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Statement

91/36

CHECK AGAINST DELIVERY

NOTES FOR A STATEMENT BY

THE MINISTER OF JUSTICE AND

ATTORNEY GENERAL OF CANADA,

THE HONOURABLE KIM CAMPBELL,

AT THE OPENING OF ORAL PROCEEDINGS

BEFORE AN INTERNATIONAL COURT OF ARBITRATION

IN THE CANADA-FRANCE MARITIME BOUNDARY CASE

NEW YORK CITY
July 29, 1991

Canada

GC 194 7540-21-886-3757

Mr. President, distinguished Members of the Court, it is an honour for me to open these proceedings today on behalf of Canada, and more particularly on behalf of Newfoundland and the fishermen of Newfoundland. For what is in play here touches the very heart of that province and the very life of its fishermen.

Mr. President, distinguished Members of the Court, you have accepted to delimit the areas of maritime jurisdiction appertaining to Canada and to France on North America's Atlantic seaboard, where the islands of St. Pierre and Miquelon lie within the approaches to the Gulf of St. Lawrence. For this, my Government and the Government of the French Republic owe you a debt of gratitude. We have sought to reach an agreed delimitation over the years, but without success. Canada regrets this failure and the need to proceed to arbitration.

At the same time, however, Canada is gratified that the parties appear before you as friends, motivated by the same desire to resolve their differences by friendly means. We are confident that this Court will discharge its high responsibilities "in accordance with the principles and rules of international law applicable in the matter," as the arbitration agreement enjoins you to do.

In the time available to me today, I shall review the highlights of Canada's position in this case. I shall then review the highlights of France's position as Canada understands it, touching on France's depiction of the facts and the law, and on France's representation of Canada's arguments and of Canada itself. Finally, I shall try to place this maritime boundary dispute in the broader context of the relations between Canada and France. The agent for Canada and his colleagues, of course, will develop various themes in greater detail over the next few days.

Mr. President, distinguished Members of the Court, Canada's position in this case is faithful to the law you are asked to apply. It rests on geography, and geography is the bedrock of the law of maritime delimitation. In the evolution of the law through conventions, jurisprudence and state practice, geography emerges as the one constant factor: concrete, objective and permanent.

Other factors may be relevant, but they are always secondary. To determine a maritime boundary in accordance with the law remains largely a matter of giving proper effect to the coastal geography. The goal is equity, the vehicle is law, and the starting point is the coast, which is the basis of title.

A glance at the map tells us that the islands of St. Pierre and Miquelon lie very close to Canada and very far from France. Their coasts are very short and the surrounding Canadian coasts

are very long. The islands blend into the Newfoundland coastline, well within the concavity formed by the coasts of both Newfoundland and Nova Scotia. Dependencies of France in political terms, the islands nonetheless remain outcroppings of the submerged landmass of Canada in physical terms. They are, in reality, the products rather than the producers of the continental shelf on which they sit.

The jurisprudence and state practice tell us that the enclave solution gives a reasonable effect to this coastal geography. For the enclave solution proposed by Canada respects the rights of both Canada and France: it reflects the extreme disparity in the lengths of their coasts within the area; it ensures that Canada's natural prolongation or seaward extension is not blocked to the front or to the sides by St. Pierre and Miquelon; and it takes account of the limitations on St. Pierre and Miquelon's capacity to generate competing claims, in view of their dependent status, their total geographic detachment from France and their virtual geographic attachment to Canada.

The breadth of the enclave proposed by Canada is 12 miles, the maximum breadth of the territorial sea. Geography and law lead to this result; other factors confirm its equity. The vital interests at stake here are overwhelmingly Canadian because the geography here is overwhelmingly Canadian: because Canada is present in and dependent on the area in a way that France is not and cannot be from the other side of the Atlantic. Presence and dependence go together. Each sustains the other; each is bound up with the vital interests of Canada; and each is evidenced by the responsibilities Canada has assumed in the area and France has not. Only a 12-mile enclave would be consistent with these realities.

For the 80,000 people on the south coast of Newfoundland, the outcome of this case is crucial. For the inshore fishermen in particular, it is a matter of devastation or survival. Their past, present and future are bound up with the fishery resources of the area known as "3Ps." That is all they have. In Nova Scotia also, several communities depend upon 3Ps to a significant, albeit lesser, degree.

