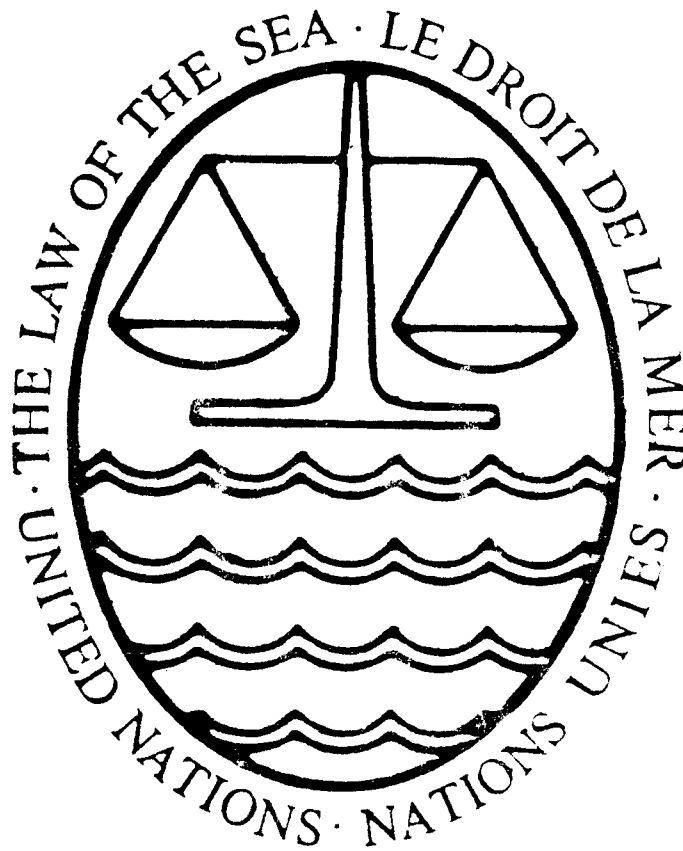


LAW OF THE SEA

BULLETIN

No. 6

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OFFICE OF THE SPECIAL REPRESENTATIVE  
OF THE SECRETARY-GENERAL FOR THE LAW OF THE SEA

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# I. STATUS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

## (a) TABLE OF SIGNATURES AND RATIFICATIONS UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND FINAL ACT AS OF 30 SEPTEMBER 1985

STATES	FINAL ACT SIGNATURE	CONVENTION SIGNATURE <u>1/</u>	CONVENTION RATIFICATION
Afghanistan		18/3/83	
Albania			
Algeria * <u>2/</u>	x	x	
Angola *	x	x	
Antigua and Barbuda		7/2/83	
-----			
Argentina *		5/10/84	
Australia	x	x	
Austria	x	x	
Bahamas	x	x	29/7/83
Bahrain	x	x	30/5/85
-----			
Bangladesh	x	x	
Barbados	x	x	
Belgium *	x	5/12/84	
Belize	x	x	13/8/83
Benin	x	30/8/83	
-----			
Bhutan	x	x	
Bolivia *		27/11/84	
Botswana	x	5/12/84	
Brazil *	x	x	
Brunei Darussalam <u>3/</u>		5/12/84	
-----			
Bulgaria	x	x	
Burkina Faso <u>4/</u>	x	x	
Burma	x	x	
Burundi	x	x	
Byelorussian SSR *	x	x	
-----			
Cameroon	x	x	
Canada	x	x	
Cape Verde *	x	x	
Central African Republic		4/12/84	
Chad	x	x	
-----			
Chile *	x	x	
China	x	x	
Colombia	x	x	
Comoros		6/12/84	
Congo	x	x	

1/ Those States which signed the Convention on 10 December 1982 are indicated by an "x". Those that signed at a later date are indicated by that date.

2/ Those States which made declarations at the time of signature of the Convention are indicated with an "\*".

3/ Became a member of the United Nations on 18 September 1984.

4/ Formerly Upper Volta.

STATES	FINAL ACT SIGNATURE	CONVENTION SIGNATURE	CONVENTION RATIFICATION
Costa Rica *	x	x	
Cuba * ** 5/	x	x	15/8/84
Cyprus	x	x	
Czechoslovakia	x	x	
Democratic Kampuchea		1/7/83	
Democratic People's Rep. of Korea	x	x	
Democratic Yemen	x	x	
Denmark	x	x	
Djibouti	x	x	
Dominica		28/3/83	
Dominican Republic	x	x	
Ecuador	x		
Egypt **	x	x	26/8/83
El Salvador		5/12/84	
Equatorial Guinea	x	30/1/84	
Ethiopia	x	x	
Fiji	x	x	10/12/82
Finland *	x	x	
France *	x	x	
Gabon	x	x	
Gambia	x	x	22/5/84
German Democratic Republic *	x	x	
Germany, Federal Republic of	x		
Ghana	x	x	7/6/83
Greece *	x	x	
Grenada	x	x	
Guatemala		8/7/83	
Guinea *		4/10/84	6/9/85
Guinea-Bissau	x	x	
Guyana	x	x	
Haiti	x	x	
Holy See	x		
Honduras	x	x	
Hungary	x	x	
Iceland **	x	x	21/6/85
India	x	x	
Indonesia	x	x	
Iran (Islamic Republic of) *	x	x	
Iraq *	x	x	30/7/85
Ireland	x	x	
Israel	x		
Italy *	x	7/12/84	
Ivory Coast	x	x	26/3/84
Jamaica	x	x	21/3/83
Japan	x	7/2/83	

5/ Those States which have made declarations at the time of ratification of the Convention are indicated with a "\*\*\*".

STATES	FINAL ACT SIGNATURE	CONVENTION SIGNATURE	CONVENTION RATIFICATION
Jordan	x		
Kenya	x	x	
Kiribati			
Kuwait	x	x	
Lao People's Democratic Republic	x	x	
-----			
Lebanon		7/12/84	
Lesotho	x	x	
Liberia	x	x	
Libyan Arab Jamahiriya	x	3/12/84	
Liechtenstein		30/11/84	
-----			
Luxembourg *	x	5/12/84	
Madagascar		25/2/83	
Malawi		7/12/84	
Malaysia	x	x	
Maldives	x	x	
-----			
Mali *		19/10/83	16/7/85
Malta	x	x	
Mauritania	x	x	
Mauritius	x	x	
Mexico	x	x	18/3/83
-----			
Monaco	x	x	
Mongolia	x	x	
Morocco	x	x	
Mozambique	x	x	
Nauru	x	x	
-----			
Nepal	x	x	
Netherlands	x	x	
New Zealand	x	x	
Nicaragua *		9/12/84	
Niger	x	x	
-----			
Nigeria	x	x	
Norway	x	x	
Oman *	x	1/7/83	
Pakistan	x	x	
Panama	x	x	
-----			
Papua New Guinea	x	x	
Paraguay	x	x	
Peru	x		
Philippines * **	x	x	8/5/84
Poland	x	x	
-----			
Portugal	x	x	
Qatar *		27/11/84	
Republic of Korea	x	14/3/83	
Romania *	x	x	
Rwanda	x	x	

STATES	FINAL ACT SIGNATURE	CONVENTION SIGNATURE	CONVENTION RATIFICATION
St. Christopher and Nevis <u>6/</u>		7/12/84	
Saint Lucia	x	x	27/3/85
St. Vincent and the Grenadines	x	x	
Samoa	x	28/9/84	
San Marino			
-----			
Sao Tome and Principe *		13/7/83	
Saudi Arabia		7/12/84	
Senegal	x	x	25/10/84
Seychelles	x	x	
Sierra Leone	x	x	
-----			
Singapore	x	x	
Solomon Islands	x	x	
Somalia	x	x	
South Africa *		5/12/84	
Spain *	x	4/12/84	
-----			
Sri Lanka	x	x	
Sudan *	x	x	23/1/85
Suriname	x	x	
Swaziland		18/1/84	
Sweden *	x	x	
-----			
Switzerland	x	17/10/84	
Syrian Arab Republic			
Thailand	x	x	
Togo	x	x	16/4/85
Tonga			
-----			
Trinidad and Tobago	x	x	
Tunisia **	x	x	24/4/85
Turkey			
Tuvalu	x	x	
Uganda	x	x	
-----			
Ukrainian SSR *	x	x	
Union of Soviet Socialist Reps. *	x	x	
United Arab Emirates	x	x	
United Kingdom	x		
United Republic of Tanzania	x	x	30/9/85
-----			
United States of America	x		
Uruguay *	x	x	
Vanuatu	x	x	
Venezuela	x		
Viet Nam	x	x	
-----			
Yemen *	x	x	
Yugoslavia	x	x	
Zaire	x	22/8/83	
Zambia	x	x	7/3/83
Zimbabwe	x	x	
TOTAL FOR STATES	<u>140</u>	<u>155</u>	<u>23</u>

6/ Became a member of the United Nations on 23 September 1983.



OTHERS (under Art. 305(1) (b) , (c) , (d) , (e) and (f))	FINAL ACT SIGNATURE	CONVENTION SIGNATURE	CONVENTION RATIFICATION
Cook Islands	x	x	
European Economic Community *	x	7/12/84	
Namibia (United Nations Council for)	x	x	18/4/83
Niue		5/12/84	
Trust Territory of the Pacific Islands	x		
West Indies Associated States			
 TOTAL FOR STATES AND OTHERS	 144 ===	 159 ===	 24 ==

OTHER ENTITIES WHICH SIGNED THE FINAL ACT OF THE CONFERENCE

African National Congress  
 Netherlands Antilles  
 Palestine Liberation Organization  
 Pan Africanist Congress of Azania  
 South West Africa People's Organization

I. (b) DECLARATIONS MADE UPON RATIFICATION OF THE CONVENTION

ICELAND

[Original: English]

Upon depositing the instrument of ratification of the United Nations Convention on the Law of the Sea, the Permanent Representative of Iceland, on behalf of the Government of Iceland, declares that under article 298 of the Convention the right is reserved that any interpretation of article 83 shall be submitted to conciliation under Annex V, Section 2, of the Convention.

TUNISIA

[Original: Arabic]

Declaration 1

The Republic of Tunisia, on the basis of resolution 4262 of the Council of the League of Arab States, dated 31 March 1983, declares that its accession to the United Nations Convention on the Law of the Sea does not imply recognition of or dealings with any State which the Republic of Tunisia does not recognize or have dealings with.

Declaration 2

The Republic of Tunisia, in accordance with the provisions of article 311, and, in particular, paragraph 6 thereof, declares its adherence to the basic principle relating to the common heritage of mankind and that it will not be a party to any agreement in derogation thereof. The Republic of Tunisia calls upon all States to avoid any unilateral measure or legislation of this kind that would lead to disregard of the provisions of the Convention or to the exploitation of the resources of the sea-bed and ocean floor and the subsoil thereof outside of the legal régime of the seas and oceans provided for in this Convention and in the other legal instruments pertaining thereto, in particular resolution I and resolution II.

### Declaration 3

The Republic of Tunisia, in accordance with the provisions of article 298 of the United Nations Convention on the Law of the Sea, declares that it does not accept the procedures provided for in part XV, section 2, of the said Convention with respect to the following categories of disputes:

- (a) (i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;
- (ii) after the conciliation commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree;
- (iii) this subparagraph does not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties;
- (b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 297, paragraph 2 or 3;
- (c) disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention.

### Declaration 4

The Republic of Tunisia, in accordance with the provisions of article 310 of the United Nations Convention on the Law of the Sea, declares that its legislation currently in force does not conflict with the provisions of this Convention. However, laws and regulations will be adopted as soon as possible in order to ensure closer harmony between the provisions of the Convention and the requirements for completing Tunisian legislation in the maritime sphere.

I. (c) DECLARATION

CHINA

The Secretary-General received from the Government of China, on 12 June 1985, the following declaration:

[Original: English]

With reference to depositary notification C.N.7.1983.TREATIES-1 (Annex B) [of 23 February 1983] and C.N.104.1984.TREATIES-3 [of 22 May 1984] which involve the sovereignty and interests of the People's Republic of China over its territory of the Nansha Islands, [China] has the honour to reiterate as follows:

The so-called Kalayaan Islands are part of the Nansha Islands, which have always been Chinese territory. The Chinese Government has stated on many occasions that China has indisputable sovereignty over the Nansha Islands and the adjacent waters and resources.

I. (d) OBJECTIONS TO DECLARATIONS

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

The Secretary-General received from the Government of the Byelorussian Soviet Socialist Republic, on 24 June 1985, the following objection concerning the understanding recorded by the Philippines:

[Original: Russian]

The Byelorussian Soviet Socialist Republic considers that the statement which was made by the Government of the Philippines upon signing the United Nations Convention on the Law of the Sea and confirmed subsequently upon ratification of that Convention in essence contains reservations and exceptions to the said Convention, contrary to the provisions of article 309 thereof. The statement by the Government of the Philippines is also inconsistent with article 310 of the Convention, under which any declarations or statements made by a State when signing, ratifying or acceding to the Convention are admissible only "provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State".

The Government of the Philippines in its statement repeatedly emphasizes its intention to continue to be governed in ocean affairs not by the Convention or by obligations thereunder, but by its national laws and previously concluded agreements, which are not in conformity with the provisions of the Convention. The Philippine side therefore declines to harmonize its national legislation with the provisions of the Convention and fails to perform one of its most fundamental obligations thereunder - to comply with the régime of archipelagic waters, which provides for the right of archipelagic passage of foreign ships and aircraft through or over such waters.

For the above reasons, the Byelorussian Soviet Socialist Republic cannot recognize the validity of the statement by the Government of the Philippines and regards it as having no legal force in the light of the provisions of the Convention.

The Byelorussian Soviet Socialist Republic believes that if the similar statements which were likewise made by certain other States when signing the Convention and which are inconsistent with the provisions thereof also occur at the stage of ratification or accession, the result could be to undermine the object and importance of the Convention and to prejudice that major instrument of international law.

In view of the foregoing, the Permanent Mission of the Byelorussian Soviet Socialist Republic to the United Nations believes that it would be appropriate for the Secretary-General of the United Nations, in accordance with article 319, paragraph 2 (a), of the Convention, to carry out a study of a general nature relating to the universal application of the provisions of the Convention and, inter alia, to the issue of harmonizing the national laws of States parties with the Convention. The findings of such a study should be incorporated in the report of the Secretary-General to the General Assembly at its fortieth session under the agenda item entitled "Law of the Sea".

CZECHOSLOVAKIA

The Secretary-General received from the Government of Czechoslovakia, on 29 May 1985, the following objection concerning the understanding recorded by the Philippines:

[Original: English]

The Permanent Representative of the Czechoslovak Socialist Republic to the United Nations presents his compliments to the Secretary-General of the United Nations and wishes to draw the Secretary-General's attention to the concern of the Czechoslovak Socialist Republic about the fact that certain States made upon signature of the United Nations Convention on the Law of the Sea declarations which are incompatible with the Convention and which, if reaffirmed upon ratification of the Convention by those States, would constitute a violation of the obligations to be assumed by them under the Convention. Such approach would lead to a breach of the universality of the obligations embodied in the Convention, to the disruption of the legal regime established thereunder and, in the long run, even to the undermining of the Convention as such.

A concrete example of such declaration as referred to above is the understanding made upon signature and reaffirmed upon ratification of the Convention by the Philippines which was communicated to Member States by notification C.N.104.1984 TREATIES-3 of the United Nations Secretariat dated 22 May 1984.

The Czechoslovak Socialist Republic considers that this understanding of the Philippines

- is inconsistent with Article 309 of the Convention on the Law of the Sea because it contains, in essence, reservations to the provisions of the Convention;

- contravenes Article 310 of the Convention which stipulates that declarations can be made by States upon signature or ratification of or accession to the Convention only provided that they "do not purport to exclude or to modify the legal effect of the provisions of this Convention";

- indicates that in spite of having ratified the Convention, the Philippines intends to follow its national laws and previous agreements rather than the obligations under the Convention, not only taking no account of whether those laws and agreements are in harmony with the Convention but even, as proved in paragraphs 6 and 7 of the Philippines understanding, deliberately contravening the obligations set forth therein.

Given the above-mentioned circumstances, the Czechoslovak Socialist Republic cannot recognize the above-mentioned understanding of the Philippines as having any legal effect.

In view of the significance of the matter, the Czechoslovak Socialist Republic considers it necessary that the problem of such declarations made upon signature or ratification of the Convention which endanger the universality of the Convention and the unified mode of its implementation be dealt with by the Secretary-General in his capacity as depositary of the Convention and that the Member States of the United Nations be informed thereof.

ISRAEL

The Secretary-General received from the Government of Israel, on 10 April 1985, the following objection concerning the declaration made by Qatar:

[Original: English]

The Government of the State of Israel objects to the declaration made by Qatar upon signature of the Convention of the Law of the Sea. Such a declaration, which is explicitly of a political character extraneous to the Law of the Sea, is incompatible with the purposes and objects of this Convention and cannot in any way affect whatever obligations are binding upon Qatar under general international law or under particular conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Qatar an attitude of complete reciprocity.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

The Secretary-General received from the Government of the Ukrainian Soviet Socialist Republic, on 8 July 1985, the following objection concerning the understanding recorded by the Philippines:

[Original: Russian]

The Ukrainian Soviet Socialist Republic believes that the statement which was made by the Government of the Republic of the Philippines when signing the United Nations Convention on the Law of the Sea and subsequently confirmed upon ratification thereof contains elements which are inconsistent with articles 309 and 310 of the Convention. In accordance with those articles, statements which a State may make upon signature, ratification or accession should not purport "to exclude or to modify the legal effect of the provisions of this Convention in their application to that State" (art. 310). Such exceptions or reservations are legitimate only when they are "expressly permitted by other articles of this Convention" (art. 309). Article 310 also emphasizes that statements may be made by a State "with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention."

However, the statement by the Government of the Republic of the Philippines not only provides no evidence of the intention to harmonize the laws of that State with the Convention, but on the contrary has the purpose, as implied particularly in paragraphs 2, 3 and 5 of the statement, of granting precedence over the Convention to domestic legislation and international agreements to which the Republic of the Philippines is a party. For example, this applies, inter alia, to the Mutual Defense Treaty between the Philippines and the United States of America of 30 August 1951.

Furthermore, paragraph 5 of the statement not only grants priority over the Convention to the pertinent laws of the Republic of the Philippines which are currently in force, but also reserves the right to amend such laws in future pursuant only to the Constitution of the Philippines, and consequently without harmonizing them with the provisions of the Convention.

