

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

Judgment of 3 June 1985

In its judgment in the case concerning the Continental Shelf between the Libyan Arab Jamahiriya and Malta, the Court, by 14 votes to 3, stated what principles and rules of international law are applicable to the delimitation of the continental shelf between the two States, and the circumstances and factors to be taken into consideration in order to achieve an equitable delimitation. It stated that an equitable result could be obtained first by drawing between the 13° 50' and the 15° 10' meridians a median line, of which every point is equidistant from the low-water mark of the relevant coasts of Malta, on the one hand, and of Libya, on the other, and by then transposing this line northwards by 18' so as to intersect the 15° 10' E meridian at a latitude of approximately 34° 30' N.

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The voting was as follows:

IN FAVOUR: *President* Elias; *Vice-President* Sette-Camara; *Judges* Lachs, Morozov, Nagendra Singh, Ruda, Ago, El-Khani, Sir Robert Jennings, de Lacharrière, Mbaye, Bedjaoui; *Judges ad hoc* Valticos, Jiménez de Aréchaga.

AGAINST: *Judges* Mosler, Oda and Schwebel.

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The Court was composed for this case as follows: *President* Elias; *Vice-President* Sette-Camara; *Judges* Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Khani, Schwebel, Sir Robert Jennings, de Lacharrière, Mbaye, Bedjaoui; *Judges ad hoc* Valticos and Jiménez de Aréchaga.

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Judge El-Khani appended a declaration to the Judgment.

Vice-President Sette-Camara appended a separate opinion to the Judgment; Judges Ruda and Bedjaoui, and Judge *ad*

hoc Jiménez de Aréchaga appended a joint opinion. Judge Mbaye and Judge *ad hoc* Valticos each appended separate opinions.

Judges Mosler, Oda and Schwebel appended dissenting opinions to the Judgment.

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

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Proceedings and Submissions of the Parties
(paras. 1-13)

The Court begins by recapitulating the various stages in the proceedings and setting out the provisions of the Special Agreement concluded between the Libyan Arab Jamahiriya and Malta for the purpose of submitting to the Court the dispute between them concerning the delimitation of their respective continental shelves.

By Article 1 of the Special Agreement, the Court is requested to decide the following question:

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

According to Article III:

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

Continued on next page

Having described the *geographical context* (paras. 14–17) in which the delimitation of the continental shelf, the subject of the proceedings, is to be carried out, the Court explains its approach to the *task* which it has to discharge (paras. 18–23).

The Parties agree on the task of the Court as regards the definition of the principles and rules of international law applicable in the case, but disagree as to the way in which the Court is to indicate the practical application of these principles and rules. Malta takes the view that the applicable principles and rules are to be implemented in practice by the drawing of a specific line (in this case, a median line) whereas Libya maintains that the Court's task does not extend to the actual drawing of the delimitation line. Having examined the intentions of the Parties to the Special Agreement, from which its jurisdiction derives, the Court considers that it is not debarred by the terms of the Special Agreement from indicating a delimitation line.

Turning to the scope of the Judgment, the Court emphasizes that the delimitation contemplated by the Special Agreement relates only to areas of continental shelf "which appertain" to the Parties, to the exclusion of areas which might "appertain" to a third State. Although the Parties have in effect invited the Court not to limit its Judgment to the area in which theirs are the sole competing claims, the Court does not regard itself as free to do so, in view of the interest shown in the proceedings by Italy, which in 1984 submitted an application for permission to intervene under Article 62 of the Statute, an application which the Court found itself unable to grant. As the Court had previously indicated in its Judgment of 21 March 1984, the geographical scope of the present decision must be limited, and must be confined to the area in which, according to information supplied by Italy, that State has no claims to continental shelf rights. Thus the Court ensures to Italy the protection which it sought to obtain by intervening. In view of the geographical location of these claims the Court limits the area within which it will give its decision, on the east by the 15° 10' E meridian, including also that part of the meridian which is south of the 34° 30' N parallel, and on the west by excluding a pentagonal area bounded on the east by the 13° 50' E meridian. The Parties have no grounds for complaint since, as the Court says, by expressing a negative opinion on the Italian Application to intervene, they had shown their preference for a restriction in the geographical scope of the Judgment which the Court would be required to deliver.

