INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

MINUTES OF PUBLIC SITTINGS

MINUTES OF THE PUBLIC SITTINGS
HELD FROM 17 TO 24 OCTOBER 2022

Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)

PROCÈS-VERBAL DES AUDIENCES PUBLIQUES

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TENUES DU 17 AU 24 OCTOBRE 2022

Différend relatif à la délimitation de la frontière maritime entre Maurice et les Maldives dans l'océan Indien (Maurice/Maldives)

For ease of use, in addition to the continuous pagination, this volume also contains, between square brackets at the beginning of each statement, a reference to the pagination of the revised verbatim records.

En vue de faciliter l'utilisation de l'ouvrage, le présent volume comporte, outre une pagination continue, l'indication, entre crochets, au début de chaque exposé, de la pagination des procès-verbaux révisés.

Minutes of the Public Sittings held from 17 to 24 October 2022

Procès-verbal des audiences publiques tenues du 17 au 24 octobre 2022

PUBLIC SITTING HELD ON 17 OCTOBER 2022, 10 A.M.

Special Chamber

Present: *President* PAIK; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges* ad hoc OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

Mauritius is represented by:

Mr Dheerendra Kumar Dabee, G.O.S.K., S.C.,
Legal Adviser/Consultant, Attorney General's Office,

as Agent;

Mr Jagdish Dharamchand Koonjul, G.C.S.K., G.O.S.K.,
Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations in New York, United States of America,

as Co-Agent;

and

Mr Philippe Sands KC,
Professor of International Law at University College London, Barrister at 11 KBW, London, United Kingdom,

Mr Pierre Klein,
Professor of International Law at the Université Libre de Bruxelles, Brussels, Belgium,

Mr Andrew Loewenstein,
Attorney-at-Law, Foley Hoag LLP, Boston, United States of America,

Mr Yuri Parkhomenko,
Attorney-at-Law, Foley Hoag LLP, Boston, United States of America,

Mr Remi Reichhold,
Barrister at 11 KBW, London, United Kingdom,

Dr Mohammed Rezah Badal,
Director-General, Department for Continental Shelf, Maritime Zones Administration and Exploration, Prime Minister's Office,

as Counsel and Advocates;

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Member of the Indian Bar, New Delhi, India,

Ms Diem Huong Ho,
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Ms Sun Young Hwang,
Attorney-at-Law, Foley Hoag LLP, Washington, D.C., United States of America,

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Ms Shiu Ching Young Kim Fat,
Minister Counsellor, Prime Minister's Office,

as Adviser;

Mr Scott Edmonds,
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Ms Vickie Taylor,
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as Technical Advisers;

Ms Nancy Lopez,
Foley Hoag LLP, Washington, D.C., United States of America,

as Assistant.

The Maldives is represented by:

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Attorney General,

as Agent;

and

Ms Khadeeja Shabeen,
Deputy Attorney General,

Ms Mariyam Shaany,
State Counsel in the Office of the Attorney General,

as Representatives;

Mr Payam Akhavan, LL.M., S.J.D. (Harvard),
Professor of International Law; Senior Fellow, Massey College, University of Toronto; Member of the State Bar of New York and of the Law Society of Ontario; Member of the Permanent Court of Arbitration,

Mr Jean-Marc Thouvenin,
Professor at the University Paris-Nanterre; Secretary-General of The Hague Academy of International Law; Associate Member of the Institut de droit international; Member of the Paris Bar, Sygna Partners, France,

Mr Makane Moïse Mbengue,
Professor and Director of the Department of International Law and International Organization, Faculty of Law, University of Geneva; Associate Member of the Institut de droit international; President of the African Society of International Law,

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as Counsel and Advocates;

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AUDIENCE PUBLIQUE TENUE LE 17 OCTOBRE 2022, 10 HEURES

Chambre spéciale

Présents : M. PAIK, *Président* ; MM. JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR *juges* ; Mme CHADHA, *juge* ; MM. OXMAN, SCHRIJVER, *juges* ad hoc ; Mme HINRICHS OYARCE, *Greffière*.

Maurice est représentée par :

M. Dheerendra Kumar Dabee, G.O.S.K., S.C.,
conseiller juridique/consultant, Bureau de l'*Attorney General*,

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M. Jagdish Dharamchand Koonjul, G.C.S.K., G.O.S.K.,
Ambassadeur et Représentant permanent de la République de Maurice auprès de l'Organisation des Nations Unies à New York (États-Unis d'Amérique),

comme co-agent ;

et

M. Philippe Sands KC,
professeur de droit international au University College London, avocat au cabinet 11KBW, Londres (Royaume-Uni),

M. Pierre Klein,
professeur de droit international à l'Université libre de Bruxelles, Bruxelles (Belgique),

M. Andrew Loewenstein,
avocat, Foley Hoag LLP, Boston (États-Unis d'Amérique),

M. Yuri Parkhomenko,
avocat, Foley Hoag LLP, Boston (États-Unis d'Amérique),

M. Remi Reichhold,
avocat au cabinet 11 KBW, Londres (Royaume-Uni),

M. Mohammed Rezah Badal,
Directeur général, Département de l'administration et de l'exploration du plateau continental et des zones maritimes, Bureau du Premier Ministre,

comme conseils et avocats ;

Mme Anjolie Singh,
membre du barreau indien, New Delhi (Inde),

Mme Diem Huong Ho,
avocate, Foley Hoag LLP, Washington (États-Unis d'Amérique),

Mme Sun Young Hwang,
avocate, Foley Hoag LLP, Washington (États-Unis d'Amérique),

comme conseils ;

Mme Shiu Ching Young Kim Fat,
Ministre conseillère, Bureau du Premier Ministre,

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Mme Vickie Taylor,
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Mme Nancy Lopez,
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comme assistante.

Les Maldives sont représentées par :

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Attorney General,

comme agent ;

et

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Attorney General adjointe,

Mme Mariyam Shaany,
State Counsel au Bureau de l'*Attorney General*,

comme représentantes ;

M. Payam Akhavan, LL.M, S.J.D. (Harvard),
professeur de droit international ; maître de recherche au Massey College, Université de Toronto ; membre des barreaux de l'État de New York et de l'Ontario ; membre de la Cour permanente d'arbitrage,

M. Jean-Marc Thouvenin,
professeur à l'Université Paris-Nanterre ; Secrétaire général de l'Académie de droit international de La Haye ; membre associé de l'Institut de droit international ; membre du barreau de Paris, cabinet Sygna Partners (France),

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Mme Amy Sander, LL.M (Cambridge),
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Mme Justine Bendel, doctorat (Édimbourg),
Marie Curie Fellow, Université de Copenhague ; chargée de cours en droit, Université d'Exeter,

M. Andrew Brown, LL.B (King's College London),
étudiant en LL.M à l'Institut de hautes études internationales et du développement, Genève,

Mme Lefa Mondon, LL.M (Strasbourg),
juriste, cabinet Sygna Partners (France),

comme assistants.

Opening of the Oral Proceedings
[ITLOS/PV.22/C28/1/Rev.1, p. 1–4]

THE PRESIDENT OF THE SPECIAL CHAMBER: Good morning, everyone. I wish to welcome you all to this hearing. The Special Chamber of the International Tribunal for the Law of the Sea meets this morning to hear the Parties' arguments on the merits in the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean*. We meet today in the interim courtroom of the Tribunal and it is a pleasure to welcome you again to attend the hearing in person. I wish to kindly ask everyone to ensure that their mobile phone is turned off.

It should be recalled that by Special Agreement concluded on 24 September 2019, the representatives of the Republic of Mauritius and the Republic of Maldives agreed to submit the dispute concerning delimitation of the maritime boundary between them in the Indian Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute of the Tribunal.

The Tribunal was notified of the Special Agreement on 24 September 2019 and the Special Chamber was constituted by an Order of the Tribunal of 27 September 2019. The case was entered as No. 28 in the List of Cases.

On 18 December 2019, the Maldives raised preliminary objections to the jurisdiction of the Special Chamber and to the admissibility of Mauritius' claims pursuant to article 97, paragraph 1, of the Rules of the Tribunal. On 28 January 2021, the Special Chamber delivered its judgment on the preliminary objections of the Maldives. In its judgment, the Special Chamber found that it had jurisdiction to adjudicate upon the dispute submitted to it by the Parties concerning the delimitation of the maritime boundary between them in the Indian Ocean and that the claim submitted by Mauritius in this regard was admissible.

I now call on the Registrar to summarize the procedure relating to the merits of the case and to read out the submissions of the Parties.

THE REGISTRAR: Thank you, Mr President.

By order of 3 February 2021, the President of the Special Chamber fixed 25 May and 25 November 2021 as the time limits for the filing, respectively, of the Memorial of Mauritius and the Counter-Memorial of the Maldives. The Memorial and the Counter-Memorial were filed within the prescribed time limits.

By order of 15 December 2021, the President of the Special Chamber authorized the submission of a Reply by Mauritius and of a Rejoinder by the Maldives and fixed 14 April 2022 and 15 August 2022, respectively, as the time limits for the filing of these two pleadings. The Reply and the Rejoinder were duly filed within the prescribed time limits.

I will now read out the submissions of the Parties.

In its Reply, Mauritius makes the following submissions:

> Mauritius respectfully requests the Special Chamber to adjudge and declare that:
>
> (1) The maritime boundary between Mauritius and Maldives in the Indian Ocean connects the following points, using geodetic lines (the geographic coordinates are in WGS 1984 datum).
>
> (2) Maldives shall pay to Mauritius a reasonable sum, being not less than €460,000, to cover the reasonable additional costs incurred by Mauritius in the conduct of the scientific survey of Blenheim Reef and appurtenant waters and islands, as a consequence of the unreasonable refusal of Maldives to allow any part of its territory to be used in the conduct of the survey.

A table with the list of the coordinates for each of the points is set out in the Reply of Mauritius at pages 54 and 55.

The Maldives, in its Rejoinder, makes the following submissions:

> The Republic of Maldives requests the Special Chamber to adjudge and declare that:
>
> (a) Mauritius' claim to a continental shelf beyond 200 Miles from the baselines 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 following points 1 to 46.
>
> (c) In respect of the Parties' Exclusive Economic Zones, the maritime boundary between them connects point 46 to the following point 47 *bis* following the 200 Miles limit measured from the baselines of the Maldives:
>
> (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 Miles 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):
>
> (e) Mauritius' request that the Maldives be ordered to pay to Mauritius certain costs incurred by Mauritius in the conduct of its survey of Blenheim Reef be dismissed.

Tables with the list of the coordinates for each of the relevant points is set out in the Rejoinder of the Maldives at pages 69 and 70.

By order dated 18 August 2022, the President of the Special Chamber fixed 17 October 2022 – that is, today – as the date for the opening of the hearing.

Pursuant to the Rules of the Tribunal, copies of the written pleadings are being made accessible to the public as of today. They will be placed on the Tribunal's website. The hearing will also be transmitted live on this website.

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

In accordance with the arrangements on the organization of the procedure decided by the Special Chamber, the hearing will comprise a first and second round of oral argument. The first round will begin today and will close on Friday, 21 October 2022 following a morning sitting. The second round will take place during the afternoon of Saturday, 22 October 2022 and the morning of Monday, 24 October 2022.

Today's sitting, in the course of which Mauritius will present the first part of the statement, will last until one o'clock and, as usual, there will be a 30-minute break between 11:30 and midday. After the lunch break the hearing will be resumed at 3 p.m.

I note the presence at the hearing of Agents, Co-Agents, representatives, counsel and advocates of Mauritius and the Maldives.

I now call on the Agent of Mauritius, Mr Dheerendra Kumar Dabee, to introduce the delegation of Mauritius. You have the floor, Mr Dabee.

MR DABEE: Mr President, distinguished Members of the Special Chamber, Madam Registrar. Good morning.

It is my pleasure to introduce the members of the Mauritius delegation. My name is Dheerendra Kumar Dabee. I was Solicitor-General of Mauritius when the proceedings started and now I am the Legal Adviser/Consultant in the Attorney General's Office, and have remained as Agent of Mauritius.

The Co-Agent for Mauritius is His Excellency Mr Jagdish Dharamchand Koonjul, Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations.

The members of the delegation are as follows: as Counsel and Advocates, Mr Philippe Sands King's Counsel, Professor of International Law at University College London, Barrister at 11 King's Bench Walk, London, UK; Mr Pierre Klein, Professor of International Law at the Université Libre de Bruxelles, Belgium; Mr Andrew Loewenstein, Attorney-at-Law, Foley Hoag USA; Mr Yuri Parkhomenko, Attorney-at-Law, Foley Hoag, Boston, USA; Mr Remi Reichhold, Barrister at 11 King's Bench Walk, London, UK; Dr Mohammed Rezah Badal, Director-General, Department for Continental Shelf, Maritime Zones Administration and Exploration, Prime Minister's Office, Mauritius.

As Counsel we have Ms Anjolie Singh, Member of the Indian Bar, New Delhi, India; Ms Diem Huong Ho, Attorney-at-Law, Foley Hoag USA; Ms Sun Young Hwang, Attorney-at-Law, again at Foley Hoag Washington, USA.

As Adviser, we have Ms Young Kim Fat, Minister Counsellor, Prime Minister's Office, Mauritius.

As Technical Advisers, we have Mr Scott Edmonds and Ms Vickie Taylor, both of International Mapping, Ellicott City, Maryland, United States.

As Assistant, we have Ms Nancy Lopez, again of Foley Hoag LLP, Washington, DC, USA.

Finally, allow me to recognize our Ambassador to Germany, Her Excellency Ms Christelle Sohun, who is in the gallery.

As you would have noted, I did not mention the name of Mr Paul Reichler, who was to be part of the Mauritius delegation as communicated to the Special Chamber on 4 October. Unfortunately, for medical reasons Mr Reichler has been unable to travel to Hamburg, and he deeply regrets not being able to be here.

Mr President, I wish to conclude the introduction of the delegation of Mauritius by assuring you and the Maldives team of our full collaboration to ensure that the hearing proceeds smoothly.

Thank you, Mr President, Members of the Special Chamber.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Dabee.

I now call on the Agent of the Maldives, His Excellency Mr Ibrahim Riffath, Attorney General of the Republic of Maldives, to introduce the delegation of the Maldives.

MR RIFFATH: President, Tribunal Members of the Special Chamber, Madam Registrar, members of the delegation of Mauritius, my name is Ibrahim Riffath; I am the Attorney General of the Maldives and the Maldives' Agent in these pleadings.

It is my pleasure to introduce the members of the Maldives team. I am joined by Ms Shabeen, Deputy Attorney General of the Republic of Maldives, and Ms Mariyam Shaany, State Counsel in the Office of the Attorney General.

Also in the delegation of counsel and advocates are: Professor Payam Akhavan of the University of Toronto and a Member of the Permanent Court of Arbitration; Professor Jean-Marc Thouvenin, of the University Paris-Nanterre; Professor Makane Moïse Mbengue, of the University of Geneva; Ms Amy Sander of Essex Court Chambers in London; and Dr Naomi Hart, also of Essex Court Chambers.

Our delegation has two technical advisers: Mr John Brown of Cooley (UK) LLP, and Mr Alain Murphy of GeoLimits Consulting; Ms Melina Antoniadis; Ms Justine Bendel; Mr Andrew Brown and Ms Lefa Mondon assist in the delegation.

Thank you, Mr President.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Riffath.

I now give the floor to the Agent of Mauritius, Mr Dabee, to make his opening statement.

First Round: Mauritius

STATEMENT OF MR DABEE
AGENT OF MAURITIUS
[ITLOS/PV.22/C28/1/Rev.1, p. 5–10]

Mr President, Members of the Special Chamber, Honourable Agent and members of the delegation of the Republic of Maldives, it is a privilege and an honour for me to appear before you, in my capacity as Agent of the Republic of Mauritius, to open this hearing on the merits of the dispute concerning the delimitation of the maritime boundary between Mauritius and the Maldives.

We are grateful to you, Mr President and to the Members of the Special Chamber, for the opportunity to present our claim and to engage with our colleagues from Maldives. We are also grateful to ITLOS, and in particular its Registrar and her staff, for the exemplary manner in which they have carried out their mandate throughout these proceedings.