Paragraph 7 of the statement draws an analogy between internal waters of the Republic of the Philippines and archipelagic waters and contains a reservation, which is inadmissible in the light of article 309 of the Convention, depriving foreign vessels of the right of transit passage for international navigation through the straits connecting the archipelagic waters with the economic zone or high sea. This reservation is evidence of the intention not to carry out the obligation under the Convention of parties thereto to comply with the régime of archipelagic waters and transit passage and to respect the rights of other States with regard to international navigation and overflight by aircraft. Failure to comply with this obligation would seriously undermine the effectiveness and significance of the United Nations Convention on the Law of the Sea.

It follows from the above that the statement by the Government of the Republic of the Philippines has the purpose of establishing unjustified exceptions for that State and in fact of modifying the legal effect of important provisions of the Convention as applied thereto. In view of this, the Ukrainian Soviet Socialist Republic cannot regard the above-mentioned statement as having legal force. Such statements can only be described as harmful to the unified international legal régime for seas and oceans which is being established under the United Nations Convention on the Law of the Sea.

In the opinion of the Ukrainian Soviet Socialist Republic, the harmonization of national laws with the Convention would be facilitated by an examination within the framework of the United Nations Secretariat of the uniform and universal application of the Convention and the preparation of an appropriate study by the Secretary-General.

#### UNION OF SOVIET SOCIALIST REPUBLICS

The Secretary-General received from the Government of the Union of Soviet Socialist Republics, on 25 February 1985, the following objection concerning the understanding recorded by the Philippines:



[Original: Russian]

The Union of Soviet Socialist Republics considers that the statement made by the Philippines upon signature, and then confirmed upon ratification, of the United Nations Convention on the Law of the Sea in essence contains reservations and exceptions to the Convention, which is prohibited under article 309 of the Convention. At the same time, the statement of the Philippines is incompatible with article 310 of the Convention, under which a State, when signing or ratifying the Convention, may make declarations or statements only "provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State".

The discrepancy between the Philippine statement and the Convention can be seen, inter alia, from the affirmation by the Philippines that "The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation". Moreover, the statement emphasizes more than once that, despite its ratification of the Convention, the Philippines will continue to be guided in matters relating to the sea, not by the Convention and the obligations under it, but by its domestic law and by agreements it has already concluded which are not in line with the Convention. Thus, the Philippines not only is evading the harmonization of its legislation with the Convention but also is refusing to fulfil one of its most fundamental obligations under the Convention - namely, to respect the régime of archipelagic waters, which provides that foreign ships enjoy the right of archipelagic passage through, and foreign aircraft the right of overflight over, such waters.

In view of the foregoing, the USSR cannot recognize as lawful the statement of the Philippines and considers it to be without legal effect in the light of the provisions of the Convention.

Furthermore, the Soviet Union is gravely concerned by the fact that, upon signing the Convention, a number of other States have also made statements of a similar type conflicting with the Convention. If such statements are also made later on, at the ratification stage or upon accession to the Convention, the purport and meaning of the Convention, which establishes a universal and uniform régime for the use of the oceans and seas and their resources, could be undermined and this important instrument of international law impaired.

Taking into account the statement of the Philippines and the statements made by a number of other countries upon signing the Convention, together with the statements that might possibly be made subsequently upon ratification of and accession to the Convention, the Permanent Mission of the USSR considers that it would be appropriate for the Secretary-General of the United Nations to conduct, in accordance with article 319, paragraph 2(a), a study of a general nature on the problem of ensuring universal application of the provisions of the Convention, including the question of the harmonization of the national legislation of States with the Convention. The results of such a study should be included in the report of the Secretary-General to the United Nations General Assembly at its fortieth session under the agenda item entitled "Law of the sea".

II. LEGAL INFORMATION RELEVANT TO THE UNITED NATIONS CONVENTION  
ON THE LAW OF THE SEA

(a) RECENT NATIONAL LEGISLATION RECEIVED FROM GOVERNMENTS

(1) Decree No. 85/185 of 6 February 1985 regulating the Passage  
of Foreign Ships through French Territorial Waters

Article 1. Foreign ships shall enjoy the right of passage through French territorial waters according to the rules of innocent passage as defined by this Decree.

Article 2. Passage means navigation through the territorial waters for the purpose of:

(a) traversing them without entering internal waters or calling at a roadstead or port facility outside internal waters;

(b) proceeding to or from internal waters or to and from a call at such roadstead or port facility.

Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article 3. - Passage is innocent so long as it is not prejudicial to the peace, good order or security of the State.

Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the State if in the territorial waters it engages in any activity not having a direct bearing on passage, including:

1. Any threat or use of force against the sovereignty, territorial integrity or political independence of the State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

2. Any exercise or practice with weapons of any kind;

3. Any act aimed at collecting information to the prejudice of the defence or security of the State;

4. Any act of propaganda aimed at affecting the defence or security of the State;

5. The launching, landing or taking on board of any aircraft;

6. The launching, landing or taking on board of any military device;

7. The loading or unloading of any commodity, currency or person contrary to the laws and regulations in force;

8. Any act of wilful and serious pollution;

9. Any fishing activities;

10. The carrying out of research or survey activities;

11. Any act aimed at interfering with any systems of communication or any other facilities or installations located in French territory or in French territorial waters.

Article 4. In the territorial waters, submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Article 5. The maritime prefect in mainland France and the representative of the Government in the overseas departments, overseas territories and the territorial community of Mayotte, may take the necessary steps in their territorial waters to prevent or interrupt any passage which is not innocent.

In the case of foreign ships proceeding to internal waters or a call at a port facility outside internal waters, the above-mentioned authorities may also take the necessary steps to prevent any breach of the conditions to which admission of those ships to internal waters or such a call is subject.

Article 6. The authorities referred to in article 5 above may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through French territorial waters to use such sea lanes and traffic separation schemes as they may designate or prescribe, particularly in the case of tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances or materials. The sea lanes and traffic separation schemes shall be indicated on sea charts to which due publicity shall be given.

These same authorities may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of the territorial waters the exercise of the right of innocent passage of foreign ships if such suspension is essential for the protection of the State's security, including weapons exercises. Such suspension shall take effect only after having been duly published.

Article 7. The provisions of this Decree are applicable to the overseas territories and to the territorial community of Mayotte.

Article 8. The Garde des Sceaux and Minister of Justice, the Minister for Foreign Affairs, the Minister of Defence, the Minister of the Interior and Decentralization, the Minister of Urbanization, Housing and Transport, the Secretary of State to the Minister of the Interior and Decentralization responsible for overseas departments and territories, and the Secretary of State to the Minister of Urbanization, Housing and Transport responsible for maritime affairs, shall be responsible, each in his own area, for the execution of this Decree, which shall be published in the Official Gazette of the French Republic.

II. (a) (2) Netherlands Territorial Sea (Demarcation) Act  
of 9th January 1985 \*

Section 1

1. The territorial sea of the Netherlands shall extend to a line, each point on which lies twelve international nautical miles, or twenty-two kilometres two hundred and twenty-four metres, seawards of the nearest point on the low-water line along the coast, with the proviso that, where a naturally formed elevation of the seabed which is covered at high tide but dry at low tide lies within this distance from the low-water line, the territorial sea shall be measured from the closest point on the low-water line of such an elevation.

2. The low-water line shall be defined as the line indicating the depth of 0 metres on the large-scale Dutch sea charts issued upon the instructions of the Minister of Defence.

Section 2

1. The demarcation line between the inland waters and the territorial sea of the Netherlands shall be formed by the low-water line along the coast together with the base lines referred to in subsections 2 and 4, insofar as the latter lie seawards thereof.

2. Base lines shall be drawn through the arcs of the great circles which represent the shortest routes between the following points:

- a. In the mouth of the Western Scheldt:  
Point A, the intersection of the land boundary between the Netherlands and Belgium with the low-water line, deemed for the purposes of the present Act to lie at 51°22'25.0" north latitude and 3°21'52.5" east longitude.  
Point B, the Molenhoofd light on the coast of Walcheren, at 51°31'38.1" north latitude and 3°26'07.9" east longitude.
- b. Between Den Helder and Texel:  
Point C, the Kijkduin lighthouse at Den Helder, at 52°57'22.5" north latitude and 4°43'39.8" east longitude; from there to  
Point D, on the island of Noorderhaaks, at 52°58'24.0" north latitude and 4°39'30.0" east longitude; from there to  
Point E, the Loodsmansduin (direction table) on the island of Texel, at 53°01'21.2" north latitude and 4°43'45.6" east longitude.

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\* This Act entered into force on 1 June 1985.

- c. Between Texel and Vlieland:  
Point F, the Eierland lighthouse on the island of Texel at 53°10'58.4" north latitude and 4°51'23.7" east longitude.  
Point G, the refuge on the island of Vlieland at 53°13'27.6" north latitude and 4°53'12.3" east longitude.
  - d. Between Vlieland and Terschelling:  
Point H, the Vuurduin lighthouse on the island of Vlieland, at 53°17'47.7" north latitude and 5°03'34.3" east longitude.  
Point J, the Brandaris lighthouse on the island of Terschelling, at 53°21'39.8" north latitude and 5°12'55.9" east longitude.
  - e. Between Terschelling and Ameland:  
Point K, the Noordkaap beacon on the island of Terschelling, at 53°26'40.6" north latitude and 5°32'47.1" east longitude.  
Point L, the Ameland lighthouse, at 53°26'59.9" north latitude and 5°37'37.2" east longitude.
  - f. Between Ameland and Schiermonnikoog:  
Point M, the cape at the east point of Ameland, at 53°27'50.0" north latitude and 5°55'49.4" east longitude.  
Point N, the Schiermonnikoog lighthouse, at 53°29'15.3" north latitude and 6°08'52.1" east longitude.
  - g. Between Schiermonnikoog and Rottumeroog:  
Point O, the cape at the southeast point of Schiermonnikoog, at 53°29'50.5" north latitude and 6°17'56.1" east longitude; from there to  
Point P, the Boschplaat beacon, at 53°31'48.9" north latitude and 6°27'42.4" east longitude; from there to Point Q, the Great Cape on Rottumeroog, at 53°32'39.1" north latitude and 6°34'39.0" east longitude.
3. The location of points A to Q referred to in subsection 2 is expressed in longitude and latitude using European coordinates (1st Adjustment, 1950).
4. In the mouth of the River Maas and in the harbour mouths at Scheveningen and IJmuiden, the base line shall be taken to be a straight line between the lights on the ends of the jetties.

### Section 3

- 1. The lateral demarcation of the territorial sea shall be determined by agreement with the States whose territorial sea borders on that of the Netherlands.
- 2. For the purposes of the application of Netherlands legislation, the border between inland waters and the territorial sea in the mouth of the Ems shall be deemed to be formed by a straight line between the Great Cape on Rottumeroog, at 53°32'39.1" north latitude and 6°34'39.0" east longitude, and the large lighthouse at Borkum, at 53°35'22.2" north latitude and 6°39'48.3" east longitude, insofar as the said line remains within Netherlands territory.

#### Section 4

In section 38, subsection 4, of the Nuisance Act (Bulletin of Acts, Orders and Decrees 1981, 410), the final full-stop shall be replaced by a semi-colon, after which the following words shall be inserted:

"c. establishments where activities are performed for which a licence is required pursuant to section 2 of the Continental Shelf Mining Act (Bulletin of AOD 1965, 428).".

#### Section 5

In section 1, subsection 1, of the Factories Act 1919 (Bulletin of AOD 624), the final full-stop shall be replaced by a semi-colon, after which the following words shall be inserted:

"performed by persons as referred to in section 26, subsection 1b of the Continental Shelf Mining Act (Bulletin of AOD 1965, 428).".

#### Section 6

In section 38, subsection 1, of the Industrial Safety Act 1934 (Bulletin of AOD 352), the final full-stop shall be replaced by a semi-colon, after which the following words shall be inserted:

"f. work performed by persons as referred to in section 26, subsection 1b, of the Continental Shelf Mining Act (Bulletin of AOD 1965, 428).".

#### Section 7

In section 2, subsection 6, of the Working Conditions Act (Bulletin of AOD 1980, 664), subdivision b shall be relettered c and the following words shall be inserted after subdivision a:

"b. performed by persons as referred to in section 26, subsection 1b, of the Continental Shelf Mining Act (Bulletin of AOD 1965, 428);".

#### Section 8

For one year after the entry into force of the present Act, the Earth Removal Act (Bulletin of AOD 1965, 509) shall not apply to the area by which the territorial sea is extended by virtue of the present Act.

#### Section 9

1. The present Act shall enter into force on the first day of the third month after the date of issue of the Bulletin of Acts, Orders and Decrees in which it is published.

2. It may be cited as the Netherlands Territorial Sea (Demarcation) Act.

We order and command that this Act shall be published in the Bulletin of Acts, Orders and Decrees (Staatsblad) and that all ministerial departments, authorities, bodies and officials whom it may concern shall diligently implement it.

II. (a) (3) Act No. 15/1984 of 12 November 1984 on the Territorial Sea and Exclusive Economic Zone of the Republic of Equatorial Guinea

PART I

The territorial sea

Article 1

The sovereignty of the Republic of Equatorial Guinea extends to the entire national territory consisting, in accordance with the boundaries inherited from the colonial era, of the mainland area of Río Muni and the islands of Bioko, Annobón, Corisco, Elobey Grande, Elobey Chico and adjacent islets, internal waters and the adjacent belt of sea described as the territorial sea.

This sovereignty is exercised, in accordance with international law, over the water column, the sea-bed and subsoil, the resources of this sea and the superjacent airspace.

Article 2

The breadth of the territorial sea shall be 12 nautical miles measured from the baselines.

Article 3

The baseline for measuring the breadth of the territorial sea is the low-water line along the coast.

Where there are river mouths, bays, ports, islands and other indentations, however, the baselines for measuring the territorial sea shall be the straight baselines set, in accordance with international law, by the Technical Commission established by this Act.

Article 4

Except where otherwise provided, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the Republic of Equatorial Guinea.

Article 5

With regard to coastal States the coastline of which is adjacent to or opposite the coastline of the Republic of Equatorial Guinea, the territorial sea shall not extend beyond a median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States, drawn in accordance with international law, is measured.

Article 6

Ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea of the Republic of Equatorial Guinea.

Article 7

Passage is innocent so long as it is not prejudicial to the peace, good order or security of Equatorial Guinea.

Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of Equatorial Guinea if in the territorial sea it engages in any of the following activities:

- (a) Any threat or use of force against the sovereignty, territorial integrity or political independence of Equatorial Guinea, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
- (b) Any exercise or practice with weapons of any kind;
- (c) Any act of propaganda or any act aimed at collecting information to the prejudice of the defence or security of Equatorial Guinea;
- (d) The launching, landing or taking on board of any aircraft or military device;
- (e) The loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of Equatorial Guinea;
- (f) Any act of serious international pollution contrary to international law;
- (g) The carrying out of any fishing activities, research activities or hydrographic surveys without the corresponding authorization or licence;
- (h) Any act aimed at interfering with any systems of communication or any other facilities or installations of Equatorial Guinea;
- (i) Any other activity not having a direct bearing on passage.

Article 8

In the territorial sea, submarines and any other foreign underwater vehicles are required to navigate on the surface and to show their flag.

Article 9

Notwithstanding the provisions of article 6 of this Act, foreign ships, by the mere fact of exercising the right of innocent passage through the territorial sea, shall have to comply with any laws and regulations relating to innocent passage enacted by Equatorial Guinea in respect of all or any of the following:

- (a) The safety of navigation and the regulation of maritime traffic;
- (b) The protection of navigational aids and other facilities or installations;



- (c) The protection of cables and pipelines;
- (d) The conservation of the living resources of the sea;
- (e) The prevention of infringement of fisheries laws and regulations;
- (f) The preservation of the environment and the prevention, reduction and control of pollution thereof;
- (g) Marine scientific research and hydrographic surveys;
- (h) The prevention of infringement of customs, fiscal, immigration and sanitary laws and regulations.

## PART II

### The exclusive economic zone

#### Article 10

The exclusive economic zone is an area beyond and adjacent to the territorial sea.

The exclusive economic zone of the Republic of Equatorial Guinea extends from the outer limit of the territorial sea of the Republic of Equatorial Guinea up to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

#### Article 11

1. Except where otherwise provided in international treaties concluded with States whose coastlines are opposite or adjacent to those of Equatorial Guinea, the outer limit of the exclusive economic zone of Equatorial Guinea shall not extend beyond the equidistant median line.

2. Equidistant line means that line every point of which is at an equal distance from the nearest points on the line of passage drawn from each State in accordance with international law.

#### Article 12

In the exclusive economic zone, the Republic of Equatorial Guinea has sovereign rights for the purpose of exploiting, exploring, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation of the zone.

#### Article 13

In the exclusive economic zone, the Republic of Equatorial Guinea has exclusive jurisdiction with regard to:

- (a) Marine scientific research;
- (b) The establishment and use of artificial islands, installations and structures;

(c) The protection and preservation of the environment;

(d) Any other matters which the Government of the Republic of Equatorial Guinea may establish, in accordance with international law.

#### Article 14

In the exclusive economic zone, fishing shall be reserved for nationals of Equatorial Guinea.

Foreign fishermen shall be able to fish in the exclusive economic zone only when a provision to this effect exists in international treaties concluded by the Republic of Equatorial Guinea with the corresponding States or when the competent authority of Equatorial Guinea grants a special licence outside the framework of an international agreement.

#### Additional provisions

1. There is hereby established a Technical Commission consisting of representatives of the Ministries of Foreign Affairs and Co-operation; Water, Woods and Reforestation; National Defence; Justice and Worship; Mines and Hydrocarbons; and Public Works, Housing and Urban Development, which shall be responsible for preparing, for submission to the Council of Ministers, charts of an adequate scale showing the baselines used to measure the breadth of the territorial sea, and the limits derived therefrom, in accordance with the provisions of this Act.

2. Such charts shall be accompanied by lists of geographical co-ordinates of points, each of which shall specify the geodetic datum. These charts shall form part of this Act.

3. The above-mentioned Ministries shall designate their respective representatives to the Technical Commission within one month from the date of publication of this Act in the official information media.

4. Any matter not covered by this Act shall be covered by the provisions of the United Nations Convention on the Law of the Sea of 30 April 1982.

#### Final provisions

1. All legislation conflicting with this Act, in particular Decree-Law No. 17/1970 of 24 September 1970 and Decree-Law No. 28/1976 of 17 October 1976, is hereby revoked.

2. This Act shall enter into force on the date of its publication in the official information media.

II. (a) (4) Second Ordinance for the Implementation of the  
Law on the State Frontier of the German Democratic Republic  
(Frontier Ordinance) of 20 December 1984  
(Corrigendum)

The Permanent Mission of the German Democratic Republic to the United Nations has communicated to the Secretariat of the Law of the Sea Office a letter dated 20 May 1985, which reads as follows:

The publication of the frontier ordinance of the German Democratic Republic of 20 December 1984 in the United Nations Law of the Sea Bulletin No. 4 of February 1985, pages 41 to 42, contains some minor incorrectness due to our letter of transmittance. Therefore, I kindly ask you to correct the text of the above publication as follows:

1. The term "State frontier between the German Democratic Republic and the Federal Republic of Germany" in Article 1, paragraph (2) has to be referred to the co-ordinates 1 to 5.
2. The term "State frontier between the German Democratic Republic and the Polish People's Republic" in Article 1, paragraph (2) must unambiguously refer both to co-ordinate 14 and co-ordinate 13.
3. In sentence 2 of Article 2 the word "immediate" has either to be underlined or written in italics.

