

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICATION FOR REVISION AND
INTERPRETATION OF THE JUDGMENT OF
24 FEBRUARY 1982 IN THE CASE CONCERNING
THE *CONTINENTAL SHELF (TUNISIA/LIBYAN
ARAB JAMAHIRIYA)*

(TUNISIA v. LIBYAN ARAB JAMAHIRIYA)

JUDGMENT OF 10 DECEMBER 1985

1985

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

DEMANDE EN REVISION
ET EN INTERPRÉTATION DE L'ARRÊT
DU 24 FÉVRIER 1982
EN L'AFFAIRE DU *PLATEAU CONTINENTAL*
(*TUNISIE/JAMAHIRIYA ARABE LIBYENNE*)

(TUNISIE c. JAMAHIRIYA ARABE LIBYENNE)

ARRÊT DU 10 DÉCEMBRE 1985

Official citation :

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24 February 1982 in the Case concerning the Continental Shelf
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APPLICATION FOR REVISION AND
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Single application combining requests for revision, interpretation and “correction of an error” – Procedure.

Request for revision of a judgment – Admissibility – Article 61 of the Statute – Discovery of “new fact” – Whether “new fact” known to party claiming revision – Means available to that party to ascertain fact, which it was in its own interests to do – Whether fact was “of such a nature as to be a decisive factor”.

Request for interpretation of a judgment – Article 60 of the Statute – Whether jurisdiction affected by existence of Special Agreement providing for recourse to the Court by Parties jointly to request “explanations and clarifications” – Admissibility of request for interpretation – Real purpose of request – Existence of dispute as to meaning or scope of judgment – Significance of principle of res judicata.

Request for correction of an error found to be without object.

Request for interpretation concerning reference to “the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes” – Irrelevance of presence of wadi at approximately latitude referred to.

Request that the Court order an expert survey.

JUDGMENT

*Present : President NAGENDRA SINGH ; Vice-President DE LACHARRIÈRE ;
Judges LACHS, RUDA, ELIAS, ODA, AGO, SETTE-CAMARA, SCHWEBEL,
MBAYE, BEDJAOUI, NI ; Judges ad hoc BASTID, JIMÉNEZ DE ARÉ-
CHAGA ; Registrar TORRES BERNÁRDEZ.*

In the case concerning the application for revision and interpretation of the Judgment of 24 February 1982,

between

the Republic of Tunisia,

represented by

Mr. Habib Lazreg, D.Sc. (geophysics), Geologist, Ministry of the National Economy, Chairman and Managing Director of ETAP,
as Agent,

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

as Co-Agent and Counsel,

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

Mr. Michel Virally, Professor of 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,

as Counsel and Advocates,

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

as Legal Adviser,

Commander Abdelwahab Layouni, Ministry of Defence (Navy),

as Technical Adviser,

and

the Socialist People's Libyan Arab Jamahiriya,

represented by

H.E. Mr. Kamel H. El Maghur,

as Agent,

Mr. Ibrahim Abdul Aziz Omar, Counsellor at the People's Bureau for Foreign Liaison,

as Counsel,

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

Mr. Jean-Pierre Quéneudec, Professor of International Law at the University of Paris I,

Sir Francis A. Vallat, G.B.E., K.C.M.G., Q.C., Professor Emeritus of International Law at the University of London,

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

as Counsel and Advocates,

Mr. Rodman R. Bundy,
Mr. Richard Meese,
Mr. Walter D. Sohier,
as Counsel,

THE COURT,

composed as above,
after deliberation,

delivers the following Judgment :

1. On 27 July 1984 the Agent of the Republic of Tunisia filed in the Registry of the Court an Application, dated 17 July 1984, instituting proceedings in reliance on Articles 60 and 61 of the Statute of the Court and Articles 98, 99 and 100 of the Rules of Court. Tunisia thereby requested the revision of the Judgment given by the Court on 24 February 1982 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*I.C.J. Reports 1982*, p. 18), the interpretation of that Judgment, and the correction of what was regarded by Tunisia as an error in it.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was at once communicated to the Government of the Libyan Arab Jamahiriya, and at the same time the Parties were informed of the time-limit fixed by the Vice-President of the Court for the filing by the Libyan Arab Jamahiriya of written observations on the application and in particular on the admissibility thereof as provided in Article 99, paragraph 2, of the Rules of Court. In accordance with paragraph 3 of Article 40 of the Statute, all other States entitled to appear before the Court were notified of the Application.

3. On 15 October 1984, within the time-limit fixed, the Government of the Libyan Arab Jamahiriya filed in the Registry its written observations on the Tunisian Application. On 13 June 1985, after ascertaining the views of the Parties, the Court decided, pursuant to Article 53 of the Rules of Court, that copies of the pleadings in the case should be made accessible to the public on the opening of the oral proceedings.

4. Since the Court did not include upon the Bench a judge of the nationality of either party, each party exercised its right under Article 31, paragraph 3, of the Statute to choose a person to sit as judge in the case. Tunisia chose Mrs. Suzanne Bastid and the Libyan Arab Jamahiriya chose Mr. Eduardo Jiménez de Aréchaga.

5. At public hearings held from 13 to 18 June 1985, the Court heard the oral argument of the Parties on the admissibility of the Application, and on the questions of interpretation and the correction of an error ; it was addressed by the following representatives of the Parties :

For Tunisia :

Mr. Habib Lazreg,
Mr. Yadh Ben Achour,
Professor Michel Virally,
Professor René-Jean Dupuy.

For the Libyan Arab Jamahiriya :

H.E. Mr. Kamel H. El Maghur,
Sir Francis A. Vallat, Q.C.,
Professor Jean-Pierre Quéneudec,
Professor Derek W. Bowett, Q.C.

During the hearings, questions were put to the Parties by Members of the Court, and answered either orally during the hearings or in writing, pursuant to Article 61 of the Rules of Court.

6. In the course of the proceedings the following submissions were presented by the Parties :

On behalf of Tunisia,

in the Application :

"May it please the Court to adjudge and declare :

1. As regards the first sector of the delimitation :

That there is a new fact of such a character as to lay the Judgment open to revision within the meaning of Article 61 of the Statute of the Court ;

That the application for revision submitted by the Tunisian Republic is on that account admissible.

Altogether subsidiarily :

That there is cause to construe the Judgment of 24 February 1982 and to correct an error ;

That 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° 50' 17" N, 11° 59' 53" E, and 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° 50' 17" N, 11° 59' 53" E, thus on that same bearing, to the point of intersection with the parallel 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 Gabès.

2. As regards the second sector of the delimitation :

That it will be for the experts of both Parties to establish the exact co-ordinates of the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, or in other words the most westerly point of the shoreline (low-water mark) of the Gulf of Gabès, making use of all available cartographic documents and, if necessary, carrying out an *ad hoc* survey *in loco.*"

At the hearing of 14 June 1985 (afternoon) :

"May it please the Court to adjudge and declare :

1. As regards the first sector of delimitation :

That there is a new fact of such a character as to lay the Judgment open to revision within the meaning of Article 61 of the Statute of the Court.

That the application for revision submitted by the Tunisian Republic is on that account admissible.

Altogether subsidiarily :

That there is cause to construe the Judgment of 24 February 1982 and to correct an error.

As regards the interpretation :

That in the first sector, the one closer to the coasts 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 frontier point of Ras Ajdir and aligned on the south-eastern boundary of Tunisian petroleum concession 'Permis complémentaire offshore du golfe de Gabès' (21 October 1966), in such a way as to avoid, as far as is at all possible, any encroachment on the area defined by that concession ; from the intersection point so determined, the line of delimitation between the two continental shelves is to run north-east on the same bearing to the point of intersection with the parallel 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.

The co-ordinates of the point at sea through which the line thus determined must pass, and the bearing of that line east of north, as they appear in the operative provisions of the Judgment, were given only by way of indication. It will be for the experts of the two Parties to calculate them accurately.

As regards the correction of an error :

That there is cause to replace the co-ordinates $33^{\circ} 55' N$, $12^{\circ} E$, mentioned in section C (2) of paragraph 133 of the Judgment of 24 February 1982, with the co-ordinates $33^{\circ} 50' 17'' N$, $11^{\circ} 59' 53'' E$.

If this correction is made, the point so defined will be the point at sea through which the delimitation line must pass ; there will therefore be no need for the experts to calculate it.

2. As regards the second sector of delimitation :

That the most westerly point of the Gulf of Gabes lies on latitude $34^{\circ} 05' 20'' N$ (Carthage).

Altogether subsidiarily :

That there is cause to order an expert survey for the purpose of ascertaining the exact co-ordinates of the most westerly point of the Gulf of Gabes."

On behalf of the Libyan Arab Jamahiriya :

in the written Observations :

"May it please the Court to adjudge and declare :

1. That the request for revision under Article 61 of the Statute of the Court contained in the Application of Tunisia does not satisfy the conditions laid down in that Article and is thus inadmissible ;
2. That there are no grounds to grant Tunisia's request to construe the Judgment ; and
3. That there is no foundation in law or in fact for the request to the Court to correct an error in the Judgment."

At the conclusion of the last statement made on behalf of the Libyan Arab Jamahiriya, at the hearing of 18 June 1985 (afternoon), the Agent of Libya stated that "Libya reaffirms its submissions".

* * *

7. The Application of Tunisia instituting proceedings in the present case contains three distinct requests : an application for revision of the Judgment given by the Court on 24 February 1982 (hereafter called "the 1982 Judgment"), on the basis of Article 61 of the Statute of the Court ; an application for interpretation of that Judgment, on the basis of Article 60 of the Statute ; and a request to "correct an error" in that Judgment, on the basis of a power which, in the contention of Tunisia, the Court "unquestionably possesses", even though such a power is not mentioned in any article of the Statute or of the Rules of Court. In response to a question put during the hearings by a Member of the Court, Tunisia explained that it was in fact submitting two requests for interpretation : a request, subsidiary to the application for revision and conditional on that application being found inadmissible, concerning the first sector of the delimitation the subject of the 1982 Judgment ; and a principal request concerning "the determination of the most westerly point of the Gulf of Gabes", in connection with the second sector of that delimitation. In its final submissions at the hearings, set out in paragraph 6 above, Tunisia clarified the interrelation of its various requests by reference to the two sectors of the delimitation, and added a submission referring to an expert survey.

