INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING THE CONTINENTAL SHELF

(LIBYAN ARAB JAMAHIRIYA/MALTA)

VOLUME IV

Oral Arguments *(concluded)*; Correspondence

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU PLATEAU CONTINENTAL

(JAMAHIRIYA ARABE LIBYENNE/MALTE)

VOLUME IV

Procédure orale *(suite et fin)*; correspondance

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The case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, entered on the Court's General List on 26 July 1982 under number 68, was the subject of Judgments delivered on 21 March 1984 (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, Judgment, I.C.J. Reports 1984*, p. 3) and 3 June 1985 (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13).

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Volume II. Counter-Memorials of the Libyan Arab Jamahiriya and Malta; Application by Italy for Permission to Intervene, and consequent proceedings.
Volume III. Replies of Tunisia and the Libyan Arab Jamahiriya; commencement of Oral Arguments.
Volume IV. Conclusion of Oral Arguments; Documents submitted to the Court after closure of the written proceedings; Correspondence.
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Les pièces de procédure écrite et les plaidoiries relatives à cette affaire sont publiées dans l'ordre suivant :

Volume I. Compromis ; mémoires de la Jamahiriya arabe libyenne et de Malte.
Volume II. Contre-mémoires de la Jamahiriya arabe libyenne et de Malte ; requête de l'Italie à fin d'intervention et procédure y relative.
Volume III. Répliques de la Jamahiriya arabe libyenne et de Malte ; début de la procédure orale.
Volume IV. Suite et fin de la procédure orale ; documents présentés à la Cour après la fin de la procédure écrite ; correspondance.
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MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague, from 6 to 14 December 1984, from 4 to 22 February 1985 and on 3 June 1985, President Elias presiding

PLAIDOIRIES *(Suite et fin)*

PROCÈS-VERBAUX DES AUDIENCES PUBLIQUES

tenues au Palais de la Paix, à La Haye, du 6 au 14 décembre 1984, du 4 au 22 février 1985 et le 3 juin 1985, sous la présidence de M. Elias

LIST OF ABBREVIATIONS USED IN THE ORAL ARGUMENTS

LM	Memorial of the Libyan Arab Jamahiriya
MM	Memorial of Malta
LCM	Counter-Memorial of the Libyan Arab Jamahiriya
MCM	Counter-Memorial of Malta
LR	Reply of the Libyan Arab Jamahiriya
MR	Reply of Malta

LISTE DES ABRÉVIATIONS UTILISÉES DANS LES PLAIDOIRIES

ML	Mémoire de la Jamahiriya arabe libyenne
MM	Mémoire de Malte
CML	Contre-mémoire de la Jamahiriya arabe libyenne
CMM	Contre-mémoire de Malte
RL	Réplique de la Jamahiriya arabe libyenne
RM	Réplique de Malte

SIXTEENTH PUBLIC SITTING (6 XII 84, 10 a.m.)

Present: [See sitting of 26 XI 84.]

ARGUMENT OF MR. EL-MURTADI SULEIMAN

AGENT FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Mr. EL-MURTADI SULEIMAN: Mr. President, Members of the Court. Out of its respect for international law, Libya has submitted, for the second time, a case concerning the delimitation of its continental shelf with one of its neighbours. For me, it is a great privilege indeed to appear again before this honourable Court as Agent of the Socialist People's Libyan Arab Jamahiriya, this time to open Libya's oral presentation in this important case. I am also honoured to be associated in this case with the Agent of Malta, Dr. Mizzi, with whom I have had an excellent working relationship, and with counsel of such distinction on both sides of the bar.

In speaking of counsel, I must note with sadness the absence of our good friend, Professor Antonio Malintoppi, who had rejoined the Libyan delegation shortly before his death. Professor Malintoppi's reputation as an international lawyer was too well known to the Members of the Court and to all the counsel in this room for me to say more than what we all know, that the loss of this friend will long be felt and that his contribution is irreplaceable.

Mr. President, Members of the Court, let me start by saying that this case is not vital or urgent merely for Malta, as the words of the Maltese Agent seem to suggest. The case is also of great importance to Libya, and not just from the juridical or political aspect (III, p. 276). Indeed, as I indicated, the importance of resolving issues relating to continental shelf delimitation is such that it has led Libya to submit, within a relatively short period of time, two cases involving the delimitation of its continental shelf to this eminent Court. I believe I am right in saying that, in this respect, Libya is the only State to have done this. And it is precisely because Libya views these issues as vital that it has followed this course.

A decision by this Court has another aspect as well. As with previous disputes involving continental shelf delimitation which have been resolved by this Court, it will be of significance to the entire international community. There can be no doubt that the decisions of this Court, as they have in the past, will continue to contribute to an important and growing body of law in the field of continental shelf delimitation.

Of course, it is evident that the delimitation of all of Libya's continental shelf boundaries cannot be accomplished simultaneously. It was for this reason that Libya adopted an orderly, step-by-step approach to delimitation, an approach which, I am happy to say, appears to have been followed by other States in the region as well, including Malta. For, as we have heard from the Maltese Agent the other day, Malta's initial priorities were to establish a continental shelf boundary with Italy, not with Libya.

It is not correct to say that the delimitation of the continental shelf with Malta is low on Libya's list of priorities, as has been suggested by Malta. In fact, I was

glad to hear the Maltese Agent confirm a point which Libya has made in its written pleadings. This is the fact that no difference or dispute arose between Libya and Malta until 1973 (**III**, p. 281). Prior to that time, Malta's internal legislation — enacted in 1966 and based as it was on the concept of exploitability — raised no prospect of any dispute and was not then of concern to Libya, as will be brought out by Sir Francis Vallat. And as I have just noted, Malta itself was preoccupied with issues related to delimitation with Italy. During the same period, as the Court will recall from the *Tunisia/Libya* case, Libya and Tunisia had already commenced discussions over their continental shelf boundary. These, in fact, had started in July of 1968, some five years before the dispute in the present case arose.

Mr. President, Members of the Court, it may seem trite — or banal, to use a term favoured by Malta — to emphasize at the outset that this case is about the delimitation of the continental shelf. The Parties have asked the Court how they can delimit without difficulty their respective areas of continental shelf in accordance with the principles and rules of international law.

Libya considers that in order to assist the Court it is necessary to put before the Court all the facts and circumstances relevant to the case, in as complete and objective a manner as possible. This we have endeavoured to do. I stress the phrase "all the facts", since — contrary to what counsel for Malta have contended — geology and geomorphology do not constitute the alpha and omega of Libya's case. While they are key elements which cannot be overlooked, Libya's case rests on all the relevant facts and not just a select few. It is for the purpose of assisting the Court in its appreciation of these facts that Libya considers that it must present to the Court, along with the geographic and other relevant factors, the scientific evidence which has such an important bearing in the case. It is appropriate, in Libya's view, that such significant evidence should be produced for the Court clearly and concisely through the testimony of scientists rather than in the course of legal argument by counsel.

This case is about facts, and facts in a particular setting, and how the well-established principles and rules of continental shelf delimitation apply to these rather special facts. It is not about abstract theories or concepts, and it is not about geometrical constructs.

In order to place the problem of delimitation in its proper context and perspective, it is necessary — first — to look at a map showing the broad geographical circumstances in which the delimitation is to be decided. I have had such a map placed behind me on the easel, and Members of the Court have small copies of this map, which is No. 1, in the folders provided by Libya. What the map so vividly brings out is the relationship and size of Libya and Malta in the Central Mediterranean. It also shows the location of neighbouring States in this setting.

As can be seen from the map, the delimitation between Libya and Malta is focused on the physical setting of the two States in the Pelagian Sea. But the two States do not sit in isolation. As a result, this case must also be viewed in the broader geographical context, that is, of both Libya and Malta in the Central Mediterranean and surrounded by other States.

If I might narrow the focus somewhat, the relevant areas of continental shelf and the abutting coasts of the Parties are shown on the next map, just put up on the easel. This is a bathymetric chart of the area between Libya and Malta which is on a considerably larger scale than the previous map and shows more detail.
(48) This is No. 2 in the Judges' folders. Of course, the full range of relevant factors cannot necessarily be discerned on any one map or, indeed, on any collection of maps. But I do suggest that this map gives a good picture of what must be the two most striking aspects of the present case: first, the vast difference in the

lengths of the coasts of the Parties; and second, the existence roughly here of a zone of troughs and channels which make up the Rift Zone and which effectively divide the area between Libya and Malta into separate shelves. We are not, as Professor Weil has suggested, operating in a fog here. Nor are we shadow-boxing with abstractions. We are dealing with concrete, readily ascertainable facts.

It is on the basis of the facts which, in a very general way, I have just referred to that we are concerned with reaching an equitable result through the application of the principles and rules of international law. In reaching this result, the jurisprudence of the Court must be a primary guide since it is that jurisprudence which has given the clearest articulation to these principles and rules. In invoking the jurisprudence, I mean in no way to suggest that we are unaware either of the contents of the 1982 Convention signed by Libya or of State practice in the form of delimitation agreements. It is not my task, however, to address the substance of either of these subjects. My learned colleagues, Professor Jaenicke and Professor Quéneudec, will deal with those aspects of the 1982 Convention which have a bearing on the case. They are intimately familiar with the Convention itself and with the history of its evolution into its present form.

As for the relevance of particular delimitation agreements, this will be dealt with in large part by Dean Colliard. At this stage, however, I would like to refer to one comment which first appeared in the Maltese Reply and which, more recently, has been repeated by Professor Brownlie (III, MR, para. 265, and III, p. 468). This is the reference to "what may be described quite properly as the Libyan fear of State practice".

Libya's two-volume Annex of Delimitation Agreements furnished with its Counter-Memorial (II), complete with the text of each agreement, bathymetric maps and commentary, is a strange way to manifest fear. Aside from discussing the true legal significance of State practice in the area of continental shelf delimitation, it will be demonstrated during Libya's presentation that, on the factual plane, State practice does not show what Malta claims for it. Libya intends to present to the Court a thorough analysis of the highly selective examples cited in the Maltese pleadings as well as of the faulty analysis of many of these examples.

Mr. President, the main point regarding State practice still seems to have eluded our opponents. It is the point which I just made in referring to the map here on the easel. The case before the Court is about this area of the Pelagian Sea (pointing) — the area lying between Libya and Malta. It is not about other areas of the world in different geographical settings which are not comparable.

If there can be said to be any indication of fear in this case, it is Malta's fear of the facts. Apart from constant references to distance and basepoints, we have seen relatively little of the relevant geographical facts in Malta's written pleadings. They almost totally ignored the essential facts regarding the coasts of the Parties and gave short shrift to the characteristics of the sea-bed and subsoil. I would invite the Court to peruse again the Maltese Reply. It is striking that not one map showing Libya and Malta appeared in that pleading. Instead, we were given diagrams and abstract drawings of situations that do not represent at all the area between Libya and Malta. I suggest that this approach is symbolic of Malta's attempts to get rid of the presence of the important geographical, geomorphological and geological facts by down-playing their existence and denying their legal relevance. Yet in contrast, the striking preoccupation of Malta during these oral hearings with the lengths of the coasts of the Parties and with the Rift Zone in particular suggests that the coasts of Libya and Malta and the sea-bed and subsoil features in this area relevant to the present delimitation are of very real concern to Malta. We welcome this shift towards reality although we would have preferred to have seen it earlier in Malta's written pleadings.

I should like now to turn briefly to three particular subjects to which it is appropriate to devote more specific attention as Agent of Libya. The first has to do with certain comments that have been made by our opponents about Libya's reaction to Malta's equidistance claim of 1972; the second concerns Libya's 1973 proposal, and the third relates to the no-drilling understanding between the Parties.

Turning first to Malta's 1972 claim, the distinguished Agent for Malta may have given the Court the wrong impression concerning the first meeting of the Parties in 1972, for he suggested that Libya, in only contesting the use by Malta of particular basepoints in the construction of its median line, "was accepting that the equitable and otherwise appropriate dividing line was the median line" (**III**, p. 281). Any such impression is wrong and I would respectfully refer the Court to what was said in the Libyan Reply (**III**) at paragraphs 1.08 to 1.12. It is sufficient for me to recall that Malta's 1972 claim did not even appear on the agenda for the meeting of July 1972 and was not discussed in substance at all. Indeed, such a discussion would have been beyond the authority of the Libyan delegation which, on that occasion, had instructions only to engage in exploratory discussions with Malta as well as with other countries in the region. What is perfectly clear is that at no time did any Libyan delegation give the slightest indication of accepting the validity of Malta's equidistance-line claim.

Nine months later, Libya advanced its 1973 proposal. That proposal was made during discussions between the Parties who were attempting to agree upon a line of delimitation between the areas of continental shelf appertaining to each. It was a proposal which was made after Malta had first unveiled its claim to an equidistance line — a claim which then, as now, Libya considered to be wholly inequitable given the circumstances of the case. Moreover, Libya's 1973 proposal did not represent "a radical change" in Libya's position, as the Agent for Malta has asserted, since there had been no previous Libyan position vis-à-vis Malta that could have changed (**III**, p. 281). This proposal seemed to Libya to reflect the geographical and other relevant factors particular to the Libya-Malta setting. Libya has throughout sought a result which would be equitable in the circumstances of the present case and has consistently pursued this course. It is unfortunate, however, that Malta dismissed this proposal out of hand on the very day it was made without any serious discussion at all. At that very moment, at the highest levels of the Maltese Government, petroleum concessions were being offered by Malta which, subject to certain qualifications, reached as far as the median line. At this stage, I do not intend to dwell further on these events, which have been fully discussed in Libya's written pleadings (**II**, LCM, para. 1.12).

There is one thing that must be made clear in the light of Malta's continual efforts to give the impression that the 1973 proposal represented some sort of formula for a sharing out or partition of areas of shelf lying between the Parties. This is simply not true. To the contrary, the 1973 proposal — advanced as it was in the context of discussions between the two Parties in order to reach an agreed delimitation line — reflected, among other factors, the great difference between the respective lengths of the coasts of the Parties. It did not seek to divide areas of continental shelf in fixed proportions. It cannot have escaped the notice of Malta that the Chamber in the *Gulf of Maine* case adopted a somewhat similar approach in respect to the second sector of that delimitation, even though the differences in coastal lengths of the Parties in that case were not nearly so great as in the present case.

As for the no-drilling understanding, I must confess to great surprise at several comments the Agent of Malta made. He suggested that Libya "would have presented a more balanced picture of the situation if it had quoted the Secretary-General's report more fully".

That Report, of course, discussed in more detail the background to the no-drilling understanding. But, Libya annexed the entire Report to its Memorial. It was Malta that was reluctant to mention this important element of mutual conduct of the Parties in its written pleadings, just as it was Malta that did not bring to the Court's attention the fact that it had requested its concession holders to cease activities in this area (I, LM, para. 4.73). Thus, I would respectfully refer the Court to the Secretary-General's Report, once again, to refute the statement of the distinguished Agent of Malta that there is no evidence of a no-drilling understanding in the sense of a binding commitment. Sir Francis Vallat will add some additional comments on this aspect of the background.

While I do not intend to repeat the observations which have been made in Libya's written pleadings on the significance of the no-drilling understanding, I would like to note that it has, in effect, a dual significance. First, it refutes among other things, any notion at all of acquiescence or "status quo". And second, through the mutual conduct of the Parties, it points to the area which is really in dispute in the present case. This is an area lying somewhere between the lines proposed by the Parties in 1972 and 1973. The observance by the Parties of this understanding between the time of the signing of the Special Agreement in 1976 — when the understanding was created — and the unfortunate incident of 1980 — the Texaco incident — when Malta opted to breach the understanding, is evidence of the conduct of the Parties which is not without relevance.

Having dealt with these points, I would now like to make one comment about the Special Agreement relating to certain observations of Malta made during these oral hearings. Of course, Libya does consider that the Court has been entrusted with the important task of indicating the principles and rules of international law and how they can be applied by the Parties in the light of the facts of the case throughout the entire relevant area. But this does not mean that either the presence of third States or of third State claims in the area are irrelevant and should be ignored. On the contrary, Libya considers that the presence of third States constitutes an important relevant circumstance in the present case. For it is obvious from a glance at the map that there are certain areas, particularly those areas lying east of the Escarpments, that are no more relevant to delimitation between Libya and Malta than were areas north of the latitude of Ras Kaboudia or east of the longitude of Ras Tajoura to the delimitation in the *Tunisia/Libya* case. Libya has noted the Judgment of the Court on the Italian Application for Permission to Intervene (*I.C.J. Reports 1984*, p. 3) and recognizes that the Court will need to take steps in the Judgment in the present case to protect potential interests of third States.

Mr. President, Members of the Court: I have begun my remarks by discussing what this case is about. I should now like to turn very briefly, and with a good deal less enthusiasm, to a number of considerations raised by our opponents which point to what this case is not about. In so doing, I must make it clear that it was not the intention of Libya to engage in a debate about matters which are clearly not relevant to the principles and rules governing continental shelf delimitation. Nevertheless, a number of statements made during Malta's oral presentation, regarding what Libya seeks in this case, require correction.

Libya does not seek the "lion's share" or a "monopoly" of the continental shelf. It is not engaged in a "remorseless attempt to shrink Malta's continental shelf". Nor does it "covet" what legally belongs to Malta. The Court will recognize all these terms as having been used during Malta's oral presentation. Libya seeks only what it is entitled to under the law, and it looks to this Court to point the way to a final solution between the Parties which is equitable.

In speaking about the facts and circumstances that are relevant to continental

shelf delimitation, it is clear that neither Libya nor Malta are before the Court to determine "boundaries of wealth", as Malta would have it. This theme was introduced as early as Malta's Memorial and has persisted throughout its written and oral pleadings. In the very opening pages of the Maltese Memorial the matter was put in the following way: "it must be stated without delay that the present case is really about access to resources". It is this formulation of what apparently Malta sees as the guiding theme of this case that prompts me to say — also "without delay" — that Libya regards this to be a fundamental misconception of the case before the Court.

As Professor Lucchini will bring out, economic issues are of no legal relevance to the question of the delimitation of the continental shelf. The economies of the world have greatly changed over the past 25 years. It may be said that in many respects nature has smiled on Malta. As for Libya, which was one of the poorest countries, even now its economy is far more dependent on oil, including offshore oil, than is that of Malta. And Libya's present oil reserves are a rapidly depleting asset. In the future this resource will no longer exist, and it may be that Libya will be in the position of having to import oil. But the Court has not been asked to rule on the way in which either Libya or Malta handle their economies. These matters are irrelevant to continental shelf delimitation.

Whether or not the areas of continental shelf in dispute in the present case contain valuable deposits of petroleum or other minerals is a matter of sheer speculation. So also is the past or present prosperity of one State or the other and their prospects for the future. Such questions lack pertinence to the present case. We are not here to decide on an "apportionment" of resources, but upon the delimitation of the continental shelf according to the applicable principles and rules of international law regardless of whether resources may or may not exist. This is not a case of a dispute over areas where there are known resources or where substantial sums have already been expended in developing producing fields. To make the point more directly, this dispute is not about a specific area such as the Georges Bank, which was indeed the focus of the *Gulf of Maine (Canada/United States of America)* case by the admission of both Parties in that case. There the area contained valuable and proven economic resources — in that case fish stocks — and a Chamber of the Court had been specifically requested by the Parties to that case to determine a single maritime boundary line that included the fishing zones of each State as well as their continental shelves.

In the present case, no such situation prevails. So far as Libya is aware, no wells have been drilled which indicate the existence of petroleum within the area of dispute in the present case whether in the Rift Zone itself or under the gentle banks and valleys lying south of the Rift Zone. The statement made by the Agent of Malta that Malta is "fairly confident" that there are mineral deposits in this area to the south of Malta is not supported by any data that Libya has seen in Malta's pleadings or, in fact, of which Libya is aware.

There are, in this regard, certain recent developments to which the Court's attention has not been drawn by Malta and which suggest that the prospect for oil may be better in the region north of Malta than to Malta's south and east. It appears that there has been renewed interest by oil companies in the area of shelf north and north-east of Malta in the Ragusa-Malta Plateau. Libya believes that drilling activity by Malta has recently been undertaken there, as suggested in the Maltese press. Since Malta regards such evidence as material, perhaps Malta can confirm whether or not petroleum deposits of some interest have been found. It is well known that important oil finds have been made at the Italian VEGA-1 discovery on the Ragusa-Malta Plateau. I understand that the production forecast has recently been increased to between 60,000 and 80,000 barrels per day. Estimated

reserves are now around 300 million barrels. This important discovery has been made on the area of shelf upon which Malta is indeed lying north of the Rift Zone.

Who knows what tomorrow will bring? And it is precisely this uncertainty which makes this sort of consideration irrelevant to the determination of the continental shelf rights of Libya and Malta.

In this same vein, and in spite of repeated references in the Maltese written and oral pleadings to the exclusive economic zone, I must state that this matter too has nothing to do with the present case. While counsel for Libya will develop this point further, I need only recall that it was Malta which vigorously rejected the inclusion of the exclusive economic zone in the terms of reference to the Court at the time the Special Agreement was negotiated. And I note, with satisfaction, that fisheries have not figured with any prominence in Malta's oral argument.

One final matter must be mentioned by me, if only briefly. This concerns the apparent misundersandings in Malta's pleadings regarding what Libya's scientific advisers have said in their papers attached to Libya's pleadings in both the present case and in the previous case with Tunisia.

I should like to clarify one example, surprisingly to be found in the oral statement of the Maltese Agent himself. I refer to pages 291 and 292 (**III**). Here, it was said that, in the case with Tunisia, Libya referred to the entire area between Sicily, Libya and Tunisia as the Pelagian Basin and that "without the shadow of a doubt" — I am quoting the exact words of the Maltese Agent — "without the shadow of a doubt" — Libya characterized this entire area as a geological and geophysical unit. In so stating, Malta has misunderstood Libya's position in thinking that during the previous case Libya called the relevant area in the present case a geological continuum but now, miraculously, has discovered the Rift Zone and, with it, a basic discontinuity.

Mr. President, permit me to clarify this misunderstanding. The relevant area in the previous case was very different from the relevant area in the present case. The Pelagian Basin was defined on numerous occasions as extending only to the troughs which form part of the Rift Zone. Definitions aside, the Rift Zone and the Escarpments were of no relevance to the case between Libya and Tunisia; they lay outside the area relevant to that case. The present case does not involve the same geomorphological and geological elements discussed in the previous case. That case was entirely different in this respect. Malta's effort to compare the two cases is merely another diversion which attempts to play down sea-bed and subsoil features — as well as the geographical setting — which can neither be ignored nor played down.

Libya and Malta have referred their differences to this Court because they could not reach agreement themselves. Were equidistance recognized by both Parties as a reasonable solution to this delimitation or even as the appropriate starting-point, Libya and Malta would not have needed to have recourse to you today. In this respect, a similar difference of view between States may be found in many situations around the world. This certainly is seen in the large number of agreements yet to be arrived at between States involving maritime delimitations: an estimate has been made that some 300 such situations remain to be resolved. In fact, it could be said that it has been the less controversial or less complex situations where delimitation agreements have been signed between States. A number of these, of course, have employed, at least in part, the equidistance method. And equidistance is the obvious, easy solution to the straightforward cases. But the cases which come to litigation are not of this character. As in the three previous cases which have come before this Court, this formula does not fit the facts of the present case. And so Libya and Malta have come to seek the Court's assistance.

Given the very distinctive nature of this case, I do not think it is an exaggeration to say that if the sea-bed and subsoil features to which Libya has called attention are not regarded as relevant to the present delimitation, then it is difficult to see how geomorphology or geology will ever have a role to play in continental shelf delimitation. Equally, if Malta's thesis supporting equidistance is regarded to be the appropriate way of reaching an equitable result in the present case, then it is hard to see how equidistance will not *a fortiori* be applied in virtually every future case of continental shelf that can be imagined. I cannot close my remarks without a word about Libya and Malta as friendly neighbouring States. Our relations are excellent. It is a matter of pride to Libya that the two States have over the years entered into a substantial number of important agreements of co-operation and assistance. It will be recalled that as recently as 19 November of this year, a Treaty of Friendship and Co-operation was signed by Libya and Malta. Regrettably, during our oral presentation by counsel for Malta, there have been some statements which are out of step with the close relations that exist between the two countries. We have been surprised of talk of Libyan claims within 15 nautical miles of Malta's shores; of helicopters within a few minutes' flying time to Valletta; and even "à la fenêtre de Malte", and so forth. Libya has asserted no such claim. This whole line of argument is preposterous and is an attempt to deflect attention from the real issues of this case.

If Libya has felt it to be necessary to put to the Court all of the geographical, geological and geomorphological elements of the case, including such matters as comparative size and coastal lengths, it has done so in no sense in deprecation of Malta's status as a sovereign State, on an equal footing with Libya and every other State.

Mr. President, I should now like to give a general indication of Libya's presentation. Sir Francis Vallat will follow next. He will discuss the background of the dispute and identify the main issues before the Court.

Professor Briggs will follow with a discussion of the meaning and application of the principle of the equality of States and how it has been misused by Malta in their pleadings.

Professors Jaenicke and Quéneudec will then take up a number of the legal issues that appear to exist between the Parties, with particular emphasis on the concept of natural prolongation and the distance criterion.

Dean Colliard will follow with a discussion of the status of equidistance as a method of delimitation. This will include an analysis of many of the various delimitation agreements on which Malta has relied.

Professor Lucchini will deal with a number of considerations advanced by Malta which Libya regards to be irrelevant to the present delimitation.

Then, Professor Bowett will discuss the facts and relevant circumstances of the case, relating them to the manner in which, in Libya's view, an equitable result may be achieved.

Professor Jaenicke will then return to discuss the role and application of the test of proportionality.

ARGUMENT OF SIR FRANCIS VALLAT

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Sir Francis VALLAT: Mr. President, Members of the Court. May I with all sincerity say what an honour, privilege and pleasure it is to appear once more before this eminent Court. May I also associate myself with the tribute paid by the Agent for Libya, and by Professor Weil, to our former friend and colleague, Professor Antonio Malintoppi, whose loss we so deeply regret.

Mr. President, time is short. I shall therefore come immediately to the substance of my statement.

This statement is intended to serve as a general introduction to the case to be presented orally on behalf of Libya. It will be divided into three parts, of differing length. Part I will deal with the framework and background of the dispute; Part II will touch briefly on the Special Agreement and the task of the Court; in Part III I shall try to identify the main issues, in an effort to help the Court in reaching its decision. This part will also be designed to provide a brief overall view of Libya's case.

I

In the first part — the background of the dispute — I shall deal with the following four subdivisions:

(a) general framework and the context of the dispute;
(b) legislative background;
(c) emergence of the dispute; and finally
(d) steps leading to the submission of the dispute to the Court.

(a) *General Framework and Context of the Dispute*

The natural starting-point for a consideration of the case is of course Article I of the Special Agreement itself. The aspect of that Article to which I should like to refer at this stage is the essence of the question which the Court is requested to decide. As is repeatedly called to the attention of the Court, the question is focused on the principles and rules of international law applicable to the delimitation and how in practice such principles and rules can be applied by the two Parties in this particular case. The Parties are thus seeking a determination of the applicable principles and rules of international law and the method for their application.

Article I of the Special Agreement contains no reference to particular matters which the Court is requested to take into account. The subject-matter of the first part of the question is the principles and rules of international law. It is not the interpretation and application of the 1958 Convention on the Continental Shelf or of the 1982 United Nations Convention on the Law of the Sea.

Neither of these two Conventions is applicable in the present dispute between Libya and Malta over the delimitation of the area of continental shelf which appertains to Malta and the area of continental shelf which appertains to Libya. So far as this dispute is concerned, the fact that Malta is a Party to the 1958 Geneva Convention on the Continental Shelf, and that it is in force, does not

make the Convention or any of its provisions opposable by Malta against Libya. Similarly, the 1982 United Nations Convention has not yet entered into force and become applicable as between Malta and Libya. I will not speculate as to when, if ever, the Convention will enter into force but up till now (that is to say by 4 September 1984) it has only received 13 ratifications.

In this situation, as agreed by the Parties, the dispute is governed by customary international law and not by convention or treaty. This is not to say that neither of the two Conventions has any relevance. What it means is that the principles and rules to be enunciated by the Court are those of customary international law, of which the Conventions may, or may not, be evidence.

This much is common ground between the Parties. But there are important differences between them as to the effect of the 1982 United Nations Convention on the Law of the Sea on the principles and rules of customary international law applicable to delimitation in the present case. As Professor Prosper Weil made so clear in his speech on 28 November (III, p. 361), the proposition that the rules of customary international law find their expression in Article 76 of the Convention lies at the heart of Malta's case. Can this proposition really be right? *Where* is the State practice to support all the detailed rules contained in Article 76? In the light of the general principles relating to the emergence of customary international law, I suspect that the Court, notwithstanding the eloquence of Professor Weil, will feel bound to adopt a much more cautious approach. It is not for me to examine the changes in the text as compared with Article 1 of the 1958 Convention on the Law of the Sea but I will simply suggest that attention has to be paid to two matters: first to the fact that Article 1 of the 1958 Convention has been treated as stating a rule — and they call it that — of customary international law and, second, to the reasons why Article 76 of the 1982 Convention came into being. In any event, the latter Article cannot possibly be regarded as a codification of customary international law, at least in the sense in which that expression is used in the Statute of the International Law Commission.

Of course, distance could be used in the definition of the outward limit of the continental shelf of States in certain circumstances. But this does not justify converting this into a "distance principle" which, as Malta would have it, overrides those considerations which up till now have governed continental shelf delimitation.

It is so easy and convenient to slip into the habit of speaking of the "distance principle" but, even in the context of Article 76, one has to have regard not to some unexpressed general principle but to the actual use made of distance in the Article. I will leave to my colleague, Professor Quéneudec, further development of this point and continue on the more general level appropriate to an introduction.

There is no need for me at this point to go further into the subtleties about codifying conventions as evidence of customary international law or possibly as factors in the emergence or crystallization of its principles and rules. But there is one point that should be made: it is that there is a considerable difference between the negotiation of a treaty by delegations given authority for that purpose by their Governments and the general acceptance by States of what is stated in the convention as a principle or rule of customary international law. In some circumstances, the process of consensus may be deceptive. The process may be designed to enable the inclusion of a particular provision in a draft treaty or set of articles as a kind of compromise which may or may not in the long run prove to be acceptable to States as a rule of law. Therefore, while the adoption at a conference of a provision by consensus may be some evidence of the acceptability of that provision to States, it is not in itself conclusive evidence. Many other fac-

tors, including the history and the purpose of the provision and its very nature, have to be taken into account. Although the procedure by way of consensus was not used when the text of the 1958 Geneva Convention was adopted, the distinction drawn by the Court in 1969 between Articles 1 to 3 and Article 6 of that Convention provides a useful illustration.

Since we are here operating in the field of customary international law, the role of the Court is of paramount importance. This is true not only for the Parties but also for the process of the evolution of the law in the field of continental shelf delimitation. I stress the word "evolution": it is no part of the function of the Court to behave in a legislative or revolutionary manner. On the other hand, individual cases of this kind cannot be decided without important contributions being made by the Court to the evolution of customary international law.

The importance of the role of the Court in this connection is indeed underlined by the United Nations Convention on the Law of the Sea itself. Article 83 deals with delimitation of the continental shelf and paragraph 1 clearly reflects the important role which it is contemplated that the International Court of Justice should play in the process of delimitation. Delimitation of the continental shelf, says paragraph 1:

> "shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution".

It is pointless for Professor Weil to try to downgrade or sterilize Article 83 of the 1982 Convention as he attempted to do on 28 November (**III**, p. 366). I am sure that he does not thereby intend to downgrade the role of the Court and its jurisprudence, which are in effect given the mark of approval by Article 83. Indeed, that this is not his intention is proved beyond doubt by the wealth of references made during this oral hearing to the Judgments of the Court and the Judgment of the Chamber of the Court in the recent *Gulf of Maine* case (Canada/United States of America, Judgment of 12 October 1984). The reference back to existing customary international law and the vital role of the International Court of Justice is itself confirmed by the statement in paragraph 10 of Article 76 of the 1982 Convention, which says expressly that the provisions of the Article are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts. It is indeed the view of Libya that the pre-existing principles and rules of customary international law continue to govern delimitation, and in particular to govern delimitation in the present case. It is also the view of Libya that, in the absence of agreement, this honourable Court is the proper tribunal to decide questions in dispute.

Furthermore, it is not correct to treat paragraph 1 of Article 83 as devoid of content. In Article 83 we find a reflection of the most fundamental principles of customary international law in this field: these are the requirements of delimitation by agreement and the requirement of an equitable result. These are the elements echoed through the decided cases from 1969 to 1984 and they are basic elements on which Libya has consistently relied throughout the present dispute.

The Court adjourned from 11.20 a.m. to 11.50 a.m.

(b) *Legislative Background*

In cases concerning the delimitation of the continental shelf, the maritime legislation of the parties is always likely to throw light on the problem, if only as some indication of their traditional attitudes. So far as Libya is concerned, there

is no need at the moment to add to what is said in its written pleadings except with respect to its petroleum legislation. Sufficient details are given in paragraphs 4.12 to 4.19 of the Libyan Memorial (I) and the appropriate Annexes.

During his speech on 26 November, the Agent for Malta, Dr. Mizzi, while admitting that Libyan concessions granted after 1973 extended northward of the median line, tried to minimize the significance of this fact by suggesting that the concessions were indicative of "hesitation and doubt" on the part of Libya (III, p. 279). In the light of observations such as this and a number of minor accusations made in the written pleadings, it does seem necessary to clarify some points concerning Libya's petroleum legislation which was passed as long ago as 1955 and which provided the authority for the grant of the concessions. Mr. President, Members of the Court, I regret having to do this because the Court is already familiar with that legislation, but it is necessary to read facts in their proper historical setting. So I shall have to go over the ground again.

The basic provisions were, as the Court is well aware, made by the Petroleum Law of 1955 and Petroleum Regulation No. 1. Both the Law and the Regulation came into force on 19 July 1955 and were published in the *Gazette*. An official map of Libya entitled "Map No. 1" was published in the *Gazette* together with the Petroleum Regulation. These documents are mentioned in paragraphs 4.20 to 4.23 of the Libyan Memorial (I) and copies are to be found in Annexes 32 and 33 to the Memorial.

The first point to stress is that the Law and the Regulation and the map, being published in the *Gazette* were, from August 1955 onwards, freely available to Malta or any other interested State. It is apparent to anyone who chooses to read the Law, the Regulation and Map No. 1 together in the ordinary way that Libya made no attempt in those instruments either to define or to limit the northward extent of its continental shelf. Article 3 of the Law identifies the four petroleum zones by reference to four areas corresponding to the three provinces of Libya. It does not in itself deal with offshore areas at all. These are the subject-matter of Article 4, which does indicate the extent of the Law. The Law is to extend "to the sea-bed and subsoil which lie beneath the territorial waters and high seas contiguous thereto under the control and jurisdiction of the United Kingdom of Libya" (as it then was). The question of the boundaries of the territorial waters and of the high seas is left open. But the possibility of the inclusion of areas of the high seas in the zones is indicated by the second sentence of paragraph 1 of Article 4. This says: "Any such sea-bed and subsoil adjacent to any zone shall for the purposes of this Law be deemed to be part of that zone."

Articles 1 and 2 of the Regulation deal with the definition of the petroleum zones for the purposes of the Law. Article 1 provides for the official map of Libya (Map No. 1) attached as the first schedule to the Regulation. The map indicates international frontiers, petroleum zones and the grid. Of the four zones, the first and second are the only ones that border on the sea. So far as there is an established international land boundary, this is referred to in the description in Article 2 and is indicated on the map. The western boundary of Zone 1 (Tripolitania) and the eastern boundary of the second zone (Cyrenaica) are projected seaward from the respective land boundaries with Tunisia and Egypt. There is, however — and this is the point I really want to make — no attempt to indicate how far seaward these projected lines would extend, nor how far north the offshore areas of Zones 1 and 2 might extend. It is obvious that the arbitrary line across the top end of the map was never intended to be an international boundary. This procedure is, of course, in accordance with the description in Article 2 of the Regulation which, following Article 4 of the Law, says with respect to the first zone that it "consists of the provinces of Tripolitania bounded on the north

by the limits of territorial waters and high seas contiguous thereto under the control and jurisdiction of the United Kingdom of Libya"; and virtually identical language is used with respect to the second zone. This provision, read together with Articles 3 and 4 of the Law, effectively leaves the northern boundary of the zone open to be settled as and when Libya is able to establish a northern boundary or boundaries to its continental shelf to the north of its continental mainland.

The position of Libya was, and has consistently been, that the establishment of the northern boundaries is a matter for settlement in accordance with international law by agreement with any other State or States concerned. It is accordingly entirely correct to say that Libya's claim to areas of continental shelf to the north was not in any way limited by the Law and in that sense extended indefinitely northward. It may perhaps be observed in passing that it is absolutely impossible to construe the Law and the Regulation and the map as in any way constituting the slightest acknowledgment that the northern boundary should be defined by means of an equidistance line.

In connection with this Libyan legislation, it only remains to observe that the Lybian concessions were granted and their areas defined in accordance with the provisions of the Law and the Regulation. Where appropriate, the grant of concessions was made bearing in mind the need to settle continental shelf boundaries by agreement, and it has been the policy of Libya, in this connection, to try to avoid imposing obligations on the concessionnaires which might provoke international incidents with Libya's neighbours.

The most significant piece of Maltese legislation for the purposes of the present case is the Continental Shelf Act of 1966, and I would like to say something about this. As I have just said, Libya's legislation contained no provision concerning the outward limit of its continental shelf, which extends broadly speaking northward of the African continent. But it may also be noted that it adopted no definition of the continental shelf. By contrast, the Maltese 1966 legislation enacted a definition of the continental shelf for the purposes of the Act which echoed some, but not all, of the elements of the 1958 Geneva Convention on the Continental Shelf, to which Malta had recently become a party.

The definition is quoted in paragraph 4.06 of the Libyan Memorial (I) and the text of the 1966 Act is at Annex 15 to the Memorial. The definition contained in section 2 of the 1966 Act is divided into two parts, and I should like to analyse this a little. The first part is a definition in the proper sense; the second part indicates a method of delimitation in relation to certain other States.

As regards the definition proper, Malta had, in 1965, adopted a position closer to that of Libya, leaving the extent of the continental shelf to be determined in accordance with international law. If I may refer to footnote 1 on page 46 and Annex 14b to the Libyan Memorial, it will be seen that the Maltese Act of 1965 (the Petroleum Production Amendment Act) said:

> "the 'continental shelf' means that part of the sea-bed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters over which Malta is entitled by international law to exercise sovereign rights for the purpose of exploring it and exploiting its natural resources" (I, pp. 64 and 238).

But in section 2 of the 1966 Act, Malta adopted a depth and exploitability test, broadly on the lines of Article 1 of the 1958 Convention. The relevant part of section 2 of the 1966 Act provides:

> "the 'continental shelf' means the sea-bed and subsoil of the submarine areas adjacent to the coasts of Malta but outside territorial waters to a

depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas".

Apart from the omission of the reference to areas adjacent to the coasts of islands, this definition follows Article 1 of the 1958 Convention very closely. The importance of the depth and exploitability test was by no means overlooked by the Maltese Government. It was referred to in statements made on behalf of the Maltese Government, in its Parliament, which I shall mention shortly. But it does appear that the depths in the area of the Rift Zone were at the time of the 1966 Act regarded by the Government of Malta as excluding the possibility of exploitation and as a barrier to delimitation with Libya.

When we turn to the second part of the definition in section 2 of the 1966 Act, we find that it has some curious features. First of all it is expressed as a clarification of the definition of the continental shelf which has just been given by reference to the depth and exploitability test. But it is also in part expressed as a qualification or condition which applies, "where in relation to States of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves." The formulation of this condition seems to imply that there were "States of which the coast is opposite that of Malta" with which it would not be necessary "to determine the boundaries of the respective continental shelves." Could Libya in particular have been in mind here or did the Maltese Government realize that the length of the Maltese coast truly opposite to the coast of Libya was so short as to make the contemplated method of delimitation inapplicable? In this respect, one cannot fail to contrast the geographical relationship between the coast of Malta and that of Libya with, for example, the geographical relationship between the south coast of England and the north coast of France. Admittedly, these thoughts are speculation but they do reflect the facts of geography. Besides, the changes in language from Article 6, paragraph 1, of the 1958 Convention to the words used in section 2 of Malta's 1966 Act do invite speculation.

After the passage in the Act to which I have just referred, there follows a provision which is perfectly sound in principle and is in accord with Article 6 (1) of the 1958 Convention. It says: "The boundary of the continental shelf shall be that determined by agreement between Malta and such other State or States." But why, one may ask, have the words "where . . . it is necessary to determine the boundaries of the respective continental shelves" been added as compared with the text of Article 6 (1) of the 1958 Convention and inserted before the perfectly proper provision for determination of continental shelf boundaries by agreement between Malta and "such other State or States"? Surely the words "where it is necessary to determine the boundaries of the respective continental shelves" cannot have been inserted to provide an excuse, a cloak or a cover for unilateral action by Malta?

As is well known and well established, the requirement of delimitation of continental shelf areas by agreement is basic and paramount under customary international law. However subtle in language the Maltese Act may be, it could not displace the corollary to the principle, namely, the requirement of bona fide efforts to reach agreement by meaningful negotiations. It is clear that both in Article 6 (1) of the 1958 Convention and Article 2 of the 1966 Act the expression "in the absence of agreement" must be interpreted so as to give full effect to the principle and its corollary. The expression cannot be used, I suggest, as an excuse to bypass the requirement of agreement and meaningful negotiation in good faith so as to justify delimitation of continental shelf areas by unilateral action.

It is true that the 1966 Act provides for a median line delimitation in the absence of agreement. But most astonishing is the omission from that provision, as compared with the text of Article 6 (1), of the condition, "unless another boundary is justified by special circumstances". The omission of these words could only be excused on the ground that any such circumstances would be duly taken into account during the course of meaningful negotiations leading to agreement as contemplated in section 2 of the 1966 Act and in Article 6 of the 1958 Convention. Mr. President, even if Malta itself considered that there were no special circumstances, Malta, I suggest, had no right to assume that other States would take the same view or that States not parties to the 1958 Convention would accept the terms and the text of Article 6. There is no need to remind the Court again that Article 6 of the 1958 Convention has not been accepted as expressing a rule or principle of customary international law as to the applicability of the equidistance method and is in no way binding on States not party to the 1958 Convention.

In any event, it is apparent that the lack of clarity in Article 2 of the Maltese Continental Shelf Act of 1966 and the potential conflict with both customary international law and the 1958 Convention make it a broken reed as a support for the plea of status quo or acquiescence made by Malta in its written pleadings.

May I now respectfully refer Members of the Court to Chapter IV of the Maltese Memorial (I). I am not suggesting that we look at that chapter now, of course. This chapter virtually states the essence of Malta's case. It is a case founded on a claim to a unilateral right of delimitation and the legal validity of the median line said to have been established by Malta by its unilateral action. The purported delimitation is so described in the heading to the chapter which reads: "Malta's Equidistance Line" or in the words of the sub-heading "Malta's Delimitation".

The key paragraphs 105-106 contain assertions one after the other which are patently not in accord with customary international law, as it was in 1966 or as it remains now, nor with the 1958 Convention, nor even with the provisions of the 1966 Act to which I have been referring. For example, the second sentence of paragraph 105 states: *"The provisions of the Act established a median line delimitation"* (emphasis added). Whatever may have been the effect of the Act from the internal point of view in Malta, from the point of view of international law this simply cannot be true. And it was international law to which any delimitation had to be subject. The Act itself could not, and I submit on a proper interpretation did not, purport to establish by unilateral action a legally valid median or equidistance line either in general or in relation to Libya in particular. In fact, any attempt by Malta publicly to define an equidistance line with respect to Libya only came some years later. The Court will no doubt recall the gasps of astonishment when Malta's equidistance line was first unveiled to the Court in 1981 during the oral proceedings on Malta's application for permission to intervene in the proceedings between Tunisia and Libya.

Later we shall of course have a good deal to say about that line. For the moment let me continue with the story of Maltese legislation concerning the continental shelf.

In paragraphs 2.08 to 2.12, the Libyan Reply (III) called attention to a second reading debate in the Maltese Parliament on the draft Bill which led to the adoption of the 1966 Act. Without repeating the comments made there, I should like to refer the Court in particular to what was said by the Maltese Minister of Justice, as set out in Annex 1 to the Libyan Reply at pages 2 and 3. Nowhere is it claimed that Malta was establishing by the Act a particular equidistance line. The requirement of agreement flowing from Article 6 of the 1958 Convention is

acknowledged. Attention is called to the fact that the Prime Minister was to be given power to designate areas where Malta's rights over the continental shelf are exercisable and it is at the very least acknowledged that a median line could only be provisional and would have to be subject to agreement with any State with which there might be a difference of view regarding overlapping claims. The recognition of the requirement of agreement is wholly inconsistent with any concept of status quo or acquiescence.

In referring to these statements in the Maltese Parliament, Dr. Mizzi confirmed that while, in 1966, Malta saw a necessity to reach a delimitation agreement with Italy, it saw no such necessity in the case of Libya to which it merely gave notice of intentions for the future (**III**, p. 278).

As far as Libya is concerned, it is made perfectly clear by the statements of the Minister of Justice that he did not consider that there was any existing delimitation, established unilaterally by Malta or otherwise, between Malta and Libya. This point is already made in paragraph 2.08 of the Libyan Reply. It is also confirmed by the exchanges between the Minister of Justice and Mr. Mintoff, then in opposition, at the resumed debate on 22 July 1966 (see **III**, LR, Annex 1 at p. 5). Whatever Mr. Mintoff may have thought, the Minister was absolutely firm that there was no problem regarding the continental shelf of the African States, for the moment at least, because they were separated by a depth which could not be exploited. In view of this position taken by the Government of Malta on the effect of the projected Act, it clearly cannot be maintained that the effect of the 1966 Act was to establish an equidistance line opposable by Malta against Libya.

So far as Malta's equidistance line is concerned, the indeterminate and inconclusive effect of the 1966 Act, as such, is demonstrated by the steps that followed. To provide for the grant of production and exploration licences in accordance with the Continental Shelf Act of 1966, Malta made the Petroleum (Production) Regulations 1969 followed by the Continental Shelf (Designation of Area) Order 1971. These instruments are referred to in paragraphs 4.07 and 4.29 of the Libyan Memorial (**I**) and attached as Annexes 16 and 35. It is worth taking a brief look at these two instruments.

In section 2 of the 1969 Regulations, "the continental shelf" is given the same meaning as in section 2 of the 1966 Act. By paragraph 4, read with paragraph 5, of section 4, every application for production licences had to be in respect of one or more blocks described or specified by a notice published from time to time by the Minister in the Government *Gazette* describing or specifying, by reference to a map, numbered areas (referred to in the Regulations as "blocks"). This provision clearly is in accordance with the power given by section 3, subsection 3, of the 1966 Act to the Prime Minister to designate areas within which the continental shelf rights of Malta are exercisable. Paragraph 6 of section 4 authorizes the exploration licences to be made in respect of the whole or any part of Malta and "the continental shelf". But this only constitutes a reference back to the 1966 Act and does nothing — and this is the point — it does nothing to confirm the establishment of an equidistance line.

The first designation of areas over which Malta was claiming that rights were exercisable, so far as Libya is aware, was the Continental Shelf (Designation of Area) Order 1971. It is a short Order which, as can be seen from Annex 35 to the Libyan Memorial, recites that it is made in exercise of the powers conferred by section 3 of the Continental Shelf Act 1966 and, following the wording of the Continental Shelf Act itself, provides:

> "The area described in the Schedule hereto is by this Order designated as

an area within which the rights mentioned in subsection (1) of section 3 of the Continental Shelf Act, 1966 are exercisable." (I, p. 328.)

(3) The Schedule contains the co-ordinates of the area which is shown on Map 7 facing page 56 of the Libyan Memorial.

Mr. President, I should now like the Members of the Court to look at one particular map — the only map I intend to put before the Court at this stage. This map is No. 3 in the folder of maps provided by Libya for the convenience of the Court. Whatever words one may use to describe the area, it is perfectly clear that the area has no relation whatever to any equidistance line between Malta and Libya and is, if anything, more closely aligned with the 200-metre isobath. In any event, it seems to show the tendency of Malta to surround itself by areas within which, in accordance with the depth and exploitability test, it deemed its continental shelf rights to be exercisable and not to push out to the equidistance line, which has more recently become the subject-matter of its claim. Naturally, Malta is at pains to minimize the significance of the Designation Order and the concessions which, as shown on this map, were granted in the areas affected by it. But even though the licences were in due course surrendered, the significance of the Designation Order, and their grant, cannot be allowed to escape notice.

Again, so far as Libya is aware, the next public step taken by Malta in pursuance of the 1966 Act was the Prime Minister's Notice, LN 41 of 1973 (I, LM,
(6) para. 4.38 and Map 10). Although it was unknown to Libya at the time, it was in fact virtually contemporary with the presentation to Malta of Libya's 1973 proposal.

It is true that in 1972 Malta had disclosed to Libya its claim to an equidistance line, but it is difficult to find in the legislative steps taken by Malta any ground whatever for a plea based on status quo or acquiescence. Perhaps I should add that it is not possible seriously to contend that the time from July 1972 to April 1973 taken by Libya to study the Maltese proposal could in any way be regarded as the slightest indication of acquiescence. If it were, it would make a mockery of the principle of delimitation by agreement.

For the sake of completeness — and I realize this is a little tedious, but it is quite important — Chapter 4 of the Libyan Memorial (I) dealt in some detail with the maritime legislation of Malta and Libya other than measures concerning the continental shelf. For the Maltese legislation, reference may be made to paragraphs 4.03 and 4.08 to 4.11, and for the Libyan legislation, paragraphs 4.12 to 4.20. Those paragraphs, together with the related Annexes, speak for themselves. The only comment that I would like to add refers to Malta.

In paragraph 23 of its Counter-Memorial (II), Malta accuses Libya of arguing for a delimitation which approximates to an enclave solution and thus of disregarding the principle of equality of States. Like others in the Maltese Counter-Memorial, and especially in Chapter I, this accusation is wide of the mark and is patently illogical. It obviously flows from Malta's misunderstanding and misapplication of the principle of equality of States, about which my colleague, Professor Briggs, will have more to say later.

At the moment, I only wish to comment on the aspect of the accusation which, although with a vague reservation in the word "approximates", charges Libya with seeking an enclave solution. If it is intended to suggest that Libya is seeking to surround Malta with Libyan continental shelf, the accusation is patently false. If, on the other hand, it contemplates Malta's continental shelf being surrounded by that of other States in the Central Mediterranean, this is an inevitable consequence of the geographical location of Malta in the Mediterranean Sea. This natural consequence cannot possibly depend on any disregard of the principle of

equality of States. Even Malta's equidistance line itself, extreme as it is, involves in this sense an enclaving of Malta.

Of more practical significance in this connection is the traditional outlook of Malta, which may well be described as one of "self-enclave". I would like just to mention very briefly the legislation. By the Fish Industry Act, 1953, the exercise of fishery jurisdiction over foreign vessels was limited to Malta's territorial waters which were then three nautical miles wide. By the Territorial Waters and Contiguous Zone Act of 1971, the breadth of Malta's territorial waters was entended to six nautical miles and, for the purpose of the laws relating to fishery, to 12 nautical miles. The 1971 Act also declared a 12-mile contiguous zone. All of these measures inevitably created a band around Malta, thereby constituting an enclave. The extension of the fishery and contiguous zones to 20 nautical miles, by an Act of 1975, conjures up the same picture. To similar effect was the Territorial Waters and Contiguous Zone (Amendment) Act 1978, which extended Malta's territorial waters to 12 miles, and the contiguous zone to 24 miles and the exclusive fishery zone to 25 nautical miles. That, Mr. President, was in 1978. In each of these measures, Malta, quite properly, created a band or enclave of waters around itself. As late as 1971 one sees the same picture emerging from the Continental Shelf (Designation of Area) Order, 1971, to which I have already
(3) referred, and the effect of which is shown on Map 7, facing page 56 of the Libyan Memorial. Here, however, it looks as if the enclave effect was resulting from the application of a depth criterion, as I have said, such as the 200-metre isobath. It was not until July 1972 that Libya was faced with co-ordinates proposed by Malta involving a claim to a delimitation line far to the south of the 1971 Maltese "blocks". It was only in 1973 that the Prime Minister of Malta issued his Notice LN 41 inviting applications for production licences for 16 blocks in the intervening area between the 1971 blocks and Malta's equidistance line, reaching as far south as the line indicated to Libya in July 1972.

Happily, at this point I can leave the question of legislation; this is not really material for a statement before the Court, it is really material for study. Nevertheless, it has a bearing on the dispute, and I felt I was obliged to go into some detail.

(c) *Emergence of the Dispute*

It was in the circumstances that I have described that the dispute rapidly came to a head. It is remarkable that, at the time when issue was joined between the Parties, no concessions had been granted by Malta reaching as far south as its equidistance line. Indeed, it was at the very time when the conflict of views became apparent that the Prime Minister of Malta issued his Notice inviting applications for production licences in blocks or areas which lay between the original blocks of 1970-1971 and the equidistance line.

There is a good deal in the pleadings of both Parties about the rather brief history of the emergence of the dispute. It is not my intention to compare the details presented by each Party. I would, however, commend to the attention of the Court the objective outline, which is given in paragraphs 4.30 to 4.41 of the Libyan Memorial (I) and the related Annexes and maps. The story itself can be virtually reduced to a single sentence. The dispute arose out of Malta's proposal of July 1972 followed by Libya's rejection and counter-proposal made nine months later in April 1973. For convenience of reference, I would mention that the co-ordinates of Malta's proposal are given in paragraph 4.31 of the Libyan Memorial and the co-ordinates of Libya's proposal in paragraph 4.34. These are

depicted respectively on Maps 8 and 9, opposite page 58 of the Libyan Memorial.

Malta's rejection of the Libyan proposal was immediate and out of hand. It cannot have been based on a careful consideration of the proposal and it left no room for meaningful negotiation. By a letter dated 23 April 1973, the very date on which the Libyan proposals were presented by the Libyan delegation to the Maltese, the Prime Minister of Malta sent a written message to Colonel Qadhafi saying that the Libyan delegation had suggested as the underlying principle an "inequitable yardstick", which was completely unacceptable to the Government of Malta. It would almost seem that this answer was pre-prepared. At any rate, there cannot have been any time for serious consideration on the part of Malta.

It is true that the method for delimitation used by Libya was novel, but it was adapted to the circumstances of the particular case. It is not the position of Libya that its 1973 proposal is necessarily the last word but Libya does suggest that it is on the right lines and going in the right direction. It is not open to the criticism made by Dr. Mizzi (**III**, p. 279) that it encroached on Malta's exclusive fishery zone or its contiguous zone, for the simple reason that the 1973 proposal was made years before Malta extended its fishery zone to 25 miles and its contiguous zone to 24 miles by the Territorial Waters and Contiguous Zone (Amendment) Act 1978. In any event, the overlap is slight and could easily have been adjusted in negotiations. Unfortunately, the precipitate action of Malta and the rigidity of its position prevented any serious discussion of the proposal between the Parties. Any negotiations might well have taken account of points such as these.

The visit of the Libyan delegation to Malta in May 1973 only served to confirm the deadlock and the determination of Malta to proceed unilaterally. The result was a complete absence of meaningful negotiations and in particular the exclusion of any opportunity to explore the basis of any flexibility in Libya's position. The situation was again confirmed when, in March 1974, Malta offered to send a delegation to Libya to discuss the "definition of the median line". Such an approach offered no hope of progress. This was apparently recognized by Malta because, in April 1974, Malta proposed referring the dispute over delimitation to arbitration and submitted a draft agreement for that purpose.

It is remarkable that during these exchanges Malta did not raise or rely on the status quo/acquiescence contention raised in the written pleadings. It is also remarkable that "overlapping concessions" were granted by both Parties in 1974, following the 1972 and 1973 proposals, the crystallization of the dispute and the collapse of negotiations.

In these circumstances, I suggest, the areas covered by the grant of concessions obviously have much less significance than they would have in a case where the grant of concessions by the Parties precedes or even leads to the emergence of the dispute or where they indicate what the Parties might have considered to be equitable. Nevertheless, some comments have to be made in this connection.

Having regard to the accusations made by Malta in paragraph 16 of its Reply (**III**), Libya has again checked the details of the chronology given in footnote 1 of page 16 of the Libyan Counter-Memorial (**II**). I am authorized to confirm the details there set out for the convenience of the Court and the Parties. The date of the principles of agreement between Libya and Total concerning NC 53 was 14 April 1974 and the date of the EPSA resulting from them was 13 October 1974. The accuracy of these dates now seems to be accepted by Dr. Mizzi (**III**, p. 280). As pointed out in the parentheses at the bottom of the footnote, the date of July 1977 for the Total EPSA given on Map No. 3 in the Map Annex in the Maltese Memorial is not correct. The correct date is 13 October 1974. I thought

we ought to get the position of the question of the dates straightened out because of the accusations which have been made.

While referring to Map No. 3 and without accepting the accuracy of the map itself, the map — which, of course, was produced by Malta — by the legend and by the lines attributed to the Libyan concessions makes it clear that Malta well knew that the Libyan concessions did overlap with those granted by Malta and did extend north of Malta's equidistance line. So the concessions themselves were again a clear rejection of the median line. The areas of the Libyan concessions are shown on Map 11 opposite page 62 of the Libyan Memorial, to which I invite the attention of the Court in due course. One has only to check the co-ordinates of the Maltese equidistance line and to compare these with the areas of the Libyan concessions to see that their grant involved a rejection of the median line.

It is necessary to recall, however, that in the application of Libya's 1955 Law and Regulation No. 1 the concessions have a northward reach based on the extent of Libyan jurisdiction and control which were not defined in the Law. However the northern boundaries of the concessions do not in any way restrict the full extent of Libyan jurisdiction or claims. In this case, one has to look for that purpose to the proposal made by Libya in 1973. As regards the area of NC 53, I am to confirm that the position of Libya is correct and the situation is clearly explained in paragraphs 2.14-2.16 of the Libyan Reply (**III**).

From what Dr. Mizzi said in his opening speech on 26 November (**III**, p. 283), he now seems to accept that the boundary of the concession as shown on the Libyan map (LM, No. 11 facing p. 62) is substantially correct, but he still has some reservations with respect to the area of "the work programme". I am not going into that question; I need only add that the areas in which the concessionaires undertook commitments to operate are really of no importance.

As I have already indicated, the mainspring of the dispute in this case was the Prime Minister's message of 23 April 1973 to Colonel Qadhafi, which is quoted in Annex 41 to the Libyan Memorial. The grant of concessions by Malta as well as by Libya followed the crystallization of the difference and indeed of the dispute between the Parties. Hence, protest and counter-protests following the concessions and even the grant of concessions do not have the importance for delimitation which they might otherwise have. In the circumstances, I will limit myself to calling attention to the exchanges mentioned in paragraphs 4.49-4.57 of the Libyan Memorial (**I**) and the fact that in these exchanges there appears no hint of a status quo claim or of acquiescence on the part of Libya. The evidence is to the contrary.

(d) *Steps Leading to Submission of the Dispute to the Court*

It is necessary at this point to make a few observations on the steps leading to submission of the dispute to the Court. Without intending any discourtesy either to the Court or to the delegation of Malta, I shall limit myself to a large extent to making references to the Libyan written pleadings. Beginning with the initiative taken by Malta in April 1974 by presenting a draft proposal for submission to arbitration and ending with the signature of the Special Agreement on 23 April 1976, the pertinent facts are stated in the Libyan Memorial (**I**, LM, paras. 4.41, 4.47 and 4.58-4.67).

Very briefly, the facts were these. There were discussions in December 1974 between Prime Minister Mintoff and Colonel Qadhafi with little progress. However, in October 1975, there was a meeting between Prime Minister Mintoff and Major Jalloud, the Prime Minister of Libya, at which Malta agreed to reference

to the International Court of Justice instead of arbitration as the means for the settlement of the dispute. This opened the way to further negotiations which ultimately led to concentration on the difference between the Parties as to whether, as Libya proposed, the Court should pronounce on the principles and rules of international law or whether, as Malta wished, the Court should draw the delimitation line. A suggestion by Mr. Mintoff for a compromise solution was accepted by Colonel Qadhafi and the formula was embodied in the Special Agreement which was ultimately agreed. I mention this point in particular because it was a compromise formula, and not a surrender to the view of Malta that the Court should actually determine the delimitation line.

As the Agent of Libya has already recalled, the signature of the Special Agreement was accompanied by a no-drilling understanding. On 26 November at the beginning of the oral hearing, Dr. Mizzi seemed to deny the very existence of that understanding (**III**, p. 280). I shall have something to say about this denial in a moment.

Let me just briefly complete the story. Following signature of the Special Agreement in April 1976, there were difficulties and delays involved in ratification. But States frequently do meet difficulties and delays in ratifying an agreement as quickly as they might wish. Exchange of ratifications duly took place on 20 March 1982, followed by joint notification to the Court on 26 July 1982. Further details may be found in paragraphs 4.68 to 4.85 of the Libyan Memorial (**I**). It is clear that the delay in ratification involved no breach by Libya of any express or implied term or condition of the Special Agreement or of the no-drilling understanding.

However, Dr. Mizzi's remarks, coupled with the allegations made in Chapter I of Malta's written Reply, makes some examination of this question necessary.

With reference to the "no-drilling understanding", paragraph 18 of the Maltese Reply (**III**) makes this extraordinary allegation: "Paragraphs 1.23-1.27 of the Libyan Counter-Memorial contain no less than three significant distortions of fact." What are these so-called distortions of fact?

In subparagraph (i), Malta complains that, while relying on the confirmation of the acceptance by Malta of the no-drilling understanding as recorded in paragraph 6 of the Secretary-General's Report, Libya did not also rely on the following sentence in the Report. That sentence merely recorded Malta's view that as Libya had failed to ratify the Agreement, Malta was legally entitled to commence drilling operations. This was a legal position taken by Malta which Libya did not and does not accept as well founded. The false nature of this accusation of distortion is demonstrated by the fact that Libya quoted the whole text of the Report in Annex 72 to its Memorial and it is that Annex which Malta uses as the source of information for its accusation!

Having regard to the denial by Dr. Mizzi of the very existence of the no-drilling understanding to which I have already referred, may I, with your permission Mr. President, read the first two sentences of paragraph 6 of the Report of the Secretary-General of 13 November 1980 (UN Security Council doc. S/14256), a copy of which is in Annex 72 to the Libyan Memorial:

> "Malta has confirmed that it had accepted an implicit understanding, when the Agreement was signed in 1976, that it would not begin drilling operations until the Court had reached a decision and an agreement on delimitation had been concluded in accordance with Article III of the Agreement." (**I**, p. 379.)

And the next sentence to which, it is claimed, Libya made no reference is:

> "Malta considered that since the Libyan Arab Jamahiriya had failed to

ratify the Agreement, it was legally entitled to commence drilling operations." (I, p. 379.)

Mr. President, what clearer confirmation of the no-drilling understanding could there be than this? No further evidence is necessary having regard both to this statement in the Secretary-General's Report and the considerable history of the no-drilling understanding which is referred to in the written pleadings. If any further confirmation were needed, it is to be found in the second sentence that I have just quoted. If there had been no understanding, *why* did Malta have to provide a legal excuse in order to say that it was legally entitled to commence drilling operations? Malta's excuse for repudiating the understanding was Libya's failure to ratify the Special Agreement. I believe that no more need be said on this particular point.

The precise charges made in subparagraphs (ii) and (iii) are somewhat obscure but they seem to relate essentially to the same point as was raised in subparagraph (i). This is the legal allegation by Malta that delay in ratification of the Special Agreement entitled Malta to repudiate the no-drilling understanding. I cannot emphasize too strongly that this was a claim by Malta which was not and is not accepted by Libya.

As regards subparagraph (ii), the point being made at the end of paragraph 1.26 of the Libyan Memorial (I) was the warning by the Prime Minister of Libya that Libya would protest against and resist drilling by Malta as threatened by the Prime Minister of Malta during his visit to Tripoli on 23 April 1980. Whatever the Prime Minister of Libya said about prospective ratification it had nothing to do with that point. As it happens, Libya does not disagree that at the end of the meeting Major Jalloud mentioned the prospects of ratification. Without necessarily accepting the accuracy of the unilateral notes of the meeting on that date, now appearing as Annex 3 to Malta's Reply, Libya does consider that the last sentence of the notes is more accurate than the last sentence of paragraph 100 of the Memorial of Malta (I) quoted in paragraph 18 of its Reply (III). In the notes, Major Jalloud is quoted as saying: "The Agreement which was signed (i.e., the 1976 Agreement) will be ratified by the Congress in June and we will then go to the Court."

I am sorry to have to trouble the Court with such minute details. However, the differences between the two texts are not without significance. It is clear from the reference to ratification "by the Congress in June" that Major Jalloud was expressing an expectation and not making a promise. It is also clear that he was not giving June as a date for going to the Court. In other words, the statement at the very end of paragraph 100 of the Maltese Memorial (I) "that the two sides would go to the Court in June (1980)" is itself not entirely accurate. Even according to the notes, Major Jalloud stated no month when the Parties would go to the Court.

With reference to subparagraph (iii), I would retort that Malta seems to claim the unilateral right to drill in spite of the no-drilling understanding, without appearing to appreciate that there had been no breach of legal obligation on the part of Libya which gave Malta the right to terminate or repudiate the no-drilling understanding. The difference between the Parties in any event is again one of law and there is absolutely no question of any distortion of fact on the part of Libya.

The truth of the matter is that Malta seems to be exceptionally sensitive about the no-drilling understanding. There may be two explanations which may be cumulative and not alternative. These are: first, that the Texaco drilling was clearly in breach of the understanding and, secondly, that both the understanding itself and Malta's attempts to secure modification by the establishment of

"buffer" zones are wholly inconsistent with Malta's status quo/acquiescence contention.

Mr. President, in reviewing briefly the background to the dispute and its history, I have incidentally called attention to the absence of foundation for the contention made by Malta in its written pleadings based on an alleged status quo or acquiescence. I had intended to add a separate part to my introductory observations dealing with that contention. However, as it is so obviously without foundation and has not been revived in Malta's oral pleading, I am not going to trouble the Court with arguments on this point. I shall now turn immediately to the Special Agreement, followed by the identification of the main issues in the case.

II

May I now pass from the background to the case to the second part of my observations. This is concerned with the Special Agreement and the task of the Court. There is in fact little to add to Chapter 5 of the Libyan Memorial and Chapter 1 of the Libyan Reply.

I should like to confirm the position of Libya, as expressed in those passages of the written pleadings, and call particular attention to paragraph 5.05 of the Memorial (I), which gives the essence of the views of Libya on the interpretation of Article I of the Special Agreement, and to Article III, by which agreement on the boundary line between the areas of continental shelf appertaining to each of them is left to the Parties to determine. As stated in paragraph 5.05, in the view of Libya the scope of the present case falls between the scope of the request in the *North Sea Continental Shelf* cases and the one made in the *Tunisia/Libya* case. Although there is no express reference in the Special Agreement to equitable principles, the effect of Article I of the Special Agreement is to request the Court to tell the Parties how to reach a goal whose result would be in accord with equitable principles and represent the most appropriate application of the existing principles and rules of international law. As stated at the end of paragraph 5.07, this would naturally involve an assessment by the Court of the relevant circumstances and the weight to be attached to them. Those words will not be unfamiliar to Members of this distinguished Court.

Malta seems to be compelled by its median line contentions to adopt a different approach to the interpretation of the Special Agreement. This emerges clearly from Part II, and in particular paragraphs 68 and 69, of the Maltese Counter-Memorial (II). In this connection may I call attention to the submissions of the two Parties, and note that the views expressed by Malta on interpretation are related to its Second Submission. According to Malta (quoting from its Memorial), "the Court should indicate the boundary which in its view would result from the application of such method as the Court may choose for the Parties to achieve the relevant determination". This is directly related to the Second Submission in the Maltese Memorial which asks the Court to adjudge and declare that:

> "in practice the above principles and rules are applied by means of a median line every point of which is equidistant from the nearest points on the baselines of Malta and the low-water mark of the coast of Libya" (I, p. 503).

In other words, Malta is asking the Court to rubber-stamp its pre-ordained median or equidistance line and, by its submission, is compelled to interpret Article I of the Special Agreement to accord with that restricted task.

The Libyan Ninth Submission gives greater scope to the Court and freedom to assess the facts and circumstances with a view to determining a method of delimitation which would achieve an equitable result. Contrary to what was argued at length by my learned friend Mr. Lauterpacht on 27 November (**III**, pp. 319-320), this submission in no way deprives the Court of its proper role under the Special Agreement. I shall, therefore, not take the time of the Court by arguing in detail the contention which has no substance.

Reverting to the written pleadings, it is quite wrong, as Malta has done, to describe the role attributed to the Court by Libya's interpretation of the Special Agreement as less significant than the role which Malta has tried to attribute to it. Indeed, in a case of this kind, the role of the Court cannot be insignificant. As the representatives of Malta are well aware, the requests in the *North Sea Continental Shelf* cases were clearly restricted to the statement of the relevant principles and rules of international law: yet, as evidenced by the frequent references made to those cases by counsel for Malta, they occupy a position of prime importance in the elucidation of customary international law concerning continental shelf delimitation. While maintaining the task of the Court in the present case does not extend as far as the actual determination of the line, Libya agrees that it does go beyond the role assigned to the Court in the *North Sea Continental Shelf* cases.

The task of the Court, as we have said, is undoubtedly an important and a difficult one. The purpose of Libya is not to put blinkers on the Court and try to lead it to a predetermined line; it is to assist the Court to reach conclusions that will enable the Court to decide for the Parties how the principles and rules of international law may be applied by the Parties so as to achieve without difficulty an equitable result in the present case.

Ultimately, the case is not about a particular line and claims up to that line. It is about delimitation and how the Parties are to effect that delimitation in application of the relevant principles and rules of international law. That is the purpose of this litigation and that is the direction in which our presentation will go.

Mr. President, this brings me to the end of my second part. I shall next pass to the identification of the issues.

The Court rose at 12.50 p.m.

SEVENTEENTH PUBLIC SITTING (7 XII 84, 10 a.m.)

Present: [See sitting of 26 XI 84.]

Sir Francis VALLAT:

III

Mr. President, I finished yesterday speaking briefly about the interpretation of the Special Agreement and indicating the direction of our presentation in the light of the requirements of the Special Agreement. I should now like to indicate what seem to me, at any rate, to be some of the main issues of fact and law in the present case.

I do not intend to anticipate the arguments which will be put before you by counsel for Libya, or to burden my remarks with references, which will no doubt be made subsequently. My intention is simply to try to provide for the Court points of focus that may assist in weighing the arguments presented to it by the two Parties.

In connection with the consideration of the issues in the case, there are two preliminary observations that I would ask Members of the Court, with great respect, to bear in mind throughout. The first is that in the written pleadings Malta seemed to be at pains to provoke a diversionary battle of charge and countercharge. Happily, this attitude has not been revived during this oral hearing. For their part, the representatives of Libya before this honourable Court have no intention of being drawn into any such battle. Their intention is to concentrate on the issues and on the merits.

The second consideration is this: it has also become apparent from the written pleadings that, while Libya is concerned with the facts of this particular case, Malta has ventured further and further into abstractions ending in its Reply with a series of figures and diagrams which have little or no relation to the actual facts of the present case. Unhappily, this approach has been repeated at this hearing. It is quite extraordinary, Mr. President, that while accusing Libya of ignoring the facts, it is Malta which seeks to minimize, obscure and avoid the facts by highly theoretical legal arguments.

Turning now to the issues themselves, one of the underlying themes in the Maltese argument is the principle of equality of States. Malta leans heavily on this principle as justifying, in one guise or another, equal reach of jurisdiction or as justifying its claim to an equidistance line. Of course, the principle of sovereign equality of States is well known and is consecrated in the United Nations Charter. But it is also well known that the principle does not mean that all States have precisely the same or equal shares of wealth and natural resources, territory or areas of continental shelf. I will not elaborate further on Malta's misuse of the principle of equality of States. The Court will shortly hear more on this subject from my colleague Professor Briggs who will, in this context, deal with the question of non-encroachment. There will, of course, be more about non-encroachment later. I do, however, wish to stress here the need to beware of the theme of equality as used by Malta.

In Libya's view, the principle of the equality of States is properly protected

by the application of the well-established principles and rules of international law, including the application of equitable principles. But *nowhere* does one find any authority among these principles and rules for the automatic or *a priori* application of the equidistance method of delimitation.

Here lies a basic difference in the approach of the Parties. It begins with the very terms of Article I of the Special Agreement and runs through the entire course of the written pleadings. Libya has sought to identify the principles and rules of international law applicable to the delimitation and to establish the facts so as to enable the Court to tell the Parties how they may delimit their respective areas of continental shelf without difficulty. Malta, on the other hand, while paying lip service to the Special Agreement, has sought by every conceivable means to maintain its own *a priori* method of delimitation and even its own pre-selected line.

Libya, however, does agree with Malta that basis of title has some relevance to delimitation. This is not for me to develop. More about Libya's views on this will be given later by my colleague, Professor Jaenicke, when he deals with the subject of natural prolongation. But Libya does not accept the theory of the substitution of distance for natural prolongation as the new basis of title to areas of continental shelf now put forward by Malta. It is well established in customary international law that title to continental shelf areas is founded on the extension of the territory of a State into and under the sea; in other words, on natural prolongation. This is the basis of the *ipso jure* title of a coastal State to areas of continental shelf.

Before actually embarking on the problem of delimitation itself, the Court may well wish to consider the question of the relevant area for the purpose of the delimitation. This is certainly one of the questions on which the Parties are in disagreement. The importance of this question needs no emphasis. It will not have escaped the attention of the Court that, while Libya takes a comparatively modest view as to the relevant area, Malta wishes to reach out in the direction of the far end of the Mediterranean and would ask the Court, in its Judgment in this case, virtually to ignore prospective delimitations with other States.

Let me now turn to the question of delimitation itself. Libya maintains that the method of delimitation in any particular case is to be determined by the application of equitable principles so as to achieve an equitable result. An examination of the First Submission in the Maltese Memorial might lead one to suppose that Malta shared this view. It would not, however, be confirmed by an examination of the text of Malta's written pleadings or its oral argument. Although there is considerable ambiguity in Malta's position, these pleadings and arguments seem to assign to the facts and circumstances of the case a subsidiary role merely for the purpose of testing the result. In the view of Libya, this approach is repugnant to the jurisprudence of the Court but is tailor-made for Malta's assumption of legal priority for the equidistance method.

In its effort to maintain its *a priori* method and its pre-selected line, Malta started by relying on Article 6 of the 1958 Convention on the Continental Shelf — adjusted, as I have shown, to suit its interests — and has in these proceedings passed to reliance on Article 76 of the 1982 Law of the Sea Convention. As has been amply demonstrated and has already been confirmed during this oral hearing, Malta's reliance on Article 6 of the 1958 Convention was in itself defective and as will be shown the reliance on Article 76 of the 1982 Convention is misplaced.

Mr. President, as I remarked at the beginning and is indeed common ground between the Parties, this case is governed not by the Conventions, whether in force or not, but by customary international law. Article 6 of the 1958 Con-

vention has been held by this Court not to be expressive of customary international law. How far, if at all, Article 76 of the 1982 Convention is so expressive has yet to be determined. In any event, in the view of Libya, Malta's view of the so-called "distance principle" is not well founded even on the language of Article 76 itself. Nor is this "distance principle" as presented by Malta a true reflection of customary international law on continental shelf delimitation. In Libya's view, if any Article of the 1982 Convention could be regarded as relevant, it is Article 83. So far as distance is involved, Article 76 is concerned with the determination of the outer limits of the continental shelf; the present case is concerned, like Article 83, with delimitation of continental shelf areas between States. If there were any doubt about this distinction, it would be removed by paragraph 10 of Article 76. It stipulates that the provisions of this Article, i.e., Article 76, are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts. It is, of course, Article 83 which deals with such delimitation. Malta chooses to ignore or side-step paragraph 10 of Article 76 and this distinction between Article 76 and Article 83. Now, at this oral hearing, Professor Weil tries to downgrade or neutralize Article 83, a process which Libya cannot accept.

Arguing on the basis of the "distance principle", allegedly supported by State practice, Malta has contended both in its written and oral pleadings for equidistance and virtually nothing but equidistance. It has admitted that the equidistance method is not obligatory. Indeed, in the face of the existing jurisprudence on which counsel for Malta have now relied so heavily, it could not seriously be contended otherwise. They have, however, tried to achieve what is tantamount to the same legal position by arguing on legal grounds for priority for the equidistance method of delimitation. They have also tried to support this position by appeal to State practice. It will be demonstrated (if any demonstration is really necessary) that it is equitable principles and not any method such as equidistance that has priority.

While not really within the main issues, I should mention the non-relevant factors to which Malta has attached so much importance, both in the written pleadings and at the oral hearing. In the view of Libya, factors such as economics, including fishing, cannot make equitable a delimitation which is otherwise inequitable.

Having disposed of the non-relevant factors, we shall turn our attention to the relevant circumstances. It is fundamental to Libya's case that due account should be taken of all the circumstances relevant to the delimitation. I will not trespass on that field except to add a few remarks on the very important question of coastal lengths to which so much attention has been paid in the written pleadings and in the oral arguments presented by Malta.

The significance of coastal lengths is apparently rejected by the first sentence of paragraph 245 of Malta's Counter-Memorial (**II**). It says: "The entitlement of Malta depends upon the relationship (opposite) and the distance between Libya and Malta." This omits any mention of coastal lengths.

The apparent rejection of the relevance of coastal lengths by Malta drives Malta into reliance on a novel and untenable doctrine. As stated in paragraph 251 of its Counter-Memorial (**II**), Malta contends "The generation of shelf rights depends upon the pertinent control points and the measurements taken from them in order to give effect to the distance principle." Malta is forced to go this far in order to try to sustain its theoretical case in support of its equidistance line. Malta is at pains to support the equidistance line at all costs.

An inequitable result in the present case would be inevitable if Malta's claim were admitted because it not only seeks to prevent proper account being taken

of the facts, such as the coastal lengths relevant to the areas of delimitation, but also facts such as the exceptional character of the Rift Zone, both in terms of depth and geological features and the Escarpments-Fault Zone.

Having failed in its Counter-Memorial to shake Libya's factual case on the geomorphological/geological features, in its Reply Malta appears to ignore them completely. In the view of Libya such important features cannot be ignored. Libya is encouraged in this view by the strong attack on the Rift Zone mounted by Malta in this first round of oral pleadings.

Finally, there is the question of proportionality in connection with which the views of Libya have been so vehemently attacked by Malta.

I should like to conclude these introductory remarks, Mr. President, by stressing again the importance of natural features, including all relevant aspects of geology, geomorphology and geography. Natural features, such as the Rift Zone, may in themselves provide criteria for delimitation, for example by reason of a fundamental discontinuity in the continental shelf. In any event, they are factors to be taken into account. Malta, in the teeth of all the jurisprudence, takes an opposite position. It pins its flag to distance as overriding everything and tries to force the Court to the inexorable decision to bless the equidistance method. In this process, Malta by one device or another has tried to sweep aside all relevant physical factors except distance and the fact that the two States are opposite to one another. Although the continental shelf starts from the coasts, Malta would attach no real importance to coastal relationships but only to radial projection from a few points on or near the coasts and tries to ignore or destroy the importance of the relationship and relative lengths of the coasts of the two States. As has been made clear in the written pleadings, and will now be explained by my colleagues, these views are not shared by Libya.

Mr. President, Members of the Court, may we now start with the first main issue, the principle of equality of States. For this purpose, I would invite you, Mr. President, to call on Professor Briggs.

ARGUMENT OF PROFESSOR BRIGGS

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Professor BRIGGS: Mr. President, Members of the Court, it is always an honour to appear before you and I should like to take this opportunity to salute my learned friends on the wrong side of the bar.

My task is to analyse the reliance placed by Malta on what she correctly terms "the fundamental principle of international law relating to the equality of States" (**II**, MCM, 26 October 1983, para. 192). It is also my task to throw light on the egregious misapplication of the principle throughout the Maltese pleadings.

Obvious misunderstandings of the principle need not detain us, as in the convoluted reasoning of paragraph 192 of Malta's Counter-Memorial (**II**) by which Malta pretends that, because Libya is rich and Malta is poor in oil resources, Libya therefore violated the principle of the equality of States by delaying — the word they used was "procrastinating" — the conclusion and entry into force of the Special Agreement instituting these proceedings. Such an obvious distortion of the principle merely betrays confusion as to its legal nature.

What requires closer analysis here is the principle itself — the principle of the equality of States — and its misuse by Malta as an umbrella to cover a diverse array of propositions and slogans claiming "equal reach", "equal projection of coasts", "equal radial projection", "equal entitlement", "equality of opposite States", "equal significance of coasts", "equality of seaward reach of the opposite coasts of the Parties". These diverse claims of equality appear like an incantation at least a dozen times in Malta's Reply alone.

Although terms like "equality of seaward reach" or "equality of seaward projection of the coasts" are sometimes used to refer to jurisdictional rights over a maritime belt like the territorial sea (with which the claim is improperly compared, **III**, MR, para. 87), in the circumstances of this case these slogans are clearly directed to obtaining for Malta entitlement to an area of continental shelf which far exceeds the limited natural projection from her relevant coasts towards Libya. The repetition of the words "equal" and "equality" in these slogans is an attempt to find a factitious or contrived justification in the principle of the equality of States.

The concept of the equality of States in international law is a legal principle which has nothing whatever to do with equal rights of States to equivalent territory, wealth, natural resources, lengths of coastlines or areas of appurtenant continental shelf.

When the United Nations Charter (Art. 2, para. 1) based the Organization on the sovereign equality of States it was merely enshrining a centuries-old concept of the equality of States before the law. Twenty-five years later — in 1970 — the United Nations General Assembly in its Declaration on Principles of International Law concerning Friendly Relations referred to this concept in four words: "States are juridically equal" (GA res. 2625 (XXV)).

Completely alien to this concept of juridical equality was any theory that the legal principle had somehow equalized or abolished the actual inequalities with which history, politics, economics and geography, among other things, have left States.

The legal principle of the equality of States has perhaps never been more clearly expressed than by Léon Bourgeois, the first French delegate at the Second Hague Peace Conference, held downtown in the Ridderzaal in 1907, when the States of Latin America were being welcomed for the first time (they had been excluded from the First Hague Peace Conference in 1899). In welcoming them Léon Bourgeois stated that equality of States meant that each nation had "whether small or great, weak or powerful, an equal claim to respect for its rights, an equal obligation in the performance of its duties".

And that means that each State is entitled to the equal protection of the law for whatever rights it may possess, for example, to its territory or to its continental shelf. It does not mean a right to acquire a larger area of continental shelf in the name of equality.

However, this is precisely what Malta is claiming. The phrase "equality of seaward reach" becomes in paragraph 98 of Malta's Reply (**III**) equality of "entitlement" with Libya to as much as possible of a continental shelf of 200 miles from the baselines; and in paragraph 180, the claim is expressed as "the concept of equal entitlement in terms of seaward reach"; in paragraph 270 *(a)* the claim becomes "the entitlement of island States to appurtenant shelf areas on a basis of equality with other coastal States".

This shift from "equality of seaward reach" as a claim to maritime jurisdiction to a claim of enrichment or entitlement to an equal area of the continental shelf between Malta and Libya cannot be based upon any emanation from the legal principle of the equality of States. Such a misapplication of the principle, if generally applied, would have the effect of opening Pandora's box. As the 1977 Anglo-French Court of Arbitration observed (para. 195):

> "*The doctrine of the equality of States, applied generally to the delimitation* of the continental shelf, would have vast implications for the division of the continental shelf among the States of the world, implications which have been rejected by a majority of States and which would involve, on a huge scale, that refashioning of geography repudiated in the *North Sea Continental Shelf* cases." (Emphasis added.)

Malta realizes that the principle of the equality of States in international law is insufficient of itself to confer title to areas of continental shelf on maritime States or to provide a delimitation line between them. However, Malta does use the principle of equality to support equidistance in delimitation, claiming "an equality of distance" which you will find repeated at page 315 (**III**). The Maltese pleadings therefore attempt to read into the Law of the Sea Convention their mistaken interpretation of the equality of States as justifying equal entitlement to continental shelf areas within fixed limits of 200 miles.

On 29 November, my learned friend, Professor Weil, gave us an insight into the rather curious form of State equality espoused by Malta (**III**, pp. 387 ff.).

We learned:

First, that the equality pursued at the Third Conference on the Law of the Sea was not the equality of all States before international law, but only equality for coastal States.

Second, that equality did not really mean equality, even for all coastal States, since they will not have equal areas of continental shelf.

Third, this conception of equality which is not equality, and it is certainly not the equality of States, was, we were told, designed by the Conference to eliminate inequalities with which nature has left States. In other words, the political purpose was to refashion nature and ignore geology and geography.

Fourth, the equality of States was to be the motive force in the effacement of the role of natural prolongation and the emergence of the so-called distance principle which Malta finds in Article 76, paragraph 1, of the Law of the Sea Convention (**III**, p. 385).

This playing fast and loose with State equality before the law culminates in a Maltese plea that the adoption of this political compromise by the Conference has created a new international law which equates equality of distance with equidistance for purposes of continental shelf delimitation.

The purported basis for this plea lies in the persistent misreading which Malta gives to Article 76, paragraph 1, of the Law of the Sea Convention.

The Court is familiar with this text; my colleagues will discuss it further — but I find it necessary to quote in the context of my discussion of State equality.

Article 76, paragraph 1, of the Law of the Sea Convention provides in part, that:

> "The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin . . ."

and the provision continues that "where the outer edge of the continental margin does not extend up to that distance" the "distance of 200 nautical miles" applies.

In other words, the 200-mile outer limit applies only where the projection of a State's landmass into and under the sea falls short of 200 miles. Where that natural prolongation continues beyond 200 miles, the outer limit of a State's entitlement to continental shelf shall not exceed 350 miles (according to para. 5 of Article 76).

There is no provision in Article 76 for a uniform 200-mile limit for all coastal States.

Malta, however, reading the Law of the Sea Convention in the light of her misinterpretation of the legal principle of the equality of States, professes to find therein a right of enrichment, a right to acquire continental shelf on a basis of equality with other States, irrespective of what this Court has termed "an inherent right" to continental shelf derived through natural prolongation (*North Sea Continental Shelf* cases, paras. 19, 43, 85, 96).

Modifying the interpretation of this Court in its *Tunisia/Libya* Judgment (*I.C.J. Reports 1982*, p. 48, para. 47) that "the distance of 200 nautical miles" is the basis of title to continental shelf only "in certain circumstances", Malta would base title in all circumstances to a continental shelf of up to 200 miles. Thus, paragraph 67 of Malta's Reply (**III**) states:

> "Article 76 sets out two rules of equal force: up to 200 miles from the coasts, distance is the basis for the legal title of the State; beyond 200 miles, the coastal State has rights based on physical natural prolongation, these rights themselves being limited to a distance not exceeding 350 nautical miles."

Mr. President, neither of these rules as formulated by Malta — and claimed by her to be rules of customary international law (**II**, MCM, para. 80) — neither of these rules is in fact international law. No rule that natural prolongation is the basis of title to continental shelf only beyond 200 miles from the coast has ever existed in international law; and such a conclusion is contradicted by the very words of Article 76.

As for the other alleged rule of international law — namely that a limit of up to 200 miles somehow confers equal entitlement to continental shelf on all coastal States — this is a misconception of the equality of States which constantly recurs throughout Malta's pleadings.

At times it appears as "a distance criterion or principle of distance, in general international law" (**I**, MM, para. 249). However, no such distance principle or concept exists in general or in customary international law. Maritime limits of varying distance for specific purposes (territorial sea, contiguous zone, continental shelf, fisheries zones, economic zones, air defence identification zones, etc.) — maritime limits of varying distance with specific purposes have been created in the practice of States but no general "principle of distance" as asserted by Malta exists in international law. Nor has customary international law ever provided that coastal States have title to continental shelf up to 200 miles from their coasts or baselines — let alone equality of entitlement. The concept which Malta would have this Court promulgate as law appears for the first time in a treaty which has not entered into force. You heard Sir Francis Vallat on the point.

Are the States which have not signed the Law of the Sea Convention obligated by its terms? Are the more than 100 States, including Libya now, which have signed it, but not ratified it, are they obligated by its terms? Even the 13 States which have ratified, are they bound by a treaty which has not entered into force? What makes its provisions binding — that includes Article 76 — and I mean binding as a matter of law — on the rights, obligations and conduct of any State?

Malta attempts, of course, to assimilate Article 76 to "present-day customary international law" (**II**, MCM, para. 98) — hence the phrase "present-day customary international law" — and places on it an interpretation that in "the new conception of the continental shelf, as expressed in Article 76" (**III**, MR, para. 56), the old concept of the continental shelf shall be replaced; replaced by a spatial distance from the coast measured at the surface of the sea (**II**, MCM, para. 116).

My colleagues, Mr. President, will deal with this question in more detail and will deal with the argument whether or not a rule has been consecrated in the practice of States.

An attempt to support this proposition of Malta's is displayed in the frequent use (**III**, MR, paras. 56-58, 63, 156, etc.) of the cryptic phrase "continental shelf as understood in international law" — a phrase originally used by the Court in paragraph 36 of its *Tunisia/Libya* Judgment in order to distinguish the differing concepts of the continental shelf used by geologists and geographers from those held by an international lawyer (cf. also *ibid.*, para. 41), but used here in the Maltese pleadings as a disparagement of the role specified in Article 76 for natural prolongation in continental shelf entitlement.

Natural prolongation, of course, is not based on any pseudo-rule of equal entitlement of States to continental shelf — and this displeases Malta.

Delimitation — said this Court in the *North Sea Continental Shelf* cases (para. 101 (C) (1)) in its *dispositif* — should:

> "leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other".

Malta quotes this holding with approval in paragraph 98 of its Reply (**III**), but radically changes its meaning by observing:

> "This means, *in today's legal context*, that delimitation must leave to Malta as much as possible of its entitlement to a continental shelf of 200 miles from its baselines without encroachment on a similar right of equal validity possessed by Libya." (Emphasis added.)

Thus, delimitation and equal entitlement are to go hand in hand, and we heard that repeated also by Dr. Mizzi and by Professor Weil here in this room (Mizzi, **III**, p. 296; Weil, **III**, p. 371). To emphasize the point, Malta's Reply added that by asserting "a necessity to treat Malta on a footing of equality with Libya, in the sense that entitlement of each has the same validity as that of the other . . .".

In an effort to prove that Article 76 — viewed through the prism of the equality of States — provides for zones of equal entitlement of up to 200 miles, Malta invokes the exclusive economic zone to which Sir Francis also averted. The so-called "principle of distance" is asserted by Malta to be "its inseparable corollary" (**III**, MR, para. 45). And provision of Article 57 that the exclusive economic zone "shall not extend beyond 200 nautical miles" is alleged actually to confer such economic zones on States (**III**, MR, para. 47); and again "the multi-purpose jurisdiction of the exclusive economic zone as defined in Article 56" (**III**, MR, para. 46), it is alleged, has led to the actual "absorption" of the concept of the continental shelf within that of the concept of the exclusive economic zone.

This, of course, is contradicted by the third paragraph of Article 56 of the Law of the Sea Convention, which specifically provides that the "rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI". Part VI includes Article 76 which refers to natural prolongation. The provisions on the exclusive economic zone thus furnish no support for the thesis that Article 76 confers a 200-mile zone of continental shelf entitlement without regard to natural prolongation.

A comparable "absorption" argument by counsel for France that the Geneva Convention of 1958 was obsolete and that "the notion of the 'exclusive economic zone' tends to substitute itself and to absorb, in a large measure, the concept of the continental shelf" (VR-4, p. 151) was not accepted by the Court of Arbitration in 1977 (Cmnd. 7438, paras. 45-48).

Mr. President, it must be kept constantly in mind that in the present case no issue as to the exclusive economic zone arises for determination by the Court. The case relates only to the legal appurtenance and delimitation of the continental shelf between the Parties.

The "distance" mystique incessantly resorted to in the Maltese pleadings finds no basis in the principle of the equality of States and is without relevance to any established legal criterion. It constitutes a misapplication of the very provisions contained in the Convention on the Law of the Sea and of State practice pursuant thereto.

My learned friend Professor Quéneudec will have more to say on this topic.

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Now the fact that Malta and Libya are not 400 miles apart and that 200 miles of shelf entitlement for each is geographically impossible, has led Malta to contend that the equality of States principle requires an equal division of the continental shelf lying between them, and an equidistance boundary line. In the words of Malta's Memorial (**I**, MM, paras. 151, 153) "the principle of equality

in the case of opposite States" requires that "in the present case, the median line 'must effect an equal division' of the area involved".

The concept of "opposite State equality" which Malta calls an "equitable principle" (*ibid.*, para. 134) has no inherent meaning which gives precision to the phrase either in fact or in law. If it were intended by Malta to refer to coasts of approximately equal length — as was done half a dozen times in the Award in the Anglo-French case as a justification for a median line in the English Channel, then "opposite State equality" might acquire a meaning — even though imprecisely phrased. However, it is explicity clear from Malta's assertion (**I**, MM, para. 264) that "in the present case the length of coastlines is of little or no consequence for the law of delimitation" this was not the meaning sought by Malta in proclaiming what she terms "opposite State equality".

Although the slogan lacks precision as a legal concept, it is clear that by opposite State equality Malta is claiming a legal right to an equal or an equidistance division of the continental shelf lying between Malta and Libya. It is equidistance in disguise — claimed as equality.

No support can be found in Article 76 for equal division of areas of continental shelf between States which are, because of geography, unable to claim 200 miles each. The reason, of course, is that Article 76 does not deal with any delimitation of continental shelf boundaries whether between opposite or adjacent States. This is made explicit in paragraph 10 of Article 76. The word "delimitation" is not to be found in Article 76 until the tenth paragraph, which says that the Article is "without prejudice" to delimitation of the continental shelf. Furthermore, reference to the equidistance method was deliberately excluded at the Conference from the provisions of Article 83, which does deal with delimitation. There is no support therefore in the treaty for what Malta has been claiming.

Malta has therefore been forced to place her reliance on phrases — "equality of seaward reach", "equal radial projection", "equal significance of coasts", "equal entitlement", "entitlement as an island State" — whose purpose is more clear than their content. The constant references to equality are less a claim to recognized legal rights already possessed by Malta as a State than a plea for acquiring a larger area of continental shelf than the easily understood facts of geology and geography warrant. The slogans conceal a complete disregard of circumstances relevant for a delimitation, the small size of Malta as revealed in its short facing coast and appurtenant natural prolongation in relation to Libya's longer coast and larger natural prolongation. Malta would sink relevant circumstances of geology and geography in a seaward reach of equality and equidistance.

Mr. President, difficult as it has been for Libya to grasp from the written pleadings what Malta means by the equality of States, the uncertainty has been compounded in Malta's oral pleadings. Thus, Mr. Mizzi, the learned Agent of Malta, stated on 27 November (**III**, p. 315) that when this Court in 1969 held that, failing agreement, overlapping areas must be divided equally, the Court, he says, did not necessarily mean divided "in equal parts". What the Court intended, he says, was a *relative equality*, "dependent mostly on the configuration of the coastlines including their length". He saw in the Court's words a reference to "equality of distance" as a "seaward reach".

Similarly confusing is the concept of "approximate equality" invoked so frequently by my learned friend, Professor Brownlie (**III**, pp. 437-469).

These concepts of "relative equality" and "approximate equality" have been used by counsel for Malta to assure Libya that Malta did not quite mean what she said in her written pleadings when she claimed an equal division and asserted that the median line effects an equal division of the continental shelf.

One thing is clear: "relative equality" and "approximate equality" do not mean that States are approximately equal before the law or relatively equal juridically.

The equality claimed by Malta is thus not really based on the legal principle of the equality of States at all. It is a bid for acquisition of larger areas of continental shelf in relation to Libya, clothed in the language of equality.

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The same misconception of the legal principle of equality of States which underlies so much of Malta's pleadings, reappears in statements such as that found in paragraph 242 of Malta's Memorial that: "Malta's coasts count as much as the coasts of other opposite States in terms of the generation of continental shelf entitlement." (I, MM, p. 119.)

Of course, Malta is entitled to the continental shelf appurtenant to her short facing coast. The seldom-quoted third paragraph of Article 76 of the Law of the Sea Convention refers to the continental shelf as a "submerged prolongation of the landmass of the coastal State". Incidentally, it is interesting to note that despite favourable quotations from selected parts of the 1969 *North Sea Continental Shelf* Judgment, Malta tends to regard the Judgment as rather old-fashioned, because it mentions natural prolongation and landmass. It appears, however, that these words — natural prolongation and landmass — achieve recognition in the new bible, in the Law of the Sea Convention, in Article 76.

Now physically, of course, the continental shelf appertaining to a smaller landmass and shorter coast will necessarily be smaller than that appertaining to a State with a longer coastline. Coasts do not by nature generate equal entitlement to areas of continental shelf. Under the guise of a misconceived right of equality, Malta is really claiming an exceptional and privileged position by asserting an equidistance line, depite the disparity of the coastal lengths of the Parties.

This contrasts strangely with the admissions made by Malta in paragraph 166 of her Reply (**III**). It is there admitted that "the function of the concept of equality is related to the actual geography of the region" and that "there is no room for a radical policy of equality of States in the form of a reformation — a refashioning — of geography". Yet, in disregarding actual geographical disparities in size, landmass and lengths of coast, Malta, contrary to her professions — just quoted — claims to redress her natural and geographical disadvantages by refashioning nature in the name of a misconceived equality concept.

This Maltese claim of equal entitlement is contradicted by the jurisprudence of this Court, and of the Anglo-French Court of Arbitration — I shall read that first — the Anglo-French Court of Arbitration said, in paragraph 249: "Equity does not, therefore, call for coasts, the relation of which is not equal, to be treated as having completely equal effects." And in its *North Sea Continental Shelf* Judgment, this Court said in part:

> "There can never be any question of completely refashioning nature, and equity does not require that . . . there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline." (*I.C.J. Reports 1969*, pp. 49-50, para. 91.)

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* *

A brief word about non-encroachment, beyond the equidistance line claimed by Malta. The very purpose of these proceedings is to permit the establishment of a boundary line delimiting the respective areas of continental shelf legally appertaining to the Parties. But the boundary does not yet exist; and the curious insistence of Malta in her Memorial (I, MM, paras. 133-134, 234 *(k)*, 242, etc.) that the principle of non-encroachment "can only be applied *in the present case* on the basis of equidistance" (I, MM, para. 134) culminates in this assertion in the Maltese Memorial, paragraph 150:

> "Given the simple coastal relationships of Malta and Libya, an encroachment northward of the median line would involve an affront to the principle of the equality of States and, in particular, of coastal States." (I, MM, p. 47)

An obligation not to encroach beyond a non-existent line makes no sense. Moreover, Malta recognized the correct application of the non-encroachment principle when she quoted this Court in her Reply, paragraph 98, that a delimitation should leave to each Party as much as possible of the natural prolongation of a State's land territory into and under the sea without encroachment on the natural prolongation of the land territory of the other. Acceptance by Malta of this principle can also be found in her statement (I, MM, para. 268) that "the concept of non-encroachment is another form of the principle of natural prolongation and rests on the premise that the land dominates the sea". In making this statement the Maltese Memorial cited the separate opinion of Judge Jiménez de Aréchaga (*I.C.J. Reports 1982*, p. 119) where he observed that "the principle of non-encroachment is inherent in the principle of natural prolongation".

While it may be conceded that if States have agreed to establish an equidistance line — or any other boundary line — they are under a legal obligation not to encroach beyond the boundary thus established, no agreed boundary exists in the present case. Non-encroachment, as used in the *ex post facto* argument of Malta, fails to provide a criterion for drawing a boundary line, in particular an equidistance line.

The attempt of Malta to find in the principle of non-encroachment a basis, or method, for determining the placement of an equidistance line or for preventing encroachment beyond this non-existent line is to substitute fantasies for facts. In Libya's submission, the facts of geology and geography are more relevant to a delimitation than a misconceived legal theory of equal entitlement of continental shelf.

On the basis of this misconceived theory of the equality of States — sometimes explicit but *constantly implicit* throughout her pleadings — Malta has confronted us with a truly remarkable set of propositions:

1. "Continental shelf" is to become a legal term of art without relation to the shelf of the continent. Not even Article 76, paragraph 1, goes that far.
2. "Natural prolongation" must no longer be understood as nature's prolongation of the landmass of a State into and under the sea but must be conceived of as a mere linear measurement on the surface of the sea until more than 200 miles from the coast it becomes permissible again to recognize the facts of natural prolongation.
3. "Non-encroachment" becomes an *ex post facto* argument against encroaching beyond a non-existent line.
4. The pseudo-principle expressed in Malta's Counter-Memorial, paragraph 339, that "the equality of lateral reach from the coasts which results from equidistance" must be used to refashion nature — they do not term it that —

and in the name of "equal entitlement" to equalize the short facing coast and appurtenant shelf of Malta with the lengthier coast of Libya.

5. The doctrine of "equal entitlement" to continental shelf, we are told, must prevail over the wise admonitions of this Court that "the equitable principle requiring *all relevant circumstances* to be taken into account" (emphasis added) must apply in a continental shelf delimitation; and the Court mentioned explicitly geography and geomorphology in making this statement (*I.C.J. Reports 1982*, paras. 72, 80, 81 and 133).

6. Finally, it appears that the legal principle of the equality of States before the law can be distorted in order to determine the magnitude of the continental shelf area claimed by Malta.

Libya rejects these misconceptions as a contrived effort to equalize that which is not equal. A disregard of relevant factual circumstances in the name of a misunderstood and misapplied concept of the equality of States fails to provide a legal basis for an equitable delimitation. Mindful of this Court's pronouncement in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 49, para. 91), that "equity does not necessarily imply equality", Libya seeks a delimitation — as her submissions indicate — on the basis of equitable principles.

Mr. President, that concludes my statement and I would ask you, respectfully, to call on Professor Jaenicke.

The Court adjourned from 11.20 a.m. to 11.35 a.m.

ARGUMENT OF PROFESSOR JAENICKE

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Professor JAENICKE:

THE LAW OF CONTINENTAL SHELF DELIMITATION

Mr. President, distinguished Judges, it is a high honour and a special privilege for me to appear again before this Court, this time as counsel for the Socialist People's Libyan Arab Jamahiriya, and a third time in a case of maritime zone delimitation.

The basic principles and rules of maritime zone delimitation which are still uncodified have been developed by the jurisprudence of this Court. The development of these principles and rules is one of the outstanding accomplishments of this Court; it has not only influenced State practice but has also contributed to legal security and equity in this field of law. I am sure that the Court will use the opportunity of this case to reaffirm these principles and rules and to clarify and develop them further in the light of the special features and the special factual situation of this case.

The present case before the Court is a case of continental shelf delimitation. We are not concerned here with the delimitation of 200-mile zones or with the determination of a single maritime boundary for all kinds of coastal jurisdiction. Therefore the principles and rules of continental shelf delimitation as they have been established by the jurisprudence of this Court will apply to the present case. It is Libya's position that the concept of natural prolongation is still the basic concept which has formed the legal régime of the continental shelf, and the criteria and methods for delimitation derived therefrom, and these criteria and methods remain valid for this case.

My presentation has the object to put the present case in the proper perspective within the law of maritime zone delimitation. I shall examine the principles and rules of delimitation that are applicable to the special factual situation of this case, and I hope to show that the criteria for delimitation put forward by Libya — or, as the other side liked to call it, the "process of delimitation" followed by Libya — are in harmony with the Court's jurisprudence and the dictates of equity.

My presentation will consist of the following parts:

Part I will address the concept of natural prolongation and the role it has to play in the particular situation of this case.

Part II will address the question whether and to what extent the source and basis of title to the submarine areas before the coast may provide criteria for its *delimitation between the Parties.*

Part III will draw some conclusions from the analysis in Parts I and II for selecting the proper criteria for delimitation in order to reach an equitable result.

Mr. President, distinguished Judges, before addressing the concept of natural prolongation, I would like to recall some important facts which distinguish this case from others which so far have been resolved by treaty or judicial decision:

First, a zone which by its special geological and geomorphological properties separates two geological plates, runs through the area of delimitation; no previous judicial decision has yet been confronted with such an extraordinary phenomenon.

Second, the coasts of the Parties which face the area of delimitation are extremely different in length; they differ on a scale never before experienced in litigation or even, I would submit, in delimitations by treaty.

Third, Malta is a small group of islands within a narrow sea surrounded by much larger coasts of other States so that Malta's shelf is necessarily enclaved and each delimitation of Malta's continental shelf vis-à-vis any one of the surrounding States must take into consideration the prospective delimitations vis-à-vis the others.

These facts present a delimitation problem of distinct particularity and this will have to be taken into account in reaching an equitable result. Neither the so-called "distance principle" nor the equidistance method is capable of taking cognizance of these facts so that other methods of delimitation must be applied. Libya has demonstrated the reasons for the inapplicability of the equidistance method to the present case at length in its written pleadings, and I shall not want to bore the Court by repeating these arguments. I shall rather concentrate on the criteria and methods of delimitation which relate to the distinctive facts of this case.

I

Mr. President, distinguished Judges, the first part of my presentation will examine the content and legal significance of the concept of natural prolongation. In view of the Court's consistent jurisprudence in this respect, this would not have been necessary were it not for the fact that Malta seeks to change radically the meaning and content of that concept. In particular, Malta asserts that natural prolongation, as a legal concept, has to be divorced from its traditional geological and geographical components and should now be based solely on distance from the coast. Malta contends that only such a concept provides the legal basis of title to continental shelf rights in present international law (**II**, MCM, paras. 121-132; **III**, MR, para. 63). This new theory of natural prolongation is at variance with the generally recognized meaning of this concept as it has been developed by the jurisprudence of this Court and, as such, embodied in the United Nations Convention on the Law of the Sea. Nor is it admissible to give the concept of natural prolongation a new legal content in contradiction to its established meaning; this only creates confusion and does not assist in the process of delimitation.

This concept of natural prolongation is neither a purely physical phenomenon to which the law attaches no legal consequences, nor is it a purely legal term which can be totally divorced from its physical basis. Natural prolongation is a legal term in so far as it attributes to the physical continuation of a State's territory into the sea the entitlement to continental shelf rights over the respective submarine areas. On the other hand, natural prolongation as a legal term cannot operate independently of its physical basis, which consists of the physical link between the territory of the State and the submarine areas into which its territory continues from the coast into and under the sea. Mere distance cannot provide the indispensable physical basis of the concept of natural prolongation. Such a theory seeks to promote the fact of mere proximity, of mere distance from a point of the coast, to a legal rule which determines the better right of a

coastal State in continental shelf delimitation. This in effect re-establishes equidistance as a primary legal rule in maritime zone delimitation. Such a status of the equidistance method had been rejected by the jurisprudence of this Court in continental shelf delimitation cases since 1969; it has again been rejected in a case of a single maritime boundary delimitation by the Chamber of this Court in the *Gulf of Maine* case. I shall return to the distance criterion and its proper role in the law of maritime boundary delimitation at a later stage of my presentation.

Before proceeding further in the analysis of the concept of natural prolongation, I would like to clarify that at present I am talking of natural prolongation as the factual or physical basis and justification of the coastal State's legal entitlement to jurisdiction over the submarine areas in front of its coast. I am not yet dealing with the legal significance of natural prolongation for delimitation between States whose claims for continental shelf jurisdiction conflict with each other, nor with the legal significance of natural prolongation for determining the outer limit of a State's continental shelf vis-à-vis the international sea-bed area. The legal significance of natural prolongation in these three different respects, namely, first as a basis of title, second as a criterion for delimitation between conflicting claims, and third, as a factor in determining the outer limit of a State's continental shelf, should be clearly kept separate in order to avoid misunderstandings and wrong conclusions.

In its oral argument Malta reproaches Libya with using different and inconsistent concepts of natural prolongation in its pleadings. This is not the case: Libya regards natural prolongation in its physical sense as an objective fact which is scientifically ascertainable; as such it is the same in all contexts in which it produces legal consequences. Natural prolongation, however, produces different legal consequences according to the legal context in which it becomes relevant and according to the respective legal principle or rule under which legal consequences are attributed to it. Thus, natural prolongation may have different legal significance for entitlement to continental shelf rights, for delimitation between neighbouring States, and for determining the outer limit of a State's continental shelf vis-à-vis the international sea-bed area.

I need not dwell very long on the legal significance of natural prolongation as the primary, if not the sole, basis and justification of the coastal State's legal title to the submarine areas adjacent to its coast. It will suffice here to refer to the jurisprudence of this Court. The Court has stated very clearly in paragraph 43 of its Judgment in the *North Sea Continental Shelf* cases:

> "Submarine areas do not really appertain to the coastal State because — or not only because — they are near it. They are near it of course; but this would not suffice to confer title, any more than, according to a well-established principle of law recognized by both sides in the present case, mere proximity confers *per se* title to land territory. What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion, — in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea." (*I.C.J. Reports 1969*, p. 31, para. 43.)

In its Judgment in the *Tunisia/Libya* case, the Court reaffirmed this view and commented in detail on the concept of natural prolongation and its significance as the factual basis of a State's legal title to the continental shelf in front of its coast, and, on the other hand, as a criterion for its delimitation (*I.C.J. Reports*

1982, pp. 46-48, paras. 43-48). The Court will be well aware of that and I need not quote any passages from these paragraphs. I think it is a correct assessment of the Court's considerations to say that these considerations confirmed that the concept of natural prolongation remains the primary basis of a coastal State's legal title to continental shelf rights. The Conference on the Law of the Sea endorsed the concept of natural prolongation as a primary basis of the coastal State's title to its continental shelf and embodied it in Article 76 of the Law of the Sea Convention.

Now it is true that in the *Tunisia/Libya* case the Court also referred to the subsidiary clause in Article 76, paragraph 1, of the Convention, whereby in those cases where the continental margin does not extend up to 200 miles, the coastal State's continental shelf jurisdiction will be extended beyond the continental margin up to the 200-mile limit. The Court remarked that in such a case the basis of the coastal State's title departs from the principle that natural prolongation is the sole basis of title to these submarine areas in front of the coast (*I.C.J. Reports 1982*, p. 48, para. 48). Apart from the fact that this provision, which was designed to accommodate States with narrow geological shelves, is not yet in force, it in no way affects the validity of the concept of natural prolongation for submarine areas as far as they consist of shelf in the geological sense. My learned friend and colleague Professor Quéneudec will address the development of continental shelf law at the Third United Nations Conference and the interpretation of the relevant provisions of the 1982 Convention in more detail, and you will permit me to refer to his presentation in this respect.

Malta has relied very heavily on this subsidiary clause in Article 76 of the new Convention which, if it should become law, will confer continental shelf rights in the absence of natural prolongation in certain circumstances; the simple answer to that approach is that in the present case there is no submarine area between the Parties to which this subsidiary clause of Article 76 could apply if it were enforced because the area between the Parties covers only continental margin as defined in that Article.

Mr. President, distinguished Judges, the concept of natural prolongation emphasized this very much. The concept of prolongation has geographical as well as geological and geomorphological elements. In fact, Libya has always considered the geographical component to be as important as the geological or geomorphological components because all of them provide criteria for delimitation. It is not true that Libya, as Malta asserts, "continues to see the continental shelf as an essentially geological and geomorphological phenomenon" (**III**, MR, para. 65); nor is it correct, as Malta asserts, that the concept of natural prolongation is only a geological and geomorphological concept divorced from the geography of the area of delimitation; nor is it true that there is a recognizable trend away from a geological or a geomorphological concept of the natural prolongation. Such unwarranted conclusions probably stem from the observation that the delimitation cases which have so far been decided by international courts have not been decided on criteria of geology or geomorphology but rather on the geographical relationship of coasts as well as on other relevant factors, such as the conduct of the Parties.

Malta's attack on the relevance of geological and geomorphological features overlooks the fact that in the continental Shelf Arbitration between France and the United Kingdom as well as in the *Tunisia/Libya* case the Courts carefully examined the geological and geomorphological criteria put forward by the Parties before they discarded them as unhelpful, given that the whole area was one of essential continuity in those particular cases. Thus, it is well established that natural prolongation has an inherent and indeed inseparable geological and

geomorphological element because of the natural link and continuity between the land territory and the submarine area in front of the coast. But, natural prolongation also has a necessary geographical component because it is from the coast that a State's continental shelf extends into and under the sea. I would like to recall that in the *North Sea Continental Shelf* cases where the Court relied on the concept of natural prolongation, the Court derived from that concept criteria of delimitation and indicated criteria to the Parties which were mainly related to geography.

Thus, Libya understands natural prolongation as a geographical as much as a geological and geomorphological phenomenon. Each of these elements contributes to the coastal State's title to the submarine areas in front of its coasts and as such may provide relevant criteria for delimitation.

At this juncture it is necessary to deal with Malta's contention that the emergence of the exclusive economic zone concept and the alleged absorption of the continental shelf into that concept has had a changing impact on the rules governing the delimitation of the continental shelf. By this reasoning Malta seeks to diminish, if not to negate, the rule of the concept of natural prolongation as the basis of title and also its role as a primary criterion for delimitation; Malta wants to substitute in its place the criterion of distance from the coast in order to seek support for its thesis that thereby the equidistance method has now acquired the status of a primary rule of delimitation. This attempt to undermine the validity of the concept of natural prolongation must fail for some reason.

First, it cannot be maintained that the continental shelf concept has been absorbed by the economic zone concept under present international law. There is no evidence in State practice that the continental shelf rights claimed by States by proclamation, legislation or otherwise have been affected by the declaration of fishery or exclusive economic zones. It was rather the protection of the coastal States' interests in the fishery resources of these waters and not the consideration of creating a uniform jurisdictional régime for all purposes which prompted the declaration of the 200-mile fishery or exclusive economic zones. The Third United Nations Conference on the Law of the Sea preserved the legal régime of the continental shelf as a separate legal régime; the new Convention on the Law of the Sea regulates the legal régime of the continental shelf in a separate part independent of the part relating to the economic zone régime; this part, on the continental shelf, contains special articles which define the continental shelf on the basis of natural prolongation and provide also for separate delimitation. Article 56 of the Convention, which defines the jurisdictional orbit of the exclusive economic zone concept, expressly, in its paragraph 3, preserves the autonomy of the legal régime of the continental shelf by leaving the regulation of the continental shelf rights to that special part of the Convention. My learned friend and colleague, Professor Quéneudec, will have more to say on the history of Article 56 and its relationship to the established legal régime of the continental shelf. The Court will allow me to refer to his presentation in this respect.

The second point: it is also wrong to maintain that the establishment of fishery or exclusive economic zones has fundamentally changed the law of maritime-zone delimitation or has placed the criterion of distance from the coast in a more prominent place than before. The overriding principle that the land dominates the sea is the source of a State's jurisdiction over its adjacent waters in the same way as it is the source of title over the submarine areas in front of its coast. Whether termed adjacency or natural prolongation, in both cases the coast is the geographical basis from which the jurisdiction of the coastal State

extends into the sea, be it the waters of the exclusive economic zone or the continental shelf. In so far as the geographical relationship between the coasts to the area of delimitation is determinant, the principles and rules of delimitation and the criteria derived from geography will be basically the same. The continental shelf delimitation cases which have so far been decided by international adjudication have all been decided primarily on the basis of the relationship of the coasts of the Parties to the area of delimitation, taking into account the requirements of a reasonable degree of proportionality between the length of the respective coasts and the maritime areas attributed to them. There is no valid reason why the criteria which have been considered relevant by this jurisprudence should not be equally applicable to the delimitation of exclusive economic or fishery zones; in particular, there is no valid reason why the criterion of distance from the coast should be more relevant here than in continental shelf delimitation.

In the *Gulf of Maine* case where the Chamber of this Court drew a single maritime boundary between the Parties solely on the basis of geography, the Chamber noted in its Judgment, that the terms "adjacency", "proximity" or "distance" might correctly describe the link between the coastal State's territorial sovereignty and its jurisdiction over the waters and submarine areas in front of its coast but the Court noted also, and emphasized it, that these concepts could not be used for deducing a rule that a State, any part of whose coast is less distant from maritime areas than the coast of another State should, *ipso jure*, be entitled to have such areas recognized as its own; the Chamber confirmed that in maritime-zone delimitation the equidistance method remains only one method among others for reaching an equitable result (*I.C.J. Reports 1984*, pp. 296-297, paras. 103-107). Thus, there is no convincing argument that the emergence of the exclusive economic zone concept has changed the established principles and rules of continental shelf delimitation and the methods and criteria established thereunder.

Third point: it cannot be maintained that since the emergence of the exclusive economic zone concept geophysical facts have lost their relevance in continental shelf delimitation on the argument that both jurisdictional régimes should be delimited on the basis of the same criteria. The criteria for delimiting the exclusive economic zones or the continental shelves of States need not necessarily be the same and there may be other criteria which are non-geographical and which must be considered relevant only for the delimitation of the one or the other jurisdictional régime under the application of equitable principles. This need not, but may, have the effect that different boundaries have to be drawn between neighbouring States for their exclusive economic zones and their continental shelves respectively; in fact, there is State practice in this respect. There is no cogent legal reason why the boundaries of both régimes must necessarily be the same.

It is significant in this context that the new Convention on the Law of the Sea contains two separate Articles for the delimitation of the exclusive economic zone and for the delimitation of the continental shelf (Art. 74 and Art. 83). Although both Articles are framed in identical terms, their co-existence presupposes that the criteria for drawing the boundary line may be different in view of the different character and object of each jurisdictional régime. Of course, the States concerned may regard it as practical to have a single maritime boundary for both the water column and the continental shelf. In such a case, it might be considered equitable to take into account only those criteria which are common to both jurisdictional régimes and which are not typically or exclusively bound up with the particular characteristics of only one of the two régimes (*I.C.J.*

Reports 1984, pp. 326-327, paras. 193-194). In the present case, however, both Parties have asked the Court to decide on a continental shelf delimitation only. In fact, when the Parties negotiated the Special Agreement, it had been the wish of Malta to confine the adjudication to the continental shelf. Therefore, whatever criteria may be considered relevant for the delimitation of an exclusive economic zone, for the delimitation of the continental shelf — and that is only what is in issue here — the concept of natural prolongation and the criteria inferred therefrom by the jurisprudence of the Court remain valid and applicable, including the geology and geomorphology of the area of delimitation.

In concluding the first part of my presentation I would like to stress the following points:

1. There is no reason to abandon the concept of natural prolongation because of new developments in the law of the sea.

2. The concept of natural prolongation is an integral and indispensable element of the legal framework governing the jurisdiction of States over the submarine areas adjacent to their coasts; it explains and justifies why States have claimed jurisdiction over the submarine areas adjacent to their coasts and why this jurisdiction has been recognized by the international community.

3. The concept of natural prolongation expresses and defines the physical link between the territory of the State and the submarine areas extending from its coasts. This is true even in those cases where States with narrow geological shelves claim continental shelf rights beyond the outer limit of their shelves, at least to the edge of their geological continental shelf. While the coast is the starting-line of the extension of a State's continental shelf into the sea, it is the territory of that State, not isolated basepoints at the coast, which generates continental shelf rights of that State.

4. The criterion of distance from the baseline of the coast does not constitute the basis of continental shelf rights; its function is rather to set limits to the seaward extent of a State's jurisdiction vis-à-vis the international area. Distance from the coast does, therefore, neither prejudge the delimitation of the continental shelf between neighbouring States, nor determine the better right of one of them to a certain continental shelf area.

5. The jurisprudence of this Court, which has regarded the concept of natural prolongation as the basis of title to the continental shelf, and as such the primary source of criteria for the delimitation of the continental shelf between neighbouring States, remains valid and applicable in the present case.

II

Mr. President, distinguished Judges, the second part of my presentation will address the question to what extent the concept of natural prolongation provides criteria for the delimitation of the continental shelf between the Parties to this case.

In the absence of conventional law the delimitation between the continental shelves of the Parties is governed by the fundamental norm that delimitation is to be effected in accordance with equitable principles, taking account of all relevant factors and circumstances in order to achieve an equitable result. This means that it is necessary to identify these criteria and methods of delimitation the application of which is equitable with regard to the factual elements of the area of delimitation and other relevant circumstances of the case. Libya is of the opinion that, among others, the concept of natural prolongation can provide such criteria in the present case.

Both Parties are in agreement that the entitlement and delimitation are interconnected. But Malta, relying on its misconception of distance as the sole basis of title for continental shelf rights, neglects the geological, geomorphological and geographical components of natural prolongation which are of particular importance in the present case. Libya does not go so far as to argue that the extent of the geophysical continuation of the land territory into the sea always constitutes an absolute criterion; all the relevant circumstances of the case have to be taken into account and have to be weighed against each other. But in those cases where other equitable criteria point to the same or a similar division between the continental shelves of the parties, and the result is on the whole equitable, the criteria derived from the concept of natural prolongation assume a determinant weight.

As I said before, the concept of natural prolongation has geological and geomorphological as well as geographical components. Let us first examine the geological and geomorphological components of the concept of natural prolongation, and ascertain the weight of criteria derived therefrom in general as well as under the circumstances of the present case. (For convenience and brevity, I shall henceforth use the term "geophysical" for comprising both the geological and geomorphological characteristics of the sea-bed.)

This Court has always recognized the relevance of geophysical characteristics of the area of delimitation if they assist in identifying a line of separation between the continental shelves of the Parties. In the *North Sea Continental Shelf* cases, the Court remarked that:

> "it can be useful to consider the geology of that shelf in order to find out whether the direction taken by certain configurational features should influence delimitation because, in certain localities, they point-up the whole notion of the appurtenance of the continental shelf to the State whose territory it does in fact prolong" (*I.C.J. Reports 1969*, p. 51, para. 95).

In the *Tunisia/Libya* continental shelf case, the Court recognized that

> "identification of natural prolongation may, where the geographical circumstances are appropriate, have an important role to play in defining an equitable delimitation, in view of its significance as the justification of continental shelf rights in some cases" (*I.C.J. Reports 1982*, p. 47, para. 44),

and, again, in the *Tunisia/Libya* continental shelf case, the Court remarked that "a marked disruption or discontinuance of the sea-bed" may constitute "an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations" (*ibid.*, p. 57, para. 66).

In the *Gulf of Maine* case, the Chamber of this Court examined whether or not the Northeast Channel, which was claimed by the United States as constituting a natural boundary within the submarine structure of the Gulf, had the "characteristics of a real trough marking the dividing-line between two geomorphologically distinct units", but the Court came to the conclusion that, in that case, too, the situation was "different from the situation that may prevail in areas where a natural separation does exist from the factual viewpoint between the respective continental platforms of the Parties in dispute" (*I.C.J. Reports 1984*, pp. 274-275, paras. 46-47).

Although the Court has made the reservation that the identification of the contours and limits of the geophysical prolongation will not *per se* be conclusive for an equitable delimitation (para. 44 of the 1982 Judgment), the Court nevertheless indicated that evidence of a clear and ascertainable separation

between the natural prolongations of the territories of the States concerned was a higher-ranking criterion than other supporting circumstances. The high-ranking character of such a criterion is clearly evidenced by the differentiation the Court made between the geophysical features, which constitute a separation so as to indicate a legal title to the natural prolongation up to a certain point but, on the other hand, that natural prolongation may be only one of several circumstances considered to be the elements of an equitable solution. This differentiation was taken in paragraph 68 of the Court's 1982 Judgment. This differentiation between geophysical features that do amount to a separation of the natural prolongations of the parties, and those other features which merely constitute supporting elements, or circumstances, for determining the division between the two continental shelves of the parties, clearly shows the significance of the geophysical reach of the natural prolongation as a determinant criterion for equitable delimitation, where it can be identified.

Libya, therefore, acts in full harmony with the jurisprudence of this Court when it puts the geophysical characteristics, of what has been termed the Rift Zone, in evidence before the Court as clear proof of the separation of the natural prolongation of Libya and Malta along this Zone. These facts will be described and evaluated in more detail and depth later in the oral argument of Libya. In the present context, however, it will be necessary to put these facts in the correct legal perspective:

First, Malta does not seem to deny the existence of the geological and geomorphological phenomena which have been described by Libya in order to demonstrate the exceptional geophysical character of the Rift Zone as clearly separating Libya's and Malta's natural prolongation. Malta does, however, contest, in principle, the relevance of geological or geomorphological features for continental shelf delimitation; and if such features were to be considered relevant, Malta challenges their legal quality as an interruption, or discontinuity, constituting a separation between the natural prolongations of the territories of the Parties.

Second, as to the general legal relevance of geophysical features, I need not add anything to what I have already said before. The question remains whether the features of the Rift Zone are such as to constitute a discontinuity or separation of shelves in the sense understood by the jurisprudence of this Court. It may be noted in this context that the Court has not required a particularly fundamental discontinuity, as the distinguished counsel for Malta has termed it. What is decisive is the finding that the disruption or discontinuity constitutes an indisputable indication of the existence of two separate continental shelves. While the geophysical characteristics of the Rift Zone are certainly scientifically ascertainable facts, their qualification as separating two natural prolongations rests, essentially, on an appreciation of the distinctive character of these features in question. The recognition of the Rift Zone as separating the natural prolongations of Libya and Malta will not rest merely on the contours and depths of the channels and troughs which follow the course of the Rift Zone, by simply comparing them with similar geomorphological features in other parts of the world; it rather rests on the scientific finding that these channels and troughs, together with other geological phenomena, which have been put in evidence by Malta, are the expression of a distinct movement of two separate geological plates to which the respective geological shelves of both Parties belong.

In the view of Libya, these facts are so indicative of a deep-seated, fundamental fracture or separation of two geological plates that it is difficult to deny the existence of two separate geological shelves. Apart from these geological

findings, a glance at the bathymetric map reveals that the Maltese islands are nothing more than mere elevations on the Ragusa-Malta Plateau.

Third, as already noted, Libya has not gone so far as to assert that a continental shelf boundary following the geophysical division between two natural prolongations of two opposite coasts is necessarily equitable *per se*. Although a factor of primary importance, it must be weighed together with all other relevant criteria in order to ascertain whether it produces an equitable result under the circumstances of the particular case. In the present case, however, the geographical relationship between the coasts of both Parties points to a boundary located within the same area and, thereby, reinforces the equitable character of a boundary based on the geophysical fact of a recognizable division between the natural prolongations of the territories of both Parties. It is, therefore, in accordance with equitable principles to regard the "Rift Zone" as the determinant criterion for drawing the continental shelf boundary between the Parties.

Fourth, Malta has questioned the appropriateness of the "Rift Zone" as a workable criterion for determining a continental shelf boundary in the present case because the identification of a rather broad boundary "zone" would not yield a sufficiently precise "line" so that the Parties could "without difficulty" delimit their respective continental shelves as required by Article I of the Special Agreement. Libya will show later in its oral argument that there are several supplementary equitable criteria available for determining the boundary line within, and following the general direction of, the "Rift Zone", and I leave it to my learned friend and colleague Professor Bowett to expand and justify these criteria in more detail. In the present context, I would merely like to point to a principle that has been pronounced by this Court in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, pp. 52 and 53, paras. 99, 101 (C) (2)) for determining a boundary line in areas of overlapping natural prolongations. There the Court indicated that the Parties should divide the area of overlap in agreed proportions, or, failing agreement, equally between them. It would seem reasonable that the Parties — *per analogiam* — could follow the same approach where doubts remain with respect to the precise location of the dividing line between the shelves of the Parties within the "Rift Zone".

I shall now turn to the geographical aspect of the concept of natural prolongation in order to examine what criteria may be derived therefrom for the delimitation of the continental shelves of the Parties. This examination will rest solely on the relationship of the coasts of the Parties to the area of delimitation, leaving out of account, for the purpose of this demonstration, the geological and geomorphological criteria and their significance for the delimitation in the present case. Therefore, I shall now deal with the question whether the concept of natural prolongation as reflected in the geographical relationship of the coasts of the Parties to the area of delimitation can provide equitable criteria for the determination of the continental shelf boundary between the Parties.

The Court has said in the *Tunisia/Libya* case that the

> "coast of each of the Parties . . . constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation to neighbouring States situated either in an adjacent or opposite position" (*I.C.J. Reports 1982*, p. 61, para. 74).

For the purpose of delimitation in the present case it is therefore necessary first to identify the respective coasts of the Parties which face the maritime area between them. In the present context I do not think it necessary to go into the

details of identifying and measuring the relevant coasts. I refer in this respect to paragraphs 2.24 to 2.51 and 10.08 to 10.11 of Libya's Memorial (I); my learned friend and colleague Professor Bowett will go more deeply into this matter later in Libya's oral argument. For the moment, it will suffice to note the following.

On Malta's side, the only coasts that may be regarded as facing the maritime area between the Parties lie between the most south-easterly point of the Island of Malta (Delimara Point) and the most south-westerly point of the Island of Gozo at Ras il-Wardija where the coast turns to the north. Not all the coasts in between really face the area of delimitation. Whatever method might be used in identifying and measuring these coasts, in any event, Malta's coastal front which extends into the area of delimitation cannot be broader than a straight line between the most south-easterly and the most south-westerly points of the aforementioned coasts.

On the Libyan side, the coast which faces the maritime area between the Parties starts from Ras Ajdir at the Libyan/Tunisian border and terminates to the east at Ras Zarruq where the Libyan coast then turns to the south. The Libyan coasts east of Ras Zarruq do not face the maritime area which is relevant for the delimitation between the Parties.

It follows therefrom that the difference in length of the coasts of the Parties, expressed in ratios, is higher than 8 to 1, the exact figure depending on how each coast is measured. Now if one would follow Malta's vision of the area of delimitation as depicted in its trapezium model, which Libya does not accept as correct — you find it as Number 5 in Libya's map folder before you — and would consider Libya's coast to the east up to Ras at-Tin on the Cyrenaican coast as relevant, then the difference in length between the coastal fronts of Malta and Libya would increase to an even higher ratio, such as between 1 to 25 and 1 to 30, the exact figure again depending on how each coast is measured.

Now, the extraordinary difference in length of the coastal fronts of Libya and Malta which face the area of delimitation, poses the problem — which is peculiar to this case — of determining an equitable boundary between coastlines of extreme difference in length. The problem is not peculiar to islands. It also arises in other geographical contexts, but the problem of unequal coasts will, of course, occur most probably in geographical situations, as here, where the coast of a small island faces a much larger coast. In other cases, where larger islands are involved in the maritime boundary delimitation, and their coastlines correspond in length to the opposite coast, the problem of delimitation between unequal coasts will probably not arise. In the present case, however, the delimitation of the maritime boundary between unequal coasts poses itself with exceptional gravity. Bearing in mind that the coast is the starting line of a State's continental shelf extension into the sea, the extreme difference between the lengths of the coastal fronts of Libya and Malta cannot possibly be ignored and considered irrelevant for the determination of the boundary between their respective continental shelves.

Now, Malta contests the relevance of comparing the coasts of the Parties in principle, and asserts that between opposite coasts, whatever their dimension and length, the median line represents the equitable boundary. Malta insists that only small-scale adjustments of the equidistance line could be made where incidental coastal features would otherwise have a disproportionately distorting effect on the course of the boundary line. That this far-reaching proposition has no foundation in the jurisprudence and practice of States has already been explained in detail in Libya's Counter-Memorial (II, LCM, paras. 4.26-4.28; para. 5.96) from which is drawn the conclusion on State practice. I need not

repeat these observations here. Such a proposition that between opposite coasts the median line could be an equitable boundary could only be sustained if the coastlines of the opposite coasts are themselves approximately equal in their relation to the area of delimitation.

Malta has, however, in its latest written pleading (III, MR, paras. 72-99) now chosen another line of argument in defence of its untenable proposition that between opposite coasts, irrespective of their dimensions and lengths, the median line is the logical and therefore equitable boundary. Malta seeks support for its median line proposition in the so-called "distance principle" and in the consequential theory that each State must have an equal geographical reach of entitlement to the submarine areas lying between them. It is obvious that such a proposition amounts in substance to nothing else than again promoting the equidistance method between opposite coasts as an obligatory, if not absolute, rule; in effect, it seeks to justify the equidistance line by the equidistance method itself as if the latter were equitable *per se*. And Malta's argument rests on two wrong premises.

First, Malta misconceives the role of distance in continental shelf delimitation.

And second, Malta wrongly assumes that between opposite coasts the distance between them is a determinant criterion of an equitable boundary, regardless of the geographical relationship and difference in length of both coasts.

I shall deal first with the role of distance in continental shelf law. As I have already demonstrated, the legal basis of the coastal State's right to the continental shelf in front of its coast rests upon the concept of natural prolongation which regards the submarine areas in front of the coast as an extension or continuation of the land territory into the sea. This remains true as well in those cases where States with narrow belts of geological shelf claim submarine areas beyond that shelf. At least up to the seaward limit of the geological shelf the physical link of the submarine areas with the coast remains the basis of the coast continental shelf rights. Thus far, distance has no relevance as basis of title. It should also be noted that the Continental Shelf Convention of 1958, which first codified the coastal State's continental shelf rights, contained no reference to any criterion of distance. The distance criterion of 200 miles made its appearance with the emergence of the institution of fishery zones and later with the institution of the exclusive economic zone for purposes of defining the outer limit of a coastal State's jurisdiction vis-à-vis the international waters of the high seas.

It is now generally recognized that a coastal State may not extend its jurisdiction over adjacent waters beyond 200 nautical miles from its coast, but such a distance criterion has never been recognized with respect to the continental shelf. The fact that the distance of 200 nautical miles from the basepoints on the coast has been used to determine the outermost seaward limit of a coastal State's jurisdiction over the waters in front of its coast does not justify the conclusion that the coastal State's title to such jurisdiction rested on the mere fact of their lying within a distance of 200 nautical miles; even less does that justify the conclusion that the better legal title to any part of these areas could be measured in terms of distance from certain basepoints of the coast. In any event, such a reasoning could not be valid for the continental shelf to which the outer limit of 200 miles does not apply.

The fact that a certain distance has been used to set a seaward limit to the coastal State's extension of its jurisdictional rights into the sea does not support the conclusion that distance from the coasts was the reason and justification for the recognition of the coastal State's title to these maritime areas. In reality,

more substantial interests than mere distance from the coast were involved when jurisdiction of the coastal State over the resources in front of its coast was recognized by the international community. It was the need for protection of these resources and for an effective control over their orderly management and exploitation which became the justification for attributing the jurisdiction over these resources to the coastal State and for recognizing the coastal State's primary interest in managing and exploiting these resources.

Thus, the primary interest of the coastal State in the resources off its coasts and the responsibility of the coastal State for their exploitation — and not merely the degree of distance from basepoints on the coast — were the conceptual basis and justification of the coastal State's entitlement to exclusive jurisdiction over the continental shelf and, later, over the fishery resources in the superjacent waters. Certainly, the fact that these maritime areas were adjacent to the coast had not been irrelevant, but the degree of contiguity or adjacency did not provide the justification for the coastal State's jurisdictional rights over maritime areas off its coasts. Adjacency in expressing a certain distance from the coast determined, rather, the outer limit of those areas where the coastal State's special interests have been recognized, vis-à-vis those areas of the high seas where the interests of the international community have prevailed. Even if geographical contiguity or adjacency would be considered part of the basis of the coastal State's entitlement to the continental shelf or the superjacent waters off its coasts, it would only be one element among others and, therefore, not capable of establishing mere distance from the coast as the determinant criterion for the appurtenance of these areas to one State or another.

The Court rose at 1 p.m.

EIGHTEENTH PUBLIC SITTING (10 XII 84, 3 p.m.)

Present: [See sitting of 26 XI 84.]

Professor JAENICKE: Mr. President, distinguished Judges, before I left off last Friday, I had begun to examine the geographical component of the concept of natural prolongation and to define what criteria could be derived therefrom for the delimitation of the continental shelf in the present case. I had stressed the relevance of the coast as the line of departure of the natural prolongation of a State's territory into the sea and the consequential relevance of their difference in length for the identification of the dividing line between their respective prolongations. I was about to deal with Malta's argument that between opposite coasts the difference in coastal length, how great it might be, has no relevance, and that the equidistance line is the logical and equitable boundary. In exposing the fallacies in this line of argument, I had first clarified the limited role of adjacency and distance as basis of title for the jurisdiction over the maritime areas in front of a State's coast and the consequential limited role of distance as a criterion for delimitation.

I shall now deal with the second fallacy in Malta's argument which consists of the assumption that at least in those cases where distance is the basis of title, distance from the coast is the only relevant criterion for determining the equitable boundary allowing only small-scale adjustments of the equidistance line to eliminate the distorting effect of incidental geographical features.

Now, apart from the fact, in the present case of continental shelf delimitation, natural prolongation, and not distance from the coast, is the basis of title, distance as the basis of title would not, by itself, logically lead to equidistance in delimitation. Even if one were to adopt Malta's thesis of adjacency or distance being the sole basis of title, it would not follow therefrom that, between States which both claim jurisdiction over the area of delimitation on that basis, the boundary line must therefore be equidistant from both coasts. For this would mean that the criterion of distance from the coast — which might be a useful criterion in appropriate circumstances — would have assumed the character of a superior role, or at least of a primary criterion of delimitation, with priority over any other criteria the relevance of which has been recognized by the jurisprudence of this Court. Such a reasoning would be tantamount to recognizing the equidistance method as a rule of law — a thesis constantly rejected by this Court.

Certainly, the concept of adjacency in terms of distance from the coast may provide criteria for delimitation — among them equidistance as its most simple expression — for application where justified under the circumstances of the case. But this hardly justifies applying one of these criteria as legally required so as to exclude all others. The Court has never done that; it has always judged the applicability of the criteria for delimitation on the basis of an appreciation whether their application would lead to an equitable result under the circumstances of the case.

In the *Tunisia/Libya* continental shelf case, the Court clearly distinguished between the criteria for entitlement, on the one hand, and the criteria for delimitation in that area where both States can claim continental shelf rights under the

criteria for entitlement, on the other hand (*I.C.J. Reports 1982*, pp. 46, 48 and 61, paras. 44, 48 and 73). This distinction has again been made very clear in the Judgment of the Chamber in the *Gulf of Maine* case (paras. 103-107). Here the Chamber acknowledged that the concept of adjacency could be considered a correct expression of the link between the State's sovereignty over its territory and its sovereign rights over the adjacent maritime areas. The Chamber rejected, however, the Canadian argument that it was possible to deduce from the concept of adjacency a legal rule — equidistance — for delimitation between States whose continental shelves or adjacent maritime zones overlap. Thus, even if one would follow Malta's argument — which Libya does not regard as being correct — that mere adjacency or distance provides the legal basis and justification of the coastal State's entitlement to continental shelf rights, it would not logically follow therefrom by legal implication that distance from the coast must be the only or primary criterion for determining the appurtenance of submarine areas to one or the other of the Parties.

Mr. President, I turn now to the question what *geographical criteria* might be considered equitable in the geographical setting of this case. As the natural prolongation of the territories of both Parties into the area of delimitation emanates and extends from the coasts of both Parties, the relationship of both coasts to the area of delimitation must be the starting-point for considering the equitableness of the criteria for the delimitation of the maritime area between them. Malta contends that the opposite relationship between the two coasts is the only factor that ought to be considered in this context. Thereby Malta completely neglects two facts:

1. Malta's coastal front which faces the area of delimitation, as I have said earlier, is much shorter than the Libyan coastal front which faces the same area; in fact, its coastal front would, if measured (among the various possible ways of measuring relevant coasts) by the length of the two southward-facing façades of the islands of Malta and Gozo, then be ten times shorter than that of Libya.
2. Malta's small insular territory provides only a restricted basis of a natural prolongation into the area of delimitation.

Malta is of the view that between opposite coasts, whatever their length, equidistance from both coasts is the only equitable criterion in delimiting the area of delimitation between them. Malta misinterprets for this purpose the well-known statement of the Court in the *North Sea Continental Shelf* cases where the Court had expressed the opinion that in the case of opposite States where the prolongations of both States meet or overlap, they could only be delimited by means of a median line and that, in the absence or after elimination of disproportionally distorting effects produced by islets, rocks or minor coastal projections, such a median line effects an equal division of the particular area involved (*I.C.J. Reports 1969*, p. 36, para. 57).

It can be safely assumed that the Court when expressing this opinion had coasts of comparative length in mind and certainly not the situation of a small island facing an extensive continental coast. For, in the latter case, an equidistance line between the island and the continental coast is for most of its length not in fact the true median line nor does it lead to that equal division of the area between them which was the very basis of the Court's recognition of the equitableness of the true median line between opposite coasts. It must be noted that the Court emphasized the need to eliminate disproportionally distorting effects caused in such geographical situations by the presence of islets, rocks and minor coastal projections. From this it can only be inferred that the Court

would have viewed the disproportionally distorting effect caused by the application of the equidistance method between two coastlines of very different lengths as no less requiring elimination. In the continental shelf arbitration between France and the United Kingdom, the Court of Arbitration gave the same reading to the statement of the Court in the *North Sea Continental Shelf* cases, qualifying it with the following considerations:

> "Between opposite States . . . a median line boundary will in *normal circumstances* leave broadly equal areas of continental shelf to each State and constitute a delimitation in accordance with equitable principles. It follows that where the coastlines of two opposite States are themselves *approximately equal* in their relation to the continental shelf not only should the boundary in *normal circumstances* be the median line but the areas of shelf left to each Party on either side of the median line should be broadly equal or at least broadly comparable." (Judgment, para. 182; emphasis added.)

It is important to observe that this dictum refers with particular emphasis to "normal circumstances" and to cases of "approximately equal" opposite coasts. In cases where there is a continuous uninterrupted continental shelf area between coasts of comparable length and configuration it is certainly plausible to come to the conclusion that the two prolongations meet and overlap to the same extent and that consequently the median line is the most equitable method of delimitation in such cases, absent other compelling circumstances. There are, however, many cases where the geographical situation is quite different and the situation between Libya and Malta is certainly one of them. The geographical circumstances and the reasons which justified the prevalence of the median line between opposite coasts in the opinion of the judges are not present here. It is difficult to perceive how the natural prolongations from coasts of such difference in length could possibly be regarded as meeting and overlapping with comparable or even equal extent so that the median line would offer the obvious and equitable solution.

Thus, I fail to see how Malta could find support in the jurisprudence for its untenable thesis that between opposite coasts the median or equidistance line is the equitable boundary even where these coasts are not comparable in length.

In view of the special characteristics of the geographical situation in the present case, which is totally different from earlier cases, we are confronted with the problem whether the concept of natural prolongation — apart from its geological or geomorphological criteria — may also provide us with equitable criteria derived from the geographical setting of this case. It is in harmony with the jurisprudence of this Court — and not disputed between the Parties — that the identification of the natural prolongation of the territories of both Parties must start from their respective coasts (*Tunisia/Libya* continental shelf case, *I.C.J. Reports 1982*, p. 61, para. 74).

The Parties, however, hold totally different, even divergent, views as to what constitutes geographically the natural prolongation or extension of the territory of the Parties in the area of delimitation. Malta claims that the only relevant factor which determines the outward reach of each Party's natural prolongation is proximity to the nearest basepoints of both respective coasts. This attitude is somehow inconsistent with Malta's thesis put forward in the context of the argument concerning the relevance of economic and security considerations. There Malta insists that the list of relevant factors should not be restricted and that no circumstance should be excluded *in limine*. Why should then the difference in the lengths of the coasts, which is a particularly striking geographical feature in the present case, be totally irrelevant?

Libya is of the opinion that the dimensions of the coastal front which faces the area of delimitation cannot be disregarded in determining the geographical extent of the natural prolongation of the territory of each Party into the area of delimitation.

Malta's thesis, although put forward in many variations and in different contexts, essentially rests on only one argument. It rests on the theoretical and unsupported assumption that the natural prolongation of the territory of an island extends radially with an *equal reach* into the area of delimitation as far as any natural prolongation from an opposite continental coast extends into the same area.

This argument, however, is in substance — I have already said it several times — nothing other than a claim for an equidistance boundary reasserted again. It does not explain or prove why the natural prolongation from coasts of different length must have necessarily the same seaward reach and why such an assumption is necessarily equitable, either *in abstracto* or under the particular circumstances of the case. Nor does it explain why it is equitable to disregard the smallness of Malta and the extraordinary difference in length between the coastal fronts of Malta and of Libya which face the area of delimitation.

Malta has, in its pleadings, tried to draw support for its thesis from the principle of equality of States but, as my dear friend and colleague, Professor Briggs, has explained, it misconceives the legal content of that principle. Equality of States means equality before the law — or expressed more clearly — equal application of the principles and rules of international law to all States whether big or small, whether continental or insular. But this principle does not guarantee each State an equal share of maritime areas where the equal application of the principles of maritime delimitation to the geography of the case does not accord an equally large share to each of the States concerned. I need only refer to the well-known statement of this Court in the *North Sea Continental Shelf* cases where the Court emphasized that there could never be any question of refashioning nature or of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline (*I.C.J. Reports 1969*, p. 49, para. 91).

In Malta's oral argument, counsel for Malta had said "the legal value of equality is represented by the equal seaward reach of equally significant opposite coasts of the States concerned" (**III**, p. 456). The equation "legal equality" equals "equal significance of coasts" equals "equal seaward reach of opposite coasts" sounds well, but the legal reason why each coast must have "equal reach" is still missing. The legal framework of continental shelf delimitation is based on the rule of applying equitable principles not on equal reach of coasts, or — what is the same — on a rule of equidistance. Counsel for Malta has even gone so far as to assert that "the boundary which accords with equitable principles and legal policy always aims, however approximately, at an equal attribution of shelf areas to continental States" (**III**, p. 462). That is tantamount to aclaim for a distribution of the continental shelf by equal shares, divorced from geographical reality.

I need not take issue here with Malta's theory of the radial projection of the natural prolongation of the Maltese islands into the surrounding sea because it is not relevant in the present context. Irrespective of what Malta may understand by the term radial projection, the direction of a coastal State's natural prolongation is determined by the geographical relationship between the coastal fronts of the States concerned towards the area of delimitation. I have already identified the coastal fronts which are, in the present case, relevant for the deli-

mitation of the continental shelf between the Parties and the area of delimitation into which they extend.

It is Libya's position that the geographical relationship of the coasts of the Parties to the area of delimitation provides geographical criteria for the determination of how far into the maritime area lying between both coasts the natural prolongation of the territory of one or the other Party can be considered to extend. Libya has never denied that Malta as an island has an entitlement to continental shelf rights on the basis of its coast just as does any other coastal State. But it does not follow therefrom that the natural prolongation of an island's territory — which is the indispensable physical basis of its claims — must have the same expanse as the natural prolongation of a continental State having a much more extensive coastline.

This is not at variance with the principle of equal application of the law but is, rather, a consequence of the reduced dimension of the territory and the coasts of a small island. The small size of the Maltese islands and the consequential smallness of Malta's coastal front in comparison to that of Libya distinguish clearly the geographical situation in this case from other relationships between opposite coasts. The difference in size and coastal lengths is so obvious that these facts must find expression in the criteria for the delimitation between the Parties if the requirement of applying equitable principles is to be observed. Contrary to what Malta tries to deny, differences in the lengths of the coastal fronts which face the area of delimitation, as well as the size of islands, have found recognition in the jurisprudence of this Court as well as in State practice as relevant criteria for an equitable delimitation.

Mr. President, I shall now first deal with the criterion of the lengths of coasts. In the *North Sea Continental Shelf* cases, the Court considered it a requirement for delimitation under equitable principles that a reasonable degree of proportionality ought to be brought about between the extent of the continental shelf areas appertaining to each of the Parties and the lengths of their respective coasts measured in the general direction of the coastline (*I.C.J. Reports 1969*, p. 52, para. 98). In the *Tunisia/Libya* continental shelf case, the Court emphasized the importance of this requirement by considering such proportionality as indeed required by the fundamental principle of ensuring an equitable delimitation (*I.C.J. Reports 1982*, p. 296, para. 103).

It is true that in both cases the Court had applied proportionality between coastal fronts of the parties and the submarine areas attributed to each of them as an *object* to be achieved in the process of delimitation, and not as *a method* for dividing up the area of delimitation between the parties. But this application of the criterion of proportionality does in no way diminish the importance of the difference in coastal lengths and does not rule out the relevance of this fact for the method of delimitation. Rather, it underlines the relevance of the lengths of the respective coastlines of the parties to the process of delimitation. In particular, if there is a marked difference in the lengths of the coasts abutting the area of delimitation which would have a grossly disproportionate effect in the attribution of areas by the equidistance method, this factor must find corresponding expression in the method, as well as in the result, of the delimitation process. Otherwise, an equitable result could not be achieved.

Malta accuses Libya of misusing the Court's proportionality test by putting forward a claim to continental shelf areas on the basis of coastal length. This accusation is a distortion of Libya's argument: Libya does not use proportionality as a legal basis for a claim to a proportionate area of shelf — which may amount to a claim for an equitable share rejected by the Court in 1969. Libya's proposition is rather to emphasize the relevance of the difference in coastal

lengths and to have this difference adequately reflected in the methods of delimitation. Under this perspective, the concept of proportionality may also point to delimitation criteria which are appropriate under the geographical circumstances of the case in order to reach a result which meets the requirement of proportionality. In the *Tunisia/Libya* continental shelf case, the Court emphasized that the equitableness of a principle of delimitation must be assessed in the light of its usefulness for the purpose of reaching an equitable result and that it may acquire this quality by reference to the equitableness of the solution (*I.C.J. Reports 1982*, p. 59, para. 70). So there is nothing wrong in using a criterion which is indicated by the need to reach a result which has to pass the test of proportionality and which assists in reaching an equitable result. The concept of proportionality in its wider sense can at least provide appropriate correctives to the established geometrical methods of delimitation. Libya has tried to deduce such criteria or correctives from the concept of proportionality because that concept is indeed inherent in the equal application of the law to unequal conditions, and I would like to refer in this respect to the proposals advanced by Libya under this approach. I shall come back to this point later when the oral argument of Libya will deal with the concept of proportionality.

Mr. President, Libya's approach is, in my view, consistent with the approach taken by this Court to the problems of maritime delimitation. I would like to refer in this respect to the Judgment of the Chamber of this Court in the *Gulf of Maine* case where the Chamber was faced, among others, also with the problem of coasts having different lengths when it had to delimit the Gulf of Maine areas between Canada and the United States. When the Chamber examined the various criteria that might lead to the appropriate method of delimitation in view of these and other special characteristics of the area of delimitation, the Chamber mentioned among the so-called corrective or auxiliary criteria in particular that:

> "a fair measure of weight should be given to a by no means negligible difference within the delimitation area between the lengths of the respective coastlines of the countries concerned" (*I.C.J. Reports 1984*, p. 328, para. 196).

Later in its Judgment the Chamber stated the following:

> "the Chamber has recognized in principle the equitable character of the criterion whereby appropriate consequences may be deduced from any inequalities in the lengths of the two States' respective coastlines abutting on the delimitation area. As the Chamber has expressly emphasized, it in no way intends to make an autonomous criterion or method of delimitation out of the concept of 'proportionality', even if it be limited to the aspect of lengths of coastline. However [and that is important], this does not preclude the justified use of an auxiliary criterion serving only to meet the need to correct appropriately, on the basis of the inequalities noted, the untoward consequences of applying a different main criterion." (*Ibid.*, p. 335, para. 218.)

As you will know the Chamber applied this criterion in such a way as to shift the dividing line between the maritime zones of the Parties, which was originally drawn as a median line between Massachusetts and Nova Scotia, towards the Nova Scotian coast to such an extent that the distances from both coasts to the new line reflected the difference in lengths of the coastlines of Canada and the United States facing the Gulf of Maine (*ibid.*, p. 336, para. 222). The geography of the *Gulf of Maine* case is certainly different from the geography in

the present case, but the weight which had been given by the Chamber to the difference in the lengths of the coastlines of both Parties, and the method used by the Chamber to reflect appropriately this difference, are certainly instructive and, in principle, applicable beyond the *Gulf of Maine* case. The approach and methods proposed by Libya for the determination of the continental shelf boundary between Malta and Libya are not substantially at variance with the approach and the methods taken by the Chamber in the *Gulf of Maine* case. If a similar approach were taken in the present case, it would mean that the dividing line between the continental shelves of Malta and Libya must lie nearer to Malta to an extent which adequately reflects the difference of the lengths of the coastal fronts of both Parties.

Mr. President, in its oral argument Malta has tried to defend its thesis of the irrelevance of differences in coastal lengths by another argument. The distinguished Agent for Malta as well as his distinguished counsel have repeatedly asserted that a difference in coastal lengths need not be taken into account because the longer coast already by its very length attracts a larger continental shelf than the shorter coast (**III**, pp. 301, 435 and 476). This argument appears plausible on its face, but on a closer look it cannot be sustained. It is neither true in the geographical situation of the present case nor is it true under the principles of geometry. If the relevant coasts are in an opposite relationship, an equidistance line between them tends to neglect or to take only marginal account of a difference in length of both coasts. I shall explain that in more detail:

First, we will show later in our oral argument on proportionality that Malta's equidistance line divides the area which has been defined by Libya as relevant for delimitation on a ratio of about one to one and a half; this is hardly an adequate reflection of the difference in coastal length. If the area of delimitation between the two States would not narrow towards Malta because the presence of Tunisia and the Italian islands limits the area of delimitation to the west, the amount of area attributed by an equidistance line to both Parties would turn out as being nearly equal.

Second, Malta seeks to create the wrong impression that an equidistance boundary would give Libya a much larger share compared to Malta. It does so by the construction of a highly artificial area of delimitation — the trapezium. The trapezium is depicted in Figure 5 of Libya's map folder before you. You will observe that the trapezium, or the area of delimitation, as Malta wants to have it, reaches to the east far beyond the region where the natural prolongations of both Parties could possibly overlap. The trapezium which Malta puts forward as the area relevant for delimitation, is not based on the true relationship between the coasts of the Parties. If I may draw the Court's attention to
(38) Figure 6 of Malta's illustrations for the oral hearing — this is also No. 6 in the Libyan folder — the red circle of 200 nautical miles around Malta makes it obvious that even on the basis of Malta's claim to a natural prolongation of 200 nautical miles to the east — a claim which Libya does not recognize — the area of overlap stops at that line so that the area of delimitation cannot possibly extend beyond.

Third, if I may refer to the map now being placed on the easel (which is
(49) No. 7 in your map folder), it can be shown that the location of equidistance boundary and the attribution of area thereby would not be substantially different if Libya's coast would be reduced to the same length as that of a small island like Malta. That is to say if Libya were itself a small island. This demonstrates plainly that, contrary to Malta's assertion, the greater length of Libya's coast does not materially affect the amount of area attributed to Libya's coast. The

(49) map illustrates this by superimposing Malta on Libya's coast and constructing an equidistance boundary between them. The black line represents the equidistance boundary as claimed by Malta, and the red line represents the hypothetical boundary between the two small islands.

Fourth, if one were to construct a geometrical model which reflected the situation between Libya and Malta more correctly, it would turn out that the amount of area attributed to both coasts by an equidistance boundary would not substantially differ whether or not both coasts were of equal length. Diagram A (16) of the Libyan Counter-Memorial illustrated this situation. This diagram is being placed on the easel and appears as No. 8 in your folder. It shows the median line between the two opposite coasts of the same length on both sides of the area of delimitation, and in comparison thereto it shows the equidistance line between two coasts where the one coast is reduced to a fifth of its original length or even to a mere point. The attribution of area by these lines shows only marginal difference.

All this illustrates quite clearly that the equidistance method is not capable of taking adequate account of a difference in coastal lengths and that in particular, it is not true that in an opposite relationship the longer coast by the mere fact of its length attracts substantially more area than the smaller coast.

Once it is recognized that the dividing line between the natural prolongations or extensions of two coastal fronts must reflect the difference in their lengths and that the natural prolongation of the much shorter coast cannot have the same seaward extent as the natural prolongation of the much longer coast into the area of delimitation between them, equitable principles will determine the dividing line between them in geographical terms. It is therefore possible — even if there were no such clear geophysical division between the two shelves as fortunately is the situation in the present case — to determine the dividing line between the respective natural prolongations of the Parties by geographical criteria. The criteria and methods which will have to be applied must be such as to reflect adequately and equitably the difference in the lengths of the respective coastal fronts of the Parties which abut on the area of delimitation. They must effect a division of the area between the Parties on a ratio which corresponds to the difference in length of the two coastal fronts of the Parties. There are various methods available to give expression to the difference in coastal lengths; the Judgment of the Chamber in the *Gulf of Maine* case has indicated one of them. The selection of the appropriate method largely depends on the configuration of the area of delimitation and on an evaluation of the effect a particular method would have on the attribution of area to the one or to the other Party. That is not — I must again emphasize — is not a partition by equitable shares. It is not using proportionality as a source of right, but rather a selection of the appropriate criteria for reaching the required equitable result. In the *Tunisia/Libya* continental shelf case the Court had clearly stated that the equitable principles for delimitation "have to be selected according to their appropriateness for reaching an equitable result" (*I.C.J. Reports 1982*, p. 59, para. 70). So, it is well in harmony with the Court's jurisprudence to select criteria and methods for delimitation in view of their appropriateness to satisfy the test of proportionality between coastal lengths and the attribution of areas.

Mr. President, at this stage of Libya's oral argument I do not intend to enter into a selection of methods and calculations. It may suffice to say that the extraordinary difference in length of the coasts of the Parties which abut the area relevant for delimitation must express itself geographically in a dividing line between the natural prolongations of the Parties which lies much nearer to

Malta on a scale corresponding to that extraordinary difference in coastal length. A dividing line which would be effected by the various boundary proposals that have been made by Libya accords with the high ratio of difference in the length of both coastal fronts in an adequate way.

Malta has complained that such a division of the submarine area between the Parties would be a massive encroachment on Malta's continental shelf. Distinguished counsel for Malta, while admitting that the jurisprudence had made correctives to the median line where appropriate, insists that such "adjustments" to the equidistance line could only be of a "modest scale" and must remain within the limits of the "approximate equality" between the areas so divided (**III**, pp. 457-458). I do not think that the jurisprudence could be interpreted so narrowly. In particular, the Court in the *North Sea Continental Shelf* cases was well aware that its proportionality requirement would necessarily lead to a major departure from, if not a total abandonment of, the equidistance method in that case. In fact, in the negotiations which followed the Court's Judgment, the area that was accorded to the Federal Republic of Germany amounted to approximately 150 per cent of the area which would otherwise have been attributed to the Federal Republic by the application of the equidistance method. The selection of the methods of delimitation and the degree of their modification for the purpose of reaching an equitable result depends rather on the degree of the disproportionate effect of the geographical factors involved. There is no rule that the necessary corrections to remedy the disproportion must be kept to within a close range to the equidistance boundary.

I shall now turn to the second characteristic element of the geographical situation in the present case. This is the small size of the insular territory of Malta which constitutes the basis of the extension of Malta's coastal front into the area of delimitation. Of course, the small size of Maltese islands necessarily is reflected in their small coastal front as compared with the opposite Libyan coastal front. I have already noted the relevance of this extraordinary difference in arriving at an equitable delimitation which takes into account the disproportionate effect of this difference in coastal length. I do not want to reiterate this, but I would like to emphasize again that the small size of the Maltese islands and the consequential small length of their coastlines are both basic geographical facts. These facts must in the geographical circumstances of the present case find expression in a corresponding reduced outward reach of Malta's natural prolongation into the area of shelves around the islands. In the special, geographical situation in which Malta finds itself, the size of its territory, and the correspondingly small coastal fronts vis-à-vis the surrounding continental coasts, will necessarily raise the question whether such a small territorial basis can produce a natural prolongation into the surrounding sea of the same geographical reach and extent as the much larger continental coasts. I do not want to imply thereby that islands have a more limited extent of continental shelf by the very fact of their insular character, but in the special geographical situation of this case the size of Malta's territory will unavoidably raise the question whether such a small territory basis can produce a natural prolongation to the same extent as the larger continental territories enclosing this narrow sea.

In cases where a division between the natural prolongations emanating from two opposite coasts cannot be identified by the physical structure of the sea-bed — as it can be in the present case — the determination of the dividing line requires an evaluation of the weight or reach of the two natural prolongations on the basis of equitable criteria. Malta contends that Malta's natural prolongation, irrespective of Malta's size, must have the same outward reach as any other of the surrounding continental coasts, using for this purpose the principle

of equality of States as an argument. This thesis divorces itself completely from the legal concept of the continental shelf which is based on the physical facts of geology, geomorphology and geography. It overlooks that it is not statehood as an abstraction, but landmass and coast as physical facts which generate continental shelf rights. An equal application of the principle and rules of continental shelf delimitation cannot close its eyes to the facts of geography.

Libya does not deny that an island may have, in principle, continental shelf rights to the outer limit of the geophysical prolongation of its territory provided there are no opposite coasts whose natural prolongation limits the reach of that island's natural prolongation. But where there is an opposite coast, it will have to be determined by the application of equitable criteria what part of the area of delimitation between the island and the opposite coast may, in view of the size and location of the island, be considered as being the natural prolongation of the island and of the opposite coast, respectively. How far the submarine areas around an island can equitably be considered its natural prolongation or coastal front extension cannot be expressed in abstract mathematical formulae. That will depend rather on the special geographical situation in each case. In a narrow sea, where the natural prolongations extending from the island as well as from the surrounding coasts necessarily limit the seaward extension which each of them would otherwise be entitled to, the size of the island's territory and the amount of continental shelf area that it attracts as its natural prolongation will necessarily become a relevant and equitable criterion in determining the dividing line between the natural prolongations emanating from the island and the surrounding coasts, respectively.

Without accepting Malta's theory of the radial projection of an island's natural prolongation from every basepoint of its coast, it follows from geography that within an enclosed sea an island has coastal fronts vis-à-vis all the surrounding States. If it is very small, it will attract a continental shelf area many times its size if it is accorded in terms of distance, an extension equal to that accorded to the surrounding opposite coasts. In fact, on the basis of the data provided by Malta in its Memorial (I) (paras. 25 and 39), the equidistance boundary claimed by Malta would attribute Malta a continental shelf area which would be nearly 200 times larger than the area of its territory (in exact figures: 316:60,000 km^2). It is not the island's size as such which prohibits the recognition of its natural prolongation up to the median line as equitable, but rather that such a recognition would, under the special circumstances of the present case, accord the island an amount of continental shelf area disproportionate to its size compared to the continental shelf areas left to the surrounding States.

The relevance of the size and location of an island in certain geographical situations has been recognized by the jurisprudence as well as by State practice in maritime zone delimitations, mostly under the term of the so-called weight of islands in the construction of maritime boundaries. The disproportionate effect of small-size islands on the construction of continental shelf boundaries has been the decisive element common to all these cases irrespective of how much the concrete geographical situations may have varied from case to case. Two groups of cases may be distinguished:

1. There are those cases where small islands are geographically connected with the coast of the larger mainland; but because they are situated at quite a distance off the coast, they may influence disproportionately the location or direction of the boundary line vis-à-vis an opposite or adjacent State. In such cases, jurisprudence and State practice have recognized the disproportionate effect of such small islands and have accorded them only partial weight, or

even no weight in constructing the boundary. The Court is well aware of this jurisprudence and State practice and I need not refer to any particular cases. What is important is that jurisprudence and State practice have, in principle, recognized the relevance of such disproportionate effects and the necessity for their elimination in order to reach an equitable result. This group of cases, however, is not comparable to the case of Malta because Malta is neither politically nor geographically connected with any mainland coastal front. I have mentioned this group of cases only as evidence of the recognition of the relevance of the possible distorting effect of small-size islands on the geographical reach of a coastal State's natural prolongation, if it were determined on the basis of equidistance.

2. The second group of cases, which are more comparable to Malta's situation, are those where small-size islands, either geographically unconnected with the coastal front of their home State or politically independent, face a much larger foreign coast. In such cases, the question has arisen whether such small-size islands can claim the same extent of their natural prolongation vis-à-vis the opposite coast. The jurisprudence had to deal with just such a problem in the continental shelf arbitration between France and the United Kingdom. In that case, the Court of Arbitration accorded to the British Channel Islands, in view of the narrowness of the area of delimitation, only a 12-mile belt of continental shelf within the French continental shelf area. The distinguished counsel for Malta has disputed the relevance of this decision for the present case because the Channel Islands were dependencies of the United Kingdom, not island States. He asserts that the Court of Arbitration might have decided otherwise if the Channel Islands had been considered a sovereign State. But this is mere speculation. The Court of Arbitration in its judgment had to dispose of the argument of the political status of these islands because the United Kingdom had argued it as a relevant factor. The Court discarded the United Kingdom's argument *in limine* by stating that the Channel Islands lacked sufficient independence to claim a continental shelf in their own right. There is, however, no indication in the Court's reasoning whether its decision on the delimitation would have been influenced by a different political status of these islands (Decision, paras. 184-186).

In State practice, continental shelf or maritime-zone boundary agreements can be found where small-size islands have no or only a small belt of continental shelf beyond their territorial sea. Libya has referred to such cases in its detailed review of delimitation agreements in Volume II annexed to its Counter-Memorial. My good friend and colleague, Professor Colliard, will deal with this aspect of State practice later in Libya's oral argument.

Malta seeks to negate the relevance of these precedents with the argument that the examples concerned only dependent islands. But it is not the political status of an island, but rather its territory which generates continental shelf rights. In this context, the Maritime Boundary Delimitation Treaty between the Netherlands and Venezuela for the maritime boundary between the self-governing Netherlands Antilles and Venezuela of 30 March 1978 is significant; according to my information this Treaty had been negotiated by the Netherlands Antilles themselves, only the formal conclusion of the Treaty involved the Netherlands, which retained the competence to act in external matters on behalf of the Antilles. The agreed boundary reduced the area attributed to these islands by approximately half of the area which the Netherlands Antilles would otherwise have been attributed under the application of the equidistance method.

Thus, it cannot be denied that the small size of an island may, in certain geo-

graphical situations, become a relevant criterion for putting a limit to the island's natural prolongation in order to reach an equitable result. In Malta's case this fact reinforces the validity and equitableness of Libya's identification of the outer limits of Malta's natural prolongation as lying within the boundaries which have been referred to as the Rift Zone.