I would be grateful to you if it could be done in a corrigendum or any other appropriate form.

II. (b) TREATIES

South Pacific Nuclear Free Zone Treaty,  
6 August 1985  
(Draft)

PREAMBLE

The Parties to this Treaty,

United in their commitment to a world at peace;

Gravely concerned that the continuing nuclear arms race presents the risk of nuclear war which would have devastating consequences for all people;

Convinced that all countries have an obligation to make every effort to achieve the goal of eliminating nuclear weapons, the terror which they hold for humankind and the threat which they pose to life on earth;

Believing that regional arms control measures can contribute to global efforts to reverse the nuclear arms race and promote the national security of each country in the region and the common security of all;

Determined to ensure, so far as lies within their power, that the bounty and beauty of the land and sea in their region shall remain the heritage of their peoples and their descendants in perpetuity to be enjoyed by all in peace;

Reaffirming the importance of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in preventing the proliferation of nuclear weapons and in contributing to world security;

Noting in particular, that Article VII of the NPT recognises the right of any group of States to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories;

Noting that the prohibitions of emplantation and emplacement of nuclear weapons on the seabed and the ocean floor and in the subsoil thereof contained in the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof apply in the South Pacific;

Noting also that the prohibition of testing of nuclear weapons in the atmosphere or under water, including territorial waters or high seas, contained in the Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water applies in the South Pacific;

Determined to keep the region free of environmental pollution by radioactive wastes and other radioactive matter;

Guided by the decision of the Fifteenth South Pacific Forum at Tuvalu that a nuclear free zone should be established in the region at the earliest possible opportunity in accordance with the principles set out in the communique of that meeting;

Have Agreed as follows:

Article 1

Usage of terms

For the purposes of this Treaty and its Protocols:

- (a) "South Pacific Nuclear Free Zone" means the areas described in Annex 1 as illustrated by the map attached to that Annex;
- (b) "territory" means internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath, the land territory and the airspace above them;
- (c) "nuclear explosive device" means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such a weapon or device in unassembled and partly assembled forms, but does not include the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it;
- (d) "stationing" means emplantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment.

Article 2

Application of the Treaty

- 1. Except where otherwise specified, this Treaty and its Protocols shall apply to territory within the South Pacific Nuclear Free Zone.
- 2. Nothing in this Treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to freedom of the seas.

Article 3

Renunciation of nuclear explosive devices

Each Party undertakes:

- (a) not to manufacture or otherwise acquire, possess or have control over any nuclear explosive device by any means anywhere inside or outside the South Pacific Nuclear Free Zone;

- (b) not to seek or receive any assistance in the manufacture or acquisition of any nuclear explosive device;
- (c) not to take any action to assist or encourage the manufacture or acquisition of any nuclear explosive device by any State.

#### Article 4

##### Peaceful nuclear activities

Each Party undertakes:

- (a) not to provide source or special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material for peaceful purposes to:
  - (i) any non-nuclear-weapon State unless subject to the safeguards required by Article III.1 of the NPT, or
  - (ii) any nuclear-weapon State unless subject to applicable safeguard agreements with the International Atomic Energy Agency (IAEA).

Any such provision shall be in accordance with strict non-proliferation measures to provide assurance of exclusively peaceful non-explosive use;

- (b) to support the continued effectiveness of the international non-proliferation system based on the NPT and the IAEA safeguards system.

#### Article 5

##### Prevention of stationing of nuclear explosive devices

1. Each Party undertakes to prevent in its territory the stationing of any nuclear explosive device.

2. Each Party in the exercise of its sovereign rights remains free to decide for itself whether to allow visits by foreign ships and aircraft to its ports and airfields, transit of its airspace by foreign aircraft, and navigation by foreign ships in its territorial sea or archipelagic waters in a manner not covered by the rights of innocent passage, archipelagic sea lane passage or transit passage of straits.

Article 6

Prevention of testing of nuclear explosive devices

Each Party undertakes:

- (a) to prevent in its territory the testing of any nuclear explosive device;
- (b) not to take any action to assist or encourage the testing of any nuclear explosive device by any State.

Article 7

Prevention of dumping

1. Each Party undertakes:

- (a) not to dump radioactive wastes and other radioactive matter at sea anywhere within the South Pacific Nuclear Free Zone;
- (b) to prevent the dumping of radioactive wastes and other radioactive matter by anyone in its territorial sea;
- (c) not to take any action to assist or encourage the dumping by anyone of radioactive wastes and other radioactive matter at sea anywhere within the South Pacific Nuclear Free Zone;
- (d) to support the conclusion as soon as possible of the proposed Convention relating to the protection of the natural resources and environment of the South Pacific region and its Protocol for the prevention of pollution of the South Pacific region by dumping, with the aim of precluding dumping at sea of radioactive wastes and other radioactive matter by anyone anywhere in the region.

2. Paragraphs 1(a) and 1(b) of this Article shall not apply to areas of the South Pacific Nuclear Free Zone in respect of which such a Convention and Protocol have entered into force.

## Article 8

### Control system

1. The Parties hereby establish a control system for the purpose of verifying compliance with their obligations under this Treaty.
2. The control system shall comprise:
  - (a) reports and exchange of information as provided for in Article 9;
  - (b) consultations as provided for in Article 10 and Annex 4 (1);
  - (c) the application to peaceful nuclear activities of safeguards by the IAEA as provided for in Annex 2;
  - (d) a complaints procedure as provided for in Annex 4.

## Article 9

### Reports and exchanges of information

1. Each Party shall report to the Director of the South Pacific Bureau for Economic Co-operation (the Director) as soon as possible any significant event within its jurisdiction affecting the implementation of this Treaty. The Director shall circulate such reports promptly to all Parties.
2. The Parties shall endeavour to keep each other informed on matters arising under or in relation to this Treaty. They may exchange information by communicating it to the Director, who shall circulate it to all Parties.
3. The Director shall report annually to the South Pacific Forum on the status of this Treaty and matters arising under or in relation to it, incorporating reports and communications made under paragraphs 1 and 2 of this Article and matters arising under Articles 8(2)(d) and 10 and Annex 2(4).

## Article 10

### Consultations and review

Without prejudice to the conduct of consultations among Parties by other means, the Director, at the request of any Party, shall convene a meeting of the Consultative Committee established by Annex 3 for consultation and co-operation on any matter arising in relation to this Treaty or for reviewing its operation.



Article 11

Amendment

The Consultative Committee shall consider proposals for amendment of the provisions of this Treaty proposed by any Party and circulated by the Director to all Parties not less than three months prior to the convening of the Consultative Committee for this purpose. Any proposal agreed upon by consensus by the Consultative Committee shall be communicated to the Director who shall circulate it for acceptance to all Parties. An amendment shall enter into force thirty days after receipt by the depositary of acceptance from all Parties.

Article 12

Signature and ratification

1. This Treaty shall be open for signature by any Member of the South Pacific Forum.

2. This Treaty shall be subject to ratification. Instruments of ratification shall be deposited with the Director who is hereby designated depositary of this Treaty and its Protocols.

3. If a Member of the South Pacific Forum whose territory is outside the South Pacific Nuclear Free Zone becomes a Party to this Treaty, Annex 1 shall be deemed to be amended so far as is required to enclose at least the territory of that Party within the boundaries of the South Pacific Nuclear Free Zone. The delineation of any area added pursuant to this paragraph shall be approved by the South Pacific Forum.

Article 13

Withdrawal

1. This Treaty is of a permanent nature and shall remain in force indefinitely, provided that in the event of a violation by any Party of a provision of this Treaty essential to the achievement of the objectives of the Treaty or of the spirit of the Treaty, every other Party shall have the right to withdraw from the Treaty.

2. Withdrawal shall be effected by giving notice twelve months in advance to the Director who shall circulate such notice to all other Parties.

Article 14

Reservations

This Treaty shall not be subject to reservations.

Article 15

Entry into force

1. This Treaty shall enter into force on the date of deposit of the eighth instrument of ratification.
2. For a signatory which ratifies this Treaty after the date of deposit of the eighth instrument of ratification, the Treaty shall enter into force on the date of deposit of its instrument of ratification.

Article 16

Depositary functions

The depositary shall register this Treaty and its Protocols pursuant to Article 102 of the Charter of the United Nations and shall transmit certified copies of the Treaty and its Protocols to all Members of the South Pacific Forum and all States eligible to become Party to the Protocols to the Treaty and shall notify them of signatures and ratifications of the Treaty and its Protocols.

ANNEX 1

SOUTH PACIFIC NUCLEAR FREE ZONE

A. The area bounded by a line:

- (1) commencing at the point of intersection of the Equator by the maritime boundary between Indonesia and Papua New Guinea;
- (2) running thence northerly along that maritime boundary to its intersection by the outer limit of the exclusive economic zone of Papua New Guinea;
- (3) thence generally north-easterly, easterly and south-easterly along that outer limit to its intersection by the Equator;
- (4) thence east along the Equator to its intersection by the meridian of Longitude 163 degrees East;
- (5) thence north along that meridian to its intersection by the parallel of Latitude 3 degrees North;
- (6) thence east along that parallel to its intersection by the meridian of Longitude 171 degrees East;
- (7) thence north along that meridian to its intersection by the parallel of Latitude 4 degrees North;
- (8) thence east along that parallel to its intersection by the meridian of Longitude 180 degrees East;
- (9) thence south along that meridian to its intersection by the Equator;
- (10) thence east along the Equator to its intersection by the meridian of Longitude 165 degrees West;
- (11) thence north along that meridian to its intersection by the parallel of Latitude 5 degrees 30 minutes North;
- (12) thence east along that parallel to its intersection by the meridian of Longitude 154 degrees West;
- (13) thence south along that meridian to its intersection by the Equator;
- (14) thence east along the Equator to its intersection by the meridian of Longitude 115 degrees West;
- (15) thence south along that meridian to its intersection by the parallel of Latitude 60 degrees South;

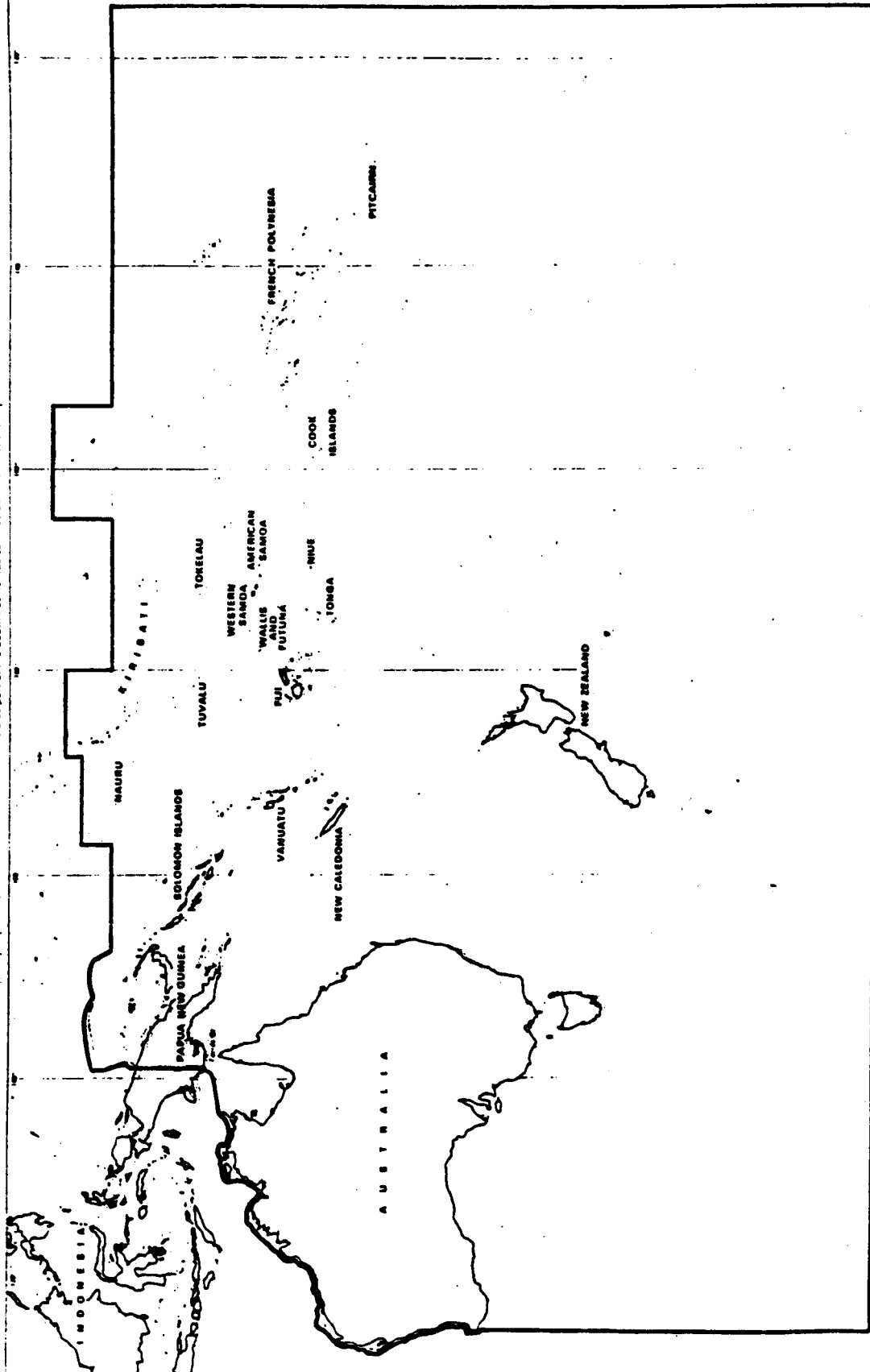
- (16) thence west along that parallel to its intersection by the meridian of Longitude 115 degrees East;
- (17) thence north along that meridian to its southernmost intersection by the outer limit of the territorial sea of Australia;
- (18) thence generally northerly and easterly along the outer limit of the territorial sea of Australia to its intersection by the meridian of Longitude 136 degrees 45 minutes East;
- (19) thence north-easterly along the geodesic to the point of Latitude 10 degrees 50 minutes South, Longitude 139 degrees 12 minutes East;
- (20) thence north-easterly along the maritime boundary between Indonesia and Papua New Guinea to where it joins the land border between those two countries;
- (21) thence generally northerly along that land border to where it joins the maritime boundary between Indonesia and Papua New Guinea, on the northern coastline of Papua New Guinea; and
- (22) thence generally northerly along that boundary to the point of commencement.

B. The areas within the outer limits of the territorial seas of all Australian islands lying westward of the area described in paragraph A and north of Latitude 60 degrees south, provided that any such areas shall cease to be part of the South Pacific Nuclear Free Zone upon receipt by the depositary of written notice from the Government of Australia stating that the areas have become subject to another treaty having an object and purpose substantially the same as that of this Treaty.

ZONE OF APPLICATION OF THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

ATTACHMENT TO ANNEX I TO THE SOUTH PACIFIC NUCLEAR FREE ZONE TREATY -  
ILLUSTRATIVE MAP

(Austral plain islands in the Indian Ocean, which are also part of the South Pacific Nuclear Free Zone, are not shown)



ANTARCTIC TREATY AREA

ANNEX 2

IAEA SAFEGUARDS

1. The safeguards referred to in Article 8 shall in respect of each Party be applied by the IAEA as set forth in an agreement negotiated and concluded with the IAEA on all source or special fissionable material in all peaceful nuclear activities within the territory of the Party, under its jurisdiction or carried out under its control anywhere.

2. The agreement referred to in paragraph 1 shall be, or shall be equivalent in its scope and effect to, an agreement required in connection with the NPT on the basis of the material reproduced in document INFCIRC/153 (Corrected) of the IAEA. Each Party shall take all appropriate steps to ensure that such an agreement is in force for if not later than eighteen months after the date of entry into force for that Party of this Treaty.

3. For the purposes of this Treaty, the safeguards referred to in paragraph 1 shall have as their purpose the verification of the non-diversion of nuclear material from peaceful nuclear activities to nuclear explosive devices.

4. Each Party agrees upon the request of any other Party to transmit to that Party and to the Director for the information of all Parties a copy of the overall conclusions of the most recent report by the IAEA on its inspection activities in the territory of the Party concerned, and to advise the Director promptly of any subsequent findings of the Board of Governors of the IAEA in relation to those conclusions for the information of all Parties.

ANNEX 3

CONSULTATIVE COMMITTEE

1. There is hereby established a Consultative Committee which shall be convened by the Director from time to time pursuant to Articles 10 and 11 and Annex 4 (2). The Consultative Committee shall be constituted of representatives of the Parties, each Party being entitled to appoint one representative who may be accompanied by advisers. Unless otherwise agreed, the Consultative Committee shall be chaired at any given meeting by the representative of the Party which last hosted the meeting of Heads of Government of Members of the South Pacific Forum. A quorum shall be constituted by representatives of half the Parties, subject to the provisions of Article 11, decisions of the Consultative Committee shall be taken by consensus or, failing consensus, by a two-thirds majority of those present and voting. The Consultative Committee shall adopt such other rules of procedure as it sees fit.

2. The costs of the Consultative Committee, including the costs of special inspections pursuant to Annex 4, shall be borne by the South Pacific Bureau for Economic Co-operation. It may seek special funding should this be required.

#### ANNEX 4

##### COMPLAINTS PROCEDURE

1. A Party which considers that there are grounds for a complaint that another Party is in breach of its obligations under this Treaty shall, before bringing such a complaint to the Director, bring the subject matter of the complaint to the attention of the Party complained of and shall allow the latter reasonable opportunity to provide it with an explanation and to resolve the matter.

2. If the matter is not so resolved, the complainant Party may bring the complaint to the Director with a request that the Consultative Committee be convened to consider it. Complaints shall be supported by an account of evidence of breach of obligations known to the complainant Party. Upon receipt of a complaint the Director shall convene the Consultative Committee as quickly as possible to consider it.

3. The Consultative Committee, taking account of efforts made under paragraph 1, shall afford the Party complained of a reasonable opportunity to provide it with an explanation of the matter.