Mr President and Members of the Special Chamber, two years ago, exactly to the day, the Parties appeared before you – some of us here in Hamburg, others attending virtually – for the hearing concerning Maldives' preliminary objections. Less than four months later, on 28 January 2021, the Special Chamber handed down its Judgment on Preliminary Objections confirming the Special Chamber's jurisdiction to adjudicate on the dispute jointly submitted by the Parties concerning the delimitation of their maritime boundary in the Indian Ocean, and determining that Mauritius' claim is admissible, subject to the requirements of article 76 of the Convention.

As we move to the stage of the hearing on the merits, I wish to draw attention to two significant developments which have occurred since your Judgment on Preliminary Objections.

First, in February of this year Mauritius carried out an on-site scientific and technical survey of Blenheim Reef, which is the northernmost feature of the Chagos Archipelago. The significance of the survey cannot be overstated. It was the first time that the Republic of Mauritius was able to visit, in an official capacity, the Chagos Archipelago, an integral part of its territory. As a result of the survey, Mauritius has been able to furnish a large body of scientific and technical information about Blenheim Reef, the accuracy of which is not disputed by Maldives.[1] Mr President, I pause here for a moment to express the sincere gratitude of the Republic of Mauritius to the Special Chamber and to the Registrar for their good offices, as well as to the Government of Seychelles for facilitating that survey.

Second, following the survey, in August of this year, the President of the Republic of Maldives, His Excellency Mr Ibrahim Mohamed Solih, wrote to the Prime Minister of Mauritius, Hon. Pravind Kumar Jugnauth, to confirm a significant change of position on the part of Maldives.[2] The Maldives' President has, in the letter, provided an assurance to the Mauritian Prime Minister that Maldives would vote "yes" to a forthcoming UN General Assembly Resolution reaffirming the ICJ's Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* and UN General Assembly Resolution 73/295.[3]

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[1] Mauritius Reply, Annex 1, Geodetic Survey of Blenheim Reef, 22 February 2022 (hereinafter "Geodetic Survey").

[2] See exchange of correspondence transmitted to the ITLOS Registrar dated 30 September 2022.

[3] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion [of 25 February 2019], I.C.J. Reports 2019*; UN General Assembly Resolution 73/295, "Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965".

The Maldives' President gave a further assurance that Maldives will provide every assistance to facilitate the future travel of the Prime Minister of Mauritius through Maldives to the Chagos Archipelago.

In reliance on those assurances, Mauritius, in turn, informed Maldives of its decision to leave to the past the difficulties that arose with regard to the survey, in particular the conditions that Maldives sought to impose with respect to the composition of Mauritius' survey team and the obtaining of "necessary clearances" from the unlawful colonial administration in the Chagos Archipelago. On the basis of Maldives' assurances, Mauritius no longer pursues its request that the Special Chamber exercise its discretion pursuant to article 34 of the ITLOS Statute and article 125 of the ITLOS Rules with regard to the significant additional costs incurred by Mauritius in carrying out the survey.

Mr President, Maldives' change of position is most appreciated. We are neighbouring countries with shared interests and common challenges. We welcome the clear commitment of Maldives to respect the Special Chamber's Judgment on Preliminary Objections. It also reaffirms that, despite our differences with regard to the delimitation of our common maritime boundary, Mauritius and Maldives continue to enjoy long-standing warm and friendly relations, fostered over more than four decades. Mauritius and Maldives are Small Island Developing States which are confronted with the effects of climate change, sea-level rise, economic and environmental vulnerabilities, and inherent structural handicaps such as distance from larger markets, and are dependent on tourism, which was severely impacted by the COVID-19 pandemic. There is so much common ground between Mauritius and Maldives, on so many issues, and that is evident from the tone of the recent exchange of correspondence between the Maldives' President and Mauritius' Prime Minister.

As small island States, Mauritius and Maldives appreciate the value of ocean resources and attach great importance to measures to preserve and protect the environment. The Parties also attach much importance to the matter now before you, i.e., the delimitation of our maritime boundary in the Indian Ocean.

As anticipated in articles 74, paragraph 1, and 83, paragraph 1, of the Convention, Mauritius sought to achieve a negotiated solution for many years, first inviting Maldives to preliminary talks in June 2001.[4] Despite recognizing the existence of an overlap in our maritime entitlements, Maldives subsequently declined to engage in further negotiations, and that is why we are here today. Mauritius was left with no choice but to resort to Part XV of the Convention and filed its Notification of Claim under article 287 and Annex VII of the Convention.[5] Mauritius did so for two reasons: first, to resolve the difference between the Parties as to their overlapping entitlements in the EEZ and the continental shelf within and beyond 200 Miles; and, second, to enable Mauritius to definitively establish its maritime spaces and sovereign rights under international law, within and beyond 200 Miles.

On 24 September 2019, following consultations with the ITLOS President, the Parties concluded the Special Agreement by which the present dispute was submitted to this Special Chamber.[6] This demonstrates the confidence and faith that each of the Parties has in ITLOS, and a recognition of ITLOS's special position as the only permanent tribunal charged specifically with ensuring the proper interpretation and application of the Convention.

Mr President, I will now briefly summarize Mauritius' first round of oral presentations in this hearing on the merits.

Professor Sands, Mr Parkhomenko and Mr Reichhold will all address you on the delimitation within 200 Miles. First, Professor Sands will provide an overview of Mauritius'

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[4] See Mauritius' Memorial, paras. 3.2-3.5; 3.20-3.25; Mauritius's Reply, paras. -3.7-3.11.

[5] Mauritius Notification under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the Claim and Grounds on which it is Based, dated 18 June 2019.

[6] Special Agreement and Notification dated 24 September 2019.

claim, including the evidential and legal consequences that flow from Mauritius' site visit to Blenheim Reef. In particular, the survey revealed vast stretches of drying reef, exposed not only at low tide, but also at Mean Sea Level, extending to 19 kilometres of Blenheim Reef's perimeter, in particular in the north, facing Maldives.[7] The survey was most useful in establishing the extent of Blenheim Reef as a drying reef. Consequently, Blenheim Reef qualifies both as a low-tide elevation for the purposes of article 13, paragraph 1, of the Convention and also as a "drying reef" within the meaning of article 47. Under either of these provisions, in Part II and Part IV of the Convention, Blenheim Reef, which lies less than 12 Miles from Takamaka Island, must therefore be regarded as an integral part of Mauritius' coast from which to measure the territorial sea, the EEZ and continental shelf, within and beyond 200 Miles. Pursuant to those provisions, and in accordance with relevant judicial practice, Blenheim Reef is entitled to supply basepoints from which to construct a median or equidistance line. Professor Sands will also outline the points of agreement between the Parties and the four points of disagreement which you are tasked with resolving.

Mr Parkhomenko's presentation, which will follow that of Professor Sands', will focus on Part II of the Convention. He will explain why, at the first stage of the now well-established three-stage delimitation process that both Parties agree upon, Blenheim Reef – as a low-tide elevation within the meaning of article 13, paragraph 1 – must be taken into account in the construction of the provisional equidistance line within 200 Miles. As the Members of the Special Chamber are aware, the construction of the provisional equidistance line in stage one of the process is an objective, mathematical process without room for subjective judgments about particular geographic features. This rule has been laid down by no less an authority than this eminent Tribunal in the *Bangladesh* v. *Myanmar* case,[8] as well as by the ICJ and Annex VII tribunals. Mr Parkhomenko will conclude his presentation by showing you the provisional equidistance line that results from this objective process, taking account of all features on the relevant coasts of both Parties, including Blenheim Reef.

Professor Sands will then address you on Part IV of the Convention, and the maritime entitlements which flow from Mauritius' archipelagic baselines. As an archipelagic State, Mauritius, in line with its entitlement, has drawn archipelagic baselines encompassing Blenheim Reef as a "drying reef" within the meaning of article 47 of the Convention. That provision makes no distinction whatsoever between a drying reef and an island. As such, Mauritius' archipelagic baselines encompassing Blenheim Reef confer precisely the same entitlement to a full maritime area, up to and beyond 200 Miles, in the same way as a baseline along the low-water line around an island, or along a mainland coastline.

As Professor Sands will explain, this case features a unique characteristic: it is, as far as we can ascertain, the first time that an international court or tribunal has been tasked with delimiting the maritime boundary between two archipelagic States. It would be contrary to Part IV of the Convention, in such a case, to ignore, or disregard, the archipelagic baselines of one of those States, especially in a situation where they have been drawn in strict compliance with article 47 and gained wide international approval and acceptance. Professor Sands will show that, in stage one of the three-stage process, with basepoints properly placed along Mauritius' archipelagic baselines at Blenheim Reef, the resulting provisional equidistance line is exactly the same as the one shown by Mr Parkhomenko on the basis of article 13.

Next, Mr Reichhold will take you through stages two and three of the three-stage process, on the basis of the provisional equidistance line that results from stage one, under either of Mauritius' two approaches: namely, treatment of Blenheim Reef as a low-tide elevation integrally connected to Mauritius' coast, or as a drying reef along Mauritius'

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[7] Mauritius's Reply, Annex 1, Geodetic Survey, p. 5.

[8] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4.

archipelagic baselines; and he will demonstrate that at the second stage, there are no special or relevant circumstances calling for any adjustment to the provisional equidistance line, which is neither disproportionate nor prejudicial to Maldives in any significant way. Then he will demonstrate that the unadjusted equidistance line passes the disproportionality test at stage three, and that this line is almost perfectly proportionate, and constitutes the equitable solution that articles 74 and 83 of the Convention require.

Mr Reichhold will conclude with Mauritius' submission on the boundary within 200 Miles, that is, an unadjusted equidistance line taking account of all basepoints on the two Parties' relevant coasts, including those drawn around Blenheim Reef.

Following Mr Reichhold, Professor Klein will begin Mauritius' presentation on the delimitation beyond 200 Miles by addressing you on Maldives' outstanding preliminary objection in relation to jurisdiction and admissibility. First, Professor Klein will demonstrate that the Special Chamber is competent to proceed with the delimitation of the continental shelf beyond 200 Miles. This has been an integral part of the maritime delimitation dispute between the Parties from 2010 onwards and falls within the ambit of Mauritius' Notification and the Special Agreement.[9] Second, Professor Klein will show that Mauritius has made a timely submission to the Commission on the Limits of the Continental Shelf ("CLCS") with regard to the Northern Chagos Archipelago Region and that Maldives has had a full and proper opportunity to respond to Mauritius' extended continental shelf claim.

Thereafter, Dr Badal will make a submission on the scientific and technical material concerning Mauritius' entitlement to an extended continental shelf, included in Mauritius' submission to the CLCS, giving rise to overlapping entitlements between the Parties beyond 200 Miles. First, he will address the geomorphological and geophysical circumstances, confirming the existence of a natural prolongation extending from the northern portion of the Chagos Archipelago. Second, he will address the test of appurtenance and the delineation of Mauritius' extended continental shelf.

In relation to the letter of the honourable Agent of Maldives dated 10 October 2022, I wish to make clear that Dr Badal addresses the Special Chamber in his capacity as counsel for Mauritius. The matters to which Dr Badal will refer go no further than those set out in Mauritius' submissions to the CLCS, and to the extent that it is necessary to respond to the points raised by Maldives in its Rejoinder. He is not a witness and his submissions to the Special Chamber will address the evidence that has already been submitted with Mauritius' pleadings.

Finally, Mr Loewenstein will address you on the equitable delimitation of the Parties' overlapping entitlements in the extended continental shelf beyond 200 Miles, amounting to approximately 22,272 square kilometres. Whereas Maldives invites you to apportion the area in the ratio of 99-to-1 in its favour, Mr Loewenstein will show that pursuant to article 83, paragraph 1, the Convention mandates an equitable solution, which, in the circumstances of this case, is achieved by according each Party an equal share of the overlapping entitlements beyond 200 Miles.

Mr President, Members of the Special Chamber I would like to take this opportunity to reiterate that Mauritius would welcome the appointment of an expert to prepare an opinion on the scientific and technical issues concerning the delimitation of the continental shelf beyond 200 Miles, should the Special Chamber consider it necessary to do so. We respectfully submit that the Special Chamber would benefit from an expert opinion on the hydrography, geology and geomorphology of the area at issue. We have presented our detailed views on the matter in our letter of 30 August 2022, and responded to Maldives' objections in our letter of

[9] Mauritius' Notification under Article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the Claim and Grounds on which it is Based, dated 18 June 2019; Special Agreement and Notification dated 24 September 2019.

5 September 2022. For the reasons set out in the letters, Mauritius stands by its earlier communications.[10]

Mr President, Members of the Special Chamber, it is a privilege for Mauritius to participate in these proceedings before this Special Chamber of ITLOS. My delegation will remain available to provide any such assistance as the Special Chamber might need. We will be pleased to offer our fullest collaboration and cooperation to the delegation for Maldives in making this hearing as helpful as possible for the Special Chamber. In addition to the questions communicated to the Parties yesterday afternoon, we would welcome, of course, further questions from the Special Chamber.

I also wish to inform the Special Chamber that we have already provided the supporting scientific and technical data of the Submission made by Mauritius to the CLCS in April 2022. This addresses question 4 in the list of questions received yesterday afternoon. Questions 1, 2 and 3 will be answered in the presentations of the members of our delegation later today.

To assist the Special Chamber, we have provided a folder for each Judge. This contains the recent correspondence between the Maldives' President and Mauritius' Prime Minister to which I referred earlier, and copies of the graphics that will appear on your screens throughout the day. Copies of our Judges' folders have also been provided to the ITLOS Registry and to our friends from Maldives.

Mr President, I now respectfully request that you invite Professor Sands to make his first presentation. Thank you, Mr President and Members of the Special Chamber, for your kind attention.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Dabee.

I now give the floor to Mr Philippe Sands to make his statement. You have the floor, Sir.

[10] *See* exchange of correspondence transmitted to the ITLOS Registrar dated 30 August 2022 (Mauritius); 31 August 2022 (Maldives) and 5 September 2022 (Mauritius) in response to the Tribunal's communication dated 16 August 2022.

STATEMENT OF MR SANDS
COUNSEL OF MAURITIUS
[ITLOS/PV.22/C28/1/Rev.1, p. 10–18]

Mr President, Members of the Special Chamber, it is a privilege to appear before you once again on behalf of Mauritius and here in person, in Hamburg. My task this morning is to introduce Mauritius' arguments, with a focus on two aspects of this case. First, I am going to address certain evidential and legal consequences that flow from the site visit that Mauritius was able to carry out a few months ago, in the northern parts of the Chagos Archipelago. Second, I will address the key points of agreement and disagreement between the Parties; as with so many cases, the written pleadings have allowed those issues to be narrowed.

Mr President, allow me to begin with the site visit and to start with some words of appreciation which followed this Tribunal's clear judgment on jurisdiction. Mauritius, as you know, was able to organize and conduct a site visit. It is not possible to overstate the significance of the visit.[1] You get a sense from this video, which is of course in the public domain, of the nature of the location.

The voyage was historic: it was the first visit ever organized by the Republic of Mauritius to the Chagos Archipelago since the territory was unlawfully detached and Mauritius gained its independence in 1968. It was the first time that members of the Chagossian community, who had been forcibly removed from the Chagos Archipelago, could return without an armed British escort.[2] It was the first time the flag of the Republic of Mauritius flew over the archipelago; the islands of Peros Banhos, Salomon and Blenheim Reef. And it was the first time that Mauritius – or indeed anybody, ever – had conducted a rigorous scientific and technical survey of certain maritime features and the appurtenant waters.

Back then, earlier this year, the enthusiasm of the Maldives for the visit was perhaps not entirely unbridled, but there has been a change of tone, as noted by our Agent, which we warmly welcome, with assurances on which Mauritius has placed reliance. Mauritius looks forward to being able to count on the full support of the Maldives in facilitating travel to and from, and other activities in relation to, the Chagos Archipelago. This is exactly as it should be between two friendly, neighbouring countries; it is a seamless connection between Africa and Asia.

In the end, the journey had to be arranged from Seychelles. On 8 February of this year, a Mauritian team of 25 individuals boarded the vessel *Bleu de Nîmes* at the port in Mahé. Led by Ambassador Koonjul, the group comprised scientists from the Mauritian Department for Continental Shelf, Maritime Zones Administration and Exploration (CSMZAE), two marine scientific experts from Sweden, members of the Mauritian legal team, government officials, Mauritian and international journalists and five members of the Chagossian community who have particular knowledge of the islands, including the area around Blenheim Reef.