8. The Statute and Rules contemplate different procedures for a request for revision and for a request for interpretation. Under Article 61 of the Statute, the proceedings for revision shall be opened by a judgment of the Court declaring the application admissible on the grounds contemplated by the Statute ; and Article 99 of the Rules of Court provides expressly for proceedings on the merits of the application in the event that, by its initial judgment, the Court finds it admissible. The provisions of Article 60 of the Statute and Article 98 of the Rules, concerning requests for interpretation, do not contemplate such a two-stage procedure. As for the request for correction of an error in a decision of the Court, there is, as already noted, no provision in the Statute and Rules of Court governing such a request, or the applicable procedure.

9. The procedure adopted by the Court in the present case was first to authorize the filing by the Government of Libya of written observations on the Tunisian application, and in particular on the admissibility thereof as provided in Article 99, paragraph 2, of the Rules of Court. Thereafter the Court held oral proceedings for the purpose of hearing the argument of the Parties in regard to the Application of Tunisia as a whole. Such argument was however necessarily limited, so far as the request for revision is concerned, to the question of admissibility, but did not have to be limited to that aspect of the requests for interpretation and for correction of an error.

10. While Article 61 of the Statute requires, as a first stage in a procedure on a request for revision, a judgment limited to the question of admissibility of that request, there is, in the Court's view, no reason why that same judgment should not, in appropriate circumstances, deal with other requests made in the same application instituting proceedings. No provision in the Statute and Rules operates as a bar to such a procedure,

which in the present case has practical advantages. Accordingly, in the present Judgment the Court will deal first with the question of admissibility of the request for revision, and will then, if appropriate in the light of its findings on that matter, examine the request for interpretation, sector by sector, and the request for correction of an error. In this latter respect, it should be observed that Tunisia's request is presented as one for the correction of an "erreur matérielle". The Court does of course have the power to correct, in one of its judgments, any mistakes which might be described as "erreurs matérielles". That power would not normally be exercised by way of a judgment, since the very nature of the correction of such an error excludes any element of contentious procedure ; yet there is no reason why a judgment devoted to another purpose should not also deal with a request connected therewith, for such a correction. It appears however that Tunisia's request relates to an alleged error of a more substantive kind, and thus raises wider questions than that whether a judgment would be the appropriate means for such correction.

* * *

11. In its Application for revision of the 1982 Judgment, Tunisia relies on Article 61 of the Statute of the Court, paragraphs 1, 4 and 5 of which provide as follows :

"1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

.....
4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment."

The fact which, according to Tunisia, was unknown either to the Court or to Tunisia before the delivery of the Judgment of 24 February 1982, was identified in the Application as being the text of a Resolution of the Libyan Council of Ministers of 28 March 1968, which determined the "real course" of the north-western boundary of a petroleum concession granted by Libya, and referred to in the 1982 Judgment, known as Concession No. 137. According to Tunisia, the real course of that boundary was very different from that emerging from the various descriptions given by Libya during the proceedings before the Court leading up to the 1982 Judgment.

12. In order to set the contentions of Tunisia in context, it is necessary to recapitulate part of the reasoning in the 1982 Judgment. The Court was seised by notification of a Special Agreement, under which it was requested

to determine the principles and rules of international law applicable for the delimitation of the areas of the continental shelf appertaining to the Parties and (in the Libyan translation from the original Arabic) to “clarify the practical method for the application” of those principles and rules, or (in the Tunisian translation) “to specify precisely the practical way” in which they apply, so as to enable the experts of the two countries to delimit these areas without any difficulties. At the stage of its reasoning dealing with methods of delimitation, the Court identified a particular circumstance, related to the conduct of the Parties, to which the methods proposed by the Parties gave, in the view of the Court, “insufficient weight” (*I.C.J. Reports 1982*, p. 80, para. 113, p. 83, para. 117). The Court explained the circumstance in question as follows :

“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 . . . 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.” (*Ibid.*, pp. 83-84, para. 117.)

13. In the operative part of its Judgment, the Court indicated *inter alia* that “the delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances” (para. 133 A (1)), and that the relevant circumstances referred to included (*inter alia*) :

“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” (*ibid.*, p. 93, para. 133 B (4)).

The practical method which the Court indicated for the application of the

relevant principles and rules of international law in the particular situation of the case was, so far as here material, as follows :

“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” (*I.C.J. Reports 1982*, pp. 93-94, para. 133 C (2)).

14. For this purpose the Court relied on the information as to the boundaries of the concessions mentioned, particularly Concession No. 137, supplied by the Government of Libya, which had granted them. In its Memorial, Libya stated that the area covered by that Concession lay “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”, adding that “The point of origin viewed from Ras Ajdir is at an angle of 26 degrees”. In its Counter-Memorial, Libya mentioned the “stepped eastern boundary” of the Tunisian concession described in the 1982 Judgment as the “Permis complémentaire offshore du Golfe de Gabès” (hereafter referred to as “the Tunisian permit”) and stated : “This is the Concession boundary that runs in a direction northward at an angle of 26° from Ras Ajdir.” Further on in the same pleading, Libya indicated that

“on 30 April 1968, the Libyan authorities granted Concession No. 137 to Aquitaine and Exwarb . . . The western boundary of that Concession followed the direction of the Tunisian Concessions granted in 1967 to SNPA/RAP [i.e., the Tunisian permit].”

Referring to later concessions further from the coast, Libya mentioned that “The western boundary of both these Concessions followed the 26° line”, and it concluded that “Libya has exercised considerable self-restraint in never going west of the original 26° concession line in the grant of further concessions”. At the hearings in 1981 the Agent of Libya referred to the Tunisian permit as having “moved eastward from the due north line from Ras Ajdir . . . to a line of 26° from Ras Ajdir”, and went on to say that “Libya’s first concession in 1968 . . . avoided the possibility of conflict by adopting the same line”.

15. The Government of Tunisia, relying on the report of an expert consulted by it, annexed to the Application for revision, has drawn attention to the following aspects of the factual situation. While the point $33^{\circ} 55' N$, $12^{\circ} E$, referred to in the 1982 Judgment, corresponds to the north-western corner of Libyan Concession No. 137, and its bearing from the frontier point at Ras Ajdir has a value that is very close to 26° , the western boundary of Concession No. 137 does not run at 26° to the meridian, since the “point about one nautical mile offshore” referred to by Libya as its south-western corner is not at a bearing of 26° from the frontier point at Ras Ajdir, but approximately 1 mile to the east of Ras Ajdir, at $33^{\circ} 10' N$, $11^{\circ} 35' E$. The bearing of this boundary is thus not 26° but $24^{\circ} 57' 03''$. Secondly, the south-eastern corner points of the stepped line forming the eastern boundary of the Tunisian permit are not in line, so that no straight line can be drawn through them all ; a straight line which would leave all these points on the west (i.e., would not encroach on the area of the Tunisian permit) would have a bearing of $27^{\circ} 50' 01''$. Thirdly, the north-western boundary of the Libyan petroleum concessions, in particular Concession No. 137, “is not aligned with the south-eastern boundary of the Tunisian *permis complémentaire*, however one defines the latter’s alignment”. Quoting paragraph 121 of the Judgment, which states that the Libyan boundary “was aligned with the eastern points of the zig-zag south-eastern boundary” of the Tunisian concession, the expert consulted by Tunisia notes that the alignment of these points

“neither merges with nor is parallel to the Libyan boundary (there is a difference of 2° to $2\frac{1}{2}^{\circ}$), nor parallel to line FP [that defined by the decision of the Court between Ras Ajdir and point $33^{\circ} 55' N$ $12^{\circ} E$] (difference of between 1° and $1\frac{1}{2}^{\circ}$)”.

16. On this basis, Tunisia argues in its Application for revision that

“the delimitation line passing through point $33^{\circ} 55' N$, $12^{\circ} E$ would allocate to Libya areas of continental shelf lying within the Tunisian permit of 1966, contrary to what has been clearly decided by the Court, whose entire decision is based on the idea of alignment between the permits and concessions granted by the two Parties and on the resultant absence of any overlapping of claims up to 1974 and in the nearest offshore areas, up to 50 miles from the coast (Judgment, para. 117). It has been shown how this was the ‘one circumstance in particular’ which the Court found ‘to be highly relevant to the determination of the method of delimitation.’”

It contends that the Resolution of the Libyan Council of Ministers of 28 March 1968, which, according to Tunisia, determined the real course of the boundary of Concession No. 137, was a fact which

“was of such a nature as to be a decisive factor in the Court’s Judg-

ment, given that the Court relied upon certain statements by Libya which prove to be contradicted by the document in question and that the actual operative provisions of the Judgment define the delimitation line to be drawn in accordance with criteria derived from those statements".

17. The geographic facts as to positions and bearings of the boundaries of the relevant concessions as stated by the expert consulted by Tunisia are not disputed by Libya. It has however been emphasized in the Libyan written observations that "there can be no question of Libya presenting a misleading picture of the course of its concessions" in its pleadings and argument in the proceedings leading up to the 1982 Judgment. Libya points out that the statements in its Memorial (quoted in paragraph 14 above) were perfectly accurate : the south-western corner of Concession No. 137

"does lie approximately one mile from the terminus of the land frontier at Ras Ajdir, and the bearing of the angle viewed from Ras Ajdir to the point of origin of the Concession ($33^{\circ} 55' N$, $12^{\circ} E$) is approximately 26° ".

Libya also observes that

"this Concession was portrayed by both Parties in their written and oral pleadings on small-scale maps. Neither Party showed any interest in the details as to the precise course of the boundary of Concession No. 137 or, indeed, of Tunisia's 1966 Concession, and neither Party furnished large-scale, detailed maps in this regard. Libya's descriptions of its concessions, therefore, were not intended to be detailed, but to give the general setting which was accurate given the scale of the maps presented. Nor were there any statements made by Libya as to a precise relationship of Libyan Concession No. 137 to Tunisia's 1966 Concession. That there was a generally common boundary between these Concessions, following a direction of approximately 26° as viewed from Ras Ajdir, was the extent of the descriptive detail given to the Court by Libya and portrayed on its small-scale maps and, as such, was correct."

