

**WRITTEN OBSERVATIONS ON
THE APPLICATION FOR PERMISSION
TO INTERVENE**

**OBSERVATIONS ÉCRITES SUR LA REQUÊTE
À FIN D'INTERVENTION**

**OBSERVATIONS OF THE SOCIALIST PEOPLE'S LIBYAN ARAB
JAMAHIRIYA ON THE APPLICATION FILED BY ITALY
FOR PERMISSION TO INTERVENE**

INTRODUCTION

1. On behalf of the Socialist People's Libyan Arab Jamahiriya ("Libya"), I have the honour pursuant to Article 83 of the Rules of Court and the decision of the President of the Court fixing 5 December 1983 as the time-limit for filing written observations, communicated to the Agent for Libya by a letter (ref. 70589) from the Registrar on 24 October 1983, to submit the following Observations with respect to the Application filed by the Government of Italy on 24 October 1983 (the "Application"¹) for permission to intervene under the terms of Article 62 of the Statute in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/ Malta)*.

I. GENERAL OBSERVATIONS

2. The following Observations examine certain problems raised by Italy's request for permission to intervene. While Libya is fully aware of the need to take account of the presence of third States in the course of the delimitation between Libya and Malta, the present Application does appear to give rise to various difficulties.

3. As far as Libya is aware, the Application now made by Italy is the first occasion on which Italy has sought vis-à-vis Libya the establishment of claims to areas of continental shelf involving delimitation between their respective areas of continental shelf. Libya does, of course, contemplate the need for such delimitation in certain areas, but there have been no negotiations and no previous indication by Italy to Libya of where, in the view of Italy, such need might arise. This Application creates an unforeseen situation. As far as Libya is concerned, Italy appears in its Application to be indicating for the first time its claims to areas of continental shelf in the vicinity of Malta which might give rise to a need for a delimitation with Libya. Until now, no such claim has been formulated and, being advanced for the first time now, there must be a serious question as to the validity of such a claim. Italy must have known of the attitude of Malta and Libya expressed in overt acts, such as legislation, public notices and the grant of concessions. It must also have known of the Special Agreement signed between Malta and Libya in 1976 and of the ratification and notification to the Court of the Agreement in 1982. Yet, it is only now that Italy seeks to raise the claims indicated broadly in its Application which, as far as Libya is concerned, have never been defined or identified.

4. If Italy is seeking delimitation between its areas of continental shelf and those of Malta and Libya by way of a judgment or judgments of the Court, it would have been more appropriate to have opened negotiations, in particular with Libya, which might in due course have led to the drafting of a *compromis*

¹ References to the Application are to the English translation prepared by the Registry. [Text not reproduced in the present series. (Note by the Registry.)]

for the submission of the appropriate issues to the Court. Prior to the present Application Italy had taken no such step. As it is, there have been no negotiations between Italy and Libya and no dispute has arisen between them.

5. The attempt by Italy to intervene at this late stage of the proceedings would seem to create some inequality with respect to the Parties. Not only has Italy been aware of the facts mentioned in paragraph 3 above, but by intervening now would have the advantage of seeing the Memorials and Counter-Memorials of Libya and Malta before placing the details of Italy's case on record in writing before the Court. This would, in the circumstances of the *Libya/Malta* case, put the Parties, which have already committed themselves by their written pleadings, at a disadvantage. This would be unfair.

6. Although not the first request to intervene under Article 62, the natural starting-point for an examination of the Application of Italy is the Judgment of the Court on the Application by Malta to intervene in the case concerning the continental shelf between Tunisia and Libya. The upshot of that Application can be seen in clear and concise terms in paragraphs 31 to 36 of the Judgment on the Application delivered on 14 April 1981 (*I.C.J. Reports 1981*, p. 3 at pp. 18-20). Although in its Application Italy formally refers to Article 59 of the Statute, it is difficult to escape the conclusion that the observations of the Court concerning the Maltese Application also apply to the Application in the present case. Moreover, there is an ambiguity in the references to Article 59 which may, when clarified, remove any apparent distinction between the Applications of Italy and Malta (see paras. 24 et seq. below).

7. In paragraph 32 the Court stressed that Malta sought to enter the case but without assuming the obligations of a party to the case within the meaning of the Statute, and in particular of Article 59 under which the decision in the case would be binding upon Malta in their relations with Libya and Tunisia. The Court added that if Malta had sought to submit its own legal interest for decision by the Court, and become a party, the question of the need for a jurisdictional link would have arisen (see paras. 28 et seq. below).

8. In paragraph 33, setting aside Malta's general interest in the Court's treatment of the relevant circumstances and legal considerations, the Court stated:

"But what Malta has to show in order to obtain permission to intervene under Article 62 of the Statute is an interest of a legal nature which may be affected by the Court's decision in the present case between Tunisia and Libya. This case has been brought before the Court by a Special Agreement between those two countries under which the Court is requested to decide what are the principles and rules of international law which may be applied and to indicate the practical way to apply them in the delimitation of the areas of continental shelf appertaining to Libya and Tunisia. That is the case before the Court and it is one in which Tunisia and Libya put in issue their claims with respect to the matters covered by the Special Agreement."

Then, after finding that the limited form of participation in the subject-matter sought by Malta could not properly be admitted as falling within the terms of the intervention for which Article 62 of the Statute provides, the Court decided that it could not accede to the request for permission to intervene (paras. 34 and 35).

9. However, at the end of paragraph 35, the Court reverted to the importance of the Special Agreement between Tunisia and Libya. It added these considerations:

"The findings at which it arrives and the reasoning by which it reaches those findings in the case between Tunisia and Libya will therefore inevitably be directed exclusively to the matters submitted to the Court in the Special Agreement concluded between those States and on which its jurisdiction in the present case is based. It follows that no conclusions or inferences may legitimately be drawn from those findings or that reasoning with respect to rights or claims of other States not parties to the case."

The importance of the Special Agreement between Libya and Malta is emphasized in paragraph 34 below.

10. The relevance of the Judgment on the Maltese Application in the *Tunisia/Libya* case is beyond question. Therefore, it is not surprising that the Application in the present case is written and arranged in the light of the Court's conclusions in that case. Italy has clearly tried to avoid the obstacles in its path which appear from the Judgment of the Court on the Maltese Application but, in the view of Libya, has failed to do so. However, the arrangement adopted in the Application stemming from Article 62 of the Statute and Article 81 of the Rules of Court will be followed in these Observations.

11. At this point it is convenient for purposes of reference to set out the provisions of Article 62 of the Statute and the requirements of paragraph 2 of Article 81 of the Rules of Court. Article 62 provides:

"1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request."

Paragraph 2 of Article 81 of the Rules requires that the Application shall set out:

- "(a) the interest of a legal nature which the State applying to intervene considers may be affected by the decision in that case;
- (b) the precise object of the intervention;
- (c) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case."

II. ITALY'S ALLEGED INTEREST OF A LEGAL NATURE THAT MAY BE AFFECTED BY THE LIBYA/MALTA CASE

12. The Application begins by observations on the Special Agreement of 23 May 1976 between Libya and Malta. This is in itself a proper beginning because the Application for permission to intervene must stem from, and be related to, the case as submitted to the Court by that Agreement and does not depend on the case as expounded to the Court in the written pleadings of the two Parties. It is, however, to the substance of the case that reference should be made which, as paragraph 1 of the Application indicates, is contained in Article 1, quoted in that paragraph. On the other hand, it does not seem appropriate that Italy should comment on an aspect of the interpretation of the Agreement, which is an agreement between the Parties and which concerns the task assigned to the Court. Whether the judgment sought is to be more or less specific cannot determine the question whether a legal interest of Italy may be affected by a decision in accordance with the substance of the matter submitted by the Parties to the Court. The comments made in this connection in the Application

illustrate what a disruptive influence participation by Italy would have on the conduct of the case.

13. As regards Italy's "interest of a legal nature", Italy has long been aware of the facts and has never thought fit, until the Application, to put forward a claim against Libya corresponding to the claim now hinted at in the Application (see paras. 3 and 4 above). Libya is not aware of any interest of Italy in the area of concern in the present case.

14. The very vagueness of the claim now hinted at by Italy suggests that it is not one which could properly be the subject of intervention by Italy in the present case. To try to deal with Italy's contentions in this connection is like shadow-boxing. For example, in paragraph 6, it relies on the undoubted fact that Italy is a State in the Central Mediterranean but does not explain how, in relation to Libya, Italy can be regarded as a "coastal State" with respect to areas of continental shelf lying not between Italy and Libya but between Malta and Libya. In the circumstances of the geographical situation, it is very difficult to see what connection there could be between the distance to which Italy refers (namely 400 nautical miles) and any such areas.

15. It is not sufficient that Italy considers ("estime") that it has an interest of a legal nature which may be affected by the decision in the case: it is for the Court to decide, in accordance with Article 62 of the Statute, whether there is a legal interest within the meaning of that Article. As the Court observed in paragraph 17 of its 1981 Judgment on the Maltese Application for permission to intervene: "under paragraph 2 of Article 62 it is for the Court itself to decide upon any request for permission to intervene under that Article". The Court at the same time emphasized "that it does not consider paragraph 2 to confer upon it any general discretion to accept or reject a request for permission to intervene for reasons simply of policy". On the contrary, the Court took the view that the task entrusted to it by that paragraph was to determine the admissibility or otherwise of the request by reference to the relevant provisions of the Statute. Having regard to the views expressed by the Court, the mere fact that Italy considers that it has some ill-defined rights in areas which might be affected by the judgment of the Court in the present case is not sufficient to justify the grant of permission to intervene in that case. Merely to call the interest "specific and direct", as is done in paragraph 13 of the Application, does not cure the real defect in the Application which appears in particular from paragraphs 8, 9 and 10.

16. In paragraphs 11 to 13 of the Application, there is a subtle slide from "considers" to "undeniable rights". It starts, in paragraph 11, by stating that Italy considers that it has undeniable rights and ends, in paragraph 13, with the assertion that "Italy does possess . . . an interest which is specific and direct". This alleged interest, which has been undefined and unidentified, is put forward as the very reason for the Application which "determines the object thereof".

17. This process of slide involves assertions which are open to serious question. Without any explanation, it is asserted that Italy has a legal interest "which is indisputably 'en cause' in the case". This assertion is unsound in the light of the Special Agreement between Libya and Malta which only puts in issue rights and claims as between Libya and Malta and not any right of Italy. However far the Court may go in determining how the principles and rules of international law should be applied by the Parties in drawing the delimitation line, no right or title of Italy need be in issue. Bearing in mind the express provisions of the Special Agreement, there is equally no basis for the assertion that the "predetermined line . . . would *de facto* and *de jure* effect the attribution to the Parties of the areas of continental shelf to be delimited by that line", as

alleged in paragraph 12 of the Application. Italy also purports to support its assertion by reference to intervention "in procedural law", of which Italy regards its present application as a "classic case". The appeal to "procedural law" is equally unsound. There is no precedent for the grant of permission to intervene in the practice of the International Court under Article 62. The analogy with systems of municipal law is misleading, since those systems are based upon compulsory jurisdiction.