It took five days to sail the 975 nautical miles from Mahé to Peros Banhos. The survey team then spent five full days at Blenheim Reef, Peros Banhos and Salomon. It took another five days to then sail back to Mahé.

The results of the scientific and technical survey are set out in the Geodetic Survey Report of Ola Oskarrson and Thomas Mennerdahl. They provided new, detailed, objectively

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[1] Cullen Murphy, "They Bent to Their Knees and Kissed the Sand", *The Atlantic* (15 June 2022), available at https://www.theatlantic.com/magazine/archive/2022/07/reclaiming-chagos-islands-british-colonization/638444/ (last accessed 15 October 2022).

[2] Chiamaka Okafor, "Mauritius hoists flag on Chagos Archipelago, says it's reclaimed territory from Britain", *The Premium Times* (15 February 2022), available at https://www.premiumtimesng.com/foreign/africa/511647-mauritius-hoists-flag-on-chagos-archipelago-says-its-reclaimed-territory-from-britain.html (last accessed 15 October 2022).

verifiable and significant material and evidence, which Mauritius has put before the Special Chamber in its Reply.[3] As a result of this survey, Mauritius has been able to obtain more accurate and detailed information about Blenheim Reef, and we hope this might assist the Special Chamber. Of particular significance is the new evidence revealed by the survey which established the existence of extensive areas of "drying reef" – I use these words in the sense of article 47 of the 1982 Convention – along the northern, eastern and western flanks of Blenheim Reef's seaward perimeter. This includes the areas that directly face Maldives, and so are directly relevant for the delimitation of the maritime boundary.

Let us be clear: Mauritius, the Maldives and everyone else was previously aware of the existence of some drying reef on Blenheim, but this information was only to be found in remote satellite imagery and large-scale hydrographic charts. The new information – on the nature and extent of the drying reef – was not known. The site visit, and the scientific investigation that was carried out, has changed the state of our knowledge. Before the investigation, it was not known that the drying reef extends to some 19 kilometres of Blenheim Reef's circumference.[4] The Special Chamber can now proceed on the basis of evidence that has been corroborated by an independent expert, Dr David Dodd.[5] The results of the survey, and of Dr Dodd's opinion, have not been challenged by the Maldives.

I turn first to the findings of the survey, the unchallenged findings, which are set out in the Reply. Blenheim Reef, which you can see in the top right-hand corner of the plate on your screens, is situated on the north-eastern fringe of the Chagos Archipelago. It is some 10.6 nautical miles east-northeast of Salomon Islands Atoll. Blenheim Reef covers approximately 36 square kilometres. It is a lagoon encircled by coral heads, rocks and unconsolidated material, including sand and granulated coral. From north to south, Blenheim Reef extends for 9.6 km, whilst at its widest point, from east to west, it spans 4.7 km.[6] The north-eastern part of Blenheim Reef, which faces Maldives and which you can see from the air (you can see on this plate right now) features very extensive areas of drying sand, coral sand and coral blocks. In its written pleadings, Maldives would have you believe this is a small and insignificant feature. It is not, as you can see on your screens, with the survey vessel, tiny in the foreground, for scale.

From 13 to 16 February 2022, Mauritius carried out a geodetic survey of Blenheim Reef – you can see the whole area on your screens on the plate in front of you. This was based on tide models and *in situ* surveys undertaken using advanced pressure tidal recorders, satellite receivers, and aerial photography from low-flying drones, as you can see on the screens. Using these instruments, the survey team calculated the tide model of Blenheim Reef, which was then used to calculate the Mean Seawater Level (MSL), the Lowest Astronomical Tide (LAT), and the Highest Astronomical Tide (HAT). On the next plate you can see the rise and fall of the water level – approximately 1.6 metres – over nine days. As a result, the survey team identified rocks and coral heads located along the perimeter of the lagoon, as well as extensive areas of drying sands that were exposed at Mean Sea Level along the reef's outermost perimeter, as you can see on this next plate.

The Survey Report sets out the details of the equipment used and where precisely it was positioned along the reef.[7] The findings of Blenheim Reef's geographic status relative to

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[3] Ola Oskarsson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, (hereinafter "the Survey Report"), 22 February 2022, Mauritius Reply, Vol. III, Annex 1.

[4] *Ibid.*, p. 5.

[5] Dr David Dodd, Assessment of methods used to determine the vertical relationship between Blenheim Reef and various vertical datums; including: WGS 84 Ellipsoid, EGM08 Geoid, MSL, LAT and HAT vertical references, 28 March 2022, Mauritius' Reply, Vol. III, Annex 2.

[6] The Survey Report, p. 5.

[7] The operation included placement of two water level recorders on the seafloor of the reef's lagoon; three "global navigation satellite system" (GNSS) recording base stations were located along Blenheim's drying reefs based on

Lowest Astronomical Tide were confirmed by the use of drones that captured high and low altitude images of the reef, as you can see from this plate. The images clearly show extensive areas of drying reefs and sands, including exposed coral heads. These features begin to uncover at or near Mean Seawater Level and extend significantly in area as the tidal flow reaches Lowest Astronomical Tide.

Maldives says this is a "reef covered with water and waves just breaking at its highest point."[8] But it is not, as you can see from these three images that are now on the screens. Of course, although I cannot give testimony as a witness, I can tell you that I was there and I walked on this drying reef. The survey team established that there were numerous rocks, coral heads and drying reefs exposed at Mean Sea Level. This directly contradicts Maldives' claim that Blenheim Reef is "barely above water at lowest tides and completely submerged at other times."[9]

Drones were used to take overlapping photos within the survey area, which were then processed by specialist software, to create a single orthomosaic image. The one you can see on your screens is at position 3, along the north-eastern coastline of Blenheim Reef, directly facing Maldives. This image shows large swathes of drying reef.

Along the north-eastern edge of Blenheim Reef there are many such areas of drying sands and coral blocks easily visible as soon as the tide begins to drop from its highest levels. In total, 70 per cent – 70 per cent – of the reef's entire circumference of 27.2 kilometres – that is, some 19 kilometres – is composed primarily of drying reefs.[10] I should add, Mr President, that these scientific findings are not contested in the Maldives' Rejoinder.

While the seafloor surrounding the reef, and the seafloor within the enclosed lagoon, is mainly composed of a mix of coral fragments, sand and a granulated coral and sand mix, the drying reefs have a more consolidated appearance. They consist primarily of rocky coral beds and outcroppings, coral sand and larger coral fragments scattered throughout their rugged surfaces.[11]

Mr President, Mauritius has only been able to obtain this information and evidence as a result of the on-site survey. To visit Blenheim Reef for the first time, as occurred on the morning of 13 February, was transformative of the state of our knowledge of the reef. The scientists were struck by the vastness of Blenheim Reef, stretching as far as the eye can see and beyond. They were struck by the nature and extent of those parts of the reef that were "drying", and by the number and size of rock and coral outcroppings. The satellite imagery and large-scale charts, which is all that Mauritius had access to before the survey, had not prepared the team for the extent of the "drying reef" that could be seen above water at Mean Sea Level. It is difficult to overstate the enormity of Blenheim Reef or, indeed, its beauty.

It was these observations that caused the legal team to consider the implications of the true nature – on the basis of facts and evidence – of Blenheim Reef, and to revisit the text of the 1982 Convention, and in particular its Part IV, on Archipelagic States. We re-read those articles, and in particular the provisions on archipelagic baselines. With this different eye we looked again at article 47, paragraph 1, which provides that an "archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago", provided that certain conditions are met. And article 48, which states that

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report prepared by EOMAP. Finally, selected areas were photographed using low-flying drones to produce orthomosaics and photogrammetry models of the more significant areas where drying reefs were prevalent.

[8] Maldives' Counter-Memorial, para. 108.

[9] Maldives' Counter-Memorial, para. 104.

[10] The Survey Report, p. 5.

[11] *Ibid.*

> [t]he breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from the archipelagic baselines drawn in accordance with article 47.

Mr President, the on-site survey – and the vast swathes of drying reef seen by the experts of Mauritius – caused the Applicant to reflect further, and to revisit and refine the approach adopted in the Memorial with regard to the delimitation with which you are faced.

Significantly, Maldives does not contest any of the findings of the geodetic survey. At paragraph 5 of the Rejoinder, Maldives asserts that the survey is "irrelevant", because it does no more than confirm

> what was already common ground between the Parties: namely, that Blenheim Reef includes 'drying reefs' which are above water only at low-tide, constituting LTEs under UNCLOS Article 13.[12]

Mr President, with these words in mind, was it the case, in fact, that the Parties had agreed that Blenheim Reef consisted of "drying reefs" within the meaning of article 47 of the Convention? It was not. If you review the entirety of the Maldives' Counter-Memorial, you will see that the words "drying reef" do not appear in the pleading, not once. The existence, nature and effect of Blenheim's "drying reefs" were not in the minds of the drafters of that pleading. And that fact – for it is a fact – rather begs the question: how can Maldives have had common ground with Mauritius, on the matter of the legal effects of the drying reefs, if it had not turned its mind to those words – "drying reefs"? Moreover, as the survey has now – and newly – made clear, the extensive areas of drying reef are above water not only at Lowest Astronomical Tide, but also at Mean Sea Level.

What are the legal consequences of this fact, established by incontrovertible – and uncontroverted – proof before the Tribunal?

The evidence before the Tribunal establishes that the drying reefs of Blenheim Reef make it an extensive low-tide elevation within the meaning of article 13 of the Convention. It is not, however, 57 separate low-tide elevations, as now claimed by Maldives.[13] We have no idea, incidentally, where the number 57 comes from, as it is not in our pleadings and it is not in the Survey Report. As an extended low-tide elevation – situated approximately 10.5 Miles from Île Takamaka in Salomon Islands Atoll, which is permanently above water – Mauritius is entitled to locate basepoints on Blenheim Reef, and these basepoints can properly be utilized for the delimitation. This is what we set out in our Memorial.[14] Mr Parkhomenko will address this aspect following my presentation and make clear that Maldives' attempts to minimize the significance of the reef, for the purpose of excluding it from the well-established procedure for delimitation of the maritime boundary between Mauritius and Maldives, are entirely without merit.

However, Mr President, this is not the only basis for the submissions of Mauritius. As a consequence of the site visit, it is now apparent to us that there is another approach, one that leads to – and buttresses – the very same line of delimitation for which Mauritius argues. As I have mentioned, the extensive areas of drying reef at Blenheim Reef were not apparent from satellite imagery or from other sources. They provide a complementary approach to the use of basepoints on Blenheim Reef, as a low-tide elevation.

The Special Chamber will be aware that Mauritius' basepoints on Blenheim Reef – the coordinates for which are set out in the Memorial and Reply – are located not only on

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[12] Maldives' Rejoinder, para. 5(a).
[13] Maldives' Rejoinder, paras. 5b, 19, 25, 42, 64.
[14] Mauritius' Memorial, paras. 2.20, 4.28-4.30.

Mauritius' coast, but also along Mauritius' archipelagic baselines. As an archipelagic State, Mauritius is entitled to use its archipelagic baselines in relation to Blenheim Reef as the basis for all its maritime entitlements. As article 48 makes clear: the territorial sea, EEZ, continental shelf and extended continental shelf are all, in accordance with Part IV of the Convention, to be derived from its archipelagic baselines.

Moreover, the baselines are also to be utilized for the construction of the equidistance line to delimit the Parties' overlapping entitlements within 200 Miles. As an archipelagic State, Mauritius is entitled, as a matter of law, to use its archipelagic baselines to delimit its maritime boundary with the Maldives.

I am going to address this in more detail later today, but, in short, Blenheim Reef is both a low-tide elevation under article 13 of the Convention, and a feature with extensive areas of "drying reef" within the meaning of article 47. Here, one aspect of the Convention needs to be teased out. This is relevant for your third question, which I am going to come to in my second presentation today.

Every drying reef is also a low-tide elevation but not every low-tide elevation is a drying reef. And, under article 47, paragraph 1, of the Convention, the entitlements of a coastal State that derive from a drying reef may be more extensive than those that may arise from a low-tide elevation. As Mr Parkhomenko and I will explain, articles 13, 74 and 83, along with Part IV of the Convention, result in Blenheim Reef being entitled to full effect in the delimitation of the Parties' overlapping entitlements, up to and beyond 200 Miles.

Mr President, Members of the Special Chamber, I turn to the second part of my presentation: the areas of agreement and disagreement between the Parties. Having read the pleadings, you will be aware that there are now significant areas of agreement which narrow the task of the Special Chamber.

First, Mauritius and Maldives agree on the methodology to be adopted in relation to the delimitation of the maritime boundary within 200 Miles. They both invite you to adopt the well-established three-step methodology, often referred to as the "equidistance/relevant circumstances" method, which ITLOS, the ICJ and arbitral tribunals have regularly applied to achieve an equitable delimitation of maritime spaces.[15]

Second, there are significant areas of agreement with respect to the basepoints for the construction of the provisional equidistance line. Mauritius agrees with the selection of all 39 basepoints located on the southern coast of Addu Atoll in the Maldives, which you can see on your screens. The Parties are also in agreement with respect to nine of the 13 basepoints on the left-hand side of the screen here on Peros Banhos Atoll, but they do not agree on the four basepoints, numbers 10 to 13, located on Blenheim Reef. I will say more about these basepoints, and C83, C84 and C85, later on this morning.

Third, and subject to one point, the Parties agree that there are no relevant circumstances that call for any adjustment of the provisional equidistance line in the maritime areas up to 200 Miles.[16] The one caveat is that Maldives argues that an adjustment would be required if the Special Chamber were to give Blenheim Reef full effect,[17] an argument with which Mauritius is in profound disagreement, as there is no basis in the Convention or in the jurisprudence for that approach. The Parties also agree that the provisional equidistance line

[15] Mauritius' Memorial, paras. 4.2, 4.14-4.47; Maldives' Counter-Memorial, paras. 5, 9, 113; Mauritius' Reply, paras. 1.3(a); Maldives' Rejoinder, para. 2(a).
[16] Mauritius' Memorial, paras. 4.32-4.38; Maldives' Counter-Memorial, para. 151; Mauritius' Reply, para. 1.3(c); Maldives' Rejoinder, para. 2(e).
[17] Maldives' Counter-Memorial, paras. 151-152; Maldives' Rejoinder, footnote 7.

does not in any event produce a result that is grossly disproportionate and requiring adjustment.[18]

Fourth, Mauritius and Maldives agree that Blenheim Reef is a low-tide elevation within the meaning of article 13.[19] That said, Maldives seeks to minimize its significance and effect, arguing in its Counter-Memorial that Blenheim Reef is "barely above water at lowest tides and completely submerged at other times."[20] It was this assertion, in part, that prompted Mauritius to recognize the need to ascertain the facts on the ground, so to speak, and conduct the on-site survey.

Having initially conceded that Blenheim Reef was a low-tide elevation, the Maldives has now changed its position: in its Rejoinder it now asserts that Blenheim Reef is actually 57 "distinct LTEs rather than a single LTE".[21] We do not know where the 57 comes from. It sounds a bit like Heinz's claim that its famous ketchup comprises 57 different varieties of tomato. But that claim, as with the ketchup, is false.[22] Mr Parkhomenko will address this point shortly.

Fifth, it is also common ground between the Parties that Blenheim Reef includes areas of "drying reef".[23] The Parties disagree, however, on the extent of those "drying reefs" and the legal consequences that are to be drawn from the evidence in relation to Part IV of the Convention. I will address this in my second presentation.

I now turn to the areas of disagreement that will need to be addressed by the Special Chamber. In our submission, there are four significant points of disagreement.

First, the Parties disagree on the application of the methodology in delimiting overlapping entitlements within 200 Miles, having regard to the geographic circumstances of the case. The disagreement centres on the nature of, and effect to be accorded to, Blenheim Reef in the delimitation process: should basepoints for the construction of the provisional equidistance line be located on Blenheim Reef either, or both, as a low-tide elevation under article 13 or as a drying reef within the meaning of article 47 of the Convention? We say yes, under both articles, and that to give Blenheim Reef full effect, as the law plainly requires, does not result in, as Maldives claims, "an extraordinarily disproportionate effect".[24]

In addressing these points, Mr Parkhomenko and I will rebut Maldives' arguments that Blenheim Reef, one, is not part of the relevant coast of Mauritius; and, two, that it is not an appropriate location for basepoints.

