WRITTEN OBSERVATIONS ON APPLICATION FOR PERMISSION TO INTERVENE

OBSERVATIONS ÉCRITES SUR LA REQUÊTE À FIN D'INTERVENTION

OBSERVATIONS DU GOUVERNEMENT DE LA TUNISIE SUR LA REQUÊTE À FIN D'INTERVENTION DU GOUVERNEMENT DE MALTE

En transmettant aux Parties la requête du Gouvernement de Malte à fin d'intervention en application de l'article 62 du Statut de la Cour internationale de Justice, le Président de la Cour a fixé au 26 février 1981 le délai imparti aux Parties pour présenter leurs observations écrites.

La présente note a pour objet de formuler les observations du Gouvernement tunisien à ce sujet.

Le Gouvernement tunisien comprend les raisons qui ont conduit le Gouvernement de Malte à demander à intervenir et éprouve de la sympathie à leur égard. Il n'aurait donc pas souhaité faire objection, si l'admission de cette requête, à un moment aussi tardif de la procédure, n'était pas de nature à provoquer inévitablement des retards considérables dans le prononcé de l'arrêt de la Cour, et si, par ailleurs, cette demande remplissait toutes les conditions auxquelles elle est subordonnée par le Statut et le Règlement de la Cour. Il voit, cependant, sur ce dernier point également, un certain nombre de difficultés sur lesquelles il estime devoir attirer respectueusement l'attention de la Cour et qui le conduisent à penser que ces conditions ne sont pas remplies en l'espèce.

L'article 81 du Règlement de la Cour dispose qu'une requête à fin d'intervention fondée sur l'article 62 du Statut dans un cas déterminé doit spécifier :

> « *a)* l'intérêt d'ordre juridique qui, selon l'Etat demandant à intervenir, est pour lui en cause ;
> *b)* l'objet précis de l'intervention ;
> *c)* toute base de compétence qui, selon l'Etat demandant à intervenir, existerait entre lui et les parties ».

Il apparaît approprié de considérer successivement chacune de ces prescriptions, qui semblent toutes causer des difficultés pour la requête maltaise.

Bien que la requête commence par admettre (par. 8) que « Malte est dans une position géographique différente par rapport à la Libye et à la Tunisie que celle dans laquelle ces deux Etats se trouvent l'un par rapport à l'autre », elle continue (par. 9) en affirmant qu'« il est impossible d'établir une distinction rigide entre les principes et règles juridiques, ou les principes équitables, qui s'appliquent respectivement aux situations d'Etats se trouvant dans des situations géographiques différentes l'un par rapport à l'autre ».

Cette dernière affirmation ne tient pas compte de la distinction clairement établie par la Cour dans les affaires du *Plateau continental de la mer du Nord* entre la situation juridique existant entre Etats limitrophes et celle existant entre Etats se faisant face en ce qui concerne la délimitation du plateau continental entre ces Etats (*C.I.J. Recueil 1969*, p. 36), distinction qui est pertinente dans ce cas.

Cette différence de droit et de fait met en question l'affirmation de Malte selon laquelle « il est hautement probable que nombre de « circonstances pertinentes » ... influant sur la détermination de la limite entre la Libye et la Tunisie sont également pertinentes pour la détermination des limites de Malte avec ces deux Etats » (par. 10). Les circonstances pertinentes doivent varier en fonction des différentes relations géographiques. Le Gouvernement de Malte

lui-même, d'ailleurs, attire l'attention sur sa situation très particulière de « petit Etat insulaire » (par. 5).

La requête indique clairement (par. 20) que « l'objet précis de l'intervention de Malte ... est de lui permettre d'exposer ses vues à la Cour sur les points soulevés dans l'instance avant que la Cour se soit prononcée ».

Si un tel intérêt dans les principes et règles juridiques discutés devant la Cour pouvait constituer une base suffisante pour une intervention, il serait difficile de voir comment tout Etat partie à un différend pourrait se voir refuser la possibilité d'intervention dans une affaire susceptible de donner application aux mêmes principes et règles juridiques. Plus particulièrement, tout Etat côtier, même très éloigné de la Tunisie et de la Libye, partie à un différend actuel ou potentiel relatif à la délimitation de son plateau continental, aurait le droit d'intervenir. On pourrait même s'interroger sur le droit que la Tunisie ou la Libye aurait eu d'intervenir dans les affaires du *Plateau continental de la mer du Nord*.

