

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE  
CONTINENTAL SHELF

(TUNISIA/LIBYAN ARAB JAMAHIRIYA)

**JUDGMENT OF 24 FEBRUARY 1982**

**1982**

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DU PLATEAU CONTINENTAL

(TUNISIE/JAMAHIRIYA ARABE LIBYENNE)

**ARRÊT DU 24 FÉVRIER 1982**

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**24 February 1982**

**CASE CONCERNING THE CONTINENTAL SHELF**  
(TUNISIA/LIBYAN ARAB JAMAHIRIYA)

*Interpretation of Special Agreement – Sources of law to be applied by the Court – Binding force of Judgment.*

*Delimitation of continental shelf between adjacent States – Applicable principles and rules of international law – Concept of natural prolongation of the land territory as defining the physical object or location of rights of the coastal State – Role of the concept in delimitation – Effect of geological and geomorphological factors.*

*Recent trends in the law admitted at the Third United Nations Conference on the Law of the Sea – Articles 76 and 83 of draft convention.*

*Claim to historic titles justifying (inter alia) drawing of straight baselines – land frontier and maritime limits.*

*Application of equitable principles with a view to achieving equitable solution – Account to be taken of relevant circumstances – Determination of area relevant for the delimitation – Criterion of proportionality as an aspect of equity.*

**JUDGMENT**

*Present : Acting President ELIAS ; Judges FORSTER, GROS, LACHS, MOROZOV, NAGENDRA SINGH, MOSLER, ODA, AGO, SETTE-CAMARA, EL-KHANI, SCHWEBEL ; Judges ad hoc EVENSEN, JIMÉNEZ DE ARÉCHAGA ; Registrar TORRES BERNÁRDEZ.*

In the case concerning the continental shelf,  
*between*

the Republic of Tunisia,  
represented by

H.E. Mr. Slim Benghazi, Ambassador of Tunisia to the Netherlands,  
as Agent,

Professor Sadok Belaïd, sometime Dean of the Faculty of Law, Politics and Economics, Tunis,  
as Co-agent and Counsel,

Mr. Néjib Bouziri, Diplomatic Counsellor and former Minister,  
Mr. Amor Rourou, Geologico-geophysical Engineer, former Minister of Industry, Mining and Energy,  
as Advisers to the Government,

Mr. Robert Jennings, Q.C., Whewell Professor of International Law at the University of Cambridge, President of the Institute of International Law,

Mr. René-Jean Dupuy, Professor at the Collège de France, Member of the Institute of International Law, Secretary-General of the Hague Academy of International Law,

Mr. Michel Virally, Professor at the University of Law, Economics and Social Sciences, Paris, and at the Graduate Institute of International Studies, Geneva, Member of the Institute of International Law,

Mr. Georges Abi-Saab, Professor of International Law at the Graduate Institute of International Studies, Geneva, Associate of the Institute of International Law,

Mr. Yadh Ben Achour, Professor at the Faculty of Law, Politics and Economics, Tunis,

Mr. Pierre-Marie Dupuy, Professor at the University of Law, Economics and Social Sciences, Paris,  
as Counsel and Advocates,

Mr. Habib Slim, Lecturer in the Faculty of Law, Politics and Economics, Tunis,

Mr. Mohamed Mouldi Marsit, Director of Conventions in the Office of the Prime Minister,

Mr. Jeremy P. Carver, Solicitor (Coward Chance),  
as Legal Advisers,

Mr. Robert Laffitte, Professor emeritus at the French National Museum of Natural History, sometime Professor of Geology and former Dean of the Science Faculty, Algiers,

Mr. Carlo Morelli, Professor of Applied Geophysics and Director of the Institute of Mines and Applied Geophysics at the University of Trieste,

Mr. Habib Lazreg, D.Sc., Geologist, Ministry of the National Economy,

Mr. Daniel Jean Stanley, D.Sc., Oceanographer, consultant in oceanography and marine geology at Washington, D.C.,  
as Experts,

Commander Abdelwahab Layouni, Ministry of Defence (Navy),

Mr. Kamel Rekik, Engineer, alumnus of the Ecole Polytechnique, Paris,  
Ministry of the National Economy,  
as Technical Advisers,

Mrs. Hend Mebazaa, Archivist, Ministry of the National Economy,

Mr. Samir Chaffai, Secretary at the Embassy of Tunisia to the Netherlands,  
Mr. Lazhar Bouony, Assistant Lecturer in the Faculty of Law, Politics and  
Economics, Tunis,  
Mr. Fadhel Moussa, Assistant in the Faculty of Law, Politics and Economics,  
Tunis,  
Mr. Ridha Ben Hammed, Assistant in the Faculty of Law, Politics and Eco-  
nomics, Tunis,  
Mr. Raouf Karrai, Assistant Lecturer in Geography at the University of  
Tunis,  
Mr. Farouk Saimanouli, Lawyer, Ministry of the National Economy,  
Mr. Zoubeir Mazouni, Lawyer, Ministry of the National Economy,  
as Assistants,

*and*

the Socialist People's Libyan Arab Jamahiriya,  
represented by

H.E. Mr. Kamel H. El Maghur, Ambassador,  
as Agent,

Mr. Abdelrazeg El-Murtadi Suleiman, Professor of International Law at the  
University of Garyounis, Benghazi,  
as Counsel,

Professor Derek W. Bowett, Q.C., President of Queens' College, Cam-  
bridge,

Mr. Herbert W. Briggs, Goldwin Smith Professor of International Law  
emeritus, Cornell University,

Mr. Claude-Albert Colliard, Honorary Dean, Professor of International Law  
at the University of Paris I,

Mr. Keith Highet, Member of the New York and District of Columbia  
Bars,

Mr. Antonio Malintoppi, Professor of the Faculty of Law at the University of  
Rome,

Sir Francis A. Vallat, K.C.M.G., Q.C., Professor emeritus of International  
Law at the University of London, Member of the International Law Com-  
mission, Member of the Institute of International Law,

Professor Mustapha K. Yasseen (deceased, 20 September 1981), Member of  
the Institute of International Law,

Mr. Walter D. Sohier, Member of the New York and District of Columbia  
Bars,

as Counsel and Advocates,

Mr. Amin A. Missallati, Professor of Geology, Al-Fateh University, Tri-  
poli,

Mr. Omar Hammuda, Professor of Geology, Al-Fateh University, Tripoli,

Mr. Mohammed Alawar, Assistant Professor of Geography, Al-Fateh Uni-  
versity, Tripoli,

Mr. Mohammed Jamal Ghellali, Counsellor, Department of Legal and Treaty Affairs, People's Bureau for Foreign Liaison, Tripoli,

Mr. Seif Jahme, Maritime Department, Tripoli,

Mr. Khaled Gordji, Maritime Department, Tripoli,

Mr. Salem Krista, Cartographic Department, Secretariat of Oil, Tripoli,

Mr. Muftah Smeida, Third Secretary, People's Bureau for Foreign Liaison, as Advisers,

Mr. Frank H. Fabricius, Professor of Geology at the Institute of Geology and Mineralogy, Technical University of Munich,

Mr. Claudio Vita-Finzi, Reader in Geology, University College, London,

as Experts,

Mr. Rodman R. Bundy,

Mr. Richard Meese, Doctor of Laws,

Mr. Henri-Xavier Ortoli,

as Counsel.

THE COURT,

composed as above,

after deliberation,

*delivers the following Judgment:*

1. By a letter of 25 November 1978, received in the Registry of the Court on 1 December 1978, the Minister of Foreign Affairs of Tunisia notified the Court of a Special Agreement in the Arabic language signed at Tunis on 10 June 1977 between the Republic of Tunisia and the Socialist People's Libyan Arab Jamahiriya ; a certified copy of the Special Agreement was enclosed with the letter, together with a translation into French.

2. In the French translation supplied by Tunisia, Articles 1 to 5 of the Special Agreement read as follows [*English translation by the Registry*] :

#### *"Article 1*

The Court is requested to render its Judgment in the following matter :

What are the principles and rules of international law which may be applied for the delimitation of the area of the continental shelf appertaining to the Republic of Tunisia and the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and, in rendering its decision, to take account of equitable principles and the relevant circumstances which characterize the area, as well as the recent trends admitted at the Third Conference on the Law of the Sea.

Also, the Court is further requested to specify precisely the practical way in which the aforesaid principles and rules apply in this particular situation so as to enable the experts of the two countries to delimit those areas without any difficulties.

*Article 2*

Immediately following the delivery of the Judgment by the Court, the two Parties shall meet to put into effect these principles and rules to determine the line of delimitation of the area of the continental shelf appertaining to each of the two countries, with a view to the conclusion of a treaty in this matter.

*Article 3*

In the event that the agreement mentioned in Article 2 is not reached within a period of three months, renewable by mutual agreement, from the date of delivery of the Court's Judgment, the two Parties shall together go back to the Court and request such explanations or clarifications as may facilitate the task of the two delegations, to arrive at the line separating the two areas of the continental shelf, and the two Parties shall comply with the Judgment of the Court and with its explanations and clarifications.

*Article 4*

A. The proceedings shall consist of written pleadings and oral argument.

B. Without prejudice to any question that may arise relating to the means of proof, the written pleadings shall consist of the following documents :

(1) Memorials to be submitted to the Court and exchanged between the two Parties within a period not exceeding eighteen (18) months from the date of the notification of the present Special Agreement to the Registrar of the Court.

(2) Counter-Memorials to be submitted by both Parties to the Court and exchanged between them as follows : the Republic of Tunisia shall submit its Counter-Memorial within a period of six (6) months from the date on which it receives from the Court notification of the Memorial ; the Socialist People's Libyan Arab Jamahiriya shall submit its Counter-Memorial within a period of eight (8) months from the date on which it receives from the Court notification of the Memorial.

(3) If necessary, additional written pleadings to be submitted to the Court and exchanged within periods to be fixed by the Court at the request of either Party or, if the Court so decides, after consultation between the two Parties.

C. The question of the order of speaking for the oral argument shall be decided by mutual agreement between the Parties and whatever order of speaking may be adopted, it shall be without prejudice to any question relating to the burden of proof.

*Article 5*

This Special Agreement shall enter into force on the date on which the instruments of its ratification are exchanged and shall be notified to the Registrar of the Court by both Parties or by either of them."

3. Pursuant to Article 40, paragraph 2, of the Statute, and to Article 39, paragraph 1, of the Rules of Court, a certified copy of the notification and of the Special Agreement was forthwith transmitted to the Government of the Socialist People's Libyan Arab Jamahiriya. By a letter of 14 February 1979, received in the Registry of the Court on 19 February 1979, the Secretary of Foreign Affairs of the Socialist People's Libyan Arab Jamahiriya made a like notification to the Court, enclosing a further certified copy of the Special Agreement in the Arabic language, together with a translation into English.

4. In the English translation supplied by the Libyan Arab Jamahiriya, Articles 1 to 5 of the Special Agreement read as follows :

*"Article 1"*

The Court is requested to render its Judgment in the following matter :

What principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the area of the continental shelf appertaining to the Republic of Tunisia, and the Court shall take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea.

Also, the Court is further requested to clarify the practical method for the application of these principles and rules in this specific situation, so as to enable the experts of the two countries to delimit these areas without any difficulties.

*Article 2*

Following the delivery of the Judgment of the Court, the two Parties shall meet to apply these principles and rules in order to determine the line of delimitation of the area of the continental shelf appertaining to each of the two countries, with a view to the conclusion of a treaty in this respect.

*Article 3*

In case the agreement mentioned in Article 2 is not reached within a period of three months, renewable by mutual agreement from the date of delivery of the Court's Judgment, the two Parties shall together go back to the Court and request any explanations or clarifications which would facilitate the task of the two delegations to arrive at the line separating the two areas of the continental shelf, and the two Parties shall comply with the Judgment of the Court and with its explanations and clarifications.

*Article 4*

- (a) The proceedings shall consist of written pleadings and oral argument.
- (b) Without prejudice to any question which may arise relating to the means of proof, the written pleadings shall consist of the following documents :

First – Memorials to be submitted to the Court and exchanged between the two Parties, within a period not exceeding (18) eighteen months from the date of the notification of this Agreement to the Registrar of the Court.

Second – Counter-Memorials to be submitted to the Court by both Parties and exchanged between them as follows :

The Republic of Tunisia shall submit its Counter-Memorial within a period of (6) six months from the date on which it receives from the Court notification of the Memorial ; the Socialist People's Libyan Arab Jamahiriya shall present its Counter-Memorial within a period of (8) eight months from the date on which it receives from the Court notification of the Memorial.

Third – If necessary, additional written pleadings to be submitted to the Court and exchanged within periods to be fixed by the Court, at the request of either Party, or, if the Court so decides, after consultation between the two Parties.

- (c) The question of the order of speaking for the oral argument shall be decided by mutual agreement between the two Parties and whatever order of speaking is accepted it shall not prejudice any question relating to the presentation of proof.

#### *Article 5*

This Agreement shall enter into force on the date of exchange of the instruments of its ratification and shall be notified to the Registrar of the Court by the two Parties or by either of them.”

5. Pursuant to Article 40, paragraph 3, of the Statute and to Article 42 of the Rules of Court, copies of the notifications 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.

6. Since the Court did not include upon the bench a judge of Tunisian or of Libyan 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. On 14 February 1979 the Libyan Arab Jamahiriya designated Mr. Eduardo Jiménez de Aréchaga, and the Parties were informed on 25 April 1979, pursuant to Article 35, paragraph 3, of the Rules of Court that there was no objection to this appointment ; on 11 December 1979 Tunisia designated Mr. Jens Evensen, and on 7 February 1980 the Parties were informed that there was no objection to this appointment.

7. By Orders of 20 February 1979 and 3 June 1980 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 the time-limits so fixed, and exchanged between the Parties pursuant to the Special Agreement.

8. By a letter from the Prime Minister of the Republic of Malta dated 28 January 1981 and received in the Registry of the Court on 30 January 1981, the Government of Malta, invoking Article 62 of the Statute, submitted to the Court a request for permission to intervene in the case. By a Judgment dated 14 April 1981, the Court found that that request of Malta could not be granted.

9. By an Order dated 16 April 1981, the President of the Court, having regard to Article 4(b)(3) of the Special Agreement, quoted above, fixed a time-limit for the filing of Replies by the two Parties, and such Replies were filed and exchanged within the time-limit fixed.

10. On 16 to 18 September, 21 to 25 September, 29 September to 2 October, 5 to 9 October, 13 to 15 October, and 19 to 21 October 1981, the Court held public sittings at which it was addressed by the following representatives of the Parties :

For Tunisia :

H.E. Mr. Slim Benghazi,  
 Professor Sadok Belaïd,  
 Professor Robert Jennings, Q.C.,  
 Professor René-Jean Dupuy,  
 Professor Michel Virally,  
 Professor Georges Abi-Saab,  
 Professor Yadh Ben Achour,  
 Professor Pierre-Marie Dupuy,  
 Professor Robert Laffitte,  
 Professor Carlo Morelli,  
 Professor Habib Lazreg.

For the Libyan Arab Jamahiriya : H.E. Mr. Kamel H. El Maghur,  
 Professor D. W. Bowett, Q.C.,  
 Professor Herbert W. Briggs,  
 Professor Claude-Albert Colliard,  
 Mr. Keith Hight,  
 Professor Antonio Malintoppi,  
 Sir Francis A. Vallat, K.C.M.G., Q.C.,  
 Professor Omar Hammuda,  
 Dr. Claudio Vita-Finzi.

11. Dr. Frank A. Fabricius was called as an expert by the Libyan Agent, pursuant to Articles 57 and 63 to 65 of the Rules of Court. He was examined in chief by Professor D. W. Bowett and was cross-examined by Professor M. Virally.

12. On 14 October 1981 the Court held a sitting *in camera* at which the Agent of Tunisia showed a film on "The Tunisian Shelf and the Gulf of Gabes : the Low-tide Elevations". The Agent of the Libyan Arab Jamahiriya had previously been afforded the opportunity of studying the film, and had indicated that he did not find it necessary to object to the showing of the film.

13. In the course of the hearings questions were put to both Parties by Members of the Court. Prior to the close of the hearings, oral or written replies to those questions were given by the Agents of the Parties.

14. The Governments of the United States of America, the Netherlands, Canada, Argentina, Malta and Venezuela, 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 letters of 24 November 1980, after the views of the Parties had been sought, and objection had been raised by one of them, the Registrar informed those Governments that the President of the Court had decided that the pleadings in the case and documents annexed would not, for the present, be made available to States not parties to the case. On 14 September 1981 the Court

decided, after ascertaining the views of the Parties pursuant to Article 53, paragraph 2, of the Statute, 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 the States mentioned above.

\*

15. In the course of the written proceedings, the following Submissions were presented by the Parties :

*On behalf of the Republic of Tunisia :*

in the Memorial :

“On the basis of the factual and legal considerations set out in the Memorial submitted by the Republic of Tunisia, may it please the Court to adjudge and declare :

I. In reply to the first question put in Article 1 of the Special Agreement of 10 June 1977 :

1. The delimitation contemplated in that Article (hereinafter referred to as ‘the delimitation’) is to be effected in such a way, taking into account the physical and natural characteristics of the area, as to leave to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other ;

2. The delimitation must not, at any point, encroach upon the area within which Tunisia possesses well-established historic rights, which is defined laterally on the side toward Libya by line ZV-45°, and in the direction of the open sea by the 50-metre isobath ;

3. The rule defined in paragraph 1 above is to be applied taking into account that as a result of the geomorphological peculiarities of the region it has been possible to establish that the natural prolongation of Tunisia certainly extends eastwards as far as the areas between the 250-metre and 300-metre isobaths, and south-eastwards as far as the zone constituted by the Zira and Zuwarah Ridges ;

4. In the areas situated to the east and southeast of the region defined above, the delimitation is to take account of all the relevant circumstances which characterize the area, and in particular :

- (a) the fact that the eastern coastal front of Tunisia is marked by the presence of a body of islands, islets and low-tide elevations which form a constituent part of the Tunisian littoral ;
- (b) the fact that the general configuration of the coasts of the two States is reproduced with remarkable fidelity by the bathymetric curves in the delimitation area and that this fact is simply a manifestation of the physical and geological structure of the region ; that in consequence the natural prolongation of Tunisia is oriented west-east, and that of Libya southwest-northeast ;
- (c) the potential cut-off effect for Tunisia which could result from the

particular angulation of the Tuniso-Libyan littoral in combination with the position on the coast of the frontier point between the two States ;

- (d) the irregularities characterizing the Tunisian coasts, resulting from a succession of concavities and convexities, as compared with the general regularity of the Libyan coasts in the delimitation area ;
- (e) the situation of Tunisia opposite States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States.

**II. In reply to the second question put in Article 1 of the Special Agreement of 10 June 1977 :**

1. The delimitation should lead to the drawing of a line which would not appreciably depart from the lines which result from taking into account the geomorphological factors peculiar to the region, in particular the existence of a crestline constituted by the Zira and Zuwarah Ridges and of the general orientation of the natural prolongations of the territories of the two countries toward the abyssal plain of the Ionian Sea ;

2. The delimitation line could either :

- (a) be constituted by a line drawn at the Tuniso-Libyan frontier parallel to the bisector of the angle formed by the Tuniso-Libyan littoral in the Gulf of Gabes (cf. para. 9.25 of this Memorial) ; or
- (b) be determined according to the angle of aperture of the coastline at the Tuniso-Libyan frontier, in proportion to the length of the relevant coasts of the two States (cf. paras. 9.30-9.34 of this Memorial)" ;

in the Counter-Memorial :

"On the basis of the factual and legal considerations set out in the Counter-Memorial submitted by the Republic of Tunisia, may it please the Court to adjudge and declare :

**I. In reply to the first question put in Article 1 of the Special Agreement of 10 June 1977 :**

1. The delimitation contemplated in that Article (hereinafter referred to as 'the delimitation') is to be effected in such a way, taking into account the physical and natural characteristics of the area, as to leave to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other ;

2. The delimitation must not, at any point, encroach upon the area within which Tunisia possesses well-established historic rights, which is defined laterally on the side toward Libya by line ZV-45°, and in the direction of the open sea by the 50-metre isobath ;

3. The delimitation must also be effected in conformity with equitable principles and taking account of all the relevant circumstances which characterize the case, it being understood that a balance must be established between the various circumstances, in order to arrive at an equitable result, without refashioning nature ;

4. The rule defined in paragraphs 1 and 3 above is to be applied taking into account that as a result of the geomorphological peculiarities of the region it has been possible to establish that the natural prolongation of Tunisia certainly extends eastwards as far as the areas between the 250-metre and 300-metre isobaths, and south-eastwards as far as the zone constituted by the Zira and Zuwarah Ridges ;

5. In the area situated to the east and south-east of the region defined above, the delimitation is to take account of all the other relevant circumstances which characterize the area, and in particular :

- (a) the fact that the eastern coastal front of Tunisia is marked by the presence of a body of islands, islets and low-tide elevations which form a constituent part of the Tunisian littoral ;
- (b) the fact that the general configuration of the coasts of the two States is reproduced with remarkable fidelity by the bathymetric curves in the delimitation area and that this fact is simply a manifestation of the physical and geological structure of the region ; that in consequence the natural prolongation of Tunisia is oriented west-east, and that of Libya southwest-northeast ;
- (c) the potential cut-off effect for Tunisia which could result from the particular angulation of the Tuniso-Libyan littoral in combination with the position on the coast of the frontier point between the two States ;
- (d) the irregularities characterizing the Tunisian coasts, resulting from a succession of concavities and convexities, as compared with the general regularity of the Libyan coasts in the delimitation area ;
- (e) the situation of Tunisia opposite States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States.

