

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE
CONTINENTAL SHELF

(LIBYAN ARAB JAMAHIRIYA/MALTA)

JUDGMENT OF 3 JUNE 1985

1985

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU PLATEAU CONTINENTAL

(JAMAHIRIYA ARABE LIBYENNE/MALTE)

ARRÊT DU 3 JUIN 1985

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*Continental Shelf (Libyan Arab Jamahiriya/Malta),
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CASE CONCERNING THE CONTINENTAL SHELF
(LIBYAN ARAB JAMAHIRIYA/MALTA)

Interpretation of Special Agreement – Task of the Court – Interests of third States.

Delimitation of continental shelf between opposite coasts – Applicable principles and rules of international law – Customary international law – Relevance of 1982 Convention on the Law of the Sea – Natural prolongation and distance from the coast – Geophysical features less than 200 miles from the coast – Relationship between the idea of distance and the equidistance method.

Application of equitable principles in order to achieve an equitable result – Relevant circumstances.

Adjustment of an equidistance line to achieve an equitable result in the light of relevant circumstances – Considerable disparity in lengths of the coasts of the Parties – General geographical context – Determination of degree of adjustment – Test of proportionality.

JUDGMENT

Present : President ELIAS ; Vice-President SETTE-CAMARA ; Judges LACHS, MOROZOV, NAGENDRA SINGH, RUDA, MOSLER, ODA, AGO, EL-KHANI, SCHWEBEL, Sir Robert JENNINGS, de LACHARRIÈRE, MBAYE, BEDIAOUI ; Judges ad hoc VALTICOS, JIMÉNEZ DE ARÉCHAGA ; Registrar TORRES BERNÁRDEZ.

In the case concerning the continental shelf,
between
the Socialist People's Libyan Arab Jamahiriya,
represented by
Mr. Abdelrazeg El-Murtadi Suleiman, Professor of International Law at the
University of Garyounis, Benghazi,
as Agent,

Mr. Youssef Omar Kherbish, Counsellor at the Secretariat of Justice,
Mr. Ibrahim Abdul Aziz Omar, Counsellor at the People's Bureau for Foreign
Liaison,
as Counsel,

Professor Derek W. Bowett, C.B.E., Q.C., LL.D., F.B.A., Whewell Professor
of International Law in the University of Cambridge,
Mr. Herbert W. Briggs, Goldwin Smith Professor of International Law
emeritus, Cornell University,
Mr. Claude-Albert Colliard, Honorary Dean, Professor of International Law
emeritus at the University of Paris I,
Mr. Keith Highet, Member of the New York and District of Columbia
Bars,
Mr. Günther Jaenicke, Professor of International Law at the University of
Frankfurt-am-Main,
Mr. Laurent Lucchini, Professor of International Law at the University of
Paris I,
Mr. Jean-Pierre Quéneaudec, Professor of International Law at the University
of Paris I,
Mr. Walter D. Sohier, Member of the New York and District of Columbia
Bars,
Sir Francis A. Vallat, C.B.E., G.C.M.G., Q.C., Professor emeritus of Inter-
national Law at the University of London,
as Counsel and Advocates,

Mr. Mohammed Alawar, Assistant Professor of Geography, Al-Fateh Uni-
versity, Tripoli,
Mr. Scott B. Edmonds, Instructor of Cartography and Director of Carto-
graphic Services at the University of Maryland, Baltimore County,
Mr. Icilio Finetti, Professor of Geodesy and Geophysics at the University of
Trieste,
Mr. Omar Hammuda, Professor of Geology, Al-Fateh University, Tripoli,

Mr. Derk Jongsma, Senior Lecturer in Geology at the Vrije Universiteit,
Amsterdam,
Mr. Amin A. Missallati, Professor of Geology, Al-Fateh University, Tri-
poli,
Mr. Muftah Smeida, Second Secretary, People's Bureau for Foreign Liai-
son,
Mr. Mohamed A. Syala, Surveying Department, Secretariat of Planning,
Tripoli,
Ms. Victoria J. Taylor, Cartographer at the University of Maryland, Baltimore
County,
Mr. Jan E. van Hinte, Professor of Paleontology at the Vrije Universiteit,
Amsterdam,
as Advisers,

Mr. Rodman R. Bundy, Member of the New York Bar,
Mr. Richard Meese, Docteur en droit,
Mr. Henri-Xavier Ortoli, Member of the New York Bar,
as Counsel,

and

the Republic of Malta,

represented by

H.E. Mr. Edgar Mizzi, Ambassador,

as Agent and Counsel,

Mr. Ian Brownlie, Q.C., F.B.A., Chichele Professor of Public International Law, University of Oxford ; Fellow of All Souls College, Oxford,

Mr. Elihu Lauterpacht, Q.C., Director of the Research Centre for International Law and Reader in International Law, University of Cambridge,

Mr. Prosper Weil, Professor at the University of Law, Economics and Social Sciences, Paris,

as Counsel,

Commander Peter B. Beazley, O.B.E., F.R.I.C.S., R.N. (Retd.), Hydrographic Surveyor,

Mr. Georges H. Mascle, Professor of Geology, Dolmieu Institute of Geology and Mineralogy, University of Grenoble,

Mr. Carlo Morelli, Full Professor of Applied Geophysics, University of Trieste,

Mr. J. R. V. Prescott, Reader in Geography, University of Melbourne,

Mr. Jean-René Vanney, Department of Dynamic Geology, Pierre et Marie Curie University, and Department of Teaching and Research, Sorbonne University, Paris,

as Scientific and Technical Advisers,

Mr. Roger Scotto, Assistant Secretary, Oil Division, Office of the Prime Minister, Malta,

Mr. Saviour Scerri, Petroleum Geologist, Oil Division, Office of the Prime Minister, Malta,

Mr. Mario Degiorgio, Petroleum Geologist, Oil Division, Office of the Prime Minister, Malta,

Mr. Tarcisio Zammit, First Secretary, Embassy of Malta to the Netherlands,

Miss M. L. Grech, Administrative Assistant, Office of the Prime Minister, Malta,

as Assistants.

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment :

1. By a notification dated 19 July 1982, received in the Registry of the Court on 26 July 1982, the Secretary of the People's Committee for the People's Foreign Liaison Bureau of the Socialist People's Libyan Arab Jamahiriya and the Minister for Foreign Affairs of the Republic of Malta notified the Court of a Special

Agreement in the Arabic and English languages signed at Valletta on 23 May 1976 between the Socialist People's Libyan Arab Jamahiriya and the Republic of Malta, providing for the submission to the Court of a dispute concerning the delimitation of the continental shelf between those two States ; a certified copy of the Special Agreement was enclosed with the letter.

2. The authentic English text of the Special Agreement reads as follows :

“Article I

The Court is requested to decide the following question :

What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III.

Article II

1. The proceedings shall consist of written pleadings and oral hearings.

2. Without prejudice to any question of the burden of proof, the written pleadings shall consist of the following documents :

- (a) Memorials to be submitted simultaneously to the Court by each Party and exchanged with one another within a period of nine months from the date of the notification of this agreement to the Registrar of the Court.
- (b) Replies to be similarly submitted to the Court by each Party and exchanged with one another within four months after the date of the submissions of the Memorials to the Registrar.
- (c) Additional written pleadings may be presented and exchanged in the same manner within periods which shall be fixed by the Court at the request of one of the Parties, or if the Court so decides after consultation with the two Parties.

3. The question of the order of speaking at the oral hearings shall be decided by mutual agreement between the Parties but in all cases the order of speaking adopted shall be without prejudice to any question of the burden of proof.

Article III

Following the final decision of the International Court of Justice the Government of the Republic of Malta and the Government of the Libyan Arab Republic shall enter into negotiations for determining the area of their respective continental shelves and for concluding an agreement for that purpose in accordance with the decision of the Court.

Article IV

This agreement shall enter into force on the date of exchange of instruments of ratification by the two Governments, and shall be notified jointly to the Registrar of the Court.”

3. Pursuant to Article 40, paragraph 3, of the Statute and to Article 42 of the Rules of Court, copies of the notification and Special Agreement were transmitted to the Secretary-General of the United Nations, the Members of the United Nations and other States entitled to appear before the Court.

4. Since the Court did not include upon the bench a judge of Libyan or of Maltese nationality, each of the Parties proceeded to exercise the right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. The Libyan Arab Jamahiriya designated Mr. Eduardo Jiménez de Aréchaga, and Malta designated Mr. Jorge Castañeda; on 13 October 1984 Mr. Castañeda resigned his functions for reasons of health, whereupon Malta designated Mr. Nicolas Valticos to take his place.

5. By Orders of 27 July 1982 and 26 April 1983 respectively time-limits were fixed for the filing of a Memorial and a Counter-Memorial by each of the two Parties, and the Memorials and Counter-Memorials were duly filed within those time-limits, and exchanged between the Parties through the Registrar pursuant to the Special Agreement.

6. By an Application dated 23 October 1983 and received in the Registry of the Court on 24 October 1983, the Government of Italy, invoking Article 62 of the Statute, submitted to the Court a request for permission to intervene in the case. By a Judgment dated 21 March 1984, the Court found that the application of Italy for permission to intervene could not be granted.

7. By an Order dated 21 March 1984, the President of the Court, having regard to Article II, paragraph 2 (c), of the Special Agreement, quoted above, fixed a time-limit for the filing of Replies, which were filed and exchanged within the time-limit fixed.

8. On 26 to 30 November, 3 December, 6 to 7 December, 10 to 14 December 1984, and 4 to 5 February, 8 February, 11 to 13 February and 21 to 22 February 1985, the Court held public sittings at which it was addressed by the following representatives of the Parties :

For Malta :

H.E. Dr. Edgar Mizzi,
Mr. E. Lauterpacht, Q.C.,
Professor Prosper Weil,
Professor Ian Brownlie, Q.C.

For the Libyan Arab Jamahiriya :

Professor El-Murtadi Suleiman,
Sir Francis Vallat, G.C.M.G., Q.C.,
Professor Herbert W. Briggs,
Professor Günther Jaenicke,
Professor Jean-Pierre Quéneudec,
Professor Claude-Albert Colliard,
Professor Laurent Lucchini,
Mr. Keith Hight,
Professor Derek W. Bowett, Q.C.

9. Professor Jan van Hinte, Dr. Derk Jongsma and Professor Icilio Finetti were called as experts by the Libyan Arab Jamahiriya, pursuant to Articles 57 and 63 to 65 of the Rules of Court. They were examined in chief by Professor D. W. Bowett, and Professor van Hinte was cross-examined by Mr. E. Lauterpacht. Professor Georges Mascle and Professor Carlo Morelli were similarly

called as experts by Malta ; they were examined in chief by Mr. E. Lauterpacht, and cross-examined by Professor D. W. Bowett.

10. Previously to its application for permission to intervene, referred to in paragraph 6 above, the Government of Italy, in reliance on Article 53, paragraph 1, of the Rules of Court, asked to be furnished with copies of the pleadings in the case. By a letter dated 13 October 1983, after the views of the Parties had been sought, and objection had been raised by the Government of Malta, the Registrar informed the Government of Italy that the Court had decided not to grant its request. On 26 November 1984 the Court decided, after ascertaining the views of the Parties pursuant to Article 53, paragraph 2, of the Rules of Court, that the pleadings should be made accessible to the public with effect from the opening of the oral proceedings, and they were thus at the same time made available to Italy.

*

11. In the course of the written proceedings, the following submissions were presented by the Parties :

On behalf of the Socialist People's Libyan Arab Jamahiriya,

in the Memorial : after a preamble not here quoted :

"May it please the Court, rejecting all contrary claims and submissions, to adjudicate and declare as follows :

1. The delimitation is to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances in order to achieve an equitable result.

2. The natural prolongation of the respective land territories of the Parties into and under the sea is the basis of title to the areas of continental shelf which appertain to each of them.

3. The delimitation should be accomplished in such a way as to leave as much as possible to each Party all areas of continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the other.

4. A criterion for delimitation of continental shelf areas in the present case can be derived from the principle of natural prolongation because there exists a fundamental discontinuity in the sea-bed and subsoil which divides the areas of continental shelf into two distinct natural prolongations extending from the land territories of the respective Parties.

5. Equitable principles do not require that a State possessing a restricted coastline be treated as if it possessed an extensive coastline.

6. In the particular geographical situation of this case, the application of equitable principles requires that the delimitation should take account of the significant difference in lengths of the respective coastlines which face the area in which the delimitation is to be effected.

7. The delimitation in this case should reflect the element of a reasonable degree of proportionality which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the respective States and the lengths of the relevant parts of their coasts, account being taken of any other delimitations between States in the same region.

8. Application of the equidistance method is not obligatory, and its application in the particular circumstances of this case would not lead to an equitable result.

