

THE CANADIAN 200-MILE FISHERY LIMIT AND THE DELIMITATION OF MARITIME ZONES AROUND ST. PIERRE AND MIQUELON

C.R. Symmons*

I. INTRODUCTION

The aim of this article is to analyze the legal implications of recent Canadian and French moves in relation to the maritime boundaries around the French islands of St. Pierre and Miquelon. The present Franco-Canadian dispute over the appropriate boundary around the islands relates particularly to delimitation of the Canadian 200-mile fishery zone and the French 200-mile "zone économique". The issue is examined in the context of the recent arbitration case dealing with the continental shelf between Great Britain and France¹ and analogies are drawn from the Court of Arbitration's discussion of the British Channel Islands. Recent "enclave" solutions for small islets fringing the coastlines of foreign states are also considered.

II. THE BACKGROUND TO THE DISPUTE

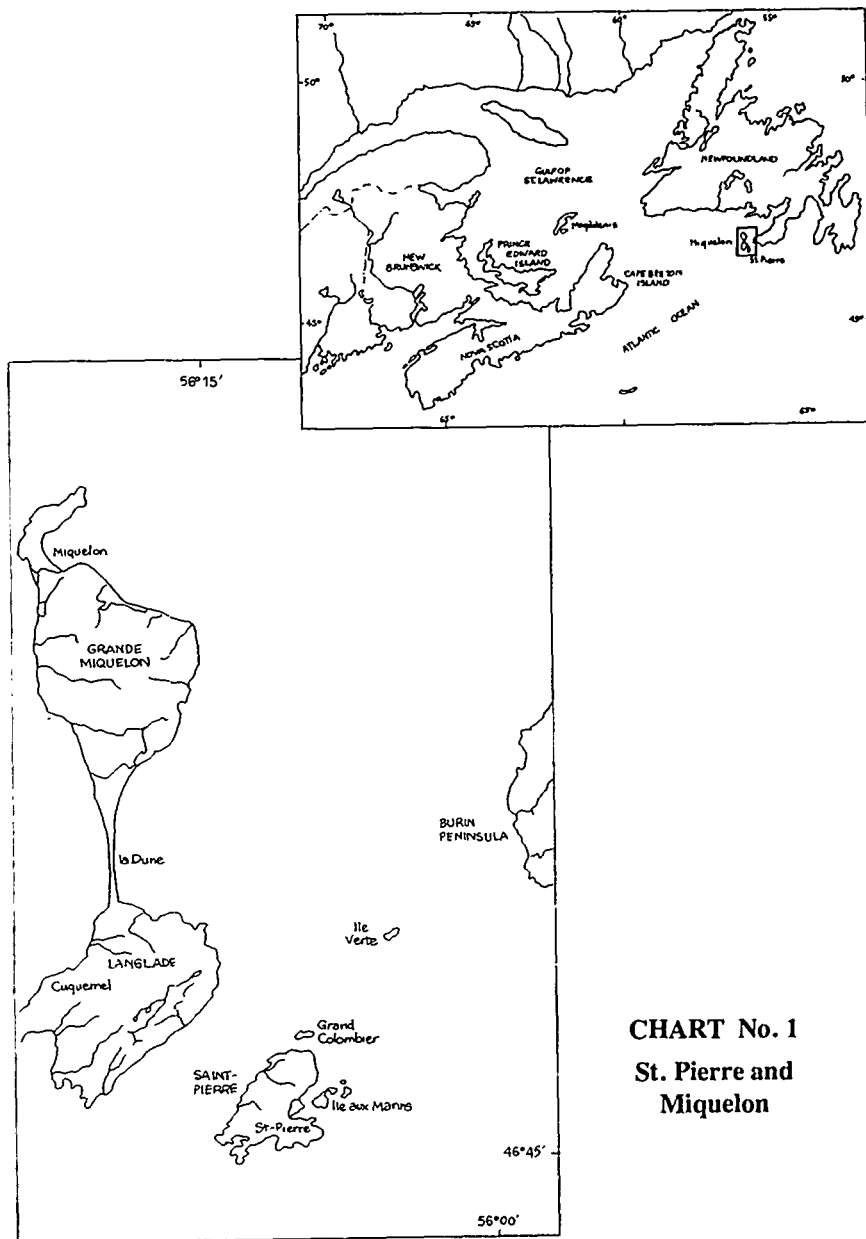
The history of French fishery rights along the coast of Newfoundland, dating back to the Treaty of Utrecht of 1713, is well-documented² and needs no further discussion for the purposes of this article. As background to the dispute, however, it should be noted that although by the end of the nineteenth century the major French activity had become deep-sea fishing on the Grand Banks,³ in the more recent past emphasis has been placed on limiting French shared-fishery rights within Canadian inshore waters.

* Senior Lecturer in Law, University of Bristol.

¹ Arbitration on the Delimitation of the Continental Shelf (Great Britain v. France), June 30, 1977 & Mar. 14, 1977 (Cmd. 7438, 1979), reproduced in 18 INT'L LEGAL MATERIALS 397 (1979).

² See, e.g., Prowse, *The Treaty Shore Question in Newfoundland*, 1 CAN. L. REV. 329 (1902), which contains an excellent summary of the developments from 1713 to 1902. For reference to the voluminous French literature on the topic, see Rousseau, *Chronique des faits internationaux: Canada*, 67 REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC [R.G.D.I.P.] 884, at 887 n. 34 (1963).

³ See Prowse, *supra* note 2, at 334.



A. The 1972 Franco-Canadian Agreement on Mutual Fishing Practices

In 1971, Canada created an exclusive fishery zone in the Gulf of St. Lawrence⁴ and at the same time negotiated "phase-out" agreements with those states having traditional fishery rights within the Gulf. The most important of these agreements was that signed with France on March 27, 1972,⁵ by which France renounced its fishery privileges under the prior treaty of 1904.⁶ It nevertheless retained restricted privileges for fishing in the region.⁷

There are three factors in the Agreement which bear on the present fishery delimitation dispute between the two countries. In the first place, it settled the maritime boundary on the *landward* side of the islands.⁸ Secondly, Canada declared that if it were to extend its fishery limits in the future, it would, subject to certain qualifications, continue to

⁴ This was done by order-in-council (Fishing Zones of Canada (Zones 1, 2 and 3) Order, C.R.C., c. 1547) pursuant to An Act to amend the Territorial Sea and Fishing Zones Act, S.C. 1969-70, c. 68. See Pharand, *Annual Survey of Canadian Law International Law*, 9 OTTAWA L. REV. 505, at 514 (1977).

⁵ Agreement on Mutual Fishing Practices, Mar. 27, 1972, Canada-France, reproduced in S. ODA, 2 THE INTERNATIONAL LAW OF THE OCEAN DEVELOPMENT 144 (1975).

