

INTERNATIONAL COURT OF JUSTICE
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

**CASE CONCERNING THE
CONTINENTAL SHELF**

(LIBYAN ARAB JAMAHIRIYA/MALTA)

VOLUME III
Replies; Oral Arguments

COUR INTERNATIONALE DE JUSTICE
MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

**AFFAIRE
DU PLATEAU CONTINENTAL**

(JAMAHIRIYA ARABE LIBYENNE/MALTE)

VOLUME III
Répliques; procédure orale



Abbreviated reference :

*I.C.J. Pleadings, Continental Shelf (Libyan
Arab Jamahiriya/Malta), Vol. III*

Référence abrégée :

*C.I.J. Mémoires, Plateau continental (Jamahiriya
arabe libyenne/Malte), vol. III*

ISSN 0074-4433
ISBN 92-1-070676-5

Sales number
N° de vente :

618

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

AFFAIRE DU PLATEAU CONTINENTAL
(JAMAHIRIYA ARABE LIBYENNE/MALTE)

INTERNATIONAL COURT OF JUSTICE
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

**CASE CONCERNING THE
CONTINENTAL SHELF**

(LIBYAN ARAB JAMAHIRIYA/MALTA)

VOLUME III
Replies; Oral Arguments

COUR INTERNATIONALE DE JUSTICE
MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

**AFFAIRE
DU PLATEAU CONTINENTAL**

(JAMAHIRIYA ARABE LIBYENNE/MALTE)

VOLUME III
Répliques; procédure orale



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

The pleadings and oral arguments in the case are being published in the following order:

- Volume I. Special Agreement; Memorials of the Libyan Arab Jamahiriya and Malta.
- Volume II. Counter-Memorials of the Libyan Arab Jamahiriya and Malta; Application by Italy for Permission to Intervene, and consequent proceedings.
- Volume III. Replies of Tunisia and the Libyan Arab Jamahiriya; commencement of Oral Arguments.
- Volume IV. Conclusion of Oral Arguments; Documents submitted to the Court after closure of the written proceedings; Correspondence.
- Volume V. Maps, charts and illustrations.

Certain pleadings and documents of this edition are reproduced photographically from the original printed text.

In addition to the normal continuous pagination, the Volumes feature on the inner margin of pages a bracketed indication of the original pagination of the Memorials, the Counter-Memorials, the Replies and certain Annexes.

In internal references, bold Roman numerals (in the text or in the margin) are used to refer to Volumes of this edition; if they are immediately followed by a page reference, this relates to the new pagination of the Volume in question. On the other hand, the page numbers which are preceded by a reference to one of the pleadings relate to the original pagination of that document and accordingly refer to the bracketed pagination of the document in question.

The main maps and charts are reproduced in a separate Volume (V), with a renumbering, indicated by ringed numerals, that is also added in the margin in Volumes I-IV wherever corresponding references appear; the absence of such marginal reference means that the map or illustration is not reproduced in the present edition.

Neither the typographical presentation nor the spelling of proper names may be used for the purpose of interpreting the texts reproduced.

L'affaire du *Plateau continental (Jamahiriya arabe libyenne/Malte)*, inscrite au rôle général de la Cour sous le numéro 68 le 26 juillet 1982, a fait l'objet d'arrêts rendus le 21 mars 1984 (*Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 3) et le 3 juin 1985 (*Plateau continental (Jamahiriya arabe libyenne/Malte), arrêt, C.I.J. Recueil 1985*, p. 13).

Les pièces de procédure écrite et les plaidoiries relatives à cette affaire sont publiées dans l'ordre suivant :

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

Certaines pièces de la présente édition sont photographiées d'après leur texte imprimé original.

Outre leur pagination continue habituelle, les volumes comportent, entre crochets sur le bord intérieur des pages, l'indication de la pagination originale des mémoires, des contre-mémoires, des répliques et de certaines de leurs annexes.

S'agissant des renvois, les chiffres romains gras (dans le texte ou dans la marge) indiquent le volume de la présente édition ; s'ils sont immédiatement suivis par une référence de page, cette référence renvoie à la nouvelle pagination du volume concerné. En revanche, les numéros de page qui sont précédés de l'indication d'une pièce de procédure visent la pagination originale de ladite pièce et renvoient donc à la pagination entre crochets de la pièce mentionnée.

Les principales cartes sont reproduites dans un volume séparé (V) où elles ont reçu un numérotage nouveau indiqué par un chiffre cerclé. Dans les volumes I à IV, les renvois aux cartes et illustrations du volume V sont portés en marge selon ce nouveau numérotage, et l'absence de tout renvoi à la présente édition signifie qu'une carte ou illustration n'est pas reproduite.

Ni la présentation typographique ni l'orthographe des noms propres ne sauraient être utilisées aux fins de l'interprétation des textes reproduits.

CONTENTS — TABLE DES MATIÈRES

	<i>Page</i>
Reply of the Socialist People's Libyan Arab Jamahiriya — République de la Jamahiriya arabe libyenne populaire et socialiste	
INTRODUCTION	3
CHAPTER 1. THE REQUEST MADE TO THE COURT.	8
CHAPTER 2. THE CONDUCT OF THE PARTIES AND THE ALLEGATION OF LIBYAN "ACQUIESCENCE" IN THE MALTESE MEDIAN LINE	12
CHAPTER 3. ISSUES REGARDING THE PRINCIPLES AND RULES OF INTERNATIONAL LAW GOVERNING CONTINENTAL SHELF DELIMITATION	20
A. The process of applying equitable principles	20
B. The role of relevant circumstances.	25
C. The legal significance of the physical facts and circumstances.	28
CHAPTER 4. THE INAPPLICABILITY OF EQUIDISTANCE IN THE PRESENT CASE	35
A. Malta's thesis of the primacy of the equidistance method	35
1. Delimitation agreements	35
(a) The import of State practice and its limits.	36
(b) New interpretations by Malta of particular delimitation examples.	42
2. Other considerations advanced by Malta	48
B. The Maltese argument to justify equidistance based upon considerations claimed to be relevant	52
C. Hints of "flexibility" in Malta's approach to equidistance	53
CHAPTER 5. ISSUES REGARDING THE PHYSICAL FACTORS AND CIRCUMSTANCES OF THE PRESENT CASE	56
A. Geographical facts	57
B. Sea-bed and subsoil features and characteristics.	61
1. The Rift Zone	62
2. The Escarpments-Fault Zone	73
CHAPTER 6. REFLECTION OF THE FACTS AND RELEVANT CIRCUMSTANCES IN ORDER TO ACHIEVE AN EQUITABLE RESULT.	78
A. The general setting	79
B. Geographical factors	79
C. Libya's 1973 proposal	80
D. Sea-bed and subsoil features — a boundary within and following the general direction of the Rift Zone	84
E. Geography, geomorphology and geology pointing to the same result	86
CHAPTER 7. PROPORTIONALITY AS A TEST OF THE RESULT	87
A. Proportionality in principle.	87
1. Common ground between the Parties.	87
2. The principal points in issue between the Parties	87

	<i>Page</i>
B. The relevant area	91
C. Proportionality in practice	92
CHAPTER 8. OBSERVATIONS ON THE APPROACHES OF THE PARTIES TO DELIMITATION IN THE PRESENT CASE.	96
SUBMISSIONS	102
<i>Annexes to the Reply of Libya</i>	
<i>Annex 1.</i> Extracts from Maltese Parliamentary Debates, 20-22 July 1966; translation	104
<i>Annex 2.</i> Maltese Note Verbale to Italy dated 31 December 1965	109
<i>Annex 3.</i> Documents relating to Concession NC 53: (a) extracts from Heads of Agreement of 14 April 1974; (b) extracts from EPSA of 13 October 1974; (c) Act No. 58 of 23 September 1974, with accompanying map; translation; (d) exchange of letters between the Libyan Ministry of Petroleum and TOTAL, dated 17 November 1974 and 12 January 1975; (e) reduction of map published by the NOC in 1975	110
<i>Annex 4.</i> Extracts from Maltese Parliamentary Debates, 16 January 1978; translation	119
<i>Annex 5.</i> Seismic profiles of the Medina and Malta Channels	121
<i>Annex 6.</i> Extracts from D. Jongsma, J. E. van Hinte and J. M. Woodside, "Geologic Structure and Neotectonics of the North African Continental Margin South of Sicily", submitted for publication, 1984; pages 1, 11, 14 and 15; Figure 1: Simplified tectonic framework of the Mediterranean region	122
<i>Annex 7.</i> Extracts from I. R. Finetti, "Geophysical Study of the Sicily Channel Rift Zone", 1984; Figure 13: Residual Gravity Map of the Pelagian Sea (page 18); Figure 15: Comparison of rifting in the Red Sea and the Sicily Channel Rift Zone (page 20); pages 3, 9 and 27 . .	125
<i>Annex 8.</i> Comparison of the Medina Channel and the Jerrafa Trough . .	129
<i>Annex 9.</i> Bathymetric Profiles: (a) bathymetric profiles prepared under the direction of Professor F. Fabricius; (b) bathymetric profiles prepared by the Lamont-Doherty Geological Observatory under the direction of Dr. W. B. F. Ryan	129
<i>Annex 10.</i> Certification	130
Reply of the Republic of Malta — Réplique de la République de Malte	
INTRODUCTION	133
PART I. SOME FACTUAL ELEMENTS	134
Introduction.	134
Chapter I. The background of the dispute.	135
1. Legislation	135
2. Exchanges between the Parties 1972-73	137
3. Petroleum activities of the Parties	138
4. The "no-drilling understanding"	140
Chapter II. Economic considerations	141
1. General economic considerations.	141
2. Fishing	146
3. Malta's status as an "island developing country"	147

	<i>Page</i>
PART II. THE PRINCIPLES AND RULES OF INTERNATIONAL LAW GOVERNING DELIMITATION	149
Introduction	149
Chapter III. The nature of the delimitation sought and the sources of the applicable law	150
1. The law applicable to the delimitation of the continental shelf	150
2. The relevance of the exclusive economic zone to the delimitation of the continental shelf	150
Chapter IV. Entitlement and delimitation	153
1. The relationship between entitlement and delimitation	153
2. Entitlement and delimitation go hand in hand	155
(a) Natural prolongation and the distance criterion	155
(b) The method of delimitation must be rooted in the legal basis of title.	156
3. The process of delimitation.	156
Chapter V. Legal basis of title: the concept of natural prolongation.	158
1. The so-called "physical facts" of natural prolongation	158
2. Geology and geomorphology: their irrelevance in the present case.	159
(a) The evolution of the concept of continental shelf.	160
(b) Article 76 (1) of the 1982 Convention.	161
(c) Case law and physical features	162
(d) Physical features and State practice	163
3. Coastal geography	164
(a) Coasts and not landmass generate entitlement.	164
(b) Landmass irrelevant for the purposes of delimitation.	167
(c) Coasts and distance from coasts are the relevant considerations	169
(d) The equality of the seaward projection of coasts	170
(e) Entitlement is measured from basepoints and in all directions	173
(f) Malta's entitlement is delimited only by the equal entitlement of neighbouring States	174
Chapter VI. The equidistance method.	176
1. Imaginary Libyan argument	176
2. The so-called "trends away from equidistance"	177
3. Equidistance and equity	178
PART III. REBUTTAL OF LIBYAN ARGUMENTS TENDING TO DISTORT THE GEOGRAPHICAL AND LEGAL FRAMEWORK OF THE PRESENT CASE.	182
Chapter VII. Recognition and appreciation of geographical factors	182
1. The allegation of Malta's neglect of geographical factors.	182
2. The geographical framework of this case: the appropriate legal perspective	183
3. The continuing significance of the distinction between opposite and adjacent States	184
(a) Attacks upon a non-existent Maltese thesis	185
(b) The consequence of the dichotomy between "opposite" and "adjacent" situations	186
(c) The role of the distinction between "opposite" and "adjacent" States in cases decided by international tribunals	186

	<i>Page</i>
(d) The reasoning of the court in the Anglo-French Continental Shelf Arbitration	187
(e) The relation between the equidistance method and the distinction between "opposite" and "adjacent" States	188
Chapter VIII. The rôle of geographical considerations in achieving an equitable result	190
1. The misconceptions of the Libyan Counter-Memorial concerning geographical considerations	190
2. The relation between legal principles and geography	190
3. Physical factors and geopolitical results in the Libyan case: the example of proportionality	192
Chapter IX. The equal status of island States within the framework of equitable principles.	194
1. Refutation of the allegation that Malta argues for a privileged status for island States	194
2. Libyan recognition of the correct principle	195
3. Libya's claim to privileged status	196
PART IV. THE LEGAL SIGNIFICANCE OF COASTS IN CONTINENTAL SHELF DELIMITATION	198
Chapter X. The underlying principles	198
1. The importance of the relationship of coasts to other geographical features	198
2. The need to identify the area of shelf relevant to the decision of the dispute.	198
3. The coasts in relation to the basis of entitlement to submarine areas	199
Chapter XI. The significance of lengths of coasts	202
1. Libya's case rests upon basic errors of principle	202
2. Coasts have a similar legal significance in terms of seaward reach.	202
3. The link between attribution of shelf areas and delimitation	205
4. The scale of equitable adjustment	207
5. The ratio of coastal lengths: proportionality advanced as an independent source of rights	207
6. The significance of the distinction between opposite and adjacent States	208
7. Delimitation must relate to the coasts actually abutting on the continental shelf	210
8. Coastal relationships and delimitation in semi-enclosed seas: the results of the Libyan approach	211
9. Significance of lengths of coasts: summary	212
PART V. THE ROLE OF PROPORTIONALITY: LIBYAN MISREPRESENTATIONS CORRECTED	214
Chapter XII. Libya's misrepresentation of Malta's position concerning the rôle of proportionality	214
Chapter XIII. The legal framework	217
1. A Libyan position based on fundamental error	217
2. The length of coasts treated as an abstraction	217
3. Proportionality in the Libyan mode causes inequity.	218

	<i>Page</i>
4. The importance of the relationship of coasts	218
5. The Libyan version of proportionality is inapplicable even in cases of adjacent coasts	218
6. Malta's position is compatible with the framework of legal principle	224
PART VI. STATE PRACTICE: ITS RÔLE IN CONFIRMING THE VALIDITY OF MALTA'S POSITION	226
Chapter XIV. Criticism of the <i>modus operandi</i> of the Libyan Counter-Memorial	226
Introduction	226
1. Libyan misstatement of Malta's arguments	226
2. The Libyan attempt to discount State practice <i>tout court</i>	227
3. Conclusion: the extraordinary character of the Libyan attack on State practice	231
Chapter XV. The so-called "trends away from equidistance" and State practice	232
1. The Libyan contention	232
2. The errors in the Libyan assessment of State practice	232
(a) Irrelevant statements	233
(b) The statement that many agreements do not specify the method upon which delimitation was based	233
(c) Persistent under-estimation of the incidence of the equidistance method in delimitation agreements	234
(d) An unwarranted emphasis on the fact that an alignment was "negotiated"	235
(e) The fact that States sometimes use other methods of delimitation	235
(f) Conclusion: the Libyan thesis of the "trends away from equidistance" is false	236
Chapter XVI. The legal significance of State practice in confirming the equity of the equidistance method	237
1. General recognition of the significance of State practice	237
2. Certain admissions by Libya concerning the seaward reach of coasts	238
3. The significance of State practice in the present case reaffirmed	239
SUBMISSIONS	240
<i>Annexes to the Reply of Malta</i>	241
<i>Annex 1. Extract from notes on talks of 10 April 1974</i>	<i>241</i>
<i>Annex 2. Letter from Exxon dated 25 June 1975</i>	<i>242</i>
<i>Annex 3. Notes on meeting of 23 April 1980</i>	<i>243</i>
<i>Annex 4. Expert opinion on State practice: an opinion by J. R. V. Prescott</i>	<i>245</i>
Certification	268
Oral Arguments — Plaidoiries	
OPENING OF THE ORAL PROCEEDINGS	275
ARGUMENT OF MR. MIZZI (MALTA)	276
Historical and economic background of Malta's claim	276
The initial conduct of the Parties	279

	<i>Page</i>
The decision of the Court in the <i>North Sea Continental Shelf</i> cases and the new attitude of Libya	281
The Special Agreement of 1976 and the task of the Court	282
The Court should indicate the practical way to apply the principles and rules it identifies	283
The rights of third States are safeguarded by Article 59 of the Statute of the Court.	284
The principles and rules of international law applicable	285
The so-called "Rift Zone"	285
The "Rift Zone" and the physical facts	288
The "Rift Zone" and the law	292
The Escarpments-Fault Zone	300
Refutation of Libya's position on proportionality	302
The identification of equitable principles and relevant circumstances	309
State practice confirms the validity of the equidistance method	315
ARGUMENT OF MR. LAUTERPACHT (MALTA).	318
The task of the Court in the light of the Special Agreement	318
The Court's decision should set out in detail the practical method of delimitation in order to preclude further controversy	319
The position of third States.	321
The task of the Court in the light of the applicable law.	323
Equity: judicial history and State practice.	323
Relevance of economic considerations.	326
The relationship between equity and equidistance in State practice	330
Geology and geomorphology: the so-called "Rift Zone" does not constitute a fundamental discontinuity	336
Similar features exist further to the south	353
The Escarpments-Fault Zone does not form the edge of the continental shelf.	357
PLAIDOIRIE DE M. WEIL (MALTE)	361
I. Les sources du droit applicable	362
La notion de prolongement naturel est à examiner dans le contexte du droit coutumier et de la pratique des Etats, marqués par un effacement progressif des données physiques; pertinence du concept de zone économique exclusive	364
II. L'opération de délimitation	366
1. Les positions des Parties	367
Les divers arguments de la Libye pour dissocier le titre juridique et la délimitation	369
2. Structure et contenu de l'opération de délimitation	373
3. Titre juridique et délimitation	377
III. Le prolongement naturel.	381
1. L'existence prétendue de deux plateaux continentaux physiquement séparés par un accident naturel du type de la soi-disant <i>Rift Zone</i> est incompatible avec le concept même de délimitation du plateau continental.	382
2. La prise en considération des caractéristiques géologiques et géomorphologiques des fonds marins comme élément détermi-	

	<i>Page</i>
nant dans la délimitation du plateau continental est condamnée par le principe de l'égalité des Etats	385
L'évolution du droit international du prolongement naturel vers le principe de distance	385
Egalité des Etats et principe de non-empiétement	395
IV. Le principe de distance	401
1. Les « côtes »	402
2. La « distance »	410
Le concept de distance et l'article 76, paragraphe 1, de la convention sur le droit de la mer de 1982.	411
La mise en œuvre du concept de distance: la projection radiale à partir des côtes	415
V. L'équidistance	421
L'équidistance comme point de départ de l'opération de délimitation	422
Equidistance et solution équitable	427
ARGUMENT OF PROFESSOR BROWNLIE (MALTA)	437
I. Introduction	437
II. The general significance of coasts in maritime delimitation as a question of principle	438
III. The legal significance of coastal configurations in relation to continental shelf delimitation	446
IV. The identification of the area "relevant to the decision of the dispute"	447
V. The concept of equality and the geographical features which establish the legal framework	449
VI. The role of proportionality	454
1. Introduction	454
2. The Libyan view of proportionality	454
3. Malta's view of proportionality in outline	455
4. The importance to the delimitation process of the general legal framework	455
5. The ratio of coastal lengths produces a crude apportionment in this case	456
6. The special function of the test based upon the ratio of coastal lengths	458
7. The scale of equitable adjustment	460
8. Proportionality is not a general principle providing an independent source of rights.	462
9. The inappropriateness of the Libyan version of proportionality as an instrument of equity: the jurisprudence	463
10. The concept of proportionality: the evidence of State practice	468
11. Coastal relationships in semi-enclosed seas	473
12. The coincident results of proportionality and the principle of natural prolongation in the Libyan argument.	474
13. Conclusion on proportionality	474
STATEMENT BY MR. MIZZI (MALTA).	477

**REPLY OF THE SOCIALIST PEOPLE'S
LIBYAN ARAB JAMAHIRIYA**

**RÉPLIQUE DE LA JAMAHIRIYA
ARABE LIBYENNE POPULAIRE
ET SOCIALISTE**

INTRODUCTION

1. This Reply is filed pursuant to the request of the Parties for the exchange of written pleadings as contemplated by Article II (2) (c) of the "Special Agreement"¹ signed by the Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as "Libya"²) and the Republic of Malta (hereinafter referred to as "Malta") on 23 May 1976 and the Order made by the President of the Court in the present case on 21 March 1984, fixing 12 July 1984 as the time-limit for the filing of a Reply by each Party. In conformity with Article 49(3) of the Rules of Court, this Reply is directed to bringing out the main points in issue between the Parties.

2. It is evident that the Maltese Counter-Memorial has introduced many new elements and lines of argument. This Reply must necessarily address these points. In so doing, however, emphasis will be placed on major points of difference. While the new material submitted by the Parties in their Counter-Memorials would alone have made the exchange of written Replies desirable, the nature and content of the Maltese Counter-Memorial also has made a further exchange necessary. Unfortunately, it introduces so many misunderstandings and misinterpretations, especially of Libya's position and arguments, that clarification is essential. It would be futile and confusing to try to deal with each and every point of this kind to be found in the Maltese Counter-Memorial, but an attempt will be made in this Reply to rectify some of the more serious errors. In an effort to keep the Reply within reasonable proportions, a number of points will not be dealt with here. Libya, however, respectfully reserves the liberty to revert to such points as may be advisable during the oral hearing.

3. In order to illustrate the nature of the "misunderstandings and misinterpretations" mentioned above, one need go no further than Chapter I of the Maltese Counter-Memorial. The very heading to Chapter I is gross distortion. The heading reads, "The Substance of the Libyan Case: Malta Disregarded". Such an imputation is manifestly without foundation. The fact that Libya appears in a case concerning the delimitation of the continental shelf on an equal footing with Malta itself belies and shows

¹ See para. 4 of the *Libyan Memorial* and fn. 5 at p. 1 thereof.

² *Ibid.*, fn. 1 at p. 1.

the absurdity of the imputation. It is difficult to understand how such an assertion could be made in the light of the detailed treatment of the geographical, geomorphological and geological facts concerning Malta contained in the Libyan Memorial and its Annexes. There is no issue as to the existence of Malta and, therefore, no meaning of significance that can be attributed to the final remark in paragraph 25 of Chapter I: "Malta, however, does exist". That remark reflects the sensitivity shown in the Maltese pleadings to the fact that the Maltese Islands are small and their coasts are short in relation to the size of Libya and the length of its relevant coast. It also suggests an awareness of the exaggerated extent of Malta's claim to areas of continental shelf in the Central Mediterranean. The question posed by Malta — "which is the 'disproportionate claim'" — is a good question, and one which Libya seeks to examine in the manner usual in continental shelf delimitation cases².

4. The Libyan case is based on the geographical and other physical facts as they are. It is in no way based on some hypothetical delimitation with Italy as if Malta did not exist as suggested in paragraph 4 of the Maltese Counter-Memorial. It is the delimitation of continental shelf areas as between Malta and Libya which is in issue in the present case. This was underlined in the proceedings on Italy's Application for Permission to Intervene in the case and is a basic assumption of the arguments submitted by Libya to the Court. No amount of rhetoric can alter the geographical and geomorphological position of Malta.

5. The difference between the nature of the Libyan and the Maltese approaches to delimitation that emerges with even greater clarity from the Counter-Memorials of the Parties also gives rise to the need for a Reply in this case. An examination of this difference in approach is fundamental to a proper assessment of the strength of the cases presented by the Parties. The approach of Malta is highly abstract: it seems to be designed to divorce the concrete question of delimitation from the reality of the facts with which it is concerned. By contrast, Libya lays emphasis on the facts and circumstances of this particular case and aims at achieving an equitable result in the light of them. This difference in approach will be examined in the Chapters that follow.

¹ *Maltese Counter-Memorial*, para. 22.

² Similar examples of misrepresentation of Libya's case found in Chapter I of the *Maltese Counter-Memorial* appear at paras. 6, 17 and 18, where the phrase, the "indefinite extent of the Libyan claim seawards", appearing at para. 4.21 of the *Libyan Memorial* is taken and twisted out of context; at paras. 8 and 15, where it is suggested that para. 2.37 of the *Libyan Memorial* denies to Malta any south-facing coast at all; and at para. 18 where the *Maltese Counter-Memorial* asserts: "Libya also endeavours to deny Malta not only its physical and cultural independence, but also its position as a State." The misrepresentation in these paragraphs is so evident from a mere reading that any detailed refutation in this Reply would be taking up the Court's time unnecessarily. See also para. 5.04, below.

6. One contention of Malta appears in a novel form in its Counter-Memorial and, as it is a side issue, has been included in a separate chapter, Chapter 2 below. This is the allegation of Libya's "acquiescence" in a *median line*. With this assertion of Malta, made in different terms in the Maltese Memorial where the words "*status quo*" were repeatedly used, another new element has been introduced into the Maltese Counter-Memorial. In addition, an attempt has apparently been made to show a lack of candor on the part of Libya with respect to information regarding Concession NC 53. Any such insinuation is plainly wrong as will also be shown in Chapter 2 below.

7. As regards the facts, the Maltese Counter-Memorial adds considerably, in terms of pages, to the material previously provided by Malta in its Memorial. This material appears mainly in Annex 2 on "The Scientific Facts", and in Chapter III of the Counter-Memorial. The aim of the Maltese Counter-Memorial is to try to minimise the significance of the major geomorphological and geological features to which the Libyan Memorial drew attention. The truth is that the scientific evidence now produced by Malta only serves to confirm the particularity and importance of the "Rift Zone" and the "Escarpments-Fault Zone" which Malta previously chose to ignore or brush aside. To a large extent, Malta continues to gloss over the salient geographic facts of the case. There are here major differences between the Parties which will have to be dealt with in some detail in this Reply¹.

8. Nevertheless, the main dividing issue is one of law. It stems from Malta's insistence — consistently maintained since the very origin of the dispute — that equidistance and only equidistance can provide the basis for *delimitation in the present case*. Although Malta's reasoning in support of equidistance has undergone some evolution since its initial proposal in 1972 and even during the course of these written pleadings — as will be noted in later Chapters of this Reply² — its basic position founded on the application of equidistance has not changed. Libya, on the other hand, has consistently sought a delimitation which leads to an equitable result having regard to all the relevant facts and circumstances. In the view of Libya, this position is *in full accord with the established principles and rules of international law in regard to continental shelf delimitation*.

9. It is evident from the written pleadings to date that there are fundamental disagreements between the Parties as to the law. The Maltese Counter-Memorial goes so far as to contend that natural prolongation no longer has any physical content but has become a purely "spatial" concept relating solely to "distance". By blending the separate con-

¹ See Chapter 5, below.

² See Chapters 3 and 4, below.

cepts of entitlement and delimitation, the Maltese Counter-Memorial has attempted to build a case for equidistance as a "primary" method of delimitation¹. In so doing, the Maltese Counter-Memorial has failed to address the specific facts of this case. It has dealt with the case as one between two "opposite States" — in the abstract — and has avoided any detailed examination of the facts of geography, such as the coasts of the Parties and their relationship to each other and to the continental shelf to be delimited. It has denied the legal relevance of the characteristics of the sea-bed and subsoil of the continental shelf. It has sought refuge in examples of delimitation agreements between other States in different factual settings; and it mistakenly has attempted to extract certain conclusions as to the legal significance of this "State practice".

10. As will be brought out in this Reply, the respective views of the Parties as to the law and the legal relevance of the physical facts of geography, geomorphology and geology are very different. Libya denies that equidistance has any primary role or privileged status and regards itself to be in accord with the jurisprudence of the Court in this respect. The emphasis in Libya's pleadings is on the particular facts of the present case relevant to reaching an equitable result through the application of equitable principles and not on some abstract notion of a method which *per se*, regardless of the particular situation, may be claimed to lead to an equitable result. The final stage in the delimitation process is to test the equity of the result by means of the proportionality criterion. Since the Parties diverge sharply as to the role of proportionality, it has been made the subject of Chapter 7 below.

11. The structure of this Reply may be seen from the Table of Contents. It will be noted that the order of discussion in the previous pleadings has been reversed in the sense that the legal issues that divide the Parties are taken up before the factual issues are discussed. This has been done because — with the exception of certain aspects of the conduct of the Parties including Malta's new allegation of "acquiescence" on the part of Libya — there appears to be a deeper division between the Parties over the law and its application than over the facts themselves². Moreover, the difference in the legal approaches of the Parties to delimitation has influenced, to a large extent, the way in which each Party has dealt with the facts³.

¹ See paras. 126-132 of the *Maltese Counter-Memorial* which are discussed in Chapter 3, below.

² However, Malta's continued failure to address seriously the geographical facts remains a point of contention between the Parties. See Chapter 5, below.

³ Of course, it has been necessary to treat the differences over the physical facts which do exist between the Parties in a separate Chapter, particularly since it was only in its *Counter-Memorial* that Malta dealt with the physical aspects of the sea-bed and subsoil in any detail. See Chapter 5, below.

12. Whatever common ground between the Parties both as to the law and as to the facts may exist, it appears from the Counter-Memorials that the gap between the approaches of the Parties to the resolution of the present dispute has, in fact, widened. What follows in this final written pleading of Libya, therefore, is a review of the positions of the Parties in the light of their basic differences as to the legal framework within which the delimitation is to occur, bringing out the other major issues that continue to divide the Parties.

13. It appears useful to begin this summary of differences by considering again the task entrusted to the Court in the request of the Parties in the Special Agreement. This will be the subject of Chapter I which follows next.

CHAPTER I

THE REQUEST MADE TO THE COURT

1.01 The Special Agreement is discussed in Chapter 5 of the Libyan Memorial¹. Malta treated the Special Agreement in Part I of its Memorial. The interpretation of the Special Agreement in the Maltese Memorial did not prompt any addition in the Libyan Counter-Memorial to what had already been said in the Libyan Memorial. However, the Maltese Counter-Memorial (Part II) stresses a difference of position claimed to exist between the Parties regarding "the task of the Court in the present case" and, hence, it is appropriate to revert to this matter in this Reply to clarify certain points.

1.02 The Libyan Memorial drew attention to certain distinctions between the Special Agreement in this case and the Special Agreement in the *Tunisia/Libya* case, and pointed out that the request in the present case is more analogous to that presented in the *North Sea* cases than to that in the *Tunisia/Libya* case². These distinctions include the absence in the present Special Agreement of any reference to delimitation by "the experts of the two countries" and the inclusion of the provision for "negotiations" to be undertaken between the Parties themselves for concluding an agreement following the Judgment of the Court. The Maltese Memorial, on the other hand, did not focus on textual differences and appeared to find little difference between the Special Agreement in the present case and that in the *Tunisia/Libya* case. The Maltese Counter-Memorial failed to comment on the observations made in paragraphs 5.05 and 5.06 of the Libyan Memorial regarding the text of the Special Agreement.

1.03 Even though the Court has not been requested by the Parties to draw the delimitation line³, as is evident from the Special Agreement, it has been invested with the task of deciding what principles and rules of international law are applicable to the delimitation between the Parties and how in practice such principles and rules can be applied by the two Parties in order that they may, in their subsequent negotiations, delimit without difficulty their respective continental shelves. A major component of the second task of the Court will be, in the view of Libya, to identify, to weigh and to balance up the relevant factors and circumstances present in

¹ Counsel for Libya also dealt with this subject at the oral hearings in connection with Italy's Application for Permission to Intervene in the present case (CR 84/4, 27 Jan. 1984, pp. 29-38).

² *Libyan Memorial*, para. 5.06.

³ In the 1977 *Anglo-French Arbitration* and in the case between Canada and the United States currently before a Chamber of the Court involving a unitary line delimiting both the continental shelf and the fisheries zones of these States in the Gulf of Maine area, the requests of the parties were quite different, since the Court of Arbitration, and the Chamber in the latter case, were asked to draw the actual line of delimitation.

this case and to test the equitableness of the anticipated result by the criterion of proportionality¹. The Court has not, however, been requested to apply any pre-ordained method of delimitation but rather to indicate how in practice the Parties can apply the principle and rules "in this particular case", a point sufficiently developed in paragraph 5.07 of the Libyan Memorial as not to require restatement here.

1.04 Malta claims to have perceived in Libya's final Submission an important difference between the Parties as to the task of the Court. In the Maltese Counter-Memorial it is contended that this Submission does not show "how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may *without difficulty* delimit such area[s] by an agreement as provided in Article III²." But Libya's position as stated in Libya's final Submission has been misconceived. Contrary to the assertion made a number of times in the Maltese Counter-Memorial³, Libya has not advanced the Rift Zone as providing a "natural frontier", but rather as a physical factor that constitutes a fundamental discontinuity in the sea-bed and subsoil separating the shelf areas between the Parties⁴. This feature, combined with the relevant geographical circumstances of the present case and viewed in the light of the relevant conduct of the Parties, leads to the conclusion, in Libya's view, that an equitable result which meets the test of proportionality would be achieved by a delimitation line within and following the general direction of the Rift Zone⁵. The facts set forth by Libya in its written pleadings of a geographical, geomorphological and geological character point to the elements which, when balanced together, indicate how in practice an equitable result may be achieved in the present case. These elements are discussed in Chapters 6 and 7 below.

1.05 Malta's position regarding the task of the Court, and the difficulties it sees in this connection with Libya's Submissions, appear to be tantamount to saying that, unless the Court is requested to draw the precise delimitation line — as was the case in the *Anglo-French Arbitration* and the *Gulf of Maine* case — or unless the Court is to conceive its role as prescribing for the Parties a single method of delimitation having the degree of precision of, for example, the equidistance method, the Special Agreement cannot be carried out by the Parties in their negotiations following the Judgment of the Court. Libya dissents from such a view, for it would leave to the Court virtually no choice at all other than to

¹ This point is more fully developed in relation to the particular facts of this case in paras. 7.14-7.16, below.

² Italics added by Malta in para. 74 of the *Maltese Counter-Memorial*.

³ See, e.g., *Maltese Counter-Memorial*, para. 332.

⁴ See paras. 5.19-5.29, below. See also *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 64, para. 80.

⁵ See Chapter 6, below.

sanction the application of a pre-ordained method, such as Malta's application of equidistance. Libya, on the other hand, believes that it has put forward sufficient factual elements on the basis of which the Court will be able to frame the kind of Judgment enabling the Parties to negotiate the final delimitation line "without difficulty".

1.06 In the light of the proceedings involving Italy's Application for Permission to Intervene and the resulting Judgment of the Court¹, there remains, however, another aspect of the request made to the Court under the Special Agreement that deserves comment at this stage. In that Judgment the Court made it clear that "the rights claimed by Italy would be safeguarded by Article 59 of the Statute [of the Court]"². In referring to the Judgment to be rendered in the present case, the Court also observed that the "future judgment will not merely be limited in its effects by Article 59 of the Statute: it will be expressed, upon its face, to be without prejudice to the rights and titles of third States"³. Hence, it is the view of Libya that the task entrusted to the Court can lead to a Judgment which, although perhaps "more limited in scope between the Parties themselves, and subject to more caveats and reservations in favour of third States, than it might otherwise have been had Italy been present"⁴, nevertheless should extend to all the areas of continental shelf relevant to a delimitation between Libya and Malta. In determining these areas, it is Libya's view that it must be based on the relevant coasts of the Parties and their relationship to the shelf areas lying off those coasts in the present case, even if such areas may in part extend into areas over which third States may present claims.

1.07 Thus, Libya believes that the Court may properly indicate the principles and rules of international law and how in practice they can be applied by the Parties throughout the entire relevant area⁵. Nevertheless, a distinction may have to be made between that part of the area in which there are no claims by third States, and that part or parts in which there are such claims. In the former part, precisely because there are no such claims, the Parties can proceed to a definitive delimitation. In the latter part, the "caveats and reservations" of the Court will protect the rights of third States by precluding such a delimitation being definitive vis-à-vis such third States. Moreover, it will undoubtedly assist third States if, in such parts of the area, Libya and Malta proceed to a non-prejudicial delimitation between themselves—that is, a delimitation which does not

¹ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*. Application to Intervene, Judgment, I.C.J. Reports 1984, p. 3.