Il est vrai que la requête invoque un intérêt plus spécifique en affirmant que « les limites entre les trois Etats *convergent en un point unique qui reste à déterminer* ». La demande d'intervenir fondée sur le fait que la limite du plateau continental de Malte pourrait être directement mise en cause par l'arrêt de la Cour soulève cependant, dans les circonstances de la présente affaire, les difficultés suivantes :

a) dans la mesure où elle n'est pas autorisée à intervenir, Malte est protégée contre tout effet de l'arrêt de la Cour par les dispositions de l'article 59 du Statut de la Cour ;

b) au surplus, aucune des deux Parties ne suggère, en fait, dans ses conclusions, une méthode qui pourrait avoir un effet sur les délimitations avec Malte. La Libye pose en principe que toute zone appartenant à un Etat tiers, ou divisible entre la Tunisie ou la Libye et un Etat tiers, doit être exclue de la délimitation à effectuer entre les Parties dans la présente affaire (contre-mémoire libyen, par. 482). De son côté, la Tunisie a précisé que toute ligne de délimitation entre la Tunisie et la Libye devra être arrêtée au point où elle couperait la ligne séparant les zones de plateau continental appartenant à l'une ou l'autre des Parties de celles appartenant à un ou plusieurs Etats leur faisant face, et que son point extrême restera donc indéterminé en attendant que cette ligne soit elle-même déterminée (mémoire tunisien, par. 9.35). Le Gouvernement de Malte n'ayant pas pris connaissance des mémoires des Parties ignore évidemment ce fait, mais la Cour le connaît et il est respectueusement suggéré que la Cour devrait en tenir compte en considérant la requête maltaise ;

c) enfin si, contrairement à ce qui est dit plus haut, l'intervention de Malte devait permettre à son gouvernement d'être entendu avant que soit rendu un arrêt susceptible d'avoir un effet sur la délimitation de son plateau continental avec la Tunisie et la Libye, il deviendrait nécessaire, semble-t-il, que Malte établisse une « base de compétence » qui existerait entre elle et les Parties, comme il est prévu à l'article 81, paragraphe 2 *c)*, du Règlement de la Cour.

Malte est évidemment aussi de cette opinion, puisque la requête contient une déclaration (par. 22, répétée au paragraphe 24) selon laquelle elle ne cherche pas à « obtenir, sous couvert et au cours d'une intervention dans l'affaire *Libye/Tunisie*, un prononcé ou une décision quelconque de la Cour au sujet des limites de son plateau continental par rapport à ces deux pays ou à l'un d'eux ». La requête en déduit qu'« il semble qu'aucune question de compétence au sens strict de ce terme ne puisse se poser entre Malte et les Parties à l'affaire *Libye/Tunisie* ».

Ceci ne serait vrai, cependant, que dans l'hypothèse où Malte n'interviendrait que pour être entendue sur les principes et règles de droit international applicables à toute délimitation quelles que soient les situations géographiques des Etats intéressés, ce qui semble insuffisant à justifier une intervention aux termes de l'article 62 du Statut pour les raisons invoquées précédemment.

Le 25 février 1981.

(Signé) Slim BENGHAZI,
agent du Gouvernement
de la République tunisienne.

OBSERVATIONS OF THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA ON MALTA'S 30 JANUARY 1981 APPLICATION FOR PERMISSION TO INTERVENE

Introduction

1. On behalf of the Socialist People's Libyan Arab Jamahiriya ("Libya") I have the honour pursuant to Article 83 of the Rules of Court and the Order made by the President of the Court on 6 February 1981 to submit the following Observations with respect to the 30 January 1981 Application of the Government of Malta (the "Application") for permission to intervene under the terms of Article 62 of the Statute in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*.

2. The following Observations examine certain problems raised by the Maltese request for permission to intervene. Libya is sympathetic to the interest shown in these proceedings by Malta and would under other circumstances welcome the opportunity to learn the views of Malta on questions of continental shelf delimitation. In this regard Libya recalls that Libya and Malta have signed a Special Agreement on 23 May 1976 submitting the question of the delimitation of the areas of their respective continental shelves to this Court, and that the exchange of instruments of ratification awaits the agreement of the parties to that Special Agreement as to the appropriate time and manner for their exchange. Accordingly, Libya suggests that any views Malta may have concerning her continental shelf boundaries may most appropriately be presented in the course of the prospective Libyan/Maltese proceedings.

