

**MEMORIAL OF MALTA**

**MÉMOIRE DE MALTE**

## VOLUME I

## INTRODUCTION

1. This is the Memorial of the Government of the Republic of Malta (hereinafter called Malta) filed pursuant to the Order of the Court made on 27 July 1982.

2. The present proceedings are being conducted on the basis of the Special Agreement concluded between Malta and the Socialist People's Libyan Arab Jamahiriya (hereinafter called Libya) concluded on 23 May 1976. Ratifications were exchanged on 20 March 1982 and the Agreement was notified to the Court jointly by the Parties on 26 July 1982 by a letter dated 19 July 1982.

3. The English text of the Special Agreement is as follows:—

“The Government of the Republic of Malta and the Government of the Libyan Arab Republic agree to recourse to the International Court of Justice as follows:

*Article I*

The Court is requested to decide the following question :

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

*Article II*

- (1) The proceedings shall consist of written pleadings and oral hearings.
- (2) Without prejudice to any question of the burden of proof, the written pleadings shall consist of the following documents:
  - (a) Memorials to be submitted simultaneously to the Court by each Party and exchanged with one another within a period of nine months from the date of the notification of this Agreement to the Registrar of the Court.
  - (b) Replies to be similarly submitted to the Court by each Party and exchanged with one another within four months

after the date of the submissions of the Memorials to the Registrar.

- (c) Additional written pleadings may be presented and exchanged in the same manner within periods which shall be fixed by the Court at the request of one of the Parties, or if the Court so decides after consultation with the two Parties.
- (3) The question of the order of speaking at the oral hearing shall be decided by mutual agreement between the parties but in all cases the order of speaking adopted shall be without prejudice to any question of the burden of proof.

### *Article III*

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

### *Article IV*

This Agreement shall enter into force on the date of exchange of instruments of ratification by the two Governments, and shall be notified jointly to the Registrar of the Court.

Done in two originals at Valletta, Malta this 23rd day of May, 1976 corresponding to 24th 1396 H in the English and Arabic languages both texts being equally authentic."

### **IMPORTANCE TO MALTA OF THE PRESENT CASE**

4. At the very outset, it is right that Malta should emphasize the particular importance which this case has for her. Though some of the details will be repeated later within the framework of the systematic exposition of the geographical, economic and geological circumstances of the Parties, it must be stated without delay that the present case is really about access to resources. For Malta, such access is vital. Within her limited territory (less than 320 sq. kms.), supporting a population of 320,000 persons, there are no natural resources whatever. Surveys and explorations indicated that there is no prospect of finding such resources onshore. Accordingly, it is to the sea that Malta must turn. And in terms of significant economic support, it is with the mineral resources of the continental shelf that Malta must be concerned. The investigations so far carried out suggest that the most promising areas for the discovery and production of oil lie in or near the regions of Malta's southern equidistance line. Although there are also other cogent reasons, this is the fundamental reality which underlies Malta's opposition to Libya's assertion of rights north of that equidistance line.

5. This aspect of the matter might be less striking if Libya were a State in the same economic position as Malta. But this is evidently not so. It may be helpful to bear in mind in this connection (to take but one relevant economic indicator) that in 1980 the revenue of Libya from oil production was some US\$ 23 billion.

6. The members of the United Nations have given frequent and explicit recognition to the status of Malta as an "island developing country". The concept has a specific content which has been repeatedly and unanimously recognised in resolutions of the UN General Assembly and of the United Nations Conference on Trade and Development. The concept stands for acknowledgment by the international community that there exists a substantial group of island States whose condition of economic development is such that, at the very least, nothing must be done which would contribute to worsening it.

PART I  
THE TASK OF THE COURT

## THE TASK OF THE COURT

7. Article I of the Special Agreement requests the Court

“to decide the following question:

[i]<sup>1</sup> What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and [ii]<sup>1</sup> how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III”.

8. Article III provides that following the final decision of the Court the Parties.

“shall enter into negotiations for determining the area of their respective continental shelves and for concluding an agreement for that purpose in accordance with the decision of the Court”.

9. It will at the outset be necessary for the Court to determine in the light of these provisions what task the Parties have asked it to perform; and it is to this matter that Malta will direct its first submissions.

10. The Court has recently, in the *Continental Shelf (Tunisia-Libyan Arab Jamahiriya)* case<sup>2</sup>, had occasion to interpret and apply a special agreement similar to the Special Agreement in the present case. It is true that the Special Agreement in the *Tunisia-Libya* case was concluded on 10 June 1977, that is, just over a year after the Special Agreement in this case. Accordingly, there can be no suggestion that the draftsmen of the Special Agreement in the present case could in any way have had in mind the Special Agreement in the *Tunisia-Libya* case. But the fact that the Court has now interpreted a number of closely similar provisions in the *Tunisia-Libya* Special Agreement means that special attention must be given to that interpretation in the present case.

11. Article I of the *Tunisia-Libya* Special Agreement, in the translation used by the Court<sup>3</sup>, requested the Court to state:

“What principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to the Socialist People’s Libyan Arab Jamahiriya and [of]<sup>4</sup> the area of

1. The numbers in square brackets have been inserted for ease of reference later.

2. *I.C.J. Reports 1982*, p. 18 (hereinafter called “the *Tunisia-Libya* case” or “the *Tunisia-Libya* judgment”, as circumstances may require).

3. *Ibid.*, p. 37, para. 22.

4. The English text of the Agreement as printed in *I.C.J. Reports 1982*, at p. 23 here uses the word “to” – which seems likely to be a misprint (cf. the French text, “de”).

the continental shelf appertaining to the Republic of Tunisia, and the Court shall take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea.

“Also, the Court is further requested to clarify the practical method for the application of these principles and rules in this specific situation, so as to enable the experts of the two countries to delimit these areas without any difficulties.”

12. In addition, Article 2 provided that:

“Following the delivery of the Judgment of the Court, the two Parties shall meet to apply these principles and rules in order to determine the line of delimitation of the area of the continental shelf appertaining to each of the two countries, with a view to the conclusion of a treaty in this respect.”

13. Point [i]<sup>1</sup> of Article I of the *Libya-Malta* Special Agreement can thus be seen to be almost the same as the first paragraph of Article I of the *Tunisia-Libya* Special Agreement with the exception that the latter agreement contains an additional element, namely, the request to the Court that it take its decision

“according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea”.

14. It is appropriate therefore to note the manner in which the Court in the *Tunisia-Libya* judgment interpreted the first paragraph of Article I. On this topic the Court said<sup>2</sup>:

“The Court is specifically called upon, in rendering its decision, to take account of the following three factors, expressly mentioned in the Special Agreement: (a) equitable principles; (b) the relevant circumstances which characterize the area; and (c) the new accepted trends in the Third United Nations Conference on the Law of the Sea. While the Court is, of course, bound to have regard to all the legal sources specified in Article 38, paragraph 1, of the Statute of the Court in determining the relevant principles and rules applicable to the delimitation, it is also bound, in accordance with paragraph 1 (a) of that Article, to apply the provisions of the Special Agreement. Two of the three factors referred to are, however, in complete harmony with the jurisprudence of the Court, as appears from its Judgment in the *North Sea Continental Shelf* cases in which it held that international law required delimitation to be effected ‘in accordance

1. See above, para. 7.

2. *I.C.J. Reports 1982*, p. 37, para. 23.

with equitable principles, and taking account of all the relevant circumstances' (*I.C.J. Reports 1969*, p. 53, para. 101 (c) (1)) – With regard to the third, the 'new accepted trends' the Court would recall what it had to say on the subject of the work of the Third United Nations Conference on the Law of the Sea in the *Fisheries Jurisdiction* cases (*I.C.J. Reports 1974*, p. 23, para. 53, and p. 192, para. 45)<sup>1</sup>. It must however note that the law making process in this respect has now progressed much further."

With regard to the third factor, the Court further observed that<sup>2</sup>

"... it does not appear that it was their (the Parties') intention to go so far as to impose additional or supplementary rules on themselves in this way in the context of this case".

15. From the passages just cited, Malta derives the following conclusions:

- (1) The requirement of recourse to "principles and rules of international law" applicable to the delimitation of the continental shelf in the *Tunisia-Libya* Special Agreement was construed by the Court as a reference to the Court's own decision in the *North Sea Continental Shelf* cases to the effect that international law required delimitation to be effected in accordance with equitable principles and taking account of all the relevant circumstances. This conclusion is confirmed by the later statement of the Court in the *Tunisia-Libya* case<sup>3</sup>:

"The Court has thus examined the question of equitable principles which, besides being mentioned in the Special Agreement as the first of the three factors to be taken into account, are, as the Court has emphasized, of primordial importance in the delimitation of the continental shelf".

- (2) The same interpretation should be attached to point [i] in Article I of the *Libya-Malta* Special Agreement.

16. In general, though subject to some significant qualification, the law applied in the *Tunisia-Libya* case is applicable in the present case. The reference in the *Tunisia-Libya* Special Agreement to the three additional factors does not really set that Agreement apart because, as indicated above, the Court considered that the first two factors are in any event part of the relevant international law and the third (the reference to "new trends") was not interpreted by the Parties as requiring the Court to

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1. These paragraphs concluded with the statement: "In the circumstances, the Court, as a court of law, cannot render judgment *sub specie legis ferendae*, or anticipate the law before the legislator has laid it down".

2. *I.C.J. Reports 1982*, p. 38, para. 24.

3. *Ibid.*, p. 60, para. 72.



apply any rules or concepts that were not already part of international law.

17. Malta will presently examine in more detail the meaning of "equitable principles" and of "relevant circumstances" as they are to be applied to the present case.

18. The other respect in which the interpretation and application by the Court of the *Tunisia-Libya Special Agreement* has a direct bearing on the *Libya-Malta Special Agreement* is that of the practical application of the principles and rules which the Court identifies as applicable to the substantive problem. As set out more fully in paragraph 11 above, the *Tunisia-Libya Special Agreement* requested the Court "to clarify the practical method for the application of principles and rules in this specific situation", while the *Libya-Malta Special Agreement* requests the Court to decide "how in practice such principles and rules can be applied by the two Parties in this particular case". In both Agreements the purpose of this clarification or decision is also expressed in almost parallel language: "so as to enable the experts of the two countries to delimit these areas without any difficulties" (*Tunisia-Libya*) and "in order that they [the Parties] may without difficulty delimit such areas by an agreement as provided in Article III" (*Libya-Malta*).

19. As to this aspect of the *Tunisia-Libya* case, the Court, after noting some difference of view between the Parties, said:<sup>1</sup>

"The Court, therefore, considers the whole controversy as of minor importance, since it has in any case to be precise as to what it decides, and cannot agree with the repeated reference of Libya to 'guidance' as defining the requirement of what the Court should specify".

20. With reference to the provision in Article 2 of the *Tunisia-Libya Special Agreement*, of which the corresponding part of the *Libya-Malta Special Agreement* is Article III, the Court said:<sup>2</sup>

"The Court's view is that, at that stage, there will be no need for negotiation between experts of the Parties regarding the factors to be taken into account in their calculations, since the Court will have determined that matter. The only task remaining will be the technical one making possible the drafting of the treaty incorporating the result of the work by the experts . . .".

21. The Court added to this explanation that<sup>3</sup>:

" . . . the fact that the Parties have reserved for themselves the determination, by treaty, of the boundary delimiting the two continental shelf areas, does not prevent the Court from indicating the

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1. *Ibid.*, p. 40, para. 29 (emphasis supplied).

2. *Ibid.*, p. 40, para. 30.

3. *Ibid.*, p. 78, para. 108.

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”.

22. Malta concludes that in the present case the task of the Court is to identify the principles and rules of international law applicable to the delimitation of the continental shelves of the two Parties with effectively the same degree of particularity as those principles were identified in the *Tunisia-Libya* judgment. 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.

PART II  
THE FACTS

**CHAPTER I**  
**GEOGRAPHICAL, ECONOMIC AND GEOLOGICAL**  
**BACKGROUND**

1. MALTA

(1) *General and Economic*

23. As an island State, Malta is one of some thirty-eight such States. In an international community consisting of some one hundred and fifty four states, island States thus represent a constituent element amounting to virtually 25%.<sup>1</sup> In addition there is a considerable number of islands or group of islands which have the status of associated States or are more or less self-governing dependencies, and of which many may in the future become independent.

24. Every one of these island States possesses a continental shelf and exclusive economic zone rights and many are in a situation in which they may have delimitation problems with opposite or adjacent States. Thus the position of Malta as island State, as opposed to being merely an island, is neither unique nor even rare.

25. Malta is an archipelago consisting of three main islands: Malta, Comino and Gozo. They are aligned on a NW – SE axis. The NW tip of Gozo lies approximately 43 nautical miles (79 kms) south of the nearest point on the coast of Sicily. The SE tip of Malta lies approximately 183 nautical miles (340 kms) north of the nearest point on the coast of Libya. The superficial area of the three islands is 316 sq. kms. The population of the three islands totals 320,000.

26. The economy of Malta is based upon manufacturing, ship repair, agriculture, fisheries and tourism.

27. There are no natural resources in Malta. Mineral surveys and oil exploration have been carried out, but nothing has been found. Offshore Malta, exploration has been carried out in the area of continental shelf.<sup>2</sup> No traces of oil or gas have been found. Exploration at a potentially promising point,<sup>3</sup> was forcibly prevented by Libya in 1980.<sup>4</sup>

28. It may be noted in passing that Malta's lack of resources is neither "variable" nor "unpredictable" (to use the words of the Court's judgment

1. While there may be debate as to the precise definition of an island State, the following are States which occasion an island situation:

Antigua and Barbuda, Bahamas, Bahrain, Barbados, Cape Verde, Comoros, Cuba, Cyprus, Dominica, Dominican Republic, Fiji, Grenada, Haiti, Iceland, Indonesia, Ireland, Jamaica, Republic of Kiribati, Madagascar, Maldives, Malta, Mauritius; Nauru, New Zealand, Papua New Guinea, the Philippines, St. Lucia, St. Vincent and the Grenadines, Sao Tome, Seychelles, Singapore, Solomon Islands, Sri Lanka, Tonga, Trinidad and Tobago, Tuvalu, Vanuatu, Western Samoa.

2. See Volume III Map 1.

3. The point is marked X on Map 1.

4. See below, para. 104.

in the *Tunisia-Libya* case when referring to the relevance of economic considerations.<sup>1</sup> Every attempt has been made to seek valuable economic resources on Malta's territory and none has been successful. Without access to the possible oil deposits in the sea-bed, there is no basis for any suggestion that Malta may "become rich tomorrow".<sup>2</sup>

29. In the context of the interest of the United Nations in "developing island States", Malta has been placed within this category, where it is classified as "small" in terms of area and "very small" in terms of size of population.<sup>3</sup>

## (2) *Extent of the Territorial Sea*

### (i) *Width*

30. Prior to 1971, Malta claimed a 3-mile limit for the territorial sea. By Act No. XXXVI of 1971 (the 1971 Act), Malta extended its claim to territorial sea to six nautical miles. In 1978 this claim was extended to 12 nautical miles.

### (ii) *Base-lines*

31. The 1971 Act provided in section 3(1) that the limits of the territorial sea should be "measured from low-water mark on the method of straight base-lines joining appropriate points". These straight lines link 26 points and enclose as internal waters the waters lying between the islands of Malta, Comino and Gozo.<sup>4</sup>

32. These lines were notified to Libya in July 1972 and were used when Malta set out the boundary for exploration licences in 1973.<sup>5</sup>

33. Malta has not as yet established an exclusive economic zone; but, of course, it has a right under international law to do so at any time.

## (3) *The submarine areas appertaining to Malta*

34. On 19 May 1966 Malta became a party to the Geneva Convention on the Continental Shelf of 1958 and to the Optional Protocol on the Settlement of Disputes. In the exercise of her right under the Convention and under customary international law Malta then asserted her claim to her continental shelf in the form of the Continental Shelf Act, 1966.<sup>6</sup> The continental shelf was defined in section 2 as meaning

"the seabed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters, to a depth of two hundred

1. *I.C.J. Reports 1982* p. 77, para. 107.

2. *Ibid.*

3. See below para. 228 (i).

4. See Volume III Map 2.

5. See below para. 35 and 63.

6. Act. No. XXXV, 1966; 28 July, 1966 (Annex 1).

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; so however that where in relation to states of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves, the boundary of the continental shelf shall be that determined by agreement between Malta and such other state or states or, in the absence of agreement, the median line, namely a line every point of which is equidistant from the nearest points of the baseline from which the breadth of territorial waters of Malta and of such other States is measured”.

35. On 24 April 1973 a supplement to the Malta Government Gazette contained a Notice<sup>1</sup> inviting applications for production licences in the offshore area south of Malta. The area open to applications (which were to be filed by 2 August 1973) was identified on a map<sup>2</sup> referred to in the Notice and stated to be deposited at the Oil Division, Ministry of Development, Valletta and to be open to inspection there. This Notice, after listing the coordinates of the sixteen blocks opened for applications, stated that

“The areas of Blocks 12, 13, 14, 15 and 16 are subject to alterations in the light of any agreement on the Median Line between Malta and the Libyan Arab Republic”.

36. The southern boundaries of these blocks were laid down to coincide with the equidistance line between Malta and Libya. Those concession areas are set out in Volume III Map 3. Concessions were granted as follows:

<i>Concessions</i>	<i>Date of Grant</i>	<i>Oil Company</i>
Blocks 2, 3, 4 and 9	31 May 1974	Texaco Malta Inc.
Blocks 10, 11 and 14	31 October 1974	Joc Oil Ltd.
Block 16	19 November 1974	Aquitaine Malte S.A. et al.

Notices of the grant of these concessions were given shortly after they were made. The main facts concerning them were conveyed to the Maltese Parliament by the Government of Malta in Statements made, respectively, on 3 June 1974, 4 November 1974 and 25 November 1974. The concessions were also given publicity in the petroleum industry press.

37. As will be seen from Volume III Map 3 and the description of the concessions believed to have been granted by Libya, Blocks 2, 4, 9, 10, 11, 14 and 16, all of which lay north of the equidistance line, were overlapped

1. Annex 2.

2. See Map attached to Annex 2.

by Libyan concession EL-NC 35A, granted by Libya to Exxon (Esso) in September 1974. It is believed that this concession was surrendered by Exxon in 1981. Libyan Concession EL-NC 35B, granted to Exxon in September 1974, while not overlapping with any existing Maltese concession, projects north of the equidistance line and, in its northwesterly corner, overlaps with Maltese Block 6, ungranted. This concession is also believed to have been surrendered by Exxon in 1981.

38. Additional concessions were granted by Malta to a consortium led by Reading and Bates Petroleum Co. in April 1981. These lie closer inshore, just to the west and south of Malta and Gozo.<sup>1</sup>

39. The whole area of Malta's continental shelf as encompassed by an equidistance line is approximately 60,000 sq. kms.

40. No territory lies due east of Malta until one reaches the Greek islands. The point may, therefore, be made straightaway that Malta's principal interest in the continental shelf lies in the area which falls for delimitation between it and Libya. Echoing the language of the Tribunal in the *Anglo-French Continental Shelf Arbitration*, and unlike the situation of the United Kingdom and France in that arbitration, there is no room to compensate Malta elsewhere for any adverse consequences of the delimitation with Libya. It is evident that no similar consideration applies to Libya.

#### (4) Fisheries

41. Some of the methods of fishing employed by Maltese fishermen have a bearing on the present case. The first is the method known as *Kannizzati*. Although it is used principally in relation to two species, *lampuki* and *fanfri*, which are migratory in habit and seasonal (July/August-December/January) in their appearance in the relevant waters, it is nonetheless the source of as much as 40% of the Maltese catch.

42. The method depends upon the inclination of the relevant species to gather in the shade of any object floating in the sea. Accordingly, the fishermen have developed a system of laying individual floats (*kannizzati*) to provide such shade. These used to be made of cork and would be held in place by a line tethered to a stone anchor resting on the sea-bottom. More recently, because of the cost and fragility of cork, the floats have come to be made of bundles of palm leaves. The fish collect in the shade of each *kannizzata* and are caught by a seine net which is thrown round the float.

43. In order to keep the series of *kannizzati* of one fisherman separate from those of others, the *kannizzati* are laid not at random but along predetermined lines at variable intervals. *Kannizzati* fishing is licensed and each licence states the "ground" within which the licence holder may set his line of floats. In practical terms, the "ground" is identified by the

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1. See Volume III Map 3.

point at which the series of *kannizzati* begins. The licence holder is then entitled to run his series of floats as far seaward from that point as he cares to go. The end result is a pattern of lines comparable to the spokes of a wheel.

44. 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.

45. The method is one of considerable antiquity. Its existence was recognized in the first fishery regulations adopted by the Government of Malta in 1909. At that time the band within which each series of floats might be set was fixed at a width of three miles and the number of floats in each series was limited to twenty. Now the bands are not so wide. They are established by the fixing of a starting point and an indication of the bearing on which the series should run seaward. Map 4 in Volume III is a copy of the chart on which the starting points and bearings of the licensed *Kannizzati* lines have been marked by the licensing authority, the Director of Agriculture and Fisheries. Map 5 in Volume III is a chart showing the overall area within which *kannizzati* fishing has now developed with the advent of modern fishing boats. The outer limits of some lines of *kannizzati* are as much as 150 miles from their starting points. These lines remain in place throughout the season (July/August-December/January).

46. In addition, Maltese fishermen have used longline fishing for swordfish and tuna; and bottom longlining and trawling for bottom fish. Although the location of fishing banks is a closely guarded secret of individual fishermen, it is known that longlining has been going on in the Medina Bank and beyond, and that trawling grounds on the 100 and 200 fathom line in the south attract a sizeable number of craft in the winter months. Map 5 in Volume III also indicates the area within which trawling by Maltese fishermen takes place.

## 2. LIBYA

### (1) *General and Economic*

47. The general and economic position of Libya is strikingly different from that of Malta.

① 48. Libya is one of the largest States in Africa, as can be seen from Map No. 1 in the Libyan Memorial (30 May 1980) in the *Tunisia-Libya* case. The area of this territory is 1.8 million sq. kms. (compared to Malta's 316 sq. kms.). Its coast stretches from Ras Ajdir, in the west, to near Port Bardia, in the east, a distance along a direct west-east line of approximately 1280 kms. and of actual coastline of about 1850 kms.

49. The population of Libya is 3.13 million (compared to Malta's 320,000).

50. The dominating feature of Libya's economy is the production and



sale of mineral products, mainly oil. The export value of this commodity in the years, 1976–1980 was (in U.S. dollars) as follows<sup>1</sup>:

1976	\$ 8.3 billion
1977	\$ 9.75 billion
1978	\$ 9.5 billion
1979	\$15.2 billion
1980	\$22.5 billion

With these figures may be compared Malta's *total* exports (in U.S. dollars) in each of the same years<sup>2</sup>:

1976	\$228.3 million
1977	\$308.7 million
1978	\$362.7 million
1979	\$442.3 million
1980	\$470.7 million

### (2) *Offshore Areas*

51. The areas which Libya claims as continental shelf will no doubt be described in the Libyan Memorial in the present case.

52. Malta at this point restricts itself to noting that the area of Libya's continental shelf, calculated by reference to the *Tunisia-Libya* judgment, as between Libya and Tunisia, and by reference to the equidistance principle elsewhere, and constructed on the low water mark, is approximately 400,000 sq. kms. This is about seven times the size of the entire continental shelf claimed by Malta *vis-à-vis* all her neighbours on the basis of equidistance.

53. Libya has granted a number of concessions in the continental shelf north of the Libyan coast. Two of these, EL-NC 35A and EL-NC 35B, have already been mentioned as projecting north of the equidistance line and overlapping with concessions granted by Malta. A third EL-NC 87 was granted to Exxon in July 1977. This area lies south of the equidistance line, but touches it at its northeastern corner. These concessions are marked on Map 3 in Volume III.

### 3. THE GEOLOGICAL RELATIONSHIP BETWEEN THE TWO COUNTRIES

54. Malta lies about 340 km. (183 nautical miles) north of the Libyan mainland and approximately 80 km. (43 nautical miles) south of Sicily. To the west of Malta lies Tunisia at a distance of about 370 km. (200 nautical miles). Closer to the west, however, lie the Italian islands of Linosa, Lampedusa, Lampione and Pantelleria, at distances of 119 km.

1. *International Financial Statistics*, I.M.F., Dec., 1982.

2. Official Statistics. The figures given include re-exports.

(64 n. miles), 152 km. (82 n. miles), 177 km. (96 n. miles) and 205 km. (111 n. miles), respectively, from the nearest point in Gozo.

55. The islands constituting Malta are emergent parts of the Maltese plateau (sometimes called Ibleo-Malta Plateau) which extends over a much greater submarine area than that suggested by their position.

56. The seafloor between Malta and Libya exhibits a generally east-west or northwest-southeast trending relief. Broadly to the south of Malta are a series of deep troughs reaching over 1000 m. in depth known geologically as the Pantelleria and Linosa graben (also known as "Fosse de Malte", "Fosse de Linosa" and "Chenal de Medina"). Mid-way between Malta and Libya is a broad shallow region, mostly less than 400 m. deep called the Plateaux of Melita and Medina. Geologically this is an elevated region bounded to the north and south by fault systems. Off the coast of Libya is a furrow running east-west called the Tripolitanian Furrow. In the *Libya-Tunisia Continental Shelf* case the Court took the view<sup>1</sup> that this "submarine valley does not display any really marked relief until it has run considerably further to the east than the area relevant to the delimitation".

57. The entire region south of Malta as far as the Libyan coast relevant to this case forms a continuous continental shelf. In the geological terminology of continental margins, no continental slopes descending to abyssal depths are found in this area.

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1. *I.C.J. Reports 1982*, p. 57, para. 66.

## CHAPTER II

### MALTA'S NEUTRALITY

58. In order to complete what the Court of Arbitration in the Anglo-French *Continental Shelf Arbitration* has called "the legal framework within which the Court must decide the course of the boundary"<sup>1</sup> it is appropriate to bring to the notice of the Court that since 15 May 1981 Malta is a Neutral State. On that date a Declaration concerning the Neutrality of Malta made by the Government of Malta was approved by the Maltese Parliament. The Declaration defines the status of neutrality with regard, *inter alia*, to non-alignment, to foreign military bases, military facilities to foreign forces, the presence of foreign military personnel on Maltese territory and the use of the shipyards of Malta for the repair of military vessels.

59. This status of neutrality has been affirmatively received and recognized, or even guaranteed, in a variety of forms by Algeria, Bulgaria, China, the Commonwealth, the European Community, France, Greece, Guinea, Italy, the Democratic People's Republic of Korea, Libya, Morocco, the Non-Aligned Movement, Qatar, Saudi Arabia, Senegal, Tunisia, the USSR and Yugoslavia.

60. Although Malta's geographical position in the Mediterranean Sea is such that access to her territory for military purposes could be of great importance to any one of a number of States, Malta's declared<sup>2</sup> and widely recognized status of neutrality now excludes this possibility. Under this status Malta is barred from acquiescing in the presence of any foreign military base on Maltese territory or the provision of military facilities to any foreign forces save where necessary for the defence of Malta or in pursuance of measures decided by the Security Council of the United Nations. The use of the shipyards in Malta is limited to civil commercial purposes, to the repair of military vessels which have been put in a state of non-combat, and to the construction of vessels; and the use of the Maltese shipyards is completely denied to the military vessels of the two superpowers.

61. In economic terms this means that Malta cannot derive the considerable financial benefit that might otherwise accrue to it from payments connected with the use of her territory for or in connection with military bases.

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1. Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 187.

2. Annex 3.

### CHAPTER III

#### HISTORY OF RELEVANT RELATIONS BETWEEN THE PARTIES

62. The question of the delimitation of the continental shelf between the Parties appears first to have been discussed in July 1972.

##### *Meeting of 12-13 July 1972*

63. At the meeting held in Malta between Libyan and Maltese delegations, Malta presented a draft agreement, accompanied by a map,<sup>1</sup> setting out in specific detail Malta's proposals for a boundary based on equidistance. The line was constructed on the basis of Malta's straight base-lines,<sup>2</sup> including the use of the island of Filfla as a base point, and of Libya's low-water mark line.

64. The Libyan delegation did not reject the principle of an equidistance line but questioned the use of Filfla as a base-point and indicated that they wanted the co-ordinates checked by their experts.

##### *Meeting of 23 April 1973*

65. On 23 April 1973 a further visit was paid to Malta by a delegation from Libya. The position of the Libyan delegation on this occasion was materially different from that adopted previously. Libya now came forward with a draft agreement proposing a line which paid no regard to equidistance but lay well to the north of Malta's proposed equidistance line.<sup>3</sup> Libya explained that this line had regard to the respective lengths of coastline of Libya and Malta, the length of the former being taken as extending from the Tunisian border to Misurata: in other words the distance between the two coastlines was divided in the same proportions that the two shorelines bore to each other.

##### *Message from the Prime Minister of Malta to the Chairman of the Revolutionary Command Council of Libya, 23 April 1973*

66. The terms of Libya's proposal led the Prime Minister of Malta immediately to communicate its unacceptability to Col. Gaddafi. At the same time, the Prime Minister of Malta proposed an urgent meeting between himself and the Prime Minister of Libya and concluded by indicating that

"Meantime, it is now impossible for us to evade the commitments we have made with international oil companies and tenders are being called for with a provisional Median Line identical with the one which was submitted to your Government over a year ago."

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1. Annex 4.

2. See above, para. 31.

3. Annex 5.

*Meeting of 26 April 1973*

67. A meeting was rapidly arranged in Tripoli between representatives of Malta and the Prime Minister of Libya at which each side restated its position – Malta, that of equidistance; Libya, that of proportionality.

*Meeting of 3 July 1973*

68. The next meeting, on 3 July 1973, was unproductive, with neither side bringing forward new proposals, each having expected the other to come with fresh suggestions. In the ensuing but inconsequential discussion Malta emphasized the full entitlement of sovereign island States.

*Communication of legal memorandum by Malta to Libya, 27 November 1973*

69. On 27 November 1973 Malta sent to Libya a memorandum to the effect that the use of a line of equidistance had been supported by Dr Rouhani and Dr Pachachi (both of whom had been Secretaries-General of OPEC) and had been confirmed in a legal opinion rendered by a firm of Norwegian lawyers.

*Memorandum from Malta, 1 January 1974*

70. On 1 January 1974 Malta sent Libya a memorandum recalling the urgency of Malta's need for a settlement of the continental shelf boundary and stressed Malta's economic needs. Libya did not respond.

*Message from Malta, 25 March 1974*

71. The urgency of the situation was again stated by the Prime Minister of Malta in a message to the Chairman of the Revolutionary Command Council on 25 March 1974.

*Talks between Malta and Libya, 10 April 1974*

72. A meeting took place between the Prime Minister of Malta and Mr Ben Amer, a Libyan Minister, on 10 April 1974 in which the Prime Minister again referred to the need not to lose time and recalled an earlier proposal that independent advice should be sought. Mr Ben Amer said that Libya had not accepted such a proposal and, in his turn, suggested that each side should abandon its position in favour of a compromise proposal. The Prime Minister replied that this was not acceptable. Both sides accepted the idea that a draft submission to arbitration should be prepared, including time limits so that the matter might be resolved promptly.

*Agreement between Malta and Texaco Malta Inc., 31 May 1974*

73. Eventually, Malta found itself in a position in which it could no longer delay the conclusion with Texaco Malta Inc. of an agreement for offshore oil exploration. On 31 May 1974 Texaco was granted exploration rights in Blocks 2, 3, 4 and 9 shown on Map 3 in Volume III. This

agreement was announced by the Prime Minister of Malta in Parliament on 3 June 1974. On 25 June 1974 the Embassy of Libya in Malta officially requested a copy of the Agreement. The request was refused on 27 June 1974, but a copy of the Prime Minister's summary of the agreement was sent to Libya. Libya subsequently reserved its position in general terms by a Note Verbale of 30 June 1974.

74. On 14 July 1974 Libya enquired as to the accuracy of a news item in the *Times of Malta* to the effect that a survey ship would be carrying out seismic tests for the next two months at a distance of 40 miles south of Malta. On 17 July 1974 Libya asked for a map showing the areas over which Texaco Malta was permitted to carry out exploration activities.

*Malta's Note, 8 August 1974*

75. Malta replied to the Libyan Note Verbale of 14 July 1974 on 8 August 1974, indicating where the seismic vessel had been operating, stating that the area was north of the equidistance line and explaining that this was why Malta could not accept the reservation made by Libya in its Note of 30 June 1974. Attached to the Note was a copy of Malta's Notice of 24 April 1973 inviting applications for exploration permits and of the map attached thereto.<sup>1</sup>

76. In this Note the Maltese Government also took the opportunity of recording that Malta could not accept or recognize Libya's claim to the Gulf of Sirte made in the previous September.

*Libya's Warning Letters, 8 June 1975*

77. For the next ten months little happened on either side: Malta's licensees conducted seismic surveys in their areas and Libya granted the concessions referred to in paragraph 37 above.

78. Then, on 8 June 1975 Libya addressed letters to the licensees of Malta stating that the areas granted to them fell within Libyan continental shelf, that no activities might be carried on there without Libya's permission and that unauthorized activities would justify "the adoption of any measures deemed necessary to safeguard our legitimate rights"<sup>2</sup>.