The second disagreement between the Parties – which is related to the first – is on the legal effect to be given to the proven fact that there are extensive areas of "drying reef" at Blenheim, as established by the survey. In its Reply, Mauritius set out in detail the legal consequences of this fact, as required by Part IV of the Convention.[25] It is notable that in its Rejoinder, Maldives has offered no evidence of its own to counter the evidence we presented in the Reply. It is equally notable that Maldives has rather failed to address all the submissions we made on Part IV of the Convention, including in particular the interpretation and application

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[18] Mauritius' Memorial, paras. 4.39-4.47; Maldives' Counter-Memorial, paras. 153-158; Mauritius' Reply, para. 1.3(d), 2.84-2.88; Maldives' Rejoinder, para. 2(f).

[19] Mauritius' Memorial, para. 2.20 *et seq.*; Maldives' Counter-Memorial, para. 106.

[20] Maldives' Counter-Memorial, paras. 104, 108 ("For significant periods of time, Blenheim Reef is fully submerged.")

[21] Maldives' Rejoinder, para. 5(b).

[22] Nathaniel Meyersohn, "How Heinz uses a fake number to keep its brand timeless", *CNN* (19 February 2022) available at https://edition.cnn.com/2022/02/19/business/heinz-ketchup-57-varieties-history/index.html (last accessed 15 October 2022).

[23] Maldives' Rejoinder, para. 5(a).

[24] Maldives' Counter-Memorial, para. 152.

[25] Mauritius' Reply, para. 2.20 *et seq.*

of article 47 and the relevance of drying reefs for archipelagic coastal States. It offered just 13 cursory paragraphs.[26]

Third, the Parties disagree with respect to the scope of the Special Chamber's jurisdiction to delimit the continental shelf beyond 200 Miles. Mauritius submits that it has established that both Parties have an extended continental shelf beyond 200 Miles from their respective coasts; that the Parties' entitlements in this area overlap; and that there is no reason for the Tribunal to decline to exercise jurisdiction over this or any other part of Mauritius' claim. Maldives, on the other hand, argues that the Special Chamber does not have jurisdiction to delimit the continental shelves beyond 200 Miles because there was, allegedly, no dispute in respect of overlapping extended continental shelf claims when Mauritius filed its claim. It also argues that Mauritius' claim is inadmissible because it has only submitted preliminary information, not a full submission, to the CLCS, and, allegedly this was submitted after the expiration of the time-limit for doing so. Professor Klein will address these arguments on jurisdiction and admissibility this afternoon, including the argument that Mauritius is somehow attempting to "significantly expand" the dispute between the Parties "by making an entirely new claim to an OCS."[27] Professor Klein will establish that there is no reason for the Tribunal to limit its jurisdiction to the delimitation of the Parties' maritime boundary within 200 Miles.

Fourth and finally, there are two disagreements with respect to the delimitation beyond 200 Miles. Maldives contests Mauritius' entitlement to an extended continental shelf under article 76 of the Convention, arguing that it is "manifestly unfounded".[28] Dr Rezah Badal will address you on Mauritius' entitlement under article 76 later today. Maldives also takes issue with the methodology to be adopted in the division of overlapping entitlements beyond 200 Miles pursuant to article 83 of the Convention, requiring an equitable solution, a matter which will be addressed by Mr Andrew Loewenstein.

Mr President, Members of the Special Chamber, that concludes my presentation. You will have noted, I am sure, that in certain respects the case brought to you by the Parties is a discrete one. It is not, however, without significance or interest. This appears to be the first case in which the delimitation of the maritime boundary between two archipelagic States has been brought to any international court or tribunal. In addressing this aspect of the case, the Special Chamber and ITLOS have a significant role to play in confirming the correct interpretation and application of Part IV of the Convention. In so doing, the Special Chamber will cement the place of the Tribunal in playing a leading role in the life of the Convention, and in upholding the rule of law and in fully resolving the dispute that exists between these two friendly neighbouring countries.

I thank you, Mr President, Members of the Tribunal, for your kind attention and now ask that you invite Mr Parkhomenko to address you on the delimitation of the maritime boundary up to 200 Miles.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Sands.

I now give the floor to Mr Yuri Parkhomenko to make his statement.

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[26] Maldives' Rejoinder, paras. 55-67.

[27] Maldives' Counter-Memorial, para. 6. Also Maldives Rejoinder, para. 6 *et seq.*

[28] Maldives' Counter-Memorial, para. 55(b)(ii), para. 79 *et seq*; Maldives' Rejoinder, Chapter 2.

STATEMENT OF MR PARKHOMENKO
COUNSEL OF MAURITIUS
[ITLOS/PV.22/C28/1/Rev.1, p. 18–30]

Mr President, Members of the Special Chamber, it is an honour and a privilege for me to appear before you today and to do so on behalf of the Republic of Mauritius. My pleasure, however, is tempered by the fact that my mentor Mr Reichler cannot appear before you today, but he looks forward to appearing before you at the next opportunity.

As Professor Sands has shown, Blenheim Reef is both a low-tide elevation under article 13 of UNCLOS and a drying reef under article 47. As such, Blenheim Reef must be treated as part of Mauritius' relevant coast for purposes of this delimitation, and under both articles must be used in constructing a provisional equidistance line in the first stage of the three-stage delimitation process, as defined by the ICJ in the *Black Sea* case, adopted by ITLOS in *Bangladesh/Myanmar,* and followed by this Tribunal ever since.[1] The Parties agree that the delimitation of the maritime boundary within 200 Miles is to be carried following the three-stage process.[2]

The main point of difference between the Parties is whether Blenheim Reef is to be considered part of Mauritius' coast and given effect in constructing the provisional equidistance line during the first stage of the process. Mauritius insists that, under the applicable law, Blenheim Reef is an integral part of its relevant coast, and that it must be taken into account in constructing the provisional equidistance line. Maldives argues the opposite, that Blenheim Reef must be disregarded in constructing an equidistance line, even at the first stage of the three-stage delimitation process.

So, in this presentation, I will focus on stage one, and demonstrate why, for both geographical and legal reasons, Blenheim Reef must be taken into account in constructing the provisional equidistance line.

Following my presentation, Professor Sands will explain why the same provisional equidistance line results if – instead of treating Blenheim Reef as a low-tide elevation under article 13 – it is considered a drying reef under article 47 and part of Mauritius' lawfully adopted and internationally recognized archipelagic baselines, from which the same basepoints are generated. On either approach, Blenheim Reef must be taken into account in constructing the provisional equidistance line in stage one of the three-stage process. After I and Professor Sands have addressed stage one, Mr Reichhold will take you through stages two and three of the three-stage process, and show you that the equidistance line produced at stage one, under both of our approaches, constitutes the equitable solution that UNCLOS and the case law, including ITLOS's own cases, require, and that the Special Chamber in this case should adopt as the boundary within 200 Miles.

In stage one, we begin by confirming that Blenheim Reef is a low-tide elevation located within 12 Miles of Mauritius' coast. The relevant geographical facts are indisputable: (1) Blenheim Reef is a low-tide elevation, and (2) it is situated within 12 Miles of Mauritius' territorial sea.

The geographic and cartographic evidence leave no doubt about either point. First, they show that, in fact and in law, Blenheim Reef is a low-tide elevation. To quote article 13, it is "a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide."[3] This is reflected in the official nautical charts of various States,

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[1] See *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, paras. 116-122; *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 240.

[2] Counter-Memorial of the Republic of Maldives, para. 113.

[3] United Nations Convention on the Law of the Sea 1982, article 13, para. 1.

including the official charts of the United Kingdom, the United States, India and Russia. They all depict Blenheim Reef as a low-tide elevation, a single mass of submerged land, some of which is above water at low tide.

On your screens you see the depiction of Blenheim Reef on BA chart 727, published in 2004 and updated in 2017, as presented in Figure 2.5 of Mauritius' Memorial. Maldives accepts the accuracy of this chart.[4]

The hydrographic evidence shows that Blenheim Reef is shaped like the rim of a volcanic mountain rising from the sea floor. The rim is extensive, with a perimeter exceeding 27 kilometers, much of which is above sea level, except at high tide. The exposed rim surrounds a large lagoon, comprising more than 36 square kilometers, and punctuated by coral reefs, some of which are also exposed at low tide, as shown on this extract from BA 727. You can also see the size and shape of Blenheim Reef, including its enclosed lagoon, on the satellite image now on your screens. It is a sizeable feature, extending for 9.6 kilometers from south to north, and 4.7 kilometers from west to east, with extensive portions above water at low tide.

The undisputed evidence further establishes that part of Blenheim Reef is situated within 12 Miles of the territorial sea of Takamaka Island, which is indisputably part of Mauritius' relevant coast for delimiting the maritime boundary with Maldives. As you can see from this excerpt of BA 727, the distance between Takamaka Island and the south-western part of Blenheim Reef is approximately 10.6 Miles. Thus, more than a Mile of the reef is located within Mauritius' territorial sea. This is not challenged in Maldives' Counter-Memorial. It follows, in accordance with article 13, that Blenheim Reef is a low-tide elevation which "may be used as the baseline for measuring the breadth of the territorial sea."[5]

Article 5 of the Convention tells us how to determine the precise location of that baseline.

> Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.[6]

The large-scale chart that Mauritius has long officially recognized for this part of the Chagos Archipelago is the one you have just seen, BA 727.

Here, you can see more clearly, in red, the low-water line on Blenheim Reef's northern coast, which directly faces Maldives and the area to be delimited. And you can also see the rest of Mauritius' relevant coast, on the north-facing coasts of Peros Banhos Atoll and Salomon Islands Atoll.

Maldives accepts this depiction of Mauritius' relevant coast, with one exception. It wishes to exclude Blenheim Reef from Mauritius' relevant coast by arguing that only land territory, including islands, may comprise a State's relevant coast but never a low-tide elevation.[7] There is no support for this, not in UNCLOS or in the case law. In fact, the case law expressly rejects Maldives' theory. Ironically, the leading case is the one they cite, albeit for other purposes: *Qatar v. Bahrain*. In a passage that Maldives avoided, the judgment confirms that a low-tide elevation, situated wholly or partly within a State's territorial sea "forms part of the coastal configuration"[8] of that State. The Court explained that

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[4] See Counter-Memorial of the Republic of Maldives, para. 128, and p. 71, table 2.

[5] United Nations Convention for the Law of the Sea 1982, art. 13, para. 1.

[6] *Ibid.*, art. 5.

[7] Counter-Memorial of the Republic of Maldives, paras. 127-130; Rejoinder of the Republic of Maldives, paras. 30, 35, 39, 43.

[8] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, para. 202.

> the question whether low-tide elevations are territory and can be appropriated [is distinct from *the question] 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.*[9]

This makes clear that a low-tide elevation like Blenheim Reef, within a State's territorial sea, is part of the geographical configuration that determines the State's legal coastline.

Once the Parties' relevant coasts are identified, the next step, as the ICJ held in the *Black Sea* case, is for the equidistance line

> to be constructed from the most appropriate points on the coasts of the two States concerned, with particular attention being paid to those *protuberant coastal points situated nearest to the area to [be] delimited.*[10]

In *Peru* v. *Chile,* the Court explained that, following this rule, the

> base points for the construction of the provisional equidistance line have been selected as the most seaward coastal points "situated nearest to the area to be delimited".[11]

For Mauritius, it is indisputable that, objectively, and as a matter of coastal geography, its "most seaward coastal points 'situated nearest to the area to be delimited'" include the coastal points on the low-water line of Blenheim Reef.

The drawing of the equidistance line is not a work of art. It is, as you know, a matter of science. This is an "objective" exercise which should "require no subjectivity or discretion at all".[12] As the ICJ explained in the *Black Sea* case, "the line is plotted on strictly geometrical criteria on the basis of objective data."[13]

The established method for plotting the provisional equidistance line on strictly geometrical criteria and objective data is by using CARIS software. This software identifies basepoints along each Party's relevant coast and mathematically constructs from them the equidistance line.

As you can see on this slide, the software identified 13 basepoints along Mauritius' relevant coast. These include three basepoints on Île Diamant, six on Île de la Passe and four basepoints, numbers 10 through 13, at Blenheim Reef, which are magnified in the inset on the right side of this slide. Along Maldives' coast, the software identified 39 basepoints that control an equidistance line within 200 Miles, and Mauritius does not challenge them.

Taking account of basepoints identified by the CARIS software, this is the equidistance line that the objective application of the software produces. In Mauritius' view, this is the provisional equidistance line for stage one, objectively and mathematically constructed.

But Maldives does not accept this line as the stage one provisional equidistance line and seeks to disregard Blenheim Reef entirely.

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[9] *Ibid.*, para. 204, emphasis added.

[10] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, para. 117.

[11] *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014,* p. 3, para. 185.

[12] Stephen Fietta & Robin Cleverly, *A Practitioner's Guide to Maritime Boundary Delimitation* (OUP 2016), p. 576.

[13] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, para. 118.

Maldives offers three arguments to disregard the basepoints at Blenheim Reef. None is defensible in geography. None has support in the Convention or the case law. There is no justification for disregarding Blenheim Reef in constructing the provisional equidistance line. Let us recall the ICJ's injunction in the *Black Sea* case that:

> [a]t this initial stage of the construction of the provisional equidistance line the Court is not yet concerned with any relevant circumstances that may obtain and the line is plotted on strictly geometrical criteria on the basis of objective data.[14]

ITLOS confirmed this in *Bangladesh* v. *Myanmar*, holding that:

> [a]t this stage, the judge pays no heed to any relevant circumstances and the line is drawn in accordance with strictly geometric criteria on the basis of objective data.[15]

Indeed, as far back as 1993, Professor Bowett observed, based on his study of the jurisprudence and State practice, that the objective data upon which the equidistance line is drawn, on the basis of geometric criteria, include low-tide elevations that form an integral part of a State's coast:

> As regards their use simply as base points, islands have no special status, and they need to be considered *together* with rocks, reefs and low-tide elevations. In general, all of these features will be valid for use as basepoints, in conjunction with the equidistance method, where they can be regarded as forming an integral part of the coast.[16]

That description includes Blenheim Reef, because it is, under articles 13 and 5 the Convention, indisputably an integral part of Mauritius' coast.

Maldives' first argument for excluding Blenheim Reef is that it is not *wholly* within 12 Miles of any Mauritian mainland or island territory.[17]

This argument conflicts with the Convention. Article 13 makes this clear:

> Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.[18]

"Wholly or partly" means what it says.

Blenheim Reef is partly situated within 12 Miles of Takamaka Island. Therefore, basepoints may be placed on the low-water line on this elevation, which abuts the delimitation area, even if part of this feature is located beyond 12 Miles from that island. Article 13 thus defeats Maldives' first argument.

This also answers the Tribunal's question 3, part 2, whether article 13, paragraph 1, second sentence, permits the use of basepoints on Blenheim Reef that are beyond 12 Miles from Takamaka Island. The answer is: "Yes." Article 13 tells us "the low- water line on that

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[14] *Ibid.*

[15] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 92.

[16] D. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", in J. I. Charney and L. M. Alexander (eds.), *International Maritime Boundaries, Vol. I* (1993), p. 151.

[17] Rejoinder of the Republic of Maldives, para. 64.

[18] United Nations Convention on the Law of the Sea 1982, art. 13, para. 1.

elevation may be used as the baseline for measuring the breadth of the territorial sea," and article 5 tells us that baseline "is the low-water line along the coast". There is nothing in either article, or the rest of the Convention, or the case law, that limits the placement of coastal basepoints to parts of the coast that are within 12 Miles of another feature, in this case, Takamaka Island. It would be especially inappropriate to invent such a rule for this case, where Blenheim Reef is a single consolidated feature, parts of which expose at low tide. There is no justification, in law or geography, for treating as its coastline, or placing basepoints only on, exposed patches within 12 Miles of Takamaka Island, when these patches lie far away and do not face the area to be delimited, and appear and disappear depending on the tides.

And this brings me to Maldives' second argument, namely that "Blenheim Reef is not a single LTE [but] comprises 57 LTEs, with large gaps between some of them."[19] This argument is even more far-fetched and only appeared in the Rejoinder. So this is the first opportunity for us to address it.

Maldives offers absolutely no scientific or technical evidence to support this rather stunning assertion. No hydrographer, geographer or cartographer or other technical expert is offered to endorse it. Strangely, the only reference identified by Maldives for its contention is the geodetic survey conducted by Mauritius during its visit to Blenheim Reef in February 2022, which is annexed to its Reply.[20] But that survey provides no support whatsoever for Maldives' argument. To the contrary, it makes clear that Blenheim Reef is a single feature, parts of which are exposed at low tide.