18. It thus appears that the Application fails to satisfy the first test of showing that there is a legal interest of Italy which may be affected by the Court's judgment in the present case. Since, by paragraph 13, it is said that the alleged interest determines the object thereof, it follows that Italy would, on the basis of its own Application, fail to establish the precise object of the intervention.

III. THE "PRECISE OBJECT" ALLEGED IN ITALY'S APPLICATION TO INTERVENE

19. Article 81, paragraph 2 (b), provides that the application "shall set out . . . the precise object of the intervention". In other words, it is not enough for the Applicant to point to its legal interest in the case: the exact purpose which it seeks to achieve through the intervention must also be indicated. In paragraphs 14 to 17, the Application purports to meet this requirement, but fails to do so.

20. Paragraph 14 adds nothing to what is said in the preceding paragraphs and rests on the ill-founded assumption that the specification of the object of the intervention need not be more than a simple allusion to the object of the case itself and to the legal interest that may be affected by the Court's decision.

21. Apparently, paragraph 15 tries to link the "precise object of the intervention" to the competence given to the Court by the *Special Agreement*. However, the Application does not explain what relevance, if any, the latter question bears to the former.

22. In paragraph 16, the vagueness and the ambivalence of Italy's position is fully revealed. On the one hand, Italy contends that the object of its application is "to ensure the defence before the Court of its interest of a legal nature . . ." and to "participate in the proceedings to the full extent necessary to enable it to defend the rights which it claims over some of the areas claimed by the Parties, and to specify the position of those areas . . .". On the other hand, Italy declares that these actions are undertaken "so that those principles and rules and, in particular, the practical method of applying them are not determined by the Court without awareness of that interest, and to its prejudice" and "so that the Court may be as fully informed as possible as to the nature and scope of the rights of Italy . . .".

23. These indications are so blurred and ambiguous that they seem to fall under the ruling of the Court concerning Malta's application to intervene:

"[I]t does not appear to the Court that the direct yet limited form of participation in the subject-matter of the proceedings for which Malta here seeks permission could properly be admitted as falling within the terms of the intervention for which Article 62 of the Statute provides. What Malta in effect seeks to secure by its application is the opportunity to argue in the present case in favour of a decision in which the Court would refrain from adopting and applying particular criteria that it might otherwise consider appropriate for the delimitation of the continental shelf of Libya and Tunisia. In short, it seeks an opportunity to submit arguments to the Court

with possibly prejudicial effects on the interests either of Libya or of Tunisia in their mutual relations with one another. To allow such a form of 'intervention' would, in the particular circumstances of the present case, also leave the Parties quite uncertain as to whether and how far they should consider their own separate legal interests vis-à-vis Malta as in effect constituting part of the subject-matter of the present case. A State seeking to intervene under Article 62 of the Statute is, in the view of the Court, clearly not entitled to place the parties to the case in such a position, and this the more so since it would not be submitting its own claims to decision by the Court nor be exposing itself to counter-claims." (*I.C.J. Reports 1981*, pp. 19-20, para. 34.)

24. Paragraph 17 of the Application states that Italy "will submit to such decision as the Court may make with regard to the rights claimed by Italy, in full conformity with the terms of Article 59 of the Statute of the Court". No doubt Italy has added this expression of willingness to abide by the decision of the Court with regard to the rights claimed by Italy in an attempt to avoid the fate of the Maltese Application. Nevertheless, the statement in question is so vague that it does not alter the fact that the Parties are still left, in the Court's words, "quite uncertain as to whether and how far they should consider their own separate legal interests vis-à-vis [Italy] as in effect constituting part of the subject-matter of the present case".

25. In any event, as already pointed out above, just as in the case of the application by Malta to intervene in the *Tunisia/Libya* case, so here in the legal sense, the judgment of the Court would not and could not prejudice any interest of Italy (*I.C.J. Reports 1981*, p. 20, para. 35). Accordingly, the sole object that might remain would be to make the Court aware of Italy's interest. Indeed, it may be that this is the true object of the present Application. If so, it is not an Application in respect of which permission to intervene should be granted under Article 62.

26. If, however, Italy really wished to submit to adjudication its claims against Libya (and Malta), intervention would not be the proper process. Such a step would have the effect of widening to a yet unspecified degree the scope of the case referred to the Court. It would also delay and disrupt proceedings which have already progressed to the stage where Counter-Memorials have been exchanged, and would involve disadvantage for the Parties who have brought their dispute before the Court by Special Agreement. In Libya's view, the appropriate course would be for Italy to seek to explain its views — and if necessary to present its claims — in negotiations with either Malta or Libya as the case may be.

27. It thus appears from the foregoing paragraphs that the Italian Application fails to meet the test of a precise object within the requirements of Article 81 of the Rules in the light of the 1981 Judgment.

IV. THE ALLEGED BASIS OF THE COURT'S JURISDICTION

28. This question is dealt with in paragraphs 18 to 23 of the Application. It is related to the other aspects of the request for intervention, as Italy recognizes, since paragraph 23 repeats the ambiguous statement that

"once admitted to intervene under Article 62, Italy intends to participate in the proceedings to the full extent necessary to defend and implement its rights. To that extent, Italy would thus be subject to the obligations resulting from Article 59."

In Libya's view, as stated above, Italy has not established "an interest of a legal nature which may be affected by the decision" in the present case, and neither has it identified the "rights" that would be "defended and implemented" through the intervention and would thus be its "precise object". On these grounds, the Application is not one in respect of which permission to intervene should be granted under Article 62 of the Statute. However, in the light of the Court's 1981 Judgment, if Italy

"were seeking permission to submit its own legal interest in the subject-matter of the case for decision by the Court, and to become a party to the case, another question would clearly call for the Court's immediate consideration . . . whether a link of jurisdiction with the parties to the case is a necessary condition of a grant of permission to intervene under Article 62 of the Statute" (*I.C.J. Reports 1981*, pp. 18-19, para. 32).

Accordingly, the question of the existence of a basis of jurisdiction arises as soon as one is led to assume that Italy intends to become a party to the case and that the Application for permission to intervene meets the other requirements laid down by the Statute and the Rules.

29. In this context, it must be recalled that the Court's jurisdiction over the parties is governed by Chapter II of the Statute, and in particular by Article 36. Under the present system of jurisdiction based on consent, any State purporting to "implement" its rights against another State must satisfy the Court that it has competence to entertain these claims. Indisputably, such competence can only be based upon the common and mutual consent of the States involved. This means that no State can be put into the position of defending its own rights in the Court's proceedings against its will, unless it has assumed the obligation to do so beforehand by an explicit and clear declaration. There is no need to go into any details here as to the various forms that the consent of the parties can take, since there is not, in the present case, even a *prima facie* link of jurisdiction as between Libya and Italy.

30. The Application tries to circumvent this lack of any basis for jurisdiction by noting that "there is no provision in Article 62 of the Statute that the existence of a basis of jurisdiction is a condition for intervention" (para. 19). Then, there is again an interesting slide from this assertion to the quite different contention that "the operation of Article 62 itself suffices to create the basis of jurisdiction of the Court to the extent necessary for the admission of an application for permission to intervene" (para. 21). How the first proposition leads to the other is left unexplained. In any event, the former is irrelevant, and the latter is incompatible with the principle of jurisdiction based on consent. It is quite natural that Article 62, belonging as it does to Chapter III of the Statute which relates to "Procedure", should not refer explicitly to the basis of competence which is governed by Chapter II. That is, of course, not to say that such basis is not required. The existence of a jurisdictional link is always necessary when the Court is asked to pass judgment upon States' claims, with binding force as between the parties according to Article 59 of the Statute.

31. Admittedly, the Statute occasionally can and does provide jurisdiction to the Court. But this is always restricted to strictly procedural questions, such as the question of jurisdiction contemplated in Article 36, paragraph 6. Likewise, Article 62, paragraph 2, confers jurisdiction to the Court to decide upon a request for permission to intervene. This title, however, only refers to its very object, namely, the admissibility of the intervention. It does not by any means imply that the Court's jurisdiction would extend to the claims of the intervening State against the parties: just as the Court's "*compétence de la compétence*"

under Article 36, paragraph 6, does not imply that the Court is also competent to pronounce upon the merits of the case. There is nothing in Article 62 to suggest that the general requirement of consent is overridden by its provisions and certainly not in cases where parties come to the Court by way of a Special Agreement between them. In short, the idea of allowing third States to intervene as parties without a basis of jurisdiction is beyond contemplation.

32. The contentions made by Italy are also inconsistent with Article 81, paragraph 2 (c), of the Rules. Indeed, if they were true, they would make this clause meaningless. Since the Application is required to set out "any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case", this must signify that Article 62 does not in itself "create the basis of jurisdiction". Italy tries to brush aside this inescapable conclusion by remarking that the Rules "could not make the admissibility of an application for permission to intervene subject to legal conditions not laid down in the Statute" (para. 19), that the wording of Article 81 "in no way implies an intention to impose . . . an additional condition for admissibility" and "that that phrase does no more than lay down a mere requirement for information to be supplied with a view to fuller knowledge of the circumstances of the case" (para. 20). But these observations are merely begging the question and do not expound the reason for which the Court wishes to be informed of the basis of jurisdiction.

33. The Court itself has explained why it inserted the provision regarding jurisdiction in Article 81, paragraph 2:

"This it did in order to ensure that, when the question did arise in a concrete case, it would be in possession of all the elements which might be necessary for its decision." (*I.C.J. Reports 1981*, p. 16, para. 27.)

It will be noted that this explanation is quite different from the one offered in paragraph 20 of the Application which curiously refers to paragraph 17 of the Court's 1981 Judgment. In any event, the adoption of paragraph 2 (c) does suggest that, in the Court's view, it would consider the basis of jurisdiction "when the question did arise in a concrete case", and it clearly does here if one assumes that Italy intends to become a party. Italy does not deny that Article 81, paragraph 2 (c), is in conformity with Article 62 of the Statute. Therefore, the assertion that Article 62 itself creates a basis for jurisdiction falls of its own weight.

34. The Application is perhaps trying to raise a slightly different point when it says that

"the Italian legal interest which may certainly be affected [by the decision] . . . and the object of the present application . . . are automatically, and in accordance with the Statute of the Court, creative of jurisdiction of the Court to the extent necessary to justify the admission of Italy to participate in the present proceedings as an intervener" (para. 21).