9. The principles and rules of international law can in practice be applied by the Parties so as to achieve an equitable result, taking account of the physical factors and all the other relevant circumstances of this case, by agreement on a delimitation within, and following the general direction of, the Rift Zone as defined in this Memorial”;

in the Counter-Memorial and the Reply : after modified preambles not here quoted, the submissions as presented in the Memorial were repeated.

On behalf of the Republic of Malta,

in the Memorial :

“*May it please the Court to adjudge and declare that :*

- (i) the principles and rules of international law applicable to the delimitation of the areas of the continental shelf which appertain to Malta and Libya are that the delimitation shall be effected on the basis of international law in order to achieve an equitable solution ;
- (ii) in practice the above principles and rules are applied by means of a median line every point of which is equidistant from the nearest points on the baselines of Malta, and the low-water mark of the coast of Libya” ;

in the Counter-Memorial and the Reply : the submissions as presented in the Memorial were repeated and confirmed.

12. In the course of the oral proceedings, the following submissions were presented by the Parties :

On behalf of the Socialist People's Libyan Arab Jamahiriya :

at the hearing of 22 February 1985, the final submissions of the Libyan Arab Jamahiriya were read, which were identical with those set out in the Memorial.

On behalf of the Republic of Malta,

at the hearing of 13 February 1985:

“*May it please the Court, . . . to declare and adjudge that :*

- (i) the principles and rules of international law applicable to the delimitation of the areas of the continental shelf which appertain to Malta and Libya are that the delimitation shall be effected on the basis of international law in order to achieve an equitable result ;
- (ii) in practice the above principles and rules are applied by means of a median line every point of which is equidistant from the nearest points on the baselines of Malta, and the low-water mark of the coasts of Libya.”

*

13. Two Members of the Court (Judges Mosler and El-Khani) whose terms of office expired under Article 13, paragraph 1, of the Statute of the Court on 5 February 1985 have continued to participate in the present proceedings in accordance with paragraph 3 of Article 13. On 14 February 1985, the Court elected Judge Nagendra Singh as President of the Court and Judge de Lacharrière as Vice-President of the Court ; in accordance with Article 32, paragraph 2, of the Rules of Court, the Court as composed for the present proceedings has continued to sit under the presidency of Judge Elias.

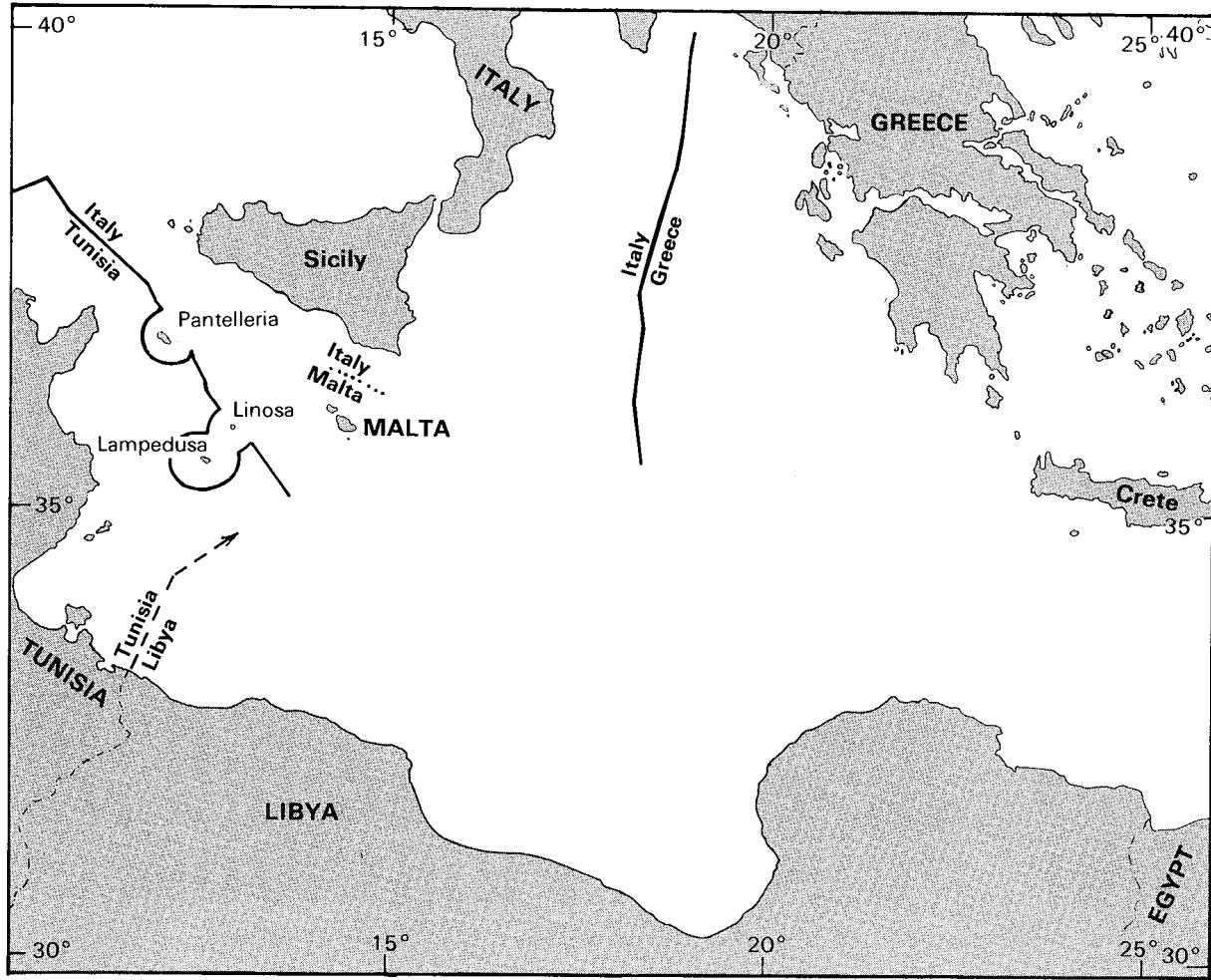
* * *

14. It is appropriate to begin with a general description of the geographical context of the dispute before the Court, that is to say the area in which the continental shelf delimitation, which is the subject of the proceedings, has to be effected. It should however be emphasized that the only purpose of the description which follows is to outline the general background ; it is not intended to define in geographical terms the area which is relevant to the delimitation and the area in dispute between the Parties. The question whether the area in which the delimitation is to be effected has for any reason to be defined or contained within limits will be examined later in this Judgment (paragraphs 20-23). Similarly, the only purpose of Map No. 1 appended to the present Judgment is to give a general picture of the geographical context of the dispute, and no legal significance attaches to the choice of scale or the presence or absence of any particular geographical feature.

15. The Republic of Malta (hereinafter called "Malta") is a State made up of a group of four inhabited islands : Malta (246 km^2 in area), Gozo (66 km^2), Comino (2.7 km^2), Cominotto (less than one-tenth of a square kilometre) ; and the uninhabited rock of Filfla. The 36° N parallel passes between the main island of Malta and the island of Gozo, which lie between the 14° E and 15° E meridians. The islands are situated in the Central Mediterranean, an area of the Mediterranean Sea which may be said broadly to be bounded by the eastern coast of Tunisia on the west, a part of the coast of Italy, with the southern and eastern coasts of the island of Sicily and the Ionian coast of the mainland up to the Strait of Otranto on the north, the western coast of Greece, from the island of Corfu to the southern tip of the Peloponnese and the island of Crete on the east, and on the south by the coast of the Socialist People's Libyan Arab Jamahiriya (hereinafter called "Libya"). Libya is a mainland State on the coast of North Africa covering a large area lying mainly between the $9^\circ 30' \text{ E}$ and 25° E meridians, and encompassing some 1,775,500 square kilometres. The coast of Libya stretches for more than 1,700 kilometres from Ras Ajdir in the west to near Port Bardia in the east.

16. The Maltese islands are oriented in an approximately northwest-southeast direction, and extend for a distance of some 44.5 kilometres (24 nautical miles). North of Malta, at a distance of some 80 kilometres (43 nautical miles) is the island of Sicily. The southeast tip of Malta lies approximately 340 kilometres (183 nautical miles) north of the nearest

MAP NO. 1



point on the coast of Libya, and the latter point is to be found some three-quarters of the distance along the most westerly segment of the Libyan coast, that running from the frontier with Tunisia at Ras Ajdir, somewhat south of east, through Ras Tajura to Ras Zarruq. At about the latter point, the Libyan coast swings southwards, forming the western end of the Gulf of Sirt, the coast at the back of which runs again somewhat south of east until, at about the meridian 20° E it swings round north and slightly west, then round to the eastward again through Benghazi to Ras Amir. The general line of the coast from there to the frontier with Egypt is again somewhat south of eastwards.

17. In 1970 agreement was reached between Malta and Italy for provisional exploitation of the continental shelf in a short section of the channel between Sicily and Malta on each side of the median line, subject to any adjustments that might be made in subsequent negotiations. With this exception, neither of the Parties has yet established any agreed delimitation of continental shelf, or other maritime areas, with any neighbouring State. The question of the delimitation between Libya and Tunisia has been the subject of a Judgment of the Court (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 18). Delimitations in this part of the Mediterranean have been effected by agreement between Italy and Greece, and between Italy and Tunisia. These delimitations are indicated in Map No. 1 annexed hereto. Neither Party has proclaimed an exclusive economic zone, but Malta has proclaimed a 25-mile exclusive fishing zone. Malta has also defined straight baselines for the measurement of its territorial sea relying on Article 4 of the Convention on the Territorial Sea and the Contiguous Zone. Both Parties have granted a number of petroleum exploration concessions extending into areas material to the case.

* * *

18. The terms of the Special Agreement by which the Court was seised of the present case have been set out in paragraph 2 of the present Judgment. The question which the Court is requested to decide is there defined as follows :

“What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III.”

The first part of the request is thus intended to resolve the differences between the Parties regarding the principles and rules of international law which are applicable in the present case ; there is in this case no divergence

of views between the Parties as to the task to be performed by the Court. As to the second part of the request, by which the Parties have asked the Court to indicate how the applicable principles and rules can, in practice, be applied by the Parties, in order that they may, without difficulty, establish by an agreement the delimitation of their continental shelves, it has been stated before the Court that the wording of the Special Agreement in this respect was a compromise formula. Malta had wished the Court to be asked to draw the delimitation line, while Libya wanted it to be requested only to pronounce on the principles and rules of international law applicable. Libya would not accept that the line itself should be drawn by the Court since, in its view, it was preferable that this be done by agreement between the Parties. Malta did not agree that the matter be left to the Parties since it is of the view that the reference of the dispute to the Court would then fail to achieve its main purpose. While the Special Agreement as adopted does not request the Court itself to draw the line of delimitation between the areas of continental shelf appertaining to each Party, Malta, relying on the interpretation by the Court of the similarly worded Special Agreement in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, contends that “the Court should indicate the boundary which, in its view, would result from the application of such method as the Court may choose for the Parties to achieve the relevant determination”. Malta emphasizes the purpose of the proceedings as being to enable the Parties to effect the delimitation “without difficulty”, which could not, it argues, be achieved unless the Court were to state in the clearest possible terms how the exercise is to be carried out. Malta’s submissions, accordingly, request a finding by the Court that the appropriate principles and rules are in practice to be applied by means of a specific line (a median line). Libya on the other hand maintains that the task of the Court in the present case does not extend so far as the actual determination of the delimitation line, and it need not specify or particularize one method of delimitation or one way by which in practice the principles and rules can be applied ; in Libya’s view the goal to be reached is the result which would be in accord with equitable principles and represent the most appropriate application of the existing principles and rules of international law. Accordingly, the submissions of Libya refer in broad terms to a delimitation by agreement on the basis of the Court’s Judgment “within, and following the general direction of”, a particular sea-bed area defined in the Libyan Memorial ; it is explained that in its pleadings “Libya did not advance a precise line, since the Court’s task is not to determine a precise line”.

19. Since the jurisdiction of the Court derives from the Special Agreement between the Parties, the definition of the task so conferred upon it is primarily a matter of ascertainment of the intention of the Parties by interpretation of the Special Agreement. The Court must not exceed the jurisdiction conferred upon it by the Parties, but it must also exercise that jurisdiction to its full extent. The Special Agreement, unlike that by which the Court was seized in the *Tunisia/Libya* case, contains no reference to the

indication of a method or methods of delimitation ; but since the Court is required to decide how in practice the principles and rules of international law can be applied in order that the Parties may delimit the continental shelf by agreement "without difficulty", this necessarily entails the indication by the Court of the method or methods which it considers to result from the proper application of the appropriate rules and principles. Whether the Court should indicate an actual delimitation line will in some degree depend upon the method or methods found applicable : if, for example, the Court were to find that the equidistance method is required by the applicable law in the circumstances of this case, its finding to that effect would in fact dictate the delimitation line, since the nature of that method is such that any given set of basepoints will generate only one possible equidistance line. Other methods, however, less automatic in their operation, might require to be backed by more detailed indications of criteria by the Court, if the objective of an agreed delimitation reached "without difficulty" is to be achieved. The Court does not in any event consider that it is debarred by the terms of the Special Agreement from indicating a line. Even Libya, which contends that the task of the Court in the present case does not extend so far as the actual determination of the delimitation line, did in fact itself indicate on the map two possible lines for the purpose of illustrating a possible method which it considered would be likely to produce an equitable result. It should also be noted that both Parties have indicated that the consequences of the application of any method initially adopted are to be tested against certain criteria in order to check the equitableness of the result. It is not apparent how this operation could be performed unless that result took the form of at least an approximate line which could be illustrated on a map.

