

THE CONTRIBUTION OF THE INTERNATIONAL
COURT OF JUSTICE TO THE CONTINENTAL SHELF
DISPUTES IN THE MEDITERRANEAN SEA

THE INSTITUTE OF ECONOMICS
AND SOCIAL SCIENCES OF
BILKENT UNIVERSITY

BY

AYSEM BIRIZ TOKAT

A THESIS SUBMITTED TO THE DEPARTMENT
OF INTERNATIONAL RELATIONS IN PARTIAL
FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF
RELATIONS INTERNATIONAL

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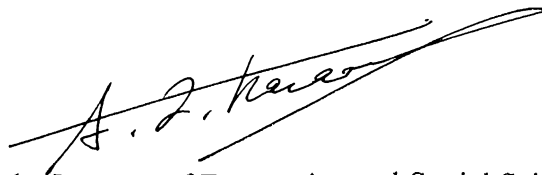
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Approval of the Institute of Economics and Social Sciences

I certify that I have read this thesis and have found that it is fully adequate, in scope and in quality, as a thesis for the degree of Master of International Relations.

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Asst. Prof. Gulnur Aybet



ABSTRACT

THE CONTRIBUTION OF THE INTERNATIONAL COURT OF JUSTICE TO THE CONTINENTAL SHELF DISPUTES IN THE MEDITERRANEAN SEA

Aysem Biriz Tokat

M.A , Department of International Relations

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October 1999

In this thesis, after explaining the historical evolution of the concept of the continental shelf, It is tried to show how the International Court of Justice (ICJ) solved two continental shelf disputes – the Tunisia-Libya Case and the Aegean Sea Case - in the Mediterranean Sea. Then, the other cases that deal with continental shelf delimitation and the jurisdiction of the International Court of Justice are take into account. The Mediterranean Sea is characteresed by the diversity in ethnic, cultural and political perceptions all of which become a reason for potential instabilities and crises. Therefore, the solution of the continental shelf disputes contribute to peace and security in the Mediterranean Sea, playing a crucial role in eliminating increasing tensions. In the conclusion, it is argued that the solution of the legal aspect is not sufficient. Because of the changing nature of the law on the subject and the inconsistency in the decisions of the International Court of Justice, a system of projects for joint development are suggested as a means for peaceful final solutions of the disputes.

ÖZET

ULUSLARARASI ADALET DİVANİ' NİN AKDENİZ'DEKİ KITA SAHANLIĞI ANALŞMAZLIKLARINA KATKISI

Aysem Biriz Tokat

Yüksek Lisans, Uluslar arası İlişkiler Bölümü

Tez Yöneticisi: Prof. Santiago Martinez Caro

Ekim 1999

Bu tezde, kıta sahanlığı kavramının oluşumu anlattıktan sonra Uluslararası Adalet Divanı'nı Akdeniz'de yer alan iki kıta sahanlığı anlaşmazlığının- Tunus-Libya Davası ve Ege Denizi Davası- nasıl çözümlediğini açıklanmıştır. Daha sonra, kıta sahanlığı ile ilgili diğer davaları ve Uluslararası Adalet Divanı'nın kararlarını ele alındı. Akdeniz birbirinden farklı etnik, kültürel ve politik bir karaktere sahiptir ve bu yapı potansiyel dengesizlik ve krizler için bir neden oluşturmaktadır. Bu yüzden kıta sahanlığı anlaşmazlıklarının çözümü, Akdeniz'indeki barışa ve güvenliğe katkıda bulunur ve yükselen tansiyonun düşmesinde önemli bir rol alır. Bu konu ile ilgili hukukun değişen yapısı ve Uluslararası Adalet Divanı'nın kararlarındaki tutarsızlık yüzünden, ortak kalkınma projeleri sistemi bu anlaşmazlıkların barışçı çözümü için bir yol olarak önerilmiştir.

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INTRODUCTION

The concept of the continental shelf is one of the subjects of international law about which a great deal of literature is written. The practice of states, the work of the International Law Commission in 1950's, the records of the 1958 Geneva Conference and the Third United Nations Conference are matched by the writings of several scholars and the decisions of the International Court of Justice. This is not only because of the importance of the subject to the international community but also because of the fact that the law on the subject changed very rapidly.

Therefore, analysing this concept under the light of the judgements of the International Court of Justice will shed light not only on the state practice about the continental shelf but also on the legal attitude of such an international body. In other words, the concept of the continental shelf will be assessed by the decisions of the International Court of Justice, in order to examine the contribution of this Court to the continental shelf disputes among the states.

Essentially, as a consequence of this, two main purposes are tried to be achieved in this study. As a first step, the continental shelf disputes in the Mediterranean will be described in order to clarify the substance of those problems. The second step, then, will be the analyses of the decisions given by the International Court of Justice under the light of the legal developments and state practice.

As a study field, the Mediterranean Sea is chosen because the problems that associated

with the continental shelf are particularly seen in enclosed and semi-closed seas. The physical disposition of coastal states and the geographical configuration of the enclosed and semi-enclosed seas make any change in the continental shelf especially difficult. The Mediterranean Sea has also the characteristics of the semi-enclosed seas.¹

Comprising a long and a narrow corridor with a length of slightly over 2,000 nautical miles, this sea has a width under 600 n. m. at its widest point.² Moreover, this limited area is divided between eighteen sovereign states as well as three dependent territories. The coasts of these littorals are very different from each other by length, configuration and direction.³

Table 1: Mediterranean coastlines and seabed allocation.

	Coastal Length (n. m.)	Seabed area (sq. n. m.)
Albania	153	6,114
Algeria	596	32,461
Cyprus	290	26,000
Egypt	537	51,387
France	491	25,787
Gaza Strip	21.6	-
Gibraltar (UK)	7	159
Greece	1,645	134,000
Israel	120	5,969
Italy	2,450	155,000
Lebanon	105	4,586
Libya	910	93,311
Malta	45	17,815
Monaco	3	82
Morocco	190	6,332
Sovereign Base Area (UK)	86	4,360
Spain	618	73,514
Syria	82	2,984
Tunisia	555	28,387
Turkey	973	17,323
Yugoslavia	426	20,453

* Source: "Sovereignty of the Sea", *Geographic Bulletin* 3

Map 1. The Mediterranean Sea.

* Source: <http://www.expediamaps.com>

¹ See Map 1 on p.3

² The widest point in the Mediterranean Sea is between the Strait of Otranto and the Libyan coast as 600 n. m.

³ See, Table 1 on p.2.

* Source: <http://www.expediamaps.com>

* Source: <http://www.expediamaps.com>



Furthermore, the presence of many islands with different size and location give to this sea one of its most distinctive characteristic.⁴ In addition to those characteristics, sensitive and complex issues regarding to the political status and economic significance lead to many legal and diplomatic problems.

To begin with a short historical outline about the continental shelf will be necessary in order to concentrate on the purpose of this study. Then, two chapters will deal with two disputes in the Mediterranean taking into consideration the judgements of the International Court of Justice. The disputes related to the continental shelf are considered as follows: the case between *Tunisia and Libya* and then *the Aegean Sea* dispute between Turkey and Greece. The next chapter is based on other cases about the continental shelf delimitation and the jurisdiction of the International Court of Justice with respect to these cases. These cases—*the North Sea Continental Shelf Case*, *the Anglo-French Arbitration*, *Australia-New Guinea Negotiation*, *the Gulf of Main Case* and *the Libya-Malta Case*- will provide sufficient clues and evidences in order to assess the contribution of the Court. The final chapter will focus on the assessment of the contribution of the International Court of Justice.

⁴ Cyprus in the Eastern Mediterranean, Kerkennah Islands in the Central Mediterranean , Majorca in the Western Mediterranean are one of the examples.

CHAPTER 1

A HISTORICAL OUTLINE OF THE CONTINENTAL SHELF

1.1. EARLY REFERENCES TO THE CONTINENTAL SHELF

The history of the continental shelf (CS) goes back to *the 1910 decree of the Portuguese Government*. That decree explained CS as a habitat of fisheries. It also stated that deep trawling by steam vessels beyond one hundred fathoms was extremely harmful to the fisheries. With this decree, fishing beyond one hundred fathoms was prohibited.⁵

Indeed, there was no clear definition of continental shelf in the 1910 decree of the Portuguese Government. This decree was a simple attempt in order to regulate the fisheries. The important point, however, is that the area over which the national jurisdiction was claimed, was beyond the territorial waters. In other words, this decree became the first intention to regulate the fisheries on the continental shelf.

In 1916, the second governmental attempt came from the Imperial Russian Government. *The declaration of the Russian Government* put forward that some of the islands were the integral part of the empire and formed the northern extension of the continental shelf of Siberia. However, this declaration did not deal with the submarine areas, whereas it was

⁵ The text of this decree is reprinted in "UNITED NATIONS LEGISLATIVE SERIES, LAWS AND REGULATIONS ON THE REGIME OF THE HIGH SEAS, 1951", vol. 1, p. 19.

stated that the northern extension of the continental shelf of Siberia, in which there were several islands was part of the Russian territory.⁶

The following years were shaped by the writers and jurists, who tried to form the basis of the continental shelf doctrine. One of the most leading figures was the writer *Storni* from Argentina. In his paper written in 1916, he insisted on the importance of continental shelf for commercial fishing.⁷ In 1918, *Odon de Buen*, from Spain, claimed that the national jurisdiction of the coastal state should extend to the continental shelf as a habitat of important edible species of fish.⁸

An event developed in 1918 in *the Gulf of Mexico* provided a change in the course of continental shelf history. Discovering a huge oil pool in that gulf, a United States citizen asked the Government of the United States to grant him a property or a leasehold right to a tract of the ocean bottom that contained oil. He also demanded protection, for the artificial island that would be built for the use of the oil. In his application to the United States Government, he additionally, stated that if he had permission for his demands then he would grant the oil field to the government- but in the light of an agreed consideration.

The US response to this situation was the statement that the US had no jurisdiction over the ocean bottom of the Gulf of the Mexico beyond the outer limits of the territorial waters. Therefore, the US did not grant the requested rights to the US applicant. But, the only idea was that if the island was built and given to the United States control, then the

⁶ A. Gündüz, "The Concept Of the Continental Shelf In Its Historical Evolution" , Istanbul: Marmara University, (1990) , p. 17.

⁷ D. O'Connel, "The Law of the Sea" , Oxford:Clarendon Press, (1982) , p.469.

⁸ B. L. Austin, "The Continental Shelf, The Practice and Policy of the Latin American States ", New York:Oxford Press, (1961), p.42.

Department of State might provide protection. On the other hand, if the creation of the island did not lead to any attempts against the rights of the US citizens and no objection by a foreign government, then the Department of State would not oppose such an intention of creating an island.

Another event that shed light in continental shelf was the Argentinean national *Suarez's* attempt in 1925. Being a member of League of Nations' Committee of Experts for the Progressive Codification of International Law, he suggested the extension of jurisdiction of the coastal state over the continental shelf with the aim of preserving and protecting the fisheries beyond the territorial water.⁹

Although *Suarez's* proposal did not gain support, the idea he put forward remained as the constant policy among the Latin American States, until the acceptance of the exclusive economic zone. Again another Latin American writer *Ruelas*, for the first time in 1930 argued that the continental shelf had a natural prolongation of land territory and therefore belonged to the coastal state. In 1936, the theory founded by those Latin American writers gained a major support from the fishermen in the United States.¹⁰

With the *Japanese fishing* fleets fishing salmon heavily in the Bristol Bay, Alaska, the US fishing industry reacted to those Japanese fisheries due to their overfishing. They saw these fishing fleets as a threat to their industry and therefore they protested against the Japan. As a result of these reactions, two bills were concluded.¹¹ The first one -the Diamond Bill- claimed that the salmon in the rivers of the Alaska was the property of the United States.

⁹ See, "Reports of Exploitations of the Product of the Sea" in *AJIL*, Vol. 2, No.21, (1926), p.231.

¹⁰ D. O'Connel, *"The International Law of the Sea"* Oxford:Clarendon Press, (1982), p.469.

¹¹ J. W. Bingham, "The Continental Shelf and the Marginal Belt" in *AJIL*, Vol.20, No. 173, (1946), p.179.

There would be a twelve-mile protection zone and an additional law enforcement area with a possible outer limit of 100-fathom line.¹²

According to the other one, the Copeland Bill, the shallow depths of the Bering Sea must be regarded as a slightly submerged margin of the American Continent.¹³ It aimed at the protection of the mineral deposits, fisheries, and animal life of the region. Additionally the extension of the jurisdiction of the United States over the water and submerged land adjacent to the coast of Alaska was put on the table too. However, both of the bills were failed to pass through the Congress.¹⁴

¹² J. W. Jessup, "The Pacific Fisheries" in AJIL Vol.33 , No.129, (1946), p.181

¹³ Ibid.

¹⁴ The legal basis on which the bills were based were criticized by Jessup in his article "The Pacific Fisheries" in p.135.

1.2 THE GULF OF PARIA TREATY AND THE PRESIDENTIAL PROCLAMATION

1.2.1 GULF OF PARIA TREATY

The first treaty regulating the regime of the continental shelf was *the Gulf of Paria Treaty*. It was concluded between the United Kingdom and Venezuela in 1942. The Gulf of Paria Treaty is the first treaty that established and regulated the exclusive rights for the Parties in order to provide the possibility of exploration and exploitation of the submarine areas.¹⁵

Defining the provisions and their respective interests in the submarine areas of the Gulf of Paria, both of the Parties had claims beyond the territorial waters. The Parties mutually recognised the high seas status of the overlying waters. It was decided that the navigation on the surface of the sea should not be changed due to any work or installation. Moreover, the Parties made further provisions for the protection of the environment against pollution, which might result from the explorations and exploitations.¹⁶

Being a bilateral treaty, the Gulf of Paria Treaty was binding only the Parties concerned. Indeed, the area was not used for shipping purposes too much. Besides, the only coastal states were the parties themselves. On the other hand the treaty did not make any distinction between the seabed and the subsoil. It put them under the same regime. The treaty did not mention the term of “continental shelf”; they simply used the “submarine area of the Gulf of Paria”.

¹⁵ This Treaty was reproduced in “I UNITED NATIONS LEGISLATIVE SERIES, 44” , (1951)

¹⁶ For more details about the Treaty, see C. H. M. Waldock, “The Legal Basis of Claims to the Continental Shelf” in “The Grotious Society. Transactions for the Year 1948” Vol.36 ,No.115, (1950), pp.131-132.

But, interestingly, the United Kingdom formally annexed its submarine area to the Colony of Trinidad and Tobago, same as Venezuela that annexed its portion of the submarine area to its territory. On balance, the Gulf of Paria Treaty became important, because of the fact that it was the first treaty that obviously dealt with the continental shelf. On the other hand, with the annexations, it was also clear that the seabed and subsoil of the high sea could be taken over by occupation.

From 1910 to 1942, the continental shelf was either a habitat of the living resources where the coastal state(s) had rights or location of the minerals that could be exploited by the coastal state. Mainly, the continental shelf was seen as an area of physical nexus with the territory of the coastal state(s). But, the Gulf of Paria Treaty, although not being a declaration of the existing law, aimed at justifying their claims so that what they called the continental shelf would be recognised by themselves and by the other states.

1.2.2 PRESIDENTIAL PROCLAMATION (TRUMAN PROCLAMATION)

The emergence of the continental shelf as a legal institution was the result of the change in the ocean policy of the United States. In the 1930s, President Roosevelt dealt with the extension of the US jurisdiction with the aim of protecting the Alaskan Salmon against foreign states, especially, against the Japanese fishermen. The US Government also aimed at maintaining its interests in that region. As a result preparations were made in order to establish the basis of the new policy. Because President Roosevelt died shortly before the proclamations became ready for issuance, it fell to his successor Harry Truman to issue them, on September 28, 1945.¹⁷

¹⁷ A. Gündüz, "The Concept of the Continental Shelf in its Historical Evolution", Istanbul: Marmara University, (1990), p.24.