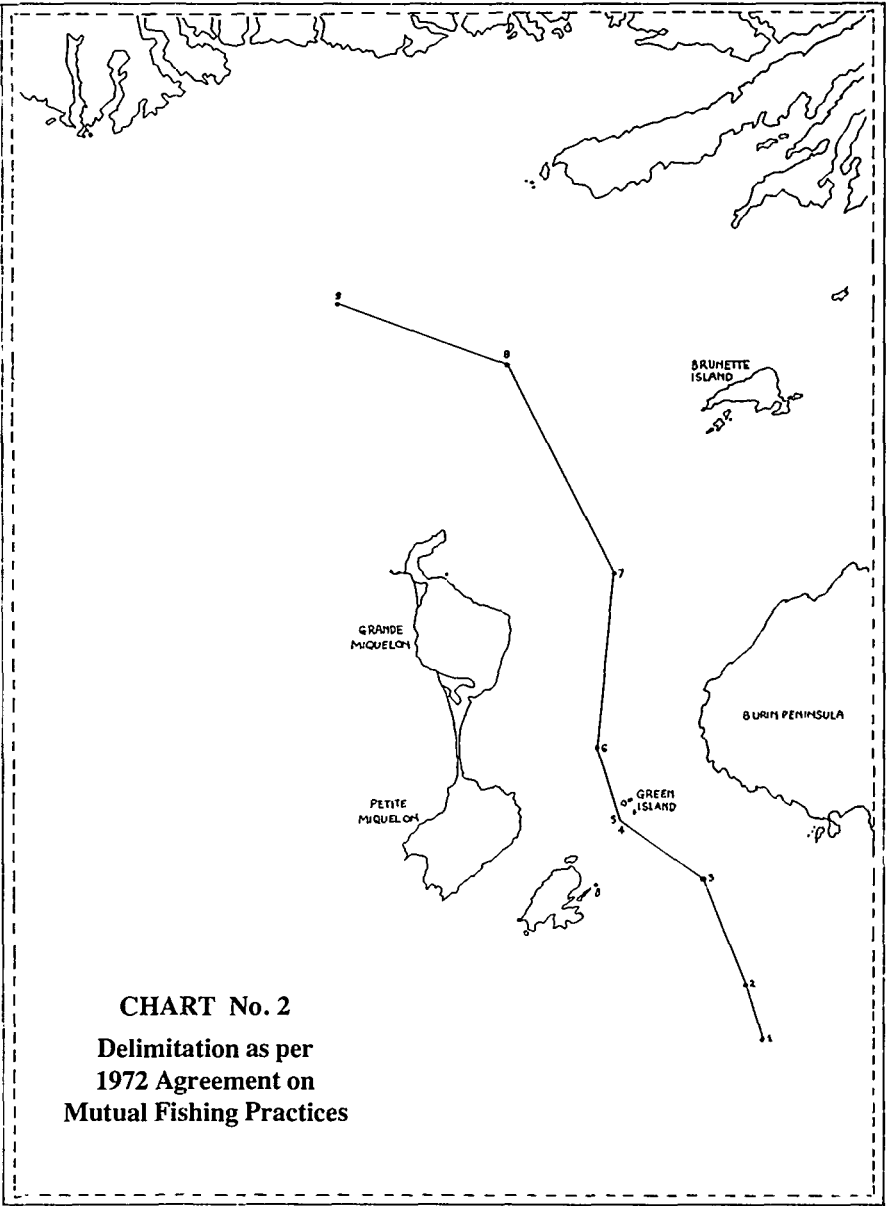
⁶ Convention respecting Newfoundland, and West and Central Africa, Apr. 8, 1904, Great Britain-France, 97 BRITISH AND FOREIGN STATE PAPERS 31 (1904). See generally Prowse, *The Settlement of the French Shore Question and Union Between Canada and Newfoundland*, 3 CAN. L. REV. 343 (1904).

⁷ See arts. 3, 4. See generally H.C. DEB., 30th Parl., 2d Sess., at 1194 (Nov. 19, 1976).

⁸ Art. 8: "The line defined in the annex to the present agreement determines, in the area between Newfoundland and the islands of Saint-Pierre and Miquelon, the limit of the territorial waters of Canada and of the zones submitted to the fishery jurisdiction of France." This cumbersome wording makes it unclear whether it is a territorial sea or a 12-mile fishery zone which is being delimited. However, despite the "no prejudice" clause in art. 9 (see p. 149 *infra*), namely, that no provision of the treaty is to prejudice, *inter alia*, future claims of either party concerning fisheries jurisdiction, it is likely that this "modified" equidistance line solution for the landward area would also be adopted in any delimitation of the respective 200-mile limits. See also note 123 *infra*.

In 1971, France had extended French territorial waters to 12 miles (Law no. 71-1060 of Dec. 24, 1971, [1971] JOURNAL OFFICIEL [J.O.] 12899, [1972] BULLETIN LÉGISLATIF DALLOZ [B.L.D.] 18). This legislation applied to French overseas possessions (art. 5). In 1973, the fishery zones around St. Pierre and Miquelon that were prohibited to foreign vessels were extended (Decree no. 73-161 of Feb. 19, 1973, [1973] J.O. 1940). See also Beurrier & Cadenat, *Les positions de la France à l'égard du droit de la mer*, 79 R.G.D.I.P. 1028, at 1060-61 (1975). In 1977, France defined the straight baselines from which the islands' adjacent territorial waters were to be measured (Decree no. 77-1068 of Sept. 12, 1977, [1977] J.O. 4697). See also Rousseau, *Chronique des faits internationaux: France*, 82 R.G.D.I.P. 666, at 669-70 (1978). This decree makes a reference in its preamble to the 1972 Agreement.

Canada's extension of its territorial sea to 12 miles had come slightly earlier. See An Act to amend the Territorial Sea and Fishing Zones Act, S.C. 1969-70, c. 68, s. 1 (repealing S.C. 1964-65, c. 22, s. 3(1), which set the territorial sea at three miles).



recognize French fishing rights in the Atlantic.⁹ Thirdly, and most importantly, the Agreement contained a "no prejudice clause" which *prima facie* gave both states a *carte blanche* to declare future 200-mile fishery zones, indicating that for this purpose the Agreement was not necessarily determinative. Article 9 reads as follows:

No provisions of the present agreement shall be interpreted as prejudicing the views and future claims of either party concerning internal waters, territorial waters or jurisdiction with respect to fisheries or the resources of the continental shelf. . . .¹⁰

B. *The Relevé des Conclusions of May 26, 1972, Concerning Delimitation of the Continental Shelf Around St. Pierre and Miquelon*

This confidential understanding¹¹ between France and Canada, the exact details of which have not yet been fully published, followed closely on the 1972 Mutual Fisheries Agreement. There had been a sequence of Canadian and French grants of exploration permits which, by the mid-1960's, had resulted in an overlap of seabed claims in the vicinity of the French islands.¹² This brought to a head the Franco-Canadian discussions which had previously dragged on inconclusively.¹³

⁹ Art. 2 states:

In return, the Canadian Government undertakes in the event of a *modification to the juridical regime relating to the waters situated beyond the present limits of the territorial sea and fishing zones of Canada on the Atlantic coast*, to recognize the right of French nationals to fish in these waters subject to possible measures for the conservation of resources, including the establishment of quotas. [Emphasis added].