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The Court observes that no decisive role is played in the present case by considerations derived from the *history of the dispute*, or from legislative and exploratory activities in relation to the continental shelf (paras. 24 and 25). In these the Court finds neither acquiescence by either Party to claims by the other, nor any helpful indication of any view of either Party as to what would be equitable differing in any way from the view advanced by that Party before the Court. Its decision must accordingly be based upon the application to the submissions made before it of principles and rules of international law.

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The applicable principles and rules of international law (paras. 26–35)

The two Parties agree that the dispute is to be governed by customary international law. Malta is a party to the 1958 Geneva Convention on the Continental Shelf, while Libya is not; both Parties have signed the 1982 United Nations Convention on the Law of the Sea, but that Convention has not yet entered into force. However, the Parties are in accord in considering that some of its provisions constitute the expression of customary law, while holding different views as to which provisions have this status. In view of the major importance of this Convention—which has been adopted by an overwhelming majority of States—it is clearly the duty of the Court to consider how far any of its provisions may be binding upon the Parties as a rule of customary law.

In this context the Parties have laid some emphasis on a distinction between the law applicable to the *basis of entitlement* to areas of continental shelf and the law applicable to the *delimitation* of areas of shelf between neighbouring States. On the second point, which is governed by Article 83 of the 1982 Convention, the Court notes that the Convention sets a goal to be pursued, namely "to achieve an equitable solution", but is silent as to the method to be followed to achieve it, leaving it to States themselves, or to the courts, to endow this standard with specific content. It also points out that both Parties agree that, whatever the status of Article 83 of the 1982 Convention, the delimitation is to be effected in accordance with equitable principles and taking account of all relevant circumstances.

However, on the legal basis of title to continental shelf rights the views of the Parties are irreconcilable. For Libya, the natural prolongation of the land territory of a State into the sea remains the fundamental basis of legal title to continental shelf areas. For Malta, continental shelf rights are no longer defined in the light of physical criteria; they are controlled by the concept of distance from the coast.

In the view of the Court, the principles and rules underlying the régime of the exclusive economic zone cannot be left out of consideration in the present case, which relates to the delimitation of the continental shelf. The two institutions are linked together in modern law, and one of the relevant circumstances to be taken into account for the delimitation of the continental shelf of a State is the legally permissible extent of the exclusive economic zone appertaining to that same State. The institution of the exclusive economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law; and although the institutions of the continental shelf and the exclusive economic zone are different and distinct, the rights which the exclusive economic zone entails over the sea-bed of the zone are defined by reference to the régime laid down for the continental shelf. Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf. It follows that, for juridical and practical reasons, the distance criterion must now apply to the continental shelf as well as to the exclusive economic zone; and this quite apart from the provision as to distance in Article 76 of the 1982 Convention. Within 200 miles of the coast, natural prolongation is in part defined by distance from the shore. The concepts of natural prolongation and distance are not opposed but complementary; and both remain essential elements in the juridical concept of the continental shelf. The Court is thus unable to accept the Libyan contention that distance from the coast is not a relevant element for the decision of the present case.

The Libyan "rift zone" argument
(paras. 36–41)

The Court goes on to consider Libya's argument based on the existence of a "rift zone" in the region of the delimitation. From Libya's contention that the natural prolongation, in the physical sense, of the land territory into the sea is still a primary basis of title to continental shelf, it would follow that, if there exists a fundamental discontinuity between the shelf area adjacent to one Party and the shelf area adjacent to the other, the boundary should lie along the general line of that fundamental discontinuity. According to Libya, in the present case there are two distinct continental shelves divided by what it calls the "rift zone", and it is "within, and following the general direction of, the Rift Zone" that the delimitation should be carried out.

The Court takes the view that, since the development of the law enables a State to claim continental shelf up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding sea-bed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance. Since in the present instance the distance between the coasts of the Parties is less than 400 miles, so that no geophysical feature can lie more than 200 miles from each coast, the "rift zone" cannot constitute a fundamental discontinuity terminating the southward extension of the Maltese shelf and the northward extension of the Libyan as if it were some natural boundary. Moreover, the need to interpret the evidence advanced for and against the Libyan argument would compel the Court first to make a determination upon a disagreement between scientists of distinction as to the more plausibly correct interpretation of apparently incomplete scientific data, a position which it cannot accept. It therefore rejects the so-called "rift zone" argument of Libya.

