INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2022

Public sitting

held on Monday, 24 October 2022, at 10 a.m.,

at the International Tribunal for the Law of the Sea, Hamburg,

President of the Special Chamber, Judge Jin-Hyun Paik, presiding

DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY BETWEEN MAURITIUS AND MALDIVES IN THE INDIAN OCEAN

(Mauritius/Maldives)

Verbatim Record

Special Chamber

of the International Tribunal for the Law of the Sea

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	Judges	José Luís Jesus
		Stanislaw Pawlak
		Shunji Yanai
		Boualem Bouguetaia
		Tomas Heidar
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	Registrar	Ximena Hinrichs Oyarce

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THE PRESIDENT OF THE SPECIAL CHAMBER: Please be seated. Good morning. The Special Chamber will continue today its hearing on the merits in the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean*.

We meet this morning to hear the second round of oral argument of the Maldives. I now give the floor to Mr Thouvenin to make his statement.

MR THOUVENIN (*Interpretation from French*)**:** Thank you, Mr President.

Mr President, distinguished Judges, it falls to me today to start off the oral arguments of the second round of Maldives. At this ultimate stage of adversarial debate intended to inspire your reflection, the smokescreens have disappeared. As the Chamber knows well, the instant case of maritime delimitation was initially somewhat complicated by the dispute between Mauritius and the United Kingdom, until the Special Chamber, in its wisdom, decided that there was no longer any dispute between the United Kingdom and Mauritius. In that respect, Mauritius won – and very good, thus; Maldives is as delighted as Mauritius.

Now it remains to resolve the merits of the maritime dispute between Mauritius and Maldives. That should be non-contentious; all that is needed is an agreement on the equidistance line measured from the relevant coasts, consistent with the rules and settled practice, making sure of course not to refashion geography. This is essentially something for cartographers and diplomats, which really should not require lengthy legal debate; all the more so – and this is something we have experienced over these past days – given the amiability between the Parties, the open-mindedness, the spirit of friendship and willingness to cooperate that prevail between the Parties.

But *voilà*, there is the case of Blenheim Reef. The Special Chamber full well knows now what divides the Parties regarding this feature. Maldives is of the opinion that you have to treat this question pursuant to international law, whereas Mauritius requests you to venture out on far riskier slopes, illustrated by the very evocative image of Bingo.[1] Now, I have not got the imagination of a novelist and I never actually thought that maritime delimitation could be associated with a game of chance. So will you let yourselves be intoxicated during your deliberations by the power to reinvent maritime delimitation law? Will you twist the rules of the law of the sea like rusty old pieces of iron rusted by the salt of the sea? Will you refashion physical geography? Will you rewrite UNCLOS with no regard for the rules of interpretation of treaties codified by the Vienna Convention? Will you forgive all those offences done to procedure? Will you be so bold as to usurp the function of the Commission on the Limits of the Continental Shelf? Will you let yourself be convinced by some incomprehensible sketches accompanied by hastily manufactured arguments seeking to convince you of the existence of an extended continental shelf there where there is nothing?

Mauritius' arguments regarding all these questions is indeed similar to the game of Bingo.

[1] ITLOS/PV.22/C28/6, p. 6 (line 4) (Sands).

Mr President, since it is the last day and we are among friends who know one another, let me confide in you that, in her old age my grandmother herself played Bingo. She maintained that the odds of winning were 90 to 1.

So, does our opponents' line of argument have something like a 1 in 90 chance of convincing you? Well, let us have a look. Is a majority among the Members of the Special Chamber ready to be convinced that, for the purposes of delimitation, even though historically nobody – no court – has ever let themselves be convinced in this delimitation process that by the magic of some unbridled interpretation of articles 13 and 5 of the Convention, basepoints may be placed not on the relevant coast but on some low-tide elevation far away from the relevant coast of the closest island, of which they form no part, nor more so the prolongation, and which are in reality unrelated to that coast? I am going to say a little bit more about that later on, but if – and I did have the impression that it was the dominant feeling during the oral arguments on Saturday – the other side has come to realize that the relevant submarine coast has but a feeble chance of prospering, they can still hope that you may be more drawn to the idea of acting as legislators, rewriting Part IV of the Convention, naturally in disregard of the well-established rules of treaty interpretation law as codified by the Vienna Convention.

The Special Chamber will recall that Part IV was presented on Monday as a special regime.[2] This is apparently a magical concept. Yet, Part IV says strictly nothing about the law of maritime delimitation, which, after all, is the sole subject that interests us here; and no one, as far as I know, has ever argued that Part IV says that a dry reef is an island, and that maritime delimitation law is spelled out in it by way of exception to martitime delimitation law in articles 79 and 83. Does anyone think that this proposition has a 1 in 90 chance of winning the day?

Ms Sander will talk about this later on. She will also revisit the extent of Mauritius' EEZ, which determines the area of overlap between the Maldives' claim to an extended continental shelf and Mauritius' claim to an EEZ. She will also revisit the question of equal sharing of the alleged overlap of continental shelves. Because, not only is the other side urging you to reinvent the very foundations of the law of the sea and to disrupt its institutions by substituting yourselves for the Commission on the Limits of the Continental Shelf, but it is also asking you to refashion geography, giving it instead – by the magic of your judgment – the perfect balance that geography never offers, by dividing into two equal parts the alleged area of overlap between the Maldives' indisputable and undisputed claim to an extended continental shelf, and that of Mauritius – fruit of the imagination alone of a few and invented in the very middle of these proceedings.

Our opponents bet once again that, in order to be able to carry out this Solomonic endeavour, you will promptly pardon anyone who offers you the chance, for having scrupulously run roughshod over the basic rules of procedure of international law; and that you will go so far as to find that you have jurisdiction to settle a dispute which, when you ruled on jurisdiction, you had no idea even existed –

[2] ITLOS/PV.22/C28/1, p. 31 (lines 42-43) (Sands).

Ms Hart will revisit this too; and that, you will find that an incurable time-barred claim by Mauritius to an extended continental shelf is admissible – Professor Mbengue will talk to this as well; and that Mauritius' claim to an extended continental shelf is plausible, whereas it is manifestly destitute, contradictory and void of the minimum of scientific credibility which might render it admissible. Professor Akhavan will revisit this. The Agent of Maldives will wind up this round of oral argument by presenting the final submissions of the Respondent.

Mr President, distinguished Members of the Special Chamber, let me now come to the first part of my presentation today, which responds in part to the oral argument of Professor Sands, which was a bit of a rewrite of *The Mysterious Island* by Jules Verne, seasoned with the myth of Atlantis. It takes us to Blenheim Reef – Blenheim Reef transfigured into a full-blown island,[3] which is wholly part of the relevant coasts and, furthermore, controls more than 60 per cent of the provisional equidistance line, proudly annexing more than 4,600 square kilometres of the continental shelf and EEZ which should fall to Addu Atoll.[4]

With all due respect, that is the novel the other side has written. Blenheim Reef, you can see here at high water. According to the UN Convention on the Law of the Sea, it is an island. There is no difference between an island and Blenheim Reef. This is at high water – you can see it here. It is a large island. You should actually see it as *terra firma*, dry land. Blenheim Reef is the land territory that makes up the coast of Mauritius; and thus this island should be retained for the purpose of citing a basepoint to determine the provisional equidistance line.

You can see currently on the screen Addu Atoll on the left, and on the right you can see the Blenheim Reef area, which shows the elevations at low tide. The two images are at the same scale. Addu Atoll is made up of a number of islands, not a single one. Nobody has any doubt about it. But it does illustrate, by contrast, the weakness of the proposition advanced by the other side about the single low-tide elevation composed of a number of low-tide elevations.[5]

In the south-east part of Addu Atoll, you have Gan Island. This is a large island, inhabited by more than 1,000 inhabitants, with a bustling economy. It is not a very good photo – I do apologize, distinguished Judges, Mr President; but it is the only one we could get hold of. Addu Atoll is an island within the meaning of article 121, paragraph 1, so it has full effect, as article 121, paragraph 2, says. As you know, an island does not have full effect if it is a rock unfit for human habitation or an economic life of its own. As I said, if it is a rock unfit for human habitation or an economic life of its own. But if an island, a real island, generates no projection beyond 12 nm when it cannot sustain human habitation or an economic life of its own, what magic wand would enable the low-tide elevations of Blenheim Reef to have effect beyond 12 nm?

Mr President, distinguished Judges, perhaps, listening to our opponents' attempts to justify this fabulous destiny for Blenheim Reef, you thought of the well-known tirade

[3] ITLOS/PV.22/C28/1, p. 8 (lines 5-9) (Sands).
[4] ITLOS/PV.22/C28/1, p. 6 (lines 13-14) (Sands).
[5] ITLOS/PV.22/C28/1, p. 6 (line 23) (Sands).

of Edmond Rostand's Cyrano de Bergerac, which is often called "the tirade of the nose". Blenheim Reef – how to describe it?

> It is a rock! a crag! a cape! What am I saying? A cape is a peninsula![6]

Be reassured: even if I am wearing a near purple robe, I will not take you to the theatre today, unless very unwillingly.

Mr President, although it was presented somewhat elliptically on Saturday, we were finally able to understand the proposition of the other side; the other side requests that you decree as the law[7] as follows: first, any low-tide elevation located within 12 nm of land should, in principle, be considered to be the relevant coast within the legal meaning of that term, and can thus be retained as a basepoint for the delimitation of the continental shelf and the EEZ.[8]

Second, it is only if the LTE has a disproportionate effect on the equidistance line that it can be disqualified.[9] Were you to uphold this proposition as law, it would – to rehearse yet again the words of Cyrano de Bergerac's tirade, assuredly, Sir, be the jackpot[10] for Mauritius. Of course, both limbs of this line of argument are erroneous. As to the first of them, I recalled before the Special Chamber on Thursday the setteld jurisprudence regarding relevant coasts generating maritime entitlements.[11] Coasts are the meeting of the land with the sea. This is clear jurisprudence; it is massive, unchallenged, respected, the guarantee of legal certainty.

I have explained why certain States have proposed to courts and tribunals that basepoints be placed on low-tide elevations for the delimitation of their territorial sea because article 15 expressly allows this.[12] I have also indicated that never has any State made such a proposal for the purposes of legal delimitation of its EEZ and its continental shelf except for the case of Somalia, which came up against a huge wall of silence from the court.

Rather than recognizing this fact, Professor Sands quite simply repeated the erroneous arguments from the first round[13] that were countered in the first round by Maldives.[14] In fact, on Saturday our opponents were clearly crushed by the weight of the solid and consistent legal arguments put by Maldives. They found nothing to say as regards settled jurisprudence concerning the relevant coasts, which, in the law on delimitation of the continental shelf and the EEZ – a law that is clearly separate from that on delimitation of the territorial sea – are nothing other than *terra firma*, land territory, dry land. They did not seek to refute the dictum of the arbitral tribunal in the *South China Sea* case, which said without any ambiguity that an LTE is not land territory.[15] There, there was an awkward silence. Nor did they seek to refute the

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[6] *Cyrano de Bergerac* (1897), Edmond Rostand, Act 1, scene 4.
[7] ITLOS/PV.22/C28/1, p. 4 (line 11) (Sands).
[8] ITLOS/PV.22/C28/6, p. 3 (lines 29-38) (Sands).
[9] ITLOS/PV.22/C28/6 p. 3 (lines 40-43) (Sands).
[10] *Cyrano de Bergerac* (1897), Edmond Rostand, Act 1, scene 4.
[11] ITLOS/PV.22/C28/4, p. 1 (lines 33-47); p. 2 (1-16) (Thouvenin).
[12] ITLOS/PV.22/C28/3, p. 36 (lines 39-47); p. 37 (lines 1-13) (Thouvenin).
[13] ITLOS/PV.22/C28/1, p. 5 (lines 31-37) (Sands).
[14] ITLOS/PV.22/C28/1, p. 2 (lines 5-27) (Thouvenin).
[15] ITLOS/PV.22/C28/3, p. 23 (lines 42-44) (Thouvenin).

fundamental principle that they claim to embrace: the land dominates the sea. All this, according to them, is a creative but unprecedented approach.[16] No: with all due respect, it is settled jurisprudence, consistent, clear; it is what the law says.

Professor Sands, however, stuck to the authentically creative, but unprecedented, interpretation of articles 13 and 5, set out on Monday by Mr Parkhomenko,[17] and which I dispelled on Thursday without being contradicted in any way on Saturday. Professor Sands quite simply repeated that Blenheim Reef is an integral part of Mauritius' coast,[18] which is inexact; and, once again, he cited the supposedly saviour paragraph from *Qatar* v. *Bahrain*, where it states:

> In the view of the court, the question in the present case is not whether low-tide elevations are or are not part of the geographical configuration and as such may determine the legal coastline. The relevant rules of the law of the sea explicitly attribute to them that function when they are within a State's territorial sea.[19]

Did Maldives fail to engage with this passage, as you heard on Saturday?[20] Well, in the Rejoinder, paragraphs 31-35 deal with this;[21] and here I come to something that cannot be denied: our opponents failed to engage precisely with these paragraphs. Mr President, this time it is not I taking you to the theatre of the absurd; it is our opponents who are doing so. In line with the Rules I will not repeat our Rejoinder, but I would urge the Special Chamber to refer to it.

