

## SEPARATE OPINION OF JUDGE SCHWEBEL

While I am largely in accord with the Judgment, there are aspects of its reasoning with which I do not agree. I have particular reservations about the Court's treatment of the question of whether, in 1982, it appreciated that the petroleum concessions of Tunisia and Libya overlapped. When the Court in 1982 declared that "the phenomenon of actual overlapping of claims did not appear until 1974, and then only in respect of areas some 50 miles from the coast" – and specified that this was "the actual situation" – (para. 117), the Court clearly acted on the understanding that, before 1974, and within 50 miles of the coast, the concessions which had been granted by Tunisia and by Libya did not overlap. If the Court in 1982 really understood that there was a measure of overlapping before 1974 within 50 miles of the coast, but nevertheless cast its Judgment in the terms in which it is cast, those terms are inexplicable.

Whatever may have been the understanding of one or more judges, and whatever exiguous indications the record of the pleadings may reveal of overlap, it is clear to me, from the language of the Judgment quoted above, that the Court as a whole when it adopted its 1982 Judgment was under the impression that there was no "actual overlapping" at the time and in the zone specified. In its Application for Revision and Interpretation, Tunisia has demonstrated the error of that impression. Nevertheless, I agree with the Court in its holding that the request for revision is inadmissible, because that error is not of such a nature as to be a decisive factor. Had the Court been actively aware of the minor measure of overlapping which obtained, that would not have changed the decision of the Court on the first sector of the delimitation line.

*(Signed)* Stephen M. SCHWEBEL.

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