

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

Judgment of 24 February 1982

In its judgment in the Continental Shelf case between Tunisia and Libya, the Court declared the principles and rules of international law which are applicable to the delimitation of the areas of continental shelf appertaining respectively to Tunisia and Libya in the region concerned in the dispute.

It enumerated the relevant circumstances to be taken into account for the purpose of arriving at an equitable delimitation and specified the practical method to be used for the delimitation itself.

The delimitation line indicated by the Court is made up of two segments: the *first segment* of the line starts from the outer limit of the Parties' territorial sea, at the intersection of that limit with a straight line constructed from the frontier point of Ras Ajdir at a bearing approximately 26° east of north; it continues at the same bearing until it meets the latitude of the most westerly point of the Gulf of Gabes, approximately 34° 10' 30" N. There begins the *second segment*, which is inclined farther to the east at a bearing of 52°.

The Court's Judgment was adopted by 10 votes to 4.

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The Court was composed as follows: Acting President Elias; Judges Forster, Gros, Lachs, Morozov, Nagendra Singh, Mosler, Oda, Ago, Sette-Camara, El-Khani and Schwebel; Judges *ad hoc* Evensen and Jiménez de Aréchaga.

Judges Ago, Schwebel and Jiménez de Aréchaga appended separate opinions to the Judgment.

Judges Gros, Oda and Evensen appended dissenting opinions to the Judgment.

In these opinions the Judges concerned stated and explained the positions they adopted in regard to certain points dealt with in the Judgment.

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The Court began its Judgment by recapitulating the various stages of the proceedings (paras. 1-15), defining the geographical setting of the dispute, namely the region known as the Pelagian Block or Basin (paras. 17-20 and 32-36), and noting that petroleum prospection and exploitation had been carried out on the continental shelf (para. 21).

Turning to the Special Agreement between Tunisia and Libya by which the proceedings had been instituted (paras. 22-31), the Court recalled that under Article 1, paragraph 1, it had been requested to state "the principles and rules of international law" which might "be applied for the delimitation of the areas of the continental shelf" respectively appertaining to each of the two States, and had further been specifically called upon, in rendering its decision, to take account of the following three factors: (a) equitable principles; (b) the relevant circumstances which characterize the area; and (c) the new accepted trends in the Third United Nations Conference on the Law of the Sea.

Article 1, second paragraph, of the Special Agreement required the Court to "clarify the practical method for the application of these principles and rules . . . so as to enable the experts of the two countries to delimit these areas without difficulties". The Court was therefore not called upon itself to draw the actual delimitation line. The Parties were in disagreement as to the scope of the task entrusted to the Court by that text, but a careful analysis of the pleadings and arguments on the point led the Court to conclude that there was only a difference of emphasis as to the respective roles of the Court and of the experts. Articles 2 and 3 of the Special Agreement made it clear that the Parties recognized the obligation to comply with the Judgment of the Court, which would have the effect and binding force attributed to it under Article 94 of the Charter, Articles 59 and 60 of the Statute and Article 94, paragraph 2, of the Rules of Court. The Parties were to meet as quickly as possible after the Judgment was given with a view to the conclusion of a treaty. The Court's view was that at that stage there would be no need for negotiation between the experts of the Parties regarding the factors to be taken into account in their calculations, since the Court would have determined that matter.

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The Court then dealt with the question of the principles and rules of international law applicable to the delimitation (paras. 36-107), which it examined in the light of the Parties' arguments. After first setting forth some general considerations (paras. 36-44), it examined the role of the new accepted trends at the United Nations Third Conference on the Law of the Sea (paras. 45-50). Next it turned to the question whether the natural prolongation of each of the two

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States could be determined on the basis of physical criteria (paras. 51–68); having found that there was just one continental shelf common to both States, it concluded that the extent of the continental shelf area appertaining to each could not be ascertained from criteria of natural prolongation. The Court went on to consider the implications of equitable principles (paras. 69–71) and to review the various circumstances characterizing the area which were likely to be relevant for the purposes of the delimitation (paras. 72–107).

Finally the Court examined the various methods of delimitation (paras. 108–132) contended for by the Parties, explained why it could not accept them, and indicated what method would in its judgment enable an equitable solution to be reached in the present case.

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The conclusions reached by the Court are indicated in the operative paragraph of the Judgment, which is worded as follows:

The Court, by ten votes to four, finds that

A. The principles and rules of international law applicable for the delimitation, to be effected by agreement in implementation of the present Judgment, of the areas of continental shelf appertaining to the Republic of Tunisia and the Socialist People's Libyan Arab Jamahiriya respectively, in the area of the Pelagian Block in dispute between them as defined in paragraph B, subparagraph (1) below, are as follows:

(1) the delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances;

(2) the area relevant for the delimitation constitutes a single continental shelf as the natural prolongation of the land territory of both Parties, so that in the present case, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation as such;

(3) in the particular geographical circumstances of the present case, the physical structure of the continental shelf areas is not such as to determine an equitable line of delimitation.