In short, it states that Mauritius has taken this sentence from *Qatar* v. *Bahrain* completely out of context, which is that of a delimitation of the territorial sea but not of an EEZ and the continental shelf; and this sentence is saying nothing other than what is expressly stated by the Convention, which expressly states in article 15 that the median line is calculated from the baselines that can legally incorporate certain LTEs – baselines which, in this context, but only in this context – not at all in that of the delimitation of the continental shelf and the EEZ – are deemed to be the coastline within the legal meaning of the term. In this regard, I recall that the arbitration in *Bay of Bengal* – and here I have to say that three Members of the Special Chamber were part of that tribunal – confirmed what Maldives is saying, which Mauritius is not understanding; that,

(Continued in English)

> the reference in article 15 to the median line as a method of delimitation cannot be read into articles 74 and 83 of the Convention.[22]

(Resumed in French) There was absolutely no response from our opponents in order to try to get around what is self-evident, other than to cite a study of the practice

[16] ITLOS/PV.22/C28/1, p. 3 (lines 40-41) (Sands).
[17] ITLOS/PV.22/C28/1, p. 23 (lines 6-19) (Parkhomenko).
[18] ITLOS/PV.22/C28/1, p. 3 (line 32) (Sands).
[19] *Maritime Delimitation between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, p. 101, para. 204.
[20] ITLOS/PV.22/C28/1, p. 3 (lines 37-38) (Sands).
[21] Rejoinder of the Republic of Maldives, paras. 31-35.
[22] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India),* Award, 7 July 2014, para. 338.

written by Derek Bowett,[23] which clearly does not have the same authority as does the settled jurisprudence that I have recalled, and it says nothing other than what we see in the extract from *Qatar* v. *Bahrain*, which I have just recalled applies only to the delimitation of the territorial seas and nothing beyond that.

The initial limb of the Mauritian argument therefore collapses onto itself. An LTE is not the relevant coast in terms of geography. It may be the relevant coast as an exception through the combination of articles 15 and 13 and solely in the context of the delimitation of territorial sea but not at all as regards the EEZ and the continental shelf.

As for the second limb of the Mauritius argument that only if an LTE has a disproportionate effect on the provisional equidistance line can it be set aside from its calculations – that is, quite simply, at odds with the jurisprudence.

What the jurisprudence says is, first of all, that when a law expressly provides – in the sole context of delimitation of the territorial sea through the combination of articles 15 and 13 – that the LTE is the coast within the legal meaning, that LTE will nonetheless be set aside if it misrepresents the coastal configuration, just as one must set aside veritable land features such as rocks, islands or coastal protruberances if they misrepresent the profile. In all cases to date, low-tide elevations have all been set aside. I explained the judgment in *Qatar* v. *Bahrain*[24] and other cases in detail on Thursday,[25] and my opponent responded with little enthusiasm quite simply what had already been set out in the Reply and in the first round of oral arguments.

What the jurisprudence states, this time on the matter of delimitation of the continental shelf and the exclusive economic zone is – as recalled with approval by ITLOS in 2012 – that

> [t]he Court must, when delimiting the continental shelf and exclusive economic zones, select base points by reference to the physical geography of the relevant coasts.[26]

That says it all: a low-tide elevation is not the relevant coast within the meaning of physical geography. An LTE within the meaning of physical geography is the sea. There can be no basepoints placed there for the purposes of delimitation; the matter is settled; the line of equidistance can be drawn.

But, Mr President, we are still left with Edimbourg Reef, this supposed LTE at some 20 nm – more than that, in fact – from the coasts of Nicaragua – and upon which the International Court of Justice allegedly decided in 2012, according to our opponents, to place a basepoint for the purpose of delimitation.[27] That is a key argument of their

[23] ITLOS/PV.22/C28/1, p. 5 (lines 38-41) (Sands).
[24] ITLOS/PV.22/C28/3, p. 29 (lines 29-46); p. 30 (lines 1-48) (Thouvenin).
[25] ITLOS/PV.22/C28/3, p. 35 (lines 14-46); p. 36 (lines 1-47) (Thouvenin).
[26] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment*, *I.C.J. Reports* 2009, p. 108, para. 137.
[27] ITLOS/PV.22/C28/1, p. 29 (lines 23-25) (Parkohomenko).

demonstration, their dramatic revelation. It could, according to them, tip the balance. We cannot, therefore, allow this to remain unsettled.

I shall not reiterate what I have already said as regards Edimbourg Reef in the first round of oral arguments. [28] It is correct, appropriate and not subject to any approximation. I do not take back a single word, and I note that, rather than responding, Counsel for our opponent wrote an epilogue to the rewrite of *The Mysterious Island*.

Three points can be made here. First, our opponents persistently claim that Edimbourg Reef is not an island but a low-tide elevation.[29] That was never decided by the International Court of Justice, neither in 2007 – on the contrary, it was then deemed to be an island with a territorial sea[30] – nor in 2012: it was the same island, in the eyes of the Court, which repeated this several times over in its judgment[31] – nor, again, in 2022 when the Court quite simply said that it did not know, and that Nicaragua had not furnished any evidence.[32] Nobody knows where our friends found the information they reproduced and which, moreover, in no way supports their position; because, secondly, and with all due respect, Counsel for our opponent has truly misunderstood in the reading of the 2012 judgment. It is undeniably incorrect to state that in 2012, the Court had not decided whether it was an LTE or a small islet.[33] In 2012, the Court had decided that it was an island because Nicaragua had not said otherwise, and that Colombia had not dreamed that it might be any different.

I have cited the judgment from 2012, which poses no difficulty of interpretation on that matter. The Court states that Edimbourg Reef is an island and it is because it believed that it was an island that it placed a basepoint on it.

Thirdly, there is nothing that would allow us to say, as we heard on Saturday, that the Court only recognized that it was an LTE in the subsequent *Violations* case when Colombia proved it to be such in opposing Nicaragua's straight baselines claim.[34]

The Court simply said, having heard the disconcerting arguments put by Colombia in September 2021,[35] that it could not take for granted that Edinburgh Reef was an island, which in no way is a stated final position.[36] Saying that a fact is not proved does not mean that it does not exist. Certainly not. Perhaps it is an island, perhaps not; the Court does not know. That is, quite simply, what it said – no more than that.

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[28] ITLOS/PV.22/C28/4, p. 3 (lines 40-47); p. 4 (lines 1-40); p. 5 (lines 1-8) (Thouvenin).
[29] ITLOS/PV.22/C28/6, p. 4 (lines 1-4) (Sands).
[30] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, *Judgment, I.C.J. Reports 2007*, p. 751, para. 303.
[31] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012,* p. 638, para. 21. pp. 698-700, paras. 201 and 204.
[32] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia),* Judgment of 21 April 2022, p. 85, para. 248.
[33] ITLOS/PV.22/C28/1, p. 5 (line 8-9) (Sands).
[34] ITLOS/PV.22/C28/1, p. 5 (line 9-10) (Sands).
[35] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia),* VR 2021/18, pp. 67-68, paras. 30-36.
[36] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia),* VR 2021/18, pp. 67-68, paras. 30-36.

Mr President, I shall finish with the argument of the drying reefs expounded by our opponents, and Ms Sander will come back to that shortly. In short, Mauritius is asking you to find that, under Part IV, points marked as drying reef on the sketch that you see before you, which is an illustration prepared for the purposes of demonstration, are, on the one hand, permitted as archipelagic basepoints, and, on the other hand, *ipso jure* basepoints for the purposes of delimitation of the continental shelf and the EEZ.

Take a look at this point, which is more than 40 nm to the north of the closest island. Consider that it is a low-tide elevation in the geomorphological category of drying reefs. Can one reasonably imagine that the drafters of UNCLOS intended that point to be both authorized as an archipelagic basepoint and to be imposed upon third parties and on judges as a basepoint for the purposes of maritime delimitation?

I leave the question with you, while sharing my own conviction that it is totally unimaginable.

Mr President, Members of the Special Chamber, it was an honour for me to make my oral pleadings before you. This concludes my presentation and I would ask you to call Ms Sander to the podium.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Thouvenin. I now give the floor to Ms Sander to make her statement. You have the floor, Madam.

MS SANDER: Mr President, Members of the Chamber, good morning. I will respond to the arguments made by Mauritius on three issues.

First, the drawing of archipelagic baselines pursuant to article 47. This is relevant to the placement of Mauritius' 200 nm line for the purposes of identifying the precise dimensions of the area of overlap between the OCS claim of the Maldives and the EEZ claim of Mauritius as identified in your preliminary objections judgment.[1]

Second, the continuation of the equidistance line as an equitable solution on the basis of international law, regardless of whether or not Mauritius has established an entitlement to an OCS, which it clearly has not, as Professor Akhavan will later explain.

Third, turning to why that OCS claim is in any event outside of this Chamber's jurisdiction and otherwise inadmissible, I will then address the Maldives' objection that Mauritius' proposed delimitation of the Parties' purported overlapping OCS claims necessarily requires prior delineation of the outer limits and that encroaches on the mandate of the CLCS. My colleagues will subsequently address the three further objections with respect to jurisdiction and admissibility in turn.

The Chamber will recall the graphic currently on the screen, showing in purple the area of overlap between the Maldives' OCS claim and Mauritius' EEZ claim. It is

[1] *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives),* Judgment on Preliminary Objections, 28 January 2021 ("Judgment on Preliminary Objections"), para. 332.

recalled that the red line depicts the equidistance line running from the left of the screen up to point 46, as addressed by Professor Thouvenin just now.

Point 47 *bis* indicates where Mauritius' 200 nm claim meets the Maldives' 200 nm claim.

The Maldives' case as to the correct placement of Mauritius' 200 nm claim line is that it should be located approximately 3.5 nm to the south of where Mauritius says that it should be placed; the reason being that there is a series of 57 low-tide elevations at Blenheim Reef and it is only with respect to those low-tide elevations within 12 nm of Île Takamaka that, pursuant to UNCLOS article 47, paragraph 4, the breadth of Mauritius' EEZ should be measured.

The Chamber will recall that article 47, paragraph 4 – now on your screens – expressly states that archipelagic baselines shall not be drawn to and from low-tide elevations except in two circumstances. The first, lighthouses or similar installations, is not relevant here. The second is if a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

Mauritius' first line of attack on this matter is to deny that Blenheim Reef is a feature consisting of 57 separate low-tide elevations. We were somewhat surprised to hear this given it is Mauritius' own survey that shows this geographical reality and Mauritius had expressly referred to the existence of drying reefs – plural – at Blenheim Reef in its written pleadings.[2] We were even more surprised to hear Professor Sands claim that the Maldives declined to engage with any of the evidence or arguments Mauritius presented[3] on this issue, given Professor Akhavan's submissions of that issue on Thursday.[4] Maybe I am still in Wonderland, perhaps having now migrated to the Mad Hatter's tea party.

In any event, the starting point is UNCLOS article 13 which defines a low-tide elevation as a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. So a single area of land. What gives that area of land its character as an LTE is that it is surrounded by and above water at low tide but submerged at high tide. Is that an apposite definition of Blenheim Reef, taken as a single feature? No. At low tide, Blenheim Reef could not be described as a single area of land and, further, taken as an aggregate feature, could not be described as being surrounded by and above water. Rather, Blenheim Reef is a feature, certain parts of which are surrounded by and above water at low tide; and each of those, taken individually, is an area of land which meets the requirements of article 13. Any submerged geological feature which connects those discrete areas of land under the water does not transform them into a single area of land.

The point can be tested with reference to UNCLOS article 121. Article 121 defines an island as a naturally formed area of land, surrounded by water, which is above water at high tide. Again, an area of land in the singular, identified with reference to whether it is above water at high tide. On the screen now we see a figure showing

[2] Reply of the Republic of Mauritius ('MR'), paras. 2.15, 2.82.
[3] ITLOS/PV.22/C28/6**,** p. 2 (lines 13–14) (Sands). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.
[4] ITLOS/PV.22/C28/3, p. 10 (line 10)–p. 11 (line 13) (Akhavan).

the southwestern portion of Peros Banhos Atoll. The yellow features are each discrete islands marked with their own names, and they are, in layman's terms, connected by other features, with green tidal regions exposed at low tide and submerged at high tide and blue shading indicating a submerged reef structure. But each yellow portion of land is clearly an island in its own right. What gives each area of land that character is that it is above water at high tide. Whatever so-called connection that may exist underwater is irrelevant to the legal definition. It is true for islands; it is true for LTEs.

Professor Sands chose to focus on a number of figures, seemingly to create an impression of a single drying unit. But, as he himself urged, let us dig a little deeper,[5] and I have my shovel ready.

His first port of call was navigational charts that he had referred to in the first round.[6] These navigational charts are generalized representations of Blenheim Reef, produced with a very specific purpose – safety of navigation. When an ore bulk oil carrier is navigating waters, it is not concerned with the niceties of a single feature versus a series of distinct features a few metres above or below low tide. But we are, and those charts are not optimal for the technical exercise currently before this Chamber of determining the precise dimensions of the low-tide elevations in the area. I will now explain why, using BA Chart 3 as an example.

First, they are based on old data. Professor Sands noted that this chart was updated in 2017.[7] Yes, but the source data diagram now on the screen shows that the data relating to Blenheim Reef (circled in red and marked with an "a") was, according to the top line of data sources, from a lead-line survey conducted in 1837. And that top line of data sources also indicates that the navigational charts in this area are all constructed using the same basic data sets, with BA Chart 3 here using Indian, U.S. and Russian data, so the fact that multiple States have published charts to the same effect does not bolster Mauritius' position.

The second point: the charts are at a small scale, and there is a reason for this. They are not intended to be at a granular level of detail, to be zoomed in on in a PowerPoint deck of slides before a tribunal. As I alluded to earlier, they are intended for use by a mariner on the bridge of a ship, using her compass and parallel rulers to navigate around a potentially dangerous partially submerged feature. Depicting a single feature, visible on a hard copy map, which a ship should circumvent, is precisely the function of these maps.

As expressly noted by the Court in *Nicaragua* v. *Colombia*, certain charts on which Nicaragua sought to rely in establishing whether Quitasueño was a low-tide elevation had little probative value with regard to that issue because those charts were prepared in order to show dangers to shipping at Quitasueño, not to distinguish between those features which were just above, and those which were just below, water at high tide.[8]

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[5] ITLOS/PV.22/C28/6, p. 7 (line 45) (Loewenstein).
[6] ITLOS/PV.22/C28/1, p. 24 (lines 2–7) (Sands); ITLOS/PV.22/C28/6, p. 2 (lines 13–22) (Sands).
[7] ITLOS/PV.22/C28/6, p. 2 (lines 21–22) (Sands).
[8] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J Reports 2012*, p. 624 at p. 644, para. 35.

