

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE
CONTINENTAL SHELF

(LIBYAN ARAB JAMAHIRIYA/MALTA)

APPLICATION BY ITALY FOR PERMISSION TO INTERVENE

JUDGMENT OF 21 MARCH 1984

1984

COUR INTERNATIONALE DE JUSTICE

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(JAMAHIRIYA ARABE LIBYENNE/MALTE)

REQUÊTE DE L'ITALIE À FIN D'INTERVENTION

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CASE CONCERNING THE CONTINENTAL SHELF

(LIBYAN ARAB JAMAHIRIYA/MALTA)

APPLICATION BY ITALY FOR PERMISSION TO INTERVENE

Case brought by Special Agreement – Application to intervene under Article 62 of the Statute – Legal interest which may be affected by the decision – Object of the intervention – Intervention and introduction of a fresh dispute – Principle of consent underlying jurisdiction of the Court.

JUDGMENT

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

In the case concerning the continental shelf,
between

the Socialist People's Libyan Arab Jamahiriya,
 represented by

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

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

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

Mr. Etienne Grisel, Professor of Law at the University of Lausanne,
Sir Francis Vallat, G.B.E., K.C.M.G., Q.C., Professor emeritus of International Law at the University of London,
as Counsel and Advocates,

Mr. Derek W. Bowett, C.B.E., Q.C., LL.D., Whewell Professor of International Law in the University of Cambridge,

Mr. Gunther Jaenicke, Professor of International Law at the University of Frankfurt-am-Main,

as Consultants,

and

Mr. Rodman R. Bundy,

Mr. Richard Meese,

Mr. Henri-Xavier Ortoli,

Mr. Walter D. Sohier,

as Counsel,

and

the Republic of Malta,

represented by

Dr. Edgar Mizzi, Special Legal Consultant,

as Agent and Counsel,

and

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

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

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

Upon the application for permission to intervene submitted by the Italian Republic,

represented by

H.E. Mr. Roberto Gaja, Ambassador,

as Agent,

Mr. Riccardo Monaco, Dean of the Faculty of Political Sciences, University of Rome,

Mr. Arnaldo Squillante, Section President in the Council of State, Head of the Diplomatic Legal Service at the Ministry of Foreign Affairs,

as co-Agents,

Mr. Giuseppe Manzari, State Advocate-General,

Mr. Marcello Conti, State Advocate,

as Advocates of the Italian State,

and

Mr. Gaetano Arangio-Ruiz, Professor at the University of Rome,
Mr. Giuseppe Sperduti, Professor at the University of Rome,
Mr. Michel Virally, Professor at the University of Law, Economics and Social
Sciences, Paris,

as Advocates and Counsel,

and

Mr. Giorgio Bosco, Minister Plenipotentiary,
as Counsel,
assisted by

Mrs. Cristina Antonelli, Counsellor in the Diplomatic Legal Service,

THE COURT,

composed as above,
after deliberation,

delivers the following Judgment :

1. By a notification dated 19 July 1982, received in the Registry of the Court on 26 July 1982, the Secretary of the People's Committee for the People's Foreign Liaison Bureau of the Socialist People's Libyan Arab Jamahiriya and the Minister for Foreign Affairs of the Republic of Malta notified the Court of a Special Agreement in the Arabic and English languages signed at Valletta on 23 May 1976 between the Socialist People's Libyan Arab Jamahiriya and the Republic of Malta, providing for the submission to the Court of a dispute concerning the delimitation of the continental shelf between those two States ; a certified copy of the Special Agreement was enclosed with the letter.

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

3. Since the Court did not include upon the bench a judge of Libyan or of Maltese nationality, each of the Parties proceeded to exercise the right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. On 27 July 1982 the Libyan Arab Jamahiriya designated Mr. Eduardo Jiménez de Aréchaga, and the Parties were informed on 8 October 1982, pursuant to Article 35, paragraph 3, of the Rules of Court, that there was no objection to this appointment ; on 26 April 1983 Malta designated Mr. Jorge Castañeda, and on 30 May 1983 the Parties were informed that there was no objection to this appointment.

4. By a Note Verbale of 10 June 1983, the Government of the Italian Republic, in reliance on Article 53, paragraph 1, of the Rules of Court, asked to be furnished with copies of the pleadings in the case, which at that date comprised the Memorials filed on 26 April 1983, and documents annexed thereto. By a letter dated 13 October 1983, after the views of the Parties had been sought, and objection had been raised by the Government of Malta, the Registrar informed the Government of Italy that the Court had decided not to grant the request.

5. The Counter-Memorials of the Parties to the case, as contemplated by the Special Agreement of 23 May 1976, and in accordance with an Order made by the President of the Court on 26 April 1983, were required to be filed on or before 26 October 1983. The Special Agreement, however, included a provision for a possible further exchange of pleadings, so that even when the Counter-Memorials of the Parties had been filed, the date of the closure of the written proceedings, within the meaning of Article 81, paragraph 1, of the Rules of Court, would remain still to be finally determined. The Counter-Memorials were each filed within the time-limits fixed.

6. By an Application dated 23 October 1983 and received in the Registry of the Court on 24 October 1983, the Government of Italy, invoking Article 62 of the Statute, submitted to the Court a request for permission to intervene in the case. In accordance with Article 83, paragraph 1, of the Rules of Court, certified copies of the Application by Italy for permission to intervene were forthwith communicated to the Libyan Arab Jamahiriya and Malta, the Parties to the case, and copies were also transmitted, pursuant to paragraph 2 of that Article, to the Secretary-General of the United Nations, the Members of the United Nations and other States entitled to appear before the Court.

7. On 5 December 1983, within the time-limit fixed for that purpose by the President of the Court as provided by Article 83, paragraph 1, of the Rules of Court, the Government of the Libyan Arab Jamahiriya and the Government of Malta submitted written observations on the Application of Italy for permission to intervene, in which they set out their respective reasons for, in the case of the Libyan Arab Jamahiriya, requesting the Court to decline to permit Italy to intervene, and, in the case of Malta, submitting that the Court should find that the Application of Italy for permission to intervene cannot be granted. The Parties and the Government of Italy were therefore notified on 5 December 1983 that the Court would hold public hearings, in accordance with Article 84, paragraph 2, of the Rules of Court, to hear the observations of Italy, the State seeking to intervene, and those of the Parties to the case.

8. On 25, 26, 27 and 30 January 1984 public hearings were held, in the course of which the Court heard oral argument, on the question whether the permission to intervene under Article 62 of the Statute requested by Italy should be granted, by the following representatives :

For the Italian Republic :

H.E. Mr. Roberto Gaja,
Professor Gaetano Arangio-Ruiz,
Professor Riccardo Monaco,
Professor Giuseppe Sperduti,
Mr. Marcello Conti,
Professor Michel Virally ;

*For the Socialist People's
Libyan Arab Jamahiriya :*

Mr. Abdelrazeg El-Murtadi Suleiman,
Professor Claude-Albert Colliard,
Sir Francis A. Vallat, G.B.E.,
K.C.M.G., Q.C.,
Professor Etienne Grisel ;

For the Republic of Malta :

Dr. Edgar Mizzi,
Mr. E. Lauterpacht, Q.C.