4. If, after considering any explanation given to it by the representatives of the Party complained of, the Consultative Committee decides that there is sufficient substance in the complaint to warrant a special inspection in the territory of that Party or elsewhere, the Consultative Committee shall direct that such special inspection be made as quickly as possible by a special inspection team of three suitably qualified special inspectors appointed by the Consultative Committee in consultation with the complained of and complainant Parties, provided that no national of either Party shall serve on the special inspection team. If so requested by the Party complained of, the special inspection team shall be accompanied by representatives of that Party. Neither the right of consultation on the appointment of special inspectors, nor the right to accompany special inspectors, shall delay the work of the special inspection team.

5. In making a special inspection, special inspectors shall be subject to the direction only of the Consultative Committee and shall comply with such directives concerning tasks, objectives, confidentiality and procedures as may be decided upon by it. Directives shall take account of the legitimate interests of the Party complained of in complying with its other international obligations and commitments and shall not duplicate safeguard procedures to be undertaken by the IAEA pursuant to agreements referred to in Annex 2 (1). The special inspectors shall discharge their duties with due respect for the laws of the Party complained of.

6. Each Party shall give to special inspectors full and free access to all information and places within its territory which may be relevant to enable the special inspectors to implement the directives given to them by the Consultative Committee.

7. The Party complained of shall take all appropriate steps to facilitate the special inspection, and shall grant to special inspectors privileges and immunities necessary for the performance of their functions, including inviolability for all papers and documents and immunity from arrest, detention and legal process for acts done and words spoken and written, for the purpose of the special inspection.

8. The special inspectors shall report in writing as quickly as possible to the Consultative Committee, outlining their activities, setting out relevant facts and information as ascertained by them, with supporting evidence and documentation as appropriate, and stating their conclusions. The Consultative Committee shall report fully to all Members of the South Pacific Forum, giving its decision as to whether the Party complained of is in breach of its obligations under this Treaty.

9. If the Consultative Committee has decided that the Party complained of is in breach of its obligations under this Treaty, or that the above provisions have not been complied with, or at any time at the request of either the complainant or complained of Party, the Parties shall meet promptly at a meeting of the South Pacific Forum.



PROTOCOL 1

The Parties to this Protocol

Noting the South Pacific Nuclear Free Zone Treaty (the Treaty)

Have Agreed as follows:

Article 1

Each Party undertakes to apply, in respect of the territories for which it is internationally responsible situated within the South Pacific Nuclear Free Zone, the prohibitions contained in Articles 3, 5 and 6, insofar as they relate to the manufacture, stationing and testing of any nuclear explosive device within those territories, and the safeguards specified in Article 8 (2) (c) and Annex 2 of the Treaty.

Article 2

Each Party may, by written notification to the depositary, indicate its acceptance from the date of such notification of any alteration to its obligations under this Protocol brought about by the entry into force of an amendment to the Treaty pursuant to Article 11 of the Treaty.

Article 3

This Protocol shall be open for signature by France, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Article 4

This Protocol shall be subject to ratification.

Article 5

This Protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

PROTOCOL 2

The Parties to this Protocol

Noting the South Pacific Nuclear Free Zone Treaty (the Treaty)

Have Agreed as follows:

Article 1

Each Party undertakes not to contribute to any act which constitutes a violation of the Treaty or its Protocols by Parties to them.

Article 2

Each Party further undertakes not to use or threaten to use any nuclear explosive device against:

- (a) Parties to the Treaty; or
- (b) any territory within the South Pacific Nuclear Free Zone for which a State that has become a Party to Protocol 1 is internationally responsible.

Article 3

Each Party may, by written notification to the depositary, indicate its acceptance from the date of such notification of any alteration to its obligations under this Protocol brought about by the entry into force of an amendment to the Treaty pursuant to Article 11 of the Treaty or by the extension of the South Pacific Nuclear Free Zone pursuant to Article 12 (3) of the Treaty.

Article 4

This Protocol shall be open for signature by France, the People's Republic of China, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Article 5

This Protocol shall be subject to ratification.

Article 6

This Protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

PROTOCOL 3

The Parties to this Protocol

Noting the South Pacific Nuclear Free Zone Treaty (the Treaty)

Have Agreed as follows:

Article 1

Each Party undertakes not to test any nuclear explosive device anywhere within the South Pacific Nuclear Free Zone.

Article 2

Each Party may, by written notification to the depositary, indicate its acceptance from the date of such notification of any alteration to its obligation under this Protocol brought about by the entry into force of an amendment to the Treaty pursuant to Article 11 of the Treaty or by the extension of the South Pacific Nuclear Free Zone pursuant to Article 12 (3) of the Treaty.

Article 3

This Protocol shall be open for signature by France, the People's Republic of China, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Article 4

This Protocol shall be subject to ratification.

Article 5

This Protocol shall enter into force for each State on the date of its deposit with the depositary of its instrument of ratification.

II. (c) DECLARATION BY STATES

COMMUNICATION TRANSMITTED TO THE PERMANENT MISSIONS  
OF THE STATES MEMBERS OF THE UNITED NATIONS  
AT THE REQUEST OF THE PERMANENT REPRESENTATIVE  
OF THE UNITED STATES TO THE UNITED NATIONS  
10 July 1985 (Reference NV/85/11)

The Permanent Representative of the United States to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honor to refer to the notice to mariners issued by the Government of the Libyan Arab Jamahiriya regarding navigational regulations effective June 1, 1985 in waters off the coast of Libya.

The Government of the United States understands regulations 1 through 5 of the said notice to mariners to apply only to ships intending to call at Libyan ports. The Government of the United States notes, however, that regulations 6 and 7 do not appear to be limited in their application to vessels intending to call at Libyan ports, but rather that they address themselves to vessels exercising the internationally recognized right of innocent passage. With regard to the said regulations 6 and 7, the Government of the United States makes the following observations: first, the right of innocent passage is one that under long-standing principles of international law may be exercised by all vessels, whether or not engaged in commercial service; second, international law does not permit a coastal state to limit innocent passage of vessels through its territorial sea to certain periods of time, such as daylight hours only; third, under long-standing principles of international law, the coastal State may not claim to condition the right of innocent passage upon prior notification to it.

The United States further notes that regulation 10 of the said notice to mariners requires that vessels strictly comply with directives pertaining to the so-called prohibited zones specified in that regulation. In this regard, the United States observes that zones A, B and D are all areas within the territorial sea of Libya and therefore subject to innocent passage by vessels of all States. International law does not permit a coastal State to subject an area of its territorial sea to a permanent prohibition of navigation. Zone C, as specified in regulation 10, lies within the Gulf of Sidra, within an area claimed by the Libyan Arab Jamahiriya as internal waters. The United States reiterates its rejection of the Libyan claim that the Gulf of Sidra constitutes internal waters to the latitude of 32° 30' North, and, accordingly, the United States rejects as an unlawful interference with the freedoms of navigation and overflight and related high seas freedoms, the Libyan claim to prohibit navigation in Zone C or elsewhere in the Gulf of Sidra.

The Permanent Representative of the United States has the honor to request that this communication be transmitted to the Permanent Missions of States members of the United Nations.

## II. (d) JUDICIAL DECISIONS

- (1) Judgment of the International Court of Justice on the Continental Shelf (Libyan Arab Jamahiriya/Malta)  
(Application by Italy for permission to intervene)  
21 March 1984

Today, 21 March 1984, the International Court of Justice delivered its Judgment in respect of Italy's application for permission to intervene under Article 62 of the Statute in the case concerning the Continental Shelf between Libya and Malta.

By 11 votes to 5, the Court found that Italy's request for permission to intervene could not be granted ... .

The Court was composed as follows: President Elias; Vice-President Sette-Camara; Judges Lachs, Morozov, Nagendra Singh, Ruda, Oda, Ago, El-Khani, Schwebel, Sir Robert Jennings, de Lacharrière, Mbaye, Bedjaoui; Judges ad hoc Jiménez de Aréchaga, Castañeda.

Judges Morozov, Nagendra Singh, Mbaye and Jiménez de Aréchaga appended separate opinions to the Judgment.

Vice-President Sette-Camara, Judges Oda, Ago, Schwebel and Sir Robert Jennings appended dissenting opinions to the Judgment.

### Analysis of the Judgment 1/

#### Proceedings before the Court (paragraphs 1 to 9)

In its Judgment, the Court recalled that on 26 July 1982, the Governments of Libya and Malta jointly notified to it a Special Agreement concluded between them on 23 May 1976 for the submission to the Court of a dispute concerning the delimitation of the continental shelf between those two countries.

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1/ This analysis of the Judgment was prepared by the Registry of the Court for the use of the press, Communiqué No. 84/8. It cannot be quoted against the actual text of the Judgment, of which it does not constitute an interpretation.

In accordance with the Statute and the Rules of Court, the proceedings took their course having regard to the terms of the Agreement between the two countries. The Memorials of both Parties were filed on 26 April 1983 and the Counter-Memorials on 26 October 1983.

Since the Court did not include upon the bench a judge of Libyan or Maltese nationality, each of the Parties exercised the right conferred by Article 31 of the Statute to choose a judge ad hoc to sit in the case. The Libyan Arab Jamahiriya designated Judge Jiménez de Aréchaga and Malta, Judge Castañeda.

On 24 October 1983, the Registry received from the Italian Government an Application for permission to intervene under Article 62 of the Statute. The Governments of the Libyan Arab Jamahiriya and Malta submitted written observations on this Application on 5 December 1983, within the time-limit fixed for that purpose. Objection having been raised to Italy's application to intervene, the Court, in accordance with Article 84 of its Rules, held sittings between 25 and 30 January 1984 to hear the Parties and the State seeking to intervene on the question whether the Italian Application for permission to intervene should or should not be granted.

Provisions of the Statute and Rules of Court concerning intervention  
(paragraph 10)

Article 62 of the Statute, invoked by Italy, provides 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."

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."

Formal admissibility of the Italian Application for permission to intervene  
(paragraphs 10-12)

Noting that the Italian Application complied formally with the three conditions set out in Article 81, paragraph 2, of the Rules and that it was not filed out of time, the Court concluded that it had no formal defect which would render it inadmissible.

Statement of the contentions of Italy and of the two Parties  
(paragraphs 13-27)

The Court summarized the contentions advanced by Italy in its Application and oral argument (paragraphs 13-17). It noted in particular that the legal interest invoked by Italy was constituted by the protection of the sovereign rights which it claimed over certain areas of continental shelf *en cause* in the case between the Libyan Arab Jamahiriya and Malta. It also noted that the object of the intervention was to permit Italy to defend those rights, so that the Court should be as fully informed of them as possible, and so that it might be in a position to take due account of them in its decision and provide the Parties with every needful indication to ensure that they do not, when they conclude their delimitation agreement pursuant to the Court's Judgment, include any areas over which Italy has rights. Finally, the Court noted that, according to Italy, Article 62 of the Statute afforded a sufficient basis of jurisdiction in this case, which did not need to be complemented by a special jurisdictional link between itself and the Parties to the case.

The Court then summarized the arguments put forward by the Libyan Arab Jamahiriya (paragraphs 18-24) and by Malta (paragraphs 25-27), both in their written observations on the Italian Application and in their Counsel's oral argument.

Interest of a legal nature and object of the intervention  
(paragraphs 28-38)

In order to determine whether the Italian request is justified, the Court had to consider the interest of a legal nature which, it was claimed, might be affected, and to do this it had to assess the object of the Application and the way in which that object corresponds to what is contemplated by the Statute, namely to ensure the protection of an "interest of a legal nature", by preventing it from being "affected" by the decision.

The Court recalled that in the case of an intervention, it is normally by reference to the definition of its interest of a legal nature and the object indicated by the State seeking to intervene that the Court should judge whether or not the intervention is admissible. It had nonetheless to ascertain the true object of the claim. In this case, taking into account all the circumstances as well as the nature of the subject-matter of the proceedings instituted by Libya and Malta, it appeared to the Court that, while formally Italy was requesting the Court to safeguard its rights, the unavoidable practical effect of its request was that the Court would be called upon to recognize those rights, and hence, for the purpose of being able to do so, to make a finding, at least in part, on disputes between Italy and one or both of the Parties. Italy was in fact requesting the Court to pronounce only on what genuinely appertains to Malta and Libya. But for the Court to be able to carry out such an operation, it would first have to determine the areas over which Italy has rights and those over which it has none. It would therefore have to make findings as to the existence of Italian rights over certain areas, and as to the absence of such Italian rights in other areas. The Court would thus be called upon, in order to give effect to the intervention, to determine a dispute, or some part of a dispute, between Italy and one or both of the principal Parties, which would involve it in adjudicating on the legal relations between Italy and Libya without the consent of Libya, or on those between Italy and Malta without the consent of Malta. Its decision could not be interpreted merely as not "affecting" those rights, but would be one either recognizing or rejecting them, in whole or in part.

The consequences of the Court's finding, that to permit the intervention would involve the introduction of a fresh dispute, could be defined by reference to either of two approaches to the interpretation of Article 62 of the Statute.

According to the first approach, since Italy was requesting the Court to decide on the rights which it had claimed, the Court would have to decide whether it was competent to give, by way of intervention procedure, the decision requested by Italy. As already noted, the Italian Government maintained that the operation of Article 62 of the Statute was itself sufficient to create the basis of jurisdiction of the Court in this case. It appeared to the Court that, if it were to admit the Italian contention, it would thereby be admitting that the procedure of intervention under Article 62 would constitute an exception to the fundamental principles underlying its jurisdiction: primarily the principle of consent, but also the principles of reciprocity and equality of States. The Court considered that an exception of this kind could not be admitted unless it were very clearly expressed, which was not the case. It therefore considered that appeal to Article 62 should, if it were to justify an intervention in a case such as that of the Italian Application, be backed by a basis of jurisdiction.



According to the second approach, in a case in which the State requesting the intervention asked the Court to give a judgment on the rights which it was claiming, this would not be a genuine intervention within the meaning of Article 62. That Article would not derogate from the consensualism which underlies the jurisdiction of the Court, since the only cases of intervention afforded by that Article would be those in which the intervener was only seeking the preservation of its rights, without attempting to have them recognized. There was nothing to suggest that Article 62 was intended as an alternative means of bringing an additional dispute as a case before the Court, or as a method of asserting the individual rights of a State not a party to the case. Such a dispute may not be brought before the Court by way of intervention.

The Court found that the intervention requested by Italy fell into a category which, on Italy's own showing, is one which cannot be accepted. That conclusion followed from either of the two approaches outlined above, and the Court accordingly did not have to decide between them.

Since the Court considered that it should not go beyond the considerations which were in its view necessary to its decision, the various other questions raised before the Court in the proceedings as to the conditions for, and operation of, intervention under Article 62 of the Statute did not have to be dealt with by the Judgment. In particular the Court, in order to arrive at its decision on the Application of Italy to intervene in the present case, did not have to rule on the question whether, in general, any intervention based on Article 62 must, as a condition for its admission, show the existence of a valid jurisdictional link.

Protection of Italy's interests  
(paragraphs 39-43)

Italy had also urged the impossibility, or at least the greatly increased difficulty, of the Court's performing the task entrusted to it by the Special Agreement in the absence of participation in the proceedings by Italy as intervener. Whilst recognizing that if the Court were fully enlightened as to the claims and contentions of Italy, it might be in a better position to give the Parties such indications as would enable them to delimit their areas of continental shelf without difficulty (even though sufficient information for the purpose of safeguarding Italy's rights had been supplied during the present proceedings), the Court noted that the question was not whether the participation of Italy might be useful or even necessary to the Court; it was whether, assuming Italy's non-participation, a legal interest of Italy would be en cause, or was likely to be affected by the decision.

The Court considered that it was possible to take into account the legal interest of Italy - as well as of other States of the Mediterranean region - while replying to the questions raised in the Special Agreement. The rights claimed by Italy would be safeguarded by Article 59 of the Statute, which provides that "The decision of the Court has no binding force except between the parties and in respect of that particular case". It was clear from this that the principles and rules of international law found by the Court to be applicable to the delimitation between Libya and Malta, and the indications given by the Court as to their application in practice, could be relied on by the parties against any other State. Furthermore, there could be no doubt that the Court would, in its future judgment in the case, take account, as a fact, of the existence of other States having claims in the region. The judgment would not merely be limited in its effects by Article 59 of the Statute; it would be expressed, upon its face, to be without prejudice to the rights and titles of third States.

Interpretation of Article 62  
(paragraphs 44-46)

Reverting to the question as to whether or not an intervener has to establish a jurisdictional link as between it and the principal Parties to the case, the Court recalled that it had already made a summary of the origin and evolution of Article 62 of the Statute of the Court in its Judgment of 14 April 1981 on the Application of Malta for permission to intervene in the Tunisia/Libya case. The Court had found it possible to reach a decision on the present Application without generally resolving the vexed question of the "valid link of jurisdiction" (see above), and no more needed to be said than that the Court was convinced of the wisdom of the conclusion reached by its predecessor in 1922, that it should not attempt to resolve in the Rules of Court the various questions which have been raised, but leave them to be decided as and when they occurred in practice and in the light of the circumstances of each particular case.

Operative clause  
(paragraph 47)

For these reasons, the Court found that the Application of the Italian Republic for permission to intervene under Article 62 of the Statute of the Court could not be granted.

In favour: President Elias, Judges Lachs, Morozov, Nagendra Singh, Ruda, El-Khani, de Lacharrière, Mbaye, Bedjaoui; Judges ad hoc Jiménez de Aréchaga and Castañeda.

Against: Vice-President Sette-Camara, Judges Oda, Ago, Schwebel and Sir Robert Jennings.

II. (d) (2) Award by the Arbitral Tribunal on the  
Maritime Delimitation (Guinea/Guinea-Bissau)  
14 February 1985

An award was made today, 14 February 1985, at the Peace Palace in The Hague, by the Arbitral Tribunal entrusted with delimiting the maritime boundary between Guinea and Guinea-Bissau. The Tribunal was composed of Judge Manfred Lachs, President, and Judges Kéba Mbaye and Mohammed Bedjaoui, Members.

It unanimously decided that the line delimiting the maritime territories of the two States shall follow, successively:

- (a) Pilots Passage, starting from the mouth of the Cajet;
- (b) the parallel of 10° 40' north as far as 12 miles west of the Guinean island of Alcatraz;
- (c) the bearing of 236° as far as the outer limit of the maritime territories recognized under general international law.

Summary of the Award 1/

Background to the case and the proceedings

In its Award, the Tribunal recalls that the neighbouring countries of Guinea and Guinea-Bissau, before gaining independence, were colonies of France and Portugal respectively. The final paragraph of Article 1 of a Convention of 12 May 1886 between France and Portugal for the delimitation of their respective possessions in West Africa states that:

"Portugal will possess all the islands included between the meridian of Cape Roxo, the coast and the southern limit formed by a line following the thalweg of the Cajet River, and afterwards turning towards the south-west across Pilots Passage, where it reaches 10° 40' north latitude, and follows it as far as the meridian of Cape Roxo."