² *Ibid.*, p. 26, para. 42.

³ *Ibid.*, pp. 26-27, para. 43.

⁴ *Ibid.*, p. 27, para. 43.

⁵ See *Libyan Memorial*, paras. 10.12-10.18, in which the relevant area in the present case is described.

prejudge the rights of third States¹. For third States will then know against which of the two present Parties, Libya or Malta, they should present their claims if, subsequently, such third States decide they do have claims in this part of the relevant area. Indeed, without a delimitation which extends throughout the relevant area, the solution would remain problematical, for in principle such a restricted solution would compel tripartite negotiations, or possibly adjudications, with all the attendant difficulties for those parts of the relevant area in which third States may have claims.

¹ As expressed by the Court in its 1982 Judgment, "... the rights of other States bordering on the Pelagian Sea which may be claimed in the northern and north-eastern parts of that area must not be prejudged by the decision in the present case." *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, *I.C.J. Reports 1982*, p. 62, para. 75.

CHAPTER 2

THE CONDUCT OF THE PARTIES AND THE ALLEGATION OF LIBYAN “ACQUIESCENCE” IN THE MALTESE MEDIAN LINE

2.01 Before turning to the manner in which the Parties differ over the application of the principles and rules of international law governing delimitation in this case, it is necessary to deal with a new theme that has emerged from the Maltese Counter-Memorial. This is the allegation of Libyan “acquiescence” in Malta’s median line proposal. As this Chapter will show, there is simply no factual basis for such an allegation.

2.02 The Court will have perceived that, in advancing its acquiescence contention, Malta’s arguments directed at the conduct of the Parties have changed. Whereas the Maltese Memorial asserted that delimitation by means of equidistance represented the “*status quo*” between the Parties, the Maltese Counter-Memorial attempts to show Libyan acquiescence in Malta’s equidistance line during the period from 1965 to 1973¹. The Maltese argument now treats this “acquiescence” as an additional foundation for its claim that equidistance produces an equitable result. Since Libya dealt with the invalidity of the earlier “*status quo*” argument in its Counter-Memorial², there is no need here to repeat those observations. In the light of the pertinent conduct of the Parties, however, Malta’s new contentions alleging Libyan acquiescence in Malta’s median line are equally ill-founded.

2.03 One answer to Malta’s claim of acquiescence is that there was at that time no legal position put forward by Malta vis-à-vis Libya in which Libya could acquiesce. This is evident from the nature of the acts on which Malta bases its argument: the 1965 Maltese Note Verbale, the 1966 Continental Shelf Act and the grant of Libyan concessions in 1974. A second answer is that the conduct of the Parties, and in particular Malta’s own conduct at the time of the enactment of its continental shelf legislation, attests to the fact that as early as 1966 Malta recognised the existence of an area of deep water lying between Malta and Libya corresponding generally to the area of the Rift Zone and acknowledged the significance of this fact for the limit of its continental shelf rights to the south at that time. These aspects will be discussed in turn below.

2.04 Malta seems to have found some new importance in its Note Verbale of 5 May 1965, for the Maltese Counter-Memorial places considerable emphasis on it despite the fact that its existence was not mentioned

¹ *Maltese Counter-Memorial*, para. 194.

² *Libyan Counter-Memorial*, Chapter 1.

in the Maltese Memorial¹. It was Libya which annexed a copy of this Note to the Libyan Memorial, thus bringing it to light in these proceedings².

2.05 The upshot of the Note is apparent from its text, which indicated that it was Malta's intention to accede to the 1958 Convention on the Continental Shelf and that Malta had been guided by Article 6(1) of that Convention in determining the boundary of its continental shelf. How Malta can find Libyan acquiescence in a median line delimitation from a Note which stated that Malta had been guided by the 1958 Convention which called, above all, for agreement on delimitation has yet to be explained by Malta³.

2.06 On 19 May 1966, Malta acceded to the 1958 Convention without any reservations. Shortly thereafter, Malta's 1966 Continental Shelf Act was enacted. This is the principal item of legislation on which Malta relies. As such, it reveals Malta's real attitude toward delimitation at that time. The unilateral nature of this Act and the fact that it could not, of itself, establish a delimitation with other States has already been mentioned in the Libyan Counter-Memorial⁴. In relation to Malta's new acquiescence claims, however, the 1966 Act merits close attention. For, as the facts set forth below show, this Act did not "assert" a claim to the median line vis-à-vis Libya as the Maltese pleadings have suggested.

2.07 It will be recalled that Section 2 of the 1966 Act provided for the definition of Malta's continental shelf as follows:

" '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...".

These provisions were by and large faithful to the text of Article 1 of the 1958 Convention to which Malta had just acceded. The remainder of Section 2 of the 1966 Act, however, reads:

"[S]o 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

¹ See *Maltese Counter-Memorial*, paras. 183-186.

² See *Libyan Memorial*, Annex 34.

³ The fact that the 1965 Note, incorrectly quoted in para. 183 of the *Maltese Counter-Memorial*, failed to reflect accurately the provisions of Article 6(1) of the 1958 Convention was of little relevance to Libya at the time and called for no comment. In any event, Libya was not a party to that Convention.

⁴ *Libyan Counter-Memorial*, para. 1.05. A copy of the 1966 Act may be found in Annex 15 to the *Libyan Memorial*.

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.”

As the Libyan Memorial pointed out¹, this second half of Section 2 of the 1966 Act did not accurately reflect Article 6 of the 1958 Convention.

2.08 The ambit of the 1966 Act and its application to the specific situation around Malta were clarified during the debates which took place within the Maltese Parliament over its scope. During the second reading of the Act, Dr. Caruana Demajo, the Maltese Minister of Justice and Parliamentary Affairs, explained the operation of the bill in this manner. He stated that —

“... it is naturally desirable that an agreement should be reached between the states concerned regarding the limits of the Continental Shelf and the Convention relating to the Continental Shelf to which I have already made reference [the 1958 Convention], already provides for such an eventuality².”

As regards the limits of Malta's continental shelf, he went on to state:

“I would like to make it clear that in so far as Africa is concerned, this matter is not relevant today since the Maltese Continental Shelf and the African Continental Shelf do not meet, and the seas between them are so deep as to prevent exploitation³.”

Dr. Caruana Demajo then drew a clear distinction between this situation and the one between Malta and Sicily. In the latter case, he noted that the “situation vis-à-vis Sicily is different³”, and that exploration could be carried out. The Minister stated that it was thus desirable for agreement on delimitation to be reached with Italy. He went on to point out that Italy had already been informed that if agreement were not reached, Malta would consider the median line between itself and Italy as constituting the dividing line³. Seen in this context, these discussions reveal the following.

2.09 *First*, the Maltese Minister expressly acknowledged that the limit of the continental shelf was to be determined by agreement where two States laid claim to it. In the light of Malta's acquiescence claims, this affirmation is significant in itself³.

2.10 *Second*, he observed that the extent of Malta's continental shelf was determined by reference to what was known as the “exploitability

¹ *Libyan Memorial*, para. 4.06.

² Extracts from the Maltese Parliamentary debates, 20-22 July 1966, are attached as *Annex 1*, hereto; see p. 3, thereof.

³ See *Libyan Counter-Memorial*, paras. 1.05-1.06.

criterion". This, of course, reflected the provisions of Article 1 of the 1958 Convention whereby the continental shelf of a coastal State extended beyond its territorial sea to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admitted the exploitation of the natural resources. According to Dr. Caruana Demajo, however, the sea-bed areas lying between Malta and Libya were too deep to be able to be exploited. As a bathymetric map of this area shows, they reach depths well in excess of 200 metres, particularly in the area where the Rift Zone is located. The conclusion to be drawn from the text of the 1966 Act and from the Minister's remarks is that the sea-bed areas lying in this deeper zone fell beyond the limit of Malta's continental shelf as it was defined in the 1966 Act. That being the case, the implication is that Malta, at the time it enacted its 1966 legislation, did not contemplate claiming continental shelf rights in this deeper area and, thus, did not contemplate any continental shelf delimitation with Libya. As a result, it is difficult to understand how Libya could be said to have "acquiesced" in any particular delimitation when no delimitation with Libya was foreseen by Malta at the time and no claim was advanced.

2.11 *Third*, Malta evidently viewed the situation between Italy and itself in quite a different manner. In contrast to the situation between Malta and Libya, the sea-bed north of Malta between the Maltese Islands and Sicily is relatively shallow (generally less than 200 metres) and thus could be said to fall within the definition of Malta's continental shelf as contained in the 1966 Act. This much was confirmed by Dr. Caruana Demajo in his remarks to the Maltese Parliament when he noted the desirability of reaching a delimitation agreement with Italy. To that end, Malta had already sent to Italy a specific proposal for the continental shelf boundary between them¹. Malta refrained, however, from sending a comparable proposal to Libya. This is further evidence of the fact that Malta did not believe it had a boundary to delimit with Libya because of the water depths involved.

2.12 These aspects of the 1966 Act shed light on Malta's subsequent conduct as well. For example, the very first offshore concessions granted by Malta — those offered for bidding in 1970 and issued in 1971 — confirmed the limited scope of the 1966 Act. As the *Libyan Memorial* pointed out², these concessions were grouped closely to the north and east of Malta. *Map 2* illustrates these concessions and shows how their lateral limits coincided almost precisely with the 200 metre isobath³, and their

¹ Malta informed Italy of this proposal by a Note dated 31 December 1965. A copy of this Note was attached as Annex 2 to Malta's Observations on the Italian Application for Permission to Intervene and may be found as *Annex 2*, hereto.

² See *Libyan Memorial*, paras. 4.29 and 9.32.

³ See also *ibid.*, Map 13, facing p. 146.

northern limits ran approximately along a median line between Malta and Sicily¹. No concessions were granted during this period to the south of Malta where the deeper areas were not considered exploitable. This practice was consistent with the provisions of the 1966 Act as interpreted by the Government of Malta since the exploitability criterion defined the outer limit of Malta's continental shelf.

2.13 These facts expose the lack of any substance in Malta's assertion that Libya acquiesced in a median line south of Malta in the period from 1965 to 1973. Malta itself did not contemplate a delimitation vis-à-vis Libya and other North African States at the time of its 1966 legislation. Indeed, Malta appears to have become actively interested in reaching an agreement with Libya only after the 1971 Italy-Tunisia Agreement focussed Malta's attention on the area to the south. The first time Malta unveiled its median line proposal to Libya was at the meeting at the Auberge de Castille in July 1972². At no time during the discussions that followed did Malta raise the claim either of Libyan acquiescence in a particular line of delimitation or of the existence of a "*status quo*". What is significant is that Malta's Prime Minister referred to Malta's proposed median line as "provisional" in a Note dated 23 April 1973 addressed to Colonel Ghadaffi³. Such a characterisation of Malta's position hardly supports the arguments now advanced alleging Libyan acquiescence.

2.14 The final elements in the Maltese Counter-Memorial on which the contention of Libyan acceptance of the median line is based are the Libyan petroleum concessions granted in 1974 and, in particular, Concession NC 53 granted to TOTAL. There it is asserted that Concession NC 53 "reflects a measure of Libyan acceptance of the median line". Regrettably, this assertion is tainted by an insinuation that Libya has misled the Court as to the extent of this concession. This is not so. As the facts that are recounted below attest, the grant of Concession NC 53 in no way constituted an acceptance of Malta's median line. Nor has this concession been falsified in any way in Libya's pleadings as the remarks in the Maltese Counter-Memorial would suggest.

2.15 Concession NC 53 had its origins in discussions that were held between representatives of Libya and the Compagnie Française des Pétroles ("C.F.P." — the parent company of TOTAL). These discussions led up to minutes of understanding being signed in Paris on 20 February 1974. Based on these minutes, the Libyan National Oil Corporation (the "N.O.C.") and

¹ As noted in para. 2.11, above, the fact that delimitation with Italy was contemplated was reflected in the Parliamentary debates over the provisions of the 1966 Act.

² See *Libyan Memorial*, para. 4.30.

³ *Ibid.*, Annex 41.

⁴ *Maltese Counter-Memorial*, para. 189 (d). As noted in the *Libyan Memorial*, para. 4.44, Libyan "concessions" were granted at this time in the form of Exploration and Production Sharing Agreements ("EPSAs").

C.F.P. signed Heads of Agreement for an Exploration and Production Sharing Agreement ("EPSA") on 14 April 1974. Subsequently, the EPSA itself was signed on 13 October 1974¹. This agreement encompassed four separate areas, of which one — Area A — constituted NC 53.

2.16 Appendix I-A of the Agreement defined Area A in the following terms:

- "a) On the one hand, the seaward limit of jurisdiction of the Libyan Arab Republic over the seabed and subsoil underlying the Mediterranean Sea as established by or pursuant to any agreement between the Libyan Arab Republic and any other relevant Mediterranean State claiming jurisdiction over such seabed and subsoil, between the westernmost and the eastern intersections of the said limit with the broken line defined in (b) below.
- b) On the other hand, that part of the continuous broken line defined hereafter which is comprised between the easternmost and westernmost intersections referred to in (a) above."

The "continuous broken line" referred to in (b) above was specified by coordinates and corresponds to the southern boundary of NC 53 as it is depicted on Map 11 in the Libyan Memorial. As for the northern and western limits of NC 53, these were clearly indicated on the official Libyan map which was attached to the legislation authorising the grant.

2.17 By Act No. 58 of 23 September 1974², N.O.C. was duly empowered to execute the contract by the Revolutionary Command Council. As usual, Act No. 58 was published in the Libyan Gazette together with the map mentioned above indicating the limits of the pertinent Libyan concessions. A copy of the Act together with this map appears in *Annex 3*. As the map reveals, the limits of Concession NC 53 therein depicted are the same as those that were shown on Map 11 in the Libyan Memorial. A subsequent map published by N.O.C. in 1975 shows the identical configuration for this concession³.

2.18 At the time Concession NC 53 became effective, therefore, the area it encompassed was not in issue. Article 13 (a) of the Heads of Agreement stipulated that the grant would "not exceed 22,000 square kilometres" — an

¹ A copy of the relevant portions of the Heads of Agreement and the EPSA is attached in *Annex 3*, hereto. In accordance with Article 50(2) of the Rules of Court, a copy of the entire EPSA has been furnished to the Registry.

² This legislation became effective upon its publication on 17 December 1974. The Libyan Ministry of Petroleum notified representatives of TOTAL by a letter dated 17 November 1974 that NC 53 had been ratified by this legislation. TOTAL responded by a letter dated 12 January 1975 in which it acknowledged 17 December 1974 as the "Effective Date" of the contract. Copies of these letters are attached at *Annex 3*, hereto.

³ A reduced copy of this map appears at *Annex 3*, hereto. A full scale copy of this map has been deposited with the Registry.

area which corresponds to the size of NC 53 as it appears on Map 11 in the Libyan Memorial. Moreover, Appendix I-A of the EPSA itself set forth the grid system along which the individual blocks within the concession were to be subdivided¹. Under the provisions of this Appendix, these blocks extended as far north as 35° 50' N latitude (toward which NC 53 may be seen to extend on Map 11), as far south as 33° 50' N latitude (corresponding to the actual southernmost limit of the concession on Map 11), and as far east as 14° 45' E longitude (the easternmost limit as again depicted on the map). The western boundary of NC 53 was simply extended along the same bearing as the western limits of Libyan Concessions 137 and NC 41.

2.19 In this manner the insinuations of the Maltese Counter-Memorial may be laid to rest. What is clear is that Malta's assertion to have found a *measure of Libyan acquiescence in Malta's median line by virtue of the grant of Concession NC 53* has no substance at all. Nowhere in the relevant documents is there any mention of such a line. The facts speak otherwise. Indeed, Malta itself sent a Note to TOTAL on 17 June 1975 indicating that Malta had been informed that TOTAL was carrying out oil exploration activities in the offshore area in the Mediterranean north of Malta's median line². It is difficult, therefore, to see how the "Median Line" could now be said to have been "accepted" by virtue of NC 53. In addition, the Maltese Counter-Memorial has chosen to ignore completely the implications of the Libyan grant of Concessions NC 35A and 35B, as well as Libya's protests over Maltese concessions south of Malta and Libya's reaction to the breach of the no-drilling agreement at the time of the Texaco-Saipem incident³.

2.20 Malta's contention that Libya has acquiesced in a median line delimitation is, thus, wrong. To the contrary, Malta — at the time of the enactment of its 1966 Continental Shelf Act — implicitly recognised the significance of the area comprising the Rift Zone inasmuch as it did not contemplate a delimitation with Libya due to the depth of the sea-bed in that area. Thus, while Malta has exhibited a certain obstinacy in its claim to a median line delimitation since discussions between the Parties began, Malta never advanced such a claim vis-à-vis Libya prior to July of 1972. As Malta itself acknowledged in paragraph 62 of its Memorial, discussions with Libya did not begin until 1972, making it difficult to see how Libya could have acquiesced in anything before that time. The claim to a median line, when it eventually was proposed by Malta at the meeting at the Auberge de Castille, was not in any way accepted or acquiesced in by Libya but, being the first time Libya had

¹ A copy of this document is attached at *Annex 3*, hereto.

² A copy of this Note was attached as *Annex 56* to the *Libyan Memorial*. It should also be noted that the Maltese Notice L.N. 41 of 1973 itself acknowledged that Malta's own concessions were subject to alteration in the event of a different agreement on the shelf boundary between Libya and Malta. See *Libyan Memorial*, *Annex 42*, p. B 234.

³ See *Libyan Memorial*, paras. 4.49-4.53 and paras. 4.79-4.81, and *Libyan Counter-Memorial*, paras. 1.14-1.27.

been informed of a concrete Maltese position, was taken away for study. Libya's flat rejection of the median line came less than a year later, as the Libyan pleadings have already explained¹.

2.21 It may be said, therefore, that both Libya and Malta recognised the existence of a difference in their views regarding delimitation soon after discussions between them had commenced. This recognition led in turn to the drafting of the Special Agreement and to the no-drilling understanding between them pending the resolution of the dispute. Malta continues to omit any reference to the existence of the no-drilling understanding despite the fact that it constitutes an important element of mutual conduct that is relevant to the delimitation question². By itself, the no-drilling understanding contradicts the notion of either Libyan acquiescence in the median line or the existence of any "*status quo*". As noted in the *Libyan Memorial and Counter-Memorial*, however, this understanding and history shed light on the area in dispute between the Parties³.

¹ *Libyan Memorial*, para. 4.33, and *Libyan Counter-Memorial*, para. 1.12.

² The existence of an agreement between Malta and its concession holders to suspend exploration activities pending the resolution of the dispute was explained by Prime Minister Mintoff before the Maltese Parliament on 16 Jan. 1978. Extracts from the Prime Minister's address are attached in *Annex 4*, hereto.

³ *Libyan Memorial*, para. 9.26, and *Libyan Counter-Memorial*, paras. 1.23-1.27.

CHAPTER 3

ISSUES REGARDING THE PRINCIPLES AND RULES OF INTERNATIONAL LAW GOVERNING CONTINENTAL SHELF DELIMITATION

3.01 Apart from the obvious difference that exists between the Parties as to whether any one method of delimitation commands a privileged status¹, three other basic differences over the way in which the Parties interpret and apply the principles and rules of continental shelf delimitation to the present case may be identified. Stated briefly, these differences relate to (i) the meaning and content each Party ascribes to the process of applying equitable principles; (ii) the role of relevant circumstances in the delimitation process; and (iii) the legal relevance attached to particular factors and circumstances².

3.02 These differences go to the very heart of continental shelf delimitation. Their resolution has consequences not only for the delimitation in the present case, but also for future delimitations in other parts of the world³. In view of the importance which attaches to these issues, each will be addressed separately in the Sections that follow.

A. The Process of Applying Equitable Principles

3.03 The Maltese Counter-Memorial has unveiled an approach to delimitation — only hinted at in the Maltese Memorial — which does violence to the primary role of equitable principles in delimitation. This approach results from the intermingling and confusion of two quite distinct concepts — entitlement and delimitation. Such intermingling and confusion had been introduced in the Maltese Memorial; if anything, it has been accentuated in Malta's Counter-Memorial⁴. The end result is that the proper criteria relevant to delimitation, which center around the principle that the delimitation is to be effected in accordance with equitable principles taking into account all the relevant circumstances in order to reach an equitable result, have been ignored by Malta in favour of contentions relating to the outer limits of a State's continental shelf rights in situations where no delimitation issue exists. A close look at certain portions of the Maltese Counter-Memorial reveals the fallacies in this

¹ This difference is discussed in Chapter 4, below. See also Chapter 7 of the *Libyan Memorial* and Chapter 5 of the *Libyan Counter-Memorial*.

² The issue of proportionality, over which the Parties also differ, will be taken up separately in Chapter 7, below.

³ See, in this regard, Chapter 8, below. As pointed out in the *Libyan Counter-Memorial*, para. 5.97, over 300 maritime delimitation situations exist, the vast majority of which have not, as yet, been agreed.

⁴ Both the *Libyan Memorial*, paras. 6.01-6.09, and the *Libyan Counter-Memorial*, paras. 4.10-4.16, drew attention to the fundamental distinction to be drawn between entitlement to areas of continental shelf and the delimitation of those areas in a concrete case.

approach, for it is an approach which subordinates the role of equitable principles to a single method of delimitation — the equidistance method — and which gives a primary status to that method.

3.04 Malta's legal exposition of the rules of international law which it considers as "governing the delimitation process" is set forth in paragraphs 152 to 176 of the Maltese Counter-Memorial. The starting point of the delimitation process, according to Malta, is to be found in the "legal basis of title to continental shelf rights"¹. It is asserted by Malta that on this point the two Parties are in agreement and that where they diverge "is on the content of this legal basis of title"² itself. Although the Maltese Counter-Memorial acknowledges that physical considerations lie at the origin of the continental shelf concept, it asserts that the "meaning and content of the concept of prolongation has evolved"³. This is followed by the sweeping, unsupported assertion that prolongation is no longer defined by reference to physical factors "but by reference to a certain distance from the coasts"⁴. From this, Malta proceeds to contend that "the basic concept of distance between the coasts forms the necessary point of departure of the whole process"⁵. And in paragraph 156 of the Maltese Counter-Memorial this line of argument is brought to its ultimate conclusion when it is stated that "Malta expressly requests the Court to recognize this principle [the so-called "distance principle"] as the controlling element in the delimitation in the present case".

3.05 This is an extraordinary request, and differs sharply from the fundamental rules of continental shelf delimitation as these rules have been expressed by the Court and as they would be applied under Article 83 of the 1982 Convention. "Title" is, of course, relevant to delimitation in the sense that if there is no claim of title there can be no dispute about delimitation. But it does not follow that the "basis of title" means the "basis of delimitation". This is clear both in principle and from paragraph 10 of Article 76 of the 1982 Convention: in principle, because a question of delimitation *only arises where there is a clash of claims to title; and from paragraph 10 of Article 76, in the light of the plain meaning of its text:*

"The provisions of this article [Article 76] are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts."

3.06 The Maltese Counter-Memorial attempts to support the contention that distance is now "the controlling element" in continental shelf

¹ *Maltese Counter-Memorial*, para. 153.

² *Ibid.*, para. 122.

³ *Ibid.*, para. 155.

delimitation by citing paragraph 48 of the 1982 Judgment¹. The portion of this paragraph cited by Malta reads as follows:

“It is only the legal basis of the title to continental shelf rights—the mere distance from the coast—which can be taken into account as possibly having consequences for the claims of the Parties.”

It will be apparent that this quotation is taken out of context and in a manner which distorts its meaning². The entire paragraph 48 of the Court's Judgment is set out below with the portion quoted in the Maltese Counter-Memorial italicised:

“48. The principle that the natural prolongation of the coastal State is a basis of its legal title to continental shelf rights does not in the present case, as explained above, necessarily provide criteria applicable to the delimitation of the areas appertaining to adjacent States. In so far as Article 76, paragraph 1, of the draft convention repeats this principle, it introduces no new element and does not therefore call for further consideration. In so far however as the paragraph provides that in certain circumstances the distance from the baseline, measured on the surface of the sea, is the basis for the title of the coastal State, it departs from the principle that natural prolongation is the sole basis of the title. The question therefore arises whether the concept of the continental shelf as contained in the second part of the definition is relevant to the decision of the present case. *It is only the legal basis of the title to continental shelf rights — the mere distance from the coast — which can be taken into account as possibly having consequences for the claims of the Parties.* Both Parties rely on the principle of natural prolongation: they have not advanced any argument based on the “trend” towards the distance principle. The definition in Article 76, paragraph 1, therefore affords no criterion for delimitation in the present case.”

It is quite evident that in the passage quoted by Malta the Court was only dealing with the new element contained in paragraph 1 of Article 76 of the 1982 Convention, in which distance from the baselines in certain circumstances — which do not exist in the present case — may become the basis for the title of the coastal State. The Court was not making a general statement about the existing law governing the basis of title, still less about delimitation.

¹ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 48, para. 48.

² *Maltese Counter-Memorial*, para. 155.

3.07 This is made clear by the previous paragraph (paragraph 47) of the 1982 Judgment, where the Court discussed briefly Article 76 of the 1982 Convention. The Court, after mentioning paragraph 10 of Article 76, analysed the definition of the continental shelf found in paragraph 1 of Article 76 in the following terms:

“That definition consists of two parts, employing different criteria. According to the first part of paragraph 1 the natural prolongation of the land territory is the *main* criterion. In the second part of the paragraph, the distance of 200 nautical miles is in certain circumstances the basis of the title of a coastal State¹.”

What are the circumstances in which distance becomes the basis of title? They are clearly spelled out in paragraph 1 of Article 76: when “the outer edge of the continental margin does not extend up to that distance”.

3.08 Aside from what the Court had to say on the subject in its 1982 Judgment, the proceedings of the Third Conference on the Law of the Sea stand as a clear rejection of the Maltese thesis that simple distance has now been recognised as the sole basis of title. Such a thesis is contrary to what the Conference intended. Physical natural prolongation of the land territory is still regarded as the essential, primary basis of title — the “*main criterion*” in the Court’s words — for the coastal State’s continental shelf rights. The distance criterion emerged as a purely secondary and subsidiary basis of title in those particular situations where a coastal State’s continental margin did not extend as far as 200 nautical miles. For such disadvantaged States it thus extended the outer limit of their shelf entitlement. In addition, the distance criterion served a second purpose of setting an absolute outer limit for all States of 350 nautical miles to assure that adequate areas of sea-bed, ocean floor and subsoil would remain available to all States as the “common heritage of mankind”. Thus, the distance criterion was concerned only with outer limits of the continental shelf and not with delimitation of that shelf where there were conflicting claims².

¹ Italics added. It is evident that the Court was referring here to natural prolongation in a physical sense and not as a purely spatial concept, as Malta appears to contend.

² The “*continental margin*” is, of course, a defined term, the definition appearing in para. 3 of Article 76. It is, therefore, rather a surprise to find this same para. 48 of the Court’s 1982 Judgment quoted in part again at para. 128 of the *Maltese Counter-Memorial* where language has been included in the quotation “(i.e., up to 200 miles)” which is not to be found in para. 48 at all and which changes the meaning of the words “in certain circumstances”. On the basis of the scientific evidence, the entire sea-bed areas of the Pelagian and Ionian Seas fall within the Art. 76 definition of “continental margin”. In fact, there seems to be agreement with Malta on this point. Consequently, there is no area at issue in the present case which lies beyond the continental margin and to which the “distance principle” might be said to apply.

³ Distance may only be said to involve “delimitation” in the sense that it “delimits” the outer limits of the continental shelf from the international area beyond.

3.09 It follows that the whole argument erected in the Maltese Counter-Memorial in order to establish natural prolongation solely as a "spatial" concept is ill-founded¹. And as the spatial argument vanishes so also does the basis for Malta's assertions that "the delimitation process must in the submission of Malta, necessarily begin by taking into consideration an equidistance line between the two coasts" and that "equidistance is the most appropriate technique to give effect at the same time to the two components of natural prolongation: distance and coasts"².

3.10 Malta cites no authority for these propositions regarding equidistance. But the cornerstone of Malta's entire argument as now presented appears to consist of the contention that natural prolongation is a "spatial" concept which, together with a so-called "basic concept of distance between the coasts", forms the "necessary point of departure of the whole process"³. As noted above, neither Article 76 of the 1982 Convention (particularly in the light of the proceedings of the Third Conference on the Law of the Sea) nor the Court's 1982 Judgment can be relied upon for the proposition that natural prolongation has become a purely "spatial" concept. By failing to preserve the clear distinction between the concept of the continental shelf as defined in paragraph 1 of Article 76 and the process of delimitation provided for under Article 83 — a distinction so clearly pointed to by paragraph 10 of Article 76 — the Maltese position, as it has evolved in its Counter-Memorial, has the effect of evading the fundamental principle of delimitation: that it should be effected in accordance with equitable principles⁴.

3.11 In this manner, the Maltese Counter-Memorial sets the stage for a new approach whereby equidistance becomes a "primary delimitation" which is *prima facie* equitable⁵. This proposition is advanced in the teeth of the unmistakable trend away from equidistance as a mandatory method

¹ What, if any, distinction is intended between the terms "spatial concept" and "distance principle" is left unexplained in the *Maltese Counter-Memorial* and it is, therefore, assumed here that they are used by Malta interchangeably.

² *Maltese Counter-Memorial*, para. 157.

³ *Ibid.*, para. 155.

⁴ A clear expression of this fundamental principle was provided by Counsel for Malta during the Oral Hearings on Italy's Application for Permission to Intervene (CR 84/6, 30 Jan. 1984, p. 16):

"The applicable law is now clear as a result both of case law and of the terms of Article 83 of the 1982 Law of the Sea Convention. International law requires in the delimitation process the application of equitable principles to reach an equitable result. The considerations which lead to a particular conclusion in one case do not necessarily lead to the same conclusion in another, even in a neighbouring or possibly overlapping area. Each case must be decided upon its own merits, having regard to all the relevant circumstances."

⁵ *Maltese Counter-Memorial*, para. 166.

of delimitation as reflected in the jurisprudence, in the 1982 Convention and in State practice¹.

3.12 Yet even if, *arguendo*, it were granted that entitlement would flow from a "spatial" concept, this would not have the effect of setting aside the prime objective in continental shelf delimitation of achieving an equitable result through the application of equitable principles having regard to the relevant facts and circumstances of the particular case and of substituting therefor the equidistance method as a "primary delimitation", as Malta would urge. Even in such a case, the lengths and the relationships of the coasts of the Parties and the characteristics of the sea-bed and subsoil of the continental shelf, together with the other relevant facts and circumstances, necessarily must weigh in the balance in determining what is an equitable result.

3.13 In contrast to Malta's approach, Libya regards the starting point of the process to be not equidistance but the application of equitable principles taking into account all the relevant facts and circumstances. Hence, the facts of the particular case are the key elements to consider, and it is in the light of these facts that an equitable result that satisfies the test of proportionality must be sought. Malta's approach relies on an abstract construction based on the outer limits of a State's entitlement to continental shelf — a matter not in issue in the present case. Libya's approach rests on the facts of the particular case and how they relate to an equitable delimitation. It is, therefore, to the role of the relevant facts and circumstances of the present case that the next section turns.

B. The Role of Relevant Circumstances

3.14 In paragraph 107 of the Maltese Counter-Memorial it is said that the concept of the delimitation process developed in the Libyan Memorial is "flawed" in respect of the role which the relevant circumstances are required to play in the process. The Maltese Counter-Memorial then claims to accord relevant circumstances "a leading place in the delimitation process"² — a proposition with which Libya is in full accord — but suggests that their "precise role has yet to be defined". Whether any further definition of the precise role of relevant circumstances is necessary is a point of no real significance. The essential point is that the primacy of equitable principles and relevant circumstances is well established in the jurisprudence. Since the application of equitable principles involves the balancing of all the relevant facts and circumstances, their role depends inevitably on the facts and circumstances of each case. Therefore, the

¹ This trend has been discussed at length in Chapter 7 of the *Libyan Memorial* and Chapter 5 of the *Libyan Counter-Memorial*.

² *Maltese Counter-Memorial*, para. 108.

abstract approach of the Maltese Counter-Memorial seeking further definition is going in the wrong direction. Yet with this starting point, the Maltese Counter-Memorial embarks on a lengthy effort to define the role of relevant circumstances (paragraphs 109 through 115), an excursion which seems designed to minimise their role in order to pave the way for establishing equidistance as the primary method of delimitation.

3.15 The analysis in the Maltese Counter-Memorial takes the following course: (i) the judge's task is not merely a mechanical one — it involves a balancing of the various relevant considerations rather than applying some predetermined solution drawn from the relevant circumstances (paragraph 109); (ii) the judge must follow a course between the application of too general or abstract a rule, on the one hand, and an "excessive individualisation of the rule of law", on the other; there must be a minimum of generality to avoid the process becoming an "exercise of discretion or conciliation" or an "operation of distributive justice" (paragraphs 110 and 111, citing paragraph 71 of the 1982 Judgment); (iii) hence, the taking into consideration of relevant circumstances "never occurs on its own in the delimitation process" with the result that "relevant circumstances never suffice by themselves to establish the boundary line" since the legal nature of entitlement has a decisive role in the delimitation process¹, nor do they ever support a boundary line but rather they enable the judge to achieve an "equitable and reasonable solution" (paragraphs 112, 113 and 114); (iv) therefore, "relevant circumstances do not provide the original basis for delimitation, but rather have the status of criteria for evaluating the equitableness of a delimitation *prima facie* indicated by the geographic facts" (paragraph 114).

3.16 This flow of argument consists of a mixture of uncontested generalities and unsupported contentions. It leads to the proposition that the first step in the delimitation process is to start with the equidistance method — which in Malta's view is the appropriate technique required by the "distance principle" between coasts with an opposite relationship. This analysis leads, in turn, "provisionally, not definitively", to a line produced by equidistance as the *prima facie* method in contradiction with Malta's assertion that the judge's task is not to apply a predetermined solution². The second step in the delimitation process is to use relevant circumstances to "adjust" this equidistance line (the *prima facie* method) if it proves to be inequitable or unreasonable³.

¹ This view is contradicted by Article 76, para. 10 of the 1982 Convention.

² See para 3.15 (i), above.

³ To quote Malta exactly in this regard:

"This first approach, purely provisional and tentative, is followed at a second stage by taking into consideration the relevant circumstances of the case. If this consideration leads to the conclusion that the line emerging from the first stage is inequitable or unreasonable it must be adjusted or even, in certain cases, combined with other methods." *Maltese Counter-Memorial*, para. 117.

3.17 These paragraphs, which might have borne the heading "The Subordinate Role of Relevant Circumstances", reveal several things. *First*, this part of Malta's argument poses considerable difficulties in view of the clear position of primacy accorded by the jurisprudence to the application of equitable principles and, consequently, to the relevant circumstances of the particular case. *Second*, Malta's reasoning attempts to pave the way for its assertion of a primary role for the application of the equidistance method. *Third*, Malta attempts to lay a basis for leap-frogging over (*jouer à saute-mouton*) the important physical features that exist in the relevant areas of the continental shelf in the present case and deflecting attention from the relevant coasts of the Parties. In short, what Malta seeks to do is to assert distance as the basis of title, then to equate the "distance principle" with equidistance, and finally to consider "relevant circumstances" only as subsidiary factors which may call for some minor adjustment of the equidistance line. Predictably, Malta contends that there are no such relevant circumstances in this case and so equidistance stands unmodified and unimpaired. It is a process of reasoning which elevates equidistance from merely one possible method among others to the status of an absolute principle. Anything more alien to the whole development of the law since 1958, and to the outcome of the discussions at the Third Conference on the Law of the Sea, can hardly be imagined.