Precisely so.

The third point: BA Chart 3 comes with an express disclaimer entitled – as you see on your screen – "Chart Accuracy" which reads: "Owing to the age and quality of the source information, some detail on this chart may not be positioned accurately."

It is these deficiencies which, apparently, informed Mauritius' decision to conduct a survey so it could fully understand the precise physical properties of Blenheim Reef. Professor Sands told the Chamber in the first round that the survey was transformative of the state of our knowledge of the reef[9] and provided new, detailed, objectively verifiable and significant material and evidence.[10] And yet it seems now Mauritius seeks to skate over such transformative evidence when the transformation looks unfavourable to them.

Professor Sands showed the original image, from Mauritius' survey, which provides the evidence of 57 LTEs, with red dots atop a grey submerged feature. Professor Sands presented the Maldives' approach of counting the separate elevations which are above water at low tide – represented here by the red dots – as an artifice on the basis that it airbrushed away the underlying image.[11] But there are no Photoshop or filtered Instagram tricks at play here. To analyse the features above water at low tide while stripping away the irrelevant submerged underwater connection is simply a faithful application of the definition of low-tide elevations pursuant to article 13. It is a representation of the precise areas of land that exist above water at low tide.

As to the satellite images to which Professor Sands referred,[12] no indication is given as to when in the tidal cycle these images were captured. The image of satellite-derived bathymetry[13] in its survey is a blunt tool showing depths related to an unknown vertical datum, with different colours indicating different depths below the surface, but not indicating what the surface is – lowest astronomical tide, high tide, mean sea level or something else. Whatever broad impression Professor Sands intended those images to create, the Maldives' submission is that they are of no technical value.

Professor Sands, finally, sought to derive some assistance from the case law. He pointed out that in the *South China Sea Arbitration* Mischief Reef and Second Thomas Shoal were each treated as a single feature.[14] But there was no need for the tribunal, in that case, to consider in any great detail the number of distinct low-tide elevations which these features comprised. Both were beyond 12 nm from the Philippines' coast,[15] neither of them (or part of them) was capable of generating a territorial sea.

[9] ITLOS/PV.22/C28/1, p. 15 (lines 29–31) (Sands).
[10] ITLOS/PV.22/C28/1, p. 13 (lines 15–20) (Sands).
[11] ITLOS/PV.22/C28/6, p. 2 (line 39) (Sands).
[12] ITLOS/PV.22/C28/6, p. 2 (line 22) (Sands).
[13] ITLOS/PV.22/C28/6, p. 3 (lines 1–6) (Sands).
[14] ITLOS/PV.22/C28/6, p. 3 (line 17) citing *South China Sea Arbitration (Philippines* v. *China)*, Award on the Merits, 12 July 2016, paras. 377–379.
[15] *South China Sea Arbitration (Philippines* v. *China)*, Award on the Merits, 12 July 2016, para. 290.

But there is a case where it has been necessary for an international court to consider whether maritime features in close proximity constitute a single low-tide elevation or more than one. That is *Nicaragua* v. *Colombia*. In that case, the Court focused on contemporary evidence and actual observations in identifying relevant maritime features.[16] The Court noted that Colombia relied on this evidence, these observations, in order to show that the large bank named Quitasueño comprised at least 20 low-tide elevations,[17] while Colombia contended that a number of other features qualified as islands.

The Court agreed with Colombia's approach of identifying numerous distinct maritime features based on the discrete areas of land which were above water at low and high tide, confirming that the evidence showed many of the features to be above water at some part of the tidal cycle and thus to constitute low-tide elevations, and proceeded to state: "[A]ll of those features would be low-tide elevations under the tidal model preferred by Nicaragua."[18] You will see there I was seeking to emphasize the use of the plural – low-tide elevations.

On your screen now is a graphic on which Colombia relied in its Rejoinder, entitled "Islands and low tide elevations identified during site visit" and denoted by a series of red dots red atop a grey submerged feature. The Court found that one of the features at Quitasueño, namely QS 32, is above water at high tide and thus constitutes an island but, as to the other 53 features identified at Quitasueño, it said, these are low-tide elevations.[19] It is significant that the individual features were the red dots very close to each other, many of which sat atop a single fringing reef which ran down the eastern edge of this feature. The fact of this submerged connection was irrelevant to the exercise of identifying the discrete areas of land which qualified as an island and 53 low-tide elevations.

I turn now to Mauritius' second line of attack and this is to say, aha! In fact, you the Chamber do not even need to worry about whether or not Blenheim Reef is one or 57 low-tide elevations for the purposes of drawing baselines; it is article 47, paragraph 1, of UNCLOS that applies, and this subparagraph provides – so they say – that Mauritius can draw its straight archipelagic baselines joining drying reefs of the archipelago without any distance constraint.

As this Chamber has likely now gathered, I like to begin by establishing the correct starting point. Here, the starting point, pursuant to the well-established rules on treaty interpretation set out in article 31 of the Vienna Convention on the Law of Treaties, is to interpret the terms of article 47, paragraph 94, in good faith in accordance with the ordinary meaning and in context. As Alice said to the cat, "Would you tell me, please, which way I ought to go from here?" to which the cat

[16] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J Reports 2012*, p. 624 at p. 644, para 36.
[17] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J Reports 2012*, p. 624 at p. 642, para. 29.
[18] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J Reports 2012*, p. 624 at p. 645, para. 38.
[19] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J Reports 2012*, p. 624 at p. 692, para. 181.

replied, “That depends a good deal on where you want to go.” Well, we want to go to a good faith interpretation of the plain terms of article 47.

It is common ground that every drying reef is a low-tide elevation,[20] as is the classification of Blenheim Reef as falling within the definition of low-tide elevations in article 13. And we know that article 47, paragraph 4, expressly provides that baselines shall not be drawn to and from low-tide elevations, except for in two circumstances, the relevant one being here where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island. Mauritius asks the Chamber to read article 47, paragraph 4, as adding a third exception of – unless the type of LTE is a drying reef. But that is not what it says.

Let’s look at the context to article 47, paragraph 4, namely the terms of article 47 as a whole. Article 47, paragraph 1, provides that an archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago. Professor Sands contended that the baselines drawn around drying reefs pursuant to article 47, paragraph 1, were not constrained by the requirements of article 47, paragraph 4. He asserted a textual basis for this. He sought to read the words, “the outermost islands and drying reefs” as “the outermost islands and outermost drying reefs”. He said it would be a bit weird if the drafters had referred to outermost drying reefs but then subjected them to a distance constraint three paragraphs later.[21]

But that reading is simply wrong, as is apparent when one consults the equally authoritative French text. If the Chamber will forgive the somewhat unpolished French accent combined with the Scouse twang here, the same words in the French version of the Convention are “*des îles les plus éloignées et des récifs découvrants*”. As is crystal clear, the translation of “outermost” − “*les plus éloignées*” − is attached only to “*des îles*”, the “islands”. This adjectival phrase is not also attached to “*des récifs découvrants*”, the “drying reefs”. The bottom falls out of Professor Sands’ textual launch pad. In fact, the States Parties’ choice not to attach the adjective to drying reefs is entirely consistent with them then imposing the distance constraint later in the article. I note that this confirms that islands and drying reefs are not equivalent in the drawing of archipelagic baselines, as explained by Professor Thouvenin.

The same conclusion is reinforced by examining the structure of article 47. I have already set out the general entitlement in article 47, paragraph 1, to draw baselines around certain features − drying reefs and the outermost islands. The article then goes on to provide a series of qualifications to that general starting point.

Subparagraph (2) states that as regards such baselines – and I pause there to note the clear linkage of this qualification to the baselines identified in subparagraph (1) – as regards such baselines, the lengths are not to exceed 100 nm.

[20] MR, paras. 2.47–2.48; ITLOS/PV.22/C28/1, p. 15 (line 29) (Sands).
[21] ITLOS/PV.22/C28/6, p. 7 (lines 40-43) (Sands).

Subparagraph (3): as regards such baselines, they are not to depart to any appreciable extent from the general configuration of the archipelago.

At subparagraph (4), the key one here, such baselines shall not be drawn to and from low-tide elevations, unless – as relevant here – it is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

The Maldives maintains that the alternative reading of article 47, paragraph 1, in isolation, as a stand-alone proviso that baselines may be drawn from drying reefs with zero distance constraint, is not a reasonable reading.

I recognize that to counter my reliance on the view of the Virginia Commentary, Professor Sands relied on the view of Commander Beazley, and in that connection spent some time on the *travaux* with reference to a rejected amendment proposed by the Bahamas.[22] The narrative on the *travaux* did not appear to fully take into account the unique circumstances of the Bahamas as expressly set out in the negotiating record.[23] In any event, pursuant to article 32 of the Vienna Convention on the Law of Treaties, recourse to the *travaux* is only to be made where the interpretation of the terms in accordance with the ordinary meaning pursuant to article 31 are obscure or lead to a result which is manifestly absurd or unreasonable. That is not the case here with the interpretation advanced by the Maldives.

As to the examples relied upon where States have drawn archipelagic baselines joining drying reefs without any distance constraint, the practice was hardly overwhelming – three isolated examples. The examples of Solomon Islands and Fiji relied upon are ones cited in the Proelss commentary. In that same passage of Proelss, he cites a 2008 U.S. and UK protest.[24] That protest was regarding the Dominican Republic's drawing of archipelagic baselines, with those two States, the U.S. and the UK, taking the position that a feature used to draw archipelagic baselines must either be above water at high tide – an island – or, if it is a drying reef, i.e. only emerging at low tide, it must comply with one of the exceptions in article 47, paragraph 4. That practice is consistent with the position of the Maldives.

I turn now to the fact that the Maldives' entitlement to a continental shelf beyond 200 nm from its baseline, its OCS, extends into the 200 nm limit of Mauritius. The Maldives maintains its position that it can do so and that the minutes of 2010 are of no assistance in this regard, noting that Mauritius did not refute the clear legal

[22] ITLOS/PV.22/C28/6, p. 8 (lines 19–43) (Sands).
[23] Third United Nations Conference on the law of the Sea, Summary records of meetings of the Second Committee, 36th meeting, 12 August 1974, UN Doc A/CONF.62/C.2/SR.36 <https://legal.un.org/diplomaticconferences/1973_los/docs/english/vol_2/a_conf62_c2_sr36.pdf> accessed 23 October 2022, p. 265; Third United Nations Conference on the Law of the Sea, 191st Plenary meeting, 9 December 1982, UN Doc A/CONF.62/SR.191 <https://legal.un.org/diplomaticconferences/1973_los/docs/english/vol_17/a_conf62_sr191.pdf>, accessed 23 October 2022, p. 105.
[24] Clive R. Symmons, "Part IV: Archipelagic states", in Alexander Proelss*, United Nations Convention on the Law of the Sea: A Commentary* (Nomos/Bloomsbury, 2017), p. 368; Text of a joint demarche undertaken by the United Kingdom of Great Britain and Northern Ireland and the United States of America in relation to the law of the Dominican Republic number 66-07 of 22 May 2007, done on 18 October 2007 (Law of the Sea Bulletin no. 66).

principle I cited that a statement offered during inconclusive negotiations that fail to resolve interrelated issues cannot be taken into account.[25]

What Mauritius did do was assert that in that case Mauritius could also correspondingly claim an OCS that encroaches within 200 nm of Maldives.[26] But, as I noted in the first round, with respect to the extension of the Maldives' OCS entitlement into the 200 nm limit of Mauritius, the foot of slope point on which the Maldives relies is clearly within its – the Maldives' – 200 nm limit and located on its – the Maldives' – side of the delimitation line, based on a properly drawn equidistance line. This is shown on the graphic now on the screen, with the red dot denoting the foot of slope point and the equidistance line denoted by the dark grey dash line. The same could not be said for Mauritius' hypothetical claim of an OCS encroaching within 200 nm of Maldives based on foot of slope points on the Maldives' side of the delimitation line on either of the Parties' cases.

With respect to this area of overlap, an equitable solution in accordance with international law is to continue the equidistance line using a directional line.

Mauritius has failed to establish its entitlement to an OCS before this Chamber, as Professor Akhavan will later confirm, and it has similarly failed to overcome the Maldives' other jurisdictional and admissibility objections. But even if Mauritius had surmounted these objections, the continuation of the equidistance line remains an equitable solution on the basis of international law.

On this issue of the delimitation of overlapping OCS entitlements − a hypothetical which I am only addressing for the sake of completeness − Mr Loewenstein identified three areas of agreement: first, the three-step method is not mandatory,[27] although, as noted in the *Ghana* v. *Côte d'Ivoire* award also cited by Mauritius, it is only compelling reasons that make it impossible or inappropriate which would justify not using that methodology.[28]

Second, that the three-step method ensures coherence and predictability as well as sufficient flexibility to accommodate the particular circumstances.[29]

Third, where the three-step methodology is applied it must be an equitable solution in light of the circumstances of the case.[30] The Chamber will have noticed the gradual creep of Mauritius' position from a no three-step hard line, to increasingly engaging with the Maldives' position of its application not just within, but also beyond, 200 nm.