*Malta's Warning Letters, 17 and 23 June 1975*

79. At about the same time Malta learned of the grant of concessions by Libya to Compagnie Des Pétroles Total (Libya) and to Exxon Corporation. On 17 and 23 June 1975 Malta sent warning letters<sup>3</sup> to these concessionaires requesting an assurance that operations would not be carried on in the area of Malta's continental shelf. As far as Malta is aware – and this is confirmed by the replies received from the Libyan concessionaires – no activities were carried out by them north of the equidistance line.

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1. See Annex 2.

2. Annexes 6, 7 and 8.

3. Annexes 9 and 10.

*The conclusion of the Special Agreement*

80. Towards the end of 1975, Libya intimated to Malta that it would look favourably on Malta's suggestion that the dispute should be submitted to the *International Court of Justice*. Malta thereupon prepared a draft special agreement of which the principal feature was a request to the Court to draw the dividing line separating the continental shelf areas lying between Malta and Libya.<sup>1</sup> This draft was handed by the Prime Minister of Malta to Minister Ben Amer of Libya at a meeting in Tripoli on 3 January 1976.

81. On 27 January 1976 Libya forwarded to Malta the text of a Libyan draft.<sup>2</sup> This differed from the Maltese draft in limiting the task of the Court to a statement of the principles of international law to be applied to the determination of the continental shelf areas lying between the two countries and in requiring the statement of principles to cover the exclusive economic zone. After the decision of the Court, the Parties were to enter into discussions to conclude an agreement to determine the respective areas of jurisdiction.

82. A meeting then took place between the two sides on 5 February 1976 at which it was indicated on behalf of Malta that the references to the economic zone should be deleted as at that time there was no international law or convention on the matter but it was a legal concept in evolution. There was also discussion about the order and timing of pleadings and the sources of law to be applied by the Court. On 11 March 1976, at a meeting between Mr Camilleri (Malta) and Minister Ben Amer (Libya) it was agreed that the periods for pleadings contemplated in the Libyan draft should be shortened.

83. This was followed by a visit to Libya on 7 and 8 April 1976 of the Attorney-General of Malta, who met Minister Ben Amer, at which the remaining differences were narrowed – in particular as regards the role of the Court.

84. A further meeting was then held between the Prime Minister of Malta and Mr Ben Amer on 14 April 1976 at which further progress was made and on 23 May 1976 the Special Agreement was signed at Valletta.

85. It was also agreed by an exchange of letters on that day that the representatives of Malta would speak first in the oral hearings.

*Ratification of the Special Agreement*

86. Malta ratified the Special Agreement within five days, on 28 May 1976.<sup>3</sup>

87. Libya, on the other hand, delayed its ratification for nearly six years, until 19 March 1982. Several times between May and December

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1. Annex 11.

2. Annex 12.

3. Annex 13.

1976 Malta called the attention of Libya to the importance of prompt ratification of the Agreement. Eventually, on 3 December 1976, the Prime Minister of Malta was obliged to draw to the attention of Colonel Gaddafi the economic need for Malta to proceed with exploration in the continental shelf area south of Malta. The Prime Minister went on to say: "I am ready to interpret your silence following receipt of this letter as implying your approval that Libya, as a friendly gesture towards Malta, will let Malta drill in the area up to the Median Line that is exactly equidistant between our two countries.

"Therefore, if by the first day of the new year, we will not receive a reply other than an acknowledgment of our letter, I will assume that this is indeed your wish."<sup>1</sup>

88. When the Prime Minister of Malta met the Minister of Labour and Public Services of Libya on 14 December 1976, the Prime Minister again stressed the need for a favourable answer from Libya.

89. Five days later, on 19 December 1976, Major Jalloud, Prime Minister of Libya, sent a letter to the Prime Minister of Malta, which represented a significant set-back in the move towards judicial settlement and the prospect of economic development by Malta of the continental shelf area pertaining to it. Major Jalloud observed that the subject was not an easy one and that "it cannot be settled quickly because the International Laws in this regard did not establish fixed basis yet". He then went on to veto further unilateral exploration activity by Malta by saying, albeit in diplomatic language:

"No doubt, accordingly, that you share with me the opinion that it is in the interest of our two friendly people not to take quick decisions from one side. Instructions have been issued to the appropriate experts in the Libyan Arab Republic to give priority to this subject in their researches and studies in order to reach a definite opinion in the nearest time. Such studies would, naturally, include the agreement signed last May which you referred to in your letter."

90. No doubt one factor in the situation was the decision which Libya had taken in August 1976 also to submit the continental shelf boundary dispute with Tunisia to the International Court of Justice.<sup>2</sup> This decision was implemented by the signature on 10 June 1977 of the Special Agreement between Tunisia and Libya and an exchange of ratifications on 27 February 1978.

91. But when on 20 June 1977 the Prime Ministers of Libya and Malta met in Malta the Prime Minister of Libya said that the document signed between Malta and Libya had to be revised on the basis of the conditions agreed with Tunisia; the two agreements could then be ratified together

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1. Annex 14.

2. See *Tunisia-Libya* Joint Communiqué, 24 August 1976, concerning the Continental Shelf (*Tunisia-Libya*, I.C.J. Pleadings, Libyan Memorial, Annex 1-11).



and the matter referred to The Hague in early January 1978. The Prime Minister of Malta took exception to this, saying that the ratification of the *Libya-Malta* agreement should proceed on the basis of the text already agreed. The Prime Minister of Libya said that he could not guarantee that the People's Committee would consent to ratification of the text as agreed.

92. No further step was taken on the Libyan side. So, seven months later, on 14 January 1978, the Prime Minister of Malta yet again addressed a letter to Colonel Gaddafi, referring to the delay in ratification, expressing his lack of understanding of the causes for it, and saying that "the people of Malta are anxious for exploration work to start, because if oil is found by 1979 our Island would be able to face its future as a neutral country with greater courage".<sup>1</sup>

93. In March 1978 Libya proposed further talks on the subject and on 3-5 May 1978 a Libyan representative went to Malta with a proposal to re-open the negotiations which had led to the agreement of May 1976. As the Prime Minister of Malta said in a letter to Colonel Gaddafi of 12 May 1978,

"the Libyan proposal puts the clock back at least six years and expects the Government of Malta to start again from scratch".<sup>2</sup>

94. There was then silence on both sides for a full year until 4 May 1979 when Malta, on seeing a reference to the problem in a book published by the Information and Membership Secretariat of Libya, suggested that this clearly meant that Libya had found a solution to the problem and asked what the solution might be. There was no reply.

95. On 16 October 1979, during a visit to Libya, the Prime Minister of Malta raised with the Prime Minister of Libya the possibility of establishing a margin extending five miles wide on each side of the equidistance line within which neither country would conduct exploration activities until the boundary was finally established. The Prime Minister of Libya countered with a proposal to reconsider the 1976 Agreement, in particular by deleting the last four lines of the English text of Article I and providing for consecutive, instead of simultaneous, written pleadings, with Malta to start. It was then agreed that the experts of the two countries should meet at the beginning of November.

96. On 21 November 1979 Malta found it necessary to complain to Libya that the latter had not fulfilled the undertaking for a meeting early in November and expressed anxiety that proceedings were not moving quickly enough to secure ratification of the agreement during the current year's session of the Popular Congresses. Malta said that any new proposals which Libya might make should be ones which had first been authorized by the Popular Congresses and could be implemented without

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1. Annex 15.

2. Annex 16.

the need for reference back to the Congresses for ratification. For its part, Malta was prepared to modify its own proposal regarding the identification of the disputed area by extending the margin on each side of the equidistance line from five to fifteen miles in width. Malta emphasized that it could not postpone any longer the exploitation of that part of the continental shelf appertaining to Malta.<sup>1</sup>

97. This note was promptly followed by a visit to Libya by the Attorney-General of Malta and the Secretary of the Ministry of Foreign Affairs of Malta on 26–29 November 1979. Malta indicated that it could not postpone drilling any longer. Libya sought to re-open the 1976 Agreement by proposing that the agreement would be notified to the Court within six months of the exchange of ratifications, that Malta would submit its memorial first and that the Court should not be given jurisdiction to enter into practical matters of drawing the line.

98. When the Maltese delegation indicated that it saw the Libyan proposals as an attempt to delay matters, the Libyan representative indicated, for the first time, that Libya could not cope with two International Court proceedings simultaneously. Libya offered no explanation of why the proceedings with Tunisia should be taken before those with Malta. Malta said that it could only accept the proposal that the Court should not go into the practical methods of drawing the dividing line if there were a provision that if the Parties could not agree on a line within three months of the Court's decision, either could go back to the Court for clarifications with a view to facilitating the conclusion of the Agreement. Libya resisted this.

99. The representatives of Malta repeated that Malta had decided to go ahead with drilling operations. Libya replied that this would endanger relations between the two countries. It was agreed that a further meeting should take place sufficiently soon to leave enough time for Libya to submit the matter to the Popular Congresses for ratification in January 1980.

100. When the Prime Minister of Malta next visited Tripoli on 23 April 1980 he again notified Libya of Malta's intention to commence drilling up to fifteen miles from the equidistance line. The Prime Minister of Libya replied that Libya would protest against and resist such an action. At the end of the meeting the Prime Minister of Libya said that the 1976 Agreement would be ratified and that the two sides would go to the Court in June (1980).

101. On 10 May 1980 Libya addressed a Note Verbale<sup>2</sup> to Malta informing Malta that Libya had come to know about the grant of concessions by Malta in what Libya claimed to be Libya's continental shelf, denounced this violation of its rights and declared its non-recognition of acts which would affect its sovereignty. This was Libya's

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1. Annex 17.

2. Annex 18.

first diplomatic protest in respect of the concessions granted by Malta in 1974.

102. At a meeting between a Libyan and a Maltese delegation on 12 May 1980, the representative of Libya again promised that the question of delimitation would be submitted to the People's Congresses later in the month.

103. On 21 May 1980 the Ministry of Foreign Affairs of Malta replied by a Note Verbale<sup>1</sup> to the Libyan communication of 10 May 1980, rejecting as unfounded and inadmissible Libya's claims to areas of continental shelf over which Malta had granted concessions. The Maltese Note recalled that none of the concessions had been granted later than November 1974. It also drew attention to its own protests of 17 and 23 June 1975 against Libya's grants of concessions falling within the area of Malta's continental shelf.

104. On 20 August 1980, an Italian rig in use by Texaco Malta Inc. for the purpose of drilling in Block 3 in the region of the Medina Bank<sup>2</sup> was approached by Libyan warships and, despite protests by the Government of Malta and by the licensees and their contractors, was forced to stop drilling and withdraw from the site. On 30 August, 1980 the matter was referred by Malta to the Security Council of the United Nations as one which was of potential danger to peace and security in the region. On 17 October, 1980 the Secretary-General of the United Nations wrote to the Security Council informing the Council that with the agreement of the parties he intended to appoint a Special Representative to help in the search for a mutually acceptable solution<sup>3</sup>. The proposal was accepted by the Council and the Secretary-General was so informed on 22 October, 1980<sup>4</sup>. The Secretary-General then appointed Mr. Diego Cordovez as his Special Representative and on 13 November, 1980 he reported to the Council on Mr. Cordovez's mission to Malta and the Libyan Arab Jamahiriya<sup>5</sup>. In due course, in part as a result of the activities of the Special Representative, Libya ratified the Special Agreement on the basis of which the present proceedings have commenced.

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1. Annex 19.

2. See Volume III Map 1.

3. U.N. Doc., S/14228.

4. U.N. Doc., S/14229.

5. U.N. Doc., S/14256.

**PART III**  
**THE LAW**

## CHAPTER IV

### MALTA'S EQUIDISTANCE LINE

#### 1. MALTA'S DELIMITATION

105. Malta's legal rights in respect of appurtenant areas of continental shelf were confirmed and regulated by means of the Continental Shelf Act adopted in 1966<sup>1</sup>. The provisions of the Act established a median line delimitation. This delimitation was in accordance with the principles and rules of customary international law existing in 1966; and legal developments since then, and State practice in particular, have provided further confirmation of the validity of Malta's median line boundary.

106. The delimitation of 1966 was subject to any agreement which might be concluded with States "of which the coast is opposite that of Malta"<sup>2</sup>, a condition which merely reflected the possibility of alterations derived from the necessary adjustments of a negotiated settlement. The position of Malta in this respect was like that of any other coastal State which, by unilateral measures, satisfies the need to confirm and regulate its complement of legal rights over adjacent shelf areas. It is normal experience to find that a delimitation effected in accordance with legal principles is, at some subsequent period, and in greater or lesser degree, the subject of diplomatic controversy. The contingency of the negotiated settlement of such a controversy cannot be said to impugn the legal validity of the median line as constituting the *status quo*.

107. In accordance with her views on the relevant principles and rules of international law, Malta in April 1973 invited applications for Production Licences in the area of continental shelf to the south.<sup>3</sup> The area open for applications consisted of sixteen blocks<sup>4</sup>. The licensing arrangements were based upon the principle of equidistance in the form of a median line<sup>5</sup>. This development involved the implementation of the median line delimitation established in Malta's legislation of 1966.

108. The equidistance line established and consistently maintained by Malta is based upon the appropriate method for achieving an equitable solution in accordance with the principles and rules of international law applicable to the delimitation of areas of continental shelf as between opposite States.

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1. 28 July 1966, Annex 1.

2. See Section 2 of the Act of 1966; and see also the Notice of 24 April 1973, Annex 2, which stated that "The areas of Blocks 12, 13, 14, 15 and 16 are subject to alterations in the light of any agreement on the Median Line between Malta and the Libyan Arab Republic".

3. For the documentation see above para. 35.

4. See the Map attached to Annex 2.

5. See above para. 36.

## 2. THE CONFIRMATION OF THE EQUITABLE CHARACTER OF THE EQUIDISTANCE METHOD BY STATE PRACTICE

109. The legal justification for the equidistance line in the present case lies in the equitable nature of the delimitation in accordance with the principles and rules of customary international law. The statement of the basic principle – that the delimitation must be in accordance with equitable principles which lead to an equitable result – is to be derived from judicial exposition of the law. On the other hand, as the word “equitable” is not in all respects definite, the determination of what it means in the specific context of continental shelf delimitation must, if it is not to be arbitrary but objectively justifiable, take due account of the practice of States. As will be shown in Chapter VII of this Memorial, this practice provides ample confirmation that in the present case the method which is equitable is that of equidistance. The equitable nature of the equidistance line receives further confirmation in the form of the practice of the States of the Mediterranean region<sup>1</sup> and the conduct of the parties<sup>2</sup>.

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1. See below, paras. 196–200.

2. See below, paras. 201–207.

## CHAPTER V

### THE IMPORTANCE OF THE GEOGRAPHICAL FACTS

#### 1. THE PRINCIPLE: THE EQUITABLE RESULT MUST REFLECT THE GEOGRAPHICAL FACTS

110. The delimitation of the continental shelf must start from the geographical facts in each particular case. This principle was formulated in the Decision of the Court in the *Anglo-French Continental Shelf Arbitration* as follows<sup>1</sup>: “the validity of the equidistance method, or of any other method, as a means of achieving an equitable delimitation of the continental shelf is always relative to the particular geographical situation”. The Court reiterated this principle in several important passages of the Decision in which the importance of the “geographical facts” was stressed. The following passage<sup>2</sup> provides an example of this insistence:

“In short, this Court considers that the appropriateness of the equidistance method or of any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case.”

111. At the same time in the passage just quoted the Court of Arbitration was careful to relate the appropriateness of the method of delimitation to the geographical *and other relevant circumstances* of each particular case.

#### 2. THE SIGNIFICANT GEOGRAPHICAL FACTS IN THE PRESENT CASE: TWO COASTAL STATES IN AN ENTIRELY NORMAL SETTING

112. In the light of the principle that the validity of any method of delimitation is always related to the particular geographical situation, it is necessary to review the significant geographical facts in the present case.

113. Malta is an island State and the entire group of islands has a total length of about 28 miles. The principal island in its southern aspects is in every sense opposite the coast of Libya. Moreover, both the island of Malta and the Libyan coastline have a certain tilt, at an attitude northwest to southeast. The entire Libyan coastline is not less than 180 nautical miles from Malta and in some sectors the distance is greater. There are no intervening islands and the seabed is a continuum in geological terms.

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1. Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 84.

2. *Ibid.*, para. 97. For similar references in this Decision see paragraphs 95, 103, 181-183, 191, 194, 199, 201, 233-242.

114. These are the facts which constitute the geographical framework of the delimitation to be effected. There are no incidental or unusual geographical features. No Maltese islands exist near the Libyan shore. No peninsulas complicate the picture. There are simply certain large-scale geographical data: the island State of Malta standing at a considerable distance from the coastline of Libya. Two coastal States thus face one another in a very simple setting, in the absence of narrow seas or other special circumstances.

115. This setting is such that any revision of the *status quo* – the equidistance line which is the established boundary – would be inconsistent with the principles enunciated so clearly by the Court in the *North Sea Continental Shelf Cases*<sup>1</sup>:

“Equity does not necessarily imply equality. There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than 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. Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy.”

116. These basic principles were reiterated by the Court in the *Anglo-French Continental Shelf Arbitration*. In particular, the following passage occurs in the Court’s Decision:<sup>2</sup>

“The equitable delimitation of the continental shelf is not . . . a question of apportioning – sharing out – the continental shelf amongst the States abutting upon it. Nor is it a question of simply assigning them areas of the shelf in proportion to their coastlines; for to do this would be to substitute for the delimitation of boundaries a distributive apportionment of shares.”

117. In the circumstances of the present case the equidistance method is entirely appropriate since it produces an equitable result. Libya obtains an impressive longitudinal spread of continental shelf, a fact which is illustrated in Figures A and B<sup>3</sup>. In accordance with the equidistance method, Libya obtains an area of approximately 400,000 square kilometres and Malta an area of 60,000 square kilometres. In this sense geography has bestowed considerable benefits upon Libya.

118. Similarly, given Malta’s position at distances of 180 miles and more from Libya, together with the natural reach of controlling base-points even on a modest coastal frontage, Malta receives a certain area

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1. *I.C.J. Reports 1969*, p. 49, para. 91.

2. *International Law Reports*, Vol. 54, p. 6, para. 191.

3. See below, with reference to paras. 243–247.



of shelf, the size and distribution of which reflect Malta's existence and location. Consequently, geography has also smiled upon Malta, though not in the same way as it has on Libya.

119. It may be noted that, on the hypothesis that Malta did not exist, an equidistance line as between Libya and Italy would leave Libya with an area certainly not greater than the area which in the past Libya claimed against Malta<sup>1</sup>. This fact provides a striking confirmation of the inequity of any solution which avoids affording full effect to all coastal States in this region of the Mediterranean. As a perusal of the map<sup>2</sup> will reveal, the position adopted in the Libyan proposal of 1973 could presumably be advanced also against Italy (on the same hypothesis, that no effect is given to Malta), since the island of Sicily in its southern aspects does not have the same longitudinal extension as Libya. The point is, of course, that opposite coastal States are often of different configurations, but this does not necessarily affect the delimitation of the shelf areas dividing them.

120. In the context of delimitation geographical facts have significance primarily in relation to base-points and construction lines. Each type of feature and circumstance has its own benefits and drawbacks. An extensive coastline generates a longitudinally extensive area of shelf rights and yet, at the same time, given the way in which alignments are constructed, many potential base-points on a long, more or less regular, coastline are in a sense wasted or redundant. In the same way, a centrally placed, regularly shaped, island or peninsula will support a smaller number of basepoints which will, nonetheless, generate an appropriately ample area of appurtenant continental shelf. There is no absolute correlation between the extent of a shelf area and the number of basepoints which generate it.

### 3. THE SIGNIFICANT RÔLE OF SHORT ABUTTING COASTS IN DELIMITATION

121. Thus it follows that any coast *which abuts upon the shelf area to be delimited* has considerable significance, even though the actual frontage involved is more or less modest in extent. The Decision of the Court in the *Anglo-French Continental Shelf Arbitration* gives emphasis to this feature of delimitation. In certain geographical contexts relatively short sectors of "relevant" or, in other words, abutting or controlling coasts, may provide the basis for delimitation by means of the equidistance method. The overriding factors are twofold: First, the existence of a relevant frontage and, secondly, a *relationship* between the abutting coasts and the appurtenant areas of shelf<sup>3</sup>.

122. The matter can be expressed in the proposition that, *apart from unusual geographical elements, any coastal feature counts equally and must be*

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1. For the Libyan claim see above, para. 65. See also the map at Annex 5.

2. See Annex 5.

3. *International Law Reports*, Vol. 54, p. 6, para. 240-243, 248.

given the appropriate controlling effect. This important factor lies behind the conclusion of the Court in the *Anglo-French Arbitration* in favour of applying the equidistance principle to the Atlantic region.

123. The conclusion of the Court's reasoning is to be found in paragraph 248 of the Decision:

*"The Court considers that the method of delimitation which it adopts for the Atlantic region must be one that has relation to the coasts of the Parties actually abutting on the continental shelf of that region<sup>1</sup>. Essentially, these are the coasts of Finistère and Ushant on the French side and the coasts of Cornwall and the Scilly Isles on the United Kingdom side. . . . Both Ushant and the Scilly Isles are . . . islands of a certain size and populated; and, in the view of the Court, they both constitute natural geographical facts of the Atlantic region which cannot be disregarded in delimiting the continental shelf boundary without 'refashioning geography'. . . ."*

124. The significance of the *Anglo-French Arbitration* calls for proper emphasis. It is not suggested that the coastal relationships in the Atlantic region are similar in all respects to the relationships in the present case. The parallel lies in the fact that, *because the areas involved were not in narrow seas*, shelf areas extended for long distances from the abutting or controlling coastal features. In such circumstances the equidistance method was applied to give the same effect in principle both to the very attenuated feature of the Cornish peninsula and to the outlying Scilly Isles<sup>2</sup> as in the case of the considerably more substantial mainland of Finistère.

125. The significance of short abutting coasts is illustrated in the practice of States. In the Agreement signed on behalf of the Governments of Denmark and Norway on 15 June 1979<sup>3</sup> the boundary between the Norwegian coasts and the Faroes is expressly stated to be the median line. Thus, in a situation of opposite coasts, the relatively small feature constituted by the Faroes generates as much appurtenant shelf as the mainland of Norway. The delimitation between Bahrain and Iran provides a further example and the State practice set forth in Chapter VII includes several dozen examples<sup>4</sup>.

126. The evidence both of principle and practice leads to the conclusion that, in the absence of unusual geographical features, the coasts of Malta and Libya must play their proper and normal rôle in producing an equitable delimitation of appurtenant areas of continental shelf.

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1. Emphasis supplied.

2. Subject to some adjustment in the latter case: Decision, paras. 243-251.

3. Text supplied officially through diplomatic channels and translated - Annex 20 and map opposite.

4. For the substantial State practice, see below, para. 185 et seq.

#### 4. THE RELATIONSHIPS OF THE COASTS OF MALTA AND LIBYA RULE OUT APPLICATION OF THE CRITERION OF PROPORTIONALITY

127. In seeking an equitable solution the geographical facts are to be considered in the context of legal principle. The relevance of coasts must be weighed with necessary care and finesse. Thus the geographical configuration relevant to the determination of an equitable method of delimitation consists not merely of 'coasts', of whatever length, but to a considerable extent of the *relationships* of coasts. The *location and relation of coastlines* are the overriding factors. *It is the position of Malta at a distance from the Libyan coast, and the absence of intervening islands, which are as important as any other aspect of the geography.*

128. The geographical picture contains two elements which are of particular relevance to the issue of delimitation and which make the "refashioning of geography" completely inapposite even if such refashioning were allowed by legal principle. These two elements are as follows:

- (a) The fact that a restricted coastal sector may produce a number of very influential controlling points by reason of its location and character: and such is the case of Malta.
- (b) The fact that the effect of the difference between the west-east or lateral reach of the Maltese and Libyan coastlines leaves Libya with a very large part of the shelf area dividing Malta and Libya.

129. From these elements – the nature of the coastal relationships in the present case – it follows that the criterion of proportionality (by reference to the length of the respective coastlines) cannot be applied if an equitable solution is to be achieved. The differences in the geographical identity of the two States are so marked that the requirement of equity that "like should be compared with like" – 'the only absolute requirement of equity'<sup>1</sup> – is not applicable.

130. Any attempt to make the delimitation reflect the difference in coastal lengths as between Malta and Libya would be inconsistent with legal principle, since it would involve a simple apportionment of the continental shelf. Moreover, such an apportionment of the area of shelf between the two States would be in conflict with the basic notion that the shelf constitutes the natural prolongation of the coastal State's land territory and thus appertains to that State *ipso facto* and *ab initio*. As the Court observed in the *North Sea Continental Shelf* cases<sup>2</sup>:-

"19. More important is the fact that the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law

1. *Tunisia-Libya Continental Shelf case*, I.C.J. Reports 1982, p. 76, para. 104.

2. I.C.J. Reports 1969, p. 22, para. 19.

relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it – namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right”.

##### 5. CONCLUSION: THE FOUNDATIONS OF THE EQUITABLE SOLUTION

131. The crucial and incontrovertible fact is that the legal framework of the present case consists of the essentially very simple Malta–Libya coastal relationships. The two States face one another at a considerable distance and in the absence of unusual features. It is this entirely normal setting which forms “the geographical and legal framework” for an adjudication concerning the basis of continental shelf delimitation<sup>1</sup>.

132. The geographical facts must be placed in the context of legal reasoning and equitable principles. Malta and Libya are opposite States abutting upon continental shelf areas which form a geological continuum. In this type of situation it is only the equidistance method of delimitation that can lead to an equitable solution.

133. In the light of the coastal relationships of Malta and Libya any departure from equidistance would involve substantial breaches of two cardinal principles of equitable delimitation:

- (a) The principle that, in the case of a continental shelf dividing opposite States, the delimitation is normally by means of a median line<sup>2</sup>; and
- (b) The principle of non-encroachment<sup>3</sup>.

These principles will be accorded further statement and elaboration in later sections of this Memorial. The median line principle is examined in Chapter VII, paras. 181–184, and the rôle of the principle of non-encroachment is explained more fully in Chapter IX, paras. 240–247.

134. The principle of non-encroachment can only be applied in the present case on the basis of equidistance. The *location* of Malta as a coastal State *distant* from the Libyan coastline necessitates the use of a median line. The two equitable principles of non-encroachment and opposite State equality reflect the idea that the shelf is a prolongation of the land

1. Cf. *The Anglo-French Continental Shelf Arbitration*, *International Law Reports*, Vol. 54, p. 6, paras. 181, 187, 199.

2. *North Sea cases*, *I.C.J. Reports 1969*, p. 36, para. 57; *Anglo-French Arbitration*, *International Law Reports*, Vol. 54, p. 6, para. 85.

3. *North Sea cases*, *I.C.J. Reports 1969*, p. 53, para. 101; and see also *ibid.*, p. 47, para. 85(c); *Anglo-French Arbitration*, *International Law Reports*, Vol. 54, p. 6, para. 85.

territory under the sea. It is for the same reason that the factor of proportionality can only be meaningful in the case of adjacent States and cannot produce an equitable solution in the geographical situation of opposite States such as Malta and Libya<sup>1</sup>.

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1. See the view expressed by Professor Bowett, Q.C., in his work *The Legal Régime of Islands in International Law*, (1978), p. 164; quoted below at para. 258.

## CHAPTER VI MALTA'S ENTITLEMENT AS AN ISLAND STATE

### 1. THE ELEMENTS OF ENTITLEMENT

135. The position adopted during negotiations by the Libyan Government and the position which, it can be assumed, will be reflected in the Libyan arguments in these proceedings, involves a fundamental refusal to accord to Malta her lawful rights as a coastal State. The consequence is that Malta finds it necessary, at the risk of stressing what is obvious, to include in her submissions arguments on certain basic issues of principle.

136. Malta contends that as a coastal State she has a legal entitlement to the area of continental shelf which appertains to the territory of Malta in accordance with equitable principles, and thus to a shelf area delimited on the basis of the equidistance method. This entitlement rests upon the following legal elements:-

- (1) the generally recognised significance of islands in maritime delimitation;
- (2) the importance of the exercise of political authority as a central element in the legal conception of shelf rights;
- (3) the principle of equality of States;
- (4) the entitlement of island States and Dependencies to appurtenant shelf areas in customary international law as other coastal states;
- (5) the recognition of the entitlement of island States in doctrine; and
- (6) the Conventions of 1958 and 1982.

Malta will now develop its position relating to these elements of entitlement *seriatim*.

#### (1) *The Generally Recognised Significance of Islands in Maritime Delimitation*

137. The dictates of common sense and considerations of legal principle insist upon the significance of islands in the context of maritime delimitation.<sup>1</sup> It is obvious that islands normally have a political rôle and in the recent past even the status of rocks has been the subject of considerable controversy. Many bilateral agreements on delimitation illustrate the significance of groups of islands<sup>2</sup>.

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1. Cf. the Separate Opinion of Judge Schwebel, *Tunisia-Libya Continental Shelf* case, *I.C.J. Reports* 1982, p. 99; and the Report of the Conciliation Commission concerning the *Jan Mayen Continental Shelf*, 19-20 May 1981; *International Law Reports*, Vol. 62, p. 108 at p. 126.

2. See Chapter VII of this Memorial for the enumeration of treaties.

138. In the Decision of the Court in the *Anglo-French Continental Shelf Arbitration* the reasoning strongly indicates the political elements in approaching the evaluation of the pertinent geographical facts. Thus in respect of the Channel Islands their political status was carefully weighed in a substantial section of the Decision<sup>1</sup>. In particular the Court examined "their political relation to the United Kingdom"<sup>2</sup>, their constitutional status<sup>3</sup>, the degree of autonomy vis-à-vis the United Kingdom<sup>4</sup>, "the question whether the Channel Islands are to be considered as political units distinct from the United Kingdom"<sup>5</sup>, and the question of "responsibility for the foreign relations of the Channel Islands"<sup>6</sup>. The Court concluded<sup>7</sup> that it "must treat the Channel Islands only as islands of the United Kingdom, not as semi-independent States entitled in their own right to their own continental shelf vis-à-vis France".

139. In the same connection the weight given by the Court to the Scilly Islands (in the delimitation of the Atlantic region) depended upon the Court's view that they constituted "the projection of the United Kingdom land mass further into the Atlantic region"<sup>8</sup>. In contrast, the Court emphasised the geographical detachment of the Channel Islands from the mainland of the United Kingdom<sup>9</sup>.

140. The case of the island State is necessarily *a fortiori*. The island (or group of islands) constitutes the mainland both in the political and in the geographical sense. The island State is the homeland and benefits, like other coastal States, from the principle that the land dominates the sea. The island State is a geographical and political fact: it is not a "special circumstance" or "an incidental special feature", the effects of which may be reduced<sup>10</sup>.

141. Malta, as a coastal State, has continental shelf rights as "an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State"<sup>11</sup>. Such rights exist whether the coastal State consists of one or more of the following features:—

- (a) an island State near a "mainland" of another State;
- (b) an island State isolated in mid-ocean or otherwise distant from other coastal States;

1. Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, paras. 183–187.

2. *Ibid.* para. 183.

3. *Ibid.* para. 184.

4. *Ibid.*

5. *Ibid.* para. 185.

6. *Ibid.* para. 186.

7. *Ibid.*

8. *Ibid.* para. 244.

9. *Ibid.* para. 199; and see also paras. 183, 187.

10. See the Judgment in the *North Sea* cases, *I.C.J. Reports* 1969, pp. 49–50, para. 91.

11. *Aegean Sea Continental Shelf* case, *I.C.J. Reports* 1978, p. 36, para. 86, quoted in the *Tunisia-Libya Continental Shelf* case, *I.C.J. Reports* 1982, p. 61, para. 73.

- (c) a peninsula State;
- (d) a group of islands as in (a);
- (e) a group of islands as in (b).

142. The position would remain the same if one State had only a short coastal frontage abutting upon the continental shelf areas concerned. It would also remain the same if one coastal State had a frontage based upon a very exiguous tranche or strip of land territory, either adjacent to a neighbouring State<sup>1</sup>, or in the form of a narrow peninsula.

(2) *The Importance of the Exercise of Political Authority as a Central Element in the Legal Conception of Shelf Rights*

143. The legal relevance of the political status of islands has been stressed sufficiently already in this Memorial, but the position of the island State calls for appreciation of a particular facet of fundamental legal doctrine. The legal conception of continental shelf rights contains a political element: the inherent right of the coastal State to regulate activity in the adjacent and appurtenant submarine areas. Thus the exercise of political authority is central to the legal conception of shelf rights.

144. The connection between the sovereignty of the coastal State over its land territory and its rights in respect of the shelf is explained with clarity and emphasis in the Judgment of the Court in the *Tunisia-Libya Continental Shelf* case. In the words of the Court<sup>2</sup>:

“73. It should first be recalled that exclusive rights over submarine areas belong to the coastal State. The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State’s legal title. As the Court explained in the *North Sea Continental Shelf* cases the continental shelf is a legal concept in which ‘the principle is applied that the land dominates the sea’ (*I.C.J. Reports 1969*, p. 51, para. 96). In the *Aegean Sea Continental Shelf* case the Court emphasised that

‘it is solely by virtue of the coastal State’s sovereignty over the land that rights of exploration and exploitation in the continental shelf can attach to it, *ipso jure*, under international law. In short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State.’ (*I.C.J. Reports 1978*, p. 36, para. 86).