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1/ This summary was prepared by the Registry of the Arbitral Tribunal for the use of the Press, and in no way involves the responsibility of the Tribunal. It cannot be quoted against the actual text of the award, of which it does not constitute an interpretation.

The provision applied mainly to the islands of the Bijagos archipelago. Its implementation caused no difficulty until 1958. At that time, Portugal granted an oil concession. Like Guinea and Guinea-Bissau, which had now become independent, Portugal also proceeded to issue laws and decrees defining its territorial waters. The effect of these various definitions was that the maritime areas over which these countries claimed to exercise jurisdiction overlapped. Negotiations then took place during which, in January 1978, it transpired that a legal dispute existed between Guinea and Guinea-Bissau concerning the delimitation of their maritime territories.

On 18 February 1983, these two States decided to seek arbitration of the matter through an Arbitral Tribunal which was established on 14 October 1983 and is independent of the International Court of Justice, although its three Members are also Members of the latter Court. Memorials and Counter-Memorials were filed by each Party on 20 January and 8 June 1984, and eleven private sittings were held between 21 August and 15 September 1984. Neither the written pleadings nor the text of the oral arguments are to be made public.

#### Interpretation of the Franco-Portuguese Convention of 12 May 1886

The first question submitted to the Tribunal by the Parties was whether the above-mentioned Convention, at the period in question, fixed the maritime boundary between the French and Portuguese possessions in Guinea. Guinea-Bissau took the view that the only purpose of the "southern limit" was to designate the islands belonging to Portugal, whereas Guinea held that this limit also represented a general maritime boundary.

The Tribunal notes that the 1886 Convention remained in force between France and Portugal until the end of the colonial period, and then became binding as between Guinea and Guinea-Bissau by virtue of the principle of uti possidetis. The land boundary between the two Parties, which was established by the Convention, is not in dispute. As regards their maritime boundary, they have agreed that the last paragraph of Article 1 (see texts above) is to be interpreted in accordance with the provisions of the 1969 Vienna Convention on the Law of Treaties.

Applying the method of interpretation of the Vienna Convention, the Tribunal observes that, in the term "the southern limit formed by", the word "limit" may signify "boundary", although this is not necessarily the case. Thus its meaning in the context of the 1886 Convention is somewhat uncertain. However, it is clear from the facts submitted before the Tribunal that until the dispute arose in 1978 neither France, nor Portugal, nor Guinea, nor Guinea-Bissau, interpreted the last paragraph of Article 1 of the 1886 Convention as having established a maritime boundary.

This leads to the second question submitted to the Tribunal by the Parties: what significance is to be attached to the preparatory work (travaux préparatoires) of the 1886 Convention for the purpose of interpreting it?

In this connection the Tribunal recalls that, in the minutes of the negotiations of 1885-1886, there was no reference to the delimitation of territorial waters, except in a proposed draft text of the last paragraph of Article 1, which was submitted suddenly by France and was immediately withdrawn at the request of Portugal. As no explanation was given in the minutes for the submission and withdrawal of this draft, which in fact went considerably beyond the conceptions then generally held in the matter, the Tribunal considers that the two States which were signatories to the 1886 Convention did not intend to fix a general maritime boundary.

The Tribunal concludes, in the light of the preparatory work and of the circumstances prevailing at the time, that the 1886 Convention did not fix any maritime boundary between the French and Portuguese possessions in Guinea.

#### Course of the delimitation line

In a third question, the two Parties asked the Tribunal to determine the course of the single line delimiting their territorial waters, their exclusive economic zones and their continental shelves. Guinea-Bissau was seeking a delimitation according to an equidistance line, whereas Guinea argued in favour of applying the "southern limit" of the 1886 Convention, extending it as far as might be necessary.

On this point, the Parties took the view that international customary law is enshrined in the recent Convention of 1982 on the Law of the Sea, although the latter is not yet in force. The Tribunal observes that, according to Article 74, paragraph 1, and Article 83, paragraph 1 of this Convention, the aim of any delimitation process is to achieve an equitable solution having regard to the relevant circumstances. In order to ensure that the delimitation rests on an equitable and objective basis, every effort must be made to guarantee that each State controls the maritime areas situated in front of its coasts and in proximity to them.

The coastline in question is easy to define, since it comprises the whole of the coasts of the two countries from Cape Roxo, which marks the boundary of Guinea-Bissau with Senegal, as far as Point Sallatouk, where Sierra Leone begins. However, there is no maritime boundary which could be taken into account at either of these extreme points, since there is an ongoing dispute in relation to the first, and as far as the second is concerned, there is only a unilateral delimitation on the part of Guinea. Moreover, there are numerous islands, some of which are coastal, others belong to the Bijagos archipelago and others are scattered. In these circumstances, the most relevant factor is the general configuration and direction of the coastline, including the islands.

The Tribunal observes that, taken together, the coasts of the two countries, including islands, are concave, with the effect that the equidistance line - although this is a scientific concept and a relatively easy one to apply - would cut off Guinea's maritime area in front of its coasts and would tend to enclave it between the maritime areas belonging to Guinea-Bissau and Sierra Leone. As for the "southern limit", the Tribunal has concluded, in reply to the first question, that it did not establish a maritime boundary. However, it could be used from the extremity of the land boundary as far as the elevation of the Guinean island of Alcatraz, but seaward of Alcatraz it would produce a cut-off effect and might well lead to an enclavement, which, in this case, would operate to the detriment of Guinea-Bissau.

For these reasons, the Tribunal passing from the short coastline to the long coastline, decided to focus upon the entire West African region. It concludes that an equitable delimitation in this case must be carried out by following a direction which takes overall account of the convex shape of the West African coastline and would be adaptable to the pattern of present or future delimitations in the region. After investigating various methods of taking account of the general configuration of the western coast of Africa, the Tribunal observes that a coastal front proceeding in a straight line from Almadies Point in Senegal to Cape Shilling in Sierra Leone would most faithfully reflect this situation.

Thus an equitable delimitation can be derived by first pursuing the "southern limit" (Pilots Passage and the parallel 10° 40' N) to 12 miles west of Alcatraz, and then, to the south west, a straight line with a bearing of 236°, broadly perpendicular to the Almadies-Shilling line.

The Tribunal considers that an examination of the other circumstances invoked in this case by the Parties should not affect its decision. There is no possibility of invoking any feature based on the concept of natural prolongation of the land territory of each State, since the continental shelves of Guinea and Guinea-Bissau comprise a single whole, without sufficiently marked divisions. The rule of proportionality between the extent of maritime areas to be allocated and the length of the coastline does not permit either of the Parties to claim any additional advantage, since, when the general direction of the coasts of the two countries, including islands, is taken as a basis, they must be treated for delimitation purposes as both having the same length. Finally, economic factors are not of a sufficiently durable nature to be taken into account for delimitation purposes; the Tribunal merely emphasises that, in this respect, economic concerns should motivate the Parties to practice mutually beneficial co-operation with a view to attaining their right to development.

#### Operative Provisions of the Award

Consequently, having given the foregoing replies to the first two questions submitted by the Parties, the Tribunal replies as follows to the third question:

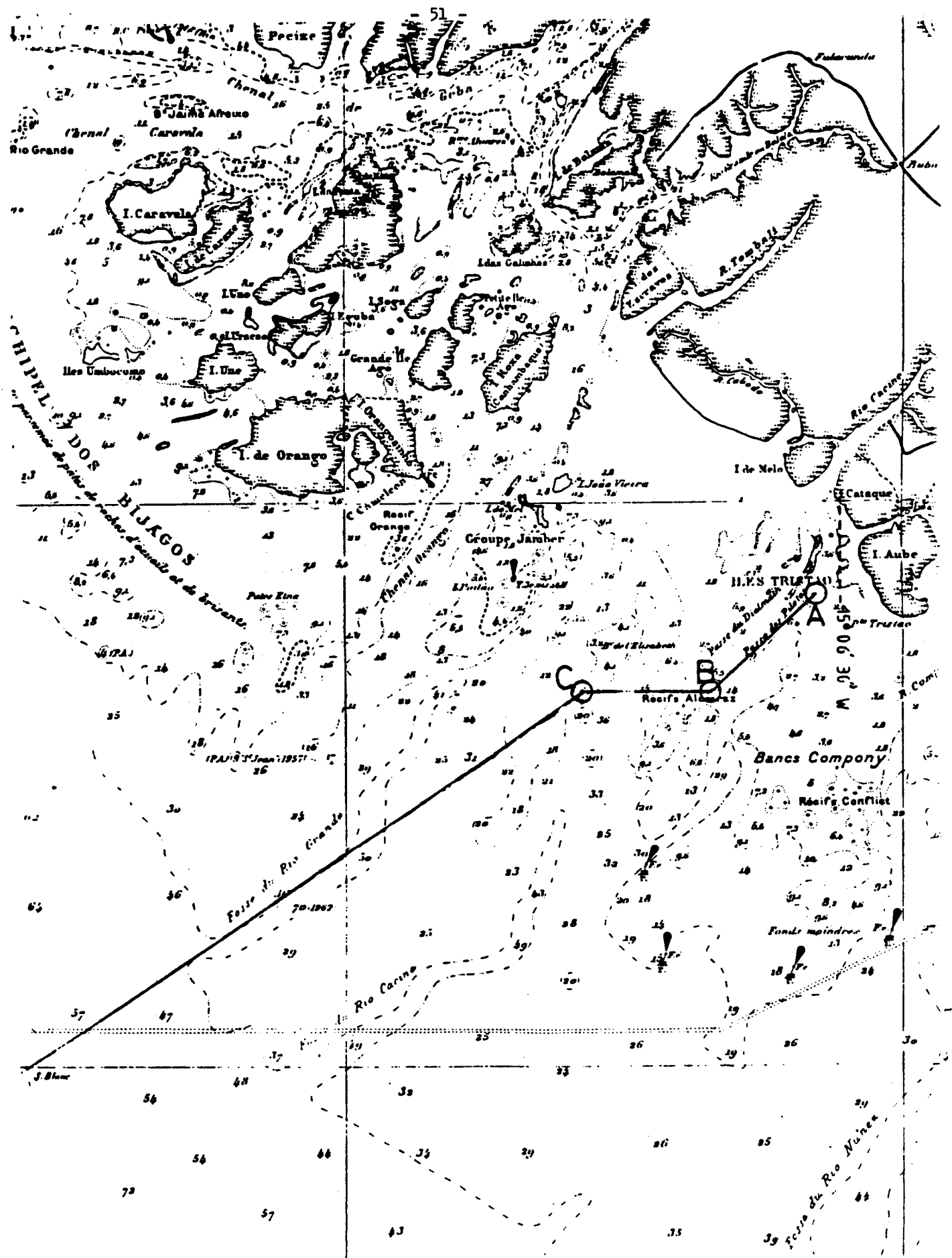
"The line delimiting the maritime areas appertaining respectively to the Republic of Guinea-Bissau and the Republic of Guinea:

"(a) begins at the intersection of the Cajet thalweg and the meridian longitude 15° 06' 30" West;

"(b) connects, by means of loxodromes, the following Points:

	<u>Latitude North</u>	<u>Longitude West</u>
A	10° 50' 00"	15° 09' 00"
B	10° 40' 00"	15° 20' 30"
C	10° 40' 00"	15° 34' 15"

"(c) follows a loxodrome on a bearing of 236° from Point C above to the outer limit of the maritime territories which are recognized under general international law as appertaining to each State."



II. (d) (3) Judgment of the International Court of Justice on the  
Continental Shelf (Libyan Arab Jamahiriya/Malta)  
3 June 1985

On 3 June 1985, the International Court of Justice delivered its Judgment in the case concerning the Continental Shelf between the Libyan Arab Jamahiriya and Malta.

By 14 votes to 3, it states what principles and rules of international law are applicable to the delimitation of the continental shelf between the two States, and the circumstances and factors to be taken into consideration in order to achieve an equitable delimitation. It states that an equitable result can be obtained first by drawing between the 13°50' and the 15°10' meridians a median line, of which every point is equidistant from the low-water mark of the relevant coasts of Malta, on the one hand, and of Libya, on the other, and by then transposing this line northwards by 18' so as to intersect the 15°10' E meridian at a latitude of approximately 34°30'N.

Analysis of the Judgment 1/

I. Proceedings and Submissions of the Parties (paras. 1-13)

The Court begins by recapitulating the various stages in the proceedings and setting out the provisions of the Special Agreement concluded between the Libyan Arab Jamahiriya and Malta for the purpose of submitting to the Court the dispute between them concerning the delimitation of their respective continental shelves.

By Article 1 of the Special Agreement, the Court is requested to decide the following question:

"What principles and rules of international law are applicable to the delimitation of the area of continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such area by an agreement as provided in Article III."

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1/ This analysis of the Judgment was prepared by the Registry of the Court for the use of the press, Communiqué No. 85/11. It cannot be quoted against the actual text of the judgment, of which it does not constitute an interpretation.



According to Article III:

"Following the final decision of the International Court of Justice the Government of the Republic of Malta and the Government of the Libyan Arab Republic shall enter into negotiations for determining the area of their respective continental shelves and for concluding an agreement for that purpose in accordance with the decision of the Court."

Having described the geographical context (paras. 14-17) in which the delimitation of the continental shelf, the subject of the proceedings, is to be carried out, the Court explains its approach to the task which it has to discharge (paras. 18-23).

The Parties agree on the task of the Court as regards the definition of the principles and rules of international law applicable in the case, but disagree as to the way in which the Court is to indicate the practical application of these principles and rules. Malta takes the view that the applicable principles and rules are to be implemented in practice by the drawing of a specific line (in this case, a median line) whereas Libya maintains that the Court's task does not extend to the actual drawing of the delimitation line. Having examined the intentions of the Parties to the Special Agreement, from which its jurisdiction derives, the Court considers that it is not debarred by the terms of the Special Agreement from indicating a delimitation line.

Turning to the scope of the Judgment, the Court emphasizes that the delimitation contemplated by the Special Agreement relates only to areas of continental shelf "which appertain" to the Parties, to the exclusion of areas which might "appertain" to a third State. Although the Parties have in effect invited the Court not to limit its Judgment to the area in which theirs are the sole competing claims, the Court does not regard itself as free to do so, in view of the interest shown in the proceedings by Italy, which in 1984 submitted an application for permission to intervene under Article 62 of the Statute, an application which the Court found itself unable to grant. As the Court had previously indicated in its Judgment of 21 March 1984, the geographical scope of the present decision must be limited, and must be confined to the area in which, according to information supplied by Italy, that State has no claims to continental shelf rights. Thus the Court ensures to Italy the protection which it sought to obtain by intervening. In view of the geographical location of these claims the Court limits the area within which it will give its decision, on the east by the 15° 10' E meridian, including also that part of the meridian which is south of the 34° 30' N parallel, and on the west by excluding a pentagonal area bounded on the east by the 13° 50' E meridian. The Parties have no grounds for complaint since, as the Court says, by expressing a negative opinion on the Italian Application to intervene, they had shown their preference for a restriction in the geographical scope of the Judgment which the Court would be required to deliver.

The Court observes that no decisive role is played in the present case by considerations derived from the history of the dispute, or from legislative and exploratory activities in relation to the continental shelf (paras. 24 and 25). In these the Court finds neither acquiescence by either Party to claims by the other, nor any helpful indication of any view of either Party as to what would be equitable differing in any way from the view advanced by that Party before the Court. Its decision must accordingly be based upon the application to the submissions made before it of principles and rules of international law.

The applicable principles and rules of international law (paras. 26-35)

The two Parties agree that the dispute is to be governed by customary international law. Malta is a party to the 1958 Geneva Convention on the Continental Shelf, while Libya is not; both Parties have signed the 1982 United Nations Convention on the Law of the Sea, but that Convention has not yet entered into force. However, the Parties are in accord in considering that some of its provisions constitute the expression of customary law, while holding different views as to which provisions have this status. In view of the major importance of this Convention - which has been adopted by an overwhelming majority of States - it is clearly the duty of the Court to consider how far any of its provisions may be binding upon the Parties as a rule of customary law.

In this context the Parties have laid some emphasis on a distinction between the law applicable to the basis of entitlement to areas of continental shelf and the law applicable to the delimitation of areas of shelf between neighbouring States. On the second point, which is governed by Article 83 of the 1982 Convention, the Court notes that the Convention sets a goal to be pursued, namely "to achieve an equitable solution", but is silent as to the method to be followed to achieve it, leaving it to States themselves, or to the courts, to endow this standard with specific content. It also points out that both Parties agree that whatever the status of Article 83 of the 1982 Convention, the delimitation is to be effected in accordance with equitable principles and taking account of all relevant circumstances.

However, on the legal basis of title to continental shelf rights the views of the Parties are irreconcilable. For Libya, the natural prolongation of the land territory of a State into the sea remains the fundamental basis of legal title to continental shelf areas. For Malta, continental shelf rights are no longer defined in the light of physical criteria; they are controlled by the concept of distance from the coast.

In the view of the Court, the principles and rules underlying the regime of the exclusive economic zone cannot be left out of consideration in the present case, which relates to the delimitation of the continental shelf. The two institutions are linked together in modern law, and one of the relevant circumstances to be taken into account for the delimitation of the continental shelf of a State is the legally permissible extent of the exclusive economic zone appertaining to that same State. The institution of the exclusive

economic zone, with its rule on entitlement by reason of distance, is shown by the practice of States to have become a part of customary law; and although the institutions of the continental shelf and the exclusive economic zone are different and distinct, the rights which the exclusive economic zone entails over the sea-bed of the zone are defined by reference to the régime laid down for the continental shelf. Although there can be a continental shelf where there is no exclusive economic zone, there cannot be an exclusive economic zone without a corresponding continental shelf. It follows that, for juridical and practical reasons, the distance criterion must now apply to the continental shelf as well as to the exclusive economic zone; and this quite apart from the provision as to distance in Article 76 of the 1982 Convention. Within 200 miles of the coast, natural prolongation is in part defined by distance from the shore. The concepts of natural prolongation and distance are not opposed but complementary; and both remain essential elements in the juridical concept of the continental shelf. The Court is thus unable to accept the Libyan contention that distance from the coast is not a relevant element for the decision of the present case.

The Libyan "rift zone" argument (paras. 36-41)

The Court goes on to consider Libya's argument based on the existence of a "rift zone" in the region of the delimitation. From Libya's contention that the natural prolongation, in the physical sense, of the land territory into the sea is still a primary basis of title to continental shelf, it would follow that, if there exists a fundamental discontinuity between the shelf area adjacent to one Party and the shelf area adjacent to the other, the boundary should lie along the general line of that fundamental discontinuity. According to Libya, in the present case there are two distinct continental shelves divided by what it calls the "rift zone", and it is "within, and following the general direction of, the Rift Zone" that the delimitation should be carried out.