The Presidential Proclamation (Truman Proclamation) concerning continental shelf contained two separate documents: one dealing with continental shelf, the other dealing with fisheries. On the document that focused on continental shelf, it was stated that there was a world-wide need for the resources of petroleum, gas and other minerals. According to the experts, on the other hand, these were available under many parts of the continental shelf off the coast of the United States.¹⁸ As a result, the proclamation argued that these oils and minerals could be used and therefore, over those regions, control and jurisdiction were needed. In the light of these facts, doubtless to say that the Truman Proclamation was built itself on a just and reasonable ground.

According to that proclamation, close cooperation and protection from the coast should be obtained in order to provide the effective measures to utilize these resources. Moreover, the continental shelf might be considered as the extension of the landmass of the coastal state. Therefore, the resources in it –oil or other minerals- formed a seaward extension of the coastal state. As a result, the coastal state should not ignore self-protection and had to keep a close watch over activities on its coasts.

The United States, in this proclamation, put forward that the subsoil and the seabed of continental shelf belonged to the U.S. and were subject to its jurisdiction and control. The proclamation pointed out that where continental shelf bordered the coasts of other states(s), then the state(s) and the U.S. would determine the boundary according to the equitable principles. The proclamation itself did not define the outer limit of continental shelf. But, a press release issued simultaneously with the Proclamation defined the outer limit of

¹⁸ For further details about the Proclamation, see Presidential Proclamation, "No 2667 DEPARTMENT OF STATE BULLETIN", September 30 1945, pp.484-487.

continental shelf as no more than 100 fathoms (600 feet).¹⁹

In the light of this statement, the area of continental shelf over which USA had jurisdiction became approximately 750.000 square miles. On balance, the United States acquired not sovereignty but jurisdiction and control over that area. This proclamation, first of all, extended the jurisdiction of the coastal state over the resources of the continental shelf. Secondly, it introduced the *ipso jure* acquisition doctrine, which considered the continental shelf as natural prolongation of the land territory.

The Gulf of Paria Treaty opened the way for the positive law on continental shelf and was the first step; this Proclamation, finally, became the second step. After the Truman Declaration, many nations started to extend their jurisdiction to the seabed. Additionally, there were also cases of overlying waters beyond the territorial waters. The declarations that shaped the state practice, *inter alia*, took its essence from the Truman Proclamation.²⁰

Another conference was convoked with 19 states between 25-28 May 1956, in Ciudad Trujillo (Dominican Republic). *The Ciudad Trujillo Conference* led to the passage of a resolution on the legal status of submarine areas. As a consequence, continental shelf took the approval of most of the states. There was a general agreement on the extension of the national jurisdiction of the coastal state over the submarine areas beneath the high seas but contiguous to the coast, in other words over the continental shelf. However, the major problem came from the different definitions of continental shelf among the states.²¹

¹⁹ See, "UNITED NATIONS LEGISLATIVE SERIES, 39", (1951).

²⁰ The practice of the Latin American states like the Mexico Presidential Decree, the Panamanian Regulations; the British practice like the Gulf of Parai Treaty; the practice of other states like the India proclamation.

²¹ The definition of the continental shelf : Scientifically, the term continental shelf was understood to be that portion of the continent or island which is covered by waters up to the point of declivity of the slope or the edge of the shelf.

In the view of some states, like USA, UK, Mexico, Brazil or Saudi Arabia, the seabed and subsoil of the submarine areas of the high seas beyond the territorial waters, but contiguous to the coast constituted the continental shelf. Therefore, the legal status of the superjacent waters was not changed. According to other states like, Chile, Peru, Costa Rica or Panama, the continental shelf included the submarine areas and also the waters covering them (epicontinental sea). As a result of this definition, these states extended their national jurisdiction both to non-living and living resources of their continental shelf.

Apart from the definition of continental shelf, another disagreement among states came from the seaward limits of their continental shelves. Because, for some states, the outer limit of continental shelf was set up at the 200 meter (100-fathom) depth line, while some of the other states preferred a 200-mile distance limit.

Moreover, the degree of power that would be used over those areas created another disagreement. The US, Saudi Arabia or Mexico claimed only control and jurisdiction whereas Chile or Peru insisted on sovereignty. On the other hand Australia and India preferred the term of “sovereign rights”. Although there were disagreements about some points, the basic agreement was that the coastal state had the continental shelf rights and therefore third parties could not make any claims over it.

1.3 THE GENEVA CONVENTION (1958)

When the ILC began to deal with continental shelf and included it in its lists of subject for codification, the first step for the Geneva Convention was completed. Slowly but surely, the Commission tried to develop and codify the legal regime of the continental shelf between 1950 and 1956. As a result, the International Law Commission proposed to the General Assembly to convoke a conference. The Conference was convened in Geneva, on February 24, 1958. The objects were to analyse the results of the work of the ILC about the Law of the Sea and to draft international conventions. The Geneva Conference consisted of four committees and the Fourth Committee dealt with the subject of continental shelf²².

The Geneva Convention was the first conventional regulation of the regime of continental shelf. It was signed on 29 April 1958 and came into force on 10 June 1964²³.

Article 1 defined the continental shelf as:

- a) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters, or beyond that limit, to where the superjacent waters admits of the exploitation of the natural resources of the said areas.
- b) the seabed and subsoil of similar submarine areas adjacent to the coasts of the islands.²⁴

There was a clear distinction between the legal definition and the geological definition. First of all, according to the geological definition, the continental shelf extends from the coastline, whereas the legal continental shelf extends from the outer limit of the territorial

²² The other conventions concluded by the Conference are: Convention on the Territorial Sea and the Contiguous Zone, in force 10 September 1964; Convention on Fishing and Conservation of the Living Resources of the High Sea, in force, 30 September 1962.

²³ The Convention is a relatively short document, consisting of 15 articles.

²⁴ R. Platzöder, "The United Nations Convention on Law of the Sea Basic Documents with an Introduction", Dordrecht: Martinus Nijhoff, (1995), p.32.

waters. Secondly, for the outer limit of the legal shelf, there were two possibilities. It can extend to depth of 200 meters which meets the outer limit of the geological shelf. The other possibility for the outer limit, regarding to the legal definition, is the line, which would be determined due to the technological capacity to exploit the natural resources of the submarine areas. But, this do not match with the geological definition.

On the other hand, the nature and the extend of the rights of the coastal state were indicated in the Article 2:

1. The coastal state exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred in paragraph 1 to this Article are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal state.
3. The rights of the coastal state over the continental shelf do not depend on occupation, effective notional or on any express proclamation.²⁵

This Article, clearly, gives all rights to the coastal state(s) and excluded all potential claims of any third state. For the acquisition of the continental shelf rights occupation or any kind of proclamation were not necessary. They belonged *ipso jure* and *ab initio* to the coastal state. Article 4 paragraph 2 defined the natural resources that could be used by the coastal state:

- 4) The natural resources referred to in these Articles consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either immobile on or under the seabed or unable to move except in constant physical

²⁵ Ibid.

contact with the seabed or subsoil.²⁶

Article 6 of this Convention dealt with inter-state delimitation in situations, where the states involved are either opposite or adjacent to each other. The Fourth Committee focused on the “special circumstances” clause rather than on the “equidistant line” in their discussions to formulate a general application for this topic. Although three states, Greece, Portugal and Yugoslavia, opposed the inclusion of this element, most of the delegations defended the Commission’s draft.²⁷ They supported the “special circumstances” as being necessary for the effective application of the whole delimitation provision. Tunisia and Indonesia were one of the supporters.

The delegate of Tunisia stated “delimitation ...should take account of the geographical configuration of the region, and that considerable flexibility would have to be used in applying that Article”.²⁸ The delegate of Indonesia argued the “International Law Commission’ s text is sufficiently flexible to provide all states whatever their geographical situation with the necessary safeguard.”²⁹ Statements of Iraq, UK, Italy, Sweden, USA and France were also in the same direction, that is to say, in agreement with the special circumstances.³⁰

Article 6, as a result, was as follows:

1. Where the same continental shelf is adjacent to the territories of two or more states whose coasts are opposite each other, the boundary of the continental shelf appertaining to such states shall be determined by *agreement* between them. In the absence of agreement and unless

²⁶ Ibid. , p.33.

²⁷ F. Ahnisch, “The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea”, Oxford: Clarendon Press, (1993), p.55.

²⁸ Ibid.

²⁹ Ibid. , p.56

³⁰ Ibid.

another boundary line is justified by *special circumstances*, the boundary line is the *median line*, every point of which is equidistant from the nearest point of the baselines from which the breadth of the territorial sea of each state is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent states, the boundary of the continental shelf shall be determined by application of *the principle of equidistance* from the nearest point of the baselines from which the breadth of the territorial sea of each state is measured.³¹

According to this Article, for two or more opposite or adjacent states sharing the same continuous continental shelf boundary, for the purpose of delimitation, *agreement* would be the first mean. If reaching an agreement is not possible or too difficult, then the second step would be shaped by the *special circumstances* –for instance, the presence of several islands- in the delimitation area in order to find out a negotiated line. However, if there is no special circumstances then the boundary line would be the *median line* in the case of opposite states and *equidistant line* in the case of adjacent states.

Although the Geneva Convention provided an important step for the legal definition of the continental shelf, some specific problems arising out of the interpretation of the Convention came also into the agenda. First of all, when the coastal state take measures for exploration and exploitation of the continental shelf, then the traditional high seas freedom and the right of laying and maintaining submarine cable or pipelines on the seabed of the high seas could be influenced. For example, the exploration of the continental shelf or exploitation of its resources might lead to interference with the navigation or fishing. In addition to this, the exploitation criterion is not defined in the Geneva Convention and that uncertainty results also to a different problems.

Secondly, the coastal state is allowed to construct, maintain or operate on the continental shelf installations and other devices necessary for the continental shelf exploration and exploitation. Establishing safety zones and exercising jurisdiction are other opportunities that could be used by the coastal state. Those installations do not have any territorial waters and also do not have the status of island all of which could create different problems.

Finally, it is no longer as free for the international community to do research concerning the continental shelf as it had been before the Convention was concluded. Because, the consent of the coastal state is needed. But, if this research is a purely scientific one and deals with the physical or the biological characteristics of the continental shelf and if the request comes from a qualified institution, then the state shall not withhold its consent. Moreover, the coastal state is entitled to participate or to be represented in the research. At the end of the research, the results of the research should be published.

³¹ R. Platzöder, "The 1994 UNCLOS Basic Documents with an Introduction", Dordrecht: Martinus Nijhoff, (1995), p.35.

1.4. THE NORTH SEA CONTINENTAL SHELF DISPUTE

The first and the most important case in which the International Court of Justice gave its opinion is the “*NORTH SEA CONTINENTAL SHELF CASE*” of 1969. Generally speaking, this kind of cases have built on this case and on its interpretation. This case was based on the dispute about delimitation of the continental shelf concerning Federal Republic of Germany, Denmark and the Netherlands. With the request of the parties involved, the Court attempted to identify *principles of general equity* applicable to the delimitation of the area under consideration. No question was raised as to the seawards limits of the shelf in the North Sea and the Court, therefore, had to deal with the delimitation of the continental shelf areas in the said sea.

Both, Denmark and the Netherlands argued that the delimitation should be concluded according to Article 6 of the Convention.³² In their view, there was no “special circumstances” in the North Sea and therefore, their boundaries with the Federal Republic of Germany should be determined by the application of the equidistance method.³³ However, from the perspective of Germany, first of all, Article 6 was not applicable, because Germany had not ratified the Convention of 1958, while Denmark and the Netherlands did.³⁴ Secondly, the rule of Article 6 did not become rule of customary international law.³⁵ Furthermore, Germany claimed that in any event, the rule could not be used, where it did not result in a just and equitable apportionment of the shelf.³⁶ The Federal Republic, finally, emphasised the “special circumstances” existing in the North Sea. In other words, even if Article 6 became

³² See, North Sea Continental Shelf, (Federal Republic v. The Netherlands and Denmark), *Judgement*, ICJ. , Reports, (1969), para.37

³³ See, Submission No.3, Counter-Memorials of Denmark and The Netherlands, in pleadings (1968), p. 221

³⁴ See, Submission No.3 in the Memorial of the Federal Republic of Germany , p.91

³⁵ Ibid.

³⁶ Ibid.

customary law, then it again could not be applicable for this case, due to the special circumstances.³⁷

Under this main framework, the Court decided on the basis of customary international law but dealt with some aspects of the Geneva Convention as well. From the perspective of the Court, the continental shelf was the land territory, which was a “*natural prolongation*” under the sea.³⁸ Neither the International Law Commission nor the Geneva Convention used the concept of “*natural prolongation*” in their context. The Court itself introduced it into the vocabulary of the international Law of the Sea.

According to the Court, the continental shelf of a state included “a natural prolongation of its land territory into and under the sea” and the rights of the state “exists *ipso facto* and *ab initio*, by virtue of its sovereignty over the land and as an extension of it”.³⁹ As a result, the delimitation exercise of the Court would be shaped by the natural prolongation of each state under the sea. In other words, the determination of the extent of the *underwater platform* that belonged to the states would form the processes of delimitation. In the Judgement of North Sea Continental Shelf Case, the Court clearly stated the delimitation as follows:

“Delimitation is a process which involves establishing the boundaries of an area already, in principle, appertaining to the coastal State and not the determination *de novo* of such an area...The process of delimitation is essentially one of drawing a boundary line between areas which already appertain to one or other States effected.”⁴⁰

³⁷ Ibid. , p.422.

³⁸ See, North Sea Continental Shelf, *Judgement*, ICJ , Reports , (1969), para. 95.

³⁹ Ibid. , para.19.

⁴⁰ Ibid. , paras. 18 and 20.

Indeed, this way of delimitation had only a declaratory character. It was not man-made or constitutive. As a result, the delimitation became nothing more than noting the limits of the natural prolongation of each state. Moreover, this case showed that the analyses of the Court did not come from what should have been the interpretation of the whole rule of Article 6. Rather, the Court developed its view as part of the *general principles of equity*.

