

# Oxford Public International Law



## **Continental Shelf Arbitration (France v United Kingdom)**

**Alex G Oude Elferink**

**Content type:** Encyclopedia entries

**Product:** Max Planck Encyclopedias of International Law [MPIL]

**Module:** Max Planck Encyclopedia of Public International Law [MPEPIL]

**Article last updated:** June 2006

### **Subject(s):**

Continental shelf

Published under the auspices of the Max Planck Foundation for International Peace and the Rule of Law under the direction of Rüdiger Wolfrum.

---

## A. Introduction

1 The United Kingdom proposed to France preliminary discussions on the delimitation of their → *continental shelf* in February 1964. The UK considered that this delimitation should be effected on the basis of the median line principle. France accepted the proposal for preliminary discussions in August 1964. In this connection France pointed out that it considered that there existed special circumstances within the meaning of Art. 6 (1) Convention on the Continental Shelf in respect of the continental shelf adjacent to the UK and France. France further stated that in these circumstances the unilateral establishment of an equidistance line for the calculation of a dividing line without agreement of the other party could not be accepted.

2 France and the UK conducted negotiations on the delimitation of their continental shelf between 1970 and 1974 (→ *Negotiation*). Both States agreed in the whole of the eastern part of the English Channel and a section of the western part of the Channel on a simplified equidistance line to delimit the continental shelf. They did not reach agreement on the delimitation in the area involving the Channel Islands and the area of the western approaches to the Channel (→ *Channel Islands and Isle of Man*). On 10 July 1975, France and the UK signed an agreement referring the delimitation of the continental shelf in the English Channel westward from the meridian 0° 30' W as far as the 1,000 metre isobath in the Atlantic Ocean to → *arbitration*. The Court of Arbitration was requested to decide the course of the continental shelf boundary as between the parties in these areas in accordance with the rules of international law applicable in the matter. The court considered that it was without competence to delimit a boundary in the narrow waters between the Channel Islands and the French coast. It confined its decision to areas that did not involve the delimitation of the → *territorial sea* of either party.

## B. The First Award

3 France and the UK were both parties to the Continental Shelf Convention. A first question the Court of Arbitration had to decide was the effect of certain reservations of France to Art. 6 Continental Shelf Convention (→ *Treaties, Multilateral, Reservations to*). France, among others, had indicated that it would not accept the application of the principle of equidistance in the Bay of Granville, in which the Channel Islands are located, because it considered that there existed special circumstances. The UK had indicated that it was unable to accept the French reservations to Art. 6 Continental Shelf Convention. The Court of Arbitration found that Art. 6 Continental Shelf Convention was only inapplicable as between the parties to the extent, but only to the extent, of the reservations. This effect is envisaged by Art. 21 (3) → *Vienna Convention on the Law of Treaties (1969)*. The court found that as a result Art. 6 Continental Shelf Convention was not applicable in the region involving the Channel Islands.

4 The court's decision on the French reservations had as a result to apply both Art. 6 Continental Shelf Convention and → *customary international law*. The Court of Arbitration observed that in the circumstances of the case before it, the rules of customary law led to much the same result as the provisions of Art. 6 Continental Shelf Convention. The court further observed that customary international law was a relevant and even essential means for interpreting and completing the provisions of Art. 6 Continental Shelf Convention. The court concluded that Art. 6 Continental Shelf Convention neither defines special circumstances nor lays down criteria to assess whether particular circumstances justify a deviation from the equidistance line. Consequently, even under Art. 6 Continental Shelf Convention equidistance does not have the inherent quality as a legal norm which justifies

its use, but this is dependent on whether, in the light of the geographical and other circumstances of the case, the equidistance method can achieve an equitable solution.