The Court takes the view that, since the development of the law enables a State to claim continental shelf up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding sea-bed and subsoil, there is no reason to ascribe any role to geological or geophysical factors within that distance. Since in the present instance the distance between the coasts of the Parties is less than 400 miles, so that no geophysical feature can lie more than 200 miles from each coast, the "rift zone" cannot constitute a fundamental discontinuity terminating to southward extension of the Maltese shelf and the northward extension of the Libyan as if it were some natural boundary. Moreover, the need to interpret the evidence advanced for and against the Libyan argument would compel the Court first to make a determination upon a disagreement between scientists of distinction as to the more plausibly correct interpretation of apparently incomplete scientific data, a position which it cannot accept. It therefore rejects the so-called "rift zone" argument of Libya.

Malta's argument respecting the primacy of equidistance (paras. 42-44)

Neither, however, is the Court able to accept Malta's argument that the new importance of the idea of distance from the coast has conferred a primacy on the method of equidistance for the purposes of delimitation of the continental shelf, at any rate between opposite States, as is the case with the coasts of Malta and Libya. Malta considers that the distance principle requires that, as a starting point of the delimitation process, consideration must be given to an equidistance line, subject to verification of the equitableness of the result achieved by this initial delimitation. The Court is unable to accept that, even as a preliminary step towards the drawing of a delimitation line, the equidistance method is one which must necessarily be used. It is neither the only appropriate method of delimitation, nor the only permissible point of departure. Moreover, the Court considers that the practice of States in this field falls short of proving the existence of a rule prescribing the use of equidistance, or indeed of any method, as obligatory.

Equitable principles (paras. 45-47)

The Parties agree that the delimitation of the continental shelf must be effected by the application of equitable principles in all the relevant circumstances in order to achieve an equitable result. The Court lists some of these principles: the principle that there is to be no question of refashioning geography; the principle of non-encroachment by one Party on areas appertaining to the other; the principle of the respect due to all relevant circumstances; the principle that "equity does not necessarily imply equality" and that there can be no question of distributive justice.

The relevant circumstances (paras. 48-54)

The Court has still to assess the weight to be accorded to the relevant circumstances for the purposes of the delimitation. Although there is no closed list of considerations which a court may invoke, the Court emphasizes that the only ones which will qualify for inclusion are those which are pertinent to the institution of the continental shelf as it has developed within the law, and to the application of equitable principles to its delimitation.

Thus it finds to be unfounded in the practice of States, in the jurisprudence or in the work of the Third United Nations Conference on the Law of the Sea the argument of Libya that the landmass provides the legal justification of entitlement to continental shelf rights, such that a State with a greater landmass would have a more intense natural prolongation. Nor does the Court consider, contrary to the contentions advanced by Malta, that a delimitation should be influenced by the relative economic position of the two States in question. Regarding the security or defence interests of the two Parties, the Court notes that the delimitation which will result from the application of the present Judgment is not so near to the coast of either

Party as to make these questions a particular consideration. As for the treatment of islands in continental shelf delimitation, Malta has drawn a distinction between island States and islands politically linked to a mainland State. In this connection the Court merely notes that, Malta being independent, the relationship of its coasts with the coasts of its neighbours is different from what it would be if it were part of the territory of one of them. This aspect of the matter also seems to the Court to be linked to the position of the Maltese islands in the wider geographical context, to which it will return.

The Court rejects another argument of Malta, derived from the sovereign equality of States, whereby the maritime extensions generated by the sovereignty of each State must be of equal juridical value, whatever the length of the coasts. The Court considers that if coastal States have an equal entitlement, ipso jure and ab initio, to their continental shelves, this does not imply an equality in the extent of these shelves, and thus reference to the length of coasts as a relevant consideration cannot be excluded a priori.

#### Proportionality (paras. 55-59)

The Court then considers the role to be assigned in the present case to proportionality, Libya having attached considerable importance to this factor. It recalls that, according to the jurisprudence, proportionality is one possibly relevant factor among several others to be taken into account, without ever being mentioned among "the principles and rules of international law applicable to the delimitation" or as "a general principle providing an independent source of rights to areas of continental shelf". Libya's argument, however, goes further. Once the submission relating to the rift-zone has been dismissed, there is no other element in the Libyan submissions, apart from the reference to the lengths of coastline, which is able to afford an independent principle and method for drawing the boundary. The Court considers that to use the ratio of coastal lengths as self-determinative of the seaward reach and area of continental shelf proper to each, is to go far beyond the use of proportionality as a test of equity, in the sense employed in the case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya). Such use finds no support in the practice of States or their public statements, or in the jurisprudence.

#### The delimitation operation and the drawing of a provisional equidistance line (paras. 60-64)

In order to apply the equitable principles which were elicited by taking account of the relevant circumstances, the Court proceeds by stages; it begins by making a provisional delimitation, which it then compares with the requirements derived from other criteria which may call for an adjustment of this initial result.

Stating that the law applicable to the present dispute is based on the criterion of distance in relation to the coast (the principle of adjacency measured by distance), and noting that the equitableness of the equidistance method is particularly marked in cases where the delimitation concerns States with opposite coasts, the Court considers that the tracing of a median line between the coasts of Malta and Libya, by way of a provisional step in a process to be continued by other operations, is the most judicious manner of proceeding with a view to the eventual achievement of an equitable result. The equidistance method is not the only possible method, and it must be demonstrated that it in fact leads to an equitable result - this can be ascertained by examining the result to which it leads in the context of applying other equitable principles to the relevant circumstances. At this stage, the Court explains that it finds it equitable not to take account of the uninhabited Maltese island of Filfla in the construction of the provisional median line between Malta and Libya, in order to eliminate the disproportionate effect which it might have on the course of this line.

Adjustment of the equidistance line, taking account especially of the lengths of the respective coasts of the Parties (paras. 65-73)

The Court examines whether, in assessing the equitableness of the result, certain relevant circumstances may carry such weight as to justify their being taken into account, requiring an adjustment of the median line which has provisionally been drawn.

One point argued before the Court has been the considerable disparity in the lengths of the relevant coasts of the Parties. Here, the Court compares Malta's coasts with the coasts of Libya between Ras Ajdir (the boundary with Tunisia) and Ras Zarruq (15' 10') and notes that there is a marked disparity between the lengths of these coasts, since the Maltese coast is 24 miles long and the Libyan coast 192 miles long. This is a relevant circumstance which warrants an adjustment of the median line, to attribute a greater area of shelf to Libya. However, it remains to determine the extent of this adjustment.

A further geographical feature must be taken into consideration as a relevant circumstance; this is the southern location of the coasts of the Maltese islands, within the general geographical context in which the delimitation is to be effected. The Court points to a further reason for not accepting the median line, without adjustment, as an equitable boundary: namely that this line is to all intents and purposes controlled on each side, in its entirety, by a handful of salient points on a short stretch of the coast (two points 11 miles apart for Malta; several points concentrated immediately east of Ras Tadjoura for Libya).

The Court therefore finds it necessary that the delimitation line be adjusted so as to lie closer to the coasts of Malta. The coasts of the Parties being opposite to each other, and the equidistance line lying broadly west to east, this adjustment can be satisfactorily and simply achieved by transposing it in an exactly northward direction.

The Court then establishes what should be the extreme limit of such a transposition. It reasons as follows: were it supposed that the Maltese islands were part of Italian territory, and that there was a question of the delimitation of the continental shelf between Libya and Italy, the boundary would be drawn in the light of the coasts of Libya to the south and of Sicily to the north. However, account would have to be taken of the islands of Malta, so that this delimitation would be located somewhat south of the median line between Sicily and Libya. Since Malta is not part of Italy, but is an independent State, it cannot be the case that, as regards continental shelf rights, it will be in a worse position because of its independence. It is therefore reasonable to assume that an equitable boundary between Libya and Malta must be to the south of a notional median line between Libya and Sicily. That line intersects the 15° 10' E meridian at a latitude of approximately 34° 36'. The median line between Malta and Libya (drawn to exclude the islet of Filfla) intersects the 15° 10' E meridian at a latitude of approximately 34° 12' N. A transposition northwards of 24' of latitude of the Malta-Libya median line would therefore be the extreme limit of such an adjustment.

Having weighed up the various circumstances in the case as previously indicated, the Court concludes that a shift of about two-thirds of the distance between the Malta-Libya median line and the line located 24' further north gives an equitable result, and that the delimitation line is to be produced by transposing the median line northwards through 18' of latitude. It will intersect the 15° 10' E meridian at approximately 34° 30' N. It will be for the Parties and their experts to determine the exact position.

#### The test of proportionality (paras. 74-75)

While considering that there is no reason of principle why a test of proportionality, based on the ratio between the lengths of the relevant coasts and the areas of shelf attributed, should not be employed to verify the equity of the result, the Court states that there may be certain practical difficulties which render this test inappropriate. They are particularly evident in the present case, inter alia because the area to which the Judgment will apply is limited by reason of the existence of claims of third States, and to apply the proportionality test simply to the areas within these limits would be unrealistic. However, it seems to the Court that it can make a broad assessment of the equity of the result without attempting to express it in figures. It concludes that there is certainly no manifest disproportion between areas of shelf attributed to each of the Parties, such that it might be claimed that the requirements of the test of proportionality as an aspect of equity are not satisfied.

The Court presents a summary of its conclusions (paras. 76-78) and its decision, the full text of which follows (para. 79).

Operative provisions of the Court's Judgment

THE COURT,

by fourteen votes to three,

finds that, with reference to the areas of continental shelf between the coasts of the Parties within the limits defined in the present Judgment, namely the meridian 13° 50' E and the meridian 15° 10' E:

A. The principles and rules of international law applicable for the delimitation, to be effected by agreement in implementation of the present Judgment, of the areas of continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the Republic of Malta respectively are as follows:

- (1) the delimitation is to be affected in accordance with equitable principles and taking account of all relevant circumstances, so as to arrive at an equitable result;
- (2) the area of continental shelf to be found to appertain to either Party not extending more than 200 miles from the coast of the Party concerned, no criterion for delimitation of shelf areas can be derived from the principle of natural prolongation in the physical sense.

B. The circumstances and factors to be taken into account in achieving an equitable delimitation in the present case are the following:

- (1) the general configuration of the coasts of the Parties, their oppositeness, and their relationship to each other within the general geographical context;
- (2) the disparity in the lengths of the relevant coasts of the Parties and the distance between them;
- (3) the need to avoid in the delimitation any excessive disproportion 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.

C. In consequence, an equitable result may be arrived at by drawing, as a first stage in the process, a median line every point of which is equidistant from the low-water mark of the relevant coast of Malta (excluding the islet of Filfla), and the low-water mark of the relevant coast of Libya, that initial line being then subject to adjustment in the light of the above-mentioned circumstances and factors.

D. The adjustment of the median line referred to in subparagraph C above is to be effected by transposing that line northwards through eighteen minutes of latitude (so that it intersects the meridian 15° 10' E at approximately latitude 34° 30' N) such transposed line then constituting the delimitation line between the areas of continental shelf appertaining to the Socialist People's Libyan Arab Jamahiriya and to the Republic of Malta respectively.

IN FAVOUR: President Elias; Vice-President Sette-Camara; Judges Lachs, Morozov, Nagendra Singh, Ruda, Ago, El-Khani, Sir Robert Jennings, de Lacharrière, Mbaye, Bedjaoui; Judges ad hoc Valticos, Jiménez de Aréchaga.

AGAINST: Judges Mosler, Oda and Schwebel.



Annex I

Summary of the Declaration and Opinions  
appended to the Judgment of the Court

Declaration by Judge El-Khani

Judge El-Khani voted in favour of the Judgment, but is of the view that a line located further to the north than the proposed line would have been more in accordance with proportionality while satisfying one requirements of equity.

Separate Opinion by Vice-President Sette-Camara

Vice-President Sette-Camara, while concurring in voting for the Judgment, filed a separate Opinion for the following reasons:

1. The natural prolongation doctrine as established in the 1969 North Sea Continental Shelf Judgment is still the main pillar of the concept of continental shelf. Although the original concept of the "species of platform" has been replaced by a gradually more juridical definition of the continental shelf, natural prolongation remains the basic element of the definition of continental shelf. Article 76, paragraph 1, of the 1982 Montego Bay Convention itself confirms the reliance on natural prolongation.

2. Vice-President Sette-Camara sees no need to resort to the "distance principle" as defined in the final part of paragraph 76 of the 1982 Montego Bay Convention as a legal foundation for the Judgment. The coasts of Malta and Libya are barely 180 miles apart and the specific geographical situation dealt with by that proviso does not exist in the present case. Even if we consider the said proviso as containing a rule of customary international law - discarding conventional law because the Convention is not in force - it has no relation with the circumstances of this case.

3. Since neither of the Parties has claimed an exclusive economic zone the opinion finds unnecessary and out of place the considerations of the Judgment on this specific subject.

4. Although concurring with the method of establishing a median line between the Maltese and Libyan coasts and then correcting its course by transposing it northwards by 18 minutes, the opinion fails to subscribe to the way the Judgment reached a line on the extreme northern parameter for that operation. The imaginary exercise of drawing a "notional" median line between the coasts of Sicily and Malta is rejected as an artificial refashioning of geography. Vice-President Sette-Camara believes that it would be much simpler to attribute partial effect to the coasts of Malta, to be balanced up with similar partial effect to the coasts of Libya.

Separate Opinion of Judges Ruda, Bedjaoui and  
Judge ad hoc Jiménez de Aréchaga

The authors of the joint separate Opinion agree with many of the Court's findings and conclusions, but observe that the Judgment does not pronounce on Malta's trapezium claim, which they find excessive and contrary to the practice of States in enclosed or semi-enclosed seas.

They also believe that it would have been more equitable to correct the median line northwards by 28', thus giving Malta a 3/4 effect, achieving a proportionality ratio of 1 to 3.54 and dividing equally the area in dispute.

Separate Opinion by Judge Mbaye

Judge Mbaye voted in favour of the Judgment since he endorses the conclusions which the Court has reached and accepts, on the whole, the reasons for them.

His Opinion deals with two points: what he has called the "two meanings of the concept of natural prolongation" and the circumstance of the "considerable distance between the coasts of the two States".

As far as the first point is concerned, although Judge Mbaye states that he does not disagree with the Court, especially as regards the finding that natural prolongation in the physical sense cannot, in the present case, have any effect on the delimitation of the areas of continental shelf appertaining respectively to each Party, he expresses regret that the Court, which he finds has made a highly perceptive analysis of the development of customary international law relating to the continental shelf by drawing a distinction between natural prolongation as a "legal principle" and natural prolongation in the "physical sense", has not taken the opportunity to bring out this fundamental idea, which marks a turning point in the development of this area of the law as it emerges from the United Nations Convention on the Law of the Sea of 10 December 1982.

As for the second point, Judge Mbaye questions whether the "considerable" distance between the coasts of the two States can be described as a "relevant circumstance", such as to justify in any way the transposition northwards of the median line initially drawn by the Court. According to Judge Mbaye, the decisive reason for such a transposition is the difference in the lengths of the coasts, and also the general configuration of these coasts and the geography of the State.

Separate Opinion by Judge ad hoc Valticos

While concurring with the Judgment as a whole, Judge ad hoc Valticos emphasizes that, by confining the area to which its decision applies to a limited zone, in order to leave unaffected the interests of Italy, the Court points out that Malta and Libya remain free to examine together with Italy the question of the delimitation, as between these three countries, of areas outside this limited zone. He states his full agreement as to the lack of relevance of the geological and geomorphological factors; nevertheless, he considers that the line of delimitation should have been the median line between Malta and Libya for various reasons, including the position of opposite countries, the new trends in international law, the practice of States and the task of the Court, which is to define the appropriate rule of international law. He takes the view that the factor of the difference in lengths between the coasts should not have been taken into consideration, and did not warrant any "correction" of the median line. He also considers that account should have been taken of the economic factors involved and of security needs, circumstances which constitute additional justification for the median line solution.

Dissenting Opinion by Judge Mosler

Judge Mosler is of the opinion that the median line between Malta and Libya constitutes an equitable solution in the circumstances of the case. He criticizes the global removal of the median line by 18 minutes northward and the method used by the Court in arriving at that result.

Dissenting Opinion by Judge Oda

In Judge Oda's view, the Court has not fully grappled with recent developments in the law of the sea and is in danger of identifying the principle of equity with its own subjective sense of what is equitable in a particular case. He finds that the area to which the Court has confined the operation of its Judgment is misconstrued through overconcentration on third-State interests which have not been judicially established. Furthermore, the Judgment's employment of a proportionality test to verify the equity of the suggested delimitation is paradoxical, in that the necessity of defining the relevant area and coastlines for that purpose is first propounded and then this exercise is abandoned on the ground of its impossibility. The adjustment or transposition of the Libya/Malta median line so as to shift it 18 minutes northwards on each meridian appears to Judge Oda to be groundless. Despite the Judgment's professing to have taken the Libya/Malta median line as an initial or provisional delimitation, the final line suggested as a consequence of the 18-minute shift is devoid of all the properties inherent in the concept of equidistance, so that this resultant line cannot properly be regarded as an adjusted median. In effect, the technique of the Judgment has involved viewing the entire territory of one Party as a special circumstance affecting a delimitation (Sicily/Libya) which the Court had no call to make and which excludes that Party. In that context, the partial effect that may sometimes be allowed to an island is interpreted in a manner completely

different to that featured in the 1977 Anglo-French Arbitration. In Judge Oda's view, the "half-effect" of an island had also been misinterpreted by the Court's 1982 Judgment in the Tunisia/Libya case and the 1984 Judgment of a Chamber of the Court in the Gulf of Maine case. To clarify his criticisms, he analyses the relevant sections of those Judgments as well as the "proportionality" test as originally mentioned in the North Sea Continental Shelf cases.

Judge Oda remains of the view that the equidistance/special-circumstances rule indicated in the 1958 Continental Shelf Convention is still part of international law and, furthermore, that the role of special circumstances is not to justify any substitute for the equidistance line but to enable the bases of that line to be rectified with a view to the avoidance of any distorting effect. In the present case, Judge Oda suggests that the island of Filfla should be ignored in plotting an equidistance line between Libya and Malta. The resultant line would then in his view have constituted a correct delimitation. Drawing it would not, in the circumstances, have had any legal impact on the claim of any third State, but would have implied that neither Libya nor Malta was entitled to any claim against the other in any area beyond it.

#### Dissenting Opinion by Judge Schwebel

Judge Schwebel dissents from the Judgment in two respects. In his view, the line of delimitation which it lays down has been unduly truncated to defer to the claims of Italy; and the line is not a median line between the opposite coasts of Libya and Malta but a "corrected" median line which, as rendered, is incorrect.