20. The delimitation contemplated by the Special Agreement is of course solely that between the areas of continental shelf appertaining to the Parties. It is no part of the task of the Court to define the legal principles and rules applicable to any delimitation between one or other of the Parties and any third State, let alone to indicate the practical application of those principles and rules to such delimitation. The Court is in fact aware of the existence of specific claims by a third State to areas which are also claimed by the Parties : these are the claims of Italy, which in 1984 made an application to the Court for permission to intervene under Article 62 of the Statute of the Court, and outlined to the Court in the course of the proceedings on that request the extent of its continental shelf claims in the direction of Libya and Malta. In its Judgment of 21 March 1984, by which it found that the Italian Application could not be granted, the Court explained that it "cannot wholly put aside the question of the legal interest of Italy as well as of other States of the Mediterranean region, and they will have to be taken into account" (*I.C.J. Reports 1984*, p. 25, para. 41). In the geographical context of the case it is also possible that there might be conflict between the claims of the Parties and such claims as may be made by Tunisia, though the Court has not been furnished with any information as to the views of that State as to its own entitlement vis-à-vis Malta. The

Parties agree, however, as concerns the extent of the Court's decision, in contending that the Court should not feel inhibited from extending its decision to all areas which, independently of third party claims, are claimed by the Parties to this case, since if the Court were to exclude any such areas as are the subject of present or possible future claims by a third State it would in effect be deciding on such claims without jurisdiction to do so. Libya draws a distinction : the areas in which there are no claims by third States are the areas primarily in focus for the present proceedings and here the Parties can proceed to a definitive delimitation, whereas in areas where there are such claims, the caveats and reservations which the Court would include in its judgment would protect the rights of third States by precluding such a delimitation being definitive vis-à-vis such third States. Malta rejects this distinction, arguing that it would have no practical purpose and would be objectionable on jurisdictional grounds.

21. The Court notes that by the Special Agreement it is asked to define the legal principles and rules applicable to the delimitation of the area of continental shelf "which appertains" to each of the Parties. The decision of the Court will, by virtue of Article 59 of the Statute, have binding force between the Parties, but not against third States. If therefore the decision is to be stated in absolute terms, in the sense of permitting the delimitation of the areas of shelf which "appertain" to the Parties, as distinct from the areas to which one of the Parties has shown a better title than the other, but which might nevertheless prove to "appertain" to a third State if the Court had jurisdiction to enquire into the entitlement of that third State, the decision must be limited to a geographical area in which no such claims exist. It is true that the Parties have in effect invited the Court, notwithstanding the terms of their Special Agreement, not to limit its judgment to the area in which theirs are the sole competing claims ; but the Court does not regard itself as free to do so, in view of the interest of Italy in the proceedings. When rejecting the application of Italy to intervene in the proceedings, the Court noted that both Malta and Libya opposed that application ; while it stated that in its final judgment in this case

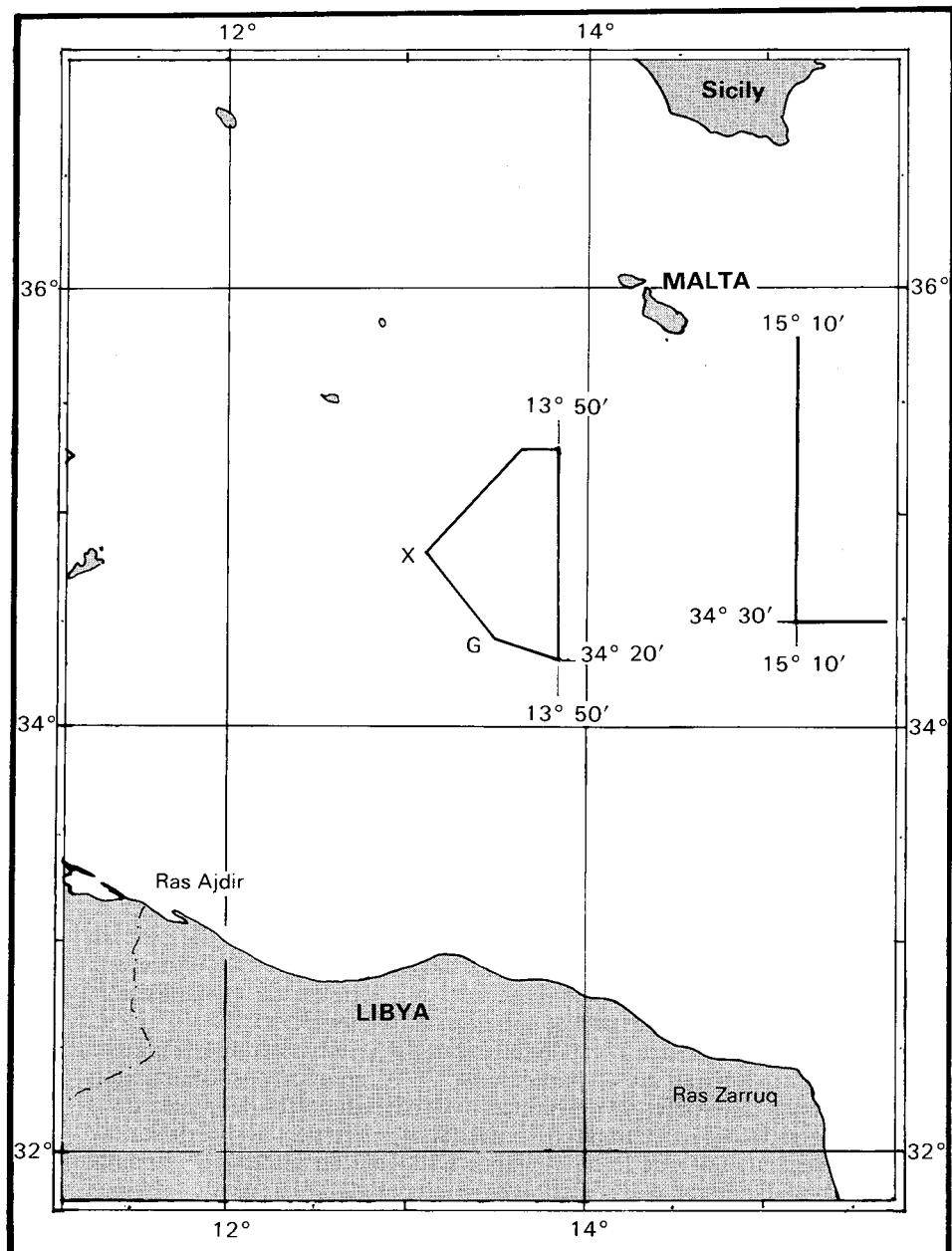
"the Court will, so far as it may find it necessary to do so, make it clear that it is deciding only between the competing claims of Libya and Malta",

it also went on to observe that :

"If, as Italy has suggested, the decision of the Court in the present case, taken without Italy's participation, had for that reason to be more limited in scope between the Parties themselves, and subject to more caveats and reservations in favour of third States, than it might otherwise have been had Italy been present, it is the interests of Libya and Malta which might be said to be affected, not those of Italy. It is material to recall that Libya and Malta, by objecting to the intervention of Italy, have indicated their own preferences." (*I.C.J. Reports 1984*, p. 27, para. 43.)

The present decision must, as then foreshadowed, be limited in geographical scope so as to leave the claims of Italy unaffected, that is to say that the decision of the Court must be confined to the area in which, as the Court has been informed by Italy, that State has no claims to continental shelf rights. The Court, having been informed of Italy's claims, and having refused to permit that State to protect its interests through the procedure of intervention, thus ensures Italy the protection it sought. A decision limited in this way does not signify either that the principles and rules applicable to the delimitation within this area are not applicable outside it, or that the claims of either Party to expanses of continental shelf outside that area have been found to be unjustified : it signifies simply that the Court has not been endowed with jurisdiction to determine what principles and rules govern delimitations with third States, or whether the claims of the Parties outside that area prevail over the claims of those third States in the region.

22. The limits within which the Court, in order to preserve the rights of third States, will confine its decision in the present case, may thus be defined in terms of the claims of Italy, which are precisely located on the map by means of geographical co-ordinates. During the proceedings held on its application for permission to intervene, Italy stated that it considered itself to have rights over a geographical zone delimited on the west by the meridian $15^{\circ} 10' E$, to the south by the parallel $34^{\circ} 30' N$, to the east by the delimitation line agreed between Italy and Greece (see Map No. 1) and its prolongation, and to the north by the Italian coasts of Calabria and Apulia ; and over a second area delimited by lines joining the following points : (i) the south-eastern end-point of the line defined in the Agreement between Italy and Tunisia of 20 August 1971, (ii) points X and G, shown on a map submitted to the Court on 25 January 1984, (iii) the point $34^{\circ} 20' N$ and $13^{\circ} 50' E$, and (iv) the point located on the meridian $13^{\circ} 50' E$, to the north of the previous point and to the east of the end-point mentioned under (i). These areas are shown on Map No. 2 appended hereto. The Court, in replying to the question put to it in the Special Agreement as to the principles and rules of international law applicable to the delimitation of the areas of continental shelf appertaining to each of the Parties, will confine itself to areas where no claims by a third State exist, that is to say, the area between the meridians $13^{\circ} 50' E$ and $15^{\circ} 10' E$. The Court notes that there is on the east of this a further area of continental shelf, lying south of the parallel $34^{\circ} 30' N$, to which the claims of Italy do not extend but which is subject to conflicting claims by Libya and Malta. However the Court does not think that it is enabled to pass judgment on this area so long as the national attribution of the continental shelf lying immediately to the north of it (that is, east of the meridian $15^{\circ} 10' E$ and north of the parallel $34^{\circ} 30' N$) has not been settled by agreement between the States concerned or by the decision of a competent organ. The Court therefore concludes that on the basis of the geographical definition of the claims of Italy it should limit the area within which it will give a decision by



MAP No. 2

the meridian 15° 10' E, including also that part of that meridian which is south of the parallel 34° 30' N. No question of this kind arises to the west of the meridian 13° 50' E, since the southward limit of Italian claims is the same as that of the claims of Malta ; the area to the south is thus not in dispute in this case.

23. It has been questioned whether it is right that a third State – in this case, Italy – should be enabled, by virtue of its claims, to restrict the scope of a judgment requested of the Court by Malta and Libya ; and it may also be argued that this approach would have prevented the Court from giving any judgment at all if Italy had advanced more ambitious claims. However, to argue along these lines is to disregard the special features of the present case. On the one hand, no inference can be drawn from the fact that the Court has taken into account the existence of Italian claims as to which it has not been suggested by either of the Parties that they are obviously unreasonable. On the other hand, neither Malta nor Libya seems to have been deterred by the probability of the Court's judgment being restricted in scope as a consequence of the Italian claims. The prospect of such a restriction did not persuade these countries to abandon their opposition to Italy's application to intervene ; as noted in paragraph 21 above, the Court observed, in its Judgment of 21 March 1984, that in expressing a negative opinion on the Italian application, the two countries had shown their preference for a restriction in the geographical scope of the judgment which the Court was to give.

* * *

24. The history of the dispute, and of the legislative and exploratory activities in relation to the continental shelf, do not require to be set out at length, since the Court does not find that anything of moment turns on considerations derived from this history. It is not argued by either Party that the circumstances in this case gave rise to "the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims", which might be taken into account as indicating "the line or lines which the Parties themselves may have considered equitable or acted upon as such", as the Court was able to find in the case concerning the *Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)* (*I.C.J. Reports 1982*, p. 84, paras. 117-118). In its pleadings, however, Malta recounted how it had in 1965 informed Libya of its intention to delimit its continental shelf by means of a median line, and stated that until Libya made a counter-proposal in 1973, Libya remained silent in face of Malta's claim to such a delimitation ; Malta contended that this pattern of conduct could be viewed "either as a cogent reflection of the equitable character of Malta's position or as evidence of acquiescence by Libya in Malta's position or as precluding Libya, in law as in fact, from challenging the validity of Malta's position". Malta referred also to the question of the northern boundaries of certain Libyan concessions, and the exemption of the licencees from the duty to carry out petroleum activities north of the median line, and con-

tended that these also confirmed Malta's submission that "by their conduct, the Parties have indicated that the median line is, to say the least, very relevant to the final determination of the boundary in the present case". Libya disputes the allegation of acquiescence ; it has also contended that Maltese petroleum concessions followed geomorphological features in a manner consistent with the "exploitability criterion", which is denied by Malta. It also contended that Malta, at the time of the enactment of its 1966 Continental Shelf Act, implicitly recognized the significance of an area described as the "rift zone" area, which Libya, as will be explained below, regards as significant for the delimitation ; this contention Malta also rejects.