This proposition not only contradicts the basic principles referred to above, it also disregards the fact that the proceedings have been initiated by Libya and Malta and relate only, in the Court's words, "to the matters submitted to the Court in the Special Agreement concluded between those States and on which its jurisdiction in the present case is based" (*I.C.J. Reports 1981*, p. 20, para. 35). If Italy were now to submit its own claims against either of the Parties, it would thus, without their consent, extend the scope of competence created by the *Compromis*. That is to say that the meaning and the effect of the treaty would be altered by the unilateral action of a third State. This would stand against logic and reason.

35. The Application makes no serious attempt to establish a basis of jurisdiction in the present case. Although the provisions of Article 1 of the European Convention for Peaceful Settlement of Disputes of 29 April 1957 are quoted in paragraph 22, no conclusion is drawn from those provisions. In themselves they appear to be irrelevant. In any event, they are not opposable to Libya which is not a party to the European Convention. Finally, the reference to membership in the "judicial community" established by the Statute is *incomprehensible*.

V. CONCLUSION

36. On the basis of the foregoing Observations, Libya respectfully requests the Court to decline to permit Italy to intervene in the present proceedings between Libya and Malta. Libya is, however, prepared to participate in any oral hearing on the Italian Application that may be ordered by the Court and would gladly take advantage of such an opportunity to present supplementary explanations and arguments.

(Signed) Abdelrazeg EL-MURTADI SULEIMAN,
Agent of the Socialist People's
Libyan Arab Jamahiriya.

OBSERVATIONS BY MALTA UPON THE APPLICATION BY ITALY TO INTERVENE

1. These Observations are filed by Malta in response to the Court's Order of 24 October 1983 and are directed to the Application for permission to intervene made by Italy on 23 October 1983.

I. Summary

2. Malta's Observations may be summarized as follows:

(1) Italy's Application to intervene is inadmissible.

It relates to a claim which Italy has never before formulated and which even now is so imprecise that it is effectively devoid of content. Moreover, with the exception of two areas (the area east of the Pelagic Islands of Linosa and Lampedusa and the areas between Sicily and Malta) which are evidently unrelated to and unaffected by the proceedings between Libya and Malta, the claim has not been the subject of any negotiation which would identify its nature or justify Italy in asserting the existence of a dispute. For this reason alone, the Application — even if it were not defective in other respects more closely related to those provisions of the Statute and Rules of the Court which specifically relate to intervention — is not admissible.

(2) The same considerations regarding the absence of any specific claim and the non-establishment of any dispute between Italy and Malta also means that the requirements of Article 81 of the Statute and Article 62 of the Rules of Court have not been satisfied. Italy has not provided a sufficiently clear identification of the interest which it claims may be affected by the decision in the case between Libya and Malta nor has it specified in precise terms, by reference to any clearly identified interest, what the object of its intervention is. Moreover, the Italian Application appears to assume that the judgment of the Court in the case between Libya and Malta will in some way formally bind Italy. Any such assumption is wrong.

(3) Italy's previous inactivity in relation to the claim which it now makes serves to estop or preclude it from now asserting the claim against Malta by way of an application to intervene.

(4) No jurisdictional link exists between Italy, on the one hand, and either Libya or Malta, on the other.

II. The Defects in the Italian Position

A. THE VAGUENESS OF THE ITALIAN CLAIM

3. It must at the outset be observed that the Application provides only the flimsiest and most inexact description of Italy's claim to continental shelf within the relevant area.

4. The only concrete elements in the Italian argument appear to be the following:

(a) Italy is a coastal State of the central Mediterranean (para. 6);

- (b) the whole sea-bed in the area is part of the continental shelf of the coastal States and consists of areas of overlap of the rights of such States (para. 6);
- (c) if the test of natural prolongation is used, the same conclusion may be reached; it being noted that "Malta is on the continental platform of Sicily" (para. 7);
- (d) "A glance at the map" shows that "a considerable area of the sea-bed of that region . . . lies off the coasts of Italy and to seaward of such coasts" (para. 8);
- (e) if Malta is left "out of account" [!], a median line between the Italian and Libyan land masses lies markedly to the south of Malta (para. 9);
- (f) the use of the "proportionality" test as between Libya and Malta might accord to Libya certain areas north of a median line between Libya and Italy (para. 10).

On the basis of these five points, the scantiness of which has in no way been exaggerated by summarization, Italy contends that it has "undeniable rights" (para. 11).

5. This assertion prompts a number of questions: Rights to what? And on what basis? Where is the identification by Italy of the exact area to which it lays claim? When did Italy lay claim to the area (whatever it may be)? In what documents did Italy give public expression to its claims? More particularly, when did it bring the full extent of its claims to the attention of Malta and Libya? Can Italy have hitherto been unaware of the possibly competing claims of Malta and Libya? What explanation can Italy offer for its silence on all these matters (except its claims against Tunisia and the establishment of a line between Sicily and Malta and between Malta and the Pelagic Islands of Linosa and Lampedusa) over a period of nigh on a score of years?

B. THE ABSENCE OF ANY PRIOR EXPRESSION BY ITALY OF ANY RELEVANT CLAIMS

6. It must, secondly, be noted that Italy now seeks to assert an interest in an area wherein it has never previously expressed an interest to either of the Parties and that Italy's position, in any form relevant to the new Italian claim, has never been the subject of negotiation between Italy and, at any rate, Malta.

7. The extent to which there have been diplomatic exchanges between Italy and Malta regarding the limits of their respective claims to the continental shelf will presently be recalled¹. It will be seen that the discussions have been limited to the area of continental shelf lying between Sicily and Malta and between Malta and the Pelagic islands of Lampedusa and Linosa. Malta's understanding of the state of discussions was publicly expressed by Counsel on its behalf before the Court on 19 March 1981 in connection with Malta's application to intervene in the *Libya/Tunisia Continental Shelf* case. Italy is aware of that statement, as appears from the citation of it in paragraph 9 of Italy's present application.

8. It is appropriate to quote here in full the relevant part of the statement:

"Lastly, and in order to complete the picture, I come to relations with Italy. Italy declared its rights over its continental shelf in 1965. In 1965 and 1969 it addressed certain enquiries to the Government of Malta and in 1969 proposed boundary talks. The Government of Malta replied in October

¹ The text of these exchanges is reproduced in Annexes 1 to 22.

1969 that it had not yet completed the preparations necessary to enable it to enter into fruitful discussions. In July 1970 the Government of Malta indicated to Italy that it was in a position to start talks and at about the same time, on 17 July 1970, the Government of Malta issued a notice in the *Malta Government Gazette* indicating that the area between Malta and Sicily as far as 500 metres on the Maltese side of the median line was open for tenders.

By a note of 14 August 1970 the Italian Government indicated that it would adopt the same course to the north of the median line, subject to any adjustments that might be made in subsequent negotiations.

No further exchanges took place between Malta and Italy until 1975.

In particular, Italy did not inform Malta of the negotiation and conclusion with Tunisia of the boundary agreement relating to the area to the southwest of Malta and covering the position of the Italian islands of Pantelleria, Lampedusa, Linosa and Lampione. But eventually Malta became aware of this Agreement from other sources.

It is desirable to interpose here a few words about the Italian-Tunisian continental shelf delimitation of 1971. Ratifications were not exchanged until 6 December 1978, and the agreement only entered into force on that date. Malta does not accept the validity of that part of the delimitation between Italy and Tunisia which brings within the area of the Tunisian continental shelf parts of the sea-bed which fall within the area of Malta's continental shelf as delimited on the basis of the principle of equidistance. This principle would be applied, in the present case, by measuring from the island of Malta to the island of Kerkenneh, allowing a 12-mile belt of territorial sea and continental shelf around the Italian islands of Pantelleria, Linosa and Lampedusa. As can be seen from the map, the areas claimed by Tunisia encroach significantly on the area of Malta's claim, while the area claimed by Italy does so to a lesser degree.

To return to the course of negotiations in 1975, upon the initiative of Malta, talks took place between Italy and Malta in the course of which Malta presented to Italy a draft agreement for the division of the continental shelf between the two countries on the basis of equidistance, with the exception of the Islands of Linosa and Lampedusa.

As regards these islands they were to be accorded a belt of continental shelf of 13 nm radius. This proposal echoed the solution adopted in respect of the islands in the Italian/Tunisian Agreement of 1971.

At a meeting on 19 June 1975 the Italian Government rejected the proposal of Malta regarding the Islands, claiming that the Islands were entitled to a full share of the continental shelf lying between them and Malta on the basis of equidistance. Malta insisted that there was a clear distinction to be drawn between the island of Malta, the metropolitan territory of a State, and the Italian islands, which are no more than distant dependencies of the mother State.

That same meeting is important in another respect. The representative of Italy explained that the special treatment accorded the Islands in the Italian/Tunisian Agreement reflected in part the fact that the islands were sitting on the extension seawards of the Tunisian land mass — a factor to which Tunisia attached importance in the Libyan/Tunisian case. If that should be so, it would seem that anything that the Court may say on this topic in the main case would have some direct bearing on the relationship between Malta and Tunisia.

After this meeting three years passed without action on either side, until

25 August 1978, when Malta urged Italy to renew negotiations. Further notes from Malta followed on 25 September 1978 and 6 November 1978, but have not been answered by Italy."

9. In the period of two-and-a-half years which has elapsed since the 1981 hearings Italy has not made any suggestion that the statement made on behalf of Malta was incomplete or inaccurate.

10. By way of amplification of the statement quoted above, reference should also be made to the following matters:

(i) On 31 December 1965, in reply to an Italian Note Verbale of 8 November 1965¹, a Maltese Note Verbale stated:

"In the absence of an agreed boundary line for the continental shelf to the north of Malta, the boundary will be provisionally deemed to be the median line between Malta and Italy. This provisional agreement is being made without prejudice to future discussions on the demarcation of this line."

(ii) On 29 April 1970 Italy addressed to Malta a Note Verbale² in which it accepted that:

"the median line between the northern coasts of Malta and the opposite Sicilian coasts could be considered as the provisional line of demarcation . . . without prejudice to future discussion . . . and with reservations, particularly as regards the aforesaid line, for eventual corrections, which would presumably be of a mere technical nature".

(iii) In 1973 Malta offered for licensing 16 blocks south and south-east of Malta. Three of these, Nos. 12, 13 and 16, which lie immediately to the north of the Malta-Libya equidistance line, were applied for by AGIP³, an Italian oil company which is the operating arm of the Italian state agency ENI.