A different picture presents itself for St. Pierre and Miquelon. These islands depend upon France for their existence; in many respects they even depend upon Canada. They do not, however, depend upon the fishery to anywhere near the same extent as the south coast of Newfoundland. Nor do they depend upon the resources of 3Ps, in particular, to anywhere near the same extent as the south coast of Newfoundland.

Seventy-two communities on the south coast of Newfoundland participate in the 3Ps fishery, and 56 of them rely upon 3Ps for every fish they catch. St. Pierre and Miquelon have two

communities, and both of them conduct wide-ranging fisheries which have generally been centred in areas beyond 3Ps.

Some 8,000 persons are employed in the fishing industry on the south coast of Newfoundland; there are 400 persons at most employed in the fishing industry in St. Pierre and Miquelon. Some 3,000 inshore vessels from Newfoundland are registered in the 3Ps fishery; there are 27 small boats altogether in St. Pierre and Miquelon. Forty-five trawlers from the south coast of Newfoundland and several from Nova Scotia fish the offshore waters of 3Ps; seven trawlers are registered altogether in St. Pierre and Miquelon.

Without question, the economic interests at stake in this arbitration are overwhelmingly Canadian. To the extent that the future of St. Pierre and Miquelon is bound up with the fishery, it is not bound up with 3Ps as such. Rather, it is bound up with the fishing rights the islands enjoy in the Canadian 200-mile zone and the Gulf of St. Lawrence, by virtue of the tradition of accommodation that has marked the fisheries relations of Canada and France. St. Pierre and Miquelon are the present-day beneficiaries of that tradition under the 1972 Fisheries Agreement between Canada and France.

As it is with economic interests, so it is also with interests related to security, navigation, the environment and other fields. The gulf approaches are Canada's front door. Bordered entirely by Canada's coast and Canada's 200-mile zone, they offer access to the great seaway that penetrates 3,500 km into the interior of North America. Canada is necessarily involved in and committed to the area far beyond any possible involvement or commitment by France. That is why the Canadian line leaves France's vital interests undisturbed, while the French claim impinges massively upon Canada's. Where the Canadian line fits within geographic and other realities, the French claim is out of all proportion to any reality.

Mr. President, distinguished Members of the Court, one of the unique features of this case is that France's very deeds of title to St. Pierre and Miquelon enjoin France from encroaching upon the vital interests of Canada. Under the eighteenth-century terms of cession, the islands were not meant to serve as a kind of Trojan horse out of which French claims of aggrandizement might one day come spilling forth. Aggrandizement at another's expense is surely a classic "object of jealousy" in any century. That language conditioned France's title at the outset and should do so now. The concept it embodied is as valid today as it was then.

Another unique feature of this case is that one of the parties has previously committed itself to a different position on the very same subject matter for the purposes of another arbitration.

Thus, in the 1977 Anglo-French case, France told the Tribunal that it accepted a 12-mile enclave for St. Pierre and Miquelon. So the Tribunal understood France's representations at any rate. While we cannot say just how much these representations influenced the decision, the fact is that the Tribunal did adopt an enclave solution for Britain's Channel Islands as urged by France.

Mr. President, distinguished Members of the Court, I must stop here to note that Canada is at a disadvantage on an important issue in these proceedings. Indeed, the Tribunal is at a disadvantage. You know that in the present case France itself has referred to its pleadings in the Anglo-French case. You know that we have asked France to provide us -- and the Tribunal -- with those pleadings. And you know that our request has been refused.

France argues that the Anglo-French award is irrelevant because of profound differences between that situation and the present one. Yet it was not Canada, but France, that first drew an analogy between the two. Indeed, the issue goes beyond analogy. Leave aside for a moment what the 1977 Tribunal said about an equitable boundary for the Channel Islands. Focus instead on what France said to the 1977 Tribunal about an equitable boundary for St. Pierre and Miquelon. That is more than analogy. And that must be relevant by anyone's test of relevance.

Given all the circumstances, we would have expected a different reply to our request to France. Given all the circumstances, we now expect that France will not be allowed to deny that in the Anglo-French proceedings it put forward a 12-mile enclave as an equitable solution for St. Pierre and Miquelon. What France held to be equitable then, this Tribunal should hold to be equitable now.