But tellingly off his list is the fact, as I noted on Friday, that article 83, paragraph 1, of UNCLOS mandates an equitable solution on the basis of international law, and

[25] ITLOS/PV.22/C28/4, p. 8 (lines 10–18) (Sander).
[26] ITLOS/PV.22/C28/6, p. 27 (lines 17–18) (Loewenstein).
[27] ITLOS/PV.22/C28/6, p. 27 (line 24) (Loewenstein).
[28] *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 289, cited by ITLOS/PV.22/C28/2, p. 24 (lines 37–39) (Loewenstein).
[29] ITLOS/PV.22/C28/6, p. 27 (lines 31–36) (Loewenstein).
[30] ITLOS/PV.22/C28/6, p. 27 (lines 26–29) (Loewenstein).

international law is clear that equity does not necessarily imply equality[31] and the object of delimitation is not an equal apportionment of maritime areas.[32]

As to my point that all cases to date have applied the same methodology within and beyond 200 nm, all of those cases post-dated the ILA Committee's report to which Mr Loewenstein referred,[33] including the 2012 decision in *Bangladesh* v. *Myanmar* of this Tribunal, a member of which was Chair of the ILA Committee.[34]

The Chamber will recall that Mr Loewenstein had conceded in the first round that equidistance can still usefully serve as an appropriate starting point, where the geographical context is one of adjacency,[35] and I had shown with reference to a series of supporting graphics that the configuration of the continental margins in this case is indeed one of adjacency.[36]

The response we heard on Saturday was a development of Mauritius' position on the critical point of distinction, namely that in all the prior cases applying the same methodology within and beyond 200 nm, those cases involved adjacent coastal States where, and I quote, "the overlapping OCS entitlements were situated across a broad, continuous belt of shelf next to the adjacent States." Mr Loewenstein said that the present case is different because the area of overlapping OCS entitlements here protrudes to the north.[37]

But that is precisely the point. The geographical and geomorphological reality in the circumstances of this case is that the extended shelf that Mauritius claims lies in closer proximity to Maldives' coast than to that of Mauritius,[38] with the area subject to delimitation protruding, to use Mauritius' terminology, to the north. This was clear from the graphic I presented at round 1,[39] now shown again on your screen.

And it is that reality that cannot be ignored. As Mr Loewenstein kept emphasizing, it is the facts of the particular case[40] to which the Chamber must have close regard and the Tribunal must examine the geographic situation as a whole.[41] We agree. On this point, the graphics shown by Mauritius on Saturday were helpful. The Chamber will recall the graphic from Saturday that is now on your screen.[42]

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[31] *Maritime Dispute (Peru* v. Chile*), Judgment, I.C.J. Reports 2014*, p. 3 at p. 69, para. 193, citing *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 61 at p. 100, para. 111, (emphasis added).
[32] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13 at pp. 39-40, para. 46; *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)*, Judgment, 12 October 2021, para. 172, cited in ITLOS/PV.22/C28/5, p. 19, (lines 44–46) (Sander).
[33] ITLOS/PV.22/C28/6, p. 28 (lines 11–47) (Loewenstein).
[34] ITLOS/PV.22/C28/6, p. 28 (line 13) (Loewenstein).
[35] ITLOS/PV.22/C28/2, p. 27 (lines 6–8) (Loewenstein).
[36] ITLOS/PV.22/C28/5, p. 23 (lines 24–45) (Sands).
[37] ITLOS/PV.22/C28/6, p. 29 (lines 41–42) (Loewenstein).
[38] Memorial of the Republic of Mauritius ("MM"), para. 4.72.
[39] ITLOS/PV.22/C28/5, p. 25 (lines 13–26) (Sander).
[40] ITLOS/PV.22/C28/6, p. 29 (lines 12–13) (Loewenstein).
[41] *Ibid*., p. 29 (lines 17–20) (Loewenstein), citing *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, Award, 7 July 2014, para. 410.
[42] ITLOS/PV.22/C28/6, p. 30 (lines 25–31) (Loewenstein).

Mr Loewenstein said that if this figure reflected the physical reality, then the delimitation line within 200 nm could be extended, consistent with equity.[43] But Mauritius' continental shelf is not arranged in that way, and that reality, that circumstance, should be reflected in the equitable solution adopted. The delimitation methodology cannot be the tool used to compensate for the fact that the geographical and geomorphological arrangement does not result in an equal split.

And the Maldives' position here is fully supported by the approach taken in *Ghana* v. *Côte d'Ivoire*. Here is the graphic I showed on Friday,[44] with the area between the yellow and red line showing the overlapping OCS areas, and the white dashed line denoting the equidistance line drawn by the Chamber, awarding a smaller area to Ghana. The Chamber did not redraw the line to ensure a mathematically precise equal share. If it had refashioned geography in this way, the delimitation line would have been that indicated by the orange line.

I also showed in round one the series of graphics from the *Bangladesh* v. *Myanmar* case showing that, pursuant to the adjusted equidistant line that was applied there, and reflecting the physical realities of the case, Bangladesh was awarded less than 20 per cent of its OCS claim. Mr Loewenstein did not respond on that.

Mauritius is stuck with the fact that the tribunals in those cases found that it was equitable for Ghana and Bangladesh, respectively, to receive much less than 50 per cent of the pie given the geographical and geomorphological realities. It presumably follows that, if the physical reality in this case were such that, for example, an equidistance line resulted in Mauritius getting 40 per cent, or 30 per cent, or even (like Bangladesh) less than 20 per cent of the overlapping area, Mauritius would concede that no adjustment would be needed. But Mauritius suggests that, because the geographical and geomorphological reality here weighs even more heavily against it than was the case for Ghana and Bangladesh, that it (Mauritius) should be placed in a much more favourable position than those two States, receiving a full 50 per cent of the overlapping area. That cannot be right.

As to the accusation that the Maldives had failed to consider the linkage between the method of delimitation and the basis for entitlement,[45] I did engage with that linkage. The point that I developed was that the basis of entitlement to a continental shelf is based on a State's natural prolongation of its land territory, i.e., the prolongation from its coast, and so the coastal geography must be reflected in the methodology deployed, to guard against arbitrariness.

It in fact seems that Mauritius' focus, as I alluded to earlier, is now not on the question of whether to apply the three-step methodology, but has shifted to its application[46] by way of an adjusted equidistance line. On this Mauritius calls for an adjustment based on the cut-off of its OCS.

[43] ITLOS/PV.22/C28/6, p. 30 (line 29) (Loewenstein).
[44] ITLOS/PV.22/C28/5, p. 26 (line 28) (Sander).
[45] ITLOS/PV.22/C28/6, p. 28 (lines 43–46) (Loewenstein).
[46] ITLOS/PV.22/C28/6, p. 27 (lines 31–36) and p. 31 (lines 3–21) (Loewenstein).

It is unfortunate that on Saturday, counsel for Mauritius represented that I had said "This is not a 'cut-off'."[47] Of course, as the Chamber will have noted, what I had in fact said was:

> This is not a cut-off in the sense of Mauritius being wedged in without access to the wider Indian Ocean, and Mauritius would still of course have over 1,100 square kilometres of outer continental shelf which it has identified to the east of the area of overlapping OCS claims.[48]

And that is correct.

I also noted that "international jurisprudence does not recognize a general right of coastal States to the maximum reach of their entitlements, irrespective of the geographical situation, noting that, in light of the geographical situation, a State may not be awarded the full theoretical entitlement".[49] Again, that is correct.

The cut-off here is a reflection of the physical reality. It cannot be the case that, because the physical reality is distributed unfavourably against Mauritius, this Chamber should engage in distributive justice to achieve an arbitrary equal share. The settled jurisprudence expressly rejects delimitation based on distributive justice or such mathematical equality.[50] Just ask Bangladesh.

Mauritius remains notably silent as to the third stage of the methodology. Despite the Maldives expressly raising this point,[51] Mauritius has not carried out any proportionality calculation with respect to the overlapping areas both within and beyond 200 nm applying the equidistance line. If it had, it would have been forced to acknowledge that the discrepancy between the ratio of area and coast arising from its delimitation would be significantly less extreme than that in the case of *Nicaragua* v. *Colombia*, which were not significant enough to justify an adjustment by the Court.[52]

Of course, Mauritius does not in any event have an OCS entitlement and this issue of the delimitation of the Parties' overlapping OCS claims is simply not one that, in the Maldives' respectful submission, this Chamber can or ought to exercise jurisdiction over, and it is to those jurisdiction and admissibility objections the Maldives now turns.

I will begin by addressing the objection that Mauritius' proposed delimitation of the Parties' purported overlapping OCS claims necessarily requires prior delineation of the outer limits and therefore encroaches on the mandate of the CLCS. My colleagues will then address the additional three objections in turn.

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[47] ITLOS/PV.22/C28/6, p. 30 (lines 34–35) (Loewenstein).
[48] ITLOS/PV.22/C28/5, p. 24 (lines 23–24) (Sander).
[49] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, Award, 7 July 2014, para. 469 (emphasis added).
[50] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021, para. 172.
[51] Rejoinder of the Republic of the Maldives ("MRej"), para. 141(c); ITLOS/PV.22/C28/5, p. 29 (lines 6-17) (Sander).
[52] MM, para. 4.46; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J Reports 2012*, p. 624, at p. 717, para. 247.

As I explained on Friday, fundamental to Mauritius' proposal is the premise of an equal share,[53] resulting with a mathematically precise equal apportionment of the area,[54] with Mauritius and the Maldives being awarded exactly 11,136 square kilometres each.[55] So it is clear that Mauritius' line of equal division[56] is premised on a particular delineation of the Parties' respective OCS claims. That proposed approach to delimitation would run directly counter to the clear position of ITLOS that

> [t]he exercise by international courts and tribunals of their jurisdiction regarding the delimitation of maritime boundaries, including that of the continental shelf, is without prejudice to the exercise by the Commission of its functions on matters related to the delineation of the outer limits of the continental shelf.[57]

Having provided no substantive response on this objection in its written pleadings, on Monday we heard for the first time two arguments from Mauritius, to which I responded on Friday.[58]

By Saturday, Mauritius' response had whittled down to just one of those two arguments, namely

> the Parties agree as to the location of the continental shelf's outer limits in this area … because the Parties use the same critical foot of slope point and it is simply a matter of applying the method of delineation set out in article 76(4)(a)(ii),[59]

having earlier asserted that the Special Chamber

> simply requires the outer limits to be drawn by straight lines from the foot of the continental slope not exceeding 60nm in length, connecting fixed points, defined by coordinates of latitude and longitude.[60]

But this seems to confuse the provisions of article 76, paragraph 4(a)(ii), regarding the delineation of fixed points 60 nm from the foot of slope, with paragraph 7, concerning the means of delineating the fixed points at a distance not exceeding 60 nm from each other.

More fundamentally, it ignores the key point that I had made in round one, namely that whether or not there is agreement between the Parties on the exact location of FOS-VIT31B, the Commission may not accept a State's position. As Mr Loewenstein showed, the single-beam profile, upon which the foot of slope point is based, dates from 1959 and was acquired by the former Soviet research vessel Vitiaz.[61]

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[53] MM, para. 4.49.
[54] MR, para. 4.25.
[55] MR, Figure R4.6 (reproduced in Mauritius' Judges' folder, (Loewenstein-1) Figure 7).
[56] MR, Figure R4.6.
[57] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 379.
[58] ITLOS/PV.22/C28/5, p. 18 (line 47) – p. 19 (line 6) (Sander).
[59] ITLOS/PV.22/C28/6, p. 25 (line 49) – p. 26 (line 2) (Loewenstein).
[60] ITLOS/PV.22/C28/6, p. 22 (lines 38–40) (Loewenstein).
[61] Reproduced in Mauritius' Judges' folder, Loewenstein-(2) Figure 5.

Consequently, it cannot be ruled out that the CLCS may not agree with the location of this foot of slope point.

What the delineation of the outer limits pursuant to the Commission's recommendations will ultimately be cannot be assumed. Yet Mauritius' approach is premised precisely on such an assumption.

It is necessary at this point to include one clarificatory point. Mr Loewenstein doubled down on his position that the Maldives had indeed objected to Mauritius' CLCS submission in respect of the Northern Chagos Archipelagic Region, accusing the Maldives of adopting what he called a hyperformalistic view[62] of its diplomatic note of 13 June 2022.[63] The Maldives, the author of the relevant note, is advancing the correct interpretation, in light of two considerations.

First, what the note says, in the section of the note that was not cited by Mauritius on Saturday, it says that, having just recently received Mauritius' submissions, the Maldives does not consider it appropriate to respond to the submission and reserves its right to fully respond in due course.

Second, that the Maldives has not, to date, objected to the Commission's consideration of Mauritius' submission is based on the knowledge of the good-faith intention in sending that diplomatic note, which was at that stage certainly not to lodge any objection impeding progress before the Commission. As has been expressly clarified by the Agent on Thursday: "Contrary to the contention advanced by the counsel for Mauritius on Monday afternoon, the Maldives has never protested any submission by Mauritius to the CLCS, including the one filed in April of this year."[64]

The current position could not be clearer.

Mr President, Members of the Chamber, that concludes my submission and I ask that you now call Dr Hart to the podium.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Sander. I now give the floor to Ms Hart to make her statement.

MS HART: Mr President, good morning. Today I will address you again on the question of whether there was a dispute concerning Mauritius' OCS claim which had crystallized prior to Mauritius commencing these proceedings. The Maldives' answer to that question remains an emphatic "no".

Professor Klein's second speech on Saturday was notable not only for what he said, but also for what he did not say on two crucial issues.

[62] ITLOS/PV.22/C28/6, p. 26 (line 11) (Loewenstein).
[63] Diplomatic Note Ref. 2022/UN/N/25 of the Permanent Mission of the Republic of the Maldives to the United Nations to the Commission on the Limits of the Continental Shelf, 13 June 2022 (MRej, Annex 11).
[64] ITLOS/PV.22/C28/3, p. 4 (lines 45-47) (Riffath).

First, he was silent as to the legal principles which I set out carefully in my first speech. As I explained on Thursday,[1] a dispute requires a positive opposition of views,[2] with "the claims of one party [having been] affirmatively opposed and rejected by the other".[3] This positive opposition must have arisen – and this was a point I stressed – "with respect to the issue brought before the Court".[4] A dispute on different, even if closely related, matters is not sufficient. The dispute must be of sufficient clarity, a requirement not satisfied if one side's position lacks "any particulars".[5] And the dispute must have crystallized before proceedings commenced; a notification cannot itself create a dispute *de novo*. As Mauritius offered no response, we can only assume it accepts all these principles.

