a simplified form of "strict" or "true" equidistance lines, but whether they can and ought to be considered as "equidistance lines" within

the meaning and for the purpose of the half-effect method defined in paragraphs 251, 253 and 254 of the Decision of 30 June 1977. This method, in my view, is necessarily the specific one defined, but not completely defined, in those paragraphs, and not some other approximation to that method not specified in the Decision. At the same time, I accept that the general context in which the method was adopted by the Court may be relevant in appreciating whether the two loxodromes calculated by the Expert should be considered compatible with the method of delimitation prescribed by the Court.

I agree generally with the Court's observations regarding the somewhat qualified manner in which the equidistance principle is often applied in maritime boundary delimitations; and I also subscribe generally to its account of the circumstances in which the Expert's calculations of the two loxodrome "equidistance" lines and of the bisector line determining the boundary from Point M westwards came to be made and adopted by the Court. Where I feel that I may differ from the Court is in the weight which, in appreciating whether these three lines are compatible with the method prescribed by the Court, I would give to the omission to apply corrections for scale error in the latitudes of the Atlantic region and over the very long distances involved.

Each of the two loxodrome "equidistance" lines, as defined in the Expert's Technical Report, diverges at every point westwards from Point M from the real equidistance line drawn so as to reflect the curvature of the earth's surface. If for a short distance along each line the divergence may be minimal and negligible, it becomes more and more appreciable as the loxodrome diverges northwards from the "real" equidistance line continuously and increasingly over distances respectively of 160 and 180 nautical miles to the 1,000-metre isobath. The divergence is all one way in favour of one Party, so that there is no question of balancing of gains against losses which is characteristic of a "simplified" equidistance line; and the total area of this divergence all one way out to the 1,000-metre isobath is substantial, so that it can hardly be discounted as "minimal" or "negligible". Point N itself, so far from being an equidistant point, is the point on the line which diverges furthest from "real" equidistance on the earth's surface.

I agree with the Court's conclusion that the information available does not appear to establish that the delimitation of a maritime boundary by a loxodrome line on a standard navigational chart based on Mercator projection without correction for scale error is either inadmissible in law or so outmoded in practice as to make its use open, in general, to challenge. It is necessary, on the other hand, to consider the possible impact in this connexion of the great extension seawards of the boundary in the present case, combined with the lateral relation of the coasts of the United Kingdom and France in the Atlantic region. The Court, as it has recognized, made this combination of circumstances one of the cardinal elements in its decision to allow only half-effect to the Scilly Isles. Expressing its conclusions on this point in paragraph 242 of the Decision of 30 June 1977, the Court said:

> 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.

It emphasised this element in the geographical situation in the Atlantic region for the same reason that had led the International Court of Justice in the *North Sea Continental Shelf* cases to emphasise the distinction between the cases of delimitation between "opposite" coasts and between laterally related coasts (I.C.J. Reports 1969, paragraph 59); namely that, owing to the lateral relation and the great extension of the shelf seawards, the effect of any distorting geographical feature on the areas of shelf allocated to each State under the equidistance method is automatically magnified, the greater the distance from the shore (Decision of 30 June 1977, paragraph 86).

This consideration clearly has relevance in considering the effects of scale error in distorting the allocation of areas of shelf under the equidistance method, since these are increased with every nautical mile that the boundary extends to seawards. Accordingly, the delimitation of the half-effect boundary in the Atlantic region by loxodrome without correction for scale error at least has the appearance of disregarding an equitable consideration that the Court made one of the foundations of its decision with respect to this region. As I have said, I accept that the delimitation of a maritime boundary by a loxodrome without correction for scale error is not so outmoded as to make its use, in general, open to challenge. At the same time, every case has to be considered in its own context, and in the present one the Court is faced with laterally related States and a very great extension seawards of the continental shelf. Admittedly, some examples may be found where such a loxodrome boundary has been accepted by agreement. But the present case is before a Court of Arbitration, and the question arises whether the applicable principles which the Court has itself laid down may require that, in the circumstances of the Atlantic region, a delimitation by reference to the equidistance method should take account of scale distortion in the application of that method.