3. Moreover, Libya is constrained to indicate to the Court that the present Maltese request does not conform with the conditions required for an intervention before the Court. In Libya's view, an application to intervene under Article 62 of the Statute can be granted only if three conditions are fulfilled. In logical order, these conditions are :

(i) that there is a valid link of jurisdiction between both parties to the proceedings and the State applying to intervene ;
(ii) that the State applying to intervene has an interest of a legal nature in the subject-matter of the proceedings ; and
(iii) that such an interest may be affected by the decision in the case.

4. It should be noted that all three of the conditions indicated above must be satisfied for an intervention under Article 62 to be justified, and that if even one of these conditions cannot be satisfied it must follow that intervention is not justified in law. Thus, e.g., *even if there were* a jurisdictional link between the intervening State and both parties to the present proceedings, intervention under Article 62 would not be justified if there were no interest of a legal nature *or* there were such an interest but that interest were not such as to be capable of being affected in the pending case.

5. None of these conditions is in fact satisfied by Malta's request. In Libya's view, therefore, the Court should decide against the application seeking permission to intervene in the present case. Reasons supporting this conclusion are set forth below.

I. No Valid Link of Jurisdiction

6. In order to intervene in a proceeding pursuant to Article 62, a State must demonstrate that it has "an interest of a legal nature which may be affected by the decision in the case" (Art. 62, para. 1). By virtue of the second paragraph of Article 62, the Court rules upon the propriety of a request made under Article 62. There is no doubt that the Court has jurisdiction to decide on a request for an intervention. The intervention, however, cannot be admitted unless the Court is satisfied that there exists a valid jurisdictional link between the parties to the proceedings and the intervening State. This issue must be addressed before the other difficulties presented by the Maltese application are considered.

7. Article 81, paragraph 2, of the Rules of Court sets forth a number of elements to be supplied by a State applying to intervene under the terms of Article 62 of the Statute. In addition to specification of an interest of a legal nature which may be affected by the decision in a case pending before the Court, a request for permission to intervene must also specify "any basis of jurisdiction which is claimed to exist as between the State applying to intervene and the parties to the case" (Art. 81, para. 2 *(c)*).

8. Malta attempts to circumvent its lack of any jurisdictional link with the Parties to the present case by contending in paragraph 23 of its Application that intervention "is not dependent on the existence of a basis of jurisdiction as between the State seeking to intervene and the parties to the case". To support this conclusion, Malta points out that Article 81 (2) *(c)* of the Rules "did not figure in any form in previous versions of the Rules" and "cannot of course have created a new substantive condition of the grant of . . . permission" to intervene.

9. Malta's conclusion fails to recognize that Article 62 of the Statute does not confer an independent title of jurisdiction upon a party seeking to intervene in a case pending before the Court pursuant to a Special Agreement between other States. In this context, Malta appears to claim that jurisdiction to decide on the admissibility of an intervention, which is provided for by Article 62 of the Statute, also extends to jurisdiction over the litigation itself. However, the title of jurisdiction provided for by Article 62 only refers to its object, namely, the admissibility of the intervention — just as the Court's jurisdiction in any and all cases to pronounce over its own *jurisdiction (compétence de la compétence)* does not imply that the Court is also competent to pronounce on the *merits* of any given case. *Corfu Channel* case, *I.C.J. Reports 1949*, pages 23-26 ; cf. *Nottebohm* case, *I.C.J. Reports 1953*, pages 119-120.

10. As the Court is well aware, its jurisdiction is governed by Article 36 of the Statute. The effect of that Article is that unless the States concerned have made effective declarations accepting the compulsory jurisdiction of the Court, its jurisdiction is governed by Article 36 (1) which provides :

> "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

Malta does not possess any jurisdictional link with both Parties to the present proceedings within the meaning of Article 36 (1) capable of providing a basis for intervention pursuant to Article 62. Indeed, none has been alleged in Malta's application.

