

SEPARATE OPINION OF JUDGE MOROZOV

1. I voted for the operative part of the Judgment in which the Court “finds that the Application of the Italian Republic, filed in the Registry of the Court on 24 October 1983, for permission to intervene under Article 62 of the Statute of the Court, cannot be granted”.

2. This is the second time in the course of the judicial activity of the International Court of Justice of the United Nations that the Court has been obliged to take a decision on a request invoking Article 62 of the Statute of the Court.

As I noted in my separate opinion appended to the Judgment of 14 April 1981 on the application by Malta for permission to intervene in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*I.C.J. Reports 1981*, p. 22) “the impact of” the reasoning used in this Judgment “goes far beyond the specific request of Malta, and may in future be considered as a precedent which . . . could be used for [further] justification of a practice which is not consistent with the Statute” of the Court.

3. The deliberations in the present case and a substantial part of the reasoning used in the Judgment, from my point of view, have confirmed my previous apprehensions. Certain attempts by Italy to contend that jurisdictional links exist between Italy and Malta and Libya prove nothing.

I continue to hold that no application to intervene under Article 62 can be entertained by the Court unless jurisdictional links (within the meaning of Articles 36 and 37 of the Statute) exist between the State presenting the request to intervene and the States parties to the case.

4. I cannot refrain from some remarks on paragraph 43 of the Judgment : “It is material to recall that Libya and Malta, by objecting to the intervention of Italy, have indicated their own preferences.” In the context of the paragraph, this sentence can only be interpreted to the effect that the Court, before considering the merits of the case between Libya and Malta, appears to have decided that their interests could be affected as a consequence of exercising their legal right to object to the Italian request.

In short, in the sentence previously quoted the Court, before considering the substance of the case, pledges itself to act in a way which could affect the interests of the Parties to the case. This seems like an attempt to predict that Libya and Malta could have made a rod for their own backs.

Such an unusual approach is, of course, unprecedented in the history of international jurisprudence.

(Signed) P. D. MOROZOV.