Questions were addressed to the representatives of Italy and of Malta by Members of the Court, and the replies were given in writing after the close of the hearings in accordance with Article 61, paragraph 4, of the Rules of Court.

9. In the course of the proceedings the following submissions were presented to the Court :

On behalf of the Italian Republic,

in the Application for permission to intervene :

“On the basis of the foregoing observations, Italy respectfully requests authorization to intervene in the present proceedings between Libya and Malta” ;

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

in the Observations of the Libyan Arab Jamahiriya on the Italian Application :

“On the basis of the foregoing Observations, Libya respectfully requests the Court to decline to permit Italy to intervene in the present proceedings between Libya and Malta” ;

in the course of the oral proceedings :

“We therefore would reaffirm the submissions made to the Court in the written Observations of Libya and would respectfully request that the Court decline to authorize Italy to intervene in the *Libya/Malta case*” ;

On behalf of the Republic of Malta,

in the Observations of Malta on the Italian Application :

“Malta respectfully submits that the Court should find that the Application of Italy for permission to intervene cannot be granted” ;

in the course of the oral proceedings :

“the formal submission [of the Republic of Malta is] that the Court be pleased to find that the Application of the Republic of Italy cannot be granted”.

* * *

10. The Application of the Italian Republic submitting a request to the Court for permission to intervene in the case is based on Article 62 of the Statute of the Court, which provides :

“1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.”

Such an application under Article 62 is required by Article 81, paragraph 1, of the Rules of Court to be filed “as soon as possible, and not later than the

closure of the written proceedings”, and by Article 81, paragraph 2, to specify the case to which it relates and to set out :

- “(a) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case ;
- (b) the precise object of the intervention ;
- (c) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case.”

The Application of Italy was filed in the Registry of the Court only two days before the time-limit fixed for the filing of the Parties’ Counter-Memorials. This fact has been emphasized by counsel for Libya in the context of a contention that Italy’s legal or procedural position has been affected by delay. The Court notes however that the Application was filed before the expiry of the time-limit fixed by Article 81, paragraph 1, of the Rules. The substantive objections taken by the Parties in connection with (*inter alia*) the date of filing of the Application to intervene, in the context of these proceedings, need not be examined at this stage in the Judgment when the Court is concerned only with *formal* admissibility. So far as the three requirements set out in subparagraphs (a), (b) and (c) of Article 81, paragraph 2, of the Rules of Court are concerned, the Court notes that the Italian Application complies formally with these, even though objection has been taken by the Parties on the basis that, on the substance, in all three respects there are grounds for finding the Application of Italy inadmissible. The Court concludes that the Italian application is not out of time and has no formal defect which would render it inadmissible.

11. Certain questions have been raised as to the jurisdiction of the Court in relation to the Italian Application, inasmuch as it has been objected both by Libya and by Malta that Italy has not shown, and cannot show, the existence of “any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the Parties to the case”. It has not however been suggested by either of these States that the Court lacks jurisdiction to entertain the present Application, and to determine its admissibility : on the contrary, it is admitted that such jurisdiction is conferred on the Court by Article 62 of the Statute, a view which is shared by the Court itself. The contention of Libya and Malta is rather that the absence of what the Court in 1981 called “a valid link of jurisdiction with the parties to the case” (*I.C.J. Reports 1981*, p. 20, para. 36), constitutes a ground on which the Application of Italy for permission to intervene must be refused, or found to be inadmissible. Accordingly, although this question is one of the Court’s jurisdiction, it has no priority of the kind which attaches to a jurisdictional objection *stricto sensu*, and need not be examined in advance of the other contentions put forward by the Parties either as objections to the admissibility of the Application, or as grounds for refusing it.

12. Before proceeding further, the Court would emphasize, as it did in the Judgment of 14 April 1981 on the application of Malta to intervene in the *Continental Shelf* case between Tunisia and Libya, that

"it does not consider paragraph 2 [of Article 62 of the Statute] to confer upon it any general discretion to accept or reject a request for permission to intervene for reasons simply of policy. On the contrary, in the view of the Court the task entrusted to it by that paragraph is to determine the admissibility or otherwise of the request by reference to the relevant provisions of the Statute." (*I.C.J. Reports 1981*, p. 12, para. 17.)

The Court will therefore now examine the contentions advanced by Italy in support of its application for permission to intervene, and the objections taken by the Parties to the admissibility of the Italian Application, in the light of the relevant provisions of the Statute.

* * *

13. Article 62 of the Statute begins by setting the condition that "should a State consider that it has an interest of a legal nature which may be affected by the decision in the case . . .". Taken literally, this is no more than an indication of the reasons which may impel a State to seek to intervene; but it is clear that the intention of the text is that the existence of such an interest is, objectively, a requirement for intervention. As the Court stated in its Judgment of 14 April 1981, what a State seeking to intervene

"has to show in order to obtain permission to intervene under Article 62 of the Statute is an interest of a legal nature which may be affected by the Court's decision in the present case" (*I.C.J. Reports 1981*, p. 19, para. 33).

14. In order to assess the interest of a legal nature claimed by Italy and to appreciate in what way Italy considers that its interest is *en cause*, or may be affected by the decision in the present case, it is necessary to recall the subject-matter of the case as defined by the Special Agreement concluded by the Parties on 23 May 1976 and notified to the Court on 26 July 1982. Articles I and III of that Special Agreement provide as follows :

"Article I"

The Court is requested to decide the following question :

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

Article III

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

No express indication is given in the Special Agreement which would in any way limit the area in which the delimitation referred to in Article I is to be effected, and reference is there made to delimitation of “the area of the continental shelf which appertains to” Malta and to the Libyan Arab Jamahiriya respectively, without saying in which direction it extends or indicating the identity of the State whose shelf might border on it. It is clear however from, in particular, the reference in Article III to a delimitation agreement to be concluded between Malta and Libya “in accordance with the decision of the Court” that the Court’s task is confined to indication of the principles and rules of international law applicable to the delimitation to be effected between those two States, and how in practice they can be applied. Furthermore, it is a fundamental principle that the Court has no jurisdiction to determine matters in dispute between States without their consent. Thus the content of the future decision by the Court in the case brought before it by the Libya/Malta Special Agreement of 23 May 1976 cannot determine the delimitation of the respective continental shelves appertaining to those States vis-à-vis any third State.

