## DISSENTING OPINION OF SIR ROBERT JENNINGS

1. I regret that I am not able to agree with the Court's decision to refuse Italy permission to intervene in the present case. I am in entire agreement with the Court that a right of intervention must be qualified by the principle of the consensual basis of the Court's jurisdiction. Accordingly, I can also broadly agree with the proposition that Italy could not be permitted, under the guise of intervention, to attempt to seise the Court "of a dispute between Italy on the one hand and Libya and Malta on the other, or each of them separately, without the consent of the latter States" (paragraph 41 of the Court's Judgment). I cannot agree, however, that this proposition can be taken to the length of refusing Italy permission to intervene, to protect its interests of a legal nature which, because they may already be involved directly in the dispute between Libya and Malta submitted to the Court by the Special Agreement, may be affected by the Court's decison in the case.

2. It is the principle of consensual jurisdiction itself which, even in the absence of a jurisdictional link or other consent of the main parties, requires the possibility of a limited form of intervention when the case between the original parties is about a subject-matter in which a third State has rights which are put in issue, and therefore in jeopardy, by the action. In the absence of a jurisdictional link, that third State is not in a position to protect its interests by an application under Article 40.1 of the Statute. Yet neither should the main action result in the Court exercising jurisdiction over a matter in which the third State has material rights, and in the absence of that third State, if it desires to intervene. The impropriety of exercising jurisdiction in the face of a substantial interest of a third State in the same subject-matter, that State not being before the Court, is strikingly illustrated by the *Monetary Gold Removed from Rome in 1943* case (*I.C.J. Reports 1954,* p. 19). It is true that in that case the legal interest of the third State, Albania, was before the Court because of the terms of the *compromis* itself, by which also Albania was in effect invited to make application to the Court to intervene but did not do so. Yet in the absence of Albania, the Court refused even to pass upon the contingent interests in the same subject-matter of the three States who were before the Court.

3. Thus, where rights in the subject-matter of the action belong to a State which is not a party to the action, the requirement of consent to the exercise of jurisdiction by the Court cuts both ways. It places the Court in a dilemma from which it may be able to extricate itself in more than one way depending upon the circumstances of the case. One way may be to refuse to exercise jurisdiction at all, as in the *Monetary Gold* case. Another way may

be to avoid that part of a decision which does or may affect the interest of the third State ; although, as will be shown below, this cannot always be achieved simply by calling attention to Article 59 of the Court's Statute. But another way is surely an intervention in which the participation of the intervening State is limited strictly to the demonstration and safeguarding of its own rights actually called in question in the main action ; and it is in the context of this need for the possibility of strict intervention, a need which the consensual principle itself imposes, that the meaning of Article 62 of the Statute must be considered.

## ARTICLE 62 OF THE STATUTE

4. Article 62 of the Court's Statute provides :

> "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."

It thus lays down two, and only two, requirements for the State wishing to intervene : first, that it considers that it has "an interest of a legal nature which may be affected by the decision in the case" and, second, that the Court for this reason permit it to intervene.

5. It is happily not necessary here to consider either the history or the preparatory work of Article 62 because these have been examined with cogency and clarity in the separate opinion of Judge Oda in the case of the application by Malta to intervene in the case concerning the continental shelf between Tunisia and Libya (*I.C.J. Reports 1981,* p. 23). It is, however, evident from the wording of Article 62 that an intervention under that article is admirably suited to intervention limited to the subject-matter and the issues raised in the main action, thus providing for the situation where, as mentioned above, it is the consensual principle itself which commends the possibility of such limited intervention. Where the main action is brought before the Court by a special agreement, such intervention will be qualified by the special agreement itself. If the intervention in the present case were thus limited to safeguarding Italian interests of a legal nature already put in issue by the special agreement, and which, therefore, may be "affected by the decision in the case", such a limited intervention should be permissible even in the absence of any jurisdictional link or other consent of the main Parties. I am unable to see why, if A and B are engaged in litigation about an item of property which I believe in fact belongs to me, I should be required to stand idly by, and may not be permitted formally to alert the court to what I believe to be my rights, and which I believe may be affected by the court's decision. The powers of the court in face of such an intervention is another matter to which we shall return ; but that such a limited but necessary form of intervention comes within the intention of Article 62, seems to be beyond question.