The second notable silence concerned the factual record. On Thursday I pointed out that Professor Klein had been able to marshal just a single sentence in just a single document, the Parties' March 2011 joint communiqué,[6] in support of Mauritius' contention that a relevant dispute existed prior to June 2019. After Saturday, that remains true.

If those were the silences, what did we hear from Professor Klein? There were six matters which I will address in turn.

First, although he could point to no other documents, Professor Klein doubled down on his reliance on the 2011 joint communiqué. On the basis of this document, he said that both States found in 2011 the existence of an overlap of the OCSs in the Chagos region.[7] He steered well clear of invoking the actual legal test – positive opposition of views, with each side's claim affirmatively rejected by the other – because the communiqué gets nowhere near that standard. All that the Parties agreed was the principle of making bilateral arrangements with respect to an overlapping area of extended continental shelf, but of course that says nothing as to whether there had been any articulation of a claim in that regard let alone the crystallization of any disagreement.

Professor Klein said that the "key question" was whether the matter referred to in this document was ever "resolved", and he pointed out that the States in fact never made any "bilateral arrangements".[8] The logic appears to be that if States don't reach a resolution, then there must be a dispute. But this doesn't follow. States may have a dispute and fail to resolve it but there may also be no resolution where there is no

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[1] ITLOS/PV.22/C28/4, p. 25 (lines 34–35), p. 26 (lines 1–6) (Hart).
[2] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833 at pp. 850–851, para. 41.
[3] *South China Sea Arbitration (Philippines* v. *China)*, Award on Jurisdiction and Admissibility, 29 October 2015, para. 159.
[4] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833 at pp. 850–851, para. 41.
[5] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833 at pp. 851, 855–856, paras. 42–43, 57.
[6] Joint Communiqué of the Republic of Mauritius and the Republic of Maldives, 12 March 2011 (Counter-Memorial of the Republic of Maldives ("MCM"), Annex 66).
[7] ITLOS/PV.22/C28/6, p. 13 (lines 43–44) (Klein).
[8] *Ibid*., p. 14 (lines 4–11) (Klein).

dispute in the first place, and as to the question of whether there was such a dispute, one cannot bypass the clear requirement of a positive opposition of views that has been sufficiently particularized. Put another way, where two States agree to collaborate on a matter and then no concrete measures of collaboration are put in place, that in and of itself is not evidence of a dispute; it must still be shown that the matter was one satisfying the usual criteria.

Secondly, Professor Klein sought to convince the Chamber that Mauritius' OCS claim formed part of an "overall delimitation dispute" and that that is enough to establish jurisdiction.[9] His argument goes that, because the Parties had a dispute over other maritime entitlements, a claim by Mauritius to an OCS can be assumed to have been rolled up as part of their disagreement.

But that defies the case law, to which Professor Klein did not respond, as to the necessary specificity of a dispute, including the ICJ's stipulation that there must have been a dispute about "the issue brought before the Court".[10] In particular, it is inconsistent with the approach in *Barbados* v. *Trinidad and Tobago*. As the Chamber will recall from my speech on Thursday, the tribunal in that case meticulously addressed whether a dispute specifically relating to delimitation of the OCS had crystallized between the Parties before allowing this matter to be folded into proceedings about other maritime delimitation issues.[11]

And that brings me to the third matter: Professor Klein's response on *Barbados* v. *Trinidad and Tobago*. He pointed out to you that, in considering whether to allow Trinidad and Tobago, as the respondent State, to expand the matters before the tribunal beyond those in the application of Barbados, as the applicant State, the tribunal had regard to the fact that there is in law only a single continental shelf.[12] However, the notion of a single continental shelf was only one factor. The existence of a dispute concerning OCS delimitation, which had formed a discrete and identifiable part of the parties' negotiations, was also a crucial factor and one that is lacking in the present case.

Professor Klein also sought to distinguish the *Barbados* case from the present one, saying that, in that case, the "negotiations case file … is radically different from the one we have got".[13] As he pointed out, in that case there were no fewer than nine maritime boundary negotiations, involving exchanges of concrete proposals which were even mapped on specialized charts.[14] He stated: "The contrast with our situation in the instant case could hardly be more marked."[15] I cannot help but agree vigorously, but that is a point in the Maldives' favour, not Mauritius'. In relation to Mauritius' OCS claim, there was nothing even in the same ballpark as the negotiations between Barbados and Trinidad and Tobago. The evidence supporting the existence of a dispute in that case is altogether absent here.

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[9] *Ibid*., p. 13 (line 41) (Klein).
[10] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833 at pp. 850–851, para. 41.
[11] ITLOS/PV.22/C28/4, p. 28 (lines 29–32) (Hart).
[12] ITLOS/PV.22/C28/6, p. 15 (lines 20–41) (Klein).
[13] ITLOS/PV.22/C28/6, p. 14 (line 41) (Klein).
[14] *Ibid*., p. 14 (lines 42–48) (Klein).
[15] *Ibid*., p. 15 (line 1) (Klein).

I recognize the nuance which I understand Professor Klein sought to draw out, namely that in the *Barbados* case, where there was a very full negotiating record, it is natural that the specific OCS claim was spelled out in some detail. His argument is that, in this case, where the negotiating record is considerably thinner, the lack of specific mention of Mauritius' OCS claim should be overlooked.[16]

But this logic is wrong in principle. A more sparse negotiating record does not justify a lowering of the requirements in relation to the existence of a dispute. This is especially so when even the single document which does relate to the relevant subject matter refers only to an intention to collaborate and not to any disagreement.

It is also especially the case here, where the joint communiqué was followed, just 12 days later, by Mauritius' formal protest against the Maldives' CLCS claim,[17] which objected only to the Maldives' encroachment into Mauritius' EEZ – a point Professor Klein conspicuously avoided. There is simply not a credible basis for saying that the Parties understood their maritime delimitation dispute, as opposed to the matters on which they would cooperate, as encompassing an OCS claim by Mauritius.

Fourth, Professor Klein alleged that the Maldives was not deprived of an opportunity to react to Mauritius' OCS claim, and that the only reason discussions had not occurred was that the Maldives chose not to participate in them.[18] This argument confuses the question of whether negotiations had become futile with the question of whether Mauritius had ever articulated a claim.

In *Georgia* v. *Russia*, the ICJ held that "the existence of a dispute may be inferred from the failure of a State to respond to a claim in circumstances where a response is called for".[19] So there must first be a claim calling for a response, and then a failure by the other side to engage with it.

In this case, the fact that the Maldives felt unable to negotiate given the longstanding sovereignty dispute between the United Kingdom and Mauritius (which this Chamber has acknowledged existed not only in 2011 but all the way up to 2019)[20] did not prevent Mauritius from setting out its claim. It could have done so in written correspondence or even filing a CLCS submission with respect to the Northern Chagos Archipelago Region. Maldives could then have reacted. Here, there was no claim by Mauritius which called for a response by the Maldives.

Fifth, Professor Klein disavowed Mauritius' own figure from the preliminary objections phase which showed the extent of the dispute. He said that Figure 4 from Mauritius' Written Objections, which I showed you on Thursday, was intended to

[16] *Ibid*., p. 15 (lines 11–18) (Klein).
[17] Diplomatic Note No. 11031/11 from the Permanent Mission of the Republic of Mauritius to the Secretary-General of the United Nations, 24 March 2011 (MCM, Annex 59).
[18] ITLOS/PV.22/C28/6, p. 16 (lines 12–21) (Klein).
[19] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70 at p. 84, para. 30.
[20] Judgment on Preliminary Objections, para. 242.

depict only the Parties' overlapping claims within 200 nm and not the full extent of the dispute before the Special Chamber.[21]

But this response overlooks a number of points.

One: Professor Klein ignored the fact that I also took the Chamber to Figure 3 of Mauritius' Written Observations, which, as I pointed out on Thursday, depicted the Maldives' OCS claim.[22] There was no figure showing an OCS claim by Mauritius.

Two: as I also highlighted on Thursday, the Special Chamber found that "graphic representations illustrate the extent of the Parties' claims".[23] So the Chamber was satisfied that the totality of the graphics presented to it – again, none of which depicted an OCS claim by Mauritius – reflected the extent of the Parties' claims – the full scope of the dispute.

Three: beyond the graphics, there was no other aspect of Mauritius' case which suggested that its OCS claim formed part of the dispute. Both in its Written Observations[24] and Professor Klein's oral submissions two years ago,[25] Mauritius referred to the Parties' respective domestic legislation claiming an EEZ and continental shelf up to 200 nautical miles. It also referred to the Parties' CLCS claims made prior to that point, of course not including Mauritius' claim to the north of the Chagos Archipelago, which it would only make in mid-2021. Again, the Special Chamber anchored the dispute it identified in that evidence arising from the Parties' actual conduct.[26]

Professor Klein would have the Chamber believe that, despite the fact that Mauritius had not yet made an OCS claim and thus nobody mentioned any OCS claim by Mauritius at the preliminary objections phase, nonetheless both Parties and the Chamber were aware that the dispute encompassed an OCS claim by Mauritius. This was an aspect of the dispute apparently so obvious that it didn't need to be referred to in the Parties' written or oral submissions, or depicted in any graphics, or supported by any documentary evidence, or referred to in the judgment. That suggestion, in my respectful submission, does not survive a basic reality check.

Which brings me to the sixth and final matter arising from Professor Klein's speech. He closed this argument by stating that, if the Chamber were to decline jurisdiction, Mauritius could simply recommence fresh proceedings where the existence of a dispute would be beyond doubt.[27] He prayed in aid the Croatian *Genocide* case and its references to the sound administration of justice,[28] overlooking that that case was not about the existence of a dispute but the relevant States' access to the Court, and

[21] ITLOS/PV.22/C28/6, p. 16 (lines 36–50) – p. 17 (lines 1–2) (Klein).
[22] ITLOS/PV.22/C28/4, p. 22 (lines 1–4) (Hart).
[23] Judgment on Preliminary Objections, para. 314; ITLOS/PV.22/C28/4, p. 30 (lines 39–41) (Hart).
[24] Written Observations of the Republic of Mauritius on the Preliminary Objections raised by the Republic of Maldives, 17 February 2020, paras. 3.41–3.43.
[25] ITLOS/PV.20/C28/4, p. 23 (line 48) – p. 24 (line 19).
[26] Judgment on Preliminary Objections, para. 327.
[27] ITLOS/PV.22/C28/6, p. 17 (lines 22–29) (Klein).
[28] *Ibid*., p. 17 (lines 29–37) (Klein).; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008,* p. 412 at pp. 442–443, para. 89.

also ignoring that the ICJ expressly based its decision on the particular circumstances of that case. Those circumstances included in particular the fact that Croatia had not adopted a "careless approach" to ensuring that the prerequisites for the Court's exercise of jurisdiction were satisfied before commencing proceedings.[29] The same cannot be said of Mauritius.

But more importantly, Mauritius' analysis of this case overlooks the case law that is directly on point where a claim has been dismissed on the basis that the dispute requirement was not satisfied. For example, as at the date of the ICJ's relevant judgment on preliminary objections, the Marshall Islands could hypothetically have commenced a fresh claim against the United Kingdom. Indeed, surely, that will almost always be the case where a dispute emerges during the course of the proceedings; the absence of a dispute would necessarily not be a barrier in a future claim. But nonetheless the ICJ did not allow the Marshall Islands simply to carry on with the proceedings. In fact, the Court did not even rule on any of the United Kingdom's other preliminary objections as, whatever their validity, the absence of a dispute was enough to prevent the Court from exercising jurisdiction. If it had decided otherwise on the basis of judicial economy or if this Chamber were to do so now, this would eviscerate the dispute requirement altogether.

This argument also ignores the practical reality of what will happen if the claim is dismissed on jurisdictional grounds now. As I said on Thursday,[30] if the Chamber takes the accepted approach of dismissing the claim, this will give the Parties the opportunity to act constructively by engaging in negotiations and an exchange of views, just as UNCLOS requires them to do.

Mr President, to conclude, I wish to take a step back from the detail. This is not a borderline case. Mauritius made its OCS claim only in May 2021. In June 2019 when proceedings were commenced, were there positively opposed claims on this issue, each side's affirmatively rejected by the other? Simply and incontrovertibly, there were not. The Maldives and everyone on this side of the bar were genuinely surprised when we received the Memorial. Our side has lived and breathed the tangible prejudice of an untimely claim, most recently exemplified by the fact that we first saw Mauritius' alleged line of natural prolongation only on Saturday afternoon, less than 48 hours ago.

Mr President, I thank you for the opportunity to address you. I understand a break will now be taken but after that I invite you to give the floor to Professor Mbengue.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Hart. As we have reached 11.30, at this stage the Special Chamber will withdraw for a break of 30 minutes. We will continue the hearing at 12 o'clock.

(*Break*)

THE PRESIDENT OF THE SPECIAL CHAMBER: I now give the floor to Mr Mbengue to make his statement.

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[29] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, I.C.J. Reports 2008*, p. 412 at p. 443, para. 90.
[30] ITLOS/PV.22/C28/4, p. 32 (lines 35–39) (Hart).

MR MBENGUE: Mr President, Members of the Special Chamber, I will briefly address the inadmissibility of Mauritius' new OCS claim on the grounds that it has failed to make a timely CLCS submission.

On Saturday, the Special Chamber might have been surprised to hear Counsel for Mauritius conjure something called the principle of the path of least resistance[1] – a turn of phrase later adopted by the honourable Co-Agent of Mauritius.[2] Professor Klein similarly observed that the Special Chamber should prioritize above all (*continued in French*) the principle of procedural economy.[3]

(*Resumed in English*) Throughout its presentation, the Mauritian delegation deployed, like a mantra, this plea for efficiency and flexibility. But with the greatest respect, invoking these abstract principles does not justify disregard for the settled jurisprudence and principles of procedural fairness.

