

## 66. THE REGISTRAR TO THE AGENT OF THE LIBYAN ARAB JAMAHIRIYA

27 January 1984.

I have the honour to acknowledge receipt of the letter dated 23 January 1984 in which you give your views on the accessibility to the public of the written observations of the Parties on Italy's Application for permission to intervene in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*.

## 67. THE AGENT OF MALTA TO THE REGISTRAR

6 February 1984.

I have the honour to refer to the question put by Judge Oda to Malta and Italy at the sitting of 30 January 1984, in the oral hearing held on Italy's application for permission to intervene in the *Libya-Malta Continental Shelf* case, and to enclose the reply by Malta to the above question.

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*Question by Judge Oda*<sup>1</sup>

"Considering that the expressions 'median line' and 'equidistance line' are used in the 1958 Convention on the Continental Shelf in two different situations, is the sector between B and C of the red line on the map on the easel regarded as a median line in the case of opposite States or an equidistance line in the case of adjacent States, in the sense of these concepts in the 1958 Convention?"

*Reply by Malta*

Malta notes in the first place that the dichotomy between on the one hand "median line in the case of opposite States" and "equidistance line in the case of adjacent States" is not entirely exact. The Convention on the Continental Shelf of 1958, Article 6, in relation to opposite coasts speaks of "the median line, every point of which is equidistant from the nearest points of the baselines . . .", while in relation to adjacent coasts it does not use the expression "equidistance line" but says that "the boundary shall be determined by the application of the principle of equidistance from the nearest points of the baselines . . .". Thus while the expression "median line" is expressly used in relation to opposite coasts, its use is not excluded in relation to adjacent coasts, especially since the equidistance method is, in the circumstances stated in the Article, applicable to both.

Malta also notes, in passing, that Italy is not a party to the 1958 Convention.

Another pertinent observation of a general character is that the expressions "opposite coasts" and "adjacent coasts" do not represent all the geographical situations in which the delimitation of continental shelves is to be effected; nor are such geographical situations easily classifiable into these two classes only.

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<sup>1</sup> See II, p. 646.

As may be clearly seen from the *Libya-Tunisia Continental Shelf* case and the Anglo-French Continental Shelf case, there are geographical situations which possess both "opposite coasts" and "adjacent coasts" features and even ones which are neither exactly the one or the other, but cases of "laterally related coasts", as the Atlantic region between France and the United Kingdom was described in the Anglo-French case.

Indeed in the case just referred to, and in relation to the Atlantic region which is quite comparable to parts of the geographical situation of Malta and Italy, the Court of Arbitration in paragraph 242 of its decision expressly stated:

"In so far as the point may be thought to have importance, the Court is inclined to the opinion that the Atlantic region falls within the terms of paragraph 1 rather than paragraph 2 of Article 6. As the United Kingdom emphasizes, there are a number of precedents in which equidistance boundaries between 'opposite' States are prolonged seawards beyond the point where their coasts are geographically 'opposite' each other: and the assumption seems to be that these are prolongations of median lines."

It is therefore quite in consonance with these views that Malta has from the outset and also by reason of its island character, treated all the delimitation situations by which it might be effected as being "opposite coasts" situations. Language corresponding to this first appears in Malta's Continental Shelf Act, 1966, where section 2 provides that

"... where in relation to States of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective shelves, the boundary of the continental shelf shall be that determined by Malta and such other State or States or, in the absence of agreement, the median line, namely a line every point of which is equidistant from the nearest points of the baselines . . .".

In its relations with Italy Malta has not distinguished between "opposite coasts" and possible "adjacent coasts" situations, or perhaps more accurately a situation of "laterally related coasts". When referring in its Note Verbale of 31 December 1965, to the provisional arrangement with Italy, Malta treated the whole situation as an "opposite States" situation and used the simple expression "median line".

Malta's position in this regard has been consistent as may be seen from the terms of the draft delimitation agreement presented by Malta to Italy at the discussions of 19 June 1975 (see draft attached to Annex 15 to Malta's observations on Italy's Application). This draft was entitled "Agreement between the Government of the Republic of Malta and the Government of the Republic of Italy relating to the delimitation of the Continental Shelf between the two countries". This was clearly intended to be a comprehensive agreement, settling the whole of the continental shelf boundary. Article 1 drew no distinction between "opposite" and "adjacent coasts"; and the boundary of the continental shelf appertaining to each of the Contracting Parties is the median line every point of which is equidistant from the points nearest to the baselines from which the breadth of the territorial waters of Malta and Italy is measured, with the exception of the Islands of Linosa and Lampedusa.

The position taken by Italy is quite similar to that of Malta. Thus the Italian Continental Shelf Law of 21 June 1967 refers to the "median line", even though the delimitation might, in certain circumstances, e.g., near the termini of the land boundaries with France and Yugoslavia, involve an "adjacent coasts" situation.