II. In reply to the second question put in Article 1 of the Special Agreement of 10 June 1977 :

1. The delimitation should lead to the drawing of a line which would not appreciably depart from the lines which result from taking into account the geomorphological factors peculiar to the region, in particular the existence of a crestline constituted by the Zira and Zuwarah Ridges and of the general orientation of the natural prolongation of the territories of the two countries toward the abyssal plain of the Ionian Sea ;

2. The delimitation line could either :

- (a) be constituted by a line drawn at the Tuniso-Libyan frontier parallel to the bisector of the angle formed by the Tuniso-Libyan littoral in the Gulf of Gabes (see para. 9.25 of the Tunisian Memorial) ; or
- (b) be determined according to the angle of aperture of the coastline at the Tuniso-Libyan frontier, in proportion to the length of the relevant coast of the two States (see paras. 9.30-9.34 of the Tunisian Memorial) ;

in the Reply :

“The Tunisian Government maintains in full the submissions of its Counter-Memorial and respectfully requests the Court to reject the sub-

missions of Libya in so far as they are contrary to the Tunisian submissions."

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

"*In view of the facts set forth in Part I of this Memorial, the statement of the law contained in Part II, and the arguments applying the law to the facts as stated in Part III of this Memorial ;*

*Considering that the Special Agreement between the Parties requests the Court to render its Judgment as to what principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the area of the continental shelf appertaining to the Republic of Tunisia, and requests the Court to take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea ;*

*May it please the Court, on behalf of the Socialist People's Libyan Arab Jamahiriya, to adjudge and declare :*

1. The concept of the continental shelf as the natural prolongation of the land territory into and under the sea is fundamental to the juridical concept of the continental shelf and a State is entitled *ipso facto* and *ab initio* to the continental shelf which is the natural prolongation of its land territory into and under the sea.

2. Any delimitation should leave as much as possible to each Party all those parts of the continental shelf that constitute such a natural prolongation.

3. A delimitation which gives effect to the principle of natural prolongation is one which respects the inherent *ipso jure* rights of each State, and the assertion of such rights is therefore in accordance with equitable principles.

4. The direction of natural prolongation is determined by the general geological and geographical relationship of the continental shelf to the continental landmass, and not by the incidental or accidental direction of any particular part of the coast.

5. In the present case the continental shelf off the coast of North Africa is a prolongation to the north of the continental landmass, and therefore the appropriate method of delimitation of the areas of continental shelf appertaining to each Party in this specific situation is to reflect the direction of this prolongation northward of the terminal point of the land boundary.

6. Application of the equidistance method is not obligatory on the Parties either by treaty or as a rule of customary international law.

7. Whether the application of a particular method of delimitation is in accordance with equitable principles is to be tested by its results.

8. The equidistance method is in itself neither a 'rule' nor a 'principle' and

is not necessarily 'equitable' since its application under particular circumstances may lead to inequitable results.

9. A principle or method of delimitation which disregards the *ipso jure* title of a coastal State to the continental shelf constituting the natural prolongation of its land territory is, *ipso facto*, illegal and necessarily inequitable.

10. In the present case, given the particular geographical configuration, the equidistance method would result in a delimitation of the continental shelf which would be inequitable, inappropriate, and not in conformity with international law.

11. The baselines promulgated by Tunisia in 1973 are not opposable to Libya for the purposes of the delimitation and the results of giving effect to them would in any event be inappropriate and inequitable.

12. For the purpose of achieving an equitable delimitation, the whole of the sea-bed and subsoil beyond the low-water mark along the coast of each Party is to be taken into account" ;

in the Counter-Memorial :

*"In view of the facts set forth in Part I of the Libyan Memorial, the statement of the law contained in Part II, and the arguments applying the law to the facts as stated in Part III of the Libyan Memorial ; and*

*In view of the observations concerning the facts as stated in the Tunisian Memorial and statement of law as therein contained, and the additional facts and the statement of law contained in this Counter-Memorial ;*

*Considering that* the Special Agreement between the Parties requests the Court to render its Judgment as to what principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the area of the continental shelf appertaining to the Republic of Tunisia, and requests the Court to take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea ;

*May it please the Court, rejecting all contrary claims and Submissions set forth in the Tunisian Memorial,*

To adjudge and declare as follows :

1. The concept of the continental shelf as the natural prolongation of the land territory into and under the sea is fundamental to the juridical concept of the continental shelf, and a State is entitled *ipso facto* and *ab initio* to the continental shelf which is the natural prolongation of its land territory into and under the sea.

2. The natural prolongation of the land territory of a State into and under the sea which establishes its *ipso jure* title to the appurtenant continental shelf is determined by the whole physical structure of the landmass as indicated primarily by geology.

3. Submarine ridges on the sea-bed, even if and where ascertained, which

do not disrupt the essential unity of the continental shelf provide no scientific basis for a legal principle of delimitation.

4. The 'fishing rights' claimed by Tunisia as 'historic rights', even if and where ascertained, are in any event irrelevant to shelf delimitation in the present case.

5. The direction of natural prolongation is determined by the general geological and geographical relationship of the continental shelf to the continental landmass, and not by the incidental or accidental direction of any particular part of the coast.

6. In the present case the continental shelf off the coast of North Africa is a prolongation to the north of the continental landmass, and therefore the appropriate method of delimitation of the areas of continental shelf appertaining to each Party in this specific situation is to reflect the direction of this prolongation northward of the terminal point of the land boundary.

7. The practical method for the application of the principles and rules of international law in this specific situation is therefore to continue the reflection of the direction of the natural northward prolongation from the outer limit of the territorial sea, at least as far as the parallel where there occurs a significant change in the general direction of the Tunisian coast which might reasonably be required to be taken into account in order to achieve a delimitation respecting the relevant circumstances in accordance with equitable principles, without affecting the rights of States not Parties to these proceedings.

8. Any delimitation should leave as much as possible to each Party all those parts of the continental shelf that constitute its natural prolongation.

9. A delimitation which gives effect to the principle of natural prolongation is one which respects the inherent *ipso jure* rights of each State, and the assertion of such rights is therefore in accordance with equitable principles. A principle or method of delimitation which disregards the *ipso jure* title of a coastal State to the continental shelf constituting the natural prolongation of its land territory is, *ipso facto*, illegal and necessarily inequitable.

10. Whether the application of a particular method of delimitation is in accordance with equitable principles is to be tested by its results.

11. For the purpose of achieving an equitable delimitation, the whole of the sea-bed and subsoil beyond the low-water mark along the coast of each Party is to be taken into account.

12. While the concept of proportionality is not applicable to the geological and juridical appurtenance of continental shelf which confers *ipso jure* entitlement on a State, it may properly be used as a criterion to evaluate the effect of geographical features on a delimitation in marginal areas.

13. Application of the equidistance method is not obligatory on the Parties either by treaty or as a rule of customary international law. The equidistance method is in itself neither a 'rule' nor a 'principle' and is not

necessarily 'equitable' since its application in particular circumstances may lead to inequitable results.

14. In the present case, given the particular geographical configuration, the equidistance method would result in a delimitation of the continental shelf which would be inequitable, inappropriate, and not in conformity with international law.

15. The baselines promulgated by Tunisia in 1973 are not opposable to Libya for the purposes of the delimitation and the results of giving effect to them would in any event be inappropriate and inequitable" ;

in the Reply :

"Libya confirms and maintains the Submissions made in its Memorial and Counter-Memorial, as follows" (whereafter the Submissions as set out in the Counter-Memorial were reproduced).

16. In the course of the oral proceedings, the following Submissions were presented by the Parties :

*On behalf of the Republic of Tunisia :*

at the hearing of 25 September 1981 :

"May it please the Court to adjudge and declare :

I. In reply to the first question put in Article 1 of the Special Agreement of 10 June 1977 :

1. The delimitation contemplated in that Article (hereinafter referred to as 'the delimitation') is to be effected in such a way, taking into account the physical and natural characteristics of the area, as to leave to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other ;

2. The delimitation must not, at any point, encroach upon the area within which Tunisia possesses well-established historic rights, which is defined laterally on the side toward Libya by line ZV-45°, and in the direction of the open sea by the 50-metre isobath ;

3. The delimitation must also be effected in conformity with equitable principles and taking account of all the relevant circumstances which characterize the case, it being understood that a balance must be established between the various circumstances, in order to arrive at an equitable result, without refashioning nature ;

4. The rules defined in paragraphs 1 and 3 above are to be applied taking into account that as a result of the geomorphological peculiarities of the region it has been possible to establish that the natural prolongation of Tunisia certainly extends eastwards as far as the areas between the 250-metre and 300-metre isobaths, and south-eastwards as far as the zone constituted by the Zira and Zuwarah Ridges ;

5. In the areas situated to the east and south-east of the region defined above, the delimitation is to take account of all the other relevant circumstances which characterize the area, and in particular :

- (a) the fact that the eastern coastal front of Tunisia is marked by the presence of a body of islands, islets and low-tide elevations which form a constituent part of the Tunisian littoral ;
- (b) the fact that the general configuration of the coasts of the two States is reproduced with remarkable fidelity by the bathymetric curves in the delimitation area and that this fact is simply a manifestation of the physical and geological structure of the region ; that in consequence the natural prolongation of Tunisia is oriented west-east, and that of Libya southwest-northeast ;
- (c) the potential cut-off effect for Tunisia which could result from the particular angulation of the Tuniso-Libyan littoral in combination with the position on the coast of the frontier point between the two States ;
- (d) the irregularities characterizing the Tunisian coast, resulting from a succession of concavities and convexities, as compared with the general regularity of the Libyan coasts in the delimitation area ;
- (e) the situation of Tunisia opposite States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States.

II. In reply to the second question put in Article 1 of the Special Agreement of 10 June 1977 :

1. The delimitation should lead to the drawing of a line which would not appreciably depart from the lines which result from taking into account the geomorphological factors peculiar to the region, in particular the existence of a crestline determined by the Zira and Zuwarah Ridges, and particularly by the Zira Ridge, and by the general orientation of the natural prolongations of the territories of the two countries toward the abyssal plain of the Ionian Sea.

2. The delimitation line could either :

- (a) be constituted by a line drawn at the Tuniso-Libyan frontier parallel to the bisector of the angle formed by the Tuniso-Libyan littoral in the Gulf of Gabes (see para. 9.25 of the Tunisian Memorial) ; or
- (b) be determined according to the angle of aperture of the coastline at the Tuniso-Libyan frontier, in proportion to the length of the relevant coasts of the two States (see paras. 9.30-9.34 of the Tunisian Memorial) ;

at the hearing of 15 October 1981, the Agent of Tunisia stated that the Government of Tunisia maintained the Submissions made on 25 September 1981.

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

at the hearing of 9 October 1981, the Agent of the Libyan Arab Jamahiriya stated that the Government of the Libyan Arab Jamahiriya confirmed and maintained its Submissions as set forth in the Libyan Counter-Memorial and the Libyan Reply ;

at the hearing of 21 October 1981 the Agent of the Libyan Arab Jamahiriya

stated that the Government of the Libyan Arab Jamahiriya confirmed and maintained unchanged its Submissions as set forth in the Libyan Counter-Memorial.

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17. It is appropriate to begin with a general description of the geographical context of the dispute before the Court, that is to say the general area in which the continental shelf delimitation, which is the subject of the proceedings, has to be effected. However, one of the issues between the Parties has been whether it is necessary, before examining a proposed delimitation, to define the area to be delimited, and if so, what is the effect of such definition. The Parties have also disagreed quite markedly over questions of geographical description, particularly with respect to coastal features ; not so much because there is doubt as to the physical facts (except in some sea-bed areas) but rather because the relative importance of a geographical feature, and judgment whether it constitutes a norm or an exception, may vary – or appear to vary – according to the cartographic scale employed, and according to whether the observer contemplates such feature in a much wider context or concentrates upon it in its immediate surroundings.

18. It should be emphasized that the only purpose of the description which follows is to outline the background, and not to define legally the area of delimitation nor to say how the Court views the various geographical features for the purposes of their impact on the legal situation. To the extent that the definition of any feature may command a conclusion of law material to the Court's decision, the definition will be provided at the appropriate point in this Judgment. Similarly, the only purpose of Map No. 1 annexed to the present Judgment is to give a general picture of the geographical context of the dispute, and no particular significance attaches to the choice of scale or the presence or absence of any particular geographical feature.

19. The Republic of Tunisia (hereinafter called "Tunisia") and the Socialist People's Libyan Arab Jamahiriya (hereinafter called "Libya") are both situate on the northern coastline of the African Continent, fronting on the Mediterranean Sea. The more westerly of the two States is Tunisia, lying approximately between 30° N and 38° N and between 7° E and 12° E. To the east and south-east of it lies Libya, approximately between 19° N and 34° N and between 9° E and 25° E. The eastern coast of Tunisia more or less coincides with the western end of a roughly rectangular indentation, longer from west to east than its depth from north to south, in the northern coastline of Africa, the eastern end of which is constituted by the Gulf of Sirt on the Libyan coast. Thus not far west of the point (Ras Ajdir) at which the land frontier between Libya and Tunisia commences on the sea coast, there is a change in the direction of the coastline. If one follows the coast of Libya towards Tunisia, for some distance before and after the frontier point, the general line of the coast is somewhat north of

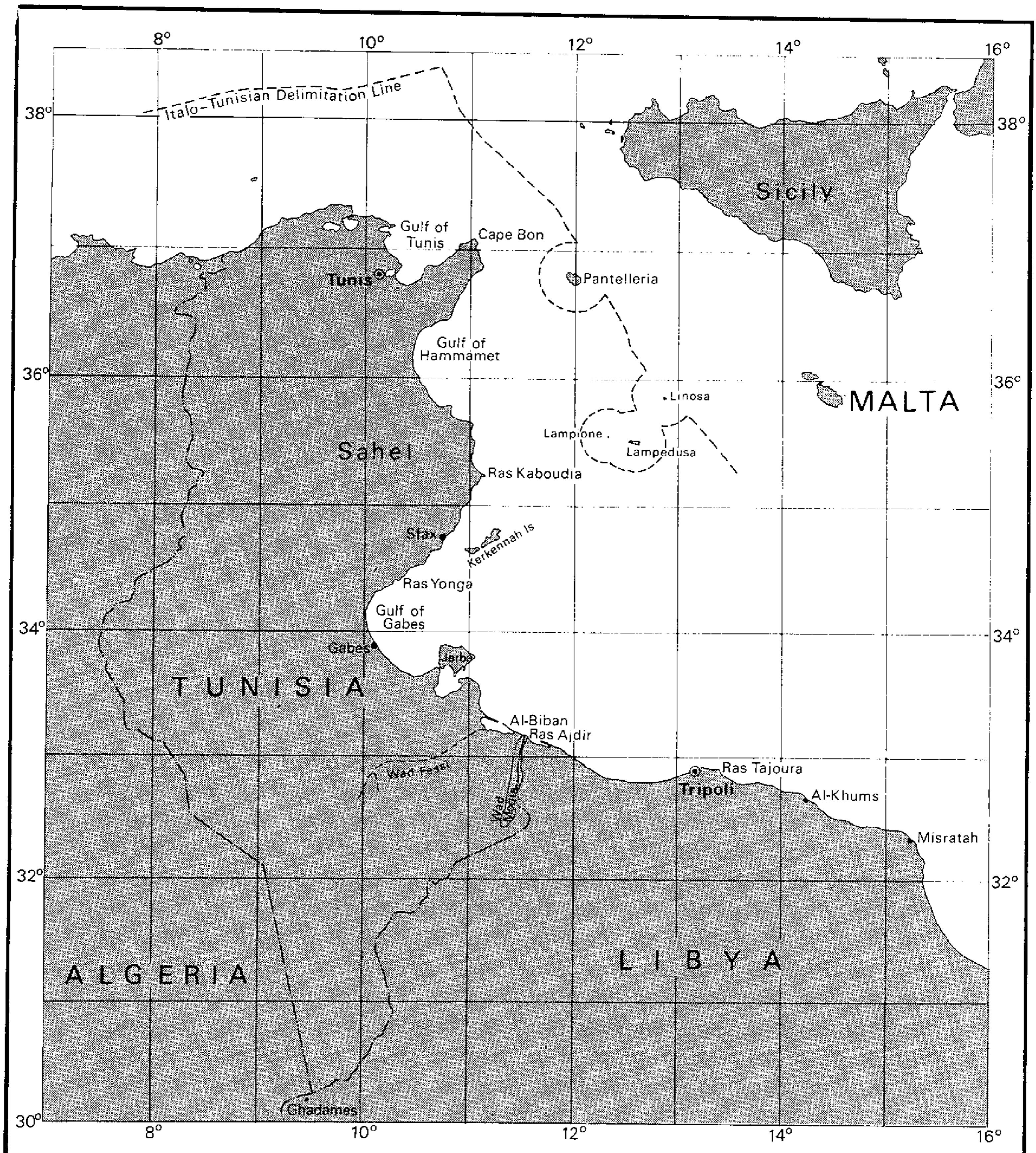
west ; beyond the frontier point, after passing the island of Jerba, one enters the concavity of the Gulf of Gabes, which leads round to a length of coastline running roughly north-east to Ras Kaboudia. Then follows the Gulf of Hammamet, the protrusion (roughly north-eastwards) of Cape Bon, and the Gulf of Tunis, before the final section of the Tunisian coast, which runs again somewhat north of west, though some four degrees of latitude further to the north than the coast on each side of Ras Ajdir.

20. The area in which a continental shelf delimitation will have to be effected is that lying, very broadly, to the north of the coast on each side of Ras Ajdir, bounded on the west by part of the Tunisian coast, but unconfined on the east by any visible feature or agreed delimitation line. Whether the area to be considered includes the territorial sea (claimed to be a breadth of 12 miles by each of the Parties) or any part thereof, is a question in controversy between the Parties, as is the question of the baselines from which Tunisia claims to measure its territorial sea, and that of certain historic rights claimed by Tunisia. So far as limits seawards are concerned, no delimitation agreement has been concluded by either Party with Malta ; Tunisia has concluded an Agreement, dated 20 August 1971, with Italy, effecting the delimitation of the continental shelf between the two countries, primarily on a median-line basis, but with special arrangements for the Italian islands of Lampione, Lampedusa, Linosa and Pantelleria. The line so defined is indicated on Map No. 1 annexed to this Judgment.

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21. While the Parties have not concluded any agreement delimiting any part of the continental shelf, or as to the lateral boundary between their respective areas of territorial sea, this has not prevented a certain amount of exploration and exploitation of the continental shelf. Each Party has granted licences or concessions in respect of shelf areas regarded by the Party concerned as necessarily appertaining to itself, and a considerable amount of drilling has taken place. On the Libyan side, the legislative authorization for this process was Petroleum Law No. 25, and Petroleum Regulation No. 1 made in virtue thereof, both of which came into effect on 19 July 1955. However, initial development took place onshore, and it was only in 1968 that the first offshore concession was granted by Libya. Between 1968 and 1976, 15 wells were drilled in an offshore concession area, several of which proved productive. In the meantime, Tunisia had granted its first offshore concession in 1964. A concession granted in 1972 was expressed to be bounded on the south-east by "the maritime boundary between Tunisia and Libya", the position thereof being unspecified ; and in 1974 the relevant concession boundary was specified to be part of

"the equidistance line . . . determined in conformity with the principles of international law pending an agreement between Tunisia and Libya defining the limit of their respective jurisdictions over the continental shelf".



MAP NO. 1

In the same year Libya granted a concession the western boundary of which was (consistently with a previous concession) a line drawn from Ras Ajdir at some 26° to the meridian, that is to say, further west than the equidistance line, so that the result was an overlapping of claims in an area some 50 miles from the coasts. Following protests in 1976 by each Government at the activities of the other, diplomatic discussions led to the signing of the Special Agreement of 10 June 1977 by which the matter was to be brought before the Court. Even after the proceedings before the Court had begun, further activities by each Party led to protests by the other.

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22. Each of the Parties filed its own French or English translation, set out in paragraphs 2 and 4 above, of the original Arabic text of the Special Agreement on the basis of which the present dispute has been brought before the Court for settlement. For convenience, the text that will hereafter be referred to in the present Judgment will be, except where otherwise indicated, the English translation made by Libya, which was in turn translated by the Registry into French. That English translation is also generally consistent with the translation made by the Secretariat of the United Nations following registration of the Special Agreement pursuant to Article 102 of the Charter.

23. Under Article 1 of the Special Agreement, the Court is required first to state "the principles and rules of international law [which] may be applied for the delimitation of the area of the continental shelf" appertaining to each of the two countries respectively. The Court is specifically called upon, in rendering its decision, to take account of the following three factors, expressly mentioned in the Special Agreement : (a) equitable principles ; (b) the relevant circumstances which characterize the area ; and (c) the new accepted trends in the Third United Nations Conference on the Law of the Sea. While the Court is, of course, bound to have regard to all the legal sources specified in Article 38, paragraph 1, of the Statute of the Court in determining the relevant principles and rules applicable to the delimitation, it is also bound, in accordance with paragraph 1 (a), of that Article, to apply the provisions of the Special Agreement. Two of the three factors referred to are, however, in complete harmony with the jurisprudence of the Court, as appears from its Judgment in the *North Sea Continental Shelf* cases, in which it held that international law required delimitation to be effected "in accordance with equitable principles, and taking account of all the relevant circumstances" (*I.C.J. Reports 1969*, p. 53, para. 101 (C) (1)). With regard to the third, the "new accepted trends", the Court would recall what it had to say on the subject of the work of the Third United Nations Conference on the Law of the Sea in the *Fisheries Jurisdiction* cases (*I.C.J. Reports 1974*, p. 23, para. 53, and p. 192, para. 45). It must however take note that the law-making process in this respect has now progressed much further.