6. This conclusion is without prejudice to the question whether an altogether broader kind of intervention, rather in the sense in which that term is used in municipal laws, is possible under Article 62. That is not a matter the Court has to decide in the present case because it is not the kind of intervention that Italy seeks. What does seem beyond question – and here again one can respectfully agree with what seems to be the opinion of the Court – is that even under Article 62, if the purpose of the State seeking to intervene is to become a true third party in the case, and in effect to tack on a new and different case against either or both of the original parties, then it may readily be accepted that this intervention could not be permitted unless the principal parties had in some way given their consent. Otherwise a State which had no possibility of bringing a case by application under Article 40.1 of the Statute against its opponent, might seize the opportunity of its opponent being engaged in litigation with another State, to attempt to mount its own case by way of intervention. This would breach the primary principle of consensual jurisdiction, and do so, moreover, in a way that would make litigation before the Court an unattractively hazardous occupation.

7. The Court seems to be of the opinion that the Italian request has in fact strayed into this broader notion of intervention, and is seeking to tack on to the main case distinct questions about its continental shelf. To this question we shall return shortly. But it is relevant here to observe that if Italy has, in the course of argument, strayed beyond the permissible limits of a strict intervention, then it would to that extent have to be disappointed by the Court's eventual decision in the main case. But asking too much should not vitiate the application to intervene, provided the proper purposes are included. The Maltese application of 1981 was rejected in effect because Malta asked too little, and drew back from direct involvement in the dispute between Libya and Tunisia. It would be unfortunate if the Court now appears to reject Italy's application because they had asked too much. Obviously, however, all this depends upon the nature of the Italian interests of a legal nature on which the application relies ; and to these we may now turn.

## ITALY'S INTERESTS OF A LEGAL NATURE THAT MAY BE AFFECTED BY THE DECISION IN THE CASE

8. Article 62 does not require a State, at the stage of requesting permission to intervene, to prove and precisely identify the interests which it believes may be affected by the decision in the case. Indeed, it could hardly do so, for in so far as the intervention must be confined to the issues raised in the main case, much depends upon the course the main hearing may take whether in a later stage of written pleadings or in the oral pleadings. It would be particularly unkind to require such an absolute demonstration of its possibly affected interests from Italy, which has not been permitted access to the written pleadings already exchanged between the Parties.

Article 62 requires only that the would-be intervener "consider" that it has such an interest which "may" be affected by the decision.

9. In contrast to intervention under Article 63, however, it is for the Court itself to decide upon the request, and here the Court clearly has to exercise a considerable measure of appreciation of the particular situation in coming to its decision. This is far from saying the Court has a complete discretion. What it has to do is to decide whether the requirements of intervention under Article 62 are complied with or not : that is to say it has to decide in this case whether there are sufficiently cogent and convincing grounds upon which Italy might reasonably "consider" that it does indeed have interests of a legal nature which "may" be affected by the decision in the case between Libya and Malta. And that is all.

10. There is no need for the purposes of this opinion to expound and analyse the considerable material and argument that Italy brought to bear upon this question of what its potentially affected legal interests may be. Given the geographical position of Italy in relation to the main Parties, in a narrow, enclosed sea, with common shelf areas, where in the words of this Court in the *North Sea Continental Shelf* cases "it happens that the claims of several States converge, meet and intercross . . ." (*I.C.J. Reports 1969,* para. 89) ; and given the claims already made public by Malta in support of its attempted intervention in 1981, it is difficult to see how it could possibly be denied that Italy has fulfilled the requirements of paragraph 1 of Article 62.