15. The interest of a legal nature contemplated by the Statute has been defined in the present case by counsel for Italy as “an interest of the Applicant State covered vis-à-vis other States, namely the principal Parties, by international legal rules or principles”. The specific legal interest relied on by Italy is claimed to be “nothing less than respect for its sovereign rights over certain areas of continental shelf in issue in the present case”. Briefly expressed, the contention of Italy is that, so far as it is acquainted with the claims of Libya and Malta to areas of continental shelf in the central Mediterranean, it is of the view that those claims extend to areas which would be found to appertain to Italy if a delimitation were to be effected between Italy and Libya, and between Italy and Malta, on the basis of international law. At the hearing counsel for Italy demonstrated on a map of the central Mediterranean what were understood by Italy to be the claims of the Parties to continental shelf areas, and indicated broadly where Italy considered that it had rights in such areas. In response to a question put by a judge, the Agent of Italy, in a written reply enclosed with a letter dated 6 February 1984 (to which was attached a map) indicated

“the zones of continental shelf over which Italy considers that it has rights and which are comprised within the region which is probably

the subject-matter of the case pending before the International Court of Justice".

The legal interest of Italy is thus not merely an interest, but the "sovereign rights" over the appropriate areas of continental shelf for the purpose of exploration and exploitation recognized by customary law and explicitly mentioned in the 1958 Geneva Convention on the Continental Shelf and the 1982 United Nations Convention on the Law of the Sea. "The interest relied upon by Italy", said counsel at the hearing, "is the protection of its claims to its sovereign rights over areas claimed by the Parties to the present case". Furthermore, its interests are involved inasmuch as it has reservations as to what it understands to be the views of Libya on such matters as the status of a considerable part of the Gulf of Sirt.

16. In its Application for permission to intervene, and in the arguments of its counsel before the Court, Italy gives the following indications of the way in which it considers that its interest of a legal nature is *en cause*, or may be affected by the decision in the present case. The areas of continental shelf to be delimited between the Parties all belong to one and the same region of the central Mediterranean, of which Italy is a coastal State, and in which, consequently, some of the continental shelf areas over which it considers it possesses rights are situated. The whole bed of the sea area in question is part of the continental shelf, within the meaning of the definition in Article 76 of the 1982 United Nations Convention on the Law of the Sea, and the greater part of such sea-bed consists of areas of overlap of the rights of such States. Some of the areas of continental shelf disputed between Malta and Libya in the present proceedings are areas over which Italy considers that it has undeniable rights. In the light of a comparison of the Special Agreement by which the Court was seized in the present case with that concluded in 1977 by Tunisia and the Libyan Arab Jamahiriya, on the basis of which the Court gave its Judgment of 24 February 1982, Italy expects that the future judgment of the Court in the present case will be as precise as that previous Judgment and will necessarily exclude any uncertainty with regard to the location and size of the continental shelf belonging to each of the Parties as a consequence of the establishment of the demarcation line. The Court's future judgment, it is suggested, will therefore inevitably decide, albeit implicitly, namely by delimiting between States other than Italy, that given areas do not appertain to Italy.

17. In accordance with Article 81, paragraph 2 (b), of the Rules of Court, the Application of Italy contains a statement of the "precise object" of the intervention. Italy explains first that :

"The object of the intervention which Italy seeks authorization to make directly follows both from the definition of its legal interest which may be affected, and from the very object of the case which has been brought before the Court."

The Application goes on to indicate that: “The object of Italy’s application to intervene is to ensure the defence before the Court of its interest of a legal nature”, so that the principles and rules of international law to be determined by the Court as applicable to the delimitation of the continental shelf between Malta and Libya “and, in particular, the practical method of applying them, are not determined by the Court without awareness of that interest, and to its prejudice”, and continues :

“In other words, Italy seeks to participate in the proceedings to the full extent necessary to enable it to defend the rights which it claims over some of the areas-claimed by the Parties, and to specify the position of those areas, taking into account the claims of the two principal Parties and the arguments put forward in support of those claims, so that the Court may be as fully informed as possible as to the nature and scope of the rights of Italy in the areas of continental shelf concerned by the delimitation, and may thus be in a position to take due account of those rights in its decision.”

During the oral proceedings, a co-Agent for Italy offered a further summary of the object of the intervention. Italy, he said, is not requesting the Court to determine the course of the delimitation line dividing the areas of continental shelf appertaining to Italy from the areas appertaining respectively to Malta or Libya, nor to determine the principles and rules of international law applicable to that delimitation.

“Italy is asking the Court, when it accomplishes the mission entrusted to it by the Special Agreement of 23 May 1976, that is to say, when it answers the questions put to it in Article I of that Special Agreement, to take into consideration the interests of a legal nature which Italy possesses in relation to various areas claimed by the main Parties, on certain parts of those areas, and accordingly to provide the two Parties with every needful indication to ensure that they do not, when they conclude their delimitation agreement pursuant to the Court’s judgment, include any areas which, on account of the existence of rights possessed by Italy, ought to be the subject either of delimitation between Italy and Malta, or of delimitation between Italy and Libya, or of a delimitation agreement as between all three countries.”

At a later stage, counsel emphasized that Italy is not seeking to intervene solely to inform the Court of its claims, but so that the Court can give the Parties all the requisite guidance to ensure non-encroachment on areas over which Italy has rights. The object of the Italian intervention is thus claimed to be “strictly within the framework of the case brought before the Court by the 1976 Special Agreement”, and in no way to affect the interests of the main Parties. Another aspect of its intervention emphasized by Italy is that

“the Government of Italy, once permitted to intervene, will submit to such decision as the Court may make with regard to the rights claimed by Italy, in full conformity with the terms of Article 59 of the Statute of the Court”.

Its status in such circumstances would, it was suggested, be that of an “intervening party”, entitled to make submissions.

18. The Court has noted above the formal compliance by Italy in its Application with the requirement of paragraph 2 (c) of Article 81 of the Rules of Court, requiring the applicant State to set out “any basis of jurisdiction which is claimed to exist” as between itself and the parties to the case. Italy’s contention is that

“the Italian legal interest which may certainly be affected . . . and the object of the present application . . . are automatically, and in accordance with the Statute of the Court, creative of jurisdiction of the Court to the extent necessary to justify the admission of Italy to participate in the present proceedings as an intervener”.

This indication is however prefaced by the observation that “there is no provision in Article 62 of the Statute that the existence of a basis of jurisdiction is a condition for intervention”, and that Article 81, paragraph 2 (c), was not intended to impose such a condition but “does no more than lay down a mere requirement for information to be supplied with a view to fuller knowledge of the circumstances of the case”. Italy argues that every State party to the Statute is *ipso facto* made subject to the “jurisdictions which are directly established by the Statute”, including the direct jurisdiction created by Article 62. Provided the conditions laid down by that Article are fulfilled,

“Italy considers that the operation of Article 62 itself suffices to create the basis of jurisdiction of the Court to the extent necessary for the admission of an application for permission to intervene”.

Accordingly, while mentioning its being a party to the European Convention for the Peaceful Settlement of Disputes, in order – as counsel later explained – “to satisfy the procedural obligations arising out of Article 81 of the Rules of Court”, Italy has throughout maintained its view that Article 62 of the Statute afforded a sufficient basis of jurisdiction, either in itself or by the conjunction of the acceptance of the jurisdictional power of the Court by becoming a party to the Court’s Statute, with a subsequent conferral of jurisdiction on it, for example by Special Agreement. This view it qualifies only to the extent of recognizing that it might be valid only for a “genuine intervention”, one bearing exclusively on the subject-matter of the main case, and not concerning an independent dispute. Should the intervention, or purported intervention, be one in which the applicant seeks to assert a right against the parties, and thus equivalent to a mainline application, in such case either it would not be a genuine intervention at all, or

"the general title of jurisdiction constituted by Article 62 should be supplemented by a special jurisdictional link between the State seeking to intervene and the Parties to the case, by virtue of an interpretation reading Article 62 with Article 36, and taking into account the optional character of the Court's jurisdiction".