(iv) At the meeting of 19 June 1975⁴ between representatives of Italy and Malta, referred to above, a discussion took place on Malta's proposal for a general delimitation on the basis of equidistance, save as regards Linosa and Lampedusa, in respect of which Malta proposed that the Italian continental shelf should not extend more than 13 miles from their coasts. At that meeting, Italy made no reference to any claim to any continental shelf area anywhere extending beyond the median line. Indeed, the Italian representatives stressed that they were willing only to settle the boundaries of the continental shelf between Italy and Malta comprehensively and on the basis of equidistance.

(v) The Note Verbale of 25 August 1978⁵ from Malta to Italy, mentioned in the statement above, referred to the draft delimitation agreement which Malta had presented to Italy during the discussions of 19 and 20 June 1975 and

"noted with concern that a long time has passed since the last promise of an early settlement of this question was made by the Government of Italy, and that repeated requests for an early decision by the Italian Government have as yet not found a favourable response".

(vi) In August 1980, at the time of the Texaco-Saipem incident, when Libya

¹ Annexes 1 and 2.

² Annexes 9 and 9A.

³ Annexes 23 and 24.

⁴ Annex 14.

⁵ Annex 16.

threatened the use of force against a drilling vessel at work in the Texaco concession area, Malta asked Italy to provide protection for the ship which flew the Italian flag and had an Italian crew. Italy declined to take any action, saying that this was an exclusively Maltese-Libyan episode, which did not touch Italian interests at all.

(vii) On 16 March 1981¹, a few days before the commencement of the oral hearings in the application by Malta to intervene in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case, Italy sent Malta a Note Verbale which arrived too late to be referred to in the statement quoted above, which referred to the existence of a provisional agreement on the use of the median line generally between the coasts of Italy and Malta and then reserved the right to ascertain in relation to eight areas "of the continental shelf situated largely in the zone comprised between Malta and Sicily" whether these areas "are actually situated in the area of the continental shelf recognized as belonging to Malta by the aforesaid understandings". The eight areas in question are as depicted on the map attached as Annex 24.

III. The Consequences of the Above Defects

11. To the defects in the Italian position just noted and to the failure of Italy ever previously to identify or present its claim in diplomatic negotiations it is possible now to attach certain consequences.

A. THE INADMISSIBILITY OF THE ITALIAN APPLICATION

12. First, the Italian application is inadmissible.

This defect is identified by Malta as something which would affect the Italian application even if (which will presently be shown not to be the case) the application could be seen in other respects to comply with the requirements of the Statute and the Rules regarding intervention. In other words, even if there were no question of intervention in a case pending between two States, but merely an application by Italy seeking to institute on a bilateral basis proceedings exclusively between Italy and Malta regarding the delimitation of the areas of continental shelf appertaining to each of them and even if there were no issue regarding a jurisdictional link between Italy and Malta for this purpose, the application is one which would founder on the ground of inadmissibility. The reason is that there is simply no evidence before the Court that any dispute has come into existence between the parties or, alternatively, that the requirement of negotiation which must precede the submission of any dispute (and, especially, a continental shelf boundary dispute) to the Court has been satisfied.

And if an application were to be inadmissible in direct contentious proceedings instituted by one State against another *a fortiori* a comparable application to intervene in proceedings commenced by agreement, and pending, between two States would be inadmissible.

13. The proposition that a dispute cannot be brought before the Court until its character and dimensions have been established by negotiation between the States concerned is too well established to require citation of authority.

¹ Annex 14.

In relation to disputes regarding the delimitation of the continental shelf, the need for such prior negotiation is even more firmly established. The Geneva Convention on the Continental Shelf 1958 lays down in Article 6 the primary duty of the parties to seek agreement upon the delimitation of the continental shelf. The use of the adjective "primary" to describe the duty of the parties echoes the language of the Court in the *North Sea Continental Shelf* cases when it spoke of "a primary obligation to effect delimitation by agreement" (*I.C.J. Reports 1969*, p. 42, para. 72).

14. The fact that Italy has not become a party to that Convention does not diminish the force of the requirement, which is also one of customary international law. The Court emphasized this requirement later in the same judgment:

"the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful . . ." (*I.C.J. Reports 1969*, at p. 47).

15. The existence of this requirement is confirmed by the Law of the Sea Convention 1982, the terms of which Italy has itself invoked in its Application. Article 83 provides:

"1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be determined in accordance with the provisions of that agreement."

16. Moreover, it may be observed that every continental shelf delimitation case which has been brought before the Court or been the subject of arbitration has always been preceded by an extended period of direct negotiation between the parties with a view to settling the controversy and, ultimately, when it became evident that settlement was unlikely, with a view to establishing the limits of the dispute. (See the narrative of the facts in the *North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, pp. 17-19; 41 *International Law Reports*, pp. 46-49; the *Anglo-French Continental Shelf* arbitration (1977), 54 *International Law Reports*, p. 36 and the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case, *I.C.J. Reports 1982*, *passim*.)

17. In short, the application by Italy does not fulfil the requirement of admissibility which must be satisfied in every case. There is nothing to suggest that this requirement is any the less stringent in relation to an application to intervene than it is in any other contentious case before the Court.

**B. ITALY'S APPLICATION DOES NOT SATISFY THE REQUIREMENTS
OF THE RELEVANT ARTICLES OF THE STATUTES AND THE RULES OF COURT**

18. Article 62 (1) of the Statute of the Court requires that a State applying to intervene establish that "it has an interest of a legal nature which may be affected by the decision in the case". In addition to specifying that the application shall indicate this claimed interest, Article 81 of the Rules requires that the application shall set out "the precise object of the intervention".

*1. The Application Does not Sufficiently Specify the Nature
of the Italian Interest*

19. The Italian application is tainted, effectively to the point of invalidity, by the uncertainty and looseness of the Italian position therein revealed. The Court will recall the importance of certainty in this matter which it stresses in these words in its judgment on Malta's application to intervene in the *Tunisia/Libya* case:

"To allow such a form of 'intervention' would in the particular circumstances of the present case, also leave the Parties quite uncertain as to whether and how far they should consider their own separate legal interests vis-à-vis Malta as in effect constituting part of the subject-matter of the present case." (*I.C.J. Reports 1981*, p. 20.)

The concept of legal certainty, here invoked by the Court, is one which is to be found in many legal systems and can properly play an extended role in the Court's jurisprudence.

20. While it is true that a party seeking to intervene does not have to unfold in its application the whole of its substantive case, there must rest upon it an obligation to identify at least in outline the nature and extent of the interest which it seeks to protect. The application of Malta in the *Tunisia/Libya* case made a genuine effort to reveal to the parties the extent of Malta's claim to the continental shelf in the area in which Malta thought that the Court's decision might impinge upon its interest. Indeed, it can be said that Malta went as far as its knowledge at the time of the claims of Libya and Tunisia enabled it to do in expounding positively the nature and extent of its claim.

21. The same cannot be said of Italy's present application. In paragraph 11, in support of its suggestion that this is "an absolutely classic case for intervention", Italy describes its situation as one "in which the intervener relies on rights as the true *dominus* of the object which is disputed, or a part thereof".

22. This contention appears defective in a number of respects. A mere assertion of a title is not a sufficient basis for a party to claim a right of intervention. The claim must, at the very least, be supported by some *prima facie* demonstration of its basis. Yet in this case — as is shown in detail in paragraphs 4 and 5 above — the Italian application does not specify even the approximate dimensions of the Italian claim.

*2. The Application Does not Sufficiently Specify
the Precise Object of the Intervention*

(a) *Italy makes "object" dependent upon "interest"*

23. The inadequacy of Italy's statement of its "interest of a legal nature" serves also to undermine Italy's statement of the object of its application. This is

said to be "to ensure the defence before the Court of its interest of a legal nature" (para. 16). By expressing its object in terms of "the defence" of "its interest of a legal nature" Italy makes the former entirely dependent upon the validity of the identification of the latter. If, as Malta has suggested above, there has been and remains insufficient specification of the nature of Italy's interest, it follows that there is insufficient specification of its object.

(b) *Italy's misapprehension regarding the nature and effect of the Court's eventual Judgment*

24. Moreover, quite apart from the basic point of a logical nature made in the preceding paragraph, Italy's statement of its objective is affected by a far-reaching misapprehension of the nature of any possible impact which the Court's eventual judgment may have upon any claimed Italian interest. There is no way in which, even if Italy could show a sufficient legal interest in the *Libya/Malta* case, that interest could be "affected" by the decision in the case (Art. 62 (1)).

25. In paragraph 12 (2) of the Application Italy suggests that the line which might be established on the basis of the Court's Judgment as between Libya and Malta would "*de facto and de jure effect the attribution to the parties of areas of continental shelf to be delimited by that line*". As to this, Malta observes that what may occur *de facto* can in no way prejudice Italy's *legal* interests — which alone may be invoked in this case. As to the *de jure* effect of the Court's Judgment, that is entirely controlled by the terms of Article 59 of the Statute of the Court. The Court observed in its Judgment on Malta's application to intervene in the *Tunisia/Libya* case:

"The findings at which it [the Court] arrives and the reasoning by which it reaches those findings in the case between Tunisia and Libya will therefore be inevitably directed exclusively to those matters submitted to the Court in the Special Agreement concluded between those States and on which its jurisdiction in the present case is based. It follows that no conclusions or inferences may legitimately be drawn from those findings on that reasoning with respect to rights or claims of other States and parties to the case." (*I.C.J. Reports 1981*, p. 20.)

26. The next subparagraph (para. 12 (3)) of the Italian Application appears to reflect a basic misunderstanding of the position which would flow from a delimitation by Libya and Malta of their continental shelf boundary on the basis of the judgment to be given by the Court.

Such a delimitation would no more affect Italy's rights than would a delimitation reached by Libya and Malta on the basis of negotiation without prior recourse to the Court. The fact that Libya and Malta seek the assistance of the Court in resolving a dispute which they see as solely affecting them cannot give Italy any better right than it would have possessed individually against each of them if they had not sought judicial assistance in the solution of their dispute.

27. The Application states that

"it would be difficult for Italy subsequently to obtain recognition of its rights, either by negotiation . . . or by proposing to submit the decision to the Court".

This consideration is not well founded. The use which Libya or Malta could make of the Court's decision could be no greater than the scope of that decision. As the Court will be doing no more than determining what are the *existing* principles and rules of international law, the principles and rules so found would

presumably in any event be operative as between Italy on the one hand and Libya and Malta respectively on the other. Italy may not complain that those with whom it disputes title should rely on the law to support opposition to Italy's claims. Nor may Italy say that simply because the Court is clarifying the law this somehow gives Italy an "interest" in the dispute to which the clarification relates.