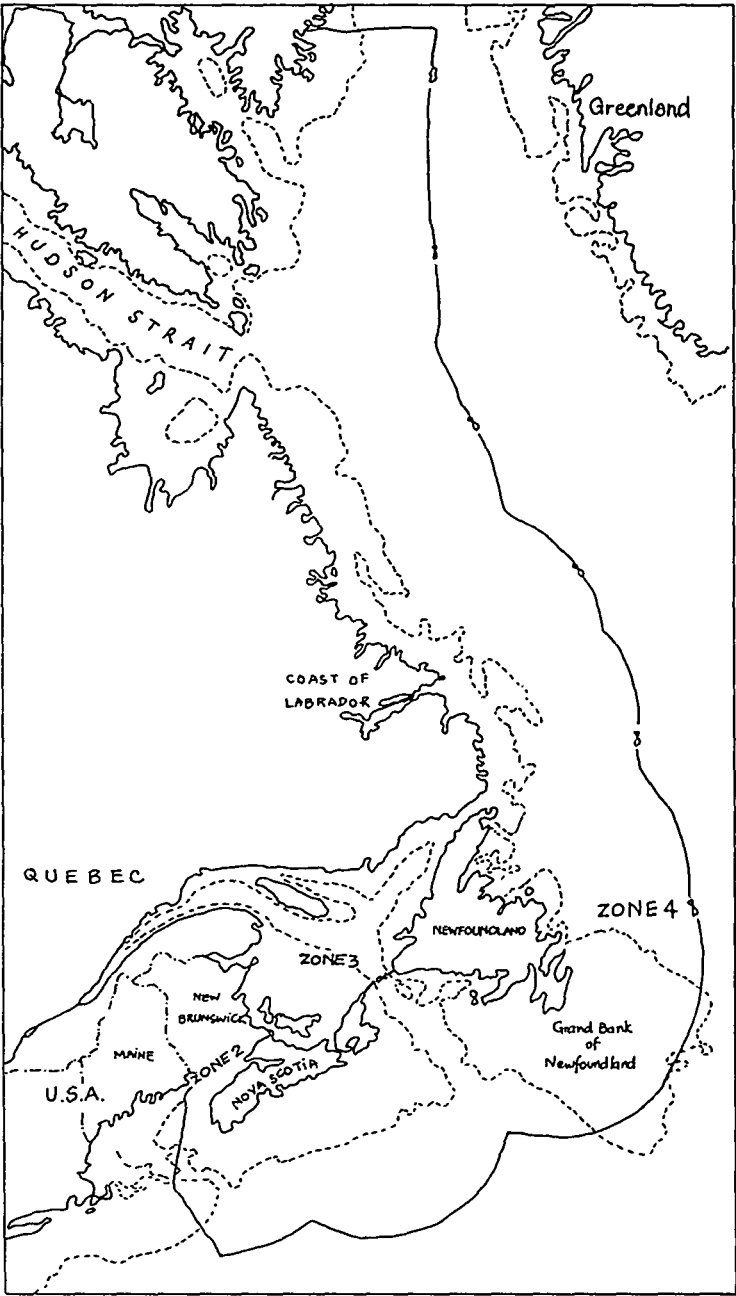
¹⁰ Fishery agreements between other states, albeit of a more provisional nature, have contained more positive "no prejudice" clauses with respect to boundary delimitation of extended fishery zones. See, e.g., Exchange of Notes Concerning Fishing in the Icelandic Fisheries Zone, June 1, 1976, Great Britain — Iceland, art. 9, [1976] Gr. Brit. T.S. No. 73 (Cmd. 6545). It has been suggested that art. 9 of the Franco-Canadian agreement might enable France to claim a 200-mile fishery zone southward to the mid-point from Cape Breton, N.S. See Rigaldies, *La délimitation du plateau continental entre états voisins*, 14 CAN. YEARBOOK INT'L L. 116, at 172 (1976).

¹¹ At present the *Arbitration case*, *supra* note 1, is the only source of publication of the confidential terms of the *Relevé des Conclusions*. The Court of Arbitration referred to this summary of discussions as an "agreement" (see, e.g., paras. 177, 200). For criticism of this, see McRae, *Delimitation of the Continental Shelf Between the United Kingdom and France: The Channel Arbitration*, 15 CAN. YEARBOOK INT'L L. 173, at 190 n. 60 (1977).

¹² See Rousseau, *Chronique des faits internationaux: Canada et France*, 72 R.G.D.I.P. 164, at 167 (1968). See generally Buzan & Middlemiss, *Canadian Foreign Policy and the Exploitation of the Seabed*, in CANADIAN FOREIGN POLICY AND THE LAW OF THE SEA 1 (B. Johnson & M. Zacher eds. 1977).

¹³ See Rousseau, *Chronique des faits internationaux: Canada et France*, 77 R.G.D.I.P. 496 (1973).

CHART No. 3



Canadian Fishing Zones as of January 1, 1977

From the outset, the discussion foundered on the method to be used for the delimitation of the continental shelf around the islands. On the one hand, Canada claimed that the French islands constituted "special circumstances" under Article 6 of the 1958 Convention on the Continental Shelf.¹⁴ On the other hand, France argued for a strict application of the equidistance principle, taking full account of the islands as basepoints. This stance, however, was to redound to France's disadvantage in the Franco-British *Arbitration* case¹⁵ as Great Britain made reference to it¹⁶ in an attempt to counter the French argument that the British Channel Islands should be ignored as basepoints in the English Channel sector and that they should merely generate enclaved zones of six nautical miles.¹⁷

Geological research shows that the continental shelf appurtenant to St. Pierre and Miquelon stretches a distance of about 400 kilometres south-west from the islands.¹⁸ Thus the effect of the equidistance claim would be to encompass for France a seabed amounting to about 19,000 square miles and extending some 85 miles south of St. Pierre, there being 170 miles between it and Nova Scotia.¹⁹ Such a claim was viewed by Canada as quite disproportionate if the areas of the French islands and the Canadian land-mass are compared.²⁰ This view has since been repeated in the context of the delimitation of the 200-mile limit claims.²¹

In 1972, however, under the provisional terms of the *Relevé des Conclusions*, France significantly moderated its position and agreed to an enclave of continental shelf around the islands. In the words of the Court of Arbitration in the *Arbitration* case, France accepted "no more than a 12-mile zone of territorial sea" with a "considerable extent of continental shelf left to Canada in the Atlantic to seawards of the islands."²² The important precedent which this concession creates for a solution of the 200-mile maritime boundary problems will be discussed later.

¹⁴ *Opened for signature* Apr. 29, 1958, 499 U.N.T.S. 311, [1970] Can. T.S. No. 4. See extract from letter of Department of External Affairs, in Lee, *Canadian Practice in International Law During 1974 as Reflected Mainly in Public Correspondence and Statements of the Department of External Affairs*, 13 CAN. YEARBOOK INT'L L. 329, at 350 (1975); H.C. DEB., 28th Parl., 4th Sess., at 1160 (Mar. 27, 1972).

¹⁵ *Supra* note 1.

¹⁶ *Id.* at 87-88, para. 177.

¹⁷ *Id.* at 11-12, para. 8.

¹⁸ See Rousseau, *supra* note 13.

¹⁹ See Gass, *The French Claim to the Eastern North American Continental Shelf*, 27 JAG J. 367, at 374 (1973).

²⁰ See Beauchamp, Crommelin & Thompson, *Jurisdictional Problems in Canada's Offshore*, 11 ALTA. L. REV. 431, at 447 (1973).

²¹ See text accompanying notes 47, 48, *infra*.

²² *Supra* note 1, at 95, para. 200. See Chart No. 2.

C. *The 200-Mile Declaration of Canada*

On November 1, 1976, Canada gave notice of its intention to expand its fishery limits to 200 miles in the Atlantic and Pacific oceans.²³ The relevant order for the Atlantic coast was included in the Fishing Zones of Canada (Zones 4 and 5) Order²⁴ which came into force on January 1, 1977.

It appears to have been the Canadian aim to conclude fishery agreements with all neighbouring territories prior to the announcement of the new zone.²⁵ Initially it was the Canadian official view that the 1972 Franco-Canadian Agreement on Mutual Fishing Practices covered the situation of St. Pierre and Miquelon,²⁶ and that, in any event, the "continuing fishery rights" clause in Article 2 of that Agreement²⁷ would allow Canadian enforcement of quotas and licensing in the areas under expanded Canadian jurisdiction.²⁸ Franco-Canadian talks later in 1976, however, led to mutual recognition that a new interim agreement relating to the waters near the French islands was urgently required in order to avoid a conflict of fishery jurisdictions.²⁹

By the close of 1976, it became clear that French trawlers would be able to fish without permits within an area south and east of the French islands covering some 30-35,000 square miles inside the new Canadian limits.³⁰ When the Foreign Vessel Fishing Regulations³¹ came into force on January 1, 1977, France, by express regulation, was exempted from obtaining fishing licences for an interim period.³²

Despite this special treatment of the French islands on the question of continuing fishing rights, the absence of agreed maritime boundaries between the French islands and Canada in the new context was obviously

²³ Proposed Fishing Zones of Canada (Zones 4 and 5) Order, 110 Can. Gazette, Extra no. 101 (Nov. 1, 1976), reproduced in 15 INT'L LEGAL MATERIALS 1372 (1976). See H.C. DEB., 30th Parl., 2d Sess., at 675 (Nov. 2, 1976).