Malta's argument respecting the primacy of equidistance
(paras. 42–44)

Neither, however, is the Court able to accept Malta's argument that the new importance of the idea of distance from the coast has conferred a primacy on the method of equidistance for the purposes of delimitation of the continental shelf, at any rate between opposite States, as is the case with the coasts of Malta and Libya. Malta considers that the distance principle requires that, as a starting point of the delimitation process, consideration must be given to an equidistance line, subject to verification of the equitableness of the result achieved by this initial delimitation. The Court is unable to accept that, even as a preliminary step towards the drawing of a delimitation line, the equidistance method is one which must necessarily be used. It is neither the only appropriate method of delimitation, nor the only permissible point of departure. Moreover, the Court considers that the practice of States in this field falls short of proving the existence of a rule prescribing the use of equidistance, or indeed of any method, as obligatory.

Equitable principles
(paras. 45–47)

The Parties agree that the delimitation of the continental shelf must be effected by the application of equitable principles in all the relevant circumstances in order to achieve an equitable result. The Court lists some of these principles: the principle that there is to be no question of refashioning geography; the principle of non-encroachment by one Party on areas appertaining to the other; the principle of the respect

due to all relevant circumstances; the principle that "equity does not necessarily imply equality" and that there can be no question of distributive justice.

The relevant circumstances
(paras. 48–54)

The Court has still to assess the weight to be accorded to the relevant circumstances for the purposes of the delimitation. Although there is no closed list of considerations which a court may invoke, the Court emphasizes that the only ones which will qualify for inclusion are those which are pertinent to the institution of the continental shelf as it has developed within the law, and to the application of equitable principles to its delimitation.

Thus it finds to be unfounded in the practice of States, in the jurisprudence or in the work of the Third United Nations Conference on the Law of the Sea the argument of Libya that the landmass provides the legal justification of entitlement to continental shelf rights, such that a State with a greater landmass would have a more intense natural prolongation. Nor does the Court consider, contrary to the contentions advanced by Malta, that a delimitation should be influenced by the relative economic position of the two States in question. Regarding the security or defence interests of the two Parties, the Court notes that the delimitation which will result from the application of the present Judgment is not so near to the coast of either Party as to make these questions a particular consideration. As for the treatment of islands in continental shelf delimitation, Malta has drawn a distinction between island States and islands politically linked to a mainland State. In this connection the Court merely notes that, Malta being independent, the relationship of its coasts with the coasts of its neighbours is different from what it would be if it were part of the territory of one of them. This aspect of the matter also seems to the Court to be linked to the position of the Maltese islands in the wider geographical context, to which it will return.

The Court rejects another argument of Malta, derived from the sovereign equality of States, whereby the maritime extensions generated by the sovereignty of each State must be of equal juridical value, whatever the length of the coasts. The Court considers that if coastal States have an equal entitlement, *ipso jure* and *ab initio*, to their continental shelves, this does not imply an equality in the extent of these shelves, and thus reference to the length of coasts as a relevant consideration cannot be excluded *a priori*.

Proportionality
(paras. 55–59)

The Court then considers the role to be assigned in the present case to proportionality, Libya having attached considerable importance to this factor. It recalls that, according to the jurisprudence, proportionality is one possibly relevant factor among several others to be taken into account, without ever being mentioned among "the principles and rules of international law applicable to the delimitation" or as "a general principle providing an independent source of rights to areas of continental shelf". Libya's argument, however, goes further. Once the submission relating to the rift-zone has been dismissed, there is no other element in the Libyan submissions, apart from the reference to the lengths of coastline, which is able to afford an independent principle and method for drawing the boundary. The Court considers that to use the ratio of coastal lengths as self-determinative of the seaward reach and area of continental shelf proper to each, is

to go far beyond the use of proportionality as a test of equity, in the sense employed in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. Such use finds no support in the practice of States or their public statements, or in the jurisprudence.

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The delimitation operation and the drawing of a provisional equidistance line
(paras. 60–64)

In order to apply the equitable principles which were elicited by taking account of the relevant circumstances, the Court proceeds by stages; it begins by making a provisional delimitation, which it then compares with the requirements derived from other criteria which may call for an adjustment of this initial result.