Maldives does not explain how it determined, from this survey, that Blenheim Reef is 57 separate maritime features. The best we can discern is that they took from Mauritius' report this map, drawn from satellite imagery, which identified the parts of Blenheim Reef above water when the image was taken, and then determined that there were 57 locations to be treated as separate low-tide elevations.

This conclusion is unscientific and unsupportable, as a matter of geography, hydrography and cartography. There is equally no legal support in UNCLOS or the case law for the claim that each drying patch on a low-tide elevation is to be treated as a separate maritime feature.

Maybe on Thursday Maldives will explain this approach, after which we can respond. In the meantime, let me make a number of points. First, nautical charts of Blenheim Reef depict it as a single, consolidated maritime feature. You have already seen this on BA 727, which serves as Mauritius' official large-scale chart. Here is an earlier BA chart, 003, from 1998, updated in 2017.[21] This is Blenheim Reef as depicted on India's Hydrographic Office Chart 269, from 2005, again, as a single, consolidated maritime feature.[22] Russia, too, has depicted Blenheim Reef in the same manner, on chart 41286, from 1964, corrected in 2017.[23] Here is the United States' NIMA chart 61610, last updated in 1997. It, too, shows Blenheim Reef as a single low-tide elevation.[24]

Blenheim Reef's status as a single maritime feature is further confirmed by satellite imagery, including, as shown on your screens, these images taken in January, April and December of 2021.

As would be expected, the reef's height above the sea floor is not uniform all around the perimeter. Therefore, at different tide levels, different parts of the reef are exposed. The

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[19] Rejoinder of the Republic of Maldives, para. 64.

[20] Ola Oskarsson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, 22 February 2022 (Reply of the Republic of Mauritius, Vol. III, Annex 1).

[21] British Admiralty Chart 003 (published 5 March 1998, updated 10 August 2017).

[22] Indian Hydrographic Office Chart 269 (30 September 1992, updated 2015).

[23] Russian Nautical Chart 41286 (published 12 December 1964, updated 24 June 2017).

[24] NIMA Chart 61610 (7th Edition, 20 September 1997).

photographic depiction of 57 separate maritime features is merely the number of exposed parts of the same feature at a particular point in time. It is meaningless. Another photograph taken an hour later might show a different number, less or more. And the photograph relied on by Maldives was not taken at lowest astronomical tide, at which point five or six uncovered areas separated by water on this photograph, or 10 or 20, might be seen as connected to one another.

Mr President, the number of maritime features at Blenheim Reef does not change by the hour, depending on rising or falling tides. What changes with the tides is the extent of the single feature that is uncovered at a particular moment in time. At all times, in our submission, Blenheim Reef is a single low-tide elevation. We do not see how this Special Chamber could adopt a rule that the number of low-tide elevations under the State's jurisdiction at a single location may change by the hour, increasing or decreasing with the tides.

This is certainly not the approach that the distinguished Annex VII tribunal took in the *South China Sea* arbitration. For example, it described Second Thomas Shoal as "a low-tide elevation" even though it had multiple "rocks that are almost certain to be visible at low water".[25] Likewise, the Tribunal characterized Mischief Reef as "a low-tide elevation", with "drying rocks" and "rocks exposed during half-tide."[26] Each of these features was thus regarded as a single low-tide elevation, no matter how many parts were exposed at a given time.

Mr President, I thank you for your patience. This would be a good opportunity to take a break and after the break I will address the third argument advanced by Maldives with respect to Blenheim Reef.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Parkhomenko.

We have reached 11.30 so we will take a break for half an hour. Thank you.

(Break)

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

You have the floor, Sir.

MR PARKHOMENKO: I now turn to Maldives' third argument. The Maldives' third argument for disregarding basepoints at Blenheim Reef is the blanket assertion that, as a matter of law, low-tide elevations can never be taken into account in delimiting a maritime boundary. In their words: "The relevant jurisprudence consistently rejects LTEs as locations for basepoints."

Here again, I am afraid, Maldives has failed to support their argument. First, there is nothing in UNCLOS or the case law requiring international courts and tribunals, in all cases, to disregard low-tide elevations in constructing a provisional equidistance line.

Nor, to be fair, is there an absolute rule that requires courts or tribunals to take low-tide elevations into account in every maritime delimitation. Rather, as the case law makes clear, it all depends on the geographic circumstances of a particular case, and whether giving effect to a low-tide elevation in those circumstances contributes to, or detracts from, the equitable solution that international law requires.

Maldives relies on three cases – two ICJ judgments and one Annex VII arbitral tribunal – to prop up its argument that, regardless of the geographic circumstances, a low-tide elevation may never be taken into account in drawing a maritime boundary. However, none of those

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[25] *The South China Sea Arbitration (Philippines* v. *China)*, PCA Case No. 2013-19, Award, 12 July 2016, paras. 379-381.

[26] *Ibid.*, paras. 377-378.

cases supports their assertion. None of those cases refers to, or even suggests, the existence of such a rule. To the contrary, in every case the treatment given to particular low-tide elevations, or similar maritime features, depended on the specific geographical circumstances in that case, and whether giving effect to the maritime feature contributed to, or detracted from, the achievement of an equitable solution.

We begin with *Qatar* v. *Bahrain*. In that case, the ICJ was called upon to delimit the territorial sea boundary in a geographic context involving certain low-tide elevations within 12 Miles of both States. The unique situation here, as shown on this map, was that these LTEs, Fasht ad Dibal and Fasht al Azm, were situated precisely in the area where the territorial seas of Qatar and Bahrain overlapped. This is shown by the dotted red lines representing the 12-Mile limit from Qatar on the left and the 12-Mile limit from Bahrain on the right.

As the Court explained:

> When a low-tide elevation is situated in the overlapping area of the territorial sea of two States, whether with opposite or with adjacent coasts, both States in principle are entitled to use its low-water line for the measuring of the breadth of their territorial sea. The same low-tide elevation then forms part of the coastal configuration of the two States.

But, in the unique circumstances of this case,

> there is no ground for recognizing the right of Bahrain to use as a baseline the low-water line of those low-tide elevations which are situated in the zone of overlapping claims, or for recognizing Qatar as having such a right. [Accordingly], for the purposes of drawing the equidistance line, such low-tide elevations must be disregarded.

As the Court further explained:

> For delimitation purposes the competing rights derived by both coastal States from the relevant provisions of the law of the sea would by necessity seem to neutralize each other.

The judgment is clear: the Court ruled that States are entitled to treat low-tide elevations as integral parts of their relevant coasts, but where the two States attempt to place basepoints on the same LTEs situated within 12 Miles of both of them, the Court will disregard those features because they are located in the area of overlapping entitlements of both States. The Court did not rule that no delimitation right could derive from such features. To the contrary, its ruling confirms that such rights could emanate from low-tide elevations, as part of a State's "coastal configuration" in other circumstances. *Qatar* v. *Bahrain* is thus distinguishable on the facts, but to the extent it is relevant here it supports Mauritius' argument, not Maldives'.

Nor can Maldives derive any support from *Bangladesh* v. *India*. Maldives attempts to make much of the fact that the Annex VII tribunal chose to disregard a feature within 12 Miles of both States' coastlines that Bangladesh called "South Talpatty" and India called "New Moore." But this is easy to explain. During the Tribunal's site visit to the area, it could not find at this location any feature above water, even at low tide.

As the Tribunal explained in its award, "it was not apparent whether the feature was permanently submerged or constituted a low-tide elevation." In these geographic circumstances, the Tribunal sensibly decided, for delimitation purposes, that "[i]f alternative base points situated on the coastline of the parties are available, they should be preferred to

base points located on low-tide elevations". In other words, it is possible, depending on the circumstances, to place basepoints on an LTE.

There is thus nothing in this award to assist Maldives. The geographic circumstances are entirely different. Blenheim Reef exists and under articles 13 and 47 of the Convention can be used as a place for basepoints. The reasons the Annex VII Tribunal gave for not putting basepoints on South Talpatty/New Moore are not present here. There is thus no need to prefer any "alternative" basepoints elsewhere along Mauritius' coast.

I turn now to *Somalia* v. *Kenya*, the third and final case that Maldives invoked in support of its argument that, as a matter of international law, low-tide elevations must never be given basepoints in maritime delimitation. Like the other two cases, *Somalia* v. *Kenya* does not support this argument.

There is nothing in this case that says or suggests that basepoints may not be placed on low-tide elevations for delimitation purposes. The general rule, articulated by the Court, is that

> delimitation methodology is based on the geography of the coasts of the two States concerned, and that a median or equidistance line is constructed using base points appropriate to that geography.

Basepoints on small maritime features – not only low-tide elevations but also islands – may be deemed appropriate or inappropriate, depending on whether or not they have a "disproportionate effect" on the construction of the equidistance line to the prejudice of one of the Parties.

As the Court recalled, it "has sometimes been led to eliminate the disproportionate effect of small islands," by not selecting a basepoint on such small maritime features. As the Court has stated in the past, there may be situations in which

> the equitableness of an equidistance line depends on whether the precaution is taken of eliminating the disproportionate effect of certain "islets, rocks and minor coastal projections."

These were the principles that guided the Court in *Somalia* v. *Kenya*, as is further evident from these passages in the judgment:

> The first two base points that Somalia proposes on its side of the land boundary terminus are located on the Diua Damasciaca islets. They have a significant effect on the course of the median line in the territorial sea, pushing it to the south. Somalia's third base point, off the southern tip of Ras Kaambooni, also has the effect of significantly pushing the course of the median line to the south. The placement of base points on the tiny maritime features described above has an effect on the course of the median line that is disproportionate to their size and significance to the overall coastal geography.

Accordingly:

> In the circumstances of the present case, the Court ... does not consider it appropriate to place base points on the tiny arid Diua Damasciaca islets, which would have a disproportionate impact on the course of the median line in comparison to the size of these features. For similar reasons, the Court does not consider it appropriate to select a base point on a low-tide elevation off the southern tip of Ras Kaambooni.

Two conclusions can be drawn for purposes of the present proceedings. First, there is no special rule for low-tide elevations. Just as Professor Bowett wrote, they are to be treated no differently than "islets, rocks and minor coastal projections." Second, the appropriateness of using basepoints for delimitation purposes on such features will depend on whether, in the geographic circumstances of a particular case, the basepoints will have a disproportionate effect, relative to their size and significance, on the construction of the equidistance line, rendering the delimitation inequitable to the other party. Conversely, when the effect of the basepoints is neither disproportionate nor inequitable, there is no reason not to use them for delimitation purposes.

The justification for the Court's distinction in *Somalia* v. *Kenya* between small maritime features that have a prejudicial effect and those that do not is apparent from this chart. Here, you can see that the features discounted by the Court, especially the small Somali islands, would have deflected the equidistance line to the south by as much as 52 degrees, causing it to run almost parallel to Kenya's coast, thus causing a cut-off effect and distributing a disproportionate share of the territorial sea to Somalia. It is also important to appreciate that this case, like *Bangladesh* v. *India*, was between two adjacent States, where small coastal features close to the land boundary terminus are more likely to have a pronounced effect on the course of the equidistance line. The disproportionate effects of such features, as between adjacent States, was demonstrated as far back as the *North Sea* cases, in this familiar diagram by Professor Jaenicke of Germany.

The diagram shows the effects of a small coastal headland on the equidistance line between two adjacent States. We have highlighted in blue the equidistance line drawn by Professor Jaenicke in the absence of this feature. The various dashed lines show how State A's headland, depending on its size, can affect the equidistance line and cause the corresponding prejudice to adjacent State B.

The same effects of small coastal features on delimitation between adjacent States in the territorial sea are more easily discernible here. State A's small coastal feature could be a headland, as depicted by Professor Jaenicke, or a rock or small island, or a low-tide elevation, as depicted here. In all cases, the effect would be the same: to push the equidistance line significantly across the coastal front of adjacent State B, to that State's prejudice.

But note how different the effect is when State A and State B are opposite one another rather than adjacent. To be sure, State A's low-tide elevation (or islet or headland) would have an effect on the equidistance line, but it is an extremely modest one, and not out of proportion to the significance of the feature causing this effect. This chart, as you will now see, closely resembles the geographic situation between Mauritius and Maldives.

This map shows the actual impact of Blenheim Reef on the equidistance line between Mauritius and Maldives. What it shows is that Blenheim Reef does not even begin to affect the equidistance line until a point that is 145 Miles from the Parties' coasts. Even then, its impact is not felt on the entire equidistance line but only a segment of it; and along that segment, it pushes the line slightly to the north by no more than 11 Miles at its maximum reach, adding to Mauritius' side of the boundary only about 4,690 square kilometres, which is less than 5 per cent of the entire area to be delimited. There is no cut-off of Maldives' maritime projections. There is no inequity to Maldives. As you will see later, when Mr Reichhold comes to the podium to address stages two and three, the equidistance line that results from taking Blenheim Reef into account equitably distributes the overlapping area between Mauritius and Maldives and easily passes the disproportionality test. In fact, the delimitation is almost perfectly proportionate.

Before we get to stages two and three, however, I would like to respond to Maldives' assertion that there is no case "in which a provisional equidistance line in respect of overlapping

EEZ and continental shelf claims has been drawn by situating a basepoint on an LTE." In fact, there is such a case, and it is cited in Maldives' Rejoinder.

This is the *Violations* case between Nicaragua and Colombia that the ICJ decided last April. This case was mainly about Nicaragua's claims that Colombia had violated its sovereign rights in its EEZ and continental shelf, as declared by the Court in its 2012 judgment in the *Territorial and Maritime Dispute* case. In the *Violations* case, the Court sustained Nicaragua's claims in all respects. The part of the case that Maldives mentions concerns Colombia's counterclaim challenging the lawfulness of Nicaragua's straight baselines.

On this issue, the Court ruled for Colombia, rejecting Nicaragua's contention that it could place a basepoint on Edinburgh Reef for purposes of its straight baseline claim. Maldives quotes this portion of the Court's judgment:

> [T]he issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying base points for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the exclusive economic zone between adjacent/opposite States are two different issues.[27]

To which we respond: "Exactly." This is, indeed, the teaching of the *Violations* case. In that case, as Maldives told you, the Court would not allow Nicaragua to place a basepoint on Edinburgh Reef for purposes of its straight baseline claim because Nicaragua had not proved that the feature was above water at high tide. But what Maldives did not tell you is that, in its 2012 judgment, the Court placed a basepoint on the same low-tide elevation for delimitation purposes and used it to construct the provisional equidistance line between Nicaragua and Colombia.

Here is the Court's own map from its 2012 judgment showing the basepoints – including on Edinburgh Reef – that it used in constructing the provisional equidistance line. The Court recalled this in the *Violations* case:

> [I]n plotting a provisional equidistance line, the 2012 Judgment refers to "Edinburgh Reef" as part of the islands located off the coast of Nicaragua and that *... the Court placed a base point on this feature for the construction of the provisional equidistance line*.[28]

This was conspicuously omitted from the Maldives' discussion of the *Violations* case. I should add that, in the second stage of the three-stage process, the Court continued to treat Edinburgh Reef as an appropriate Nicaraguan basepoint and gave it and Nicaragua's other basepoints considerably more weight than Colombia's corresponding basepoints, resulting in a major adjustment of the provisional equidistance line in Nicaragua's favour.[29]

Mr President, Members of the Special Chamber, in conclusion, there is no valid reason, in geography or in law, for declining to place basepoints on Blenheim Reef based on strictly objective, mathematical criteria, as the CARIS software does, in constructing a provisional equidistance line in stage one of the three-stage process.

As a matter of law, under articles 13 and 5 of UNCLOS, Blenheim Reef is an integral part of Mauritius' relevant coastline, and it is situated within 10.6 Miles of another integral part of Mauritius' relevant coast, Takamaka Island. There is no valid reason for disregarding or

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[27] Rejoinder of the Republic of Maldives, para. 45, citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, Judgment, 21 April 2022, para. 250.

[28] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, Judgment, 21 April 2022, para. 250, emphasis added.

[29] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, para. 234.

discounting it in the specific geographical circumstances in this case in the first stage of the three-stage process.

Stage one thus concludes with the drawing of this provisional equidistance line which takes into account all of the basepoints generated by the CARIS software on the relevant coasts of Mauritius and Maldives, including the four basepoints at Blenheim Reef.