²⁴ C.R.C., c. 1548. See Chart No. 3.

²⁵ See Rousseau, *Chronique des faits internationaux: Canada*, 81 R.G.D.I.P. 792 (1977).

²⁶ H.C. DEB., 30th Parl., 1st Sess., at 14164 (June 4, 1976).

²⁷ See *supra* note 9.

²⁸ H.C. DEB., 30th Parl., 2d Sess., at 1190-91 (Nov. 19, 1976).

²⁹ *Id.* at 1190.

³⁰ See Rousseau, *supra* note 25, at 793. French possession of the islands had already given France preferential fishery treatment in 1975 when Canada had succeeded in achieving a 40% reduction in the number of vessel-days fished by members of the International Commission for Northwest Atlantic Fisheries (ICNAF). Because of the islands, France was specifically exempted as a state with coastal rights in the area. See Johnson, *Canadian Foreign Policy and Fisheries*, in CANADIAN FOREIGN POLICY AND THE LAW OF THE SEA, *supra* note 12, at 52, 86-87.

³¹ C.R.C., c. 815. These regulations listed the countries being given permits for quotas of particular species of fish.

³² Transitional French Fishing Vessel Licence Exemption Regulations, C.R.C., c. 414. See generally Pharand, *supra* note 4, at 517; H.C. DEB., 30th Parl., 2d Sess., at 2828 (Feb. 8, 1977).

a factor of critical importance for the longer term. This was especially true in light of the fact that France had enabling legislation by which it could apply a 200-mile "zone économique" to its islands at any time.³³ The Canadian order dealing with Fishing Zone 4 makes preambular reference to France as being one of the countries with which the Canadian Government was engaged in consultations "on the delimitation of waters subject to [their] respective fisheries jurisdiction".³⁴

Furthermore, although *prima facie* the French islands were engulfed within the vast swath of Canada's expanded fishery limits, the provisional nature of these unilaterally proclaimed co-ordinates was emphasized in the preamble which also stated that the limits of the Canadian fishing zone were intended "to be without prejudice to any negotiations or to any positions which may have been or may be adopted respecting the limits of maritime jurisdiction in such areas".³⁵ The fact that Canada was ostensibly at pains to arrive at a mutually-agreeable boundary with France received some support in the House of Commons at the time.³⁶

The only specific reference in the Canadian Order to any *de facto* maritime boundary with St. Pierre and Miquelon is to be found in section 4, which makes it clear that Fishing Zone 4 does not include any areas within "the territorial sea of the islands of St. Pierre and Miquelon".³⁷ Thus the Canadian Order respects a twelve-mile zone on the seaward side of the islands. In this regard it seems to follow the provisional status quo as to continental shelf delimitation which has already been seen in the *Relevé des Conclusions*, and which, in the light of other precedents shortly to be considered, may eventually come to constitute the mutually-agreed boundary around the islands.

D. The 200-Mile "Zone Économique" of France

On July 16, 1976, France passed legislation authorizing the establishment of a "zone économique" not only around its home shores, but also around those of its overseas territories.³⁸ Article 5 enabled the Conseil d'État to fix, by decree, the conditions and dates of coming into force of economic zones around the various French coasts. It was in fact revealed in the Assemblée Nationale that one of the Government's main

³³ See Law no. 76-655 of July 16, 1976, [1976] J.O. 4299, [1976] B.L.D. 317.

³⁴ Fishing Zones of Canada (Zones 4 and 5) Order, S.O.R./77-62 (111 Can. Gazette, Pt. II, 115). [Editor's note: The Order as given in C.R.C., c. 1548, omits the preamble.]

³⁵ *Id.*

³⁶ H.C. DEB., 30th Parl., 2d Sess., at 1193 (Nov. 19, 1976).

³⁷ C.R.C., c. 1548, s. 4.

³⁸ Law no. 76-655 of July 16, 1976, [1976] J.O. 4299, [1976] B.L.D. 317. In this regard it followed the precedent of art. 5 of law no. 71-1060 of Dec. 24, 1971, [1971] J.O. 12899, [1972] B.L.D. 18. See *supra* note 8.

intentions was to allow it to respond to the creation of 200-mile zones by foreign states bordering French *overseas* departments and territories.³⁹ The legislation was to provide France with a ready-made bargaining counter in such situations.

Despite the fact that the Franco-Canadian talks in November, 1976, yielded no confirmation of French intentions to declare a 200-mile "zone économique" to the east and south of St. Pierre and Miquelon,⁴⁰ Canada obviously realized that this might take place at any time.⁴¹ As it turned out, by a French decree dated February 25, 1977,⁴² St. Pierre and Miquelon became the first French overseas insular possession to be granted a 200-mile economic zone. Article 1 of the decree stated that the exterior limit of this zone was to extend 188 miles from the territorial sea of the islands "sous réserve d'accords de délimitation avec le Canada". Thus, although the French decree ostensibly declared a full economic zone around the islands, its express "no prejudice" clause to allow for future mutually-agreed delimitation reciprocated the terms of the Canadian Order.⁴³

III. POSSIBLE 200-MILE ZONE DELIMITATION SOLUTIONS IN THE LIGHT OF OTHER PRECEDENTS

At the time of writing, continuing discussions between France and Canada over the maritime boundary problem have failed as yet to provide a mutually-agreed solution and the negotiating positions appear to be still very much opposed to each other.⁴⁴ It seems most unlikely that Canada will countenance such diminutive islands,⁴⁵ so close to its shores,⁴⁶ as the

³⁹ See Rousseau, *Chronique des faits internationaux: France*, 80 R.G.D.I.P. 1225, at 1225-26 (1976). It is significant that, of the members of the European Economic Community, France alone has acted to create a 200-mile *economic* zone rather than a 200-mile *fishery* zone.

⁴⁰ See H.C. DEB., 30th Parl., 2d Sess., at 1190 (Nov. 19, 1976).

⁴¹ See, e.g., H.C. DEB., 30th Parl., 1st Sess., at 14168 (June 4, 1976).

⁴² Decree no. 77-169 of Feb. 25, 1977, [1977] J.O. 1102. At the same time a similar zone was created for French Guiana, where the essential aim was to gain bargaining rights vis-à-vis delimitation with the Brazilian 200-mile zone: Decree no. 77-170 of Feb. 25, 1977, [1977] J.O. 1103. See also Rousseau, *Chronique des faits internationaux: France*, 81 R.G.D.I.P. 850, at 850-51 (1977).

⁴³ It has been standard practice in subsequent French economic zone decrees relating to overseas possessions not to enunciate co-ordinates for delimitation with neighbouring states. See Decrees nos. 78-142 to 78-149 of Feb. 3, 1978, [1978] J.O. 683-88. See generally Rousseau, *Chronique des faits internationaux: France*, 82 R.G.D.I.P. 666, at 669-71 (1978).

⁴⁴ See most recently the statement of Prime Minister Trudeau, H.C. DEB., 30th Parl., 4th Sess., at 3258 (Feb. 15, 1979). See generally Thibaut, *Le continent américain et la crise du droit de la mer*, 80 R.G.D.I.P. 785, at 792 (1976).