Stating that the law applicable to the present dispute is based on the criterion of distance in relation to the coast (the principle of adjacency measured by distance), and noting that the equitableness of the equidistance method is particularly marked in cases where the delimitation concerns States with opposite coasts, the Court considers that the tracing of a median line between the coasts of Malta and Libya, by way of a provisional step in a process to be continued by other operations, is the most judicious manner of proceeding with a view to the eventual achievement of an equitable result. The equidistance method is not the only possible method, and it must be demonstrated that it in fact leads to an equitable result—this can be ascertained by examining the result to which it leads in the context of applying other equitable principles to the relevant circumstances. At this stage, the Court explains that it finds it equitable not to take account of the uninhabited Maltese island of Filfla in the construction of the provisional median line between Malta and Libya, in order to eliminate the disproportionate effect which it might have on the course of this line.

Adjustment of the equidistance line, taking account especially of the lengths of the respective coasts of the Parties
(paras. 65–73)

The Court examines whether, in assessing the equitableness of the result, certain relevant circumstances may carry such weight as to justify their being taken into account, requiring an adjustment of the median line which has provisionally been drawn.

One point argued before the Court has been the considerable disparity in the lengths of the relevant coasts of the Parties. Here, the Court compares Malta's coasts with the coasts of Libya between Ras Ajdir (the boundary with Tunisia) and Ras Zarruq (15° 10') and notes that there is a marked disparity between the lengths of these coasts, since the Maltese coast is 24 miles long and the Libyan coast 192 miles long. This is a relevant circumstance which warrants an adjustment of the median line, to attribute a greater area of shelf to Libya. However, it remains to determine the extent of this adjustment.

A further geographical feature must be taken into consideration as a relevant circumstance; this is the southern location of the coasts of the Maltese islands, within the general geographical context in which the delimitation is to be effected. The Court points to a further reason for not accepting the median line, without adjustment, as an equitable

boundary: namely that this line is to all intents and purposes controlled on each side, in its entirety, by a handful of salient points on a short stretch of the coast (two points 11 miles apart for Malta; several points concentrated immediately east of Ras Tadjoura for Libya).

The Court therefore finds it necessary that the delimitation line be adjusted so as to lie closer to the coasts of Malta. The coasts of the Parties being opposite to each other, and the equidistance line lying broadly west to east, this adjustment can be satisfactorily and simply achieved by transposing it in an exactly northward direction.

The Court then establishes what should be the extreme limit of such a transposition. It reasons as follows: were it supposed that the Maltese islands were part of Italian territory, and that there was a question of the delimitation of the continental shelf between Libya and Italy, the boundary would be drawn in the light of the coasts of Libya to the south and of Sicily to the north. However, account would have to be taken of the islands of Malta, so that this delimitation would be located somewhat south of the median line between Sicily and Libya. Since Malta is not part of Italy, but is an independent State, it cannot be the case that, as regards continental shelf rights, it will be in a worse position because of its independence. It is therefore reasonable to assume that an equitable boundary between Libya and Malta must be to the south of a notional median line between Libya and Sicily. That line intersects the 15° 10' E meridian at a latitude of approximately 34° 36'. The median line between Malta and Libya (drawn to exclude the islet of Filfla) intersects the 15° 10' E meridian at a latitude of approximately 34° 12' N. A transposition northwards of 24' of latitude of the Malta-Libya median line would therefore be the extreme limit of such an adjustment.

Having weighed up the various circumstances in the case as previously indicated, the Court concludes that a shift of about two-thirds of the distance between the Malta-Libya median line and the line located 24' further north gives an equitable result, and that the delimitation line is to be produced by transposing the median line northwards through 18' of latitude. It will intersect the 15° 10' E meridian at approximately 34° 30' N. It will be for the Parties and their experts to determine the exact position.