* * *

19. In its Observations on the Application of Italy, Libya first raises certain preliminary issues. Noting that there had been no negotiation, prior to that application, between Libya and Italy confirming the delimitation of their continental shelf and no dispute upon that subject had arisen, it observes that since the Italian claims were asserted for the first time in the application for permission to intervene, their validity was seriously open to challenge. To allow Italy to intervene at this late stage in the proceedings would create an unfair situation by placing Italy in an advantageous position vis-à-vis the main Parties, already committed as they were by the contents of their pleadings. During the oral proceedings, Libya contended that the absence of prior negotiations was abnormal in the case of a problem – the delimitation of the continental shelf – for whose solution international law prescribed agreement as the primary method, whereas it is only in the absence of such agreement that the States concerned should turn to procedures of pacific settlement. International practice accords with that principle, it observes, and Italy has itself concluded several delimitation agreements. But it has not entered into any negotiations with Libya with a view either to delimitation or to the conclusion of a special agreement for the institution of proceedings. Now Italy is seeking to make use of intervention procedure ; but it is doing so by means of an application filed at so late a stage that, even if it was not in breach of Article 81, it runs counter to the tendency expressed by that Article in the 1978 Rules of Court.

20. Libya further denies that Italy has been able to establish the existence of any Italian interest of a legal nature which could be affected by the decision in the case. In its Observations it urges that the claims disclosed by the Italian Application remain so vague that they could not properly be the subject of an intervention ; Italy's interest is neither defined nor localized. Furthermore, the 1976 Special Agreement does not in any way put in issue the rights of Italy but only rights and claims as between Libya and Malta. The Italian position could not be justified by any reference to "procedural law", since there is no precedent for permission to intervene in the Court's practice, and any analogy with municipal law would be misleading, since that law is based on compulsory jurisdiction. During the oral proceedings, Libya explained further that the Application "does not in fact take the Special Agreement of 23 May 1976 properly into consideration". The Italian argument based on similarity with the 1977 Tunisia/Libya Special Agreement (referred to in paragraph 16 above), was unsound particularly since the Libya/Malta agreement of 1976 left the Parties a margin for

negotiations leading to a treaty, whereas the 1977 text simply provided for experts to apply the decision of the Court. Italy failed to recognize the strictly bilateral character of the delimitation to be effected. That character is more strictly denoted in the 1976 Special Agreement than in that of 1977. The relativity of delimitations stands confirmed in judicial and arbitral case-law. This constitutes both a necessity, in that bilateral delimitations have to be settled one by one, and a guarantee for third States. Furthermore, in the case of a decision by the Court, Italy's rights would be safeguarded by the application of Article 59 of its Statute. Thus the rights of third States would be protected by the constant attitude of the Court, without it being necessary to have recourse to intervention.

21. With regard to the object of the intervention, which according to Libya Italy had not been able to describe precisely, Libya refers in its Observations to Italy's statement of that object (quoted or summarized in paragraph 17 above), and contends that those declarations were so vague that they should induce the Court to adopt in their respect the same negative position as it had taken with regard to the Application of Malta for permission to intervene in the case between Tunisia and Libya. In any event, as the Court's Judgment on the dispute between Libya and Malta could not prejudice any Italian legal interest, the sole real object which the Italian Application could have was, in Libya's view, to make the Court aware of Italy's interest. But if that were so the Italian Application was not one in respect of which permission to intervene should be granted under Article 62 of the Statute. If, on the other hand, Italy really wishes to submit its claims against Libya (or Malta) to adjudication, the appropriate procedure should be negotiations between Italy and Libya or Malta, not that of an intervention, which would widen the scope and disrupt the development of the case already referred to the Court.

22. During the oral proceedings Italy did, Libya conceded, furnish certain indications regarding the object of its Application. These, however, had not removed all ambiguity. It remained unclear whether Italy proposed to defend its rights by merely supplying the Court with information or whether it intended to put in issue its own claims to certain areas. The purpose of merely informing the Court would not justify an intervention, while if, on the other hand, Italy sought to assert its rights against Libya or Malta as a party to the case, that could not be regarded as an intervention but would be an entirely new case. Moreover, the indications provided by Italy served to demonstrate that the Court could properly discharge its task without the admission of Italy to intervene. By the effect of Article 59 of the Statute, the Court's judgment would be binding only upon the Parties but would be relative and non-opposable to Italy ; that State would in no way be bound by the operative provisions of that judgment. Italy would be protected by the relative effect of judicial decisions, the fact that delimitation agreements are always concluded subject to the rights of third States and, finally, the fact that the Special Agreement of 1976 did not place any rights in issue except as between Libya and Malta.

23. In its Observations Libya also contends that the Italian Application

should be dismissed on account of the requirements imposed by the Statute and the Rules of Court in regard to jurisdiction. The sole possible basis of the Court's competence is the common and mutual consent of the States involved. But there was not even a *prima facie* link of jurisdiction between Libya and Italy. Article 62 in itself could not constitute such a link. If the Italian contentions were accepted, the provision of the Rules of Court concerning the basis of jurisdiction, which implies that Article 62 cannot create in itself that basis, would be meaningless. During the oral proceedings, Libya further observed that the fact that Italy had expressed its intention of becoming a party and requesting a judgment in its favour was highly relevant in determining whether the Court had jurisdiction. That jurisdiction flowed from a dual consent, made up of accession to the Statute and subsequent acceptance of a basis of jurisdiction. There could be no presumption of such acceptance and, whatever its form, it must be clearly and distinctly expressed. That basis of jurisdiction was not provided by Article 62. This conclusion could be drawn from the location of this Article within the Statute, from Article 81, paragraph 2(c), of the Rules of Court (which, while unable to derogate from the Statute, provided an authoritative interpretation thereof, and at the least signified that the question of jurisdiction could be relevant or even decisive), by the authority of jurists of unimpeachable competence, including several judges of the Court, and, finally, by the respect owed to the principles of reciprocity and equality between States. Those principles would be violated if intervention was made exempt from the requirement of a common and mutual consent of the three States, since the initial Parties would be constrained to submit themselves to the Court's jurisdiction to a degree exceeding the corresponding obligations of the intervener, which would enjoy a right not possessed by the original Parties.