Before concluding this part of my presentation, I must deal with Malta's contention that the boundary proposed by Libya, which is based simultaneously upon the geological separation of the continental shelves of the Parties within the Rift Zone and on the geographical fact of the difference in coastal lengths, is derived from two distinct conceptions that lack a common basis. I have already shown earlier that it would be a misconception to imply that there is no common basis between geophysical facts on the one hand and geographical facts on the other. Their common basis is the concept of natural prolongation which is based simultaneously on the geophysical and geographical connection between the territory of the coastal State and the submarine areas adjacent to its coast. Geology, geomorphology and geography, all relate to the same set of physical facts that make up the natural prolongation of a coastal State's territory into the sea. It would be fundamentally wrong to treat those different aspects of scientific findings as if they were isolated in separate compartments. Therefore, for the purpose of delimitation, geophysical and geographical facts may both become relevant if by applying equitable criteria they assist in identifying the division — the equitable division — between the natural prolongations of the territory of both Parties. In the delimitation process, all the relevant facts and circumstances must be identified, examined, assessed and weighed in order to reach an equitable result. It can neither be anticipated nor is it necessary that each of these factors lead to exactly the same line of demarcation between the natural prolongation of both Parties. If they do not, the question will arise how much weight they must be given in relation to each other within the general relationship of the Parties in order to reach an equitable solution. In the present case, geology, geomorphology and geography all provide equitable criteria which leads to the identification of a demarcation line between the two prolongations of both Parties within the range of the boundary proposals made by Libya.

III

I shall now turn to the third part of my presentation which draws some conclusions from the interpretation and application of the concept of natural prolongation.

In the first two parts of my presentation, I have examined the relevance of the concept of natural prolongation as basis of continental shelf rights and the criteria that may be derived therefrom for the delimitation of the continental shelf between the Parties. The identification and application of the geophysical and geographical criteria derived from the concept of natural prolongation should not be understood to mean that these criteria are necessarily exclusive. The fundamental norm of continental shelf delimitation requires that not only these but any other supplementary equitable criteria, which have to be considered relevant in the circumstances of the case, must be examined and weighed in order to attain an equitable result. The role and application of equitable principles, criteria and methods in the present case will be treated in greater depth later in Libya's oral argument. At this stage, it may suffice to state that there are no other circumstances in the case, which would contradict Libya's identification of what constitutes the demarcation line between the natural prolongations of the Parties on the basis of geology, geomorphology and geography.

Thus, the geophysical and geographical criteria as they have been deduced from the concept of natural prolongation and applied to the facts of the present case can safely be taken as the determinant criteria for the delimitation of the continental shelf boundary between the Parties.

The importance of the identification of the natural prolongations of the territories of both Parties into the area of delimitation has heretofore been underlined by this Court in the *North Sea Continental Shelf* cases, where the Court considered it as one of the primary principles of continental shelf delimitation that the delimitation is to be effected

> "in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other" (*I.C.J. Reports 1969*, p. 53, para. 101).

In this context, it is necessary to clarify the meaning of the principle of non-encroachment because Malta, in its pleadings, has interpreted this principle as an argument for the use of the equidistance method for the identification of the demarcation line between the natural prolongations between opposite coasts. Malta wants to qualify any boundary which is nearer to Malta than the equidistance line as being an undue encroachment on Malta's entitlement to the continental shelf off its coast. This proposition in effect does nothing more than to define the seaward reach of Malta's natural prolongation by the equidistance line. Such reasoning proves nothing; it just uses another catchword for the claim to an equidistance boundary without providing any further valid ground why Malta's natural prolongation has to reach to that line. That is not the principle of non-encroachment as it had been understood by the Court in the *North Sea Continental Shelf* cases. There the Court wanted to ensure that the boundary should follow as closely as possible the geographical limits of each State's natural prolongation where it could be identified. Thus, the proper application of the principle of non-encroachment presupposes the prior identification of the respective natural prolongations of the Parties, but provides no criteria for their identification. It is only after the geological and geographical extent of the natural prolongation of the territories of the Parties and the areas where they meet and overlap have been identified, that the principle of non-encroachment comes into play for determining the boundary line and for providing a guideline for dealing with overlaps.

Libya is of the opinion that the concept of natural prolongation, if interpreted in harmony with the jurisprudence of this Court, is capable, where the circumstances of the case so permit, of defining correctly the geophysical and geographical basis of a coastal State's continental shelf and, thus, to provide criteria for its delimitation vis-à-vis neighbouring States. Malta has tried not only to replace the established concept of natural prolongation by the criterion of mere distance from the coast but also to question the role of the concept of natural prolongation in maritime zone delimitation. It seems that Malta's assumption of a diminishing role of the concept of natural prolongation rests not only on the false premise of an absorption of the institution of the continental shelf by the 200-mile zone concept, but also on a too narrow understanding of the concept of natural prolongation as a mere geological phenomenon.

Upon these considerations, I fail to see any reason why the concept of natural prolongation should be abandoned. It is not inconsistent with the principles and rules of maritime zone delimitation and has its proper role to play in continental shelf delimitation. In any event, in the present case the concept of natural pro-

longation assists in selecting equitable criteria and methods for determining the continental shelf boundary between the Parties.

Mr. President, in concluding, I would like to present a summary of the main points I have tried to develop in my presentation:

1. The concept of natural prolongation is an integral element of the legal framework governing the delimitation of the continental shelf. It is firmly grounded in the jurisprudence of this Court and in State practice. There is no reason to abandon this concept because of new developments in the law of the sea.

2. The concept of natural prolongation expresses and defines the geophysical and geographical link between the territory of the State and the continental shelf area extending from its coast. As such it is the basis of the coastal State's legal title to its continental shelf and may provide geophysical and geographical criteria for the delimitation of a State's continental shelf vis-à-vis other States.

3. The criterion of distance from the coast does not constitute the basis of the continental shelf rights of the Parties in the present case. Therefore, mere distance from the coast cannot be considered the sole or primary criterion for determining the better right of one or the other Party to continental shelf areas.

4. Libya acts in full harmony with the jurisprudence of this Court when it puts the geophysical characteristics of the Rift Zone in evidence before the Court as clear proof of the separation of the natural prolongations of Libya and Malta along this zone.

5. As the coasts are the starting-line for each Party's extension of its continental shelf into the maritime areas between them, their extraordinary difference in length is a relevant criterion in determining an equitable dividing line between their respective natural prolongations.

6. Malta's thesis that because of the opposite relationship of the relevant coasts of the Parties their extraordinary difference in length should not have any relevance for their delimitation is contrary to the jurisprudence of this Court and State practice; nor does such a thesis lead to an equitable result in the geographical circumstances of this case.

7. Finally, Malta's thesis that between opposite coasts each Party is entitled to an equal reach of its natural prolongation into the maritime area between them is merely a restatement of the alleged priority of the equidistance method — a claim constantly rejected by this Court.

Mr. President, distinguished Judges, this concludes my presentation for today. I thank you for the patience with which you have followed my arguments. May I respectfully ask you, Mr. President, to give the floor to my dear friend and colleague, Professor Quéneudec.

The Court adjourned from 4.30 p.m. to 4.45 p.m.

PLAIDOIRIE DE M. QUÉNEUDEC

CONSEIL DU GOUVERNEMENT DE LA JAMAHIRIYA ARABE LIBYENNE

M. QUÉNEUDEC: Monsieur le Président, Messieurs les juges, se présenter comme conseil d'un Etat devant la Cour internationale de Justice est assurément un grand honneur. Je tiens à vous le dire très simplement, non pas pour satisfaire au rituel de la courtoisie judiciaire, mais parce que cela correspond effectivement à un sentiment réellement éprouvé.

Monsieur le Président, il m'appartient d'exposer à la Cour l'argumentation de la Libye en ce qui concerne la place occupée et le rôle éventuellement joué par le facteur de distance dans le droit international applicable à la notion de plateau continental.

C'est dire que mon exposé se situe dans le droit fil de l'intervention précédente de M. Jaenicke, dont il constitue en quelque sorte le complément — pour ne pas dire le «prolongement naturel».

Dans la discussion générale des règles de droit international relatives au plateau continental, nous sommes conduits à examiner l'élément de distance depuis la côte, dans la mesure où l'autre Partie à l'instance *lui* a accordé une importance qui nous paraît à la fois hors de proportion avec son influence réelle sur la définition juridique du plateau continental et, en tout état de cause, sans aucun rapport avec la présente affaire de délimitation.

Il n'est évidemment pas question de répéter ici ce que M. Briggs a déjà dit à ce sujet l'autre jour en examinant le principe d'égalité. La perspective dans laquelle j'entends me placer est sensiblement différente.

Dans les différentes pièces écrites comme dans les plaidoiries orales présentées par la République de Malte, une place non négligeable a été réservée à ce qui y est présenté tantôt comme un «principe de distance», tantôt comme un «critère de distance».

Quelle que soit l'appellation retenue, Malte a manifestement semblé considérer que l'on se trouvait en présence d'un authentique principe ou d'une véritable règle du droit international général. Et la Partie adverse s'est efforcée de démontrer que ce prétendu principe confirmait la validité de la ligne médiane qu'elle défend comme l'unique solution possible au problème de délimitation faisant l'objet de la présente instance.

Le contre-mémoire maltais est même venu demander expressément à la Cour de «reconnaître ce principe comme l'élément déterminant de la délimitation dans la présente affaire» (II, CMM, p. 76, par. 156).

Les écritures présentées par Malte, comme les plaidoiries de ses conseils, démontrent à l'évidence que nos adversaires souhaiteraient ardemment voir ce soi-disant «principe de distance» agir sur la Jamahiriya arabe libyenne comme le chant des sirènes sur Ulysse.

Au risque de décevoir nos éminents contradicteurs, nous n'entendons cependant pas imiter le légendaire roi d'Ithaque. Il ne nous paraît pas nécessaire de nous remplir les oreilles de cire pour échapper aux enchantements qu'ils ont cru pouvoir déceler dans le chœur des sirènes chantant la mélodie de la distance. Le pouvoir de séduction du refrain de la distance n'existe, en effet, que dans l'esprit de nos adversaires.

C'est ce que nous nous proposons de démontrer en attirant respectueusement

l'attention de la Cour sur le caractère plus que contestable de la position adoptée par la Partie adverse.

Cette position est contestable, tout d'abord, parce qu'elle repose sur une interprétation erronée, selon nous, de la notion de plateau continental dans le droit de la mer.

Cette position nous semble, en outre, indéfendable parce qu'elle ne tient aucun compte des particularités du présent litige et de la spécificité qui caractérise tout problème de délimitation, lequel doit toujours, selon la Cour, «être examiné et résolu en lui-même en fonction des circonstances qui lui sont propres» (affaire du *Plateau continental (Tunisie/Jamahiriya arabe libyenne), arrêt, C.I.J. Recueil 1982*, p. 92, par. 132).

Nous allons donc nous attacher essentiellement à montrer, d'une part, que le «principe de distance» n'est pas une règle de droit positif en matière de plateau continental et, d'autre part, que le recours à un critère de distance n'est pas approprié pour le règlement de la présente affaire de délimitation.

Ce sont là deux propositions que nous souhaitons développer et que nous allons examiner successivement.

I. Première proposition: Le «principe de distance» n'est pas une règle de droit positif en matière de plateau continental

Le nouveau droit international de la mer, tel qu'il résulte non seulement des travaux de la troisième conférence des Nations Unies mais aussi de la pratique que cette conférence a engendrée, est incontestablement caractérisé par un accroissement notable des compétences des Etats côtiers sur des zones maritimes de plus en plus étendues. En particulier, cette conférence et cette pratique ont entraîné l'apparition de ce qu'on a pu appeler la «règle des 200 milles».

Se fondant sur cette donnée nouvelle, la République de Malte s'est efforcée de développer l'idée selon laquelle la notion juridique de plateau continental était désormais définie en fonction de la «règle des 200 milles», c'est-à-dire principalement selon un critère de distance.

Elle l'a fait en tentant d'établir un lien étroit entre les concepts de zone économique exclusive et de plateau continental, n'hésitant pas à réaliser une assimilation abusive entre ces deux concepts.

Une telle assimilation est faite évidemment par la Partie adverse dans le but unique de faire ressortir et de mettre en valeur un artificiel «principe de distance».

Malte considère, en effet, que le critère de distance, qui est mentionné dans l'article 76 de la convention des Nations Unies sur le droit de la mer, est désormais le principe essentiel à partir duquel et autour duquel s'organise la définition du plateau continental et que c'est ce principe qui sert aujourd'hui de fondement principal aux droits de l'Etat côtier sur cette zone sous-marine.

Cette façon de voir ne nous paraît cependant pas tout à fait conforme à la réalité juridique. Tant s'en faut.

L'utilisation d'un critère de distance dans la nouvelle définition du plateau continental n'a ni le sens ni surtout la portée qu'entend lui conférer la Partie adverse.

De même, l'existence et la consécration de la notion de zone économique exclusive dans le droit international contemporain n'exercent pas, sur le concept même de plateau continental, l'influence qu'on a voulu leur prêter de l'autre côté de la barre.

Nous allons reprendre chacun de ces deux points.

A

Monsieur le Président, envisageons, en premier lieu, le sens et la portée que peut avoir l'utilisation d'un critère de distance dans la nouvelle définition du plateau continental, donnée par l'article 76 de la convention de 1982 sur le droit de la mer.

La signification de cet article n'est nullement celle que Malte a voulu y voir.

Sans doute, cet article marque-t-il l'abandon des éléments sur lesquels reposait la définition donnée par la convention de Genève de 1958 sur le plateau continental. En particulier, il n'est plus fait expressément référence, dans la définition de 1982, à la notion d'adjacence qui était un aspect essentiel de la définition conventionnelle antérieure. Surtout, la définition donnée dans la nouvelle convention écarte les critères de profondeur et d'exploitabilité, qui avaient été retenus par la convention de 1958.

Cependant, la définition figurant à l'article 76 n'est pas entièrement novatrice. Elle repose en effet sur l'idée de prolongement naturel, qui sous-tend toute la doctrine du plateau continental depuis ses origines.

En définissant le plateau continental d'un Etat côtier comme «les fonds marins et leur sous-sol au-delà de sa mer territoriale, sur toute l'étendue du prolongement naturel du territoire terrestre de cet Etat», la convention des Nations Unies sur le droit de la mer vient simplement confirmer et consacrer la norme de droit international général qui fixe en ce domaine l'assise des droits de l'Etat côtier et qui a été dégagée par la Cour dans son arrêt de 1969.

Là où l'article 76 innove absolument par rapport aux règles antérieures, c'est en ce qui concerne la fixation de l'étendue des droits de l'Etat côtier, c'est-à-dire la définition de la limite extérieure du plateau continental. Aux anciens critères de profondeur et d'exploitabilité, le nouveau texte tend à substituer, un critère tiré de l'extension de la marge continentale et, dans certaines circonstances, un critère de distance.

Ce second critère repose exclusivement sur la distance à partir de la côte; et la limite extérieure du plateau continental est alors définie de façon forfaitaire par référence uniquement à la distance de 200 milles, mais uniquement lorsque le rebord externe de la marge continentale est situé à moins de 200 milles marins au large.

On ne peut toutefois ne saisir le sens de ce critère des 200 milles que si l'on tient compte des conditions dans lesquelles il a été inséré dans la nouvelle définition.

Historiquement, le critère de distance a été avancé, tant au comité des fonds marins que dans le cadre de la troisième conférence sur le droit de la mer, afin de combattre les incertitudes ou les excès auxquels pouvait conduire l'application du critère d'exploitabilité de la convention de 1958. Il s'agissait de fixer une limite et d'apporter un coup d'arrêt aux prétentions croissantes des Etats côtiers qui, par le biais de ce critère d'exploitabilité, pouvaient étendre presque indéfiniment leur plateau continental en se fondant sur les progrès constants des techniques d'exploitation sous-marine.

Et c'est pourquoi, dans un premier temps, il fut envisagé de définir le plateau continental par référence uniquement à un critère de distance. Cette position est d'ailleurs restée longtemps celle des Etats désireux de limiter strictement l'étendue des zones maritimes sous juridiction nationale, en particulier les Etats africains et les Etats membres du groupe arabe, comme en témoigne une proposition officieuse faite encore en mai 1978 par le groupe arabe, et qui reçut l'appui de la délégation de Malte (doc. NG.6/2, 11 mai 1978).

Pour ces Etats, il s'agissait avant tout d'éviter que le patrimoine commun de

l'humanité ne subisse des amputations du fait d'une trop grande extension des juridictions nationales. La raison d'être de la position adoptée par ces Etats résidait en somme dans leur souci de «maximiser» la zone internationale des fonds marins.

Remarquons en passant qu'il n'est donc pas tout à fait exact de prétendre, comme Malte n'a pas hésité à le faire lors du premier tour des plaidoiries, que le critère de distance ainsi proposé visait essentiellement à corriger les inégalités et à promouvoir une stricte égalité entre les pays riverains de la mer (**III**, p. 387 et 412).

Le but poursuivi et clairement affiché transcendait en réalité la simple recherche d'une égalisation des conditions et était directement en rapport avec les finalités de l'humanité tout entière.

Toutefois, plusieurs autres Etats, estimant que le prolongement naturel sous-marin de leur territoire s'étendait au-delà de la distance de 200 milles, n'entendaient pas renoncer à des droits inhérents qui leur étaient reconnus par le droit international existant.

Et, dans ces conditions, la notion de prolongement naturel fut introduite dans la définition du plateau continental, en plus de la référence au critère de distance, pour préserver ce qui pouvait être considéré comme des droits acquis par un certain nombre d'Etats côtiers. Mais l'extension du plateau continental au-delà de 200 milles, qui en résultait inévitablement, était alors considérée comme présentant un caractère exceptionnel.

Ainsi, dans le premier projet officieux élaboré en avril 1974 au sein du «groupe Evensen» — qui allait jouer par la suite un rôle important dans la réalisation des compromis au sein de la conférence —, il était précisé:

> «Le plateau continental d'un Etat côtier s'étend au-delà de sa mer territoriale jusqu'à une distance de 200 milles marins ou, au-delà de cette distance, sur toute l'étendue du prolongement naturel du territoire terrestre de l'Etat côtier.» (Art. 18, par. 2.)

Selon cette approche, le critère de distance devait donc s'appliquer en premier lieu, la référence à l'étendue du prolongement naturel n'intervenant qu'à titre complémentaire, si le prolongement naturel s'étendait effectivement au-delà de 200 milles.

Cette approche n'est toutefois pas celle qui a prévalu. En effet, à la même époque, devait prendre forme l'idée selon laquelle il convenait de mettre en avant la notion de prolongement naturel pour définir le plateau continental, la référence à la distance de 200 milles passant au second plan. La justification en était que la notion de prolongement naturel avait été dégagée et consacrée par la Cour dans son arrêt de 1969 relatif au *Plateau continental de la mer du Nord* et était une notion admise par le droit international coutumier.

Cette idée fut notamment présentée par le président du Mexique dans l'allocution qu'il prononça le 26 juillet 1974 devant la Conférence des Nations Unies sur le droit de la mer:

> «L'Etat côtier devrait exercer des droits souverains sur le plateau continental jusqu'à la limite extérieure de l'émersion continentale, ou jusqu'à une distance de 200 milles à partir de la côte, étant entendu qu'il serait libre de choisir la formule qui lui convient le mieux.» (*Documents officiels*, vol. I, p. 222.)

Reprise aussitôt par plusieurs Etats, cette proposition devait être explicitée le 29 juillet 1974 par l'Argentine, qui fit valoir que dans la définition du plateau continental le recours à un critère de distance ne pouvait ni ne devait faire pas-

ser au second plan la notion de prolongement naturel; car cette notion était à la base même du concept de plateau continental. Selon la délégation argentine: «Le critère de distance, ou plus exactement la limite des 200 milles, est complémentaire du critère géologique.» Et elle ajoutait:

> «Le critère de distance appliqué à la définition de la limite du plateau continental devra non seulement être considéré comme un critère de rechange, mais également pouvoir se combiner avec d'autres dans les cas où la limite du plateau continental se trouve à moins de 200 milles.» (*Documents officiels*, vol. II, p. 167.)

Et c'est pourquoi, à l'issue de la session de Caracas, la conférence des Nations Unies sur le droit de la mer se trouvait principalement en présence de deux formules possibles pour la définition du plateau continental.

Selon la première formule:

> «Le plateau continental d'un Etat s'étend au-delà de sa mer territoriale, jusqu'à une distance de 200 milles mesurés à partir des lignes de base applicables ou, au-delà de cette distance, sur toute l'étendue du prolongement naturel du territoire terrestre de cet Etat.»

Dans cette formule, la distance était le premier critère, tandis que le prolongement naturel apparaissait presque comme accessoire.

Selon une deuxième formule:

> «Le plateau continental comprend le fond de la mer et le sous-sol des zones sous-marines adjacentes aux territoires de l'Etat mais situées en dehors de la zone de la mer territoriale, jusqu'au bord inférieur externe de la marge continentale qui limite les plaines abyssales et, quand ce bord est situé à une distance inférieure à 200 milles de la côte, jusqu'à cette distance.» (Doc. A/CONF.62/L.8/Rev.1, annexe II, app. I, *Documents officiels*, vol. III, p. 136.)

Dans cette deuxième formule, l'ordre des critères était inversé et le critère de distance devenait un critère secondaire.

C'est cette seconde formule qui devait finir par l'emporter à l'occasion de la troisième session de la conférence en 1975.

Il convient de souligner en effet qu'en revisant son projet initial le groupe Evensen renversa l'ordre de présentation des éléments figurant dans la définition qu'il avait adoptée l'année précédente. Son nouveau projet en date du 6 mai 1975 retenait la définition suivante:

> «Le plateau continental d'un Etat côtier comprend le fond de la mer et le sous-sol des zones sous-marines qui s'étendent au-delà de sa mer territoriale sur toute l'étendue du prolongement naturel du territoire terrestre dudit Etat jusqu'au rebord externe de la marge continentale, ou jusqu'à une distance de 200 milles marins des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale quand la marge continentale ne s'étend pas jusqu'à cette distance.»

Et c'est cette définition qui fut reprise par le président de la Deuxième Commission de la conférence et insérée dans l'article 62 de la deuxième partie du texte unique de négociation du 7 mai 1975 (A/CONF.62/WP.8/Part II, *Documents officiels*, vol. IV, p. 167).

Je dois cependant à la vérité de reconnaître que, quelques mois plus tard,

dans le cadre de discussions officieuses au sein du groupe Evensen, certains proposèrent de revenir sur l'ordre des critères énoncés dans l'article 62 du premier texte de négociation.

Invoquant la logique, on fit valoir qu'il serait peut-être souhaitable d'indiquer en premier lieu le critère des 200 milles. Et l'un des arguments qui fut alors avancé en faveur d'une telle modification consistait à dire que, statistiquement, c'était le critère des 200 milles qui serait appliqué dans le plus grand nombre de cas.

Or, ce même argument a refleuri le 30 novembre dernier dans la plaidoirie de Malte, lorsque son éminent conseil est venu déclarer que la limite de 200 milles correspondait à «la situation la plus fréquente» (**III**, p. 412).

Je suis au regret de dire qu'il s'agit là d'une affirmation non démontrée.

Mon collègue Elihu Lauterpacht se souvient très certainement comme moi des indications qui furent communiquées au groupe Evensen par les services australiens à la fin de l'année 1975, indications d'où il résultait qu'il n'y avait pas une grande différence entre le nombre des Etats ayant une marge continentale s'étendant à plus de 200 milles et le nombre de ceux n'ayant pas une telle marge. Selon les calculs effectués à l'époque par les services australiens, on pouvait dénombrer soixante-sept Etats n'ayant pas de marge continentale au-delà de 200 milles et cinquante-trois Etats disposant d'une marge plus étendue. Soixante-sept contre cinquante-trois, la différence n'était effectivement pas aussi importante qu'on aurait pu le penser.

Quoi qu'il en soit, et sans qu'on puisse véritablement déterminer quel fut l'impact réel de ces chiffres, il n'en demeure pas moins que le texte initial de l'article 62 du texte de négociation fut maintenu en l'état.

Ce qui fait que, sous réserve de quelques modifications mineures, la structure de la définition du plateau continental arrêtée en 1975 est ensuite demeurée inchangée dans les textes de négociation successifs produits par la conférence. Et c'est cette même structure que l'on retrouve aujourd'hui dans l'article 76, paragraphe 1, de la convention.

La genèse de l'actuelle définition du plateau continental tend ainsi à prouver que le prolongement naturel a été reconnu comme le «critère principal», selon la formule employée par la Cour dans son arrêt du 24 février 1982 (*C.I.J. Recueil 1982*, p. 48, par. 47); tandis que le critère de distance a davantage été conçu comme un critère de rechange ne jouant que dans certaines circonstances, c'est-à-dire lorsque le rebord externe de la marge continentale est située à moins de 200 milles.

La Cour n'a d'ailleurs pas dit autre chose dans son arrêt relatif à l'affaire du *Plateau continental (Tunisie/Jamahiriya arabe libyenne)*.

Sans doute a-t-elle ajouté que «dans certaines circonstances la distance à partir de la ligne de base, mesurée à la surface de la mer, fonde le titre de l'Etat côtier» (*C.I.J. Recueil 1982*, p. 48, par. 48); mais la Cour précisait bien qu'il ne s'agissait là que d'une «tendance» en faveur du principe de distance» (*ibid.*, p. 49, par. 48).

Une «tendance», c'est-à-dire une orientation, et certainement pas une règle ou un principe juridique fermement établi et faisant l'objet d'une pratique générale.

On ne doit pas oublier, en effet, que la Cour avait été expressément invitée par le compromis tuniso-libyen à tenir compte des «nouvelles tendances acceptées à la troisième conférence sur le droit de la mer».

Et la Cour avait elle-même fait valoir que cette invitation ne l'autorisait pas «à traiter ces tendances comme représentant nécessairement des principes et règles de droit international» (*C.I.J. Recueil 1982*, p. 47, par. 46).

Et on doit encore ajouter que la Cour insistait, de surcroît, sur le fait que la

disposition de l'article 76, paragraphe 1, ne pourrait jouer que «dans certaines circonstances».

Dès lors, il ne semble pas que l'on puisse déduire des remarques faites par la Cour en 1982 la conséquence que le conseil de Malte a voulu en dégager. «Le principe de distance, nous a dit M. Weil, figure en conséquence parmi les principes et règles du droit international coutumier.» (**III**, p. 363.)

Mais on aurait souhaité qu'il expliquât comment on pouvait parvenir à une pareille conséquence. Il n'y a pas l'ombre d'une démonstration menant à cette conclusion.

En réalité, la partie adverse s'est contentée ici d'extraire de l'arrêt de la Cour deux brèves citations, en les isolant de leur contexte: l'une, dans laquelle la Cour venait dire que ne devait pas être perdue de vue la définition du plateau continental donnée par l'article 76, paragraphe 1; et l'autre, par laquelle la Cour considérait que la zone économique exclusive faisait partie du droit international coutumier.

En mentionnant ces deux observations de la Cour, le conseil de Malte s'est abstenu d'indiquer que la première était faite par la Cour à l'occasion de l'examen des relations entre les paragraphes 1 et 10 de l'article 76, relations sur lesquelles nous reviendrons d'ailleurs plus tard. Quant à la deuxième observation, relative à la zone économique, le conseil de Malte n'a pas davantage rappelé qu'elle se trouvait dans la partie de l'arrêt ou la Cour, examinant les droits et titres historiques de la Tunisie, constatait simplement que ces droits se rattachaient plutôt à la zone économique, mais que la Tunisie ne s'était pas fondée sur cette notion.

La conséquence que Malte a cru pouvoir en tirer nous paraît donc hâtive et hasardeuse.

A nos yeux, la seule conséquence résultant de ces observations ne peut être que celle-ci: il est pour le moins malaisé de voir dans ce qui n'est encore qu'une sorte de *jus emergens* la consécration d'une règle ou d'un critère de distance applicable dans tous les cas.

Qui plus est, Malte n'a pas hésité à affirmer, dans sa réplique, à propos des notions de prolongement naturel et de distance de l'article 76, qu'il s'agit là de «deux règles d'égale valeur», qui reflètent l'état actuel du droit international coutumier (**III**, RM, par. 67).

Notons d'ailleurs au passage qu'un certain flottement caractérise les positions maltaises sur ce point. Dans les plaidoiries orales, en effet, Malte a d'abord paru considérer que ce qu'elle appelle le «principe de distance» l'emportait désormais sur la référence au prolongement naturel. Son conseil n'a-t-il pas estimé que «le principe selon lequel la terre domine la mer ... (qui) trouvait naguère son expression ... dans le concept de prolongement naturel ... la trouve aujourd'hui dans le principe de distance»? (**III**, p. 401)

Toutefois, un peu plus loin, dans la même plaidoirie, M. Weil s'est ravisé, semble-t-il, lorsqu'il a déclaré:

> «L'article 76 énonce une règle en deux parties, sans établir de hiérarchie entre une partie qui serait essentielle et une partie qui serait secondaire. Ces deux parties sont de valeur égale et sont placées sur le même plan.» (**III**, p. 412.)

Quelle que soit en ce domaine la position définitive de Malte, selon nous, non seulement la référence à la distance ne l'emporte pas sur la référence au prolongement naturel, mais elle n'a pas ici la même valeur juridique.

Il paraît difficile de prétendre que les éléments figurant dans l'article 76 sont tous placés sur le même plan et que le contenu de cet article correspond au

droit coutumier international. La portée de cet article n'est certainement pas celle que Malte veut lui attribuer.

Seule, semble-t-il, la référence au prolongement naturel peut être considérée comme faisant partie du droit international coutumier, conformément d'ailleurs à la solution dégagée par la Cour dans son arrêt relatif au *Plateau continental de la mer du Nord*. Or, de l'avis de la chambre constituée par la Cour pour connaître de l'affaire de la *Délimitation de la frontière maritime dans la région du golfe du Maine*, la décision rendue en 1969 «représente ... la décision judiciaire qui a le plus contribué à la formation du droit coutumier en la matière». Et la Chambre d'ajouter: «De ce point de vue, ses acquis demeurent incontestés.» (*C.I.J. Recueil 1984*, arrêt du 12 octobre 1984, p. 293, par. 91.)

Il n'en va pas nécessairement de même des autres éléments contenus dans cet article 76 de la convention, notamment de ceux qui sont relatifs à la détermination de la limite extérieure du plateau continental.

Ainsi, dans son discours de clôture prononcé le 10 décembre 1982, le président de la troisième conférence des Nations Unies sur le droit de la mer estimait:

> «En ce qui concerne l'article 76 sur le plateau continental, cet article contient du droit nouveau en ce qu'il a étendu le concept de plateau continental de manière à inclure le talus continental et le glacis continental. Cette concession aux Etats dotés d'une marge étendue a été faite en échange de leur acceptation du partage des revenus tirés du plateau continental au-delà de 200 milles. En conséquence, selon moi, un Etat qui n'est pas partie à la convention ne peut pas invoquer le bénéfice de l'article 76.» (Nations Unies, SEA/MB/14, 10 décembre 1982.)

De la même manière le critère de distance mentionné dans cet article peut difficilement être regardé comme conforme actuellement au droit international général en matière de plateau continental. Il s'agit là aussi de droit nouveau. Pas plus que les règles complexes relatives à la détermination du rebord externe de la marge continentale, cette disposition n'est, dans son origine, déclaratoire d'une règle coutumière internationale. Et elle ne semble pas avoir entraîné, depuis son adoption, la formation d'une telle règle.

La deuxième partie de l'article 76, paragraphe 1, «le critère de distance», ne peut pas être considérée comme énonçant une règle établie de droit international, parce qu'il n'existe guère de pratique générale faisant du critère des 200 milles la limite extérieure du plateau continental. En effet, rares sont les législations nationales ou les accords internationaux concernant le plateau continental qui mettent en œuvre ce critère. Et faute pour la limite des 200 milles d'être «généralement adoptée par la pratique des Etats», selon la formule de l'arrêt dans l'affaire des *Pêcheries* en 1951 (*C.I.J. Recueil 1951*, p. 128), le critère de distance mentionné dans l'article 76 n'est donc ni un principe ni une règle obligatoire du droit international pour ce qui est de la définition du plateau continental.

Dans son dernier ouvrage, *The International Law of the Sea*, publié à titre posthume en 1982, le regretté Daniel O'Connell écrivait à propos de ce qui n'était encore que le projet d'article 76:

> «*Except for* the technicalities of delineation, and *the granting of seabed rights to States with continental shelf narrower than 200 nautical miles*, the Draft Caracas Convention provisions may be taken to represent the present positions in customary international law.» (Oxford, vol. 1, 1982, p. 497.)

Selon l'éminent auteur, la reconnaissance de droits sur les fonds marins jusqu'à 200 milles au profit des Etats ayant un plateau continental ne s'étendant

pas jusqu'à cette distance ne pouvait pas être considérée comme admise par le droit coutumier.

Le fait que le critère de distance soit aujourd'hui énoncé dans un texte conventionnel qui a recueilli plus de cent cinquante signatures ne paraît pas de nature à infirmer cette conclusion. En effet, la limite des 200 milles figurant à l'article 76 ne représente que l'un des éléments de l'équilibre des intérêts que le texte de la convention de 1982 a cherché à réaliser. En tant que tel, ce critère de distance ne devrait normalement jouer qu'entre les Etats parties à la convention, après l'entrée en vigueur de celle-ci.

Jusqu'ici, la convention n'a été ratifiée que par treize Etats et son entrée en vigueur est subordonnée au dépôt de soixante instruments de ratification ou d'adhésion. Comme elle ne lie pas les deux Parties à l'instance, ce n'est, par conséquent, que par une sorte de déformation que Malte a cru pouvoir parler du «principe de distance» en matière de plateau continental, en faisant comme s'il s'agissait d'une règle de droit positif.

Ainsi que nous l'avons rappelé il y a un instant, dans son arrêt de 1982, la Cour n'a regardé le critère de 200 milles en matière de plateau continental que comme une «tendance» révélée par la nouvelle convention sur le droit de la mer.

Mais, pour importante qu'elle soit, cette nouvelle tendance introduite dans la définition conventionnelle du plateau continental ne saurait cependant l'emporter sur le principe coutumier bien établi qui fait du prolongement naturel la notion de base du plateau continental.

Mais, Monsieur le Président, j'entends déjà les conseils de la République de Malte invoquer l'adage latin: *«verba volant, scripta manent»*, et me rappeler que si la parole est libre la plume est serve et que je contredis aujourd'hui ce que j'ai écrit naguère.

Mon excellent collègue, M. Weil, m'a fait beaucoup d'honneur, en effet, en citant à l'audience du 30 novembre un texte que j'avais écrit l'an dernier et qui, à l'en croire, apporterait de l'eau au moulin maltais (**III**, p. 413 et 414). Toutefois, l'empressement apporté à repérer dans un texte écrit une ou deux formules apparemment favorables aux thèses de Malte l'a conduit à omettre assez fâcheusement de mentionner le titre de la publication en cause.

Que la Cour veuille bien me pardonner de pratiquer ici l'autocitation. Le titre exact en était: «Les tendances dominantes du système juridique issu de la convention.» J'ajoute que l'ouvrage dans lequel cette publication a été reproduite a lui-même pour titre général: *«Perspectives du droit de la mer à l'issue de la troisième conférence des Nations Unies.»*

Tendances... Perspectives... Je laisse aux membres de la Cour le soin d'apprécier s'il peut y avoir un quelconque malentendu sur la nature de la marchandise que recouvrent de tels pavillons et si les mots «tendances» et «perspectives» peuvent véritablement apparaître comme un exposé de pur droit positif.

Je puis seulement constater qu'ici aussi l'arbre de la tendance a caché à nos adversaires la forêt des règles juridiques.

Pour autant, nous n'entendons pas nier le fait que la conférence sur le droit de la mer et la pratique concordante de nombreux Etats pendant le déroulement même de cette conférence ont sécrété quelques règles coutumières dans un laps de temps relativement court. Car il est vrai que certaines dispositions de la convention de 1982 peuvent être regardées comme l'expression écrite de coutumes internationales. Parmi celles-ci figurent incontestablement aujourd'hui les règles relatives à l'institution de la zone économique exclusive.

Ce qui me conduit, Monsieur le Président, à envisager, en second lieu, l'influence du concept de zone économique sur la notion de plateau continental.

B

Peut-on considérer que, par le biais de l'influence exercée par le concept de zone économique, le critère de distance serait néanmoins devenu une règle juridique applicable en matière de plateau continental? Telle est la question sur laquelle je voudrais maintenant attirer l'attention de la Cour.

Prenant appui sur une remarque faite par la Cour dans l'affaire du *Plateau continental (Tunisie/Jamahiriya arabe libyenne)*, remarque selon laquelle «on peut considérer (la zone économique exclusive) comme faisant partie du droit international moderne» (*C.I.J. Recueil 1982*, p. 74, par. 100), et estimant que la proclamation américaine du 10 mars 1983 relative à la zone économique exclusive des Etats-Unis constituait une éclatante confirmation de la reconnaissance de cette notion par le droit international, le contre-mémoire de Malte en déduit:

> «jusqu'à une distance de 200 milles marins au large de ses côtes, chaque Etat côtier possède des droits du chef du plateau continental sur les fonds marins et leur sous-sol et des droits du chef de la zone économique sur la colonne d'eau surjacente» (**II**, CM, par. 81).

Mais, ce faisant, la partie adverse assimile de façon erronée les notions de plateau continental et de zone économique. L'assimilation est abusive, parce que, à la différence de la zone économique, le plateau continental constitue un «quasi-territoire» sur lequel les droits de l'Etat côtier existent *ab initio* et sont indépendants de toute revendication ou proclamation. Point n'est besoin ici d'insister sur une théorie juridique que les membres de la Cour connaissent mieux que personne.

Mais à la différence des droits de l'Etat sur son plateau continental, les droits d'un Etat côtier dans une zone économique ne sont pas des droits inhérents. Une telle zone n'apparaît pas comme l'accessoire obligé de la souveraineté territoriale de l'Etat côtier. Elle n'existe qu'à partir du moment et dans la mesure ou l'Etat décide de l'instituer par le biais d'une proclamation ou d'un acte juridique de son droit interne. Ce que Malte a reconnu d'ailleurs dans sa réplique et dans ses plaidoiries orales, en affirmant: «L'une ou l'autre partie, ou les deux, peut à tout moment déclarer une zone économique exclusive.» (**III**, RM, par. 47.)

Alors que l'article 2, paragraphe 3, de la convention de 1958 sur le plateau continental et l'article 77, paragraphe 3, de la convention de 1982 précisent l'un et l'autre que les droits de l'Etat sur le plateau continental sont indépendants de toute proclamation expresse, aucune disposition analogue n'a été introduite dans la partie V de la convention de 1982, partie relative à la zone économique exclusive. La pratique des Etats montre, au contraire, la nécessité d'une action positive des autorités pour créer une zone économique. On est donc conduit à reconnaître qu'il n'y a pas de zone économique exclusive *ipso facto*.

Et c'est la raison pour laquelle un auteur a pu justement écrire que, si «le plateau continental a été découvert, la zone économique a été inventée» (R.-J. Dupuy, *L'océan partagé*, Paris, 1979, p. 105).

Cette différence quant à l'origine des droits que l'Etat côtier peut exercer sur son plateau continental ou dans une zone économique laisse déjà entrevoir que la notion de plateau continental n'a pas perdu son caractère spécifique du fait de l'avènement du concept de zone économique. Les deux institutions coexistent dans le droit international contemporain, et elles coexistent d'une manière indépendante l'une de l'autre.

Loin de disparaître et de se fondre dans l'idée de zone économique exclusive, le plateau continental demeure soumis à un régime juridique propre, non seulement lorsqu'il s'étend au-delà de 200 milles, mais aussi en deçà de cette limite.

Aussi lorsque Malte vient, dans sa réplique, parler de «l'évolution de la notion de plateau continental et son absorption dans la juridiction polyvalente de la zone économique exclusive» (III, RM, par. 46), il s'agit là d'une affirmation qui n'est pas seulement très discutable, mais qui est proprement erronée.

La convention des Nations Unies sur le droit de la mer maintient, en effet, une dualité de régimes pour ces deux catégories d'espaces maritimes.

L'article 56, paragraphe 1, prévoit certes que, dans la zone économique exclusive, l'Etat côtier a des droits souverains sur l'ensemble des ressources de la zone et notamment sur les ressources naturelles des fonds marins et de leur sous-sol.

Toutefois, cette définition très large de l'objet des droits de l'Etat côtier s'explique essentiellement par le fait que la formulation adoptée pour cet article est le résultat d'un compromis entre des opinions divergentes apparues au sein de la conférence sur le droit de la mer.

Alors que certaines délégations souhaitaient une incorporation pure et simple de la notion de plateau continental dans le concept — jugé plus large — de zone économique, les Etats côtiers à marge continentale étendue entendaient, au contraire, maintenir un régime juridique distinct pour le plateau continental. Ces Etats désiraient évidemment sauvegarder le titre juridique qui dérivait pour eux de la conception traditionnelle du plateau continental.

Et c'est pourquoi, l'article 56 de la convention a été rédigé de manière, d'une part, à reconnaître les droits exclusifs de l'Etat côtier en ce qui concerne l'exploitation économique d'une zone maritime jusqu'à 200 milles et, d'autre part, à maintenir sous un régime juridique séparé les droits de l'Etat en matière d'exploitation des ressources du plateau continental. Qui plus est, ce régime séparé est rendu uniformément applicable à l'ensemble du plateau continental aussi bien lorsque ce plateau reste en deçà de 200 milles, que lorsqu'il s'étend au-delà de 200 milles; car on ne doit pas oublier que le plateau continental commence à la limite externe de la mer territoriale.

Ainsi s'explique la disposition qui figure à l'article 56, paragraphe 3, de la convention. Selon cette disposition: « les droits relatifs aux fonds marins et à leur sous-sol énoncés dans le présent article s'exercent conformément à la partie VI », c'est-à-dire conformément aux dispositions concernant en propre le plateau continental. Or le régime juridique du plateau continental, tel qu'il est notamment défini à l'article 77 de la nouvelle convention, demeure celui qui était décrit dans l'article 2 de la convention de 1958. Le régime juridique est intégralement maintenu en ce qui concerne le plateau continental.

En outre, reprenant l'essentiel de la règle qui était énoncée dans l'article 3 de la convention de Genève, l'article 78 de la convention de 1982 maintient également la dissociation entre le régime juridique applicable au plateau continental en tant que sol et sous-sol et le régime juridique des eaux surjacentes, même lorsque celles-ci ne sont plus qualifiées expressément de haute mer, comme c'est désormais le cas pour les eaux de la zone économique exclusive.

De ce fait, non seulement le plateau continental n'est pas absorbé par la zone économique exclusive, contrairement à l'affirmation maltaise, mais c'est au contraire le maintien du statut spécifique et indépendant du plateau continental qui altère assez sensiblement la notion de zone économique et la réduit pratiquement à son élément liquide.

Le résultat le plus clair de cette dualité de régimes juridiques est donc que le statut international de la zone économique se trouve en quelque sorte circonscrit à un régime juridique spécial pour les eaux, qu'il s'agisse de l'exploitation des ressources de ces eaux, de la recherche scientifique marine dans ces eaux ou de la protection de ces eaux contre la pollution.

Précisons en outre que, si ce régime juridique de la zone économique s'applique en principe à l'exploitation des ressources des eaux, à l'exploitation des ressources biologiques de la zone, il ne vaut cependant pas pour l'exploitation des ressources vivantes appartenant à la catégorie des espèces sédentaires. Pour ces dernières, c'est le régime du plateau continental qui prévaut, selon l'article 77 de la convention qui reprend d'ailleurs sur ce point la règle énoncée par l'article 2, paragraphe 4, de la convention de Genève. Et l'article 68 de la convention de 1982 précise formellement que les dispositions relatives à la zone économique exclusive ne s'appliquent pas aux espèces sédentaires ; ce qui signifie qu'il n'existe pas d'obligation pour l'Etat côtier d'autoriser les Etats tiers à exploiter un éventuel reliquat de ses ressources sédentaires. Il y a là, peut-on dire, une preuve supplémentaire de la séparation qui existe entre les régimes respectifs du plateau continental et de la zone économique exclusive.

Si l'on quitte le terrain de la convention de 1982 pour examiner la pratique des Etats en ce domaine, on s'aperçoit également que, pour le moment, les zones économiques exclusives qui ont été instituées se présentent essentiellement comme des zones de pêche, dans lesquelles les Etats côtiers exercent en outre certaines compétences relatives aux activités de recherche scientifique et certains pouvoirs concernant la préservation du milieu marin.

La plupart des Etats qui ont adopté une législation interne relative à la zone économique ont, en effet, maintenu les dispositions qu'ils avaient édictées antérieurement en ce qui concerne le plateau continental. Les quelques législations nationales qui traitent dans un seul et même texte de la zone économique et du plateau continental le font généralement dans des dispositions séparées.

Il en résulte que les zones économiques existantes ne se distinguent guère des zones de pêche exclusives. Ce qui est, somme toute, conforme à l'origine même de la «règle des 200 milles», dont on ne doit pas oublier qu'elle a vu le jour pour répondre aux nécessités de l'exploitation et de la conservation des ressources biologiques et, plus particulièrement, pour tenir compte de la zone de migration de certaines espèces côtières. La limite des 200 milles est, en effet, apparue d'abord pour les zones de pêche et s'est jusqu'à ce jour développée dans la pratique des Etats, indépendamment de la notion de plateau continental.

Sans doute, ne peut-on pas exclure une possibilité d'évolution progressive de cette notion, évolution qui tendrait, à plus ou moins long terme, à intégrer le plateau continental dans la zone économique jusqu'à la limite extérieure de celle-ci. Mais ce n'est là qu'une éventualité, car l'on ne peut même pas parler ici de «tendance». Et l'on ne peut pas, dans l'état actuel du droit international, se fonder sur cette simple éventualité pour trancher le présent litige dont il faut se rappeler, une fois encore, qu'il ne concerne que le plateau continental.

Comme le faisait remarquer la Cour dans son arrêt du 27 juillet 1974 relatif à la *Compétence en matière de pêcheries (Royaume-Uni c. Islande)*:

> «La possibilité d'une modification du droit existe toujours mais cela ne saurait décharger la Cour de son obligation de statuer sur la base du droit tel qu'il existe au moment où elle rend sa décision.» (*C.I.J. Recueil 1974*, p. 19, par. 40.)

Dans ces conditions, on voit mal comment le critère des 200 milles, qui est consacré par le droit international contemporain en matière de zone économique, pourrait *ipso facto* s'appliquer au plateau continental.

Il est même permis de se demander si le droit international attribue dès maintenant à l'Etat côtier des droits exclusifs sur les ressources des fonds marins se trouvant en deçà de 200 milles mais au-delà de la limite du plateau continental défini selon le critère traditionnel du prolongement naturel. En d'autres termes,

un doute existe quant au point de savoir si l'institution d'une zone économique jusqu'à la limite de 200 milles entraîne automatiquement l'application du régime du plateau continental à l'ensemble des fonds marins de cette zone, lorsque le prolongement naturel de l'Etat côtier s'étend à une distance inférieure.

Ce doute se trouve encore accentué par le fait que la limite des 200 milles est un maximum pour la zone économique. Selon l'article 57 de la convention de 1982, la «zone économique exclusive ne s'étend pas au-delà de 200 milles marins».

Et il a été expressément entendu, lors de l'adoption de cette règle par la conférence sur le droit de la mer, que les Etats côtiers n'étaient pas tenus d'adopter cette limite maximum lorsqu'ils instituaient une zone économique exclusive, mais qu'ils pouvaient adopter une limite inférieure.

Dès lors, si le critère des 200 milles utilisé pour définir la limite extérieure de la zone économique ne présente pas un caractère impératif, il devient à peu près impossible de prétendre que le critère de distance utilisé pour la zone économique exerce une attraction irrésistible sur la fixation de la limite extérieure du plateau continental. La consécration de la notion de zone économique par le droit international contemporain n'a donc pas d'incidence sur la définition du plateau continental.

Supposons qu'un Etat côtier établisse une zone économique exclusive de 100 milles marins et que le prolongement naturel de son territoire sous la mer s'étende jusqu'à 150 milles marins. Serait-il juridiquement fondé à revendiquer des droits exclusifs sur un plateau continental jusqu'à la limite de 200 milles, au nom d'un prétendu «principe de distance»? Certainement pas.

A fortiori, un Etat peut également décider de n'avoir aucune zone économique. En pareil cas, il est évidemment totalement impossible pour lui d'invoquer l'absorption du concept de plateau continental par celui de zone économique pour revendiquer à son profit des droits souverains d'exploitation sur les fonds marins jusqu'à 200 milles.

Telle est d'ailleurs la situation de Malte à l'heure actuelle, ainsi que celle de la Libye.

Et c'est pourquoi le critère de distance allégué par Malte n'apporte aucun élément permettant de résoudre le problème de délimitation du plateau continental entre les deux Etats.

L'audience est levée à 17 h 59

DIX-NEUVIÈME AUDIENCE PUBLIQUE (11 XII 84, 10 h)

Présents: [Voir audience du 26 XI 84.]

M. QUÉNEUDEC: Monsieur le Président, Messieurs les juges, dans la première partie de mon exposé je me suis efforcé hier de démontrer que le principe de distance invoqué par Malte n'était pas une règle de droit positif en matière de plateau continental.

Je voudrais ce matin exposer à la Cour la seconde proposition énoncée au début de ma plaidoirie. Cette deuxième proposition peut se formuler ainsi, le critère de distance n'est pas approprié pour régler la présente affaire de délimitation.

II. Deuxième proposition: Le critère de distance n'est pas approprié pour régler la présente affaire de délimitation

En mettant en avant le critère de distance, la République de Malte n'a tenu aucun compte semble-t-il des données propres à la présente espèce. En particulier, tout porte à croire qu'elle s'est refusée à tenir compte du simple fait que le critère des 200 milles est absolument inadapté dans un espace maritime tel que la Méditerranée.

Inapplicable en l'espèce, en raison de la géographie de l'affaire, le facteur de distance est en outre inutile, car on ne peut en dégager une quelconque méthode de délimitation qui soit en accord avec des principes équitables et avec la jurisprudence internationale relative aux délimitations maritimes.

Je vais donc m'attacher à l'examen de ces deux aspects, à savoir:

— l'inadaptation du critère de distance en Méditerranée, d'une part,
— l'impossibilité de dégager du critère de distance une méthode de délimitation équitable, d'autre part.

A

L'inadaptation du critère des 200 milles en Méditerranée n'appelle pas une longue démonstration, tant est apparent son caractère inapproprié à la «sombre mer bleue» chantée par Byron.

D'ailleurs, la Libye a déjà attiré l'attention de la Cour sur ce point en insistant dans la phase écrite sur les caractères particuliers de la zone géographique dans laquelle la délimitation doit intervenir.

Bornons-nous à rappeler le caractère essentiellement océanique de la fameuse «règle des 200 milles». D'ailleurs, c'est, peut-on dire, l'ensemble du nouveau droit de la mer qui est d'inspiration océanique. La possibilité de recourir à la limite des 200 milles s'offre surtout aux Etats riverains des larges océans; en l'absence de côtes étrangères leur faisant face, ce sont eux qui peuvent réellement développer leurs zones sous juridiction nationale jusqu'à cette distance.

Il n'en va évidemment pas de même s'agissant des Etats qui sont riverains de mers resserrées, dont l'exiguïté ou l'étroitesse fait obstacle à la mise en œuvre d'un tel critère. Tel est le cas en Méditerranée, où les limitations naturelles

entraînent une sorte de conditionnement géographique des prétentions des Etats riverains.

Afin d'illustrer notre propos, nous avons fait dresser une carte de la Méditerranée centrale, carte qui a été remise aux membres de la Cour et qui est la carte n° 9 de l'album libyen. Sur cette carte, sont reportées des limites hypothétiques de 200 milles marins tracées à partir des côtes des cinq Etats intéressés, à savoir: la Tunisie, l'Italie, la Grèce, la Libye et Malte.

Les différentes lignes qui en résultent se recoupent largement et montrent de manière parfaitement claire qu'aucun de ces cinq Etats ne peut valablement revendiquer des droits sur une zone de 200 milles. Le fameux critère de distance ne saurait leur être appliqué.

La raison en est évidente. Nous ne sommes pas ici en présence d'un large espace océanique.

Avec environ 2,5 millions de kilomètres carrés, la Méditerranée ne représente que un trente-troisième de la superficie de l'Atlantique et un cent quatre-vingtième de la superficie de l'ensemble des mers et des océans.

Si l'on raisonne, non plus en termes de superficie, mais en termes de distance, l'impossibilité de toute référence aux 200 milles est encore plus évidente, particulièrement dans la région où doit intervenir la délimitation entre Malte et la Libye.

En effet, entre le point le plus occidental de l'île de Gozo et l'extrémité occidentale de la côte libyenne à Ras Ajdir, il n'y a que 214 milles marins. Et si l'on mesure la distance séparant l'extrémité sud-ouest de l'île de Malte et Ras Ajdir, on trouve 210 milles marins.

De même, la distance entre l'extrémité orientale de l'île de Malte (Delimara Point) et le point le plus à l'est de la côte libyenne de Tripolitaine (Ras Zarrouk) ne s'élève qu'à 208 milles marins.

Et la distance entre les côtes maltaises et libyennes les plus proches est inférieure à 200 milles et tombe même à 180 milles marins, approximativement, si on la mesure entre l'îlot de Filfla et Ras Tadjura.

Ces chiffres, à eux seuls, montrent avec éloquence que le critère des 200 milles est radicalement inadapté dans la région en cause et est donc totalement inapplicable dans la présente affaire.

Quoi qu'elle en ait dit, la Partie adverse n'a d'ailleurs pas toujours manifesté un attachement sans faille à l'égard de l'application du critère des 200 milles dans la présente affaire.

Rappelons simplement qu'à l'ouverture de la procédure écrite Malte paraissait affirmer que ses prétentions pouvaient s'étendre jusqu'aux côtes libyennes de
(12) Cyrénaïque. La figure A reproduite à la page 118 du mémoire maltais indiquait en effet que la zone de plateau continental se trouvant au large des côtes libyennes dans ce secteur constituait également une zone où les prolongements naturels des deux Etats se chevauchaient: «areas of overlapping natural prolongations», précisait la légende de cette figure A du mémoire maltais.

Or, la distance mesurée à partir de Delimara Point (à l'extrémité sud-est de l'île de Malte) s'élève à 466 milles marins jusqu'à Ras at-Tin, qui semble être le point le plus oriental de la côte libyenne retenu par le croquis figurant dans le mémoire de Malte. 466 milles, c'est plus de deux fois 200 milles, dirait un enfant d'une école primaire. Malte parlait pourtant d'*«overlap»* jusqu'à cette distance, en se fondant, il est vrai, sur la notion de prolongement naturel — ce que la Cour aura certainement remarqué.

En s'adonnant à cet exercice, qui a servi à l'élaboration du trapèze qu'elle a artificiellement construit, Malte ne s'inspirait évidemment pas du critère des 200 milles. Que peut-on en déduire, si ce n'est que Malte n'avait manifestement

pas une croyance indéfectible dans la valeur de ce critère de distance et dans son applicabilité en Méditerranée?

Telle est d'ailleurs l'opinion assez généralement partagée par les divers Etats riverains du bassin méditerranéen.

Lorsque s'ouvrit à Caracas la discussion sur le statut de la zone économique exclusive devant la deuxième commission de la conférence des Nations Unies sur le droit de la mer, la délégation du Liban s'attacha à souligner que des zones économiques de 200 milles marins seraient «un non-sens» en Méditerranée (*Documents officiels*, vol. II, p. 248).

De même, le délégué de l'Algérie, fit-il valoir que «la thèse des 200 milles impliqu[ait] nécessairement certains aménagements, en particulier en ce qui concerne les mers fermées ou semi-fermées» (*ibid.*, p. 249).

Lors de la session de clôture de la conférence, le chef de la délégation de Malte, agent de son gouvernement dans la présente affaire, faisait à son tour remarquer, dans un discours prononcé le 9 décembre 1982:

> «In the Mediterranean, ... not one single State can probably utilize the full extent of 200 miles as the limit of the exclusive economic zone.» («Statement of Dr. Mizzi.»)

Les positions ainsi adoptées par les Etats méditerranéens dans le cadre de la conférence sur le droit de la mer se trouvent corroborées par les politiques juridiques que ces mêmes Etats ont entendu mettre en œuvre. Il suffit, pour s'en convaincre, de se référer aux dispositions qu'ils ont prises dans leur droit interne, ou mieux encore aux dispositions qu'ils se sont abstenus de prendre, leur abstention étant ici hautement significative.

Parmi les dix-huit Etats riverains de la Méditerranée, on peut, semble-t-il, faire une distinction entre les Etats entièrement méditerranéens et les Etats partiellement méditerranéens. Les premiers sont ceux dont les côtes bordent exclusivement la mer Méditerranée, tandis que les seconds ont au moins une façade maritime sur une autre mer ou sur un océan.

Aucun Etat entièrement méditerranéen n'a, jusqu'à présent, prétendu exercer sa juridiction sur une zone maritime de 200 milles marins et aucun n'a établi une zone économique exclusive.

Seuls les Etats partiellement méditerranéens ont créé des zones économiques, mais sans nécessairement se référer à la limite des 200 milles et surtout sans instituer automatiquement de telles zones au large de leurs côtes méditerranéennes. Ainsi, sur la base d'une loi du 16 juillet 1976, la France a créé, en février 1977, une zone économique au large de ses côtes métropolitaines, à l'exception des côtes méditerranéennes. Cet exemple a été suivi en 1978 par l'Espagne, qui n'a institué une zone économique que sur sa façade atlantique. Quant au Maroc, si la loi du 18 décembre 1980 ne distingue pas entre le littoral atlantique et le littoral méditerranéen, elle n'est pas mise en œuvre au large des côtes marocaines de Méditerranée, où elle n'existe qu'à l'état de simple virtualité, comme le montrait une carte publiée au Maroc en juillet 1981 par la direction de la cartographie qui n'indiquait pas l'existence d'une zone économique marocaine en deçà du détroit de Gibraltar.

En déposant son instrument de ratification le 26 août 1983, l'Egypte, premier Etat méditerranéen à ratifier la convention des Nations Unies sur le droit de la mer, a assorti sa ratification d'une déclaration annonçant la création d'une zone économique dans les termes suivants:

> «La République arabe d'Egypte exerce, à compter de ce jour, les droits qui lui sont conférés par les dispositions des parties V et VI de la conven-

tion des Nations Unies sur le droit de la mer dans la zone économique exclusive qui se trouve au-delà de sa mer territoriale adjacente aux côtes de la mer Méditerranée et de la mer Rouge. ... Elle affirme qu'elle s'engage à fixer les limites extérieures de sa zone économique exclusive selon les règles, les critères et les modalités prévus par la convention.» (Nations Unies, C.N.272.1983.*Treaties* — 10 novembre 1983.)

Mais pour l'instant, la position adoptée par l'Egypte semble identique à celle du Maroc en ce domaine; sa déclaration d'août 1983 s'apparente plutôt à une déclaration d'intention et n'a guère été suivie d'effet jusqu'à présent. Il est donc difficile de dire que c'est la première zone économique créée en Méditerranée.

En outre, à supposer même que les autorités égyptiennes décident d'instituer effectivement une zone économique au large des côtes égyptiennes de Méditerranée, il convient de souligner qu'elles se sont bien gardées d'avancer un quelconque critère de distance pour la fixation de l'étendue de la zone en question.

Peut-on, Monsieur le Président, considérer que les attitudes concordantes des Etats méditerranéens sont le produit du seul hasard? Je ne m'avancerai sans doute pas beaucoup en affirmant que cette commune attitude des divers Etats méditerranéens est intimement liée aux caractéristiques mêmes de la région et à la perception qu'en ont les gouvernements de ces différents Etats.

La pratique suivie par les Etats méditerranéens montre donc que ni l'idée de zone économique ni le critère de distance symbolisé par les 200 milles ne trouvent véritablement place dans cette mer. La Méditerranée, en raison à la fois de son étroitesse et de la pauvreté relative de ses eaux, n'est pas un lieu se prêtant à l'application de cette idée ou à la mise en œuvre de ce critère.

De ce point de vue, il est tout de même assez remarquable que le seul Etat méditerranéen à avoir institué une zone de pêche réservée au-delà de sa mer territoriale soit précisément la République de Malte. Mais il est encore plus remarquable de noter que la zone de pêche maltaise ne s'étend que jusqu'à une limite de 25 milles marins au large des lignes de base. Quelle meilleure preuve peut-on trouver de l'impossibilité de faire application en Méditerranée de la «règle des 200 milles»?

Aussi dois-je avouer que je ne comprends pas très bien pourquoi Malte vient aujourd'hui laisser entendre qu'elle pourrait revendiquer 200 milles de plateau continental. On vient nous dire, en effet, que si Malte était située en plein océan, loin de toute autre côte, elle aurait droit à un plateau continental d'au moins 200 milles marins (**III**, p. 390). Et l'on suggère en quelque sorte à la Cour: que ce n'est pas parce que Malte est située à proximité d'autres côtes que ses droits doivent être réduits.

M. Weil reprochait l'autre jour à la Libye de se tromper d'époque et de pratiquer le passéisme juridique *(ibid.)*. Mais est-il bien sûr que Malte ne se trompe pas de monde et de région et qu'on ne puisse pas lui reprocher à présent de pratiquer ce qu'on pourrait appeler une extraversion géographique?

Il est inutile d'en dire plus. Bornons-nous à souligner que l'attitude de Malte elle-même, révélée par sa législation de 1978 sur la zone de pêche, vient confirmer, s'il en était besoin, le caractère radicalement inadapté du critère de la distance des 200 milles dans la région méditerranéenne.

B

Ce caractère d'inadaptation du critère de distance se double, en outre, d'une inutilité absolue, dans la mesure où ce critère n'apporte strictement aucun élément de nature à dégager une méthode de délimitation équitable.

C'est ce que je me propose de démontrer pour terminer mon exposé, Monsieur le Président.

Le facteur de distance invoqué constamment par Malte tout au long de la procédure écrite et orale ne permet de dégager aucun critère ou aucune méthode de délimitation équitable des zones de plateau continental qui relèvent respectivement de Malte et de la Libye.

Cette impossibilité est purement et simplement niée par Malte. Selon la réplique présentée par la Partie adverse:

> «Dans l'optique de la délimitation, c'est le lien entre les côtes et les étendues immergées adjacentes qui revêt un intérêt primordial; or ce facteur ne peut s'exprimer que selon un principe de distance.» (**III**, RM, par. 165.)

Une telle attitude s'explique dans une large mesure par la conception maltaise selon laquelle le concept de distance est la base juridique du titre de l'Etat et justifie par lui-même le recours à une ligne d'équidistance. La logique de cette argumentation n'est d'ailleurs pas évidente.

Et, puisque l'on a évoqué l'autre jour la «casuistique» de l'autre côté de la barre, la Cour nous permettra de relever le caractère pour le moins sophistiqué de l'argumentation adverse. Le critère de distance, fondement du titre de l'Etat, nous a-t-on dit, ne gouverne pas la délimitation; mais la délimitation est en étroite corrélation avec ce critère (**III**, p. 379-380).

Nous prenons acte de cette reconnaissance: le critère de distance ne régit pas la délimitation. Nous enregistrons la reconnaissance ainsi faite par Malte de ce qui résulte d'ailleurs de la simple lecture de l'article 76 de la convention de 1982. Mais alors, nous ne comprenons plus très bien pourquoi Malte a parlé, dans son contre-mémoire, du «principe de distance, dont l'équidistance n'est qu'une application particulière» (**II**, CMM, par. 278). Et nous renvoyons aux manuels de casuistique, s'il en existe, pour la compréhension du raisonnement développé par la Partie maltaise.

De plus, la Cour n'aura pas manqué de remarquer que, tout en invoquant la convention de 1982 sur le droit de la mer, Malte cherche à occulter la distinction établie par la convention entre la détermination de la limite extérieure du plateau continental d'un Etat et l'opération de délimitation du plateau continental entre deux Etats. Malte ne tient pas véritablement compte, en effet, de l'article 76, paragraphe 10, de cette convention, selon lequel:

> «Le présent article ne préjuge pas de la question de la délimitation du plateau continental entre des Etats dont les côtes sont adjacentes ou se font face.»

Rappelons pour mémoire que les autres dispositions de l'article 76 sont relatives à la définition générale de la notion (par. 1) et aux modalités de fixation des limites extérieures du plateau continental d'un Etat (par. 2-7), ainsi qu'aux obligations d'information qui pèsent en ce domaine sur les Etats côtiers (par. 8 et 9).

Et le paragraphe 10 vient en quelque sorte préciser que ces autres dispositions ne doivent pas être regardées comme étant nécessairement pertinentes pour une opération de délimitation. Ce qui revient notamment à dire que l'élément de distance, figurant dans la seconde partie de la définition du paragraphe 1, ne saurait avoir en lui-même une vertu particulière pour résoudre un problème de délimitation: il ne permet pas de préjuger des principes et des méthodes applicables en matière de délimitation entre Etats.

Aussi passer sous silence ou minimiser la portée de l'article 76, paragraphe 10, revient alors à refuser de tenir compte de la distinction tranchée qui existe entre la fixation de la limite extérieure du plateau continental d'un Etat, d'une part, et

la détermination d'une limite séparative entre les zones de plateau continental relevant de deux Etats, d'autre part.

Au demeurant, dans le cadre de la conférence sur le droit de la mer, les deux questions ont été traitées séparément et ces deux questions font de surcroît l'objet de dispositions distinctes dans le texte de la convention qui traite séparément les limites extérieures à l'article 76 et de la délimitation à l'article 83.

D'autre part, les raisons qui ont poussé à l'adoption de ce qu'on appelle la «règle des 200 milles» n'ont absolument rien à voir avec les règles de délimitation maritime entre Etats.

Sur un plan strictement juridique, ce sont des considérations qui sont totalement étrangères les unes par rapport aux autres, ainsi que nous espérons l'avoir clairement établi en rappelant, hier, les conditions dans lesquelles la référence à la limite des 200 milles avait été introduite dans la convention en ce qui concerne le plateau continental.

Ce n'est que sur un plan purement factuel que l'on peut percevoir une certaine relation de cause à effet entre l'accroissement du nombre des zones économiques de 200 milles et la multiplication des problèmes de délimitation. Mais cette simple constatation d'évidence n'apporte ici aucun élément qui permettrait de conclure dans le sens indiqué par Malte.

Aussi, en prétendant que le critère de distance justifie le tracé d'une ligne médiane dans la présente affaire, la thèse maltaise est totalement artificielle et tourne peut-on dire le dos aux dispositions de la convention sur lesquelles elle prétend pourtant prendre appui.

En se fondant sur un critère de distance, la Partie adverse cherche uniquement à justifier le recours qu'elle préconise à la méthode de l'équidistance pour l'établissement de la délimitation de son plateau continental avec la Libye. Pour reprendre une image évoquée à la barre par M. Weil, Malte s'est efforcée d'accrocher le wagon de l'équidistance à ce qu'elle pense être la locomotive de la distance.

Mais, ce faisant, Malte paraît considérer que l'opération de délimitation consiste purement et simplement à reconnaître les droits de chaque Etat sur la plus grande distance possible. Etant donné qu'aucun des deux Etats en cause n'est en mesure de faire valoir ses droits jusqu'à la distance de 200 milles, il faudrait donc accorder à chacun une égale distance. D'où le recours nécessaire, selon la Partie adverse, à la méthode de l'équidistance.

Un tel raisonnement est toutefois entaché d'un vice fondamental. Il est moins juridique que mathématique et aboutit à réduire une opération de délimitation du plateau continental à une «division par parts égales».

Peut-être est-ce ce à quoi songeait M. Lauterpacht lorsque, à l'audience du 28 novembre, il comparait le lit et le sous-sol de la mer pélagienne à une sorte de tranche de gâteau-sandwich, dont Malte revendique aujourd'hui une grande portion (**III**, p. 348).

Mais il nous faut alors rappeler que la Cour avait précisément condamné cette façon de voir dans les affaires du *Plateau continental de la mer du Nord*, en rejetant la théorie de «la part juste et équitable».

Une délimitation de plateau continental ne peut pas, en effet, être assimilée au partage d'un gâteau familial entre les enfants qui se disputent pour réclamer l'attribution de parts strictement égales ou des parts justes et équitables.

Ce que la Cour exprimait en termes juridiques dans son arrêt de 1969, lorsqu'elle soulignait qu'une délimitation

> «ne pourrait avoir pour objet d'attribuer une part équitable ni même simplement une part, car la conception fondamentale en la matière exclut qu'il

y ait quoi que ce soit d'indivis à partager» (*C.I.J. Recueil 1969*, p. 22, par. 20).

Le raisonnement avancé par la Partie maltaise présente, d'autre part, un vice rédhibitoire au regard des principes équitables qui doivent guider toute opération de délimitation. S'il était suivi, ce raisonnement conduirait, en effet, à ne pas tenir compte des différents facteurs caractéristiques de la zone à délimiter, puisqu'il suffirait de déterminer les points géométriques jusqu'où chacun des deux Etats pourrait bénéficier de droits sur la plus grande étendue possible. Ce qui signifierait, par conséquent, que la Cour n'aurait pas à prendre en considération les diverses circonstances pertinentes de la présente affaire. Il n'est pas douteux qu'une telle conséquence serait contraire à toute la jurisprudence internationale en la matière.

Que reste-t-il alors de la thèse de Malte sur ce point?

Il apparaît, en définitive, que le seul élément commun au soi-disant «principe de distance» et à la méthode de l'équidistance est un élément terminologique. Dans le terme «équidistance», il y a effectivement le mot «distance». Mais une telle relation, tenant simplement à l'existence d'une racine grammaticale unique, est dépourvue de toute valeur et de toute pertinence du point de vue juridique. Ce n'est qu'une commodité de présentation qui permet d'ailleurs d'éluder une démonstration impossible; et le recours à une formule dont la seule vertu réside dans le fait qu'elle est assez commode laisse à penser que Malte fait sienne la formule de l'Amphitryon de Molière: «J'aime mieux un vice commode qu'une fatigante vertu.»

Du reste, une tentative semblable est apparue récemment dans une autre affaire de délimitation maritime. Dans son arrêt du 12 octobre 1984, la chambre constituée par la Cour dans l'affaire du *Golfe du Maine* s'est bornée à observer à ce sujet:

> «il n'y a là finalement qu'un nouvel effort pour faire apparaître l'idée non pas de la «distance», mais de l'«équidistance», comme étant sanctionnée par le droit international coutumier lui-même, puisque son but est d'affirmer que les étendues situées à une distance d'un Etat inférieure à celle qui les sépare des côtes d'un autre Etat doivent automatiquement relever du premier.» (*C.I.J. Recueil 1984*, p. 297, par. 106.)

Et l'on sait que, dans cet arrêt récent, a été repoussée une interprétation du soi-disant «principe de distance» qui tendait à faire admettre que la convention de 1982 aurait indirectement prescrit l'application de la méthode de l'équidistance. Ce qui était d'autant moins admissible que la convention ne fait aucune allusion à cette méthode.

Comme dans cette précédente affaire, nous nous trouvons ici en présence d'une nouvelle tentative pour faire de l'équidistance une véritable règle de droit international. Ce qu'elle n'est assurément pas, comme va le montrer dans un instant M. Colliard.

Monsieur le Président, de toutes les considérations qui précèdent, il me semble que l'on peut dégager les trois conclusions suivantes:

1. Le prétendu «principe de distance» invoqué par Malte ne fait pas partie des règles de droit international qui sont actuellement applicables en matière de plateau continental.

2. A supposer même que l'on puisse d'ores et déjà voir dans la distance un critère permettant, dans certaines conditions, de définir l'étendue des droits d'un Etat sur son plateau continental, un tel critère est à coup sûr inapplicable en Méditerranée, et donc dans la présente affaire.

3. Si le facteur de distance était néanmoins pris en compte dans la région où doit intervenir la présente délimitation, force serait cependant de reconnaître que cet élément est en lui-même dépourvu de tout lien avec une opération de délimitation.

Dans ces conditions, le recours à des principes équitables conduit en l'espèce à prendre d'abord en considération l'ensemble des facteurs physiques et des circonstances géopolitiques propres à la région, c'est-à-dire à apprécier *in concreto* à la fois l'équité des principes applicables et l'équité du résultat auquel ils conduisent. Car la Cour sait mieux que personne que «ce qui est raisonnable et équitable dans un cas donné dépend forcément des circonstances» (*C.I.J. Recueil 1982*, p. 60, par. 72).

PLAIDOIRIE DE M. COLLIARD

CONSEIL DU GOUVERNEMENT DE LA JAMAHIRIYA ARABE LIBYENNE

M. COLLIARD: Monsieur le Président, Messieurs les juges, qu'il me soit permis tout d'abord de dire que j'éprouve un grand sentiment d'honneur et de fierté à me retrouver une nouvelle fois devant vous.

Dans le cadre général de la présentation devant la Cour de la thèse libyenne, il m'appartient de traiter des questions qui se rapportent à la formule de l'équidistance, en général, à sa valeur, à son rôle, à son utilisation éventuelle dans les accords internationaux de délimitation de plateaux continentaux, de traiter aussi des principes équitables.

A cet égard, il convient de rappeler la position de la Libye, au demeurant bien connue.

La thèse libyenne se borne à affirmer que toute délimitation de plateau continental doit être équitable. Le résultat équitable c'est ce qui compte, pourvu qu'il soit obtenu par des principes équitables et que cette solution équitable repose sur le droit applicable.

La conception que la Libye a de la règle fondamentale de droit qui doit être appliquée en matière de délimitation du plateau continental est en accord avec la jurisprudence de la Cour sur ces problèmes, arrêt de 1969, arrêt de 1982, arrêt de la Chambre de 1984, et elle est aussi en accord avec la sentence arbitrale de 1977. Cette conception est en conformité avec les dispositions de la convention de 1982 sur le droit de la mer.

Pour la Libye, il existe une règle fondamentale, c'est que la délimitation doit être effectuée par l'application des principes équitables pour obtenir une solution équitable. Il n'y a pas de méthode privilégiée et la méthode d'équidistance n'est pas une méthode privilégiée.

Je voudrais, dans les développements qui suivent, montrer:

1) que dans l'ensemble juridique complexe que constitue le régime du plateau continental l'équidistance n'est pas et n'a jamais été une règle juridique ni une méthode privilégiée; et
2) que l'analyse objective et scientifique des accords de délimitation conclus par les Etats ne peut permettre d'affirmer qu'existe une primauté reconnue de la méthode de l'équidistance considérée d'une manière générale.

J'examinerai ces questions dans les deux parties de mon exposé.

I. L'ÉQUIDISTANCE N'EST PAS UNE RÈGLE JURIDIQUE

On doit constater et souligner, en ce qui concerne les principes juridiques régissant les délimitations des plateaux continentaux, une très grande cohérence maintenue tout au long d'une période d'une quarantaine d'années.

L'évolution est continue, elle ne comporte aucune rupture depuis la genèse même de la notion de plateau continental.

Nous examinerons, à ce sujet, quatre points. Les trois premiers traiteront successivement: d'abord les déclarations unilatérales; ensuite la convention de Genève et l'interprétation de ce même article 6; enfin la troisième conférence

sur le droit de la mer et la convention de 1982. Le point 4 sera une sorte de rappel général, on l'appellera le sens de l'histoire.

Tout d'abord, premier point:

1. Les déclarations unilatérales

A l'origine de l'évolution se trouvent les déclarations unilatérales. Au commencement a été formulée la double règle fondamentale qui régit encore aujourd'hui le problème de la délimitation entre Etats de leurs plateaux continentaux.

Le texte initial est bien connu, c'est la proclamation Truman du 28 septembre 1945 qui en matière de délimitation énonce que la ligne de délimitation serait «déterminée par les Etats-Unis et l'Etat intéressé conformément à des principes équitables».

Dans son arrêt de 1969, la Cour a mis l'accent sur cette solution qui a commandé toute la suite et lui a imprimé sa marque.

On peut ainsi relever le paragraphe 47 de l'arrêt (*C.I.J. Recueil 1969*, p. 32-33).

Parmi les déclarations postérieures à la proclamation Truman de 1945, je voudrais mentionner tout particulièrement celles qui ont été formulées par des Etats riverains du golfe Arabique, déclarations dont l'importance est grande dans la mesure où elles émanent d'Etats dotés de ressources pétrolières et dans la mesure aussi où ces Etats concluront ultérieurement — et nous en parlerons plus loin — des accords de délimitation.

On trouve ainsi la déclaration de l'Arabie saoudite du 28 mai 1949 précisant que la délimitation serait faite en accord avec d'autres Etats «conformément à des principes équitables».

La formule se retrouve identiquement dans des déclarations faites par des Etats arabes alors sous la protection du Royaume-Uni. Il s'agit de déclarations émanant de principautés qui devaient être en 1971 regroupées dans l'Etat fédéral «Emirats arabes unis», ainsi Abu Dhabi, 10 juin 1949; Ajman, 20 juin 1949; Dubaï, 14 juin 1949; Ral el Kaïhmah, 17 juin 1949; Sharjah, 10 juin 1949; Ummal Qarwan, 20 juin 1949.

A ces déclarations s'ajoutent les déclarations de Bahreïn du 5 juin 1949, du Koweït du 12 juin 1949, de Qatar du 8 juin 1949.

Toutes ces déclarations utilisent la formule «*equitable principles*» sauf celle de Bahreïn où la formule est «*just principles*».

A ces déclarations il convient d'ajouter un autre acte unilatéral quelque peu postérieur, la loi iranienne du 12 juin 1955 selon laquelle «les différends éventuels ayant trait à la délimitation du plateau continental de l'Iran seront réglés d'après le principe de l'équité».

2. La convention de Genève et l'interprétation de son article 6

Passons maintenant, Monsieur le Président, au second point, la convention de Genève et l'interprétation de son article 6. Le texte en est bien connu:

> «1. Dans le cas où un même plateau continental est adjacent aux territoires de deux ou plusieurs Etats dont les côtes se font face, la délimitation du plateau continental entre ces Etats est déterminée par accord entre ces Etats. A défaut d'accord, et à moins que des circonstances spéciales ne justifient une autre délimitation, celle-ci est constituée par la ligne médiane

dont tous les points sont équidistants des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacun de ces Etats.

2. Dans le cas où un même plateau continental est adjacent aux territoires de deux Etats limitrophes, la délimitation du plateau continental est déterminée par accord entre ces Etats. A défaut d'accord, et à moins que des circonstances spéciales ne justifient une autre délimitation, celle-ci s'opère par application du principe de l'équidistance des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacun de ces Etats.»

Existe-t-il une évolution, un changement que marquerait ce texte par rapport aux deux notions fondamentales énoncées dans la proclamation Truman et donc, je le répète: délimitation par voie d'accord — délimitation conforme à des principes équitables?

Sur la première notion, ou «voie d'accord», on ne peut que constater l'identité. La première phrase du paragraphe 1, comme la première phrase du paragraphe 2, de l'article 6 pose le principe que la délimitation se fait par voie d'accord. La seconde notion, «délimitation conforme à des principes équitables», a-t-elle été abandonnée en 1958, dans le cas où un accord ne pourrait être obtenu, pour être remplacée par une autre notion que formulerait l'article 6?

Nouvelle notion exprimée dans le paragraphe 1 de cet article: «délimitation ... constituée par la ligne médiane...», et dans le paragraphe 2: «application du principe de l'équidistance».

Y aurait-il eu un changement fondamental, ce changement consistant en l'abandon du principe «conformité de la délimitation à des principes équitables» et en son remplacement par un principe nouveau appelé «principe d'équidistance»?

La thèse du changement de notion a pu être soutenue avec des formes diverses, par exemple apparition d'une notion de caractère conventionnel jouant dans les rapports entre ceux des Etats parties à la convention de 1958 ou encore thèse plus audacieuse d'une notion nouvelle s'imposant plus généralement, c'est-à-dire par-delà même la communauté des Etats parties à la convention de 1958, donc une notion appartenant au droit coutumier général. Cette discussion apparaît aujourd'hui bien dépassée car l'article 6 de la convention de 1958 a fait l'objet d'interprétations de la part d'instances juridictionnelles comme la Cour dans ses arrêts de 1969 et de 1982, la Chambre, dans son arrêt de 1984, le tribunal arbitral institué dans le litige franco-britannique dans sa sentence de 1977.

Je ne pense pas, Monsieur le Président, qu'il existe dans l'histoire du droit international d'exemple comparable d'un article d'une convention ayant fait l'objet d'un examen par autant de hautes instances. Et ce qui doit être noté, car c'est là un point fondamental, est que la conclusion à laquelle sont parvenues ces instances est la même, à savoir le maintien de la seconde notion apparue en 1945: «la délimitation doit être conforme à des principes équitables».

Cette solution est connue, mais là encore il est nécessaire d'en rappeler quelques positions essentielles et de faire quelques citations. Je me bornerai à un très bref rappel concernant l'histoire même, si l'on peut dire, de l'article 6 et les travaux de la Commission du droit international.

La Cour a présenté cet historique dans les paragraphes 47 à 56 de son arrêt de 1969 (*C.I.J. Recueil 1969*, p. 32-36).

La Cour, dans son arrêt de 1969, a formellement rejeté la méthode de l'équidistance en tant que principe juridique.

Elle a accompagné ce rejet d'un rappel des principes juridiques fondamentaux dans le paragraphe 85 de son arrêt de 1969, et tout particulièrement dans cet important passage:

> «Il ressort de l'histoire du développement du régime juridique du plateau continental, qui a été rappelée ci-dessus, que la raison essentielle pour laquelle la méthode de l'équidistance ne peut être tenue pour une règle de droit est que, si elle devait être appliquée obligatoirement en toutes situations, cette méthode ne correspondrait pas à certaines notions juridiques de base qui, comme on l'a constaté aux paragraphes 48 et 55, reflètent depuis l'origine l'*opinio juris* en matière de délimitation; ces principes sont que la délimitation doit être l'objet d'un accord entre les Etats intéressés et que cet accord doit se réaliser selon des principes équitables. Il s'agit là, sur la base de préceptes très généraux de justice et de bonne foi, de véritables règles de droit en matière de délimitation des plateaux continentaux limitrophes, c'est-à-dire de règles obligatoires pour les Etats pour toute délimitation; en d'autres termes, il ne s'agit pas d'appliquer l'équité simplement comme une représentation de la justice abstraite, mais d'appliquer une règle de droit prescrivant le recours à des principes équitables conformément aux idées qui ont toujours inspiré le développement du régime juridique du plateau continental en la matière...» (*C.I.J. Recueil 1969*, p. 46-47.)

La Cour, on le sait, a consacré l'opinion que l'article 6 de la convention de 1958, bien que n'y référant pas expressément, n'a jamais abandonné l'idée d'une délimitation obtenue en conformité avec des principes équitables.

*

Le tribunal arbitral a exprimé la même opinion.

Au paragraphe 70 de la sentence il a rappelé la primauté de la règle des principes équitables en laquelle il voyait une «norme générale».

Il a souligné le caractère contingent de l'équidistance:

> «Même sous l'angle de l'article 6, ce sont les circonstances géographiques et autres qui, dans chaque espèce, indiquent et justifient le recours à la méthode de l'équidistance comme étant le moyen de parvenir à une solution équitable, plutôt que la vertu propre de cette méthode qui ferait d'elle une règle juridique de délimitation.»

La sentence, dans d'autres passages, affirme également le caractère fondamental que présente la conformité à des principes équitables que doit assurer la délimitation, et le paragraphe 82 est à cet égard particulièrement significatif.

L'arrêt de 1969 et la sentence de 1977 convergent parfaitement dans la portée qu'ils donnent à l'équidistance, présentée tantôt sous le nom de «principe», il ne s'agit pas évidemment de principe juridique, tantôt sous le nom de «méthode». Ce n'est pas une règle juridique.

L'arrêt récemment rendu par la chambre constituée en 1982 par la Cour pour l'affaire de la *Délimitation maritime dans la région du golfe du Maine* et qui a poursuivi l'œuvre de définition et de formulation des règles régissant la délimitation du plateau continental apporte une utile contribution au problème de l'interprétation de l'article 6, que l'on trouve plus particulièrement dans le paragraphe 115 de l'arrêt de la Chambre du 12 octobre 1984:

> «la prise en considération de la convention de 1958 sur le plateau continen-

tal et plus précisément de la deuxième phrase de chacun des paragraphes 1 et 2 de l'article 6 qui, comme il a pu être constaté, n'énonce pas comme la première un principe ou une règle de droit international, mais prévoit notamment l'utilisation d'une certaine méthode pratique pour l'exécution concrète de l'opération de délimitation. Il s'agit, on l'a vu, de la méthode qui emploie pour une délimitation de plateau continental une technique qui est unique, mais qui se traduit par le tracé d'une ligne médiane dans les zones maritimes comprises entre des côtes qui se font face et d'une ligne d'équidistance latérale dans le cas où les côtes des deux Etats sont adjacentes. Cette méthode s'inspire et découle d'un critère équitable déterminé: celui qui tient pour équitable, de prime abord du moins, une division par parts égales des zones de chevauchement des plateaux continentaux des deux Etats en litige.» (*C.I.J. Recueil 1984*, p. 300-301.)

3. La troisième conférence sur le droit de la mer et la convention de 1982

Le problème de la délimitation du plateau continental s'est posé à nouveau sur le plan conventionnel, dans le cadre de la troisième conférence. Il est intéressant de constater que les principes équitables qui, comme nous l'avons montré en rappelant l'opinion de la Cour dans son arrêt de 1969 et celle du tribunal arbitral dans sa sentence de 1977, n'avaient pas été abandonnés comme règle fondamentale mais n'avaient pas fait l'objet en 1958, dans la convention, d'une référence expresse sont au contraire formellement retenus au cours de la troisième conférence.

Les dispositions adoptées en matière de règles relatives à la délimitation du plateau continental mettent l'accent sur l'aspect équitable que doit revêtir cette délimitation.

Les textes successivement adoptés sont très significatifs, comme l'est également le texte définitif, c'est-à-dire l'article 83, de la convention du 10 décembre 1982.

Ainsi a été maintenu et consacré le caractère équitable que doit comporter toute délimitation, ainsi a été affirmée la priorité accordée à cette exigence, mais on ne saurait omettre le fait que la conférence a été le cadre d'un très vif affrontement entre les partisans de l'équidistance et les partisans, plus nombreux, des principes équitables. En d'autres termes, si après l'arrêt de la Cour de 1969 et la sentence du tribunal arbitral de 1977, on doit considérer qu'il n'y a pas en réalité de dilemme «équidistance/équité» mais un principe supérieur, celui de la «délimitation équitable», et si ce principe a été consacré en 1982, il faut noter que le dilemme «équidistance/équité» a été à nouveau posé dans le cadre des négociations de la conférence.

Il convient de rappeler ici les versions successives de l'article consacré à la délimitation, les versions antagonistes présentées par deux groupes d'Etats, enfin le texte final.

Je dis «il convient de rappeler», je dois dire plutôt, je suis contraint de rappeler les versions successives de l'article consacré à la délimitation.

Pourquoi suis-je ainsi contraint? mais tout simplement parce que mon savant collègue et ami, M. Weil, le vendredi 30 novembre, a affirmé: «il ne faut pas oublier que la méthode de l'équidistance est la seule à avoir bénéficié d'une mention expresse dans certains des textes de négociation» (**III**, p. 429).

Comme le sait toute personne ayant participé aux travaux de la conférence, cette affirmation que nous avons tous entendue et que nous lisons dans le compte rendu précité ne correspond pas à la réalité.

Elle me contraint, je m'en excuse devant la Cour, à rappeler la vérité, car si l'équidistance est citée dans les deux premiers textes c'est en place mineure par rapport aux principes équitables qui sont cités avec un caractère général et prioritaire.

Mais rappelons les textes. Je voudrais le faire en trois points. D'abord les versions successives entre 1975 et 1981, ensuite le dilemme «équidistance/principe équitable» et enfin le texte actuel.

a) *Les versions successives de 1975 à 1981*

Commencés dans le cadre général de la conférence, de l'année 1975 à l'année 1981, on peut relever six textes successifs. J'entend six textes à caractère général: le texte unique de négociation du 7 mai 1975 (TUN); le texte de négociation revisé du 6 mai 1976 (A/CONF.62/WP.8/Part II, TUN/Rev.1); le texte de négociation composite officieux du 15 juillet 1977 (A/CONF.62/WP.10); le texte de négociation composite officieux, revision 1, du 28 avril 1979 (A/CONF.62/WP.10/Rev.1); le texte de négociation composite officieux, revision 2, du 11 avril 1980 (A/CONF.62/WP.10/Rev.2); le texte de négociation composite officieux, revision 3, du 22 décembre 1980 (A/CONF.62/WP.10/Rev.3).

S'agissant de l'article consacré à la délimitation du plateau continental on se trouve heureusement en présence seulement de deux rédactions successives pour cette période 1975-1981:

1) La première version se trouve dans le texte de 1975 et se retrouve en 1976, 1977, 1979.

Cette version porte dans le premier texte le numéro d'article 70 en 1975, puis 71 en 1976, et enfin dans le texte commun le numéro 83 tant en 1977 qu'en 1979. C'est un texte synthétique. Il se lit:

«*Délimitation du plateau continental*
entre deux Etats limitrophes ou qui se font face

1. La délimitation du plateau continental entre Etats adjacents ou se faisant face est effectuée par accord entre eux selon des principes équitables, moyennant l'emploi, le cas échéant, de la ligne médiane ou équidistante et compte tenu de toutes les circonstances pertinentes.»

Telle est la première version.

2) Une seconde version se trouve dans les deux textes de l'année 1980, celui du 11 avril (A/CONF.62/WP.10/Rev.2) et celui du 22 décembre (A/CONF.62/WP.10/Rev.3).

La rédaction est très voisine de la rédaction précédente. La seule addition est «conformément au droit international», formule qui est ajoutée après le mot «accord». Pour le reste, les différences de rédaction sont mineures comme on l'entend à la lecture, que je prie la Cour de me pardonner, de l'article 83 dans sa version 1980:

«*Article 83*

Délimitation du plateau continental
entre Etats dont les côtes sont adjacentes ou se font face

1. La délimitation du plateau continental entre Etats dont les côtes sont adjacentes ou se font face est effectuée par voie d'accord [nous connaissons le refrain], conformément au droit international [c'est là l'addition].

> Un tel accord se fait selon des principes équitables, moyennant l'emploi le cas échéant, de la ligne médiane ou de la ligne d'équidistance et compte tenu de tous les aspects de la situation dans la zone concernée.»

Vraiment les principes équitables n'ont pas été oubliés et ils ont été mentionnés en première et noble place.

b) *Deuxième problème: le dilemme équidistance/principes équitables*

On sait qu'au cours de l'année 1978 et de la septième session des groupes de négociation furent constitués.

L'un d'eux portant le numéro 7 eut comme thème de travail: «La délimitation des frontières maritimes entre Etats qui se font face ou sont limitrophes et le règlement des différends qui s'y rapportent.»

On vit les Etats s'opposer au sujet de ce problème.

— Le groupe dit des «Vingt-deux», réunissant divers Etats, dont la République de Malte, fit une proposition combinant la notion d'accord et la notion d'équidistance:

> «la délimitation du plateau continental entre Etats limitrophes ou qui se font face se fait par voie d'accord, en utilisant comme principe général la ligne médiane ou la ligne d'équidistance compte tenu, quand cela se justifie, de tous les facteurs particuliers».

(C'est le fameux document bien connu, mais que j'ai cru utile tout de même de citer, NG 7/2.)

— Un autre groupe dit des «Vingt-neuf», réunissant divers Etats, soutenait un texte tout à fait différent:

> «La délimitation ... du plateau continental entre Etats limitrophes et (ou) se faisant face se fait par voie d'accord, conformément à des principes équitables, compte tenu de tous les facteurs pertinents et en utilisant, le cas échéant, toutes méthodes permettant d'aboutir à une solution équitable.» (NG 7/10.)

On a donc vu apparaître au sein du groupe n° 7 une opposition entre deux thèses. Le groupe dit des «Vingt-deux» faisant de l'équidistance un principe général, ce qui était absolument nouveau et allant bien au-delà de la solution de 1958 même dans son interprétation la plus audacieuse.

En 1980, et sans que soient calmées les oppositions au sein du groupe, une nouvelle rédaction, peu différente de la première, est retenue par le collège et devient l'article 83 du texte de négociation composite officieux revision 2, maintenu dans le revision 3, donc dans le projet de convention sur le droit de la mer (texte officieux), nous avons cité ce texte tout à l'heure. Et enfin maintenant je voudrais présenter la solution équitable.

c) *La solution équitable*

En effet ce n'est pas ce texte que l'on trouve dans le projet de convention du 28 août 1981 et dans la convention elle-même. Il s'agit d'une version nouvelle que le nouveau président de la conférence avait présentée le même jour, 28 août 1981, après diverses consultations tant avec les membres du groupe n° 7 que d'une manière plus générale. Le nouveau texte conserve l'adjectif équitable, mais il le fait porter sur la solution et il supprime toute allusion à l'équidistance qui était mentionnée dans les deux premières versions en tant que méthode auxiliaire. Il se lit:

«*Article 83*

Délimitation du plateau continental
entre Etats dont les côtes sont adjacentes ou se font face

1. La délimitation du plateau continental entre Etats dont les côtes sont adjacentes ou se font face est effectuée par voie d'accord, conformément au droit international, tel qu'il est visé à l'article 38 du Statut de la Cour internationale de Justice, afin d'aboutir à une solution équitable.»

Ce texte introduit le 28 août 1981 et adopté immédiatement par le collège inséra it dans le projet de convention (non plus officieux mais le texte officiel) l'actuel article 83 de la convention du 10 décembre 1982. Et j'aborde maintenant, Monsieur le Président, un quatrième point de cette évolution que j'ai appelé le sens de l'histoire.

4. Le sens de l'histoire

On doit remarquer qu'entre la déclaration Truman de 1945 et l'article 83 de la convention de 1982 la solution en matière de délimitation du plateau continental est placée sous le signe de la continuité et de la cohérence.

Cette continuité et cette cohérence ont été précisées, affirmées, par la jurisprudence internationale, et tout particulièrement par la Cour internationale de Justice.

C'est elle, qui dès 1969 a affirmé, comme il convenait, la primauté des principes et règles juridiques sur des méthodes pratiques certes, utiles le cas échéant, mais qui demeurent étrangères à la règle de droit et mineures par rapport à elle. La Cour a manifesté clairement en 1969, et le tribunal arbitral a suivi en 1977, l'attachement au principe que la délimitation devait s'effectuer selon des principes équitables (*C.I.J. Recueil 1969*, p. 36-37, par. 57).

La Cour a souligné

> «qu'il ne s'agit pas d'appliquer l'équité comme une représentation de la justice abstraite, mais d'appliquer une règle de droit prescrivant le recours à des principes équitables» (*ibid.*, par. 85).

En situant l'article 6 de la convention de Genève de 1958 dans ce cadre juridique général, en dégageant comme il convient la règle de droit, la Cour a maintenu et nettement formulé le principe juridique que la délimitation du plateau continental doit s'opérer selon des principes équitables. Mais cette délimitation, en tant qu'opération juridique, et cette application de principes équitables, dans le cadre d'une opération juridique, ont évidemment une finalité. Cette finalité qui s'articule avec «la règle de droit prescrivant le recours à des principes équitables» (*C.I.J. Recueil 1969*, p. 47, par. 85) est elle-même équitable. Mais que l'on ne se méprenne pas, il ne s'agit pas d'une solution d'équité. Je voudrais ici rappeler, Monsieur le Président, Messieurs les juges, les principes que vous avez formulés dans les affaires de la *Compétence en matière de pêcheries* qui opposaient le Royaume-Uni à l'Islande et la République fédérale d'Allemagne à l'Islande. La Cour, dans ses arrêts de 1974, a confirmé la position adoptée dans l'arrêt de 1969 sur le *Plateau continental de la mer du Nord* et précisé la manière dont, au service supérieur du droit, elle pouvait envisager la finalité d'une décision et, dans un certain cadre bien défini, le recours à l'équité.

Dans cette affaire de droits de pêche, la Cour a posé la règle que les Parties avaient «l'obligation mutuelle d'engager des négociations de bonne foi...» Et la

Cour a rappelé: «Il ne s'agit pas simplement d'arriver à une solution équitable, mais d'arriver à une solution équitable qui repose sur le droit applicable.» (*C.I.J. Recueil 1974*, p. 33, par. 78.)

«Solution équitable» cette formule de l'arrêt de 1974 correspond, bien curieusement, à la formule de l'article 83 de la convention de Montego Bay de 1982 que le président de la conférence a lancée et fait adopter le 28 août 1981.

Mon ami, M. Weil, a déclaré que ce texte de l'article 83 était «pauvre».

Je comprends qu'il ne puisse estimer satisfaisant un texte qui ne fait plus aucune allusion à l'équidistance et qui consacre ainsi son effacement.

Et il me permettra de penser que ce texte est en réalité d'une grande richesse. Il est porteur d'un noble message en mettant l'accent sur le résultat équitable, but suprême de l'opération de délimitation conduite évidemment selon des principes équitables.

Solution équitable, qui repose sur le droit applicable, c'est-à-dire sur des principes équitables, tel est le sens.

Là encore, que l'on ne se méprenne pas.

Il y a de grandes différences entre un arrêt sur des droits de pêche avec le problème sous-jacent des ressources halieutiques et un arrêt sur la délimitation d'un plateau continental qui n'est aucunement lié, et mon excellent ami, M. Quéneudec, l'a rappelé tout à l'heure, qui n'est aucunement lié à une répartition. Mais au plan théorique, les deux types d'arrêts sont proches. La Cour a posé, en 1974, un principe: elle a dégagé l'impératif théorique de la solution équitable, mais elle n'a pas précisé la mise en œuvre pratique, qui ne relevait pas de sa mission.

Et, à cet égard aussi, un rapprochement avec la présente affaire s'impose. La Cour, en 1969, notait que toute l'évolution en matière de plateau continental avait été commandée par la double exigence d'une délimitation par voie d'accord et aboutissant à une solution équitable commandée par l'application de la règle de droit et des principes équitables.

Mais cette évolution n'a pas été une rupture, elle est au contraire continuité.

L'audience est suspendue de 11 h 20 à 11 h 35

Monsieur le Président, Messieurs les juges, juste avant l'interruption de séance j'avais abordé le quatrième point de ma première partie que j'ai intitulé: «Le sens de l'histoire». Je me proposais d'exposer dans ce développement la continuité d'une évolution, la cohérence d'interprétation.

L'évolution, disais-je, a consisté plutôt ici en une analyse progressivement conduite, en des précisions successivement apportées, pour mieux définir la théorie d'une norme générale.

Des pièces successives ont pu être apportées par la jurisprudence internationale en vue de l'édification de la construction d'ensemble. Mais les bases initiales, les fondations de l'édifice n'ont pas changé, de l'édifice juridique bien évidemment car les procédés pratiques, parmi lesquels peut figurer l'équidistance, sont nombreux.

La sentence arbitrale de 1977 évoquait précisément, dans son paragraphe 70, la «norme générale suivant laquelle la limite ... doit être déterminée selon des principes équitables».

La Cour dans son arrêt de 1969, au paragraphe 65, avait conclu à la même affirmation (*C.I.J. Recueil 1969*, p. 39-40). Et, dans la continuité de l'application de cette formule qu'elle a voulu souligner, la Chambre constituée pour l'affaire du *Golfe du Maine* a donné la définition «de ce que le droit international général prescrit dans toute délimitation maritime...», et son analyse se trouve au paragraphe 112 de l'arrêt de 1984:

« 1) ... Cette délimitation doit être recherchée et réalisée au moyen d'un accord faisant suite à une négociation menée de bonne foi et dans l'intention réelle d'aboutir à un résultat positif. Au cas où, néanmoins, un tel accord ne serait pas réalisable, la délimitation doit être effectuée en recourant à une instance tierce dotée de la compétence nécessaire pour ce faire.

2) Dans le premier cas comme dans le second, la délimitation doit être réalisée par l'application de critères équitables et par l'utilisation de méthodes pratiques aptes à assurer, compte tenu de la configuration géographique de la région et des autres circonstances pertinentes de l'espèce, un résultat équitable. » (*C.I.J. Recueil 1984*, p. 299-300.)

Ainsi se trouve confirmée une hiérarchie entre, d'une part, la règle juridique générale, la norme fondamentale définie par l'application de critères ou principes équitables et celle du résultat équitable, et, d'autre part, les méthodes pratiques parmi lesquelles peut figurer l'équidistance.

Au terme de cette longue analyse la constatation est évidente. Principes équitables, résultats équitables font partie de la règle de droit.

L'équidistance n'est qu'une méthode.

Cette place plus modeste, ce caractère non juridique expliquent que l'article 6 de la convention de 1958 soit le seul texte à avoir mentionné l'équidistance. J'ai rappelé que le texte définitif de la convention de la mer n'y fait point allusion, et les divers textes de négociation antérieurs la mentionnaient, leur lecture nous l'a rappelé, comme une méthode après avoir consacré tout d'abord la règle des « principes équitables ».

On ne saurait porter une appréciation générale meilleure sur la méthode de l'équidistance que celle formulée par la Cour dans l'affaire du *Plateau continental (Tunisie/Jamahiriya arabe libyenne)*, et qui est exprimée au paragraphe 109 de l'arrêt de 1982:

« l'historique de l'article 83 du projet de convention sur le droit de la mer [amène] à conclure que l'équidistance est applicable si elle conduit à une solution équitable; sinon, il y a lieu d'avoir recours à d'autres méthodes. » (*C.I.J. Recueil 1982*, p. 79, par. 109.)

Ainsi, la Cour subordonne très nettement l'équidistance, simple méthode, à une finalité : « la solution équitable ». Elle précise que l'on peut avoir recours à d'autres méthodes afin d'atteindre ce résultat équitable et donc établit que la méthode de l'équidistance n'est pas une méthode privilégiée.

Cette affirmation a été développée au paragraphe 110 de l'arrêt de 1982 pour préciser les conséquences qu'entraîne ce caractère non privilégié de la méthode de l'équidistance.

Ce paragraphe 110 indique, en effet:

« La Cour n'estime pas non plus qu'en l'espèce il lui incombe d'examiner en premier lieu les effets que pourrait avoir une délimitation selon la méthode de l'équidistance, et de ne rejeter celle-ci au bénéfice d'une autre méthode que si les résultats d'une ligne d'équidistance lui paraissaient inéquitables. Pour pouvoir conclure en faveur d'une délimitation reposant sur une ligne d'équidistance, il lui faudrait partir de considérations tirées d'une évaluation et d'une pondération de toutes les circonstances pertinentes, l'équidistance n'étant pas à ses yeux un principe juridique obligatoire ni une méthode qui serait en quelque sorte privilégiée par rapport à d'autres. » (*C.I.J. Recueil 1982*, p. 79.)

On aurait pu raisonnablement penser, Monsieur le Président, Messieurs les

juges, qu'après cet arrêt de 1982 et l'affirmation renouvelée que l'équidistance n'est pas une méthode privilégiée la thèse que c'est une méthode privilégiée, devant être utilisée en priorité, ne serait plus soutenue.

Il n'en est rien.

Voici que cette priorité est affirmée de nouveau par mon excellent ami M. Weil. A plusieurs reprises il reprend cette affirmation dans sa plaidoirie du 30 novembre.

Selon lui, on utilise d'abord l'équidistance, c'est-à-dire on l'utilise d'une manière prioritaire.

Il cite, à cet effet, la communication faite au colloque de Rouen de 1983, de la Société française pour le droit international, par M. le conseiller d'Etat Guillaume (**III**, p. 425).

Mais il s'agit là d'opérations de délimitation par voie d'accord entre Etats et les Etats ont une grande liberté, la Cour l'a affirmé en 1974 et M. Weil le sait bien, pour conduire leurs négociations.

C'est d'une manière toute différente que la Cour, ou un tribunal arbitral, doit mener l'opération de délimitation lorsque, précisément, les parties ne sont pas parvenues à un accord.

C'est à ce propos que la Cour affirmait de nouveau, en 1982, le caractère non privilégié et non prioritaire de l'équidistance.

Pourtant le conseil de Malte a redit la primauté de l'équidistance (**III**, p. 426), redit que la ligne d'équidistance est la ligne de premier pas (p. 431), que la ligne d'équidistance est retenue comme première approche (p. 432), qu'on pourra ultérieurement procéder à l'ajustement de la ligne de départ (p. 435) avec une «ligne médiane envisagée comme point de départ» *(ibid.)*.

Quelques lignes sont citées à la page 429 (**III**), tirées du paragraphe 109 de l'arrêt de la Cour de 1982. Elles sont détachées du contexte, car la phrase terminale du paragraphe 109 se lit:

> «*La pratique illustrée par les traités, ainsi que l'historique de l'article 83* du projet de convention sur le droit de la mer, amènent à conclure que l'équidistance est applicable si elle conduit à une solution équitable...» (*C.I.J. Recueil 1982*, p. 79.)

Le texte se borne à indiquer que si on peut parvenir avec l'équidistance à un résultat équitable on peut appliquer cette méthode.

Il ne dit pas que l'équidistance est prioritaire ou qu'elle est une méthode de référence.

Pourtant, M. Weil veut voir, dans le passage qu'il cite en partie, «l'idée que l'équidistance constitue la méthode de référence».

Le conseil de Malte tente ainsi d'inverser le sens des dispositions pertinentes de l'arrêt de 1982.

De même, il ne se borne pas à affirmer, comme il l'a fait le 30 novembre, le caractère selon lui premier, prioritaire, de premier pas, de point de départ de cette méthode.

Il cherche à accréditer l'idée que dans l'affaire du *Golfe du Maine* la Chambre a utilisé cette méthode de manière prioritaire.

Le président et les juges qui ont constitué la Chambre ont affirmé l'inverse et c'est bien connu, mais devant des affirmations contraires je ne crois pas inutile de me référer au paragraphe 163 de l'arrêt de la Chambre du 12 octobre 1984 et d'en citer quelques lignes:

> «Il n'y a pas non plus de méthode dont on puisse dire absolument qu'elle doit être prise en considération en priorité, une méthode par l'appli-

cation de laquelle toute opération de délimitation devrait pouvoir commencer, quitte à en corriger les effets ou même à l'écarter ensuite en faveur d'une autre si lesdits effets se révélaient carrément insatisfaisants par rapport à la situation existant en l'espèce. Dans chaque cas concret, les circonstances peuvent au départ faire apparaître une certaine méthode comme mieux appropriée; mais il faut toujours se réserver la possibilité d'y renoncer en faveur d'une autre méthode si cela se justifiait par la suite. Il faut surtout être disposé à adopter une combinaison de méthodes distinctes, toutes les fois que l'on constaterait que cela serait requis par la différence des circonstances qui peuvent se révéler pertinentes dans les différentes phases de l'opération et par rapport aux différents segments de la ligne.» (*C.I.J. Recueil 1984*, p. 315.)

C'était, Monsieur le Président, Messieurs les juges, une entreprise bien difficile que de chercher un appui à la thèse de la priorité générale de l'équidistance dans l'arrêt de la Chambre rendu dans l'affaire du *Golfe du Maine*.

Mais il est aussi une autre tentative qui a été faite et que je voudrais analyser de plus près.

Il s'agissait de trouver pour la thèse de la ligne médiane une position de la doctrine, il s'agissait de solliciter la caution d'un allié prestigieux, d'un auteur classique faisant autorité.

Et ce fut l'appel à Gilbert Gidel (**III**, p. 430). Il convient tout d'abord d'apprécier la difficulté de l'entreprise.

Le passage cité est dans le tome III, au livre IV, intitulé «Le tracé des limites de la mer territoriale», au chapitre 8 intitulé «Délimitation de la mer territoriale dans les détroits», à la section 2 intitulée «Cas d'un passage maritime où les zones de mer territoriale des deux rives viennent au contact».

On voit donc qu'il ne s'agit pas du plateau continental, ce qui est évident puisque le livre a été publié en 1934. Il s'agit de navigation et de souveraineté dans les détroits et plus précisément de détroits où les zones de mer territoriale viennent au contact. On ne voit pas le rapport de ce problème, d'ailleurs intéressant, parfois d'une grande importance car Gidel a traité là du canal de Beagle, avec la délimitation du plateau continental entre les deux Etats dont les côtes sont distantes de près de 200 milles nautiques. Dire, à propos de ce texte de Gidel tiré d'un passage relatif aux détroits, comme l'indique le compte rendu (**III**, p. 430), «détroits peu larges» et ajouter «nous dirions aujourd'hui: entre «côtes se faisant face», est une transposition que j'admire fort.

On pourrait dire que s'agissant de détroits d'une largeur inférieure à deux fois la mer territoriale, c'est-à-dire, alors, très généralement 6 milles marins (deux fois trois), et s'agissant de navigation la citation n'a aucune pertinence et que préconiser la ligne médiane dans un détroit d'une largeur de quelques milles marins n'a rien à voir avec une méthode de délimitation du plateau continental.

C'est vrai, mais puisque l'opinion de Gidel, sur ce problème, a été citée et a fait l'objet d'un témoignage d'admiration pour le modernisme des vues de l'auteur, je voudrais, à mon tour, formuler de sincères louanges à l'égard d'un Gidel moderniste, ancêtre du principe de la primauté de l'accord en matière de délimitation. Il écrit en effet, à la page 758, donc la page suivante de celle qui a été citée, qu'il y a une solution supérieure à celle de la ligne médiane:

«la meilleure solution dans les cas envisagés sera assurément toujours celle qui rencontrera l'agrément des parties intéressées et à cet égard il est désirable qu'une convention intervienne».

Priorité de l'accord, la délimitation se fait par voie d'accord. C'est là la

vision que nous défendons, à propos du plateau et non pas de «détroits peu larges». Et l'affaire du canal de Beagle fait bien apparaître que l'idée de l'accord est la meilleure, comme le prouve l'accord récemment intervenu.

*
* *

Je voudrais maintenant, Monsieur le Président, Messieurs les juges, en terminant cette première partie de mon exposé formuler les propositions principales qui s'en dégagent.

Mais je voudrais auparavant, avec votre permission, Monsieur le Président, faire une observation générale.

Mon cher collègue et ami M. Weil a présenté avec beaucoup de véhémence l'attitude de la Libye envers l'équidistance.

Il a même affirmé que selon la Libye l'équidistance serait toujours inéquitable, tout en reconnaissant d'ailleurs que cette affirmation ne pouvait être trouvée dans les écritures libyennes et tout en reconnaissant qu'au contraire on y trouvait «que dans certaines circonstances l'équidistance peut se révéler comme une solution équitable» (**III**, p. 427).

Il a parlé de la position libyenne comme d'une croisade contre une équidistance présentée comme le mal absolu (*ibid.*, p. 429).

Ce sont là des outrances. D'ailleurs M. Weil, et il l'indique lui-même, a employé les mêmes expressions dans l'affaire du *Golfe du Maine* à l'égard d'un autre Etat que la Libye. Il ne me semble pas y avoir de croisade contre l'équidistance. En tout cas, la Libye n'y participe pas.

Et, pour ma part, je m'efforce d'appliquer la formule que plaçait, dans son *Discours de la méthode*, René Descartes, ce grand français qui vivait en Hollande au XVII[e] siècle, discours qu'il fit publier à Leyde, tout près d'ici, en 1637. La formule est bien connue et je m'efforce de l'appliquer: «éviter soigneusement la précipitation et la prévention».

La Libye, je le disais en commençant, adopte, à l'égard de l'équidistance, exactement la même attitude que la Cour. Et je ne pense pas que la Cour ait engagé une croisade contre l'équidistance et je voudrais tenter de rassurer mon ami M. Weil, ou du moins lui donner l'assurance que les propositions en lesquelles je voudrais résumer cette première partie de ma plaidoirie sont entièrement conformes, et il le sait d'ailleurs parfaitement, à des positions affirmées antérieurement par la Cour, par la Chambre, par le tribunal franco-britannique.

Voici ces propositions:

1. L'équidistance n'est pas un principe ou une règle juridique générale.
2. L'équidistance n'est pas une méthode pratique obligatoire.
3. La méthode de l'équidistance n'a aucun caractère prioritaire *(primary delimitation)*.
4. Une opération de délimitation ne commence pas nécessairement par le recours prioritaire à la méthode de l'équidistance.

Cette méthode n'est pas un *starting point*.

Mais la méthode de l'équidistance, une fois remise à la place qui est la sienne, peut parfois être utile.

On la trouve employée dans un certain nombre d'accords de délimitation conclus par des Etats.

Et après l'avoir cherchée au niveau des principes parmi lesquels elle ne figure pas il convient maintenant de tenter de la trouver dans les accords de délimita-

tion, du moins dans ceux qui l'emploient car là aussi la généralité absolue fait défaut.

J'aborde ainsi, Monsieur le Président, Messieurs les juges, la seconde partie de mon exposé.

II. Les accords internationaux de délimitation ne consacrent pas comme méthode prépondérante l'équidistance ni la ligne radiale pluridirectionnelle

L'examen des accords internationaux intervenus entre un certain nombre d'Etats permet d'apporter des éléments intéressants concernant l'utilisation ou la non-utilisation de la méthode de l'équidistance ou d'autres méthodes.

Avant d'aborder le premier point de cette étude, je voudrais faire, Monsieur le Président, Messieurs les juges, une remarque préliminaire. Quelque part dans ses écritures, je crois au paragraphe 265 de sa réplique, Malte a cru devoir affirmer que la Libye redoute ce que Malte appelle la *State practice*.

Je voudrais dire, puisque je suis en charge de ce dossier, que je n'ai peur de rien, sauf d'une chose: la manière dont Malte présente quelquefois la *State practice*, ou encore, sous une autre forme, de la manière dont Malte substitue l'imaginaire à la réalité dans certains cas.

Mon étude sera conduite en distinguant deux séries de questions:

A. Examen général des accords.
B. Examen plus particulier de divers accords et diverses analyses présentés par Malte lors des plaidoiries orales.

A

Examen général des accords

Je procéderai à l'examen général des accords en formulant dans un premier point des observations de caractère général et dans un second point je ferai une analyse de la présentation par Malte des divers accords de délimitation en général.

1. Observations générales

Avant d'examiner les divers accords intervenus, il me semble nécessaire de formuler des observations générales.

Je voudrais les classer sous trois rubriques: d'abord, les observations de caractère juridique, ensuite les observations de caractère méthodologique et enfin des observations portant sur des données numériques.

a) *Observations de caractère juridique*

Nous sommes en présence d'un certain nombre de conventions bilatérales relatives à des délimitations de plateaux continentaux.

Peut-on déduire de l'ensemble de ces accords des conséquences juridiques?

Peut-on les compter et de ce décompte peut-on dégager une règle de droit qui correspondrait à une majorité d'accords et devrait être considérée comme exprimant une solution acceptée et retenue par la communauté internationale?

Une réponse à cette question est évidemment négative.

Je n'ai d'ailleurs, Monsieur le Président, Messieurs les juges, aucun mérite à la donner. C'est la Cour qui a répondu dans l'arrêt de 1969.

Amenée à examiner la pratique des Etats et en présence alors d'une quinzaine d'exemples la Cour a affirmé:

> «Même s'ils représentaient plus qu'une très faible proportion des cas possibles de délimitation dans le monde, la Cour n'estimerait pas nécessaire de les énumérer ou de les examiner séparément car plusieurs raisons leur enlèvent à priori la valeur de précédents en l'espèce.» (*C.I.J. Recueil 1969*, p. 43, par. 75.)

La Cour se réfère ici à des exemples classiques. Elle remarque que l'adoption de telle ou telle méthode ou l'utilisation de telle ligne n'a pas de signification juridique. Elle affirme ainsi:

> «on doit simplement constater que dans certains cas peu nombreux des Etats sont convenus de tracer, ou ont tracé, les limites qui les concernent suivant le principe de l'équidistance. Rien ne prouve qu'ils aient agi ainsi parce qu'ils s'y sentaient juridiquement tenus par une règle obligatoire de droit coutumier, surtout si l'on songe que d'autres facteurs ont pu motiver leur action.» (*Ibid.*, p. 44-45, par. 78.)

Cette affirmation s'appuie sur l'analyse préalable de la valeur juridique de la pratique internationale, sur la prise en considération de l'*opinio juris* comme condition préalable, analyse à laquelle la Cour se livre dans le paragraphe 77 de l'arrêt. Elle repose aussi et la Cour internationale de Justice a rappelé l'opinion de la Cour permanente à propos de la célèbre affaire du *Lotus*. La solution est bien connue. On peut lire en effet au paragraphe 78 de l'arrêt de 1969:

> «A cet égard la Cour fait sienne l'opinion de la Cour permanente de Justice internationale dans l'affaire du *Lotus*, telle qu'elle est énoncée dans le passage suivant, et dont le principe est applicable par analogie à la présente espèce presque mot pour mot *mutatis mutandis* (*C.P.J.I. série A n° 10*, 1927, p. 28):
>
> > «Même si la rareté des décisions judiciaires que l'on peut trouver ... était une preuve suffisante du fait invoqué ... il en résulterait simplement que les Etats se sont abstenus, en fait, d'exercer des poursuites pénales, et non qu'ils se reconnaissent obligés de ce faire; or, c'est seulement si l'abstention était motivée par la conscience d'un devoir de s'abstenir que l'on pourrait parler de coutume internationale. Le fait allégué ne permet pas de conclure que les Etats aient été conscients de pareil devoir; par contre ... il y a d'autres circonstances qui sont de nature à persuader du contraire.» (*C.I.J. Recueil 1969*, p. 44, par. 78.)

Par-delà la question de la valeur juridique, en tant que précédent, d'autres observations de caractère juridique relatives à la pratique internationale doivent être mentionnées. En ce qui concerne par exemple la pratique des Etats-Unis en matière de délimitation maritime, on peut mentionner l'observation formulée par un commentateur qualifié à propos de l'accord Etats-Unis-Venezuela du 28 mars 1978:

> «Les accords de délimitation maritime conclus par les Etats-Unis ne sont pas déterminés par des théories particulières de droit international. Ce sont des accords résultant de négociations, fondés sur l'intérêt dans les circonstances particulières.» (M. B. Feldman et D. Colson, «The Maritime Boundaries of the United States», *AJIL*, vol. 75, 1981, p. 742-743.)

On peut mentionner également à propos du traité conclu entre les Etats-Unis

et le Mexique l'*Executive Report* du Gouvernement des Etats-Unis présenté au Sénat en août 1980. Après avoir indiqué que:

> «la limite ne saurait être mieux caractérisée que comme une frontière négociée assurant pour chacune des parties au traité la détermination de leurs intérêts propres»,

le rapport ajoute:

> «C'est la position des Etats-Unis que les délimitations maritimes doivent être établies par voie d'accord en conformité avec des principes équitables. La méthode de l'équidistance peut être appliquée en tant que matière dont les parties sont convenues, si elle conduit à un résultat correspondant à des principes équitables.» (*US Senate Executive Report*, n° 96.49, 5 août 1980, p. 24.)

Ajoutons enfin que c'est l'attitude bien connue du Gouvernement français, qui a affirmé sans cesse son attachement aux principes équitables et qui utilise l'équidistance lorsque son emploi, dans les circonstances particulières d'un traité déterminé, correspond à une solution qui est celle dictée par le principe fondamental, celui des principes équitables.

Après ces premières observations de caractère juridique, je voudrais formuler quelques observations de caractère méthodologique.

b) *Observations de caractère méthodologique*

L'analyse des différents accords conclus entre les Etats doit être conduite, si l'on veut en tirer quelques enseignements, d'une manière bien précise, afin d'avoir des positions et des classifications précises.

Il convient de distinguer plusieurs problèmes, par exemple l'objet de la délimitation, les traités eux-mêmes, les attitudes des Etats, les zones géographiques particulières, la méthode même de délimitation employée.

Ces points seront traités successivement.

i) *L'objet de la délimitation*

Tous les accords de délimitation n'ont pas le même objet.

Il faut absolument distinguer les traités relatifs à la délimitation du plateau continental et ceux qui concernent les délimitations maritimes que la terminologie anglaise appelle les «maritime boundaries».

On relève que, dans les tableaux figurant dans les écritures maltaises, il n'est jamais question que de «délimitation of the maritime boundaries» et qu'aucune précision n'apparaît dans les divers tableaux qui, dans les écritures maltaises, présentent ces accords.

Ainsi apparaissent des risques d'erreurs fondées sur une imprécision de départ. Plus du tiers des accords ne concernent pas la délimitation du plateau continental. Cette imprécision est contraire à une bonne méthodologie.

La ligne de délimitation n'est pas nécessairement la même pour le plateau continental et pour des zones marines, c'est-à-dire aussi des colonnes d'eau. Cette coïncidence se rencontre parfois, ainsi l'exemple bien connu de l'accord du 22 octobre 1981 entre l'Islande et la Norvège, pour le plateau continental entre l'Islande et l'île norvégienne de Jan Mayen. Le préambule précise que, suivant en cela les recommandations de la commission de conciliation, la ligne sera la même.

On sait également que pour le golfe du Maine les parties avaient demandé à la Cour d'établir une ligne unique pour le plateau et les zones maritimes de pêche.

Mais précisément dans les documents présentés par le Canada dans l'affaire du *Golfe du Maine*, il est indiqué, et il y a toute une liste d'accords comme pièces documentaires, lorsque l'accord concerne le plateau ou lorsque l'accord précède simplement les frontières maritimes.

Cette précision fait défaut dans les pièces de la République maltaise. Ainsi sont présentés des accords, comme par exemple France-Tonga et France-Maurice, qui concernent uniquement les zones économiques, et je me borne à ces deux exemples mais il y en a beaucoup d'autres.

Si une bonne méthodologie exige la distinction entre les deux domaines précités de délimitation, du moins une fois cette précision apportée on peut traiter de l'un ou de l'autre problème, par contre la mer territoriale, dans les limites que lui fixe le droit international, doit être exclue du champ de notre analyse car il s'agit pour ce dernier domaine de la souveraineté de l'Etat riverain.

ii) *Les attitudes des Etats*

Deuxièmement, on peut considérer les attitudes des Etats.

Il est évidemment d'une bonne méthode avant d'énumérer toute une série d'accords selon un ordre chronologique de mentionner pour qu'elles soient présentes à l'esprit les grandes lignes politiques de la conduite des Etats.

L'attitude française, que j'évoquais il y a un instant, qui fait que le Gouvernement français n'accepte jamais que des délimitations équitables.

On peut rappeler l'attitude des Etats-Unis que je signalais tout à l'heure (*US Senate Executive Report*, n° 96-49, août 1980).

On peut signaler l'attitude des Etats du Golfe définie dans des déclarations unilatérales que j'ai mentionnées au début de cet exposé et auxquelles se réfèrent des traités plus récents.

Ces prises de position préalables, sorte de politique juridique de doctrine adoptée par certains Etats, sont des guides très utiles pour l'interprétation des traités et elles permettent d'éviter soit des erreurs soit des affirmations un peu hâtives.

Par exemple les prises de position des Etats, lors de la troisième conférence, l'appartenance au «groupe des Vingt-deux» ou au «groupe des Vingt-neuf» marquent les attitudes et déterminent dans une grande mesure le type de solution adoptée par le traité.

Il est peu probable, Monsieur le Président, que par exemple si deux Etats appartenant au «groupe des Vingt-deux» concluent entre eux un traité de délimitation du plateau continental ils n'adoptent pas la méthode de l'équidistance dont ils font par prétérition une méthode privilégiée.

Et lorsqu'on évoque par exemple les accords intervenus en Méditerranée, ils ont été conclus entre des Etats qui, à la troisième conférence, avaient adopté une attitude politique en faveur de l'équidistance.

L'attitude peut parfois être enfin déterminée par un traité antérieur. C'est l'exemple de l'application des règles de Genève entre Etats parties à la convention de 1958. L'accord entre la Finlande et la Suède pour la détermination du plateau continental dans le golfe de Botnie présente, et je reviendrai sur ce point par la suite, un exemple tout à fait parfait. Les deux Etats non seulement sont parties à la convention de Genève de 1958, mais dans le traité de délimitation ils se réfèrent à cette convention. Comment n'appliqueraient-ils pas l'équidistance?

Ces «pré-déterminations» d'ordre juridique ou politique réduisent de beaucoup la signification du traité intervenu.

iii) *Les zones géographiques*

Il y a aussi lieu de tenir compte des zones géographiques.

C'est d'une manière beaucoup moins nette d'ailleurs que l'on peut utiliser d'un point de vue méthodologique les diverses zones géographiques.

C'est une solution par exemple que celle de l'équidistance qui est assez largement pratiquée en mer du Nord, sauf évidemment pour les accords conclus en 1971 à la suite de l'arrêt de 1969 qui porte précisément remède aux inconvénients que présente la méthode de l'équidistance. On peut citer à cet égard, et nous les retrouverons par la suite (ils figurent d'ailleurs dans les cartes), l'accord entre les Pays-Bas et la République fédérale d'Allemagne, l'accord entre le Danemark et la République fédérale d'Allemagne, deux accords conclus le même jour, le 28 janvier 1971.

Les écritures maltaises, qui considèrent ces deux accords comme fondés sur l'équidistance, commettent ici une erreur grave.

Dans les vastes océans la variété des situations ne permet pas de dégager une tendance régionale différente, il peut en aller autrement. Pour reprendre l'exemple de la Méditerranée, il existe quatre accords. Trois mentionnent la méthode de l'équidistance, l'un conclu entre la Yougoslavie et l'Italie ne la mentionne pas et utilise des tracés qui s'en écartent.

L'accord Italie-Tunisie indique l'équidistance mais la modifie considérablement avec les limitations de distance autour des îles de 13 milles nautiques pour Pantelleria, Lampedusa et Linosa et de 12 milles nautiques pour Lampione.

On notera à ce sujet que l'Italie, après avoir été un champion de l'équidistance et un membre du «groupe des Vingt-deux», a nuancé sa position.

Ainsi qu'il est rappelé dans la réplique libyenne (p. 40, note 1 — **III**), M. Virally au cours des plaidoiries orales dans l'affaire de l'intervention de l'Italie a pu déclarer que pour l'Italie l'équidistance n'est pas «une méthode obligatoire pour la délimitation des zones du plateau continental» (**II**, p. 557).

Mais précisément en relevant l'existence ou non dans l'accord d'une référence à une méthode de délimitation on aborde ce problème, si j'ose dire, doublement méthodologique, l'examen méthodique de la méthode, recherche de la méthode de délimitation employée par les accords.

Et c'est ma quatrième observation.

iv) *Méthode propre de délimitation*

Un certain nombre de conventions indiquent dans le préambule ou dans l'un des premiers articles la méthode de délimitation utilisée: par exemple, méthode de l'équidistance ou bien principes équitables, ou bien manière juste et précise, etc. Il n'existe, lorsqu'une telle référence se présente, aucune ambiguïté. Mais plus fréquemment aucune indication n'est fournie.

L'interprétation alors peut devenir délicate.

Dans les écritures maltaises, dans une étude établie par M. Prescott, et annexée à la réplique de Malte, il est traité du problème de la méthode de délimitation d'une manière très simple.

On distingue côtes adjacentes et côtes se faisant face, on classe les accords pour chacune des situations géographiques précitées en deux catégories: «Agreements which have relied on equidistance» et «Agreements which have not relied on equidistance».

C'est là une classification simple, peut-être même simpliste.

Car, premièrement, que signifie le mot *rely*, que signifie le mot *equidistance*.

Rely, bien sûr, «se fonder sur», mais ce n'est pas une expression juridique. Et *equidistance*, est-ce le principe de l'équidistance, la règle de l'équidistance, la méthode de l'équidistance, la ligne.

Rien n'est précisé.

La Libye, on le sait, n'a pas présenté de classification. Mais parce qu'elle s'est bornée à fournir une liste d'accords aussi complète qu'elle a pu, redoutant des choix sélectifs, cette liste comporte quelques omissions.

La Libye a préparé cette liste et l'a présentée en annexe au contre-mémoire et elle a présenté ses accords sans les classer autrement que selon un ordre neutre, l'ordre chronologique.

Les documents fournis dans l'affaire du *Golfe du Maine* par le Canada et les Etats-Unis permettent de mieux apprécier la trop grande simplicité des écritures maltaises.

En effet, le document canadien (livre I, annexe à la réplique[1]) distingue les délimitations, comme je le disais tout à l'heure, faisant usage d'une distinction fondamentale entre «maritime boundaries» et plateau continental, ou parfois les deux. S'agissant de l'équidistance, le document canadien précise qu'il s'agit d'une méthode et distingue la méthode d'équidistance et la ligne d'équidistance, et les traités sont classés suivant qu'ils utilisent comme méthode:

— l'équidistance stricte ou simplifiée,
— l'équidistance modifiée,
— pas l'équidistance.

Le document américain, dans la même affaire, distingue les accords qui incorporent la méthode de l'équidistance pour toute la limite ou seulement pour une partie, et il distingue bien évidemment les accords qui n'incorporent pas la méthode de l'équidistance.

Le document américain comporte une seconde présentation qui prend essentiellement en considération les limites en elles-mêmes et non plus les accords qui les fixent. Il distingue ainsi les frontières qui n'incorporent pas des lignes d'équidistance, des frontières qui incorporent ces lignes en partie, des frontières qui incorporent ces lignes en totalité.

Voilà des approches dont la valeur méthodologique est certaine. Ce n'est pas l'opposition entre «équidistance» (ligne ou méthode) et «non-équidistance» qui place dans l'embarras ou parfois amène à commettre des erreurs lorsque l'on utilise, sur une certaine longueur, l'équidistance et non sur d'autres longueurs. Car comment classer? Bien sûr pas comme le font les écritures maltaises qui donnent la priorité absolument et pour la totalité à l'équidistance dans de tels cas — nous y reviendrons.

N'oublions pas, en effet, que les situations complexes sont fréquentes. Il peut y avoir une délimitation concernant deux côtes différentes d'un même Etat. Il peut y avoir à propos d'une même côte l'utilisation de plusieurs méthodes.

C'est là une hypothèse normale et l'emploi d'une seule méthode n'a jamais été recommandée par la Cour. Les lignes sont souvent constituées par plusieurs segments. Et la méthode utilisée pour un segment n'est pas nécessairement la méthode que l'on utilise pour un autre.

On trouve par exemple dans l'accord entre la Colombie et le Panama du 20 novembre 1976 tant dans le Pacifique que dans la mer des Caraïbes deux déli-

[1] *C.I.J. Mémoires, Délimitation de la frontière maritime dans la région du Golfe du Maine*, vol. V, p. 157 et suiv. *[Note du Greffe.]*

mitations dont chacune est constituée, au départ, je veux dire à partir de la terre, par une ligne d'équidistance, et ensuite par un second segment qui n'est pas déterminé par l'équidistance.

Donc des distinctions doivent être apportées pour un classement exact. Et cette complexité concernant l'emploi de diverses méthodes a été remarquée par la Cour qui, dans son arrêt de 1982, a évoqué la combinaison des méthodes dans des termes fort clairs:

> «La pratique ultérieure des Etats, dont témoignent les traités de délimitation ... atteste que la méthode de l'équidistance a été employée dans un certain nombre de cas; cependant elle montre aussi que les Etats peuvent l'écarter... Une solution peut consister à combiner une ligne d'équidistance dans certaines parties de la zone avec une ligne différente dans d'autres parties, en fonction des circonstances pertinentes ... la convention entre la France et l'Espagne sur la délimitation des plateaux continentaux des deux Etats dans le golfe de Gascogne, conclue le 29 janvier 1974, fourni[t] [un exemple] de cette façon de procéder.» (*C.I.J. Recueil 1982*, p. 79, par. 109.)

Ainsi dit la Cour. Mais pas les écritures maltaises. Que le tracé, dans cet exemple France-Espagne, soit différent, que le traité expose le contraire, c'est-à-dire qu'on a recours à l'équidistance, d'une part, et à une autre méthode, d'autre part, peu importe pour Malte.

Malte ne porte que peu d'attention aux faits et aux textes, elle classe délibérément l'accord parmi ceux «which rely on equidistance».

La troisième série d'observations concerne, Monsieur le Président, Messieurs les juges, les données numériques.

c) *Observations portant sur des données numériques*

Du point de vue méthodologique une place particulière doit être faite aux données numériques.

Il est difficile de donner une liste complète de tous les accords conclus entre les Etats.

La liste libyenne (II, contre-mémoire libyen, vol. II, première et deuxième parties, 26 octobre 1983, «Annex of Delimitation Agreements»), fournie dans les écritures, comporte soixante et onze rubriques, mais on doit remarquer que dans certains cas une rubrique correspond à plusieurs accords successivement conclus entre les deux mêmes Etats, de telle sorte qu'on peut arriver à une liste de quatre-vingt-un accords. Les écritures canadiennes dans l'affaire du *Golfe du Maine* citent quatre-vingt-huit accords, et les écritures américaines, dans la même affaire, évoquent, selon des conventions dans le détail desquelles je n'entrerai pas, quatre-vingt-quatorze conventions.

Par conséquent, il y a, vous le voyez, moins d'une centaine d'accords.

Les écritures maltaises ne présentent pas de listes d'accords mais font allusion à une série d'accords et notamment dans les tableaux établis par M. Prescott dont je parlais tout à l'heure et dont parlait surtout, lors de sa plaidoirie orale, M. l'agent de la République de Malte, les 26 et 27 novembre dernier. Un ensemble d'accords par exemple est indiqué, au point de vue numérique, par M. Prescott, avec un total de soixante-dix-neuf accords; dans ses tableaux il ne mentionne que soixante-dix-sept d'entre eux.

La différence de deux accords est minime, mais tout de même elle est fâcheuse dans la mesure où Malte s'est lancée dans l'aventure d'une analyse arithmétique dont elle tire des conséquences qu'elle voudrait juridiques.

Malte ne pouvant, en effet, que constater l'attitude de la Cour qui depuis

1969 a laissé à l'équidistance une place seconde, celle d'une méthode, a tenté de minimiser la solution retenue par la Cour en présentant la pratique des Etats.

La tentative de démonstration consiste à distinguer les accords conclus avant et après 1969, date de l'arrêt dans l'affaire du *Plateau continental de la mer du Nord*, et pour chaque période à distinguer ceux qui sont fondés sur l'équidistance, notion très vague, et ceux qui ne le sont pas.

On établit ainsi deux séries de rapports numériques, l'un concernant la période antérieure à 1969 et l'autre la période postérieure. En comparant la valeur de ces rapports, on en vient à affirmer que le pourcentage des accords fondés sur l'équidistance par rapport au nombre total des accords conclus est plus grand dans la période postérieure à 1969.

Donc déduction toute naturelle, loin d'être en déclin l'équidistance serait en progrès.

Une telle conclusion est inadmissible. Elle constitue une affirmation fallacieuse dépourvue de toute portée, ne reposant sur aucune base scientifique.

D'ailleurs, cet exercice d'arithmétique internationale, même s'il était scientifiquement conduit, serait dépourvu de toute portée.

Tout d'abord, une première raison, la Cour a déjà jugé que toute solution doit être établie en fonction des circonstances propres à chaque arrêt (*C.I.J. Recueil 1982*, p. 92, par. 132).

D'ailleurs même s'il y a une majorité d'accords en faveur de l'équidistance, et si exprimée en pourcentage cette majorité était postérieurement à 1969 plus grande qu'avant 1969, cela ne prouverait strictement rien et pour plusieurs raisons.

La première est évidemment qu'une majorité d'accords en faveur de l'équidistance, alors que cette majorité ne correspond pas à la mise en œuvre d'une obligation juridique existante et à une conduite d'Etats estimant, en la circonstance, qu'ils doivent obéir à une règle de droit, est dépourvue de toute signification juridique.

La seconde est qu'une pluralité ou une majorité d'opinions sur un point ne signifie pas l'exactitude scientifique de l'opinion. Or, là, il ne s'agit pas d'un même point mais de toute une série d'accords dans des circonstances de faits différentes.

La troisième raison mérite une mention particulière parce qu'il s'agit du fondement même de l'exercice arithmétique et que ce fondement n'existe pas.

Les accords que l'on prend en considération ne sont en effet pas très nombreux. Nous l'avons dit, ils sont inférieurs à la centaine.

Ils ont été conclus par une soixantaine d'Etats, c'est-à-dire un peu plus du tiers du nombre des membres de la communauté internationale.

Ils ont été conclus d'une manière non systématique, c'est-à-dire que certains Etats adjacents ou certains Etats dont les côtes se font face ont conclu des accords alors que d'autres Etats ne le faisaient pas.

C'est donc d'une manière purement contingente qu'ont été conclus des accords, et le nombre des accords conclus avant 1969 ou après 1969 est purement fortuit.

On ne peut dégager une tendance, on ne peut établir une statistique sur des bases fragmentaires, partielles et purement contingentes.

Il en irait peut-être autrement si le temps avait passé. Si l'on se trouvait en présence de tous les accords de délimitation, de tous les accords que la communauté internationale aurait pu conclure et avait conclus. Dans cette hypothèse, dont la réalité apparaît fort lointaine, puisque plusieurs centaines d'accords restent à conclure, comme l'a indiqué l'agent du Gouvernement libyen, il est évident que si cette hypothèse était réalisée l'on pourrait, s'adressant par

exemple au Secrétaire général des Nations Unies, dénombrer tous les accords, les classer selon qu'ils utilisent ou non telle méthode et établir donc un rapport.

Bien entendu ce rapport n'aurait qu'une portée indicative, intellectuellement intéressante pour une étude de sciences politiques dans le domaine des relations internationales. Il n'en est d'aucune valeur juridique dans la mesure où le comportement des Etats n'aurait pas été dominé par le sentiment d'obéir à une obligation juridique. Mais, dans les circonstances ci-dessus indiquées, le rapport aurait indubitablement une valeur scientifique.

L'exercice arithmétique tel qu'il apparaît dans les écritures maltaises et tel qu'il a été présenté dans les plaidoiries orales de Malte n'a pas de valeur juridique mais il n'a pas non plus de valeur scientifique.

Il incorpore des données contingentes et tire des conclusions erronées.

La base, c'est-à-dire le nombre d'accords fondés sur telle ou telle méthode, se trouve, nous le verrons, mal établie et inexacte, ce qui enlève à l'exercice toute crédibilité. Mais si les bases étaient mieux établies, les conclusions n'en seraient pas moins erronées.

On sait en effet que les Etats lorsqu'ils négocient un accord de délimitation défendent — ce qui est tout à fait naturel — leurs intérêts. Ils s'efforcent donc dans les négociations de faire triompher leurs points de vue.

On a vu plus haut qu'au cours de la troisième conférence sur le droit de la mer deux groupes d'Etats se sont opposés au sein du groupe de négociation n° 7 qui, notamment en 1978, avait été chargé des problèmes de délimitation.

Voici des données numériques. Les expressions «groupe des Vingt-deux», «groupe des Vingt-neuf» sont bien connues.

Le nombre effectif des Etats ayant participé à chacun de ces groupes est en réalité d'ailleurs un peu plus élevé.

Ainsi, le «groupe des Vingt-deux» réunissant les partisans de l'équidistance a compté jusqu'à vingt-six membres.

Le «groupe des Vingt-neuf» qui réunissait les partisans des principes équitables a compté jusqu'à trente-trois membres, dirais-je, sympathisants.

Donc 26, 33, voilà une donnée numérique intéressante. Elle montre que les deux séries d'Etats sont à peu près à égalité avec une légère avance pour les partisans des principes équitables. Il faut noter aussi que si l'on ajoute 26 et 33, cela fait 59.

Cinquante-neuf Etats sur un ensemble d'une conférence groupant cent soixante membres, cela ne fait pas une proportion tout à fait déterminante. On remarquera, une curiosité, c'est que ce nombre de cinquante-neuf représente exactement la moitié des Etats ayant un littoral maritime.

Et, sur l'ensemble des accords conclus et que je citais tout à l'heure, c'est une vingtaine seulement d'accords qui contiennent une disposition précise mentionnant que le critère de l'équidistance a été choisi. Dans d'autres cas, plus nombreux, aucune méthode de référence n'est indiquée.

On remarquera aussi que, sur l'ensemble de ces accords que j'ai cités, ils ont été conclus par 65 Etats. On remarquera que 18 Etats sur le «groupe des Vingt-deux», c'est-à-dire 18 sur 26 si l'on veut, ont conclu 51 accords. Et que 12 Etats seulement sur les 33 favorables aux principes équitables ont conclu des accords de délimitation.

Ces disparités numériques, qu'il faut avoir présentes à l'esprit, soulignent l'absence de base scientifique du calcul présenté dans les écritures et dans les plaidoiries maltaises.

Il existe d'ailleurs d'autres erreurs que nous aurons à constater par la suite.

Je voudrais maintenant, Monsieur le Président, aborder un autre point, ma section 2.

2. *Analyse de la présentation maltaise des accords de délimitation*

On voit figurer dans les écritures maltaises (**III**, réplique, annexe 4, p. 151 et suiv.), une opinion sur la *State practice* rédigée par M. Prescott, lecteur à l'université de Melbourne.

Il présente quatre tableaux. Ces tableaux recensent les accords «which rely on equidistance» et les accords «which do not rely on equidistance».

Les uns concernent les accords conclus entre Etats dont les côtes sont «mainly adjacent» et les autres accords conclus entre les Etats dont les côtes sont «mainly opposite».

Mon analyse, mes paroles seront illustrées par des cartes qui sont présentées dans l'album qui a été remis à la Cour. Il est d'ailleurs à remarquer que les tableaux qui sont présentés dans la réplique des écritures maltaises ne sont assortis d'aucune carte. Des cartes certes sont contenues dans l'ensemble des écritures maltaises mais elles sont relativement peu nombreuses et cela signifie que dans beaucoup de cas des accords mentionnés dans les tableaux ne sont pas illustrés par des cartes.

Etrange méthode pour l'auteur de l'opinion qui nous a été présenté comme un géographe. Mais les cartes auraient souvent fait immédiatement apparaître des erreurs.

Alors on n'a pas fourni de cartes.

C'est parfois tout à fait regrettable. Ainsi à la page 171 de la réplique maltaise (**III**) figure un tableau destiné à accréditer l'affirmation que les accords de délimitation ne prennent pas en considération des «dépressions significatives».

Des cartes auraient montré le caractère pas nécessairement pertinent des observations.

Par exemple l'accord entre Haïti et Cuba du 27 octobre 1977 ne tient pas compte, nous dit-on, de la fosse Cayman. Mais elle est située fort loin de l'accord, fort loin de la zone de délimitation.

De même, il est indiqué que l'accord entre la République dominicaine et la Colombie du 11 janvier 1978 et l'accord entre la République dominicaine et le Venezuela du 3 mars 1979 ne tiennent pas compte de la «coupure Aruba», mais cette fosse est très au sud de la zone de chacun des accords, de 64 à 90 milles nautiques, pour le premier, de 57 à 95 milles nautiques pour le second.

Ma présentation orale se bornera, pour ne pas lasser la patience de la Cour, à citer les accords et les cartes de l'album qui les illustrent, avec des commentaires dans les cas les plus importants. J'examinerai successivement les omissions puis les erreurs principales.

a) *Les omissions*

Les écritures maltaises comportent des omissions. Certes, il est difficile d'avoir un recensement parfait de la centaine d'accords intervenus en matière de délimitation de plateau continental ou de zone maritime. Mais il faut s'efforcer d'être complet.

Monsieur le Président, Messieurs les juges, je pense que la Cour ne sera pas étonnée de m'entendre me référer à nouveau au *Discours de la méthode* de René Descartes et à cet impératif scientifique qu'il relevait, faire un recensement si complet «que je fusse assuré de ne rien omettre». Les omissions sont regrettables: Elles diminuent la valeur scientifique de l'étude. Elles condamnent tout calcul de rapport de proportion car, c'est très fâcheux, nous le verrons, les omissions ne portent que sur des accords qui ne sont pas en faveur de l'équidistance.

Les cartes le montrent et on doit commenter le cas échéant.

Les principales omissions, car je ne prétends pas avoir tout relevé, sont les suivantes:

— Accord Abu Dhabi-Dubaï du 18 février 1968 (album carte 10). La carte parle d'elle-même. Il faut la combiner avec la carte 11.

— Accord Portugal-Espagne du 12 février 1976 (album carte 12). On a utilisé au nord un parallèle, au sud un méridien. La carte parle d'elle-même.

— Turquie-URSS du 23 juin 1978 (album carte 13). L'accord, comme l'indique son préambule, applique les principes équitables. D'ailleurs, l'URSS avait une attitude qui en 1978, lors de la troisième conférence, était conforme à celle du groupe des «Vingt-neuf».

— France-Brésil du 30 février 1981 (album carte 14). Au sujet de cet accord, M. Guillaume, directeur du service juridique au ministère français des relations extérieures, a déclaré:

> «En l'espèce, l'équidistance aurait été inéquitable du fait de l'avancée du cap Orange vers les côtes guyanaises dans la baie de l'Oyapock. En effet, cette avancée ne reflète pas la direction générale des côtes françaises et brésiliennes, et, en outre, s'allonge d'année en année du fait de dépôt de matières solides en suspension dans les fleuves côtiers. De ce fait, sa prise en considération aurait entraîné une déviation excessive de la ligne d'équidistance vers le nord-ouest.» (Colloque de la Société française pour le droit international, Rouen, 1983.)

— Cuba-Haïti du 27 octobre 1977 (album carte 15; **II**, p. 197). On trouvera dans le compte rendu une référence aussi au contre-mémoire libyen mais je me borne oralement à citer l'album qui vous a été remis, Monsieur le Président, Messieurs les juges. Cet accord a été omis.

C'est regrettable car son article premier souligne la relativité des méthodes, il indique une solution très flexible: «la délimitation est établie sur la base de l'équidistance ou de l'équité comme les circonstances l'exigent».

— Accord Etats-Unis-Mexique du 4 mai 1978 (album cartes 16 et 17). Cet accord a fait seulement l'objet d'une note de bas de page dans les écritures maltaises (**III**, RM, p. 176) et il est indiqué que cet accord est la suite de l'accord du 20 novembre 1970 qui est recensé dans le tableau. Il n'est pas exact de présenter l'accord de 1978 comme se bornant à prolonger l'accord de 1970.

L'accord en effet consacre des solutions qui avaient fait l'objet d'un échange de notes entre les deux gouvernements en date du 24 novembre 1976. Le traité de 1978 rappelle cet échange de notes dans son préambule et reconnaît que les lignes alors adoptées, et qu'il confirme, sont «pratiques et équitables».

Les services juridiques des Etats-Unis ont indiqué que les traits essentiels de l'accord étaient qu'une surface maritime substantielle de 18000 milles nautiques carrés dans l'océan Pacifique revenait aux Etats-Unis et une surface moindre dans les zones de grande profondeur de la partie centrale est du golfe du Mexique revenait au Mexique.

C'est à propos de la discussion au Sénat qu'a été précisée la position générale du Gouvernement des Etats-Unis en matière de traités de délimitation maritime que je rappelais tout à l'heure: «c'est la position des Etats-Unis que les frontières maritimes doivent être établies par voie d'accord en conformité avec les principes équitables.»

Voilà ce que sont les omissions, ou quelques omissions, que j'ai retrouvées. On peut maintenant passer à l'examen de ce que j'appelle les erreurs, mais je voudrais auparavant déplorer les omissions citées ci-dessus, car, il convient de

le remarquer au passage, les accords omis ne fournissent pas d'appui à la thèse de l'équidistance, ne consacrent pas la thèse de Malte, mais celle de la Libye.

C'est là certainement un hasard, mais il est fâcheux.

b) *Les erreurs*

Il convient de suivre ici la présentation qui existe dans la réplique de Malte. On notera d'une manière générale un défaut de précision car les tableaux ne distinguent pas les accords qui portent sur la délimitation du plateau continental et les accords qui portent sur les frontières maritimes. Cette distinction a été au contraire utilisée, je l'ai déjà indiqué, dans les écritures canadiennes à propos de l'affaire du *Golfe du Maine*, et pourtant le Canada est un partisan de la thèse de l'équidistance. Cette absence de distinction n'est pas fortuite. Elle est délibérée, car elle correspond à la tactique employée par Malte qui consiste à utiliser la notion de zone économique et ce point a été présenté notamment par mon collègue, M. Quéneudec, attitude d'autant plus curieuse que Malte a refusé que la présente affaire concerne autre chose que le plateau continental. On a déjà mentionné cette contradiction.

Je voudrais maintenant examiner les principales erreurs qui me semblent avoir été commises dans les deux tableaux présentés dans les écritures maltaises au stade de la réplique.

Tableau 1 d'abord, tableau 3 ensuite (**III**, RM, annexe 4, p. 173 et 176).

Tableau 1

S'agissant du tableau 1, je voudrais formuler d'abord quelques observations portant sur deux séries d'accords, les uns passés par la France, les autres conclus dans le Golfe.

S'agissant des accords passés par la France, on ne peut les inclure parmi les accords «which rely on equidistance», car, comme l'a précisé M. Guillaume au colloque de Rouen dont on parle décidément beaucoup, ces accords retiennent comme ligne de délimitation la ligne d'équidistance lorsqu'elle est jugée en l'espèce conforme à l'équité.

Alors comment les classer? Ils emploient l'équidistance, oui, mais ils emploient aussi l'équité, et c'est tout de même différent d'un accord qui emploie l'équidistance et qui ne consacre pas l'équité. Alors, voici un problème. Peut-être n'est-il pas résolu? Mais le problème existe.

Ce sont, donc, les accords passés avec Tonga, album carte 18, avec Maurice, carte 19, avec Sainte-Lucie, carte 20, avec l'Australie, carte 21. Il s'agit ici d'une première observation. Et cela concerne cinq accords puisque dans les tableaux de Malte est ajouté l'accord avec Fidji.

On notera de nouveau que les accords conclus par la France avec Tonga et Maurice ne concernent que la zone économique exclusive et ne sont pas pertitents; que l'accord avec Sainte-Lucie porte sur les espaces maritimes et que seul l'accord avec l'Australie indique expressément qu'il concerne les zones économiques et le plateau continental.

Deuxième observation générale: s'agissant du Golfe arabique, c'est vraiment une formule simple que de dire que les délimitations y sont opérées par application du principe de l'équidistance.

Seul un accord indique le recours à la méthode de l'équidistance, celui de 1958 entre Bahreïn et l'Arabie saoudite.

L'accord Iran-Arabie saoudite de 1968 indique «in a just and accurate manner».

Les accords Iran-Qatar de 1969, Iran-Bahreïn de 1971, Iran-Oman de 1974

font référence à une délimitation conduire «in a just equitable and exact manner».

On dira que la ligne médiane a été souvent utilisée, mais où est l'équidistance en tant que principe, où est l'équidistance en tant que méthode, lorsque l'on voit varier dans le Golfe le traitement des îles d'une manière très grande.

Il n'y a pas moins de cinq solutions différentes:

— Les îles sont parfois ignorées pour l'ensemble de la délimitation, ainsi l'accord Iran-Qatar de 1969.

— Les îles sont parfois ignorées dans un secteur mais prises en considération dans un autre, ainsi l'accord Bahreïn-Arabie saoudite qui retient les îles dans la partie centrale de la zone délimitée.

— Dans l'accord Abu Dhabi-Qatar de 1969, l'île de Daynina appartenant à Abu Dhabi se voit attribuer un arc de mer territoriale de 3 milles nautiques qui est intégré dans la délimitation.

— L'accord Iran-Arabie saoudite de 1968 adopte une formule curieuse. Il est attribué à deux îles, chacune relevant de chacun des Etats, mais située plus près de la côte de l'autre, une mer territoriale de 12 milles nautiques. Une ligne d'équidistance est retenue, mais entre les deux îles seulement et la ligne générale de délimitation est établie en considération de ces solutions particulières.

— Dans un autre accord, celui entre l'Iran et l'Arabie saoudite, un demi-effet est attribué à une île proche du territoire de l'un des Etats.

Dans le Golfe, on constate qu'il n'y a pas de limite à la subtilité de la négociation.

La délimitation entre Abu Dhabi et Qatar de 1969 utilise parmi les points du tracé un point où se trouve un puits en exploitation et dont l'accord prévoit que les revenus seront partagés également entre les Etats.

Dans l'accord entre Bahreïn et l'Arabie saoudite de 1958, il est prévu que les deux Etats partageront les revenus provenant de l'exploitation d'une zone pourtant placée sous la souveraineté d'un seul Etat et administrée par lui.

Tous les accords conclus dans le Golfe sont ainsi marqués par la subtilité des solutions, par la prise en considération de telle ou telle circonstance particulière.

On ne peut affirmer qu'il s'agit là de l'application du principe de l'équidistance. Ce serait là une prise de position de caractère systématique et à priori qui ne tiendrait pas compte de la réalité.

D'ailleurs, il m'est agréable de dire que M. Prescott, dans son étude, mentionne fort exactement comme accords ne reposant pas sur l'équidistance l'accord Dubaï-Iran du 21 août 1974 et l'accord Qatar-Abu Dhabi du 20 mars 1969.

Cette complexité, Monsieur le Président, Messieurs les juges, apparaît manifestement avec les cartes. Comme j'ai pour chacun des accords parfois parlé de plusieurs problèmes, c'est maintenant seulement que j'évoque les cartes: album carte 36A: Iran-Arabie saoudite; carte 36B: Qatar-Abu Dhabi; carte 37: Bahreïn-Iran; carte 42: Barheïn-Arabie saoudite; carte 43: Iran-Qatar; carte 45: Iran-Oman.

Les erreurs concernent aussi d'autres régions et je voudrais évoquer maintenant, en terminant, les Caraïbes:

— L'accord entre les Pays-Bas et le Venezuela du 31 mars 1978 ne repose pas sur l'équidistance (album carte 22, **II**, CML, *Agreement 57*). Le préambule indique clairement que la délimitation est conduite «in a fair, concise and equitable manner». Les lignes — la carte l'illustre magnifiquement — s'écartent considérablement des lignes d'équidistance.

— L'accord entre la République dominicaine et le Venezuela signé le 3 mars

1979 (album carte 23, **II**, CML, *Agreement 61*) ne repose pas sur l'équidistance. Le préambule indique que la délimitation a été établie «sur la base de principes équitables».

S'agissant maintenant des mers d'Asie et d'Océanie:

— L'accord entre l'Indonésie et la Thaïlande du 17 décembre 1971 (album carte 24, **II**, CML, *Agreement 28*) sur le plateau continental dans la mer d'Andaman n'est pas fondé sur l'équidistance. La carte le montre.

— L'accord entre l'Indonésie et la Thaïlande du 11 décembre 1975 (album carte 25, **II**, CML, *Agreement 28*) n'est pas fondé sur l'équidistance. La carte le montre.

— S'agissant de l'Inde et de la Thaïlande, l'accord du 22 juin 1978 (album carte 26, **II**, CML, *Agreement 59*) ne repose pas sur l'équidistance. Le commentateur de *Limits in the Seas* indique que la ligne est une «ligne négociée qui est agréable aux parties concernées».

— S'agissant des relations entre l'Inde et le Sri Lanka (album carte 27, **II**, CML, *Agreement 38*), on est en présence de deux accords successifs et différents.

Le premier du 28 juin 1974 ne peut être classé parmi les accords qui reposent sur l'équidistance. Le préambule indique que les questions sont réglées *«in a manner which is fair and equitable to both sides»*.

Le préambule indique également que l'ensemble de la question a été considéré sous tous ses angles.

L'accord ne fait évidemment aucune mention de l'équidistance. On ne peut compter le premier accord, on ne peut compter le second pour les mêmes raisons puisqu'il mentionne qu'il s'agit là encore d'une délimitation faite d'une manière *«fair and equitable»*.

— Enfin l'accord entre l'Australie et la Papouasie-Nouvelle-Guinée du 18 décembre 1978 (album carte 28, **II**, CML, *Agreement 60*) est un ensemble complexe. La frontière maritime dans la mer de Corail n'est pas fondée sur l'équidistance dont elle s'écarte nettement comme le prouve une carte extraite d'ailleurs des écritures canadiennes dans l'affaire du *Golfe du Maine*.

Monsieur le Président, j'ai ainsi examiné une série d'accords qui figurent dans les écritures maltaises à la réplique dans ce qui est appelé le tableau 1; il me reste d'autres délimitations à examiner.

L'audience est levée à 13 heures

VINGTIÈME AUDIENCE PUBLIQUE (12 XII 84, 10 h)

Présents: [Voir audience du 26 XI 84.]

M. COLLIARD: Monsieur le Président, Messieurs les juges, lorsque je me suis arrêté hier, j'analysais la présentation maltaise de la *State practice*, présentation de caractère général contenue dans la réplique de Malte. J'avais analysé les omissions, puis examiné le tableau 1 concernant les accords entre Etats se faisant face. Je voudrais maintenant aborder l'étude du tableau 3 concernant les accords entre des Etats dont les côtes sont «*mainly adjacent*».

Tableau 3

Les erreurs du tableau 3 sont nombreuses et plus graves que les précédentes.

1. Examinons tout d'abord les deux accords conclus entre la République fédérale d'Allemagne et le Danemark le 28 janvier 1971 et la République fédérale d'Allemagne et les Pays-Bas le 28 janvier 1971. Ce sont les cartes 29 et 30 de l'album qui vous a été remis. Je présente ces deux accords ensemble car ils ont été signés le même jour. Les cartes montrent clairement qu'ils n'appliquent pas l'équidistance. Mais pour une fois les cartes n'étaient pas nécessaires pour savoir que l'équidistance ne pouvait être utilisée dans ces deux accords conclus à la suite de l'arrêt de la Cour de 1969.

M. Prescott mentionne en note de bas de page (p. 176) de la réplique de Malte cette circonstance (**III**). Mais il classe tout de même les deux accords parmi ceux qui utilisent l'équidistance et il eut pu consulter un auteur autorisé, M. Prescott lui-même dans son ouvrage *The Political Geography of the Oceans*, qui, alors qu'il n'était pas encore, il est vrai, expert pour Malte, écrivait fort exactement page 203, après avoir évoqué l'arrêt de la Cour:

> «Comme conséquence du jugement dans cette affaire, la République fédérale d'Allemagne pouvait négocier avec le Danemark et les Pays-Bas des frontières qui étaient plus favorables que celles basées sur des lignes d'équidistance...»

2. Un troisième accord est particulièrement intéressant. C'est l'accord de délimitation entre la France et l'Espagne du 29 janvier 1974 (carte 31, **II**, CML, *Agreement 34*).

Le tableau 3 mentionne, parmi les accords conclus entre Etats dont les côtes sont principalement adjacentes «and which have relied on equidistance», un accord entre la France et l'Espagne. C'est là une erreur manifeste.

Tout d'abord, mais ceci est peu important, on relèvera qu'il existe deux accords entre la France et l'Espagne signés le même jour, le 29 janvier 1974. L'un est relatif à la délimitation des eaux territoriales et zones contiguës, et l'autre, qui seul relève de notre étude, relatif à la délimitation des plateaux continentaux dans le golfe de Gascogne.

Présenter, comme le fait le tableau 3, cet accord comme appliquant l'équidistance n'est pas exact.

La ligne de délimitation est constituée par deux segments. Le premier défini par les points appelés Q et R et le second par les points R et T.

Le segment QR constitue une ligne d'équidistance comme l'indique l'article 2 de l'accord; il a une longueur de l'ordre de 100 milles nautiques.

Le second segment RT, nettement plus long, de l'ordre de 160 milles nautiques, n'est pas une ligne d'équidistance mais une ligne définie par des coordonnées géodésiques et établie par application de principes équitables.

Dans son commentaire sur l'accord le géographe du département d'Etat des Etats-Unis (*Limits in the Seas*, n° 83) le précise en ces termes:

> «Le second segment de la limite du plateau continental entre la France et l'Espagne a été négocié sur la base de principes équitables en se référant au rapport existant entre les lignes de côtes artificielles des deux Etats.»

Ce rapport étant de 1 (Espagne) à 1,541 (France), la ligne aboutit à donner à l'Espagne un plateau de 13561 milles nautiques carrés et à la France de 22101.

Le directeur du service juridique du ministère français des relations extérieures fait remarquer que l'application de l'équidistance n'a pas été retenue car elle aurait été inéquitable pour la France.

Il précise:

> «la ligne retenue s'écarte à partir d'un certain point de l'équidistance pour tenir compte de la concavité des côtes françaises et attribuer à chaque Etat des espaces maritimes qui soient proportionnés à la longueur relative de ses côtes».

3. Autres accords utilisant plusieurs méthodes.

Outre l'accord franco-espagnol de 1974, on peut relever plusieurs accords qui figurent dans le tableau 3 à tort parce qu'ils utilisent une combinaison de méthodes et donc pas uniquement le principe de l'équidistance.

— Ainsi l'accord du 20 novembre 1976 entre la Colombie et le Panama (album cartes 32 et 33, **II**, CML, *Agreement 48*) comporte deux séries de délimitations, l'une dans les Caraïbes, l'autre dans le Pacifique.

Pour chacune des séries, l'équidistance est utilisée pour partie, puis d'autres critères sont adoptés.

Ainsi, dans les Caraïbes, le paragraphe 1 de l'alinéa 1 de l'article 1 prévoit l'équidistance, mais le paragraphe 2 l'abandonne au-delà du point H 12° 30' 00" N, 78 00' 00" ouest.

L'équidistance n'est utilisée que sur 215 milles nautiques, soit quarante pour cent des 523 milles nautiques et soixante pour cent de la ligne ne correspondent pas à l'équidistance.

Il en va de même dans le Pacifique où l'équidistance est prévue par le paragraphe 1 de l'alinéa B de l'article 1 et est abandonnée par le paragraphe 2 au profit d'un parallèle. L'équidistance n'est utilisée que sur 90 milles nautiques, soit la moitié.

— L'accord entre le Kenya et la Tanzanie du 17 décembre 1975 — 9 juillet 1976 parce que c'est un échange de notes (album carte 34, **II**, CML, *Agreement 46*). Il porte, outre les eaux territoriales, sur d'autres zones de juridiction.

L'équidistance n'est pas employée, si ce n'est sur une très faible distance, et la délimitation s'en écarte très vite pour adopter un parallèle. La carte illustre la solution et la ligne d'équidistance figurée comme dans les accords précédents en rouge le montre parfaitement.

— L'accord Argentine-Uruguay du 19 novembre 1973 (album carte 35, **II**, CML, *Agreement 32*) relatif à la délimitation de la frontière maritime est présenté comme fondé sur l'équidistance. La lecture de l'accord montre que l'équidistance n'est mentionnée que dans l'article 70 du traité et au-delà d'un point assez éloigné des côtes. Jusqu'à ce point situé au milieu de la ligne idéale joi-

gnant Punta del Este en Uruguay à Punta Rasa del Cabo San Antonio en Argentine la ligne n'est pas une ligne d'équidistance.

J'ai ainsi achevé cette première revue des tableaux figurant dans la réplique de Malte.

Je voudrais maintenant, Monsieur le Président, Messieurs les juges, aborder l'autre série de questions de cette seconde partie. J'examinerai ici, dans deux sections, d'une part des accords, ce sera la première section, et d'autre part une théorie.

B

1. Analyse des accords présentés spécialement par Malte

Le dernier jour des plaidoiries orales, Malte a présenté un tableau d'ensemble d'accords de délimitation et mon éminent collègue, M. Brownlie, a classé ces accords en plusieurs catégories (**III**, p. 470-471).

Bien évidemment, il a présenté les accords qu'il considère comme apportant un appui à sa thèse. Il estime également que ces accords correspondent à une situation géographique analogue à celle existant dans la présente affaire.

Je vais reprendre les exemples mêmes qui ont été présentés par M. Brownlie, dont l'analyse me semble presque toujours contestable et parfois contient de graves erreurs:

I. Le premier groupe présenté par M. Brownlie est défini par lui-même comme concernant la situation d'Etats insulaires se trouvant en face d'Etats avec une grande longueur de côtes.

Sept accords sont présentés:

1. Bahreïn-Iran du 17 juin 1971 (voir album carte 36, qui présente l'ensemble du golfe Arabique, et carte 37, le présent accord). Les deux Etats sont séparés par 100 milles nautiques. La longueur de la côte de Bahreïn est de 40 kilomètres. La longueur correspondante de la côte d'Iran est de 50 kilomètres. La longueur de la ligne de délimitation est de 29 milles nautiques.

Donc, situation toute différente. Il convient de remarquer, et c'est une observation que nous retrouverons tout à l'heure, que la côte de l'Iran correspond en face à une série de côte d'Etats «opposite» et que donc il ne s'agit pas d'une côte longue.

2. Cuba-Mexique du 26 juillet 1976 (album carte 38).

La carte montre que l'on ne se trouve pas en présence pour l'Etat non insulaire d'une côte longue. Les deux côtes se faisant face, c'est-à-dire la pointe de Cuba et le rivage est de la péninsule du Yucatan, sont très courtes. Aucun rapport avec l'intitulé de la classification et avec la situation Malte-Libye. Longueur de la ligne: 350 milles nautiques.

3. Inde-Maldives du 28 décembre 1976 (album carte 39).

La carte montre que la délimitation concerne les îles Maldives, un archipel de 730 kilomètres de long, si l'on compte du nord au sud et de la pointe sud-ouest de l'Inde. La côte du continent est plus courte que la longueur nord-sud de l'archipel. Cet exemple ne correspond ni à l'intitulé ni à la situation Malte-Libye. Pour la ligne est-ouest de délimitation, l'îlot de Minicoy a joué un rôle, mais ce n'est pas non plus la même situation.

4. Cuba-Etats-Unis du 16 décembre 1977 (album carte 40).

La carte fait apparaître la longueur considérable des côtes de l'Etat insulaire. Les parties de côtes prises en considération pour la délimitation sont d'une part

la côte nord de l'extrémité occidentale de Cuba et les îles Keys et Dry Tortugas de la côte de Floride. La ligne de délimitation est longue de 315 milles nautiques. Ce n'est pas une ligne d'équidistance, mais une ligne dont chaque «turning point» a été négocié comme il est mentionné dans l'*US Senate Report No. 96-49*. Cet exemple ne correspond ni à l'intitulé ni à la situation Malte-Libye.

5. Colombie-République dominicaine du 13 janvier 1978 (album carte 41).

La côte de la Colombie se situe à l'ouest de celle de la République dominicaine, la partie prise en considération est en gros de la même longueur que la côte de la République dominicaine, de l'ordre de 500 kilomètres. La longueur de la ligne de délimitation est de 23 milles nautiques. Cet exemple ne correspond pas à l'intitulé (il n'y a pas de côte longue) ni à la situation Malte-Libye.

6. Colombie-Haïti du 17 février 1977 (album carte 41).

La ligne de délimitation a une faible longueur de 65 milles nautiques. Les côtes prises en considération ont approximativement la même longueur. Cet exemple, très lié au précédent, ne correspond pas à l'intitulé ni à la situation Malte-Libye.

7. Bahreïn-Arabie saoudite du 22 février 1958 (album carte 42).

La carte fait apparaître la proximité de Bahreïn et de l'Arabie saoudite sur la plus grande partie de la délimitation dont la longueur est de l'ordre de 100 milles nautiques. La distance entre ces deux Etats sur une grande partie est de l'ordre de 20 milles, pour diminuer jusqu'à 3 et atteindre à un seul endroit 67. C'est une situation toute différente de la distance séparant Malte et la Libye. La côte de l'Arabie saoudite prise en considération est de l'ordre de trois fois la longueur de Bahreïn. L'équidistance n'est pas respectée sur tous les points. Cet exemple, par la proximité des Etats et le rapport de la longueur des côtes, ne correspond guère à l'intitulé et aucunement à la situation Malte-Libye.