3.18 It is appropriate now to turn to what the Maltese Counter-Memorial has asserted is "flawed" in the role ascribed by Libya to relevant circumstances¹. The curious fact is that the alleged "flaws" in the Libyan position are not revealed. Paragraph 113 refers forward to Malta's disagreement with Libya over the legal basis of title, involving Malta's contention that natural prolongation is a "spatial" and not a physical concept. But as to the delimitation process itself, no "flaws" are specifically singled out. To the contrary, paragraph 114 erroneously suggests that Libya is in agreement with Malta in according to relevant circumstances the subordinate role of "*verifying* whether the delimitation suggested by the recourse to the legal basis of title is equitable and reasonable"². No reference to this effect is made to any portion of the Libyan Memorial, and no such statement can be found in Libya's pleadings. This is not the view of Libya as to the role of relevant circumstances in the delimitation process.

3.19 The role of relevant circumstances was covered principally in paragraphs 6.32 through 6.43 of the Libyan Memorial in a subchapter headed "Equitable Principles and the Aim of Securing an Equitable Result". The Libyan Counter-Memorial also devoted considerable attention to the role of relevant circumstances in the delimitation process³. It is not necessary to restate the points made there in this Reply: they suggest no such subordinate or secondary role for relevant circumstances.

¹ See *Maltese Counter-Memorial*, para. 107.

² Italics added.

³ *Libyan Counter-Memorial*, Chapter 6, Section A.

3.20 The subordinate role that Malta would ascribe to the relevant circumstances of the case is evidently tied to the normality which Malta asserts characterises the particular geographical, geomorphological and geological setting. As expressed in paragraph 330(a) of the Maltese Counter-Memorial:

“The key elements are to be derived from the geographical circumstances, which are characterised by an absence of unusual features.”

Malta's constant resort to what it regards as the normality of the situation of the present case—a far cry from the actual facts, as the Libyan pleadings, including Chapter 5 below, demonstrate—seems to be a throwback to the “equidistance-special circumstances rule” derived from the 1958 Convention. Malta seems to treat relevant circumstances as if they were special circumstances that have relevance only if they justify departing from equidistance in the event the situation is not “normal”. In its 1969 Judgment, the Court disposed of such a resort even to special circumstances when it said that—

“... since once the use of the equidistance method of delimitation is determined not to be obligatory in any event, it ceases to be legally necessary to prove the existence of special circumstances in order to justify not using the method¹.”

In no sense, therefore, are relevant circumstances to be relegated to the role of a mere check on the result produced by equidistance. The appropriateness of equidistance, or any other method, in a particular case is determined on the basis of whether in the light of all the relevant circumstances of that case it leads to an equitable result. In the present case, such a test is clearly not met by the median line proposed by Malta.

C. The Legal Significance of the Physical Facts and Circumstances

3.21 Libya's Memorial and Counter-Memorial dealt extensively with the relevant physical facts and circumstances both in respect to their legal significance² and their factual content³. There are, *first*, the physical factors of primary significance such as the coasts of the Parties, the land territory (or landmass) of each and the characteristics of the continental shelf (that is, the sea-bed and subsoil) related to the coasts. *Second*, the broader geographical setting is of importance in the present case: a small island group is located in a confined sea surrounded by larger coastal States and other islands, both large and small, rather than being situated alone in the middle of a large ocean.

¹ *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 46, para. 82.

² See, generally, *Libyan Memorial*, Chapter 6, and *Libyan Counter-Memorial*, Chapter 4.

³ See *Libyan Memorial*, Chapters 2 and 3, and *Libyan Counter-Memorial*, Chapter 2.

3.22 As Chapter 5 below brings out, the Parties differ not so much as to the facts themselves but rather as to their legal significance and the weight to be accorded to them for purposes of the present delimitation. On a superficial plane, the Maltese Counter-Memorial continues to appear to discuss geography as a key aspect of the case. On closer examination, it is evident that the Maltese pleadings avoid or ignore most of the relevant geographic facts. Coastal lengths, configurations, orientations and relationships, which the jurisprudence has established as being of prime relevance, give way to basepoints, which reflect none of these elements of geography. To say, as Malta does¹, that the relationship of the Libyan and Maltese coastlines is "remarkable only in terms of its normality" or that the "primary elements in the geographic facts are uncomplicated" or that "each pertinent coast should be given its appropriate legal significance on the basis of the distance principle and the use of controlling basepoints", is to utter a series of incorrect or, at best, ambiguous phrases devoid of any content regarding the particular geographic facts of the case.

3.23 Libya's views regarding the legal relevance of coastal lengths and configurations, size, the relevant area, and the presence of third States have been amply developed in the Libyan Memorial and Counter-Memorial. Their importance rests on concrete, readily ascertainable facts and not on abstract notions. The Maltese Counter-Memorial has, by and large, elected not to dispute the geographic facts put forth in the Libyan Memorial. What does deserve mention at this stage, however, is the question of the legal relevance of sea-bed and subsoil features to the delimitation of the continental shelf. This is a point which, based on the Counter-Memorials of the Parties, is in serious contention between them².

3.24 These features are, according to Malta, legally irrelevant due to the purely "spatial" content which natural prolongation is said to have acquired as a result of Article 76 of the 1982 Convention. The intermingling in the Maltese pleadings of the basis of entitlement with the delimitation process is aimed at making these features irrelevant to delimitation as well. The defects in this line of argument have been dealt with in Section A above. The Maltese Counter-Memorial then proceeds in Part I, where scientific matters are taken up (paragraphs 41-62), to make the following assertion:

"As Malta presently hopes to show, the natural prolongation argument, as developed by Libya, entirely lacks support in international law. Whether the "Rift Zone" and the "Escarpments-Fault Zone" correspond or not to the description given in the Libyan Memorial, is entirely without legal interest. Quite different criteria

¹ *Maltese Counter-Memorial*, para. 270.

² The more factual aspects of geography and of the sea-bed and subsoil features will be discussed in Chapter 5, below.

are required by international law to form the basis of the delimitation of the continental shelf between Malta and Libya. It is, therefore, only out of respect for the Court that Malta proposes to review briefly in the present Chapter the errors and contradictions of the technical presentation contained in the Libyan Memorial¹.”

3.25 These propositions are flatly contrary to the statements made by the Court in its 1982 Judgment. The Court quite clearly indicated that even those geomorphological features which do not interrupt the continuity of the continental shelf may still be taken into account in the delimitation process as relevant circumstances². Of course, if the features in question do represent such a discontinuity — as has been demonstrated by Libya —, they must necessarily be given greater weight.

3.26 In addition, the vigour with which Malta tries to show these “errors and contradictions of the technical presentation contained in the Libyan Memorial” belies the confidence assumed by Malta in saying that the sea-bed features referred to are “entirely without legal interest”. As Chapter 5 below reveals, the simple conclusion is that the Maltese Counter-Memorial and its technical annexes fail to show the “errors and contradictions” alleged to exist in Libya’s technical evidence. As for the emphasis placed in the Maltese Memorial, and carried over into its Counter-Memorial, on the assertion that the continental shelf area in question is a “geological continuum”, the Maltese Counter-Memorial, in attempting to rebut the significance of the Rift Zone, has itself demonstrated the lack of a “geological continuum”³.

3.27 The present case falls squarely within the scope of the statements of the Court in the *Tunisia/Libya* case dealing with the possible relevance of physical features of the sea-bed. Libya has furnished to the Court, in the Technical Annex to its Memorial, scientific evidence which establishes that in the present case there are sea-bed and subsoil features breaking the continuity of the continental shelf and constituting an “interruption of the natural prolongation” of Malta and of Libya. To use the language of paragraph 80 of the 1982 Judgment, these features “disrupt the essential

¹ *Maltese Counter-Memorial*, para. 42 (footnote deleted).

² *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 58, para. 68. See also *ibid.*, p. 64, para. 80, where the same possibility is alluded to.

³ So also does the statement appearing at para. 136 of the *Maltese Counter-Memorial*, citing *I.C.J. Reports 1982*, p. 58, para. 67, in which it is admitted that the Court—

“... certainly did not exclude completely the possibility that a very marked physical separation might serve as a basis for delimitation. Nor did it exclude the possibility that a physical separation which was not as marked might have a function ‘as one of the several circumstances considered to be the elements of an equitable delimitation’.”

⁴ See Chapter 5, below. The fact that the relevant area, that is the area of shelf between the Parties underlying the Pelagian Sea, cannot possibly be regarded as a “geological continuum”, and the inherent defects in the term itself, were fully covered in paras. 2.58-2.69 of the *Libyan Counter-Memorial*.

unity of the continental shelf” and involve, in the language of paragraph 66 of the same Judgment, “such a marked disruption or discontinuance of the sea-bed as to constitute an indisputable indication of the limits of two separate continental shelves, or two separate natural prolongations”.

3.28 It is evident that Malta is troubled by the words of the Court quoted in paragraph 136 of the Maltese Counter-Memorial¹. So the Maltese Counter-Memorial resorts again to casuistry:

“That two States may adopt physical features as the boundary of their continental shelves (as did Australia and Indonesia in relation to the Timor Trench) is one thing. That a judge or arbitrator should make these same features into a compulsory legal criterion is quite another².”

This statement is remarkable in several respects. Apparently, where geomorphological features are concerned State practice loses the legal significance otherwise accorded it by Malta³. And the phrase “compulsory legal criterion” rests totally unexplained. The statement also ignores the fact that the Court has clearly said that features characterised in paragraphs 66, 68 and 80 of the 1982 Judgment might indeed constitute relevant circumstances to be taken into account in a given case.

3.29 The Maltese Counter-Memorial then attacks the conception of natural prolongation as having physical characteristics⁴. It stresses the element of chance as relating to the location of sea-bed features; but it is hard to see how one might not try to escape from any geographical or other physical facts on the same basis. It could be regarded as a matter of chance — “as a fact of nature” — that Malta is not still attached physically by land to Sicily and is a group of small islands at all. Libya’s position is, and has been from the start of the dispute, that an equitable result must be achieved in the resulting delimitation in the light of all the facts. As Chapter 6 below will develop in some detail, Libya believes that such a result can be achieved by a line within the Rift Zone which reflects all the relevant circumstances of the present case.

3.30 The Maltese Counter-Memorial then develops another line of argument based on State practice⁵. The discussion of the Norwegian Trough and the Hurd Deep in these paragraphs has already been covered

¹ See fn. 3 at p. 28, above.

² *Maltese Counter-Memorial*, para. 137.

³ But see paras. 140-150 of the *Maltese Counter-Memorial* where no hesitation is shown to attempt to discredit the relevant sea-bed features on the basis of State practice. In this regard, see para. 4.15, below. See also paras. 5.54-5.60 of the *Libyan Counter-Memorial* dealing with the legal relevance of State practice.

⁴ *Maltese Counter-Memorial*, para. 138.

⁵ *Ibid.*, paras. 140-150.

in the Libyan Memorial¹. However, some further comments must be added regarding these paragraphs of the Maltese Counter-Memorial. The very fact that there have been few examples to cite in State practice where geomorphological features appear to have affected the result must be viewed in the light of the following considerations: *first*, it points up the highly special nature and, hence, the significance for the present case of just such features as the Rift Zone and Escarpments-Fault Zone; *second*, as has been brought out in the Libyan Counter-Memorial², it is by no means clear what factors States may have considered in reaching agreement on a line of delimitation. The agreements themselves seldom indicate the considerations that were weighed in the balance, a fact borne out by the Australia-Indonesia Agreement which does not expressly mention how and to what extent the Timor Trough was taken into account, although there is clear evidence that it had an important impact on the determination of the boundary line³.

3.31 The first point mentioned above — the highly special nature of the sea-bed features in the present case — in fact proves the reverse of what Malta suggests. It may be true that in relatively few cases among existing delimitations have sea-bed features played an important role in the result. This may have been due either to the absence of any such relevant features that might have affected the result in the particular cases or to the fact that they have been outweighed by other considerations (as, for example, in the case of the Norwegian Trough). But where, as here, truly remarkable sea-bed and subsoil features do exist, cutting across the relevant area and, in the case of the Rift Zone, the area of dispute as indicated by the proposals of the Parties and their no-drilling understanding, such features deserve major weight in arriving at a delimitation. It should be added that, in the present case, it is not these features alone that stand out — so also do the entire geographical setting and the coastal relationships of the Parties. We have here a case where the sea-bed features and the geographical setting support each other in leading to the same result.

3.32 It can only be surmised that Malta has had to rely on an interpretation of natural prolongation as a purely "spatial" concept in order to

¹ *Libyan Memorial*, paras. 6.45-6.51. See also para. 5.33, below.

² *Libyan Counter-Memorial*, para. 5.54.

³ See *Libyan Counter-Memorial*, paras. 5.70-5.75. Nor does Libya agree that the Italy/Tunisia delimitation line does not in the southern part follow the general direction of the Rift Zone. See para. 149 of the *Maltese Counter-Memorial*. Map 13 facing page 130 of the *Libyan Counter-Memorial* can be seen to show otherwise. As to the Italy/Greece delimitation line, para. 150 of the *Maltese Counter-Memorial* is incomprehensible if the map depicting the course of this line found in the Annex of delimitation agreements, No. 51, to the *Libyan Counter-Memorial* is examined. How possibly could the Sicily-Malta Escarpment have been deemed relevant in that case? The line of delimitation generally runs parallel to this feature as well as to significant sea-bed features on the eastern side of the Ionian Sea near Greece. In contrast, Malta proposes a line that would cut across the Escarpment. These situations are entirely different. These two delimitations can be found on the bathymetric chart, *Map 11* facing p. 76.

provide a basis for its contention that the physical features of the sea-bed and subsoil are irrelevant. As pointed out in Section A above, however, these arguments are neither in harmony with the jurisprudence of the Court nor with Article 76 of the 1982 Convention as interpreted by the Court.

3.33 The inevitable conclusion to be derived from a close analysis of Malta's legal approach to the present delimitation is that it has undergone considerable evolution since the Maltese Memorial. Natural prolongation and entitlement to areas of continental shelf have been flatly stated to be purely "spatial" in content. Entitlement under Article 76 of the 1982 Convention and delimitation under Article 83 have been intermingled and confused by Malta, in spite of the clear language to the contrary in paragraph 10 of Article 76. By this means, the "spatial" or "distance" concept has been introduced in Malta's pleadings as a dominant factor in the process of delimitation of the continental shelf. Although these contentions fly in the face of the 1982 Convention, they have served several purposes in Malta's pleadings: *first*, to thrust equidistance into the forefront as the primary delimitation only to be adjusted if necessary — but not here — by relevant circumstances, which have been given a secondary, subordinate role; *second*, to push into the background the application of equitable principles to the relevant factors and circumstances of the present case in order to reach an equitable result by claiming for the equidistance method a *prima facie* equitable character and a primary role; and, *third*, to discard as irrelevant geographical factors and sea-bed and subsoil features, regardless of how pronounced they are, that present an insuperable obstacle to the Maltese claims represented by the Maltese equidistance line.

3.34 The arguments in the Maltese Counter-Memorial culminate in the assertion that: "Equidistance is the method by which the primary equitable delimitation is achieved".¹ To this is added:

"The equitable nature of the primary boundary is then, so to speak, tested and, if necessary, refined by reference to other relevant considerations. Such adjustment or abatement does not involve major re-ordering of the primary delimitation, still less a reapportionment — since no apportionment took place originally."

In this manner, Malta tries not only to do away with potentially troublesome factors of a geomorphological and geological nature but also to diminish to the point of extinction any substantive role for the geographical facts and other relevant circumstances. In so doing, it abolishes the primacy of equitable principles in the delimitation process.

¹ *Maltese Counter-Memorial*, para. 340.

3.35 What this section has demonstrated is that Malta's conclusions as to the legal relevance of the physical factors is wrong as a matter of law. In the next Chapter the primary role which Malta would ascribe to equidistance will be examined in relation to the additional legal and factual contentions Malta employs to support equidistance as a kind of "primary delimitation" in this specific case.

CHAPTER 4

THE INAPPLICABILITY OF EQUIDISTANCE IN THE PRESENT CASE

4.01 Despite Malta's dogmatic adherence to equidistance, the Maltese Counter-Memorial seems to hint at a slight softening of presentation. To the extent this indicates a hint of flexibility in Malta's approach to delimitation, it is welcomed by Libya. Nevertheless, it remains true that, for Malta, equidistance is the method of delimitation warranted by law. The Maltese argument is maintained both as an abstract proposition of law¹ and as an assertion based on considerations claimed to be relevant in this case². It will be appropriate to treat these two different facets of the Maltese argument separately, and then to turn to the new evidence of Malta's "flexibility".

A. Malta's Thesis of the Primacy of the Equidistance Method

4.02 The previous Chapter has demonstrated the manner in which the Maltese approach to delimitation is fundamentally mistaken. Contrary to Malta's assertions, the so-called "distance principle" does not in law constitute the "controlling element" for continental shelf delimitation either as an abstract notion or as applied in the present case³. Nor is there any juridical basis for Malta's contention that equidistance is established as a kind of "primary delimitation" which is *prima facie* equitable in every case⁴. To sustain such a novel thesis one would have to accept equidistance not only as an obligatory method that has an *a priori* or privileged status, but also as equivalent to the basis of title — thereby confusing delimitation with entitlement; and one would have to disregard all the evidence that States are not in fact prepared to concede to equidistance such a role⁵. What remains to be dealt with in this Chapter is to examine the other bases upon which Malta seeks to support its untenable thesis.

1. Delimitation Agreements

4.03 Examples of delimitation agreements entered into by third States have been deployed at considerable length in both of Malta's pleadings. These examples have been discussed by Malta under the heading "State practice", a term which will also be used in the following paragraphs as a convenient short-hand term⁶. They have been used to support several different contentions. With the submission of Counter-

¹ *Maltese Counter-Memorial*, Chapter II, Section 2 and Chapter IX.

² *Ibid.*, Chapters X, XI and XII.

³ *Ibid.*, para. 156; see para. 3.04, above.

⁴ *Ibid.*, paras. 164-166; see para. 3.11, above.

⁵ For a review of this evidence see the *Libyan Memorial*, Chapter 7, and the *Libyan Counter-Memorial*, Chapter 5, Section A.

⁶ See *Libyan Counter-Memorial*, fn. 7 at p. 104.

Memorials, it is now possible to summarise the principal differences which divide the Parties on this issue and to reveal the misconceptions in Malta's argument as to both the legal relevance of State practice and the interpretations put on individual examples, as well as on the practice as a whole.

4.04 Libya trusts that, with the filing of its own Counter-Memorial, Malta's complaint that Libya has disregarded State practice has been laid to rest¹. It must be noted, however, that Libya deemed it necessary to submit to the Court an Annex dealing with all the delimitation agreements of which it was aware because Malta's subjective selection of only a portion of these agreements in its Memorial had created an unbalanced picture. It was necessary, therefore, to place Malta's contentions in their proper perspective and to demonstrate that the physical setting of the present case bears little resemblance to other examples of State practice. The fact that the complete picture is now before the Court means that there is no need for Libya to go into this material in extensive detail in this Reply. Libya is confident that the Court is in a position to draw its own conclusions from these agreements. As has already been noted, much of the practice is of marginal legal relevance in any event².

4.05 The Maltese Counter-Memorial has introduced, however, several new examples of State practice, and has employed other examples previously referred to in a novel way. These new aspects are conveniently dealt with in this Reply even though, in Libya's view, they do not add anything substantive to Malta's case. Before going into these details, it is first necessary to deal with the principal differences between the Parties as to the general relevance of the ascertainable State practice relating to existing continental shelf delimitations.

(a) The Import of State Practice and its Limits

4.06 Malta's underlying contention regarding the overall import of State practice is best expressed by the following words found in the Maltese Memorial:

"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"³.

Basing itself on this premise, Malta has attempted to introduce a number of delimitation examples said to be "comparable" to the Libya-Malta situation where the equidistance method was utilised. This Malta has done in order to create the impression that because equidistance was used in these examples, it must, *a priori*, be employed between Libya and Malta in

¹ See *Maltese Counter-Memorial*, para. 64.

² See *Libyan Counter-Memorial*, paras. 5.51-5.60, and para. 4.15, below.

³ *Maltese Memorial*, para. 154(c).

order to produce an equitable result. It is on this series of contentions that the Parties are fundamentally at odds. As will be demonstrated in the following paragraphs, there are three principal defects in Malta's argument.

4.07 *First*, Malta's premise that island States and island dependencies have been "entitled to a median line whenever the situation was that of opposite States" is wrong. There is no particular reason why a median line solution should be preferred in the case of delimitations involving island States or island dependencies. Moreover, State practice does not indicate any such result. It is clear that there is a large number of delimitation agreements where island States and island dependencies have not been accorded a median line in the delimitation of their continental shelves. Examples may readily be found in the Annex of delimitation agreements furnished with the Libyan Counter-Memorial. Perhaps by inadvertence, examples disproving Malta's contention may also be found in the Maltese pleadings themselves, although for the most part Malta has tended to avoid discussing examples of State practice unfavourable to its case¹.

4.08 Using examples found in the Maltese pleadings, however, the following agreements may be advanced as disproving Malta's thesis. In the delimitation between Australia and Indonesia, there can be no doubt that portions of Indonesia's territory (and Indonesia is classified as an "island State" by Malta) received significantly less than equidistance treatment². This is particularly true with respect to the Tanimbar Islands and Timor. Equally true is the fact that the Italian Islands of Pantelleria, Lampedusa, Linosa and Lampione were not accorded a median line delimitation in the Italy-Tunisia agreement. In this respect, even Malta's own conduct disproves its contentions. For Malta has revealed that during its negotiations with Italy over delimitation, Malta proposed that these same Italian Islands should not receive equidistance treatment, but be accorded enclaves instead³. Apparently Malta was prepared to take the small size of these Italian Islands into account in this instance despite the fact that they lie "opposite" the Maltese Islands. Finally, it is quite clear that the Channel Islands did not receive equidistance treatment in the *Anglo-French Arbitration* in spite of the fact that they lay "opposite" the French mainland.

¹ Both the *Maltese Memorial* and *Counter-Memorial* dealt with agreements which incorporated equidistance for at least part of the boundary. Other examples not based on equidistance were largely ignored.

² See *Maltese Memorial*, para. 187(c); *Libyan Counter-Memorial*, paras. 5.70-5.75, and the Annex of delimitation agreements, No. 24.

³ See *Libyan Memorial*, paras. 9.56 and 9.59. See also the presentation of Professor Arangio-Ruiz at the Oral Hearings, Italy's Application for Permission to Intervene (CR 84/1, 25 Jan. 1984, p. 33).

4.09 For the sake of brevity, other obvious examples where islands were not accorded strict equidistance in continental shelf delimitations are listed below in tabular form. Details regarding each of the agreements cited, and maps depicting the actual boundary lines, may be found in the Libyan Annex of delimitation agreements furnished with the Libyan Counter-Memorial.

*The Netherlands - Venezuela*¹

The Dutch islands of Aruba, Bonaire and Curaçao did not receive full equidistant treatment, but were accorded substantially less shelf area than equidistance would have provided.

*Iceland - Norway*²

The much smaller Norwegian island of Jan Mayen did not receive full equidistance treatment as against Iceland.

*France - Venezuela*³

The delimitation line falls significantly closer to the small Venezuelan Island of Aves than to the much larger French Island of Martinique.

*Indonesia - Malaysia*⁴

The delimitation line in the third segment appears to discount the Indonesian islands; the line falls noticeably closer to them than to mainland Sarawak.

*Kenya - Tanzania*⁵

The delimitation line follows a parallel of latitude in its seaward sector, thus ignoring the presence of Pemba Island.

*Iran - Saudi Arabia*⁶

The important Iranian Island of Kharg received reduced effect, and two smaller islands lying between the States were partially enclaved.

*Japan - Korea*⁷

The southern segment of the delimitation forms a joint development zone which lies significantly closer to Japan than to Korea.

*Bahrain - Saudi Arabia*⁸

In the northern sector, a joint development zone is provided for which appears to fall closer to Bahrain than Saudi Arabia.

¹ See *Libyan Counter-Memorial*, Annex of delimitation agreements, No. 57.

² *Ibid.*, No. 70.

³ *Ibid.*, No. 67.

⁴ *Ibid.*, No. 22.

⁵ *Ibid.*, No. 46.

⁶ *Ibid.*, No. 17.

⁷ *Ibid.*, No. 35.

⁸ *Ibid.*, No. 5.

Italy - Yugoslavia¹

At least three Yugoslav and one Italian island were given reduced effect in the delimitation which essentially took place between two mainland coasts of approximately equal length.

Colombia - Panama²

Certain Colombian islands lying in the Caribbean did not receive equi-distance treatment.

Abu Dhabi - Qatar³

Offshore islands belonging to Abu Dhabi appear to have been enclaved, at least partially.

4.10 The *second* major defect that taints Malta's use of State practice is the assumption that a method of delimitation, because it has been used in particular delimitation situations between other States, must of necessity be employed as between Libya and Malta at least as an *a priori* or "primary" delimitation⁴. Such an argument is a *non sequitur*. It ignores the importance and the individuality of the facts and relevant circumstances of each particular case. As the Libyan Counter-Memorial made clear, existing delimitation agreements rarely indicate the full range of considerations that may have been taken into account by States involved in negotiating a continental shelf boundary⁵. It is dangerous, therefore, to state categorically whether or not a particular characteristic played a role in the ultimate delimitation.

4.11 The Maltese Counter-Memorial asserts, for example, that "State practice does not take account, with but one exception, of trenches, troughs, channels, depressions and other features . . .". How does Malta know? Certainly the Australia-Indonesia agreement did take account of geomorphology, as did the agreement between Saudi Arabia and the Sudan⁶. Geomorphology may also have played a role in the Italy-Tunisia agreement as Counsel for Malta has explained⁷. And there is some evidence to suggest that sea-bed features may also have influenced the Japan-

¹ See *Libyan Counter-Memorial*, Annex of delimitation agreements, No. 14.

² *Ibid.*, No. 48.

³ *Ibid.*, No. 19.

⁴ See *Maltese Memorial*, para. 195.

⁵ See generally *Libyan Counter-Memorial*, Annex of delimitation agreements, p. 2, para. 8; and see in particular the comments of the Deputy Legal Adviser of the United States Department of State where he noted that "specific tradeoffs" could be involved in negotiating those agreements; Annex of delimitation agreements, No. 23.

⁶ *Maltese Counter-Memorial*, para. 144 (footnote deleted). See, in this respect, para. 3.30, above.

⁷ See *Libyan Counter-Memorial*, Annex of delimitation agreements, Nos. 24 and 37.

⁸ See *Libyan Memorial*, para. 9.52.

Korea and France-Spain delimitations as well¹. The extent to which individual features figured in each example, however, is a question that must be left to conjecture. If reference is made to the maps included in the Annex of delimitation agreements, it may be noted that, for the most part, there were no features similar to the Rift Zone which represented fundamental discontinuities in the areas of continental shelf to be delimited and which would have assisted in pointing to an appropriate delimitation.

4.12 It is particularly revealing that the Maltese Counter-Memorial attempts to construct an argument based upon State practice which aims at diminishing the importance of the lengths and configurations of the coasts relevant to the delimitation². Once again, Libya would ask on what basis Malta claims to know how individual States arrived at delimitation agreements and how coastal configurations influenced the end result. If size and coastal length are without relevance, why is it that small islands with correspondingly short coastlines have been enclaved or given reduced effect or even ignored in numerous instances where they face larger land-masses (as in the examples portrayed on *Maps 3* and *5*)³, while in other cases islands have received an equidistance boundary where they faced islands of similar size (as in the examples portrayed on *Maps 4* and *6*)⁴?

4.13 Rather than drawing hard and fast conclusions from what amount to a large number of very diverse agreements, Libya believes that State practice, when viewed as a whole, supports the view that each case of delimitation is a function of the particular facts of that case and that, consequently, each case is different and must be approached in the light of its own characteristics and not with any preconceived or *a priori* notion of what constitutes an equitable result⁵. A factor of importance in one example may not be present in another. As a result, State practice does not suggest that the equidistance method possesses a privileged position above all others that is responsive to all different factual situations. Rather, examples of State practice present a wide spectrum of factual situations and a correspondingly wide diversity of methods utilised and solutions reached.

4.14 Malta's attempt to extract rules of delimitation from State practice underlies the *third* major defect in its approach to this practice. In an

¹ *Libyan Counter-Memorial*, paras. 5.89 and 5.93.

² *Maltese Counter-Memorial*, paras. 252-257.

³ See, for example, the Iceland-Norway agreement where the larger island of Iceland received a larger area of shelf than Jan Mayen. See also the following examples: Indonesia-Australia; Indonesia-Malaysia; Venezuela-The Netherlands; Tunisia-Italy; Iran-Saudi Arabia; and the *Anglo-French Arbitration*.

⁴ See, for example, the agreements between France and Mauritius, New Zealand and the United States, Cuba and Haiti and Australia and France.

⁵ Certainly the Libya-Malta setting presents a factual matrix which is like no other and which must be approached in the context of its own peculiar characteristics.

effort to show that State practice accords the equidistance method a privileged status, the Maltese pleadings have misconceived the legal relevance of such practice to the actual delimitation between Libya and Malta. For what Malta fails to acknowledge is that the situation regarding State practice today is no different than it was in either 1969 or 1982 — the two previous occasions when the Court had occasion to comment on its legal relevance. As was fully discussed in the Libyan Counter-Memorial¹, State practice in the area of continental shelf delimitation does not amount to a “settled practice” as to any particular method. It neither demonstrates that States have felt themselves legally compelled to use a particular method of delimitation nor points to the fact that any one method has an *a priori* or privileged status.

4.15 The irony now presented by the Maltese Counter-Memorial is that Malta itself has acknowledged the limited value of recourse to State practice. In paragraph 145, the Maltese Counter-Memorial takes pains to downplay the significance of the fact that Australia and Indonesia took account of geomorphological features in arriving at their continental shelf boundary. Malta cites with approval an observation made by Judge *ad hoc* Jiménez de Aréchaga in his Separate Opinion to the *Tunisia/Libya* Judgment, and states that “the fact that in one case or another States may decide to fix boundaries of their continental shelves at a trench or depression may not be interpreted as being significant unless there was a legal obligation for them to proceed in this way²”. In Libya’s view, the same must be, and indeed has been, said about the significance of the use of the equidistance method³. Absent a legal obligation for States to apply equidistance (and there is no such obligation), examples of State practice where equidistance has been employed prove nothing to support the Maltese thesis.

4.16 The practice of States in the Mediterranean provides first-hand evidence of the potential dangers in drawing general conclusions from individual delimitation agreements. The Maltese pleadings have argued that this practice attests to the “normality and prominence of the equidistance method⁴” and “provides significant indicators as to the proper basis of an equitable solution in the present proceedings⁵”. As has been noted

¹ *Libyan Counter-Memorial*, paras. 5.54-5.60.

² *Maltese Counter-Memorial*, para. 145. As explained in BROWNE, I., *Principles of Public International Law*, Clarendon Press, Oxford, 1979, p. 5, citing BRIERLY, *The Law of Nations*, 6th ed.: “What is sought for is a general recognition among States of a certain practice as obligatory”. There is no such general recognition among States that application of equidistance, even as a “primary delimitation”, is viewed at all as being obligatory.

³ See, for example, *North Sea Continental Shelf, Judgment*, I.C.J. Reports 1969, pp. 44-45, para. 78.

⁴ *Maltese Memorial*, para. 198.

⁵ *Ibid.*, para. 200. See also the *Maltese Counter-Memorial*, para. 302.

during the course of these proceedings, Italy is a party to each of the delimitation agreements concluded thus far in the Mediterranean¹. Under the Maltese thesis, one would expect Italy to approach delimitation in the Central Mediterranean also on the basis of equidistance. But Italy's position appears to be quite different, as the proceedings devoted to Italy's Application for Permission to Intervene have brought out. Indeed, Counsel for Italy stressed that, although Italy had made use of equidistance for certain parts of delimitations to which it is a party, equidistance "is not an obligatory method for the delimitation of areas of continental shelf".

4.17 It appears that Malta, too, may now be coming around to this view of State practice inasmuch as Counsel for Malta stressed that:

"The considerations which lead to a particular conclusion in one case do not necessarily lead to the same conclusion in another, even in a neighbouring or possibly overlapping area²."

Thus all that existing delimitation agreements show is that boundaries based on equidistance have been used in the past in particular situations where they were equitable or regarded as such by the respective States for reasons valid in those situations. These agreements also show that many other methods have been used as well, each presumably tailored to the individual situations at hand.

(b) New Interpretations by Malta of Particular Delimitation Examples

4.18 The selective use of State practice which appeared in the Maltese Memorial has been continued in its Counter-Memorial where individual examples are introduced to support three new lines of argument endorsing equidistance. *First*, four cases are cited for the proposition that equidistance — without regard to the requirement of proportionality — had been used in what Malta terms "comparable geographical circumstances"³. *Second*, the Maltese Counter-Memorial introduces a category of examples involving what it terms "peninsular States" which are apparently designed to show the rejection of any reliance on the ratio of coastal lengths in arriving at boundary lines⁴. *Third*, five examples are advanced

¹ See *Libyan Counter-Memorial*, paras. 5.76-5.87. See also the statement by Professor Virally during the Oral Hearings on Italy's Application for Permission to Intervene. (CR 84/3, 26 Jan. 1984, p. 48). It is also of interest to note that Italy was a signatory of U.N. Doc. NG 7/2, Informal Suggestions Relating to Paragraphs 1, 2 and 3 of Articles 74 and 84, ICNT, during the Third Conference on the Law of the Sea.

² Statement made by Professor Virally during the Oral Hearings on Italy's Application for Permission to Intervene. (CR 84/3, 26 Jan. 1984, p. 49, English translation).

³ Statement made by Mr. Lauterpacht during the Oral Hearings on Italy's Application for Permission to Intervene. (CR 84/6, 30 Jan. 1984, p. 16).

⁴ *Maltese Counter-Memorial*, para. 253.

⁵ *Ibid.*, paras. 255-256.

which are designed to show that "significant sectors" of a delimitation line may be generated by one or two control points¹.

4.19 As for Malta's *first* category of State practice, the propositions for which the examples are advanced are so totally devoid of any reasoned analysis that it is very difficult for Libya to comment. Malta has presented four maps depicting the following delimitation agreements: Denmark-Norway; Bahrain-Iran; Norway-United Kingdom; and India-Indonesia. Also appearing on each of these maps is a second line labelled "hypothetical proportionality line".

4.20 It is said that the "hypothetical" lines have been constructed "on the basis of proportionality as propounded by Libya". But Libya has never advanced proportionality as a method or line of delimitation. If reference is made either to the background of the dispute or to Libya's discussion of proportionality in these pleadings, it is impossible to see how the Libyan position could possibly form the basis upon which Malta has arrived at these lines. Presumably, they have been drawn on the basis of some proportion calculated by Malta. Presumably also, Malta has employed coastal lengths to arrive at its proportions. But nowhere is it explained how this was done. It is not indicated, for example, which coasts Malta considered relevant to any of the delimitations portrayed and what coastal ratios Malta came up with. It seems likely, however, that Malta is not taking, as the basis for its calculations, the coasts that are actually relevant to the particular area to be delimited. Absent any reasoned analysis to make these examples intelligible, only brief comments need be made at this stage.

Denmark (Faroes) - Norway (Map No. 2, p. 113²)

4.21 The use of the median line in this situation bears no analogy to the present case. The relevant Danish and Norwegian coasts involved are of approximately equal length. The length of the boundary is restricted by the adjoining U.K.-Norway boundary, so that there is no possibility of the "fan-like" spread to the equidistance line as in the case of Malta. It should finally be noted that the Faroes may be regarded as "opposite" to only a very short stretch of Norwegian coast³, quite unlike that of Libya.

¹ *Maltese Counter-Memorial*, paras. 274-278.

² *Ibid.*, para. 253.

³ References in the parentheses to this delimitation agreement, as well as to those that follow, are to the *Maltese Counter-Memorial*.