The test of proportionality
(paras. 74–75)

While considering that there is no reason of principle why a test of proportionality, based on the ratio between the lengths of the relevant coasts and the areas of shelf attributed, should not be employed to verify the equity of the result, the Court states that there may be certain practical difficulties which render this test inappropriate. They are particularly evident in the present case, *inter alia* because the area to which the Judgment will apply is limited by reason of the existence of claims of third States, and to apply the proportionality test simply to the areas within these limits would be unrealistic. However, it seems to the Court that it can make a broad assessment of the equity of the result without attempting to express it in figures. It concludes that there is certainly no manifest disproportion between areas of shelf attributed to each of the Parties, such that it might be claimed that the requirements of the test of proportionality as an aspect of equity are not satisfied.

The Court presents a *summary of its conclusions* (paras. 76–78) and its decision, the full text of which follows (para. 79).

THE COURT,

by fourteen votes to three,

finds that, with reference to the areas of continental shelf between the coasts of the Parties within the limits defined in the present Judgment, namely the meridian 13° 50' E and the meridian 15° 10' E:

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 Socialist People's Libyan Arab Jamahiriya and to the Republic of Malta respectively are as follows:

(1) the delimitation is to be effected in accordance with equitable principles and taking account of all relevant circumstances, so as to arrive at an equitable result;

(2) the area of continental shelf to be found to appertain to either Party not extending more than 200 miles from the coast of the Party concerned, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation in the physical sense.

B. The circumstances and factors to be taken into account in achieving an equitable delimitation in the present case are the following:

(1) the general configuration of the coasts of the Parties, their oppositeness, and their relationship to each other within the general geographical context;

(2) the disparity in the lengths of the relevant coasts of the Parties and the distance between them;

(3) the need to avoid in the delimitation any excessive disproportion 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.

C. In consequence, an equitable result may be arrived at by drawing, as a first stage in the process, a median line every point of which is equidistant from the low-water mark of the relevant coast of Malta (excluding the islet of Filfla), and the low-water mark of the relevant coast of Libya, that initial line being then subject to adjustment in the light of the above-mentioned circumstances and factors.

D. The adjustment of the median line referred to in subparagraph C above is to be effected by transposing that line northwards through eighteen minutes of latitude (so that it intersects the meridian 15° 10' E at approximately latitude 34° 30' N) such transposed line then constituting the delimitation line between the areas of continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the Republic of Malta respectively.

IN FAVOUR: *President Elias; Vice-President Sette-Camara; Judges Lachs, Morozov, Nagendra Singh, Ruda, Ago, El-Khani, Sir Robert Jennings, de Lacharrière, Mbaye, Bedjaoui; Judges ad hoc Valticos, Jiménez de Aréchaga.*

AGAINST: *Judges Mosler, Oda and Schwebel.*

SUMMARY OF THE DECLARATION AND OPINIONS
APPENDED TO THE JUDGMENT OF THE COURT

Declaration by Judge El-Khani

Judge El-Khani voted in favour of the Judgment, but is of the view that a line located further to the north than the proposed line would have been more in accordance with proportionality while satisfying one requirement of equity.

*Separate Opinion by Vice-President
Sette-Camara*

Vice-President Sette-Camara, while concurring in voting for the Judgment, filed a separate Opinion for the following reasons:

1. The natural prolongation doctrine as established in the 1969 *North Sea Continental Shelf* Judgment is still the main pillar of the concept of continental shelf. Although the original concept of the "species of platform" has been replaced by a gradually more juridical definition of the continental shelf, natural prolongation remains the basic element of the definition of continental shelf. Article 76, paragraph 1, of the 1982 Montego Bay Convention itself confirms the reliance on natural prolongation.

2. Vice-President Sette-Camara sees no need to resort to the "distance principle" as defined in the final part of paragraph 76 of the 1982 Montego Bay Convention as a legal foundation for the Judgment. The coasts of Malta and Libya are barely 180 miles apart and the specific geographical situation dealt with by that proviso does not exist in the present case. Even if we consider the said proviso as containing a rule of customary international law—discarding conventional law because the Convention is not in force—it has no relation with the circumstances of this case.

3. Since neither of the Parties has claimed an exclusive economic zone the opinion finds unnecessary and out of place the considerations of the Judgment on this specific subject.