As has been explained in connection with the concept of natural prolongation, the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it. Adjacency of the

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1. Examples: U.S. territory in Gulf of Alaska; the Argentine coastal strip on the eastern side of Isla Grande, Tierra del Fuego; the Thai coast on the western side of the Gulf of Siam.  
2. *I.C.J. Reports 1982*, p. 61, para. 73. See also *ibid.*, paras. 74 and 75.



sea-bed to the territory of the coastal State has been the paramount criterion for determining the legal status of the submerged areas, as distinct from their delimitation, without regard to the various elements which have become significant for the extension of these areas in the process of the legal evolution of the rules of international law.”

145. It will be recalled that the Court in the *Aegean Sea Continental Shelf* Case decided the crucial question of interpretation (of the Greek reservation (b)) on the basis that a dispute as to shelf rights related to the “territorial status” of the coastal State<sup>1</sup>.

146. In the *Rann of Kutch Arbitration* Judge Aleš Bebler<sup>2</sup> observed that “an island State is normally prompted to control the sea around it and would not like this sea to be controlled by others, because in the latter case the island State would be at the mercy of the master or masters of the surrounding sea.” The good sense of this statement undoubtedly applies to the regime of the continental shelf.

147. The position of the island State is one of particular sensitivity in view of the fact that it has a homeland or “mainland” which consists of an island or group of islands, together with the appurtenance of the continental shelf in accordance with the principle that “the land dominates the sea”<sup>3</sup>. The legal interaction of land territory and sovereign rights over submarine areas is much more critical than it is for most other coastal States. Moreover, the relationship with the appurtenant shelf areas has an enhanced significance in cases like that of Malta, that is to say, when land-based resources are minimal and the shelf is the only possible location of the resources.

148. There is an obvious parallel between the dependence of certain coastal States on fish stocks in adjacent waters and the strong and abiding interest which Malta has in the prospect of petroleum resources of the appurtenant shelf areas. To describe this interest as “economic” would be inadequate. Such an interest, in the present condition of the world, cannot be exclusively economic *but* embraces political and security elements. On two occasions the jurisprudence of the International Court has given recognition of the legal interest which a coastal State may have, given certain conditions, in economic resources of adjacent maritime areas. In the *Fisheries Case* of 1951 the Judgment of the Court referred to the consideration of “certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage”<sup>4</sup>. In the *Fisheries Jurisdiction Case* (United Kingdom v. Iceland) the Court recognised “the concept of preferential rights of fishing in adjacent waters

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1. *I.C.J. Reports 1978*, p. 36, para. 86 *in fine*.

2. *International Law Reports* Vol. 50, p. 387 at p. 392 (Dissenting Opinion).

3. *North Sea Continental Shelf cases*, *I.C.J. Reports 1969*, p. 51, para. 96.

4. *I.C.J. Reports 1951*, p. 116 at p. 133.

in favour of the coastal State in a situation of special dependence on its coastal fisheries”<sup>1</sup>.

149. In this litigation Malta is seeking the legal affirmation and protection of important aspects of her national patrimony and in particular the sovereign rights to govern, manage, exploit and conserve the resources of appurtenant shelf areas. The method of equidistance provides a delimitation which gives appropriate recognition of the need for an adequate political control, both as to the quality and extent of such control, by the island State of Malta in respect of adjacent submarine areas. The coast of any State generates appurtenant zones of maritime jurisdiction. The distance criterion, which is prominent in recent sources of the law of maritime delimitation, is a reflection of the rule that all coastal States have a lateral reach of jurisdiction. Such an apron of jurisdiction is a necessary attribute of national security. The equidistance method thus gives effect to the logic that Malta’s need for security is no less than that of Libya. Malta will refer to this aspect of the matter again later in this Memorial<sup>2</sup>.

### (3) *The Principle of Equality of States*

150. The legal validity of the median line as the delimitation of appurtenant shelf areas in the present case is supported both by the equitable principles which constitute the law of shelf delimitation and also by the principle of the equality of States (as a general principle of international law)<sup>3</sup>. 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.

151. It is a striking fact that the well-established principles of continental shelf law give a specific and practical application of the principle of equality in the case of opposite States. Thus in the *North Sea Continental Shelf* cases the Judgment states the following important legal principle<sup>4</sup>:

“The continental shelf off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; . . .”

In the *dispositif* of the Judgment the Court states that if “the delimitation

1. *I.C.J. Reports 1974*, p. 3 at p. 23, para. 52; and see also paras. 55-68. See also *Fisheries Jurisdiction case (Federal Republic of Germany v. Iceland)*, *ibid.*, p. 175 at pp. 191-192, para. 44; and see also paras. 45-60.

2. See below, para. 232.

3. Standard references include the Charter of the United Nations, Article 2, paragraph 2, and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States of 1970 (U.N. General Assembly Resol. 2625(XXXV) adopted without vote on 24 October 1970).

4. *I.C.J. Reports 1969*, p. 36, para. 57.

leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally . . . ”<sup>1</sup>.

152. In the *Anglo-French Continental Shelf Arbitration* the Court made two affirmations of the same principle:

“Whereas in the case of ‘opposite’ States a median line will normally effect a broadly equitable delimitation, a lateral equidistance line extending outwards from the coasts of adjacent States for long distances may not infrequently result in an inequitable delimitation by reason of the distorting effect of individual geographical features.”<sup>2</sup>

“In a situation where the coasts of the two States are opposite each other, the median line will normally effect a broadly equal and equitable delimitation.”<sup>3</sup>

153. In the present case, the median line “must effect an equal division” of the area involved. Malta and Libya are opposite States and there are no complicating features of the type envisaged by the Court in the *North Sea* cases. In this context island States are on the same footing as other coastal States.

(4) *The Entitlement of Island States and Dependencies to Appurtenant Shelf Areas in Customary International Law*

154. Malta’s entitlement to a delimitation based upon a median line is firmly based on the principles of customary law as they have evolved since 1945. The evolution contains three related elements as follows:

- (a) The law recognised from very early on that coastal States were entitled to appurtenant shelf areas without discrimination: indeed, the State practice was related to island States and island dependencies from 1948 onward.
- (b) In due course both the practice of States and the jurisprudence of international tribunals accepted that the appropriate method of delimiting the shelf area dividing opposite States was normally by means of a median line.
- (c) Both as a matter of logical necessity and the practice of States in delimitation it was recognised that island States and island dependencies were entitled to a median line delimitation whenever the situation was that of opposite States.

155. It is necessary to draw the attention of the Court to the relevant aspects of the evolution of the customary law concerning the entitlement of States and dependencies to rights over adjacent shelf areas. In the remainder of the present Chapter the general aspects of State practice

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1. *Ibid.*, p. 53, para. 101.

2. Decision of 30 June 1977, *International Law Reports*, Vol. 54, para. 95.

3. *Ibid.*, para. 239.

concerning entitlement will be examined. In Chapter VII the link between entitlement *grosso modo* and the appropriateness of the equidistance method of delimitation will be elucidated; and in that context it will be demonstrated that State practice indicates the equitableness of the equidistance method in the case of island States opposite distant mainlands.

156. It is universally recognised that the development of the concept of the continental shelf in customary international law began substantially with the Truman Proclamation of 28 September 1945 and the Mexican Presidential Declaration of 29 October 1945<sup>1</sup>. Within a short period a pattern of claims was evident and it is a striking fact that from the beginning island States and island dependencies were prominent in the State practice. The chronology of practice relating to island States and dependencies is as follows<sup>2</sup>:

Bahamas: Bahamas (Alteration of Boundaries) Order in Council (No. 2574), 26 November 1948<sup>3</sup>.

Jamaica: Jamaica (Alteration of Boundaries) Order in Council (No. 2575), 26 November 1948<sup>4</sup>.

Bahrain: Proclamation with respect to the seabed and the subsoil of the high seas of the Persian Gulf, 5 June 1949<sup>5</sup>.

Philippines: Petroleum Act of 1949, enacted by Republic Act No. 387, 18 June 1949<sup>6</sup>.

Falkland Islands: Falkland Islands (Continental Shelf) Order in Council (no. 2100), 21 December 1950<sup>7</sup>.

Dominican Republic: Law No. 3342, dated 13 July 1952, concerning the extent of the Territorial Waters of the Republic (see Article 5 thereof)<sup>8</sup>.

Sri Lanka: Proclamation of 19 December 1957 by the Governor-General on the Rights over the Continental Shelf and Conservation Zones<sup>9</sup>.

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1. These instruments are to be found in the U.N. Legislative Series ST/LEG/SER.B/1, *Laws and Regulations on the Régime of the High Seas*, Vol. I, New York, 1951, pp. 13 (Mexican Declaration), 38 (U.S. Proclamation).

2. For convenience' sake the terminal year is 1972.

3. *Ibid.*, p. 31. See also the Continental Shelf Act, 1970, U.N. Legis. Ser., ST/LEG/SER.B/16, 1974, p. 172.

4. *Ibid.*, p. 33.

5. *Ibid.*, p. 24.

6. *Ibid.*, p. 19. See also Proclamation No. 370 of 20 March 1968 by the President of the Philippines, U.N. Legis. Ser., *National Legislation and Treaties Relating to the Territorial Sea*, ST/LEG/SER.B/15, New York, 1974, p. 422.

7. *Ibid.*, p. 305.

8. *Laws and Regulations on the Régime of the Territorial Sea*, ST/LEG/SER.B/6, New York, 1957, p. 11. See also Law No. 186, promulgated on 13 September 1967, U.S. Dept. of State, *The Geographer, Limits in the Seas*, No. 5.

9. U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 164.

- Haiti: Decree dated 22 December 1959<sup>1</sup>.  
 Seychelles: Minerals Ordinance, No. 14 of 1962, 15 October 1962<sup>2</sup>.  
 New Zealand (and the Cook Islands): Continental Shelf Act, 1964, No. 28 of 1964, 3 November 1964<sup>3</sup>.  
 Malta: Continental Shelf Act, 1966; 28 July 1966<sup>4</sup>.  
 Ireland: Continental Shelf Act, 1968; 11 June 1968<sup>5</sup>.  
 Barbados: Petroleum Act 1950 (Amendment) Act, 1968; 15 February 1968<sup>6</sup>.  
 Iceland: Act of 24 March 1969 regarding the sovereign rights of the Icelandic State over the continental shelf around Iceland<sup>7</sup>.  
 Trinidad and Tobago: Continental Shelf Act, 1969; 22 December 1969<sup>8</sup>.  
 Cayman Islands: Petroleum (Production) (Amendment) Law, 1969; Law 16 of 1969; 1 January 1970<sup>9</sup>.  
 Mauritius: Continental Shelf Act, 1970; 16 April 1970<sup>10</sup>.  
 Solomon Islands: Continental Shelf Ordinance, No. 4 of 1970; 28 July 1970<sup>11</sup>.  
 Tonga: Continental Shelf Act, 1970; Act No. 6 of 1970; 1 December 1970<sup>12</sup>.  
 Fiji Continental Shelf Act, 1970; Act No. 9 of 1970; 30 December 1970<sup>13</sup>.  
 Cyprus: Statement of the Ministry of Foreign Affairs, 31 May 1972<sup>14</sup>.

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1. *Le Mornieur*, No. 113, 28 Dec. 1959 (unverified reference). See also the Decree of 6 Apr. 1972; U.S. Dept. of State, *The Geographer, Limits in the Sea*, No. 51, p. 6.

2. U.N. Legis. Ser., *National Legislation and Treaties Relating to the Territorial Sea*, ST/LEG/SER.B/15, New York, 1970, p. 460. See also the Mining (Mineral Oil) Ordinance, No. 7 of 1963, 6 May 1963, *ibid.*, p. 461; and the Control of the Natural Resources of the Seabed and Subsoil Ordinance, No. 16 of 1967, 24 November 1967.

3. *Ibid.*, p. 389. Section 9 applies the Act in the Cook Islands, with certain exceptions which are not material.

4. U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 156.

5. U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/18, New York, 1976, p. 157.

6. Suppl. to Official Gazette, dated 15 February 1968.

7. U.N. Legis. Ser., *National Legislation and Treaties Relating to the Territorial Sea*, ST/LEG/SER.B/15, New York, 1970, p. 364.

8. Act No. 43 of 1969.

9. *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 114.

10. Act No. 5 of 1970.

11. *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 175.

12. U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/18, New York, 1976, p. 165.

13. U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 141.

14. *Ibid.*, p. 136.

157. With two exceptions<sup>1</sup>, the twenty-one precedents recorded above relate either to independent States or to Protected States or to dependencies which subsequently achieved full independence. At no time has any State expressed a doubt or reservation in the face of the persistent pattern of practice on the part of island States and States acting on behalf of island dependencies, most of which have become independent since the original legislation was made. The evidence of the silence and acquiescence of non-island States in the view that island States have a normal entitlement of shelf rights has particular cogency. The earliest claims – and especially those in respect of Jamaica, the Bahamas and Bahrain, in the years 1948 and 1949 – received the greatest possible publicity and were widely commented upon. The concept of shelf rights was regarded as both radical in legal terms and of great practical importance.

(5) *Recognition of the Entitlement of Island States in Doctrine*

158. The early claims and State legislation received the widest possible notice both in government circles and in the literature of the law. The shelf claims relating to Jamaica, the Bahamas and Bahrain were subjected to examination in many sources in the period 1948 to 1955, and the following items provide a substantial sample of the material (in chronological order):

- (a) Young, 'Further claims to areas beneath the high seas', *American Journal of International Law*, Vol. 43 (1949), pp. 790–792.
- (b) Azcárraga, 'Los Derechos sobre la plataforma submarina', *Revista española de derecho internacional*, Vol. 2 (1949), pp. 47–99.<sup>2</sup>
- (c) U.N. Secretariat Memorandum, 14 July 1950; *Yearbook of the International Law Commission*, 1950, Vol. II, p. 67 at pp. 87–113.
- (d) Lauterpacht, 'Sovereignty over submarine areas', *British Year Book of International Law*, Vol. 27 (1950), pp. 376–433.
- (e) *Anglo-Norwegian Fisheries case*, Pleadings of the Norwegian Government: *Pleadings*, Vol. II, pp. 249–262 (Annexes to the Norwegian Counter-Memorial); *ibid.*, Vol. III, pp. 647–653 (Norwegian Reply).
- (f) Young, 'Delimitation of seaward areas under national jurisdiction', *American Journal of International Law*, Vol. 45 (1951), pp. 225–239; (and see, in particular, at p. 236).
- (g) Award in the case of *Petroleum Development Ltd. v. Sheikh of Abu Dhabi*, September 1951; *International Law Reports*, Vol. 18, p. 144 at p. 153.
- (h) Azcárraga, *La plataforma submarina y el derecho internacional*, Madrid, 1952.

1. Namely: the Falkland Islands and the Cayman Islands, as dependencies of the United Kingdom.

2. This writer does not refer to the precedents involving Jamaica, the Bahamas and Bahrain, but considers Latin-American practice, including therein Cuban proposals of 1946 and 1947.

- (i) Gidel, *Le Plateau Continental*, International Bar Association, Madrid, July 1952; Martinus Nijhoff, The Hague.
- (j) Mouton, *The Continental Shelf*, The Hague, 1952 (see, in particular, pp. 250-260).
- (k) Anninos, *The Continental Shelf and Public International Law*, The Hague, 1953, pp. 30-39, 150-151.
- (l) Rousseau, *Droit international public*, Paris, 1953, paragraph 567.
- (m) Colombos, *The International Law of the Sea*, 3rd edition, London, 1954, pp. 58-63.
- (n) Goldie, 'Australia's Continental Shelf: Legislation and Proclamations', *International and Comparative Law Quarterly*, Vol. 3 (1954), pp. 535-575.
- (o) Oppenheim, *International Law*, 8th edition, by H. Lauterpacht, London, 1955, Vol. I, pp. 631-635.

159. This mass of materials includes the work of some of the leading publicists of the period, and represents a variety of nationalities. In responding to and participating in the development of continental shelf doctrine the writers make not a single critical observation concerning the shelf claims relating to Jamaica, the Bahamas, Bahrain or the Falkland Islands.

160. The literature of the law and, indeed, all the available sources, indicate with absolute certainty that the State practice of coastal States whose homeland consisted of one or more islands, failed to evoke a single protest or reservation. The acquiescence and recognition of other States was the general rule and there were no exceptions. Moreover, it may be recalled that in this period States did not fail to protest developments in maritime matters of which they disapproved<sup>1</sup>. The acceptance of the international community is evidenced also in Digests of State practice. Thus the official Department of State publication, *Digest of International Law*, edited by Dr. Whiteman, chronicles the practice in detail<sup>2</sup> and records no United States reservation concerning the shelf rights of island States and island dependencies.

#### (6) *The Conventions of 1958 and 1982*

161. As a matter of legal principle the modern law of the sea assimilates islands and island-coasts to mainland territory in respect of continental shelf entitlement and rights and for all purposes of delimitation. The legal position is fully reflected in the 1958 Conventions. Thus the Convention on the Territorial Sea and Contiguous Zone makes provision as follows in Article 10:

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1. See Auguste, *The Continental Shelf*, Geneva and Paris, 1960, p. 144 (note 137), referring to protests on the part of the United Kingdom and others in response to South American claims. For U.S. protest notes to various South American Governments, see Whiteman, *Digest of International Law*, Vol. IV, pp. 792-802.

2. Vol. IV, released April 1965, pp. 789-814.

- “1. An island is a naturally-formed area of land, surrounded by water, which is above water at high tide.
2. The territorial sea of an island is measured in accordance with the provisions of these articles.”

In the provisions relating to delimitation (Article 12 and Article 24, paragraph 3) the same Convention makes no reference to island States or the coasts of island States as a legally distinct category.

162. The Convention on the Continental Shelf of 1958 defines the term “continental shelf” by reference to “the coast” (in general) and also to “the coasts of islands” (Article 1). In defining the legal quality of continental shelf rights, Article 2 refers comprehensively to “the coastal State” without further distinction.

163. At the First United Nations Conference on the Law of the Sea, the Fourth Committee adopted a Philippine proposal to add an additional paragraph to the draft Article 67<sup>1</sup>. As adopted by the Committee, the text of Article 67 included a second paragraph as follows: “For the purpose of these articles the term “continental shelf” shall be deemed also to refer to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.”<sup>2</sup> In the final text of the Convention on the Continental Shelf the two paragraphs were merged into a single text (Article 1) as follows:

“For the purpose of these articles, the term ‘continental shelf’ is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast . . . ; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.”

164. Another facet of State practice of relevance in the present connection is the manner in which Parties to the 1958 Convention did or did not make reservations thereto relating to the effect upon delimitation of the presence of islands. It will be recalled that the 1958 Convention contains, in Article 12, provisions permitting reservations to be made to, *inter alia*, Article 6, which is the delimitation article. The only Parties to make reservations relating in any way to islands were the Republic of China (which stated that in determining the boundary of the continental shelf exposed rocks and islets shall not be taken into account), France (which rejected the application of equidistance in those areas where, in the Government’s opinion, special circumstances exist, including in particular the Bay of Granville) and Venezuela (which declared that there are special circumstances to be taken into account in the area between the coast of Venezuela and the island of Aruba).<sup>3</sup>

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1. *United Nations Conference on the Law of the Sea, Official Records*, Vol. VI, pp. 31–47, 133.

2. *Ibid.*, p. 143.

3. As recorded in the U.N. publication, *Multilateral Treaties in respect of which the Secretary-General performs depositary functions*, New York, 1980.



165. The practice of States in the matter of reservations to the 1958 Convention is entirely compatible with, and provides confirmation of, the practice of States generally concerning the entitlement of island States. Only three reservations touched on the question of islands *in any form* and no reservation related to island States. The significance of the absence of any reservation concerning delimitation in respect of island States is enhanced by the fact that six of the States signing, ratifying or acceding to the 1958 Convention had coasts opposite to island States. The pertinent cases of juxtaposition were as follows:

- Colombia (ratified 8 January 1962) *vis-à-vis* Dominican Republic and Haiti.
- Iran (signed 28 May 1958) *vis-à-vis* Bahrain.
- Malaysia (acceded 21 December 1960) *vis-à-vis* Singapore.
- Mexico (acceded 2 August 1966) *vis-à-vis* Cuba.
- United Kingdom (ratified 11 May 1964) *vis-à-vis* Republic of Ireland.
- United States (ratified 12 April 1961) *vis-à-vis* Cuba and the Bahamas.

166. The practice in the matter of reservations to the Convention is consistent with the text of the Articles of the Convention itself. Island States were regarded as having a normal entitlement to shelf rights.

167. In connection with the Law of the Sea Conference of 1958 the attention of the Court is respectfully drawn to a document (included in the "Preparatory Documents" of that Conference) which is of relevance, "Preparatory Document No. 2"<sup>1</sup> consists of a memorandum by the UNESCO Secretariat entitled "Scientific considerations relating to the continental shelf". The contents of this item show that without any doubt the concept of continental shelf included both "the zone around an island or island group"<sup>2</sup> and the "shallow seas between islands and/or continents"<sup>3</sup>. Of the latter the Memorandum states that "these areas incontestably form parts of the continental shelf". The examples given include the Gulf of Paria (between Venezuela and Trinidad) and the Arabian (or Persian) Gulf.

168. The various drafts produced by the Third United Nations Conference on the Law of the Sea contain a special part relating to the "Régime of Islands", but the effect is emphatically the same: island States are not the subject of any special provision. The provision in the Convention on the Law of the Sea signed in Jamaica on December 10, 1982 is identical with the provision (Article 132) formulated in the

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1. *United Nations Conference on the Law of the Sea, Official Records*, Vol. I, p. 39 (Doc. A/Conf. 13/2 and Add 1).

2. *Ibid.*, para. 6; and see also para. 11.

3. *Ibid.*, para. 12.

Informal Single Negotiating Text dated 7 May 1975<sup>1</sup>. The relevant text is as follows:

" PART VIII  
RÉGIME OF ISLANDS

*Article 121*

*Régime of islands*

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

169. There can be little doubt that these formulations constitute evidence of the state of general or customary international law in the last thirty years or so in respect of the legal status of islands. On the general issue there is a consistency in the position adopted both in the Conventions of 1958 and in the drafts, and the Convention, produced in the period 1975 to 1982 by the Third United Nations Conference: in matters of maritime delimitation no legal disability attaches to coastal States which are islands or consist of a group of islands. In this connection it is to be recalled that of Article 121 Judge Oda has remarked: "No suggestion was ever made, and no idea ever presented, to imply that an island State should be distinguished from other coastal States or from any non-independent islands or groups of islands"<sup>2</sup>. Indeed, the terms of the third paragraph of Article 121 present an *a fortiori* argument<sup>3</sup>. Only very insignificant features are to be denied a normal rôle in the process of delimitation.

170. The consistency of the doctrine that island States are under no legal disability in relation to the entitlement to, or delimitation of, areas of appurtenant continental shelf is confirmed by the literature in the period after the conclusion of the Continental Shelf Convention of 1958. The

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1. Doc. A/CONF.62/WP.8/Part II; *Third United Nations Conference on the Law of the Sea, Official Records*, Vol. IV, p. 152.

2. *Dissenting Opinion, Tunisia-Libya case, I.C.J. Reports 1982*, pp. 251-252, paras. 149-150 (at p. 252, para. 150).

3. See the Dissenting Opinion of Judge Evensen, *Tunisia-Libya case, I.C.J. Reports 1982*, p. 283.

items which follow are representative of the publications in the relevant period:

- Whiteman, *Digest of International Law*, Vol. IV, U.S.G.P.O., Washington, 1965, pp. 808–810.
- Barabolya *et al.*, *Manual of International Maritime Law*, Moscow, 1966 (translation, Dept. of the Navy, Washington, D.C., 1968), pp. 101–102.
- De Visscher, *Les problèmes de confins en droit international public*, 1969, pp. 148–157.
- Verzijl, *International Law in Historical Perspective*, Vol. III, Paris, 1970, pp. 77–94.

## 2. THE ENTITLEMENT OF ISLAND STATES: FURTHER EVIDENCE

171. The practice of States in affirming the normal entitlement of island States, as coastal States, for purposes of shelf delimitation is complemented by other evidence of the law.

172. In the *Anglo-French Continental Shelf Arbitration* the Court considered the evidence of the relationship of the Channel Islands and the United Kingdom and concluded that “in matters relating to the continental shelf, it is the United Kingdom Government which is the responsible authority, both internally and externally”<sup>1</sup>. The Court then expressed the following legally significant conclusion<sup>2</sup>:

“It follows that, as between the United Kingdom and the French Republic, the Court must treat the Channel Islands only as islands of the United Kingdom, not as a semi-independent States entitled in their own right to their own continental shelf vis-à-vis the French Republic.”<sup>3</sup>

173. This statement involves the finding that the Channel Islands “are separate islands of the United Kingdom, not separate States”<sup>4</sup>. It also constitutes an acceptance of the principle that island States do not suffer reduction of shelf rights. In the words of a recent writer<sup>5</sup>: “The implication lying behind this finding is that had the Channel Islands constituted independent<sup>6</sup> island States, their effect as continental shelf basepoints would have been different.” In the same general connection, Professor Bowett<sup>7</sup> has observed that: “In practice States, whether parties

1. Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 186; and see also para. 172.

2. *Ibid.*

3. Emphasis supplied.

4. *Ibid.*, para. 190 *in fine*.

5. Dr. Clive R. Symmons, *The Maritime Zones of Islands in International Law*, The Hague, 1979, p. 177.

6. Emphasis in the original.

7. *The Legal Regime of Islands in International Law*, New York, 1979, p. 140.

to the 1958 Convention or not, and whether 'island-States' or continental States with off-shore islands, have asserted rights to continental shelf for their islands."

174. A former Geographer of the United States Department of State adopted the view that, as a matter of principle, an island State should be given full effect for purposes of continental shelf delimitation<sup>1</sup>:

"A fifth situation also calls for the full effect of islands, although care must be exercised in the application. An independent state, or perhaps even an autonomous insular state, should possess territory that warrants treatment as mainland. While it was stressed earlier that political status should not exercise a negative effect on the value of islands as basepoints, justice would appear to demand that the status of independence or near-independence should entitle a small island state to all the attributes of mainland. It is difficult to conceive of such a small state being deprived justifiably of shelf and/or seabed merely on the basis of size. While few independent and small insular states are situated in close proximity to other states, the potential exists. With the increasing trend for independence on the part of small areas, the world may well see in the near future many of these entities, which will be limited in territory. Equity should logically demand a maritime domain undiminished by the special circumstance of small-area insularity."

175. By 1981 fourteen island States had claimed exclusive economic zones with the dimension of 200 nautical miles from the pertinent baselines<sup>2</sup>. Numerous other States have in recent years established either exclusive economic zones or exclusive fishery zones of 200 miles in respect of island dependencies<sup>3</sup>.

### 3. CONCLUSION

176. The practice of island States both in relation to the continental shelf and the exclusive economic zone has the features of generality and consistency with reference to the critical point of law; namely, that island States have the same entitlement to shelf rights and economic zones as other coastal States. There is the clearest possible evidence of the absence of any disability in the context of general international law.

177. There is here an analogy with the issues presented to the Court in the *Anglo-Norwegian Fisheries* case. No record has been found of any

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1. Robert D. Hodgson, in Gamble and Pontecorvo (ed.), *Law of the Sea: The Emerging Régime of the Oceans*, Cambridge, Mass., 1973, p. 137 at p. 186. For other expressions of this view see Padwa, *International and Comparative Law Quarterly*, Vol. 9 (1960), p. 628 at p. 650 and Karl, *American Journal of International Law*, Vol. 71 (1977), p. 642 (footnote 3).

2. See Annex 21.

3. See Annex 21.

diplomatic protest or reservation of position in face of the practice of island States – a *practice which begins in 1948* (with reference to rights over continental shelf). To the positive practice of island States since 1948 must be added the general toleration of the international community. In the *Anglo-Norwegian Fisheries* case the reasoning of the Judgment placed emphasis on “the general toleration of foreign States with regard to the Norwegian practice”<sup>1</sup>, and “the general toleration of the international community”<sup>2</sup>.

178. The evidence is thus overwhelmingly in support of the proposition that island States have a normal entitlement to continental shelf rights. It follows that the position of Malta in these matters is a part of a well-established pattern of practice and a legal tradition, widely accepted within the international community. Moreover, in due course it was recognised in the practice of States that in the case of opposite States abutting upon the same shelf, the appropriate method of delimitation is by means of a median line.

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1. *I.C.J. Reports 1951*, p. 138.

2. *Ibid.*, p. 139.

**CHAPTER VII**  
**THE PRINCIPLES AND RULES OF INTERNATIONAL LAW**  
**APPLICABLE IN THE CONTEXT OF THE PRESENT**  
**DELIMITATION**

1. INTRODUCTION

179. This Chapter sets out the judicial exposition of the key aspects of the law applicable to the present delimitation and examines the State practice relating to delimitation of shelf areas dividing island States from opposite mainlands and to other comparable situations. In addition the relevance of the practice of other States in the Mediterranean region and the conduct of the parties will be indicated.

180. At this point in the exposition it is appropriate to notice the intimate connection between entitlement and delimitation on the basis of equidistance in the case of opposite States, whether or not one or both of the States involved are island States. It is important to recall that two delimitations on the basis of agreement, which took place near the beginning of the sequence of practice in the matter, involved a division of the seabed, either on the basis of equidistance or of equal shares, and involved islands. The first was the Agreement between the United Kingdom and Venezuela relating to the Gulf of Paria in 1942<sup>1</sup> and the second was the Agreement between Bahrain and Saudi Arabia in 1958<sup>2</sup>. The conclusion of these agreements evoked no hint of criticism by States or in the legal literature in respect of the basis of delimitation. Moreover, the background to the delimitation agreement between Bahrain and Saudi Arabia should be recalled. The pertinent legislation of the littoral States of the Gulf had, from the earliest appearance of continental shelf claims, made explicit reference to the determination of seabed boundaries in accordance with equitable principles<sup>3</sup>. The relevant Royal Pronouncement concerning the Policy of the Kingdom of Saudi Arabia, dated 28 May 1949<sup>4</sup>, states that "the boundaries . . . will be determined in accordance with equitable principles". The Proclamation made in the case of Bahrain, dated 5 June 1949, refers to the need for determination of boundaries "on just principles"<sup>5</sup>. Still, subject to minor variations, the dividing line between these two States is the median line<sup>6</sup>.

2. THE CASE OF OPPOSITE STATES: THE MEDIAN LINE EFFECTS AN  
 EQUITABLE DELIMITATION

181. The principle that where the coasts of two States are opposite to one another the median line will normally bring about an equitable result

1. See below, para. 187(a).

2. See below, para. 187(b).

3. The legislation is collected in U.N. Legislative Series, *Laws and Regulations on the Regime of the High Seas*, ST/LEG/SER. B/1, 1951, pp. 22-30.

4. *Ibid.*, p. 22.

5. *Ibid.*, p. 24.

6. See below, para. 187(b).

has been explicitly recognised in all three delimitation cases so far decided by international tribunals. Thus in the *North Sea Continental Shelf* cases the Court made the following observations on the case of opposite States<sup>1</sup>:

“57. Before going further it will be convenient to deal briefly with two subsidiary matters. Most of the difficulties felt in the International Law Commission related, as here, to the case of the lateral boundary between adjacent States. Less difficulty was felt over that of the median line boundary between opposite States, although it too is an equidistance line. For this there seems to the Court to be good reason. *The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved.*”

182. In the *Anglo-French Continental Shelf Arbitration* the Court made two significant statements of principle:

- (i) “Whereas in the case of ‘opposite’ States a median line will normally effect a broadly equitable delimitation, a lateral equidistance line extending outwards from the coasts of adjacent States for long distances may not infrequently result in an inequitable delimitation by reason of the distorting effect of individual geographical features.”<sup>2</sup>
- (ii) “In a situation where the coasts of the two States are opposite each other, the median line will normally effect a broadly equal and equitable delimitation.”<sup>3</sup>

183. The parties in the *Tunisia-Libya Continental Shelf* case did not rely upon the method of equidistance, and the Court did not employ that method of establishing the basis of an alignment. However, in regard to the second sector of the line adopted by the Court in that case, the Court gave clear recognition to the normal applicability of the equidistance method to the case of opposite coasts. The relevant passage is as follows<sup>4</sup>:

“While, as the Court has already explained (paragraphs 109–110), there is no mandatory rule of customary international law requiring delimitation to be on an equidistance basis, it should be recognised that it is the virtue – though it may also be the weakness – of the equidistance method to take full account of almost all variations in

1] *I.C.J. Reports* 1969, p. 36, para. 57. Emphasis supplied. See also the Judgment at p. 53.

2. *Decision* of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 95.

3. *Ibid.*, para. 239.

4. *I.C.J. Reports* 1982, p. 88, para. 126.

the relevant coast-lines. Furthermore, the Court in its 1969 Judgment recognised that there was much less difficulty entailed in a general application of the equidistance method in the case of coasts opposite to one another, when the equidistance line becomes a median line, than in the case of adjacent States (*I.C.J. Reports 1969*, pp. 36–37, para. 57). *The major change in direction undergone by the coast of Tunisia seems to the Court to go some way, though not the whole way, towards transforming the relationship of Libya and Tunisia from that of adjacent States to that of opposite States, and thus to produce a situation in which the position of an equidistance line becomes a factor to be given more weight in the balancing of equitable considerations than would otherwise be the case.*<sup>1</sup>

### 3. STATE PRACTICE

#### (1) *The relevance of State practice*

184. By way of preface to the presentation which follows of State practice in the form of delimitation agreements between States, it is pertinent to recall the observations of Judge Padilla Nervo in his Separate Opinion in the *North Sea Continental Shelf* cases<sup>2</sup>:

“The fact that the equidistance method has been followed in several bilateral agreements between neighbouring States does not mean at all that those States were compelled by the Convention to use the equidistance method. It only means that there was *agreement* between them *because they considered such method satisfactory, fair, equitable and convenient.*”<sup>3</sup>

There is an evident value in recourse to the practice of States in like and comparable situations as an objective reflection of the application of equitable principles leading to an equitable result.