24. Libya also disputed each of the Italian arguments regarding the interpretation of Article 62. It argued that once the decision had been taken to subject the Court's jurisdiction to the consent of States, the draftsmen of the Statute would have said so in terms had they wished to exclude the case of intervention from that decision. All that Article 62 conferred upon the Court was an incidental jurisdiction, one quite distinct from jurisdiction for dealing with matters of substance; otherwise, that Article would automatically and covertly institute a form of compulsory jurisdiction, all possibility of reservations to which would be excluded. The Italian contention that States referring a dispute to the Court by means of a special agreement accept the provisions of the Statute authorizing the intervention of any State substantiating a legal interest would be correct only if such a derogation from the principle of the equality of States had a clear and express legal basis, which it had not. Even supposing such implicit consent to be conceivable, it should at least relate to a specific pre-existing dispute, which is not the case here. The Special Agreement could not serve as an implicit basis for the Italian intervention, which would virtually involve its revision.

* * *

25. Malta contends that Italy's application "relates to a claim which Italy has never before formulated". According to Malta, its discussions with Italy since 1965 have concerned only the areas of continental shelf between Malta and Sicily, or Malta and the Pelagian Islands, and have not concerned the areas to which it has in its Application indicated claims. Malta has further pointed out that, whereas in 1981 it had had occasion publicly to expound its own claims when presenting its own application for permission to intervene, Italy did not, either then or later, give utterance to any conflicting claims. In particular, Malta maintains that Italy has never made "reference to any claim to any continental shelf area anywhere extending beyond the median line", so that Malta is entitled to consider that Italy has never objected to the median line method it had accepted in regard to the Channel between Malta and Sicily and proposed for the delimitation between Malta and the Pelagian Islands. Malta accordingly concludes on the one hand that no dispute exists between it and Italy and, on the other hand, that "Italy is now estopped from asserting its claim against Malta by way of an application to intervene". The application must be rejected, as Italy has failed to provide evidence of a dispute. For, according to Malta, if a dispute cannot be submitted to the Court in direct contentious proceedings until its character and dimensions have been established by prior negotiation, the same must *a fortiori* apply to "a comparable application to intervene in proceedings commenced by agreement, and pending between two States". Since Italy has not availed itself of its many opportunities of clearly pointing out to Malta the existence of a disagreement or dispute concerning areas other than those between Malta and the Pelagian Islands, it has, by its "silence" and "inactivity", laid itself open to having the claims it would now seek to assert declared inadmissible by virtue of estoppel or preclusion.

26. Malta considers that the nature of the interest relied upon by Italy has been insufficiently specified and that the application makes the object of the intervention dependent upon that vaguely expressed interest, with the result that this object also is, necessarily, obscure. Malta asserts that Italy's interest could not in any event be affected by the decision in the present case, since the Court's decision, confined at it must be to the questions submitted in the Special Agreement, could not affect the rights and claims of third States, either in its reasoning or in its operative provisions. So far as those States are concerned, it will be *res inter alios acta*, and cannot be creative of more rights or obligations for Italy than any Libya-Malta delimitation resulting from direct negotiations between those two countries. Malta also remarks that, whereas Italy's present position differs little, from the formal viewpoint, from Malta's own at the time of its endeavour to intervene in 1981 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* there is a distinction of substance in that Italy, Malta says, has not provided a shred of evidence concerning its

claims. In Malta's view, Italy has remained ambiguous about the status and role in the proceedings which it has sought to acquire by its application for permission to intervene.

27. Malta contends that Italy has not established the existence of a jurisdictional link between it and the two main Parties. While admitting that in the case between Tunisia and Libya the Court did not have formally to decide whether the possession of a jurisdictional link was a necessary condition for the granting of an application for permission to intervene, it considers that both the Court's Judgment and the separate opinions appended on that occasion showed due

"concern to protect the exclusivity of the relationship between two States which by special agreement jointly submit a dispute to the Court, to preserve the basis on which that agreement was reached and to safeguard the principle that the Court's jurisdiction is based upon consent".

Malta contends that the result of allowing Italy's intervention would be to disregard the principles of reciprocity and of the equality of parties' rights and obligations, to modify and widen the scope of the Special Agreement drawn up between the Parties and to lead the Court to pronounce upon matters which are not only unenvisioned by that Special Agreement but even remain hitherto unknown to the Parties.

* * *

28. Some of the arguments of the Parties to the case, Malta and the Libyan Arab Jamahiriya, have been put forward in effect as grounds for rejecting the Italian Application *in limine*, without there being any need for further examination of its compliance with Article 62 of the Statute of the Court. For reasons that will become clear, the Court does not find it necessary to examine whether these contentions are really of a preliminary character, or to deal with them separately from the other objections made by the Parties. The Court will confine itself to those considerations which are in its view necessary to the decision which it has to give. On that basis, in order to determine whether the Italian request is justified, the Court should consider the interest of a legal nature which, it is claimed, may be affected. However, it must do this by assessing the object of the Application and the way in which that object corresponds to what is contemplated by the Statute. Article 62 of the Statute provides for intervention by a State which considers that it has an interest of a legal nature which "may be affected by the decision in the case" or which is "*en cause*", and thus envisages that the object of the intervening State will be to ensure the protection or safeguarding of its "interest of a legal nature", by preventing it from being "affected" by the decision. The Court has therefore to consider whether or not the object of the intervention is such protection or safeguarding. In its Judgment of 14 April 1981 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* the Court noted that

"the very character of the intervention for which Malta seeks permission shows, in the view of the Court, that the interest of the legal nature invoked by Malta cannot be considered to be one 'which may be affected by the decision in the case' within the meaning of Article 62 of the Statute" (*I.C.J. Reports 1981*, p. 19, para. 33 *in fine*).

Italy has recognized that the object of the intervention and the nature of the legal interest invoked were linked ; as noted in paragraph 17 above, the Application states that

"The object of the intervention which Italy seeks authorization to make directly follows both from the definition of its legal interest which may be affected, and from the very object of the case which has been brought before the Court."

29. Italy has emphasized in the present proceedings that it is making no claim against either of the two principal Parties, that it is not seeking a decision by the Court delimiting its own areas of continental shelf, nor a decision declaring the principles and rules of international law applicable to such a delimitation. Normally, the scope of a decision of the Court is defined by the claims or submissions of the parties before it : and in the case of an intervention it is thus by reference to the definition of its interest of a legal nature and the object indicated by the State seeking to intervene that the Court should judge whether or not the intervention is admissible. However, as the Court observed in the *Nuclear Tests* cases with reference to an application instituting proceedings "it is the Court's duty to isolate the real issue in the case and to identify the object of the claim" (*I.C.J. Reports 1974*, p. 262, para. 29), and again :

"the Court must ascertain the true object and purpose of the claim and in doing so it cannot confine itself to the ordinary meaning of the words used ; it must take into account the Application as a whole, the arguments of the Applicant before the Court, the diplomatic exchanges brought to the Court's attention, . . ." (*ibid.*, p. 263, para. 30).

Similarly, in the case of the present Application for permission to intervene, the Court must take all these circumstances into account as well as the nature of the subject-matter of the proceedings instituted by Libya and Malta. While formally Italy requests the Court to safeguard its rights, it appears to the Court that the unavoidable practical effect of its request is that the Court will be called upon to recognize those rights, and hence, for the purpose of being able to do so, to make a finding, at least in part, on disputes between Italy and one or both of the Parties.