25. The Court has considered the facts and arguments brought to its attention in this respect, particularly from the standpoint of its duty to "take into account whatever indicia are available of the [delimitation] line or lines which the Parties themselves may have considered equitable or acted upon as such" (*I.C.J. Reports 1982*, p. 84, para. 118). It is however unable to discern any pattern of conduct on either side sufficiently unequivocal to constitute either acquiescence or any helpful indication of any view of either Party as to what would be equitable differing in any way from the view advanced by that Party before the Court. Its decision must accordingly be based upon the application to the submissions made before it of principles and rules of international law.

* * *

26. The Parties are broadly in agreement as to the sources of the law applicable in this case. Malta is a party to the 1958 Geneva Convention on the Continental Shelf, while Libya is not ; the Parties agree that the Convention, and in particular the provisions for delimitation in Article 6, is thus not as such applicable in the relations between them. Both Parties have signed the 1982 United Nations Convention on the Law of the Sea, but that Convention has not yet entered into force, and is therefore not operative as treaty-law ; the Special Agreement contains no provisions as to the substantive law applicable. Nor are there any other bilateral or multilateral treaties claimed to be binding on the Parties. The Parties thus agree that the dispute is to be governed by customary international law. This is not at all to say, however, that the 1982 Convention was regarded by the Parties as irrelevant : the Parties are again in accord in considering that some of its provisions constitute, to a certain extent, the expression of customary international law in the matter. The Parties do not however agree in identifying the provisions which have this status, or the extent to which they are so treated.

27. It is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States, even though multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in

developing them. There has in fact been much debate between the Parties in the present case as to the significance, for the delimitation of – and indeed entitlement to – the continental shelf, of State practice in the matter, and this will be examined further at a later stage in the present judgment. Nevertheless, it cannot be denied that the 1982 Convention is of major importance, having been adopted by an overwhelming majority of States ; hence it is clearly the duty of the Court, even independently of the references made to the Convention by the Parties, to consider in what degree any of its relevant provisions are binding upon the Parties as a rule of customary international law. In this context particularly, the Parties have laid some emphasis on a distinction between the law applicable to the basis of entitlement to areas of continental shelf – the rules governing the existence, “*ipso jure* and *ab initio*”, and the exercise of sovereign rights of the coastal State over areas of continental shelf situate off its coasts – and the law applicable to the delimitation of such areas of shelf between neighbouring States. The first question is dealt with in Article 76 of the 1982 Convention, and the second in Article 83 of the Convention. Paragraph 1 of that Article provides that :

“The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”

Paragraph 10 of Article 76 provides that “The provisions of this article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts”. That the questions of entitlement and of definition of continental shelf, on the one hand, and of delimitation of continental shelf on the other, are not only distinct but are also complementary is self-evident. The legal basis of that which is to be delimited, and of entitlement to it, cannot be other than pertinent to that delimitation.

28. At this stage of the present Judgment, the Court would also first recall that, as it noted in its Judgment in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*,

“In the new text, any indication of a specific criterion which could give guidance to the interested States in their effort to achieve an equitable solution has been excluded. Emphasis is placed on the equitable solution which has to be achieved. The principles and rules applicable to the delimitation of continental shelf areas are those which are appropriate to bring about an equitable result . . .” (*I.C.J. Reports 1982*, p. 49, para. 50.)

The Convention sets a goal to be achieved, but is silent as to the method to be followed to achieve it. It restricts itself to setting a standard, and it is left to States themselves, or to the courts, to endow this standard with specific

content. Secondly, the Court in 1982 observed the disappearance, in the last draft text of what became Article 83, paragraph 1, of reference to delimitation by agreement “in accordance with equitable principles” (*I.C.J. Reports 1982*, p. 49, para. 49). It found however that it was “bound to decide the case on the basis of equitable principles” as well as that “The result of the application of equitable principles must be equitable” (*ibid.*, p. 59, para. 70).

29. In the present case, both Parties agree that, whatever the status of Article 83 of the 1982 Convention, which refers only to the “solution” as being equitable, and does not specifically mention the application of equitable principles, both these requirements form part of the law to be applied. In the first of Libya’s submissions, the Court is asked to declare that

“The delimitation is to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances in order to achieve an equitable result.”

The first submission of Malta reads :

“the principles and rules of international law applicable to the delimitation of the areas of the continental shelf which appertain to Malta and Libya are that the delimitation shall be effected on the basis of international law in order to achieve an equitable result”.

The Agent of Malta confirmed that Malta also accepts that the delimitation is to be effected in accordance with equitable principles and taking account of all relevant circumstances.

30. It is however with regard to the legal basis of title to continental shelf rights that the views of the Parties are irreconcilable ; for Libya,

“The natural prolongation of the respective land territories of the Parties into and under the sea is the basis of title to the areas of continental shelf which appertain to each of them.” (Submission No. 2.)

In Libya’s view, the prolongation of the land territory of a State into and under the sea, referred to by the Court in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 31, para. 43), was a “geological fact” and natural prolongation in the same physical sense, involving geographical as well as geological and geomorphological aspects, remains the fundamental basis of legal title to continental shelf areas. For Malta, while it is still true to say that the continental shelf of a State constitutes a natural prolongation of its land territory into and under the sea, prolongation is no longer defined by reference to physical features, geological or bathymetric, but by reference to a certain distance from the coasts. The concept of natural prolongation has in Malta’s view become a purely spatial concept which operates independently of all geomorphological or geological characteris-

tics, only resuming a physical significance beyond 200 miles from the coast, since States which possess a more extensive physical natural prolongation enjoy continental shelf rights to the edge of their continental margin. For Malta, the principle is the application of the "distance criterion"; continental shelf rights, whether extending without restraint into the open sea or limited by reference to a neighbouring State, are controlled by the concept of distance from the coasts.

31. In this connection the question arises of the relationship, both within the context of the 1982 Convention and generally, between the legal concept of the continental shelf and that of the exclusive economic zone. Malta relies on the genesis of the exclusive economic zone concept, and its inclusion in the 1982 Convention, as confirming the importance of the "distance principle" in the law of the continental shelf and the detachment of the concept of the shelf from any criterion of physical prolongation. Malta has submitted that, in the present delimitation, account must be taken of the rules of customary law reflected in Article 76 of the Convention in the light of the provisions of the Convention concerning the exclusive economic zone. Malta's opinion is based on the statement made on this point by the Court itself in its 1982 Judgment, that "the definition given in paragraph 1 [of Article 76] cannot be ignored" and that the exclusive economic zone "may be regarded as part of modern international law" (*I.C.J. Reports 1982*, p. 48, para. 47 and p. 74, para. 100). For Malta, the "distance principle", referred to also by the Court itself, is accordingly included among the principles and rules of customary international law and should be taken into account. Malta emphasizes the development of the law in this field, and recalls that in its 1982 Judgment the Court stated: "the concept of natural prolongation . . . was and remains a concept to be examined within the concept of customary law and State practice" (*ibid.*, p. 46, para. 43).

32. Libya, on the other hand, points out that this case is concerned only with the delimitation of the continental shelf, and emphasizes that the 1982 Convention has not yet come into force and is not binding as between the Parties to the present case. It contends that the "distance principle" is not a rule of positive international law with regard to the continental shelf, and that the "distance criterion", which may be applicable to the definition of the outer limit of the continental shelf in certain circumstances, if it applies at all to delimitation, is inappropriate for application in the Mediterranean. It is Libya's contention that the continental shelf has not been absorbed by the concept of the exclusive economic zone under present international law; and that the establishment of fishery zones and exclusive economic zones has not changed the law of maritime zone delimitation, or given more prominence to the criterion of distance from the coast. It also argues that, whereas the rights of the coastal State over its continental shelf are inherent and *ab initio*, rights over the exclusive economic zone exist only in so far as the coastal State chooses to proclaim such a zone. For Libya, the 1982 Convention on the Law of the Sea, particularly

Article 78, maintains the dissociation of the legal régime of the continental shelf, the sea-bed and subsoil, from the régime of the superjacent waters.

33. In the view of the Court, even though the present case relates only to the delimitation of the continental shelf and not to that of the exclusive economic zone, the principles and rules underlying the latter concept cannot be left out of consideration. As the 1982 Convention demonstrates, the two institutions – continental shelf and exclusive economic zone – are linked together in modern law. Since the rights enjoyed by a State over its continental shelf would also be possessed by it over the sea-bed and subsoil of any exclusive economic zone which it might proclaim, one of the relevant circumstances to be taken into account for the delimitation of the continental shelf of a State is the legally permissible extent of the exclusive economic zone appertaining to that same State. This does not mean that the concept of the continental shelf has been absorbed by that of the exclusive economic zone ; it does however signify that greater importance must be attributed to elements, such as distance from the coast, which are common to both concepts.

34. For Malta, the reference to distance in Article 76 of the 1982 Convention represents a consecration of the “distance principle” ; for Libya, only the reference to natural prolongation corresponds to customary international law. It is in the Court’s view incontestable that, apart from those provisions, the institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law ; in any case, Libya itself seemed to recognize this fact when, at one stage during the negotiation of the Special Agreement, it proposed that the extent of the exclusive economic zone be included in the reference to the Court. Although the institutions of the continental shelf and the exclusive economic zone are different and distinct, the rights which the exclusive economic zone entails over the sea-bed of the zone are defined by reference to the régime laid down for the continental shelf. Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf. It follows that, for juridical and practical reasons, the distance criterion must now apply to the continental shelf as well as to the exclusive economic zone ; and this quite apart from the provision as to distance in paragraph 1 of Article 76. This is not to suggest that the idea of natural prolongation is now superseded by that of distance. What it does mean is that where the continental margin does not extend as far as 200 miles from the shore, natural prolongation, which in spite of its physical origins has throughout its history become more and more a complex and juridical concept, is in part defined by distance from the shore, irrespective of the physical nature of the intervening sea-bed and subsoil. The concepts of natural prolongation and distance are therefore not opposed but complementary ; and both remain essential elements in the juridical concept of the continental shelf. As the

Court has observed, the legal basis of that which is to be delimited cannot be other than pertinent to the delimitation (paragraph 27, *supra*) ; the Court is thus unable to accept the Libyan contention that distance from the coast is not a relevant element for the decision of the present case.

* * *

35. It will now be convenient in view of this conclusion to examine two important and opposed arguments of the Parties : first the Libyan "rift-zone" argument, which depends upon giving primacy to the idea of natural prolongation, in the physical sense ; and second, the argument of Malta that, on the contrary, it is distance that is now the prime element ; and that, in consequence of this, equidistance, at least between opposite coasts, is virtually a required method, if only as the first stage in a delimitation.

36. As noted above, it is Libya's case that the natural prolongation, in the physical sense, of the land territory into and under the sea is still a primary basis of title to continental shelf. For Libya, as a first step each Party has to prove that the physical natural prolongation of its land territory extends into the area in which the delimitation is to be effected ; if there exists a fundamental discontinuity between the shelf area adjacent to one Party and the shelf area adjacent to the other, then the boundary, it is contended, should lie along the general line of that fundamental discontinuity. The delimitation of continental shelf between Libya and Malta must therefore respect the alleged existence of a fundamental discontinuity which, according to Libya, divides the areas of physical continental shelf appertaining to each of the Parties (see final submissions 2 and 4). The argument is thus that there is no problem of overlapping shelves, but that, on the contrary, two distinct continental shelves are separated by what Libya calls the "rift zone".

37. The sea-bed area so referred to by Libya lies broadly to the south and south-west of the Maltese islands, and much closer to them than to the coasts of Libya. In this area is a series of deep troughs, running in a generally northwest-southeast direction, and reaching over 1,000 metres in depth, described on the International Bathymetric Chart of the Mediterranean as the "Malta Trough", the "Pantelleria Trough" and the "Linosa Trough". To the east of these troughs, and running in broadly the same direction, are two channels of lesser depth designated the "Malta Channel" and the "Medina Channel". This "rift zone" area lies towards the northern extremity of the Pelagian Block, which the Court had occasion to examine in the *Tunisia/Libya* case in 1982. It should also be noted that to the east of the Pelagian Block is an area called by Libya the "Escarpment-Fault Zone", to which Libya also attributes importance ; however, the argument based upon it appears to the Court to be distinct from that concerning the "rift zone", and since the "Escarpment-Fault Zone" is beyond the limits, defined in paragraph 22 above, within which the present Judgment oper-

ates, it will not be further referred to, and the Court will express no view as to the validity of the arguments based upon it.