⁴⁵ The total area of both islands is approximately 93 square miles.

⁴⁶ Fifteen miles south of Newfoundland.

basis for the extensive zone now notionally claimed by France. It has already been stated in the House of Commons that it would be "unrealistic, in view of the land base involved, for Canada to permit a 200-mile zone on the seaward side",⁴⁷ and that Canada has made it clear in its talks with France that the land-mass of St. Pierre and Miquelon when compared with that of Newfoundland justified "a more appropriate solution than that suggested by the French government".⁴⁸

A. *The Third United Nations Conference on the Law of the Sea (UNCLOS III)*

Before discussing delimitation solutions appropriate to this difficult geographical context, it is worth noting that, since the French islands are populated⁴⁹ and possess some economic viability,⁵⁰ they do not fall within the restrictive ambit of the UNCLOS III provisions relating to islands which are mere "rocks which cannot sustain human habitation or economic life of their own";⁵¹ such "islands" do not have the right to generate an exclusive economic zone or continental shelf.⁵² Prima facie, then, the French islands qualify under the latest negotiating text⁵³ as having the capacity to generate an exclusive economic zone. Furthermore, although there were strong moves at UNCLOS III to deprive *dependent* islands of the right to generate such zones,⁵⁴ or at least to deprive the colonial power of the right to benefit from the creation of such zones, the remnant of this sentiment has merely survived in the current negotiating text as an unnumbered transitional provision.⁵⁵ In any event ownership of St. Pierre and Miquelon, unlike that of many other

⁴⁷ H.C. DEB., 30th Parl., 1st Sess., at 14168 (June 4, 1976) (*per* The Secretary of State for External Affairs).

⁴⁸ H.C. DEB., 30th Parl., 1st Sess., at 15248 (July 12, 1976) (*per* The Secretary of State for External Affairs).

⁴⁹ According to 1974 statistics, the population is approximately 5,840.

⁵⁰ The most important economic activity is fishing and related industries. There is also a growing tourist trade.

⁵¹ Informal Composite Negotiating Text/Revision 1, A/CONF.62/WP.10/Rev. 1, art. 121, para. 3 (Apr. 28, 1979) [hereinafter cited as ICNT/Rev. 1].

⁵² *Id.* Note that there were some submissions at the Conference which sought to deprive small but thinly-populated islands of an exclusive economic zone if they were situated "in" the exclusive economic zone of another state. See, e.g., the Turkish draft article on the regime of islands, A/CONF.62/C.2/L.55, art. 3, para. 2 (Aug. 13, 1974).

⁵³ ICNT/Rev. 1, *supra* note 51, art. 121, para. 2.

⁵⁴ See, e.g., the draft articles of certain socialist states, A/CONF.62/C.2/L.38, art. 10 (Aug. 5, 1974), and of certain Latin American states, A/CONF.62/C.2/L.58 (Aug. 13, 1974). Note, however, the Argentinian proviso to the Latin American proposals where the inhabitants of the island are "nationals or descendants of nationals of the colonial power". 2 UNCLOS III OR, at 284. St. Pierre and Miquelon are populated largely by persons of French descent, most being of Basque, Breton and Norman stock.

⁵⁵ ICNT/Rev. 1, *supra* note 51, arts. 139-40.

distant dependencies,⁵⁶ is not disputed by the neighbouring continental power.

It seems unlikely, therefore, that Canada would deny the notional right of the French islands to a 200-mile zone.⁵⁷ This also seems clear from the statements of its delegation at UNCLOS III, where it was maintained that if small, isolated insular territories were to be taken into account at all, they should in most cases be treated as generously as mainland territories, irrespective of their size; and besides, such islands were often important to a state because of their "historical links".⁵⁸ This has obvious application to the situation of St. Pierre and Miquelon and French delegation made similar statements.⁵⁹ Both states, in fact, have already made 200-mile claims based on insignificant and unpopulated islets; Canada in respect of Sable Island (lying some 100 miles off the coast of Nova Scotia),⁶⁰ and France in respect of its islet possessions in the Indian Ocean.⁶¹

With respect to continental shelf delimitation, as has been seen, a provisional "enclave" solution has already been adopted by the parties in the 1972 *Relevé des Conclusions*, notwithstanding France's initial insistence that an equidistance solution was appropriate.⁶² It seems likely that France has once again championed equidistance in respect of the 200-mile limits despite the fact that, in this new situation, the delimitation provisions of Article 6 of the 1958 Geneva Convention on the Continental Shelf⁶³ (now ratified by both states⁶⁴) are not directly applicable. It must be noted, however, that in the exclusive economic zone regime which is emerging at UNCLOS III, seabed rights, as well as fishery rights, have an important position.⁶⁵ Within the 200-mile zone, continental shelf rights are effectively to be subsumed under the exclusive economic zone and the delimitation provisions of the two

⁵⁶ *E.G.*, the Falkland Islands, British dependencies in the South Atlantic claimed by Argentina.

⁵⁷ It should be noted, however, that in 1967 during the early discussions concerning the delimitation of the continental shelf, Canada appeared to deny the right of the islands to a continental shelf as such. See Rousseau, *supra* note 12. Of course at that time Canada had not yet ratified the Convention on the Continental Shelf, *supra* note 14.

⁵⁸ 2 UNCLOS III OR, at 284.

⁵⁹ *Id.* at 286.

⁶⁰ See Pharand, *supra* note 4, at 514.

⁶¹ Several of these, in the Mozambique Channel, have been classed since 1971 as nature preserves. Nevertheless in 1973 France placed a token military presence on each of them. See Rousseau, *supra* note 43, at 670-71. See generally *infra* note 70.

⁶² See text accompanying notes 11-22, *supra*.

⁶³ *Supra* note 14.

⁶⁴ The French ratification, with important reservations, took effect on July 14, 1965 (538 U.N.T.S. 336); that of Canada on Mar. 8, 1970 (716 U.N.T.S. 390).

⁶⁵ See, e.g., ICNT/Rev. 1, *supra* note 51, art. 56, para. 1: "In the exclusive economic zone, the coastal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters . . .".

regimes are virtually identical. Thus, the Informal Composite Negotiating Text/Revision I of 1979 provides:

The delimitation of the exclusive economic zone between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances.⁶⁶

As this Article has as yet no conventional or customary law force, it can at most be of persuasive value. A complicating factor is that Canada, unlike France,⁶⁷ has not yet declared a 200-mile exclusive economic zone, but simply a 200-mile *fishery* zone to which the Article does not directly relate. Furthermore, in emphasizing the notion of "equitable principles", the Article does not, as several states at UNCLOS III advocated it should,⁶⁸ mention the effect in this context of small islands. In such a case, strict use of the equidistance method could obviously cause very distorted boundaries to the advantage of states owning such islands. Significantly, France was one of the states at the Caracas session to table a specific draft article on continental shelf/exclusive economic zone delimitation which made special reference to islands. It provided that account should be taken, "*inter alia*, of the special nature of special circumstances, including the existence of islands or islets situated in the area to be delimited".⁶⁹ No doubt this formula was aimed essentially at the situation of the British Channel Islands, but it redounds to French disadvantage in the context of St. Pierre and Miquelon, and indeed of other French "distant islands".⁷⁰

Canada, for its part, appears from its submissions at UNCLOS III not to have been in favour of spelling out the effect on delimitation of

⁶⁶ *Id.* at art. 74, para. 1. The wording for the purpose of continental shelf delimitation is identical. *See id.* at art. 83, para. 1.