In truth it may be said that very often the terms "median line" and "equidistant line" are used interchangeably and no safe conclusions can be drawn from the use of either of these terms. For example, the geographical situation between Italy and Tunisia is not exactly and in all respects one of opposite States and yet the two countries agreed that the "boundary of the continental shelf between the two countries shall be the median line . . . with the exception of Lampione, Lampedusa, Linosa and Pantalleria" (Agreement of 20 August 1971). Conversely, the geographical situation between Italy and Spain, namely between Sardinia and the Balearic Islands is almost exactly that of opposite coasts; this notwithstanding the words used in the Agreement of 19 February 1974 is the following: "The dividing line of the continental shelf between Spain and Italy will remain established following the criterion of equidistance from respective baselines."

In conclusion Malta wishes to state that it has provided a somewhat full answer in order to be as much of assistance to the Court as possible. However in the absence of an indication of the issue to which the question is intended to relate, Malta must reserve the right to supplement or qualify this answer should any later developments in these or other proceedings so require.

68. L'AGENT DE L'ITALIE AU GREFFIER

Rome, le 6 février 1984.

En vous priant de bien vouloir les soumettre à l'examen de la Cour, j'ai l'honneur de vous envoyer les réponses du Gouvernement italien aux questions posées oralement par MM. les juges Oda et de Lacharrière au cours de l'audience du 30 janvier 1984.

P.-S. — A toutes fins utiles je vous joins aussi une carte avec les indications à la réponse au juge de Lacharrière.

*Reply to the Following Question Put by Judge Oda<sup>1</sup>  
to Professor Arangio-Ruiz on January 30th, 1984*

"As Counsel will be aware, the expressions 'median line' and 'equidistance line' are used in the 1958 Convention on the Continental Shelf in two different situations. I wonder whether Professor Arangio-Ruiz, or Professor Virally, and Mr. Lauterpacht regard the sector between B and C of the red line on the map on the easel as a median line in the case of opposite States or an equidistance line in the case of adjacent States, in the sense of these concepts in the 1958 Convention."

1. Professor Arangio-Ruiz is aware, as well as the eminent Judge, of the difference set forth in Article 6 of the 1958 Convention on the Continental Shelf, between a median line as a boundary line between States "whose coasts are

<sup>1</sup> See II, p. 646.

opposite each other" and the "principle of equidistance" by "application" of which should be determined the boundary line between "two adjacent States".

2. With regard to line B-C in the map used by counsel for Italy during the oral procedure (January 25-30, 1984), it was meant to correspond to the line as drawn on the map presented to the Court by counsel for Malta in March 1981. As stated by counsel for Italy during the recalled oral proceedings, that line was presumably understood by Malta as a line of equidistance, drawn as a continuation of line A-B. Line A-B in its turn seemed to be understood by Malta, as corresponding to the line *provisionally* agreed upon with Italy for the part of the sea-bed situated between Sicily and Malta.

It is possible that in the Maltese conception, line B-C was intended more for the purpose of delimitation between adjacent coasts than of delimitation between coasts facing each other.

3. In any case, considering the very small coastal and territorial dimensions of Malta as compared to Sicily and the southern part of continental Italy (and other Italian islands), and considering also, in addition to geography, the geology and geomorphology of the area, counsel for Italy finds it very difficult, as he stated before the Court, to understand how the line B-C could ever be justified in law, either as a "median" line, or as a line of "equidistance".

4. It should also be noted that, in the measure indicated in the Italian Agent's reply to the question put by the eminent Judge de Lacharrière the area situated south of line B-C is considered by Italy to be part of the Italian continental shelf.

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Réponse de l'agent du Gouvernement italien à la question qui lui a été posée en date du 30 janvier 1984 par M. le juge de Lacharrière<sup>1</sup>, dans les termes suivants:

«Monsieur l'agent pourrait-il donner des indications précises sur les zones de plateau continental sur lesquelles l'Italie considère qu'elle a des droits?»

1. L'agent du Gouvernement italien croit interpréter la question qui lui a été adressée dans le sens qu'il lui est demandé de préciser seulement les zones de plateau continental sur lesquelles l'Italie considère avoir des droits et qui sont comprises dans la région qui est vraisemblablement l'objet de l'affaire en cours devant la Cour internationale de Justice.

2. L'agent du Gouvernement italien croit, qu'au cours de la phase orale du débat qui a eu lieu à La Haye du 25 au 30 janvier 1984, lui-même et les conseils de l'Italie, notamment M. Arangio-Ruiz, lors de son intervention du 25 janvier, ont fourni des renseignements assez détaillés sur les revendications italiennes et sur leur localisation géographique. Toutefois, dans l'actuelle phase de la procédure, il n'a pas paru approprié de s'entretenir trop longuement sur une question qui devra être approfondie lors de l'examen du fond.

3. L'agent du Gouvernement italien est toutefois en mesure de préciser davantage les zones sur lesquelles l'Italie considère avoir des droits et remercie le juge de Lacharrière de l'occasion qu'il lui a offerte de revenir sur ce point important. Il se réserve, si la demande à fin d'intervention de l'Italie sera

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<sup>1</sup> Voir II, p. 646.