#### (2) *The Case of Island States Opposite Distant Mainlands*

185. The State practice provides an unequivocal demonstration of the persistence of the equidistance method of delimitation in the case of opposite States. It is not the purpose to present all such delimitation practice. The most relevant practice for present purposes concerns island States facing distant mainlands and abutting upon the same shelf. So far as Malta has been able to ascertain there have been seven relevant delimitations on the basis of agreement. These are (in chronological order) described below. The texts of the Agreements appear as Annexes (Annexes 22 to 28). Maps illustrating each of these Agreements, and the Agreements listed later, are also presented in this Memorial.

1. Emphasis supplied.

2. *I.C.J. Reports 1969*, p. 98.

3. Emphasis supplied.



(a) *Bahrain–Iran, Agreement signed on 17 June 1971*<sup>1</sup>

This instrument establishes the continental shelf delimitation. A glance at the alignment on the map shows that Bahrain did not suffer any reduction of shelf area. In his commentary on the Agreement the Geographer of the U.S. Department of State makes the following remarks:

“The Bahrain–Iran continental shelf boundary is not based solely on the equidistance principle. Points 1 and 4 were determined by existing continental shelf boundary agreements; the remaining two points are nearly the same distance from Bahrain and Iran, so the assumption can be made that Points 2 and 3 are in fact equidistant points. The continental shelf boundary agreement does not specify that the principle of equidistance was utilised, but rather that the boundary divides the shelf in a ‘just, equitable and precise manner’.”<sup>2</sup>

“The limits of the Bahrain–Iran continental shelf boundary were constrained by two terminal points which were part of existing continental shelf boundary agreements. The intervening turning points, Points 2 and 3, are apparently based on the principle of equidistance, although the agreement does not state that the equidistance principle was utilised.”<sup>3</sup>

This delimitation is based substantially upon equidistance and is an excellent example of a division of shelf areas between an island State and a distant mainland: the distance between the two sets of basepoints averages a little over 100 nautical miles. The United States Department of State Geographer expresses no criticism of the treatment of Bahrain in his papers published in 1974<sup>4</sup> and 1981<sup>5</sup>.

(b) *Cuba–Mexico, Agreement signed on 26 July 1976*<sup>6</sup>

The Agreement establishes an equidistance line of 350 miles. In the Exchange of Notes the two Governments agreed that the dividing line affecting both the exclusive economic zones and the continental shelf areas of the Parties should be established “on the basis of the principle of equidistance”.

(c) *India–Maldives, Agreement signed on 28 December 1976*<sup>7</sup>

The delimitation concerns both continental shelf and exclusive economic zone. The Geographer of the U.S. Department of State states in his

1. U.S. Dept. of State, The Geographer, *Limits in the Seas*, No. 58. Ratifications were exchanged and the agreement entered into force on 14 May 1972.

2. *Ibid.*, p. 3.

3. *Ibid.*, p. 5. See also *Limits in the Seas*, No. 93, pp. 2–3.

4. *Ibid.*, No. 58: *Bahrain–Iran*.

5. *Ibid.*, No. 94: *The Persian Gulf*.

6. Text obtained officially through diplomatic channels and translated.

7. U.S. Dept. of State, *Limits in the Seas*, No. 78.

analysis<sup>1</sup>: "The boundary closely approximates an equidistance line". Much of the Maldives group lies at considerable distance from the coast of India.

(d) *Cuba-United States, Agreement signed on 16 December 1977*<sup>2</sup>.

The maritime boundary resulting is an equidistance line with certain minor adjustments. The purpose is to create a dividing line between the maritime jurisdictions of the two States; and in practice this involves division of exclusive economic zones.

(e) *Colombia-Dominican Republic, Agreement signed on 13 January 1978*<sup>3</sup>.

Article I of the Agreement provides as follows:

"The delineation of the marine and submarine areas that correspond to each of the two countries shall be effected, in general practice, by using the principle of the median line whose points are all equidistant from the closest points of the baselines whence the extension of the territorial sea of each State is measured."

(f) *Colombia-Haiti, Agreement signed on 17 February 1978*<sup>4</sup>.

Article I of the agreement provides as follows:

"The delimitation of the marine and submarine areas of the Republic of Colombia, and of the exclusive economic zone and continental shelf of the Republic of Haiti. It is a median line all the points of which are equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."

(g) *Dominican Republic-Venezuela, Agreement signed on 3 March 1979*<sup>5</sup>.

The maritime boundary created is in two segments. Both the western and eastern segments are equidistance lines, the former 108 miles in length.

### (3) *Cases of Island States Opposite Non-distant Mainlands*

186. The precedents referred to in the previous section concern delimitations as between island States and *distant* "mainlands" abutting upon the same continental shelf. This relationship obviously bears a very close analogy with the relationship of Malta and Libya. However, there are other examples of State practice which provide strong evidence of the propriety of the equidistance method of delimitation in the case where an

1. *Ibid.*, p. 7.

2. *International Legal Materials*, Vol. XVII (1978), p. 110.

3. Nordquist, Lay and Simmonds, *New Directions in the Law of the Sea*, VIII, p. 78.

4. *Ibid.*, p. 76.

5. *Ibid.*, p. 80.

island State lies off-shore (though not at a considerable distance from) a "mainland" coastal State.

187. The relevant precedents of this type are as follows<sup>1</sup>:

(a) *United Kingdom (Trinidad)–Venezuela*<sup>2</sup>

On 26 February 1942, the Governments of the United Kingdom and of Venezuela signed an Agreement relating to the delimitation of the submarine areas of the Gulf of Paria<sup>3</sup>. The validity of the delimitation has at no time been challenged and the now independent State of Trinidad and Tobago has accepted the alignment. The delimitation concerns areas between opposite coasts abutting upon the same continental shelf. The boundary was not based upon the equidistance principle *as such*, but the resulting delimitation affords equal areas of seabed to each of the parties. Professor Bowett<sup>4</sup> has observed that the boundary is "an excellent example of a median line adjusted for administrative convenience since areas accruing to one party as a result of a deviation from the strict median line exactly balance areas accruing to the other". The significant feature is that the island of Trinidad *as such* was not considered to be under any legal disability and this assumption was made both in 1942 and in the practice of the two coastal States subsequent to the independence of Trinidad and Tobago. Both Venezuela and Trinidad and Tobago have become parties to the Continental Shelf Convention of 1958.

In the case of Venezuela the following reservation was made on signature<sup>5</sup>:

"In signing the present Convention, the Republic of Venezuela declares with reference to Article 6 that there are special circumstances to be taken into consideration in the following areas: the Gulf of Paria, *in so far as the boundary is not determined by existing agreements*<sup>6</sup>, and in zones adjacent thereto; the area between the coast of Venezuela and the coast of Aruba; and the Gulf of Venezuela."

(b) *Bahrain–Saudi Arabia, Agreement signed on 22 February 1958*<sup>7</sup>.

This instrument establishes a median line – for such it is in principle,

1. The texts of the Agreements are reproduced in Annexes 29 to 34.

2. U.S. Dept. of State, *Limits in the Seas*, No. 11.

3. The Agreement entered into force on 22 September 1942.

4. *The Legal Regime of Islands in International Law*, New York, 1978, p. 170.

5. *United Nations, Multilateral Treaties Deposited with the Secretary-General (Status as at 31 December 1981)*, ST/LEG/SER.E/1, p. 606. At the time of ratification (as opposed to signature) a reservation was made as follows: '... with express reservation in respect of article 6 of the said Convention'.

6. Emphasis supplied.

7. U.S. Dept. of State, *Limits in the Seas*, No. 12. The Agreement entered into force on 26 February 1958.

subject only to certain minor variations – as the continental shelf boundary, and this extends for a distance of 98.5 nautical miles. In his 'Analysis'<sup>1</sup> of the Agreement the Department of State Geographer expresses no surprise or reservation of any kind on the application of the equidistance method. It is worth noting that this approach was consistent with the policy of the Agreement of 1971 governing the delimitation as between Bahrain and Iran<sup>2</sup>. Both agreements show conformity in two significant respects: the application of the equidistance method in the context of opposite States abutting upon the same continental shelf; and the giving of the same weight to Bahrain as to the other coastal States of the region.

(c) *Australia-Indonesia, Agreements signed 18 May 1971, 9 October 1972 and 12 February 1973*

These instruments effect a seabed boundary in the area between Indonesia, Papua New Guinea and Australia. On achieving independence on 16 September 1975, the Government of the latter accepted the validity of the Agreements. The Australian sector of the boundary lies between the trijunction point A3 and extends westward to point A16. Between points A3 and A12 the line is in accordance with equidistance. Westward of point A12 the alignment is a negotiated boundary.

(d) *Indonesia-Singapore, Agreement signed on 25 May 1973*<sup>4</sup>.

Whilst this Agreement is concerned to establish a territorial sea boundary, the outcome is, given the geographical circumstances, a maritime boundary for all purposes, involving the shelf-locked island State of Singapore. A study of the text of the Agreement and of the analysis produced by the Geographer of the United States Department of State makes clear the fact that Singapore was not legally disadvantaged in the process of delimitation. In his "summary" of the arrangements agreed upon, the Geographer states the following<sup>5</sup>:

"The Indonesian-Singapore territorial sea boundary utilises both the equidistant principle (3 turning points) and negotiated positions (3 turning points). Five of the six turning points lie on the Indonesia side of an Indonesia-Singapore median line. Of particular interest is the location of Point 2. This turning point is located inside the Indonesian straight base-line system and is

1. *Ibid.*, pp. 3-5.

2. See above; para. 185(a).

3. U.S. Dept. of State, *Limits in the Seas*, No. 87, Annexes I and II.

4. *Ibid.*, No. 60.

5. *Ibid.*, pp. 4-5.

therefore in Indonesian internal waters. Islands were utilised as basepoints for the construction of the territorial sea boundary.”

(c) *India–Sri Lanka, Agreement signed on 23 March 1976*<sup>1</sup>.

This instrument is additional to the previous Agreement of 1974<sup>2</sup> establishing an historic waters boundary, which involved the application of the *equidistance method with minor modifications*<sup>3</sup>. The Agreement of 1976 provides for an equidistance line (with certain minor modifications) both in the Gulf of Manaar and in the Bay of Bengal. The combined maritime boundaries created by the two Agreements total approximately 604 nautical miles.

(f) *Bahamas–United States*

The delimitation of the continental shelf areas between the Bahamas and the coasts of Florida has not been regulated by agreement between the two States. However, the position of the United States in respect of the areas within the Florida Straits, where the relevant coasts are opposite each other, is, it is reported, based on the equidistance method<sup>4</sup>.

(4) *Equidistance in the National Legislation of Island States*

188. A considerable number of island States specify in their legislation the method of delimitation on the basis of a median line in relation either to the continental shelf, or to the exclusive economic zone, or to both legal interests, or to an exclusive fishery zone. The pattern of recent legislation shows an ever-increasing tendency for the shelf to be assimilated to the exclusive economic zone for many purposes.

189. The pertinent legislation is as follows (in alphabetical order)<sup>5</sup>:

Bahamas: Fisheries Resources (Jurisdiction and Conservation) Act, 1977<sup>6</sup> (fishery resources of the seabed and subsoil).

Barbados: Marine Boundaries and Jurisdiction Act, 1978<sup>7</sup> (exclusive economic zone).

Comoros: Ordinance No. 76–938/CE, 15 June 1976<sup>8</sup> (exclusive economic zone).

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1. *Ibid.*, No. 77. The Agreement entered into force on 10 May 1976.  
 2. *Ibid.*, No. 66.  
 3. *Ibid.*, p. 6.  
 4. See Feldam and Colson, *American Journal of International Law*, Vol. 75 (1981), p. 729 at pp. 750–1.  
 5. The text of the legislation is reproduced in Annexes 34 to 45 and in Annex 1.  
 6. Section 11; U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/19, New York, 1980, p. 179.  
 7. Section 3, Act 3, 1978.  
 8. Article 3; Nordquist, Lay and Simmonds, *New Directions in the Law of the Sea*, VII, p. 372.

- Fiji: Marine Spaces Act, 1977<sup>1</sup> (continental shelf and exclusive economic zone).  
 Grenada: Marine Boundaries Act, 1978<sup>2</sup> (exclusive economic zone).  
 Iceland: Law No. 41 of 1 June 1979<sup>3</sup> (continental shelf and exclusive economic zone).  
 Kiribati: Proclamation of 10 March 1978<sup>4</sup> (fishery limits).  
 Malta: Continental Shelf Act, 1966<sup>5</sup> (continental shelf).  
 Nauru: Marine Resources Act, 1978<sup>6</sup> (fishery limits).  
 New Zealand: Territorial Sea and Exclusive Economic Zone Act, 1977<sup>7</sup> (exclusive economic zone).  
 Solomon Islands: Delimitation of Maritime Waters Act, 1978<sup>8</sup> (continental shelf and exclusive economic zone).  
 Tuvalu: Proclamation of 26 October 1978<sup>9</sup> (fishery limits).  
 Western Samoa: Exclusive Economic Zone Act, 1977<sup>10</sup> (exclusive economic zone).

(5) *Equidistance in National Legislation. Relating to Island Dependencies*

190. In addition, several States have produced similar provisions in relation to island dependencies, as follows:<sup>11</sup>

- Denmark (Faroe Islands): Order No. 598 of 21 December 1976<sup>12</sup> (fishery limits)  
 New Zealand (Cook Islands): Territorial Sea and Exclusive Economic Zone Act, 1977<sup>13</sup> (exclusive economic zone)  
 New Zealand (Tokelau): Tokelau (Territorial Sea and Exclusive Economic Zone) Act, 1977<sup>14</sup> (exclusive economic zone).  
 United Kingdom (Turks and Caicos Islands): Proclamation No. 4 of 1978<sup>15</sup> (fishery limits).

1. Sections 6 and 7, *ibid.*, p. 391.

2. Section 3; Act No. 20 of 1978.

3. Article 7; U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/19, New York, 1980, p. 43.

4. Nordquist, Lay and Simmonds, *op. cit.*, VII, p. 110. Kiribati became independent on 12 July, 1979.

5. Section 2; U.N. Legis. Ser., *National Legislation and Treaties Relating to the Law of the Sea*, ST/LEG/SER.B/16, New York, 1974, p. 156.

6. Sections 2 and 3; Nordquist, Lay and Simmonds, *op. cit.*, VII, p. 429.

7. Section 9; Nordquist, Lay and Simmonds, *op. cit.*, p. 440.

8. Sections 6 and 7; Act No. 32, 1978.

9. Nordquist, Lay and Simmonds, *op. cit.*, p. 197.

10. Section 9; Nordquist, Lay and Simmonds, *op. cit.*, VIII, p. 38.

11. The texts of the legislation is reproduced in Annexes 46 to 49.

12. Article 1; Nordquist, Lay and Simmonds, *op. cit.*, V, p. 111.

13. Sections 2 and 8; Nordquist, Lay and Simmonds, *op. cit.*, VII, p. 374; see also Continental Shelf Amendment Act, 1977.

14. Sections 2 and 7; Nordquist, Lay and Simmonds, *op. cit.*, VII, p. 468.

15. 24th November 1978; L.N. 14/1978.

(6) *Certain Other Delimitations Involving Major Island Dependencies Opposite Mainlands*

191. These include the following:<sup>1</sup>

(a) *Norway—United Kingdom (Shetland Islands)*

On 10 March 1965 the Governments of the Kingdom of Norway and the United Kingdom signed an agreement for the delimitation of the continental shelf boundary between the two countries<sup>2</sup>. Article 1 of the Agreement specifies that the dividing line is based upon equidistance "with certain minor divergencies for administrative convenience". In his 'Analysis'<sup>3</sup> the Geographer of the U.S. Department of State observes that "the equidistance principle was employed for the entire length of the C.S.B." [continental shelf boundary].

The northern sector of the equidistance line lies between the mainland of Norway and the Shetland Islands and involves turning points 5, 6 and 7, and terminal point 8. This sector is 150 nautical miles in length. The distances between the four points and the land are, respectively, 98, 90, 82 and 87 miles.

(b) *India (Nicobar Islands)—Indonesia (Sumatra)*

The delimitation of continental shelf areas dividing the Nicobar Islands and the large island of Sumatra lying opposite was effected by an Agreement on 8 August 1974<sup>4</sup>. The shelf boundary is based upon equidistance with certain practical and unimportant modifications<sup>5</sup>. The boundary was extended both northeastward and southwestward by an agreement signed on 14 January 1977<sup>6</sup>. Once again the equidistance method was employed. In substance these two delimitations accord full weight to the Nicobar Islands and provide strong evidence for the appropriateness of equidistance in comparable situations elsewhere. It will be noted that the Nicobar Islands do not have the status of an island State.

(c) *United States (Puerto Rico)—Venezuela*

On 28 March 1978 the Governments of the United States and the Republic of Venezuela signed an agreement establishing 'the mari-

1. The text of the Agreements is reproduced in Annexes 50 to 54 and Annex 20.

2. U.S. Dept. of State, *Limits in the Seas*, No. 10 (Revised), p. 2. The Agreement entered into force on 29 June 1965.

3. *Ibid.*, p. 4.

4. U.S. Dept. of State, *Limits in the Seas*, No. 62. The Agreement entered into force on 17 December 1974.

5. *Ibid.*, p. 3.

6. *Ibid.*, No. 93, pp. 5, 14; also in *Indian Journal of International Law*, Vol. 19 (1979), p. 295. The Agreement entered into force on 15 December 1978.

time boundary' between them<sup>1</sup>. The boundary divides the waters and seabed areas lying between Puerto Rico and Venezuela. The delimitation is based closely upon equidistance and creates segments which are, respectively, median lines between Puerto Rico and certain groups of islands lying off the coast of Venezuela, and median lines between St. Croix Island (United States) and Aves Island (Venezuela)<sup>2</sup>. In so far as the boundary *as between Puerto Rico and the Venezuelan mainland* is not a median line, this is due to the presence of Venezuelan islands. The significance, for purposes of delimitation, accorded to these relatively small Venezuelan islands is consistent with the policy giving appropriate weight to Puerto Rico, subject only to the influence of the intervening Venezuelan islands.

(d) *India (Nicobar Islands)–Thailand*

This continental shelf delimitation of the areas lying between the Nicobar Islands and Thailand was effected by an agreement signed on 22 June 1978<sup>3</sup>. The alignment is substantially based upon equidistance. Consequently, as in the two delimitations between India and Indonesia, the Nicobar Islands have been given full weight in a delimitation *vis-à-vis* the distant mainland. The Thailand coasts lie approximately 230 or 240 miles (in different sectors) away from the baselines and basepoints on the Nicobar Islands.

(e) *Denmark (Faroes)–Norway*

On 15 June 1979 the Governments of Denmark and Norway signed an agreement for the delimitation of the continental shelf between the Faroes and Norway<sup>4</sup>. Article 1 of the Agreement provided as follows:

“The line of demarcation between the section of the continental shelf in the waters between the Faroes and Norway over which the Kingdom of Denmark and the Kingdom of Norway, respectively, exercise sovereignty in so far as prospecting for, and exploitation of, natural resources are concerned, shall be the median line which is equidistant on every point from the closest points on the base lines whence the width of the outer territorial waters of the contracting parties is measured.”

The Faroe Islands are some 310 miles distant from Norway.

1. *Ibid.*, No. 91. The Agreement entered into force on 24 November 1980.

2. See the analysis by Robert W. Smith, *Geographical Review*, Vol. 71 (1981), p. 395 and pp. 406–7. It may be recalled that the author was the official Geographer of the U.S. Department of State.

3. *Limits in the Seas*, No. 93, pp. 5, 14; also in *Indian Journal of International Law*, Vol. 19 (1979), p. 295. The Agreement entered into force on 15 December 1978.

4. The Agreement was ratified on 3 June 1980. The text of the Agreement was obtained officially through diplomatic channels. See reduced map at page 38.



(f) *Australia–France (New Caledonia)*

On 4 January 1982 the Governments of Australia and France signed an agreement which effected a major delimitation between the Australian fishing zone and the French Economic Zone and between their respective areas of continental shelf<sup>1</sup>. With respect to New Caledonia, the resulting boundary is an equidistance line more than 1200 miles in length which gives full effect to New Caledonia and, additionally, utilises a number of uninhabited reefs as basepoints.

192. The view of the United Kingdom Government on the issue of principle emerges clearly in a written answer<sup>2</sup> from the Secretary of State for Foreign and Commonwealth Affairs in response to a question relating to advertisements for tenders to drill for oil by the Argentine State petroleum company in relation to areas appurtenant to the Falkland Islands. The Secretary of State expressed the Government's view thus:

“No agreement has been reached between the U.K. and Argentine Governments on the delimitation of the continental shelf as between the Falkland Islands and Argentina. In the absence of an agreed boundary, neither party, in Her Majesty's Government's view, would be entitled to exercise continental shelf rights beyond the median line between the Falkland Islands and Argentina. We have protested to the Argentines about the YPF tender which does indeed go beyond the median line.”

(7) *Equidistance in the Delimitation of Shelf Areas Dividing Island Groups*

193. The rôle of equidistance in the delimitation of areas dividing islands and island groups at some distance from each other is prominent in a number of recent delimitation agreements.<sup>3</sup> The relevant agreements are as follows (in alphabetical order):

- (a) Cuba–Haiti, Agreement signed on 27 October 1977 (equidistance line dividing exclusive economic zones and continental shelf areas)<sup>4</sup>.
- (b) France (Wallis and Futuna Islands)–Tonga, Agreement signed on 11 January 1980 (median line dividing the economic zones)<sup>5</sup>.
- (c) France (Reunion)–Mauritius, Agreement signed on 2 April 1980 (median line dividing the economic zones)<sup>6</sup>.

1. Text obtained officially through diplomatic channels.

2. See *Parliamentary Debates*, House of Lords, Vol. 415, cols. 971–2, 15 December 1980; also in *U.K. Materials on International Law, 1980*; *British Year Book of International Law*, Vol. 51 (1980), p. 458.

3. The text of the Agreements is reproduced as Annexes 54 to 60.

4. Nordquist, Lay and Simmonds, *New Directions in the Law of the Sea*, VIII, p. 69.

5. *Ibid.*, Vol. 84 (1980), p. 968.

6. U.S. Dept. of State, *Limits in the Seas*, No. 95. In force: 2 April 1980.

- (d) New Zealand (Cook Islands)–United States (American Samoa), Agreement signed on 11 June 1980 (establishes a maritime boundary which is an equidistance line)<sup>1</sup>.
- (e) New Zealand (Tokelau)–United States (American Samoa), Agreement signed on 2 December 1980 (establishes a maritime boundary which is an equidistance line).<sup>2</sup>
- (f) France (Martinique)–St. Lucia, Agreement signed on 4 March 1981 (equidistance line dividing the “respective maritime areas in which the two States exercise sovereign rights”)<sup>3</sup>.
- (g) Australia (Heard and McDonald Islands)–France (Kerguelen Islands), Agreement signed on 4 January 1982 (median line dividing the Australian fishing zone and the French Economic Zone, and the respective areas of continental shelf).<sup>4</sup>

194. In the context of delimitation of shelf areas dividing island groups the relations of the New Hebrides (in the period immediately before Independence) and the independent island group of Fiji are of considerable relevance. On 22nd January 1980 the British High Commission and the French Embassy in Suva, Fiji, presented a joint diplomatic Note to the Government of Fiji, which read in part as follows<sup>5</sup>:

“The Government of the French Republic and the Government of the United Kingdom have taken note of the intention of the Government of Fiji to establish a maritime zone of 200 miles from the baselines from which the breadth of the territorial waters of Fiji is measured.

In view of the forthcoming independence of the New Hebrides and the permanent character which an eventual delimitation of Fiji and New Hebridean 100-mile zones would have, the two Governments consider that any definitive delimitation should be effected after the Condominium régime has ceased to exist by direct agreement between the New Hebridean and Fiji authorities.

However, even in the absence of a definitive delimitation, the establishment by the Government of Fiji of a 200-mile zone does not give rise to any objection on the part of the two Governments, provided that the rights and powers exercised by the Government of Fiji in the zone conform with established international law.

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1. Text obtained officially through diplomatic channels.

2. Text obtained officially through diplomatic channels.

3. *Revue générale de droit international public*, Vol. 85 (1981), p. 654. In force: 4 March, 1981. Another Agreement relating to the delimitation of the Continental Shelf between Martinique (and Guadeloupe) on the one hand and the Venezuelan Islet of Aves bears no comparison with the situation here examined, because the geographical situation is significantly different.

4. The Agreement is the same as that referred to in para. 191(f) above. This Agreement effected two separate delimitations.

5. Printed in *British Year Book of International Law*, Vol. 51 (1980), p. 461.

It is understood that the median or equidistant line, defined in the Department's Note of 27 December 1978, will serve provisionally to delimit the competences exercised respectively in the New Hebrides zone and in the Fiji zone in respect of the sovereign rights recognised by international law for the purposes of exploration and exploitation of natural resources.

In the view of the two Governments, this provisional delimitation is expressly subject to a definitive delimitation which should be undertaken, as set out above, by negotiation between the representatives of the two Governments of the New Hebrides and Fiji."

#### 4. STATE PRACTICE ESTABLISHES THE EQUITABLE CHARACTER OF THE EQUIDISTANCE METHOD IN THE PRESENT CASE

195. In the light of the material set out above it is evident that the practice of States in situations which are legally comparable with the coastal relationships of Malta and Libya gives the strongest possible indication of the appropriateness – the equitable nature – of the method of equidistance in delimitation of the areas of continental shelf which appertain to Malta and Libya respectively. In considering the volume and significance of the State practice, as evidence of the position in accordance with customary or general international law, two factors call for emphasis. First, given the total of sufficiently comparable situations in the world at large, the practice set forth by the Government of Malta constitutes as complete a rehearsal of such material as possible. Secondly, there is a conspicuous absence of practice adverse to the application of the equidistance method in the case of opposite states abutting upon the same continental shelf.

#### 5. THE PRACTICE OF STATES IN THE MEDITERRANEAN REGION

196. The practice of the coastal States of the Mediterranean has general relevance in so far as it indicates the approach of the States of the region toward the problem of achieving an equitable solution in the setting of semi-enclosed seas of which the Mediterranean basin is composed. The evidence consists of four delimitation agreements, a provisional delimitation, and of course the legislation of Malta, relating to the continental shelf. Thus in sum the practice of six states is involved.

197. The relevant items of practice are as follows:<sup>1</sup>

(a) *Italy–Yugoslavia, Agreement signed on 8 January 1968*<sup>2</sup>

This delimitation involves the application of the method of equidistance with certain modifications to avoid giving too much effect to

1. The text of the Agreements is reproduced as Annexes 61 to 64.

2. U.S. Dept. of State, *Limits in the Seas*, No. 9.

“the presence of small islands located many miles from the mainland near the middle of the sea”.<sup>1</sup> The United States Department of State Geographer remarks that “this Agreement is an example of what has been achieved through negotiation when strict application of the equidistance principle results in a disproportionate division of the shelf between two countries as a consequence of the random location of small islands”<sup>2</sup>

(b) *Italy-Tunisia, Agreement signed on 20 August 1971*<sup>3</sup>

Article 1 provides as follows:—

“The boundary of the continental shelf between the two countries shall be the median line . . . taking into account islands, islets, and low-tide elevations with exception of Lampione, Lampedusa, Linosa and Pantelleria.”

Of this delimitation the United States Department of State Geographer remarks: “Italy and Tunisia have agreed that the Italian islands of Pantelleria, Linosa, Lampedusa, and Lampione, *all situated near the Tunisian mainland*<sup>4</sup>, constitute a special circumstance.”

(c) *Italy-Spain, Agreement signed on 19 February 1974*<sup>5</sup>

This Agreement also bases the shelf delimitation explicitly upon “the criterion of equidistance” (Article 1), and the boundary is thus the median line between Sardinia and Minorca. It is to be noted that Minorca is small compared with the mainland of Sardinia.

(d) *Greece-Italy, Agreement signed on 24 May 1977*<sup>6</sup>

The continental shelf division effected by this agreement is expressly based upon “the principle of the median line”, as stated in the preamble and in Article 1.

(e) *Malta: Continental Shelf Act, 1966*<sup>7</sup>

Section 2 of the Act provides that, in the absence of agreement, in the case of states “of which the coast is opposite that of Malta”, the boundary of the respective shelf areas shall be the median line.

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1. *Ibid.*, p. 7.

2. *Ibid.*

3. *Ibid.*, No. 89.

4. Emphasis supplied.

5. *Ibid.*, No. 90.

6. U.S. Dept. of State, the Geographer, *Limits in the Seas*, No. 96.

7. Annex 1.

(f) *Italy–Malta provisional demarcation on the basis of a Median Line between the opposite coasts of Sicily and Malta established 1965–70*

The seabed dividing the opposite coasts of Sicily and Malta has been subject to a median line demarcation in practice since the years 1965–70, in the form of a provisional line of delimitation of the continental shelf. The Notes Verbales which constitute the basis of this line of division are as follows: the Note Verbale No. 143/64 by the Ministry of Foreign Affairs of Malta to the Italian Embassy dated 31 December 1965<sup>1</sup>; and the Note Verbale by the Italian Ministry of Foreign Affairs to the Embassy of Malta on 29 April 1970<sup>2</sup>. The existence of the provisional line was confirmed by the Italian Government in a Note Verbale dated 16 March 1981<sup>3</sup>, in which the position is stated as follows:—

“As is well known, as far back as the years 1965–1970, since it was not possible – for contingent technical reasons – to proceed to a negotiated delimitation of the continental shelf between Malta and Italy, it had been agreed that the median line between the aforesaid coasts be considered as the provisional line of demarcation of the said shelf.”

Whilst the dividing line adopted at the insistence of the Italian Government was “provisional”, the ambit of adjustment envisaged was clearly limited. Thus in the Note Verbale of 29 April 1970 the Italian Government expresses itself in the following manner:

“... the Italian Government, pending a definitive agreement on the matter, considers that a provisional solution is necessary for the area of more immediate interest, namely that between Malta and Sicily, which is not affected by particular problems.”

198. The practice set forth exhibits certain common features. The five delimitations all concern opposite states on the same shelf and any adjustment of the equidistance line results from the existence of small islands substantially displaced from the mainland of the State concerned, and in some cases<sup>4</sup> nearer the coast of the other State. The normality and prominence of the equidistance method is consistently evident.

199. Two of the delimitations have a special relevance to the present case. The delimitations between Italy and Spain, and Greece and Italy, both involve the use of a median line as between coasts – and islands – at considerable distances from each other: in the case of Italy and Spain between 180 and 200 miles, and in the case of Greece and Italy between

1. Annex 65.

2. Annex 66.

3. Annex 67.

4. See the Italy–Tunisia delimitation, para. 197(b) above.

42 and 332 miles. Moreover, in the division between Italy and Spain equal value is given both to Sardinia and to Minorca in the constitution of the median line boundary.

200. In the submission of the Government of Malta, the practice of coastal States of the region provides significant indicators as to the proper basis of an equitable solution in the present proceedings.

#### 6. THE CONDUCT OF THE PARTIES: THE CONSISTENCY OF MALTA'S CONDUCT

201. In the *Tunisia-Libya Continental Shelf Case* the Court gave emphasis to the conduct of the Parties as being "highly relevant to the determination of the method of delimitation".<sup>1</sup> In this context the Court made the following statement: "the history of the enactment of petroleum licensing legislation by each Party and the grant of successive petroleum concessions, during the period from 1955 up to the signing of the Special Agreement, shows that . . . the phenomenon of actual overlapping of claims did not appear until 1974". The Court gave weight to the conduct of the parties, the line which the Parties acted upon, as a relevant circumstance.<sup>2</sup> Moreover, it may be recalled that Judge Jessup in a Separate Opinion in the *North Sea Continental Shelf Cases* referred to the need to take account of existing patterns of exploitation of seabed oil under licences or concessions.<sup>3</sup>

202. In the relations of Malta and Libya the conduct of the parties constitutes weighty evidence of the relevant equities to be taken into account in these proceedings. Malta adopted her Continental Shelf Act in 1966<sup>4</sup> on 28 July, and this was published in the normal way. The provisions of the Act (in section 2) stated unambiguously that, in the absence of agreement, the continental shelf boundary "in relation to states of which the coast is opposite that of Malta . . . shall be . . . the median line . . .". The adoption of this legislation on the part of Malta evoked no protest or reservation of rights from the Libyan Government, and no dissenting opinion was indicated by Libyan officials prior to a meeting of delegations in April 1973.<sup>5</sup>

203. On 24 April 1973 the *Malta Government Gazette* published a Notice inviting applications for Production Licences in the offshore area south of Malta and, in due course, concessions were granted in the period May to November 1974.<sup>6</sup> The concessions granted by Malta naturally observed the median line as a southern limit.<sup>7</sup> The first Libyan con-

1. *I.C.J. Reports* 1982, p. 18 and p. 83, para. 117.