Mr President, the parties clearly agree that filing a CLCS submission is a "prerequisite",[4] in the words of the International Court of Justice, for the determination of a claim concerning an OCS and that the claim is otherwise inadmissible.[5] It is also clear that admissibility must be established at the critical date when proceedings are initiated. I have pointed to the *jurisprudence constante* in this respect and Mauritius has responded with silence. We heard nothing in either the first or second round of pleadings questioning this obvious point of law. Inadmissibility, like a lack of a jurisdiction, cannot be cured after the critical date. It is reasonable to conclude that Mauritius has conceded the point – and that point is fatal for their case. The facts are clear: they filed their notice instituting these proceedings in June 2019 and their CLCS submission in April 2022. That, Mr President, is the end of the matter.

But for the sake of completeness, let us explore the matter further. In threatening to start new proceedings regarding its alleged OCS claim, Mauritius highlights even more the weakness of its position.[6] The *Genocide* case, invoked by Mauritius,[7] as noted by Dr Hart, is irrelevant to jurisdictional and admissibility issues before you in this case. In any event, in accordance with the clear Rules of the Convention, even if Mauritius elected to bring new proceedings, its OCS claim would remain inadmissible because it would still be time-barred. There can be no doubt that its 2009 preliminary information did not make reference whatsoever to the claim that is now before you.

[1] ITLOS/PV.22/C28/6, p. 6 (line 35) (Sands). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.
[2] ITLOS/PV.22/C28/6, p. 32 (line 16) (Koonjul).
[3] TIDM/PV.22/A28/6, p. 18 (line 30) (Klein).
[4] *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J Reports 2016*, p. 100 at pp. 132, 136, paras. 87, 105.
[5] ITLOS/PV.22/C28/2, p. 7 (lines 24–42) (Klein); ITLOS/PV.22C28/4, p. 33 (lines 28–33) (Mbengue).
[6] ITLOS/PV.22/C28/6, p. 17 (lines 22–35) (Klein).
[7] ITLOS/PV.22/C28/6, p. 17 (lines 29–33) (Klein).

In this respect, counsel for Mauritius accuses the Maldives of adopting a rigorous interpretation of the Convention.[8] This must come across as a curious criticism to the Special Chamber, which, in its judgment on preliminary objections, had mentioned the rigour and scrutiny exercised in carrying out its judicial function.[9] Yet, on matters of time limits, the Maldives has asked only that you adhere to the *jurisprudence constante*, the ITLOS Rules, and principles of procedural law – all of which point to the same inescapable conclusion of inadmissibility.

The Special Chamber will note that Mauritius has proven to be fond of cherry-picking the Convention's *travaux préparatoires* to call into question the intent of the States Parties in other aspects of its case. But on the subject of the States Parties' painstakingly negotiated time limits, the need for which was clear from the earliest talks to establish the CLCS, the applicant has nothing – nothing – to offer. This is because a look at the *travaux* shows without ambiguity that the deadlines now challenged by Mauritius were essential to building consensus at the Third Conference from 1976 onwards.[10] By 1980, delegations attached such importance to timely submissions that all of the considered drafts of Annex II to the Convention had inserted the phrase "as soon as possible" into the formulation of the time limit.[11]

Faced with these insurmountable legal hurdles, Mauritius has not on Saturday maintained its earlier position that it filed its CLCS submission within time. It has instead insisted on the need for the Special Chamber to be flexible – a rather peculiar invitation regarding what are clearly mandatory time limits. Mr President, either time limits are mandatory or flexible; they cannot logically be both. Professor Klein relies for this plea for flexibility on two lines of argument: that Mauritius' approach matches the practice of other States; and that it was necessary due to (*continued in French*) the different vicissitudes facing the Mauritian authorities after communication of preliminary information in 2009.[12] (*Resumed in English*) But these are entirely unconvincing.

First, the State practice cited by Mauritius – rather than supporting its elastic concept of treaty interpretation – does the exact opposite. It demonstrates that, having filed timely preliminary information submissions, States do not suddenly invent entirely new claims that were never previously mentioned. It refers to Micronesia's communication in 2009 of a single, timely preliminary information filing concerning two distinct geographic claims,[13] two distinct geographic claims – and thus calls into question why Mauritius itself could not use publicly available data to do precisely the same in 2009. Mauritius' reference to Indonesia's partial submission in 2008 is, of

[8] ITLOS/PV.22/C28/6, p. 7 (line 30) (Sands).
[9] *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives),* Judgment, Preliminary Objections, 28 January 2021 ("Judgment on Preliminary Objections"), para. 203.
[10] Satya N. Nandan and Shabtai Rosenne, *United Nations Convention on the Law of the Sea 1982: A Commentary, vol. II* (Martinus Nijhoff, 1985), pp. 1000–1008.
[11] *Ibid*., pp. 1009–1020.
[12] TIDM/PV.22/A28/6, p. 23 (lines 6–7) (Klein).
[13] ITLOS/PV.22/C28/6, p. 18 (lines 42–44) (Klein); Preliminary Information Indicative of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles for the Eauripik Rise and Mussau Ridge Areas submitted by The Federated States of Micronesia, <https://www.un.org/depts/los/clcs_new/submissions_files/preliminary/fsm_preliminaryinfo.pdf> accessed 23 October 2022.

course, irrelevant to the question of whether a more recent submission – be it partial or full – was reserved by the timely filing of preliminary information.[14]

However, Mr President, the reference to Korea's practice is the most puzzling,[15] since this CLCS submission – unlike Mauritius' 2022 filing – falls entirely within the region depicted in Korea's timely preliminary information.[16] That timely preliminary information appears on your screens at left, while its 2012 CLCS submission appears at right. As we can see, any States impacted by Korea's claim had been put on timely notice since 2009.

Critically, none of the State practice invoked by Mauritius affects, or is even alleged to affect, the admissibility of such submissions in judicial proceedings as the basis of a request for delimitation beyond 200 nm.

Mauritius' reference to a 2005 opinion of the Legal Counsel of the United Nations is equally curious. This opinion merely stated that States that have already submitted a CLCS claim may provide additional documents to the Commission at the time this claim is being examined.[17] We fail to see how this is relevant to whether a State party has properly identified its claims in a timely preliminary information filing. Of course, the filing of additional documents at the time of examination presumes that the submission itself complied with the basic requirements for consideration by the CLCS.

This is no more persuasive than Professor Klein's reminder to the Special Chamber that paragraph 3 of Annex I to the CLCS Rules of Procedure allows for partial submissions.[18] What that provision, Annex 1(3), does not do is allow for partial filings of preliminary information. Nor could it, since it pre-dates the establishment of the preliminary information procedure.[19]

Likewise irrelevant is Mauritius's sole jurisprudential citation to support its elastic interpretation of time limits – the Chamber's judgment in *Ghana* v. *Côte d'Ivoire*.[20] In that case, it was the respondent, not the applicant, which had filed a revised CLCS submission during the proceedings concerning the same area – concerning the same area – as its earlier, timely submission. Contrary to what Counsel for Mauritius seems to suggest, the Chamber did not reject the application of (*continued in*

[14] ITLOS/PV.22/C28/6, p. 19 (lines 12–13) (Klein); Partial Submission in respect of the area of North West of Sumatra, Government of the Republic of Indonesia 2008, <https://www.un.org/depts/los/clcs_new/submissions_files/idn08/Executive20Summary.pdf> accessed 23 October 2022.
[15] ITLOS/PV.22/C28/6, p. 19 (lines 29–40) (Klein).
[16] Republic of Korea, Preliminary Information, 11 May 2009, p. 7 <https://www.un.org/depts/los/clcs_new/submissions_files/preliminary/kor_2009preliminaryinformation.pdf> accessed 23 October 2022; Republic of Korea, Partial Submission, Executive Summary, 26 December 2012, p. 9 <https://www.un.org/depts/los/clcs_new/submissions_files/kor65_12/executive_summary.pdf> accessed 23 October 2022.
[17] Letter dated 25 August 2005 from the Legal Counsel, Under-Secretary-General of the United Nations for Legal Affairs, addressed to the Chairman of the Commission on the Limits of the Continental Shelf, CLCS/46, 7 September 2005, p. 13.
[18] ITLOS/PV.22/C28/6, p. 18 (line 50), p. 19 (lines 7, 17, 36) (Klein).
[19] CLCS/40/Rev.1, 17 April 2008; SPLOS/183, 20 June 2008.
[20] TIDM/PV.22/A28/6, p. 22 (line 21) (Klein).

French) normal principles of international litigation (*resumed in English*) to ITLOS proceedings.[21] Rather, the Chamber found that it could take into account the revised submission when delimiting the course of the boundary – a question it treated separate from, and subsequent to, its assessment of whether the dispute had been admissible on the critical date of seisin.[22]

Professor Klein's emphasis on one passage from this judgment, which you can see on your screens, is also of no assistance:

(*Continued in French)*

> The Special Chamber would also like to point out that it is for each State to decide – within the framework set out under article 76, paragraph 8, of the Convention (including the Rules of the CLCS) – when and how to file its submissions to the CLCS.[23]

(*Resumed in English*) This says nothing about flexibility of mandatory time limits. This passage makes explicit that the timing and manner of CLCS submissions are circumscribed by (*continued in French*) the framework set out under article 76, paragraph 8, of the Convention.

(*Resumed in English*) Allow me now to turn to the second and final ground advanced by Professor Klein in his plea for flexible application of mandatory time limits under the Convention: that this is necessary due to (*continued in French*) the different vicissitudes facing the Mauritian authorities after communication of preliminary information in 2009. (*Resumed in English*) Little can be said in response to such a wanting argument.

To be clear, the Maldives – as a developing country – has at no point asserted that such constraints should never be taken into account. However, Mauritius has no answer on why it was unable to file preliminary information in respect of the Northern Chagos Archipelago Region when it could do so for the southern region, and when the data has been publicly available for decades. It has simply failed to address that point. It has failed to point to any basis in the Convention, or Rules or decisions adopted thereunder, allowing for a right of amendment of preliminary information. Clearly, no such right exists because it would defeat the very purpose of this procedure, which is to create certainty and stability. Indeed, the case of the Maldives is a perfect illustration of why the mandatory time limits should be understood as exactly that: mandatory! For more than a decade, Mauritius acquiesced in the Maldives' 2010 submission to the CLCS. The only exception was the small area of overlap within Mauritius' EEZ.

In this light, Mauritius' half-hearted concern that the Maldives' position calls into question (*continued in French*) the predictability of the system for those States who, with such submissions, are exercising their right to claim an extended continental shelf *(resumed in English*) rings particularly hollow.[24] There can be no predictability

[21] *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, 23 September 2017, para. 515.
[22] *Ibid.*, paras. 495, 518.
[23] *Ibid.*, para. 516.
[24] TIDM/PV.22/A28/6, p. 22 (lines 5–8) (Klein).

in upending the legitimate expectations of neighbouring States to their own OCS entitlements on the basis of undue delay in raising a competing claim. Nor is there any whiff of predictability in an applicant raising such claims far into the course of its own hastily instituted proceedings. Quite to the contrary, predictability arises from adhering to long-established rules and principles.

Mr President, honourable Members of the Special Chamber, this will conclude my presentation on behalf of the Maldives. I thank you for your kind attention. I would ask that you please give the floor, Mr President, to my colleague Professor Akhavan. Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Mbengue, for your statement. I now give the floor to Mr Akhavan to make his statement. You have the floor.

MR AKHAVAN: Mr President, distinguished members of the Chamber, good afternoon. I will be addressing Mauritius' manifest lack of entitlement to a continental shelf beyond 200 nm. This will conclude the oral pleadings of the Maldives, following which the Agent will read the submissions.

Mr President, you may recall that last week I compared Mauritius' appeal to your creativity to a surreal painting by Salvador Dalí; an image of wanton disregard for the strictures of legal reasoning. Having heard their second-round pleadings on natural prolongation, I have now reconsidered my position. I have come to the conclusion that the more appropriate work of art is The Carnival of Animals – *Le Carnaval des Animaux* – by the nineteenth-century French composer Camille Saint-Saëns. Perhaps the most famous of these fourteen suites − one of the favourite of my children when they were small − is *The Swan* for cello and piano; but there are many other of God's interesting creatures that make an appearance in this splendid musical composition.

One of these is *The Elephant* − in this instance the elephant in the courtroom that my friend Mr Loewenstein studiously avoided. Of course, I refer here to Mauritius' express admission that the morphological break known as the Chagos Trough does not allow for natural prolongation of its landmass beyond 200 nm. He did not once – not once − refer to Mauritius' very own CLCS submission of 12 April 2022, filed two days before its Reply in this proceeding. It therefore falls on me to remind you of some of the crucial information contained in that document.

First, and most importantly, there is the express recognition that the Chagos Trough constitutes a morphological break which extend[s] from south of the Chagos Archipelago Region up to the equator around 0° and 1°N.[1] This appears at paragraph 2.3.1.2 of Mauritius' own submission. As a reminder, here is a visual representation of that statement. As you can see, the inescapable consequence of Mauritius' recognition of this fact is that there is no continental margin that extends beyond 200 nm from the baselines from which the breadth of its territorial sea is measured, within the meaning of article 76 of the Convention.

[1] Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Main Body, April 2022, Doc MCNS-MB-DOC (Reply of the Republic Mauritius, Annex 3), para. 2.3.1.2 (emphasis added).

As the Maldives' pointed out in its Counter-Memorial, the only possible morphological continuity from the Chagos Archipelago across the Chagos-Laccadive Ridge to the foot of slope point is to go some 466 nm within the uncontested EEZ of the Maldives. Of course, morphological continuity as a matter of science, as you will know very well, is not the same as natural prolongation as a matter of law under article 76, as I will shortly explain.