Moreover, Denmark and The Netherlands argued that the special circumstances could be taken into consideration only for cases, where a particular coastline, by reason of some exceptional feature, gave the state concerned an extend of continental shelf abnormally large in relation to the general configuration of its coasts.⁴¹ Contrary to this argument, the Federal Republic claimed that the special circumstances clause did not constitute an exception to the rule of equidistance, but that these two elements were valid on an equal footing so that the equidistance element had no priority over the special circumstances element.⁴²

The Court, on the other hand, gave emphasis on the hierarchical order which was stated as follows:

Article 6 is so framed as to put second the obligation to make use of the equidistance method, causing it to come after a primary obligation to effect delimitation by agreement. Such a primary obligation constitutes an unusual preface to what is claimed to be a potential general rule of law.⁴³

Although Article 6 could lead to different results due to the different geometrical construction of the varying cases, the strict version which provided a hierarchical order tried to be applied in the North Sea Continental Shelf dispute. Moreover, the Court overlooked the relationship between the equity and the special circumstances. In the Judgement, it was

⁴¹ See, the Danish and Netherlands Counter-Memorials, Pleadings, p.214-316

⁴² See, The Memorial of the Federal Republic of Germany, Pleadings, p.43

explained as follows:

Delimitation is to be effected by agreement in accordance with *equitable principles*, and taking account of *all relevant circumstances*, in such a way as to leave as much as possible to each party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory.⁴⁴

The Court mixed what it cited as “*all relevant circumstances*” with the “special circumstances” under Article 6. It is true that the relationship between the equity and the special circumstances as coordinate principles may not be precise from the language of the Article 6. Therefore the Court denied the norm-creating character of this Article.⁴⁵

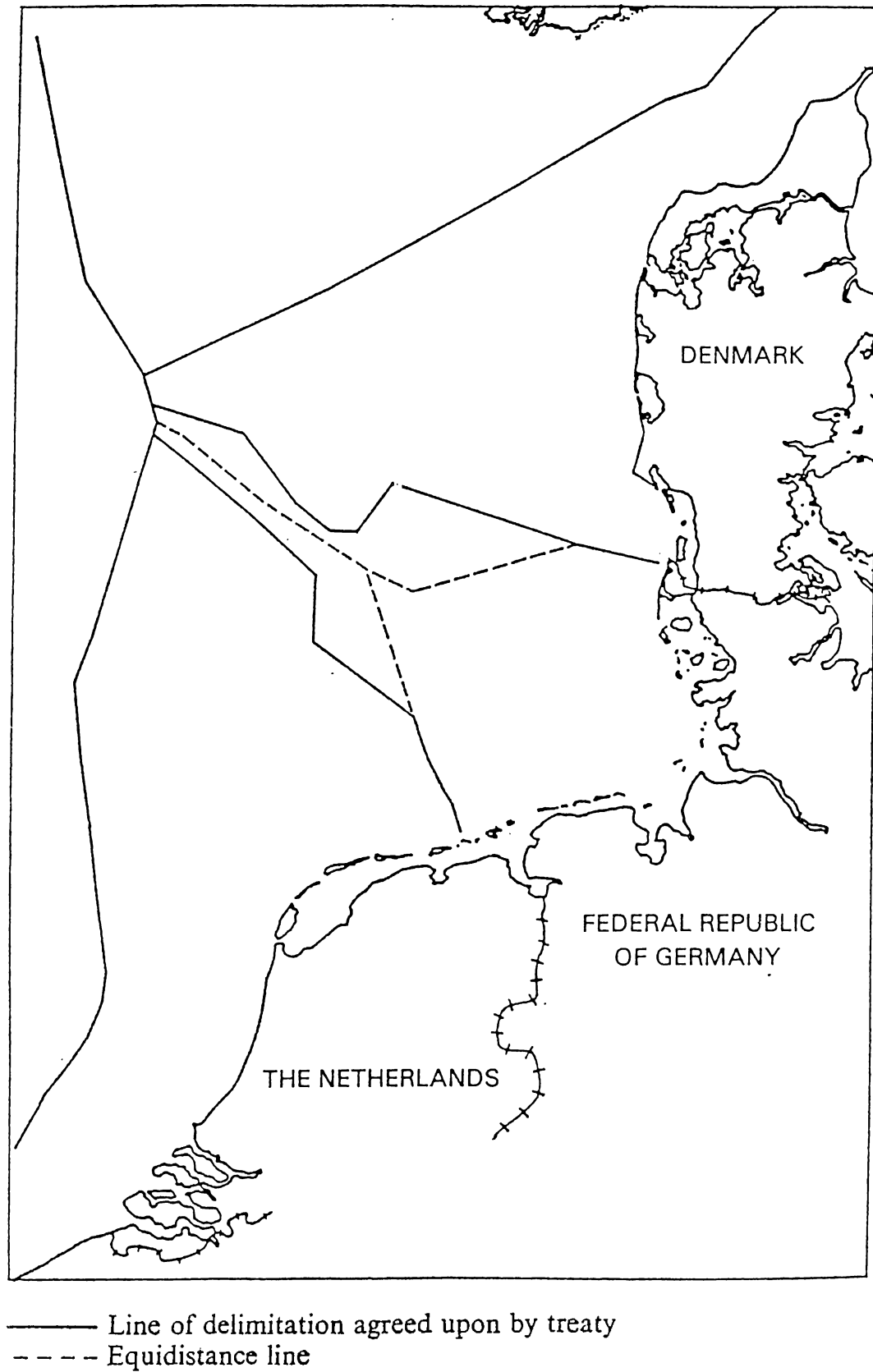
On balance, after the conclusion of the Geneva Convention, it became clear that it did not meet the expectations of the international community. Although there was a great support for the concept of continental shelf among the member states of the Geneva Convention, the precision of the concepts was not obtained. The lack of clearness or double-criterion about the concepts like the depth and distance criteria, the exploitation criterion or outer limit were other important challenging factors. Besides, the rapid development in the maritime technology created an additional reason for different disagreements among the nations. All of these elements opened the way for the new meetings and arrangements about the Law of the Sea and in particular about the continental shelf.

⁴³ See, North Sea Continental Shelf Case, *Judgement*, ICJ, Reports, (1969) p. 72

⁴⁴ *Ibid.*, 93

⁴⁵ See Map 2 on p.23

Map 2. The agreed delimitation line in the North Sea Continental Shelf Case
* Source: International Boundary Case, Cambridge: Grotius, p. 23



1.5. THE UNITED NATIONS CONFERENCE ON LAW OF THE SEA (UNCLOS III)

In 1967, Malta took the initiative and appealed to the General Assembly for revision or replacement of the Geneva Convention. The main purpose of that appeal was to clarify uncertainties about the limits of the national jurisdiction and the international regime. As a result of this attempt, the General Assembly established an Ad Hoc Committee in 1986. Then, it was replaced by the United Nations Seabed Committee aiming at preparing for the meeting of the Third United Nations Conference on Law of the Sea (UNCLOS III) which would be convoked in 1974.

In Montego Bay, the results of these efforts came as “The United Nations Conference on Law of the Sea” in 1982. Having a chapter about the continental shelf, this convention introduced a new concept, “the exclusive economic zone” (EEZ) into the field of international law. These improvements- UNCLOS III and EEZ- led to a change in the concept of the continental shelf in the Geneva Convention. In Article 55, EEZ was defined as follows:

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal state and the rights and the freedoms of other states are governed by the relevant provision of the Convention.⁴⁶

For the breadth of the EEZ, the convention claimed that it should not go beyond 200 nm from the baselines from which the breadth of the territorial waters were measured (Article 57). The continental shelf, on the other hand, was defined as follows:

The continental shelf of a coastal state comprises the seabed and the

⁴⁶ A. Gündüz, “The Concept of the Continental Shelf in its Historical Evolution”, Istanbul: Marmara University, (1990), p.205.

subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.⁴⁷

During the drafting period, the final provisions for the delimitation of continental shelf and EEZ resulted in clash of the two ideas. The first one “*median line or equidistance principle*” was based on the proposal that the delimitation of both EEZ and continental shelf should be effected by agreement using as a general principle, the median line or equidistance line in consideration with the special circumstances where this is justified. The second one was “*equitable principles*”. According to that principles, the delimitation should be effected by agreement in accordance with equitable principles taking into account all relevant circumstances. Session after session, Article 83 (1) and Article 74 (1) came on the final stage during the Tenth Session.

In Article 83 (1) and Article 74 (1), as a first step, it referred to agreements in order to achieve equitable solutions for all sides in conformity with international law as stated in Article 38 of the Statute of the International Court of Justice. But, if there was no agreement, the Part XV that including provisions for the settlement of the dispute, should be taken into account.

Both articles made agreement the primary mean for a solution. However, they were not able in clarifying the substance of the agreement and therefore the parties involved faced with difficulties. In the North Sea Continental Shelf Case, the Court stated that “the delimitation must be subject of agreement between the states concerned.”⁴⁸ According to this

⁴⁷ Ibid. , p.206

⁴⁸ See, North Sea Continental Shelf , *Judgement*, ICJ, (1969), p.85

statement, unilateral delimitation was rejected. Regarding this argument, the tribunal refused to “take into consideration a delimitation which did not result from negotiations or an equivalent act in accordance with international law”, in the Guinea- Guinea Bissau Arbitration. Within this context, the rules in Article 74 (1) and Article 83 (1) repeated the existing rules of conduct in all inter-state relations. Furthermore, these articles were based on the “good faith” and peaceful settlement of disputes”. However, these aspects too remained vague and open ended.

In the North Sea Case, the Court in defining “the obligation to negotiate meaningfully” referred to the cases of *the Free Zones of Upper Savoy and the District of Gex* and *Railway Traffic between Lithuania and Poland*. And, it took as quotation that negotiation must be pursued “as fast as possible with a view to concluding agreements”⁴⁹ In the Fisheries Jurisdiction Case, the Court emphasised that the most relevant method for resolving the dispute would be negotiation and to open the ways for negotiation. Because, according to the Court, the negotiation was therefore a proper exercise of the judicial function of the Court.⁵⁰

The cases related to the continental shelf disputes were also faced with the *equitable principles*, when agreement could not offer the proper solution for the cases. While these cases tried to be assessed by the notion of equitable principles, no attempt was made to identify the content of those principles for the continental shelf disputes. In the Judgement of the North Sea Case, the Court put emphasis on *equity*. However, the Court never maintained that in all circumstances, the application of the equitable principles should lead to an equitable solution.

⁴⁹ Ibid. , para.87

⁵⁰ See, The Fisheries Jurisdiction Case, (UK v Iceland), *Merits*, ICJ, Reports, (1974), p.32

In the Anglo-French Arbitration of 1977, the Court argued that *equity* was achieved through a method which would pay attention to geography. Because it held that “the appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case.”⁵¹ Unfortunately, the Tunisia-Libya Case went beyond the definitions of 1969 and 1977 cases. Because it said “the principles are subordinate to the goal. The *equitableness* of a principle must be assessed in the light of its *usefulness* for the purpose of arriving at an equitable result.”⁵²

Equity, as result of this statement , then became achieving a compromise between different claims. The Court, therefore, should select appropriate principles, that would lead to an equitable result. On the other hand, the Chamber in the Gulf of the Maine Judgement referred to equity as a fact-evaluation process.⁵³ In the Libya-Malta Case, the emphasis was put on the equitable solution.⁵⁴ But the term of equitable principles were not clear enough. It referred to the results to be achieved as well as to the means to be applied to reach that result. The Court then tried to identify some of the principles in order to reach to a conclusion. Geography- the inequalities of the nature, nonencroachment by one party on the natural prolongation of the other were one of these stated principles.⁵⁵

As a result, under the main framework of the developments on the Law of the Sea, stated above, the concept of continental shelf has experienced an historical evolution. After the Truman Proclamation of 1945, a certain amount of high seas was put under the control and jurisdiction of the coastal state for the purpose of exploitation and exploration of its

⁵¹ See, The Anglo-French Arbitration, (UK v. France), *Decision of 18 Mar. 1978* , para. 97

⁵² See, The Tunisia-Libya Case, *Judgement*, ICJ Reports, (1982) para. 70

⁵³ See, The Gulf of Maine Case, *Judgement*, ICJ Reports, (1984) , para. 112

⁵⁴ See, The Libya-Malta Case, *Judgement*, ICJ Reports, (1985), para. 28

natural resources. The Geneva Convention of 1958, on the other hand, could not stay alive any longer against the technological developments and unclear definition in its articles that led to controversy among the states. In the Third United Nations Conferences on Law of the Sea, the natural prolongation, the principle of equidistance and Exclusive Economic Zone were added into the Convention of 1982 (UNCLOS III). Within these developments, the coastal states gained

- the mineral resources of the seabed and subsoil of the submarine areas,
- the fish swimming in it,
- the wind blowing over,
- the control and possession of the coastal state over the waters of the high seas within 200 miles of the coast.

Consequently, comparing the gain of the coastal state, it became clear that the loss of the international community that occurred so quietly made all of the developments a part of a peaceful revolution between the coastal states and the world oceans.

⁵⁵ Ibid. , para.45

CHAPTER 2

THE CONTINENTAL SHELF DISPUTE BETWEEN TUNISIA AND LIBYA

(FEBRUARY 1982)

2.1. BACKGROUND

The present situation of the land frontier between Libya and Tunisia dates from 1910. Both countries had been under Turkish suzerainty since the middle of the 16th century. Proclaiming a French protectorate in 1881, the Tunisia Regency had not experienced any dispute with the “vilayet” of Tripoli about the frontiers or boundaries. Because, both of them were under the internal border of the Ottoman Empire.

In 1886 and 1892, some suggestions were proposed between France and the Ottomans with a view to a delimitation. The boundary, in those years, located in the middle of AL-Biban lagoon, at the mouth of the Wad Fessi. Later on, it was moved eastwards in the direction of the Wad Moqta, and led to the *de facto* establishment of the present site of Ras Ajdir. The new direction of this boundary was stated in the “*Convention relative a la frontière entre la régence de Tunis et le vilayet de Tripoli*” which was concluded between the Bey of Tunis and the Emperor of the Ottomans on 19 May 1910.

This frontier established in 19 May 1910 remained unchanged, between the Regency of Tunis under French protectorate and the Italian colony of Tripolitania after Turkey had

ceded that region to Italy. The decolonisation efforts of those years also did not result in a new arrangement of suggestion for the 1910 frontier. In other words, after their independence too, Tunisia and Libya respected the same convention with the same frontier.

It had moreover been expressly confirmed by “*the Treaty of Friendship and Neighbourly Relations*” concluded on 10 August 1955 between France (on behalf of Tunisia) and Libya. On the other hand, Libya and Tunisia confirmed it implicitly by “*the Treaty of Fraternity and Neighbourly Relations*” on 7 January 1957. This treaty was amended and completed by “*the Establishment Convention of 14 June 1961*” and expressly confirmed by an exchange of letters at the time of signing of that Establishment Convention.

Throughout the two World Wars, the convention was accepted and no dispute was seen about the 1910 frontier. Then, two treaties strengthened the validity of this convention. The first one was “*the Cairo Resolution of the Organisation of African Unity*” in 1964. The important principle in this treaty was that, “all Member States pledge themselves to respect the borders existing on their achievement of national independence”. The second treaty was “*the 1978 Vienna Convention on Succession of States*” which also accepted the same principle. Thus the permanence and stability of the land frontier is one of the points where the Parties are in full agreement. No issue was raised by the Parties concerning its validity.

An incident occurring in 1913, when an Italian torpedo boat arrested three Greek fishing vessels in an area claimed by Tunisia gave Italy a reason in order to propose a delimitation line. It would be drawn between Libyan and Tunisian sponge-banks, in the direction of the coastline at Ras Ajdir. Italy developed this delimitation line and it became formal in 1919,

with the issuance of "*Instructions for the Surveillance of Maritime Fishing in the waters of Tripolitania and Cyrenalca*". It provided that :

"As far as the sea border between Tripolitania and Tunisia is concerned, it was agreed to adopt as a line of delimitation the line perpendicular to the coast at the border point, which is, in this case, the approximate bearing north-north-east from Ras Ajdir."⁵⁶

In order to avoid the danger of friction that might arise from the position of a foreign vessel near the frontier, the Italian authorities established two eight-mile buffer zones at the two ends of the Libyan coast. With this zone, vessels flying foreign flags and not holding a license from the Italian authorities would be liable to be ordered away but not seized. Both Parties recognised that an important solution had been achieved with this buffer zone, which operated for a long time without incident and without protest from any side. The line was reaffirmed by the Italian authorities in Libya in 1931. After the independence of both countries, the situation existed in this respect.