⁴ See *Libyan Counter-Memorial*, Annex of delimitation agreements, No. 62. And for detailed comment on this agreement, see *Libyan Counter-Memorial*, paras. 5.65-5.66.

Bahrain - Iran (Map No. 3, p. 114)

4.22 The same comment may be made here. Given the broad equality of the coasts on opposite sides of the Gulf, the median line is the obvious, and equitable, solution. The length of Iranian coast deemed "opposite" to Bahrain is in fact very limited.

Norway - United Kingdom (Map No. 4, p. 115)

4.23 The Maltese Counter-Memorial mistakenly construes this example as a delimitation between Norway and the Shetland Islands. In fact, the delimitation is between Norway and Great Britain so that the delimitation cannot be interpreted as being solely one employing a median line which divides the shelves of Norway and the Shetland Islands *per se*. The shelf area attaches to the British Isles as a whole, and not to the Shetland Islands. Of course, the coasts of Scotland and northern England are also relevant to the delimitation and face a length of Norwegian coast which is comparable.

India - Indonesia (Map No. 5, p. 116)

4.24 This is a modified median line between two very short coasts, including on the one side the Nicobar Islands belonging to India and on the other a group of several smaller islands — including Rondo Island — belonging to Indonesia. This situation is not analogous to that of Libya-Malta¹.

4.25 Thus, not one of these examples is similar to the situation now before the Court. In addition, the construction of "proportionality" lines, being unsupported by any explanation enabling the examples to be understood, is meaningless. What Malta has actually demonstrated is an unwillingness to appreciate and grapple with the factual setting of each example that has been put forward. As in the present case, so also in its hypothetical constructs, Malta has failed to identify which coasts are genuinely relevant to the delimitation.

4.26 In the *second* category of examples referred to in the Maltese Counter-Memorial the notion of so-called "peninsular States" is introduced. Five examples are put forward but, here again, it is unclear precisely what these examples are designed to show. As the maps themselves demonstrate, none of these new examples is at all comparable to the Libya-Malta setting. Accordingly, although a brief comment on each example is offered below, Libya respectfully refers the Court to the Annex of delimitation agreements which accompanied Libya's Counter-Memorial where a fuller treatment of these examples, together with a map of each, may be found.

¹ See *Libyan Counter-Memorial*, Annex of delimitation agreements, No. 41. See also *Map 7*, facing p. 44, below.

Denmark - Norway (Map No. 6, p. 118)

4.27 This is a median line between two broadly equal and similar coasts¹: the coasts are initially opposite (in the Skagerrak) and then assume a lateral relationship (facing the North Sea). The median line in fact respects the broadly equal ratio of the two coasts.

Iran - Qatar (Map No. 7, p. 119)

4.28 As indicated above, this median line boundary lies between two broadly equal, and similar, coasts in a very shallow area.

United Kingdom - Denmark (Map No. 8, p. 120)

4.29 This is a very short line (only about 11 nautical miles long) and is also restricted by other boundaries running up the North Sea and lying between broadly equal coasts². The Danish coast has to be seen, not in isolation, but as a sector of the coast which stretches from the Netherlands, to the Federal Republic of Germany, to Denmark and to Norway: and all of the coast is opposite the United Kingdom. The North Sea is typically an area where, save for the special problem of the German concave coast, a median line will effect a roughly proportionate allocation of shelf areas in the ratio of coastal lengths. As such, there is little similarity to the Libya-Malta situation.

Iran - Oman (Map No. 9, p. 121)

4.30 Like the Bahrain/Iran and Qatar/Iran boundaries, this is simply one segment of a long, overall boundary between opposite coasts that are roughly comparable in length, if not entirely equal³, in an area where there is no significant sea-bed relief.

Australia - Papua New Guinea (Map No. 10, p. 122)

4.31 The comment in the Maltese Counter-Memorial is that "Cape Yorke Peninsula and its off-lying islands have been given normal weighting". As the map itself shows, the Torres Strait is narrow, and the Cape Yorke Peninsula is enormous. In essence, the delimitation line falls between two stretches of coast which are roughly equal in length. Thus, it is impossible to discern the analogy with the Libya-Malta situation.

4.32 The purpose of the first two categories of State practice referred to in the Maltese Counter-Memorial appears to be twofold: *first*, to demonstrate the adoption of median line delimitations in State practice, and, *second*, to prove the irrelevance of coastal configurations and the ratio of coastal lengths. What the review actually achieves is precisely the opposite. It simply demonstrates the rather obvious fact, noted repeatedly

¹ *Libyan Counter-Memorial*, Annex of delimitation agreements, No. 12.

² *Ibid.*, No. 13.

³ *Ibid.*, No. 40.

in the Libyan pleadings, that with broadly equal, opposite coasts, and absent any other distinct features or circumstances, the median line will normally afford an acceptable solution because it will, in practice, effect a delimitation of shelf areas in proportion to the length of the relevant coasts. The problem in the present case arises for two reasons which are peculiar to this case and which have no counterpart in the examples used by Malta. The first reason is the existence of a fundamental discontinuity between the two shelf areas — the Rift Zone — and the second reason is the glaring disparity in the coastal lengths of Libya and Malta. In other words, the essential justification for the median line solution in the illustrations of State practice used by Malta is not present in the Libya-Malta situation: there is simply no analogy.

4.33 As noted above, there is a *third* use to which State practice is put in the Maltese Counter-Memorial¹. This is to show that a limited number of basepoints can “generate” a long segment of a delimitation line and, thus, a large area of shelf. Five examples are given; yet, as a close examination of them reveals, they do not offer any similarities to the present case. In the analysis of these boundaries Malta confuses the basepoints which are used for the construction of a line (such as an equidistance line) with the relevant coasts from which the land territory extends into and under the sea, and which generate the coastal State’s entitlement to continental shelf.

4.34 The first example — the delimitation between Norway and the United Kingdom — illustrates how the tip of the Shetland Islands controls the construction of the northern portion of the line. It fails to indicate, however, which points were influential on the Norwegian coast. Malta has simply decided not to draw in the corresponding lines. Libya suspects that perhaps only one point on Norway’s coast would have controlled the northern sector of the line, too. All this shows, therefore, is that single points on each side acted as basepoints for the construction of the boundary. This does not mean, however, that there was a disproportion between the lengths of the relevant coasts involved as there is in the present case between the length of relevant Libyan coast and that of Malta.

4.35 The maps showing control points for the Bahrain-Iran, Denmark-United Kingdom and India-Indonesia agreements are equally meaningless. In the first two cases, again, a single point controls the line on each coast. This only illustrates how a limited stretch of coast of *each* State can properly be identified as being pertinent to the delimitation. The significant fact is that the coasts involved were roughly equal in length and there were no fundamental discontinuities between clearly distinguishable shelf areas on each side. As for the example of the delimitation between

¹ See *Maltese Counter-Memorial*, paras. 275-278 and the maps on pp. 135-139, therein.

India and Indonesia, the Maltese map demonstrates that the coastal lengths or coastal fronts on the Nicobar Islands, on the one hand, and on Indonesia (or between the two small islands lying just offshore), on the other, were approximately equal. *Map 7* illustrates this example and shows the manner in which the examples chosen by Malta bear little similarity to the Libya-Malta situation. Absent any other compelling circumstances in the India-Indonesia example, one would expect an equidistance line to be drawn between such comparable coasts.

4.36 All the examples illustrate the same fundamental error. The error lies in assuming that it is the basepoints as such which "generate" a shelf area. The truth is that the shelf is a prolongation or extension from the coast of the landmass or land territory (not of one or more basepoints) into and under the sea, and the area of shelf attaching to a coastal State is an extension of the landmass of that State, normally measured and represented by its coastal length. What determines the appropriate method of delimitation is the relationship of the two landmasses and the two coasts, viewed in the context of all the relevant circumstances. It may well be that the relationship is such that the appropriate method is not equidistance — as in the situations before the Court in its 1969 and 1982 Judgments — in which case the basepoints become totally irrelevant, since application of the appropriate method will not depend upon them. Even where equidistance, in one form or another, strict or modified, is an appropriate method, the shelf area is "generated" by the respective landmasses and coasts, and how many basepoints are used to construct the boundary line which properly reflects the relationship between the two coasts is often purely fortuitous, depending on the configuration of the coasts in question. The sectors actually shown by Malta show the use of *two* (Norway/U.K.), *one* (Bahrain/Iran), *one* (U.K./Denmark), *five* (Spain/Italy)¹ and *five* (India/Indonesia) basepoints. But what does this prove? It proves nothing more than, given that the relationship of the two landmasses and the relevant lengths of the two coasts justified the use of the equidistance method, the particular delimitation line was arrived at by the use of one or more basepoints on each side. Yet to assert that it is the basepoints which "generate" the shelf, and that somehow equidistance can alone reflect the relevant coasts, is simply incorrect.

4.37 In summary, what is significant about the Maltese use of State practice is its inability to find any example really comparable to the Libya-Malta setting. This emphasises the importance of the point made by Libya, namely, that the appropriateness of any method of delimitation depends on the particular facts of each case and that there is no basis for a claim that any method has a privileged, let alone obligatory, character.

¹ Four basepoints on Minorca; five on Sardinia.

2. Other Considerations Advanced by Malta

4.38 The remaining arguments raised by Malta to support equidistance as a *legal principle center around four main contentions* already discussed in considerable detail in the the Maltese Memorial: (i) the alleged “general toleration” of the equidistance method by the international community; (ii) the need for finality and stability in the use of delimitation methods; (iii) the alleged support for Malta’s position in the jurisprudence; and (iv) the principle of the equality of States. Since the Maltese Counter-Memorial has only mentioned these aspects in most summary fashion without adding any substantive argument, comment here can be brief¹.

4.39 In Chapter IX of its Counter-Memorial, Malta relies on the so-called “general toleration” of the international community in support of the assertion that equidistance is the equitable solution, sanctioned by State practice and “analogous considerations”, referring to the *Anglo-Norwegian Fisheries* case where the Court had used this argument with respect to the Norwegian straight baselines system². Apart from the fact that there is not the slightest evidence of such a “general toleration” or acquiescence in Malta’s claim for equidistance boundaries around its coast, the best evidence against such a “general toleration” can be found in the proceedings of the Third Conference on the Law of the Sea. As pointed out in detail in the Libyan Counter-Memorial³, the proceedings of this Conference and the final version of Article 83 of the 1982 Convention on the Law of the Sea demonstrated the absence of any consensus on the acceptance or “toleration” of equidistance as the primary or preferred method for continental shelf delimitation. It is a travesty of the history of the Conference, and a misrepresentation of the general opinion of the international community, to pretend that there exists *general support* amongst States for the idea that equidistance has a special, preferred status and is accepted as being generally synonymous with an equitable result⁴.

4.40 Malta then argues that because quite a number of existing delimitation agreements — some of them allegedly in situations “comparable to that of Malta and Libya” — have made use of the equidistance method, it would create an “atmosphere of uncertainty” if the Court were to sanction

¹ See, for example, Chapter IX of the *Maltese Counter-Memorial*. For a detailed rebuttal of these contentions initially introduced in the *Maltese Memorial*, see generally the *Libyan Counter-Memorial*, Chapters 3, 4 (B) and 5.

² The citation to the *Anglo-Norwegian Fisheries* case in support of this proposition, at p. 146 of the *Maltese Counter-Memorial*, is offered without further explanation, and wisely so since it had absolutely nothing to do with continental shelf delimitation or with the status of the equidistance method.

³ *Libyan Counter-Memorial*, paras. 5.29-5.33.

⁴ See *Libyan Memorial*, Chapter 7, and *Libyan Counter-Memorial*, Chapter 5.

a different method in this case¹. This argument also merits only the briefest response. *First*, Malta has been unable to disclose any existing delimitations which are in situations truly comparable to that of Libya and Malta. *Second*, the whole trend of the Court's Judgments in 1969 and 1982, and the Court of Arbitration's Award in 1977, has been to stress the specific characteristics of each particular situation, and to base the appropriateness of a method of delimitation on those specific characteristics. And, *third*, there is no evidence that States rely on the expectation that the Court would, in principle, endorse the equidistance method as the preferred method most likely to yield an equitable result. Indeed, given the widespread opposition to even mentioning equidistance in Article 83 of the 1982 Convention, it is inconceivable that States would have agreed to the final wording of that Article had they expected the Court to endorse the general applicability of the equidistance method.

4.41 It remains part of the Maltese legal argument that the jurisprudence in matters of continental shelf delimitation, namely the two Judgments of the Court in 1969 and 1982, and the Award of the Court of Arbitration in 1977, does not controvert Malta's thesis of the preferred status of equidistance as the most appropriate method apt to produce an equitable result². Clearly, Libya does not share this view of the import of those decisions³. In neither of its Judgments did this Court adopt equidistance, and it expressly denied to equidistance any obligatory or preferred status as a method which has to be tried as a "first step" in delimitation⁴.

4.42 It is, of course, true that in the *Anglo-French Arbitration* the Court of Arbitration adopted for parts of the boundary a method based on equidistance. However, in that case both States were parties to the 1958 Convention⁵, and their mainland coasts were broadly equal in length with no fundamental discontinuities of the sea-bed or subsoil lying between⁶. Moreover, in relation to the two groups of islands which created the real difficulties in the delimitation — the Channel Islands and the Scilly Isles — the Court of Arbitration used a 12-mile enclave and "half-effect". So even this decision lends no support to the Maltese thesis.

¹ *Maltese Counter-Memorial*, paras. 299-300.

² *Ibid.*, paras. 164-171.

³ For the Libyan analysis of those decisions see the *Libyan Memorial*, paras. 6.11, 6.20, 6.23, 6.56-6.59 and the *Libyan Counter-Memorial*, paras. 5.03-5.09.

⁴ See *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 35-36, paras. 55-56; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 78-79, paras. 109-110.

⁵ Although, it must be added, the Court found that, by reason of the French reservation, Article 6 did not apply to the Channel Islands sector.

⁶ The Court of Arbitration went out of its way to stress the overall equality of the mainland French and British coasts, mentioning this equality no less than four times in the space of six paragraphs in its Award; *Anglo-French Arbitration, Decision of 30 June 1977* (Cmd. 7438), pp. 93-95, paras. 196-201.

4.43 The Maltese Counter-Memorial in fact concedes that "at first sight" the reasoning of the 1982 Judgment appears contrary to Malta's thesis¹. But then Malta attempts to distinguish the 1982 Judgment on two grounds. The first is that the Court was not dealing with opposite coasts. Yet the Court noted expressly that, in the second sector, the relationship between the Tunisian and Libyan coasts was largely transformed "from that of adjacent States to that of opposite States"². The second is that the Court's Judgment was specific to the facts of that case. But of course! It is precisely Libya's position that the method which is appropriate must be determined on the facts of each case, and it is Malta which seeks to confer on equidistance some general, abstract virtue as a method appropriate in all cases of opposite coasts. Thus, neither of the alleged grounds for distinction in fact serves to support Malta's attempt to construe the 1982 Judgment as a decision in favour of Malta's thesis.

4.44 The Maltese Counter-Memorial also seeks to prove, by reference to the 1982 Judgment³, that in practice Courts do use equidistance as a starting-point, whatever they might say. The argument is that otherwise the Courts could not decide whether or not equidistance produced an inequitable result without first trying that method. But this is pure speculation and does not address the real issue. In any event, a Court's preliminary essay, perhaps involving a whole series of possible methods, does not involve giving to any one of those methods a preferred or special status. As the Court has said, it is the coasts that provide the starting point⁴, not the method, so that whichever method is used in the initial, tentative essay by a Court, it is still the result of the Court's evaluation of the coasts and other relevant factors, and not the result of that method having some special status.

4.45 In the light of these contentions, it comes as something of a surprise to find the Maltese Counter-Memorial conceding that there has been a "toning down of equidistance" over the past 15 years⁵. Malta argues that this "toning down of equidistance" does not mean that use of the equidistance method always produces an inequitable result. Of course this is true, and Libya is well aware that in certain circumstances an equitable solution can be achieved by use of either strict or modified equidistance just as under other circumstances different methods are

¹ *Maltese Counter-Memorial*, para. 170.

² *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 88, para. 126. In addition, it may be noted that the Court took account of both lengths of Tunisia's coast for purposes of applying the proportionality test.

³ *Maltese Counter-Memorial*, para. 170. It may be noted that the references really relied on by Malta in para. 171 are to separate or dissenting opinions.

⁴ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 61, para. 74.

⁵ *Maltese Counter-Memorial*, paras. 163-164.

called for. But this hardly supports the Maltese contention that equidistance must be used as a first step — as a kind of “primary delimitation” which is presumed to be equitable until proven otherwise. The jurisprudence upon which Malta has sought to rely suggests precisely the opposite approach whereby no single method may be said to possess an *a priori* validity. As the Maltese Counter-Memorial admits, “equidistance cannot *always* be regarded as equitable”¹.

4.46 The final argument to which Malta has resorted rests upon the principle of the equality of States. The Maltese Counter-Memorial spared no effort in pressing its claims on this point, going so far as to accuse Libya of misunderstanding “the fundamental principle of the sovereign equality of States”².

4.47 Libya’s views on the principle of equality of States and the applicability of this principle to matters of continental shelf delimitation were fully discussed in the Libyan Counter-Memorial and need not be amplified here³. However, it may be pertinent to recall that the issue of the equality of States was raised by one of the parties to a previous case involving continental shelf delimitation — the *Anglo-French Arbitration*. As a result, the Court of Arbitration had occasion to comment on this principle and its relation to questions of delimitation. In language which is crystal clear in its import and which disposes of the Maltese contention, that Court stated:

“In the opinion of the Court, the doctrine of the equality of States . . . cannot be considered as constituting such an equitable ground. The doctrine of the equality of States, applied generally to the delimitation of the continental shelf, would have vast implications for the division of the continental shelf among the States of the world, implications which have been rejected by a majority of States and which would involve, on a huge scale, that refashioning of geography repudiated in the *North Sea Continental Shelf* cases. Any ground of equity, the Court considers, is rather to be looked for in the particular circumstances of the present case and in the particular equality of the two States in their geographical relation to the continental shelf of the Channel⁴.”

4.48 The conclusion that may be drawn from an examination of all the legal grounds which Malta puts forward to support its claim for equidistance as the method required by law is that this claim is without substance. Neither State practice, nor the record of the Third Conference on the Law

¹ *Maltese Counter-Memorial*, para. 164.

² *Ibid.*, para. 13. By allegedly disregarding this principle, Libya is also said to be refashioning geography; *ibid.*, para. 328.

³ *Libyan Counter-Memorial*, paras. 4.02-4.08.

⁴ *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 93, para. 195.

of the Sea, nor the judicial precedents, nor the concepts of "finality" and "general toleration", nor the principle of equality of States afford any support for the Maltese thesis. It is necessary, therefore, to turn to Malta's use of the "facts" of the present case in order to show that they do not give any support to Malta's thesis either.

B. The Maltese Argument to Justify Equidistance Based upon Considerations Claimed to be Relevant

4.49 Chapter X of the Maltese Counter-Memorial begins with the proposition that the coasts of the Parties indicate the "primary delimitation" (which in Malta's view is equidistance), and that the equity of this primary delimitation must then be tested in the light of other relevant factors¹. These appear to be six in number, namely:

- (i) Malta's special dependence upon sea-bed energy resources;
- (ii) Malta's requirements as a developing country;
- (iii) Malta's considerations of national security;
- (iv) Malta's range of fishing activity;
- (v) the conduct of the parties; and
- (vi) the constriction of Malta's continental shelf by the presence of third States in the region.

4.50 It has to be said that, in outlining these factors, the Maltese Counter-Memorial contains nothing new as to the facts, and simply repeats arguments already made in the Maltese Memorial. These have already been dealt with in the Libyan Counter-Memorial² (and, in the case of Malta's claims relating to the conduct of the Parties, in Chapter 2 above). It is only necessary, here, to emphasise three points. The *first* is that Malta treats as "relevant" factors those very economic and political factors which Courts have already rejected as being irrelevant and extraneous to shelf delimitation³. The *second* is that these alleged factors still lack real substance. For example, we are still not told what the security considerations are which concern Malta (except in the most general sense that all States are said to be concerned to control activities immediately off their coasts⁴). Nor are we given any more evidence about Malta's alleged fishing activities in the area in dispute. And the reference to delimitations vis-à-vis third States remains one of extreme vagueness⁵. Yet it is the *third* point which needs most emphasis, for it remains the case that nowhere does Malta explain why any of these factors point to, or relate to,

¹ *Maltese Counter-Memorial*, paras. 303-306.

² *Libyan Counter-Memorial*, Chapter 3 (paras. 3.02-3.46) deals with the economic, fishing, security and other political arguments advanced by Malta; Chapter 1 deals with the conduct of the Parties; and Chapter 2, A. 4 (paras. 2.18-2.28) with the presence of third States.

³ *Libyan Counter-Memorial*, para. 3.02.

⁴ *Maltese Counter-Memorial*, para. 314.

⁵ *Ibid.*, paras. 317-318.

an equidistance line as the method which would reflect the balancing of these factors and would lead to an equitable result. Why do economics or fishing practices or the presence of third States point to equidistance in this case? Why not an enclave of 25 miles to be consistent with Malta's 25-mile fishing zone? Or 24 miles to be consistent with Malta's contiguous zone, or even less to be consistent with Malta's view as to how the Italian Pelagian Islands should be treated?

4.51 It might have been thought that answers to these questions would be found in the following Chapter XI of the Maltese Counter-Memorial, which sets out the significance of the legal framework of this particular delimitation, but that is not so. All Chapter XI does is to restate, in the most abstract terms, the four "significant" principles of non-encroachment, equitable considerations¹, "distance", and equality of States. So one is no nearer to understanding what exactly are these relevant factors that confirm the equitable nature of the equidistance line in this particular case. They would appear to be a matter of mere assumption rather than of factual demonstration or logical argument. Not surprisingly, therefore, exactly the same difficulty is faced in attempting to discern the elements of the new "flexibility" hinted at in the Maltese Counter-Memorial.

C. Hints of "Flexibility" in Malta's Approach to Equidistance

4.52 It is not entirely clear whether, according to Malta, consistency² or flexibility³ is the more virtuous. Be that as it may, certainly one notable feature of the Maltese Counter-Memorial is its recognition that equidistance may not be the appropriate boundary in the present case. Indeed, Malta admits to the "toning down of equidistance"⁴ and to the fact that equidistance does not always produce an equitable solution. In the words of the Maltese Counter-Memorial—

" . . . in order to avoid all misunderstanding, Malta considers it necessary to state that in adopting this equidistance line as the starting point of the delimitation process, it does not intend in any way to suggest that the equidistance line must necessarily be — in some inherent way — the appropriate boundary in every case, or even in the present case⁵."

¹ These, listed at para. 330(j), are in large part a repetition of the considerations already set out in Chapter X.

² See the Maltese tribute to the consistency of its position, and its criticism of the alleged change in the Libyan position, in the *Maltese Counter-Memorial*, Chapter V, paras. 261-269.

³ *Maltese Counter-Memorial*, paras. 163-165.

⁴ *Ibid.*, para. 163.

⁵ *Ibid.*, (italics added).

The idea now being put forward seems to be that the geographical relationship between the two coasts dictates a *primary* delimitation¹; that, in the case of opposite coasts (or States), this is the median line which is *prima facie* equitable²; and that this line may be adjusted in the light of all the relevant circumstances². This adjusted line would presumably give the *secondary* (and final) delimitation, being the line which reflected all the relevant circumstances.

4.53 The idea of a primary and secondary delimitation is clearly not the same as that used by the Court of Arbitration in the *Anglo-French Arbitration* of 1977³. There the Court had drawn a median line boundary between the two, broadly equal mainland coasts as a first stage and then turned to the particular problem of the Channel Islands as a second stage in devising an equitable solution for those islands by a second, separate boundary: in the event, a twelve-mile enclave. But here the Maltese Memorial says expressly—

“ . . . the process of delimitation does not involve two successive stages any more than the application of equity, in other spheres of international law, involves the successive application of a general rule followed by the application of a particular rule which derogates from it. Equity consists not in that, but in a reasonable application, taking into consideration all the circumstances of the case, of the general rule⁴.”

4.54 So, if the delimitation process is not to be separated into two stages, of what does the “primary” delimitation consist? It is not possible to discern the answer to this question with any clarity from the Maltese pleadings. It would seem that Malta still has in mind a median line which is legally presumed, *prima facie*, to be equitable. Although Malta claims to be willing to test that presumption by reference to the relevant factors, this never materialises. Theoretically according to the Maltese framework, that “testing process” could lead either to confirming the line as an equitable result, or modifying it to conform to an equitable result. But in either case, evidently, the median line has a preferred or privileged status because of the presumption. However, as Libya has shown⁵, neither this proposition, nor the Maltese approach which relegates the role of the relevant circumstances to one of secondary importance, is consistent with the law.

¹ *Maltese Counter-Memorial*, paras. 162-163. But note that we are still not told precisely which are the two relevant, opposite coasts.

² *Ibid.*, para. 166.

³ *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), paras. 201 ff.

⁴ *Maltese Counter-Memorial*, para. 176 (*italics deleted*).

⁵ *Libyan Counter-Memorial*, Chapter 6. See also Chapter 3, Section B, above.

4.55 In the present case, it is Malta's view that the relevant circumstances confirm the equitableness of the median line. However, as shown in Section B above, there is no means of knowing why this may be so, since Malta has failed to explain why or how the circumstances alleged by Malta to be "relevant" support that specific line of delimitation.

4.56 It necessarily follows that the flexibility hinted at in the Maltese Counter-Memorial does not really materialise. It remains, for Malta, a purely theoretical idea precisely because Malta proceeds on the basis of a presumption of the equitableness of the median line and totally fails at any stage to test that presumption by reference to the actual, relevant facts of this particular delimitation or by reference to the criterion of proportionality.

CHAPTER 5

ISSUES REGARDING THE PHYSICAL FACTORS AND CIRCUMSTANCES OF THE PRESENT CASE¹

5.01 On the geographical plane, the Maltese Counter-Memorial has added little to the treatment accorded geography in the Maltese Memorial. Nor has it called into question the geographical facts set forth by Libya in its Memorial. The principal new material in Malta's Counter-Memorial relates to geomorphology and geology. Here too, however, the Maltese Counter-Memorial and accompanying technical annexes have not seriously disputed the geomorphological and geological facts adduced by Libya². This should come as no surprise, for the scientific facts are straightforward and are based on objective, readily observable data³.

5.02 Yet the Maltese Counter-Memorial has sought to create a rather different impression. To this end, it has resorted to the technique, noted earlier, of misstating Libya's position as to the facts both in this case and in the previous case between Libya and Tunisia. It has also tried to demonstrate inconsistencies in Libya's presentation, division amongst the scientists, and even a certain liberty on the part of Libya in dealing with the facts. These techniques seem aimed at giving the misleading impression that there is significant disagreement between the scientists advising the two Parties and even amongst those advising Libya; that the Libyan case includes distortions of the evidence; and that the scientific facts are too complex or ambiguous to be of value to the present case.

5.03 Such an outcome would probably be welcomed by the other Party, which favours a solution couched in abstraction and bolstered by tenuous analogies with other delimitations. Libya regards the facts of the particular case to be a critical element in the resolution of the dispute and believes that they are sufficiently unambiguous to enable them to be balanced up so as to achieve an equitable delimitation. Indeed, the Memorials and Counter-Memorials already before the Court show that by and large the scientists on both sides have come to the same general conclusions.

¹ See *Libyan Counter-Memorial*, fn. 2 at p. 23, where the term "physical factors" is defined to include features of a geographical, geomorphological and geological character.

² There are, however, certain errors of facts and differences of interpretation that will be dealt with further on in this Chapter.

³ It is of interest to note that during the Oral Hearings on Italy's Application for Permission to Intervene, Italy's description of physical factors relevant to the present case closely approximated that given by Libya. (CR 84/1, 23 Jan. 1984, pp. 37-39).

A. Geographical Facts

5.04 Malta's neglect of coastal details was brought out in Libya's Counter-Memorial; it was contrasted with the detailed treatment given by Libya to the coastal geography of both Libya and Malta¹. The entire first Chapter of Malta's Counter-Memorial is a transparent deformation of the geographical facts put forward by Libya, making any detailed refutation of the many exaggerations (such as Malta being represented as "not really an island" or, if so, as a one-sided, or a "kind of unilateral island") seem hardly necessary at this stage. However, when the Maltese Counter-Memorial asserts in paragraph 10 that Libya regards the coasts of Malta to be "insignificant", it entirely misses the point. The lengths of the coasts of the Maltese Islands as well as those of Libya, the directions in which they face, their configurations, and their relationships to each other and to the areas of continental shelf to be delimited are all geographical factors that have major significance in the present case. These involve matters of fact rather than of opinion. They must be examined as they actually are and not on the abstract, hypothetical plane upon which the analysis in the Maltese pleadings rests.

5.05 Given the extensive description of the coasts of the Parties in the Libyan Memorial, some factual discussion of the coasts might have been anticipated in the Maltese Counter-Memorial. There is virtually none — merely a series of broad assertions (strongly reminiscent of the Maltese Memorial) together with the same lip-service given to the importance of geography as a factor in delimitation. To Libya's detailed description of the coasts of the Parties is opposed the assertion by Malta that they are "facing coasts"; to Libya's analysis of the "relevant coasts" and the "relevant area" is opposed a geometrical construct — the trapezium. It is as if Malta could not deal with the actual facts of the case and has been compelled to invent a geographical case divorced from these facts and built instead around abstractions and hypotheses². Yet, in so doing, Malta has not put into dispute the actual facts set forth and illustrated in Libya's pleadings³.

¹ *Libyan Counter-Memorial*, paras. 2.30-2.35; 2.43-2.44. It is, thus, remarkable to find the title of the initial Chapter of the *Maltese Counter-Memorial* to read: "The Substance of the Libyan Case: Malta Disregarded". See para. 3, above, of the Introduction to this Reply and fn. 2 at p. 2.

² Similarly, Malta's constant resort to examples taken from State practice in quite different geographical settings is an attempt to escape from the geographical realities of the present case.

³ The *Libyan Counter-Memorial* added some commentary on the Maltese baselines that had made their first official appearance (to the knowledge of Libya) in the *Maltese Memorial*, and any remarks of Malta regarding these baselines presumably will appear in its Reply. However, it may be noted that the Maltese baselines demonstrate how little of Malta's very short lengths of coast, facing as they do the coasts of third States, may be regarded as facing the coasts of Libya.

5.06 The Maltese Counter-Memorial has made it increasingly clear that not only does Malta regard the factor of coastal lengths as irrelevant to delimitation, but also that the only geographical factors that it regards as relevant are the "oppositeness" of the coasts of Malta and Libya and the "considerable distance" separating them¹. To these is added the "absence of intervening islands or other unusual features". The relationship of the coastlines of Libya and Malta is described as "remarkable only in terms of its normality"².

5.07 From these conclusions of "fact", Malta asserts that, since the "primary elements in the geographical facts are uncomplicated", each "pertinent coast should be given its appropriate legal significance on the basis of the distance principle and the use of controlling basepoints"³. Stated in different words, Malta asserts (after suggesting that the Libyan Memorial shows a certain "obsession" with the length of the Libyan coastline) that the "location and relation of coastlines are the over-riding factors and the dominant geographical features in consequence is [*sic*] the position of Malta at a distance from the Libyan coast and the absence of any intervening islands or other unusual features⁴."

5.08 It is impossible to accept these assertions as constituting a serious treatment of the geography that characterises the present case. Which coasts of Malta and Libya are "opposite" to each other and relevant to the delimitation? What is the "appropriate legal significance" which Malta contends each stretch of coast should receive? What is the factor of distance between the coasts of the Parties that is said to be of such significance and how is it significant — and between which coasts? Compared to other situations around the world, what is "normal" about the relationship between the coastlines of Libya and Malta, a relationship not in any way described other than to state that certain unspecified coastlines are said to bear an opposite relationship to each other? An island necessarily has an opposite relationship to surrounding coastal States. But not all of its coasts are opposite to all of the coasts of these surrounding States any more than Valletta can be said to lie opposite to Tripoli, and not all of its coasts are necessarily relevant to a particular delimitation with any one of these neighbouring States.

5.09 As was pointed out in the Libyan Memorial⁵, the preliminary question to be answered regarding the coasts of the Parties is what relationship, if any, particular portions of the coast of each Party have with each other and with the area of continental shelf to be delimited. This

¹ See, e.g., the *Maltese Counter-Memorial*, para. 270.

² *Ibid.* See also para. 3.20, above.

³ *Maltese Counter-Memorial*, para. 270.

⁴ *Ibid.*, para. 274.

⁵ *Libyan Memorial*, para. 10.08.

question cannot be answered in abstract terms. It has significance only in the context of the actual delimitation of maritime areas lying between the two States and bearing in mind the presence of third States and third State delimitations. Italy's Application for Permission to Intervene in the present case and the resulting Judgment of the Court in the matter brought this point home very clearly. However, this essential question goes unanswered by Malta which seeks refuge in "oppositeness" as a general, abstract concept and in basepoints which cannot be said to "face" in any direction¹.

5.10 Libya believes that a reasonably precise determination of these relationships is essential and that this requirement does not vanish merely because an island is involved, the coasts of which necessarily bear a relationship with the coasts of other States surrounding this island. The special geographical position of Malta is that of a group of small islands almost surrounded by continental States in a constricted sea. Only a part of the coasts of the various Maltese Islands can count in respect to continental shelf delimitation with each surrounding State. The fact that Malta is a group of small islands necessarily leads to another result that seems to have eluded Malta — it is bound ultimately to be enclaved, whatever means of delimitation are agreed between Malta and its neighbours². It is tempting, therefore, by way of rejoinder to suggest that it is Malta which is ignoring itself in the present case.

5.11 The "relationship/distance" theme reappears in paragraph 245 of the Maltese Counter-Memorial where diagrams are used (Figures 5 and 6 at pages 109 to 110) in attempted explanation. What these diagrams (Diagrams A and B) show, taken on the basis of Malta's own explanations and as conceded by paragraph 245 itself, is that the distance between the coasts (the factor h) is not an element in the result. So in just what way distance is regarded by Malta as a major geographical factor in the present case is left quite unclear. By contrast, it was shown in paragraph 7.26 of the Libyan Counter-Memorial that increasing the distance between coasts of unequal lengths has the effect of distorting the coastal relationships in the context of continental shelf delimitation by allocating to the State with the shorter coast a disproportionate, and hence inequitable, area of continental shelf. The Maltese pleadings fail to recognise or explain this fact, which is the true meaning of distance as a relevant

¹ Malta's failure to deal seriously with either its coasts or those of Libya hardly comports with what the Court had to say about the importance of coasts in para. 73 of its 1982 Judgment. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 61, para. 73.

² In a sense, however, an island enjoys a certain geographical advantage since, unlike a mainland State, it may claim maritime rights all around its territory.

circumstance in the present case and, thus, constitutes a major issue between the Parties¹.

5.12 With regard to the factor of size, Malta is understandably sensitive. If geography is not to be refashioned, however, the size of Malta and the size of Libya are undeniable facts relevant to the question of delimitation. Apparently, Malta does not grant any relevance to the factor of size whether in terms of coastal lengths or size of land territory or landmass.

- ①7 Map 18 facing page 166 of the Libyan Counter-Memorial (which has been reproduced as *Map 8*, facing this page) demonstrates how unrealistic is the basis of Malta's claim. For the dotted portion of this Map represents what Malta regards as the area of natural prolongation of the land territory of Malta that overlaps the area of natural prolongation of the land territory of Libya. It will be seen that Malta regards the two natural prolongations as identical. But the coasts of Malta from which the lines project do not even face Libya, and the only Maltese coastal segment facing southeast toward the vast area of the Ionian Sea - Sirt Rise encompassed within the Maltese trapezium figure is a mere 5.4 kilometres in length. Can these areas really be said to constitute as to Malta "a prolongation or continuation of that territory, an extension of it under the sea", to use the words of the Court in its 1969 Judgment²? The contention expressed by the trapezium is totally incongruous — it defies common sense — and it does so because of the very small size of Malta compared to that of Libya. It surely would be — to borrow the phrase used in the Maltese Memorial — a "massive encroachment" on the natural prolongation of Libya seaward from its coast facing northward toward the Ionian Sea to grant this contention of Malta expressed by the trapezium figure.