⁶⁷ Note, however, that although art. 1 of the French Law no. 76-655 of July 16, 1976, [1976] J.O. 4299, [1976] B.L.D. 317, which relates to the economic zone off the coasts of French territory claims "des droits souverains en ce qui concerne l'exploration et l'exploitation des ressources naturelles, biologiques ou non biologiques, du fond de la mer, de son sous-sol et des eaux surjacentes" [sovereign rights for the purpose of exploring and exploiting the natural resources, whether living or non-living, of the seabed and its subsoil and the superjacent waters], it is subject to the important proviso in art. 2 which expressly states that art. 1 of Law no. 68-1181 of Dec. 30, 1968, [1968] J.O. 12404, [1969] B.L.D. 29 (relating to continental shelf rights), is not to apply to the economic zone. As the latter article declares French sovereign rights to explore and exploit its continental shelf seabed, it appears that at present the French 200-mile zone is in reality a 200-mile fishery zone under a broader title.

⁶⁸ *See, e.g.*, the statements of: Ireland, 2 UNCLOS III OR, at 165; Turkey, *id.* at 104; Colombia, *id.* at 280.

⁶⁹ A/CONF.62/C.2/L.74, art. 2 (Aug. 22, 1974).

⁷⁰ The Malagasy Republic, on Oct. 23, 1973, expanded its territorial waters to 50 miles and its continental shelf to 100 miles. In so doing, it engulfed four small French islets in the Indian Ocean and the Mozambique Channel. When France, on Feb. 3, 1978, decreed 200-mile economic zones around these islets, the Malagasy Republic raised official objections. *See* Rousseau, *supra* note 43, at 670-71.

awkwardly-placed insular formations. Indeed, it has been content to adopt the median/equidistance formula as the primary rule.⁷¹ In committee, the Canadian delegate expressed the view that a new convention could not be expected to provide rules of universal application and that the delimitation problems caused by islands should be dealt with by bilateral or multilateral negotiations.⁷²

Thus the texts of UNCLOS III provide no clear guidelines for a solution to the St. Pierre and Miquelon 200-mile delimitation problem. On the other hand, certain analogies may be drawn from the provisional delimitation of the islands' continental shelf. This received some attention from the Court of Arbitration in the *Arbitration* case⁷³ on the delimitation of the continental shelf between France and Britain.

B. *The Arbitration Case on the Delimitation of the Continental Shelf Between Great Britain and France*

Significantly, when France acceded to the 1958 Convention on the Continental Shelf in 1965, it made a declaration, *inter alia*, that there were "special circumstances", within the meaning of Article 6, in the Bay of Granville (*i.e.*, in the vicinity of the Channel Islands).⁷⁴ On February 6, 1970, Canada deposited with the Secretary-General of the United Nations a communication indicating that it reserved its opinion concerning this and certain other of the French reservations.⁷⁵ It has been suggested that this Canadian reservation was "clearly related" to the St. Pierre and Miquelon boundary problem.⁷⁶ Nevertheless, it appears to go against the Canadian interest which would favour "special circumstances" around the French islands (as there are certain similarities between the situations of the French islands off Canada and the British Channel Islands off France) unless its intention was to emphasize that the French elaboration of "special circumstances" implied some sort of inclusive geographical list.

⁷¹ See, *e.g.*, the amendment proposed by Canada on Sept. 8, 1976, to the Revised Single Negotiating Text, Part II, A/CONF.62/WP.8/Rev.1/Part II, art. 62, para. 1, a provision virtually identical to art. 74, para. 1 of ICNT/Rev. 1, quoted at p. 157, *supra*.

The delimitation of the Exclusive Economic Zone between adjacent and opposite States shall be effected by agreement employing, as a general rule, the median or equidistance line, taking into account special circumstances, where justified, in order to reach an equitable result.

Reproduced in Buzan & Middlemiss, *supra* note 12, at 43.

⁷² 2 UNCLOS III OR, at 284.

⁷³ *Supra* note 1.

⁷⁴ Instrument of Accession, 538 U.N.T.S. 336, at 338.

⁷⁵ Instrument of Ratification, 716 U.N.T.S. 390.

⁷⁶ Buzan & Middlemiss, *supra* note 12, at 38; *contra*, Gass, *supra* note 19, at 373. The other French reservations with respect to art. 6 concerned straight baselines and the 200-metre isobath and were not geographically tied to the European sphere. *Supra* note 74. The Canadian objection to them is understandable in light of their obvious implications for St. Pierre and Miquelon.

Geographical differences between the French islands and the Channel Islands were, however, referred to in the *Arbitration* case.⁷⁷ France, apparently invoking the 1972 *Relevé des Conclusions* as one of its cited precedents⁷⁸ for an "enclave" solution around the Channel Islands,⁷⁹ nonetheless admitted that the Channel Islands situation was distinguishable from that of St. Pierre and Miquelon:

[T]he fact that in this region the mainland coasts of France and the United Kingdom are opposite each other . . . distinguishes the case of the Channel Islands from such a case as that of the islands of St. Pierre et Miquelon, where there is no French coast opposite Newfoundland and where, in consequence, the continental shelf remains largely open both to the south and east.⁸⁰

The court seems to have endorsed this French viewpoint in its own assessment of the geographical situation of the French islands. It found that their case differed from that of the Channel Islands in two "important" respects:

First, that case is not one of islands situated in a channel between the coasts of opposite States, so that no question arises there of a delimitation between States, whose coastlines are in an approximately equal relation to the continental shelf to be delimited. Secondly, there being nothing to the east of St. Pierre et Miquelon except the open waters of the Atlantic Ocean, *there is more scope for redressing inequities than in the narrow waters of the English Channel*.⁸¹

The court prefaced this *obiter dictum*, however, by the admission that the case of the French islands clearly presented "some analogies" with the case of the Channel Islands.⁸² Thus, despite the court's earlier plea that it was laying down no precedents for the delimitation of continental shelf boundaries other than those between the two parties to the arbitration⁸³ and that it was outside its terms of reference to pronounce on any 200-mile boundary,⁸⁴ there is a hint in the *dictum* that the islands of St. Pierre and Miquelon might merit a more generous enclave on their seaward side (though not a strict equidistance solution)

⁷⁷ *Supra* note 1.

⁷⁸ *See id.* at 87, para. 177.

⁷⁹ In this case, of six miles width. *See* text accompanying note 17, *supra*.

⁸⁰ *Supra* note 1, at 81, para. 159.

⁸¹ *Id.* at 95, para. 200. [Emphasis added].

⁸² *Id.* Even Great Britain admitted certain analogies between the two cases. *Id.* at 87, para. 177.

⁸³ *Id.* at 31, para. 228.

⁸⁴ [I]n the opinion of the Court, . . . the Arbitration Agreement does not confer upon it any competence to settle differences between the Parties regarding the boundary of their respective zones of territorial sea or of their respective fishery zones, and still less to pronounce upon the boundary of the Economic Zone declared by the French Republic in a law of 16 July 1976.

Id. at 26, para. 13.

than the twelve-mile zone decreed by the court to be the "secondary" boundary for the Channel Islands region.⁸⁵

Apart from the court's direct references to St. Pierre and Miquelon, several of the court's more generalized *dicta* may be interpreted as having relevance to the problem of the delimitation of their maritime boundary. The court summarized the substantial point in issue in the Franco-British case as "whether the presence of the British . . . Channel Islands *close to the French coast* is a 'special circumstance' or a circumstance creative of inequity that calls for a departure from or variation of the equidistance method of delimitation".⁸⁶ It indicated that an examination of the articles of the UNCLOS III Revised Single Negotiating Text dealing with exclusive economic zone and continental shelf delimitation⁸⁷ did not lead it to suppose that, "if they were applicable, they would make any difference to the determination of the course of the boundary in the present case".⁸⁸ It thus implied that the "enclave" solution should apply to any Franco-British 200-mile zone delimitation in the same area.