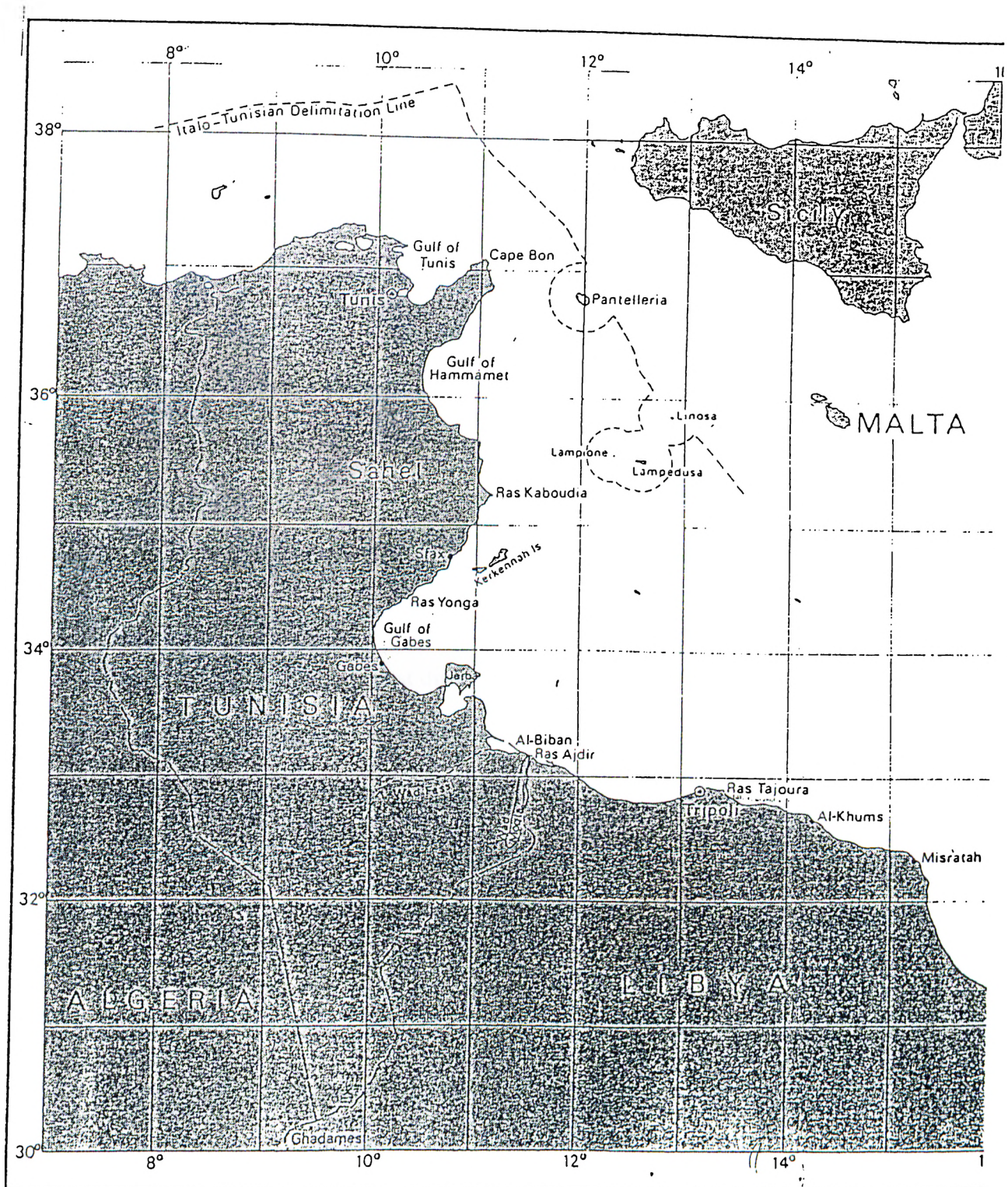
On the other hand, Tunisia has concluded an agreement, dated 20 August 1971, with Italy. This agreement shaped the delimitation of the continental shelf between the two country on a median-line basis. But special arrangements were put into effect for the Italian islands of Lamplone, Lampedusa, Linosa and Pantelleria. So far as seawards limits are concerned, no delimitation agreement has been concluded by either Party with Malta.⁵⁷

⁵⁶ See, *Tunisia-Libya Continental Shelf Case*, Judgement, ICJ, Reports, (1982), p.58.

⁵⁷ See Map 3 on p.32.

Map 3. The delimitation line between Italy and Tunisia.

* Source: The Tunisia-Libya Case, Judgement, ICJ, Reports, (1982), p.36.



Neither Tunisia nor Libya had concluded any agreement delimiting any part of the continental shelf, or a certain area of their territorial sea. However, this did not prevent the activities of exploration and exploitation of the continental shelf. Each Party granted licenses or concessions in the continental shelf areas regarded by each Party as necessarily appertaining to itself. As a result of this, a considerable amount of drilling had taken place.

On the Libyan side, the legislative authorisation for this process was completed.⁵⁸ It was only in 1968 that the first offshore concession was granted by Libya. Between 1968 and 1976, fifteen wells were drilled in an offshore concession area, several of which proved productive. In the meantime, Tunisia had granted its first offshore concession in 1964. In the concession granted in 1972, it was expressed that the concession boundary between Tunisia and Libya had to be bounded on the south-east direction. However, the position of this statement was not clear. In 1974, this boundary was specified as being a part of "the equidistance line ... determined in conformity with the principles of international law pending an agreement between Tunisia and Libya defining the limit of their respective jurisdictions over the continental shelf".⁵⁹

In the same year Libya granted another concession. According to this, the western boundary was a line drawn from Ras Ajdir at some 26° to the meridian, that is to say, further west than the equidistance line. Consequently, the result was an overlapping of claims of each Party in an area some 50 miles from the coasts. Following protests in 1976 by each

⁵⁸ "*Petroleum Law No. 25*", and "*Petroleum Regulation No. 1*" came into effect on 19 July 1955 and both of them were the legal essence of the arguments of Libya.

⁵⁹ See, Tunisia-Libya Continental Shelf Case, ICJ, *Judgement*, Reports, (1982), p.60.

Government, diplomatic discussions led to the signing of the “Special Agreement” on 10 June 1977. With this Special Agreement, it was decided to bring the matter before the Court. Even after the proceedings before the Court had begun, further activities by each Party led to protests by the other. The Court was requested to declare general principles and rules of international law which were applicable to the delimitation of the areas of continental shelf appertaining to Tunisia and Libya in the region concerned.⁶⁰

However, apart from the licenses given for the purpose of exploitation and exploration, there has never been any agreement between Tunisia and Libya on the delimitation of the territorial sea, contiguous zones, exclusive economic zones, or the continental shelf, upon which the Parties formally agreed yet. This situation constituted one of the difficulties of the dispute between Tunisia and Libya, because the delimitation of the continental shelf should start from the outer limit of the territorial sea, in accordance with Article 1 of the 1958 Geneva Convention on the Continental Shelf.⁶¹

Because of the absence of agreement signed about the continental shelf areas appertaining to the Parties, the 1910 Convention became an important feature for the consideration of the present case. Because it definitely established the land frontier between the two countries. Moreover, both Parties had the same view about the starting point which reinforced the significance of the place “Ras Ajdir”. As the starting point, Ras Adjir had a crucial role in the present case. In addition to this factor, this area became important because, it was the point where the unilateral claims and certain partial maritime delimitation tried to be realised by the

⁶⁰ All of the requests that were stated by the Parties will be described in a more detailed way in the following parts.

⁶¹ Article 1: the continental shelf is referring a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres, or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Parties. Apart from the concessions given by each Party for the purpose of exploitation and exploration, those claims too played a crucial role in the Tunisia-Libya Case concerning the continental shelf.

First of all, Tunisia claimed that the ZV (Zénith vertical) 45° line was drawn from the land frontier at Ras Ajdir, at an angle of 45° in a north-easterly direction. According to Tunisia, Article 62 of the *"Instruction of the Director of Public Works on the Navigation and Sea Fisheries Department"* (31 December 1904) did in fact define the areas of surveillance for the fishing of sponges and octopuses, where the administrative authorities exercised exclusive power like control and regulations. At the first time, the ZV 45° was mentioned in *"the Decree of 26 July 1951"*, reorganising the *"Legislation on Fishery Control"* Article 3 (b) of which contained a specific reference to the line in the following terms:

"(b) From Ras Kaboudia to the Tripolitanian frontier, the sea area bounded by a line which, starting from the end of the 3-mile line described above, meets the 50-metre isobath on the parallel of Ras Kaboudia and follows that isobath as far as its intersection with a line drawn north-east from Ras Ajdir, ZV 45°."⁶²

However, the Tunisian ZV 45° north-eastern line could include a limited area for the specific fishery regulations and therefore had the nature of an unilateral claim. Besides, it was not a line plotted for the purpose of maritime delimitation.

Secondly, on the side of the Libyan claims, it was seen a northerly direction in conformity with the land boundary established by the 1910 Convention. This line was issued in the *"Petroleum Law"* (Law No.25 of 1955) on 21 April 1955. This was followed by

⁶² See, Tunisia-Libya Case, Judgement, ICJ, Reports, (1982), p. 64

"*Petroleum Regulation No.1*" of 15 June 1955.⁶³ Article 3 of the 1955 Law established a division of the territory of Libya into four petroleum zones and Article 4, paragraph 1, included the following provision :

"This Law shall extend to the seabed and subsoil which lie beneath the territorial waters and the high seas contiguous thereto under the control and Jurisdiction of the United Kingdom of Libya. Any such seabed and subsoil adjacent to any Zone shall for the purpose of this Law be deemed to be part of that Zone."⁶⁴

This Article referred to the "seabed and subsoil which lie beneath the territorial waters and the high seas contiguous thereto under the control and Jurisdiction" of Libya. However, there is no evidence that Libya had claimed control and jurisdiction over a continuous zone, before the enactment of this Law. Both the Law and the Regulation are purely internal legislative acts, intended to identify domestic zones for the petroleum exploration and exploitation activities of Libya.

The claims of the Parties -the ZV 45° line of Tunisia and the northward line under the Petroleum Law No.25 of 1955 and Regulation No.1 of Libya- were based on the unilateral actions. However, the maritime boundaries should be determined by agreement between the Parties. This principle was stated in the *Fisheries Case of 1951* as follows:

"The delimitation of sea areas has always an international aspect it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law."⁶⁵

⁶³ Both of them were published in the Official Gazette of Libya.

⁶⁴ See, ICJ, Reports (1982) , p.84.

⁶⁵ See, The Fisheries Case, *Judgement*, ICJ, Reports 1951, p. 132.

Each party sought to claim particular areas of the sea-bed as their natural prolongation of their land territory so that they could prove the essence of their concessions and lines. The Court was asked to determine what principles and rules of international law were applicable to the continental shelf delimitation between Tunisia and Libya of the respective areas appertaining to each. All of these facts shed light on the truth that the Court should examine very carefully all factors and arguments of the Parties relating to this case.

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2.2. PROCEEDINGS BEFORE THE INTERNATIONAL COURT OF JUSTICE

The Registry of the Court received a letter of 25 November 1978 on 1 December 1978. Tunisia, in this letter, notified the Court of a "*Special Agreement*" signed between Tunisia and Libya on 10 June 1977.⁶⁶ On the other hand, Libya sent a letter of 14 February 1979 received in the Registry of the Court on 19 February 1979. Libya too, made a like notification by enclosing the Special Agreement concluded between Tunisia and Libya. In both of the letters, the first five articles explained the aim of their requests and also the procedures after the decisions of the Court were completed.⁶⁷

In Article 1, the Court was requested to adjust and declare what were the principles and rules of international law which might be applied for the delimitation of the area of the continental shelf appertaining to Tunisia and the area of the continental shelf appertaining to Libya, by taking into account the equitable principles and the relevant circumstances which characterised the area, as well as the recent trends admitted at the Third Conference on the Law of the Sea. In the second part of Article 1, the Court was further asked to specify precisely the practical way in which these principles and rules apply in this particular situation so that the experts of the two countries did not face with any difficulties in the delimitation of the area.

Article 2, on the other hand, stated that after the delivery of the Judgement by the Court, two Parties should meet to put into effect these principles and rules in order to determine the line of the continental shelf delimitation appertaining to each of the two countries, with a conclusion of a treaty in this matter.

⁶⁶ "International Boundary Cases: The Continental Shelf", Cambridge: Grotius Publications, p.927

⁶⁷ The five Articles of the Special Agreement are stated in Appendix C.

According to Article 3 if the agreement mentioned in Article 2 was not reached within a period of three months, the two Parties should together go back to the Court and request such explanations or clarifications that might facilitate the task of the two delegations. The two Parties should comply with the Judgement of the Court and with its explanations and clarifications. Article 4 described the proceedings which as based on the submission of the Memorials, Counter-Memorial and presentation of the Oral Arguments.⁶⁸

On 30 January 1981, Malta filed an Application requesting permission to intervene in the case under Article 62 of the Statute. The Article of the Statute invoked by Malta was 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.⁶⁹

Under Article 81, paragraph 2, of the Rules of Court, an application for permission to intervene under Article 62 of the Statute shall specify the case to which it relates, and 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;
- (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.⁷⁰

The Court noted that Malta was not successful in showing possession of an interest of a legal nature in relation with the three matters specified in Article 81, paragraph 2, of the

⁶⁸ The special Agreement was stated in "the Tunisia-Libya Case", *Judgement*, ICJ, Reports, 1982, p.3.

⁶⁹ "Charter of the United Nations and Statute of the International Court of Justice", New York: United Nations, pp.94.

⁷⁰ See, "The Tunisia-Libya Case", *Judgement*, ICJ, Reports, 1982, p.8.

Rules.⁷¹ As a result, the object of its request fell altogether outside the scope of the form of intervention which was provided in Article 62. By a Judgement dated 14 April 1981, the Court found that request of Malta could not be granted.⁷²

2.2.1. TUNISIA

In the course of the written proceedings, both Parties presented their submissions. First of all, Tunisia, in its *Memorial*, made its statements due to the first part of the Article 1 of the Special Agreement of 10 June 1977 which requested the Court to define the general principles and rules of international law for the delimitation of the continental shelf areas. In the view of Tunisia, the delimitation should take into account *the physical and natural characteristics of the area*, as to leave all those parts of the continental shelf that constitute a natural prolongation of their land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.

Secondly, the delimitation must not encroach upon the area where Tunisia possessed “*well-established historic rights*”. This area was defined on the side towards Libya by line ZV 45° and in the direction of the 50-metre isobath. Moreover, taking into account the “*geomorphologic peculiarities*” of the region, it was possible to establish a natural prolongation of Tunisia that extended eastwards towards the areas between the 250-metre and 300-metre isobath, and south-eastwards as far as the zone constituted by the Zira and Zuwarah Ridges.

⁷¹ Ibid.

⁷² Ibid. , p.11.

Furthermore, in the east and southeast of this region, the relevant circumstances which characterised the area should be carefully examined. “*The relevant circumstances*” which shaped the area were as follows:

- the fact that the eastern coastal front of Tunisia is marked by the presence of a body of islands, islets and low-tide elevations which form a constituent part of the Tunisian littoral
- the fact that the general configuration of the coasts of the two States is reproduced with remarkable fidelity by the bathymetric curves in the delimitation area and that this fact is simply a manifestation of the physical and geological structure of the region ; that in consequence the natural prolongation of Tunisia is oriented west-east, and that of Libya southwest - northeast ;
- the potential cut-off effect for Tunisia which could result from the particular angulation of the Tunisia-Libyan littoral in combination with the position on the coast of the frontier point between the two States;
- the irregularities characterising the Tunisian coasts, resulting from a succession of concavities and convexities, as compared with the general regularity of the Libyan coasts in the delimitation area ;
- the situation of Tunisia opposite, States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States.⁷³

All of these considerations argued by Tunisia were related to the first part of the Article 1 of the Special Agreement. For the second part of Article 1 of the Special Agreement which looked for a specified practical method to be used for the delimitation, Tunisia clarified its arguments in its Memorial. From the perspective of Tunisia, the delimitation should lead to

⁷³ See, “Tunisia- Libya Case”, Judgement, ICJ, 1982, p.22

the drawing of a line, but, the geomorphologic factors -like the existence of a crestline constituted by the Zira and Zuwarah Ridges- and the general orientation of the natural prolongation of the territories of the two countries toward the abyssal plain of the Ionian Sea should not be ignored. The delimitation line could either :

- (a) be constituted by a line drawn at the Tunisia-Libyan frontier parallel to the bisector of the angle formed by the Tunisia-Libyan littoral in the Gulf of Gabes; or
- (b) be determined according to the angle of aperture of the coastline at the Tunisia-Libya frontier, in proportion to the length of the relevant coasts of the two States.⁷⁴

In the *Counter-Memorial*, Tunisia repeated its arguments but referring to the first part of the Article 1 of 10 June 1977, put forward that the delimitation must be in conformity with “*the equitable principles*” and should take into account “*the relevant circumstances*” in order to arrive an equitable solution.

2.2.2. LIBYA

Libya, too, submitted its Memorial and Counter-Memorial to the Court. Libya stressed the importance of the juridical link between the continental shelf and the state practice.⁷⁵ Because a state was entitled *ipso facto and ab initio* to the continental shelf which, was the natural prolongation of its land territory into and under the sea. Moreover, any delimitation should leave as much as possible to each Party all those parts of the continental shelf that had such a natural prolongation. Respecting the principle of the natural prolongation and the *ipso*

⁷⁴ Ibid. , p. 42

⁷⁵ See, F. Ahnish, “The International Law of Maritime boundaries and the Practice of the States in the Mediterranean”, Oxford: Clarendon , p 317

jure rights of a coastal State, a delimitation, for Libya, should be in accordance with the equitable principles.⁷⁶

Libya stated that the direction of the natural prolongation was determined due to the *geological and geographical relationship* of the continental shelf to the continental landmass. Because in the present case, the continental shelf off the North Africa was a prolongation to the north of the continental landmass, an appropriate method should reflect this direction.⁷⁷

On the side of the appropriate method, Libya argued that application of the equidistance method was not obligatory and any method of the delimitation in accordance with equitable principles would be tested by its results. The equidistance method, for Libya, was neither a rule nor a principle and therefore was not obligatory on the parties either treaty or as a rule of customary international law. Besides, it also led to inequitable results under particular circumstances.