5.13 As to Malta's reliance on basepoints rather than coastlines, Malta does not identify the basepoints upon which it relies. Quite aside from this oversight, it remains for Malta to demonstrate how basepoints reflect the coastal relationships of Libya and Malta and how, in themselves, they "generate" continental shelf rights³. Basepoints cannot be relied on to escape from an examination of actual coasts and coastal relationships. Natural prolongation of the land territory or landmass of a State starts from the coastline. In this respect, baselines or coastal fronts

¹ The Court has recognised that the greater the distance from the coasts of a State the greater is the likelihood that equidistance can lead to an inequitable result. See *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 37, para. 59. This observation, made by the Court in the context of adjacent coasts, would apply, *mutatis mutandis*, in a situation of opposite relationship between coasts, particularly where there is, in addition, a major disproportion between the respective lengths of coasts.

² *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 31, para. 43.

³ See para. 4.36, above.

are relevant, not basepoints, for only the former reflect the length, shape and direction of the coasts.

5.14 Another issue that has been avoided by Malta is the relevant area in the present case, a matter intimately connected with the question of the relevant coasts of the Parties¹. The relationship of the relevant area to the element of proportionality is taken up in Chapter 7 below. Insofar as the physical factors of the present case are concerned, it may be deduced that Malta regards the relevant area in the present dispute to be the area of shelf between the two Parties underlying the Pelagian Sea in spite of Malta's *claimed equidistance line extending far to the east into the Ionian Sea*. A number of the scientific assertions in the Maltese Counter-Memorial can only be construed, even accepted on their own terms, as referring to the areas of shelf underlying the Pelagian Sea, and not to areas east of the edge of the Pelagian Block marked by the line of Escarpments and Fault Zone². Certainly the Maltese assertion that the area is a "geological continuum" can have been intended to refer only to the areas of sea-bed and subsoil south of the Rift Zone underlying the Pelagian Sea.

B. Sea-Bed and Subsoil Features and Characteristics

5.15 The Maltese pleadings appear to contain an internal contradiction regarding the relevant areas of sea-bed and subsoil. On the one hand, they have tried to play down the Rift Zone in order to sustain the claim that the entire shelf area between Malta and Libya is a "geological continuum". On the other hand, the technical notes appearing in Annex 2 of the Maltese Counter-Memorial prepared by Malta's scientific advisers refute any notion of a "continuum". The existence of the Rift Zone is confirmed by these papers, although it is given a different name — "The Central Trough and Ridge System" — and efforts to point up the importance of features to the south of the Rift Zone, both in the sea-bed and the subsoil, can hardly be regarded as consistent with any "continuum" theory.

5.16 Not surprisingly, the two technical notes incorporated in the Maltese Counter-Memorial reveal that the scientists on both sides are to a large extent in agreement. However, the Maltese Counter-Memorial also

¹ The subject of the relevant area was dealt with in Chapter 10 of the *Libyan Memorial* (paras. 10.12-10.18).

² This conclusion appears from the scientific notes annexed to the *Maltese Counter-Memorial* where the emphasis has been placed almost exclusively on the geomorphology and geology of areas of shelf underlying the Pelagian Sea as seen not only from the titles of the notes themselves but also from such figures as Figure 1, Figure 8 and Figure 19. It is also confirmed by Professor Vannoy's emphasis in his technical note on the "structural unity" of the Pelagian Block and his contrasting description of the Ionian Basin to the east (*Annex 2*, p. 18). Figure 3 of Annex 2 of the *Maltese Counter-Memorial* is focussed solely on the features underlying the Pelagian Sea. See, in this connection, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 41, para. 32.

contains the kind of misstatement of Libya's position that requires comment in this Reply.

5.17 In considering the paragraphs which follow, three general observations should be borne in mind:

First, as observed above, there are few substantive differences among the scientists as to the physical features of the sea-bed and subsoil. The few that do exist — including a number of serious errors and misleading impressions contained in the Maltese Counter-Memorial — will, however, be mentioned below.

Second, there is a lack of conformity between a number of statements made in Volume I of the Maltese Counter-Memorial and the technical notes included in Volume II, Annex 2, thereto.

Third, the main points regarding the physical facts of relevance in the present case are based on easily understood and readily observable data: they are not controversial and are well accepted within the scientific community. This is borne out by Malta's own scientific evidence.

5.18 The two major features of special relevance to the present case are the Rift Zone, which cuts across the relevant area of continental shelf lying between Libya and Malta, and the Escarpments-Fault Zone which limits this area in the east. The physical characteristics of the sea-bed and subsoil within the area of continental shelf of relevance to the present case will be discussed below in relation to these two features.

1. The Rift Zone

Its Existence Recognised by Both Parties

5.19 The principal point about the Rift Zone that has emerged from the pleadings of the Parties to date is that its physical existence is acknowledged by both Parties. (Of course, as noted in Chapter 3 above, Malta questions its legal relevance.)

5.20 The Rift Zone is referred to in several parts of Volume I of the Maltese Counter-Memorial and is discussed in some detail in the two technical notes found in Annex 2 to that pleading. Figures 1 and 3 at pages 16 and 20 of that Annex accurately depict the Rift Zone area as extending all the way east to the Heron Valley which separates the Sicily-Malta Escarpment from the Medina Escarpment¹. As the following paragraphs will show, the Maltese Counter-Memorial itself and its annexed technical notes refute the statement in paragraph 5 of the Maltese Counter-Memorial that "Malta will demonstrate in the course of this Counter-Memorial that in fact the so-called 'Rift Zone' does not show the characteristics of a

¹ See *Libyan Memorial*, paras. 3.14 and 3.50.

radical physical separation between the natural prolongations of the two countries . . . ”.

5.21 Libya has demonstrated in its Memorial and Counter-Memorial that the Rift Zone constitutes a fundamental discontinuity in the areas of continental shelf lying between Libya and Malta relevant to the present dispute. The notes included in the Technical Annex to the Libyan Memorial (Volume I) amply support this conclusion. It is supported as well in recent scientific literature, a number of examples of which are noted below¹. Apart from Figures 1 and 3 at pages 16 and 20 of Annex 2 to the Maltese Counter-Memorial, which clearly illustrate the sea-bed manifestations (or geomorphology) of the Rift Zone, the three seismic profiles (Figures 4, 5 and 6) found at pages 22, 24 and 25 of this same technical note equally clearly reveal the subsoil manifestations (or geology) of the Rift Zone. These are the same seismic lines that appear as Figure 7, Part II, of the Technical Annex to the Libyan Memorial. They were prepared by Professor Finetti who explained their relevance in the following terms:

“The particular area between Sicily and Libya presently corresponding to the area of major *grabens* (Malta, Linosa, Pantelleria and Medina) — the Sicily Channel — consisted of a substantially flat, unfractured and undeformed Paleocene-Eocene-Oligocene-Miocene cover. Then an extensive rifting process started to occur during the Neogene- Quaternary stretching phase (about 15 million years ago), a process which continues today. It produced a remarkable deformation of the above-mentioned area along the rift zone.

“Intense faulting, collapse and uplifting of blocks, tilting and igneous extrusion (and intrusion) *i.e.*, volcanic activity, were the

¹ BAMES, J.H., “Graben Formation - The Maltese Islands - A Case History”, *Tectonophysics* 73, 1981, pp. 151-168; FINETTI, I.R., “Geophysical Study of the Sicily Channel Rift Zone”, 1984, *Boll. Geof. Teor. Appl.*, Vol. 26, No. 101; AKAL, T., “The General Geophysics and Geology of the Strait of Sicily”, 1972, *Oceanography of the Strait of Sicily*, T.D. ALLAN, T. AKAL AND R. MOLCARD (eds.), Saclant ASW Research Center, La Spezia, Conf. Proc., Vol. 7, pp. 177-192. A copy of the recently published Finetti paper has been furnished to the Registry. The paper contains some material and technical analysis related, in part, to work done by Professor Finetti as scientific adviser to Libya in connection with the present case. It will be referred to hereinafter as FINETTI, I.R., (1984). See also JONGSMA, D., VAN HINTE, J.E., and WOODSIDE, J.M., “Geologic Structure and Neotectonics of the North African Continental Margin South of Sicily”, a paper submitted for publication on 18 June 1984 to *Marine and Petroleum Geology*. A draft of this paper has been furnished to the Registry and references in this Reply are to this draft of the paper. The authors of this paper have also served as scientific advisers to Libya in connection with the present case and their paper contains some data stemming from this work. (See Introduction to the Technical Annex to the *Libyan Memorial*.) This paper will be referred to hereinafter as JONGSMA, D., *et al.* (1984).

main geological results of this rifting process. The general dominating trend of rifting was northwest/southeast. With a few exceptions, all main geomorphological structures of the Sicily Channel were generated during this extensional process¹.

“The Islands of Malta, in particular, appeared at this time as a small area of the uplifted block at the north flank of the Malta Graben . . .

“Between Malta and the Medina Bank there exists, with no interruption whatsoever, what is the continuation to the east of the Pantelleria-Malta-Linosa Rift Zone (the Sicily Channel). I refer here to the major rift area, the Medina Graben, which geomorphologically is expressed by the two channels running between Malta and the Medina Bank (sometimes referred to as the Malta and the Medina Channels) . . . ”.

5.22 Portions of this technical paper are quoted above since both Professor Vanney and Professor Mascle relied heavily on the data published by its author in their technical papers annexed to the Maltese Counter-Memorial. However, these data have been used quite selectively in Malta's pleading. For example, the part of the seismic profile along the line MS-14, which shows the Medina *graben* and which illustrates so well the continuation of the Rift Zone in the area of the Medina Channel lying between Malta and the Medina Bank, was not shown by Malta². (The seismic profile has been placed in *Annex 5* hereto, together with the same profile as depicted in Figure 7 of Finetti (1984). Another profile taken from Jongsma, *et al.* (1984) is also included in this *Annex*.) These seismic profiles demonstrate the continuity of the Rift Zone along the Malta and Medina Channels out to the Ionian Sea. The omission of the Medina *graben* profile from the Maltese Counter-Memorial made it easier for Malta to make the kind of comment found in paragraph 45 of its Counter-Memorial, quoted below:

“Libya is evidently troubled by the shallowness of these two Channels [referring to the Malta and Medina Channels], compared with that of the Troughs further to the west, as is shown by the embarrassed explanations which the Libyan Memorial gives for Libya's view that these two Channels constitute 'eastward extensions' of the Troughs.”

¹ The term “Sicily Channel” is used in this paper in its broader sense to encompass this whole area of rifting and faulting which Libya refers to in its pleadings as the “Rift Zone.”

² *Libyan Memorial*, Technical Annex III, pp. 2-3.

³ Figure No. 2, Part II, of the Technical Annex to the *Libyan Memorial*. See also Figure No. 1, Part III of the same Technical Annex.

5.23 Professor Vanney, in his technical note, demonstrated exactly this continuity between the Troughs and the Channels, even though he substituted the term "The Central Trough and Ridge System" for "Rift Zone". This is graphically demonstrated by *Map 9*, which consists of a bathymetric map with the Rift Zone shaded in. Professor Vanney's Central Trough and Ridge System has been superimposed on *Map 9*, revealing that the Rift Zone is entirely encompassed within the "System" of Professor Vanney. Since Figure 3 of Professor Vanney's paper concerns itself with the sea-bed and not the subsoil, that is, with geomorphology and not geology, his choice of terminology is quite understandable. While observing that "The Central Trough and Ridge System" does not comprise a single long trough with a flat bottom similar to the Hurd Deep or the Norwegian Trough — an indisputably correct statement — Professor Vanney goes on to say that "[a]ll this complex morphology is the most remarkable expression of the distensive forces acting since Miocene times (10 million years ago)". This accords entirely with such statements appearing in the 1984 Finetti paper as —

"... cutting across the sea-bed of the Pelagian Sea from the Egadi Valley to the Heron Valley are the huge troughs of Pantelleria, Linosa and Malta and the Medina and Malta Channels. The ensemble of these troughs and channels constitutes a distinct and unique geomorphological province that, with differing widths and varying water depths, crosses with continuity the entire Pelagian Sea³."

The introduction to this paper further states that—

"... it has become clear that this area has been affected by a prominent rifting process which remarkably deformed the previously existing quiet tectonic conditions. More detailed observations revealed that this tectonic fragmentation is due to a young geodynamic process, still active⁴."

5.24 In paragraph 18 of the Vanney paper, the volcanism along this System is also mentioned⁴. In fact, this paper at paragraph 11, page 23, clearly connects up the deeper troughs and shallower channels as part of

¹ *Maltese Counter-Memorial*, Vol. II, Annex 2, Figure 3 at p. 20.

² *Ibid.*, Vol. II, Annex 2, para. 18. "Distensive" is another term for rifting or pull-apart.

³ FINETTI, I. R., (1984), *op. cit.*, p. 3. A copy of this page is attached as *Annex 7*, hereto.

⁴ The paper is surprisingly silent as to the intense magnetic anomalies indicating volcanic activity between Malta and the Medina Bank, important evidence of the continuation of the Rift Zone across the Medina and Malta Channels to the Heron Valley. See FINETTI, I. R., (1984), *op. cit.*; see ZARUDZKI, E.F.K., "Submarine Volcanoes in the Strait of Sicily", *Rapp. Comm. Int. Mer Médit.*, 24, pp. 233-234 (1977). The volcanism within the Rift Zone, including the Malta and Medina Channels, is also discussed in JONGSMA, D., *et al.*, (1984), *op. cit.*, pp. 11-13. This paper notes the absence of recent volcanism in the southern area of the Pelagian Sea.

the same system which, to quote from this paragraph of the paper, "... contains the major Malta, Pantelleria and Linosa Troughs with intervening ridges and the smaller Malta and Medina Channels". In the light of these observations, there can scarcely be any question as to the existence of a major discontinuity in the sea-bed between Libya and Malta, whether it is called the "Rift Zone" or "The Central Trough and Ridge System", a discontinuity that includes the Troughs and Channels extending east to the Heron Valley.

5.25 It is surprising, therefore, to find the main body of the Maltese Counter-Memorial taking a different view of the Rift Zone. The principal discussion of the Rift Zone in the Maltese Counter-Memorial itself appears in paragraphs 41 through 58. These paragraphs — devoted to criticizing the use of the term "Rift Zone", to describing its complexity, and to a criticism of Libya's failure to identify its exact starting point — do not seem to be of particular significance. A feature of this size, involving pull-apart and shearing motions, is necessarily diffuse. It could be identified by many names, but as the Libyan Counter-Memorial brought out, the term "Rift Zone" is commonly used for features of this kind'. It will be seen that the technical note of Professor Vanney is full of descriptive terms which point out the significance of the Rift Zone: he refers to "recent faulting", to an area "cut by discontinuous indentations", and to the "steepness and height" of the troughs (all at page 26 of Annex 2). Such statements hardly validate the introductory statement in paragraph 5 of the Maltese Counter-Memorial that "the so-called 'Rift Zone' does not show the characteristics of a radical physical separation between the natural prolongations of the two countries . . .".

5.26 Paragraph 46 of the Maltese Counter-Memorial asserts that the "striking weakness" regarding the Rift Zone is that its major features do not lie between Libya and Malta. Yet this point is not borne out by Malta's own annexed technical paper of Professor Vanney. In fact, Figure 1 at page 16 of that paper (which has been reproduced as *Figure 1* facing the following page) shows the Malta Trough to extend to the south of all of Gozo and most of the southwest-facing coast of Malta and, thus, to lie between these coasts and the coast of Libya. The Malta Trough is clearly not located "beyond the western limits of the 'relevant area' as seen by Libya itself". The extent of the Malta Trough is also shown on the sketched bathymetric map appearing as Figure 8 at page 28 of Malta's Technical Annex where this deep feature is shown to cross in front of most of the Maltese Islands. The legend to this sketch describes the Malta Trough as being "closed South of the island of Malta . . .". But, in any event, this is not really the point, as was carefully explained and illustrated

¹ See *Libyan Counter-Memorial*, fn. 1 at p. 52.

² *Maltese Counter-Memorial*, para. 46.

by a diagram in the Libyan Memorial¹ as well as in the Libyan Counter-Memorial². It is to be expected that there will be geomorphological variations along a Rift Zone of these proportions in which pull-apart (rifting) and strike/slip (shearing) movements are occurring in the subsoil. The form which these features take on the sea-bed has a direct correlation with such variations in subsoil movements. As described in a very recent scientific paper:

"After the Messinian a rift and dextral shear zone established itself across the African Margin from the Strait of Sicily [used in the sense of that narrow body of water lying between Cape Bon in Tunisia and the opposite Sicilian coast] to the Medina Ridge in the Ionian Basin. The zone is marked by up to 1.7 km deep grabens, narrow active wrench faulted channels, volcanic fissures and local uplifted 'Keilhorsts' such as Malta³."

A particularly lucid account of the faulting in this zone appears in the same paper:

"The pattern of faulting derived from tracing active faults in seismic profiles across this zone, shows all three general styles of faulting which have been recognized to be associated with wrenching [citing Wilcox, *et al.*, (1973)]. In the area of the Pantelleria, Linosa and Malta Troughs, divergent wrenching is seen resulting in deep grabens perpendicular to the main tensional axis of the strain ellipse. The zone narrows between the Malta Plateau and Medina Bank and the style is simple parallel wrenching producing uplift of 'keilhorsts' such as Malta . . . The eastern part of the wrench zone in the Ionian Sea, the Medina Ridge is typical of convergent wrenching . . .⁴"

5.27 A technical study⁵ of the gravity anomaly data⁶ along the Rift Zone bears out the fact of the continuity of the Rift Zone from the Egadi Valley between Sicily and Tunisia in the northwest to the Heron Valley dividing the Sicily-Malta and the Medina Escarpments. *Map 10* shows a red line running down the Rift Zone. It represents the axial ridge of the

¹ See *Libyan Memorial*, para. 3.20, Fig. 2, and Part II of the Technical Annex.

² See *Libyan Counter-Memorial*, paras. 2.75-2.76.

³ JONGSMA, D., *et al.*, (1984), *op. cit.*, p. 1, attached as Annex 6, hereto.

⁴ *Ibid.*, p. 14, attached as Annex 6, hereto.

⁵ FINETTI, I.R., (1984), *op. cit.*

⁶ Gravity anomalies are used to trace geological structures since they indicate excess or deficiency of mass at depth. A gravity anomaly is the difference between the local value of gravity and that to be expected in the absence of geological variations but allowing for latitude and elevation. See also BATES, R.L. AND JACKSON, J.A. (Eds.), *Glossary of Geology*, second edition, American Geological Institute, Falls Church, Virginia, 1980.

Rift Zone where the crust has been stretched to its thinnest point¹. The data from which this line has been obtained appears in *Annex 7* hereto, which is page 18 of this technical study and includes a residual gravity map of the Pelagian Sea on which this line appears. This technical study also makes a comparison between the Rift Zone and the Red Sea Rift Zone, where similar geomorphological variations are found. The Figure, also appearing at *Annex 7*, illustrates this comparison. Aside from similarities in respect to crustal thinning, it is also of interest that the Gulf of Aqaba and the Dead Sea are part of the same Red Sea Rift Zone; yet geomorphologically they are areas which are considerably less pronounced in depth than other parts of the Red Sea Rift Zone. This is the result of strike-slip or shearing rather than pull-apart or rifting motions in the subsoil, a factor common to both Rift Zones². Thus, when the movements occurring in the subsoil are examined — as seen, for example, from seismic profiles of the Medina *graben*³, whose sea-bed manifestation is the Medina Channel lying between Malta and the Medina Bank — it is evident that deep rifting down to the upper mantle is occurring, with resulting volcanism. It is, thus, the Rift Zone as a whole which is the significant feature regardless of the variation in geomorphological expression normal in parts of such a Rift Zone.

5.28 The simple diagram used by Libya to explain the foregoing (Figure 2 of the Libyan Memorial) was apparently mistaken by Malta as some kind of theoretical model. This is revealed by the rather imaginative discussion of rotational theory for the origins and nature of the Rift Zone in the technical paper of Professor Mascle. Libya has seen nothing in that aspect of the technical discussion of relevance to the present case that it need take issue with. The Rift Zone — its rifting and shearing in the subsoil, and its sea-bed features — is based on scientific data, not on mere theory. It does not seem necessary, therefore, to introduce a complex and controversial subject such as “rotation” into the discussion of plainly evident features. The data put forward in the Libyan pleadings are readily available and do not depend on models. These data are not difficult for the non-expert to understand, unlike complex and questionable theories of

¹ See para. 6.20, below, and fn. 2 at p. 83, below, for a further discussion of this point of maximum thinness.

² LILLES, J.H., (1981), *op. cit.*; SCHICK, R., “Seismotectonic Survey of the Central Mediterranean”, *Inter-Union Commission on Geodynamics, Scientific Reports*, H. CROSS, D. ROEDER, K. SCHMIDT (eds.), Stuttgart, 1978; JONGSMA, D., *et al.*, (1984), *op. cit.*, p. 1 and p. 3, where “wrench faulting” in the Medina-Malta Channel is noted as well as thicknesses of more than 800 metres of post-Messinian sediments within the *grabens* formed by this wrenching, indicating rapid filling. See FINETTI, I. R., (1984), *op. cit.*, p. 20. Strike-slip or shearing motions in both the Rift Zone and the Red Sea Rift Zone are said by Professor Finetti to account for “reduced pull-apart movements”; this factor accounts for the more moderate geomorphological manifestations in certain areas of the Rift Zones in both instances. See also JONGSMA, D., *et al.*, (1984), *op. cit.*, pp. 10-11.

³ See para. 5.22, above, and fn. 4 at p. 63, above. See *Annex 5*, hereto.

“rotation” that neither confirm nor deny the presence of actual physical features. It is Libya’s belief, confirmed by scientific papers and even by Malta’s own experts, that the essential elements of fact which establish the Rift Zone are clear and uncontroversial.

5.29 In short, the evidence put forward by the pleadings of both Parties establishes the existence and importance of the Rift Zone. This evidence shows that it cannot be regarded as other than a fundamental discontinuity in the sea-bed and subsoil in areas of shelf lying between Libya and Malta. To characterise this area of shelf as a “geological continuum” is at odds with the scientific evidence put forward by both Parties to the present case.

Points Requiring Clarification or Correction

5.30 It is now necessary to turn to certain specific technical points to be found in the Maltese Counter-Memorial requiring correction or clarification. One example is found in Professor Mascle’s paper at paragraph 60 — where an attempt is made to emphasise the faulting in the southern area of the Pelagian Sea in order to refute statements to the contrary in the Libyan Memorial. This conclusion is based on a seismic profile along MS-19 (Figure 24 at page 55 of Professor Mascle’s paper). However, a serious error regarding the location of the Jerrafa Trough has been made. What is identified on Figure 24 as the Jerrafa Trough is not that feature at all, which in fact lies some 30 nautical miles to the south — well below the 35°N parallel¹. The Jerrafa Trough is a relatively minor feature of the sea-bed and subsoil and does not at all resemble the faulting shown in Figure 24². Rather than disproving Libya’s case regarding the considerably greater faulting north of the 35°N parallel than south of it, Figure 24 of Professor Mascle’s paper implies the contrary.

5.31 The Maltese Counter-Memorial has sought to attack Libya’s scientific data in other ways which are erroneous and deserve mention. It has sought to portray inconsistencies between Libya’s position regarding the physical facts in the present case and in the *Tunisia/Libya* case. One example concerns the definition of the Pelagian Block. Libya had thought that this matter had been completely dealt with in Part I of the Technical Annex to the Libyan Memorial. However, paragraphs 49 and 50 of the Maltese Counter-Memorial seem intent on trying to show some difference between the Libyan Memorial and Professor Fabricius, who preferred in his paper in Part I of the Technical Annex to refer to a northern and southern unit divided by the Rift Zone — a minor matter of terminology.

¹ The feature erroneously identified in the Maltese Technical Annex as the Jerrafa Trough has been given the name Lampedusa Trough in FINETTI, I.R., (1984), *op. cit.*

² See the Figure which appears in *Annex 8* to this Reply, where comparisons are made to show how much more significant geomorphologically the Medina Channel is than the Jerrafa Trough. See also FINETTI, I.R., (1984), *op. cit.*, p. 9.

Malta also suggests that, whereas in the *Tunisia/Libya* case Libya found no geomorphological features of relevance to delimitation in the Pelagian Block, in the present case Libya has "discovered" the Rift Zone and, with it, the importance of geomorphology.

5.32 It is clear that the delimitation in the *Tunisia/Libya* case did not involve the area of the Rift Zone but rather the area lying to its south. There were no features in the *Tunisia/Libya* case on the sea-bed or in the subsoil in that southern area which in the least resemble the features of the Rift Zone in the present case¹. The two cases are markedly different in this respect.

5.33 Malta has also sought to play down the significance of the Rift Zone by attempting to highlight other geomorphological and geological characteristics of the continental shelf underlying the Pelagian Sea. Many of these features, such as the Tripolitanian Valley, fall well outside any area of shelf claimed by Malta in the present case; their relevance, therefore, is quite different from that of the Rift Zone, which runs right through the area of dispute. However, as features underlying the relevant area of the Pelagian Sea in the present case they undoubtedly have a closer connection to the case than such more remote features, mentioned in several places in the Maltese Counter-Memorial, as the Hurd Deep, the Norwegian Trough, the Timor Trough or the Okinawa Trough. Of course, the Rift Zone is quite different from each of these features. The Libyan Memorial discussed in some detail the Hurd Deep and the Norwegian Trough, as well as the Tripolitanian Valley, showing how they were hardly comparable to the Rift Zone².

5.34 With regard to such pronounced features as the Timor Trough and the Okinawa Trough, although they might well be regarded as discontinuities of significance in any delimitation (and the Timor Trough did play an important role in the delimitation agreement between Australia and Indonesia³), to try to compare their physical forms with those of the Rift Zone is like comparing apples with oranges. Nor does the fact that the Rift Zone is not a unified trough have the significance implied by paragraph 44 of the Maltese Counter-Memorial. There is no doubt at all, in spite of the diversity of its features, that geomorphologically, geologically

¹ The Ride de Zira and the Ride de Zuara, for example, can hardly be compared to the features of the Rift Zone. The Ride de Zira rises no more than 25 metres above the sea floor over a length of 41 km and a width of 7.5 km. Hence, it is a barely discernable sea-bed feature. The Ride de Zuara rises only between 5 and 10 metres above the sea floor. These features are the result of salt doming rather than the pull-apart, rifting and shearing that created the *grabens* of the Rift Zone.

² See the *Libyan Memorial*, paras. 6.45-6.51 and 8.06-8.08; fn. 2 at p. 99; and fn. 1 at p. 100.

³ See para. 6.48 of the *Libyan Memorial*; and paras. 5.74-5.75 and Annex of delimitation agreements, No. 24, to the *Libyan Counter-Memorial*.

and oceanographically¹ the Rift Zone forms a connecting link between the Western Mediterranean and the Ionian Sea. Thus, paragraph 44 of the Maltese Counter-Memorial which claims that the Rift Zone is not a "major feature" cannot be taken as a serious comment on the Rift Zone, which contains troughs descending to depths exceeding 1,700 metres; which extends for some 300 nautical miles from the Egadi Valley between Tunisia and Sicily to the Heron Valley separating the Sicily-Malta Escarpment from the Medina Escarpment at the eastern edge of the Pelagian Sea; which is between 15 and 50 nautical miles in width; which in its subsoil contains deep ruptures descending down to the upper mantle of the earth; and along which young volcanism is found, attesting to the depth and activeness of the rifting throughout its extent.

The Area South of the Rift Zone

5.35 As for the southern "valleys", including the Tripolitanian Valley, which are introduced in the Maltese Counter-Memorial in an attempt to play down the significance of the Rift Zone, they may well be located over ancient, inactive faults. The important fact, however, is that their present-day sea-bed expression is gentle² and the direct result of erosional and depositional factors³. They are heavily blanketed by thick columns of sediment. It is the present-day characteristics of these areas—not the past—which is of interest. The fact is that there is no active rifting revealed by young volcanism here and, consequently, little sea-bed expression, quite unlike the Rift Zone. There is no evidence of any rift network that may be separating the African plate as in the case of the Rift Zone⁴. In fact, the Reduced Map No. 1 at page 72 of the Maltese Counter-Memorial showing "major structural features" of the North Sea might be compared with the situation in the southern part of the Pelagian Sea. For the North Sea has a shallow, featureless sea-bed that may be likened to the seafloor of the southern part of the Pelagian Sea: although there may be ancient underlying structures of geological interest, the sea-beds themselves are not today the direct reflection of these structures. There is no fundamental discontinuity reflected in the sea-bed of either the North Sea or the area underlying the Pelagian Sea south of the Rift Zone. When Professor Vanney speaks of the "structural unity" of the Pelagian Block,

¹ The oceanographic connection between the eastern and western Mediterranean formed by the Rift Zone is mentioned (with references) in JONGSMA, D., *et al.*, (1984), *op. cit.*, p. 2.

² There is an obvious error at p. 33 of Vol. II, Annex 2, of the *Maltese Counter-Memorial* where the gradient of the slopes of the Tripolitanian Valley is said to surpass 40 and even 50:100. What is clearly intended is 40 or 50:1000, a rather gentle slope. Measurements of gradients taken from several directions in this Valley may be found in Part I of the Technical Annex to the *Libyan Memorial*.

³ To quote from JONGSMA, D., *et al.*, (1984), *op. cit.*, p. 11: "To the south of 35°N over the Jarrafa Trough and Tripolitania Basin the contours reflect the erosional effects of a river system at the end of the Messinian." A copy of this page is attached as *Annex 6, hereto*.

⁴ See para. 5.43, below.

he is quite accurately describing the shelf area lying south of the Rift Zone¹.

5.36 A quite misleading impression is created by the “bathymetric profiles” which appear as Figure 2 at page 19 of Annex 2 of the Maltese Counter-Memorial and as Figures 1 and 2 at pages 27 and 28 of the Maltese Counter-Memorial. One of these profiles appears to have been carefully selected to cross the Medina Channel in a particularly shallow area and to cross the southern “valleys” at their deepest points. The latter are deep because the southern sections of the Pelagian Block very gradually deepen toward the area of the Sirt Rise-Ionian Sea. What is not revealed are the steep flanks of the southern part of the Medina Channel where it passes along the Medina Bank dividing it from the Ragusa-Malta Plateau. Bathymetric profiles to be of informative value should be drawn perpendicular to the features being measured — which, since they trend in this area roughly north-northwest/south-southeast, would be profiles running out from the Libyan coast at approximately 26°. The Figures contained in Annex 9 hereto show two profiles drawn in this manner: the first profile passes between the Islands of Gozo and Malta; the second falls just to the east of the Island of Malta. They give quite a different impression from that in the Maltese account and, being constructed perpendicular to the features, they have a more scientific basis. The same Annex 9 also contains profiles that follow the western segment of the Maltese trapezium from Ras Ajdir to Gozo and its eastern leg as far as its intersection with the proposed Maltese median line. These profiles illustrate how completely Malta has ignored the geomorphology of the sea-bed in its proposed result. However, it does not seem necessary to resort to the drawing of profiles any more than to rely on abstract constructs or models to illustrate what plainly appears from a bathymetric map of the area regarding the nature of the sea-bed of interest in the present case.

5.37 The only point that emerges from this discussion, whatever the language employed or the illustrations used, is that the southern portion of the Pelagian sea-bed becomes deeper toward the east. In this sense, depth *per se* does not create a discontinuity. There is no network or zone of rifting here that can be compared in any way with the Rift Zone. The legends on Figures 1 and 2 of the Maltese Counter-Memorial and referred to above — to the effect that the Misurata and Tripolitanian Valleys are “established on old, partly buried grabens” — is incorrect. The “valleys” are merely a general reflection of old *grabens* (over 90 million years old) underlying this region. The “valleys” themselves were formed by other, much more recent factors such as erosion and deposition. Moreover (and

¹ See *Maltese Counter-Memorial*, Vol. II, Annex 2, p. 18.

more importantly), the *grabens* are heavily blanketed by thick sediments¹ — they are not “partly buried grabens”. The general smoothness and lack of steep gradient of this whole area of the sea-bed underlying the southern Pelagian Sea was fully detailed in the Libyan Memorial² in both a north/south and an east/west direction, and has not been controverted. The Maltese Counter-Memorial fails completely in this respect — the most it shows is a mere deepening of this portion of the sea-bed to the east³.

5.38 What stands out rather conspicuously from Malta’s effort to play down the significance of the Rift Zone by emphasising geomorphological and geological features south of the Rift Zone is that it makes a shambles of the argument in the Maltese Memorial that the whole area is a “geological continuum”. It might have been expected that this assertion would fade away in the Maltese Counter-Memorial but, to the contrary, it returns with full vigour. In Part IV, where Malta’s case is restated, it is again asserted at paragraph 270(a) that:

“The seabed between Malta and Libya is a geological continuum consisting of the Pelagian Block and thus the shelf in the relevant area is characterised by its essential geological and geomorphological continuity⁴.”

As the foregoing paragraphs have made clear, however, this is simply not the case. Even the descriptions found in the scientific papers annexed to the Maltese Counter-Memorial contradict any notion of a geomorphological or geological “continuum” in the relevant area⁵.

2. The Escarpments-Fault Zone

5.39 Less need be said about this feature at this stage of the written pleadings. It was amply discussed in the Libyan Memorial and Counter-Memorial. Neither the Maltese Counter-Memorial nor its two technical notes attempt to deny its existence and importance on the factual plane. Professor Vanney even describes this feature as “one of the most remarkable in the Mediterranean because of its length (more than 700 km) and its

¹ FINETTI, I. R., “Structure, Stratigraphy and Evolution of Pelagian and Ionian Seas”, *Bol. Geof. Teor. Appl.*, Vol. 24, No. 96, 1982, pp. 247-312; JONGSMA, D., *et al.*, (1984), *op. cit.*, p. 13.

² See *Libyan Memorial*, Technical Annex, Part I.

³ The implication in para. 56 of the *Maltese Counter-Memorial* that the Court in paras. 66 and 80, pp. 57 and 64, of its 1982 Judgment made an assessment as to the relevance of the “Tripolitanian Furrow” which Libya is now disregarding in the present case is incorrect. This feature was merely noted as the only possible one that might have relevance when compared with such trivial sea-bed features as the *Ride de Zira* and the *Ride de Zuara*, upon which Tunisia had placed so much emphasis.

⁴ See para. 5.14, above, regarding Malta’s apparent admission as to what is the relevant area in the present case.

⁵ See paras. 5.15-5.29, above.

height (difference in level between 1 to 3 km)¹". The technical paper of Professor Mascle, since his interest is focussed on the sea-bed between Malta and Libya from which he apparently excludes any area east of this line of escarpments and fault zone, does not expressly deal with this feature at all. However, Figure 19 at page 50 of his paper portrays the two Escarpments in very clear, graphic form running southward to a point at about 15° E longitude and 33° N latitude².

5.40 It must, therefore, be taken as admitted that the Parties are in agreement over the fact that the Escarpments-Fault Zone forming the eastern boundary of the Pelagian Block constitutes a fundamental break in the morphology of the sea-bed and subsoil. However, Malta makes two curious comments relating to this feature that require discussion.