2. *Ibid.*, p. 84, para. 118.

3. *I.C.J. Reports* 1969, pp. 79-81.

4. Annex 1.

5. See above, para. 65.

6. See above, para. 36.

7. See Map 3.

cessions in the area which infringed the median line were granted in September 1974.<sup>1</sup> Thus the first disturbance of the *status quo* constituted by Malta's legislation of July 1966 took place in September 1974, and resulted from a Libyan initiative. The conduct of Malta has remained consistent throughout the material period.

204. The grant of concessions which impugned the median line on the part of the Libyan Government forced the Government of Malta to take the steps necessary to protect her legal rights. The corporations licensed by Libya to undertake exploration activities in areas north of the median line were informed of Malta's rights in the relevant areas of continental shelf in letters couched in the clearest possible terms<sup>2</sup>.

205. At all stages of the matter Malta has maintained her position based on the legality of the equidistance delimitation and reserved her rights<sup>3</sup>. In contrast to the consistency of the conduct of Malta, which after all has reflected a position based upon legal principle and given due publicity in her legislation of 1966, the Libyan Government has failed to clarify its position on delimitation in the form of any legislation or administrative act. This lack of a public and definitive stance appears to reflect the absence of confidence on its part in any solution, based on legal principle, which differs from that propounded by Malta. This assessment is given strong confirmation by the terms of the letter sent by the Prime Minister of Libya to the Prime Minister of Malta on 19 December 1976<sup>4</sup>. In particular the Libyan Prime Minister adopts the view that no rule of international law on the subject of delimitation had emerged thus far.

206. As the Court indicated in its Judgment in the *Tunisia-Libya Case*,<sup>5</sup> the conduct of the Parties provides evidence of the position in equity as they conceive it to be. In this connection the attention of the Court is respectfully drawn to the Declaration of the Organization of African Unity on the Issues of the Law of the Sea of 19 July 1974.<sup>6</sup> This Declaration includes the following important point of principle:

*"Regime of Islands*

5. That the African States recognize the need for a proper determination of the nature of maritime spaces of islands and recommend that such determination should be made according to equitable principles *taking account of all relevant factors and special circumstances*<sup>7</sup> including:

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1. *Ibid.*

2. Annexes 9 and 10.

3. See, for example, (para.75 above), the terms of the diplomatic Note dated 8 August 1974, from the Government of Malta to the Libyan Ministry of Foreign Affairs.

4. See above, para. 89.

5. *I.C.J. Reports 1982*, p.84, para. 118.

6. *Third United Nations Conference on the Law of the Sea, Official Records III*, p. 63, U.N. Doc. A/CONF.62/33.

7. Emphasis supplied.

- (a) The size of the islands
- (b) Their population or the absence thereof
- (c) Their contiguity to the principal territory
- (d) Their geological configuration
- (e) *The special interest of island states<sup>1</sup> and archipelagic states.<sup>2</sup>*

207. Libya, which was and remains a Member of the Organisation of African Unity, did not oppose this Declaration or place any reservation on record in respect of the statement concerning the regime of islands.

#### 7. CONSIDERATIONS OF STABILITY AS AN ASPECT OF AN EQUITABLE SOLUTION

208. The practice of States examined in this Chapter of the Memorial provides clear evidence of the important and widespread role of equidistance as a method for producing an equitable solution in the case of delimitations between island States and distant "mainlands" and in other comparable cases of opposite States. That same practice carries an implication of great political and legal significance. Given the number of island States in the world and the high incidence of delimitation agreements involving such States which are based upon equidistance, any solution not predicated upon equidistance would be very likely to lead to a real sense of unease in the international community.

209. It is worth recalling the words of the Court in the *Temple* case (Merits)<sup>2</sup>:

"In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question . . ."

210. The issues in the *Temple* case were not related to the law of the sea but the principle enunciated is surely of general application. Indeed, in his work *The Development of International Law by the International Court*<sup>3</sup>, Judge Sir Hersch Lauterpacht referred to "those principles of finality, stability, and effectiveness of international relations, which have charac-

1. Emphasis supplied.

2. *I.C.J. Reports* 1962, p. 6 and p. 34; and see also *ibid.*, p. 60, the Separate Opinion of Judge Sir Gerald Fitzmaurice. See also the *Rann of Kutch Arbitration*, Award, *International Law Reports* (ed. E. Lauterpacht, Q.C.), Vol. 50, p. 2, and pp. 475, 520 (Opinion of the Chairman), pp. 409-10 (Dissenting Opinion of Judge Aleš Bebler).

3. London, 1958, p. 241. The importance of the achievement of stability and finality has been recognised by various writers: see Jennings, *The Acquisition of Territory in International Law*, Manchester, 1963, p. 70; Cukwurah, *The Settlement of Boundary Disputes in International Law*, Manchester, 1967, p. 121; Anand, *Studies in International Adjudication*, Delhi, 1969, p. 238; Sharma, *International Boundary Disputes and International Law* (Foreword by Judge Nagendra Singh), Bombay, 1976, pp. 2-3.



terised the work of the Court". These broad considerations militate strongly in favour of maintaining a regime of delimitation in respect of shelf rights which is already firmly established in the practice of States in various regions of the world.

#### 8. THE EQUITABLENESS OF EQUIDISTANCE IN THE PRESENT CASE

211. The key elements in the position of Malta relating to the applicable principles and rules of international law in the context of the Special Agreement are these:

- (a) In the case of opposite States abutting on the same continental shelf, the median line will normally give an equitable result.
- (b) The practice of States in situations legally comparable with coastal relationships of Malta and Libya establishes the equitable nature of the method of equidistance in dividing the pertinent shelf areas in the present case.
- (c) The appropriateness of the equidistance method is confirmed by the practice of other States in the Mediterranean region.
- (d) The conduct of the Parties in the present case and, in particular, the consistency of Malta's conduct, is a relevant consideration in deciding upon the balance of equities.
- (e) A significant number of delimitations involving island States rely upon the equidistance method and the stability of such existing settlements is an equitable consideration to be given appropriate weight.

**CHAPTER VIII**  
**THE PREMISES OF CONTINENTAL SHELF**  
**DELIMITATION**

1. THE PREMISES OF EQUITABLE DELIMITATION

212. The principles of international law which have relevance to the delimitation of shelf areas dividing the coasts of Malta and Libya will now be examined in two phases. In the first phase the general premises will be set forth and in the second phase attention is given to the equitable principles of particular relevance to the present case.

(a) *The equitable result must reflect the geographical facts in each particular case*

213. This principle has already been developed in Chapter V of this Memorial.

(b) *Where the coasts of two States are opposite each other the median line will normally bring about an equitable result*

214. The key statement of this equitable principle occurs in the Judgment of the Court in the *North Sea Continental Shelf Cases*<sup>1</sup> thus:

“The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionately distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved.”

215. The applicability of this principle to the uncomplicated relationship of the Maltese and Libyan coasts is obvious. The principle involved was of particular prominence in the Judgment in the *North Sea* cases and was restated in the *dispositif*<sup>2</sup> as follows:

“if . . . the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally . . .”

216. This principle, which is very similar to the provision which appears in Malta's Continental Shelf Act of 1966, is part of the Court's statement of “the principles and rules of international law applicable to the delimitation” and is one of the two major principles formulated in the

1. *I.C.J. Reports* 1969, p. 36, para. 57.

2. *Ibid.*, p. 53 C (2).

Judgment. The principle was to be reiterated by the Court in the *Anglo-French Continental Shelf Arbitration* in these words:<sup>1</sup>

“In a situation where the coasts of the two States are opposite each other, the median line will normally effect a broadly equal and equitable delimitation.”

(c) *Equity does not necessarily imply the elimination of geographical differences by legal means*

217. The task of equity in delimitation of shelf areas cannot involve the geopolitical role of refashioning geography. The principle was stated by the Court in the *North Sea* cases thus:<sup>2</sup>

“It is therefore not a question of totally refashioning geography whatever the facts of the situation, but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustified difference of treatment could result.”

218. It is clear that the geographical identity of a normal feature such as an island State cannot constitute an “incidental special feature” either in legal principle or as a matter of political common sense. After all, out of 154 independent States, 38 are island States, a proportion of 25 per cent.

(d) *Even when it is applicable in limine, the concept of natural prolongation is subordinate to the satisfaction of equitable principles*

219. The concept of natural prolongation related to the notion of shelf as “a species of platform”<sup>3</sup> has no relevance to the present case, since the geographical circumstances are not appropriate. It is only in rare cases that the concept of natural prolongation provides an indication of an alignment deriving from the facts of geology.<sup>4</sup> In any case the effect to be given to the concept is dependent not only on the geographical circumstances but also on any relevant circumstances of law and equity.<sup>5</sup> The satisfaction of equitable principles is of cardinal importance, and the identification of the natural prolongation of less importance, in defining an equitable delimitation.<sup>6</sup>

220. As this Memorial has indicated earlier<sup>7</sup>, the framework within which an equitable solution is to be sought is not one of geography as such

1. Decision of 30 June 1977, *International Law Reports*, para. 239. See also para. 95 of the *Decision* and Vol. 54, p. 6, para. 183 of this Memorial.

2. *I.C.J. Reports 1969*, p. 50, para. 91.

3. *Tunisia-Libya Continental Shelf Case, I.C.J. Reports 1982*, p. 48, para. 47.

4. *Ibid.*, pp. 46-47, para. 44; p. 92, para. 133.

5. *Anglo-French Continental Shelf Arbitration, Decision, 1977*, para. 194 *in fine*.

6. *Tunisia-Libya Continental Shelf Case, I.C.J. Reports 1982*, pp. 46-47, para. 44.

7. Above, Chapter V.

and in the abstract. Consequently, it is the *relationships* of coasts which really count and such relationships have to be weighed in terms of the relevant political facts, which include the status of Malta as an island State.

(e) *The general code of delimitation consists of equitable principles*

221. In the *Tunisia-Libya Continental Shelf* case the Court applied the law in a manner consonant with the formulations in the *North Sea* cases<sup>1</sup> and, indeed, remarked that it was "bound to decide the case on the basis of equitable principles"<sup>2</sup>. In the same paragraph the Court observed:

"The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result. It is not every such principle which is itself equitable; it may acquire this quality by reference to the equitableness of the solution. The principles to be indicated by the Court have to be selected according to their appropriateness for reaching an equitable result. From this consideration it follows that the term 'equitable principles' cannot be interpreted in the abstract; it refers back to the principles and rules which may be appropriate in order to achieve an equitable result."

2. CERTAIN EQUITABLE CONSIDERATIONS OF PARTICULAR RELEVANCE IN THE PRESENT CASE

222. It is generally recognised that there is no legal limit to the equitable considerations and factors which may be taken into account in achieving an equitable delimitation in each particular case<sup>3</sup>. The jurisprudence of international tribunals makes it abundantly clear that weight may be given to non-geographical elements in achieving an equitable solution. In the *Anglo-French Continental Shelf Case* the Court of Arbitration recognised the significance of the economic, as well as the political, status of the Channel Islands<sup>4</sup>:

"Possessing a considerable population and a substantial agricultural and commercial economy, they are clearly territorial and political units which have their own separate existence and which are of a certain importance in their own right separately from the United Kingdom . . . The political status of the Channel Islands, *vis-à-vis* France for the purpose of the delimitation of the continental shelf is, therefore, a matter to be appraised by this Court itself."

1. *I.C.J. Reports 1969*, p. 53, para. 101.

2. *I.C.J. Reports 1982*, p. 59, para. 70.

3. *North Sea Continental Shelf Cases, I.C.J. Reports 1969*, p. 50, para. 93.

4. Decision of 30 June 1977, *International Law Report*, Vol. 54, p. 6, paras. 184-185.

Later in the same Award the Tribunal said<sup>1</sup>:

“... the appropriateness of the equidistance or any other method for the purpose of effecting an equitable delimitation in any given case is always a function or reflection of the geographical *and other relevant circumstances of the particular case*”.

223. In the same Award the Court referred to “the legal framework within which the Court must decide the course of the boundary”<sup>2</sup>. Within the legal framework the Court accorded relevance to “the size and importance” of the Channel Islands<sup>3</sup> and stated further<sup>4</sup>:

“Other elements in the framework are the various equitable considerations invoked by the Parties regarding their respective navigational defence and security interests in the region”.

(a) *The Absence of Land-based Energy Resources*

224. The importance to Malta of the petroleum resources of the seabed in the region delimited by her equidistance line cannot be emphasized too much. There are no indications of the existence of any energy resources on the mainland of Malta and this absence of oil, coal and hydro-electric sources is not speculative but is a fact, a permanent state of deprivation.

225. At this point it is to be recalled that in the *Fisheries Jurisdiction* case (United Kingdom v. Iceland)<sup>5</sup> the Court gave legal effect to the concept of preferential rights of fishing in favour of a coastal State “in a situation of special dependence on its coastal fisheries”. The analogy with the dependence of Malta upon sea-bed energy resources is obvious and it is equally obvious that Malta cannot in future change her energy prospects. 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. The lack of energy resources on Malta’s mainland is not a matter of “unpredictable national fortune”<sup>6</sup>.

(b) *The Requirements of Malta as an Island Developing Country*

226. The text of the Law of the Sea Convention of 1982 is inspired by a concern for the well-being of developing countries and for “the realization of a just and equitable international economic order which takes into account ... in particular, the special interests and needs of developing

1. *Ibid.*, para. 239. Emphasis supplied.

2. *Ibid.*, para. 187.

3. *Ibid.*

4. *Ibid.*, para. 188.

5. *I.C.J. Reports 1974*, p. 3, and p. 23, para. 52 and see also paras. 55-68.

6. *Tunisia-Libya Continental Shelf Case, I.C.J. Reports 1982*, p. 77, paras. 106-107.

countries, whether coastal or land-locked"<sup>1</sup>. The overall concern of the international community with the development requirements of developing countries is, it is submitted, a relevant consideration or factor which must be given proper weight in achieving an equitable solution in the present case.

227. The significance of this particular equitable consideration is evidenced and confirmed by the fact that over the last decade the international community has given explicit and persistent recognition of the category of "island developing countries". Moreover, Malta has been classified as an "island developing country" in a number of pertinent United Nations documents<sup>2</sup>.

228. Within the broad framework of the Second UN Development Decade and the work of the UN Conference on Trade and Development (UNCTAD), the idea began to surface in 1972 that island developing countries constituted a special category of States entitled to assistance from more fortunate countries. International recognition of this concept and its implications may be demonstrated by a chronological description of some of the earlier stages of this development.

(i) In 1972 the UNCTAD conference promoted an expert study of the problems of developing island countries (Resolution 65 (III)). Within the range of population categories of large and medium, small and very small, this study identified Malta as small in territory and very small in terms of population<sup>3</sup>.

(ii) The Declaration on the Establishment of the New Economic Order adopted by the UN General Assembly in Resolution 3201 (S-VII) on 1 May 1974 contained in Article 4 a statement of the principles on which the new international economic order should be founded. This included:

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1. See the preamble; and see also the incorporation in Part II of the Convention of the concept of the 'common heritage of mankind'.

2. See Table 23 appended to the 1976 Report of the UNCTAD Secretariat on *Action on special measures in favour of the least developed among the developing countries, the developing island countries and the developing land-locked countries: policy issues and recommendations*. (Proceedings of the U.N. Conference on Trade and Development, Fourth Session, Vol. III, p. 188). This Table, which is reproduced in Annex 68, classifies developing island countries by population, income levels, land area and distance from the nearest continent. Within this classification Malta appears as "small" in population and "very small" in territory. In June 1977, the Secretary-General of the UN reported, in relation to island developing countries, that the operations under the UN Development Programme for Malta

"were severely curtailed for lack of resources and an extra year was required to complete the projects included in it. Some of the projects current and planned relate to the island situation of Malta and, in particular, to the transformation of its economy with respect to civilian activities in the Malta dockyard as well as to the development of fisheries and to offshore drilling". (U.N. Doc. A/32/426, para. 37).

3. *Developing Island Countries*, TD/B/443/Rev. 1.

“(c) Full and effective participation on the basis of equality of all countries in the solving of world economic problems in the common interest of all countries, bearing in mind the necessity to ensure the accelerated development of all the developing countries, while devoting particular attention to the adoption of special measures in favour of the least developed, land-locked and *island developing countries* as well as those developing countries most seriously affected by economic crises and natural calamities, without losing sight of the interests of other developing countries.”

(iii) Again, in the Programme of Action on the establishment of the New International Economic Order by the UN General Assembly on the same day as the previous resolution (Resolution 3202 (S-VI)), the section on “Food” proposed that “All efforts should be made”, *inter alia*,

“(f) To ensure that developing countries can import the necessary quantity of food without undue strain on their foreign exchange resources and without unpredictable deterioration in their balance of payments, and, in this context, that special measures are taken in respect of the least developed, land-locked and *island developing countries* as well as those developing countries most seriously affected by economic crises and natural calamities”;

(iv) Later in the same year, the Charter of Economic Rights and Duties, contained in UN General Assembly Resolution 3281 (XXIX), 12 December 1974, included a reference to island developing countries in Article 25:

“In furtherance of world economic development, the international community, especially its developed members, shall pay special attention to the particular needs and problems of the least developed among the developing countries, of land-locked developing countries and also *island developing countries*, with a view to helping them to overcome their particular difficulties and thus contribute to their economic and social development”.

(v) On 17 December 1974 the UN General Assembly adopted Resolution 3338 (XXIX) in the following terms:

“The General Assembly,  
Recalling resolution 65 (III) of 19 May 1972 of the United Nations Conference on Trade and Development and Trade and Development Board resolutions 101 (XIII) of 8 September 1973 and 108 (XIV) of 12 September 1974.

Recalling further General Assembly resolution 3202 (S-V) of 1 May 1974, containing the Programme of Action on the Establishment of a New International Economic Order, in which the

Assembly, *inter alia*, called upon the international community to assist the developing countries while devoting particular attention to the least developed, land-locked and *island developing countries*<sup>1</sup> and those developing countries most seriously affected by economic crises and natural calamities leading to serious retardation of development processes.

Recalling also Economic and Social Council decision 28 (LVII) of 2 August 1974 on the special economic problems and development needs of geographically disadvantaged developing island countries.

1. Invites the executive heads of the organizations concerned within the United Nations system, particularly those of the United Nations Conference on Trade and Development, the United Nations Development Programme, the United Nations Industrial Development Organization, the International Labour Organisation, the *Food and Agriculture Organization of the United Nations*, the International Civil Aviation Organization, the World Meteorological Organization, the Inter-Governmental Maritime Consultative Organization, international financial institutions, regional development banks and the regional commissions, to intensify their efforts with respect to *developing island countries*<sup>1</sup> within their fields of competence, bearing in mind the aforementioned resolutions;

2. Calls upon the Secretary-General to take effective measures towards meeting the needs of the *developing island countries*<sup>1</sup> in accordance with the Programme of Action on the Establishment of a New International Economic Order;

3. Urges all Governments, in particular those of the developed countries, within the context of their assistance programmes, to consider extending appropriate financial and technical assistance to *developing island countries*<sup>1</sup>, especially for the expansion of their transportation and communication facilities and *the development of their marine resources*<sub>2</sub><sup>1</sup>.

4. Requests the executive heads of the United Nations organizations concerned to report on the implementation of the present resolution to the Economic and Social Council at its fifty-ninth session, through the Committee on Review and Appraisal at its 1975 session, within the context of their reporting in relation to the mid-term review and appraisal of the International Development Decade and in preparation for the special session of the General Assembly devoted to development and international economic co-operation, to be held in September 1975".

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1. Emphasis supplied.



229. This process of re-affirmation and application of the concept of "developing island countries" continued undiminished in the following years. The years 1976 to 1982 saw a flow of UNCTAD studies, United Nations General Assembly resolutions, and other items, dealing with the subject; and the relevant material is annexed to the present Memorial<sup>1</sup>.

230. The concept of "island developing countries" has wide implications but for present purposes its significance lies in the international and universally accepted certification which it provides for the development needs of Malta. In the context of continental shelf delimitation, the absence of land-based resources, coupled with the presence of petroleum in the area in issue, provides substantial justification for the view that the development requirements of Malta constitute an equitable consideration or factor to be given weight in the delimitation of the shelf areas dividing Malta and Libya. The Government of Malta is confident that the Court, as the principal judicial organ of the United Nations, will readily recognize the relevance of the practice of the organs of the United Nations and of the Member States in relation to island developing countries.

(c) *The Geographical Range of Fishing Activity*

231. 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. Some reference has already been made<sup>2</sup> to the established patterns of Maltese fisheries stretching southwards to the equidistance line and even beyond it.

(d) *The Element of National Security in Control of Adjacent Submarine Areas*

232. The apron of jurisdiction which a coastal State has over adjacent submarine areas constitutes a necessary attribute of national security. The importance of the exercise of political authority by the coastal State has been emphasized already in this Memorial<sup>3</sup> and it only remains for Malta to point out that security interests form a relevant consideration for purposes of an equitable delimitation of appurtenant shelf areas<sup>4</sup>. For purposes of control and the maintenance of security, Malta has a need for a lateral reach of control from its coastline which cannot be less than that of Libya. Moreover, the importance of this consideration is increased substantially as a consequence of Malta's status of neutrality<sup>5</sup>. It is, of course, obvious that the need for security, reflected in the lateral reach of jurisdiction, bears no relation to the *length* of the coasts of the particular State.

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1. Annex 68.

2. See above, paras. 41-45.

3. See above, paras. 143-149.

4. See Note 3 to para. 223 above.

5. The factual background has been outlined above, paras. 58-61.

### 3. A RESUMÉ OF THE EQUITABLE PRINCIPLES AND CONSIDERATIONS RELEVANT TO THE PRESENT CASE

233. In accordance with the precept stated by the Court in the *Tunisia-Libya* case that the test of the applicability of a given principle is its appropriateness for reaching an equitable result, and in the light of the previous jurisprudence of the Court, the Government of Malta will formulate the equitable principles (and the relevant circumstances) of particular relevance in the present case. Such principles constitute a part of the "principles and rules of international law" which are applicable to the delimitation of the seabed areas dividing the coasts of Malta and Libya.

234. The equitable principles and relevant circumstances of particular relevance are as follows:-

- (a) The area relevant for the delimitation constitutes a single continental shelf as the natural prolongation of the land territory of both Parties, so that in the present case, no criterion for delimitation of shelf areas can be derived from the concept of natural prolongation.<sup>1</sup>
- (b) The general configuration of the coasts of the Parties involves a coastal relationship of opposite coasts set at a considerable distance from each other, and the absence of any special or unusual features.<sup>2</sup>
- (c) In the presence of opposite coasts and the absence of displaced islands or other unusual features, the equitable solution must be based upon the method of equidistance.<sup>3</sup>
- (d) Malta is a State and its status as an island State is not a justification for discrimination in matters of delimitation.<sup>4</sup>
- (e) The conduct of the Parties is a relevant circumstance in determining the method of delimitation.<sup>5</sup>
- (f) Economic considerations are to be taken into account with particular reference to the absence of land-based energy sources in Malta.<sup>6</sup>
- (g) A further relevant consideration, related to the absence of land-based energy resources in Malta, especially in view of the abundance of such resources available to Libya, lies in the development needs of Malta (evidenced, *inter alia*, by her status as a developing island country)<sup>7</sup>.

1. Cf. the *Tunisia-Libya Continental Shelf Case*, *I.C.J. Reports 1982*, p. 92; and see the *North Sea Cases*, *I.C.J. Reports 1969*, pp. 53-54, which refers to "the physical and geological structure and natural resources, of the continental shelf areas involved".

2. See above, para. 114.

3. See above, paras. 181-183, for the judicial authorities.

4. This aspect of the problem is expounded above, Chapter VI.

5. This aspect of the case is examined above, Chapter VII, paras. 201-207.

6. This aspect of the case is examined above in Chapter VIII paras. 224-225.

7. See above, paras. 226-230.

- (h) The patterns and range of established fishing activity are to be given weight as a relevant equitable consideration.<sup>1</sup>
- (i) The element of national security involved in control of the adjacent submarine areas also constitutes a relevant consideration.<sup>2</sup>
- (j) The stability of existing settlements based upon equidistance is an equitable consideration in the present case, and in any case it is the general policy of international law to achieve stability and finality in matters of delimitation.<sup>3</sup>
- (k) In the geographical circumstances presented by the present case, a departure from the equidistance method would involve a massive breach of the principle of non-encroachment.<sup>4</sup>

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1. See above, paras. 41-45 and para. 231.

2. See above, paras. 143-149 and 232.

3. The point is expounded more fully in paras. 208-210, above.

4. The point is expounded more fully in paras. 240-243, below.

## CHAPTER IX

### THE APPROPRIATE METHOD OF DELIMITATION

#### 1. MALTA'S CLAIM TO A MEDIAN LINE

235. The exposition of the principal elements of equity, the relevant equitable principles in this case, is undertaken elsewhere in this Memorial.<sup>1</sup> The purpose of this chapter is to give a more detailed articulation of the legal justification for the median line delimitation adopted by Malta in the Continental Shelf Act enacted in 1966. The baselines and basepoints employed in the construction of the median line boundary have been described in Chapter I above.

#### 2. THE TEST OF APPROPRIATENESS

236. The appropriateness of the given method of delimitation depends upon the result, and the delimitation must lead to an equitable solution. The primary guide to equity is the geographical configuration and in the case of opposite coasts the normally applicable method is that of equidistance and the drawing of the median line.

237. In the words of the International Court in the *North Sea Continental Shelf* cases:<sup>2</sup>

“The continental shelf off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved . . .”<sup>3</sup>

238. In the circumstances of the present case, no intervening islands or other minor and casual features of the geography of the area create any complications. No distorting effect needs to be eliminated or abated. No Maltese islands lie near the Libyan coast and no outlying Libyan islands are to be found. Thus in the *Anglo-French Continental Shelf Case*<sup>3</sup> the Court adopted the following position:

“In the English Channel, leaving aside the particular situation resulting from the Channel Islands being located off the French coast, the geographical and the legal frame of reference for determining the course of the boundary of the continental shelf is patently that of a delimitation between ‘opposite’ States.”

1. See in particular Chapter VIII, and the other parts of the Memorial referred to therein.

2. *I.C.J. Reports 1969*, p. 36, para. 57.

3. Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 103.

239. In the *Dispositif* in the *North Sea Cases Judgment*<sup>1</sup> the Court stated, as one of "the principles and rules of international law" applicable, the principle that, when areas of the shelf "overlap", these are "to be divided . . . equally" in the absence of agreement between the Parties. This important judicial pronouncement, which was made in the context of customary international law, provides an emphatic confirmation of the legality of the median line constituted by Malta's Continental Shelf Act of 1966.

### 3. THE PRINCIPLE OF NON-ENCROACHMENT NECESSITATES USE OF THE EQUIDISTANCE METHOD

240. In the *North Sea* cases the Court stated<sup>2</sup> that "delimitation was 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". Moreover, in several passages the Judgment refers to the effect of "cut-off" which results from the use of equidistance in certain geographical situations<sup>3</sup>, especially when the equidistance line swings laterally across the "coastal front" of one State..

241. The principle of non-encroachment was reaffirmed in the *Anglo-French Continental Shelf Arbitration*<sup>4</sup>, and again in the Judgment in the *Tunisia-Libya* case,<sup>5</sup> though in the form of an *obiter dictum*, and remains a fundamental aspect of the law relating to continental shelf delimitation.

242. In the geographical circumstances presented by the present case, a departure from the equidistance method of delimitation would involve a massive breach of the principle of non-encroachment. Malta's coasts count as much as the coasts of other opposite States in terms of the generation of continental shelf entitlement. The concept of non-encroachment directly reflects the idea that the shelf is a prolongation of the land territory under the sea. Moreover, it is the *location* of Malta as an island State *distant* from the Libyan coastline which justifies and, indeed, necessitates the use of equidistance.

⑫ 243. The position is better understood by a perusal of the sketch map (Figure A), which clarifies the coastal relationships of Malta and Libya *inter se*. The hatched areas, I and II, indicate the areas of shelf which, according to the judicial metaphor in the *North Sea Cases*, may be said to "overlap". These are areas forming part of a single geological continuum

1. *I.C.J. Reports 1969*, p. 53, para. 101.

2. *Ibid.*, p. 53, para. 101, and also p. 47, para. 85(c).

3. *Ibid.*, p. 17, para. 8, p. 31, para. 44, p. 37, para. 58.

4. *International Law Reports*, Vol. 54, p. 6, para. 85.

5. *I.C.J. Reports 1982*, p. 62, para. 76. See also the Separate Opinion of Judge Jiménez de Aréchaga, *ibid.*, pp. 116-117, paras. 57-59; pp. 118-122, paras. 65-76; p. 132, para. 103.

12 and, apart from the baselines and coasts of the Parties, the western and eastern limits (shown on Figure A) are notional indications of the simple idea that the hatched areas divide the coasts of the two Parties. In other words the areas *either* face Malta *or* Libya and constitute shelf areas "off, and dividing, opposite States". In this situation the problem of encroachment met with in the case of *laterally adjacent* States cannot arise. In the case of *opposite* States the median line provides the logical and equitable response to the need to avoid encroachment on the natural prolongation of the land territory of each Party.

#### 4. THE TRAPEZIUM AS THE EQUITABLE REFLECTION OF THE EQUIDISTANCE METHOD

13 244. The attention of the Court is respectfully drawn to Figure B in the text of this Chapter. The illustrative sketch there displayed is formed on the basis of a quadrilateral having only one pair of its opposite sides parallel, in other words, on the basis of a trapezium. This figure provides a means of understanding the equitable solution resulting from the use of a median line in the division of the areas of shelf lying between Malta and Libya. In the trapezium figure the two parallel sides represent the coast of opposite States.

245. The equitable solution which the law calls for is the product of the coastal configuration and the other relevant circumstances. The key elements in the coastal relationships of Malta and Libya are as follows:-

- (a) The *distance* between Malta and the Libyan coastline; and since it is *relationship* which is the key, it is precisely the distance, in conjunction with the location of Malta and the long regular coast of Libya, which is the significant factor.
- (b) The *location* of the Malta group of islands and the opposite relationship thereof to the Libyan coastline produces a particular effect: a critically located Maltese group of islands supports a sufficient number of control points.
- (c) The extensive *west-east reach* of the Libyan coastline, in conjunction with the "set back" *location* of Malta, results in a trapezoidal figure: that is to say, the Libyan coastal extent is appropriately reflected in the southern segment of the trapezium (Figure B, Zone 2), and the equidistance method of delimitation places equitable limits upon the latitudinal and southerly reach of the Maltese continental shelf entitlement (Figure B, Zone 2). The median line constitutes a natural northern boundary to the southern segment of the trapezium.

13 246. The relationship of the two sets of coastlines is, generally speaking, trapezoidal, since the west-east extension of the Libyan coastline provides a broad wedge of shelf which is the base of the trapezium, and the Maltese entitlement (so far as it has a relationship with *Libyan* coasts) provides the upper segment of the trapezium. The natural limits of the

Maltese relationship with the *Libyan* coasts create a "drawing in" of the western and eastern sides of the trapezium. The consequence is that the principle of appurtenance is observed and the different areas of shelf relate in the legally appropriate way to the relevant coasts of Libya and Malta respectively.

247. The result is in complete conformity with the principle of non-encroachment. If Libya were to be allowed shelf rights north of the equidistance line, such a delimitation would involve massive encroachment on seabed areas lying off Malta but not lying off Libya. In this situation the problem would not be a minor "cut off" effect but a large-scale overtaking or excision of continental shelf not related to Libyan coasts. It follows both as a matter of equitable principles and of ordinary logic that *within the zones between the two coastlines* only equidistance can produce an equitable solution.

##### 5. THE RELEVANCE OF THE DISTANCE PRINCIPLE IN CONFIRMING THE LEGALITY OF THE MEDIAN LINE

248. The areas of continental shelf between the coasts of Malta and Libya form part of a geological continuum and the principle of natural prolongation thus does not provide a criterion of delimitation. Moreover, the coasts and coastal relationships are essentially simple and the two States are opposite each other at a considerable distance. As a result the coastal configurations have a direct effect on the delimitation and this effect is confirmed and reflected by the principle of distance, i.e. the concept that continental shelf rights are generated up to a certain distance from the coast irrespective of the geology, geomorphology and bathymetry of the submarine area.

249. The increase in the rôle of a distance criterion, or principle of distance, in general international law is evidenced by the large number of States which have established an exclusive economic zone of 200 miles extension from the baselines. It is evidenced also by the draft articles produced in the course of the Third United Nations Conference on the Law of the Sea<sup>1</sup>.