11. The question may be asked how the position of Italy differs from that of Malta in 1981 when it was refused permission to intervene under Article 62 in the case between Libya and Tunisia ? One reply no doubt is that in so far as the Court is given a freedom of appreciation to be exercised in relation to the circumstances of each particular case, it must do precisely that ; and how that appreciation was made in other cases is neither here nor there. But it is also to be noted that there is a nice but material distinction between the present application and the Maltese application, as it was perceived by the Court. In its Judgment (*I.C.J. Reports 1981,* p. 12, para. 19) on the Maltese application the Court said :

> "The interest of a legal nature invoked by Malta does not relate to *any legal interest of its own directly in issue* as between Tunisia and Libya in the present proceedings or as between itself and either one of those countries. It concerns rather the potential implications of reasons which the Court may give in its decision in the present case on matters in issue as between Tunisia and Libya with respect to the delimitation of their continental shelves for a subsequent delimitation of Malta's own continental shelf." (Emphasis supplied.)

It is evident that, if the Court was right in thus qualifying the Maltese

application, it was entirely correct in holding that it failed to satisfy the requirement of Article 62, which is precisely "a legal interest of its own" which *is* "directly in issue" between the main parties.

## THE REQUIREMENTS OF THE COURT'S RULES

12. Article 62 of the Statute requires only that a State requesting permission to intervene consider that is has an interest of a legal nature which may be affected by the decision in the case ; but Article 81 of the 1978 version of the Rules adds two further requirements, namely :

> "*(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".

Since the Rules cannot add to or modify the effect of the Statute, it has to be assumed that these additional items of information are required only to enable the Court more effectively to appreciate whether the statutory requirements of intervention are fulfilled.

13. The requirement in paragraph *(c)* need not detain us. It does not suggest that a basis of jurisdiction is required in all cases : quite the contrary ; though it may well be relevant if and in so far as the requesting State is seeking to join a different case with the original one.

14. As to the "precise object of the intervention", this is presumably to enable the Court to assure itself how far the object is indeed the safeguarding of legal rights which may be affected by the decision, and how far other purposes might be involved. There has been no suggestion that the Italian application in the present case has any object other than to protect what it believes to be its rights of a legal nature that may be affected by the decision. Nevertheless, there is something more to this question of "the precise object". For the Court has to consider, besides the existence of interests of the kind referred to in Article 62, what the intervening State proposes to ask the Court to do about them. If, for example, it were allowed to intervene, in what ways might it be asking the Court to modify the decision it has to make in the main case ? Or are there other ways in which the Court might be asked to assist the intervening State ? Obviously, therefore, this kind of information is relevant to the Court's consideration whether or not the intervention should be permitted.

15. Before turning to those aspects, it will be convenient briefly to mention the argument put forward by both the main Parties that there is another requirement not mentioned in either Article 62 of the Statute, nor yet in Article 81 of the Rules, namely, that the would-be intervening State must show an existing dispute with either, or perhaps both, of the main parties ; and perhaps also a history of attempted negotiation of agreement

where the case is about continental shelf boundaries. Obviously there may be an existing dispute or disputes, and there may have been prior negotiations ; the question is whether there has to be, before a valid request to intervene may be made.

16. One sufficient answer to this objection to the Italian request is that it is not permissible thus to seek to amend the effect of the Court's Statute. To require there to be an existing dispute with the intervener is to require something not mentioned in Article 62. What that article requires of the intervener is a legal interest, which may or may not be related to an existing dispute, but which may be affected by the decision the Court makes in respect of the dispute between the main parties. That is the dispute that matters for Article 62.