I simply note that this route of natural prolongation is, as Mr Loewenstein referred to it, the route described in the Memorial.[2] Those were his words from Saturday. Putting aside this apparent acknowledgment that Mauritius' original position had nothing to do with the Gardiner Seamounts, it is curious that both Mauritius' Reply and Dr Badal's testimony in the first round of oral pleadings made no mention of it whatsoever. For that reason, the Maldives assumed that Mauritius had abandoned the point, and so it was again surprising to hear Mr Loewenstein's apparent attempt to resurrect it once again on Saturday.

We were somewhat astonished when Mr Loewenstein told you that the Maldives cites no authorities that support its contention that Mauritius cannot establish its natural prolongation through the Maldives' 200 nm limit.[3] Clearly, Mauritius has forgotten the authority relied on by the Maldives in its Counter-Memorial; namely, article 76 of UNCLOS itself. Here is what we said: "UNCLOS article 76 provides that a coastal State must establish a submerged natural prolongation from its land territory across its seabed through the shelf, slope and rise to the outer edge of its continental margin."[4] This was apparently a sufficient authority to convince Mauritius that it should abandon that approach. That is exactly why it invented the Gardiner Seamounts theory in paragraph 4.13 of its Reply and why it made no mention of its original path in the first round of oral pleadings. It appeared to be a common ground that Mauritius could not rely on a natural prolongation through the Maldives' 200 nm limit.

But, Mr President, in case there should be any doubt about this blindingly obvious point, further authority does exist, as this Chamber will be very well aware. In the consideration of Côte d'Ivoire's submission, the CLCS explicitly rejected the delineation of the continental shelf based on measurements from Ghana's side of the delimited maritime boundary. In its submission to the CLCS on 8 May 2009, as amended on 24 March 2016, Côte d'Ivoire had delineated its continental margin along the extent of the then undelimited continental margin with neighbouring Ghana.[5] This is depicted by the red foot of slope points on this figure. A subcommission was established on 26 August 2016 to consider Côte d'Ivoire's submission.

[2] ITLOS/PV.22/C28/6, p. 25 (lines 11–12) (Loewenstein) (emphasis added). At the time of drafting, the Maldives had received only unverified copies of this transcript. All references are to the unverified version.
[3] ITLOS/PV.22/C28/6, p. 25 (lines 16–17) (Loewenstein).
[4] Counter-Memorial of the Republic of Maldives, para. 82.
[5] See Amended Submission of the Republic of Côte d'Ivoire regarding its continental shelf beyond 200 nautical miles, March 2016, Doc no. CI_DOC_ES_Amended, Figure 1.

The following year, in 2017, the judgment of the Special Chamber in *Ghana* v. *Côte d'Ivoire* effected a maritime boundary delimitation beyond 200 nm along the defined azimuth to the outer limits of the continental shelf.[6] Members of the Special Chamber will be familiar with this case. Subsequently, the CLCS Subcommission informed the delegation of Côte d'Ivoire that

> [a]s a result of the Judgment, FOS_RCI_01 and FOS_RCI_02, as well as the sediment thickness formula point GP_RCI_08, are located east of the maritime boundary. Consequently, the Subcommission requested that Côte d'Ivoire re-examine the test of appurtenance in light of this finding.[7]

In other words, the CLCS recognized the obvious point that it could not – it could not − delineate the outer limits where the entitlement passed through the uncontested continental shelf of an adjacent State. Following this instruction by the CLCS, Côte d'Ivoire discarded two foot of slope positions − circled here in red − and recalculated sediment thickness points from those submitted so that there was no encroachment on the maritime space of Ghana. Côte d'Ivoire responded that the delegation has generated a new Gardiner point GP_RCI_09 from FOS_RCI_03 (that lies west of the maritime boundary) that permits validation of the test of appurtenance.[8]

Of course, this position is consistent with the CLCS Guidelines,[9] which recommend that

> [t]he submission in support of the outer limit of the continental shelf of a coastal State may include one of five possible cases at any point along the limiting line […] not further than [not further than] [… a] limit agreed to by States with opposite or adjacent coasts (in accordance with article 83).

It is clear then, as a matter of law, that Mauritius' claim as set out in its Memorial is manifestly unfounded. Mr Loewenstein himself acknowledged that the Maldives' argument in this respect is legal in nature, not technical.[10] There is, therefore, no need for any further expert report for the Special Chamber to dismiss Mauritius' original claim to entitlement as set out in its Memorial.

Mr President, this brings me back to the invention of the Gardiner Seamounts theory in an attempt to circumvent the Maldives' EEZ. Returning momentarily to Saint-Saëns' *Carnival of the Animals*, the suite that comes to mind is the one called Characters with Long Ears − *Personnages à Longues Oreilles*. The creature I have in mind here is the rabbit that the magician pulls out of the hat; in this case, the new path of submerged prolongation which appeared out of nowhere to help Mauritius get around the Maldives' EEZ. Judging by the science fiction that was presented

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[6] See *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, 23 September 2017, p. 147.
[7] Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard to the amended submission made by the Republic of Côte D'Ivoire on 24 March 2016, para. 53.
[8] *Ibid*., para. 54.
[9] United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, "Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf", 13 May 1999, Doc CLCS/11, para. 9.5.1.
[10] ITLOS/PV.22/C28/6, p. 25 (lines 15–16) (Loewenstein).

before the Chamber on Saturday, there is quite a bit of magical thinking behind the arguments.

Before delving into this, I will briefly address Mauritius' suggestion in its letter to the Registry dated 21 October, and referred to by Professor Sands, that in my oral pleadings in the first round I had somehow introduced new evidence.[11] We acknowledge that Mauritius has not objected to the material relied on by the Maldives, so I will not dwell on this point, but I would like to briefly clarify that there was in fact nothing for Mauritius to object to in the first place.

The graphics produced by GeoLimits Consulting were prepared by Dr Alain Murphy, the director of GeoLimits Consulting, who you will note is listed in the Maldives' delegation as one of its technical advisors. They are merely visual representations of data already referred to in the written pleadings. The only exceptions were the graphics which were generated in response to the new material introduced by Dr Badal, for the very first time, in his testimony last Monday. For example, his argument regarding natural prolongation based on an elevated saddle, and the accompanying figures he introduced, were entirely new. Surely Mauritius would agree that the Maldives should be able to respond to the new arguments that it has raised in these proceedings.

This brings me to Mr Loewenstein's attempt to pick up the pieces of Dr Badal's testimony on scientific and technical matters, to make one last attempt to persuade this Chamber that somehow, somewhere, there is some evidence of something around the Gardiner Seamounts; a kind of secret backdoor to the critical foot of slope point.

The key point that seems to have emerged from Mr Loewenstein's pleadings on Saturday is that the Parties are now in agreement that, as he put it, measured bathymetric data, whether single-beam or multi-beam echosounder data, is superior to satellite-derived data.[12] Where the Parties disagree is as to the quality of such data that is required. With the greatest respect, Mr Loewenstein seems to have misunderstood the Maldives' submissions when he claimed that the Parties also agreed that measured data is sufficient in itself to satisfy the requirements of the CLCS' Guidelines.[13]

That is clearly not what we said in our first-round oral pleadings. The Maldives' argument was that, in a region of complex geomorphology like the Gardiner Seamounts, a significant quantity of measured data is required by the CLCS. The best that Mauritius can do in response is to argue that the Maldives is wrong to say that there is not a single shred of evidence, because there is actually one shred; the meagre strip of data somewhere in the vicinity. Mr President, that is no answer at all to what the Maldives showed you last week.

You will recall this slide demonstrating the complete absence of measured data in the Gardiner Seamounts region. Mr Loewenstein would have you believe that there is measured bathymetric data for the entirety of the natural prolongation of

[11] ITLOS/PV.22/C28/6, p. 1 (lines 35–46) (Sands).
[12] ITLOS/PV.22/C28/6, p. 23 (lines 31–32) (Loewenstein).
[13] ITLOS/PV.22/C28/6, p. 23 (lines 32–33) (Loewenstein).

Mauritius.[14] This is patently wrong in two key ways. Firstly, Mauritius' counterargument confirms that there is very much a total absence of measured bathymetric data in this region. Secondly, for reasons that I shall explain, the data that was presented by Mauritius in no way demonstrates the natural prolongation it asserts. To the contrary, it shows that this purported path is unquestionably the deep ocean floor, well beyond the continental margin.

We were told that the profile you now see before you − on the left − demonstrated the route Mauritius takes through the Gardiner Seamounts,[15] despite the evidence I showed you on Tuesday that there was no measured data over that feature. It obviously does not show what Mauritius claims. The one lonely, solitary track here clearly occurs to the south of, and not across, the Gardiner Seamounts.

I hope that the Maldives can be forgiven for thinking, prior to seeing this path for the first time on Saturday, that the route which Mauritius intended to take through the Gardiner Seamounts would actually go through the Gardiner Seamounts, rather than to the south. So we will be generous; let us significantly enlarge the circle to show the relevant area for which data would be needed to the south. You now see in white the single line of measured data on which Mauritius relies; the data which Mauritius claims is sufficient to satisfy the exacting requirements of the CLCS.

Let us again compare this with the example of the Seychelles; and I will remind you that Dr Badal described the elevated region on which Mauritius relies as part of the continental shelf in the same manner as recognized by the CLCS when it considered similar circumstances in the submission concerning the Seychelles Northern Plateau Region.[16] On the left, you can again see the extensive web of ships' tracks demonstrating the coverage of the measured data available to the Seychelles. I will further remind you that the CLCS did not consider even this to be sufficient; Mauritius' answer that this single line of measured data is sufficient in itself to satisfy the requirements of the CLCS' Guidelines[17] is simply not credible.

Moreover, as the figure before you demonstrates, the quality of the bathymetric data is very poor along the key part of the profile that covers the region where the CLR meets the deep ocean floor. In fact, there is a gap of some 60 kilometres in the exact region where the Chagos Trough is located.

We are pleased, nonetheless, that after repeated evasion and vague assertions, Mauritius has finally demonstrated at the eleventh hour the specific measured bathymetric profile that its theory is based on. It becomes evident now why they did not want to show you a specific profile previously, because at just one shred of evidence, at best, it is just slightly better than having not even a shred of evidence, but, with the greatest respect, it is still utterly hopeless.

Perhaps we can go beyond the Gardiner Seamounts region to explore the magical path that Mauritius would have you believe leads to the foot of slope point on which it relies. Mr Loewenstein seems to equate the mere presence of data as being

[14] ITLOS/PV.22/C28/6, p. 24 (lines 16–17) (Loewenstein).
[15] ITLOS/PV.22/C28/6, p. 24 (lines 27–28) (Loewenstein).
[16] ITLOS/PV.22/C28/2, p. 17 (lines 1–4) (Badal).
[17] ITLOS/PV.22/C28/6, p. 23 (lines 32–33) (Loewenstein).

a demonstration of natural prolongation without demonstrating how such data might actually prove the point. Once again, it falls to the Maldives to provide a brief explanation. Based on Mauritius' data alone, the Maldives has identified at least six major flaws in Mauritius' theory on submerged prolongation, each of which is fatal to its case on its own.

First, contrary to Mauritius' submissions, the bathymetric data rather convincingly identifies the base of slope region within the Chagos Trough region, and the area to the east as the deep ocean floor. What is more, this profile shows that in the region of the supposed morphological connection through the Gardiner Seamounts, the depths descend beyond 5000 metres − the very depth that Mauritius itself characterizes as the deep ocean floor in this region.[18]

Second, you will recall from this image that Mr Loewenstein presented five single-beam bathymetric profiles that crossed the CLR, at a more or less perpendicular angle, to the deep ocean floor. We note that this was the first time ever that these profiles were invoked by Mauritius. To be clear, the Maldives does not dispute that there is a minor elevation of the seafloor to the east of the Chagos Trough. But that is not the point.

Mr President, you will recall this figure from my presentation last week, illustrating how the base of slope is identified under the CLCS guidelines. It uses a two-step approach to identify both a landward and seaward edge. Using that approach, you will see from the red shaded areas, that the base of slope region is, as Mauritius itself has accepted many times over, located within the Chagos Trough, not to the east. This is readily identified in all five profiles illustrated on your screen. In other words, the minor elevation is clearly situated beyond the base of slope and therefore, by definition, it is part of the deep ocean floor within the meaning of article 76. Again, Mr Loewenstein appeared to be under the misapprehension that merely pointing to the existence of data was sufficient to establish entitlement. Plainly not. He must demonstrate that the data actually supports Mauritius' case; here, the data does quite the opposite.

Third, it does not matter whether or not this elevated region is the deep ocean floor unless Mauritius can actually demonstrate how it is morphologically connected to the CLR. It claims that this is somehow possible across (or perhaps now, just to the south of) the Gardiner Seamounts. But as I have just shown, it has not provided any data whatsoever which actually demonstrates the existence of such a bridge to the elevated region in the first place.

Fourth, the approach advocated by Mr Loewenstein is self-contradictory. It is impossible for the natural prolongation of Mauritius' land territory to cross the deep ocean floor. Allow me to explain. We can see that Mauritius' proposed natural prolongation crosses the foot of slope, located on the right-hand side of the profile at the bottom of your screens. It is also clear that the region to the right of the foot of slope is the lower part of the Laccadive Basin to the north – that is the slope. It stands to reason therefore that the seafloor immediately to the left of FOS-VIT31B is the deep ocean floor. So we have the absurd situation whereby the natural

[18] Memorial of the Republic of Mauritius, para. 2.35.

prolongation proposed by Mauritius must arrive at the foot of slope from the deep ocean floor. But that cannot be right. This theory has it completely backwards; it flips the very idea of the continental margin on its head!

By combining the profile Mauritius introduced on Saturday, now marked in red, with the composite bathymetric profile from its CLCS submission, now marked in green, we can see the patent contradiction in Mauritius' position. The foot of slope must always, by definition, separate the slope from the deep ocean floor. It is therefore impossible to approach the foot of slope from opposite directions; it must have the slope on one side, and the deep ocean floor on the other. Mauritius is trying to have it both ways. It wants to pick and choose which side the deep ocean floor is on, and of course it cannot do so – one cannot change nature with a few creative slides.