38. The Court was furnished by both Parties with considerable expert evidence, both written and oral, as to the geological history and nature of the area described as the "rift zone", on the basis of which it was contended by Libya, and controverted by Malta, that the rift zone indicated the boundary zone between Libya's entitlement to areas of continental shelf to the north of the Libyan landmass and Malta's entitlement to areas of continental shelf to the south of the Maltese islands, either as constituting geologically a boundary between two tectonic plates, or simply as a geomorphological feature of such importance as to constitute a very marked discontinuity. Since, however, this discontinuity is not a line but a zone, Libya allows that there remains a problem of delimitation confined to this "rift zone", to be settled by negotiation between the Parties, in implementation of Article III of the Special Agreement.

39. The Court however considers that since the development of the law enables a State to claim that the continental shelf appertaining to it extends up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding sea-bed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims. This is especially clear where verification of the validity of title is concerned, since, at least in so far as those areas are situated at a distance of under 200 miles from the coasts in question, title depends solely on the distance from the coasts of the claimant States of any areas of sea-bed claimed by way of continental shelf, and the geological or geomorphological characteristics of those areas are completely immaterial. It follows that, since the distance between the coasts of the Parties is less than 400 miles, so that no geophysical feature can lie more than 200 miles from each coast, the feature referred to as the "rift zone" cannot constitute a fundamental discontinuity terminating the southward extension of the Maltese shelf and the northward extension of the Libyan as if it were some natural boundary.

40. Neither is there any reason why a factor which has no part to play in the establishment of title should be taken into account as a relevant circumstance for the purposes of delimitation. It is true that in the past the Court has recognized the relevance of geophysical characteristics of the area of delimitation if they assist in identifying a line of separation between the continental shelves of the Parties. In the *North Sea Continental Shelf* cases the Court said :

"it can be useful to consider the geology of that shelf in order to

find out whether the direction taken by certain configurational features should influence delimitation because, in certain localities, they point-up the whole notion of the appurtenance of the continental shelf to the State whose territory it does in fact prolong" (*I.C.J. Reports* 1969, p. 51, para. 95).

Again, in the *Tunisia/Libya* case of 1982, the Court recognized that :

"identification of natural prolongation may, where the geographical circumstances are appropriate, have an important role to play in defining an equitable delimitation, in view of its significance as the justification of continental shelf rights in some cases" (*I.C.J. Reports* 1982, p. 47, para. 44),

and the Court remarked also that "a marked disruption or discontinuance of the sea-bed" may constitute "an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations" (*ibid.*, p. 57, para. 66). However to rely on this jurisprudence would be to overlook the fact that where such jurisprudence appears to ascribe a role to geophysical or geological factors in delimitation, it finds warrant for doing so in a régime of the title itself which used to allot those factors a place which now belongs to the past, in so far as sea-bed areas less than 200 miles from the coast are concerned.

41. These juridical difficulties of the rift-zone argument are conclusive against it. Even had this not been so, there would still have been difficulties concerning the interpretation of the evidence itself. Having carefully studied that evidence, the Court is not satisfied that it would be able to draw any sufficiently cogent conclusions from it as to the existence or not of the "fundamental discontinuity" on which the Libyan argument relies. Doubtless the region has many geological or geomorphological features which may properly be described in scientific terms as "discontinuities". The endeavour, however, in the terms of the Libyan argument, was to convince the Court of a discontinuity so scientifically "fundamental", that it must also be a discontinuity of a natural prolongation in the legal sense ; and such a fundamental discontinuity was said to be constituted by a tectonic plate boundary which the distinguished scientists called by Libya detected in the rift zone, or at least by the presence there of a very marked geomorphological feature. However the no less distinguished scientists called by Malta testified that this supposed "secondary" tectonic plate boundary was only an hypothesis, and that the data at present available were quite insufficient to prove, or indeed to disprove, its existence. The Court is unable to accept the position that in order to decide this case, it must first make a determination upon a disagreement between scientists of distinction as to the more plausibly correct interpretation of apparently incomplete scientific data ; for a criterion that depends upon such a judgment or estimate having to be made by a court, or perhaps also by negotiating governments, is clearly inapt to a general legal rule of delimi-

tation. For all the above reasons, the Court, therefore, rejects the so-called rift-zone argument of Libya.

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42. Neither, however, is the Court able to accept the argument of Malta – almost diametrically opposed to the Libyan rift-zone argument – that the new importance of the idea of distance from the coast has, at any rate for delimitation between opposite coasts, in turn conferred a primacy on the method of equidistance. As already noted, Malta rejects the view that natural prolongation in the physical sense is the basis of title of the coastal State, and bases its approach to continental shelf delimitation on the “distance principle” : each coastal State is entitled to continental shelf rights to a certain distance from its coast, whatever may be the physical characteristics of the sea-bed and subsoil. Since there is not sufficient space between the coasts of Malta and Libya for each of them to enjoy continental shelf rights up to the full 200 miles recognized by international law, the delimitation process must, according to Malta, necessarily begin by taking into consideration an equidistance line between the two coasts. The delimitation of the continental shelf must start from the geographical facts in each particular case ; Malta regards the situation as one of two coastal States facing each other in an entirely normal setting. Malta does not assert that the equidistance method is fundamental, or inherent, or has a legally obligatory character. It does argue that the legal basis of continental shelf rights – that is to say, for Malta, the “distance principle” – requires that as a starting point of the delimitation process consideration must be given to a line based on equidistance ; though it is only to the extent that this primary delimitation produces an equitable result by a balancing up of the relevant circumstances that the boundary coincides with the equidistance line. As a provisional point of departure, consideration of equidistance “is required” on the basis of the legal title.

43. The Court is unable to accept that, even as a preliminary and provisional step towards the drawing of a delimitation line, the equidistance method is one which *must* be used, or that the Court is “required, as a first step, to examine the effects of a delimitation by application of the equidistance method” (*I.C.J. Reports 1982*, p. 79, para. 110). Such a rule would come near to an espousal of the idea of “absolute proximity”, which was rejected by the Court in 1969 (see *I.C.J. Reports 1969*, p. 30, para. 41), and which has since, moreover, failed of acceptance at the Third United Nations Conference on the Law of the Sea. That a coastal State may be entitled to continental shelf rights by reason of distance from the coast, and irrespective of the physical characteristics of the intervening sea-bed

and subsoil, does not entail that equidistance is the only appropriate method of delimitation, even between opposite or quasi-opposite coasts, nor even the only permissible point of departure. The application of equitable principles in the particular relevant circumstances may still require the adoption of another method, or combination of methods, of delimitation, even from the outset.

44. In this connection, something may be said on the subject of the practice of States in the field of continental shelf delimitation ; the Parties have in fact discussed the significance of such practice, as expressed in published delimitation agreements, primarily in the context of the status of equidistance in present international law. Over 70 such agreements have been identified and produced to the Court and have been subjected to various interpretations. Libya questions the relevance of State practice in this domain, and has suggested that this practice shows, if anything, progressive disappearance of the distinction to be found in Article 6 of the 1958 Geneva Convention on the Continental Shelf, between "opposite" and "adjacent" States, and that there has since 1969 been a clear trend away from equidistance manifested in delimitation agreements between States, as well as in jurisprudence and in the deliberations at the United Nations Conference on the Law of the Sea. Malta rejects both these latter contentions, and contends that such practice need not be seen as evidence of a particular rule of customary law, but must provide significant and reliable evidence of normal standards of equity. The Court for its part has no doubt about the importance of State practice in this matter. Yet that practice, however interpreted, falls short of proving the existence of a rule prescribing the use of equidistance, or indeed of any method, as obligatory. Even the existence of such a rule as is contended for by Malta, requiring equidistance simply to be used as a first stage in any delimitation, but subject to correction, cannot be supported solely by the production of numerous examples of delimitations using equidistance or modified equidistance, though it is impressive evidence that the equidistance method can in many different situations yield an equitable result.

* * *

45. Judicial decisions are at one – and the Parties themselves agree (paragraph 29 above) – in holding that the delimitation of a continental shelf boundary must be effected by the application of equitable principles in all the relevant circumstances in order to achieve an equitable result. The Court did of course remark in its 1982 Judgment that this terminology, though generally used, "is not entirely satisfactory because it employs the term equitable to characterize both the result to be achieved and the means to be applied to reach this result" (*I.C.J. Reports 1982*, p. 59, para. 70). It is however the goal – the equitable result – and not the means used to

achieve it, that must be the primary element in this duality of characterization. As the Court also said in its 1982 Judgment :

“Equity as a legal concept is a direct emanation of the idea of justice. The Court whose task is by definition to administer justice is bound to apply it.” (*I.C.J. Reports 1982*, p. 60, para. 71.)

Yet the “Application of equitable principles is to be distinguished from a decision *ex aequo et bono*” and as the Court put it in its 1969 Judgment :

“it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles, in accordance with the ideas which have always underlain the development of the legal régime of the continental shelf in this field” (*I.C.J. Reports 1969*, p. 47, para. 85).

Thus the justice of which equity is an emanation, is not abstract justice but justice according to the rule of law ; which is to say that its application should display consistency and a degree of predictability ; even though it looks with particularity to the peculiar circumstances of an instant case, it also looks beyond it to principles of more general application. This is precisely why the courts have, from the beginning, elaborated equitable principles as being, at the same time, means to an equitable result in a particular case, yet also having a more general validity and hence expressible in general terms ; for, as the Court has also said, “the legal concept of equity is a general principle directly applicable as law” (*I.C.J. Reports 1982*, p. 60, para. 71).

46. The normative character of equitable principles applied as a part of general international law is important because these principles govern not only delimitation by adjudication or arbitration, but also, and indeed primarily, the duty of Parties to seek first a delimitation by agreement, which is also to seek an equitable result. That equitable principles are expressed in terms of general application, is immediately apparent from a glance at some well-known examples : the principle that there is to be no question of refashioning geography, or compensating for the inequalities of nature ; the related principle of non-encroachment by one party on the natural prolongation of the other, which is no more than the negative expression of the positive rule that the coastal State enjoys sovereign rights over the continental shelf off its coasts to the full extent authorized by international law in the relevant circumstances ; the principle of respect due to all such relevant circumstances ; the principle that although all States are equal before the law and are entitled to equal treatment, “equity does not necessarily imply equality” (*I.C.J. Reports 1969*, p. 49, para. 91),

nor does it seek to make equal what nature has made unequal ; and the principle that there can be no question of distributive justice.

47. The nature of equity is nowhere more evident than in these well-established principles. In interpreting them, it must be borne in mind that the geography which is not to be refashioned means those aspects of a geographical situation most germane to the legal institution of the continental shelf ; and it is “the coast of each of the Parties”, which

“constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation to neighbouring States situated either in an adjacent or opposite position” (*I.C.J. Reports 1982*, p. 61, para. 74).

In a semi-enclosed sea like the Mediterranean, that reference to neighbouring States is particularly apposite, for, as will be shown below, it is the coastal relationships in the whole geographical context that are to be taken account of and respected.

48. The application of equitable principles thus still leaves the Court with the task of appreciation of the weight to be accorded to the relevant circumstances in any particular case of delimitation. There is a much-quoted *dictum* of the Court in its 1969 Judgment to this effect :

“In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others. The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case.” (*I.C.J. Reports 1969*, p. 50, para. 93.)

Yet although there may be no legal limit to the considerations which States may take account of, this can hardly be true for a court applying equitable procedures. For a court, although there is assuredly no closed list of considerations, it is evident that only those that are pertinent to the institution of the continental shelf as it has developed within the law, and to the application of equitable principles to its delimitation, will qualify for inclusion. Otherwise, the legal concept of continental shelf could itself be fundamentally changed by the introduction of considerations strange to its nature.

49. It was argued by Libya that the relevant geographical considerations include the landmass behind the coast, in the sense that that landmass provides in Libya’s view the factual basis and legal justification for the State’s entitlement to continental shelf rights, a State with a greater landmass having a more intense natural prolongation. The Court is unable to

accept this as a relevant consideration. Landmass has never been regarded as a basis of entitlement to continental shelf rights, and such a proposition finds no support in the practice of States, in the jurisprudence, in doctrine, or indeed in the work of the Third United Nations Conference on the Law of the Sea. It would radically change the part played by the relationship between coast and continental shelf. The capacity to engender continental shelf rights derives not from the landmass, but from sovereignty over the landmass ; and it is by means of the maritime front of this landmass, in other words by its coastal opening, that this territorial sovereignty brings its continental shelf rights into effect. What distinguishes a coastal State with continental shelf rights from a landlocked State which has none, is certainly not the landmass, which both possess, but the existence of a maritime front in one State and its absence in the other. The juridical link between the State's territorial sovereignty and its rights to certain adjacent maritime expanses is established by means of its coast. The concept of adjacency measured by distance is based entirely on that of the coastline, and not on that of the landmass.