28. Yet again it is incorrect for Italy to suggest that in any subsequent litigation between Italy and either Malta or Libya the Court would "be bound by its previous judgment". The Court would not be so bound — as Article 59 of the Statute of the Court expressly provides and as the Court has repeatedly affirmed. (See especially *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case, *Application to Intervene*, *I.C.J. Reports 1981*, p. 3 at p. 20, para. 35; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case, *I.C.J. Reports 1982*, pp. 42, 62, 91 and 93, paras. 33, 75, 130 and 133 (B) (1).) Similarly, the Court of Arbitration in the *Anglo-French Continental Shelf* case said :

"The Court's Decision, it scarcely needs to be said, will be binding only as between the Parties to the present arbitration and will neither be binding upon nor create any rights or obligations for any third State, and in particular for the Republic of Ireland, for which the Decision will be *res inter alios acta*. In so far as there may be a possibility that the two successive delimitations of continental shelf zones in this region, where the three States are neighbours abutting on the same continental shelf, may result in some overlapping of the zones, it is manifestly outside the competence of this Court to decide in advance and hypothetically the legal problem which may then arise. That problem would normally find its appropriate solution by negotiations directly between the three States concerned . . ." (*54 International Law Reports*, p. 38 ; and see also p. 118.)

29. In short, while Malta can understand that Italy may feel some concern over the prospect of a judicial statement of rules and principles applicable to a dispute between Malta and Libya, Malta is bound to observe that in formal terms Italy's position is effectively no different from Malta's in relation to the *Tunisia/Libya* case. Furthermore in substantive terms Italy's case is evidently of a different order to Malta's in view of the striking absence of even any *prima facie* evidence to support the overlapping claims which Italy now asserts in such general terms.

(c) *The object of Italy's Application is obscure*

30. Lastly, Malta notes a certain obscurity in the position adopted by Italy. It is not clear from the Application whether Italy seeks to intervene as a party or not.

31. In paragraph 16 the object of the intervention is stated as being

"to ensure the defence before the Court of its [Italy's] interest of a legal nature, so that those principles and rules and, in particular, the practical method of applying them are not determined by the Court without awareness of that interest, and to its prejudice".

32. This statement appears to Malta to resemble the position which Malta adopted in the *Tunisia/Libya* case, when Malta sought to intervene in order to inform the Court of its views in respect of such issues in that case as might affect its position in later, but geographically related, delimitations. Malta's application to intervene was not accepted by the Court.

33. However, in paragraph 17 Italy adds a further element to its position :

"It goes without saying — but it is better that it should be stated to avoid any ambiguity — that the Government of Italy, once permitted to intervene, will submit to such decision as the Court may make with regard to the rights claimed by Italy, in full conformity with the terms of Article 59 of the Statute of the Court."

34. Italy's suggestion that it thereby avoids ambiguity is not entirely justified, for a genuine ambiguity remains. Is Italy saying that it will be bound as a party or is it saying that, in conformity with the terms of Article 59 of the Statute, not being a party it will not *formally* be bound? The words may be interpreted in both senses, and the subsequent mention of Article 59 at the end of paragraph 17 does not resolve the doubt.

35. Malta would respectfully suggest that Italy should make its position clear. If it is that Italy does not seek to become a party in the sense of Article 59, then Italy's position is indistinguishable from that of Malta in the 1981 proceedings and the Italian application must accordingly fail. If, on the other hand, it is that Italy does wish to become a party to the case and to convert a bilateral case into a trilateral one, then it confronts the obstacle of admissibility examined in section III of these Observations, namely, that there has hitherto been no formulation of a claim by Italy, no negotiation, no definition of a dispute and no opportunity to attempt to resolve it by the usual pre-judicial procedures.

C. ITALY IS NOW ESTOPPED FROM ASSERTING ITS CLAIM AGAINST MALTA BY WAY OF AN APPLICATION TO INTERVENE

36. As appears clearly from both the statement made on behalf of Malta in 1981 and the additional matters just set out there have been several occasions on which it would have been appropriate for Italy to inform Malta of its extended claim to a continental shelf area, but Italy has not made use of them. The most striking illustrations of this failure on the part of Italy are as follows:

- in 1973 when Malta placed on offer 16 blocks south and south-east of Malta;
- in 1975, when discussions took place between Italy and Malta about the continental shelf boundary generally;
- at any time since 1976, when the agreement for the submission of the present dispute to the Court was concluded between Libya and Malta;
- at any time since 1981, when Malta's views regarding the boundaries of its surrounding continental shelf were publicly expounded on its behalf before the Court.

In other words, on no appropriate occasion has Italy identified to Malta the existence of any difference or dispute with Malta outside the areas affected by the drawing of an equidistance line from Lampedusa and Linosa or the area between Sicily and the northern coast of Malta.

37. In the meantime, Malta — as may be seen from Annex 24 — has granted concessions in several areas of its continental shelf and proceeded on the basis that the sole adverse claim with which it would have to deal, save in relation to Tunisia, to the Italian Pelagic Islands of Lampedusa and Linosa and the area between Malta and Sicily, was Libya. This assumption underlay Malta's negotiations with Libya and the conclusion of the agreement between Malta and Libya which forms the basis of the Court's jurisdiction in the present case; and it would be detrimental to Malta if the position were now found to be other than as Italy has by its conduct allowed it to be seen.

38. In these circumstances, so Malta submits, Italy's silence and inactivity in the past in relation to the claim it now advances can be seen as estopping or precluding it from putting forward its present application.

IV. Italy Has no Jurisdictional Link with Either Party

39. Malta turns finally to the basis of the Court's jurisdiction. The question of the need for a jurisdictional link between an Applicant and either or both of the parties is one on which the Court has already heard ample argument in the *Tunisia/Libya* case and it is unnecessary to repeat it here. The only development since the argument in that case which it is appropriate to note now is the rejection by the Court of Malta's application in that case. It is true that this did not formally involve a finding that in the absence of a jurisdictional link the applicant could not succeed. (See the judgments of 14 April 1981, *I.C.J. Reports 1981*, p. 16, para. 27.) Malta suggests, however, that there is nonetheless to be discerned in the Court's decision and in the separate opinions of a number of judges an element of concern to protect the exclusivity of the relationship between two States which by special agreement jointly submit a dispute to the Court, to preserve the basis on which that agreement was reached and to safeguard the principle that the Court's jurisdiction is based upon consent.

40. Without seeking at this point to enter into the substance of Italy's arguments regarding the jurisdiction of the Court, Malta notes that neither the reference in the Application to the operation of Article 62 of the Statute of the Court nor the mention of Italy's acceptance of the compulsory jurisdiction of the Court under the European Convention for the Pacific Settlement of Disputes serves to establish a jurisdictional link between Italy and either Malta or Libya.

V. Conclusion

41. Malta respectfully submits that the Court should find that the Application of Italy for permission to intervene cannot be granted.

(Signed) Edgar Mizzi,
Agent of the Republic
of Malta.

ANNEXES TO THE OBSERVATIONS BY MALTA

Annex 1

NOTE VERBALE FROM THE EMBASSY OF ITALY DATED 8 NOVEMBER 1965

[Italian text not reproduced]

Annex 1A

(Translation of Annex 1)

NOTE VERBALE

The Embassy of Italy presents its compliments to the Ministry of Commonwealth and Foreign Affairs and has the honour to request the following information:

- (1) whether Malta has acceded to the 1958 Geneva Conventions concerning the extent of territorial waters and the continental shelf;
- (2) the limit established for Maltese territorial waters and, if they exist, the legislative sources thereof;
- (3) whether there are Agreements between Malta and third Countries concerning territorial waters and relative rights, and the continental shelf.

The Embassy of Italy is pleased with this opportunity to renew to the Ministry of Commonwealth and Foreign Affairs the expression of its highest consideration

Ta' Xbiex, 8 November 1965.

Ministry of Commonwealth and Foreign Affairs, Valletta.

Annex 2**NOTE VERBALE FROM THE MINISTRY OF COMMONWEALTH AND FOREIGN AFFAIRS
DATED 31 DECEMBER 1965****NOTE VERBALE**

The Ministry of Commonwealth and Foreign Affairs presents its compliments to the Embassy of Italy and has the honour to inform the Embassy that the Government of Malta intends to carry out, in the near future, a survey of the continental shelf for the purpose of exploration and the eventual exploitation of its natural resources.

The survey will be carried out without any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea.

In the absence of an agreed boundary line for the continental shelf to the north of Malta, the boundary will be provisionally deemed to be the median line between Malta and Italy. This provisional agreement is being made without prejudice to future discussions on the demarcation of this boundary line.

The Ministry of Commonwealth and Foreign Affairs avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.

31 December 1965.

The Embassy of Italy, Ta' Xbiex.

Annex 3

NOTE VERBALE FROM THE EMBASSY OF ITALY DATED 27 JUNE 1969

*[Italian text not reproduced]***Annex 3A***(Translation of Annex 3)*

NOTE VERBALE

The Embassy of Italy presents its compliments to the Ministry of Commonwealth and Foreign Affairs and has the honour to inform that in the course of an interministerial meeting held in Rome in the last few days the Italian side felt that it would be opportune to proceed to the necessary delimitation of the continental shelf between Italy and Malta.

The Embassy of Italy would therefore be grateful if the Ministry of Commonwealth and Foreign Affairs would inform it, with courteous solicitude, whether the Maltese Government is prepared to receive an Italian delegation entrusted with the task of proceeding, in the interest of both countries, to the definition of such a delimitation. Such delegation would, if the Maltese Government were favourable to the suggestion, be ready to come to Malta in the first ten days of July next.

While awaiting to learn the eventual decisions of the Government of Malta, the Embassy of Italy thanks and takes the opportunity to renew to the Ministry of Commonwealth and Foreign Affairs the expression of its highest consideration.

Malta, 27 June 1969.

Ministry of Commonwealth and Foreign Affairs, Valletta.

Annex 4

NOTE VERBALE FROM THE EMBASSY OF ITALY DATED 17 OCTOBER 1969

[Italian text not reproduced]

Annex 4A*(Translation of Annex 4)*

NOTE VERBALE

The Embassy of Italy presents its compliments to the Ministry of Commonwealth and Foreign Affairs and, with reference to the request made by Note Verbale No. 2224 of 27 June last concerning the wish expressed by the Italian side to start talks for the delimitation of the continental shelf, has the honour to make known that the Italian Government is prepared to send to Malta its own delegation as soon as the Maltese side declares its readiness to commence the negotiations.

On this occasion, the Embassy of Italy has the honour to state that it is the wish of the Italian side that Malta should not proceed with the publication of the "notice" envisaged by regulation 4 (5) of the "Petroleum (Production) Regulations, 1969", before the desired meeting between the two delegations has taken place.