24. The Court is thus authorized by the Special Agreement to take into account "new accepted trends" which can be considered, as the term "trends" suggests, as having reached an advanced stage of the process of elaboration. The Third United Nations Conference on the Law of the Sea has however not yet come to an end. The draft convention of 28 August 1981 is not yet the final text to be submitted for signature. It would no doubt have been possible for the Parties to have identified in the Special Agreement certain specific developments in the law of the sea of this kind, and to have declared that in their bilateral relations in the particular case such rules should be binding as *lex specialis*. The Parties have however not been so specific, and in the light of their replies to a question put by a Member of the Court on the point, it does not appear that it was their intention to go so far as to impose additional or supplementary rules on themselves in this way in the context of this case. According to Tunisia, the "trends", so far as they do not constitute general international law, are to be taken into account as "factors in the interpretation of the existing rules". In any event, however, any consideration and conclusion of the Court in connection with the application of the "trends" is confined exclusively to the legal relations of the Parties in the present case. Furthermore, the Court would have had *proprio motu* to take account of the progress made by the Conference even if the Parties had not alluded to it in their Special Agreement ; for it could not ignore any provision of the draft convention if it came to the conclusion that the content of such provision is binding upon all members of the international community because it embodies or crystallizes a pre-existing or emergent rule of customary law.

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25. A further provision in the Special Agreement requires the Court to "clarify the practical method for the application of these principles and rules", that is to say, those it finds applicable to the delimitation, "in this specific situation, so as to enable the experts of the two countries to delimit these areas without difficulties". In the instant case, the Parties have thus not reserved the right to choose the method to be adopted ; instead, they have asked the Court to determine the method for them. In the course of the oral argument, both Parties agreed that in this respect the present case would seem to lie between the *North Sea Continental Shelf* cases of 1969, in which the Court was asked only to indicate what principles and rules of international law were applicable to the delimitation, and the Franco-British Arbitration on the Delimitation of the Continental Shelf of 1977, in which the court of arbitration was requested to decide what was the course of the boundary between the portions of the continental shelf appertaining to each of the Parties in the relevant area.

26. In this respect, a preliminary question which falls for decision by the Court arises out of a disagreement between the Parties as to the interpretation of Article 1 of the Special Agreement, and to the scope of the task

entrusted to the Court by that text. From one aspect, the dispute is whether Article 1 submits to the Court two distinct questions, namely, first, what are the applicable rules and principles of international law, and secondly, what is the practical method for their application ; or whether these are simply two facets of a single question. From another aspect, and expressed in more practical form, the dispute relates to the degree of precision of the judgment of the Court, and the corresponding extent or absence of freedom of the Parties and their experts in defining the line of delimitation.

27. According to Tunisia, the Court is required to specify precisely the practical way in which the principles and rules should be applied. If a choice of method is likely to give occasion for disagreement, the Court itself is to decide the option from both the legal and practical points of view, so as to avoid any differences of opinion which might arise between the experts of the two Parties ; only a *technical* task of application would remain, "leaving no room for any difficulty to arise between the two countries' experts in point of meaning or of method". The Court is required to take into account all the elements of fact and law regarding the practical methods and instruments to be used, up to the ultimate point before the technical work, the calculation of the co-ordinates of the points through which the line is to pass and the actual plotting of the line upon the chart.

28. The Libyan view, however, is that the Court is *not* authorized to carry the matter "right up to the ultimate point before the purely technical work". In general, Libya clearly argues in favour of a more restrictive interpretation of the Special Agreement. Its contention is that in clarifying the "practical method" for the application of the principles and rules of international law, the Court is to indicate the additional considerations and factors which have to be taken into account and balanced, but has not been invited to set out the specific method of delimitation itself. This is the basis of the disagreement about the translation of the Arabic text of the Special Agreement, inasmuch as Libya contends that the inclusion by Tunisia of the words "avec précision" in the French translation is unjustified. This controversy concerns the translation of the Arabic word rendered by Libya as "clarify" and by Tunisia as "clarifier avec précision", in the phrase quoted in paragraph 25 above. Another aspect of the controversy is about the meaning of the phrase "practical method" or "practical way", which Tunisia interprets as synonymous with "method of delimitation" and Libya as less specific or precise.

29. The Court does not consider that there is any substantial distinction between a "method of delimitation" and a "practical method for the application of . . . principles and rules in this specific situation, so as to enable the experts of the two countries to delimit the area". In any event a careful analysis of the pleadings and arguments of both Parties on the point leads the Court to conclude that there is here no fundamental difference of opinion between them. There is only, in the final analysis, a difference of emphasis as to the respective roles of the Court and of the

experts of the two countries. The Court, therefore, considers the whole controversy as of minor importance, since it has in any case to be precise as to what it decides, and cannot agree with the repeated reference of Libya to "guidance" as defining the requirement of what the Court should specify. The Court is of course not asked to render an advisory opinion in this case, in the sense of Article 65 of the Statute and Article 102 of the Rules of Court. What the Court is asked to do is to render a judgment in a contentious case in accordance with Articles 59 and 60 of the Statute and Article 94, paragraph 2, of the Rules of Court, a judgment which will have therefore the effect and the force attributed to it under Article 94 of the Charter of the United Nations and the said provisions of the Statute and the Rules of Court.

30. Articles 2 and 3 of the Special Agreement make it clear that the Parties recognize the obligation to comply with the Judgment of the Court. Under Article 2 of the Special Agreement, for the purpose of implementing the Judgment of the Court, both Parties are required to meet following its delivery, in order to apply the principles and rules which the Court will have defined regarding the delimitation of the area of the continental shelf, with a view to the conclusion of a treaty in this respect. They are to meet as quickly as possible after the Judgment is given. This is implied by Article 3 which contemplates that the Agreement between the Parties should normally be reached within three months following the Judgment. The Court's view is that, at that stage, there will be no need for negotiation between experts of the Parties regarding the factors to be taken into account in their calculations, since the Court will have determined that matter. The only task remaining will be the technical one making possible the drafting of the treaty incorporating the result of the work by the experts. There is no need for the Court to make any further general finding as to the interpretation of the Special Agreement in this respect ; the degree of precision which is, in its view, called for, will be apparent when it comes to indicate the practical method for application of the relevant principles and rules, later in this Judgment.

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31. Article 3 of the Special Agreement, just referred to, provides for the possibility that, in default of agreement, the Parties "shall together go back to the Court and request any explanations or clarifications which would facilitate the task of the two delegations" in effecting the delimitation. This provision has also provoked disagreement between the Parties, since Libya has expressed the view that "the power under that Article is not confined to a mere interpretation of the Judgment", as contemplated by Article 60 of the Statute and Article 98 of the Rules of Court. Tunisia has objected to this reading of the Special Agreement, contending that it would have the effect of depriving the Judgment of its "final" character, in violation of the Statute of the Court. The point might have been regarded as an academic one at the present stage of the proceedings, were it not that the Parties'

interpretations of Article 3 of the Special Agreement are relied upon to support their respective interpretations of Articles 1 and 2. The Court has however not found it necessary for the purpose of interpreting these Articles to arrive at a determination of the correct interpretation of Article 3. Such a determination would in fact be premature ; if the Parties should decide to come back to the Court, any request based upon Article 3 of the Special Agreement will be dealt with by the Court at that time.

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32. The character of the sea-bed of the area within which a delimitation has to be effected has been the subject of very abundant examination by the Parties, and of detailed scientific studies by their experts during the written and oral proceedings. At the outset it will be sufficient to note that this sea-bed area is part of a broader submarine region, i.e., the submerged portion of a geomorphological entity referred to by the Parties as the Pelagian Block (or Pelagian Basin), underlying the sea area known as the Pelagian Sea. It is agreed by the Parties that this entity also includes land areas within their territories, notably eastern Tunisia south of the Gulf of Hammamet, and the plain of the Jeffara in south-eastern Tunisia and northern Libya. Without entering into the question of the correct geological classification of any feature, the Court notes that this broader submarine region is inclined at a gentle slope from west to east ; it extends on the north at least as far as a series of large depressions (the Troughs of Pantelleria, Malta and Linosa), and on the east as far as a change in slope of the sea-bed discussed in argument under the names of the "Malta-Misratah Escarpment" or the "Ionian Flexure" (approximately 15° east). A feature to which Tunisia has attached importance is a submarine valley or depression referred to as the "Tripolitanian Furrow", running roughly parallel to the Libyan coast between longitude 13° and 15° east approximately, and which Tunisia regards as a continuation under the sea of the Gulf of Gabes. Features the existence or importance of which are particularly controversial between the Parties include : two submarine ridges, running in an approximately west-east direction, approximately on the parallels of 33° 20' and 33° 30' north, called by Tunisia the Zira and Zuwarah Ridges ; certain submarine cliffs (*falaises*) or sharply marked declivities, at depths of some 150 to 200 metres, marking the edge of an area called the "Tunisian Plateau" east of the Kerkennah Islands and the "Melita-Medina Plateau" covering the banks of Melita and Medina, between 34° and 35° north and approximately 14° 30' and 15° 30' east. A feature lying outside the Pelagian Block area, which Tunisia at least regards as of possible relevance to the delimitation, is an area of markedly greater depth (some 4,000 metres) east-south-east of Malta, called by Tunisia the "Ionian Abyssal Plain".

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33. It is evident that the Pelagian Block is a much wider region than that which can possibly be available to be delimited between the Parties. The submerged part of the Block situated under the Pelagian Sea comprises not only areas which are involved in the decision of the present case, but also regions which are of no concern with regard to the claims in dispute. Furthermore, the presence of the territories of other States, including the Pelagian Islands, and Pantelleria, belonging to the Pelagian Block and abutting on the Pelagian Sea must not be lost sight of. The northern and north-eastern parts of the Pelagian Block, where conflicting claims of the Parties exist, are situated in a region where claims of other States regarding the same areas have been made or may be made in the future. The Court has no jurisdiction to deal with such problems in the present case and must not prejudge their solution in the future.

34. The need for delimitation of areas of continental shelf between the Parties can only arise within the submarine region in which claims by them to the exercise of sovereign rights are legally possible according to international law. Those claims relate, as far as the areas near the coasts are concerned, to regions which undoubtedly appertain to the one or the other Party. However, their conflicting claims also overlap in large parts, though not the whole, of the sea-bed of the Pelagian Sea. It is with reference to this latter area therefore that the Court will have to indicate the legal principles and rules and the practical method of delimitation to be employed in the present case.

35. Libya has suggested taking into account a region which it calls the "area of concern" bounded, on its eastern side, by a line joining the Italian island of Lampedusa to the point of the same longitude ( $12^{\circ} 36'$ ) on the outer boundary of the Libyan territorial sea. It has not indicated any northern limit of this area, but on the diagrams in its pleadings the lines indicating the direction which, according to Libya, the delimitation should take run almost as far north as the island of Lampedusa. Tunisia, for its part, rejects the Libyan suggestion of an area of concern as devoid of legal basis or real utility, and because such region cannot be defined in the north and north-eastern part of the Pelagian Sea by reference to the rights of third States which are as yet undetermined. Tunisia agrees, however, that the region in which the delimitation must be drawn is confined to the Pelagian Sea, which is bordered by the part of the coasts of Tunisia and Libya which may be described as adjacent, on each side of the frontier at Ras Ajdir. To the north, Tunisia regards as not relevant areas bordering on the Italian-Tunisian delimitation line ; to the east, the Court notes that the "sheaf of lines" drawn by Tunisia (to be examined in more detail below), as representing appropriate lines of delimitation, extend on the diagrams in the Tunisian pleadings approximately as far as the meridian of  $15^{\circ}$  east. The Court considers that, for present purposes, these positions of the Parties will suffice to define the general area relevant for the delimitation.

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36. Despite its comparatively recent appearance among the concepts of international law, the concept of the continental shelf, which may be said to date from the Truman Proclamation of 28 September 1945, has become one of the most well known and exhaustively studied, in view of the considerable economic importance of the exploitation activities effected under its aegis. There is therefore no need for the Court to dwell on its nature and development, particularly since, as the Parties themselves have noted, there has proved to be a considerable measure of agreement between them as to the principles and rules of international law which in general fall to be applied to a delimitation of areas of continental shelf appertaining to two adjacent States which (as is the case of Tunisia and Libya) are not parties to the 1958 Geneva Convention on the Continental Shelf. Since however the "principles and rules of international law which may be applied" for the delimitation of continental shelf areas must be derived from the concept of the continental shelf itself, as understood in international law, the Parties themselves found it necessary, in the course of the presentation of their arguments to the Court with a view to defining the rules and principles for the application of which each of them contended, to discuss extensively the concept of the continental shelf. In particular, they both devoted much attention to a consideration which they regarded as not only pertaining to the essence of the continental shelf but also a major criterion for its delimitation, namely the "fundamental concept of the continental shelf as being the natural prolongation of the land domain" (*I.C.J. Reports 1969*, p. 30, para. 40). The Parties are in agreement in the degree of importance they attribute to this concept. The essential issues in dispute between them relate to the manner in which the principles and rules deriving from it should be applied to the particular circumstances of the present case, and to the determination of the factors which have to be taken into account in order to effect the delimitation.

37. For both Parties, the starting point for a discussion of the applicable principles and rules has been the Court's Judgment of 20 February 1969 in the *North Sea Continental Shelf* cases. The Parties both take the view that, as in those cases, the delimitation in the present case has to be effected

"by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other",

and that among the factors to be taken into account in the negotiations contemplated between the Parties was

"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 measured in the general direction of

the coastline" (*I.C.J. Reports 1969*, pp. 53-54, para. 101 (C) (1) and (D) (3)).

38. The present case however illustrates how the application of the principles and rules enunciated, and the factors indicated, by the Court in 1969 may lead to widely differing results according to the way in which those principles and rules are interpreted and applied, and the relative weight given to each of those factors in determining the method of delimitation. Yet here also the Parties are, to a lesser extent, in accord : for both Parties it is the concept of the natural prolongation of the land into and under the sea which is commanding. Where they differ in this respect is first, as to the meaning of the expression "natural prolongation", that is to say by reference to what terrestrial unit (continental landmass or State territory), and by the application of what criteria, it is to be determined whether a given area is the natural prolongation of the one State or of the other. Secondly, while there is also broad agreement between the Parties that a delimitation which leaves as much as possible to each State those parts of the continental shelf that constitute its natural prolongation will necessarily be in accordance with equitable principles, they differ in particular as to the extent to which considerations other than the dictates of geography, geomorphology and geology – and specifically considerations of equity – operate to determine what is the natural prolongation of each State.

39. It is in any event accepted on both sides that equitable considerations would not justify a delimitation whereby one State was permitted to encroach on the natural prolongation of the other. However, the relationship between the concept of the natural prolongation and the need, emphasized by the Court in 1969, for any delimitation to be effected in accordance with equitable principles is conceived in a different way by each Party. Since Libya contends that the natural prolongation is, at least in this case, determinable as a matter of scientific fact by the application of geological criteria, equitable principles should play no role in identifying appurtenant continental shelf based upon the juridical concept of natural prolongation. Furthermore, for Libya a delimitation which gives effect to the principle of natural prolongation is necessarily in accordance with equitable principles, since it respects the inherent rights of each State. Tunisia agrees that there is no necessary conflict between natural prolongation and equity, but for a different reason : "the satisfying of equitable principles in a particular geographical situation" is part of the process of "the identification of the natural prolongation". The issue between the Parties in this respect is whether a natural prolongation defined scientifically without reference to equitable principles is truly a "natural prolongation" for the purpose of delimitation.

40. For the determination, with the aid of the physical sciences, of the natural prolongation of a State's land territory into and under the sea, the terrestrial reference unit is, in the contention of Libya, the continental landmass ; the "incidental or accidental direction" of any particular coast

of the continent is in principle to be disregarded. Furthermore, in Libya's view, what has to be ascertained is the direction of the natural prolongation, rather than the area of sea-bed which constitutes the prolongation ; and the appropriate method of delimitation is to reflect the direction of the natural prolongation by drawing a line in that direction from the terminal point of the land boundary. Tunisia, for its part, accepts the idea that the "direction" of natural prolongation may be used for the purpose of determining the orientation of the delimitation line ; however, it maintains that it is the prolongation of the land territory of the individual States which is in question, not that of the continent as a whole. For Tunisia, to adopt the whole landmass as terrestrial reference unit, and on that basis to exclude from consideration variations in the direction of the coastline, is to allow geology alone to determine the natural prolongation, whereas in Tunisia's view considerations of geography, geomorphology and bathymetry are at least as relevant to the question as are those of geology.

41. Both Parties consider that the "continental shelf" is an institution of international law which, while it remains linked to a physical fact, is not to be identified with the phenomenon designated by the same term — "continental shelf" — in other disciplines. It was the continental shelf as "an area physically extending the territory of most coastal States into a species of platform" which "attracted the attention first of geographers and hydrographers and then of jurists" (*I.C.J. Reports 1969*, p. 51, para. 95) ; but the Court notes that at a very early stage in the development of the continental shelf as a concept of law, it acquired a more extensive connotation, so as eventually to embrace any sea-bed area possessing a particular relationship with the coastline of a neighbouring State, whether or not such area presented the specific characteristics which a geographer would recognize as those of what he would classify as "continental shelf". This widening of the concept for legal purposes, evident particularly in the use of the criterion of exploitability for determining the seaward extent of shelf rights, is clearly apparent in the records of the International Law Commission and other *travaux préparatoires* of the 1958 Geneva Convention on the Continental Shelf.

42. It will be recalled that the definition of the continental shelf in Article 1 of the 1958 Convention is as follows :

"For the purpose of these articles, the term 'continental shelf' is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas : (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."

While the 200-metre limit was chosen partly as corresponding approximately to the normal outer limit of the shelf in the physical sense, the

definition of the outer limit of the shelf by reference to the possibility of exploitation of the sea-bed is clearly open-ended, and emphasizes the lack of identity between the legal concept of the continental shelf and the physical phenomenon known to geographers by that name. This definition, which was according to its terms expressed to be for the purpose of a convention text, was considered by the Court in its 1969 Judgment to have been one of those regarded in 1958 as "reflecting, or as crystallizing, received or at least emergent rules of customary law relative to the continental shelf" (*I.C.J. Reports 1969*, p. 39, para. 63). The fact that the legal concept, while it derived from the natural phenomenon, pursued its own development, is implicit in the whole discussion by the Court in that case of the legal rules and principles applicable to it.

43. It was the Court itself in its 1969 Judgment which gave currency to the expression "natural prolongation" as part of the vocabulary of the international law of the sea. It should, however, first be recalled that the geographical and other physical circumstances of that case were different from those of the present case. In particular the whole relevant area of the North Sea consisted of continental shelf at a depth of less than 200 metres. Secondly, it should be borne in mind that, as the Court itself made clear in that Judgment, it was engaged in an analysis of the concepts and principles which in its view underlay the actual practice of States which is expressive, or creative, of customary rules. The concept of natural prolongation thus was and remains a concept to be examined within the context of customary law and State practice. While the term "natural prolongation" may have been novel in 1969, the idea to which it gave expression was already a part of existing customary law as the basis of the title of the coastal State. The Court also attributed to that concept a certain role in the delimitation of shelf areas, in cases in which the geographical situation made it appropriate to do so. But while the idea of the natural prolongation of the land territory defined, in general terms, the physical object or location of the rights of the coastal State, it would not necessarily be sufficient, or even appropriate, in itself to determine the precise extent of the rights of one State in relation to those of a neighbouring State.

44. Both Parties to the present case have in effect based their argument upon the idea that because a delimitation should, in accordance with the Judgment in the *North Sea Continental Shelf* cases, leave to each Party "all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea" (*I.C.J. Reports 1969*, p. 53, para. 101 (C) (1)), therefore the determination of what constitutes such natural prolongation will produce a correct delimitation. The Court in 1969 did not regard an equitable delimitation and a determination of the limits of "natural prolongation" as synonymous, since in the operative clause of its Judgment, just quoted, it referred only to the delimitation being effected in such a way as to leave "as much as possible" to each Party the shelf areas constituting its natural prolongation. The Court also clearly distinguished

between a principle which affords the justification for the appurtenance of an area to a State and a rule for determining the extent and limits of such area : “the appurtenance of a given area, considered as an entity, in no way governs the precise delimitation of its boundaries” (*I.C.J. Reports 1969*, p. 32, para. 46). The Court is therefore unable to accept the contention of Libya that “once the natural prolongation of a State is determined, delimitation becomes a simple matter of complying with the dictates of nature”. It would be a mistake to suppose that it will in all cases, or even in the majority of them, be possible or appropriate to establish that the natural prolongation of one State extends, in relation to the natural prolongation of another State, just so far and no farther, so that the two prolongations meet along an easily defined line. Nor can the Court approve the argument of Tunisia that the satisfying of equitable principles in a particular geographical situation is just as much a part of the process of the identification of the natural prolongation as the identification of the natural prolongating is necessary to satisfy equitable principles. The satisfaction of equitable principles is, in the delimitation process, of cardinal importance, as the Court will show later in this Judgment, and 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 ; but the two considerations — the satisfying of equitable principles and the identification of the natural prolongation — are not to be placed on a plane of equality.