Clearly, the Decision of 30 June 1977 must be considered as directed to the actual geographical facts rather than to their cartographical representation on nautical charts. No court could do otherwise and, as appears from the Decision itself, this Court took into consideration a number of specific geological and geographical facts, such as the geological continuity of the continental shelf in the region and the fact that both Ushant and the Scilly Isles form an integral part of the land masses of their respective countries. On the other hand, the Court's findings in paragraphs 251, 253 and 254 of the Decision were inevitably made not only on the basis of the geographical facts as they appeared from the information and arguments presented to it but also as they were depicted on the charts of the region. These charts are of the finest quality and reproduce the geographical facts with a high degree of precision, subject only to the question of scale error resulting from the curvature of the earth.

The present case is not, therefore, like those in some arbitrations where, through inadequate information concerning the terrain, a land map used in a treaty or by an arbitral tribunal had erroneously depicted a physical

feature forming an element in the delimitation of the boundary. Here there is no such misplacement of physical features, otherwise than in regard to the difference between the plane geometry and the curved surface of the earth. Even then, the geographical features are not really misrepresented on the charts, since the standard navigational charts in question do not purport to be anything but charts on Mercator projection, leaving it to the users to make such adjustments for scale distortion as may be thought necessary for the purpose in hand. Consequently, any error, if error should arise, can come only through the misreading or misapplication of the charts.

Leaving aside the question of scale distortion inherent in the projection, it is agreed that the Court's Expert calculated the two loxodrome "equidistance" lines and the bisector forming the boundary with meticulous accuracy on the Boundary-Line Chart; and the Court has no reason to suppose that he did otherwise on the standard navigational charts which it used as working documents. Consequently, the Court having taken no decision and given no directions concerning the technical questions of chart projection and system of delimitation (geodesic or loxodrome) to be used, the issue of the compatibility of the line M-N with the findings of the Court in paragraphs 251, 253 and 254 turns on two closely related questions. The first is whether the loxodrome "equidistance" lines calculated by the Expert can be regarded as passing for "equidistance" lines for the purpose of the method of delimitation prescribed by the Court; and the second is whether the resulting bisector line can be regarded as passing for a boundary giving half-effect to the Scilly Isles.

On the first question, I have already indicated my serious doubt as to whether a loxodrome "equidistance" line delimited over distances of 160 and 180 nautical miles without correction for scale distortion ought to be regarded by the Court as passing for one of the "approximate" kinds of equidistance lines found in practice. In many cases, as the Court has noted, either because of the short distances involved in territorial sea and internal waters delimitations or because of the low latitudes of the regions concerned, the divergence from geodetic equidistance is slight enough for the approximate character of the line as an equidistance line to be neglected. The question, it seems to me, is one of degree dependent, in the case of a boundary between laterally related States delimited seawards from two basepoints, on the length of the loxodrome and, correspondingly, the extent of the area of its divergence from geodetic equidistance. In the latitudes and particular geographical circumstances of the Atlantic region, my doubt remains whether it is fully consonant with the rationale of the equitable principle applied by the Court in its Decision of 30 June 1977 for the effects of the divergence from geodetic equidistance over the great distances mentioned above to be passed over. Thus, if the matter were now to be open to reconsideration, I am of the opinion that the Court ought certainly to take account of the effect of the curvature of the earth on the operation of the equidistance principle over great distances such as those in the Atlantic region. Even so, in the light of the information before the Court regarding State practice in the matter, it might be going too far to say that the "equidistance" lines calculated by the Expert fall wholly outside the concept of what may pass for

equidistance lines in maritime boundary delimitations. As to the second question, the half-effect solution being a device adopted *ad hoc* to remedy the inequitable effects of a "special circumstance", it may be difficult to maintain that there is any precise, accepted concept of the technique to be used to effect such a solution. Accordingly, and in the light of the observation just made concerning the calculation of the "equidistance" lines by the Expert, it might again be going too far to say that the method applied in the present instance falls wholly outside the concept of what may pass for a half-effect boundary.