In its Counter-Memorial, Libya made additional proposals. It was stated that the natural prolongation of the land territory of a state was determined by the whole physical structure of the landmass as indicated by geology. Submarine ridges of the sea-bed did not disrupt the essential unity of the continental shelf and did not provide a scientific basis for a legal principle of delimitation.

On the other hand, according to Libya, the “fishing rights” claimed by Tunisia as “historic rights” were in any event irrelevant to shelf delimitation in the present case. The practical method for the application of the principles and rules of international law in this

⁷⁶ Ibid.

⁷⁷ See, ICJ Reports (1982), p.51

specific situation is to continue the reflection of the direction of the natural northward prolongation from the outer limit of the territorial sea, without effecting the rights of States not parties to these proceedings.

After the written proceedings, the oral proceedings were completed and none of the Parties presented a different statement from what put forward in their written proceedings.

2.3. THE COURT

During the proceedings, all of these documents put forward by the Parties concerned led to the analyses and assessments of the Court in order to reach a solution that could be necessary for both sides. Therefore, the Court examined the Special Agreement and also the arguments stated in the Memorial and Counter-Memorial of Tunisia and Libya.

Under Article 1 of the Special Agreement, the Court was required first to state "the principles and rules of international law which may be applied for the delimitation of the area of the continental shelf" appertaining to each of the two countries respectively.⁷⁸ The Court had to take account the three factors mentioned in the Special Agreement:

- *equitable principles ;*
- *the relevant circumstances which characterised the area and*
- *the new accepted trends in the Third United Nations Conference on the Law of the Sea.*

While the Court had to regard to all legal sources specified in Article 38, paragraph 1, of the Statute of the Court in determining the relevant principles and rules applicable to the delimitation, it is also bound, in accordance with paragraph 1 (*a*), of that Article, to apply the provisions of the Special Agreement.⁷⁹ Two of the three factors –the equitable principles and the relevant circumstances- referred in harmony with the jurisprudence of the Court, as it was stated in the Judgement of the *North Sea Continental Shelf* cases. Because, in that Judgement

⁷⁸ See, Attard, "The Exclusive Economic Zone in International Law", Oxford: Clarendon Press, (1989), p.127.

⁷⁹ Article 38 / 1: The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states.

it was held that international law required delimitation to be effected "in accordance with equitable principles, and taking account of all relevant circumstances"⁸⁰

The Court was authorised by the Special Agreement to take into account "*new accepted trends*" which could be considered, as the term "trends" as having reached an advanced stage of the process of elaboration. The Third United Nations Conference on the Law of the Sea had however not yet come to an end. According to Tunisia, the "trends", so far as they did not constitute general international law, were to be taken into account as "factors in the interpretation of the existing rules".⁸¹ In any event, however, any consideration and conclusion of the Court in connection with the application of the "trends" was confined exclusively to the legal relations of the Parties in the present case.

However, the Court had to take account of the progress made by the Conference even if the Parties had not mentioned it in their Special Agreement. It could not ignore any provision of the draft convention. Because if it came to the conclusion that the provision was binding upon all members of the international community, it then would embody or crystallise a pre-existing or emergent rule of customary law.

In the second part of Article 1, the Special Agreement, required the Court to "clarify the practical method for the application of these principles and rules".⁸² In other words, those it finds applicable to the delimitation, would result, in the delimitation of these areas without difficulties" for this specific situation. On the other hand, the Parties did not use the

⁸⁰ See, "The North Sea Continental Shelf Case", Judgement, ICJ, Reports, (1969), p.53.

⁸¹ See, Weil, "The Law of Maritime Delimitation", Cambridge: Oxford, (1987), p.249.

⁸² See, ICJ Reports (1982), p62.

right to choose the method to be adopted; instead, they have asked the Court to determine the method for them.

This case, according to the Court, would seem to lie between the *North Sea Continental Shelf* cases of 1969, in which the Court was asked only to indicate what principles and rules of international law were applicable to the delimitation, and the Franco-British Arbitration on the Delimitation of the Continental Shelf of 1977, in which the Court of Arbitration was requested to decide what was the course of the boundary between the portions of the continental shelf appertaining to each of the Parties in the relevant area.

According to Tunisia, the Court is required to specify precisely the practical way in which the principles and rules should be applied.⁸³ If a choice of method would give occasion for disagreement, the Court itself had to decide the option from both the legal and practical points of view in order to avoid any problem due to any differences of opinion which might arise between the experts of the Parties

The Libyan view, however, was that the Court was *not* authorised to carry the matter "right up to the ultimate point before the purely technical work".⁸⁴ In general, Libya clearly argued in favour of a more restrictive interpretation of the Special Agreement. Its contention was that in clarifying the "practical method" for the application of the principles and rules of international law, the Court is to indicate the additional considerations and factors which have to be taken into account and balanced. But it had not been invited to set out the specific method of delimitation itself.

⁸³ Pazarcı, "Uluslararası Hukuk", Ankara:Turhan, (1998), p.397.

⁸⁴ Ibid. , p.381.

The Court also analysed Articles 2 and 3 of the Special Agreement which made it clear that the Parties recognised the obligation to comply with the Judgement of the Court.⁸⁵ On balance, the Court saw that there was not any substantial distinction between a "method of delimitation" and a "practical method for the application of ... principles and rules in this specific situation, that would enable the experts of the two countries to delimit the area".⁸⁶ The careful examinations of the pleadings and arguments of both Parties led the Court to conclude that there was here no fundamental difference of opinion between them. In the final analysis, a difference of emphasis as to the respective roles of the Court and of the experts of the two countries were put on the table. The Court, therefore, considered the whole controversy as of minor importance.

⁸⁵ See, ICJ Reports, (1982), paras. 22-31.

⁸⁶ Ibid. , p.32.

2.4. DECISION OF THE COURT

The Court in its decision, first of all shed light on the general principles and rules of international law applicable for the delimitation, that would enter into force by agreement after the implementation of the present Judgement. First of all, the delimitation had to be effected in accordance with *equitable principles*, and taking account of all *relevant circumstances*. The relevant circumstances that would be taken into account in achieving an equitable delimitation include the following:

- (1) the fact that the area relevant to the delimitation in the present case is bounded by the Tunisian coast from Ras Ajdir to Ras Kaboudia and the Libyan coast from Ras Ajdir to Ras Tajoura and by the parallel of latitude passing through Ras Kaboudia and the meridian passing through Ras Tajoura, the rights of third States being reserved;
- (2) the general configuration of the coasts of the Parties, and in particular the marked change in direction of the Tunisian coastline between Ras Ajdir and Ras Kaboudia;
- (3) the existence and position of the Kerkennah Islands;
- (4) the land frontier between the Parties, and their conduct prior to 1974 in the grant of petroleum concessions, resulting in the employment of a line seawards from Ras Ajdir at an angle of approximately 26° east of the meridian, which line corresponds to the line perpendicular to the coast at the frontier point which had in the past been observed as a de facto maritime limit;
- (5) the element of a reasonable degree of proportionality, which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the coastal State and the length of the relevant part of its coast, measured in the general direction of the coastlines, account being taken for this

purpose of the effects, actual or prospective, of any other continental shelf delimitation between States in the same region.⁸⁷

Secondly, the area relevant for the delimitation had a single continental shelf as the *natural prolongation* of the land territory of both Parties, so that in the present case, no criterion for delimitation of shelf areas could be derived from the principle of natural prolongation.⁸⁸ Finally, in the particular geographical circumstances of this case, the physical structure of the continental shelf areas could not offer a determination of *an equitable line* of delimitation.⁸⁹

After assessing the general principles and rules of international law, the Court referred to the practical method for the application of the stated principles and rules of international law in the particular situation of the present case. The delimitation made up two sectors each requiring the application of a specific method of delimitation in order to achieve an equitable solution.⁹⁰

In the first sector, the sector closer to the coast of the Parties, the starting point for the line of delimitation was the point where the outer limit of the territorial sea of the Parties was intersected by a straight line drawn from the land frontier point of Ras Ajdir through the point 33°55'N, 12°E, which line runs at a bearing of approximately 26° east of north, corresponding to the angle followed by the northwestern boundary of Libyan petroleum concessions numbers NC 76, 137, NC 41 and NC 53, which was aligned on the south-eastern boundary of

⁸⁷For further information about the relevant circumstances, ICJ, Reports (1982) and Weil, "The Law of Maritime Delimitation" Cambridge: Grotius, (1989), p. 266.

⁸⁸ See, The Tunisia-Libya Case, Judgement, ICJ, Reports, (1982), para.77. ⁸⁸

⁸⁹ Ibid., para.78.

⁹⁰ Ibid., para.82

Tunisian petroleum concession "*Permis complémentaire offshore du Golfe de Gabès*" (21 October 1966); from the intersection point so determined the line of delimitation between the two continental shelves is to run north-east through the point 33°55'N, 12°E, thus on that same bearing, to the point of intersection with the parallel passing through the most westerly point of the Tunisian coastline between Ras Kaboudia and Ras Ajdir, that is to say, the most westerly point on the shoreline (low-water mark) of the Gulf of Gabès.⁹¹

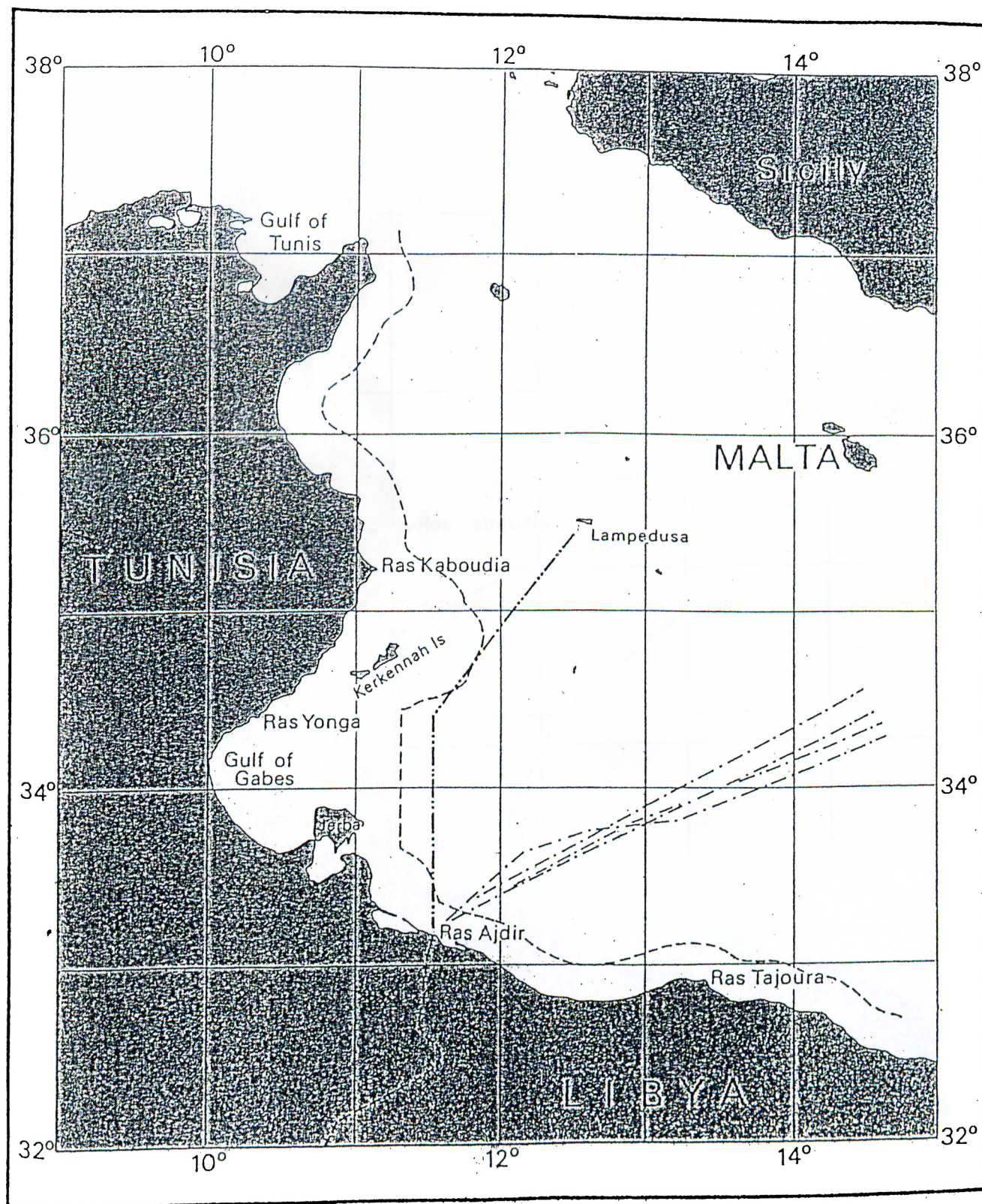
In the second sector, namely -the area which extends seawards beyond the parallel of the most westerly point of the Gulf of Gabs- the line of delimitation of the two continental shelves is to the east in such a way as to take account of the Kerkennah Islands; that is to say, the delimitation line is to run parallel to a line drawn from the most westerly point of the Gulf of Gabès bisecting the angle formed by a line from that point to Ras Kaboudia and a line drawn from that same point along the seaward coast of the Kerkennah Islands, the bearing of the delimitation line parallel to such bisector being 52° to the meridian; the extension of this line northeastwards is a matter falling outside the jurisdiction of the Court in the present case, as it will depend on the delimitation to be agreed with third States.⁹²

⁹¹ Ibid. , para.88

⁹² Ibid. , paras.108-112. Map 4 illustrates the alternative lines proposed by the parties on p.52 and Map 5 shows the decision of the Court.