250. In Articles 76 and 83 of the Convention on the Law of the Sea, clear recognition is given to the criterion of distance. Thus, Article 76, paragraph 1, contains the following formulation:

"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

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1. See the first such draft: Informal Single Negotiating Text, 7 May 1975, Article 46 (exclusive economic zone); Article 62 (continental shelf); *Third United Nations Conference on the Law of the Sea, Official Records*, Vol. IV, p. 137, Doc. A/CONF.62/WP.8.

edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

251. In the *Tunisia-Libya Continental Shelf* case,<sup>1</sup> the International Court noted that the criterion of natural prolongation had been modified (in the provisions concerned) by the "criterion" of "the distance of 200 nautical miles". It is evident that in that case the Court held the view that the "distance principle" – the terminology used by the Court – was an aspect of the recent trends in general international law. It is equally clear that the Court considered the principle of distance to be relevant in a situation in which the principle of natural prolongation did not provide criteria of delimitation.<sup>2</sup> The principle was set aside simply because the Parties in that case had not relied upon any argument relating to the distance principle. Of the existence of the "trend" towards the principle, however, the Court had no doubts. In his Separate Opinion in the *Tunisia-Libya Case* Judge Jiménez de Aréchaga expressed the view that "the distance test of 200 miles" had "already crystallised as a rule of customary international law".<sup>3</sup>

252. In his Dissenting Opinion in the *Tunisia-Libya Case* Judge Oda adopted the same view of "the criterion of the 200 mile distance". In his conclusion to a consideration of "new trends in the concept of the continental shelf", Judge Oda stated<sup>4</sup>:

"Thus in the upshot the actual regime of the continental shelf is represented as remaining in 1981 exactly the same as in 1958. Yet it cannot be over-emphasized that, in parallel with the change in the outer limit of the continental shelf, the notion of natural prolongation by which the concept of the continental shelf was embellished in the 1969 Judgment has greatly lost its significance, particularly with the introduction of the criterion of the 200-mile distance under the strong influence of the concept of the exclusive economic zone . . . not to mention the parallelism between that zone and a possible inner-continental shelf of 200 miles, coupled with the possibility of a different regime applying to the continental margin beyond that distance. In spite of the provision of Article 77 relevant to the rights of the coastal State (which is essentially identical to that of the 1958 Convention), as mentioned above, the concept of the continental shelf cannot have escaped change as a result of the fading-away of the geomorphologi-

1. *I.C.J. Reports* 1982, p. 48, para. 47.

2. *Ibid.*, para. 48.

3. *Ibid.*, pp. 114-115, paras. 51-53 (para. 52, in particular).

4. *Ibid.*, pp. 211-222, paras. 89-107, at p. 222, para. 107; and see also the passage at p. 253, para. 151.



cal notion of natural prolongation. This notion may be said to have remained in the case where the (geomorphological) continental shelf or slope extends farther than 200 miles, yet it must be said that the concept of the continental shelf, which had been sustained by scholarly views and the imperious necessities of the 1950s, has, early in the 1980s, changed.”

253. In their Opinions Judge Jiménez de Aréchaga,<sup>1</sup> Judge Oda,<sup>2</sup> and Judge Evensen,<sup>3</sup> stress the strong influence on shelf delimitation of the concept of the exclusive economic zone. In this connection Judge Evensen makes the following observation:<sup>4</sup>

“When neighbouring States claim functional sovereign rights up to 200 miles – be they opposite States or adjacent States — their claims are based on a *distance criterion*.<sup>5</sup> This very fact seems to strengthen the equidistance/median line principle as an equitable approach for delimiting overlapping areas.”

254. The dominant element in recent State practice is the relation of coastal geography and the 200 mile criterion of distance. Much recent legislation<sup>6</sup> assimilates the regime of shelf rights and the exclusive economic zone. The consequence is that, as between opposite States at a distance of less than 400 miles, an island State receives the appurtenant areas, subject only to division on the basis of median line, in accordance with the normal operation of legal principle as demonstrated earlier in this Memorial.

255. The last proposition calls for some amplification. If it be supposed that Malta were an island State in the Atlantic Ocean lying *more than* 400 miles off Portugal, and not abutting upon the same continental shelf, it would be obvious that Malta would then have a 200-mile continental shelf (or exclusive economic zone, if such a zone were claimed), together with any natural prolongation beyond that limit. If it be now supposed that the hypothetically displaced Malta were *less than* 400 miles from the Portuguese coastline, according to the distance criterion (and either *qua* continental shelf or *qua* exclusive economic zone) Malta would have a full complement of pertinent legal rights (measured of necessity in accordance with equidistance). Moreover, this would be so *whether or not the geological shelf was continuous between hypothetical Malta and Portugal*.

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1. *Ibid.*, p. 115, paras. 54-56.

2. *Ibid.*, pp. 222-267, paras. 107-176; and p. 270, para. 182.

3. *Ibid.*, pp. 283-288, paras. 7-10.

4. *Ibid.*, p. 296, para. 15.

5. Emphasis in the original.

6. See above, paras. 189 and 190.

## 6. THE IRRELEVANCE OF PROPORTIONALITY IN THIS CASE

256. As Malta has already explained<sup>1</sup>, the factor or criterion of proportionality is not applicable in the case of opposite States, and in any case the factor can only operate within the general context of equitable principles and in relation to the goal of achieving an equitable solution.<sup>2</sup> The major relevant circumstance, and one which must far outweigh the consideration of proportionality, is the status of Malta as an island State opposite Libya and, consequently, as an abutting coast with full continental shelf entitlement. The view of the Government of Malta is that the factor of proportionality is irrelevant in the circumstances of the present case.

257. The Judgment of the International Court in the *Tunisia-Libya Continental Shelf* case emphasises, more than once, that in the context of proportionality, "the only absolute requirement of equity is that one should compare like with like"<sup>3</sup>. The rôle of proportionality varies considerably from case to case, just as the geographical and other relevant circumstances of each case are necessarily specialised. The *legal* approach involves the abatement of minor causes of distortion in the alignment dictated by the major geographical data of the case, but "there can never be any question of completely refashioning nature"<sup>4</sup>. Equity cannot remedy natural differences. In fact the effect of the difference between the west-east reach of the Maltese and Libyan coastlines leaves Libya *with a very large part of the shelf areas between the two opposite coasts*.

258. As a matter both of legal principle and the legal policy of promoting stability in delimitation, the factor of proportionality is inapplicable in the case of opposite States. This view is supported both by the practice of States and by doctrine. Thus an authoritative writer on the law of the sea, Professor Bowett, has expressed the view that the "proportionality factor" does not apply to the case of "opposite" States. With reference to the "factors" set forth by the Court in the *North Sea Continental Shelf Cases*<sup>5</sup>, Professor Bowett expressed himself as follows<sup>6</sup>:

"The relevance of the proportionality factor is more difficult to assess. Clearly, it is entirely subservient to the primary criterion of 'natural prolongation', so there can be no justification for ignoring the geological evidence and simply dividing the shelf according to coastal ratios. Nor, indeed, are such ratios to be calculated on actual coastal

1. See above, paras. 128-130.

2. *Anglo-French Continental Shelf Arbitration*, Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, paras. 98-101.

3. *I.C.J. Reports 1982*, p. 76, para. 104; and see also *ibid.*, p. 91, para. 130.

4. *North Sea Cases*, *I.C.J. Reports 1969*, pp. 49-50, para. 91.

5. *Ibid.*, pp. 53-54.

6. *The Legal Regime of Islands in International Law*, (1978), p. 164.

length, for the Court envisaged a 'coastal front', a line of general direction to the coast rather than a line following its sinuosities (so that islands may count for this purpose, as part of such 'front'). *Indeed, it would seem that the proportionality factor might only be applied, or be meaningful, in the case of adjacent States (not 'opposite') where the existence of a markedly concave or convex coastline will produce a cut-off effect if the equidistance principle is applied:*<sup>1</sup> that is to say, will allocate to one State shelf areas which in fact lie in front of, and are a prolongation of, the land territory of another."

#### 7. THE EQUITABLE SOLUTION INDICATED IN STATE PRACTICE IS THE MEDIAN LINE

259. The State practice is significant and provides cogent evidence of the views of States on the application of equitable principles in delimitation. Twelve agreements<sup>2</sup> involving an island State opposite a mainland were concluded in the period subsequent to<sup>3</sup> the decision of the International Court in the *North Sea Continental Shelf* cases in 1969, and these all involve either express reliance upon the equidistance method or substantial application of a median line solution in practice. These agreements constitute compelling evidence that island States are not subject to reduction of their continental shelf entitlement on the ground that the equidistance method is incompatible either with equitable principles (as a whole) or with the factor of proportionality (in particular).

260. In Chapter VII of the present Memorial the relevant State practice was surveyed. In particular, reference was made to bilateral delimitations concerning island States facing distant "mainlands" and abutting upon the same shelf. The delimitation agreements listed involve eleven different coastal States of various regions of the world: Western Europe, the Indian Ocean, the Arabian (or Persian) Gulf, and the Caribbean Sea. Naturally, the cases listed are *ex hypothesi* limited in number, since the situations which are comparable are restricted. In addition, if regard is had to agreements involving both distant and non-distant mainlands, then it will be found that seventeen different coastal States are involved.

#### 8. THE MEDIAN LINE IS THE LEGALLY APPROPRIATE DELIMITATION

261. In accordance with international law and the equitable principles and relevant circumstances pertinent to this case, the appropriate method of delimitation is the median line between the pertinent baselines. This

1. Emphasis supplied.

2. See above, paras. 185 and 187.

3. With the exception of the Bahrain-Saudi Arabia Agreement of 1958.

solution involves an equitable division in the light of the geographical and other legally relevant circumstances of the case. As the figure of the equitable trapezium demonstrates, the division by means of a median line takes into account the length of Libya's coastline and allows Libya a very generous part of the shelf areas dividing Malta and Libya. The equitable character of the equidistance method is confirmed by the delimitation practice of States relating to comparable situations, and also by the prominence of the distance principle in contemporary international law.

## CHAPTER X

### THE EQUITABLE SOLUTION

#### 1. THE NECESSARY CONCLUSION

262. The application of the legal principles governing delimitation of the continental shelf to the circumstances of the Malta-Libya geographical and geological relationships leads ineluctably to an equitable solution on the basis of equidistance. The geographical circumstances require the use of equidistance. The coasts of the Parties are opposite, and in the case of opposite coasts the normal means of achieving an equitable result is the use of a median line. This is particularly so when there are no intervening islands or other abnormal geographical features.

263. There is in legal terms a complete absence of abnormal geographical features in the present case. There is nothing unusual in the existence of an island State; and the Mediterranean and Caribbean Seas and the Indian and Pacific Oceans encompass a good number of island States<sup>1</sup>. Nor is there anything unusual about the Libyan coastline, which is obviously free from abnormalities. Moreover, the *relationship* of the Maltese and Libyan coastlines is quite unremarkable. As a matter of principle, only unusual features, which involve serious departures from the primary elements in the geographical framework, can be subjected to the process of abatement on equitable grounds. To resort to adjustments where nothing in the geographical situation justifies it would be to refashion geography and would involve a crude process of apportionment.

264. The key elements in the geographical configuration are the *relationships* of the coasts concerned, including the *distance* and *location* of the respective coastal fronts. In the present case the length of coastlines is of little or no consequence for the law of delimitation. In the context of the continental shelf in an area of relatively open sea – such as that between Malta and Libya – modest sectors of abutting coast may have an extensive controlling effect. Given the coastal and sea relationships, only the method of equidistance produces an equitable solution.

#### 2. THE SIGNIFICANCE OF ISLAND STATES

265. International law recognises that all coastal States have the same entitlement to continental shelf rights. The island State is not placed under any legal disability. Geography cannot be reordered. Moreover, in the context of delimitation the political geography is a part of the “geographical configurations” which count for legal purposes. Thus coast-

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1. As already shown (para. 23, below) there are some 38 island States or 25% of the international community.

lines and islands must be evaluated in terms of the placing of land boundaries, the location of islands in relation to coasts of a different sovereignty, and the political status of the islands in question as independent (or nearly so) or as mere dependencies.

266. It must follow that the existence of a homeland, even consisting exclusively of a single island or a compact island group, draws in its train certain legal consequences. After all, "the land dominates the sea" in the legal philosophy of the continental shelf. The coasts of the island State, like most of any other State, support basepoints which control an appropriate area of shelf. These effects are the consequence of what is in legal terms perfectly *normal* geography and of the primary political and geographical elements there present. Malta, as an island State set at a considerable distance from the North African coast, has its appurtenant shelf and Libya has the shelf areas corresponding to its own coastline. The political geography is clear. No claim is made to deprive Libya of her appurtenant rights: and the fact that Malta is an island cannot justify the undoing of the frontier of equidistance.

267. The difference in the geographical identity of the two States produces neither a privilege nor a disability in relation to the entitlement of Malta.

### 3. THE DELIMITATION OF AREAS DIVIDING OPPOSITE STATES

268. One of the major principles of the law of delimitation is the principle of non-encroachment, and 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<sup>1</sup>. In the case of adjacent States on a concave coastline – as in the *North Sea Continental Shelf* cases – there is a need to avoid a cut-off effect which would result from a rigid application of the method of equidistance. In the circumstances of the present case the cut-off effect would result not from the application of the equidistance method but from its rejection or modification of the kind that would result from the Libyan position as it has appeared to be in the course of the negotiations.

269. In geological terms there is a continuum and thus in legal terms the natural prolongations of the respective territories meet and "overlap". As the Court stated in the *North Sea* cases<sup>2</sup>: "The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore, only be delimited by means of a median line; . . .". In its findings the Court formulated "the principles and rules of international law" applicable to the delimitation of the areas of continental

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1. See the Separate Opinion of Judge Jiménez de Aréchaga, *Tunisia-Libya Continental Shelf* case, *I.C.J. Reports 1982*, p. 118, paras. 65–66.

2. *I.C.J. Reports 1969*, p. 36, para. 57.

shelf concerned. The second of these "principles and rules" was as follows:<sup>1</sup>

"if . . . the delimitation leaves to the Parties areas that overlap, these are to be divided between them in agreed proportions or, failing agreement, equally . . ."

#### 4. THE CUSTOMARY LAW PROVENANCE OF THE EQUIDISTANCE METHOD.

270. There is no indication whatsoever in the practice of States that island States should suffer an artificial reduction of continental shelf entitlement. There has been no suggestion that island States are geographically disadvantaged and this must be equally true of island States in semi-enclosed seas and of island States in or abutting upon the oceans. Any tendency to the artificial reduction of the shelf entitlement of island States would have serious repercussions.

271. In positive terms, non-island neighbours of island States have recognised the normal entitlement of their island State neighbours. In an earlier Chapter<sup>2</sup>, the following bilateral delimitations were recorded: Bahrain-Iran; Cuba-Mexico; India-Maldives; Cuba-United States; Colombia-Dominican Republic; Colombia-Haiti; Dominican Republic-Venezuela; U.K.-Venezuela; Bahrain-Saudi Arabia; Australia-Indonesia; Indonesia-Singapore and India-Sri Lanka. In addition other bilateral delimitation agreements<sup>3</sup> involved an equal division of seabed areas dividing mainlands and major island dependencies opposite mainlands *viz.*: Norway-United Kingdom (Shetland Islands); India (Nicobar Islands)-Indonesia (Sumatra); United States (Puerto Rico)-Venezuela; India (Nicobar Islands)-Thailand; Denmark (Faroes)-Norway and Australia-France (New Caledonia). These two sets of delimitations involve twenty-one different States: the total of the delimitations, taking into consideration the inclusion of States from a variety of regions, represents a substantial and significant proportion of the practice relating to existing delimitations which involve island States and major island dependencies.

#### 5. THE PRINCIPAL CONSIDERATIONS JUSTIFYING MALTA'S DELIMITATION

272. It is useful if certain principal considerations are set forth as a series of propositions. These propositions are intended to link the legal principles concerning delimitation of the continental shelf to general considerations of law and good policy.

(a) Island States enjoy the same complement of legally appurtenant rights over the continental shelf as do other coastal States.

1. *Ibid.*, p. 53, para. 101.

2. See above, paras. 185 and 187.

3. See above, para. 191.

(b) In the case of opposite States abutting on the same continental shelf, the established normal method of equitable delimitation is that of equidistance.

(c) The geography of the Malta-Libya relationship is simple and there is no legal basis for "abatement" of the normal effect of coastal features.

(d) The dominant geographical circumstances consist of the position of Malta at a considerable distance from the Libyan coast, and the absence of any intervening islands.

(e) Virtually every relevant instance of State practice affirms the equitable character of the method of equidistance in comparable geographical situations.

(f) International tribunals should avoid any disturbance of generally accepted principles on which the stability of existing delimitations depends.

(g) The governing conception both in the context of continental shelf and the exclusive economic zone is the relation of coastal geography and the 200-mile criterion of distance: and the logical consequence is that, in an "opposite" States situation of less than 400 miles, each State receives a normal complement of appurtenant rights, subject only to the equidistance division *vis-à-vis* the "opposite" coastline.

(h) Recent developments in the law of the sea give added importance to islands and there is no basis for any suggestion that an island State should suffer any discrimination in the law.

(i) The normal entitlement of island States to shelf rights and exclusive economic zones has received the general approbation of the international community; and the use of the equidistance method between opposite States is more widely recognised than (for example) was the system of straight baselines at the time (1951) when the legality of that system was accepted by the Court in the *Anglo-Norwegian Fisheries* case<sup>1</sup>.

(j) The appropriateness of the equidistance method is indicated by the practice of coastal States of the Mediterranean.

(k) The conduct of the Parties is a relevant circumstance in determining what is the equitable solution: Malta's position has always been consistent, and the first Libyan action incompatible with the *status quo* constituted by Malta's legislation of July 1966 took place in September 1974.

(l) The median line established by Malta in her legislation of 1966 is justified by equitable principles and other relevant considerations.

(m) The relevant equitable considerations include the absence of energy resources on the mainland of Malta, the requirements of Malta as an island developing country, the range of established fishing activity, and the element of national security in maintaining control of

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1. *I.C.J. Reports 1951*, p. 116 and pp. 138, 139.



adjacent submarine areas, a consideration the importance of which is enhanced by Malta's status of neutrality.

(n) Malta's line conspicuously lacks any element of inequity and Libya receives a generous part of the shelf areas dividing the two States by virtue of a combination of the equidistance method and the considerable longitudinal extension of the Libyan coastline.

(o) Equidistance is the only means of delimitation which, in the present geographical situation, produces an outcome compatible with the fundamental principle of non-encroachment in the law of the continental shelf.

(p) It is widely recognised that islands belonging to a State and lying in the vicinity of its coasts are ordinarily given full weight for delimitation purposes. It is obvious that the island State is an *a fortiori* case.

(q) Professor Sørensen has observed<sup>1</sup> that "it must be kept in mind that the legal concept of the continental shelf owes its origin to the generally recognised need of giving the coastal State an exclusive right to exploitation", and Judge Sir Robert Jennings<sup>2</sup>, as he now is, has pointed out that "the notion of exploitation itself is qualified by the notion of appurtenance" and, in consequence, "the exploitation meant in this context is that exploitation which is 'contingent upon cooperation and protection from the shore'." This consideration was set out in the Truman Proclamation of 1945 and forms a major *raison d'être* of the legal conception of the continental shelf and of the exclusive economic zone. The shelf areas south of Malta and bounded by the median line clearly conform to this conception in practical terms, and Malta is anxious to obtain the full benefit of the petroleum resources of the appurtenant shelf areas.

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1. Carnegie Endowment, *International Conciliations*, No. 520, November 1958, p. 195 and p. 228.

2. *Recueil des Cours de l'Académie de Droit International de La Haye*, Vol. 121 (1967, II), p. 323 and p. 394.

## SUBMISSIONS

**SUBMISSIONS**

273. Having regard to the considerations set out above,  
*May it please the Court* to adjudge and declare 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 solution;
- (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.

## VOLUME II

## ANNEXES TO THE MEMORIAL OF MALTA

## Annex 1

## THE CONTINENTAL SHELF ACT, 1966

*An Act to make provision as to the exploration and exploitation of the continental shelf and for matters connected with those purposes.*

*Be it enacted* by the Queen's most excellent Majesty, by and with the advice and consent of the House of Representatives of Malta, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Continental Shelf Act, 1966.

2. In this Act, unless the context otherwise requires—

“the continental shelf” means the sea bed and subsoil of the submarine areas adjacent to the coast of Malta but outside territorial waters, to a depth of two hundred 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; so however that where in relation to States of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves, the boundary of the continental shelf shall be that determined by agreement between Malta and such other State or States or, in the absence of agreement, the median line, namely a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial waters of Malta and of such other State or States is measured;

“Malta” has the same meaning as is assigned to it by section 126 of the Constitution of Malta;

“natural resources” means the mineral and other non-living resources of the sea bed and subsoil as well as the living organisms belonging to sedentary species.

3. (1) Any rights exercisable by Malta with respect to the continental shelf and its natural resources are by this Act vested in the Government of Malta.

(2) In relation to any petroleum with respect to which the rights mentioned in subsection (1) of this section are exercisable subsection (2) of section 3 (which prohibits any person from searching or boring for or getting petroleum without a licence), section 4 (which relates to the granting of licences to search and bore for, and get, petroleum) and section 5 (which relates to the making of regulations with respect to the exploration, prospecting and mining for petroleum) of the Petroleum (Production) Act, 1958, shall apply as they apply in relation to petroleum in Malta.

(3) The Prime Minister may from time to time by order published in the

Government Gazette designate any area as an area within which the rights mentioned in subsection (1) of this section are exercisable, and any area so designated is in this Act referred to as a designated area.

(4) In this section "petroleum" has the same meaning as in the Petroleum (Production) Act, 1958.

4. (1) The Prime Minister may for the purpose of protecting any installation or other device in a designated area by order published in the Government Gazette prohibit ships, subject to any exceptions provided by the order, from entering without his consent such part of that area as may be specified in the order.

(2) If any ship enters any part of a designated area in contravention of an order under this section its owner or master shall be liable, on summary conviction, to a fine (*multa*) not exceeding one thousand pounds or to imprisonment for a term not exceeding three months, or to both, unless he proves that the prohibition imposed by the order was not, and would not on reasonable inquiry have become, known to the master.

5. Any order under this Act may be varied or revoked by a subsequent order.

6. (1) Any act or omission which—

(a) takes place on, under or above an installation or other device in a designated area or any waters within five hundred metres of such an installation or device, and

(b) would, if taking place in any part of Malta, constitute an offence under the law in force in Malta,

shall be treated for the purposes of that law and of any other law in force in Malta as taking place in the island of Malta.

(2) For the purposes of section 743 of the Code of Organisation and Civil Procedure (which relates to jurisdiction) any installation or device in a designated area and any waters within five hundred metres of such an installation or device shall be treated as if they were situated in the island of Malta.

7. (1) If any oil or any mixture containing not less than one hundred parts of any oil in a million parts of the mixture is discharged or escapes into any part of the sea—

(a) from a pipe-line, or

(b) as a result of any operations for the exploration of the sea bed and subsoil or the exploitation of their natural resources in a designated area,

the owner of the pipe-line or, as the case may be, the person carrying on the operations shall be guilty of an offence unless he proves, in the case of a discharge from a place in his occupation, that it was due to the act of a person who was there without his permission (express or implied) or, in the case of an escape, that he took all reasonable care to prevent it and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

(2) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine (*multa*) not exceeding one thousand pounds.

8. (1) No person shall lay or maintain any submarine cable or pipe-line under the high seas in a designated area without a licence in that behalf granted by the Prime Minister or in contravention of any requirement or condition contained in any such licence as to the route of any such cable or pipe-line or as to any

other matter intended to ensure non-interference with the exploration or exploitation of the continental shelf or its natural resources.

(2) Any person who contravenes any of the provisions of this section shall be liable, on summary conviction, to a fine (*multa*) not exceeding fifty pounds for each day during which the offence continues.

9. (1) Where an offence under this Act (including an offence under another Act as applied by this Act and anything that is an offence by virtue of subsection (1) of section 6 of this Act) is committed by an association of persons, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such association or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2) A member of the Police Force shall on any installation or device in a designated area have all the powers, protection and privileges which he has in Malta.

10. The enactment specified in the First Column of the Schedule hereto shall have effect subject to the amendments specified in the Second Column of that Schedule.

#### SCHEDULE

##### Section 10

First Column <i>Enactment Amended</i>	Second Column <i>Extent of Amendments</i>
Petroleum (Production) Act, 1958	In section 2— (a) the definition of “the continental shelf” shall be deleted; (b) in the definition of “Malta” for the words “the land underlying territorial waters and the continental shelf” there shall be substituted the words “and the land underlying territorial waters”.

## Annex 2

## NOTICE INVITING APPLICATIONS FOR PRODUCTION LICENCES

PETROLEUM (PRODUCTION) ACT, 1958

CONTINENTAL SHELF ACT, 1966

*Petroleum (Production) Regulations, 1969**Notice for the Purposes of Regulation 4*

For the purposes of regulation 4 of the Petroleum (Production) Regulations, 1969, the Prime Minister hereby notifies that he is prepared to receive between 10.00 a.m. on May 2nd 1973 and 1.00 p.m. on August 2nd 1973 applications in accordance with the said Regulations for Production Licences in respect of the area offshore South of Malta, consisting of sixteen blocks to which the numbers specified in the Schedule to this Notice have been assigned, described in the said Schedule and shown on a map deposited at the Oil Division, Ministry of Development, Merchants Street, Valletta, Malta. The Map may be inspected on request between the hours of 9.30 a.m. and 12.30 p.m. except on Saturdays, Sundays and Public Holidays. In considering any application the Prime Minister will not take into account the day on which it was received.

Applications can be submitted for any number of blocks. To assist the Prime Minister in considering the applications, applicants are, however, invited to indicate the degree of preference which they attach to each block to which their application relates.

Following is a summary of the basic considerations which the Prime Minister has decided to require in respect of licences granted in response to applications :

(i) An annual rental :

(a) on signature calculated at the rate of four Malta pounds (£M4) per square kilometre ; and

(b) upon each anniversary of the date of commencement of the licence and during the continuance thereof in respect of the periods herein undermentioned calculated per square kilometre of the area retained as set out hereunder :

<i>Years</i>	<i>Rate</i>
2 to 3	£M4 per sq. kilometre
4 to 6	£M8 per sq. kilometre
7 to 10	£M16 per sq. kilometre
11 to 13	£M32 per sq. kilometre
14 to 16	£M64 per sq. kilometre
17 to 19	£M96 per sq. kilometre
20 to 22	£M128 per sq. kilometre
23 to 25	£M160 per sq. kilometre
26 to 30	£M192 per sq. kilometre

After 30 years and up to 30 years after the date on which the option under clause 6 of the Second Schedule of the Petroleum (Production) Regulations, 1969, was exercised.

£M200 per sq. kilometre.

(ii) A minimum royalty equal to 12½ per cent of the posted prices of crude oil produced and saved in the concession area.

Applicants are expected to indicate :

(a) the minimum amounts they are willing and able to spend on prospecting, exploration, drilling or development of the petroleum resources in their concession area during the ten years referred to in clause 3 of the Second Schedule of the Petroleum (Production) Regulations, 1969;

(b) the number and depth or the aggregate depth of wells to be drilled during the exploration period;

(c) the time within which they are willing and able to commence drilling a first test well, such period not to exceed twenty-four (24) months from the date of the grant of the licence;

(d) the amount of signature and/or production bonuses to be paid to the Government of Malta; and

(e) special financial formulae providing escalating scales of carried interest applicable at various stages of production.

Applications will only be considered if applicants purchase the data from a recent seismic survey conducted on the area on behalf of the Government of Malta.

The attention of applicants is particularly drawn to the following facts :

(a) For the purpose of calculating royalties and income tax, values will be assessed according to applicable "Posted Prices";

(b) Royalties will be expensed but not be regarded as payment on account of tax;

(c) For income tax purposes, a company to which more than one licence is granted shall be deemed to constitute as many persons subject to tax as the number of licences it enjoys

#### SCHEDULE

##### *Open for Application for Production Licences*

#### BLOCK I

#### A B C D

A:	35° 23' 6 N 14° 50' 5 E
B:	35° 23' 6 N 15° 18' 1 E
C:	35° 06' 7 N 15° 18' 1 E
D:	35° 06' 7 N 14° 50' 5 E

---



## BLOCK 2

D G F E

D: 35° 06' 7 N  
14° 50' 5 E

G: 35° 06' 7 N  
15° 11' 8 E

F: 34° 43' 4 N  
15° 11' 8 E

E: 34° 43' 4 N  
14° 50' 5 E

---

## BLOCK 3

G H I J

G: 35° 06' 7 N  
15° 11' 8 E

H: 35° 06' 7 N  
15° 33' 5 E

I: 34° 55' N  
15° 33' 5 E

J: 34° 55' N  
15° 11' 8 E

---

## BLOCK 4

J I K F

J: 34° 55' N  
15° 11' 8 E

I: 34° 55' N  
15° 33' 5 E

K: 34° 43' 4 N  
15° 33' 5 E

F: 34° 43' 4 N  
15° 11' 8 E

---

## BLOCK 5

H M L K

H: 35° 06' 7 N  
15° 33' 5 E

M: 35° 06' 7 N  
15° 54' E

L: 34° 43' 4 N  
15° 54' E

K: 34° 43' 4 N  
15° 33' 5 E

---

## BLOCK 6

N O P L

N: 35° 02' 1 N  
15° 54' E  
O: 35° 02' 1 N  
16° 26' E  
P: 34° 43' 4 N  
16° 26' E  
L: 34° 43' 4 N  
15° 54' E

---

## BLOCK 7

Q T S R

Q: 34° 43' 4 N  
14° 07' 5 E  
T: 34° 43' 4 N  
14° 27' 1 E  
S: 34° 27' 2 N  
14° 27' 1 E  
R: 34° 27' 2 N  
14° 07' 5 E

---

## BLOCK 8

T U V S

T: 34° 43' 4 N  
14° 27' 1 E  
U: 34° 43' 4 N  
15° 03' 3 E  
V: 34° 27' 2 N  
15° 03' 3 E  
S: 34° 27' 2 N  
14° 27' 1 E

---

## BLOCK 9

U X W V

U: 34° 43' 4 N  
15° 03' 3 E  
X: 34° 43' 4 N  
15° 23' 3 E  
W: 34° 27' 2 N  
15° 23' 3 E  
V: 34° 27' 2 N  
15° 03' 3 E

---

## BLOCK 10

X Y Z W

X: 34° 43' 4 N  
15° 23' 3 E

Y: 34° 43' 4 N  
15° 42' 7 E

Z: 34° 27' 2 N  
15° 42' 7 E

W: 34° 27' 2 N  
15° 23' 3 E

---

## BLOCK 11

Y AA AB Z

Y: 34° 43' 4 N  
15° 42' 7 E

AA: 34° 43' 4 N  
16° 07' 4 E

AB: 34° 27' 2 N  
15° 59' 5 E

Z: 34° 27' 2 N  
15° 42' 7 E

---

## BLOCK 12

R S AD AC

R: 34° 27' 2 N  
14° 07' 5 E

S: 34° 27' 2 N  
14° 27' 1 E

AD: 34° 15' 5 N  
14° 27' 1 E

AC: 34° 17' 1 N  
14° 07' 5 E

---

## BLOCK 13

S AF AE AD

S: 34° 27' 2 N  
14° 27' 1 E

AF: 34° 27' 2 N  
14° 56' 1 E

AE: 34° 13' 2 N  
14° 56' 1 E

AD: 34° 15' 5 N  
14° 27' 1 E

---

## BLOCK 14

AF AG AH AE

AF:	34° 27' 2N
	14° 56' 1 E
AG:	34° 27' 2N
	15° 13' E
AH:	34° 12' 2N
	15° 13' E
AE:	34° 13' 2N
	14° 56' 1 E

---

## BLOCK 15

AG AJ AI AH

AG:	34° 27' 2N
	15° 13' E
AJ:	34° 27' 2N
	15° 30' E
AI:	34° 12' N
	15° 30' E
AH:	34° 12' 2N
	15° 13' E

---

## BLOCK 16

AJ AB AK AI

AJ:	34° 27' 2N
	15° 30' E
AB:	34° 27' 2N
	15° 59' 5 E
AK:	34° 14' 2N
	15° 52' 9 E
AI:	34° 12' N
	15° 30' E

The areas of Blocks 12, 13, 14, 15 and 16 are subject to alterations in the light of any agreement on the Median line between Malta and the Libyan Arab Republic.

---

**Annex 3****DECLARATION BY THE GOVERNMENT OF THE REPUBLIC OF MALTA CONCERNING  
THE NEUTRALITY OF MALTA****The Government of the Republic of Malta**

Faithful to the decision of the People of the Republic of Malta to eliminate all foreign military bases after March 31, 1979, and to contribute to peace and stability in the Mediterranean region by changing their country's unnatural role of a fortress into a centre of peace and a bridge of friendship between the Peoples of Europe and of North Africa;

Conscious of the special contribution the Republic of Malta can make towards that end by assuming a status of neutrality strictly founded on the principles of non-alignment;

Aware of the support which neighbouring European and Arab Mediterranean States will give to Malta's new role and to such a status of neutrality:

1. Solemnly declares that the Republic of Malta is a neutral State actively pursuing peace, security and social progress among all nations by adhering to a policy of non-alignment and refusing to participate in any military alliance;

2. Affirms that such a status will, in particular, imply that:

(a) no foreign military base will be permitted on Maltese territory;

(b) no military facilities in Malta will be allowed to be used by any foreign forces except at the request of the Government of Malta, and only in the following cases:

(i) in the exercise of the inherent right of self-defence in the event of any armed violation of the area over which the Republic of Malta has sovereignty, or in pursuance of measures or actions decided by the Security Council of the United Nations; or

(ii) whenever there exists a threat to the sovereignty, independence, neutrality, unity or territorial integrity of the Republic of Malta;

but the Government of Malta will immediately inform the neighbouring Mediterranean States which have made like Declarations welcoming the present Declaration and giving appropriate undertakings of the steps taken under this paragraph;

(c) except as aforesaid, no other facilities in Malta will be allowed to be used in such manner or extent as will amount to the presence in Malta of a concentration of foreign forces;

(d) except as aforesaid, no foreign military personnel will be allowed on Maltese territory, other than military personnel performing, or assisting in the performance of, civil works or activities, and other than a reasonable number of military technical personnel assisting in the defence of the Republic of Malta;

(e) the shipyards of the Republic of Malta will be used for civil commercial purposes, but may also be used, within reasonable limits of time and quantity, for the repair of military vessels which have been put in a state of non-combat or for the construction of vessels; and in accordance with the principles of non-alignment the said shipyards will be denied to the military vessels of the two superpowers.