**5** To establish the rules of customary law the Court of Arbitration turned to the judgment of the → *International Court of Justice (ICJ)* in the → *North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherland)*, noting that many of the pronouncements of the ICJ were of a general character and applicable to a delimitation under Art. 6 Continental Shelf Convention as well as customary law. The Court of Arbitration subscribed to the view of the ICJ that the continental shelf must be the natural prolongation of the coastal State's land territory and not encroach upon the natural prolongation of another State. However, as far as delimitation is concerned this conclusion did not provide guidance, as a continental shelf may geographically speaking be the natural prolongation of both States concerned.

**6** The examination of the observations of the ICJ in the *North Sea Continental Shelf Cases* on equidistance led the Court of Arbitration to conclude that the appropriateness of using equidistance or any other method for the purpose of effecting an equitable delimitation is a function or a reflection of the geographical and other relevant circumstances of the particular case. The choice of the method or methods of delimitation has to be determined in the light of the circumstances of the particular case and the fundamental norm that the delimitation must be in accordance with equitable principles (→ *Equity in International Law*). In this connection, the differentiation between opposite and adjacent coasts reflects the geographical facts. In the geographical situation characterized by oppositeness a median line will normally effect a broadly equitable delimitation, while a lateral equidistance line extending outward for long distances may lead to an inequitable delimitation by reason of the distorting effects of individual geographical features.

**7** The court found that the criterion that there should be a reasonable degree of → *proportionality* between the areas of continental shelf appertaining to each State and the lengths of the coastlines was developed by the ICJ in the *North Sea Continental Shelf Cases* in the particular geographical situation of three coastal States situated on a concave coast, and rejected that it should be applied in this precise form in all circumstances. In general, proportionality may be a factor for determining the equitable or inequitable effects of particular geographical features. The court observed that 'it is disproportion rather than any general principle of proportionality which is the relevant criterion' (*Arbitration Between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf [Decision]* [1977] para. 101). Proportionality should not be treated as a general principle providing an independent source of rights to continental shelf areas. The limited role of proportionality also appears from its application in the establishment of the actual delimitation line. The court rejected that the establishment of the boundary in the Atlantic proportionality required calculation in regard of the total areas of continental shelf accruing to the parties in this region. Instead, proportionality was only taken into account in appreciating whether the Scilly Isles were to be considered a special circumstance having distorting effects on an equidistance boundary, and, if so, the extent of the adjustment that would be appropriate to abate the inequity caused by the presence of such a special circumstance.

**8** The parties were in agreement that in the English Channel, apart from the region influenced by the Channel Islands, a situation of oppositeness existed and that the boundary in principle should be a median line. The court agreed with this, noting that irregularities in the coastline of each State generally offset each other, so that a median line resulted in a generally equitable delimitation. In connection with the delimitation of this part of the boundary the Court had to adjudge whether the axis of the Hurd Deep–Hurd Deep Fault Zone formed an alternative basis for delimitation, as was submitted by the UK. The court

held that even if the zone was to be considered as a discontinuity it did not disrupt the essential unity of the continental shelf. Attaching critical significance to the Hurd Deep-Hurd Deep Fault Zone would run counter to the whole tendency in State practice in recent years. Another issue the Court had to decide in connection with this section of the boundary line was whether the Eddystone Rocks formed a relevant base-point (see also → *Baselines*). Without taking a position on the difference between the parties over the precise legal status of the Eddystone Rocks, the Court treated it as a relevant base-point because the parties had accepted it as such.

**9** As regards the delimitation of the continental shelf in the Channel Islands region the Court noted that this region presented particular features and problems. In geographical terms the Channel Islands region was considered to form an integral part of the English Channel. In this larger area there existed a relation of approximate equality between the mainland coasts of France and the UK. If the Channel Islands did not exist, a median line boundary would leave broadly equal areas of continental shelf to each State and constitute a delimitation in accordance with equitable principles. The presence of the Channel Islands on the French side of the median line disturbed the balance of geographical circumstances which would otherwise exist, affecting the legal framework within which the boundary had to be delimited in the Channel Islands region. To establish the effect of the Channel Islands the Court took into consideration a number of facts related to them. The Channel Islands are set apart from rocks or small islands figuring in some of the precedents given by the parties. They possess a considerable population, substantial economic activities, and they are clearly territorial and political units which have their own separate existence. Security considerations, invoked by both States, according to the Court may support and strengthen conclusions that are indicated by the geographical, political and legal circumstances of the region. These considerations gave evidence of the predominant interest of France in the southern areas of the English Channel, which is also indicated by its position as a coastal State along the whole south coast of the English Channel.