II. Le deuxième groupe d'exemples présenté par M. Brownlie concerne des Etats à côtes longues faisant face à des Etats péninsulaires à côtes courtes.

On relèvera tout d'abord l'expression «Etats péninsulaires» qui n'existe pas et qui n'a aucune signification juridique.

On notera également que, quels que soient les efforts d'imagination que l'on fasse pour donner un sens à l'expression «Etats péninsulaires», il est évident que ce n'est pas un Etat analogue qui se trouve impliqué dans l'affaire *Libye/Malte*, qu'il s'agisse de Malte Etat insulaire ou qu'il s'agisse de la Libye.

Le défaut de pertinence des accords figurant sous cet intitulé est total par rapport à la présente affaire.

Malgré ces observations qui détruisent la tentative, je voudrais présenter rapidement les quatre accords cités par M. Brownlie.

1. Iran-Qatar du 20 septembre 1969 (album carte 43).

La ligne de délimitation a une longueur de 130 milles nautiques et comprend cinq points. La distance entre les deux territoires est de l'ordre de 100 milles nautiques. La longueur des côtes de chaque Etat est difficile à mesurer exactement compte tenu de l'existence d'autres délimitations, mais la carte permet de se rendre compte qu'il n'y a pas de disproportion ni surtout de côte courte ou de côte longue.

On ne peut considérer l'Iran comme ayant une côte longue car, nous l'avons dit, la longueur totale de la côte iranienne dans l'ensemble du Golfe est plus ou moins de la même longueur que celle correspondant à l'addition des longueurs des côtes des Etats de l'autre côté du Golfe. Quant au Qatar, il est difficile de voir là une côte courte.

2. Danemark-Norvège du 8 décembre 1965 (album carte 44, **II**, CML, *Agreement 12*).

La carte montre tout de suite que si l'on tient à utiliser l'étrange expression, dépourvue de signification juridique, d'«Etat péninsulaire», on pourrait l'appliquer à la Norvège comme au Danemark, la Norvège étant seulement plus trapue. La longueur de la délimitation est de 255 milles nautiques. La ligne s'étend depuis la délimitation Norvège-Suède à l'est jusqu'au «tripoint» à l'ouest Norvège-Danemark, Norvège-Royaume-Uni, Royaume-Uni-Danemark. Comme le suggère la carte, les longueurs des côtes intéressées sont à peu près les mêmes. On ne peut parler de «short» ou de «long coast».

3. Iran-Oman du 25 juillet 1974 (album carte 45, **II**, CML, *Agreement 40*).

La longueur de la ligne de délimitation est de 125 milles nautiques avec vingt-deux points. La distance entre les Etats est de 40 milles à chaque extrémité du détroit et de 30 au milieu. En raison de sa concavité la côte iranienne est plus longue que celle d'Oman, la mesure précise est difficile car il y a de nombreuses îles mais les différences ne sont pas très considérables. On ne peut pas parler là non plus de «short coast» pour la côte d'Oman.

4. Australie - Papouasie-Nouvelle-Guinée du 18 décembre 1978 (album carte 46, **II**, CML, *Agreement 60*).

Ainsi que le montre la carte, la ligne de délimitation est très longue, avec ses 21 points elle s'étire sur plus de 1200 milles nautiques (1214, exactement) environ 2250 kilomètres. A l'ouest du détroit de Torres se trouve l'origine qui coïncide avec le point 3 de la délimitation Australie-Indonésie, après on entre dans la mer de Corail.

Les côtes qui dans le détroit sont distantes de 80 milles sont alors beaucoup plus éloignées mais leur longueur est comparable et l'on ne saurait là non plus parler de «long coast» et de «short coast».

III. Le troisième groupe d'exemples présenté par M. Brownlie concerne des îles ou groupes d'îles qui sont, dans certains cas, plus ou moins indépendantes et le continent situé en face, avec de longues côtes.

Six exemples sont ici présentés.

1. Danemark *(in respect of the Faroe group)*-Norvège, accord du 15 juin 1979 (album carte 47, **II**, CML, *Agreement 62*).

Il est parfaitement exact qu'existe un accord intitulé accord entre le Danemark et la Norvège concernant les Féroé qui délimite le plateau continental entre les Féroé et la zone économique exclusive de la Norvège. On peut retenir cet exemple et noter que les Féroé ont une façade maritime nord-sud de l'ordre de 120 kilomètres, donnant naissance à une ligne de démarcation définie par deux points et dont la longueur est de 32 milles nautiques, soit 59 kilomètres, soit la moitié de la longueur de l'archipel.

2. Finlande-Suède du 29 septembre 1972 (album carte 48, **II**, CML, *Agreement 31*).

M. Brownlie a présenté cette convention à la Cour avec l'expression suivante: «Finland (in respect of the Aaland islands which belong to Finland) and Sweden as the long-coast State.»

Pour le traité précédent concernant les Féroé j'ai accepté l'expression utilisée par M. Brownlie, mais ici je ne puis le faire car cette appellation n'est pas exacte et je voudrais faire quatre observations.

Premièrement, l'accord s'intitule: «Accord entre la Finlande et la Suède concernant la délimitation du plateau continental dans le golfe de Bothnie, la mer d'Åland et la partie septentrionale de la mer Baltique.» Pas question des îles Åland.

Les îles Åland ne sont pas mentionnées, elles ne sont point individualisées dans le titre ou dans un article.

Est seulement mentionnée la convention du 20 octobre 1921 relative à la non-fortification et à la neutralisation des îles Åland qui a été, on le sait, l'œuvre de la Société des Nations. Dans les articles 3 et 5 de la convention actuelle on utilise des coordonnées employées par ladite convention de 1921.

Deuxièmement, l'article 2 du traité précise le *starting point* de la ligne de délimitation qui est au nord à 65°31' de latitude, soit 5° plus au nord que les îles. La ligne de délimitation a une longueur de 420 milles nautiques, soit près de 800 kilomètres.

Troisièmement, comme l'indique d'une manière absolument manifeste la carte, les longueurs des côtes des deux Etats sont approximativement égales dans la zone de délimitation. Il n'y a pas de «long-coast State».

Quatrièmement, je voudrais faire une dernière remarque et apporter une nouvelle précision.

L'accord a été conclu par deux Etats parties à la convention de Genève de 1958 sur le plateau continental et l'accord précise qu'il applique l'article 6, c'est-à-dire le couple «équidistance, circonstances spéciales». Outre les erreurs d'interprétation mentionnées, et en particulier la mention inexacte «in respect of Aaland islands», l'accord reposant sur la convention de 1958 n'est pas pertinent en droit général.

3. France-Australie du 4 janvier 1982 (album carte 39, II, CML, *Agreement 71*).

M. Brownlie a présenté cet exemple devant la Cour en disant: «France (in respect of New Caledonia) and, as the long-coast State opposite, Australia.» Je suis désolé, Monsieur le Président, mais c'est totalement inexact et cela ne correspond pas à la réalité. Il y a là une erreur.

Car il ne s'agit pas d'une délimitation entre une île française et le vaste continent australien, «the long-coast State opposite». Il s'agit de délimitation entre des îles relevant les unes de la souveraineté française, les autres de la souveraineté australienne, mais le continent n'est pas en cause.

Il suffit, pour s'en rendre compte, de lire les deux premiers articles de la convention de délimitation conclue entre la France et l'Australie le 4 janvier 1982 à Melbourne:

«Article 1

Au large de la Nouvelle-Calédonie, des îles Chesterfield et des autres îles françaises, d'une part, des îles australiennes de la mer de Corail, de l'île Norfolk et des autres îles australiennes, d'autre part, la ligne de délimitation...

Article 2

Au large des îles Kerguelen, d'une part, et des îles Heard et McDonald, d'autre part, la ligne de délimitation entre la zone économique française et la zone de pêche australienne...»

Donc ce sont des délimitations entre territoires insulaires. Aucun rapport avec la situation, aucune cohérence avec l'intitulé.

4. Norvège-Royaume-Uni du 10 mars 1965 (album carte 50, II, CML, *Agreement 8*).

M. Brownlie présente cet accord: «Norway as the long-coast State and the United Kingdom, in respect of the Shetland Islands.»

En réalité, à la différence de l'accord entre le Danemark et la Norvège qui portait sur les Féroé aucun accord entre le Royaume-Uni et la Norvège ne concerne expressément les îles Shetland.

Il convient de rappeler que deux accords successifs ont été signés, le premier

à Londres le 10 mars 1965, le second intitulé protocole supplémentaire, à Oslo, le 22 décembre 1978.

Le mot «Shetland» ne figure dans aucun des deux textes. On ne peut donc dire «in respect of the Shetland Islands».

La carte montre que c'est une délimitation fort longue de plus de 500 milles nautiques, près de 1000 kilomètres. La distance entre les deux Etats est considérable, variant entre 160 et 320 milles nautiques. La longueur des côtes se faisant face est tout à fait comparable. Le point le plus au sud est le «tripoint» Norvège-Danemark, Royaume-Uni-Danemark. Le point le plus au nord rejoint la limite sud de la courte ligne de délimitation Féroé-Norvège.

5. Inde-Indonésie du 8 août 1974 (album carte 51, **II**, CML, *Agreement 41*).

M. Brownlie présente la délimitation entre l'Inde et l'Indonésie en indiquant: «India (in respect of the Nicobar Islands) and Indonesia Agreements 1974 and 1977.»

Il y a en effet deux accords différents et successifs. Le premier du 8 août 1974 traite de la délimitation du plateau continental «dans la zone située entre la grande Nicobar (relevant de l'Inde) et Sumatra (relevant de l'Indonésie)». Le rapport est entre des îles et l'on ne peut parler ici de «long-coast opposite States». Donc, l'exemple ne peut être compris dans le groupe des accords sous l'intitulé employé.

Les côtes en relation sont très courtes, de même l'est la ligne de délimitation avec 48 milles nautiques.

Le second accord du 14 janvier 1977 étend largement la délimitation à l'est et à l'ouest de la première ligne. Comme le précise son titre, il s'agit cette fois de délimitation entre les deux Etats dans la mer d'Andaman et dans l'océan Indien.

La situation n'a pas de rapport avec celle concernant Malte et la Libye.

6. Inde-Thaïlande du 22 juin 1978 (album carte 51, **II**, CML, *Agreement 59*).

Cet accord est présenté par M. Brownlie comme un accord «India (again also in respect of the Nicobar Islands) and Thailand as the long-coast State».

La ligne de délimitation est en réalité assez courte, avec moins de 100 milles de long (94 exactement) et la côte de la Thaïlande retenue ne saurait être considérée comme une «long coast». On relèvera que la longueur de la ligne de délimitation est fort inférieure à la longueur des îles qui est de l'ordre de 130 milles nautiques. Les côtes de la Thaïlande sont à environ 260 milles nautiques de Nicobar et un peu moins si l'on tient compte de multiples îles le long de la côte.

On relèvera par ailleurs que la côte «est une ligne négociée qui est agréable aux deux Parties».

*

Il apparaît ainsi que les accords présentés par Malte à l'appui de sa thèse n'ont pas d'une manière générale une grande pertinence avec notre affaire.

Certains d'entre eux sont complètement étrangers aux conditions de l'affaire *Malte-Libye*. Les faits sont têtus, a dit un conseil de Malte, on pourrait dire aussi que les textes sont têtus et les accords ne sont pas favorables à Malte car ils ne fournissent, dans le cas d'une côte insulaire très courte et d'une côte continentale très longue, aucun précédent à sa thèse.

Ainsi apparaissent les artifices de la présentation.

Le domaine de la théorie est-il plus favorable, c'est la dernière question que je voudrais examiner.

2. La théorie de la ligne radiale pluridirectionnelle

La Libye a été taxée de «passéisme» juridique, nous avons la faiblesse de penser que ce n'est pas vrai. Mais ne peut-on dire en toute objectivité que Malte utilise le futurisme juridique?

Quelle que soit en effet la plasticité des solutions retenues dans les accords, *quelle que soit la diversité des méthodes visant à concilier les facteurs dans* chaque cas d'espèce, aucun exemple ne peut être trouvé consacrant la théorie de Malte sur l'utilisation des côtes pour la détermination des zones du plateau continental et la manière dont à partir d'une côte très courte on peut établir une ligne de délimitation de plateau continental.

Cette théorie a été présentée dans les plaidoiries orales de Malte.

J'ai écouté avec attention et entendu avec beaucoup d'admiration l'exposé du conseil de Malte présentant une thèse nouvelle concernant la façade maritime. Alors que la pratique est celle que nous connaissons, voici une présentation toute différente. C'est la théorie du pouvoir générateur. C'est la théorie de la ligne radiale multidirectionnelle.

On connaissait, Monsieur le Président, Messieurs les juges, des réalités géographiques, des côtes concaves et des côtes convexes, et l'arrêt du *Plateau continental de la mer du Nord* a utilisé ces notions géographiques, relevé par exemple les effets divergents des côtes convexes. Et précédemment la Cour a relevé les conséquences de cette potentialité de divergence et la nécessité d'une atténuation (*C.I.J. Recueil 1969*, p. 17-18, par. 8).

Or, quelle est la théorie qui nous est présentée? C'est l'affirmation d'une côte génératrice d'une ligne très grande et d'autant plus grande que l'on se trouve en face d'une longue côte. Ce n'est pas une côte simplement et artificiellement convexe, c'est une côte génératrice d'extension, d'élongation, en un mot une côte élastique. C'est une côte avec effet amplificateur.

J'avoue, Monsieur le Président, Messieurs les juges, ne pas croire au miracle, au prétendu miracle de la multiplication de la longueur des côtes. Je ne pense pas que l'on puisse adopter une sorte de côte éventail.

En réalité on se trouve en présence d'une tentative fort audacieuse.

Confrontée à la réalité d'une côte de tout au plus 40 kilomètres, comme le montrera mon ami M. Bowett, Malte se met à rêver et utilise un mythe juridique qu'elle espère mobilisateur à l'égard de la Cour.

Voici ce mythe. Cette côte de 40 kilomètres on ne doit pas la considérer dans sa réalité. Il faut la prendre potentiellement. Elle a un pouvoir générateur. Et ce pouvoir est gigantesque: il est multiplicateur, extendeur, élongateur. Quarante kilomètres, que non pas, mais une ligne dix fois plus longue, cent fois plus longue.

Ce n'est point invention de ma part, Monsieur le Président, c'est la thèse
(42) maltaise et la figure 11 de l'album présenté par Malte le 26 novembre sous le titre «Illustrations de Malte pour les procédures orales» le montre avec la plus grande netteté. Cette figure 11 a été reproduite ici et elle figure dans les trois cartes qui ont été remises ce matin, elle figure sous le n° 52 dans la nomenclature libyenne. Côte imaginaire.

Mais pourquoi travailler dans l'imaginaire? le juge travaille dans la réalité. Quelle étrange figure que cette figure 11 (album carte 52). Combien révélatrice cette tendance de Malte à préférer les constructions abstraites à la réalité des choses!

(42) Un simple regard sur la figure 11 éclaire le sens de la tentative de Malte. Si l'on observe les flèches placées sur la figure 11, on voit que la côte de Malte est présentée comme irradiante en quelque sorte. Les flèches sont divergentes

quand il s'agit de Malte, convergentes quand il s'agit de la Libye. La divergence accroît la portée de la côte, la convergence la réduit. La Cour a souligné de tels effets à propos de l'affaire du *Plateau continental de la mer du Nord* en 1969.

Or, le schéma présenté par Malte est encore plus divergent que ne le serait une côte convexe réelle. La théorie nouvelle de la ligne radiale pluridirectionnelle comporte des effets amplificateurs très importants et que l'on peut considérer comme redoutables. Car l'effet amplificateur ne joue pas uniquement dans les rapports des Etats engagés dans la procédure de délimitation, il joue aussi à l'égard des Etats tiers.

La théorie classique de la façade maritime permet de laisser à tous les Etats d'une région maritime les délimitations correspondantes. Mais il en va autrement avec la théorie nouvelle, la côte éventail entraîne des effets d'amputation très graves pour les Etats tiers. Elle aboutit à priver par exemple un Etat tiers, dont les côtes se trouvent situées en arrière de l'Etat invoquant la théorie de la côte éventail, de zones de plateau continental qui dans la réalité géographique s'étendent devant ses côtes. Avec la théorie de la côte élastique la longueur de la côte réelle n'est plus considérée dans sa réalité objective car la côte devient seulement la base de départ et d'appui de ces lignes radiales pluridirectionnelles qui amputent les Etats voisins de leurs zones normales.

Où trouve-t-on dans la pratique internationale un seul précédent d'un si étrange procédé? Evidemment aucun.

Mais précisément certains accords ci-dessus examinés à un autre titre fournissent une indication contraire. On n'a point utilisé la ligne radiale pluridirectionnelle pour les Féroé où une côte de 120 kilomètres se traduit par une délimitation de 32 milles nautiques. On n'a point utilisé la ligne radiale pluridirectionnelle pour la délimitation entre Haïti et la Colombie, pas plus pour la délimitation entre la République dominicaine et la Colombie, pas plus entre l'Inde (Nicobar) et la Thaïlande.

On pourrait fournir bien d'autres exemples.

Je voudrais, toutefois, simplement ici me borner à une observation générale tirée de la pratique des Etats et qui démontre le caractère inacceptable de la thèse de la ligne radiale pluridirectionnelle et de la théorie de la côte éventail.

Les accords très généralement et quelle que soit la situation géographique précisent en effet non seulement une ligne de délimitation composée de divers segments mais fixent très souvent aussi des limites communes à plusieurs délimitations.

C'est la pratique bien connue des «tripoints». Elle a été utilisée, nous l'avons dit, en mer du Nord, en Baltique, dans le Golfe et aussi dans la mer d'Andaman où l'on a même, et c'est un exemple très particulier et plein d'intérêt, eu recours à la formule d'un accord tripartite entre l'Inde, l'Indonésie et la Thaïlande, du 22 juin 1978, qu'illustre la carte 51 de l'album libyen (**II**, CLM 58). Ces «tripoints» sont les charnières véritables des délimitations. Ils sont non seulement des éléments de méthodes de délimitation dont l'utilité technique et pratique est évidente mais ils ont aussi une grande et noble signification juridique. Ils apportent, en effet, ce que l'on peut appeler la sécurité juridique.

Définir par voie d'accord ces «tripoints» symbolise et concrétise les droits des tiers, les droits de chaque Etat.

Le respect des droits des tiers peut apparaître dans certains accords qui laissent en quelque sorte une zone dans laquelle se ferait la délimitation ultérieure avec l'Etat dont les droits sont ainsi sauvegardés.

Une convention entre l'Indonésie et l'Australie du 9 octobre 1972 contient, à cet égard, des indications intéressantes. Nous utiliserons, Monsieur le Président,

Messieurs les juges, la carte n° 53 de l'album libyen (**II**, CML, *Agreement 24*). Il s'agit de la délimitation du plateau entre l'Australie et le Timor (accord de 1972). L'île à l'époque était divisée en deux parties, à l'est sous souveraineté indonésienne, à l'ouest sous souveraineté portugaise. La convention entre l'Indonésie et l'Australie prévoit une ligne de délimitation. Notons au passage que cette ligne — et la carte l'indique nettement — n'est pas l'équidistance. Mais ce n'est pas le point que je veux soulever ici, l'accord est intéressant car la ligne est interrompue entre les points 16 et 17; et cela sur une longueur de 129 milles nautiques, pourquoi cette interruption? pour réserver les droits du Portugal, nous sommes en effet en 1972 et il y a un Timor portugais et ce respect des droits de l'Etat tiers se manifeste par la prise en considération de la façade maritime telle que la géographie la fait apparaître.

Les négociations sur l'emplacement des points communs de ces points charnières sont délicates et peuvent prendre du temps. Une précaution se trouve souvent indiquée dans certains accords. Il s'agit d'une mention relative à la fixation définitive d'un point origine ou d'un point terminal ou des deux.

On peut donner plusieurs exemples, ainsi, dans le Golfe à propos du point 1 de la délimitation Qatar-Iran (accord du 20 septembre 1969, album carte 43) dont la position dépend de la délimitation future entre le Qatar et Bahreïn et de l'accord entre Bahreïn et l'Iran du 17 juin 1971 (album carte 37).

Je voudrais aussi me référer à l'accord franco-britannique du 24 juin 1982 (album carte 54), concernant la délimitation du plateau continental entre les deux Etats à l'est du méridien 30' est de Greenwich. C'est la suite de l'arbitrage franco-britannique. Il est indiqué à l'article 2:

> «2. It has not been possible for the time being to complete the delimitation of the boundary beyond Point No. 14; it is however agreed between the Parties that the delimitation from Point 14 to the tripoint between the boundaries of the continental shelf appertaining to the Parties and to the Kingdom of Belgium shall be completed at the appropriate time by application of the same methods as have been utilised for the definition of the boundary line between Points Nos. 1 and 14.»

De telles dispositions sont parfaitement possibles et concevables dans la pratique internationale qui utilise la notion classique de façade maritime mais elles sont incompatibles avec la théorie de la ligne radiale multidirectionnelle.

On remarque que le souci de sécurité juridique auquel correspondent la notion et l'usage du «tripoint» ou des points communs se trouve évidemment parmi les préoccupations de la Cour. C'est le problème du respect du droit des Etats tiers. Ce respect concernant les décisions de la Cour est évidemment assuré par l'article 59 du Statut et le principe fondamental de l'effet est relatif. Mais la Cour, notamment dans son arrêt de 1982, a donné des précisions à ce sujet, notamment dans le dispositif de l'arrêt au point B1 où il est indiqué «les droits des Etats tiers étant réservés», ou encore au point C3 du dispositif du même arrêt évoquant «les délimitations à convenir avec les Etats tiers» (*C.I.J. Recueil 1982*, p. 93-94, par. 133). Et on peut relever aussi dans l'analyse que fait la Cour de ce problème, dans le paragraphe 130 de son arrêt, «la question de savoir jusqu'où la ligne de démarcation se prolongera vers le nord-est dépendra bien entendu des délimitations futures...» (*ibid.*, p. 91).

Monsieur le Président, Messieurs les juges, on n'a jamais utilisé la ligne pluridirectionnelle et je ne pense pas qu'on le fasse un jour, sauf peut-être dans des océans gigantesques.

Mais nous sommes en Méditerranée, la nature y est à la mesure de l'homme,

la nature, oui, et on l'a souligné depuis la plus haute Antiquité, depuis la proto-histoire de la Grèce, mais la ligne radiale multidirectionnelle n'est plus à la mesure de l'homme, elle n'est pas méditerranéenne.

*
* *

L'examen des accords conclus entre les Etats me conduit aux propositions suivantes:

1. La tentative de démonstration de l'emploi de plus en plus intense depuis 1969 de la méthode de l'équidistance a échoué:

a) des omissions d'accords non fondés sur l'équidistance sont nombreuses;
b) la lecture des accords fait apparaître les erreurs ou les interprétations subjectives.

2. L'analyse méthodologique fait apparaître que:

a) l'indication claire de l'utilisation de l'équidistance ne figure que dans moins d'un quart des conventions conclues, dans un grand nombre de cas l'utilisation de la méthode de l'équidistance est souvent subordonnée à la recherche d'une finalité d'équité ou de justice, à l'adoption fondamentale et première de principes équitables;
b) les accords conclus n'ont jamais utilisé des côtes «élastiquement évaluées»;
c) la formule du «trapezium», c'est-à-dire la théorie de la côte divergente, n'a jamais été utilisée;
d) les accords conclus, presque exclusivement bilatéraux, ont tenu compte, lorsque existaient des Etats tiers, d'une telle situation par l'utilisation de «tripoints» ou par la détermination d'un point limite ou de plusieurs points limites.

Monsieur le Président, Messieurs les juges, je suis parvenu au terme de mon exposé.

Je ne présenterai pas de conclusions plus générales s'ajoutant à celles que j'ai formulées à la suite de chacune des deux parties de mon exposé. Je voudrais donc tout simplement et très sincèrement, Monsieur le Président, Messieurs les juges, vous remercier de l'attention que vous avez bien voulu me prêter.

Fidèle pour ma part au discours cartésien que j'invoque encore, j'ai voulu me référer aux textes des accords, aux cartes qui les illustrent. Mais cette entreprise exigeait beaucoup de temps car j'ai traité de plus de quarante accords. Qu'il me soit pardonné d'avoir été long mais je ne pouvais être bref sans déformer la réalité.

PLAIDOIRIE DE M. LUCCHINI

CONSEIL DU GOUVERNEMENT DE LA JAMAHIRIYA ARABE LIBYENNE

M. LUCCHINI: Monsieur le Président, Messieurs les juges, permettez-moi tout d'abord d'exprimer la profonde émotion que je ressens à plaider aujourd'hui devant vous pour la première fois. Permettez-moi également de dire combien je suis conscient de l'honneur qui m'est fait et de la responsabilité qui est la mienne de m'adresser à vous en vue de défendre les thèses juridiques d'un Etat, l'Etat libyen.

Il m'appartient d'étudier les diverses considérations présentées par Malte et appréciées par elle comme de nature à justifier une délimitation équitable fondée sur la méthode d'équidistance. Ma tâche vise plus particulièrement à réfuter la pertinence de ces circonstances dans le cas présent.

LES CIRCONSTANCES NON PERTINENTES INTRODUITES PAR MALTE

La Cour a eu l'occasion de souligner avec une grande puissance démonstrative et une constance sans faille l'importance déterminante que peuvent avoir les circonstances pertinentes propres à chaque cas. C'est ainsi qu'au paragraphe 23 de son arrêt du 24 février 1982 dans l'affaire *Tunisie/Libye*, elle a tenu à rappeler la phrase fameuse, parce que capitale, du dispositif de l'arrêt de 1969 rendu à l'occasion des affaires du *Plateau continental de la mer du Nord*:

> «le droit international exige que la délimitation s'opère «conformément à des principes équitables et compte tenu de toutes les circonstances pertinentes» (*C.I.J. Recueil 1982*, p. 37).

C'est dans cette optique que la Cour, que la Chambre de la Cour, que le tribunal arbitral également, chargé de trancher le différend franco-britannique, ont pris soin de peser soigneusement — on pourrait presque dire de passer au trébuchet — ces différentes circonstances en vue d'apporter une solution équitable et appropriée aux litiges relatifs au plateau continental qu'ils ont eu à connaître.

Pour sa part, la Libye est pleinement persuadée du bien-fondé de cette démarche juridique tout comme elle est persuadée de la place éminente qu'occupent les circonstances pertinentes dans toute question de délimitation du plateau continental en vue de parvenir à un résultat équitable.

Le désaccord avec Malte qui est le support de mon intervention porte alors sur le contenu, sur la substance même des circonstances invoquées.

Autrement dit, les circonstances qui sont présentées par la Partie adverse — avec d'ailleurs plus ou moins d'insistance selon les différentes phases de la procédure — sont à notre avis dépourvues de tout lien avec le cas que la Cour a pour mission de trancher. Elles sont sans pertinence.

Bien évidemment, la notion même de circonstances pertinentes, à retenir dans une situation donnée, va à l'encontre de la fixation d'une liste exhaustive et *ne varietur* de telles circonstances et en même temps du poids précis à conférer, de manière préalable et abstraite, à chacune d'elles. «De tels problèmes d'équilibre entre diverses considérations varient naturellement selon les circonstances de l'espèce» a pu dire la Cour au paragraphe 93 de son arrêt du 20 février 1969 (*C.I.J. Recueil 1969*, p. 50).

Néanmoins, la prise en considération de ces circonstances ne relève pas d'une appréciation discrétionnaire. La Cour a entendu le rappeler dans son arrêt de 1982 (par. 71). Et après avoir affirmé que:

> «[elle] doit appliquer les principes équitables comme partie intégrante du droit international et peser soigneusement les diverses considérations qu'elle juge pertinentes, de manière à aboutir à un résultat équitable»,

la Cour ajoute cette précision fondamentale:

> «Certes, il n'existe pas de règles rigides quant au poids exact à attribuer à chaque élément de l'espèce; on est cependant fort loin de l'exercice d'un pouvoir discrétionnaire ou de la conciliation.» (*C.I.J. Recueil 1982*, p. 60.)

En d'autres termes, la Cour ne s'estime en droit de reconnaître comme pertinentes et par conséquent de ne retenir à ce titre que celles de ces circonstances qui ont un lien direct avec l'institution du plateau continental, la finalité de ce phénomène juridique, les droits que les Etats y exercent. (C'est là une sorte de limite naturelle que la Cour fixe à son appréciation.)

Je n'insisterai pas davantage sur ce point pour l'instant, étant amené à l'exposer plus longuement tout à l'heure, mais j'aimerais immédiatement présenter une remarque de caractère terminologique qui a en fait des incidences sur le fond. Je voudrais plus particulièrement attirer votre attention, Monsieur le Président, Messieurs les juges, sur l'application soigneuse mise par Malte à ne pas utiliser l'expression pourtant consacrée de circonstances pertinentes pour qualifier les différents éléments qu'elle invoque, mais à recourir de manière constante — et on pourrait presque dire de manière systématique — aux termes de «considérations» ou encore de «facteurs», ce dernier mot dont le juge Koretsky disait dans son opinion dissidente jointe à l'arrêt du 20 février 1969, à la page 167, qu'il désignait «quelque chose de caractère non juridique, qui ne relève pas «du domaine du droit».

Cette vertueuse prudence dans la forme n'est-elle alors pas le reflet des craintes qu'éprouverait Malte concernant le caractère inadapté au type d'affaires en question des «considérations» invoquées?

Cette remarque terminologique et préalable étant faite, quels sont alors les considérations ou facteurs introduits par Malte dans son argumentation?

Ils sont très divers. Disons seulement pour une simple approximation de clarté et de commodité que:

— les uns sont plutôt à connotation politico-juridique, référence par exemple à la notion d'Etat insulaire ou aux intérêts de sécurité, ou bien encore aux intérêts de sécurité en liaison avec le statut de neutralité;

— tandis que les autres sont plutôt à dominante économique, qu'il s'agisse du partage des ressources, de la situation des pêcheries maltaises, ou encore de la notion alléguée d'«Island developing country».

Je l'ai dit, la Libye ne partage absolument pas les vues maltaises sur la pertinence de ces facteurs et les résultats que Malte entend leur faire produire.

Cette position libyenne, je tenterai de l'exposer en empruntant un raisonnement dont la ligne générale est destinée à mettre l'accent sur deux points complémentaires qui forment, bien évidemment, les deux parties — de longueurs d'ailleurs tout à fait inégales — de mon exposé.

Dans une première partie, je m'appliquerai à marquer l'absence de pertinence juridique des facteurs invoqués par Malte en la présente affaire.

C'est là un point capital — on pourrait dire la charpente — de l'argumenta-

tion. C'est pourquoi d'ailleurs, je lui consacrerai les développements les plus amples. Mais pour aller jusqu'au bout du système maltais il me faudra ensuite démontrer, dans une seconde partie, la non-cohérence des facteurs allégués avec la prétention de Malte à l'application de la méthode d'équidistance.

I. Les facteurs invoqués par Malte sont dénués de pertinence juridique

La première partie est donc consacrée à l'absence de pertinence juridique des facteurs invoqués par Malte. Dans cette partie, il convient de déterminer en premier lieu le cadre juridique exact dans lequel doit s'inscrire les circonstances pertinentes à prendre en considération dans une opération de délimitation du plateau continental comme c'est le cas en la présente espèce. Ce sera l'objet de ma première section.

Ma seconde section visera à mettre en lumière, du moins je l'espère, l'incompatibilité des facteurs invoqués par Malte avec le droit de la délimitation du plateau continental.

Enfin, ma dernière section évoquera le problème plus particulier de la non-pertinence de la conception maltaise du partage des ressources.

1. Le cadre juridique

Monsieur le Président, Messieurs les juges, il importe de rappeler d'abord qu'en saisissant la Cour de leur différend la Libye comme Malte ne lui ont pas demandé de trancher celui-ci sur la base d'un règlement *ex aequo et bono* régi par un système très particulier, régi par un esprit très spécial qui, écartant éventuellement les règles du droit positif, permettrait de faire appel à des considérations d'ordre divers, dont certaines pourraient être tout à fait étrangères à l'institution du plateau continental.

Bien au contraire, en vertu des termes de leur compromis, la Libye et Malte ont prié la Cour de préciser quels étaient les règles et principes du droit international applicables à la délimitation. C'est dire que, par là, et de manière claire, les deux Etats ont entendu confier à votre haute juridiction une mission qui soit accomplie par l'application du droit existant du plateau continental.

Cette prémisse, ainsi posée, je suis conduit à me montrer plus explicite sur deux points. L'institution du plateau continental apparaît comme une institution clairement individualisée. En outre, son régime juridique est maintenant bien établi et peu sujet à controverse.

Tout d'abord, je souhaiterais en quelques mots attirer respectueusement et tout spécialement l'attention de la Cour sur l'autonomie de l'institution juridique du plateau.

Pourquoi ce souci, qui peut paraître superflu, de souligner la spécificité du plateau continental au regard notamment d'autres institutions relevant du droit de la mer?

Ma préoccupation est dictée par les tentatives d'abord obliques dans les écritures maltaises, puis devenues parfaitement claires lors des plaidoiries orales, de rapprocher — au risque de les confondre — les concepts de plateau continental et de zone économique exclusive, tentatives de rapprochement dont il a été déjà fait état dans les plaidoiries libyennes.

Cette volonté maltaise est récente. En effet, lors des négociations entre les deux pays en vue de porter le litige devant le juge international, la Libye quant à elle se montrait prête à confier à la Cour une mission étendue, comme l'at-

teste d'ailleurs l'article premier du projet de compromis libyen en date du 17 janvier 1976, qui est ainsi formulé:

> «The Court is requested to decide the following question: What principles and rules of international law are applicable to the delimitation of the areas of the continental shelf and the economic zone which appertain to the Libyan Arab Republic and that of the Republic of Malta.»

En revanche, Malte, souhaitait soumettre à la Cour la question de la délimitation du seul plateau continental.

Volonté récente donc, comme je viens de le souligner, mais volonté qui est désormais évidente au regard des exposés oraux des conseils maltais.

On peut s'interroger sur les raisons qui inspirent désormais Malte dans son souci d'établir une corrélation entre plateau continental et zone économique exclusive.

L'objectif poursuivi est transparent. Plus exactement il est double:

1. Accréditer de façon plus favorable le soi-disant principe de distance, prétendu principe dont mon collègue et ami M. Quéneudec a montré l'inexistence juridique et je n'y reviens pas.
2. Permettre d'élargir — à cette occasion — en étendant le champ des facteurs ou des considérations estimés pertinents.

C'est plus spécialement ce second objectif sur lequel — avec votre permission, Monsieur le Président — je voudrais m'expliquer brièvement.

Le concept de plateau continental est un concept plus circonscrit que celui de zone économique exclusive. Ce dernier correspond à la reconnaissance au profit de l'Etat riverain d'une grande diversité d'intérêts (en matière de richesses biologiques, de recherche scientifique, de protection contre la pollution) et donc à la possibilité pour cet Etat d'exercer toute une gamme, très large, d'activités.

En conséquence, les droits conférés à l'Etat sur la zone économique exclusive sont à la mesure de cet éventail plus ouvert. En d'autres termes, ils sont plus nombreux et plus diversifiés.

La tentative maltaise de dérive en direction de la zone économique exclusive s'éclaire alors: elle permettrait de prendre en compte, dans le cadre d'une opération technique et limitée de délimitation du plateau continental, des considérations variées, dont certaines d'entre elles pourraient être en connection avec le concept de zone économique exclusive, mais, en toute occurrence, extérieures à l'essence même du plateau.

D'ailleurs, au paragraphe 231 de son mémoire (**I**), Malte se fait clairement entendre sur ce point:

> «In view especially of the close link existing in modern international law between continental shelves and exclusive economic zones, factors which are relevant to the exploitation of biological resources must be given weight as an equitable consideration.»

Je ne reviendrai pas, bien sûr, sur les différences profondes qui séparent plateau continental et zone économique exclusive et qui en font des institutions séparées ayant pour chacune d'entre elles leur statut et leur vie juridique.

Ces différences ont fait l'objet d'un exposé lumineux par mon ami M. Quéneudec.

Au cours des plaidoiries orales, M. Weil a pu affirmer le droit pour Malte comme pour la Libye de proclamer «à tout moment» une zone économique exclusive (**III**, p. 364). Droit de proclamer: sans doute. Mais Malte jugerait-elle

qu'il est opportun de déterminer effectivement une zone économique exclusive en Méditerranée?

Peut-être — mais peut-être pas. Jusqu'à présent, en effet, les Etats côtiers de la Méditerranée s'en sont tous prudemment gardés.

Et une certitude existe: à ce jour, ni la Libye ni Malte n'ont fait de telles proclamations.

Il est vrai, ainsi que l'a fort justement souligné la Chambre de la Cour au paragraphe 194 de l'arrêt récent qu'elle a rendu dans l'affaire de la *Délimitation maritime dans la région du golfe du Maine*, que:

> «avec l'adoption progressive, par la plupart des Etats maritimes, d'une zone économique exclusive et, par conséquent, avec la généralisation de la demande d'une délimitation unique, évitant autant qu'il est possible les inconvénients inhérents à une pluralité de délimitations distinctes, la préférence ira désormais, inévitablement, à des critères se prêtant mieux, par leur caractère plus neutre, à une délimitation polyvalente» (*C.I.J. Recueil 1984*, p. 327).

Mais, parallèlement d'ailleurs, la Chambre au paragraphe 202 de son arrêt note les grandes difficultés que l'on peut rencontrer lorsque l'on entend jumeler des limites qui soient acceptables pour le fond des mers et susceptibles en même temps de s'appliquer à des zones maritimes de pêche.

Le cas qui nous occupe actuellement se présente tout à fait différemment. Nous sommes face à un problème de délimitation du plateau continental — c'est la volonté qui a été à l'évidence exprimée par les deux Parties — et non pas en face d'une délimitation unique de plateau continental et de zone économique exclusive ou de zone exclusive de pêche. Et les circonstances pertinentes à prendre en considération dans chacun des deux cas de figure ne sont pas nécessairement les mêmes.

L'audience, suspendue à 11 h 25, est reprise à 11 h 40

Monsieur le Président, Messieurs les juges, avant la suspension j'ai tenté de rappeler le cadre juridique dans lequel s'insèrent les circonstances pertinentes et j'ai notamment souligné dans un premier point le caractère autonome du plateau continental.

J'aimerais maintenant, dans un second point, faire état du régime juridique de ce plateau.

Je serai plus bref sur ce second aspect bien connu et dont je crains qu'un trop long exposé le concernant ne lasse la Cour.

Mon désir est de parvenir en quelques mots à une analyse correcte des droits dont l'Etat riverain est titulaire sur le plateau continental.

La question du contenu des droits ainsi soulevée est étroitement liée avec la nature de ceux-ci.

A ce sujet, il est devenu banal d'affirmer aujourd'hui que l'Etat n'exerce pas sa souveraineté sur le plateau continental, mais une juridiction, c'est-à-dire qu'il y possède des droits. Ces droits sont sans aucun doute souverains, mais ils sont aussi limités dans leur objet — fonctionnels — ou encore — selon la formule qui est fréquemment employée, parce que fort juste et révélatrice de l'harmonie existant entre le droit reconnu et le but poursuivi — finalisés.

Sur cette conception s'est faite une sorte d'unanimité.

L'unité est d'ailleurs parfaitement reflétée par le droit conventionnel qui énonce les droits de l'Etat sur le plateau.

C'est ainsi que la convention de 1958 sur le plateau continental, dans son article 2, dispose:

> «l'Etat riverain exerce des droits souverains sur le plateau continental aux fins de l'exploration de celui-ci et de l'exploitation de ses ressources naturelles».

(Je laisse provisoirement de côté la référence aux ressources naturelles pour y revenir dans quelques instants.)

La convention des Nations Unies sur le droit de la mer du 10 décembre 1982 diffère-t-elle de celle de 1958 relativement à l'énoncé de ces droits?

Alors que les travaux de la troisième conférence des Nations Unies sur le droit de la mer ont marqué une évolution de la définition du plateau continental, telle qu'elle avait été donnée par la convention de Genève de 1958, les droits de l'Etat sur ce plateau sont restés inchangés à tel point que l'article 77 dans ses paragraphes 1 et 4 de la nouvelle convention a repris jusqu'à la rédaction des dispositions correspondantes de la convention de 1958.

Monsieur le Président, Messieurs les juges, je sais bien que la convention de 1958 sur le plateau continental n'est pas applicable en l'espèce. Je sais également qu'il convient de ne pas tirer de celle de 1982 des conséquences de portée absolue. Elle n'a pas en tant qu'instrument conventionnel, nous le savons tous, force obligatoire. On ne peut tout de même pas totalement ignorer le large assentiment qui semble s'être dégagé au sein de ce grandiose concert des nations qu'a été la troisième conférence relativement aux droits dont jouit l'Etat sur le plateau ainsi que la parfaite continuité réalisée avec le texte de la convention de 1958. Cette continuité dans le temps, cette harmonie dans l'espace portent un témoignage net en faveur d'un accord qui s'est fait au sein de la communauté internationale.

La Cour est parfaitement au cœur de cette symphonie par la qualification qu'elle a conférée aux droits de l'Etat: «droits souverains aux fins de l'exploration du lit de la mer et de l'exploitation de ses ressources naturelles», selon la formule utilisée par elle au paragraphe 19 de son arrêt de 1969 (*C.I.J. Recueil 1969*, p. 22).

La conclusion à tirer de cette rapide analyse afin de la remettre en perspective, c'est-à-dire de la situer dans le cadre de notre démonstration, est donc que les facteurs à prendre en considération dans une opération ayant trait à la délimitation du plateau continental doivent avoir pour être pertinents un lien juridique de connexité avec le droit de ce plateau. Plus précisément, ils doivent être en rapport avec les catégories de droits dont bénéficient les Etats.

2. Incompatibilité des facteurs invoqués par Malte avec le droit de la délimitation du plateau continental

Au regard du cadre juridique que je viens brièvement de rappeler, nous sommes tout naturellement amenés maintenant de façon pécise à examiner les considérations avancées par Malte, afin d'apprécier leur pertinence ou leur non-pertinence dans la présente affaire.

Et à cet égard différents points méritent successivement d'être examinés.

Premier point. Rejet des considérations économiques par la jurisprudence

Malte affirme la pertinence de ces facteurs et elle fait de ceux-ci une condition nécessaire du caractère équitable de la solution à retenir.

A cette fin, elle s'est livrée, au cours des plaidoiries orales, à une analyse de

la jurisprudence. La lecture qu'elle fait de cette dernière ne nous paraît pas concluante. Et c'est pourquoi j'aimerais — avec la permission de la Cour — y revenir quelques instants.

En ce qui concerne, tout d'abord, l'arrêt du 20 février 1969, son examen ne nous fournit guère, à ce sujet, d'élément appréciable ou d'élément tout au moins d'appréciation utilisable.

Sans doute, comme l'a rappelé mon éminent collègue M. Lauterpacht, la Cour affirme-t-elle au paragraphe 93 de son arrêt qu'«il n'y a pas de limites juridiques aux considérations que les Etats peuvent examiner afin de s'assurer qu'ils vont appliquer des procédés équitables» (*C.I.J. Recueil 1969*, p. 50), et au paragraphe 94, évoquant certains facteurs susceptibles d'être pris en considération, elle ne fait pas mention de ceux d'ordre économique à part la référence très particulière à l'«unité de gisement».

Et si dans son dispositif au paragraphe 101, point C1, elle déclare que la délimitation doit s'opérer par voie d'accord conformément à des principes équitables et compte tenu de toutes les circonstances pertinentes, elle ne fournit pas de précisions sur le caractère pertinent des circonstances qui, seules, doivent être retenues.

La référence que fait le même paragraphe du dispositif dans son point D2 à la prise en considération éventuelle des ressources naturelles des zones de plateau en cause ne vaut que pour les négociations ultérieures qu'auront à mener les parties. Elle ne vise pas les principes et règles du droit international applicables à la délimitation.

En d'autres termes, l'arrêt de 1969 constitue à cet égard, pour parler le langage des chimistes, un corps neutre.

Il en va tout différemment, en revanche, de l'arrêt de 1982 rendu dans l'affaire du *Plateau continental (Tunisie/Jamahiriya arabe libyenne)*.

La Cour a rejeté avec netteté les facteurs économiques au paragraphe 107 de son arrêt. Qu'il me soit permis, Monsieur le Président, d'épargner à la Cour une nouvelle fois la citation du célèbre *dictum* de ce paragraphe qu'elle connaît bien, pour me contenter de rappeler que la condamnation qu'elle prononce se fonde essentiellement sur la variabilité dans le temps de ces facteurs.

Il ne convient pas, en effet, qu'une délimitation faite pour durer, une délimitation entreprise dans le définitif, soit dans son processus affectée par le caractère changeant, éphémère des conditions économiques.

Mon collègue Lauterpacht redoute qu'un tel rejet «would run counter to the whole philosophy underlying the concept of an equitable solution». Nous ne partageons pas ses craintes. Nous pensons au contraire qu'une solution équitable dans une opération donnée n'est pas celle qui prend en compte tous les facteurs quels qu'ils soient mais seulement ceux d'entre eux qui sont en relation juridique avec l'opération à effectuer et qui forment des données caractérisant de façon persistante la situation d'espèce.

Cette position d'exclusion n'est pas remise en cause par la Chambre de la Cour dans l'arrêt qu'elle a rendu le 12 octobre 1984 à propos de l'affaire de la *Délimitation de la frontière maritime dans la région du golfe du Maine*.

En effet, à cette occasion la Chambre a procédé à l'examen des circonstances que les Parties avaient présentées comme des données fournies par la géographie humaine et économique. Elle a estimé au paragraphe 232 que ces circonstances ne pouvaient pas «entrer en considération en tant que critères à appliquer à l'opération de délimitation elle-même». Elle a reconnu, cependant, dans le même paragraphe, que ces circonstances pouvaient servir «pour juger du caractère équitable de la délimitation établie à l'origine sur la base de critères empruntés à la géographie physique et politique» (*C.I.J. Recueil 1984*, p. 340).

La Chambre n'a finalement pas retenu ces facteurs, alors même que les deux parties à l'instance lui demandaient de procéder à une délimitation par ligne unique valable aussi bien pour le plateau continental que pour la zone de pêche exclusive.

Mon collègue Lauterpacht semble également vouloir tirer des enseignements favorables à la thèse maltaise de l'affaire de la zone du plateau continental entre l'Islande et Jan Mayen (**III**, p. 328). Il souligne notamment que la commission de conciliation a, dans l'accomplissement de ses fonctions, tenu compte des considérations économiques.

C'est tout à fait certain et je ne peux qu'être d'accord avec lui sur ce point. Je voudrais cependant attirer respectueusement votre attention, Monsieur le Président, Messieurs les juges, sur les termes de l'article 9 du compromis conclu le 28 mai 1980 entre l'Islande et la Norvège:

> «The Commission shall have as its mandate the submission of recommendations with regard to the dividing line for the shelf area between Iceland and Jan Mayen. In preparing such recommendations the Commission shall take into account Iceland's strong economic interest in these sea areas...»

En d'autres termes, l'invitation expresse faite à la commission de tenir compte en l'espèce des intérêts économiques dans ce secteur maritime — intérêts puissants et actuels — dictait à la commission la prise en compte de ces facteurs.

La seule leçon correcte que je crois légitime de tirer de cette affaire est — par un raisonnement *a contrario* — qu'à défaut de référence *expressis verbis* dans le compromis demandant à l'organe intervenant de les prendre en considération, de tels intérêts sont dénués de pertinence.

Ainsi pour me résumer sur ce point, la non-pertinence des considérations économiques se justifie par deux séries de raisons:

— d'une part, comme l'a indiqué la Cour en 1982, à cause de la variabilité dans le temps desdits facteurs,
— d'autre part, parce que pour certains d'entre eux ils sont sans lien avec l'institution du plateau continental. C'est notamment le cas de la pêche dont je voudrais parler maintenant dans un second point pour en marquer rapidement la non-pertinence.

Deuxième point. Non-pertinence des intérêts de pêche

Malte considère comme facteur à retenir, facteur pertinent en l'espèce, les activités de pêche exercées par ses pêcheurs nationaux. C'est du moins ce qu'indiquaient ses écritures.

Les plaidoiries orales, en effet, n'ont plus fait état de cet argument. Néanmoins écritures et plaidoiries orales forment un tout indissociable. Et il ne convient pas, au stade de la procédure orale, de faire abstraction complète des arguments de la procédure écrite.

Au regard de ce que nous avons dit précédemment, il est clair que la conservation ainsi que l'exploitation des ressources biologiques se trouvant dans les eaux surplombant le plateau continental forment un élément sans relation avec le plateau.

Il ne pourrait en être autrement que dans une hypothèse: celle où l'activité en question affecterait certaines des ressources naturelles du plateau.

C'est pourquoi il est utile à ce stade de rappeler la définition des ressources naturelles, telle qu'elle est donnée au paragraphe 4 de l'article 2 de la conven-

tion de Genève du 29 avril 1958 sur le plateau continental, et dispositions qui sont reproduites en termes similaires à l'article 77, paragraphe 4, de la convention du 10 décembre 1982:

> «les ressources minérales et autres ressources non vivantes du lit de la mer et du sous-sol, ainsi que les organismes vivants qui appartiennent aux espèces sédentaires, c'est-à-dire les organismes qui, au stade où ils peuvent être pêchés, sont soit immobiles sur le lit de la mer ou au-dessous de ce lit, soit incapables de se déplacer si ce n'est en restant constamment en contact physique avec le lit de la mer ou le sous-sol».

Cette définition, sur laquelle semble s'être réalisé, là encore, l'accord de l'ensemble des Etats, nous intéresse car elle incorpore certaines espèces dans les ressources naturelles du plateau.

Dans les pièces successives de ses plaidoiries écrites, Malte met assez longuement l'accent sur la méthode Kannizzati. Elle fournit à ce propos quelques précisions à la fois d'ordre technique et historique.

Il découle à l'évidence de ces explications que cette technique de pêche ne permet pas d'effectuer une assimilation quelconque avec l'exploitation des espèces qui sont visées par les dispositions rappelées des conventions de 1958 et de 1982.

Pourtant, au paragraphe 35 de sa réplique (**III**), la Partie maltaise procède à l'affirmation suivante:

> «*Kannizzati* fishing, which involves the anchoring of a cluster of palm leaves, is an activity of which an essential element is the continuous contact of the stone anchor with the seabed during the whole fishing season and is thus directly related to the use of the continental shelf resources.»

Il semble, au regard de cette phrase, que Malte commette une confusion entre les espèces attachées au plateau continental (et à ce titre incorporées aux richesses dudit plateau) et les moyens de pêche, qui, du seul fait qu'ils sont fixés au plateau continental n'entraînent en aucune façon la qualification de ressources naturelles aux espèces qui sont capturées grâce à eux. En d'autres termes, la définition des ressources naturelles est dépourvue d'ambiguïté, elle prend en compte la nature des espèces et non pas le caractère de l'équipement utilisé.

Dans un troisième point, je voudrais marquer maintenant la non-pertinence des intérêts de sécurité.

Troisième point. Non-pertinence des intérêts de sécurité

Malte retient, en tant que considération pertinente en l'espèce, ses intérêts de sécurité. Elle accorde à ce facteur une grande importance comme en témoignent les pièces écrites et les plaidoiries orales.

La relation de ce facteur paraît mal assurée au regard de l'objet du litige.

Je n'entends pas dire par là que les intérêts de sécurité soient toujours démunis de toute pertinence.

La Libye aurait mauvaise grâce à le prétendre de façon absolue puisqu'elle a elle-même reconnu qu'ils pouvaient être éventuellement retenus (**I**, ML, p. 110, par. 6.77 et 6.78). Mais elle ajoutait immédiatement que les situations dans lesquelles ce facteur pouvait intervenir et le rôle qu'il pouvait jouer lui paraissaient juridiquement limités.

La difficulté en la matière tient au fait que la notion de sécurité est peu juridique et que son contenu est imprécis. Si bien qu'il convient d'appréhender une telle notion avec prudence.

Les écritures de Malte, ses plaidoiries orales n'ont pas grande vertu clarificatrice. Peu d'indications sont fournies sur la nature exacte des intérêts en cause.

En revanche, Malte expose de manière plus explicative les raisons pour lesquelles lesdits intérêts seraient plus intenses que ceux d'autres Etats. Son argumentation — si l'on essaie de procéder à une présentation synthétique — se développe sur un triple plan:

I. En premier lieu — selon Malte — ses intérêts de sécurité nationale forment une considération d'une importance particulière eu égard au fait que son territoire est constitué par un groupe d'îles. C'est ce que dit le paragraphe 288 de son contre-mémoire (**II**):

> «it is clear that control over the seabed has a significant security aspect. When the entire homeland of a State consists of an island or group of islands the interest of the coastal State in the maintenance of political authority for the purposes of such control is enhanced».

Malte estime donc qu'une île ou un groupe d'îles possède des intérêts de sécurité à protéger plus importants que ceux d'un Etat continental.

On doit avouer ne pas voir très clairement en quoi le caractère insulaire d'un pays impliquerait des besoins de sécurité renforcés... et Malte ne nous fournit pas, une fois de plus, beaucoup d'explications sur ce point pour éclairer nos vues.

Afin d'asseoir plus fermement sa position, Malte recourt au paragraphe 260 de son contre-mémoire (**II**) à un autre argument:

> «The Convention on the Law of the Sea confirms the security interests of groups of islands in so far as "archipelagic States" are accorded a special régime in respect of the archipelagic waters, as well as their bed and subsoil: see the elaborate provisions of Part IV of the Convention.»

Concernant ce curieux argument, je voudrais simplement présenter deux brèves observations:

1) La partie IV de la convention de 1982 qui a trait aux Etats archipels et à laquelle Malte nous invite à nous reporter ne contient pas de disposition touchant à la sécurité de ces Etats qui soit plus contraignante que celles qui régissent le passage inoffensif dans les eaux territoriales de n'importe quel autre Etat côtier. Il n'existe pas de réglementation particulariste.

2) Le statut des eaux archipélagiques — ainsi visé — n'est applicable qu'aux eaux maritimes enfermées à l'intérieur des lignes de base archipélagiques, mais ce régime demeure tout à fait étranger au plateau continental au-delà des eaux territoriales de l'Etat archipélagique.

II. En second lieu, dans ses plaidoiries orales, Malte est revenue — en y insistant à différentes reprises — sur la nécessité impérieuse de protection et elle a recours à l'argument de proximité.

En l'occurrence, l'argumentation maltaise n'entraîne pas sans réserve la conviction.

Il a été notamment exposé par la Partie adverse qu'une exploitation du plateau continental entreprise par la Libye en face et à proximité des côtes maltaises serait de nature à faire peser de lourdes menaces sur cet Etat.

L'argumentation juridique surprend. Elle ne semblerait, en effet, trouver application que dans les relations d'Etats se faisant face. Dans le cas de deux Etats limitrophes, les activités économiques que chacun d'eux mène à l'intérieur de sa propre sphère de juridiction voisinent de façon permanente. La sécurité doit bien alors s'accommoder de cette situation géographique de voisinage.

Est-ce à dire alors que le principe d'égalité des Etats soit sélectif, modulable, qu'il soit empreint de plasticité et qu'il ne joue pas dans les mêmes conditions selon que les Etats sont face à face ou limitrophes? Est-ce un principe à géométrie variable?

III. Malte estime, en troisième lieu que le facteur de sécurité nationale est plus pertinent encore eu égard à la condition juridique d'Etat neutre que ce pays a récemment choisie. Ce thème est important dans le raisonnement maltais puisqu'un chapitre y est consacré dans le mémoire (I, par. 58-61) et qu'il y est fait référence par la suite, même si les plaidoiries orales n'y reviennent plus.

Malte semble conférer une signification particulière à la décision de neutralité qu'elle a adoptée. Faisant notamment valoir sa situation géographique centrale en Méditerranée, elle considère que le récent statut qui est le sien constitue un gage de paix pour elle-même, mais aussi pour toute la région.

Il s'agit là — sans aucun doute — d'une position de portée généreuse et utile. Et la Libye vient par le traité d'amitié et de coopération du 19 novembre 1984 de garantir cette neutralité.

Au départ, cependant, c'est par une décision du 15 mai 1981 que Malte a opté pour le statut de neutralité. Cette décision est un acte exprimant un libre choix accompli en toute souveraineté. Les garanties qui sont apportées par les Etats tiers ne modifient pas la nature de base de la décision maltaise.

Mais alors, de nombreuses questions se posent auxquelles les pièces maltaises n'apportent pas de réponse:

— Comment expliquer que la condition juridique d'Etat neutre soit de nature à renforcer les besoins en matière de sécurité nationale plutôt qu'à les limiter?

— Comment expliquer que la décision prise puisse conférer à l'Etat qui en est l'auteur le droit de prétendre à une extension spatiale de ses compétences?

— Comment encore et surtout expliquer que la déclaration maltaise puisse entraîner des conséquences juridiques favorables à Malte sur le plateau continental en Méditerranée centrale?

En vérité, les intérêts de sécurité nationale peuvent être difficilement retenus en tant que circonstances pertinentes, étant donné le caractère très indirect de leur lien avec le concept de plateau et son régime juridique. Ce n'est que de manière exceptionnelle qu'un tel facteur pourrait être pris en considération compte tenu de situations particulières.

Le litige relatif à la délimitation du plateau continental entre la République française et le Royaume-Uni faisait apparaître une situation de ce type eu égard aux îles Anglo-Normandes, dont la présence était susceptible d'entraîner une division du plateau continental en deux zones séparées. Exposant au paragraphe 161 de sa sentence le point de vue français, le tribunal arbitral déclarait:

> «Ceci aurait pour conséquence que même si l'attribution de la partie du plateau continental du Royaume-Uni qui viendrait s'insérer entre les deux zones françaises n'affectait pas, en théorie, le statut juridique des eaux et de l'espace aérien surjacents, les intérêts vitaux de la République française en matière de sécurité et de défense de son territoire ne manqueraient pas d'être compromis.»

Dans le présent litige, il est, à l'évidence, impossible d'invoquer une situation de cet ordre.

Mais d'ailleurs, au paragraphe 188 de la même sentence, le tribunal arbitral relativisait le rôle des considérations de sécurité en concluant:

> «Elles peuvent étayer et renforcer les conclusions déjà déduites des élé-

ments géographiques, politiques et juridiques de la région que le tribunal a retenus, mais elles ne sauraient les annuler.»

De son côté, la Chambre de la Cour n'a pas non plus retenu les considérations de défense qui étaient invoquées par les Etats-Unis dans l'affaire de la *Délimitation de la frontière maritime dans la région du golfe du Maine* et, au paragraphe 237 de son arrêt, elle ne leur a pas reconnu en l'espèce valeur de considération pertinente.

Aucun élément particulier ne nous semble donc autoriser Malte à faire état en tant que circonstance pertinente de ses intérêts de sécurité.

Non pertinente également est la considération tirée d'un statut juridique d'Etat insulaire et c'est là l'objet de mon quatrième point.

Quatrième point. Non-pertinence du «statut juridique» d'Etat insulaire

Monsieur le Président, nous sommes en présence ici d'une autre considération que Malte estime être de la plus haute importance.

Le chapitre VI de son mémoire avec un intitulé significatif («Malta's Entitlement as an Island State») y est consacré. Des références fréquentes à ce facteur sont faites et la qualification de considération pertinente est expressément conférée (**I**, MM, par. 220 et 234 *d*)).

J'aurais aimé ne pas trop m'attarder sur cette question que la Libye a déjà examinée dans son mémoire ainsi que dans son contre-mémoire mais les conseils maltais, au cours des plaidoiries orales, ont mis en relief le fait de l'Etat insulaire et je me vois contraint de m'y arrêter quelques instants.

Pour synthétiser les débats, on peut dire que les Parties se trouvent réunies sur un point qui est le suivant: une île possède le même titre juridique qu'un territoire continental au plateau.

Cette entente n'est d'ailleurs que la résultante de règles d'une grande clarté qui sont exprimées par l'article 1 de la convention de Genève de 1958 sur le plateau continental ainsi que par l'article 121, paragraphe 2, de la convention de 1982. Là encore, ces dispositions conventionnelles semblent «cristalliser des règles du droit international coutumier».

Ce point d'entente étant admis, la Libye ne peut suivre la distinction entre Etats insulaires et îles rattachées politiquement à un Etat continental que la Partie adverse considère comme fondamentale et comme faisant — à ses yeux — partie intégrante du droit positif.

Les choses ne sont pas si simples et nous ne pouvons pas partager l'assurance et la certitude maltaises à ce sujet et ceci pour deux raisons:

— La première est de principe: dans les deux cas, il n'y a toujours qu'une souveraineté qui s'exerce sur le territoire. La souveraineté est indivisible. On ne voit guère pourquoi une île rattachée à un Etat continental pourrait se trouver dans une situation plus défavorable qu'un Etat insulaire au regard du principe de souveraineté. C'est la souveraineté qui est la qualité commune de tous les Etats, quelles que soient leur forme, leur taille, leur puissance militaire ou économique. C'est la souveraineté qui fait l'égalité des Etats et voilà, me semble-t-il, une des significations exactes qu'il convient de donner à l'article 2, paragraphe 1, de la Charte des Nations Unies dans la référence qu'il fait à l'«égalité souveraine» des Etats.

D'ailleurs, la pratique conventionnelle des Etats en matière de délimitation — à laquelle Malte a amplement prouvé son intérêt — ne semble pas s'inspirer de cette distinction dégagée par la Partie adverse.

C'est ainsi que, pour ne citer que deux exemples, le traité conclu le 4 mars

1981 entre la France (pour le compte de la Martinique) et l'Etat insulaire de Sainte-Lucie porte sur la délimitation des espaces maritimes des deux îles de longeurs de côtes comparables et ce traité n'avantage pas Sainte-Lucie.

La même leçon pourrait être tirée de la délimitation intervenue à la suite du traité du 2 avril 1980 entre la France (mais cette fois-ci pour le compte de la Réunion) et l'île Maurice, Etat insulaire.

Ainsi l'Etat insulaire souverain ne bénéficie pas d'un traitement plus favorable que l'île rattachée à un Etat continental ni même souverain, dans le cas où leurs côtes sont de longueurs comparables.

— La deuxième raison qui nous paraît essentielle est que la distinction a rapidement disparu des débats de la troisième conférence des Nations Unies sur le droit de la mer et que l'on n'en voit nulle trace dans le texte de la convention de 1982.

Malte fait preuve sur ce point d'une mémoire à éclipses. Elle, si soucieuse dans certains cas de reconnaître l'importance fondamentale des travaux de la troisième conférence et des termes de la convention qui en est issue (article 76 de ladite convention), semble oublier ce fait.

La troisième conférence n'a pas consacré la spécificité du phénomène de l'Etat insulaire, malgré la présence à la conférence de trente-huit Etats insulaires qui — comme le rappelle Malte — représentent près de vingt-cinq pour cent de l'ensemble des Etats.

C'est-à-dire comment interpréter ce silence sinon qu'un aussi grand rassemblement d'Etats n'a pas considéré ce fait comme distinctif.

Et dans ces conditions il ne me paraît pas tout à fait exact de prétendre comme le fait Malte au paragraphe 272 i) de son mémoire (**I**):

> «The normal entitlement of island States to shelf rights and exclusive economic zones has received the general approbation of the international community...»

Il serait plus approprié d'affirmer que les droits au plateau continental (comme aux autres espaces maritimes d'ailleurs) ont été reconnus de façon générale à toute île en toute indifférence à son statut politique.

Malte invoque souvent pour conforter son argumentation la sentence rendue par le tribunal arbitral chargé de délimiter le plateau continental entre la France et le Royaume-Uni.

Elle observe notamment que le tribunal a longuement analysé le statut politique des îles Anglo-Normandes. Ceci est tout à fait exact, à condition de mentionner parallèlement que les termes du compromis franco-britannique (et notamment l'article 2) lui commandaient cette attention particulière, à condition également de ne pas oublier que c'est la solution de l'enclave à laquelle le tribunal s'est finalement arrêté.

La sentence du tribunal dans le différend franco-britannique me paraît d'ailleurs tout à fait éclairante pour la présente affaire, mais dans une perspective qui a été un peu négligée par la Partie maltaise. Ladite sentence illustre parfaitement, en effet, la distinction capitale entre titre juridique et délimitation. A cet égard le tribunal a clairement reconnu que les îles possèdent un titre juridique à un plateau continental, mais dans la mesure où l'objet du litige concernait, en l'espèce, la délimitation dudit plateau, il a seulement affecté aux îles Anglo-Normandes, pour parvenir à une solution équitable, une zone de 12 milles marins.

En conclusion, l'argumentation maltaise concernant la distinction Etat insulaire, île rattachée à un Etat continental, ne semble pas correspondre à la réalité juridique.

Cinquième point. Inadaptation du recours par Malte à la notion d'«Island developing country»

La notion de «pays insulaire en développement» est introduite dans ses pièces écrites et n'a plus été évoquée dans les développements oraux des conseils maltais. En dépit de ce silence qui a été observé, il apparaît nécessaire, pour quelques instants, de souligner sa non-pertinence et son inadaptation en l'espèce.

Malte confère en effet beaucoup d'ampleur à la notion d'«Island developing country» dans toutes ses écritures (cf. paragraphe 226 à 230 du mémoire **(I)**; paragraphes 309 à 311 du contre-mémoire **(II)**, paragraphes 37 à 41 de la réplique **(III)**). Elle considère que ladite qualification appliquée à son cas constitue dans la présente affaire, pourtant relative à la délimitation du plateau continental, une considération pertinente.

Au paragraphe 41 de sa réplique **(III)**, Malte demande même à la Cour d'avoir à l'esprit que «Malta is an island developing country and Libya is not». Qui pourrait ne pas reconnaître la justesse de cette lapalissade? Qui également pourrait oublier parallèlement que la Libye qui — à l'évidence — n'est pas une île, est tout de même aussi un pays en développement?

Malte se réfère donc longuement à cette notion et elle note avec soin l'intérêt que les Nations Unies ont pu prendre aux pays insulaires en développement. Il est vrai que l'Organisation des Nations Unies, les institutions des Nations Unies, y ont consacré une certaine attention. Il est non moins vrai que ces mêmes institutions se sont beaucoup plus penché sur le sort — ô combien douloureux — des pays les moins avancés, et ont organisé à Paris, en 1981, la tenue d'une conférence internationale propre à ce sujet. Parmi ces pays on compte d'ailleurs plusieurs petits Etats insulaires comme les Maldives, Samoa, etc., mais, heureusement pour elle, Malte n'y figure pas.

Je voudrais à ce propos, au sujet de cette allégation faite par Malte, demander à la Cour la permission de souligner en quelques minutes l'utilisation erronée que fait Malte de ce concept, en relevant d'ailleurs — chemin faisant — certaines contradictions que recèle le raisonnement maltais.

Malte, nous l'avons dit, cherche à tirer avantage de cette notion. Mais c'est une notion juridiquement incertaine et je voudrais faire apparaître cette incertitude par deux remarques:

1. En premier lieu, le droit de la mer semble superbement ignorer cette notion. Malte à voulu montrer l'intérêt manifesté par les Nations Unies au phénomène. Il n'empêche, cependant, que la conférence internationale la plus importante (par son sujet), la plus ample (par le nombre d'Etats participants), la plus longue (par le nombre de ses sessions et des années passées) n'a pas fait le moindre écho tout au long de ses travaux à ce problème, qui aurait dû pourtant figurer parmi ses préoccupations.

2. En second lieu, le concept ne renvoie pas à un statut de droit positif, accepté en tant que tel par l'ensemble de la communauté internationale. Je vais essayer de m'en expliquer.

La notion de pays insulaires en développement a été visée dans différents travaux effectués par certaines institutions des Nations Unies. Il ne semble pas que la spécificité de cette notion soit nettement dégagée. C'est ainsi que, dans un cadre autre que celui des Nations Unies, les pays d'Afrique, des Caraïbes et du Pacifique, parties aux conventions de Lomé et qui forment le groupe des Etats dits ACP, ont identifié une catégorie au contenu quelque peu différent, puisque sont concernés «les pays les moins avancés, enclavés ou insulaires».

Surtout l'analyse des documents élaborés dans le cadre des Nations Unies, et

dont Malte nous fournit quelques extraits à l'annexe 68 de son mémoire (I), amène à dégager deux enseignements étroitement complémentaires.

a) Si on les étudie sous l'angle de leur forme juridique, ces différents documents peuvent être classés en documents d'études ou en résolutions adoptées soit par la CNUCED, soit par l'Assemblée générale des Nations Unies.

Il est difficile d'y voir des textes à portée contraignante, à valeur juridique obligatoire, créant des obligations positives pour certains Etats.

b) Le second enseignement dérive directement du premier, le rejoint et le prolonge.

Il a trait au contenu des documents cités. Certains d'entre eux expriment — comme cela est souvent le cas pour des résolutions adoptées en matière de développement économique — une philosophie du souhaitable dans les relations économiques internationales du futur, une invitation à un certain comportement, mais non point des normes de droit. La rédaction desdites résolutions emprunte d'ailleurs et de façon caractéristique le mode conditionnel (c'est ce que fait notamment la déclaration concernant l'instauration du nouvel ordre économique international, résolution 3201 du 1er mai 1974). En toute occurrence, on chercherait en vain dans tous ces documents la reconnaissance d'un véritable droit au profit des Etats insulaires en développement.

J'en viens maintenant à aborder dans ma troisième et dernière section de cette partie le thème non juridique du partage des ressources.

3. Le thème non juridique du partage des ressources

Il est en effet un thème qui traverse de façon certes plus ou moins souterraine, mais de façon aussi évidente, les écritures maltaises et dans une moindre mesure les plaidoiries orales: celui du partage des ressources.

Ce thème apparaît en filigrane dès les premières pages du mémoire maltais, qui situe d'emblée la présente espèce soumise à la Cour sous le signe de l'accès aux richesses, comme l'a déjà signalé M. l'agent du Gouvernement libyen.

Appliquant une technique répétitive, Malte souligne à l'envi l'absence sur son territoire terrestre de ressources énergétiques.

Le caractère de leitmotiv que prend cette affirmation est encore accusé par l'opposition qui est pauvre en puissance juridique, mais riche en images, que souligne Malte entre cette absence de ressources énergétiques dont elle souffre et l'abondance des mêmes ressources dont bénéficie la Libye.

Qu'il me soit permis de rappeler à la Cour, à titre illustratif, deux phrases significatives (et je n'ai que l'embarras du choix) extraites des pièces écrites maltaises:

> «This permanent lack of land-based energy resources, especially bearing in mind the abundance of Libya's petroleum and gas resources, is, without doubt, an equitable consideration or factor relevant to the delimitation of the shelf areas dividing the two Parties.» (I, MM, p. 110, par. 225.)

Et surtout cette phrase surprenante difficilement supportable et de toute façon *totalement inappropriée figurant au paragraphe 25 de la réplique maltaise (III)*: «The issue is not "are both rich or poor?" but "what is the comparative wealth of one as against the other?"»

Cette référence constante faite par Malte à l'absence de ressources sur son territoire détourne de la règle juridique selon laquelle les droits de l'Etat sur le plateau existent *ipso facto* et *ab initio*, comme l'a dit la Cour au paragraphe 19 de son arrêt de 1969. Elle commande et sous-entend non pas l'opération juri-

dique de délimitation du plateau continental mais plutôt un partage des ressources de celui-ci.

Une telle conception est condamnée par la Cour qui s'est fermement refusée à tout recours à la justice distributive.

Dans l'arrêt du 20 février 1969, auquel je viens de faire référence, la Cour a en effet estimé que cette tâche «concerne essentiellement la délimitation et non point la répartition» (*C.I.J. Recueil 1969*, p. 22, par. 18).

Il apparaît également utile de faire un rappel qui semblera, je vous prie de m'en excuser, Monsieur le Président, une évidence. La notion d'«inégalité compensatrice» dont mon ami M. Weil a fait état dans son intervention orale est une formule qui est présentée parfois pour illustrer un des principes généraux dégagés par la première CNUCED et destiné à servir de concept opératoire en faveur des pays en développement dans leurs relations économiques avec les pays développés.

Or, à ce propos, M. Weil procède à cette affirmation:

> «La Cour n'acceptera pas ... qu'en matière de délimitation du plateau continental la protection que le principe de l'égalité souveraine des Etats assure aux «petits» soit balayée par des privilèges juridiques exorbitants accordés aux «grands»; faute de quoi l'inégalité compensatrice ferait place à une inégalité aggravatrice.» (**III**, p. 408.)

Il s'agit là d'une formule brillante et — à coup sûr — elle porte.

On voit mal cependant comment l'inégalité compensatrice trouverait à s'appliquer ici. Le présent différend ne met pas aux prises, que je sache, un pays en développement — Malte en l'occurrence — à la puissance hautement industrialisée que serait la Libye.

Cette évocation est malgré tout assez symbolique de tout un état d'esprit qui caractérise les thèses maltaises car elle débouche naturellement sur le thème riche/pauvre, qui court de façon diffuse au travers de toutes les écritures maltaises.

Je n'en parlerai pas à ce stade de la procédure orale puisque, dans leurs exposés, les conseils maltais sont assez peu revenus sur ce type d'argument.

Restons donc sur le terrain juridique.

Je me contenterai simplement d'indiquer que l'opposition (à traits forcés) entre le Gulliver libyen et le Lilliput maltais est non seulement dénuée de pertinence juridique mais elle fausse le débat et entraîne une vision déformée, et par conséquent déformante, de la réalité.

Et c'est pourquoi la Libye se réserve la possibilité de revenir ultérieurement sur cet aspect de la question pour montrer que cette «disparity between the economic positions of the Parties» que se plaisait à souligner mon collègue Lauterpacht (**III**, p. 329) relève plus du mythe que d'une observation objective des situations économiques des deux Etats.

La seconde partie que j'aborde maintenant — et qui me retiendra beaucoup moins longuement — a pour objet de montrer que les considérations alléguées par Malte ne commandent pas une délimitation effectuée sur la base de l'équidistance.

II. Les considérations alléguées par Malte ne commandent pas une délimitation effectuée sur la base de l'équidistance

Dans mes précédents propos, j'ai cherché à démontrer qu'au titre des circonstances propres à conduire à une délimitation équitable Malte a invoqué des considérations qui souffraient d'une absence de pertinence juridique au regard de l'objet du litige.

Il s'agit là d'un point fondamental, suffisant en lui-même pour ruiner l'argumentation maltaise.

Néanmoins, pour quelques instants seulement, laissons nous entraîner dans cette fausse perspective. A supposer que l'on puisse retenir des considérations étrangères à l'institution du plateau continental, encore convient-il de savoir si de telles considérations conduisent nécessairement, inéluctablement, à l'application de la méthode d'équidistance.

Avant de répondre à cette question qui implique l'existence d'un lien de logique juridique entre considération pertinente et méthode d'équidistance, il est utile en quelques mots de s'interroger de manière plus précise sur le rôle à remplir par les circonstances pertinentes.

C'est l'objet de ma première et très courte section.

1. Fonction des circonstances pertinentes

Mon intention n'est pas de m'attarder longuement sur ce problème puisque mon collègue, M. Bowett, en parlera beaucoup plus savamment que je ne saurais le faire.

Je voudrais plutôt étudier d'un point de vue abstrait et général les types de fonctions que l'on peut assigner aux circonstances pertinentes, étant entendu comme postulat de base que ces circonstances ont pour objet d'individualiser, d'adapter la règle de droit au cas d'espèce à résoudre. En somme de personnaliser la règle de droit.

A l'analyse, deux schémas théoriques sont concevables.

Le premier implique un rapport d'ensemble, un équilibre général entre les considérations invoquées et le résultat obtenu.

En d'autres termes, c'est la balance entre tous les facteurs pertinents qui doit amener à la délimitation équitable. Cette conception est celle que semble retenir la Cour et qu'elle a notamment explicité au paragraphe 93 de son arrêt dans l'affaire du *Plateau continental de la mer du Nord*. Ce premier schéma se caractérise par sa finalité. Les circonstances pertinentes produisent ou du moins contribuent à produire de manière positive une délimitation équitable.

C'est bien là ce qu'a affirmé la Cour en 1982 au paragraphe 132 de son arrêt: chaque litige relatif au plateau continental doit être examiné et résolu en lui-même en fonction des circonstances qui lui sont propres» (*C.I.J. Recueil 1982*, p. 92).

Il en va différemment du second schéma. Là, le rôle dévolu aux circonstances pertinentes perd son importance primordiale.

Ces circonstances vont alors, soit servir de test à posteriori, afin de s'assurer que le résultat auquel on est parvenu par d'autres voies est bien équitable, soit intervenir dans un second stade après qu'aura d'abord été appliquée une méthode privilégiée.

Cette dernière conception s'apparente de très près à celle qui est défendue par Malte. On en trouve une expression symbolique dans un intitulé du contre-mémoire maltais (**II**): «Checking the equitable and reasonable character of the result: relevant circumstances» (p. 81) et dans des explications qui sont fournies au paragraphe 172 de ladite pièce.

Ces différences d'approches sont importantes. Elles semblent correspondre aux points de vue respectifs de la Libye et de Malte.

Peu importe d'ailleurs pour la démonstration immédiate. Ce que l'on peut retenir, c'est le fait que ces schémas ont en commun de répondre tous deux à l'exigence logique d'une correspondance étroite entre les considérations alléguées et la délimitation proposée ou la méthode à employer pour y parvenir.

Or, sur ce point essentiel, on est bien obligé de prendre acte de la déficience du système maltais. Et c'est précisément ce que j'aimerais maintenant voir dans la seconde section qui traite de l'absence de lien logique.

2. Absence de lien logique

Récapitulant dans son contre-mémoire **(II)** les différents facteurs qu'elle invoque, Malte conclut:

> «These equitable considerations or relevant circumstances confirm and reinforce the appropriateness of Malta's equidistance line as the equitable solution in the present case.» (Par. 320, p. 152.)

Ce type d'affirmation (péremptoire autant que non argumentée) qui revient à différentes reprises surprend l'esprit rationnel. En vertu de quelle curieuse relation de cause à effet peut-on faire découler des considérations évoquées par Malte comme pertinentes le caractère approprié de la méthode d'équidistance? En quoi, par exemple, le fait que Malte fasse état de sa qualité d'«Island developing country» puisse conduire, par une impérieuse nécessité logique, à l'application de l'équidistance?

Contrairement aux prétentions maltaises, on peut affirmer avec plus de sûreté qu'aucune des considérations auxquelles il est fait référence n'appelle l'équidistance. Cette remarque à caractère général requiert cependant quelques précisions supplémentaires concernant plus spécialement deux des facteurs auxquels Malte accorde un poids privilégié dans son argumentation: le facteur pêche et le facteur intérêts de sécurité que nous avons déjà rencontrés, mais que j'examine ici dans une autre perspective.

a) *Pêche*

Après avoir longuement fait état de la question des pêches et y avoir consacré certaines annexes, Malte en vient, dans sa réplique, à tempérer l'importance initialement conférée à ce facteur, pour finalement, comme nous l'avons déjà noté, n'en plus parler dans les plaidoiries orales.

Dans son mémoire **(I)**, Malte insiste sur l'importance et la pertinence, dans le cas présent, de la méthode que j'ai déjà évoquée, la méthode Kannizzati. Elle y dit notamment:

> «The relevance of the existence of this method of fishing is that individual series of *kannizzati* may stretch over an extended distance and many of them have for some years stretched as far as the equidistance line between Malta and Libya, *and even beyond.*» (Par. 44, p. 19.)

La carte n° 3 qui est annexée au mémoire (vol. III) se révèle fort peu explicite et ne fournit aucune indication sur l'extension géographique de cette méthode.

Au paragraphe 46 du même mémoire, Malte indique également que, bien que le secret des lieux de pêche soit jalousement gardé par les pêcheurs, certaines activités s'exercent au-delà du Medina Bank. Effectivement, la carte n° 5 du volume III intitulée «Area covered by certain Maltese fishing activities (long-line fishing and trawling)» confirme l'assertion dans la mesure où elle montre que certaines de ces activités semblent trouver place au sud de la ligne des 34 degrés de latitude, donc sensiblement au sud de la ligne d'équidistance.

Je ne voudrais pas abuser du temps de la Cour, la Libye ayant déjà consacré de substantiels développements en réponse à ces arguments (notamment les

paragraphes 3.12 à 3.24 de son contre-mémoire (**II**). Aussi me bornerai-je à quelques brèves remarques directement axées sur la prétendue liaison des questions de pêche et de la ligne d'équidistance:

1. Il semblerait, d'abord, que l'étendue considérable des zones où sont censées se dérouler ces activités de pêche soit peu à la mesure des capacités de la flotte maltaise. Si pêche à longue distance il y a, elle ne peut être que l'exception plutôt que la règle.

2. La prétention de Malte à une délimitation établie sur la thèse de l'équidistance paraît démunie de fondement au regard même des assertions maltaises. En effet, selon les explications fournies, les activités alléguées se prolongeraient donc même au-delà de la ligne d'équidistance. Dans ces conditions, quelle signification pourrait-on accorder à une telle ligne?

3. Mais surtout, et pour quitter le domaine des hypothèses et s'en tenir à des certitudes, Malte, par l'acte n° 24 en date du 21 juillet 1978, a procédé à la fixation à 25 milles marins de sa zone de pêche exclusive.

Ce texte a fait l'objet d'une communication officielle au Secrétaire général des Nations Unies, afin que — comme l'indique, expressément, la lettre en question — la décision maltaise soit portée à la connaissance des Etats membres des Nations Unies et des observateurs.

En fixant par cet acte juridique libre, souverain, les limites de la zone de pêche exclusive, en entendant expressément les rendre opposables aux tiers, Malte a, par là même, clairement reconnu les bornes de ses droits en matière de pêche.

Depuis lors, cette réglementation et ces limites sont demeurées inchangées. C'est seulement dans le cadre étroitement circonscrit du différend concernant le plateau continental que Malte affiche maintenant des prétentions au-delà des 25 milles marins.

b) *Intérêts de sécurité*

En effet, la même coïncidence heureuse des intérêts de défense et de la ligne d'équidistance se trouve également exposée dans les écritures maltaises. Elle est affirmée en ces termes dans le contre-mémoire maltais (**II**):

> «In the circumstances of the present case, the equitable consideration of security and defence interests confirms the method of equidistance, which gives each Party a comparable lateral control from its coasts.» (P. 150, par. 314.)

Une idée voisine est également exprimée au paragraphe 149 du mémoire (**I**): «The equidistance method thus gives effects to the logic that Malta's need for security is no less than that of Libya.» Nous nous permettons encore une fois de rappeler que ce n'est pas en ces termes que le problème se pose dans le cas d'espèce et que la question adressée à la Cour n'est pas de savoir si Malte a ou non les mêmes besoins que la Libye en matière de sécurité. Sur le fond, j'aimerais tout d'abord observer que la bonne protection des intérêts de sécurité, ou les nécessités de «légitime défense» pour reprendre l'expression à laquelle a eu recours M. Brownlie, s'apprécie certainement moins que par le passé par référence à un critère de distance. A l'époque actuelle, les armements modernes sont susceptibles de faire surgir le risque qui menace tout Etat — neutre ou non — à des milliers de kilomètres.

En outre, la logique de protection des intérêts de sécurité s'accommoderait beaucoup plus facilement pour un Etat insulaire de la détermination d'une zone circulaire, d'une circonférence d'une certaine largeur tout autour de l'île ou du groupe d'îles plutôt que d'une ligne d'équidistance.

Je voudrais enfin ajouter que certains Etats ont pu parfois estimer que les exigences de leur sécurité, entendue au sens large, leur dictaient la fixation de zones dans lesquelles ils se reconnaissaient des compétences spéciales adaptées à ces fins. C'est ainsi par exemple que la France, par un décret du 17 mars 1956, avait porté à 27 milles marins les limites de la zone de contrôle douanier le long des côtes d'Afrique du Nord pour les bateaux de 100 tonneaux de jauge et plus. Il en a été de même pour l'Italie, au début du siècle en 1912, qui avait fixé en temps de paix les limites d'une zone de sécurité plus large que les limites de sa mer territoriale.

Or, Malte n'a jamais agi de la sorte. Sans doute a-t-elle amendé par l'acte 28 du 24 juillet 1980 sa législation de 1971 relative à ses eaux territoriales et sa zone contiguë afin de préciser les prérogatives qu'elle entend donner à l'intérieur des limites de cette zone. Mais, jusqu'à la présente affaire, elle n'avait jamais fait correspondre les intérêts de la sécurité nationale avec la ligne d'équidistance.

Non-pertinence des considérations invoquées au regard de l'objet du litige, non-cohérence avec la ligne d'équidistance, tels sont les traits qui semblent se dégager de la position maltaise. Et en vérité la construction maltaise en ce domaine apparaît pleinement artificielle. La coïncidence fortuite des facteurs invoqués avec la ligne d'équidistance constitue en fait les justifications à posteriori de la nécessité posée à priori de la méthode d'équidistance.

Parvenu ainsi au terme de mon intervention, il me reste, Monsieur le Président, Messieurs les juges, à formuler les conclusions qui se dégagent de celle-ci et qui sont au nombre de quatre:

1. La délimitation par voie judiciaire du plateau continental entre deux Etats obéit à un corps de règles internationales spécifiques, précisées en particulier par la Cour dans les différentes affaires qu'elle a eu à connaître.

2. L'autonomie d'une telle opération juridique ne s'accommode pas de la présentation d'un certain nombre de considérations dépourvues de tout lien de connexité au regard de l'objet du litige soumis à l'appréciation de la Cour.

3. Aucune des considérations exposées par Malte ne présente les caractères mentionnés à la conclusion précédente.

4. Aucune des considérations soi-disant pertinentes présentées par Malte ne peut fournir le moindre appui en faveur de la méthode d'équidistance.

Monsieur le Président, Messieurs les juges, je vous remercie de votre attention. J'en ai fini avec ma présentation. Demain matin, si vous le voulez bien, Monsieur le Président, la présentation de la thèse libyenne continuera.

L'audience est levée à 12 h 55

TWENTY-FIRST PUBLIC SITTING (13 XII 84, 10 a.m.)

Present: [See sitting of 26 XI 84.]

ARGUMENT OF MR. HIGHET

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Mr. HIGHET: Mr. President, Members of the Court, may I first say that it is a great honour and a distinct personal pleasure to appear before you again.

What I am to speak about today is the use of certain diagrams and abstractions by Malta. My friend Sir Francis Vallat pointed out last week that the use of theoretical and abstract diagrams is a subject which appears to have acquired an increasingly important role in Malta's case (p. 29, *supra*). We have noted that this tendency towards abstractions and geometry has even increased in the oral proceedings.

Geometry must, therefore, be dealt with — however reluctantly — and this subject follows directly upon the conclusion yesterday of my friend Professor Lucchini's statement on the subject of irrelevant factors or considerations introduced by Malta. These Maltese abstractions and diagrams are also not relevant. They are of a different order, however, from circumstances such as fishing, neutrality and economics. Those — even if not relevant — were factual in nature. The diagrams introduced by Malta, however, are intellectualized abstractions. They should thus be dealt with separately.

I must stress that my statement is in rebuttal of Malta's suggestions and should not be perceived as forming part of Libya's positive case.

I shall limit myself to two examples: the trapezium and the diagram more recently used by Professor Brownlie and contained in Figure 27A in Malta's dossier of maps and diagrams presented to the Court and I will turn to that in a moment.

First, I have had a large map of the trapezium placed on the easel behind me. The Court will also find it depicted on Number 4 of the Libyan dossier.

The Trapezium

As the Court can see from the diagram the trapezium casts its shadow all the way from the Tunisian border, at Ras Ajdir, to a point approaching the Egyptian border, at Ras-at-Tin. The projection reaches out more than 460 nautical miles to the east. It is the quickest possible illustration of why equidistance cannot achieve equity in this particular situation: one only has to look at it. It shows, in dramatically stark relief, how an equidistance line for a small island automatically cuts off the coasts of the opposite mainland States from their continental shelves. It encroaches drastically upon the natural prolongation of the land territory of those States.

Figure 7 was identified in Malta's "Illustrations for the Oral Proceedings" as being "The trapezium in the context of the Maltese and Libyan coastlines". No indication was given as to how those particular lengths of coast were in fact selected. It does not say "in the context of the relevant Maltese and Libyan

coastlines", for by no means can all these lengths of coast be relevant to this delimitation or even, I submit, to a test of proportionality. As I have just observed, the line imposed by the trapezium between Malta and Ras-at-Tin, almost all the way to Egypt, is more than 460 nautical miles long.

What is more, the trapezium as seen here spreads its wings across nine-tenths of the entire Libyan coastal front on the Mediterranean. The equidistance line, which has been advanced by Malta in conjunction with the trapezium, presents a text-book case of "cut-off". Libya is cut off across its coastal front by the equidistance line contained in the trapezium and is likewise encroached upon by the approach of that equidistance line to its coastal front.

The trapezium serves no real purpose, Mr. President, except that of an artificial framework for Malta's equidistance line. That is its sole and unique object.

It has not been suggested by Malta that it has ever been used by any other State or in connection with any other method of delimitation. Thus one must refer to the trapezium as if it contained a proposed or implied equidistance line, for that is what it does.

It is the highly artificial framework within which Malta seeks to justify, on fallacious grounds of "relative proportionality", the equidistance line which cuts right across Libya's coast from one side of that artificial framework to the other.

Why was the trapezium introduced in the first place? It may well originally have come about as a result of a desire on Malta's part to make an exaggerated assertion about "overlapping natural prolongations", as was the case in the original Figure A in Malta's Memorial at page 118. It was also doubtless stimulated by the goal of enlarging the "area" for the Court to look at, to the greatest extent possible.

(12)

As we have also said, the trapezium can be viewed as a recognition by Malta that the test of proportionality is, after all, applicable — even in the case of opposite States. Deep down, Malta cannot avoid subconsciously acknowledging the value of proportionality.

The only problem is that the area presupposed by Malta bears no relationship whatever to the proper area for delimitation. As we said in Libya's Counter-Memorial, the area of the trapezium appears to have been selected solely to accommodate Malta's actual claims. (**II**, LCM, Ann., pp. 5-6, para. (iii), "A critique of the trapezium exercise".)

And thus the distinguished Agent of Malta said that Malta's purpose was "exactly that of showing how a longer coast naturally produces a larger area of shelf" (**III**, p. 305). Yet he also sought to qualify that purpose. He said that what he meant was "a relatively larger area and not a proportionately larger area" (**III**, p. 306).

What does this really mean? It is obvious that if one increases the long coast of State B at the bottom of the trapezium, State B may then be entitled to more shelf, in absolute quantity, than it had before. This does not reflect, of course, the plain fact that these areas here (pointing at the Gulf of Sirt and east of Benghazi) really have nothing to do with Malta — or with State A at the top of the trapezium. State A, Malta — the State with the short coast at the top of the diagram — will also acquire more shelf, if you enlarge the geometric figure, and if one increases the long coast of State B.

But Malta has, in effect, conceded that any amount of additional shelf accruing to State B — the long-coast State — will be less than proportionate. This means that State A — Malta, the short-coast State — must acquire a disproportionately larger area. It must receive the shelf area which Libya or State B — the long-coast State — is not to receive, since the share of the long-coast

State has already been defined as being less than proportionate. The shelf of the short-coast State, and any increase in that shelf, is therefore always disproportionate, disproportionately large compared to the length of its short coasts.

Malta's Agent also explained that to reject the results of equidistance derived from the trapezium would "give to a State an even larger share than that allocated to it by nature and would amount to a refashioning of nature — a refashioning of geography" (III, p. 305).

Should he not in fact have said "allocated to it by equidistance", or "allocated to it by the trapezium", instead of "allocated to it by nature"? For "nature" has nothing to do with the matter. It is the abstraction of the trapezium which is controlling.

Moreover, the system depicted by the trapezium, Mr. President — simply as a matter of geometry — will ensure that its results are never proportionate vis-à-vis the long-coast State, and always disproportionately in favour of the short-coast State.

The trapezium illustrates that this disproportion will increase, the longer the assumed coastal front at the bottom becomes, or the shorter the little coastal front at the top becomes. How can this be?

It was the Agent of Malta who first admitted this inevitable disproportion, which has loomed like a submerged rock just below the surface of Malta's case. The Agent said the following:

> "An island, because it is surrounded by water and therefore its natural prolongation extends in all directions, must, in normal circumstances, also generate rights over the surrounding sea areas, which may also not be proportionate to its size." (III, p. 306.)

Leaving aside the question of what are "normal circumstances", how severe is this conceded lack of proportion? A simple illustration will give the answer. Let us suppose that the trapezium has become a simple triangle, with the small island at the apex and the long mainland at the base. This result was foreseen
(12) by Figure A of Malta's Memorial, at page 118. In the case of a near-triangle, there is no way that the use of a median line can produce any result other than granting to the island at the top one-quarter of the total shelf area, and the mainland at the bottom, three-quarters.

This disproportion always runs in favour of the island, to the detriment of the mainland. Its inequity increases as the island coast gets relatively smaller and smaller, or as the mainland coast gets relatively longer and longer; as this happens, the ratio of shelf to shelf approaches, but can never exceed, the ratio of only three to one, even if the ratio of the coasts is a thousand to one.

The trapezium demonstrates, therefore, that — where one of two States in a delimitation has a small island coast, and the other has a long mainland coast — equidistance will always produce a result whose inequity will increase in proportion to any increase in disparity between the coastal lengths.

Finally, I would remind Members of the Court of that quite remarkable map in Libya's Counter-Memorial — it is Map B to the Annex, the last map in the book — where three separate trapezia are constructed. One for Malta and Libya, another for Malta and Greece, and the third for Malta and Italy; they are superimposed one upon another in a grotesque and giant fan in a peremptory demonstration of why the trapezium concept gets one nowhere in matters of delimitation — and particularly so when several mainland States are brought into the picture at once.

We can now arrive at three conclusions on the trapezium.

First, when several trapezia are visualized, together, it becomes quite clear how artificial the basic concept is.

Second, when an overall delimitation with several mainland States is contemplated it is easy to see how a delimitation between the island and any single one of those mainland States would be unjustifiable by reference to the trapezium but must be determined otherwise on equitable principles.

Third, equity requires different treatment for mainland coasts in these situations, which takes into account the inherent and severe distortions caused by the disparity in coastal lengths.

The situation where these distortions exist, therefore, is predictable, inexorable, and extreme. There will inevitably be discrimination against the State with the longer coast unless some other method of delimitation is used.

MALTA'S DIAGRAM OF THE "PROPORTIONALITY LINE OF LIBYA'S TYPE"

Mr. President, the Court has perhaps heard enough by now of geometry, triangles and trapezia; but there was another geometrical construct used by Professor Brownlie which cannot remain unchallenged. It was the diagram identified as Figure 27A in Malta's dossier of maps and diagrams provided to the
(31) Court. It was also presented in the form of Figures A and B at page 96 of Malta's Reply. (For convenience, Members of the Court can refer to it by turning to No. 55 of the Libyan dossier, and this is Figure 27A reproduced and put up on the easel behind me.)

The Court will recall that Professor Brownlie — and the diagram — purported thereby to represent the role of proportionality in what was called Libya's theory of the case. Based upon what Malta considers Libya's theory of the case to be, there would be, it was said, an equally "intense" projection by State I (at the bottom) in the general direction of States IIn (the little States in the north of the diagram). There was thus drawn, above the median line between the two landmasses, a dotted line entitled "Proportionality line of Libyan type". The point made by Malta was that this is the line which would be required by the so-called "Libyan theory of proportionality", which Malta equates with a method of delimitation. When it is logically applied to a series of little adjacent States, says Malta, the result is obviously wrong.

Therefore, says Malta, the so-called Libyan method or theory of proportionality is also wrong.

The difficulty with this proposition is that no delimitation suggested by Libya would ever have reached the result portrayed in this figure. There would have been two possible results, neither of which approaches this caricature.

The first is that one would initially have to recognize a series of adjacent relationships of opposite relevant coasts or sections of coasts. A coastal front of X kilometres for each one of the 17 little States IIn would be precisely matched by a segment, or partial coastal frontage of State I (at the bottom), likewise of X kilometres. If one had 17 such relationships between sections of relevant opposite coasts, one right after the other, sweeping across Figure 27A like a series of vertical planks, one can easily see that the "Proportionality line of the Libyan type" indicated here is a total misrepresentation of Libya's position.

The second solution. It might also be imagined that the entire coastline at the top of the diagram could be — in the apt phrase of the Court in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 32, para. 46) — "considered as an entity" and would thus present a composite coastline precisely equal in overall length to the single coastline to the south. What would the logical solution

be, between the composite coast at the top and the unitary coast at the bottom? One would presume, the median line. And it would be up to the little adjacent neighbouring States, at the top of the diagram, to sort matters out amongst themselves, in 16 smaller delimitations of adjacent States. The result of each of those delimitations could well be expected to be practically uniform: 16 perpendiculars to the general direction of the coast, assuming of course no other relevant circumstances to be taken into account.

In either case the same result would be reached. In neither case would the result be reached which has been suggested by Malta. This error of method is, with respect, so elementary that it might well not have been needed to elaborate this point for the Court, but — as I said earlier — we could not let this serious mistake in reasoning go unanswered.

Moreover, the point made by Professor Brownlie was not a minor point. It supported his statement on 3 December that "the Libyan position . . . stands quite simply for the dominance of the shelf areas of a semi-enclosed sea or gulf by a long-coast State" (**III**, p. 473). In addition, in the Maltese Agent's concluding remarks on that day, the same point was there used to support Malta's closing proposition 8: "The Libyan position . . .", said the Agent, "would be wholly inequitable, not only in the present case but generally in the situation of long-coast States co-existing with short-coast States in semi-enclosed seas" (**III**, p. 475). This characterization of the Libyan position then became referred to by Malta's Agent as "[t]he Libyan argument for special advantage" *(ibid.)*.

One has the feeling that this is all being done with mirrors. The images are reversed, and upside-down. In fact, it is not Libya which is contending for a "special advantage"; it is Malta which has claimed application of a method which, in the specific circumstances of this case, will inevitably give a special advantage to Malta because of the inherent distortion in the situation. This is true even using Malta's own construction of the trapezium to demonstrate the point.

Professor Weil also argued, on 30 November, that Libya's coasts should not be given more weight or intensity than those of Malta, as "[b]oth coasts are of equal legal value" (**III**, p. 434). But what does equidistance, as illustrated by the trapezium, actually do? It gives each kilometre of those long Libyan coasts far less "weight", and less "intensity", than that given to each kilometre of Malta's coasts. The weight and the intensity accorded to Malta's coasts are exaggerated to a striking degree. Although it is Malta which has frequently made use of an argument of "non-discrimination", it is Libya that would be discriminated against.

Finally, one can readily see how the basic position expressed in this abstract diagram destroys any remaining logic or persuasiveness possessed by the earlier diagram of the trapezium. For here one must visualize 17 trapezia, side by side, each with its two sides leading down to the western and the eastern edges of the long coast of State I at the bottom and each with its separate small apex in the north. It is the last word in overlap. If the trapezium can make no sense in Malta's own illustration, how can it make any better sense when applied to the facts of the present case?

My statement has, I hope, illustrated how Malta's figures and diagrams do not prove what Malta has said that they prove. They tell us quite the opposite.

It must now be clear beyond doubt that the trapezium is devoid of justification in reality; it is divorced from the actual facts and circumstances; and it in no way establishes that the use of equidistance would produce an equitable result in the present case.

It is therefore now time to turn away from these artificial figures and dia-

grams and to turn to a consideration of the relevant circumstances of this case which Malta's trapezium so thoroughly ignores.

I thank you, Mr. President and distinguished Judges of the Court, for your attentive hearing of my argument. I would be much obliged, Mr. President, if you would now kindly call upon my friend and colleague, Professor Bowett.

ARGUMENT OF PROFESSOR BOWETT

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Professor BOWETT: Mr. President, Members of the Court, may I say what a privilege it is to address this Court once again as counsel for Libya.

THE RELEVANT FACTS AND CIRCUMSTANCES OF THE CASE

My task is to assist the Court by outlining the facts and circumstances relevant to this case and then showing how these may be reflected in an equitable result. My aim is clarification. Whether I achieve it will be for the Court to decide, but I do assure the Court that I shall try to simplify rather than to obscure. I can equally assure the Court that we have taken great care to heed the views of the Court in its 1982 Judgment and I shall not be repeating arguments rejected by the Court in 1982. In particular, I shall not again vex the Court with an extensive discussion of the theory of plate tectonics.

But I must emphasize that the area for delimitation in this case is not the same as it was in the 1982 case, and the relevant circumstances are quite different. In particular, I would stress the fact that the Rift Zone was not an issue in the 1982 case and did not form any part of the essential arguments of Libya in that case, simply because it had no relevance to a delimitation between Libya and Tunisia. The Court will recall that the Court took the view in that case that the relevant area ended at the parallel with Ras Kaboudia and the line of longitude from Ras Tajoura. Perhaps I may be permitted to recall for the Court the relevant area in the 1982 case and if I may I will draw it on this map. It was this area. It can be seen that the Rift Zone lies right outside the relevant area in the 1982 case.

I should say at the outset that, like my distinguished colleague, Mr. Lauterpacht, I sensed the Court's reluctance to become involved in the scientific evidence relating to the Rift Zone. But it is the Court's jurisprudence, not I, that has emphasized the importance of a significant discontinuity. And here, in this case, we have one. So it is impossible, in deference to the Court and to the interests of Libya, to ignore this evidence.

But at least I can assure the Court that my argument will not be limited simply to that one issue. So let me begin with broader issues.

The principle that a delimitation in accordance with equitable principles must take account of all relevant circumstances is beyond dispute. My learned friend, Professor Jaenicke, has commented upon its significance in this case, and so I say no more about its legal validity.

But the relevance of this principle for the Court's task is important and I would respectfully submit that it imposes on the Court a three-stage task. Assuming that the Court has established the legal principles and that it must then turn to the facts, the task would seem to be the following.

The Court's Task

First, the Court will need to identify all the relevant facts and circumstances and I need scarcely add that it must at the same time identify and discard the irrelevant.

Second, the Court will need to weigh or balance those that are relevant. Some facts may be more important than others. The criterion or test of importance is the degree to which a particular fact will influence the equitable result and, more specifically, the actual course of the boundary to be agreed between the Parties in application of the Court's judgment. And, of course, irrespective of their relative weight or importance, the Court may have to determine their consistency with a particular result. For some factors may tend one way and some another way.

The Court will have noted Malta's accusation that there is no logical connection for consistency between the various factors relied on by Libya. Specifically, Malta says there is no logical connection between the facts of geography and the facts of geology and geomorphology. But, of course, Mr. President, why should there be? There may well be cases where different factors pull in different directions, and the Court will have the difficult task of deciding which have the more weight. In this case, the Court faces no such problem since the relevant factors lead to the same general result and the Court's task is made easier. However, logical connection between them, as demanded by Malta, is not required and cannot be required: the facts are the facts, and the Court must deal with them as they are.

The third stage is for the Court to specify to the Parties how the relevant facts or circumstances must be taken into account by the Parties when they come to apply the principles and rules laid down in the Court's judgment.

Now if I am right in that analysis of the Court's task in relation to the facts of the case, it would be equally right to expect the Parties to follow the same, three-stage progression or development of the facts, in order to give the maximum assistance to the Court. And in a sense they have done so. But the approaches of the two Parties are very different, and the difference is so important that it needs both emphasis and comment.

Differences in Approach of the Parties

Let me take Malta's approach first. Malta's identification of the relevant facts is — to use a kindly word — selective. We find on the one hand a somewhat cavalier dismissal of all the physical facts of geology and geomorphology as irrelevant: and, on the other hand, a surprising emphasis on many factors which are totally irrelevant, as my colleague Professor Lucchini has shown.

It is true that Malta does recognize the geographical relationships of the coasts of the two Parties to be relevant, and that is right. Indeed they are highly relevant.

But when one examines what, for Malta, constitutes this relationship it becomes clear that it is not the actual coasts of the Parties at all, but rather an abstraction represented by this trapezium construct, and that is the matter with which Mr. Highet has just dealt.

However, the most striking anomaly of the Maltese approach — which needs to be in our minds at the outset — is that Malta does not see the relevant factors and circumstances as producing an equitable result. Malta puts it the other way round. For Malta the equitable result is presumed to be equidistance: that is Malta's whole premise. And you only look at the relevant factors and circumstances as a check, to verify whether equidistance is equitable. Of course, for Malta, it is. In my submission, that approach is fundamentally mistaken. As I read the Court's jurisprudence, we cannot start off from the Maltese premise that unless the relevant facts show otherwise, equidistance is presumed to be equitable. The correct approach is to examine the relevant facts, objectively,

and see what result emerges as an equitable result. It may be an equidistance line, or it may be a line produced by some quite different method or methods which combine to give an equitable result. But the result flows from the facts and circumstances: the facts are its *fons et origo*. They are not a mere test of the equitableness of equidistance.

The Libyan approach is different from Malta's, and in my submission more consistent with the Court's jurisprudence. We have tried to keep in mind the Court's previous indications of which factors are relevant, and which are not. We have tried to look at the actual facts, and not theoretical constructs, and we have moved from the facts towards an equitable result, rather than the other way round. Certainly we have had no preconceived view that any particular method is *per se* equitable.

Mr. President, let me now turn to the various categories of relevant fact. I believe there are two main categories, and I propose to deal with them in the following order. First, there is the category of physical facts. This includes the geographical facts and also the physical facts of geology and geomorphology. Second, there is a category of non-physical factors embracing the conduct of the Parties and delimitations with third States.

Geography

I start with geography.

I want to emphasize the importance of geography in the Libyan case. The configurations of the two relevant coasts, the great discrepancy in their lengths, the difference in the size of the two States, the location of Malta in relation to the surrounding States — these are all factors vital to the Libyan arguments. It is certainly true that, applying these factors, one ends up with a delimitation within and following the Rift Zone. And that is why Libya's Submission 9 refers to the physical facts in quite general terms: for we intend, by that phrase, to comprehend all the geographical factors. Mr. Lauterpacht is wrong to assume that the Libyan Rift Zone argument is exclusively a geological and geomorphological argument. It simply is not the case that, if the Court rejects these geological and geomorphological arguments, the whole of Submission 9 falls to the ground. As Professor Weil recognized in his statement, and Professor Brownlie in his, the Libyan argument stands quite independently as a geographical argument.

I think it may be useful to look first at the Mediterranean as a whole. If we can look at this map (No. 57 in the Libyan folder) then you will see that the Mediterranean is a crowded sea. But the area of greatest congestion is, without doubt, the Central Mediterranean, here. For there are some four States which must share this restricted shelf area: the four States being Italy, Tunisia, Malta and Libya.

Given the geography, Libya can only look north. Its long, north-facing coast compels that for, unlike the other large European States like Italy, Greece or Spain on the northern shores of the Mediterranean, which have extensions to the east and west, as well as to the south, Libya generally faces in only one direction.

The other striking feature in the Central Mediterranean is its uniqueness. Nowhere else in the Mediterranean do you find a single, small island enclosed by three surrounding States.

Now let us focus on the central area. I have a map which is already in the Court's folder as Map No. 4 and this is the map which enlarges behind me now, and this shows the central area.

The Libyan coast

Now the Libyan coast extends for some 1,700 kilometres from Ras Ajdir on the Tunisian border to the border with Egypt which is off the map. That coast is, by any common-sense standard, opposite Crete, Greece, Italy and Malta. The question is, how much of it faces Malta? Or to put the question in more technical terms, how much of the Libyan coast is relevant to this delimitation with Malta.

In Libya's view the answer is that only the stretch from Ras Ajdir to Ras Zarruq is relevant: and we take that view for the following reasons.

First, if we accept Malta's analysis of the situation as one of opposite coasts, then oppositeness must imply some degree of direct facing: that the two coasts are *en face*. And thus there must come a point at which a line joining the two coasts strikes the coasts at such a tangent that realistically one would have to say that they were no longer opposite in any true sense.

Ras Zarruq already lies some 65 kilometres east of the line of longitude on which Malta lies and a line joins the two — Ras Zarruq and Malta — tangentially at an angle of 67 degrees (rather than the 90 degrees of directly opposite coasts). Thus we would say that any Libyan coast further to the east than Ras Zarruq is not opposite to Malta in any real sense. And it is no part of Malta's case that there is a relationship of quasi-adjacency.

(12) Malta takes a very different view of the relevant Libyan coast. As the Court will see from Malta's Figure A in its Memorial, Malta asserts that the Libyan coast is opposite to Malta nearly as far as the Libyan border with Egypt: and that assertion was repeated by Professor Weil (III, p. 418). That assertion not only offends common sense but it invites the Court to accord to Malta areas of shelf which are appropriate only to a delimitation between Libya on the one hand and Italy and Greece on the other. The result would be to ignore totally the interests of third States. Moreover, it is apparent that the extent of the relevant Libyan coast — as seen by Malta — is dictated solely by the need to encompass the Maltese equidistance line within the trapezium figure. The relevant coast does not dictate the result: for Malta the preconceived result dictates the selection of the relevant coast.

Second, Malta and Libya do not exist in splendid isolation and whether two coasts are opposite each other must depend on whether there are other coasts, other States, with a more direct relationship. The situation in relation to Italy has to be considered and Libya is very firmly of the view that all of its coast east of Ras Zarruq can only be opposite to Italy and then Greece and therefore relevant to future delimitations with Italy and Greece. It is significant that Professor Weil made no mention of Italy's interests: the Maltese approach to oppositeness remains wholly abstract. It ignores both Italy and the escarpments which terminate any shelf area over which Malta might have a claim in the east. Thus, by stopping at Ras Zarruq we minimize the risk of encroachment and cut-off, in this delimitation, on areas which are not strictly the concern of Malta at all and we respect the evidence of the Sicily-Malta and the Medina Escarpments. We therefore avoid the error made by Malta in selecting the Libyan coast as far east as Ras-at-Tin, which is just west of Tobruk.

So, taking the Libyan relevant coast as that between Ras Ajdir and Ras Zarruq, I can describe that coast quite simply. It is some 403 kilometres long, following the sinuosities of the coast. If you represent the coast by a single coastal front — namely a line from Ras Ajdir to Ras Zarruq — then the line gives a slightly lesser total of 350 kilometres. I need only add that the Gulf of Sirt is entirely irrelevant to Libya's view of its relevant coast in this case. We would stop at Ras Zarruq even if the Gulf of Sirt did not exist.

Malta's coast

I now turn to the coast of Malta. Members of the Court have a map of the Maltese coast and there is Map Number 58 in the folder. It is the same map of which the enlarged version is now on the board and the map also shows Malta's baselines. It must be apparent that the north-facing coasts are irrelevant to any delimitation with Libya. They are relevant to Italy but not to Libya.

As to the south-facing coasts, the Court can see that there is a problem in that these are not parallel to Libya. Malta tilts quite markedly on a north-west-south-east alignment. As a consequence, it can be fairly said that much of the coast of Malta faces west rather than south. It does not face south towards Libya.

If we take the Maltese baselines as a true representation of Malta's coast, then one could say that only these lines from Filfa to Delimara Point — a mere 14.14 kilometres — are really facing Libya and can therefore be treated as opposite coasts. But let us be a little more charitable. Ignoring the baselines one could say that these two coastal façades — Delimara Point to Ras il-Qaws and Ras il-Qala to Ras il-Wardija — face south towards Libya and they would give a total length of 34.8 kilometres. The rest face west and would be more relevant to a delimitation in relation to the islands of Linosa and Lampedusa.

But if we were to be even more charitable, we might take the Maltese coast from its extreme westerly tip at Ras il-Wardija and take a straight line to Delimara Point and that would give a total distance of 40.6 kilometres. On that basis, which is the most favourable to Malta, the ratio of relevant coastal lengths is 8.6:1 in favour of Libya: and that is an important point. This large discrepancy in size is quite inescapable. There is really no way in which one can get beyond this 8 : 1 ratio as the most favourable to Malta.

Malta's propositions

Malta is fully aware of this fact, and of its implications. Understandably, therefore, Malta has avoided any detailed description of its coast, or any definition of which part of its coast it considers to be opposite to Libya. In lieu of this, Malta makes the extraordinary allegation that it is Libya's treatment of coasts that is abstract. And Malta then goes on to offer a number of propositions relating to the geography that need to be examined.

Coasts count equally

First, Malta says that, "apart from unusual geographical elements, any coastal feature counts equally . . ." (I, MM, para. 122).

This notion that, distorting features apart, all coasts are equal is absurd on its face, for it ignores completely configuration and disparities of length. And this Court has repeatedly enjoined parties not to refashion nature, and to take the geographical facts as they are. Moreover the authorities on which Malta relies simply do not support the proposition. For example, the Anglo-French arbitration, on which Malta relies, says no such thing. So far as the English Channel was concerned, the two mainland coasts of the United Kingdom and France were treated equally because they were, broadly speaking, equal in length. No legal doctrine required them to be treated as such, irrespective of their actual length. But, as I understood my friend Professor Brownlie's comments on the Anglo-French arbitration (III, p. 451), he attached greatest importance to the analogy offered by the Atlantic sector. But even in that sector, the Court of

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Arbitration was dealing with comparable coasts. It found the two coasts of Finistère and Cornwall broadly comparable. It was basically the Scilly Islands which upset the balance, because of their greater distance from the mainland compared to Ushant and their projection towards the south-west. And this is why the Court of Arbitration could start from equidistance, and modify that result by the half-effect technique applied to the Scilly Isles. But there is really no analogy to the present case. Certainly this Court has never disregarded the differences in coastal lengths. It did not do so in the 1969 Judgment, and it did not do so in the 1982 Judgment. The Court will recall that in its 1982 *dispositif* it referred expressly to this as a relevant circumstance. More recently, in its Judgment of 12 October 1984, the Court's Chamber in the *Gulf of Maine* case took great care to assess the respective coastal lengths of the Parties. Indeed, it was the difference in the lengths of the two relevant coasts which caused the Chamber to modify the median line in the Gulf.

State practice also shows that, in delimitation agreements, differences in coastal lengths are often a highly relevant factor in determining an equitable result. That point emerged very clearly from Dean Colliard's examination of this practice two days ago.

Nor is it simply a question of length. The coast is the front, or façade, of a landmass. Behind Libya's coast is an enormous landmass, and the shelf offshore is a projection of that great landmass. In comparison, the area of Malta is minute. It cannot be right to treat coasts fronting minute landmasses as of equivalent weight to coasts fronting great landmasses. To give the Court some idea of the true comparison, each kilometre of Libyan coast represents an interior landmass of 1,028 square kilometres, whereas each kilometre of Malta's coast represents 1.66 square kilometres. In short, Libya's coast, kilometre for kilometre, represents a landmass nearly 1,000 times greater than Malta's. Professor Brownlie suggested that there is no judicial support for the idea that the magnitude of territory — as distinct from coastal lengths — has legal relevance. I am not so sure. Was not the size, the magnitude of the Channel Islands relevant in the 1977 award? Or the magnitude of the Kerkennah Islands relevant in the 1982 Judgment of this Court? And was not the smallness of size of islands relevant in various delimitation agreements? In any event, Mr. President, we are in a world of comparatively young, developing jurisprudence, so that if good sense commends territorial magnitude as a relevant factor, there is no reason to preclude this Court from adopting it.

Basepoints generate shelf

So much for coastal lengths, and the landmasses they represent. Let me turn to Malta's next point. Malta says that it is basepoint rather than coasts which generate a shelf area (**II**, MCM, para. 270).

This argument was developed by Professor Weil in his oral argument, and I pay tribute to his ingenuity. The Court will recall the sequence of his argument (**III**, pp. 408-410). He conceded that coastal lengths were one of the elements of coastal geography: that was a sensible concession, though I could wish that he would put a figure on Malta's relevant coastal length. Then his argument developed via a series of propositions.

First, that basepoints — or baselines — are the basis for establishing the outer limit of the territorial sea, the exclusive economic zone and, in some cases, the continental shelf. That is certainly true. But let us register a question before proceeding to his second proposition. The question is, what has that to do with delimitation of boundaries between opposite States?

The second proposition was that international law allows a coastal State to represent its coast by such basepoints. That also is true. But let us again register the caveat that this is only for the same purpose of determining outer limits.

The third proposition is that, since Malta has disclosed its baselines, it had necessarily disclosed its basepoints. That is hardly true, for, as Malta well knew, the question posed by Libya was what basepoints had been used to determine Malta's equidistance line — and that question is scarcely answered by a depiction of the entirety of Malta's baselines.

But the purpose of argument is tolerably clear. It is to avoid specifying the coastal lengths on which you rely at all costs. Despite the very clear jurisprudence, emphasizing the importance of coastal lengths, the trick is to focus on basepoints rather than coasts: and if you don't have much of a coast I suppose that is quite a good tactic.

But, Mr. President, it is not much of a legal argument. Because the relevance of basepoints is confined to two purposes: either to determine outer limits (which does not concern us here); or to determine an equidistance boundary (which begs the question). The whole argument is therefore misconceived. It does not in the least demonstrate that basepoints generate shelf entitlement. It is coasts that generate shelf entitlement, and basepoints have no function except to represent the actual coast.

The Court adjourned from 11.15 a.m. to 11.30 a.m.

Mr. President, before the break I dealt with two of the points made by Malta in relation to geography. I turn now to the third of Malta's points.

Situation "normal" or "simple"

Malta says the geographical situation in this case is normal or simple. Now presumably Malta's hope is that if the Court will accept that proposition it will then more readily accept that equidistance is the appropriate method of delimitation between normal, opposite coasts.

Yet for Malta the situation is normal only because there are no intervening islands or promontories. That apparently is the test of normality.

There are many, many geographical relationships; so perhaps normality has no real meaning. There may be convex coasts, concave coasts, coasts of different lengths, peninsulas, archipelagos, gulfs or bays. Why does Malta suppose that everything is normal and equidistance the correct method in all cases except where there are intervening islands or promontories? State practice demonstrates the absurdity of such a conclusion. And it is significant that Malta is unable to produce a single situation elsewhere in the world really comparable to that between Malta and Libya. That in itself is sufficient to demonstrate that in this case we have a situation which is quite specific — I will not use the word abnormal — and which requires a specific solution. The principal feature of this specific situation is that a very short coast lies opposite a very long coast. It is that principal feature which Malta is so anxious that the Court should overlook.

Location and distance count

Then there is a fourth point. Malta emphasizes the importance of its location and its distance from Libya. I confess I have never understood from Malta's written pleadings what significance Malta attached to its location and Malta's oral arguments have so far failed to reveal what this significance is.

One would have thought that, if there is a point to be made about Malta's location it is simply this. Malta is a small island group surrounded by a number of much larger coastal States and that would have a threefold consequence. First, Malta's shelf is inevitably enclaved by the shelves of its surrounding neighbours. However, it would also mean that as an island Malta benefits from having the shelf projected all round its coasts: its shelf radiates through 360°. On the other hand, since Malta faces larger coastal States all around, the distance to which Malta's shelf may extend is necessarily limited.

But what of this second factor of distance which Malta finds so important? Malta evidently sees the considerable distance between it and the Libyan coast — some 180 nautical miles at its closest point — as a factor in Malta's favour. But, Mr. President, surely the opposite is true? Let us take Malta's own Figure
(31) B, which is given on page 96 of the Reply, I believe it is No. 59 in the Libyan folder and the one we now have on the board. Here you see, diagrammatically, the effect of a small island opposite a long, mainland coast. Small island State II, the long, mainland coast State I. You could say that only this narrow corridor in the middle is opposite to a part of State I's coast. In fact, as you will see, the median line creates a fan-shaped area spreading laterally into these dotted areas to the side. And let us remember also that because of the radial projection State II will also lay claim to these areas to the side.

But the essential point is that the greater the distance between States I and II, the wider the fan becomes and the more shelf State II gets. The short island coast generates more and more shelf using the median line as the distance between State II and State I increases. So whereas a median line may be reasonable or equitable where the distance between opposite coasts is relatively small — say between Malta and Sicily — it becomes demonstrably unreasonable and inequitable over a large distance such as that between Malta and Libya.

Summary of differences

If I may summarize, our differences with Malta over geography are the following:

1. Malta sees this as a normal situation. It is not. It is a quite specific and very unusual situation.
2. Malta has selected as relevant a large stretch of Libyan coast which is totally irrelevant to this delimitation. And Malta has failed to indicate which part of its own coast is relevant or even which actual basepoints it uses.
3. Malta ignores both the great disparity in the lengths of the two coasts and in the size of the landmasses they represent.
4. Malta ignores the proximity of Italy and seeks a delimitation which will inevitably trespass into areas of shelf to be delimited between Italy and Libya and indeed even between Greece and Libya.

So much for geography, Mr. President.

Geology and Geomorphology

I turn now to the second category of relevant factors, namely, the geological and geomorphological features of the areas.

As I said earlier, in the preparation for this case the Libyan team has considered very carefully what the Court said in its 1982 Judgment. And I hope that what I have to say is fully consistent with what the Court has said about the relevance of geological and geomorphological factors.

Thus, I shall be concerned with these physical circumstances as they exist today. I shall not detail to the Court their historical evolution, except for the quite specific purpose of explaining their present significance, and I trust that that will comply with paragraph 61 of the 1982 Judgment. Furthermore, the essential question I shall be examining is this: are these features such a marked disruption or discontinuity of the sea-bed between Malta and Libya as to constitute an indisputable indication of the limits of two separate continental shelves, or two natural prolongations? As the Court will realize, I use practically verbatim the words of the Court, in paragraph 66 of its 1982 Judgment, to describe the test to be applied.

In Libya's submission, that test is met in the present case. Here, for the first time, the Court is faced with geomorphological and geological factors of major proportions — so major, in fact, that if these features are not regarded as relevant to the present delimitation it is difficult to imagine how the topography of the sea-bed and the structure of the subsoil can ever be factors relevant to delimitations of the continental shelf.

Malta's case invites this conclusion. Paragraph 43 of the Maltese Counter-Memorial (II) states: "Whether the Rift Zone and the Escarpments-Fault Zone correspond or not to the description in the Libyan Memorial, is entirely without legal interest." So what Malta is saying, and Mr. Lauterpacht confirmed this, is that even if Libya is correct in its description of these facts, this is legally irrelevant. Now that view, mistaken as it is, determines the structure of my argument. First, it is necessary for me to show how wrong Malta is as to the legal relevance of these factors in the present case. In so doing, I shall rely primarily on the jurisprudence as established by this Court. And second, in order to show the Court that we are in fact dealing with one quite fundamental discontinuity, separating two shelves, namely the Rift Zone, and a second geomorphological feature separating these two shelves from the area to the east, namely, the escarpments, I shall outline the scientific evidence; although it is my view that the Court is entitled to hear the scientific facts from scientists, rather than risk being misled by a lawyer. As the Court is aware, I had originally intended at this stage to assist the Court by putting questions to three scientists of distinction and with expert knowledge of this area of the Mediterranean. But, in conformity with the Court's order, the independent, scientific evidence to support my pleading will have to come later. And third, I shall have to make a brief analysis of the State practice which Malta has pointed to to support its assertion as to the irrelevance of the sea-bed and the subsoil.

So, Mr. President, I begin with the legal relevance of geomorphological and geological features in the present case.

The geology of shelves and its configurational features were first mentioned as possible relevant factors in the *North Sea Continental Shelf* cases (p. 51, para. 95) where the doctrine of natural prolongation as the basis of a State's title was propounded by the Court. It was there recognized that the institution of the continental shelf had arisen out of the recognition of a physical fact and that, although the continental shelf was and remains essentially a legal concept, it could not be divorced from this physical fact (1969 Judgment, paras. 94-95). After all, the continental shelf then, as today, is comprised of the sea-bed and subsoil. The Court was quite specific in indicating that, although there was no legal limit to the factors which States could take account of in applying equitable principles, it would be appropriate for geological factors to be included in the considerations to be balanced up in reading an equitable result. It was the Court's view, even in 1969, that geology must be considered because certain configurational features, to use the Court's words, "point-up the whole notion

of the appurtenance of the continental shelf to the State whose territory it does in fact prolong" (1969 Judgment, para. 95).

Now the area of the North Sea concerned in the delimitations in question was shallow, flat and generally featureless. The Court did, however, mention the Norwegian Trough in its 1969 Judgment (see p. 32, para. 45) in connection with its rejection of the notion of proximity in favour of the natural prolongation of the land territory as the basis of title. The Norwegian Trough was not, of course, a feature located so as to affect any of the delimitations before the Court. However, "[w]ithout attempting to pronounce on the status of that feature", the Court appeared to acknowledge that such a feature might have some relevance in regard to a delimitation of the natural prolongation of the land territories of the States concerned.

In the 1977 Anglo-French award, a feature known as the Hurd Deep was considered at some length by the Court of Arbitration. Although this feature was recognized to exist, lying to the north of the Channel Islands, the Court of Arbitration rejected it as capable of exercising a material influence on the continental shelf boundary between England and France, since it did not disrupt the essential unity of the shelf in either the Channel or in the Atlantic sector. The Court of Arbitration noted, in any event, that both Parties, both the United Kingdom and France, had recognized the essential geological continuity of the continental shelf throughout the arbitration area (Award, para. 107). Aside from the Hurd Deep, the English Channel is, like the North Sea, virtually featureless, flat and shallow.

At the beginning of the second round, I shall ask Libya's scientific experts to compare both the Norwegian Trough and the Hurd Deep with the Rift Zone as well as with the Malta-Medina Escarpments, which are the major geomorphological and geological features of relevance to the present case. But, meanwhile, I can only apologize for this gap in our evidence, and I refer the Court to the discussion of these other sea-bed features in paragraphs 6.45 to 6.51 and 8.06 to 8.09 of the Libyan Memorial (I).

In its 1982 Judgment, the Court did not accept the arguments of Tunisia based on bathymetry nor the geological thesis of Libya. However, the Court did deal with the possible relevance of geomorphology and geology in paragraphs 66, 68 and 80 of its Judgment.

In paragraph 66 of that Judgment, in the context of considering geomorphological features "from the view point of their relevance to determine the division between the natural prolongation" of Libya and of Tunisia, the Court pointed to the fact that Libya had emphasized the unity of the Pelagian Block. The Court, therefore, failed to find in Libya's geological case a "means of identifying distinct natural prolongations". And in relation to the sea-bed features advanced by Tunisia as an indication of a boundary, these were not found by the Court to involve

> "such a marked disruption or discontinuance of the sea-bed as to constitute an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations".

In paragraph 80 of its 1982 Judgment the Court again took up the subject of the geomorphological configuration of the sea-bed and this time in the context of whether it might be taken into account as "a circumstance relevant for an equitable delimitation". The Court gave particular consideration to one feature — the Tripolitanian Furrow. In rejecting the relevance of that feature, in the area of shelf relevant to the delimitation, the Court again indicated the various criteria that might have made it relevant. For example, the Court mentioned that

it was not such a "significant feature that it interrupts the continuity of the Pelagian Block". The Court also mentioned its position — comparatively near and parallel to the Libyan coast — and found that

> "unless it were such as to disrupt the essential unity of the continental shelf so as to justify a delimitation on the basis of its identification as the division between areas of natural prolongation"

then it would not be an appropriate element for inclusion among the factors to be balanced up with a view to an equitable delimitation.

Mr. President, I have quoted fairly extensively from the paragraphs of the Court's Judgment because I hope to demonstrate that the Rift Zone in the present case fits with exactness the criteria set out by the Court.

In addition, as paragraph 68 of the 1982 Judgment makes clear, even if a geomorphological configuration of the sea-bed fails to cause an interruption in the continental shelf or to amount to an interruption of the natural prolongation of one party with regard to the other, it may still constitute a relevant circumstance characterizing the area.

As I have mentioned earlier, the specific feature singled out by the Court for consideration in its 1982 Judgment — the Tripolitanian Furrow — will be taken up before the start of the second phase in February during the examination of Libya's experts. However, it is appropriate to note here a point respecting this feature which is of relevance to the present case — its location. Quite aside from any detail about the size, shape and depth of this feature, this feature lies far outside any area of shelf claimed by Malta. In this respect its relevance is entirely different from that of the Rift Zone, which runs right through the area in dispute.

The Chamber of this Court in the recent *Gulf of Maine* case also examined geological and geomorphological aspects of the shelf area in question. The parties in that case were in general agreement that, geologically, the shelf area in question is essentially continuous and that geological factors were not significant in that case (para. 44). Similarly, at the geomorphological level the Chamber found the parties to have submitted studies showing the "unity and uniformity of the whole sea-bed" (para. 45). The Chamber stated that neither party disputed that there is nothing in this

> "single sea-bed, lacking any marked elevations or depressions, to distinguish one part that might be considered . . . the natural prolongation of the coasts [of one party] from another part which could be regarded as the natural prolongation of the coasts [of the other party]".

The geomorphological feature most discussed in that case — the Northeast Channel — was found not to have the *"characteristics of a real trough marking the dividing-line between two geomorphologically distinct units"* (para. 46, emphasis added). Those were the Chamber's actual words. The Chamber concluded that the

> "situation [in that case] as regards the sea-bed of the delimitation . . . is therefore different from the situation that may prevail in areas where a natural separation does exist from the factual viewpoint between the respective continental platforms of the Parties in dispute" (*I.C.J. Reports 1984*, p. 275, para. 47).

As in the case of the 1982 Judgment, the geomorphological and geological features in the *Gulf of Maine* case were found to be so insignificant as to afford no assistance in leading to an equitable delimitation. But the Chamber, follow-

ing the Court, did adopt the same criterion of a marked disruption in continuity and the sea-bed features and subsoil characteristics of the present case meet these criteria.

For we have here, lying between Malta and Libya, not merely a trough but a series of troughs and channels forming part of an important Rift Zone. We have a new plate boundary along this Rift Zone. Given the Court's own jurisprudence, emphasizing the importance for delimitation of a "significant discontinuity", how could a discontinuity which is not merely significant but fundamental be legally irrelevant, as Malta suggests? Indeed, if a new plate boundary is irrelevant for purposes of delimitation, what features could ever fit the Court's own description of a "marked disruption or discontinuance of the sea-bed"? Malta is really accusing Libya of taking the Court's *dicta* seriously. I do not in the least mind that accusation.

So much for the case law. What of State practice? Contrary to what our Maltese colleagues appear to argue, geological and geomorphological features have played a role in influencing the course of the boundary line in a number of delimitation agreements between States as well. The 1972 Agreement between Australia and Indonesia involving the Timor Trough is, of course, well known. I do not wish to repeat the observations which my friend, Dean Colliard, made with respect to that agreement but I would suggest that the geographical, geological and geomorphological characteristics of this example are perhaps more closely similar to the present situation between Malta and Libya than virtually all of the other examples of State practice introduced by our opponents.

I have had a map of this delimitation placed on the easel behind me — and the Court has small versions of the same map in their folders (No. 53). The boundary line is very striking. In this area to the east you will see that the seabed is virtually featureless and relatively shallow. The boundary line here follows the equidistance line, but when we move over towards the west the bathymetry changes dramatically. Not only is the Timor Trough in evidence, but also it may be seen we are no longer dealing with a long, extended coast to the north. Instead we have a series of islands — the Tanimbar Islands, over here, which are quite small, and Timor here. So the situation in this sector is really one of delimitation between islands (although components of a large island State), on the one side, and a long, continental coast on the other. Lying in between are some marked geological and geomorphological features, the Timor Trough. And the resulting delimitation in this area is not an equidistance line as can be seen on this map. The resulting delimitation is certainly not an equidistance line but it is certainly a line influenced to a large extent by the Timor Trough. The Court will also note that, like the Rift Zone, the Timor Trough is a large, irregular area: it is not itself a line. Yet the parties were able to agree a line within this area.

This example need not stand in isolation. Although it is not always easy to determine what factors States may have considered in establishing particular delimitations, there is some evidence to suggest that geomorphological or geological features have played a role in a number of agreements. This evidence is set out in the Libyan Counter-Memorial (II) at paragraphs 5.89 to 5.93.

For example, there is the agreement between Japan and Korea — an illustration of which is now on the easel behind me. The Members of the Court may also wish to refer to No. 60 in their map folders. As the Court will observe, the southern portion of that agreement established a joint development zone, which is outlined in black on the map. Also appearing on the map is a dotted red line which corresponds to what would be an equidistance or median line delimitation had that method been employed. It may be seen that in the northern part of

this delimitation, the agreed boundary follows almost precisely the equidistance line. In the south, however, the picture is quite different. For virtually all of the joint development zone quite clearly lies on what would be the Japanese side of the hypothetical equidistance line and, thus, much closer to the Japanese coast than to the Korean. As the map shows, there is a large trough lying just off the south-west coast of Japan. The sea-bed here in fact descends to depths between 500 and 1,000 metres. Further towards Korea, in contrast, the sea-bed remains relatively shallow. As Libya noted in its written pleadings (**II**, LCM, para. 5.89) prior to the establishment of the joint development zone, Japan had apparently relied on a claim based on a median line as a potential boundary while Korea had invoked the concept of natural prolongation (*Japan Quarterly*, Vol. XXIV, No. 4, 1977, p. 394; Choon-Ho Park, "Maritime Claims in the China Seas: Current State Practice", *San Diego Law Review*, Vol. 18 (1981), pp. 447-448). The result, evidently, was a compromise formula. But the point I wish to note is that the result was almost certainly influenced by this geomorphological feature.

I might also mention briefly the 1974 delimitation agreement between France and Spain. A map of this agreement, which my colleague Dean Colliard has also referred to, may be found as No. 31 in the Libyan folder of maps. If I could invite the Court to turn to that map for a moment, I believe the point I am about to make will be very clear. It can be seen that in the seaward sector of the delimitation — between points R and T — where the boundary begins to deviate from an equidistance line, it falls instead roughly half-way between the bathymetric contours lying to the north and south. As my learned friend Professor Brownlie noted (**III**, p. 472), there is evidence in the literature to show that the topography of the sea-bed influenced this boundary, in addition to the difference in coastal lengths. The literature which I refer to is cited in the Libyan Counter-Memorial, footnote to page 184.

Finally, I would like to call attention to the delimitation between Italy and Tunisia to which a number of references have already been made during these hearings. The only point I wish to make is to recall a comment which was made by my learned friend, Mr. Lauterpacht, on the occasion of the oral hearings on Malta's Application for permission to intervene in the *Tunisia/Libya* case. In discussing the negotiations that took place between Malta and Italy concerning delimitation between Malta and the Pelagian Islands, Mr. Lauterpacht stated that Italy's reason for agreeing to an enclave of the islands in the Italy-Tunisia delimitation was because they rested on "the extension seawards of the Tunisian land mass". Those were Mr. Lauterpacht's very words (*I.C.J. Pleadings, Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Vol. III, p. 309). This suggests, to me at least, that geological or geomorphological features may not have been wholly irrelevant to that agreement.

Mr. President, I should point out that I am not suggesting that the physical factors of geology and geomorphology must always be taken into account in the delimitation of the continental shelf. That would be contrary to what the Court itself has indicated. But I do suggest that such features must be taken into account when they constitute so fundamental a discontinuity in the sea-bed and subsoil of the area relevant to the delimitation that we are in fact faced with two shelves.

Description of the facts

If I may leave the question of the legal relevance of these facts or circumstances, I would like now to turn to the facts themselves. Let us begin by examining the general setting.

The general setting

(2) As the Court will see on the map now behind me (LM, Map 6; Map 56 in the Court's folder), this area of the Mediterranean is characterized by two great plateaux, divided by a Rift Zone.

In the north there is this great plateau comprising Adventure Bank, the Gela Basin and the Ragusa-Malta Plateau, on which Malta itself sits. As we shall see, there is an essential unity in this whole area, evidenced not simply by the bathymetry but by the geological structures and the fault trends.

In the south we have the vast Pelagian Block, stretching from the Lampedusa Plateau in the west from the North African coast, and then over to the Medina Bank and the Rift Zone in the north. The southern plateau forms one great plateau, sloping away from the North African coast, and tilted eastwards into the Ionian Sea. As the Court has recognized in its 1982 Judgment, this area is marked by its essential unity and uniformity. The Tripolitanian Furrow is, in this area, of minimal topographical significance. So, too, are the slight depressions, here, and here (pointing to the map), rising up to the Melita and Medina Banks.

But between these two plateaux lies this remarkable area — the Rift Zone. Beginning here in the west, between Adventure Bank and the Tunisian Shelf, it stretches through the Pantelleria Trough, broadens into an area of two deep parallel troughs — the Linosa Trough in the south, the Malta Trough in the north — and then sweeps round to the south of Malta through the Malta Channel and then the Medina Channel. The Channels are of course bathymetrically less impressive, but structurally they are part of the same Rift Zone. The Zone cuts through these escarpments to the east, so that we have two sections: the Sicily-Malta Escarpment in the north, and the Medina Escarpment in the south. And the plate boundary runs through the Rift Zone and cuts out through the escarpment out to this feature, the Medina Ridge.

In the east we have these two escarpments. Like the Rift Zone the escarpments are striking features. Geomorphologically, they are huge features, although their geological significance is less than that of the Rift Zone, for they do not form a plate boundary.

So, that is the general setting. Two enormous plateaux — in Libya's submission two separate shelves — separated by a Rift Zone, and terminating in the east along this line of escarpments.

I will deal with the Rift Zone first. There are really only two basic questions: is it there, and, if it is, is it such a discontinuity that it fits the test, the language used by this Court?

It is certainly there. But it is not located where Mr. Lauterpacht drew it. Even allowing for artistic licence, I must reject his drawing. The limits of the zone are illustrated in both the Libyan and the Maltese written pleadings and they do not conform to Mr. Lauterpacht's drawing. Could I ask the Court to look at No. 61 in the folder? This will enable the court to compare the Rift Zone as de-
(26) picted on Map 9 of the Libyan Reply — that is the area shaded in grey — with the central trough and ridge system described by the Maltese expert, Professor Vanney, in his technical note attached to the Maltese Counter-Memorial. The map shows Professor Vanney's zone outlined in red, and shows that the two zones essentially coincide. The terminology is unimportant. Whether we call it the Rift Zone or the central trough and ridge system really does not matter. Professor Vanney was quite clear what was happening here. To cite his own words, it is "the most remarkable expression of the distensive force acting since Miocene times" (**II**, MCM, Vol. II, p. 30). What Professor Vanney calls a "remarkable expression of the distensive forces" is what Libya would call the

site of rifting or, if you like, the Rift Zone. The difference is simply one of terminology.

There is a further point of considerable importance. The plate boundary running through this zone does not stop at the escarpments. It continues out along the Medina Ridge: this is a mountain range, more than 2,000 metres high, running for 150 miles to the east of the escarpment. It is a feature which was totally omitted from the maps placed before you by Malta during the oral hearings. And for good reason. It is, as we shall see, one of the most important pieces of evidence which totally destroys the Maltese argument that the rift system is no different from the Jarrafa Trough, or the Tripolitanian Furrow to the south. It is additional evidence of the continuity of the Rift Zone from the deeper troughs through the channels and out along this ridge.

So, the Rift Zone is certainly there. But is it a sufficient discontinuity to divide two shelves? That is the question. Libya says it is not only sufficient, but that it is a quite fundamental discontinuity. Malta criticizes Libya for not having defined that term. But the term "fundamental discontinuity" has not been defined in the Libyan pleadings for good reason. The Court has not used the term, but has spoken merely of "significant features" or a "marked disruption". The Court will know also that it has always identified features that are not such a discontinuity, and never features that are. Therefore we do not yet have a legal definition. What we do have from the Court is a sufficient indication of the kind of features which may constitute such a discontinuity.

But let us suppose it is a legal concept, albeit undefined, as Malta says. It cannot be identified with the edge of the continental margin as Mr. Lauterpacht suggests. *It cannot be said that such a discontinuity exists only where, beyond,* there is oceanic crust, as contrasted with continental crust. For if that were so, we would have no need of any such legal concept: for we already have one, the continental margin. If one looks carefully at the actual contexts in which the Court has used this concept — the North Sea, the Pelagian Sea, the Gulf of Maine or, in the Anglo-French award (made by the Court of Arbitration), the English Channel — those Courts could not have contemplated a continental margin. The relevant area in each case was nowhere near any continental margin. Those Courts clearly contemplated a fundamental discontinuity within a shelf area. So the Maltese thesis is wrong in law.

The Maltese thesis is also wrong in fact. Libya's view is that we are dealing with a factual rather than a legal concept. In short whether or what is or is not a sufficient, significant, or fundamental discontinuity is better determined on the facts. It is a matter of objective evaluation of scientifically reliable facts. And we would share Mr. Lauterpacht's view that where you find a separation of plates, a plate boundary, that would most certainly be a fundamental discontinuity. And that is precisely what we have here, in this case, a plate boundary.

But even on the facts, it is quite wrong to assume that you can only have a plate boundary *where, beyond, there is oceanic crust.*

Mr. President, if you will permit me just a few words on some very elementary plate tectonics, I can describe what plates do. Plates do only one of three different things. First, they separate or pull apart and that is the "extensional" boundary, and when this process of separation, pull-apart, goes far enough, in distance, then an ocean forms and part of the area of separation becomes oceanic crust. Secondly, plates can collide: that is the "compressional" boundary. And then, subduction happens, with one plate sliding under the other — but there is no oceanic crust. And, third, they can slip or shear past each other: that is the "shear" or "transform" boundary, and again you will not get oceanic crust. You will only get oceanic crust with the extensional boundary. But all

three processes occur along plate boundaries, so the existence or non-existence of oceanic crust is not the test of whether a plate boundary exists. Indeed in some cases — in the case of the Rift Zone — all three processes may occur along the same plate boundary.

Equally misconceived is Mr. Lauterpacht's view that there can be only one plate boundary. The Court will recall the suggestion made by Malta that because Libya had, in the 1982 case, identified the northern boundary to the African Plate as running through Sicily, there could be no other plate boundary running through the Rift Zone. That is simply wrong. Fractures at the edge of plates are not uniform, or even single, and sections of plate do break away, forming microplates, with new plate boundaries. Indeed, in 1973, Dewey and a distinguished group of collaborators including Pitman, Ryan and Bonnin identified a series of separate plates — or micro-plates — along the northern rim of the African Plate, including the one we have here. They said:

> "There probably never was a single plate boundary between Africa and Europe; but, rather, there was at all times a network of compressional, extensional, and transform boundaries." (LM, Ann. 12, I, p. 230.)

Now these scientists, in describing the Rift Zone as a plate boundary, or as a division between two separate shelves, were not the first. In 1967 Burollet had depicted two separate shelves divided by a similar zone: the Pelagian shelf to the south, and the Ragusa shelf to the north (LM, Ann. 11, I, p. 229). Malta's own scientist, Professor Mascle, on page 47 of his report, states clearly that

> "Africa and the Ibleo-Maltese Complex, that is the Malta-Ragusa Plateau, ceased to form one solid block and that the latter has rotated with respect to Africa . . . Such a rotation imposes the formation of troughs between the two domains."

Again, Blanpied and Bellaiche, in their 1981 paper furnished to the Court by Malta, as document A during these oral proceedings, expressly distinguish two separate units, which they identify as "the Sicilian shelf on the north and the Tunisian platform on the south". And, for them, the separation or division is along the Rift Zone — not the Jarrafa Trough, and not the Tripolitanian Furrow. I commend this scientific literature to my friends on the Maltese side. It may cause them to re-assess their view that this idea is a fiction of the Libyan imagination, unsupported by scientists.

So, let us set aside these red herrings about lack of definition and oceanic crust, and unique plate boundaries, and instead look at the facts.

The evidence that the Rift Zone constitutes a plate boundary has four essential components.

First, the faulting is deep. The fractures in the earth's crust go right through to the basement, at least 20 kilometres below the sea-bed, and it is through these fractures that the molten rock, or the magma rises, and it is this important volcanic material which can then be identified amongst the strata forming the sea-bed and subsoil.

Second, because of this, this magma is found in great sheets, from 10 to 100 metres thick, coming right through the strata. And this is what we mean by the presence of volcanics. And these are what we call "young" volcanics, so they tell us the contemporary picture, what is happening now and not just what happened in ancient geological history. These volcanics tell us that we have here, right now, very deep, fundamental fractures.

Third, there is the process of plate movement, and this deformation of the

strata is currently active. We know this because, if this were not so, the troughs or valleys would have been filled up with sedimentation long ago.

And fourth, we know that the northern plate is rotating anticlockwise. Malta says this, too, and the Court will recall Mr. Lauterpacht's description of that rotation (III, pp. 356-357). Now if the northern plate — what Mr. Lauterpacht referred to as the Iblean Block — which I refer to as this plateau, the whole of this — if the northern plate is rotating in relation to the main African Plate, there must be a plate boundary. For, if there were not two separate plates, how could the one move and rotate against the other? I urge the Court to consider this point very carefully, for its significance is really crucial. In fact the only question is where — along what line — is this rotation occurring? The only possible place is along this Rift Zone. I do not frankly understand what Malta says. If the whole area is a unity, you really could not get this separate movement, this rotation of the one section against the other. So there is a fundamental contradiction in the Maltese argument. I suppose Malta might say, as a kind of fall-back position, that the plate separation occurs further south, along the Jarrafa Trough, or the Tripolitanian Furrow, but really their reliance on these features is quite unsound, for reasons which I will now explain.

These two features, the Jarrafa Trough and the Tripolitanian Furrow, are virtually inactive. Do not be misled by the earthquake mentioned by Mr. Lauterpacht. Such a tremor can have a variety of causes. It might well have been caused by the intrusion of salt domes. That such salt domes exist is certainly the view of Blanpied and Bellaiche, on whom Malta relies. But what is quite clear is that it was not caused by volcanics. For there is no evidence of volcanics in the Jarrafa Trough and the faulting there is quite shallow. It is not fundamental in the sense that the faulting cuts right through to the basement, allowing the magma to force its way up through the cleavages. As for the Tripolitanian Furrow, further south, although here there is evidence of volcanics, the volcanics are old and deeply buried. The rifting ended long, long ago and never developed into a plate boundary: as a geological feature, in a sense, it is dead.

It is of course true that Malta has produced Professor Mascle's map to suggest that these two southerly features are just as important as the Rift Zone. May I invite the Members of the Court to examine that map carefully at their leisure? It was Figure 3 in the Malta Map Atlas and it was reproduced as No. 62 in the Court's folder now known as Professor Mascle's map. The Court will see that it attempts to depict faults and rifting on the basis of a bathymetric map, the IBCM Map. You can see the legend quite clearly on the bottom — faults and rifting in the Pelagian Basin as deduced from IBCM Map. It needs no great intellect to see that Professor Mascle was attempting a rough sketch only, for you simply cannot identify accurately the location of faults and rifting simply by deductions based on bathymetry and there is no evidence of independent verification by seismic techniques, measurements of magnetic and gravity anomalies, or drilling data most of which is readily available. Interestingly enough, in 1984 Professor Mascle published an article jointly with Besse, Pozzi and Feinberg (*Earth and Planetary Science Letter*, Vol. 67, 1984, pp. 377-390) and that joint article includes a tectonic sketch of the same area. And on that sketch not only are these two southerly features differently aligned from Malta's Figure 3, but the authors say the troughs "widen from east to west". Just think of the implications of that for Mr. Lauterpacht's fan. If the wide openings are in the west and not the east then the handle of the fan must be somewhere out here in the Sirt Rise and not up in the area of the Pantelleria Trough which is where Mr. Lauterpacht had the handle of his fan.

Small wonder then that Mr. Lauterpacht was tempted into his picturesque, but quite erroneous, analogy of the fan. The Court will remember Mr. Lauterpacht's home-made fan, the purpose of which was essentially to demonstrate that these two southerly features — the Jarrafa Trough and the Tripolitanian Furrow — were just as good as the Rift Zone, and were caused by the same process.

Mr. President, these two southerly features and the Rift Zone were created at very different times. Certainly Mr. Lauterpacht conceded that, but in fact the difference is so great — some 40 to 90 million years difference — that we could not be talking of the same fan, or the same process. The fact is these two southerly fault zones simply never developed and now they are virtually dormant. In contrast, the Rift Zone has developed into a plate boundary and it is still active. And what is more you can see this plate boundary continuing out, right through to the Medina Ridge. You will find no counterpart to this Medina Ridge in the south as a continuation of either the Jarrafa Trough or the Tripolitanian Furrow.

And let me say that, far from concealing these two southerly features, Libya has in its pleadings provided far more information about them than has Malta. We have no fear of these features if they are to be put as rivals to the Rift Zone.

So if the attempt to deny to the Rift Zone its character as a plate boundary fails, both on the law and on the facts and if the attempt to equate the Rift Zone with these two southerly features also fails, what are we left with?

We are left with only two remaining arguments by Malta. The first is a sort of estoppel argument made by the Agent for Malta and it lies in the suggestion that in the *Tunisia/Libya* case in 1982 Libya had argued that the Pelagian Block was a single unity extending right into Sicily.

In fact, the distinguished Libyan Agent is quite mistaken in suggesting that the Libyan pleadings in the 1982 case, or the expert evidence of Professor Fabricius, have suggested that the Pelagian Block is a single shelf going all the way up to Sicily.

Let me repeat that in the 1982 case we were not really concerned with this area and I believe it would be unfortunate if the Court were to be diverted from the main question by terminological confusions between blocks, basins, shelves and plates. What is clear is that the Libyan pleadings did identify the shelf area in the 1982 case as ending at the Rift Zone. I do not want to weary the Court with a long, detailed analysis. So let me give just a few citations to make the point.

Annex II to the Libyan Memorial, the so-called Missallati Report, defined the Pelagian Block (*I.C.J. Pleadings, Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Vol. I, p. 559) in these terms:

> "It [the Pelagian Block] consists of an area, roughly a parallelogram in shape, with a northern boundary running along the Pantelleria Trough."

Annex 11, the Technical Report to the Counter-Memorial, prepared by Professor Fabricius (*I.C.J. Pleadings, Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Vol. III, at p. 194):

> "To the west of the Malta-Misurata Escarpment the area is conspicuously less deep, forming the so-called Pelagian Block. It extends to Sicily in the north. The only feature of importance is the Pantelleria-Malta Trench system *dissecting the Pelagian Block into two shelf areas.*"

And, again, *ibid.*, at page 198:

> "the area under consideration covered by the Pelagian Sea is one single shelf area which reaches . . . to the northeast to the depressions formed by the rift system".

Although it is true that Professor Fabricius, in contrast to Professor Missallati, took the Block as far as Sicily, he was speaking entirely in geomorphological terms and he was in no doubt that there were two shelves and that the Pelagian shelf ended at the Rift Zone.

And certainly counsel for Libya was clear on the point: "Now the Pelagian Block can be seen on this map here . . . it is an area bounded . . . in the north along the Pantelleria Trough" (*I.C.J. Pleadings, Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)*, Vol. V, p. 149).

So there is really no substance to that first argument.

I turn to the second and last Maltese argument. This is essentially that while the troughs are deep to the west, to the south of Malta — and when you come to the area lying between Malta and Libya — the area of the Malta and the Medina Channels becomes shallower. And so the argument runs: we no longer have a real discontinuity even if there is one in the troughs themselves.

The first thing to note about this argument is that a good deal of the Malta Trough does in fact lie between Malta and the Libyan coast. Second, and perhaps unwittingly, the Maltese argument has shifted from geology to simple bathymetry. It no longer asks the question "What kind of structures do we find here?" but rather the very simple and rather superficial question "How deep are the sea-bed depressions?"

Certainly there is a bathymetric difference. The Malta Trough for example is 1,714 metres deep and would be very much deeper if you removed the sediments. The Channels are less impressive but by no means insignificant: the Medina Channel has depths of up to 650 metres and if the sediments were removed there the depth would be over 1,000 metres.

Mr. President, depth is not really the issue. We are dealing with a plate boundary and not only is this demonstrated by the evidence of volcanics but there is a large volcanic structure in the middle of this bathymetrically shallower area. Echo-sounding, magnetic measurements and gravity measurements reveal that. So we know that this is part of the same plate boundary irrespective of its shallowness.

These differences in depth along the plate boundary can be easily explained. If you take a line of fractures along a plate, a plate boundary, the line of fracture tends to be irregular and as you rotate one section against the other, you will appreciate that because the line of fracture is irregular, in some places the gaps open up and in others they close up. Where the gaps open up, the bottom drops — as Mr. Lauterpacht quite correctly demonstrated — and deep troughs are formed. But when the gaps close up, you get compression and no deep troughs are formed. On the contrary, the area remains relatively shallow in bathymetric terms. But these differences are trivial. The importance lies in the demonstration that the plate boundary goes right along the zone, regardless of variations in depth. It is the same process and it is a discontinuity, which is just as fundamental in the east as it is in the west. Indeed, as I said before, the plate boundary does not end there but continues out along the Medina Rise. It is for this reason that I emphasized the importance of this ridge — the feature eliminated from Malta's maps.

I must emphasize that I am not talking about geological history. I am describing a process which is going on now. I am describing what is to be found on the sea-bed at this moment of time.

Indeed, it is Malta's thesis which is the historical, out-dated thesis. The whole area may once have been a unity, a continuity. But that phase ended long, long ago — between five and ten million years ago when Malta was formed, in fact — and the current position is one of disunity, of the creation of two shelves, divided by the plate boundary along the Rift Zone.

I would now like to turn my attention to the escarpments in the east.

The significance of these features is morphological rather than geological. They are not a plate boundary, like the Rift Zone, but they are a quite major feature on the sea-bed. There are, in fact, two escarpments divided at this point: the Heron Valley, with the Sicily-Malta escarpment to the north and the Medina escarpment to the south.

The escarpment in the north, the Sicily-Malta Escarpment, is the more prominent. Indeed, it is one of the steepest and most distinctive features on the entire Mediterranean sea-bed. Professor Vanney, the Maltese expert, at page 36 of his annex, describes it as a scarp which is "the most remarkable in the Mediterranean". It is 120 miles long, it marks a drop in the sea-bed of 3,600 metres and the angle of declivity ranges from 20 degrees to 60 degrees.

I would like to show the Court the illustration of this escarpment, which has been prepared by the Lamont-Doherty Geological Observatory of Columbia University. It is Number 63 in the folders and it was Annex 9-b to the Libyan Reply. The section shown in that illustration cuts across the escarpments and then the Medina Ridge, and it cuts across along the line used by Malta as the easterly arm of its trapezium. So it runs along this line.

The illustration is, of course, exaggerated: there is a 1 to 50 vertical exaggeration, as is normal for this type of diagrammatic illustration. But it will serve to give the Court some idea of the relative size of these features and really why Libya says with confidence that, geomorphologically, this is a significant feature, a marked disruption in the continuity of the sea-bed.

The Medina Escarpment to the south is less impressive but still quite a feature. It is some 87 miles in length, with a drop in the sea-bed level of between 1,000 and 1,200 metres and with a slope of 1 in 10.

Perhaps the best way to give the Court an impression of both escarpments and their relation to the two shelves to the west, is to ask the Court to look at the photograph of the model of the area prepared by the same Lamont-Doherty Institute of Columbia University. The photograph is in the Court's folder as Number 64.

If I could invite you to look at that photograph, Number 64, the photograph has a 25-times exaggeration, but you will see on the photograph the Libyan coast on the left-hand side of the photograph, Sicily on the right-hand side and Malta appears as a small brown dot between; and then you will see the Rift Zone, of course represented solely in bathymetric terms, running through from the troughs and then out to the Heron Valley before dropping down this trough.

So these are the escarpments. Like Malta, we do not say that they are the edge of a continental margin, nor do we say that the area to the east ceases to be continental shelf in legal terms. The two Parties agree on that. Where we disagree is over Libya's view that the features are so major, so marked, that they must be taken as the eastern boundary to any shelf area over which Malta might conceivably have a claim.

There is a final point relating to these escarpments to which Malta attaches significance. Malta says, in effect, if the escarpments put an end to the extension of Malta's shelf to the east, why is Libya in any different position? In short, how can Libya claim any shelf to the east?

I have to assume that this is a serious question, so I shall give it a serious, but short, answer. Libya has extensive coasts lying to the east of these escarpments. And this extensive coast, east of Ras Zarruq has its prolongation into the Ionian Basin. It is by reference to that coast that Libya has a shelf claim east of the escarpments. We do not rely on this coast, Ras Ajdir to Ras Zarruq, which

is relevant to delimitation with Malta. In contrast, Malta has no coast, east of the escarpment. I hope we shall agree, at least, on that.

Mr. President, I have now dealt with the relevant geographical facts, and then the relevant geological and geomorphological facts. In placing the greatest stress on those first two categories of physical facts I hope I have faithfully followed the emphasis preferred by the Court in its own decisions in earlier cases.

However, there are two remaining categories of relevant circumstances I need to mention, that is the conduct of the Parties and delimitations with third States.

The Court rose at 1 p.m.

TWENTY-SECOND PUBLIC SITTING (14 XII 84, 10 a.m.)

Present: [See sitting of 26 XI 84.]

Professor BOWETT: Mr. President, yesterday I had outlined for the Court the categories of relevant physical factors or circumstances, that is to say those of geography and then geology and geomorphology.

But there remain two further categories of relevant circumstances which I need to mention.

Conduct of the Parties

The third category is the conduct of the Parties. Happily, Sir Francis Vallat has already given the Court the facts, and has commented on their legal relevance. So I need make only one or two comments by way of emphasis.

It is clear that we have no pattern of conduct which establishes a form of *de facto* boundary of the kind which the Court found to exist in relation to the 26° line in the *Tunisia/Libya* case. The Maltese *status quo* argument is based upon a myth: it is sheer wishful thinking. What we do find is conduct which identifies the area really in dispute as lying well to the north of any median line. This emerges from the record of conduct over the grants of concessions, which Sir Francis has reviewed. It emerges also, very clearly, from the no-drilling understanding of 1976. For this agreement not to drill covered an area north of the median line proposed by Malta and south of Libya's 1973 proposal line. Indeed, apart from the unfortunate Texaco-Saipem incident in August 1980, caused by Malta in breach of the no-drilling understanding, no drilling has been authorized by Malta south of the Rift Zone.

Actual and Prospective Delimitations with Third States

The fourth, and last, category of relevant circumstances concerns actual and potential delimitations with third States. Malta would have the Court ignore these as relevant circumstances for the reason that, as Mr. Lauterpacht has said, they will complicate the Court's task. That may well be, but I venture to suggest that the Court cannot disregard relevant circumstances simply because they complicate matters. And to say that third States are not bound by the Court's judgment is really no answer. For, whether that is true, the Court cannot delimit between States A and B an area which is only relevant to a delimitation between States B and C. And what is the relevant area in each case must be objectively determined. It is not something for A and B to decide by their own agreement. In the present case there are at least five separate factors to be borne
(48) in mind. These can best be illustrated by the map now behind me (Map No. 2 in the Libyan folder will also serve). The first is the need to respect the *Tunisia/Libya* delimitation which will have to follow the 52° line in accordance with the Court's 1982 Judgment. A second is the need to consider the 1971 delimitation line between Italy and Tunisia. I do not say that Malta or Libya are technically bound by that line: but they would need to show good legal cause to disregard it. A third factor flows from the second, and this is the element of

consistency. By that I mean that Malta's equidistance claim involves the rejection of large sections of the 1971 Tunisian/Italian line. We do not know whether Malta has hitherto formally protested that line, but we do understand that Malta must now do so if its equidistance arguments against Libya are to have any credibility: for otherwise the inconsistency between past conduct — that is, Malta's non-opposition to the 1971 line — and its present conduct — by that I mean its insistence on equidistance — must be a feature of Malta's conduct which the Court cannot ignore.

Another crucial factor is the prospective Italian/Libyan delimitation. Italy made clear its areas of interest in the course of the Court's hearings on Italy's request to intervene. Libya entirely shares Italy's concern to prevent encroachment by Malta, in the sense that, beyond the escarpment at least, there can be no question of a Maltese shelf. The area is one to be delimited between Italy and Libya. It is important, in Libya's view, for the Maltese equidistance claim to be seen for what it is. It cuts off the entitlements of both Italy and Libya to the east in a totally unacceptable way.

And, finally, the situation of Libya vis-à-vis Greece cannot be ignored. The Maltese trapezium and its equidistance proposal is so extreme that it even jeopardizes the prospective agreement between Greece and Libya in areas far to the east.

I believe that is all I need to say about actual or prospective delimitations with third States. But apparently there is now a new category of hypothetical delimitations with third States which the Court is being invited to consider. The Court will recall Professor Weil's depiction on a map of a hypothetical boundary between Italy and Libya, based upon the premise that Malta did not exist at all. That is an extreme premise which we would not have dared to advance. But, in any event, Professor Weil's argument was to suggest that an Italian/Libyan boundary, south of a non-existent Malta, would be — inevitably — a median line. And so the argument was that Libya could not reasonably claim against Malta a boundary more favourable to Libya than Libya could claim against Italy.

Mr. President, we have here one unfounded premise upon another, and I think it is necessary, in reply, to note only these points.

First, we cannot deal with problems of delimitation by supposing that a part of the problem, Malta, does not exist. We have to deal with the facts of geography as they are. We must not refashion geography. We must deal with the real situation rather than hypothetical ones. Second, so far as I am aware, Italy has made no claims to the area south of Malta but has merely indicated that it considers Italy's interests to be involved to the west and east. Third, even if Italy did have such claims, the Libyan argument that the Rift Zone is a plate boundary and therefore a clear division between the two shelves is as valid against Italy as against Malta. And, fourth, on geographical grounds there is no warrant for the assumption that an Italian/Libyan boundary would be a median line. If one takes that part of the Sicilian coast facing Libya, plus that part of the Italian mainland also facing Libya, you get a coastal ratio of two to one in favour of Libya.

Moreover, I do not believe that the points I have just made are any different from the views of Italy itself. Let me cite from the speech of counsel for Italy, before this Court on 25 January 1984:

> "It is the belief of Italy, on the contrary, that equidistance is not a rule, far less an absolute rule. According to the relevant rules of the International Law of the Sea — the law of yesterday as well as today — equi-

distance is only one of the criteria of shelf delimitation. *Other criteria* come into play with equal weight, *such as the geography, geology and morphology of the areas, the comparative lengths of coasts and the comparative dimensions of the landmass.*" (**II**, p. 495, emphasis added.)

Exactly, Mr. President, that statement could not be bettered. So perhaps counsel for Malta should have a word with the Italian Foreign Office before they advance fictitious claims, on behalf of Italy, which Italy itself may have no intention of making.

If I can return to the task in hand and leave aside these hypothetical exercises, I would like now to come to the final part of my presentation. The question I pose — and attempt to answer — is how can we reflect all these relevant facts and circumstances in an equitable result?

The Reflection of All the Facts and Circumstances in an Equitable Result

Mr. President, although you and Members of the Court have borne patiently this long exposé of the relevant facts and circumstances, the task does not end there, for there remains the essential task of applying them to produce an equitable result. How can this be done? I invite the Court to consider the two approaches.

First, *Malta's approach*. It cannot be done by applying equidistance. Equidistance would ignore all the relevant geography. It would ignore the great disparity in coastal lengths and size of the landmass; it would treat Malta as having a coast many times the length of its actual coast. Malta freely admits that its equidistance claim would be little different if it had a much longer
(16) coast. The point emerges very clearly from diagram A to the Libyan Counter-Memorial, which Malta reproduced as a diagram on page 94 of its Reply. It is Number 8 in the Libyan folder: the same illustration as Professor Jaenicke used a few days ago. The Maltese comment on this diagram is curious. It is that "the diagram simply shows the way geography works" (**III**, MR, p. 95). The diagram shows no such thing. It shows the way equidistance works and it shows that it works in a most inequitable way so as to virtually ignore, in a situation such as this, these major differences in coastal length.

The other defect of the equidistance method in relation to the geographical facts is that it would ignore the proximity and interests of Italy. Encroachment into areas of shelf relevant to Italy's delimitation with Libya is inevitable. Equidistance would also ignore all the relevant geological and geomorphological factors. It would treat the whole area as one of essential unity and continuity, ignoring the evidence that points unmistakably to the existence of two separate shelves, divided by the Rift Zone. And it would equally ignore the limits in the east to any area of shelf claimable by Malta, the limit constituted by the Sicily-Malta and Medina Escarpments. Equidistance would ignore the conduct of the Parties in that any area of dispute has clearly lain to the north of a median line. And, finally, equidistance would disregard the actual and prospective delimitations with third States.

Let me turn to the *Libyan approach*: the Court is entitled to ask "would the Libyan approach fit the relevant facts any better?" In my submission, Mr. President, it would. Let me demonstrate this by taking the categories of relevant facts or circumstances, each in turn. I ask you to accept, for the purposes of this

demonstration, the Libyan thesis that an equitable result would be achieved by a delimitation within and following the general direction of the Rift Zone.

There is first the category of physical facts, comprising geography, geology and geomorphology. Let me start with geography.

Geography

The Libyan approach would fit the geography because a line following the Rift Zone would accord to Malta an area which, when compared to the area accorded to Libya, would be roughly proportionate to their relevant coastal lengths. So, even if the Rift Zone were not there and the whole area was as flat as a pancake, we say that geography would dictate a result roughly within the Rift Zone, even though the Rift Zone as such is irrelevant to an approach based on the geography of the coasts. Let me recall to the attention of the Court Libya's 1973 proposal. It is shown on Map Number 65 in the Libyan folder. It (30) can also be seen on Map Number 13 from the Libyan Reply and it is the staggered black line. The proposal was an approach that reflected the difference in the coastal lengths of the Parties and attempted to restrict any line to the area lying properly between Malta and Libya. The details of how the proposal was worked out are given in the Libyan Reply, Chapter 6, section C.

The method adopted was to join the two coasts by a series of connecting lines, and then divide those lines at a point where the division would reflect the same ratio as the coastal lengths. That method was a genuine attempt to grasp and tackle the salient geographical fact of the difference in coastal lengths and, moreover, by coincidence it does in fact lie broadly within the Rift Zone — the Court will see the Rift Zone area shaded in grey on the map. There may well be other ways of reflecting this major discrepancy in coastal lengths, but I submit Libya's 1973 proposal was a perfectly valid approach. In essentials, it was not far removed from the method used by the Court's Chamber in the *Gulf of Maine* Judgment. The Court may recall that, in the second sector, between points B and C, the Chamber shifted the median line between the two opposite coasts laterally. The shift was along a line separating those coasts, and the point at which the median line was relocated was determined by the ratio of coastal lengths of the two Parties. In essence, that was what Libya proposed in 1973.

The other virtue of a line within and following the Rift Zone would be that each Party would have the area adjacent to its coast, and the result would respect the Court's proposition that the coasts are the basis of title. Even the limits of such a line west and east would fit with the geography. For in the west the line would meet with the 52° line, and so accord with a reasonable view of where the Libyan coasts, and the shelf areas of the coasts, were relevant to Tunisia rather than Malta. And in the east, because of the break caused by the escarpments, the line would not continue into areas which were not off Malta, or which lay between Libya and Italy.