18. Libya does however dispute the admissibility of the Tunisian Application for revision, on both factual and legal grounds. It contends that the Application of Tunisia fails to comply with any of the conditions set by Article 61 of the Statute (set out in paragraph 11 above), with the exception of the condition as to the ten-year limit laid down in paragraph 5. It contends :

- that the fact relied on was known to Tunisia, either at the time of the 1982 Judgment or at some time earlier than six months before the filing of the Application for revision ;
- that if the fact was unknown to Tunisia, that ignorance was due to negligence on the part of Tunisia ; and

– that Tunisia has failed to show that the fact discovered was “of such a nature as to be a decisive factor”.

19. Article 61 of the Statute provides that an application for revision of a judgment may be made only when it is based upon the discovery of a fact “which was, when the judgment was given, unknown to the Court and also to the party claiming revision”. So far as knowledge of the fact in question could be derived from the pleadings and material submitted to the Court in the proceedings leading up to the original judgment, anything which was known to the Court must equally have been known to the party claiming revision. The Court must be taken to be aware of every fact established by the material before it, whether or not it expressly refers to such fact in its judgment; similarly, a party cannot argue that it was unaware of a fact which was set forth in the pleadings of its opponent, or in a document annexed to those pleadings or otherwise regularly brought before the Court.

20. In its Application, Tunisia contends that

“The new fact, that is to say, the fact unknown both to the Court and to Tunisia before the delivery of the Judgment consists in the discovery of the text of the Resolution of the Libyan Council of Ministers dated 28 March 1968, which determines the true course of the north-western boundary of Libyan concession No. 137, a course which, as has been demonstrated, is very different from the one emerging from the descriptions Libya gave during the written and oral proceedings. This document was not drawn to the attention of the Court. It is neither in the Memorial and Annexes of Libya nor in the documents provided by Libya in the course of the proceedings.”

Annexed to the Tunisian Application was what was described as the “Description of Concession No. 137 as defined in the Resolution of the Council of Ministers of 28 March 1968”. Libya contends however that the actual Resolution in question contained no details as to Concession No. 137, nor did it include a map. The document annexed to the Tunisian Application is, according to Libya, a reproduction of an Annex to the pertinent Concession Agreement, setting forth the area covered by the Concession in square kilometres as well as the co-ordinates of the boundaries of the Concession. Libya has suggested that “technically this mistake might be enough to render the Application inadmissible as an application for revision”. The Court however considers that this would be an over-formalistic approach. It will examine the matter on the basis that the fact which allegedly was unknown in 1982 was the co-ordinates defining the boundary of Concession No. 137, however those co-ordinates may have been officially recorded. It is really on this basis that the matter has been argued.

21. It is however worth emphasizing at this point that the “new fact”, i.e., the fact the discovery of which is relied on to support the application for revision, is solely the boundary co-ordinates. This entails, it is argued,

first that the boundary of the Libyan concession is not "aligned" on the Tunisian permit, and secondly that the true north-western boundary of Concession No. 137 "reveals a phenomenon of overlapping", in that the line passing through point 33° 55' N, 12° E "would allocate to Libya areas of continental shelf lying within the Tunisian permit of 1966, contrary to what has been clearly decided by the Court". It appears to the Court however that while the actual co-ordinates may constitute a new fact, this is not the case as regards the existence of an overlap between the north-western edge of Libyan Concession No. 137 and the south-eastern edge of the Tunisian permit. The expert consulted by Tunisia has himself shown in his report that the position of the south-eastern tips of the zig-zag boundary of the Tunisian permit is such that that boundary overlaps not only the line of the actual north-western boundary of Concession No. 137, the bearing of which the expert calculates as 24° 57' 03", but also the 26° line indicated by the Court as "a *de facto* line dividing concession areas which were the subject of active claims" (*I.C.J. Reports 1982*, p. 84, para. 117). Thus even assuming that Tunisia was given the impression by Libya's pleadings that the north-western boundary of Concession No. 137 ran at 26° to the meridian, ending at the point 33° 55' N, 12° E, and starting from a point one mile offshore of, *and at a bearing of 26°* from, Ras Ajdir, it would necessarily have been aware of the existence of an overlap with its own permit. The overlap with the 26° line was in fact almost twice as great in area as that with the actual boundary of Concession No. 137, since the southern end of that boundary was further east than the 26° line.

22. So far as the 26° line is concerned, Libya has in the present proceedings drawn attention to a map attached to its Counter-Memorial of 1981, which indicated some degree of overlap between the 26° line and the stepped boundary of the Tunisian permit. Libya has also suggested that the overlap was discernible, though with difficulty, on a map produced by Tunisia during the oral proceedings in 1981. On the other hand, a map annexed to the Libyan Memorial of 1980 shows all the outer (south-eastern) corner points of the Tunisian stepped boundary as apparently lying on the 26° line, but this, according to the expert consulted by Tunisia, was not correct since those points did not lie on that line or indeed on any straight line. As for the actual boundary of Concession No. 137, Libya has drawn attention in the present proceedings to the fact that the map annexed to the Concession was reproduced as an Annex to the Libyan Counter-Memorial. That map, which bears the legend "Approximated boundaries indicated in red" does not however give the co-ordinates of the various boundary points. The boundaries are shown superimposed upon a grid of degrees (not minutes) of latitude and longitude, and the coastline is not shown, so that careful scaling would be necessary to establish even the approximate position of the point nearest Ras Ajdir.

23. That said, it should be noted that while Libya emphasizes that the

information it supplied to the Court in the proceedings leading up to the 1982 Judgment was accurate as far as it went, it does not in fact deny that the exact co-ordinates of Concession No. 137 were not supplied to the Court by either Party, so that Tunisia would not have been able to ascertain the exact location of the Libyan concession from the pleadings and other material then before the Court. The Court must however consider whether the circumstances were such that means were available to Tunisia to ascertain the details of the co-ordinates of the concession from other sources ; and indeed whether it was in Tunisia's own interests to do so. If such be the case, it does not appear to the Court that it is open to Tunisia to rely on those co-ordinates as a fact which was "unknown" to it for the purposes of Article 61, paragraph 1, of the Statute. In the *Fisheries* case, in which the United Kingdom denied knowledge of a Norwegian Decree of 1869 concerning the delimitation of the territorial sea, the Court observed that

"As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, the United Kingdom *could not have been ignorant* of the Decree of 1869." (*I.C.J. Reports 1951*, p. 139, emphasis added.)

24. It should first be noted that the Resolution of the Council of Ministers of 28 March 1968 was published both in the Libyan *Official Gazette* (4 May 1968) and in *Middle East Economic Survey* (9 August 1968), in the latter publication with the editorial explanation that it related to "6846 sq. kms. of offshore acreage in the Zuara area *near the Tunisian border*" (emphasis added). Secondly, in a Note of 13 April 1976 addressed to Libya Tunisia stated that

"From 1968 onwards the Tunisian Government has contested the concession No. 137 granted by the Libyan Government, since it extends within the Tunisian continental shelf as defined by international law and usage."

The "Tunisian continental shelf" certainly included the areas within the Tunisian permit, the co-ordinates of which were included in the material before the Court in 1982 (though only in a form requiring some expert knowledge to plot them on a map). In what way the Tunisian Government had "contested" the Concession is not clear, since Libya's Note of 30 March 1976 stated that its concession limits had "encountered no opposition or reservation". However, the reasonable and appropriate course of action to be taken by Tunisia, in 1976 at the latest, would have been to seek to know the co-ordinates of the Concession, so as to establish the precise extent of the encroachment on what it regarded as Tunisian continental shelf.

25. Libya has pointed out that, although it is not its practice to publish the co-ordinates of oil concessions granted by it, the Libyan Petroleum

Regulations of 1955 do provide for access by the public to the Petroleum Register, and to status maps which show "the areas indicated in all pending applications, the areas of all currently valid concessions and all open areas". Thus while the co-ordinates of Concession No. 137 were never published, they were, according to Libya "readily obtainable in Tripoli". It was also possible, according to Libya, to obtain the information from the Libyan National Oil Corporation. It has been shown by Libya in the present proceedings that an independent firm of consultants in the petroleum industry was thus able to obtain the information in question in 1976 ; and Tunisia has neither explained why it would not have been possible for it to do the same — or indeed itself to apply to the firm of consultants in question — nor proved that if it had made such approaches, they would have been unsuccessful.

26. In this respect Tunisia has urged that

"The Tunisian Government cannot be held negligent in any way, as its representatives have vainly requested their Libyan counterparts to communicate this text to them during the meetings between the two sides ever since 1968."

Libya, it should be observed, denies that such requests were made. However, even if Tunisia's assertion be accepted, it is clear from the Notes exchanged between the Parties and produced to the Court, and not contested by Tunisia, that Libya had expressed its willingness to assist Tunisia to obtain maps of the area claimed by Libya ; Tunisia had been told that these maps had already been published, registered and distributed and were available to all ; but that Tunisia commented that it would have been "simpler" for the Libyan Government itself to transmit the maps in question to Tunisia. While it was no doubt correct as a matter of diplomatic practice for Tunisia to invite the Libyan Government to supply the relevant information, there was no reason why Tunisia, particularly if it was not receiving from the Libyan Government the co-operation which it apparently expected, should not employ other, perfectly lawful and proper, means to obtain it.

27. Normal diligence would require that, when sending a delegation to negotiate a continental shelf delimitation, following the grant by each side of neighbouring or conflicting concessions, a State should first try to learn the exact co-ordinates of the other party's concession. Furthermore, it is to be expected that a State would not assert that such concession extended to its own area of continental shelf without knowing, or making efforts to discover, the exact limits of the concession. It is also to be expected that, in litigation the ultimate purpose of which is the establishment of a continental shelf delimitation, and in the course of which a petroleum concession in the relevant area is described by one party without precision, the other party will not limit itself to commenting on the matter in its pleading, but itself seek out the information.