While it is my opinion that there is an element of contradiction between the application of the Court's findings in regard to the Atlantic region and the rationale of those findings, it is another question whether that element of contradiction amounts to a "material error" such as can bring into play the Court's inherent power to rectify material errors. A majority of the Court takes the view that, even if it were open to the Court to review the problem of the appropriate technique for applying the half-effect solution, this could be done only after a fresh examination of all pertinent factors and considerations as well as of the several possible techniques and the courses of the boundaries resulting from their use. The Decision of 30 June 1977 in regard to the Atlantic region, it considers, was a particular one on the basis of the applicable rules of international law, providing a particular equitable solution and after studying the boundaries resulting from the application of other techniques, I, too, recognize that the method of applying the half-effect solution, including the selection of the particular base-points, and the half-effect solution itself were adopted after a complex balancing of diverse considerations and in the light of an appreciation of the results of applying different techniques illustrated by the Expert on standard navigational charts. I entertain some doubts as to whether the substitution of geodesic for loxodrome lines would have affected the Court's appreciation either of the problem or of the base-points to be selected. But, whatever these doubts, it is difficult to discount altogether the possibility that the United Kingdom's request for the rectification of the line M-N may involve some element of reappraisal of the problem of the Atlantic region and some slight adjustment of the technical framework of the method of delimitation laid down by the Court in paragraph 254 of the Decision. For this reason, I have come to the conclusion that I ought not to press these doubts to the point of dissenting from the Court's finding that to reopen the question of the method applied by the Expert and the Court in the proceedings in 1977 appears to go beyond the function of interpretation entrusted to the Court under Article 10 of the Arbitration Agreement as well as its inherent power to correct a material error. I do so with reluctance in view of the substantial issue raised in the Application.

Dissenting opinion of Herbert W. Briggs

With regret, I am compelled to dissent from the finding of the Court that the delimitation of the line M-N in the Atlantic region, indicated in the

dispositif and the Chart of the Court's Decision of 30 June 1977 as a loxodrome on a Mercator projection without correction for scale errors, is expressive of the decision of the Court, on an approximation not incompatible therewith.

In the Atlantic region, the Court decided that the applicable law was Article 6 of the 1958 Geneva Convention on the Continental Shelf, which, absent agreement, provides for an equidistance boundary unless another boundary is justified by special circumstances; that, in the present case, the geographical position of the Scilly Isles constituted such a special circumstance, calling for a variant of the equidistance method so as to give half-effect to the Scilly Isles; that the actual boundary-line should be a line calculated by the equidistance method bisecting two other equidistance lines, one with, and the other without, the use of the Scilly Isles as a base-point. (Decision of 30 June 1977, paragraphs 248-254.)