45. Since the Court gave judgment in the *North Sea Continental Shelf* cases, a period has elapsed during which there has been much State practice in this field of international law, and it has been under very close review, particularly in the context of the Third United Nations Conference on the Law of the Sea. The term “natural prolongation” has now made its appearance in Article 76 of the draft convention on the Law of the Sea. At this point, the Court must thus turn to the question whether principles and rules of international law applicable to the delimitation may be derived from, or may be affected by, the “new accepted trends” which have emerged at the Third United Nations Conference on the Law of the Sea.

46. The Court takes note that the request contained in the Special Agreement for account to be taken of accepted trends is not considered by the Parties themselves as authorizing it to decide *ex aequo et bono*, or to regard these trends as being necessarily principles and rules of general international law. The Court has first to ascertain how the Parties themselves identify the trends at the Third Conference on the Law of the Sea which are to be regarded as accepted. It has been indicated by the Parties that they consider as trends relevant to the present case the provisions which have been incorporated in the successive versions of the Informal Composite Negotiating Text (ICNT), and in the draft convention on the Law of the Sea developed from that text. Both Parties refer to the proce-

dure laid down in United Nations document A/CONF.62/62 of 14 April 1978 which defines, in paragraphs 10 and 11, the conditions which have to be fulfilled in order to introduce provisions into the ICNT and, since it changed its name, into the draft convention.

47. Article 76 and Article 83 of the draft convention are the provisions of the draft convention prepared by the Conference which may be relevant as incorporating new accepted trends to be taken into account in the present case. According to Article 76, paragraph 1,

“the continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

Paragraphs 2 to 9 of the Article, which deal with details of the outer limits of the continental shelf, can be disregarded for the purposes of the present Judgment. While paragraph 10 states that the provisions of the Article “are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts”, the definition given in paragraph 1 cannot be ignored. That definition consists of two parts, employing different criteria. According to the first part of paragraph 1 the natural prolongation of the land territory is the main criterion. In the second part of the paragraph, the distance of 200 nautical miles is in certain circumstances the basis of the title of a coastal State. The legal concept of the continental shelf as based on the “species of platform” has thus been modified by this criterion. The definition in Article 76, paragraph 1, also discards the exploitability test which is an element in the definition of the Geneva Convention of 1958.

48. The principle that the natural prolongation of the coastal State is a basis of its legal title to continental shelf rights does not in the present case, as explained above, necessarily provide criteria applicable to the delimitation of the areas appertaining to adjacent States. In so far as Article 76, paragraph 1, of the draft convention repeats this principle, it introduces no new element and does not therefore call for further consideration. In so far however as the paragraph provides that in certain circumstances the distance from the baseline, measured on the surface of the sea, is the basis for the title of the coastal State, it departs from the principle that natural prolongation is the sole basis of the title. The question therefore arises whether the concept of the continental shelf as contained in the second part of the definition is relevant to the decision of the present case. It is only the legal basis of the title to continental shelf rights – the mere distance from the coast – which can be taken into account as possibly having consequences for the claims of the Parties. Both Parties rely on the principle of natural prolongation : they have not advanced any argument based on the

"trend" towards the distance principle. The definition in Article 76, paragraph 1, therefore affords no criterion for delimitation in the present case.

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49. With regard to the delimitation of the continental shelf between States with opposite or adjacent coasts, Article 83, paragraph 1, of the Informal Composite Negotiating Text of the Third United Nations Conference on the Law of the Sea (A/CONF.62/WP.10/Rev.2) provided that :

"The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Such an agreement shall be in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned."

But, on 28 August 1981, the President of the Conference presented to the Conference in Geneva the following proposal to replace Article 83, paragraph 1 :

"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."

In accordance with the decision taken by the Conference, this proposal has now acquired the status of part of the official draft convention before the Conference.

50. 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 ; this is a matter which the Court will have to consider further at a later stage. For the present, the Court notes that the new text does not affect the role of the concept of natural prolongation in this domain.

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51. Having thus set the concept of delimitation by identification of natural prolongation in what the Court considers to be its proper perspective, the Court will proceed to examine the contentions of the Parties as to its application in the present case. In view of the emphasis placed upon it, the Court will first examine the contentions of the Parties as to the con-

tribution made to the identification of their respective areas of natural prolongation by geological study of the area to be delimited and of the neighbouring coastal regions of the two States. The Court will for this purpose briefly summarize the arguments which the Parties have based upon the geological structure and history of the area, and the major successive stages of its geological development as expounded by the counsel, scientific advisers and experts of the two Parties.

52. To appreciate the Libyan argument, it is first necessary to set out briefly a comparatively recently developed theory known as "plate tectonics", presented to the Court by Libya. Before doing so, however, the Court would mention that Tunisia has criticized the Libyan argument for its reliance upon that theory. However, the Court notes that the experts consulted by Tunisia agree with the international geological community on the basic principles of plate tectonics ; Tunisia has rather disputed some of the deductions sought to be made from the theory, and contended that the reference to it is irrelevant in the present case. According to this theory, the outermost structural shell of the earth, the lithosphere, is segmented by a network of faults into a number of "plates", which rest upon the next shell of the earth, the asthenosphere, the boundary between lithosphere and asthenosphere being defined in terms of temperature (by the isotherm of 1,350°C). The plates making up the lithosphere are about 125 kilometres thick ; they are, for practical purposes, treated as being rigid. The actual surface of the earth is the continental crust, generally some 30 to 40 kilometres thick ; the remainder of the lithosphere is classified as subcrustal. The asthenosphere is not rigid, but is an area in which flow can occur. Each of the plates making up the lithosphere can and does move in relation to the asthenosphere beneath and in relation to the other plates ; thus at the points or lines of contact between the plates, various kinds of relative motion may occur.

53. It is the occurrence of this latter phenomenon in late Triassic or early Jurassic time (some 195 to 170 million years ago) which is regarded by Libya as the key factor in geological terms in this case ; the plate underlying the continent of Africa, and the Eurasian plate, underlying (*inter alia*) modern Europe, then moved apart. When this "rifting" process occurs, the continental crust and subcrustal lithosphere are stretched ; this disturbs the equilibrium of the relationship between the lithosphere and the underlying asthenosphere (the isostatic balance) and the consequence is both a subsidence of the thinned area, and a correlative upward movement of the immediately underlying asthenosphere, and thus a cooling of the upper part of the asthenosphere, leading to a contraction (densification) of the material of the lithosphere. This contraction causes the crust and lithosphere to subside further ; the total subsidence results in the formation of a depression or basin, which frequently becomes an ocean, in which successive sedimentary layers are deposited.

54. According to Libya, the Pelagian Block derives its essential nature

from this process, and possesses the characteristic features resulting from it, namely : the "fall line", a line at which the continental basement begins to drop or dip in the direction of the sea ; then, further seaward, a progressive thickening of the sedimentary deposits forming or underlying the coastal plain, in the direction of an area known as the "hinge zone" where the continental basement falls away in a series of faults and flexures. The hinge zone marks the line along which the bending and stretching of the continental crust occurred. In the context of the present case the Court's attention has been called to the "Permian hingeline" which runs in an east-west direction through southern Tunisia and northern Libya ; in the region with which the case is concerned, it is represented by the feature known as the Jeffara flexure.

55. Successive shorelines of the ocean in the basin created by this process of rifting and subsidence are considered by geologists to have run approximately east-west at a latitude further to the south than the present Libyan coast. The northern part of what is now Tunisia therefore at this time formed part of a long narrow ocean basin, extending originally from the present-day Sirt Basin to the Atlantic Ocean south of the Straits of Gibraltar. Very considerable thicknesses of sedimentary deposits accumulated in the basin, including some of those affording hydrocarbon resources. Subsequently, however, during the Tertiary era, between 53 and 18 million years ago, the movement of the African plate continued ; the north-western area of the African plate moved towards the Eurasian plate. The collision of the plates produced an orogenic zone (an area of mountain building) of a generally east-west trend, inasmuch as the compression resulting from the collision resulted in the folding (mainly during Middle Cenozoic time), and throwing up of (*inter alia*) the Atlas mountains on the African Continent. As a result of the overriding of one plate by another, a subduction zone was also produced, trending east-west. At some stage, apparently prior to the folding which produced the Atlas mountains, the area which was to become present-day Tunisia was crossed from north to south by a fault axis (the "N/S Dorsale" or "north/south axis"), a strip of less subsidence than neighbouring areas and thus featuring a smaller accumulation of sediments. None of these developments however affected the area of present-day Libya, which lies on the stable craton or Saharan platform, and not within zones either of orogeny or subduction.

56. The above is a simplified account of what was, according to the Parties, a much more complicated evolution ; and the subsequent development of the western Mediterranean area, while not affecting the basic relationship of the areas now under consideration, was also highly complicated. Enough has however been said to indicate why the land territories of Tunisia and Libya adjoining the Pelagian Block comprise two distinct areas of different geological history, and consequently presenting markedly different geological and geographical features. Essentially, the difference between these areas is that the Saharan platform to the south of the Block, covering the greater part of Libya and the southern portion of

Tunisia, is made up of comparatively thin geological formations which have never been subjected to regular detailed folding. The Atlas area to the west of the "north/south axis", extending over the whole of western Tunisia, is however constituted by thick sedimentary deposits, which have undergone very extensive deformation in the process of development of the Atlas mountains, varying from "Alpine deformation" – bodily displacements of the whole of the component mountain masses in a more or less horizontal direction over distances of several kilometres – to much less intense warping and folding. Between these two areas lies the Jeffara coastal plain, a transition zone covering the hingeline, referred to above, which is also the dividing line between thick sediments deposited in the open sea and thin sediments deposited in littoral conditions.

57. The principal contention of Libya is that the area in front of its coast constituting the Pelagian Block is the "natural prolongation" northward of the North African landmass to the south, inasmuch as it constitutes a typical continental margin produced by plate movement and rifting as described above. This is the argument which in the course of the proceedings has become epitomized in the expression "the northward thrust" of the African landmass, a form of words which does not however imply, in Libya's conception, any notion of movement. Libya maintains that the direction of the natural prolongation, of Tunisia as of Libya, is northwards, because the separating movement of the continental plates, which was essentially north-south oriented, produced a continental margin lying to the north of a coastline running generally east-west. In Libya's contention, the subsequent geological events, whereby what is now the greater part of Tunisia was lifted up out of the sea and the Pelagian Block tilted slightly, did not disturb the essential relationship of the Block as a projection to the north of the landmass.

58. Tunisia for its part emphasizes the geological continuity of the Pelagian Block with the land territory of eastern Tunisia and even, to a lesser extent, with the Atlas mountain areas west of the "north-south axis" described above. The various geological zones of Tunisia are aligned generally west-east ; this alignment is typified, according to Tunisia, by the lines of equal sedimentary thickness (isopach maps), by the existence of a series of "moles" following a west-east orientation ; by the presence of homogeneous stratigraphic facies in a west-east direction, subject to some local disturbance by the "north-south axis". Each of these west-east oriented zones is, according to Tunisia, prolonged into the adjacent sea area to the east of it.

59. A key feature in both approaches is the Permian hingeline. For Tunisia, this line constitutes a geological boundary, separating the stable African Continent or Saharan platform on the south from the Pelagian Block on the northern, seaward side, and the Jeffara through which it runs is a transition zone between geologically very different entities. Its presence is therefore relied on to support Tunisia's contention that the Pelagian Block

area is the natural prolongation eastwards of Tunisia, and not the natural prolongation northwards of Libya. For Libya, on the other hand, the Permian hingeline, being the line marking the division between the stable plate and the area of subsidence produced by rifting, so far from being a line of separation between distinct geological areas, confirms by its presence the continuity between the landmass and the continental margin which justifies for Libya its categorization of the Pelagian Block as the natural prolongation northwards of the landmass.

60. The Court has not overlooked that these contentions are not the whole arguments of the two Parties based on the geology of the area. For example, Libya has also relied on the presence of the "Sirt Basin rift system", the significance of which is disputed by Tunisia ; there has also been controversy between the Parties as to the significance of fault areas and of the existence, at various locations, of diapiric salt formations, that is to say, salt formations resulting from the penetration by mobile salt of faults or fissures in overlying strata. Nevertheless, the essential conflict between the Parties as respects the significance for legal analysis in the present case of material afforded by geological studies appears to the Court to be as outlined above. Thus the Court is in effect invited to choose between two interpretations of "natural prolongation" as a geological concept which in fact highlight two aspects of geology as a science. On the one hand, geology involves the study of the components of the earth's structure as they now are, the analysis and classification of minerals, rocks and fossils, the observance of trends and continuities ; and in harmony with this approach Tunisia, in so far as it bases its argument on geological considerations, invites the Court to deduce the "natural prolongation" of Tunisia from the identity of deposits in the bed of the Pelagian Sea with those found under the land territory of Tunisia, and the continuation of strata and features from that territory seawards in a generally west-east direction. On the other hand, geology in its historical aspect involves deducing the history of the earth from the physical evidence now present, and ascertaining, so far as human knowledge permits, what were the processes and events which gave rise to the existence of the observed features on and beneath the earth's surface ; and it is in this historical spirit that Libya has pointed to the rifting process which, in Libya's contention, marked the Pelagian Block with the permanent character of the "natural prolongation" of the African landmass.

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61. The conclusion which, in the Court's view, has ineluctably to be drawn from this analysis is that, despite the confident assertions of the geologists on both sides that a given area is "an evident prolongation" or "the real prolongation" of the one or the other State, for legal purposes it is not possible to define the areas of continental shelf appertaining to Tunisia and to Libya by reference solely or mainly to geological considerations.

The function of the Court is to make use of geology only so far as required for the application of international law. It is of the view that what must be taken into account in the delimitation of shelf areas are the physical circumstances as they are today ; that just as it is the geographical configuration of the present-day coasts, so also it is the present-day sea-bed, which must be considered. It is the outcome, not the evolution in the long-distant past, which is of importance.

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62. The Court now turns to the arguments of the Parties based on geomorphology and bathymetry. Consistently with its emphasis on the geological aspect, Libya attributes less value to bathymetry and to analysis of geomorphological features as methods of determining the extent of natural prolongation :

“As a fundamental geological concept, the superficial or topographical characteristics of the shelf — of which bathymetry is the most obvious — are not true indicators of prolongation.”

It does on the other hand consider that “geography supports and confirms geology, which indicates that the natural prolongation of the landmasses into and under the sea is to the north”. The factors mentioned in support of this contention are : that the Pelagian Basin area, a geological and physiographic unit, is a part of the African plate ; that it has a distinct affinity to the African landmass and is a different region from the Atlas mountain region of Tunisia ; and that geological *facies* data confirm the northward prolongation and the basic affinity of the shelf to the North African landmass. This contention as to the consonant indications of geology and geography is advanced in support of the thesis that the delimitation of shelf areas is to be effected by a line from the land frontier reflecting the general northward line of direction. While Libya accepts that the northward line has at some point to veer eastwards in order to achieve an equitable result over the entire course of the delimitation, that veering is not dictated by a change in direction of the natural prolongation, or the intersection of two distinct natural prolongations, but is to take account of “a relevant geographical circumstance which characterizes the area”, in order to achieve an equitable result. This implies that, in Libya’s conception, factors of a geographical or geomorphological nature do not operate to identify separate areas of natural prolongation, but tend solely to determine the direction of natural prolongation, and hence the direction of delimitation ; equitable principles may however require the result to be tempered by the influence of other relevant circumstances of a geographical nature, “to avoid a patently unfair or grossly inequitable result”.

63. The Tunisian contentions require more detailed consideration at this point, since Tunisia has a different conception of the relationship of the “relevant circumstances” to the concept of “natural prolongation”. Tunisia’s view is that

“the primary function of ‘relevant circumstances’ . . . is to make a possible contribution towards the determination of a delimitation line, in particular by providing a method for ascertaining what constitutes the natural prolongation of the territory of each State”.

While the Court will have at a later stage to examine all the “relevant circumstances” in this case, it is therefore necessary for it to make a preliminary examination here of those circumstances to which Tunisia has drawn attention in this specific connection, in order to assess their contribution to the identification of the natural prolongation of the two States. In its submissions, Tunisia has contended

“that the general configuration of the coasts of the two States is reproduced with remarkable fidelity by the bathymetric curves in the delimitation area and that this fact is simply a manifestation of the physical and geological structure of the region ; that in consequence the natural prolongation of Tunisia is oriented west-east, and that of Libya southwest-northeast”.

Its argument has been initially directed to demonstrating what it claims to be “the deepseated unity between the landmass of Tunisia and the submarine area abutting upon its eastern coastal front”, which makes it possible “to identify clearly and convincingly the natural prolongation of Tunisian territory under the sea”. Tunisia contends that the marine topography of the Pelagian Block shows the presence of three major units : a central spur stretching eastwards as a continuation of the Sahel (the “Tunisian Plateau”), and, on each side of it, low areas or valleys running eastwards, one on the north prolonging the Gulf of Hammamet and the other on the south prolonging the Gulf of Gabes. The latter feature is regarded by Tunisia as a furrow extending from west to east between the Tunisian Plateau and the Jeffara coast, which takes the name of “Tripolitanian Furrow” opposite the coast of Libya, and drops progressively towards the Ionian Sea, beyond the Malta-Misratah escarpment. These structures at sea are also found, it is claimed, with the same characteristics and the same general orientation, on the land territory of Tunisia. So far as the Libyan coast is concerned, Tunisia asserts that the sea-bed off the coast sinks quite rapidly towards the greater depths in a general southwest-northeast direction. Analysing the relationship between the two prolongations, Tunisia identifies what it regards as a number of salient features : primarily the Tripolitanian Furrow and the “Tunisian Plateau” ; the “Rise of Sirt” to the east, divided from the plateau by a transitional zone described as the “borderland” ; and the Zira and Zuwarah Ridges and Malta-Misratah escarpment, already described.

64. Much of Tunisia's argument on this aspect of the case has been addressed to the question of the direction of the natural prolongation or prolongations in the Pelagian Block : where Libya discerns a pure northward direction of the prolongation of the landmass, Tunisia observes an eastward natural prolongation off eastern Tunisia, and a continuity northward or north-eastward of Libya only as far as the Tripolitanian Furrow. By way of criterion for delimitation, Tunisia offers specific suggestions as to the possible natural boundary between the shelf areas. The Tripolitanian Furrow is put forward as "a true natural submarine frontier". Furthermore, Tunisia contends, when discussing the practical methods for delimitation, that the

"phenomenon of the reproduction of the shorelines by bathymetric lines, on either side of the frontier, makes possible the accurate transposition, from isobath to isobath, of the point representing the frontier which separates the two territories on the coast and thus enables one to mark the limit of their respective prolongations following the natural orientation of the continental shelf in the frontier zone".

After describing the "crestline" formed by the Zira and Zuwarah Ridges, Tunisia concludes that :

"In this particular case, owing to these noteworthy morphological features, the 'physical and geological structure' provides, as envisaged by the Court, a factor making it possible to draw, with a relatively satisfactory degree of accuracy, the line delimiting those areas which can respectively be regarded as the prolongation of the territory of each of the two States up to the 300-metre isobath, and as 'the most natural' prolongation beyond that isobath."

The essence of the Libyan response to these contentions of Tunisia is to argue, with the support claimed from scientific evidence, that the shelf area within the Pelagian Block is an area of fundamental continuity, both geologically and geomorphologically, and to minimize the importance of the features noted by Tunisia.

65. Tunisia has also employed an argument of a rather different nature, though still based upon an analysis of the geomorphological structure of the Pelagian Block, with a view to demonstrating the direction of natural prolongation. It has drawn attention to the physiographical definition of the continental margin to be found, in particular, in paragraph 3 of Article 76 of the draft convention on the Law of the Sea, which reads :

"The continental margin comprises the submerged prolongation of the landmass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof."

It has been contended that the "Malta-Misratah Escarpment" or "Ionian Flexure" constitutes the slope and the rise forming the continental margin of Tunisia, and that the Ionian Abyssal Plain beyond it, a roughly triangular area of greater sea-depth (about 4,000 metres) south-east of Sicily is the area to which the continental margins of all the surrounding coastal States converge. Thus in Tunisia's view, it is possible to define the orientation of each State's continental margin by a line drawn from its coast to the centre of the Ionian Abyssal Plain. Libya rejects this argument, observing that there is no necessary correlation between an abyssal plain and the progression of shelf, slope and rise, and showing that sedimentological data point to that progression being oriented northwards rather than eastwards.

66. Since the Court is here dealing only with the question of geomorphological features from the viewpoint of their relevance to determine the division between the natural prolongations of the two States, and not with regard to their more general significance as potentially relevant circumstances affecting for other reasons the course of the delimitation, its conclusion can be briefly expressed. The Court has carefully examined the evidence and arguments put forward concerning the existence and importance of the submarine features invoked as relevant for delimitation purposes. Those relied on by Libya in support of its principal contention as to the geologically determined "northward thrust" do not seem to the Court to add sufficient weight to that contention to cause it to prevail over the rival geological contentions of Tunisia ; nor do they amount independently to a means of identifying distinct natural prolongations, which would in fact be contrary to Libya's assertion of the unity of the Pelagian Block. As for the features relied on by Tunisia, the Court, while not accepting that the relative size and importance of these features can be reduced to such insubstantial proportions as counsel for Libya suggest, is unable to find that any of them involve such a marked disruption or discontinuance of the sea-bed as to constitute an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations. As was noted in argument, so substantial a feature as the Hurd Deep was not attributed such a significance in the Franco-British Arbitration of 1977 concerning the Delimitation of the Continental Shelf. The only feature of any substantial relevance is the Tripolitanian Furrow ; but that submarine valley does not display any really marked relief until it has run considerably further to the east than the area relevant to the delimitation (see further paragraph 75 below). Nor does any geographical evidence as to the direction of any "natural prolongation" assist in determining the boundaries thereof, however relevant it may be as a circumstance to be taken into account from the viewpoint of equity.