28. The Court must therefore conclude that in the present case, the fact

that the concession boundary co-ordinates were obtainable by Tunisia, and the fact that it was in its own interests to ascertain them, together signify that one of the essential conditions of admissibility of a request for revision laid down in paragraph 1 of Article 61 of the Statute, namely ignorance of a new fact not due to negligence, is lacking. In view of this conclusion, there is no need to enquire into the question whether the application for revision was made within six months of the discovery of the fact of the co-ordinates, as required by paragraph 4 of Article 61 of the Statute.

29. There remains however a further requirement of Article 61, namely that the fact, the discovery of which is relied on, must be "of such a nature as to be a decisive factor". Strictly speaking, once it is established that the request for revision fails to meet one of the conditions for admissibility, the Court is not required to go further and investigate whether the other conditions are fulfilled. However, in the special circumstances of the present case, in which the request for revision is accompanied by a request for interpretation, the Court finds it useful to consider also whether the fact of the concession co-ordinates was "of such a nature as to be a decisive factor". The request by Tunisia for interpretation of the 1982 Judgment as regards the first sector of the delimitation – which, it will be recalled, is made "altogether subsidiarily" to the request for revision – is closely bound up with the question of which aspects of the case were to be regarded as constituting a "decisive factor" in that Judgment and which were not. In the exercise of its "freedom to select the ground upon which it will base its judgment" (*Application of the Convention of 1902 Governing the Guardianship of Infants, I.C.J. Reports 1958*, p. 62), the Court considers that it should therefore deal with this aspect of the admissibility of the request for revision before turning to the requests for interpretation.

30. In its Application, Tunisia refers to the relevant passage from paragraph 133 C of the 1982 Judgment (see paragraph 13 above) and deduces that "the Judgment's definition of the determining line" – the line from the frontier point determining the point on the boundary of the territorial sea from which the delimitation line was to run, and by extension also the delimitation line itself – "draws on three distinct factors", which it finds in the operative clause of the Judgment,

"for the line in question is the straight line :

- 'drawn from the land frontier point of Ras Ajdir through the point 33° 55' N, 12° E',
- 'at a bearing of approximately 26° east of north',
- 'corresponding to the angle followed by the north-western boundary of Libyan petroleum concessions Nos. 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)'."

Tunisia emphasizes the word "approximately" in the phrase "at a bearing

of approximately 26° east of north”, which it understands as signifying “that the degree mentioned is not given as an exact bearing”. In Tunisia’s interpretation therefore,

“The exact bearing of the line in question will, therefore, finally depend on the other two factors mentioned by the Court, which do not admit of any variation.

For, on the one hand, only one straight line can be drawn through two specified points : in this case, the frontier point of Ras Ajdir and the point 33° 55' N, 12° E. On the other hand, the boundaries of the Libyan concessions and the Tunisian permit were of course defined in terms of precise co-ordinates by the official deeds granting them and can be discovered without risk of error simply by consulting those deeds.”

31. Tunisia then goes on to argue not merely that it is insufficient to draw a straight line from the frontier point through the point 33° 55' N, 12° E, without checking that the bearing of the line actually corresponds to the angle formed by aligning the Libyan concessions on the Tunisian permit, but even that the criterion constituted by such alignment is “not a secondary criterion”, but “an essential element on which the equitable character of the delimitation depends and, in truth the *ratio decidendi* of the Judgment”. This criterion is, it is said, the most important, because it is “the only one to be meaningful”. This Tunisia deduces from the fact that

“in the Court’s eyes, the line that must be adopted in order to ensure an equitable delimitation must be determined having regard to ‘one circumstance in particular’ which it ‘finds to be highly relevant to the determination of the method of delimitation’ that the Parties have to follow (Judgment, paras. 113 and 117). This ‘one circumstance in particular’, according to the Court, is related to the conduct of the Parties in granting petroleum concessions from 1955 to the signature of the Special Agreement. The Court states that the result of that conduct ‘was the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims’ and stemming from the fact that, when the Libyan concessions were granted, their western boundary fitted alongside the ‘stepped’ line forming the eastern boundary of the Tunisian permit of 21 October 1966.”

32. The view of Tunisia as to the decisive character of the fact of the coincidence of the concession boundaries is based upon its own reading of the operative clause of the 1982 Judgment. That clause, however, falls into two distinct parts. It first defines what may be called the “determining line”, for the purpose of establishing the starting point of the delimitation line ; as the Court explained in paragraph 116 of the 1982 Judgment :

“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.” (*I.C.J. Reports 1982*, p. 83.)

Thus the operative clause defines the starting point as

“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’” (*ibid.*, p. 93, para. 133 C (2)).

The definition of the “determining line” – which is not itself the delimitation line – is solely that it is to be “drawn from the land frontier point of Ras Ajdir through the point 33° 55' N, 12° E”; the Court then adds, by way of explanation, but not of definition, that the line runs at a specified approximate bearing, and that that bearing corresponds to the angle formed by the boundary of the concessions mentioned. The Court goes on to define the actual delimitation line as follows :

“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 [i.e., approximately 26° east of north]” (*ibid.*, pp. 93-94).

33. In the operative clause of the Judgment there is therefore a single precise criterion for the drawing of the delimitation line, namely that the line is to be drawn through two specifically defined points. The considerations which led the Court to arrive at the choice of that line are reflected in the operative clause only in so far as they are indicated as an explanation of the “determining line”; they are not mentioned at all as part of the description of the delimitation line itself. The role of the Parties’ experts was consequently limited to establishing with accuracy, and according to an appropriate geodetic system of reference, the two points defined by the Court, and drawing a straight line between them, which involves agreement between the experts as to whether such line is to be orthodromic or loxodromic. They are not required to concern themselves with any relationship between that line and the boundaries of the Libyan concessions or the Tunisian permit.

34. This does not of course fully answer the question whether knowledge of the precise co-ordinates of Concession No. 137 would have led the Court to give a different decision. The factual situation may be said to have

differed in two respects from that described by the Court in its Judgment. First, there was in fact a phenomenon of overlapping, albeit slight, as soon as Concession No. 137 was granted in 1968 ; and this would have been the case even if the western boundary of Concession No. 137 had run at 26° from Ras Ajdir. Secondly, the western boundary of successive Libyan concessions did not follow a consistent line at 26° from Ras Ajdir, but began one mile to the east of Ras Ajdir, ran to the point 33° 55' N, 12° E (which point is at 26° from Ras Ajdir), and then turned slightly east so as to run at 26° from there on (boundaries of Concessions NC 41 and NC 53). This was still the case after part of Concession No. 137 was surrendered and regranted in 1977 as Concession No. NC 76.

35. Tunisia considers that the “entire decision” of the Court was “based on the idea of alignment between the permits and concessions granted by the two Parties and on the resultant absence of any overlapping of claims up to 1974 and in the nearest offshore areas, up to 50 miles from the coast”, and therefore contends that since the Libyan concessions did not, on the western side, “match up with” the Tunisian stepped boundary, this is “certainly a fact which, if it had been known to the Court, would have led it to adopt a different approach”. This however seems to the Court to be an over-simplification of its reasoning. In the first place, it should be recalled that in the operative clause of its Judgment the Court defined the relevant circumstances to be taken into account in achieving an equitable delimitation as including the following : the definition of the area relevant to the delimitation, the general configuration of the coasts of the Parties, in particular the marked change in direction of the Tunisian coastline between Ras Ajdir and Ras Kaboudia, the existence and position of the Kerkennah Islands, 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” (for over 60 years) “been observed as a *de facto* maritime limit” (including the respective zones of sponge fishing), and the element of a reasonable degree of proportionality between continental shelf areas and the length of the relevant part of the coast (cf. para. 133 B of the 1982 Judgment). The line resulting from the grant of petroleum concessions was thus by no means the sole consideration taken into account by the Court. As was explained in the reasoning part of the Judgment,

“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” (*I.C.J. Reports 1982*, p. 85, para. 120).

The method for ensuring an equitable delimitation indicated by the Court derived in fact from a balance struck between a number of considerations, a process which has always been regarded as inherent in the application of equity in this domain :

“In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others.” (*North Sea Continental Shelf, I.C.J. Reports 1969*, p. 50, para. 93.)

Tunisia itself, when explaining in its Application the difficulties encountered in implementing the Judgment, treated the perpendicular to the general direction of the coastline as a “criterion” to be met by the delimitation line. While this view attaches too great an importance to one of the relevant circumstances identified by the Court, it does highlight the fact that the petroleum concessions line was by no means the sole basis of the entire decision. Any “new fact” discovered in connection with the conduct of the Parties in the grant of petroleum concessions is therefore not necessarily to be regarded as a decisive factor.

36. Secondly, the argument of Tunisia proceeds on the implicit basis of a narrow interpretation of the term “aligned” employed in the operative clause of the 1982 Judgment. The Court there refers to the north-western boundary of Libyan petroleum concessions numbers NC 76, 137, NC 41 and NC 53 as having been “aligned on the south-eastern boundary” of the Tunisian permit. According to Tunisia, discovery of the exact co-ordinates of Concession No. 137 reveals that the north-western boundary of the Libyan petroleum concessions, and in particular that of Concession No. 137, “is not aligned on” the north-eastern boundary of the Tunisian permit of 1966. It is evident that the Court did not mean by “aligned” that the boundaries of the relevant concessions formed a perfect match in the sense that there was neither any overlap of the concessions nor any sea-bed areas left open between the two boundaries. The Libyan line was, according to all the references made to it during the proceedings, a straight line (at a bearing of 26° to the meridian) ; the Tunisian boundary was a stepped line. Thus the Libyan boundary would necessarily either leave a succession of triangular areas between itself and the Tunisian boundary, or create a succession of triangular areas of overlap of the two concessions, or both. Tunisia argues further that in view of the chronological priority of the Tunisian permit, “if there was to be any alignment, this could only arise from the Libyan concession being aligned with the south-eastern boundary of the Tunisian permit”, and that the delimitation line should pass through the most easterly point of the Tunisian permit. It should however be recalled that Libya, both in its Counter-Memorial and at the hearings in 1981, referred to the Tunisian permit boundary as a 26° line from Ras Ajdir (paragraph 14 above), without correction or contradiction by Tun-

sia ; and this description was adopted by Tunisia itself in its Reply, where it stated that its own permit was “delimited on the east by a stepped line trending north-northeast at an angle of approximately 26° from the Ras Ajdir meridian”. The Court is of course aware that, according to the expert consulted by Tunisia, the alignment of the stepped boundary may be assessed in different ways, because the points of the zig-zag do not lie on a straight line, and that the orientation of the line is calculated by that expert at bearings varying from 26° 59' 22" to 27° 50' 01". In 1982, these calculations were not however before the Court, which was simply informed by both Parties that the Tunisian stepped boundary ran in a direction of 26° from Ras Ajdir. It is therefore evident that, in relation to the Tunisian stepped boundary, a bearing of 26° from Ras Ajdir was adopted as expressing its general direction ; and it was with that general direction that the Libyan concession boundary was said by the Court to be “aligned”. The mention by the Court in its decision of the point 33° 55' N, 12° E, which had been indicated by Libya as the corner point of Concession No. 137 (and thus also of the adjoining Concession NC 41), and as lying at 26° to the meridian “viewed from Ras Ajdir”, was a convenient concrete means of defining the 26° line. Since the Court was well aware, as it had indicated, that the alignment of the Tunisian permit and the Libyan concessions was not the co-incidence of two straight lines, it was not relevant whether or not that point also lay on the zig-zag boundary of the permit – a matter which would have been very difficult to establish from the material then before the Court.