Mr. President, distinguished Members of the Court, I now wish to turn from France's position on St. Pierre and Miquelon in the Anglo-French case to France's position on St. Pierre and Miquelon in the present case. They are, as you know, in total contradiction. In a word, the French position today is equidistance: equidistance recast in various guises, but equidistance still, with all the old pretensions to being a necessary method and a self-justifying result.

Now, this is an extraordinary position for France to adopt. If one point has been settled in maritime boundary law since the *North Sea* cases in 1969, it is that there is no mandatory or preferred method of delimitation. Nothing suggests that this point has been re-opened in any of the cases or other developments after 1969. On the contrary, everything confirms its continued validity. Only some pendulum theory of legal dynamics could now attempt to call it into question.

Nonetheless, France must do what it can to provide some underpinning for its equidistance thesis. To this end, France indulges in arguments that suggest a kind of dialectical cubism, refashioning reality into unlikely patterns to fit the geometry of equidistance.

Take geography to begin with. To meet its purposes here, France simply lops off some 352 nautical miles of Canadian coast as being irrelevant to the delimitation. The French test of relevance, of course, is whether any segment of the Canadian coast serves to construct the French equidistance line. With this same object in mind, France also transforms adjacency into oppositeness by linking St. Pierre and Miquelon to the coast of Nova Scotia rather than the coast of Newfoundland of which the islands form a part.

Having made Newfoundland small by decreeing it so, France makes it rich by the same method. Newfoundland, we are told, has an abundance of resources and its economic well-being owes nothing to fish: the poorest and most dependent region of Canada is painted in the image of California. The economy of St. Pierre and Miquelon, on the other hand, is transmuted from one that depends on the public sector to one that depends on the fishery. The idea, of course, is to give some colour of equity to France's equidistance claim. This time, however, the French argument requires that the whole of Newfoundland be considered relevant and not just scraps of its south coast. And so the rules of relevance are changed forthwith to meet France's convenience.

France's attempt to belittle the south coast of Newfoundland is matched by its attempt to belittle the fishermen there. Thus, we are told that some of them have only a "statistical existence," that fishing on that coast is only of a "social" character, and that it is sustained only by subsidies and unemployment insurance.

Mr. President, distinguished Members of the Court, let me assure you that the fishermen of the south coast of Newfoundland have more than a statistical existence. They are flesh and blood. They fish for a living, not for a pastime. The support they receive from the State reflects the nature of the resource and the need for conservation. And it is no greater than the support France gives, for instance, to its farmers and fishermen.

In any case, the Government of Canada has no apology to make for supplementing incomes of fishermen where the alternative is poverty, unemployment and the collapse of entire communities. And the people of the south coast of Newfoundland have no apology to make for working as long as they can at whatever jobs they can find, full-time or part-time. France may deride the inshore fishermen and the villages to which they have stubbornly clung for hundreds of years. As for Canada, we take pride in preserving a meaningful way of life on this hard coast.

France's view of the south coast of Newfoundland implies that Canada ought to close most of the villages there and shift to an industrial fishery that operates from other ports and is no longer tied to the 3Ps fishing grounds. The effect would be the depopulation of the entire south coast, a region many times larger than St. Pierre and Miquelon. I am not certain that this would be good policy in conservation terms or even in economic terms. But I am certain that it is neither good human policy nor the policy of the Government of Canada. Above all, it is not equity.

The transformation France works in dealing with geography and economics is startling enough. But it is overshadowed by the sea change France brings to the law. This is not surprising, given that the law as it stands is in flat contradiction with the French thesis in this case.

France's approach to the law is well illustrated in the treatment of the sources of the law in the French countermemorial. There France begins by reminding us that the jurisprudence makes a precious contribution to maritime boundary law. That contribution, we are told, is all the more precious in that judges base themselves on legal principles in their boundary decisions, whereas states do so more rarely in their boundary agreements.

So far, so good. But we have heard only the first half of France's doctrine on the sources of the law. In the present case, France goes on to argue, the precious contribution of the jurisprudence can be of little help, because none of the earlier cases concerned a situation identical to this one. State practice, on the other hand, has something to teach us because France considers that certain delimitation agreements strongly resemble the present case. The message is clear. When faced with a jurisprudence that defies France at every turn, the French reaction is simple and direct: Get rid of it. As Verlaine might have said, *prends la jurisprudence et tords-lui le cou*.

