

SEPARATE OPINION OF JUDGE MOROZOV

1. I voted for the operative part of the decision because from my point of view no application to intervene under Article 62 of the Statute can be entertained by the Court unless jurisdictional links (within the meaning of Articles 36 and 37 of the Statute) exist between the State presenting the request to intervene and the States parties to the case.

2. Article 62, which is included in the Statute under the title "Chapter III. Procedure", does not contain any provisions on the basis of which it can be considered as an Article which nullifies any provisions relating to the competence of the Court standing in Chapter II of the Statute under the title "Competence of the Court". Moreover, paragraph 2 of Article 62, which establishes the right of the Court "to decide upon this request", cannot be considered as some *lex specialis* which provides exemption from general jurisdictional requirements and leaves the Court free to entertain the intervention irrespective of the cornerstone provisions of Articles 36 and 37 of the Statute. All that this paragraph really provides is that the Court, subject to the exigencies of its Statute, including Articles 36 and 37, may grant or refuse the request. Thus even if jurisdictional links exist, the Court may still, for a valid reason, refuse the request. However, if they do not exist, the Court has no choice but to refuse.

3. This is the first time in the administration of international justice and, more particularly, in the experience of the International Court of Justice, that the Court has been obliged to take a decision on a request invoking Article 62. Therefore the impact of this decision unavoidably goes *far beyond the specific request of Malta* and may in future be considered as a precedent which, from my point of view, could be used for justification of a practice which is not consistent with the Statute and might, moreover, undermine the guiding principle of the consent of States.

4. As is well known, Malta recognized that there were no jurisdictional links between it and Libya and Tunisia. Libya and Tunisia objected to the jurisdiction of the Court and stated that only Article 36 of the Statute could be considered as a basis for the Court's jurisdiction.

5. I would finally like to recall paragraph 6 of Article 36 of the Statute, which provides : "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." From my point of view, whenever a request is submitted for permission to intervene under Article 62 of the Statute, the question of jurisdiction must, as a matter of principle, be considered first, particularly when, as in the current instance, an objection to jurisdiction has been presented by both of the original Parties (Libya and Tunisia).

(Signed) Platon MOROZOV.