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67. The submarine area of the Pelagian Block which constitutes the natural prolongation of Libya substantially coincides with an area which constitutes the natural submarine extension of Tunisia. Which parts of the submarine area appertain to Libya and which to Tunisia can therefore not be determined by criteria provided by a determination of how far the natural prolongation of one of the Parties extends in relation to the natural prolongation of the other. In the present case, in which Libya and Tunisia both derive continental shelf title from a natural prolongation common to both territories, the ascertainment of the extent of the areas of shelf appertaining to each State must be governed by criteria of international law other than those taken from physical features.

68. The conclusion that the physical structure of the sea-bed of the Pelagian Block as the natural prolongation common to both Parties does not contain any element which interrupts the continuity of the continental shelf does not necessarily exclude the possibility that certain geomorphological configurations of the sea-bed, which do not amount to such an interruption of the natural prolongation of one Party with regard to that of the other, may be taken into account for the delimitation, as relevant circumstances characterizing the area, as indicated in this case in Article 1, paragraph 1, of the Special Agreement. In such a situation, however, the physical factor constituting the natural prolongation is not taken as a legal title, but as one of several circumstances considered to be the elements of an equitable solution. The decision whether configurations of this kind exist within the single continental shelf constituted by the Pelagian Block has thus to be made, according to the logic of the present Judgment, in connection with the examination of the relevant circumstances which characterize the area. The Court has however first to turn to the question of the equitable principles applicable to delimitation of shelf areas, and specifically mentioned in the Special Agreement as to be taken into account in the present case.

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69. Both Parties have, in their argument before the Court, dealt with the meaning and significance of equitable principles (in the context of the delimitation in the present case) in close relationship with the principle of natural prolongation, and have devoted less attention to the question of what are the equitable principles to be taken into account. For Tunisia, however, “‘equitable principles’ do not mean equity in the large sense, but an equitable delimitation which respects as far as may be the actual physical situation – the natural prolongation from the actual coasts of each Party”, and “the function of equity is to do equity in the particular geographical circumstances, and faithfully reflect them”. In its Counter-Memorial Tunisia included an additional submission to the effect that

"The delimitation must also be effected in conformity with equitable principles and taking account of all the relevant circumstances which characterize the case, it being understood that a balance must be established between the various circumstances, in order to arrive at an equitable result, without refashioning nature."

Libya's Submissions from the outset have included a paragraph to the effect that

"A delimitation which gives effect to the principle of natural prolongation is one which respects the inherent *ipso jure* rights of each State, and the assertion of such rights is . . . in accordance with equitable principles."

This corresponds to Libya's primary contention, already examined by the Court, that "a delimitation which is consistent with the physical facts of natural prolongation cannot possibly be inequitable". Libya considers that, in this case as in the *North Sea Continental Shelf* cases, equitable principles play no role in identifying appurtenant continental shelf based upon the juridical concept of natural prolongation, and that it is only in disputed marginal areas between States that title will be based upon natural prolongation as qualified by equitable principles. Each Party has also explained why the delimitation for which it contends is equitable, in the light of the relevant circumstances, and that of its opponent is not.

70. Since the Court considers that it is bound to decide the case on the basis of equitable principles, it must first examine what such principles entail, divorced from the concept of natural prolongation which has been found not to be applied for purposes of delimitation in this case. The result of the application of equitable principles must be equitable. This terminology, which is 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. It is, however, the result which is predominant ; the principles are subordinate to the goal. The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result. It is not every such principle which is in itself equitable ; it may acquire this quality by reference to the equitableness of the solution. The principles to be indicated by the Court have to be selected according to their appropriateness for reaching an equitable result. From this consideration it follows that the term "equitable principles" cannot be interpreted in the abstract ; it refers back to the principles and rules which may be appropriate in order to achieve an equitable result. This was the view of the Court when it said, in its Judgment of 1969 :

"it is a truism to say that the determination must be equitable, rather is the problem above all one of defining the means whereby the delimi-

tation can be carried out in such a way as to be recognized as equitable" (*I.C.J. Reports 1969*, p. 50, para. 92).

71. 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. In the course of the history of legal systems the term "equity" has been used to define various legal concepts. It was often contrasted with the rigid rules of positive law, the severity of which had to be mitigated in order to do justice. In general, this contrast has no parallel in the development of international law ; the legal concept of equity is a general principle directly applicable as law. Moreover, when applying positive international law, a court may choose among several possible interpretations of the law the one which appears, in the light of the circumstances of the case, to be closest to the requirements of justice. Application of equitable principles is to be distinguished from a decision *ex aequo et bono*. The Court can take such a decision only on condition that the Parties agree (Art. 38, para. 2, of the Statute), and the Court is then freed from the strict application of legal rules in order to bring about an appropriate settlement. The task of the Court in the present case is quite different : it is bound to apply equitable principles as part of international law, and to balance up the various considerations which it regards as relevant in order to produce an equitable result. While it is clear that no rigid rules exist as to the exact weight to be attached to each element in the case, this is very far from being an exercise of discretion or conciliation ; nor is it an operation of distributive justice.

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72. The Court has thus examined the question of equitable principles, which, besides being mentioned in the Special Agreement as the first of the three factors to be taken into account, are, as the Court has emphasized, of primordial importance in the delimitation of the continental shelf ; it has also dealt with the third of the factors mentioned in the Special Agreement, the "new accepted trends" in the Third Conference on the Law of the Sea. The second factor must now be considered, that of the "relevant circumstances which characterize the area" ; and again, it is not merely because they are mentioned in the Special Agreement that the Court must have regard to them. It is clear that what is reasonable and equitable in any given case must depend on its particular circumstances. There can be no doubt that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area. Both Parties recognize that equitable principles dictate that "the relevant circumstances which characterize the area" be taken into account, but differ as to what they are. The Special Agreement moreover confers on the Court the task of ascertaining what are the relevant circumstances and assessing their relative weight for the purpose of achieving

an equitable result. It is evident that the first and most essential step in this respect is to determine with greater precision what is the area in dispute between the Parties and what is the area which is relevant to the delimitation.

73. It should first be recalled that exclusive rights over submarine areas belong to the coastal State. The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title. As the Court explained in the *North Sea Continental Shelf* cases the continental shelf is a legal concept in which "the principle is applied that the land dominates the sea" (*I.C.J. Reports 1969*, p. 51, para. 96). In the *Aegean Sea Continental Shelf* case the Court emphasized that

"it is solely by virtue of the coastal State's sovereignty over the land that rights of exploration and exploitation in the continental shelf can attach to it, *ipso jure*, under international law. In short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State." (*I.C.J. Reports 1978*, p. 36, para. 86.)

As has been explained in connection with the concept of natural prolongation, the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it. Adjacency of the sea-bed to the territory of the coastal State has been the paramount criterion for determining the legal status of the submerged areas, as distinct from their delimitation, without regard to the various elements which have become significant for the extension of these areas in the process of the legal evolution of the rules of international law.

74. The coast of each of the Parties, therefore, 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. The only areas which can be relevant for the determination of the claims of Libya and Tunisia to the continental shelf in front of their respective coasts are those which can be considered as lying either off the Tunisian or off the Libyan coast. These areas form together the area which is relevant to the decision of the dispute. The area in dispute, where one claim encroaches on the other, is that part of this whole area which can be considered as lying both off the Libyan coast and off the Tunisian coast.

75. Nevertheless, for the purpose of shelf delimitation between the Parties, it is not the whole of the coast of each Party which can be taken into account ; the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration by the Court. It is clear from the map that there comes a point on the coast of each of the two Parties beyond which the coast in question no longer has

a relationship with the coast of the other Party relevant for submarine delimitation. The sea-bed areas off the coast beyond that point cannot therefore constitute an area of overlap of the extensions of the territories of the two Parties, and are therefore not relevant to the delimitation. In the view of the Court, in the present context that point on the Tunisian coast is Ras Kaboudia ; on the Libyan coast it is Ras Tajoura. The Court cannot, therefore, take into consideration such parts of the sea-bed of the Pelagian Block as lie beyond those points. As for the boundaries to seaward of the area relevant for the delimitation, these are not at present material and will be considered only in relation to the criterion of proportionality, for the purposes of which such boundaries will have to be defined. The conclusion that these areas are not legally relevant to the delimitation between the Parties does not however lead to the conclusion by way of corollary that the whole area bounded by the coasts of both countries and by such seaward boundaries is reserved in its entirety for division between Libya and Tunisia. As mentioned above, the rights of other States bordering on the Pelagian Sea which may be claimed in the northern and north-eastern parts of that area must not be prejudged by the decision in the present case.

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76. Both Parties have of course included among the elements which, they submit, should be taken into account as "relevant circumstances which characterize the area", the factor which was referred to in the Court's Judgment in the *North Sea Continental Shelf* cases as "the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features" (*I.C.J. Reports 1969*, p. 54, para. 101 (D) (1)). In its submissions, Tunisia has specified as some of the relevant circumstances the presence of islands, islets and low-tide elevations forming part of the eastern coastal front of Tunisia ; the manifestation in the bathymetric curves in the area of the physical and geological structure of the region ; the potential cut-off effect for Tunisia which could result from the particular angulation of the Tuniso-Libyan littoral in combination with the position on the coast of the frontier point ; the irregularities characterizing the Tunisian coasts, as compared with the general regularity of the Libyan coasts in the relevant area ; the situation of Tunisia, opposite States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States. In its pleadings, Tunisia has also mentioned as relevant its claimed historic rights and claimed that in appropriate cases economic and historical particularities as well as geological and geographical factors may be included as relevant circumstances. The question of the "cut-off effect" arises only in the context of the application of a geometrical delimitation method, such as that of equidistance, whereby the delimitation line is directly governed by points on the coasts concerned, or in relation to a line drawn from the frontier point on the basis of a predetermined direction, such as the northward line contended for by Libya. Since that line has not been upheld

by the Court, and the equidistance method is, as will be explained, also not applicable in this case, the "cut-off effect" is not here a relevant circumstance.

77. On the other hand, Libya's conception of the relevant circumstances is stated in more restricted terms : those circumstances are primarily twofold, namely the geological structure of the shelf and its relation to the adjoining landmass, and the geographic configuration of the coasts. During the oral proceedings counsel for Libya also mentioned a number of particularly relevant circumstances or factors, divided into six categories : the fact that the two States are adjacent, separated by a generally north-south land frontier ; the fact that the shelf area is continuous, with an essentially homogeneous character ; the general configuration of the coasts of the Parties ; the existence of segments of coasts which are not relevant ; and, as a related factor, the existence of actual or prospective delimitations with third States in the region ; the existence of a number of legislative acts by both Parties, relating to fishing, the territorial sea, and petroleum concessions ; and the existence of petroleum fields or wells within the relevant area.

78. While the initial part of the Tunisian coast, westwards from Ras Ajdir, runs for some distance in approximately the same direction as the Libyan coast, the most marked characteristic of the coast, discussed at length by the Parties, is that it subsequently changes direction, so as to run roughly southwest-northeast. This aspect of the geographical situation as it exists in the area relevant to the decision is legally significant, in the context of the present examination of the application of equitable principles, as one of the relevant circumstances which characterize the area. The change in direction may be said to modify the situation of lateral adjacency of the two States, even though it clearly does not go so far as to place them in a position of legally opposite States.

79. The body of "islands, islets and low-tide elevations which form a constituent part of the Tunisian littoral", referred to in the Tunisian Submissions, is a feature closely related to the claim of Tunisia to historic rights in connection with the fixed and sedentary fisheries in this area, to be dealt with below. Independently of that question, however, the presence of the island of Jerba and of the Kerkennah Islands and the surrounding low-tide elevations is a circumstance which clearly calls for consideration. Libya has contended that

"in arriving at the general direction of the coastlines, the Island of Djerba invites omission, since it is clearly an exceptional feature and its inclusion would introduce irrelevant complications. Similarly, the Kerkennah Islands should be excluded since they occupy little more than 180 square kilometres".

This observation is made in a section of the argument devoted to the question, first raised in fact by Tunisia, of whether the one State or the

other is favoured by nature, or the reverse, as regards its coastline ; an argument which the Court does not consider to be relevant since, even accepting the idea of natural advantages or disadvantages, "it is not such natural inequalities as these that equity could remedy" (*I.C.J. Reports 1969*, p. 50, para. 91). However that may be, the Court cannot accept the exclusion in principle of the island of Jerba and the Kerkennah Islands from consideration. The practical method for the delimitation to be expounded by the Court hereafter is in fact such that, in the part of the area to be delimited in which the island of Jerba would be relevant, there are other considerations which prevail over the effect of its presence ; the existence and position of the Kerkennah Islands and surrounding low-tide elevations, on the other hand, are material.

80. The Court has already (paragraph 68 above) alluded to the possibility that certain geomorphological configurations of the sea-bed, which do not amount to an interruption of the natural prolongation of one Party with regard to that of the other, may be taken into account as a circumstance relevant for an equitable delimitation, and the Court has thus to re-examine, from this standpoint, the sea-bed features discussed between the Parties such as the Zira and Zuwarah Ridges, the Tripolitanian Furrow, and the Malta-Misratah Escarpment (see paragraphs 32 and 66). The principal feature which could, in the Court's view be taken into account as a relevant circumstance is the Tripolitanian Furrow. As has been shown, it is not such a significant feature that it interrupts the continuity of the Pelagian Block as the common natural prolongation of the territory of both Parties, so as to amount to a "natural submarine frontier". The greater part of it, and the most significant from a geomorphological aspect, lies beyond Ras Tajoura, which was indicated above as the bound of the area relevant for the delimitation. It is a feature of such a kind, and so positioned – comparatively near, and running roughly parallel to, the Libyan coast – that unless it were such as to disrupt the essential unity of the continental shelf so as to justify a delimitation on the basis of its identification as the division between areas of natural prolongation, it would be an element inappropriate for inclusion among the factors to be balanced up with a view to equitable delimitation.

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81. The "relevant circumstances which characterize the area" are not limited to the facts of geography or geomorphology, either as a matter of interpretation of the Special Agreement or in application of the equitable principle requiring all relevant circumstances to be taken into account. Apart from the circumstance of the existence and interests of other States in the area, and the existing or potential delimitations between each of the Parties and such States, there is also the position of the land frontier, or more precisely the position of its intersection with the coastline, to be taken into account. In that connection, the Court must in the present case consider a number of alleged maritime limits resulting from the conduct of

the States concerned. It has further to give due consideration to the historic rights claimed by Tunisia, and to a number of economic considerations which one or the other Party has urged as relevant.

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82. The absence of maritime boundaries formally agreed upon between the Parties constitutes one of the difficulties of the present case, since the delimitation of the continental shelf should start from the outer limit of the territorial sea, in accordance with a principle of international law embodied in Article 1 of the 1958 Geneva Convention on the Continental Shelf and Article 76, paragraph 1, of the draft convention on the Law of the Sea. Since there has never been any agreement between Tunisia and Libya on delimitation of the territorial sea, contiguous zones, exclusive economic zones, or the continental shelf, the undisputed land frontier between the Parties established by a convention becomes a circumstance of considerable relevance.

83. The present course of the land frontier between Libya and Tunisia dates from 1910. Both countries had been under Turkish suzerainty since the middle of the 16th century. Until 1881, when Tunisia was proclaimed a French protectorate, the limits between the Tunisian Regency and the "vilayet" of Tripoli were simply internal circumscriptions of the Ottoman Empire. In 1886 and 1892 overtures were made between France and Turkey with a view to a delimitation. Later on, the boundary, previously located at the fort in the middle of Al-Bibon lagoon, at the mouth of the Wad Fessi, was moved eastwards in the direction of the Wad Moqta, and became *de facto* established at its present site of Ras Ajdir ; this led to the conclusion of the "Convention relative à la frontière entre la régence de Tunis et le vilayet de Tripoli" of 19 May 1910, between the Bey of Tunis and the Emperor of the Ottomans. Article 1 of the Convention states that the initial part of the line follows a general direction north-south ; a glance at the map attached to the text of the Convention, however, shows that the general direction of the line as a whole is rather northeast-southwest.

84. The Convention duly entered into force and the frontier thus established became that between the Regency of Tunis under French protectorate and the Italian colony of Tripolitania after Turkey had ceded that region to Italy. Following decolonization, the 1910 frontier became that between the independent States of Tunisia and Libya. It had moreover been expressly confirmed by the Treaty of Friendship and Neighbourly Relations concluded on 10 August 1955 between the French Republic (on behalf of Tunisia) and the United Kingdom of Libya, implicitly confirmed by the Treaty of Fraternity and Neighbourly Relations between the United Kingdom of Libya and the Kingdom of Tunisia, of 7 January 1957, which was amended and completed by the Establishment Convention of 14 June 1961, and expressly confirmed by an exchange of letters at the time of signing of that Establishment Convention. The boundary remained

unchanged throughout the vicissitudes of the two World Wars, and it exemplifies the principle declared in the 1964 Cairo Resolution of the Organization of African Unity, according to which "all Member States pledge themselves to respect the borders existing on their achievement of national independence". This rule of continuity *ipso jure* of boundary and territorial treaties was later embodied in the 1978 Vienna Convention on Succession of States in respect of Treaties. Thus the permanence and stability of the land frontier is one of the points where the Parties are in full agreement. No issue was raised by the Parties concerning its validity ; Libya has indicated that it furnished the history of the frontier prior to 1910 simply to "put into focus the parallel attempted Tunisian/French thrust to the east" which allegedly occurred later in relation to maritime areas.

85. The Court regards the 1910 Convention as important for the consideration of the present case, because it definitively established the land frontier between the two countries. The Court is however not able to accept the suggestion based upon it in the Libyan Memorial that the "boundary on the seaward side of Ras Ajdir would continue, or could be expected to continue" in the northward direction of the land frontier. Both Parties have agreed in recognizing the relevance of the land boundary starting-point ; this only reinforces the significance of Ras Ajdir as a basic point of reference. In this sense the Court believes that the 1910 Convention constitutes a relevant circumstance for the delimitation of the continental shelf between the two Parties.

86. The relevance of Ras Ajdir is underlined by the fact that it was the starting-point in past endeavours by the two Parties to establish by unilateral claims certain partial maritime delimitations. Indeed Ras Ajdir is the starting point of two such attempts relating to lines projecting seawards : the ZV (Zénith vertical) 45° line north-east claimed by Tunisia ; and the northward line claimed by Libya to be a continuation seawards of the last segment of the land frontier, under Petroleum Law No. 25 of 1955, and Regulation No. 1 thereof. Ras Ajdir is also the point of departure of the line perpendicular to the coast proposed by Italy in 1914, and of the line of 26° north-east which had been followed by the two Parties in the granting of concessions for the exploration and exploitation of mineral resources during the period 1964-1972.

87. The Court will proceed to consider one by one the various lines mentioned in the preceding paragraph. The first two lines were not expressly agreed upon, but established initially by unilateral action. The Court would therefore observe at the outset that an attempt by a unilateral act to establish international maritime boundary lines regardless of the legal position of other States is contrary to recognized principles of international law, as laid down, *inter alia*, in the Geneva Conventions of 1958 on the Law of the Sea, especially the Convention on the Territorial Sea and the Contiguous Zone and the Convention on the Continental Shelf, which provide that maritime boundaries should be determined by agreement

between the Parties. This principle has been retained in the draft convention on the Law of the Sea. In 1951 the Court, in the *Fisheries* case, held that :

“The delimitation of sea areas has always an international aspect ; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law.” (*I.C.J. Reports 1951*, p. 132.)

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88. The ZV 45° line was presented by Tunisia as the last segment of the delimitation, based on the 50-metre isobath, as far north as the parallel of Ras Kaboudia, of what Tunisia claims to be the zone of its historic rights over sedentary and other fisheries since time immemorial. In the Tunisian pleadings it was repeatedly claimed that the ZV 45° line drawn from the land frontier at Ras Ajdir, at an angle of 45° in a north-easterly direction, as far as the intersection with the 50-metre isobath, was established by the Instruction of the Director of Public Works of 31 December 1904 on the Navigation and Sea Fisheries Department. Article 62 of the Instruction did in fact define the areas of surveillance for the fishing of sponges and octopuses, within which the administrative authorities exercised exclusive power of making regulations and control, and in defining Zone 4 it made reference to “a line drawn north-east from Ras Ajdir to the intersection with the 50-metre depth line”. The first express mention of the ZV 45° line appears in the Decree of 26 July 1951, reorganizing the Legislation on Fishery Control, Article 3 (b) of which contains a specific reference to the line in question, in the following terms :

“(b) From Ras Kaboudia to the Tripolitanian frontier, the sea area bounded by a line which, starting from the end of the 3-mile line described above, meets the 50-metre isobath on the parallel of Ras Kaboudia and follows that isobath as far as its intersection with a line drawn north-east from Ras Ajdir, ZV 45°.”