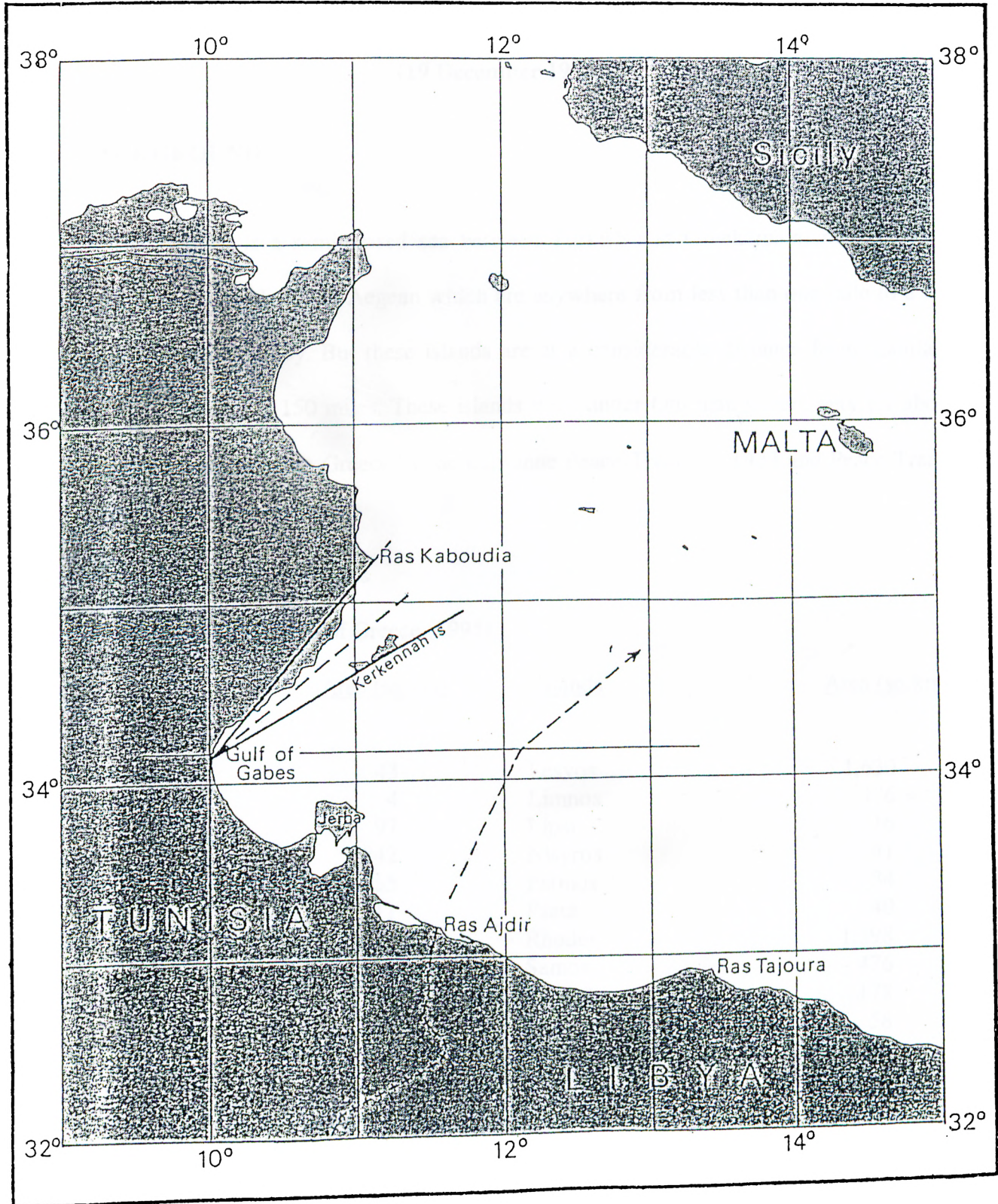
Map 4. Alternative lines proposed by the parties

* Source: Tunisia-Libya Case. Judgement. ICJ. Reports. (1982) p.81



Map 5. The decision of the Court

* Source: Tunisia-Libya Case, Judgment, ICJ, Reports, (1982) p.90



CHAPTER 3

THE CONTINENTAL SHELF DISPUTE BETWEEN TURKEY AND GREECE

(19 December 1978)

3.1. BACKGROUND

The Aegean is a semi-closed sea between Turkish and Greek mainland. There are numerous Greek islands in the Aegean which are anywhere from less than one mile to a few miles off mainland Turkey. But these islands are at a considerable distance from mainland Greece – approximately 150 miles. These islands were under Ottoman sovereignty for about 400 years and were given to Greece by the Lausanne Peace Treaty of 1923 and Peace Treaty of 1947.⁹³

Table 2. Area of the Greek Islands

*Source: statistical Yearbook of Greece (1995)

<u>Islands</u>	<u>Area (sq.km)</u>	<u>Islands</u>	<u>Area (sq.km)</u>
Aghios Eustratios	43	Lesvos	1,630
Antispara	4	Limnos	476
Astypalca	97	Lipsi	16
Chios	842	Nisyros	41
Ikaria	255	Patmos	34
Kalymnos	111	Psara	40
Karpathos	301	Rhodes	1,398
Kasos	66	Samos	476
Klalki	28	Samothrace	178
Kos	290	Symni	58
Leros	53	Tilos	63

⁹³ Within this treaty, the Straits were internationalized, the lands of both sides were demilitarized. But Turkey was allowed to send its troops through the neutral zones as needed as well as to station maximum 12,000 men. Turkey gained final control of the Straits with the Montreux Agreement in 1936

Map 6. The Aegean Sea

* Source: <http://www.expediamaps.com>



From 1960 onwards, Greece had granted licenses and conducted extensive exploration activities on the Aegean Continental Shelf. In 1972, Greece granted new oil exploration concessions in the high seas areas of the Aegean on the basis of a unilateral claim that these areas were part of its continental shelf.⁹⁴

This dispute came to the forefront for the first time in November 1, 1973. On that date, the Turkish Government gave mineral exploration licenses in the eastern Aegean to the Turkish Petroleum Company.⁹⁵ Turkey made public a map that showed the delimitation of respective continental shelves in the Aegean Sea. According to the Greek Government, this map did not take into account the presence of the Greek Islands.⁹⁶ In 1973, Turkey granted 27 permits to the Turkish Petroleum Company to explore for petroleum on the high sea areas westward of the Greek islands of Samothrace, Lemnos, Aghios, Eustratios, Lesbos, Chios, Psara, and Antispara.⁹⁷

The Greek Government questioned the validity of these licenses by a Note Verbale of 7 February 1974. In that Note Verbale, Greece based itself on international law as codified by Articles 1 (b) and 2 of the 1958 Geneva Convention on the Continental Shelf.⁹⁸ It was also argued that the continental shelf between two States required to be delimited on the basis of equidistance by means of a median line.⁹⁹ The answer of the Turkish Government came on 27

⁹⁴ See, N. Deloukas, "The Controversy between Greece and Turkey in the Aegean Sea" in "Issues and Studies", No.70, (1980), p.70.

⁹⁵ Resmi Gazete, (The Official Gazette of Turkey) , (1.November.1973)

⁹⁶ See, "The Aegean Sea Case", *Judgement*, ICJ, Reports, (1976), para.16

⁹⁷ A. Wilson, "The Aegean Sea Dispute" in "Institute for Strategic Studies", No. 155, (1980)

⁹⁸ In Article 1 (a) the continental shelf was referred as to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 m., or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

⁹⁹ See, ICJ Reports , (1976) para.22

February 1974. By that Note Verbale, it was stated that “the Greek Islands were situated very close to the Turkish Coast and did not possess a continental shelf of their own.”¹⁰⁰ In addition to this, Turkey opened a discussion about the applicability of the equidistance principle and suggested a solution in conformity with international law by means of agreement.

Greece, on the other hand, indicated that it was not opposed to a delimitation based on the provision of international law as codified by the 1958 Geneva Convention on the Continental Shelf. According to the Turkish Government, two Governments had to use all possibilities to reach to an agreed solutions of various problems that based on their neighbourly relations in the Aegean Sea. With this statement, Turkey expressed their readiness to enter into negotiations for the delimitation of the continental shelf between the two countries.

On 29 May 1974 the Turkish oceanographic research vessels “Çandarlı” and “Hora” sailed into the Aegean Sea for the purpose of carrying out research activities. The Greek Government interpreted this exploration as a breach of exclusive sovereign rights of Greece and protested this exploration with a Note Verbale of 14 June 1974. The Turkish Government, in its reply of 4 July 1974, refused to accept the Greek protest and repeated its suggestion of negotiations. On 22 August 1974, another protest in respect to further licenses for exploration was made by Greece. Turkey again did not accept it and insisted on negotiations.

The Greek Government, thereafter, proposed to the Turkish Government that the International Court of Justice might have the solution for the present case. Therefore, Greece put

¹⁰⁰ Ibid.

forward that it would be necessary to make a “*special agreement*” for reference to the Court. Taking this suggestion into consideration, Turkey would agree, but gave priority to enter into negotiations on the question of the Aegean Sea continental shelf. As a result, both of the Governments decided on drafting a special agreement so that talks between the two Governments at ministerial level were started.

On 17-19 May 1975, the Ministers of Foreign Affairs of Greece and Turkey met in Rome and gave initial considerations to the text of the special agreement that based on the submission of the matter to the International Court of Justice. After the *Rome Meeting*, the two Prime Ministers came together in Brussels and issued a *joint communiqué* on 31 May 1975. In the *Brussels Communiqué*, they conferred jurisdiction on the Court and decided on a future meeting of experts dealing with the question of continental shelf of the Aegean Sea. Turkey, by a Note of 30 September 1975, made itself clear that the first step to settle this dispute should be attempting meaningful negotiations. After then, those issues, which could not be resolved by negotiations, would be jointly submitted to the Court. Turkey also referred to the Rome Meeting by emphasising that, the delimitation negotiations should take place parallel with the preparation of a special agreement. But, the Greek Government claimed that in the Brussels Communiqué it had been agreed that the issue would first be formally submitted to the Court.

‘ The Turkish Government was not supporting the interpretation of the Greek side and therefore invited them to conduct meaningful negotiations for an agreed equitable settlement. After the conclusion of such negotiations, the other unresolved but well-defined legal issues could then be jointly submitted to the Court, if necessary. In the view of Greece, negotiation was

in any case necessary in order to proceed with the drafting of the special agreement. If in the course of that negotiation, proposals that led to an agreement regarding the delimitation were put on the table, according to the Greeks, those proposals would be given appropriate consideration.

In accordance with the Brussels Communiqué, the experts of both sides met in Berne from 31 January to 2 February and on 19 and 20 June 1976. In the 1976 *Berne Protocol*, two states established a standing committee “to study state practice and international law rules to identify certain principles and practical criteria” which might be applicable to the Aegean Sea.

In the Turkish press release of 13 July 1976, the Turkish Government granted licenses to the seismic research vessel *MTA-Sismik I* in order to carry out exploration in the Turkish territorial sea and high seas. Moreover, in the statement on Turkish Radio on 24 July 1976, the Turkish Foreign Minister indicated that these researches would be carried out in the areas of the Aegean claimed by Turkey and could extend to all areas of the Aegean outside the territorial waters of Greece. The research ship *MTA-Sismik I* began conducting seismological exploration on 6 August 1976 in the Aegean waters and led to a warlike atmosphere.

When the vessel, *MTA-Sismik I*, began its researches on the areas that according to Greece belonged to their continental shelf area, Greece made a diplomatic protest to the Turkish Government in a Note Verbale dated 7 August 1976. On 10 August 1976, the Greek Government referred the matter simultaneously to the International Court of Justice requesting “interim measures of protection too”.¹⁰¹ On the same day, Greece applied to the Security Council of the

¹⁰¹ In the view of Greece, in accordance with the interim measures of protection, the Governments of both States should first of all refrain from all exploration activity or any scientific research with respect to the areas in dispute

United Nations and claimed that Turkey through its action had destroyed the peace in the area and should be stopped.

Greece, with its requests, aimed first of all at clarifying the delimitation of the continental shelf between Greece and Turkey and wanted from International Court of Justice a declaration that Greece was entitled to exercise over its continental shelf sovereign and exclusive rights for the purpose of researching, exploring and exploiting natural resources.

On 25 August 1976, the Security Council adopted resolution 395 (1976). In the third paragraph of that resolution, the Security Council suggested Greece and Turkey “to resume the direct negotiations over their differences” and offered them “to do everything within their power to ensure that this results in mutually acceptable solutions”. Moreover, the Court at its Order of 11 September 1976 denied the request of Greece for interim measures of protection.

In justification of its request for interim measures, Greece claimed that certain acts of Turkey -the granting of petroleum exploration, the explorations of the vessel MTA Sismik I- constituted infringements of its exclusive sovereign rights to the exploration and exploitation of its continental shelf. As a result, that breach of the right of a coastal State became “irreparable prejudice” which was an important reason for the declaration of these measures. Moreover, they ‘stated that these activities would increase the tension of the dispute, if they continued.

unless having the consent of each other or pending the final judgment of the Court. Secondly, they should refrain from taking any military measures or actions which may endanger their peaceful relations.

Consequently, the Court was unable to find a breach of Greece's rights that would lead to irreparable prejudice or any risk of the exercise of power to indicate interim measures of protection. The Court considered that both Governments will act in conformity with their obligations under the United Nations Charter and Security Council resolution 395 (1976) of 25 August 1976, where the States were offered "to do everything in their power to reduce the present tensions in the area" and called on "to resume direct negotiations over their differences".

In the light of this resolution, Greece and Turkey restarted their negotiations. The Ministers for Foreign Affairs of both states met in New York on 1 October 1976. In the *New York Meeting*, the continental shelf delimitation in the Aegean Sea was decided to be subject of negotiations between the two governments with the aim of reaching a mutually acceptable settlement. From 2 to 11 November 1976, another meeting was convoked by the parties in Berne.

In the *Berne Agreement*, it was decided to hold negotiations with the aim of reaching an agreement on the delimitation of the continental shelf. In addition to this, the parties also accepted that neither would explore for oil in the continental shelf of the Aegean until the issue of delimitation of the continental shelf was settled and the negotiations would be confidential. The Berne Meeting was confirmed by the *Brussels Joint Communiqué* which was concluded with the Ministers of Foreign Affairs and published on 11 December 1976. This was followed by other meetings in *Strasbourg, London, Paris, Montreux, Washington, Ankara* and in *Athens*. In the Athens Meeting, they agreed that "the bilateral talks related to the continental shelf question should be resumed at the appropriate level on or about the December 1978".

3.2. PROCEEDINGS BEFORE THE COURT

By a letter of 10 August 1976, Greece instituted proceedings against Turkey in respect of a dispute concerning the delimitation of the continental shelf appertaining to each of the states in the Aegean Sea and their rights over those areas. Apart from the Application of the Greek Government, there was also another request which was instituted again in the same day (10 August 1976). Greece sought the Court to declare interim measures of protection. But this request was rejected by the Court with its Order of 11 September 1976.

In this Application, the Greek Government requested the Court to adjudge and declare:

- what is the boundary (or boundaries) between the portions of the continental shelf appertaining to Greece and Turkey in the Aegean Sea in accordance with the principles and rules of international law which the Court shall determine to be applicable to the delimitation of the continental shelf in the aforesaid areas of the Aegean Sea;
- that Greece is entitled to exercise over its continental shelf its sovereign and exclusive rights for the purpose of researching and exploring it and exploiting its natural resources;
- that the Greek Islands as part of the territory of Greece, are entitled to the portion of continental shelf which appertains to them according to the principles and rules of international law;
- that Turkey is not entitled to undertake any activities on the Greek continental shelf, whether by exploration, exploitation, research or otherwise, without the consent of Greece;

- that the activities of Turkey constitute infringements of the sovereign and exclusive rights of Greece to explore and exploit its continental shelf or to authorise scientific research respecting the continental shelf;
- that Turkey shall not continue any further activities as described above within the areas of the continental shelf which the Court shall adjudge appertain to Greece.¹⁰²

On 25 August 1976, the Registry of the Court received a letter that included the observation of the Turkish Government on the request by the Government of Greece dated The Hague 10 August 1977. In these observations, Turkey clearly expressed that International Court of Justice had no jurisdiction to entertain the Application. By an Order of 11 September 1976, which rejected the declaration of the interim measures of protection, the Court focused on the question of its jurisdiction with respect to this case.

The Court aimed at assessing its function of jurisdiction and therefore fixed the time-limits for the written proceedings: 18 April 1976 for the filing of a Memorial by Greece and 24 October 1976 for the filing of a Counter-Memorial by the Turkish Government. However, Greece requested extension of these time-limits which was provided by the Court as 18 July 1977 for Greece and 24 April 1977 for Turkey.

At the final stage, the Memorial of Greece was filed on due date. The main essences of the Memorial of the Greek Government were described as following:

¹⁰² For further information about the Requests of Greece, see, ICJ, Reports (1976) , para.10.

“...the Government of Greece requests the Court to adjudge and declare that, whether on the basis of *Article 17 of the General Act for the Pacific Settlement of International Disputes*, 1928, read with Article 36, paragraph 2, and 37 of the Statute of the Court, or on the basis of *the joint communiqué of Brussels* dated 31 May 1975, the Court is competent to entertain the dispute between Greece and Turkey on the subject of the delimitation of the continental shelf appertaining to the two countries in the Aegean Sea.”¹⁰³

On the other hand, the Turkish Government did not file any Counter-Memorial but send a letter dated 24 April 1978 which was the end of the time-limit for the written proceedings. In that letter Turkey stated the Government of Turkey did not intend to appoint an agent or file a Counter-Memorial. This letter had a similar context with the letter send by Turkey on 25 August 1976. It stated inter alia:

“It should in the view of the Government of Turkey, be recalled that that Application was filed although the two Governments had not yet begun negotiations on the substantive issue, as is clearly apparent from the context of the Notes exchanged by the Governments. It was however always contemplated between them that they would seek, through meaningful negotiations, to arrive at an agreement which would be acceptable to both parties.”¹⁰⁴

Recalling the Security Council resolution 395 (1976) which offered direct negotiations resulting mutually acceptable solutions, the Turkish Government referred to the Berne Agreement of 11 November 1976. This agreement too gave special emphasise to the means of agreement. Article 1 of the Berne Agreement which was indicated in the letter of the Turkish Government, provided that the two Parties agree that *negotiations* shall be frank, thoroughgoing

¹⁰³ Ibid. , para.12

¹⁰⁴ Ibid. , para.27

and pursued in good faith with a view to reaching an *agreement* based on their mutual consent with regard to the delimitation of the continental shelf as between the themselves.¹⁰⁵

Under the light of the Montreux Meeting, Turkey, in this letter, claimed that:

“The necessary conditions for the conduct of frank and serious negotiations, and the spirit which should motivate the parties concerned, with a view to the settlement of their problems by such negotiations are not reconcilable with the continuation of international judicial proceedings.”