Mr. President, distinguished Members of the Court, all of this simply amounts to saying that there is no maritime boundary law applicable to the present case. State practice, we are told, may be relevant. But how are we to know when it is relevant? How are we to know that a delimitation agreement is based on legal principles, if we have only state practice to judge by and no objective legal principles to guide us? If the jurisprudence is dismissed, we are left only with the delimitation provisions of the 1958 Convention on the Continental Shelf and of the 1982 Convention on the Law of the Sea. The first are not applicable in the present case, and the second do not help us out of the legal vacuum created by France.

But, of course, there is no legal vacuum. This Tribunal has been asked not to invent new law, but to apply existing law. The jurisprudence does provide clear principles and criteria of general application, and they do help to determine the relevance of state practice.

France, however, persists in its effort to invent new law or to stand existing law on its head. Thus, the French countermemorial suggests that equidistance must always play a role in any delimitation, at least as a first step. But beginnings lead to endings, as France well knows, and *ce n'est que le premier pas qui coûte*. That is why all the cases have rejected any special status for equidistance, as France also knows.

Other notions relied upon by France have also been decisively rejected. Not all of France's inventiveness can give new life to the idea that the equality of states means equality in the extent of titles. And for all that France tries to read into the indivisibility of sovereignty, nothing can erase the distinction between dependent and independent territories, and nothing can move France across the Atlantic to add the weight of its mainland coast to that of St. Pierre and Miquelon.

France's greatest flights of imagination, however, are reserved for its treatment of "special circumstances" or sources of inequity. Where islands have always been regarded as classic examples of special circumstances, France claims that islands far removed from the mother country can never be special circumstances. Indeed, France argues that remoteness from the mother country must now weigh in favour of the island territory. The mainland becomes a special circumstance, and longer coasts generate inequities rather than entitlements.

Mr. President, distinguished Members of the Court, audacity and invention can go no further. With these propositions by France, we move from a dialectic of cubism to one of surrealism.

France advances no legal basis for its revolutionary arguments and does not seem anxious to have them examined too closely. That is perhaps why we are bombarded with a stream of assertions that Canada has recognized France's claim not once but again and again: in 1972, 1977, 1979 and 1989. But France itself demonstrates how far-fetched these assertions are by complaining, at the same time, that Canada has never budged from its position.

In fact, Canada has been consistent in its principles, but flexible in applying them, throughout the boundary negotiations. France, of course, never really addresses Canada's principles in its memorial or countermemorial. Instead, it draws a caricature of Canada's position and then attacks that easier target.

Take, for instance, France's argument that Canada treats St. Pierre and Miquelon like uninhabited rocks and leaves them no zone of maritime jurisdiction. No rock in the world has received the fishing rights that Canada accords to St. Pierre and Miquelon under the 1972 Fisheries Agreement with France. Moreover, a 12-mile territorial sea is a zone of maritime jurisdiction. Larger and more populous islands than St. Pierre and Miquelon have been restricted to an enclave of that breadth, notably the Channel Islands. The French argument here implies that any island is automatically entitled to a zone of more than 12 miles, thus giving islands a privileged status over mainland territory. Put another way, it is the mainland coast behind the island that is treated like an uninhabited rock in the French view of things.

To judge from the account given by France, it would seem that Canada's claim is based on anything but geography. The opposite, of course, is true. Canada has advanced non-geographic circumstances only in support of a claim solidly based on geography. In fact, the vital interests that Canada has identified as equitable considerations are themselves a function of geography. Canada is not putting forward a thesis of "historical dominance," as the U.S. did in the Gulf of Maine case. We are simply adopting the French view of "predominant interests," which the Anglo-French award recognized as elements that support and strengthen a claim based on other grounds. The state activities we have undertaken in the area are relevant as evidence of our interests, not as a ground of title.