**10** The Court considered the Channel Islands a circumstance creating an inequity. In establishing the weight to be given to this fact a number of considerations played a role: *a*) the already noted general relation of broad equality of the mainland coasts; *b*) the location of the Channel Islands close to the French coast 'on the wrong side' of the median line (*Continental Shelf Arbitration [1977]* para. 199); *c*) wholly detached geographically from the UK; and *d*) the relatively limited space of the English Channel to adjust for any inequities. To maintain the balance between the mainland coastlines the primary boundary established by the Court is a median line between the mainland coasts, while the Channel Islands were enclaved within a 12 nautical mile continental shelf.

**11** In the Atlantic, the Scilly Isles were found to be a special circumstance within the meaning of Art. 6 Continental Shelf Convention. The court considered that the Scilly Isles and the British mainland project further seaward into the Atlantic Ocean than the French mainland and the island of Ushant. The additional projection of the Scilly Isles constituted an element of distortion which was material enough to justify not delimiting the boundary by a strict median line. The court observed that the conclusion that the Scilly Isles are a special circumstance did not imply that it could totally disregard the median line. As is observed by the Court, the method to be applied would have to remedy the disproportionate effect of the Scilly Isles without disregarding either them or Ushant. To implement these findings, the Court established a boundary that gave half-effect to the Scilly Isles. This was done by drawing the median line taking into account the Scilly Isles and a median line for which no base-points on the Scilly Isles were taken into account. The boundary was established as a bisector of these two lines. The court noted that equity does not call for

coasts, the relation of which to the continental shelf is not equal, to be treated as having completely equal effects.

### **C. The Second Award**

**12** After the Court of Arbitration had delivered its decision on 30 June 1977, the UK made an application concerning the meaning and scope of the decision on 17 October 1977. The court first dealt with various questions related to the admissibility of the application, upholding the application's admissibility.

**13** The application was concerned with two issues. A first question related to the manner in which the 12 nautical mile enclave around the Channel Islands had been drawn. The boundary as defined in the *dispositif* and as drawn on the chart accompanying the decision did not coincide with the description in para. 202 of the decision. The court held that the contradiction between the express findings in para. 202 of the decision and the delimitation of the boundary in the *dispositif*, which was not a correct application of these express findings, had to be resolved in favour of the findings in the reasoning, in order not to defeat the intention of the decision of the Court.

**14** A second question concerned the type of straight line that had been used to establish the boundary in the Atlantic region. The decision had defined the boundary as a loxodrome (a straight line on a chart using a Mercator projection). A straight line (geodesic) on a spheroid, such as the Earth, diverges from this loxodrome. This geodesic would have given a larger area of continental shelf to the UK. The loxodrome also did not represent a line lying midway between the equidistance lines giving no effect and full effect to the Scilly Isles. The UK submitted that a correct interpretation of the decision implied that the boundary in this area should be a geodesic. The court held that the delimitation of maritime boundaries by a loxodrome was neither inadmissible in law nor as yet as outmoded in practice as to make its use open to challenge. The court concluded that the course of the boundary in the *dispositif* was not in such contradiction with the findings in the decision as to be incompatible with the method of delimitation prescribed in those findings, and upheld that boundary.