Geology and Geomorphology

Demonstrably, the line would fit with the geological and geomorphological features even if, as we have seen, it also accords with the geographical features. The line would have a natural termination in the east where it meets the Malta-Medina Escarpment. I have described for the Court how that escarpment constitutes a geomorphological feature of extraordinary significance. It stands, like a great rampart, forming a clear break in the continuity of the shelf and at the

same time marking the natural end to any areas of shelf over which Malta might have a claim.

Producing a line

It has been said in the Maltese Counter-Memorial, by way of criticism of the Libyan thesis, that a zone is not a line, and cannot provide a line.

The argument was put in rather different form by Professor Weil (III, p. 383). He appears to assume that the Libyan Rift Zone argument means that Malta's shelf ends at the northern end of the Rift Zone, and Libya's shelf ends at the southern end of the Rift Zone, so that the Zone itself becomes a sort of no-man's land — what Professor Weil called a hiatus.

I am afraid that the problem is entirely of his own making. No one suggests that the Rift Zone is oceanic crust. No one suggests that it is not shelf. So, obviously, if you have a shelf area along a plate boundary, with the two shelves coming together along that boundary, you have what may be, geologically and geomorphologically, quite a complex area. The problem is to decide which parts of this complex area belong to the one shelf, and which to the other. Legally, one can regard this complex area as an area of overlapping claims. There is no hiatus. There is the quite familiar problem of dividing an area of overlapping claims. And that is what the methods proposed by Libya seek to do.

Our Maltese friends have an allied concern in that they are anxious that the delimitation should be agreed without difficulty. It is Libya's view that if the Court saw fit to indicate that the principles and rules of international law prescribed a line of delimitation along the Rift Zone, there would be a sufficient basis, even in that finding, for the Parties to proceed to a delimitation by agreement.

Certainly that would be a more precise guidance than the parties received in the *North Sea Continental Shelf* cases.

However, in this case the Court is empowered by the terms of the *compromis* to decide how in practice such principles and rules can be applied without difficulty. So the Court has the power to decide how, in relation to a zone of irregular shape, a precise line of delimitation might be agreed.

The axial ridge line

In Libya's view various methods are possible. In the choice of a suitable method there are various components of a method which suggest themselves. They do so rather obviously, because they derive from the relevant factors of the case. One component which derives from the geology and geomorphology and has a rational scientific basis to support it, is the axial ridge line. This is
(30) portrayed on the map behind me now as the red line (LR, Map 13). That line represents the point at which, throughout the length of the Rift Zone, the continental crust has been stretched to the maximum. It is the thinnest point in the crust, and has been investigated and identified by Professor Finetti of the University of Trieste in research embodied in a paper reprinted as Annex 7 to the Libyan Reply. The research technique is to plot what is called a residual gravity map.

The Court has heard a far-reaching attack on Professor Finetti's work from Mr. Lauterpacht, and Professor Finetti is not here so that he might defend his work.

I would like to emphasize to the Court that scientists like Professor Finetti, or Professors Van Hinte and Jongsma are scientists of international repute. And the

work which Libya has used in its pleadings is not work simply commissioned for this case, but work which these scientists have either published or submitted for publication in well-known scientific journals. They have all put forward their views for scrutiny, not just by this Court, but by their colleagues in the scientific world. So I believe their work is entitled to respect — though I would not deny that it is entirely for this Court to decide upon its legal relevance.

Hence I must reject the suggestion by Malta that there is an "arbitrary manner and preconceived character" to the line: those were the words used at page 350 (III). I think this illustrates the risk of having such matters debated by counsel, rather than taken as testimony of witnesses, and subject to cross-examination. I hope it may prove possible for Professor Finetti to make his own defence in good time. But lest the attack on his axial ridge line should have made any impression on the Court, let me note a few brief comments now. Certainly the gravity readings have to be corrected to allow for the depth of water overlying the sea-bed. But to suggest this is all undisclosed guesswork is nonsense. Professor Finetti's map explicitly discloses its use of the Bouguer Map, so other scientists know immediately that he is using a standard, accepted technique for this purpose. The same is true of his selection of the appropriate "filter length".

As to Mr. Lauterpacht's own attempt to draw alternative lines, well, I can only say I admire his courage. But amateurism is dangerous, and I am told by our scientific advisers that Mr. Lauterpacht's lines are scientifically indefensible.

So we maintain the validity of the axial ridge line. It remains a perfectly valid component of a method whereby a precise line in the Rift Zone can be ultimately determined.

The Thalweg

Another component derives from the bathymetry. We would need to identify a line of greatest depth along the zone — a sort of thalweg — so that if one imagined water flowing through the zone (as indeed it does), the greatest volume of water would follow this line. The bathymetry enables us to identify two such lines. If I can invite the Court to look at No. 66 in the Libyan folder, or at the large map behind me, you will see here the Libyan 1973 proposal in black, based on geography; you will see also the axial ridge line in red based on geology and geomorphology. And if you followed the bathymetry, then that would give you two lines. One line would run through the Pantelleria Trough and the Linosa Trough and then eastwards through the Medina Channel. The other line would run from the Pantelleria Trough through the Malta Trough and through the Malta Channel. The phenomenon of two main thalwegs, or channels, is quite common in large rivers and we have the same sort of phenomenon here. The existence of two thalwegs does not prevent a boundary being located in a river, and nor need it here. Indeed, international practice has already found a solution to this kind of problem. If I can cite the Agreement of 1928 concerning the territorial waters between Johore and the Straits Settlement, that Agreement not only adopted the thalweg as a territorial waters boundary, but it expressly provided for the situation where two thalwegs existed, and the solution adopted was to adopt a median line between the two thalwegs (*UN Legislative Series, Laws and Regulations on the Régime of the Territorial Sea*, ST/LEG/SER.B/6, 1957, 52-53).

Another component of an appropriate method could be derived from the

notion of an equal division of areas of convergence or overlap, which one finds reflected in the Court's jurisprudence. As I indicated earlier, one can treat the Rift Zone as an area of overlapping claims. It is a zone of discontinuity, geologically a rather complex zone, lying between the two geological shelves, but still, legally, a shelf area. Thus it could be equally divided by a line generally mid-way between the boundaries to the zone to the north and to the south, taking the boundaries as the 500-metre bathymetric line.

Nor need we neglect geography. Malta's coast faces, not south, but south-west. Thus, this may suggest that a line following the Rift Zone should have two sectors. In the first sector the line could be parallel to the direction of the Maltese coast, like this, and then when you reach the point of longitude at which there is no Maltese coast any longer opposite to the coast of Libya, the line could then be extended eastwards along that line of latitude. As the Court will realize I am trying to demonstrate a method rather than a precise line. This particular line could in fact be adjusted by moving it up or down this meridian, and so as to conform to any test of proportionality which the Court might apply. On the new map which is now behind me, the same type of method has been used to show lines which would cover a range of coastal ratios. The bottom line would be 1 to 8 and the top line would be 1 to 10, but, of course, the method has flexibility and you can see by this representation you could move that line either up or down within the relevant area.

So the Libyan approach would fit the geography, the geology, the geomorphology, and even the bathymetry. And it is no answer for Malta to say that these factors cannot, in this case, produce a line.

Conduct of the Parties

Would the Libyan approach be consistent with the conduct of the Parties? That is the third category of relevant circumstances. The answer is that it would. The conduct of the Parties has clearly revealed that the area in dispute lies north of any equidistance line, in roughly the same area as the Rift Zone. There is no *de facto* boundary to oppose such a solution, and there are no producing wells in the area. So there would be no problem over a boundary in the Rift Zone interfering with established rights of any concessionaire, operating such wells under a concession from the one Party and then finding themselves operating on the shelf of the other.

Delimitations with Third States

(48) And what are the delimitations with third States, actual or prospective? Let us look at the present position with the assistance of Map 2 in your folder.

The Court will note that the 1971 Italy/Tunisian line broadly follows the Rift Zone, except for this bulge around the island of Lampedusa. The 1971 line ends at this point here, point 32. So we can reasonably assume that Tunisia has no claims east of that point. So let us therefore draw a line of longitude representing the limits to the area to be delimited between Malta and Libya. A Libya/Malta line starting at the western limit of the relevant area, as defined in the Libyan Memorial, and running eastwards along the Rift Zone would involve no alteration to this 1971 line: and let me remind the Court that the Maltese equidistance line must be incompatible with this 1971 line. Nor would this kind of Malta/Libya line interfere or impinge upon Tunisian interests; as we have seen, Tunisia appears to have no claims to the east of that line.

If the Court's 1982 line — the 52° line — in the second sector of the Tuni-

sian/Libyan delimitation were extended, it could meet up with this line of longitude representing the presumptive limit to any Tunisian claims and therefore the limit to the area for delimitation between Malta and Libya. From that point the Court's 1982 line, as extended, could be joined to the beginning point of the Malta/Libya line. Anything to the west of that line would be a matter for negotiation between Malta and Italy, or indeed Tunisia if it did have claims there.

In the east, a Malta/Libya Rift Zone line could be extended to these escarpments, but no further. It would be understood that, if Italy had claims to the west of this escarpment, Italy could pursue those claims either against Malta or against Libya, or, indeed, against both. In other words, the continuation of the line as far as the escarpment would be without prejudice to the claims of Italy. And at least beyond the escarpment, the area would be left free for a future Italy/Libya delimitation.

The line agreed between Italy and Greece would be unaffected. And the Libyan coast would be left as a coast opposite to Greece, with this area to the north to be delimited by agreement between Libya and Greece. We should avoid the error, which Malta's equidistance proposal contains, of treating this long Libyan coast as relevant to a delimitation with Malta, as being opposite to Malta. Let me make clear, Mr. President, that we are not proposing a line joining point 32 on the Italian/Tunisian delimitation with point 16, the terminal point of the Greek-Italian delimitation. We are *not* proposing such a line as Professor Weil seemed to assume (**III**, pp. 384-385). We do not propose any line to the east of the escarpments. But in fact, even on Professor Weil's assumption, it can be seen that a line joining these two points would indeed run through the Rift Zone.

So it is Libya's contention that a boundary following the Rift Zone would faithfully reflect the facts and the relevant circumstances of this case, giving to each its proper weight, and leading to an equitable result.

There is, of course, a final question, namely, does such a boundary satisfy the test of proportionality? In fact it does, but I must leave the demonstration of that fact to my good friend and colleague, Professor Jaenicke.

Mr. President, that brings me to the end of my presentation. I am most grateful for the attention and the courtesy shown to me during this long statement by Members of the Court.

ARGUMENT OF PROFESSOR JAENICKE

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Professor JAENICKE:

PROPORTIONALITY

Mr. President, distinguished Judges, my presentation of today will deal with the concept of proportionality as a means of verifying the equitableness of a proposed continental shelf boundary. I shall demonstrate that the various methods of delimitation suggested by Libya for the determination of the continental shelf boundary between Malta and Libya will result in a delimitation which would satisfy the proportionality test, while Malta's proposed equidistance boundary does not.

My presentation will consist of two parts. The first part will deal with the role of the concept of proportionality in continental shelf delimitation; the second part will deal with the application of the proportionality test, as it has been developed by the jurisprudence of this Court, to the respective solutions proposed by the Parties.

I

The first part of my presentation will address the role and applicability of the concept of proportionality in the light of the jurisprudence of this Court. It is Libya's position that the verification of whether a reasonable degree of proportionality exists between the lengths of the coastlines of the Parties which face the area of delimitation (which I shall hereafter call the "relevant area" in the present context), and the extent of continental shelf area appertaining to them, is an essential, if not indispensable, requirement in the process of determining an equitable continental shelf boundary. Malta, on the other hand, while admitting the usefulness of some form of proportionality for eliminating the distorting effects of incidental geographical features by small-scale adjustments to the equidistance line, has otherwise constantly taken the position that a proportionality test based on respective lengths of coastlines is not applicable between opposite coasts (**III**, MR, para. 212), and, consequently, not applicable in the geographical situation of the present case (*ibid.*, para. 201). In view of the divergent positions of the Parties in this respect, it is necessary to examine more closely the scope of the concept of proportionality and of the applicability of the proportionality test of the kind employed by this Court in previous cases.

However, before proceeding further it is necessary to clarify that the jurisprudence has referred to and utilized the concept of proportionality in different ways, depending upon the particular context in which it has arisen in cases concerning maritime zone delimitation. The attack by Malta on Libya's position somehow confuses the different ways in which the concept of proportionality has been employed, by mixing up arguments from the different ways in which proportionality has been used. In fact, we have to distinguish three ways in which the concept of proportionality has been applied. These are the following:

First, proportionality as an indication of whether a certain individual geographical feature used as a basepoint in constructing the equidistance or other geo-

metrical boundary would have a disproportionate or distorting effect on the location or direction of the boundary (*North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, para. 57; France-United Kingdom continental shelf arbitration, Decision, paras. 100-101, 199-202).

Second, proportionality used as a corrective factor where the inequalities in the lengths of the two States' respective coastlines abutting on the area of delimitation call for a proportionate shifting of the boundary line constructed on the basis of equidistance or some other geometrical method. That is the way used by the Chamber in the *Gulf of Maine* case Judgment, paragraphs 157, 184-185, 218-222).

The *third* way is proportionality based on a comparison of coastal lengths and maritime areas attributed to them as a final test for verifying the equitableness of the solution reached in the delimitation process (*North Sea Continental Shelf* case, Judgment, paras. 98 and 101 and *Tunisia/Libya Continental Shelf* case, Judgment, paras. 103, 130-131).

The concept of proportionality in maritime-zone delimitation is not a mere incidental or secondary criterion or factor. It has not such a "low normative status" as the distinguished counsel for Malta would give it (**III**, p. 465). The Court has rather characterized it in the *Tunisia/Libya Continental Shelf* case, (*I.C.J. Reports 1982*, p. 75, para. 103) as a requirement of the "fundamental principle of ensuring an equitable delimitation between the States concerned" and as an "aspect of equity" (*ibid.*, p. 91, para. 131).

Mr. President, distinguished Judges, this is so because the concept of proportionality in the application of the law is intertwined with the principle of equality before the law, both emanating from the dictates of equity. Equity requires the application of proportionate treatment in those cases where the same legal rule or criterion has to be applied to facts of the same order, but of unequal dimension, thus ensuring real equality before the law. Proportionate treatment is particularly required in maritime-zone delimitation where one has to start from complex coastal configurations and, in particular — as in the present case — from coasts of different length extending into the area of delimitation. The application of equitable principles requires taking cognizance of a difference in the lengths of the coasts which abut the area of delimitation. This *does not aim* at a repartition of the area of delimitation by equitable shares; it *does* however call for methods of delimitation which measure the relationship of each of these coasts to the area of delimitation by one and the same yardstick — by the length of their coastal fronts which form the basis of the natural prolongation of the abutting territories into the area of delimitation. In fact, if one does not give coasts of unequal length proportionate treatment, then one necessarily treats unequal coasts as if they were equal. If one treats a State with an extensive coast as if it had a much smaller coast, that is to flout the principle of equality of States and not to support it. It is therefore not surprising that the concept of proportionality has found so much recognition on various levels of the process of maritime-zone delimitation.

The concept of proportionality in the law of continental shelf delimitation is certainly — as the Court of Arbitration in the France-United Kingdom continental shelf case remarked, Decision, paragraph 99:

> "a broader one, not linked to any specific geographical feature. It is rather a factor to be taken into account in appreciating the effects of geographical features on the equitable or inequitable character of a delimitation, and in particular of a delimitation by application of the equidistance method."

Later in its judgment the Court of Arbitration continued that

> "the fact of proportionality may appear in the form of the ratio between the areas of continental shelf to the lengths of the respective coastlines, as in the *North Sea Continental Shelf* cases. But it may also appear and more usually does, as a factor determining the reasonable or unreasonable — the equitable or inequitable — effects of particular geographical features or configurations upon the course of an equidistance line boundary."

It is worth noting that the Court of Arbitration viewed proportionality not only as a mere "hindsight" test to verify the equitableness of the result but as a factor which requires and somehow already implies a method to remedy the otherwise inequitable result.

In the present case, we are confronted with a coastal configuration where there is an extraordinary difference in the lengths of the coasts of the Parties which extend into the area of delimitation. In the *North Sea Continental Shelf* cases as well as in the *Tunisia/Libya Continental Shelf* case, in both cases the Court applied the concept of proportionality to a comparison of the length of relevant coasts to the continental shelf areas appertaining to them. The exact wording in the relevant paragraph of the Judgment in the *North Sea Continental Shelf* cases was as follows:

> "A final factor to be taken account of is the element of a reasonable degree of *proportionality which a delimitation* effected according to equitable principles *ought to bring about* between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coastlines." (*I.C.J. Reports 1969*, Judgment, p. 52, para. 98, emphasis added.)

It may be worth noting that the Court did not visualize proportionality merely as an *ex post facto* operation in order to verify whether a boundary line determined without any prior regard to proportionality in the end meets the proportionality test.

The Court certainly also bore in mind that the Parties would have to select a method of delimitation which would be capable of paying regard to the required proportionality. That this was in the mind of the Court when it stated the requirement of proportionality on the basis of the lengths of coasts follows clearly from the sentences following the passage which I have just cited. For, the Court continued in the same paragraph that "the choice and application of the appropriate technical methods would be a matter for the parties" and, in addition, the Court indicated one of the possible methods how a reasonable degree of proportionality could be reached in the particular coastal configuration of the North Sea (*ibid.*, para. 98). It is also worth noting that in the *Tunisia/Libya Continental Shelf* case, the Court, in the *dispositif* of its Judgment, qualified the element of proportionality as a "relevant circumstance" to be taken into account for achieving an equitable delimitation (*I.C.J. Reports 1982*, p. 92, para. 133).

The distinguished counsel for Malta questions the value of the precedent of the *North Sea Continental Shelf* cases. He asserts that in those cases it was not the difference in length of the coast of the Parties the effect of which had to be remedied, but it was rather the purpose of the proportionality concept to restore equality between the Parties, in particular, to ensure that the coast of the Federal Republic of Germany, being comparable in length to the neighbouring coast, should not — by the effect of its concavity on the construction of the equidistance line — be attributed a much smaller area of continental shelf.

I do not dispute this analysis of the geographical situation in the *North Sea Continental Shelf* cases, but I am unable to share the legal conclusion which the distinguished counsel for Malta has drawn therefrom. Neither in the formulation of the criterion of proportionality nor in the reasons given by the Court for this criterion has it ever appeared that it had been the Court's intention to guarantee the Federal Republic of Germany an equal seaward reach of its natural prolongation; the reason was rather to give broadly equal coasts a broadly equal area of continental shelf. In the present case, the geographical situation requires the opposite remedy, namely, to prevent the inequitable result that would occur if the much smaller coast were to get only a slightly smaller area of continental shelf as the much longer coast which extends into the same area of delimitation. The criterion of proportionality between coastal length and continental shelf area as a requirement to ensure an equitable delimitation works both ways: it ensures on the one hand, that the chosen method of delimitation attributes broadly equal areas to coasts of comparable length, and it likewise ensures on the other hand that the chosen method of delimitation does not attribute to coasts of different length areas of equal amount, but rather areas which broadly correspond to the difference in coastal length. A reasonable proportionality between coastal length and continental shelf area, not equal seaward reach of natural prolongation or equal distribution of area, is the object and function of the concept of proportionality.

The Court adjourned from 11.10 a.m. to 11.30 a.m.

Before I left off, I dealt with the general role of proportionality as an important and indispensable requirement of continental shelf delimitation. Now I shall deal with Malta's argument with which it contests the applicability of the concept of proportionality in the present case in both respects as a relevant factor for selecting the appropriate method of delimitation as well as a final test of the equitableness of the result. Malta does so on essentially two arguments (**III**, p. 458):

1. On the argument that between opposite coasts the median line is *per se* "compatible" with the concept of proportionality.
2. On the argument that between opposite coasts the concept of proportionality based on the difference of coastal length, has no application.

The argument that the median line is *per se* compatible with the concept of proportionality, need not detain us long. It is based on Malta's reliance on the alleged rule of equal reach of each State's continental shelf which is, in effect, postulating the inherent equitableness of the equidistance method between coasts with an opposite relationship, irrespective of any difference of coastal length. I have dealt with that proposition earlier in Libya's oral argument and shall not repeat myself in the present context.

It is certainly plausible to regard a median line as compatible with the concept of proportionality where it divides the area between coasts of comparable length by equal parts; but how a boundary line which divides the area between coasts of so much difference in length in a ratio of one to one-and-a-half could be qualified as compatible with the concept of proportionality as understood by the Court, is difficult to perceive and still unexplained by the distinguished counsel for Malta.

As to the argument that between opposite coasts the concept of proportionality has no application, it is necessary to deal in more detail with this argument

because Malta asserts that it is supported by the jurisprudence. However, a closer look at the jurisprudence shows that it does in no way support Malta's proposition. Neither the Judgment of the Court in the *North Sea Continental Shelf* cases nor its Judgment in the *Tunisia/Libya Continental Shelf* case contains an indication that the applicability of the proportionality test was in any way dependent on whether the coasts of the parties were in an adjacent or in an opposite relationship to each other. In fact, in the *Tunisia/Libya Continental Shelf* case, the Court specifically noted (*I.C.J. Reports 1982*, p. 88, para. 126) that the relationship of Libya and Tunisia was gradually transformed from that of adjacent States to that of opposite States, particularly as regards the area of delimitation lying further to seaward.

Mr. President, Malta relies heavily on the Decision of the Court of Arbitration in the continental shelf arbitration between France and the United Kingdom of 30 June 1977. There, the Court of Arbitration stated that the criterion of a reasonable degree of proportionality between the areas of continental shelf and the lengths of the coastlines was not necessarily a criterion to be applied in all cases, and that it was the particular geographical situation in the *North Sea Continental Shelf* cases which gave relevance to that criterion in that case (Judgment, para. 99). It is true that the Court of Arbitration did not apply the concept of proportionality in the same way as it had been applied by this Court in 1969; it used proportionality or rather the evidence of a disproportionate effect of individual coastal features (the Scilly Islands) on the division of area by the equidistance line as a corrective factor in the construction of the boundary line. The reason, however, why the Court of Arbitration felt it difficult in that case to apply the criterion of proportionality between the lengths of coastlines and areas of continental shelf to the area of delimitation in the so-called "Atlantic region" where France had argued for the application of proportionality on the basis of the length of coastlines (Decision, para. 22) had nothing to do with the opposite or adjacent relationship of the relevant coasts of the parties. In fact, precisely with respect to the so-called "Atlantic region", the Court — in commenting on the divergent views of the parties on the opposite or adjacent character of their Atlantic-facing coasts — noted that:

> "in the Atlantic region the situation geographically is one of two laterally related coasts, abutting on the same continental shelf which extends from them a great distance seawards into the Atlantic Ocean" (Decision, para. 241).

The real reason why the Court of Arbitration had difficulties in applying the proportionality test in the "Atlantic region" can only be found in the open-endedness of the area of delimitation in its lateral extent, both to the north and south of the delimitation line. It was this which did not allow the relevant coasts and the limits of the area of delimitation to be identified with the same degree of precision as it had been possible in the enclosed areas of delimitation in the North Sea and between Tunisia and Libya. Therefore, the Court of Arbitration applied the concept of proportionality under these geographical circumstances only in a limited way — as a disproportionality test — by examining whether and to what extent the islands lying off the Atlantic-facing coasts of each party (Ushant and Scilly Islands) exercised a disproportionate influence on the direction of the equidistance line into the Atlantic.

In the *Gulf of Maine* case, the Chamber of this Court similarly did not apply the proportionality concept based on the lengths of coastlines to the area of delimitation for verifying the equitableness of the boundary line prescribed by the Chamber.

However, the Chamber did apply this concept to a particular part of the area

only, and precisely to that segment of the boundary line where the coasts of the Parties abutting the Gulf of Maine proper changed into an opposite relationship. The Parties in that case had extensively debated whether and to what extent a proportionality text could be applied to the Gulf of Maine area as a whole. There is good reason to assume that the Chamber felt itself to be in the same situation as the Court of Arbitration because here again the area of delimitation outside the closing line of the Gulf had been left undefined by the Parties and neither the relevant coasts, nor the eventual seaward extent of the maritime zones of the Parties in the Atlantic, in particular the lateral limits of these zones, could be determined with the necessary precision.

The analysis of the jurisprudence leads, therefore, to the conclusion that, contrary to the opinion of Malta, the proportionality concept which the Court applied in the *North Sea Continental Shelf* and the *Tunisia/Libya Continental Shelf* cases, is, in principle, applicable irrespective of whether the delimitation concerns opposite or adjacent coasts. Its applicability depends, however, on the possibility of defining the relevant coasts and the relevant area into which the natural prolongation of these coasts extends, with such precision that the necessary calculations can be made as to the ratio between the lengths of coastlines and the areas of continental shelf which will be attributed to each of these coasts by the proposed delimitation method. Libya has shown that the relevant coasts and the relevant area for the application of the proportionality test in the present case can clearly be identified in the geographical situation between Libya and Malta.

Mr. President, Malta's main attack on the applicability of the proportionality test based on the lengths of the coasts of the Parties rests, however, on quite another ground. This is the unfounded premise that opposite States are presumed to have, as Malta has phrased it, an "equality of seaward reach of jurisdiction" from the basepoints of their coasts irrespective of length of their coastal fronts which face the area of delimitation (**III**, MR, paras. 211, 231; **III**, pp. 440, 444 and 458). Basing itself on this premise, on equality of seaward reach, Malta argues that any shift of the boundary line to the north of the median line towards Malta by reason of the application of the proportionality concept would constitute an encroachment on Malta's natural prolongation and would make proportionality "an independent source of continental shelf rights" (**III**, MR, para. 208; **III**, pp. 462-463). If this premise and this line of argument were correct, the proportionality test based on the length of the coasts abutting on the area of delimitation would indeed become irrelevant not only between opposite, but also between adjacent coasts — a consequence which could not possibly be maintained in view of the jurisprudence of this Court. I already had occasion at an earlier stage of Libya's presentation to observe that Malta's premise as well as its line of argument are nothing more than a restatement of the contention that there exists an alleged priority in favour of equidistance as the only legal method of delimitation between opposite coasts. Although Malta phrases its reliance on the equidistance method not as a peremptory norm but as a legal presumption, Malta cannot explain why a marked difference in the lengths of the relevant coasts which face the relevant area must be totally disregarded under all geographical circumstances and could never be capable of rebutting the presumption of the median line. And finally, Malta does not explain why it is equitable for an island with a small coastal front necessarily to have a continental shelf area up to a median line vis-à-vis surrounding continental coasts which are much larger with the result that the small island receives an area of continental shelf which, proportionally, is many times larger than the surrounding continental coasts could ever obtain. The pro-

portionality test, which has been developed by the jurisprudence with good reason, shows conclusively that Malta's claim for a median line delimitation between coasts of such different lengths obviously leads to an inequitable result.

II

I now turn to the second part of my presentation which deals with the application of the concept of proportionality, as it has been used by this Court in previous cases, as a final test of the equitableness of the delimitation methods proposed by both Parties in the present case. For the purpose of comparing coasts and continental shelf areas appertaining to them, it is first necessary to identify the coasts and the sea area which are relevant for carrying out the proportionality calculation.

I shall begin with the *relevant coasts*: the relevant coasts are the geographical basis from which the natural prolongation or submarine extension of each of the Parties into the area of delimitation originates, or, expressed in other terms, which generates the extension of each State's continental shelf jurisdiction into the area of delimitation. As the Court has said in the *Tunisia/Libya Continental Shelf* case (*I.C.J. Reports 1982*, p. 61, para. 75):

> "for the purpose of shelf delimitation between the Parties, it is not the whole of the coast of each Party which can be taken into account; the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration".

Therefore, it is only those parts of the coasts of Libya and Malta whose natural prolongations or submarine extensions could possibly meet or overlap in the maritime area to be delimited between the Parties which can reasonably be taken into account as the maritime area to be delimited between the Parties. It has already become apparent at this stage that the coasts which are relevant for the proportionality calculation must be defined in view of the area wherein a delimitation is sought by the Parties, and that only those coasts which really face the area of delimitation become relevant in this respect. On the basis of these considerations, I shall first identify the relevant coasts of the Parties in the present case.

On the *Libyan* side, the coast which may reasonably be regarded as relevant is that part of the coast which runs from Ras Ajdir at the Tunisian/Libyan border eastward to Ras Zarruq. This is so because it is only that part of Libya's coast which faces the maritime area between the Parties. Beyond Ras Zarruq the Libyan coast faces areas which may be relevant for delimitation vis-à-vis other States, but not vis-à-vis Malta; I shall come back to this point later when I shall define the relevant area. According to the practice of this Court, the length of the relevant coasts of the Parties which enter into the proportionality calculation should be measured according to their general direction in order to reduce irregular coastlines to truer proportions, in order to compare like with like. The length of the Libyan coast between Ras Ajdir and Ras Zarruq, if measured in two straight lines from Ras Ajdir to Ras Tajoura and from Ras Tajoura to Ras Zarruq, amounts to about 350 kilometres (in exact figures: 174.1 plus 178.9 = 353 km). If it is measured in one straight line it would only be two kilometres less, but in any case above 350 kilometres.

Now we come to the *Maltese* coasts. There it is more difficult to identify those coasts which clearly face the maritime area which is to be delimited between the Parties. I would refer in this respect to the Libyan Memorial (I), para-

graphs 2.24 to 2.45 and 10.10 to 10.11, and to what my colleague Professor Bowett explained yesterday. I do not regard it as necessary to go further into the details of how the Maltese coast should be measured for the different purposes of Libya's argument. Professor Bowett pointed to the different ways how one could view the geographical situation and measure the lengths of the relevant coasts of the Maltese islands in comparison to those of Libya, the results ranging from 14.4 to 40.6 kilometres. Among them he mentioned the two southward-facing façades of the islands of Malta and Gozo with a combined length of 34.8 kilometres. For the purpose of the proportionality calculations we have to be more specific and to take a mode of measurement comparable to that applied to the coast of Libya in order to compare like with like — that is, to measure the coastal front which faces the area for delimitation. Applying this method, the two southward-facing coastal façades of Malta and Gozo represent, in my view most appropriately, the coastal front of Malta which clearly faces southward into the area of delimitation. The Court will see that the western end-point of Malta's southward-facing coast at Ras il-Qala lies approximately on the same meridian as the eastern end-point of Gozo's southward-facing coast at Ras il-Qala, so that their combined length could be considered as Malta's frontage on to the maritime area that has to be delimited between the Parties because this (pointing to the south on the map) is the direction in which the coastal fronts of Malta, or the coastal frontage of Malta taken as a whole, extend into the area of delimitation.

In the result, among the various methods of measurement a ratio of around one to ten seems to describe the ratio of coastal lengths for the purpose of the proportionality calculations most appropriately.

Any method of delimitation, whatever may be its construction, should attribute to each of the Parties areas of continental shelf which, within a reasonable degree, reflect that difference in length of their coastal fronts in order to satisfy the test of proportionality.

After having defined the relevant coasts of the Parties and the ratio of their lengths, it is then necessary to identify the relevant area which enters into the calculation for the proportionality test. While the identification of the relevant area depends *in concreto* on the particular geographical and other circumstances of the case, the jurisprudence of this Court has developed three criteria for the determination of the relevant area which are of general application. These are: first, that the relevant area is bounded by the relevant coasts of both Parties; second, that the area should include those maritime areas that may objectively be claimed by each of the Parties as the natural prolongation or extension of their respective territories emanating from the coasts which face the area of delimitation; and third, that account be taken of the effects, actual or prospective, of any other continental shelf delimitations between third States in the same region. On the basis of these criteria it is now possible to define with some precision the area which is relevant for the proportionality test.

The coastal fronts of both Parties which bound the relevant area between the Parties in the north and the south have already been defined and the eastern and western end-points of these coastal fronts will constitute the starting-points for the lateral limits of the relevant area both to the east and to the west.

For the purpose of establishing the western limit of the relevant area, account must first be taken of the Tunisian-Libyan continental shelf boundary as indicated by the Court in its Judgment of 1982. As Libya cannot claim any prolongation or extension from its coastal front to the west of this boundary, it is legally required to take this boundary line as the first segment of the lateral limit of the area of delimitation vis-à-vis Malta as far as the course of the boundary has

been indicated by the Court, that is up to the point of the arrow on the map which accompanied the Judgment of the Court (*I.C.J. Reports 1982*, p. 90). It seems appropriate to complete the western limit of the relevant area by drawing a straight line from that point to the western end-point of Malta's coastal front at Ras il-Wardija. This line shall, I must emphasize, in no way prejudge the delimitation in this area because that is a complex problem as several States are involved, and my colleague, Professor Bowett, has pointed to this problem today. But it seems appropriate to assume that the areas west of this line may not be considered as areas for delimitation between Malta and Libya.

The eastern limit of the relevant area is more difficult to identify because it depends on the determination of the areas than can reasonably be considered areas where the natural prolongation from the relevant coasts of both Parties which face the maritime area meet or overlap. It is obvious that a straight line between Ras Zarruq and Delimara Point — the easternmost point of the Island of Malta — cannot possibly constitute the eastern limit of the area which has to be delimited between the Parties. For this would have the effect of leaving out areas of sea-bed where the natural prolongations extending from the relevant coastal fronts of both Parties clearly meet or overlap. Under the criteria which I have just mentioned, the relevant area could be considered bounded to the east as follows:

1. In the northern part of this area, east and south-east of Malta, the Sicily-Malta Escarpment — where the shelf area of the Sicily-Malta Plateau slopes down very steeply into the depths of the Ionian Sea — forms a natural break in the shelf beyond which Malta's limited natural prolongation cannot possibly extend if equitable criteria are applied. Moreover, Malta's coastal front facing to the east is so small (5.4 km) that it would be difficult to maintain that its extension reaches as far as beyond the escarpments into an area into which the seaward projections of much larger coastal fronts of other States extend.

2. In the southern part, the maritime area east of a line which runs along the Medina Escarpment towards the eastern end-point of Libya's coastal front at Ras Zarruq, cannot be considered any more a natural prolongation or extension of Libya's coastal front between Ras Ajdir and Ras Zarruq because it is the Libyan coast *east* of Zarruq which extends into that area. As a result, this area to the east cannot form part of the relevant area under the criteria I mentioned before. Upon these considerations, the eastern lateral limit of the maritime area which has to be considered as relevant for the purpose of applying the proportionality test can be appropriately defined by a line consisting of the following three segments — for this purpose I would like to invite the Court to look again at the map: (1) a line drawn from the eastern end-point of Malta's coastal front at Delimara Point in a due easterly direction until it intersects with the Malta-Sicily Escarpment because only the area south of this line can be attributed, even under Malta's own radial projection theory, to Malta's coastal front which faces the area of delimitation; (2) a line from there — where this line intersects with the Sicily-Malta Escarpment — following as closely as possible that escarpment southward to a point where the escarpment, now named Medina Escarpment, reaches its most easterly point; and (3) a line drawn from there to the eastern end-point of Libya's relevant coastal front at Ras Zarruq.

The area so defined comprises approximately 108,700 square kilometres. This figure forms the basis for the calculation of what proportion of this area will be attributed to the one or the other Party by the various methods of delimitation proposed by the Parties. I should recall that this proportion should correspond in a reasonable degree to the proportion between the lengths of the coastal fronts of the Parties, that is to a ratio of about around one to ten.

We have now to examine the methods of delimitation proposed by the Parties in order to verify how far they meet the test of proportionality, or, more precisely, how far the ratio of the continental shelf areas attributed to each of the Parties by these proposals correspond, within a reasonable degree, to the difference in length of their respective coastal fronts.

It is readily apparent that the equidistance boundary proposed by Malta attributes an amount of continental shelf area to Malta which is far out of proportion to the ratio between the lengths of the coastal fronts of both Parties. Of the area of delimitation just defined, comprising approximately 108,700 square kilometres, the equidistance boundary would attribute to Malta about 44,000 square kilometres and to Libya 64,700 square kilometres. That represents a ratio of approximately one to one-and-a-half (in exact figures: 44,059 km^2, Libya 64,658 km^2, an exact ratio of 1 : 1.47). This is a striking result and one that qualifies Malta's boundary proposal as totally inequitable.

In contrast to Malta's proposal, the various methods of delimitation proposed by Libya will lead to boundaries which correspond with much more fidelity to the requirement of proportionality. Earlier in its written and oral presentations, Libya has demonstrated various solutions for determining the delimitation on the basis of equitable criteria. They are partly based on geology — as reflected in the axial ridge line within the Rift Zone — or based on geomorphology — as reflected in the lines based on bathymetry — or also on geographical criteria, based on the different weight accorded to the unequal coastal fronts of the Parties. All these various solutions suggested by Libya range within the contours of the shaded area shown on the map behind me on the easel, which is also Map No. 66 in Libya's map folder. They all satisfy within a reasonable degree the requirement of proportionality. If one would, just for example, put the so-called axial ridge line to the proportionality test, it would divide the relevant area between the Parties on a ratio of about 1 to 10.5, which is within a reasonable degree of concordance to the difference of the coastal lengths of the Parties which ranges around a ratio of 1 to 10. Today my colleague, Professor Bowett, has shown how a geographical method might be applied so as to arrive at a result which divides the relevant area on a ratio between 1 : 8 to 1 : 10.

It should be recalled in this context that the jurisprudence of this Court does not require an exact correspondence of the ratios between the coastal lengths and the areas attributed to them, but only a reasonable degree of such correspondence. In the *Tunisia/Libya Continental Shelf* case, the Court regarded a discrepancy of around 20 per cent between the ratio of the coastal lengths and the ratio of the areas attributed to them as being within the required degree of proportionality. As the proportionality test is a means for verifying the equitableness of a result and not a mathematical formula for dividing up continental shelf areas into proportionate shares, no exactly corresponding ratios are required; a reasonable degree of correspondence will be sufficient. The methods of delimitation proposed by Libya range within the required degree of proportionality and can, therefore, be considered equitable.

The question remains whether the limits of the area which I have identified for the purpose of the proportionality test and the calculations made in the implementation of this test, are affected by Italy's claim for continental shelf areas within the relevant area. Libya is of the opinion that these Italian claims, whether or not well founded, do not change the limits of the area which is to be considered relevant for delimitation between Malta and Libya and consequently also relevant for the proportionality test. I would like to recall that the Court in the *Tunisia/Libya Continental Shelf* case was faced with the same problem when it had to define the area of delimitation for purposes of applying the proportio-

nality test in view of the well-known claims of Malta to parts of that area as defined by the Court in that case. The Court considered the circumstance of the existence of such claims as having no influence on its definition of the relevant area; the Court stated in paragraph 130 of the Judgment:

> "How far the delimitation line will extend north-eastwards will, of course, depend on the delimitations ultimately agreed with third States on the other side of the Pelagian Sea. The Court has not been called upon to examine that question. Nevertheless, it is open to the Court to make use, within the area relevant to the delimitation, of the criterion of proportionality . . . It is legitimate to work on the hypothesis of the whole of that area being divided by the delimitation line between Tunisia and Libya; because although the rights which other States may claim in the north-eastern portion of that area must not be prejudged by the decision in the present case, the Court is not dealing here with absolute areas, but with proportions. Indeed if it were not possible to base calculations of proportionality upon hypotheses of this kind, it is difficult to see how any two States could agree on a bilateral delimitation as being equitable until all the other delimitations in the area had been effected."

This is clear language to the effect that third States' claims to certain parts of the relevant area between Libya and Malta do not and should not affect the calculations under the proportionality test. When the Court decides on the criteria to be applied in determining the continental shelf delimitation between Libya and Malta, the Court will decide which of both Parties has the better right to any part of the area of delimitation between the Parties without, however, prejudging any rights third States might have to areas which the Court has determined to appertain to the one or other Party. It is obvious that as long as potential rights or claims of third States to certain parts of the relevant area have not been established with legal effect against one or both of the Parties, this Court is not prevented from deciding which of the Parties in the present case has a better right to those parts of that area. And in order to verify the equitableness of this decision, the Court will appropriately subject the whole of the relevant area to the proportionality test.

Mr. President, in its written pleadings Malta has neither commented on the delineation of the relevant area as identified by Libya nor disputed Libya's proportionality calculations. Malta has, of course, disputed the applicability of the proportionality test and has for that reason not put forward, on its side, proportionality calculations. Malta had, however, in its written pleadings put forward the "trapezium" in order to convey the impression that the division of the continental shelf between Malta and Libya by the median or equidistance line should be regarded as equitable because of the larger area attributed to Libya thereby. Malta did not expressly qualify the area covered by the trapezium as the relevant area of delimitation in its written pleadings but has done so now in its oral argument. Libya has aleady, earlier in its written pleadings and oral argument, demonstrated that this proposition is as legally unfounded as it is artificial, in particular because the trapezium comprises — as has been said many times already in Libya's oral argument — areas to the east where the natural prolongations of both Parties cannot possibly meet or overlap and where Malta's claim trespasses into areas relevant for delimitation between Libya and third States. Even if one would, for the sake of argument, accept Malta's area of delimitation as the relevant area for the proportionality test, the median or equidistance line boundary requested by Malta would not pass this test of equity. This emerges clearly from the following calculations: the Libyan coast which would

then be relevant on the basis of Malta's area of delimitation would run from Ras Ajdir in the west to Ras-at-Tin in the east, as you can see on the map reproducing Malta's trapezium, which is Map No. 5 in Libya's map folder. This coast would, when measured in straight lines, amount to approximately 1,390 kilometres or, if measured in a single straight line, to 1,100 kilometres. Thus, the ratio between the length of Malta's coastal front with 35 kilometres, if measured by straight lines along the southward-facing façades of the Islands of Malta and Gozo, and Libya's coastal front with 1,390 kilometres or 1,100 kilometres if measured either in several straight lines or in a single straight line would then range between 1:31 and 1:39. The area appertaining to Malta by the equidistance line within Malta's area of delimitation would amount to 53,800 square kilometres — in exact figures 53,833 square kilometres — while Libya's part of the area would amount to 237,000 square kilometres — in exact figures 236,995 square kilometres; that would amount to a ratio of about 1:4.4, compared with a coastal ratio of 1:31 or 1:39. This shows that even under the hypothesis of Malta's area of delimitation, Malta's claim for an equidistance boundary falls far outside the reasonable limits of proportionality.

But let us leave behind the artificial construct of the trapezium and return to the realities of geography and the true geographical relationship between the coasts of the Parties. The area which Libya considers relevant for delimitation and consequently for the proportionality test, and which I have defined more precisely before, corresponds to the opposite relationship of the relevant coasts of the Parties; it comprises those maritime areas into which — from a realistic perspective — the natural prolongations of the relevant coasts of the Parties extend.

If the positions advanced by each Party relating to the delimitation of that area are put to the test under the concept of proportionality, the following conclusions emerge:

1. The claim for an equidistance boundary put forward by Malta is indefensible under the concept of proportionality as developed by the jurisprudence of this Court and, therefore, is inequitable.

2. The methods of delimitation suggested by Libya which take account of the particular geographical and geophysical facts of this case satisfy the test of proportionality as understood by this Court and are therefore in accordance with the dictates of equity.

Mr. President, distinguished Judges, this concludes my statement of today and I thank you for the patience and attention with which you have listened to my argument. I would respectfully request you, Mr. President, to give the floor now to the Agent for Libya.

STATEMENT BY MR. EL-MURTADI SULEIMAN

AGENT FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Mr. EL-MURTADI SULEIMAN: With the examination of the question of proportionality by Professor Jaenicke, we have come to the end of the first round of the oral presentation on behalf of Libya. As Agent for Libya, I should like to say how grateful we are for the courteous and attentive hearing which we have been given by you and the distinguished Members of this Court.

In their statements, counsel have tried to provide clear summary statements of Libya's argument. Therefore, I do not think that it would be appropriate or useful at this stage to add a summary of Libya's case. Since there will be a second round of oral argument, Libya's final submission will be read at the conclusion of our last statement in that round in accordance with Article 60 of the Rules of Court.

Mr. President, Members of the Court, with your permission I again thank the Court as well as our friendly and learned opponents for the courtesy and patience shown to us, and I extend to you, Mr. President, the Members of the Court, the Agent for Malta and to all counsel and advisers on both sides, best wishes for the holiday period.

Mr. President, perhaps you will permit me to give this final message in French as well.

Monsieur le Président, Messieurs les membres de la Cour, je voudrais remercier la Cour ainsi que nos distingués contradicteurs de leur courtoisie et de l'attention qu'ils ont bien voulu nous porter. Je voudrais également, Monsieur le Président, Messieurs les membres de la Cour, vous transmettre ainsi qu'à l'agent de Malte et aux conseils des deux délégations, mes meilleurs vœux pour l'année qui va s'ouvrir.

The PRESIDENT: The session is closed, unless the Agent for Malta would like to speak?

Mr. MIZZI: Mr. President, there is just one small question I would like to put to the Agent for Libya. We have been shown a number of maps this morning, and also yesterday, of which we do not have a copy. Is it the intention of the Agent for Libya to give us a copy of the maps that have been used for the purpose of their argument?

The PRESIDENT: Mr. El-Murtadi Suleiman?

Mr. EL-MURTADI SULEIMAN: All the maps are in the folder, there is no problem about this.

The PRESIDENT: The Court observes that one or two new maps were used this morning, for instance, and we would like to have copies of them. The Registrar has been asked to contact you to let us have copies of those maps which have been used.

Mr. EL-MURTADI SULEIMAN: Yes, we shall be ready to do so, Mr. President.

The PRESIDENT: The Registrar will undertake to let Malta have copies of whatever you give us.

Mr. MIZZI: Thank you, Mr. President.

Mr. EL-MURTADI SULEIMAN: Thank you, Mr. President.

The PRESIDENT: The session is adjourned until February.

The Court rose at 12.25 p.m.

TWENTY-THIRD PUBLIC SITTING (4 II 85, 10 a.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

RESUMPTION OF THE ORAL PROCEEDINGS

The PRESIDENT: The Court sits today for the purpose of resuming the oral proceedings in the case concerning the *Continental Shelf* between the Libyan Arab Jamahiriya and Malta. I regret to say that Judge Morozov is indisposed and unable to be present with us today.

In November and December of last year the Parties each presented oral argument in support of their case, and each will in due course reply to the arguments of the other.

The first two days of the present session will however be devoted to the examination and cross-examination of the experts called by the respective Parties, a procedure, governed by Article 57 of the Rules of Court, which has been invoked by the Libyan Arab Jamahiriya with a view to clarification of the scientific evidence produced in its pleadings.

This morning's sitting will therefore be devoted to the examination by counsel for Libya of the experts called by that Party, and the Court will sit again this afternoon to enable counsel for Malta to cross-examine those experts.

Malta having also expressed the intention to call experts for the purpose of testifying on the same points, a similar pattern will be followed tomorrow, with the examination of Malta's experts beginning at 10 o'clock, and their cross-examination at 4 p.m.

The points to which the evidence of the Libyan experts will be directed were enumerated in a letter from the Agent of the Libyan Arab Jamahiriya to the Registrar dated 13 December 1984, and in accordance with a letter from the Agent of Malta to the Registrar dated 14 January 1985 the evidence of the Maltese experts will be addressed to those same points. I shall not read out the list of points, but I request counsel to keep them in mind as defining the scope of this part of the proceedings.

It has been agreed that the hearing of argument will subsequently be resumed on the morning of Friday, 8 February, at 10 o'clock, when Malta will begin its oral reply.

Before any expert makes a statement before the Court, he has to make a solemn declaration the terms of which are prescribed in Article 64 of the Rules of Court. I shall therefore require each expert to make this declaration after he has been presented by the Agent of the Party calling him, and would request all present to rise when such declarations are made.

I now call upon the Agent of Libya to begin.

Mr. EL-MURTADI SULEIMAN: As you have just mentioned Mr. President, this session is devoted specially to the testimony of the scientific experts of both Parties.

The Court will recall Libya had initially planned on examining the scientific experts within the framework of Professor Bowett's presentation of 13 December last. It was decided, however, to defer the presentation of the scientific evi-

dence to the present time, prior to beginning the second round of the oral hearings.

Accordingly, I would respectfully request that you now call upon Professor Bowett to conduct the examination of Libya's scientific experts.

EVIDENCE OF EXPERTS CALLED BY THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Professor BOWETT: Mr. President, Members of the Court, it falls to me to introduce the scientific evidence offered by Libya in this case by expert testimony. As I indicated when I last addressed the Court, in Libya's view you are entitled to hear about scientific facts from scientists. I should now like to call three of the scientific experts on whom Libya has relied. I shall put to them a number of questions designed to clarify the facts of significance in the present case regarding geomorphology and geology — that is, the configuration of the sea-bed and the characteristics of the subsoil. I shall also ask them to give the Court some assistance in defining or explaining what might be meant by the term "discontinuity" in relation to a continental shelf area. The Court will recall that one of the grounds of criticism, addressed by counsel for Malta to Libya's written pleadings, was that we had offered no scientific evidence on this point.

Mr. President, introducing these distinguished scientists in the order in which they will speak, there is first Professor Dr. Jan van Hinte of the the Free University of Amsterdam. He is of Dutch nationality. In addition to his teaching and research responsibilities in the University of Amsterdam, he has lectured in many different countries. Professor van Hinte has also served as Senior Research Specialist on Mediterranean oil exploration problems for a major oil company. In addition to the Mediterranean, he has supervised or conducted research on West and North Africa; the Red Sea; the North Atlantic; the coasts of the United States and Canada; south-west France; Indonesia; Jamaica; Guatemala; the North Sea; and the Norwegian Sea and southern Spain. Professor van Hinte has been chief scientist for the Deep Sea Drilling Project and is at present co-ordinator for an Indonesian-Dutch scientific expedition. He has published over 40 scientific papers and is a member, or serves on the boards, of a number of technical organizations and institutes.

His colleague, Dr. Derk Jongsma, was born in Holland, and is also an Australian national, having studied there as well as at Cambridge University. At present he is Associate Professor at the Free University in Amsterdam. His fields of expertise include planetary geology, earth physics, plate tectonics, marine geology, deep sea sedimentation and seismic stratigraphy. His research activities have taken him into all the oceans of the world, with particular emphasis on the western Pacific and the Mediterranean. He has, in fact, just returned from a research survey of the Java Trench and will be conducting another survey in the Timor Trench next month.

The last scientist to speak will be Professor Finetti. Professor Finetti is Professor of Applied Geophysics at the University of Trieste, Faculty of Sciences. He is also Professor of Seismic Exploration at the School of Geophysics for Doctoral Studies at the University of Trieste for international postgraduate students. Professor Finetti has had several national and international scientific responsibilities in earth sciences. He has 29 years of worldwide experience in geophysical exploration for scientific and practical purposes, especially hydrocarbon exploration. He has served as geophysicist — with contracting groups or as consultant — for several major international American and European oil companies. He is the author of more than 50 papers, mostly on the Mediterranean.

I should add, that at our request, all three scientists have read the written pleadings of both Parties and the oral arguments in the first phase.

With your permission, Mr. President, I shall now call upon Professor van Hinte.

May I invite you to take the oath?

Professor VAN HINTE: I solemnly declare upon my honour and conscience, that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief.

Question: Professor van Hinte, from the brief resumé I have just given regarding the scientific background and activities of you and Dr. Jongsma, it is evident that, between the two of you, you have conducted investigations in a large number of different parts of the world.

However, I understand that the Mediterranean — and in particular that part of the Mediterranean of relevance to the present case — has been an area of particular interest and study for both you and Dr. Jongsma. Is that so?

Answer: Yes, Professor Bowett, we have had a particular interest in the Mediterranean.

Prior to working together, Dr. Jongsma undertook geophysical investigations of the Mediterranean as a Ph.D. student at Cambridge University, and one of my main assignments as a Senior Research Specialist for a major oil company concerned the Pelagian Sea area of the Central Mediterranean where the company was drilling offshore wells at the time. Dr. Jongsma joined the University department about five years ago, and we have been involved in research projects around and in the Mediterranean ever since then.

The reason for our particular interest in the Mediterranean — and we are by no means alone in this — is the fact that important geological events are currently occurring there. It is an area where plate separation, shoving and shearing all are going on at the same time. What we see today in the Mediterranean tells us a great deal about the formative processes of the earth's mountain chains. Of course, these processes also explain what the sea-bed looks like today in the Central Mediterranean.

Question: Professor van Hinte, our primary focus must be on the relevant geographical and geomorphological features as they exist today. This is what the Court has indicated is of primary interest in shelf disputes. Perhaps you could give the Court a brief description of the present-day sea-bed in the area underlying the Pelagian Sea — this area here. However, it would be helpful, as well, to add as much about the evolutionary history of the area — that is its geology — as is needed to explain what is there today, and its significance. If at any time you refer to features within this area outlined in black, would you make a point of stressing that? The reason I request you do that is that this is that area which the Court has already dealt with in the *Tunisia/Libya* case.

Answer: The map on the easel shows the physiography of the Pelagian Sea, or in your terms, the sea-bed area underlying the Pelagian Sea — this area here. It also shows the sea-bed which underlies the Ionian Sea all the way out to the Ionian Abyssal Plain and on to Greece. To the north a piece of the Italian boot can be seen and to the south is the long, concave coastline of Libya running along the Sirt Basin or the Gulf of Sirt, and at about 20° E longitude it turns sharply north to the convex area from Benghazi to the east, from where it runs eastward to Egypt. This is the sea-floor between Libya and Greece.

This is the large picture. What can be so plainly seen on the map is how the landscape under the Pelagian Sea between Sicily, Malta and Tunisia and Libya

differs from the sea-bed lying east of the Pelagian Sea boundary formed by these two escarpments.

But now back to the area which you have asked me to describe, Professor Bowett, the area shown on the second map just put on the easel. This is a larger-scale map of the shelf areas under the Pelagian Sea showing and identifying the features of major prominence. The most striking sea-floor features are perhaps along this line — deep linear steep-sided troughs and shallower banks which become channels to the south-east of Malta and continue out here in the Heron Valley. This is what has been called in the proceedings the "Rift Zone". At the Heron Valley — here — the Zone breaks through and divides the escarpments and its extension can be traced eastward along the Medina (Malta) Ridge — often called the Medina Mounts.

Question: Professor van Hinte, let me just stop you there for a moment. What of the shelf areas under the Pelagian Sea further to the west? Would you say that the Rift Zone breaks the continuity of those areas? And when you answer that question, I want you to deal with it as a scientist, applying your scientific knowledge and your common sense to the word "continuity". I do not want you to worry about what the lawyers may mean when they talk about "continuity" or even "discontinuity".

Answer: Well, also as scientists, we do use the words "continuity" and "discontinuity", and I would indeed say that the Zone literally breaks the original continuity of the area between Sicily/Malta and Tunisia/Libya. It is my view that the Rift Zone is what we call a plate boundary. Plate boundaries are the fundamental boundaries of outer earth and in terms of shelf areas, therefore, the Rift Zone is a most important break or discontinuity. In fact, I do not see how one can talk about one shelf area when you have a feature that is no significant, both geologically and geomorphologically as this Rift Zone, cutting right through the area. There are, in my view, two shelves, one the shelf of the Ragusa-Malta Plateau and Adventure Bank, which is part of Sicily and Malta, and two the continental shelf of the Pelagian Block, which is part of Africa. You cannot have one so-called continuous shelf across such a feature that has all the characterisitics of a plate boundary. Would you like me to go into more detail on the nature of the boundary?

Question: Well, in a moment, but could you first of all clarify the size and the extent of this Rift Zone?

Answer: The technical note of Professor Vanney, the Maltese expert, annexed to Malta's Counter-Memorial, called the Zone the "Central Trough and Ridge System". I have personally tended to use terms such as "Active Fault Zone" or "Wrench Zone". But any of these terms will do for the purpose; they are all descriptive of what we observe of today's sea-bed in this area and of its dynamics. The map which has just been put on the easel compares the areas described by Libya and by Malta as encompassing this feature. This map is No. 61 in the Judges' folder. It shows the "Rift Zone" as sketched in on Libya's maps with Professor Vanney's "Central Trough and Ridge System" superimposed. Of course, as you can see, the areas substantially coincide, simply because the Zone is there. Not only geologically, but also geomorphologically, the Zone is a very important feature — or, if you will, — a line-up of different features.

The Rift Zone runs roughly here from the Egadi Valley all the way out to the Heron Valley and beyond, a distance of approximately 300 nautical miles (or 555 km), more than the distance from Amsterdam to Paris. If its observable extension out along the Medina Mounts is included, the total length of this zone exceeds 450 nautical miles — more than 810 km. It is wide in some places and

narrower in others, the width varying between some 60 to 25 nautical miles. I understand that you will ask Dr. Jongsma to give the Court more detail as to the particular features in the Rift Zone. But I should like to emphasize that all data confirm our observation that the Rift Zone does cut this area into two distinct platforms or shelves that move as separate entities. This is why I regard the Rift Zone as a real discontinuity.

The northern shelf area (the Ragusa-Malta and the Adventure Plateau) consists of promontories extending southward from Sicily. The Maltese islands are elevations on the Ragusa-Malta Plateau. The relief on this northern shelf area is gentle except in its southern portion where the Maltese islands, and to a lesser extent the Hurd Bank (lying to the east of the islands), rise from the seabed. The area is interesting for an oil geologist. The Vega field, on the Italian side of the Ragusa Basin, is particularly interesting. A report two months ago by the American Association of Petroleum Geologists (AAPG, *Explorer* for December 1984, p. 18) described it as "the largest single oil field in the Mediterranean Sea". The report closes with the sentence "Potential for discovery of other fields similar to Vega in the Ragusa Basin appears to be excellent". And in fact a recent activity report mentions that a Maltese offshore well, Alexia 2, located here, is being tested, which normally means that it is a discovery.

The southern shelf — lying to the south of the Rift Zone — is known as the Pelagian Block. It is broader than the northern shelf, and slopes gently eastward towards the Medina Escarpment. This shelf is continuous with the African continent and is shared by Tunisia and Libya. The only place where appreciable seabed relief is found in this southern area is where it descends into the Rift Zone and along the eastern boundary of the Pelagian Block, the Medina Escarpment.

Herewith we come to the other major group of features which should be noted on the map: two distinct escarpments, one forming the eastern boundary of the Ragusa-Malta Plateau; and the other forming the eastern boundary of the Pelagian Block. The escarpment on the north, the Sicily-Malta Escarpment, is the more pronounced of the two. It forms the eastern boundary of the northern shelf and is one of the steepest and most distinctive geomorphological features in the entire Mediterranean. The Rift Zone cuts through here, south of that Escarpment, separating it from the southern Escarpment, the Medina Escarpment, which is a major feature as well, forming the eastern boundary of the Pelagian Block.

Question: You keep referring to two separate shelves. Now you have read the Libyan written pleadings. Is this consistent with those pleadings?

Answer: Sure. There are references to there being two shelves — and, indeed, a plate boundary — throughout those pleadings. Perhaps I should say, though, that our ideas have evolved since Libya asked first for our assistance three years ago. Our opinion on this point is more definite now, after having studied more data.

Question: Professor van Hinte, would you summarize for the Court the significance of the Rift Zone as you see it?

Answer: I have just mentioned that the two shelves are separated by a central trough and channel system which, as you see on the map, obviously has geomorphological significance. Now in order to answer your question, the Zone must be considered geologically and geophysically as well; one has to know more about the subsurface to understand why there are deep troughs here and less deep channels here and that it is the Rift Zone in its entirety that is the significant, dynamic feature of today. The geological and geophysical observations show that the remarkable geomorphology of the Zone came into existence

and is being maintained because it marks a crack where two pieces of the crust of the earth move relative to each other. In places the two pieces have been pulled apart, while they elsewhere shear and in some places even may get squeezed. Yet, it is one and the same large-scale lateral movement. Such what we call strike-slip or wrench movements can have these effects because the crack is not a straight line. I can perhaps illustrate this with the board as a general model. If this is an unbroken area it cracks in an irregular shape and when the two pieces move relative to each other we get compression here. They hit and they get compression. You get extension and an opening here, while elsewhere with the same movement two pieces slide simply along each other and you get very little violence. So this is an irregular crack and when the two pieces move you get compression here, they hit each other, whereas here with the same movement there is an extension and with the same movement in another area they just simply slide past each other. All with one geological activity, there are very different effects in different areas.

Out here along the Medina (Malta) Ridge, often called the Medina Mounts, the topography is the result of squeezing (squeezing or compression) — so instead of troughs or channels there are mounts rising from the sea floor. Along here, where the Medina and Malta Channels are to be found, the physiography is the result of a simple sliding past or shearing effect of the plate movement. Here to the west, the deep troughs result from extensional pull-apart or rifting effects. The Maltese islands in this system were created as part of an uplifted block associated with the general movements, are similarly so was, for instance, the island of Lampedusa on the other side of the system.

So the significance of the Rift Zone is that it constitutes the separation of two plates or, more precisely, the fracture system where a microplate (referred to as the Messina Plate in the literature) broke off and now moves with respect to the African Plate on its own. In other words, a plate boundary cuts through the area between Sicily-Malta and North Africa. We see it in the geomorphology as the Rift Zone and it continues on out here into the east along the Medina Mounts and beyond.

Fractures in the subsurface, marking this separation of plates, slice down to the depth to where the molten rock (called "magma") lies under the crust of the earth. As a result, the magma has risen and extruded out to the sea-bed in the form of volcanoes. These volcanoes can be found all along the Rift Zone — here, here, and numerous volcanoes also up in the north. The evidence indicates that the fractures along which this separation is occurring are to a depth of more than 20 kilometres, the total thickness of the crust in that area.

The geological processes that I have just described explain the particular form of the surface features in various parts of the Rift Zone. The geomorphology underscores the importance of the rupture dividing two platforms both at the sea-floor and in the subsurface below.

Why this is happening along the Rift Zone will get us into the rather complex subject of plate tectonics. You will recall that Malta's expert, Professor Mascle, referred in his study in the Maltese Counter-Memorial to the rotation of what he called the "Ibleo-Maltese Block" comprising the Ragusa area of Sicily and the Ragusa-Malta Plateau. Our own studies confirm this. It is the rather complex interaction of the direction of the plate boundary with the rotation that has given this zone its particular features: deep troughs in some places trending north-west/south-east; shallower channels trending east/west in other places; and out here, seamounts. If one platform is rotating along an irregular boundary, you get very uneven distribution of pressure as has been demonstrated. It causes rifting in one place, causing deep troughs; compression in others,

causing seamounts; and lesser features where the two platforms are sliding past each other.

Perhaps I may be permitted to dwell for only a minute or two on why this is happening to show you its significance. Our planet, fortunately, is hot and wet. Otherwise, the presence of life would not be possible. But of the total distance to the earth's centre of 6,400 kilometres only the outer 5 to 40 kilometres has cooled down significantly to form a brittle crust. In scale, this crust is thinner than an egg shell.

So it is no wonder that the crust has broken and continues to break as a result of the forces created by the convection of the hot inner material beneath the thin crust. The crustal fragments are referred to by the scientists as plates. Today's earth has 11 major plates. Like ice floes on a river, the major plates separate, shove and collide, or shear past each other, creating or crushing small plates, so-called microplates, at their edges, or sealing boundaries, or incorporating small plates at one place while cracking new ones at another. The resulting anomalies and boundary conditions are to us of great interest.

Such a boundary now is occurring along the entire length of the Rift Zone. The hot material from below the crust of the earth has appeared all along the length of the Rift Zone — and this is a young event; something that is going on today. Professor Bowett, I believe this explains the essential significance of the Rift Zone.

Professor BOWETT: Thank you, Professor van Hinte. I think you have given the Court enough of the geological picture to point up the significance of this sea-bed feature, the Rift Zone. Now I should like to call upon Dr. Jongsma.

Could I invite you to make the solemn declaration?

Dr. JONGSMA: I solemnly declare upon my honour and conscience, that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief.

Professor BOWETT: Dr. Jongsma, I hope you will help us over this question of definition. Counsel for Malta have charged us with failing to state what is meant to a geologist or a geomorphologist by this concept of a fundamental discontinuity (Lauterpacht, III, p. 337). Now just concentrate on the word "discontinuity", don't bother with that adjective "fundamental", and tell us what would constitute a marked or significant discontinuity in a shelf area, from a scientist's point of view.

Dr. JONGSMA: "Discontinuity" as used in geological science has at least three meanings — a seismic meaning, a stratigraphic one and a structural one. It is the latter structural discontinuity, known as a fault, that is relevant here. For a plate boundary is a structural discontinuity and is characterized by a large number of faults due to the movement along it. It is therefore a discontinuity on a large scale. There are other features also formed by faulting such as the escarpments which might also be regarded as a significant discontinuity even though they may not constitute an active plate boundary. But certainly active plate boundaries must be so regarded.

Question: But how would you identify a plate boundary?

Answer: There are various kinds of evidence such as seismicity, large amounts of faulting, radical variation in elevations along the boundary consisting of troughs and upthrown blocks, high heat flow, crustal thickness variations and indications of relative rotations. In short, deformation of the edges of the plates. A key piece of evidence is the presence of active or young volcanics which in the evolution of a divergent plate boundary eventually result in

oceanic crust. Similarly in a transform plate boundary the fractures in the earth's crust go deep, penetrating right through the basement, and they allow hot, molten rock that we call "magma" to rise up through the fractures under pressure. Now if there is a consistent line of such fractures, which are deep as evidenced by the volcanic rocks, then you may well have a plate boundary.

Question: You say "may well". Do you mean not "necessarily so"?

Answer: In some cases you get evidence of volcanics but they are old and the rifting process has simply stopped. Take the Rhine Valley, for example. That began with deep rifting, and there is evidence of volcanics but then the process stopped, and what was an incipient plate boundary just never developed. Now you have the same thing here, in this area: there is evidence of volcanics in the Tripolitanian Furrow, here. But, it ceased millions of years ago and though the faults are there, it is not now a plate boundary.

In any event, one does not rely solely on volcanics and there are a number of techniques which are usted to study the sea-bed and subsoil. For the sea-bed itself, accurate bathymetry is now based on the technique of echo-sounding and precise positioning.

But to tell us about the subsoil, we have relied on five available techniques. And although these techniques vary in their power of resolution and penetration, they all record the presence and the active nature of the Rift Zone along its entire observable length — from here to here.

I shall mention these techniques very briefly. *First*, there is seismic reflection profiling using sound waves of which the echoes show the sedimentary layers and the structure in the subsurface. I shall shortly display several examples of this technique which, incidentally, is used extensively in the exploration for hydrocarbons. *Second*, there is seismic refraction which allows sound wave penetration down to the base of the earth's crust — some 30 kilometres below the surface of the sea-bed. The echoes show up variations in crustal thicknesses. *Third*, there is the use of magnetic measurements which permits the location of iron rich material such as volcanics in the subsoil. *Fourth*, gravity measurements show variations or anomalies in weight, that is the density of layers in the earth. By this means we can tell how the thickness of the earth's crust varies from point to point. Obviously, the crust will vary along a plate boundary, where there is stretching or overriding. *Fifth*, heat flow measurements show the variations in temperatures within the subsoil of the earth which are caused by deep-seated heat sources. Now the important thing to note is that the widely different forms of data derived from these quite different and independent techniques provide checks and controls between them. In the area of the Pelagian Sea these techniques invariably record the presence of a major discontinuity along the Rift Zone. And there can be no doubt as to its existence.

Question: Dr. Jongsma, you did not mention the presence of oceanic crust, as opposed to continental crust. Why is this not evidence of a plate boundary?

Answer: It can be. But the fact is that you often have a plate boundary even where there is no oceanic crust, for instance the San Andreas Fault in California.

You see, plate boundaries are basically of three kinds. Some plate boundaries are formed by rifting, which is really separation — or a "pull-apart" — of plates: this is often referred to as "divergent" or "extensional" plate boundary. Along this type of plate boundary, oceanic crust is added to both plates, resulting near the continents in an ocean-continent boundary. Such a boundary can be regarded as a discontinuity even though it lies within the plate. The distance between the actual plate boundary and the continent will increase with time.

Most of the sea-bed of the Atlantic is oceanic crust, and the plate boundary lies midway between the continents along the Mid-Atlantic Ridge. Some scientists would say that the area of the Ionian Abyssal Plain is oceanic crust, though the evidence is inconclusive.

But a quite different plate motion occurs when two plates converge and "subduction" occurs. Here, one plate literally decends beneath the other — like so. This is what happened, for instance, in the Timor Trench, and it also happened here, beneath Northern Sicily and Italy and further along beneath the Aegean Sea. If there is a continent on the descending plate then it may reach the subduction zone and collision will occur. In such a situation all the oceanic crust may have disappeared below the overriding plate.

Thirdly, plates can shear, or slide past each other. This type of plate boundary is a transform or strike/slip fault. These transform faults are just as significant a discontinuity as are the other two types because they cut down to below the crust. This is why the absence, or the presence, of oceanic crust is not a determining factor, and it is not key evidence of a plate boundary, as is demonstrated by the San Andreas Fault which is a transform plate boundary. In any case the Rift Zone has volcanics which in the first type of plate boundary, the extensional, are precursors to oceanic crust.

Question: But are these movements — extension, compression, and shearing — mutually exclusive?

Answer: No. The plate interaction is often complex. Particularly along a transform plate boundary, you can find all three processes occurring as is observed, for instance, along the San Andreas Fault, the Dean Sea Fault and the Alpine Fault in New Zealand. This is why plate boundaries vary, structurally and geomorphologically, along their course. Deep areas of pull-apart, or troughs, if you like, are found joined to narrow shear zones, which in turn are joined to areas of topographic highs in regions of compression where the crust is forced upwards — exactly as we find along the Rift Zone and eastwards out to the Medina Mountains. But the boundary is continuous.

Question: In this area of the Mediterranean, how many plates are there?

Answer: People tend to think of the two major plates, the African Plate and the European Plate. But that is too simple. To use Professor van Hinte's analogy, egg shells do not break quite so neatly. You find, in fact, that small blocks break away at the edges of the main plates, so you get micro-plates, and several plate boundaries. This has happened here. The older plate boundary, the northern rim of the African Plate runs through Sicily, but this large block has broken away, with a newer plate boundary along the Rift Zone, and this is rotating with respect to the main African Plate. The 1973 study by Dewey, Pitman, Ryan and Bonnin identified these various plates and micro-plates. This type of behaviour is characteristic of the African-Eurasian Plate collision.

Question: But what about continental shelves and continental margins? How do they fit into these plates and micro-plates?

Answer: I know that lawyers have rather special definitions of continental shelves and margins, and I don't want to get into that.

But it is evident that different continental shelves may lie on the same plate — for example, Greenland and Labrador have separate shelves on the same North American Plate. A continuous shelf may exist over a long period, but the formation of a plate boundary across it really breaks or disrupts the shelf. Of course you may find evidence of similar geological structures on the two opposite sides of the plate boundary, for the area was once the same shelf. But if

you look at the situation now, you cannot realistically describe it as a continuous shelf.

On the two sides of the Red Sea there are the same strata because they were once joined. But today they are clearly split and displaced by a very fundamental break; and this is why Mr. Lauterpacht's anology of the layer-cake is misleading.

Question: Let me ask you one further, definitional question. Apart from plate boundaries, can you envisage other forms of disruption or discontinuity in a shelf area?

Answer: Well, yes. The plate boundary is essentially a geological phenomenon. It will often be reflected in the bathymetry or geomorphology of the sea-bed — because of the rifting and movement — but the formation of a plate boundary is primarily a geological event.

Nevertheless, I can envisage that a very substantial geomorphological feature — such as the escarpments which we have here — may not be a plate boundary, but could nevertheless be described perfectly well as a major break in the continuity of the sea-bed or shelf or crust. Indeed, these troughs in the Rift Zone — the Pantelleria, the Linosa and the Malta Trough — are very considerable geomorphological features, quite apart from the geological significance as part of the Rift Zone.

Professor BOWETT: Dr. Jongsma, let me now leave these questions of definition and ask you to pick up where Professor van Hinte has left off and give us a more detailed description of these features.

Dr. JONGSMA: Before looking at the component parts, I should like to emphasize what Professor van Hinte has just said. The significant feature is the Rift Zone as a whole rather than its components. For whatever the particular manifestation of the sea-bed may be in any particular section of it, the Rift Zone is a continuous zone where this plate separation is occurring with its rifting or pull-apart, its shearing or sliding past and its squeezing effects.

Turning now to the particular components of the Rift Zone, the most impressive features on the sea-bed are the major troughs. To give some idea of the major proportions of these troughs — the Pantelleria Trough is approximately 52 nautical miles long, 15 miles wide, and it descends to a depth of 1,315 metres. The Linosa Trough, named after the volcanic island of Linosa situated on its south-western scarp, descends to depths of 1,615 metres. It is 41 nautical miles long and 8 nautical miles wide. The Malta Trough, which cuts across all of the coasts of the Maltese islands facing south-west and a substantial portion of Malta's southward-facing coast, is the longest and the deepest of these troughs; 87 nautical miles long and 1,714 metres deep. It is 11 nautical miles wide and it does lie squarely between Malta and Libya. This area experiences one of the highest levels of sediment accumulation in the Mediterranean due to the important oceanographic function performed by the Rift Zone. If the sediments were removed from the Malta Trough, its depth would exceed 2,000 metres. If they were removed from the Linosa Trough, the depths would be approximately 3,615 metres. But, of course, it is not the mere depth of these troughs that matters. It is the fact that they are grabens caused by fractures slicing all the way through the crust of the earth of which the molten rock or magma rises. Hence, they are major cleavages in the sea-bed and the subsoil separating one shelf from another. They are the surface indication of an active plate boundary.

One way of showing the geomorphological effect of the Rift Zone is to examine a profile of the sea-bed along the western line of Malta's trapezium figure

— that is, between Ras Ajdir and the western tip of Gozo — and you have to imagine what the map looked like along this line here. This Figure, which appeared in Annex 9-b of the Libyan Reply, prepared by the Lamont-Doherty Geological Observatory of Columbia University, is such a profile. It is No. 71 in the Judges' folders. The Malta Trough shows up clearly on this figure as well as the steep gradient between Gozo and the bottom of this trough.

Professor BOWETT: May I interrupt for a moment, Dr. Jongsma? So far, you have emphasized the deep troughs of the Rift Zone which, with the exception of Malta Trough's eastern end, lie rather more between the Maltese islands and Tunisia or the Italian Pelagian Islands than Libya. Now, you may recall that in paragraph 58 of the Maltese Counter-Memorial it was said: "If there is, in this whole area, an insignificant feature it is that part of the so-called Rift Zone which lies between Libya and Malta." Perhaps you would help us by describing this area quite specifically, that is to say the area lying squarely between Malta and the Ragusa-Malta Plateau, on the north, and the bank to the south of the Rift Zone, comprising in part the Medina Bank — that area, here. That is the area I want you to describe.

Dr. JONGSMA: In this area, the Rift Zone narrows and it forms the Malta and the Medina Channels. They trend east/west because of the relative plate motions mentioned by Professor van Hinte earlier. Between these Channels — right here — is an interesting feature. It is an elongated slice or block which has recently been pushed up due to the shearing motion in the subsoil. Note that it lies in the area where the Rift Zone is narrowest. We know that only some two kilometres below this block there is a large volcanic body. How is this known? Because two of the techniques which I referred to earlier — seismic profiles and magnetic measurements — reveal an intense anomaly here. This indicates the presences there of volcanics — further evidence of the deep and fundamental nature of the Rift Zone and of its continuity along this shallower portion of the Rift Zone.

These two Channels show less depth than the troughs to the north-west because, based on scientific evidence, the effects in the subsoil of the division between the plates involves the sliding past or shearing motions which I described earlier, rather than the pull-apart or rifting motions caused by the same division of plates here in the north-west resulting in these troughs. However, the fractures in the subsoil are just as deep here in the Medina Channel as they are here in the troughs.

Question: Let me interrupt just once more. That seems an important point. You are saying that although, in bathymetric terms, the Channels are shallower, in geological terms the faulting is just as deep as in the troughs?

Answer: Yes. It is important not to confuse geomorphology — or bathymetry — with geology. In bathymetry the channels may not look as significant as the troughs, which is probably due to sedimentation. But when you look at the subsoil the faulting is just as deep, active and significant. The plate boundary in this region is more shearing than extensive because it parallels the direction of relative movement.

Anyway, the Channels, even considered only geomorphologically, are important sea-bed features. The Medina Channel, which is bathymetrically seen as an extension to the east of the Linosa Trough, has depths of up to approximately 650 metres. If the sediments were removed, its depth would exceed 1,000 metres.

The flanks of all these troughs are steeply inclined. They are like deep ravines on the land. There are places in the troughs which exceed a gradient of

1:1.8 — this is a drop of 1,275 metres over a distance of 2,300 metres — and it is a gradient that appears like this. This may be compared with the gradient of the continental slope which is like this: 4°.

As to the Channels of the Rift Zone, there is a definite break in slope near their flanks. Some parts of the Channels are filled with young sediments; in other places scarps 180 metres high may be found with gradients of less than 1:5. In the Medina Channel, the upfaulted volcanic block referred to earlier has a gradient of 1:2.5 on its southern side.

What this comes down to is that the part of the Rift Zone lying here along the Medina and the Malta Channels is just as significant as the area up here to the north-west where there are deep troughs in the sea-bed. The plate separation is occurring across the entire area. The subsoil effects in one part of the Rift Zone merely differ from those in another part for reasons already explained. This causes differences in what the sea-bed looks like. But the whole area is part of this significant feature, the Rift Zone.

Question: Let me be clear. Are you describing the historical evolution of the Rift Zone, or the current status of that Zone?

Answer: The Rift Zone is not simply a matter of historical interest. It is a dynamic feature. To give one example, as mentioned earlier, the Rift Zone is one of the areas of highest sedimentation in the Mediterranean, and this is largely due to the important oceanographic function performed by the Rift Zone. Thus, one would expect the troughs and the channels of the Rift Zone to fill up rapidly and disappear. But this is not happening, because the pull-apart and the shearing motions that are still going on are of such a magnitude that even the high rate of sedimentation is unable to swamp or disguise the active features and steep slopes within the Rift Zone. In fact, the seismic profiles appearing in Libya's Memorial and Reply reveal that the uppermost sedimentary layers at the sea-floor are broken and sheared by this activity in spite of this high sedimentation rate.

In contrast, the southern area of the Tripolitanian Furrow is quiescent. The sedimentation there has smoothed out the subsurface features. The contours of the sea-bed are, therefore, gentle and shaped by erosional and fluvial factors that have acted on the sediments which have obliterated the sea-bed reflection of ancient rifting. Any rifting which took place in the remote past in the subsoil of the southern shelf is now of historical interest only.

I should like to illustrate what I have just said with several figures. These are seismic profiles obtained along the lines indicated in red on the location map which is No. 72 in the Judges' folder. I shall only be showing three profiles — there are I think five red lines on your map, but I will indicate on this map which three they are.

Next the location map. If the Court would turn to Nos. 73 and 74 in the folders. I will show the profile here across the Medina-Malta Channel, one across the Malta Trough and one in the Tripolitanian Furrow.

It will be easier to follow my explanation with the first figure which is an interpretive sketch of a seismic reflection profile of the Medina-Malta Channel or Graben (that is No. 73 in the Judges' folders). Such a profile appeared as Annex 5 to the Libyan Reply. A profile such as this is difficult for the layman to read, so I have placed an interpretive sketch below the original profile to bring out what is shows, and this can be seen on No. 74 in the folder. Now, the zero line on this figure is sea level. On the next line below it is the sea-bed surface. Note how this surface is broken by faults and they slice into the subsoil. A reflector below it, which I have drawn in, is also displaced by this fault. The

sea-bed is directly affected by this faulting in spite of the very high sedimentation rate experienced along the Medina-Malta Channel.

This figure brings out the importance of the Medina and Malta Channels both geomorphologically and geologically. And it is of additional interest because it shows this mount, to which I have referred earlier, lying between the Medina and Malta Channels. Underneath it are volcanics. There is nothing like this in the quiescent valleys of the southern shelf.

Now the next figure, and it is No. 75 in the Judges' folder, is located across the Malta Trough. It appears as Figure 11B in our paper furnished to the Court with the Libyan Reply. Note the same direct effect on the sea-bed surface of the faults along this Trough or Graben. Although in both figures the rifts are not depicted as descending deeper than several kilometres, they in fact slice all the way down to the mantle of the earth, at least 20 kilometres below the surface of the sea-bed.

Contrast this with the third figure, and it is No. 76 in the Judges' folder. It is located in the Tripolitanian Furrow. This shows the ancient faulting in the Tripolitanian Basin, south of the Rift Zone. There is virtually no effect on the sea-bed surface caused by this ancient, quiescent faulting. This is because the rifting has stopped and the sedimentation has gradually levelled off the sea-bed, and what faulting there is now is primarily a subsiding reaction to the normal weight of sediments.

Now the Rift Zone is different. It consists of rifts which have pulled apart or sheared the crust of the earth all the way to the surface. These deep rifts are there today and they are still very active. Their effects can be seen on the present-day sea-bed, because, despite the sedimentation, the rifting is still deepening the troughs.

Professor BOWETT: Mr. President, that concludes that answer.

The Court adjourned from 11.20 a.m. to 11.35 a.m.

Professor BOWETT: Dr. Jongsma, The description you gave just before the break of the size of the Rift Zone raises a point of some importance. Map 9 of the Libyan Reply, which is now on the easel, shows the Rift Zone in grey. It also shows, outlined in red, the Central Trough and Ridge System described by Professor Vanney, the Maltese expert, in his technical note to the Maltese Counter-Memorial. This is the same map briefly referred to earlier by Professor van Hinte and is No. 61 in the Judges' folder.

My question is, from a scientific point of view do these descriptions of the Rift Zone show its boundaries with reasonable accuracy?

Dr. JONGSMA: Yes, they do. You may recall that in the Libyan Memorial there appeared an interpretive diagram of the Rift Zone prepared by Professor van Hinte, Dr. Woodside and myself. It shows the Rift Zone in sketch form along with the Escarpments, the Heron Valley and the Medina (Malta) Ridge. (It is No. 77 in the Judges' folder.) The boundaries which we showed on this diagram are virtually the same.

Another way used by scientists to define the Rift Zone geomorphologically is to take the 500-metre isobath. Winnock and Bea as well as Professor Vanney — Malta's Technical Adviser — have referred to this method of defining this feature.

Still another way of showing the boundaries of the Rift Zone is to examine the faulting in the subsoil. Figure 7 in Part II to the Technical Annexes to the

Libyan Memorial portrayed the area of concentrated faulting along the Rift Zone. The illustrative figure on the easel shows the same thing. (It is No. 78 in the Judges' folder.) This is Figure 16 in the paper referred to in Annex 6 to the Libyan Reply, a copy of which was furnished to the Court. Drawing a line along the northern and southern portions of this zone of faulting (as I am doing) you end up with a Rift Zone which has roughly the same boundaries as those shown on the other two figures which I have just been examining.

Question: You have mentioned the presence of volcanics along the Rift Zone. Could you elaborate on why this is a significant fact and what evidence you have of this?

Answer: It is not just volcanics which are present here but young volcanics. This establishes that the movements that are pulling apart and shearing the subsoil are active today. The lavas are basaltic in character. Their strontium isotope ratios indicate that they originate from magma — which is hot molten rock — that forms below the earth's crust. The lava has travelled upward at least 20 kilometres through fissures which are caused by the same faulting and shearing that is responsible for the presence of the troughs and channels on the sea-bed of the Rift Zone. Volcanics of this type are found all along the Rift Zone.

Heat flow measurements across this area — another of the techniques I mentioned earlier — recently published by Russian scientists substantiate these findings. Seismic refraction data reveal that the earth's crust along the Rift Zone is only 20 kilometres thick, that is thinner by 15 kilometres than the normal continental thickness of 35 kilometres. These proven volcanics, together with the evidence of volcanics below the seamount in the Medina Channel, which I have just shown the Court, and the presence of magnetic anomalies over the Medina Mounts, show that this whole Zone is injected by volcanic intrusions of subcrustal origin.

Thus, in the subsoil, what is occurring along the entire extent of the Rift Zone is of comparable significance. It all attests to the presence of an active plate boundary along the Zone. The surface features vary according to the kind of effects produced: whether pull-apart, shearing or even squeezing. But the plate boundary has formed there and is still developing along this Zone. That is why we can regard the areas to the north and south of the Rift Zone as separate shelves.

Question: Dr. Jongsma, I have to tell you that Malta has described the sea-bed and subsoil lying between Libya and Malta as a "geological continuum". How do you respond to that?

Answer: I could not accept that description because there is a discontinuity. Any area of shelf which is cut across by a zone such as I have just described can hardly be regarded as a "continuum". This term cannot be applied to the sea-bed or to the subsoil lying between Libya and Malta. As I have said, the area is properly to be regarded as two shelves divided by a rift zone, and not as a "continuum".

Question: Would you describe the shelf area south of the Rift Zone (that is, this area) as a "continuum"?

Answer: That would not necessarily be my choice of words, yet, south of the Rift Zone the relatively gentle banks and valleys, including the Tripolitanian Valley, might make such a description reasonable. As already pointed out and illustrated by the figures which the Court has just seen, in the subsoil, the rifting is ancient and quiescent; it has no present effect on the sea-bed, unlike the Rift Zone. The sea-bed lacks marked features such as exist in the Rift Zone,

and there are no great troughs there. There are no young volcanics here. So it is a very different area in this sense than the area comprising the Rift Zone.

Of course, if the calendar were turned back in geological time to before the existence of the Rift Zone then perhaps the entire area between Libya and Sicily could be considered a "continuum" just as, once, Gabon and Brazil were joined together in the same geological block. However, we are dealing with today and not the far distant past.

Question: Perhaps we can return to a point made at the outset of this scientific discussion — that is that the Rift Zone is a plate boundary. Is there support in the work of other scientists for your own views?

Answer: Support for this conclusion has been increasing with our increased knowledge and understanding of the geology of this region. And there is in the scientific literature reference to the separation of this region into individual blocks, the creation of a microplate, and the separate movement of the Sicilian block with respect to Africa. In 1972 Akal concluded from an examination of the geophysical and geological data that the formation "of a rift in the Strait of Sicily Zone" constitutes the "breaking of a continent" in plate tectonic terms ("The General Geophysics and Geology of the Strait of Sicily", in *Oceanography of the Strait of Sicily*, 1972, p. 182, T. Akal, edited by T. D. Allan and R. Molcard, Saclant ASW Research Center, La Spezia, Conf. Proc. Vol. 7, pp. 177-192). We have referred already to the important 1973 study by Dewey, Pitman, Ryan and Bonnin in which they provided a name for the microplate: the Messina Plate (Dewey *et al.*, 1973, "Plate Tectonics and Evolution of the Alpine System", *Geol. Soc. Am. Bull.*, Vol. 84, pp. 3137-3180). Another paper is that of Colombi and others in 1973.

The work that I have done with Professor van Hinte and Dr. Woodside in the past few years supports the conclusion of these earlier papers and provides a stronger formulation on which to base them.

The data on which this conclusion rests are derived from the five techniques I have already described.

Such a plate boundary is essential to allow the rotation of Sicily with respect to Africa as documented in the Maltese Counter-Memorial by Professor Mascle. These results using the paleomagnetic technique were published last year by Besse, Pozzi, Mascle and Feinberg in *Earth and Planetary Science Letters.*

The scientific significance of the Rift Zone as a plate boundary, and its extension along the Heron Valley and the Medina Mountains is that it provides the possibility for the area to the north to move with respect to the African Plate to the south. In other words, the northern block is now decoupled from the southern plate.

Now in plate tectonic terms movement on a globe can be described by rotation around a point called a pole. A purely geometrical argument. The scientific expert of Malta has tried to show that our interpretation of the Rift Zone as a transform boundary is wrong by using various poles to the north and north-west of Sicily to rotate the southern part of Sicily. (This is Figure 17 on page 48 of the Maltese Counter-Memorial.) His selection of poles resulted in extension across the Medina-Malta Channels, rather than the shearing and squeezing which we have observed. If one locates the pole by one of the correct procedures, that is to say drawing perpendiculars to the pure transform parts of the Rift Zone and using their intersection to locate the pole, then this rotation pole is located in the arch of Italy's Boot. When this pole is used to rotate the southern part of Sicily, then the Pantelleria, Linosa and Malta Troughs are seen to be extensional pull-apart basins typical for this type of plate boundary. Also

the Medina Malta Channel area will be an area where sliding past occurs. The model also predicts squeezing along the Medina Mounts.

There is another important piece of evidence, and that is that plate boundaries have to link with other plate boundaries: they cannot end in thin air, as it were. Now the Rift Zone does link up with plate boundaries in the west and in the east. But the Jarrafa Trough and the Tripolitanian Furrow could not be a plate boundary, because they lead nowhere. Any extension, east or west, is miles away from linking up with other plate boundaries.

Question: Let me ask you to concentrate on Malta for a moment. What, if any, connection is there between the Maltese islands and the forces that created the Rift Zone?

Answer: There is a direct connection. In fact, Professor van Hinte has already touched on this point. The same forces that created the Troughs of the Rift Zone — and in particular the Malta Trough — forced up a section of the subsoil — an uplifted block — thus creating the Maltese islands. In technical terms, the Malta Trough is a graben and the Maltese islands comprise horsts directly related to that graben.

This, no doubt, has resulted in the fact that the general direction of this part of the Rift Zone is matched by the general direction of the Maltese islands and of their south-western-facing coast. You see, when plate movements occur, the forces at work are enormous. And it is these forces that create, and shape, the physical geography. You cannot really separate the physical geography from the geological forces that formed the present landmasses.

Question: So without the Rift Zone Malta would not be there?

Answer: Yes, that is right.

Question: Would you now turn to the Escarpments which have been described as forming the eastern boundaries of the Ragusa-Malta Plateau and of the Pelagian Block, that is, of the northern and southern shelves on each side of the Rift Zone? How would you describe those Escarpments?

Answer: The Sicily-Malta Escarpment on the north — which forms the boundary between the northern shelf, the Ragusa-Malta Plateau, here, and the Ionian Sea, here, — is one of the major geomorphological scarps of the Mediterranean. Its length is some 120 nautical miles, and the sea-bed plunges to depths of 3,600 metres along the Escarpment and this occurs in steps. Angles of 25 degrees to 30 degrees are common with an average of 20 degrees in the upper slope. The lower slope is steeper, with angles of 60 degrees. Going up and down this Escarpment would involve real "mountain climbing".

South of the Sicily-Malta Escarpment is the steep, deep, and complex Heron Valley where the Rift Zone divides this Escarpment from the Medina Escarpment to the south. As has been mentioned earlier, from the Heron Valley the plate interaction continues eastward from the Rift Zone out along the Medina Mounts. As can be seen on the map, there is a major change in topography east of the Pelagian Sea.

The area of shelf south of the Rift Zone is bounded on the east by the Medina Escarpment which extends southward to approximately here, that is approximately 33°30' N latitude. It forms another major shelf break, where the sea-bed drops to a depth of 1,000 to 1,200 metres with a slope of 1 in 10. This feature has a length of approximately 87 nautical miles. It is recognized as the eastern boundary of that portion of the shelf underlying the Pelagian Sea south of the Rift Zone known as the Pelagian Block.

The rather dramatic effect of these Escarpments is seen from another bathy-

metric profile prepared by the Lamont-Doherty Geological Observatory, which also appeared at Annex 9-b of the Libyan Reply. This profile, which is No. 63 in the Judges' folder, follows the eastern edge of Malta's trapezium figure, out to its intersection with Malta's proposed equidistance line.

Question: Dr. Jongsma, I should now like to focus attention on certain features that have been discussed in the jurisprudence and which it may help the Court to have compared with the Rift Zone and the Escarpments. I refer to the Norwegian Trough, the Hurd Deep, the Tripolitanian Furrow, and the North-east Channel in the Gulf of Maine. I am sure the Court is growing weary of statistics, so could you compare, in a general way, those features with the Rift Zone and the Escarpments?

Answer: Dealing first with the geomorphological characteristics of these features, none can be compared in terms of depth or gradient with the troughs of the Rift Zone or with the escarpments — the former are all rather gentle sea-bed features.

The Tripolitanian Trough or Valley, when it reaches a point north of Ras Zarruq — and in fact this whole area of the southern shelf — does deepen as it extends to the east. There are, however, no steep gradients or dramatic sea-bed declines. After it passes a line between Ras Zarruq and the Medina Escarpment, the sea-bed of this southern area of shelf continues to deepen gradually to depths of 800 and 1,000 metres. But at this point the sea-bed area no longer underlies the Pelagian Sea; it is quite a different region. It has become the Sirt Rise-Ionian Sea. This area of sea-bed was described in detail in Part I of the Technical Annexes to the Libyan Memorial prepared by Professor Fabricius.

The other features you mention are quite similarly minor in a geomorphological sense in comparison to the major features of the Rift Zone — the top show profiles across the Rift Zone, these are across the various features. The difference between them is even more apparent when their origin is contemplated. The Court will find a comparison of these various features in No. 80 in the Judges' folders. And the Court will also find location maps for the profiles on this figure in their folders; and it will be noted that these figures show the location and longitude of the maximum gradient (Figs. 81-85). The Norwegian Trough is considered to be of glacial, erosional origin. The Hurd Deep, similarly, is regarded to have been formed by erosion by glacio-fluvial action. The North-east Channel was similarly formed. None of these features resemble at all the Rift Zone in terms of origin and fundamental nature; and the figure to which I just referred on the easel compares these features in terms of geomorphology with the Medina Channel. Of course, aside from the geomorphological comparison portrayed here, only the Medina Channel lies in the middle of an extensive active Rift Zone, the geological processes of which have created the Medina Channel itself.

The Tripolitanian Valley overlies an area of ancient rifting which is now quiescent.

In contrast, the channels in the Rift Zone are very much part of this active zone. Young volcanics are present; the sea-bed configuration is the direct result of the deep faults that exist in the subsoil. The Medina Channel contains several areas of steep gradients.

Question: Dr. Jongsma, I have one final question. Where else in the ocean areas of the world can you find, in your view, a feature such as the Rift Zone positioned as it is right in the area relevant to a delimitation between two States?

Answer: I am glad, Professor Bowett, that you have limited your question

because, of course, there are many plate boundaries around the world, and not many are so located as to likely effect a delimitation. But there is one oceanic area in particular that could be said to resemble the Rift Zone in that it involves a continental shelf which has collided and now has a piece broken off; and this is the shelf area between Australia and Indonesia. The map on the easel shows this area, which includes the Timor Trough, and this other feature, the Aru Trough, which even more than the Timor Trough could be said to geologically resemble the Rift Zone. The only thing is that, unlike the Timor Trough, this other feature could presumably play no role in a delimitation because of its location. As an Australian I am particularly aware that the Timor Trough did, however, affect the delimitation line agreed upon.

Other than this area, I cannot think of any comparable situations other than, in a more general sense, the Red Sea, which was discussed in the paper of Professor Finetti annexed to the Libyan Reply.

Professor BOWETT: Thank you Dr. Jongsma. Mr. President, I should now like to call upon Professor Finetti. Professor Finetti, can I ask you to make the solemn declaration.

Professor FINETTI: I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief.

Professor BOWETT: Thank you.

Question: Professor Finetti, I think it would be of interest to the Court if you could expand a little on your activities at the OGS in Trieste, that is the National Organization for Geophysical Exploration, and also at the Institute of Geodesy and Geophysics at the University of Trieste. I believe you conducted extensive geophysical studies in this part of the Mediterranean over many years. Could you elaborate on that?

Answer: I have been engaged in the geophysical study of the Sicily to Libya area since the beginning of my career, 29 years ago. I began by studying the area of Ragusa, in Sicily, where the first oilfield was discovered, when I worked at the time for the oil industry, before my activity at the University and OGS. Later, I conducted with OGS of Trieste important regional geophysical explorations of the whole Mediterranean including the Pelagian Sea.

In regard to my OGS activities, to avoid a long and detailed description, I should like to refer to the 1973 paper by Finetti-Morelli entitled "Geophysical Exploration of the Mediterranean Sea", where the relevant OGS research activity is summarized. It also contains a location map of the OGS geophysical exploration activity between 1966 and 1972, which involved a whole series of cruises during those years. Paragraph 2 of my 1982 paper and paragraph 3 of my 1984 paper also refer to the geophysical data produced by the OGS of Trieste.

I think I can say that the work of our group in Trieste over the past 20 years has provided most of the basic data used by scientists all over the world in writing about the Mediterranean. Recently I performed, for the concession holder, on the Ragusa-Malta Plateau north of Malta, the seismic interpretation for the location of the Vega 1 discovery well. This led to the discovery of this major oilfield of the Mediterranean. Professor van Hinte has already referred to it.

Question: I should like you to direct your attention to Map 10 of the Libyan Reply, an enlarged version of which is now being placed on the easel. This is Map 86 in the Judges' map folders. It has the Rift Zone lightly shaded in. In red, there appears what is called the "Axial Ridge Line". I refer also to your

recent study entitled "Geophysical Study of the Sicily Channel Rift Zone", published earlier this year, extracts from which appear in Annex 7 to the Libyan Reply and a copy of the study was furnished to the Court.

My questions are — how did you derive this "axial ridge line" and what is its significance?

Answer: I shall try to make my answer as simple as possible. The data on which I based my findings were data that have existed for over ten years (Finetti-Morelli, 1973). They are what is known in scientific terms as "Bouguer gravity anomalies". From these 1973 data, by the use of a simple mathematical procedure, the "Residual Gravity Anomalies" plotted in Figure 13 of my 1984 paper were obtained.

These gravity data, together with the seismic data, are objective evidence that along the Rift Zone runs a remarkable, continuous geological feature characterized by positive gravity anomalies, tectonic fragmentation and crustal thinning. These data, among other things, tell a scientist where the crust of the earth has been stretched to its thinnest zone. The "axial ridge line" has been traced along the top of the positive, continuous gravity axis, which corresponds to the points of greatest crustal thinness.

As Professor van Hinte and Dr. Jongsma have already explained, the Rift Zone is an area where a separation of plates is occurring. Where such a separation is occurring, it is evidenced by a thinning of the earth's crust. In this entire area of the Rift Zone — from the major trough — here — to the north as well as along the Medina Channel — here — the crust is markedly thinner than elsewhere in the Pelagian Sea shelf area. We find an average crustal thickness of 20 kilometres in this area and even less than 20 kilometres, as opposed to a normal continental crustal thickness of 30 to 35 kilometres. It is along here that the separation in the plates is occurring.

What is interesting to note is that this line does not necessarily coincide everywhere with the deepest areas, geomorphologically. It runs down the approximate middle of the Pantelleria and Linosa Troughs; then from 14° to 16° longitude, it runs along the northern half of the Rift Zone. For example, here, it runs down the middle of the Medina Graben, where a remarkable tilting due to crustal stretching and thinning occurred.

Question: Professor Finetti, I have to tell you that counsel for Malta referred to the axial ridge line shown in your recent study as "arbitrary" and "preconceived". I suppose the word "arbitrary" implies it is unscientific, and "preconceived" implies that it was produced with an eye to furthering Libya's arguments in this case. How do you react to those terms?

Answer: Any scientist would deeply resent such an accusation, and I am no exception. But the point today, I take it, is to explain to the Court in clear and simple terms how the axial ridge line was arrived at.

The starting point, as mentioned, was the Bouguer gravity data published in 1973 (Finetti-Morelli, 1973 paper). Figure 2 of my 1984 paper sets forth this data. At that time, 1973, we were interested in the broad gravity picture of the Mediterranean and, therefore, we did not calculate the residual or local anomalies. But, even on this map the axial ridge in the Rift Zone can be recognized, though less precisely. An enlarged version of this map has been placed on the easel. A ridge line evidently runs along the line I am now drawing. It is a long positive gravity anomaly axis, which has this trend from here to here. Then when arriving here, this track may be correlated with this positive anomaly. And if we look at this map in more detail, remember that here we have a contour interval of 10 milligals, which is enormous. If we look at the map with

contour intervals smaller than 10 milligals you have continuity, even in Bouguer, of this axis through the Medina Channel. Not only in my data of 1984 but also on those of 1973 we have this axial ridge evident. However, a more localized and precise map was required in order to arrive more exactly at such a ridge. Therefore, using the data already published, a residual gravity map was calculated mathematically with a filter length of 31.6 km. This appeared as Figure 13 in my 1984 paper on which both the Rift Zone and the axial ridge line also appear. An enlarged version of this map has been placed on the easel. However, neither the Rift Zone nor the axial ridge line are shown.

Question: Now, Professor Finetti, you will recall that counsel for Malta said that this map "is not a direct or immediate reflection of objectively verifiable elements", and he drew this conclusion from what he said were two stages of modification of the data, each involving a supposed exercise of your discretion. The first stage was said to be correct for the body of water lying above the seabed. The second involved the selection of "filter length". What do you say to this?

Answer: These statements are incorrect. The map which you see here was calculated on the basis of a strictly objective process using the data published since 1973. In fact, the water layer adjustment had already been made in accordance with standard procedures in the Bouguer anomaly map published by Finetti-Morelli (1973). There was nothing arbitrary or discretionary about this step.

As to the selection of filter length, one selects a particular filter length according to the size — that is the width and depth — of the feature you want to examine. The thicker the crust, the longer the filter length you need to examine right through the crust. So, in my study, it was selected on the basis of the thickness of the crust throughout the entire Pelagian Sea area so that the data would reflect anomalies all the way to the top of the mantle throughout this area. The earth's crust is thinner in the area of the Rift Zone — only about 20 kilometres. But to the north and south of the Rift Zone the depth of the crust is more normal for an area of continental shelves, descending to depths of up to 30 kilometres. Had the true purpose of this study been petroleum exploration, for example, a filter length of about 10 kilometres would have been adequate. However, since the object of the study was to discriminate anomalies between the sea-floor and the mantle, a filter length of 31.6 kilometres was appropriate. Such a choice was in accordance with standard procedures, but greater or smaller filter lengths would have shown the same result. In fact, after reading counsel for Malta's accusations on the subject, I redid the study using a filter length of 22.4 kilometres. The result was substantially the same because the deformation process affects the entire crust and the upper part of the mantle. I have a copy of this map which the Maltese delegation is invited to examine.

Question: Now how did you know where to draw this axial ridge line?

Answer: This was the easiest part. The gravity anomaly data were used in conjunction with other data and not in a vacuum. The sea-bed geomorphology combined with seismic data were considered together with the gravity anomaly data. What one looks for is whether there is a pattern, or coherent sequence of anomalies, revealed by the map. The geomorphology revealed a system of troughs, ridges and channels running from the Egadi Valley — the Egadi Valley is just in this area — the Egadi Valley between Sicily and Tunisia to the Heron Valley which is not shown exactly in this map but is around here. Here I continue with the observation I am telling you. The seismic data showed a major fault system parallel to the gravity anomalies with prominent thinning of

the crust and uplifting of the mantle combined with young volcanics along the same zone, all evidence of a rifting process. The residual gravity map confirmed that along this zone, identified by these other data, an axial ridge could clearly be identified but the rise of the mantle reached its peak and the crust is thinnest.

I can show you now essentially what happens on an area like this. I am sketching now what is a rift process. This is not my personal figure, it is a scheme reported widely in literature. So, we start from an element of crust, not faulted. Then we apply to this element of crust a stretching force. If this stretching force is sufficient to produce the formation of fractures, you obtain a first creeping, in correspondence with the axial ridge, like here, and a slight mantle uplifting. When the rifting process is sufficiently progressed, a complete crust separation or crustal fragmentation are obstained in the figure like this. The mantle at this stage is considerably uplifted. This is crust, this is mantle. And, if you want, you may have water — water layer covering the rift. In this scheme, Malta is on a position like this, here there is the Malta Trough. And the axial ridge I am talking about is in this central position where you have the thinnest crust, the mantle uplifting. Fragmentation all across this line with opposite polarity of faults and gravity anomaly, positive gravity anomaly, represent the deformation produced. When you have fragmentation for example with collapsing of blocks without a rifting process, gravity anomaly is indicating negative anomaly. When you have this figure of fractures and this positive gravity anomaly everywhere in the world, this indicates a rifting process; active fault cuts also sea-bottom surface with actual sediments.

My line is a line which is intended to represent this zone of the axial ridge. This is typical of a rift zone and this is not my figure. In literature there are figures like this in every plate tectonic book. The same pattern can be seen along the ridge Red Sea-Gulf of Aden, for example. This is illustrated in the September 1983 Italian edition of the *Scientific American Journal*. A photograph of the Gulf of Aden in this article shows exactly what I have been describing. I offer my copy to the Maltese delegation for their inspection. The *structural conditions of the Medina Graben shown in Figure 7 of my 1984 paper* are similar to those revealed by this photograph.

I shall show this by putting up on the easel a blown-up photograph of the axial ridge of the Gulf of Aden later, taken from the *Scientific American* article, and a seismic profile of the Medina Graben, also blown up. (Those illustrations are Nos. 91 and 92 in the folder.) I shall put up the Medina Graben profile first.

This is an objective figure obtained geophysically from seismic reflection profile just passing across the Medina Graben area as indicated. You have faults as interpretation, but no one can question about this very clear and evident interpretation. If you look at what is shown here, we have a rifting process here, with faults in opposite polarity and volcanic activity. This figure does not show the entire Medina Graben, it is just only the central part where the axial ridge of the Medina Graben passes. It is here that I drew it in my Figure 13 of the 1984 paper. We see a rifting that is associated with a remarkable mantle uplifting, and with stretching, even if in this area are prevailing strike-slip movements. This photograph is typical of an area of axial ridge and is self-explanatory. It shows a typical fragmentation, associated with an axial ridge of a *rifting process*.

We simply see a figure, there is no interpretation at all. It is just a photograph published in the *Scientific American* of the Gulf of Aden, that, together with the Red Sea, is the best-known rifting system in the world.

It is perhaps better if we say something about where this figure is located. It

is possible to see where it is exactly on the *Scientific American* referred paper. You have the Red Sea, the Gulf of Aden, and you are here at the axial ridge of the rifting system, near the Red Sea and the Gulf of Aden. This ridge is entering here and the figure is taken looking to the Gulf of Aden and is taken in an area where the system is outcropping, because we know that we have a lot of ridge systems, but it is impossible to photograph it when submerged. The author made the most of the opportunity of this position in order to photograph exactly what is an axial ridge. The axial ridge is just perpendicular to the photograph in this direction. What you see here is exactly a mantle uplifting, fragmentation, and in the middle also volcanoes. It is just a photograph. It is not my interpretation, this explanation is in the paper. So, according to this photograph when you see a figure like that of the Medina Graben there is no question that that is corresponding to a position that means rifting process and this is the part corresponding to the axial ridge.

Do we find features bearing such basic characteristics in the area of the case? Yes, we do, and not only across the Trough of Pantelleria and Linosa but also across the Medina Graben area as clearly shown in the figure previously commented on.

Returning now to the residual gravity map which has been put back on the easel, I shall now draw what I have called the "axial ridge line" passing along the existing, unique continuous positive gravity axis. According to the seismics and morphological data, this line corresponds to the axis of the rifting process where the crust is at its minimum thickness. (The Court can find a copy of this map with the line drawn on it as No. 87 in the Judges' folder.) It is a continuous coherent line, just as you find along the Red Sea rift. This line stretches for 300 miles.

Question: Professor Finetti, it was suggested by counsel for Malta that a variety of lines were equally feasible. In fact, Mr. Lauterpacht drew a number of lines on the map. Now, I am going to have placed on the easel a reproduction of this map with the lines in red which Mr. Lauterpacht drew. What do you say about these red lines?

Answer: They are absurd because they obviously were based on the assumption that merely finding plus signs on the map and connecting them up was what is involved — a sort of child's game. But what is of interest is whether or not there is a pattern or coherence to the anomalies. For example, counsel for Malta drew this line along the southern area here. His line crosses areas of negative anomalies indiscriminately in order to connect up positive anomalies. The previous axis of these lines is all along positive anomalies. These attempted correlation lines connect gravity anomalies having different geological histories, different structural and stratigraphic explanations and different structural trends. The whole exercise by Malta's counsel makes no scientific sense at all.

Question: We heard a lot today about the "Rift Zone" and, of course, it is extensively treated in Libya's written pleadings. In your judgment, Professor Finetti, is there any doubt of the existence of such a zone with its various pull-apart and shearing effects mentioned earlier?

Answer: There is no doubt, whatsoever. The seismic data, the gravity anomaly data, the sea-bed itself, all make the existence of the Rift Zone a fact. It is a truly remarkable feature. I completely subscribe to the view, scientifically speaking, that this Rift Zone is a profound rupture in the earth's suface and crust along which a microplate boundary has been formed.

Question: Now in your 1984 study, Professor Finetti, you compared the Rift

Zone to the rift zone in the Red Sea. Could you just discuss that comparison briefly?

Answer: I find this to be a comparison of considerable interest. It helps to explain what is happening in the Sicily Channel Rift Zone. This Map (in Annex 37 of the Annex of Delimitation Agreements, LCM, II) shows the bathymetry of the Red Sea. (It is No. 88 in the folder.) The rift zone in the Red Sea runs roughly from here to here. The northern segment is of particular pertinence to the case. In fact, it is "shallower" here than here. You find the same, for example, in the Medina Graben and Malta and other troughs. You see much of troughs. On the other hand, the deepest area of the Red Sea rift zone reaches depths of up to 3,000 metres. One may ask why this is so when both features are part of the same rift system. It is for the same reason that the Medina-Malta Channels are less deep than the Linosa and Pantelleria Troughs. Up here in the Dead Sea, the prevailing effects are those of shearing and strike/slip; down here, in the deeper Red Sea rift zone, pull-apart or rifting effects are predominant. But the whole area from north to south, from the Dead Sea to the southern part of the Red Sea, are all the same area of the same rift system.

I have had blown up Figure 15 of my 1984 paper, which is here on the easel. (It is No. 89 in the folder.) It compares the rifting in the Red Sea with that in the Sicily Channel Rift Zone. What is happening in the Red Sea started about 40 million years ago, long before the Rift Zone in which we are interested, but the two processes are still working and are identical in terms of producing effects. In fact, the style and pattern of tectonic deformation are the same: crustal fragmentation with faults of opposite polarities, crustal thinning with the limit cross mantle, and mantle uplifting along the axial ridge, here and here. Horizontally, it is the same scale. You can have an idea of the dimension because we have the same horizontal scale. Here there is also volcanic extrusion and positive gravity anomalies in the axial ridge zone, in both cases.

This can be seen on the map of the Red Sea rift area just placed on the easel. (It is No. 90 in the folder.) I am now drawing a line along the positive gravity axis just as I did a few minutes ago along the Sicily Channel Rift Zone.

The Red Sea rift zone represents one of the clearest examples of two continental plates separating. The Rift Zone of interest in the present case involves the same forces in the subsoil with the same effects on the sea-bed, with only a different stage of evolution — one that is younger.

Question: Now there were two other points made during Malta's oral presentation to which I should like you to respond. The first was the suggestion that you had indicated in your 1984 paper that the faulting in the Rift Zone had "already passed its zenith", to quote counsel for Malta directly, and was on a "downward trend". Is this what you wrote?

Answer: Not at all. I pointed out that there were indications that the first rift movements had decreased as regards velocity of deformation, but remained active at the present time. This is not the same as suggesting a downward trend. To suggest on the basis of my paper, as counsel for Malta did, that "we do not have an area which is going on being active" is to distort is completely. In fact, I said the opposite. I mentioned in paragraph 3.2 a rifting process which is young and still active. In mentioning areas of less activity, I emphasized that in the axial ridge area almost all the faults are active, as clearly shown by seismic reflection data. And what I was writing about is happening today. I noted that toward the flanks of the lateral troughs of the Rift Zone the rifting activity becomes less pronounced with respect to the axial ridge area. But this is normal and there is no evidence of a downward trend at all. I can only associate myself

with Professor Vanney's paper annexed to the Maltese Counter-Memorial that contained seismic reflection profiles taken from earlier papers of Finetti-Morelli (1973) revealing intense faulting across the Rift Zone which he described in the following way: "All this complex morphology is the most remarkable expression of the distensive forces active since Miocene times (10 million years ago)."

Question: The second point raised by Malta is that in earlier papers you have talked of the continuity between Africa all the way north to Sicily. Is this so?

Answer: Yes, it is. But you must realise that, as the context clearly reveals, I was talking in stratigraphic terms and not in terms of tectonics. Until the tectonic events that created the Rift Zone occurred, as well as Malta itself, as part of this dynamic process, the crustal layers were stratigraphically and tectonically continuous across the Rift Zone. But since late Miocene the northern and southern areas have been broken apart by the rift process, resulting in a clear discontinuity, even though the stratigraphic layers of pre-rifting age on each side, quite naturally, are similar. As a matter of fact, the same is true on either side of the Red Sea rift, which is one of the world's clearest examples of a discontinuity. The strata are the same on both sides of the plate boundary.

Professor BOWETT: Thank you Professor Finetti. Mr. President, Members of the Court, perhaps I may point out that the Sudan-Saudi Arabia delimitation agreement, which concerned the Red Sea, is one of the examples where the geomorphology of the sea-bed was explicitly taken into account by the two States. This is discussed in Annex 37 of the Annex of Delimitation Agreements to the Libyan Counter-Memorial. You will note that the "Common Zone" negotiated between the Sudan and Saudi Arabian Governments is bounded on each side by the 1,000-metre isobath, and this directly reflects this remarkable rift zone in the Red Sea.

Mr. President, that concludes the presentation of this evidence.

The PRESIDENT: Is that the end of your scientific evidence this morning?

Professor BOWETT: It is indeed, Sir.

The Court rose at 12.55 p.m.

TWENTY-FOURTH PUBLIC SITTING (4 II 85, 4 p.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

The PRESIDENT: I now call on Mr. Lauterpacht, for cross-examination.

EVIDENCE OF EXPERTS CALLED BY THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA *(cont.)*

Mr. LAUTERPACHT: I would like to call Professor van Hinte for cross-examination.

Mr. President, to set the mind of the Court at ease I can assure it I am not going to enter into an extended scientific discussion with Professor van Hinte.

Professor van Hinte, may I begin by recalling a statement which you made early in your evidence. Of course, I have only a rough note of what you said, but there, in response to a question about the existence of plates and shelves, you spoke of the significance of the Rift Zone as separating two plates; and you also mentioned that there is a microplate referred to as the Messina Plate in the literature.

Professor van Hinte, you have taken a firm position, as I understand it, on the existence throughout the Rift Zone of an actual plate boundary. Is that correct?

Professor VAN HINTE: That is correct.

Question: Now, you spoke of the reference in the literature to the Messina Plate?

Answer: That is correct.

Question: Am I right in believing that the reference which you have in mind in the literature to the existence of the Messina Plate as a microplate is to be found in the article by Dewey of 1973?

Answer: That is one of the references, yes, and that is the one to the Messina Plate, to my knowledge it is the first one.

Question: Are there any other references to the Messina Plate in the literature?

Answer: There are many and I think Jongsma gave you a number and, just recently, Professor Roeder presented a paper at the AAPG Conference in Geneva, of which an abstract is published entitled "Tectonic Evolution of the Appenines" and he distinguishes the same microplate.

Question: When you say just recently, of what date?

Answer: 1984.

Question: I see. But apart from this professor, whose name I did not catch . . .

Answer: Roeder.

Question: Professor Roeder. Is there any other reference to the Messina Plate in the Dewey article?

Answer: In the Dewey article?

Question: Yes, the question I am asking is, between Dewey in 1973 and Roeder in 1984, were there any other references to the Messina Plate?

Answer: Yes, there were. There were references to the Rift Zone as a key tectonic zone and there were references to the plate, and those were given by Jongsma. I am sorry, I do not know them by heart but you can find them in the paper.

Question: When you say Jongsma, you mean the article . . .?

Answer: This morning in his . . .

Question: In the course of his evidence?

Answer: Yes.

Question: I see. Well, we have not had an opportunity to follow those up. Now, just to pause for a moment on Dewey — I hand you a document which is called Figure 1. Mr. President, copies of this document have been handed to the Registrar for distribution to the Court, and no doubt it will eventually find its way to you. I will explain what the document is so that there is nothing surprising about it, it is merely a piece of paper on which we have put together two maps. One is the figure from Dewey and others of 1973, where there first appears a reference to the Messina Plate. And we have put below it on the same sheet Figure 1 — in the article by Professors Jongsma, van Hinte and Dr. Woodside — so that one may conveniently see the two maps together.

Now, looking at the Dewey map, have I the right to believe that although Dewey mentions the Messina Plate in this map he never actually discusses the Messina Plate in the course of his article. Is that correct?

Answer: I don't remember, quite frankly.

Question: You don't remember. So you probably would not remember that none of the sources, which Mr. Dewey cites below the figure as indicating where the material for the figure came from, mention the Messina Plate? He mentions: based mainly on Bogdanoff, Choubert, Stöcklin, McKenzie, Ryan and others. You wouldn't remember?

Answer: I wouldn't remember that. The usefulness of Dewey's paper is that it indicates that he needs a plate boundary there to complete the picture, and he gave it a name, so for convenience's sake, we refer to the Messina Plate as the name of the microplate that we distinguish now with many new data — that are available now — compared to 1973.

Question: But you are attributing that meaning to Dewey? He never actually says that in words, does he?

Answer: I don't recall that, but we don't need Dewey to see that there is a boundary going through — that there is a plate boundary — and Dewey gives it a name.

Question: Well, we will come to that question of the plate boundary in due course, but for the moment I am only concerned to establish with you, first, that Dewey was the first person to mention the Messina Plate, second, that Dewey never discussed the existence of the Messina Plate in the text of his article, and thirdly that none of the sources from which the figure on which there appears a reference to the Messina Plate discusses the existence of such a plate?

Answer: I can agree on the first point. For the second and third points I would have to have the paper in front of me.

Question: Well, I think that we are obviously not going to take the time of

the Court for you to examine the paper now, but I am sure that when you do, Sir, you will find that what I have said is correct.

There is another detail which I would like you to observe on the Dewey map, and confirm if I understand it correctly: and that is that the line which separates *the Messina Plate, so-called, from the rest of the African Plate to the south* is not a solid line, but a pecked line, a line consisting of a series of dashes. Do you confirm that?

Answer: Yes, it also confirms what I said earlier, he needed that area to make a consistent picture of the place. At that time the evidence didn't exist to make it a solid line. It exists today.

Question: Well, you have very helpfully answered my next question, when you say that at that time the evidence did not exist to make it a solid line. In other words, my next question is going to be, am I right to understand that the use of a pecked line indicates an uncertainty — that it is a speculation or an inference?

Answer: Yes, it was at the time, certainly.

Question: Now, you say he needed that line to make his theory hold together. Could you look more closely at that figure and tell me whether my eyes are correct in seeing that pecked line picking a course from the north-east corner of Tunisia approximately, between Tunisia and Sicily, in a south-easterly direction and then turning sharply south-south-east towards the Libyan coast, and then resuming a south-easterly course towards the eastern side of the Gulf of Sirt? Do you see such a pecked line there?

Answer: I see two pecked lines from the point where you state — one that goes in the direction that you say and the other one goes to the north-east, and the north-eastern one is a continuation from the Rift Zone. He tied that up with the deformation front that we now call the deformation front of the subduction zone of the Hellenic Arch.

Question: So you confirm that there are not one but two lines, of which one line is certainly a line following the direction that I stated in the question I put to you a moment ago?

Answer: Yes.

Question: And then you add, understandably, that there is another pecked line turning towards the northeast. The Court I hope will have this Figure 1, as we call it, in front of it now. I would like to invite you to look at Figure 1 of Jongsma, van Hinte and Woodside, and there you have picked up the notion of the Messina Plate — correct? And am I right in saying that you have reproduced one of those pecked lines. Is that correct?

Answer: Correct — as reproduced, it is more or less the same, yes.

Question: It is more or less, but not exactly. Is that right?

Answer: Well, on the scale that we are talking about on this picture, this drawing, which is a sketch map, I think it is the same line.

Question: In so doing, is it correct to observe that you dropped the second Dewey line, the one that moved towards the south-east and cuts Libya off from the continental shelf to the north of it?

Answer: Yes, we do not have that on our Figure 1, for the reasons I explained to you before.

Question: Would you care to repeat those reasons?

Answer: Because that line is following the so-called Mediterranean ridge, the southern edge of it, which is the deformational front of the subduction process that happens a little to the north, and we do not equate that with the plate boundary.

Question: I see. Now, you say that there are other people besides you who have picked up the Dewey map. Is that correct, Professor van Hinte?

Answer: Yes, that is correct.

Question: And we will find the references for that in the statement of Professor Jongsma of this morning?

Answer: Whether they picked up the Dewey map exactly, I do not know, but that they have the concept of the plate boundary going through that area, yes, that is correct.

Question: You are not referring to the references which Professor Jongsma made to the papers by Mr. Akal and Mr. Colombi?

Answer: I know that list of papers, yes.

Question: Well, I was going to ask you for your help about that, but I can take it straight away. In fact, according to my note, Professor Jongsma referred to Akal in 1972 on the formation of a rift in the Straits of Sicily. Professor Jongsma referred also to Professor Dewey and he referred also to the paper of 1973 by Colombi, Giese and others. Now, in the interval, Mr. President, since lunch it has not been possible for us to pursue those authorities. We do happen to have a copy of Akal, but in Akal we can find no reference to the Messina Plate. So I wonder if perhaps, in due course, you could assist us with references. And there are really two references that we would appreciate from you. One is that I cannot find any reference in the Libyan written pleadings to either of these two authorities which are cited as being users, or adopters, of the Messina Plate concept. Are you sufficiently well acquainted with the pleadings to be able to assist me?

Answer: Well, I have a vague remembrance of them if you can cite the page.

Mr. LAUTERPACHT: No, I cannot cite the page. My difficulty is that on my examination of the Libyan written pleadings I cannot find any reference to Akal or Colombi. I was merely seeking from you assistance, either that you should confirm that there are no references in the Libyan pleadings or help me with identifying references in the Libyan pleadings.

Professor VAN HINTE: Are Akal and Colombi mentioned in the Libyan pleadings?

Dr. JONGSMA: Not in the pleadings. They are in the paper . . .

Mr. LAUTERPACHT: Well, we will leave the question aside for now because, as I say, I cannot find it and you cannot help me with it. Now, apart from Akal and Colombi, do you know of any use in the literature since 1973 of the expression the "Messina Strait"?

Answer: Quite frankly, I do not think I do, no, except for that Roeder paper I mentioned which has been presented at the AAPG meeting in Geneva.

Question: Well, that is 1984, and none of us had had an opportunity to see that apart from yourself. Now, apart from the reference to Akal and Colombi, am I right in thinking that there is no express statement anywhere in the literature in the period from 1973 until now to a microplate called the Messina Plate, or having any name other than in the article by Professor Finetti in 1984 and the article which you and Professor Jongsma and Dr. Woodside have prepared?

Answer: Will you allow me to ask Professor Jongsma to . . .?

Mr. LAUTERPACHT: Professor van Hinte, I am asking you the question. You know the subject. You are here as an expert.

Professor VAN HINTE: Yes, I know the subject, but I do not know the history of the subject. You are asking for references and literature but we are not constituting any jurisprudence, or how you would call that. When we find a certain situation and in this case we find this very interesting for us, a very interesting area (cutting through the area of discussion) which we refer to as the rift zone, and I would refer to rather as a wrench zone. We will find that situation once we have one reference in literature that refers to it then we can call it the Messina Plate. I mean we are not looking all the way through the literature until we find confirmation of those facts.

Question: Good. Would you disagree with what Professor Jongsma said this morning that support for the notion that the Rift Zone is a plate boundary has been growing?

Answer: Yes.

Question: You would disagree?

Answer: No, no, I would not disagree, I would agree with him.

Question: You would agree?

Answer: Yes.

Question: So, since the evidence he gives is that of Akal, Dewey and Colombi, I am asking you do you know any other of its support?

Answer: Actually we talk with many of our colleagues in conferences and many places, and . . . I don't think you will see in the future many papers that will not have a plate boundary there. The notion is clearly growing.

Mr. LAUTERPACHT: You say that I may not see in the future many references, but the data as I understand it on which it is claimed that a plate boundary exists has been known for a number of years.

Professor VAN HINTE: No, not that widely and the data is increasing every day. Part of the data is our own, part of the data is the fact that now we have the new bathymetric map, everybody is becoming familiar with . . .

Question: You see, what I have done, Professor van Hinte, in order to prepare myself to meet you, is I have looked at the references, I have gathered up the references which appear in the Libyan written pleadings on the subject of the character of the Pelagian Block in order to ascertain the nature of the support that there may exist for the concept of a plate boundary. And I have collected quite a lot of articles, as you may see. I cannot find in any of them, except the articles of 1984 by Professor Finetti, and the article by you and Professor Jongsma of 1984, any reference to a plate boundary in this area. Are you saying that that silence is consistent with a growing support for the existence of a plate boundary in this area?

Answer: No, I am not saying that silence is a growing support. There is a growing support, I mean there isn't a growing support, there is a growing notion as you said before.

Mr. LAUTERPACHT: I may say, I have not said it is a growing notion, you have said it. The long and the short of it is, I think, that so far as the literature is concerned, you are not asserting that there is in the literature growing support for the notion.

Professor VAN HINTE: I think there is. There is now since 1973 three papers that refer to it, the papers of Jongsma and us, Finetti, Roeder.

Question: Three papers out of how many, do you think, have been written about the character of this area? Would you like to hazard a guess?

Answer: Well, maybe, 15 or 20.

Mr. LAUTERPACHT: Well, just to take Professor Finetti's of 1984, is 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30. Thirty on that paper alone and that's a short bibliography by reference, by comparison with many of the other articles. And I'm saying, in this enormous literature you cannot point to a single specific article which develops the notion of a Messina Plate or a microplate boundary as such by those words in this area.

Professor VAN HINTE: Apart from Dewey.

Question: And I thought that we had dealt with Dewey a few minutes ago and I thought that you had not disagreed with me when I said that Dewey says nothing about a Messina Plate, does not discuss it and the sources cited by Dewey do not support it. It's a pure speculation of which the evidence exists exclusively in the Figure 1 of Dewey; I thought we had established that some minutes ago.

I think you said at an early stage in your evidence that your ideas have evolved, or opinions are more definite now, or words to that effect. Is that correct?

Answer: That is correct.

Question: Now is this primarily on the basis of new material or on the interpretation or reinterpretation of old material?

Answer: Both.

Question: On what kind of new material do you rely?

Answer: The new material is, for instance, a paper on, let me find it for you, a paper on the Medina Mount where a French team has been diving. It is a deep dive, and it's the group Escarmed — it's a 1982 paper, "Données nouvelles sur les marges du bassin Ionien profond" published in the *Revue de l'Institut français du pétrole*, Volume 37, and they observed on the Medina Mount about 2,000 metres relief with thick sedimentary series and they have observed from the diving bascule and to cite their page 726 "les escarpments sont contrôlés par une tectonique de failles normales". And on page 725 they say, "Confirmer la présence d'une série sédimentaire épaisse, lithologiquement diversifiée". And, this is one of the things that we would have predicted which is not a signal from an apparatus but is a direct observation.

Question: So we are talking there about one item of material evidence relevant to one section only of the so-called Rift Zone and that section is the extreme eastern section, the Medina Mount. Is that correct?

Answer: Correct, yes.

Mr. LAUTERPACHT: Now my original question was whether your views have hardened on the basis of new material or reinterpretation. You have said both. I said what new material, and you mentioned the activities of the Escarmed expedition.

Professor VAN HINTE: Correct.

Question: What other new material would you . . . without needing to go into great detail of its content?

Answer: Another part of the new material is the seismic that we could see, seismic lines, we had available.

Question: And those seismic lines dated from what period?

Answer: From the sixties and the seventies, I think.

Question: From the sixties and the seventies. Am I right to think that those seismics were fully publicized in the article by Professor Morelli and Professor Finetti in 1973?

Answer: Part of it was, part of it was not.

Question: And you used the part that had not been publicized previously at all?

Answer: I have to turn to that, I think so, yes.

Question: Good. In which line was that?

Answer: Yes, with Jongsma because that was the part he has been mainly working on.

Question: Now, I think we'll leave it there and come back to it if necessary. So you've got additional material you say on the extreme eastern end of the Rift Zone, the Medina Mount. You have additional material on seismics, but you don't know what that material is? Was there any other material on the basis of which new material, on the basis of which your opinion hardened?

Answer: Yes, there are new surveys in the area, there are new papers; you mentioned that there are about 21 papers published between 1973 and 1984 and part of it came out in the last few years. Really, the interpretation aspect is that I have been working in the south and Jongsma has been mainly working in the north, and coming together and plotting all the data available from literature on a map, that brings you to new conclusions. We had a new map available for the topography and just working on the data, you know, you change your views. I mean . . . It's not I mean, a study in a hurry, you're not static, you know. We don't end up with the same ideas that we start out with, because in the course of the study, in the course of the project, we learned a lot.

Question: So I wouldn't be putting it unfairly if I said this: that the hardening of your views is dependent in part on some new material of which you have given us some details, and in part on a reinterpretation of the whole situation in the light of all the material available. That's a fair way of putting it?

Answer: Yes, it falls in line, at a certain moment, all the data you . . .

Question: So there is in this a conclusion that we have an actual rift, an actual plate boundary in the Rift Zone per substantial degree of personal interpretation?

Answer: No, it's putting the right data together. And there is personal insight.

Question: There is personal insight, and ultimately a personal judgment is formed?

Answer: No, the data force you to a particular conclusion.

Question: But you would recognize that the data available to other writers, and there have been many of them in the area, have not forced them to that conclusion?

Answer: No, and they may not have lined them all up. We were working as a team, and so there is the seismic evidence, there is stratigraphic evidence, there is the structural evidence, the volcanics, the isotopes, the bathymetry, the geo-

morphology and if you are working alone you cannot draw a conclusion or you don't have that insight. If you work as a team, you support each other, and then it falls all in place. Once that has happened, you really grow in certainty on your conclusion.

Question: Whether you act on your own or as a team, it is a matter of interpretation as well as of material?

Answer: It is a matter of understanding the observations. It's not really an interpretation in the sense that the facts are not there. It is a matter of understanding how this present situation with its volcanics, with its grabens, with its topography, could have come about. That is, what is of course, always a matter of interpretation.

Question: Well, let us go on then and have a look for a moment at the article which contains the statement on your latest views, the views of yourself and Professor Jongsma and Dr. Woodside.

Now am I right in saying that this is the article that you wrote, would it be in 1983 or 1984 on, I will give you the title, "The Geologic Structure and Neotectonics of the North African Continental Margin South of Sicily, 1983/84". When did you actually finish the writing of it?

Answer: I think the last version must have been sometime this last summer.

Question: And that has been submitted for publication to a journal called *Marine and Petroleum Geology*? Is that right? And you are an editor of that journal?

Answer: I am on the board of the editors.

Question: You are one of the members on the board of the editors. And if we were to look at page 15 of that you would see that you have a conclusion there, expressed a bit more cautiously perhaps than this morning, "this movement of what might be considered a micro plate between the African and the European plates is similar to that of the Aegean micro plate". Is that correct? It is in the last sentence but one of the conclusion on page 15.

Answer: Let me see. Yes.

Question: That is the latest written expression of your views. I suppose since it is a joint paper, it reflects jointly the views of yourself, Professor Jongsma and Dr. Woodside?

Answer: That is correct.

Question: And had that paper been accepted for publication?

Answer: It has been accepted.

Question: And when will it be published?

Answer: In the Spring issue of the Journal.

Question: Now a copy of this paper was referred to in the Libyan pleadings and was submitted to the Court by a letter to the Registrar from the Agent for Libya dated 12 July 1984, and that is probably not a matter of your knowledge, is it?

Answer: No. I know that the Shelf Committee got a copy of it, so that was to my knowledge.

Question: I still did not get quite what you . . . You know that who got a copy of it?

Answer: The Shelf Committee on which we are assisting.

Question: The Shelf Committee. What is the Shelf Committee?

Answer: The Shelf Committee of the Libyan Party.

Question: I see there is a Shelf Committee of the Libyan Party which you and Professor Jongsma are assisting, and they got a copy of it?

Answer: Correct.

Question: I see. Now I have got in my hand here a copy of the article as it was submitted to the Court. I am going to hand it to you and does that look like the article that you wrote?

Answer: Yes.

Question: Well now will you turn to the page from which I read a moment ago, page 15? Do you have page 15 there and you are looking at the copy which I handed to you which is a copy taken from the copy presented to the Court?

Answer: I have got it.

Question: Now, would you read the last sentence on that page?

Answer: "Brittle fracture of the African margin through the central Pelagian Sea is a response to post-collision uplift and the shear stresses posed on this region by differential horizontal plate consumption."

Question: Now is there anything more on that page?

Answer: You asked me to read the last sentence.

Question: So there is nothing more on the page?

Answer: Not on this one, no.

Question: Is there a row of typewritten dots at the bottom of the page?

Answer: Sure.

Question: So that is the end of the article?

Answer: No, then follow the references.

Question: I see. What is the number of the page from which you have just been reading?

Answer: Fifteen.

Question: And what is the number of the next page?

Answer: Seventeen.

Question: So is page 16 missing?

Answer: Or it is a typing error.

Question It is a typing error?

Answer: Compared to the other article it is missing.

Question: Would you take the document which has the map of Dewey and Woodside on one side. Have you got that? Now will you turn it over please. Now on the reverse of that document you have a xerox copy of pages 15 and 16 of the article as it was originally submitted for publication. Now would you like to tell the Court what appears after the last sentence of the conclusions which you read a moment ago? Would you like to read the acknowledgements please?

Answer: The whole of the acknowledgements?

Mr. LAUTERPACHT: Yes, the whole of the acknowledgements or if you like you can go straight to the last sentence on page 16.

Professor VAN HINTE: Correct. Yes, you have a sentence underlined on this copy.

Question: Yes, that's right. And what does it say, please?

Answer: "This study was made possible through a grant to the Free University by the international law firm Curtis, Mallet-Prévost Colt & Mosle, who also arranged for permission to use some of the unpublished information."

Question: So the reference to the assistance or grant made to the Free University by Curtis, Mallet, the international firm Curtis, Mallet-Prévost, Colt & Mosle is missing from the copies submitted to the Court. Is that correct?

Answer: I do not know whether the . . .

Question: I have just told you that that copy in your hand is a copy of a copy submitted to the Court and you have just identified that at the bottom of page 15 a series of typewritten dots replace the paragraph headed acknowledgements and you have identified page 16 with the conclusion of the acknowledgements is missing. Now are you in a position to tell me this? Are Messrs. Curtis, Mallet-Prévost Colt the firm of lawyers who for a long time have been associated with the preparation of the Libyan case?

Answer: Yes they are.

Mr. LAUTERPACHT: Well Professor van Hinte I have no more questions to put to you. I wonder Mr. President whether the Court would be good enough to indulge us. Mr. President I have no further questions to put to Professor van Hinte, so he is available to my learned friend if he wishes to re-examine him.

The PRESIDENT: No that will not be necessary.

Mr. LAUTERPACHT: In that case Mr. President I wonder whether the Court would be good enough to allow a short adjournment for ten minutes so as to permit the Agent for Malta and counsel to consider whether we could perhaps dispense with the cross-examination of Professor Jongsma and Professor Finetti; if we might have an adjournment for ten minutes to consider that matter.

The Court adjourned from 4.45 p.m. to 4.55 p.m.

Mr. MIZZI: I have consulted my colleagues and we have decided to dispense with the cross-examination of the other witnesses. We shall be prepared to produce our own tomorrow morning.

The Court rose at 5 p.m.

TWENTY-FIFTH PUBLIC SITTING (5 II 85, 10 a.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

EVIDENCE OF EXPERTS CALLED BY THE GOVERNMENT OF MALTA

Mr. LAUTERPACHT: Mr. President and Members of the Court, Malta will, with your permission, call two expert witnesses. The first will be Professor Georges Mascle who is a professor at the University of Grenoble, and the second will be Professor Carlo Morelli who is a professor at the University of Trieste. It may be more convenient if I read the qualifications of each witness separately before beginning his examination. With your leave, may I invite Professor Mascle to take his place at the witness stand. Professor Mascle will you make the declaration.

M. MASCLE: Je déclare solennellement, en tout honneur et en toute conscience, que je dirai la vérité, toute la vérité et rien que la vérité et que mon exposé correspondra à ma conviction sincère.

Mr. LAUTERPACHT: Mr. President, Professor Mascle is of French nationality. He qualified in geology at the University of Paris in 1961 and became a Doctor of Science in 1973. In 1980 he became a professor at the University of Grenoble. Since 1966 he has made studies of the Alpine belt in the Mediterranean Basin from Morocco to Cyprus, principally in the regions of Sicily and Calabria. Then he studied the Himalayan and the Californian chains. He has also served as an expert in structural geology with various working groups, such as the Escarpment Project in the Ionian Sea. He has written more than 100 scientific papers and is a member of a number of learned bodies such as the Geological Societies of America, India and Nepal. He was Vice-Chairman of the Geological Society of France. He was a former Deputy-Editor of the Society's Journal and is currently a Member of its Council. At the present time he is Director of the Research Laboratory of the National Centre of Scientific Research in Alpine Geology in Grenoble.

Professor Mascle, I understand that you have actually made dives in the area in which we are now interested and have seen some of the features of which we are speaking, from depths as great as 3,000 metres. Is that correct?

Réponse: Oui. Avant de vous répondre cependant je voudrais dire que je suis à la fois très honoré et très ému de parler devant la Cour. Donc effectivement, j'ai plongé dans un petit sous-marin au fond de la mer Ionienne sur l'escarpement de Malte et la mission à laquelle j'appartenais a également effectué une plongée sur les monts de Medina.

Question: Professor Mascle, let us begin the substantive discussion by a reference to the Pelagian Block. Would you first describe for the Court the characteristics, or the boundaries of the Pelagian Block? The boundaries first.

Réponse: Eh bien, le bloc pélagien est situé à la bordure septentrionale de l'Afrique, donc dans cette région. Il est limité à l'ouest par la Tunisie, au sud

par la Libye, à l'est par les escarpements de Malte et de Syracuse, ici, puis de Medina, ici, et au nord par la zone de plissement de Sicile qui coupe la Sicile dans cette direction. C'est la zone plissée sicilienne. En fait c'est un domaine de mer épicontinentale qui se prolonge à terre un peu dans le Sahel tunisien, le long de la plaine côtière de Libye et dans le plateau de Raguse ou dans le plateau ibléen. Ces deux termes signifient la même chose, ici, en Sicile méridionale. Du point de vue de la structure régionale, il représente une partie de ce que l'on appelle l'avant-pays africain des chaînes maghrébo-siciliennes. Les chaînes maghrébo-siciliennes courent de Gibraltar à la Sicile et leur avant-pays est l'Afrique et le bloc pélagien fait partie de cet avant-pays. Du point de vue de la tectonique globale, il est situé immédiatement au sud de la zone d'affrontement entre la plaque européenne qui a sa limite à peu près ici et qui traverse la Sicile et la plaque africaine qui est au sud.

Question: Professor Mascle, would you like to say something about the geological characteristics of the Pelagian Block?

Réponse: Pour résumer très simplement, d'assez nombreux profils de sismique réflexion continue faits dans le bloc pélagien et des forages pétroliers permettent de reconstituer les séries sédimentaires. La série sédimentaire dépasse 4 kilomètres d'épaisseur. Les terrains sont essentiellement des terrains carbonatés, c'est-à-dire essentiellement calcaires, et détritiques, c'est-à-dire des terrains gréseux et argileux. Ils montrent une tendance à diminuer d'épaisseur à partir du sud vers le nord, ce qui traduit ce que l'on appelle une progradation, un gain si vous voulez, d'une plate-forme en direction du nord, et ils présentent quelques intercalations volcaniques assez nombreuses, surtout au crétacé. Le tertiaire, c'est-à-dire les séries relativement récentes, y est peu épais et marqué par de fréquentes lacunes. Enfin ce bloc a été fracturé plusieurs fois depuis deux cents millions d'années.

Question: Before this case have you been aware of any attempt to limit the area of the Pelagian Block to the region south of the so-called Rift Zone?

Réponse: La seule mention que je connaisse d'une limite possible est celle qui a été évoquée par Dewey et coauteurs en 1973. Ils ont dessiné un schéma; sur ce schéma une ligne en «tiretés» a été tracée correspondant à une limite méridionale dans le domaine dénommé «Messina plate» sans qu'aucune explication ou discussion justificative ne soit jointe à ce document. En géologie il faut noter que, lorsqu'on dessine quelque chose en «tiretés», cela signifie que c'est une hypothèse de travail. Dans le cas particulier c'était une ligne hypothétique. La carte tectonique de Méditerranée qui est présentée dans vos dossiers avec le numéro de figure 3 est un document très récent. Elle a été présentée au Congrès géologique international en 1984 à Moscou. Elle a été réalisée par une équipe de tectoniciens franco-soviétiques, à laquelle je n'appartiens pas d'ailleurs. Cette carte tectonique est le plus récent document de synthèse concernant ce domaine méditerranéen et même plus large, comme vous pouvez voir, puisqu'il va jusqu'en Iran. Cette carte présente une limite de plaque, une limite tectonique majeure qui traverse la Sicile, soulignée en rouge sur vos documents. En conclusion, à part Dewey et ses coauteurs, personne à ma connaissance n'a placé de limite nord du bloc pélagien ailleurs qu'en Sicile.

Question: So, in conclusion on this matter, Professor Mascle, may the Court take it that your own view is the same as the view which appears in Figure 3, namely that the Pelagian Block is a geological unit?

Réponse: Oui, bien sûr, c'est d'ailleurs évident depuis plus de 200 millions d'années. La série sédimentaire est la même, aux variations de détail près par-

tout, l'évolution structurelle est la même, c'est un domaine qui a été distendu, étiré à différentes époques, on peut dire que cela s'est produit par exemple vers 100 millions d'années, vers 20 millions d'années, vers 7 à 8 millions d'années, à nouveau vers 1 à 1,5 million d'années, il a aussi subi de brèves périodes de compression: ceci vers 40 millions d'années, ceci vers 10 millions d'années, vers 3,5 millions d'années et ces petites phases de compression sont connues partout en Sicile, à Malte, en Tunisie et dans le sud de la mer Pélagienne.

Question: But, despite these various developments or changes it still remains a unity?

Réponse: Mais oui, bien sûr. Imaginez, prenons un exemple, le pain: un pain est une unité, il présente une croûte qui est fendillée et fendue dessus; lorsque vous le placez dans un congélateur pour le conserver il se recroqueville un peu et ses fentes se referment un peu, c'est une compression si vous voulez, mais ça reste un pain. Quand vous le sortez du congélateur pour le consommer et que vous le réchauffez ses fentes s'ouvrent à nouveau, c'est encore un pain.

Question: I hope, Mr. President, that the Court will not think that the Maltese team is entirely consumed by considerations of a gastronomic character — references to a local bread and, on my part, to a layer cake. Professor Mascle, you are aware of the area which Libya calls the Rift Zone. Could you tell the Court whether that area is known by the name Rift Zone to geologists?

Réponse: J'ai entendu parler de grabens et de fossés, au pluriel d'ailleurs, c'est, je peux citer, Burollet en 1962; j'ai entendu parler de zones des grabens, Burollet et ses coauteurs en 1978; d'ailleurs cette expression de zone des grabens de Burollet a été appliquée à tout ce qui est situé entre la côte libyenne et la Sicile, c'est-à-dire à tout cet espace-là, à tout cet espace qui serait limité par Lampedusa et la côte libyenne et Ras Ajdir, si vous voulez, et la Sicile. Rifts (au pluriel) apparaît dans un texte d'Akal en 1972; il apparaît aussi sur une figure d'Anketell en 1980, qui considère que tout ce qui est situé au nord du fossé de Jarrafa constitue la «Malta-Medina platform (with young? rifts)». «With young? rifts» est écrit entre parenthèses et *young* est suivi d'un point d'interrogation.

Question: So what it boils down to is that although many authors have written about the presence of rifts in this zone, no one has actually called it the Rift Zone?

Réponse: Non.

Question: Well now do the characteristics of this so-called Rift Zone suggest that it is a single zone, distinguishable as such from the rest of the Pelagian Block?

Réponse: Je pense qu'il faut distinguer ce qui se passe à l'ouest de Malte et ce qui se passe au sud et au sud-est. Loin à l'ouest de Malte il y a un fossé, une fosse, la fosse de Pantelleria, elle est assez profonde et assez large; plus près, à l'ouest de Malte toujours, il y a deux fosses, celles de Malte et de Linosa qui sont également assez profondes et larges; au sud de Malte, en cette région, là, il y a une dépression qui est assez peu profonde et qui est assez large et qui ne mérite pas le nom de fosse. Elle n'a jamais été appelée ainsi. Enfin au sud-est de Malte il y a ce couloir qui est étroit et très peu profond qui correspond aux chenaux de Medina et de Malte.

Question: Pausing there for a moment, Professor Mascle, can you just assist the Court by telling them what proportion of the Malta Trough actually lies south of Malta?

Réponse: A peu près. Si l'on choisit l'isobathe 1000 c'est à peu près à un dixième.

Question: To go on with your description of the system of trenches in this area: would you like to continue with that?

Réponse: Bien, le système de fosses dont nous avons parlé correspond structuralement à une série de fossés tectoniques ou de grabens qui décalent l'horizon repère crétacé de près de 2,5 kilomètres. Le décalage des horizons récents montre que le mouvement de subsidence s'est ralenti récemment, sinon arrêté parfois.

Question: May I just interrupt you there to ask how do you show that this element of subsidence has recently slowed down and perhaps stopped?

Réponse: Lorsque l'on analyse le remplissage sédimentaire des fossés de Malte, on observe qu'il y a un remplissage qui est d'abord relativement épais puis plus mince. Ce système de fossés tectoniques a un correspondant au sud des bandes de Medina et de Malte. Il s'agit des fossés de Jarrafa et tripolitain; fossés de Jarrafa-Misurata et fossé tripolitain. Les principales caractéristiques de tous les fossés sont d'ailleurs données dans le tableau qui est légendé sous le nom de figure 4 où l'on a choisi de préciser pour chacun des fossés la longueur, la direction et le déplacement vertical d'un horizon, le toit du crétacé. On constate que les caractéristiques des fossés tripolitain et de Jarrafa sont du même ordre de grandeur que celles des fossés de Malte, de Linosa et de Pantelleria. Ils présentent le même type de structure, ce sont des grabens aussi, ils décalent des niveaux récents comme cela a été montré par les publications de Blanpied et Bellaiche et également d'ailleurs sur les profils schématiques que nous a montré M. Jongsma, qui sont annexés dans son document; ils décalent l'horizon de référence du crétacé supérieur du même ordre de grandeur (entre 1 et 3 km) et même l'un de ces fossés, le fossé tripolitain, est actif sismiquement comme cela a été montré récemment dans un article de M. Ambraseys en 1984.

Par contraste, le décalage des horizons crétacés dans les chenaux de Malte et de Medina n'atteint pas 500 mètres.

Si je veux conclure, je dirai que la région dénommée Rift Zone par la Libye n'est pas une zone homogène, on ne peut pas la dissocier du reste du bloc pélagien.

Question: Looking at the Pelagian Block as a whole would you explain to the Court the nature of the rifting that occurs in the Pelagian Block?

Réponse: Ceci nécessite de réaliser ce qu'on appellera une synthèse géodynamique ou géotectonique du bloc pélagien. Réaliser une telle synthèse implique de prendre en compte toutes, je souligne toutes, les données géophysiques et géologiques disponibles et d'effectuer une analyse de ces données qui soit si complète que, pour reprendre une expression de Descartes qui a déjà été rappelée en ces lieux, «je fusse assuré de ne rien omettre».

Mr. LAUTERPACHT: Just pausing there, you have referred to considerations or factors of a geophysical and geological character, so perhaps you might take each in turn and deal first with the geophysical considerations.

M. MASCLE: Je vais résumer ces points:

Premièrement, donc, la séismicité: elle est très faible dans tout le domaine, sauf dans le sillon tripolitain.

En second lieu, la gravimétrie: l'anomalie de Bouguer suggère que la croûte est amincie.

En troisième lieu, le profil unique de sismique réfraction entre Pantelleria et Palermo montre que la croûte continentale est sans doute amincie sous le fossé de Pantelleria.

En quatrième point, la carte du magnétisme: elle a été publiée par MM. Finetti et Morelli en 1973; elle montre des anomalies ponctuelles qui indiquent la présence d'un corps volcanique un peu partout dans le bloc pélagien, plus nombreux dans les fossés de Pantelleria et de Linosa. Ceci est illustré sur la figure 8C qui est tirée de M. Finetti. 8C donc sur les figures qui vous ont été distribuées.

Cinquième point: les profils de sismique réflexion continue publiés par Finetti et Morelli (1973) d'une part, par Winnock (1979), Bellaiche et Blanpied (1979), Jongsma également, montrent la présence de failles récentes dans tous les fossés et ces failles sont en extension.

Sixième point, la carte bathymétrique: cette carte montre la prédominance de deux directions majeures à toutes les échelles. Ces deux directions majeures sont celles-ci: la direction N120, à peu près, si vous voulez, et la direction N60-70. Accessoirement, deux autres directions peuvent être notées: celle de l'escarpement de Malte, ici, qui est N160 à peu près, et puis celle qui est presque est-ouest, qui correspond au chenal de Medina.

Question: Well, now having dealt with some of these geophysical considerations, would you like to discuss the geological considerations?

Réponse: Les considérations géologiques, elles sont aussi très nombreuses.

En premier, je reprends l'analyse des profils de sismique réflexion qui nous montrent les remplissages sédimentaires et l'ampleur des décalages verticaux et qui nous permettent de différencier les mouvements successifs le long des fractures. La corrélation entre ces profils permet de vérifier et de préciser les directions que je viens de définir précédemment.

En second lieu, l'observation à terre des fractures à Malte, en Sicile, en Tunisie permet de caractériser le jeu en extension des fractures. Elle permet d'observer aussi que ces fractures n'ont pas joué une seule fois mais plusieurs, qu'il y a des jeux successifs, parfois contraires de ces fractures; que certaines fractures peuvent être reprises en compression. Le modèle de ceci est figuré sur la figure 5E qui vous a été distribuée. Sur cette figure 5E, vous pouvez voir un bloc qui est initialement non fracturé, puis qui est fracturé en extension, donnant un petit fossé et, si ce fossé est repris en compression, localement, il peut, suivant la façon dont est orientée la contrainte de compression, soit jouer comme indiqué à droite sur le dessin en inversant le sens des failles, soit jouer en coulissement, comme c'est indiqué à gauche, sur le dessin de gauche donc, et dans ce cas-là on s'explique d'avoir parfois des images de coulissement dans le bloc maltais. D'autant plus qu'on sait qu'une compression à peu près est-ouest a existé dans ce domaine.

En troisième point, j'évoque le volcanisme. Le volcanisme est un volcanisme alcalin.

En quatrième point, j'évoque le paléomagnétisme des séries sédimentaires. Les données de ce paléomagnétisme montrent que l'ensemble ibléo-maltais a pivoté en direction anti-horaire par rapport à tout ce qui est situé au sud du sillon tripolitain. Les limites sont le sillon tripolitain et le domaine ibléo-maltais. Les données proviennent du bloc ibléo-maltais et de l'Afrique. Cette rotation en sens anti-horaire dure depuis environ huit millions d'années.

Cinquième point, il faut évoquer une appréciation de l'extension de l'étirement, si vous voulez, du bloc, qui montre que l'on a un fossé assez profond, puis deux, ici. Donc un étirement qui croît en direction de l'est. Et si l'on arrive

ici, on a un étirement très faible dans cette région-là. Donc, on a une contradiction apparente. Si l'on fait intervenir les autres fossés, la contradiction est levée. Ceci apparaît, est illustré, si vous voulez, dans la figure 5B qui vous a été distribuée et qui avait déjà été présentée à la Cour dans le contre-mémoire maltais, où l'on voit que plusieurs petits fossés peuvent donner un étirement plus grand qu'un seul grand.

Question: Having set out this series of geophysical and geological factors, how do you interpret them?

Réponse: Il s'agit donc de venir à un modèle. Différents modèles ont été présentés pour cette région. Mes collègues Finetti et Jongsma nous en ont présenté. Les modèles de MM. Finetti (1982) et Jongsma (1984) sont à peu près identiques. Ils considèrent qu'il y a un coulissement, un décalage, si vous voulez, de la partie nord du bloc en direction de l'est, par rapport à la partie sud. Dans ce cas, les fossés ici apparaissent comme ce qu'on appelle des «pull apart basins» — le terme est passé en français.

J'ai partagé ce point de vue jusqu'en 1981 sans toutefois aller jusqu'à placer, à admettre, l'existence d'une limite de plaque à cet endroit-là. Je considérais qu'il ne s'agissait que d'une extension en croûte continentale. Mais, et c'est d'ailleurs parce que je considérais que ce domaine n'avait pas changé d'orientation, que, avec mes collègues Besse et Pozzi, alors que nous avions besoin, pour étudier l'arc calabrais, d'une référence stable, fixe, qui n'ait pas bougé, nous avons choisi de commencer l'étude du paléomagnétisme dans le domaine ibléen. Et les résultats nous ont apporté une surprise. Il y avait une rotation du bloc ibléen que le coulissement de ce bloc en direction de l'est n'expliquait pas. C'est pourquoi nous avons changé, nous avons interprété, j'ai changé mon interprétation, et nous avons interprété ceci suivant un modèle différent. Je voudrais d'ailleurs, au moyen de la figure 6 qui vous a été distribuée, vous montrer en quoi la rotation n'est pas compatible avec les modèles de mes collègues.

Donc, sur cette figure 6, la figure 6A est tirée de M. Finetti et est le modèle proposé — c'est écrit d'ailleurs — «Proposed Rift Model — M. Finetti». Alors, partant de l'état qui est marqué «Early Pliocene», donc il y a quelques millions d'années, et en ouvrant pour tenir compte de la rotation de 15°, on a la figure donc 6B qui nous montre que l'on doit avoir un étirement important à ce niveau-là.

On peut faire la démarche inverse. Partir d'un état actuel donné par M. Finetti sous l'expression «present time» et refermer, refermer en effectuant une rotation de 15° dans l'autre sens. Et, à ce moment-là, on a un recouvrement important: à ce niveau-là les deux plateaux, les deux morceaux de plateaux, se recouvrent. J'ai fait le même dessin avec le modèle de mon collègue Jongsman et on voit aussi que l'on a un recouvrement à ce niveau-là.

Donc, si vous voulez, pour tenir compte de toutes les données, il faut arriver à un modèle de croûte continentale qui s'étire davantage à l'est qu'à l'ouest. Ce modèle est schématisé sur la figure 7B. En bas de cette figure 7B, vous avez une sorte d'éventail — c'est l'éventail que vous avez évoqué — et cet éventail nous montre des parties hachurées, en hachures serrées. Ces parties en hachures serrées sont celles qui ont été étirées fortement par les failles; supprimez l'étirement provoqué par ces failles et on obtient ce qui est juste au-dessus. Donc l'éventail fermé avec la rotation de 15° soulignée par les flèches. Et vous voyez que, sur un modèle de ce type, on est contraint donc d'étirer tout le bloc, de façon homogène à grande échelle, disons.

Question: Please would you tell the Court whether I have put the handle of the fan in the right place?

Réponse: Oui, pour déterminer l'emplacement approximatif du centre de rotation de l'éventail, il faut tenir compte de l'augmentation de l'extension vers l'est et aussi de la direction des fractures qui décalent les fossés; il y en a une qui est très nette ici, sur cette carte, et il y en a une foule d'autres qui sont marquées à petite échelle sur la figure 7A qui a déjà été présentée à la Cour et qui est un détail de la bathymétrie du fossé de Linosa où l'on voit aussi toutes ces petites directions qui décalent le front du fossé de Linosa. Ces petites fractures, qui sont orientées à peu près à N60, nous donnent la direction de l'ouverture, elles nous donnent la direction du mouvement et elles imposent donc le pôle de rotation, soit quelque part dans cette direction (entre Sicile, Sardaigne et Tunisie) (fig. 7B), puisque l'extension est plus grande ici et que la direction du mouvement est produite par ces lignes.

Question: Now, Professor Mascle, you remember that before Christmas Professor Bowett made certain criticisms of your maps and your views, as expressed in your memorandum in the Maltese Counter-Memorial and also in the article written by you and Professors Besse and Pozzi and Feinberg. Would you like to comment on those observations of Professor Bowett?

Réponse: La critique portait sur deux points majeurs je pense:

— l'utilisation d'une carte bathymétrique pour définir les zones de fracture; et
— l'observation que la légende qu'une figure publiée par Besse, Pozzi, Feinberg et moi-même parlait de fossés s'élargissant vers l'ouest.

Sur le premier point je réponds:

Les exemples de carte bathymétrique à toutes échelles montrant les fractures sont innombrables, j'en ai ici au moins trois exemples venant de l'Atlantique ou du Pacifique. Les fractures sont toujours marquées par des variations nettes de la bathymétrie. Et si nous désirons prendre un exemple, nous pouvons reprendre
(11) l'exemple de la figure 7A du fossé de Linosa qui a déjà été produite et qui nous montre que la bathymétrie du fossé est gouvernée par la fracture. La carte IBCM n'échappe pas à la règle. Il est au moins aussi légitime de définir les directions de fractures à partir de cette carte que d'interpoler des profils de sismique réflexion continue et de dessiner des fractures en «tiretés» comme cela apparaît sur les documents présentés hier par mon ami Jongsma. En géologie l'usage est de figurer en «tiretés» des structures hypothétiques, c'est-à-dire non vérifiées.

Sur le deuxième point l'article qui a été publié à *Earth and Planetary Science Letters* porte en légende de la figure 8 que les fossés s'élargissent vers l'ouest. C'est évidemment une erreur d'impression qui a échappé à l'imprimeur. En effet, d'une part la figure montre le contraire, d'autre part il suffisait de lire le texte sous la figure page 386, dernière ligne de la colonne de gauche et cinq premières lignes de la colonne de droite:

> «This result is consistent with contemporaneous extensional tectonics in the Pelagian Sea as shown by the alkaline Plio. Quaternary volcanism, steep normal faults and "en relais" graben widening from west to east (fig. 8).»

Au demeurant ce qui est important ce n'est pas tant la largeur d'un fossé que l'extension qu'il représente et celle-ci, l'extension, est fonction du déplacement vertical le long des failles. Un fossé large et peu profond est moins étiré qu'un fossé plus étroit et plus profond, je l'ai figuré schématiquement pour expliquer cela à la Cour sur la figure 6D où l'on voit un même bloc, représenté à la fois sous forme de deux coupes et sous forme d'un bloc diagramme, un même bloc

qui a été étiré par un fossé profond et par le même fossé moins profond et plus large.

Question: Having dealt with those criticisms that were made of you, can I pass on to another point. You are aware that Libya has advanced the proposition that the Rift Zone constitutes a fundamental discontinuity between what Libya considers as Malta's shelf, and the rest of the Pelagian Block to the south of the Rift Zone. Do you agree with that proposition?

Réponse: L'expression de discontinuité fondamentale n'appartient pas à la terminologie géologique, et le concept lui-même n'apparaît nulle part.

J'ai expliqué tout à l'heure que de part et d'autre des fossés la série sédimentaire est la même à des détails près et que la structure y est très simple, c'est un plateau faillé, ce qu'on appelle en tectonique une structure tabulaire. Elle est la même de tous les côtés, on est en présence d'une continuité telle qu'il est illégitime d'invoquer une discontinuité fondamentale.

Question: We really have here a situation of a single Pelagian Block and nothing that you would understand or recognize as a fundamental discontinuity — that is clear. Now, you are also aware that Libya considers that a plate boundary exists within the Rift Zone. Would you like to comment on that suggestion — the existence of a plate boundary?

Réponse: Qu'est-ce qu'une limite de plaque? Une définition en est fournie dans cet ouvrage de Le Pichon, Francheteau et Bonnin: *Plate Tectonics 1973*, édité par Elsevier dans la série *Developments in Geotectonics*, n° 6. Au chapitre 2, page 3, définition, on lit:

> «The plate tectonics hypothesis explains the tectonics and seismic activity now occurring within the upper layer of the earth as resulting from the interaction of a small number of large rigid plates whose boundaries are the seismic belts of the world.»

Et plus loin: «This is the fundamental premise of plate tectonics: the seismic belts are zones where differential movements between rigid plates occur»; et encore un peu plus loin: «One can then proceed to define simply the boundaries of the plates using seismicity . . .»

Question: Now that you have referred to seismicity, perhaps you would tell the Court something about the nature of seismicity in this region?

Réponse: Quelle est la séismicité dans la région? Les séismes sont fréquents dans l'arc calabro-sicilien, en Calabre et en Sicile en liaison avec la subduction tyrrhénienne. Ils sont très rares dans le système Pantelleria-Linosa-Malte (voir par exemple la figure 4 de mes amis Jongsma et van Hinte présentée hier) et, dans deux cas connus, ils sont liés à des éruptions volcaniques (en 1831 et en 1891). Ils sont un peu plus fréquents dans le sillon tripolitain et à terre en Libye comme cela était souligné dans un article récent de N. N. Ambraseys (1984, paru dans *The O.G.S. Silver Anniversary Volume, 1958-1983. Contributions to Modern Geophysics and Oceanology: Bolletino di Geofisica Teoretica ed Applicata*, vol. 26, n° 103, p. 143-153).

Donc la séismicité dans le bassin Pélagien n'atteint pas l'intensité caractéristique d'une frontière de plaque. Si cette carte est assez lumineuse de loin, on voit que les ceintures séismiques sont soulignées par des points rouges qui correspondent aux épicentres (il s'agit d'une carte de la séismicité mondiale publiée en 1974 (*US Geological Survey*, 1974), par des points rouges et des points verts aussi dans certaines zones. On voit que les ceintures séismiques existent dans les dorsales intra-océaniques, celle-ci, dorsale spécifique, celle-ci,

la dorsale médio-Atlantique, qu'il y en a énormément dans l'arc égéen en Italie, dans l'arc de Calabre en Sicile, qu'il y en a aussi en d'autres points tout autour du Pacifique et que le bassin pélagien est pratiquement indemne de séismicité.

Donc la séismicité dans le bassin pélagien n'a aucun rapport avec la séismicité d'une frontière de plaque.

Question: We have heard quite a lot about the relevance of volcanism to boundaries. Perhaps you would like to speak about that subject?

Réponse: Le volcanisme n'est pas une caractéristique des seules frontières de plaque. Il existe un très abondant volcanisme intra-plaque *(inside the plate)*: deux exemples suffisent. Celui du volcanisme du système de fossés du Massif central et du fossé rhénan qui sont représentés pour vous sur les figures 8A et 8B. Ceci pour choisir un exemple en croûte continentale. Et en croûte océanique il y a aussi les volcans importants intra-plaque. Vous voyez tout cet immense espace, c'est la plaque pacifique. Ici au centre il y a le plus gros volcan du monde, le volcan de Hawaii, et on a toute une chaîne volcanique ici, la chaîne Hawaii, qui se poursuit d'ailleurs par des volcans éteints, des Empereurs. On a d'autres chaînes volcaniques dans le Pacifique. Le plus gros volcan du monde n'est pas sur une frontière de plaque. Il existe en Méditerranée un volcanisme caractéristique de limite de plaque. C'est celui de limites de convergence, celui de l'arc éolien (tyrrhénien) et celui de l'arc égéen, le volcan de Santorin par exemple.

Question: Yesterday you heard the development by Professor Jongsma of certain criteria relevant to the definition of the plate block. Would you care to comment on what Professor Jongsma said?

Réponse: Mon ami Jongsma hier a examiné une série de critères qui pour lui peuvent être considérés comme témoignant de frontière de plaque. Il ne nous a pas précisé si ces critères devaient être pris tous ensemble ou séparément. Il a cité la séismicité, la présence de failles, les variations d'altitude, les indications de rotation, le flux de chaleur et l'activité volcanique. Si on prend ces critères tous ensemble il faut tenir compte de la séismicité. Je viens de parler de la séismicité, il n'y a donc pas de limite de plaque ou de microplaque au sens entendu par Jongsma hier. Si on les prend un par un, ce n'est pas une frontière de microplaque qu'il y a dans le bloc pélagien, c'est plusieurs, en particulier, au sud des bancs de Medina et de Malte, puisque Jongsma, van Hinte et Woodside écrivent, page 14 de leur texte: «Crustal blocks such as Medina Bank appear to have been rotated during the early phase of wrenching.» Ainsi à leur sens, au sens que proposait Jongsma hier, on est conduit à placer des limites de plaque dans le fossé tripolitain, dans le fossé de Jarrafa, dans celui de Malte et dans celui de Linosa, il y aurait au moins quatre microplaques.

Question: So how do you like to compare . . .?

Réponse: Je préfère m'en tenir à la définition originelle de Le Pichon. Il n'y a pas de frontière de plaque ou microplaque dans la «Rift Zone».

Question: You have been speaking about the question of the existence of a plate boundary. Would you like to talk for a moment about the possibility of plate boundary in formation — the idea of an incipient plate boundary which we have heard? What evidence is there in support of, or contrary to, this hypothesis?

Réponse: Dans le monde il existe des limites de plaque qui sont récentes. Pour s'en tenir aux limites en extension, en étirement, deux exemples existent: la mer Rouge, qui a été évoquée hier par M. Finetti, et le golfe de Californie.

Tous les deux sont caractérisés par une séismicité assez importante et aussi par l'apparition de croûte océanique.

Question: How long does it take for a plate boundary to develop? Could we have a plate boundary developing between 1982 and 1984?

Réponse: Le temps demandé par une marge pour atteindre son état de marge, c'est-à-dire le temps pour que s'effectue l'effondrement complet, ce qu'on appelle la subsidence initiale, varie entre cinq et vingt millions d'années. Il dépend de l'intensité et surtout de la continuité de l'étirement. Lorsque se produit un étirement brutal de la croûte continentale il s'ensuit un effondrement, donc la création d'un ou plusieurs fossés. La subsidence peut durer entre cinq et vingt millions d'années et le remplissage sédimentaire atteindre trois à quatre kilomètres; quelques volcans alcalins peuvent se manifester. Si l'étirement ne se renouvelle pas, le phénomène cesse, si le fossé est proche de sources de sédiments il se remplit, il se comble, sinon il reste une dépression. En particulier, s'il est émergé il a peu de chance de se combler parce qu'il sert souvent de zone de transit pour les cours d'eau, par exemple toujours le fossé rhénan qui était présenté à la figure 8B tout à l'heure. Ce fossé rhénan s'est produit il y a environ quarante millions d'années. Il a été rempli d'environ 2 kilomètres de sédiments et il a présenté quelques volcans alcalins encore très récents. Il s'y manifeste encore d'ailleurs une très faible activité sismique et ce n'est pas une frontière de plaque. La même chose s'est produite il y a beaucoup plus longtemps, il y a cent cinquante millions d'années, dans ce qui est maintenant la mer de Norvège (Northern North Sea) et cet effondrement, à cette époque là, a produit les bassins de Möre et de Viking Trough qui sont montrés en coupe sur la figure 7C. De ces bassins il y a eu un étirement entre la partie Shetland et la partie continentale norvégienne — un étirement qui n'est pas négligeable; il a atteint 70 kilomètres, c'est-à-dire que deux points qui étaient à l'origine à une certaine distance se sont trouvés plus éloignés de 70 kilomètres, et ceci c'est un bassin qui a évolué en croûte continentale étirée et qui n'est jamais devenu une frontière de plaque.

