

DECLARATION OF JUDGE RANJEVA

[Translation]

I have voted in favour of the operative part of the Judgment and subscribe to the arguments on which it is based. In my opinion, the solution adopted by the Court constitutes an equitable result, which pays due regard to the interests at stake. I would nevertheless have wished the Court to be more explicit in stating its reasons for drawing the delimitation line adopted. To be sure, like any judicial organ required to pronounce on a dispute such as the one it has adjudicated, the Court had available a margin of discretionary power to rule on the relevance of the circumstances of the case and on the equitable nature of the result of the delimitation. But the exercise of this discretionary power required the Court to be more specific in setting forth its grounds for proceeding as it did. The Parties were entitled to expect fuller explanations regarding the elements of the decision arrived at. But that is not all. In accordance with Article 59 of the Statute, the Judgment delivered by the Court "has no binding force except between the parties and in respect of that particular case". Nevertheless, in view of the solution adopted, the Judgment in this case is such that it may well influence case-law in the sphere of maritime delimitation. The authority of a decision of the Court cannot but be reinforced whenever, in stating the reasons for its judgment, it reveals the factors which shed light on the operative provisions, i.e., criteria, methods, rules of law, etc. True, the Court may not create law; but it must specify the law it applies. The proper administration of justice, as well as the legal security to which States aspire, depends, to a very considerable extent, on the certainty of the legal rule (*la certezza del diritto*, to use the phraseology of Italian legal theory).

Moreover, the reference in paragraph 39 of the Judgment to the positions taken by the two Parties at the Third United Nations Conference on the Law of the Sea does not, in my view, take due account of the procedural rules applied by that conference. The wording used in the present Judgment should be compared with the text adopted in 1982 in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*:

"the Court notes that Libya, while emphasizing that the *de facto* line between the concessions was 'at no time accepted by Libya as the legal line of delimitation', observed that it was one that did 'suggest the kinds of lines that, in the context of negotiations, might have been put forward for discussion' . . ." (*I.C.J. Reports 1982*, p. 84, para. 118.)

Thus, in 1982, the Court was unable to remain indifferent to the positions stated by the parties in a bilateral negotiation. At the Third

United Nations Conference on the Law of the Sea, questions of delimitation were dealt with by the Negotiating Group 7. Under the procedural rules adopted, which were of an exceptional nature for the purposes of this important negotiation, proposals or draft provisions were regarded as unofficial and entirely non-committing. It was only on 28 August 1981 that, pursuant to the decision taken by the Conference, official status was acquired by a text concerning delimitation (of the continental shelf). (Cf. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, I.C.J. Reports 1982, p. 49, para. 49.) The Court was therefore wrong to take document NG 7/2 into account in substance. At all events, in the circumstances of this case the Court had no need to explore the legal scope of statements made by a State at the Third United Nations Conference on the Law of the Sea. This criticism, however, is entirely without prejudice to the proposition that the law of delimitation rests on the rule combining equidistance and special circumstances.

Lastly, I regret that paragraph 55 should have been limited to a mere description of the relation between "special circumstances" and "relevant circumstances", without managing to pinpoint their precise meaning, which would have brought out their inherent unity. For it is important to specify that it is in relation to the rights of the Parties over their maritime spaces that these circumstances can — or, sometimes, should — be taken into account in a delimitation operation. Hence, special or relevant circumstances appear as facts which affect the rights of States over their maritime spaces as recognized in positive law, either in their entirety or in the exercise of the powers relating thereto.

(Signed) Raymond RANJEVA.