Mr President, Members of the Special Chamber, this concludes my presentation. I thank you for your patient attention and kindly ask you to invite to the podium Professor Sands.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Parkhomenko.

I now give the floor to Mr Sands. Mr Sands, I inform you in advance that this morning's session will be adjourned around 1.10, at the latest, given the time we spent for introductions. Therefore, if you will not be able to finish your statement within this time, you may, of course, continue your statement this afternoon. You have the floor.

STATEMENT OF MR SANDS
COUNSEL OF MAURITIUS
[ITLOS/PV.22/C28/1/Rev.1, p. 30–42]

Thank you, Mr President. I am planning to finish by 1.10, but because of the questions that were posed which we only received yesterday at 4 p.m., I may ask your indulgence for a couple of minutes to just beyond, but I hope I do not need to do that.

Mr President, Members of the Special Chamber, following Mr Parkhomenko's presentation I am going to address you on Mauritius' entitlement to maritime spaces within 200 Miles, based on its archipelagic baselines, pursuant to Part IV of the Convention.

In its Counter-Memorial, Maldives stated that Blenheim Reef is the "central dispute dividing the Parties" in this case.[1] Of the 52 basepoints proposed by the Parties in the first round of written pleadings, 39 located along the southern coast of Addu Atoll in Maldives and nine along the northern coastline of the Chagos Archipelago, are fully agreed. Only four basepoints are in dispute: Mauritius' points 10, 11, 12 and 13 on the northern fringe of Blenheim Reef.

Mr Parkhomenko has demonstrated why – having regard to article 13 of the Convention, in conjunction with article 5 – Blenheim Reef as a low-tide elevation is to be treated as part of Mauritius's regular coast, upon which these basepoints may be placed to construct the provisional equidistance line. I am now going to address the second legal basis for the line of delimitation proposed by Mauritius, one based on the use of archipelagic baselines in relation to Blenheim Reef, pursuant to Part IV of the Convention.

Mauritius' entitlement based on its archipelagic baselines is not a theory in the alternative, as contended by Maldives.[2] As an archipelagic State, Mauritius has the right to use archipelagic baselines based on Part IV, and for Blenheim Reef – as a "drying reef" – it generates a full entitlement in the delimitation. As I noted earlier, there is a cardinal distinction with regard to the entitlements that may be generated by a low-tide elevation, on the one hand, and an archipelagic "drying reef", on the other: although every "drying reef" may also be characterized as a low-tide elevation, not every low-tide elevation is a "drying reef" within the meaning of article 47.

Blenheim Reef falls into the first category: it is both a low-tide elevation for the purposes of article 13 of the Convention and a drying reef within the meaning of article 47. On either approach – article 13 or article 47 – you get to the same equidistance line between Mauritius and Maldives.

Before turning to Part IV of the Convention and the legal effect of Mauritius' archipelagic baselines, I will just briefly mention two factual disagreements to be addressed.

First, Maldives argues that the geodetic survey of Blenheim Reef "merely confirms what was already common ground between the Parties – namely that there are LTEs at Blenheim Reef within the meaning of article 13 of UNCLOS."[3] Mr Parkhomenko has already fully addressed this matter and explained why Blenheim Reef as an LTE is properly to be treated as a single feature. The same approach allows Mauritius to make full use of archipelagic baselines on the basis of the drying reef, that is Blenheim Reef, a single feature. Under article 47, the salami-slicing approach of the Maldives is simply irrelevant.

The second factual disagreement concerning Blenheim Reef is Maldives' assertion that the findings of the on-site survey are "irrelevant to the issue regarding basepoints".[4]

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[1] Maldives' Counter-Memorial, para. 114.
[2] Maldives' Rejoinder, para. 55.
[3] Maldives' Rejoinder, para. 19, emphasis added.
[4] Maldives' Rejoinder, para. 5(a).

Mr President, earlier I explained why the survey was significant in relation to the extent of drying reefs, and I will not repeat myself now.

In the Memorial, relying on charts produced by the U.S. National Imagery and Mapping Agency (NIMA) and the French Naval Hydrographic and Oceanographic Service (SHOM), Mauritius characterized Blenheim Reef as "a large area of reef drying at low tide".[5] Maldives apparently did not agree with this. In its Counter-Memorial it made no submissions on Blenheim Reef as a "drying reef" under Part IV of the Convention. There was no "common ground". In its Reply it barely addressed the legal issues, and so we will have to wait until Thursday to see what Maldives has to say about these provisions of the Convention.

Let me turn now to our submissions on Part IV of the Convention. As Mauritius described in its Reply, Part IV creates a distinct and special regime applicable only to "Archipelagic States".[6] The application of Part IV to Blenheim Reef confirms the full entitlements that this feature generates in the context of delimitation of the Parties' overlapping maritime entitlements.

Let us begin with a little history. Proposals relating to a "special regime" for archipelagos, for the purpose of delimiting territorial waters, may be traced back to the 1899 meeting of the Institut de Droit International, by coincidence held here in Hamburg.[7] Further preliminary studies were then carried out in 1924 and 1926 by the International Law Association and by the Institut, in 1927 and 1928, and by the American Institute of International Law, in 1925. There was also active consideration of archipelagos in the territorial sea in preparation for the 1930 Hague Codification Conference. But it was not until the independence of Indonesia and the Philippines that State practice truly began to emerge.[8]

In 1951, the International Court was called upon by the United Kingdom to rule on the validity under international law of Norwegian baselines purporting to delimit a fisheries zone (that is the *Fisheries* case).[9] The coastal zone under consideration included the islands, islets, rocks and reefs known as "*skjærgaard*". The Court noted that Norway and the United Kingdom agreed that "in the case of a low-tide elevation (drying rock) the outer edge at low water of this low-tide elevation may be taken into account as a basepoint for calculating the breadth of the … sea."[10]

Turning to the delimitation of Norwegian territorial waters, the Court identified three methods. As to this second method – it was apparently the first time the ICJ was called upon to address an archipelagic matter – the Court held that where the coast is "bordered by an archipelago such as the '*skjærgaard*' … the base-line becomes independent of the low-water mark, and can only be determined by means of a geometrical construction." In these circumstances, the Court continued, "the line of the low-water mark can no longer be put forward as a rule requiring the coastline to be followed in all its sinuosities."[11]

The Court held that baselines should "not depart to any appreciable extent from the general direction of the coast" but also that the coastal State "must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements".[12]

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[5] Mauritius' Memorial, para. 2.24.
[6] Mauritius' Reply, paras. 2.20-2.52.
[7] H.P. Rajan, "The Legal Regime of Archipelagos", *German Yearbook of International Law*, 29 (1986) p. 137.
[8] International Law Association, "Baselines under the International Law of the Sea: Final Report" (2018), p. 23, available at https://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018-5 (last accessed 15 October 2022).
[9] *Fisheries* case, *Judgment [of 18 December 1951], I.C.J. Reports 1951*, p. 116.
[10] *Ibid.*, p. 128.
[11] *Ibid.*, pp. 128-129.
[12] *Ibid.*, p. 133.

The Court ultimately concluded that Norway's method of straight baselines, "imposed by the peculiar geography of the Norwegian coast" was not contrary to international law, even as it stood in 1951 before the adoption of the Convention.[13]

The principles elucidated by the International Court in the *Fisheries* case have been very significant. They were carried forward to a large extent in the negotiation of what became Part IV of UNCLOS. During sessions of the Seabed Committee at the Third United Nations Conference on the Law of the Sea, Mauritius, Fiji, Indonesia and the Philippines introduced two ideas on principles applicable to archipelagic States.

The first idea took forward the use of straight baselines to connect "the outermost points of the outermost islands and drying reefs of the archipelago from which the extent of the territorial sea of the archipelagic State is or may be determined."[14]

The second idea, which led to a proposal submitted by the United Kingdom, concerned the "[r]ights and obligations of archipelagic States", setting out objective criteria to define archipelagic States by reference to, amongst other things, the maximum length of baselines and the "ratio of the area of sea to the area of land territory inside the perimeter".[15]

By 1976 there was agreement on the essence of these two ideas: the legal definition of an archipelagic State, and the right of such a State to construct straight baselines which could then be used for the purposes of determining their maritime entitlements, in relation not only to the territorial sea but, also, the EEZ, and the continental shelf, both up to and beyond 200 Miles. What emerged was a special regime for archipelagos in the Convention; one that related to "mid-ocean archipelagos", as opposed to archipelagos associated with a continental State. Ultimately, it was these proposals that led to the adoption of Part IV, which is applicable and fully binding to this case.[16] That became indisputable after the site visit.

Part IV of the Convention comprises nine articles, constituting a "distinctive regime".[17]

The terms "Archipelagic State" and "archipelago" are defined in the first provision of Part IV, article 46. For the purposes of the Convention, (a) an "archipelagic State" means "a State constituted wholly by one or more archipelagos and may include other islands", and (b) an "archipelago" means

> a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

Both Mauritius and Maldives have declared themselves to be "archipelagic State[s]" within the meaning of article 46. Mr President, what makes this case so interesting, indeed unique, is that this is the first time an international court or tribunal has been called upon to delimit the maritime boundary between two archipelagic States. In this way, the Special Chamber is called upon to interpret and apply, for the first time, the provisions of Part IV.

Part IV applies to all "archipelagic States", but it does not necessarily apply to all "archipelagos". The provisions of Part IV only apply to archipelagos falling within the jurisdiction of coastal States which consist entirely of a group of islands. That plainly includes Mauritius. That point is not in dispute.

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[13] *Ibid.*, p. 139.

[14] UNGA, Official Records: Twenty-Eighth Session, Supplement No. 21 (A/9021), Report of the Committee on the Peaceful uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction (1973), Volume V, A/AC.138/SC.II/L.15 of 14 March 1973, available at https://digitallibrary.un.org/record/725198/files/A_9021%28Vol.V%29-EN.pdf (last accessed 15 October 2022).

[15] *Ibid.*, A/AC.138/SC.II/L.44 of 2 August 1973.

[16] International Law Association, "Baselines under the International Law of the Sea: Final Report" (2018), p. 24.

[17] International Law Association, "Baselines under the International Law of the Sea: Final Report" (2018), p. 24.

On your screens, you can now see article 47, which allows an archipelagic State to draw straight baselines. As you can see, article 47, paragraph 1, allows Mauritius, as an archipelagic State, to "draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago". Indeed, article 47 is the only place in the Convention in which the words "drying reefs" are to be found, in paragraphs 1 and 7. The February survey confirmed that Blenheim Reef comprises a "drying reef". Article 47, therefore, allows Mauritius to use the "outermost … drying reefs" of Blenheim Reef to draw its archipelagic baselines. We can see no basis for a contrary view.

To be able to draw straight baselines, an "archipelagic State" must meet six criteria arising under article 47. We explained this in our Reply, as you can see at paragraph 2.29. These criteria are as follows: the baselines must include the main islands; the ratio of water to land must be no more than 9 to 1; no segment of the line can be more than 125 Miles long; the baselines must not depart "to any appreciable extent from the general configuration of the archipelago"; baselines can be drawn from islands and drying reefs in all circumstances, and from low-tide elevations in limited circumstances; and the baselines must not cut off the territorial sea of any other State.

Mauritius plainly meets all of these requirements, including in the area around Blenheim Reef. It has declared itself to be an archipelagic State within the meaning of article 46(a). It has given due publicity and deposited charts or lists of coordinates with the UN Secretary-General, as required by article 47, paragraph 9. It, and the Maldives, are among the 22 Parties to UNCLOS to have done so.[18] Of these Parties, Mauritius and 15 others meet all the requirements of article 47. The Maldives, however, is one of six Parties that do not meet all the requirements of article 47. This is confirmed by a recent report of the ILA, published in 2018.[19]

For its part, Maldives appears to accept that Mauritius meets all of the requirements for using archipelagic baselines, including the use of "drying reefs" at Blenheim, except for one criterion: the Maldives says that Mauritius has not met the fourth requirement – in accordance with article 47, paragraph 3 – namely the requirement that the "drawing of such [archipelagic] baselines shall not depart to any appreciable extent from the general configuration of the archipelago."

With the greatest respect, our friends from the Maldives are wrong.

You can now see Mauritius' archipelagic baselines on your screens. Maldives argues that these baselines do not meet the requirements of article 47, paragraph 3, because, as paragraph 66 of their Rejoinder puts it, they allegedly "depart to an appreciable extent from the general configuration of the 'group of islands' forming the Chagos Archipelago."[20]

To make this argument, Maldives has taken the actual language of article 47, paragraph 3, of the Convention, and then rewritten it by inserting additional words. That provision states, as you can see on the screen, that archipelagic "baselines shall not depart to any appreciable extent from the general configuration of the archipelago". But Maldives has added extra words to 47, paragraph 3: it has introduced an additional requirement, a different requirement, namely that the baselines must not depart from the general configuration of the "group of islands" forming part of the archipelago.

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[18] Antigua and Barbuda, Bahamas, Cabo Verde, Comoros, Dominican Republic, Fiji, Grenada, Indonesia, Jamaica, Kiribati, Maldives, Marshall Islands, Mauritius (with respect to Cargados Carajos and the Chagos Archipelago), Papua New Guinea, Philippines, Saint Vincent and the Grenadines, São Tomé and Príncipe, Seychelles, Solomon Islands, Trinidad and Tobago, Tuvalu and Vanuatu.

[19] See Appendix 3 to International Law Association, "Baselines under the International Law of the Sea: Final Report" (2018).

[20] Maldives' Rejoinder, para. 66.

As you will see from the screens, the words "group of islands" do not appear anywhere in article 47, paragraph 3. They have just been added on by Maldives. Nor could those words appear: for the purposes of archipelagic baselines, article 47 treats islands and drying reefs as coterminous.

Mr President, there is no requirement for archipelagic baselines to encompass all the islands of an archipelago. What article 47, paragraph 1, says is only that the "main islands" may not be excluded. And in Mauritius' case they have not been excluded. The Chagos Archipelago is made up of more than 60 islands, banks and reefs, with a total area of 52.07 square kilometres. Annex 4 to Mauritius' Reply sets out a table of 56 high-tide features which are depicted on nautical charts available to Mauritius.[21] All the "main islands" are included within Mauritius' archipelagic baselines.

Yet the Maldives argues that Mauritius' archipelagic baselines do not comply with article 47, paragraph 3, because of the supposed exclusion of Nelson's Island, which you can see highlighted in a red circle on your screens, and the Great Chagos Bank. They say we have excluded it and we should have included it.

Aside from Nelson's Island, Maldives has not identified any other island in the Great Chagos Bank that does not fall within Mauritius' archipelagic baselines. Maldives expressly recognizes that Nelson's Island is "the only high-tide feature of the Great Chagos Bank excluded from Mauritius' archipelagic baselines."[22]

Let us look at Nelson's Island. It covers an area of just 0.32 square kilometres, or 0.6 per cent of the total land area in the Chagos Archipelago. It is not a "main island". Unlike many of the larger islands in the Chagos Archipelago, there is no record of there ever having been any human habitation on Nelson's Island.

In the Reply, Mauritius provided four concrete examples of recognized archipelagic States that exclude certain islands from their archipelagic baselines, and these are all significantly larger than Nelson's Island.[23] You can see these on your screens.

First, on the top left-hand corner, Kiribati's archipelagic baselines exclude the island of Nikunau, which is 59 times larger than Nelson's Island. Second, on the top right, Papua New Guinea's archipelagic baselines exclude Wuvulu Island, which is 45 times larger than Nelson's Island. Third, bottom left, Seychelles' archipelagic baselines omit Frégate Island, which is six times larger than Nelson's Island. Fourth, bottom right, Tuvalu's archipelagic baselines exclude Vaitupu Island, which is 18 times larger than Nelson's Island.

In all four of these examples, the U.S. Department of State's Bureau of Oceans and International Environmental and Scientific Affairs concluded that the archipelagic baselines do "not appear to depart to any appreciable extent from the general configuration of the archipelago."[24]

You will note that the U.S. Department of State has – unlike Maldives – used the actual language of article 47, not the Maldives' modified version.

All of the excluded islands in its studies are significantly larger than Nelson's Island. And, significantly, in the case of Nikunau Island and Vaitupu Island, they are located much further away from the nearest high-tide feature, departing to a far greater extent from the configuration of the archipelago.