Coming to the oral arguments, the public hearings were held on 9-13 October and 16-17 October 1978. Turkey was not represented at the hearings. The Greek side, on the other hand, participated to these proceedings. At the close of these proceedings, Greece stated that

“The Government of Greece submits that the Court be pleased to declare itself competent to entertain to dispute between Greece and Turkey on the delimitation of the respective areas of continental shelf appertaining to the two countries in the Aegean Sea”¹⁰⁶

3.2.1. TURKEY AND GREECE

The proceedings were ended without pleadings filed by the Government of Turkey and it was not represented at the oral proceedings. No formal submissions were therefore made by the Government of Turkey. But the jurisdiction of the Court with respect to this dispute were questioned by the letters of Turkey received by the Registrar of the Court on 25 August 1976, 24

¹⁰⁵ Ibid.

April 1978 and 10 October 1978. The Court began to deal with this question by referring to other cases and evidences. However, both states had their own arguments for the solution of this dispute.

According to the Turkish Government, the historical right to exploit the natural resources of the seabed of the Aegean affected economic interest and national security of both states. Because of this reason, political and legal issues should not be considered separately. So, a serious attempt should be made first to resolve the question equitably and taking into account the relevant circumstances through meaningful bilateral negotiations and then refer the unsolved issues to the judicial means, if necessary. The Greek Government, on the other hand, stated that the dispute should be submitted to the International Court of Justice.

Greece, claimed that because islands had their own continental shelves, the sovereign rights of Greece over almost the entire Aegean with respect to the 3000 Greek islands should not be infringed. As a result of this condition, a median line which would pass between the Turkish coast and the offshore islands should lead to the delimitation of the continental shelf of two states. The claims of Greece were based on its analyses of 1958 Geneva Convention. Turkey did not signed this convention because of the fact that it did not take into account seas with special circumstances, like the Aegean.

Turkey, due to this attempts, stated that the delimitation of the Aegean continental shelf by using the equidistance method (median line) between the Eastern Aegean Islands and Turkey would breach the principle of equity, which was the cornerstone of such delimitation.

¹⁰⁶ Ibid. ,para.13.

Furthermore, it was clearly stated in the decision of the Court that the delimitation was to be effected “by agreement in accordance with the equitable principles and taking account all relevant circumstances”. Sharing the same view, Turkey maintained that all efforts to solve the problem should not ignore the equilibrium established by the 1923 Lausanne Treaty, relevant international agreements applicable in the region and the equitable principles.

3.3. THE COURT

The International Court of Justice first of all tried to analyse the attitude of the Turkish Government - Turkey did not participate in the proceedings and furthermore asserted that the Court had no jurisdiction to entertain the Greek Application- by examining the exercise of its judicial function and assessing the existence of any legal dispute between the parties. Thereafter, it would turn to the case and find a solution regarding the dispute itself and the Application made by Greece.

Turkey had asked, the Court to reach the conclusion that it should not proceed with the case, while the parties continued to negotiate. In other words, the existence of active negotiations in progress hindered the jurisdiction of the Court. However, the Court did not share the same view. According to the Court, negotiation and judicial settlement were handled in Article 33 of the Charter of the United Nations. This article provided that:

1. The Parties to any dispute, the continuance of which is likely to endanger the maintenance of the international peace and security, shall, first of all, seek a solution by negotiation, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Moreover, “*the Trial of Pakistani Prisoners of War*” proved that the judicial proceedings could be ended, when such negotiations efforts would result in agreement for both sides.¹⁰⁷ Therefore, in the view of the Court, the fact that negotiations tried to be achieved during the

¹⁰⁷ ICJ, Reports (1973), p.347.

proceedings, did not lead legally to any obstacle to the judicial function of the Court as it was stated in the letter of Turkey.

The Court, apart from this interpretation, developed another argument due to the letter of the Turkish side. There it was stated that there was no dispute between the parties during the negotiation process, that is to say, the Court could not for that reason, exercise its jurisdiction in this case. The answer to this argument came with the Order of 11 September 1976.

In its Order, the Court recalled that on 10 August 1976 Greece instituted proceedings against Turkey in respect of a dispute concerning the Aegean Sea Continental Shelf. Greece requested the Court *inter alia* to declare what was the course of the boundary between the portions of the continental shelf appertaining respectively to Greece and Turkey in the area, and to declare that Turkey was not entitled to undertake any activities on the Greek continental shelf, whether by exploration, exploitation, research or otherwise, without the consent of Greece. As a result, the existence of a dispute according to the Court, could hardly be open to doubt.

Finally, the Court referred to a further argument that described the dispute between Turkey and Greece “as highly political nature”. The Court shared the same view. It was too difficult to fail to have some political element in the dispute. Because, the parties were in conflict within their respective rights. In other words, both of the states were in conflict as to the delimitation of their continental shelf in the Aegean Sea. Therefore, the Court found that there existed a legal dispute between Greece and Turkey in respect to the continental shelf in the Aegean Sea and the active negotiations could not legally be any obstacle to the judicial function of the Court.

3.4. THE DECISION OF THE COURT

3.4.1. First Basis of Jurisdiction: Article 17 of the General Act of 1928

In its Application, the Greek Government specified two bases on which it claimed that the Court had jurisdiction in the dispute. The first was *Article 17 of the General Act of 1928 for the Pacific Settlement of International Disputes*, read with *Article 36, paragraph 1*, and *Article 37 of the Statute of the Court*.

Article 17 of the General Act was as follows:

"All disputes with regard to which the parties are in conflict as to their respective rights shall, subject to any reservations which may be made under Article 39, be submitted for decision to the Permanent Court of International Justice, unless the parties agree, in the manner hereinafter provided, to have resort to an arbitral tribunal. It is understood that the disputes referred to above include in particular those mentioned in Article 36 of the Statute of the Permanent Court of International Justice."¹⁰⁸

This Article thus provided for the reference of disputes to the Permanent Court of International Justice. That body was the predecessor of the present Court, which, by the effect of Article 37 of its own Statute, was substituted for it in any treaty or convention in force. In other words, if the General Act was to be considered as a convention in force between Greece and Turkey, it might, when read with Article 37 and Article 36, paragraph 1, of the present Court's Statute, suffice to establish the jurisdiction.

However, the question of the status of the General Act of 1928 as a convention in force for the purposes of Article 37 of the Statute was challenged in previous cases before the Court. In the present case the Greek Government contended that the Act must be in force between Greece and Turkey; while the Turkish Government, on the contrary, stated that the Act was no longer in force.

The Court noted that Greece draw attention to the fact that both the Greek and the Turkish side had reservations within this Act. Greece put forward that these were irrelevant to the case. Turkey, on the other hand, took the position that, whether or not the General Act was assumed to be in force, Greece's instrument of accession, dated 14 September 1931, was subject to a clause-reservation (b). This reservation would exclude the competence of the Court with respect to the dispute. The text of this reservation (b) was as follows:

"The following disputes are excluded from the procedures described in the General Act . . .

"(b) disputes concerning questions which by international law are solely within the domestic jurisdiction of States, and in particular disputes relating to the territorial status of Greece, including disputes relating to its rights of sovereignty over its ports and lines of communication."¹⁰⁹

The Court considered that, if the effect of reservation (b) on the applicability of the Act as between Greece and Turkey with respect to the subject-matter of the dispute was justified, then the question whether the Act was or was not in force would not be an essential factor for the decision regarding the jurisdiction of the Court.

¹⁰⁸ See, Reports (1976), Judgement.

According to Greece, the Court should leave reservation (b) out of consideration. Because, the applicability of the General Act was not raised regularly by Turkey in accordance with the Rules of Court, so that Turkey had not required to obey the reservation. Because, by Article 39, paragraph 3, of the General Act, it was stated that "If one of the parties to a dispute has made a reservation, the other parties may enforce the same reservation in regard to that party." In the view of the Court, Turkey's invocation of reservation (b) made in a formal statement must be considered as constituting an "enforcement" of the reservation within the meaning of Article 39, paragraph 3, of the Act. The Court was therefore unable to ignore a reservation the invocation of which was brought to its notice earlier in the proceedings.

Greece maintained that reservation (b) could not cover the dispute regarding the continental shelf of the Aegean Sea and therefore did not exclude the normal operation of Article 17 of the Act. In particular it was related to disputes relating to the territorial status of Greece where at the same time "questions which by international law are solely within the domestic jurisdiction of States" occurred.

This argument depended on a grammatical interpretation which based on the meaning of "and in particular" ("et, notamment," in the original French of the reservation). After considering this interpretation, the Court concluded that it could not base itself on a grammatical interpretation of the text and found that reservation (b) contained two separate and autonomous reservations.

¹⁰⁹ Ibid.

The first one included disputes concerning questions of domestic jurisdiction and the other reserving "disputes relating to the territorial status of Greece". The Court then assessed what must be understood by "disputes relating to the territorial status of Greece".

Greece maintained that a restrictive view of the meaning must be taken, due to the historical context. Because, those words were related to the territorial settlements established by the peace treaties after the World War I . In the opinion of the Court, the historical evidence claimed by Greece did not confirm that in reservation (b) the expression "territorial status" was used with the meaning of "any matters properly to be considered as belonging to the concept of territorial status in public international law". The expression therefore included not only the particular legal regime but also the territorial integrity and the boundaries of a State.

Greece argued that the idea of the continental shelf was unknown in 1928 when the General Act was concluded, and in 1931 when Greece became a part of the Act. But, in the Court's view, the words "territorial status" in the Greek reservation and also "rights" in Article 17 of the General Act, was to follow the evolution of the law and to correspond with the meaning attached to it by the law in force at any given time. The Court therefore found that the expression "disputes relating to the territorial status of Greece" must be interpreted in accordance with the rules of international law as they exist today.

The Court then tried to examine whether the expression "disputes relating to the territorial status of Greece" should or should not include disputes relating to the rights of Greece over the continental shelf in the Aegean Sea. Greece argued that the dispute concerned the delimitation of the continental shelf could not be connected with territorial status. According to the Court, on the

other hand, it would be difficult to accept that delimitation was not bound to the notion of territorial status and pointed out that a dispute regarding delimitation of a continental shelf tended by its very nature to be one relating to territorial status. Because, the rights of a coastal State's over the continental shelf would be derived from its sovereignty over the land. Besides, the territorial status of the coastal State included the rights of exploration and exploitation over the continental shelf which was stated under international law.

In relation with these considerations, the Court came to the opinion that the dispute was related to the territorial status of Greece within the meaning of reservation (b). Therefore, the reservation had the effect of excluding the dispute from the application of Article 17 of the General Act. The General Act was as a result not a valid basis for the jurisdiction of the Court.

The Court also interpreted a suggestion that the General Act had never been applicable between Turkey and Greece, because of existence of the "*Treaty of Friendship, Neutrality, Conciliation and Arbitration*" between two states (30 October 1930). The Court stated that by the effect of reservation (b), the Act was not applicable to the dispute, and the 1930 treaty was not invoked as a basis for its jurisdiction.

3.4.2. Second Basis of Jurisdiction: the Brussels Joint Communiqué of 31 May 1975

The second basis of jurisdiction relied upon by Greece was *the Brussels Joint Communiqué* of 31 May 1975. This was a communiqué issued directly to the press by the Prime Ministers of Greece and Turkey following a meeting between them on that date. It contained the following passage:

"They (the two Prime Ministers) decided that those problems (between the two countries) should be resolved peacefully by means of negotiations and as regards the continental shelf of the Aegean Sea by the International Court at The Hague."¹¹⁰

Greece maintained that this passage directly conferred jurisdiction on the Court, Turkey, for its part, maintained that the communiqué did not "amount to an agreement under international law". The Court, on the other hand, found confirmation that the two Prime Ministers did not undertake any unconditional commitment to refer their continental shelf dispute to the Court.

As the consequence of this, the Brussels communiqué did not constitute an immediate commitment between the Prime Ministers of Greece and Turkey. Therefore, the submission of the dispute to the Court unilaterally by Application could not be acceptable. In the view of the Court, this could not become a valid basis for the jurisdiction of Court. The Court decided that neither the 1928 General Act nor the Brussels Communiqué were relevant and applicable to the present dispute between Greece and Turkey. It was without jurisdiction to entertain the Application filed by the Government of Greece on 10 August 1976. The Court, finally, added that nothing it had said might be understood as precluding the dispute from being brought before the Court if and when the conditions for establishing its jurisdiction were satisfied.

CHAPTER 4

OTHER DECISIONS

The contribution of the International Court of Justice to two continental shelf disputes in the Mediterranean Sea should be examined under the light of the other cases that came to the forefront of the Court. In this way, the attitude of the Court due to the changing nature of international law would be clearly analysed.

It was obvious that both cases- Tunisia and Libya Case and the Aegean Sea Case- were shaped with different backgrounds, requests and conclusions. But, they met in two common points. The first was that all of the parties involved to these cases presented from the same disagreement: the delimitation of the continental shelf appertaining to those states in accordance with the principles and rules of international law.

The second was that the International Court of Justice was faced with both cases. Under these focal points, it would be necessary to come a conclusion in the light of the other cases which were sharing the same considerations: the delimitation of the continental and the attitude of the International Court of Justice.

¹¹⁰ H. Pazarcı, "Uluslar Arası Hukuk Dersleri", Ankara, Turhan, (1998) p.407.

4.1. NORTH SEA CONTINENTAL SHELF CASE

The language of the 1982 Convention has been interpreted by some jurists as a reference to the 1969 North Sea Continental Shelf Case, where the Court clearly stated that the delimitation had to be effected in accordance with the principle of equity and taking into account all relevant circumstances.

In this case, the application of the equidistance method was denied by Germany. If this method would be applied, then Germany would have a small share of the shelf. Because, the coastline of Germany was concave. However, the Court did not ignore the relevant circumstances and took it into account for achieving an equitable solution. According to the Court, an equitable solution included the configuration of the coastline and the proportionality between the length of the coastline of a nation and the area of the continental shelf of the nation.

The North Sea Continental Shelf Case relied on the principle of the natural prolongation. According to this view, the undersea shelf was considered as an extension of the continental land mass. This view led to the conclusion that the islands on the prolongation of the landmass did not have the same capacity to generate continental shelf of their own.

Consequently, the Court said in its decision that “the presence of the islets, rocks and minor coastal projections, the disproportionately distorting effect of which could be eliminated by other means”, should be ignored in the continental shelf delimitation. This point of view was based on the notion that all islands did not generate equal maritime zones. Because, all islands

did not have equal marine space as the continental land. However, this approach was not stated by Article 121 of Law of the Sea Conference. It defined the regime of the islands as follows:

1. An islands is a naturally formed area of land surrounded by water, which is above water at high tide.
2. Except as provided in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”

One should emphasise that Article 121 is ambiguous and it is difficult to give a precise meaning to its language. This was caused by the fact that during the negotiations initiated at United Nations Law of the Sea Conference in mid-1975 which led to the 1982 Law of the Sea Convention several draft proposals were submitted on the determination of the maritime space of the islands according to various criteria.

Although these views were controversial and difficult to reach t o an agreement, a Single Negotiated Text (SNT) was prepared in April 1975. This text was an attempt to formulate articles that would represent some areas of consensus. With this document, it was aimed at setting up the basis of further negotiations and achieving a general consensus. But, the language of this document too was ambiguous. These ambiguities remained in the following revised SNTs and also were reproduced by the Draft Treaty of August 1980. After this date, no sufficient discussions took place on the regime of the islands, because of the pressure to complete the Convention in 1982. As a consequence, the wording of the United Nations Law of the Sea Convention Article 121 was nothing more than a reproduction of numerous revised SNTs, which were prepared as negotiation drafts. This explains the ambiguity of Article 121.