In the expectation of the commencement of such discussions, the Embassy of Italy has received instructions to give assurance that, on the part of Italy, it is intended to keep in abeyance:

- (1) the publication of the data concerning petroleum explorations in the shelf of the Maltese Channel;
- (2) the acceptance of requests and permits for research in the aforesaid areas.

The Embassy of Italy would therefore be grateful to the Ministry of Commonwealth and Foreign Affairs if it could make known, with courteous solicitude, the date on which the Government of Malta deems it possible to initiate the negotiations in question and takes this opportunity to renew the expression of its highest consideration.

Malta, 17 October 1969.

Ministry of Commonwealth and Foreign Affairs, Valletta.

Annex 5

NOTE VERBALE FROM THE MINISTRY OF COMMONWEALTH AND FOREIGN AFFAIRS
DATED 23 OCTOBER 1969

NOTE VERBALE

The Ministry of Commonwealth and Foreign Affairs presents its compliments to the Embassy of Italy and has the honour to refer to the Ministry's Note Verbale of even number dated 8th July 1969 and to the Embassy's Note Verbale No. 3413 dated 17th October 1969 regarding talks proposed by the competent Italian authorities on matters connected with the Continental Shelf.

The Ministry would like in the first place to take this opportunity to assure the Embassy that this matter has been actively engaging the attention of the Maltese Government for some time. The Embassy will no doubt agree that this is an exercise requiring very close scrutiny and much spadework before it can be decided to commence the proposed talks. The Ministry is fully conscious of the importance of initiating talks with the Italian Government at the earliest possible but is likewise alive to the futility of having to commence talks which, through lack of adequate preparation, would be bedevilled by time-wasting and unnecessary interruptions. Moreover, it is felt that the Embassy will surely appreciate the fact that with the limited expertise at our disposal on such an intricate matter, a certain amount of reasonable delay should occur. However, the preparatory work is well in hand and information is now being culled on some of the more complex aspects of the problem. In this context reference is made to this Ministry's Note Verbale of even number dated 30th September 1969.

In the light of the foregoing it will be seen that further delay is likely to occur: however the Ministry will not fail to inform the Embassy as soon as the Maltese Government is ready to participate in bilateral discussions.

Your request not to publicize in Malta the "notice" contemplated by section 4 (5) of the "Petroleum (Production) Regulations, 1969" has been referred to the competent Maltese authorities for their attention.

Meanwhile the Ministry has taken good note of what is stated in the penultimate paragraph of the Embassy's Note Verbale of 17 October.

The Ministry of Commonwealth and Foreign Affairs avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.

23 October 1969.

The Embassy of Italy, Ta' Xbiex.

Annex 6

NOTE VERBALE FROM THE EMBASSY OF ITALY DATED 22 DECEMBER 1969

[Italian text not reproduced]

Annex 6A*(Translation of Annex 6)*

NOTE VERBALE

The Embassy of Italy presents its compliments to the Ministry of Commonwealth and Foreign Affairs and, with reference to its Note Verbale CFA 1624/68 of 30 September 1969 concerning some cartographic information on the Italian coastal lines has the honour to communicate that no regulation has yet been adopted in Italy for the determination of the base lines, in conformity with the principles contained in the Geneva Convention of 1958 on the Territorial Waters and Contiguous Zone.

Consequently the Italian base lines from which the breadth of the territorial waters is measured remain those specified in Article 2 of the Navigation Code, i.e.: the low-water mark of the coast and the lines joining the extreme points of the Gulfs, inlets or bays whose entrance is not wider than 20 nautical miles.

The Embassy of Italy takes this opportunity to renew to the Ministry of Commonwealth and Foreign Affairs the expression of its highest consideration.

Malta, 22 December 1969.

Ministry of Commonwealth and Foreign Affairs, Valletta.

Annex 7

NOTE VERBALE FROM THE EMBASSY OF ITALY DATED 20 JANUARY 1970

*[Italian text not reproduced]***Annex 7A***(Translation of Annex 7)*

NOTE VERBALE

The Embassy of Italy presents its compliments to the Ministry of Commonwealth and Foreign Affairs and, with reference to its Note Verbale CFA No. 1624/68 of 23 October 1969 concerning the Italian request to commence bilateral talks for the delimitation of the continental shelf between Italy and Malta, would be grateful to the said Ministry if it were to make known, with courteous solicitude, the eventual decision taken on the matter by the Government of Malta.

The Embassy of Italy conveys its thanks and takes the opportunity to renew to the Ministry of Commonwealth and Foreign Affairs the expression of its highest consideration.

Malta, 20 January 1970.

Ministry of Commonwealth and Foreign Affairs, Valletta.

Annex 8**NOTE VERBALE FROM THE MINISTRY OF COMMONWEALTH AND FOREIGN AFFAIRS
DATED 24 JANUARY 1970****NOTE VERBALE**

The Ministry of Commonwealth and Foreign Affairs presents its compliments to the Embassy of Italy and has the honour to refer to the Embassy's Note Verbale No. 184 dated 21 January 1970 enquiring about developments concerning the proposed bilateral talks on the Continental Shelf between Malta and Sicily.

The Ministry would like to assure the Embassy that everything possible is being done to hasten matters. However, it is not envisaged that it will be possible to commence the talks in the very near future. The Ministry will of course inform the Embassy immediately there is an indication that the talks would start within a specified period.

The Ministry of Commonwealth and Foreign Affairs avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.

24 January 1970.

The Embassy of Italy, Ta' Xbiex.

Annex 9

NOTE VERBALE FROM THE ITALIAN MINISTRY OF FOREIGN AFFAIRS DATED
29 APRIL 1970

[Italian text not reproduced]

Annex 9A

(Translation of Annex 9)

NOTE VERBALE

The Ministry of Foreign Affairs presents its compliments to the Embassy of Malta and has the honour to communicate what follows.

With Note Verbale of 24 January 1970 (CFA. 1624/68) addressed to the Italian Embassy in Malta, the Maltese Ministry of Commonwealth and Foreign Affairs confirmed the impossibility, for the Government of Malta, to start early negotiations with Italy aimed at the delimitation of the continental shelf.

On the part of Italy, while account is taken of the technical difficulties which prevent the Maltese Government from giving an early start to the negotiations, one cannot but confirm the interest in a rapid resolution of the problem, also in view of the laws which regulate these matters in Italy.

In these circumstances the Italian Government, pending a definitive agreement on the matter, considers that a *provisional solution is necessary for the area of more immediate interest, namely, that between Malta and Sicily which is not affected by particular problems.* In this respect, the Italian Government, recalling what at one time had been proposed by the Maltese Government by a Note Verbale of 31 December 1965, considers as opportune that, limitedly to the above-mentioned area, the median line between the northern coasts of Malta and the opposite Sicilian coasts could be considered as the provisional line of demarcation, and this of course without prejudice to future discussions and with reservations, particularly as regards the aforesaid line, for eventual corrections — *which would presumably be of a mere technical nature* — in relation to the definitive agreements which could be made during the negotiations.

Such a provisional solution would enable the two Governments to proceed without further delays with the publication of the data concerning the areas in question and with the granting of licences for exploration.

The Ministry of Foreign Affairs avails itself of this opportunity to present to the Embassy of Malta the expression of its highest consideration.

Rome, 29 April 1970.

Annex 10

NOTE VERBALE FROM THE EMBASSY OF ITALY DATED 11 MAY 1970

[Italian text not reproduced]

Annex 10A*(Translation of Annex 10)*

NOTE VERBALE

The Embassy of Italy presents its compliments to the Ministry of Commonwealth and Foreign Affairs and, in continuation of the conversation held on the morning of the 8th instant between the Embassy's Counsellor and Messrs Borg Cardona and Bartolo, concerning the delimitation of the Italo-Maltese continental shelf, has the honour to request the courteous interest of the Government of Malta with a view to giving due consideration to the proposal made by Italy in the Note Verbale No. 071/8745 forwarded on 29 April last to the Embassy of Malta in Rome and of which a copy is being transmitted for all good purposes.

While awaiting to learn, with every courteous solicitude, the point of view of the Maltese Government, especially in so far as concerns the possibility of arriving at a delimitation — even provisional — of the Italo-Maltese continental shelf, the Embassy of Italy conveys its thanks and takes the opportunity to renew to the Ministry of Commonwealth and Foreign Affairs the expression of its highest consideration.

Malta, 11 May 1970.

Ministry of Commonwealth and Foreign Affairs, Valletta.

Annex 11**NOTE VERBALE FROM THE MINISTRY OF COMMONWEALTH AND
FOREIGN AFFAIRS DATED 30 MAY 1970****NOTE VERBALE**

The Ministry of Commonwealth and Foreign Affairs presents its compliments to the Embassy of Italy and has the honour to refer to the Embassy's Note Verbale No. 1287, dated 11 May 1970, regarding the delimitation of the continental shelf lying between Malta and Sicily.

The Ministry would inform that as during the next few weeks certain members of the Oil Committee will be either away from the Island on official business or heavily engaged in parliamentary affairs, it has not been found possible to arrange a meeting between representatives of the Maltese and Italian Governments immediately.

However, there is the possibility that a preliminary meeting between the two sides might be held during the first half of July next. The Embassy may rest assured that everything possible is being done so that the meeting will take place as scheduled.

The Ministry of Commonwealth and Foreign Affairs avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.

30 May 1970.

The Embassy of Italy, Ta' Xbiex.

Annex 12**NOTE VERBALE FROM THE MINISTRY OF COMMONWEALTH AND
FOREIGN AFFAIRS DATED 15 JULY 1970****NOTE VERBALE**

The Ministry of Commonwealth and Foreign Affairs presents its compliments to the Embassy of Italy, and has the honour to refer to this Ministry's Note Verbale of even number dated 20 May 1970, concerning the delimitation of the continental shelf between Malta and Sicily.

The Ministry would like to inform that the Government of Malta is now in a position to meet representatives of the Italian Government on the matter and would welcome suggestions for such a meeting to take place.

The Ministry of Commonwealth and Foreign Affairs avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.

15 July 1970.

The Embassy of Italy, Ta' Xbiex.

Annex 13

NOTE VERBALE FROM THE EMBASSY OF ITALY DATED 14 AUGUST 1970

[Italian text not reproduced]

Annex 13A*(Translation of Annex 13)*

NOTE VERBALE

The Embassy of Italy presents its compliments to the Ministry of Commonwealth and Foreign Affairs and has the honour to acknowledge receipt of Note Verbale No. 1624 of 15 July last, whereby information was given that the Maltese authorities are now in a position to meet Italian representatives with a view to examining the questions relating to the delimitation of the continental shelf between Malta and Italy.