First, Malta asserts in paragraph 60 of its Counter-Memorial that the importance attributed by Libya to the Escarpments-Fault Zone can be valid only if "the Escarpment — the existence of which cannot be denied — represents the eastern end of Malta's continental shelf". In paragraph 61, Malta then invokes the definition of the continental shelf in Article 76 of the 1982 Convention. But this again indicates a confusion between the concepts of entitlement and delimitation. For Libya does not say that the Escarpments-Fault Zone marks the limit of areas of national jurisdiction, beyond which lies the "area", the deep sea-bed³. The point is simply that the Escarpments-Fault Zone represents a fundamental change in the morphology of the sea-bed and subsoil, forming the edge of the continental shelf underlying the Pelagian Sea, often referred to as the "Pelagian Block". Accordingly, it constitutes a relevant factor of great importance to the present case.

¹ *Maltese Counter-Memorial*, Vol. II, Annex 2, para. 29, p. 34. Other descriptive phrases used by Professor Vannoy for these features are: its "remarkable extent"; its "edge . . . dips on the east to depths in the Ionian Basin which are exceptional for the Mediterranean"; the "rupture of the slope"; "diverse reliefs stagger down"; "erect slopes (often cut by a network of ravines or by several small valleys), crests . . . , peaks (in many cases volcanic), or deep basins" (all found at p. 18).

² This Figure in other respects is confusing, making no distinction between types of structural features and their ages. The suggestion that there is some "network" uniting all of these features conveys a very misleading impression. It is well-known and beyond question that the various features depicted, to the extent they exist at all, occurred at widely separated geological times and had quite different causes. (It is worth noting however, that Professor Mascle uses Libya's nomenclature for the "Ragusa-Malta Plateau".)

³ See Part XI, Article 133, *et seq.*, of the 1982 United Nations Convention on the Law of the Sea. It is not the position of Libya that the continental margin, as this term is defined in paragraph 3 of Article 76, ends at this significant feature. In fact, Libya has never conceded that Malta's continental shelf rights extend this far to the east. The whole matter raised by Malta of whether the Ionian Sea is underlain by continental or oceanic crust or some intermediate form is, in the view of Libya, a scientific question of no relevance to the present case. See, in this regard, fn. 2 at p. 21, above.

Second, the analysis in the Maltese Counter-Memorial of the relevance and significance of the Escarpments-Fault Zone seems based on a fundamental confusion. For example, in paragraph 6 of the Maltese Counter-Memorial, the question is posed:

“[W]hy should the descent into the depths of the Ionian sea limit the rights of Malta towards the east but not constitute any obstacle to the extension of the rights of Libya towards the north?”

Again, in paragraph 139, Malta speaks of Libyan claims to maritime rights that “skirt the Medina Escarpment towards the east”. The complete — and most baffling — statement of Malta in this respect is found in paragraph 208 of the Maltese Counter-Memorial, quoted in part below:

“Malta, we are repeatedly told, can have no rights extending beyond her limited ‘natural prolongation’ in the physical sense and, in particular, cannot have rights which project beyond the edge of the Sicily-Malta and the Medina Escarpments. Libya, however, does not regard itself as bound by these limitations but, so it argues, should be allowed to develop its claims right through this ‘forbidden’ area in order to establish a delimitation with ‘third States’. Why is it, one is bound to ask, that considerations of geology, geomorphology and of the principle of natural prolongation which are so strenuously adduced as the basis of Libya’s case against Malta, have no reciprocal applicability in relation to Libya’s ambitious claims?”

A simple reference to a map will provide the answer. For a map shows the very long length of Libyan coast extending from the line of Escarpments and Fault Zone eastward across the southern limits of the entire area of the Sirt Rise-Ionian Sea, all the way to the Egyptian border¹. The Escarpments-Fault Zone does not cut across and disrupt the natural prolongation northwards of the Libyan landmass from this length of coast as it does any Maltese prolongation to the east.

5.41 In this connection, one of the most misleading illustrations in the entire Counter-Memorial of Malta appears as Figure 1 of Annex 2 at page 16. This has been reproduced as *Figure 1* facing page 65. The north/south dark blue line which marks the eastern edge of the Pelagian Sea formed by the line of Escarpments and Fault Zone is made to continue on to the east as if a similar structure blocked Libya’s natural prolongation into the area beyond the Escarpments-Fault Zone. The legend makes matters worse by asserting that the isobaths underline major structures.

¹ The Italian Application for Permission to Intervene in the present case and the subsequent Oral Hearings and Judgment of the Court did much to clarify the obvious relationship between the coasts of Italy and Libya in this area of continental shelf east of the Escarpments-Fault Zone.

There is no discontinuity lying off the coast of Libya in this area. The natural prolongation of the land territory of Libya northward in this area is illustrated in geological terms by the pull-out cross-section appearing as Figure 1 in the Libyan Counter-Memorial, a figure based on seismic and drilling data. Malta's claim, displayed by its trapezium figure, would, if allowed, be a clear violation of the principle of non-encroachment so often emphasised in Malta's pleadings — the encroachment in this case being on the natural prolongation of Libya seaward from its coast into areas of the Sirt Rise and Ionian Sea lying to the north of Libya, or on the natural prolongation of Italy to the south — areas which all lie outside the relevant area in the present case.

5.42 Thus, it stands out clearly from the pleadings of the Parties to date that, just as Malta seeks to avoid a serious analysis of the geographical facts, so also does it attempt to divert attention from the remarkable seabed and subsoil features that exist in the areas of continental shelf relevant to this dispute. In the view of Libya, the physical facts of geography, geomorphology and geology lie at the very heart of this delimitation of the continental shelf. They are not complex to understand and constitute relevant factors of prime significance that cannot be ignored in seeking an equitable result.

5.43 The significance of the Rift Zone is underscored by the fact that two of the most recent technical papers dealing with this geomorphological and geological phenomenon have reached the same conclusion: that a "microplate" may be in formation along the Rift Zone¹. To quote from the first of these papers, referring to the results of the collision between the African and Eurasian plates:

"This initiated the latest period of tectonic activity and broke the Pelagian area in a passive southern platform attached to Africa and a separate fractured mobile terrain north of the Tunisian Plateau and Medina Bank. The neotectonics north of 35° can be described by uplift of Sicily and dextral shearing of the east to southeast moving Sicilian-Calabrian block with respect to Africa. This movement, of what might be considered a microplate between the African and European plates, is similar to that of the Aegean microplate, both of which are apparently consuming from different directions what remains of the oceanic part of the Ionian Basin²."

¹ These papers support the conclusion referred to in fn. 2 at p. 29 of the *Libyan Memorial*, citing DEWEY, *et al.*, (1973), whose figure illustrating this point appeared at Annex 12, thereto.

² JONGSMA, D., *et al.*, (1984), *op. cit.*, p. 15, as well as Fig. 1 of that paper. Minor spelling errors have been corrected in the above quotation. This page and Fig. 1 appear in Annex 6, hereto.

The second paper, after comparing the Rift Zone with that of the Red Sea, concluded as follows:

“The rifting process in the [Rift Zone], though quite recent in comparison to the rifting in the Red Sea, for example, has already produced a huge fragmentation of the crust along the [Rift Zone] and a prominent Mantle uplifting and crustal thinning. Hence, it is possible to delineate the tectonic separation of a Sicilian microplate, which includes the Adventure Plateau and the Ragusa-Malta Plateau, from the African megaplate¹”.

¹ FINETTI, I.R., (1984), *op. cit.*, p. 27. This page appears in *Annex 7*, hereto.

CHAPTER 6
REFLECTION OF THE FACTS AND RELEVANT
CIRCUMSTANCES IN ORDER TO ACHIEVE
AN EQUITABLE RESULT

6.01 The principal elements which point to a delimitation that is equitable under the particular circumstances of the present case can be found on a bathymetric map of the Central Mediterranean¹. The various considerations introduced in the Maltese Memorial under such headings as Malta's political status, the absence of land-based energy sources, and Malta's status as an island developing State are extraneous and clearly not relevant to the question of delimitation². Other factors, such as those relating to Malta's fishing activities and national security considerations, have also been shown to be lacking in substance³.

6.02 The factors of particular relevance to delimitation in the present case are the physical factors in the sense that they relate to (i) the general geography of the setting in which the delimitation is to take place, including the presence of third States and third State delimitations in the area, (ii) the specific geographical factors of coasts, size and distance, and (iii) the characteristics of the sea-bed and subsoil that constitute the continental shelf. As to the subsoil, it is when these geological elements have affected the surface of the sea-bed that they acquire particular significance in pointing-up what, in fact, constitutes the natural prolongation of one State or the other and whether fundamental discontinuities exist⁴. As the Court said in its 1982 Judgment —

“ . . . just as it is the geographical configuration of the present-day coasts, so also it is the present-day sea-bed, which must be considered. It is the outcome, not the evolution in the long-distant past, which is of importance⁵.”

28 6.03 *Map 11* displays the physical setting of this case and may be a useful guide to the paragraphs that follow. On it have been placed the delimitation lines according to the Italy-Tunisia Agreement of 1971, the Italy-Greece Agreement of 1977 and the Court's line in the *Tunisia/Libya* case as it appeared on illustrative Map No. 3 of the 1982 Judgment. The

¹ Of course, the important factor of the conduct of the Parties is not reflected by a bathymetric chart. Its relevance to the present case is taken up in Chapter 2, above. See also paras. 1.04-1.27 of the *Libyan Counter-Memorial*.

² See, generally, Chapter 3 of the *Libyan Counter-Memorial* and paras. 4.49-4.51, above.

³ *Ibid.*; Malta's reliance on the principle of equality of States has been dealt with in para. 4.47, above, and in the *Libyan Counter-Memorial* (paras. 4.03-4.08) where it was shown to be of no relevance in effecting a delimitation between the Parties.

⁴ See *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 51, para. 95.

⁵ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 54, para. 61.

Rift Zone is shown by a slight shading, and the key features of the Rift Zone have been labelled, as well as certain other features of particular interest in the present context.

A. The General Setting

6.04 Reverting to the broader geographical and geomorphological setting revealed by *Map 11*, certain points stand out. The distinct character of both the geographical situation and the characteristics of the seabed in question is immediately evident. Malta is seen to be a small island group, not located by itself in the middle of a vast ocean, but placed within a constricted sea bordered by mainland States with extensive coastlines and large land territories. It is also apparent that the lines formed by the Sicily-Malta Escarpment and the Medina Escarpment divide two very different areas of sea-bed: that underlying the Pelagian Sea, on the west, and that underlying the Ionian Sea, on the east. Focussing on the area under the Pelagian Sea, the Rift Zone may be seen to divide two other, clearly separable areas or units: to the north are the Maltese Islands and the shelf of the Ragusa-Malta Plateau, the latter appearing as a submarine extension of Sicily; to the south lies the shelf that extends from the Libyan shores through the Melita and Medina Banks up to the Medina Channel, which separates this southern area from the Ragusa-Malta Plateau. The eastern border of the banks is the Medina Escarpment. These banks run generally southwestward toward Libya and westward toward Tunisia. To the east, the sea-bed area underlying the Pelagian Sea is bounded in the north by the Sicily-Malta Escarpment and in the south by the Medina Escarpment¹.

6.05 With respect to the presence of third States in the region, the southernmost points of the Italy-Tunisia delimitation on the west and of the Italy-Greece delimitation on the east are of particular interest. If these points are connected, it is seen that this line would not substantially depart from a line running through the Rift Zone.

B. Geographical Factors

6.06 An examination of the relationship of the coasts of the Parties reveals, *first*, that the Maltese Islands are very small in relation to the surrounding land territories and, *second*, that the general direction of most of their coasts does not run from west to east but rather from northwest to southeast, generally parallel to the coast of Sicily to the north and to the features of the Rift Zone to the south. The effect of this, particularly when

¹ As *Map 11* shows, the Medina Escarpment extends south to approximately 33° 30' N latitude. The dividing point of these Escarpments is the Rift Zone and its extension into the Heron Valley.

this "tilt" is emphasised by Malta's official baselines¹, is that only short lengths of the coasts of the Maltese Islands can be said to face Libya directly. Only those south or southwestern facing coasts on the Islands of Gozo and Malta that were identified in the Libyan Memorial bear a relationship to the Libyan coast between Ras Ajdir and Ras Zarrouq, which, similarly, was identified as relevant for purposes of the present delimitation².

6.07 Of course, the Libyan coast extends along the entire southern flank of the Central Mediterranean. However, the portion of this coast lying east of Ras Zarrouq lies well outside the area relevant for purposes of the present delimitation as identified in paragraphs 10.12 through 10.18 of the Libyan Memorial. In theory, the tiny segment of Maltese coast facing southeastward (a coastal facade of only some 5.4 kilometres) might be said to face the Libyan coast in the vicinity of Benghazi, some 350 nautical miles away. In reality, these coasts bear no more relation to each other than do the coasts of Crete to the coasts of Tunisia. Aside from the considerable distance that separates the two coasts and the vast difference in size, the Libyan coast east of Ras Zarrouq abuts on a very different area of continental shelf lying east of the Escarpments-Fault Zone consisting of the Ionian Sea and Sirt Basin. Moreover, the small southeast-facing part of Malta's coast is dwarfed by the coasts of third States — in this case of Italy and Greece — which also extend into this area, and, as noted above, by the coast of Libya. This highlights the fact that delimitations in the Ionian Sea involve these larger mainland States, not Malta.

6.08 It follows that the only coasts of the Parties which can realistically be regarded as having a relationship to each other for purposes of the present delimitation are the Libyan coast between Ras Ajdir and Ras Zarrouq and, at the very most, the Maltese coasts between the westernmost point on Gozo and the easternmost point on the Island of Malta³. The lengths of these coasts stand in a ratio of between approximately 1:8 and 1:12 to each other⁴. When viewed in this context, the 1973 proposal of Libya — to which the Maltese Counter-Memorial devoted considerable attention — can readily be understood.

C. Libya's 1973 Proposal

6.09 The manner in which the Maltese Counter-Memorial has mischaracterised Libya's 1973 proposal calls for some comment⁵. This proposal is attacked on three main grounds in the Maltese Counter-

¹ These baselines were discussed in the *Libyan Counter-Memorial*, para. 2.35.

² *Libyan Memorial*, paras. 10.10-10.11.

³ *Ibid.*, and see para. 6.06, above.

⁴ *Libyan Memorial*, para. 10.11.

⁵ The historical background to Libya's 1973 proposal has been fully set forth in Chapter 4 to the *Libyan Memorial*.

Memorial: it is said that it would be "the product not of a method of delimitation but of a system of apportionment based upon a concept of proportionality"; thus, "[t]his line was in no way constructed by reference to Libya's now dominant concern to reflect its own 'natural prolongation'"; this, in turn, is said to show that "Libya's case to-day is in principle quite different from Libya's case a decade ago". The invalidity of these assertions may be seen if the 1973 proposal is examined for what it is and not for what Malta would claim it represents.

6.10 The 1973 proposal of Libya was geared to the physical setting of the area between Libya and Malta. It was arrived at by connecting points along the relevant coasts of the two Parties and dividing the resulting lines in the ratio of the respective lengths of the relevant coasts. These were regarded by Libya as approximately the lengths of coast described in 29 Section B above. The resulting line appears on *Map 12*.

6.11 In July 1972, Libya had, for the first time, been presented with a concrete proposal for delimitation by Malta. Examination of the Maltese median line quickly showed that the equidistance method could not lead to an equitable result in the circumstances of the case and was clearly disproportionate. As shown by the minutes of the meetings of April 1973¹, the approach taken by the Libyan side represented a method based on the facts characterising the situation that would be responsive, in particular, to two key questions: what coasts are relevant to the delimitation, and how can the very different characteristics of those coasts be reflected in the delimitation?

6.12 The answer given by the Libyan side to these questions — dividing the distance separating the coasts of the Parties in accordance with their relative lengths — is now attacked by Malta as reflecting "no known method of delimitation in accordance with law and [being] impressionistic and arbitrary, as befits an approach based on apportionment"². Such a conclusion seems to stem from the insistence in Malta's pleadings on the "normal" nature of the geographical setting. The fallacy in Malta's description of the geographical situation involved in the present case is that Malta apparently sees itself as if it were located alone in the middle of an ocean. It is not. It is located in a narrow sea with a number of much larger neighbours having far more extensive lengths of coast flanking the surrounding areas of continental shelf.

6.13 The 1973 Libyan proposal dealt with this particular situation — a small group of islands with only very short lengths of coast that could be

¹ *Maltese Counter-Memorial*, para. 267.

² *Ibid.*, para. 182.

³ *Ibid.*, para. 194.

⁴ See *Libyan Memorial*, Annex 40.

⁵ *Maltese Counter-Memorial*, para. 228.

said to face a much longer length of the mainland Libyan coast — in a fashion that would reflect these coastal differences. For this reason, it was not based on equidistance since that method fails to reflect, among other factors, the differences in coastal lengths between Libya and Malta¹. Rather than being derived from a pre-ordained method as such, the 1973 proposal sought a way of achieving an equitable result in these circumstances. The technique employed assured that each kilometre of Maltese coast received approximately the same weight as each kilometre of Libyan coast, with the result that the differences in coastal lengths were taken into account and the distorting effects of equidistance, particularly given the distance between the coasts, were eliminated².

6.14 In the light of these observations, it is interesting to turn to the Maltese assertion that:

“Stripped of the detail, the Libyan position is based upon a highly abstract conception involving a partition of the seabed in accordance with a specialised version of the test of proportionality, which in effect becomes an independent criterion advanced as the basis for a claim to a just and equitable share³.”

In fact, it is obvious that the Libyan approach of 1973 is not based on or derived from an apportionment of areas of continental shelf. An apportionment presupposes two operations: *first*, a measurement of the areas of continental shelf to be apportioned between the Parties; *second*, a partition of those areas to each Party in accordance with a set ratio. The method proposed by Libya involved neither of these steps. It involved the construction of a line by applying a ratio based on the difference in coastal lengths to the distance separating the coasts of one country from those of the other, and not a “sharing out” of areas.

6.15 Even were the Maltese assertion correct, it could be made with equal force about equidistance, the difference being that equidistance would represent an attempt to apportion the continental shelf between the

¹ The question of the distorting effect which small islands may have on an equidistance line has always been a problem. How to remedy that effect in order to reach an equitable result must be answered within the framework of each particular situation. The diversity of possible methods which may be used to obviate such disproportionate results was illustrated by the 1977 *Anglo-French Arbitration* where two different approaches were used: an enclave solution around the Channel Islands and the use of half-effect with respect to the Scilly Islands. Examples of State practice also illustrate other methods of dealing with islands.

² During the April 1973 meetings, the Libyan delegation made the following point:

“In replying to the example stated by the Maltese delegation concerning the determination of the dividing line by the equidistance method between the Island of Malta and Sicily the Libyan delegation stated that in this specific case both methods will give almost the same results, because of the fact that the portion of the coast line of Sicily Island nearly equal to the length of the Maltese coast facing Sicily.” *Libyan Memorial*, Annex 40.

³ *Maltese Counter-Memorial*, para. 222.

countries involved in a 1:1 ratio¹, whatever their coastal lengths, whereas the Libyan proposal reflected the difference in coastal lengths. Which conception is the more "highly abstract": that of Malta, which dictates the automatic application of a method simply because it has been used elsewhere, and in spite of the fact that it leads to results divorced from the concrete circumstances of the case, or that of Libya, which assesses and balances those circumstances, and reflects them in the delimitation?

6.16 The second ground on which the 1973 Libyan proposal is attacked by Malta stems from what Malta sees as an inconsistency in the Libyan case. The 1973 line is said by Malta not to have been constructed by reference to what is "Libya's now dominant concern", natural prolongation.

6.17 Malta's assertion that the "proposal based upon the ratio of coastal lengths and the 'Rift Zone' boundary represent two distinct conceptions which cannot in legal terms be complementary since they lack a common basis"² is at the same time inexact and misleading. It is inexact in implying that there is no common basis between geographical factors, on the one hand, and geomorphological or geological ones, on the other. That common basis is the concept of natural prolongation, which cannot be reduced to either one or the other set of factors³. It is misleading in stating that these factors "cannot in legal terms be complementary", because this is creating a problem which does not exist. In the delimitation process, all the relevant facts and circumstances must be identified, examined, assessed and weighed in order to reach an equitable delimitation. Foremost among those facts and circumstances are those which concern the coasts of the Parties and the sea-bed and subsoil of the continental shelf itself in the area to be delimited. The question is not, therefore, to know whether the solution toward which an examination of the coastal relationships of the Parties and that toward which an examination of the sea-bed would lead are "complementary" in an abstract way; the question is whether those factors point towards the same solution and, if not, how much weight they must be given in relation to each other, within the framework of the particular delimitation in order to reach an equitable solution.

6.18 It is also impossible to accept Malta's contention that Libya's case has materially changed since 1973. Today, as ten years ago, Libya takes the view that "the solution should be fair and reasonable, taking fully into account the circumstances of the particular case"⁴. In 1973, the

¹ See *Libyan Counter-Memorial*, Diagram A facing p. 160.

² *Maltese Counter-Memorial*, para. 269.

³ See *Libyan Memorial*, para. 6.55, and *Libyan Counter-Memorial*, para. 4.21.

⁴ *Libyan Memorial*, para. 4.24, disapprovingly quoted by Malta in its *Counter-Memorial*, para. 222.

Parties met to reach an agreement on a line, and Libya made a proposal taking into account what are still, in Libya's view, important relevant circumstances in the present case including the coastal relationship of the Parties¹. The question then was to arrive at a line of delimitation by agreement, not to develop a full legal case in support of this proposal. The general physical characteristics of the deep areas of sea-bed lying south of Malta were, of course, well known to both Parties at that time². Libya's 1973 proposal, though based primarily on the coasts of the Parties, was in harmony with this fact. It is evident that during a one-day meeting a full discussion of the factors supporting the proposals of each Party would have been inconceivable. Moreover, since this meeting the potential legal significance of sea-bed and subsoil features such as the Rift Zone has been amplified by the Court of Arbitration in its 1977 Award and by this Court in its 1982 Judgment. Thus, there is no inconsistency in the approach of Libya to the present delimitation which has always been focussed on the facts. Today, as ten years ago, Libya seeks an equitable result that reflects the relevant circumstances of the present case which, as was observed at the start of this Chapter, consist largely of the physical factors of geography and the features of the sea-bed and subsoil of the continental shelf areas in question.

D. Sea-Bed and Subsoil Features — a Boundary Within and Following the General Direction of the Rift Zone

6.19 Turning next to the sea-bed and subsoil features of the continental shelf within the relevant area, the Rift Zone is evidently of particular importance in the light of the scientific evidence. As discussed in Chapter 5 above, in its essence this evidence has not been disputed by the scientific papers furnished by Malta with its Counter-Memorial. However, the Maltese Counter-Memorial has criticised Libya for suggesting that the Rift Zone should constitute the boundary between the continental shelf areas appertaining to each of the Parties. This characterisation of Libya's position is inexact. Libya has never advanced the proposition that the Rift Zone *per se* constitutes a natural maritime boundary line between the States. Rather, Libya's position is that the Rift Zone provides critical physical elements for the determination of a boundary line which would lie within and follow its general direction.

¹ During the April 1973 meeting Libya had no opportunity to develop fully its position. It was only a one-day session in which the Parties had the opportunity to do no more than set forth their positions and at which no comprehensive proposals were formulated. It is evident that Malta had no interest in discussing alternatives to its "median line" position. The out-of-hand rejection of Libya's proposal by the Prime Minister of Malta on the very day the Libyan proposal was tabled attests to this fact. See *Libyan Memorial*, para 4.37.

² See paras. 2.03-2.12, above, with reference to Malta's acknowledgment in 1966 of this fact.

6.20 The characteristics and features of the Rift Zone and its general extent have been fully discussed in the Libyan pleadings and are illustrated on *Map 13*. With respect to the geological factors of primary importance which underscore the significance of the Rift Zone, of particular pertinence is the scientific study containing an analysis of gravity anomaly data in the area generally underlying the Pelagian Sea¹. It should be stressed that the bulk of the data on which this study relies has been in existence for some 10 years and is objectively verifiable. What this analysis confirms in geological terms is the magnitude and importance of the Rift Zone. One of the illustrations in this paper depicts a line along the axial ridge of the Rift Zone where the crust has been stretched and hence thinned the most as a result of the deep-seated rifting and faulting occurring there. This red line appears on *Map 10* facing page 66 in Chapter 5 above, and has been superimposed on *Map 13*. To quote from the legend appearing on the illustration to this study (attached hereto as *Annex 7*): "This axis is associated with a remarkable Mantle uplifting and Crustal fragmentation." Thus, it reflects the geological factors which point up the extent and continuity of these sea-bed features².

6.21 As for the relevant geomorphological — or sea-bed — features that appear within the Rift Zone, they stand out clearly on these bathymetric maps of the area. It is evident that in the area of the Rift Zone that crosses to the south of the Maltese Islands there are two related series of troughs and channels; one may be seen to follow the Malta Trough-Malta Channel route where depths exceed 1,700 metres; the other follows the deepest parts of the Linosa Trough-Medina Channel. The depths and dimensions of these various features were set forth in the Libyan Memorial and its Technical Annex³. When the axial ridge depicted on *Map 13* is compared with these lines of deepest sea-bed relief, it may be seen to run in the same general direction and roughly between them.

¹ FINETTI, I.R., (1984), *op. cit.* See para. 5.27, above. For a definition of "gravity anomalies" see fn. 6 at p. 65, above.

² As is stated in FINETTI, I.R., (1984), *op. cit.*, p. 9 (attached as *Annex 7*, hereto):

"The gravity map (Fig. 13) clearly indicates the area of the [Rift Zone] and the position of the axis of maximum uplift and crustal thinning. The length and the axis of the uplift are well outlined by the continuity of the gravity anomalies across the whole Pelagian Sea. Such evident continuity cannot be found elsewhere in the Pelagian Sea."

It would be along this line that any separation of plate boundaries would be expected to occur, and, if the Rift Zone should develop to this extent, a new ocean would start to be formed. Although the end result of the rifting along the Rift Zone is speculative, the fact that this line represents the areas of greatest thinning is not.

³ *Libyan Memorial*, para. 3.14, and Technical Annex, Part I, pp. 1-12-13.

E. Geography, Geomorphology and Geology Pointing to the Same Result

6.22 This Chapter has set forth the manner in which the principal physical characteristics of the relevant area between Libya and Malta are reflected on a bathymetric map of the region. With respect to the geographical facts of the case, the key elements of interest are (i) the great disparity in the lengths and configurations of the relevant coasts of the Parties and (ii) the general setting of the dispute and the proximity of third States and existing third State delimitations. As has just been pointed out, the 1973 proposal of Libya reflected, among other considerations, the first of these geographical elements — the marked difference in the lengths and configurations of the coasts of Libya and Malta. This proposal has been depicted on *Maps 12 and 13* on which the area comprising the Rift Zone has been superimposed. As for the second of the relevant geographical elements, the presence of third States and existing third State delimitations, it was noted how a line connecting the respective end-points of these two delimitations runs generally through the Rift Zone¹. With respect to the geological and geomorphological factors characterising the area, the existence and significance of the Rift Zone constitutes the most striking element. Within the Rift Zone itself, the scientific evidence indicates the presence of an axial ridge line marking the area of maximum stretching of the subsoil underlying the Pelagian Sea. This line also appears on *Map 13*, and may be seen to fall generally between the two deepest geomorphological series of troughs and channels.

29 30

6.23 The expression of these factors and their relative proximity to each other illustrates how a balancing of the relevant geographical, geomorphological and geological circumstances of the present case may point to a result that would not be difficult to identify. Such a delimitation would also run right through the disputed area encompassed by the no-drilling understanding entered into between the Parties at the time of the signing of the Special Agreement and, as Chapter 7 below shows, would satisfy the test of proportionality². It is this combination of circumstances which suggests that it should not be an insurmountable task, contrary to Malta's assertion, for the Court to indicate how in practice these relevant facts and circumstances might be reflected by the Parties in negotiating a line of delimitation dividing the areas of continental shelf between them³, thus enabling them to arrive at a delimitation without any difficulty.

¹ It may also be noted that the extension of the Libya-Tunisia delimitation, as depicted by the Court in its illustrative Map No. 3 to the 1982 Judgment, almost intersects with the end-point of the Italy-Tunisia delimitation.

² See also Chapter 10 of the *Libyan Memorial*.

³ See paras. 1.06 and 1.07, above, regarding the safeguarding of any claims of third States in the area.

CHAPTER 7

PROPORTIONALITY AS A TEST OF THE RESULT

7.01 The shift in Malta's treatment of proportionality in its Counter-Memorial as compared with its original Memorial is welcome if only because it enables the dispute on this point to be conducted in more realistic terms. In its Memorial, Malta asserted the irrelevance of the proportionality test in the present case¹. In its Counter-Memorial, Malta devotes the whole of Chapter IV to proportionality, conceding its general relevance to a delimitation in accordance with equitable principles², but still attempting to limit its application in the present case³. Nevertheless, basic differences between the Parties exist both at the conceptual level — that is to say, in relation to the role of proportionality in principle — and at the factual level, in terms of how, if at all, it should be applied having regard to the facts of this case. It will help to clarify the points in issue if these two levels are dealt with separately below.

A. Proportionality in Principle

1. Common Ground Between the Parties

7.02 The Parties now share the view that proportionality is inherent in any delimitation in accordance with equitable principles although Malta, somewhat inconsistently, still contends that proportionality is not applicable in the present case⁴. They equally share the view that proportionality in itself is not a source of title to a continental shelf area, but a criterion for evaluating the equitableness of a delimitation⁵. Beyond this, however, there is little on which the Parties agree.

2. The Principal Points in Issue Between the Parties

7.03 The main points of disagreement may be most readily identified by reference to the critique of Libya's position found in the Maltese Counter-Memorial. Reduced to its essentials, this critique takes three steps. *First*, Malta attributes to Libya a position regarding proportionality which Libya has, in fact, never advanced. This is the Maltese claim that, in effect, Libya employs proportionality as a method of delimitation⁶. *Second*, Malta attacks this hypothetical position, which is of its own making, as constituting an "apportionment" of the continental shelf. *Third*, Malta thus avoids discussing the proper role of proportionality in the delimitation process and fails to apply the test of proportionality even to its own

¹ *Maltese Memorial*, para. 129.

² *Maltese Counter-Memorial*, para. 237.

³ *Ibid.*; *Libyan Counter-Memorial*, paras. 6.25-6.32.

⁴ *Maltese Counter-Memorial*, para. 243.

⁵ *Ibid.*, para. 237; *Libyan Memorial*, para. 6.90.

⁶ *Maltese Counter-Memorial*, para. 221.

proposal for an equidistance boundary. Each of these steps requires some comment in order to place the issue in the appropriate context.

7.04 At the outset, it is convenient to dispense with one point raised by Malta. This is the comment that Libya does not treat proportionality as a "principle", and accords to it only a secondary role¹. Of course, the jurisprudence has emphasised that proportionality is not a principle or method of delimitation, but rather a criterion or test of the equity of the result². This, however, does not diminish the importance of proportionality since, as the Court has noted, it remains a fundamental "aspect of equity"³. Thus, it is quite wrong to say that Libya accords proportionality a secondary role.

7.05 The major criticism by Malta, which merits more attention, lies in the assertion that Libya is advocating the use of proportionality as a delimitation method — "a dogmatic basis for what is in effect a delimitation"⁴. To avoid all further misunderstanding, it should be pointed out that this allegation finds absolutely no basis in any position put forward by Libya in its pleadings or elsewhere. Nowhere has Libya relied on proportionality as a method of delimitation. Malta has simply chosen to ignore what Libya has actually said on the subject of proportionality⁵.

7.06 Instead, Malta has attempted to equate the 1973 delimitation proposal made by Libya with Libya's views on the role of proportionality as a legal concept. That this is Malta's design is clear from paragraph 221 of its Counter-Memorial where it is asserted that the meetings between representatives of the Parties of April 1973 "reveal the primary reliance upon a certain conception of proportionality" and that Libya "has continued to rely upon this conception of proportionality in its Memorial". Having thus created the impression that Libya's views on proportionality are reflected in its 1973 proposal — erecting in effect a straw man — Malta proceeds to attack this position.

7.07 The reasoning underlying Libya's 1973 proposal has been discussed in the previous Chapter. As was there pointed out, the 1973 proposal was based on the physical realities of the particular situation. It is true that Libya did utilise a ratio between the lengths of the relevant coasts of the Parties in order to arrive at a proposal which would reflect the geographic facts of the setting. That coastal ratio came into play, however, only as a technique for giving comparable treatment to the relevant coasts

¹ *Maltese Counter-Memorial*, paras. 2.18-2.20.

² See, especially, *Anglo-French Arbitration, Decision of 30 June 1977* (Cmd. 7438), p. 61, para. 101.

³ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 131.

⁴ *Maltese Counter-Memorial*, para. 221.

⁵ See *Libyan Memorial*, Chapter 10, and *Libyan Counter-Memorial*, Chapter 6.

of each Party so that each kilometre of the Maltese coast would receive more or less the same weight as each kilometre of the Libyan coast. Thus it was that the 1973 proposal of Libya took account of geography and the relevant coasts of the Parties and did not involve proportionality in the sense of apportioning out areas of continental shelf.

7.08 The justification for such a method is self-evident. This Court has emphasised that:

“The geographic correlation between coast and submerged areas off the coast is the basis of State’s legal title . . . the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it’.”

Similarly, the Court of Arbitration has observed that:

“A State’s continental shelf, being the natural prolongation under the sea of its territory, must in large measure reflect the configuration of its coasts. Similarly, when two ‘opposite’ or ‘adjacent’ States abut on the same continental shelf, their continental shelf boundary must in large measure reflect the respective configurations of their two coasts².”

Thus, if the coasts are the starting point for determining the areas to be delimited, and if the continental shelf of a State should generally reflect the configuration of its coasts, the logical sequence for arriving at a suitable method of delimitation would seem to be:

- (i) to determine which particular coasts are relevant for the delimitation between the Parties concerned³;
- (ii) to determine which areas of shelf are relevant because they abut on these coasts in the sense that the areas are the “natural prolongation” of the territory of one or the other Party⁴;
- (iii) to determine what are the relevant geographical and other physical facts and how they are to be reflected in the delimitation within the relevant area;
- (iv) to balance in any other considerations (e.g., the conduct of the Parties) that may be relevant for an equitable delimitation; and finally
- (v) to test the result by means of the criterion of proportionality.

¹ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 61, para. 73. And see *Libyan Memorial*, paras. 7.07-7.20, for a further discussion.

² *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 60, para. 100.

³ This is the stage of the process discussed in the *Libyan Memorial*, paras. 10.08-10.11.

⁴ This second stage of the process is described in the *Libyan Memorial*, paras. 10.12-10.18.

7.09 It is the third stage of the process which calls for the "weighting" of the two coasts and the balancing of the relevant circumstances of coastal length and configuration with the other relevant factors, whereas it is the last stage by which the result is tested by means of the element of proportionality. Of course, the Maltese thesis is essentially that no weighting is required nor any testing necessary, since it regards all coasts in the abstract as equal, but that thesis accords neither with common sense nor with the law¹. Some "weighting" has to occur if Courts are to treat the geographical factors realistically and to balance them into the delimitation equation, for to ignore very real differences in two coasts is to ignore the facts of nature, the true geographical factors from which the delimitation exercise begins. As the Court indicated in its 1969 Judgment, there can never be a question of "rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline"². Whether one describes this process as "weighting", or "evaluating the geographical factors" makes very little difference. The point is that Courts have to take account of real differences³, and the only question is how should they do this.

7.10 Two criteria suggest themselves (indeed, it is difficult to imagine any others): the *first* is the length and configuration of the coasts, and the *second* is the size of the land territory or landmass which extends into and under the sea from the coast or coastal front. The *first* criterion needs no further explanation. The *second* criterion follows from the fact that it is the natural prolongation of the landmass — the extension of the land territory into and under the sea — which appertains to a State as its continental shelf. And whilst the method of delimitation may well have to be based on the actual coast, good sense would require that an equitable delimitation should reflect the landmass behind the coast in terms of the "weight" of its natural prolongation. The treatment of islands in the jurisprudence and in State practice where they have received reduced effect supports this view. It appears that the size of the island will virtually always be a relevant factor in the delimitation⁴.