Judge Schwebel maintains that, while a request by Italy to intervene in the case between Libya and Malta had been denied by the Court, today's Judgment grants to Italy all that it sought in its request to intervene. The Court justifies this implausible conclusion by holding that the Special Agreement between Libya and Malta gave the Court jurisdiction only to decide questions of the delimitation of the continental shelf "which appertains" to Malta or Libya, and not to any third State. But the Special Agreement did not speak of areas which exclusively appertain to a party. Moreover, in boundary cases, as previous judgments of the Court indicate, the Court need not decide in the absolute. Thus the Court could, as between Malta and Libya, pass upon areas to which Italy as well as Malta or Libya lay claim, while reserving any rights of Italy. That this interpretation of the Special Agreement is the better interpretation is shown by the fact that both Parties to it, Malta and Libya, maintained it. But the Court, contrary to the rules of treaty interpretation, has taken no account of the interpretation which the Parties placed upon their agreement. Judge Schwebel doubts the propriety of the Court's Judgment deferring so absolutely to Italy's claims for these reasons, and because it appears to place in the hands of a third party the determination of the extent of the jurisdiction which two other Parties to a case conferred upon the Court.

As to the location of the line of delimitation, while Judge Schwebel agrees that, in a case of purely opposite States, a median line is the correct starting point, he does not agree with the Court's decision to transpose the line substantially to the north and thereby to accord Libya a much larger continental shelf than a median line would. The Court has relied essentially on the fact that Libya's coasts are much longer than Malta's and that, in the general geographical context, the Maltese islands are a small feature which lie south of a continental median line. But the Court has failed to show that these circumstances are probative or even relevant. They provide no reason for discounting the whole of the islands of Malta - which together constitute that independent State - as if they were the anomalous dependent islands of a mainland State. The general geographical context - which the Court in any event sharply narrowed to defer to Italy's claims - worked against Malta's position no more than Libya's. As for the fact that Libya's coasts are longer, since it has always been accepted that the base of a triangle is longer than the apex, it naturally follows that there is a larger area lying off the base (Libya) than the apex (Malta). But the Court goes beyond that fact to allot Libya a bonus because its coasts are longer. The Court denies that it does so for reasons of proportionality. But it supplies no alternative justification. It rather seems to base its Judgment on some intuitive instinct to give Libya a bonus because its coasts are so much longer than Malta's. Moreover, the Court offers no objective, verifiable link between the circumstances it regards as relevant and the determination of the precise line it regards as equitable. It fails to show that those circumstances dictate the adjustment to the extent of that adjustment.

### III. INFORMATION ABOUT THE PREPARATORY COMMISSION

The Preparatory Commission, established by resolution I of the Third United Nations Conference on the Law of the Sea, held its third regular session in Kingston (Jamaica), 11 March to 4 April 1985 and a meeting in Geneva (Switzerland), 12 August to 4 September 1985.

Since the Convention closed for signature a total of 159 States or entities which signed the Convention are members of the Preparatory Commission (resolution I, paragraph 2); 15 States or entities are observers under Rule 2 of the Rules of Procedure of the Preparatory Commission. Other States or entities which neither signed the Convention nor the Final Act might be invited to attend the meetings of the Preparatory Commission as observers.

III. (a) TABLE OF MEMBERS, OBSERVERS AND PARTICIPANTS  
OF THE PREPARATORY COMMISSION  
AS OF 5 SEPTEMBER 1985 <sup>1/</sup>

STATES	<u>Third Session</u> <sup>2/</sup>		<u>Geneva Meeting</u> <sup>3/</sup>	
	Member/ Observer	Participant	Member/ Observer	Participant
Afghanistan	M		M	x
Albania				
Algeria	M	x	M	x
Angola	M	x	M	x
Antigua and Barbuda	M		M	
Argentina	M	x	M	x
Australia	M	x	M	x
Austria	M	x	M	x
Bahamas	M		M	
Bahrain	M	x	M	x
Bangladesh	M	x	M	x
Barbados	M		M	
Belgium	M	x	M	x
Belize	M		M	
Benin	M	x	M	x
Bhutan	M	x	M	x
Bolivia	M		M	x
Botswana	M		M	
Brazil	M	x	M	x
Brunei Darussalam	M		M	
Bulgaria	M	x	M	x
Burkina Faso	M		M	
Burma	M	x	M	x
Burundi	M		M	
Byelorussian SSR	M	x	M	x
Cameroon	M	x	M	x
Canada	M	x	M	x
Cape Verde	M	x	M	x
Central African Republic	M		M	
Chad	M		M	

<sup>1/</sup> States and other entities which are members or observers of the Preparatory Commission as defined in resolution I, paragraph 2 of the Third United Nations Conference on the Law of the Sea, are indicated by an "M" for members or an "O" for observers. States or entities which did not sign the Convention and the Final Act of the United Nations Conference on the Law of the Sea, are left blank. Those States or entities indicated by an "x" participated in the session or meeting.

<sup>2/</sup> Held from 11 March to 4 April 1985 in Kingston, Jamaica.

<sup>3/</sup> Held from 12 August to 4 September 1985 in Geneva, Switzerland.

STATES	Third Session		Geneva Meeting	
	Member/ Observer	Participant	Member/ Observer	Participant
Chile	M	x	M	x
China	M	x	M	x
Colombia	M	x	M	x
Comoros	M		M	
Congo	M	x	M	
-----				
Costa Rica	M	x	M	x
Cuba	M	x	M	x
Cyprus	M	x	M	x
Czechoslovakia	M	x	M	x
Democratic Kampuchea	M		M	x
-----				
Dem. People's Republic of Korea	M	x	M	x
Democratic Yemen	M	x	M	x
Denmark	M	x	M	x
Djibouti	M		M	
Dominica	M	x	M	
-----				
Dominican Republic	M	x	M	x
Ecuador	O		O	x
Egypt	M	x	M	x
El Salvador	M		M	
Equatorial Guinea	M		M	
-----				
Ethiopia	M	x	M	x
Fiji	M		M	
Finland	M	x	M	x
France	M	x	M	x
Gabon	M	x	M	x
-----				
Gambia	M		M	
German Democratic Republic	M	x	M	x
Germany, Federal Republic of	O	x	O	x
Ghana	M	x	M	x
Greece	M	x	M	x
-----				
Grenada	M		M	
Guatemala	M		M	x
Guinea	M		M	
Guinea-Bissau	M		M	
Guyana	M	x	M	
-----				
Haiti	M		M	x
Holy See	O	x	O	
Honduras	M	x	M	x
Hungary	M	x	M	x
Iceland	M		M	



STATES	Third Session		Geneva Meeting	
	Member/ Observer	Participant	Member/ Observer	Participant
India	M	x	M	x
Indonesia	M	x	M	x
Iran (Islamic Republic of)	M		M	x
Iraq	M	x	M	x
Ireland	M	x	M	x
-----				
Israel	O	x	O	x
Italy	M	x	M	x
Ivory Coast	M	x	M	x
Jamaica	M	x	M	x
Japan	M	x	M	x
-----				
Jordan	O		O	
Kenya	M	x	M	x
Kiribati				
Kuwait	M	x	M	x
Lao People's Democratic Rep.	M		M	
-----				
Lebanon	M		M	x
Lesotho	M	x	M	
Liberia	M	x	M	x
Libyan Arab Jamahiriya	M	x	M	x
Liechtenstein	M		M	
-----				
Luxembourg	M		M	x
Madagascar	M	x	M	x
Malawi	M	x	M	
Malaysia	M	x	M	x
Maldives	M		M	
-----				
Mali	M	x	M	
Malta	M	x	M	x
Mauritania	M		M	
Mauritius	M		M	
Mexico	M	x	M	x
-----				
Monaco	M		M	
Mongolia	M	x	M	x
Morocco	M	x	M	x
Mozambique	M	x	M	x
Nauru	M		M	
-----				
Nepal	M		M	
Netherlands	M	x	M	x
New Zealand	M	x	M	x
Nicaragua	M		M	x
Niger	M		M	
-----				
Nigeria	M	x	M	x
Norway	M	x	M	x
Oman	M	x	M	x
Pakistan	M	x	M	x
Panama	M	x	M	

STATES	Third Session		Geneva Meeting	
	Member/ Observer	Participant	Member/ Observer	Participant
Papua New Guinea	M		M	x
Paraguay	M		M	
Peru	O	x	O	x
Philippines	M	x	M	x
Poland	M	x	M	x
Portugal	M	x	M	x
Qatar	M		M	x
Republic of Korea	M	x	M	x
Romania	M	x	M	
Rwanda	M		M	x
St. Christopher and Nevis	M		M	
Saint Lucia	M		M	
St. Vincent and the Grenadines	M		M	
Samoa	M		M	
San Marino				
Sao Tome and Principe	M		M	
Saudi Arabia	M	x	M	x
Senegal	M	x	M	x
Seychelles	M		M	
Sierra Leone	M		M	
Singapore	M		M	
Solomon Islands	M		M	
Somalia	M	x	M	x
South Africa	M		M	
Spain	M	x	M	x
Sri Lanka	M	x	M	x
Sudan	M	x	M	x
Suriname	M		M	
Swaziland	M		M	
Sweden	M	x	M	x
Switzerland	M	x	M	x
Syrian Arab Republic				
Thailand	M	x	M	x
Togo	M		M	
Tonga				
Trinidad and Tobago	M	x	M	x
Tunisia	M	x	M	x
Turkey				x
Tuvalu	M		M	
Uganda	M	x	M	x
Ukrainian SSR	M	x	M	x
Union of Soviet Socialist Reps.	M	x	M	x
United Arab Emirates	M		M	x
United Kingdom	O	x	O	x
United Republic of Tanzania	M	x	M	x

STATES	Third Session		Geneva Meeting	
	Member/ Observer	Participant	Member/ Observer	Participant
United States of America	O		O	
Uruguay	M		M	x
Vanuatu	M	x	M	x
Venezuela	O	x	O	x
Viet Nam	M		M	x
-----				
Yemen	M		M	
Yugoslavia	M	x	M	x
Zaire	M	x	M	x
Zambia	M	x	M	x
Zimbabwe	M	x	M	
OTHERS				
(under Art. 305(1) (b), (c), (d), (e) and (f))				
Cook Islands	M		M	
European Economic Community	M	x	M	x
Namibia (United Nations Council for Namibia)	M	x	M	x
Niue	M		M	
Netherlands Antilles	O		O	
Trust Territory of the Pacific Islands	O		O	
West Indies Associated States				
NATIONAL LIBERATION MOVEMENTS				
African National Congress of South Africa	O		O	
Palestine Liberation Organization	O		O	
Pan Africanist Congress of Azania	O	x	O	x
South West Africa People's Organization	O		O	x
TOTAL OF MEMBERS	159	97	159	103
TOTAL OF OBSERVERS	<u>15</u>	<u>7</u>	<u>15</u>	<u>9</u>
GRAND TOTAL	174	104	174	112

The following States and entities which did not sign the Final Act of the Conference, and thereby were not entitled to the observer status, were invited to the meeting of the Preparatory Commission in Geneva, and did attend as observers under rule 3 as States which had participated in the Third United Nations Conference on the Law of the Sea: Albania, Kiribati, San Marino, Syrian Arab Republic, Tonga, Turkey and West Indies Associated States.

III. (b) REPORT ON THE WORK OF THE  
THIRD SESSION OF THE PREPARATORY COMMISSION FOR THE  
INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL  
TRIBUNAL FOR THE LAW OF THE SEA

Third session: 11 March - 4 April 1985, Kingston  
Geneva meeting: 12 August - 4 September 1985, Geneva

The Kingston Session

The Chairman characterized the third session of the Preparatory Commission as one of the most encouraging sessions in that the Commission settled down to deal with all aspects of its substantive work. The Commission is mandated to prepare for the establishment of the International Sea-Bed Authority (Assembly, Council, Legal and Technical and Economic Commissions); the Enterprise (mining arm); draft a mining code; study the possible impact of production of sea-bed minerals on developing countries land-based producers; prepare for the establishment of the international disputes settlement Tribunal; and administer the régime for registration of pioneer investors (resolution II).

The plenary began its second reading of the draft rules of the Assembly of the Authority. The major outstanding issue with respect to the Assembly rules was the status of observers.

The second issue of importance was the proposal to establish a Finance Committee in the Assembly which would "help" the Secretary-General of the Authority in the preparation of the budget and oversee all financial affairs.

Resolution II. The important item on the adoption of regulations for the registration of pioneer investors and the consideration of the applications submitted by the four pioneer investors which were earlier identified as priority matters were not dealt with in the formal meetings. Consultations on these items were undertaken informally by the Chairman in an effort towards resolving the overlapping claims of some applicants.

Special Commission 1, which is undertaking studies on the problems which would be encountered by developing land-based producer States from sea-bed mineral production, continued its consideration of the data and information on the mineral market, the identification of developing land-based producer States most likely to be affected and possible measures that might be taken in the event of adverse effects.

Special Commission 2, dealing with the establishment of the Enterprise, had before it a project profile for a deep sea-bed mining operation, prepared by the Secretariat, and two other Secretariat papers on an Ad Hoc Expert Group for the planning of the future operation of the Enterprise and on the training needs of the Enterprise respectively. The project profile paper marked a new phase in the work of the Preparatory Commission. It provided a basis for more concrete discussion of a mining operation as compared to the somewhat philosophical and idealistic discussions that had taken place at previous meetings. It indicated the various steps in the establishment of a sea-bed mining operation, spanning a period of 14 years, before full-scale commercial production could begin. It also provided a number of operational options to indicate various choices open to the Enterprise, as well as indicated the order of magnitude of the financial requirements under the different options.

Special Commission 3, charged with drafting the mining code, began for the first time considering draft regulations prepared by the Secretariat dealing with the use of terms, scope, prospecting and procedure for submission and approval of plans of work for exploration and exploitation. It completed an article-by-article first reading of the provisions on the scope and prospecting towards the end of the session and began the consideration of regulations on nationality of applicant, sponsorship and control by the sponsoring State.

Special Commission 4 continued its consideration of draft rules of the Tribunal submitted by the Secretariat at the 1984 summer meeting. At this session it considered matters such as who may represent parties before the Tribunal, privileges, immunities and facilities that should be accorded to representatives of parties, agent and counsel, (in response to a request and in consultation with the Office of Legal Affairs, the Secretariat provided an analysis of norms and practices on privileges and immunities), preliminary procedures intended to safeguard coastal States exercise of resource rights in the exclusive economic zone against abuse by vexatious litigation, official languages of the Tribunal, provision of information by international organizations and provisional measures to protect parties rights and to prevent damage to the marine environment.

The Secretariat also provided supplementary draft rules dealing with applications to the Tribunal for prompt release of vessels and crews which is mandated by an innovative provision of the Convention.

### The Geneva meeting

During this meeting the plenary and the four commissions continued to make progress on various matters within their mandates.

Intensive consultations on the overlapping issue took place amongst all interested parties throughout the duration of the meetings under the good offices of the Chairman, Minister Joseph Warioba of Tanzania. It was decided that these consultations would be pursued intensively during the intersessional period.

Another development during this session was the adoption without a vote by the Preparatory Commission of a Declaration which asserted that the Convention régime was the only régime for deep sea-bed mining and that "any claims incompatible with it shall not be recognized". It rejected such claims and regarded them "as illegal". At the adoption the Chairman explained that it was his understanding that the Declaration commanded a "large majority in the Preparatory Commission". He noted, however, that a number of delegations could not give support to the Declaration because of their concerns about some aspects of the substance and the effect of the Declaration. (For the text of the Declaration, see page 85).

### Plenary

#### (a) Working Group on Resolution II:

As already mentioned above, registration could not be effected because efforts to resolve the overlaps could not be completed to the point where a broadly acceptable proposal could be put before the Preparatory Commission.

#### (b) Working Group on Rules of Procedure for the Assembly and Council of the Sea-Bed Authority:

The plenary completed a second reading of the draft rules of procedure of the Assembly and examined more than two-thirds of the rules of procedure of the Council. A number of these rules, however, have been held in abeyance pending the consideration of the rules of procedure for the Legal and Technical Commission of the Authority, as the latter will have a significant role in the examination of the applications for mine sites and the negotiation of mining contracts on behalf of the Authority, as well as in recommending their approval by the Council.

The following issues remain outstanding. They were the subject of private consultations held by the Chairman: The question of subsidiary organs (whether main committees should be institutionalized in the rules of the Assembly); the status and extent of participation by States observers to the Authority; control over financial and budgetary matters (including a proposal by the six industrialized countries to have a key role in a Finance Committee whose membership will include the four largest contributors to the Authority); and the majority required for the election of the Secretary-General of the Authority.

Special Commission 1, which is undertaking studies on the potential impact of sea-bed mineral production on developing land-based producer States, concentrated its discussion on: (a) the concrete formulation of the criteria for the identification of developing land-based producer States likely to be most seriously affected; (b) preparation of an outline for an in-depth study of possible effects of sea-bed production on such States and investigation of associated problems; (c) the formulation of certain guidelines that will need to be taken into account by the Authority in devising any remedial or assistance measures. In addition to the data and information provided by the Secretariat, the Commission had before it responses from 19 international organizations on remedial measures, programmes and activities undertaken by them in different sectors. There appears to be a realization in the Commission that its studies and recommendations cannot be definitive until actual sea-bed mineral production begins and its impact is experienced.

Special Commission 2, which is preparing for the establishment of the Enterprise, the operational arm of the Authority, continued with its consideration of the project profile prepared by the Secretariat for a deep sea-bed mining operation, illustrating different operational options open to it. It decided that it will begin to examine each of the operational options at the next session, the first of which being an integrated mining project by the Enterprise alone. Considerable interest was expressed in favour of a joint venture as an initial operational option.

The other important subject discussed was the training requirements for the staff of the Enterprise. It was generally recognized that any training programme to be undertaken prior to the coming into force of the Convention will depend largely on the obligations to be performed by pioneer investors after their registration.

Special Commission 3 continued with the examination of the comprehensive draft mining code for sea-bed minerals, prepared by the Secretariat. Detailed discussions took place on, inter alia, the submission of an application for the approval of a plan of work, the form and content of the application, the financial and technical capabilities of the applicant, the total area covered by the application, and data on estimated commercial value of the two sites submitted in the application under the parallel system. The Commission left in abeyance its discussion of whether the application should be submitted in one stage, containing two sites of equal commercial value together with a general plan of work, or whether it should be in two stages, with the second stage containing a detailed plan of work in respect of the site to be allocated to the applicant.