50. It was argued by Malta, on the other hand, that the considerations that may be taken account of include economic factors and security. Malta has contended that the relevant equitable considerations, employed not to dictate a delimitation but to contribute to assessment of the equitableness of a delimitation otherwise arrived at, include the absence of energy resources on the island of Malta, its requirements as an island developing country, and the range of its established fishing activity. The Court does not however consider that a delimitation should be influenced by the relative economic position of the two States in question, in such a way that the area of continental shelf regarded as appertaining to the less rich of the two States would be somewhat increased in order to compensate for its inferiority in economic resources. Such considerations are totally unrelated to the underlying intention of the applicable rules of international law. It is clear that neither the rules determining the validity of legal entitlement to the continental shelf, nor those concerning delimitation between neighbouring countries, leave room for any considerations of economic development of the States in question. While the concept of the exclusive economic zone has, from the outset, included certain special provisions for the benefit of developing States, those provisions have not related to the extent of such areas nor to their delimitation between neighbouring States, but merely to the exploitation of their resources. The natural resources of the continental shelf under delimitation "so far as known or readily ascertainable" might well constitute relevant circumstances which it would be reasonable to take into account in a delimitation, as the Court stated in the *North Sea Continental Shelf cases* (*I.C.J. Reports 1969*, p. 54, para. 101 (D) (2)). Those resources are the essential objective envisaged by States when they put forward claims to sea-bed areas containing them. In the present case, however, the Court has not been furnished by the Parties with any indications on this point.

51. Malta contends that the “equitable consideration” of security and defence interests confirms the equidistance method of delimitation, which gives each party a comparable lateral control from its coasts. Security considerations are of course not unrelated to the concept of the continental shelf. They were referred to when this legal concept first emerged, particularly in the Truman Proclamation. However, in the present case neither Party has raised the question whether the law at present attributes to the coastal State particular competences in the military field over its continental shelf, including competence over the placing of military devices. In any event, the delimitation which will result from the application of the present Judgment is, as will be seen below, not so near to the coast of either Party as to make questions of security a particular consideration in the present case.

52. A brief mention must also be made of another circumstance over the relevance of which the Parties have been in some contention. The fact that Malta constitutes an island State has given rise to some argument between the Parties as to the treatment of islands in continental shelf delimitation. The Parties agree that the entitlement to continental shelf is the same for an island as for mainland. However Libya insists that for this purpose no distinction falls to be made between an island State and an island politically linked with a mainland State; and further contends that while the entitlement is the same, an island may be treated in a particular way in the actual delimitation, as were the Channel Islands in the Decision of 30 June 1977 of the Court of Arbitration on the delimitation of the continental shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic. Malta explains that it does not claim any privileged status for island States, but does distinguish, for purposes of shelf delimitation, between island States and islands politically linked to a mainland State. It is only in the case of dependent islands, in Malta’s view, that international law gives varying effect to them, depending on such factors as size, geographical position, population or economy.

53. In the view of the Court, it is not a question of an “island State” having some sort of special status in relation to continental shelf rights; indeed Malta insists that it does not claim such status. It is simply that Malta being independent, the relationship of its coasts with the coasts of its neighbours is different from what it would be if it were a part of the territory of one of them. In other words, it might well be that the sea boundaries in this region would be different if the islands of Malta did not constitute an independent State, but formed a part of the territory of one of the surrounding countries. This aspect of the matter is related not solely to the circumstances of Malta being a group of islands, and an independent State, but also to the position of the islands in the wider geographical context, particularly their position in a semi-enclosed sea.

54. Malta has also invoked the principle of sovereign equality of States as an argument in favour of the equidistance method pure and simple, and

as an objection to any adjustment based on length of coasts or proportionality considerations. It has observed that since all States are equal and equally sovereign, the maritime extensions generated by the sovereignty of each State must be of equal juridical value, whether or not the coasts of one State are longer than those of the other. The first question is whether the use of the equidistance method or recourse to proportionality considerations derive from legal rules accepted by States. If, for example, States had adopted a principle of apportionment of shelf on a basis of strict proportionality of coastal lengths (which the Court does not consider to be the case), their consent to that rule would be no breach of the principle of sovereign equality between them. Secondly, it is evident that the existence of equal entitlement, *ipso jure* and *ab initio*, of coastal States, does not imply an equality of extent of shelf, whatever the circumstances of the area; thus reference to the length of coasts as a relevant circumstance cannot be excluded *a priori*. The principle of equality of States has therefore no particular role to play in the applicable law.

* * *

55. Libya has attached great importance to an argument based on proportionality (see Libyan submissions 5, 6 and 7, set out in paragraph 11 above). Proportionality is certainly intimately related both to the governing principle of equity, and to the importance of coasts in the generation of continental shelf rights. Accordingly, the place of proportionality in this case calls for the most careful consideration. The 1969 Judgment in the *North Sea Continental Shelf* cases describes what it consistently refers to as the proportionality "factor" in the following terms :

"A final factor to be taken account of is the element of a reasonable degree of proportionality which a delimitation effected according to equitable principles ought to bring about between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coastlines, — these being measured according to their general direction in order to establish the necessary balance between States with straight, and those with markedly concave or convex coasts, or to reduce very irregular coastlines to their truer proportions." (*I.C.J. Reports 1969*, p. 52, para. 98.)

There is a further statement in the operative part (*ibid.*, p. 54, para. 101 (D) (3)), and this is in the nature of things addressed specifically to the actual case then before the Court, and is accordingly somewhat differently qualified :

"the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas

appertaining to the coastal State and the length of its coast measured in the general direction of the coastline, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitation between adjacent States in the same region".

56. It is clear that what the Court intended was a means of identifying and then correcting the kind of distortion – disproportion – that could arise from the use of a method inapt to take adequate account of some kinds of coastal configuration : thus, for example, since an equidistance line is based on a principle of proximity and is therefore controlled only by salient coastal points, it may yield a disproportionate result where a coast is markedly irregular or markedly concave or convex. In such cases, the raw equidistance method may leave out of the calculation appreciable lengths of coast, whilst at the same time giving undue influence to others merely because of the shape of coastal relationships. In fact the proportionality "factor" arises from the equitable principle that nature must be respected : coasts which are broadly comparable ought not to be treated differently because of a technical quirk of a particular method of tracing the course of a boundary line.

57. It follows – and this also is evident from the 1969 Judgment – that proportionality is one possibly relevant "factor", among several other factors (see the whole of para. (D) of the operative part on pp. 53-54 of *I.C.J. Reports 1969*) "to be taken into account". It is nowhere mentioned amongst "the principles and rules of international law applicable to the delimitation" (*ibid.*, p. 53, para. (C)). Its purpose was again made very clear in the Decision of 30 June 1977 of the Anglo-French Court of Arbitration, already referred to, which stated that :

"The concept of 'proportionality' merely expresses the criterion or factor by which it may be determined whether such a distortion results in an inequitable delimitation of the continental shelf as between the coastal States concerned. The factor of proportionality may appear in the form of the ratio between the areas of continental shelf to the lengths of the respective coastlines, as in the *North Sea Continental Shelf* cases. But it may also appear, and more usually does, as a factor for determining the reasonable or unreasonable – the equitable or inequitable – effects of particular geographical features or configurations upon the course of an equidistance-line boundary" (para. 100),

and went on to say also that :

"there can never be a question of completely refashioning nature, such as by rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline ; it is rather a question of remedying the disproportionality and inequitable effects produced by particular geographical configurations or features in situations where otherwise the appurtenance of roughly comparable

attributions of continental shelf to each State would be indicated by the geographical facts. Proportionality, therefore is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf." (Para. 101.)

The pertinent general principle, to the application of which the proportionality factor may be relevant, is that there can be no question of "completely refashioning nature"; the method chosen and its results must be faithful to the actual geographical situation.

58. Both Parties appear to agree with these general propositions of law concerning the use of the proportionality factor or criterion. Nevertheless, Libya's proportionality argument in effect goes a good deal further. The fifth and sixth submissions of Libya are to the effect that

"Equitable principles do not require that a State possessing a restricted coastline be treated as if it possessed an extensive coastline";

and that

"In the particular geographical situation of this case, the application of equitable principles requires that the delimitation should take account of the significant difference in lengths of the respective coastlines which face the area in which the delimitation is to be effected."

These submissions have in argument been treated as ancillary to the fourth submission, whereby Libya contends that a criterion for delimitation can be derived from the principle of natural prolongation because of the presence of a fundamental discontinuity in the sea-bed and subsoil; but this submission — the rift-zone argument — has been rejected by the Court. Nothing else remains in the Libyan submissions that can afford an independent principle and method for drawing the boundary, unless the reference to the lengths of coastlines is taken as such. However, to use the ratio of coastal lengths as of itself determinative of the seaward reach and area of continental shelf proper to each Party, is to go far beyond the use of proportionality as a test of equity, and as a corrective of the unjustifiable difference of treatment resulting from some method of drawing the boundary line. If such a use of proportionality were right, it is difficult indeed to see what room would be left for any other consideration; for it would be at once the principle of entitlement to continental shelf rights and also the method of putting that principle into operation. Its weakness as a basis of argument, however, is that the use of proportionality as a method in its own right is wanting of support in the practice of States, in the public expression of their views at (in particular) the Third United Nations Conference on the Law of the Sea, or in the jurisprudence. It is not possible for the Court to endorse a proposal at once so far-reaching and so novel. That does not

however mean that the "significant difference in lengths of the respective coastlines" is not an element which may be taken into account at a certain stage in the delimitation process ; this aspect of the matter will be returned to at the appropriate stage in the further reasoning of the Court.

59. Libya has also placed particular reliance upon the 1982 decision of the Court in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, in which the Court took note of the relationship of the lengths of the relevant coasts of the Parties, and compared that relationship with the ratio between the areas of continental shelf attributed to each Party. On the basis of figures for distances and ratios, the Court concluded that the result of the delimitation contemplated would "meet the requirements of the test of proportionality as an aspect of equity" (*I.C.J. Reports 1982*, p. 91, para. 131). Libya has in its pleadings and arguments carried out a similar operation in the present case, in order to show that "a delimitation within, and following the general direction of, the Rift Zone" would clearly meet the test of proportionality. Neither the Court's findings as to the proper function of the concept of proportionality, set out above, nor its dismissal of the arguments based on geological or geophysical features in support of the rift zone, signify the rejection in principle of the applicability of the criterion of proportionality as a test of the equitableness of the result of a delimitation. The question of its practical applicability in the circumstances of this case however will fall to be examined once the Court has indicated the method of delimitation which results from the applicable principles and rules of international law.

* * *

60. In applying the equitable principles thus elicited, within the limits defined above, and in the light of the relevant circumstances, the Court intends to proceed by stages ; thus, it will first make a provisional delimitation by using a criterion and a method both of which are clearly destined to play an important role in producing the final result ; it will then examine this provisional solution in the light of the requirements derived from other criteria, which may call for a correction of this initial result.

61. The Court has little doubt which criterion and method it must employ at the outset in order to achieve a provisional position in the present dispute. The criterion is linked with the law relating to a State's legal title to the continental shelf. As the Court has found above, the law applicable to the present dispute, that is, to claims relating to continental shelves located less than 200 miles from the coasts of the States in question, is based not on geological or geomorphological criteria, but on a criterion of distance from the coast or, to use the traditional term, on the principle of adjacency as measured by distance. It therefore seems logical to the Court that the choice of the criterion and the method which it is to employ in the

first place to arrive at a provisional result should be made in a manner consistent with the concepts underlying the attribution of legal title.

62. The consequence of the evolution of continental shelf law can be noted with regard to both verification of title and delimitation as between rival claims. On the basis of the law now applicable (and hence of the distance criterion), the validity of the titles of Libya and Malta to the sea-bed areas claimed by those States is clear enough. Questions arise only in the assessment of the impact of distance considerations on the actual delimiting. In this assessment, account must be taken of the fact that, according to the "fundamental norm" of the law of delimitation, an equitable result must be achieved on the basis of the application of equitable principles to the relevant circumstances. It is therefore necessary to examine the equities of the distance criterion and of the results to which its application may lead. The Court has itself noted that the equitable nature of the equidistance method is particularly pronounced in cases where delimitation has to be effected between States with opposite coasts. In the cases concerning the *North Sea Continental Shelf* it said that :

"The continental shelf area off, and dividing, opposite States [consists of] prolongations [which] meet and overlap, and can therefore only be delimited by means of a median line ; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionately distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved." (*I.C.J. Reports 1969*, p. 36, para. 57.)

In the next paragraph it emphasized the appropriateness of a median line for delimitation between opposite coasts (*ibid.*, p. 37, para. 58). But it is in fact a delimitation exclusively between opposite coasts that the Court is, for the first time, asked to deal with. It is clear that, in these circumstances, the tracing of a median line between those coasts, by way of a provisional step in a process to be continued by other operations, is the most judicious manner of proceeding with a view to the eventual achievement of an equitable result.