89. The 1951 Decree, though dealing with an exclusive fisheries zone reserved for vessels flying the French or Tunisian flags only, was the real legislative source of the ZV 45° line. Tunisian Law No. 62-35 of 16 October 1962 repealed Article 3 of the 1951 Decree and instituted a new territorial sea régime. From Ras Kaboudia to the Tuniso-Libyan frontier, the territorial sea was the part of the sea bounded by a line which, starting from the end-point of the 12-nautical-mile line delimiting the territorial sea on the other side of Ras Kaboudia, intersected, on the Ras Kaboudia

parallel, the 50-metre isobath, and then followed that isobath to its point of intersection with a line running from Ras Ajdir in a northeasterly direction, ZV 45°. This was a short-lived provision, because Tunisian Law 63-49, of 30 December 1963 redefined the territorial sea as

“from the Tunisian/Algerian frontier to the Tunisian/Libyan frontier and around the adjacent islands, the area of the sea lying between low-water mark and a parallel line drawn six miles to seaward, with the exception of the Gulf of Tunis, which, within the line Cape Farina-Plane Island-Zembra Island-Cape Bon, falls wholly within the said sea”.

The area within the 50-metre isobath from Ras Kaboudia to the intersection of that isobath with a line drawn north-east from Ras Ajdir, ZV 45°, was now defined as part of a reserved zone “contiguous to the Tunisian territorial sea as defined above, within which only vessels flying the Tunisian flag may be authorized to fish”.

90. The existence of the ZV 45° line may have been implied by the 1904 Instruction, but was expressly stated only by the 1951 Decree. Those were in any event unilateral acts, internal legislative measures, which were never the subject of agreement by Libya. Diplomatic correspondence containing references to the 45° line prior to 1951 has been quoted in the Libyan pleadings, but this contributes only to cast doubts on the acceptance of the line by the States then in control of neighbouring territories. The Court concludes that the Tunisian ZV 45° north-east line, originally intended only as the limit of an area of surveillance in the context of specific fishery regulations, constitutes a unilateral claim, but was never a line plotted for the purpose of lateral maritime delimitation, either in the seas or on the continental shelf below them. Taking all the stages of the Tunisian-Libyan relations into account, up to the time when the Special Agreement was concluded, the ZV 45° north-east line is not opposable to Libya, even as a mere inchoate maritime boundary between the two countries.

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91. Tunisia put forward its claim to a maritime boundary along the ZV 45° line in the framework of legislation for the protection of its fishing interests. It was, however, in the context of legislation relating to its interests in the field of hydrocarbons that Libya advanced its claim to a maritime boundary running in a northerly direction, “in the general direction of the land boundary established by the 1910 Convention”. On 21 April 1955, Libya issued a Petroleum Law (Law No. 25 of 1955), followed by Petroleum Regulation No. 1 of 15 June 1955, both published in the Official Gazette of the Kingdom of Libya; the Regulation, issued pursuant to Article 24 of the Law, provided for the publication of an

official map, attached to the Regulation "for the purpose of the Petroleum Law 1955", and on which "the international frontiers, petroleum zones and the grid" were to be indicated. Article 3 of the 1955 Law established a division of the territory of Libya into four petroleum zones ; its Article 4, paragraph 1, included the following provision :

"This Law shall extend to the seabed and subsoil which lie beneath the territorial waters and the high seas contiguous thereto under the control and jurisdiction of the United Kingdom of Libya. Any such seabed and subsoil adjacent to any Zone shall for the purpose of this Law be deemed to be part of that Zone."

The Regulation defined more fully the zones set out in the Law. The definition of the relevant zone (the Province of Tripolitania) made no express reference to a maritime or continental shelf boundary with Tunisia. However, the official map which is attached to the Regulation, a map on the very small scale of 1:2,000,000, shows a dashed-and-dotted line (the symbol used on the map for "Territorial Boundaries") running from Ras Ajdir due north, seawards to the edge of the map, a distance of some 62.9 nautical miles. A similar line, also to the edge of the map but projecting noticeably farther out to sea, also runs due north, from the border with Egypt.

92. Both the Law and the Regulation which followed it are purely internal legislative acts, intended to identify domestic zones for the petroleum exploration and exploitation activities of Libya, and could, in view of the admission by Libya itself during the oral proceedings that the Law does not purport to be an "act of delimitation", hardly be considered even as a unilateral claim for maritime lateral boundaries with Tunisia. Moreover, paragraph 1 of Article 4 of the Law refers to the "seabed and subsoil which lie beneath the territorial waters and the high seas contiguous thereto under the control and jurisdiction" of Libya ; there is no evidence that Libya had claimed control and jurisdiction over a contiguous zone of about 50 nautical miles beyond the territorial sea prior to the time the Law was enacted. Furthermore, the facts of the case do not, in particular, allow any assumption of acquiescence by Tunisia to such a delimitation ; indeed its manifested attitude excludes the possibility of speaking of such acquiescence. There is no doubt that Libya in 1955, by enacting the Petroleum Law and Petroleum Regulation No. 1, purported to claim sovereign rights over shelf resources ; but the mere indication on the map of the line in question is not sufficient even for the mere purpose of defining a formal claim at the level of international relations to a maritime or continental shelf boundary. For these reasons the Court finds that the line referred to by the Libyan Legislation of 1955 is not opposable to Tunisia, that the ZV 45° line is not opposable to Libya and that neither can be taken into consideration for the purposes of this Judgment.

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93. In the view of the Court, a line which does have a bearing upon the questions with which it is concerned is the third line mentioned in paragraph 86 above, the line designed to be "normal" or "perpendicular" to that section of the coast where the land frontier begins. According to Libya, this line emerged from the attitude of Italy, which, having succeeded Turkey in the exercise of sovereignty over Tripolitania, refused to accept the line at 45° as lateral delimitation of the maritime fishery zones claimed by the authorities of the neighbouring Protectorate. An incident occurring in 1913, when an Italian torpedo boat arrested three Greek fishing vessels in an area claimed by Tunisia to fall within the zone delimited by the ZV 45° line, gave Italy occasion to propose a delimitation line between Libyan and Tunisian sponge-banks, drawn perpendicularly to what was considered to be the direction of the coastline at Ras Ajdir. In any event, Italy developed this delimitation line, which became a sort of tacit *modus vivendi*, more formally in 1919, with the issuance of Instructions for the Surveillance of Maritime Fishing in the waters of Tripolitania and Cyrenaica, which provided that :

"As far as the sea border between Tripolitania and Tunisia is concerned, it was agreed to adopt as a line of delimitation the line perpendicular to the coast at the border point, which is, in this case, the approximate bearing north-north-east from Ras Ajdir."

94. In order to avoid the danger of friction that might arise from the difficulty of establishing the precise position of a foreign vessel near the frontier, the Italian authorities established two eight-mile buffer zones at the two ends of the Libyan coast, within which vessels flying foreign flags and not holding a licence from the Italian authorities would be liable to be ordered away but not seized. Both Parties during the oral proceedings recognized that a *de facto* compromise or provisional solution had been achieved by means of the buffer zone, which operated for a long time without incident and without protest from any side. The line was reaffirmed in 1931 by the Italian authorities in Libya. Such was then the situation which existed in this respect when both countries became independent. The exact angle of inclination of the "normal" or "perpendicular" line was never spelled out by the Italian regulations, which merely referred to a perpendicular to the coast as being on "the approximate bearing north-north-east".

95. The Court considers that the evidence of the existence of such a *modus vivendi*, resting only on the silence and lack of protest on the side of the French authorities responsible for the external relations of Tunisia, falls short of proving the existence of a recognized maritime boundary between the two Parties. Indeed, it appears that Libya is not in fact contending that it had that status, but rather that the evidence that such a line was employed or respected to a certain extent is such as to deprive the ZV 45° line of credibility. But in view of the absence of agreed and clearly specified maritime boundaries, the respect for the tacit *modus vivendi*,

which was never formally contested by either side throughout a long period of time, could warrant its acceptance as a historical justification for the choice of the method for the delimitation of the continental shelf between the two States, to the extent that the historic rights claimed by Tunisia could not in any event be opposable to Libya east of the *modus vivendi* line.

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96. Lastly, in this connection, the Court could not fail to note the existence of a *de facto* line from Ras Ajdir at an angle of some 26° east of north, which was the result of the manner in which both Parties initially granted concessions for offshore exploration and exploitation of oil and gas. This line of adjoining concessions, which was tacitly respected for a number of years, and which approximately corresponds furthermore to the line perpendicular to the coast at the frontier point which had in the past been observed as a *de facto* maritime limit, does appear to the Court to constitute a circumstance of great relevance for the delimitation. Since this is a matter closely bound up with the practical method of delimitation, the Court will examine the nature and genesis of the line when it comes to that part of the Judgment.

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97. The next important feature, relevant for the delimitation, which the Court must examine is the existence of an area off the coasts of Tunisia over which it claims historic rights deriving from long-established fishing activities. In this connection, it will however also be convenient to note what are the areas claimed by Tunisia as its internal waters and territorial sea, and in particular the baselines from which the breadth of the territorial sea area is measured ; the position of those baselines is, it is claimed by Tunisia, justified by the link of those areas with the “land domain” constituted by the long-established fixed fisheries. Libya has contended in its submissions that these baselines

“are not opposable to Libya for the purposes of the delimitation and the results of giving effect to them would in any event be inappropriate and inequitable”.

For the purpose of comparing areas of continental shelf in the light of the criterion of proportionality, it is Libya’s view that “the entire area of sea-bed and subsoil beyond the low-water mark” of each State must be taken into account. The Court has been furnished with calculations showing that the inclusion, or exclusion, for this purpose of the areas claimed by Tunisia as internal waters or territorial sea makes a very marked difference in the ratios resulting from any foreseeable delimitation line. Tunisia, while contending that the baselines are in any event opposable to Libya for lack of timely protest on its part, argues that their “main justification” is

the existence of historic waters over the zone of fixed fisheries. It will therefore be convenient to deal with the questions of the historic rights, the baselines, and the test of proportionality, in relation to each other.

98. The historic rights claimed by Tunisia derive from the long-established interests and activities of its population in exploiting the fisheries of the bed and waters of the Mediterranean off its coasts : the exploitation of the shallow inshore banks for fixed fisheries for the catching of swimming species, and of the deeper banks for the collection of sedentary species, namely sponges. According to Tunisia, the antiquity of this exploitation, and the continuous exercise both of proprietary rights by the inhabitants of Tunisia over the fixed fisheries, and of rights of surveillance and control, amounting to the exercise of sovereign rights, by the Tunisian authorities, over the fisheries of both kinds, coupled with at least the tacit toleration and recognition thereof by third States, has resulted in the acquisition by Tunisia of historic rights over a substantial area of sea-bed. Accordingly, Tunisia claims that the delimitation of the continental shelf between itself and Libya must not encroach at any point upon the area within which Tunisia possesses such historic rights. Libya, however, in addition to denying the possibility in general of excluding certain sea-bed areas from consideration, as noted above, claims that in so far as the area claimed might overlap with the natural prolongation of Libya's land territory, a fishing practice of one State cannot in principle prevail over the inherent and *ab initio* rights of another State in respect of its natural prolongation. Furthermore, while not denying the existence of the fishing practices relied on, Libya questions whether the rights claimed to have been enjoyed amount to an exercise of sovereignty, whether they have been exercised over a single identifiable homogeneous area, and whether there has been such international recognition as is alleged by Tunisia.

99. Much of Tunisia's argument in connection with its historic fishing activities has been devoted to pointing out and illustrating a parallel between the modern recognition of the rights of the coastal State over its natural extension into and under the sea, and the asserted recognition by third States of Tunisia's acquisition of rights over the banks and shoals off its coasts which, because of their exceptional geographical character, were capable of being exploited centuries before the continental shelf became of economic and legal significance. Tunisia claimed to have exercised sovereignty over these areas, and cited in support legislative acts and other indicia of the exercise of supervision and control dating back to the time "whereof the memory of man runneth not to the contrary". There is insistence on Tunisia's part that these rights have been recognized for centuries by other States. Such exercise of sovereignty has even led to, and is evidenced by, the acquisition of possessory rights by Tunisian nationals over the areas of fixed fisheries ; so far as the sedentary fishing areas are

concerned, while these have at times been exploited by non-Tunisians, this has been under concessions or licences granted, or subject to conditions fixed, by the Tunisian authorities. All these areas have been claimed as "historic rights" under customary international law. The main thrust of the argument of Tunisia would seem to be to emphasize that the exploitation of these islands and the shoals surrounding them is a demonstration that they belong to the Tunisian landmass and are its extensions under the sea ; indeed, that the offshore areas are "submerged Tunisia". Tunisia argues that there is a striking coincidence between the status of "the Tunisian sedentary fisheries and the way they fit into the theory of the continental shelf", and claims that this should have an impact on the delimitation of the continental shelf, saying that

"the historic titles which Tunisia acquired in the course of centuries have come to anticipate the appearance of the legal concept of natural prolongation, and after the appearance of that concept in international law, those titles have come to be the manifestation of part of the prolongation. So far from contradicting the natural prolongation, they afford the most apt illustration of it . . . drawn from history".

Tunisia also attempts to prove that

"the delimitation of the continental shelf must logically take account of the objective situation created from time immemorial by Tunisia's historic rights in the Gulf of Gabes, which . . . constitutes one of the oldest and most natural manifestations of natural prolongation".

The Court is of the view that, although parts of the areas in question are not part of the continental shelf in the legal sense, which starts beyond the territorial sea, the sea-bed of the region of internal waters within the Tunisian baselines and of the territorial sea is the natural prolongation of the land territory in the physical sense.

100. In so far as the question of historic fishing rights is raised in connection with the concept of "natural prolongation", it no longer falls for consideration in view of the Court's findings on that matter (paragraphs 67-68 above). The historic rights remain however to be considered in themselves. Historic titles must enjoy respect and be preserved as they have always been by long usage. In this connection, it may be recalled that, when the 1958 Conference on the Law of the Sea had occasion to consider the matter, it adopted a resolution entitled "Régime of historic waters", which was annexed to the Final Act, requesting the General Assembly to arrange for a study of the topic. In 1959, the Assembly adopted a resolution requesting the International Law Commission to take up the study of the "juridical régime" of historic waters, including historic bays. The International Law Commission has not yet done so. Nor does the draft convention of the Third Conference on the Law of the Sea contain any detailed provisions on the "régime" of historic waters : there is neither a definition of the concept nor an elaboration of the juridical régime of "historic

waters” or “historic bays”. There are, however, references to “historic bays” or “historic titles” or historic reasons in a way amounting to a reservation to the rules set forth therein. It seems clear that the matter continues to be governed by general international law which does not provide for a *single “régime”* for “historic waters” or “historic bays”, but only for a particular régime for each of the concrete, recognized cases of “historic waters” or “historic bays”. It is clearly the case that, basically, the notion of historic rights or waters and that of the continental shelf are governed by distinct legal régimes in customary international law. The first régime is based on acquisition and occupation, while the second is based on the existence of rights *“ipso facto and ab initio”*. No doubt both may sometimes coincide in part or in whole, but such coincidence can only be fortuitous, as in the case of Tunisia where the fishing areas cover the access to its continental shelf, though only as far as they go. While it may be that Tunisia’s historic rights and titles are more nearly related to the concept of the exclusive economic zone, which may be regarded as part of modern international law, Tunisia has not chosen to base its claims upon that concept.

101. In any event, other considerations are governing. For the purpose of exercising sovereign rights over submarine areas before the coasts of a State, the term “continental shelf”, as defined in Article 1 of the 1958 Geneva Convention on the Continental Shelf, is used as referring to the sea-bed and subsoil of the submarine areas “outside the area of the territorial sea”. This definition was regarded by the Court, in its Judgment in the *North Sea Continental Shelf* cases, as part of customary international law. There is no doubt that it is generally accepted, as may be seen from, *inter alia*, the text of Article 76 of the draft convention on the Law of the Sea. By their national legislation both Parties have fixed 12 nautical miles as the outer limit of their territorial sea, measured from the baselines determined by them. The Court has already noted (paragraph 89 above) that the Tunisian Law of 30 December 1963 claimed the whole of the Gulf of Tunis as territorial sea ; round the remainder of the coast the outer limit was a line six miles seaward of low-water mark. In 1973, however, Tunisia promulgated a law (Law No. 73-49 of 2 August 1973) declaring the existence of a territorial sea of a breadth of 12 miles, calculated from baselines constituted by

“the low-water mark and . . . straight baselines drawn in the direction of the Shebba shores and to the Kerkennah Islands where sedentary fisheries are to be found, and the closing lines of the Gulf of Tunis and of the Gulf of Gabes”.

The law went on to declare that the waters of the Gulf of Tunis and of the Gulf of Gabes were “internal waters”. A Decree of 3 November 1973 provided more detailed definition of the position of the baselines, which involve, *inter alia*, the closing of the Gulf of Gabes by a straight line. As

explained above, Libya considers that those lines are not opposable to Libya and that "the results of giving effect to them would in any event be inappropriate and inequitable".

102. In sum, the Court notes that the question of Tunisia's historic rights may be relevant for the decision in the present case in a number of ways. In the first place, there is the principal contention of Tunisia based on its historic fishery rights :

"The delimitation must not, at any point, encroach upon the area within which Tunisia possesses well-established historic rights . . ."

Secondly, the ZV 45° line, advanced as a maritime boundary, is based upon legislation and practice in connection with the exercise of those rights within an area defined, in part, by that line. The Court has already given its findings in respect of the ZV 45° line (paragraph 95 above). Thirdly, the rights in respect of the fixed fisheries for the capture of mobile species, as distinct from the sponge fisheries, are relied on as justification for the drawing of straight baselines for measurement of territorial waters ; that matter will be dealt with below. It should however be noted here that Tunisia's claim that the areas between those baselines and low-water mark should be excluded from the proportionality calculations is based upon the contention that the continental shelf, as a legal concept, excludes the area of sea-bed under the territorial sea and under internal waters within the baselines. Thus the areas to be excluded are not co-extensive with the area claimed as that of historic rights ; only what are claimed as areas of internal waters or territorial sea are to be excluded. It follows that the validity of the historic rights is not a problem directly relevant to the proportionality question.

103. The Parties are, as noted earlier in this Judgment (paragraph 36), in agreement as to the need to take into account

"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" (*I.C.J. Reports 1969*, p. 54, para. 101 (D) (3)),

and the Court considers that that element is indeed required by the fundamental principle of ensuring an equitable delimitation between the States concerned. The differences between the Parties are as to which coasts should be taken into account, and whether or not the whole areas of sea-bed below low-water mark are to be compared. As far as the coasts are concerned, the finding of the Court is set out in paragraphs 74-75 above ; there remains the question of the sea-bed areas. It is clear that in the circumstances of many, if not most, delimitations between adjacent States, the assessment of proportionality will produce results which are hardly

different, whether the areas of sea-bed beneath territorial and internal waters are included or omitted from consideration. If both States claim territorial waters of the same breadth, around coasts of generally similar configuration, and calculated from baselines determined on the same general basis, then the relative proportions to each other of the areas of continental shelf *stricto sensu* appertaining to each State are likely to be broadly the same as the relative proportions of the sea-bed areas comprising both the continental shelf and the bed of the territorial sea and internal waters. For this reason, the Court does not consider that any general rule of law exists which requires the test of proportionality always to be applied by adopting one of the two methods. In a case such as the present one in which the two calculations would produce different results, it is the relevant circumstances of the area which will afford the basis for determining whether it is the comparison between the more restricted, or between the more extensive, areas that will determine whether the result is equitable.

104. In the circumstances of the present case, the Court is not convinced by the Tunisian contention that the areas of internal and territorial waters must be excluded from consideration ; but in so finding it is not making any ruling as to the validity or opposability to Libya of the straight baselines. It should be reaffirmed that the continental shelf, in the legal sense, does not include the sea-bed areas below territorial and internal waters ; but the question is not one of definition, but of proportionality as a function of equity. The fact that a given area is territorial sea or internal waters does not mean that the coastal State does not enjoy "sovereign rights for the purpose of exploring it and exploiting its natural resources" ; it enjoys those rights and more, by virtue of its full sovereignty over that area. Furthermore, the element of proportionality is related to lengths of the coasts of the States concerned, not to straight baselines drawn round those coasts. The question raised by Tunisia : "how could the equitable character of a delimitation of the continental shelf be determined by reference to the degree of proportionality between areas which are not the subject of that delimitation?" is beside the point ; since it is a question of proportionality, the only absolute requirement of equity is that one should compare like with like. If the shelf areas below the low-water mark of the relevant coasts of Libya are compared with those around the relevant coasts of Tunisia, the resultant comparison will, in the view of the Court, make it possible to determine the equitable character of a line of delimitation.

105. Since the Court thus does not find it necessary to pass on the question of historic rights as justification for the baselines, it is only if the method of delimitation which the Court finds to be appropriate is such that it will or may encroach upon the historic rights area that the Court will have to determine the validity and scope of those rights, and their opposability to Libya, in the context of a delimitation of the continental shelf. If

however the method of delimitation thus arrived at, independently of the existence of those rights, is such that the delimitation line will undoubtedly leave Tunisia in the full and undisturbed exercise of those rights – whatever they may be – over the area claimed to be subject to them, so far as opposable to Libya, then a finding by the Court on the subject will be unnecessary. Such is in fact, in the view of the Court, the result of the method of delimitation to be indicated further on in this Judgment. The fact that the point is made the subject of one of Tunisia's submissions does not affect the matter ; as in the *Fisheries* case (*I.C.J. Reports 1951*, p. 126), the Court considers that the rights claimed are elements which "may be taken into account only in so far as they would appear to be relevant for deciding the sole question in dispute", that is to say, in this context, the practical method for effecting an equitable delimitation.