Special Commission 4, which is dealing with the establishment of the International Tribunal for the Law of the Sea, continued with its consideration of the rules of procedure for the Tribunal and dealt with procedures for proceedings in disputes. This included incidental proceedings which consist of preliminary objections, counter-claims, interventions by interested parties, special reference and discontinuance of proceedings. It also dealt with proceedings before chambers and judgements, their interpretation or revision and a modification of the rules in particular cases. On the subject of revisions of judgements, although the Convention and the Tribunal statute do not expressly provide for it, agreement was reached that provision should be made in the draft rules of procedure by which decisions may be revised on the basis of discovery of a new fact of a decisive nature which comes to light after the decision.

It also considered a draft set of rules prepared by the Secretariat dealing with procedures for the prompt release of vessels and crew. The Convention empowers the Tribunal to act in cases where a detaining State fails to release vessels as required by the Convention upon posting of a reasonable bond. Procedures formulated in this connection are both unusual and exceptional and of important significance especially to long-distance fishing States and merchant fleets.

Next session. The Commission decided that its fourth session would take place in Kingston, Jamaica, from 17 March to 11 April 1986, preceded by a three-day meeting of the Group of 77 from 12 to 14 March.



III. (c) LIST OF DOCUMENTS OF THE THIRD SESSION OF THE PREPARATORY  
COMMISSION AND OF THE GENEVA MEETING

	Provisional list of delegations [22 March 1985]
LOS/PCN/INF.8	Delegations to the Third Session, Kingston, Jamaica [2 April 1985]
LOS/PCN/INF.9	Delegations to the Meeting of the Preparatory Commission, Geneva, 12 August-4 September 1985
LOS/PCN/55	Provisional agenda [11 March 1985]
LOS/PCN/56	Letter dated 28 February from the Governments of France, Japan and the Union of Soviet Socialist Republics addressed to the Chairman of the Preparatory Commission [12 March 1985]
LOS/PCN/56/Corr.1	<u>Corrigendum</u> (French only) [30 August 1985]
LOS/PCN/57	Letter dated 19 March 1985 from the Chairman of the delegation of the Federal Republic of Germany addressed to the Chairman of the Preparatory Commission [20 March 1985]
LOS/PCN/58	Credentials of Representatives to the Third Session of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea - Report of the Credentials Committee [3 April 1985]
LOS/PCN/59	Letter dated 3 April 1985 from the Chairman of the African Group addressed to the Chairman of the Preparatory Commission [3 April 1985]
LOS/PCN/60	Letter dated 28 March 1985 from the Chairman of the delegation of the Kingdom of the Netherlands addressed to the Chairman of the Preparatory Commission [26 April 1985]
LOS/PCN/61	Letter dated 2 April 1985 from the Chairman of the delegation of Belgium addressed to the Chairman of the Preparatory Commission [26 April 1985]

LOS/PCN/62 Letter dated 2 April 1985 from the Chairman of the delegation of Italy addressed to the Chairman of the Preparatory Commission [26 April 1985]

LOS/PCN/63 Letter dated 3 April 1985 from the Chairman of the delegation of Canada addressed to the Chairman of the Preparatory Commission [26 April 1985]

LOS/PCN/64 Letter dated 10 June 1985 from the Acting Permanent Representative of the Union of Soviet Socialist Republics to the United Nations addressed to the Chairman of the Preparatory Commission [1 July 1985]

LOS/PCN/65 Letter dated 28 June 1985 from the Acting Permanent Representative of the Union of Soviet Socialist Republics to the United Nations addressed to the Chairman of the Preparatory Commission [8 July 1985]

LOS/PCN/66 Letter dated 10 July 1985 from the Acting Permanent Representative of the Union of Soviet Socialist Republics to the United Nations addressed to the Chairman of the Preparatory Commission [15 July 1985]

LOS/PCN/67 Letter dated 31 July 1985 from the Chairman of the delegation of France addressed to the Chairman of the Preparatory Commission [16 August 1985]

LOS/PCN/68 Letter dated 31 July 1985 from the Chairman of the delegation of France addressed to the Chairman of the Preparatory Commission [16 August 1985]

LOS/PCN/69 Letter dated 31 July 1985 from the Chairman of the delegation of France addressed to the Chairman of the Preparatory Commission [16 August 1985]

LOS/PCN/70 Letter dated 31 July 1985 from the Chairman of the delegation of France addressed to the Chairman of the Preparatory Commission [16 August 1985]

LOS/PCN/71	Letter dated 15 August 1985 from the Chairman of the delegation of China addressed to the Chairman of the Preparatory Commission [20 August 1985]
LOS/PCN/72	Declaration adopted by the Preparatory Commission on 30 August 1985 [2 September 1985]
LOS/PCN/L.7/Rev.2	Letter dated 29 March 1985 from the Head of the delegation of Czechoslovakia and Chairman of the Group of Eastern European Socialist countries addressed to the Chairman of the Preparatory Commission [1 April 1985]
LOS/PCN/L.15	Statement by the Chairman of the Group of 77 delivered on 11 March 1985 [20 March 1985]
LOS/PCN/L.16	Statement to the Plenary by the Chairman of Special Commission 3 on the progress of work in that Commission [2 April 1985]
LOS/PCN/L.17	Statement to the Plenary by the Chairman of Special Commission 4 on the progress of work in that Commission [2 April 1985]
LOS/PCN/L.18	Statement to the Plenary by the Chairman of Special Commission 1 on the progress of work in that Commission [2 April 1985]
LOS/PCN/L.19	Statement made by the Chairman of the Preparatory Commission [3 April 1985]
LOS/PCN/L.20	Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission [2 April 1985]
LOS/PCN/L.21	Draft Declaration submitted by Pakistan on behalf of the Group of 77 [12 August 1985]
LOS/PCN/L.22	Statement by the Chairman of the Group of 77 delivered on 12 August 1985 [30 August 1985]
LOS/PCN/L.23	Statement to the Plenary by the Chairman of Special Commission 1 on the progress of work in that Commission [2 September 1985]
LOS/PCN/L.24	Statement to the Plenary by the Chairman of Special Commission 4 on the progress of work in that Commission [3 September 1985]

LOS/PCN/L.24/Corr.1	<u>Corrigendum</u> (Arabic and English only) [3 September 1985]
LOS/PCN/L.25	Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission [3 September 1985]
LOS/PCN/L.25/Corr.1	<u>Corrigendum</u> (Arabic only) [4 September 1985]
LOS/PCN/L.26	Statement to the Plenary by the Chairman of Special Commission 3 on the progress of work in that Commission [3 September 1985]
LOS/PCN/L.27	Report of the Chairman of the Preparatory Commission [3 September 1985]
LOS/PCN/WP.20/Rev.1	Draft Rules of Procedure of the Assembly of the International Sea-Bed Authority [19 March 1985]
LOS/PCN/WP.25	Suggested amendments to the Draft Rules of Procedure of the Assembly of the International Sea-Bed Authority (LOS/PCN/WP.20) [15 March 1985]
LOS/PCN/WP.26	Draft Rules of Procedure of the Council of the International Sea-Bed Authority [29 March 1985]
LOS/PCN/WP.26/Corr.1	Draft Rules of Procedure of the Council of the International Sea-Bed Authority <u>Corrigendum</u> (English only) [16 August 1985]
LOS/PCN/WP.27	Suggested amendments to the Draft Rules of Procedure of the Assembly of the International Sea-Bed Authority (LOS/PCN/WP.20/Rev.1) [12 August 1985]
LOS/PCN/WP.28	Suggested amendments to the Draft Rules of Procedure of the Council of the International Sea-Bed Authority (LOS/PCN/WP.26) [14 August 1985]
LOS/PCN/WP.29	Suggested amendments to the Draft Rules of Procedure of the Council of the International Sea-Bed Authority (LOS/PCN/WP.26) [16 August 1985]

LOS/PCN/WP.30	Suggested amendments to Rule 95 of the Draft Rules of Procedure of the Assembly of the International Sea-Bed Authority (LOS/PCN/WP.20/Rev.1) [22 August 1985]
LOS/PCN/1985/CRP.5	Provisional time-table [12 March 1985]
LOS/PCN/1985/CRP.6/Rev.1	Provisional time-table [12 August 1985]
 <u>Special Commission 1</u>	
LOS/PCN/SCN.1/WP.2/Add.3	Basic data and information of relevance to the work of Special Commission 1 - Responses from States/entities to the note verbale transmitted by the Secretary-General <u>Addendum</u> [31 July 1985]
LOS/PCN/SCN.1/WP.2/Add.4	Basic data and information of relevance to the work of Special Commission 1 - Recycling of copper, nickel, cobalt and manganese <u>Addendum</u> [6 August 1985]
LOS/PCN/SCN.1/WP.3	Concrete formulations of criteria for identifying developing land-based producer States likely to be most seriously affected by sea-bed production [8 February 1985]
LOS/PCN/SCN.1/WP.4	Preliminary study on possible approaches to the measurements of potential effects of sea-bed production [8 February 1985]
LOS/PCN/SCN.1/WP.5	Information on existing international or multilateral economic measures which could be of relevance to the work of Special Commission 1 [29 August 1985]
LOS/PCN/SCN.1/1985/CRP.5	Opening statement of the Acting Chairman of Special Commission 1 [13 March 1985]
LOS/PCN/SCN.1/1985/CRP.6	Six-point proposal by the delegation of Pakistan for overcoming or minimizing the difficulties which may be encountered by developing land-based producer States on commencement of sea-bed mining of polymetallic nodules [28 March 1985]
LOS/PCN/SCN.1/1985/CRP.7	Proposal by the delegation of Zimbabwe on remedial measures to alleviate problems that affect developing countries for consideration by Special Commission 1 [2 April 1985]

LOS/PCN/SCN.1/1985/CRP.8	Statement of the Chairman of Special Commission 1, provisionally concluding the discussion on the issue of the concrete formulation of the criteria for the identification of developing land-based producer States likely to be most seriously affected by sea-bed production [16 August 1985]
LOS/PCN/SCN.1/1985/CRP.8/Corr.1	<u>Corrigendum</u> [22 August 1985]
LOS/PCN/SCN.1/1985/CRP.9	Statement of the Chairman of Special Commission 1, provisionally concluding the discussion on the issue of the preparation of an outline to study in-depth possible effects of sea-bed production in the Area on developing land-based producer States and to investigate the associated problems [26 August 1985]
 <u>Special Commission 2</u>	
LOS/PCN/SCN.2/L.2/Rev.2	Austria: Executive summary of revised proposal for a joint enterprise for exploration, research and development in ocean mining (JEFERAD) [21 August 1985]
LOS/PCN/SCN.2/WP.5	A model joint venture agreement for sea-bed mining [15 October 1984]
LOS/PCN/SCN.2/WP.5/Corr.1	<u>Corrigendum</u> (Russian only) [9 January 1985]
LOS/PCN/SCN.2/WP.5/Corr.2	<u>Corrigendum</u> (English only) [9 January 1985]
LOS/PCN/SCN.2/WP.6	Project profile of a deep sea-bed mining operation by the Enterprise [5 February 1985]
LOS/PCN/SCN.2/WP.6/Add.1	Project profile of a deep-sea-bed mining operation by the Enterprise [18 June 1985]
LOS/PCN/SCN.2/WP.6/Add.1/Corr.1	<u>Corrigendum</u> [19 August 1985]
LOS/PCN/SCN.2/WP.7	Development of an <u>ad hoc</u> expert core group for the Enterprise to assist the Preparatory Commission [1 February 1985]
LOS/PCN/SCN.2/WP.8	Training needs and requirements of the Enterprise [1 February 1985]
LOS/PCN/SCN.2/WP.9	Implementation of paragraph 12 of resolution II: Training [15 August 1985]

Special Commission 3

- LOS/PCN/SCN.3/WP.6 \* Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area [15 March 1985]
- LOS/PCN/SCN.3/WP.7 Suggested amendments to the Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (LOS/PCN/SCN.3/WP.6) [22 August 1985]
- LOS/PCN/SCN.3/1985/CRP.3 Applications for the designation of areas and the approval of plans of work [29 March 1985]
- LOS/PCN/SCN.3/1985/CRP.4 Introductory note by Chairman of Special Commission 3 [27 August 1985]

Special Commission 4

- LOS/PCN/SCN.4/L.2/Add.1 Chairman's summary of discussions on the Draft Rules of the International Tribunal for the Law of the Sea [29 January 1985]
- LOS/PCN/SCN.4/L.2/Add.1/Corr.1 Corrigendum (Chinese, English, French and Russian only) [11 February 1985]
- LOS/PCN/SCN.4/L.3 Chairman's summary of further discussions on the Draft Rules of the International Tribunal for the Law of the Sea [3 April 1985]
- LOS/PCN/SCN.4/L.3/Add.1 Chairman's summary of discussions on the Draft Rules of the International Tribunal for the Law of the Sea. [27 June 1985]
- LOS/PCN/SCN.4/L.4 Chairman's summary of discussions on the Draft Rules of the International Tribunal for the Law of the Sea [3 September 1985]
- LOS/PCN/SCN.4/WP.2/Add.1 International Tribunal for the Law of the Sea - Supplement to the Draft Rules of the Tribunal [25 March 1985]

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\* Reissued for technical reasons.

LOS/PCN/SCN.4/WP.3	International Tribunal for the Law of the Sea - Table of concurrence of the Draft Rules of the Tribunal [25 March 1985]
LOS/PCN/SCN.4/1985/CRP.6	Suggested re-draft of article 62, paragraph 3 (LOS/PCN/SCN.4/WP.2) [20 March 1985]
LOS/PCN/SCN.4/1985/CRP.7	Suggested re-draft of article 79, paragraph 4 in document LOS/PCN/SCN.4/WP.2 [27 March 1985]
LOS/PCN/SCN.4/1985/CRP.8	Privileges and immunities of the Tribunal - Statement by the Special Representative of the Secretary-General for the Law of the Sea [29 March 1985]
LOS/PCN/SCN.4/1985/CRP.9	Privileges and immunities of the Tribunal - Statement by the Chairman [1 April 1985]
LOS/PCN/SCN.4/1985/CRP.10	Suggested re-draft of article 84, paragraphs 2, 3 and 4 (LOS/PCN/SCN.4/WP.2) [2 April 1985]
LOS/PCN/SCN.4/1985/CRP.11	Explanatory Statement by the Secretary on Supplement to the Draft Rules of the Tribunal on the Prompt Release of Vessels and Crews (LOS/PCN/SCN.4/WP.2/Add.1) [2 April 1985]
LOS/PCN/SCN.4/1985/CRP.12	Suggested re-draft of article 98 in document LOS/PCN/SCN.4/WP.2 [29 August 1985]
LOS/PCN/SCN.4/1985/CRP.13	Suggested re-draft of article 108 in document LOS/PCN/SCN.4/WP.2 [29 August 1985]
LOS/PCN/SCN.4/1985/CRP.14	Suggested re-draft of articles 110-112 in document LOS/PCN/SCN.4/WP.2 [29 August 1985]



III. (d) DECLARATION ADOPTED BY THE PREPARATORY COMMISSION  
ON 30 AUGUST 1985  
(LOS/PCN/72)

The Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea;

Determined to carry out the powers and functions entrusted to it by resolutions I and II of the Third United Nations Conference on the Law of the Sea;

Taking note of the increasing and overwhelming support for the United Nations Convention on the Law of the Sea as evidenced, inter alia, by 159 signatories and 21 ratifications;

Considering that the United Nations General Assembly has adopted without dissent the declaration of principles in resolution 2749(XXV) proclaiming that the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction as well as the resources of the Area, are the common heritage of mankind;

Recognizing that the United Nations Convention on the Law of the Sea establishes the only régime to be applied to the Area and its resources;

Taking note of the letter dated 10 June 1985, addressed to the Chairman of the Preparatory Commission by the Acting Permanent Representative of the Union of Soviet Socialist Republics to the United Nations regarding the licence granted by the United States of America for the exploration of parts of the Area, 1/

Recalling Article 137 of the Convention which proclaims that no State or natural or juridical person shall claim, acquire or exercise rights with regard to the minerals recovered from the Area except in accordance with Part XI of the Convention;

Deeply concerned that some States have undertaken certain actions which undermine the Convention and which are contrary to the mandate of the Preparatory Commission;

Recalling also the United Nations General Assembly resolution 39/73, of 13 December 1984, which calls upon all States to desist from taking actions which undermine the Convention and defeat its object and purpose;

1. Declares that:

- (a) The only régime for exploration and exploitation of the Area and its resources is that established by the United Nations Convention on the Law of the Sea and related resolutions adopted by the Third United Nations Conference on the Law of the Sea;
- (b) Any claim, agreement or action regarding the Area and its resources undertaken outside the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions shall not be recognized.

2. Rejects such claim, agreement or action as a basis for creating legal rights and regards it as wholly illegal.

IV. OTHER INFORMATION

PROCES-VERBAL OF RECTIFICATION OF THE ORIGINAL OF THE CONVENTION  
(ENGLISH TEXT) AND OF THE CERTIFIED TRUE COPIES  
Reference C.N.202.1985.TREATIES-17 (Depositary Notification)  
23 August 1985

The Secretary-General of the United Nations, acting in his capacity as depositary, and referring to depositary notifications C.N.44.1985.TREATIES-3 of 16 March 1985 and C.N.94.1985.TREATIES-6 of 30 April 1985 concerning a proposed correction in respect of the original (English text) of the Convention, communicates the following:

Within a period of 90 days from the date of the depositary notification of 30 April 1985, no objection to the said proposed correction had been notified by any of the signatory or contracting States. Consequently, the Secretary-General has caused, on 29 July 1985, the appropriate correction to be effected in the English original of the Convention. A copy of the corresponding procès-verbal of rectification, which also applies to the certified true copies of the Convention established on 19 January 1983 transmitted by depositary notification C.N.57.1983.TREATIES-3 of 16 March 1983, is enclosed.

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA,  
CONCLUDED AT MONTEGO BAY, JAMAICA, ON 10 DECEMBER 1982

PROCES-VERBAL OF RECTIFICATION OF THE ENGLISH ORIGINAL OF THE CONVENTION

THE SECRETARY-GENERAL OF THE UNITED NATIONS, acting in his capacity as depositary of the United Nations Convention on the Law of the Sea, concluded at Montego Bay, Jamaica, on 10 December 1982,

WHEREAS it appears that the original of the Convention (English text) contains an error which should be corrected as follows:

English text

Page 75, article 164, paragraph 2 (b), line 2

Instead of:

"materials which may be derived from the Area"

read:

"minerals which may be derived from the Area"

WHEREAS the corresponding proposed correction was communicated to all States concerned by depositary notification C.N.94.1985.TREATIES-6 of 30 April 1985,

WHEREAS at the end of a period of 90 days from the date of the said communication no objection had been notified,

HAS CAUSED the correction to be effected in the original of the Convention (English text) which also applies to the certified true copies of the Convention established on 19 January 1983.

IN WITNESS WHEREOF, I, Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, have signed this procès-verbal at the Headquarters of the United Nations, New York, on 8 August 1985.