11. For this purpose nothing will suffice short of (i) adherence by all three States to one special agreement or to more than one, but identical, special

agreements or to the same treaty or convention, or (ii) acceptance by all three States of Article 36 (2) of the Statute of the Court without reservations affecting the case ; or (iii) acquiescence by Tunisia and Libya in the intervention by Malta (even though a problem would still then exist as to the limitation on the subject-matter as described in Article 1 of the Libya/Tunisia Special Agreement).

12. Malta tries to brush aside the requirement of a "basis of jurisdiction". Indeed, does not paragraph 23 of Malta's Application suggest that Article 81 of the Rules is a superfluous provision ? Malta assumes that "the statement for which subparagraph *(c)* [of Article 81] provides is required [solely] as a matter of information for the Court regarding the jurisdictional relationship (if any) of the States concerned". Left unsaid in paragraph 23, however, is a clear implication that, if Malta's proposition is correct, it would be difficult to understand the reasons for the Court's adoption of Article 81 (2)*(c)* of the new Rules.

13. Moreover, it may be noted that Article 81 (2) *(c)* was adopted subsequent to this Court's consideration of the issue of intervention during the course of the proceedings in the *Nuclear Tests* cases (*Australia* v. *France ; New Zealand* v. *France). I.C.J. Reports 1973, 1974.* As shown in the following paragraphs, the implication by Malta that a proper title of jurisdiction is not required to support an application to intervene is inconsistent with several declarations issued during the course of those proceedings.

14. After the commencement of the proceedings in the *Nuclear Tests* cases, the Government of Fiji submitted two applications to the Court requesting permission to intervene under Article 62 of the Statute. In an interim decision, the Court by a vote of 8 to 5 deferred consideration of Fiji's application until it had resolved two other issues to which the parties had been asked to confine their observations at the preliminary stage of the procedure : (i) whether it had jurisdiction to entertain the dispute between Australia and France and (ii) whether the dispute brought by the Australian application was admissible.

15. Fiji's application to intervene in the *Nuclear Tests* cases ultimately failed after the Court found that the claims of Australia and New Zealand no longer had any object. As a result, no proceedings existed before the Court to which Fiji's application could relate. It must be emphasized, however, that several Judges issued declarations addressing other fundamental infirmities precluding Fiji's application for permission to intervene. In this respect (although they did not concur with the Court's disposition of the *cases* themselves), Judges Dillard and Sir Humphrey Waldock observed, in a joint declaration, that

> "the issue of Fiji's intervention would have required examination in order to determine whether or not there existed a *sufficient jurisdictional link* between Fiji and France to justify the former's intervention . . ." (*I.C.J. Reports 1974*, p. 532). (Emphasis supplied.)

16. Judge Gros voted in favour of the Court's decision dismissing Fiji's application for reasons other than those stated in the Order. Reaffirming an earlier declaration, Judge Gros stated :

> "The document filed by the Government of Fiji . . . could not in any way be regarded as a request to be permitted to intervene, within the meaning of Article 62 of the Statute, and the request should have been dismissed *in limine*." (*I.C.J. Reports 1974*, p. 531.)

17. Judge Jiménez de Aréchaga made the following declaration concerning the jurisdictional infirmities precluding Fiji's intervention :

"In my view, in order to be entitled to intervene under Article 62 of the Statute for the purpose of asserting a right as against the respondent a State must be in a position in which it could itself bring the respondent before the Court.

When Article 62 of the Statute was drafted, its authors were proceeding on the assumption that the intervening State would have its own title of jurisdiction in relation to the respondent, since the draft Statute then provided for general compulsory jurisdiction. When that system was replaced by the optional clause, Article 62 remained untouched, but it must be interpreted and applied as still subject to that condition. Otherwise, unreasonable consequences would result, in conflict with basic principles such as those of the equality of parties before the Court and the strict reciprocity of rights and obligations among the States which accept its jurisdiction."

Malta, however, has failed to establish its own title of jurisdiction with respect to each of Libya or Tunisia. Moreover, Malta is decidedly not in a position where it could have brought both Libya and Tunisia before the Court in respect of the dispute between Libya and Tunisia of which the Court is already seized. The mere existence of a ratified Special Agreement between Malta and *one* of the Parties to the present case fails to cure this essential defect, and would also fail even when it is notified to the Court (in addition, that Special Agreement is quite different in scope and object from the Special Agreement between Libya and Tunisia).