30. Italy is requesting the Court to pronounce only on what genuinely appertains to Malta and Libya, and to refrain from allocating to these States any areas of continental shelf over which Italy has rights. But for the Court to be able to carry out such an operation, it must first determine the

areas over which Italy has rights and those over which it has none. As regards the first areas, once they are identified, the Court will be able to refrain from declaring that they appertain either to Libya or to Malta. As regards the second areas the Court will then be able to carry out the operation requested by the Special Agreement between Malta and Libya. Thus in a decision given by the Court after Italy had been admitted to intervene and assert its rights, the juxtaposition between, on the one hand, the areas involved in the Court's operation under the Special Agreement and, on the other hand, the areas in regard to which the Court would refrain from carrying out such an operation, would be tantamount to the Court's having made findings, first as to the existence of Italian rights over certain areas, or as from certain geographical points or sets of points ; and secondly as to the absence of such Italian rights in other areas, or as from certain geographical points or sets of points.

31. Therefore, if Italy were permitted to intervene in the present proceedings in order to pursue the course it has itself indicated it wishes to pursue, the Court would be called upon, in order to give effect to the intervention, to determine a dispute, or some part of a dispute, between Italy and one or both of the principal Parties. The fact that Italy has disclaimed any intention of asking the Court to settle such a dispute is immaterial : as the Court has previously observed :

“Whether there exists an international dispute is a matter for objective determination. The mere denial of the existence of a dispute does not prove its non-existence.” (*Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950*, p. 74.)

Nor would the intervention sought be justifiable on the ground that it would merely convert an existing bilateral dispute, already before the Court, into a trilateral dispute. Whether the relations between Italy and the Parties in the matter of continental shelf delimitation be regarded as three disputes, or one dispute, the fact remains that the Court cannot adjudicate on the legal relations between Italy and Libya without the consent of Libya, or on those between Italy and Malta without the consent of Malta.

32. The distinction which Italy has endeavoured to make is between a request that the Court take account of, or safeguard, its legal interests, and a request that the Court recognize or define its legal interests, which would amount to the introduction of a distinct dispute. But this distinction is in any event not valid in the context of the task conferred on the Court by the Special Agreement in the present case. If the Court is to perform that task, and at the same time to safeguard the legal interests of Italy (more than would result automatically, as will be explained below, from the operation of Article 59 of the Statute), then when giving any indication of how far the Parties may extend their purely bilateral delimitation, it must take account, so far as appropriate, of the existence and extent of Italian claims. But if Italy were permitted to intervene and by that means not only to inform the Court of its claims, but to present substantive arguments in favour of their

being recognized – which is what Italy requests –, the ensuing decision of the Court could not be interpreted merely as not “affecting” these rights, but would be one either recognizing or rejecting them, in whole or in part. A decision of the Court preserving the Italian rights, in contrast to a decision ruling upon them, could only be one taken after Italy had informed the Court of its claims, but without the merits of those claims being argued before the Court by Italy and the principal Parties. Thus in this case, it is not sufficient for the intending intervenor to exercise restraint in the formulation of the protection of its interests it seeks from the Court. If in a case of this kind a third State were permitted to intervene so as to present its claims and indicate the grounds advanced as justifying them, then the subsequent judgment of the Court could not be limited to noting them, but would, expressly or implicitly, recognize their validity and extent.

33. The fact that to permit Italy to intervene would inevitably lead the Court to make a finding as to Italy’s rights (to the extent that they are opposed to Malta’s and Libya’s claims) is in fact demonstrated by the text of Italy’s Application itself, and by the statements of Italy’s representatives before the Court. In the Application, Italy explains that it “seeks to participate in the proceedings to the full extent necessary to enable it *to defend the rights which it claims* over some of the areas claimed by the Parties” (emphasis added). As already noted in paragraph 17 above, counsel for Italy has defined the object of the intervention by explaining that Italy is asking the Court, when carrying out its task under the Special Agreement, to

“provide the two Parties with every needful indication to ensure that they do not, when they conclude their delimitation agreement pursuant to the Court’s judgment, include any areas which, *on account of the existence of rights possessed by Italy, ought to be the subject* either of delimitation between Italy and Malta or of delimitation between Italy and Libya, or of a delimitation agreement as between all three countries.” (Emphasis added.)

Furthermore the Agent of Italy, recalling the aim of Italy’s application to intervene and the result expected by his country from these proceedings, added : “Italy desires nothing more than that which, through appropriate procedures, will be recognized as its legal due.” In order to comply with Italy’s request, the Court would have to define the areas which “ought to be the subject of delimitation” with Italy, and to do so by reference, not to claims advanced by Italy, but to “the existence of rights possessed by Italy”; it follows that it is being asked to make a finding of the existence of such rights, and as to at least the approximate extent of them. Furthermore, Italy admits that the decision as to its rights also has a negative aspect. This was expressed by counsel for Italy in another declaration, according to which “the Court could decide that, in the areas within which

it will be indicating to the main Parties how they should proceed with the delimitation, Italy is not entitled to claim any rights". Similarly, another representative of Italy argued that :

"If . . . , after hearing Italy's presentation, the Court decides that there are grounds for proceeding to a delimitation between Malta and Libya, it will decide, implicitly or explicitly, that Italy has no rights in the areas concerned, despite any claims which it may make to the contrary."

34. The consequences of the Court's finding, that to permit the intervention would involve the introduction of a fresh dispute, can be defined by reference to either of two approaches to the interpretation of Article 62 of the Statute, both of which must result in the Court being bound to refuse the permission to intervene requested by Italy, and both of which will give to Article 62 its full effectiveness. These are in effect two facets of a single reality, namely the basic principle that the jurisdiction of the Court to deal with and judge a dispute depends on the consent of the parties thereto.

35. The first way of expressing this reality would be to find that, having thus reached the conclusion that Italy is requesting it to decide on the rights which it has claimed and not merely to ensure that these rights be not affected, the Court must state whether it is competent to give, by way of intervention procedure, the decision requested by Italy. As noted above, Italy considers that once it is established that a State seeking to intervene has a legal interest which is *en cause*, "the operation of Article 62 itself suffices to create the basis of jurisdiction of the Court to the extent necessary for the admission of an application for permission to intervene". It appears to the Court that if it were to apply this argument to an intervention having the object which, as explained above, is that of Italy, it would be admitting that the procedure of intervention under Article 62 would constitute an exception to the fundamental principles underlying its jurisdiction : primarily the principle of consent, but also the principles of reciprocity and equality of States. The Court considers that an exception of this kind could not be admitted unless it were very clearly expressed. Recognition of the compulsory jurisdiction of the Court is an important aspect of the freedom and equality of States in the choice of the means of peaceful settlement of their disputes. Such a limitation is not to be presumed, and must be clearly and expressly stated if it is to be admitted. Article 62 of the Statute contains no such express derogation ; and neither its position in the Statute, nor the *travaux préparatoires* of its adoption, serve to support an interpretation of the Article as intended to effect such derogation. In harmony with this first method of reconciling Article 62 with the principle of consent to the jurisdiction of the Court, appeal to that article should thus, if it is to justify an intervention in a case such as that of the Italian application, be backed by a basis of jurisdiction.