63. The median line drawn in this way is thus only provisional. Were the Court to treat it as final, it would be conferring on the equidistance method the status of being the only method the use of which is compulsory in the case of opposite coasts. As already pointed out, existing international law cannot be interpreted in this sense ; the equidistance method is not the only method applicable to the present dispute, and it does not even have the benefit of a presumption in its favour. Thus, under existing law, it must be demonstrated that the equidistance method leads to an equitable result in the case in question. To achieve this purpose, the result to which the distance criterion leads must be examined in the context of applying equitable principles to the relevant circumstances.

64. An immediate qualification of the median line which the Court considers must be made concerns the basepoints from which it is to be constructed. The line put forward by Malta was constructed from the low-water mark of the Libyan coast, but with regard to the Maltese coast from straight baselines (*inter alia*) connecting the island of Malta to the uninhabited islet of Filfla. The Court does not express any opinion on whether the inclusion of Filfla in the Maltese baselines was legally justified ; but in any event the baselines as determined by coastal States are not *per se* identical with the points chosen on a coast to make it possible to calculate the area of continental shelf appertaining to that State. In this case, the equitableness of an equidistance line depends on whether the precaution is taken of eliminating the disproportionate effect of certain "islets, rocks and minor coastal projections", to use the language of the Court in its 1969 Judgment, quoted above. The Court thus finds it equitable not to take account of Filfla in the calculation of the provisional median line between Malta and Libya. Having established such a provisional median line, the Court still has to consider whether other considerations, including the factor of proportionality, should lead to an adjustment of that line being made.

65. In thus establishing, as the first stage in the delimitation process, the median line as the provisional delimitation line, the Court could hardly ignore the fact that the equidistance method has never been regarded, even in a delimitation between opposite coasts, as one to be applied without modification whatever the circumstances. Already, in the 1958 Convention on the Continental Shelf, which imposes upon the States parties to it an obligation of treaty-law, failing agreement, to have recourse to equidistance for the delimitation of the continental shelf areas, Article 6 contains the proviso that that method is to be used "unless another boundary line is justified by special circumstances". Similarly, during the drafting of the United Nations Convention on the Law of the Sea, the text which contained reference to the use of the equidistance method (later superseded by what is now Article 83, paragraph 1), qualified that reference by indicating that the method should be used "where appropriate, and taking account of all circumstances prevailing in the area concerned" (A/CONF.62/WP.10/Rev.2). Moreover in the practice of States as reflected in the delimitation agreements concluded and published, analysis of the delimitation line chosen, in relation to the coasts of the parties, or the appropriate basepoints, reveals in numerous cases a greater or lesser departure from the line which would have been produced by a strict application of the equidistance method. It is thus certain that, for the purposes of achieving an equitable result in a situation in which the equidistance line is *prima facie* the appropriate method, all relevant circumstances must be examined, since they may have a weight in the assessment of the equities of the case which it would be proper to take into account and to reflect in an adjustment of the equidistance line.

66. The Court has already examined, and dismissed, a number of contentions made before it as to relevant circumstances in the present case

(paragraphs 48-54 above). A further geographical circumstance on which Libya has insisted is that of the comparative size of Malta and of Libya. So far as "size" refers to landmass, the Court has already indicated the reasons why it is unable to regard this as relevant (paragraph 49 above); there remains however the very marked difference in the lengths of the relevant coasts of the Parties, and the element of the considerable distance between those coasts referred to by both Parties, and to be examined below. In connection with lengths of coasts, attention should be drawn to an important distinction which appears to be rejected by Malta, between the relevance of coastal lengths as a pertinent circumstance for a delimitation, and use of those lengths in assessing ratios of proportionality. The Court has already examined the role of proportionality in a delimitation process, and has also referred to the operation, employed in the *Tunisia/Libya* case, of assessing the ratios between lengths of coasts and areas of continental shelf attributed on the basis of those coasts. It has been emphasized that this latter operation is to be employed solely as a verification of the equitableness of the result arrived at by other means. It is however one thing to employ proportionality calculations to check a result; it is another thing to take note, in the course of the delimitation process, of the existence of a very marked difference in coastal lengths, and to attribute the appropriate significance to that coastal relationship, without seeking to define it in quantitative terms which are only suited to the *ex post* assessment of relationships of coast to area. The two operations are neither mutually exclusive, nor so closely identified with each other that the one would necessarily render the other supererogatory. Consideration of the comparability or otherwise of the coastal lengths is a part of the process of determining an equitable boundary on the basis of an initial median line; the test of a reasonable degree of proportionality, on the other hand, is one which can be applied to check the equitableness of any line, whatever the method used to arrive at that line.

67. In order to assess any disparity between lengths of coasts it is first necessary to determine which are the coasts which are being contemplated; but that determination need only be in broad terms. The question as to which coasts of the two States concerned should be taken into account is clearly one which has eventually to be answered with some degree of precision in the context of the test of proportionality as a verification of the equity of the result. Such a test would be meaningless in the absence of a precise definition of the "relevant coasts" and the "relevant area", of the kind which the Court carried out in the *Tunisia/Libya* case. Where a marked disparity requires to be taken into account as a relevant circumstance, however, this rigorous definition is not essential and indeed not appropriate. If the disparity in question only emerges after scrupulous definition and comparison of coasts, it is *ex hypothesi* unlikely to be of such extent as to carry weight as a relevant circumstance. It is in this light that the Court has here to consider the coasts of the Parties within the area to

which, as explained above, its judgment relates ; the question of the coasts and areas to be taken into account for application of the proportionality test is one which only arises at a later stage in the delimitation process.

68. Within the bounds set by the Court having regard to the existence of claims of third States, explained above, no question arises of any limit, set by those claims, to the relevant coasts of Malta to be taken into consideration. On the Libyan side, Ras Ajdir, the terminus of the frontier with Tunisia, must clearly be the starting point ; the meridian $15^{\circ} 10' E$ which has been found by the Court to define the limits of the area in which the Judgment can operate crosses the coast of Libya not far from Ras Zarruq, which is regarded by Libya as the limit of the extent of its relevant coast. If the coasts of Malta and the coast of Libya from Ras Ajdir to Ras Zarruq are compared, it is evident that there is a considerable disparity between their lengths, to a degree which, in the view of the Court, constitutes a relevant circumstance which should be reflected in the drawing of the delimitation line. The coast of Libya from Ras Ajdir to Ras Zarruq, measured following its general direction, is 192 miles long, and the coast of Malta from Ras il-Wardija to Delimara Point, following straight baselines but excluding the islet of Filfla, is 24 miles long. In the view of the Court, this difference is so great as to justify the adjustment of the median line so as to attribute a larger shelf area to Libya ; the degree of such adjustment does not depend upon a mathematical operation and remains to be examined.

69. In the present case, the Court has also to look beyond the area concerned in the case, and consider the general geographical context in which the delimitation will have to be effected. The Court observes that that delimitation, although it relates only to the continental shelf appertaining to two States, is also a delimitation between a portion of the southern littoral and a portion of the northern littoral of the Central Mediterranean. If account is taken of that setting, the Maltese islands appear as a minor feature of the northern seaboard of the region in question, located substantially to the south of the general direction of that seaboard, and themselves comprising a very limited coastal segment. From the viewpoint of the general geography of the region, this southward location of the coasts of the Maltese islands constitutes a geographical feature which should be taken into account as a pertinent circumstance ; its influence on the delimitation line must be weighed in order to arrive at an equitable result.

70. Enough has been said above to show why the Court is unable to accept the contention of Malta that the relationship of the coasts of Malta and Libya forms a "classical" and straightforward case for a simple application of the median line. It is true that the coasts are opposite and that the area between them is clear of any complicating features. But within the area to which the present Judgment relates the median line drawn by Malta is wholly controlled by two basepoints, on the islet of Filfla and on the southeastern extremity of the island of Malta ; that is to say base-

points some 11 kilometres apart. Even if the islet of Filfla be excluded as a basepoint, as the Court has found that it should be, the line is controlled, within the area mentioned, only by points between Ras il-Qaws and Benghisa Point on the southwestern coast of the island of Malta. In either case, neither the receding westerly coast of the island of Malta, nor the island of Gozo, nor the straight baseline drawn from Ras il-Qaws to Ras il-Wardija, have any influence on the course of the median line. On the Libyan coast also, the basepoints controlling the line in the area mentioned are concentrated on a short stretch of coastline immediately east of Ras Tajura. Furthermore, it is well to recall the precise reason why the Court in its 1969 Judgment contrasted the effect of an equidistance line between opposite coasts and the effect between adjacent coasts. In the latter situation, any distorting effect of a salient feature might well extend and increase through the entire course of the boundary ; whilst in the former situation, the influence of one feature is normally quickly succeeded and corrected by the influence of another, as the course of the line proceeds between more or less parallel coasts.

71. In the light of these circumstances, the Court finds it necessary, in order to ensure the achievement of an equitable solution, that the delimitation line between the areas of continental shelf appertaining respectively to the two Parties, be adjusted so as to lie closer to the coasts of Malta. Within the area with which the Court is concerned, the coasts of the Parties are opposite to each other, and the equidistance line between them lies broadly west to east, so that its adjustment can be satisfactorily and simply achieved by transposing it in an exactly northward direction.

72. Once it is contemplated that the boundary requires to be shifted northward of the median line between Libya and Malta, it seems appropriate first to establish what might be the extreme limit of such a shift. This is easily done and indeed the calculation is, in broad terms, apparent from any map of the area as a whole, showing the wider geographical context which the Court has found to be relevant. Let it be supposed, for the sake of argument, that the Maltese islands were part of Italian territory, and that there was a question of the delimitation of the continental shelf between Libya and Italy, within the area to which this Judgment relates. Again, between opposite coasts, with a large, clear area between them, that boundary would not then be the median line, based solely upon the coasts of Libya to the south and Sicily to the north. At least some account would be taken of the islands of Malta ; and even if the minimum account were taken, the continental shelf boundary between Italy and Libya would be somewhat south of the median line between the Sicilian and Libyan coasts. Since Malta is not part of Italy, but is an independent State, it cannot be the case that, as regards continental shelf rights, it will be in a worse position because of its independence. Therefore, it is reasonable to assume that an equitable boundary between Libya and Malta must be to the south of a notional median line between Libya and Sicily ; for that is the line, as

we have seen, which allows no effect at all to the islands of Malta. The position of such a median line, employing the baselines on the coasts of Sicily established by the Italian Government, may be defined for present purposes by its intersection with the meridian $15^{\circ} 10' E$; according to the information supplied to the Court, this intersection is at about latitude $34^{\circ} 36' N$. The course of that line evidently does not run parallel to that of the median line between Malta and Libya, but its form is, it is understood, not greatly different. The equidistance line drawn between Malta and Libya (excluding as basepoint the islet of Filfla), according to the information available to the Court, intersects that same meridian $15^{\circ} 10' E$ at approximately $34^{\circ} 12' N$. A transposition northwards through $24'$ of latitude of the Malta-Libya median line would therefore be the extreme limit of such northward adjustment.