7.11 However, whether the comparisons are of length *simpliciter*, or of length plus weight, they are necessarily reflected in a ratio. But to confound this method of delimitation with the "test of proportionality" is a gross misrepresentation of this method.

¹ See *Libyan Counter-Memorial*, paras. 7.16-7.20. Indeed, in the *Tunisia/Libya* case how else could the change of direction in the Tunisian coast be taken into account without being accorded a certain "weight" in the delimitation?

² *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 49-50, para. 91.

³ Of course minor differences or incidental features of coastal configuration can be taken account of by representing a coast by a "coastal front".

⁴ See, in particular, para. 4.12, above, and, generally, the *Libyan Counter-Memorial*, Annex of delimitation agreements.

7.12 Proportionality is a criterion whereby the equity of the result arrived at by balancing the facts and relevant circumstances is tested. Indeed, as Libya has already pointed out in its Counter-Memorial¹, reliance on proportionality cannot be, *per se*, drawn from a reliance on the idea of a “just and equitable share” which the Court has rejected in its 1969 Judgment², for the Court itself has used the proportionality test in the very cases in which it had rejected the doctrine of the “just and equitable share”. In addition, one cannot escape the fact that the Court has held in prior cases that a reasonable degree of proportionality should exist between the extent of the shelf areas appertaining to a coastal State and the length of the relevant part of its coastline. While it is understandable that Malta does not like the result of the application of the proportionality test to its equidistance proposal, nature cannot be refashioned, and it serves no constructive purpose for Malta to circumvent this fact through a suggested view of proportionality attributed to Libya that, in fact, is totally at variance with Libya’s pleadings.

B. The Relevant Area

7.13 It is apparent that the proportionality test is to be applied within the area which is relevant to the delimitation. Although the presence of third States is germane to the definition of the relevant area, it is the view of Libya that for purposes of the present case this area is to be defined essentially on the basis of the coasts of the Parties which are related to each other even if third State claims may potentially exist in parts of this area. The area considered relevant to the present dispute was outlined in paragraphs 10.12 to 10.18 of the Libyan Memorial. The fact that third States may claim certain parts of this area cannot serve to alter the basis for determining this area as relevant to a delimitation between Libya and Malta, even though the extent of the area to be delimited definitively between the Parties may be thereby affected. It is also apparent that in any part of the area in which third States have claims the delimitation must remain non-prejudicial until such time as these claims are resolved. As the Court stated in its 1982 Judgment:

“It is legitimate to work on the hypothesis of the whole of that area being divided by the delimitation line between Tunisia and Libya; because although the rights which other States may claim in the north-eastern portion of that area must not be prejudged by the decision in the present case, the Court is not dealing here with absolute areas, but with proportions. Indeed, if it were not possible

¹ *Libyan Counter-Memorial*, para. 6.15.

² *North Sea Continental Shelf, Judgment*, I.C.J. Reports 1969, p. 22, paras. 19-20. And see the similar views by the Court of Arbitration in the 1977 *Anglo-French Arbitration* and the Court in the 1982 *Tunisia/Libya* case, quite properly cited by Malta in its *Counter-Memorial*, paras. 226-227.

to base calculations of proportionality upon hypotheses of this kind, it is difficult to see how any two States could agree on a bilateral delimitation as being equitable until all the other delimitations in the area had been effected¹.”

C. Proportionality in Practice

7.14 It may be recalled that the Libyan Memorial, having identified the relevant coasts and the relevant area, suggested that the ratios of the two coasts (broadly between 1:8 and 1:12) be applied to determine whether, within the relevant area, a delimitation which falls within the Rift Zone and which takes into account all of the relevant circumstances meets the test of proportionality². The conclusion reached was that such a delimitation would satisfy this test. Libya did not advance a precise line, since the Court's task is not to determine a precise line.

7.15 Obviously, when, in their negotiations, the Parties move on to the task of determining the precise line, that line will have to produce a result which reflects the balancing up of all the relevant factors and circumstances and which meets the proportionality test³. The previous Chapter has shown how the geographical, geological and geomorphological factors, if properly reflected in the delimitation, lead to a similar result. Each of these factors points to a solution falling within the area of dispute as evidenced by the conduct of the Parties, respects the presence of third States and existing third State delimitations, and produces a result within the Rift Zone which satisfies the test of proportionality as a “touchstone of the equitableness”⁴ of the result. There is no particular magic or sanctity in any one method of arriving at the particular delimitation. What matters is that the result should be equitable: it should be a product of a balancing of the relevant facts and circumstances of the case and should reflect approximately the ratio of the relevant coasts of the two Parties. The drawing of the precise line should not present major problems for the Parties, once the Court has indicated the relevant area along with the relevant circumstances, the weight to be accorded them and how they are to be reflected in the delimitation, and the ratio of areas which such a delimitation established according to equitable principles should bring about.

¹ See *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 91, para. 130. See also paras. 1.06 and 1.07, above.

² *Libyan Memorial*, para. 10.18. This broad approach was followed in the *Libyan Counter-Memorial*, para. 8.05.

³ For this purpose, “nice calculations” of proportionality need not be used (*Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 117, para. 250), but rather a “reasonable degree of proportionality” should be achieved between the areas of shelf appertaining to each State and the general length of their relevant coasts.

⁴ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 78, para. 108.

7.16 If the additional factor of weighting of size of the landmass or land territory is considered, it should operate so as to justify the selection of a higher, rather than a lower, ratio of coasts in the present case. As we have seen, depending upon how the relevant coasts are measured, the coastal ratio could be anything from 1:8 to 1:12. But, given the fact that the factor of size is weighted so heavily in Libya's favour because of the enormous landmass lying behind the Libyan coasts compared to the very small size of the Maltese Islands, this would suggest that the delimitation should be tested by taking at least the 1:12 ratio rather than the 1:8.

7.17 The Maltese Counter-Memorial has not disputed Libya's determination as to which coasts of the Parties are relevant to the delimitation¹. Nor has it taken exception to the coastal ratios, indicated in the Libyan Memorial, which flow from a comparison of these coasts². Moreover, while it is true that the Maltese Counter-Memorial challenges the importance of the Rift Zone, it has not advanced any argument contradicting the fact that a delimitation within and following the general direction of the Rift Zone would satisfy the criterion of proportionality based on the ratio of the coastal lengths of the Parties and maritime areas appurtenant to them.

7.18 Instead, Malta has accused Libya of being illogical. The Maltese argument is that Libya treats natural prolongation and proportionality as producing a coincidental result³. According to Malta, since there is no necessary correlation between proportionality, as a function of the lengths of coastlines, and the principle of natural prolongation, the fact that both produce results within the Rift Zone is meaningless. Thus the Maltese Counter-Memorial asserts: "If the proportionality argument is valid, the natural prolongation argument is irrelevant. If the latter principle is valid, the proportionality argument is irrelevant⁴."

7.19 This line of argument entirely misses the point: it illustrates how the Maltese pleadings have failed to appreciate the proper function of proportionality. There is no reason in law why each and every factor relevant to delimitation must of necessity "coincide" with proportionality. In the *Tunisia/Libya* case, for example, there was no inherent correlation between the existence of a *modus vivendi* — a line extending roughly perpendicular from the parties' common land boundary — and the test of proportionality employed by the Court. And yet the existence of such a *modus vivendi* was deemed to be a relevant factor in that delimitation⁵; its recognition as a relevant circumstance was not considered to be exclusive

¹ These coasts were identified in the *Libyan Memorial*, paras. 10.08-10.11.

² See *Libyan Memorial*, para. 10.11.

³ *Maltese Counter-Memorial*, para. 233.

⁴ *Ibid.*, para. 235.

⁵ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 84-85, para. 119.

of any other element or circumstance; and certainly not to be preemptive of the requirement that the equitableness of the outcome be verified by application of the proportionality test. Similarly, in that case there was no automatic correlation between, or mutual exclusion of, the giving of one-half effect to the Kerkennah Islands and the application of the proportionality test.

7.20 The reason why there is no predetermined relation between proportionality and any particular factor is straightforward. It is simply because "proportionality" *per se* does not result in any one particular line of delimitation representing a division of areas of shelf. Within any given area, an infinite number of lines can divide the area in a set proportion. But this is not the role of proportionality as the Courts have made use of it. For proportionality is not applied to produce a "line" which is then compared with the individual factors and relevant circumstances of the case to see if it is consistent with individual factors. Proportionality is used as a test of the result — a result which has been arrived at by selecting, weighing and balancing-up all the relevant considerations. The question which the criterion of proportionality seeks to answer is: does the delimitation to which a balancing of the facts and relevant circumstances leads produce an equitable result? Is it one which includes —

"the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf and the length of the relevant part of its coast . . . 17?"

7.21 If the proportionality test is applied to Malta's proposed median line delimitation, the answer to these questions is unequivocally, "No". By no stretch of the imagination may it be claimed that, within the area relevant to delimitation between Libya and Malta, an equidistance line produces a result which includes the "reasonable degree of proportionality" that this Court has insisted upon in both its 1969 and 1982 decisions. The Maltese proposal is disproportionate upon its face. It fails outright the test of proportionality "as an aspect of equity".

7.22 In summary, what needs to be stressed is that the treatment afforded to proportionality in the Maltese Counter-Memorial remains purely theoretical; it adheres to the abstract trapezium exercise², and is divorced from any appreciation of the actual coasts of the Parties or the actual area which lies between them. This is in itself the best proof that the realities of the situation are wholly inconsistent with Malta's proposal.

¹ *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 93, para. 133 (B)(5) [*dispositif*].

² *Ibid.*, p. 91, para. 131.

³ See Chapter 7 of the *Libyan Counter-Memorial* and the Annex thereto for a critique of the trapezium exercise.

The moment one examines the actual coasts and the area relevant to those coasts (taking account of the presence of third States), the inequity of the median line is all too apparent. As for proportionality, it must remain Malta's thesis that proportionality is irrelevant. For once its relevance is conceded, the lack of proportionality in Malta's median line is glaringly obvious. And once that is revealed, the inequity of the result sought by Malta is inescapable. In contrast, a delimitation within and following the general direction of the Rift Zone produces a result which takes into account all the physical factors and relevant circumstances and satisfies the test of proportionality.

CHAPTER 8

OBSERVATIONS ON THE APPROACHES OF THE PARTIES TO DELIMITATION IN THE PRESENT CASE

8.01 In the Introduction to this Reply, attention was called to the numerous "misunderstandings and misinterpretations" which characterise the Maltese Counter-Memorial. Libya's first reaction was that the errors should be corrected one by one. On closer examination, it was found that any attempt to deal with each and every one of these "mistakes" would lead to a document of inordinate length and complexity. Accordingly, comment in the Introduction was limited to just a few illustrative examples of the misunderstandings or misinterpretations which appear in that Chapter.

8.02 The final Chapter of the Maltese Counter-Memorial, Chapter XIII, adopts a somewhat different approach from that of Chapter I. It suggests adverse implications "for the development of the principles of law and equity relating to the continental shelf" flowing from the Libyan arguments in the present case. The alleged implications are themselves a fantasy and are based on an incorrect and, at times, distorted view of the Libyan arguments. In fact, the Chapter is one which should be examined closely in order to appreciate the extent to which the Maltese Counter-Memorial has employed misrepresentation and exaggeration as a technique of pleading. In the end, the Court will, of course, judge where the truth lies. Even the Maltese Counter-Memorial admits (paragraph 333) "that the Libyan Memorial *appears to accept* the existing body of principles". Properly understood, the Libyan case is directly founded on the applicable relevant principles and rules of international law concerning delimitation of the continental shelf.

8.03 Apparently, in an attempt to evade this self-evident fact, paragraph 332 of the Maltese Counter-Memorial resorts to the presentation of a view which is a mere caricature of Libya's position. Libya has not, contrary to what is said in paragraph 332(a), presented sea-bed features as "natural frontiers" or, as is alleged in paragraph 332(d), "topography" as one of the "actual bases" for a "primary delimitation". In fact, the whole concept of a "primary delimitation" is alien to Libya's thinking. A composite feature of the dimensions of the Rift Zone does not, in and of itself, provide a natural boundary line. However, the physical factors of geomorphology and geology, just as those of geography, have been brought to the Court's attention because they are of relevance to the entitlement of the Parties and constitute in any event relevant circumstances that provide important elements pointing to an equitable result.

¹ *Maltese Memorial*, para. 331.

8.04 Contrary to what is said in paragraph 332(b), Libya has never talked in terms of the “jurisdictional needs” of one Party being “more significant” than those of the other. If by “territorial extent” in paragraph 332(c) is meant the factor of the very small size of the Maltese Islands and, in particular, their very short lengths of coast in comparison to Libya’s very large size and extensive coasts, then Libya has, consistent with the jurisprudence, advanced these geographical factors as relevant circumstances, particularly as concerns the coasts of each Party that are related to the shelf area to be delimited. As to paragraph 332(d), it misstates completely Libya’s view as to the role of proportionality, a matter adequately brought out in the previous Chapter.

8.05 These misstatements of Libya’s case have paved the way for the Maltese Counter-Memorial, in paragraphs 333 and 345, to suggest that dire consequences would result if Libya’s approach to the present case — wrongly described as a “radical change in the existing structure of the law of maritime jurisdictions” — were favourably considered by the Court. Malta puts its threat of dire consequences in these words:

“Were an international tribunal to show favour to arguments of the type advanced by Libya in this case, the law would be thrown into confusion. The implications, the invitation to forms of aggrandisement and revisionism which such a change of direction in the law would presage, would be serious indeed¹”.

8.06 But this alarmist suggestion that the case put forward by Libya represents a “change of direction in the law” — in fact a “radical change” — is pure fabrication. It is not Libya but Malta which is advancing a novel approach to delimitation — an approach which, in fact, did not fully take form until the Maltese Counter-Memorial. It is that approach which is contrary to the jurisprudence and tendencies of legal development from the Truman Proclamation of 1945 to the 1982 Convention. It is an approach based on a theoretical priority for the equidistance method now bolstered by appeal to a “distance principle” whose relationship to delimitation of the continental shelf is tenuous at best, particularly in the light of paragraph 10 of Article 76 of the 1982 Convention. The Libyan case, on the other hand, is solidly grounded in the particular facts of the present case and in the jurisprudence.

8.07 It is not necessary for Libya to try to outdo Malta in predicting the dire consequences that would result if the Maltese approach to delimitation should find favour with the Court. For Malta’s line of argument does violence to the fact that no special or privileged status has been accorded to the equidistance method in the jurisprudence, in State practice and in the 1982 Convention. The Maltese approach rests on alleged

¹ *Maltese Counter-Memorial*, para. 345.

“principles” with no facts to back them up or to establish their application in the present case. It ignores or side-steps the circumstances which in the jurisprudence have clearly been regarded as relevant to continental shelf delimitation, namely, the specific geographical facts such as coastal lengths, coastal relationships vis-à-vis the area of continental shelf to be delimited, sea-bed features and the presence of third States. In Malta’s view relevant circumstances may be used to “refine” the “equitable nature of the primary boundary” as to the “marginal aspects of the equal relationships of the two coastal States”, but never to require a “major re-ordering of the primary delimitation”. Such a view relegates the relevant circumstances of the particular case — and hence equitable principles — to a role subordinate to the equidistance method which, as Malta would have it, *a priori* leads to a “primary boundary” which is said to be *prima facie* “equitable”.

8.08 This primary delimitation theory only clearly emerged in Malta’s Counter-Memorial, and may well be termed novel. The *a priori* role that Malta would assign to equidistance never has existed in customary international law. In fact, the Truman Proclamation of 1945, invoked no less than four times in the final chapter of the Maltese Counter-Memorial, itself suggests that such a position as Malta now advances had no standing even in 1945. For the Proclamation states unequivocally:

“In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned *in accordance with equitable principles*.”²

8.09 What is so different between the approaches of the Parties, then, is this. The Libyan approach starts with the view that each case of continental shelf delimitation has to be considered on its own facts. Accordingly, Libya examines the facts, opening up the map, observing the coasts of the Parties that relate to the area to be delimited and all the geographical, geomorphological and geological features. Other factors such as the presence of third States and the conduct of the Parties are examined. Given this special situation involving these various factual circumstances, the task, in the view of Libya, is to determine which ones are relevant and how much weight should be accorded those that are relevant in order to reach an equitable result. The way in practice of achieving that result flows from these facts — it is a function of how best to achieve an equitable result.

¹ *Maltese Counter-Memorial*, paras. 340-341. This novel approach concerning the “primary delimitation” is unambiguously set forth in paras. 338-344 of the *Maltese Counter-Memorial*.

² See *Libyan Memorial*, Annex 80.

8.10 Malta's approach is designed to circumvent the facts. To do this a sort of code is employed. But this code is readily decipherable. Malta's lip service to the geographical factors of the present case is quite transparent as has been brought out in Chapter 5 above and in the Libyan Counter-Memorial¹. Malta denies the relevance of size, coastal lengths and coastal relationships. Instead, in Chapter XIII, Malta refers to —

“the equitable principle of non-encroachment which recognises the element of self-protection and requires that proximity of a coastal front should predominate over any geomorphological arguments which would allow cutting across the coastal front of one coastal State in favour of another².”

Similarly, Malta asserts:

“In principle coastal States which are opposite and abut upon the same area of continental shelf should be accorded an equal lateral reach of jurisdiction³.”

And, again:

“ . . . the equality of lateral reach from the coasts which results from equidistance is in harmony with the traditional thinking behind the legal principles governing maritime delimitation⁴.”

These pronouncements have no support in the jurisprudence and none is cited. Terms like “equal reach of jurisdiction” and “equality of lateral reach” are just code words for use in getting around the facts — of rendering irrelevant the coasts of the Parties and the other relevant circumstances of this particular case. In reality, these propositions are nothing more than a restatement of the equidistance method in other terms.

8.11 Similarly, Malta's resort to State practice is another device for deflecting attention from the facts of the present case as if some determinative principle or rule of delimitation can be drawn from such practice in other factual settings. By the same token, Malta's new emphasis on natural prolongation as a purely spatial or distance concept is well suited to a theory of leap-frogging features of the sea-bed as well as ignoring size, coastal lengths and coastal relationships; but, similarly, it has no support in the jurisprudence or in the 1982 Convention.

8.12 Malta's case is built around abstractions and theories — principles that lack a legal foundation, rather than facts and relevant circumstances. The equitableness of Malta's result is not arrived at in the light of

¹ See, generally, Chapter 2 of the *Libyan Counter-Memorial*.

² *Maltese Counter-Memorial*, para. 337(b).

³ *Ibid.*, para. 340.

⁴ *Ibid.*, para. 339.

the facts and relevant circumstances in this particular case but on the basis of an *a priori* judgment that equidistance must be the primary delimitation to be adjusted in an appropriate case — but not here — and only slightly adjusted if “relevant considerations” so require.

8.13 Apparently these “relevant circumstances” have nothing to do with geography, geomorphology or geology. They appear to be the various considerations so prominently advanced in the Maltese Memorial which Libya regards either to have been found by the Court as not relevant in a case of continental shelf delimitation — considerations such as comparative economic needs and lack of natural resources — or to be unproven or irrelevant in the present case — considerations such as “security needs”. It does not suffice merely to state:

“The security needs of small States and especially small island States are no less, to say the least, than those of other States’.”

What are Malta’s security needs that require it to have rights to the seabed and subsoil as far south as almost 34° N latitude and as far east as 18° E longitude, let alone the Medina Bank area? If Malta has security interests that would be affected by Libya’s claim, just what are they?

8.14 The case-by-case, factual approach of Libya is clearly in accord with the jurisprudence, the basic principle of delimitation by agreement, and the practice of States. It also makes sense; no situation is entirely like another. If equitable principles are to govern the result, the facts of each case have to be the starting point and key element in any case of continental shelf delimitation. It is clear, as the Court itself has noted, “that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area”¹. An abstract, theoretical approach is always prone to work injustice in particular cases. Such an approach as adopted by Malta in the present case would certainly do so. To adopt Malta’s approach would be to pre-judge future delimitations regardless of the facts or other relevant circumstances and considerations in the particular case.

8.15 The crucial task lies in balancing the various factors relevant to the delimitation and in weighing the effect each particular circumstance should have in the overall result². It is not surprising that a factor of major importance in one case may be less in evidence in another. Given that each particular delimitation situation presents its own matrix of relevant facts, this is to be expected. But this does not prevent all the relevant factors from being balanced in a manner which points to an

¹ *Maltese Counter-Memorial*, para. 339.

² *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 60, para. 72.

³ *Ibid.*, p. 60, para. 71.

equitable solution in that particular case. What then remains is for the result that emerges from the facts to be tested by means of the element of proportionality to determine whether, in fact, a result which bears a reasonable degree of proportionality has been achieved. This does not, however, convert the test of proportionality into a "method" of delimitation¹.

8.16 The Libyan approach to delimitation in this case is dictated by — and indeed arises directly out of — the principles and rules of international law concerning continental shelf delimitation as they have evolved down to the present day. Such an approach cannot threaten the existing principles and rules, and Malta's dire predictions are completely unfounded. Libya is confident that this approach is the right one and that it gives scope to the Court to fulfill its task under the Special Agreement in appreciating the geographical and other circumstances relevant to the delimitation in the particular case², a role denied to the Court by Malta's insistence on the primacy of the equidistance method.

8.17 In spite of the diversions and false scents provided by the Maltese Counter-Memorial, it is Malta's insistence on its equidistance line that remains a principal issue in the present case. It is the main obstacle to a solution which will achieve an equitable result in accordance with the principles and rules applicable to continental shelf delimitation. The Maltese contentions concerning the "distance principle" confuse the issue of delimitation and have no real impact. Malta's arguments on alleged acquiescence have been shown to be without merit. There is overall nothing in the Maltese Counter-Memorial to cause Libya to alter the basic approach adopted in its Memorial which rejected the equidistance method as obligatory and maintained that its application in the present case would not lead to an equitable result. Libya continues to seek an equitable solution which would take account of all the relevant facts and circumstances of this case. Accordingly, Libya continues to maintain the Submissions made in its Memorial.

¹ See paras. 7.12 and 7.20, above.

² *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 48, para. 69.

SUBMISSIONS

Libya confirms and maintains its Submissions made in its Memorial as follows:

In view of the facts, the statement of the law, and the application of the law to the facts as set forth in the Libyan Memorial, the Libyan Counter-Memorial, and in this Reply; and

In view of the observations concerning the facts as stated in the Maltese Memorial and Counter-Memorial and the statement of law as therein contained;

Considering that the Special Agreement between the Parties requests the Court to decide "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" in accordance with the Judgment of the Court:

May it please the Court, rejecting all contrary claims and submissions, to adjudge and declare as follows¹:

1. The delimitation is to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances in order to achieve an equitable result.
2. The natural prolongation of the respective land territories of the Parties into and under the sea is the basis of title to the areas of continental shelf which appertain to each of them.
3. The delimitation should be accomplished in such a way as to leave as much as possible to each Party all areas of continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the other.
4. A criterion for delimitation of continental shelf areas in the present case can be derived from the principle of natural prolongation because there exists a fundamental discontinuity in the sea-bed and subsoil which divides the areas of continental shelf into two distinct natural prolongations extending from the land territories of the respective Parties.

¹ The numbered Submissions are as they appear in the *Libyan Memorial*.

5. Equitable principles do not require that a State possessing a restricted coastline be treated as if it possessed an extensive coastline.
6. In the particular geographical situation of this case, the application of equitable principles requires that the delimitation should take account of the significant difference in lengths of the respective coastlines which face the area in which the delimitation is to be effected.
7. The delimitation in this case should reflect the element of a reasonable *degree of proportionality* which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the respective States and the lengths of the relevant parts of their coasts, account being taken of any other delimitations between States in the same region.
8. Application of the equidistance method is not obligatory, and its application in the particular circumstances of this case would not lead to an equitable result.
9. The principles and rules of international law can in practice be applied by the Parties so as to achieve an equitable result, taking account of the physical factors and all the other relevant circumstances of this case, by agreement on a delimitation within, and following the general direction of, the Rift Zone as defined in the Libyan Memorial.

(Signed)

ABDELRAZEG EL-MURTADI SULEIMAN
Agent of the Socialist People's
Libyan Arab Jamahiriya

ANNEXES TO THE REPLY OF LIBYA

Annex 1

EXTRACTS FROM MALTESE PARLIAMENTARY DEBATES,
20-22 JULY 1966

(Unofficial translation)

[20 July 1966]

DEBATE ON CONTINENTAL SHELF BILL
CONTINENTAL SHELF BILL

Hon. Dr. T. Caruana Demajo (Minister of Justice): I move that the Draft Bill on the Continental Shelf be read a second time.

Mr. President, as the House will remember, the Draft Bill was presented in the last Parliament. Its general principles and aims were discussed, and it was even given a second reading; unfortunately, however, Mr. Speaker, this Draft Bill did not become Law because of the dissolution of Parliament.

Today, for the benefit of the new Honourable Members of the House, and also because some doubts were expressed by the Opposition when this Draft Bill was discussed last time, I shall repeat, in brief, the principles and aims of the Draft Bill.

This Draft Bill assumes and indirectly affirms the sovereignty of Malta over the Continental Shelf, and gives to the Government all the rights which Malta has over the Continental Shelf, as well as all the natural resources of the Shelf. I think that the House will appreciate that this sovereignty which Malta has over the Continental Shelf does not come from the Draft Bill which lies before the House, but comes from International Law which has now been enshrined in the Convention on the Continental Shelf. This Draft Bill therefore assumes Malta's sovereignty and continues to assert and affirm it, as happens in every country which possesses a Continental Shelf. However, although this sovereignty over the Continental Shelf exists independently of whether or not there is a Municipal law, and thus it existed without the Draft Bill which lies before the House, and without the amendments which were made to the Petroleum (Production) Act, 1958, it is necessary, Mr. Speaker, to have a Municipal law so as to hand over to the Government the rights which Malta has over the Continental Shelf and over its natural resources, and so as to regulate, or rather, I should say, so as to find a means of regulating the exploration and exploitation of this Shelf and of its resources.

Thus in the first instance the Draft Bill which lies before the House today invests in the Government the rights which Malta has over the Continental Shelf and over its natural resources.

Hon. P. Carachi: For the fourth time this evening I ask that there should be a quorum, because we do not have a quorum. I am asking this for the fourth time, Mr. Chairman.

At 8.42 p.m., a quorum being present, the sitting was resumed.

Hon. Dr. T. Caruana Demajo: Thus, Mr. Speaker, in the first instance, the Draft Bill which lies before the House invests in the Government all the rights which Malta has over the Continental Shelf and over its natural resources and by making it a condition that all the oil which may be found here in Malta will be subject to the relevant provisions of the Petroleum (Production) Act, it prohibits the exploration for oil without a Government licence, and regulates also the granting of that licence and the conditions under which it must be given.

The relevant provisions of the Petroleum (Production) Act, 1958, to which I have referred are to be found in Section 3, sub-section 2 of the Bill which lies before us.

The Draft Bill also provides for the protection of the living resources of the sea and also for the cleanliness of the sea, and it will impose penalties on anyone who discharges oil or allows it to flow out in a way which would pollute the sea.

The Draft Bill also controls, in so far as it is necessary for the production and exploitation of oil, underwater cable installations, the laying down of underwater cables is what I meant to say.

It results, from Section 4, that this Draft Bill gives the Prime Minister the power to indicate the area or areas over which, from time to time, the right of Malta over the Continental Shelf may be exercised, and he has this power not only as a consequence of an agreement with other countries over this Continental Shelf but also for the purpose of exercising certain rights for the protection of the installations or other equipment which it may be necessary to install and for the application of the Maltese law to these installations.

Hon. P. Carachi: Mr. Speaker, I wish that things would be taken seriously, I had insisted on a quorum, and this is now the fifth time that I am insisting on it!

We should be ashamed of the fact that in this House we are cutting such a bad figure. If we are unable to stay in this House to carry out our duties, we should not have come here, we should not have had a sitting!

The Clerk counted the House and, a quorum being present, the debate continued.

Hon. Dr. T. Caruana Demajo: In this context I would like to explain a few things about the limits of the Continental Shelf.

The Continental Shelf of every country has two main limits. The first limit of the Continental Shelf is established by the depth of the sea because it is a fundamental principle of International Law that sovereignty only extends as far as it can be exercised, and modern technological means only permit exploitation up to a certain depth. The second limit of the Continental Shelf comes into being when two States claim equal or conflicting rights, that is when the shelf of one country, in line with the first limitation which I mentioned earlier, meets that of another country.

As regards the second limitation, it is naturally desirable that an agreement should be reached between the States concerned regarding the limits of the Continental Shelf, and the Convention relating to the Continental Shelf, to which I have already made reference, already provides for such an eventuality.

However it is not possible, although it is highly desirable, that there should always be such an agreement. However, even in the case of lack of agreement, the Geneva Convention provides for a median line, which is that line which divides the two shelves.

I am mentioning this mainly because when I moved this Draft Bill in the last Parliament, the Opposition referred to the negotiations with Italy and with the African States.

I would like to make it clear that in so far as Africa is concerned, this matter is not relevant today since the Maltese Continental Shelf and the African Continental Shelf do not meet, and the seas between them are so deep as to prevent exploitation. However, our situation vis-à-vis Sicily is different, Mr. Speaker. But even here I would like to clarify that although it is desirable that there should be an agreement on the limits of the Continental Shelves of Sicily and of Malta, this is not at all essential. Should there be no agreement, Mr. Speaker, the Government of Malta has already made it clear to the Italian Government that until a different agreement is reached, the Maltese Government considers that the median line is that which divides the two shelves.

Finally I would like to refer to what I have already stated in an earlier sitting when the first reading of this Draft Bill was moved regarding the way in which the survey of our Continental Shelf will be carried out, and eventually its consequent exploration and, should oil be found, its exploitation. I also recall that in the last Parliament I had announced that discussions were to take place with companies which had shown an interest in the exploration and exploitation of oil in Malta. In fact, Mr. Speaker; these discussions did take place, but serious doubts were expressed, and these serious doubts were expressed not only by the companies but also by the Government's experts because it emerged that it was not worth while carrying out a preliminary "combined survey" because of the geological structure of our Continental Shelf and the result which such a survey might yield.

The Government is giving this matter all the necessary consideration and it will not be long before it will announce the procedure and the method which it intends to follow . . .

Hon. D. Mintoff: Do I understand correctly that the survey is not going to take place?

Hon. Dr. T. Caruana Demajo: No, it is not going to take place.

Hon. D. Mintoff: Was there no need for it?

Hon. Dr. T. Caruana Demajo: There was no need for it. We were shown as much both by the companies as well as by the experts which the Government has at its disposal. Of course the Government will publish the regulations which in fact are in the process of being prepared by my office, and thus all the preliminary steps will be taken which I am sure, as all members of the House would wish, will have a successful outcome in the interests of the economy of the country should we succeed in finding oil. This is all I had to say regarding the principle and the aim of the Draft Bill which we have before the House.

Hon. Dr. P. Borg Olivier: I second it.

Hon. D. Mintoff: I think, Mr. Speaker, that the Government will not take offence if the Opposition should state that it is not very impressed with the speed and rapidity with which these matters concerning oil are being taken, and I honestly cannot understand how a few months ago the Government felt that there was a need for a survey, and not only that there should be such a survey, but that it should be combined, and that it should be undertaken by all the companies together, and today the Government is stating that it has been informed by the experts that there is no need for it. I cannot understand how they did not know this six months ago and nine months ago. I am saying this on the basis

of what I have just heard. I will repeat that it is a mystery to me why the Government was not informed by its experts six months and nine months ago that there was no need for this survey.

I will also repeat, Mr. Speaker, that we should be pleased if agreement is reached with the Italian Government, but the Minister was not particularly explicit on this point. I agree with him over the point that the depth of the sea which divides Malta from Sicily is much less than the depth of the sea which divides Malta from Libya and from Tunis. Thus far I agree with what he says. I also think that the Minister will also agree with me when I say that there is a part of this area where the sea is shallow, especially the area between Malta and Libya. I think that if the Minister were to investigate thoroughly, he would agree with me on this point. From what I know of geology of the sea and of our island, the shallowest part of the whole of the Mediterranean basin is that between Libya and Sicily and the part around Malta. Of course the depth between Malta and Sicily is less than the depth between Malta and Libya, but there is a shallow part in this area which divides Malta from Libya which is so shallow as to permit it to be exploited for the purposes of research for the exploration of oil, and I think that what the Government meant to say when it said that the sea was deep was that the shallow part was so much nearer to Malta that there should not be much cause for dispute on this point between ourselves and Libya, and up to this point we are in agreement.

I have also tried to understand how the law has been drawn up, constructed, and put together, and I could not honestly understand why there are such discrepancies in the penalties for breaking the law which we have before us. For example, if one were to lay a cable in an area designated as a petroleum area, a fine of £50 a day would be imposed, and then if a tanker were to pass through that area and do anything where oil exploration was being carried out, we find that the fine is £100, and then, yet again, if somebody else were to break the law in another way as is mentioned at the end of the law, you will find that there is a fine of £1000.

.....

[22 July 1966]

Hon. Dr. T. Caruana Demajo: During last Wednesday's sitting, the Opposition raised two matters after I had spoken about the principles and aims of the Bill. The Opposition referred to the limits of the Continental Shelf between Malta and the African States and it also referred to the fines which are laid down in the Draft Bill.

As regards the first observation, I can say there is no problem regarding the Continental Shelf of the African States, for the moment at least, because they are separated by a depth which cannot be exploited and, whilst I was explaining the principles of the Bill, I said that one of the principles of International Law is that sovereignty extends only so far as it can be asserted, and modern technology today does not permit exploitation beyond a certain depth.

Hon. D. Mintoff: If you will allow me. There is a part of it, however, which can be exploited, is that not so?

Hon. Dr. T. Caruana Demajo: But they do not touch one another.

Hon. D. Mintoff: But they all touch one another.

Hon. Dr. T. Caruana Demajo: But there is the question of depth.

Hon. D. Mintoff: A part of it. For example, towards Libya it is shallow enough, but this part does not come as far as the area between us.

Hon. Dr. T. Caruana Demajo: Mr. Chairman, as I was saying, there are three different penalties. The first is a penalty of not more than £100 or imprisonment for a period of not more than three months, or a combination of the fine and imprisonment together. There is a provision for this penalty in Clause 4 . . .

.....

Annex 2

MALTESE NOTE VERBALE TO ITALY DATED 31 DECEMBER 1965

[See I, p. 551, Memorial of Malta, Annex 65]

Annex 3

DOCUMENTS RELATING TO CONCESSION NC 53: (a) EXTRACTS FROM HEADS OF AGREEMENT OF 14 APRIL 1974; (b) EXTRACTS FROM EPSA OF 13 OCTOBER 1974; (c) ACT NO. 58 OF 23 SEPTEMBER 1974, WITH ACCOMPANYING MAP; TRANSLATION; (d) EXCHANGE OF LETTERS BETWEEN THE LIBYAN MINISTRY OF PETROLEUM AND TOTAL, DATED 17 NOVEMBER 1974 AND 12 JANUARY 1975; (e) REDUCTION OF MAP PUBLISHED BY THE NOC IN 1975

(a) EXTRACTS FROM HEADS OF AGREEMENT OF 14 APRIL 1974

HEADS OF AGREEMENT

Preamble

As a result of discussions held in Tripoli, pursuant to the minutes of understanding signed in Paris on 20th February, 1974 by representatives of the Government of the Libyan Arab Republic and Compagnie française des pétroles, it was agreed upon the following principles:

1. (A) *Type of Contract:*

Petroleum Exploration and Production Sharing.

(B) *Parties to the Contract:*

- (1) National Oil Corporation — General Corporation established in the Libyan Arab Republic according to Law No. 24 of 1970 and its amendments (First Party)
- (2) Compagnie française des pétroles — a Corporation established under the Laws of France, acting for itself and for its affiliate, Compagnie des pétroles Total Libye (C.P.T.L.) (Second Party).