### **D. Conclusions**

**15** After the *North Sea Continental Shelf Cases*, this was the second case involving the delimitation of the continental shelf. There are two important differences between both cases. The ICJ had been requested to decide on the applicable principles and rules of international law. The Court of Arbitration was requested to decide the course of the continental shelf boundary in accordance with the applicable rules of international law. As a consequence, the decision of the Court of Arbitration focuses more on the actual methods of delimitation. The methods to delimit the boundary employed by the Court of Arbitration are almost exclusively based on geography. The ICJ found that Art. 6 Continental Shelf Convention was not applicable between the parties to the cases, but in its reasoning suggested that Art. 6 Continental Shelf Convention and customary law differed in content. The Court of Arbitration found that Art. 6 Continental Shelf Convention provided the applicable law for a part of the area in which it was to effect a delimitation. The court reached the conclusion that Art. 6 Continental Shelf Convention was in principle equal in content to customary law. That equation of customary law and Art. 6 Continental Shelf Convention has been variously appraised. A criticism in some quarters has been that special circumstances under Art. 6 Continental Shelf Convention should be regarded as having

more limited implications for the application of equidistance than the application of equitable principles under customary law.

**16** In some respects the decision of the Court of Arbitration put a gloss on the judgment of the ICJ in the *North Sea Continental Shelf Cases*. The Court of Arbitration de-emphasized the role of proportionality and natural prolongation for the delimitation of continental shelf boundaries.

**17** The decision of the Court of Arbitration was handed down at a time when the negotiations on the delimitation of the continental shelf and the → *exclusive economic zone* at the Third United Nations Conference on the Law of the Sea were in deadlock (→ *Conferences on the Law of the Sea*). One group of States favoured a delimitation provision in a new convention giving primacy to equitable principles, whereas another group of States submitted that the equidistance method provided an appropriate starting point to effect an equitable delimitation. The decision of the Court did not noticeably contribute to reconciling these positions, even though the decision indicated that both approaches could be considered to lead to a similar result. That similarity has been confirmed in the subsequent case-law. The case-law has also largely adopted the Court's approach on other points, such as the importance of geography for the choice of methods of delimitation.

## Select Bibliography

DM McRae 'Delimitation of the Continental Shelf between the United Kingdom and France' (1977) 15 ACIDI 1739-7.

E Zoller 'L'affaire de la délimitation du plateau continental entre la République française et le Royaume-uni de Grande Bretagne et d'Irlande du Nord; Décision du 30 juin 1977' (1977) 23 AFDI 359-407.

PH Imbert 'La question des réserves dans la décision arbitrale du 30 juin 1977 relative à la délimitation du Plateau continental entre la République française et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord' (1978) 24 AFDI 29-58.

MD Blecher 'Equitable Delimitation of the Continental Shelf' (1979) 73 AJIL 60-88.

DW Bowett, *The Legal Regime of Islands in International Law* (Oceana Dobbs Ferry 1979) 193-237.

JP Quéneudec 'L'affaire de la délimitation du plateau continental entre la France et le Royaume-Uni' (1979) 83 RGDIP 53-103.

F Rigaldies 'L'affaire de la délimitation du plateau continental entre la République française et le Royaume-uni de Grande Bretagne et d'Irlande du Nord' (1979) 106 JDI 506-31.

JG Merrills 'The United Kingdom-France Continental Shelf Arbitration' (1980) 10 CalWIntlJ 314-64.

P Weil, *The Law of Maritime Delimitation* (Grotius Cambridge 1989).

ED Brown, *Sea-Bed Energy and Minerals* (Nijhoff Dordrecht 1992) vol 1 *The Continental Shelf* 88-129.

R Kolb, *Case Law on Equitable Delimitation* (Nijhoff The Hague 2003) 85-136.

## Select Documents

*Arbitration Between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf (Decision of 30 June 1977)* (1979) 18 ILM 398.

*Arbitration Between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf (Decision of 14 March 1978)* (1979) 18 ILM 462.

Convention on the Continental Shelf (adopted 29 April 1958, entered into force 10 June 1964) 499 UNTS 311.

*North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands) (Merits)* [1969] ICJ Rep 4.

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.