18. Returning to the *Nuclear Tests* cases: Judge Onyeama, in voting to dismiss Fiji's application, declared:

"The Court should have . . . rejected [Fiji's Application] on the ground that the condition of reciprocity of an obligation to accept the Court's jurisdiction was wholly absent between Fiji and France." (*I.C.J. Reports 1974*, pp. 531-532.)

Judge Sir Garfield Barwick also voted in favour of dismissal "solely for the reasons expressed" by Judges Onyeama and Jiménez de Aréchaga "in their declarations concerning the Fiji Order . . ." (*I.C.J. Reports 1974*, p. 533). And Judge Ignacio-Pinto declared: "There is no treaty link between France and that State [Fiji] capable of authorizing such intervention on the latter's part." The views expressed in the declarations of Judges Dillard, Waldock, Onyeama, Jiménez de Aréchaga and Barwick concerning jurisdictional infirmities barring Fiji's application to intervene in the *Nuclear Tests* cases indicate that the contention expressed by Malta in its Application – that no jurisdictional link is required between the State seeking to intervene and the parties to a case pending before the Court – is inconsistent with the jurisprudence of this Court and should therefore be rejected.

19. In addition, it may readily be inferred that Malta is so fully aware of the proper construction of Article 62, and of the absence of any title of jurisdiction resulting therefrom, that its Government found it necessary to notify a second declaration of unilateral acceptance of the Court's jurisdiction to the Secretary-General of the United Nations. If Malta's interpretation of Article 62 was correct, no unilateral declaration under Article 36 (2) *would ever have been necessary to provide a jurisdictional link* between the parties to the procedure and the State requesting intervention. Yet Malta has submitted such a declaration, which nevertheless also fails to satisfy the Statute's jurisdictional requirements as regards Libya and Tunisia.

20. In the present case Malta cannot invoke either of its own declarations under Article 36 (2) as creating any basis of jurisdiction. No unilateral declaration of acceptance by Malta can establish jurisdiction as against another State. What is also required is a corresponding declaration *by the other State*, since the jurisdiction of the Court is founded upon the common ground on which the Parties have accepted that jurisdiction.

21. It is in this context that paragraph 25 *(b)* of Malta's Application, which refers to the "second declaration", dated 2 January 1981 and addressed to the Secretary-General of the United Nations, should be read. This paragraph is alleged to enlarge the scope of Malta's acceptance of the compulsory jurisdiction of the Court in connection with proceedings relating to continental shelf delimitations in the Mediterranean Sea. Based on that Declaration, Malta concludes in paragraph 25 *(c)* of its Application that "it follows that any State can at any time start proceedings against Malta before the Court" in regard to any such dispute.

22. But the converse is not true, and no reference is made by Malta to the actual text of Article 36 (2) which states that recognition of the Court's jurisdiction under the optional clause is only effective "in relation to any other State accepting the same obligation . . .". At the time of the commencement of the present case, neither Libya nor Tunisia had accepted the compulsory jurisdiction of this Court under Article 36 (2) of the Statute. The lack of acceptance by Libya or Tunisia of the jurisdiction of the Court under Article 36 (2) of the Statute of the Court cannot be transformed into "acceptance" for the purposes of that Article by a unilateral declaration by *Malta* that its [second] declaration is "without the condition of reciprocity and without reservation"; any such indication by Malta cannot satisfy a requirement which can only be met or fulfilled by action by *both Libya and Tunisia*. In other words, Malta, as any other State, cannot modify Article 36 (2) of the Statute by unilateral action.

23. Malta's contention – "that any State can at any time start proceedings against Malta before the Court" concerning continental shelf delimitation in the Mediterranean – is therefore beside the point. The new declaration of Malta has no more effect than a mere statement of intention not to assert lack of jurisdiction if another State files a unilateral request on matters falling within the scope of the new declaration. It may be noted however that, if Malta indeed failed to raise jurisdictional objections in a given case, the jurisdiction of the Court to adjudicate that case would then be based on Malta's acquiescence to jurisdiction in those proceedings, and not on its unilateral declaration (whether old or new).

