

## CASE CONCERNING THE CONTINENTAL SHELF (TUNISIA/LIBYAN ARAB JAMAHIRIYA) (APPLICATION FOR PERMISSION TO INTERVENE)

**Judgment of 14 April 1981**

In its Judgment in respect of Malta's application for permission to intervene under Article 62 of the Statute in the case concerning the Continental Shelf between Tunisia and Libya, the Court found unanimously that Malta's request for permission to intervene could not be granted.

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The Court was composed as follows:

*President* Sir Humphrey Waldock; *Vice-President* Elias; *Judges* Gros, Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Erian, Sette-Camara, El-Khani, Schwebel; *Judges ad hoc* Evensen, Jiménez de Aréchaga.

Judges Morozov, Oda and Schwebel appended to the Judgment separate opinions making clear their positions with regard to certain matters raised in the Court's reasoning.

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*Proceedings before the Court*  
(paras. 1-10)

In its Judgment, the Court recalled that on 1 December 1978 and 19 February 1979, respectively, Tunisia and the Libyan Arab Jamahiriya notified to the Court a Special Agreement which they had concluded on 10 June 1977 for the submission of the question of the continental shelf between the two countries to the International Court of Justice.

In accordance with the Statute and the Rules of Court, the proceedings then took their course having regard to the terms of that Agreement. The Memorials of the Parties were filed and exchanged on 30 May 1980; the Counter-Memorial of Tunisia and that of the Libyan Arab Jamahiriya were filed respectively on 1 December 1980 and 2 February 1981, and were exchanged on the latter date.

Since the Court did not include upon the bench a judge of Tunisian or of Libyan nationality, each of the Parties exercised the right conferred by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. The Libyan Arab Jamahiriya designated Mr. E. Jiménez de Aréchaga and Tunisia Mr. J. Evensen.

On 30 January 1981 Malta filed an Application requesting permission to intervene in the case under Article 62 of the Statute. Tunisia and the Libyan Arab Jamahiriya submitted written observations on this Application on 26 February 1981, the date fixed as the time-limit for that purpose. Objection having been raised to Malta's request, the Court, in accordance with Article 84 of its Rules, sat in public on 19-21 and 23 March 1981 for the purpose of hearing the three States before deciding whether it should be granted or not.

*Provisions of the Statute and Rules of Court concerning intervention*  
(para. 11)

The Article of the Statute invoked by Malta provides as follows:

*"Article 62*

"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."

Under Article 81, paragraph 2, of the Rules of Court, an application for permission to intervene under Article 62 of the Statute shall specify the case to which it relates, and 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."

*The contentions of Malta and of the Parties*  
(paras. 12-16)

The Court summarized the contentions put forward by Malta in its Application and oral arguments, and by the two Parties in their respective written observations and oral arguments.

*Legal problems raised by Malta's request*  
(paras. 17-27)

The Court noted that objections in relation to all three matters specified in Article 81, paragraph 2, of the Rules had been raised by the Parties, which had alleged that Malta had not succeeded in showing possession of an interest of a legal nature which might be affected by the decision in the case, that the object of its request fell altogether outside the scope of the form of intervention for which Article 62 provided, and that it had not established any jurisdictional link with them. If any one of those objections should be found justified, it would, said the Court, clearly not be open to it to give any further consideration to the request.

Before considering the objections the Court retraced the history of the provisions of its Statute and Rules concerning intervention and noted how, from the beginning, it had been agreed not to try to resolve in the Rules of Court the various substantive questions which had been raised but to leave them to be decided on the basis of the Statute and in the light of the particular circumstances of each case.

*Interest of a legal nature and object of the intervention*  
(paras. 28-35)

The Court then considered whether the interest of a legal nature relied upon by Malta and the stated object of its intervention were such as to justify the grant of permission to intervene.

The interest of a legal nature which Malta had invoked consisted essentially in its possible concern with any findings of the Court that identified and assessed the geographical or geomorphological factors relevant to the delimitation of the

Libya/Tunisia continental shelf and with any pronouncements made by the Court regarding, for example, the significance of special circumstances or the application of equitable principles in that delimitation. Any such findings or pronouncements, in Malta's view, were likely to have repercussions upon Malta's own rights and legal interests in any future settlement of its continental shelf boundaries with Libya and Tunisia. Malta had underlined that only such elements were the object of its request and that it was not concerned with the choice of the particular line to delimit the boundary between those two countries or with the laying-down of general principles by the Court as between them.

The fact that Malta's request related to specific elements in the case between Tunisia and Libya implied, the Court found, that the legal interest which it relied on would concern matters which were, or might be, directly in issue between the Parties and, as Malta had presented them, were part of the very subject-matter of that case. Yet Malta had at the same time made it plain that it did not mean by its intervention to submit its own interest in those matters for decision as between itself and Libya or Tunisia, since its object was not to obtain any decision from the Court concerning its continental shelf boundaries with either or both of those countries.