Mauritius got this correct in its CLCS submission, but, in an attempt to circumvent the well-founded arguments of the Maldives, it has invented yet another, with the greatest of respect, absurdity in its pleadings on Saturday, whereby the slope and the deep ocean floor had magically switched sides at the foot of slope. On Mauritius' current theory, the raised area which it previously considered part of its natural prolongation must now be the deep ocean floor. To borrow a maxim from counsel for Mauritius, when you are in a hole, stop digging. But there is yet more, so I will pick up the shovel from where Ms Sander left it.

This brings me to the fifth point: the elevated region approach to natural prolongation can be seen where Mauritius' proposed saddle region is located. At this location the elevated region simply ends. This can be seen on Mr Loewenstein's slide itself, at the point which is now marked by a red arrow. So even if Mauritius could show that there was a morphological connection through the Gardiner Seamounts – which it cannot – its elevated region theory still fails, because that region simply stops and meets, as you can see, a flat 5000-metre deep ocean floor before the profile arrives at the critical FOS-VIT31B.

Sixth, and finally, the flaws are so fundamental with Mauritius' proposed natural prolongation that it is not even consistent with its own theory. Even applying the base of slope line defined by Mauritius, which as I showed on Friday is incorrect, Mauritius still cannot show the natural prolongation to the critical foot of slope point. You will see on the screen, indicated by red circles, that the bathymetric profile crosses its proposed base of slope twice before reaching the critical foot of slope point. The Maldives' Rejoinder pointed to these morphological breaks,[19] and I also described them on Friday.[20]

Mauritius shot itself in the foot with its criticism, on Saturday, of the bathymetric profile presented by the Maldives to illustrate morphological breaks along its proposed path of natural prolongation. Mauritius complain that this profile is inaccurate because it is based on the GEBCO bathymetric grid derived from satellite altimetry-derived data.[21] The Maldives did not suggest it was otherwise. It proves the point that there is no accurate data available for this region. Satellite-derived data is not always sufficient to ground an entitlement, in particular in the circumstances of

[19] Rejoinder of the Republic of Maldives, para. 135.
[20] ITLOS/PV.22/C28/5, p. 8 (lines 32–33) (Akhavan).
[21] ITLOS/PV.22/C28/6, p. 25 (lines 20–29) (Loewenstein).

this case. However, where the data which is available (coming from satellites) casts strong doubt on an already dubious claim, the need for countervailing measured data is all the more compelling. That is certainly the view the CLCS would take.

These criticisms can be levelled at the purported saddle region as well, illustrated in Mr Loewenstein's Figure 11, now on your screens, which is in fact the third theory manufactured by Mauritius in the course of its submissions last week. You will note that the base of slope has been identified with its landward edge, not on the slope of the CLR, but on the flat deep ocean floor, and its seaward edge is located at the base of the Laccadive Basin. This bathymetric profile corresponds to the one that I showed you on Friday last week demonstrating that, in fact, there is no saddle region and that the base of slope is correctly identified at the base of the CLR.

Mr President, this is an appropriate juncture to once again return to Saint-Saëns' *Carnival of the Animals* and consider the suite called *Kangaroos*. It calls to mind the persistent attempt to hop, skip, and jump across the Chagos Trough, over the deep ocean floor, no matter what, to arrive at the critical foot of slope point. That, in summary, is the case before you.

And so, Mr President, the position of the Maldives stands unrebutted. There is simply no measured data in the region of the Gardiner Seamounts that could possibly be accepted by the CLCS to establish natural prolongation. It is, with the greatest respect, an utterly hopeless claim, tailor-made for litigation purposes.

Mr President, as I explained last week, the Chamber cannot proceed with delimitation of the outer continental shelf where there is significant uncertainty as to Mauritius' entitlement.[22] But as we conclude this hearing, having heard their arguments in full for the first time, there should be no doubt that in fact such entitlement does not, and cannot, exist. Mauritius' misrepresentation of the data is, if I may say, a slippery slope, and one that invariably leads to the deep ocean floor. Its claim is manifestly unfounded.

Mr President, all of these flaws, each of them fatal to Mauritius' case on their own, demonstrate exactly why it is essential that Mauritius' claim to entitlement be put through the rigorous scientific and technical procedure of the CLCS. Mr Loewenstein insisted that the deadlock in the CLCS process was not exclusively Mauritius' fault; that the present dispute between the Parties has automatically engaged article 5(a) of Annex I to the CLCS Rules of Procedure, and that the Maldives had not provided its consent for the CLCS to examine Mauritius' submissions.[23]

Even if this were true, which it is not, there is a very simple solution. To the extent that there could be any misunderstanding, as Ms Sander has stated, the Maldives has not, to date, objected to the CLCS considering Mauritius' submission. But even if there is any ambiguity, both Parties could simply write to the CLCS expressing their consent for each respective submission to be considered without impediment. If Mauritius were then to establish its entitlement based on a valid CLCS

[22] ITLOS/PV.22/C28/3, p. 16 (lines 20–31) (Akhavan); ITLOS/PV.22/C28/5, p. 2 (lines 2–6) (Akhavan).
[23] ITLOS/PV.22/C28/6, p. 26 (lines 17–28) (Loewenstein).

recommendation, the Maldives would not dispute it, and the Parties could negotiate delimitation.

It is disappointing, in this regard, that despite expressions of willingness to put past difficulties behind, Mauritius has not indicated in its second-round written pleadings that it would withdraw its 2011 protest against the Maldives' CLCS submission, which became the cause of misgivings in the 2019 UN General Assembly vote. It is still not too late for Mauritius to do so as we approach the final stages of this case.

Mr President, there seems to be an element here of forum shopping; trying to block the CLCS, to persuade this Chamber to give Mauritius an entitlement that the CLCS never would. Or perhaps our friends' opposite hope that, by rejecting their sizeable but manifestly unfounded claim, you could give them something else in exchange; perhaps some basepoints here and there on Blenheim Reef. No doubt, this explains their insistence that you should exercise jurisdiction and address matters through an expert report in a matter of weeks that would take the CLCS several years to complete.

But we already know what the obvious conclusion would be as to the Gardiner Seamounts theory. It is not necessary to waste the precious resources of ITLOS to conclude that the asserted entitlement exists only in the fertile imagination of lawyers, rather than those using proper scientific methods.

Forum shopping, Mr President, conjures images of bargaining in the bazaar from the part of the world that I come from; and in an ancient civilization we learn a thing or two about bargaining and the art of compromise. A customer entering a merchant's shop must not appear too enthusiastic, must look at the coveted merchandise seemingly unimpressed with the quality, ask the price with dismissive nonchalance, and upon receiving a figure – any figure, no matter how reasonable – the customer must respond with surprise if not outrage, and proceed to leave the shop in protest; the shrewd merchant must then chase the customer to offer a lower price amidst profuse flattery, and the ritual goes on until the parties finally come to an agreement.

But, Mr President, with the greatest respect, the continental shelf is not a silk carpet that you can bargain over. It is a gift of nature. Either it exists or it does not. Mauritius cannot get something for nothing, even if it has made its surreal claim as a bargaining chip in these proceedings.

Mr President, as I set out in the Maldives' introduction to its case last week, the narrow dispute between the Parties is about four basepoints on Blenheim Reef. All that this Chamber needs to do, consistent with the 1982 Convention and settled jurisprudence, is to effect delimitation by drawing an equidistance line without those four basepoints. The sudden expansion of that narrow dispute by Mauritius after your Judgment on Preliminary Objections, with a new and massive claim to an outer continental shelf is, with respect, nothing more than a litigation strategy; with the greatest respect, a frivolous claim that has wasted precious resources for no good reason. We respectfully submit that it should not be given any weight whatsoever in arriving at a just and balanced judgment.

Mr President, distinguished Members of the Chamber, this brings us to the conclusion of the Maldives' oral pleadings. I take this opportunity to thank you and the Registry, as well as the interpreters and all others who have worked with such diligence and courtesy to allow for the smooth functioning of these proceedings.

Mr President, as you are aware, I had stepped into the shoes of Professor Alan Boyle in the middle of this case, so I take this opportunity on behalf of all my colleagues to pay tribute to a dear friend and distinguished colleague, who sadly could not be with us in Hamburg on this occasion.

I also extend greetings once again to our friends and colleagues in the delegation of Mauritius, for their courtesy, and to express satisfaction and reassurance that the two Parties leave this hearing with strengthened ties of friendship.

Mr President, all that is now left for me to do is, with your permission, to ask that the Agent for the Maldives be called to the podium.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Akhavan. I understand that the Agent of the Maldives will now make some closing remarks and present the final submissions of the Maldives.

In this respect, I wish to recall that article 75, paragraph 2, of the Rules of the Tribunal, provides that, at the conclusion of the last statement made by a party at the hearing, its Agent, without recapitulation of the arguments, shall read that party's final submissions. A copy of the written text of these submissions, signed by the Agent, shall be communicated to the Special Chamber and transmitted to the other party.

I now invite the Agent of the Maldives, Mr Riffath, to take the floor to make some closing remarks and present the final submissions of the Maldives.

MR RIFFATH: Mr President, honourable Members of the Special Chamber. This concludes the Maldives' oral pleadings in this hearing. In accordance with the terms of article 75, paragraph 2 of the Rules of this Tribunal, I will not recapitulate the arguments of the Maldives. We have full confidence that, in delimiting the maritime boundary between Mauritius and the Maldives, this Chamber will apply the 1982 Convention consistent with the settled jurisprudence. Such predictability and stability of results will strengthen the Part XV procedures and encourage recourse by States Parties to ITLOS by way of Special Agreements.

As we close this hearing, I would like to convey to the Agent for Mauritius and his delegation how much we appreciate the cordial and cooperative atmosphere between the two teams, reflecting the friendly and constructive relations between our two countries. We have conveyed our clear position on the General Assembly resolution regarding the 2019 ICJ advisory opinion. We hope that Mauritius will reciprocate by withdrawing its formal protest of 2011 to our CLCS submission so that we can fully put past difficulties behind. We have not, to date, objected to consideration by the CLCS of Mauritius' 2022 submission, and hope that the Parties can find a way of having both submissions dealt with in accordance with the

Commission's processes. These matters require time and are best resolved by scientific and technical cooperation between the Parties.

We also repeat our willingness, already expressed in January of this year, to cooperate in use of the port of Gan to facilitate travel to the Chagos Archipelago. At the end of the day, whatever maritime boundary is established by adversarial proceedings, it is the spirit of mutual cooperation and friendly relations that will allow two neighbours to build a better future for their peoples, not least as they struggle with sea-level rise and other existential threats. In this respect, we trust that, in the years ahead, ITLOS will play an important role in defining the obligations of States Parties to protect and preserve the marine environment, and thus help small island States to confront the perils of catastrophic climate change.

Mr President, honourable Members of the Special Chamber, I take this opportunity to express our gratitude to you for your diligence and kind attention throughout these proceedings. I would like to convey our sincere thanks to all those who have helped in making this possible. First, I wish to thank the Registrar and the Registry staff, for their cooperation and professionalism that has ensured the smooth running of these proceedings. Thanks, too, to the interpreters who have translated the presentations of each side so well.

As the Agent for the Maldives, of course I also wish to express my thanks to the Maldives' counsel, technical advisers and assistants.

In accordance with Article 75 paragraph 2 of the Rules of the Tribunal, I shall now read the final submissions of the Republic of the Maldives, noting a copy of the written text of these submissions is now being communicated to the Registry and transmitted to the Agent of Mauritius.

(a) Mauritius' claim to a continental shelf beyond 200 M from the base lines from which its territorial sea is measured should be dismissed on the basis that it is:

    (i) Outside the jurisdiction of the Special Chamber; and/or
    (ii) Inadmissible

(b) The single maritime boundary between the Parties is a series of geodesic lines connecting the points 1 to 46 as set out in the Maldives' Rejoinder at pages 69–70;

(c) In respect of the Parties' Exclusive Economic Zones, the maritime boundary between them connects point 46 to the point 47 *bis* following the 200 M limit measured from the baselines of the Maldives as set out in the Maldives' Rejoinder at page 70;

(d) In respect of the Parties' continental shelves, the maritime boundary between the Parties continues to consist of a series of geodesic lines connecting the following points, until it reaches the edge of the Maldives' entitlement to a continental shelf beyond 200 M from the baselines from which the breadth of

its territorial sea is measured (to be delineated following recommendations of the Commission on the Limits of the Continental Shelf at a later date).

Thank you, Mr President.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Riffath. This brings us to the end of this hearing.

I would now like to give the floor to the Registrar, who will give you some information about documentation.

THE REGISTRAR: Thank you, Mr President.

Pursuant to article 86, paragraph 4, of the Rules of the Tribunal, the Parties may, under the supervision of the Special Chamber, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the meaning and scope thereof. These corrections relate to the transcripts in the official language used by the Party in question. The Parties are requested to use for the purpose the verified versions of the transcripts and not use those marked as "un-checked". The corrections should be submitted to the Registry as soon as possible and by Tuesday, 1 November 2022 at 4.00 p.m. Hamburg time, at the latest.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Madam Registrar.

On behalf of the Special Chamber, I would like to take this opportunity to express our appreciation for the high quality of the presentations of the representatives of both Mauritius and the Maldives. I would also like to take this opportunity to thank the Agent and Co-Agent of Mauritius and the Agent of Maldives for the exemplary spirit of cooperation and cordiality they have demonstrated.

The Special Chamber will now withdraw to deliberate. The judgment will be read on a date to be notified to the Agents of the Parties. The Agents will be informed with sufficient notice of the precise date of the reading of the judgment.

In accordance with the usual practice, I request the Agents to kindly remain at the disposal of the Special Chamber in order to provide any further assistance and information that it may need in its deliberations prior to the delivery of the judgment.

The hearing is now closed. Good afternoon.

(*The sitting ended at 1.05 p.m.*)