

**APPLICATION
FOR PERMISSION TO INTERVENE**

**REQUÊTE
À FIN D'INTERVENTION**

APPLICATION FOR PERMISSION TO INTERVENE

BY THE GOVERNMENT OF THE REPUBLIC OF MALTA

The Registrar
International Court of Justice
The Hague

1. On behalf of the Government of Malta I have the honour
 - (a) to invoke Article 62 of the Statute of the International Court of Justice and – for the limited purposes and objects set out hereafter – to request the Court's permission to intervene in the current proceedings before the Court (herein called the *Libya/Tunisia* case) concerning the continental shelf areas lying in the vicinity of Tunisia and the Libyan Arab Jamahiriya ; and
 - (b) to state that the Government of Malta hereby appoints as its Agent Dr. Edgar Mizzi, Attorney-General, and H.E. Emanuel Attard Bezzina, Ambassador of Malta to The Hague, as co-Agent, and that their address for service shall be c/o Koninginnegracht 27, The Hague. Each of the said Agents shall separately have full representation.

I. ARTICLE 62 OF THE STATUTE

2. Article 62 of the Court's Statute provides as follows :

"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."

3. No other condition than that indicated in Article 62 is prescribed by the Statute as necessary to found a request for permission to intervene in a case before the Court. Accordingly the present request is made on the basis that Malta is a State which "consider(s) that it has an interest of a legal nature which may be affected by the decision" to be given by the Court in the *Libya/Tunisia* case.

4. Since, at the present stage, it cannot be known what the decision of the Court in the above-mentioned case will be, it equally cannot be known whether any legal interest of Malta will in fact be affected by that decision, or not. This must therefore be a matter of possibilities – as Article 62 of the Statute recognizes by its use of the phrase "which may be affected". In consequence Malta respectfully submits that it must be sufficient to demonstrate the existence of reasonable grounds for thinking that the decision, whatever it is, may have such an effect. These grounds will now be stated, and it is submitted that they satisfy the requirements of Article 62.

II. MALTA'S LEGAL INTEREST

5. Attention is drawn in the first place to a general fact, namely that Malta is a small island State, with virtually no natural resources, and dependent for its viability on imports, including imports of oil. In consequence the question of the extent and limits of its continental shelf, and of the resources of that shelf, is a matter of vital concern to Malta.

6. Although the nature of Malta's legal interest that may be affected by the Court's decision in the *Libya/Tunisia* case should be evident, Malta has had to rely entirely on the indication of the character of the case provided by the terms of the Libya/Tunisia Special Agreement or *Compromis* of 10 June 1977, as published – since Malta's request, dated 18 August 1980, to be furnished with copies of the written pleadings in the case was not granted (see letter from the Registrar dated 24 November 1980).

7. There can be no doubt that Malta's interest in her continental shelf boundaries is of a legal character since the continental shelf rights of States are derived from law, as are also the principles and rules on the basis of which such areas are to be defined and delimited. In other words these rights are created and protected by law, and the question of the proper spatial extent of the regions over which they can be exercised by any given State is also a matter of law.

8. The circumstance that, as an island some 200 miles distant from the African coast, Malta stands in a different geographical relationship to Libya and Tunisia from that in which those two States stand to each other, does not affect the fact that there are undoubtedly a number of ways in which the decision to be given by the Court in the *Libya/Tunisia* case not only could, but must, affect the question of Malta's continental shelf rights and boundaries. The principal ones are stated in the following paragraphs.

9. In the first paragraph of Article I of the Special Agreement or *Compromis* between Libya and Tunisia providing for a reference to the International Court, the Court is requested to "render its judgment" on

"What principles and rules of international law may be applied for the delimitation of the area of the continental shelf appertaining to Libya and Tunisia respectively . . . (and to) take its decision according to equitable principles, and the relevant circumstances which characterize the area, as well as the new accepted trends in the Third Conference on the Law of the Sea."

In contemporary international law relating to continental shelf boundaries, it is impossible to draw any hard and fast distinction between the legal principles and rules, or the equitable principles, that respectively apply to the situations of States in different geographical relationships with one another.