4. Although concurring with the method of establishing a median line between the Maltese and Libyan coasts and then correcting its course by transposing it northwards by 18 minutes, the opinion fails to subscribe to the way the Judgment reached a line on the extreme northern parameter for that operation. The imaginary exercise of drawing a "notional" median line between the coasts of Sicily and Malta is rejected as an artificial refashioning of geography. Vice-President Sette-Camara believes that it would be much simpler to attribute partial effect to the coasts of Malta, to be balanced up with similar partial effect to be given to the flagrant disproportionality in the lengths of the relevant coasts, so as to reach an equitable result.

*Separate Opinion of Judges Ruda, Bedjaoui
and Judge ad hoc Jiménez de Aréchaga*

The authors of the joint separate Opinion agree with many of the Court's findings and conclusions, but observe that the Judgment does not pronounce on Malta's trapezium claim, which they find excessive and contrary to the practice of States in enclosed or semi-enclosed seas.

They also believe that it would have been more equitable to correct the median line northwards by 28', thus giving Malta a 3/4 effect, achieving a proportionality ratio of 1 to 3.54 and dividing equally the area in dispute.

Separate Opinion by Judge Mbaye

Judge Mbaye voted in favour of the Judgment since he endorses the conclusions which the Court has reached and accepts, on the whole, the reasons for them.

His Opinion deals with two points: what he has called the "two meanings of the concept of natural prolongation" and the circumstance of the "considerable distance between the coasts of the two States".

As far as the first point is concerned, although Judge Mbaye states that he does not disagree with the Court, espec-

ially as regards the finding that natural prolongation in the physical sense cannot, in the present case, have any effect on the delimitation of the areas of continental shelf appertaining respectively to each Party, he expresses regret that the Court, which he finds has made a highly perceptive analysis of the development of customary international law relating to the continental shelf by drawing a distinction between natural prolongation as a "legal principle" and natural prolongation in the "physical sense", has not taken the opportunity to bring out this fundamental idea, which marks a turning point in the development of this area of the law as it emerges from the United Nations Convention on the Law of the Sea of 10 December 1982.

As for the second point, Judge Mbaye questions whether the "considerable" distance between the coasts of the two States can be described as a "relevant circumstance", such as to justify in any way the transposition northwards of the median line initially drawn by the Court. According to Judge Mbaye, the decisive reason for such a transposition is the difference in the lengths of the coasts, and also the general configuration of these coasts and the geography of the region.

Separate Opinion by Judge ad hoc Valticos

While concurring with the Judgment as a whole, Judge *ad hoc* Valticos emphasizes that, by confining the area to which its decision applies to a limited zone, in order to leave unaffected the interests of Italy, the Court points out that Malta and Libya remain free to examine together with Italy the question of the delimitation, as between these three countries, of areas outside this limited zone. He states his full agreement as to the lack of relevance of the geological and geomorphological factors; nevertheless, he considers that the line of delimitation should have been the median line between Malta and Libya for various reasons, including the position of opposite countries, the new trends in international law, the practice of States and the task of the Court, which is to define the appropriate rule of international law. He takes the view that the factor of the difference in lengths between the coasts should not have been taken into consideration, and did not warrant any "correction" of the median line. He also considers that account should have been taken of the economic factors involved and of security needs, circumstances which constitute additional justification for the median line solution.

Dissenting Opinion by Judge Mosler

Judge Mosler is of the opinion that the median line between Malta and Libya constitutes an equitable solution in the circumstances of the case. He criticizes the global removal of the median line by 18 minutes northward and the method used by the Court in arriving at that result.

Dissenting Opinion by Judge Oda

In Judge Oda's view, the Court has not fully grappled with recent developments in the law of the sea and is in danger of identifying the principle of equity with its own subjective sense of what is equitable in a particular case. He finds that the area to which the Court has confined the operation of its Judgment is misconstrued through overconcentration on third-State interests which have not been judicially established. Furthermore, the Judgment's employment of a proportionality test to verify the equity of the suggested delimitation is paradoxical, in that the necessity of defining the relevant area and coastlines for that purpose is first propounded and then this exercise is abandoned on the ground of