36. The argument of Italy does not in fact go so far as to contradict this

view. Italy distinguishes between interventions which do, and which do not, assert a right of the intervener against a principal party, and contends that since the object of the Italian Application is limited, inasmuch as it is not asserting its rights against the Parties in the present proceedings, or against either of them separately, then :

“Because of this limited object, Italy’s application unquestionably falls within the bounds of intervention *stricto sensu* . . . regarding which . . . Article 62 in itself provides the requisite title of jurisdiction.”

Italy recognizes that, on the hypothesis that

“by the channel of intervention a State might seek endorsement of a right vis-à-vis the parties to the proceedings, in conditions comparable to what it could have done by itself instituting a principal case against those two States”,

the situation would be otherwise. Italy suggests that one view of the matter (which it does not itself advance but indicated it could accept) would be that, an application to intervene whereby the intervener sought to assert a right being equivalent to a mainline application, the intervener would be under the obligation of showing a special jurisdictional link. Thus the view could be taken that Article 62 does not permit an intervention of the kind referred to except when the third State desiring to intervene can rely on a basis of jurisdiction making it possible for the Court to take a decision on the dispute or disputes submitted to it by the third State.

37. A second method of expressing the Court’s conviction that Article 62 of its Statute is not an exception to the principle of consent to its jurisdiction to deal with a dispute would be to find that, in a case where the State requesting the intervention asked the Court to give a judgment on the rights which it was claiming, this would not be a genuine intervention within the meaning of Article 62. In such a situation, the State requesting the intervention ought to have instituted mainline proceedings in application of Article 36, and possibly to have asked for the two proceedings to be joined. This was in fact the view advanced by counsel for Italy. Thus, according to this second approach, Article 62 would not derogate from the consensualism which underlies the jurisdiction of the Court, since the only cases of intervention afforded by that Article would be those in which the intervener was only seeking the preservation of its rights, without attempting to have them recognized, the latter objective appertaining rather to a direct action. Article 62 of the Statute envisages that the object of the intervening State is to ensure the protection or safeguarding of its “interest of a legal nature” by preventing it from being “affected” by the decision. There is nothing in Article 62 to suggest that it was intended as an alternative means of bringing an additional dispute as a case before the Court – a matter dealt with in Article 40 of the Statute – or as a method of asserting the individual rights of a State not a party to the case. Such a dispute might be the subject of negotiation, leading either to its settlement – in the case of

a maritime boundary dispute, to an agreed delimitation – or to the conclusion of a special agreement for its resolution by a judicial body ; it may not however be brought before the Court by way of intervention.

38. The Court thus finds that it is unable to accept Italy's own classification of the object of its intervention, and that the intervention falls into a category which, on Italy's own showing, is one which cannot be accepted. That conclusion follows from either of the two approaches outlined above, and the Court accordingly does not have to decide between them. In a case brought before the Court by special agreement, the scope of the Court's action is defined by that agreement, which embodies the consent of the parties to the settlement by the Court of the dispute between them. The possibility of intervention, being a feature of the Statute of the Court, does of course remain open in cases brought by Special Agreement, but its implementation must in principle be effected within the scope of the Special Agreement. Since, as explained in paragraph 28 above, the Court considers that it should not go beyond the considerations which are in its view necessary to its decision, the various other questions raised before the Court in these proceedings as to the conditions for, and operation of, intervention under Article 62 of the Statute need not be dealt with by the present Judgment. In particular the Court, in order to arrive at its decision on the Application of Italy to intervene in the present case, does not have to rule on the question whether, in general, any intervention based on Article 62 must, as a condition for its admission, show the existence of a valid jurisdictional link.

39. Italy has also urged the impossibility, or at least the greatly increased difficulty, of the Court's performing the task entrusted to it by the Special Agreement in the absence of participation in the proceedings by Italy as intervener. In support of this contention it has drawn attention to the marked difference between the situation in the present case and that with which the Court was faced in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* in 1981-1982, in which the role of the Court under the relevant Special Agreement was similar to its task in the present case. That case concerned a delimitation between two laterally adjacent States, the starting point of which, on the outer margin of the territorial sea, was determined by the position of an established land frontier, and the line of which extended seawards through an area over which, for a considerable extent, no actual or potential claim by any State other than the parties to the case needed to be contemplated. Even the test of proportionality of areas and coasts could be applied by the Court without the extent of the rights of Malta, as third State, having been defined (*I.C.J. Reports 1982*, p. 91, para. 130). In the present case, however the terminal points of the delimitation ultimately to be effected between the Parties will lie in the high seas, and it may prove that they will have to be tripoints or even quadripoints. Italy has drawn attention to the difficulties in which the Court may find itself, and has suggested that

"it is the delimitation in its entirety, or at least over an important stretch of its course, which is in danger of lying outside the jurisdiction of the Court"

and contends that the intervention of Italy, if admitted, is the sole means by which the Court can escape this difficulty.

40. The Italian argument as to the reduction of the scope of the Court's decision owing to the geographic extent of the Italian claims does not concern the first part of the task which the Special Agreement between Malta and Libya has conferred upon the Court : the determination of the principles and rules of international law applicable in this case. It therefore only concerns the second part of this task (the practical means of implementing these principles and rules) and then only on condition that the Court interprets this second part of its task in a particularly concrete way, tantamount to the drawing of a line. In that respect, it must be conceded that, if the Court were fully enlightened as to the claims and contentions of Italy, it might be in a better position to give the Parties such indications as would enable them to delimit their areas of continental shelf "without difficulty", in accordance with Article I of the Special Agreement, even though sufficient information as to Italy's claims for the purpose of safeguarding its rights has been given to the Court during the proceedings on the admissibility of the Italian Application. But the question is not whether the participation of Italy may be useful or even necessary to the Court ; it is whether, assuming Italy's non-participation, a legal interest of Italy is *en cause*, or is likely to be affected by the decision. In the absence in the Court's procedures of any system of compulsory intervention, whereby a third State could be cited by the Court to come in as party, it must be open to the Court, and indeed its duty, to give the fullest decision it may in the circumstances of each case, unless of course, as in the case of the *Monetary Gold Removed from Rome in 1943*, the legal interests of the third State "would not only be affected by a decision, but would form the very subject-matter of a decision" (*I.C.J. Reports 1954*, p. 32), which is not the case here.

41. It has been emphasized above that the Italian Application to intervene tends inevitably to produce a situation in which the Court would be seised of a dispute between Italy on the one hand and Libya and Malta on the other, or each of them separately, without the consent of the latter States ; Italy would thus become a party to one or several disputes which are not before the Court at present. In this way the character of the case would be transformed. These considerations, in the view of the Court, constitute reasons why the Application cannot be granted. Yet the Court cannot wholly put aside the question of the legal interest of Italy as well as of other States of the Mediterranean region, and they will have to be taken into account, in the same way as was done for example in the Judgment of 24 February 1982 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. The Court considers that it will be possible for it

to do this, while replying in a sufficiently substantial way to the questions raised in the Special Agreement.