3. Expresses its hope that, with the concurrence of the Government of the Republic of Malta, neighbouring Mediterranean States will make like Declarations welcoming the present Declaration and giving such undertakings as may be appropriate. The Government of the Republic of Malta will inform each of such States of the Declarations made by other States.

---

## Annex 4

DRAFT DELIMITATION AGREEMENT  
PROPOSED BY MALTA ON 12-13 JULY 1972AGREEMENT BETWEEN THE GOVERNMENT OF MALTA AND THE GOVERNMENT OF  
THE LIBYAN ARAB REPUBLIC RELATING TO THE DELIMITATION OF  
THE CONTINENTAL SHELF BETWEEN THE TWO COUNTRIES

The Government of Malta and the Government of the Libyan Arab Republic;

Desiring to establish the boundary between the respective parts of the Continental Shelf on the basis of a line every point of which is equidistant from the nearest points of the baselines from which the territorial sea of each country is at present measured:

Have agreed as follows:

*Article 1*

(1) The dividing line between the part of the Continental Shelf which appertains to Malta and that part which appertains to the Libyan Arab Republic shall be arcs of Great Circles between the following points, in the sequence given below:

- |     |           |   |
|-----|-----------|---|
| 1.  | 34° 27' 0 | N |
|     | 13° 27' 4 | E |
| 2.  | 34° 20' 3 | N |
|     | 13° 54' 3 | E |
| 3.  | 34° 17' 2 | N |
|     | 14° 06' 3 | E |
| 4.  | 34° 16' 2 | N |
|     | 14° 16' 2 | E |
| 5.  | 34° 14' 0 | N |
|     | 14° 39' 8 | E |
| 6.  | 34° 12' 3 | N |
|     | 15° 02' 5 | E |
| 7.  | 34° 11' 0 | N |
|     | 15° 25' 0 | E |
| 8.  | 34° 12' 8 | N |
|     | 15° 43' 0 | E |
| 9.  | 34° 14' 8 | N |
|     | 16° 00' 0 | E |
| 10. | 34° 19' 3 | N |
|     | 16° 37' 5 | E |
| 11. | 34° 23' 5 | N |
|     | 17° 16' 0 | E |
| 12. | 34° 27' 2 | N |
|     | 17° 46' 2 | E |
| 13. | 34° 48' 0 | N |
|     | 18° 04' 6 | E |

The positions of the points in this Article are defined by latitude and longitude on the basis of the Greenwich Meridian.

(2) The dividing line has been drawn on the chart annexed to this Agreement.

*Article 2*

Subsequent changes in the conformation or charting of the coastline or base-lines of Malta or the Libyan Arab Republic due to natural or other causes shall not alter the dividing line.

*Article 3*

If at any time it is determined that a single petroleum field extends across the dividing line then the Contracting Parties shall consult with a view to reaching agreement upon a plan for the exploitation of the field in question.

*Article 4*

Should any dispute arise concerning the position of any installation or other device in relation to the dividing line, the Contracting Parties shall in consultation determine on which side of the dividing line the installation or other device is situated.

*Article 5*

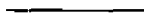
The present Agreement shall enter into force upon signature.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

Done in duplicate at . . . . .  
the . . . . . in the English and Arabic languages,  
both texts being equally authoritative.

. . . . .  
For the Government of Malta.

. . . . .  
For the Government of the Libyan  
Arab Republic.





**Annex 5**

DRAFT DELIMITATION AGREEMENT PROPOSED BY LIBYA ON 23 APRIL 1973  
[English Text]

*[See Memorial of the Libyan Arab Jamahiriya,  
Documentary Annex 39, supra]*

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**Annex 6****LETTER SENT BY LIBYA TO TEXACO MALTA INC.**

The Government of the Libyan Arab Republic has learnt that your Company is carrying out exploration activities aiming at the extraction of oil in off-shore areas in the Mediterranean, the locations of which are described by the coordinates shown in the attached data. The said areas constitute a continental shelf upon which the Libyan Arab Republic maintains full sovereignty.

Accordingly, the Government of the Libyan Arab Republic hereby demands a firm assurance from your Company confirming that no such exploration or drilling activities are being carried out within the said areas. Your performance of such activities without obtaining a prior permit or authority from the Libyan Arab Republic shall be considered an infringement upon its rights, thus justifying the adoption of any measures deemed necessary to safeguard our legitimate rights.

*(Signed)* M. M. ZREGH,  
Undersecretary  
Ministry Of Petroleum.

Encl: Detailed data on the locations referred to in this letter.

---

**TEXACO****(1) Area comprised between points :**

- A 34° 54' Latitude  
14° 49' Longitude
- B 34° 54' Latitude  
15° 11' Longitude
- C 34° 43' Latitude  
15° 11' Longitude
- D 34° 43' Latitude  
14° 49' Longitude

**(2) Area comprised between points :**

- A 34° 54' Latitude  
15° 32' Longitude
- B 34° 43' Latitude  
15° 32' Longitude
- C 34° 43' Latitude  
15° 11' Longitude
- D 34° 54' Latitude  
15° 11' Longitude

(3) Area comprised between points :

- A     $34^{\circ} 43'$  Latitude  
       $15^{\circ} 03'$  Longitude
  - B     $34^{\circ} 43'$  Latitude  
       $15^{\circ} 22'$  Longitude
  - C     $34^{\circ} 26'$  Latitude  
       $15^{\circ} 22'$  Longitude
  - D     $34^{\circ} 26'$  Latitude  
       $15^{\circ} 03'$  Longitude
-

**Annex 7****LETTER SENT BY LIBYA TO JOC OIL LTD.**

The Government of the Libyan Arab Republic has learnt that your Company is carrying out exploration activities aiming at the extraction of oil in off-shore areas in the Mediterranean, the locations of which are described by the co-ordinates shown in the attached data. The said areas constitute a continental shelf upon which the Libyan Arab Republic maintains full sovereignty.

Accordingly, the Government of the Libyan Arab Republic hereby demands a firm assurance from your Company confirming that no such exploration or drilling activities are being carried out within the said areas. Your performance of such activities without obtaining a prior permit or authority from the Libyan Arab Republic shall be considered an infringement upon its rights, thus justifying the adoption of any measures deemed necessary to safeguard our legitimate rights.

(Signed) M. M. ZREGH,  
Undersecretary,  
Ministry Of Petroleum.

Encl : Detailed data on the locations referred to in this letter.

---

**JOC OIL EXPLORATION CO. INC.****(1) Area comprised between points :**

- A 34° 43' Latitude  
15° 22' Longitude
- B 34° 43' Latitude  
15° 41' Longitude
- C 34° 26' Latitude  
15° 22' Longitude
- D 34° 26' Latitude  
15° 41' Longitude

**(2) Area comprised between points :**

- A 34° 43' Latitude  
15° 41' Longitude
- B 34° 43' Latitude  
16° 06' Longitude
- C 34° 26' Latitude  
15° 58' Longitude
- D 34° 26' Latitude  
15° 41' Longitude

(3) Area comprised between points :

- A     $34^{\circ} 26'$  Latitude  
       $14^{\circ} 54'$  Longitude
  - B     $34^{\circ} 26'$  Latitude  
       $15^{\circ} 12'$  Longitude
  - C     $34^{\circ} 11'$  Latitude  
       $15^{\circ} 12'$  Longitude
  - D     $34^{\circ} 12'$  Latitude  
       $14^{\circ} 54'$  Longitude
-

**Annex 8****LETTER SENT BY LIBYA TO SNPA**

The Government of the Libyan Arab Republic has learnt that your Company is carrying out exploration activities aiming at the extraction of oil in off-shore areas in the Mediterranean, the locations of which are described by the co-ordinates shown in the attached data. The said areas constitute a continental shelf upon which the Libyan Arab Republic maintains full sovereignty.

Accordingly, the Government of the Libyan Arab Republic hereby demands a firm assurance from your Company confirming that no such exploration or drilling activities are being carried out within the said areas. Your performance of such activities without obtaining a prior permit or authority from the Libyan Arab Republic shall be considered an infringement upon its rights, thus justifying the adoption of any measures deemed necessary to safeguard our legitimate rights.

*(Signed)* M. M. ZREGH,  
Undersecretary,  
Ministry Of Petroleum.

Encl: Detailed data on the locations referred to in this letter.

---

**AQUITAINE**

Area comprised between points:

- A 34° 26' Latitude  
15° 28' Longitude
  - B 34° 26' Latitude  
15° 58' Longitude
  - C 34° 13' Latitude  
15° 51' Longitude
  - D 34° 11' Latitude  
15° 28' Longitude
-

## Annex 9

## LETTER SENT BY MALTA TO CFP

17 June 1975.

The Government of the Republic of Malta is informed that your Company is carrying out oil exploration activities in the offshore area in the Mediterranean north of a line defined by the following co-ordinates

- (a) 34° 27' 0 N  
13° 27' 4 E
- (b) 34° 20' 3 N  
13° 54' 3 E
- (c) 34° 17' 2 N  
14° 06' 3 E
- (d) 34° 16' 2 N  
14° 16' 2 E
- (e) 34° 14' 0 N  
14° 39' 8 E
- (f) 34° 12' 3 N  
15° 02' 5 E
- (g) 34° 11' 0 N  
15° 25' 0 E
- (h) 34° 12' 8 N  
15° 43' 0 E
- (i) 34° 14' 8 N  
16° 00' 0 E
- (j) 34° 19' 3 N  
16° 37' 5 E
- (k) 34° 23' 5 N  
17° 16' 0 E

This area constitutes a continental shelf upon which the Republic of Malta maintains full sovereign rights and any exploration or drilling activities therein without a licence issued to you by the Government of the Republic of Malta, constitutes an infringement of Malta's sovereignty, justifying the adoption of measures necessary to safeguard the legitimate rights of the Republic of Malta.

The Government of the Republic of Malta hereby requests a categoric assurance from your Company that no such exploration or drilling activities are being or will be carried out in any part of the above area.

*(Signed)* M. ABELA,  
Chairman Oil Committee.

Chairman,  
Compagnie Française de Pétroles,  
49, quai André-Citroën,  
75739 Paris.

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## Annex 10

## LETTER SENT BY MALTA TO EXXON

23 June 1975.

The Government of the Republic of Malta is informed that your company is carrying out oil exploration activities in the off-shore area in the Mediterranean north of a line defined by the following co-ordinates :

	<i>Degs.</i>	<i>Mins.</i>	<i>Secs.</i>	
A	34	27	0	N
	13	27	4	E
B	34	20	3	N
	13	54	3	E
C	34	17	2	N
	14	06	3	E
D	34	16	2	N
	14	16	2	E
E	34	14	0	N
	14	39	8	E
F	34	12	3	N
	15	02	5	E
G	34	11	0	N
	15	25	0	E
H	34	12	8	N
	15	43	0	E
I	34	14	8	N
	16	00	0	E
J	34	19	3	N
	16	37	5	E
K	34	23	5	N
	17	16	0	E

This area constitutes a continental shelf upon which the Republic of Malta maintains full sovereign rights and any exploration or drilling activities therein without a licence issued to you by the Government of the Republic of Malta, constitutes an infringement of Malta's sovereignty, justifying the adoption of measures necessary to safeguard the legitimate rights of the Republic of Malta.

The Government of the Republic of Malta hereby requests a categoric assurance from your company that no such exploration or drilling activities are being or will be carried out in any part of the above area.

This letter replaces the one dated 17 June 1975, which contained a technical error.

(Signed) C. V. VELLA,  
Chargé d'Affaires, a.i.

### Annex 11

#### DRAFT SPECIAL AGREEMENT PRESENTED BY MALTA TO LIBYA ON 3 JANUARY 1976

SPECIAL AGREEMENT FOR THE SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF A DIFFERENCE BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALTA AND THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC REGARDING THE DELIMITATION OF THE CONTINENTAL SHELF IN THE MEDITERRANEAN SEA

The Government of the Republic of Malta and the Government of the Libyan Arab Republic;

*Considering* that the area of the sea-bed and subsoil in the Mediterranean Sea between Malta and Libya forms a continental shelf over which the two States exercise sovereign rights for the purpose of exploring it and exploiting its natural resources; and that it is desirable to lay down the exact continental shelf boundary between them;

*Considering* that in the course of the negotiations that have taken place between the Parties some differences of opinion have become apparent in regard to the rules and principles to be applied in laying down such a boundary;

*Considering* the close and friendly relations existing between the two Nations and their Governments;

*Intending* to settle the differences which have thus arisen in the spirit of the friendly and good neighbourly relations existing between them;

*Bearing in mind* that for the purpose of settling differences between States which cannot be solved by means of diplomatic negotiations, judicial settlement is best in harmony with the basic principles of international law and the Charter of the United Nations to which the Parties firmly adhere;

*Have decided* to submit the differences that have arisen between them to the International Court of Justice, and for this purpose have agreed as follows:

#### Article 1

(1) The Court is requested—

(a) to decide what, according to the applicable principles and rules of international law, is the dividing line separating, as between the Parties, the continental shelf areas lying between Malta and Libya;

(b) to delimit the said dividing line and cause such part of it as stretches in the west-east direction from the [14th to the 18th] degrees of longitude east of Greenwich, to be marked out on a chart or charts of scale not less than [1:1,000,000 at lat. 39° N], to be attached to and form an integral part of the final decision of the Court.

(2) The choice of the [14th to the 18th] degrees of longitude east of Greenwich is without prejudice to the rights of the Parties beyond those points in conformity with the decision of the Court.

*Article 2*

- (1) The proceedings shall consist of written pleadings and oral hearings.
- (2) Without prejudice to any question of the burden of proof, the written pleadings shall consist of the following documents:
  - (a) *Memorials* to be submitted simultaneously to the Court by each Party and exchanged with one another [four months] after the date of the communication of the present Agreement to the Registrar of the Court;
  - (b) *Replies* to be similarly submitted and exchanged [three months] after the date of the submission of the Memorials;
  - (c) If either Party so requests and the Court so decides after consultation with the other Party, *Rejoinders* to be submitted and exchanged on such date as the Court may direct.
- (3) The question of the order of speaking at the oral hearing shall be decided by mutual agreement between the Parties, or, failing such agreement, by the Court after consultation with the Parties, or, if necessary, after hearing them. Whatever the order of speaking adopted it shall be without prejudice to any question of the burden of proof.

*Article 3*

Following upon the final decision of the Court, the Governments of the Republic of Malta and of the Libyan Arab Republic shall respectively proclaim the continental shelf boundary between their two countries in conformity with that decision.

*Article 4*

The present Agreement shall enter into force on the day of its signature and shall be immediately communicated to the Registrar of the Court by the Parties jointly, or failing that by either of them.

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## Annex 12

DRAFT SPECIAL AGREEMENT PRESENTED BY LIBYA TO MALTA  
ON 27 JANUARY 1976 (English Text)SPECIAL AGREEMENT FOR REFERRING THE DIFFERENCES  
BETWEEN THE LIBYAN ARAB REPUBLIC AND THE REPUBLIC OF  
MALTA TO THE INTERNATIONAL COURT OF JUSTICE

The Government of the Libyan Arab Republic and the Government of the Republic of Malta have decided to have recourse to the I.C.J. for its decision on the following question :

*Article 1. Requested from the Court:* to indicate which rules and principles of the international law should be applied for the demarcation of the continental shelf areas and the economic zone areas belonging to each of the Libyan Arab Republic and the Republic of Malta.

*Article 2.* The Government of the Libyan Arab Republic and the Government of Malta will enter into consultations to establish the dividing line of the continental shelf and the economic zone belonging to each State in accordance with the decision of the Court.

*Article 3.* (i) The processes should comprise both written and oral pleadings.

(ii) without prejudice to any evidence that may be produced in the course of the written proceedings, the latter shall include :

(a) *Memoranda* presented by both Parties. Malta shall submit its memorandum to the Court within a year from the date of presentation of this protocol to the Court. The L.A.R. shall in turn submit its memorandum to the Court within a year from the date of the presentation of Maltese memorandum.

(b) *Replies* or answers shall be exchanged in similar sequence within a period of six months from the date of delivery of the memoranda to the Registrar.

(c) *Supplementary Aide-Memoires* shall be presented and exchanged on dates fixed by the Court upon request from one of the Parties or, if the Court so decides, after consulting the other Party.

(iii) The order of speeches during the oral pleadings shall be established by agreement between the two Parties, through the Court, and upon consultation of the two Parties if the hearings so necessitate. However, the agreed order of statements shall not be contravened in the case of evidence, proof or new bases of concepts regarding the dispute decided by International Conferences.

*Article 4.* Following the final decision of the Court, both Parties shall enter into negotiations to conclude an agreement on the demarcation of the Continental Shelf and the Economic Zone pertaining to each, in accordance with the principles and bases decided by the Court.

*Article 5.* The said Agreement shall come into force from the date of signature and shall be referred by both Parties to the Registrar of the Court.

For the Government of the  
Libyan Arab Republic.

For the Government of the  
Republic of Malta.

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**Annex 13****RATIFICATION OF SPECIAL AGREEMENT BY MALTA, 28 MAY 1976***[See Special Agreement, p. 14, supra]*  
  

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**Annex 14**

LETTER FROM THE PRIME MINISTER OF MALTA OF 3 DECEMBER 1976

*[Maltese text not reproduced]**(Translation)*

You are aware that the most delicate problem we have had to face in the relations between Malta and Libya was the share of the sea-bed in the exploration and exploitation of oil appertaining to each side.

We both spent years racking our brains on how to come to an understanding which would do justice to both Libya and Malta. From the very beginning we agreed on one thing: that we shall not let this problem disrupt the friendship existing between our two peoples.

In January of this year we both agreed to leave the decision on the principles and their application in the hands of the International Court of Justice at The Hague.

On the 23rd May 1976 during your memorable visit to Malta, Minister Ben Amer and Minister Abela signed a special agreement giving official confirmation by both Governments to what you and I had agreed upon in January.

I regret to inform you that up to the present day this agreement has not yet been ratified by the Libyan Arab Republic.

At first this delay was due to Prime Minister Jalloud's mediation mission in Lebanon. When he returned to Tripoli we were informed that there was a backlog of other agreements which were concluded before ours, awaiting ratification.

But now it has come to our knowledge that the Libyan Arab Republic has ratified agreements with other countries which had been signed at a later date than ours.

This lack of ratification is causing us great trouble. The Opposition in Parliament is accusing us that in spite of our close friendly relations we have been unable to agree on such a simple matter. It is also worth remembering that the two countries — Malta and Libya — are bound by a commitment that they will change Malta's economy from one dependent on the foreign military base to one of development based on peaceful relations with our neighbours, by March 1979.

I need to explain to you that if we succeed in finding oil before 1979 we will make a great stride forward in eliminating the need for a military base. For this reason this delay is also weighing on our conscience and I am certain that you will agree with us that there is now no reason why this issue should still stand between us.

If my impression is correct that it is your wish for us to work quietly and without publicity on the lines that Malta had indicated prior to our agreement to go to the International Court, I am ready to interpret your silence following receipt of this letter as implying your approval that Libya, as a friendly gesture towards Malta, will let Malta drill in the area up to the median line that is exactly equidistant between our countries.

Therefore, if by the first day of the new year, we will not receive a reply other than an acknowledgement of our letter, I will assume that this is indeed your wish.

In another letter, or as soon as we meet again, I will give you useful information on what is happening with Germany, France, Italy, Spain and Yugoslavia regarding our aspiration that after March 1979 Malta will be a neutral State.

My colleagues and I send our best regards to you, your colleagues and family and augur prosperity to the Libyan people.

H.E. Col. Muammar Gaddafi,  
President of the Arab Republic of Libya.

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## Annex 15

LETTER FROM THE PRIME MINISTER OF MALTA OF 14 JANUARY 1978

*[Maltese text not reproduced]**(Translation)*

You are aware of all the trouble we have been through until, finally on the 23rd May 1976 we reached an agreement, signed by Minister Ben Amer on behalf of the Libyan Jamahiriya and Minister Wistin Abela on behalf of the Republic of Malta, to submit the dispute on the division of the sea-bed between Malta and Libya to the International Court of Justice at The Hague.

In December 1976 Major Jalloud promised me in writing that Libyan experts would leave no stone unturned to ensure the ratification of the agreement in the shortest possible time.

In June of last year, when Major Jalloud was in Malta, he promised me that the agreement signed in May 1976 would be presented to the People's Congress for the necessary approval. This was again confirmed to me in Malta by the Secretary of Foreign Affairs, Dr. Ali Treki, last September.

Now that the People's Congress have not only met but have approved all that the Administration has done, there appears to be nothing to prevent the Government of the Libyan Jamahiriya from formally communicating to us ratification as agreed.

I cannot understand what is preventing the friendly Government of the Libyan Jamahiriya from carrying out a mere formality in order that the May 1976 Agreement may come into force. Of one thing I am sure: this is not being done capriciously or through carelessness because I am fully aware how hard both of us have worked to strengthen the friendship and brotherly ties between our two countries. This same bond of friendship makes it incumbent on me to inform you that the non-ratification of the May 1976 Agreement is seriously demolishing all that we have succeeded to build together.

I know, Mr. Secretary General, that you will appreciate that the people of Malta are anxious for exploration work to start, because if oil is found by 1979 our Island would be able to face its future as a neutral country with greater courage. This notwithstanding, unless the Agreement is ratified, I am not only unable to give serious information to Parliament, but I am also being prevented from warding off the great damage that is being inflicted to the good relations that exist between us.

Only our enemies are benefiting from this situation. I am enclosing with this letter a translation of the leading article of the reactionary and pro-West newspaper *Times of Malta* of the 12th January 1978.

For this reason I am confident that you will fully understand this situation and the need for both sides that the May 1976 Agreement be ratified prior to the formal discussions scheduled for the 30th of this month in connection with Malta's status after March 1979.

H.E. Col. Muammar Gaddafi,  
Secretary General,  
Socialist People's Libyan Arab Jamahiriya.

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## Annex 16

## LETTER FROM THE PRIME MINISTER OF MALTA OF 12 MAY 1978

Like you I still feel the shock of the death by accident of Taha Sharif Ben Amer and Ahmed Abushagur. Sharif Ben Amer we all loved as a brother. He has not had the opportunity to collect from the hands of our President the decoration bestowed upon him by the Republic of Malta — Midalja għall-Qadi tar-Repubblika. We would feel honoured if you could arrange for his widow, with her young son, to come to Malta and accept the medal on behalf of her late husband.

On May 3-5 of this year His Excellency Mansour M. Badr has come to Malta to make some proposals about two major issues: (a) the dividing line of the Continental Shelf between our two countries; and (b) the concessionary oil agreement.

On the first issue the Libyan proposal seems to be that Malta should forget all the years of discussion which finally ended with your personal intervention enabling an agreement to be reached between our two governments on the 23 May 1976 to refer the dispute for arbitration by the International Court of Justice. The Libyan proposal puts the clock back at least six years and expects the Government of Malta to start again from scratch.

The second proposal brings to an end the concessionary terms of the oil agreement which you, personally, generously and publicly offered to the people of Malta during one of your visits. It also hints vaguely at the setting up of a joint Maltese/Libyan Committee of Experts which would discuss in what way the Maltese economy might be helped as a substitution in total or in part for the loss of the concession.

On our side the Deputy Prime Minister tried to raise the point — vital to both countries — concerning the urgency for a formal agreement to be publicly made between our two countries to enable Malta to have a guaranteed status of neutrality after March, 1979. Minister Badr was repeatedly told of the urgency of this issue especially now that there are hardly any British Forces left on the Island and we want to make sure to have the ability to resist sudden attacks of the Entebbe type. Much to our surprise His Excellency Mansour M. Badr regretted he had no authority to discuss this issue.

From what I have briefly stated — if you wish my friend Joe Camilleri will give you more details orally — I am sure you will gather how necessary is again your personal intervention to clear up this mess for which I feel certain only the bureaucrats are responsible.

Our country is passing through one of its most dangerous and critical periods. If, with your help, we are able to steer a course which will ultimately enable us to reach the goal of a lasting and stable neutral Malta in a Mediterranean free of domination by the two super powers, your name in history will shine for many generations.

H.E. Muammar El-Ghaddafi,  
Secretary General of the Socialist People's Libyan  
Arab Jamahiriya,  
Tripoli, Libya.

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### Annex 17

#### MALTA'S NOTE TO LIBYA OF 21 NOVEMBER 1979

The Ministry of Foreign Affairs of the Republic of Malta presents its compliments to the Popular Office of the Socialist People's Libyan Arab Jamahiriya and has the honour to refer to the long-outstanding question of the delimitation of the continental shelves of the two countries.

The Ministry recalls with satisfaction the understandings reached recently in Tripoli, and later confirmed in Malta, on current and future co-operation between the Jamahiriya and Malta.

The Ministry must, however, again express its regret that no real progress was made on the question of delimitation. Indeed the Ministry cannot but recall with concern the various abortive attempts at reaching an agreed solution, in particular the fact that the Special Agreement signed, after years of negotiations, in May 1976, has, notwithstanding the promise of an early ratification, remained unratified by the Libyan side until this day.

Even a simple agreement that the experts of the two sides should meet in Malta in the very early days of this month has not been kept. This meeting was intended to pave the way for a last-minute attempt to be made at the highest level not later than mid-November in order that, should an agreement be reached, this could be ratified by the Popular Congresses during this year's session.

There seems to be now little time left for the two sides to reach a final agreement capable of being ratified by the Congresses this year unless both sides were to act quickly and with the necessary determination to reach an agreement in time.

While, therefore, the Maltese Government will honour its latest commitment to send its experts to Tripoli on November 26, it has little confidence that this mission will be successful unless both sides take a more flexible approach.

Thus, as regards the proposal made by the Jamahiriya during the meeting of October 16, 1979, and which is recorded in the agreed minutes of that meeting, it would not be possible for the Maltese Government—for reasons already given verbally—to consider its acceptance, even with modifications, unless the proposal is authorized by the Popular Congresses and could be implemented without the need of a reference back to the Congresses for ratification.

To show its own good will, and in a further effort to reach a working agreement that would give the two sides more time and a better opportunity for a wider and final agreement, the Maltese Government declares its readiness to modify its own proposal put forward at the Tripoli meeting just referred to. The Maltese Government would be prepared to extend from 5 to 15 miles the area on its side of the median line which would be declared to be in dispute, if the Jamahiriya made a similar extension on its side. The two countries could then exploit the remainder of the areas without any further delay.

At the same time, the Government of the Republic of Malta has no option but to confirm that it cannot postpone any further the exploitation of the area of the continental shelf between the two countries which it firmly believes to appertain to the Maltese people. The Maltese Government has commitments which it must honour and drilling must therefore start in the near future in the area north of the line A B shown in the attached map.

The Ministry of Foreign Affairs of the Republic of Malta avails itself of this opportunity to renew to the Popular Office of the Socialist People's Libyan Arab Jamahiriya the assurances of its highest consideration.

Popular Office of the  
Socialist People's Libyan  
Arab Jamahiriya.

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**Annex 18**

LIBYAN NOTE TO MALTA OF 10 MAY 1980

*[See Memorial of the Libyan Arab Jamahiriya,  
Documentary Annex 66, supra]*

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**Annex 19****MALTA'S NOTE TO LIBYA OF 21 MAY 1980**

The Ministry of Foreign Affairs of the Republic of Malta presents its compliments to the Popular Committee of the Socialist People's Libyan Arab Jamahiriya and has the honour to refer to the Note Verbale of May 10, 1980, addressed by the Secretariat of the Socialist People's Libyan Arab Jamahiriya to the Embassy of the Republic of Malta.

The Ministry of Foreign Affairs rejects and refutes as completely unfounded and inadmissible in international law, all claims by the the Socialist People's Libyan Arab Jamahiriya over areas of the continental shelf in respect of which the Republic of Malta has granted exploration and production licences.

All licences granted for that purpose by the Government of the Republic of Malta—none of which, incidentally, was granted recently, since the last licence is dated 19 November 1974—were granted in areas which unquestionably fall within the continental shelf which appertains exclusively to the Republic of Malta.

Indeed, it was the Republic of Malta that was aggrieved by the grant of licences made by the Socialist People's Libyan Arab Jamahiriya, against all rules and principles of international law, in respect of areas falling within the exclusive sovereignty of the Republic of Malta. So much so that the Government of Malta protested strongly against this illegal most unfriendly act by letters dated 17 June 1975 and 23 June 1975.

The Ministry of Foreign Affairs of the Republic of Malta therefore, while it denounces as completely unfounded in law and in fact all claims and allegations contained in the Libyan Note Verbale under reply, calls on the Socialist People's Libyan Arab Jamahiriya to refrain from any further acts of unfriendliness against the Republic of Malta and places responsibility for any adverse effect on the friendly relations between the two countries squarely on the Socialist People's Libyan Arab Jamahiriya.

Popular Committee of  
the Socialist People's  
Libyan Arab Jamahiriya,  
Popular Office,  
Sliema.