Obviously the fact that the French mainland is not contiguous to the Canadian mainland is a significant geographical distinction between the situations of St. Pierre and Miquelon and the Channel Islands. The Court of Arbitration, in arriving at its two-fold delimitation solution, stressed "the approximate equality of the mainland coastlines of the Parties on either side of the English Channel, and . . . the resulting equality of their geographical relation to the continental shelf of the Channel, if the Channel Islands themselves are left out of account".⁸⁹ As a non-independent insular territory far removed from its metropolitan owner, the French islands constitute a typical example of what has been dubbed the "distant island" problem.⁹⁰ The emphasis placed by the Court of Arbitration on the factor of opposite *mainland* coastlines is somewhat diluted by other *dicta* indicating that the situation of the Channel Islands on the "wrong side of the median line"⁹¹ was similar to that of the

⁸⁵ See *id.* at 94-96, paras. 198, 202. The primary boundary on the seaward side of the Channel Islands was based on a mainland-oriented baseline system which ignored the presence of the islands.

⁸⁶ *Id.* at 77, para. 148. [Emphasis added]. See also *id.* at 90, para. 187: "The legal framework within which the Court must decide the course of the boundary (or boundaries) in the Channel Islands region is . . . that of *two opposite States* one of which possesses island territories close to the coast of the other State." [Emphasis added].

⁸⁷ *Supra* note 71, arts. 62, 71.

⁸⁸ *Id.* at 59, para. 96.

⁸⁹ *Id.* at 93-94, para. 196.

⁹⁰ See, e.g., Karl, *Islands and the Delimitation of the Continental Shelf: A Framework for Analysis*, 71 AM. J. INT'L L. 642, at 661 n. 76 (1977). For a discussion of other "distant island" situations, see Hodgson, *Islands: Normal and Special Circumstances*, in LAW OF THE SEA: THE EMERGING REGIME OF THE OCEANS 137 (J. Gamble & G. Pontecorvo eds. 1974).

⁹¹ *Arbitration case, supra* note 1, at 80-82, paras. 159, 164.

"distant island".⁹² Furthermore, the court's characterization of the legal and political position of the Channel Islands distinguished them from "rocks or small islands"⁹³ and described them as "island territories"⁹⁴ of the United Kingdom. This latter vague description was thought "not, however, to deny all relevance to the *size and importance* of the Channel Islands . . . in balancing the equities in [the] region".⁹⁵ Whether the same description may properly attach to St. Pierre and Miquelon is debatable in view of their smaller population⁹⁶ and arguably less important economy,⁹⁷ although it is true that they are slightly greater in area.⁹⁸ In any event, the French islands do not constitute "island states" which, as the court hinted, might be entitled to more liberal delimitation solutions.⁹⁹

The Court of Arbitration also stated that the presence of the Channel Islands so close to the French coast, if given its full effect, would "manifestly result in a substantial diminution" of the continental shelf which would otherwise accrue to France and that this factor was "*prima facie* a circumstance creative of inequity".¹⁰⁰ This *dictum* could obviously be applied *pari passu* to the situation with respect to the French islands and Canada where, as has been seen, in the context of both the continental shelf¹⁰¹ and the 200-mile zone,¹⁰² the concept of "proportionality" has been stressed by Canada. Indeed, one commentator has already suggested that the "logical rule" for the solution to the continental shelf delimitation problem in this area would be to divide the shelf area adjacent to Canada and the French islands "in proportion to their relative dry land-masses".¹⁰³ In the *Arbitration* case, however, a similar "proportionality" argument put forward by France¹⁰⁴ received little sympathy from the court.¹⁰⁵

Whatever may be the difficulties in drawing exact legal parallels between the position of the French islands and that of the British Channel Islands, the twelve-mile enclave solution adopted in an arbitral context for the latter has already been viewed in official Canadian circles as reinforcing Canada's legal position on the delimitation of maritime

⁹² See, e.g., *id.* at 95, para. 199, where the islands are stated to be "wholly detached geographically from the United Kingdom".

⁹³ *Id.* at 89, para. 184.

⁹⁴ *Id.* at 90, para. 187.

⁹⁵ *Id.* [Emphasis added].

⁹⁶ 5,840 inhabitants as compared with an estimated 130,000 for the Channel Islands.

⁹⁷ Like the Channel Islands, the French islands have some market-gardening aspects to their economy, as well as a fishing industry. See also *supra* note 50.

⁹⁸ 93 square miles as compared with 75 square miles for the Channel Islands.

⁹⁹ See *Arbitration* case, *supra* note 1, at 90, para. 186.

¹⁰⁰ *Id.* at 94, para. 196.

¹⁰¹ See text accompanying note 20, *supra*.

¹⁰² See text accompanying notes 47, 48, *supra*.

¹⁰³ Gass, *supra* note 19, at 390.

¹⁰⁴ See *supra* note 1, at 104, para. 220.

¹⁰⁵ *Id.* at 60-61, 115, 117, paras. 98-101, 246, 250, respectively.

boundaries.¹⁰⁶ It should be noted, however, that in all but one¹⁰⁷ of the bilateral delimitation agreements to date, it has been the "semi-enclave" (for which Britain argued in the *Arbitration* case¹⁰⁸) which has been adopted to equitably accommodate awkwardly-placed islets.¹⁰⁹ This leaves a connecting corridor of sea between the islet and the maritime zone of its owner state. The reason, however, for the comparative lack of full enclave solutions would appear to be no more substantial than the fact that delimitation agreements for distant islands — where they may be most appropriate — have been the most difficult to draw up.

C. The Papua New Guinea — Australia Delimitation Agreement

The recent maritime boundary treaty between Papua New Guinea and Australia¹¹⁰ illustrates the suitability of the enclave solution for a distant island problem similar to that of St. Pierre and Miquelon. In the Torres Strait between the two countries, Australian islets (Boigu, Dauan and Saibai in particular) have caused delimitation difficulties with Papua New Guinea because of their position immediately off the latter's coast. The Agreement uses in essence a *mainland*-based median line for the purposes of *continental shelf* delimitation between the two states.¹¹¹ In consequence, the seabed boundary line lies well south of the Australian islets which are accorded (subject to median line co-ordinates on their landward side) merely a three-mile territorial sea.¹¹² This is, in effect, an enclave solution for continental shelf purposes, giving Australia seabed rights within those enclaves.¹¹³ By contrast, for the purposes of the respective 200-mile *fisheries* jurisdictions, the three Australian shore-hugging islets are utilized as full basepoints,¹¹⁴ although they are

¹⁰⁶ H.C. DEB., 30th Parl., 3d Sess., at 1999 (Dec. 19, 1977). For a French view on the effect of the Court of Arbitration's *dicta* on continental shelf delimitation in relation to St. Pierre and Miquelon, see 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*, 106 JOURNAL DU DROIT INTERNATIONAL 506, at 527-28 (1979).

¹⁰⁷ Treaty Concerning Sovereignty and Maritime Boundaries, Dec. 18, 1978, Papua New Guinea — Australia, reproduced in 18 INT'L LEGAL MATERIALS 291 (1979).

¹⁰⁸ *Supra* note 1, at 87, para. 177.

¹⁰⁹ For a full discussion of these enclave precedents, see C.R. SYMONS, *THE MARITIME ZONES OF ISLANDS IN INTERNATIONAL LAW* 193-200 (1979).

¹¹⁰ *Supra* note 107.

¹¹¹ See art. 4, para. 1, as described in annex 5 and shown on the maps in annexes 6 & 7.

¹¹² See art. 3, para. 2, as shown on the map in annex 2.