24. Although paragraph 21 of Malta's Application refers to "the prospect of an early ratification" of the Special Agreement of 23 May 1976 between Malta and Libya, it is not correct to infer that this Special Agreement has not been ratified by any one of the Parties. On the contrary, it has been ratified by the competent constitutional authorities of both Parties. Instruments of ratification are ready to be exchanged, and joint notification to the Registrar of the Court effectuated when the Parties agree on an appropriate time and manner in view of the Special Agreement and the Rules of Court and in light of the pending and subsequent proceedings.

II. No Interest of a Legal Nature

25. As indicated in paragraph 3 above, not only must a State applying to intervene establish that there is a valid jurisdictional link between itself and the parties to the procedure, it must also – pursuant to Article 62 of the Statute –

demonstrate that it has "an interest of a legal nature which may be affected by the decision in the case". Although nowhere in its Application does Malta precisely set forth what its interest of a legal nature is, paragraph 7 of the Application apparently contends that intervention is proper because "Malta's interest in her Continental Shelf boundaries" is a sufficient interest of a legal character which may be affected by the decision in the present proceedings. As demonstrated below, however, Malta's claimed "interest of a legal character" – assuming it exists at all – will not and indeed could not be affected by the decision in the present case.

26. The actual text of the Special Agreement between Libya and Tunisia requests the Court to indicate the principles and rules of international law (and to clarify the practical method for application of those principles and rules by the Parties and their experts) relating to the "delimitation of the area of the continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya" and of "the area of the continental shelf appertaining to the Republic of Tunisia". In essence, the Special Agreement does not contemplate an actual delimitation by the Court ; nor does it envisage an ultimate delimitation by the Parties and their experts of any *areas of continental shelf other than areas appertaining to Libya and areas appertaining to Tunisia*. These specific areas constitute the very subject-matter of the present proceedings. Therefore, Malta has no interest of a legal nature in the subject-matter.

III. And No Effect Which Could Exist

27. Moreover, the decision to be rendered in this case as such, as well as the practical method to be applied in accordance with that decision, will not affect in a legal sense the interest of any other State including Malta. Indeed, the interest alleged by Malta in its Application is totally unrelated to the very subject-matter of the decision as expressed in paragraph 1 of the Special Agreement between Libya and Tunisia.

28. The litigation pending between Libya and Tunisia is a perfectly normal case in which the interests of third parties are protected by the legal limitations, both subjective and objective, inherent in the binding force of any judicial decision – that is to say the *res judicata*. No special protection is needed such as that which would exceptionally be afforded by intervention. Therefore, Malta's claim that it has an interest of a legal nature which may be affected by the decision in the present case is implausible and falls of its own weight.

29. Indeed can any interest in its continental shelf boundaries justify Malta's intervention in light of the admission in paragraph 22 of its Application that it is not Malta's object "to obtain any form of ruling or decision from the Court concerning its continental shelf boundaries . . ."? Instead, in suggesting the "precise object" of the intervention, as required by Article 81, paragraph 2 *(b)*, of the Rules, Malta states only the following :

> "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" (emphasis supplied).

The purpose of intervention in contentious proceedings, however, must be more than merely to "submit views". Indeed, the very fact that this is the limit of the conceded purpose for which permission to intervene is sought is dispositive of the question whether there can be any Maltese legal interest which could be affected by the decision in this case.

30. In addition, the issues indicated in paragraphs 13 and 14 of the Maltese Application as being "examples of specific issues that might arise in the *Libya/Tunisia* case, and be pronounced upon by the Court" are issues which will in every likelihood differ in the Libya/Tunisia context from the issues in the Malta/Libya context. Would not consideration of the issues as relating to Malta and Libya therefore create extraordinary and disruptive difficulties in the quite different context of a delimitation as between Tunisia and Libya? Such a result would appear to be unavoidable – and would be rendered even the more unfortunate by the fact that Malta does not intend to be bound by a decision in the present case in any event.