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

(1) the fact that the area relevant to the delimitation in the present case is bounded by the Tunisian coast from Ras Ajdir to Ras Kaboudia and the Libyan coast from Ras Ajdir to Ras Tajoura and by the parallel of latitude passing through Ras Kaboudia and the meridian passing through Ras Tajoura, the rights of third States being reserved;

(2) the general configuration of the coasts of the Parties, and in particular the marked change in direction of the Tunisian coastline between Ras Ajdir and Ras Kaboudia;

(3) the existence and position of the Kerkennah Islands;

(4) the land frontier between the Parties, and their conduct prior to 1974 in the grant of petroleum concessions, resulting in the employment of a line seawards from Ras Ajdir at an angle of approximately 26° east of the meridian, which line corresponds to the line perpendicular to the coast at the frontier point which had in the past been observed as a *de facto* maritime limit;

(5) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of

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

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

(1) the taking into account of the relevant circumstances which characterize the area defined in paragraph B, subparagraph (1) above, including its extent, calls for it to be treated, for the purpose of its delimitation between the Parties to the present case, as made up of two sectors, each requiring the application of a specific method of delimitation in order to achieve an overall equitable solution;

(2) in the first sector, namely in the sector closer to the coast of the Parties, the starting point for the line of delimitation is the point where the outer limit of the territorial sea of the Parties is intersected by a straight line drawn from the land frontier point of Ras Ajdir through the point 33°55'N, 12°E, which line runs at a bearing of approximately 26° east of north, corresponding to the angle followed by the north-western boundary of Libyan petroleum concessions numbers NC 76, 137, NC 41 and NC 53, which was aligned on the south-eastern boundary of Tunisian petroleum concession "Permis complémentaire offshore du Golfe de Gabès" (21 October 1966); from the intersection point so determined, the line of delimitation between the two continental shelves is to run north-east through the point 33°55'N, 12°E, thus on that same bearing, to the point of intersection with the parallel passing through the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabès;

(3) in the second sector, namely in the area which extends seawards beyond the parallel of the most westerly point of the Gulf of Gabès, the line of delimitation of the two continental shelves is to veer to the east in such a way as to take account of the Kerkennah Islands; that is to say, the delimitation line is to run parallel to a line drawn from the most westerly point of the Gulf of Gabès bisecting the angle formed by a line from that point to Ras Kaboudia and a line drawn from that same point along the seaward coast of the Kerkennah Islands, the bearing of the delimitation line parallel to such bisector being 52° to the meridian; the extension of this line northeastwards is a matter falling outside the jurisdiction of the Court in the present case, as it will depend on the delimitation to be agreed with third States.

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

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

SUMMARY OF DISSENTING OPINIONS APPENDED TO THE JUDGMENT

In *Judge Oda's* view, the Court fails to suggest any positive principles or rules of international law, and the line suggested is not grounded on any persuasive considerations. Indeed, the judgment appears as one appropriate to a case to be decided *ex aequo et bono* under Article 38, paragraph 2, of the Statute. Considering that the distance criterion has become dominant in the new concept of the limits of the continental shelf, as also the limits of the exclusive economic zone which inevitably has a significant impact on the exploi-

tation of submarine mineral resources, an equidistance method is appropriate in principle for the delimitation of the continental shelf between Tunisia and Libya, but only on condition that the line is adjusted in the light of any coastal features which might otherwise result in some distortion from the general viewpoint of proportionality between the lengths of coastline and the areas to be apportioned. He suggests, for what is quite a normal case of delimitation of a continental shelf between two adjacent States, a line equidistant from the coasts of both countries, disregarding the Kerkennah Islands and surrounding low-tide elevations, as shown on attached maps.

Judge ad hoc Evensen held that, although equity is part of international law, it cannot operate in a legal void. In the case at hand, the coasts of the two States were adjacent but at the same time almost opposite each other. The Court has not paid

sufficient attention to this geographic fact. It has also disregarded such relevant characteristics of the coasts concerned as the Island of Jerba, the promontories of Zarzis and the Kerkennah Archipelago with the surrounding low-tide elevations. Nor had the Court given sufficient considerations to such new trends in the United Nations Law of the Sea Conference as the 200-mile exclusive economic zone and the trend towards distance criteria for certain aspects of the continental shelf. He felt that, in this case, the equidistance criterion might have been a more appropriate starting-point for delimitation purposes, adjusted by considerations of equity, than the method proposed by the Court. He felt that the distinction between a decision based on principles and rules of international law in accordance with Article 38, paragraph 1, of the Statute and an *ex aequo et bono* decision under Article 38, paragraph 2, had become blurred.