2. *Contract Area:*

It shall be made of:

Area A — Western Offshore Area — as described in Appendix IA.

Area B — Murzuk Basin Area — as described in Appendix IB.

Area C — Hamada Area — as described in Appendix IC.

Area D — Eastern Deep Offshore Area — as described in Appendix ID.

Each block shall have an approximate surface of 1,500 km except for Area D.

3. *Contract Duration:*

Thirty-five (35) years.

4. *Exploration Period:*

Shall be:

— for Area A — five (5) years,

— for Area B — six (6) years,

— for Area C — five (5) years,

— for Area D — five (5) years; as from the date of selection of the blocks retained in that area as provided in Appendix II.

At the end of the Exploration Period for each of the areas, only the blocks in such area in which a discovery . . .

. . . below, if Second Party does not agree with a decision of the Committee on a development project which Second Party deems uneconomical, First Party may proceed with the project at its sole risk and expense and ask the operator to perform such operation, and the First Party shall enjoy the entire benefits deriving therefrom.

13. *Exploration Commitments:*

Second Party undertakes to carry out the work program outlined for each area in Appendix II as approved by the Management Committee.

Second Party undertakes to spend for such operations:

(a) Area A:

Minimum Commitments of 30 millions US \$ for the first 6,000 square km.

for any area in excess of 6,000 sq. km. where TOTAL shall work after international boundaries have been agreed upon, commitments shall be 15 million US \$ for each 3,000 sq. km.

Area A shall not exceed 22,000 sq. km.

(b) Area B not less than 30 million US \$.

(c) Area C not less than 30 million US \$.

(d) Area D 1 million US \$ for seismic, and after the optional selection of block or blocks, 10 million \$ for each block.

In the case of Area D the Exploration Period shall be extended as necessary to enable drilling to be conducted in a safe manner.

In the case of Area A the Exploration Period shall be extended by a period equal to the delay between the effective date and the final determination of the limit of Libyan jurisdiction affecting the said Area.

Should the geophysical works and the general geological studies and/or drilling information not result in a sufficient number of drillable prospects justifying such commitments, then additional area(s) shall be requested by the Second Party to the Libyan Government. Should such new area(s) not be granted or should the same, in Second Party's opinion and after serious consultations and review with the Supervisory Committee, not justify the undrilled exploration wells, then Second Party shall be released from any remaining obligations.

14. *Force majeure:* The usual clause.

15. *Arbitration:*

According to the Rules of the International Chamber of Commerce in Paris. The Board of Arbitration shall consist of three (3) Arbitrators.

16. *Assignment of Rights:*

The assignment of any of the Second Party's rights and obligations under the agreement shall be subject to the Government consent.

It is noted that TOTAL intends to request such consent for the transfer of a part interest in one or more of the areas, to another oil company which would become partner with TOTAL as Second Party, being understood that TOTAL would remain responsible vis-à-vis First Party of Second Party's obligations.

The above principles shall be developed into a detailed Agreement which shall be finalized as soon as practical between the Parties' representatives and approved by a Libyan Law enacted for that purpose and in accordance with the applicable procedures in both countries.

Signed on this day 21st Rabi El-Awal, 1394 H., corresponding to the 14th April, 1974 A.D.

for the Libyan Party
(Signed) [ILLEGIBLE.]

for C.F.P.
(Signed) [ILLEGIBLE.]

Appendix IA

WESTERN OFFSHORE AREA

The Area shall be the area comprised within a line made up of:

- (a) On the one hand, the seaward limit of jurisdiction of the Libyan Arab Republic over the seabed and subsoil underlying any agreement between the Libyan Arab Republic and any other relevant Mediterranean State claiming jurisdiction over such seabed and subsoil, between the westernmost and the easternmost intersections of the said limit with the broken line defined in (b) below.
- (b) On the other hand, that part of the continuous broken line defined hereafter which is comprised between the easternmost and westernmost intersections referred to in (a) above; that continuous broken line shall be made up of:
 - (i) that part of the meridian of 14° 45' longitude East, which is situated north of point A being its intersection with
 - (ii) parallel 34° 10' of latitude North, westward of point A up to point B being its intersection with
 - (iii) meridian 13° 30' of longitude East, southward of point B up to point C being its intersection with
 - (iv) parallel 33° 50' of latitude North, westward of point C up to point D being its intersection with
 - (v) meridian 13° 05' of longitude East, northward of point D up to point E being its intersection with
 - (vi) parallel 34° 15' of latitude North, west of point E.

(b) EXTRACTS FROM EPSA OF 13 OCTOBER 1974

PETROLEUM EXPLORATION AND PRODUCTION SHARING CONTRACT

Between:

- *National Oil Corporation*, a General Corporation established in the Libyan Arab Republic according to Law No. 24 of 1970 and its amendments (hereafter called "NOC" or "First Party");

- *Compagnie des pétroles Total (Libye)*, a company established and organised under the laws of France being a wholly owned affiliate of *Compagnie française des pétroles* (hereafter called "TOTAL" or "Second Party"); and
- *Compagnie française des pétroles*, a company established and organised under the laws of France

Whereas representatives of the Government of the Libyan Arab Republic and of *Compagnie française des pétroles* have agreed in Paris in February 1974 on co-operation between them in the fields of petroleum activities including exploration for which an exploration contract was to be concluded as soon as possible;

Whereas certain principles for such an exploration contract have been discussed, agreed and recorded in Heads of Agreement signed by the Parties in Tripoli on the 21st Rabi El-Awal 1934 H. corresponding to 14th April 1974 A.D.;

Whereas NOC has the exclusive right and authority to explore for and develop petroleum in and throughout the Contract Area as hereinafter defined;

Whereas NOC is authorised and empowered by the Revolutionary Command Council of the Libyan Arab Republic to enter into this Contract;

Now therefore it is agreed as follows:

.....

Article 3 — Contract Area

3.1. The Contract Area shall initially consist of:

- Area A: the Western Offshore Area as described in Appendix I.A.
- Area B: the Murzuk Basin Area as described in Appendix I.B.
- Area C: the Hamada Area as described in Appendix I.C.
- Area D: the Eastern Deep Offshore Area as described in Appendix I.D.

3.2. No later than eighteen (18) months after the Effective Date, Second Party shall have the option, by notice to First Party, to designate within Area D as defined above up to three blocks defined by portions of meridians and parallels, of an aggregate areal extent of no more than thirty thousand (30,000) square kilometers.

Area D, except for areas so designated, shall cease to form part of the Contract Area on the expiry of such 18 months period.

3.3. At the end of the Exploration Period in respect of any Area, the said Area shall be reduced to those Blocks within which a discovery has been made or a discovered field, structure or trap extends. All other Blocks in said Area shall cease to form part of the Contract Area.

3.4. The Contract Area may be increased by the inclusion therein of additional areas as provided in Article 5.3. below.

.....

Article 19 — Effective Date and Term

19.1 This Contract shall take effect when it shall have been signed by duly authorized representatives of First Party, Second Party and *Compagnie française des pétroles* and approved by a Libyan Law enacted for such purpose.

This Contract shall terminate, except for extensions due to Force Majeure as provided in Article 15, on the thirty-fifth anniversary of the Effective Date.

Done in Tripoli on the 27th Ramadan 1394 H.
corresponding to the 13th October 1974 A.D.

For Compagnie française des pétroles,

(Signed) [ILLEGIBLE.]

For Compagnie des pétroles TOTAL
(Libye),

(Signed) [ILLEGIBLE.]

For National Oil Corporation,
(Signed) [ILLEGIBLE.]

Appendix I

DEFINITION OF AREAS

A — WESTERN OFFSHORE AREA

The Area shall be the area comprised within a line made up of:

- (a) On the one hand, the seaward limit of jurisdiction of the Libyan Arab Republic over the seabed and subsoil underlying the Mediterranean Sea as established by or pursuant to any agreement between the Libyan Arab Republic and any other relevant Mediterranean State claiming jurisdiction over such seabed and subsoil, between the westernmost and the eastern intersections of the said limit with the broken line defined in (b) below.
- (b) On the other hand, that part of the continuous broken line defined hereafter which is comprised between the easternmost and westernmost intersections referred to in (a) above; that continuous broken line shall be made up of:
 - (i) that part of the meridian of 14° 45' longitude East, which is situated north of point A being its intersection with
 - (ii) parallel 34° 10' of latitude North, westward of point A up to point B being its intersection with
 - (iii) meridian 13° 30' of longitude East, southward of point B up to point C being its intersection with
 - (iv) parallel 33° 50' of latitude North, westward of point C up to point D being its intersection with
 - (v) meridian 13° 05' of longitude East, northward of point D up to point E being its intersection with
 - (vi) parallel 34° 15' of latitude North, west of point E.

This Area shall be subdivided into blocks by such portions of the following meridians and parallels which are included in the Area under the Libyan Arab Republic jurisdiction:

<i>Meridians</i>	<i>Parallels</i>
12°	33° 50'
12° 15'	34° 10'
12° 30'	34° 30'

12° 45'	34° 50'
13°	35° 10'
13° 15'	35° 30'
13° 30'	35° 50'
13° 45'	
14°	
14° 15'	
14° 30'	
14° 45'	

(c) ACT NO. 58 OF 23 SEPTEMBER 1974, WITH ACCOMPANYING MAP;
TRANSLATION

(Unofficial translation)

Libyan Arab Republic

Official Gazette

No. 66 3 AL-HEJJA 1394,
Corresponding to 17 December 1974

TABLE OF CONTENTS

LAWS PROMULGATED BY THE REVOLUTIONARY
COMMAND COUNCIL

	<i>XIIth Year</i>
	<i>Page</i>
Law No. 58 (1974) issued on 23 September 1974 approving exploitation and production sharing agreements as between the National Oil Corporation and certain oil companies	2847

Published by order of the Minister of Justice

No. 66

Page 2847

LAW NO. 58 OF 1974

APPROVING EXPLORATION AND PRODUCTION SHARING AGREEMENTS AS
BETWEEN THE NATIONAL OIL CORPORATION AND CERTAIN OIL COMPANIES

In the Name of the People,
The Revolutionary Command Council,

Having regard to

The Constitutional Declaration of 2 Shawal 1389, corresponding to 11 December 1969;

The 1955 Petroleum Law No. 25 of 1955, and its amended laws;
 Law No. 24 of 1970 establishing the National Oil Corporation and its amended laws;
 Law No. 8 of 1974 approving an exploration and production sharing agreement between the National Oil Corporation and Occidental (Libya) Co. S.A., and;

Having regard to what has been submitted by the Minister of Petroleum in his memorandum dated 9 Jumada AL-ULA 1394, corresponding to 30 May 1974, and to the approval of the Council of Ministers,

Has promulgated the following law:

Article 1

Exploitation of areas illustrated in the annexed chart and in the exploration and production sharing agreements between the National Oil Corporation and the following oil companies has been agreed upon:

1. The French Petroleum Company and its subsidiary Total (Libya) Petroleum Company;
2. Esso Libya S.A.;
3. Mobil Oil (Libya) Ltd.;
4. AGIP Company S.A.;
5. Petrobras International Company S.A. Braspetro.

And that is according to conditions specified in the memorandum of the Minister of Petroleum referred to above.

Article 2

The Minister of Petroleum is authorized to take the necessary measures to complete the detailed and final Agreements between the National Oil Corporation and the companies referred to in the preceding article. He may delegate any official of the Ministry of Petroleum, the National Oil Corporation or any of its subsidiaries, to sign such agreements.

Article 3

The Minister of Petroleum shall implement this law which enters into force as of the date of its promulgation. It shall be published in the Official Gazette.

The Revolutionary Command Council

Izziddin AL-MABROUK,
 Minister of Petroleum.

Major Abdussalam Ahmad JALLOUD,
 Prime Minister.

Issued on 7 Ramadan 1394
 23 September 1974

(d) EXCHANGE OF LETTERS BETWEEN THE LIBYAN MINISTRY OF PETROLEUM AND TOTAL, DATED 17 NOVEMBER 1974 AND 12 JANUARY 1975

Libyan Arab Republic
Ministry of Petroleum
P.O. Box 256, Tripoli.

Tripoli, 3rd. Zul Keda, 1394 H.Y.
Corresponding to the 17th Nov., 1974.

Messrs. Compagnie française des pétroles — TOTAL
39-43, Quai André Citroën
75739 Paris-CEDEX 15
France.

Kindly be informed that the Revolutionary Command Council of the Libyan Arab Republic has on the 29th Shawwal, 1394 H.Y. corresponding to the 13th November, 1974, promulgated a Law ratifying the terms and conditions of the agreement concluded on the 27th Ramadan, 1394 H.Y., corresponding to the 13th October, 1974 between the Ministry of Petroleum, acting on behalf of the National Oil Corporation and your Companies.

You are hereby notified accordingly so as to commence the implementation of your commitments.

Yours faithfully,

(Signed) Hussein ABDINE,
Legal Advisor,
Ministry of Petroleum.

Mr. Hussein Abdine
Legal Advisor
Ministry of Petroleum
P.O. Box 256, Tripoli.

Tripoli, le 29 Thoul Haja 1394,
12 January 1975.

Dear Sir,

We thank you for your letter of 17 November 1974, in the course of which you informed us that a law had been promulgated ratifying the agreement entered into between the Ministry of Petroleum and our Company on 13 October 1974.

This law was published in the official gazette on 17 December 1974.

We take it that on a proper interpretation of the contract the "Effective Date" is the date of such publication.

As far as we understood it correctly, it was our same understanding when we discussed the matter in your office on 8 January 1975.

In the absence of advice from you to the contrary, therefore we shall regard the date of such publication as the effective date of the contract and shall act accordingly.

Yours faithfully,

(Signed) P. RONDEAU.

(e) REDUCTION OF MAP PUBLISHED BY THE NOC IN 1975

[Not reproduced]

Annex 4**EXTRACTS FROM MALTESE PARLIAMENTARY DEBATES,
16 JANUARY 1978; TRANSLATION****STATEMENT****AGREEMENT WITH THE OIL COMPANIES REGARDING THEIR POSITION UNTIL
THE SITUATION BETWEEN MALTA AND LIBYA IS RESOLVED**

The Hon. Dom Mintoff: On the 7th December, 1977, after many months of negotiation, agreement was finally reached with the three companies who were given a licence to drill for oil towards the south of the Maltese Islands. This special agreement was made necessary because of the disagreement between Malta and Libya regarding the median line which separates the two countries.

All the companies who had been given a licence to drill for oil agreed that the matter had to be resolved by the International Court; so much so, that agreement was reached with two of these companies before the Special Agreement with Libya of the 23rd May, 1976 was signed. This Agreement was placed before the House in the statement of the 24th May, 1976.

Although the companies were in agreement regarding the International Court, the details regarding changes to the licence, the talks were not finalised with them all in a short time. One should not be surprised at the lengthy proceedings if the Government's aim in these negotiations is understood. This was that whilst the Maltese Government allowed the companies to postpone those undertakings that could not be effected before the case between Malta and Libya was resolved, at the same time would force these companies to satisfy the other undertakings which were not tied to the drilling of oil proper.

The agreement now reached between all the companies states that prospecting for oil will be stopped pending the decision of the International Court regarding the extent of the Maltese continental shelf, thus ensuring that any future prospecting will be conducted in our (Maltese) waters. The companies want to know what will happen should the International Court decide that the median line is not that which Malta maintains. Consequently we had to foresee what changes to the licences would be required should the International Court not decide wholly in our favour.

The new agreement made it clear that irrespective of the Court's decision, all monies which had been paid to Malta would be retained by Malta and Malta would not refund any money neither would it forfeit those sums which fall due for payment during the period of the disagreement.

The Agreement re-enforces that part of the original agreement which bound the companies to invest in industrial projects in Malta. These changes have not been effected because of the disagreement between Malta and Libya, but because of difficulties encountered by these same companies in investing in industrial projects in Malta. We ourselves have encountered these same difficulties, as can be said of the whole World; because of the recession.

Notwithstanding, the Government made sure that whilst it was not possible to create the desired number of jobs for the people of Malta, they would reap other benefits.

The agreement made with the consortium run by Aquitaine regarding invest-

ments did not raise any problems. Not only did they set up the proposed factory but it is being run in accordance with the agreement and is making progress.

Texaco fulfilled its undertaking to appoint "consultants" in an endeavour to establish which industries could be profitably set up in Malta. In November 1974 Stanford Research Institute made a long report to Texaco and the Malta Development Corporation in which the necessary advice was given as well as naming the American companies who had shown interest in setting up industries in Malta. Because in the past years trade between countries was reduced (there was the "recession") every effort of Texaco and the Malta Development Corporation to set up industries came to nothing.

Therefore, we agreed with Texaco that out of the unspent sum, which amounted to 2.8 million American dollars, the sum of 1 million dollars would be paid immediately to the Government to be spent as it thought fit, and the balance would be retained by Texaco to be invested by this company in an industrial project of the Maltese Government's choice. This money will be expended as soon as we have a worthwhile project in which we wish Texaco to invest. In the meantime, we have kept this money as a reserve, as we had other means on which to draw.

Joc Oil's problems were more complicated and difficult, and they took longer. Joc Oil's undertaking was precise: it was to invest in a cement company costing approximately 35 million American dollars. After careful study made by the company, it was found that the project would not be a profitable one, principally because of the high cost of oil.

Despite the considerable effort made in an endeavour to find an alternative project to take the place of the cement project, nothing was achieved. After months of negotiations, Joc Oil agreed to give to the Government the sum invested in the cement project. This sum, together with accrued interest, was approximately Lm580,000. This sum was placed in Malta's treasury to meet the needs of its people.

It is therefore clear that, despite the delay in oil exploration because of the disagreement with Libya, and despite the problems which the oil companies had to face in their efforts to set up industries, not only did the Government not remain passive, but it took all the necessary steps to obtain for the people of Malta as much as possible. Notwithstanding that circumstances were all against us, the people of Malta succeeded in obtaining an appreciable sum.

I know how much the people of Malta would like oil exploration in our waters to be resumed as soon as possible. I know how beneficial to the people of Malta this oil exploration would be. However, I also know that if oil exploration is not undertaken in a peaceful climate, it would be a cause of harm to us. Therefore, whilst I promise that we will do everything possible to urge our friendly Government of the Libyan Jamahiriya to hurry up and ratify the agreement to go before the International Court, I also want to warn our people not to allow themselves to be misled on the matter without understanding how, even amongst countries of the West who are the best of friends, it took years to resolve peaceably matters of this nature. When disagreement ended in quarrels, everyone was the loser.

I hope that in a short time I will be able to give information which will be to the good of the Maltese people regarding the matter between Malta and Libya.
(Applause)

.....

Annex 5

SEISMIC PROFILES OF THE MEDINA AND MALTA CHANNELS: MEDINA CHANNEL (OR GRABEN) ALONG LINE MS14, AFTER FINETTI; MEDINA GRABEN (MIOCENE TO QUATERNARY RIFTING) ALONG LINE MS14, FINETTI (1984); MEDINA-MALTA CHANNEL (SEE FIGS. 7 AND 9B, JONGSMA, *ET AL.* (1984))

[Not reproduced]

Annex 6

EXTRACTS FROM DERK JONGSMA¹, JAN E. VAN HINTE¹ AND JOHN M. WOODSIDE², "GEOLOGIC STRUCTURE AND NEOTECTONICS OF THE NORTH AFRICAN CONTINENTAL MARGIN SOUTH OF SICILY", SUBMITTED FOR PUBLICATION, 1984: PAGES 1, 11, 14 AND 15; FIGURE 1: SIMPLIFIED TECTONIC FRAMEWORK OF THE MEDITERRANEAN REGION

[Page 1]

Abstract

Marine geological and geophysical data together with drilling information indicate that the North African passive continental margin has been subjected to extension and wrenching after it collided with the northern part of Sicily.

The area of the Tripolitania Basin, Jarrafa Trough, Melita and Medina Bank and the Ragusa-Malta Plateau formed part of a sinking passive margin since the dispersal of Gondwanaland at about 180 Ma as observed from geohistory diagrams. A record of rifting in a NW-SE direction accompanied by dextral shear along the southern troughs is observed in seismic reflection data. The rifting started during the Neocomian and lasted until the Eocene when activity became minor.

A pre-Middle Miocene period of northward subduction of oceanic crust is inferred from the geology in NE Sicily. Uplift of the northern part of the African margin after collision in the Middle Miocene is seen in wells in southern Sicily. After the Messinian a rift and dextral shear zone established itself across the African Margin from the Strait of Sicily to the Medina Ridge in the Ionian Basin. The zone is marked by up to 1.7 km deep grabens, narrow active wrench faulted channels, volcanic fissures and local uplifted "Keilhorsts" such as Malta.

[Page 11]

changing in polarity. A two stage development of fault tectonics in the Sicily Channel as envisaged by Winnock (1979) conforms with this change in the general pattern of faulting. The first extensional phase caused a complex field of faults and tilted blocks. The later wrenching phase caused many of these faults to lock while major vertical motion continued along others (Jackson and McKenzie, 1983) causing the deep grabens.

In response to or just prior to the wrenching, the Medina Bank appears to have rotated clockwise. This would explain the peculiar NNW trend of the disturbed fault zone seen along the southwest flank of Medina Bank (Figs. 7c, 8b and 16) and the NNE trend of the Medina Escarpment and of the top of the bank as shown by the 200 m bathymetric contour (Fig. 2). The structural pat-

¹ Free University, Inst. for Earthsciences, P.B. 7161, 1007 MC Amsterdam, The Netherlands.

² Lyngby Geophysical Services, 46 Lyngby Ave, Dartmouth, N.V., Canada.

tern of the Medina Ridge is also typical of an East West dextral shear. Individual ridges have a NE-SW trend being the expected axis of folding and reverse faulting (i.e. compressional features) suggesting continuation of the wrench zone into the Ionian Sea (Woodside and Jongsma, in prep.).

Basal Pliocene Surface Map

The difference between the underlying structure of the area south and north of Medina and Melita Bank is well displayed by a map of the depths to the "M" reflector. The contour map on the base of the Pliocene (i.e. "M" reflector) presented in Figure 17, illustrates two contrasting topographies on this horizon. To the south of 35° N over the Jarrafa Trough and Tripolitania Basin the contours reflect the erosional effects of a river system at the end of the Messinian. In the area of Sicily Strait and between the Medina and Malta Platform the contours clearly show the effect of post Pliocene structural changes superimposed by faulting of the "M" reflector.

Volcanism

Volcanism is closely associated with the active phase of faulting north of the Tunisia Plateau (Fig. 4). The volcanic islands of Linosa and Pantelleria lie on NW-SE trending faults through which lava was extruded and along which the islands have elongated (di Paola, 1973). These faults do not appear to be the boundary faults for the grabens (e.g. volcanoes on Linosa and Pantelleria are on the bordering highlands and in the centre of the graben, respectively). N-S

[Pages 14-15]

from Tunisia (Caire, 1977; Illies, 1981) to the Medina Ridge in the Ionian Sea. The pattern of faulting derived from tracing active faults in seismic profiles across this zone, shows all three general styles of faulting which have been recognized to be associated with wrenching (Wilcox *et al.*, 1973). In the area of the Pantelleria, Linosa and Malta Troughs, divergent wrenching is seen resulting in deep grabens perpendicular to the main tensional axis of the strain ellipse. The zone narrows between the Malta Plateau and Medina Bank and the style is simple parallel wrenching producing uplift of "keilhorsts" such as Malta. Crustal blocks such as Medina Bank appear to have been rotated during the early phase of wrenching. Presently flower structures are being produced in this zone. The eastern part of the wrench zone in the Ionian Sea, the Medina Ridge is typical of convergent wrenching with folds forming parallel to the main tensional axis of the strain ellipse and normal faulting perpendicular to this trend (Fig. 16).

The geophysical data summarized in this paper is consistent with the above interpretation and supports the contention that a sliver of the African Margin including southern Sicily is moving eastward relative to Africa. Crustal structure investigation and Bouguer gravity anomalies show that extension is pronounced in the Strait of Sicily where crustal thickness has been reduced to about 20 km. Present seismicity is at a low level and within the top 10 km of the crust. A poorly constrained fault plane solution within the Wrench Zone supports dextral shear motion. Paleomagnetic data (Besse *et al.*, 1981) from the Ragusa Malta Plateau in Sicily show anticlockwise rotation of Sicily by up to 10° with respect to Africa since the Pliocene. Prior to this Sicily moved with Africa.

The most convincing evidence in our minds for a deepseated crustal fracturing is the presence of alkaline volcanoes within the rifts and on southern Sicily. The short wavelength magnetic anomalies within the wrench zone SE of Malta indicate that volcanic material may also be entering the fractures caused by the wrenching within the Medina Malta Channel. Longer wavelength anomalies over a large part of the Pelagian Sea are related to older Cretaceous and Jurassic periods of volcanic activity, of which the products were encountered during drilling in the Tripolitania Trough and on Sicily.

Relief on the Messinian erosional surface conclusively shows that major vertical motions due to faulting in the Pelagian Sea took place after the Messinian. Most of this faulting is located north of 35° N and is associated with the wrenching. The surface mapped shows an eroded river system within the Tripolitania and Jarrafa troughs. Subsequent deposition has smoothed out the bathymetric contours in this region.

Conclusions

The tectonic development of this portion of the north African margin began with rifting and subsequent drifting about 180 Ma ago. Normal development of the passive margin was modified in the south by Neocomian to Eocene rifting of a failed arm of the Sirte Triple Junction and by Eocene to Middle Miocene subduction in the north. Dextral shearing in the southern Tripolitania Basin was probably a reaction to the change in relative motion between Europe and Africa (Dewey *et al.*, 1973). Northern subduction terminated with the collision of major alpine fragments with North Africa from the Grande Kabylie to Calabria (e.g. Cohen *et al.*, 1980; Alvarez *et al.*, 1974). This initiated the latest period of tectonic activity and broke the Pelagian area in a passive southern platform attached to Africa and a separate fractured mobile terrane north of the Tunisian Plateau and Medina Bank. The neotectonics north of 35° can be described by uplift of Sicily and dextral shearing of the east to southeast moving Sicilian-Calabrian block with respect to Africa. This movement, of what might be considered a microplate between the African and European plates, is similar to that of the Aegean microplate, both of which are apparently consuming from different directions what remains of the oceanic part of the Ionian Basin. Brittle fracture of the African margin through the central Pelagian Sea is a response to post-collision uplift and the shear stresses posed on this region by differential horizontal plate consumption.

.....

Annex 7

EXTRACTS FROM I. R. FINETTI, "GEOPHYSICAL STUDY OF THE SICILY CHANNEL RIFT ZONE", 1984: FIGURE 13: RESIDUAL GRAVITY MAP OF THE PELAGIAN SEA (PAGE 18); FIGURE 15: COMPARISON OF RIFTING IN THE RED SEA AND THE SICILY CHANNEL RIFT ZONE (PAGE 20); PAGES 3, 9 AND 27

I. FINETTI

GEOPHYSICAL STUDY OF THE SICILY CHANNEL RIFT ZONE

Summary. The Sicily Channel area of the Pelagian Sea, running generally along the Pantelleria, Linosa and Malta Troughs and the Malta and Medina Channels to the Heron Valley, constitutes a prominent rift zone. The rifting process has produced a remarkable uplifting of the Mantle and crustal thinning in a ridge area associated with a distinct positive gravity anomaly axis (axial ridge). This axial ridge is continuous along a line which includes the Pantelleria volcano, the Linosa Graben and the Medina Graben.

The first rift movements commenced in the Early Pliocene (or Late Miocene) and continued with high intensity until the Late Quaternary; then they decreased but remain still active at the present time. The Sicily Channel Rift Zone (SCRZ) reaches a maximum width of about 100 km in the central part where a total pull-apart amount of 17-18 km has been computed. Its dimensions are less at the two extremities.

A combined pull-apart and strike-slip model is proposed. This model is based on the view that in the areas of Cape Bon on the west and the Medina Graben on the east strike-slip movements prevail over pull-apart movements.

Received November 5, 1983

1. Introduction

The Pelagian Sea is generally characterized by large areas having flat or slightly deformed sea-bed morphology. However, cutting across the sea-bed of the Pelagian Sea from the Egadi Valley to the Heron Valley are the huge troughs of Pantelleria, Linosa and Malta and the Medina and Malta Channels. The ensemble of these troughs and channels constitutes a distinct and unique geomorphological province that, with differing widths and varying water depths, crosses with continuity the entire Pelagian Sea. This part of the Pelagian Sea is given in this paper the name "Sicily Channel"; the geological phenomenon manifested by these sea-bed features is referred to there as the "Sicily Channel Rift Zone" (or in abbreviated fashion as the "SCRZ").

More than a decade ago the first modern geophysical investigation of the Pelagian Sea (Finetti and Morelli, 1972) and in particular the seismic reflection exploration conducted by the OGS of Trieste showed that the Sicily Channel zone of the Pelagian Sea is characterized by huge tectonic deformation with numerous normal faults and collapse of blocks. Since these earlier studies, it has become clear that this area has been affected by a prominent rifting process which remarkably deformed the previously existing quiet tectonic conditions. More detailed observations revealed that this tectonic fragmentation is due to a young geodynamic process, still active. The knowledge of this crustal deformation is of importance to an understanding of the latest geodynamic movements of the Central Mediterranean. The main sources for a reconstruction of the

relatively low gravity anomalies in troughs lateral to an axial ridge is quite normal and frequent in a rift area (i.e. the Red Sea).

The gravity map (Fig. 13) clearly indicates the area of the SCRZ and the position of the axis of maximum uplift and crustal thinning. The length and the axis of the uplift are well outlined by the continuity of the gravity anomalies across the whole Pelagian Sea. Such evident continuity cannot be found elsewhere in the Pelagian Sea.

d) Utilizing all the numerous available geophysical data, it is possible to reconstruct the regional structural setting of the SCRZ shown in Figs. 18 and 19. Due to the small scale used, only the main faults, without the time-structural contour lines, have been plotted. The SCRZ is shown in grey. In the sector of the SCRZ running from Pantelleria to Linosa up to the seismic line MS-19, the rifting process has produced the maximum extensional effects with extrusion of the major basaltic shows (Pantelleria, Linosa, Bannock, etc.). From line MS-19 to the area of the Medina Graben shown in Fig. 7 (this figure shows only the axial part of the much wider fragmented area of the Medina Graben), the fault intensity and the width of the fractured area commences to diminish considerably. In the eastern part of the SCRZ, from roughly 15° longitude east to the Sicily-Malta Escarpment (16° longitude), the seismic sections show subvertical faults with deformational characters that are indicative of strike-slip movements or of a combination of strike-slip and vertical movements.

This appears evident both for the Medina Graben (Fig. 8) and for the eastern extension of the Malta Graben (Fig. 9). The strike-slip faults shown on the structural maps (Figs. 18 and 19) are trending W-E (or WSW-ENE) according to the existing physiographic shape.

To reconstruct the observed and/or the extrapolated or inferred deformational pattern at the northwestern extremity of the SCRZ, where the pull-apart components of the movements also become less, it is necessary to examine carefully the structural elements of the area from Cape Bon in Tunisia to Pantelleria and to the Adventure Plateau (Fig. 19). The structural details of this part of the Pelagian Sea have been published some years ago (Winnock, 1979; 1981).

North of Pantelleria the large Pantelleria Trough continues east of the Adventure Plateau with a very consistent reduction in number of faults and in the width of the extended area. The structural picture indicates the presence of NNW-SSE (nearly N-S) faults and, from Cape Bon to Pantelleria, some W-E accentuated features that suggest the existence of strike-slip deformation components.

e) During the geodynamic phase which generated the SCRZ, other parts of the Pelagian Sea were affected by much smaller stretched zones which created some troughs, such as the Lampedusa Trough (Fig. 11) and the Jarrafa Trough (Fig. 10). These second-order troughs cannot be compared in terms of magnitude and crustal significance with the first-order rift of the SCRZ. An immediate comparison of the different order of rifting existing between the SCRZ and these lesser troughs can be seen in the structural geological cross-section of the Pelagian Sea published by Winnock (1979; 1981) (Fig. 12).

3.2. Time analysis of the rifting process in the Sicily Channel

From the seismic reflection data and from the geological data of the dredged samples reported in literature, it is possible to establish the geological time during which the rifting process of the SCRZ took place. These data, particularly the seismic data, furnish several clear indications regarding the time of occurrence of the rifting in the Sicily Channel area.

A number of extensional faults have affected the sea-bed surface (Figs. 4, 5 and 6), which clearly indicates that the rifting process here is young and still active. In the Malta Trough (Fig. 4), there is clear evidence that some faults are not affecting the uppermost

From a comparison of the data, it is of interest to note that in the SCRZ the deformational process, in terms of crustal stretching, is of the order of almost one-third that of the Red Sea rift zone.

4. Proposed model for the Sicily Channel Rift Zone

Taking into account all the observed deformational data above described, it is now possible to construct a rift model. It is immediately evident that a simple pull-apart model does not explain the reconstructed deformational pattern.

The results of a critical analysis of the possible applied stretching forces and observed deformational components are shown in Fig. 17. In the upper part of the figure, at the northeastern boundary of the SCRZ (grey area), the varying amount of the total pull-apart deformation calculated from the seismic lines is plotted (dashed area). The width of the area is proportional to the computed total pull-apart. Following the obtained data, and restricting the SCRZ to the pull-apart calculated to have occurred between PR (Present time) and PL (Early Pliocene, beginning of the rift process), the pre-rift conditions, modified by the pull-apart components, can be computed.

As above mentioned, evidence of strike-slip components are observed. It seems evident that the first-order strike-slip faults take a W-E direction. This is in accordance with the more generale deformational pattern observed in offshore northern Sicily and in the southern Tyrrhenian Sea. Some strike-slip faults of NE-SW direction are also inferred, but these are, most probably, of second-order significance as compared to those trending W-E.

Assuming the direction of the stretching geodynamic force and the deformational components of the pull-apart and strike-slip movements indicated in Fig. 17, it is possible to propose the combined pull-apart and strike-slip rift model shown in the lower part of the same figure. This model fits very well all the observed deformational data and the calculated total pull-apart movements of the SCRZ.

The rifting process in the SCRZ, though quite recent in comparison to the rifting in the Red Sea, for example, has already produced a huge fragmentation of the crust along the SCRZ and a prominent Mantle uplifting and crustal thinning. Hence, it is possible to delineate the tectonic separation of a Sicilian microplate, which includes the Adventure Plateau and the Ragusa-Malta Plateau, from the African megaplate.

Annex 8

COMPARISON OF THE MEDINA CHANNEL AND THE JERRAFA TROUGH:
LOCATION MAP; PROFILES

[Not reproduced]

Annex 9

BATHYMETRIC PROFILES: (a) BATHYMETRIC PROFILES PREPARED UNDER THE DIRECTION OF PROFESSOR F. FABRICIUS: LOCATION MAP; PROFILE A; PROFILE B; (b) BATHYMETRIC PROFILES PREPARED BY THE LAMONT-DOHERTY GEOLOGICAL OBSERVATORY UNDER THE DIRECTION OF DR. W. B. F. RYAN: FROM RAS AJDIR TO GOZO ALONG THE WESTERN EDGE OF THE MALTESE TRAPEZIUM; FROM GOZO ALONG THE EASTERN EDGE OF THE MALTESE TRAPEZIUM TO ITS INTERSECTION WITH THE MALTESE EQUIDISTANCE LINE. BOTH SETS OF BATHYMETRIC PROFILES ARE BASED ON DATA DERIVED FROM THE IBCM

[Not reproduced]

Annex 10**CERTIFICATION**

I, the undersigned, Abdelrazeg El-Murtadi Suleiman, Agent of the Socialist People's Libyan Arab Jamahiriya, hereby certify that the copy of each document attached as an Annex in the Reply submitted by the Socialist People's Libyan Arab Jamahiriya is an accurate copy; and that all translations are accurate translations.

(Signed) Abdelrazeg EL-MURTADI SULEIMAN,
Agent of the Socialist People's
Libyan Arab Jamahiriya.