Mr. LAUTERPACHT: Well, Professor Mascle, that concludes the questions I would like to ask you. Thank you very much indeed. Mr. President, if it is agreeable to you, may I now call Professor Morelli? Before I describe Professor Morelli's qualifications perhaps it would be convenient if he were to make the declaration.

Professor MORELLI: I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief.

Mr. LAUTERPACHT: Mr. President, Professor Morelli is the professor of applied geophysics at the University of Trieste and has been such for over 20 years. He founded the Osservatorio Geofisico Sperimentale in Trieste and was Director of it from 1951 to 1962 and its President from 1963 to 1975. In 1975 he was awarded the Gold Medal for Culture and Arts by the Minister of Public Instruction of Italy. He has been President of many learned bodies specializing in his area. For example, President of the European Association of Exploration Geophysicists, and President of the European Geophysical Society. Indeed his fame goes wider than that; he has been President of the International Gravity Commission of the International Association of Geodesy, as well as Vice-President of the Intergovernmental Oceanographic Commission of Unesco.

At the present time he is chairman of a number of groups: the Sub-Commission for Deep Seismic Sounding of the European Seismological Commission;

chairman of the Committee for Geology and Geophysics of the International Commission for the Scientific Study of the Mediterranean Sea; chairman of the editorial board for the Overlay Sheets to the IBCM, which has so often been referred to at this Court; and chairman of the National Group for Physics of the Solid Earth of the CNR.

He is a member of the Scientific Review Board of the IOC, of the NATO Scientific Committee, and of the Istituto Veneto di Scienze, Lettere e Arti. More than that, he is the author of 255 scientific publications including a major book on gravimetry running to 800 pages. He has been a specialist in the geophysics of the Mediterranean sea-bed since 1953, when he began to carry out a gravity survey of the Adriatic Sea. Subsequently that survey was extended to the whole of the Mediterranean.

The Court is aware that in 1973 Professor Morelli wrote with Professor Finetti a major study on the geophysical exploration of the Mediterranean Sea, of which part related to the Strait of Sicily and the Pelagian Sea.

In 1975 he wrote with Dr. Gantar and Dr. Pisani a study entitled "Bathymetry, Gravity and Magnetism in the Strait of Sicily and in the Ionian Sea". In 1981 he published "Gravity Anomalies and Coastal Structures Connected with the Mediterranean Margins". And since then he has maintained a specialist interest in the Strait of Sicily and the Pelagian Sea by taking a leading part in a research group active in the preparation of the International Bathymetric Chart of the Mediterranean. Eighty per cent of the data used in the preparation of those maps was surveyed by the Trieste group, the Osservatore Geofisico Sperimentale under his leadership.

I should add that the association of Professor Morelli with Malta's case goes no further back than December of this past year, that is to say the end of the hearings of the first stage of the present case.

Well now, Mr. President, I will be putting a number of questions to Professor Morelli which are similar to those which have been put to Professor Mascle, but I will not expect Professor Morelli to answer in identical terms but rather by reference to a different range of materials and to his own personal experience.

Question: Professor Morelli, may I begin with the first question which relates to the concept of the Pelagian Block. Would you describe to the Court its boundaries and its geological characteristics?

Answer: I thank you, and will you permit me to say how honoured I am to be appearing here in front of the Court, and I thank you for this honour.

The boundaries of the Pelagian Block have already been described at least three times here in this room yesterday and today so it is really simple just to recall them. To the south — Libya, to the west — Tunisia and exactly the north-south high line in the centre of this area. To the north — Sicily. The boundary of the Block is the boundary of Africa in that area. Africa is in contact with Europe below the mountains in northern Sicily. This is demonstrated in many geophysical manners.

I will not enter into discussion of the boundaries there, the unique plate boundary that we have in the area. To the east the boundary is the Malta-Medina Escarpments. This is the outline of the boundaries.

Question: Would you care to go on and say something about the observation of the relevant geophysical data on the basis of which one can speak about the Pelagian Sea?

Answer: This has also been recalled in this room. The Osservatorio Geofisico Sperimentale of Trieste has done a large amount of survey in all the Mediterra-

nean, and in particular in the Pelagian Sea area. We were also told yesterday that almost all the surveys in the area are based on this original material. This material consists of 212,000 kilometres of gravimetric, magnetic and bathymetric lines and 30,000, until 62 and subsequently other ones, lines of seismic profiles. The material permitted to gain immediately new information on the geological and geophysical situation in the Mediterranean. But we are now at least 12 years from the first publication and every moment new ideas are coming and new studies are coming.

Question: On the basis of the data that have been published are you in a position to describe the terminology which has been used in connection with the Pelagian Block, and in particular whether the name "the Sicily Channel Rifting Area" has been used, and so on?

Answer: That area was described initially by Professor Burollet, who is a great expert in geology. He has passed all his life — 40 years of it — in Tunisia and the Pelagian Sea area and he has named this area Pelagian Sea and Pelagian Block. Later on, from the studies that we had then, and especially from the seismic studies, it became very clear that this area was a single area, all between the boundaries described, and this was very clearly a sedimentary area; and the sedimentary strata can be followed very nicely from the seismical data. And so in a subsequent paper Professor Finetti gave it a name which is also indicative of what he was thinking at the time of this area and on which obviously I agree perfectly; he said "Sicilian African Platform" in describing the essence of this area. Now the Pelagian Block is named in this publication that you have as Figure 15 in the folder. This is the Sicilian African Platform — called "platform" because geologically it is a platform, and I have mentioned and specified already the results.

In our paper Finetti, Morelli, 1973, the summary of the area was presented for the first time. In the Strait of Sicily there is an absolute continuity of the continental African Plate from Tunisia-Libya to the Ragusa Massif with Tertiary and Mesozoic sediments that in the central part of the Strait seemed to be predominantly a platform and intersected by a rifting geodynamics which was still active.

This came out by the, I would say, famous profile MS-19 that you have also seen yesterday which we will examine also very briefly in a short time because from this profile came out the first evidence of fractures. We have fracture here, fracture here, fracture everywhere. In the same paper — this was in the summary — in concluding the part devoted to the Pelagian Block (p. 304) it was said that all the above-mentioned elements lead to the conclusion that the area of the Strait of Sicily constitutes a zone of continuity of the African plate from the emergent continent of the Ragusa Massif.

Moreover, it is evident that in the central part of the Pelagian Sea there exists a rifting process probably of an early age and still active. So it was clear from the beginning that we have the continuation of the African Plate till Sicily and that we have this rifting phenomenon going on and this is the main argument in our discussion of this morning.

Question: Professor Morelli, before Professor Finetti used the expression the "Sicily Channel Rift Zone" in his paper of 1984, are you aware of the use of that expression in the literature?

Answer: No, in reality he has used another term in a previous paper. This was the "Sicily Channel Rifting Area", and this was published in 1982. All the references are in this folder and the references are published as Figure 21 in the

folder, so you can see all the references. In this paper of 1982 he said "This Sicily Channel Rifting Area is continuous all along the Pelagian Sea from the Tunisian extremity to the Ionian Sea." Now, this is the new concept. He is introducing the concept of the continuity of the rifting from the north-western part to the south-eastern part. Later on in the paper of 1984, also mentioned here, this name was converted into "Sicily Channel Rift Zone", and obviously this will be the main object of the following discussion.

Question: Before this case, had you been aware of any attempt to limit the concept of the Pelagian Block to the area south of the so-called Rift Zone?

Answer: To my knowledge, no.

Question: Is it your view that the Pelagian Block is geophysically a unit?

Answer: I agree completely on this point and I would like to bring some explanations just to show how this opinion is based. The geophysical unity of the Pelagian Block results from all the available geophysical data. The reflection seismic profiles permit us to follow the reflections throughout the entire region, and to construct on the maps all the main stratigraphic horizons — this is what Professor Finetti said yesterday — "stratigraphic continuity". For example, see the map of the top of the Miocene and of the top the Mesozoic presented as Figures 18 and 19 by Finetti in 1984. These horizons can be followed all over the area, in depth, obviously.

Very clear statements on the geological continuity have already been mentioned, so let us now pass on to gravity data. The gravity data are almost uniform all over the area and demonstrate the continuity of the continental crust. This is shown in Figure 14 in the folder. I would like you to look just for a moment with me at Figure 14, which is relevant to the case because we have to make some deductions from the figures. The area of the Mediterranean is shown in a very reduced, or condensed, form. This is a very condensed or reduced form of the area that is normally in the Mediterranean. After the coffee break I will present the originals on a larger scale on the blackboard. But you can see that the gravity anomalies which describe the situation are practically absolutely uniform in all the parts of the Pelagian Block with the exception of the centre of Sicily in which a very thick sedimentary basin is present and with very strong negative anomalies — but this has nothing to do with our case — and in the north-western area practically in what is called the sector of the rifting area, that is the area of the three main grabens. All the rest is absolutely uniform and, moreover, we can see that the gravities are normally negative but they are comprised between zero and 50 mGals — the equidistance is 50 mGals. So practically the area is very flat. What does this mean? This means that in the area we do not have any mass variation in depth capable of influencing the gravity field itself. We do not have any big magmatic body, that is the mantle, coming near the surface. We do not have any big variation in the thickness of the crust. This is also another very important argument that we will consider.

If you permit, I would like just to indicate what is the general situation of the crust, because yesterday it was also discussed at this point. We can consider the normal crust — by normal I mean absolutely flat, without mountains and without depressions — a plateau like this. The crust has a thickness of approximately 30 kilometres and here at the bottom of the crust there is a discontinuity normally called moho. I am sorry to repeat this because I know it has been mentioned many times in this room — 30 kilometres is the thickness. The mean density of the crust is 2.67, and that of the mantle 3.3, so we have a difference of 0.6 in density, which is the difference supporting the crust.

Now, let us suppose that the weight is increased by a mountain. Obviously this weight requires an increase in the force of Archimedes to maintain the crust in equilibrium. So, the mountain is increasing the weight, the root is also increasing the weight, and the mantle must go down. The root, as it is called, this is the root of the mountain, is approximately 4.5 times the height. If you have a mountain 2 kilometres high, like the Dolomites or a similar mountain, the root will be deeper than 30 kilometres. Thus the root of the Alps is 39 kilometres generally speaking. In the Himalaya the root is 80 kilometres, and so on. In this case — and I call your attention now to this conclusion — we have sifted the crustal material which is light below, that is into, the mantle. If we make a gravity profile we will notice that we have a negative Bouguer anomaly. And this has come in because that crust is thicker. Let us look at the opposite case. Let us go to an ocean. This is the sea surface, this is the sea bottom — I exaggerate too much. Here we have the water 1.0 density. Obviously in this case the mantle is coming nearer to the surface, and this antiroot is of the order of 2.8 times the depth of the water. So if we have an ocean of say 3 kilometres depth, we will have approximately 9 kilometres of antiroot. Of course this means that the crust will not be 30 kilometres but 21 kilometres.

I mention this because in the central area where we have the big grabens, as has already been said many times, thickness of the crust is diminishing. But if the thickness of the crust is diminishing this is automatically bringing the mantle nearer to the surface and this immediately causes a positive Bouguer anomaly. This is the general rule. The profiles indicate that it is fractuated in certain points: we have grabens, many grabens. This situation, as has already been said, derives from the fact that the area has been subjected to powerful forces in the past, subjected to compressions, subjected to distensions. The actual phase of the formation of this graben came from this distension. If you have distension, you have a separation of this block and this block can tilt and go down. So practically you can have — I make now another scheme — you can have a certain block like this, which has gone down, let us say, 2 kilometres as we have said. The fault is, I do not say lubricated, it has not the resistance of the rest of the rock, so it is able to make vertical movements because it is broken. Then if this is the mantle, if here we have 2 kilometres of water, the mantle will come up by 2.8×2 kilometres, the distance is 6 kilometres and we will have a mantle not at 30 but at 24 kilometres. If you remember the table that Professor Mascle has presented, we have in some grabens a vertical shift downwards of 3 kilometres and this brings the mantle at 20 kilometres. The crust is reduced to 20 kilometres, which indicates (not proves because we do not have a seismic profile) a seismic reflection profile passing exactly in this area. But the indications coming from the profile of Gargano and Pantelleria are in this direction. Gravity confirms this. So, the mountain is coming nearer to the surface and the anomaly will be positive; and this is an argument that must be recalled later on.

Question: That explanation, Professor Morelli, was in relation to the relevance of the gravity data and their contribution to demonstrating the continuity of the continental crust?

Answer: Exactly.

The Court adjourned from 11.20 a.m. to 11.35 a.m.

Mr. LAUTERPACHT: Professor Morelli, before the coffee break you were speaking about the geophysical unity of the Pelagian Block resulting from the

available geophysical data. You had spoken of the reflection siesmic profiles and you have been dealing with the gravity data and I believe that you would now go on to consider the question of the magnetic field.

Professor MORELLI: Yes, exactly, and I apologize for having entered into such details, but it was important to see that bathymetry is correlated with crustal thickness and is also correlated with gravity anomalies, so when we speak of the three arguments they will always be connected, they are not independent. Another thing that came out is that if we consider the bottom of the Pelagian Sea we can imagine what is the bottom of the crust. Then if we connect gravity this is another argument and so this can follow nicely. Coming back to Figure 14, which we examined before, we see that in the Pelagian Sea there is no sign in gravity of a relevant fundamental discontinuity nor of any relevant crustal variations apart from what has already been said. Let us now go to the magnetic field. The magnetic field is, as you can see in Figure 15, fairly regular, but much more regular in the area west of the Malta-Medina Escarpment than in the area of the Gulf of Sirt, and what are all these anomalies along the Malta Escarpment? These magnetic anomalies are in correspondence with magma coming near the surface, and maybe sometimes also volcanos, along the faults of this very big system of faults which we call the Malta-Medina Escarpment. In the south-eastern part one finds spread and diffused magnetic anomalies.

This is of no interest to us. In the Pelagian Block we have obviously a concentration of magnetic anomalies in the area to the north-west where there are volcanos; they are all young so they are all connected with magnetic anomalies. This is well known. They appear also in the south-eastern part and this is like the earthquakes — they are spread all over the Pelagian Block.

Question: Having spoken of the magnetic field do you think it would be helpful to go on to consider the question of bathymetry?

Answer: Yes, bathymetry itself is a physical fact which sometimes does not receive proper attention, because from bathymetry, as you well know, many things can be deduced. In bathymetry, as has already been indicated, the three big grabens all lie to the area west and south-west of Malta. They are all closed and are separated topographic features, and they are also limited in length. Professor Mascle has presented a table this morning, with all the pertinent data.

The eastern sector of the Pelagian Block, between Sicily and the Gabes-Tripoli-Misurata Basin, is a quite different thing because it is a single plateau which I have been calling the Malta Platform, Medina Rise and Melita Plateau, and which is very clearly to be seen from IBCM. Incidentally, I have presented on the wall the pertinent sheet of IBCM, Number 8, and the original sheets on a 750,000 scale, which were published in 1975. This is the original publication of the geophysical data — gravity, magnetic and bathymetry. You can see very clearly that there is no discontinuation, which is very nice; then you have here this Medina Bank and then you have here the Melita Bank. The colours are not as strong as yesterday, but between the banks we have, we know, two channels to the east, the Medina Channel which continues with the Heron Channel and the Malta Channel which continues to the north-east; they are of limited depth (600 metres) permitting the transfer of the deep water from the eastern to the western Mediterranean, eroding the surface of the Pelagian Block which is a continental bridge separating the two parts of the Mediterranean. To the south of the Medina Bank we have another channel to which I draw your attention because we have to come back to it again. The same thing can also be seen here with more detail — the three grabens and then the banks and so on as I have described.

Question: A moment ago you said something about the flow of water in the area. Were you referring to the lower currents or the upper currents?

Answer: I was referring to the lower currents because they are of interest at the bottom. The situation is this; in the Sicily Channel area the Atlantic waters enter, passing to the north of Africa, and going to the Eastern Mediterranean as surface water. It seems not true because they are normally colder, but the Levantine waters are hotter but denser — that is they have more salinity — so coming back they cross the Pelagian Block as bottom water.

Question: So the situation is that there are in fact currents in two directions; currents from the south-east to the north-west which represent the lower currents; currents from the north-west to the south-east which represent the upper currents?

Answer: Yes.

Question: And is it right that the currents that come from the north-west to the south-east are not limited in their direction simply to this but in fact spread out?

Answer: They make currents, they turn around; they in fact distribute themselves in all the eastern Mediterranean.

Question: Well, I think you might want to say something about bathymetric profiles?

Answer: I have made a bathymetric profile along the 15° meridian from north to south. This is to see the difference, a comparison with the two bathymetric profiles that our Libyan colleagues have presented in the written parts. If you make a profile from the north to the south, you see the results with the same data, with the same vertical exaggeration presented in Figure 16. So starting from the north, that is from the left side looking at the figure, from Sicily you go through the Malta Platform which is obviously very flat, then you enter the Malta Channel and the Medina Channel in which you have this exceptionally studied and discussed volcano, because it is an isolated volcano and it is very nicely represented in the figure. Then you continue along the Medina Rise entering the Tripolitanian Furrow, coming to the Libyan coast. So practically it suffices here only to indicate that there is no major topographic accident in this area. We do not have the big grabens, we do not have the things that have been discussed in the western area. The geologists say that this is high, looking at the structures and the profiles so often cited here, is an area which is comparatively high, in many senses, also in depth — relative to the rest of the area.

Question: Well, would you like to say something about the activity in the area as revealed by seismic profiles?

Answer: So, this is a new argument, and again, I must apologize if we will lose a few minutes to examine this, because this is, I would say, of fundamental importance in the further discussion. If I can call your attention to Figure 17 in the folder: this is the planemetry of the profiles in the area. The same planemetry is in the transfer sheet that they have taken away, but it can be brought back.

And so, I have reviewed the profiles which are interesting in the present case. First of all, I would say classical MS-19, the profile which runs from the northwest of Malta. Let us look at the symbols, which are on the bottom. There are faults which don't reach the recent sediments and which are therefore older, and there are faults that cut all the sediments including the most recent ones, therefore they are very young. They are indicated with this sign, old and active. Here are grabens, and also the grabens can be old or new; that is they are either not

touching the bottom, or they are active also now; that is they cross the bottom, and the recent sediments are displaced by the formation of the graben, or the movements of the graben.

So, starting from the north-east, we have the Caltanisetta basin, which is a very wide sedimentary basin, which has nothing to do with the present case. Then we come to the Malta horst, it's written "The Malta Horst" which is the continuation of Malta and Gozo — the high. Incidentally, it has also been explained that all the area of the Pelagian Block has been submitted to very intense vertical movements, and so for most of the time it settled down, but at a certain moment it came up, or we have differential movement, vertical movement. So a relative high is a horst, a relative low is a graben. From the Malta horst we enter the Malta Graben, that we cross in section, and we cross also with a profile MS-14. You see, the Malta Graben is practically active in all the parts, because the older faults came in through the surface of the bottom. Then we have a high again, then later on another graben, the continuation of the Linosa Graben, which is very clearly demonstrated by very active faults again. Then we have a small high which is called on the map "Boribank" and then we enter the Tunisian Plateau. The Plateau is an absolutely flat, 100-kilometre-long platform without any accident.

Now, let us see what happens on the parallel profile which is called MS-20. And let's start again from the north-east. Starting from the north-east there is first the platform — which platform? — the Malta Platform; and then there is the Malta Channel. The Malta Channel is not active because, as you can see, faults are not coming to the surface; it's a small graben, in any case. Then, continuing to the south-west, there is the Medina Graben and the Medina Bank. Between Malta and the Medina Bank, there is again a horst high. In reality the Medina Graben is a sedimentary basin, because it's very regular and no faults are crossing the surface. Continuing, we have the Medina Bank, again a plateau, no faults crossing it. And we find, this is some surprise, before arriving at the Melita Bank, we find the Melita Graben again. The Melita Graben is below the surface. The Melita Bank continues to the south-west, and then we come to the Jarrafa Trough. The Jarrafa Trough, as you can see, is very fractured and active because faults are coming in most parts through the bottom; so the Jarrafa Trough, which has been declared dead, is not dead in any sense, it's working, active like all the other grabens of the Pelagian Sea.

Let's continue. We reach the Tripolitanian Graben, and we find the same thing. The Tripolitanian Furrow, the big topographic accident in the southernmost part of the Pelagian Sea, is again active. And this is one of the main discoveries coming from the seismic data. We knew that the graben were, in many parts, still active. Professor Finetti has declared yesterday, and I repeat it today, this activity is diminishing. There is this faulting, this very important argument which we are considering, and which has been so important in the last few million years, especially in the last two million years, which is decreasing. Whether it will stop or not, this is another thing. But it is diminishing. This is a general feature of all the Pelagian Block, not only of the so-called graben area.

And can I say something of the rifting?

Mr. LAUTERPACHT: Yes, indeed.

Professor MORELLI: What you see now is the relief on the bottom, that is the bathymetry. This, as I said, is the result of a very long tectonic activity. And any textbook of geology will tell you that this is the consequence of the strong actions between the African Plate to the south, and the European to the north. These collide and since the material is rigid and brittle it is fractured. I

present here the research of quite recent studies which were published in 1984, which has nothing to do with the present case, because they are completely outside of the problem. Figure 22, please, in your folder. And you see that the main faults in the area under discussion have the following direction. First of all, we have in a north-east/south-east direction the faults which bound the big grabens — the faults that have been discussed by Professor Mascle this morning — and they are in an anticlockwise direction. Then we have the north-east/south-west faults affecting the Medina and Melita Banks, also anticlockwise. And in Italy we call them Appennine trend and anti-Appennine trend, north-west/south-east, north-east/south-west. Then there are the east/west faults which are interesting, especially the central-most part, in particular the Sahel-Medina area, and indeed they are also dextral. And finally we have the north/south faults which are specially valid and active in the southernmost Pelagian Sea, but also in the northwestern parts and you can see the continuation in the Tyrrhenian Sea. So, practically everywhere there are faults. Now, because we have north-west/north-east/north-south/east-west, and according to the different tectonic origins of the forces, one or the other force was active, and of course the result is drifting, because that is the meaning of active. The fault is drifting, breaking, rifting. So this is again a general picture of the area, showing that rifting is a general phenomenon in the Pelagian Block area.

Question: Professor Morelli, just before you put away Figure 22, the structural map of the Central Mediterranean taken from the article by Bocaletti, could you perhaps just tell the Court whether you see on that map any indication of a fundamental discontinuity in the Rift Zone?

Answer: No, but I have already said before that I don't see any fundamental discontinuity in the Pelagian Block, so . . .

Mr. LAUTERPACHT: I'm really asking you in relation to this very recent map.

Professor MORELLI: No. The reply is always the same. And since you called again attention to this map, I would like to call the attention of the Court to what is happening to the north of the Medina Bank. You see, from the map, all the area going from Sicily to the Medina Bank is completely quiet. No major interruption of any type, apart from the small channels which, as we have seen, are minor topographic features.

Question: So what conclusion do you draw from that complete quietness in the area? Does that affect the continuity of the Rift Zone?

Answer: No. It does not affect the continuity of this Malta Platform and the Medina Platform. This is what I am saying. You don't have any faults here.

Question: In other words, it establishes the continuity on the north/south plain?

Answer: Exactly, what I said before.

Question: Establishes the discontinuity of the Rift Zone in west-east direction?

Answer: That is correct. What has been called the Rift Zone. The Rift Zone has been intended as the area of interruption of the Pelagian Block that we discussed here many times. This Rift Zone, I would say, has different provinces. The province of the big grabens, the province of the small channels to the north-west, the province of the small channels to the south-east and finally the province, which I do not know how to call, of the Medina mountain down into the Ionian plain, and this in my opinion must be very carefully discussed by the

geologists because everything here is down, everything is settling, everything is considered as graben. But these are mountains, these are not all channels, these are mountains, these are old sedimentary mounts which are relics of regions existing here before the big collapse of the Ionian sea. And they have been discovered to be absolutely flat.

Question: Arising directly, I think, from what you have just been saying is the question of the existence of plate boundary within the Rift Zone. You know that Libya considers that such a plate boundary exists. I think that the direction of your own views on that subject is beginning to be apparent, and perhaps you would like to comment some more on the subject of a plate boundary within the Rift Zone?

Answer: As Professor Mascle has already said, all the geophysical data are not in favour of a plate boundary. All of them. The seismicity is certainly not that of plate boundary. This is surely not a plate boundary. The epicentres are not aligned in the ridge crust, in the so-called axial ridge line. Also the earthquakes' foci distribution here is not indicative of the typical movement at plate boundaries in formation along strike-slip faults. Strike-slip faults are normally to be recognized because you have in the first sectors compressions, tensions, compressions and tensions. This design just means that this is distributed in the four quadrants. So studying this you can understand if it is a transfer fault in movement, but nothing really is coming out. Magnetism, should we have a plate boundary, we should have something very clearly stated or a line of the oceanic crust forming or the lineaments — magnetic lineaments all around. So, surely, I say surely this time not probably, no plate boundary exists in the Pelagian Block and on Figure 18 you see the plate boundary between Africa and Europe going from the Azores through Gibraltar to Cape Bon to Sicily and around Italy to Crete, and so on. This is the area shown by all geophysical means and which are becoming less in the Pelagian Block.

Question: Now Professor Morelli you have just reached the conclusion that there is no plate boundary in existence in the Pelagian Block. May I put to you the same question as I put earlier to Professor Mascle: what possibility do you see of the existence of a plate boundary in formation, an incipient plate boundary?

Answer: Like for instance as Professor Finetti suggested yesterday for the northern part of the Red Sea where the southern part is open and the northern part is opening. But if the same thing were happening in this area, we would have what one would normally have in such a case, and we would also have a strong heat flow from the bottom because if the crust is breaking, the magma is coming up and is obviously hot and we would have very strong heat flow anomalies. Now we do not have very many data in the area, but taking together all the data of Figure 19 one can assess the situation. In the easternmost part of the Sicily Channel the measurements are approximately 25 measurements and they have been done by our Russian colleagues and published by Zolosterev and Soshishnikov in 1979, and these measurements you see today to the east are normal. The heat flow scale is indicated on the top. Since the normal valve ratio is approximately 42 millewatt per square metre, the measured valves are all less than 50, so they are all normal for the area indicated. And to the western part we are covering the area of the big grabens and they must be higher and indeed they are higher, they are more than 100, but not so high as they would be if they were in a Rift Zone like in the Tyrrhenian Sea. Here in the Tyrrhenian Sea, in its south-easternmost part, we have 200 mw per square metre, so we have five times the normal value, and this is one of the ways for finding a break between plates. So also this is no indication of an incipient plate boundary.

Question: There is no indication for the incipient boundary. Now just supposing that such a boundary could be said to be in the process of formation, what time scale is involved?

Answer: This is a geological phenomenon, and in geology we speak always of millions of years. And just to clarify a little bit quantitatively, I have brought the figure that Professor Finetti has published in his book in 1984 to illustrate the situation of the Red Sea. Starting from the top, there are different geologic epochs: the first is Oligocene, 40 million years ago. 40 millions when the process started. Second is early Miocene (25 my) with crustal stretching, moho upheaval and rifting in the upper crust: corresponding to the present situation in the Pelagian Block. The break in the crust beginning at 16 my, with the asthenosphere reaching the moho, very high heat flow, etc. For the Pelagian Block, if the phenomenon would continue (and in reality it is going to stop) we would have to wait, therefore, some other 9 my. Here I have to clarify a point that has been misunderstood many times, also yesterday, and it refers to the crust. In reality the crust is thick — 30 kilometres — and is the upper part of the lithosphere. Lithosphere means rigid; it is the outer part of the earth which is rigid, normally 100 kilometres thick. It follows the asthenosphere. And this is going down up to 200 to 150 kilometres below the continents. This is to say that in the continents, the crust is 30 kilometres. Below the oceans, the oceanic crust is only 5-10 kilometres.

Summarizing again this is the base of the crust or moho. This is the lithosphere and below the asthenosphere. The asthenosphere is the area which is viscous. The material can have convection currents and so here you have convection currents that transfer their actions to the lithosphere. So the lithospheric plates are transported by this asthenospheric current. If a break should happen this is a break that could cause a plate boundary. Therefore to speak of a plate boundary we cannot consider only the crust as has been said until now here. We must consider all the lithosphere. When we say "plates" they are lithospheric plates not crustal plates. Excuse me, but this is an essential point, because you see, in the first and second stage of Figure 23 you have some small fractures, some small rifting in the outer part of the crust. What does this mean for our purpose? Nothing. Rifting in the crust is not enough. After 15 million years the crust begins to be more broken, more rifted, the moho is coming up and the asthenosphere is coming up. But the moho and the asthenosphere are separated so the asthenosphere is reduced in thickness and the crust is reduced in thickness. In the Pelagian Block we are far away because, continuing, you must arrive at 16 million years in the story of the Red Sea and then you see some faults breaking the crust and the asthenosphere coming in contact with the lithosphere.

But to reach the present situation of the Red Sea another 15 million years are needed — so we have time.

Mr. LAUTERPACHT: Thank you Professor Morelli. Now let us move on from the plate boundary to the question of the so-called "axial ridge". You may remember from your reading of the records of the hearings in the Court before Christmas that I got into some trouble because of the axial ridge lines which I was so bold as to draw on the map, and yesterday I was further criticized. So I think it may be helpful to the Court if you were to explain what you understand by an axial ridge, and perhaps you could also tell the Court whether it is appropriate to use the concept of an axial ridge in the context of any part of the Pelagian Block?

Answer: I used to ask my English colleagues: "What is a ridge?" A ridge is a crest in English. Very simply, a ridge is a crest. What is a ridge in English? It

is a crest. In plate tectonics a ridge is an opening from the ocean bottom where the lithospheric plates are broken and the magma ascends like the volcanos; and this is the ridge. The magma is coming continuously up. The two lithospheric plates have separated, a new lithosphere is formed on the borders and this lineament, these fractures are very long, so you have a very long chain of mountains. This chain of mountains crosses all the earth. In Figure 9 you see the scheme of this region. This is the region.

If you permit me, I will start from the northern Atlantic through Iceland, down to the mid-Atlantic and around Africa, entering the Gulf of Aden (Professor Finetti has made this nice photograph of the Gulf of Aden) and then past the Red Sea to the right and the great lakes of the African area. So it reaches an area which has topographical and gravimetrical well-defined characters. Positive, the first ones, and here we have negative ones and particularly different are the gravity anomalies. For instance, if you turn the page to Figure 20 here is the situation of the gravity anomaly of the mid-Atlantic ridge, and you see that the Bouguer anomalies are negative, and this is completely different from our case in the Pelagian Block, where they are positive. They are negative because the magma coming from the bottom is transformed and it has a reduced density and so on.

Question: Just to interrupt you for a moment, Professor Morelli. When we talk about an axial ridge you are saying that that ridge is in effect an extended line of mountain crests under the water, representing the magma that has been thrown up and there has been a break in the lithosphere?

Answer: Formed by . . .

Question: Formed by the magma which has been thrown up by a break in the lithosphere?

Answer: This region that I mention is long — 40,000 kilometres. It is the biggest mountain system in the world. But we do not see it because it is below the sea level. But we see the crest of some mountains coming up (like St. Helena) or we see the island of Iceland. Of course there are always problems with the magma covering the crests.

Question: Do you see any sign of that in the area in which Professor Finetti has drawn his axial ridge line?

Answer: First of all I would like to specify that Professor Finetti has done a geophysical work. He has taken the gravity anomalies and he has elaborated them to see what he could deduce from this, and this work is perfectly correct, but has nothing to do with the conclusion taken from his paper. As he stated yesterday — and I am very glad that he hears what I am saying — he has done a sort of filtering of the original Bouguer data. These are the data on which everyone is working. They are the only work from which one can deduce the Bouguer anomalies in the area of the Pelagian Sea. He has first of all chosen the theme that he would have liked to solve and individuate in the lower crust, 20-30 kilometres deep. Then he filtered — that is, took away — the small anomalies which are caused by density variations near the surface. They do not interest us. For this purpose he has taken a big circle on which he computed the mean observed Bouguer anomalies. The radius must be sufficiently big to be free from the local gravity effect at its centre. The difference with the Bouguer anomaly in the centre of the circle is what we call residual anomaly. You have a map as Figure 17. It was presented yesterday but it was published before, obviously, and it is here that the map is objective. The map presents the residual anomalies after you take away the deeper effect. The second step that Pro-

fessor Finetti has done is to try to correlate the positive or semi-positive highs. Now this is the second problem which you have to be careful of when extrapolating, and, just for clarity, when you are in an area of the Pantelleria Graben, the Malta Graben or the Linosa Graben, which corresponds here to very clear positive residual anomalies, perfectly close, perfectly correlated and so on, it is no problem, the correlation is there, you can go just a little to the north or the south but, incidentally, it is a thing that you can do also without making any fiftering, because you see also here in the Bouguer map all that is there in general. The original map is the Bouguer map. All the elaborations are mathematical procedures for trying to help the observer to an interpretation. But nothing can come out through mathematical procedures which are not yet here. So let us look at the same time at this (filtered) and this (Bouguer). I am speaking here of the original filtered anomalies but I could speak in the same manner here (Bouguer anomalies). The axis here is very clear, and the axis here is very clear, no problem . . .

Question: Professor Morelli, would you bear in mind that what you say has to be written down, so if you could just specify when you say "here" exactly where you actually are?

Answer: The axis is in the centre of the Graben area, the axial axis passes near Pantelleria and near Linosa. The Malta Graben has been left out because of the three it is the one which is anomalous, giving rise to negative anomalies. And later on you can continue, here to the south-east of Malta you have these lines, and now, following the map of Professor Finetti, the line turns to the south-east and on to the Medina Channel and down to the Ionian Sea.

Question: You are describing what? You are describing Professor Finetti's lines?

Answer: Yes, I am describing Professor Finetti's lines. To do this, obviously some sort of extrapolation may be done, because if you have the map before you — which is Map 87 in the folder — you can see that as soon as you leave the big grabens you have an extension of the positive gravity anomaly, a very weak extension, and then you have to cross a negative area and then to continue you have to go to the unique volcano which is of some help, because this is the only positive anomaly in the area. The volcano is there, and fortunately it is possible to use it and from this to continue, otherwise this extrapolation would not be possible.

Question: So, just again to make precise where that positive feature is you are talking about, the volcano — about half way down on the right-hand side and about an inch and a half in from the right-hand margin?

Answer: It is at the lowest latitude of the axis of the so-called axial ridge line. But looking at this map (residual) and also looking at this map (Bouguer), I would like to show you, according to what I presented before, that other solutions are possible and with the same degree of uncertainty or, if you wish, with the same degree of certainty. A look at the bathymetric map shows that Bouguer anomalies and depth of the crust are connected. So, bathymetry — you have crossed the Linosa Basin and then you have here a very nice alignment following without any interruption and passing between the Medina and Melita Bank — a straight line.

Mr. LAUTERPACHT: Now Professor Morelli, this is really quite important and I take it that what you are saying is quite important. I am sure the other side as well as the Court would like to know exactly where this alternative line is, so perhaps you could describe it a little bit more precisely, the starting point and the various points on it and its terminal point.

Professor MORELLI: I make reference to Professor Finetti's map, Figure 87 of your folder. The north-west-south-east line drawn by Professor Finetti just turns to the south, and then at a certain moment it leaves the grabens area, turning to the east/south-east, practically towards the above-mentioned volcano — I can make here a sketch.

Question: Perhaps you could describe it in terms of that map?

Answer: Which map?

Question: In terms of Map 87. Do I follow you correctly when I think you are talking about that part of Professor Finetti's line which lies south of the number 13° at the top of the map and approximately east of 36° south of the map?

Answer: Just a little south of 36° latitude. Yes, I am speaking of this line and the line, as you see, has a very nice positive anomaly there. Then it turns towards the east and it is extrapolated across the positive anomalies before reaching the volcano and then extrapolated again without any positive sign to reach down to the Ionian Sea, the Heron Valley. But if you take the continuation of the straight line going from the point that you have mentioned, 13° E and 36° N approximately, and you continue to the south-east, straight across all the positive anomalies, also very big ones without negative ones in between, and you reach the end of this area which is shown here, very clearly the continuation of the bathymetric profile, and then you go down in the Ionian Sea. The same is true if you are going to consider the Bouguer gravity anomalies — here you have the negative-negative-positive in between the positive, then you go down.

Mr. LAUTERPACHT: Professor Morelli, "here and here and here" are where? You see the difficulty — you must assist the Court. My learned friend on the other side will no doubt wish to refer to this this afternoon. I am sure that you will be able to draw that line on the map and provide it to the Court.

Professor MORELLI: May I suggest that we make copies of this and distribute them to everyone?

Question: Copies of what?

Answer: Of this line that I have drawn here.

Mr. LAUTERPACHT: You have drawn a line? Good. Well, certainly, I think what we should do is to immediately make a copy and offer it to our friends and then provide the Court with a copy. But to look at this map which Professor Morelli has just handed me, what is really happening is that Professor Morelli has drawn on it a line which runs virtually in a diagonal from the top left-hand corner of the map to the bottom right-hand corner of the map. Of course it does not stretch as far as that at each end, but the general direction of the line which he has constructed is a good deal further to the south than is the eastern extension of Professor Finetti's map. We will let our friends have that and provide a copy to the Court.

Professor MORELLI: Yes, the Court could have the copy now if someone would copy this, please. In the meantime I would like to explain that this is not only derived from bathymetry and gravity but also from seismic information.

I presented to you this morning Figure 17 — can we go back just a second now — yes, it was Figure 17. When I referred to horsts and grabens shown in the Pelagian Block — this line which I hope you will see in a few minutes — is the continuation of the Linosa Graben straight down, crossing what is, on the

map, indicated as the Melita Graben, just down there you see, shown practically within another — I don't say confirmation, because these are only nice exercises that we are doing for interpreting what we have available — but this is another confirmation that really this graben could continue, this graben could be an important feature in the area. I repeat, Professor Finetti's and my line are exactly the same in the north-western part. They diverge where Professor Finetti's line goes to the east and mine continues straight down, following the graben of Linosa to the graben of Melita and down into the Ionian Sea.

Question: Professor Morelli, then is it right to conclude from what you are saying that you regard the justification for Professor Finetti's eastward extension of the line effectively from the end of the Malta Trough, approximately, as having no more justification than the projection which you have made?

Answer: I just follow the same procedure.

Question: You follow the same procedure?

Answer: The same procedure. Yes, I don't say that this is not the right procedure, I am just saying this procedure can be followed also in a different manner.

Question: And produce the line that you have drawn?

Answer: The probability, apart from the graben, apart from the north-west area, is the same. You have only to choose the highs that you have; I have chosen the highs from the Bouguer and residual gravity anomalies, the lows from bathymetry, and the grabens from the seismic profiles.

Question: So, really, I suppose there are at least two conclusions that one could draw from the line which you have constructed. One is that Professor Finetti's axial ridge line does not serve to justify the allegation of continuity of the Rift Zone eastwards — south-eastwards and eastwards — and the second, I suppose, is that if there is any relevance in the axial ridge line as a determinant of a continental shelf boundary, the axial ridge line that could be used would run much more to the south-south-east than does Professor Finetti's line and would move straight down in the direction of the Jarrafa Trough and the Tripolitanian Furrow. Is that correct?

Answer: Yes, but I would like to be sure that I have been correctly understood, because: first of all, we don't have any ridge; second, we don't have any plate separation; third, we therefore don't have any discontinuity. This has been demonstrated all of this morning. And, finally, I said this is a nice exercise, because it is a qualitative use of the gravity anomalies, but, only to the extent of what gravity can offer.

Question: I very much appreciate your help. You are really saying to me, don't talk about an axial ridge line, we are just talking about a line of gravity anomalies?

Answer: A line of positive — of maxima, of positive — gravity anomalies. In the case of my line, also, of relative maxima depths of water and of alignment of the grabens.

Mr. LAUTERPACHT: Well, thank you very much Professor Morelli.

Professor MORELLI: I would like to present to the Court all the figures which I have in these folders, just to complete the presentation.

Mr. LAUTERPACHT: Certainly, if it is going to clarify matters I am sure the Court would like to have them.

Professor MORELLI: The first one is called Figure 17, that is Figure 17 from Jongsma and other papers, and this Figure 17 shows the depth in two-way travel time to the base of the Pliocene. The shaded area is the area in which no M reflector exists. But I am not interested in this, I am interested in showing that also from this map you can see the continuity from north to south, from the Malta Plateau and to the Medina and Melita Banks, because they are connected you see, and there are only very minor channels in between.

The second map that I would like to present to you is the subsequent one called Figure 10 and this is the section of the Rhine Graben. The Rhine Graben is a graben that has been illustrated, I would say, in one of the best manners in the world, because French and German colleagues are doing all the possible geological and geophysical studies to understand this graben. It started 40 million years ago, in effect; there was then a certain subsidence of the ground — of a few kilometres — there was a fracturing, a rifting, perhaps even volcanos, which are also recent, and produced some earthquakes. And then it stopped and nothing happened; you see the crust is absolutely regular — and let us hope that it will not re-occur. But in any case, also, if it does re-occur, we have some 35 million years to wait until the effects are of importance to us.

Question: So really, your point about the Rhine Graben is that this is a case where there might have been a plate boundary but it never developed in full?

Answer: Yes, it aborted.

Question: Professor Morelli, you referred to Figure 17 a moment ago, and I fear there may be some confusion here?

Answer: Figure 17 in the Jongsma paper. The last figure in the Jongsma paper.

Question: But what figure is it in the document before the Court?

Answer: I introduced a copy of this figure in the folder.

Question: As what number?

Answer: It is written as Figure 17 — it is the last one, but it is written as Figure 17 from Jongsma. It is this one, as you can see.

Mr. LAUTERPACHT: Well, let us have a verbal description of it. For the sake of the record, the figure which Professor Morelli has been describing as Figure 17 is not the Figure 17 which is in the folder which Malta has presented to the Court. That Figure 17 is the figure that has on it the seismic lines. The Figure 17 which Professor Morelli has just been speaking of, is the figure which bears that number in the article by Professor Jongsma, van Hinte and Dr. Woodside, which was submitted to the Court — which was the subject of discussion yesterday, and for the moment I don't see it in Malta's folder, but we shall take steps to see that it is put there.

Professor Morelli, I have concluded the questions that I want to put to you, and you have now concluded what you want to say?

Professor MORELLI: Yes, I thank you very much. To conclude this, I would like then to say that what we have seen is that the Pelagian Block is a continuum. The Pelagian Block is submitted to — has been and is submitted to strong tectonic forces. The forces broke the upper part of the crust, so we have rifting fissures everywhere, and we have grabens formed in certain of the weakest points. These grabens are yet active. These grabens have also different alignments; the main alignment of these grabens is north-west-south-east and also the southernmost grabens, like the Jarrafa Trough and the Tripolitanian Trough

are yet as active as all the others. Seismicity is the same everywhere, all the features in fact are the same everywhere, so we don't see any reason for saying that the crust is divided, that it is a fundamental discontinuity, and that the plates are neither existing nor forming.

Mr. LAUTERPACHT: Thank you very much Professor Morelli. Mr. President, we have no other witnesses.

The PRESIDENT: Thank you. Libya will start cross-examination in the afternoon at 4 o'clock.

The Court rose at 12.35 p.m.

TWENTY-SIXTH PUBLIC SITTING (5 II 85, 4 p.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

Professor BOWETT: Mr. President, if Professor Mascle could take the stand. Professor Mascle in order than we understand each other it will help if we speak slowly. I shall do my best and hope you will reciprocate. Could we begin by discussing your scientific paper which was reproduced in part two of Annex 2 to the Maltese Counter-Memorial. That raises a number of interesting points and I would like to discuss them. I am now assuming that it is designed as a scientific reply to the scientific arguments of Libya in the Libyan Memorial. I repeat the question. Am I right in assuming that this was designed as a reply to the scientific arguments of Libya in the Libyan Memorial? I think we have some difficulty, I am not getting through . . .

And you stand by that as a scientist? You still believe as a scientist in what you have written? Well you must forgive my next question: it is one I would not normally ask and it is something of an impertinence, but I have to ask it because of the questioning yesterday. Were you paid for that work?

M. MASCLE: Certes.

Question: Now in the study, at paragraph 48, you say this:

> "after the beginning of the pliocene, Africa and the Ibleo Maltese complex ceased to form one solid block and the latter has rotated with respect to Africa. This rotation, although quite small, is over 10 degrees and is anti-clockwise. Such a rotation imposes the formation of troughs between the two domains."

In paragraph 50, you say the "two domains, separated by an anticlockwise rotation of the northern block through an angle of the order of 10°." Let me ask you, Professor Mascle, which are the two domains and along what line does the break between the two parts that are moving separately occur. Would you show us on the map?

Réponse: Je crois avoir déjà répondu à cette question ce matin. Donc, il y a, je l'ai dit ce matin, un bloc qui tourne au nord, qui comporte la plate-forme...

Question: I wonder if you would mind taking the pointer and just illustrating that more precisely?

Réponse: Il y a un bloc qui est situé au nord de ce domaine et un bloc qui est situé au sud de ce domaine. Les mesures paléomagnétiques sont effectuées dans le bloc ibléo-maltais d'une part, c'est-à-dire dans certains points de mesures qui sont essentiellement sûrs d'ailleurs en pays ibléen. Et toutes les autres mesures sont prises dans l'Afrique stable.

Question: Let me explain my difficulty. If this block is rotating in relation to this block, and the rotation of the block in the north is anti-clockwise through 10° to 15°, there must be somewhere a line where the one block is moving against the other. What I am asking you to identify is the line where that movement occurs.

Réponse: Pourquoi voulez-vous qu'il y ait une ligne? Il n'y a pas de ligne.

Vous avez tout un domaine qui se distend, qui s'étire et, entre cette partie-là qui est peut-être fixe ou qui tourne dans ce sens-là, puisqu'il s'agit d'un mouvement relatif, et cette partie-là qui est peut-être fixe ou qui tourne dans ce sens-là, puisqu'il s'agit d'un mouvement relatif, on étire le domaine entre les deux. C'est simple. Il n'y a pas de ligne.

Question: I see. So as I understand you, you have got something like a fan and a handle up here, and what is happening is that it is opening out that way?

Réponse: En gros. C'est schématique mais ce n'est pas faux.

Question: But at the edges of the fan. Where it is opening out?

Réponse: Il y a des mouvements de transformation, je l'ai dit. C'est dessiné sur mon schéma le long de ces fractures, le long de ces fractures, le long de cette fracture.

Question: I do not quite understand how the edges of the fan are not in a continuous line. How can the edges of the fan be there, there and there? I would have expected your fan to have an edge somewhere out here.

Réponse: Vous avez bien regardé le dessin que je vous ai montré ce matin, Monsieur. Il y a plusieurs éventails imbriqués l'un dans l'autre, en fait. L'image de l'éventail est certes une image simple, simpliste dirai-je, qui exprime bien, qui permet de bien comprendre les choses. Le mouvement est un peu plus complexe. Ces fractures, je l'ai expliqué, ces fractures, qui ont cette direction, pour moi, sont des fractures de transformation. C'est une notion classique en tectonique des plaques. C'est une fracture le long de laquelle le mouvement se transforme.

Professor BOWETT: I understand your model. What I am trying to do is apply it to this area and see how you can discern in the structure of that area the edges of your fan. I cannot detect the edges of your fan, that is my difficulty.

M. MASCLE: Je vous les ai montrées. Une ici, d'autres de transformation quelque part par ici, en tout cas une certaine ici, il y en a probablement ici, à chaque fois qu'il y a un changement de direction...

Question: Let us assume that you have the edge of a fan here. Would there then be evidence of substantial rifting or fracturing along there?

Réponse: Il y a subsidence de ce domaine. Quand il y a subsidence d'un domaine, il y a étirement.

Professor BOWETT: Subsidence is quite another matter. That can occur simply through the weight of sediments.

M. MASCLE: Non pas seulement.

Question: Not alone. Is there extensive fracturing along there? Are there substantial faults along there?

Réponse: Mais c'est une fracture. On n'a pas besoin d'un grand nombre de failles. Une suffit. C'est une zone de fractures, cet escarpement. Tous les profils sismiques publiés par MM. Finetti et Morelli le montrent.

Question: Let's turn to this notion of a discontinuity, or a marked discontinuity, a notion which has been used a number of times in this case, in relation to a continental shelf area. I understand your position to be that there is no discontinuity in the whole of that area. Could you help me by describing what would be, in your view, a discontinuity? What would be a discontinuity? What kind of feature would be a discontinuity?

Réponse: Une discontinuité, pour moi, peut être une zone. En géologie, disons, c'est une zone qui sépare deux domaines qui ont des structures et des

histoires fondamentalement différentes. Prenons la ligne insubrienne — je ne sais pas si la Cour connaît la ligne insubrienne — c'est une ligne qui se trouve dans la chaîne des Alpes, qui sépare le sud de la chaîne des Alpes du nord de la chaîne des Alpes. Au nord de la chaîne des Alpes on a une structure, une histoire qui sont fondamentalement différentes de ce qu'il y a au sud; donc la ligne insubrienne au sens géologique est une discontinuité.

Question: Take this feature, the Sicily-Malta Escarpment. Would that constitute a discontinuity between the Pelagian Block and the Ionian Sea?

Réponse: Votre question est à quel sens? Au point de vue géologique, au point de vue juridique?

Question: Not *juridique*, no. I am not asking about law: I am asking you as a scientist. Would you regard that feature as a discontinuity between this area and this area?

Réponse: En tant que scientifiques, nous avons ici un domaine qui est un domaine de croûte continentale avec une série sédimentaire et nous avons ici un domaine qui est un domaine de croûte océanique; c'est donc un domaine qui a une autre structure, donc on a une discontinuité.

Question: So, let us get this clear. There are two different domains here and that is a discontinuity?

Réponse: Oui.

Question: But there is no discontinuity on this side of the escarpment?

Réponse: Nous avons un seul domaine géologique.

Question: Would you describe the Rhine valley as a discontinuity on land?

M. MASCLE: A quelle époque?

Professor BOWETT: Now.

M. MASCLE: Non.

Question: Tell me, what is the scientific reputation of people like Dewey and Ryan, Pitman and Bonach?

Réponse: Excellente.

Question: You must know that in 1973 they identified what we call Rift Zone as a microplate boundary and they showed a microplate which they called the Messina Plate, lying between the boundary of the main African Plate and the Pelagian Block. Why did you not refer to that view in your study?

Réponse: Le papier de Dewey ne parle pas de *microplate boundary* dans la région que vous citez. Il y a pour caractériser ce domaine une figure — une figure, je l'ai dit ce matin — dans laquelle la frontière en question est traitée en «tiretés», ce qui signifie que c'est une frontière hypothétique. L'hypothèse n'ayant pas été confirmée, il ne m'est pas apparu nécessaire de l'utiliser et de la citer. Nous n'avons pas confirmation de cette existence.

Question: It was a hypothesis quite different from your own?

Réponse: C'était une hypothèse différente de la mienne, certes.

Question: And even if there was no discussion it did show the boundary of a microplate through that Rift Zone; the boundary of the Messina Plate ran through the Rift Zone. Is that not right?

Réponse: Une minute hypothétique.

Question: On the illustration used the boundary ran through the Rift Zone? Say yes or no, it did or it did not?

Réponse: Certes, autant qu'on puisse en juger à voir le dessin. Le dessin est très petit et le trait très gros.

Question: What about the work of Boccaletti and Guazzone in 1975? The work I refer to is their piece on plate tectonics in the Mediterranean region and it is published in the book on the *Geology of Italy* published by Squires. Now they also showed a plate which they called the Messina Plate, with a boundary in exactly the same place in the Rift Zone. Did you know that work? Were you aware of that study?

Réponse: Oui.

Question: Why did you not refer to that? I can understand you not agreeing to it but what I cannot understand is why in a scientific study . . .?

Réponse: Non pas avec moi, avec eux. Il y a peut-être eu une erreur de traduction.

Question: Well let me repeat the question. I can understand you not agreeing . . .?

Réponse: On ne peut pas citer tout le monde, Monsieur.

Question: I see. Let us set aside this term plate boundaries. Let us concentrate on a rather simpler question as to whether a division exists in this area and if so where it is. Now, you are familiar with the 1983 study by Blanpied and Bellaiche, that you cited in your study. Now they distinguished between the Sicilian Shelf and the Tunisian Platform did they not? The Sicilian Shelf . . .

Réponse: Ils ont donné ces noms, oui.

Question: Do you agree with that distinction?

Réponse: Tout dépend ce que l'on entend par plate-forme. Si c'est un plateau haut — nous avons un plateau haut dans cette région-là — voyez, d'ailleurs, la ligne bathymétrique le montre; nous avons un autre plateau haut, ici.

Question: Let us not quibble over terms. They made a distinction and they described a dividing line. Do you remember how they described the dividing line between these two domains? Do you remember?

Réponse: Je n'ai pas présent à l'esprit les termes, mais je peux retrouver cela dans mes papiers, ici.

Question: I will help you. What they say is this. They say that the Sicilian Shelf and the Tunisian platform "are separated by several northwest-southeast oriented grabens. Among these Pantelleria, Malta and Linosa are the most important." Now where would you draw that line which they indicate? The northwest-southeast oriented grabens — Pantelleria, Malta and Linosa. Show us on the map.

Réponse: Vous m'excuserez, je souhaite vérifier le texte. Non... Mais il y a quelque chose de plus dans la phrase. J'ai le souvenir que Bellaiche et Blanpied parlent de fossé de Linosa, de Malte, mais parmi d'autres. Il y a cette partie de la phrase qui est importante: parmi d'autres. Si vous voulez que je vous montre où sont les fossés de Pantelleria, de Malte et de Linosa, je vous les montre, mais je peux vous montrer les autres aussi. Les autres, ce sont ceux-ci, ce sont ceux-ci.

Question: I am just asking you to identify the features referred to by Blanpied and Bellaiche. What about the work of Burollet, Mugniot and Sweeney in 1978, their work on the geology of the Pelagian Block? You cited that work. Now they say that the Pelagian Platform is divided into three: the Tunisian

Platform, the Medina Bank and the Sicilian Platform and Malta Horst and the division which they identify is "the large northwest-southeast Pantelleria and Malta Graben". Where are they? Could you please point to them? This is what we call the Rift Zone.

Réponse: Je pense que c'est ceci: Pantelleria, Malta... Oui.

Question: Do you agree with the division made by Burollet, Mugniot and Sweeney?

Réponse: Quelle division? Celle que vous appelez «Rift Zone»? Ou... C'est-à-dire l'existence de trois plateaux, de trois zones hautes? Oui, certes, bien sûr. Medina Bank, Melita Bank, Lampedusa Plateau et Ragusa Malta Plateau. C'est écrit sur cette carte.

Question: If I were to call them platforms would you be quite happy about accepting the division?

Réponse: Plate-forme. C'est tout.

Question: Do you know the work by Akal in 1972 on *The General Geophysics and Geology of the Strait of Sicily*? He says that the Strait of Sicily, and that is the same as the Sicily Channel or the Rift Zone as we call it, "separates Sicily from Africa and divides the Mediterranean into two basins". Do you agree with that?

Réponse: Oui.

Question: Do you know the work published in 1982 by Beccaluva, Rossi and Serri on volcanism? Do you know that they describe the Sicily Channel as "structurally a continental rift"?

Réponse: Oui.

Question: Now, Professor Mascle, I have given you citations from some 15 reputable scientists, and that is excluding those presently advising Libya, and they have all recognized that this feature, the Rift Zone or Sicily Channel, is a marked division. Clearly some of them describe it as a plate boundary, others as a division between two platforms, or two shelves, but they all treat that zone as a marked division. Now does it not appear to you that this view, supported by all these scientists, is scientifically respectable?

Réponse: Mais c'est une question d'échelle, Monsieur. C'est une division à petite échelle, à l'échelle du bassin marin pour les pêcheurs qui vont à la pêche, il est évident qu'ils ne vont pas tremper leur ligne dans le fossé de Malte... mais à l'échelle de la croûte de la plaque africaine, ce n'est pas une division.

Question: Professor Mascle, let us not play games, these are geologists, we are not talking about fishermen. Why would the difference in scale affect your answer?

Réponse: Tout dépend de l'échelle à laquelle on travaille. Lorsqu'on travaille dans un petit espace, on cherche des divisions qui sont à petite échelle pour subdiviser ce petit espace. Lorsqu'on traite d'un grand espace, on n'utilise pas les mêmes subdivisions!

Question: I do not understand your answer. They are all dealing with the whole of that area, so for them the scale is the scale. Why does the scale make any difference? Where does scale enter into it?

Réponse: C'est une subdivision à certains niveaux.

Question: Perhaps we could just turn to a different question, and that is on the availability of new data to report the existence of an incipient plate bound-

ary. Do you recall the seismic profile of the Medina-Malta Channel that appeared in Annex 5 to the Libyan Reply? Perhaps I could help you by giving you this copy? Do you ever recall seeing that profile before?

Réponse: Non. Enfin, auparavant je l'ai vu, lorsque la délégation de Malte m'a fourni la copie de ce document.

Question: So to the best of your knowledge it was a profile that has never before been published?

Réponse: Que je n'ai pas vu publié? Oui.

Question: So it can be said to be new data?

Réponse: Certes.

Question: Perhaps I could also refer you to the 1984 paper which you co-authored in the *Earth and Planetary Science Letters*; do you recall in that paper including data relating to the rotation of Sicily?

Réponse: Oui. Le papier dont je suis cosignataire? C'est cela?

Question: Had that data been published before?

Réponse: Quelles données? Je voudrais une précision. Est-ce le papier de Besse, Pozzi et Feinberg dont je suis cosignataire?

Question: Yes, the latter. Did you use data which had not before been published?

Réponse: Oui. Sur ce papier-là, les données ont été mesurées par mon collègue Besse qui a soutenu une thèse en 1981, à Paris, et ensuite, nous en avons tiré deux articles: l'un qui a été publié en 1983, à la Société géologique de France, et un autre qui a été publié en 1984, à *Earth and Planetary Science Letters*.

Question: I understand that, and that is exactly as I would expect. So you have no hesitation in developing a new view or a new theory in an article in relying on new data?

Réponse: Certes.

Question: I asked the question simply because there was a suggestion that Dr. Jongsma and Professor van Hinte had developed their theories relying on unpublished data. You would not find that strange in a scientist to rely on unpublished data?

Réponse: Lorsque les données résultent de votre propre travail, non. Certes.

Question: Let me just turn to the question of the faulting. Now in your scientific study you included a map which was Figure 19 and it showed the main fracture network of the Pelagian Block, and it says on the map that this is taken from the bathymetric chart, the IBCM. Do you recall that map?

Réponse: Oui.

Question: Is it usual to depict faulting on the basis of bathymetry alone?

Réponse: Je crois avoir répondu ce matin, déjà, à cette question. Toutes les cartes bathymétriques traitent bien des réseaux de failles. Il n'est donc pas illégitime d'utiliser les cartes bathymétriques, et pas seulement les cartes bathymétriques, pour définir les réseaux de failles.

Question: But would you not, as a scientist, find it desirable to use additional evidence derived from seismic soundings or drilling data or measurements of magnetic or gravity anomalies?

Réponse: Que je ne sache pas que les données de sondage montrent des failles? Vous savez, un sondage c'est quelque chose d'extrêmement petit, une zone de failles, c'est, en général, quelque chose de très large, et il y a peu de chances pour qu'un sondage fournisse des données de failles. Des profils sismiques, certes.

Question: In 1984 you published the article we have already referred to, the article in *Earth and Planetary Science Letters.* That was the article jointly with Besse, Pozzi and Feinberg. Let me just refresh your memory with a copy of the map showing the tectonic sketch of the same area. Do you consider that the Jarrafa Trough and the Tripolitanian Furrow depicted on that map are in the same
(24) position as the position in which they were depicted on your Figure 19? Would you just compare the two? Are they in the same position?

Réponse: A quel point de vue?

Question: Do they point in exactly the same direction?

Réponse: En ce qui concerne le fossé de Jerrafa *grosso modo* ou en ce qui concerne la prolongation vers l'est, peut-être pas, mais je ne me souviens pas de la nature du système de projection que nous avons utilisé pour faire cette carte-là. Vous savez qu'un géologue terrestre travaille sur des cartes qui ne conservent pas forcément les directions parce qu'il se préoccupe de conserver les surfaces.

Question: Well, let me put it to you that you are the author or one of the authors of this paper — l'un des auteurs certes — there are obviously others, but no doubt you assume your share of responsibility. Those troughs are simply not in the same position, are they? They are not in the same position. Well, look again.

Réponse: Je pense que peut-être nous n'avons pas dessiné la fosse tripolitaine sur ce schéma-là. Je ne vois pas la différence autre que le manque de dessin de la fosse tripolitaine.

Question: Is there a difference between the faulting in the Rift Zone area and the faulting further to the south in the Jarrafa Trough and the Tripolitanian Furrow? Is there a difference?

Réponse: A quel point de vue? L'orientation est la même et les décalages à peu près, enfin à 10 degrés près, les décalages des couches crétacées supérieures sont à peu près les mêmes, ce sont des failles normales, c'est-à-dire des failles qui ont joué en extension.

Question: Let us take current activity. Is there a difference in the current activity of the two sets of faults, north and south? And, to be more precise, are the southern faults still active?

Réponse: Certes, peut-être pas toutes mais il y en a d'actives.

Question: So you commit yourself to the view that the southern faults are still active?

Réponse: J'estime que certaines failles dans le sud sont toujours actives.

Question: Well now, I am talking specifically about the Jarrafa Trough and the Tripolitanian Furrow. Is the faulting in those two troughs still active?

Réponse: Les deux failles majeures de la fosse de Jerrafa sont actives et il y a des failles dans le sillon tripolitain qui sont actives.

Question: What about the time at which this rifting occurred, these fractures. Did the fractures or rifting in the Jarrafa Trough and Tripolitanian Furrow occur at the same time as the rifting up in the north, in the Rift Zone?

Réponse: Elles ont vraisemblablement commencé avant et elles ont fonctionné un peu en même temps.

Question: You see, Professor Vanney, who is one of the other Maltese experts, tells us that there is quite a difference in age. He describes the Jarrafa Trough and the Tripolitanian Furrow and also the Misratah Valley as very old fractures, something between 70 and 65 million years old. And he also tells us, and Professor Morelli tells us, that the Rift Zone is very new. It is only about 7 to 10 million years old. Is that wrong?

Réponse: Voudriez-vous répéter, parce que j'ai perdu le fil.

Question: Professor Vanney, who is one of your experts, describes the troughs in the south as very old. He says 70 to 65 million years old. In contrast Professor Morelli and many other authors state categorically that the rifting in the Rift Zone to the north is very young — it is between 7 to 10 million years old. Now, is that right?

Réponse: C'est partiellement juste; le *rifting* a débuté plutôt au sud.

Question: So your expert Mr. Vanney is only partially right?

Réponse: Il faudra que je revoie ce qu'a écrit exactement M. Vanney, mais si c'est exactement ce que vous dites, oui.

Professor BOWETT: You see, the reason why I ask is that if you have this fan notion with the fan opening out, my problem is to understand how rifting which is millions of years apart in time can be part of the same fan, part of the same model or complex. That's my difficulty.

M. MASCLE: Il est très rare que des fractures naissent comme cela spontanément. Cela peut arriver mais il est très rare qu'elles naissent spontanément. Quand un champ de contraintes en extension s'installe dans un domaine et qu'il y a dans ce domaine des zones qui ont déjà été distendues il les réemploie, c'est ce qui se passe en ce qui concerne le sillon tripolitain et à propos du sillon de Jerrafa. Ce sont des fractures anciennes qui sont réemployées dans les montagnes.

Question: Just a word about the location of the pole or, if you like, the handle to your fan. As I understood you this morning you located the pole at Pantelleria?

Réponse: Quelque part par ici.

Question: I see. How do you locate a pole in that way? What is the process by which you deduce that the pole is there?

Réponse: C'est quelque chose qui est classique en tectonique des plaques. Lorsque l'on fait une analyse en tectonique des plaques on recherche quelles sont les directions des fractures transformantes car le pôle est le centre des grands cercles (je m'excuse de faire de la géométrie sérique ici), mais le pôle est défini comme étant le centre des grands cercles sur lequel sont installées les fractures transformantes. Les fractures transformantes, comme je vous l'ai dit, ce sont ces fractures-là; donc, le pôle, il est perpendiculaire, il est dans une direction perpendiculaire à ces fractures, en gros; et pourquoi dans cette direction plutôt que dans celle-ci? Parce que j'estime que l'extension est plus grande ici, qu'ici, et qu'elle est plus grande dans tous cet ensemble qu'elle n'est ici.

Question: I see, so you locate the angle or the direction of the transform faults, the sideslip faults, and if they are like that then you have got to find your pole at right angles, which leads you up there?

Réponse: Particulièrement à cette direction mais il n'y a pas que celle-là; il y a celle-ci qui est très remarquable, et puis sur les cartes à échelles différentes,

qui ont été faites avec l'appareil Sibim, dont une qui a été reproduite dans le contre-mémoire maltais, on en voit tout un très grand nombre qui sont situées dans la bordure du fossé de Linosa.

Question: Supposing that the slip-strike fractures, the transform faults, were pointing in that direction, then your perpendicular would be running up towards the boot of Italy?

Réponse: Si l'on supposait, oui.

Question: Would you be surprised to know that our own scientists — who have gone through the same processes as you have to locate this pole — found this pole in the boot of Italy?

Réponse: Certes non, je ne suis pas surpris, c'est une question de discussion scientifique, mais je ne suis pas d'accord avec ces arguments.

Question: But you would not be surprised?

Réponse: Je ne serais pas étonné, c'est-à-dire...

Question: Are there transform faults pointing in this direction. That is north-west to south-east?

Réponse: Dans le domaine pélagien?

Question: Let us talk about the location of your Jarrafa Trough. In your study at Figure 24 you show the Jarrafa Trough located on the seismic line MS-19. Do you not?

Réponse: Fossé tripolitain, non?

Professor BOWETT: Let me help you. It is this one.

M. MASCLE: Oui, alors ou bien il y a eu une erreur de traduction, ou bien vous avez fait une erreur comme moi.

Question: I will try again Professor Mascle. In your Figure 24, and also 23, you show the feature called the Jarrafa Trough located in the south-west section on seismic line MS-19, do you not?

Réponse: Oui. Je puis corriger une erreur ici, comme vous venez d'en faire une d'ailleurs en vous trompant de nom pour nommer ce fossé, j'ai par erreur nommé le fossé de Jerrafa, le fossé de Lampedusa. Cette erreur a été corrigée par la suite par M. Finetti, je l'ai vu dans la réplique de la Libye, et je confesse cette erreur.

Question: So this trough which you have labelled Jarrafa Trough you say is actually the Lampedusa Trough?

Réponse: C'est Lampedusa qui est ici, oui; le petit fossé de Lampedusa.

Professor BOWETT: That again raises a slight problem for me because our view is that seismic line goes nowhere near the Jarrafa Trough.

M. MASCLE: Non, c'est vrai, je vous l'accorde.

Question: But that Figure, and the deductions you drew from it about the Jarrafa Trough, form the core of your argument: that this is the important feature?

Réponse: Absolument pas.

Question: So it is not this that is the important feature, it is this?

Réponse: Oui.

Question: This is not as important? Nor that?

Réponse: Cet accident là n'est pas... J'aimerais si vous voulez, parce qu'il y a eu un problème de traduction, que l'on reprenne l'argumentation.

Professor BOWETT: My point is that if it was this trough you were really talking about, the Lampedusa Trough, and not the Jarrafa Trough, and not the Tripolitanian Furrow, then the core of your argument — the argument you finish up with in your study, which is designed to show, on the basis of that profile, the importance of these troughs — is wrong.

M. MASCLE: Mais non. Absolument pas. Absolument pas. Puis-je répondre? Pourquoi? Parce que j'ai vu des profils du fossé de Jerrafa. Je sais que ce fossé est un fossé actif. J'ai vu des profils, il y en a d'ailleurs figurés par mon ami Jongsma, de la faille tripolitaine dans la région des fossés tripolitains et je sais qu'il y a des failles actives, donc il y a des failles actives dans ces fossés-là. Donc cela ne change rien quant au jeu de ces fossés-là. Alors, ce que j'avais voulu illustrer dans ce schéma, c'était qu'il y avait, lorsque l'on prenait le fossé de Malte, ici, comme axe, il y avait une extension majeure au sud qu'au nord. Prenons ce fossé-là pour le fossé de Jerrafa, et évidemment s'il n'est pas le fossé de Jerrafa il y a encore plus d'extension au sud, puisque l'extension par rapport à l'axe de la fosse de Malte, l'extension donc de cette partie-là, est plus grande que celle-ci. Si l'on ajoute l'extension de ces fossés-là, on a encore plus d'extension.

Question: However that may be, these troughs — Jarrafa, Tripolitania — are not as dominant. They are not as significant as Lampedusa or the troughs to the north?

M. MASCLE: A quel point de vue?

Professor BOWETT: From the point of view of their structural significance.

Réponse: Si, ils sont exactement aussi importants. Je crois avoir donné dans l'ouvrage que vous citez et reproduit ce matin à l'usage de la Cour une figure dans laquelle j'ai expliqué qu'une extension par de nombreux fossés peu profonds peut être plus forte qu'une extension par un seul fossé profond.

Question: Do you recall the chapter you wrote together with Professor Grandjaquet in 1978, published in the book on the ocean basins, Volume IVB of the *Ocean Basins*?

Réponse: Je ne sais pas si j'en ai la mémoire extrêmement précise mais si vous me la rafraîchissez...

Question: As we do not have time to search for this document let me just read you what you said. I do have a copy, I shall give it to you afterwards. You are discussing the Pelagian Basin; you said:

> "the Western limit with the Pelagian Basin is marked by a series of escarps extending up to the coast of Sicily. The Pelagian Basin is shallow and characterized by narrow grabens trending northwest, southeast (Linosa, Pantelleria and Malta Grabens). The grabens appear at the centre of the channel separating Sicily and the islands to the south and west from Tunisia."

So describing this area you yourself in that publication refer expressly to the Linosa, Pantelleria and Malta Grabens. There is not a word about the Jarrafa Trough or the Tripolitanian Furrow is there? Would you like me to give you the copy? Is there any mention of the Jarrafa Trough?

Réponse: Volontiers. Effectivement, je ne les ai pas mentionnés à cette époque.

Question: If they are just as important why did you not mention them? Now

in the same study you published a map and this map shows the Pantelleria, Linosa and Malta Troughs, it does not show the Jarrafa Trough or the Tripolitanian Furrow, does it?

Réponse: J'aimerais voir la légende de ce fossé, mais effectivement j'ai tiré cette figure d'une carte qui à l'époque ne figurait pas les fossés de Jerrafa et tripolitain.

Professor BOWETT: Well, Professor Mascle, wherever you got it, if you reproduced it in your article, you adopted it as a correct statement.

M. MASCLE: Pardon?

Professor BOWETT: If you use the map in your article, you adopt it as a correct statement.

M. MASCLE: Oui, mais, monsieur, la science est quelque chose qui évolue les cartes aussi. J'ai utilisé une carte alors que la carte IBCM n'existait pas à cette époque-là et que les fossés de Jerrafa et tripolitain n'étaient pas aussi bien figurés qu'ils le sont maintenant.

Question: Well, you say science evolves and clearly views change. Did I understand you correctly this morning to say that your views of the models, the fan-like evolution of this area had been arrived at in 1980? Did I understand you correctly?

Réponse: Eighty-one.

Question: Before that, what were your views?

Réponse: Je vous l'ai dit ce matin. Je pensais comme MM. Finetti et Jongsma que la structure s'expliquait assez bien par un coulissement de la partie nord par rapport à la partie sud, mais j'ai ajouté ce matin que je ne pensais pas que cela justifiât l'existence d'une limite de plaque, car pour moi une croûte continentale peut très bien s'étirer sans qu'il y ait formation d'une limite de plaque.

Question: Could you tell us of any other authors or writers who share your view, your new view of this model?

Réponse: Ce modèle ici?

Professor BOWETT: Yes.

M. MASCLE: Pour l'instant, les données que nous avons publiées sont trop fraîches pour que ces modèles aient été repris.

Professor BOWETT: Well, I can see it's recent, but not . . .

M. MASCLE: Il n'y a pas de document publié, l'auteur acceptant notre modèle, je puis vous dire que certains de mes collègues à l'Institut de physique du globe de Paris sont d'accord avec ce modèle-là. Mais ils ne l'ont pas publié. Quelle valeur cela a-t-il?

Question: So there is no other publication that you can refer me to to support your model?

Réponse: Pour l'instant, non.

Question: You published or formed these views in 1981. May I ask another impertinent question. When were you first advising Malta? In what year?

Réponse: Depuis 1983.

Question: Not until 1983?

Réponse: Oui.

Professor BOWETT: I think that's all I need ask . . .

M. MASCLE: Je pense en avril 1983 ou mai 1983.

Professor BOWETT: Thank you, I am much obliged. I think, Mr. President, I might put some questions to Professor Morelli.

The PRESIDENT: Very well. I call on Professor Morelli.

Mr. LAUTERPACHT: Mr. President, as I said earlier, I would prefer to re-examine Professor Mascle immediately after the conclusion of his cross-examination.

Professor Mascle, I just want to re-examine you on a number of small points arising out of Professor Bowett's cross-examination, just so that there should be no misunderstandings arising out of what you said. The first question relates to the nature of the escarpment. You were asked about fundamental discontinuity.

M. MASCLE: Non, j'ai parlé de discontinuité, je n'ai pas prononcé le terme fondamental; M. l'avocat a prononcé le terme fondamental, c'est sa responsabilité et pas la mienne.

Question: Thank you for clarifying that. Perhaps it's my mistake. Perhaps he did not speak of fundamental discontinuity, perhaps I spoke of it. But the question I want to ask you is this: you answered the question put by Professor Bowett regarding discontinuity by saying, yes, there was a discontinuity there because above the escarpment one had continental crust and below the escarpment in the Ionian Sea one had oceanal crust. Well, the question I just wanted to check with you is what is the discontinuity, the change from one crust to the other, or the presence of the escarpment?

Réponse: L'escarpement est à l'endroit du changement de passage.

Question: So in your view, the feature which constitutes a discontinuity is the change from one crust to the other?

Réponse: Oui, c'est la marge. Nous avons là une marge continentale habituelle, un passage de croûte continentale à une croûte océanique. Je dis habituelle, c'est peut-être un terme abusif parce qu'elle est très étroite.

Question: Thank you. Then a question was put to you regarding Mr. Dewey's paper and the presence in the Dewey article 1973 of Figure 1 which is said to contain a line showing a mini-plate boundary in the Rift Zone, and you explained that this was a hypothetical boundary on the part of Mr. Dewey. Would you like to remind the Court as to the nature of the depiction of the line by Mr. Dewey? Was it a solid line? Or was it a hatched line, or pecked line?

Réponse: Non, c'est une ligne en «tiretés». C'est une ligne en «tiretés», c'est visible sur les publications.

Question: It was a solid line?

Réponse: Non.

Question: It was a pecked line, discontinuous line. And that you have told the Court is a line which shows that it is hypothetical?

Réponse: Correct.

Question: Some questions were put to you which involved references to differences between certain platforms. Would you tell the Court whether a platform is the same thing as a plate?

Réponse: Absolument pas.

Mr. LAUTERPACHT: Thank you. That's all I have to ask.

Professor BOWETT: It is a pleasure to see you again Professor Morelli. May we begin by talking about the escarpments? I recall that when you gave evidence in the *Tunisia/Libya* case you described them as "doubtless one of the most important topographical features in the Mediterranean Sea". In fact in your conclusions you said "the Pelagian Shelf is gently sloping eastwards toward its continental slope, represented by the Malta-Misurata Escarpment". In 1980 you gave a paper on gravity anomalies of Mediterranean margins to a conference held in Urbino. You said there, referring to the Sicily Channel and the Pelagian Plateau that it was "limited to the east by the Malta Escarpment". Do you maintain those views?

Professor MORELLI: The plateau is limited to the east by the Malta and Medina Escarpments. At the time this was called the Sicily-Malta Escarpment; later on it was modified to Sicily-Malta and Medina.

Question: Let us not worry about the terms. That is the limit therefore to the shelf?

Answer: You are right.

Question: And beyond there you are in a different domain?

Answer: Absolutely.

Question: So you would treat these escarpments as a discontinuity?

Answer: Yes.

Question: Would you find oceanic crust immediately beyond the escarpments?

Answer: This is a very difficult point because you have heard in this room Professor Jongsma say yesterday that we are not sure what is there. There is a group of experts that say there is oceanic crust present, and they support this with many arguments, and there are others that say no, this is an ancient continental crust which has been eroded from the bottom and reduced in thickness. So it is, I would say, not possible to reply up to now. We need very good, deep refraction measurements that we do not have.

Question: I understand there is a controversy, but am I not right in saying that the controversy is about this area here, the Abyssal Plain?

Answer: No. On this area here this is the minimum of the thickness but all around — if it is oceanic crust — you have all around oceanic crust with increasing thickness of sediments coming from the different shelves — from the north, from the west, from the east.

Question: Is there any evidence of oceanic crust immediately, *immediately*, to the east of the escarpment?

Answer: I cannot reply. I have no data and I doubt that a similar paper exists, because, as I told you, we do not have good, deep refraction measurements.

Question: But then if there is no data one could not treat those escarpments as a discontinuity on the basis that beyond them there is oceanic crust — because we have no data?

Answer: No. There are some data. I have not said that we have no data. I have said that we do not have good data. So, on all this data there are different opinions, and one is seeing one version and another in another manner, but the definition is not yet conclusive. I cannot conclude in the sense that you would like to hear.

Question: Can we pick up this model which Professor Mascle has developed about rotation. I believe I am right in suggesting that there are other authors

who support the rotation theory — people like Besse, Pozzi and Feinberg in 1984 and Letouzey and Temolières in 1980. They, too, talk about the rotation of the block to the north. Is that correct?

Answer: Yes. It is correct.

Question: Do they in their writings identify the pole of that rotation in the place where Professor Mascle has put it?

Answer: I cannot reply to this point.

Question: Let us suppose there is rotation. Would you expect the line of break in the symbol we have been using, the edge of the fan, to coincide with the major fracture zones, the major rifting, or not?

Answer: If you permit me, I will give you the reply in a different manner to what you expect. Here we are not speaking of breaking. We are speaking of stretching of the crust, no matter if it is coming from rotation or not. You have all the people in the room, and also outside if you could hear them, speaking of stretching. Now this is the way in which we see this action of the tensions. In the figures (there were some figures indicating — I cannot make a sketch but — indicating what happens when the crust (the continental crust) is stretched); in Figure 7 at the bottom of the page you have an example that is a consequence of the tensions. You have breaks, thinning and increasing in length, and this can be 2 to 1, 3 to 1 and so on. Finally, when you arrive at the break — but here we do not yet have breaks. Here we have only thinning.

Question: But if that process is going on you would at least get fractures, would you not?

Answer: Fractures are already here.

Question: Where are the major fractures in this area?

Answer: The major fractures — apart from the escarpment — are around the three main grabens.

Question: So the main fractures are here?

Answer: Yes, where we can see them. Yes. Then there are others that we cannot see.

Question: If there was to be some movement between two parts, some rotation, would you expect the movement to be here along these fractures?

Answer: I do not see any reason for having the movement there, or in any other place. We do not know which are the dangers within the crust. The dangers can act according to physical laws, of which we know nothing because we do not know where the dangers are, what is the resistance below, or anything. So anything can happen. The main important point, I repeat, and you will agree with me, is that we are in a distension area at the present time. There have been many compressions obviously.

Question: Yes, I see that. Let us just concentrate on the Rift Zone. In your testimony in the *Tunisia/Libya* case you described the Sicily Channel in some detail. You gave the depths of the three main troughs or grabens and then you commented on their "very steep flanks". You said that the collapse of the graben area was very recent and in parts still active as shown by volcanic activity. You said that the Tunisia Plateau descended continuously "northward steeply to the grabens area of the Sicily Channel". Could you just point out to us where you think the limit of the Plateau?

Answer: Here we have indicated the Lampedusa Plateau, what has been called the Tunisia Plateau because this is an extension of the Tunisia shelf very

far away from the Tunisian coast. Here the depths are very, very small and we start from 10-20 metres and we must go to 150 kilometres from the coast to reach the 200 metres.

Professor BOWETT: It is very important that you answer my question.

Professor MORELLI: I will reply to your question. You must permit me to reply. So here we have an area which is at the smallest depth — 0-200 metres. Going to the north we arrive very rapidly to an area in which we find 1,000 metres, and then entering into the grabens 1,500-1,300 metres deep. So obviously you descend rapidly.

Question: So the Tunisia Plateau ends in that graben area?

Answer: Yes.

Question: In fact you also said, and I quote from the record: "The main difference between the northern and the southern parts of the Pelagian Sea is the extensive fracturation to the north." The main difference between the northern and southern parts is the extensive fracturation to the north. Would you just point to where you meant?

Answer: Yes. I repeated it also this morning. This area is much more fractured than the rest from the point of view of bathymetry.

Question: You are familiar with the paper which Professor Vanney submitted as an Annex to the Maltese Counter-Memorial?

Answer: No.

Question: Well, that is a pity but I think I can help you. In that paper Professor Vanney described the troughs of the main Malta-Pantelleria-Linosa Troughs and he included the smaller, or shallower, Malta and Medina Channels, which he defined as "well-defined" by the 500-metre isobath, and he produced a map showing the central trough and ridge system which, if you will just look at it, goes right through to the Ionian Sea, does it not?

Professor MORELLI: You can have a very clear image of what is in this figure. Can I reply? Or must I await your question?

Professor BOWETT: Well, I think it is better to wait for the question before you reply, on the whole.

In 1975 you wrote a paper with Professors Gantar and Pisani and you referred to the Heron Valley as the eastwards continuation of the valley between the Malta Platform and the Medina Bank. Could you just point to the Heron Valley? That, you say, is the continuation of the valley between the Malta Platform and the Medina Bank. Do you then agree with Professor Vanney when he describes the whole of that area, right out to the escarpment, as a system, a central trough and ridge system?

Answer: It is clear that the valleys — and he is speaking in terms of geomorphology — so, if you are speaking in terms of geomorphology, you do not need to go to Professor Vanney to have such a reply, you need to look only to bathymetry and you see that if the 600 metres at the north-western corner, the 600 metres of these very small channels, called the Pantelleria Channel and Melita Channel — and with this 500 metres here — and approximately the same level here — 700, 800 and then the trough, but this is not important. You have a low area, so, you can practically imagine that until 500 metres you have no obstruction, so you can take a nuclear submarine and pass at 400 metres without any obstruction. This is the meaning of morphology you know. But now, your question — is it necessary to say something else, because you have spoken of a ridge?

Professor BOWETT: I had not mentioned ridge.

Professor MORELLI: Ridge, you said ridge — you called it ridge system.

Professor BOWETT: Ridge system.

Professor MORELLI: Yes, ridge system means ridge. No ridge — absolutely because we have clarified this this morning and yesterday. No ridge exists here in the area. Ridge has a completely different meaning.

Question: I have difficulties with this because you will see that if this system of Professor Vanney's cuts right through here, even morphologically, I have difficulty in understanding you when you say that there is continuity from the north to the south. How can there be continuity with a defined system cutting right through the two halves?

Answer: I can give you an example. The first one that comes to mind; I am saying that morphologically, in the Alps there is a continuity from the east to the west. I can cross all the Alps, obviously I have to go up and down — up and down — up and down, but I always remain in the Alps. So, the small channels are insignificant in the 30 kilometres of the crust and they are also insignificant from the point of view of bathymetry, if you wish.

Question: You use a word "insignificant". Let me just remind you what Professor Vanney said when he was referring to his trough and ridge system. He described it not as insignificant but as "the most remarkable expression of distensive forces acting since Miocene times". Now, why is it remarkable for him but insignificant to you?

Answer: Because we see this from different points of view. I am seeing it from the geophysical point of view, that is, globally, and he is seeing it from the morphological point of view, that is, superficially.

Question: What about the faulting in that ridge system?

Answer: I have already replied. It was the first question that was posed to me. How are the faults in the area? Steep, deep, and so on. This is what you wished to know, no?

Question: And what evidence do you personally rely on to tell you about the nature of these faults?

Answer: I have never been below, I have not seen the faults, I can see the faults only from the bathymetry and from the seismic profiles.

Question: So you wouldn't use just bathymetry, you would also use seismic profiles?

Answer: Obviously. If you wish to see below, you must use seismic profiles.

Question: Do you accept that the crust in that area, which Professor Vanney identifies as the trough and ridge system, is thinner?

Answer: I do not accept that the crust is there in all the areas. That I explained this morning. It can be thinner only if we have the physical condition for it, and we don't have the required physical conditions, because the physical conditions for having a thinner crust were clearly explained this morning in the grabens area. You see, as Professor Finetti wrote, we suspect that it is true from the refraction profiles — in the area of the three grabens probably the crust is between 20 — or 19 to 20 — kilometres and not 30. So it is a thinner crust. But we don't have any reason for this area — which is as I told you, very superficial — that is, where the troughs are very near — and the channels here also. So, in this area here, it is to be expected that the stretching has been minor and that the crust is of a thickness very near to the normal.

Question: But, if there are thinner areas then they lie within that central . . .?

Answer: If there are thinner areas they probably lie only here — probably. But we cannot be certain.

Question: So they wouldn't lie in the Jarrafa Trough? Or the Tripolitanian Furrow?

Answer: This is another point. You would like to know what happens in these two areas?

Question: No, I am just asking you if the crust is thinner there?

Answer: A mistake has been made . . . The situation in this area is that here we have a wonderful valley, the Tripolitanian Trough, which has been filled in recent times by the sediments — so — this is a very large valley, a very deep valley and with faults which are yet active, as has been said and demonstrated. Now, the sediments filling the valley are not water. If the sediments, in old times, would have been water, we would have here — three kilometres here, two kilometres here, one kilometre here, in any case, here three kilometres of water — and 3×2.8 to make nine kilometres less of thickness of the crust. The crust would also be thinner here, but now we have sediments — the sediments filled everything — the density is approximately two, and so, probably, the crust is not so thin any more.

Question: So the crust is not so thin?

Answer: Not any more here. But this is all guesswork, because we have no data so I followed only the theoretical reasoning.

Question: Do you remember in 1975 . . .?

Professor MORELLI: Excuse me, you asked also about the other — the Jarrafa Trough, no? You asked me about the two troughs?

Professor BOWETT: Yes, both the Tripolitanian Furrow and the Jarrafa Trough.

Professor MORELLI: Can I reply also for the other?

Professor BOWETT: Yes?

Professor MORELLI: The same. Thank you.

Question: Very easy.
In 1975 you published a paper on bathymetry, gravity and magnitism in the Strait of Sicily?

Answer: This is the paper from which the maps that I presented this morning are taken, and this is the paper here.

Question: Yes, I have a copy too. Do you remember reproducing the sketch by Burollet?

Answer: Yes.

Question: Presumably if you used that sketch you approved of it?

Answer: This is one of the oldest sketches of Burollet, but obviously apart from such an authority it was the best possible at that time.

Question: But you approved of it?

Answer: I approved of it, yes. Otherwise I would not have made the reference to this sketch.

Question: Now, isn't it clear that on this sketch he identifies two separate shelves? He identifies the Pelagian shelf — here — and what the calls the Ragusa shelf — up here. Isn't that so?

Answer: Maybe . . . I don't agree now. I said maybe when you had spoken, but now that I see, I don't agree, because you see the Pelagian shelf is written in very large block letters, and reference is made to all the area which is extended up here, so to all the area practically of the Pelagian Block. Ragusa is on land and an extension to the Melita-Caltanissetta Basin here which is an extension to the sea. So I don't agree. The Pelagian shelf is unit 1 in this sketch.

Question: So you published a map you didn't agree with?

Answer: No, I don't agree with you, not with the map. There is a big difference. I am sorry, I am not an English-speaking gentleman, but when I say something normally it is clear — normally.

Question: Do you agree that on the map these two areas — the Ragusa shelf and the Pelagian shelf — are identified?

Answer: Yes. Certainly, because if you look at the map you see that the Pelagian shelf is written in block letters in the centre, and this refers to all this white area here. On the contrary, in this big Pelagian Block and Pelagian shelf, you have also the Ragusa shelf and obviously you also have some other shelf here in Tunisia, to the south in Libya, and so on.

Question: So you can have different shelves on the same block?

Answer: The block is one thing, the shelf is another.

Question: Now, if we accept that there are two shelves separated by that zone, whatever we call it, you remember that in 1973 there was a report published by Mr. Colombi . . .?

Professor MORELLI: And Morelli . . .

Professor BOWETT: . . . and Morelli — I felt sure you'd be familiar with it.

Professor MORELLI: Would you read the names please, they are there?

Professor BOWETT: The one name is the only one which you need remember, Morelli.

Professor MORELLI: No.

Question: Now, let me read you what was said.

> "The continental crust between the southern coast of Sicily and Pantelleria can be seen as part of Africa *just becoming split from this block* as it is suggested by the trough between Pantelleria and Linosa. Further a crustal the thickness of 20 kilometres seems anomalously thin: a value of about 30 kilometres should be normal. This feature may be interpreted as an indication that the crust here has recently been getting thinner by a process of upward-moving *oceanization*."

Now, as I read that, doesn't that say that along the troughs that block is splitting?

Answer: Oceanization — this was an idea that was discussed, but it is a possible cause of modification of the crust from below. If you imagine like in the Tyrrhenian Sea the mantle coming near the surface and by absorbing slowly the lower crust there finally remains only the upper crust and, in the case of the Tyrrhenian, the upper crust has been shifted away and you remain with the oceanization of this oceanic crust. It is true that I would no longer support this idea, because after 1973 the stretching model was introduced in science, and nowadays it has been demonstrated that what we were thinking was a type of evolution that is vertical evolution is substituted by the stretching of the crust. That is the model that you have in your set, 7 and so on. So today it would not apply any more.

Question: But what about the split occurring in this block? You identify the split as occurring down that trough or ridge system. You say you do not now agree that there is a split?

Professor MORELLI: What do you intend by "split", please?

Professor BOWETT: Well, it's your word, not mine.

Professor MORELLI: No, I am not an English-speaking person.

Professor BOWETT: Well, I can only repeat what you wrote, "just becoming split". Split was the word you used.

Professor MORELLI: Split is in this case "open" — this is what I intended — and in reality we don't have an opening here, but also stretching is an opening in reality. The stretching, also the grabens and the systems similar to the grabens are in tension, open, settled and similar things. So it is the same.

Question: You see, if you've got a split in the block right along there, how can you talk about the whole being a continuity?

Answer: Because, as we have already spoken many times, the whole of the crust is existing. It's only reduced in thickness. Twenty kilometres of crust is very much.

Question: What would you require to be a discontinuity?

Answer: The absence of a layer, for instance.

Question: The absence of a layer — what does that mean?

Answer: It means, for instance, that the upper crust would disappear and the lower crust remain. For example coal, or something else, some radical modification of the geological conditions below one of the sites. But I am not a geologist, so I cannot imagine anything like this. I am a geophysicist.

Question: I see. But as a geophysicist you do subscribe to the plate theory now?

Answer: Yes, obviously.

Question: And also to the theory of microplates?

Answer: No, the theory of microplates has been abused in the fashion it was introduced, but I only say this. It is true when you have data to support it. It is not a different theory: the theory of plates and the theory of microplates are exactly the same.

Question: Well, you've posed a difficulty for me, Professor Morelli, because I have here a copy of a paper you wrote on physiography, gravity and magnetism in the Tyrrhenian Sea, and there you say:

> "We have to consider also the possibility that the boundaries of continental plates often may be complicated by the existence of *small rapidly-moving plates* whose motion is not simply related to the motion of any of the major plates involved."

Now, I have understood that in the sense that you are referring to microplates forming at the edges of the major plates?

Answer: No.

Question: What were these small rapidly moving plates that you were talking about?

Answer: A few examples are Sardinia, Corsica. These are microplates which separated from the south of France and the south of Spain and rotated by 45° and are now in the position in which they are. This is a microplate.

Question: I thought you just said you did not believe in microplates?

Answer: No. You have again misunderstood me. I am very sorry. I said that plates and microplates are the same thing. At the beginning the microplate term was abused. I am referring for instance to the Messina Plate.

Professor BOWETT: I am glad that we both believe in microplates. When you produced this morning a copy of plates with this chart showing plates . . .

Professor MORELLI: This is the general scheme all around.

Question: This is Figure 9 which shows the major plate boundaries, is it not?

Answer: Let me see. This is practically the sketch of the main subdivisions of the world into plates. So it represents not only the major ones but you have also a small plate in the Caribbean, and then you have also a small plate to the west of South America, and then you have another one to the west of Central America.

Professor BOWETT: Let us stick to the Mediterranean.

Professor MORELLI: In the Mediterranean you will not see anything here. It is so small.

Question: So you do not show any microplates?

Answer: This is the general scheme that is used to describe the big division in plates all over the world and there are seven or eight according to the different authors. So obviously if you are travelling to the Mediterranean, you will come back to Dewey and their presentation of the Aegean Plate, the Adriatic Plate and so on.

Question: Is there a microplate to the south of the main African Plate boundary running through Sicily?

Answer: No. I reply immediately no. The Messina Plate is not in existence.

Question: Now I want just to ask you to turn to a comparison of the rifting in this area. It is a matter which I was discussing with Professor Mascle. Now his suggestion in his report, the Technical Annex to the Maltese Counter-Memorial, is that "the total rifting is more important to the southwest than to the north-east". So as I understand it, he is saying the total rifting is more important in this area to the south-west . . .?

Answer: This is not south-west.

Question: It is here is it?

Answer: Yes.

Question: Where does he mean then? Where is the rifting more important?

Answer: This is surely not south-west. It depends in relation to the North Pole and nothing else.

Question: Where would you understand him to be referring to? The total rifting is more important to the south-west than to the north-east.

Answer: Of what?

Professor BOWETT: Well he is referring to the area under study. This was the study done for the Maltese Counter-Memorial.

Professor MORELLI: You cannot read the phrase like this. We must know what this refers to because south-west and north-east are relative. If you are here you are south-west of Malta but you are to the north-east of the Jarrafa

Trough and so on. You must indicate to which area you are referring. The question has no sense in such a manner.

Question: You would understand the description in relation to that area?

Answer: No. Impossible. It is not a description, it is a misunderstanding.

Professor BOWETT: Well I can help you because the statement appears in paragraph 59 of his report and he is talking about the faults lying along the line MS-19.

Professor MORELLI: Finally you declare where. Along line MS-19, so you have the north-east of the line, and the south-west of the line. So you are speaking of the south-west of the line MS-19. Thank you.

Professor BOWETT: Now you are familiar with the line. Locate the two areas that he is contrasting. Just point to them on the map.

Professor MORELLI: Just a moment because I have to see the planemetry and then indicate what we wish.

Professor BOWETT: Or perhaps we can help you by putting up a map with the line on.

Professor MORELLI: No it is not necessary. So MS-19 is going . . .

Professor BOWETT: It may help the Court if you put it on exactly.

Professor MORELLI: If you wish. This is line MS-19.

Professor BOWETT: So that is MS-19. He says that the total rifting is more important to the south-west than to the north-east.

Professor MORELLI: Who says?

Professor BOWETT: This is Professor Mascle.

Professor MORELLI: Thank you. Now looking to the map that I presented this morning, I can check what you say and I agree on what he says because to this we have first of all the Caltanisetta Basin indicated here, which is a very gentle and regular sedimentary basin, and then you pass the Malta horst, which is here, which is high and then you begin with all the region of the rifting, which in this case is the Malta Graben and the continuation of the Linosa Graben, which is not clearly indicated. Here, it is just at the end that you can see an indication of the Linosa Graben. The area is very fractured here, it is true.

Question: What about this area here, the Jarrafa Trough and the . . .?

Answer: MS-19 cannot tell you anything.

Question: That I realize. I am asking you irrespective of the information derived from MS-19, what is the rifting there?

Answer: If you permit, I am looking again to my Figure 17 of this morning. And so I see that the Jarrafa Trough is a graben area because it is rifting here and continuing, I see that MS-20 passes also through the Tripolitanian Graben and also the Tripolitanian Graben is a graben area because it is rifting also here. It is covered with sediments, so we do not see anything from the surface, but below something can be seen.

Question: Just comparing the rifting in the Rift Zone and the rifting around those troughs — Jarrafa and Tripolitania. Which is the more important rifting?

Answer: Both. They are all rifting. Here you have practically a concentration of faults in all this area but if you wish the length, the length crossed by the lines MS-19 and MS-20 in the grabens is — that for the Malta Graben and for the Linosa Graben and for the Tripolitanian Graben approximately the same; and on the contrary for the Jarrafa Graben approximately half of the others. So

this is a minor one. These are bigger and the Jarrafa, and the area crossed by MS-20 is minor in the sense of width.

Question: Width?

Answer: In width, yes.

Question: Take a broader view. As a matter of judgment which are the more significant riftings? These here or the ones up here?

Answer: If you look at the table which has been presented, in which all this data is summarized, you will have the answer. I forgot to mention this. In Figure 4 presented this morning we have the Pantelleria Graben which is something like 100 kilometres in length, and 2 kilometres vertical displacement at the top of the cretaceous. The Malta Graben is 190 kilometres in length, which is very, very long, and 2.5 kilometres vertical displacement at the top of the cretaceous. Linosa is only 50 kilometres and 3 kilometres of vertical displacement. In the Malta Channel (these are the two small channels which I consider only channels) we have a length of the channel of 90 kilometres and a vertical displacement of only 100 metres. In the Medina Channel, which is long also (100 km) we have a vertical displacement less than 500 metres. In the Jarrafa Trough, and now we come to your question, the length is 100 kilometres again, vertical displacement is 2 kilometres. The Tripolitanian Trough is 200 kilometres, and vertical displacement 2.5 kilometres. So the figures are of the same order of magnitude for all of the major grabens with the exception of the two smallest ones, which are here, which in reality are channels and not grabens. So it is clear from this table that you have seen.

Professor BOWETT: Yes, indeed. I had seen it previously. I was merely asking for your judgment.

Professor MORELLI: They are of the same order of magnitude of vertical displacement and in length the smallest one is Linosa and the longest one is the Tripolitanian.

Question: Could I just ask you to turn to Figure 17, which you were using this morning? Now, if you look along the line MS-20 up in the top right-hand corner you show the Malta Channel, and the little profile that you sketched in . . .

Answer: Yes, this is just an indication. It has no reference to the forming of the channel. It is only for indicating where the graben stops.

Question: But why did you give that, as it were, more significance? Why did you give it a deeper profile than, for example, the one you give to the Tripolitanian Graben in the bottom left corner?

Answer: This is only a sketch. I was writing it by hand. It has no reference to the depth. The data pertinent to the grabens is on the table. This is only an illustration which is on such a small scale that you cannot do anything with it.

Question: I thought it was intended to signify something?

Answer: No, I am sorry.

Question: I see. On your drawing this morning was a kind of alternative axial ridge line on the residual gravity map. Your axial ridge line took a sharp turn to the south-east as compared with Professor Finetti's line which went virtually due east to the escarpment. I note that your line does not follow the bathymetry. Is that of any significance?

Answer: No. This line that you see here follows the graben.

Question: It does not follow the bathymetry. Is that right?

Answer: No. In reality the bathymetry is here. You can see the bathymetry very nicely. This is a wonderful map. The bathymetry continues from the Linosa Trough to this area here.

Question: But keep going. How do you get across that high?

Answer: This is not a high. This is only reduced bathymetry. This is not a high. It is, you know, according to the choice of the observers here. If you were to arrive at 400 metres you would not see anything but you would continue straight up. Probably you were in the room this morning when I discussed this point?

Question: Yes, indeed, I was.

Answer: So you heard that I tried to explain the meaning of these anomalies. I said that the view of these anomalies was correct, that the computations were correct, and also that all types of alignment can be found. For instance I said that this can be proposed with the same degree of accuracy or inaccuracy, exactly starting from this observation, because this bathymetry is in the direction north-west-south-east and from the seismic profiles which are showing it is a continuation of the Linosa Graben south-eastwards.

Question: We have not very much time now. May I just proceed with the questions? Does not your line cut across the axes of positive and negative anomalies?

Answer: Yes. Obviously. But the area covered by positive anomalies along the axis is 90 per cent and you have obviously some small portions in which you do not have . . .

Professor BOWETT: But this is exactly what I am informed you cannot do to make your lines scientifically defensible. You cannot cut across the axes of positive and negative anomalies.

Professor MORELLI: I would like to see with you which are the axes of negative anomalies. Let us start from the point in which I diverge from the so-called axial ridge axis. You have the map there?

Professor BOWETT: I do.

Professor MORELLI: So let us continue to the south-east. This is all positive, positive, positive, positive, positive, positive, and then what you do is to cross into an anomaly, zero, it is called, and you find the negative anomaly on the other side. And what is this anomaly when you reach the maximum value, approximately 100 kilometres away: less than 10 mgals (and the mean error of the sea gravity survey is ± 5 mgals).

Let us continue. You enter a positive anomaly and you continue along the positive anomaly, and then again you are in the same situation in passing from one to the other positive anomaly, the distance is very small, and the anomaly is very small . . .

Professor BOWETT: I must put it to you . . .

Professor MORELLI: This is only an example.

Professor BOWETT: It is an example which I am informed is scientifically indefensible. I have to put that to you. Now, you remember the Gulf of Aden?

Professor MORELLI: What did you say? Excuse me.

Professor BOWETT: You remember the Gulf of Aden?

Professor MORELLI: No. I would like to hear what you have said. Because I have not understood the last words that you said.

Professor BOWETT: The last words I said was that on my information, as I am instructed, the line you have drawn was scientifically indefensible.

Professor MORELLI: Exactly. I have understood correctly. Just as indefensible as the other example. Because I am doing exactly the same thing. But I do not wish to enter in . . .

Professor BOWETT: Let us turn to the photograph that Professor Finetti produced of the Gulf of Aden.

Professor MORELLI: I don't have it.

Question: You remember where he showed you this photograph . . .?

Answer: Yes.

Question: . . . and suggested that what you could see there visually was an axial ridge line? Did you agree with that?

Answer: I imagine. I do not know . . . I agree with what he says obviously. I cannot imagine that it is not true. I agree. It is an ridge line. This is what you wished me to say. Yes, it is.

Question: Well, Professor Finetti's point was that that demonstrated visually exactly the same as the illustration which he had also shown of the Medina Channel or Graben. His whole point was that you would see photographically and diagrammatically exactly the same phenomenon. Are they the same phenomenon?

Answer: No. Here on the Medina Graben you have a graben in which the borders are elevated and in which vertical displacement is relatively small, but you don't have an opening, and so far as I have been told this is really a ridge — here. That is the continuation of the mid-Atlantic ridge. What does this mean? It means really an opening in all the lithosphere mountain of the magma and so on. So this is completely different. But obviously they are proportionately the same. You can have the mountains high here, the mountains high here, and the same here. But it is completely different as to meaning.

Question: But this feature here — right in the middle of the channel. That one. Is that different from what you see there in the middle of the photograph?

Answer: Absolutely. This small mountain here is there by accident, and we are trying to give it an importance that it does not have. This small volcano had found at a certain moment a very weak fracture in the crust through which magma could ascend. But there are volcanos all around in the area and we don't attribute this importance to them. Absolutely not.

Question: Is it a rather large accident — the feature we've just been discussing?

Answer: Oh, not the volcano. This is a channel you see, it's very nice, and the volcano is dividing it into two parts. On the older maps it was written only Malta Channel and now it's written Malta and Medina Channel. It's nice. If you will, call it an accident, but it's not an accident.

Question: Whilst you are at the map, perhaps you could show us the 1,000-metre isobath and its extreme easterly limit. Where does the 1,000-metre isobath below Malta reach?

Answer: The 1,000-metre is the blue — it should be this one.

Professor BOWETT: No, immediately below Malta.

Professor MORELLI: Here. This blue is the same.

Professor BOWETT: Just point out to the Court the most extreme easterly point.

Professor MORELLI: This 1,000-metre.

Question: And 600 metres?

Answer: 600 metres — you would have to go two colours more — here.

Question: And 400 metres?

Answer: 400 metres is here.

Question: Would you say therefore that at least for the 400-metre line, that lies between Malta and the Libyan coast?

Answer: The 400 metre? The 400 metre where — here or another?

Professor BOWETT: That point — that most easterly point.

Professor MORELLI: Yes, obviously if you wish. It lies so because I could go this way and past just the tangent and don't touch it. It's just at the limit, but if you wish to have this affirmative line, it's just at the limit here, exactly here.

Professor BOWETT: Mr. President, I have no further questions.

The PRESIDENT: Thank you. Is this the end of the first part of the evidence from your side?

Professor BOWETT: Yes, Sir, it is.

The PRESIDENT: And your side?

Mr. MIZZI: Mr. President, this is the end of our presentation of the evidence.

The Court rose at 6 p.m.

TWENTY-SEVENTH PUBLIC SITTING (8 II 85, 10 a.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

STATEMENT BY MR. MIZZI

AGENT FOR THE GOVERNMENT OF MALTA

Mr. MIZZI: Mr. President, Members of the Court, having concluded the presentation of the expert evidence on the scientific issues raised by Libya, the Parties may now proceed to the second, and it is hoped the final, round of the oral presentation of their case. It is again my privilege and honour to open these proceedings and I shall do so by outlining very briefly the order in which counsel for Malta will speak and the main subject-matters they will deal with.

Professor Brownlie will, this morning, present Malta's position on the geographical aspects of the case, with particular reference to proportionality, the significance of lengths of coasts and the position of third States with respect to the delimitation in the present case. He will examine the relevance and weight of State practice and answer Libyan criticism in this regard; and he will also deal with the Libyan argument based upon territorial magnitude.

Next week, Mr. Lauterpacht will review the expert evidence produced by the Parties and will deal with the scientific aspects of the Libyan argument based on geology, geophysics and geomorphology. He will also reply to Libyan criticism of Malta's position concerning certain relevant factors.

Professor Weil will then focus upon the main legal issues which divide the Parties, in particular the problems concerning the title to continental shelf rights and the concrete manner in which, in the presence of conflicting entitlements, an equitable delimitation is to be drawn.

I shall then, with such reservations as may be appropriate in the circumstances, conclude Malta's presentation and make the final submissions on behalf of Malta.

I thank you, Mr. President, and I ask you to call on Professor Brownlie.

REPLY OF PROFESSOR BROWNLIE

COUNSEL FOR THE GOVERNMENT OF MALTA

Professor BROWNLIE: Mr. President, Members of the Court, may it please the Court.

I. Introduction

In beginning the presentation of Malta's argument in the second round my task is to focus upon those issues which still divide the Parties. The issues which divide the Parties certainly include the problems concerning proportionality and the significance of lengths of coasts, and my speech will be concerned with these questions, together with the relevance and weight of State practice, the position of third States in relation to the delimitation between Malta and Libya, and the Libyan argument based upon territorial magnitude.

II. Lengths of Coasts, Proportionality and Relevant Area

The major part of my presentation will be devoted to the problems concerning lengths of coasts and proportionality, and it may be helpful to the Court if I start by restating Malta's position in clear terms.

Libya has told the Court *ad nauseam* that Malta is a small island State and that Libya is a large State with long coasts. Malta has never sought to deny these evident facts. Of course, it is not the geographical facts as such which divide the Parties but the legal implications of those facts. However, the Parties do disagree both about the geological and geomorphological facts and about the legal consequences attaching to those facts, and my friend, Mr. Lauterpacht, will be dealing with those matters in his speech.

Malta considers that, as in the case of Tunisia and Libya, the relevant area consists of a natural prolongation which is in legal terms common to both the territories of Malta and Libya. As a result the primary task of the Court is to consider the legal implications of the coastal configurations of the Parties in their relations with each other.

In this context Malta has at no time stated that the length of coasts has no relevance, and in this respect the difference between the Parties concerns the legal significance of coastal lengths for purposes of delimitation.

Malta contends that length is but one aspect of coastal configurations and relationships. Libya insists that length is a paramount element and, further, that the delimitation must satisfy the formula based upon a ratio of coastal lengths. Malta contends that the geographical facts must be placed within a certain legal order related to the concept of approximate equality, whilst Libya insists upon a certain version of proportionality, the formula of the ratio of coastal lengths, which would virtually destroy Malta's entitlement as a coastal State to adjacent areas of continental shelf.

Mr. President, the Libyan position is based upon a fundamental misunderstanding of the legal order within which maritime delimitation takes place and, as a consequence, substitutes a concept of spatial distribution of areas of sea-bed for the proper mediation of areas of convergence as between coasts, coasts which

are presumed to have an equal seaward reach of jurisdiction, this being a corollary of the equal entitlement of coastal States to continental shelf.

Malta is not, of course, asking for half of the relevant area or indeed for any particular proportion of the relevant area. Malta's position is based upon the logical link between the actual geography, expressed in terms of relevant coasts, and the concept of approximate equality, which may also be expressed as the equitable criterion of equal division.

But, if it may be stated once more for the sake of clarity, Malta is not seeking a mechanical half-share of the relevant area. The principle of equal division is to be applied within the geographical and legal framework and the trapezium gives a simple graphical indication of the proper application of that principle in the circumstances of the present case.

Malta has already stressed the radical and exceptional nature of the position adopted by Libya in the present case. When the speeches of Libyan counsel are studied, the impression is further confirmed that proportionality for Libya is a predominant principle and a direct source of rights. Since the geological factors invoked by Libya have no logical connection with the configuration of Libya's coasts, the coincidence between Libya's geological boundary and the proportionality line resulting from the ratio of the difference of coastal lengths involves no mutual confirmation. Thus the proportionality argument necessarily stands on its own, and not as a test of the equity of a delimitation based upon other criteria, including the actual geography of the relevant coasts. The ratio of the difference of coastal lengths, in this abstract and detached form, involves a process of spatial apportionment and a complete divorce from coastal geography.

The Libyan position lacks roots in the available legal principles. As I shall demonstrate in due course, the jurisprudence gives no support to the Libyan approach to delimitation, which relies upon the ratio of lengths of coasts as a primary source of rights. In the arguments relating to proportionality, counsel for Libya have consistently ignored two major factors. The first such factor is that of comparability: that is to say, the principle that any adjustment by reference to lengths of coasts must depend upon a process of comparing like with like, and must be appropriate for the overall geographical framework.

The second factor is that of physical context. In the *North Sea Continental Shelf* cases the Court did not show much interest in the actual length of German coasts, beyond accepting that the coastlines of all three States were "comparable in length". The whole point of the exercise was the fact that the configuration of the German coast would produce an inequitable outcome if the equidistance method was used. The focus was not upon length, but upon the location or configuration of German coasts in relation to other coasts. Thus the German coasts were "markedly concave", whilst those of the other States were "roughly convex in form" (*I.C.J. Reports 1969*, p. 50, para. 91; and see also *ibid.*, p. 17, para. 8).

The fact is, Mr. President, that the purpose of the Court in the *North Sea Continental Shelf* cases, and also in the *Tunisia/Libya* case, was to avoid an occlusion of the coastal front of any one of the States concerned. The qualification of the equidistance method as producing a distortion in certain situations was based upon a notion of substantial equality between coasts and the appurtenance of sea-bed areas in front of those coasts. The enemy the Court identified was the cutting off of areas of sea-bed from the coastal front of a State to which they were appurtenant.

The *modus operandi* adopted by Libya in the present case is calculated to produce an extreme example of the very situation the principles laid down by the jurisprudence of the Court were intended to avoid.

In areas where the claims of several States meet and converge, the legal

approach is to reflect that convergence and to reject a method of delimitation which leads to an occlusion of coastal fronts. It is to be recalled that, in the aftermath of the Judgment in the *North Sea Continental Shelf* cases, the United Kingdom and the German Federal Republic concluded a shelf delimitation agreement which brought the Federal Republic into the central area of convergence in the North Sea (see *Limits in the Seas*, No. 10 (Revised), p. 23). The picture can be seen on Figure 20 of Malta's first dossier. The three boundary turning points were an average distance of 178 nautical miles from British territory. No doubt the coastal relations of the States in the present case are very different, but, *mutatis mutandis*, Malta is maintaining a position essentially similar to that accorded to the German Federal Republic by the Court in the *North Sea Continental Shelf* cases.

And I would emphasize that the Court in the *North Sea Continental Shelf* cases did not concern itself with space, but with the relationship of shelf areas to coastal fronts.

The Libyan case is based upon a complete misunderstanding of the nature of continental shelf delimitation, and this fact is highlighted once again when the question of the relevant area is examined. For the present I shall confine myself to the indication of certain eccentricities purely by way of sample.

In the first place, geological criteria are used for defining the relevant area, which is thus said to be confined to the areas west of the Medina Escarpment. No justification and no authority can be found for the use of geological criteria for this purpose. And how is it possible to apply a criterion of proportionality based upon coastal lengths to a delimitation within a relevant area substantially based upon geological criteria?

The second sample of eccentricity is provided by the strange concept of what may be called the "exclusive oppositeness" of coasts. Thus counsel for Libya has asserted that the Libyan coasts of Ras Zarruq are not part of the relevant area but "can only be opposite to Italy and then Greece" (p. 157, *supra*). This interpretation of the concept of oppositeness in evaluating coastal relationships can only be described as bizarre. No doubt part of Libya's coasts faces certain coasts of Italy, and of course Italy has a role in what is clearly an area of convergence. But to say that Libyan coasts east of Ras Zarruq are opposite to Italy and also to Greece, but are not opposite to, or facing, the coasts of Malta, is to defy common sense (pp. 176 and 182, *supra*). In the context of the Libyan argument, oppositeness, like other coastal relationships, has become subordinated to geological premises, and the result is the curious notion that coasts can only be opposite to one State and then only on the basis of what counsel for Libya described as "some degree of direct facing" (p. 157, *supra*).

In this connection the position adopted by the Court in the proceedings between Tunisia and Libya may be noted. In that case the Court had no doubt whatsoever that the Libyan coast as far east as Ras Tajoura was relevant to the delimitation with Tunisia (*I.C.J. Reports 1982*, pp. 61-62, para. 75). The Libyan Counter-Memorial presented in that case accepted that the area of concern included a considerable proportion of this section of coastline (pp. 190-197, paras. 474-490). Consequently it has already been well recognized by Libya that the same sector of coast may be relevant to more than one delimitation.

Making Legal Sense of the Geography

However, it will not do to devote too much time to indicating the eccentricities of the Libyan arguments, and it will be more helpful to the Court if I proceed to a constructive examination of the precise elements of a principled

approach to delimitation in the present case with particular reference to the relevant coasts and the element of proportionality.

As the Chamber pointed out in the Judgment in the *Gulf of Maine* case, the choice of equitable criteria for delimitation is primarily derived from geography, and especially the geography of coasts, and the geography of coasts has a political, as well as a physical, aspect (*I.C.J. Reports 1984*, p. 327, para. 195). The task in continental shelf delimitation is essentially and always that of making political and legal sense of the geography, and the Chamber in its Judgment "emphasized that a delimitation, whether of a maritime boundary or of a land boundary, is a legal-political . . ." (*ibid.*, p. 277, para. 56).

Given that geology does not produce a legally justifiable delimitation in the present case, the task must be that of making sense of coastal relationships. In my submission, making legal sense of the geography of coasts and coastal relationships involves three principal elements.

The first element is that of entitlement, and this must bear rationally upon delimitation. Entitlement of its very nature connotes a presumed equality of entitlement and an equality of the seaward reach of jurisdiction. Entitlement and delimitation should have a complementary relationship and certainly should not be in opposition.

In the jurisprudence, commencing with the *North Sea Continental Shelf* cases, the relationship between entitlement and delimitation has always been recognized, and this relation provides the roots of the concepts of non-encroachment, and of distortion caused by certain features, in relation to geometrical methods of delimitation.

In addition, the principles of attribution recognized in the Truman Proclamation and generally in the doctrine, and particularly the principles of security and self-protection, militate in favour of an approximate equality of entitlement, and consequently the observance of the principle of equal division in the delimitation process.

The second element is a corollary of the concept of entitlement, and consists of the principle of equality, and thus of the equality of seaward reach of jurisdiction and, in the case of islands, of radial projection. My friend and colleague, Professor Weil, will reaffirm the significance of these principles in his presentation in the course of the second round.

The third element in making sense of the geography for purposes of delimitation is the inevitable relevance of the principle of approximate equality or of equal division in the delimitation process, always bearing in mind that the principle of equal division does not connote a spatial distribution of sea-bed areas based upon lengths of coasts. In appropriate geographical circumstances the equidistance line, with or without modification, is simply the practical outcome of the concepts of the entitlements of coastal States to shelf areas, of the equality of seaward reach of jurisdiction, and of the principle of equal division of areas where the maritime projections of the States in dispute converge and overlap.

Any method of delimitation, or criterion, which produces extreme results, and which diverges substantially from the principle of equal division, is prima facie invalid. The use of the criterion of the ratio of coastal lengths as a primary basis for delimitation produces extreme results and subverts the principle of equal entitlement. The line proposed by Libya in 1973, to be seen in Malta's first dossier, Figure 1, is extreme enough, since it leaves Malta with little entitlement beyond her territorial sea, but the implications of the Libyan *modus operandi* need to be stated in all their inexorability. That *modus operandi* should apply, if it be applicable at all, to the full length of the Libyan coastal frontage facing Malta.

Mr. President, the implications of the Libyan approach are strikingly apparent, since the ratio of coastal lengths would then produce the result that Malta would be deprived of virtually any appurtenant areas of sea-bed. The overall Libyan frontage, based upon the facing coasts of Tripolitania and Cyrenaica, in relation to Malta, and taken as a straight line, totals about 1,600 kilometres in length. If the Maltese frontage be taken as approximately 40 kilometres in length — this was the figure offered as "the most favourable to Malta" by counsel for Libya in the first round speeches (p. 158, *supra*) — the resulting ratio is 39:1. The distance between Malta and Libya is approximately 180 miles and thus the ratio required to give Malta a territorial sea of 12 miles wide would be of the order of 14:1, since 180 miles is a factor of 12 by 15. Thus the ratio of the lengths of facing coasts, that is now 39:1, would fall far short of recognizing even the sea-bed of Malta's territorial sea as part of her continental shelf entitlement.

It thus becomes apparent why the Libyan argument has been built around an artificially restricted sector of relevant coast on the Libyan side with a terminus at Ras Zarruq. If this is not done, if that restricted sector is not taken, the absurdity of the so-called proportionality test becomes too obvious for words.

And, of course, the same logical difficulty would apply if Malta were much closer to Libya, since even on the Libyan view of the relevant coast ending at Ras Zarruq, there would be a very high ratio, and the same absurd result, namely, that the Libyan claim would encroach even upon the territorial sea entitlement of Malta. It may be that this consequence is the reason why counsel for Libya (pp. 120 and 161, *supra*) have on several occasions accepted that, if Malta were close to the Libyan coast, equidistance would be applicable. And yet this is a strange and inconsistent concession, since if the criterion of the ratio of coastal lengths is required by equity when Malta is distant, it should also be required in the situation of greater proximity.

I have been speaking about the procedure for making political and legal sense of the geography, and it is now convenient to move on to an examination of what the geography consists of for present purposes.

Counsel for Libya has asserted that Libya has moved from the actual facts towards an equitable result, whereas Malta has, so it is said, neglected the facts (pp. 155-156, *supra*). But the reality is very different. Malta has not neglected the facts and the difference between the Parties is one concerning the legal implications of the facts of geography and geology.

Moreover, the Libyan suggestion that the facts are somehow self-explanatory is, it must be stated frankly, somewhat naive. If the facts in cases such as this were so helpful and self-explanatory, the settlement of disputes would be a simple process indeed. The dispute leading to the *Gulf of Maine* case is but the latest example of the controversies which arise from the need to evaluate coastal geography within a legal framework.

Certainly, it is the facts concerning coasts and coastal relationships which must determine the framework within which delimitation takes place. The framework consists naturally of the position of Maltese and Libyan coasts in their mutual relations as coastal States. The question then becomes: what are the relevant coasts and what is the relevant area?

For Malta the answer to this question can be expressed graphically by means of the trapezium figure which is now on the easel behind me.

But before I come to the significance of the trapezium I would like to look at the concept of relevant coasts. The term "relevant" is question-begging, of course, and there is the ever-present danger of circularity in the process of defining terms.

In the first place, it is important to appreciate that the question of identifying the relevant coasts, and hence the area relevant to delimitation, is essential to a rational approach to delimitation and is not simply an aspect of the question of proportionality.

In the second place, the question of identifying relevant coasts is analogous to, but not identical with, the determination of the area in dispute. In the case of a territorial dispute, if the area in dispute is not already defined in a *compromis* it will be established on the basis of the history of the dispute and the claims as formulated prior to the critical date or dates. The situation in the case of a dispute concerning title to shelf areas is in some respects comparable, and the Parties may have formulated claims at least in the form of espousing either particular methods of delimitation or specified alignments.

However, in the case of continental shelf delimitation there are certain differences. The lines claimed will be justified by the Parties primarily, and perhaps exclusively, upon the principles or criteria of equitable delimitation, and therefore by reference to the geographical framework and coastal geography. Thus the claims relate back to the contentions of the Parties as to what are the relevant geographical elements. As a result there may be a certain circularity and the concept of relevance may be determined *a priori* by the nature of the delimitation contended for by the respective Parties. From all this it follows that in the case of shelf delimitation, as opposed to territorial disputes, the concepts of relevant coasts and relevant areas must depend much more upon the appreciation of the Court based upon objective criteria and much less upon the way in which the Parties formulate their claims. It follows further that the relevant coasts will not usually form the limit of an area all of which is actually in dispute, but will have a purely functional role in providing the framework for the process of delimitation in accordance with equitable principles.

The criteria for determining relevant coasts must be themselves legal. Since it is the coast, as land territory, which is the basis of entitlement, and since the issue of entitlement is to be related to the dispute between the Parties, the relevant areas are those which can be considered in a legal sense to be lying off the coasts of either one Party or the other. These areas taken together form the area which is relevant to the decision of the dispute.

This mutual relationship is commonly described in terms of the areas between coasts "which face each other", or in terms of "areas where the maritime projections of the coasts of the States between which delimitation is to be effected converge and overlap" (Judgment in *Gulf of Maine* case, *I.C.J. Reports 1984*, para. 195). Another form of words used refers to "the coasts of the Parties actually abutting upon the continental shelf" of the region (Anglo-French Arbitration, Decision of 1977, para. 248). And in its Judgment in the *Gulf of Maine* case the Chamber also referred to "the geographical area directly concerned in" the delimitation (*I.C.J. Reports 1984*, p. 268, para. 28, and see paras. 28 to 41 *passim*).

This account of the criteria of relevance may be completed with some general points. First of all, and of great importance, is the assumption that it is coastal geography and not geological, and still less, economic or social, considerations which provides the basis for determining the relevant coasts and the relevant area. The second point is that the jurisprudence employs the concept of convergence or overlapping of coastal extensions under the sea on the basis that coasts are presumed to have a legal equality in the generation of entitlement to shelf areas.

In other words, reference to coasts is a prefiguring of the application of the principle of equal division, but this is not a circularity since the principle of

equal division is the logical means by which the law gives credit to the actual coastal relationships in the region. In other words the convergence or overlapping (in a legal sense) of maritime projections is on a basis of legal or approximate equality of coasts and coastal extensions.

Malta's Views concerning the Relevant Area

In the light of these considerations I can now explain the basis for Malta's view of the relevant area, that is, the area in which the maritime projections of the two Parties meet and overlap. Malta's view of the relevant area has been indicated graphically by means of the trapezium. The trapezium indicates the coastal relationships of Malta and Libya in terms of the criteria of facing coasts and the concept of the convergence or overlapping of maritime projections. The two parallel sides of the trapezium reflect the coastal fronts of Malta and Libya in so far as they face each other. The western side of the figure represents the limits of mutual convergence or overlapping in that part of the region, as between Malta and Libya, and the eastern side of the figure has a similar role. The figure as a whole represents the concept of the relevant area as between facing coasts. For ease of reference the figure has been termed the trapezium, since in sketch form the figure is similar to the geometrical figure of the same name.

The figure is not a geometrical construct and it is perfectly normal to give names to areas in issue, and so, for example, the area in issue in the Beagle Channel Arbitration was commonly referred to by the parties as "the Hammer" in view, of course, of its shape, not in view of its logical provenance (see *International Law Reports*, ed. E. Lauterpacht, Vol. 52, p. 93 at p. 121).

Mr. President, I fear that all this must be obvious to the Court but my distinguished opponents on the other side made the most extraordinary fuss about the trapezium, and I hope that my explanation will give them ease of mind.

The trapezium is an indication of coastal relationships and no more. The area of convergence is set by the geography and the relevant geography does not cease east of Ras Zarruq or east of the Medina Escarpment. As I pointed out in the first round of the oral hearings, the Libyan proposal of 1973, which is in Malta's first dossier, Figure 1, produced a line which clearly assumed that there were areas to be divided on an axis between the south-eastern aspects of Malta and the Benghazi sector of the Libyan coast (**III**, pp. 448-449).

Moreover, Malta's view of relevant coasts and the relevant area is based firmly upon legal principle and is not self-serving. After all, if the ratio of the difference of coastal lengths were to be the legal basis of delimitation, it would be in Malta's interest to seek to reduce the length of relevant Libyan coast.

Libya's readiness to confine the relevant coasts to sectors west of Ras Zarruq is in part the consequence of the extraordinary view that geological criteria confine the relevant area to sea-bed areas west of the Medina Escarpment, and, as I pointed out earlier, in part due to the need to obscure the absurd results of applying the proportionality argument based on coastal lengths.

The Libyan argument refuses to recognize the Benghazi or Cyrenaica sector of the Libyan coast as a part of the relevant coast, in spite of the fact that international law would undoubtedly classify the sea-bed areas between those coasts and the facing coasts of Malta as part of the continental shelf of the region. It may be remarked that the delimitation between Italy and Greece in the area of the Ionian Sea involves areas of greater depth (and this may be seen on the map which is Basic Map B in Malta's first dossier, and which is the base map behind me at the moment). Moreover, the distance between Cyrenaica and

Malta is no way affects the relationship of the coasts for purposes of delimitation. Provided that the intervening sea-bed areas constitute continental shelf in legal terms, very extensive areas between the facing coasts will be subject to delimitation between the pertinent coastal States.

The distance between Cyrenaica and Malta is approximately 350 nautical miles. This distance may be compared with the distance between the coasts of Greece and Italy in the southern sector of the delimitation effected in 1977 (*Limits in the Seas*, No. 96). The southern terminus of the boundary lies 168.9 nautical miles from the coast of Sicily and 163.4 nautical miles from the Greek island of Stamfani, a total of 332.3 nautical miles. In the Franco-Spanish delimitation in the Bay of Biscay the western terminus of the continental shelf boundary is a combined distance of approximately 288 nautical miles from the French and Spanish coasts (*Limits in the Seas*, No. 83, p. 15). In the North Sea the delimitation between the United Kingdom and Germany involved a distance of approximately 366 nautical miles between the coasts concerned (*Limits in the Seas*, No. 10 (Revised), p. 24); the delimitation between Denmark, in respect of the Faroes, and Norway, involves distances between the relevant coasts of not less than 500 nautical miles (Malta Memorial, Annexes, No. 29; *Gulf of Maine* case, Annexes to the Reply submitted by Canada, Vol. I, p. 603).

If I can sum up this part of my argument: in order to make sense of the geography it is necessary to decide which are the relevant coasts and, having done that, the framework of the delimitation can be established. In the light of the criteria for identifying the relevant coasts, the relevant area is that indicated graphically by means of the trapezium figure: and this appears applied to the
(39) region in the form of Figure 7 of Malta's first dossier. If that figure is studied two points call for attention. In the first place, for practical purposes it is not important whether the Libyan coast is regarded impressionistically as a coastal front represented by a straight line forming the base of the trapezium, or as the actual coastline of which only the Tripolitanian and Cyrenaican frontages flanking the Gulf of Sirt actually abut upon the continental shelf of the region.

The second point to be noticed is that the trapezium quite naturally takes account of the fact that an area of convergence is involved which affects States other than Malta and Libya. The inclination and location of the western and eastern sides of the trapezium prefigure the existence of other coastal relationships and relevant areas.

Having established the relevant area as the framework of the delimitation, the delimitation can then be effected in accordance with the concept of equality and the equitable criterion of the equal division of the relevant area. I have already examined these matters in my speech in the first round and my colleague Prosper Weil has affirmed the use of equidistance as the appropriate method of delimitation.

I have more or less concluded my discussion of the questions concerning relevant coasts and the relevant area. However, before I turn to the issue of proportionality it is, in my submission, helpful to consider the relevance of the lengths of coasts with particular reference to the process of determining the relevant area.

Mr. President, it is a striking fact that, in the process of establishing which are relevant coasts, the length of particular sectors of coast is of no significance. No doubt the length of Maltese coastal fronts facing Libyan coasts totals x miles and the length of Libyan coasts facing Malta totals y miles or y miles minus the coasts of the Gulf of Sirt.

But it is perfectly possible to decide which are the relevant coasts without knowing the values of x or y.

Libya excludes the sectors of coast to the east of Ras Zarruq on a number of grounds none of which involves reference to the length either of the sectors included or the sector excluded. The criteria of relevance refer to the location and shape of coasts and their relationship to each other. One may study those passages in the speeches of Professors Bowett and Jaenicke which deal with the issues of relevant coasts and relevant area without finding a single reference to the pertinence of length.

The irrelevance of the factor of length to the issues of relevant coasts and relevant area is of high significance, since the determination of these issues conditions the process of delimitation on the basis of equitable criteria. Why is length as such irrelevant to the establishment of the relevance of coasts?

There are at least three reasons, all of which are related, as might be expected, to the rationale of the delimitation process.

The first such reason is that length by itself is very different from geography and the realities of coastal configuration. In the *North Sea Continental Shelf* cases it was the recessing nature, the location, of the German coast which created a need to avoid encroachment and occlusion. Length of coasts had no relevance except in the very general sense that the coasts of the three States involved were considered to be sufficiently "comparable" (refer to Malta's first dossier, Fig. 20).

In the second place, the lengths of coasts as such could only be relevant if all the space within the relevant area were available for allocation. Such allocation would then be made on some criteria of distribution which would in many cases produce an outcome incompatible with the pattern of convergence indicated by the actual coastal relationships in the region.

I now come to the third reason for the irrelevance of coastal lengths as an abstract value. It is generally recognized that the choice of delimitation method must be dependent upon the need to produce an equitable result. That result, in order to be equitable, must reflect the criterion of equal division and the concept of approximate equality. But reliance upon the ratio of the lengths of the coasts of the Parties, when there is no general comparability in geographical terms, produces an imbalance and results in a virtual monopoly of the relevant area by one Party.

The conclusion must be that the process of delimitation is intended to reconcile the convergence of coastal extensions; it is not intended to award shelf areas according to abstract criteria of distribution based upon differences of coastal length.

Logical Inconsistencies in Libya's Position concerning Lengths of Coasts

Mr. President, moving through the logical sequence of issues, I have considered the relevant coasts and identified the relevant area, and I have indicated that the delimitation should then be effected on the basis of the equitable criterion of the equal division of the relevant area, which, within the geographical and legal framework of the present case, would involve the method of equidistance.

The Test or Criterion of Proportionality

The next phase in the procedure is the application of the test or criterion of proportionality to the delimitation — or, in the present case, to the principles on which delimitation would proceed — already established in accordance with equitable criteria.

The Libyan case gives great prominence to proportionality in the particular form of the ratio of the lengths of the relevant coasts of the Parties, as these are conceived by Libya, and, by way of preface to my critique of the issue of proportionality, it may be of assistance to the Court if certain major inconsistencies in Libyan thinking are pointed out, since these inconsistencies help us to identify some sources of confusion.

The first source of confusion arises from the admission by counsel for Libya that, when an island State is only 20 nautical miles from the long coast State, this relative proximity makes a key difference (p. 120, *supra*). I refer here to the remarks of Dean Colliard in respect of the delimitation between Bahrain and Saudi Arabia. In his speech he states that the proximity of the States is a feature distinguishing that situation from the present case. Professor Bowett has also accepted that "a median line may be reasonable or equitable where the distance between opposite coasts is relatively small" (p. 161, *supra*). But, Mr. President, why should the greater proximity make a difference to the application or not of the test based upon the ratio of coastal lengths? There is no element in the principle advanced by Libya which indicates or justifies such a qualification in its application. Indeed, in so far as proximity might be considered relevant, one might expect that proximity would be to the disadvantage of the short-coast State at least within the Libyan philosophy of maritime delimitation in relation to long coasts and short coasts.

In this same connection there is a further point requiring attention. Professor Bowett has made the claim that the greater the distance between an island State and a long-coast State, the more shelf the island State receives if a median line is used. With respect, this assertion is based upon error. The point has already been made in Malta's Counter-Memorial (pp. 108-110, II), where it was demonstrated, by means of diagrams and mathematics, that, whether the short-coast State advances or recedes, "the ratio of the areas of the two sectors of the trapezium, divided by the equidistance line, remains constant, whatever the value of *h*, [*h* being] the distance between the two coasts". That is a reference to paragraph 245 (p. 108) of Malta's Counter-Memorial (II), which refers to Figure 5 at page 109 of that document, and the diagrams concerned are reproduced as Figure 25 in Malta's second dossier.

In other words, distance makes no difference and consequently the admission by counsel for Libya that an equidistance line is equitable in conditions of relative proximity constitutes an acceptance of a principle which applies equally in the situation of Malta and Libya.

I now move on to a second source of confusion. In my speech during the first round I presented the case of a long-coast State opposite a series of short-coast States, and I invoked Figure A of Malta's Reply, which also appears in Malta's first dossier as Figure 27A. This was the very simple figure showing a series of short-coast States opposite a single long-coast State. In my argument I pointed out that, according to the landmass argument of Libya, the proportionality line would apply to each and every one of the short-coast States opposite the long-coast State.

The Libyan response to this, expressed by my friend Mr. Highet (pp. 151-152, *supra*), was to state that the correct result would be a median line and not a proportionality line based upon the ratio of the lengths of the coasts of the individual short-coast States and the length of the entire coast of the long-coast State. This response by Libya does not, in my submission, begin to destroy my point that the logic of territorial magnitude, such as it is, should apply to the disadvantage of the short-coast States, and this would be especially so if they had modest hinterlands. Mr. Highet's statement does not relate to this aspect of

my argument, and I do not intend to pursue that aspect of the matter at this point in my speech.

My present purpose is to consider the implications of Mr. Highet's statement in the general context of the Libyan argument based upon the difference in the length of coasts.

The first point to be noticed is that Malta's position is related to that of other States in the region, and indeed the Libyan argument has given emphasis to the relevance of third States. Of course, Malta is not exactly in a line of adjacent (31) short-coast States, as in Figure 27A, opposite Libya, but that is not the point. Mr. Highet's statement involves the important and logical concession that, for the purpose of applying a proportionality criterion in the form advanced by Libya, it is only the actually corresponding sector of coast which counts. The same point is made by Dean Colliard in his analysis of individual delimitations between long-coast and short-coast States.

(31) It is clear from Figure A of Malta's Reply — that is Figure 27A of our first dossier — that this creates a serious dilemma for the Libyan case, for if the concession concerning the correspondence of sectors is not made, it is impossible to answer the argument that the Libyan position involves the dominance of long-coast States in semi-enclosed seas, which point was put in my first-round speech (III, p. 473). For, if correspondence of sectors is not allowed for, the preponderance, the greater strength, as it is alleged, of the natural prolongation of the long-coast State must affect each one of the opposite short-coast States and all of them collectively. But Mr. Highet has of necessity accepted that the appropriate outcome is a median line between the short-coast States, on the one hand, and the long-coast State, on the other hand.

(31) The situation envisaged in Figure A of Malta's Reply can be varied to include a series of short-coast States, or a mixture of short- and long-coast States, surrounding an island State.

Mr. President, it is evident that the principle of the correspondence of coastal sectors must apply then also, but with the radial division indicated by the trapezium rather than a simple perpendicularity.

If Mr. Highet's logical concession were not to apply to the case of an island State surrounded by short-coast States, or a mixture of short- and long-coast neighbours, the outcome of the Libyan thesis on proportionality would be a massive multiple occlusion of the coastal projections of the island State to its very great disadvantage. But he accepts that the median line is the solution in respect of the segment of the long coast which corresponds to the relevant coast of the island State.

Such are the confusions and eccentricities which characterize the Libyan argument based upon lengths of coasts. And it is perfectly natural for these problems to pervade Libyan thinking concerning proportionality since, as I emphasized during my first-round speech (III, pp. 437-438 and 454-455, *supra*), the Libyan position on proportionality is based essentially upon a dogmatic reliance upon coastal lengths and the related concepts of territorial magnitude.

It is the case that the proportionality argument in the Libyan case consists of a substantive and primary reliance upon the difference in the lengths of the coasts, that is to say, of the relevant coasts as these are conceived by Libya. The contents of the speeches of Professor Jaenicke and Mr. Highet reveal the extent to which the Libyan argument regards proportionality in terms of simple spatial apportionment. Moreover, Professor Bowett in his speech (p. 178, *supra*) specifically drew the Court's attention to the 1973 proposal of Libya (see Map No. 65 of Libya's dossier and Malta's first dossier, Fig. 1), and this proposal was based exclusively upon the difference in the coastal lengths of the Parties.

The outcome is in effect that proportionality is employed as a primary source of rights over sea-bed areas in accordance with a dogmatic formula — the ratio of the difference in lengths — which is not based upon the realities of coastal relationships in the region.

If proportionality is not to be used as an actual method of delimitation, in effect as a basis both of entitlement and of delimitation, it can only appear as a test or criterion by which the equitable nature of a delimitation established on the basis of other criteria can be evaluated. No doubt this does not render the significance of proportionality negligible, but the procedure does not involve, so to speak, starting again.

Yet counsel for Libya clearly regard proportionality as a primary element in the process of delimitation. Indeed, in the speeches of counsel for Libya the ratio of the difference in length of the two coastal fronts of the Parties is unequivocally posited as a basis of delimitation, and this independently of the criterion of proportionality. I refer to Professor Jaenicke's speech (p. 62, *supra*). In the words of counsel for Libya: "It is therefore possible . . . to determine the dividing line between the respective natural prolongations of the Parties by geographical criteria" *(ibid.)*. It is true that Professor Jaenicke then goes on to say that this approach satisfies "the test of proportionality" (*ibid.*), but this will not do, because it is impossible to verify the criterion based on the difference of coastal lengths by the very same criterion reformulated as "the test of proportionality".

Moreover, in spite of protestations that the Libyan approach to proportionality "*does not aim* at a repartition of the area of delimitation by equitable shares" (p. 184, *supra*), counsel for Libya always insist on giving the element of proportionality a high normative status and in applying it in such a way as to lead directly to a delimitation. This is apparent throughout the second speech of Professor Jaenicke in the first round, but it receives particular emphasis when he explains how the ratio of coastal lengths applies in practice within the relevant area as perceived by Libya (p. 192, *supra*). It is striking that both Professor Bowett (pp. 180-181, *supra*) and Professor Jaenicke (p. 192, *supra*) relate the choice of a line directly to the fact that it would produce a spatial ratio corresponding to the ratio of coastal lengths.

It is true that Professor Jaenicke (p. 192, *supra*), stated that "a reasonable degree of correspondence" would be sufficient; and yet the fact remains that the *modus operandi* of the Libyan argument does not involve the evaluation of a line produced on the basis of other criteria, but the use of a formula to produce an independent delimitation, exactly as happened when Libya produced the original 1973 proposal.

This approach destroys any concept of the convergence of coastal extensions and in the present case it would produce exactly the type of occlusion and cut-off which the Judgment in the *North Sea Continental Shelf* cases was intended to guard against.

A further persistent and serious error in the Libyan argument relating to proportionality takes the form of neglecting the important condition, set by the Court in the *North Sea Continental Shelf* cases, that the abatement of an equidistance line can take place only in conditions of comparability or, in other words, "a geographical situation of quasi-equality" (*I.C.J. Reports 1969*, pp. 49-50, para. 91).

The fact is that distinguished counsel for Libya tend to play down the requirement of comparability and, in this same connection, to misinterpret the jurisprudence.

The reasons for this misunderstanding of the cases are suggestive and, with

your permission, Mr. President, I shall draw the attention of the Court to some of them.

First, I shall consider the views of the decision in the *North Sea Continental Shelf* cases expressed by my friend and colleague, Professor Jaenicke, who placed considerable reliance upon that decision. As one might expect, Professor Jaenicke places emphasis upon paragraph 98 of the Judgment in the *North Sea Continental Shelf* cases, which refers to proportionality as "a final factor to be taken account of". But paragraph 98 is only two paragraphs from the end of a long decision, and the modest status of the "factor of proportionality" is evident from the structure of the *dispositif* (*I.C.J. Reports 1969*, pp. 53-54, para. 101).

Mr. President, with all the respect due to my distinguished colleague on the other side, no one reading the Judgment as a piece would receive the impression that the case was about proportionality, and still less that it was about the use of the ratio of coastal lengths. The reasoning of the Judgment is concerned with the problems of applying equidistance in certain geographical situations, and the need to avoid the cutting off of a coastal State from areas of shelf which would result from the use of the equidistance method in the case of laterally adjacent States, when the middle of three adjacent States has a concave and recessing coast, and the two neighbours have convex coasts. In particular, one may note the text of paragraph 8 of the Judgment, and the recurrence and development of the argument in paragraphs 44, 48, 54-55, 57-59, 83-85, and 89-96. The Court will no doubt be aware that, in all the key passages in the Judgment which expound the reasons for not applying the equidistance principle, there is no reference to the issue of proportionality. Moreover, the Court insisted that the process of abatement depended upon "a geographical situation of quasi-equality" as between the States concerned (*I.C.J. Reports 1969*, p. 50, para. 91); and that there should be a general comparability between the length of the coastlines concerned.

The object of the Court was to promote substantial equality and to do so by making allowance for the recessing configuration of the German coasts. Thus it was location and configuration which were the source of the abatement, and not length. In fact, the Court pointed out that the three coasts were "comparable in length" (*I.C.J. Reports 1969*, p. 50, para. 91).

There is no evidence that the Court envisaged the use of some system of spatial apportionment as a solution to the problem of encroachment and cut-off. It is of great interest to note that the results of the subsequent delimitations with the Netherlands, Denmark and the United Kingdom did not constitute a substantial departure from equidistance but a modification of equidistance in order to maintain the principle of approximate equality. Moreover, the results of the agreements concluded subsequent to the Judgment were such that Germany was brought into the central area of convergence and consequently achieved a delimitation with the United Kingdom. The delimitation with the United Kingdom involved boundary turning points an average distance of 178 nautical miles from German territory and 158 nautical miles from British territory (*Limits in the Seas*, No. 10 (Revised), pp. 23-24). The delimitations represent an approximate equality between Germany and the other three States concerned. They are not based on equidistance in a simple way, but at the same time they are not based upon calculations based upon coastal lengths. No mention of a proportionality calculation appears in the relevant issues of *Limits of the Seas* published by the United States Department of State, and it is remarkable that no reference to such a calculation appears in the relevant sections of the Annex of Delimitation Agreements annexed to the Libyan Counter-Memorial (**II**). I refer to the

commentaries relating to Agreements in that Annex (Agreements Nos. 7, 10 and 27), all relating to the North Sea.

Mr. President, that concludes my considerations of the significant features of the Judgment in the *North Sea Continental Shelf* cases; and my next task will be to draw the attention of the Court to the errors in the treatment by Libyan counsel of the Decision in the Anglo-French Arbitration.

First of all, I would refer to the remarks of my friend and colleague, Professor Bowett (pp. 158-159, *supra*), who stated that in the Atlantic sector the Court of Arbitration was dealing with comparable coasts, and that "it found the two coasts of Finistère and Cornwall broadly comparable".

And, of course, Professor Bowett is correct, the Finistère and Cornwall-Scillies coasts were treated as broadly comparable, and that is precisely the point. For purposes of delimitation, the very attenuated features of the western terminus of Cornwall and the Scilly Isles, lying some 21 miles beyond, were treated as mainland comparable for delimitation purposes with the great mass of Finistère. As Professor Bowett points out, it was the position of the Scillies in relation to the Cornish peninsula which created the need for modification of the equidistance line. Thus it was location, and not size or length of coasts, which determined the relevance of the coasts of Cornwall and the Scillies both to the establishment of an equidistance boundary and to the modification of that boundary (see Malta's first dossier, Fig. 25).

Next, I move on to the speech of my friend and colleague, Professor Jaenicke (p. 187, *supra*), in which he explains that it was the open-endedness of the area of delimitation in the Atlantic region in its lateral extent which explains why, in his words, "the Court of Arbitration applied the concept of proportionality only in a limited way". This assessment can only be said to beg the question. The Court of Arbitration clearly did not find it appropriate to seek to identify relevant coasts because it did not consider that comparability or relevance depended upon assessing lengths of coasts. Moreover, the major and inescapable fact is that the Court of Arbitration did not give even a passing thought to the varying strength or relative legal significance of the natural prolongations of western Cornwall and western Finistère. It was their location, their character as abutting coasts, which was significant, and the coasts themselves were regarded as comparable.

I conclude my response to Libyan evaluations of the jurisprudence in the first-round speeches by emphasizing certain significant facts which may be in danger of becoming obscured by the exchange of quotations and observations on particularities.

First, the principle of proportionality in terms of the difference of coastal lengths was not given prominence in the process of reasoning in the *North Sea Continental Shelf* cases and was certainly not applied in the delimitations which occurred subsequently to the decision in the *North Sea Continental Shelf* cases.

Second, the same principle of proportionality was not applied in any phase of the Decision of the Court of Arbitration in the continental shelf case between France and the United Kingdom. The Court expressly stated that resort to the ratio of the difference of coastal lengths was exceptional — I refer to paragraph 100 of that Decision. Moreover, this Decision provides some striking examples of the importance of location and attitude of coasts as opposed to lengths of coasts. Thus the reduction of the shelf area around the Channel Islands depended to a great extent on their location close to the shores of, and within the arms of, a large gulf on the French coast well away from the United Kingdom mainland (see the Decision, paras. 189-199). Similarly, the adjustment involved in reducing the weight of the Scilly Islands was due to the fact that

they involved "a considerable projection on to the Atlantic continental shelf of a somewhat attenuated portion of the coast of the United Kingdom" (see the Decision, para. 249).

The Court of Arbitration was always at pains to emphasize that the element of proportionality in delimitation of the shelf does not relate to the total partition of the area of shelf among the coastal States concerned; and this statement of principle appears in three different places in the Decision — I refer to paragraphs 78, 101 and 250. These statements clearly involve a general principle of legal policy.

Third, the Judgment in the *Tunisia/Libya* case contains no evidence that proportionality played a dominant role in the delimitation process. Moreover, the Court expressly stated that proportionality was a means of evaluating the attribution of shelf areas "following the method indicated by the Court" (*I.C.J. Reports 1982*, p. 91, para. 131). The general approach of the Court certainly involved treating the two coastlines in the second sector of the delimitation as generally comparable, and thus there was a situation of equality within the same order. It is clear from the words of the Judgment that proportionality was employed as a test of the equity of an alignment already constructed in accordance with criteria other than proportionality (see *I.C.J. Reports 1982*, pp. 82-91, paras. 114-131); and it is also clear that the avoidance of encroachment was a major concern of the Court, which gave close attention to changes in coastal configuration and the effect of the Kerkennah Islands (*ibid.*, pp. 86-89, paras. 122-129, and the *dispositif*, p. 93, B).

Fourth, in the *Gulf of Maine* case the Chamber did not apply the proportionality test based upon the length of coastlines within the area of delimitation; and this was recognized by Professor Jaenicke in his speech (p. 187, *supra*).

Fifth, in the Decisions in the Anglo-French Arbitration, the *Tunisia/Libya* case, and the *Gulf of Maine* case the element of proportionality was expressly employed as a criterion to test the equity of a line already established in accordance with equitable criteria. It is unfortunate that counsel for Libya tend to ignore this aspect of the jurisprudence. In the *Gulf of Maine* case, which is invoked in the Libyan argument, the Chamber firstly established a median-line delimitation and then subjected the median line to a process described as that of "correction" (*I.C.J. Reports 1984*, pp. 322-323, paras. 184-185; pp. 94-97, paras. 217-223). It is to be noted that the Chamber described the correction as "limited" (*ibid.*, pp. 334-335, para. 218), and the key passage in the Judgment contains the following clear statement. In the words of the Chamber:

> "As the Chamber has expressly emphasized, it in no way intends to make an autonomous criterion or method of delimitation out of the concept of 'proportionality', even if it be limited to the aspect of lengths of coastline. However, this does not preclude the justified use of an auxiliary criterion serving only to meet the need to correct appropriately, on the basis of the inequalities noted, the untoward consequences of applying a different main criterion." (*I.C.J. Reports 1984*, p. 335, para. 218.)

These significant facts cannot be obscured by the attempts by counsel for Libya to play up the role of coastal lengths. At the end of the day, there is no single decision in which the method of the ratio of coastal lengths has been applied, and the relevant decisions expressly reject this approach as an autonomous criterion or method of delimitation. The Libyan approach is precisely to use coastal lengths as a primary method of delimitation and as an autonomous criterion. For this, and for other reasons, which I set forth in my speech in the first round, the Libyan position is entirely contrary to legal principle.

Encroachment: Its Relation to Distortion and Proportionality

Mr. President, in my submission, the jurisprudence substantially contradicts the elements on which the Libyan proportionality argument is based, and, as I shall reaffirm later in my presentation, the practice of States confirms the equitable nature of the solution which Malta has espoused.

Before I reach the conclusion of my treatment of the issues concerning lengths of coasts and proportionality, there are two matters which remain on this part of the agenda. The first is the consideration of the causes of Libyan misconceptions of proportionality; and the second is to point out the implications of the Libyan graphics (Libyan dossier, Figs. 68 and 69), which indicate the relevant area as conceived by Libya.

First, I turn to the root causes of Libyan misconceptions of the role of proportionality. The first reference to the question of proportionality appears in the Judgment in the *North Sea Continental Shelf* cases but, as I have already indicated, the major concern of the Court in those cases was the problems which would be created by the use of equidistance where the coastal configuration of one State would cause the equidistance line to swing out laterally across another State's coastal front, cutting it off from areas situated directly before that front (see, in particular, *I.C.J. Reports 1969*, paras. 8, 44 and 85). It is the problem of encroachment which troubled the Court *au fond*, and thus it is the principle of non-encroachment which is given the conspicuous place of honour in the *dispositif* of the Judgment, where it appears at the first of the "principles and rules" formulated in paragraph C of the *dispositif*. Proportionality appears at the end of the *dispositif*, as a factor "to be taken into account" in the course of negotiations, and it appears in paragraph D.

At the centre of the problem lies the fairly straightforward idea of distortion or displacement caused by the use of a method of delimitation inappropriate to the geographical circumstances. It is the idea of the approximate equality of appurtenant areas of shelf which lies behind both the need to modify the equidistance line in certain situations and the need to avoid using proportionality as the basis of a spatial apportionment of shares. At the very heart of the concept of proportionality, as developed by judicial experience, is the idea of distortion and displacement of shelf areas in relation to abutting coasts. When there is no comparability of the attitude or posture of coasts (and length is but an aspect of attitude), the use of equidistance (or any other geometrical method) causes displacement and lateral cut-off of the coastal front of one of the States concerned.

In short, it is location and dislocation, rather than space and apportionment, of shelf areas which is at stake.

When there are coasts in the relation of Malta and Libya, there is no source of lateral displacement; and thus the median line represents the neutral equilibrium between the two States, and constitutes the status quo of appurtenance based upon the natural equality of the seaward reach of coasts.

In the circumstances of the present case, the introduction of a sort of spatial equality based upon the ratio of coastal lengths would result in a massive transverse displacement of sea-bed areas relating more to Maltese coasts than to Libyan coasts, and the destruction of the balance of interests represented by the area of convergence or overlapping of coastal extensions. Whilst the physical fact of adjacency cannot automatically create title to shelf areas, the concept of adjacency very adequately expresses the link between a State's sovereignty and its sovereign rights to adjacent sea-bed areas.

The Libyan position actively promotes distortion because it depends upon a formula and not upon the actual geographical relations. The difference in

coastal lengths of itself cannot be taken to be, or translated into, the kind of anomaly which calls for correction of the normal principle of equal division, since that difference is not an index of distortion or displacement.

The Libyan position focuses upon a preconceived view of equity and neglects the real geographical setting and the legal framework.

The solecism inherent in the Libyan position is highlighted by the fact that, as counsel for Libya have recognized, if Malta were near the Libyan coast, an equidistance boundary would be equitable, just as it would be if Malta were within the arms of a Libyan gulf, like the situation of the Channel Islands in relation to the French coast. It would be strange indeed if the fact that Malta stands at a distance of 180 nautical miles and more from Libyan coasts should result in a legal disadvantage.

The Court adjourned from 10.25 to 11.40 a.m.

Libya's Graphics Indicating the Relevant Area

Mr. President, Libya's eccentric approach to the process of delimitation is more apparent than ever before when one contemplates the graphics displayed in Court towards the end of round one of these oral hearings, and I refer to (50)(51) Figures in the Libyan dossier Nos. 68 and 69. The essentials of Figure 68 of Libya's first round are now reproduced on the easel behind me. Those Figures, (50)(51) Nos. 68 and 69, show a set of lines which, in the Libyan view, constitute the relevant area (see pp. 189-192, *supra*). The figure which the lines enclose has the distinction of being completely novel and of failing to reflect either the jurisprudence or the practice of States. It may be convenient if the figure is given a name and, in view of its startling and unprecedented eastern inclination, perhaps it could be called the Prolapsed Prolongation.

The western aspect of the relevant area as seen by Libya is orthodox and more or less coincides with the western aspect of Malta's trapezium (see Professor Jaenicke, pp. 190-191, *supra*).

However, the eastern aspect of the Prolapsed Prolongation provokes comment. It consists of these two straight lines, that is the eastern point of the Medina Escarpment, but of course the Medina Escarpment itself does not always coincide with this straight line constructed on the easternmost point of the Medina Escarpment to Ras Zarruq. This eastern aspect of the prolongation is completely dependent upon geological criteria. It consists of the two escarpments (indicates on map), the Malta-Sicily Escarpment to the north and the Medina Escarpment to the south (see Professor Jaenicke, p. 191, *supra*). It is true that the southern sector is a straight line joining the most easterly point of the Medina Escarpment to Ras Zarruq, but, as Professor Bowett explained in his speech (p. 173, *supra*), the escarpments themselves are the eastern limit of the relevant area because, in Libya's view, they constitute features so marked "that they must be taken as the eastern boundary to any shelf area over which Malta might conceivably have a claim".

The southern aspect of Libya's relevant area is, of course, the coast from Ras Ajdir at the Tunisian border to Ras Zarruq (see Professor Jaenicke, p. 189, *supra*). As I pointed out earlier on, this selection of a relevant coast is based upon somewhat unusual views of what are facing coasts, but it is evident from the speeches of Libyan counsel that the Ras Zarruq terminus is also based on the geological premise that there is no relevant area east of the escarpments (see Professor Jaenicke, p. 191, *supra*).

This leaves the northern aspect of the Prolapsed Prolongation, and this is a masterful invention, it's a juridical *trouvaille* of the first order — this straight

line here, together with the coasts of Malta. The line includes the coasts of Malta, but then leaps into space as a straight sector on a latitude joining Malta with the Malta-Sicily Escarpment. It joins the actual coast of Malta to the Malta-Sicily Escarpment, and is simply this latitudinal line — there. Counsel for Libya quite simply failed to explain this line (p. 191, *supra*), but we may presume it was necessary to insert a line in order to link the coasts of Malta — which were at least not ignored — and the eastern limits of the Prolapsed Prolongation, which is based of course upon geological criteria. Thus the northern limit has the strange task of linking a line based on geography, that is Malta's coasts, and a line based on geology, that is the Malta-Sicily Escarpment. This is the line based upon Malta's coasts and this is the line based upon the Malta-Sicily Escarpment, and this is the linking line. And the linking line is quite simply based on nothing — there is no explanation of that line — and if it's based upon anything at all, well we can only say it's based on optimism.

Mr. President, both the outline and the justifications advanced for the Prolapsed Prolongation indicate the mixture of confused thinking and sheer opportunism on which it is actually based. Its dimensions depend in critical respects upon geological criteria, and thus we are presented with a relevant area which rejects geographical relationships. The resultant selection of relevant coasts is very strange indeed. The relevant area leaves out areas which clearly lie between Malta and Libya, simply because they lie east of the escarpments. I refer to these areas — here. Other areas are included — and they lie more or less east of Malta — although they cannot be said in any view at all to lie between Malta and Libya. I refer to these areas — here — more or less to the east of Malta.

There is simply no legal justification for using geological criteria in order to determine the relevant area. Moreover, the Libyan argument results in the use of coasts themselves simply as geological data from which geological formations are supposed to extend. Yet the Libyan case introduces proportionality in the form of the ratio of coastal lengths, and it is not easy to understand how the equitable nature of an exercise based upon geology can be tested by a formula based, at least in principle, upon a purely geographical criterion. Moreover, the Libyan version of the relevant area includes sea-bed areas to the east of Malta which lie well outside areas in which there is any possible convergence which includes Libyan coastal extensions.

Reaffirmation of Malta's Position on the Significance of Lengths of Coasts and Proportionality

Mr. President, I have now concluded my general examination of the issues dividing the Parties in so far as these relate to the significance of lengths of coasts and proportionality, and in doing so I would reaffirm the conclusions on these questions which I presented at the close of my speech in the first round (**III**, pp. 474-476). The key point remains. The purpose of the jurisprudence and the policy of the law has been to avoid encroachment and cut-off and to promote equality within a legal framework. The Libyan approach to delimitation involves maximizing encroachment and cut-off and rejecting equality in favour of extreme solutions.

Proportionality in Relation to Third States

The subject to which I now turn is the relevance of the interests of third States in the process of delimitation. Counsel for Libya have made reference to the position of third States in relation to proportionality (pp. 192-193, *supra*),

but they have also raised the question in the form of a category of relevant circumstances (pp. 175-177 and 181, *supra*), as a part of reference to geography in general (pp. 156 and 177-178, *supra*), and in connection with the determination of relevant coasts and relevant area (pp. 157 and 182, *supra*).

In short, the position of third States has been given some degree of prominence both in the oral argument and in the Libyan written pleadings (**I**, LM, 6.74-76; **II**, LCM, 2.18-28, 6.06, 6.30, 8.07). Indeed, the object of Libyan counsel has been to proclaim a virtuous regard for the interests of third States and to suggest that Malta chooses to ignore the interests of other States in the region.

Mr. President, Malta has no policy of ignoring the interests of third States. However, those interests cannot be protected simply by proclamations of virtue and the problem, as it so often is, is to discover how to promote virtue by practical action.

At the formal level there is, strictly speaking, no problem, since the decision of the Court on the delimitation as between Malta and Libya clearly cannot preclude the rights of third States. This condition of shelf delimitation has been recognized by the Decision in the Anglo-French Arbitration (paras. 27, 28, 250), and by this Court in its Judgment in the *Tunisia/Libya* case (*I.C.J. Reports 1982*, p. 91, para. 130), and in its Judgment in the Italian Intervention case (*I.C.J. Reports 1984*, pp. 26-27, para. 43).

Moreover, it is not possible to employ a test of proportionality based upon calculations of areas, because to take third States into account would then necessitate their voluntary participation in a many-sided judicial proceeding (*Tunisia/Libya* case, *I.C.J. Reports 1982*, p. 91, para. 130).

Thus in several senses it can be said that there is no problem. Indeed, this is recognized in the text of the Libyan Reply (para. 7.13), which states that

> "the fact that Third States may claim certain parts of this [that is, the relevant area] cannot serve to alter the basis for determining this area as relevant to a determination between Malta and Libya, even though the extent of the area to be delimited definitively between the Parties may be thereby affected. It is also apparent that in any part of the area in which Third States have claims the delimitation must remain non-prejudicial until such time as these claims are resolved."

And counsel for Libya made the same point in the first round (pp. 192-193, *supra*).

In the result the Libyan position is more than a little equivocal in respect of the interests of third States. It is particularly odd that Professor Bowett should insist on the connection between the identification of relevant coasts and the interests of third States (p. 157, *supra*), whereas Professor Jaenicke should point out that the claims of third States to parts of the relevant area cannot inhibit the decision of the Court on the rights of Malta and Libya (p. 193, *supra*).

Malta's position on all this is clear. The relevant area is that which lies between the facing coasts of the Parties presently before the Court and the relevant area is indicated by the trapezium figure (Malta's first dossier, Fig. 7). The coastal relationships naturally point up the area of convergence. Malta's definition of the relevant area minimizes overlap between the relevant area and the claims of third States. In contrast, the Libyan version, the Prolapsed Prolongation, would considerably increase the overlap with areas relevant to other bilateral delimitations, and this is the case especially to the east of Malta, if I can ask the Court to compare the inclination and position of the eastern aspects of Malta's trapezium with the inclination and position of Libya's Prolapsed Prolongation, especially in respect to those areas to the east of Malta.

At the end of the day, perhaps all that can be said about the connection between the relevant area and the claims of third States is that a relevant area defined in accordance with legal principle will minimize overlap with such claims, but that in any event such claims will not be precluded as a result of the delimitation which will result.

However, Professor Bowett in his argument also refers to the element of actual and prospective delimitation with third States as a category of relevant circumstances (pp. 175-177, *supra*), and thus the point is separated from the issue of relevant area. Malta is ready to accept that delimitations with third States may constitute relevant circumstances, but this only in certain conditions. Moreover, the mode of relevance must be appropriate to the process of bilateral delimitation and the type of relevance invoked by Professor Bowett is unacceptable.

Professor Bowett makes reference to certain actual or prospective delimitations which, he insists, the Court cannot disregard (pp. 175-176, *supra*). But, of course, to say this is to contradict the positions taken elsewhere in the Libyan pleadings to the effect that the basis for determining the area which is relevant to the delimitation cannot be affected by the claims of third States. It is in this context that counsel for Libya refers to the delimitation effected between Italy and Tunisia in 1971. As a matter of fact Malta has reserved her position in relation to this delimitation both vis-à-vis Italy and vis-à-vis Tunisia, and such a reservation of rights is evidently justified as a matter of principle.

At the same time, Malta recognizes that the actual and prospective delimitations with third States have a relevance as a criterion of the equitable nature in general terms of a particular method of delimitation. Thus the geographical circumstances of the region as a whole are significant; they provide the framework of the delimitation. It is evident that other States, with the exception of Libya and Greece, are very close to Malta, and as a result there is very little room for Malta to be compensated, so to speak, if the delimitation vis-à-vis Libya leaves Malta with a limited access to shelf areas to the south. Indeed, counsel for Libya has described the Central Mediterranean as "the area of greatest congestion" within the Mediterranean (p. 156, *supra*). At the same time Professor Bowett included Libya as one of the States which, in his words, "must share this restricted area" *(ibid.)*, the others being Malta, Italy and Tunisia. This appreciation of the position of Libya is evidently unrealistic, as any map shows. The sea areas to the east and south of Sicily and Malta are relatively uncluttered and the congestion occurs to the north, west, and south-west of Malta. Libya herself lies well to the south of the area of congestion.

Whilst the topographical details are obviously different, there is a clear analogy with the position of Germany in the *North Sea Continental Shelf* cases. In view of her recessing coasts, and the convexity of neighbouring coasts, Germany would have been unreasonably marginated as a result of an equidistance delimitation, and this solution the Court rejected as being inequitable (*I.C.J. Reports 1969*, pp. 17 and 49-50, paras. 8, 89 and 91). In the present case the solution sought by Libya would create a situation in which Malta was effectively marginated, as a result of a conjunction of Tunisian, Italian and Libyan claims. In other words, Malta would be unreasonably isolated from the central area of convergent coastal projections which appears within the framework of a semi-enclosed sea.

This intended result is spelled out very clearly in the speeches of Professor Bowett (pp. 181-182, *supra*) and Professor Jaenicke (pp. 190-192, *supra*). Particularly striking are the graphics placed on the easel during the speeches of the (50)(51) Libyan counsel concerned — I refer again to Maps 68, 69 and 70 of the Libyan dossier.

The Maltese portion of the relevant area, as designed by Libya, is an idealized version of the delimitation Libya would like to see. I can point out respectfully to the Court that this is not only a drawing of a relevant area as conceived by Libya, but it includes a proposed delimitation between Malta and Libya. And it is, in fact, a graphic illustrating the proportions as between Malta and Libya within the relevant area; and so we here have another Libyan proposal for a (50) delimitation. The set of lines from Libyan Map 68 as seen on the easel reveal this tendency to idealize the delimitation Libya would like to see in terms of the graphic which we see on the easel which appeared in No. 68. I shall not offer further comments except to say that the 1984 Libyan proportionality proposal (50) — as it appears on Map No. 68 and on the easel behind me — bears no resemblance to the 1973 proportionality line, and this indicates the vagaries of Libyan conceptions of proportionality. Both claims, of 1984 and 1973, are contradicted by the treatment accorded by the Court to Germany in the *North Sea Continental Shelf* cases. And, as I have pointed out already, in the aftermath of the decision in the *North Sea Continental Shelf* cases, Germany concluded a series of delimitation agreements which brought the Federal Republic into the central area of convergence in the North Sea.

The Relevance of Territorial Magnitude

Mr. President, I have now disposed of the issues relating to proportionality, and I can advance to a subject which, as I pointed out in my first-round speech, is closely related to the Libyan argument based upon the difference in the lengths of coasts, namely, the argument that the comparative territorial magnitude of Libya confers a privileged status upon the natural prolongation of Libya as opposed to that of Malta (**III**, pp. 444-446).

I do not propose to add very much to my statement on this subject in the first round, for the reason that Libyan counsel have to a great extent avoided answering the very specific points which were put during Malta's argument in the first round. Counsel for Libya have been content to reiterate the basic argument relating to landmass or territorial magnitude. Thus, for example, Professor Bowett (pp. 159-160, *supra*) restated the thesis in unqualified terms. In his words:

> "Behind Libya's coast is an enormous landmass, and the shelf offshore is a projection of that great landmass. In comparison, the area of Malta is minute. It cannot be right to treat coasts fronting minute landmasses as of equivalent weight to coasts fronting great landmasses." (P. 159, *supra*.)