France is equally wide of the mark in attacking a thesis of "single-state management" that Canada has never espoused. What Canada seeks, in fact, is coastal state management -- management that is commensurate with geography and with Canada's rights and responsibilities under international law. What Canada wishes to avoid is a situation in which France gains a strategic foothold that would give it effective control far beyond its own zone and well into Canada's. Such a result would deny Canada its most basic rights as a coastal state, within the very zone attributed to Canada by this Tribunal. The responsibilities of management would remain, but without the effective ability to discharge them.

While Canada wants "quiet possession" or security in the exercise of its management as a coastal state, Canada also recognizes that there will always be a need for co-operation. And Canada is prepared to co-operate. France's complaints about monopolistic tendencies ring hollow in view of the important allocations French vessels receive from Canada under the 1972 Fisheries Agreement. And let it be noted that France's self-defined minimum claim -- to "at least" the whole of St. Pierre Bank -- represents a claim of monopoly in its own right.

If one of the parties here advocates single-state management, it appears to be France. As advanced by the U.S. in the Gulf of Maine case, that theory was built around the notion of separate stocks and separate ecological regimes separated by a "natural boundary." On one side, State A would manage things; on the other side, State B would do so. These same elements have surfaced in French arguments alleging the existence of separate inshore and offshore stocks, with a so-called "thermal wall" dividing them. In the French thesis, the inshore stocks would go to Canada and the offshore stocks to France. It must be emphasized, however, that this neat and novel structure has no foundation in science or law.

As to France's indignant assertion that Canada challenges the full exercise of French sovereignty over St. Pierre and Miquelon, this is another "straw man" argument. Canada no more challenges French sovereignty over St. Pierre and Miquelon than France challenged British sovereignty over the Channel Islands in the Anglo-French case. Canada simply contends that there are legal constraints on the extent of maritime jurisdiction that can be generated by St. Pierre and Miquelon. These constraints arise from the same considerations that have applied to the Channel Islands and other islands. In the present case, additional and supportive constraints arise from the original treaties regarding the cession of St. Pierre and Miquelon to France. Canada holds that these treaties are incompatible with France's claim and demonstrate that the French islands were recognized as a geopolitical anomaly from the outset. In invoking the treaties in this way, Canada does only what France did when it invoked the fisheries provisions of the same treaties in the La Bretagne arbitration and on other occasions.

Mr. President, distinguished Members of the Court, I regret that I must now turn to another caricature drawn by France: a caricature of Canada itself. The French countermemorial, as you know, is riddled with pejoratives about the Canadian national character. We stand accused of "exclusivism," "expansionism," "hegemony" and "imperialism." We are portrayed as an international outlaw with no respect for freedom of navigation, no fidelity to treaty obligations. Hence the alleged need for a large maritime zone for St. Pierre and Miquelon. Hence the alleged need for a kind of corridor linking the islands with France without passing through waters under Canadian jurisdiction.

Mr. President, distinguished Members of the Court, Canada shares with France a tradition of vigorous advocacy in legal proceedings. We are accustomed to robust give and take in these matters. But let it be remembered that invective is not law. It is not even argument. And it certainly is not fact. Indeed, here it is so far removed from fact as to be merely ludicrous.

Canada's reputation stands high in the world and needs no defence from me. It speaks for itself more eloquently than I could. And it speaks of a devotion to the rule of law that is among the most cherished values of Canadians. I will say no more on the subject, and I will not respond to accusations that clearly merit no response. But I will review the tactical purposes behind the accusations.

France has two major legal difficulties in this case. First, it has more claim than it has coast. Secondly, that coast belongs to remote island dependencies far removed from the mother country.

We have already seen how France addresses its first difficulty: it tries to lengthen the coast of St. Pierre and Miquelon by shortening the south coast of Newfoundland almost to the point of disappearance. Faced with its second difficulty -- the disadvantage of remoteness -- France strays even further from reality. It tries to make Canada look threatening and St. Pierre and Miquelon look vulnerable. Remoteness then works in France's favour: the islands take on a kind of orphan status and are entitled to special consideration from this Tribunal. Or so it is hoped.

Mr. President, distinguished Members of the Court, all this is melodrama. The French pleadings themselves repeatedly -- and quite properly -- emphasize the tradition of alliance and friendship that binds Canada and France. That tradition is quite at odds with any idea of a threat on one side and vulnerability on the other. And it is quite at odds with any suggestion that St. Pierre and Miquelon should have a large maritime zone, or a corridor to France, for reasons of security or self-sufficiency.