17. Furthermore, however, to require that there be already an existing dispute between the intervener and at least one of the parties, and that such existing dispute be the subject-matter of the intervention, is to take the Italian application outside the category of a strictly limited intervention, and to place it in the category of "tacked disputes", where a jurisdictional link would surely be required. An existing dispute would have its own dimensions, and indeed one can easily imagine a dispute that might be affected by the Court's decision but which was at the same time an altogether larger question than one put in issue between the parties in the case. Thus to say that an existing dispute with the intervener is a condition of intervention would be to import the requirement of a jurisdictional link in virtually all cases, for such a dispute must be different from the dispute in the case. This would do nothing to assist the Court in its dilemma where it finds itself in danger of breaching the consensual principle if it makes *any* decision ; a problem, however, for the solution of which intervention within the plain meaning of Article 62, and also strictly limited to what has been put into issue in the case by the parties, in *their* dispute, seems particularly apt.

18. It is time now to turn to the difficulties which the Court evidently sees in any attempt thus to limit the intervention sought by Italy.

## WOULD AN ITALIAN INTERVENTION FACE THE COURT WITH DECISION IN A NEW DISPUTE ?

19. The Court's Judgment seems not to be very much troubled over the question whether the Italian interests form part of an already existing dispute ; it is, however, one might almost say, preoccupied by an apprehension that to entertain the Italian request might involve the Court in passing, without the consent of those Parties, upon a new dispute between Italy and the Parties ; albeit one excited by the intervention itself. Thus, the Court says (para. 31) :

"Therefore if Italy were permitted to intervene in the present pro-

ceedings in order to pursue the course it has itself indicated it wishes to pursue, the Court would be called upon, in order to give effect to the intervention, to settle a dispute, or some part of a dispute, between Italy and one or both of the principal Parties."

When Italy asks for the "safeguard" of her rights, the Court sees that as leading inevitably to its having to make a finding on the validity of those rights (para. 32) ; and if one of the main Parties should deny the existence of those rights then there emerges a new dispute ; and such a dispute the Court feels that it could not decide in the absence of consent of the Parties. Is seems almost as if the Court sees the way along a road it knows it should not take but cannot trust itself not to take it. From what it thus sees as an inexorable progression from safeguarding rights to the adjudgment of a new dispute, the Court finds safety only by refusing to take even the first step. But if this reasoning is correct, then there is, of course, virtually no practical possibility of a third party ever safeguarding its rights by intervention under Article 62, save when the main parties have at some stage given their consent. For if intervention under Article 62 (though not it seems under Article 63) is not permissible where it might or could excite some dispute between the intervener and the parties, then it is difficult to imagine in what circumstances an application under Article 62 could be successful, other than where the main parties are prepared, in effect, to welcome the intervention.

20. Yet this conclusion of the Court does nothing to extract it from the impasse in which the Court must find itself – an impasse the awkwardness of which appears through the Judgment in many places – when it is asked by the parties to a case to adjudge a matter which possibly involves the rights of a third party. It does nothing to extricate the Court from the dilemma presented precisely by the rule that it may not adjudge a dispute without the consent of all the States directly involved. In fact the only way out, if the Court is to deal with the matter at all, is an intervention by the third party, the intervention being strictly limited to the matters already put in issue by, in this case, the Special Agreement between the Parties ; the only realistic alternative being to refuse to decide such an issue at all. (The notion that it can be dealt with on a "relative" basis, whilst drawing attention to Article 59, will be considered later.)

21. But to refuse to adjudicate upon these aspects of the boundary would be to resile from the very task that the Court is asked to perform in the Special Agreement. In determining any continental shelf boundary it is necessary to draw attention to all the relevant circumstances, and it is difficult to imagine a more relevant circumstance than the legal rights of a geographically immediate neighbour. Besides, where the ultimate object of the exercise is the drawing of a line, it might be thought that a failure to be reasonably specific about how to locate the beginning and how to locate the end of the line would be a serious defect.