With few exceptions, counsel for Libya have failed to answer specific criticisms of the landmass argument. In dealing with Figure 27A in Malta's first dossier — that is the graphic showing a series of short-coast States opposite a long-coast State — Mr. Highet completely avoided reference to Malta's argument that in connection with Figure 27A the landmass argument would apply to each of the short-coast States, not simply because of their having short coasts, but also because they would not — at least in the Mediterranean setting — have hinterlands comparable to that of Libya. The record will contain the references to my original speech (**III**, p. 473) and to Mr. Highet's speech (pp. 151-152, *supra*) on the same subject. Similarly, there has been no attempt by Libya to reply to my argument based upon the practice of hinterland States, which practice lends no support to the Libyan contention.

The pattern of assertion of the basic landmass argument by counsel for Libya does, however, contain two minor developments. In the first place, Professor

Bowett suggests that there is judicial support for the relevance of territorial magnitude (p. 159, *supra*), but he is very tentative and fails to refer to any example involving an island State. In any case, he then rather engagingly admits that the jurisprudence is, in his words, "comparatively young", and invites the Court to "adopt" what he clearly regards as a novelty as yet unadopted by any tribunal (*ibid.*).

The second development appears in the first speech of Professor Jaenicke, who makes a point of the fact that a small island "will attract a continental shelf area many times its size" if an equidistance boundary is adopted (p. 000, *supra*); and this point is repeated by Professor Bowett (pp. 000-000, *supra*). In essence this is another form of the landmass argument and should stand or fall with that argument. However, the Libyan point also relates to concepts of distance and radial projection, and my friend Professor Weil will deal with these issues in his presentation.

I shall conclude my remarks on the question of territorial magnitude by reaffirming the points made on this subject in my speech of the first round (**III**, pp. 444-446), and by recalling that Libya had made no serious attempt to deal with Malta's argument on that subject.

Mr. President, the last of the issues on my agenda this morning is the significance of State practice, a subject to which Libyan counsel have devoted much attention in their speeches.

Malta's Purpose in Invoking State Practice

It may be helpful if I restate Malta's purpose in referring to State practice. That purpose is to assist the Court by seeking to make practical use of existing experience. The existing experience is substantial and it is well known that most Governments negotiating maritime delimitations consult legal advisers. Legal considerations are never far away when delimitation agreements are concluded. Moreover, the available State practice includes a considerable quantity of material relating to delimitations in semi-enclosed seas and involving island States or insular dependencies.

In spite of the marked reluctance of Libya to take State practice seriously, in the first-round speeches it became clear that at least on some occasions the comparability of other cases was recognized and accepted. Thus Professor Bowett employed State practice in his argument on the relevance of geological and geomorphological features (pp. 165-166, *supra*).

Malta affirms her view that State practice is relevant is that it provides reliable evidence of the general standard of what is equitable in various comparable political and geographical settings. It must follow that State practice is relevant to the question whether equidistance is the equitable result in certain situations, to the propriety of the Libyan thesis based upon proportionality, and to the question of the significance of geological and geomorphological features.

General Comment on Libyan Argument concerning State Practice

In contrast to Malta's use of State practice as a positive part of its case, Libya's position is almost exclusively negative, and no attempt is made to establish, or even to suggest, that State practice supports Libyan arguments on lengths of coasts and proportionality. Counsel for Libya have walked around the structure of Malta's presentation on State practice making comments like querulous building inspectors, but they have offered no architecture of their own.

In spite of all the commentary on the evidence of State practice offered by

counsel for Libya, two major conclusions remain inescapable when the material available is reviewed in its entirety.

The first major conclusion is that none of the materials reveal that the States concerned have established a delimitation based upon the ratio of the difference of the length of the respective coasts or any particular sectors of those coasts. In his detailed consideration of episodes of State practice, not once does Dean Colliard claim that the process of delimitation was based upon the ratio of the difference of the lengths of coasts (pp. 103-123, *supra*).

The second major conclusion is that whatever the precise method, or combination of methods, employed in the various delimitations involving island States, or groups of islands, or peninsulas, opposite long-coast States, the delimitation which emerges represents the concept of approximate equality. As I shall demonstrate, the examples atacked by Professor Colliard go to prove the relative insignificance of length as such and, indeed, the reasons adduced by the distinguished counsel for Libya to indicate the relevance of the practice adduced in my first-round speech in fact indicate the relative insignificance of coastal lengths, since counsel for Libya insists that it is only the sectors directly opposite each other which count and this affirms the irrelevance of the difference in coastal lengths.

In general, the Libyan argumentation blandly ignores the general pattern, the overall effect of State practice, in favour of obfuscation and captious objections based upon considerations which are for the most part either irrelevant or actually inimical to Libya's major arguments based upon the significance of coastal length.

The general character of Libya's presentation concerning State practice may be exemplified by two features.

The first such notable characteristic is the tendency not to see the wood for the trees. As a result, Dean Colliard has avoided presenting Malta's examples of State practice in the general legal and geographical context. Let us take the delimitation between Bahrain and Iran, which can be seen in Malta's first dossier at Figure 22. Dean Colliard has stated that "the coast of Bahrain is 40 kilometres long" and that "the corresponding length of the Iranian coasts is 50 kilometres" (p. 119, *supra*). On the basis of these data he concluded that the situation is "quite different" — his words — from the present, and that Iran is, in his words, "not a long coast", because it faces a series of coasts of opposite States.

However, this view of the matter rests, quite simply, on erroneous assumptions. First, the delimitation, which consists of a median line, is not, so far as technique and method go, based upon lengths of coasts at all. In fact, a single basepoint on each coast was used for the construction of the line. Secondly, the question of which are the facing or opposite coasts is not as simple as counsel for Libya considers it to be. The coastal front of Bahrain may be said to measure some 24 miles; but the relevant coastal front of Iran is evidently very much longer. The difficulty is that it is question-begging to identify exact coastal fronts, because that assumes the application of the Libyan *modus operandi*. The fact is that the lengths of relevant coasts was not a factor which determined the location of the boundary, and it is certain that Iran, as a long-coast State with an extensive hinterland, received no advantage.

The second erroneous assumption lies in the view that coasts relevant to a delimitation as between State A and State B (as opposite States) cannot be relevant as between State A and State C, another opposite State. This has already been pointed out as a fundamental weakness in Libyan thinking about relevant coasts. Moreover, Libya's Tripolitanian has already been used, so to speak, at least in part, in the *Tunisia/Libya* case.

At the end of the day, the fact remains that Bahrain is an island State with a modest frontage vis-à-vis Iran, and Iran is a long-coast State. These are the facts which constitute a major aspect of the geographical framework of that delimitation. And in the event that delimitation did not depend, either in whole or in part, on the discrepancy — however that be determined — in the lengths of relevant coasts. The legal provenance of the delimitation is plain to see. A median-line delimitation was effected between an island State and a long-coast State. Moreover, the presence of other States on the southern side of the Gulf to some extent mirrors the fact that Malta also has other States in her vicinity, in what counsel for Libya has described as a congested part of the Mediterranean.

For the moment I shall only present one other example of the Libyan failure to see the wood for the trees. Dean Colliard was very critical of Malta's reference to the delimitation between France, in respect of New Caledonia, and Australia (p. 122, *supra*) — this appears as Figure 33 in Malta's first dossier. In particular, counsel for Libya stated that "no mainland is involved". Now, it is true that the sectors of the delimitation and the turning points are all based upon small islands and are not related to basepoints, either on New Caledonia or on the Australian coast. But this is a reference to the method of constructing the line. The whole point is that the extensive Australian coast was not involved: it was not taken into account in the delimitation. Any appreciation of that example in terms of legal principle must involve reference to the geographical and political context, and the striking fact is that Australia's landmass and long coasts evidently produced no advantage for Australia in the delimitation vis-à-vis New Caledonia.

Mr. President, with your permission, I would like to make one last general observation on the nature of Dean Colliard's approach to the evidence of State practice, and this especially in relation to delimitations based upon equidistance. It is Malta's position, as it has been throughout, that in appropriate circumstances equidistance is a method which leads to a result which satisfies the equitable criteria, including the principle of equal division. In Malta's view equitable principles and the equidistance method are perfectly compatible. I say this because Dean Colliard has based his assessment of particular episodes of State practice upon the erroneous premise that a delimitation agreement must refer *expressis verbis* to equidistance; and thus an agreement which refers to the application of equitable principles cannot be relevant for this purpose, even although the delimitation established is actually based upon equidistance (pp. 107-108 and 111, *supra*). With respect to my distinguished colleague on the other side, this is not good sense and, as I have shown, the premise does not reflect Malta's position relating to the legal basis of the equidistance method.

The State Practice Relating to the Equidistance Method as Evaluated by Dean Colliard

I have now completed my general comments upon the Libyan reasoning concerning State practice, and I can move on to a consideration of more particular matters. First I shall turn to Dean Colliard's commentary upon the State practice adduced by Malta to support the position that the equidistance method, with or without some modification, was commonly employed in delimitation of continental shelf areas (pp. 103 ff., *supra*).

There is a considerable quantity of material before the Court and it would not help very much if I were to offer a commentary on every assertion contained in Dean Colliard's presentation. In my submission his criticisms do not add up to a successful attack on either the relevance or the weight of the State practice adduced by Malta and are much concerned with marginal points.

Malta finds it sufficient to take some examples of Dean Colliard's criticisms and indicate that they lack efficacy overall.

In the first place, his method of assessment is unconvincing. For example, it is one thing to point out that certain agreements concerned delimitation between economic zones, but it is another to assume that this factor renders the delimitation concerned irrelevant to the issue of shelf delimitation (pp. 105-106, *supra*).

Again, the opinion, that the practice of States which did not favour equidistance at the Third United Nations Conference on the Law of the Sea, cannot be said to support equidistance, even when in fact the practice used that method, is eccentric (pp. 106-107, *supra*). Indeed, the point could be put the other way: the practice of such States goes to show the compatibility of the equidistance method and equitable principles.

Dean Colliard makes a prolonged attack upon the material set forth in Dr. Prescott's opinion annexed to Malta's Reply (pp. 107-119, *supra*). An example of his criticism of the methodology adopted by Dr. Prescott is as follows. Dean Colliard states that only 20 agreements make express reference to the choice of the criterion of equidistance (p. 111, *supra*). But it is difficult to ignore the agreements which are clearly based upon equidistance but contain no explicit reference to equidistance in the text. It is evident that the Geographer of the United States Department of State has experienced no difficulty in characterizing, as based on equidistance or not, the many delimitations which contain no express reference to a choice of method: see, for example, the delimitation between India and Indonesia in *Limits in the Seas*, No. 62, page 3. Many of the points offered by counsel for Libya involve *non sequiturs* of this kind.

Dean Colliard identifies six so-called omissions in Malta's pleadings (pp. 112-113, *supra*), and these are described as "the main omissions", and are deplored by counsel for Libya because, in his words, "it should be observed in passing that the agreements omitted do not tend to support the case for equidistance; they do not endorse Malta's contention, but the position of Libya" (p. 113, *supra*). They are Dean Colliard's words.

Mr. President, these are harsh words, but they do represent the appropriate standard, which is whether the particular episode of State practice supports Malta's view on delimitation or Libya's view on delimitation.

I shall now apply this standard to the six so-called omissions indicated by Dean Colliard.

The first is the delimitation agreed between Abu Dhabi and Dubai in 1968 (one may refer to Libya's dossier, at Fig. 10). It is not included in the general survey of continental shelf boundaries in the Gulf published by the United States Department of State Geographer in 1981 — I refer to *Limits in the Seas*, No. 94. Certainly, by 1981 the delimitation was no longer international, since both Parties had become units within the United Arab Emirates. In any event, the delimitation involves no substantial variation from equidistance, as the illustration to the Annex to Canada's Reply in the *Gulf of Maine* case helpfully shows (p. 151 of that Annex). Moreover, the Libyan Annex of Delimitation Agreements (II) in the present case (at No. 15) observes that "the boundary appears to run roughly perpendicular to the general direction of the coast".

What is one to make of this omission? The delimitation is very close to an equidistance line and certainly it satisfies the criterion of approximate equality. Equally certainly, it gives no support whatsoever to the Libyan approach to delimitation.

The second omission referred to by Dean Colliard is the delimitation between Portugal and Spain of 1976, which is recorded in the Canadian Annex at page 391, and it appears in Libya's dossier at Figure 12. Again, the alignment

involves only a minor deviation from equidistance, and this appears from the Canadian illustration. The outcome is entirely compatible with Malta's position and clearly cannot support Libya's approach to delimitation.

The next alleged omission consists of the shelf delimitation between Turkey and the USSR established in 1978 (see the Canadian Annex, p. 523). This delimitation had in fact been given prominent reference by counsel for Malta in the first round (**III**, p. 470) and it appears in Malta's first dossier at Figure 24. The delimitation is conspicuously based upon equidistance. Thus this example is not omitted from Malta's pleadings and cannot be said to support the position of Libya.

The fourth delimitation listed as an omission consists of the agreement between France and Brazil of 1981, which appears in the Canadian Annex (p. 669) but not in the Libyan Annex of Delimitation Agreements (see Libya's dossier, Fig. 14). As the illustration in the Canadian Annex shows with great clarity, the line adopted is very close to an equidistance line and certainly satisfies the criterion of equal division. It cannot be said to support Libya's position in any way.

The fifth omission listed by Dean Colliard is, quite simply, not an omission from Malta's pleadings, since it features, with a graphic, in Malta's Memorial (pp. 86, 88), and it may be seen in Malta's first dossier (Fig. 23). This delimitation between Cuba and Haiti, adopted in 1977, is based substantially on equidistance. It gives no support to Libya's views (see the Canadian Annex, p. 455).

The sixth case referred to by counsel for Libya consists of the delimitations between the United States and Mexico of 1978 (see the Canadian Annex, p. 507) (and see Malta's first dossier, Fig. 23). The two alignments involved are based upon equidistance. Indeed, in the text of his expert opinion Dr. Prescott reports the view of Dr. Robert Smith (who is cited as an expert source by Libya) that "equidistance was an appropriate method of delimitation in each of the boundary regions" (**III**, MR, p. 160). It is difficult to see why these delimitations are counted as omissions, because the first of the relevant agreements is included in Table 3 of Dr. Prescott's opinion (*ibid.*, p. 176), and the agreement signed in 1978, but unratified, is referred to by Dr. Prescott in a footnote.

If a balance sheet be made of these six so-called omissions, it will be seen that at least two of the items have appeared prominently in Malta's pleadings, and that the other four delimitations are either based upon equidistance — the case of France and Brazil, the United States and Mexico — or otherwise are very close to equidistance and certainly compatible with the criterion of approximate equality — the cases of Abu Dhabi and Dubai, and Portugal and Spain.

Mr. President, these are the six so-called omissions which counsel for Libya deplored and which he deplored on the ground that they do not support Malta's contention, but the position of Libya (p. 113, *supra*). It is also worth recalling that Dr. Prescott's study lists a total of 77 agreements in his tables.

As I have already indicate, I do not intend to respond to each and every point made by Libyan counsel in respect of Dr. Prescott's opinion and Malta's use of State practice.

However, the Libyan views of the six so-called omissions have been examined fairly fully in order that the Court may appreciate the relativities of the standard of accuracy on which the Libyan critique is based. And in this connection the Court may be sure that a considerable degree of exaggeration attends the assertion by counsel for Libya that various agreements, such as those between Bahrain and Iran, and between India and Thailand, do not rely upon equidistance (pp. 114-119, *supra*).

State Practice Relating to Proportionality and the Significance of the Lengths of Coasts as Evaluated by Dean Colliard

This section of my speech has been concerned with Dean Colliard's criticisms of the evidence of State practice presented by Malta in connection with the role of the equidistance method in the application of equitable principles. This subject is now concluded, and I can turn to the unit of Dean Colliard's speech (pp. 119-123, *supra*) devoted to an attack upon the State practice which I invoked in the course of my presentation during the first round (**III**, pp. 468-473).

By way of preface I must point out that Dean Colliard's speech refers generally to, and is introduced as referring to, the State practice in connection with the role of equidistance in shelf delimitation: and this appears from the introductory passage to Part II of his presentation (p. 103, *supra*). His criticism of the State practice invoked in my speech is thus lumped in with the general subject of equidistance and this is very strange indeed, since the State practice concerned was expressly related to the issue of proportionality and lengths of coasts, and the rubric in the verbatim record makes this absolutely clear (**III**, p. 468, *supra*). This fact should be noted when Dean Colliard's comments are studied.

My purpose is to assist the Court by offering a closer examination of the State practice which is the subject of Dean Colliard's commentary, precisely because this practice sheds light on the issue of long coasts and short coasts. Initially, I shall look at the delimitations *seriatim* and afterwards I shall point out the general implications of the materials.

1. Long-coast States and island States in an opposite relationship

The first group of delimitations concerns long-coast States and island States in an opposite relationship. Seven examples were produced by Malta, of which the first concerns Bahrain and Iran — this is in Malta's first dossier, Figure 22.

Counsel for Libya contends that Iran is "not a long-coast State" because it faces a series of coasts of opposite States and therefore, "the situation is quite different" (p. 119, *supra*). As I have already had occasion to point out, the method of establishing the boundary was not based upon the lengths of coasts but upon a single basepoint on each coast. No doubt if the Libyan thesis were to be applied, it would be necessary to determine which were the relevant coasts. But this was not done. Even if it is accepted that only a certain sector of the Iranian coast, so to speak, matches each short-coast State opposite, this does not help Libya, since there is no evidence that the acceptance of equidistance depended upon such a consideration. And there is a further point. Malta, like Bahrain, has other States lying close to its other coasts, and therefore the Bahrain example has particular pertinence.

The next example criticized by my colleague is that of Cuba and Mexico. This may be seen on the Figure 23 in Malta's first dossier. With regard to this delimitation Dean Colliard states very shortly that "the non-island State" — that is, Mexico — "does not have a long coast" (p. 119, *supra*). With respect, the facing coast of Mexico is very extensive and it is artificial to state that the Mexican coast is comparable in length to that of Cuba. At the least, the geography of this example indicates the difficulties in using lengths of coasts as a basis for delimitation.

India and the Maldives is the next case and this appears at Figure 28 of Malta's first dossier. In this example Dean Colliard chooses to compare the entire length of the archipelago with what he refers to as "the south-westernmost

point of India" (p. 119, *supra*). In fact, the relevant coastal front of India is extensive, of the order of some 280 miles, and it is evident that the long-coast continental State of India has had no advantage in the delimitation. The example is, of course, inimical to the argument based upon territorial magnitude. As the text of the United States Department of State publication *Limits in the Seas*, No. 78, page 7, notes "the boundary closely approximates an equidistance line".

The delimitation between Cuba and the United States, which appears also on Figure 23 of Malta's first dossier, is also clearly based upon equidistance. On no clear reasoning Dean Colliard declares this episode to be irrelevant (pp. 119-120, *supra*). Yet it must be relevant, since Cuba is an island State and the United States is evidently a long-coast State. Coastal lengths were not used as the basis of the delimitation. In this connection the Libyan Annex of Delimitation Agreements, No. 53, reports that the United States Deputy Legal Adviser, who signed the Agreement on behalf of the United States, has stated that

> "the line established by the treaty — although close to an equidistance line giving full effect to islands — is in fact a boundary every turning point of which has been established by negotiation" (U.S. Senate Report No. 96-49).

But of course, an equidistance line has to be articulated in the form of turning points and these have to be negotiated and are not made in heaven. The outcome in this case was substantially based upon equidistance.

The next example attacked by counsel for Libya (p. 120, *supra*) is the delimitation between Colombia and the Dominican Republic — again, this appears on Figure 23 of Malta's first dossier — and counsel for Libya states that neither State has a long coast.

Mr. President, the fact remains that this is a median-line delimitation between an island State and a State with a considerable coast backed by an extensive landmass. The significant point is that the lengths of coastlines were not taken into account in effecting the delimitation.

The same considerations apply to the delimitation between Colombia and Haiti (See Malta's first dossier, Fig. 23), also rejected by Dean Colliard on the ground of irrelevance (p. 120, *supra*).

The last delimitation in this group is that between Bahrain and Saudi Arabia — to be seen on Malta's first dossier, Figure 22. Once again Dean Colliard denies that there is comparability with the present case (p. 120, *supra*). One can only admire the boldness of that denial. The disparity in the lengths of the relevant coasts is self-evident and the delimitation is substantially based upon the equidistance principle. In the United States Department of State publication *Limits in the Seas*, No. 12 (p. 3), it is stated that the delimitation "employs a variation of the equidistance principle". Moreover, Dean Colliard places emphasis upon the proximity of Bahrain to the coast of Saudi Arabia as a special point of distinction between that situation and the one presently before the Court. Mr. President, this is a significant admission. On what principle should Malta be disadvantaged as a result of being relatively distant from Libya? If the ratio of the lengths of coasts is a criterion which is applicable at all why should it not apply when the coasts are relatively close? On the Libyan logic of the strength of the natural prolongation of the larger State, the criterion should be applicable also in cases of proximity.

So much for the category of delimitations involving long-coast States and island States in an opposite relationship. The next class of evidence offered by Malta consists of delimitations between:

2. Long-coast States and short-coast peninsular States opposite

The delimitation between Iran and Qatar is the first example — again on Figure 22 of Malta's first dossier. Dean Colliard denies that there is any comparability with the present case (p. 120, *supra*). With respect, the comparability is very clear. The fact is that part of the Iranian coast facing the delimitation area is much longer than that of Qatar facing the delimitation area. Indeed, the broad sweep of the coast of Iran and the shorter and sharply convex coast of Qatar, set at a distance, are similar to the coastal relationships of Malta and Libya.

The delimitation between Denmark and Norway is the next in this class (see Malta's first dossier, Fig. 20). Although Dean Colliard states that the lengths of the relevant coasts are approximately the same (pp. 120-121, *supra*), the fact remains that Denmark presents a relatively attenuated and markedly convex frontage which has been given equal weight with the massive and more gently curving frontage of Norway.

The Iran-Oman delimitation (Malta's first dossier, Fig. 22) is criticized by Dean Colliard on the ground that Oman is not a short-coast State (p. 121, *supra*). But the comparability is only too evident. The formation of the northern aspect of Oman is very similar in attitude to the coast of an island and the fact, the evident fact, is that a short coast of approximately 90 miles faces a very much longer coast of some 250 miles. The delimitation effected by Iran and Oman takes no account of disparities of coastal lengths and is based upon the equidistance method (see *Limits in the Seas*, No. 67, p. 5; and No. 94, pp. 4-6).

Next comes the delimitation between Australia and Papua New Guinea (see Malta's first dossier, Fig. 31). Again it is asserted by counsel for Libya that the coastal lengths are comparable (p. 121, *supra*) but the fact remains that in this delimitation attenuated features, and especially the Yorke Peninsula, are given equal weight along mainland coasts.

3. Groups of islands (in some cases more or less autonomous) and opposite-related long-coast States

The third class of evidence invoked by Malta in the first round consisted of delimitations involving groups of islands, in some cases more or less autonomous, and opposite-related long-coast States. The first delimitation invoked was that between Denmark (in respect of the Faroes) and Norway (see Malta's first dossier, Fig. 20). Of this counsel for Libya did not have much to say beyond his statement that the Faroes have a north-south coastal front some 120 kilometres long (p. 121, *supra*). Now in reality this coastal front does not generate the boundary, since the Norway-Shetlands alignment also lies in the area. The delimitation is not in fact related to lengths of coasts and this is the significant point. It is the location and attitude of the Faroes coasts which in conjunction with the principle of equality gives rise to the delimitation. It is obvious that Norway has a long facing coast but no advantage has been obtained as a result. And, Mr. President, it may be observed in passing that Iceland, the United Kingdom and Norway have not made arrangements which either indicate or prefigure in any way the enclaving of the Faroes, as a result of delimitations which discriminate against them.

The second delimitation of this group is that involving Finland (in respect of the Åland Islands) and Sweden (see Malta's first dossier, Fig. 32). Dean Colliard stresses the close relation between the relevant sector of the alignment and the Åland Islands Convention of 1921 (pp. 121-122, *supra*). As a matter of fact, he has exaggerated the nature of the relationship since the lines are not exactly

coincident and this is pointed out in the relevant *Limits in the Seas*, No. 71 (pp. 7-8).

The third example from this group is the delimitation between France (in respect of New Caledonia) and Australia (see Malta's first dossier, Fig. 33). Dean Colliard has stated that the delimitation does not involve a mainland but is entirely between islands (p. 122, *supra*). As I have already had occasion to point out, that fact has its own importance. The result of the relevant agreement is a delimitation between Australia and New Caledonia, and the overall geographical context should not be confused with the particular means by which the boundary was technically constructed. Australia, a long-coast State with a vast hinterland, received no advantage in the delimitation.

The next example is the delimitation between Norway and the United Kingdom (in respect of the Shetlands) (see Malta's first dossier, Fig. 20), and, concerning this, counsel for Libya claims that the lengths of the opposite coastlines are comparable and the implication is that this episode of State practice is therefore irrelevant (pp. 122-123, *supra*). Mr. President, it really is not satisfactory to make assertions which are so obviously inaccurate. The selection of relevant coasts is not easy but the significant fact is that the Shetlands were treated as mainland for the purposes of the delimitation and were thus given full weight. The Norwegian coast used for establishing the delimitation was 184 miles in length and the length of the Shetlands coast used was only 61 miles. The Norwegian coast facing the area of the delimitation measures 220 miles approximately (that is, from Stavanger in the south to latitude 62° 20' North where the coast starts to turn to the north-east). On the Libyan view a difference in the lengths of the relevant coasts in such a case should be reflected in the delimitation. But it is not reflected. Instead, as the Libyan Annex of Delimitation Agreements, No. 8, notes, the boundary "employs the equidistance method with minor divergencies for convenience", and this statement is itself derived from Article 1 of the Agreement of 1965 (*Limits in the Seas*, No. 10 (Revised), p. 2).

The next item of State practice consists of the delimitation between India (in respect of the Nicobar Islands) and Indonesia resulting from the Agreements of 1974 and 1977 (see Malta's first dossier, Fig. 35). Counsel for Libya dismisses the boundary as irrelevant on the ground that the relationship only involved islands (p. 123, *supra*). This perfunctory type of commentary cannot be permitted to obscure the geographical realities of that case. The relatively small islands of the Nicobar group are given equal weight to the large island of Sumatra. The fact that certain islands lying off Sumatra were used as basepoints cannot be said to contradict the principal features of the delimitation. The extra landmass and more extensive coastline of Sumatra facing the delimitation area are not reflected in the delimitation, which is described by the United States Department of State geographer as "a modified equidistant line" (*Limits in the Seas*, No. 62, p. 3).

The final example of practice from this group is the delimitation between India (in respect of the Nicobar Islands) and Thailand (see Malta's first dossier, Fig. 36). This is dismissed by Dean Colliard on the ground that the coast of Thailand is not a long coast (p. 123, *supra*). The alignment is substantially based upon equidistance, in spite of the somewhat vague characterization in the relevant issue of the United States Department of State publication, *Limits in the Seas*, No. 93. The dominant characteristics of the delimitation are: first, that it is compatible with the principle of equal division and, secondly, that the small and disparate Nicobar group has been treated as a coastal frontage equal in weight to the continuous and more extended coastline of Thailand.

General Conclusions on the State Practice Relating to Proportionality and the Significance of Lengths of Coasts

Mr. President, I have concluded my riposte to the Libyan assault on the State practice I adduced in support of Malta's case in the first round. When the material is examined, it is immediately and strikingly apparent that, out of 17 delimitations which are in some measure geographically and legally comparable to the present case, not a single one is based upon, or has been adjusted by reference to, the difference in the lengths of sectors of coasts selected as being relevant for the purpose. The marginalia produced by counsel for Libya cannot distract the observer from this central truth. Moreover, the State practice impressively contradicts the thesis relating to the significance of territorial magnitude.

In any case, the methods of criticism employed by Dean Colliard are deeply flawed as a result of misconceptions concerning the nature of the delimitation process.

Thus the Libyan concept of relevant coast, which is highly artificial and self-serving, is imposed upon delimitations which evidently had no connection with a method of delimitation based upon such a concept of relevance. Moreover, Dean Colliard, in his critique of particular episodes of State practice, applies a test which would restrict relevant coasts to those directly opposite the particular island State. And in this respect there is a lurking paradox, since this narrow view of relevance seems to contradict the idea that the lengths of coasts abutting upon the delimitation are highly significant. On a number of occasions Dean Colliard appears to change his criterion of relevance and to speak of the sector of coast actually used in the delimitation in terms of basepoints. But, of course, this is a matter of hydrographic technique in constructing and defining a line and has no necessary connection with the general legal principles upon which the delimitation is based.

Mr. President, at this juncture I can reaffirm my submission that the State practice effectively demonstrates that a delimitation in accordance with the Libyan thesis on proportionality would be wholly incompatible with the international standard as to what is equitable and what accords with the concept of approximate equality.

State Practice and the Significance of Trenches and Troughs

I have now completed the parts of my speech dealing with State practice, except for the question of the significance of trenches and troughs for the purposes of delimitation. This question has been considered extensively by my colleagues in the first-round speeches (see, in particular, the speech of the Agent of Malta, **III**, pp. 297-300), and thus my remarks on the subject will be brief.

The evidence of State practice overwhelmingly establishes that geological and geomorphological factors are only taken into account in very rare circumstances. In his speech the Agent of Malta referred to a number of delimitations which had ignored very significant features of the sea-bed, and counsel for Libya have not been able to discredit this evidence as some examples will show.

Thus the delimitation between Cuba and Haiti, which is expressly stated to be based upon equidistance, ignores the Cayman Trough, which is 2,900 metres deep, and represents the northern limit of the Caribbean Plate, which passes through the Windward Channel and then eastward parallel to the northern shore

of Hispaniola (see Malta's second dossier, Fig. 26). The Cayman Trough is one of the major tectonic units of the Caribbean. It is 1,700 kilometres long, and 100 kilometres wide; and it is generally recognized as a plate boundary in the scientific literature. Dean Colliard attempted to dismiss this evidence by suggesting that the Cayman Trough is far from the area of delimitation (p. 112, *supra*) but, with respect, this is not the case. It is similarly inaccurate to suggest *(ibid.)* that the Aruba Gap, a structure 4,600 metres deep, was ignored because it lies some distance south of the areas of delimitation between Colombia and the Dominican Republic, and between the Dominican Republic and Venezuela. The fact remains that no account was taken of the major feature of the Aruba Gap (references, **III**, MR, p. 172).

In the first round my friend Professor Bowett broke the Libyan rule in these proceedings, according to which State practice is irrelevant, and adduced four instances of delimitation agreements in which, he contended, geological and geomorphological features have played a role (pp. 165-166, *supra*). The first example adduced was the 1972 Agreement between Australia and Indonesia involving the Timor Trough. The exceptional features of this delimitation have been indicated already by the Agent of Malta in the first round (**III**, pp. 298-300).

The Timor Trough, with an average breadth of 40 miles and a depth of 10,000 feet, is an exceptional case by any standards. Are there any other examples? Professor Bowett argued that there are, but his offerings were few in number — three in all — and their authenticity and relevance are questionable indeed.

The 1974 Agreement between France and Spain has been examined in detail in my first-round speech (**III**, pp. 472-473), and the conclusion reached that the delimitation has "little or no relevance for present purposes".

Professor Bowett invoked two other examples, involving delimitations between Japan and Korea (pp. 165-166, *supra*) and between Italy and Tunisia (p. 166, *supra*), but he produced very little in the way of evidence to support these two proposals. The commentary attached to the delimitation between Japan and Korea in the Libyan Annex of Delimitation Agreements (**II**) (No. 35), contains the language of mere suggestion when it states that "the geomorphological characteristics of this area may account for this displacement of the Zone towards Japanese territory". The same Annex contains no suggestion that the delimitation process between Italy and Tunisia took geological or geomorphological factors into account (No. 26 of the Libyan Annex). It is also worth noting that the commentaries in the pertinent numbers of the United States Department of State publication, *Limits in the Seas*, contain no reference to the influence of either geological or geomorphological factors in the two delimitations: for Japan-Korea delimitation, see No. 75, pages 5-11; and for the delimitation between Italy and Tunisia, see No. 89, pages 7-9. Moreover, in his book on *The Legal Régime of Islands in International Law*, published in 1979, Professor Bowett has made a number of comments upon both delimitations, but no reference was made to geological or geomorphological factors (see pp. 175, 274, 301-303 (Japan-Korea); pp. 176, 177, 207, 229, 273, 274 (Italy-Tunisia)).

If I may sum up, the evidence clearly indicates that geological and geomorphological features are very rarely taken into account and, further, that it is generally the case that even a plate boundary, such as the Cayman Trough, and other major features, like the Aruba Gap, may be ignored. The evidence produced by counsel for Libya is poor both in quantity and quality and the overwhelming preponderance of evidence indicates that the principle of equal division is almost universally applied in the light of coastal geography.

III. SUMMARY

Mr. President, I have now completed my observations on the significance of State practice in various respects and thus I have come to the end of my agenda. It may be helpful if I present to the Court a summary of my principal conclusions.

1. In the circumstances of the present case, it is coastal configurations and relationships between coasts which constitute the geographical framework within which the process of delimitation must take place.

2. The aim of delimitation is to avoid the problem of cut-off, which is the displacement of sea-bed areas from the appropriate coastal front: thus delimitation is not concerned with the allocation of areas in spatial terms but with the avoidance of the displacement of appurtenant shelf areas which results if a method of delimitation inappropriate to the geographical circumstances is used.

3. Giving appropriate legal recognition to coastal geography must involve the application of the concept of approximate equality and the equitable criterion of the equal division of areas in which coastal projections converge.

4. The concept of the approximate equality of appurtenant areas of shelf lies behind both the need to modify the equidistance line in certain situations and the need to avoid using proportionality as the basis of a spatial apportionment of shares.

5. When there are coasts in the relation of Malta and Libya, there is no cause of lateral displacement and the median line represents the status quo of appurtenance based upon the equality of the seaward reach of coasts, and the equitable criterion of equal division.

6. In the circumstances of the present case, the introduction of a type of spatial equality, based upon the ratio of coastal lengths, would result in a massive transverse displacement of sea-bed areas relating more to Maltese than to Libyan coasts, and the destruction of the balance of interests represented by the idea of the convergence of coastal extensions and the criterion of equal division.

7. The Libyan position actively promotes displacement, because it depends upon a formula and not upon the actual geographical relations.

8. The difference in coastal lengths cannot be taken to represent the kind of anomaly which calls for correction of the equitable criterion of equal division, since that difference is not an index of distortion or displacement calling for adjustment in the absence of a situation of equality within the same order.

9. There is no judicial support for the *modus operandi* contended for by Libya, and Libyan counsel have misinterpreted the jurisprudence. In particular, the Judgment in the *North Sea Continental Shelf* cases evidences the significance of the location and inclination of coasts rather than differences in the lengths of coasts.

10. The States practice establishes that delimitation between island States and long-coast States, and other comparable types of delimitation, are not based upon reference to the ratio of the difference of lengths of coasts, and equally do not reflect differences in territorial magnitudes.

11. Malta's view of the relevant area, represented by the trapezium, is compatible with existing legal principles and concepts in the matter of shelf delimitation.

12. Malta's approach to the process of delimitation, and the relevant area, is consonant with the interests of third States.

13. The Libyan approach to delimitation is incompatible with the interests of third States, because it involves the construction of a relevant area which

includes areas which cannot be said to lie between Malta and Libya, and also because a geological boundary, if it be justified at all, by its very nature cannot take the interests of third States into account.

14. The criterion of the ratio of lengths of coasts, as propounded by Libya in these proceedings, involves resort to proportionality as an original and direct form of delimitation, and the outcome is necessarily the apportionment of shares on the basis of an abstract formula which cannot reflect the actual geography of the region. It is hardly surprising that the Libyan approach finds no reflection in existing patterns of maritime delimitation in semi-enclosed seas.

I have completed my summary of principal conclusions, and these have focused upon the various objections to the Libyan approach to shelf delimitation. These objections necessarily involve the particular elements of legal thinking about delimitation, and I would like to end my speech with a consideration of a more general character.

The perspective within which this case will be decided is that of boundary-making. The fact that the Special Agreement does not call for the drawing of a line does not alter the overall purpose of the exercise, which is to enable the Parties to delimit "without difficulty" the areas of shelf which appertain to each of them. It must follow that the approach of the Parties, that is to say, the methodology they offer to the Court, is to be evaluated in terms of its utility, its efficacy, in the task of boundary-making.

The Libyan case rests upon two criteria of delimitation, of which one is the geological criterion, and my friend Mr. Lauterpacht will demonstrate the difficulties which that criterion engenders. The second criterion is the formula based quite simply upon the differences in the lengths of the coasts of the Parties, and this is proposed, in part at least, as a proportionality argument by the Libyan side. On previous occasions I have said that this formula of the ratio of coastal lengths is a principle of apportionment or distribution, and not a principle of delimitation. In other words, it is contrary to the established principles of shelf delimitation. But, Mr. President, the objection is not only one of principle. The formula relied upon by Libya creates a major practical problem, which is that it does not produce a line at all. Since the ratio of coastal lengths involves space and apportionment of space, there are many lines which could produce the desired spatial ratio. In other words, the formula based upon coastal lengths has no sense of place, no relation to real coasts, no geographical affinities. It lacks an anchor. And this is why the Libyan formula can be used promiscuously to support the proposal of 1973, the so-called axial ridge line, the line which appears within Libya's Prolapsed Prolongation of 1984, and no doubt any number of other lines, provided the proportions satisfy the formula. What the formula cannot be used to do is to discriminate between one line and another, that is, to establish a line which is related to the geographical facts and which has a geographical and legal rationale. It must follow that spatial proportions and comparisons of territorial magnitude are not values or criteria which can assist in boundary-making either on land or in the sea-bed.

The Court rose at 1.10 p.m.

TWENTY-EIGHTH PUBLIC SITTING (11 II 85, 10 a.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

REPLY OF MR. LAUTERPACHT

COUNSEL FOR THE GOVERNMENT OF MALTA

Mr. LAUTERPACHT: Mr. President, Members of the Court: in this reply I shall limit myself to three main points. Two of them relate to the content of relevant circumstances; of these the first is that of the relevance and effect of economic considerations.

ECONOMIC CONSIDERATIONS

I begin then, Mr. President, with the question of the relevance of economic considerations. Professor Lucchini summarized his contentions on behalf of Libya by saying:

1. that the Court had in 1982 excluded economic arguments "because of the variability of such factors in the course of time" and
2. that certain economic factors have absolutely no link with the institution of the continental shelf (p. 135, *supra*).

I shall deal first with the reference to, as Professor Lucchini put it, "the changing, ephemeral character of economic conditions" (p. 134, *supra*).

As I said in my opening speech, it is hard to believe that the Court in asserting the need for an equitable solution in continental shelf boundary cases would have wished arbitrarily and *ab initio* to exclude a whole category of considerations which on their face must affect the equity of the outcome broadly viewed. What the Court could understandably have intended, and what I submit that its words must be read as having said, is that where factors are changing or ephemeral the weight to be attached to them as affecting a solution of long-term duration must be correspondingly limited, where the factors are changing or ephemeral. Where, however, the established and relatively unchanging character of the factors is clear, then there is no more reason to exclude economic considerations than there is to exclude any other category of factor which may have a bearing on the justice or reasonableness of the outcome.

In the present case the economic considerations which Malta invokes cannot in any way be described as changing or ephemeral. And the interesting thing is that those who spoke on behalf of Libya never sought to suggest that they were. For one set of facts is clear and has never been denied by Libya, namely, those which appear in Chapter I of the Maltese Memorial (I) dealing with the economic position of the two Parties. No one can for a moment pretend that Libya is not vastly wealthier than Malta — absolutely and on a *per capita* basis. Nor can anyone ever pretend that this fundamental economic disparity between the two countries is ephemeral. Even Libya's own figures do not foresee a significant downturn in the benefit that that country will derive from oil until well into the next century. Even if Malta were to benefit significantly from discoveries of oil

in the Mediterranean it would be exposed to the same prospect of eventual exhaustion of reserves as Libya now invokes to support the prospect of poverty which it foresees for itself in the twenty-first century. And these observations take no account of the past — of the established and therefore unchanging fact that Libya has been producing oil in massive quantities for over 20 years and has, on that basis, been able to generate vast capital resources, some large part of which is already reflected in Libya's economic and social infrastructure.

No matter how closely one may peruse Libya's arguments one will find no denial of this fact, because it is simply undeniable.

And, Mr. President, if I speak so much of oil, it is because when all the talking is over, access to oil is what this case is about. The identification in this way of the real subject-matter of a case is entirely proper. As the Court will recall, the Chamber in the *Gulf of Maine* case, when dealing with the third segment of the line, prefaced its discussion by these words:

> "For present purposes, it must be borne in mind that this final segment of the line is the one of greatest interest to the Parties, on account of the presence of Georges Bank. This Bank is the real subject of the dispute between the United States and Canada in the present case, the principal stake in the proceedings, from the viewpoint of the potential resources of the subsoil and also, in particular, that of fisheries that are of major economic importance." (*I.C.J. Reports 1984*, p. 340, para. 232.)

In obvious contrast with the *Gulf of Maine* case, the present case is not about rights in the superjacent water column. Accordingly, the reference by the Chamber to the economic importance of fish is not pertinent here. But there is scope for an exact parallelism of approach regarding the relevance of, and the weight to be attached to, the "potential resources of the subsoil".

Once the Court recognizes that there may be oil in the disputed area, it cannot disregard that circumstance. And even if no regard were paid to the evidence which the Court may just have heard, one fact shines out: Libya regards the disputed area as sufficiently valuable to have carried the protection of its claim to the extent of the use of a gunboat and the threat of use of force.

Professor Lucchini's contention that a factor of this kind has "absolutely no link with the institution of the continental shelf" remains, Mr. President, entirely unblemished by good sense.

Lastly, on this point, it is necessary to say a word about the distinction which the Chamber itself drew between, on the one hand, the ineligibility of economic factors for consideration as criteria to be applied in the delimitation process itself and, on the other hand, the acknowledgment that economic circumstances could be used in the assessment of the equitable character of a delimitation first established on the basis of criteria borrowed from physical and political geography (*I.C.J. Reports 1984*, p. 340, and Professor Lucchini's speech, pp. 134-135, *supra*).

It is to be remarked, in passing, that although in the passage just cited, the Chamber used the words "may be relevant", a different and more mandatory phrase was used in the Chamber's first reference to this same distinction in paragraph 59 of its Judgment: "it may *and should* . . . bring in other criteria which may also be taken into account in order to be sure of reaching an equitable result" (emphasis supplied). "May *and should*", and amongst those equitable criteria in testing the equitableness of the conclusion reached at by other means, the Chamber was prepared to recognize the relevance of economic criteria.

The real point that needs to be made — and Professor Lucchini tacitly acknowledged this — is that the Chamber did recognize the relevance of economic factors for the purpose of assessing the equitable character of a delimita-

tion established without prior reference to economic factors "in order to be sure of reaching an equitable result".

That, I must submit, is a sufficient recognition for Malta's purposes of the role of economic considerations. One must ask: what is the significance of the statement by the Chamber that other criteria, including economic ones, should be brought in "in order to be sure of reaching an equitable result"? The significance of the statement, as I respectfully see it, is that if, when economic factors are brought in, they lead to the view that the result reached by other methods is not equitable, then that result cannot stand. It must be modified in order to make it conform to the impact of the economic considerations. Suppose — to take an example most favourable to Libya, even though in Malta's submission it would be wrong — suppose the Court were, by reference to factors not including economic ones, to identify the area of the Rift Zone as the place for a boundary line. The Court would then have to consider whether it had reached an equitable result. For this purpose, if it were to follow the same approach as the Chamber, it would have to look at the economic situation. It would find that it had effectively cut Malta off from that part of the disputed area in which Malta might reasonably expect to find oil and had instead awarded that area to Libya. Would that be an "equitable result"? The answer is plainly no — and the result could not therefore stand. The Court would have to re-examine the original result, bearing in mind the inequity by which it was found to have been flawed.

So, Mr. President, it will be seen that the distinction between recourse to economic considerations in drawing the line and similar recourse in testing the equity of the result is largely formal. Once persuaded, as the Court must be, that the party which secures control of the Medina and Malta Banks is economically advantaged, and the party which does not is economically disadvantaged, the Court cannot equitably disregard the relative impact on the Parties of that economic consequence.

That is really enough about economic considerations, but I must just conclude on this point by referring to the manner in which Professor Lucchini sought to dispose of the recommendations of the Conciliation Commission in the *Jan Mayen* case. The Court may recall that I cited this case as one illustrating the relevance of "economic interests" to continental shelf delimitation. Professor Lucchini sought to answer this by observing that the reference to the economic interest of Iceland had been specifically inserted in the agreement and that, by reasoning *a contrario*, the absence from an agreement of such a provision would mean that equitable interests are, as he put it "devoid of relevance" (p. 135, *supra*).

There are two answers to this.

The first is that at the very least — and without reference to what the Conciliation Commission actually said — the agreement would itself still stand as *evidence that the two parties, Norway and Iceland, both regarded the economic* interest of the island State party as so pertinent to the delimitation that it warranted express mention.

My second answer to Professor Lucchini's submission involves a reference to what the Commission actually said. When the Report (in 62 *ILR*, p. 108) is perused as a whole it will be seen that, where expressly adverting to the requirements of the agreement, the Commission equated its express mandate with the requirement that it reach an "acceptable and equitable solution of the problems involved" (see especially 62 *ILR*, pp. 124-125). It made no observation to the effect that it was being asked to consider factors which would not otherwise have been relevant. This, I submit, is precisely the task which the Court has identified for itself in relation to the determination of continental shelf bound-

aries. The equation is almost mathematical. If the *Jan Mayen* Commission was correct in treating a direction to take into account economic interest as falling within the scope of a search for an acceptable and equitable solution, so it would follow that other courts could properly treat the case as a precedent for the view that a search for an equitable solution embraces the need to take into account economic interests.

SECURITY

I now turn to the element of security as a relevant circumstance. This is the second of the two relevant circumstances that I am going to discuss.

The Court will recall that Professor Lucchini devoted a section of his speech to what he called "the irrelevance of security interests". So much of this portion of Professor Lucchini's speech was evidently pre-prepared, dealing as it did with matters raised in Malta's Counter-Memorial and even in its Memorial, that in a section of some six pages, barely half a page was devoted to Malta's oral arguments on the question of security.

Now, I don't suppose that I should complain if my learned opponent fails properly to grapple with my arguments. But I am entitled to point out the inadequacy of his response and the significance of his omissions.

I venture to recall that the burden of my remarks about the effect of Libya's claims upon Malta's national security was that the identification of a boundary line in the area of the Rift Zone would entitle Libya to place massive oil rigs equipped with helicopter pads within a few minutes' flying time of Malta. Malta would be confronted by the prospect of constant foreign ship and aircraft movements close to its shores but not subject to its regulation, supervision or control (see **III**, pp. 335-336). Such a situation, I argued, would be unacceptable anywhere else, except in areas so geographically constricted that geography created homogeneity and led to co-operation between neighbouring States.

The fact that I did not elaborate the point at great length does not, I submit, weaken it. Indeed, it remains as a consideration which I respectfully submit calls for the Court's serious and specific consideration.

But what was my learned friend's answer to it? It was stated in a few lines (p. 137, *supra*). He said the argument was "surprising, since it will only seem to be applicable in the case of States with opposite coasts". The activities of adjacent States, he said, are permanently destined to be carried on cheek by jowl.

Arguments of this kind, Mr. President, should not detain the Court for long.

I shall deal first with the last part of Professor Lucchini's argument. This, it may be observed, was precisely the point anticipated in my original submission. I openly acknowledged that there could be areas so geographically constricted that geography would create homogeneity and lead to co-operation between neighbouring States. My learned friend simply ignored this point in his anxiety to establish an apparent inconsistency between my treatment of opposite and adjacent States. In truth my point was applicable to both. My answer is as applicable to opposite States in geographically constricted situations — to which my friend appears to have given no consideration — as it is to adjacent States in that situation.

However, it is Professor Lucchini's first point that really calls for comment. He said that my argument "will only seem to be applicable in the case of States with opposite coasts". But this is precisely a case of States with opposite coasts. And the fact that Professor Lucchini may see my arguments as being applicable only to such States only serves to support my contention that security considerations of the kind which I mentioned are relevant in this case.

I venture to invite the Court to consider what my learned opponent could have said, but did not say. He could have said that the whole idea of oil rigs on the Libyan continental shelf close to Malta was absurd; he could have said that the rigs would not have helicopter pads; he could have said that helicopters using those pads could not threaten the peace or security of Malta; he could have said that the movement of ships under Libyan control in waters so close to Malta could pose no problem for Malta. But he did not say any of those things. And, it is entirely to his credit that he did not say so, because to have said so would have been contrary to the truth and we would have all known it. The truth, the undeniable truth, is that oil operations by Libya in the northern part of a Libyan continental shelf delimited as Libya now seeks would pose a genuine threat to Malta's security. It is not necessary for me to dilute the significance of this point by reverting to the other and earlier arguments by Malta based upon its island character and upon its neutral status upon which Professor Lucchini concentrated most of his criticism. What really matters is the inherent threat — may I call it the inactive menace — flowing from the proximity of a large and militarily capable State to a small non-military State. Libya is fully sensitive to considerations of this kind, as is evident from the claim which it has itself asserted to treat the waters of the Gulf of Sirt as internal waters. If the occasional and transient presence of foreign ships or aircraft in or over even that body of water — which is not commensurate with the whole of the Libyan coast — is seen by Libya as a threat to its security, is it not understandable that Malta would see the constant presence of rigs, helicopter pads and Libyan flag and nationally controlled vessels within 25 miles of its shores as an even greater threat?

Professor Lucchini concluded his arguments against the role of security considerations by suggesting that, even if these considerations are valid, there is no logical link between them and Malta's claim to an equidistance line. This contention is unsound.

The link is, in fact, direct and obvious. If the presence of rigs and the activity associated with them on the shelf of one State threaten of the security of opposite or adjacent States, it is reasonable that matters should be so regulated that the risk, or potential for risk, to each should bear upon each equally. The risk is a function of distance or proximity. It follows therefore that a line which is equidistant from the two States either equally reduces or equally generates the risk for each, depending upon how you look at it.

But there is a second point which arises from Professor Lucchini's contention that there is no logical connection between security considerations and an equidistance line. It is that the argument fails to appreciate that Malta refers to security considerations for two reasons. One is in support of its own claim to an equidistance line — and of that I have spoken sufficiently. The other reason is that security considerations are highly relevant as an objection to Libya's claim to a boundary in the Rift Zone area. And how does my learned friend deal with that? If the Court cares to look at page 146, *supra*, it will see not a word to the effect that proximity is not a threat. Instead, we are lightly told that "the exigencies of 'legitimate self-defence' . . . are certainly to be weighed up less than in the past by reference to a distance criterion". Now what that argument amounts to is this: Even now we, Libya, can threaten you from a distance, even by weapons of mass destruction. So, don't be frightened if we creep closer to you with conventional weapons. Mr. President, that is the kind of assurance about which Little Red Riding Hood, for all her gullibility, might have had some doubts.

If I end this section in a light-hearted vein, it is not because the matter is a

subject for levity, but only because the argument which the other side has permitted itself to develop is one that cannot be taken seriously.

And so I leave behind me the second further relevant considerations which I wish to examine, and I turn now to the third and, I regret, longest part of my speech in which I deal with the questions of geology and geomorphology. As a convenient shorthand, I shall from time to time call them "the scientific aspects" of the case. I have already apologized in my opening speech for having to deal with these matters at some length. But the situation is not one of Malta's making — except in so far as it has found itself obliged to meet scientific arguments advanced by Libya. In revisiting the matter, I shall attempt to present my case as succinctly as possible in a series of numbered points.

GEOLOGY AND GEOMORPHOLOGY

1. Seen in Perspective, the Scientific Aspects Are Largely Irrelevant

Point 1. First, it is important to see the scientific aspects of the case in proper perspective. Malta's basic contention is that the scientific aspects are irrelevant. The parts of the Pelagian Block which lie between Malta and Libya form a geological continuum constituting a single continental shelf. There is no geological or geomorphological discontinuity in this area which can play any material role in assisting the Court in its task.

Libya evidently thinks otherwise and, from its point of view, with good reason. Unless Libya can establish by reference to scientific considerations the existence of a so-called Rift Zone within which the boundary line must be drawn, it lacks any positive alternative to Malta's conclusion that the equitable result of the application of equitable principles is an equidistance line. There is quite simply no line north of the equidistance line which Libya can put forward as its own if its scientific identification of the existence and relevance of the Rift Zone is destroyed. And the vigour with which Libya has approached the defence of this zone is evidence of its acknowledgement of the difficulty in which it finds itself.

My learned friend spent enough of his speech on the role of the scientific aspects of this case to warrant my probing this matter a little further.

He sought first to respond to the passage in my opening speech in which I identified the Libyan technical arguments on these matters as absolutely central to Libya's case. If Libya could not establish the existence of a fundamental discontinuity within and along the whole of the Rift Zone so as to identify it as the area within which the boundary has to be drawn, my submission was that Libya has no other *positive* basis on which to rest its argument. I emphasize the word *"positive"* because it is, I believe, now common ground between the two sides that the process of delimitation involves two stages: in the first, the Court has to identify, by reference to the appropriate relevant circumstances, the boundary which it believes to reflect an equitable result of the application of equitable principles; in the second stage, the Court has to test the equitableness of the boundary by reference to certain criteria which are reserved for use only as what we might call "second stage tests". For example, without conceding in any way that the test of proportionality is relevant in the conditions of the present case, it is as a second stage consideration that "proportionality" has been used in the past. So I use the word "positive" to describe the factors that operate at the first stage — they are the criteria which positively lead the Court to a decision.

Professor Bowett was understandably quick to respond to this for, clearly, if it is right to identify geology and geomorphology as the sole positive props of

Libya's case, the collapse of those considerations leaves Libya with no case at all. So Professor Bowett argued that the Libyan case relied upon "various categories of relevant fact", of which one category consisted of "physical facts", the other of "non-physical facts" (p. 156, *supra*). Of the latter (the conduct of third parties and the delimitations with third States) my colleagues have spoken and will speak. But of the physical facts, I shall speak now. Not that I am primarily concerned with the geographical facts — since they are matters of which Professor Brownlie has in part already spoken and of which my colleague, Professor Weil, will have more to say later.

But I do have an interest in geography in so far as Professor Bowett referred to it in his attempt to show that Libya's positive case in a Rift Zone boundary is not exclusively geological and geomorphological.

At this point I must invite the Court to look closely at the paragraph with which Professor Bowett opened the section of his argument entitled "Geography" (p. 156, *supra*). He began thus: "I want to emphasize the importance of geography in the Libyan case." He then mentioned four factors which he asserted were all "vital to Libya's arguments". And he immediately concluded: "It is certainly true that, applying these factors, one ends up with a delimitation within and following the Rift Zone."

To appreciate the inadequacy of this reasoning, it is necessary to recall the four geographical factors which Professor Bowett mentioned. They were:

1. "the configuration of the relevant coasts";
2. "the great discrepancy of their lengths";
3. "the difference in size of the two States";
4. "the location of Malta in relation to the surrounding States".

Now, one is bound to ask, how could these four factors lead positively to a line in the area of the Rift Zone? The Rift Zone is a geological and geomorphological feature. And there is absolutely no reason why any, or indeed all, of the four factors enumerated by Professor Bowett should have results which either individually fall within the Rift Zone area, or are all coincident there. Taken by themselves, these geographical factors do not lead to a line in one place, any more than they lead to a line in any other place. And this becomes even plainer when, towards the close of his speech, Professor Bowett embarks on the task of, as he calls it, applying "the relevant facts and circumstances . . . for", as he says, "the essential task of applying them to produce an equitable result" (p. 177, *supra*). Let us leave aside for the moment his treatment of Malta's approach and concentrate instead on his treatment of the Libyan approach (which begins at p. 177, *supra*).

He proposed to demonstrate that the Libyan approach fitted the relevant facts better and said that he would take "the categories of relevant facts or circumstances each in turn". Now, pausing at this point for a moment, may I respectfully suggest that the Court should ask itself: "What do we expect counsel for Libya to do next?" And the answer is perfectly plain — his task is to show the Court positively how his geographical factors lead to a Rift Zone.

But what did he actually do? In his very next sentence, and I respectfully ask the Court to listen particularly carefully to this, he asked the Court

> "to accept, for the purposes of this demonstration, the Libyan thesis that an equitable result would be achieved by a delimitation within and following the general direction of the Rift Zone".

Whether tendered in full consciousness of its implications or not, this invitation to the Court represents an extraordinary *volte-face* in the Libyan argument.

Instead of using the geographical factors to show positively that the boundary should be drawn in and following the general direction of the Rift Zone, Profesor Bowett asks the Court to accept, that is, to assume, for the purposes of this demonstration that it would be equitable for the boundary to be drawn there. And then he goes on to test the equitableness of his assumptions by recourse to the geographical facts. He is not using his geographical facts positively as first stage factors, he is asking the Court to assume that somehow or other it is past the first stage. Then he goes on to use his "geographical factors" as second stage considerations to test the equitableness of what he invites the Court to assume. Moreover, when it comes to actually proceeding with this test in a specific way, the "geographical factors" are reduced from four to two — proportionality and adjacency (p. 178, *supra*). Gone, I may say in passing, are those other so-called "geographical facts" such as the configuration of the coasts, the difference in the size of the two States, the location of Malta. And rightly gone. Why? Because they are inherently incapable of performing the function of guiding the Court specifically to a Rift Zone line or indeed to any line. In short, they are not "line-creative". They are facts without any specific immediate function.

This, it may be recalled, is precisely the view which the Court of Arbitration in the Anglo-French case took of the use which one of the parties sought to make of the presence of the Hurd Deep and Hurd Deep Fault Zone. The Court said the following in paragraph 108:

> "The axis of the Hurd Deep-Hurt Deep Fault Zone is placed where it is simply as a fact of nature, and there is no intrinsic reason why a boundary along that axis should be the boundary which is justified by the special circumstance under Article 6 [that is Article 6 of the 1958 Convention] or which, under customary law, is needed to remedy the particular inequity."

So my friend's approach to persuasion may be paraphrased thus:

> "The task of the Court is to identify a particular line. This task falls into two stages. The first is positive — i.e., to find a line by reference to objectively compelling factors. The second is negative or probative or confirmatory: to test the validity of the product of the first stage by reference to a number of approved factors. Now, let me (that is Professor Bowett), do this for the present case. I shall discharge the burden of proving my positive case by asking you to assume that I have done so (i.e., that my thesis achieves an equitable result). Now, having made that assumption, let me hurry along to the second stage and test that assumed result by reference to factors which are excluded from the role of positive factors in establishing a result."

That is the essence of my learned friend's argument.

Now my purpose in showing that Professor Bowett has not even attempted to demonstrate that geographical factors necessarily lead to the Rift Zone (because, of course, such a demonstration is as a matter of logic, intrinsically impossible), is that, as a result, the whole burden of Libya's positive position must rest upon the geological and geomorphological arguments. No doubt, Professor Bowett and his colleagues would like to advance the test of proportionality (or its variant, coastal lengths) from a second to a first stage factor — but that would run contrary to the jurisprudence of the Court, as my own colleagues demonstrate. So if such arguments are limited to their proper role, my submission is that my learned friend cannot demonstrate that Libya's positive case stands on

two legs — one geographical, the other geological and geomorphological. Libya's case can rest, in positive terms, only upon the second of these two legs — geology and geomorphology and it is with that second leg that I am now concerned.

If my learned friend wants to get his case back on a "two-legged" basis, then he must say why there is a necessary and exclusive connection between his geographical factors and the construction of a boundary in the Rift Zone. So long as he merely invites the Court to make that assumption, Libya's case must be seen to rest on geology and geomorphology alone.

And that, Mr. President, is why there has been so much talk about scientific technicality. And because Libya has put "science" to the forefront of its presentation, Malta has been obliged to reply to it. I am not saying that it is not legitimate for Libya to rely on "science". I am saying only that Malta did not cast the first scientific stone and should not be blamed because, when replying to science with science, the case enters, as the geologists would put it, upon a remarkable extensional phase.

The identification of the issue between the Parties in this connection has, as a result of Professor Bowett's speech, been clarified in its most essential respect. Before Professor Bowett spoke, the Libyan written pleadings were in a condition which led me to criticize them on the ground that, despite their emphasis on the existence of an alleged "fundamental discontinuity", they had made no attempt to relate the claimed discontinuity to any concept of continental shelf currently operative in international law (**III**, pp. 337-339). In other words, the invocation of geological and geomorphological fact was "floating". It had no legal relevance. I suggested in my opening speech that it was necessary for Libya to attempt to connect the facts to some definition of the continental shelf and to show that the claimed discontinuities were such that in physical terms they marked the ends of the respective legal continental shelves of the two countries.

To establish such a physical ending of the respective continental shelves of the Parties it was necessary to do more than talk about profound, significant or fundamental discontinuities.

My learned friend responded that this Court and other international tribunals had, in effect, recognized that disruptions in the sea-bed must have some role because in every significant case there had been a rejection of an argument based upon an alleged discontinuity in the sea-bed; a rejection of an argument based upon the existence of an alleged discontinuity in the sea-bed. In the *North Sea Continental Shelf* cases, so my friend contended, the Court, in referring to the Norwegian Trough:

> "appeared to acknowledge that such a feature might have some relevance in regard to a delimitation of the natural prolongation of the land territories of the States concerned" (p. 163, *supra*).

In the Anglo-French case, the Arbitral Tribunal held that the Hurd Deep did not disrupt the essential unity of the shelf *(ibid.)*. In the *Tunisia/Libya* case the Court held that the Tripolitanian Furrow was not such a "significant feature that it interrupts the continuity of the Pelagian Block" *(ibid.)* — though it may be noted in passing, Mr. President, that my friend's quotation from paragraph 80 of the Court's Judgment did not extend to the passage in which the Court limited its observations to the relevant area and distinguished "the greater part (of the Furrow) and the most significant from a geomorphological aspect" which lies beyond that is, east of Ras Tajoura and inside the relevant area in the present case.

Lastly, from the *Gulf of Maine* case Professor Bowett quoted verbatim the finding of the Chamber that the Northeast Channel did not have the "characteristics of a real trough marking the dividing-line between two geomorphologically distinct units" (p. 164, *supra*). And does it follow, one may ask, that if the Chamber had found that the Northeast Channel was such a trough, the boundary would necessarily have to follow it?

From these four cases, Mr. President, in which depressions or troughs had, in a manner quite incidental to the main lines of the decision, been held not to affect the situation, Professor Bowett sought, to use his words, to extract the "criterion of a marked disruption of continuity". There is an evident difficulty here: even if his analysis were correct (and I shall not pause at this moment to dispute this aspect of the matter), and that difficulty is that it is not possible to identify any positive statement by any court regarding the nature of the discontinuity which might be deemed controlling or even relevant. To meet this difficulty my learned friend was obliged to state his conclusion as a question, and he said: "How could a discontinuity which is not merely significant but fundamental be legally irrelevant, as Malta suggests?" (P. 165, *supra*.) But that does not meet the difficulty. It is not for Libya to state a fact and ask Malta to establish its irrelevancy. It is for Libya to show why the facts which it introduces are relevant in the case and show the manner in which they operate.

In fairness, I must admit that Professor Bowett recognized that his answer in the form of a question is not much of an answer. And so, after first incidentally preparing a fall-back position for himself, he went on to a full-blooded assertion that the relevance of the discontinuity is that the Rift Zone divides the sea-bed so as to accord Libya and Malta two separate shelves. It does this because it is no mere discontinuity but is an actual plate boundary — a physical division which inexorably separates two continental shelves.

I shall return later to Professor Bowett's fall-back position, which consists of an invocation of geomorphology by itself as a "relevant circumstance". What I propose to do first is to grapple with my friends' espousal of the concept of the plate boundary.

2. *Focus on the Area between Malta and Libya*

And so I come to point 2. Much though Libya wishes this case to be about the so-called Rift Zone, it is in fact a case about the area of continental shelf which lies between Malta and Libya: to the east and south-east of the so-called straight line which I drew on a map during my opening speech, and which the Court will find, for all practical purposes, effectively reproduced in Figure 5 of the Libyan folder.

There the Court will see a construction of the trapezium and the north-west line, the western line of which coincides with the line I drew from Ras Tajoura to the north-west corner of the Island of Gozo. Indeed, the very expression "the Rift Zone" is itself a Libyan invention. As the Court has heard from both Malta's experts, Professor Mascle and Professor Morelli, the expression is a new one, developed by Libya for its needs in the case, and appearing only in the scientific papers written by Libya's own experts.

The Court will, I am sure, appreciate that Libya's concentration on the Rift Zone has a dual objective. One is to promote the idea that there is an undivided stretch of sea-bed close to Malta and far away from Libya within which the boundary line must be drawn. The other objective is to generate support from outside the area which lies between the Parties for the claim that the area between the Parties is marked by a fundamental discontinuity.

It is important, therefore, that the Court seek in Libya's arguments proof not that there is a Rift Zone but that there is between Malta and Libya a relevant fundamental discontinuity, now equated by Libya with a plate boundary, which physically divides the continental shelf of Malta from that of Libya.

3. The Distinction between Geomorphology and Geology

Now, Mr. President, point 3. It is important constantly to have in mind the distinction between geomorphology and geology. It hardly needs saying at this stage of the argument that geomorphology is concerned with the shape and depth of the surface of the sea-bed. If geomorphology is to provide a guide, then the geomorphological features upon which Libya places reliance must lie between Malta and Libya. If the geomorphology of areas which do not lie between Malta and Libya is to be invoked, then this can be only for the purpose of supporting a geological argument based on features outside the area.

By the same token, the geological elements are concerned with the structure of the underlying sea-bed. They must also lie between Malta and Libya unless they are to be used as external indicators of the presence of other geological factors which lie within the area.

Malta says, of course, that there are no features, whether geological or geomorphological, between it and Libya which serve to identify either a plate boundary or a continental shelf boundary. Malta says, moreover, that if it should be wrong and if the Court should identify in the features of the part of the Rift Zone which lies between Malta and Libya factors which amount to a discontinuity, the Court will thereby have set a standard for the recognition of such features which would be equally applicable to the identification in the southern valleys of the Jarrafa Trough and the Tripolitanian Furrow as comparable discontinuities.

4. Geological Time Is Very Long

Point 4. A plate boundary takes millions of years to develop, but the fact that the period of development is extended does not mean that there is no difference between past, present and future. The Court is invited by Libya to find the existence of a plate boundary now. The fact that a plate boundary may be developing, that is, speculation, or that it is developing, that is, certainty about something in the future, is no substitute for the conclusion that the plate boundary has emerged and is a boundary now. That is to say, certainty about something that has already come into existence. As Professor Morelli said: "But to reach the present situation in the Red Sea another 15 million years are needed, so we have time" (p. 251, *supra*). For all the lightness of Professor Morelli's touch, there can be no doubt about the rightness of his words.

5. Developments Can Stop

Point 5. It is acknowledged by Libya's experts that development can stop. As Dr. Jongsma said in his evidence, the Rhine graben area looked at one time as if it was going to develop into a plate boundary, but it did not. The same is true, he said, of the Tripolitanian Furrow (pp. 204-205, *supra*).

So unless the Court is satisfied that there is already a plate boundary over the whole of the length of the Rift Zone, the Court must recognize that whatever may be there evolving, there can be no certainty that it will ever become a plate boundary.

6. The Distinction between Data and Interpretation

And so I come to point 6. In considering the respective positions of the Parties, the Court must distinguish clearly between data, that is to say objectively verifiable facts on the one hand, and interpretation, the drawing of personal conclusions, on the other.

7. Limited Quantity of Data

Point 7. The amount of objectively verifiable data is limited and much of it has been in existence for a decade or more. When reference is made to seismic evidence of the existence of faults, it should be remembered that in the area between Malta and Libya the only seismic run on a line even approximately along the line between the two countries is MS-20, which runs from the north-east to the south-west. The only west-east trending lines are those of MS-14, 15, 16 and 17. Even the last two are quite short. The famous line MS-19, to which so much reference is made, initially in the Libyan written pleadings, lies to the north-west of Malta and never enters any part of the area between Malta and Libya. In order to get a picture of the sea-bed that is in any way reliable, one needs to have seismic measurements taken along lines which are much closer together, of a kind comparable to the pattern of soundings formed west of Malta and west of the State line by such lines as MS-118A and B, 119 and two other north-west - south-east trending lines which cut those in the same region.

In this connection one may also mention the concept of seismic refraction. It was spoken of by Dr. Jongsma as a form of relevant data. But no specific data of this kind has been produced on behalf of Libya in support of its case.

If the consideration that data is limited leads one to be cautious about attaching too much significance to it, the consideration that the data may be old has a different role to play. It is that if information is some years old, it is reasonable to expect it to have been absorbed into the conciousness of scientists and thus to have been commented upon in the literature.

In other words, I am not saying that because information is old it is bad, I am just saying that if information has been in existence for some years, one would expect the scientists to have picked it up, absorbed it and made some use of it. When Professor van Hinte was cross-examined he identified most of the seismic lines as dating "from the Sixties and Seventies" (p. 228, *supra*). The only new material that he was able specifically to identify was the work of the Escarmed Group in 1982 and that was limited to deep diving in the region of the Medina Mount (p. 227, *supra*), and he also spoke of some unspecified unpublished material.

Professor van Hinte's remarks also served to confirm Professor Finetti's statement that the measurements of the Bouguer gravity anomalies on which he based the conclusions in his 1984 paper had existed for ten years, since 1973.

The material that is most relevant to the establishment of a State boundary concept has, therefore, been available for sufficient time for it to have been the subject of comment, but no one has used it in a manner which is favourable to Libya's position.

8. The Disagreements between the Parties Are Therefore Primarily about Interpretation of Data

Point 8. On reviewing the evidence it appears that the differences between the Parties are primarily about the interpretation of data. Both sides may

agree about the existence of the Malta and Medina Channels. There may even be accord about the existence of faulting in the Channels. But there will not be accord on the depth or extent of the faulting, which are matters of interpreting the data. Take, for example, Figures 73 and 74 in Libya's loose-leaf book. These purport to show faulting in the Medina-Malta Channel as revealed by seismic profiles. The Court will note that beyond, on average, the depth of one kilometre, the solid lines indicative of faulting give way to pecked lines. The Court has already been told by witnesses that a pecked line is an indication that the line is inferred or speculative. Yet, on the basis of these lines, Dr. Jongsma was prepared to say "although . . . the rifts are not depicted as descending deeper than several kilometres, they in fact slice all the way down to the mantle of the earth, at least 20 kilometres below the surface of the sea-bed" (p. 210, *supra*.) The extrapolation is pure interpretation, if not speculation, because there is no basis in the data for the assertion that the faults penetrate 19 kilometres further than the seismic profiles show. Further on this point, the Court will remember that in the course of cross-examining Professor van Hinte I made the point to him thus:

> "So I wouldn't be putting it unfairly if I said this: that the hardening of your views is dependent in part on some new material of which you have given us some details, and in part on a reinterpretation of the whole situation in the light of all the material available. That's a fair way of putting it?"

Professor van Hinte answered "Yes, it falls in line at a certain moment." In his next answer, after saying that it is a matter of putting the right data together, he concluded: "And there is personal insight." (P. 228, *supra*.)

9. If the Court Enters into the Scientific Controversy, It Eventually Has to Choose between Interpretations

Point 9. On the basis of the concurrence of Professor van Hinte and Dr. Jongsma it is possible to say that the Parties are agreed that to a real degree, if not to a large degree, the determination of scientific questions is a matter of the interpretation of scientific data. So, if the Court decides to enter into a consideration of those questions it will have to perform in relation to the data relevant to this case the same kind of function as would the scientists, such as those who have appeared as expert witnesses, when preparing a scientific paper. The interpretations between which the Court will have to choose will be found in at least three places: the written pleadings in the case, together with their annexes; the expert evidence and the scientific literature on the subject.

10. Scientific Interpretations Can and Do Change. Should the Court Rely on Them in Determining Boundaries?

Point 10. Quite apart from any hesitation which the Court may feel at entering into a scientific assessment or interpretation, whether with or without the aid of a Court-appointed expert, there is a more fundamental question to be asked. It stems from the fact that scientific opinions can and do change. For example, Professor van Hinte observed in his examination in chief by Professor Bowett the following:

> "Perhaps I should say . . . that our ideas have evolved since Libya asked first for our assistance three years ago. Our opinion on this point is more definite now, after having studied more data."

Though one might well argue about the direction in which Professor van Hinte's ideas have evolved, one cannot dissent from the inherent reasonableness of the acknowledgment that ideas do evolve. And, they probably evolve in science more rapidly than in any other field. So the question is, is it appropriate, is it prudent to determine anything so permanent as a boundary by reference to evolving and changeable scientific interpretation? The Court has already turned its back on transient influences on boundary determination when it declined in the *Tunisia/Libya* case to take account of economic considerations because they are "variable" — here today and gone tomorrow (*I.C.J. Reports 1982*, p. 77). I have already given reasons why, in relation to economic considerations, there is room for questioning whether the Court's expressed view on the changeability of economic factors is applicable in the circumstances of this case. But one thing must be beyond doubt. If the Court regards economic factors as variable, and therefore as not to be relied upon, surely evolving scientific interpretations must, by definition, fall into that category and for that reason must be excluded from consideration by the Court.

11. Implications of Procedure Followed in this Case

Point 11. The considerations which militate against attributing weight to evolving scientific interpretations are given extra force in this case if one recalls the unusual order in which the present oral proceedings have unfolded. Only four days before the opening of the oral proceedings in this case did Libya give notice that is wished to call expert witnesses. The case which until that moment Malta had prepared in the belief that it would be fought on the basis of the evidence in the written pleadings then took on a quite different aspect. Malta objected to the last-minute way in which Libya sought to introduce expert witnesses and claimed that if Libya introduced witnesses Malta should also be able to. The Court agreed, but in the form known to you: that the evidence should be heard after the first round of speeches and before the second round. What is the consequence of this sequence of developments? It is that Malta will only hear the arguments that Libya wants to develop specifically on the basis of Libya's oral evidence after Malta has spoken for the last time. Accordingly, the case for treating Libya's scientific evidence — particularly the oral scientific evidence — with the greatest caution becomes especially compelling.

12. The Issues Affected by Science

Point 12. And now, Mr. President I can turn to point 12. We can move on and look more closely at the substantive issues regarding which the scientific evidence has been introduced. Malta has taken a simple view of the situation and has adhered to it consistently: the Pelagian Block is a geological and geomorphological unit. It never occurred to Malta at the time of preparing its Memorial that Libya would contend that any physical features so divided the area that there could be two separate continental shelves on it. Malta had read and understood paragraphs 32, 33 and 66 of the Court's Judgment in the *Libya/Tunisia* case as referring to a Pelagian Block which extended as far north as Sicily. And I must say that, notwithstanding Professor Bowett's insistence that the Libyan pleadings in the 1982 cases do not suggest that the Pelagian Block is a single shelf going all the way up to Sicily, I read the oral evidence of Professor Fabricius in the record for 1981 (*I.C.J. Pleadings, Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Vol. V, pp. 183-186) somewhat differently, as I did also the words of the Libyan Agent in the record for 1981 (*ibid.*,

pp. 9 and 31). However, that matters little. Malta is not so much saying that Libya is estopped from being inconsistent as it is that Libya simply appeared in the 1982 proceedings to be saying something different from what it says now.

And what is Libya saying now? It is certainly saying something different from what it said at the beginning of the written pleadings in this case. In its Memorial, at paragraph 8.17, we find the Rift Zone described as "an indisputable indication" of the limits of the natural prolongation of Libya and Malta. It is "in the front rank of Mediterranean geomorphological-geological features". Nothing, nothing, was said there about a full-blown plate boundary theory, or a fall-back position in which the features of the Rift Zone might constitute "relevant circumstances".

13. The Evolution of Libya's Plate Boundary Argument

Point 13. The evolution of an argument in the course of a litigant's pleadings is not in itself normally a feature of much interest. In the present case, however, the change is so dramatic that I have asked myself: why haven't I noticed the plate boundary argument before? Have I slipped up in some way and missed Libya's point? So I have re-examined the Libyan written pleadings in an attempt to clarify the position. There is, I believe, value in doing this. If an idea is so basic, so well-established and so relevant, as the plate boundary is said by Libya to be in this case, one would expect it to form part of a Party's case from the beginning and to be clearly and fully developed in its written pleadings. Conversely, if an idea is ill-described, merely hinted at, tentatively expressed and generally obscurely presented one may legitimately ask oneself what is the importance of that theory, a theory to which so little prominence is given.

The story begins, of course, in the Libyan Memorial (I).

There, in the Libyan Memorial, in paragraph 3.07, where Libya is describing the geomorphological and geological setting as part of the factual background, it quotes the Court's description of the Pelagian Block in the *Tunisia/Libya* case, and then states: "In this Memorial, Libya refers to the area, thus described by the Court, as the Pelagian Block . . .". And to this sentence it adds the following footnote:

> "Attention is drawn to the comments in the papers in Parts I and II of the Technical Annex as to the definition of the 'Pelagian Block' and to *the question whether the rift zone* along these Troughs and on to the east divides the shelf area into separate geomorphological and geological areas of continental *shelf or even constitutes an incipient micro-plate boundary in formation* . . ." (Emphasis supplied.)

When one looks at the Technical Annex, which is subtitled "The Geomorphological and Geological Setting (Scientific Facts)", one looks in vain for any express use of such expressions as "microplate boundary" or "geologically distinct" or "fundamentally discontinuous" "plates". What we do find are phrases of much greater restraint.

> "The Rift Zone . . . is technically a major Rift Zone. The Troughs and Channels are structural *grabens*; the heights, shoals and banks within the Zone are either structural *horsts* or volcanoes." (I, Technical Annex, p. I-5.)

Six pages later the Annex states:

> "These structural features are due to a general pull-apart of the two main Units of the sea-bed area of the Pelagian Sea, i.e., the Southern Unit and

> the Northern Unit, separated by the Rift Zone. The tectonic forces causing the rifting (pull-apart) are moving in a direction more or less perpendicular to the extension of the rifting zone . . ." (P. I-11.)

And the Annex then goes on:

> "These Northern and Southern Units are not separated by a single fault or sheer plane, but by a series of many such faults . . . Of course, there are also faults *within* the Northern Unit and the Southern Unit. But their occurrence is more singular, or, in any case, less frequent, and not closely grouped as within the Rift Zone. Being less important in a geological-structural sense, these faults are revealed geomorphologically as far less prominent sea-bed features than the Rift Zone." (P. I-12.)

Observe, Mr. President: here, at a point at which if anywhere, one would have expected Libya's experts to speak expressly of a plate or microplate boundary, these words are not used. Moreover, even the idea of a microplate boundary is not stated. Instead the statement refers to "separation by many faults". The nearest expression to the concept of two plates is to be found in the mention of "a general pull-apart of the two main Units" — and the concept of "Units" — the very word "Units" — is, of course, Libya's own terminology, not that established by scientists.

Note also, that even the footnote which draws the attention of the Court to this technical material speaks only of "the question of an incipient micro-plate boundary in formation".

Mr. President, what I have just been saying all hangs on the very first reference in the Libyan Memorial to "an incipient micro-plate". That reference is in a footnote; it is not even in the text.

Is there anything else in the Memorial which develops the microplate boundary theory? No. Indeed, one thing is clear beyond doubt: the authors of the relevant part of the Libyan Memorial were certainly not aware of the nature of the argument that Professor Bowett was going to develop in the oral proceedings. Within two pages of the footnote which I have already cited, after distinguishing between what they describe as the geomorphological entity of the Pelagian Block and the geological entity of the African Plate, they conclude with the following sentence: "However, Malta like Libya is a part of the geological entity known as the African Plate" (I, LM, p. 29, para. 3.11). Now, how could Malta be that unless the African Plate is a continuum, an undivided plate, stretching right up to Sicily?

Nor does Libya withdraw from this position in the next section specifically subheaded: "The Rift Zone" (I, LM, p. 29). In introducing the section Libya goes, it is true, so far as to speak of

> "the features . . . which separate in the *physical* sense the natural prolongation of the Libyan landmass northward from the natural prolongation of Malta southward".

The Libyan Memorial (I) says that the Rift Zone is "a feature of major importance to this case" (para. 3.12). But it does not speak of a microplate or of a boundary between two plates in the Rift Zone.

Indeed, it is at best only incidentally and indirectly that we get any reference to the elements of plate boundaries in the relevant area. In paragraph 6.16, Libya states that "the Rift Zone represents a currently active, fundamental fracture of the earth's crust".

The zenith of Libya's attachment to a microplate is reached in the conclusion of the chapter on "The Geological and Geomorphological Setting". There, in

paragraph 3.51, Libya says: "Some scientists believe that a plate boundary is developing across the Rift Zone." The attached footnote refers to two sources. The first, a paper by Dewey, Pitman and others in 1973, is said to contain a figure "that suggests that a micro-plate, called 'The Messina Plate', on which Malta and the Ragusa-Malta Plateau are located, is in the process of formation". The second source is stated thus:

> "The view that a micro-plate boundary may be developing along the Rift Zone is reinforced by the conclusions of Professor Finetti, set forth in his summary technical note in Part III of the Technical Annex."

But examination of Professor Finetti's note shows that he does not refer to a "micro-plate" boundary — even in the most pertinent passages at page III-4. So much for the Libyan Memorial.

The Libyan Counter-Memorial **(II)** scarcely takes matters further. Even here, it states the position in words which do not correspond with the evidence adduced to support the statement and certainly not in the language of actual microplate boundaries. And I quote the following from the Counter-Memorial **(II)** in paragraph 2.60:

> ". . . If by referring to a 'simple' or 'the same' shelf, all the Maltese Memorial means to say is that this whole area is part of the same African Plate which is generally acknowledged to include the southern part of Sicily, then the point should have been made in these specific terms. Libya does not question such a conclusion as to the extent of the African Plate. But the African Plate is not synonymous with the continental shelf. In fact, there are several distinct shelves to be found on the African Plate. As was pointed out in the Libyan Memorial, the Rift Zone is of such significance that it is regarded by many geologists as creating a division in this Plate between two separate shelves. This division is actively occurring today and continues to affect the sea-bed, creating deep troughs and connecting channels that constitute a fundamental discontinuity in the sea-floor."

There are three points in this statement which must be marked with a question mark:

— First, where is the evidence of several distinct "shelves"? None of the evidence speaks of this.
— Second, who are the "many" geologists who regard the Rift Zone as creating a division in the African Plate? At the time of the Memorial, were there others additional to Professor Dewey and his associates — other than Professor Finetti, who was by then working for the Libyans? And how do these numbers compare with those of other geologists who have written about the area without accepting that an alleged division exists?
— Third, why does the Counter-Memorial not speak in plain terms of a plate boundary which now figures so prominently in Libya's oral arguments?

But to answer this last question, at any rate in anticipation of the reply of my learned friend, let me quote again — this time from a footnote attached to the statement in paragraph 2.76 — that the Rift Zone, as he puts it, "clearly ranks among the major and relatively rare rift zones of the world". The attached footnote states:

> "In somewhat more technical terms, the Rift Zone is an incipient boundary where continental crust has thinned owing to the pull-apart effect of the deep-seated grabens noted above. However, the extension of the earth's crust has not evolved to the point at which oceanic crust has been created.

> It may be described as the beginning of a continental break-up. At the stage at which the Rift Zone now is, it is characterized by diffuse features."

Mr. President, as you can see, when, in the cool light of scientific fact the other side does speak of plate boundaries, it is in terms of "incipient boundaries" and "the beginning of a continental break-up" — the initiation of a process which, if it is ever completed, will not even approach completion for, as Professor Morelli reminded us, another 15 million years (p. 250, *supra*).

Are things different in the Libyan Reply (**III**)? Not really. In an early section on "The Legal Significance of the Physical Facts and Circumstances", where reference is made to the legal relevance of sea-bed and subsoil features, how does Libya describe this now so important feature — the plate boundary? In paragraph 3.31 we read: "But where, as here, truly remarkable sea-bed and subsoil features do exist, cutting across the relevant area . . . such features deserve major weight." But not a mention of a plate boundary.

Where else can we look in the Reply? Chapter 5 is headed "Issues Regarding the Physical Factors and Circumstances of the Present Case" and contains a section on the "Sea-Bed and Subsoil Features and Characteristics". I have already dealt in detail with the subsection in my opening speech and I shall not repeat myself here. But the odd feature of that Reply is that it is only at the very end of this Chapter — in a subsection headed "The Escarpments-Fault Zone" rather than in the subsection headed "The Rift Zone" — where one might have expected the material — we come to paragraph 5.43 which says:

> "The significance of the Rift Zone is underscored by the fact that two of the most recent technical papers dealing with this geomorphological and geological phenomenon have reached the same conclusion: that a 'microplate' may be in formation along the Rift Zone."

Two papers are quoted: one by Professor Jongsma and others; the other by Professor Finetti. Both are dated 1984. I shall have more to say about them later. Here, in this narrative of the evolution of the Libyan position, I shall only stress, first, the incidental character of the allusion to the microplate boundary and, second, even here the hesitant use of the word "may": "a microplate may be in formation along the Rift Zone".

The Court adjourned from 11.30 to 11.45 a.m.

From the very limited mention of the plate boundary in the Libyan written pleadings, we may move on to the very different picture which Professor Bowett seeks to draw in his opening speech. Suddenly, the concept of plate boundary takes off. In his speech, my learned friend referred to the existence of a plate boundary, using those very words, in the Rift Zone, no less than 26 times. And that is not to count the number of times he spoke of "two shelves" or used equivalent language.

Of course, it is not the number of times that Professor Bowett spoke of a plate boundary that matters, but the language in which he did so. Now there was nothing restrained about my learned friend's reference to the notion. Not for him the caution of his scientists; not for him the notion of mere possibility; not for him the use of the word "may"; not for him any form of temporal limitations such as "incipient" or "beginning"; not for him any restriction of the plate boundary to any particular section of the Rift Zone. No, nothing like that. Instead no less than five of the references involve a specific commitment and dependence upon the proposition that an actual plate boundary exists now and

over the whole length of the Rift Zone. At page 168, *supra*, my learned friend said: "and that is precisely what we have here, in this case, a plate boundary". And again, at page 169, he said: "The evidence that the Rift Zone constitutes a plate boundary has four essential components." At page 171, when denying the significance of the southern features, the Jarrafa Trough and the Tripolitanian Furrow, he said:

> "In contrast, the Rift Zone has developed into a plate boundary and it is still active. And what is more you can see this plate boundary continuing out, right through to the Medina Ridge."

And this crescendo of commitment to the Rift Zone as an actual plate boundary reaches its highest point at page 172, *supra*, where the words "plate boundary" are used six times. There my friend said:

> "The importance lies in the demonstration that the plate boundary goes right along the zone, regardless of variations in depth. It is the same process and it is a discontinuity, which is just as fundamental in the east as it is in the west."

And again he said:

> "I must emphasize that I am not talking about geological history. I am describing a process which is going on now. I am describing what is to be found on the sea-bed at this moment of time."

And he concludes:

> "The whole area may once have been a unity, a continuity. But that phase ended long, long ago — between five and ten million years ago when Malta was formed, in fact — and the current position is one of disunity, of the creation of two shelves, divided by the plate boundary along the Rift Zone."

Mr. President, some years ago when my older children were growing up, one of the most popular television shows for young people was "Dr. Who". Professor Bowett will remember him, I am sure. "Dr. Who" possessed a time and space machine in the shape of an old telephone kiosk which he called a Tardis. When he stepped into it he could go backwards and forwards in time and space in the most wonderful way, encountering adventures which had us all riveted to our seats. And Dr. Who is what my learned friend is seeking to become. Suddenly, he is accelerating geological time on a scale, and assuming a certainty and continuity of direction, which only enclosure in the Tardis could justify. What his technical advisers in 1983 were prepared to speak of only in terms of possibility, as an "incipient" plate boundary, one which might be beginning, has suddenly become transformed by my friend into an actual, real, live, present-day plate boundary, of such immediacy, continuity and extent that it is (no, not may be, it is) a plate boundary which physically divides two shelves and is thus the controlling determinant of the continental shelf boundary between Libya and Malta. In the space of less than two years since the Libyan Memorial was filed, the Libyan argument has moved forward 20 million years in geological time. Moreover, the Libyan case has assumed the certainty of what is today merely a speculative conclusion, namely, that the processes which some scientists have identified, and in which a few find some indication of plate formation, necessarily continue to the point at which two separate plates are truly established.

Nor is adoption of a full-blown plate boundary theory by my learned friend a merely marginal or unimportant aspect of his case. It lies at the heart of his argument. His speech is preoccupied with it. The 26 references to a plate bound-

ary in the present indicative tense are spread over the whole of his speech, from page 164 to page 179, *supra*.

Whatever may be the reason for this sudden explosion of Libya's interest in the existence of a plate boundary, the narrative of the evolution of Libya's position shows that the plate boundary is a last-minute construct. Furthermore, its validity rests largely upon the correctness of the interpretations put by its promoters upon a quantity of data, some of which is controversial.

14. The Relevant Facts

And so we come to point 14. What are the facts or the data upon which the positions of the Parties respectively rest?

Libya's position has been expressed in a variety of ways. Counsel for Libya on 13 December identified, as he put it, "four essential components" making up "the evidence that the Rift Zone constitutes a plate boundary" (p. 169, *supra*):

1. deep faulting, with the fractures going right through to the basement, at least 20 kilometres below the sea-bed;
2. the presence of young volcanics, that is, sheets of magma 10 to 100 metres thick, coming right through the structure;
3. the process of plate movement, evidenced by the fact that the troughs have not filled up with sedimentation;
4. the anti-clockwise rotation of the so-called northern plate in relation to the main African Plate (pp. 169-170, *supra*).

But Professor Bowett did not show that these characteristics were to be found throughout the length of the Rift Zone with such a degree of continuity as to establish that there was an unending break between the so-called Messina Plate and its neighbour to the south. As Professor Morelli said, to have a plate boundary you have to have a fault which goes right through the earth's crust. Otherwise you merely have a fault, not a fault which reflects a break between two plates.

The present argument between Libya and Malta is not about intermittent breaks in the earth's crust. It is about an allegation by Libya couched in terms of a continuous plate boundary, that is, a continuous breach of the plate, from end to end in the Rift Zone, from Pantelleria in the north-west to the Medina Mount in the south-east. The fact that here and there there may be a break — even if proved — does not mean that there is a break all the way.

Dr. Jongsma in his evidence spoke of young volcanics, but did not assert their continuity across the whole of the Rift Zone. The same is true of the way in which he referred to heat flow measurements. Again, there was no specific assertion that the crustal filling which they are said to evidence spread the whole length of the Rift Zone and only over that area. Dr. Jongsma also introduced a new concept into the discussion — that of seismic refraction. But it had not been mentioned previously and the area in which the tests were located was not precisely specified and no details were given (p. 211, *supra*).

Nor did Professor Finetti produce information that was any more supportive of the Libyan case. True, he spoke of crustal thinning, evidenced by gravity data and seismic data (p. 216, *supra*), but he did not go so far as to say that the crust had broken. At page 216, *supra*, he says:

> "In this entire area of the Rift Zone — from the major trough — here — to the north as well as along the Medina Channel — here — the crust is markedly thinner than elsewhere in the Pelagian Sea shelf area . . . It is along here that the separation in the plates is occurring."

"Is occurring" — not "has occurred". And if it has not occurred yet then we do not have a plate boundary now. *Now* is what matters, Mr. President, — not a dozen or score of million years hence.

True, Professor Finetti later on changed his tense. The future becomes the present and the past. At page 219, *supra*:

> "I completely subscribe to the view, scientifically speaking, that this Rift Zone is a profound rupture in the earth's surface and crust along which a microplate boundary has been formed."

But in the preceding pages of his evidence there is nothing which supports this change from an ongoing process to one which has reached its conclusion. Even if one could accept Professor Finetti's use of gravity anomalies, the defence of which fills those ten pages, it proves no more than that a series of points of crustal thinning can be identified running intermittently eastwards in the area of the Malta and Medina Channels, onward to the Medina Ridge. But a thinning of the crust is not a breaking of the crust. Without a breaking of the crust we have no plate boundary. Moreover, as Professor Morelli demonstrated, even if my own amateur gravity anomaly lines were somewhat imperfect (and he never said they were totally imperfect), he could and did draw, with all his authority, quite a different line of gravity anomalies from that of Professor Finetti — a line which departed sharply from the west-east trend of the Rift Zone. This shows that there is nothing uniquely compelling about Professor Finetti's gravity anomaly line.

And now I pass, Mr. President, from the evidence adduced on behalf of Libya — which tries clearly to support a plate boundary in the Rift Zone — to the evidence adduced on behalf of Malta — which confirms that there is no plate boundary in the Rift Zone. On the character of the Pelagian Block, both Professor Mascle and Profesor Morelli confirm its geological continuity up to and into Sicily. Professor Mascle even presented a map, Figure 3, in the Maltese additional materials, prepared by a group of French and Soviet tectonic experts as recently as 1984 which showed no sign of a microplate boundary in the Rift Zone (pp. 233-234, *supra*). Professor Morelli confirmed in geophysical terms what Professor Mascle had said (pp. 243-244, *supra*).

Both Professor Mascle and Professor Morelli agreed that the Rift Zone was not a name in established scientific use and each denied that the Rift Zone was a homogeneous area that could be described as a plate boundary (p. 235, *supra*). Then each of them passed in review the data to which the Libyan experts had pointed in claimed support of the existence of a plate boundary in the Rift Zone. The Court will find Professor Mascle's summary at pages 235-236, *supra*. Professor Morelli dealt with the matter at greater length at pages 244 and following.

I do not think that the Court will thank me for reviewing in further detail evidence which it can readily study for itself. What stands out beyond any doubt is that Professor Mascle and Professor Morelli do not disagree with some of the basic data referred to on behalf of Libya. They disagree diametrically and rationally with the interpretation which the experts for Libya put upon the relevant data.

Moreover, the cross-examination which Professor Bowett conducted in no way weakened the force of their evidence in itself. There is, I venture to submit, no way in which the Court can disregard the conclusions of Professor Mascle and Professor Morelli which are founded upon a detailed statement of the considerations underlying them.

I turn to point 15.

15. The Significance of the Scientific Literature and of the Evidence

Point 15. Quite apart, however, from the absence of any sufficient degree of persuasiveness in the evidence tendered on behalf of Libya, there is the compelling impact of the literature. Libya's thesis stands condemned by the silence of the scientific world. It is indeed nothing short of astonishing, if the existence of a plate boundary in the Rift Zone is so obvious a conclusion to draw from the data, that virtually no one has drawn it. The Court will remember that it has been assured by Libya's expert witnesses that most of the necessary data has been known for some years — effectively for at least a decade. The seismic measurements, for example, upon which so much reliance has been placed as evidence of deep faulting in the Rift Zone, were made public in the basic article by Professor Finetti and Professor Morelli in 1973. So it is not a matter of scientists not knowing of the data. Nor is it a matter of scientists not being interested in the area or not writing about the subject. In fact, the literature is enormous. The 30 articles which I counted up in the bibiliography of Professor Finetti's 1984 article, during my cross-examination of Professor van Hinte, are but a fraction of the literature. The article by Professor van Hinte, Dr. Jongsma and Dr. Woodside itemized 65 papers in its list of references. Professor Finetti's major article of 1982 on the "Structure, Stratigraphy and Evolution of Central Mediterranean" concludes with a bibliography of some 317 titles. One would therefore expect that if the data compelled, or even no more than suggested, the existence of a plate boundary in the Rift Zone, scientists would have noted and discussed it. After all, we are not talking about some obscure aspect of the sea-bed. We are talking about something which, if it exists, is the most important feature of an area which, if we are to believe what we are told, is deemed to be of key importance in the Mediterranean sea-bed geology.

So, Mr. President, what have we in fact got? Professor Bowett appeared to be presenting to the Court the whole of the literary material in support of his case, such as it is, in his speech on 13 December. I say "appeared to be presenting" because nothing that he said suggested that he was making any deliberate effort of selection in the face of an overwhelming mass of material. He referred first to a paper published in 1973 by Dewey, Ryan and Bonin. (I shall, in the style of the scientific articles, henceforth refer to this article as "Dewey *et al.* 1973".) I must quote the relevant passage in my friend's speech so as to able to demonstrate to the Court with the requisite exactness that the degree of precise support which Professor Bowett claims to find in the article is just not there. Professor Bowett said (p. 169, *supra*):

> "in 1973, Dewey . . . identified a series of separate plates — or microplates — along the northern rim of the African Plate, including the one we have here. They said:
>
> > 'There probably never was [only] a single plate boundary between Africa and Europe; but, rather, there was at all times a network of compressional, extensional, and transform boundaries.' (LM, Ann. 12, I, p. 230.)
>
> Now these scientists, in describing the Rift Zone as a plate boundary, or as a division between two separate shelves, were not the first."

To support his quotation Professor Bowett referred to the Annexes to the Libyan Memorial (I). The relevant Annex, No. 12, consists of a single page extract from Dewey *et al.* 1973. Now it is quite true that the passage quoted by Professor Bowett appears on that page. But that is by no means the end of the matter.

That page contains — as the Court can see on reading it — no reference whatsoever in the printed text to a series of plates along the northern rim of the African Plate "including the one we have here". The only appearance on that page of any reference to the Rift Zone as a plate boundary is something much less direct and a good deal more sketchy. That reference is to be found in an illustration — Figure 1. It is a small figure entitled "Neotectonics of the African System". There, if one looks with a magnifying glass, one can just succeed in identifying an area tied by an arrow to the words "Messina Plate", and the southern boundary of that plate may roughly be associated with the Rift Zone. But the figure gives no explanation of the origin of this plate. Moreover, the lines used to mark the microplate boundaries are pecked lines, not solid ones; and such lines, as was accepted by Professor van Hinte and Professor Mascle, indicate that the lines are hypothetical or inferred, not verified by reference to established data.

When one looks back into the text to find some explanation of the figure, one finds the following statement on the same page:

> "there are at present a number of microplates between Africa and Europe, each in motion with respect to all adjacent plates (McKenzie, 1970). The present motion between these plates is complex (Fig. 1)."

And this is the only reference in the text to the figure. In particular, there is no elaboration of the basis on which the figure was constructed or of how the features marked on it were formed.

I have, Mr. President, gone through the whole of Dewey *et al.* 1973 and I can find no further mention of the Messina Plate as such anywhere in it — not even where one might have expected to find some discussion on it, namely, in the section on the African System.

In these circumstances I turn naturally to the source which is mentioned in the Dewey text for the authority that there are at present a number of microplates between Africa and Europe, each in motion with respect to adjacent plates. This source was, as I read, McKenzie 1970, an article on "Plate Tectonics of the Mediterranean Region" (published in *Nature*, Vol. 226, 18 April 1970). This article was not referred to in, nor annexed to the pleadings of Libya. Scrutiny of this article reveals no mention whatsoever of a microplate with a boundary in the Rift Zone. There is no mention of a Messina Plate, nor of a microplate by any name within the same area. The text merely states at page 240 that "it is clear from the seismicity that many small plates occur in the Mediterranean". Nonetheless the Figures 1 and 2 which are referred to in this sentence in McKenzie, bear no indications of the data regarding the Rift Zone. Indeed, instead, there is one figure, Figure 4, described as "Approximate positions of plate boundaries at present active, with arrows marking the directions of motion relative to the Eurasian plate", which runs quite counter to Libya's position. There is no boundary in the Rift Zone. The nearest plate boundary is one which runs from the north-eastern corner of Tunisia north-east through Sicily and on into northern Greece.

It was evident from the text of McKenzie 1970 that he had done much work on the subject. He stated (at pp. 240 and 241, and again at p. 243) that he would be publishing "a more complete account *containing about 100 fault plane* solutions on which this study is based".

This study was in due course published in 1972 (*Geophysical Journal of the Royal Astronomical Society* (1972) 30, 109-185). It was a substantial work of 75 pages, clearly demonstrating the range and depth of McKenzie's knowledge in the field. This paper entitled "Active Tectonics of the Mediterranean Region"

again contains no reference at all to any plate or microplate with a boundary in the Rift Zone. It is obvious that McKenzie did not contemplate the existence of a plate boundary in that area. At page 113, when discussing the relationship between the African and the Eurasian plates, he said:

> ". . . Africa is moving towards Eurasia from Gibraltar eastward. This movement is taken up on the plate boundary which crosses North Africa and continues through or south of Sicily. The boundary probably continues around the Adriatic through Italy and Yugoslavia rather than crossing the entrance to the Adriatic directly to Greece."

At page 135 he sets out, in Figure 13, a sketch of the possible motion of the Adriatic showing the plate boundary running through Sicily and into Italy through its toe. He added: "this region is probably much more complicated than is shown by the available observations, and has a relatively low level of seismic activity". But the scientific experts consulted by Malta have not been able to find in this publication any additional evidence which would have justified the conclusions in Dewey *et al.* 1973.

So what is the conclusion of this close scrutiny of the first of my learned friend, Professor Bowett's, references? Contrary to what he says, Dewey *et al.* never described the Rift Zone as a plate boundary, nor as a division between two shelves. Moreover, McKenzie 1970, the only article referred to in the body of Dewey's article, never did so either. Every reference mentioned in the legend to Dewey's figure has been checked. None refers to a Messina or other microplate in the area. When I asked Professor van Hinte about Dewey's article, the most that he could find to say for it was that "the usefulness of Dewey's paper is that it indicates that he needs a plate boundary there to complete the picture" (p. 223, *supra*). He needs a plate boundary there to complete the picture, not that he found a plate boundary there. That was speculation. Professor van Hinte concedes that Dewey did not say so, even say that he needed a plate boundary, in so many words. But then Professor van Hinte's recollection of the principal independent source for his own 1984 article was, to put it mildly, rather defective.

The analysis does not end there. Professor Bowett then went on to say:

> "Now these scientists [Dewey *et al.*], in describing the Rift Zone as a plate boundary, or as a division between two separate shelves, were not the first [I mean not the first to talk about it being a plate boundary]. In 1967, Burollet had depicted two separate shelves divided by a similar zone: the Pelagian shelf to the south, and the Ragusa shelf to the north."

The reference given for Burollet was Libyan Memorial, Annex 11, page 52 [I, p. 229] (p. 169, *supra*). But when we turn to this reference what do we find? Not Burollet 1967 but only one page, page 52 of an article by Morelli and others on "Bathymetry, Gravity and Magnetism in the Strait of Sicily and in the Ionian Sea". This page of Morelli *et al.* contains a sketch, Figure 3, described thus: "Tectonic Sketch of the Strait of Sicily (from Burollet, 1967)." Does it show a plate boundary in the Rift Zone? Not at all — and that is not surprising. When Burollet published his map in 1967 the theory of plate tectonics had not yet been publicly elaborated. In any case, the only relevant marking on the sketch that can be thought of as representing the Pantelleria, Linosa and Malta Troughs is some hatching denominated "Pantelleria Trough". There is, it is true, an indication of the "Pelagian Shelf" as well as of the "Ragusa Shelf" but nothing to suggest that there is a plate or other boundary between those shelves in the vicinity of the Rift Zone. Moreover, nothing stretches out to cross the

escarpment and constitute the Medina Ridge — a feature to which Libya has now come to attach such importance to as an element in the so-called plate boundary.

The most that counsel for Libya could get out of Professor Morelli on the subject of the map was the admission that Burollet appears to have distinguished between the Pelagian Block and the Pelagian Shelf (pp. 274-275, *supra*). But it is to be remarked, Mr. President, that Professor Bowett did not pause to encourage Professor Morelli to recall the fact that he, Professor Morelli, had expressed disagreement with Dewey on the very page following the one in which he printed Dewey's map.

On page 53 of Professor Morelli's 1975 article there is an express statement by Professor Morelli of disagreement with the appearance in the sketch of the peri-atlasic basins. Professor Morelli said:

> "Our Bathymetry map (Plate I) does not confirm this arc: on the contrary, from Pantelleria it would bend northward, towards the Tyrrhenian Abyssal Plain."

As to what Burollet actually had to say about the subject — well there were only four sentences (at p. 58), and none of them support the Libyan position. I invite you, Mr. President, to note, incidentally, how his references to the Pelagian Block indicate the view that the Block stretches well to the north of the area now claimed for it by Libya. I quote from Burollet:

> "Eastern Tunisia is, in fact, the visible part of the Pelagian Block, a large craton extending to the Kerkennah Islands, Lampedusa and Linosa. The Pelagian Block extends far to the north and bathymetric map shows that structural trends bend around its northern margin. The Pantelleria Furrow is considered to be a northern counterpart to the peri-atlasic negative Zone. The positive northwest-southeast areas between the Pelagian Block and the deep Sicilian basins is equivalent to the North-South axis of Tunisia."

At this point Professor Bowett moved on from the authorities cited by Libya to those cited by Malta. But I cannot invite the Court to make the same move so rapidly. It is a fact that in the whole of the enormous literature devoted to this area in the period 1973-1984 there are only two papers which refer to the so-called microplate boundary in the Rift Zone area. Mr. President, I don't pretend to be intimately acquainted with the whole of this enormous literature, but these two binders contain quite a substantial chunk of it, and I have looked at it myself. I don't pretend that I have understood every word that I have read, but what I have seen confirms the observations which I am putting to the Court. One is by Professor Finetti. It was completed in November 1983 and was published in 1984 at a date well after the beginning of his relationship with Libya. The Libyan Memorial in the present case listed him as a Scientific Adviser and was filed on 26 April 1983. Even so, notwithstanding his connection with Libya, his conclusion then (which, it may be added, was not linked by any relevant discussion to the exposition of the data which preceded it) was in more cautious terms than his conclusion of last week. The two sentences may be compared: 1982 (at p. 27): "It is possible to delineate the tectonic separation of a Sicilian micro-plate which includes the Adventure Plateau and the Ragusa-Malta Plateau, from the African megaplate." But no reference to a plate boundary, as such. 1985 (p. 219, *supra*): "I completely subscribe to the view, scientifically speaking, that this Rift Zone is a prolonged rupture in the earth's surface and crust along which a microplate boundary has been formed."

Professor Finetti has offered no explanation of why his view hardened so

firmly between 1982 and 1985 — or, indeed, between the earlier and the later part of his 1985 evidence; and I must respectfully invite the Court to treat Professor Finetti's latest expression of opinion with the caution which one would attach to any view developed in the context of litigation by an expert recruited to assist a party.

The same caution must be urged with more vigour in respect of the only other article cited by Libya in the course of its written pleadings: the paper by Professor van Hinte, Dr. Jongsma and Dr. Woodside. In its conclusion, this paper speaks of "what might be considered a microplate between the African and European Plates". I was at pains in my cross-examination of Professor van Hinte to seek clarification from him of the degree to which the paper contained objective statements of fact and the extent to which it involved subjective or personal conclusions. In concluding his last answer on the matter Professor van Hinte said (p. 229, *supra*):

> "It is a matter of understanding how this present situation with its volcanics, with its grabens, with its topography, could have come about. That is, what is of course, always a matter of interpretation."

Well now, Mr. President, no one quarrels with the right of a scientist to put forward an interpretation in a scientific paper. Where one draws the line is at the supposed objectivity or validity of such an interpretation when the presumably impartial paper in which it was expressed turns out to have been written in circumstances which are likely to compromise its independence.

Two developments have shattered the ostensible independence and objectivity of the paper by Professor van Hinte, Dr. Jongsma and Dr. Woodside.

The first is the manner in which the connection between the authors and the firm of American lawyers assisting Libya appears deliberately to have been concealed from the Court. The Court will recall that in the course of his cross-examination Professor van Hinte admitted that the article as originally submitted for publication contained an acknowledgment in these terms: "This study was made possible through a grant to the Free University by the international law firm Curtis, Mallet-Prévost, Colt and Mosle, who also arranged for permission to use some of the unpublished information." This acknowledgment, together with all the others, was omitted from the copy of the article as submitted to the Court. The omission was not accidental. Contrary to Professor van Hinte's surmise that the omission of page 16 on which this acknowledgment appeared was a typing error, it is a fact, as shown in Figure 2 of the Maltese additional materials which contained the relevant pages, that not only was there a page 16 which contained the acknowledgment and which had been left out, but also that the acknowledgments began under the heading "Acknowledgments" on page 15. It appeared therefore that somewhere along the line, not only had the bottom of page 15 been deleted, but also a row of dots had been typed in to help fill the resultant space on the page. Now this unmentioned omission from pages 15 and 16 of the original document meant that the requirements of Article 50, paragraph 2, of the Rules of Court, which states that "A copy of the whole document shall be deposited in the Registry" had not been honoured. But serious though that is, it is only incidental to the matter. The question remains — why should the acknowledgment have been omitted unless someone had taken the view that the presence of the acknowledgment would be detrimental to the Libyan position? And why should it be detrimental to the Libyan position unless it could give rise to the view that the expression of opinion in the article had been paid for by a firm of lawyers acting on behalf of Libya and was, therefore, not to be regarded as objectively valid.

Nor is that the end of the matter. When cross-examining Professor Mascle, counsel for Libya addressed the following to Professor Mascle as his first question. After asking Professor Mascle whether his scientific paper in the Annex to Malta's Counter-Memorial had been designed as a scientific reply to the scientific arguments of Libya, counsel continued: ". . . You still believe as a scientist in what you have written? Well you must forgive my next question: it is one which I would not normally ask and it is something of an impertinence, but I have to ask it because of the questioning yesterday" (that is referring to my questioning of Professor van Hinte). "Were you paid for that work?" Professor Mascle replied briefly and straightforwardly: "Certes" (certainly).

Now I make no complaint about the question, Mr. President. I am not even sure that everyone would regard it as impertinent. That kind of question has been put to me when I have acted as an expert witness — and, more embarrassing still, I have been asked how much I was paid. But the real point is this: in asking the question, and relating it as he expressly did to "the questioning yesterday", counsel for Libya was equating Professor Mascle's contribution with the article of Professor van Hinte and Dr. Jongsma. And that's just the point that is open to criticism: Professor Mascle's paper was an openly acknowledged expert contribution to Malta's case, just as the technical contributions by Professor van Hinte and Dr. Jongsma to the Libyan Memorial were openly acknowledged contributions to Libya's case. Payments for such contributions are perfectly in order. But it is quite a different thing to commission an article supportive of a party's position when the fact of such commissioning is deliberately concealed. The question put to Professor Mascle was an admission of the partisan character of the article because in effect, counsel equated that article with a document properly and openly prepared by an expert for the use of a party.

All this needs to be spelled out because the episode relates to a central aspect of the case. It is crucial to Libya's position that the Rift Zone be established as a plate boundary. Yet the only articles which support this view, apart from Dewey's figure, are those written by Professor Finetti in 1983/1984 and by Professor van Hinte, Dr. Jongsma and Dr. Woodside a little while later. If, as I submit, Professor Finetti's conclusions must be treated with reserve and those of Professor van Hinte and Dr. Jongsma must be put aside entirely, the Libyan case is without support from the scientific profession — with the possible exception of a paper by a Professor Roeder — referred to by Professor van Hinte — of which a copy has never been seen by this side or offered to the Court by the other.

Now, although this concludes what I have to say about the scientific writing adduced in support of the Libyan position, it does not conclude what needs to be said about the authorities that run counter to the Libyan position.

It is a fact — as I have already stated — that the number of papers dealing with the geology, geophysics and geomorphology of the Pelagian sea-bed is *enormous. It is an inescapable feature of those papers that though* many of them refer to the various specific features of the area which Libya calls the Rift Zone, none of them go so far as to assert the existence of a plate boundary in that area or even, indeed, to give the name "Rift Zone" to it. I do not think that the Court would wish me to embark on attempting to prove a negative conclusion by producing before it article after article which does not assert the existence of a plate boundary. It is enough that Libya has not come forward with articles that do so assert.

So I turn next to consider how counsel for Libya dealt with the authorities invoked by Malta. In doing this, Professor Bowett focused on what Professor Mascle had to say. Both in his December speech (p. 76, *supra*) and in his

cross-examination of Professor Mascle, my learned friend was preoccupied with Professor Mascle's interpretation of the data relating to the Pelagian Block. And my friend's preoccupation was to the point, for if Professor Mascle is right, his interpretation does two things. First, it explains what is happening in the Rift Zone in a manner which excludes the formation of a plate boundary. Second, it links what is happening in the Rift Zone to what is happening in the Jarrafa Trough and the Tripolitanian Furrow — and it does so in such a way that the classification of Rift Zone developments as amounting to a fundamental discontinuity must necessarily entail that the Jarrafa Trough and the Tripolitanian Furrow amount to discontinuities of equal weight to those nearer to Malta. This, evidently, does not suit Libya at all.

Further, what did Professor Mascle say? Both in the Technical Annex to Malta's Counter-Memorial and in his evidence, Professor Mascle explained what is happening in the Rift Zone as being part of the rotation of a block. The block is in the shape of a fan. The pole of rotation or hinge is somewhere to the north-west of Pantelleria. The movement is anticlockwise.

What did my learned friend seek to make of that evidence? Well, he said, if there is rotation of a block, then there must be a break — a plate boundary at the edge of the block — and that would correspond with the evidence of extension in the Rift Zone. Second, relying upon the legend under a figure in an article of which Professor Mascle was a joint author, an article by Messrs. Besse, Pozzi, Mascle and Feinberg, 1984, my friend contended that Professor Mascle's theory that the grabens were opening from west to east did not correspond with the facts. Thirdly, for good measure, my friend criticized Professor Mascle for using bathymetry as a guide to the existence of grabens.

Professor Mascle has refuted each of these criticisms clearly and convincingly. He has explained that rotation of a block or a fan does not necessarily give rise to a break of the underlying crust. The transverse movement of the fan in the present case has led to a stretching of the earth's surface, to the formation of grabens and in places to a thinning of the crust. The faults are distributed over the whole of the area between Malta and Libya. But the grabens constituted by the Pantelleria, Linosa and Malta Troughs lie to the north-west and are not between Malta and Libya. The markedly visible indicators upon which Libya relies in the area actually between Malta and Libya are not bunched up exclusively in the area of the Rift Zone. Similarly the other types of data such as volcanic and gravity anomalies are to be found all over the area between the two countries. Professor Mascle also denied that the movement of the block or the fan has to be perceived in the form of an edge rotating against the edge of another block or plate. Further, by virtue of the movement which has taken place in the southern regions, it can be seen that the motion is taking place relative to the area south of the Jerrafa Trough and the Tripolitanian Furrow — and not, as my friend would prefer it, to the south of the Rift Zone. Indeed, as one of the authorities cited by Malta shows, the evidence of that southern movement is to be found even in developments in mainland Libya.

As to the second criticism, relative to the direction in which the grabens open, it is a pity that neither my learned friend nor his advisers took the trouble actually to study the text of the article to which the criticism relates. If they had, they would have observed a discrepancy between the legend attached to the tectonic sketch, Figure 8, and the words used in the text on the same page as the figure. The relevant text said (at p. 386):

> "This result [that is the counter-clockwise movement of the whole block including the area south of the Rift Zone] is consistent with contempor-

> aneous extensional tectonics in the Pelagian Sea, as shown by the Alkaline Plio-Quaternary volcanism, steep normal faults and 'en relais' grabens widening from west to east";

and then follows the reference to Figure 8.

So which is right — the legend attached to the sketch — stating that the grabens open from east to west — or the words in the text that the grabens open from west to east? Professor Mascle has told the Court that it is the words in the text which matter. Indeed, the Court need do no more than look at the figure to see that Professor Mascle is right. The figure shows quite clearly the direction in which the grabens widen. The eastern ends are evidently wider than the western ends. I wasn't wrong after all. I had got hold of the correct end of the fan. The handle is to the north-west. The fan opens to the south-east. The Jarrafa Trough and the Tripolitanian Furrow are both part of the same extensional movement as produced the Malta and Medina Channels. None of this amounts to a plate boundary or even a fundamental discontinuity. What it does mean is that if any importance is attached to the Malta or Medina Channels, at least as much importance must be attached to the Jarrafa Trough and the Tripolitanian Furrow.

Finally, as to the criticism that Professor Mascle had used a bathymetric map in identifying the graben, Professor Mascle assured the Court that it was legitimate to use bathymetric charts to define a network of faults (p. 263, *supra*).

Nor will the Court forget easily the evidence of Professor Morelli. The Court has still to hear, of course, what comment the Libyan side has to make on this evidence. But one fact will be inescapable — that whatever witnesses Libya may have recourse to, nothing can shake the authority and conviction with which Professor Morelli's evidence was given nor the failure of the cross-examination to weaken in any way the compelling tone of what Professor Morelli had to say. I venture to draw particularly to the Court's notice the robust manner in which, during cross-examination, Professor Morelli maintained his position regarding the continuity of the Pelagian Block (pp. 273, 276 and 277, *supra*), emphasized the significance of the fundamental thickness of the crust, even where it had undergone some thinning (p. 276, *supra*), pointed out the importance of the Tripolitanian Furrow and Jarrafa Troughs (pp. 274 and 278-279, *supra*), and defended his own presentation of the line of gravity anomalies, so wrongly described by Libya as an "axial ridge line" (pp. 279-281, *supra*), in a direction markedly different from that proposed on the Libyan side.

16. Geomorphology

And so, Mr. President, I come to point 16. So far I have been dealing with the geological aspects of the case. But it is time to come now to geomorphology, though I can deal with it relatively briefly.

Quite simply, there are no geomorphological features in the Rift Zone area which either support the argument that a plate boundary is to be found there or justify the attempt to find a fundamental discontinuity there or, indeed, any discontinuity at all. This is not to deny that there are geomorphological features in the Rift Zone. But they are without significance in this case. If they have significance, then no more weight can be accorded to them than to the features to the south, namely, the Jarrafa Trough and the Tripolitanian Furrow.

On several occasions counsel and experts for Libya have invoked the sketch map prepared by Professor Vanney, on behalf of Malta, as supporting the thesis of the existence of a rift zone because of Professor Vanney's use of the expression "The Central Trough and Ridge System". But that was a morphological not

a geological description. However, more important to note is the point that this description was only one of five phrases which Professor Vanney used to describe the five sectors into which he divided the Pelagian Block. The Court will recall that only one sector was marked on the Libyan map as coinciding with the Rift Zone and the so-called axial ridge line. But Professor Vanney's map had five sectors in it, covering the whole of the Pelagian Block. The representatives of Libya seem not to have absorbed the elementary point that if Professor Vanney's description of the central area of the Pelagian Block is so good, then his description of the southern section as "The Southern Valleys" is equally good and no less powerful as a zone of division. As a matter of the common-sense use of language, and nothing in the expertise that we have heard in this Hall of Justice suggests that common sense should be excluded, "valleys" are more important than troughs.

The significance of these southern features is brought out in the following sentence from page 32 of Professor Vanney's report in Volume II of Malta's Counter-Memorial (**II**, p. 397):

> "The topography is more complex and more uneven than the IBCM chart makes one believe. The general appearance of the depression is that of a deep and vast basin (300 km by 150 km), cut by a network of sub-parallel valleys, all oriented from northwest to southeast like the African Coast."

And there Professor Vanney is speaking of the southern features, the Tripolitanian Furrow and the Jarrafa Trough.

17. The Escarpments and the Ionian Sea

This brings me to point 17. The references to geomorphology bring one to the place of the Escarpments and of the Ionian Sea in the present case.

Counsel for Libya had little to say about the Escarpments, beyond recalling their existence and physical details. He conceded that they do not represent the edge of the continental margin and that the area to the east of them does not cease to be continental shelf in legal terms (see p. 173, *supra*). Their significance, he said, "is morphological rather than geological". Nonetheless, he said, their "features are so major, so marked, that they must be taken as the eastern boundary to any shelf area over which Malta might conceivably have a claim" *(ibid.)*.

"Why so?", one is bound to ask. The proposition is put forward as if it were self-evident and self-supporting. But it is not. If Libya acknowledges — as it does — that the Escarpments are not the edge of the continental margin, and do not bring the continental shelf of the Pelagian Block to an end in legal terms, why then should the Court take notice of the Escarpments? Even if the Escarpments do represent, so to speak, a step downwards as one moves eastward from the Pelagian Block, it is still only a step down in the same continental shelf. There is no rational basis on which Libya can claim, as it seems to do, that it enjoys an exclusive right to the whole of the shelf area stretching eastwards from the Escarpments and northwards from its coasts. Indeed the practice of the very States with which Libya claims it will in due course have to settle its continental shelf limits in the north, namely Italy and Greece, clearly runs counter to any suggestion that a profound morphological change automatically limits continental shelf rights. Nor should we forget the line in the map of Dewey *et al.* to which Libya attaches so much importance. I mean not the line which is said to mark the limit of the Messina plate, which I have already discussed, but the line omitted by Professor van Hinte and Dr. Jongsma from their

reproduction of Dewey's figure — the line which cuts right across the area which Libya claims to the east of the Escarpments.

18. Conclusion

Mr. President, it is with some relief that I come to my last point, point 18. I think that I have gone on long enough. The nature of my speech is not such that it lends itself to condensation in a summary of points. If you should wish to find your way rapidly through what I have said, I hope that the transcript of the hearings will contain the various headings by which it is divided.

If I end with the word of apology which I withheld when I began, it is only because I may appear to have enjoyed dealing with a part of the case which some might regard as just "boring old geology". Well, this part of the case has proved to be something other than that — even though Malta would not have raised these matters if Libya had not. But it is the very fact that Libya has found it necessary to do so — and in the manner that it has — that gives the geology such interest. The Court does not have to go into scientific detail to appreciate the point that I am about to make. But why has Libya given science such prominence? It is not because of an academic searching after truth. It is simply because without geology Libya has no positive case at all. Without geology where does Libya's positive line run? Nowhere.

Without geology there is no line which commends itself as being favourable to Libya. Criticizing Malta's conclusion that equitable principles leading to an equitable result call for an equidistant line does not construct a positive line in Libya's favour. What is her case without geology? Nothing. And it is because geology is everything to Libya that it has constructed the novel idea of a Rift Zone and of a plate boundary therein.

But what an extraordinary proposition the Rift Zone has turned out to be. When the question was put in my opening speech as to what sort of "a fundamental discontinuity" it was that could be said to have divided the area between the Parties into two absolutely separate shelves, Libya suddenly faced the Court with the proposition that the Rift Zone is a plate boundary. Dealing with this newly found idea of a plate boundary for me, at any rate, has not been a bore. It has been like a detective story, following each of the Libyan references to its source, learning that none supported the propositions said to rest on them, and identifying the Libyan case as ultimately relying exclusively on the writings — subsequent to their involvement in the present proceedings — of the very experts whom Libya brought in to assist it.

So what has made this study of geology and geomorphology fascinating for me, Mr. President, has been not so much the science itself, intellectually exciting though that is in many ways, but the use to which the other side has sought to put science. And in asking you, Mr. President and Members of the Court, to reject the Libyan case on scientific grounds, I am in effect asking you to dismiss the whole basis of Libya's positive claim to any specific boundary, or to any plate boundary, in the hitherto unknown so-called "Rift Zone".

The Court rose at 12.54 p.m.

VINGT-NEUVIÈME AUDIENCE PUBLIQUE (12 II 85, 10 h)

Présents: [Voir audience du 26 XI 84, MM. Morozov et Schwebel absents.]

RÉPLIQUE DE M. WEIL

CONSEIL DU GOUVERNEMENT DE MALTE

M. WEIL: Monsieur le Président, Messieurs les juges, le premier tour des plaidoiries orales a permis de constater qu'en dépit de l'étendue des désaccords les Parties se rejoignent sur deux points fondamentaux.

Nous sommes d'accord, en premier lieu, des deux côtés de la barre, sur la finalité de la délimitation, à savoir la nécessité d'aboutir à un résultat équitable. Même si, comme je l'ai relevé dans la première intervention, l'article 83 de la convention sur le droit de la mer ne fournit aucune indication sur la voie à suivre pour atteindre cet objectif et ne saurait donc constituer à lui seul le *corpus juris* du droit applicable à la présente délimitation (**III**, p. 366), cette disposition n'en constitue pas moins une directive de première importance qui se situe dans le droit fil de l'évolution du droit antérieur, tant coutumier que conventionnel. Pas plus pour Malte que pour la Libye il n'est question, contrairement à ce qui a été avancé par la Partie adverse, de chercher à minimiser («downgrade», «sterilize», «neutralize») l'article 83 (ci-dessus p. 15 et 31).

Les Parties se rejoignent également sur le fondement juridique du titre au plateau continental. Cette constatation peut paraître surprenante si l'on songe aux controverses qui les ont opposées sur ce problème depuis le début de la procédure: Malte ne place-t-elle pas la base juridique du titre dans la distance, tandis que la Libye la situe dans le prolongement naturel au sens physique du terme? A y regarder de plus près, il apparaît pourtant que ce n'est pas au niveau du fondement juridique du titre que se place la véritable ligne de fracture entre les Parties.

Je m'explique. Pour les deux Parties le fondement juridique ultime du titre au plateau continental — la *Urnorm* du droit au plateau continental en quelque sorte — se trouve dans le principe que la terre domine la mer et que le droit de l'Etat côtier repose sur la souveraineté territoriale et s'exerce en vertu de cette souveraineté, dont il constitue une extension sous la mer. Enoncée à plusieurs reprises dans l'arrêt relatif au *Plateau continental de la mer du Nord* (*C.I.J. Recueil 1969*, p. 22, par. 19; p. 29, par. 39; p. 51, par. 96), cette conception a été confirmée par la Cour dans l'affaire du *Plateau continental de la mer Egée* en des termes qui méritent de retenir l'attention:

> «ce n'est qu'en raison de la souveraineté de l'Etat riverain sur la terre que des droits d'exploration et d'exploitation sur le plateau continental peuvent s'attacher à celui-ci *ipso jure* en vertu du droit international. Bref les droits sur le plateau continental sont, du point de vue juridique, à la fois une émanation de la souveraineté territoriale de l'Etat riverain et un accessoire automatique de celle-ci.» (*C.I.J. Recueil 1978*, p. 36, par. 86.)

La Cour a reproduit ce passage dans l'affaire *Tunisie/Libye* (*C.I.J. Recueil 1982*, p. 61, par. 73), et l'arrêt relatif au *Golfe du Maine* vient, à son tour, de mettre

l'accent sur «le lien existant entre la souveraineté de l'Etat et les droits souverains qui sont les siens sur les terres submergées adjacentes» (*C.I.J. Recueil 1984*, p. 296, par. 103).

Il apparaît ainsi que, de l'accord des deux Parties, les droits de l'Etat côtier sur le plateau continental ne sont pas des droits primaires et autonomes, mais des droits *dérivés*: ces droits n'ont pas de caractère volontariste, ils découlent de la souveraineté, c'est-à-dire de la qualité d'entité étatique, dont ils constituent une «émanation» et un «accessoire». Ce caractère, le plateau continental le partage d'ailleurs avec les autres juridictions maritimes. Lorsque toutes les délimitations maritimes qui restent à effectuer seront achevées et que l'on pourra dresser la carte des frontières maritimes du monde, on constatera que cette carte sera un reflet du découpage politique entre Etats, lui-même fruit de l'histoire. On rejoint ainsi, pour ce qui concerne plus particulièrement le plateau continental, la philosophie du «droit inhérent» et de l'*«ab initio»* énoncée par la Cour dès 1969 (*C.I.J. Recueil 1969*, p. 22, par. 19).

C'est cette philosophie qui explique que les côtes jouent un rôle central dans la génération des droits de plateau continental:

> «Le lien géographique entre la côte et les zones immergées qui se trouvent devant elle est le fondement du titre juridique de cet Etat ... c'est la côte du territoire de l'Etat qui est déterminante pour *créer le titre* sur les étendues sous-marines bordant ces côtes» (*C.I.J. Recueil 1982*, p. 61, par. 73; les italiques sont de moi),

voilà comment la Cour — et, après elle, les Parties — conçoit le principe fondamental selon lequel les droits de plateau continental dérivent de la souveraineté territoriale.

Ainsi se trouve mise en lumière l'importance, pour le fondement du titre au plateau continental, du concept d'adjacence — qu'on ne saurait évidemment confondre, ainsi que la Cour l'a relevé, avec celui de proximité (*C.I.J. Recueil 1969*, p. 30, par. 41). La Chambre a précisé, dans son arrêt relatif au *Golfe du Maine*, que ce n'est pas le fait physique de l'adjacence qui crée le titre juridique:

> «le «titre juridique» sur certaines étendues maritimes ou sous-marines est toujours et uniquement l'effet d'une opération juridique. Il en va de même pour la limite jusqu'à laquelle ce titre s'étend. C'est d'une règle de droit que cette limite découle, et non d'une quelconque vertu intrinsèque que posséderait le fait purement physique.» (*C.I.J. Recueil 1984*, p. 296, par. 103.)

La Cour avait déjà noté dans l'affaire du *Plateau continental de la mer Egée*, nous venons de le voir, que c'est «du point de vue juridique» que les droits de plateau continental sont une émanation et un accessoire de la souveraineté territoriale. En d'autres termes, le seul fait naturel de l'adjacence n'entraîne pas par lui-même des conséquences juridiques; ces conséquences, il ne les entraîne que parce qu'il existe une règle de droit qui établit un lien — un lien juridique — entre la souveraineté étatique et les droits de l'Etat sur certains espaces immergés adjacents à ces côtes. En cette matière, comme en toute autre, les faits ne créent pas directement le droit.

Sur cette conception du titre juridique au plateau continental les deux Parties, me semble-t-il, sont d'accord, et si elles ont opposé le prolongement naturel et la distance en tant que base juridique du titre, c'est par un simple raccourci de langage. Ni le prolongement naturel ni la distance ne constituent à proprement parler le fondement du titre juridique de l'Etat côtier; ils sont l'un et l'autre une

expression de ce fondement, un moyen de le mettre en œuvre concrètement. C'est à ce niveau-là que les Parties divergent: pour la Libye ce sont les données physiques du prolongement naturel qui permettent de mettre en œuvre le principe que la terre domine la mer; pour Malte c'est dans une certaine distance de la côte que ce principe se matérialise. La Cour me pardonnera de reprendre ce que je disais dans ma première intervention:

> «Le principe selon lequel la terre domine la mer, et selon lequel les droits et juridictions de l'Etat côtier sur les espaces maritimes adjacents à ses côtes sont l'extension et l'accessoire de la souveraineté territoriale, trouvait naguère son expression, en ce qui concerne le plateau continental, dans le concept de prolongement naturel. Il la trouve aujourd'hui dans le principe de distance, qui lui confère un contenu concret et aisément déterminable.
>
> Le principe de distance constitue dès lors la traduction moderne de l'idée fondamentale d'adjacence...» (**III**, p. 401.)

Monsieur le Président, la Cour a défini la délimitation du plateau continental comme une opération qui «consiste essentiellement à tracer une ligne de démarcation entre des zones relevant déjà de l'un ou de l'autre des Etats intéressés» (*C.I.J. Recueil 1969*, p. 22, par. 20). Au terme du premier tour des plaidoiries, les vues des Parties paraissent converger sur les deux bouts de la chaîne: à l'une des extrémités de l'opération de délimitation, c'est la qualité d'Etats côtiers de Malte et de la Libye qui fonde leur titre juridique sur les fonds marins adjacents à leurs côtes respectives; à l'autre extrémité de l'opération de délimitation, c'est à une solution équitable que doit conduire le tracé de la ligne de démarcation. Entre ces deux pôles, c'est le désaccord qui règne.

Dans quelles directions le pouvoir générateur de plateau continental que le droit international reconnaît aux côtes s'exerce-t-il? Voilà une première question à laquelle les Parties apportent des réponses radicalement divergentes: dans toutes les directions, estime Malte; dans une seule, soutient la Libye.

Comment le pouvoir générateur de plateau continental que le droit international reconnaît aux côtes s'exprime-t-il concrètement et jusqu'où s'étend-il? A cette seconde question également les Parties apportent des réponses diamétralement opposées. C'est ainsi que s'explique la controverse entre le prolongement naturel et la distance qui sous-tend notre affaire.

Comment, enfin, tracer une ligne de délimitation équitable entre les zones de plateau continental relevant respectivement de Malte et de la Libye? Sur cette troisième question comme sur les deux précédentes les vues des Parties sont totalement divergentes: pour la Libye c'est en collant aux données géologiques et géomorphologiques de la prétendue «Rift Zone» et de la zone des escarpements que la Cour pourra remplir sa mission; pour Malte c'est au moyen d'une ligne médiane reflétant les données de la géographie côtière que cet objectif pourra être atteint.

Je souhaiterais me placer tour à tour à chacun de ces trois niveaux.

I. Dans quelles directions s'exerce le pouvoir générateur de plateau continental des côtes de Malte et de la Libye? Projection radiale et projection frontale

Et d'abord, Monsieur le Président, le débat capital qui oppose les Parties sur les directions dans lesquelles s'exerce le pouvoir générateur de plateau continental des côtes de Malte et de la Libye.

Dans ma précédente intervention, j'avais rappelé cette vérité d'évidence que les côtes — aussi bien celles de Malte que celles de la Libye — créent des projections maritimes dans toutes les directions. C'est ce que nous avons cru pouvoir appeler du terme commode de projection radiale ou pluridirectionnelle (**III**, p. 415 et suiv.). J'avais en particulier attiré l'attention de la Cour sur le caractère inacceptable de la conception libyenne qui prétend, sous le couvert d'une projection purement frontale, c'est-à-dire perpendiculaire à la direction générale de la côte, enfermer la délimitation dans les étroites limites de la projection des rares segments des côtes des deux pays qui sont rigoureusement parallèles.

Au terme du premier tour de la procédure orale, il apparaît plus que jamais que la négation de la projection radiale constitue une pièce maîtresse de la thèse libyenne, tout comme son affirmation constitue une pièce maîtresse de la thèse maltaise.

Il faut remarquer tout de suite que ce problème est indépendant de la controverse qui oppose les Parties au sujet du prolongement naturel et de la distance. Il lui est logiquement antérieur. Peu importe en effet que le principe selon lequel le plateau continental constitue l'extension de la souveraineté territoriale sous la mer s'exprime sous la forme d'un prolongement naturel physique ou sous la forme d'une certaine distance à partir des côtes, ou sous quelque autre forme que ce soit; dans toutes les hypothèses il est primordial de déterminer si cette extension s'effectue dans toutes les directions ou dans une seule, qui serait ainsi privilégiée par rapport à d'autres.

Cela étant précisé, l'offensive menée par la Partie adverse contre la projection radiale pendant la procédure orale a revêtu deux formes différentes.

La projection multidirectionnelle a été critiquée d'abord comme permettant à Malte de prendre appui sur des côtes courtes pour réclamer de vastes superficies de plateau continental. A en croire la Partie adverse, Malte aurait utilisé la projection radiale au service d'une espèce d'impérialisme maritime au détriment de ses voisins, et plus particulièrement de la Libye.

Mais la négation de la projection radiale a également été utilisée, plus nettement encore que dans la procédure écrite, pour justifier une restriction abusive des côtes pertinentes et de l'aire de délimitation; ceci, bien sûr, dans le but avoué de bloquer l'extension du plateau continental de Malte, en particulier vers l'est.

J'examinerai successivement ces deux aspects du problème.

Le concept de projection radiale

Dans un premier volet de son argumentation, la Libye a tenté de discréditer l'idée même qu'une côte engendrerait des extensions maritimes dans toutes les directions. Le doyen Colliard a vu là une «thèse nouvelle», une «tentative audacieuse», un «mythe juridique». En s'appuyant sur la théorie de la projection radiale, Malte souhaiterait, à en croire nos adversaires, faire admettre par la Cour le «miracle de la multiplication de la longueur des côtes» (ci-dessus p. 124 et suiv.). Sous cette forme imagée, la critique de la projection radiale entend venir au secours de la thèse récurrente qui voudrait que, puisque Malte n'est qu'une petite île dotée de petites côtes, face à une Libye continentale dotée de longues côtes, Malte ne peut avoir droit qu'à une superficie insignifiante de plateau continental.

Tout ceci, Monsieur le Président, ne résiste pas à l'examen.

La projection multidirectionnelle n'a rien de révolutionnaire en droit international. Le mot est peut-être nouveau, mais l'idée remonte à la nuit des temps du droit de la mer. Par sa nature même, le critère de la portée du canon — la

fameuse *cannon shot rule* — était déjà de caractère radial, car le canon n'a jamais tiré, à ce que je sache, dans l'unique direction perpendiculaire à la côte. Mieux encore: la projection radiale est inhérente au caractère dérivé des juridictions maritimes. La terre domine la mer: elle la domine dans toutes les directions. Cela est vrai pour la mer territoriale, cela est vrai pour la zone économique exclusive, cela est vrai pour le plateau continental.

Dans certains cas, les projections de la côte pourront s'épanouir jusqu'à l'extrême limite permise par le droit international pour chaque type de juridiction maritime en cause — mer territoriale, zone économique exclusive ou plateau continental. Dans d'autres cas, ces projections ne pourront atteindre la plénitude du *entitlement* et devront subir une amputation: tel sera le cas lorsqu'elles entreront en concurrence avec les projections des côtes d'autres Etats et qu'il y aura donc lieu à délimitation.

Il n'y a dès lors rien de surprenant, rien de scandaleux à ce qu'une côte courte ou un territoire exigu créent des superficies de droits maritimes, et notamment de droits de plateau continental, relativement étendues. Il n'y a pas de rapport constant entre la superficie de droits maritimes engendrée par une côte et la longueur de cette côte, pas plus qu'il n'y a de rapport constant entre la superficie de droits maritimes engendrée par une côte et la superficie du *hinterland* terrestre qui se trouve derrière cette côte.

L'indépendance de ces trois données — superficie territoriale, longueur côtière, superficie des droits maritimes — peut facilement se démontrer à l'aide de quelques exemples numériques. Pour plus de simplicité, je prendrai l'hypothèse d'une mer territoriale de 12 milles de large, mais le phénomène est évidemment le même, quoique amplifié, pour toutes les juridictions maritimes.

Prenons d'abord deux îles circulaires, de diamètre différent.

L'île A, qui a un diamètre de 1 mille, aura:

— une superficie de 0,78 mille carré;
— une longueur côtière de 3,14 milles;
— une mer territoriale de 490 milles carrés.

L'île B, qui a un diamètre de 20 milles, aura:

— une superficie de 314 milles carrés;
— une longueur côtière de 63 milles;
— une mer territoriale de 1206 milles carrés.

On constate qu'avec un territoire terrestre 402 fois plus grand que l'île A, l'île B n'engendrera qu'une mer territoriale 2,5 fois plus étendue que l'île A.

Dans le cas de l'île A, une façade côtière de 3,14 milles crée une mer territoriale de 490 milles carrés. Dans le cas de l'île B, une façade côtière de 63 milles crée une mer territoriale de 1206 milles carrés. Avec une façade côtière 20 fois plus longue que l'île A, l'île B n'engendrera qu'une mer territoriale 2,5 fois plus étendue que l'île A.

Second exemple, tout aussi éloquent. Nous venons de voir qu'une petite île de 1 mille de diamètre, ayant une longueur côtière de 3,14 milles, engendre une mer territoriale de 490 milles carrés. Pour engendrer une mer territoriale de la même superficie, un territoire continental devrait disposer d'une façade côtière de 41 milles, autrement dit, d'une côte 13 fois plus longue que la petite île.

Troisième et dernier exemple. Une île circulaire disposant d'une longueur côtière de 1 mille (ce qui suppose qu'elle a un diamètre réduit à 0,32 mille) engendre une mer territoriale de 464 milles carrés. Un territoire continental disposant de la même longueur côtière de 1 mille n'engendrera qu'une mer territoriale de 12 milles carrés, soit près de 40 fois moins.

Ces quelques exemples suffisent à montrer que la superficie de juridiction maritime engendrée par une côte n'est proportionnelle ni à la surface du territoire terrestre ni à la longueur de la façade côtière. Selon la configuration côtière, la superficie de juridiction maritime sera plus ou moins grande par rapport à la surface du territoire terrestre, et plus ou moins grande par rapport à la longueur de la façade côtière.

Ces données sont indiscutables et, à moins d'erreur de calcul de ma part, je ne pense pas qu'elles soient discutées par la Partie adverse. Elles ne sont pas autre chose que l'expression de la projection radiale, en d'autres termes: l'expression de la philosophie des juridictions maritimes telle que l'a élaborée le droit international.

Je voudrais alors poser une question: l'absence — incontestable, je le répète — de tout lien direct et automatique entre la superficie de juridiction maritime, d'une part, la magnitude territoriale et la longueur côtière, d'autre part, sur le plan des *limites extérieures*, qui est celui où se situe l'exemple que j'ai donné, ne réduit-elle pas à néant la thèse adverse selon laquelle la proportion entre la magnitude territoriale et la longueur côtière, d'un côté, la superficie de juridiction maritime, de l'autre, constituerait un élément décisif dans la *délimitation*? Pourquoi une absence de proportion regardée comme tout à fait normale et conforme au droit lorsqu'il s'agit de déterminer les limites de la juridiction maritime d'un Etat vers le large deviendrait-elle soudain génératrice d'inéquité et contraire au droit lorsqu'il s'agit de délimitation? Il est bien sûr nécessaire en pareil cas d'amputer chacune des deux projections: en l'espèce la projection radiale de Malte ne peut pas prétendre davantage à son plein épanouissement que celle de la Libye. Mais il n'y a aucune raison pour que l'amputation de la projection radiale de Malte prenne une ampleur déraisonnable, et que cette projection soit en quelque sorte sacrifiée dans le seul but d'établir artificiellement une proportion entre les superficies de plateau continental attribuées à chacun des deux pays, d'une part, la longueur de leur façade côtière et leur surface terrestre, d'autre part.

Un auteur a remarqué qu'en créant une zone économique de 200 milles la France «s'était dotée de l'instrument juridique lui permettant de devenir la troisième puissance du monde par l'étendue des surfaces maritimes soumises à sa juridiction» (G. de Lacharrière, «La zone économique française de 200 milles», *Annuaire français de droit international*, 1976, p. 647). La France n'est pourtant pas le troisième pays du monde par sa superficie terrestre ou par la longueur de ses côtes. Quelle meilleure preuve que, du fait de la projection radiale, l'étendue des juridictions maritimes n'est en proportion directe ni avec la magnitude territoriale ni avec la longueur des côtes?

Lorsque les Etats-Unis ont proclamé en 1983 leur zone économique exclusive, ils ont publié une carte qui en montrait approximativement les contours. Cette carte est reproduite dans notre second dossier sous le numéro 27; elle illustre à merveille la projection radiale.

«Où trouve-t-on dans la pratique internationale un seul précédent d'un si étrange procédé?» a demandé le doyen Colliard. «Evidemment aucun», a-t-il répondu (ci-dessus p. 125).

Je viens d'en fournir sur le plan des limites extérieures. En voici à présent quelques-uns sur le plan de la délimitation.

Si la Cour veut bien se reporter à la carte 28 de notre second dossier, elle constatera que dans la délimitation de la zone économique entre la France (pour l'île de la Réunion) et Maurice — délimitation qui englobe bien entendu celle du plateau continental — les Parties sont convenues d'une ligne de délimitation dont la longueur atteste qu'à leurs yeux leurs courtes côtes respectives ne se

projettent pas seulement l'une vers l'autre dans une aire de délimitation restreinte, mais bien radialement dans toutes les directions. Le doyen Colliard serait fondé à reprendre ici son expression de «côte éventail» (ci-dessus p. 125).

Tout aussi frappante, et appelant les mêmes observations, est la délimitation entre la France (pour la Martinique) et Sainte-Lucie. La Cour trouvera cette délimitation sur la figure 29 de notre second dossier. La Cour notera au passage combien le segment de la côte de Sainte-Lucie qui fait face directement à la côte de la Martinique est court.

Autres illustrations de la projection radiale dans la pratique des Etats: les délimitations des zones économiques et de plateau continental entre le Mexique et Cuba et entre la France (pour les îles Kerguelen) et l'Australie (pour les îles McDonald et Heard). Ces délimitations sont reproduites aux figures 30 et 31 de notre second dossier. Si la Cour veut bien s'y reporter, elle constatera que les courtes côtes qui se font face ont manifestement rayonné dans toutes les directions.

J'arrêterai là les exemples tirés de la pratique conventionnelle, bien qu'il m'eût été facile de les multiplier. Il suffira à la Cour, pour en trouver d'autres, de feuilleter les deux volumes de l'annexe libyenne de la pratique des Etats.

Si la pratique conventionnelle n'était pas suffisante pour démentir la Partie adverse, la pratique judiciaire achèvera peut-être la démonstration. Comment expliquer la ligne de délimitation tracée par le tribunal arbitral entre la France et le Royaume-Uni dans la région atlantique si ce n'est par le fait que les îles Sorlingues et l'île d'Ouessant se sont projetées non pas seulement frontalement l'une vers l'autre mais radialement dans de multiples directions? La Cour pourra le constater si elle veut bien se reporter à la figure 25 de notre dossier rouge, celui du premier tour de nos plaidoiries. Comment négliger, d'autre part, que la frontière maritime tracée par la Chambre dans l'affaire du *Golfe du Maine* constitue un rejet implicite de la thèse de la projection frontale défendue par les Etats-Unis au profit de celle de la projection radiale?

Monsieur le Président, ces quelques exemples suffiront à faire justice de l'argument libyen selon lequel Malte aurait construit de toutes pièces la théorie de la projection radiale afin de gonfler artificiellement la longueur de ses côtes et d'obtenir grâce à ce stratagème des zones de plateau continental qui ne lui appartiendraient pas en droit.

(42) Le doyen Colliard a déclaré que la figure 11 de notre premier dossier «éclaire le sens de la tentative de Malte»:

> «les flèches sont divergentes quand il s'agit de Malte, convergentes quand il s'agit de la Libye; la divergence accroît la portée de la côte, la convergence la réduit» (ci-dessus p. 124-125).

Voilà ce qu'a déclaré le doyen Colliard. Je crains, Monsieur le Président, qu'il (42) y ait eu un malentendu à propos de cette figure 11: cette carte indique les points de base utilisés sur les côtes maltaises et libyennes pour construire la ligne médiane, et il est naturel que les douze flèches maltaises et les douze flèches libyennes se dirigent vers les douze points d'infléchissement de cette ligne. Nous avons produit cette figure en réaction à l'assertion des écrits libyens selon laquelle la Libye ignorait les points de base utilisés par Malte (**III**, (42) p. 409-410); cette figure 11 n'a rien — absolument rien — à voir avec la pro- (43) jection radiale. C'est la figure 12, la suivante, de ce même dossier rouge, que j'ai utilisée dans mon exposé pour illustrer la projection radiale et le concept de (43) la zone de chevauchement. Les arcs de cercle tracés sur cette figure 12 à partir des deux côtes montrent effectivement que la côte libyenne irradie dans toutes les directions tout autant que la côte maltaise. Contrairement à ce que le doyen

Colliard a cru comprendre, Malte ne réserve pas à ses seules côtes le bénéfice des prétendus «effets amplificateurs» de la projection radiale. Si les arcs de
(43) cercle de la figure 12 ont été tracés à partir de points choisis parmi ceux qui *contrôlent la ligne médiane, c'était simplement, je l'ai précisé ici* même, à titre d'«échantillonnage destiné à éclairer mon raisonnement» (**III**, p. 416). Mais il est bien évident que la projection radiale de chacune des côtes, la libyenne comme la maltaise, ne s'effectue pas seulement à partir des points qui contrôlent la ligne médiane, mais à partir de chacun des points de chacune des deux côtes — dans notre optique, jusqu'à «l'enveloppe de tous les arcs de cercle tracés sur le modèle de ceux qui figurent sur cette carte», comme je l'ai dit en toutes lettres *(ibid.)*.

Monsieur le Président, Messieurs les juges, la projection radiale, je le répète, n'a rien de révolutionnaire. Elle n'a pas été échafaudée par Malte pour les besoins de sa cause. Elle est inhérente au principe même que la terre domine la mer et que les droits de plateau continental sont dérivés de la souveraineté territoriale et créés par les côtes. Contrairement aux assertions de la Partie adverse, la projection radiale vaut en Méditerranée aussi bien que dans les «océans gigantesques». Elle a été appliquée par l'Italie et l'Espagne pour la délimitation de leur plateau continental entre les Baléares et la Sardaigne. Si la Cour veut bien jeter un coup d'œil sur la figure 32 de notre second dossier, elle constatera que la petite côte de Minorque a bénéficié, même face à la longue côte de la Sardaigne, d'une projection dans toutes les directions. La projection radiale a été appliquée également par l'Italie et la Tunisie au sujet des îles de Pantelleria,
(38) Linosa et Lampedusa, ainsi que le montre la figure 4 de notre premier dossier. Mieux encore: toutes les propositions libyennes de délimitation, depuis celle de 1973 jusqu'à celles formulées ici même il y a quelques semaines par les conseils de la Libye, incorporent elles-mêmes une certaine dose de projection radiale, ainsi que nous le verrons tout à l'heure. Prétendre que la projection radiale serait océanique et que la Méditerranée y serait en quelque sorte allergique n'est pas conforme à l'exactitude juridique. Que dans une mer resserrée comme la Méditerranée les projections de chacune des deux côtes se heurtent plus fréquemment et plus rapidement que dans un vaste océan aux projections d'autres côtes, rendant ainsi nécessaires des délimitations, est un fait certain. Mais le phénomène du heurt des projections se retrouve dans les océans, et l'on ne voit pas en vertu de quelle considération prééminente seules les projections méditerranéennes seraient unidirectionnelles. Les délimitations déjà convenues en Méditerranée prouvent le contraire, nous venons de le voir.

La tentative libyenne de réduire les projections maltaises à l'insignifiance en jetant le doute sur ce qui constitue pourtant le droit commun des juridictions maritimes — à savoir que les côtes engendrent des droits maritimes dans toutes les directions — se solde ainsi par un échec total.

Côtes pertinentes et aire de délimitation

Là ne s'arrête pourtant pas, comme je l'ai déjà expliqué, la méconnaissance par la Libye de la projection multidirectionnelle.

Les conseils de la Libye ont en effet repris la conception restrictive des côtes pertinentes que j'avais longuement critiquée (**III**, p. 417 et suiv.), et ils y ont ajouté une description détaillée de ce que la Libye considère comme l'aire de
(50) délimitation; ils ont illustré cette dernière sur la carte 68 de l'album libyen, dont les lignes sont reproduites sur la carte posée sur le chevalet derrière moi,
(46) ainsi que sur la figure 42 de notre premier dossier. La conception libyenne des côtes et de l'aire pertinentes repose sur le rejet de la projection radiale au profit

d'une projection frontale perpendiculaire à la direction de la côte. Les efforts déployés en ce sens par nos adversaires ont pour objectif de convaincre la Cour d'arrêter la délimitation à la hauteur du 16e degré de longitude, c'est-à-dire à peu près à la hauteur de Ras Zarrouq. Cet objectif présente apparemment une importance considérable pour la Partie adverse, puisque, pour l'atteindre, elle utilise tout un éventail de tactiques: le refus aux côtes maltaises de toute projection vers l'est, bien entendu, mais aussi les caractéristiques physiques de l'escarpement (ci-dessus p. 157, 173 et 178-179) et la suggestion de mettre en réserve des zones pour la délimitation entre la Libye et l'Italie (ci-dessus p. 9, 157, 176 et 182). La Partie adverse a manifestement estimé qu'un effort majeur méritait d'être fait pour stopper à tout prix tout droit de plateau continental de Malte en direction de l'est.

Pour tenter de justifier la conception restrictive des côtes pertinentes, mon ami le professeur Bowett a repris l'argument selon lequel seuls sont pertinents les segments de la côte maltaise et les segments de la côtes libyenne qui sont rigoureusement parallèles et se font directement face: «oppositeness must imply some degree of direct facing: that the two coasts are *en face*» (ci-dessus p. 157), a-t-il déclaré. A quoi il a ajouté une note mathématique, en précisant que:

> «Thus there must come a point at which a line joining the two coasts strikes the coasts at such a tangent that realistically one would have to say that they were no longer opposite in any true sense.» *(Ibid.)*

Du côté libyen, a donc confirmé le professeur Bowett, la côte pertinente ne saurait en conséquence aller au-delà de Ras Zarrouq, puisque Ras Zarrouq est déjà situé à 65 kilomètres à l'est du méridien de Malte et qu'une ligne joignant Malte à Ras Zarrouq ne formerait pas un angle de 90° — il n'a pas précisé par rapport à quoi, mais on peut supposer que c'est par rapport à n'importe quel parallèle — mais un angle de 67°: «a line joins the two — Ras Zarrouq and Malta — tangentially at an angle of 67° (rather than the 90° of directly opposite coasts)» *(ibid.)*.

Du côté maltais, le professeur Bowett a déclaré comme pertinents, comme précédemment, les seuls segments côtiers parallèles à la Libye, segments très courts en raison du prétendu «tilt» de Malte qui fait, a-t-il répété, que la plus grande partie des côtes maltaises fait face à l'ouest plutôt qu'au sud (ci-dessus p. 158).

Le professeur Bowett a confirmé en conséquence que seul est pertinent, sur les lignes de base droites de Malte, le petit segment de Filfla à Delimara Point, mais il a ajouté que la Libye veut bien se montrer «charitable» — c'est le mot qu'il a employé — et élargir quelque peu les côtes maltaises reconnues comme pertinentes *(ibid.)*.

Monsieur le Président, je ne reprendrai pas ici la critique que j'ai faite dans ma première intervention de la synonymie arbitrairement établie par la Partie adverse entre les concepts de côtes se faisant face ou de côtes parallèles, d'une part, et la notion de côtes pertinentes, c'est-à-dire de côtes qui bordent effectivement le plateau continental, d'autre part (**III**, p. 417 et suiv.). Les développements du professeur Bowett ne font que mettre davantage en lumière les faiblesses de cette thèse. Ni la question de savoir si deux côtes se font face, ni celle de savoir si deux côtes sont pertinentes pour une délimitation n'ont le moindre rapport avec leur relation nord-sud le long d'un méridien. Le quadrillage par méridiens et parallèles n'est pas une donnée de la nature; il ne représente rien d'autre qu'une convention cartographique. La côte maltaise autour de Delimara Point fait autant face à la côte libyenne autour de Benghazi

que la ligne de base droite maltaise de Delimara Point à Filfla fait face à la côte libyenne de Ras Zarrouq: il y a un face à face ici autant qu'un face à face là. Les côtes n'ont pas de visage, et leur face à face peut s'effectuer selon tous les azimuths sans suivre forcément l'azimuth nord-sud d'un méridien. Le fait que Ras Zarrouq est situé à 65 kilomètres à l'est du méridien de Malte — à l'est de la longitude de Malte — et le fait qu'une ligne joignant Malte à Ras Zarrouq est orientée à 67° par rapport au méridien sont l'un et l'autre totalement dépourvus d'intérêt et de pertinence pour notre débat.

La vérité est tout autre, et elle est très simple. Les côtes pertinentes sont celles dont les projections se chevauchent et se rencontrent, appelant par là même une délimitation, et cette caractéristique n'est réservée ni aux brefs segments de la côte maltaise entre Filfla et Delimara Point, ni au segment de la côte libyenne entre Ras Ajdir et Ras Zarrouq.

La tentative libyenne de n'envisager la projection maritime que dans le seul sens de la perpendiculaire à la direction générale des deux segments rigoureusement parallèles des côtes maltaises et libyennes a trouvé également son expression dans les développements que la Partie adverse a consacrés à l'aire de délimitation.

Le professeur Jaenicke, mon distingué collègue et ami, a déclaré, la Cour s'en souviendra, qu'une ligne droite reliant Delimara Point à Ras Zarrouq ne pourrait manifestement pas constituer la limite orientale de l'aire de délimitation parce que — a-t-il dit — on laisserait ainsi en dehors de cette aire des espaces sous-marins dans lesquels les prolongements naturels des façades côtières des deux pays se chevaucheraient (ci-dessus p. 191). Le professeur Jaenicke a ainsi pris, pour définir l'aire de délimitation, le contre-pied de ce qui avait été avancé par le professeur Bowett pour la définition du segment pertinent de la côte libyenne, puisque la ligne des 67° joignant Delimara Point à Ras Zarrouq avait paru acceptable au professeur Bowett lorsqu'il s'était agi de fixer l'extrémité orientale de la côte libyenne pertinente. Ayant ainsi rejeté comme limite de l'aire de délimitation la ligne de Delimara Point à Ras Zarrouq, le professeur Jaenicke a proposé la définition de l'aire de délimitation qui se trouve illustrée
(50) sur la carte 68 de l'album libyen. A cet effet, le conseil libyen a tracé une ligne qui va droit vers l'est à partir de Delimara Point jusqu'à sa rencontre avec l'escarpement, et se dirige ensuite vers le sud-ouest avant de repartir vers le sud-est en direction de Ras Zarrouq.

Monsieur le Président, qu'il s'agisse de l'identification des côtes pertinentes ou de celle de l'aire de délimitation, nous nageons, que la partie adverse me permette de le dire, dans l'artifice et dans l'arbitraire.

Si la partie adverse avait voulu être cohérente avec elle-même dans sa négation de la projection radiale et dans sa thèse de la projection frontale, elle aurait dû limiter le segment pertinent de la côte libyenne à l'étroit segment de cette côte qui est enserré entre les deux méridiens qui marquent les deux extrémités du segment de la côte maltaise reconnu comme pertinent par la Libye; ce qui aurait conduit à une côte libyenne pertinente longue de 14, 34 ou 40 kilomètres, selon que la Libye se serait montrée plus ou moins «charitable». Ces deux méridiens auraient alors défini l'aire de délimitation d'une façon conforme à la logique libyenne; on aurait été en présence tant du côté maltais que du côté libyen de côtes rigoureusement parallèles, situées *«en face»* l'une de l'autre et engendrant des projections frontales l'une en direction de l'autre; et la ligne de délimitation du plateau continental entre Malte et la Libye, que la Cour aurait été appelée à tracer, se serait bornée à une ligne très courte allant de l'un de ces méridiens à l'autre. Voilà, Monsieur le Président, ce qui aurait été dans la logique du système libyen.

Les exemples tirés de la pratique, tant conventionnelle que judiciaire, auxquels je me suis précédemment référé montrent que pareil système n'a jamais été retenu par les gouvernements intéressés ou par les tribunaux. Jamais n'ont été regardés comme pertinents, pour une délimitation, les seuls segments de côte enserrés dans le rigoureux face à face d'un parallélisme imaginaire à l'intérieur de deux méridiens.

Mais la Libye elle-même n'a d'ailleurs pas suivi sa propre logique, et ses propositions concrètes démentent les conceptions théoriques qu'elle voudrait imposer à la Cour. On comprend aisément pourquoi. En traduisant dans ses revendications concrètes le système qu'elle professe, elle aurait apporté ce que les mathématiciens appellent la preuve par l'absurde que sa conception des projections unidirectionnelles ne résiste pas à l'examen. C'est pourquoi, tout en poursuivant sa tentative de jeter le discrédit sur la projection radiale, la Partie adverse s'est vue contrainte d'injecter elle-même dans sa revendication une certaine dose de radialité, en espérant sans doute que cela ne se verrait pas trop.

Déjà la proposition libyenne de 1973, dont le professeur Bowett a vanté la *qualité* (ci-dessus p. 178), débordait à l'ouest comme à l'est les longitudes extrêmes de Malte. La Cour le constatera aisément en se reportant à la figure 1 de notre premier dossier.

Par ailleurs, de l'aveu même de la Libye, Ras Zarrouq est dans une situation radiale «tangentielle» vis-à-vis de Malte, puisque Ras Zarrouq est à 65 kilomètres à l'est du méridien le plus oriental de Malte.

Et Ras Ajdir, Monsieur le Président, dont tous les schémas libyens font le terminus occidental de la côte libyenne pertinente et de l'aire de délimitation, n'est-il pas situé à l'ouest du dernier point de la côte libyenne qui fait, selon la propre optique de la Libye, directement face à Malte; n'est-ce pas de la projection radiale?

Bien mieux: n'est-il pas éclatant que la ligne droite tracée par le professeur Jaenicke à partir de Delimara Point en direction de l'est jusqu'à l'escarpement constitue une admission indirecte de la projection radiale? Cette ligne droite est décidément, comme l'a relevé il y a quelques jours mon ami Ian Brownlie, une «trouvaille juridique de premier ordre»!

Et comment ne pas rester confondu devant la contradiction logique qui mine la ligne proposée à la Cour par la Partie adverse le dernier jour des plaidoiries de décembre dernier? Dans le premier secteur, a expliqué le professeur Bowett, la ligne serait parallèle à la direction de la côte maltaise, ainsi qu'il apparaît sur (50) la carte 68 de l'album libyen. Et alors, a-t-il ajouté, «when you reach the point of longitude at which there is no Maltese coast any longer opposite to the coast of Libya», la ligne pourrait être prolongée vers l'est ainsi qu'il apparaît également (50) sur la carte 68 (ci-dessus p. 181). Monsieur le Président, pourquoi ce prolongement vers l'est, au-delà de la longitude la plus orientale de Malte, si ce n'est parce que la côte de Malte irradie vers le sud-est et vers l'est et pas seulement vers le sud?

Nous ne pourrions certes, du côté maltais, que nous féliciter de cet hommage involontairement rendu à la vérité juridique si l'on n'était conduit chaque fois à poser la question: pourquoi, pour quelle raison, en vertu de quel critère, s'arrêter à tel endroit et pas plus loin? Pourquoi le méridien de 16° formerait-il une barrière au-delà de laquelle s'étendrait une zone interdite dans laquelle les projections maltaises n'auraient plus droit de cité?

Mais il y a mieux encore! Le professeur Bowett a expressément admis que, puisque Malte est une île, son plateau continental «irradie» à 360° autour de ses côtes: «as an island Malta benefits from having the shelf projected all around its coasts: its shelf radiates through 360°» (ci-dessus p. 161). La Cour a

bien entendu: «radiates». Ce n'est pas nous qui le disons, c'est le conseil de la Libye.

Devant tant d'incohérence on se défend mal de l'impression que la projection pluridirectionnelle n'est en définitive pas récusée par la Libye sur ses mérites propres, mais parce qu'elle conduirait à admettre qu'au cas où les projections de Malte et de la Libye se chevaucheraient il serait nécessaire de leur accorder une égale valeur. C'est l'égalité entre les projections concurrentes des deux pays qui gêne la Libye, et dont elle essaie de se débarrasser au prix de ces constructions complexes et arbitraires, beaucoup plus que l'idée — qu'elle semble admettre — qu'il n'existe pas de direction prédéterminée ou privilégiée dans la création de droits sous-marins. La Libye accepterait une projection radiale autour de Malte, y compris en direction de l'est, à condition que cette projection soit bloquée suffisamment près de Malte pour ne pas se mesurer avec les projections libyennes.

Mon ami le professeur Lucchini n'a-t-il pas suggéré que les intérêts de sécurité de Malte s'accommoderaient «d'une zone circulaire, d'une circonférence d'une certaine largeur» autour de l'archipel, plutôt que d'une ligne d'équidistance (ci-dessus p. 147)? Une projection radiale qui serait stoppée suffisamment près des côtes de Malte pour aboutir à une enclave rapprochée: du coup les objections libyennes à la projection irradiante et pluridirectionnelle s'évanouiraient comme par enchantement!

Monsieur le Président, la projection muldirectionnelle des côtes sous la mer n'est autre que la résultante de la souveraineté étatique et des données de la géographie. L'égalité des Etats et la géographie côtière sont les éléments indissociables de la projection radiale, elle-même donnée inhérente à la nature dérivée des droits de plateau continental.

J'en ai ainsi terminé, Monsieur le Président, Messieurs les juges, de cette controverse autour de la projection radiale. Ainsi que je l'ai indiqué, cette question devait être réglée avant d'aborder le débat central qui oppose les Parties au sujet du prolongement naturel et de la distance. Que le caractère dérivé et accessoire des droits de plateau continental s'exprime et se concrétise par les données physiques du sol et du sous-sol marins ou par les données numériques de la distance, la question de la direction dans laquelle s'exerce le pouvoir générateur des côtes devait être résolu préalablement.

J'en arrive ainsi à la seconde des questions que j'ai évoquées en commençant: une fois déterminées les directions dans lesquelles s'exerce le pouvoir générateur de plateau continental des côtes de Malte et de la Libye, quel est le critère par lequel ce pouvoir générateur va pouvoir s'exprimer concrètement et qui déterminera son point d'arrêt?

II. Comment le pouvoir générateur de plateau continental des côtes de Malte et de la Libye s'exprime-t-il concrètement et jusqu'où s'étend-il? Prolongement naturel et distance

A cette question, Monsieur le Président, qui fera l'objet de la seconde partie de mon exposé, le concept d'adjacence ne permet pas, à lui seul, de fournir la solution, car l'adjacence est une notion relative et son contenu est indéterminé; la Cour en avait fait l'observation dès 1969 (*C.I.J. Recueil 1969*, p. 30, par. 41). Aussi faut-il aller plus loin. C'est à cette préoccupation que répondent la thèse libyenne du prolongement naturel et la thèse maltaise de la distance. De l'avis de la Libye, c'est par le prolongement naturel au sens physique du terme que le fondement du titre juridique du titre au plateau continental s'exprime, et c'est à

la fin du prolongement naturel que le droit au plateau continental s'arrête. Selon Malte, c'est par un critère spatial caractérisé par une certaine distance par rapport aux côtes que le titre au plateau continental s'exprime, et c'est à une certaine distance par rapport aux côtes que le droit au plateau continental s'arrête.

Comme je l'ai indiqué, les Parties se sont référées au prolongement naturel et au principe de distance en les présentant comme le fondement du titre juridique au plateau continental, mais c'était là une commodité de langage à laquelle nous avons eu recours les uns comme les autres. Sir Francis Vallat, par exemple, a déclaré:

> «title to continental shelf areas is founded on the extension of the territory of a State into and under the sea; in other words, on natural prolongation» (ci-dessus p. 30).

Nous avons nous-mêmes parlé du principe de distance comme fondement juridique du titre au plateau continental. Sir Francis et M. Briggs ont accompagné ce terme d'un «so-called» quelque peu ironique (ci-dessus p. 31 et 43), qui, à travers nous, qui étions directement visés, atteignait en réalité la Cour à laquelle nous avions emprunté l'expression (*C.I.J. Recueil 1982*, p. 49, par. 48).

Il est clair que ces deux thèses ne sont opposées que dans la mesure où le terme «prolongement naturel» est pris dans son sens physique, c'est-à-dire essentiellement géologique et géomorphologique. C'est en ce sens que l'emploie la Libye; c'est en ce sens que nous y faisons objection. Dans la mesure toutefois où le prolongement naturel serait conçu sous une forme purement juridique et désignerait l'étendue de plateau continental déterminée par le critère approprié, nous ne verrions, bien sûr, aucune objection à ce que l'on continue, comme par le passé, à dire que le plateau continental constitue le prolongement naturel du territoire étatique. Cette précision terminologique n'était peut-être pas inutile pour clarifier le débat.