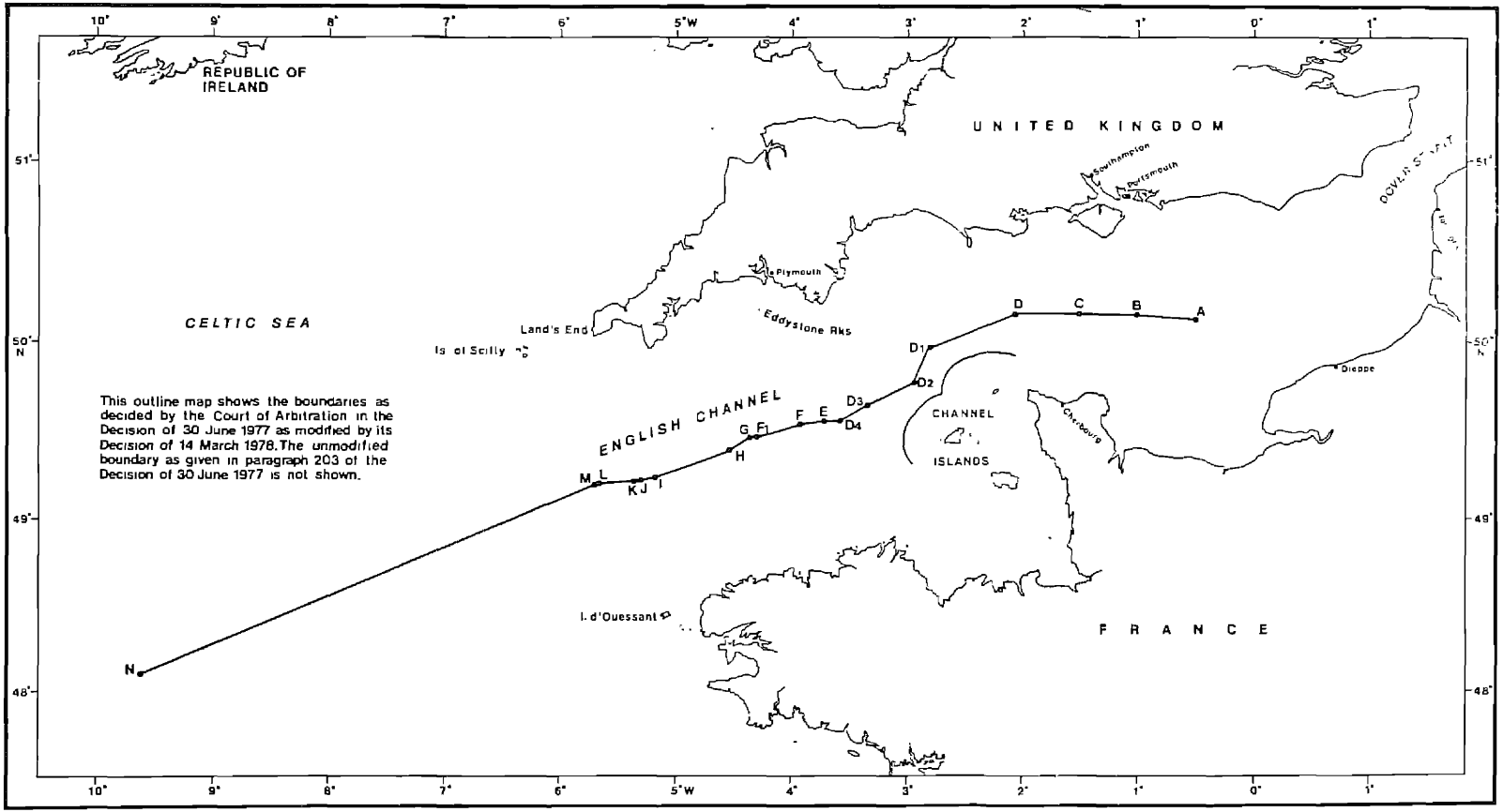
The Court's Expert was instructed to calculate the boundary-line on the basis of the above-mentioned determinations of the Court; however, the Court did not appreciate that the boundary-line he depicted on a Mercator chart was a loxodrome which, over its course of about 170 nautical miles; disregarded the sphericity of the earth, instead of a geodesic conforming to the earth's curvature—a divergence not readily detectable to international lawyers from examination of the chart on which he drew the line.

The Court consequently set forth in its Decision passages which are clearly contradictory: the decision that the boundary-line should be an equidistance line and the inadvertent misapplication of that decision in the *dispositif* and on the Chart by a loxodrome no point on which, after Point M, conforms to an equidistance line.