The Embassy of Italy, while assuring that it has brought the above to the knowledge of its Government, reserves to communicate the orientations of the competent Italian authorities as to the time in which the aforesaid contacts could be started.

Moreover, the Embassy of Italy, with reference to Note Verbale No. 071/8745 of 29 April forwarded to the Embassy of Malta in Rome and with respect to the measures adopted by the Government of Malta and published in the *Official Gazette of 17 July*, has the honour to inform that the Italian Government, in the expectation of a definitive agreement for the delimitation of all submarine areas comprised between the coasts of Malta and those of Italy, has decided to proceed with the granting of permits for exploration and exploitation within the median line of the area between the coasts of Malta and the coasts of Sicily, with a reservation however for such eventual adjustments which may be made to the said line during the negotiations.

The Embassy of Italy takes the opportunity to renew to the Ministry of Commonwealth and Foreign Affairs the expression of its highest consideration.

Malta, 14 August 1970.

Ministry of Commonwealth and Foreign Affairs.

Annex 14

NOTES OF MEETING BETWEEN AMBASSADOR VARVESI AND THE SECRETARY,
MINISTRY OF COMMONWEALTH AND FOREIGN AFFAIRS, ON 19 JUNE 1975

Mr. Abela opened the meeting by stating that between 1965 and 1970 Italy has been insisting to sign with Malta a protocol to divide the continental shelf between the two countries. Mr. Abela stated that Malta was now prepared to sign such a document. He pointed out that although the two sides had not in fact signed a protocol, nevertheless there was an agreement on the co-ordinates of the line and both countries had published in their respective official gazettes concessions which came to within 500 metres of the dividing line to allow for technical adjustments should cartographers find some inaccuracies.

Ambassador Varvesi confirmed that this was so and stated that Italy had no objection to signing a protocol based on a median line demarcation. At this stage Mr. Abela presented a draft Agreement for the perusal of Ambassador Varvesi. (Copy attached.)

Ambassador Varvesi stated that Italy could not accept that the Islands of Linosa and Lampedusa should only have a continental shelf limited to a circle of 13 nautical miles. He said that the two islands gave Italy the right of half of the continental shelf between Malta and these two Islands. He said that Italy had always respected the islands and indeed the dividing line between Italy and Spain had taken due account of the Balaeric Islands.

Mr. Abela pointed out that the agreement entered into between Italy and Tunisia was based on the principle of a 13-mile radius for all the Pelagic Islands except Lampione which had a 12-mile radius. Mr. Abela stated that this must have been in recognition of the fact that there were islands situated away from the Metropolitan area and on the continental shelf of another country. There were similar situations such as the Island of Fernando Poo off the coast of West Africa. It was inconceivable that small islands with a limited population and clearly not forming part of the land mass of the country to which they belonged should enjoy the same rights as sovereign independent islands. The case of the Balaeric Islands was different to the islands of Linosa and Lampedusa because the former were situated near to Spain and whatever has been agreed between Italy and Spain in this regard could never be made to apply to this case.

Ambassador Varvesi said that the settlement between Italy and Tunisia was a political package. Italy had agreed to the 13-mile radius in return for substantial other concessions granted by Tunisia to Italy. He recalled that Signor Moro had paid a visit to Tunisia and the whole package was agreed upon during that visit. This settlement had since caused them great trouble and today, five years after the signing of the agreement, it has not yet been ratified.

Mr. Abela stated that he did not doubt Ambassador Varvesi's words but he had two important points to make.

The first point was that the Agreement itself stipulated that the rights for concessions to be issued in terms of the demarcation lines were not affected by the process of ratification, and indeed it was difficult to understand the effect of the non-ratification if one existed. The second point was that he failed to see how Italy could possibly use two weights and two measures in its approach to what was essentially the same problem.

Ambassador Varvesi agreed that time was on the side of the Tunisians and

that it would be impossible for Italy not to ratify the agreement. On the second point he saw certain differences. He said that the two islands concerned were clearly sitting on the extension seawards of the Tunisian land mass, but they were not sitting on the elongation of the Maltese land mass. This was geographically illustrated by the fact that the 200-metre isobath was to the east of these islands. He said that during the negotiations it never occurred to them that such a political settlement with Tunisia would in any way prejudice their median line position with Malta so much so that Italy and Tunisia had agreed on a median line between them both to the north of the Island as well as to the south.

Mr. Abela challenged this. He said that the Agreement indicated that there was a median line to the north but the southern part stopped at the islands. Ambassador Varvesi stated that this was not so because he clearly recollected that the line was drawn southwards to a point equidistant from one of the islands, the Tunisian coast and Malta.

Mr. Abela said that he did not manage to obtain either a chart or the co-ordinates as these were not published and at any rate no agreement between Italy and Tunisia could prejudice Malta's claims. He again reiterated that a southern boundary was not indicated in the main agreement.

Ambassador Varvesi said that he was prepared to make available a copy of the chart and undertook to supply it the following Monday to our Ambassador in Rome.

Mr. Abela then asked the criterion on which the 13-mile radius was adopted. Ambassador Varvesi stated that to maintain the principle they asked for one mile more than the territorial waters. Mr. Abela stated that five years back both Italy and Tunisia only had six miles territorial water. After some hesitation Ambassador Varvesi said that he could not remember whether at the time there was a six-mile limit or not.

Mr. Abela then said it was a big pity that Italy was taking this attitude with Malta which would inevitably lead to a dispute. Ambassador Varvesi said that the first step would be the studying of the element to be followed by another visit to examine the whole thing objectively.

Mr. Abela also asked whether it would be possible to sign a protocol on the north/south demarcation line now and negotiate and sign later an agreement involving these two islands. Ambassador Varvesi stated that this was not possible. Indeed they had a similar problem with France and such a solution was not accepted by the Italian authorities.

On the following day, Mr. Abela contacted Ambassador Varvesi before his departure for Rome and requested in addition to the chart a copy of the protocol showing co-ordinates. Ambassador Varvesi agreed to this.

DRAFT AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALTA
AND THE GOVERNMENT OF THE REPUBLIC OF ITALY RELATING
TO THE DELIMITATION OF THE CONTINENTAL SHELF
BETWEEN THE TWO COUNTRIES

The Government of the Republic of Malta and the Government of the Republic of Italy desiring to strengthen further the relations of good neighbourhood and to strengthen the bonds of friendship between the two

countries have agreed to define and to draw up in the present Agreement the principles and criteria for determining the line dividing the Continental Shelf between Malta and Italy.

Article I

The boundary of the Continental Shelf appertaining to each of the Contracting Parties is the median line every point of which is equidistant from the points nearest to the base lines from which the breadth of the territorial waters of Malta and Italy is measured, with the exception of the Islands of Linosa and Lampedusa.

Article II

The delimitation of the Continental Shelf of the Islands mentioned in Article I above is defined as follows:

- (a) around Linosa, the delimitation towards Malta shall be constituted by the portions of the outer line of circles of 13 marine miles of radius of which the centres are to be found on the littoral of this Island, which portions are comprised within the intersection of this outer line on the one hand with that of Lampedusa mentioned in paragraph (b) below and on the other with the dividing line to be agreed between the Republic of Malta and the Republic of Tunisia; and
- (b) around Lampedusa, the delimitation towards Malta shall be formed by the portions of the outer line of circles of 13 marine miles radius, and of which the centres are to be found on the littoral of this Island, which portions are comprised within the intersections of this outer line on the one hand with the outer line relative to Linosa and defined in paragraph (a) above and on the other with the dividing line to be agreed between the Republic of Malta and the Republic of Tunisia.

Article III

An Italo-Maltese technical commission shall be formed as soon as possible with the object of charting on maps the median line and the portions of the outer line defined above and to determine the co-ordinates of the points constituting these lines.

This Commission shall, as far as possible, terminate its work within three months commencing from the date of the present agreement.

The charts as well as the definition of the co-ordinates of the points constituting the lines, which shall have been established by the aforementioned technical commission shall be authenticated by the signature of the plenipotentiaries of both parties; they shall be annexed to the present Agreement.

Article IV

If layers of natural resources extend beyond both sides of any part of the line dividing the continental shelf appertaining to the Contracting Parties, with the result that the resources in that part of the shelf belonging to one of the contracting parties could be exploited on the side of the shelf belonging to the other party, the competent authorities of the contracting parties shall consult together with a view to reaching an agreement to determine ways and means to exploit the said resources.

Pending the coming into force of the abovementioned agreement, each party shall ensure that the exploitation is carried out in the best conditions in accordance with accepted practice.

Article V

In the event of disagreement on the position of any installation or other device in relation to the dividing line, as established by the present Agreement, the competent authorities of the contracting parties shall agree to determine in which part of the continental shelf such installation or other device is situated.

Article VI

The present Agreement shall be ratified according to the constitutional laws of the contracting parties and shall come into force on the date of the exchange of the instruments of ratification, which shall take place with the least delay.

However, the two Governments may grant concessions for exploration and/or exploitation of the mineral resources within their zones defined in accordance with the abovementioned principles.

Done at, the in two texts in the language, both being equally binding.

For the Government
of the
Republic of Malta,

For the Government
of the
Republic of Italy.

Annex 15**NOTE VERBALE FROM THE MINISTRY OF COMMONWEALTH AND
FOREIGN AFFAIRS DATED 14 NOVEMBER 1975***NOTE VERBALE*

The Ministry of Commonwealth and Foreign Affairs presents its compliments to the Embassy of the Republic of Italy and has the honour to state as follows :

During the course of a meeting held in Rome on 17 September 1975, His Excellency Sig. Aldo Moro, Presidente del Consiglio, promised the Prime Minister an early reply on the problems arising from the delimitation of the continental shelf between the two countries. Subsequently, the Secretary-General of the Ministero degli Affari Esteri, during the course of his visit between 31 October and 4 November 1975, informed the Prime Minister that the Ambassador of Italy to Malta was fully briefed on the matter and would conduct the necessary negotiations with the Secretary, Ministry of Commonwealth and Foreign Affairs. It was surprising to find that negotiations could not start immediately as the Embassy was not yet fully briefed.

The Ministry of Commonwealth and Foreign Affairs regards an early settlement of this problem as being of fundamental importance to avoid the risk of this dispute becoming public knowledge, thereby impairing the excellent relations that exist between the two countries.

The Ministry of Commonwealth and Foreign Affairs avails itself of this opportunity to renew to the Embassy of the Republic of Italy the assurance of its highest consideration.

14 November 1975.

Embassy of the Republic of Italy, Floriana.