37. Thirdly, it is necessary to emphasize in what way the “alignment” of the concession boundaries was significant for the Court. After referring to that alignment as resulting in

“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” (*I.C.J. Reports 1982*, p. 84, para. 117),

the Court continued :

“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.” (*Ibid.*, para. 118.)

In other words, what the Court regarded as significant was not merely the fact that Libya had, apparently, limited its 1968 concession so as not to encroach on Tunisia's 1966 concession ; it was the fact that *both* Parties had chosen to use as boundary of the permits or concessions granted by them a line corresponding, with whatever degree of approximation, to a line drawn from Ras Ajdir at 26° to the meridian. It was the conduct of Tunisia which was relevant, just as much as that of Libya, even though when the Tunisian permit was granted in 1966, there was no existing Libyan concession in the area. Thus the choice of a stepped south-eastern boundary corresponding approximately to a 26° line was an indication of what line Tunisia considered equitable. Similarly, the choice by Libya of the point $33^{\circ} 55' N, 12^{\circ} E$ as the point of origin for Concession No. 137 – that point being, it should be reiterated, at a bearing of 26° from Ras Ajdir – suggested that a 26° line was at that time also regarded by Libya as equitable, an interpretation confirmed by Libya's use of that line for Concessions NC 41 and NC 53.

38. Consequently the Court's reasoning is wholly unaffected by the evidence now produced as to the boundaries of Concession No. 137. The slight overlap between the Libyan line and the tips of the zig-zags of the Tunisian line, while possibly of importance for some purposes, could only be of legal significance if the argument were based on an alleged recognition of the Tunisian line by Libya giving rise to estoppel ; but the Court specifically said that that was not the nature of its reasoning. As noted above, the Tunisian stepped line, for its part, supports a finding of an indication that Tunisia regarded a line at approximately 26° to the meridian as equitable. As to the north-western boundary of Concession No. 137, the fact that it runs at $24^{\circ} 57'$ is of no significance : what matters is that its most seaward point lies at 26° from Ras Ajdir, which would have to be the starting point for any agreed delimitation of maritime areas between the Parties. The only straight delimitation line from Ras Ajdir which would have been consistent with the choice by Libya of the point $33^{\circ} 55' N, 12^{\circ} E$ as the north-western corner of its concession, would be a line at some 26° to the meridian.

39. This is not of course to say that if the co-ordinates of Concession No. 137 had been clearly indicated to the Court, the 1982 Judgment would nevertheless have been identically worded. The explanation, given above, of the distinction between the bearing of the actual boundary of Concession No. 137 ($24^{\circ} 57' 03''$) and the bearing of the boundary from Ras Ajdir implied by the choice of the point $33^{\circ} 55' N, 12^{\circ} E$ (26°), might usefully have been included. If the Court had found it necessary to enter into such precise cartographic detail, it might also have made more precise its finding that "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" (para. 117). But what is required for the admissibility of an application for revision is not that the new fact relied on might, had it been known, have made it possible for the Court to be more specific in its decision ; it must

also have been a “fact of such a nature as to be a decisive factor”. So far from constituting such a fact, the details of the correct co-ordinates of Concession No. 137 would not have changed the decision of the Court as to the first sector of the delimitation.

40. Accordingly, for all the foregoing reasons, the Court must find that the Application by Tunisia for revision of the 1982 Judgment is not admissible according to the terms of Article 61 of the Statute.

* * *

41. The above examination by the Court of the meaning and scope of the 1982 Judgment for the purposes of its decision on the admissibility of the application for revision of that Judgment considerably simplifies the task of the Court in dealing with the subsidiary request by Tunisia for the interpretation of the Judgment as regards the first sector of the delimitation line, as will be seen below. However, it is first necessary to deal with a jurisdictional objection raised by Libya. That objection, made in reliance on the provisions of the Special Agreement on the basis of which the case was originally brought before the Court, is directed in effect to the jurisdiction of the Court to entertain any request by Tunisia for interpretation of the 1982 Judgment. That Special Agreement, signed on 10 June 1977 and notified to the Court on 1 December 1978, provided :

“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.”

Tunisia’s present approach to the Court was not made jointly with Libya, and was – so far as it seeks an interpretation – based upon Article 60 of the Statute rather than upon Article 3 of the Special Agreement. Tunisia did however in its Application request the Court :

"in the event it should deem it possible to construe Article 3 of the Special Agreement as authorizing its seisin by one Party only (which seisin would have the effect of obliging the other to return to the Court alongside the Applicant), to consider the present request as also founded upon that Article".

Libya's contention is that :

"the provisions of Article 3 of the Special Agreement should be respected by both Parties, and that if explanations and clarifications are required of the Court, the Parties should go back 'together'. Such a return, however, presupposes that the experts of the Parties would have made a good faith effort to implement the Court's Judgment and that, if they were not successful, they would have been obligated to indicate the precise points of difference to be included in the reference to the Court" ;

and that Tunisia has neither endeavoured in good faith to implement the Court's Judgment, nor indicated the precise points of difference.

42. The question thus arises of the relationship between the procedure contemplated by Article 3 of the Special Agreement and the possibility for either Party to request an interpretation of a judgment under Article 60 of the Statute. Counsel for Tunisia conceded that the recourse provided for in Article 3 of the Special Agreement is itself a recourse of interpretation, but contended that the effect of that provision could not be to exclude Article 60 of the Statute. Libya's argument is that :

"Article 3 requires the Parties to follow a certain procedure : that is, the evident obligation for them first to exhaust the remedy of seeking explanations and clarifications under Article 3 of the Special Agreement. For this reason, Libya considers that the Court does not possess the requisite jurisdiction to admit the Tunisian request for interpretation."

In other words, Libya's approach is that the jurisdiction of the Court to entertain a request for interpretation under Article 60 is subject to a condition requiring the exhaustion of the alternative interpretation procedure, by joint application to the Court, instituted by Article 3 of the Special Agreement. In reply to a question put by a Member of the Court, the Agent of Libya explained further that

"Tunisia had not made a *bona fide* attempt to agree on points of explanation or clarification for the purpose of a joint request to the Court under Article 3 of the Special Agreement. Such a joint request is a necessary condition for return to the Court under Article 3. The failure of Tunisia to attempt to specify the point or points of explanation or clarification for the purposes of a joint request could well be regarded as debarring Tunisia's resort to Article 60 of the Statute".

Libya had, however,

"chosen not to rely on what might be regarded by Tunisia as a purely technical bar to the present Application. Libya believes that the application is so lacking in merit that Libya has preferred to oppose it."

It is by no means clear that Libya intended to waive a jurisdictional objection based on Article 3 of the Special Agreement, which it considered itself entitled to raise.

43. In view of the importance of the question, the Court finds it necessary to deal with it. It is of course a fundamental principle that "The consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases" (*I.C.J. Reports 1950*, p. 71). It follows, first that parties to treaties or special agreements are free to make their consent to the seisin of the Court, and hence the Court's jurisdiction, subject to whatever pre-conditions, consistent with the Statute, as may be agreed between them; and secondly, that in principle a State may validly waive an objection to jurisdiction which it might otherwise have been entitled to raise. When examining its jurisdiction under Article 36 of the Statute, the Court is accordingly bound to examine and give effect both to any such jurisdictional pre-conditions, and to any unambiguous waiver of a jurisdictional objection. The jurisdiction of the Court to give an interpretation of one of its own judgments, on the other hand, is a special jurisdiction deriving directly from Article 60 of the Statute. Thus the Court has in any event to consider whether the conditions for the existence of that jurisdiction are fulfilled. Furthermore, the Parties to this case, in becoming parties to the Statute of the Court, have consented to that jurisdiction without pre-condition. The effect of Article 3 of the Special Agreement, as interpreted by Libya as being *in pari materia* with Article 60 of the Statute, would be to make the right of each Party to request an interpretation – a right exercisable unilaterally – subject to the prior employment of a procedure requiring the participation of both Parties. In other words, the exercise of the right of one party to seek an interpretation under Article 60 of the Statute would be effectively blocked by the other party, if that party chose not to co-operate. Whether or not such an agreement could validly derogate – as between the parties thereto – from the Statute, it is not lightly to be presumed that a State would renounce or fetter its right under Article 60 of the Statute to request an interpretation unilaterally. Accordingly, the Court is unable to interpret the Special Agreement in that sense, and does not consider that the request made by Tunisia for interpretation in reliance on Article 60 of the Statute is affected by the existence of Article 3 of the Special Agreement.