22. Let us take, as a convenient example of the problem that faces the

Court the possibility, discussed in argument before the Court (and see paragraph 39 of the Judgment), that the correct location of a terminus of the boundary line might well turn out to be a tripoint, being the junction of the continental shelves of the two Parties and of Italy. To see this task of establishing a tripoint as being essentially a consequence of resolving distinct disputes, as the Court seems to do, is to assume that the correct location of a continental shelf boundary is determined by a court of law by establishing some sort of compromise between different claims. Such an assumption is surely contrary to principle. Continental shelf boundaries are established by the applicable law, taking account of all the relevant circumstances. The actual extent of the claims of the parties is not a relevant circumstance. Continental shelf rights in fact belong whether they are claimed or not. Claims are, therefore, irrelevant except in so far as they can be justified before the Court by reference to the applicable law. If the correct location in law of a point on the Libyan/Maltese continental shelf boundary is a tripoint with the Italian continental shelf, it surely cannot be in a different place depending whether or not Italy be permitted to become an intervening party in the case. The question of the location of that point is, in its entirety, already before the Court in the terms of the Special Agreement. Hearing Italian argument about the extent of its own interests already involved in that question, does not enlarge that question at all ; it merely gives some promise of shedding more light upon it.

23. If this is not the kind of situation in which Article 62 contemplates the possibility of intervention by a third State whose interests might be affected by a decision, it is difficult to see when it would operate at all. The questions that Italy could properly raise before the Court in an intervention under Article 62 are solely aspects of the questions already raised in the Special Agreement between the Parties. The Court (para. 40) cites the passage from the case of the *Monetary Gold Removed from Rome in 1943* (*I.C.J. Reports 1954,* p. 32) where the legal interests of the third State "would not only be affected by a decision, but would form the very subject-matter of the decision" : "which is not the case here", adds the Court. But is seems to me that those interests do indeed form a part of the very subject-matter of the decision ; and that the question of a boundary tripoint is a very exact illustration of that fact.

## THE QUESTION OF COMPETENCE

24. At this point the question of the Court's competence to entertain this kind of strictly limited intervention must be considered. That the Court has by virtue of Article 62 itself the necessary incidental jurisdiction to deal with all procedural matters concerning an intervention is not in doubt. Furthermore, always provided that the intervention be limited to

matters which both "would be affected by the decision" and also form an integral part of "the very subject-matter of a decision", there would seem to be no problem about the competence of the Court to deal with matters of substance that fulfil those conditions. As becomes apparent from the *Monetary Gold* case itself, where third State rights are thus directly involved in the very issues submitted to the Court by the parties, the problem of competence arises not when the concerned third State intervenes but when it does not. Indeed this seems to be appreciated by the Court itself, as appears from its anxiety, to persuade itself that the intervention requested by Italy would in some way defy any attempt to confine it to this sphere of strictly limited intervention. The clear implication of what the Court says on this matter is that, if the intervention could be so limited, there would be no problem about competence and the consent of the Parties would not be required.

25. In this connection it is instructive to consider an intervention under Article 63 of the Statute. Article 63, of course, gives a right of intervention, without the need of any permission from the Court, to any States parties to a convention the construction of which "is in question" in a case. This has been invoked twice : in the case of the *S.S. "Wimbledon"* in 1922 (*P.C.I.J., Series C, No. 3,* Vol. I, pp. 118-122), where, however, the parties had no objection to the intervention ; and in the *Haya de la Torre* case (*I.C.J. Reports 1951,* pp. 76-77), where the Court admitted an intervention under Article 63 even though one of the parties did object and argued that it was inadmissible. It was in this latter case that the Court made the important pronouncement, not apparently intended to be confined to an intervention under Article 63, that :

> "every intervention is incidental to the proceedings in a case ; it follows that a declaration filed as an intervention only acquires that character, in law, if it actually relates to the subject-matter of the pending proceedings".

This, of course, suggests that what we have called strictly limited intervention is in fact the only kind contemplated by the Court's Statute. And later the Court concludes (p. 77) with the interesting observation that :

> "the only point which it is necessary to ascertain is whether the object of the intervention of the Government of Cuba is in fact the interpretation of the Havana Convention in regard to the question whether Colombia is under an obligation to surrender the refugee to the Peruvian authorities".