10. In Malta's case there is a continental shelf boundary with both Libya and Tunisia, and the boundaries between all three States converge at a single, as yet undetermined, point. Given the proximity of Libya, Tunisia and Malta, the "principles and rules of international law" applicable to the delimitation of the Libya/Tunisia boundary are bound to be relevant to the delimitation of the Malta/Libya and Malta/Tunisia boundaries. Furthermore, there is a substantial probability that many of the "relevant circumstances" – geographic, geologic, geomorphic, economic, and other – which affect the determination of the boundary between Libya and Tunisia would also be relevant to the determination of Malta's boundaries with those two States. The Court's treatment of such factors in the *Libya/Tunisia* case is thus bound to affect the

treatment of the same factors in a subsequent case involving Malta's boundaries.

11. In these circumstances, it must also be the case that the clarification which the second paragraph of Article I of the Libya/Tunisia Special Agreement or *Compromis* requests the Court to effect concerning "the practical method for the application" of the principles and rules of delimitation which the Court enunciates, will equally be liable to have a bearing on Malta's legal interest.

12. Malta therefore has to contemplate that whatever principles and rules, legal or equitable, and the practical methods of their application, are laid down by the Court (and even recognition of any special circumstances characterizing the area) will be cited and appealed to in any dispute that exists or subsequently develops regarding Malta's situation as a State with a Mediterranean continental shelf in the same general region as those of Libya and Tunisia. Yet without permission to intervene, Malta will have had no opportunity to address the Court on matters which must directly and vitally affect it – in contrast to the opportunity which those States will have had in the course of the present proceedings.

13. In so far as Malta, without knowledge of the written pleadings in the *Libya/Tunisia* case, is able to assess the situation, examples of specific issues that may arise in the *Libya/Tunisia* case, and be pronounced upon by the Court – in which event they must affect Malta's legal interest as above described, and almost certainly influence any subsequent decision concerning Malta's continental shelf boundaries – are as follows :

- (1) the question of the particular factors, equitable or other, which determine the character of boundaries in the seabed bordered by Libya, Tunisia and Malta ;
- (2) the question of whether equidistance as a principle or method of delimitation gives effect to such factors in accordance with international law ;
- (3) the effect of any geomorphic features of the relevant seabed areas that separate Malta from the African coasts ;
- (4) the question of applicable base-lines, including bay-closing lines ;
- (5) the question of whether there is a concept of coastline proportionality which a State may validly invoke as a method of delimiting its seabed boundaries with other States.

14. Finally, recalling the passage in the Libya/Tunisia Special Agreement or *Compromis* which asks the Court to take account of "new accepted trends in the Third Conference on the Law of the Sea", Malta submits that a decision by the Court identifying any such trends, assessing the degree of their acceptance, and applying them to continental shelf boundaries in the region, would undoubtedly affect Malta's legal interest in respect of its continental shelf boundaries in that same region.

15. Malta therefore submits that there can be no room for any reasonable doubt that she possesses a legal interest which, in the terms of Article 62 of the Statute, "may be affected", by the Court's decision in the case.

III. ARTICLE 81 OF THE COURT'S RULES

16. While the substantive condition of the grant of permission to intervene is necessarily governed exclusively by Article 62 of the Court's Statute, the procedural aspects of the making of the request are indicated in Article 81 of

the Rules of Court. The controlling role of the Statute in this regard is confirmed by the opening words of Article 81 which speak of an application "to intervene *under the terms of* Article 62 of the Statute" (emphasis added).

17. Paragraph 1 of Rule 81 specifies *inter alia* that the application "shall be filed as soon as possible, and not later than the close of the written proceedings", although in "exceptional circumstances" its submission at a later stage may be admitted. Malta's present application is duly submitted before the close of the written proceedings in the *Libya/Tunisia* case. It was not submitted earlier because, before finally deciding whether or not to request permission to intervene, Malta wished, if possible, to be furnished with copies of the written pleadings in the case and to have time to study them. As already mentioned in paragraph 6 above, a request to that effect, made under Article 53, paragraph 1, of the Rules, was not granted.

18. Paragraph 2 of Article 81 of the Rules begins by providing that the application shall state the name of an agent and specify the case to which it relates. On these matters Malta refers the Court to paragraph 1 above.

*Subparagraph (a) of Paragraph 2 of Rule 81 : the Question of
Legal Interest*

19. Paragraph 2 of Rule 81 goes on to provide, first, 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". As to this, the nature of Malta's legal interests has been stated in paragraphs 5-14 above.