We put these examples into our Reply. We waited and hoped that Maldives might say something in its Rejoinder about these examples. What did it say? Nothing. Silence. It just accused Mauritius of "gloss[ing] over the specific geographical circumstances of the present

[21] Mauritius' Reply, Vol. III, Annex 4.
[22] Maldives' Rejoinder, para. 66(b).
[23] Mauritius' Reply, para. 2.41.
[24] Mauritius' Reply, Vol III, Annex 5, p. 5.

case" because Nelson's Island is said to be "a high-tide feature and is therefore part of the intrinsic entity forming the Chagos Archipelago."[25]

Again – it seems to be a habit – Maldives reads words into the Convention that are simply not there. Where do the words "intrinsic entity" appear in article 47? They do not. The words "intrinsic geographical, economic and political entity", which seem to have inspired Maldives, do appear but only in article 46(b). The problem for Maldives is that the words in that provision, rather obviously, have no relation whatsoever to the interpretation or application of the six objective criteria set out in article 47, where the words do not appear.

To draw these threads together, Maldives appears to be the only State to have objected to Mauritius' archipelagic baselines on the merits. The United Kingdom and United States have issued an objection, but as you will see from it, it is only for political reasons; it is based on the UK's supposed claim to the Chagos Archipelago, not because the archipelagic baselines do not meet the legal requirements of article 47. Of course, the bases for such political objections are now entirely without force or legal consequence in light of the rulings of the ICJ and this Special Chamber, rulings which, as you now know, the Maldives has accepted, as the recent exchange of letters makes crystal clear.

May I add, for completeness, that Maldives' critique of Mauritius' baselines should perhaps be taken with a pinch of sea salt: it has recognized that its own archipelagic baselines require certain "amendments" to become compliant with the requirements of article 47, and that these are "currently under consideration".[26]

Mr President, the U.S. State Department and the International Law Association have both affirmed that Mauritius' archipelagic baselines, which enclose Blenheim Reef, do not depart to any appreciable extent from the general configuration of the Chagos Archipelago, and are fully compliant with all of the requirements of article 47 of the Convention and Part IV.[27] There is quite simply no basis whatsoever upon which it can reasonably be argued that Mauritius' archipelagic baselines do not meet all the requirements of article 47.

We therefore invite the Special Chamber to rule that Mauritius is an archipelagic State within the meaning of Part IV of the Convention; to rule that its archipelagic baselines meet the requirements of article 47, having been duly reported to the United Nations, and are fully consistent with the Convention; and to rule that the archipelagic baselines are to be given full effect in the delimitation.

Mr President, I will turn now to the legal effect of Mauritius' archipelagic baselines on this delimitation process. As set out in our Reply, for the purposes of delimitation the distinction between "drying reefs" and low-tide elevations is significant. As a "drying reef" located on a properly drawn archipelagic baseline, Blenheim Reef is to be treated no differently from an "island". That is what article 47, paragraph 1, says, referring to "the outermost points of the outermost islands and drying reefs". The language makes no distinction whatsoever between "islands" and "drying reefs", for the purpose of drawing the baseline, or for the entitlements that arise from the location of such baselines.

In short, the baseline derived from an "outermost … drying reef" has precisely the same entitlement to a full maritime area as does a baseline derived from an "outermost island". Moreover, under article 47, paragraph 1 – in contrast with article 13 – there is no requirement that the outermost drying reef to be included within the archipelagic baselines be located wholly or partially within 12 Miles of an island or mainland.

In Mauritius' case, the archipelagic baselines have been correctly drawn around Blenheim Reef, as we set out in our pleadings, and those baselines are entitled to be given the fullest effect for the purpose of maritime delimitation. This is the case in relation to the

[25] Maldives' Rejoinder, para. 66(b).
[26] Maldives' Counter-Memorial, para. 30.
[27] Mauritius' Reply, para. 2.42.

territorial sea, EEZ and continental shelf, both up to and beyond 200 Miles. Nothing in the text of the Convention says otherwise. The full effect to be given to Blenheim Reef is plain from the terms of articles 48 and 49.

Article 48 makes this crystal clear:

> The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47.

Not "may" – "shall". Article 48 could have said that the breadth of these maritime entitlements would be less if the baseline was drawn from the "outermost drying reef". But it does not say that.

The Special Chamber will have noted that Maldives dedicated all of a single paragraph of its Rejoinder to article 48. Here, Maldives argues that article 48

> simply extends to archipelagos the very same rule that is generally applicable to coastal States, namely that the breadth of maritime areas is to be measured from lawfully established baselines. It does not conflate baselines for the measurement of the breadth of maritime areas, and base points for delimitation purposes.[28]

Where is the authority for that proposition? There is none. With great respect, this is gobbledygook, reading words about basepoints into the text of article 48 that do not exist. Article 48 – and Part IV more generally – do not apply "the very same rule" when it comes to archipelagic baselines.

The provisions of Part IV are plainly distinct from those of Part II on the territorial sea and contiguous zone, or Part V on the EEZ and Part VI on the continental shelf. Those parts do not include any reference to "drying reefs", or the entitlements which they generate. Nor do those Parts of the Convention, or any of the provisions they contain, purport to displace the plain meaning or effect of article 48.

Article 49 is equally supportive of Mauritius' position. The first paragraph states – it could not be clearer:

> The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.

Paragraph 2 extends the sovereignty of the archipelagic States "to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein."

Maldives dismisses article 49 as "without merit" because "[i]t says nothing about maritime delimitation".[29] Again, Maldives doesn't like what article 49 says so it chooses to misread it, which is a curious thing to do when you are yourself an archipelagic State which presumably at some point will wish to rely on these provisions.

Article 49 creates a wholly distinct legal status for archipelagic waters, regardless of their depth or distance from the coast. It extends to the archipelagic State largely the same sovereignty and sovereign rights that it would enjoy in relation to any land territory. So, as an archipelagic State, Mauritius enjoys full sovereignty over all the waters enclosed by its archipelagic baselines drawn in accordance with article 47.

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[28] Maldives' Rejoinder, para. 60 (footnote omitted).

[29] Maldives' Rejoinder, para. 61.

By Part IV, Mauritius' sovereignty over Blenheim Reef, the appurtenant waters, air space, resources, bed and subsoil of Blenheim Reef are to be treated, as a matter of international law, in a manner that is indistinguishable from the sovereignty it enjoys in relation to an island or any other land territory. The Special Chamber will be familiar with the famous maxim that "the land dominates the sea".[30] Pursuant to article 49, Blenheim Reef is to be treated, as a matter of law under the Convention, in a manner that is indistinguishable from land. Mauritius enjoys unfettered sovereignty and sovereign rights over those archipelagic areas. And those archipelagic areas have full rights in relation to the breadth of the territorial sea, EEZ and continental shelf. Just like islands, just like land.

To address this obvious difficulty with its argument, Maldives seeks to distinguish between maritime entitlements and delimitation. To do so, it has invoked but a single authority – *Nicaragua* v. *Columbia* – to the effect that

> the issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying base points for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the exclusive economic zone between adjacent/opposite States are two different issues.[31]

Mr Parkhomenko has already addressed this and exposed the total fallacy in Maldives' argument. As he showed you, in an earlier case between the same parties, which involved the delimitation of the maritime boundary, the Court gave full weight in the construction of the provisional equidistance line, and in the final boundary line that it adopted, to Edinburgh Reef, a low-tide elevation adjacent to Nicaragua's coast.

The text quoted by Maldives, entirely out of context, is the Court's explanation of why it gave full weight to Edinburgh Reef for the purposes of maritime delimitation with Colombia, but declined to allow Nicaragua to use it in its newly adopted system of straight baselines to represent its coastline.

Moreover, the Court in the *Nicaragua* v. *Colombia* case was not dealing with archipelagic baselines, and was not interpreting or applying Part IV of the Convention. The "physical geography" of the relevant Mauritian coast – the coast of Blenheim Reef – is an extensive "drying reef", as we have shown, and it is one that falls properly within the archipelagic baselines as drawn by Mauritius.

Article 47 accords particular significance to "drying reefs", for the determination of the entitlement to maritime spaces for archipelagos in Part IV. A basepoint on a "drying reef" used to construct an archipelagic baseline is properly also to be used for the purposes of delimitation. That is what Part IV says. That is what Mauritius has done.

Mr President, is this not the first time that an international court or tribunal has been called upon to delimit the maritime boundary between two archipelagic States? It may be, however, that some inspiration can be drawn from the only maritime delimitation we are aware of involving one archipelagic State, and that is *Barbados* v. *Trinidad and Tobago*, which was an Annex VII tribunal. The tribunal in that case adopted Trinidad and Tobago's archipelagic basepoints – located on the archipelagic baseline – for the construction of an equidistance line.

Maldives argues that *Barbados* v. *Trinidad and Tobago* provides "no support whatsoever" for Mauritius. It offers two reasons.[32] First, it says that the Annex VII tribunal adopted Trinidad and Tobago's archipelagic basepoints not because they were archipelagic basepoints, but because they were "appropriate for such purposes" independently "from the

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[30] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, para. 96.
[31] Maldives' Rejoinder, para. 45.
[32] Maldives' Rejoinder, para. 46.

fact that the coastal State has selected them for drawing its archipelagic baselines."[33] However, a close reading of the tribunal's judgment makes clear that this is not correct. At paragraph 311 of the arbitral award, the tribunal noted that Trinidad and Tobago requested it to use its archipelagic basepoints to construct an equidistance line. By contrast, Barbados argued that archipelagic basepoints "cannot be used for calculating the equidistance line".[34] At paragraph 2 of the technical report of the tribunal's hydrographer, it was recorded that "the geographic coordinates of the pertinent turning points" adopted by the tribunal are four points "of the Trinidad and Tobago archipelagic baseline system".[35] You can see these four points, T1 to T4, all located on the archipelagic baselines – on your screens.

Maldives has not identified anything in the tribunal's award to support its contention that these points were selected for any other reason than that they are located along Trinidad and Tobago's archipelagic baselines.

The second argument made by Maldives is that the basepoints you can see on your screens – T1, T2, T3 and T4 – "all were islands, well above water at all times."[36] Those are the words used by Maldives. Maldives describes these islands, noting in particular the charted height of each one. A number of responses may be made. First, there is nothing in the award to indicate that the selection of these points was in any way based on the charted heights of the relevant features. In this regard, there is nothing in the Convention – and in particular in Part IV – which imposes any sort of a height requirement. The fact that none of the features at issue in *Barbados* v. *Trinidad and Tobago* were low-tide elevations is simply irrelevant. The Arbitral Tribunal used points that appear to have been "the outermost points of the outermost islands"; if there had been "drying reefs" there located, which it seems there were not, they could just as well have chosen the "outermost points of the outermost … drying reefs" because, as I have already mentioned, article 47 draws no distinction at all between "islands" and "drying reefs" for the purpose of entitlements or delimitation. The award in that case thus fully supports Mauritius' contention that the "outermost points of the outermost … drying reefs" of Blenheim Reef are properly to be used for determining entitlements and delimiting the relevant maritime boundary.

Mr President, Maldives' Rejoinder is long on hyperbole and much shorter on analysis. Maldives says that Mauritius' reliance on its archipelagic baselines for the purposes of delimitation is – surprising words – "wholly without merit",[37] but then it simply fails to engage at all with Part IV of the Convention, so we are sort of left hanging on the legal effects, or their view on the legal effects, of articles 46, 47, 48 and 49, and their interaction with the Convention's rules on delimitation and their application by the Annex VII tribunal in *Barbados* v. *Trinidad and Tobago*. Maldives has simply failed to engage with the language or realities of Part IV, and in particular article 47. Part IV does establish, as it says, a special regime, one that is distinct, one that accords a particular role and effect to archipelagic "drying reefs". Blenheim Reef is not a "remote LTE", as Maldives argues.[38] It is an integral part of Mauritius' coast, an area over which Mauritius has, under international law, full sovereignty, as though it were an island or a mainland coast. Under article 48, it generates a full entitlement; and so it follows from all of this that, like an island or a mainland coast, and it has an equally full entitlement for the purposes of delimitation.

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[33] Maldives' Rejoinder, para. 47.
[34] *Barbados* v. *Trinidad and Tobago*, Award, 11 April 2006, para. 333.
[35] *Barbados* v. *Trinidad and Tobago*, Technical Report of the Tribunal's Hydrographer, David H. Gray, M.A.Cs., P.Eng., C.LS.
[36] Maldives' Rejoinder, para. 48.
[37] Maldives' Rejoinder, para. 4.
[38] Maldives' Counter-Memorial, para. 114.

It follows from this, that the delimitation is properly to be carried out on the basis of Mauritius' archipelagic baselines as drawn around Blenheim Reef, in the Memorial and Reply.

Mr President, Members of the Tribunal, this is a moment to respond to aspects of question 3, which was given to us at about 4.30 p.m. yesterday afternoon. We were very grateful for the questions. The question asks

> whether the three points for Mauritius' archipelagic baselines (C83, C84 and C85) … are the outermost points of drying reefs which are situated wholly or partly at a distance not exceeding 12 NM from Île Takamaka?

The answer, as we stated in our Reply, is that they are not. I direct you to footnote 75 of our Reply, at page 21, which you can see on your screens. Mauritius there stated that it had "become aware that point C85 was erroneously situated approximately 840 metres to the north of Blenheim Reef", and that it was replotting its archipelagic basepoints and promulgating new Regulations under its Maritime Zones Act 2005. In relation to Blenheim Reef, the correct archipelagic basepoints are those identified by the CARIS LOTS software, which you will find in Table 4.1 on page 31 of our Memorial; and it is these that we are using for the construction of a revised archipelagic baseline pursuant to article 47 of the Convention. Accordingly, as you will have seen from our written pleadings, in both rounds we have not relied on C83, C84 or C85 – perhaps to our disadvantage because we have taken a more southerly point – for the construction of the provisional equidistance line.

The second part of question 3 asks whether article 47, paragraph 4, permits the use of basepoints that are beyond 12 NM from Île Takamaka. Mr President, in our submission, article 47, paragraph 4, is concerned only with low-tide elevations, not drying reefs within the meaning of article 47, paragraph 1, which have full entitlements, just like an island, and as a drying reef within the meaning of article 47, paragraph 1, its distance from any island is totally irrelevant. Article 47, paragraph 4, is therefore not pertinent to basepoints on Blenheim Reef, because it is a drying reef and therefore governed by article 47, paragraph 1. Even if it was only a low-tide elevation, and not a drying reef, which is not the case, you would follow exactly the same approach as that set forth by Mr Parhomenko: Blenheim Reef is a single feature, part of which is within 12 Miles of Île Takamaka, so you can put a basepoint on any part of it. So, on either approach, article 13, paragraph 1, or article 47, paragraph 1, or even article 47, paragraph 4, although we say you do not have to go there, the answer to your question is: yes.

The archipelagic baselines, and the basepoints, lead to exactly the same result as if the delimitation was based on basepoints situated on Blenheim Reef as a low-tide elevation under article 13. Mr Parkhomenko has set out the relevant steps to be applied. Whilst the basis for situating basepoints on Blenheim Reef in stage one may be different – an LTE approach (under article 13) or a drying reefs approach (under article 47) – the result in relation to location is exactly the same. On your screens you can see the depiction of that familiar provisional equidistance line.

Mr President, Members of the Special Chamber, one minute early, thank you for your kind attention. I would now ask that you invite, after lunch, Mr Reichhold to the podium to address the application of stages two and three to the provisional equidistance line on the basis of articles 13 and 47 of the Convention.

Thank you so much for your attention.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Sands, for your statement. This brings us to the end of this morning's sitting.

The hearing will be resumed at 3 p.m. The sitting is now adjourned.

(*The sitting closed at 1.10 p.m.*)

PUBLIC SITTING HELD ON 17 OCTOBER 2022, 3 P.M.

Special Chamber

Present: *President* PAIK; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges* ad hoc OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

For Mauritius: [See sitting of 17 October 2022, 10 a.m.]

For the Maldives: [See sitting of 17 October 2022, 10 a.m.]

AUDIENCE PUBLIQUE TENUE LE 17 OCTOBRE 2022, 15 HEURES

Chambre spéciale

Présents : M. PAIK, *Président* ; MM. JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR *juges* ; Mme CHADHA, *juge* ; MM. OXMAN, SCHRIJVER, *juges* ad hoc ; Mme HINRICHS OYARCE, *Greffière*.