42. In the first place, the rights claimed by Italy would be safeguarded by Article 59 of the Statute, which provides that "The decision of the Court has no binding force except between the parties and in respect of that particular case". Much argument has been addressed, in the course of these proceedings, to the question of the relationship between Article 62 of the Statute and Article 59. It is clear from the latter provision that the principles and rules of international law found by the Court to be applicable to the delimitation between Libya and Malta, and the indications given by the Court as to their application in practice, cannot be relied on by the Parties against any other State. As the Permanent Court of International Justice observed,

"the object of Article 59 is simply to prevent legal principles accepted by the Court in a particular case from being binding also upon other States or in other disputes" (*P.C.I.J., Series A, No. 13*, p. 21).

It has been contended by counsel for Italy that

"if Article 59 always provides adequate protection for third States, and if the protection which it affords is such as to prevent the interest of the third State from being genuinely affected in a pending case, then . . . Article 62 no longer has any point whatsoever, nor any sphere of application".

The Court however considers that the conclusion does not follow : a State which considers that its legal interest may be affected by a decision in a case has the choice – as is implied by the fact that Article 62 provides that a State "may" submit a request to intervene – whether to intervene, thus securing a procedural economy of means (as noted by Italian counsel) ; or to refrain from intervening, and to rely on Article 59.

43. Furthermore, there can be no doubt that the Court will, in its future judgment in the case, take account, as a fact, of the existence of other States having claims in the region. As the Permanent Court of International Justice emphasized in the case of the *Legal Status of Eastern Greenland*,

"Another circumstance which must be taken into account by any tribunal which has to adjudicate upon a claim to sovereignty over a particular territory, is the extent to which the sovereignty is also claimed by some other Power" (*P.C.I.J., Series A/B, No. 53*, p. 46),

and this observation, which is itself unrelated to the possibility of intervention, is no less true when what is in question is the extent of the respective areas of continental shelf over which different States enjoy "sovereign rights". The future judgment will not merely be limited in its effects by Article 59 of the Statute : it will be expressed, upon its face, to be

without prejudice to the rights and titles of third States. Under a Special Agreement concerning only the rights of the Parties, "the Court has to determine which of the Parties has produced the more convincing proof of title" (*Minquiers and Ecrehos, I.C.J. Reports 1953*, p. 52), and not to decide in the absolute ; similarly the Court will, so far as it may find it necessary to do so, make it clear that it is deciding only between the competing claims of Libya and Malta. If, as Italy has suggested, the decision of the Court in the present case, taken without Italy's participation, had for that reason to be more limited in scope between the Parties themselves, and subject to more caveats and reservations in favour of third States, than it might otherwise have been had Italy been present, it is the interests of Libya and Malta which might be said to be affected, not those of Italy. It is material to recall that Libya and Malta, by objecting to the intervention of Italy, have indicated their own preferences.

* * *

44. In its Judgment of 14 April 1981 the Court has already made a summary of the origin and evolution of Article 62 of the Statute of the Court (*I.C.J. Reports 1981*, pp. 13-16, paras. 21-27), beginning with the work of the Advisory Committee of Jurists of 1920, and the discussions of the Permanent Court of International Justice in 1922 as to whether there is or there is not a need for the intervener to establish a jurisdictional link as between it and the principal parties to the case. Those discussions, the Court noted, concluded as follows :

"The outcome of the discussion was that it was agreed not to try to resolve in the Rules of Court the various questions which had been raised, but to leave them to be decided as and when they occurred in practice and in the light of the circumstances of each particular case." (*I.C.J. Reports 1981*, p. 14, para. 23.)

The Court also gave a summary of the earlier judicial pronouncements on the subject, including the S.S. "*Wimbledon*" case, the *Haya de la Torre* case, the *Monetary Gold Removed from Rome in 1943* case and ending with Fiji's application for permission to intervene in the *Nuclear Tests* cases. In the light of this narrative of events the Court does not consider it necessary to review them once again here, and this is so despite the detailed repetition and elaboration of them by Italy on the one hand, in maintaining that the conditions stipulated in Article 81, paragraph 2 (c), of the Rules of Court are merely indicative, and by Libya and Malta on the other that the intervener should comply with establishing a basis of jurisdiction as a condition for the submission of the application for permission to intervene.

45. The Court observes that from the 1922 discussions up to and including the hearings in the present proceedings the arguments on this point have not advanced beyond the stage they had reached 62 years ago.

Since the Court finds it possible, as stated above, to reach a decision on the present Application without generally resolving the vexed question of the "valid link of jurisdiction", no more need be said than that the Court is convinced of the wisdom of the conclusion reached by its predecessor in 1922, that it should not attempt to resolve in the Rules of Court the various questions which have been raised, but leave them to be decided as and when they occur in practice and in the light of the circumstances of each particular case.

* * *

46. Nevertheless, within the limits set by the Court's duty not to go further than to settle the actual issues requiring decision, the Court has endeavoured, in the present Judgment, as it did in the Judgment of 14 April 1981 in the proceedings between Tunisia and Libya, to dispel some of the doubts and uncertainties which surround the exercise of the procedural faculty of intervention under Article 62 of its Statute. Some indications in this respect were also given in the case concerning the *Monetary Gold Removed from Rome in 1943 (I.C.J. Reports 1954, p. 32)*. Furthermore, while the Court attaches great importance to the element of the will of States, expressed in a special agreement or other instrument creative of jurisdiction, to define the extent of a dispute before the Court, it is worth recalling that under paragraph 2 of Article 62, "it shall be for the Court to decide" upon a request for permission to intervene, and the opposition of the parties to a case is, though very important, no more than one element to be taken into account by the Court.

* * *

47. For these reasons,

THE COURT,

by eleven votes to five,

finds that the Application of the Italian Republic, filed in the Registry of the Court on 24 October 1983, for permission to intervene under Article 62 of the Statute of the Court, cannot be granted.

IN FAVOUR : President Elias ; Judges Lachs, Morozov, Nagendra Singh, Ruda, El-Khani, de Lacharrière, Mbaye, Bedjaoui; Judges *ad hoc* Jiménez de Aréchaga and Castañeda;

AGAINST : Vice-President Sette-Camara ; Judges Oda, Ago, Schwebel and Sir Robert Jennings.

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

(Signed) T. O. ELIAS,
President.

(Signed) Santiago TORRES BERNÁRDEZ,
Registrar.

Judges MOROZOV, NAGENDRA SINGH and MBAYE and Judge *ad hoc* JIMÉNEZ DE ARÉCHAGA append separate opinions to the Judgment of the Court.

Vice-President SETTE-CAMARA and Judges ODA, AGO, SCHWEBEL and Sir Robert JENNINGS append dissenting opinions to the Judgment of the Court.

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