*Subparagraph (b) of Paragraph 2 of Rule 81 : the Object of
the Intervention*

20. Next, paragraph 2 of Rule 81 provides that the application shall set out "(b) the precise object of the intervention". The precise object of Malta's intervention in the *Libya/Tunisia* case would be to enable Malta to submit its views to the Court on the issues raised in the pending case, before the Court has given its decision in that case. It follows that the purpose of the intervention is to give the Court an opportunity to hear the submission of Malta, whose specific legal interests are likely to be affected by its decision. In the absence of such an intervention, Malta's particular views as to the manner in which such points as those mentioned in paragraphs 10-14 above are to be resolved, would remain unheard by the Court. The permissibility of an intervention of this kind is implicit in the whole character of Article 62 and no other object appears to be contemplated by it.

21. For this reason the basis of the present application for permission to intervene would not lapse, or become otiose or "moot", merely because Malta was or became a party to principal proceedings of a similar kind – whenever the decision in those proceedings was to be given later than in the proceedings which are the subject of the intervention. Equally, the prospect, indicated in paragraph 5 of the Report to the Security Council by the Secretary-General of the United Nations on the Mission of his Special Representative to Malta and the Libyan Arab Jamahiriya (S/14256, 13 November 1980), of an early ratification of the agreement with Malta submitting to the Court questions relating to the delimitation of the continental shelf between the two States, does not diminish the justification for the present application. Indeed, the similarity between, if not the identical character or, some of the important issues in the *Libya/Tunisia* case and the prospective *Libya/Malta* case, and therefore the

likely impact of the Court's decision in the pending case upon a subsequent decision in a Libya/Malta case – as well as the circumstance that direct Libyan/Maltese proceedings may be probable – serve rather to strengthen the need for the present application.

22. At the same time it must be stressed that it is not Malta's object, by way, or in the course, of intervention in the *Libya/Tunisia* case, to obtain any form of ruling or decision from the Court concerning its continental shelf boundaries with either or both of those countries.

Subparagraph (c) of Paragraph 2 of Rule 81 : the Question of "Any Basis of Jurisdiction"

23. This subparagraph, which requires the Application to set out "(c) any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case", did not figure in any form in previous versions of the Rules, and it therefore embodies a new presentational requirement for a request for permission to intervene. It cannot of course have created a new substantive condition of the grant of such permission; for that would have been to employ the Court's rule-making power for the purpose of introducing a requirement not expressed, and not to be found by any process of necessary implication, in Article 62 of the Statute which must govern and prevail. It has therefore to be assumed that the statement for which subparagraph (c) provides is required as a matter of information for the Court regarding the jurisdictional relationship (if any) of the States concerned. Indeed the use of the word "any" in relation to "basis of jurisdiction" instead of "the" basis, confirms this interpretation and implies that intervention, as such, is not dependent on the existence of a basis of jurisdiction as between the State seeking to intervene and the parties to the case.

24. Paragraph 22 above contains a declaration by Malta that it is not the object of the intervention sought by the present application, to obtain from the Court any ruling or decision concerning Malta's continental shelf boundaries. Since, therefore, the intervention would not seek any substantive or operative decision against either party, it would appear that no question of jurisdiction in the strict sense of the word could arise as between Malta and the parties to the *Libya/Tunisia* case – for where relevant at all in the context of intervention, jurisdictional questions could be so only in different circumstances.

25. Subject to these observations, Malta's position is as follows :

- (a) She has made a Declaration (dated 6 December 1966) under Article 36, paragraph 2, of the Court's Statute (the so-called "Optional Clause"), accepting the Court's obligatory jurisdiction in terms which are already on record.
- (b) Malta has subsequently, with a view to assisting the initiative taken by the Secretary-General of the United Nations – as referred to in paragraph 21 above – communicated to him a second Declaration, dated 2 January 1981, enlarging the scope of its acceptance of the Court's compulsory jurisdiction for a certain category of disputes, in terms which will have been brought to the knowledge of the Court.
- (c) It follows from this second Declaration that any State can at any time start proceedings against Malta before the Court in regard to any dispute concerning the question of what principles and rules of international law are applicable or may be applied, and/or how they are to be applied, to the delimitation of areas of the continental shelf in the Mediterranean Sea appertaining respectively to Malta and to such other State.

IV. CONCLUSION

26. In the light of the foregoing observations, Malta respectfully requests permission to intervene in the present Libya/Tunisia proceedings.

27. It is not considered necessary to make any further observations at the present stage. If need be, Malta will ask to be heard orally in due course, and accordingly reserves all additional argument for the present.

28 January 1981.

(Signed) Dom MINTOFF
Prime Minister and Minister
of Foreign Affairs of the
Republic of Malta.
