



## It takes four to tango: Quadrilateral boundary negotiations in the North-East Atlantic

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### ABSTRACT

This contribution examines the current state of play in the boundary negotiations between the UK, Ireland, Denmark and Iceland in the North-East Atlantic. It reviews the recent British, Irish and Danish submissions to the Commission on the Limits of the Continental Shelf and finds that while these submissions have been instrumental in clarifying the legal and scientific basis of the parties' perception of their continental shelf entitlements beyond 200 nm, in view of Iceland's objections, such moves need to be reappraised. As things now stand, quadrilateral action is indispensable to any future settlement attempt, whether by interstate negotiation or through judicial means.

One major maritime boundary dispute that is yet-to-be resolved in the North-East Atlantic is that over extended and vastly overlapping continental shelf rights to what is now commonly referred to as the Hatton-Rockall plateau.<sup>1</sup> In total, four states are involved: Denmark (on behalf of the Faroe Islands), Iceland, Ireland and the UK.<sup>2</sup> Both Denmark and Iceland expressed formally their claims over the area in 1985 by way of seabed designations in areas of the plateau which vastly overlapped with previous UK and Irish seabed designations in the period 1974–1977.<sup>3</sup> The crux of the controversy in this dispute lies in that each of the above states have offered differing interpretations of the concept of natural prolongation and have made use of different criteria to define area of the continental margin that naturally appertains to it.<sup>4</sup> It is important to note at this point that all interested North

Atlantic states are full parties to the 1982 UN Convention on the Law of the Sea (UNCLOS), hence, its terms are binding upon them as a matter of treaty law.<sup>5</sup>

Thus, it would appear that while the UK and Ireland have based their continental shelf title on the concept of natural prolongation of their landmass offshore, Denmark has contended that the Hatton-Rockall plateau is part of a distinct microcontinent which is geologically and morphologically connected with the Faroe Islands and that, in view of the geological characteristics of the area (particularly the presence of a steep seabed depression known as 'Rockall Trough') there is a manifest break in the continuity or natural prolongation of the UK's and Ireland's continental shelf so that neither of these two countries have a natural prolongation connection with the Hatton-Rockall continental plateau.<sup>6</sup>

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<sup>1</sup> Denmark refers to the plateau as the 'Faroe-Rockall microcontinent'. Such terminology, also preferred by Iceland, implies that the plateau is an isolated feature that is geologically and geomorphologically disconnected from the UK and Ireland, see CR Symmons 'The Rockall Dispute Deepens: An Analysis of Recent Danish and Icelandic Actions' (1986) 35(2) *International and Comparative Law Quarterly* 344, 345.

<sup>2</sup> At present, there are two large areas of trilateral overlap (Denmark/Iceland/UK and Denmark/Iceland/Ireland) and three areas of bilateral overlap (Denmark/Iceland (in two sections), Iceland/Ireland and Iceland/UK), for a discussion see CR Symmons 'The Rockall Dispute Deepens: An Analysis of Recent Danish and Icelandic Actions' (1986) 35(2) *International and Comparative Law Quarterly* 344–373.

<sup>3</sup> V Prescott and C Schofield, *Maritime Political Boundaries of the World* (2nd edn, BRILL 2004) 372–373.

<sup>4</sup> *ibid.*

<sup>5</sup> United Kingdom (25 July 1997), Republic of Ireland (21 June 1996), Iceland (21 June 1985), Denmark (19 December 2003), see Chronological lists of Ratifications of, accessions and successions to the 1982 LOS Convention' (UN Division for Ocean Affairs and the Law of the Sea) < <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280043ad5> > accessed 22 April 2017.

<sup>6</sup> Partial (Hatton-Rockall Plateau) Submission of Denmark together with the Government of the Faroes to the Commission on the Limits of the Continental Shelf (2 December 2010) (Executive Summary) 12 < [www.un.org/depts/los/clcs\\_new/submissions\\_files/dnk54\\_10/SFM-Executive\\_Summary\\_secure.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/dnk54_10/SFM-Executive_Summary_secure.pdf) > accessed 5 Sept 2017; Partial (Hatton-Rockall Plateau) Submission of Ireland to the Commission on the Limits of the Continental Shelf (31 March 2009) (Executive Summary) < [www.un.org/depts/los/clcs\\_new/submissions\\_files/submission\\_irl1.htm](http://www.un.org/depts/los/clcs_new/submissions_files/submission_irl1.htm) > accessed 5 Sept 2017. Symmons cites several authors who have considered that the tectonic evolution of the region indicates a separation of the Rockall microcontinent 'wholly or partly' from the European plate thus evidencing a closer link to the Faroe Islands, see CR Symmons 'The Rockall Dispute Deepens: An Analysis of Recent Danish and Icelandic Actions' (1986) 35(2) *International and Comparative Law Quarterly* 344, 352.