L'audience, suspendue à 11 h 15, est reprise à 11 h 30

Monsieur le Président, Messieurs les juges, dans ma précédente intervention j'ai montré que, dans l'état actuel du droit international, les données physiques du prolongement naturel sont incapables aussi bien d'identifier la limite extérieure du plateau continental (à l'exception du cas de certains Etats à marge continentale large) que de commander le tracé d'une ligne de délimitation. Je ne puis mieux faire que de reprendre mot pour mot ce qu'a écrit à ce sujet un membre de la Cour:

> «La géométrie et la géologie, n'étant pas retenues comme critères de l'existence et de la reconnaissance du droit de prospecter et d'exploiter les zones sous-marines adjacentes, ne peuvent constituer en elles-mêmes des motifs valables ou des critères applicables aux fins de la délimitation du plateau continental. Il y aurait contradiction à reconnaître des droits sur le plateau continental au Chili, au Pérou ou à la Norvège, comme on l'a fait en 1958, malgré l'existence de dépressions profondes et indépendamment de la nature géologique des couches rocheuses, et à refuser en même temps des droits identiques à un Etat A ou B en fixant une limite à ses droits sur le plateau continental sans autre raison que la présence d'une faille ou d'une dépression, ou que la forme des contours des fonds marins, ou qu'une modification quelconque de la composition géologique du sous-sol.» (*C.I.J. Recueil 1982*, opinion individuelle de M. Jiménez de Aréchaga, p. 113, par. 49.)

C'est dans cette perspective que j'ai évoqué, dans ma première plaidoirie, le lent et irrésistible déclin du critère du prolongement naturel physique, depuis les premiers travaux de la Commission du droit international dans les années cinquante jusqu'à ceux de la troisième conférence et à la convention de 1982 qui en est issue.

J'ai illustré cette évolution en me référant à la jurisprudence, à la doctrine et à la pratique des Etats. J'ai tenté de montrer que le souci de ne pas pénaliser les Etats dotés d'un prolongement naturel étroit, ou dont le prolongement naturel est coupé par une fosse ou une dépression proche de la côte, a joué un rôle important dans la substitution du critère égalisant et uniformisant de la distance au critère physique qui soumettait les droits de plateau continental aux hasards de la géologie et de la géomorphologie des fonds marins. J'ai insisté sur le rejet par le droit international de tout concept s'apparentant à la notion de frontière naturelle sous-marine. J'ai relevé que le principe du non-empiétement, expression du principe de l'égalité des Etats, a contribué puissamment au recul du critère physique au profit du critère spatial, auquel il s'apparente par sa nature même. J'ai observé que, si le critère physique est impuissant à rendre compte de la géographie côtière, alors pourtant que ce sont les côtes qui engendrent des droits de plateau continental, le critère spatial est intimement lié à la géographie côtière, à laquelle il est en quelque sorte consubstantiel et qu'il reflète fidèlement. J'ai cru pouvoir constater, en un mot, que le principe selon lequel les droits de l'Etat côtier sur les espaces maritimes adjacents à ses côtes sont l'extension et l'accessoire de sa souveraineté trouve aujourd'hui son expression *dans le critère de distance*.

Il n'est pas question de reprendre ici ces développements, auxquels je me permets respectueusement de renvoyer la Cour (**III**, p. 385-400 et p. 401 et suiv.).

Monsieur le Président, je n'aurais pas envisagé d'évoquer ces problèmes du prolongement naturel et de la distance dans ce second tour des plaidoiries orales si la Partie adverse n'avait modifié sa position à l'égard de la distance à un double point de vue.

En premier lieu, la distinction entre titre juridique et délimitation, à laquelle les écritures libyennes avaient accordé une place capitale et sur laquelle je m'étais expliqué dans ma première intervention (**III**, p. 377-381), ne paraît plus guère avoir retenu l'attention des conseils de la Libye. Le professeur Quéneudec a certes encore parlé à ce propos d'une «distinction tranchée» (ci-dessus p. 87), mais sir Francis a déclaré que «Libya . . . does agree with Malta that basis of title has some relevance to delimitation» (ci-dessus p. 30), et le professeur Jaenicke a affirmé que: «Both Parties are in agreement that the entitlement and delimitation are interconnected» (ci-dessus p. 49). Nous ne pouvons que nous féliciter de la disparition de cet important point de désaccord.

En conséquence, c'est sur la portée du principe de distance, tel qu'il a trouvé expression dans l'article 76 de la convention sur le droit de la mer, que la Partie adverse a fait porter son effort principal pendant les plaidoiries orales, mais là encore la position libyenne a subi une certaine évolution. Les conseils de la Libye ne se sont pas contentés, en effet, de proposer à nouveau une interprétation de l'article 76 accordant le moins de place possible au critère de distance, comme ils l'avaient fait dans leurs écritures: sur cet aspect j'ai déjà eu l'occasion de m'expliquer (**III**, p. 379-380 et 411-414). Ils sont allés jusqu'à mettre en doute le caractère de droit positif de ce critère.

Je me bornerai en conséquence à réfuter les arguments nouveaux qui ont été avancés par les conseils de la Partie adverse à ce sujet au cours du premier tour de la procédure orale.

Valeur coutumière et portée de l'article 76, paragraphe 1

La Cour se souviendra peut-être que, dans ma précédente plaidoirie, j'avais relevé un certain flottement dans la position libyenne au sujet du caractère coutumier de la règle incorporée dans l'article 76, paragraphe 1, et, plus particulièrement, du concept de distance mentionné par cette disposition. «Peut-être, avais-je ajouté, la Partie adverse nous éclairera-t-elle là-dessus au cours de la procédure orale» (**III**, p. 363-364). Les conseils libyens nous ont effectivement apporté les précisions que nous attendions, et c'est là-dessus que je voudrais donc faire porter l'essentiel de mes observations.

Sur un plan général, les conseils adverses ont rappelé que la convention des Nations Unies sur le droit de la mer n'est pas en vigueur, qu'elle ne peut pas être regardée comme une convention de codification et que son adoption par consensus ne suffit pas à en faire un instrument normatif dont les clauses s'imposeraient à tous les Etats, y compris à ceux qui ne l'ont pas signée ou qui l'ont signée mais non ratifiée. Sir Francis Vallat et le professeur Briggs ont fait à ce sujet des déclarations (ci-dessus p. 14-15 et 36) auxquelles nous n'avons rien à redire. Si la Cour me le permet, je me placerai un instant sur un plan personnel. J'ai eu l'occasion d'exprimer quelque réserve vis-à-vis de certaines tendances récentes à admettre la naissance d'une espèce de coutume quasi instantanée du simple fait de l'adoption d'une convention par un consensus plus ou moins majoritaire et à faire produire, au nom du droit international général, à une convention non entrée en vigueur des effets similaires à ceux d'une convention entrée en vigueur (P. Weil, «Vers une normativité relative en droit international public?» *Revue générale de droit international public*, 1982, p. 5 et suiv., notamment p. 136 et suiv. et p. 42 et suiv.; «Towards Relative Normativity in International Law?» *American Journal of International Law*, vol. 77, 1983, p. 435 et suiv., et p. 439 et suiv.). Je ne puis donc, pour ma part, que me féliciter de l'accord des Parties sur ce problème en ce qui concerne la convention sur le droit de la mer.

D'autre part, la Libye ne conteste pas que certaines dispositions de la convention peuvent être regardées comme exprimant des règles de droit coutumier, soit parce qu'elles sont déclaratoires de règles déjà consacrées antérieurement, soit parce qu'elles ont fait l'objet d'une acceptation universelle, confirmée par une pratique générale.

La convention de 1982 ne leur paraît en conséquence pas étrangère en bloc à notre affaire. C'est ce qui résulte des déclarations concordantes de l'agent et des conseils de la Libye (ci-dessus p. 7, 14, 43, 77 et 139). Là encore les positions de la Libye coïncident avec le point de vue que j'ai exprimé au nom de Malte (**III**, p. 362-363).

La Libye reconnaît ainsi valeur coutumière aux dispositions relatives à l'institution d'une zone économique exclusive (ci-dessus p. 78) et à l'article 121 relatif aux îles (ci-dessus p. 139), ainsi sans doute qu'à l'article 83 relatif à la délimitation du plateau continental (ci-dessus p. 94 et 98). C'est au sujet de la valeur coutumière de l'article 76 qu'elle émet des doutes.

Si je l'ai bien comprise, la position libyenne au sujet de la valeur juridique des dispositions de l'article 76, telle qu'elle a été exposée par mon ami le professeur Quéneudec (ci-dessus p. 76-77), est la suivante. L'article 76 comporte, dit-il, trois éléments distincts, à savoir: 1) la mention du prolongement naturel; 2) la fixation de la limite extérieure du plateau continental au rebord externe de la marge continentale; 3) la fixation de cette limite à une distance de 200 milles des lignes de base lorsque le rebord externe de la marge continentale se trouve à une distance inférieure. A en croire le conseil de la Libye, «seule, semble-t-il,

la référence au prolongement naturel peut être considérée comme faisant partie du droit international coutumier». Par contre ni les dispositions relatives à la fixation de la limite extérieure du plateau continental ni le critère de distance ne peuvent être regardés comme énonçant des règles de droit international général ou coutumier. En conséquence, conclut notre distingué contradicteur, le critère de distance énoncé au paragraphe 1 de l'article 76 «ne devrait normalement jouer qu'entre les Etats parties à la convention, après l'entrée en vigueur de celle-ci» (ci-dessus p. 77).

Pour compléter cette argumentation, mon ami le professeur Quéneudec a repris la thèse déjà exprimée dans les écrits libyens, selon laquelle l'article 76 ferait de la limite des 200 milles un critère secondaire, le critère principal demeurant le prolongement naturel. Il a parlé à cet égard d'un «critère de rechange» (ci-dessus p. 74).

Pour justifier cette théorie selon laquelle le critère de distance serait à la fois de caractère purement conventionnel et non pas coutumier et de caractère secondaire et subsidiaire, le professeur Quéneudec a cru pouvoir s'appuyer sur la genèse de l'article 76 (ci-dessus p. 71 et suiv.). A l'en croire, l'objectif de la troisième conférence aurait été double: d'une part, confirmer le principe coutumier déjà établi du prolongement naturel; d'autre part, substituer aux anciens critères de profondeur et d'exploitabilité un critère nouveau fondé sur l'extension du plateau continental jusqu'au rebord externe de la marge continentale; cette extension aurait toutefois été tempérée, mais seulement dans certaines circonstances, par une limitation des droits de plateau continental à une distance de 200 milles marins des côtes. En conséquence, la mention du prolongement naturel serait, selon notre contradicteur, déclaratoire d'une règle de droit coutumier préexistante, tandis que les dispositions étendant le plateau continental jusqu'au rebord externe de la marge continentale et instituant le «critère de rechange» de la distance seraient nouvelles et ne pourraient être regardées comme l'expression écrite de coutumes internationales: ces dispositions ne sauraient donc s'appliquer dans la présente affaire.

J'espère ne pas avoir trahi, en l'exposant ainsi, la thèse adverse.

La version ainsi présentée à la Cour de la genèse et de l'économie générale de l'article 76 est, je regrette de devoir le dire, inexacte à bien des égards.

La controverse qui a agité la troisième conférence au sujet des limites du plateau continental est connue, et j'en rappellerai simplement quelques éléments centraux.

En présence de la volonté manifestée par certains Etats d'étendre, de manière parfois considérable, leurs droits exclusifs sur les fonds marins, et en vue de remédier à l'inégalité due au fait que certains Etats sont dotés par la nature d'un plateau continental large et d'autres d'un plateau continental étroit, une majorité d'Etats tenta dans un premier temps d'atteindre ce double objectif en fixant uniformément la limite extérieure du plateau continental à une distance de 200 milles. Dans cette conception, le critère de distance aurait remplacé celui de profondeur et d'exploitabilité énoncé par la convention de 1958, et la distance de 200 milles aurait constitué à la fois un minimum et un maximum. L'égalité entre les Etats côtiers indépendamment des caractéristiques physiques des fonds marins aurait été atteinte, en même temps qu'aurait été mis un cran d'arrêt à des revendications de plus grande ampleur susceptibles de réduire de plus en plus les espaces sous-marins disponibles pour la communauté internationale.

C'est dans ces perspectives que se situait, entre autres, l'action du groupe d'Etats dont faisait partie la Libye, et à laquelle Malte s'est associée.

Si cette conception avait prévalu, le concept de plateau continental aurait perdu toute autonomie et aurait purement et simplement été absorbé par celui de

zone économique exclusive: jusqu'à 200 milles, les fonds marins auraient fait partie de la zone économique exclusive; au-delà de 200 milles, ils auraient été incorporés à la zone internationale, patrimoine commun de l'humanité.

Mais cette conception n'a pas prévalu. Bien que majoritaire, elle s'est heurtée à une «minorité remuante et décidée» — l'expression est du professeur Caflisch (*Annuaire suisse de droit international*, vol. XXXIV, 1983, p. 84). Au nom de droits prétendument acquis sous l'empire des conceptions antérieures et de critères qui se voulaient scientifiques, certains Etats entendaient non seulement bénéficier de droits exclusifs sur l'intégralité de leur «prolongement naturel», fût-ce au-delà de 200 milles de leurs côtes, mais donner en outre à ce prolongement naturel une nouvelle définition, une définition élargie, grâce à la substitution, au concept classique de «plateau continental», de la notion de «marge continentale» englobant, outre le plateau *stricto sensu*, le talus et le glacis.

C'est en présence de ces revendications minoritaires, mais émanées d'Etats influents dont le concours était indispensable à tout consensus, que la conférence se mit à la recherche d'un compromis.

Jusqu'à 200 milles des côtes la question était réglée: tout Etat côtier bénéficierait dorénavant de droits de plateau continental jusqu'à cette distance de ces côtes, quelle que fût la configuration physique de ses fonds marins. Les 200 milles comme minimum étaient acquis, et on n'y revint plus.

C'est sur les droits de plateau au-delà de 200 milles qu'allait se concentrer la discussion. Les membres de la Cour connaissent infiniment mieux que moi les péripéties de cette controverse destinée à donner aux Etats à large marge continentale suffisamment de satisfaction pour qu'ils acceptent le *package deal*, tout en assignant une limite à l'extension indéfinie de leurs droits. De nombreuses suggestions furent émises pour résoudre ce qui pouvait apparaître comme la quadrature du cercle: certaines étaient fondées surtout sur la géologie; d'autres, telles celles formulées par l'Union soviétique, tendaient à introduire un critère de distance également au-delà de 200 milles. C'est dans ces conditions que fut finalement retenu le compromis complexe qui a trouvé son expression dans les divers paragraphes de l'article 76, complétés par la création d'une commission des limites du plateau continental et d'un assujettissement à des contributions au titre de l'exploitation du plateau continental au-delà de 200 milles marins (article 82 de la convention). Maintenu comme un minimum, le critère de 200 milles cessait dès lors d'être un maximum.

Le concept de plateau continental se trouvait en définitive conservé, distinct de celui de zone économique exclusive, tout au moins au-delà de 200 milles marins.

Comme il était inconcevable de soumettre les fonds marins à un régime juridique différent en deçà et au-delà de cette distance, il apparut nécessaire de conserver un régime unique, celui de la partie VI, pour l'ensemble des fonds marins, depuis les lignes de base jusqu'à la limite extérieure; ce qui explique la disposition de l'article 56, paragraphe 3, de la convention, aux termes de laquelle «les droits relatifs aux fonds marins et à leur sous-sol énoncés dans le présent article s'exercent conformément à la partie VI». Et comme il était difficile de justifier les droits élargis de plateau continental en assignant un fondement différent à ces droits en deçà et au-delà de 200 milles, il apparut nécessaire de justifier par le prolongement naturel l'ensemble de ces droits sur toute leur étendue, en deçà comme au-delà de 200 milles.

Voilà, Monsieur le Président, Messieurs les juges, dans quelles conditions bien connues fut adopté l'article 76 et à quelles préoccupations il répond.

Il n'est pas exact, on le constate, de présenter les choses comme si un accord distinct et préalable s'était réalisé au sujet du prolongement naturel et comme si

la rédaction du paragraphe 1 de l'article 76 avait été adoptée dans le but de conférer au prolongement naturel une place prépondérante. Non, ce n'est pas ainsi que les choses se sont passées. Le concept de prolongement naturel a été introduit dans le texte en union indissociable avec l'extension des droits de plateau continental au-delà de 200 milles, et pour justifier cette extension, contraire aux souhaits de la majorité des Etats de s'en tenir à la limite uniforme de 200 milles.

Il n'est pas exact de dire, comme le fait la Partie adverse, que le concept de prolongement naturel, tel qu'il avait été antérieurement dégagé par le droit international, a reçu une confirmation solennelle dans le texte de la convention de 1982. Le prolongement naturel de 1982 n'est plus celui auquel se référait la Cour en 1969: du plateau continental *stricto sensu* on est passé, en 1982, à ce qu'on a appelé la «conception élargie du plateau continental», qui englobe, outre le plateau proprement dit, le talus et le glacis «jusqu'au rebord externe de la marge continentale». Pour justifier cette extension, comme l'a relevé le professeur Mahiou:

> «un petit nombre de délégations influentes ont réussi ... à situer le débat sur un plan géologique, avec la nature et la structure des sédiments marins, pour obtenir une extension du plateau continental au-delà des limites de la zone économique exclusive» (A. Mahiou, «La participation des Etats à l'élaboration du nouveau droit de la mer», *Droit et libertés à la fin du XX^e siècle, Etudes offertes à Claude-Albert Colliard*, Paris, Pedone, 1984, p. 318).

Il n'est pas exact de dire, comme l'a fait la Partie adverse, que la reconnaissance des droits de plateau continental sur toute l'étendue du prolongement naturel du territoire terrestre jusqu'au rebord externe de la marge continentale constitue le critère primaire et principal, tandis que la reconnaissance de ces droits jusqu'à une distance de 200 milles constitue un critère de rechange, de caractère subsidiaire et secondaire. Une telle lecture est implicitement démentie par le rapport présenté au cours de la septième session de la conférence, en 1978, par M. Aguilar, qui présidait à la fois la deuxième commission et le groupe de négociation 6 chargé de la définition des limites extérieures du plateau continental. Ce rapport fait état des difficultés rencontrées par le groupe pour établir la limite extérieure du plateau continental au-delà de 200 milles; de difficultés au sujet de la limite minimale de 200 milles, M. Aguilar ne fait pas la moindre mention (*Documents officiels*, vol. IX, p. 24; vol. X, p. 95 et suiv.). Une telle présentation serait difficilement compréhensible s'il avait été acquis depuis 1975, c'est-à-dire depuis trois ans, comme le prétend la Libye, que la limite des 200 milles ne constituerait qu'un critère secondaire et de rechange. L'analyse que M. Aguilar donne dans ce même rapport de la proposition soviétique relative à la limite extérieure du plateau continental ne donne pas non plus l'impression qu'il aurait été acquis depuis trois ans que la limite des 200 milles n'interviendrait qu'à titre d'exception (*Documents officiels*, vol. X, p. 96).

La lecture du paragraphe 1 de l'article 76, Monsieur le Président, est bien celle que nous avons donnée: tout Etat côtier a des droits de plateau continental jusqu'à une distance de 200 milles marins de ses côtes, quelle que soit la configuration physique de ses fonds marins; il peut toutefois exercer de tels droits jusqu'au rebord externe de la marge continentale si celui-ci se situe au-delà de 200 milles, et même alors dans certaines limites seulement. Tous les auteurs sont d'accord avec nous là-dessus, nous le verrons dans un instant.

Des observations qui précèdent, il ressort que la ligne de clivage entre les éléments de l'article 76 qui ont valeur coutumière et ceux qui ne l'ont pas ne

passe pas, comme voudrait le faire croire la Partie adverse, entre la mention du prolongement naturel, d'un côté, la fixation du rebord externe de la marge continentale et le critère des 200 milles, de l'autre; la ligne de clivage entre les éléments de l'article 76 qui ont valeur coutumière et ceux qui ne l'ont pas passe entre l'élargissement des droits de plateau continental au-delà de 200 milles et la fixation de la limite extérieure minimale de 200 milles. S'il peut y avoir un doute quant à la valeur coutumière de certains éléments de l'article 76, c'est uniquement au sujet de l'élargissement des droits de plateau continental jusqu'au rebord externe de la marge continentale et au sujet des dispositions complexes assignant des limites à cette extension et prévoyant l'assujettissement à des contributions. Là, oui, le doute est permis, et l'on peut se demander si ces règles peuvent être invoquées par les Etats non parties à la convention ou opposées à des Etats non parties à la convention. C'est là le sens de l'observation faite par le président de la conférence, M. Koh, dans son discours de clôture du 10 décembre 1982, qui a été cité par le professeur Quéneudec (ci-dessus p. 76) et dont je me dois de redonner lecture:

> «En ce qui concerne l'article 76 sur le plateau continental [déclare M. Koh], cet article contient du droit nouveau en ce qu'il a étendu le concept de plateau continental de manière à inclure le talus continental et le glacis continental. Cette concession aux Etats dotés d'une marge étendue a été faite en échange de leur acceptation du partage des revenus tirés du plateau continental au-delà de 200 milles. En conséquence, selon moi, un Etat qui n'est pas partie à la convention ne peut pas invoquer le bénéfice de l'article 76.» (Nations Unies, SEA/MB/14, 10 décembre 1982.)»

J'ajoute, pour être complet, que même sur ce point la question reste discutée en doctrine (cf. L. Caflisch, *Annuaire suisse de droit international*, vol. XXXIX, 1983, p. 89-100).

Il est certain en tout cas — et c'est cela qui importe dans notre affaire — que l'existence de droits de plateau continental jusqu'à 200 milles au moins a acquis valeur coutumière. Il ne s'agit pas là d'une coutume quasi instantanée qui serait issue d'un consensus sans grande portée juridique. Non, on est en présence d'une véritable *opinio juris*, à la formation de laquelle non seulement la Libye n'a pas fait objection, mais à laquelle elle a positivement contribué, ainsi que l'atteste sa participation, aux côtés de Malte, à la proposition tendant à faire des 200 milles non seulement un minimum mais aussi un maximum pour le plateau continental. Je fais référence ici au document NG6/2 du 11 mai 1978 cité par le professeur Quéneudec (ci-dessus p. 72).

Le conseil de la Libye a émis l'opinion qu'un Etat dont le prolongement naturel — plateau ou marge? il ne l'a pas précisé — s'arrêterait à moins de 200 milles de ses côtes ne serait pas en droit de revendiquer des droits exclusifs sur le fond marin jusqu'à une distance de 200 milles s'il n'a pas proclamé de zone économique exclusive ou s'il en a proclamé une de moins de 200 milles (ci-dessus p. 80).

Y a-t-il un seul Etat au monde qui serait disposé aujourd'hui à souscrire à une telle vue? «Il serait impensable [a écrit un membre de la Cour] qu'un Etat veuille exploiter les zones sous-marines à moins de 200 milles marins de la côte d'un autre Etat, en prétextant que ladite zone est située au-delà du rebord de la marge continentale.» (*C.I.J. Recueil 1982*, opinion individuelle de M. Jiménez de Aréchaga, p. 115, par. 53.)

En résumé, l'article 76 ne comporte pas trois éléments, mais deux seulement — la Cour a parlé elle-même de «deux parties» (*C.I.J. Recueil 1982*, p. 48, par. 47): l'extension des droits de plateau continental jusqu'au rebord externe

de la marge continentale, d'une part, la limite minimale de 200 milles, d'autre part. Quelles que soient les hésitations que l'on peut avoir au sujet de la valeur de droit coutumier des dispositions qui étendent les droits de plateau continental jusqu'au rebord externe de la marge continentale, la valeur de droit coutumier de la règle établissant la limite extérieure du plateau continental à la distance minimale de 200 milles n'est, quant à elle, pas controversée. Si l'on voulait parler de critère principal, c'est celui de la limite minimale des 200 milles qui mériterait ce qualificatif.

Monsieur le Président, Messieurs les juges, je n'ai pas eu le privilège de participer aux travaux de la troisième conférence. Avant de m'aventurer dans la relation que je viens de donner de la genèse de l'article 76 et d'en proposer la lecture que j'ai suggérée, je me suis entouré de certaines garanties, de manière à ne pas trop me tromper. La Cour me pardonnera si je cite quelques témoins à l'appui de mon analyse.

J'ai déjà eu l'occasion de faire état de deux études de M. Caflisch, l'une dans le volume consacré au *Nouveau droit international de la mer*, l'autre, dans l'*Annuaire suisse de droit international* de 1983. Si la Cour veut bien se reporter aux pages 81 à 92 de la première et aux pages 83 à 90 de la seconde, elle constatera que je n'ai ni récrit l'histoire de l'article 76 pour les besoins de la cause, ni proposé de l'article 76 une lecture injustifiée.

Autre témoin de cette interprétation de l'article 76. Rendant compte, dans l'un des articles annuels de l'*American Journal of International Law* consacrés aux travaux de la troisième conférence, de la rédaction retenue par le texte de négociation composite officieux, M. Oxman décrit la formule adoptée de la manière suivante:

> «(1) the continental shelf extends up to a distance of 200 nautical miles from the coast . . ., even if the outer edge of the continental margin is at a lesser distance from the coast; and
>
> (2) the fixed points defining the outer limit of the continental shelf may not exceed 350 nautical miles from the coast . . . or 10 nautical miles from the 2500-meter isobath, whichever is further seaward» (*American Journal of International Law*, vol. 74, 1980, p. 20).

Où sont, dans cette analyse, Monsieur le Président, le prétendu critère principal du prolongement naturel et le prétendu critère de rechange de la distance?

Autre témoignage encore, tout particulièrement autorisé. Evoquant les propositions qui ont été à l'origine de la réforme du plateau continental au cours de la troisième conférence, la personnalité qui a dirigé la délégation française relate comment cette réforme est partie du souhait d'étendre le régime du plateau

> «à une étendue de fonds marins qui ne constitueraient pas forcément du «plateau continental» ni au sens géologique de l'expression ni sur la base des critères énoncés par la convention de 1958»;

à ces critères, indique l'auteur, «serait substitué un seul et simple critère: la distance par rapport aux lignes de base, soit 200 milles nautiques». Et c'est à titre d'«exception» (le mot est employé) qu'a été suggéré par certains pays d'élargir le plateau continental au-delà des 200 milles jusqu'au rebord externe de la marge continentale, et cela, précise l'auteur, «bien que peu de pays se trouvent dans cette situation» (G. de Lacharrière, «Politiques nationales à l'égard du droit de la mer», *Droit de la mer. Cours et travaux de l'Institut des hautes études internationales*, Paris, Pedone, 1977, p. 36-37 et 39). Le même auteur a fait observer, dans d'autres écrits, qu'en conférant valeur coutumière à la zone

exclusive de 200 milles, le droit international avait du même coup permis aux Etats côtiers d'exercer des droits exclusifs sur les fonds marins juqu'à cette distance (G. de Lacharrière, «La zone économique française de 200 milles», *Annuaire français de droit international*, 1976, p. 646 et 647; cf. «La réforme du droit de la mer et le rôle de la Conférence des Nations Unies», *Le nouveau droit international de la mer*, Paris, Pedone, 1983, p. 29).

Mais ce n'est pas seulement la doctrine la plus qualifiée qui confirme nos vues et infirme celles de la Libye au sujet du sens et de la portée de l'article 76, ce sont aussi les opinions judiciaires.

En 1981, à propos de la requête de Malte à fin d'intervention dans l'affaire du plateau continental entre la Tunisie et la Libye, un juge a observé dans son opinion que:

> «la définition récente du plateau continental provisoirement adoptée à l'article 76 du projet de convention sur le droit de la mer prévoit, comme étendue minimum du plateau continental de tout Etat riverain, une largeur de 200 milles» (*C.I.J. Recueil 1981*, opinion individuelle de M. Schwebel, p. 37).

Dans son opinion en l'affaire *Tunisie/Libye* un autre membre de la Cour a consacré à la définition du plateau continental énoncée à l'article 76, paragraphe 1, des développements qui font définitivement justice de la description que le conseil de la Libye a proposée de la genèse, de la signification et de la valeur juridique de cette disposition (*C.I.J. Recueil 1982*, opinion individuelle de M. Jiménez de Aréchaga, p. 113-115, par. 50-53). Evoquant le critère de 200 milles, l'auteur de l'opinion écrit:

> «Ce nouveau mode de définition du plateau continental, consistant à spécifier une certaine distance mesurée à partir des lignes de bases, rompt définitivement le lien, quel qu'il fût, qui aurait pu exister entre le plateau et les données géologiques ou géomorphologiques. Le plateau continental s'étend, indépendamment de l'existence des fosses, dépressions et autres accidents, et quelle que soit sa structure géologique, jusqu'à 200 milles des lignes de base, sauf si le rebord externe de la marge continentale se situe au-delà.» (*Ibid.*, p. 114, par. 51.)

La Libye avait déjà fait valoir devant la Cour en 1982 — comme elle le fait à nouveau dans notre affaire — que, si la première partie de l'article 76, paragraphe 1, représente le droit coutumier existant, la deuxième partie de la définition, c'est-à-dire le critère de distance, n'est pas du droit coutumier. Or, cette interprétation a été rejetée en 1982 par l'auteur de l'opinion que je viens de citer, en des termes catégoriques:

> «A mon sens, s'il faut faire une distinction entre les deux critères retenus à l'article 76, paragraphe 1, du point de vue de leur valeur juridique, c'est le résultat inverse qu'on obtient. Etendre le plateau jusqu'au rebord externe de la marge continentale suscite encore une certaine opposition... On est ... fondé à dire qu'aujourd'hui le critère de distance (les 200 milles) ... doit être considéré comme cristallisant d'ores et déjà une règle du droit international coutumier.» (*Ibid.*, p. 114, par. 52.)

Des développements précis et détaillés sur la genèse de l'article 76 se trouvent également dans une autre opinion accompagnant l'arrêt de 1982 (*C.I.J. Recueil 1982*, opinion dissidente de M. Oda, p. 211 et suiv., par. 89 et suiv.; p. 214, par. 94; p. 215, par. 96; p. 217 et suiv., par. 99 et suiv.; p. 221 et suiv., par. 106 et suiv.; p. 222 et suiv., par. 108 et suiv.; p. 231 et suiv., par. 126 et suiv.).

Si l'auteur de cette opinion émet lui aussi des doutes quant à la valeur de droit coutumier des dispositions arrêtées par la conférence au sujet des limites extérieures du plateau continental élargi (*C.I.J. Recueil 1982*, p. 233, par. 129), il n'en exprime, lui non plus, aucun quant à la valeur de droit coutumier du critère de distance. Voici ce qu'il écrit:

> «bien que la limite extérieure du plateau n'ait pas encore été établie ... on peut dire en tout cas que le critère de la distance de 200 milles est largement accepté ... la limite des 200 milles est fermement établie» *(ibid.)*.

Et un peu plus loin, cette opinion relève:

> «la grande importance du changement apporté à la notion de plateau continental par l'acceptation *universelle* de la distance des 200 milles» (*ibid.*, p. 248, par. 146; les italiques sont de moi).

Monsieur le Président, M. Briggs a parlé du «persistent misreading which Malta gives to Article 76, paragraph 1, of the Law of the Sea Convention» (ci-dessus p. 35). Si nous avons mal lu l'article 76, si nous avons mal compris l'évolution du droit de la mer et les travaux de la conférence, nous sommes en excellente compagnie: plusieurs membres de la Cour, aussi bien que des auteurs compétents et impartiaux, lisent l'article 76 exactement comme nous. Je n'ai rien de plus à en dire.

Plateau continental et zone économique exclusive

Monsieur le Président, je pourrais arrêter là ces développements relatifs au concept de distance si, inspirés apparemment par une crainte quasi panique de ce concept, la Libye n'avait pas jugé utile de déployer des efforts considérables pour établir que le plateau continental a conservé sa «spécificité» vis-à-vis de la zone économique exclusive et qu'il n'a donc pas été contaminé par la règle des 200 milles qui caractérise cette dernière. Tour à tour l'agent et plusieurs conseils de la Libye ont jugé opportun de se livrer à cette démonstration (ci-dessus p. 11, 37, 42, 46, 70, 78 et 131).

La partie adverse, qu'elle me permette de le dire, s'est lancée là à l'assaut de moulins à vent.

Il est évident — et nul ne songe à le nier — qu'à partir du moment où l'extension du plateau continental jusqu'au rebord externe de la marge continentale, au-delà de 200 milles, a été acceptée, le plateau continental devait conserver son autonomie, à la fois comme concept et dans son régime juridique. L'article 56 et la partie VI de la convention ne laissent aucun doute sur ce point.

Mais il est évident également — et je comprends mal que la Libye songe à contester cette évidence admise par tous — que la genèse de la zone économique exclusive et la fixation à 200 milles de la limite extérieure minimale du plateau continental sont allées *pari passu*. La coïncidence de cette limite avec celle de la zone économique n'est pas le fruit du hasard, et il est clair que la zone économique exclusive de 200 milles inclut les droits sur les fonds marins et le sous-sol; l'article 56 est tout à fait explicite là-dessus. Dans son commentaire de la loi française relative à la création d'une zone économique de 200 milles, un auteur a noté que:

> «En conséquence les droits souverains sont exercés dans la zone en ce qui concerne les ressources naturelles du fond de la mer et de son sous-sol aussi bien que celles des eaux surjacentes.» (G. de Lacharrière, «La zone

économique française de 200 milles», *Annuaire français de droit international*, 1976, p. 647.)

Dans ma précédente plaidoirie, j'ai consacré deux brefs passages à cette «corrélation» — c'est le mot que j'avais employé — entre le plateau continental et la zone économique exclusive, et j'ai souligné que «corrélation» ne signifie pas «coïncidence ou identité totales» (**III**, p. 365). J'ai tenu à préciser que la présente affaire porte sur la délimitation du plateau continental, et non pas sur celle de la zone économique exclusive, que ni Malte ni la Libye n'ont proclamé jusqu'ici une zone économique exclusive et que Malte a proclamé une zone de pêche de 25 milles. J'ai relevé que la question de savoir si la délimitation de la zone économique exclusive et la délimitation du plateau continental doivent ou non coïncider n'a pas à être tranchée dans notre affaire. J'ai simplement ajouté qu'en raison des rapports qui existent entre les deux institutions la question de la zone économique exclusive doit — ce sont les mots que j'ai employés — «demeurer présente à l'esprit» (**III**, p. 364-365 et 414-415). Rien de plus.

En se lançant dans de longs développements destinés à combattre ce qu'elle n'a pas hésité à qualifier d'«assimilation abusive des deux concepts» et de «tentative de dérive en direction de la zone économique exclusive» (ci-dessus p. 70 et 131), la Libye a soulevé des difficultés qui n'existent pas. Les membres de la Cour l'auront noté: ce n'est pas nous, c'est la Partie adverse qui a tenté d'obscurcir le débat par des discussions académiques sur les rapports entre le plateau continental et la zone économique exclusive.

Cette tentative de diversion ne s'est cependant pas arrêtée là. Le souhait libyen d'isoler le plateau continental du concept de distance est tellement fort qu'il a poussé la Partie adverse, non seulement, comme nous venons de le voir, à contester toute corrélation entre le plateau continental et la zone économique exclusive, mais aussi à jeter le doute sur le concept de zone économique exclusive lui-même. Mon ami le professeur Quéneudec a fait l'impossible pour minimiser «ce qu'on a pu appeler la «règle des 200 milles», «la fameuse «règle des 200 milles» — ce sont les expressions qu'il a employées; et dans le compte rendu les mots «règle des 200 milles» ont été mis, de manière significative, entre guillemets (ci-dessus, p. 70, 82, 83 et 85). Cette «fameuse règle», a-t-il soutenu, a un «caractère essentiellement océanique»; elle est «radicalement inadaptée en Méditerranée» où aucun Etat n'a proclamé de zone économique exclusive; bref, en évoquant la zone économique de 200 milles dans le contexte méditerranéen, Malte se serait trompée de monde et de région et se serait rendue coupable d'«extraversion géographique» (ci-dessus p. 82-85).

Faut-il que la Partie adverse ait peur du critère de distance pour en arriver à de telles extrémités dans l'argumentation?

La Libye met manifestement beaucoup d'espoir dans la conception d'un droit de la mer qui serait spécial à la Méditerranée. La projection radiale n'était déjà pas méditerranéenne; voici maintenant que la zone économique exclusive ne l'est pas non plus! Pourquoi? Tout simplement, nous a-t-on exposé, parce que la Méditerranée n'est pas assez grande pour permettre à l'un de ses riverains d'exercer des droits exclusifs jusqu'à 200 milles de ses côtes.

Devant un tel argument on reste confondu. Faudrait-il donc admettre que chaque fois qu'il n'y a pas assez d'espace dans une mer pour que chacun des riverains puisse jouir de la totalité de ses droits, l'existence même de ces droits en devient problématique? Cela signifierait que la nécessité d'une délimitation ferait disparaître le titre juridique lui-même. Le fait qu'entre les rives opposées d'un détroit il n'y a pas 24 milles marins ne met pas en cause la «règle des

12 milles»: il provoque simplement la nécessité d'une délimitation. Pourquoi le fait que dans la Méditerranée — mais aussi dans la mer des Caraïbes ou dans la mer du Nord — il n'y a pas assez d'espace pour laisser à chaque Etat riverain la totalité de la zone économique rendrait-il inapplicable la «règle des 200 milles»? Singulière logique, que l'on a quelque mal à comprendre!

Mais ce n'est pas tout. Malte, on le sait, a proclamé une zone de pêche de 25 milles marins. Commentaire du professeur Quéneudec: «Quelle meilleure preuve peut-on trouver de l'impossibilité de faire application en Méditerranée de la «règle des 200 milles» (entre guillemets, bien sûr) (ci-dessus p. 85). Commentaire du professeur Lucchini: «Malte a, par là même, clairement reconnu les bornes de ses droits en matière de pêche» (ci-dessus p. 146). Je pose une question toute simple: est-ce parce qu'un Etat n'a pas proclamé aujourd'hui une mer territoriale à 12 milles ou une zone économique à 200 milles qu'il aurait reconnu l'impossibilité d'appliquer les règles de droit coutumier fixant la largeur de ces deux juridictions maritimes, ou qu'il aurait renoncé à tout jamais, par une espèce d'*estoppel*, à appliquer ces règles? Le droit pour le Royaume-Uni d'étendre dans l'avenir à 12 milles la largeur de sa mer territoriale, qui était alors de 3 milles, n'a pas été contesté par le tribunal arbitral franco-britannique (sentence arbitrale, par. 187). Dans l'affaire du *Golfe du Maine*, le Canada a expressément réservé son droit de proclamer un jour une zone économique exclusive, et aucune objection n'a été soulevée à cet égard par les Etats-Unis. Il est évident que si Malte n'a proclamé à ce jour qu'une zone de pêche de 25 milles, rien ne lui interdit de proclamer dans l'avenir une zone de pêche plus large ou une zone économique exclusive. Et la Libye a bien sûr le même droit. Si les deux zones se chevauchent, il y aura lieu à délimitation, et c'est tout.

La Partie adverse ne s'est-elle rendu compte qu'en recourant à une argumentation d'une telle fragilité elle met à nu la faiblesse intrinsèque de l'ensemble de sa thèse?

Et que dire enfin de l'assertion, longuement développée par mon collègue Quéneudec, qu'aucun Etat méditerranéen n'a jusqu'ici proclamé de zone économique exclusive, ce qui démontrerait, selon notre contradicteur, que «ni l'idée de zone économique ni le critère de distance symbolisé par les 200 milles ne trouvent véritablement place dans cette mer» (ci-dessus p. 84-85).

Pour faire justice de ce surprenant argument, je ne m'appuierai pas sur l'exemple de l'Egypte, cité par M. Quéneudec, et qui me paraît pourtant démentir sa thèse. Je ne m'étendrai pas non plus sur le cas de la France, dont la politique a été définie par l'un de ses responsables de la manière suivante: «Nos côtes méditerranéennes resteront sans zone économique tant que personne ne prendra l'initiative d'une telle mesure en Méditerranée occidentale» (G. de Lacharrière, *op. cit.*, *Annuaire français de droit international*, 1976, p. 649); de l'inapplicabilité de principe de cette institution en Méditerranée la France ne paraît apparemment pas persuadée. Je me concentrerai sur une seule et unique considération, suffisante pour réduire à néant l'argumentation adverse sur ce point. Selon les écritures libyennes (**I**, ML, p. 67-68, par. 4.63; **II**, CML, p. 62, note 1, et p. 71, note 2), confirmées par le professeur Lucchini (ci-dessus p. 130-131), la Libye avait proposé à Malte en 1976 de soumettre à la Cour la question de la délimitation du plateau continental *et de la zone économique* des deux pays. Le texte de la proposition libyenne a été lu ici même à la Cour par M. Lucchini et il se trouve reproduit dans le compte rendu *(loc. cit.)*. En 1976 encore, de toute évidence, le Gouvernement libyen n'était pas conscient de la prétendue inapplicabilité de la zone économique en Méditerranée!

Cela clôt mes observations sur le principe de distance.

Monsieur le Président, Messieurs les juges, j'espère avoir établi dans les deux premières parties de mon exposé: premièrement, que les côtes de Malte et de la Libye engendrent des droits de plateau continental dans toutes les directions; deuxièmement, que cette génération de droits de plateau continental ne se réalise pas selon les données de la géologie et de la géomorphologie mais selon un concept spatial. Ce qui signifie en clair que pour déterminer jusqu'où ce pouvoir générateur s'exerce, aussi bien vers le large que vis-à-vis de l'autre Etat, il n'y a pas lieu de se référer aux données physiques des profondeurs sous-marines mais aux données de la géographie côtière et de la distance à partir des côtes.

Ces indications me permettent d'aborder à présent le troisième et dernier point de mon exposé: comment tracer une ligne de délimitation équitable entre les zones de plateau continental relevant respectivement de Malte et de la Libye?

III. Comment tracer une ligne de délimitation équitable entre les zones de plateau continental relevant respectivement de Malte et de la Libye?

Pour appréhender dans sa substance la plus élémentaire le problème ultime auquel la Cour se trouve confrontée, j'adopterai une démarche très simple: j'examinerai tour à tour la réponse que la Libye et Malte apportent à ce problème.

Le cas libyen

Commençons donc par ce que j'appellerai d'un terme commode le cas libyen.

Zone ou lignes?

Le premier tour des plaidoiries orales a apporté quelques précisions sur une question que nous avions posée à plusieurs reprises: que demande exactement la Libye? La revendication d'une limite «within, and following the general direction of, the Rift Zone» nous semblait imprécise, puisque des dizaines de lignes étaient concevables à l'intérieur d'une zone aussi largement décrite. J'avais en outre attiré l'attention de la Cour sur le fait que la théorie de deux plateaux continentaux physiquement séparés par une zone large de plusieurs dizaines de kilomètres est incompatible avec le concept même de délimitation: en l'absence de rencontre et de chevauchement, il n'y aurait tout simplement pas matière à délimitation (**III**, p. 382-384).

Il est vrai que dans son dernier écrit la Libye avait ébauché quelques lignes possibles à l'intérieur de la Rift Zone, mais elle n'avait pas dépassé le stade de l'esquisse: dans les conclusions finales du troisième écrit libyen comme dans celles des deux premiers, c'était toujours la conception d'une *zone* séparative qui prévalait sur celle d'une *ligne* de délimitation. La Libye, ai-je dit dans mon premier exposé, n'avait pas eu le courage de passer à l'acte, et le concept d'une ligne de délimitation était demeuré à l'état de velléité (**III**, p. 385).

La Partie adverse a-t-elle été piquée au vif par cette remarque? Toujours est-il que c'est un véritable festival de lignes qu'elle a proposé dans ses plaidoiries orales, laissant ainsi à la Cour, si j'ose dire, l'embarras du choix.

Nous avons d'abord entendu reparler de l'«Axial Ridge Line», c'est-à-dire de la ligne présentée par la Libye comme celle du plus grand amincissement de la croûte terrestre, comme possible «composante» d'une ligne de délimitation (ci-

dessus p. 179-180). Mon ami Elihu Lauterpacht et les experts de Malte ont dit ce que l'on pouvait en penser.

Nous avons également entendu reparler, comme autre «composante» d'une possible ligne de délimitation, de ce que le professeur Bowett a appelé la ligne médiane entre deux thalwegs (ci-dessus p. 180-181). Cette ligne, qui était mentionnée rapidement dans le dernier écrit libyen (**III**, RL, p. 83 et 84, par. 6.21 et 6.22), est revenue sur le devant de la scène mais entourée cette fois-ci des plus grandes attentions. La bathymétrie de la région, a expliqué le conseil de la Libye, révèle l'existence de deux zones de plus grande profondeur: au sud, l'alignement des fosses de Pantelleria et de Linosa et du chenal de Medina; au nord, l'alignement de la fose de Pantelleria et de la fosse et du chenal de Malte. Aussi a-t-il suggéré de retenir comme ligne de délimitation la ligne médiane entre ces deux thalwegs.

Singulière suggestion, Monsieur le Président, qui, sous le couvert de la théorie du thalweg, imaginée pour les délimitations fluviales ou lacustres, aboutit à préconiser comme ligne de démarcation non pas du tout le thalweg lui-même, c'est-à-dire la ligne de *plus* grande profondeur, mais tout au contraire la ligne de *moins* grande profondeur... C'est plus exactement l'anti-thalweg qui a été proposé par la Libye. Dans une telle perspective, je m'empresse de le noter, une délimitation axée sur les bancs de Medina et de Melita serait à coup sûr infiniment plus appropriée.

Singulière suggestion également, qui contredit complètement celle de l'Axial Ridge Line, puisque celle-ci, comme je l'ai déjà relevé et comme la Cour
(44) pourra le constater sur la figure 13 de notre premier dossier, ne passe pas *entre* les deux thalwegs, mais en plein milieu dans les fosses de Pantelleria et de Linosa.

Singulière suggestion enfin, qui déclare ouvertement s'appuyer sur la bathémétrie, alors pourtant que les conseils de la Libye n'ont pas cessé de répéter que ce n'est pas la profondeur qui compte mais la structure géologique, et que ce n'est pas par la géomorphologie que la Rift Zone se définit mais par sa nature géologique de «frontière de plaques» (ci-dessus p. 50, 74 et 79). «Depth is not really the issue», a proclamé avec force l'un des conseils de la Partie adverse (ci-dessus p. 172).

La chasse aux lignes de délimitation à laquelle nous avons assisté pendant les derniers jours des plaidoiries libyennes ne s'est toutefois pas bornée à ces deux lignes, Axial Ridge Line et ligne médiane entre les deux thalwegs, déjà esquissées dans le dernier écrit libyen. Des «composantes» toutes nouvelles ont été découvertes par nos adversaires.

Le professeur Bowett a évoqué ainsi une ligne située à mi-chemin entre les lisières nord et sud de la Rift Zone. Pour justifier une telle solution, le conseil de la Libye a expliqué que la Rift Zone peut être regardée comme constituant dans son ensemble une zone de convergence ou de chevauchement et qu'en pareil cas il serait conforme à la jurisprudence de la Cour de procéder à une division égale de cette zone; cela conduirait dans le cas présent, a précisé mon ami et collègue, à une ligne de délimitation le long de l'isobathe de 500 mètres (ci-dessus p. 181). «An equal division of areas of convergence or overlap, which one finds reflected in the Court's jurisprudence» *(ibid.)*; «the quite familiar problem of dividing an area of overlapping claims» (ci-dessus p. 179); ce n'est pas le conseil de Malte, c'est celui de la Libye qui a vanté en ces termes les mérites de cette méthode. Qu'il l'ait appliquée, non pas aux zones de chevauchement définies par les projections côtières, mais à une Rift Zone définie hors de toute géographie côtière, n'enlève rien à cet hommage inattendu à la méthode de l'équidistance.

Poursuivant sa quête de possibles lignes de délimitation, le professeur Bowett a également suggéré à la Cour une ligne en deux secteurs, d'abord parallèle à la direction de la côte maltaise (donc de direction nord-ouest-sud-est), et ensuite, au-delà de la longitude la plus orientale de Malte, de direction ouest-est. Cette méthode, a-t-il précisé, bénéficie d'une certaine «flexibilité», puisque la ligne peut-être glissée plus ou moins vers le nord ou vers le sud le long du méridien (ci-dessus p. 181). La carte 68 de l'album libyen nous donne deux variantes de cette ligne, mais d'autres sont apparemment possibles.

Si la Cour veut bien examiner un instant cette ligne mobile, elle constatera qu'elle n'a rien de commun ni avec l'Axial Ridge Line ni avec la ligne médiane entre les deux thalwegs.

(44) L'Axial Ridge Line, qui est représentée sur la figure 13 de notre premier dossier, le dossier rouge, change de direction à la hauteur de Linosa, donc beaucoup
(50) plus à l'ouest que la ligne proposée par le professeur Bowett sur la carte 68. Quant à la prétendue ligne médiane entre les deux thalwegs, elle est dominée par les fosses de Pantelleria, de Linosa et de Malte qui, toutes trois, se situent à
(50) l'ouest du point de départ de la ligne tracée sur la carte 68.

La Partie adverse a également exhumé la proposition faite par la Libye en 1973, qu'un conseil libyen n'a pas hésité à qualifier de «perfectly valid approach» (ci-dessus p. 178). Un coup d'œil sur cette ligne de 1973, illustrée sur la figure 1 de notre premier dossier, montre qu'il est difficile d'y voir le
(50) *moindre rapport avec la ligne en deux secteurs de la carte 68 ou avec aucune* autre des multiples lignes dont la Cour a entendu vanter les mérites au cours des plaidoiries libyennes.

Au début nous n'avions aucune ligne libyenne. Nous voici en présence d'un florilège de lignes. Un peu de «flexibilité», soit; mais trop c'est trop!

La Libye nous objectera sans doute que toutes ces lignes se situent à l'intérieur de la Rift Zone, dont elles suivent la direction générale, qu'elles s'arrêtent toutes à la hauteur de l'escarpement, et qu'elles correspondent toutes au concept fondamental de prolongement naturel qui constitue le fil directeur de la thèse libyenne.

Bref, je devine l'objection, Malte se trompe en dénonçant l'incohérence d'une revendication qui est au contraire parfaitement logique et cohérente.

Le prolongement naturel

Admettons donc un instant que la multiplicité des lignes proposées ne porte pas atteinte à l'unité de fond de la revendication libyenne et tournons-nous en conséquence vers ce prétendu fil directeur du cas libyen qu'est le prolongement naturel. Supposons également un instant, contrairement à la vérité juridique, que les données physiques des fonds marins permettent, en droit, d'arrêter une délimitation. Supposons enfin un instant, contrairement à la vérité scientifique, que la description factuelle des fonds marins, telle que la Libye l'a proposée, soit exacte. Essayons alors, dans la perspective de cette triple hypothèse qui sous-tend la thèse libyenne, de voir comment la Partie adverse se représente exactement la Rift Zone et la zone des escarpements. Pour cela, et pour ne pas nous tromper, penchons-nous sur les explications et descriptions qui ont été données par les conseils et experts de la Libye eux-mêmes.

Prenons d'abord le cas de la Rift Zone.

On nous a expliqué que nous avons affaire à une «zone qui ... sépare deux plaques géologiques» (ci-dessus p. 43 et 201). On a dit aussi que «nous avons une nouvelle frontière de plaques le long de cette Rift Zone» *(along this Rift Zone)* (ci-dessus p. 165). On nous a dit encore que «la frontière de plaques

court à travers la Rift Zone» (*runs through the Rift Zone)* (ci-dessus p. 167; de même p. 168). On nous a dit aussi que la Rift Zone avait acquis par elle-même le caractère d'une frontière de plaques (ci-dessus p. 171).

On nous a précisé que la Rift Zone n'est pas formée de croûte océanique, qu'elle constitue en conséquence une zone de plateau et fait donc partie du plateau continental: elle se présente, nous a-t-on dit, comme une rupture à l'intérieur d'une zone de plateau *(a fundamental discontinuity within a shelf area)* (ci-dessus p. 168 et 178-179). Pas davantage, nous a-t-on exposé, la Rift Zone ne marque-t-elle le rebord externe de la marge continentale: l'ensemble de la région, a-t-il été indiqué, fait partie de la même marge continentale au sens de l'article 76 (ci-dessus p. 45).

Mais on nous a décrit également la Rift Zone comme «séparant deux plateaux» (ci-dessus p. 162): on est en présence, a-t-il été précisé, de «deux plateaux distincts, séparés par une Rift Zone» (ci-dessus p. 167, 169, 202 et 211). La Rift Zone, a-t-on exposé, «sépare clairement le prolongement naturel de la Libye et de Malte», elle constitue «une indication indiscutable de l'existence de deux plateaux continentaux distincts», une «division reconnaissable entre les prolongements naturels des territoires des deux Parties» (ci-dessus p. 50-51).

Monsieur le Président, Messieurs les juges, on aimerait comprendre la pensée de nos adversaires.

La frontière de plaques passe-t-elle *à l'intérieur* de la Rift Zone ou bien est-elle constituée *par* la Rift Zone elle-même? Les plaques s'arrêtent-elles aux bords nord et sud de la Rift Zone, ou bien se recouvrent-elles dans la Rift Zone?

La Rift Zone est-elle une région qui sépare deux plateaux continentaux physiquement distincts? La Rift Zone fait-elle elle-même partie du plateau continental, et alors de quel plateau? Sommes-nous en présence, entre les côtes de Malte et les côtes de la Libye, d'un seul plateau qui serait interrompu par la Rift Zone ou par une ligne à l'intérieur de cette zone? Ou bien sommes-nous en présence de deux plateaux distincts — un plateau maltais au nord et un plateau libyen au sud — entre lesquels se trouverait un troisième plateau, celui de la Rift Zone? Y a-t-il en définitive un, deux ou trois plateaux? Les plateaux maltais et libyen sont-ils séparés par la Rift Zone, comme on n'a cessé de le répéter mille fois depuis le début de la procédure écrite, ou bien se touchent-ils le long d'une frontière de plaques, ou bien se chevauchent-ils l'un l'autre?

On connaissait les concepts juridiques de «plateau continental» *(continental shelf)* et de «marge continentale» *(continental margin).* Mais, sauf erreur de ma part, la notion de plaques ou de frontière de plaques n'avait pas été érigée jusqu'ici en concept juridique susceptible de dicter la limite extérieur des droits d'un Etat sur les fonds marins ou la limite de ces droits vis-à-vis d'un Etat voisin. Voici maintenant que l'on nous parle d'une «frontière de plaques», qui n'arrêterait ni le «plateau» ni la «marge» — cela a été dit clairement — tout en constituant une «rupture significative», une «discontinuité fondamentale»? Rupture de quoi? Discontinuité de quoi? ne peut-on s'empêcher de demander. Pas celle du plateau, a-t-on dit, pas celle de la marge, a-t-on dit: de quoi alors? Et de l'autre côté de cette prétendue «rupture» et «discontinuité», est-ce le même «plateau» et est-ce la même «marge» qui continuent, ou un autre «plateau» et une autre «marge»?

Il y a quelques jours, le professeur Bowett a demandé au Dr Jongsma: «What about continental shelves and continental margins? How do they fit into these plates and micro-plates?» Et l'expert scientifique de la Libye a répondu: «I know that lawyers have rather special definitions of continental shelves and margins, and I don't want to get into that» (ci-dessus p. 206). On n'aurait pas

pu reconnaître avec plus de clarté que les concepts de plateau continental et de marge continentale auxquels fait appel le *droit* ne s'identifient pas avec la notion géologique de plaques, laquelle n'a aucun contenu ni incidence juridique spécifiques.

Comment, Monsieur le Président, s'y retrouver dans cet imbroglio? Après tant de pages d'écritures et tant d'heures de plaidoiries, le concept même de prolongement naturel, tel que la Libye veut l'incarner dans la Rift Zone, demeure noyé dans le plus épais brouillard.

Voilà pour la Rift Zone. La zone des escarpements, autre pilier du prolongement naturel dans la thèse libyenne, est-elle conceptuellement plus cohérente? Il n'en est rien.

Cette fois-ci, nous a-t-on dit, on n'est pas en présence d'une frontière de plaques, ni même d'une rupture géologique: la signification des escarpements, a-t-il été précisé, est d'ordre géomorphologique (ci-dessus p. 167, 173, 204 et 207).

Pas plus que la Rift Zone, nous explique-t-on, les escarpements ne marquent le rebord de la marge continentale, ni celui du plateau continental (ci-dessus p. 173).

Mais, Monsieur le Président, comment concilier l'affirmation que la zone des escarpements rompt la continuité du plateau (ci-dessus p. 178-179) avec cette autre affirmation que ni le plateau continental ni la marge continentale ne s'arrêtent aux escarpements?

Et pourquoi le prolongement naturel se définirait-il par la géologie dans le cas de la Rift Zone, par la géomorphologie et la bathymétrie dans celui des escarpements?

Pour me résumer: il est explicitement admis par la Partie adverse que la prétendue Rift Zone et la zone des escarpements ne marquent la fin ni du plateau continental ou de la marge continentale de Malte, ni du plateau continental ou de la marge continentale de la Libye. En conséquence, même si le droit international permettait de retenir le prolongement naturel au sens physique du terme comme l'élément déterminant de la fixation des limites extérieures des droits de l'Etat côtier sur les fonds marins et de leur délimitation par rapport aux Etats voisins, même alors, ces accidents seraient inaptes à fixer la limite entre les deux pays, puisque, je le répète, ils n'arrêtent ni le plateau ni la marge d'aucun des deux. En d'autres termes, même si le prolongement naturel occupait dans le droit du plateau continental la place que voudrait lui accorder la Libye, nous serions, dans le cas concret de notre affaire, en présence d'une situation où, pour reprendre les formules employées par la Cour dans l'affaire *Tunisie/Libye*:

> «*la définition des étendues de plateau relevant de chacun des deux Etats* doit être régie par d'autres critères de droit international que ceux qu'on pourrait tirer des caractéristiques physiques ... de sorte qu'en l'espèce aucun critère de délimitation des zones de plateau continental ne saurait être tiré du principe du prolongement naturel en tant que tel» (*C.I.J. Recueil 1982*, p. 58, par. 67, et p. 92, par. 133).

Mais — j'ai à peine besoin de le rappeler — tout cela n'est qu'hypothèse: ce n'est pas le prolongement naturel au sens physique du terme qui permet aujourd'hui de déterminer jusqu'où les espaces sous-marins de l'Etat côtier s'étendent vers le large ainsi que par rapport aux Etats qui lui sont limitrophes ou lui font face, mais une distance par rapport aux côtes. Et cela suffit à lui seul à sceller le sort de la thèse libyenne d'une ligne de délimitation dictée par la Rift Zone et la zone des escarpements.

Les coïncidences miraculeuses

Monsieur le Président, la constatation que je viens de faire permet de mettre le doigt sur la déficience majeure du système libyen, à savoir l'absence de toute charpente juridique dans l'opération de délimitation telle que la préconise la Libye.

Dans ma précédente intervention, j'avais relevé une différence d'approche sur ce problème entre le mémoire et la réplique libyens (**III**, p. 367 et 369 et suiv.). Les plaidoiries orales ont confirmé qu'à présent, aux yeux de la Libye, l'opération de délimitation se déroule entièrement sur le plan des faits et est entièrement détachée du droit. La mission de la Cour, a expliqué le professeur Bowett (ci-dessus p. 159 et suiv.), est: *a)* d'identifier les faits pertinents; *b)* de peser et mettre en balance ces faits; *c)* d'indiquer aux Parties comment ces faits doivent être pris en considération pour le tracé d'une délimitation. Ce développement en trois étapes — «*three-stage progression or development of the facts*» — selon l'expression de mon ami Bowett, se déroule du début à la fin dans le monde des faits:

> «The correct approach [a précisé mon contradicteur] is to examine the relevant facts, objectively, and see what result emerges as an equitable result . . . the result flows from the facts and circumstances: the facts are its *fons et origo*.» (*Ibid.*, p. 155-156.)

Où est, Monsieur le Président, la place du droit dans ce schéma? Quelle différence y a-t-il entre ce schéma et celui qui serait appliqué dans une affaire où les parties auraient demandé à la Cour une décision *ex aequo et bono*? Mes critiques précédentes d'une approche à cent pour cent factuelle du processus de délimitation (**III**, p. 373 et suiv.) demeurent valables; je crois inutile de les répéter ici.

Les conseils de la Libye ont ajouté que, s'il arrivait que les faits émettent des signaux contradictoires, il appartiendrait à la Cour de décider quels sont ceux d'entre eux qui doivent se voir reconnaître le plus de poids (ci-dessus p. 155). Selon la Partie adverse, c'est aux faits qualifiés de «géophysiques», c'est-à-dire, dans le sens où ils prennent ce mot, aux faits géologiques et géomorphologiques, que la Cour devait attribuer le «poids décisif» (ci-dessus p. 48-49 et 51). Dans la présente affaire, nos adversaires se sont empressés d'ajouter, aucune difficulté de cet ordre ne se présente heureusement pour la Cour: tous les faits, quels qu'ils soient, pointent dans la même direction.

Monsieur le Président, je ne répéterai pas ici ce que j'ai déjà eu l'honneur d'exposer à la Cour au sujet du prétendu «poids décisif» des données de la géologie et de la géomorphologie. Pour délimiter le plateau continental de Malte et de la Libye, il n'est ni nécessaire ni même utile, selon le droit international, de charger des hommes de science d'examiner la topographie des fonds marins et de sonder les structures de la croûte sous-marine. Quelles que soient les caractéristiques géologiques et géomorphologiques de la Rift Zone et de la zone des escarpements, ce ne sont pas elles qui décideront jusqu'où s'exerce, en droit, le pouvoir générateur de droits de plateau continental des côtes de Malte et de la Libye.

Cela dit, je me dois de dénoncer la présentation qui a été faite par nos adversaires de cette prétendue convergence fortuite de tous les faits. On ne peut s'empêcher de penser à l'harmonie préétablie exposée par certains philosophes optimistes: n'a-t-on pas dit que l'orange a été découpée en tranches par la nature pour en faciliter la consommation? Dans notre affaire, si l'on en croit la Partie adverse, la nature a organisé les convergences de manière véritablement miraculeuse. La ligne de plus grand amincissement de la croûte terrestre, nous

a-t-on dit, coïncide plus ou moins avec la ligne médiane entre les deux thalwegs, laquelle n'est elle-même pas très différente de la ligne médiane entre les bords nord et sud de la Rift Zone, laquelle correspond au test nécessaire de proportionnalité. Bien mieux: à en croire nos adversaires, c'est l'ensemble de la Rift Zone et de la zone des escarpements qui a été placé par la nature exactement là où il convient pour qu'il puisse être tenu compte de tous les autres facteurs, et notamment de la différence entre les longues côtes de l'énorme et continentale Libye et les courtes côtes de la minuscule et insulaire Malte: voilà à quoi se ramène, en substance, la conception libyenne de la convergence des faits dans l'opération de délimitation.

Cette approche optimiste permet à la Partie adverse, on le constate, d'injecter dans le débat le thème omniprésent de la grande côte continentale de la Libye face à la petite côte insulaire de Malte, ainsi que celui de l'énorme masse continentale de la Libye face à l'insignifiante masse territoriale de Malte. Apparemment ce thème est introduit comme une musique d'accompagnement, la mélodie principale étant supposée formée par le prolongement naturel: les données géographiques sont en effet présentées comme corroborant celles, dominantes, de la géologie et de la géomorphologie. La vérité est à l'inverse: le thème du prolongement naturel constitue un paravent destiné à couvrir ce qui constitue l'essentiel de la revendication libyenne, je veux dire: la petite Malte insulaire ne peut prétendre se mesurer à égalité avec la grande Libye continentale. Une fois le paravent renversé, le thème principal apparaît dans toute sa nudité. En fin de compte, et une fois que tout a été dit, la délimitation demandée par la Libye ne repose sur rien d'autre que la proportionnalité des longueurs de côtes et des superficies territoriales, accompagnée d'une théorie discriminatoire entre les Etats insulaires et les Etats continentaux. C'est cela le cœur de l'affaire; c'est là-dessus que la Cour est, au bout du chemin, appelée à se prononcer.

Monsieur le Président, je ne reviendrai pas de nouveau sur la critique que j'ai faite de ces conceptions dans ma précédente intervention (**III**, p. 402-410), ni sur les explications données par mon ami le professeur Brownlie.

Comme nous l'avons vu, l'idée d'une corrélation nécessaire entre les superficies de plateau continental relevant de chacun des Etats intéressés, d'une part, leur caractère insulaire ou continental, leur magnitude territoriale et la longueur comparée de leurs côtes, d'autre part, est condamnée par le principe de la projection radiale, lui-même inhérent au caractère dérivé des droits de plateau continental, définis comme un accessoire et une émanation de la souveraineté de l'Etat.

Je rejoins ainsi, par une autre voie, les observations faites par mes collègues. Comme l'a noté hier mon ami Lauterpacht, une fois disparu l'écran de papier de la géologie, il ne reste plus rien pour soutenir le cas libyen que la proportionnalité. Or celle-ci est juridiquement tellement incapable de servir de justification à la revendication libyenne, tellement inapte à rendre compte de la configuration des côtes, tellement impuissante, comme l'a montré le professeur Brownlie, à identifier une ligne de délimitation plutôt qu'une autre, que la Libye elle-même n'a pas osé s'appuyer sur la proportionnalité en tant que telle. Du cas libyen il ne reste finalement rien.

Je voudrais simplement ajouter à ces remarques deux observations qui ne me paraissent pas dépourvues d'intérêt.

Je voudrais d'abord attirer l'attention de la Cour sur le caractère artificiel de la trilogie établie par la Libye entre la magnitude territoriale, la longueur de la façade côtière et le caractère insulaire ou continental d'un Etat. Trilogie facile, bien sûr, puisque Malte est un Etat à la fois petit, insulaire et doté de côtes courtes, et que la Libye est, à l'inverse, un Etat à la fois vaste, continental et doté d'une façade côtière longue. Comment ne pas voir pourtant qu'aucune cor-

rélation n'existe entre ces trois aspects, unis arbitrairement par la Libye en une seule et même triade? La *ratio* de la longueur côtière par rapport à la superficie du territoire varie dans des proportions considérables d'un cas à l'autre, ainsi que le met en évidence le tableau publié dans un ouvrage documenté (L. Lucchini et M. Voelckel, *Les Etats et la mer*, Paris, La documentation française, 1978, p. 57). Pour parler plus clairement, un Etat vaste peut avoir des côtes courtes, un Etat petit, des côtes longues; un Etat continental peut être petit, un Etat insulaire peut être grand, et ainsi de suite.

Mais ce que je voudrais surtout dénoncer, c'est l'erreur fondamentale qui vicie la conception libyenne. Le plateau continental n'est pas l'extension d'un territoire *physique* ou d'une côte *physique*. Il est l'extension de la «souveraineté territoriale», c'est-à-dire une émanation de la qualité d'Etat, un attribut étatique. La proposition avancée par la Partie adverse, selon laquelle le plateau continental est la projection en mer de la «masse territoriale» (ci-dessus p. 159), est contraire au droit international, et provoquerait, si elle était admise par la Cour, un bouleversement complet du droit de la mer. Il en va de même de l'assertion, également formulée par la Partie adverse, que le statut politique d'une île est indifférent en matière de délimitation et qu'il n'y a pas lieu, dès lors, de distinguer selon que le territoire insulaire en cause a, ou n'a pas, la qualité d'un Etat souverain (ci-dessus p. 65-66, 139 et 140).

Ce n'est pas physiquement, mais juridiquement, que la terre domine la mer. Ce n'est pas physiquement, mais juridiquement, que le plateau continental prolonge la souveraineté de l'Etat côtier sous la mer. Ce n'est pas physiquement, mais juridiquement, que l'adjacence des fonds marins au territoire terrestre constitue la base du titre de l'Etat côtier sur ces fonds. C'est de sa qualité étatique que l'Etat côtier tient la faculté de se projeter en mer, et non pas de l'existence physique d'une masse territoriale.

Comment, dans ces conditions, admettre que le statut politique d'une île soit indifférent? Comment, dans ces conditions, admettre que le plateau continental d'un Etat insulaire doive nécessairement être délimité de la même manière que celui d'une île dépendante? Rien n'interdit certes de reconnaître à une île dépendante, dans une opération de délimitation, le même effet plein qu'à une île-Etat; de cela les exemples ne manquent pas, comme la Partie adverse le reconnaît (ci-dessus p. 139). Ce que le droit international interdit, c'est de refuser à une île-Etat la plénitude de ses droits en matière de délimitation sous le prétexte que les îles dépendantes ne se voient parfois reconnaître qu'un effet partiel, ou même aucun effet, du fait de leur petite dimension, de leur faible population ou de leur situation géographique: si ces considérations peuvent limiter les droits, dans certains cas, les droits d'une île dépendante, elles sont, dans tous les cas, dépourvues de pertinence et d'effet lorsqu'il s'agit d'un Etat insulaire. C'est ce que j'avais essayé de montrer dans ma précédente intervention (**III**, p. 404 et suiv.).

De manière révélatrice, les termes d'*Island State*, île-Etat, Etat insulaire, ont été quasiment absents du vocabulaire de nos contradicteurs. Cette négation de l'égalité souveraine des Etats ne peut manquer de retenir l'attention alors que, comme l'a rappelé le professeur Lucchini, les Etats insulaires représentent actuellement vingt-cinq pour cent de l'ensemble des Etats: un Etat sur quatre est un Etat insulaire, ne l'oublions pas (ci-dessus p. 140).

L'inéquité du résultat

Il reste enfin, Monsieur le Président, pour achever cet examen du cas libyen, à s'interroger sur le caractère équitable et raisonnable de la délimitation proposée par la Libye.

Point n'est besoin de longues explications. Que la Cour veuille bien jeter un coup d'œil, une fois encore, sur les lignes proposées par nos adversaires sur (50) leur carte 68, qui se trouvent reproduites sur la grande carte derrière moi et sur (46) la figure 42 de notre dossier rouge. Est-ce là une solution raisonnable? Est-ce là une solution équitable?

Si un résultat de ce genre était produit par l'application de la méthode de l'équidistance — en raison, par exemple, d'une configuration spéciale de l'une des côtes — on crierait à coup sûr à l'empiétement et à l'amputation, et on aurait raison.

S'il n'y a pas là un exemple caractéristique d'amputation et d'empiétement, dans quel cas pourra-t-on encore parler dans l'avenir d'amputation et d'empiétement?

Quant au fait que la délimitation proposée s'arrête à la hauteur des escarpements, c'est-à-dire à peu près au 16e degré de longitude, cette mutilation de la projection des côtes maltaises a été essentiellement expliquée par la Partie adverse, nous l'avons vu, par la présence d'un accident géomorphologique dont elle a dit qu'il ne marque la fin ni du plateau continental proprement dit ni de la marge continentale de Malte. Mais cette mutilation a également été justifiée au nom de considérations d'équité ayant trait à la nécessité de garder en réserve les zones plus à l'est pour la future délimitation entre la Libye et des Etats tiers, et plus particulièrement l'Italie (ci-dessus p. 157, 161, 176, 177 et 182).

J'aurai l'occasion ultérieurement de m'exprimer au sujet de cette idée de mettre en réserve la zone située à l'est de 16° en vue d'une délimitation future avec l'Italie. Je me bornerai ici à faire remarquer que les lignes proposées par la Libye ne respectent elles-mêmes pas cette préoccupation prétendument inspirée par l'équité.

La Cour se souviendra qu'en réponse à une question de M. de Lacharrière au cours de la procédure d'intervention de l'Italie au sujet des «zones de plateau continental sur lesquelles l'Italie croit avoir des droits», l'agent du Gouvernement italien a indiqué que:

> «La première zone sur laquelle l'Italie considère avoir des droits est la zone géographique délimitée à l'ouest par le méridien 15° 10' (qui passe par l'origine de la ligne de base de Capo Passero); au sud par le parralèle 34° 30' N, etc.»[1]

Il apparaît ainsi clairement que l'Italie estime avoir des droits dans une partie de la zone que la Libye elle-même demande à la Cour de délimiter entre elle et Malte. Tant et si bien que, même si elle acceptait la ligne proposée par la carte (50) libyenne 68, la Cour ne mettrait quand même pas en réserve l'intégralité des zones revendiquées par l'Italie puisque, selon la réponse italienne, une partie de cette zone se trouve à l'ouest de la limite extrême proposée par la ligne italienne, c'est-à-dire à l'est du méridien de Capo Passero.

Ceci est d'ailleurs reconnu par la Partie adverse, puisque le professeur Bowett a pris soin de préciser que si l'Italie a une revendication à formuler à l'ouest de l'escarpement il lui appartiendra de la faire valoir, selon le cas, contre Malte ou contre la Libye; c'est seulement l'espace à l'ouest de l'escarpement que la ligne proposée par la Libye réserverait pour une future délimitation Italie/Libye (ci-dessus p. 182).

Le caractère déraisonnable et inéquitable des lignes revendiquées par la Libye apparaît également si l'on se souvient que ces lignes se situent plus au nord qu'une ligne médiane entre l'Italie et la Libye qui ne tiendrait pas compte de

[1] Voir ci-après, correspondance, n° 68.

l'existence de Malte. J'ai évoqué cette inéquité dans ma précédente intervention
(45) (**III**, p. 398-399) et elle apparaît en pleine lumière sur la figure 41 de notre premier dossier. A quoi le professeur Bowett a objecté que rien ne permet de supposer que la délimitation italo-libyenne se ferait forcément selon une ligne médiane (ci-dessus p. 176). La Libye, a-t-il dit, pourrait invoquer la Rift Zone contre l'Italie également. L'Italie, a précisé mon ami et contradicteur, a d'ailleurs d'ores et déjà fait connaître, lors de son intervention en janvier 1984, qu'elle est hostile au caractère obligatoire et absolu de l'équidistance. Quelle que puisse être la position de l'Italie à l'égard de l'équidistance en général, ou de l'équidistance dans le cas particulier de sa délimitation future avec Malte ou avec la Libye, je remarquerai simplement que le passage de la plaidoirie italienne cité par le professeur Bowett ne se rapportait pas à une éventuelle délimitation entre l'Italie et la Libye, mais concernait, sauf erreur de ma part, la ligne d'équidistance réclamée par Malte entre l'Italie et Malte. La Cour notera également que la limite méridionale de la revendication italienne, telle qu'elle a été définie dans la réponse à M. de Lacharrière à laquelle je viens de me référer, se situe au pallèle 34°30', lequel correspond, comme la Cour pourra le
(45) constater en se reportant à la figure 41 de notre premier dossier, à peu de choses près à la ligne médiane entre l'Italie et la Libye ne tenant pas compte de l'existence de Malte.

Monsieur le Président, Messieurs les juges, que reste-t-il en fin de compte de la revendication libyenne?

La Rift Zone, qui ne marque ni la limite du plateau continental ni le rebord externe de la marge continentale d'aucun des deux pays, se ramène en définitive à une représentation cartographique qui sert de couverture ou d'alibi, oserais-je dire, à une ligne de proportionnalité que la Libye n'a pas le courage d'avouer, parce qu'elle la sait juridiquement indéfendable.

Quant à la zone des escarpements, elle ne marque pas davantage la limite du plateau continental ou le rebord de la marge continentale; elle ne suffit même pas à réserver les droits de l'Italie. Elle se réduit à une belle et profonde couleur bleue sur les cartes libyennes, destinées à créer l'impression que la nature a dressé elle-même un barrage infranchissable à toute extension des projections de Malte en direction de l'est.

Faut-il rappeler par ailleurs, une fois encore, que la revendication libyenne ne peut s'appuyer sur aucun précédent de la pratique des Etats? Manifestement aucun gouvernement n'a jamais regardé le genre de solution préconisée par la Libye comme suffisamment équitable pour accepter d'y souscrire!

Les diverses lignes de délimitation proposées par la Libye ne s'expliquent finalement pas autrement que par la volonté de réduire le plateau continental de Malte à la portion congrue. Le plateau de Malte «nécessairement enclavé», «inévitablement enclavé» (ci-dessus p. 42-43 et 161): le thème de l'enclave, que j'avais dénoncé précédemment (**III**, p. 397-398), a refait surface, et il est révélateur. Ce n'est pas tout à fait «Malta disregarded», j'en conviens, mais on n'en est pas très éloigné.

Je n'en dirai pas davantage au sujet du caractère déraisonnable et inéquitable de la solution proposée à la Cour par la Libye, et je me propose de me tourner demain matin avec votre permission, Monsieur le Président, vers le cas maltais.

La séance est levée à 13 h 08

TRENTIÈME AUDIENCE PUBLIQUE (13 II 85, 10 h)

Présents: [Voir audience du 26 XI 84, M. Morozov absent.]

M. WEIL: Monsieur le Président, Messieurs les juges, dans le cadre de la troisième partie de mon exposé, consacrée à la question de savoir comment tracer une ligne de délimitation équitable entre les zones de plateau continental relevant respectivement de Malte et de la Libye, j'ai procédé hier à l'examen critique du cas libyen. La revendication libyenne, j'espère être parvenu à en convaincre la Cour, n'a pas d'assise juridique et conduirait, si elle était acceptée, à une solution déraisonnable et inéquitable.

Je me tourne à présent vers le cas maltais.

Le cas maltais

La dénaturation des thèses maltaises

Lorsque je fais mention du cas maltais, je pense évidemment au cas maltais tel qu'il est, et non pas au cas maltais tel que la Partie adverse a cru pouvoir le décrire au cours du premier tour des plaidoiries.

Il serait fastidieux de dresser l'inventaire de tous les points sur lesquels les plaidoiries libyennes ont présenté de nos thèses une vision déformée. Il est cependant de mon devoir de dénoncer les deux dénaturations les plus flagrantes dont nos thèses ont été l'objet.

La première concerne la prise en considération des faits. A en croire nos adversaires, la position de Malte impliquerait que «la Cour n'aurait pas à prendre en considération les diverses circonstances pertinentes de la présente affaire» (ci-dessus p. 88), et l'un des conseils de la Libye n'a pas hésité à évoquer «l'application soigneuse mise par Malte à ne pas utiliser l'expression consacrée de circonstances pertinentes» (ci-dessus p. 129). Il faut croire que nos adversaires n'ont pas lu ce que nous avons écrit, ni entendu ce que nous avons dit, au sujet du rôle capital des circonstances pertinentes dans l'opération de délimitation (CMM, p. 58, par. 108; p. 60, par. 112 et 114; **III**, p. 373 et 376); sinon ils n'auraient pas pu se tromper à ce point sur la position de Malte.

La seconde dénaturation que je me dois de dénoncer a trait à l'équidistance. La Partie adverse n'a cessé, par la bouche de ses conseils successifs, de nous accuser du crime majeur de préméditation d'équidistance. Selon elle, Malte serait coupable de vouloir «acculer la Cour à la décision inexorable de donner sa bénédiction à la méthode de l'équidistance» *(to force the Court to the inexorable decision to bless the equidistance method)* (ci-dessus p. 32). Malte chercherait à imposer «à tout prix» *(at all costs)* (ci-dessus p. 31) «sa propre méthode à priori et même sa propre ligne présélectionnée» *(its own a priori method of delimitation and even its own preselected line)* (ci-dessus p. 30). Pour réaliser ce noir dessein, a-t-on expliqué à la Cour, Malte ne recule devant rien; tous les moyens lui sont bons *(ibid.)*. Pourquoi Malte fait-elle état du principe de distance? Pour faire passer sous ce pavillon la règle juridique de l'équidistance (ci-dessus p. 35, 44, 46, 55, 87, 88 et 88-89, etc.). Pourquoi Malte mentionne-t-elle le principe du non-empiétement? Parce qu'elle voit là un «*catch-*

word» pour l'équidistance (ci-dessus p. 67). Les références faites par Malte au principe de l'égalité des Etats sont elles-mêmes entachées de suspicion et présentées comme mises au service d'une délimitation obligatoirement équidistante (ci-dessus p. 29, 34, 35 et 37-38).

Bref, selon nos adversaires, toute l'argumentation maltaise ne tendrait que vers un seul et unique but: justifier le caractère juridiquement obligatoire, en toutes circonstances, de la méthode de l'équidistance, dont le caractère équitable serait présumé sans qu'il y ait besoin de prendre en considération les circonstances pertinentes propres à la présente affaire (ci-dessus p. 88 et 155).

Rappel des thèses maltaises

Monsieur le Président, la Cour sait que tout cela n'est qu'une description caricaturale de nos positions. Afin de ne laisser subsister aucun malentendu et de rétablir la vérité, je me dois de rappeler en quelques mots l'essentiel de nos thèses, telles que nous les avons exposées tout au long de cette affaire.

Le principe de droit international selon lequel les droits de plateau continental sont dérivés de la souveraineté territoriale, dont ils forment une «émanation» et un «accessoire automatique», conduit, comme j'ai essayé de le montrer hier, à une irradiation de chacun des points de chacune des côtes de chacun des Etats côtiers dans toutes les directions jusqu'à une distance minimale de 200 milles marins des lignes de base.

Dans le cas où la projection émanant de la côte d'un autre Etat vient faire obstacle à l'épanouissement plein et entier de la projection de l'Etat en cause, il y aura lieu à délimitation. L'essence de l'exercice de délimitation consistera à amputer la projection de chacun des deux Etats de manière à aboutir à une division équitable des zones de chevauchement.

C'est cela, et rien d'autre, que Malte propose de faire entre ses côtes et celles de la Libye.

Malte constate d'abord que les projections de sa côte se chevauchent avec celles de la côte libyenne depuis la frontière tunisienne jusque bien au-delà de
(43) Ras Zarrouk. C'est ce que montre la figure 12 de notre premier dossier, le dossier rouge.

S'appuyant sur le double paramètre de la géographie côtière et de la distance, conformément au droit international, Malte préconise ensuite de tracer à titre provisoire, comme premier pas, comme point de départ de l'exercice de délimitation, une ligne médiane entre les côtes opposées des deux pays intéressés. Pourquoi la méthode de l'équidistance plutôt que n'importe qu'elle autre? Parce qu'une méthode qui partage à peu près également les zones de chevauchement — je dis bien: les zones de chevauchement, et non pas: le plateau continental — permet *prima facie*, et sous réserve du contrôle ultérieur des circonstances propres à l'affaire, de respecter le droit égal de Malte et de la Libye à une certaine distance de droits de plateau continental; parce que cette méthode permet *prima facie* — je répète: *prima facie* — d'éviter un empiétement de l'un des Etats sur l'autre; parce que cette méthode est d'un emploi commode; et enfin, et peut-être surtout, parce que cette méthode est de toutes les méthodes celle qui prend le plus directement et le plus étroitement appui sur la géographie côtière.

Mais là ne s'arrête pas, de l'avis de Malte, l'exercice de délimitation: sinon, il suffirait d'un géomètre pour régler toutes les délimitations de plateau continental encore en suspens de par le monde. Malte estime, il faut y insister encore et encore, que la ligne obtenue grâce à la méthode de l'équidistance n'est qu'une ligne d'attente. Le droit international ne permet d'en faire la ligne de

délimitation définitive qu'après vérification de son caractère équitable et raisonnable. Et cette vérification doit se faire sous deux formes: négativement, il faut contrôler qu'elle n'est pas inéquitable et déraisonnable; positivement, il faut s'assurer qu'elle est effectivement raisonnable et équitable. Malte estime que, dans les circonstances concrètes de la présente espèce, la ligne médiane subit avec succès cette double vérification, et c'est pourquoi elle la préconise comme ligne de délimitation appropriée dans la présente affaire.

Voilà, Monsieur le Président, l'essentiel des thèses que nous avons développées et qui, la Cour nous le concédera, ne se retrouvent pas dans la description qu'en donne la Partie adverse.

Avant de faire la démonstration du caractère équitable de la ligne médiane dans les circonstances concrètes de la présente affaire, je voudrais encore formuler deux observations, rendues nécessaires par les plaidoiries adverses.

J'ai eu l'occasion dans mon premier exposé de m'élever contre les excès de la campagne menée par les écrits libyens contre la méthode de l'équidistance en soi, accablée de tous les maux de la création et présentée contre l'antithèse de l'équité (**III**, p. 421 et suiv.). Non seulement aucune sourdine n'a été mise à cette campagne pendant le premier tour des plaidoiries orales, mais un nouvel argument a été mis en avant, que nous nous devons de dénoncer énergiquement.

L'agent de la Libye a en effet soutenu que l'équidistance est la solution évidente et facile dans les cas simples, mais que les cas soumis aux juges ne sont par définition pas simples et que, à l'instar des trois affaires précédemment soumises à la Cour, l'équidistance n'est donc pas la solution appropriée dans la présente affaire (ci-dessus p. 11-12).

Faut-il comprendre par là que l'équidistance serait en quelque sorte réservée aux délimitations conventionnelles, mais que dès lors qu'une affaire est suffisamment complexe pour appeler une solution judiciaire ou arbitrale l'équidistance cesserait *ipso facto* d'être appropriée — ce qui reviendrait à prétendre que le juge ou l'arbitre ne pourraient *jamais* recourir à une solution d'équidistance?

La Cour acceptera-t-elle de regarder l'équidistance comme tabou, comme interdite de séjour dans l'arène judiciaire ou arbitrale? Tel est l'enjeu que la thèse libyenne, par son caractère extrême, confère à la présente affaire.

Enjeu confirmé au demeurant par une autre observation de l'agent de la Libye, immédiatement à la suite de la précédente: si la thèse de Malte en faveur de l'équidistance était admise dans la présente espèce, a-t-il déclaré, on voit mal comment l'équidistance ne devrait pas à fortiori être appliquée dans toutes les délimitations futures de plateau continental («it is hard to see how equidistance will not *a fortiori* be applied in virtually every future case of continental shelf that can be imagined»). La Libye met en quelque sorte la Cour en garde: si la Cour retient ici la ligne médiane, elle se condamne à devoir la retenir toujours. La Cour appréciera.

Ma seconde remarque se rapporte au principe d'égalité des Etats. Manifestement gênée par ce principe, dont sa thèse tout entière constitue la négation, et que l'on rencontre à tous les carrefours de notre affaire, la Libye a renforcé l'offensive qu'elle avait esquissée contre ce principe dans ses écritures et sur laquelle j'ai déjà eu l'occasion de m'expliquer (**III**, p. 403-404 et 407-408).

Malgré l'amical respect que je porte au professeur Briggs, je me dois de dire qu'il me paraît s'être mépris sur la portée du principe d'égalité tel que nous le concevons dans la présente affaire. Notre distingué contradicteur allègue que, sous le couvert du principe d'égalité, Malte réclame un «equal entitlement» et revendique en conséquence une superficie de plateau continental égale à celle de la Libye, c'est-à-dire une division du plateau continental par parts égales (ci-dessus p. 34, 36, 37 et 38). L'égalité des Etats, ont cru nécessaire d'observer les

conseils de la Libye, ne signifie pas égalité de territoire, de ressources naturelles, de superficies de plateau continental (ci-dessus p. 29, 33 et 58) — comme si nous avions jamais soutenu une théorie aussi extravagante! Mais il y a mieux. Malte n'a pas seulement été accusée de réclamer, au nom de l'égalité des Etats, autant de plateau continental que la Libye, elle a été accusée de s'appuyer sur ce principe pour «s'enrichir» (ci-dessus p. 34, 35, 38 et 39). «A claim of enrichment . . . clothed in the language of equality»: voilà comment est comprise de l'autre côté de la barre la position de Malte (ci-dessus p. 34 et 39). La thèse maltaise, a dit la Libye, représente une «misconceived theory of the equality of States», «a contrived effort to equalize that which is not equal» (ci-dessus p. 40 et 41).

Monsieur le Président, nous avons du mal à retrouver nos idées dans le tableau qu'en ont dessiné nos adversaires.

Où avons-nous dit que le principe de l'égalité des Etats doit permettre à Malte de compenser les inconvénients inhérents à sa petite taille, à son insularité, que sais-je encore?

C'est le contraire que nous avons dit. Nous avons relevé nous-mêmes la différence de taille entre les deux pays. Nous avons souligné je ne sais combien de fois que la longueur de ses côtes confère à la Libye une superficie de plateau continental de loin supérieure à celle de Malte — et nous n'avons rien trouvé à y objecter.

Ce que nous avons dit, c'est que Malte est un Etat insulaire, d'accord; petit, j'en conviens, mais un Etat —, et qu'en vertu de sa qualité d'Etat il a droit, comme tout autre Etat, à la projection de ses côtes sous la mer dans toutes les directions sur un pied d'égalité avec les autres Etats. Ce qui ne veut pas dire que Malte aurait droit à la même superficie de plateau continental que les Etats voisins, mais que le déroulement de l'opération de délimitation doit s'effectuer dans des conditions normales et sans discrimination.

Il n'y a pas deux catégories d'Etats: ceux qui méritent leurs droits maritimes, et ceux qui ne les méritent pas. La qualité d'entité étatique confère à tous les Etats le même traitement au regard du droit.

Les souverainetés dont les projections maritimes constituent, selon l'expression de la Cour, l'«émanation» et l'«accessoire automatique» sont juridiquement d'égale valeur, puisque tous les Etats sont égaux et souverains, et également souverains. Les irradiations maritimes que ces souverainetés engendrent ne peuvent donc, elles aussi, qu'être juridiquement d'égale valeur. L'une n'est pas plus «intense» que l'autre; l'une n'a pas plus de poids que l'autre. La question n'est pas de savoir si l'un des Etats est insulaire et l'autre continental. Elle n'est pas de savoir si l'une des côtes est plus longue que l'autre. Les projections de Malte existent, ou n'existent pas, exactement comme celles de la Libye; elles se chevauchent avec celles de la Libye ou ne se chevauchent pas. Mais dès lors qu'elles existent, et dès lors qu'un chevauchement se produit, le problème doit se résoudre sur ses mérites propres, et non pas selon des critères discriminatoires tirés du caractère insulaire ou continental des Etats en présence, de leur superficie terrestre ou de l'étendue de leurs façades côtières.

Ce qui irrite apparemment la Libye, c'est que cette petite île, avec ses courtes côtes, puisse engendrer, grâce à la ligne médiane, une telle superficie de plateau continental. Mais si c'est là le jeu normal des principes de droit international relatifs aux projections des souverainetés territoriales sous la mer, pourquoi s'en indigner?

Les faits sont les faits, s'est écrié le professeur Bowett (ci-dessus p. 155), et il a raison. Les faits sont les faits. Nul ne peut s'affranchir des faits géographiques, sous peine de refaire la nature — et à cela le droit international

s'oppose. Selon sa situation géographique, un Etat peut être avantagé ou désavantagé, avantagé à certains égards et désavantagé à d'autres. Chacun doit vivre avec la géographique qu'il a.

Malte doit accepter — et accepte — les inconvénients de sa géographie. Son territoire est exigu, et ses richesses limitées.

Mais si Malte doit accepter les inconvénients de sa géographie, pourquoi ne bénéficierait-elle pas en contrepartie des avantages de sa géographie et des conséquences inhérentes à son insularité? Son caractère insulaire lui confère en effet des projections tout autour de son territoire et lui assure une ceinture de juridictions maritimes, limitée certes par les projections d'égale valeur de ses voisins.

Pourquoi, et au nom de quoi, Malte devrait-elle pâtir des inconvénients et être privée des avantages de sa situation géographique? C'est à cela, exactement, que voudrait aboutir la Libye.

Ce qui est vrai de Malte l'est tout autant de la Libye. Etat continental, la Libye ne peut aspirer à une ceinture circulaire de juridictions maritimes. Mais son territoire est immense, ses richesses importantes, et ses côtes d'une grande longueur lui assurent un plateau continental particulièrement étendu vis-à-vis de tous ses voisins. La Libye, tout comme Malte, doit accepter les inconvénients en même temps que les avantages de sa géographie.

C'est dans cette approche équilibrée des réalités de la géographie que se situe la conception correcte du principe de l'égalité des Etats, et non pas dans le tableau déformé qu'en ont donné les plaidoiries adverses.

Ces remarques faites, il ne me reste plus qu'à m'interroger sur l'équité de la ligne médiane. C'est par là que s'achèvera mon tour d'horizon.

L'équité du résultat

En quoi la ligne médiane préconisée par Malte serait-elle inéquitable ou déraisonnable? Il est remarquable que les plaidoiries de la Partie adverse n'aient pas même tenté de fournir la moindre réponse à cette question. Sans doute M. Highet a-t-il affirmé qu'une ligne d'équidistance par rapport à une petite île ampute automatiquement les côtes des Etats continentaux qui lui font face et empiète automatiquement sur le prolongement naturel du territoire terrestre de ces Etats (ci-dessus p. 148): la ligne médiane demandée par Malte, a-t-il proclamé, représente «un exemple typique d'amputation» *(a text-book case of "cut-off")* (ci-dessus p. 149). Affirmer ne signifie pas démontrer: à moins de poser comme postulat de base que la Libye a droit à la plus grande partie du plateau continental à délimiter et que, par conséquent, toute ligne qui ne lui accorderait pas la part du lion «amputerait» *ipso facto* son droit, on ne comprend pas en quoi la ligne médiane peut être regardée comme amputant les droits de la Libye: l'effet d'«occlusion» dont parlait mon collègue Brownlie n'existe pas ici.

J'ai montré, dans ma précédente plaidoirie, à quel point la situation géographique dans la présente affaire est simple et banale: des côtes qui se font face, dépourvues de toute configuration mineure génératrice d'inéquité, sans la moindre île entre elles (**III**, p. 434 et suiv.). La partie adverse s'est insurgée contre cette constatation: «normality has no real meaning», a déclaré le professeur Bowett (ci-dessus p. 160). Ce n'est pas exact. Le concept de normalité joue un rôle important en matière de délimitation du plateau continental. C'est lui qui sous-tend la notion conventionnelle de «circonstances spéciales». C'est lui aussi qui est l'origine des notions de droit coutumier de «caractéristiques spéciales ou inhabituelles», «particularités non essentielles», «résultats anor-

maux», sur lesquelles je me suis expliqué dans ma précédente intervention (**III**, p. 431 et suiv.). Quoi qu'en dise mon ami et collègue, la notion de normalité est juridiquement pertinente, et la question de savoir si la géographie côtière présente ou non des particularités anormales *est* décisive.

Le mutisme quasi complet gardé par les conseils de la Libye sur le rapport de «côtes se faisant face» des côtes de Malte et de la Libye et sur la simplicité de la configuration géographique en présence constitue, de la part de la Partie adverse, un aveu de faiblesse significatif. Que les côtes libyennes et maltaises se trouvent dans un rapport d'opposition frontale indiscutable *est* important. Et il ne suffit pas de garder le silence à ce sujet et d'affirmer péremptoirement que la ligne médiane est inéquitable pour la condamner sans autre forme de procès.

Sans doute la Libye reproche-t-elle à la ligne médiane proposée par Malte de ne pas diviser les superficies de plateau continental dans la même proportion que les longueurs côtières des deux pays. Mais cela suppose acquis et préétabli que toute délimitation du plateau continental doit obligatoirement s'effectuer selon une *ratio* identique à celle dans laquelle se trouvent les longueurs côtières, autrement dit que la proportionnalité constitue une source directe de droits et une méthode primaire de délimitation. La Partie adverse elle-même ne se risque pas à de telles extrémités, condamnées par une jurisprudence unanime.

Le seul grief d'inéquité formulé contre la ligne médiane dans notre affaire est en fin de compte de ne pas sauvegarder les intérêts de l'Italie et d'empiéter sur des zones qui relèveraient d'une délimitation entre la Libye et l'Italie (ci-dessus p. 176 et 177).

Pour faire justice de cette objection «vertueuse», pour rappeler l'expression de mon ami Ian Brownlie, il me suffira de rappeler que dans l'affaire franco-britannique le tribunal arbitral s'était interrogé sur son pouvoir de tracer une ligne de délimitation entre la France et le Royaume-Uni «au cas où cette ligne paraîtrait devoir toucher aux intérêts ou revendications d'un Etat tiers» (sentence arbitrale, par. 25). Il n'était en effet pas impossible que la ligne de délimitation entre la France et le Royaume-Uni rencontre la ligne de délimitation entre le Royaume-Uni et l'Irlande. Après avoir entendu les vues des parties sur ce problème, le tribunal a décidé de procéder à la délimitation entre la France et le Royaume-Uni sans tenir compte de «conjectures» quant au tracé d'une future et éventuelle ligne de délimitation entre le Royaume-Uni et l'Irlande. La décision à prendre sur la délimitation franco-britannique, a-t-il précisé, ne sera pas obligatoire pour l'Irlande, à l'égard de laquelle elle sera *res inter alios acta*, et elle ne préjugera en rien une future délimitation anglo-irlandaise. Le tribunal a ajouté ce qui suit et qui mérite d'être rappelé:

> «Dans l'éventualité où les deux délimitations successives des zones de plateau continental dans cette région, où les trois Etats sont limitrophes sur le même plateau continental, pourraient aboutir à un chevauchement des différentes zones, le Tribunal est manifestement incompétent pour régler d'avance et de façon hypothétique le problème juridique qui pourrait alors se poser. Ce problème trouverait normalement sa solution appropriée par des négociations directes entre les trois Etats intéressés.» (*Ibid.*, par. 28.)

Il convient surtout de rappeler que, dans son arrêt du 21 mars 1984 relatif à la requête de l'Italie à fin d'intervention dans la présente affaire, la Cour a déclaré expressément que les droits de l'Italie seraient sauvegardés par l'article 59 du Statut de la Cour et que la délimitation qui sera décidée entre la Libye et Malte sera «sans préjudice des droits et titres d'Etats tiers» (*C.I.J. Recueil 1984*, p. 26 et 27, par. 42 et 43). L'agent de Malte s'est clairement exprimé à ce sujet (**III**, p. 284).

Pour réserver intégralement les intérêts italiens, ce n'est d'ailleurs pas, je l'ai indiqué hier, à la longitude de 16° qu'il faudrait arrêter la délimitation, mais à celle de 15°10', limite extrême vers l'ouest de la revendication italienne. La Libye elle-même n'a pas osé pousser aussi loin sa demande de mise en réserve des zones revendiquées par l'Italie!

Une dernière remarque encore sur ce problème des intérêts de l'Italie. Le doyen Colliard s'est référé à la pratique des «tripoints» à laquelle il a attribué «une grande et noble signification juridique» puisqu'ils symbolisent et concrétisent les droits des Etats tiers (ci-dessus p. 125). Je voudrais simplement faire observer que le point le plus oriental de la ligne médiane préconisée par Malte, le point 12, est précisément un «tripoint» à égale distance non seulement de Malte et de la Libye, mais aussi de l'Italie. La Cour pourra le vérifier en se reportant à la figure 11 de notre premier dossier. (42)

Voilà, Monsieur le Président, pour le volet négatif de la vérification de l'équité: aucune considération sérieuse, ou même plausible, n'a pu être avancée pour établir que la ligne médiane dans cette affaire ne serait pas équitable.

La démonstration positive ne soulève pas davantage de difficultés.

La ligne médiane reflète fidèlement la configuration géographique des côtes qui se font face de Malte et de la Libye. Elle assure à chacun des deux Etats la projection maritime engendrée par leurs côtes respectives, au maximum de la distance compatible avec les droits de l'autre Etat. Elle ampute certes les projections de l'un comme de l'autre des Etats, mais elle réalise cette amputation de manière équilibrée et raisonnable. Il ne faut pas oublier non plus que les droits de Malte sont particulièrement réduits par la géographie en direction du nord et de l'ouest: autant dire qu'il est important pour Malte que ses droits ne soient pas mutilés *de manière injustifiée* en direction de l'est et du sud-est. La sentence franco-britannique, on le sait, n'a pas regardé comme négligeable ce genre de considérations (cf. par. 201). Faut-il rappeler également que la ligne médiane préconisée par Malte se trouve à peine plus au sud que ne le serait une ligne médiane tracée entre l'Italie et la Libye en faisant abstraction de Malte, ainsi qu'il apparaît sur la figure 41 de notre premier dossier? (45)

La ligne de délimitation proposée par Malte est en outre conforme, il faut le souligner une fois de plus, à la pratique bien établie des Etats à un triple point de vue: recours à une ligne médiane entre côtes se faisant face; absence de prise en considération de la configuration physique des fonds marins; traitement des Etats insulaires sur un pied d'égalité avec les autres Etats alors même que leur côte aurait une longueur moindre. Malte n'ignore pas que les délimitations conventionnelles ne sont pas forcément inspirées par un sentiment d'obligation juridique et qu'en conséquence les précédents tirés de la pratique ne peuvent pas être regardés comme l'expression d'une *opinio juris* créatrice d'une règle coutumière. Malte ne méconnaît pas davantage qu'aucune situation concrète ne ressemble tout à fait à aucune autre et que chaque cas constitue à certains égards un *unicum*. Il n'en demeure pas moins que la pratique des Etats reflète, par son caractère massif et impressionnant, l'appréciation que les gouvernements intéressés ont portée sur l'équité de la solution qu'ils retenaient. Si tant d'accords de délimitation ont adopté la méthode de l'équidistance dans des situations plus ou moins analogues à celle qui se présente dans notre affaire, c'est certainement parce que cette méthode a paru aux Etats en cause apporter une solution raisonnable et équitable. En ce domaine, où l'appréciation de l'équité risque facilement de dériver vers le subjectivisme, la pratique des Etats constitue un indice objectif dont l'importance ne saurait être sous-estimée.

Monsieur le Président, Messieurs les juges, le problème soumis à la Cour se ramène en définitive à des données d'une grande simplicité. La délimitation du

plateau continental entre Malte et la Libye constitue, pour emprunter son expression à M. Highet, un «textbook case» pour l'application de la ligne médiane. Une telle ligne est dictée par les réalités géographiques. Elle est dictée par l'application normale des principes juridiques qui gouvernent le caractère dérivé des droits des Etats côtiers sur les fonds marins et la projection des côtes sous la mer dans toutes les directions jusqu'à la distance permise par le droit international et les données géographiques. Elle est dictée enfin par toutes les considérations d'équité développées par mes collègues et par moi-même.

Ecarter la ligne médiane dans les conditions concrètes de la présente affaire reviendrait à mettre entre parenthèses le lien établi par le droit international entre les droits de plateau continental et la souveraineté territoriale — autrement dit: la qualité étatique — qui leur sert de support.

Ecarter la ligne médiane dans les conditions concrètes de la présente affaire impliquerait une discrimination juridique entre Etats souverains selon leur dimension ou selon leur caractère insulaire ou continental.

Monsieur le Président, Messieurs les juges, depuis la nuit des temps, le *jus inter gentes* a pour fonction essentielle d'assurer la coexistence entre des collectivités différentes par leur dimension, leur puissance, leur niveau de développement, leur richesse. Cette fonction primordiale est devenue celle du droit international avec l'apparition de l'Etat moderne il y a quelques siècles. Cette fonction est plus importante que jamais dans le monde actuel formé de plus de cent cinquante entités étatiques qui réclament comme un dû le droit à la différence. L'égalité souveraine des Etats constitue plus que jamais la pierre angulaire de la communauté internationale pluraliste et hétérogène de cette fin du XX^{e} siècle.

Vattel écrivait il y a plus de deux siècles: «Un nain est aussi bien un homme qu'un géant. Une petite république n'est pas moins un Etat souverain que le plus puissant royaume.»

C'est là que réside, une fois que tout aura été dit et que tout aura été pesé, l'enjeu ultime de la présente affaire.

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Ici s'achève, Monsieur le Président, Messieurs les juges, ma contribution à la présentation de la thèse de Malte.

Au moment où je m'apprête à prendre une certaine «distance» par rapport à cette affaire, je voudrais exprimer ma gratitude au Gouvernement de Malte et, plus particulièrement à son agent, mon ami M. Mizzi, pour la confiance qu'ils m'ont manifestée en me chargeant de la défense d'intérêts aussi importants pour leur pays. Ils m'ont fait là un grand honneur et procuré un grand plaisir.

Je voudrais également remercier la Partie adverse pour la courtoisie avec laquelle elle m'a écouté.

Je voudrais enfin, Monsieur le Président, Messieurs les juges, exprimer à la Cour ma reconnaissance pour l'attention qu'elle a prêtée à mes longs développements. Je mesure à sa pleine valeur le privilège d'avoir pu prendre part, fût-ce dans le rôle modeste qui a été le mien, à cette élaboration du droit des délimitations maritimes qui restera, nul ne saurait en douter, l'un des apports majeurs de la Cour au développement du droit international de ces vingt dernières années.

REPLY OF MR. MIZZI

AGENT FOR THE GOVERNMENT OF MALTA

Mr. MIZZI: Mr. President, Members of the Court, I stand once more before this distinguished Court to conclude the oral presentation of Malta. I do so, as always, with a sense of a personal privilege and of a great honour; but on this occasion also with more emotion than I usually feel whenever I have to address the Court. Now more than ever I ask myself whether we, who have represented Malta, have argued Malta's case with the persuasiveness which its importance for Malta's future demands; and I am sure the Court will understand my feelings when I address it for what is likely to be the last time to plead for my country.

It is now more than 12 years that Malta has been seeking to establish with certainty the extent of its sovereign rights over the sea-bed and subsoil adjacent to its coasts.

For over 12 years Malta has had to curtail the exercise of its basic sovereign rights, foremost among which is the search for sources of energy so essential for its economic and social development. For over 12 years Malta has had to seek outside assistance for development projects which could well have been funded from its own resources if the exercise of its legitimate rights had not been contested.

We are now nearing the end of the uncertainty which has been the cause of a serious handicap to our development, and it is only natural that as we approach the day on which Malta will know more clearly and more definitively which parts of the sea-bed it can regard as its own, I should ask myself whether all that was humanly and reasonably possible has been done to ensure that Malta will have a fair deal. Having been involved in this so vital an issue for Malta from the very beginning, and having been given greater and heavier responsibilities as time passed, all I can do now is hope that I have not failed in my duty towards my country. To the extent that I have, Malta must now place its trust in the Court and I am confident that that trust will not be misplaced. *Jura novit curia* is an old Roman saying and it is some consolation to think that my shortcomings can be remedied and supplemented by the Court's knowledge of the law and by its wisdom.

Of course, I am not thereby relieved of any of my duties. It still remains my main duty that I should assist the Court to the maximum of my capacity. It is for this reason that I shall again try in my final submissions to show to the Court, as briefly as I can, the reasonableness of the way in which we believe the delimitation should be effected and to state, also summarily, why we submit that the Court should reject the Libyan arguments.

At the end of more than ten full sessions in which my colleagues and I have attempted to present Malta's case, the Court will obviously expect me not only not to be lengthy but also that I should not repeat what has already been said. I assure the Court that I shall make every effort to oblige. For this reason I shall take most of the facts and assertions presented or made by my colleagues as having been demonstrated and require no further confirmation. When I do that the Court will understand why and will not think I have avoided the issues involved. On the other hand, a certain amount of repetition is, quite frankly, inevitable; and the Court will bear with me if I do say things that have already

been said. I shall therefore limit myself to the bare essentials of Malta's case and to the basic facts that have emerged from the pleadings of the two sides. These I shall consider very briefly, in the context of the fundamental legal principle that a delimitation of continental shelf areas claimed by two or more States must be equitable, taking account of all relevant circumstances.

The main facts, and the propositions that flow from them are, as I see them, the following:

1. The area to be divided between Malta and Libya is part of one and the same continental shelf in which the entitlements of the two States meet and overlap. There is no physical discontinuity in the region which could in some way affect the delimitation and this is particularly so, but not limited to, the area relevant for delimitation between Malta and Libya. Moreover, under contemporary international law and in the light of the jurisprudence as well as State practice, the physical features of the sea-bed are irrelevant both to entitlement and delimitation.

2. The area to be divided is geographically characterized by perfect normality. The States face one another, at some distance, with nothing between them or in their coastal configuration to disturb that normal setting.

3. In these geographical circumstances what is the line which is indicated as appropriate to a delimitation of the shelf areas? What line gives due weight to all relevant circumstances, to the geographical setting, including the difference in length of the two coastlines, to the conduct of the Parties, to economic considerations and security requirements? What line is also reasonable and equitable in taking account of third States; reasonable and equitable in accordance with the jurisprudence? What line is strongly indicated by State practice? The answer is, so we submit, inevitably a median line.

To take the first of the relevant facts I have just indicated: the area for delimitation is one continuous shelf.

Notwithstanding Libya's attempt to prove otherwise, the evidence produced in the case not only does not support the Libyan thesis of a fundamental discontinuity — much less of the existence of a plate boundary — but has shown conclusively that the area of shelf to be divided between Malta and Libya is one and the same shelf — a continuum both geologically and geomorphologically. This is the view Libya held in its case with Tunisia and it is a view which, notwithstanding recent assertions, has also been shared by Libya's experts. The experts produced by Malta are, as has been seen, very categoric about it; and they have given ample reasons to support their views. Morphologically, of course, the area is not completely flat. Which sea-bed, one may ask, is completely flat? And geologically the whole of the Mediterranean has been subjected to tremendous tectonic forces. How, in fact, could it be otherwise since this is an area where the European and African Plates have met and formed mountains and deep depressions?

But nothwithstanding all this, the Pelagian Block, which comprises the area relevant for delimitation in the present case, has remained one continuous unit. Its crust has been stretched and compressed and subjected to other forces, and it is therefore cracked in several parts; and thus we have the various troughs and furrows which are by now well-known to all of us and which I need not therefore mention again. However, it still remains one unit, without any significant discontinuity and still very much an integral part of the African Plate. There is certainly no separate microplate and whatever evidence there is on the matter is indicative that even the possibility of a microplate in formation is to be excluded.

The assertion that the Pelagian Basin is essentially one, both geologically and geomorphologically, applies to the whole of the Basin, from the shores of Tunisia and Libya right up to the coast of Sicily. But that assertion is even more apparent when it is applied to the part of the Basin which, as Libya itself accepts, is the only part of the Basin relevant to a delimitation between Malta and Libya. That part is the area south-east of the straight line joining Ras il-Wardija (in Gozo) to Ras Ajdir on the Tunisian-Libyan border. I shall have occasion to comment on the Libyan position concerning the relevant area later in my statement. For the moment I need simply state that, even for Libya, the relevant area within the so-called Rift Zone which is relevant to a delimitation is the area south-east of the line joining the two points in Malta and Libya I have just described.

But even a simple glance at the map of the Central Mediterranean will show how different this area is from the rest of the Rift Zone. And I need hardly recall the evidence of our experts to show the significant difference between the two parts of what Libya considers to be one zone. From Malta all the way down at least to the median line with Libya, the area is one of gentle slopes, characterized only by shallow channels or valleys and wide plateaux, all of them very much less significant than the troughs to the north-west or the Jarrafa Trough and the Tripolitanian Furrow to the south.

Not that this difference matters very much, since as has been shown by the evidence none of the features in the Pelagian Basin — neither the grabens nor the shallower channels — is such as to cause a real break in the geology or the geomorphology of the region; but the difference that exists between the two more distinct parts of the so-called Rift Zone serves to show more clearly how unfounded, in fact, is the Libyan interpretation of the geological and geomorphological evidence before the Court.

As to the legal significance of these physical features my colleagues have already shown that even if these features were much more significant than they really are in a scientific sense, they would still be legally irrelevant. Libya accepts that they would be irrelevant to a State's entitlement, and I need not therefore stress that point. What I wish to add is that if they cannot affect the extent of a State's entitlement when there is no question of delimitation, they cannot be regarded as terminating a State's continental shelf whenever that shelf overlaps the shelf of another State.

To state otherwise is to maintain that what is irrelevant to a State's entitlement to a continental shelf under international law acquires importance — indeed becomes a determining factor — in a delimitation of common shelves on no other ground but that it happens to be physically there. What is in effect a chance location of a natural phenomenon which would otherwise be totally immaterial to a State's entitlement suddenly acquires relevance — conclusive relevance according to Libya — simply because it happens to be in an area which is contended for by two States. It is even more illogical to maintain that this is so when the physical feature coincides with a line supposedly justifiable on the basis of proportionality, but may not be so when there is no such coincidence.

It is Malta's submission that the law could not be called just or equitable if it were what Libya says it is: the law would on the contrary countenance inequity if the chance location of a physical feature were to have any part whatsoever in the delimitation of the maritime rights of States.

But this is not so. Under contemporary international law it is distance and not the morphology or the geology of the sea-bed that is the basis of a State's title to a continental shelf up to 200 nautical miles from its coasts; and it is only beyond that distance that geology and geomorphology have any relevance.

To conclude on this point, Mr. President and Members of the Court, it is Malta's submission that the area for delimitation in the present case is unaffected, both physically and legally, by any physical feature which could influence the delimitation of the part of the shelf appertaining to Malta and that appertaining to Libya.

This conclusion has the support of both the jurisprudence and State practice. In fact, although in three out of the four cases submitted for adjudication the presence of depressions in the sea-bed and other physical considerations were — with varying emphasis — presented by the Parties as being relevant factors, in no case did the Court, or its Chamber, or the Court of Arbitration in the Anglo-French case, give any role whatsoever to the physical nature of the sea-bed or its subsoil. The decisions all rested on entirely different considerations.

In State practice we find that out of some 80 delimitation agreements between States there is only one instance in which physical features appear to have played a role in determining the line of delimitation; and, as I have already had the opportunity to submit to the Court, not only is there a significant difference between the Timor Trench (which is indeed a plate boundary) and the so-called Rift Zone, which exists only in Libya's fertile imagination, but, as I have also pointed out, the legal position which had been accepted by Portugal at the time of the agreement with respect to what then was its dependent territory is now contested by Indonesia. But what is even more important than these considerations is that in no other case can it be shown that the geology of the sea-bed had any effect on the drawing of the dividing line. The agreements speak of equity or equitable considerations, and many specifically mention the principle or method of equidistance as being the basis of the delimitation. In none of them are physical considerations ever mentioned at all; and this is because these considerations have no legal significance whatsoever.

The second relevant fact in the present case is the simplicity of the geographical setting in which lies the area for delimitation.

Two States — one large, one small — face one another at a distance of some 180 nautical miles. Their coasts are quite regular, without any special feature which could disturb that regularity. There are no islands between the two States: only the sea, with the sea-bed and subsoil below. To the north of Malta and to the west and to the north-west there is Italy and its dependent islands, but neither this State nor the other States in the region — Tunisia and Greece — could have any effect on the delimitation of the shelf lying between Malta and Libya. Italy and Tunisia, though not Greece, have shelf areas to be delimited with Malta and to some extent with Libya; but in no way do these encroach on, or even affect, the larger part of the area to be delimited between Malta and Libya. It is true that points between three and possibly four States may in the future have to be established; but all these questions and issues will have to be determined in accordance with the procedures applicable to them, and are, in any case, unaffected by the present proceedings. I shall return to the question of third States in the region later in my statement. For the moment it suffices to say that they cause no disturbance to the geographical setting I have just described as very simple and very regular.

There is — Libya rightly points out — a marked difference between the length of the Maltese coast and the length of the Libyan coastline. This is an undeniable fact. What Malta says is that the very difference in length itself produces a natural and logical difference in the shelf area each coastline produces. Professor Brownlie's clear and compelling exposition of this simple fact makes it unnecessary for me to insist on it. It has further been shown that this fact has also been proved by Libya's own calculations and I respectfully refer the Court

to my earlier statements on the matter (**III**, p. 306). It has even more recently been accepted in a study, *Libyan Studies* 15 (1984), and written by G. H. Blake of the University of Durham. In this study, which is entitled "The 1982 United Nations Convention on the Law of the Sea: Some Implications for Libya", it is said that "Libya will have one of the most extensive EEZ in the Mediterranean with approximately 320,500 km^2". The study adds that "another estimate gives Libya's EEZ as 338,000 km^2 (Couper 1983, 227) equivalent to about 19 per cent of the land area of the country. Thus the 1982 Convention has increased Libya's legal domain by about one-fifth."

It will, I am sure, be retorted that also Malta's domain has been extended by the concepts of the continental shelf and the exclusive economic zone.

These areas are indeed several times the size of Malta's land domain. But I must remind the Court that ten times one is only ten while one-tenth of a thousand is still one hundred. In fact Malta's exclusive economic zone is given as 61,190 km^2 in the study just quoted: less than one-fifth of the area assigned to Libya.

When we make these comparisons we do not thereby — as Libya has suggested — accept in any way the Libyan version of proportionality. What we mean to show is the fact that a longer coast must of mathematical necessity — unless special circumstances prevent it — generate a larger area of shelf. We do so also because we know that some may be inclined to assume that there must be some relationship between the length of the coast and the area of shelf which must be acknowledged as appertaining to a State. But this is far from accepting the Libyan thesis that there must be an exact proportion between the lengths of the coasts and the areas of shelf which a State may claim. Why this proposition is legally unacceptable has already been shown, in my view, very convincingly by my colleagues; and I shall not dwell any longer on this question.

I will, however, revert to the earlier statement that, given normal circumstances, States are entitled to the area of shelf which their coasts and the presence of third States allow. This as a rule gives quite reasonable and fair results. Thus from the study above quoted it would result that Italy, which has the longest coastline in the Mediterranean, would receive the largest share of shelf (approximately 532,550 km^2) and Greece would come next with an area of 460,500 km^2.

Exceptionally, however, due in many cases to the nearness or location of the territory of another State, the shelf areas generated by a State's coasts are cut off and the rule that a coastline generates an area of shelf relative to its length ceases to be true. Such for example was the case of the Channel Islands with respect to France or the Pelagian Islands with respect to Tunisia. In such cases some remedy may be required to restore as far as is practicable the balance which the geographical circumstances have disturbed. But even in these cases, what the remedy seeks is to restore the natural relationship between the coasts and the shelf they generate and not to refashion geography by for example sharing out the shelf in proportion to the length of the coasts.

In the case of Malta and Libya, just as in the case of Italy or Greece, no such remedy needs to be sought. Each of these States may reasonably claim and retain the area of shelf generated by their respective coastline up to the point where that shelf meets the areas of shelf generated by the coastlines of other States. No imbalance is produced which needs to be put right. On the contrary, to go beyond that is to upset that balance and to refashion geography and would give to one State — unduly — what lawfully belongs to the other.

The Court adjourned from 11.15 a.m. to 11.30 a.m.

Mr. President, Members of the Court, before the break I had dealt with the two main facts which I consider to have emerged from these proceedings. At this point, one naturally asks the question I had put earlier as the third proposition that flows from the facts I have just referred to, and I shall put it in the form of a question: in the geophysical and geographical circumstances which I have just briefly described, and given that the law required that a delimitation should be equitable, taking all relevant circumstances into account, what line of delimitation would adequately satisfy that principle in the present case?

I shall, Mr. President, with your permission, start by saying what in Malta's view could not possibly be the line of delimitation; and that is the line suggested by Libya and shown on a map produced first on the easel and then hurriedly hidden away until both the Court and Malta insisted on having a copy of it, almost as if Libya dared only give a glimpse of it to the Court and then quickly (50) hide it away from view. This is now Figure 68 of the Libyan dossier and the lines drawn by Libya have also been reproduced on the map on the easel behind me.

A copy of the map on the easel — as well as of another map which will be placed on the easel later — have been distributed to the Court and to the Agent (46)(47) of Libya as Figures 42 and 43, and these, I respectfully ask the Court, to insert in Malta's red dossier.

I can appreciate the reasons for Libya's reluctance to subject that map to scrutiny, for that map contains some of the best evidence of the extremes to which one must go — not to justify, for Libya could never do that — but to give some semblance of acceptability to a proposition that a line within and following the general direction of the Rift Zone is equitable. Libya has, of course, a difficult task because such a line has no logical or legal basis to support it and would simply follow the chance location of a feature the nature of which is, to say the very least, questionable.

It is also Libya's objective to give a geometrical expression to its version of proportionality and the manner in which such proportionality could be applied in the present case. It is precisely in this attempt that Libya shows most convincingly the absurdities to which one is led by this Libyan theory.

The first striking feature of this Libyan composition is its shape. My friend Professor Brownlie, who has a knack for giving names, has called it the Prolapsed Prolongation. It does indeed very much look like one, but it is not just the shape that raises questions as to the logic or rationale of the lines which enclose the area considered by Libya as the relevant area.

Thus, for example, while these lines do start from and end at points which Libya had previously indicated as encompassing the relevant area (Ras il-Wardija and Ras Ajdir and Delimara Point and Ras Zarruq), the courses they take not only do not coincide with the previous Libyan positions but contradict them in several important respects. Apart from these inconsistencies, there is no logic in several parts of the lines drawn by Libya and the only motive one can charitably give to the Libyan drawing is that once a proposition has been advanced it has somehow to be shown to make some sense.

Where does Libya contradict itself? The Court will have noticed that the line on the west takes a direction which only slightly deviates from a direct line joining Ras il-Wardija to Ras Ajdir. This line makes good sense. It is, in fact, very nearly the line which my friend Mr. Lauterpacht had drawn for the benefit of the Court in the first round of these proceedings to show how the grabens in the so-called Rift Zone were practically all to the north-west of that line and were therefore in an area outside the relevant area. However, in that context Libya had rejected that line even, to use the words of Professor Bowett, "allowing for artistic licence" (p. 167, *supra*).

That line was rejected because it showed very clearly that, independently of the fact that even the grabens north-west of that line did not disturb the continuity of the Pelagian Block, within the relevant area all we find are the gentle valleys or channels called the Malta and Medina Channels. But, Libya needs also to justify proportionality as a basis for delimitation and must choose a line which does that, at least in appearance; so in dealing with this issue it cannot criticize Mr. Lauterpacht and is compelled to adopt a line which only very slightly varies from the line he had drawn.

The lines which Libya shows on the east of Malta do not even make sense; moreover they too contradict previous Libyan positions.

Thus, to take the first line, what logic could have compelled Libya to draw the line from Delimara Point to the Escarpment directly east of Malta. Libya has throughout maintained that there is only one part of the coasts of Malta which could be relevant. Indeed, Libya starts from the view that no part of Malta faces Libya and has great difficulty finding a stretch of Maltese coast which can be admitted to face Libya. According to Libya that coast lies on the south of Malta or rather, because of Malta's tilt, to the south-west of Malta.

That is Libya's justification for limiting its own relevant coast to that between Ras Ajdir and Ras Zarruq. Suddenly, however, Malta has a coast on the east and on the south-east. If it had not, how could there be an area in that direction which could be relevant to a delimitation? So, for that purpose, but for that purpose only, Libya accepts that Malta's coasts project to the east and south-east as well.

But, if that is so, then Malta has coasts also in the direction of the Gulf of Sirt and Cyrenaica, that is the coast east of Ras Zarruq, and consequently that part of the Libyan coast must also have relevance — at least some relevance — in the context of a delimitation. No, says Libya, in another context of course, that part of the Libyan coast faces Italy and Greece, but not Malta.

It takes this position in the context of Malta's claims beyond the Escarpments. But if one were to accept this Libyan logic and limit the relevant area to the part of the shelf where the southern coast of Malta faces the Libyan coasts west of Ras Zarruq, the relevant area must necessarily be to the west of a line joining Delimara Point to Ras Zarruq — the pecked red line on the map behind me shows that. Anything to the east of that line should be irrelevant. In accordance with this Libyan reasoning the Prolapsed Prolongation should take the form of a triangle with Malta as the apex and the coastline of Libya from Ras Ajdir to Ras Zarruq as the base. But such a geometrical figure would not withstand the proportionality test set by Libya, and correspondingly had to be abandoned.

I wish to emphasize here that even idependently of the Libyan logic (or non-logic) a good part of the area east, and to some extent south-east, of Malta — the area I am showing on the map — is not appropriate for inclusion in the area relevant to a delimitation with Libya. It is an area more appropriately to be included in that relevant to a delimitation with Italy. And I stress this point because, whatever one may think of the Libyan graphics, it is important that it should be borne in mind that under no circumstances could the whole area included by Libya within the Prolapsed Prolongation be regarded as relevant in the present case. Even if one were to follow the Libyan logic concerning the Escarpments, the line that could reasonably be drawn from Delimara Point — and that is a good point to start from — would run, at most, in the direction of the point where the Sicily-Malta Escarpment meets the Medina Escarpment. That is why we have drawn a pecked red line from Delimara Point to that point on the Escarpment; the area north-east of that line is irrelevant, absolutely, in relation to Libya.

Why, therefore, does Libya draw this line in a straight easterly direction and then turn round almost 90 degrees to the south, to veer again towards Ras Zarruq in a south-westerly direction? There are, I suggest, two main reasons for this crooked line. The first is an attempt to justify a line which is not only within and following the general direction of the Rift Zone but is also in accordance with Libya's theory of proportionality. The second reason is that, according to Libya, Malta's continental shelf ends at the Escarpment and the line must therefore follow that natural feature.

Mr. President, I have tried very hard to find a reason for the first two of the lines drawn by Libya to the east of Malta, but the only answer I could find is logical only in the sense that Libya must have drawn the lines which best fit its calculations. Libya had to find a line of delimitation which was within the Rift Zone and which at the same time divided the areas to be assigned to Malta and Libya in proportion to the lengths of what Libya considers the relevant coasts.

As Libya itself admits, there is no logical connection between a line within and following the direction of the Rift Zone and a line based on proportionality. So much so that, as Professor Bowett expressed himself (p. 155, *supra*) "logical connection . . . is not required and cannot be required". And once there is no logical connection between the two pillars on which the whole Libya case rests — and the two sides agree on this — Libya is compelled not only to find a rational basis for each of them but also to make the two lines coincide. Libya says that they just happen to coincide. The truth is, Mr. President and Members of the Court, quite the opposite: both of them are of Libyan making; even the coincidence has somehow to be made to appear to occur.

So what does Libya do? It invents a geological basis for a line as near as possible to Malta and presents us with the novelty first of a fundamental discontinuity, then of an incipient plate boundary and in less time than is the normal period for human gestation, it now presents us with a fully fledged plate boundary. Libya must, however, still show that the line drawn along that boundary is also one which, according to its version of proportionality, leaves the two States with areas proportionate to the lengths of their coasts. In trying to do this Libya meets with two major obstacles: the marked difference in the lengths of the two coasts and its own insistence that nothing east of Ras Zarruq is of any relevance in the present case.

The difference in the lengths of the two coasts is such that Libya must somehow lengthen Malta's coasts and shorten its own. Strange as it may seem, the difference in lengths of the coasts is embarrassing to Libya. Libya must of course draw the maximum advantage from this undeniable fact; but Libya also knows that if it were to pursue the logic of its own proposition this would lead to the ridiculous results already indicated by Professor Brownlie. So Libya is compelled to resort to stratagems in order to avoid them. In other words, as I have just remarked, Libya is compelled to lengthen Malta's coasts and to shorten its own.

Professor Bowett (p. 158, *supra*) calls this being "charitable". Let us examine briefly what he is forced into by the Libyan theories, and let us start with "charity".

If one considers the history of the present case and what has been, throughout, Libya's attitude, it will be difficult to find a clearer example of charity beginning, and remaining, at home. So when Professor Bowett says "let us be a little more charitable" and again further down the following paragraph: "But if we were to be even more charitable", he is not speaking of charity at all. What he is trying to do is to find a way in which he can make the conclusions to

which the Libyan theory of proportionality necessarily leads appear a little less absurd than would otherwise be the case.

In fact he has first to contend with the Libyan position that Malta has no coast facing Libya. To follow that argument to its logical conclusion, and applying at the same time the Libyan version of proportionality, would have meant that Malta was not entitled to any continental shelf as against Libya. But that conclusion even Libya accepts to be absurd and therefore impossible to advance.

So Libya is "charitable". Libya allots to Malta a coast 14.14 kilometres long, the distance between Filfla and Delimara Point. That too, however, is too short a coast and it is still too short even though Libya has, in the meantime, shortened its coast not only by reducing it to the distance between Ras Ajdir and Ras Zarruq, but also by saying that even the length of that coastline can be shortened further to 350 kilometres by taking a straight line — from 403 kilometres long Libya reduces that line to 350 kilometres. But, as I have just pointed out, that too is not enough. So we witness yet another act of charity and the Maltese coast is extended to 40.6 kilometres made up of a straight line from Ras il-Wardija to Delimara Point.

But is that the end of the story? It is not. As the Court may observe, in (50) Figure 68 of the Libyan dossier (the main elements of which are — as I have already indicated — reproduced on the map on the easel and which are also (47) reproduced on Figure 43 which I have distributed to the Court) Libya has drawn a line directly to the east of Malta, and this line for certain practical purposes has the same effect as if the coasts of Malta were longer by about 100 kilometres. That is approximately the length of that line. This is the line I have indicated on the easel joining Malta to the Escarpments in a straight easterly direction. This line, in fact, has, for the purposes of the extent of the relevant area, exactly the same effect — for Libyan purposes — as if it were a Maltese coast, and this is why I say that, for the purposes of justifying its calculations, Libya was forced into the stratagem of extending the coasts of Malta by another 100 kilometres.

I have already pointed out to the Court that, even according to the Libyan position concerning the relevant coasts and the termination of Malta's shelf at the Escarpments, the only line that logically could be drawn from Delimara Point is a line joining this point to the point where the Sicily-Malta Escarpment meets the Medina Escarpment (the pecked red line on the map, both on the easel and before the Court). But Libya cannot do this without upsetting its applecart irretrievably. If Libya were to accept that the relevant area is to be bounded by the line I have just described, and eliminate the north-eastern part, the relevant area between Malta and a line within the Rift Zone (such as the double line on the map) would be too small. It would in fact be much less than must be allotted to Malta on the basis of the ratio of the length of coastlines.

Consequently the double line south of Malta which Libya has indicated as being the equitable line would have to be pushed substantially to the south and would have to end up outside the Rift Zone. Clearly that is not the place where Libya would wish to see the line drawn; and in order to avoid this it has no alternative but to be "charitable" and somehow enlarge the area it allots to Malta. It can only do this by including areas which are not relevant with respect to Libya but only relevant in a delimitation with Italy.

Libya must also, in the process, contradict itself and consider areas which are relevant only if the Libyan coastline east of Ras Zarruq is, as Malta contends, part of the Libyan coastline. Libya evidently hoped that this contradiction would go unnoticed. These contradictions, however, are not only too apparent

to be disguised or explained away; they are also the best evidence that even under the worst of hypotheses, namely, that the delimitation should be based on proportionality — which of course Malta contests — the line of delimitation must be outside and to the south of the Rift Zone. This conclusion means that any connection — illogical as it may be — between a line within the Rift Zone and a line dictated by proportionality is completely destroyed. Thus the two Libyan theories, the Rift Zone and a particular version of proportionality, so painstakingly constructed by Libya with one object, namely, that of producing two lines which would coincide, completely fail in that purpose. All we are left with is a Rift Zone in which, apart from other considerations, even the grabens are outside the contested area and a proportionality line which falls outside that zone even as it is understood by Libya.

The absence of any logic or of any cogent argument in the Libyan position that the line should be drawn within and following the general direction of the "Rift Zone" is to be found also in Libya's position that Malta's continental shelf ends at the Escarpment. Here Libya's reasoning is much more simple, but it is not for that reason any more acceptable. Indeed it is so simplistic as to be arrogant. It also contradicts a legal position taken to justify the extent of the relevant area in the vicinity of Malta.

As I had occasion to point out a short while ago, Libya indicates as relevant to a delimitation between Malta and Libya a substantial area east and south-east of Malta and which, for reasons I have already given, is more appropriately relevant to a delimitation with Italy. This is the area north-east of a line joining Delimara Point and the most easterly limit of the Escarpments shown on the map as a pecked red line. I have also already given my reasons why I believe Libya needed to do this; and I shall not repeat them.

But by so doing Libya cannot escape the acknowledgment that the Maltese coasts do in fact face Libya in the direction north-west/south-east. In this direction the Libyan coast is far beyond Ras Zarruq and takes us instead to the Ben-
(50) ghazi area which is not shown on the Libyan map No. 68 but which the Court can find on any of the maps of the Central Mediterranean included in Malta's
(47) dossier, as well as on the map on the easel and on Figure 43 of our red dossier.

This is, of course, what Malta has contended all along: the whole of the Libyan coast is relevant up to a point approximately north-east of Benghazi. And if I may here be allowed a diversion, I wish to emphasize that it is at this point, not far from Ras Amir, that Malta considers the relevant coast to end, and not at the frontier with Egypt, as Libya has accused us of saying. The trapezium as
(39) shown in Figure 7 is merely a projection on the map of an imaginary trapezium and was never intended to indicate exactly the extent of the relevant Libyan coastline. It was meant to show the coastal relationship between Malta and the coasts of Cyrenaica but not to indicate the exact point on the Libyan coast where that relationship ended. I may even add here that if the line of the trapezium joining Malta to Cyrenaica, which was drawn approximately in that direction, were to be shifted westwards and brought nearer to say basepoint 12 on
(42) the Libyan coast (the last basepoint in Figure 11 of Malta's first dossier) such a shift would be to Malta's advantage. The Court will recall that according to Libya's own calculations (see III, p. 306) the "trapezium construct" allocates to Libya an area five times larger than that which the geometrical figure allocates to Malta. If the line of the trapezium joined Malta to basepoint 12 on the Libyan coastline the ratio would become nearer 6/1 in favour of Libya.

Libya's objection, however, covers every single part of the coastline east of Ras Zarruq: an clearly one of the main reasons for such an objection is the belief that by denying any relationship between the coast of Malta and that of

Libya east of Ras Zarruq Libya can justify the assertion that only the long Italian coast and the long Libyan coast face the area of the shelf east of the Escarpments.

But that, of course, is not correct. So much so that Libya itself has included in the relevant area an area of shelf which can only have relevance in so far as it lies between the south-eastern coast of Malta and the coast of Cyrenaica. According to this Libyan reasoning Malta has a coast facing the Escarpments just as much as Libya or Italy.

It is not, of course, quite as long; but if that coast — that is, the short Maltese coast — is sufficient to generate relevant areas in the direction of the area beyond the Escarpments there is no legal — or even physical — reason why its entitlement to a continental shelf should stop at the Escarpments.

Libya agrees that the entire area east of the Escarpments is a continental shelf, both physically and legally; but, it adds, this is an area reserved for delimitation exclusively between the larger countries that border it: Libya, Italy and Greece. Smaller States must curtail their appetite and let their bigger brothers monopolize the area and share it out among themselves. This attitude hardly deserves comment.

Nor can I accept as serious Professor Bowett's answer to the question "Why should Malta's continental shelf end at the Escarpments when the Libyan and Italian shelves do not?" His answer to that question is to be found at page 174, *supra*, and it reads as follows: "Malta has no coast, east of the Escarpments." I cannot take that answer seriously because not just Libya, but he himself, had just argued that part of the shelf relevant to a delimitation with Libya lies to the east and south-east of Malta which, as I believe I have shown conclusively, would not be possible unless Malta had a coast facing the Escarpments and therefore necessarily also facing the area beyond those natural features. One does not need to have coasts east of the Escarpments to generate rights over the area beyond them: all one needs is a coast facing that area; and both Libya and Malta agree that Malta has such a coast.

This far, Mr. President and Members of the Court, my answer to the question as to which line is appropriate to a delimitation in the present case has been rather in the negative. In other words, I have so far tried to show why the Libyan propositions in answer to this question are unacceptable and should be rejected by the Court. Our positive answer to that question is, of course, well known to the Court: in Malta's submission the line which satisfies the legal requirements in the circumstances of the present case is the equidistance line.

But before I recall briefly the reasons why we believe this to be the correct view, I shall, with your permission, comment on two reasons which Libya gives in support of its objections to Malta's position. These are: first that Malta's claim is excessive, considering its short coasts and the very smallness of its territory; and secondly, that a median line ignores the presence of third States and is also incompatible with the Italy-Tunisia and Italy-Greece delimitations.

I shall start with the second Libyan proposition which is also the simpler of the two to deal with. My first remark is that the Italy-Greece Agreement appears to be irrelevant to Malta's claims whether these refer to Libya or to Italy. As regards Greece, Malta has not claimed that its shelf extends to any area which would necessitate a delimitation with Greece; but that is not what really matters. What does matter is that if the Italy-Greece Agreement, which is based entirely on equidistance, were to be extended on the same basis, such an extension would not encroach over Malta's claims with respect to Libya. And even if some method other than equidistance were to be adopted to reach a tripartite point with Libya, it is rather difficult to imagine how such a point could fall

within the area claimed by Malta: in Malta's view it is more likely to fall outside it. Consequently, Greece may be ignored for the purposes of the present case.

As for the Italy-Tunisia Agreement, I wish first of all to state that, contrary to what has been asserted by Libya, Malta did protest to Tunisia against a Tunisian concession in an area which Malta considered to fall on its side of an equidistance line with Tunisia. It did so even though it was unaware that Italy had — in a still unratified and unpublished agreement — agreed to consider this area as appertaining to Tunisia. Malta did not pursue the matter further because Tunisia had replied in a very conciliatory tone, stating that the concession was only a provisional one. With respect to Italy, Malta has always made its position very clear in the negotiations and did not need to make formal written protests.

Having made that point, what remains to be said about the Italy-Tunisia Agreement is that, although it is true that the line south of Linosa and east of Lampedusa encroaches partly on what Malta considers to appertain to it, that in no way means that Malta ignores that Agreement or fails to take it into account. Malta regards that Agreement as a *res inter alios acta* and consequently as not affecting its rights. The question here is not one of incompatibility in the sense, as Libya seems to suggest, that Malta's claim would be untenable simply because there is, as between two neighbouring States, an agreed delimitation which is in conflict with Malta's claims. There is conflict, and consequently incompatibility, whenever two or more States claim the same area. But clearly one cannot speak of inadmissibility with respect to any of those claims simply because it is in conflict with that of another State.

The question is in reality one of conflicting claims which will have to be settled as between Malta, Italy and Tunisia, and it is not one that affects the determination of the present case. Conversely anything occasioned by the present case will be totally irrelevant to a delimitation of the issues between Malta and Italy and Malta and Tunisia, except, of course, to the extent that those countries will know whether to deal with Malta or with Libya with respect to particular areas.

Mr. President, as to the second point, far from ignoring the presence of third States in the area, Malta believes that the geographical setting cannot be fully appreciated, and the reasonableness of the delimitations of the respective shelf areas cannot be properly established, unless one takes into account the presence of third States. It is equally Malta's view that a particular delimitation may even appear to be equitable when seen in isolation but ceases to be so when it is viewed in the context of other States and their presence in the region. This applies in particular to the effects the presence of those States has on the limits of the continental shelf to which the other States would otherwise have been entitled.

In the present case the geographical setting is such that, except for the presence of Malta, Italy faces Libya throughout most of its southern shores, and these coasts are not only comparable in length to those of Libya but are even longer. It may therefore be said, without fear of being contradicted, that Libya could not reasonably oppose proportionality to Italy, or if it did so, it could only do so to its disadvantage. Moreover, Libya's assertion that the Rift Zone would be opposable to Italy even if Malta were not there, cannot be taken seriously. As to the Escarpments, Libya clearly accepts Italy's rights in that area. In these circumstances it is difficult to conceive a line of delimitation between Italy and Libya which would be more favourable to Libya than an equidistant line. And this line is shown on the map on the easel as the pecked red

(47) line on the top there and is also shown on Figure 43 on the map submitted to the Court this morning.

One may therefore say that if Malta did not exist Libya could not reasonably claim a continental shelf extending beyond a line equidistant between its coasts and those of Italy. It is the line which, in Malta's submission, marks the maximum area Libya would lawfully be entitled to claim against Italy. The same line, as I have just said, has been drawn on the map behind me on the easel; it (47) is also shown on Figure 43 distributed this morning.

Now my question, Mr. President, is this: should the presence of Malta operate in such a way as to give Libya the advantage of pushing its claim very substantially to the north of that line? The Court can see on the easel the Libyan claim and how far north it is from the equidistant line with Italy. And, if I may add a second question, could Libya justify such a claim simply on the ground that Malta is small and its coasts are short? I leave that question to be answered by the Court.

The second proposition in the context of Italy's presence in the area is that if Malta were an island off the coast of Sicily but as part of the Republic of Italy, one could reasonably assume that it would be given at least the weight that was given to Kerkennah in the *Tunisia/Libya* case. As a dependent island lying off opposite coasts where a delimitation on the basis of equidistance is, as the court held in that case, much more apposite, Malta would have been given at least half weight. In such a case the line of delimitation between Italy and Libya would have been drawn practically at equal distance between the Italy-Libya and the Malta-Libya equidistance lines, and this line is also shown on the map between those two lines as a pecked red line; and the Court will notice how near it is to the line Malta claims to be the appropriate line for delimitation between Malta and Libya.

It is true that all this does not represent the legal situation the Court has to resolve, because Malta is not only there but is also a State in the fullest sense of the word, and as such entitled to the same treatment accorded to other States, large or small, and whether with long or short coasts. As a State, a Member of the United Nations, and accepted as such by the community of nations, it cannot be treated as if it were a dependency or, worse still, as if it did not exist. But if the Libyan propositions were to be accepted the result would be that Libya would be awarded an area of shelf it could not have claimed if Malta were not there or if Malta were merely a dependency of Italy.

Is this fair, Mr. President and Members of the Court? Can one call this equity? Conversely, can Malta's demands be labelled excessive with respect to Libya when, as far as Libyan entitlement is concerned, all that the claim does is to allow to Malta an area only marginally larger than Malta would have been entitled to if it were the Kerkennah of Italy?

When all has been said and done and the various arguments by both States, whether relevant or less relevant, have been considered and given their due weight, the question which inevitably will have to be answered is this: which of the two claims is the more reasonable?

The two States accuse one another of advancing excessive claims: Libya says Malta's claim is out of proportion to its size; Malta says Libya is after the lion's share and its claims by far exceed its legal entitlement even after due allowance is made for its long coasts; so much so that it claims areas to which it could not reasonably lay a claim in a direct confrontation with Italy, thus taking advantage of Malta's presence to increase disproportionately its already large share of the shelf in the central Mediterranean.

Libyan will argue that Malta is taking advantage of Italy's presence to claim

more than it would otherwise be entitled to. It is respectfully submitted that this is not so. Malta's claims are independent of the presence of Italy and they rest on the geographical circumstances in which the delimitation is to be effected. But having been accused of making excessive demands, we felt the Court should be shown which of the two demands was the one that was indeed excessive, unreasonable and therefore inequitable.

The excess of the Libyan demand is clear enough when it is viewed in a geographical setting in which there were only Malta one end and Libya on the other, but the Libyan claim must be considered also in the context of the actual geographical setting, which of course includes Italy and the restrictions which the presence of that country imposes on the shelf claims of neighbouring States, particularly those of Malta and Libya. In this context the excess and unreasonableness of the Libyan claim becomes even more transparent.

To conclude this part of my presentation I may say, very simply, that the line indicated by the geographical circumstances of the area, taking all relevant factors into account, not least of which the presence of third States in the region, is the equidistant line.

Mr. President, such a line is also the line which, in Malta's submission, respects the fundamental principle governing State relations, namely, that all States are equal in the eyes of the law. As my colleague Professor Weil has shown at some length, the principle of equality among States is also a legal principle of very significant importance in questions of delimitation of sovereign rights and I need not dwell any further on the weight which in our view must be given to this principle.

All I wish to stress in this connection is that by the principle of the equality of States we do not mean — as Libya says we do — that States must be equal in size, in population, in wealth, or in any other similar matter. Much less do we mean that Malta's shelf should be equal to that of Libya. So much so that we have pointed out that by the method of equidistance Libya would still retain a shelf several times larger than that which Malta would keep.

What we do mean — and here too I shall be very brief — is, in a positive sense, that every State is entitled to be treated as equal to any other State no matter how much stronger, richer, larger or more powerful and influential such other State may be and, in a negative sense, that its smallness in size, its stage of development, its limited influence on world events, can in no way be adduced to limit, restrict or curtail its rights under international law. It means that a State cannot lawfully say to another State as Libya is, in effect, saying to Malta: you are small, you are surrounded by larger States and therefore you must be content with a smaller share of the continental shelf available for delimitation.

The principle of equality of States means that the law is equal for all, and the principles applicable to a larger State are applicable to a smaller State in the same manner and not in proportion to its size or the length of its coastline. If coasts generate shelf rights with respect to a larger State, they generate the same rights with respect to a smaller State and not in proportion to their length. There can be no *diminutio capitis* or other legal disadvantage by reason of smallness or of a restricted coastline and, conversely, a State has no greater rights, no privilege, which derive from the mere fact of its size or of its extended coastline.

I did not wish to dwell on this matter even as much as I have because it has been amply discussed by my colleagues, but in view of the Libyan distortion of our argument on this issue, I felt it would not be amiss if I added my voice to that of my friends Professor Brownlie and Professor Weil.

Mr. President, a line equidistant between Malta and Libya would also be justified by the two most important relevant considerations which I have not yet touched upon: these are the economic and security considerations. In this connection I respectfully ask the Court to refer to the submissions already made for Malta by Mr. Lauterpacht, and to recall the points he made about the relevance of both economic and security considerations. As he put it "when all the talking is over, access to oil is what this case is about". And it is indeed strange that Libya should consider such an important factor as having "absolutely no link with the institution of the continental shelf". In this connection I wish to reply to the references made by the other side to the possibility of oil having been struck in the latest well drilled by Malta in the area between Malta and Sicily. *I can state formally, as Agent of the Republic of Malta that, while it is* true that late last year certain indications had led to some testing of the well, the results of those tests have regrettably, of course, been negative and the well may now for all practical purposes be regarded as another dry hole.

To resume the point I was making concerning economic considerations, it was the mineral potential of the sea-bed and subsoil of the shelf that first drew the attention of Governments to those maritime areas; and second only to the need to protect those resources came the need to extend beyond the territorial waters the maritime rights of States for security purposes. Both these vital interests were in fact present even as far back as the Truman Proclamation and have been confirmed and even expanded by the 1982 Law of the Sea Convention.

With respect to both these interests we submit that our interests and those of Libya are — to say the least — equal; and they can only be so protected if the outward reach of their respective coasts is allowed to extend from both States up to the point where those natural extensions meet. Any other line would affect seriously, and not without grave apprehension, both the economic and the security interests of the State the shelf of which such other line would amputate.

I need not add much to what has already been said about Malta's assertion that according to the jurisprudence of this Court, as well as the arbitral decision in the Anglo-French case, an equidistant line is normally the line most appropriate for a delimitation of maritime areas, particularly with respect to opposite coasts. And it is only in the unusual or exceptional cases where the geographical configuration of the coastline or some distorting geographical feature make that line inequitable that the need has been felt to depart somewhat from it or to adjust it. I wish only to add a sample fact: even in such exceptional circumstances as those of the German concave coasts in the *North Sea Continental Shelf* cases, the departure from the equidistance lines meant a reduction of a mere 8 per cent from the area originally claimed by the Netherlands and a mere 12 per cent from the area originally claimed by Denmark.

In this connection, and to avoid repetition, I respectfully refer the Court to the examination by Professor Browlie of the proper way in which the jurisprudence on this issue is to be read.

Last but not least we come to State practice. I think it is no exaggeration to say that nothing could provide better evidence of what is an equitable delimitation than State practice. I cannot think of anything which can show the reasonableness and equitableness of a line of delimitation more convincingly than a line which States have accepted and agreed to use to delimit their maritime areas with other States. Quite frankly, I cannot see how one can consider as reasonable or equitable a line which departs substantially from the pattern which State practice has clearly developed over the years.

As I have already had the opportunity to point out — and as has recently

been confirmed by the Chamber of this Court in the *Gulf of Maine* case — it is very difficult, if not impossible, to set out principles and rules which would in all cases lead to an equitable delimitation. And in any case quite different and even opposite conclusions may be drawn from any such rules or principles. It is precisely because of these circumstances that State practice acquires even greater relevance in the delimitation of maritime areas than it may have with respect to other issues. This is why Malta attributes a significant importance to a careful examination of what other States have done; because there can be no better demonstration of what is equitable than the way in which States have agreed to delimit their areas of maritime jurisdiction.

Moreover, when a method is so generally used by so many States in such a variety of circumstances, surely there must be more to it than mere convenience or even versatility and adaptability; though these too are very real attributes of the method of equidistance. Surely it must mean that States regard the results achieved by that method, or on the basis of that method, as being equitable. That this is so is evidenced by the fact that in several agreements we find States expressly declaring the delimitation to have been based on equity or equitable principles and then either expressly or at least clearly applying the method of equidistance. Most agreements in the Arab/Persian Gulf and several agreements entered into by France do that very thing. And these are by no means the only cases; they are merely examples of what is clearly a trend — a pattern of behaviour — all leading inescapably to the conclusion so often stated, but which can stand another repetition, that equidistance is in effect the equitable method of delimitation unless some unusual or exceptional circumstance requires that method to be adjusted or, in extreme cases, abandoned in favour of some other method or methods.

I should like to say no more about State practice because the matter has been sufficiently and very ably dealt with by my colleagues. I simply wish to leave the Court with the thought that while it is true that no two cases are identical, there is a pattern of State practice which is clear and unmistakable with respect to the two main issues in the present case — the relevance of physical features and the role of proportionality. This is why, in our view, State practice has an even greater role in the present case in assisting the Court to find the line which will equitably divide the continental shelf of Malta from that of Libya. On the two main issues of the present case it is clear that States do not regard the physical features of the sea-bed as affecting the extent of their shelves with respect to other States; nor do States give to the difference in the lengths of coastlines any greater role than that which flows naturally from such a geographical fact.

The delimitation agreements quoted by the Parties cover a large variety of circumstances; and that is the reason why no two of them are identical. But they all point to the conclusions I have just recalled for the benefit of the Court. Indeed, and I leave the Court with this last consideration, the argument which Malta draws from State practice acquires greater strength from the very fact that State practice relates to a variety of cases and a variety of circumstances. In fact, if the method of equidistance is the appropriate method in such a variety of cases and such a variety of circumstances it must have some inherent quality to make it so. The method is not of course a mandatory rule of customary international law. Nor could it be, because it is, in exceptional cases, not equitable. But when the circumstances are not exceptional or abnormal the method of equidistance is the one that must be applied in order that equity may result.

Such, Mr. President and Members of the Court, is, in our submission, the present case.

Mr. President, Members of the Court, I have reached the end of my submissions and this may, therefore, be the last occasion I shall address the Court as Agent of the Republic of Malta in the present case. I am not more positive than I should like to be in case matters are raised or referred to next week which might call for further submissions on our part. It is my earnest hope that no such need will arise; and in the expectation that this will in fact prove to be the conclusion of the last statement by Malta in these proceedings, I shall now, as Agent of Malta and as required by Article 60 of the Rules of Court, proceed to read the final submissions of Malta in the *Continental Shelf* case between the Libyan Arab Jamahiriya and Malta. These are:

May it please the Court,

Having regard to the considerations set out in the Memorial, Counter-Memorial and Reply submitted by the Republic of Malta and in the oral presentation by Malta's counsel,

And rejecting all claims and submissions to the contrary;

To declare and adjudge that:

(i) the principles and rules of international law applicable to the delimitation of the areas of the continental shelf which appertain to Malta and Libya are that the delimitation shall be effected on the basis of international law in order to achieve an equitable result;

(ii) in practice the above principles and rules are applied by means of a median line every point of which is equidistant from the nearest points on the baselines of Malta, and the low-water mark of the coast of Libya.

A signed copy of these submissions will be communicated to the Court and transmitted to the Socialist People's Libyan Arab Jamahiriya as required by Article 60 of the Rules.

Before I leave the Bar, Mr. President, I wish to express my gratitude to the small but dedicated and very competent delegation that has represented Malta in this case: counsel, experts, advisers, and supporting staff. I thank them all on behalf of the Government and people of Malta.

To my friend the Agent of Libya, and to his delegation, I wish to say how appreciative I am of the spirit of friendship and cordiality which has characterized the conduct of these proceedings.

My thanks go also to the Registry and other staff of the Court for their always impartial but nonetheless invaluable help and advice.

Finally, Mr. President, I thank you and the Members of the Court for the patience and attention with which you have listened to our arguments for so many weeks.

The case is now in your competent and impartial hands, and in those hands Malta and its people place their trust.

Once more I thank all those who have participated or helped in these proceedings.

The PRESIDENT: Malta having thus completed the second round of oral argument, it remains for the Libyan Arab Jamahiriya to do the same. In accordance with the procedural calendar agreed with the Agents of the Parties the Court will meet to hear the Agent and counsel of Libya on Wednesday, 20 February 1985, at 3 p.m., and the present hearings thus stand adjourned to that date.

The Court rose at 12.30 p.m.

THIRTY-FIRST PUBLIC SITTING (20 II 85, 3 p.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

REJOINDER OF MR. EL-MURTADI SULEIMAN

AGENT FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Mr. EL-MURTADI SULEIMAN: Mr. President, Members of the Court. It is a high honour to stand before you once again on behalf of my country. I am deeply conscious of both the privilege of appearing before the Court and the responsibility I bear in presenting Libya's position on what constitutes an equitable delimitation in the present case.

In opening this final round of argument we have come to the last stage of the proceedings. I am aware that the Court has before it a wealth of factual and legal arguments furnished in the course of three rounds of written pleadings and during these oral hearings. There is little need to canvass much of this material which has been so extensively treated. With this in mind, we believe it would be of greater assistance to the Court during this round if we avoid merely repeating points already put before the Court and, in accordance with Article 60, paragraph 1, of the Rules of Court, concentrate instead on the principal issues which continue to divide the Parties, without venturing unnecessarily into every debating point our distinguished opponents have introduced. It is clear, however, that if Libya does not feel it necessary to address certain points raised by the other side during this round, it is simply because Libya believes them to have been adequately covered already. In this sense, Libya fully maintains the arguments it has previously put before the Court.

This being said, the purpose of my remarks will be to focus on certain quite specific points which have been raised by our opponents during their final presentation and to outline the essential elements of Libya's case.

It was, of course, by virtue of the Special Agreement between the Parties that the case was submitted to the Court. This was in keeping with the spirit of co-operation that has long existed between our two countries. Perhaps I am wrong, Mr. President, but I have sensed from the remarks from the other side of the Bar that Malta somehow feels that it is Libya's fault that a difference over delimitation arose between us. It was the distinguished Agent for Malta who implied that Malta's "legitimate rights" — those were his words — had been contested (p. 391, *supra*). By "legitimate rights", I suppose he was referring to Malta's claim for an equidistance boundary.

I find this line of argument unusual. Libya and Malta have placed their trust in the ability of this Court, in its wisdom and knowledge, to reach an equitable result precisely because they could not reach agreement themselves. This procedure demonstrates the genuine desire of both sides to settle their differences amicably, impartially and within the framework of international law.

Whether Malta's claim for an equidistance boundary is a "legitimate right" or not is for the Court to decide, just as it is for the Court to decide on Libya's position as to what constitutes an equitable result under the relevant facts of this case. Moreover, we do not think that it is at all "illegitimate" to seek an equitable solution by having recourse to the decision of this Court.

It is natural in the course of contentious proceedings for the Parties to dispute each other's interpretations of particular facts or circumstances. It serves no useful purpose, however, when accusations and criticisms are levelled which are simply devoid of foundation. In this context, we continue to be surprised and disappointed by certain comments counsel for Malta have repeated during the second round. Libya has been portrayed, to use just a few of counsel's terms, as an "inherent threat", an "inactive menace" and a "large and militarily capable State" (p. 322, *supra*).

But what point was learned counsel trying to make with these words? Are they really appropriate for a case of continental shelf delimitation brought with the initiative of both States? Contrary to the impression given by counsel's remarks, the continental shelf is in any event not a zone over which States exercise sovereignty in the manner suggested, nor a zone in which security interests have the same weight in international law as that of territorial waters. Moreover, Malta has still been unable to give any convincing argument why the security interests of States with opposite coasts seem to be more important than those of States which are adjacent to each other. Mr. Lauterpacht assumes that States that are adjacent will naturally be led to co-operation. But what a strange proposition! Geographical proximity is as much a source of conflict as it is of co-operation.

We believe it would have been more appropriate for counsel to recall that Malta and Libya have in fact signed a Treaty of Friendship and Co-operation as recently as last November and that, amongst many other examples of co-operation and assistance that characterize the relations between our two countries, Libya has been fully supportive of Malta's quest for neutrality. I am sure that it was in this context that my friend Dr. Mizzi described relations between Libya and Malta as "exemplary" and "brotherly" (**III**, p. 276). What is sure, Mr. President, is that the Parties have come before this Court in a spirit worthy of the excellent relations that prevail between them. While both sides have vigorously put forward their cases, Libya is confident this in no way will weaken the goodwill that exists between Libya and Malta.

With the *Tunisia/Libya* case and Malta's and Italy's applications to intervene, I have now had the honour to participate, as Agent or counsel for my country, in four cases before this eminent Court.

The personal privilege I feel in this respect is the direct result of the fact that, happily, my country has placed itself in the forefront of countries who have come before this Court. Libya has pursued this course precisely because in such matters it considers the need to achieve an equitable resolution to be of great importance. As I have had occasion to say before, Libya firmly believes that, when two States are unable to agree among themselves, recourse to the decision of the Court is the proper way to proceed with the orderly, step-by-step process of delimitation in the Central Mediterranean, an area which is subject to the potential claims of a number of States.

In retrospect, however, I do feel that it was unfortunate that ever since 1972 Malta never once moved from its categoric insistence on delimitation based on equidistance and nothing but equidistance. This has made any fruitful discussions with our neighbours on this question very difficult. On the other hand, the Court will recall that Libya's 1973 proposal, which represented a genuine attempt to reflect the peculiar, even unique, facts of the Libya-Malta geographical setting, was rejected at the highest levels of the Maltese Government on the very day it was made. As I noted, under those circumstances negotiations between the Parties proved futile. Nonetheless, Libya has continued to be guided by the belief that the determination of an equitable result may only be achieved

by considering all the relevant factors upon which such a result should be based. This has been Libya's position throughout.

Even at this late stage in the proceedings I feel I must once again underline the fact — which should be perfectly obvious to all — that Libya and Malta have brought a case before this honourable Court that concerns the *delimitation* of the continental shelf. The reason I emphasize this is because we believe that our opponents have lost sight of this basic premise, and have aimed their arguments at points which are not concerned primarily with the fundamental question of delimitation.

We have heard, for example, extensive discussions of matters that are largely theoretical and that relate to the outer limits of a State's continental shelf rights or to factors such as economics and security. These fall wide of the mark when it comes to examining the applicable principles and rules of delimitation and how these principles and rules may be applied in the circumstances of the case in order to achieve an equitable result.

As counsel will presently explain, Malta's case essentially boils down to reliance on basepoints and distance. These are used as a back door for claiming equidistance, which is then said to be confirmed by reference to a faulty analysis of the principle of equality of States, State practice, radial projection, economics and security. There is a reason for this approach which I feel must be very apparent. It is that Malta is genuinely troubled by, and reluctant to deal with, the relevant facts of this case, I mean the coasts of the Parties, their lengths and configurations, the sea-bed and subsoil which in law comprise the continental shelf, the conduct of the Parties and the existence or actual or prospective third State delimitation in the area. This is why we hear constant references to distance, economics and security. It is striking that Mr. Lauterpacht focused considerable attention on economic and security factors right at the beginning of his speech. At the same time he avoided speaking of fishing, neutrality and the concept of the island developing country; factors that had figured so prominently in Malta's previous pleadings. Moreover, it was not until the end of his speech that he came to the subject of the topography of the sea-floor which he treated very briefly indeed. Yet in speaking of the bathymetry, our opponents studiously avoided even discussing Professor Fabricius's detailed description of the sea-bed which was annexed to the Libyan pleadings. From the topographical point of view alone, Professor Fabricius was able clearly to identify two geomorphological units which are divided by the Rift Zone. We would say that this approach of Malta only serves to deflect attention from the types of circumstances that this Court has indicated to be relevant in previous cases.

Mr. President and Members of the Court, throughout this case Libya has directed its efforts at assisting the Court by fully documenting the facts and circumstances that have relevance to delimitation. The extensive documentation furnished with Libya's written pleadings was submitted so as to give the Court as complete a picture as possible of the issues that might have a bearing on the case. By the same token, Libya has gone to great lengths to supply accurate maps and studies of the area and even, in response to Malta's rather selective examples, to give a full and impartial analysis of State practice.

Against this background, Malta has been content to accuse Libya of an obsession with coastal lengths. Counsel for Malta has also persisted in asserting that Libya places total reliance on geology for its positive case. Libya's geographical case is discarded simply by equating it with "proportionality". And what about Malta's attitude towards geography? In its Reply Malta did not include a single map of the area between Libya and Malta. Even during these oral hearings Malta has been unwilling to give a detailed description of the coasts of

both States which it considers to be relevant. Can this be said to represent a serious treatment of the facts?

As we have said so many times, it is Libya's view that an equitable result through the application of equitable principles may only be achieved by the proper balancing of all the relevant facts and circumstances. In this respect Libya's case has remained unchanged. It is not based on an attempt to find a solution on the basis of what other States have done in other different geographical and political settings. Still less is it an attempt to refashion nature or engage in a sharing out *ex aequo et bono*. Rather, it is aimed at dealing with nature as it is.

To describe the relationship between Libya and Malta, and their relationships with other neighbouring States, as "normal", is truly bewildering. I wonder what Malta would classify as "abnormal". In truth, the setting between Libya and Malta is neither "normal" nor "abnormal". It is unique, since it is characterized by its own particular facts.

Malta apparently finds support for an equidistance solution from its use in a number of other cases involving what counsel for Malta described as a large variety of circumstances. Unless I am mistaken, this seems to me to be a specific recognition that cases strictly comparable to the present one cannot be found in delimitation agreements between other States. It also seems inconsistent with Malta's emphasis, in the same breath, on the "normality" of the present case. I need only recall two points: first, that the Libya-Malta situation is unique precisely because there is no similar situation elsewhere; and second, that some 300 potential maritime delimitations exist in the world. The vast majority remain to be agreed. This suggests that there are many instances where ready agreement has been impossible if only because equidistance can evidently not provide an equitable result satisfactory to both sides.

Malta also persists in asserting that this case is about access to oil. This is simply another resort to economics and, as such, is not correct. This case is about delimitation according to the applicable principles of law. I cannot help but note, however, that despite its constant recourse to the theme of access to oil, our opponents have not offered one shred of evidence to demonstrate why equidistance must necessarily be the result. This is quite different from the situation in the *Tunisia/Libya* case where the dispute arose out of the grant of concessions, and where both Parties had spent substantial sums in developing producing fields.

At the same time, I wonder if counsel for Malta fully appreciates the logical implication of his plea that the Court must take potential access to petroleum into account in a case such as the present one. Under such a thesis, the Court would not properly be able to rule on a dispute until it absolutely knew what resources existed in each part of the area to be delimited. Only then could the Court share out these resources. But what about existing delimitations — should they be modified every time something of value is found on one side or the other of the boundary line?

Delimitation is not a "partage" nor an apportionment. And, in any event, life is not so certain. Who knows where good fortune will shine? Until the Agent for Malta informed the Court last week that the recent well drilled by Malta — presumably the Alexia 2 well located on the Ragusa-Malta Plateau north of Malta — was, as he described it, "for all practical purposes . . . another dry hole", the published information indicated that Malta's Prime Minister himself had reported to the Maltese Parliament just last 22 December that gas and oil had been struck for the first time by Malta. What will ultimately be developed in this region of course remains to be seen. Happily, however, the prospects look good since recent Italian finds not far away on the same shelf area have

been described as amongst the largest in the Mediterranean. This only serves to highlight the temporal or transitory nature of such factors, and points up why they are inappropriate to be taken into account as relevant circumstances in a case of continental shelf delimitation.

I must say, Mr. President, that when it comes to a discussion of economics, I have a sense of *"déjà vu"*. We believed that the extensive discussions of economics in the *Tunisia/Libya* case, as well as the Court's treatment of those factors as irrelevant in its 1982 Judgment, has served the purpose of dealing with such issues once and for all. But since we continue to hear economic arguments in these hearings, I can only respectfully refer the Court back to Libya's Counter-Memorial (II) where further documentation on these matters has already been given so as not to repeat what has already been said.

I believe we have shown the Maltese approach to be what it is; that is, an unabashed attempt to establish as an *a priori* rule a method which the law, in the more than 30 years it has been developing in this field, has not done. In short, Malta seeks to elevate equidistance to a privileged status as a method that is said to be prima facie equitable, to demote the relevant circumstances to a mere secondary role used only to test equidistance, and to abolish the element of proportionality altogether. This cannot be right either in this case or as a matter of general principle. Moreover, it would have very serious consequences and implications for future delimitations throughout the world if it were to be accepted.

Mr. President, Members of the Court: there have been some developments during Malta's second round of speeches to suggest that on certain issues the position of the Parties may not be so far apart as appeared previously. I am thinking about the related subjects of the presence of third States and the relevant area. It is perhaps appropriate for me to pause for a few minutes on these points.

As for the presence of third States and existing or potential third State delimitations, Libya has always considered that these elements constitute relevant circumstances in a question of delimitation. This was Libya's position in the *Tunisia/Libya* case. It was re-emphasized even during the proceedings relating to Italy's application to intervene, an application which Libya objected to primarily on jurisdictional grounds. In contrast, Malta's position, it appears, has undergone a good deal of change. In its written pleadings and even during the first round of speeches, Malta was at pains to play down the importance of third States.

This was somehow peculiar in the light of the fact that Malta had tried to intervene in the *Tunisia/Libya* case. The second round has witnessed a marked shift in Malta's position, so much so that at times we had the feeling on our side that we had now dispensed with the question of delimitation with Malta and were, instead, involved in some future as yet unformulated delimitation with Italy.

In principle, Libya welcomes the fact that Malta now recognizes that third States and third State delimitations may have relevance, particularly given the relatively constricted geographic setting of the present case. As Libya has said, the interests of third States must of course be safeguarded by the Court in reaching its decision in this case. This is why Libya has drawn, and continues to draw, attention to point 32 of the Italy-Tunisia delimitation and point 16 of the Italy-Greece boundary. At the same time, it is also a fact that there exist areas between Malta and Libya where there are no claims of third States and thus are for delimitation between Libya and Malta alone. These must be the areas primarily in focus for the present proceedings.

This brings me to the question of the relevant area. While Professors Jaenicke and Bowett will address this key issue in greater detail, I would like to note a few brief points at this stage. First, in contrast to what the distinguished Agent of Malta implied last Wednesday (pp. 396-397, *supra*), there has been no inconsistency or change in Libya's position on the relevant area. The area described in the Libyan Memorial (I) (paras. 10.6 and 10.17) is what has been outlined on
(50) Map 68 in the Libyan folders. So nothing has changed. What is strange is that until the final round of Malta's speeches, indeed until the very last speech by the Agent, Malta had failed to address seriously the relevant area as it had been advanced in Libya's Memorial. One can only wonder why it took Malta so long to react. One possibility is that Malta's views on the relevant area may have moved closer to our own. I could not help being struck by what my learned friend, the Maltese Agent, said the other day. He spoke of "the Pelagian Block, which comprises the area relevant for delimitation in the present case" (p. 392, *supra*). And, as the experts of both Parties agree, the Pelagian Block and Pelagian Sea terminate on the east at the line of escarpments. So perhaps Malta is coming around to our view as to the eastern limits of the relevant area.

The points I have touched on will be the subject of further comments by my colleagues. To give the Court an idea of Libya's presentation in this second round, I should now like to indicate briefly the order of Libya's speakers.