Evidence supporting these assertions is spread on the record throughout the present Decision and requires no development here. The whole thrust of the Court's Decision in these proceedings under Article 10, paragraph 2, of the Arbitration Agreement for the interpretation of its 1977 Decision (and I subscribe to the present Decision down through paragraph 103) leads me to the conclusion that the technical misapplication of what the Court decided should be corrected as a part of the process of interpretation by the Court of the obscurities resulting from the contradictory passages of its Decision. In view of certain ambiguities which I see in paragraph 36 of the Court's Decision, I find it necessary to state that, whatever inherent power a court may possess under general international law and accepted international judicial practice to rectify material errors, the power of the Court in this Arbitration to interpret the meaning and scope of contradictory passages in its Decision of 30 June 1977, and, necessarily, to effect the required rectifications, can be found in Article 10, paragraph 2, of the Arbitration Agreement concluded by the Parties.

In the particular circumstances of what occurred in this Arbitration, I see no threat to the established principle of international law demanding respect for the authority of *res judicata,* when a Court, duly seised, interprets contradictions in its Decision in order to clarify the meaning and scope of that Decision.

It is my view that the United Kingdom Submissions on this point, as well as on the boundary-line to the north and west of the Channel Islands, are well-founded. In the Atlantic region the line M-N should be replaced with a geodesic commencing at Point M and going out to the 1,000-metre isobath, in order to conform to the Decision made by the Court in 1977.



This outline map shows the boundaries as decided by the Court of Arbitration in the Decision of 30 June 1977 as modified by its Decision of 14 March 1978. The unmodified boundary as given in paragraph 203 of the Decision of 30 June 1977 is not shown.

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AFFAIRE DE LA DÉLIMITATION DU PLATEAU CONTINENTAL ENTRE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD ET RÉPUBLIQUE FRANCSC41/21AISE

DÉCISION DU 14 MARS 1978

Interprétation du sens et de la portée de la décision déjà rendue—Examen de l exception d'incompétence du Tribunal *ratione temporis*—Examen de l'exception d'incompétence du Tribunal *ratione materiae*—L'exigence de formalités qui ne seraient pas raisonnables comme l'épuisement des négociations diplomatiques pour établir l'existence d'un différend, est déplacée dans le cas d'une demande d'interprétation de jugement—Le principe de l'autorité de la chose jugée—Le tracé de la "ligne d'équidistance véritable"—L'interprétation d'une décision doit être distinguée de sa modification—La notion de ligne de demi-effet pour la délimitation d'une frontière comportant l'existence d'îles en tant que circonstances spéciales—La pratique consistant à déterminer des limites maritimes par une loxochromie tracée sur une carte marine usuelle établie en projection de Mercator sans rectification des erreurs d'échelle n'est ni désuète, ni contestable.

DÉCISION

M. Erik CASTREN, *président;*

M. Herbert BRIGGS, M. André GROS, M. Endre USTOR, Sir Humphrey WALDOCK, *membres du tribunal;*

M. Lucius CAFLISCH, *greffier;*

M. Georges MALINVERNI, *greffier adjoint.*

En l'affaire de la Requête au Tribunal arbitral sur la délimitation du plateau continental fondée sur les dispositions de l'article 10, paragraphe 2, du Compromis d'arbitrage du 10 juillet 1975 qui prévoit la possibilité d'une interprétation de la Décision du 30 juin 1977 *entre* le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, représenté par:

Sir Ian Sinclair, K.C.M.G., jurisconsulte du Ministère des affaires étrangères et du Commonwealth, comme agent et conseil; et M. F. D. Berman, conseiller juridique au Ministère des affaires étrangères et du Commonwealth, comme agent adjoint; assistés par: le capitaine de frégate P. B. Beazley, service hydrographique du Ministère de la Défense; M. D. J. Bunyon, chef de la section géodésique, Centre hydrographique, Taunton, comme experts;

Et la République française, représentée par:

M. Guy Ladreit de Lacharrière, ministre plénipotentiaire, directeur des affaires juridiques au Ministère des affaires étrangères, comme agent; M. Gilles Chouraqui, conseiller des affaires étrangères, direction des affaires juridiques du Ministère des affaires étrangères, comme agent adjoint; assistés par: M. Michel Virally, professeur des facultés de droit, Université de Paris, M. Daniel Bardonnet, professeur des facultés de droit, Université