4.2. THE 1977 ANGLO-FRENCH ARBITRATION

This dispute required the international arbitral tribunal to determine whether the British Channel Islands had a continental shelf as separate islands and what would be the influence of these islands on a continental shelf delimitation between England and France.

The Channel Islands consisted of four group of islands, including the main islands of Jersey, Guernesey, Alderney, Sar, Herm, and Jethou, as well as a large number of rocks and islets, some of which were inhabited. These islands were under British sovereignty, but were located as close as 6.6 km from the French coastline. Geological evidence indicated that the physical landmass of Britannia and Normandy. These islands had a total land area of 195 square kilometres and a population of 130,000. Politically, the Channel Islands were British dependencies but not constitutionally a part of the United Kingdom.

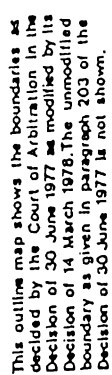
As a result, the tribunal afforded to Britain 12 nautical-mile enclaves around the Channel Islands but stated that otherwise they could not effect the delimitation of the boundary and the area around these enclaves would belong to France. On the question of the method that would be applied in the area, the tribunal rejected the British proposal that the median line should “automatically deviate southwards in a long loop around the Channel Islands”. Furthermore, the tribunal also stated that the juridical concept of natural prolongation required consideration of geographical circumstances to be viewed in light of “any relevant consideration of law and equity”.

This arbitration also dealt with the relative weight to be given to the Sicily Isles belonging to France and located on the British Coast near Land's End. They were lying some 34 km from the mainland and were a group of 48 islands and only 6 of them were inhabited.

The tribunal, as result, constructed set of baselines and equidistance lines which formed a triangle to solve the dispute. So it was clear that in this case also the tribunal based its discussions on the principle of equity and relevant circumstances. (Map 7 illustrates the decision of the Court on p.82.)

* Source: International boundary Cases, Cambridge:Grotius, p.209

* Source: International boundary Cases, Cambridge:Grotius, p.209



4.3. AUSTRALIA AND NEW GUINEA NEGOTIATION

In 1978, Australia and Papua New Guinea negotiated a solution on the problem created by the presence of Australian islands just south to the main islands of Papua New Guinea. It was agreed by both states that these small Australian islands would produce an “inequitable boundary, if given full effect”, Therefore it was decided that these small islands would generate the fishing zones but they would have no effect on the continental shelf boundary and thus these Australian islands were located on the Papua New Guinea continental shelf. Moreover, the agreement also created a protected zone to preserve the traditional way of life for the inhabitants of the islands.

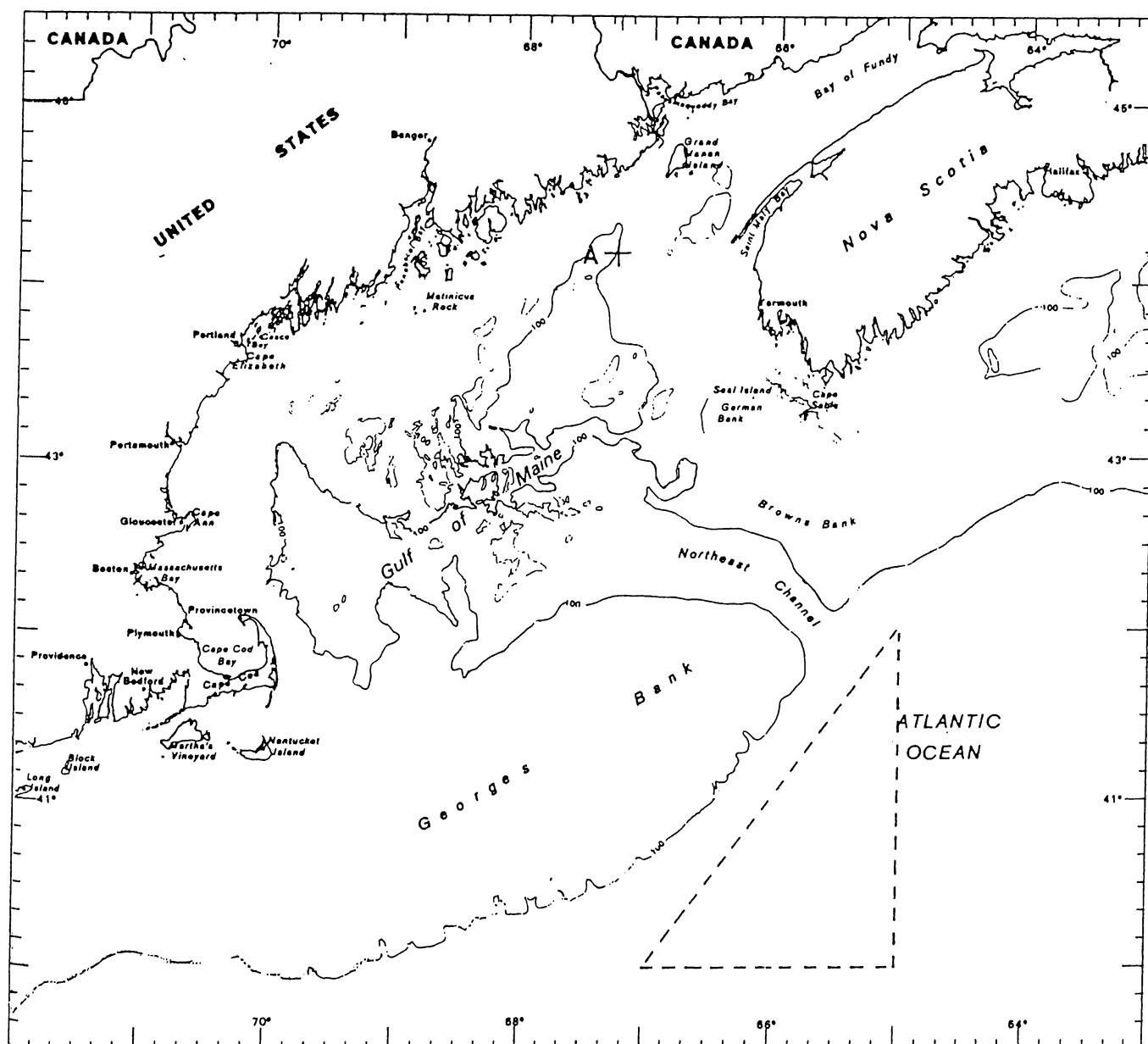
4.4. GULF OF MAINE CASE

In the determination of the boundary between Canada and USA in the Gulf of Maine Case on the other hand, Canada’s Seal Islands, Mud Island and other adjacent islets in the vicinity of Cape Nova Scotia were given only a partial effect in 1984 by the Court. In this case also the Court relied on a two-sector line. The first being drawn following an equidistance formula. Thereafter, the second sector allocated ocean space between USA and Canada in a ratio proportional to the relative lengths of their coastlines in the Gulf. As a result, no effect was given to the Seal Island and its neighbouring islets and then the ratio of ocean area belonging to the United States compared to that of Canada would be 1.38 to 1.

The Court decided that although the Seal Islands and its neighbours “cannot be disregarded” because of dimension and geographical position, it would be “excessive” to give them full effect. Thus, the Court decided it was appropriate to give the islands half effect and as a result USA –Canada ocean space became 1.32 to 1. (Map 8 shows the general map on p.84.)

Map 8. Gulf of Maine

* Source: International boundary Cases, Cambridge: Grotius, p.318



GENERAL MAP OF THE REGION, SHOWING THE STARTING-POINT FOR THE DELIMITATION LINE AND THE AREA FOR ITS TERMINATION

4.5. LIBYA-MALTA CONTINENTAL SHELF CASE

In this case, the Court ruled that equitable principle required that the tiny islands of Filfa – belonging to Malta 5 km south to the main island- should not be taken into account. In determining the boundary between the two countries. With this consideration, the Court made a big change in its jurisprudence.

In contradiction to its order in the North Sea Continental Shelf Case, the Court decided to abandon the criteria of natural prolongation in the determination of the continental shelf. According to the Court, as the new developments in the international law recognised to the coastal state the right to claim a continental shelf up to 200 miles, regardless the geological features of the seabed in the determination of the countries' rights or the delimitation of the boundaries in the case of conflicting claims, there was no reason to attribute any role to the geological or geopolitical factors. In view of the Court, there was also no reason for taking into account a special circumstance as a factor which had no role in the creation of a right.

It thus became obvious that the Court with its decision of 1985 on the Libya-Malta Case discarded the principle of natural prolongation in the determination of the continental shelf and damaged the link between the principle and the delimitation. Starting with the 1969 North Sea Case until the Libya- Malta Case in all International Court of Justice and tribunal decisions an equitable solution was accepted as an independent principle of international law, while the equidistance method (median line) which did not however, have any priority, was considered as one of the methods to be relied on for attaining an equitable solution.

With this case, the Court established a linkage between the creation of the continental shelf right and the method of delimitation. It put forward that because the continental shelf was based on the criterion of distance. As a result, the delimitation should be initiated by applying first the equidistance method as an intermediary method. Only, in the second phase, relevant circumstances should be taken into account to make adjustments so that equidistance would produce results which were equitable.

Consequently, the principle of equity was denied the status of independent principle of law to be applied in the delimitation of the continental shelf as in the North Sea Case and the 1977 Anglo-French Arbitration. It only retained the function of adjustment of the results of the equidistance method.

CONCLUSION

LEGAL ARGUMENT AS A SOLUTION

As it would be observed from the above explanations, there were differences in the attitude of the Court in the cases which were based on the disagreements about the delimitation of the continental shelf in the respective areas of the participating states. As a consequence of the attitude of the Court, some points could be stated in order to analyse the Court and its contribution to these cases.

First of all, the principles which had to be applied in the determination of the boundaries of the maritime spaces did not gained clarity in international law. They are in the process of evolution. Secondly, there was no consistency and continuity in the decision of the Court and the tribunals on the continental shelf. It was observed that the same judicial organ could give contradictory decisions on similar cases

Because of the fact that it is too difficult to establish legal principles for the determination of the continental shelf in a sea like the Mediterranean, where geographical and political features are so complex and intermingled, it would follow that the adoption of a judicial procedure for solving the problem would assess the issue as an isolated legal question. Moreover, the political and security issues should be separated from each other and the results would produce results which would endanger the vital interest in the Aegean.

As a result, the issue should be resolved through bilateral negotiations aiming at the reconciliation of the security, political, economic and maritime interests of the states regarding to the dispute and also these negotiations should also allow the countries to establish trade-off.

JOINT DEVELOPMENT AS A SOLUTION

Joint development is the most logical solution to such disputes. Because, it allows the parties to postpone the final decision on how to draw the boundary. Although not setting up a certain delimitation of the continental shelf, the joint development should provide the opportunity for exploitation of the resources for the benefit of the population of all parties concerned.

It has to be noted that joint development zones were created between Saudi Arabia and Kuwait, Saudi Arabia and Sudan, Japan and Korea, Malaysia and Thailand, Norway and Iceland, and most recently Australia and Indonesia. In a joint development project, usually a joint cooperation is formed by the parties and the persons nominated by them manage the cooperation. The states provide the capital requirement and supervise the development of the area as well as the activities undertaken by the cooperation. The resources are explored and exploited through concessions granted by the joint development agency with the revenue shared by the parties according to a formula that had the consent of the parties.

Finally, the Mediterranean Sea is an important factor for uniting the states within its shores. Because, this area is characterised by the diversity especially in ethnic, religious, cultural and political perceptions. This element may contribute to situations of potential instability , crises

or endemic conflicts. Therefore, the peaceful completion of maritime boundary delimitation plays a crucial role for reducing tension and thus providing the process of peace and security in the Mediterranean Sea. The solution should be shaped by the joint development aiming at protection and rational exploitation of the natural resources of the sea. Because, this may provide the necessary environment for peaceful coexistence among its littoral.

APPENDICES

APPENDIX A

ORDER OF 11 SEPTEMBER 1976

“Whereas: the areas of the continental shelf in which the activity complained of by Greece took place are ex hypotesi areas, which at the present stage of the proceedings are to be considered by the Court as areas in dispute with respect to which Turkey also claims rights of exploration and exploitation.”

The Court finds, by 12 votes to 1, that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate interim measures of protection, decides that the written procedures shall first be addressed to the question of the jurisdiction of the Court to entertain the dispute and reserves the fixing of the time-limits for the said written proceedings, and the subsequent procedures for further decision.

APPENDIX B

THE BERNE DECLARATION

On the procedure to be followed for the delimitation of the continental shelf by Greece and Turkey.

1. Both parties are agree that negotiations be sincere, detailed and conducted in good faith with a view to reaching an agreement based on mutual consent regarding the delimitation of the continental shelf.
2. Both parties are agree that these negotiations should, due to their nature, be strictly confidential.
3. Both parties reserve their respective positions regarding the delimitation of the continental shelf.
4. Both parties undertake the obligation not to use the details of this agreement and the proposals that each will make during the negotiations in any circumstances outside the context of the negotiations.
5. Both parties agree no statements or leaks to the press should be made referring to the content of the negotiations unless they commonly agree to do so.
6. Both parties undertake to abstain from any initiative or act relating to the continental shelf of the Aegean Sea which might prejudice the negotiations.
7. Both parties undertake, as far as their bilateral relations are concerned, to abstain from any initiative or act which would tend to discredit the other party.

8. Both parties have agreed to study state practice and international rules on this subject with a view to deducing certain principles and practical criteria which could be of use in the delimitation of the continental shelf between the two countries.
9. A mixed commission will be set up to this end will be composed of national representatives.
10. Both parties agree to adopt a gradual approach in the course of the negotiations ahead after consulting each other.

Signed in Berne: 11th November, 1976.

Released in Athens and Ankara: 20th November, 1976.

APPENDIX C

SPECIAL AGREEMENT BETWEEN TUNISIA AND LIBYA

Article 1

The Court is requested to render its Judgment in the following matter:

What are the principles and rules of international law which may be applied for the delimitation of the area of the continental shelf appertaining to the Republic of Tunisia and the area of the continental-shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and, in rendering its decision, to take account of equitable principles and the relevant circumstances which characterise the area, as well as the recent trends admitted at the Third Conference on the Law of the Sea.

Also, the Court is further requested to specify precisely the practical way in which the aforesaid principles and rules apply in this particular situation so as to enable the experts of the two countries to delimit those areas without any difficulties.

Article 2

Immediately following, the delivery of the Judgment by the Court, the two Parties shall meet to put into effect these principles and rules to determine the line of delimitation of the area of the continental shelf appertaining to each of the two countries, with a view to the conclusion of a treaty in this matter.

Article 3

In the event that the agreement mentioned in Article 2 is not reached within a period of three months, renewable by mutual agreement, from the date of delivery of the Court's Judgment, the two Parties shall together go back to the Court and request such explanations or clarifications as may facilitate the task of the two delegations, to arrive at the line separating the two areas of the continental shelf, and the two Parties shall comply with the Judgment of the Court and with its explanations and clarifications.

Article 4

A. The proceedings shall consist of written pleadings and oral argument.

B. Without prejudice to any question that may arise relating to the means of proof, the written pleadings shall consist of the following documents

(1) Memorials to be submitted to the Court and exchanged between the two Parties within a period not exceeding eighteen (18) months from the date of the notification of the present Special Agreement to the Registrar of the Court.

(2) Counter-Memorials to be submitted by both Parties to the Court and exchanged between them as follows : the Republic of Tunisia shall submit its Counter-Memorial within a period of six (6) months from the date on which it receives from the Court notification of the Memorial; the Socialist People's Libyan Arab Jamahiriya shall submit its Counter-Memorial within a period of eight (8) months from the date on which it receives from the Court notification of the Memorial.

(3) If necessary, additional written pleadings to be submitted to the Court and exchanged within periods to be fixed by the Court at the request of either Party or, if the Court so decides, after consultation between the two Parties.

C. The question of the order of speaking for the oral argument shall be decided by mutual agreement between the Parties and whatever order of speaking may be adopted, it shall be without prejudice to any question relating to the burden of proof.

Article 5

This Special Agreement shall enter into force on the date on which the instruments of its ratification are exchanged and shall be notified to the Registrar of the Court by both Parties or by either of them.

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