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**Annex 20**

AGREEMENT BETWEEN DENMARK AND NORWAY CONCERNING  
THE FAROE ISLANDS

*[Not reproduced]*

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**Annex 21**

CLAIMS TO A 200-MILE EXCLUSIVE ECONOMIC ZONE AS LISTED BY THE  
UNITED STATES DEPARTMENT OF STATE

*[Not reproduced]*

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**Annex 22**

AGREEMENT BETWEEN BAHRAIN AND IRAN, 17 JUNE 1971

*[Not reproduced]*

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**Annex 23**

AGREEMENT BETWEEN CUBA AND MEXICO, 26 JULY 1976

*[Not reproduced]*

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**Annex 24**

AGREEMENT BETWEEN INDIA AND MALDIVES, 28 DECEMBER 1976

*[Not reproduced]*  

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**Annex 25**AGREEMENT BETWEEN CUBA AND THE UNITED STATES OF AMERICA,  
16 DECEMBER 1977*[Not reproduced]*  

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**Annex 26**AGREEMENT BETWEEN COLOMBIA AND THE DOMINICAN REPUBLIC,  
13 JANUARY 1978*[Not reproduced]*  

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**Annex 27**

AGREEMENT BETWEEN COLOMBIA AND HAITI, 17 FEBRUARY 1978

*[Not reproduced]*  

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**Annex 28**

AGREEMENT BETWEEN THE DOMINICAN REPUBLIC AND VENEZUELA,  
3 MARCH 1979

*[Not reproduced]*

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**Annex 29**

AGREEMENT BETWEEN THE UNITED KINGDOM AND VENEZUELA  
CONCERNING TRINIDAD, 26 FEBRUARY 1942

*[Not reproduced]*

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**Annex 30**

AGREEMENT BETWEEN BAHRAIN AND SAUDI ARABIA, 22 FEBRUARY 1958

*[Not reproduced]*

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**Annex 31**

AGREEMENTS BETWEEN AUSTRALIA AND INDONESIA

(1) AGREEMENT OF 18 MAY 1971

(2) AGREEMENT OF 9 OCTOBER 1972  
SUPPLEMENTARY TO THE AGREEMENT OF 18 MAY 1971

(3) AGREEMENT CONCERNING CERTAIN BOUNDARIES BETWEEN  
INDONESIA AND PAPUA NEW GUINEA, 12 FEBRUARY 1973

*[Not reproduced]*

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**Annex 32**

AGREEMENT BETWEEN INDONESIA AND SINGAPORE, 25 MAY 1973

*[Not reproduced]*

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**Annex 33**

AGREEMENT BETWEEN INDIA AND SRI LANKA, 23 MARCH 1976

*[Not reproduced]*

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**Annex 34**

NATIONAL LEGISLATION — BAHAMAS

(1) ORDER IN COUNCIL NO. 2574

(2) ACT NO. 17 OF 1970

(3) FISHERIES RESOURCES (JURISDICTION AND CONSERVATION) ACT, 1977

*[Not reproduced]*

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**Annex 35**

NATIONAL LEGISLATION — BARBADOS

(1) ACT OF 1968 AMENDING THE PETROLEUM ACT, 1950

(2) ACT OF 1978 ESTABLISHING MARINE BOUNDARIES

*[Not reproduced]*

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**Annex 36**

NATIONAL LEGISLATION — COMOROS

ORDONNANCE N° 76-038/CE DU 15 JUIN 1976  
PRÉCISANT LES LIMITES DES EAUX TERRITORIALES COMORIENNES  
ET ÉTABLISSANT UNE ZONE ÉCONOMIQUE EXCLUSIVE

*[Not reproduced]*

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**Annex 37**

NATIONAL LEGISLATION — FIJI

- (1) CONTINENTAL SHELF ACT, 1970
- (2) MARINE SPACES ACT, 1977

*[Not reproduced]*

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**Annex 38**

NATIONAL LEGISLATION — GRENADA

ACT NO. 20 OF 1978

*[Not reproduced]*

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**Annex 39**

## NATIONAL LEGISLATION — ICELAND

- (1) LAW NO. 44, CONCERNING THE SCIENTIFIC CONSERVATION OF THE CONTINENTAL SHELF FISHERIES, 5 APRIL 1948. "STJÓRNARTÍÐINDI", 1948, A.4, P. 147
- (2) ACT OF 24 MARCH 1969 REGARDING THE SOVEREIGN RIGHTS OF THE ICELANDIC STATE OVER THE CONTINENTAL SHELF AROUND ICELAND
- (3) LAW NO. 41 OF 1 JUNE 1979 CONCERNING THE TERRITORIAL SEA, THE ECONOMIC ZONE AND THE CONTINENTAL SHELF

*[Not reproduced]*

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**Annex 40**

## NATIONAL LEGISLATION — KIRIBATI

PROCLAMATION OF 10 MARCH 1978

*[Not reproduced]*

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**Annex 41**

## NATIONAL LEGISLATION — NAURU

LEGISLATION ESTABLISHING AN EXCLUSIVE ECONOMIC ZONE:  
MARINE RESOURCES ACT 1978

*[Not reproduced]*

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**Annex 42**

NATIONAL LEGISLATION — NEW ZEALAND

- (1) THE CONTINENTAL SHELF ACT, 1964
- (2) THE TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE ACT, 1977

*[Not reproduced]*

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**Annex 43**

NATIONAL LEGISLATION — SOLOMON ISLANDS

- (1) CONTINENTAL SHELF ORDINANCE, 1970
- (2) FISHING LIMITS ORDINANCE, 1977
- (3) DELIMITATION OF MARINE WATERS ACT, 1978

*[Not reproduced]*

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**Annex 44**

NATIONAL LEGISLATION — TUVALU

- (1) PROCLAMATION
- (2) FISHERIES ORDINANCE
- (3) PROCLAMATION OF FISHERY LIMITS UNDER SECTION 2  
OF THE FISHERIES ORDINANCE

*[Not reproduced]*

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**Annex 45****NATIONAL LEGISLATION -- WESTERN SAMOA**

ACT NO. 3 OF 1977

*[Not reproduced]*

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**Annex 46****LEGISLATION BY DENMARK CONCERNING THE FAROE ISLANDS**ORDER NO. 598 OF 21 DECEMBER 1976  
ON THE FISHING TERRITORY OF THE FAROES*[Not reproduced]*

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**Annex 47****NATIONAL LEGISLATION BY NEW ZEALAND CONCERNING COOK ISLANDS**

ACT NO. 16 OF 1977

*[Not reproduced]*

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**Annex 48****LEGISLATION BY NEW ZEALAND CONCERNING TOKELAU**

ACT NO. 125 OF 1977

*[Not reproduced]*

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**Annex 49**

LEGISLATION BY THE UNITED KINGDOM CONCERNING  
TURKS AND CAICOS ISLANDS

PROCLAMATION NO. 4 OF 1978

*[Not reproduced]*

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**Annex 50**

AGREEMENT BETWEEN NORWAY AND THE UNITED KINGDOM COVERING ALSO  
THE SHETLANDS, 10 MARCH 1965

*[Not reproduced]*

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**Annex 51**

AGREEMENT BETWEEN INDIA AND INDONESIA CONCERNING NICOBAR ISLANDS  
AND SUMATRA, 8 AUGUST 1974

*[Not reproduced]*

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**Annex 52**

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND VENEZUELA  
CONCERNING PUERTO RICO, 28 MARCH 1978

*[Not reproduced]*

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**Annex 53**

AGREEMENT BETWEEN INDIA AND THAILAND CONCERNING NICOBAR ISLANDS,  
22 JUNE 1978

*[Not reproduced]*

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**Annex 54**

AGREEMENT BETWEEN AUSTRALIA AND FRANCE CONCERNING  
(I) NEW CALEDONIA AND (II) KERGUELEN ISLANDS, 4 JANUARY 1982

*[Not reproduced]*

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**Annex 55**

AGREEMENT BETWEEN CUBA AND HAITI, 27 OCTOBER 1977

*[Not reproduced]*

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**Annex 56**

AGREEMENT BETWEEN FRANCE AND TONGA CONCERNING WALLIS AND FUTUNA  
ISLANDS, 11 JANUARY 1980

*[Not reproduced]*

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**Annex 57**

AGREEMENT BETWEEN FRANCE AND MAURITIUS CONCERNING REUNION,  
2 APRIL 1980

*[Not reproduced]*

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**Annex 58**

AGREEMENT BETWEEN NEW ZEALAND AND THE UNITED STATES OF AMERICA  
CONCERNING COOK ISLANDS AND AMERICAN SAMOA, 11 JUNE 1980

*[Not reproduced]*

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**Annex 59**

AGREEMENT BETWEEN NEW ZEALAND AND THE UNITED STATES OF AMERICA  
CONCERNING TOKELAU AND AMERICAN SAMOA, 2 DECEMBER 1980

*[Not reproduced]*

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**Annex 60**

AGREEMENT BETWEEN FRANCE AND ST. LUCIA CONCERNING MARTINIQUE,  
4 MARCH 1981

*[Not reproduced]*

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**Annex 61**

AGREEMENT BETWEEN ITALY AND YUGOSLAVIA, 8 JANUARY 1968

*[Not reproduced]*  

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**Annex 62**

AGREEMENT BETWEEN ITALY AND TUNISIA, 20 AUGUST 1971

*[Not reproduced]*  

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**Annex 63**

AGREEMENT BETWEEN ITALY AND SPAIN, 19 FEBRUARY 1974

*[Not reproduced]*  

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**Annex 64**

AGREEMENT BETWEEN GREECE AND ITALY, 24 MAY 1977

*[Not reproduced]*  

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**Annex 65****NOTE VERBALE FROM MALTA TO ITALY, 31 DECEMBER 1965**

The Ministry of Commonwealth and Foreign Affairs presents its compliments to the Embassy of Italy and has the honour to inform the Embassy that the Government of Malta intends to carry out, in the near future, a survey of the continental shelf for the purpose of exploration and the eventual exploitation of its natural resources.

The survey will be carried out without any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea.

In the absence of an agreed boundary line for the continental shelf to the north of Malta, the boundary will be provisionally deemed to be the median line between Malta and Italy. This provisional arrangement is being made without prejudice to future discussions on the demarcation of this boundary line.

The Embassy of Italy,  
Ta' Xbiex.

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**Annex 66**

NOTE VERBALE FROM ITALY TO MALTA, 29 APRIL 1970

*[Italian text not reproduced]**(Translation)*

The Ministry of Foreign Affairs presents its compliments to the Embassy of Malta and has the honour to communicate what follows.

With Note Verbale of 24 January 1970 (CF A 1624/68) addressed to the Italian Embassy in Malta, the Maltese Ministry of Commonwealth and Foreign Affairs confirmed the impossibility, for the Government of Malta, to start early negotiations with Italy aimed at the delimitation of the continental shelf.

On the part of Italy, while account is taken of the technical difficulties which prevent the Maltese Government from giving an early start to the negotiations, one cannot but confirm the interest in a rapid resolution of the problem, also in view of the laws which regulate these matters in Italy.

In these circumstances the Italian Government, pending a definitive agreement on the matter, considers that a provisional solution is necessary for the area of more immediate interest, namely that between Malta and Sicily which is not affected by particular problems. In this respect, the Italian Government, recalling what at one time had been proposed by the Maltese Government by a Note Verbale of 31 December 1965, considers as opportune that, limitedly to the above-mentioned area, the median line between the northern coasts of Malta and the opposite Sicilian coasts could be considered as the provisional line of demarcation, and this of course without prejudice to future discussions and with reservations, particularly as regards the aforesaid line, for eventual corrections — which would presumably be of a mere technical nature — in relation to the definitive agreements which could be made during the negotiations.

Such a provisional solution would enable the two Governments to proceed without further delays with the publication of the data concerning the areas in question and with the granting of licences for exploration.

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## Annex 67

## NOTE VERBALE FROM ITALY TO MALTA, 6 MARCH 1981

*[Italian text not reproduced]*

*(Translation)*

The Ministry of Foreign Affairs presents its compliments to the Embassy of Malta and refers to the problem of the delimitation of the continental shelf in the Mediterranean.

As is well known, as far back as the years 1965-1970, since it was not possible — for contingent technical reasons — to proceed to a negotiated delimitation of the continental shelf between Malta and Italy, it had been agreed that the median line between the aforesaid coasts be considered as the provisional line of demarcation of the said shelf.

The Note Verbale No. 143/64 by the Ministry of Foreign Affairs of Malta to the Italian Embassy on 31 December 1965 and that forwarded by this Ministry to the Embassy of Malta on 29 April, 1970, are evidence of the provisional character of the agreements reached "... without prejudice to future discussions and reservations for eventual corrections with respect to the aforesaid line".

Recently information has been received that the Maltese Authorities have issued a call for tenders with the object of carrying out prospecting and explorations for hydrocarbons in eight areas of the continental shelf situated largely in the zone comprised between Malta and Sicily.

The Italian Authorities, having regard to the understandings reached in the years 1965-70 and to the provisional character of the same, reserve the right to ascertain, by an identification of the aforesaid exploration areas, whether the same are actually situated in the area of the continental shelf recognized as belonging to Malta by the aforesaid understandings.

The Italian Authorities in any case feel that it is advisable — in order to avoid situations which could prejudice Italian interests on the continental shelf in the Mediterranean — to proceed to a definitive delimitation of the respective areas of the continental shelf through the appropriate negotiations.

The Ministry of Foreign Affairs would be grateful to the Embassy of Malta if it could be advised of the views of the Maltese Government on the above matters.

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**Annex 68****ADDITIONAL MATERIAL RELATING TO ISLAND DEVELOPING STATES**

(i) In 1975 the resolution of the UN General Assembly on development and international economic co-operation adopted on 16 September (Resolution 3362 (S-VII)) contained two references to island developing countries: First, under heading I, "International Trade", paragraph 11 provides:

*" 11. Special measures should be undertaken by developed countries and by developing countries in a position to do so to assist in the structural transformation of the economy of the least developed, landlocked and island developing countries."*

Second, under heading II, "Transfer of real resources for financing and development of developing countries and international monetary reforms", paragraph 12 provides:

*" 12. Developed countries should improve terms and conditions of their assistance so as to include a preponderant grant element for the least developed, landlocked and island developing countries."*

(ii) In January 1976 the secretariat of UNCTAD produced a study entitled *Action on special measures in favour of the least developed among the developing countries, the developing island countries and the developing land-locked countries: policy issues and recommendations*.<sup>1</sup> Chapter III is devoted to "Special measures in favour of geographically disadvantaged developing countries". Its opening paragraphs read as follows:

" 97. The problems of developing island countries were initially raised in Conference resolution 65 (III) of 19 May 1972, which requested the convening of a small panel of experts to identify them and make recommendations for consideration by the Trade and Development Board. The report of this panel\* stressed the fact that developing island countries had many problems similar to those facing developing countries as a whole. However, it identified certain issues as being of particular concern to island countries. First, although the majority of the inhabitants of developing island countries live in large countries such as Indonesia, the Philippines and Sri Lanka, most developing island countries and territories are in fact

1. Doc. TD/191; *Proceedings of the UN Conference on Trade and Development, Fourth Session*, vol. III, p. 188.

\* *Developing island countries* (United Nations publication, Sales No. E.71.II.D.6).

small, and some of them very small indeed. Thus, problems associated with small territorial size are likely to be of special concern. Secondly, small islands are heavily dependent on external transport, and in particular on shipping. Thus, the nature and cost of shipping services need special consideration. Thirdly, many such islands lie in the path of tropical storms, and need to plan to meet disasters. Fourthly, they have a particular interest in questions relating to the control of marine resources. Finally, in view of their small size and the limitations which this places on their prospects for economic development, they have a particular interest in regional co-operation.

98. In its decision 28 (LVII) of 2 August 1974, the Economic and Social Council requested the Secretary-General of the United Nations, in consultation with the Secretary-General of UNCTAD and the executive heads of the specialized agencies and other international institutions, to:

(a) Prepare a report outlining the special economic problems and development needs of the geographically more disadvantaged developing island countries;

(b) Make concrete proposals concerning any measures required to overcome or minimize the effects of the special problems of the countries referred to in subparagraph (a) above;

(c) Present this report to the Committee on Review and Appraisal within the context of the mid-term review of the International Development Strategy for the Second United Nations Development Decade.

In the report prepared by the UNCTAD secretariat in pursuance of this decision,\* the special problems stemming from peripheral location, inadequate resource base and small size were examined in greater detail, and the possible measures which might help to offset these handicaps were studied.

99. Measures need to be taken in the following areas in order to alleviate the most acute of the particular disabilities facing geographically disadvantaged island developing countries."

(iii) The position of developing island countries (in conjunction with the least developed among developing countries and developing land-locked countries) was considered at the Third Ministerial Meeting of the Group of 77 held at Manila in 1976.<sup>1</sup> Section six of the programme of

1. See *Proceedings of the UN Conference on Trade and Development, Fourth Session*, vol. I, Report and Annexes (UN publication, Sales No. E.76.II.D.10 and corrigendum), Annex V.

\*"Special economic problems and development needs of the geographically more disadvantaged developing island countries: note by the Secretary-General" (E/5647).

action contains a reaffirmation of the conviction of the meeting concerning the need to agree upon effective international action to contribute to the solution of the specific and permanent problems of, *inter alia*, developing island countries. It was recognized that these measures should be in addition to the measures to be adopted in general for all developing countries in the spirit of the UN resolution concerning the establishment of the new international economic order.<sup>1</sup>

In relation to developing island countries, the areas in which action was called for were identified under such heads as shipping, air services, telecommunications, etc. Heading E was "Marine and undersea resources". This provided:

"46. The sovereignty of developing island countries, and particularly the archipelagic States, over their marine and sub-marine resources should be recognized and affirmed. The multilateral financial institutions and technical assistance agencies should provide effective assistance to these countries to enable them to exploit fully those resources . . . ."<sup>2</sup>

(iv) The fourth session of UNCTAD held in May 1976 adopted resolution 98 (IV) of 31 May 1976,<sup>3</sup> in which the part dealing with the particular needs and problems of developing island countries recommended action on, *inter alia*, assistance in exploiting marine and sub-marine resources; intensification of efforts to help small islands plan rationally in order to deal with the peculiar problems of human geography and ecology; and intensification of efforts to increase the flow of resources to island developing countries.

Prior to the Conference the socialist countries<sup>4</sup> circulated within UNCTAD a position paper which, though referring specifically only to the needs of the economically least developed among developing countries and the land-locked countries, was printed in the records under the heading: "Least developed among developing countries, developing island countries and developing land-locked countries"<sup>5</sup>. In this paper, mention was made of the "serious difficulties [of the least developed countries] in overcoming the backwardness inherited from the colonial era and in achieving their economic independence, and especially of the inflationary rise in prices of goods on the world capitalist market".<sup>6</sup>

The significance of the utilisation of national resources was emphasized by the inclusion in the list of matters on which the socialist

1. *Ibid.*, p. 122.

2. *Ibid.*, p. 126.

3. *Ibid.*, p. 22.

4. Listed as Bulgaria, Byelorussian SSR, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland, Ukrainian SSR, and the USSR.

5. TD (VI)/GC/4; *ibid.*, p. 150.

6. *Ibid.*

countries would be prepared to cooperate with developing countries of the item: "Organizing and carrying out geological exploratory and prospecting work for the discovery, evaluation and exploitation of minerals".<sup>1</sup>

(v) The UNCTAD meeting was followed on 21 December 1976 by a UN General Assembly resolution (31/156) on "Action programme in favour of developing island countries". After recalling earlier indications of General Assembly interest in the subject (which have been set out above), the resolution continues:

*"The General Assembly,*

.....  
*Recognizing* the particular impediments hampering the economic development of many developing island countries, especially their difficulties in respect of transport and communication, the smallness of their economies and markets, their low resource endowment and their heavy dependence on a few commodities for foreign exchange earnings,

1. *Invites* the executive heads of the organizations concerned within the United Nations system and in particular of the United Nations Development Programme, in the continuation of their efforts with respect to developing island countries to incorporate in their regional and interregional programmes the relevant recommendations contained in resolution 98 (IV) of the United Nations Conference on Trade and Development;

2. *Urges* all Governments, in particular those of the developed countries, to lend their support, in the context of their assistance programmes, for the implementation of the specific action envisaged in favour of developing island countries within the framework of their development plans and priorities;

3. *Calls upon* the Secretary-General to submit to the General Assembly at its thirty-second session, through the Economic and Social Council, a progress report on the implementation of specific action in favour of developing island countries."

(vi) In a later resolution at the same session, the General Assembly endorsed the resolution of UNCTAD recommending a series of special measures and specific action in favour of, *inter alia*, island developing countries and requested all organizations connected with the UN systems to incorporate the relevant recommendations in their activities and implement them as a matter of urgency. (Resolution 31/159, para. 10).

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1. *Ibid.*, p. 151.



(vii) The General Assembly at its thirty-second session again reverted to the subject of developing island countries. On 19 December 1977 it adopted a resolution which stated, *inter alia*:

“The General Assembly,

.....  
*Mindful* that the particular impediments hampering the economic development of many developing island countries, especially their difficulties in respect of transport and communications, their distance from market centres, the smallness of their economies and markets, their low resource endowment and their heavy dependence on a few commodities for foreign exchange earnings, call for the continued attention of Governments and of organizations of the United Nations system.

*Convinced* that specific action in favour of developing island countries, supplementary to the general measures applicable to all developing countries, is required to meet these particular impediments,

1. *Takes note* of the report of the Secretary-General on progress in the implementation of specific action in favour of developing island countries\* and welcomes the initiation of the measures specified therein;

2. *Welcomes* in particular the activities undertaken by the United Nations Conference on Trade and Development, including the establishment of a unit in its secretariat devoted to the problems of least developed, land-locked and island developing countries;

3. *Also welcomes* the progress achieved by the United Nations Industrial Development Organization in its implementation of the special technical assistance programme for developing island countries;

4. *Urges* all organizations in the United Nations system to continue to identify and implement, within their respective spheres of competence, appropriate specific action in favour of developing island countries, in accordance with the recommendations of resolution 98 (IV) of the United Nations Conference on Trade and Development, in particular those concerning the fields of transport and communications, trade and commercial policies, industrialization, tourism, the transfer of technology, marine and submarine resources development, the flow of external resources, environment protection and response to natural disasters;

5. *Further urges* the United Nations organizations concerned, in

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\* A/32/126 and Add.1.

particular the United Nations Development Programme and the regional commissions, to give attention to programmes of regional and subregional co-operation in respect of developing island countries;

6. *Calls upon* Governments, in particular those of the developed countries, to take fully into account, in their bilateral and regional development efforts and in relevant negotiations towards the attainment of the objectives of the new international economic order, the special problems of developing island countries;

.....

7. *Decides* to keep under review all progress in the implementation of the present resolution and requests the Secretary-General to submit for the consideration of the General Assembly at its thirty-fourth session a sectoral analysis of action undertaken in favour of developing island countries and proposals for further consideration, taking into account the consideration of this question by the United Nations Conference on Trade and Development at its fifth session".

(viii) Two years later the fifth session of UNCTAD in 1979 returned to the subject and adopted Resolution 111 (V), "Specific action related to the particular needs and problems of island developing countries", the full text of which is set out below:

"111 (V). Specific action related to the particular needs and problems of island developing countries

*The United Nations Conference on Trade and Development,*

*Reiterating* the specific actions related to the particular needs and problems of island developing countries as contained in Conference resolution 98 (IV) of 31 May 1976, section III, and in the relevant General Assembly resolutions and urging full compliance with them by the international community and,

*Taking note with appreciation* of the report of the Group of Experts on Feeder and Inter-island Services by Air or Sea for Developing Island Countries,\*

1. *Agrees* that further specific action is needed in the case of island developing countries to assist them to offset their major handicaps, in particular those which suffer handicaps due especially to smallness, remoteness, constraints in transport and communi-

\* *Official Records of the Trade and Development Board, Eighteenth Session, Annexes, agenda item 6, document TD/B/687.*

cations, great distances from market centres, highly limited internal markets, lack of marketing expertise, low resources endowment, lack of natural resources, heavy dependence on a few commodities for their foreign exchange earnings, shortage of administrative personnel, and heavy financial burdens. The international community should be ready to take action to ensure that the full benefit of general measures in favour of developing countries is shared by island developing countries;

2. *Urges* that specific action in the following areas in favour of island developing countries should be undertaken within the framework of their development plans and priorities and in accordance with accepted development criteria and technical and financial assistance provided by developed countries and multilateral financial and aid institutions, taking into account over-all prospects for, as well as existing levels of, development:

(a) In order to lower their vulnerability to economic instability, every effort should be made to diversify their economies by, *inter alia*, development of infrastructure and implementation of over-all national development programmes;

(b) Island economies, particularly those with limited domestic markets, rely heavily on exports for their foreign exchange earnings. Access to markets should be facilitated by:

(i) Assistance in trade promotion efforts;

(ii) Simplification of preference procedures where appropriate, so that small administrations and enterprises can take advantage of preferential access to markets where it is in principle available;

(c) Many of these countries are actively seeking foreign investment for export processing industries, other industries, tourism, etc. Such efforts should be supported by assistance from the international community, including:

. . . . .

7. *Reaffirms* that the criteria, terms and conditions governing the flow of bilateral and multilateral financial and technical assistance to the island developing countries should be geared to the special needs and problems of the countries concerned;

8. *Requests* the Trade and Development Board, in carrying out its tasks, to take into consideration the special needs of island developing countries as identified, *inter alia*, by the regional commissions and to co-operate with them and other competent organizations in carrying out tasks in favour of these countries;

9. *Recognizing* the importance of tourism as a major source of income, employment and foreign exchange for some island developing countries, and therefore the importance for them of international air passenger transport, invites the International Civil Aviation Organization, with assistance from UNCTAD and the appropriate regional institutions, to study the policy issues involved in the development of air transport services and to give support to the efforts of these countries in concluding mutually satisfactory air service agreements in respect of both scheduled and non-scheduled services by airlines of national designation;

10. Having noted the report of the Group of Experts on Feeder and Inter-island Services by Air or Sea for Island Developing Countries, invites the Secretary-General of UNCTAD to consult States members and the appropriate bilateral, regional and multilateral development institutions about the recommendations they consider most useful and the measures needed to have these implemented.”

(ix) This was followed by General Assembly Resolution 34/205 of 19 December 1979 which stated:

“*The General Assembly,*

.....  
*Mindful* that further specific action is needed in the case of developing island countries to assist them in offsetting their major handicaps, in particular those developing island countries which suffer handicaps due especially to smallness, remoteness, constraints in transport and communication, great distances from market centres, highly limited internal markets, lack of marketing expertise, low resource endowment, lack of natural resources, heavy dependence on a few commodities for their foreign exchange earnings, shortage of administrative personnel and heavy financial burdens,

*Emphasizing* the need for a more effective response by the international community to the various resolutions adopted by the General Assembly and its related organs in favour of developing island countries,

1. *Welcomes* resolution 111 (V) of 3 June 1979 of the United Nations Conference on Trade and Development,<sup>195</sup> entitled “Specific action related to the particular needs and problems of island developing countries”;

2. *Takes note* of the report of the Secretary-General entitled “Action programme in favour of developing island countries”;<sup>196</sup>

195. See TD/268, part one, sect. A.

196. A/34/544 and Add. I.

3. *Calls upon* the international community to implement urgently the specific actions related to the particular needs and problems of developing island countries as agreed upon in Development;

4. *Further calls upon* the international community to ensure that the criteria, terms and conditions governing the flow of bilateral and multi-lateral financial and technical assistance to the island developing countries should be geared to the special needs and problems of the countries concerned:

5. *Invites* the competent organs of the United Nations system to consider taking effective steps to enhance their capacity to respond positively to the specific needs of developing island countries at the national, regional and interregional levels, including strengthening their technical and advisory services on behalf of these countries;

6. *Further invites* the Preparatory Committee for the New International Development Strategy to take fully into account, in the formulation of the strategy for the third United Nations development decade, the particular needs and problems of developing island countries;

7. *Requests* the United Nations Development Programme, and invites international development institutions and bilateral institutions, to consider increasing their assistance to developing island countries;

8. *Invites* the United Nations Development Programme and other competent institutions to co-operate with the United Nations Conference on Trade and Development in the programme of activities envisaged in paragraphs 4 and 5 of resolution 111 (V) of the Conference;

9. *Recommends* that developed countries, international development institutions and those developing countries which are elaborating programmes of assistance in favour of other developing countries should give particular attention to requests for assistance from developing island countries;

10. *Calls upon* the regional commissions urgently to identify appropriate action in favour of the developing island countries in their respective regions;

11. *Requests* the Secretary-General to include, in his analytical report to the General Assembly at its special session in 1980 on the establishment of the new international economic order called for in Assembly resolution 33/198 of 29 January 1979, an assessment of the situation in the developing island countries."

(x) On 5 December 1980 the UN General Assembly adopted without a vote two resolutions. One was on the International Development Strategy for the Third UN Development Decade (Resolution 35/56). In the section dealing with developing island countries, this resolution provided:

*"3. Developing island countries*

148. During the Decade, further specific action will be taken to assist developing island countries in offsetting major handicaps due to geographical and other constraints. In order to lower their vulnerability to economic instability, every effort will be made by the international community to assist them in diversifying their economies, taking into account over-all prospects for, as well as existing levels of, development.

149. Efforts of developing island countries in actively seeking foreign investment will be supported by the international community, including investment in their infrastructural projects, especially in the sectors of water, electricity, industrial estates and transport. The establishment of joint ventures and assistance in strengthening the capacity of developing island countries to negotiate with foreign investors should also be explored during the Decade. Their access to foreign markets will be facilitated by assistance, both technical and financial, in their trade promotion efforts and by the simplification of preference procedures, where appropriate, so that small administrations and enterprises can take full advantage of preferential access to markets where it is in principle available. Assistance will be given in the establishment of appropriate technical education and training programmes, including the areas of marketing and management.

150. Financial and other assistance to developing island countries by multilateral and bilateral institutions will be augmented as appropriate. Assistance procedures should be simplified to the extent possible.

151. The developed countries and international organizations should be ready to take action to ensure that the full benefit of general measures in favour of developing countries is shared by developing island countries."

The other resolution was 35/61, dealing specifically with developing island countries. It provided:

*"The General Assembly,*

*.....*

*Mindful* that further specific action is needed to assist developing

island countries—in particular those which suffer handicaps due especially to smallness, remoteness, constraints in transport and communications, great distances from market centres, highly limited internal markets, lack of marketing expertise, low resource endowment, lack of natural resources, heavy dependence on a few commodities for their foreign exchange earnings, shortage of administrative personnel and heavy financial burdens—in offsetting the major handicaps that they face in their development process.

*Bearing in mind* the goals and objectives of the International Development Strategy for the Third United Nations Development Decade,

1. *Notes with concern* that very few significant initiatives have so far been taken for the implementation of the specific actions envisaged in resolutions 98 (IV) and III (V) of the United Nations Conference on Trade and Development;

2. *Appeals* to all States, international organizations and financial institutions to take urgent and effective steps to implement specific actions in favour of developing island countries, as envisaged in resolutions 98 (IV) and III (V) of the United Nations Conference on Trade and Development as well as in other resolutions on this subject;

3. *Invites* the competent organizations of the United Nations system to take further measures as necessary to enhance their capacity to respond positively to the specific needs of developing island countries during the Third United Nations Development Decade;

4. *Decides* to undertake at its thirty-seventh session a comprehensive review of the implementation of the measures taken by the international community in favour of the specific needs of the developing island countries, as called for in the relevant resolutions of the General Assembly and other resolutions on this subject.

(xi) Concern with the problem of island developing countries continues. In 1982 the Secretary-General of the UN produced a report entitled: *UNCTAD—Progress in the implementation of specific action in favour of island developing countries*.<sup>1</sup> The “Summary and Conclusions” of this Report includes the following:

“79. Energy is a world-wide problem; nonetheless, it is frequently mentioned in the context of island developing countries where specific solutions may be appropriate: Apart from energy-saving measures, submarine prospecting and soft energy are among the issues raised.

“80. Marine resources receive due attention in the replies, in view

1. A/37/196th, 21 October 1982.

*especially of the opportunities the declaration of Exclusive Economic Zones offers to island developing countries. These zones have greatly expanded many island developing countries' resource base. This includes resources of the sea itself, such as fish, or of the sea-bed and beneath, such as minerals or oil. These countries are now faced with the challenge of integrating these resources into their national development strategies."*

(xii) Most recently, on 20 December 1982, the General Assembly, in Resolution 37/206, restated its concern as follows:

*"The General Assembly,*

*.....*  
 Mindful of the fact that additional efforts are needed to implement the specific measures required to assist island developing countries—in particular those which suffer handicaps owing especially to smallness, remoteness, frequent natural disasters, discontinuity and scattering of territory, constraints in transport and communications, great distances from market centres, limited internal markets, lack of marketing expertise, low resource endowment, lack of natural resources, heavy dependence on a few commodities for their foreign exchange earnings, shortage of administrative expertise and heavy debt burdens—in offsetting the major handicaps which retard their development process.

*Welcoming* the analysis of the problems facing smaller island countries undertaken at the meeting on the special problems of those countries, held at Alofi, Niue, from 9 to 12 February 1982,<sup>1</sup>

*Recognizing* that appropriate industrial development can be vital to the economic development of small island countries.

*.....*  
 4. *Calls upon* all States, international organizations and financial institutions to intensify efforts to implement specific actions in favour of island developing countries as envisaged in resolutions 98 (IV)<sup>2</sup> and 111 (V)<sup>3</sup> of the United Nations Conference on Trade and Development as well as in other relevant resolutions;

5. *Requests* the competent organizations of the United Nations system to take adequate measures to enhance their ability to respond positively to the particular needs of island developing countries during the Third United Nations Development Decade, in particular the

1. See A/37/196 and Corr.1, annex.

2. See *Proceedings of the United Nations Conference on Trade and Development, Fourth Session*, vol. I, *Report and Annexes* (United Nations publication, Sales No. E.76.II.D.10 and corrigendum), part one, sect. A.

3. *Ibid.*, *Fifth Session*, vol. I, *Report and Annexes* (United Nations publication, Sales No. E.79.II.D.14), part one, sect. A.



United Nations Conference on Trade and Development, the United Nations Development Programme, the United Nations Industrial Development Organization and the United Nations Capital Development Fund and;

6. *Requests* the United Nations Conference on Trade and Development, at its sixth session, to review the progress made in this area and to consider the measures needed to facilitate the implementation of the resolutions adopted so far in favour of island developing countries;

7. *Requests* the Secretary-General to report to the General Assembly at its thirty-ninth session on the measures taken by the international community to respond to the specific needs of island developing countries, as called for in the relevant United Nations resolutions, and to recommend further appropriate actions to permit the General Assembly to undertake a comprehensive review of the problems and needs of the island developing countries at that session."

Classification of developing island countries and territories by population category, income level, land area and distance from the nearest continent

Population category 1973	Income level: per capita GNP in 1973 (dollars)	Distance from nearest continent			
		Less than 200 kilometres	200—1,000 kilometres	More than 1,000 kilometres	
Large and medium (over 1 million inhabitants)	Under 250	Indonesia (L) Sri Lanka (L)	Madagascar (L) Haiti (M) Philippines (L)		
	250 to 399		Papua New Guinea (L)		
	400 to 1000		Cuba (L) Jamaica (M) Dominican Republic (L)		
	Over 1000		Hong Kong (S) Singapore (VS) Trinidad and Tobago (M)	Puerto Rico (M)	
Small (150,000 to 1 million inhabitants)	Under 250		East Timor (M) Comoros (S)		
	250 to 399	Macao (VS)	Cape Verde (M)	Mauritius (S) British Solomon Islands (M) Western Samoa (S)	
	400 to 1000		Barbados (VS) Bahrain (VS)	Fiji (M)	
	Over 1000		Cyprus (M) Martinique (S) Guadeloupe (S) <b>Malta (VS)</b> Netherlands Antilles (S) Bahamas (M)	Réunion (S)	
Very small (under 150,000 inhabitants)	Under 250		Maldives (VS) St. Vincent (VS)	Tonga (VS)	
	250 to 399		St. Lucia (VS) Grenada (VS) Dominica (VS) St. Kitts-Nevis-Anguilla (VS) Antigua (VS) Seychelles (VS)	Gilbert Islands (VS) Tuvalu (VS)	
	400 to 1000		São Tomé and Príncipe (S)	New Hebrides (M) Pacific Islands (S)	
	Over 1000		US Virgin Islands (VS)	American Samoa (VS) Brunei (M) French Polynesia (M) New Caledonia (VS) Guam (VS) Bermuda (VS)	

Sources: UNCTAD Handbook of International Trade and Development Statistics, 1976 (United Nations publication, Sales No. E.F.76.11.D.3), and Developing Island Countries (United Nations publication, Sales No. E.74.11.D.6).

NOTE. Land area indications: VS = very small (under 1,000 sq km),  
S = small (1,000—3,999 sq km),  
M = medium (4,000—39,999 sq km),  
L = large (40,000 sq km and over).

**Annexes 1-68****CERTIFICATION**

I, the undersigned, *Edgar Mizzi*, Agent of the Republic of Malta, hereby certify that the copies of the documents attached as Annexes 1 to 68 (both inclusive) of the Memorial submitted by the Republic of Malta are accurate copies of the documents they purport to reproduce and that where a translation of such document is attached that translation is an accurate translation of such document.

This 26th day of April, 1983.

*(Signed)* Edgar Mizzi,  
Agent of the Republic of Malta.

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