44. Libya further contends however that the Tunisian request based upon Article 60 fails in a number of respects to comply with what the Court in 1950 defined as the conditions for the admissibility of such a request, namely :

- (1) The real purpose of the request must be to obtain an interpretation of the judgment. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided. Any other construction of Article 60 of the Statute would nullify the provision of the article that the judgment is final and without appeal.
- (2) In addition, it is necessary that there should exist a dispute as to the meaning or scope of the judgment." (*Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case, I.C.J. Reports 1950, p. 402.*)

45. Libya contends that "the essence of the Tunisian request is not interpretation, but something quite different", namely a "plea for revision of the Court's Judgment", an attempt "to alter what the Court has already decided with binding force", namely the indication that the delimitation line was to run through the point 33° 55' N, 12° E. Tunisia however argues that the co-ordinates of that point have no intrinsic significance, and "in all probability were merely calculated by reference to prior elements", i.e., that the line had to correspond to the criterion which Tunisia regarded as "the only one to be meaningful", as explained in paragraph 31 above, the "alignment" of the Tunisian permit and the Libyan concessions ; in other words Tunisia contends that the indication in the 1982 Judgment that the line should pass through the point 33° 55' N, 12° E, does not constitute a matter decided with binding force. It will be apparent from what has already been said on the request for revision that the Court is unable to uphold Tunisia's view on this issue ; but this is not in itself a reason for holding the request for interpretation to have been inadmissible. Similarly, the argument of Libya that the object of Tunisia's request for interpretation is to alter what the Court has decided with binding force rests upon a particular view as to what has been so decided ; it is therefore a refutation of the interpretation proposed by Tunisia rather than an objection to its admissibility.

46. On the question whether there exists a "dispute between the Parties as to the meaning or scope of the judgment", the Court notes that in Libya's contention, Tunisia has failed to specify precisely what differences it had with Libya's position on the implementation of the 1982 Judgment as set out in a Libyan diplomatic Note of 10 August 1982. Tunisia has therefore, it is contended, failed to show the existence of such a dispute. Libya has emphasized the reluctance of Tunisia to define exactly what were the difficulties which it claimed to encounter in the implementation of the Judgment, so that it was not until the Application was filed that Libya was really informed of the basis of Tunisia's objection. In this respect, the Court would recall the ruling of the Permanent Court of International Justice, in its decision on the *Interpretation of Judgments*

Nos. 7 and 8 (*Factory at Chorzów*), concerning the application of Article 60 of the Statute of that Court :

"In so far as concerns the word 'dispute', the Court observes that, according to the tenor of Article 60 of the Statute, the manifestation of the existence of the dispute in a specific manner, as for instance by diplomatic negotiations, is not required. It would no doubt be desirable that a State should not proceed to take as serious a step as summoning another State to appear before the Court without having previously, within reasonable limits, endeavoured to make it quite clear that a difference of views is in question which has not been capable of being otherwise overcome. But in view of the wording of the article, the Court considers that it cannot require that the dispute should have manifested itself in a formal way ; according to the Court's view, it should be sufficient if the two Governments have in fact shown themselves as holding opposite views in regard to the meaning or scope of a judgment of the Court." (*Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, pp. 10-11.)

The question is therefore limited to whether the difference of views between the Parties which has manifested itself before the Court is "a difference of opinion between the Parties as to those points in the judgment in question which have been decided with binding force", including "A difference of opinion as to whether a particular point has or has not been decided with binding force" (*ibid.*, pp. 11-12).

47. In this respect, the Court considers it useful, before proceeding further, to make certain observations as to the meaning of "binding force" and the significance of the principle of *res judicata* in the circumstances of the present case. Under the Special Agreement by which the Court was originally seised, the role of the Court was limited to indicating the principles and rules of international law applicable to the delimitation, and specifying precisely the practical way in which they apply in the particular situation ; the Parties undertook to meet to put into effect the principles and rules to determine the line of delimitation, with a view to the conclusion of a treaty (Art. 2 of the Special Agreement). It is always open to the parties to a dispute to have recourse to a conjunction of judicial determination and settlement by agreement. In the special case of continental shelf delimitation, one of the underlying principles is that "delimitation must be the object of agreement between the States concerned" (*North Sea Continental Shelf, I.C.J. Reports 1969*, p. 46, para. 85).

48. The fact however that the Parties did not entrust the Court in this case with the task of drawing the delimitation line itself in no way affects the Judgment of the Court or its binding effect on the Parties as a matter of *res judicata* ; and indeed the Court noted in 1982 that

"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." (*I.C.J. Reports 1982*, p. 40, para. 30.)

It will be the treaty contemplated by Article 2 of the Special Agreement which will contain the final delimitation. The treaty will however be the implementation of an obligation already entered into, in Article 2 of the Special Agreement ; and that provision is not a bare *pactum de contrahendo*. The Parties have undertaken not merely to conclude a treaty, but in doing so to apply the principles and rules indicated by the Court in its 1982 Judgment. While the Parties requested the Court to indicate “what principles and rules of international law may be applied for the delimitation of the area of the continental shelf”, they may of course still reach mutual agreement upon a delimitation that does not correspond to that decision. Nevertheless, it must be understood that in such circumstances their accord will constitute an instrument superseding their Special Agreement. What should be emphasized is that, failing such mutual agreement, the terms of the Court’s Judgment are definitive and binding. In any event moreover, they stand, not as something proposed to the Parties by the Court, but as something established by the Court.

49. It follows that it is not possible to argue *a priori* that any specific indications as to angles, distances or co-ordinates to be found in the 1982 Judgment are necessarily, because of the limitations placed on the role of the Court by the Special Agreement, to be read as no more than approximations or “guidance” – a term used by Libya in 1982, and specifically rejected by the Court (*I.C.J. Reports 1982*, p. 40, para. 29). The Court made it clear that

“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” (*ibid.*, para. 30) ;

and the method in fact differed for the two sectors of the delimitation. However, the opposite presumption would also be false : in particular, it is not to be supposed that all figures used in the Judgment would have to be regarded as absolute. Each such reference must be read in its context, to establish whether the Court intended it as a precise statement, an approximation for working purposes, or a simple indication subject to variation.

50. In its Application, Tunisia states that the object of the request for interpretation, so far as concerns the first sector of the delimitation, is

“to obtain some clarifications, notably as regards the hierarchy to be established between the criteria adopted by the Court, having regard to the impossibility of simultaneously applying these criteria to determine the starting-point of the delimitation line as well as the bearing of that line from due north”.

Tunisia further argues that “the boundary to be taken into consideration for the establishment of a delimitation line can only be the south-eastern boundary of the Tunisian permit of 1966” ; it has presented a detailed submission on the question of interpretation designed to give effect to that contention. However, in the course of its examination of the request for re-

vision of the 1982 Judgment, the Court has already explained (paragraph 33 above) that that Judgment laid down a single precise criterion for the drawing of the line, namely that it is to be a straight line drawn through two specifically defined points, a criterion involving simply the application of the experts' professional knowledge in the field of geodesy and cartography. The request for interpretation is therefore founded upon a misreading of the purport of the relevant passage of the operative clause of the 1982 Judgment. The Court therefore finds the Tunisian request for interpretation in the first sector to be admissible, but is unable to uphold Tunisia's submission as to the correct interpretation of the Judgment in this respect ; and since it has been possible for the Court to clear up the misunderstanding in the course of its reasoning on the admissibility of the request for revision, the Court considers that there is nothing to be added to what it has already said as to the meaning and scope of the 1982 Judgment in that reasoning.

* * *

51. Tunisia has also sought from the Court in the present proceedings "The rectification of an error", the final submission of Tunisia in this respect being

"That there is cause to replace the co-ordinates 33° 55' N, 12° E, mentioned in section C (2) of paragraph 133 of the Judgment of 24 February 1982, with the co-ordinates 33° 50' 17" N, 11° 59' 53" E.

If this correction is made, the point so defined will be the point at sea through which the delimitation line must pass ; there will therefore be no need for the experts to calculate it."

This submission is based upon the view expressed by Tunisia that the criterion whereby the delimitation line should run at the angle formed by aligning the Libyan concessions on the Tunisian permit is "in truth the *ratio decidendi* of the Judgment". As noted in paragraph 36 above, Tunisia recalls that its permit chronologically preceded the Libyan concessions, and deduces that

"If there was to be any alignment, this could only arise from the Libyan concession being aligned with the south-eastern boundary of the Tunisian permit . . ."

Accordingly, in Tunisia's view,

"alignment on the Tunisian permit without encroachment in the delimitation area . . . can be achieved solely by drawing a straight line from the frontier point of Ras Ajdir through point 33° 50' 17" N and 11° 59' 53" E, which is the most easterly point of the Tunisian permit . . . There is therefore cause to correct an error by substituting the co-ordinates of that point for the co-ordinates 33° 55' N 12° E mistakenly mentioned by the Court on the basis of the inexact indications given by Libya in its pleadings."

52. It will be apparent from what has gone before that the choice by the Court of the point $33^{\circ} 55' N$, $12^{\circ} E$ to define the delimitation line drawn seawards from the intersection of the line joining that point to Ras Ajdir was not the result of the application of a criterion whereby the delimitation line had to avoid encroachment on the Tunisian permit, or a more general criterion of avoidance of overlapping. As observed above (paragraph 36), that point, taken from the description by Libya of the position of its Concession No. 137, was chosen as a convenient concrete means of defining the 26° line from Ras Ajdir which appeared to the Court, from the balancing-up of relevant considerations, to be the appropriate method of effecting an equitable delimitation, and is integral to the whole construction. Accordingly, the application of Tunisia proves in this respect to be based upon a misreading of the Judgment, and has thus become without object. There is therefore no need for the Court to examine the wider question of the correction of an error in a judgment.

* * *

53. The Court now turns to the request made by Tunisia for an interpretation of the 1982 Judgment in so far as it concerns the second sector of the delimitation line contemplated by that Judgment. The turning point between the two sectors of that line was defined by the Court as follows. After noting that there was a radical change in the general direction of the Tunisian coastline marked by the Gulf of Gabes (para. 122), the Court said :

“The change in direction of the coast is . . . 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.” (*I.C.J. Reports 1982*, p. 87, para. 124.)

In the operative clause of the Judgment, it was provided that the first sector of the line was to run on the bearing of approximately 26° , defined as explained above,

“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” (*ibid.*, p. 94, para. 133 C (2)).