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106. In their pleadings, as well as in their oral arguments, both Parties appear to have set so much store by economic factors in the delimitation process that the Court considers it necessary here to comment on the subject. Tunisia seems to have invoked economic considerations in two ways : firstly, by drawing attention to its relative poverty vis-à-vis Libya in terms of absence of natural resources like agriculture and minerals, compared with the relative abundance in Libya, especially of oil and gas wealth as well as agricultural resources ; secondly, by pointing out that fishing resources derived from its claimed "historic rights" and "historic waters" areas must necessarily be taken into account as supplementing its national economy in eking out its survival as a country. For its part, Libya strenuously argues that, in view of its invocation of geology as an indispensable attribute of its view of "natural prolongation", the presence or absence of oil or gas in the oil-wells in the continental shelf areas appertaining to either Party should play an important part in the delimitation process. Otherwise, Libya dismisses as irrelevant Tunisia's argument in favour of economic poverty as a factor of delimitation on any other grounds.

107. The Court is, however, of the view that these economic considerations cannot be taken into account for the delimitation of the continental shelf areas appertaining to each Party. They are virtually extraneous factors since they are variables which unpredictable national fortune or calamity, as the case may be, might at any time cause to tilt the scale one way or the other. A country might be poor today and become rich tomorrow as a result of an event such as the discovery of a valuable economic resource. As to the presence of oil-wells in an area to be delimited, it may, depending

on the facts, be an element to be taken into account in the process of weighing all relevant factors to achieve an equitable result.

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108. In the light of the principles and rules of international law applicable to the delimitation of the continental shelf in the present case which have been examined and discussed above, and taking into account the relevant circumstances which have been identified, the Court will now turn to the second part of its task under the Special Agreement. In the second paragraph of Article 1 thereof the Court is requested to "clarify the practical method for the application of those principles and rules in this specific situation" (Libyan translation), or, in the alternative translation supplied by Tunisia, to "specify precisely the practical way in which the aforesaid principles and rules apply in this particular situation". On the basis of either text, the outcome is to be such as to "enable the experts of the two countries to delimit those areas without any difficulties". The Court has already examined the controversy between the Parties as to the correct interpretation of this text, and the precise role which it was the intention of the Parties to attribute to the Court (*supra*, paragraphs 25 ff.). As there stated, the Court's indications of the practical methods must be of such a degree of precision that the only task remaining will be the technical one making possible the drafting of the treaty incorporating the result of the work of the experts entrusted with the drawing of the delimitation line. The drawing of that line is not part of the function conferred on the Court by the Parties. It is, however, clear that the fact that the Parties have reserved for themselves the determination, by treaty, of the boundary delimiting the two continental shelf areas, does not prevent the Court from indicating 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. Furthermore, in the light of the Court's consideration of the concept of proportionality in paragraph 103 above, it is clearly not possible for the Court to apply this concept, by way of touchstone of equitableness, to the method or methods it may indicate, unless it can arrive at a reasonably clear conception of the extent of the areas on each side of the eventual line ; and it must therefore be able to define approximately the course of the line which it will be the task of the experts to plot with accuracy. It is thus on this basis that the Court will proceed to indicate the method of delimitation deemed appropriate in this case.

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109. Before considering the methods of delimitation discussed by the Parties in argument, the Court thinks it appropriate to make some observations on the equidistance method. The Court held in the *North Sea*

*Continental Shelf* cases, which also concerned adjacent States, that the equidistance method of delimitation of the continental shelf is not prescribed by a mandatory rule of customary law (*I.C.J. Reports 1969*, p. 46, para. 83 ; p. 53, para. 101). On the other hand it emphasized the merits of this rule in cases in which its application leads to an equitable solution. The subsequent practice of States, as is apparent from treaties on continental shelf boundaries, shows that the equidistance method has been employed in a number of cases. But it also shows that States may deviate from an equidistance line, and have made use of other criteria for the delimitation, whenever they found this a better way to arrive at an agreement. One solution may be a combination of an equidistance line in some parts of the area with a line of some other kind in other parts, as dictated by the relevant circumstances. Examples of this kind are provided by the 1977 arbitration on the Delimitation of the Continental Shelf between France and the United Kingdom, and by the Convention between France and Spain on the Delimitation of the Continental Shelves of the two States in the Bay of Biscay of 29 January 1974. Treaty practice, as well as the history of Article 83 of the draft convention on the Law of the Sea, leads to the conclusion that equidistance may be applied if it leads to an equitable solution ; if not, other methods should be employed.

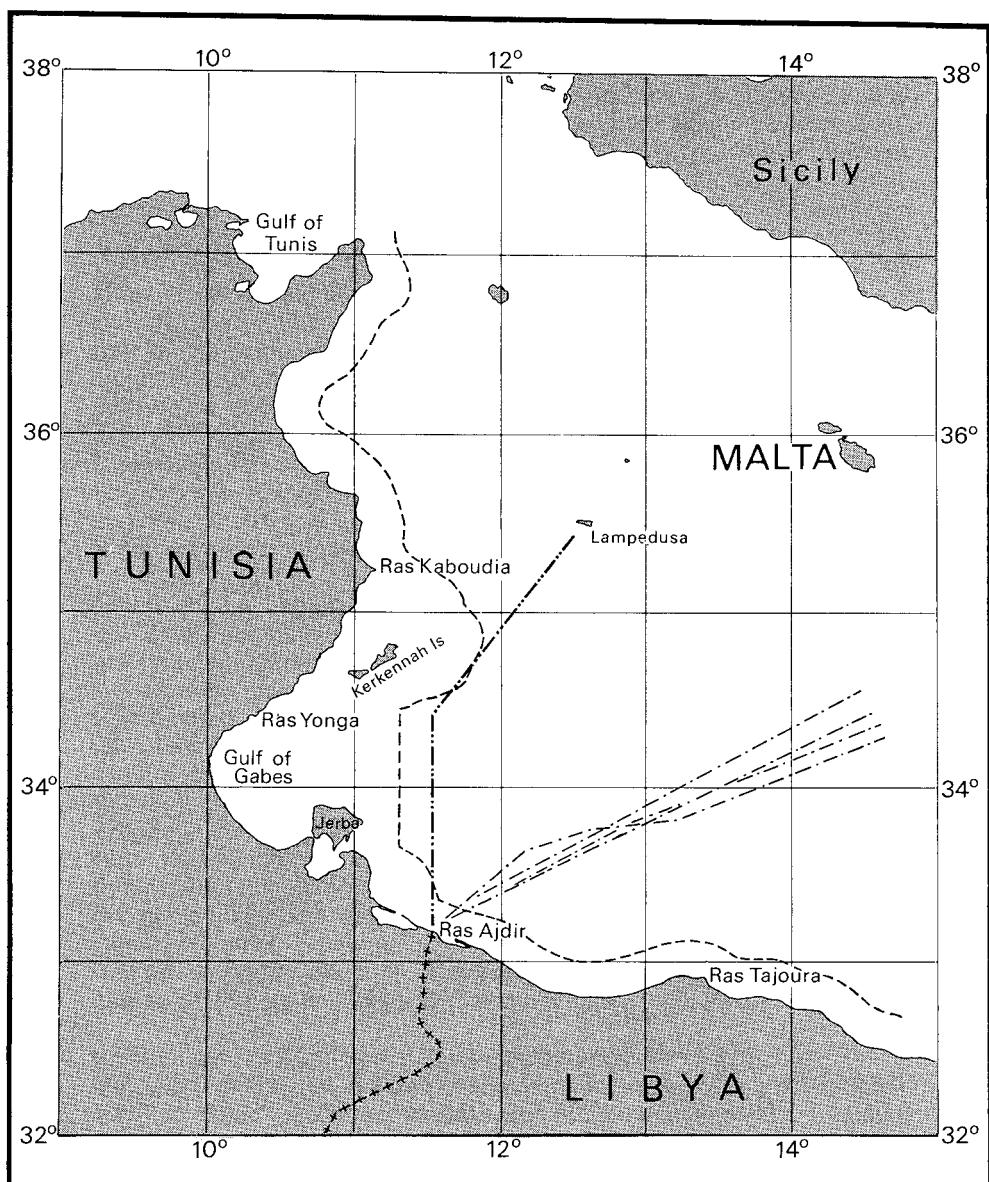
110. Nor does the Court consider that it is in the present case required, as a first step, to examine the effects of a delimitation by application of the equidistance method, and to reject that method in favour of some other only if it considers the results of an equidistance line to be inequitable. A finding by the Court in favour of a delimitation by an equidistance line could only be based on considerations derived from an evaluation and balancing up of all relevant circumstances, since equidistance is not, in the view of the Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods. It is to be noted that in the present case Tunisia, having previously argued in favour of a delimitation by the equidistance method for at least some of the area in dispute, contended in its Memorial that the result of using that method would be inequitable to Tunisia ; and that Libya has made a formal submission to the effect that in the present case the equidistance method would result in an inequitable delimitation. The Court must take this firmly expressed view of the Parties into account. If however the Court were to arrive at the conclusion, after having evaluated all relevant circumstances, that an equidistance line would bring about an equitable solution of the dispute, there would be nothing to prevent it from so finding even though the Parties have discarded the equidistance method. But if that evaluation leads the Court to an equitable delimitation on a different basis, there is no need for it to give any further consideration to equidistance.

111. The Parties recognize that in international law there is no single obligatory method of delimitation and that several methods may be applied to one and the same delimitation. Each of the Parties has indicated,

with a greater or less degree of precision, the method or methods which in its view should be employed to effect the delimitation in the present case in order to comply with the principles and rules of international law regarded as applicable by each Party and in their interaction as conceived by that Party. Because of the views it holds as to the role of the Court under the Special Agreement (paragraph 28), Libya has been less specific than Tunisia in its arguments on this matter. It has, however, given a description of a practical method by which, it is said, the principle of natural prolongation can be applied in this case. The Libyan approach is first to define the area in which delimitation must be effected, and then to determine the relevant natural prolongation which, as noted above, is for Libya the northward thrust or prolongation of the African continental landmass. The task of the experts appointed by the Parties will be to construct a line of delimitation which is consistent with the northerly direction of the natural prolongation and other relevant criteria. In order to achieve an equitable result over the entire course of the delimitation, certain relevant geographical circumstances will have to be taken into account, resulting in the strictly northward direction of the delimitation being modified. The resulting line is indicated on Map No. 2 appended hereto.

112. After reserving the area of "historic rights" (paragraph 98 above), Tunisia has indicated methods of two kinds, which give rise in their application to the area in question to a "sheaf of lines" of delimitation, all running in the same general direction across the area of continental shelf (indicated on Map No. 2 appended hereto). The first group of methods consists in defining the natural prolongation of the two States on the basis of geological, geophysical and bathymetric data which, according to Tunisia, as indicated in paragraph 64 above, themselves define possible lines of delimitation. The second group of methods is geometrical, based on the configurations of the coasts of the two Parties, with a view to implementing the concepts of the coastal front and of proportionality, taking account of the relevant circumstances which characterize the area, and abiding by equitable principles. The second type of method produces results similar to those of the first, as was in fact the declared intention of the Tunisian Government in devising the geometrical methods of the second group.

113. The delimitation method proposed by Libya, on the basis of the northward direction of natural prolongation, clearly stands or falls with its basic contentions as to that direction ; since the Court has been unable to uphold those contentions, no more need be said as to the Libyan method. The same is true of the Tunisian methods of the first group, since the geological, geophysical and bathymetric material advanced in support of them do not, in the Court's view, add up to "relevant circumstances" on which a delimitation of the kind proposed by Tunisia could be based. In addition, however, the methods proposed by both Parties give insufficient weight to one circumstance in particular, and this consideration constitutes an objection also to the Tunisian geometrical methods, which in any



MAP NO. 2

- Limit of territorial waters claimed by each Party.
- - - Line resulting from Libyan method of delimitation.
- - - Sheaf of lines resulting from Tunisian methods of delimitation.

event were advanced more as reinforcement of the methods based on other criteria than as independent propositions. The Court will therefore indicate what this circumstance is, and how it serves, with the support of other circumstances which the Parties themselves have taken into account, to produce an equitable delimitation.

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114. Any examination of methods, like the examination of applicable rules and principles, must take as starting-point the particular geographical situation, and especially the extent and features of the area found to be relevant to the delimitation. The Court has already explained (*supra*, paragraphs 32-35, 75) what it considers to be the relevant area in the present case ; the fact that the Court has found that it is necessary to define this single area does not, however, imply that the Court considers it to be an area featuring such geographical homogeneity as to justify the application of a single method of delimitation throughout its extent. On the contrary, in the view of the Court, the proper appreciation and taking into account of the "relevant circumstances which characterize the area" call for the area close to the coasts of the Parties to be treated differently from the areas further offshore. The Court will therefore deal with the area as divided into two sectors. It must, however, be emphasized that such difference of treatment is ultimately dictated by the primordial requirement of achieving an overall equitable result.

115. The considerations which dictate this difference of treatment of the two sectors of continental shelf for the purposes of delimitation are intimately related to the varying influences of the individual circumstances characterizing the area, and will be considered below. However, it should be noted at the outset that the extent of the area to be delimited is such that the terminal point to seaward of the delimitation line (which, for reasons explained in paragraph 75 above, cannot be determined with any precision by the Court) will be at a considerable distance from the nearest point on the coasts of the two Parties and from the frontier point of Ras Ajdir. Where the delimitation to be effected is upon such a scale as this, the use of any one method of delimitation which may seem appropriate, in the light of relevant circumstances, close to the shores of the States concerned, may well suffer from the defect noted in 1969 with respect to the equidistance method, that the distorting effects of certain factors on the course of the line

"under certain conditions of coastal figuration are . . . comparatively small within the limits of territorial waters, but produce their maximum effect in the localities where the main continental shelf areas lie further out" (*I.C.J. Reports 1969*, p. 37, para. 59),

and "the further from the coastline the area to be delimited, the more unreasonable are the results produced" (*ibid.*, p. 49, para. 89 (a)). In such a situation, a possible means (though not the only one) of avoiding an

inequitable result is to employ one method of delimitation up to a given distance from the coasts, and thenceforth to employ a different method. In the view of the Court, the situation in the present case calls for an approach of this kind. Since the determination of the appropriate point at which one method of delimitation should supplement another is closely bound up, not only with such circumstances as changes in coastal configurations, but also with the practical effect of the method chosen for determination of the initial sector, the Court will first indicate the method it finds to be applicable for the delimitation of the region closer to the coasts before examining the question of the changeover point.

116. Since the continental shelf begins, for purposes of delimitation, from the outer limit of the territorial sea, the starting point for the line of delimitation in this case must be from the boundary of the territorial sea off Ras Ajdir, the exact point (and thus the relationship of the delimitation line to the unsettled lateral boundary of the territorial sea) depending upon the direction of the line with respect to Ras Ajdir. While the Court is not called upon to draw any boundary line between the coast and the outer limit of the territorial sea, it is nevertheless the area immediately surrounding the starting point of the land frontier on which the Court must concentrate its attention with a view to the determination and appreciation of the relevant circumstances characterizing that area.

\* \* \*

117. The circumstance alluded to in paragraph 113 above which the Court finds to be highly relevant to the determination of the method of delimitation is a circumstance related to the conduct of the Parties. The Court has already considered the claims made by the Parties, each in favour of a different line, unilaterally determined but, it is asserted, tacitly respected or accepted; both the ZV 45° line advanced by Tunisia as a recognized boundary of a fishing zone, and the direct northward line asserted as boundary of the Libyan petroleum zones, have been found by the Court to be wanting in those respects necessary to ensure their opposability to the other Party. On the other hand, the history of the enactment of petroleum licensing legislation by each Party, and the grant of successive petroleum concessions, during the period from 1955 up to the signing of the Special Agreement, shows that, as noted in paragraph 21 above, the phenomenon of actual overlapping of claims did not appear until 1974, and then only in respect of areas some 50 miles from the coast. A Tunisian enlarged concession of 21 October 1966 was bounded on the east by a "stepped" line (a form apparently dictated by the grid/block system for grant of concessions) the eastern angles of which lay on a straight line at a bearing of approximately 26° to the meridian. In 1968 Libya granted a concession (No. 137) "lying to the eastward of a line running south/southwest from the point 33° 55' N, 12° E to a point about one nautical mile offshore" the angle thereof viewed from Ras Ajdir being 26°; the western boundaries of subsequent Libyan concessions followed the same

line, which, Libya has explained, "followed the direction of the Tunisian concessions". The result was the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims, in the sense that exploration activities were authorized by one Party, without interference, or (until 1976) protests, by the other. The Court does not of course overlook the fact that the areas to which a legal claim was asserted by both Parties were more far-reaching ; Libya claimed sovereign rights as far west as the meridian of Ras Ajdir, and Tunisia claimed as far as the ZV 45° line, and in 1974 adopted an equidistance line as south-eastern boundary of its concessions. The actual situation, however, was that which has just been described.

118. It should be made clear that the Court is not here making a finding of tacit agreement between the Parties – which, in view of their more extensive and firmly maintained claims, would not be possible – nor is it holding that they are debarred by conduct from pressing claims inconsistent with such conduct on some such basis as estoppel. The aspect now under consideration of the dispute which the Parties have referred to the Court, as an alternative to settling it by agreement between themselves, is what method of delimitation would ensure an equitable result ; and it is evident that the Court must take into account whatever indicia are available of the line or lines which the Parties themselves may have considered equitable or acted upon as such – if only as an interim solution affecting part only of the area to be delimited. In this connection, the Court notes that Libya, while emphasizing that the *de facto* line between the concessions was "at no time accepted by Libya as the legal line of delimitation", observed that it was one that did "suggest the kinds of lines that, in the context of negotiations, might have been put forward for discussion", that is to say, with a view to achieving an agreed delimitation. Furthermore, the line was not intended as a delimitation of a fisheries zone, or of a zone of surveillance. It was drawn by each of the two States separately, Tunisia being the first to do so, for purposes of delimiting the eastward and westward boundaries of petroleum concessions, a fact which, in view of the issues at the heart of the dispute between Tunisia and Libya, has great relevance.

119. A further relevant circumstance is that the 26° line thus adopted was neither arbitrary nor without precedent in the relations between the two States. It should be recalled that in the context of delimitation of the territorial sea the methods of delimitation, other than equidistance, examined by the Committee of Experts for the International Law Commission in 1953 were the continuation in the seaward direction of the land frontier, the drawing of a perpendicular to the coast at the point of its intersection with the land frontier, and the drawing of a line perpendicular to the line of general direction of the coast. The Court has already indicated how, in the relations between France and Italy during the period when these States were responsible for the external relations of present-day Tunisia and Libya, there came into existence a *modus vivendi* concerning the lateral

delimitation of fisheries jurisdiction expressed in *de facto* respect for a line drawn from the land frontier at approximately 26° to the meridian (paragraph 94, *supra*), which was proposed on the basis that it was perpendicular to the coast. It has been argued by Libya that "the drawing of lines of delimitation which reflect the projection of the territorial land boundaries into and under the sea is clearly accepted in State practice" and that at Ras Ajdir a continuation of the land frontier seaward would be roughly perpendicular to the coast at that point as well as to a more extensive length of coastal front. Tunisia, however, disagreed that the evidence of State practice supplied by Libya supports the conclusion sought to be drawn, as well as the alleged direction of the coast and of the land boundary.

120. The Court has already explained why the idea that it was the effect of the 1910 Boundary Convention, which defined the land frontier, to delimit also the maritime areas off Ras Ajdir, must be rejected (*supra*, paragraph 85). Divorced from that contention, as well as from the general geologically-based contention of the northward thrust, the factor of perpendicularity to the coast and the concept of prolongation of the general direction of the land boundary are, in the view of the Court, relevant criteria to be taken into account in selecting a line of delimitation calculated to ensure an equitable solution ; and while there is undoubtedly room for differences of opinion between geographers as to the "direction" of any land frontier which is not constituted by a straight line, or of any coast which does not run straight for an extensive distance on each side of the point at which a perpendicular is to be drawn, the Court considers that in the present case any margin of disagreement would centre round the 26° line which was identified both by the Parties and by the States of which they are the territorial successors as an appropriate limit (see paragraphs 94 and 117 above). It should also not be lost sight of that, as explained above, the Court is at this stage confining its attention to the delimitation of the sea-bed area which is closer to the coast at Ras Ajdir, so that in assessing the direction of the coastline it is legitimate to disregard for the present coastal configurations found at more than a comparatively short distance from that point, for example the island of Jerba.