31. The Court will note that four of the six issues set forth in paragraphs 13 and 14 of the Maltese Application are issues of general legal principles. To the extent that such issues concern the applicable principles and rules of international law (or indeed the new accepted trends in the Third Conference on the Law of the Sea mentioned in paragraph 14 of Malta's Application) then this contention could hardly rise to the level required to permit intervention, since on such a basis any coastal State in the world might intervene. Indeed, to accept such a contention would imply that any other coastal State in the world would have been justified in applying to intervene in the *North Sea Continental Shelf* cases. Only two issues (Nos. 1 and 3 of para. 13) appear to be specific to Malta. These are, however, entirely speculative and presuppose that the area for delimitation in the present case includes areas bordering the shelf appertaining to Malta. In Libya's view this is simply not the case.

32. It is still more difficult to perceive what interest Malta seeks to protect by applying to intervene in the pending case in view of Malta's explicit statement in paragraph 24 of the Application that "the intervention would not seek any substantive or operative decision against either Party". In view of such statements, can Malta reasonably claim that it has any interest of a legal nature that would be affected by the decision in the present case? Or is Malta's limitation of the precise object of its attempted intervention akin to an admission that it in fact possesses no interest of a legal nature capable of being "affected by the decision" *even if* the Court were to decide that Malta could intervene? Such a limitation confirms that the decision can have no effect, since no effect is contemplated or admitted by Malta.

33. The Maltese Application could be viewed as in effect mistaking intervention in contentious proceedings for appearance in advisory proceedings under Article 66 of the Statute. Under the Application, Malta would in essence become a "quasi-party". Such a quasi-party would be granted the right to an audience to express its views on law and presumably on questions of fact which may affect the rights of the parties (as if it were an advisory proceeding), but the quasi-party would also be permitted to insist that its own rights are not and cannot be affected by the Court's decision. This again confirms the absence of an interest of a legal nature which could be affected by the decision in this case, with respect to the quasi-party, Malta.

IV. Additional Considerations

34. In addition, and in confirmation of the foregoing analysis, it may be supposed that the principles and rules of international law (not to mention the role of relevant circumstances and new accepted trends which are not even mentioned in the Special Agreement signed on 23 May 1976) will apply differently in cases as different in substance as that of Libya and Tunisia on the one hand and that of Libya and Malta on the other. The former proceedings

relate to adjacent States ; the latter proceedings would involve opposite States (one of which is an island State), and not adjacent ones.

35. The only factor setting Malta apart from other States of the world in this regard is that areas of shelf which may be appurtenant to it may be in proximity to areas of shelf appertaining to Libya. This might however also be true for the other Mediterranean States, yet any other such State would have no better claim than Malta to intervene in these proceedings under Article 62, again for the simple reasons that there would be no interest of a legal nature which could be affected by the present proceedings as such, and that there would be no independent title of jurisdiction between it and the Parties to this case.

36. The question may well be asked as to whether the Maltese Application is not the more supererogatory in view of the fact that there now exists a Special Agreement between Libya and Malta which has been ratified by both States for the purpose of bringing questions concerning the delimitation of their respective continental shelves to the Court in an appropriate and orderly time and manner. As to the Special Agreement, it must be understood that it was precisely because the situations between Libya and Tunisia and between Libya and Malta were different, in many respects, that two Special Agreements were considered.

37. Moreover, in Libya's view the Court has ample power, in delivering its Judgment in the present case, to safeguard any interests of third-party States. No intervention by Malta is necessary to ensure that this Court protects the rights of third parties. That protection arises from the very nature of the judicial function and as a normal incidence of judicial propriety. The "precise object" of Malta's intervention may therefore be fully satisfied without undue disruption of the present proceedings by intervention.

38. The Government of Libya therefore respectfully concludes that the proposed Maltese intervention in the present proceedings could serve no useful purpose, and is in any event not justified by any reason adduced in the Maltese Application.

39. As indicated more fully above, the three conditions mentioned in paragraph 3 above, that a State applying to intervene under Article 62 of the State must satisfy, have not been met :

(i) there is no valid link of jurisdiction between the Parties to the present proceedings and the State applying to intervene ;
(ii) the State making the application has no interest of a legal nature in the subject-matter of the present proceedings ; and
(iii) such an interest, if it could be shown to exist at all, would not be affected by a decision in the present proceedings.

Accordingly, intervention by Malta in these proceedings is not justified.

(Signed) Kamel H. EL MAGHUR,
Agent of the Socialist People's
Libyan Arab Jamahiriya.