No co-ordinates, even approximate, were indicated in the operative part of the Judgment to identify what in the Court's view was "the most westerly point" of the Gulf of Gabes. According to Tunisia, the role of the Parties' experts is "to determine the precise location of this point [the most westerly point on the shoreline] by all existing means, including the use of maps and topographical surveys"; and the indication of the parallel 34° 10' 30" north was given by the Court "without rigour ('approximately') and for the purpose of facilitating the description of the method to be prescribed by the Court for drawing the second sector of the delimitation line". The Libyan experts, Tunisia states, "have clung to co-ordinate 34° 10' 30" N, insisting that it had been given by the Court's Judgment and that the experts should confine themselves to a strict application of that Judgment".

54. The dispute between the Parties as regards the second sector thus centres round the relationship between

"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",

and the intersection of the shoreline by the parallel 34° 10' 30" north, mentioned in paragraph 124 of the Judgment. In reply to a question by a Member of the Court, Tunisia explained that in its view the co-ordinates 34° 10' 30" north given in the Judgment do not have any binding character on the Parties, since they are not repeated in the operative part of the Judgment. The expert consulted by Tunisia advises that the most westerly point on the shoreline of the Gulf is at 34° 05' 20" N (on the Carthage geodetic system) or 34° 05' 30" N (on the ED 50 geodetic system). For reasons to be examined in a moment, that expert rejects the point, in the region of 34° 10', where "a tidal channel runs into [the mouth of a wadi] as far as a more westerly longitude than that of the points considered" earlier in his report. Libya, on the other hand, regards the task of the experts as "technical but of a very narrow scope, since the Court had already made its own preliminary, yet very precise, calculation"; the plotting of the point left to the experts was "a matter perhaps of seconds, not minutes or degrees". For Libya, the 1982 Judgment makes it clear that, in the Court's view, the change in the direction of the Tunisian coast occurs at the point described by the Court with some precision, namely at the latitude of 34° 10' 30" N.

55. For the purposes of the conditions of admissibility of a request for interpretation, set out in paragraph 44 above, it may be noted that there is thus clearly a dispute between the Parties as to the significance, for the interpretation of the expression "the most westerly point" of the Gulf of Gabes, of the presence of a tidal channel in the region of latitude 34° 10'. More fundamentally, there is a dispute as to what in the 1982 Judgment has been decided with binding force : whether it was decided that the turning point between the first and second sectors of the delimitation line should

be on the parallel of a point on the Tunisian shoreline already identified by the Court as furthest to the west, and lying on, or very near, the parallel $34^{\circ} 10' 30''$; or whether the Court merely found that the parallel to determine the turning point should be drawn through whatever the Parties' experts might regard as the most westerly point of the Gulf, whether or not it lay in the neighbourhood of $34^{\circ} 10' 30''$. This formulation of the dispute does not however imply that the Court has to choose between the two possible interpretations thus enunciated. As the Permanent Court observed, "the Court does not consider itself as bound simply to reply 'yes' or 'no' to the propositions formulated in the submissions" of one or the other party, "because, for the purpose of the interpretation of a judgment, it cannot be bound by formulae chosen by the Parties concerned, but must be able to take an unhampered decision" (*P.C.I.J., Series A, No. 13*, pp. 15-16).

56. It is however a condition of admissibility of a request for interpretation, as already noted, not only that there be a dispute between the parties as to the meaning or scope of the judgment, but also that the real purpose of the request be to obtain an interpretation – a clarification of that meaning and scope. In the present case Libya has contended that while in form the submission of Tunisia in respect of the second sector of the delimitation is a request for interpretation, behind it "lies another request for revision of the Judgment"; that "the real object of the Application is a substantial revision of the Court's Judgment". However, the Court has established that there is a dispute between the Parties as to what, on a particular question, the Court decided with binding force in the 1982 Judgment; and it is also clear that Tunisia is asking the Court for "clarification of the meaning and scope of what the Court has decided" in that respect. So far as the Tunisian request for interpretation may go further, and seek "to obtain an answer to questions not so decided", or to achieve a revision of the Judgment, no effect can be given to it; but within the limits defined by Article 60 of the Statute, it is admissible. Consequently, the Court will examine the contentions of Tunisia under this head solely in so far as they relate to the subject of Article 60 of the Statute, namely, the meaning and scope of the 1982 Judgment.

57. As already noted, even the expert consulted by Tunisia recognizes that there is on the Tunisian coast, in the region of the parallel $34^{\circ} 10' 30''$ north indicated by the Court, a point where tidal waters extend as far as a more westerly longitude than any of the other points considered by him. The reason why the expert nevertheless rejects the point appears to be twofold: in the first place, he assimilates it to

"a localized feature which is entirely independent of the general morphology of the Gulf and cannot reasonably be considered as marking the point where the general direction of the coastline moves from northwest to northeast – that being the criterion chosen by the Court to determine the latitude at which the bearing of the maritime

delimitation line should be modified (Judgment, paras. 123 and 124).

Secondly, the expert expresses the view that

“For the purpose of [the] determination [of the latitude where the coast changes direction], the low-water line must be considered as closed by the continuity existing on either side of the low-tide elevation which splits the channel in two where it meets the sea. Despite the insignificant size of the channels, this closure may, if one so wishes, be interpreted as an estuary closing line replacing at this spot the physical low-water line in conformity with the law governing the definition of baselines.”

In its reply to a question put by a Member of the Court, Tunisia indicated more specifically that, in its contention, if the Court had been aware that the parallel $34^{\circ} 10' 30''$ north intersected the coast in the mouth of a wadi,

“it would have borne in mind that, under Article 13 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, the text of which embodies customary law and has been taken up into Article 9 of the Montego Bay Convention, the shoreline (low-water mark) at a mouth is a straight line drawn between the points on the low-tide line of the banks”.

Libya on the other hand dismisses the presence of a wadi as irrelevant, since “in Libya’s view the task assigned to the experts was not to identify baselines but, quite specifically, to identify the most westerly point on the low-water mark”.

58. So far as the first difficulty raised by the expert consulted by Tunisia is concerned, it should be recalled that in its 1982 Judgment the Court was careful not to indicate that the delimitation line should “change direction in relation to the point at which the coastline changes direction”, since it considered that the latter point would “not necessarily be the subject of agreement among geographers or cartographers, and in short cannot be objectively determined as a matter of fact” (*I.C.J. Reports 1982*, p. 87, para. 123). If the Court were to employ the change of direction as criterion,

“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’.” (*Ibid.*)

The Court took the view 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" (*I.C.J. Reports 1982*, p. 87, para. 124).

If however one of the criteria for determining the "most westerly point on the shoreline" were whether a given point could "reasonably be considered as marking the point where the general direction of the coastline moves from northwest to northeast", the experts of the Parties would be thrown back on to the problem of the location of the point of change of direction, which the Court had excluded as one which "cannot be objectively determined as a matter of fact". The Court meant by "the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes" simply the point on the shoreline which is further to the west than any other point on the shoreline ; it did not mean "the most westerly point which could reasonably be considered as marking the point where the general direction of the coastline changes". The relationship between the two concepts, that of the "most westerly point" and that of the "change of direction" is not that the one defines the other, but simply that, bearing in mind the difficulties of definition of the latter concept, the former is "an appropriate point . . . to be employed as a reference-point for reflecting" the latter.

59. As to the relevance of the alleged presence of a wadi at approximately the latitude referred to by the Court, the fact is again that the Court, by referring to "the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes" meant exactly what it said, the expression "low-water mark" being intended to refer to an established concept. Had its intention been to refer to the most westerly point on the baselines from which the breadth of the territorial sea was, or might be, measured, it would have said so. Furthermore, the Court itself recorded in the 1982 Judgment that a Tunisian Law of 2 August 1973 and a Tunisian Decree of 3 November 1973 had in fact defined straight baselines in the area, declared the closing of the Gulf of Gabes by a straight line, and declared that the waters of the Gulf were "internal waters". The Court also noted that Libya considered that those lines were not opposable to Libya (*I.C.J. Reports 1982*, pp. 74-75, para. 101). The Court was therefore well aware that Tunisia was not claiming to draw straight baselines between comparatively minor features of the coast of the Gulf of Gabes, since it regarded the whole of the Gulf as internal waters. The Court also took care to avoid making any unnecessary ruling on the validity of the Tunisian baselines and claim to internal waters (*ibid.*, pp. 76-77, para. 105). In these circumstances, the contention that the Court would have applied the law relating to straight baselines, and specifically Article 13 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, within the Gulf of Gabes, to exclude from its definition of the "most westerly point" a point lying in the mouth of a wadi, must be regarded as untenable.

60. The above explanation suffices to dispose of one of the questions in

dispute between the Parties as to the meaning and scope of the 1982 Judgment. There remains the question of the significance to be attached to the Court's reference to the latitude $34^{\circ} 10' 30''$ north. As Tunisia has pointed out, that specific reference is not to be found in the operative part of the 1982 Judgment ; yet Libya contends that it has been decided by the Court that the change in direction of the coastline in the Gulf of Gabes occurs at $34^{\circ} 10' 30''$ north, and that it is not open to the experts of either Party to substitute their own views on that point. It must however be reiterated that the Court in 1982 was not concerned to identify the point of change of direction – a question on which it recognized that there was room for disagreement – but simply the most westerly point on the shoreline of the Gulf of Gabes “as a reference-point for reflecting that change” (*I.C.J. Reports 1982*, p. 87, para. 124). The Court then expressly stated that “the precise co-ordinates of this point will be for the experts to determine” before adding that “it appears to the Court that it will be approximately $34^{\circ} 10' 30''$ north” (*ibid.*). The Court had thus already indicated the approximate position of that point. It should not be overlooked that during the proceedings leading up to the 1982 Judgment neither Party submitted to the Court any large-scale charts or maps of the Gulf ; and on the small-scale maps then before the Court, the “most westerly point” appears within a small nick in the coastline. While leaving it to the experts to determine its “precise co-ordinates”, the Court nevertheless stated that it appeared to it that the point was at approximately $34^{\circ} 10' 30''$ north.