26. The parallel between the situations required to justify intervention under these two complementary articles is instructive. The party to a convention the construction of which "is in question" in a case, so clearly has an "interest of a legal nature which may be affected by the decision in the case", that a right of intervention is given by the Statute itself without need of a special decision by the Court. Otherwise the parallel is striking.

Yet it has never been supposed that an intervention under Article 63 requires the consent of the parties to the case ; indeed in the *Haya de la Torre* case the intervention had been opposed by one of the parties. Furthermore, in Article 63 it is clearly contemplated that the intervener will make submissions in regard to the content of the judgment to be given by the Court in the main case already before it ; for the article provides that "the construction given by the judgment will be equally binding upon" the intervening State. Italy did, of course, offer a like commitment if allowed to intervene under Article 62. The Court's Judgment does not deal with Article 63 ; but the reasons given for rejecting the Italian request do seem to sit uneasily with the right of intervention provided in Article 63 and with the fact that this Court has in the *Haya de la Torre* case seen no difficulty in such an intervention going forward even when one of the parties opposed it.

## ARTICLE 59 OF THE STATUTE

27. Whilst rejecting the Italian application to intervene the Court nevertheless, concedes that it "cannot wholly put aside the question of the legal interest of Italy as well as of other States of the Mediterranean region" (para. 41). And to cope with this problem, the Court first relies on Article 59 of the Statute. Thus the Court (para. 42) is of the opinion that, without the need to intervene, Italy's rights will be safeguarded by the effect of Article 59 of the Statute ; indeed, in the oral presentation it was even suggested that a judgment of the Court is *res inter alios acta,* for any third-party State (see paragraph 26 of the Judgment). On this thesis there is much to be said, because Article 59 is an important provision of the Statute and it is important that it should be seen in a proper perspective.

The Court begins its discussion of Article 59 by citing the observation of the Permanent Court of International Justice (*Series A, No. 13,* p. 21) that "the object of Article 59 is simply to prevent legal principles accepted by the Court in a particular case from being binding also upon other States or in other disputes" (see paragraph 42 of the Judgment). This is no more than to say that the principles of decision of a judgment are not binding in the sense that they might be in some common law systems through a more or less rigid system of binding precedents. But the slightest acquaintance with the jurisprudence of this Court shows that Article 59 does by no manner of means exclude the force of persuasive precedent. So the idea that Article 59 is protective of third States' interests in this sense at least is illusory.

Alternatively, Article 59 may be considered as applying, as it clearly does also, more particularly to the *dispositif* of a judgment ; and it is true that the particular rights and obligations created by the *dispositif* are addressed, and only addressed, to the parties to the case, and in respect only of that case. And in that quite particular and technical sense, Italy will certainly be protected. This is an important protection, and it would be quite wrong to suggest otherwise.

28. Nevertheless it would be unrealistic even in consideration of strict legal principle, to suppose that the effects of a judgment are thus wholly confined by Article 59. Every State a member of the Court is under a general obligation to respect the judgments of the Court. The very subject-matter of the Judgment in the *Libya/Malta* case, according to the words of the Special Agreement, will be the principles and rules of international law applicable to the delimitation of "the area of continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic" ; as well as the applications of such principles and rules in practice in order to delimit "such areas" by agreement. Will general opinion be so very wrong if it assumes, as general opinion surely will, that the Court's Judgment will have decided precisely that ?

29. Furthermore, there is an added peril for Italy in the very terms of the Special Agreement in this case ; for it must be borne in mind that the Judgment will be with a view to a bilateral boundary agreement between Libya and Malta. If the result is an agreement which trespasses on Italian continental shelf, yet is apparently backed by the powerful sanction of the Court's Judgment, does the Court really believe that Italy will find an adequate remedy in reciting the words of Article 59 ? The danger will be the greater if the Court, in its anxiety not to seem to prejudice Italian interests, were either to avoid being very specific about the zones involved, or were to confine itself to a decision in very general terms about relevant principles, rules and methods ; for the resulting bilateral agreement, whatever its range, and precision, would still seem to have stemmed from the Court's judgment. In this situation the mention of Article 59 as adequate protection of Italy would seem almost to have a touch of irony.