St. Pierre and Miquelon have never been self-sufficient. And the islands' location in North America can hardly be considered a disadvantage to them or to France, in terms of security or any other terms. To the extent that the islands depend upon Canada, they have found in Canada a reliable partner and a loyal neighbour. The record shows no ground for concern about security of access to or from the islands by sea through the Canadian 200-mile zone, or by air through Canadian territory for that matter.

As for access to resources, France urges that St. Pierre and Miquelon must be able to live without depending on the goodwill of Canada. But that goal is impossible, as France itself recognizes. In fact, the highly mobile fleet of St. Pierre and Miquelon needs access to the Canadian zone well beyond the French claim. In fact, it is not France's claim but France's 1972 Agreement with Canada that provides for the islands' wide-ranging fishery.

France suggests that the 1972 Fisheries Agreement should not be taken into account, because Canada has not given it proper effect. Yet France is obliged to admit that the fishery of St. Pierre and Miquelon has grown under the Agreement. The islands have received benefits far beyond those contemplated in 1972, and their catches have more than doubled in the 10 years that followed signature of the Agreement.

The controversy that began to mark the implementation of the Agreement in the mid-1980s cannot be attributed to any failure by Canada to meet its obligations. Problems arose from other causes. After a decade of steady but sustainable growth, French catches in the disputed area skyrocketed to unmanageable levels. France chose to escalate the boundary dispute, and the result was the breakdown of the relationship in 1987-88. This was an isolated development and will not be repeated once the boundary has been settled by this Tribunal.

Mr. President, distinguished Members of the Court, it has not always been easy in political terms for Canada to extend to St. Pierre and Miquelon the privileged treatment they enjoy under the 1972 Fisheries Agreement -- treatment in some respects better than that given to Canadians. The fishermen of Newfoundland have a natural sympathy for their neighbours in St. Pierre and Miquelon. They do not resent the provision made for the islands under the 1972 Agreement. For them, this is truly an "arrangement between neighbours." But Newfoundland fishermen have found it hard to understand how France could enjoy the unique benefits of the 1972 Agreement and still claim a vast slice out of Canada's 200-mile zone.

In fact, Canada would never have entered into the 1972 Fisheries Agreement if it had anticipated a French claim anything like the one now advanced. The 1972 Relevé de Conclusions is evidence that both Canada and France contemplated a 12-mile zone for St. Pierre and Miquelon at that time. It is troubling now that France should claim a zone so many times that size and in the process should manifest so little regard for the value of the 1972 Fisheries Agreement.

Mr. President, distinguished Members of the Court, it is especially troubling to hear the French suggestion that the Canadian zone is large enough to compensate for what France seeks to carve out of it for St. Pierre and Miquelon. The overall area of Canada's Atlantic zone has no more to do with the equities of this case than does the overall area of France's collection of zones around the globe, which together give France the second largest area of maritime jurisdiction in the world.

Mr. President, distinguished Members of the Court, relations with France occupy a high place on Canada's national agenda. Our two countries share a language, a history and a heritage. We have

been through great trials together in two world upheavals, and we know that our ties will endure. It is in this spirit that we have confided to you the task of delimiting the maritime areas appertaining to each country.

Beyond the formal ties we know in Ottawa and Paris, more intimate ties are known in Newfoundland and in St. Pierre and Miquelon. There, the people recognize that they are interdependent. They do not think of each other in terms of a threat on one side or vulnerability on the other. They understand the meaning of an "arrangement between neighbours." And they know that the future of St. Pierre and Miquelon lies in a co-operative relationship with Canada, not in the adversarial relationship implied in the French pleadings and in the French claim itself.

The 1972 Fisheries Agreement reflects a tradition dating back several centuries. It allowed the growth of the St. Pierre and Miquelon fishery, and it assured harmony between the parties for the first decade after the introduction of the 200-mile zone. It will do so again when this Tribunal has determined the maritime boundary in the area. Obstacles will be removed and normal patterns of co-operation will prevail. St. Pierre and Miquelon will remain what these islands have long been: secure in their destiny as territories of France, secure in their geographic situation in North America and secure in their participation in the regional economy that sustains them and their friends and neighbours in Newfoundland and Nova Scotia.