121. Accordingly, the Court finds that for the initial stage of the delimitation, seaward from the outer limit of the territorial sea, the practical method to be applied, taking account of the circumstances which the Court has identified as relevant, is as follows. There should first be determined what point on the outer limit of the territorial sea corresponds to the intersection of that limit with a line drawn from the terminal point of the land frontier through the point 33° 55' N, 12° E, thus at an angle to the meridian corresponding to the angle of the western boundary of Libyan Petroleum Concessions Nos. NC 76, 137, NC 41 and NC 53, which was aligned with the eastern points of the zig-zag south-eastern boundary of the Tunisian concession "Permis complémentaire offshore du Golfe de Gabès" (21 October 1966). On the information available to the Court, that angle appears to be 26° ; it will, however, be for the experts of the Parties to determine it with exactness. From the intersection point so

determined, the line of delimitation of continental shelf areas between the Parties should initially run at that same angle to the meridian. With regard to fishing rights, the Court has found (paragraphs 90 and 95 above) that it is the perpendicular to the coast, and not the ZV 45° line advanced by Tunisia, which is the only lateral boundary opposable to Libya of the area claimed by Tunisia as subject to historic rights. Accordingly, the Court does not consider that a delimitation by the method now indicated raises any issue which would make it necessary for the Court to decide on the validity or opposability to Libya of the historic rights claimed. As for Libya, it has reminded the Court that areas off its coasts have also for very many years been the scene of the exercise of sponge-fishing rights, but has not expressly submitted that the delimitation may not encroach on such areas ; in any event, it has not claimed to exercise such rights further west than the line defined by the Italian Instructions of 1919 (paragraph 93 above), that is to say, the perpendicular to the coast. The 26° line therefore reflects all appropriate factors ; as the line extends further seawards, however, certain other relevant factors come into play, and it is to consideration of such factors, and of their effect in determining how far the 26° line should extend, and what should be the method of delimitation thereafter, that the Court must now turn.

122. The most evident geographical feature of the coastlines fronting on that area of shelf relevant for the delimitation is the radical change in the general direction of the Tunisian coastline marked by the Gulf of Gabes ; and clearly no delimitation of the continental shelf in front of the coasts of the Parties could be regarded as equitable which failed to take account of that feature. Both Parties in their argument have recognized the significance of this circumstance and its influence on the delimitation, though in different ways. For Tunisia, the relevant circumstance is that the coasts are at an angle to each other, the apex of the angle being however not at the frontier point but some distance to the west of it ; one of the geometrical methods proposed by Tunisia derives from a calculation of this angle, in relation to lengths of coastline regarded as relevant. Thus for Tunisia the change in direction of the coastline occurs to the south of the Gulf of Gabes, and this change is advanced as the basis of construction of a delimitation method, rather than a reason for varying a method, or diverting a line, established by other means. Libya on the other hand sees in a change of direction of the Tunisian coastline a reason for qualifying the rigour of its insistence on the northward direction of any delimitation : “in order to achieve an equitable result over the entire course of the delimitation”, the “promontory of the Sahel, which brings about a marked change in direction of the Tunisian coast towards the northeast” at approximately Ras Yonga, is to be taken into account by the experts ; the northward line should thus be deflected at approximately the same angle of divergence as the change in direction of the coast.

123. As a result of these contentions, a considerable amount of argument has been addressed by the Parties to the question of the point at

which the change in direction of the Tunisian coastline may properly be said to occur. The Court does not consider that this is a question it is called upon to decide ; the examination of the matter by the Parties seems to the Court rather to demonstrate that the point – if point there be – at which the coastline changes direction will not necessarily be the subject of agreement among geographers or cartographers, and in short cannot be objectively determined as a matter of fact. Accordingly, if the Court were merely to indicate, for purposes of delimitation, that the line should change direction in relation to the point at which the coastline changes direction, it would be leaving room for extensive disagreement between the experts of the Parties, which would not necessarily be capable of final resolution. This would not, it seems to the Court, be a proper discharge of its duty to indicate the practical method of delimitation in such a way as to enable the experts to effect the delimitation “without any difficulties”.

124. The change in direction of the coast is however a fact which must be taken into account ; and the Court considers that an appropriate point on the coast to be employed as a reference-point for reflecting that change in the delimitation, and one which has the advantage of being susceptible of objective determination as a matter of geography, is the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes. Again the precise co-ordinates of this point will be for the experts to determine, but it appears to the Court that it will be approximately  $34^{\circ} 10' 30''$  north. The initial delimitation line indicated by the Court in paragraph 121 above will therefore extend from the outer limit of the territorial sea until its intersection with the parallel of latitude of the point just mentioned on the coast of the Gulf of Gabes. That delimitation line will then give place to a line at a different bearing, of which the Court will now indicate the justification and the factors determining its angulation.

125. The Court has found (paragraphs 117 ff. above) that one of the circumstances proper to be taken into account in defining the angulation of the initial line from the outer limit of territorial waters is the existence of the line employed *de facto* by each Party dividing their concessions. It would not, however, be proper to assume that, because the Parties were ready to adopt this line to demarcate concessions comparatively close inshore, they would both necessarily accept as equitable its effects further out to sea, unless it were supposed that in employing it they already had an eye to the effects on the line of the major change in direction of the coastline just adverted to ; but there is no evidence to warrant this supposition. Indeed, when in 1974 Tunisia had occasion to describe the south-eastern boundary of a concession in legislation relating to its transfer, it determined it, “pending an agreement between Tunisia and Libya”, by a section of an equidistance line between the two States. It may be recalled that the Tunisian claim to delimitation on an equidistance basis was reiterated in general terms in 1976. Furthermore, a line drawn per-

pendicular to the coast becomes, generally speaking, the less suitable as a line of delimitation the further it extends from the coast.

126. The Court has been informed, in the context of the Parties' explanations of the history of the dispute, of the course of the equidistance line which was at one time advocated by Tunisia. While that line was calculated by reference to the baselines unilaterally declared by Tunisia for the measurement of the breadth of the territorial sea, the Court takes note that, as a result of the presence of the island of Jerba and the Kerkennah Islands, an equidistance line drawn without reference to these baselines is similar in effect to the Tunisian line. An equidistance line drawn on either basis, in the sector now under consideration, runs at a general angulation markedly more east of north than  $26^\circ$ , and this is of material significance. While, as the Court has already explained (paragraphs 109-110), there is no mandatory rule of customary international law requiring delimitation to be on an equidistance basis, it should be recognized that it is the virtue – though it may also be the weakness – of the equidistance method to take full account of almost all variations in the relevant coastlines. Furthermore, the Court in its 1969 Judgment recognized that there was much less difficulty entailed in a general application of the equidistance method in the case of coasts opposite to one another, when the equidistance line becomes a median line, than in the case of adjacent States (*I.C.J. Reports 1969*, pp. 36-37, para. 57). The major change in direction undergone by the coast of Tunisia seems to the Court to go some way, though not the whole way, towards transforming the relationship of Libya and Tunisia from that of adjacent States to that of opposite States, and thus to produce a situation in which the position of an equidistance line becomes a factor to be given more weight in the balancing of equitable considerations than would otherwise be the case.

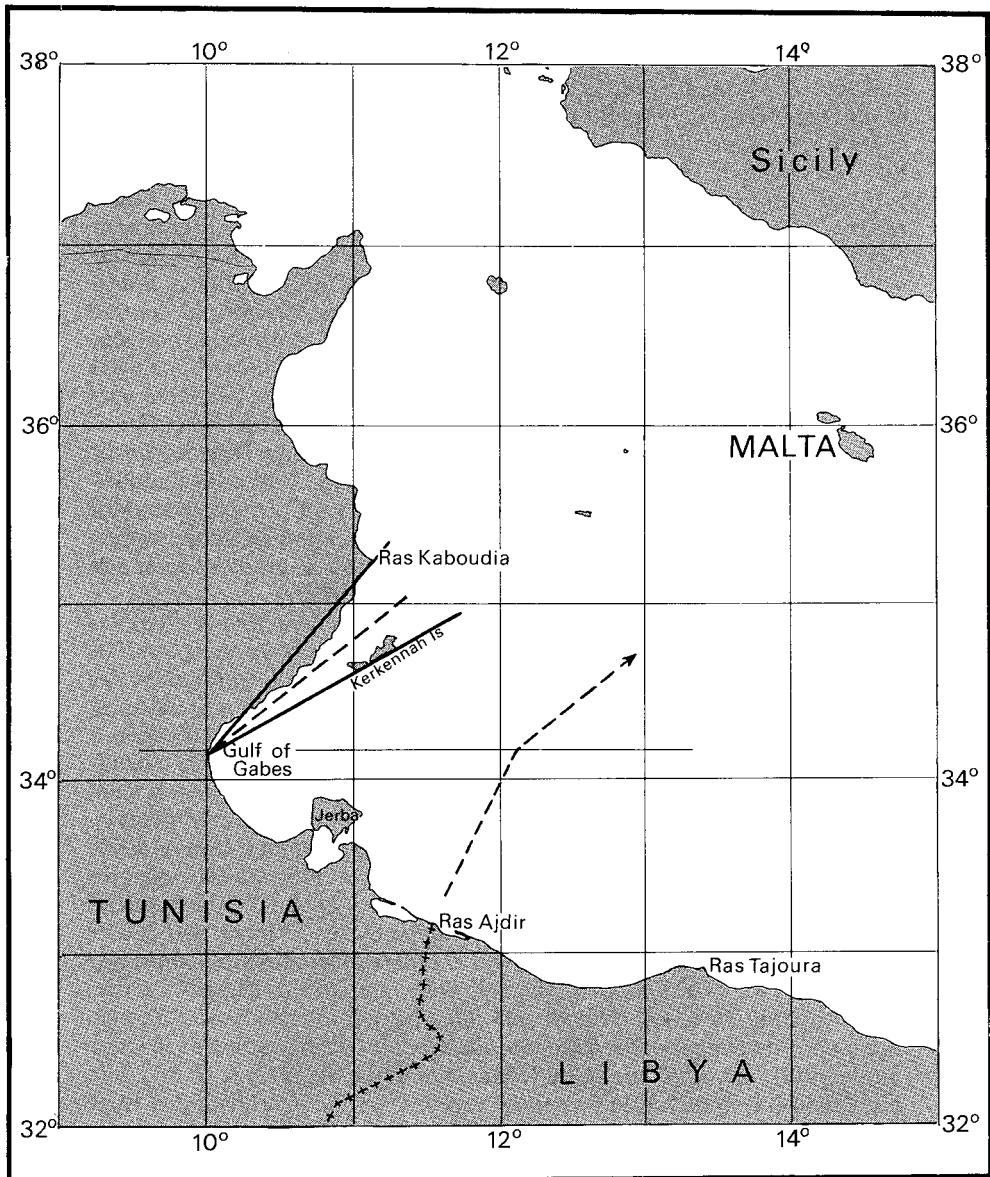
127. In the view of the Court, the relevant circumstances of the area which would not be attributed sufficient weight if the  $26^\circ$  line were prolonged seaward much beyond the  $34^\circ$  parallel of latitude are, first, the general change in the direction of the Tunisian coast already mentioned; and secondly, the existence and position of the Kerkennah Islands. The method of delimitation appropriate to the first sector has been found by the Court to be the drawing of a straight line at a defined inclination to the meridian; and the Court considers that a reasonable and equitable result will be achieved by the drawing of a straight line also, though at a different angle, throughout the second sector of the delimitation. The only question to be determined is thus the angle at which that line should run in the light of the relevant circumstances which characterize the second sector of the area.

128. The general change in direction of the Tunisian coast may, in the view of the Court, be regarded as expressed in a line drawn from the most westerly point of the Gulf of Gabes, already described, to Ras Kaboudia, and the Court notes that the bearing of this line is approximately  $42^\circ$  to the meridian. To the east of this line, however, lie the Kerkennah Islands, surrounded by islets and low-tide elevations, and constituting by their size

and position a circumstance relevant for the delimitation, and to which the Court must therefore attribute some effect. The area of the islands is some 180 square kilometres ; they lie some 11 miles east of the town of Sfax, separated from the mainland by an area in which the water reaches a depth of more than four metres only in certain channels and trenches. Shoals and low-tide elevations also extend on the seaward side of the islands themselves, which are surrounded by a belt of them varying from 9 to 27 kilometres in width. In these geographical circumstances, the Court has to take into account not only the islands, but also the low-tide elevations which, while they do not, as do islands, have any continental shelf of their own, do enjoy some recognition in international law for certain purposes, as is shown by the 1958 Geneva Conventions as well as the draft convention on the Law of the Sea. It is not easy to define what would be the inclination of a line drawn from the most westerly point of the Gulf of Gabes to seaward of the Kerkennah Islands so as to take account of the low-tide elevations to seaward of them ; but a line drawn from that point along the seaward coast of the actual islands would clearly run at a bearing of approximately  $62^{\circ}$  to the meridian. However, the Court considers that to cause the delimitation line to veer even as far as to  $62^{\circ}$ , to run parallel to the island coastline, would, in the circumstances of the case, amount to giving excessive weight to the Kerkennahs.

129. The Court would recall however that a number of examples are to be found in State practice of delimitations in which only partial effect has been given to islands situated close to the coast ; the method adopted has varied in response to the varying geographical and other circumstances of the particular case. One possible technique for this purpose, in the context of a geometrical method of delimitation, is that of the "half-effect" or "half-angle". Briefly, the technique involves drawing two delimitation lines, one giving to the island the full effect attributed to it by the delimitation method in use, and the other disregarding the island totally, as though it did not exist. The delimitation line actually adopted is then drawn between the first two lines, either in such a way as to divide equally the area between them, or as bisector of the angle which they make with each other, or possibly by treating the island as displaced toward the mainland by half its actual distance therefrom. Taking into account the position of the Kerkennah Islands, and the low-tide elevations around them, the Court considers that it should go so far as to attribute to the Islands a "half-effect" of a similar kind. On this basis the delimitation line, seawards of the parallel of the most westerly point of the Gulf of Gabes, is to be parallel to a line drawn from that point bisecting the angle between the line of the Tunisian coast ( $42^{\circ}$ ) and the line along the seaward coast of the Kerkennah Islands ( $62^{\circ}$ ), that is to say at an angle of  $52^{\circ}$  to the meridian. For illustrative purposes only, and without prejudice to the role of the experts in determining the line with exactness, Map No. 3 is attached, which reflects the Court's approach.

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MAP NO. 3

*For illustrative purposes only, and without prejudice to the role of the experts in determining the delimitation line with exactness*

130. How far the delimitation line will extend north-eastwards will, of course, depend on the delimitations ultimately agreed with third States on the other side of the Pelagian Sea. The Court has not been called upon to examine that question. Nevertheless, it is open to the Court to make use, within the area relevant to the delimitation, of the criterion of proportionality. For this purpose, it is necessary to determine the seaward limits of the area to be taken into account, which is bounded by the coasts of Tunisia as far as Ras Kaboudia and Libya as far as Ras Tajoura. Since, as explained above (paragraph 104), the essential aspect of the criterion of proportionality is simply that one must compare like with like, the exact method of drawing the outer boundaries is not critical, provided the same approach is adopted to each of the two coasts. In the present case, the Court considers that the parallel of latitude passing through Ras Kaboudia, and the meridian of longitude passing through Ras Tajoura, which have the advantage of cartographical convenience, will afford appropriate seaward limits of the areas to be compared. It is legitimate to work on the hypothesis of the whole of that area being divided by the delimitation line between Tunisia and Libya ; because although the rights which other States may claim in the north-eastern portion of that area must not be prejudged by the decision in the present case, the Court is not dealing here with absolute areas, but with proportions. Indeed, if it were not possible to base calculations of proportionality upon hypotheses of this kind, it is difficult to see how any two States could agree on a bilateral delimitation as being equitable until all the other delimitations in the area had been effected.

131. The Court notes that the length of the coast of Libya from Ras Tajoura to Ras Ajdir, measured along the coastline without taking account of small inlets, creeks and lagoons, is approximately 185 kilometres ; the length of the coast of Tunisia from Ras Ajdir to Ras Kaboudia, measured in a similar way, and treating the island of Jerba as though it were a promontory, is approximately 420 kilometres. Thus the relevant coastline of Libya stands in the proportion of approximately 31:69 to the relevant coastline of Tunisia. It notes further that the coastal front of Libya, represented by a straight line drawn from Ras Tajoura to Ras Ajdir, stands in the proportion of approximately 34:66 to the sum of the two Tunisian coastal fronts represented by a straight line drawn from Ras Kaboudia to the most westerly point of the Gulf of Gabes, and a second straight line from that point to Ras Ajdir. With regard to sea-bed areas, it notes that the areas of shelf below low-water mark within the area relevant for delimitation appertaining to each State following the method indicated by the Court stand to each other in approximately the proportion : Libya 40 ; Tunisia 60. This result, taking into account all the relevant circumstances, seems to the Court to meet the requirements of the test of proportionality as an aspect of equity.

\* \* \*

132. Delimitation is the immediate concern of the Court, in respect of which the Special Agreement between the Parties requests it to lay down the applicable principles and rules of international law and the method for their application to the delimitation in the present case. Accordingly, this Judgment has concerned itself with other questions relating to the general legal régime of the continental shelf such as the Tunisian claim to "historic rights" and "fishing zones" only in so far as the Court has found it necessary to do so for the purpose of that delimitation. In doing so, the Court has recalled the historic evolution of the concept of continental shelf, from its inception in the Truman Proclamation of 28 September 1945, through the Geneva Convention of 1958, through the *North Sea Continental Shelf* cases and subsequent jurisprudence, up to the draft convention of the Third Law of the Sea Conference, and its evolution in State practice, and the Court has endorsed and developed those general principles and rules which have thus been established. Clearly each continental shelf case in dispute should be considered and judged on its own merits, having regard to its peculiar circumstances ; therefore, no attempt should be made here to overconceptualize the application of the principles and rules relating to the continental shelf.

\* \* \*

133. For these reasons,

THE COURT,

by ten votes to four,

finds that :

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 Republic of Tunisia and the Socialist People's Libyan Arab Jamahiriya respectively, in the area of the Pelagian Block in dispute between them as defined in paragraph B, subparagraph (1), below, are as follows :

- (1) the delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances ;
- (2) the area relevant for the delimitation constitutes a single continental shelf as the natural prolongation of the land territory of both Parties, so that in the present case, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation as such ;
- (3) in the particular geographical circumstances of the present case, the physical structure of the continental shelf areas is not such as to determine an equitable line of delimitation.

B. The relevant circumstances referred to in paragraph A, subparagraph (1), above, to be taken into account in achieving an equitable delimitation include the following :

- (1) the fact that the area relevant to the delimitation in the present case is bounded by the Tunisian coast from Ras Ajdir to Ras Kaboudia and the Libyan coast from Ras Ajdir to Ras Tajoura and by the parallel of latitude passing through Ras Kaboudia and the meridian passing through Ras Tajoura, the rights of third States being reserved ;
- (2) the general configuration of the coasts of the Parties, and in particular the marked change in direction of the Tunisian coastline between Ras Ajdir and Ras Kaboudia ;
- (3) the existence and position of the Kerkennah Islands ;
- (4) the land frontier between the Parties, and their conduct prior to 1974 in the grant of petroleum concessions, resulting in the employment of a line seawards from Ras Ajdir at an angle of approximately 26° east of the meridian, which line corresponds to the line perpendicular to the coast at the frontier point which had in the past been observed as a *de facto* maritime limit ;
- (5) 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 the relevant part of its coast, measured in the general direction of the coastlines, account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitation between States in the same region.

C. The practical method for the application of the aforesaid principles and rules of international law in the particular situation of the present case is the following :

- (1) the taking into account of the relevant circumstances which characterize the area defined in paragraph B, subparagraph (1), above, including its extent, calls for it to be treated, for the purpose of its delimitation between the Parties to the present case, as made up of two sectors, each requiring the application of a specific method of delimitation in order to achieve an overall equitable solution ;
- (2) in the first sector, namely in the sector closer to the coast of the Parties, the starting point for the line of delimitation is the point where the outer limit of the territorial sea of the Parties is intersected by a straight line drawn from the land frontier point of Ras Ajdir through the point 33° 55' N, 12° E, which line runs at a bearing of approximately 26° east of north, corresponding to the angle followed by the north-western boundary of Libyan petroleum concessions numbers NC 76, 137, NC 41 and NC 53, which was aligned on the south-eastern boundary of Tunisian petroleum concession "Permis complémentaire offshore du Golfe de Gabès" (21 October 1966) ; from the intersection point so determined, the line of delimitation between the two continental

- shelves is to run north-east through the point 33° 55' N, 12° E, thus on that same bearing, to the point of intersection with the parallel passing through the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes ;
- (3) in the second sector, namely in the area which extends seawards beyond the parallel of the most westerly point of the Gulf of Gabes, the line of delimitation of the two continental shelves is to veer to the east in such a way as to take account of the Kerkennah Islands ; that is to say, the delimitation line is to run parallel to a line drawn from the most westerly point of the Gulf of Gabes bisecting the angle formed by a line from that point to Ras Kaboudia and a line drawn from that same point along the seaward coast of the Kerkennah Islands, the bearing of the delimitation line parallel to such bisector being 52° to the meridian ; the extension of this line northeastwards is a matter falling outside the jurisdiction of the Court in the present case, as it will depend on the delimitation to be agreed with third States.

IN FAVOUR : *Acting President Elias* ; *Judges Lachs, Morozov, Nagendra Singh, Mosler, Ago, Sette-Camara, El-Khani, Schwebel and Judge ad hoc Jiménez de Aréchaga* ;

AGAINST : *Judges Forster, Gros, Oda and Judge ad hoc Evensen*.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-fourth day of February, one thousand nine hundred and eighty-two, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Tunisia and to the Government of the Socialist People's Libyan Arab Jamahiriya, respectively.

*(Signed) T. O. ELIAS,*

Acting President.

*(Signed) Santiago TORRES BERNÁRDEZ,*  
Registrar.

Judges AGO and SCHWEBEL and Judge *ad hoc* JIMÉNEZ DE ARÉCHAGA append separate opinions to the Judgment of the Court.

Judges GROS and ODA and Judge *ad hoc* EVENSEN append dissenting opinions to the Judgment of the Court.

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