¹¹³ This is reinforced by art. 2, para. 4 which indicates that Australian sovereignty over the islets (recognized by Papua New Guinea under art. 2, para. 1) includes the seabed beneath their territorial seas and the subsoil.

¹¹⁴ See art. 4, para. 2, as described in annex 8 and shown on the maps in annexes 2, 6 & 7. At point (f) in annex 8, the fishery limit boundary jumps northwards to join the western territorial sea limit of Boigu and at point (v) it plummets south from the eastern-most territorial sea limit of Saibai.

contained within a so-called "protected zone",¹¹⁵ the main purpose of which is to "acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement".¹¹⁶

It is true that this treaty concerns two major opposite mainland territories, as did the *Arbitration* case. Nevertheless, the maritime boundary agreement here has great significance as a precedent for the Franco-Canadian dispute since it shows that the same enclave solution need not necessarily be adopted as an equitable solution for both the continental shelf and the 200-mile fishery zone/exclusive economic zone boundary.¹¹⁷ Furthermore, in emphasizing the historic fishery rights of island inhabitants, the formulation of a "protected zone" in the treaty has obvious relevance to the situation of St. Pierre and Miquelon. It goes beyond the existing *provisional* zone-sharing schemes, in which the position of insignificant islets has hindered the fixing of agreed maritime boundaries,¹¹⁸ and indicates that an enclave solution does not preclude the encapsulated island from receiving permanent preferential treatment in the other state's surrounding seas.¹¹⁹

IV. CONCLUSION

In the light of the discussed arbitral solution to the problem of small off-shore islands and the emerging trend in state practice, it is feasible to conclude that the provisional enclave solution applied to the French islands in the 1972 *Relevé des Conclusions* for continental shelf purposes¹²⁰ and allegedly giving them a twelve-mile zone of territorial sea,¹²¹ may yet crystallize as a permanent solution to the Franco-Canadian delimitation dispute, not only for continental shelf purposes, but also for the 200-mile zone. In effect, this would formalize the status quo under the Fishing Zones of Canada (Zones 4 and 5) Order which states that the Canadian fishery zone does not include the "territorial

¹¹⁵ See art. 10, para. 1, as described in annex 9.

¹¹⁶ Art. 10, para. 3.

¹¹⁷ It is true, however, that to date Canada appears to have treated the two delimitations as interconnected. See Buzan & Middlemiss, *supra* note 12, at 38-39, for reference to the view of External Affairs officials that French implementation of a 200-mile exclusive economic zone around St. Pierre and Miquelon would necessitate a re-opening of the question of continental shelf delimitation.

¹¹⁸ See, e.g., Agreement Concerning Joint Development of the Continental Shelf, Jan. 30, 1974, Japan — Korea, reproduced in ODA, *supra* note 5, at 95, which has an express "no prejudice" boundary clause (art. 27).

¹¹⁹ It was for this reason that Great Britain argued in the *Arbitration* case that the 1972 *Relevé des Conclusions* was not a true enclave solution. See *supra* note 1, at 87-88, para. 177.

¹²⁰ See text accompanying note 22, *supra*.

¹²¹ *Arbitration* case, *supra* note 1, at 95, para. 200.

sea'' of St. Pierre and Miquelon.¹²² Certainly, in such an enclave solution on the landward side of the islands, it seems unlikely that any boundary would be adopted other than that of the "modified" equidistance line already evident in the 1972 Mutual Fisheries Agreement.¹²³ This is so notwithstanding the presence of the "no prejudice" clause¹²⁴ vis-à-vis the boundaries of zones beyond the twelve-mile limit.

On the seaward side of the French islands, an enclave solution would not necessarily denote a twelve-mile zone,¹²⁵ and indeed at least two existing continental shelf delimitation agreements utilize other distances.¹²⁶ It may well be that a balancing of the equities in the Franco-Canadian situation indicates that a *greater* distance could be used on the basis that there is "nothing to the east of St. Pierre et Miquelon except the open waters of the Atlantic Ocean".¹²⁷ Whatever the distance chosen, it seems certain that any equitable solution along these lines would be counterbalanced by preferential fishery rights being accorded to local French fishermen in the encompassing Canadian 200-mile zone (although the rights of European Economic Community members may cause legal problems here¹²⁸). In this respect, the French declaration of a

¹²² C.R.C., c. 1548, s. 4. See text accompanying note 37, *supra*.

¹²³ See Chart No. 2. As can be seen, the line is "modified" between St. Pierre and the Burin Peninsula in that it patently ignores the Canadian Green Island group as a basepoint and uses the Newfoundland shoreline instead. Furthermore, points 4 and 5 deprive two tiny islets in this group of any territorial sea on their western sides as the boundary here follows their low water mark. This largely endorses the French view that the boundary should be a mid-channel one as opposed to the original Canadian view that it should be an equidistance line using Little Green Island as a basepoint. See Beauchamp, Crommelin & Thompson, *supra* note 20, at 443, 445.

¹²⁴ Art. 9. See p. 149 *supra*. But cf. the view of Rigaldies, note 10 *supra*.

¹²⁵ Twelve miles was chosen as the optimal distance in the Franco-British *Arbitration* case because it tallied with the existing 12-mile fishery zone around the Channel Islands. See *supra* note 1, at 95-96, para. 202.

Bowett queries the correctness of this 12-mile solution because, in his view, it is "not a reasoned result". He adds that "the Court gives no particular reasons why the enclave should be 12 miles rather than, say, 14 miles". Bowett, *The Arbitration Between the United Kingdom and France Concerning the Continental Shelf Boundary in the English Channel and South-Western Approaches*, 49 BRIT. YEARBOOK INT'L L. 1, at 9 (1978).

¹²⁶ Agreement Relating to the Delimitation of the Continental Shelf, Aug. 20, 1971, Italy — Tunisia, reproduced in 5 NEW DIRECTIONS IN THE LAW OF THE SEA 247 (R. Churchill, M. Nordquist & S. Lay eds. 1977), not in force as of Oct. 31, 1976, where the most insignificant islet, Lampione, received a 12-mile enclave as compared with that of 13 miles accorded to Pantelleria, Lampedusa and Linosa (art. 2) and the Papua New Guinea — Australia Agreement, *supra* note 107, which effectively gave the Australian islets off the Papua New Guinea shore mere three-mile enclaves of continental shelf. See text accompanying notes 112, 113, *supra*.

¹²⁷ *Arbitration* case, *supra* note 1, at 95, para. 200.

¹²⁸ The potential impact of EEC fishery rights within the French economic zone can be seen in art. 2 of Decree no. 77-169 of Feb. 25, 1977, [1977] J.O. 1102, and has been raised in the House of Commons. See H.C. DEB., *supra* note 40. See also Johnston, *Legal and Diplomatic Developments in the Northwest Atlantic Fisheries*, 4 DALHOUSIE L.J. 37, at 59 (1977).

200-mile "zone économique" around the islands may be interpreted as a useful bargaining ploy.¹²⁹ At the time of writing, however, it remains a matter of speculation whether discussions alone will produce a mutually acceptable continental shelf/200-mile zone delimitation in this problematic geographical area. If they do not, then, as in the case of the U.S.-Canadian maritime boundaries,¹³⁰ the matter may have to be referred to arbitration or to some other third-party settlement procedure of a judicial nature.¹³¹

¹²⁹ See text accompanying note 39, *supra*.

¹³⁰ See, e.g., Treaty to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area, and the Agreement on East Coast Fishery Resources, Mar. 29, 1979, Canada — United States, commented on in Nash, *Contemporary Practice of the United States Relating to International Law*, 73 AM. J. INT'L L. 476, at 478-86 (1979).

¹³¹ See H.C. DEB., 30th Parl., 4th Sess., at 956 (Nov. 9, 1978).