Similarly to Denmark, Iceland also considers that its continental margin naturally prolongs from the Icelandic mainland until the ‘shelf-breaking’ Rockall Trough – this being the natural end-point of the plateau, so implying that both Ireland and the UK are physically cut-off from any seabed rights in the area.<sup>7</sup> It is to be noted that while the average water depth in the Hatton-Rockall area is no more than 200 m, the water depth of the Rockall Trough reaches down to 4.000 m at its southwest end.<sup>8</sup>

One could reasonably observe that, from a geological and legal perspective, Iceland's position is closely related to that of Denmark's. Nevertheless, this has not prevented Iceland from arguing that its claim is stronger ‘on the basis that the interposition of the Faroes Channel weakens the Danish claim to a geological link to the Plateau and, indeed, constitutes a geomorphological break with the Faroes’.<sup>9</sup> On the opposite side, Denmark views the Hatton-Rockall plateau as being physically cut-off not only from the UK and Ireland but also from Iceland as evidenced by a ‘drop of the seafloor’ similar to that of the Rockall Trough (see Fig. 1) (Fig. 2).<sup>10, 11, 12</sup>

The UK and Ireland were able to overcome their dispute over overlapping seabed rights in the Hatton-Rockall area through the Continental Shelf Agreement in 1988,<sup>12</sup> thus turning effectively the North-East Atlantic dispute from a quadrilateral to a trilateral one, between Ireland and the UK on the one hand and Denmark (on behalf of the Faroes) and Iceland on the other.<sup>13</sup> Despite several diplomatic discussions between the four countries, the problem remains live and ongoing with both Ireland and the UK rejecting the legal basis of the Danish and Icelandic continental shelf designations, and both Denmark and Iceland pointing out that the UK-Ireland continental shelf agreement has no binding effect upon them and does not prejudice their existing rights in the Hatton-Rockall plateau. (Fig. 3)<sup>14, 15</sup>

The submissions of the UK, Ireland and Denmark to the Commission on the Limits of the Continental Shelf in 2009 and 2010 with respect to

<sup>7</sup> Iceland considers the “geomorphological hiatus” of the Rockall Trough to be self-evident, and the geological similarities between rocks in Scotland and off Rockall Bank not to be relevant, because, in its view, the overwhelming evidence is that the rocks underlying the Trough are “oceanic” and thus different from rocks in Scotland’, see CR Symmons ‘The Rockall Dispute Deepens: An Analysis of Recent Danish and Icelandic Actions’ (1986) 35(2) International and Comparative Law Quarterly 344, 360.

<sup>8</sup> D Naylor and P Shannon, *Geology of Offshore Ireland and West Britain* (Graham and Trotman, 1982) 82–83.

<sup>9</sup> CR Symmons ‘The Rockall Dispute Deepens: An Analysis of Recent Danish and Icelandic Actions’ (1986) 35(2) International and Comparative Law Quarterly 344, 362.

<sup>10</sup> Partial (Hatton-Rockall Plateau) Submission of Denmark (ibid) 8.

<sup>11</sup> Partial (Hatton-Rockall Plateau) Submission of Denmark together with the Government of the Faroes to the Commission on the Limits of the Continental Shelf (2 December 2010) (Executive Summary) 13 < [www.un.org/depts/los/clcs\\_new/submissions\\_files/dnk54\\_10/SFM-Executive\\_Summary\\_secure.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/dnk54_10/SFM-Executive_Summary_secure.pdf) > accessed 5 Sept 2017.

<sup>12</sup> The agreed Anglo-Irish continental shelf boundary, as illustrated on an annexed map to the 1988 agreement, is drawn in a zigzag manner so as to facilitate the granting of petroleum licences for rectangular blocks according to the common practice of both governments. The boundary extends in the South, to over 300 miles from either coast to the edge of the continental margin, To the North, it extends to approximately 550 miles from either coast, crossing the Rockall Trough (which begins 100 miles offshore) and extends across the whole Hatton-Rockall plateau, see Agreement Concerning the Delimitation of Areas of the Continental Shelf between the Two Countries (UK/Ireland) (adopted 7 November 1988, entered into force 11 January 1990); for a critical commentary see C Lysaght, ‘The Agreement on the Delimitation of the Continental Shelf between Ireland and the United Kingdom’ (1990) 3(2) Irish Studies in International Affairs 81–109; It must also be noted that the two countries extended the 1980 boundary by 10 nm in the north-northwest through the supplementary Protocol (adopted 8 December 1992, entered into force 26 March 1993).