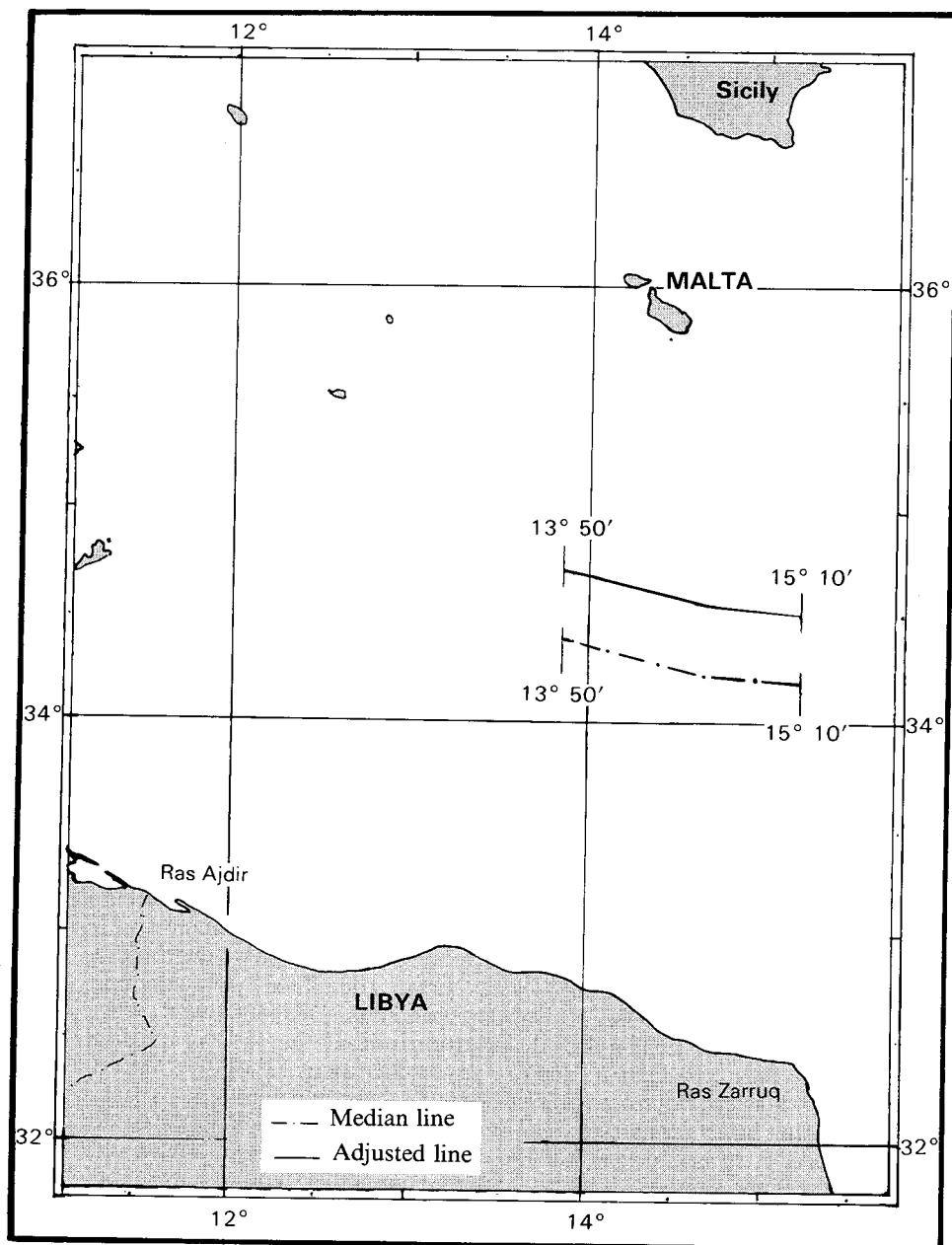
73. The position reached by the Court at this stage of its consideration of the case is therefore the following. It takes the median line (ignoring Filfla as a basepoint) as the first step of the delimitation. But relevant circumstances indicate that some northward shift of the boundary line is needed in order to produce an equitable result. These are first, the general geographical context in which the islands of Malta appear as a relatively small feature in a semi-enclosed sea; and secondly, the great disparity in the lengths of the relevant coasts of the two Parties. The next step in the delimitation is therefore to determine the extent of the required northward shift of the boundary line. Here, there are two important parameters which the Court has already mentioned above. First, there is the outside limit of any northward shift, of some $24'$ (see paragraph 72 above). Second, there is the considerable distance between the coasts (some $195'$ difference of latitude, in round terms, between Benghisa Point and the Libyan coast due south of that point), which is an obviously important consideration when deciding whether, and by how much, a median line boundary can be shifted without ceasing to have an approximately median location, or approaching so near to one coast as to bring into play other factors such as security. In the present case there is clearly room for a significant adjustment, if it is found to be required for achieving an equitable result. Weighing up these several considerations in the present kind of situation is not a process that can infallibly be reduced to a formula expressed in actual figures. Nevertheless, such an assessment has to be made, and the Court has concluded that a boundary line that represents a shift of around three-quarters of the distance between the two outer parameters — that is to say between the median line and the line $24'$ north of it — achieves an equitable result in all the circumstances. It has therefore decided that the equitable boundary line is a line produced by transposing the median line northwards through $18'$ of latitude. By “transposing” is meant the operation whereby to every point on the median line there will correspond a point on the line of delimitation, lying on the same meridian of longitude but $18'$ further to the north. Since the median line intersects the meridian $15^{\circ} 10' E$ at $34^{\circ} 12' N$ approximately, the delimitation line will intersect that meridian at $34^{\circ} 30' N$ approximately; but it will be for the Parties and

their experts to determine the exact position of the line resulting from the northward transposition by 18'. The course of the delimitation line dictated by the method adopted is shown, for the purposes of illustration only, on Map No. 3 appended hereto.

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74. There remains the aspect which the Court in its Judgment in the *North Sea Continental Shelf* cases called "the element of a reasonable degree of proportionality . . . between the extent of the continental shelf areas appertaining to the coastal State and the length of its coast" (*I.C.J. Reports 1969*, p. 54, para. 101 (D) (3)). In the view of the Court, there is no reason of principle why the test of proportionality, more or less in the form in which it was used in the *Tunisia/Libya* case, namely the identification of "relevant coasts", the identification of "relevant areas" of continental shelf, the calculation of the mathematical ratios of the lengths of the coasts and the areas of shelf attributed, and finally the comparison of such ratios, should not be employed to verify the equity of a delimitation between opposite coasts, just as well as between adjacent coasts. However, there may well in such a case be practical difficulties which render it inappropriate in that form. These difficulties are particularly evident in the present case where, in the first place, the geographical context is such that the identification of the relevant coasts and the relevant areas is so much at large that virtually any variant could be chosen, leading to widely different results ; and in the second place the area to which the Judgment will in fact apply is limited by reason of the existence of claims of third States. To apply the proportionality test simply to the areas within these limits would be unrealistic ; there is no need to stress the dangers of reliance upon a calculation in which a principal component has already been determined at the outset of the decision, not by a consideration of the equities, but by reason of quite other preoccupations of the Court. Yet to apply proportionality calculations to any wider area would involve two serious difficulties. First, there is the probability that future delimitations with third States would overthrow not only the figures for shelf areas used as basis for calculations but also the ratios arrived at. Secondly, it is the result of the delimitation line indicated by the Court which is to be tested for equitableness ; but that line does not extend beyond the meridians 13° 50' E to the west and 15° 10' E to the east. To base proportionality calculations on any wider area would therefore involve an artificial prolongation of the line of delimitation, which would be beyond the jurisdiction of the Court, even by way of hypothesis for an assessment of the equities within the area to which the Judgment relates.

75. This does not mean, however, that the Court is debarred from considering the equitableness of the result of the delimitation which it has in contemplation from the viewpoint of the proportional relationship of



MAP NO. 3. *For illustrative purposes only*

coasts and continental shelf areas. The Court does not consider that an endeavour to achieve a predetermined arithmetical ratio in the relationship between the relevant coasts and the continental shelf areas generated by them would be in harmony with the principles governing the delimitation operation. The relationship between the lengths of the relevant coasts of the Parties has of course already been taken into account in the determination of the delimitation line ; if the Court turns its attention to the extent of the areas of shelf lying on each side of the line, it is possible for it to make a broad assessment of the equitableness of the result, without seeking to define the equities in arithmetical terms. The conclusion to which the Court comes in this respect is that there is certainly no evident disproportion in the areas of shelf attributed to each of the Parties respectively such that it could be said that the requirements of the test of proportionality as an aspect of equity were not satisfied.

* * *

76. Having thus completed the task conferred upon it by the Special Agreement of 23 May 1976, the Court will briefly summarize the conclusions reached in the present Judgment. The Court has found that that task is to lay down the principles and rules of international law which should enable the Parties to effect a delimitation of the areas of continental shelf between the two countries in accordance with equitable principles and so as to achieve an equitable result. In doing so, the Court considers that the terms of the Special Agreement also make it its duty to define as precisely as possible a method of delimitation which should enable both Parties to delimit their respective areas of continental shelf "without difficulty", following the Court's decision in the case. The Court has however to look beyond the interests of the Parties themselves ; it has, as explained above, to leave unaffected the possible claims of third States in the region, which are outside the competence of the Court in the present case, and thus remain unresolved. While every case of maritime delimitation is different in its circumstances from the next, only a clear body of equitable principles can permit such circumstances to be properly weighed, and the objective of an equitable result, as required by general international law, to be attained.

77. The Court has thus had occasion to note the development which has occurred in the customary law of the continental shelf, and which is reflected in Articles 76 and 83 of the United Nations Convention on the Law of the Sea, concerning the relationship between the concept of the continental shelf as the natural prolongation of the land territory of the coastal State and the factor of distance from the coast. As the Court has explained, in a geographical situation like that with which the present case is concerned, where a single continental shelf falls to be delimited between two opposite States, so that no question arises, as between those States, of delimitation by reference to a continental margin extending beyond 200 miles from the baselines round the coast of either State, the legal concept of

natural prolongation does not attribute any relevance to geological or geophysical factors either as basis of entitlement or as criterion for delimitation. Each coastal State is entitled to exercise sovereign rights over the continental shelf off its coasts for the purpose of exploring it and exploiting its natural resources (Art. 77 of the Convention) up to a distance of 200 miles from the baselines – subject of course to delimitation with neighbouring States – whatever the geophysical or geological features of the sea-bed within the area comprised between the coast and the 200-mile limit. The introduction of this criterion of distance has not however had the effect of establishing a principle of “absolute proximity” or of conferring upon the equidistance method of delimitation the status of a general rule, or an obligatory method of delimitation, or of a priority method, to be tested in every case (cf. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, I.C.J. Reports 1982, p. 79, para. 110). The fact that the Court has found that, in the circumstances of the present case, the drawing of a median line constitutes an appropriate first step in the delimitation process, should not be understood as implying that an equidistance line will be an appropriate beginning in all cases, or even in all cases of delimitation between opposite States.

78. Having drawn the initial median line, the Court has found that that line requires to be adjusted in view of the relevant circumstances of the area, namely the considerable disparity between the lengths of the coasts of the Parties here under consideration, the distance between those coasts, the placing of the basepoints governing any equidistance line, and the general geographical context. Taking these into consideration, and setting as an extreme limit for any northward displacement of the line the notional median line which, on the hypothesis of a delimitation between Italy and Libya on the basis of equidistance, in the area to which the Judgment relates, would deny any effect whatever to Malta, the Court has been able to indicate a method making it possible for the Parties to determine the location of a line which would ensure an equitable result between them. This line gives a result which seems to the Court to meet the requirements of the test of proportionality, and more generally to be equitable, taking into account all relevant circumstances.

* * *

79. For these reasons,

THE COURT,

by fourteen votes to three,

finds that, with reference to the areas of continental shelf between the coasts of the Parties within the limits defined in the present Judgment, namely the meridian 13° 50' E and the meridian 15° 10' E :

A. The principles and rules of international law applicable for the delimitation, to be effected by agreement in implementation of the present

Judgment, of the areas of continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the Republic of Malta respectively are as follows :

- (1) the delimitation is to be effected in accordance with equitable principles and taking account of all relevant circumstances, so as to arrive at an equitable result ;
- (2) the area of continental shelf to be found to appertain to either Party not extending more than 200 miles from the coast of the Party concerned, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation in the physical sense.

B. The circumstances and factors to be taken into account in achieving an equitable delimitation in the present case are the following :

- (1) the general configuration of the coasts of the Parties, their opposite-ness, and their relationship to each other within the general geographical context ;
- (2) the disparity in the lengths of the relevant coasts of the Parties and the distance between them ;
- (3) the need to avoid in the delimitation any excessive disproportion between the extent of the continental shelf areas appertaining to the coastal State and the length of the relevant part of its coast, measured in the general direction of the coastlines.

C. In consequence, an equitable result may be arrived at by drawing, as a first stage in the process, a median line every point of which is equidistant from the low-water mark of the relevant coast of Malta (excluding the islet of Filfla), and the low-water mark of the relevant coast of Libya, that initial line being then subject to adjustment in the light of the above-mentioned circumstances and factors.

D. The adjustment of the median line referred to in subparagraph C above is to be effected by transposing that line northwards through $18'$ of latitude (so that it intersects the meridian $15^{\circ} 10' E$ at approximately latitude $34^{\circ} 30' N$) such transposed line then constituting the delimitation line between the areas of continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the Republic of Malta respectively.

IN FAVOUR : *President Elias ; Vice-President Sette-Camara ; Judges Lachs, Morozov, Nagendra Singh, Ruda, Ago, El-Khani, Sir Robert Jennings, de Lacharrière, Mbaye, Bedjaoui ; Judges ad hoc Valticos, Jiménez de Aréchaga.*

AGAINST : *Judges Mosler, Oda and Schwebel.*

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this third day of June, one thousand nine hundred and eighty-five, in three copies, one of which will be placed in the

archives of the Court and the others transmitted to the Government of the Socialist People's Libyan Arab Jamahiriya and to the Government of the Republic of Malta, respectively.

(Signed) T. O. ELIAS,
President.

(Signed) Santiago TORRES BERNÁRDEZ,
Registrar.

Judge EL-KHANI appends a declaration to the Judgment of the Court.

Vice-President SETTE-CAMARA appends a separate opinion, Judges RUDA and BEDJAOUI and Judge *ad hoc* JIMÉNEZ DE ARÉCHAGA a joint separate opinion, and Judge MBAYE and Judge *ad hoc* VALTICOS separate opinions, to the Judgment of the Court.

Judges MOSLER, ODA and SCHWEBEL append dissenting opinions to the Judgment of the Court.

(Initialled) T.O.E.
(Initialled) S.T.B.