While Malta, as it had asserted, clearly possessed a certain interest in the Court's treatment of the physical factors and legal considerations relevant to the delimitation of the continental shelf boundaries of States within the central Mediterranean region that was somewhat more specific and direct than that of States outside that region, that interest was nevertheless of the same kind as those of other States within the region. But what Malta had to show in order to obtain permission to intervene under Article 62 of the Statute was an interest of a legal nature which might be affected by the Court's decision in the case.

Under the Special Agreement the Court was called upon to decide the principles and rules of international law to be applied in the delimitation of the respective areas of continental shelf appertaining to Tunisia and Libya. Those two States had therefore put in issue their claims with respect to the matters covered by that instrument and, having regard to the terms of Article 59 of the Statute, the Court's decision in the case would accordingly be binding in respect of those matters. Malta, however, had attached to its request an express reservation that its intervention was not to have the effect of putting in issue its own claims vis-à-vis Tunisia and Libya. That being so, the very character of the intervention for which Malta sought permission showed that the interest of a legal nature which it had invoked could not be considered as one which, within the meaning of Article 62 of the Statute, might be affected by the decision in the case.

The Court found that what the request in effect sought to secure was the opportunity of arguing 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 Tunisia and Libya. To allow such a form of intervention would leave the Parties quite uncertain as to whether and how far they should consider their own separate interests vis-à-vis Malta as in effect constituting part of the subject-matter of the case. In the view of the Court, a State seeking to intervene under Article 62 of the Statute was clearly not entitled to place the parties to the case in such a position.

The Court understood Malta's preoccupations regarding possible implications for its own interests of the Court's findings and pronouncements on particular elements in the case between Tunisia and Libya. Even so, for the reasons set out

in the Judgment, the request was not one to which, under Article 62 of the Statute, the Court might accede.

*Jurisdictional link*  
(para. 36)

Having reached the conclusion that Malta's request for permission to intervene was not one to which it could accede, the Court found it unnecessary to decide in the case under consideration the question whether the existence of a valid link of jurisdiction with the parties to the case was an essential condition for the granting of permission to intervene under Article 62 of the Statute.

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For those reasons, the Court (para. 37) found that Malta's request for permission to intervene in the proceedings under Article 62 of the Statute could not be granted.

SUMMARY OF OPINIONS APPENDED TO  
THE JUDGMENT

*Judge Morozov* voted for the operative part of the decision, but for the following reason: he considered that no application for permission to intervene could be entertained by the Court unless it had competence, in one form or another, under Chapter II of its Statute. The principle enshrined in that Chapter was that the Court had no power to consider any dispute without the consent of all the States parties to that dispute. The cornerstone provisions of Chapter II had equally to be taken into account before any intervention under Article 62 could be authorized. Hence the requirement of consent applied to Malta's request, as it would also apply to that of any State requesting intervention on the basis of Article 62.

Malta had recognized that no such consent existed between it and the Parties, Libya and Tunisia, who for their part had objected that the Court was not competent. Therein lay, as a matter of principle, the decisive question which the Court should have considered first.

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*Judge Oda* stated in his opinion that he had voted in favour of the Judgment in deference to the Court's competence to exercise authority in granting or refusing permission to intervene under Article 62 of the Statute. That provision had, however, been too narrowly interpreted in the Judgment, for it was far from clear that an intervening State must in all circumstances place its interests in issue like a party to the case. The Court had also, in Judge Oda's opinion, imposed too severe a test of whether Malta had a legal interest which might be affected by the decision in the case. On the question whether a jurisdictional link was required between the intervenor and the original litigants before intervention could be authorized, Judge Oda expressed the view that that would depend *inter alia* on whether the third State claimed a right directly involved in the subject-matter of the case.

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*Judge Schwebel* appended a separate opinion which concurred in the Court's Judgment that the object of Malta's

intervention was not intervention within the meaning of Article 62 of the Statute of the Court. In his view, the Court could reasonably decide to debar Malta's request to intervene as that of a "non-party". However, he did not agree that Malta had failed to show that it had an interest of a legal nature which merely "may" be no more than "affected" by the decision in the case. Judge Schwebel submitted that, in view of the geographical situation of Malta, Libya and Tunisia—which Malta construes as that of sharing a single continental

shelf—the critical point is not the object of the case but the subjects of the case as the Court is likely to treat them. Those subjects, as dealt with in passages of the Court's Judgment in the main case, could well affect the legal interests of Malta. Judge Schwebel added that, while the Court had rightly refrained from passing upon whether a State seeking to intervene must demonstrate a jurisdictional link with the Parties to the principal case, he was of the view that Article 62 of itself provides the requisite jurisdiction.