its impossibility. The adjustment or transposition of the Libya/Malta median line so as to shift it 18 minutes northwards on each meridian appears to Judge Oda to be groundless. Despite the Judgment's professing to have taken the Libya/Malta median line as an initial or provisional delimitation, the final line suggested as a consequence of the 18-minute shift is devoid of all the properties inherent in the concept of equidistance, so that this resultant line cannot properly be regarded as an adjusted median. In effect, the technique of the Judgment has involved viewing the entire territory of one Party as a special circumstance affecting a delimitation (Sicily/Libya) which the Court had no call to make and which excludes that Party. In that context, the partial effect that may sometimes be allowed to an island is interpreted in a manner completely different to that featured in the 1977 Anglo-French Arbitration. In Judge Oda's view, the "half-effect" of an island had also been misinterpreted by the Court's 1982 Judgment in the *Tunisia/Libya* case and the 1984 Judgment of a Chamber of the Court in the *Gulf of Maine* case. To clarify his criticisms, he analyses the relevant sections of those Judgments as well as the "proportionality" test as originally mentioned in the *North Sea Continental Shelf* cases.

Judge Oda remains of the view that the equidistance/special-circumstances rule indicated in the 1958 Continental Shelf Convention is still part of international law and, furthermore, that the role of special circumstances is not to justify any substitute for the equidistance line but to enable the bases of that line to be rectified with a view to the avoidance of any distorting effect. In the present case, Judge Oda suggests that the island of Filfla should be ignored in plotting an equidistance line between Libya and Malta. The resultant line would then in his view have constituted a correct delimitation. Drawing it would not, in the circumstances, have had any legal impact on the claim of any third State, but would have implied that neither Libya nor Malta was entitled to any claim against the other in any area beyond it.

Dissenting Opinion by Judge Schwebel

Judge Schwebel dissents from the Judgment in two respects. In his view, the line of delimitation which it lays down has been unduly truncated to defer to the claims of Italy; and the line is not a median line between the opposite coasts of Libya and Malta but a "corrected" median line which, as rendered, is incorrect.

Judge Schwebel maintains that, while a request by Italy to intervene in the case between Libya and Malta had been denied by the Court, today's Judgment grants to Italy all that it sought in its request to intervene. The Court justifies this implausible conclusion by holding that the Special Agreement between Libya and Malta gave the Court jurisdiction only to decide questions of the delimitation of the continental shelf "which appertains" to Malta or Libya, and not to any third State. But the Special Agreement did not speak of areas which exclusively appertain to a party. Moreover, in boundary cases, as previous judgments of the Court indicate, the Court need not decide in the absolute. Thus the Court could, as between Malta and Libya, pass upon areas to which Italy as well as Malta or Libya lay claim, while reserving any rights of Italy. That this interpretation of the Special Agreement is the better interpretation is shown by the fact that both Parties to it, Malta and Libya, maintained it. But the Court, contrary to the rules of treaty interpretation, has taken no account of the interpretation which the Parties placed upon their agreement. Judge Schwebel doubts the propriety of the Court's Judgment deferring so absolutely to Italy's claims for these reasons, and because it appears to place in the hands

of a third party the determination of the extent of the jurisdiction which two other Parties to a case conferred upon the Court.

As to the location of the line of delimitation, while Judge Schwebel agrees that, in a case of purely opposite States, a median line is the correct starting point, he does not agree with the Court's decision to transpose the line substantially to the north and thereby to accord Libya a much larger continental shelf than a median line would. The Court has relied essentially on the fact that Libya's coasts are much longer than Malta's and that, in the general geographical context, the Maltese islands are a small feature which lie south of a continental median line. But the Court has failed to show that these circumstances are probative or even relevant. They provide no reason for discounting the whole of the islands of Malta—which together constitute that independent State—as if they were the anomalous dependent islands of a main-

land State. The general geographical context—which the Court in any event sharply narrowed to defer to Italy's claims—worked against Malta's position no more than Libya's. As for the fact that Libya's coasts are longer, since it has always been accepted that the base of a triangle is longer than the apex, it naturally follows that there is a larger area lying off the base (Libya) than the apex (Malta). But the Court goes beyond that fact to allot Libya a bonus because its coasts are longer. The Court denies that it does so for reasons of proportionality. But it supplies no alternative justification. It rather seems to base its Judgment on some intuitive instinct to give Libya a bonus because its coasts are so much longer than Malta's. Moreover, the Court offers no objective, verifiable link between the circumstances it regards as relevant and the determination of the precise line it regards as equitable. It fails to show that those circumstances dictate the adjustment to the extent of that adjustment.