30. Moreover, if Article 59 were to be given the very broad interpretation that the Court now seems to have espoused, so that every decision is to be analogous to a bilateral agreement, and *res inter alios acta* for third States, does this not mean that the Court in effect disables itself from making useful and realistic pronouncements on questions of sovereignty and sovereign rights (and the latter is what we are in fact dealing with in this case) ? "Sovereign rights" that are opposable only to only one other party comes very near to a contradiction in terms. A relative decision on continental shelf rights would seem especially odd coming from a Court which laid down "non-encroachment" as one of the governing principles of the applicable law (*I.C.J. Reports 1969,* para. 101 *C* (1)) ; and lays it down, moreover, specifically in relation to delimitation by agreement.

31. In fact this point is virtually conceded by the Court in the part of the Judgment (see para. 43), where it says that "there can be no doubt that the Court will, in its future judgment in the case, take account, as a fact, of the existence of other States having claims in the region" ; and it goes on to cite a passage from the *Legal Status of Eastern Greenland* case, which says that a

"circumstance which must be taken into account by any tribunal

> which has to adjudicate upon a claim to sovereignty over a particular territory, is the extent to which the sovereignty is also claimed by some other Power" (*P.C.I.J., Series A/B, No. 53,* p. 46).

It is curious to see this citation immediately followed in the same paragraph by the statement that the judgment of the Court "will be expressed, upon its face, to be without prejudice to the rights and titles of third States" ; though the Court never quite seems to decide whether it will indeed take account of the existence of other States having claims in the region ; or whether it will decide only on a relative basis, between the claims simply of Libya and Malta as if they alone were involved. The Court nibbles sometimes at the one and sometimes at the other way of approaching the matter ; which is demonstrative of the very dilemma that limited intervention under Article 62 was precisely intended to provide for.

32. In any event, a decision "only between the competing claims of Libya and Malta", is a somewhat novel concept of "sovereign rights", and it is especially odd to see this enervating bilateralism sought to be applied in respect of continental shelf rights which this Court has stated, to "exist *ipso facto* and *ab initio,* by virtue of [the State's] sovereignty over the land", and that "there is here an inherent right" (*I.C.J. Reports 1969* at p. 22).

33. Much the same considerations apply to the suggestion of some sort of proviso as a means of protecting Italian interests. A proviso must speak the truth ; otherwise it is merely misleading. If the judgment fails to take proper account of third-State rights relevant to the determination of the case, a proviso clause must, if it is to be sufficient, go beyond mere proviso and be a serious qualification of the judgment. It would have to make it clear that in part the decision is hypothetical and is based upon the false premise that only the claims of the parties to the case are involved. That such a course of action might easily involve the Court in successive contradictory and irreconcilable judgments with respect to the same sea area is obvious.

34. Quite apart from the dangers, inadequacies and infelicities which would result from using Article 59 as a vehicle for importing an inappropriate bilateralism or relativism into the judgments of the Court concerning "sovereign rights", the complete answer to the argument that Italy is sufficiently protected by Article 59 is simply that Article 62 is just as much a part of the Court's Statute as is Article 59 ; and it provides a sensible solution, entirely in accord with principle, of precisely the problem the Court finds itself faced with. And if a would-be intervening State has indeed rights "which may be affected by the decision of the Court", it is not permissible to say then that the third State's rights are nevertheless *not* affected because of Article 59. Article 59 applies, after all, in all cases without exception that come before the Court for judgment. If Article 59 ensures that a third State's rights can never be affected by a judgment, this

must mean that a third State's rights can never be affected in the sense of Article 62. To interpret one article of the Statute in such a way as to deprive another article in the same section of the Statute of all meaning, cannot be right.

*(Signed)* R. Y. JENNINGS.

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