Sir Francis Vallat will follow with some observations on where the case stands as we come to its final days. Tomorrow, Professors Jaenicke and Quéneudec will address the principal legal issues which divide the Parties. They will be followed on Friday by Professor Bowett, who will address the facts and relevant circumstances and will show how, in Libya's view, they lead to an equitable result. We will then have some brief concluding remarks after which I shall, in accordance with Article 60, paragraph 2, of the Rules of Court, read Libya's final submissions.

REJOINDER OF SIR FRANCIS VALLAT

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Sir Francis VALLAT: Mr. President, I cannot address this distinguished and honourable Court without saying how honoured and happy I am to have the opportunity to do so again.

The case for Malta has undoubtedly been presented with considerable ability. Happily, the decisions of this honourable Court are based, not on the skill and ingenuity of counsel, but on the law and the facts. For our part, we have done our best to put before the Court, as fully and accurately as possible, both the facts and the law.

We are concerned not with the merits or the demerits of counsel. The charge that Libya's advisers and counsel simply do not understand the delimitation process will not have escaped the notice of the Court. But I have every confidence that the Court's great experience and knowledge in these matters will adequately compensate for any lack of experience, learning or understanding on the part of the representatives of Libya. Armed with this confidence, we shall try to direct our arguments to the substance of the dispute and to the legal and factual considerations.

This does not mean that it is out of order to comment on certain debating positions taken by speakers on the other side. For example, I have to start by commenting on the position taken by the Agent for Malta in his closing speech. Quite reasonably and properly, he refrained from speaking about matters on which he had nothing to add. These largely related to the background to the dispute. Of course, he is fully entitled to rely on the record as it now rests before the Court.

What concerns me is his suggestion that he may ask for yet another opportunity to speak if Libya should say anything new in the course of this second round. What does this mean? Does this mean that Malta is content to rest on the record but will try to return to the fray if speakers on the Libyan side revert to issues which have already been discussed but on which the Agent for Malta has made no comment in his closing speech? Surely, we cannot go on like that for ever?

I have in mind at the moment two matters in particular. These are the no-drilling understanding and Malta's status quo/acquiescence argument. These two matters are interrelated, but each has its own significance for the case.

As regards the no-drilling understanding, I would like to follow in the footsteps of the Agent for Malta. I am not, you will be glad to learn, going to review again all the documentary evidence which shows beyond doubt that, however made, there was a no-drilling understanding to the effect that drilling would not take place in the disputed area until the Court had made its decision and a delimitation had been agreed accordingly. I am glad to note that Dr. Mizzi has not reverted to the allegation made in his opening speech in the first round, that a no-drilling understanding did not exist.

Now let me make a brief mention of Malta's status quo/acquiescence contention. It is hard to know why Malta thought it necessary to bolster its claim to an equidistance line by appeal to such a contention as this. To borrow a phrase from our learned opponents, this would seem to show nervousness, may I say

lack of confidence, by Malta in the legal soundness of its case. In any event, I am delighted that Malta has accepted my invitation to say no more on this aspect of the case. As to this contention there can be no doubt that Libya is right and Malta wrong.

Mr. President, while fully maintaining Libya's position on the background to the dispute as stated in the written and oral pleadings, I now turn to the real substance of this dispute. Examination of the issues falls naturally into three parts — the law, the facts and the application of the law to the facts.

The legal aspects of this case on the Maltese side were dealt with in the main by Professor Brownlie and Professor Weil, and most of the reply on these aspects will be made by Professor Jaenicke and Professor Quéneudec. It is not for me to go into the detailed arguments but, by way of introduction, I should like to offer a few general observations.

One outstanding aspect of this dispute is that both Parties starting from a common principle follow such divergent paths with such different consequences.

The common ground is, of course, that a continental shelf delimitation has to achieve an equitable result. It seems to me that the achievement of an equitable result must imply the application of principles that are equitable. Yet, even at this elementary point in the development of our thinking, we find a subtle divergence. Libya on the one hand seeks an equitable result through the application of equitable principles, while Malta seeks a similar result through the application of an *a priori* method which it tries to justify by indirect arguments said to be consistent with equity.

In the view of Libya, whatever doubt Professor Weil may have had during the first round about the import of Article 83 of the 1982 United Nations Convention on the Law of the Sea (**III**, p. 380), it is absolutely clear from the jurisprudence that the application of equitable principles for the purposes of continental shelf delimitation is well established in customary international law. This is now clearly accepted by Malta.

Equitable principles do not mean the application of an *a priori* method. Equitable principles mean the taking into account of all relevant circumstances: that is to say, to put it briefly, circumstances relevant to the delimitation in the particular case. Is it really proper to suggest that in taking these views Libya is stupid or ignorant about the law relating to the continental shelf and its delimitation, as has been suggested by our opponents? Let me, for example, recall some of Professor Brownlie's assertions. He said:

> "the Libyan position is based upon a fundamental misunderstanding of the legal order within which maritime delimitation takes place . . ." (p. 284, *supra*).
>
> "The Libyan position lacks roots in the available legal principles." (P. 285, *supra*.)
>
> "The Libyan case is based upon a complete misunderstanding of the nature of continental shelf delimitation . . ." (P. 286, *supra*.)

Allegations of this kind, which regrettably typify Malta's pleadings, are really naïve and do not assist the Court to arrive at proper conclusions based on a proper presentation of the law and the facts.

The Agent for Malta has complimented Professor Brownlie on his ability to invent phrases. Alas, this power of invention does not help the Court either. In this connection, by way of an introduction to Libya's further observations on the law, may I recall the ingrown circle of languages which he uses. I will

confine myself for the moment to his statement of the Maltese contentions. We are told:

> "Malta contends that the geographical facts must be placed within a certain legal order related to the concept of approximate equality . . ." (P. 284, *supra*.)

One can only ask: what legal order and what is meant by "the concept of approximate equality"? When we look for enlightenment on the meaning of the legal order, we are told that Libya:

> "substitutes a concept of spatial distribution of areas of sea-bed for the proper mediation of areas of convergence as between coasts, coasts which are presumed to have an equal seaward reach of jurisdiction, this being a corollary of the equal entitlement of coastal States to continental shelf" (pp. 284-285, *supra*).

I will come back to the characterization of the Libyan position. For the moment, without examining these assertions in detail, it is apparent that the series of statements is no more than a total assumption of equality, which in the form in which it is presented could only mean equality of shares. It is a case of equality of everything.

Yet we are told on the very same page of the record (p. 285, *supra*) that Malta is not asking for half of the relevant area, or any particular proportion of the relevant area, but bases its case on: "the concept of approximate equality, which may also be expressed as the equitable criterion of equal division". I am sorry, Mr. President, this is the language of Malta, not our language. This progress of equality again provokes the questions: approximate equality of what? And, as regard the so-called "equitable criterion of equal division", equal division of what?

Professor Brownlie is obviously aware of the fact that the theory proves too much, because he goes on to say: "Malta is not seeking a mechanical half-share of the relevant area." And better is to follow. He continues: "The principle of equal division is to be applied within the geographical and legal framework." He then caps the climax by saying: "the trapezium gives a simple graphical indication of the proper application of that principle in the circumstances of the present case" (p. 285, *supra*).

It is impossible to understand how the trapezium can give an indication of the proper application of the principle. Indeed, as has been conclusively shown, the trapezium is a broken reed.

Now the trapezium is used by Malta to show the area of overlap and it has now become a trapezium to show the area relevant to the delimitation. Indeed, I am not sure where the relevant area, as determined by the trapezium, is said to lie, because we do not have a copy of the map put up on the easel by Professor Brownlie when he was speaking about the relevant area (pp. 288-289, *supra*). The matter is further confused by Dr. Mizzi's reference to the Pelagian Block as comprising the relevant area and by his reference to basepoint 12 on the Libyan coast near Benghazi (pp. 391 and 400-401, *supra*). But, if one goes back (13) to Maltese Figure B (Figure 26 in "Illustrations by Malta for the Oral Proceedings" dated 26 November 1984) what it is in effect is a beautiful triangle on a blank sheet of paper. But if one goes back to this representation of the trapezium it can be seen from the note that zone 1 and zone 2 are areas of overlapping natural prolongations as between State A and State B. So what this figure is apparently supposed to illustrate is that the trapezium represents "areas of overlapping natural prolongations". Well, not even Malta contends for equal

division of the area covered by the trapezium. So we are left with no answer to the question: "equal division of what?"

So we go round and round and the only place where we come out is, not in the theory of equal division of areas, but the equal division of distance as presented by Professor Weil. Malta is still caught by the net of its equidistance method and does nothing by all this elaborate argument to establish that equidistance has any priority in international law as a method of delimitation or that, in the circumstances of the present case, a delimitation based on equidistance is equitable.

Now let me come back to what Malta says about the reliance by Malta and Libya on coastal lengths. There is no doubt that we have here a real difference between the Parties. Although Malta has given the impression that it attributes no significance to coastal length, this is now denied by Malta. Indeed, the truth of the matter seems to be that, while Malta is prepared to use lengths of coast for the purpose of determination of the relevant area, it is not prepared to give coastal length a role in the actual delimitation itself. According to Malta, delimitation is to be effected by the equal division of lines joining certain control points on or off the coasts of Malta and Libya.

Malta contends that length is but one aspect of coastal configurations and relationships. This proposition is not disputed, but Malta seeks to minimize the significance of lengths of coasts in the process of delimitation to vanishing point. It is said, on the other hand, that Libya insists that length is a paramount element. Since the continental shelf is an extension of the land territory of a State into and under the sea, not from selected points but from its coasts, it is obvious that the coast is an element of primary importance in determining the areas within which a State has a title as good or better than the title claimed by another State.

It is not for me to examine the cases on this point: as the Court is well aware, this is the basic truth behind the decision of the Court in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 3).

I have referred to Malta's concept of "approximate equality". This is contrasted with what is said to be Libya's insistence upon "a certain version of proportionality, the formula of the ration of coastal lengths . . ." (p. 284, *supra*). There are two differences to be noted here. First, one has to distinguish between the method of delimitation on the one hand and the test of the equitable result on the other. That is the key distinction. Secondly, one has to examine the elements that are to be taken into account in choosing the method of delimitation.

Libya has consistently taken the view that the results of a method should be tested by the application of a proportionality test, for example, as applied by the Court in the *Tunisia/Libya* case, which compares the respective ratios of coastal lengths to areas attributed to each of the two States. This is quite different from the method suggested by Libya, which seems to be admirably suited to the circumstances of the present case: that is to say, to take into account not distance alone, as Malta would do, but coastal configuration and length as well as distance. In the circumstances of the present case, where there is such a great discrepancy in coastal lengths, which is the better approach — to use distance alone or to use both distance and the lengths of the relevant coasts? This is presented as a valid approach to the problem of delimitation in the present case. Libya rejects the theory calling for equal division, which does not properly identify what is to be divided and, even so far as an area is to be divided, does not after all seek equal division, but something quite different.

Mr. President, in the context of Malta's theory of "approximate equality" and "equal division", it is regrettably necessary to make a few further comments on

the principle of the legal equality of States. This principle, relied upon so much by Malta throughout the written and oral pleadings, received further attention by Professor Brownlie, Professor Weil and the Agent for Malta in the second round.

I would have thought that this matter had been dealt with definitively and finally by Professor Briggs in his short but cogent speech in the first round. It is astonishing now to find the Agent for Malta, in the passages to which I am now referring (pp. 403-404, *supra*), once more speaking of "Libyan distortion" of Malta's argument on this issue. One may wonder where the distortion lies.

From the statement of Dr. Mizzi to which I have just referred, it now appears that Malta does accept the view expressed by Professor Briggs that the principle of legal equality of States means "that all States are equal in the eyes of the law". But it is counsel for Malta who seem to have persisted in misapplying the principle as justifying "equality of entitlement" of continental shelf and "equal division in the delimitation process", and I would refer to certain examples from Professor Brownlie's statement (pp. 284, 285 and 287, *supra*). Leaving on one side the rhetoric which could readily be adapted to apply to Libya's claims as well as to Malta's, I agree that the principles applicable to a larger State are applicable to a smaller State. But I cannot agree with the assertion: "If coasts generate shelf rights with respect to a larger State they generate the same rights with respect to a smaller State and not in proportion to their length." The first part of this sentence may be acceptable, but the interpretation which appears in the second is not. Where the sentence goes wrong is the confusion of the equal application of the law with actual or substantive equality resulting from the application of the law.

Put in a different way, generation of shelf rights, that is, sovereign rights to explore and exploit the resources of the continental shelf, does not mean that the areas of shelf over which those rights are to be exercised must be of the same extent no matter what the length of a State's coast. As was made so clear in the *North Sea Continental Shelf* cases, the position of a State with a short coast cannot be made the same as that of a State with a long coast. The true principle in terms of continental shelf law, I suggest, is that each kilometre of coast should, as a general rule, generate the same area of continental shelf. This principle follows from the very nature of the continental shelf itself as the extension of the land territory of a State from its coast into and under the sea.

Accordingly, the principle of equality of States in the eyes of the law as States has nothing to do with the question of the areas of shelf which may be generated by their coasts. These must, in the nature of things and in the eyes of the law, be generated in equal measure in proportion broadly speaking to the lengths of their coasts. This is one legal reason why the test of proportionality is valid and useful.

Mr. President, while Professor Brownlie has appeared to concentrate on areas and their equal division, the main legal argument of Malta, as expressed through the mouths of counsel, has become more and more one focused on distances and their equal division. To be more specific this means a delimitation based on the equal division of lines joining 12 selected points on the coast of Libya and three points on or off the coast of Malta. This is in effect the main burden of the argument of Professor Weil. Indeed to reflect the comments of Professor Weil, we might characterize the case as being a contest between the Maltese reliance on the theory of distance and the Libyan reliance on the facts. To say, however, that this Libyan reliance on the facts involves the application of the facts to the law rather than the law to the facts is completely misguided.

The selection of relevant circumstances in a particular case and the assess-

ment of the legal effect of those found to be relevant is a process with which the Court is now familiar. This is the process which Libya advocates. It is a process which in no way involves the automatic application in a delimitation of a principle of distance, which is interpreted by Malta to mean equidistance.

In the same spirit, Professor Brownlie has accused Libya of logical inconsistencies in its position concerning the lengths of coasts. But where I ask is the real inconsistency?

Addressing you, Mr. President, Professor Brownlie said (p. 292, *supra*):

> "moving through the logical sequence of issues, I have considered the relevant coasts and identified the relevant area, and I have indicated that the delimitation should then be effected on the basis of the equitable criterion of the equal division of the relevant area, which, within the geographical and legal framework of the present case, would involve the method of equidistance".

If one were to take the relevant area as identified by Professor Brownlie at that time this would, according to his thesis, correspond to a trapezium reaching along the Libyan coast as far east as Benghazi and beyond. I do not of course accept that this is the proper relevant area for the present case. Whatever the relevant area, the result would be the same. Equal division of the relevant area would require a line nowhere near the line produced by the method of equidistance. In the area selected by Malta, the equidistance line would not produce an equal division — that is to say, not a ratio of one to one in the areas attributed to Malta and Libya, but it is said a ratio of something like 1 to 6. This would depend of course on the length of Libyan coast involved and would become less favourable to Libya as the length of coast selected became longer.

This is the kind of logic, or I should say pseudo-logic, to which Malta has recourse in seeking to find support for its equidistance method as a matter of law in the application of a principle of distance. Yet, on this basis, we are accused of having no knowledge of or misunderstanding the process of delimitation.

On the contrary, as the Court is well aware, delimitation is concerned with the facts: it is the facts which are of primary importance. Indeed, it is only by a proper assessment of the facts that the Parties can hope to arrive at an equitable result. The role of the law is to select the relevant circumstances and to decide, as a matter of law, what part they should play in the delimitation in the particular case and to test whether the result would be equitable. This is why Libya has placed so much emphasis on the facts in this particular case.

The Court adjourned from 4.20 p.m. to 4.40 p.m.

The remarks that I was making before the break bring me to some observations on the facts. It is not for me at this moment to deal with the relevant circumstances and their role in the delimitation: this will come later. But I would stress again that we are, and have been, concerned to put before the Court as fully and accurately as possible what seem to us to be all the relevant facts.

These facts are mainly, indeed in this case almost exclusively, the physical characteristics of the area of delimitation. Libya, as is well known, does not entertain any *a priori* concept of the superiority of one set of facts over another. From the beginning of this case, in its Memorial, Libya has presented a full picture of the geographical, geomorphological and geological facts. Libya does not rely on any one of these aspects of the physical facts to the exclusion of the others. It is not true to say that Libya's case is wholly geological: it is, and has throughout taken account of and been based on all the relevant facts.

Indeed, Libya fully accepts that, if no weight were to be attached to the geomorphological and geological facts, a solution could be found on the basis of geography alone. It would be impossible to take a different view because although equidistance has not been by any means universally applied, even in the delimitations so far achieved, most of them have been based mainly or exclusively on geographical considerations. And this is for the reason that the areas of shelf involved have been areas of uniformity and continuity, lacking the quite exceptional sea-bed features that one has in the present case.

The view of Libya is that, whether one takes the facts individually or in combination, they all point to the selection of a method of delimitation which will result in a line falling within and following the direction of the area of the Rift Zone, as defined on the maps in the Libyan written pleadings.

Geography will be examined by Professor Bowett later in the context of the relevant circumstances. I would only stress here that there is a real and important issue between the Parties as to the role to be played by coasts and their relative lengths in the delimitation. As Malta's case was developed once more in the second round of oral argument, as I have said, it became more and more clear that her main objective was to drown the effect of the disparity in the lengths of the coasts of Malta and Libya in an artificial application of the concept of distance.

Incidentally, it is not distance which Libya rejects as a relevant fact: it is the use made of that fact by Malta which, in the view of Libya, has no legal foundation. We shall also have more to say about this point in due course.

Turning to the aspects of geomorphology and geology, we have had the spectacle of Malta trying to elevate the geological case to the status of the sole support for the Libyan case. I do not think that the so-called nervousness of States or their advisers and counsel has much to do with the merits of a dispute. Nevertheless, the passionate anxiety of Malta in the later stages to try to destroy the scientific evidence of Libya concerning the Rift Zone has been truly remarkable. It does suggest that Malta is more conscious of the strength of the Libyan case in this respect than her words disclose.

I am going to leave this aspect of the matter to my colleagues, but perhaps I may be permitted to make two observations. One relates to the Rift Zone itself, and the other relates to the handling of the evidence.

As to the Rift Zone, merely from the angle of bathymetry or topography of the sea-bed, one cannot say that the Rift Zone is simply a myth or a figment of the imagination. It is true, as one can see from the map which now stands on the easel behind me, that the zone is made up of a series of features, mainly troughs or channels of varying depth. But no amount of sleight of hand can disguise the fact that this series of features, collectively referred to as the Rift Zone, is continuous from the Egadi Valley in the north-west through the system of troughs and channels, in particular the Malta Trough and the Malta Channel, and through the Linosa Trough and the Medina Channel to the south and south-east of Malta, and then through to the Escarpments and the Heron Valley and reaching the Ionian Sea. The colouring may not be very good on this chart, but the continuity of these features all the way through is quite remarkable and can be seen quite readily if one examines the chart more closely than one can in a room of this kind.

The area of this zone lies between, or if you like separates, the Ragusa-Malta Plateau, up here. And here is Malta which, according to the Memorial of Malta, rests on the Ragusa-Malta Plateau. It divides it from the area of the Plateau down here — which on this chart is called the Lampedusa Plateau, or might be called the Tunisian Shelf or whatever name one likes to attribute to it. The area

of the Pelagian Block, from the south side of the zone runs smoothly southward towards the Libyan coast. I suggest that nobody can ignore these very important facts.

As long ago as 1967, Professor Burollet depicted this fact on a figure. This figure, which has been placed on the easel and is now No. 93 in the Judges's folder, was also used in Professor Morelli's 1975 paper, as was brought out in Professor Bowett's cross-examination of Professor Morelli (pp. 274-275, *supra*). The figure shows clearly separation of the areas of the sea-bed of the Pelagian Sea, and two separate shelves marked Ragusa Shelf here, and here is Malta and here is the Pelagian Shelf as marked on this map down below. So there is a map which shows quite clearly two areas of shelf. These, of course, I am not putting forward as areas of continental shelf in the legal sense, but these are areas of shelf in the physical sense as viewed through the eyes of scientists. The significance of the shelves from the legal point of view is something for my legal colleagues to deal with.

The Libyan case is that the series of features constituting the Rift Zone is pointed up by the geology which discloses a discontinuity between the shelf to the north and the shelf to the south. Malta, on the other hand, contends that the whole area is a "continuum". As I have indicated, these aspects of the case will be dealt with by Professor Bowett in due course.

As to my second point, may I recall that the evidence was presented to this Court in a very peculiar way. This is, of course, not a criticism of the order of events, as arranged by the Court after consultation with the Agents of the Parties. But I had understood that one of the objects of having the evidence presented orally was to assist the Court in getting to the bottom of the matter, and with this in view the experts were to be cross-examined.

The practice of cross-examination has been most highly developed in the Common Law courts. There it is generally understood that, if one party fails to put its case to the witnesses of the other party, the evidence of the latter is presumably accepted.

This, of course, is not a rule of law, but it is a practice against the background of which one may assess the methods of Malta as compared with the methods of Libya. On the Maltese side there was no cross-examination on the substantive merits of the issues. Two of the witnesses presented by Libya were not cross-examined at all and none of them was given an opportunity to deal with the substance of the evidence or views to be given subsequently by the witnesses of Malta.

It will also not have escaped notice that Professor Vanney was not called at all. Was this because, as would appear from the written pleadings, his views were not altogether in line with those of the other experts for Malta? For he had identified the Trough and Ridge System, more or less identical to Libya's Rift Zone. One cannot help wondering how he would have dealt with cross-examination on the merits such as that to which Professor Mascle and Professor Morelli were subjected.

Mr. President, diverting for a moment, I would, with your permission, in this context like to mention briefly the incident which occurred at the end of the cross-examination of Professor van Hinte. Much play was made by my good and learned friend, Mr. Lauterpacht, with the omission of the acknowledgments from the article by Professor van Hinte and others in the copy submitted to the Court. The paper referred to in the written pleadings, and in the letter [1] of 12 July 1984 transmitting the copy of the article to the Court, in accordance

[1] See Correspondence, No. 82, *infra*.

with Article 50, paragraph 2, of the Rules of Court, was indeed a true copy of the article as submitted for publication, with the exception of the omission of the acknowledgments. The suggestion has been made that this omission was deliberately made so as to mislead the Court.

That this is not true is obvious on the face of the copy submitted because the omissions were clearly indicated by the row of asterisks and the fact that the page numbering runs from page 15 to page 17 clearly omitting page 16. Had the Agent for Malta been really concerned about this omission, he could easily have addressed an enquiry to the lawyers concerned, perhaps, or more properly have raised the matter through the Registrar.

The truth of the matter is that so far from there being any intention to mislead the Court or the other Party, the intention was to avoid misleading them. Why? Because the reference to the lawyers made in the acknowledgments was factually wrong. Quite simply, there was no grant made to the Free University of Amsterdam — still less was there a grant made by the lawyers to the Free University.

It is astonishing that in their diligent search of the footnotes in Libya's written pleadings, counsel for Malta did not come across footnote 1 on page 63 of Libya's Reply (**III**), which explained the position as regards the papers written by Libya's scientific advisers.

After referring to Professor Finetti's paper, the footnote continues with reference to the Jongsma *et al.* paper (1984). Again with your permission, Mr. President, I should like to quote from the footnote so as to put the record straight. The pertinent passage reads:

> "See also Jongsma, D., van Hinte, J. E., and Woodside, J. M., 'Geologic Structure and Neotectonics of the North African Continental Margin South of Sicily', a paper submitted for publication on 18 June 1984 to *Marine and Petroleum Geology*. A draft of this paper has been furnished to the Registry and references in this Reply are to this draft of the paper. The authors of this paper have also served as scientific advisers to Libya in connection with the present case and their paper contains some data stemming from this work."

Everybody knows that scientific advisers in these cases are normally paid for their services by the States which engage them. The present case is no exception. But to say that they are paid is one thing, and to say that they are prepared to put their reputation at stake by publishing the results of their work is something quite different.

So, when all is said and done, the brilliant cross-examination of Professor van Hinte was no excuse for failure to cross-examine him and the other Libyan experts on the merits.

I should like now to return to the substance of the case. As so often happens, it is helpful to examine the maps and illustrations submitted by a party in support of its case. For this reason, I should like the Members of the Court, if you please, to look quickly at the collection of illustrations submitted by Malta for the oral pleadings which is dated 26 November 1984. I have it in this form.

At the beginning, we have basic maps A and B. B only differs in that the bathymetry has been added to map B. On the scale that is used it is, of course, impossible to be precise about the accuracy of details, but the maps do indicate the general coastal relation between Malta and Libya. South of the island of Malta — and here I am using it in the geographical sense — there is a small, almost invisible, black dot: this is presumably the rock of Filfla which is given such a prominent role in the later Maltese illustrations. I do not know whether Members of the Court will be able to find that black dot, I can just see it.

Secondly, on basic map B, submitted by Malta and not by Libya, even as a matter of bathymetry the continuity of the Rift Zone, all the way through from Pantelleria to the Malta Escarpment, is visible for all to see.

Figure 2 is worth a quick glance because it shows the Maltese concessions, even those granted up to 1981, as stopping in the region of the Malta/Medina Escarpments Faults Zone.

Figure 3, which is again Maltese and not Libyan shows only one continuous line of faults following, broadly speaking, the continuous line of the bathymetry to which I have just called attention. This is really all the way from where Pantelleria lies right down to the Heron Valley. This surely shows that the Rift Zone is no mere figment of the imagination.

(36) Turning to Figure 4, I would remark that this shows the Italy/Tunisia and Italy/Greece delimitations, but it is manifestly incomplete because it does not identify the terminal points of those two delimitations. Nor does it complete the picture by showing the Tunisia/Libya line indicated by the Court in its 1982 Judgment.

(37) Figure 5 (again this is Maltese not Libyan) shows the Escarpment very, very clearly.

(39) Figure 7, do I dare, Mr. President, is the famous or infamous, trapezium. It (12) may be compared with Figure A on page 118 of the Maltese Memorial. I am not asking Members of the Court to turn to Figure A on page 118 of the Maltese Memorial, but that Figure A shows the two sloping sides of a triangular shape running from the top of Gozo to Ras Ajdir in the west and Ras at-Tin in the east. It also purports to present as areas of overlapping natural prolongation the whole of the area contained between these two lines and the coast of Libya. A truly remarkable figure, Mr. President.

If one now turns — and I would be grateful if the Members of the Court (13) would kindly do this — to Figure 26, we find that this is marked Figure B for illustrative purposes only, but it appears to be contended by Malta that the whole of the area of the trapezium as shown in that figure equals the "areas of overlapping natural prolongations as between State A and State B". And that legend is found in the note underneath the bottom side of the trapezium which says "Note : zone 1 and zone 2 equals areas of overlapping natural prolonga- (39) tions as between State A and State B". Well now translated back to Figure 7, the shape of this trapezium would appear to coincide with the shape of the trapezium on Figure 7. So this gives us a different picture of the alleged overlapping of natural prolongations.

(39) In Figure 7, however, the trapezium is incomplete in the south-west corner and trespasses on the territory of Malta and Libya. It now seems to cut across Malta and it cuts across the area of Libya above Benghazi. It also has a line from what is presumably the easternmost point of Malta to Ras at-Tin, — not actually named on the figure but that is the point it is, Ras at-Tin — which is east of Ras Amir and many miles to the east of Benghazi. Of course, the scale is again very small. But I have placed my ruler along the line I just mentioned and, if prolonged, it would seem to reach and touch the point of Libyan territory which is west of the Egyptian border below Crete. That point is, I am told, called Ras Azzaz. Even Malta seems to have realized the extreme absurdity of any illustrative figure — an absurdity which is underlined by the fact that it is suggested that the trapezium shows the areas of overlapping natural prolongations between State A and State B, when obviously by inference it is intended to indicate Malta and Libya. We shall revert to this point later when counsel come to develop our reply to the Maltese arguments more fully.

(40) Now if we may turn to Figure 8 for a moment. This figure is interesting

because it shows that Libya's 1973 line overlaps very little with Malta's 25-mile fishing zone and could easily be adjusted to follow the line of the fishery limits. It also shows that the line claimed by Libya was not quite so near to Malta as Mr. Lauterpacht's remarks on security might lead one to believe. It is difficult to imagine how an oil engineer on the deck of a drilling-rig could at that distance see into the windows of Malta, even with binoculars.

(41) Figure 9 is in itself damaging to Malta's case. It shows very explicitly how Libya with its very long coast would seem to lose more to short-coasted Malta than to any other State in the area depicted: the topward line not quite complete to the left.

I have not carried out a detailed calculation to substantiate this point, but I do suggest that the disproportionate effect of Malta by the use of an equidistance line is really apparent on the face of the figure.

(42)(43) Now we come to Figures 11 and 12.

(42) Figure 11 shows the three points which Malta uses as the basis for its claim which is founded, essentially and fundamentally, on radial projection from these three points, and the equal division of the distance between those points and what are said to be the 12 control points on the coast of Libya. The picture is unreal. It might be compared with a small boat firing three mediaeval cannon mounted in the bow against a broadside from Libya. This is the image as presented by Malta, not by us. In the diagram the broadside from Libya is necessarily concentrated on a very short Maltese coast, while the Maltese cannon are dissipating their shot and spreading it along the length of the Libyan coast — that is to say as far as Benghazi. It should also be noted that Ras at-Tin and Ras Amir have disappeared from the scene and we only have two control points near Benghazi to the east of Ras Zarruq.

The Court may wish to ask itself how the trapezium could be adjusted to fit this diagram and how, in the light of this diagram apart from any other consideration, the trapezium could show the area of overlapping natural prolongations.

(43) The same questions may be asked about Figure 12. But the further question may be raised as to why the radius of the circles on Figure 12 is 200 miles and not beyond. If one were to work on the basis of the Maltese thesis, surely the radial projection of Malta from these three points would, in accordance with Article 76 of the 1982 Convention on the Law of the Sea, extend beyond 200 miles in the direction of Libya? But then one would find that an arc from either Filfla or Delimara Point might come within a few miles of the Benghazi coast, and the extension from the Libyan points designated by Malta would engulf Malta and even reach as far as Sicily.

But the real point is that, if Malta's theory of radial projection were correct, virtually the whole of the area, which according to Malta is said to lie within the area for delimitation in the present case, would be an area of overlap subject, according to Professor Brownlie, to the principle of equal division. Obviously Malta has not carried its argument so far because of the manifest absurdity and injustice of any such conclusion. Moreover, equal division of the area would not bring one anywhere near the equidistance line and therefore the theory provides no support for equidistance, which in that context becomes mere wishful thinking.

Finally, may I just mention Figures 14, 15 and 16, reproduced from the pleadings in the *Gulf of Maine* case, because they show so clearly the contrast between the representation of prolongation claimed by Malta through its three control points and the true principle of law which is that the continental shelf of a State consists of the natural prolongation of its land territory into and under

the sea — in other words, the projection of its coasts seaward and not individual points firing seaward like ancient cannon.

Mr. President, I have taken a little time to review the Maltese maps and figures because this will save my colleagues some time when they come to deal with various aspects of the case in a more orderly and logical manner. This brings to an end my preliminary observations on the law and the facts. Our observations on the crucial question of how the delimitation is to be effected will naturally follow at the end.

At this stage, the main burden falls on my colleagues and it is our intention that Professor Jaenicke should continue, if you please, tomorrow morning. We should then be in a position to finish quite comfortably by lunchtime on Friday and it will prevent breaking the speeches unnecessarily.

The Court rose at 5.10 p.m.

THIRTY-SECOND PUBLIC SITTING (21 II 85, 10 a.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

REJOINDER OF MR. JAENICKE

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Mr. JAENICKE: Mr. President and distinguished Judges: the exchange of oral argument between the Parties has served to direct the attention to some key issues in the legal framework governing the present case on which the Parties are still deeply divided. In addressing these issues, I shall not repeat all of Libya's legal case, but I intend to show that — despite the arguments advanced by our opponents — Libya's position on these issues is well founded in the general legal principles of continental shelf delimitation and in the jurisprudence of this Court.

I. The Application of Equitable Principles in the Process of Continental Shelf Delimitation

It is common ground that the delimitation of the continental shelf between the Parties must be effected in accordance with equitable principles. The Parties, however, take widely divergent views as to what are these "equitable principles" and which of them are applicable to the present case. The Court has developed and applied some principles which, in the view of Libya, are of general application, such as the principle that a delimitation should leave as much as possible to each party all those parts of the shelf that constitute the natural prolongation of its territory into the sea. But there are, of course, other principles and criteria which are more specific and the application of which is dependent on or is indeed required by the factual circumstances of the concrete case.

In the *Tunisia/Libya* continental shelf case the Court stated that the term "equitable principles" cannot be interpreted in the abstract, that the equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result and that the applicable principles have to be selected according to their appropriateness for that purpose (*I.C.J. Reports 1982*, p. 59, para. 70). At first sight these definitions do not seem to offer much guidance for the concrete case, but they indicate quite correctly where we have to look for the elements which combine to give an equitable result.

It is evident that the result of the delimitation process will qualify as being equitable only if all relevant facts and circumstances of the concrete case have been adequately taken into consideration. By "relevant" is meant all those facts and circumstances which bear a relationship to the subject-matter of the delimitation process, that is to the continental shelf in all its geophysical, geographical, legal and other related respects. It is inadmissible to exclude *in limine* — as Malta attempts do to — such facts and circumstances as the physical structure of the sea-bed and subsoil or the marked difference in the length of the coasts

which abut on the area delimitation. This is inadmissible because these facts and circumstances have a direct bearing on the factual basis and extent of the continental shelf and their exclusion would be inconsistent with the established jurisprudence of this Court. The Court has recognized, in principle, the geology of the shelf and in particular a geomorphological discontinuity in the physical shelf as pertinent facts for the delimitation of the continental shelf in its legal sense; the Court has done so in the *North Sea Continental Shelf* cases, in the *Tunisia/Libya* continental shelf case, and in the *Gulf of Maine* case. It was because of the absence of such facts, not because of their legal irrelevance, that the Judgment in these cases had no reason to rely on them. In the same cases, the Court considered the length of the coasts of the parties as pertinent facts for judging the equitableness of the attribution of shelf area to each of the parties by the chosen method of delimitation or, in the *Gulf of Maine* case, for correcting the chosen delimitation method on the basis of the ratio of the respective coastal lengths.

The identification of the relevant facts and circumstances of the case is the clue to the correct selection of the rules, criteria and methods, the application of which is required for reaching an equitable result. It follows therefrom that the delimitation process must allow for those rules, criteria and methods which are capable of taking into account all relevant facts and circumstances of the concrete case and of giving each of them its appropriate weight. There can be no justification for the arbitrary exclusion of any of the categories of relevant facts and circumstances. There can be no justification for attempting to downgrade criteria which have been specifically established for taking account of certain relevant facts, such as the concept of proportionality with respect to the length of coasts. To downgrade these criteria to a lower or secondary status is not admissible. They all require their proper weight in view of the particular situation in each case.

The difference in the lengths of the coasts of both Parties is so obvious and so pronounced that such a circumstance cannot be ignored.

The trapezium which Malta has considered the area for delimitation between the Parties shows the coastal front ratio of about 1 to 30, or, to be more precise, 1 to 31.4 if you take the coastal front lengths as 35 to 1,100 kilometres. This trapezium is by itself the best evidence of the singularity of the geographical relationship between the coasts of the Parties. Therefore, criteria and methods must be applied which are capable of taking account of such a relevant fact; Libya has shown and will demonstrate again that the equidistance method, by its very construction, is not capable of taking adequate account of a discrepancy in the lengths of opposite coasts.

II. The Application of the Natural Prolongation Concept

Mr. President, among the equitable principles, the Court has given the concept of natural prolongation a prominent place in continental shelf delimitation. The Court regarded it as a principle and rule of international law that the delimitation must be effected

> "in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea without encroachment on the natural prolongation of the land territory of the other" (*I.C.J. Reports 1969*, p. 53, para. 101 (C) (1)).

However, the Parties remain deeply divided: (1) on the role of the concept of

natural prolongation in the delimitation process, (2) on the factual and legal meaning of that concept, and (3) on the application of that concept to the facts of the present case. I shall deal with these three controversial points in turn.

1. The Role of the Concept of Natural Prolongation in the Delimitation Process

It is Libya's position that the geological, geomorphological, and geographical elements of the prolongation of a State's territory into the submarine areas in front of its coast constitute the basis of that State's title to continental shelf rights over these areas, and that, consequently, by the application of equitable principles, the geological structure of the subsoil, the topography of the sea-bed, and the geographical extent of a State's natural prolongation, all these criteria are particularly relevant for delimitation. Malta, however, seeks to reduce the role of the concept of natural prolongation in various ways. Malta argues that geological or geomorphological facts have lost their relevance for continental shelf delimitation under present international law; Malta tries to change the meaning of natural prolongation into a mere "spatial" concept based on distance from the coast. In fact, Malta replaces the concept of natural prolongation, as it had been established and interpreted by this Court, by the novel theory that each coastal State may, in principle, claim a continental shelf of equal reach with that of any other State abutting on the same area of delimitation. That is, in effect, nothing else than a disguised claim for equidistance vis-à-vis all States which surround Malta. I shall deal with Malta's novel theory in more detail later.

Libya has shown in its previous pleadings that the established concept of natural prolongation with its geophysical and geographical components remains the basis of the coastal State's title to its continental shelf, and that there is no reason to abandon this concept in view of the new developments in the law of the sea. On the contrary, the Law of the Sea Conference has confirmed the primary role of that concept by expressly including it in the definition of the continental shelf in Article 76, paragraph (1), of the Law of the Sea Convention.

At this juncture, I should add some words of clarification with respect to the use of the term "natural prolongation". In the *Tunisia/Libya* continental shelf case the Court used the term "submarine extension" instead of "natural prolongation", but despite this difference in terminology, the Court referred in essence to the same legal concept, namely, the extension of the coastal State's jurisdiction over the sea-bed and subsoil in front of its coast, based on the geophysical as well as on the geographical connection of these areas with the coastal State's territory. The Court avoided the term "natural prolongation" and employed a more neutral term apparently because the term "natural prolongation" is sometimes understood in the narrow sense of referring only to the geophysical basis of the continental shelf concept and in the *Tunisia/Libya* delimitation geophysical facts did not operate to determine what was the natural prolongation of each of the two States. To avoid any misunderstanding in presenting Libya's argument, I would like to clarify that Libya uses the term "natural prolongation" as equivalent to the term "submarine extension", covering the geophysical as well as the geographical basis of the coastal State's legal title to its continental shelf.

2. The Criteria Drawn from the Concept of Natural Prolongation for the Delimitation of the Continental Shelf

In the present case, geophysical as well as geographical criteria allow an identification of the limits of the respective natural prolongations of the Parties. I shall deal first briefly with the legal principles which govern the identification

of a physical separation between the natural prolongations of the Parties before I return to the more complex problem of what legal principles govern the division between the natural prolongations of the Parties on the basis of the geographical relationship between their respective coasts. Geophysical and geographical criteria both stand on their own ground. There is no legal connection between them to the effect that if geophysical criteria yield no convincing result, the application of geographical criteria will be excluded thereby. The weight of each of the applicable criteria will determine the limits — or, more precisely, the front line of the natural prolongation of each of the Parties vis-à-vis that of the other.

(a) *The physical separation between the natural prolongations of the Parties*

The relevance of the physical structure of the sea-bed and subsoil for the identification of the extent and reach of the natural prolongations of the Parties and for the delimitation of the continental shelves of the Parties vis-à-vis each other is still disputed by Malta (pp. 392 and 394, *supra*).

The objections maintained by Malta against the relevance of geological and geomorphological features of the sea-bed and subsoil run counter to the jurisprudence of this Court. In the *Tunisia/Libya* continental shelf case the Court has unequivocally affirmed the relevance of a finding of "such a marked disruption or discontinuance of the sea-bed as to constitute an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations" (*I.C.J. Reports 1982*, p. 57, para. 66); the Court added that even where the geophysical structure of the sea-bed and subsoil would not amount to such an interruption of the natural prolongation of one Party with regard to that of the other, this fact may nevertheless be taken into account as a relevant circumstance for arriving at an equitable delimitation between the natural prolongations of the Parties (*ibid.*, p. 58, para. 68).

Malta's argument is that if the Court is not convinced of a geological discontinuity between the shelves of the Parties, Libya can no longer base its case on the Rift Zone (pp. 325-326 and 393, *supra*). This argument misconceives the dicta of the Court I have just cited. Even in the absence of a geological discontinuity it is still necessary to consider whether the topography of the sea-bed in the Rift Zone indicates a separation between the shelves of the Parties or whether the geological and geomorphological features of the Rift Zone as a whole represent relevant circumstances that support a continental shelf boundary within that zone under the application of equitable principles.

Libya maintains that the geological and geomorphological features of the Rift Zone reveal such a "marked disruption and discontinuity of the sea-bed and subsoil as to constitute an indisputable indication of the limits of two separate natural prolongations" on both sides of the Rift Zone. My friend and colleague Professor Bowett will, later in the second round of this argument, in continuation of his presentation in the first round comment further on the evidence put forward by Libya in this respect; he will show that Libya's submission relating to the existence of two separate natural prolongations is well founded in the light of the legal principles I have just stated.

(b) *The identification of the division between the natural prolongations of the Parties on the basis of the geographical relationship of the coasts of the Parties*

Apart from the geophysical structure of the sea-bed and subsoil which already sufficiently evidences a division between the natural prolongations of

the Parties within and along the direction of the Rift Zone, the geographical situation between the coasts of the Parties points to an equitable dividing line between the natural prolongations of the Parties within the same geographical zone. Even if the Rift Zone did not exist, the extraordinary difference in the length of the coasts and the length of the coastal basis from which the respective natural prolongations of the territories of the Parties extend into the area of delimitation, this extraordinary difference would under the application of equitable principles exclude the median line method as providing a "natural" or equitable dividing line between them.

Malta still argues that between opposite coasts where the natural prolongations of the territories of both Parties confront each other in the area of delimitation, the dividing line must always be equidistant from both coasts irrespective of the lengths of the respective coastal fronts. Libya has already in its earlier oral argument demonstrated that such a rule has no foundation in the jurisprudence or in the general principles of maritime zone delimitation. In particular, such a rule runs counter to the principle that all relevant geographical circumstances, among them those which are peculiar or even unique to the geographical setting of the case, have to be taken into account in order to reach an equitable result. There can be no question that the marked difference in the lengths of the coasts of the Parties is such a relevant geographical circumstance because it is the coast which forms the basis of the natural prolongations of the respective territories of the Parties into the area of delimitation. If equitable considerations are applied, such a marked difference in the length of the basis of the respective natural prolongations must find expression in a corresponding difference in their extent in relation to each other. And by "extent" I mean not simply "area", but also the seaward reach of the natural prolongation of one Party vis-à-vis the other.

If the natural prolongations or — if you prefer the more neutral expression — the submarine extensions from opposite coasts confront each other in the maritime area between them, a substantial difference in the length of their respective coastal basis cannot express itself merely by the relatively larger breadth of the submarine extension from the longer coast into that maritime area but must express itself also by its more extensive reach in relation to the submarine extension emanating from the much smaller coast. Whether you call that a difference in "weight" or a difference in "effect" between the two natural prolongations or submarine extensions, it is materially the same. It is the expression of the equitable consideration that in cases where a restricted maritime area has to be delimited between coasts of substantially different length, whether they be adjacent or opposite, the respective areas attracted by those coasts should correspond in reach as well as size to the difference in length by which they abut on the area of delimitation.

The distinguished counsel for Malta went so far as to admit that the lengths of coasts could be relevant if all the space within the relevant area were available for allocation and that such allocation would then be made on some criteria of distribution (p. 292, *supra*); he added, of course, the proviso that the result must not be incompatible with his "equal reach" theory.

The necessity of taking account of a substantial difference in the lengths of the coasts which abut on the area for delimitation rests on the same reasons of equity as does the practice of States to accord less weight to small islands or projecting stretches of the coastline under the application of the equidistance method. In all these situations the equidistance method allocates to small coastal units a disproportionately larger shelf area to one of the parties at the expense of the other. Counsel for Malta has admitted that "the idea of distortion and dis-

placement of shelf areas to abutting coasts" is at the very heart of the concept of proportionality (p. 299, *supra*). He confines this perception to cases where cut-offs or displacements are caused by the "attitude and posture" of coasts laterally adjacent to each other. There is no reason to take such a limited view of the matter and regard only so-called "lateral displacements" as being relevant. The effect caused by the equidistance method in attributing to a small island large shelf areas which otherwise would constitute the natural prolongation extending from the continental coast, is no less a disproportionate displacement and should likewise be remedied.

The distinguished counsel for Malta disputes, however, the relevance of a difference of coastal lengths with the argument that jurisprudence and delimitation agreements had so far not relied on the ratio of coastal lengths as a method for delimitation (pp. 298 and 314, *supra*). This sweeping statement must be corrected in several respects:

1. Malta's argument confuses the application of specific methods with the recognition of relevant facts. Libya has shown and I have referred to it earlier that in the *North Sea Continental Shelf* cases and the *Gulf of Maine* case the Court has recognized the relevance of coastal lengths for the selection of the appropriate method for delimitation although the decisions in these cases did not use the ratio of coastal lengths as the primary basis for a delimitation method. In the cases which have so far been adjudicated, the coasts were of comparable length — as was expressly noted in the decisions, so that the Court had no reason to select a delimitation method which had to take the difference in coastal lengths as a delimitation criterion. However, never before was there a geographical situation where the coastal fronts of the parties which abut on the area for delimitation differed in lengths to such a degree as in the present case.

2. The practice of States in delimitation agreements concerned mostly situations where there was no substantial difference between the coasts which bordered the area for delimitation. In fact, compared with the situation in the present case, there is no delimitation agreement which had to cope with such an extraordinary discrepancy in the lengths of the coasts which were relevant for delimitation. Counsel for Malta has, however, not referred to the Delimitation Agreement between France and Spain in the Bay of Biscay or to the Delimitation Agreement between the Netherlands Antilles and Venezuela, both of which accorded larger shelf areas to the State with the longer coast, a larger shelf area than that State would have been attributed by the equidistance method. As counsel for Malta himself remarked, a delimitation agreement need not expressly mention all the considerations which have led the parties to choose a particular line of delimitation; what counts is the fact that these agreements reflected the difference in coastal lengths.

In the first round of our oral argument I have demonstrated that a median or equidistance line constructed between opposite coasts does not take adequate account of a difference in length between those coasts. By the illustrations (49) No. 7 and No. 8 in Libya's Map Folder I have shown — perhaps I should wait until you have had an opportunity to look again at these maps — that the amount of area attributed to each of the opposing coasts changes only marginally whatever be the difference in the lengths of the coasts which abut on the area of delimitation. As counsel for Malta have neither referred to nor commented on this demonstration, it seems that they do not want to dispute the correctness of this demonstration. They do, however, seek to weaken the force of that argument by alleging an inconsistency in Libya's position with respect to the equitableness of the median line between opposite coasts: the distinguished counsel

for Malta has made much of the so-called "admission" by Libya that in cases where an island is situated at a short distance from a foreign continental coast, the median line between the island and the continental coast produces normally an equitable boundary within the maritime area between them (pp. 288 and 293, *supra*). Counsel for Malta argued that Libya, having admitted as much, acted inconsistently therewith in maintaining that the median line could become inequitable if the island, as in the case of Malta, is farther away from the continental coast. A simple diagram will show the fundamental difference of the two geographical situations and will explain the logic of why different conclusions have to be drawn in each of the two situations. If you would look at illustration No. 94 in your map folder, and the same illustration is being put on the easel behind me.

You will see on the right side of this diagram that if the island is situated at a short distance from the continental coast, the relevant area which has to be delimited between the coasts which face each other is bounded on both sides by coasts of comparable length, as indicated by the shaded area in the diagram. In this sector the median line — and only in this sector — will normally constitute an equitable boundary. The delimitation in the maritime areas on the seaward sides of the island, however, will have to be effected in different relevant areas for which other coasts and other factors may become relevant. In these sectors there is no presumption of the equitableness of the equidistance method.

The case of the Netherlands Antilles, which I mentioned before, is an illuminating example of this situation. It is No. 95 in your map folder and now being put on the easel here. In this case a median line boundary runs through the area between the Antilles and the directly facing parts of the Venezuelan coast. But outside this narrow area the islands are partially enclaved by a boundary which attributes considerably more shelf to the Venezuelan coast than Venezuela would have got by the equidistance boundary. In such cases, as shown in the diagram, we have to distinguish more than one relevant area with different relevant coasts; the inequitable result is not produced in the relevant area between the directly facing coasts but in the outside area.

In the present case between Libya and Malta there is only one relevant area bordered on each side by coasts of different lengths. Here the essential characteristic of the area is the extraordinary difference of the lengths of the coasts of the Parties which abut on the area of delimitation and it is within this area that an inequitable result would be produced by an equidistance boundary. Thus, there is no inconsistency in Libya's argument with respect to these different geographical situations.

All this leads inevitably to the conclusion that in geographical situations where coasts of different lengths abut on the area of delimitation the equidistance or median line method is not capable of taking adequate account of the difference in the attribution of area to respective coasts. This stands in contrast to geographical situations where a lateral delimitation between adjacent coasts is in issue; there a difference in the lengths of the laterally adjacent coasts normally exercises its full effect on the attribution of proportionally smaller or larger area to the shorter or longer coasts, provided that no coastal irregularities distort the attribution of area. But between opposite coasts of different lengths the equidistance method cannot, by its very construction, reflect that difference in coastal lengths geometrically in the same way as it does between adjacent coasts. This defect of the equidistance method excludes the presumption that a median line is the equitable method for determining the dividing line between natural prolongations extending from opposite coasts in cases where these coasts differ greatly in length. In order to take adequate account of a substantial

difference in coastal length, another method must be sought to determine the dividing line between the natural prolongations in such cases.

Libya takes the position that in such a case the concept of proportionality which has been applied by the jurisprudence in various forms according to the circumstances of the geographical situation, provides the test by which one can decide whether any particular method is an appropriate approach for attaining the required equitable result. In cases where the natural prolongations of the parties converged in the area of delimitation, as in the case of the North Sea, the Court has applied the principle that the natural prolongation should be delimited vis-à-vis each other in such a way as to leave to each party a maritime area proportionate to the lengths of their respective coastlines (*I.C.J. Reports 1969*, p. 52, para. 98; *I.C.J. Reports 1982*, p. 75, para. 103). It would be a logical consequence of this jurisprudence to apply the same principle in cases where the natural prolongations of opposite coasts approach each other frontally in the area of delimitation.

This would enable us to select a method for identifying the dividing line between the natural prolongations of opposite coasts in a way which accords with equitable principles taking account of the difference in coastal length where necessary. If the opposing coasts are of equal or comparable length, the application of the proportionality concept justifies the median line method because it attributes equal or at least comparable areas to each of both coasts, provided the distorting influence of any coastal irregularities is removed; this had been the underlying premise of the dictum of the Court in the *North Sea Continental Shelf* cases (*I.C.J. Reports 1969*, p. 36, para. 57) when it referred to the equitableness of the median line between opposite coasts. If, however, the opposing coasts differ considerably in length, the proportionality concept requires a method for finding a dividing line between the natural prolongations which assures a reasonable degree of proportionality between the lengths of the coastal fronts which face the area of delimitation, and the amount of area attributed to each of the coastal fronts. Any objection raised by Malta against the application of the concept of proportionality on the ground of the principle of equality is misconceived. The concept of proportionality is designed to assure equal treatment of coasts by attributing equal areas to coasts of equal lengths and proportionate areas to coasts of different lengths.

The question remains by what method a dividing line between the natural prolongations can be identified which corresponds to the requirements of the proportionality concept. Such a method must be based on the degree of difference between the lengths of the relevant coasts. In simple situations, it might suffice to have the dividing line between the natural prolongations located where the ratio of the respective distances of the line from the coasts corresponds to the ratio of the lengths of the coasts because that would attribute areas of shelf to each of the coasts which would normally satisfy the proportionality test. However, some geographical situations are not as simple as that, in particular those cases where the area which has to be delimited between the Parties is irregularly shaped or otherwise difficult to define. In such cases, it will be necessary to calculate the effect of the prospective dividing line under the chosen method on the attribution of shelf area to each of the abutting coasts. The line would then have to be adjusted and located so as to attribute areas to each of the Parties which would in the result conform with the requirement of proportionality as it had been contemplated by the Court. Libya has selected methods for determining the continental shelf boundary between the Parties which do in fact satisfy the requirement of proportionality.

At this point of my reasoning, I should make it clear that Libya's approach

involves a two-stage operation. At the first stage, one starts from a line which reflects the different weight and reach of the natural prolongations generated by coasts of different length; at the second stage, one adjusts and corrects that line, if and in so far as necessary, until it conforms to the requirement of proportionality as established by this Court.

My friend and colleague Professor Bowett will in continuation of his presentation in the first round of this oral hearing pursue the discussion of how this legal framework will be applied to the geographical facts of the present case.

Malta has denounced Libya's approach as inadmissible in continental shelf delimitation on the ground that it would confer continental shelf rights on the basis of mere proportionality and thus amount to an apportionment of the area of delimitation by equitable shares — a method which the Court had found at variance with the legal concept of the continental shelf in 1969 (*I.C.J. Reports 1969*, pp. 21-23, paras. 18-20). Malta's argument misconceives the legal character and purpose of Libya's approach in determining the extent or reach of each Party's natural prolongation in accordance with equitable principles. The essence of Libya's approach is to select methods for finding the equitable dividing line between the two natural prolongations which confront each other between the coasts of the Parties and these methods are based specifically on those coasts, for they are the basis of title. Such an approach must be clearly distinguished from a mere apportionment of the area of delimitation between the Parties by shares of area of undefined location and arbitrarily determined. The approach followed by Libya does not divorce itself from the constituent elements of the continental shelf concept; it rather keeps within the legal framework of that concept. In order to clarify this point, I would like to call the attention of the Court to the following characteristics of Libya's approach:

1. It rests on the natural prolongations of the Parties and takes the respective coastal fronts of the Parties from which their natural prolongations extend as a starting line for determining their respective seaward reach.
2. It uses the difference in coastal length as a corrective criterion for determining the different seaward extent of each Party's natural prolongation from these coasts of different length.
3. It restricts the allocation of shelf to each of the Parties to that part of the maritime area which is encompassed by the natural prolongations of both Parties which have to be delimited in relation to each other.

Thus, Libya's approach is based on a full recognition of the three elements of the geographical relationship of the coasts of the Parties to each other as well as to the area of delimitation: it takes account of the distance between the two coasts, the configuration of each coast, and the length of each coast. Libya's approach is not a claim for rights based on proportionality pure and simple, but a selection of the relevant criteria for defining the limits of each Party's natural prolongation in accordance with the dictates of equity.

III. Malta's Novel Theory of Each State's Right to an Equal Seaward Reach of Its Continental Shelf

In support of its claim for an equidistance boundary, Malta has put forward a novel theory which culminates in the thesis that each State, irrespective of the geophysical or geographical circumstances of the case, has a right to a seaward reach of its continental shelf equal to that of any other State which abuts on the same area of delimitation. The distinguished counsel for Malta has used various

formulations for expressing that thesis which differ to some extent from each other, but in essence amount to the same thing. If I might cite two of these formulations, they read as follows:

> "The purpose of the law concerning continental shelf delimitation is to maintain an equality of seaward reach of jurisdiction . . ." (**III**, p. 474);

or

> "The median line represents the equitable result in this case, precisely because that line gives legal expression to the equality of seaward reach of the coasts abutting upon the relevant area." (*Ibid.*, p. 476)

Counsel for Malta has maintained this theory in the second round of oral argument (pp. 284-285, 287 and 292, *supra*) and has used his novel theory in various places of his arguments; nearly all his arguments depend in one way or another on this unproven premise, and they stand or fall with it.

It is necessary to deal with this theory because its object and purpose go beyond a mere claim for an equidistance boundary in the present case. This novel theory seeks to establish a legal basis for arguing the irrelevance of geophysical features like the Rift Zone and — more importantly — the irrelevance of differences of coastal length in continental shelf delimitation; it really postulates the principle that continental shelf delimitation aims at producing an "approximate equality" between the States that abut on the same area of delimitation, foremost by leaving to each State an equal seaward reach of its continental shelf and, as far as possible, even an equal share of the area which has to be delimited between the States concerned (p. 287, *supra*). Counsel for Malta believed they found support for that postulate in the principle of equality of States, in the jurisprudence of international courts, and in State practice. I am unable to share this view for the following reasons:

1. The principle of equality of States does not guarantee each State equal shares of continental shelf or an equal reach of its continental shelf vis-à-vis its neighbours, irrespective of the geophysical, geographical or other relevant circumstances of the case. Rather, equality of States guarantees equal treatment to all States in the application of the criteria which are relevant for the purpose of delimitation. The principle of equality of States does not decide what criteria have to be considered relevant; it does not decide whether or not the different lengths of the coasts of the parties is a relevant fact. But if coastal length is a relevant fact as Libya has shown, equal treatment of States will require that coasts of different length will have to be treated differently in accordance with the requirement of proportionality as established in the jurisprudence of this Court.

2. The jurisprudence in maritime zone delimitation has never referred to a principle or rule which would guarantee each State an "equal seaward reach", nor is it possible to deduce such a postulate from the reasoning of the decisions. I shall briefly review these decisions:

(a) In the *North Sea Continental Shelf* cases, the Court applied consideration of equality in the sense that the three adjacent States had coastlines of comparable length and that therefore they should have approximately equal shelves; it was for this purpose that the Court required a reasonable degree of proportionality between the extent of their continental shelves and the lengths of their respective coastlines (*I.C.J. Reports 1969*, pp. 51, 52, paras. 91, 98). But there was no indication in the Judgment that the Court had been concerned with the question whether the Federal Republic of Germany should have a seaward reach of its continental shelf equal to its neighbours in terms of distance from the

coast. Counsel for Malta believed he found support for his "equal reach" theory in that part of the *dispositif* of the Judgment which prescribed that those areas where the natural prolongations of both parties overlapped, should be divided equally between them. However, by this principle the Court neither prescribed nor implied an equal reach of the natural prolongations involved. This is obvious from the following considerations:

(i) The principle of an equal division of overlaps has to be understood in the context of the geographical situation of the *North Sea Continental Shelf* cases; it had been put forward in a case of converging, not confronting natural prolongations, emanating from coasts of comparable length.

(ii) The principle of an equal division of overlaps does not presuppose that the area of overlap will necessarily be located midway between the coasts of the parties; that may be the case between opposite coasts of equal or at least comparable length, but it may well be otherwise between coasts of different length.

(iii) The principle of an equal division of overlaps prescribes an equal division of the area of overlap, not an equal reach into the entire relevant area from coast to coast. It is only within those marginal areas, where doubts remain as to the precise dividing line between the natural prolongations or where it will be difficult to establish the better right of one or the other party, that equity requires the equal division of that area between both parties in that area where both parties can assert a natural prolongation of equal weight.

(b) In the France-United Kingdom continental shelf arbitration, the Court considered that the coastlines of the parties in the Channel as "approximately equal in their relation to the continental shelf" and therefore the areas of shelf left by the median line to each party on either side were "broadly equal or at least comparable" (Award, para. 182). Here again the attribution of equal areas to coasts of equal lengths, and not so much the reach to the middle of the Channel, was the rationale for approving the median line method in that case. In the Atlantic region, the Court of Arbitration noted again that the coastal fronts of the parties facing the area for delimitation were broadly comparable in length (Award, para. 234). The Court eliminated, however, the distorting influence of the projecting position of the Scilly Isles on the course of the equidistance line extending into the Atlantic. Here again the effect of the Scillies on the division of shelf area between the parties was apparently a more important consideration than the equal reach of continental shelf jurisdiction from the coasts of each party. In fact, the seaward reach was not an issue in the Atlantic region because the natural prolongations of both parties projected almost parallel to each other into the open Atlantic.

(c) In the *Tunisia/Libya* continental shelf case, the postulate of equal reach of continental shelf jurisdiction was neither put forward by the Parties nor considered by the Court; neither of the Parties relied on equidistance for its boundary claim. The continental shelf boundary indicated by the Court was based primarily on the prior conduct of the Parties and the general direction of the coasts of the Parties; the boundary produced by the Court's method would not be equidistant to the coasts of the Parties and would not conform to the "equal reach" theory. The Court was, however, concerned to show that the division of shelf area by the boundary line conformed to the concept of proportionality between the length of the respective coastlines and the area of shelf attributed to each coast (*I.C.J. Reports 1982*, p. 91, para. 131).

(d) In the *Gulf of Maine* case the Court rejected any obligatory force or other priority of the equidistance method: that implied also a rejection of the "equal

reach" theory and of the distance principle. None of the three segments of the single maritime boundary prescribed by the Court is equidistant from the respective coastal segments of the Parties or conforms to the "equal reach" theory. Where the construction of the boundary line started from an equidistance or median line, it deviated from it considerably in order to eliminate a cut-off effect and to take account of the difference in lengths of the coasts of the Parties.

On this analysis I fail to see how one could find support for the "equal reach" theory in the jurisprudence. The jurisprudence rather confirms the relevance of the lengths of coasts in continental shelf delimitation.

3. Finally, State practice, including treaty practice, does not support the "equal reach" theory either. Libya has shown that the delimitation agreements which have so far been concluded between States partly apply the equidistance method, partly deviate from the equidistance method to a greater or lesser extent, or apply other methods depending on what the parties to these agreements thought equitable in view of the geographical and other circumstances of the case. This has been so in cases of both adjacent and opposite coasts. Any numerical comparison between those existing agreements which followed the equidistance method and those which did not, is misleading. It is quite obvious that in cases where both parties have chosen equidistance as a method for delimitation, agreements between the parties were more easily and more quickly arrived at than in the numerous cases where the parties disagreed and still disagree about the method of delimitation. That explains quite naturally why in the existing agreements the equidistance method may appear more frequently.

The attitude of States and their legal convictions cannot be judged on the basis of the number of agreements concluded; there are numerous unresolved maritime boundary issues where at least one of the States involved regards equidistance as inequitable under the circumstances of the case. None of the cases which have so far been litigated before international courts, ended up in a confirmation of the equidistance method. So the evidence is rather that, in controversal cases, equidistance is not the answer. Nothing indicates that the motives of State practice in maritime boundary delimitation centred around the political desirability, let alone a legal obligation, of ensuring for each State involved a delimitation of an equal reach in terms of distance from their coasts in continental shelf delimitation. It seems that States were more interested in the amount of area attributed to each of them by the boundary line, and in the prospects of available resources therein.

4. Counsel for Malta has sought to justify Malta's "equal reach" theory by linking it with the outer limit of coastal State's maritime zones which should be equal for all States (III, pp. 440 ff.). However, the rule that each State may claim certain jurisdictions vis-à-vis the international area of the sea up to a fixed limit of nautical miles does not by any material reason entail the consequences that the boundary between the jurisdictional zones of two States must be equidistant from their respective coasts.

The considerations which have led — although not everywhere successfully — to a fixed and internationally uniform outward limit of the maritime zones of a coastal State vis-à-vis the international area, are quite different from the considerations which are relevant for the delimitation between the maritime zones of two neighbouring States vis-à-vis each other. It is precisely for this reason that Article 76 of the new Convention of the Law of the Sea contains its paragraph 10. Comment on this paragraph is conspicuously absent in the argument of the other side. In territorial sea and contiguous zone delimitation considerations of State security may be a highly relevant factor for demanding an

equal distance from both coasts. It is for that reason, among others, that Article 15 of the new Convention on the Law of the Sea relating to territorial sea delimitation indeed prescribes equidistance as a primary method for delimitation unless other considerations — for example, overriding navigational requirements such as the access to a port — necessitate another method for delimitation. In continental shelf, fishery zone or exclusive economic zone delimitation, however, the effect of the boundary on the attribution of area and on the attribution of resources will normally be of more concern to States than the equal distance of the boundary to their respective coasts; that explains why Articles 74 and 83 of the new Convention on the Law of the Sea, in contrast to Article 15 relating to the territorial sea, do not mention equidistance as a preferred method in continental shelf or exclusive economic zone delimitation.

The Court adjourned from 11.30 a.m. to 11.45 a.m.

Mr. President, distinguished Judges, the last part of my presentation will deal with the question of the relevant area.

IV. The Area Which Is Relevant for Delimitation in the Present Case

1. The Definition of the "Relevant Area"

The exchange of arguments between the Parties has made it quite obvious that the boundaries of the maritime area which is relevant for delimitation — or in short the "relevant area" — is of critical importance. This area is relevant for the selection of the appropriate method for delimitation and for the assessment of the equitableness of the result under the proportionality concept. But the Parties hold divergent views as to proper limits of the relevant area and, therefore, it is necessary to respond to the critique by our opponents of Libya's position in this matter.

Both Parties agree in substance on the western limit of the relevant area (pp. 396-397, *supra*) so that I need not deal with that any more. Both Parties also start from the correct position that only those of their respective coasts that "face" each other should constitute the geographical basis of the relevant area (pp. 289, 290 and 392, *supra*), but they disagree which coasts are relevant in this respect. Libya maintains that only its coasts until Ras Zarruq can be considered relevant, while Malta maintains that the Libyan coast up to Benghazi should be so considered. The Parties disagree completely about the eastern limit of the relevant area: Libya maintains that the Escarpments constitute the eastern limits of the relevant area, while Malta wants to extend the relevant area to Libya's coast at Benghazi. In view of this wide divergence between the Parties it will be necessary to define the criteria which make it possible to determine objectively the limits of the relevant area, and thus to examine whether the relevant area as defined by both sides conforms to these criteria.

If we look for appropriate criteria for determining the limits of the relevant area, the function, object and purpose of defining a relevant area should form the starting point for our orientation. In Libya's view the operation of defining the relevant area in a delimitation case has the function to provide the geographical frame within which the appropriate methods for delimiting this area between the coasts of the Parties will have to be sought; the relevant area will have to encompass those maritime areas which will have to be attributed to the one or the other of the Parties because it is only by assessing the result of

this attribution that the equitableness of the delimitation can be objectively judged. If the distinguished counsel for Malta meant the same when he characterized the relevant area as having the "functional role in providing the framework for the process of delimitation in accordance with equitable principles" (p. 289, *supra*), I find myself in agreement with him. I am, however, unable to accept his criticism of Libya's definition, nor do I find a convincing argument for Malta's relevant area in his presentation. It is Libya's position that the "relevant area" as defined by Libya is consistent with the functional role of such an area and conforms to the views of the Court in this respect.

In the *North Sea Continental Shelf* cases, the area which had to be delimited between the Parties was clearly defined and not disputed. Thus the Court had no reason to go into that problem. In the *Tunisia/Libya* case, the Court felt it necessary to define the relevant area, not only for determining the geographical frame for selecting an appropriate delimitation method but also for testing the selected method by the concept of proportionality (*I.C.J. Reports 1982*, pp. 61-62, 75-76, 91, paras. 74-75, 103-104, 130-131). The Court included in this area all maritime areas which were covered by the "submarine extensions" (as the natural prolongations were then called by the Court) from those coasts of the Parties which the Court considered relevant for the delimitation; the Court excluded expressly the coasts of the Parties as irrelevant whose submarine extensions could not possibly overlap with each other. The exclusion of those coasts was perfectly justified because the natural prolongations extending from them had no contact with each other and projected into other maritime areas; the delimitation had no effect on the attribution of continental shelf area to these coasts of the Parties.

The criterion of potential overlap which the Court employed in this context for defining the relevant area needs some interpretation in the light of its special purpose. It should not be confused with the area of overlapping claims — sometimes called the "area in dispute" — because it is the whole maritime area between the coasts of the Parties which constitutes the relevant area. The identification of areas of a potential overlap of the natural prolongations extending from the coasts of the Parties does not imply any judgment on how far the natural prolongations projecting from the coast of one Party rightfully extends in relation to that projecting from the coast of the other Party; nor does the identification of such potential overlaps determine where the dividing line between them will have to be drawn. The fact that the respective natural prolongations may meet or overlap somewhere between the coasts of the Parties, merely establishes the geographical frame of the relevant area, because it is only within that area that the delimitation will have the effect of attributing shelf area to the one or the other Party.

2. The Identification of the Relevant Area in the Present Case

In view of the said function of the relevant area the proper identification of the "relevant coasts" is a key issue in determining the limits of the relevant area because these coasts generate the natural prolongations into the maritime area which has to be delimited and it will be the natural prolongation extending from these relevant coasts which will be affected in its extent and reach by the delimitation. The proper identification of the relevant area must, therefore, start with the identification of the coasts which have relevance in this respect; the Court will be aware that it followed the same *modus operandi* in the *Tunisia/Libya* continental shelf case.

In that case, as I have already mentioned, the Court concluded that for the

purpose of continental shelf delimitation those parts of a State's coast, whose natural prolongation could not possibly overlap with the natural prolongation of the other, were not relevant for the delimitation (*I.C.J. Reports 1982*, pp. 61-62, para. 75). Thus, the identification of the relevant coasts requires the prior assessment of which parts of the coast of each Party generate a natural prolongation which might possibly overlap with a natural prolongation from the coast of the other Party. For this purpose it is necessary to identify the direction into which a natural prolongation projects into the relevant area because this decides which parts of the coast of each Party are capable of generating overlapping prolongations. In the *North Sea Continental Shelf* cases, the Court had indicated that those maritime areas should be considered the natural prolongation of a certain coast which are the "most natural" prolongation of that coast (*I.C.J. Reports 1969*, p. 31, para. 43). The Court did not indicate that the direction into which the "most natural" prolongation projects, will necessarily be perpendicular to the coastline; nor has Libya maintained — as the distinguished counsel for Malta has suggested (p. 351-352, *supra*) — that the natural prolongation of Libya's territory extends into the sea in a strictly perpendicular orientation to its coastal front. Certainly, if two opposite coasts are parallel to each other, a "most natural" view may be justified to assume that in such a case the natural prolongations extend from the coasts in a direction perpendicular to the respective coastal front. If, however, the geographical situation is more complex, and in particular if the coasts of the States concerned are neither strictly opposite nor parallel to each other, there is no cogent reason to assume a perpendicular projection of their submarine extensions into the maritime areas which have to be delimited between them. *In such situations the geographical relationship of the coasts of the Parties to the maritime area which has to be delimited between them will more appropriately determine the most "natural" direction in which their respective submarine extensions project into the relevant area.* However, even in those cases the most natural projection is that which comes closest to a perpendicular to the respective coastal front. Libya cannot accept the radial projection theory in the extreme form in which it has been put forward by Malta, in asserting that there is a radial extension of natural prolongations from any point of the coast with equal seaward reach in every direction. Certainly if a coastal front changes its direction, the geographical direction of the projection of its natural prolongation into the sea will also change, but it will change to a direction by which it "faces" another maritime area. At first sight, it might appear as a circular reasoning that the relevant coasts which constitute the geographical frame of the relevant area, will in turn be defined by their quality of generating overlapping natural prolongations in the relevant area. A closer look, however, reveals that it is not so. In reality, the identification of the relevant coasts are inseparable parts of one and the same conceptual operation: it starts with the identification of possible areas of overlap of natural prolongation within the maritime area where the Parties seek delimitation, and then examines from which parts of the coasts on both sides these overlapping prolongations emanate and which parts of the sea are encompassed by these overlapping prolongations. This is the only method which will ensure that the relevant area encompasses the "most natural" prolongations of the territories of both Parties into that area.

The main controversy between the Parties relates to the question whether maritime areas east of the Sicily-Malta and Medina Escarpments and consequently also parts of the Libyan coast which face that area must be included into the relevant area.

It is Libya's position that the escarpments constitute the eastern limit of the

relevant area because in the maritime area east of the escarpments the natural prolongations of the Parties cannot possibly overlap with each other. This is so for the following reason.

A glance on the bathymetric map reveals that along the escarpments the seabed slopes down steeply with a high gradient to oceanic depths, forming the edge of the shelf on the Sicily-Malta Plateau. Scientists on both sides agree that the Escarpments constitute the eastern limit of the edge of the shelf on the Sicily-Malta Plateau. These geomorphological facts represent a discontinuity which sets a limit to the physical basis of natural prolongations emanating from the eastern coast of Malta or, correspondingly, extending from Libya's coastal front from Ras Ajdir to Ras Zarruq. Speaking of the physical basis of the respective natural prolongations of the Parties, I can leave aside the controversial question whether the legal definition of the continental shelf in Article 76 of the new Convention of the Law of the Sea which allows a State to claim continental shelf jurisdiction beyond the edge of the physical shelf throughout the slope and rise down to oceanic depths, has already crystallized into general international law.

2. Malta contends that Libya's coast up to Benghazi should be considered relevant for the delimitation between the Parties in the maritime area east of Malta. A glance at the map reveals that the area between Malta and the Escarpments is covered by the natural prolongation emanating from Libya's coastal front between Ras Ajdir and Ras Zarruq, and a possible overlap with Malta's natural prolongation to the east and south-east is caused by that natural prolongation from Libya's coast. Apart from the fact that Malta's as well as Libya's natural prolongations are both physically based on shelves of the Pelagian Block, the maritime areas east and south-east of Malta are on the whole about 100 nautical miles nearer to the Libyan coast between Ras Ajdir and Ras Zarruq than to Libya's coast at Benghazi. Thus, if any overlapping occurs in the area between Malta and the Escarpments with Malta's natural prolongations from its coast, it is only the natural prolongation emanating from Libya's coast between Ras Ajdir and Ras Zarruq which would cover that area. This reveals that for the delimitation between the Parties in that area, there is no geographical relationship between Malta and Libya's Benghazi coast. That would even be true for the maritime areas immediately east of the Malta-Sicily Escarpment if one were to admit, which Libya denies, that the natural prolongations of the Parties would surmount that physical barrier.

3. Malta criticizes Libya's identification of the relevant area as bounded east by a line drawn due east from Malta's coast to the Sicily-Malta Escarpment, and attacks that line as lacking any legal basis. May I remind our opponents of their radial projection theory whereby that part of the relevant area is, according to Malta's own theory, attracted by Delimara Point which forms the end-point of Malta's south and south-eastward facing coast. Accordingly, that area must also be credited to Malta as an area which is attributed to Malta's coast by the delimitation between the Parties. Apart from Malta's radial projection theory, it is a maritime area which is within the possible reach of the natural prolongations emanating from the coasts of both Parties which are relevant for delimitation here.

4. It is true that the limits of the relevant area will have to be defined solely on considerations relating to the bilateral geographical relationship between the coasts of the Parties, without taking any position to claims of third States to parts of that area. But, as Malta has attacked Libya's definition of the relevant area on the ground that its eastern limits would increase the overlap with areas relevant to other delimitations, while Malta's definition would minimize it

(p. 302, *supra*), it must be put on record that rather the reverse is true: Malta's trapezium encroaches much more on areas claimed by third States, while Libya's restricted area pays much more regard to claims already advanced by third States.

On the basis of these considerations I fail to understand the attack on the eastern limits of the relevant area as defined by Libya by calling it artificial or without legal basis. The shape of this area is dictated by the geophysical structure of the sea-bed and the geographical relationship of the coasts of the Parties to the area which has to be delimited between them. It is indicative in this respect that the distinguished Agent for Malta expressly pointed to the Pelagian Block as comprising the area relevant for delimitation in the present case (p. 397, *supra*). Malta, on its side, has failed to justify its relevant area by any meaningful criteria. Malta has not shown under what criteria the Libyan coast up to Benghazi is relevant to the delimitation and where the natural prolongations extending from these coasts could possibly overlap with that of Malta.

Libya maintains that the relevant area as defined by Libya responds to the geographical and geophysical situation of the case. Libya has already shown in the first round of its oral presentation that on the basis of that area Malta's claim for an equidistance boundary falls far outside a reasonable degree of proportionality, while Libya's boundary proposals keep well within that range. I need not repeat these calculations today.

That concludes my presentation on behalf of Libya's case. Mr. President, distinguished Judges I thank you for the patience and attention with which you have listened to my arguments.

DUPLIQUE DE M. QUÉNEUDEC

CONSEIL DU GOUVERNEMENT DE LA JAMAHIRIYA ARABE LIBYENNE

M. QUÉNEUDEC: Monsieur le Président, Messieurs les juges, lors du premier tour de plaidoiries, j'avais eu l'occasion de critiquer la thèse de la distance sur laquelle repose en grande partie l'argumentation présentée à la Cour par la République de Malte.

Il me revient aujourd'hui de démontrer le caractère artificiel et inadapté de l'utilisation, faite par la Partie adverse, de la notion de pouvoir générateur des côtes dans le cadre d'un processus de délimitation du plateau continental.

Cette notion de pouvoir générateur des côtes a, en effet, été présentée dans les plaidoiries maltaises comme étant en étroite relation avec le concept de distance.

Il n'est évidemment pas question de reprendre ici ce que nous avons déjà dit à ce sujet, aucun argument vraiment nouveau ou décisif n'ayant été avancé en ce domaine de l'autre côté de la barre.

Qu'il me suffise simplement de rassurer tout de suite nos éminents contradicteurs sur un point. Accusés par eux d'éprouver «une crainte quasi panique» du concept de distance (ci-dessus p. 370) et d'avoir «peur du critère de distance» (ci-dessus p. 371), nous ne ressentons nul besoin de recourir à une quelconque méthode psycho-prophylactique pour nous prémunir contre les frayeurs qu'engendrerait chez nous le «principe de distance».

Et puisque l'on a également soutenu que nous avions joué les Don Quichotte en nous lançant à l'assaut de moulins à vent (ci-dessus p. 370) et que nous avions tenté d'obscurcir le débat par des «discussions académiques» sur les rapports entre plateau continental et zone économique exclusive (ci-dessus p. 371), faut-il rappeler que c'est Malte qui avait cru pouvoir tirer argument de la notion de zone économique pour conforter le concept de distance (**III**, réplique, p. 26-28, par. 45-47; **III**, p. 364-365 et 414-416)? Ce qui était d'autant plus étonnant que Malte s'était opposée, lors de l'élaboration du compromis, à ce que l'affaire de délimitation soumise à la Cour portât sur le plateau continental et sur une éventuelle zone économique exclusive.

Nous ne sommes pas davantage saisis de panique devant la thèse de Malte relative à la projection radiale ou multidirectionnelle des côtes. Et il n'y aurait pas grand-chose à ajouter à ce qu'en a dit le doyen Colliard dans sa plaidoirie du 12 décembre dernier, si nos adversaires — sentant sans doute ce que cette thèse pouvait avoir de fragile — n'avaient cherché à l'étayer en y consacrant de longs développements à l'occasion de leur second tour de plaidoiries.

Fragile, cette thèse l'est en effet à plusieurs titres.

Elle l'est, en premier lieu, parce qu'il s'agit d'un modèle théorique et fictif qui n'a absolument rien à voir avec le problème de délimitation soumis à la Cour.

Elle est fragile également parce que son application pratique aux circonstances de la présente affaire entraînerait manifestement des conséquences absurdes et conduirait à un résultat déraisonnable.

Sa fragilité réside, enfin, dans l'objectif qui lui est assigné. Cette thèse a pour unique objet de justifier le recours à l'équidistance puisque la Partie adverse prétend qu'en l'espèce une ligne médiane est dictée par la projection radiale.

Je voudrais reprendre successivement chacun de ces trois points.

Examinons tout d'abord le premier point.

I. Le modèle théorique et fictif de la projection radiale

A l'audience du 12 février dernier, le professeur Weil nous a exposé, avec une force de conviction à laquelle il convient de rendre hommage, que la projection multidirectionnelle des côtes sous la mer résultait à la fois de la souveraineté de l'Etat et des données de la géographie. Il s'agit, nous a-t-il expliqué, d'une donné inhérente au principe selon lequel les droits de l'Etat sur le plateau continental dérivent de la souveraineté territoriale et sont créés par les côtes (ci-dessus p. 356). Et le conseil de Malte d'ajouter:

> «L'égalité des Etats et la géographie côtière sont les éléments indissociables de la projection radiale, elle-même donnée inhérente à la nature dérivée des droits de plateau continental.» (Ci-dessus p. 360.)

Remarquons, en passant, ce qu'une telle affirmation pourrait avoir de surprenant si elle était prise à la lettre; car, sans jouer sur les mots, elle laisserait entendre que les droits de l'Etat sur le plateau continental sont des «droits dérivés», alors qu'ils ont toujours été qualifiés de droits inhérents (*Plateau continental de la mer du Nord, C.I.J. Recueil 1969*, p. 22, par. 19). Mais là n'est pas l'essentiel.

L'essentiel réside dans le souci de Malte de faire reconnaître ce qu'elle appelle «la projection des côtes sous la mer dans toutes les directions jusqu'à la distance permise par le droit international et les données géographiques» (ci-dessus p. 390).

Ce faisant, la Partie adverse s'efforce d'entretenir une confusion délibérée entre la fixation de la limite extérieure du plateau continental et l'établissement d'une ligne de délimitation entre Etats, comme l'a rappelé tout à l'heure le professeur Jaenicke.

Toute l'argumentation maltaise avancée à l'appui de sa théorie de la projection radiale ou pluridirectionnelle concerne essentiellement la fixation des limites extérieures du plateau continental, en assimilant d'ailleurs cette question à celle de la fixation des limites des autres zones maritimes (mer territoriale ou zone économique), comme si aucun problème de délimitation n'était en cause.

De ce point de vue, il est symptomatique de relever qu'en développant cette argumentation mon ami le professeur Weil s'est longuement attardé sur l'article 76 de la convention des Nations Unies sur le droit de la mer (ci-dessus p. 363-370), sans se référer une seule fois au paragraphe 10 de cet article, qui réserve expressément la question des délimitations entre Etats, et sans prendre en compte l'article 83 de cette convention, qui concerne en propre la délimitation du plateau continental entre des Etats voisins.

Cette discrétion à l'égard des deux dispositions en cause surprend d'autant plus que les participants à la conférence sur le droit de la mer ont toujours fait la distinction entre le problème de la fixation des limites extérieures du plateau continental d'un Etat et le problème de la délimitation du plateau continental entre Etats.

Une telle attitude de la part de nos adversaires s'explique par le fait que toute la construction théorique de la projection radiale élaborée par Malte repose sur un postulat, dont la véracité reste à établir. Le postulat de base consiste à présenter la distance comme l'unique expression du titre juridique de l'Etat côtier sur son plateau continental.

Sur la base de ce postulat, Malte échafaude alors le raisonnement suivant.

Etant donné que la distance est le moyen d'assurer la mise en œuvre concrète du titre juridique de l'Etat côtier et étant donné que ce titre dérive de l'existence des côtes, la détermination des zones sur lesquelles s'exerce le titre de l'Etat ne peut être faite qu'en projetant ces côtes dans toutes les directions. Il

suffit, par conséquent, de construire à partir des côtes des arcs de cercle dont le rayon est égal à la distance exprimant concrètement le titre juridique de l'Etat côtier. On obtient ainsi la zone sur laquelle l'Etat côtier peut faire valoir son titre au plateau continental.

Le raisonnement est apparemment d'une logique implacable. Il n'est cependant pas sans défaut.

Son premier défaut est de faire comme si le «principe de distance» exprimait déjà et en toute circonstance le titre juridique de l'Etat en matière de plateau continental. Or, il n'en est rien, comme je pense l'avoir montré dans ma première plaidoirie, en réponse aux arguments avancés par Malte dans son contre-mémoire (p. 65-67, par. 126-131; p. 154, par. 327 — **II**), dans sa réplique (p. 37-38, par. 66-68; p. 46-47, par. 84-86 — **III**) et dans les exposés de son conseil (**III**, p. 385-389 et 410-415). Est-il besoin de rappeler d'ailleurs que, dans l'affaire du *Golfe du Maine*, la Chambre de la Cour a rejeté le principe ou critère de distance invoqué par le Canada?

Sans doute, au cours du second tour de la procédure orale, le professeur Weil s'est-il attaché à réfuter la démonstration que j'avais présentée de l'absence de caractère de droit positif du critère de distance en ce qui concerne le plateau continental. Et il n'a pas hésité à reconnaître à ce critère une valeur coutumière. Il a dit :

> «Il ne s'agit pas là d'une coutume quasi instantanée qui serait issue d'un consensus sans grande portée juridique. Non, on est en présence d'une véritable *opinio juris*, à la formation de laquelle non seulement la Libye n'a pas fait d'objection, mais à laquelle elle a positivement contribué.» (Ci-dessus p. 367.)

Admettons un instant qu'une *opinio juris* ait été révélée par la conférence sur le droit de la mer à ce sujet. Pour étayer cette hypothèse, il ne semble pas que l'on puisse se contenter de citer uniquement «la doctrine des publicistes les plus qualifiés», pour reprendre l'expression de l'article 38 du Statut de la Cour. C'est pourtant le seul moyen de preuve avancé par la Partie adverse à l'appui de ses affirmations. A supposer même que ce moyen auxiliaire de détermination des règles de droit apporte ici un élément de conviction, est-ce toutefois suffisant pour prétendre que l'existence d'une *opinio juris* entraîne automatiquement l'apparition d'une règle coutumière? Où est en ce domaine la pratique générale qui serait reconnue comme étant le droit?

On chercherait en vain des accords entre Etats relatifs à la délimitation du plateau continental qui feraient référence à la notion de distance.

A la vérité, on ne rencontre guère de mention du critère de distance que dans quelques législations internes; mais il est difficile d'induire une pratique générale de ces quelques précédents qui concernent uniquement, répétons-le, la fixation de la limite extérieure du plateau continental.

Quelques Etats seulement ont, dans leur législation nationale, adopté le critère de distance pour définir leur plateau continental. Si l'on peut parler de pratique en cette matière, elle est surtout régionale et se rencontre chez certains Etats latino-américains riverains de l'océan Pacifique (Chili, Equateur, Pérou, Salvador et, dans une certaine mesure, Panama).

D'autres Etats, il est vrai, ont incorporé dans leur droit interne la formule alternative de l'article 76 de la convention de 1982 et font référence à la fois, pour définir leur plateau continental, au rebord externe de la marge continentale et au critère des 200 milles. Mais, exception faite du cas de l'Islande, il s'agit là aussi d'une pratique que l'on peut qualifier de régionale, car elle émane principalement d'Etats riverains de l'océan Indien (Bangladesh, Birmanie, Inde, Pakistan, Sri Lanka, Seychelles, Yémen démocratique).

En l'absence de pratique générale, ou de pratique émanant d'une communauté suffisamment large et représentative, il devient à peu près impossible d'attribuer au critère de distance un caractère coutumier. Ce critère ne correspond pas au comportement effectif des Etats.

Comme on le voit, la théorie maltaise de la projection multidirectionnelle ne résiste pas à l'examen. Le postulat de départ est faux. Non seulement la distance n'est pas l'unique expression du titre juridique de l'Etat côtier sur le plateau continental, mais elle n'est même pas le moyen principal, reconnu par le droit international général pour mettre en œuvre ce titre juridique.

Dès lors, c'est tout l'échafaudage de la construction théorique de la projection multidirectionnelle qui s'effondre comme un château de cartes.

Le raisonnement développé par la Partie adverse présente, d'autre part, un second défaut majeur, que j'ai évoqué il y a un instant, et sur lequel je souhaiterais à présent insister. Il s'agit de son caractère artificiel et fictif, de l'absence de tout lien entre ce qui est un exercice largement abstrait et le problème concret que représente une délimitation des plateaux continentaux de deux Etats.

Même si l'on admettait la validité du postulat sur lequel repose cet exercice théorique — ce qui n'est pas le cas, comme nous venons de le voir — il n'en resterait pas moins que l'extraordinaire abstraction de cette thèse conduirait à l'écarter, parce qu'elle est sans rapport avec la réalité d'une opération de délimitation entre Etats.

Le conseil de Malte a ironisé sur l'«épais brouillard» qui, à l'en croire, recouvrirait le concept de prolongement naturel sur lequel se fonde la Libye (ci-dessus p. 377). Qu'il nous soit permis de faire remarquer que la thèse de la projection radiale multidirectionnelle est tellement éblouissante qu'elle aveugle la Partie adverse au point qu'elle ne distingue plus des opérations qui sont pourtant différentes les unes des autres.

L'idée de projection radiale, que nous ne contestons d'ailleurs pas en tant que telle, ne vaut que parce qu'elle a pour objet d'établir la limite extérieure d'une zone maritime et parce qu'elle traduit la technique de construction sur une carte de la ligne représentative de cette limite extérieure.

Elle vaut incontestablement pour l'établissement de la ceinture de protection que constitue la mer territoriale, car c'est alors la souveraineté elle-même qui se projette sur la mer, dans les limites des 12 milles.

Il est certain que cette idée de projection radiale s'applique, par exemple, dès lors qu'il s'agit de déterminer la limite extérieure de la mer territoriale d'une île.

Il en est ainsi en raison de la définition même de l'île : entourée d'eau de toutes parts, son pouvoir générateur de droits se fait sentir sur 360 degrés. C'est, peut-on dire un avantage géographique spécifique aux îles, à toutes les îles.

Cet avantage géographique n'est pas propre aux Etats insulaires. Il vaut également pour les îles dépendant d'un Etat continental, en raison du principe d'indivisibilité de la souveraineté, car le fondement des droits sur les espaces maritimes adjacents réside toutjours dans la souveraineté qu'un Etat exerce sur une île, que cette île constitue son unique assise territoriale ou qu'elle soit un élément détaché de son territoire principal. Telle est d'ailleurs la solution que consacre et confirme l'article 121 de la convention de 1982 sur le droit de la mer. Et, à ce titre, l'île de Gozo n'est pas moins importante que l'île de Malte et la souveraineté exercée par la Tunisie sur les îles Kerkennah ou par l'Italie sur la petite île de Linosa ou sur la grande Sicile n'est pas différente de celle exercée par l'Etat maltais sur son territoire entièrement insulaire.

Mais en vertu du même principe d'unité juridique de la souveraineté, l'idée

de projection pluridirectionnelle doit également s'appliquer aux côtes continentales, l'angle de projection variant évidemment en fonction de la configuration côtière.

Mais alors, qui ne voit que, si l'on fait une application générale de l'idée de projection radiale pour la définition des zones de plateau continental, et non plus pour la fixation des limites plus restreintes de la mer territoriale, on aboutit inévitablement, dans les circonstances particulières de la présente affaire, à des conséquences absurdes?

Cela me conduit, Monsieur le Président, à envisager à présent le deuxième point de mon exposé, c'est-à-dire l'application pratique de la projection radiale et ses conséquences absurdes dans la présente affaire.

II. L'APPLICATION PRATIQUE DE LA PROJECTION RADIALE ET SES CONSÉQUENCES ABSURDES DANS LA PRÉSENTE AFFAIRE

Si l'on se réfère à la théorie du «Yin» et du «Yang», fondement de la philosophie chinoise, il faut dans chaque chose considérer le côté positif et le côté négatif.

Or, en appliquant l'idée de la projection radiale aux données de la présente affaire, Malte n'a manifestement voulu voir que l'aspect qui lui paraissait le plus positif pour sa thèse. Elle a négligé d'en envisager le côté négatif.

Partant d'une projection radiale de principe, selon laquelle les côtes de Malte irradieraient dans toutes les directions autour de son territoire, la thèse maltaise a trouvé également sa traduction en l'espèce sous la forme d'une projection triangulaire ou trapézoïdale. C'est, bien entendu le fameux trapèze représenté à (12) la figure A du mémoire de Malte et qui a été repris sous une autre forme et (39) dans une autre perspective dans la figure 7 du dossier maltais du premier tour de la procédure orale.

A l'audience du 8 février, le professeur Brownlie a rappelé que cette figure géométrique avait pour fonction d'illustrer «la zone de convergence» des projections côtières des deux Etats en cause (ci-dessus p. 290).

(43) Quatre jours plus tard, se fondant sur la figure 12 du dossier maltais, le professeur Weil a toutefois réaffirmé ce qu'il avait dit dans sa première plaidoirie (III, p. 416-417), à savoir que les arcs de cercle d'un rayon de 200 milles indi- (43) qués sur cette figure 12 permettaient d'illustrer «le concept de la zone de chevauchement» (ci-dessus p. 355).

(39)(43) Mais la simple comparaison de ces figures 7 et 12 montre cependant qu'il n'y a pas de coïncidence totale entre ces zones de convergence ou de chevauchement.

Dans un cas, le chevauchement des projections côtières est limité par une ligne droite joignant Delimara Point à l'extrémité sud-est de l'île de Malte et la côte libyenne à l'est de Benghazi. Dans l'autre cas, la zone de convergence des projections radiales déborde cette ligne au nord et à l'est. Nous sommes en présence d'une projection radiale à géométrie variable.

Mon collègue et ami le professeur Bowett aura l'occasion de reprendre ce point en analysant le traitement des données géographiques dans les plaidoiries maltaises. Je ne m'attarderai donc pas outre mesure sur les incertitudes ou contradictions auxquelles conduit, semble-t-il, la mise en œuvre de la théorie de la projection radiale pluridirectionnelle avancée par Malte.

Je voudrais seulement attirer respectueusement l'attention de la Cour sur la critique essentielle qui me paraît devoir être adressée à l'utilisation faite par Malte de l'idée de projection radiale dans la présente affaire de délimitation.

Elle s'apparente, en effet, à un tour de prestidigitation qui a pour résultat de

faire disparaître les côtes réelles. Comme les lignes de base de la mer territoriale ne sont juridiquement que l'expression simplifiée des côtes, sous le double aspect de leur direction et de leur dimension, il suffit, nous dit-on, de retenir ces lignes de base, et la projection de la côte peut alors se traduire à partir de certains points choisis sur ces lignes de base. Mais cette équation, selon laquelle: côte=ligne de base=points de base, qui est couramment utilisée pour la fixation des limites extérieures de la mer territoriale, ne saurait toutefois être appliquée en matière de délimitation du plateau continental; car elle a pour effet de substituer la géométrie à la géographie. Elle ne permet pas de prendre en considération les données réelles de la situation géographique, les façades côtières disparaissant derrière des points de base considérés comme représentatifs des côtes.

Or, dans toute affaire de délimitation du plateau continental, les principes équitables commandent de partir de la situation géographique concrète, dont les côtes sont précisément un élément essentiel et même un élément primordial.

Ce n'est cependant pas uniquement du point de vue de la microgéographie côtière que le recours à la thèse de la projection radiale est ici critiquable. Il l'est également d'un point de vue macrogéographique.

«La projection radiale vaut en Méditerranée aussi bien que dans les «océans gigantesques», a affirmé l'autre jour le professeur Weil (ci-dessus p. 356).

Mais si le phénomène de la projection pluridirectionnelle était à la base de toutes les opérations de délimitation qui restent à établir en Méditerranée, il faudrait admettre que toutes les côtes bordant cette mer irradient dans toutes les directions possibles. Cela signifierait que les projections côtières des divers Etats riverains de la même zone entreraient en conflit les unes avec les autres. Et, si l'on suivait la logique de l'argumentation maltaise, l'ensemble de la Méditerranée centrale serait une zone de chevauchement des projections côtières de chaque Etat riverain, et il deviendrait alors impossible d'envisager isolément une opération de délimitation entre deux Etats.

Le recours à l'idée de projection multidirectionnelle en matière de délimitation du plateau continental conduit ainsi à un non-sens et condamne donc l'application de cette thèse en cette matière.

A moins de considérer que la seule solution possible consiste à recourir, pour chaque opération de délimitation, à la méthode de l'équidistance. C'est précisément la voie empruntée par Malte: sous couvert de choisir une méthode appropriée, la Partie adverse ne propose, en effet, rien d'autre que de procéder à une amputation égale des projections côtières respectives des deux Etats. La ligne d'équidistance, selon Malte, est en quelque sorte dictée par le phénomène de la projection pluridirectionnelle.

La théorie de la projection radiale appliquée aux problèmes de délimitation apparaît ainsi comme un moyen déguisé de réclamer le recours à la méthode de l'équidistance à l'égard de tous les Etats situés autour de Malte en Méditerranée centrale. Ce n'est, en somme, qu'une nouvelle étiquette collée sur la vieille bouteille de l'équidistance.

III. La ligne médiane prétendument dictée par la projection radiale

A en croire la Partie adverse, l'équidistance serait l'unique moyen équitable d'arrêter l'épanouissement des projections côtières des deux Etats. Il en irait ainsi parce que, nous dit-on, ces projections sont juridiquement de valeur égale et que l'on ne saurait, dans une opération de délimitation, aboutir à une discri-

mination juridique entre Etats souverains (ci-dessus p. 390). Il conviendrait donc de diviser de manière égale le chevauchement de ces projections.

Le principe d'égalité des Etats, qui sous-tend ainsi la théorie de la projection radiale des côtes, est donc utilisé en renfort de la thèse de l'équidistance. Selon Malte, seule l'application de la méthode de l'équidistance satisferait le principe d'égalité des Etats.

Je dois avouer que l'on saisit mal le rapport logique que Malte prétend ainsi établir entre l'égalité, comme principe, et l'équidistance, comme méthode. En particulier, on ne voit pas alors quelle peut être effectivement la portée du principe d'égalité.

En effet, de deux choses l'une.

Ou bien le principe d'égalité signifie que tous les Etats côtiers possèdent un même titre juridique au plateau continental, comme l'a rappelé le professeur Briggs dans sa plaidoirie du premier tour. Mais, dans cette hypothèse, force est de reconnaître que le principe d'égalité n'a rien à voir avec un problème de délimitation.

Ou bien on entend conférer au principe d'égalité des Etats une portée plus étendue et il signifierait alors une égalité matérielle de plateau continental, même s'il s'agit de ce que la Partie adverse a qualifié d'«égalité approximative». C'est, semble-t-il, dans cette perspective que se plaçait le professeur Brownlie, le 8 février dernier.

Sir Francis Vallat a déjà souligné hier le caractère critiquable de l'idée développée par le conseil de Malte. Je ne m'y attarderai donc pas.

Je ferai simplement observer que la démarche adoptée par Malte se trouve tout entière résumée dans l'affirmation suivante du professeur Brownlie:

> «Malta contends that the geographical facts must be placed within a certain legal order related to the concept of approximate equality.» (Ci-dessus p. 284.)

Prétendre que les faits de la géographie doivent être placés dans le cadre d'un certain ordre juridique lié au concept d'«égalité approximative» revient à mettre la charrue devant les bœufs.

Cette démarche consiste, en effet, à prétendre que les faits, les données de fait doivent, dans une opération de délimitation, être assujettis à un «certain ordre juridique» selon lequel les côtes des deux Etats en cause sont présumées engendrer un égal domaine de juridiction maritime: «coasts which are presumed to have an equal seaward reach of jurisdiction» (ci-dessus p. 284-285).

Ce qui aboutit à la conséquence suivante: ce n'est pas le droit qu'il convient d'appliquer aux faits de l'espèce, mais ce sont les faits qui doivent s'inscrire dans un ordre juridique préétabli.

Quelqu'un a autrefois tenté des opérations de ce genre. C'était dans l'Antiquité méditerranéenne, il se nommait Procuste.

Selon les conseils de Malte, cette «égalité approximative» serait respectée dès lors que, par application de la méthode de l'équidistance, le rapport des zones de plateau continental revenant respectivement à Malte et à la Libye serait de 1 à 5. Mais on comprend mal pourquoi le principe d'égalité des Etats serait respecté avec un rapport de 1 à 5 et ne le serait pas avec un rapport de 1 à 8, par exemple. Où est en pareil cas la rationalité de l'argument?

En réalité, la démonstration que Malte prétend faire n'en est pas une, car elle part du présupposé de la ligne médiane. Ainsi, nous a-t-on dit, le rejet de la ligne médiane «impliquerait une discrimination juridique entre Etats souverains» (ci-dessus p. 390). Ce qui signifie, *a contrario*, que l'égalité souveraine des Etats implique l'adoption de la ligne médiane.

En plaçant le principe de l'égalité souveraine des Etats au premier rang des principes des Nations Unies énoncés dans l'article 2 de la Charte, les participants à la conférence de San Francisco n'avaient sans doute pas imaginé que cela devrait conduire nécessairement à l'application de la méthode d'équidistance pour la délimitation du plateau continental.

Comment peut-on en arriver là? La Partie adverse parvient à cette conclusion par une voie étrange, en adoptant comme prémisse ce qu'elle prétend démontrer.

En tant qu'Etat insulaire, Malte est juridiquement l'égal de l'Etat continental qu'est la Libye. Il ne faut donc pas s'étonner, en déduit le professeur Weil, «que cette petite île, avec ses courtes côtes, puisse engendrer, grâce à la ligne médiane, une telle superficie de plateau continental» (ci-dessus p. 387). On a bien entendu: «grâce à la ligne médiane». Car celle-ci est, dans l'esprit de la Partie adverse, à la fois le point de départ et le point d'aboutissement de toute l'opération de délimitation.

La démarche suivie en ce domaine par la Partie maltaise n'est cependant pas exempte de contradictions, à tel point que l'on éprouve parfois beaucoup de difficultés à comprendre quelle est exactement la place de l'équidistance dans la présentation de la thèse adverse.

Ainsi, soucieux de respecter sur ce point une jurisprudence constante et non équivoque qui refuse toute priorité à la méthode de l'équidistance, le professeur Weil a pris grand soin d'expliquer à la Cour que l'établissement d'une ligne médiane entre les côtes des deux Etats était une étape préparatoire et provisoire. C'est, a-t-il dit, un «premier pas», un «point de départ de l'exercice de délimitation» (ci-dessus p. 384). Il s'agirait d'une «ligne d'attente» qui ne pourrait devenir une «ligne de délimitation définitive qu'après vérification de son caractère équitable et raisonnable» (ci-dessus p. 385).

L'agent de la République de Malte, quant à lui, a été moins circonspect, lorsqu'il a clairement affirmé que la ligne d'équidistance était normalement la ligne la plus appropriée pour une délimitation et qu'elle ne pouvait être éventuellement modifiée ou abandonnée que dans des cas extrêmes, «in extreme cases». Selon lui, ce n'est qu'en pésence de situations inhabituelles ou exceptionnelles («unusual or exceptional») que le besoin pourrait se faire sentir de procéder à un ajustement de la ligne d'équidistance (ci-dessus p. 405 et 406).

La méthode de délimitation par l'équidistance ainsi entendue aboutit à une véritable standardisation du processus de délimitation lui-même. On aurait ainsi un modèle quasi unique et abstrait, détaché des particularités propres de chaque affaire, et qui serait peu en accord avec l'idée que chaque cas constitue un *unicum*.

Il est vrai que les conseils de Malte, brandissant le risque du subjectivisme dans l'application du droit international de la délimitation, prétendent trouver un garde-fou objectif en se référant constamment aux accords de délimitation conclus jusqu'à ce jour. «Tant d'accords de délimitation ont adopté la méthode de l'équidistance dans des situations plus ou moins analogues à celle qui se présente dans notre affaire», a déclaré le professeur Weil (ci-dessus p. 389).

Mais où retrouve-t-on une situation «plus ou moins analogue» à celle de la présente affaire? Existe-t-il des accords de délimitation qui aient adopté la ligne médiane dans une situation analogue ou similaire, c'est-à-dire en présence d'une telle disparité entre les longueurs des côtes des Etats concernés?

Sans doute, les conseils de Malte ont-ils affirmé à de multiples reprises que la longueur des côtes respectives ne saurait jouer un rôle dans la délimitation. Ne craignant pas de contredire cette affirmation, ils ont tenté néanmoins de trouver dans la pratique des Etats des accords de délimitation qu'ils préten-

daient fondés sur l'équidistance et qui seraient intervenus entre un Etat à côte courte et un Etat à côte longue.

Leur quête a cependant été vaine, comme l'ont montré les cartes utilisées pour illustrer la plaidoirie du doyen Colliard.

Et il convient de remarquer que la Partie adverse n'a pas fourni pour le second tour des cartes démentant celles présentées par la Libye. Celles que Malte a utilisées au second tour figuraient déjà, pour la plupart, dans le dossier libyen du premier tour, notamment les cartes relatives aux délimitations France-Maurice et France-Sainte-Lucie intervenues entre des côtes insulaires de dimensions comparables.

La raison en est simple. Les exemples de «State practice» cités à l'appui des assertions maltaises sont dépourvus de pertinence. Et la pratique des Etats ne fournit aucun exemple d'une délimitation intervenue dans une situation semblable, ou même simplement comparable, à celle qui existe dans la présente affaire. Cette affaire est sans analogie dans la pratique.

Les conseils de Malte n'ont cessé de répéter à satiété que la situation géographique est ici d'une grande simplicité et qu'il convient donc d'appliquer purement et simplement la méthode de l'équidistance, parce que cette méthode présente elle-même l'avantage de la simplicité.

Si nous récusons cette façon de voir, c'est parce que le fait de soumettre la présente affaire à la Cour ne peut avoir d'autre signification que de vouloir parvenir à une solution fondée sur le droit et non sur la géométrie.

Et le droit international applicable à la délimitation du plateau continental entre Etats, tel qu'il est aujourd'hui formulé à l'article 83 de la convention sur le droit de la mer, énonce une obligation de résultat équitable, laissant aux Etats intéressés, ou au juge, le choix des facteurs pertinents en fonction des circonstances.

En édictant l'obligation de parvenir à une solution équitable, sans conférer de priorité à aucune méthode particulière, l'article 83 montre clairement que chaque affaire de délimitation ne peut être réglée qu'en fonction des facteurs et circonstances qui lui sont propres.

Aussi, aux fins de la présente délimitation, il importe d'examiner l'ensemble des facteurs et circonstances de l'espèce. C'est ce à quoi va s'attacher demain le professeur Bowett.

Monsieur le Président, Messieurs les juges, en vous remerciant de votre bienveillante attention, je tiens à vous dire de nouveau combien j'ai ressenti l'honneur de m'adresser à vous au nom de l'Etat libyen.

L'audience est levée à 13 heures

THIRTY-THIRD PUBLIC SITTING (22 II 85, 10 a.m.)

Present: [See sitting of 26 XI 84, Judge Morozov absent.]

REJOINDER OF PROFESSOR BOWETT

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Professor BOWETT: Mr. President, Members of the Court, as in the first round, it falls to me to examine the relevant circumstances of the present case and to consider how these may affect the selection of the appropriate methods of delimitation, in accordance with legal principle.

GEOGRAPHY

I again begin with geography, just as I did in the first round, because I want to re-emphasize the importance of the geographical elements in Libya's case. The geographical circumstances are not only relevant to Libya's case, they are vital, and there should be no doubt in the Court's mind that Libya's Submission 9 was designed and drafted quite specifically so as to embrace these geographical factors. They are an essential part of the "physical factors" relevant in this case. No equitable result could ignore them.

The Court, quite rightly, is not concerned with physical factors — be they geographical or other — except in relation to the legal principles relevant to shelf delimitation.

The Legal Principles

It is important, therefore, to start with the legal principles which provide the framework within which our consideration of the geography must take place. There are, in my view, four such principles:

First, the identification of each State's "natural prolongation" is a process which requires recognition of the actual geographical circumstances of each case (*North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, pp. 49, 54, paras. 91, 101 (D); *Tunisia/Libya* case, *I.C.J. Reports 1982*, p. 46, para. 44).

Second, it is the geographic correlation between the coast and the submerged areas off that coast that form the basis of each State's title (*Tunisia/Libya* case, *I.C.J. Reports 1982*, p. 61, para. 73).

Third, equity does not require equality but rather requires that account be taken of the actual differences in coastal lengths (*North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, p. 49, para. 91; Anglo/French Arbitration, 1977, para. 249; *Tunisia/Libya* case, *I.C.J. Reports 1982*, p. 91, para. 131; *Gulf of Maine* case, *I.C.J. Reports 1984*, p. 334, para. 218).

Fourth, the geographical configuration of the coast of each Party must be examined, for this will assist in identifying which sea-bed areas are in fact extensions of those coasts (*North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, pp. 51, 54, paras. 96, 101 (D) (1); *Tunisia/Libya* case, *I.C.J. Reports 1982*, pp. 82, 86, 93, paras. 114, 122, 133, B (2)).

It is in the light of these principles that I would now wish to review, very briefly, the actual facts of this case. My friend Professor Weil made some criticism of my earlier oral presentation on the ground that I was obsessed by the facts and ignored the law (p. 378, *supra*). Mr. President, I do not speak in isolation. My colleagues, Professor Jaenicke and Professor Quéneudec, have addressed the law, and I have no wish to waste the Court's time with repetition. Mine is the more mundane task of outlining the relevant circumstances. Obviously, that is a largely factual exercise. But the importance of that exercise has been made clear by the Court in its 1982 Judgment, when it stated that it is the relevant circumstances that control what result is equitable. So I turn, without apology, to the facts.

The Facts

The geographical facts really centre around two questions. These are: what are the relevant coasts and what is the relevant area?

Relevant coasts

As to the relevant coasts, we are in virtually the same position as we were when I outlined Libya's views in the first round. The crucial and inescapable fact is the glaring discrepancy in the coastal lengths of the two Parties.

The identification and measurement of the Maltese coast is not an easy matter, in part because the islands are tilted away from Libya, facing south-west towards Tunisia rather than facing directly south towards Libya. Moreover, there are the two separate islands — Gozo and Malta — and a good deal of irregularity. I previously suggested that a straight line from Ras il-Wardija to Delimara Point, a distance of 40.6 kilometres was a generous view of Malta's coast. But even that left us with a ratio of 8.6:1 in Libya's favour.

Malta has not offered any alternative method of measuring its coast, so one is rather at a loss to suggest what might be the most favourable view of the Maltese coast. Frankly, I find a good deal of inconsistency in the Maltese oral arguments on the question of Malta's relevant coast. Professor Brownlie took our figure of 40.6 kilometres, at least for purposes of argument (p. 288, *supra*). Professor Weil was adamant that Malta's east-facing coast — I assume he meant this stretch between Delimara Point and Point Zongor — could not be ignored (p. 359, *supra*). It is, of course, a rather short stretch of coast, only 5.4 kilometres. Yet Mr. Mizzi was equally adamant that this same easterly-facing coast was relevant only to a delimitation with Italy. I have the clear impression that Malta has never been prepared to identify — either graphically or even conceptually — what the relevant coasts really are.

My submission is that, however you approach the matter, an 8:1 ratio is about as realistic an assessment of the respective coastal lengths as you can get.

Libya's coast is an easier matter. We have heard not one convincing argument for taking the relevant Libyan coast beyond Ras Zarruq. Indeed, all the arguments go the other way. The moment one goes further east than Ras Zarruq, the coast cannot realistically be said to lie opposite to Malta, but rather to Italy. Thus the areas off that coast must be left for delimitation with Italy. And, as the Court has heard from Malta's own expert witnesses, you are in a different domain, a different shelf in fact. Of course, Malta's trapezium takes no notice of any of the physical features. It is a pure abstraction, designed to accommodate within it the maximum reach of Malta's equidistance claim to the east.

No doubt the Court has asked itself the question I have asked myself. Why is it that Malta's radial projection is used only against Libya? Why should not Crete, or the Greek mainland, or, indeed, even Albania benefit from Malta's radiance? If I can invite the Court to examine this map, now behind me (map (52) No. 96 in the Court's folder) you see sketched on there not only the eastern arm of Malta's trapezium in relation to Libya but also similar radial projections to Crete, Greece, and Albania, projections over lesser distances to those coasts. So by Malta's reasoning, these coasts are opposite to Malta in exactly the same way as the Libyan coast. But if that is true, why is Malta not seeking a delimitation with Crete and Greece and Albania? Why is Libya singled out for the unique benefit of Malta's radiance?

The obvious answer would be that the idea is absurd, because this would involve a Maltese claim in areas only appropriate for a delimitation between Italy and Greece. But, of course, the same absurdity affects the trapezium figure with Libya, for this involves a claim by Malta in areas only appropriate for delimitation between Italy and Libya. Mr. Mizzi has said that Malta has no delimitation with Greece (p. 394, *supra*), but the question is, why not? Why is there no overlap of radial projections with the Greek coast, if there is such an overlap with the Libyan coast east of Benghazi? It is the logic of this difference which is missing.

This illustration confirms Libya's view that the relevant Libyan coast must stop at Ras Zarruq. So I can see no reason for altering our previous estimate of the relevant Libyan coast. It is the coast from Ras Ajdir to Ras Zarruq, a distance of 350 kilometres.

The upshot of this is that we have to take account of a very large difference in coastal lengths. It is a difference far greater than any the Court has encountered in its previous cases. Taken simply as a difference in length, you can express that difference as being approximately in the order of 8:1; in fact it could be anywhere between 6:1 and 12:1 depending on the way in which you measure the Maltese coast. Of course, that is the ratio of coastal lengths and nothing else. If, as Libya contends is right, you also take account of the landmass lying behind those coasts, then this would tend to justify the higher ratio, 12:1, as more likely to lead to an equitable result. Nevertheless, Libya accepts that the Court is not engaged in an exercise of precise mathematics. What is an equitable result is the product of many factors: but the end result, the equitable result, must, in Libya's view and consistently with the legal principles expounded in the Court's own jurisprudence, bear a reasonably close relationship to the difference in the coastal lengths of the two Parties.

Relevant area

The second question is to determine the relevant area. I believe the Court's task in relation to this question has not been simplified. For the one thing which emerged with absolute clarity from the examination of the scientists of both Parties, and I return to this point later, is that the shelf ends at the Escarpments in the east. The one point on which there was absolute agreement was that the Escarpments were a real discontinuity, a very clear dividing line between two quite different domains. And, of course, this purely scientific view of the limits of the area, terminating along this agreed line of discontinuity, serves another purpose. It prevents the delimitation in this case from extending too far into the area which is known to be the subject of claims by Italy. My good friend, Professor Weil, has rightly pointed out that Italy appears to have claims west of the Escarpments. That is true, and as I said in the first round, Italy will have to

decide whether to proceed against Malta in the area to the north of the Medina Channel, or against Libya in the area south of the Medina Channel in due course. But we do not have to define the relevant area, for our purpose, so as to exclude totally all areas which may be subject to third State claims. The Court recognized that principle in defining the relevant area in the 1982 case. What we do have to do is to exercise reasonable judgment and avoid including in our relevant area a shelf area which is beyond what Malta can reasonably claim, and conversely well within an area which, on all the facts, is patently more appropriate for a delimitation between Italy and Libya. The line of Escarpments achieves that purpose. There remains the problem of linking this eastern limit to the area with Malta itself. The simplest solution seems to be to make that link by a line of latitude, drawn from Delimara Point to the line of the Sicily-Malta Escarpment. For the identification of a relevant area is not an exact, cartographical exercise. One has only to recall the Court's own use, in 1982, of two straight lines — the latitude from Ras Kaboudia and the longitude from Ras Tajoura — to perceive what is required. We need simply a general, approximate area which can reasonably be said to encompass the shelf areas projecting from the two relevant coasts, and therefore the area relevant to delimitation between those two coasts. That area will then provide the confines for any line of delimitation, so as to exclude the risk of encroachment into areas relevant only to a delimitation with third States. And, additionally, the relevant area will allow the Court to use the test of proportionality. Mr. Mizzi objected to this line of latitude closing the relevant area in the north, and he appeared to be offering as an alternative a line joining Delimara Point to the top of the
(46) Medina Escarpment, as shown on Malta's map No. 42. The apparent reason for this was that the area east of Malta is nothing to do with Libya: it is only relevant to delimitation between Malta and Italy (p. 397, *supra*).

I am bound to say that I find this reasoning extraordinary. Malta's own trapezium figure includes large areas of shelf east and south-east of Malta — well outside this new closing line offered by the Agent for Malta.

And, if Malta claims to have an overlapping, natural prolongation with Libya stretching as far as Ras at-Tin, by what process of reasoning could Libya be denied a natural prolongation stretching into this area? The reasoning is not only contradictory with Malta's own case, it is manifestly the adoption of double standards.

So much for the eastern limits to the area. What about the western limits?

As suggested last time, we believe it is imperative to respect the Court's own indication of an appropriate line between Libya and Tunisia, as expressed in the Court's 1982 Judgment. So that takes us to approximately this point. From here, the exercise is obviously more subjective. You could simply join this point with the extreme western tip of Gozo. The objection to that might be that such an area overlaps with a small section of the Italian/Tunisian delimitation of 1971 — for Point 32 of that delimitation lies here. If that were thought to be a serious obstacle, then the western limit could be made by a line of two sections, one to Point 32, the other from Point 32 to Gozo, like this. The difference to the relevant area would not be great. The important thing to bear in mind would be that Tunisia would not seem to have claims east of Point 32: for otherwise Tunisia would not have agreed to that Point. My impression is that the western limits are more or less agreed between the Parties. As the Agent for Malta rightly pointed out (p. 397, *supra*), the western limits proposed by Libya do not depart substantially from the line suggested by Mr. Lauterpacht.

If, therefore, the geographical facts give us the relevant coasts and the relevant area — taking account of the interests of third States as part of the geo-

graphical pattern — the essential geometrical problem becomes clear. It lies simply in this. We have a short coast facing a long coast. That is the crux of the problem. If we had two equal coasts the situation might be described as normal and there would be no problem: but we do not have equal coasts in the situation before us, and that is why it is not a normal situation and we do have a problem.

(53) The consequences can be seen from this simple diagram, No. 97 in the folder, which is designed to show how inequitable the equidistance principle is in this situation. If a short coast faces another coast eight times its length, and you depict the relevant area as a triangle or trapezium, as Malta does, then necessarily the area closes, or narrows towards the short coast. In the diagram, the narrowing is regular, producing almost a triangle. It is true that in the relevant area as defined by Libya you also get some narrowing. But that shape has been adjusted in the light of the actual geography, to give the short coast more breathing-space, more area, at the sides because of its radial projection. But the narrowing is inescapable even there.

However, the Maltese trapezium accentuates the problem, for in such an area, inescapably, there is an overlap of projections. For, notionally, you can view the long coast as eight little short coasts, side by side, each equal to the opposite short coast. Any one section, taken in isolation, would have its own projection towards the opposite short coast producing a sort of "band". But, because of the narrowing, each separate "band" encroaches on that of its neighbour. On this diagram you can see the areas encroached — or "cut off" if you will — are substantial in the lower half of the figure, but almost complete in the upper half. So you have to move the line upwards towards the apex, reducing the seaward reach of the short coast, if you are to preserve equality between the two coasts. For this short coast cannot claim both equal reach and "radial spread".

If you do not do this, this means that each section of the long coast is denied its full share of the band to which it would be entitled if in isolation. That is because of the encroachment of the prolongation of the adjoining section of coast. Nor can one ignore this fact by saying, "oh, but all the coast belongs to one State, so you cannot split it up into sections!" We would face exactly the same problem if each section belonged to a different State. And, as I understand the Court's jurisprudence, the question of what shelf attaches to a particular coast does not depend upon the accident of political affiliation, of political separateness or identity.

The implication can be expressed in another way. Looked at from the short coast, that coast is representing itself as equal to all of the opposite sections combined. But the effect of the triangle or trapezium is to force the projection of each section of the long coast inwards, towards the apex of the triangle. Now why should the short coast be entitled to a radial projection, but the section of the long coast be denied any radial projection? One can make the point dramatically, or diagrammatically as shown on Figure 98 in your folder. If each section of the long coast, equal in length to the short section of the opposite coast, is to be granted an equal radial projection, then you cannot confine those radial projections within the triangle. If your relevant area is a triangle, and you do confine it, then you can only preserve equality between the long and the short coasts by reducing the seaward reach of the short coast.

(54)

Whichever way you put it, it is clear that the result of equidistance within a triangle or trapezium is not to treat equal coast equally. You simply cannot treat each equivalent stretch of coast, kilometre for kilometre, in an equal manner. On the contrary, the result is to favour the short coast, or penalize the long coast — certainly if equidistance is used.

And it is no answer to say that equidistance gives to the short coast only one-quarter of the area, not half. For that is a deception, as can be seen by this next (55) figure, which is Figure 99 in your folder.

This figure demonstrates that the 1 to 3 ratio — the quarter share — is broadly true within the triangle. But this totally misrepresents the true entitlement of the short island coast. Because, obviously, this short coast generates additional areas of entitlement, here and here, and that is a necessary consequence of the island's radial projection. Let there be no misunderstanding about Libya's view on radial projection. Of course we accept that an island's coast is projected, radially, through 360 degrees. It is precisely because of this that an equidistance line is so inequitable: it attracts so large an area of shelf to the island.

And it is important to dwell on this point. Let me take a hypothetical (56) example as shown on Figure 100 in your folder. Here we have a sea-area surrounded on four sides with coastal States A, B, C and D: each with a 500-kilometre coast. Let us place a small island in the middle of this area, say an island with one kilometre of coast facing each of the four surrounding States. If we adopt a triangle — or more accurately a trapezium — in relation to each of the four surrounding States, then the small island gets only one-quarter of each triangle, for the equidistance line divides the trapezium in the ratio of 1:3. So in relation to a single triangle, the quarter share of the island may perhaps strike you as not outrageous. But then compare the end result, in which, because of its radial projection, the island claims the same entitlement against each one of the four surrounding States. The end result is that this small island obtains a greater share of the entire area than any of the surrounding States. Each State, despite its 500-kilometre coast, gets less of the total area than does this small island. Expressed as a fraction, the one-kilometre square island gets roughly four-sixteenths of the area (a quarter): each coastal State gets only three-sixteenths. Is it really possible to regard the larger part of this sea area as more naturally the prolongation of this small island than of the four long-coast States? Surely not, Mr. President.

Obviously, the actual facts of the present case are not so extreme, or so simple. But even they will demonstrate the glaring inequity of Malta's equidistance principle. Let us postulate an area using the 38° line of latitude, and the 16° line of longitude: you see the area outlined in black on this map (Fig. 5). You will see sketched in the same map the 1971 Italy-Tunisia delimitation line sketched in red and Malta's equidistance claim-line in yellow, as well as the Court's 1982 line for Tunisia-Libya, but, of course, projected on to meet Malta's equidistance claim. A fair estimate of the coastal lengths of the four States is Malta 102 kilometres (that is, of course, all round the Maltese coast), Libya 492 kilometres, Tunisia 579 kilometres, and Italy 421 kilometres. Very roughly, the ratios are Malta 1, Libya 5, Italy 4, Tunisia between 5 and 6. Yet Malta would get 23.7 per cent of the area (58,845 km^2), Libya 30 per cent (74,379 km^2), Italy 20.7 per cent (51,210 km^2), and Tunisia 25.6 per cent (63,301 km^2). The comparison with Tunisia is the most striking. With 5.7 times the total length of Malta, Tunisia gets virtually the same shelf area. If you compare shelf area to landmass, Malta enjoys a ratio of 187 to 1, compared with Libya at 0.04 to 1, Tunisia at 0.39 to 1, and Italy, that is Sicily only, at 1.99 to 1. So each square kilometre of Malta gets a thousand times the area of shelf as each square kilometre of Libya. Those results are so offensive to common sense that it seems obvious that, in this type of situation, equidistance cannot be the equitable method.

The point can be illustrated in yet another way. May I invite the Court to

look at No. 102 in your folder. In that we show two exercises. Now the upper section shows Malta as it is, but replaces the long Libyan coast with a small island — you will see it in black: as the Court can see, the red equidistance boundary between the two Maltas remains almost the same as the original equidistance boundary in black. Now the lower section reverses the exercise: it shows a long Libyan coast replacing the island of Malta — you see it there in this broad red band — and, of course, reversed so as to face south towards the actual Libyan coast: again, the red boundary between the two Libyas remains almost the same. Now there must be something wrong to produce those results. It is inconceivable that you can substitute short coasts for long coasts, and long coasts for short coasts, and yet have it make not a scrap of difference. It does not make any kind of sense. What is wrong is the method as applied in this situation. As we have said repeatedly, the equidistance method simply is not appropriate for reflecting a large discrepancy in coastal lengths.

Mr. President, I will return to this problem in due course, and try to offer the Court some alternative ideas, or methods, which in Libya's view have far greater merit than equidistance. At this stage my purpose was the more limited one of describing the geographical realities of the situation and demonstrating that equidistance cannot be the answer to the problems posed in this case.

Before doing that, however, I think I ought to deal with the other categories of relevant facts: those derived from geomorphology and geology.

Geomorphology and geology

There are two preliminary points of importance. The first is that it is not necessary, or even correct, to regard these facts of geomorphology and geology as a quite distinct, separate category from the facts of geography. They are all concerned with the physical facts. Moreover, the area under study is the result of a complex, but interrelated process of evolution in which geology, geomorphology and geography cannot be divorced. The geography is the direct result of the geology: were it not for the creation of the Rift Zone, there would be no Malta. And the difference between the geomorphology and the geography is simply sea level: one area is covered by water, and the other not.

I recall the point being put so well by Professor Morelli in the *Tunisia/Libya* case. He said:

> "Geography . . . is not an accident, but the result of physical causes. It is the consequence of the tectonic evolution of an area and of the geological structures below it." (*I.C.J. Pleadings, Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Vol. IV, p. 518.

Thus, this is a case in which it is possible to view the relevant physical facts comprehensively, allowing geography, geomorphology and geology to form an integral pattern. The true relevance of all these facts is better seen when they are viewed as a whole, and not by isolating geography into a quite separate category.

My secondary preliminary point concerns the role of these physical factors. As pointed out in the Libyan Memorial (I) (paras. 6.52-6.54), the Court in the *Tunisia/Libya* case emphasized that the physical evidence of geology and geomorphology may make possible the identification of a clear division between two distinct natural prolongations, or two shelves. Indeed the arguments of both Parties have been principally directed to this aspect of the facts: naturally enough, because it is Libya's case that they do. But even if they do not, then the Court has identified another possible role for such physical facts. They may

yet play an important role as "relevant circumstances", supplementing the other facts of geography, of conduct, of delimitations with third States which, in their totality, will determine what result is equitable.

Let me turn now quite specifically to the geomorphology and geology.

The physical factors — geomorphology and geology

In approaching what might be termed the "scientific evidence", I must resist the temptation to cross swords with my friend, Mr. Lauterpacht. However much he and I might enjoy the exercise, I believe I can assist the Court at this late stage far better if I attempt to summarize the state of the evidence.

Both Parties must prove their case. Malta rather assumes that it is for Libya to prove that the Rift Zone is a discontinuity, and, if we fail, Malta wins. But to support Malta's own claim is just as much Malta's obligation to prove that there is a continuity, a single unified shelf, both between Malta and Libya in the Pelagian Sea and between Malta and the area east of the Escarpments stretching far out into the Ionian Sea. That burden of proof Malta has scarcely attempted. We have heard some attempts by Malta to assert that the Pelagian Block is a unity, stretching all the way from the African coast to Sicily, despite the accumulation of evidence to the contrary. But Malta has made virtually no attempt to demonstrate a unity across the Sicily-Malta Escarpment. A glance at the model beside me is sufficient to explain why Malta has not attempted the impossible. The barrier of the Escarpment is really insurmountable.

In the weighing of evidence the Court also faces a rather unusual difficulty. The fact is that counsel for Malta declined to cross-examine two of the three experts produced by Libya. And as Sir Francis Vallat has pointed out, in legal systems which use this technique of examining evidence — certainly in all common-law systems — the consequence of such a failure is that a party is deemed to have accepted such evidence. Frankly, I do not see it possible to justify this refusal to cross-examine by what my friend, Mr. Lauterpacht, regarded as the "revelation" of the missing page. Now, the Court has heard the true facts from Sir Francis Vallat, and the whole so-called "revelation" is shown to be simply grasping at straws. But even if my friend, Mr. Lauterpacht, did believe at the time that he had made a dramatic discovery, why should that eliminate the need to cross-examine Dr. Jongsma and Professor Finetti? Why should it excuse the failure to do so? In my submission, Mr. President, given this failure, the Court is entitled to treat the evidence of these two experts as unchallenged by Malta. Indeed, the position is the reverse of what my friend, Mr. Lauterpacht, assumes. He commented that Professor Finetti had offered no explanation of why his views hardened between 1982 and 1985 (p. 342, *supra*), and then invited the Court to treat Professor Finetti's views with caution. But why was that question not put directly to Professor Finetti by Mr. Lauterpacht? The fact that it was not put entitles the Court to reach the opposite conclusion to that suggested by Mr. Lauterpacht.

And now to the essential question. What are we looking for? What is the relevance of all this evidence?

The answer to that question lies in the Court's jurisprudence, supplemented by some State practice. If we are looking for a division between two natural prolongations, or two shelves, then we are looking for a "significant discontinuity", a "marked disruption or discontinuance of the sea-bed" — I use the Court's own terms. We do not have to find the edge of a margin, or a plate boundary, or even a microplate boundary. Obviously, if there is such a boundary, in physical terms the discontinuity is irrefutable: it is an *a fortiori* case.

But nothing in the Court's jurisprudence suggests that a discontinuity is limited to a plate boundary, or the edge of a margin. In fact, as I observed in the first round, in the situations in which the courts have used the concept of a "discontinuity" — the North Sea, the Tunisia-Libya area of concern, the Gulf of Maine, the English Channel — it is inconceivable that they were thinking of a plate boundary or an edge of a margin. So, patently, we have to accept that the Court has in mind a feature of far lesser significance, geologically and geomorphologically, than a plate boundary or a margin edge. In Libya's submission, it will suffice if we can show, on the evidence, either two separate shelves, or a marked disruption in the shelf, or two "natural prolongations".

With this in mind, let us look separately at the two features in issue in this case: the Escarpments and the Rift Zone. I will deal first with the Escarpments.

The Escarpments

The Parties are in fact agreed on the nature of these features, so I do not believe that they pose a problem for the Court.

The Court will recall the question I put to Professor Mascle on whether the Sicily-Malta Escarpment was a discontinuity between the Pelagian Sea and the Ionian Sea. His reply was that they were two different domains: *donc on a une discontinuité*. I pressed the point, because of its importance. I said: "Let us get this clear. There are two different domains here and that is a discontinuity?" The answer was *"Oui"* (p. 260, *supra*). In re-examination, he said that the escarpments marked the passage from a zone of continental crust to oceanic crust (p. 269, *supra*).

Interestingly enough, Professor Morelli declined to support Professor Mascle's view about the Ionian Sea being oceanic crust: he said the evidence *did not make it possible to reply affirmatively on that (p. 270, supra)*. But he was absolutely categorical about the Escarpment being a discontinuity. I asked: "That is the limit therefore to the shelf?" His answer was "you are right" *(ibid.)*. And again I asked: "So you would treat these escarpments as a discontinuity?", and he answered "yes" *(ibid.)*. I asked him if there was a different domain beyond the Escarpments and he answered "absolutely" *(ibid.)*.

So the experts of both Parties are agreed that the Escarpment is a discontinuity and a limit to the shelf. This really disposes of Malta's contention that the entire area of the trapezium, the relevant area as perceived by Malta, is a "continuum". That agreement between the experts simplifies the Court's task enormously, for it has three important consequences.

First, if the shelf ends there, at the Escarpments — and it is clear we are talking about Malta's shelf — then here we have a marked discontinuity of such an order that Malta's natural prolongation must end there. That is the clear position on the physical facts.

Of course, legally, it can still be maintained that the sea-bed under the Ionian Sea is part of the continental margin within the meaning of Article 76 of the 1982 Convention. But that area falls for delimitation as between Italy, Greece and Libya and by reference to different coasts. It is Libya's coast in the Gulf of Sirt that is prolonged northwards into this area — not the coast between Ras Ajdir and Ras Zarruq; and Italy's coast along the boot of Italy. But physically, in relation to Malta, Malta's shelf ends at the Escarpment.

Second, if that is so, it necessarily follows that the area east of the Escarpment cannot be part of the relevant area for the purposes of this delimitation between Malta and Libya: for Malta has no shelf to be delimited.

And thirdly, it follows, inescapably, that the trapezium cannot be accepted as a proper representation of the relevant area.

The Rift Zone

I turn now to the Rift Zone, and I want first to discuss it as a geological phenomenon. What we call it doesn't matter: Rift Zone, trough and ridge system, the Sicily Channel, the terminology is unimportant. What matters is its nature.

As a plate boundary

The first question is whether it is a plate, or microplate boundary as Libya contends: for if it is, Malta concedes that it would be the boundary between the Maltese and Libyan shelves.

Certainly the evidence is difficult to assess. Nor is this surprising, because not only is plate tectonics a rather new scientific theory, but its application to the Mediterranean began only in the 1970s with the first "think-pieces" by McKenzie, and by Dewey and his colleagues. Nevertheless, despite its novelty, plate tectonics is accepted by the scientific community as the best explanation of the changes in the earth's crust.

But how should the Court weigh evidence of the two Parties?

The Libyan evidence really depends on four elements.

First, the faulting in the Rift Zone is deep and active, penetrating right through to the basement, and that is so right through the Malta and Medina Channels, and no evidence to the contrary has been presented by Malta. If the Court will look at the map behind me (Map No. 78 in your folder, showing the faulting) it shows the intensity of the faulting in the area of the Rift Zone. It is no good Professor Morelli saying there are faults everywhere. The fact is that the really intensive and currently active faulting which has displaced the sea-bed is here in the Rift Zone. You will recall that Professor Morelli located the main fractures in the area of the three troughs (p. 271, *supra*). And it is quite apparent that any faulting in the area to the south, in the Jarrafa Trough or the Tripolitanian Valley, is not truly comparable. The southern faults are less intense, and virtually inactive, so that they now lie deeply buried under the sediments and they have little effect on the actual surface of the sea-bed.

Now, it does not really meet the Libyan argument for Mr. Lauterpacht to say that there is no breaking of the crust, but only a thinning. This is simply a reversion to the thesis that you cannot have a plate boundary until the crust has broken completely, to allow oceanic crust to develop between the separated continental crust. But that is only true of a rifting or "pull-apart" boundary of long standing.

It is not true of the compressional plate boundary, or the transform plate boundary, and, as I explained in the first phase, it is predominantly these latter two motions that are occurring here.

Second, the volcanics present along this Rift are still active and young. They lie near the surface, unlike the volcanics further south.

Third, the boundary goes right through the area, through the Malta and Medina Channels, and out to the Medina Mounts. The significance of what Professor Morelli called a "small volcano" (p. 281, *supra*), lies in the fact that it is additional evidence of the continuity of the rift. Professor Finetti's axial ridge line was designed to show the same continuity. Another important indication that the Rift Zone is continuous and cuts directly across the south of Malta was mentioned in paragraph 3.44 of the Libyan Memorial (I). This is the presence along the south coast of Malta of a major topographical feature with a relative vertical displacement of at least 240 metres — the Malak Fault. It is one of the most prominent features on the Island of Malta. It parallels the major troughs of the Rift Zone and is directly associated with them being, to quote the German

geologist Illies in his 1981 paper, the "outermost master fault of the rift system".

Fourth, the rotation of the Ibleo-Maltese complex, the area shown here, in relation to the main African Plate is really only explained if you postulate a plate boundary along the Rift Zone. That such a rotation has occurred is accepted on both sides — and is supported by other scientists — although Professor Mascle developed a quite new and unique theory in 1981 to explain this rotation in a different way.

Malta's rejection of this Libyan thesis depends on this new model, devised by Professor Mascle in 1981, and representing a change of mind on his part: moreover a model which has never appeared in any published literature in contrast to Libyan scientific studies. It involves giving equal importance to these more southerly features — the Jarrafa Trough and the Tripolitanian Furrow, despite the difference in age and activity. It involves locating the main transform faults in a roughly north-south direction, so as to produce a pole at right-angles, in the area of Pantelleria.

The Court, clearly, will have to weigh this opposing evidence. But at least the Court can look at a fault map such as the one behind me and ask itself two rather elementary questions. Do these southerly features really look as significant as the Rift Zone? And, if rotation is occurring, is the "fan" model really convincing to explain how the Ibleo-Maltese complex, and that includes part of Sicily, has rotated? Or is the idea of a movement along the Rift Zone more convincing?

As a division between two shelves

If we set aside the discussion of plate boundaries, we have not concluded the question, as Malta seems to think: for there remains an equally important question. Does the geomorphology and the bathymetry suggest a break, a discontinuity, between two shelves?

The Court will recall that a good deal of scientific support exists for characterizing the Rift Zone in this way, without relying at all on the formation of the plate boundary. When I cross-examined Professor Mascle I cited Blanpied, Bellaiche; Burollet, Mugniot and Sweeney; Akal; Beccaluva, Rossi and Serri; Vanney; and of course, I questioned Professor Morelli himself. For him the Tunisian Plateau ends in the graben area, the rift area (p. 272, *supra*). And in the Report he co-authored with Colombi in 1973 he said:

> "The continental crust between the southern coast of Sicily and Pantelleria can be seen as part of Africa just becoming split from this block as it is suggested by the Trough between Pantelleria and Linosa."

So what is this split, if it is not a discontinuity?

But quite apart from the scientific writings, the facts are really quite compelling. The three principal troughs, or grabens, are formidable features. In depth Pantelleria is 1,315 metres deep; Linosa is 1,615 metres; and the Malta Trough 1,714 metres. In length they are Pantelleria 52 miles, Linosa 41 miles, and Malta 87 miles; and in breadth they are Pantelleria 15 miles, Linosa 8 miles and Malta 11 miles.

(57) Malta suggests that these troughs are irrelevant, because they lie outside the relevant area. On the bathymetric map behind me now, No. 103 in the Court's folder, you will see a red line, representing a direct line from Gozo to Ras Ajdir. The Court will see that the Malta Trough extends considerably to the east of that line. The 1,000-metre isobath comes this far, the 800-metre isobath

comes this far, the 600-metre isobath this far and you have to go as far east as this point before you reach the 400-isobath. So we have to accept that the Malta Trough does lie between the two coasts and, in Libya's view, simply in bathymetric terms, it is a very marked discontinuity. Perhaps I may interject a word of caution about bathymetric maps. The basic, bathymetric map used by Malta is, in Libya's view, deceptive and should not be relied on. The bathymetric contours minimize the depths of the troughs. The IBCM map, on which Libya has based its own maps, is a more accurate map.

There has to be some consistency in the view one takes of what constitutes a "discontinuity". If the Escarpments are a discontinuity, how can it be said that the Malta Trough is not? Admittedly, the Sicily-Malta Escarpment plunges to depths of 3,000 to 3,600 metres; but the Medina Escarpment reaches depths of 1,000 to 1,200 metres, that is to say lesser depths than the 1,714 metres of the Malta Trough.

As one moves east, through the Medina Channel, the bathymetry is less impressive. But it still reaches depths of 650 metres — three times the original shelf depths of 200 metres — and just as deep as the Straits of Gibraltar. And the uplifted volcanic block in the middle of the Channel — Professor Morelli's "volcano" — has a gradient of 1:2.5. Nor should we forget the important oceanographic function of this Channel. It is the main passage westwards of the saline waters of the Eastern Mediterranean: a great under-water river, quite different from the surface movement of waters caused by winds and tide.

So there is every reason to suggest that, viewed as a geomorphological feature — and without any reference to a plate or microplate boundary — the Rift Zone is a very marked discontinuity. The degree of discontinuity between Malta and Libya is perhaps better appreciated in the light of the link between Malta and Sicily. The depth of the sill — the submarine ridge — connecting Malta and Sicily is only a little more than 100 metres. If you add to this the geological uniformity between Malta and Sicily you quickly understand the reason why the Ragusa-Malta Plateau is regarded as a unity, and why some of the scientific literature identifies this area, north of the Rift Zone, as a separate shelf.

So much for the physical facts, the relevant circumstances of geography, geology, and geomorphology. At present there remain two further categories of relevant circumstances: the conduct of the Parties, and delimitations with third States.

The Court adjourned from 11.15 to 11.35 a.m.

I wish to deal with the two last categories of relevant circumstances and I take first the conduct of the Parties.

THE CONDUCT OF THE PARTIES

As far as conduct is concerned, we can set aside the original argument of an estoppel or acquiescence by Libya in Malta's median line. The evidence never could support that assertion, and it has virtually disappeared from Malta's oral arguments.

The truth is that we get rather little help from conduct as a relevant circumstance. All one can say is that the no-drilling understanding seems to have focused on the area between the Libyan 1973 proposal and Malta's claimed median line. But neither Party has really drilled in the area. Perhaps the one point of real significance is that the Maltese concessions end at the Escarp-

ments. That is additional support for the view that the relevant area terminates at the Escarpments.

But the last category of relevant circumstances, delimitation with third States, has very real significance, and I now turn to this.

Delimitations with Third States

The Court's 1969 Judgment really made the point that States cannot delimit in a vacuum, ignoring the actual or prospective delimitations with, or between, third States. This eminently sensible admonition is fully reflected in State practice. If one looks at the delimitations in the North Sea, or in the Arabian-Persian Gulf, or in the Caribbean, the striking feature is that they form a pattern. It is clear, beyond any doubt, that States have to look to neighbouring States and their delimitations, and they have to agree on their own delimitation lines so as to make a coherent pattern. If that is not done, the result is inevitably to provoke further disputes with these other, third States.

The Court is fully aware of the problem, and has already given a rather clear indication of its approach. In its Judgment of 21 March 1984, on the Italian request for intervention, the Court emphasized that the fact of the existence of third States, with claims in the region, could not be ignored (para. 43). Indeed, some guidance was given on the approaches the Court might take in the separate opinions. Depending on the area, it might declare itself incompetent entirely; or it might rely on the purely relative effect of its Judgment under Article 59 so as to determine the rights of the Parties *inter se*, but not *erga omnes*; or it might decide which of the two Parties would, in the particular area, have the better title in the sense that it would fall to that Party to negotiate with Italy in that area.

So what is important is to identify the areas of potential third State claims and, in relation to each area, decide upon the appropriate course to take.

In the present case, if we start in the west we are faced with the fact of the 1971 Tunisian/Italian delimitation line. But Point 32, the terminal point of the 1971 Italy/Tunisia delimitation, is not sacrosanct. It does not bind either Libya or Malta. Nevertheless, it represents a statement by Tunisia and Italy of the areas within which they claim shelf rights, so it cannot be simply ignored, as the Maltese equidistance claim would have us do. It is important to recall that Malta's equidistance claim works havoc with this 1971 Italian/Tunisian line: that point emerged quite clearly from the map shown to the Court when Malta tried to intervene in the *Tunisia/Libya* case. For the Agent of Malta to say, blandly, that it is *res inter alios acta* is scarcely to address the problem. The problem cannot be dismissed so lightly by the Court. In Libya's view the 1971 delimitation is a part of the relevant facts. We do not say that it cannot be subject to some adjustment, but only that it cannot be overturned or ignored, as Malta suggests. Obviously, some adjustment is legally possible, just as the United Kingdom's median line boundary with the Netherlands and with Denmark had to be adjusted following the 1969 Judgment and the ensuing agreements. But to adjust the line is very different from ignoring it.

Similarly, the continuation of the Court's 52° line — the second sector of the 1982 *Tunisia/Libya* Judgment — cannot be ignored. And what is of interest is that the two are located in quite close proximity, in this area here. So this area is significant for two reasons. It broadly represents the limit of Tunisian interests, vis-à-vis both Italy and Libya. Secondly, we must assume that Italy claims shelf to the north-east of this sector of the line. Otherwise Italy would not be concerned to have a line of delimitation with Tunisia reaching as far as Point 32.

The other point of reference is Point 16, the southerly terminal point of the Italy/Greece delimitation. That, too, is not sacrosanct but, so far as I am aware, it has not been protested and any "pattern" of delimitation lines will have to take it into account. Mr. Mizzi suggests that it is irrelevant, because the Maltese equidistance line does not reach Point 16. At present, that is true. But what is to stop Malta from attempting to construct a trapezium against the Greek coast, if she succeeds with it against Libya? The Italy/Greece delimitation would then be subject to challenge by Malta. Of course, if we confine this delimitation to its proper, relevant area, stopping at the Escarpment, there will be no problem. For a line following the Rift Zone can perfectly well be continued, whether as a straight line or as a more complex line, out to meet Point 16 pursuant to a subsequently negotiated agreement between Italy and Libya.

I think, Mr. President, that at this point I can move directly to the question of method. What method, or methods, will fully reflect all these relevant circumstances, and produce an equitable result?

THE METHOD OR METHODS APPROPRIATE TO PRODUCE AN EQUITABLE RESULT

I need say no more about Malta's equidistance method. I hope that, by now, the Court is satisfied that this cannot produce an equitable result.

But within the very last half-hour of Malta's oral presentation we were provided with a quite novel idea by the Agent of Malta. As represented on the Maltese Map 43, the idea was that one might envisage a half-effect line, midway between a Malta-Libya median line and an Italy-Libya median line. Doubtless Malta's counsel, who have soundly criticized Libya for not disclosing its case in the written pleadings, were as surprised as we were.

But I make no complaint of the tardiness of the development of this idea. My concern is with its quite extraordinary irrationality. Malta's Map 43 postulates a median line between Italy and Libya. That is the whole basis of the proposal: without that, the proposal lacks any basis. But how can such a median line be postulated? Let us examine the components of this extraordinary idea.

First, we are to assume Malta is not there. But, Mr. President, the Court enjoins us to take the facts as they are, and not to attempt to re-fashion geography in the name of equity.

Second, we are to assume Italy is making a median line claim south of Malta. In other words, in the one area, directly south of Malta, in which Italy has expressly stated that it has no claims, we are now asked to assume a median line claim.

Any why should we suppose Italy might make such a claim? Mr. Mizzi, the Agent for Malta, appears to suggest two reasons. The first is that treating Libya and Italy as opposite coasts, and, in Mr. Mizzi's words, assuming Italy has coasts "not only comparable in length to those of Libya but even longer" (p. 402, *supra*), the median line would be the correct Italian/Libyan boundary. I have two observations on that reason. I find it quite extraordinary that a Party which has throughout these hearings protested that coastal lengths are irrelevant should now, at the very last minute, advance a fictitious median line claim on behalf of Italy based on the parity or the equality of coastal lengths. What an extraordinary admission! My second observation is that Mr. Mizzi's geography is wrong. Let me ask the Court to take a long hard look at Italy's coasts. Of course Italy has long coasts. But how much of the Italian coast actually abuts on the area of concern? The answer is only a relatively short length of coast in the southerly-facing part of Sicily. For most of the Sicilian coast faces west

towards Tunisia, and has already had its shelf delimited in 1971. And the Italian mainland, the boot of Italy, is in no sense adjacent to this particular area south of Malta.

So this Court could scarcely assume that the correct imaginary boundary between Italy and Libya would be any preconceived line. I would again refer the Court to the views of counsel for Italy that I quoted during the first round, and I must disagree with my friend Professor Weil. Those views purported to be a statement of the general law, and were not confined to the specific case of an Italian/Malta delimitation (p. 382, *supra*). Italy does not slavishly adhere to equidistance, but takes account of all relevant factors, including differences in coastal lengths and geology and geomorphology. Moreover Italy has not made any such claim.

Mr. Mizzi's second reason, as I understand it, is that if Malta were an island dependency of Italy, like the Kerkennahs, Malta would be entitled to half-effect. It is curious that Mr. Mizzi seeks an analogy with the Kerkennahs. One would have thought that if Malta were an island dependency of Italy, it would be treated like Linosa or Lampedusa, and thus semi-enclaved with a shelf of no more than 12 or 13 miles radius. But why this fiction of a dependent Malta? I had hitherto assumed that Malta's sovereign independent statehood was the core of its argument, but apparently not. In any event, the half-effect technique presupposes that, initially, you start with the median line. But, as I have just shown, there is no possible basis for assuming that a median line would be the correct, albeit fictitious, Italian/Libyan boundary. So, this reason fails also.

Perhaps I can now leave this strange world of make-believe and return to the actual situation we are faced with. How should we approach the selection of a method?

In the first round I suggested several components of a method, and, as the Court will recall, this was in response to Malta's challenge that a zone could not produce a line. These were the axial ridge line, the idea of an equal division of the Rift Zone, regarding the zone as an area of overlapping claims, and the use of the lines of greatest depth throughout the zone, by analogy with the thalweg concept. I will not repeat the explanations already on the record: they remain as perfectly valid components of a method, whether one accepts the Rift Zone as a division between two shelves or natural prolongations, or simply as a relevant circumstance which should influence the course of the boundary.

I also showed a possible method which depended not on the Rift Zone but on geography. This, as the Court will recall, involved a line of two sections. The first paralleled the Maltese coast, but at the line of longitude at which there was no more Maltese coast to parallel, the line went due east. The location of this two-sector line could be moved either nearer to Malta, or further away from Malta, to respect the proportionality test and any other relevant circumstances.

Malta found the fact that such a line coincided with the Rift Zone to be worthy of comment. Mr. President, the exercise does not require the Rift Zone. It may be helpful to the Court to go through this exercise rather carefully, on a map which does not show the Rift Zone, so as to make this point. I also wish to demonstrate that the Court's judgment must probably distinguish between different sections of the line, because of third-State interests or claims.

Let us begin in the west on the map behind me.

In this area we have a rather complex situation, for Point 32 and the continuation of the Court's 52° Tunisia/Libya line do not converge; they do not converge exactly. Still, we are entitled to assume that Tunisia has no claims east of Point 32. And if we sketch in a median line between Malta and Linosa, like that, we have a reasonable idea of the kind of claims Italy has made and

which Malta, with its insistence on the virtues of equidistance between islands, may have to concede. But, clearly, that is speculation. If, however, we confine the Malta-Libya line within the relevant area, then such a line will scarcely impede or impinge upon that future Italy/Malta delimitation. However, given that the final adjustment of the terminal points of these three delimitations — Tunisia/Libya, Italy/Malta and Malta/Libya — will certainly require negotiation, it may well be that the method or line to be indicated by the Court in this area has to be of a provisional character. By that I mean that, in the area, say, west of 14° longitude, the Court may wish to indicate the direction, but not the terminal point, and may have to invoke Article 59 specifically so as to reassure third States that, in that extreme westerly sector, the Court's judgment is without prejudice to their claims or rights.

However, between the area west of 14° longitude and 15° 10′ longitude, the limit of the Italian claims, there is no problem. Italy has made no claims, Tunisia can have no claims, and the Court can confidently give indications to the two Parties with binding and final effect.

Between 15° 10′ longitude and the edge of the Sicily-Malta Escarpment there are, again, Italian claims. So the provisional, or non-prejudicial, effect of the Court's judgment would have to be stressed. Again, therefore, we would have a pecked line rather than a solid line. The advantage of a line, however provisional, would be that Italy would then know against which Party, Malta or Libya, it should pursue its claims, and in relation to which area. We should avoid the complexities of tripartite negotiations or adjudication.

East of the Escarpments is an entirely different matter. In Libya's view this area is simply not the relevant area — for reasons I have already fully developed. The consequence is that beyond the Escarpments, in Libya's submission, the Court may have to consider whether it has competence to adjudicate under a *compromis* between Malta and Libya. It would not be sufficient to rely on the safeguards of Article 59: the bar goes to competence rather than prejudice to Italian claims.

Thus, in Libya's view, we have a basis for identifying the methodology of producing a line. And we have made the necessary distinctions as to the effect of the Court's judgment on the different sections of the line.

What remains, ultimately, is to determine its exact shape and location. Is it to be nearer, or further, from Malta? Do we move it further north, or further south?

The Criteria for the Location of Any Line

It would be unrealistic to expect the location of the line to be governed by one single factor. The situation is one of some complexity, and a number of factors appear entitled to some weight.

But perhaps the correct starting point is the coasts of the Parties. The two coasts stand in a ratio to each other of between 6:1 and 12:1. If you were to represent the different weight of each coast by a difference in their seaward reach, then you might envisage an area of overlapping claims between a 6:1 line and a 12:1 line. In fact the area so produced would be largely within the area of overlapping claims, between the Libyan 1973 proposal and Malta's equidistance claim. But an 8:1 ratio is more realistic as a truer approximation to the actual ratio of coasts. And we are entitled to deal in approximations, because our aim is not mathematical precision but rather an equitable result. The 8:1 ratio would also divide the area of overlapping prolongations.

So, using an 8:1 ratio, we could take the line of shortest distance between

Malta and Libya, that is from Ras Tajura, here, to the Maltese coast behind Filfla, that line, and divide that line in an 8:1 ratio. That will give us the provisional starting point for our line. The use of coastal lengths, and the ratio between them, to locate a line is not a novelty. It was this method that the Court's Chamber used in the *Gulf of Maine* case, in relation to the second sector. It depends on coastal lengths, not areas of shelf. It represents the relativity of coasts rather than proportionality of areas of shelf to coasts.

So we must now extend the line westwards from this point. But, in so doing, it is necessary to respect the coastal configuration of Malta. So, consistently with Libyan Submissions 2 and 9, the line can be drawn parallel to Malta's coast until we reach a point on the longitude. Because of the need to reconcile the terminal point of this line with the resolution of the other delimitations in this area, the delimitations I referred to earlier, the final section should be represented by a pecked line. If it were felt necessary also to reflect the configuration of the Libyan coast, the angle of the first sector of the line could be adjusted so as to lie half way between the angle of the Maltese coast and the angle of the Libyan coast. The initial sectoral line would, in its direction, also correspond to the general direction of the Rift Zone and also of the bathymetry of the Malta Trough. This coincidence is not surprising, since the formation of Malta's coastline and of the Rift Zone were part of the same process.

Now reverting to the mid-point, we must complete the easterly section of the line.

Initially, we can continue the line reflecting the direction of the Maltese coast until we reach the point which intersects with the line of longitude drawn from Malta's most easterly point. Here the angle of the line should change. Because we now pass the easterly longitude of Malta's coast, and so have no coast to reflect, the line can be drawn due east, out to the line of the Escarpments. In point of fact, such a line would cut a straight line drawn from Delimara Point to Ras Zarruq almost exactly on the same 1:8 dividing point, so it would continue to respect the difference in coastal lengths even at that point. I suppose that, if it were felt necessary to reflect Malta's east-facing coast, some veering of this sector might be possible, but that east-facing coast is only 5.4 kilometres long. In the east beyond the 15° 10′ longitude, we of course have a pecked line, a line subject to the interests of the third States, as opposed to the solid line in the centre.

However, that location should be regarded as provisional. Whether it would produce an equitable result must depend upon a number of other factors which are entitled to some weight.

There is, first, the Rift Zone. Whether accepted as a division between two shelves, or as a relevant circumstance, it can scarcely be ignored. Consistently with Libya Submissions 4 and 9, therefore, the location of the line should remain within the Rift Zone.

Second, the location must be such as to permit a rational solution to the future problem of tying-in this delimitation line with the delimitation with, and between, third States to the west and to the east.

Third, as I explained earlier, with an area converging towards the top — and this is inevitable with a short coast facing a long coast — the prolongations of the different sections of the longer coast encroach upon one another, with the degree of encroachment being accentuated towards the apex of the triangle. In broad terms, one has to offset the degree of encroachment to which the prolongation of the Libyan coasts are subject by moving the line closer to Malta than to Libya.

Fourth, the no-drilling understanding located the area of controversy as lying

between Malta's equidistance claim and Libya's 1973 proposal, so a line of delimitation may be expected to reflect that.

Fifth, and last, consistently with Libyan Submissions 5, 6 and 9, any line should meet the broad test of proportionality. I repeat the word "test". Libya does not use proportionality as a primary criterion or method of delimitation as Malta alleges. Indeed, it is only at this very last stage, when we come to test the equity of the result, that I mention the ratio of areas of shelf to coastal lengths. But now is the time to look at the areas of shelf which any given line would allocate to each Party within the relevant area. If we maintain a line of that shape and direction, then its placement would have to be where it is now shown on the map behind me, by the red line, slightly to the south of the first (58) line — you have both lines shown at No. 104 in your folders — and the red line would give an 8:1 ratio of areas. The actual areal figures would be Libya 96,637 square kilometres, Malta 12,080 square kilometres.

I would emphasize that I do not propose either line, on behalf of Libya. The terms of the *compromis* do not require the Parties to propose a specific line. The exercise I have just gone through is designed to illustrate a possible method which, in Libya's view, would be likely to produce an equitable result. But Libya does maintain its Submission 9. Whatever the shape or location of the line, in Libya's submission the line must lie within, and follow, the Rift Zone.

Mr. President, that brings me to the end of my statement. I am fully conscious of the extent to which I have taxed the patience of the Court. For that reason, my expression of gratitude to the Court for its courtesy and patience is all the more sincere.

REJOINDER OF SIR FRANCIS VALLAT

COUNSEL FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Sir Francis VALLAT: Mr. President, distinguished Judges: May I assure you that I only intend to take very few minutes of the precious time of the Court. All I have to do is now to tie the ribbon on the top of the puzzle, or with this beautiful model in front of me to put the icing on the cake.

We have come to the end of a long but most unusual and fascinating case, one that is sure to be a milestone — or perhaps I should say a guiding light — in the evolution of the law of continental shelf delimitation. I shall not now attempt to make a summary of Libya's case — that would be tiresome and superfluous. I merely wish to touch on some of the salient points.

With the demonstration by Professor Bowett of the inequity of the application of the equidistance method in this case, beyond a shadow of doubt, and the clarification of Libya's position which is both strong and flexible, he has brought the presentation of Libya's case to a climax and a conclusion.

The vital flaw in Malta's case, as has been shown for example by Professor Quéneudec, is reliance on distance and equal radial projection as a governing factor in delimitation. That position of Malta is based on Article 76 of the 1982 Convention. In the light of what Professor Weil has said in this second round, it seems to be unnecessary to explore further the question of the effect of the 1982 Convention on customary international law. Even if one were to adopt the Maltese view on this point, it would not transform the Article 76 definition of the outer limits of the continental shelf into a governing criterion for the delimitation of continental shelf areas between States with opposite or adjacent coasts.

This is so clear that there is no need to repeat arguments based on paragraph 10 of Article 76 and the terms of Article 83, which do concern delimitation. It is axiomatic that customary international law governs in this case, and I believe that it is common ground between the Parties that the jurisprudence of this Court is the best guide for the purpose of identifying the relevant principles and rules of international law. This position is maintained by Article 83 of the 1982 Convention.

Mr. President, in his final speech on 13 February, the Agent for Malta summarized in three short paragraphs what he regarded as the main facts and the propositions flowing from them (pp. 392, *supra*).

In the first of these paragraphs, he reaffirmed the Maltese position that there is no physical discontinuity in the region which could affect the delimitation, and maintained "the physical features of the sea-bed are irrelevant both to entitlement and delimitations". Libya strongly contests the proposition that there is no physical discontinuity. With the evidence presented and the explanations of Professor Bowett so freshly in mind, I need add nothing on that aspect of the case. But, as a matter of law, Libya cannot accept the proposition that the features of the sea-bed are irrelevant both to entitlement and to delimitation.

The second proposition on which Malta rests is the alleged "perfect normality" of the geographical setting. Surely, no more needs to be said to reveal how wide of the mark such a description is in the particular circumstances of the present case. The distinctive features present here are not reproduced in any of the examples of State practice to which Malta has referred.

State practice, however, gives us no more help in a case of this kind than it

dit in 1969. All the elaborate examination of agreements cannot, and does not, establish that equidistance as a method has any priority or is *prima facie* equitable.

As is well established in the jurisprudence, each case has to be decided on the basis of its own particular facts. Why? Because facts differ. Here, the facts are quite unique.

The particular circumstances of this case to be taken into account are not merely the fact of "some distance", that is, about 180 nautical miles between Malta and Libya, but also the fact that Malta is a small island with very short coasts, combined with the fact that being an island only a small part of the short coast faces Libya directly. It does not require a complicated situation for equidistance to lead to an inequitable result. For example, in the *North Sea Continental Shelf* cases, the concavity of the coast, coupled with the fact of approximately equal coastal lengths, resulted in an equidistance line producing an inequitable result. Here the factors that I have indicated, as has been so clearly shown by counsel who have preceded me, would lead to an inequitable result were an equidistance solution to prevail. Thus, Libya cannot agree with Dr. Mizzi's third summary paragraph.

This is not surprising. A case which is essentially based on distance from a few control points cannot possibly take proper account of the important factor of the difference in the coastline of the Parties. This weakness of the Maltese case is hidden in the rhetorical questions, in the third paragraph of Dr. Mizzi's summary, which like a refrain concludes with the answer "inevitably a median line" (p. 392 *supra*).

The most significant question in Dr. Mizzi's third paragraph is the second one which, with your permission, Mr. President, I will read:

> "What line gives due weight to all the relevant circumstances, to the geographical setting, including the differences in length of the two coastlines, to the conduct of the Parties, to economic considerations and security requirements?" *(Ibid.)*

There are two remarkable features about this question. It does not indicate, as is so clear from the whole of the Maltese case, that Malta relies not on coastal lengths but on basepoints and distance. The second remarkable feature is that "economic considerations and security requirements" are lumped together with the other considerations as if they stood on the same footing as relevant circumstances, which it is absolutely clear, in accordance with international law on continental shelf delimitation, is not correct. The statement of the Agent of Libya in this regard and of Professor Lucchini in the first round, together with Libya's extensive treatment of this subject in its Counter-Memorial, relieves me of the need to dwell further on the subject.

Similarly, the Agent of Libya and the written and oral pleadings have adequately dealt with the matter of security, which has no bearing in the present delimitation.

Mr. President and Members of the Court, in conclusion I would like to say a few words about the submissions of Malta.

Malta has only two submissions. The first submission pays lip-service to the need "to achieve an equitable solution", but does not even mention equitable principles. It is circular, in that it asks the Court to declare simply that the principles and rules of international law require that the delimitation shall be effected on the basis of international law.

The second submission is a plain request for the Court to approve Malta's equidistance line.

The submissions of Libya require no comment from me. As the Agent of Libya reads them, I think you will find that they are old friends, easily indentifiable and justified in Libya's written and oral pleadings.

Thank you, Mr. President, I am most grateful for this final opportunity to address the Court by way of putting the bow on the parcel.

STATEMENT BY MR. EL-MURTADI SULEIMAN

AGENT FOR THE GOVERNMENT OF THE LIBYAN ARAB JAMAHIRIYA

Mr. EL-MURTADI SULEIMAN: Mr. President and Members of the Court: Having reached the end of our statement in the second round, and as prescribed by Article 60, paragraph 2, of the Rules of Court, I now turn to the reading of Libya's final submissions.

I shall dispense with the preambular paragraphs and proceed directly to the submissions:

May it please the Court, rejecting all contrary claims and submissions, to adjudge and declare as follows:

1. The delimitation is to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances in order to achieve an equitable result.

2. The natural prolongation of the respective land territories of the Parties into and under the sea is the basis of title to the areas of continental shelf which appertain to each of them.

3. The delimitation should be accomplished in such a way as to leave as much as possible to each Party all areas of continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the other.

4. A criterion for delimitation of continental shelf areas in the present case can be derived from the principle of natural prolongation because there exists a fundamental discontinuity in the sea-bed and subsoil which divides the areas of continental shelf into two distinct natural prolongations extending from the land territories of the respective Parties.

5. Equitable principles do not require that a State possessing a restricted coastline be treated as if it possessed an extensive coastline.

6. In the particular geographical situation of this case, the application of equitable principles requires that the delimitation should take account of the significant difference in lengths of the respective coastlines which face the area in which the delimitation is to be effected.

7. The delimitation in this case should reflect 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 respective States and the lengths of the relevant parts of their coasts, account being taken of any other delimitation between States in the same region.

8. Application of the equidistance method is not obligatory, and its application in the particular circumstances of this case would not lead to an equitable result.

9. The principles and rules of international law can in practice be applied by the Parties so as to achieve an equitable result, taking account of the physical factors and all the other relevant circumstances of this case, by agreement on a delimitation within, and following the general direction of, the Rift Zone as defined in the Libyan Memorial.

Mr. President, I should point out that the submissions of Libya, which I have

just read, remain unchanged from those initially set forth in the Libyan Memorial. In accordance with Article 60, paragraph 2, of the Rules of Court, a signed copy of the written text of these submissions has been communicated to the Court together with a copy for transmission to the Agent of Malta.

May I now take this opportunity to thank you, Mr. President, and Members of this honourable Court for the patience and courteous attention which you have shown in listening to Libya's case. I should like also to thank the Registry for its assistance in all the difficult matters — both large and small — that arise in the course of a case such as this. To the Agent of Malta and his counsel and staff, I should like to say that we have appreciated the cordiality that has marked our personal relationships during these many weeks. Finally, I should like to thank my own counsel and staff for their hard work and able assistance in putting Libya's case before the Court.

Mr. President, Members of the Court: we leave here today confident that the Court will point the way to an equitable result.

CLOSING OF THE ORAL PROCEEDINGS

The PRESIDENT: I thank the Agents and counsel for both Parties for the assistance they have given the Court and I request the Agents to remain at the disposal of the Court for any further information it may require. With that reservation, I declare closed the oral proceedings in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*. The date on which the Court's Judgment will be delivered will be communicated in due course.

The Court rose at 12.30 p.m.

THIRTY-FOURTH PUBLIC SITTING (3 VI 85, 10 a.m.)

Present: [See sitting of 22 II 85, Judges Mbaye and Bedjaoui and Judge *ad hoc* Jiménez de Aréchaga absent.]

READING OF THE JUDGMENT

The PRESIDENT: The sitting is open.

The Court meets today in order to read in open Court, in accordance with Article 58 of the Statute of the Court, its Judgment in the case concerning the *Continental Shelf*, between the Socialist People's Libyan Arab Jamahiriya and the Republic of Malta. The Court accordingly sits in its composition for that case, without the participation of Judges Ni and Evensen, whose terms of office began on 6 February last, after the oral proceedings in the case had begun. On the other hand, two Members of the Court (Judges Mosler and El-Khani) whose terms of office expired under Article 13, paragraph 1, of the Statute of the Court on 5 February 1985 have continued to participate in the present proceedings in accordance with paragraph 3 of Article 13. On 14 February 1985, the Court elected Judge Nagendra Singh as President of the Court and Judge de Lacharrière as Vice-President of the Court; in accordance with Article 32, paragraph 2, of the Rules of Court, the Court as composed for the present proceedings has continued to sit under my presidency.

Judges Mbaye and Bedjaoui and Judge *ad hoc* Jiménez de Aréchaga are unable to be present at today's sitting, but participated fully in the Court's work and in the voting on the Judgment.

As is customary, I shall not read the opening paragraphs of the Judgment, giving the procedural history of the case. There follows a general description of the geographical context of the dispute before the Court, which I shall also omit. The Judgment then continues as follows:

[The President reads paragraphs 18 to 79 of the Judgment [1].]

I shall now ask the Registrar to read the operative clause of the Judgment in French.

[Le Greffier lit le dispositif en français [2].]

Judge El-Khani appends a declaration to the Judgment. Vice-President Sette-Camara appends a separate opinion, Judges Ruda and Bedjaoui and Judge *ad hoc* Jiménez de Aréchaga a joint separate opinion, and Judge Mbaye and Judge *ad hoc* Valticos separate opinions, to the Judgment. Judges Mosler, Oda and Schwebel append dissenting opinions to the Judgment.

(Signed) T. O. ELIAS,
President.

(Signed) Santiago TORRES BERNÁRDEZ,
Registrar.

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[1] *I.C.J. Reports 1985*, pp. 22-58.
[2] *C.I.J. Recueil 1985*, p. 56-58.