<sup>13</sup> CR Symmons, ‘The Irish Partial Submission to the Commission on the Limits of the Continental Shelf in 2005: A Precedent for Future Such Submissions in the Light of the “Disputed Areas” Procedures of the Commission?’ (2006) 37(3) Ocean Development and International Law 299, 300.

<sup>14</sup> CR Symmons, *Ireland and the Law of the Sea* (2nd edn, Round Hall Press 2000) 335; see also Verbal Note of Denmark Addressed to the UN Secretary-General (27 May 2009).

<sup>15</sup> Partial (Hatton-Rockall Plateau) Submission of Ireland to the Commission on the Limits of the Continental Shelf (31 March 2009) (Executive Summary) 4.

their outer continental shelf rights in the Hatton-Rockall plateau have been instrumental in clarifying the legal and scientific basis of the parties’ perception of their continental shelf entitlements beyond 200 nm. Nevertheless, the extent to which these submissions can influence the settlement of their maritime boundaries in the North-East Atlantic is a different matter requiring further examination. First of all, despite the provisions of Article 77(3) of UNCLOS which establishes that a state's title in the continental shelf exists *ipso facto* and *ab initio*, Article 76 makes clear that the opposability of such title with regard to other states depends on the satisfaction of certain conditions, including the procedural requirement to submit to the Commission information on the limits of the continental shelf beyond 200 nm and issuance by the Commission of relevant recommendations in this regard.<sup>16</sup> Article 76(8) further provides that only the limits of the continental shelf established on the basis of the Commission's recommendations shall be binding and final. Notwithstanding the above, Article 76(10) provides that submission of information on the limits of the continental shelf beyond 200 nm is ‘without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts’. Therefore, the submission of such information *per se*, does not have any legal effect on unresolved delimitation issues. These remain subject to the terms stipulated in Articles 83 and 74 of UNCLOS concerning the delimitation of the continental shelf and the Exclusive Economic Zone (EEZ).<sup>17</sup>

Secondly, the Commission is ‘a scientific and technical body with recommendatory functions entrusted by the Convention to consider scientific and technical issues arising in the implementation of article 76’.<sup>18</sup> The mandate to interpret and apply the provisions of Article 76 lies with international courts and tribunals such as the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS).<sup>19</sup> Even so, given that international adjudicative bodies could be influenced by the Commission's technical recommendations, UNCLOS restricts the competence of the Commission to consider submissions and make recommendations on the establishment of the outer limits of the continental shelf where outstanding delimitation disputes exist in areas which are the subject of the submission. Article 9 of Annex II to UNCLOS provides that ‘The actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts’. The Rules of Procedure of the Commission re-emphasise this requirement by mandating the Commission to refrain from considering and qualifying submissions made by any of the states concerned in a land or maritime dispute.<sup>20</sup> Indeed, the

<sup>16</sup> *Territorial and Maritime Dispute in the Caribbean Sea (Nicaragua v Honduras)* [2007] ICJ Rep 659 para 272, ‘any claim of continental shelf rights beyond 200 miles must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder’; *Dispute Concerning Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)* (ITLOS Judgment) (2012) 51 International Legal Materials 840 para 411; on the scientific methods and techniques used in the determination of the continental shelf beyond 200 nm, see B Kunoy, ‘The Rise of the Sun: Legal Arguments in Outer Continental Margin Delimitations’ 2006 53(2) Netherlands International Law Review 247, 253; RW Smith and G Taft, ‘Legal Aspects of the Continental Shelf’ in PJ Cook and CM Carleton (eds) *Continental Shelf Limits: The Scientific and Legal Interface* (OUP, 2000) 91, 101.

<sup>17</sup> SN Nandan and S Rosenne (eds), *United Nations Convention on the Law of the Sea 1982: A Commentary, Vol II* (Martinus Nijhoff 1993) explain, at 1017, that the Commission's function is not to determine, or influence negotiations on, the continental shelf boundary between states with overlapping claims (assuming the boundary in question is beyond 200 nautical miles). They further add that ‘The Commission's role is to make recommendations on the outer limits of a coastal State's continental shelf, not to be involved in matters relating to delimitation of the continental shelf between States.’

<sup>18</sup> *Dispute Concerning Delimitation of the Maritime Boundary in the Bay of Bengal (Bangladesh/Myanmar)* (ITLOS Judgment) (2012) 51 International Legal Materials 840 para 411.

<sup>19</sup> *ibid.*

<sup>20</sup> Rule 46(2) and Rule 5(a) Annex I, ‘Rules of Procedure of the Commission on the Limits of the Continental Shelf’ (adopted 18 April 2008) < [www.un.org/Depts/los/clcs\\_new/commission\\_rules.htm](http://www.un.org/Depts/los/clcs_new/commission_rules.htm) > accessed 28 March 2017, ‘The Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute.’

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