Annex 16**NOTE VERBALE FROM THE MALTESE MINISTRY OF FOREIGN AFFAIRS DATED
25 AUGUST 1978**

NOTE VERBALE

The Embassy of the Republic of Malta presents its compliments to the Ministry of Foreign Affairs of the Republic of Italy and refers to previous Notes Verbales and other correspondence and representation on the subject of the delimitation of the continental shelf of Malta and of Italy, as well as to the meeting held on the subject.

Reference is also made to the draft delimitation agreement presented to an Italian delegation during the discussions held in Malta on 19 and 20 June 1975.

It is noted with concern that a long time has passed since the last promise of an early settlement of this question was made by the Government of Italy, and that repeated requests for an early decision by the Italian Government have as yet not found a favourable response.

Further delays can only harm the excellent bilateral relations between the two countries and consequently the Government of Malta again requests the Government of Italy to take the necessary steps to have the question resolved amicably.

The Embassy of the Republic of Malta avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Italy the assurance of its highest consideration.

25 August 1978.

Ministry of Foreign Affairs of the Republic of Italy, Rome.

Annex 17**NOTE VERBALE FROM THE EMBASSY OF MALTA DATED 25 SEPTEMBER 1978****NOTE VERBALE**

The Embassy of the Republic of Malta presents its compliments to the Ministry of Foreign Affairs of the Republic of Italy and refers to its Note Verbale No. 481/78 of 25 August 1978, soliciting early action on the delimitation of the Continental Shelf of Malta and of Italy.

The Embassy of the Republic of Malta would be grateful to learn what action has been taken and avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Italy the assurance of its highest consideration.

25 September 1978.

Ministry of Foreign Affairs of the Republic of Italy, Rome.

Annex 18**NOTE VERBALE FROM THE EMBASSY OF MALTA DATED 6 NOVEMBER 1978****NOTE VERBALE**

The Embassy of the Republic of Malta presents its compliments to the Ministry of Foreign Affairs of the Republic of Italy and has the honour to refer to its Notes Verbales Nos. 481/78 of 25 August 1978, and 511/78 of 25 September soliciting early action on the delimitation of the Continental Shelf of Malta and of Italy.

The Embassy of the Republic of Malta would be grateful to learn whether the Ministry of Foreign Affairs of the Republic of Italy is now in a position to put forward any proposals, and avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Italy the assurance of its highest consideration.

6 November 1978.

Ministry of Foreign Affairs of the Republic of Italy, Rome.

Annex 19

NOTE VERBALE FROM THE ITALIAN MINISTRY OF FOREIGN AFFAIRS DATED
16 MARCH 1981

[Italian text not reproduced]

Annex 19A

(Translation of Annex 19)

NOTE VERBALE

The Ministry of Foreign Affairs presents its compliments to the Embassy of Malta and refers to the problem of the delimitation of the continental shelf in the Mediterranean.

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

The Note Verbale No. 143/64 by the Ministry of Foreign Affairs of Malta to the Italian Embassy on 31 December 1965 and that forwarded by this Ministry to the Embassy of Malta on 29 April 1970, are evidence of the provisional character of the agreements reached "... without prejudice to future discussions and reservations for eventual corrections with respect to the aforesaid line".

Recently information has been received that the Maltese Authorities have issued a call for tenders with the object of carrying out prospecting and exploration for hydrocarbons in eight areas of the continental shelf situated largely in the zone comprised between Malta and Sicily.

The Italian Authorities, having regard to the understandings reached in the years 1965-1970 and to the provisional character of the same, reserve the right to ascertain, by an identification of the aforesaid exploration areas, whether the same are actually situated in the area of the continental shelf recognized as belonging to Malta by the aforesaid understandings.

The Italian Authorities in any case feel that it is advisable — in order to avoid situations which could prejudice Italian interests on the continental shelf in the Mediterranean — to proceed to a definitive delimitation of the respective areas of the continental shelf through the appropriate negotiations.

The Ministry of Foreign Affairs would be grateful to the Embassy of Malta if it could be advised of the views of the Maltese Government on the above matters.

The Ministry of Foreign Affairs avails itself of this opportunity to present to the Embassy of Malta the expression of its highest consideration.

Rome, 16 March 1981.

Embassy of Malta, Rome.

Annex 20**NOTE VERBALE FROM THE EMBASSY OF MALTA DATED 6 APRIL 1981****NOTE VERBALE**

The Embassy of the Republic of Malta presents its compliments to the Ministry of Foreign Affairs of the Republic of Italy and has the honour, in reply to Note Verbale No. 141/A/271 of 18 March 1981, regarding the delimitation of the Continental Shelf, to refer to the Embassy's Note Verbale No. 481/78 of 25 August 1978 wherein the Government of Malta had shown its readiness to start negotiations. The Embassy of the Republic of Malta would therefore be grateful if the Ministry of Foreign Affairs of the Republic of Italy could suggest a date in May for the commencement of these negotiations to enable this Embassy to submit to the pertinent authorities in Malta.

The Embassy of the Republic of Malta avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Italy the assurance of its highest consideration.

6 April 1981.

Ministry of Foreign Affairs of the Republic of Italy, Rome.

Annex 21

NOTE VERBALE FROM THE ITALIAN MINISTRY OF FOREIGN AFFAIRS DATED
10 JANUARY 1983

[Italian text not reproduced]

Annex 21A

(Translation of Annex 21)

NOTE VERBALE

The Ministry of Foreign Affairs of the Republic of Italy presents its compliments to the Embassy of the Republic of Malta and has the honour to refer to the problem of the delimitation of the continental shelf in the area of the central Mediterranean.

The Italian Government has become aware of the decision of the Government of the Republic of Malta and the Government of the Socialist People's Libyan Arab Jamahiriya to submit to the International Court of Justice a question concerning the submarine areas in the central Mediterranean which certainly involves Italian interests.

For this reason the Italian Government makes express reservation to define, at the time and in the manner most appropriate, the attitude it will deem proper to assume in relation to and for the purposes of the protection of the lawful Italian interests involved in the question pending between the Government of the Republic of Malta and the Government of the Socialist People's Libyan Arab Jamahiriya.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the Republic of Malta the expression of its highest consideration.

Rome, 10 January 1983.

Embassy of the Republic of Malta, Rome.

Annex 22**NOTE VERBALE FROM THE EMBASSY OF MALTA DATED 2 MARCH 1983****NOTE VERBALE**

The Embassy of the Republic of Malta presents its compliments to the Ministry of Foreign Affairs of the Republic of Italy and refers to the Note Verbale of 10 January 1983 concerning the delimitation of the continental shelf in the central Mediterranean.

The Government of the Republic of Malta, while appreciating the concern of the Italian Government in matters affecting its lawful interests, fails to see how *these interests* in the submarine areas of the central Mediterranean might need to be protected in consequence of the reference to the International Court of Justice of questions concerning the delimitation of the areas appertaining to Malta and those appertaining to Libya.

The Maltese Government would be in a better position to give *due consideration* to the reservations contained in the Note Verbale of 10 January, if the Italian Government were to throw more light on the causes for its concern.

The Embassy of Malta avails itself of this opportunity to renew to the Ministry of Foreign Affairs the expression of its highest consideration.

2 March 1983.

Ministry of Foreign Affairs, Rome.

| Class of Capital | Amount authorized | Amount issued | Amount paid up | Voting rights of each class |
|-----------------------|-------------------|---------------|----------------|-----------------------------|
| <u>AGIP MALTA LTD</u> | | | | |
| Ordinary | £ M. 500,000 | £ M. 20,000 | £ M. 20,000 | one vote per share |
| <u>DEMINEX</u> | | | | |
| Ordinary | DM 50,000,000 | DM 50,000,000 | DM 12,500,000 | one vote per share |

(b) Attach copies of annual reports and balance sheets for the three years immediately preceding the application.

(c) All holdings of not less than 5% in number or value of any class of capital which has been issued by the body corporate

| Name of holder or names of joint holders, in full | Class of holding | Amount | Nationality of holders |
|---|------------------|--------|------------------------|
| <u>AGIP MALTA LTD:</u> | | | |
| AGIP S.p. A. | Ordinary | 19,997 | ITALIAN |
| <u>DEMINEX</u> | | | |
| GELSENBERG A. G. ESSEN | Ordinary | 18.5% | GERMAN |
| U.K. WESSELING | dto. | 18.5% | dto. |
| VEBA CHEMIE A.G. GELSEN- KIRCHEN | dto. | 18.5% | dto. |
| WINTERS HALL A. G. KASSEL | dto. | 18.5% | dto. |
| DEUTSCHE SCHACHTBAU GmbH LINGEN | dto. | 10.0% | dto. |
| SAARBERGWERKE A. G. SAAR- BRUECKEN | dto. | 9.0% | dto. |
| PREUSSAG A. G. HANNOVER | dto. | 7.0% | dto. |

(d) Capital issued to bearer

| Class of capital | Total amount issued | Amount issued to bearer |
|------------------------|---------------------|-------------------------|
| <u>AGIP MALTA LTD.</u> | | |
| None | None | None |
| <u>DEMINEX</u> | | |
| none | None | None |

Application of special provisions relating to the exploration and exploitation of the continental shelf

GIP MALTA LTD

See attachments

DEMINEX

will present

5. Give reference number(s) of the block(s) applied for and any order of preference

| 1st. choice | 2nd. choice | 3rd. choice |
|------------------------|--------------------|---------------------|
| blocksn. 12, 13 and 16 | blocksn. 12 and 13 | blocks n. 12 and 16 |

6. Attach description of work programme proposed during the exploration phase and of any special considerations to be taken into account.

A. Application Fee enclosed £M...900...

Production Licence £M300 for each block.

B. Attach photocopy of receipt for fee in respect of qualifying Geophysical Data purchased.

I/We hereby declare that the information given above or annexed to this application is correct.

Date August 2nd. 1973 Signature(s) of Applicant(s)

E. E. L. For GIP MALTA

L. J. J. For DEMINEX

The Oil Division,
The Ministry of Development,
Merchants Street,
Valletta,
Malta.

(Signature(s) of duly authorised officer(s), and
the capacity in which he/they sign(s) should
be stated).

Note: Additional information in respect of this Application may be provided in Annexes

Annex 24

**MALTESE CONCESSIONS IN 1974 AND 1981 AND
LIBYA-MALTA EQUIDISTANCE LINE**

[Not reproduced. See V, Map 19.]

CERTIFICATION

I, the undersigned, Edgar MIZZI, Agent of the Republic of Malta, hereby certify that the copies of the documents attached as Annexes 1 to 23 of these Observations are accurate copies of the documents they purport to reproduce and that where a translation of such document is attached that translation is an accurate translation of such document.

This 5th day of December 1983.

(Signed) Edgar MIZZI,
Agent of the Republic
of Malta.