61. It was of course necessary for the Court in 1982 to have some reasonably accurate idea of the latitude of the most westerly point in order to assess properly the effect on the delimitation of the change in direction of the line which it had found to be appropriate (paras. 122 to 123 of the 1982 Judgment). The discussion by the Court of the effect to be attributed to the Kerkennah Islands (paras. 127-129), and of the requirements of the test of proportionality (paras. 130-131) would have been wholly unrealistic unless the Court had before it some indication of the latitude at which the angle of the delimitation line was to change. It therefore employed a specified latitude, namely $34^{\circ} 10' 30''$ north, as a working definition of the point it had in mind. The working definition thus employed was not binding on the Parties ; in this respect, it is significant, first that the mention of that latitude was qualified by the word “approximately”, and secondly that the operative part of the Judgment did not mention the latitude in question. However, what was specified in the operative part of the Judgment (para. 133 C (3)) was the effect to be given to the Kerkennah Islands, a paragraph of the decision the whole of which must be respected as given with binding force.

62. It follows that the Court is unable to uphold the final submission of Tunisia on this point, that “the most westerly point of the Gulf of Gabes lies on latitude $34^{\circ} 05' 20''$ N (Carthage)”. The Court expressly decided in 1982 that “the precise co-ordinates of this point will be for the experts to determine” (para. 124), and it would not be consistent with that decision

for the Court to state that a specific co-ordinate constituted the most westerly point of the Gulf of Gabes.

63. To sum up, the task of the experts of the Parties is, so far as regards the determination of the latitude at which the bearing of the delimitation line is to change, as follows. That latitude is, as made clear in the 1982 Judgment, to be that of the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes. It has however also to be borne in mind that the working definition of the latitude in question, though stated "approximately", was the basis for the effect given to the Kerkennah Islands in paragraph 133 C (3) of the Judgment. Employing for the purpose whatever charts and maps they may consider appropriate, but disregarding any actual or potential straight baselines, the experts should seek to define on the low-water mark the most westerly point of the Gulf of Gabes. If, as appears from the report of the expert consulted by Tunisia, the tidal waters of the Gulf attain their most westerly reach in a channel leading up to a wadi, that geographical circumstance should be accepted as it is. Should it prove that such channel clearly extends further west than any other point on the low-water mark of the coast of the Gulf, but the cartographic or other material available does not suffice to establish the exact position of the most westerly point on the low-water mark within the channel, then it will be for the Parties, with the assistance of their experts, to decide whether to adopt in this respect the indications given by the existing maps, or whether to proceed to a special survey *in loco*.

* * *

64. The Court must now deal with the final submission of Tunisia, namely

"That there is cause to order an expert survey for the purpose of ascertaining the exact co-ordinates of the most westerly point of the Gulf of Gabes."

This submission was presented by Tunisia "altogether subsidiarily". However, since the Court is unable to uphold Tunisia's main submission as regards the second sector of the delimitation indicated in the 1982 Judgment (namely "That the most westerly point of the Gulf of Gabes lies on latitude 34° 05' 20" N (Carthage)"), the Court would not be disposing fully of the case if it were not to deal with the subsidiary submission. That submission was presented only in the course of the oral proceedings ; Libya, which contends that the application by Tunisia for interpretation is, as a whole, unjustified, has not commented specifically on the request for an expert survey. The request by Tunisia must therefore be regarded as a unilateral one, but one to which Libya has not expressly objected.

65. Under Article 50 of its Statute, the Court has power "at any time" to

direct the carrying out of an enquiry, or to obtain an expert opinion. The wording used in this provision is quite clear. At any time during proceedings in a case, the Court is empowered to "entrust any individual, body, bureau, commission, or other organization that it may select, with the task of . . . giving an expert opinion". However, this provision must be read in relation to the terms in which jurisdiction is conferred upon the Court in a specific case ; the purpose of the expert opinion must be to assist the Court in giving judgment upon the issues submitted to it for decision. In the present case, therefore, it would be appropriate to accede to the request of Tunisia only if the determination of the exact co-ordinates of the most westerly point of the Gulf of Gabes were required to enable the Court to give judgment on the matters submitted to it. The Court is however at present seised of a request for interpretation of a previous judgment ; and as the Permanent Court of International Justice observed, such an interpretation :

"adds nothing to the decision, which has acquired the force of *res judicata*, and can only have binding force within the limits of what was decided in the judgment construed" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 21).

Already, in its 1982 Judgment, the Court stipulated that it did not purport to determine the exact co-ordinates of the most westerly point of the Gulf of Gabes ; on the contrary, as pointed out in paragraph 60 above, it stated expressly that "the precise co-ordinates of this point will be for the experts to determine" (*I.C.J. Reports 1982*, p. 87, para. 124). It is clear that it is to the experts of the Parties that the Court is referring, even if it does not specifically say so, not to an expert appointed by the Court.

66. The question before the Court is what it can now do in regard to Tunisia's subsidiary request relating to the second sector of delimitation, having taken a decision, within the jurisdiction conferred upon it by the Parties' Special Agreement, to leave to the experts of these Parties the task of establishing the exact co-ordinates of the most westerly point of the shoreline (low-water mark) of the Gulf of Gabes. The Court in its 1982 Judgment could of course have determined this point, if necessary by appointing an expert for the purpose, since according to the Court the point was a necessary element in the decision as to the practical method to be used. Nevertheless it did not do so, preferring to leave this task to the experts of the Parties. Its decision in this respect is covered by the force of *res judicata*. This does not, however, mean that the force of *res judicata* is such as to prevent the Parties returning to the Court to present a joint request that it should order an expert survey to establish the precise co-ordinates of the most westerly point of the Gulf of Gabes. But they would have to do so by means of an agreement. At all events, this point is susceptible of geographical determination, despite the circumstances that it may lie in the mouth of a wadi.

67. Whether, and in what circumstances, the Court might in the future give effect to a request to appoint an expert submitted by one party only, does not fall to be considered at the present time. The Parties have, in their Special Agreement, undertaken an obligation to conclude a treaty for the purpose of the delimitation. An obligation to negotiate entails for the parties to it

“an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it” (*North Sea Continental Shelf, I.C.J. Reports 1969*, p. 47, para. 85 (a)).

This must *a fortiori* be so where, as the Court has noted above (paragraph 48), there is an obligation to conclude a treaty. It is not for the Court to contemplate the contingency of such an obligation not being complied with (cf. S.S. “Wimbledon”, *Judgments, 1923, P.C.I.J., Series A, No. 1*, p. 32; *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, pp. 62-63). Yet, judging by what has been brought to the attention of the Court by the two Parties in the present proceedings, no progress has been made in implementing the Special Agreement following the 1982 Judgment.

68. Thus the Court is bound to note that the obligation still rests upon both Parties to carry out the Special Agreement to the very end, and to have the 1982 Judgment implemented so that the dispute is finally disposed of. Thus the Parties must ensure that their experts and representatives engage in a sincere exercise involving a genuine effort to determine the precise co-ordinates of the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes, in the light of the indications furnished in the present Judgment, with a view to the conclusion of the delimitation treaty.

* * *

69. For these reasons,

THE COURT,

A. Unanimously,

Finds inadmissible the request submitted by the Republic of Tunisia for revision, under Article 61 of the Statute of the Court, of the Judgment given by the Court on 24 February 1982;

B. Unanimously,

(1) *Finds admissible* the request submitted by the Republic of Tunisia for interpretation, under Article 60 of the Statute of the Court, of the

Judgment of 24 February 1982 as far as it relates to the first sector of the delimitation contemplated by that Judgment ;

(2) *Declares*, by way of interpretation of the Judgment of 24 February 1982, that the meaning and scope of that part of the Judgment which relates to the first sector of the delimitation are to be understood according to paragraphs 32 to 39 of the present Judgment ;

(3) *Finds* that the submission of the Republic of Tunisia of 14 June 1985 relating to the first sector of the delimitation, cannot be upheld ;

C. Unanimously,

Finds that the request of the Republic of Tunisia for the correction of an error is without object and that the Court is therefore not called upon to give a decision thereon ;

D. Unanimously,

(1) *Finds admissible* the request submitted by the Republic of Tunisia for interpretation, under Article 60 of the Statute of the Court, of the Judgment of 24 February 1982 as far as it relates to the "most westerly point of the Gulf of Gabes" ;

(2) *Declares*, by way of interpretation of the Judgment of 24 February 1982,

(a) that the reference in paragraph 124 of that Judgment to "approximately $34^{\circ} 10' 30''$ north" is a general indication of the latitude of the point which appeared to the Court to be the most westerly point on the shoreline (low-water mark) of the Gulf of Gabes, it being left to the experts of the Parties to determine the precise co-ordinates of that point ; that the latitude of $34^{\circ} 10' 30''$ was therefore not intended to be itself binding on the Parties but was employed for the purpose of clarifying what was decided with binding force in paragraph 133 C (3) of that Judgment ;

(b) that the reference in paragraph 133 C (2) of that Judgment to "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", and the similar reference in paragraph 133 C (3) are to be understood as meaning the point on that shoreline which is furthest to the west on the low-water mark ; and

(c) that it will be for the experts of the Parties, making use of all available cartographic documents and, if necessary, carrying out an *ad hoc* survey *in loco*, to determine the precise co-ordinates of that point, whether or not it lies within a channel or the mouth of a wadi, and regardless of whether or not such point might be regarded by the experts as marking a change in direction of the coastline ;

(3) *Finds* that the submission of the Republic of Tunisia, "that the most westerly point of the Gulf of Gabes lies on latitude $34^{\circ} 05' 20''$ N (Carthage)", cannot be upheld ;

E. Unanimously,

Finds that, with respect to the submission of the Republic of Tunisia of 14 June 1985, there is at the present time no cause for the Court to order an expert survey for the purpose of ascertaining the precise co-ordinates of the most westerly point of the Gulf of Gabes.

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

(Signed) NAGENDRA SINGH,
President.

(Signed) Santiago TORRES BERNÁRDEZ,
Registrar.

Judges RUDA, ODA and SCHWEBEL and Judge *ad hoc* BASTID append separate opinions to the Judgment of the Court.

(Initialled) N.S.
(Initialled) S.T.B.