Pour Maurice : [Voir l'audience du 17 octobre 2022, 10 heures]

Pour les Maldives : [Voir l'audience du 17 octobre 2022, 10 heures]

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

I now give the floor to Mr Remi Reichhold to make his statement.

First round: Mauritius (continued)

STATEMENT OF MR REICHHOLD
COUNSEL OF MAURITIUS
[ITLOS/PV.22/C28/2/Rev.1, p. 1–3]

Mr President, Members of the Special Chamber, it is an honour to appear before you on behalf of Mauritius. On the basis of the provisional equidistance line constructed in full conformity with the applicable law, I will briefly address the implementation of stages two and three of the three-stage delimitation process. This is a straightforward matter. As Mr Parkhomenko and Professor Sands have demonstrated, stage one results in the same provisional equidistance line, whether Blenheim Reef is regarded as a low-tide elevation as part of Mauritius' regular coast under article 13, or as a drying reef that forms part of its archipelagic baselines under article 47.

At stage two, we examine whether there are any relevant circumstances that require adjustment of the provisional equidistance line to avoid an inequitable result. In its Rejoinder, Maldives does not properly address the issue of relevant circumstances, merely relegating it to a footnote.[1] This, presumably, is because of its misplaced belief that Blenheim Reef will be entirely discarded by the Special Chamber at stage one.

Mr President, we proceed on the opposite assumption. Based on articles 13, 47 and 48, the relevant case law, and the objective application of the CARIS software in the particular geographic circumstances of this case, Blenheim Reef is properly to be used for the placement of basepoints in the construction of the provisional equidistance line at stage one of the delimitation process. As I will now demonstrate, Blenheim Reef is not a relevant circumstance for purposes of stage two of the delimitation process.

In this regard, we return to the map that Mr Parkhomenko showed you earlier. Mr President, this is the map that depicts the impact of the Blenheim Reef base points on the provisional equidistance line, based on either articles 13 or 47. As you can see on your screens, unlike the jurisprudence that was reviewed by Mr Parkhomenko – *Qatar/Bahrain, Bangladesh/India* and *Somalia/Kenya* – unlike those cases, there is no impact whatsoever in the territorial sea of Maldives. Rather, because Mauritius and Maldives are opposite States, separated by 269 nautical miles of Indian Ocean, the Blenheim Reef basepoints only come into effect – at the closest point – 134.5 nautical miles out to sea, and, Mr President, they only impact on a portion of the equidistance line, as you can see on your screens.

Along this segment, at the point of greatest impact, on the right-hand side of your screens, the Blenheim Reef basepoints push the line by no more than 11 nautical miles to the north. The total benefit to Mauritius is only about 4,690 square kilometres, which represents no more than 4.9 per cent of the entire relevant area within 200 nautical miles. To be sure, this is an impact, but it is an extremely modest one by any reasonable standard, and it is certainly not an "extraordinarily disproportionate effect" as claimed by Maldives.[2] Unless the Special Chamber is prepared to rule that any impact, regardless of its size or significance, is *per se* disproportionate, it cannot reasonably conclude that this impact is disproportionate. There is no cut-off or other inequity to Maldives. Blenheim Reef does not even come close to being a relevant circumstance in the particular geographic context of this case.

Mr President, Members of the Special Chamber, we can now move on to the third and final stage of the delimitation process: the test for disproportionality. We begin with the relevant area, which is on your screens. As you can see, it measures 95,600 square kilometres. The line of delimitation proposed by Mauritius – which is an unadjusted equidistance line

[1] Maldives' Rejoinder, footnote 7.
[2] Maldives' Counter Memorial, para. 152.

taking into account all of the features, including Blenheim Reef – attributes 48,458 square kilometres of the relevant area to Mauritius and 47,142 square kilometres to Maldives. In percentage terms, this unadjusted equidistance line accords 50.69 per cent of the relevant area to Mauritius and 49.31 per cent to Maldives. That is a ratio of 1.03 to 1 in favour of Mauritius.

Maldives measures the relevant area differently. It arbitrarily excludes the 200 nautical mile entitlement generated by Blenheim Reef and comes up with a smaller relevant area of 86,319 square kilometres.

As a matter of law, the exclusion of Blenheim Reef from the measurement of Mauritius' 200 nautical mile entitlement is not defensible. It also contradicts Maldives' own argument that different criteria apply to the placement of base points for the purpose of establishing the breadth of the territorial sea and other maritime zones, and for the purpose of delimiting a maritime boundary. In its pleadings, Maldives has only objected to the latter.[3] There is, therefore, no basis for Maldives to exclude the entitlements generated by Blenheim Reef from Mauritius' entitlements within 200 nautical miles, or to exclude those entitlements from the measurement of the relevant area in these proceedings.

Mr President, we can now turn to the relevant coast. There is a dispute between the Parties as to the length of their relevant coasts. Mauritius calculates its own relevant coast as measuring 46.8 kilometres and that of Maldives as measuring 27.4 kilometres. Maldives, on the other hand, argues that Mauritius' relevant coast measures 39.9 kilometres, and that its own measures 39.2 kilometres. The difference in relation to the relevant coast of Mauritius is due to Maldives' arbitrary exclusion of Blenheim Reef in its entirety. The difference relating to the relevant coast of Maldives is due to Maldives' impermissible inclusion of parts of its coastline that either do not generate overlapping projections with Mauritius, or do not add anything to Maldives' coastal projections.[4]

Mr President, the reality is, whichever of the Parties' calculations the Special Chamber adopts with regard to relevant coasts, the delimitation line proposed by Mauritius results in no disproportionality within 200 nautical miles. I will now demonstrate this by showing the results under Maldives' approach to the case, but without accepting the accuracy of Maldives' measurements. If we adopt Maldives' calculation of 39.2 kilometres for its own relevant coast, which you can see highlighted on your screens, and 39.9 kilometres for Mauritius (which is also highlighted), this results in a coastal ratio of 1.02:1 in favour of Mauritius. This is almost identical to the area ratio of 1.03:1, also in favour of Mauritius. It reflects, Mr President, the distribution of the area to be delimited by the unadjusted equidistance line proposed by Mauritius as the maritime boundary between the two States in the EEZ and the continental shelf within 200 nautical miles. This not only passes the disproportionality test; it achieves almost a perfect result.

In conclusion, now on your screens is the equitable maritime boundary between Mauritius and Maldives within 200 nautical miles that Mauritius invites the Special Chamber to adopt.

Mr President, Members of the Special Chamber, I thank you for your kind and patient attention, and I would now ask you to call Professor Klein to the podium to begin Mauritius' presentation on the delimitation beyond 200 nautical miles. Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Reichhold.

I now give the floor to Mr Pierre Klein to make his statement. You have the floor, Sir.

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[3] Maldives' Counter Memorial, paras. 135-136; Maldives' Rejoinder, paras. 34 and 139.

[4] See Mauritius' Reply, paras. 2.55-2.68; Maldives' Rejoinder, paras. 68-76.

EXPOSÉ DE M. KLEIN
CONSEIL DE MAURICE
[TIDM/PV.22/A28/2/Rev.1, p. 3–12]

Merci, Monsieur le Président. Monsieur le Président, Madame et Messieurs de la Chambre spéciale, c'est un honneur pour moi de prendre la parole aujourd'hui au nom de la République de Maurice. Vous le savez, l'un des principaux points qui continuent à opposer les Parties à ce stade de la procédure est celui de la délimitation des espaces maritimes au-delà de 200 M. Sur le fond, les Maldives contestent l'existence même d'un droit de Maurice sur de tels espaces dans la zone concernée par le présent différent.

Mes collègues Rezah Badal et Andrew Loewenstein répondront tout à l'heure de façon détaillée à ces critiques. Mais la contestation des Maldives va plus loin, puisque nos contradicteurs prétendent que la Chambre spéciale ne serait en tout état de cause pas compétente pour trancher ce volet du différend et que la demande de Maurice sur ce point ne serait pas recevable.

Ces nouvelles exceptions préliminaires des Maldives doivent pourtant elles aussi être rejetées, comme je vais le montrer maintenant en traitant tout d'abord de la question de la compétence, puis de celle de la recevabilité.

Selon la partie adverse, la Chambre spéciale serait dépourvue de compétence pour se prononcer sur la question de la délimitation de la frontière maritime au-delà de 200 M en raison du fait que Maurice ne pourrait montrer qu'il existait un différend concernant un droit allégué à un plateau continental étendu dans la région septentrionale de l'archipel des Chagos au moment où la présente instance a été introduite[1].

La condition de base, selon laquelle les organes de règlement des différends prévus par la Convention des Nations Unies sur le droit de la mer ne sont compétents qu'à l'égard de différends relatifs à l'interprétation et à l'application de la Convention ne serait ainsi pas satisfaite[2].

Les Maldives ont contesté, au stade des exceptions préliminaires, l'existence même d'un différend entre les Parties au sujet de la délimitation maritime. Nos contradicteurs n'ont très clairement pas eu gain de cause sur ce point. Ils tentent à présent de vous présenter à nouveau la même objection, mais réduite cette fois à la question de la délimitation au-delà de 200 M. Mais cette contestation n'est pas plus convaincante que celle présentée en octobre 2020. Elle constitue, à vrai dire, un combat d'arrière-garde, puisque la Chambre spéciale a déjà reconnu sa compétence à l'égard du différend de délimitation qui oppose les Parties, dans des termes tout à fait généraux – je vais y revenir.

Ce que tentent de faire les Maldives, c'est en réalité de scinder le litige qui oppose les Parties en plusieurs différends distincts. L'un de ces différends porterait sur la délimitation jusqu'à 200 M alors que la délimitation au-delà de 200 M serait l'objet d'un autre différend, en quelque sorte indépendant du premier. Mais il s'agit là d'une approche particulièrement formaliste et artificielle qui ne trouve aucun fondement dans le dossier. Elle n'en trouve d'ailleurs pas plus, contrairement à ce que prétendent nos contradicteurs, dans votre arrêt du 28 janvier 2021 sur les exceptions préliminaires.

En ce qui concerne le dossier tout d'abord, les Maldives affirment avec beaucoup d'aplomb dans leur duplique que les échanges survenus entre les Parties depuis 2010 au moins ne font aucune référence au fait que le chevauchement des plateaux continentaux au-delà de 200 M pourrait constituer l'une des composantes du différend de délimitation qui oppose les

[1] Duplique des Maldives, p. 36 et suiv.
[2] Ibid., par. 88.

Parties. Il n'aurait donc, selon nos contradicteurs, jamais existé de différend spécifique entre les Parties au sujet de la délimitation du plateau continental au-delà de 200 M[3].

Maurice a montré dans ses écritures que les formulations utilisées par les Parties pour se référer à la question de la délimitation de leurs espaces maritimes ont varié au fil du temps. Il a été question tantôt de la délimitation de leurs zones économiques exclusives[4], tantôt d'un « chevauchement potentiel du plateau continental étendu »[5], tantôt encore d'une « zone de chevauchement »[6]. Dans certains documents, il est fait référence de façon plus générique au processus de « délimitation maritime »[7], sans autres précisions.

À d'autres moments également, et contrairement à ce qu'affirment nos contradicteurs, les Parties se sont explicitement référées au chevauchement des plateaux continentaux étendus des deux États. Ainsi, dans le communiqué conjoint publié en mars 2011, à l'issue de la visite à Maurice du Président des Maldives, il est exposé que « les deux dirigeants ont convenu de conclure des arrangements bilatéraux concernant la zone de chevauchement des plateaux continentaux étendus respectifs des deux États autour de l'archipel des Chagos. »[8] Ceci, vous le noterez au passage, constitue une reconnaissance claire de la part des Maldives de l'existence d'un différend entre les Parties : des revendications qui se chevauchent sur un même espace.

Ce que le dossier montre donc, c'est une fluctuation manifeste dans la terminologie utilisée par les Parties dans leurs échanges. Cette imprécision s'explique aisément dans un contexte où les revendications des Parties, et en tout cas celles de Maurice, n'étaient pas cernées avec précision. Un contexte où les incertitudes qui pesaient alors sur la reconnaissance des droits de Maurice sur l'archipel des Chagos, et donc sur les zones maritimes adjacentes, ont à l'évidence joué un rôle majeur à cet égard.

Mais ces incertitudes, ces absences de précisions quant à l'étendue exacte des revendications ne sont nullement déterminantes. Ce qui ressort manifestement du dossier, c'est l'existence d'un différend global de délimitation, même si ses contours exacts ne sont pas déterminés avec précision. Nos contradicteurs ont déjà tenté, au stade des exceptions préliminaires, de faire de semblables imprécisions un obstacle à la reconnaissance de l'existence d'un différend. Ils avaient alors prétendu que la note diplomatique adressée par la République de Maurice au Secrétaire général de l'ONU en mars 2011, en réaction à la demande de plateau continental étendu présentée par les Maldives, ne pouvait attester l'existence d'un différend, car elle n'offrait aucune clarification quant à une zone de revendications qui se chevauchent[9].

L'argument a été clairement rejeté par la Chambre spéciale[10]. Il n'y a aucune raison pour qu'il en aille autrement maintenant. *A fortiori*, lorsque le dossier révèle que les Maldives elles-mêmes se sont référées, à une occasion au moins, au chevauchement des plateaux continentaux étendus des deux États dans la région de l'archipel des Chagos.

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[3] Duplique des Maldives, par. 93.

[4] Lettre adressée au Ministre maldivien des affaires étrangères par le Ministre mauricien des affaires étrangères, de l'intégration régionale et du commerce international (2 mars 2010), observations écrites de la République de Maurice, annexe 11 ; note diplomatique adressée au Ministère maldivien des affaires étrangères par le Ministère mauricien des affaires étrangères, de l'intégration régionale et du commerce international, 21 septembre 2012, observations écrites, annexe 12.

[5] Première réunion sur la délimitation de la frontière maritime et la demande relative au plateau continental étendu entre la République des Maldives et la République de Maurice, 21 octobre 2010, observations écrites, annexe 13.

[6] Observations écrites de Maurice, annexe 13.

[7] Note diplomatique n° 08/19 adressée à la Mission permanente de la République des Maldives auprès de l'ONU par la Mission permanente de la République de Maurice auprès de l'ONU, 7 mars 2019, exceptions préliminaires, annexe 16.

[8] Communiqué conjoint du 12 mars 2011, observations écrites de Maurice, annexe 14.

[9] Observations écrites de la République des Maldives, par. 135 c).

[10] TIDM, *Délimitation de la frontière maritime entre Maurice et les Maldives dans l'océan Indien (Maurice/Maldives), exceptions préliminaires*, arrêt, 28 janvier 2021, par. 333.

Venons-en à l'arrêt de janvier 2021 et à la portée qu'il faut lui reconnaître. Les Maldives ont affirmé sur ce point – avec beaucoup d'insistance – que la décision de la Chambre sur les exceptions préliminaires définirait avec précision, et de manière restrictive, l'objet du différend entre les Parties. La partie adverse souligne ainsi que la Chambre a conclu qu'il existait un « chevauchement entre la revendication par les Maldives d'un plateau continental au-delà de 200 milles marins et la revendication d'une zone économique exclusive par Maurice dans la zone concernée. »[11]

Tant dans leur contre-mémoire que dans leur duplique, les Maldives déduisent de ce passage de l'arrêt – le paragraphe 332 – que c'est seulement à l'égard de ce différend particulier formulé en ces termes précis que la Chambre spéciale a reconnu sa compétence en 2021[12].

Monsieur le Président, Madame et Messieurs les juges, cette lecture de l'arrêt de 2021 est indéfendable. D'une part, parce que cette approche qu'on peut qualifier de nominaliste, minimaliste et formaliste conduirait à un résultat absurde.

S'il fallait s'en tenir aux seuls termes de cette phrase du paragraphe 332, on serait tenu de conclure que la délimitation ne pourrait concerner que la zone économique exclusive, puisque ce texte ne fait mention que d'un chevauchement avec « la revendication d'une zone économique exclusive par Maurice dans la zone concernée. » L'approche littérale soutenue par nos contradicteurs impliquerait en effet qu'il n'existerait aucun autre différend entre les Parties, puisque dans l'extrait cité, il n'est fait aucune référence à une revendication de Maurice sur le plateau continental – que ce soit en deçà ou au-delà de 200 M.

À suivre cette logique, la Chambre spéciale ne serait donc tout simplement pas compétente pour se prononcer sur la délimitation des plateaux continentaux entre les Parties. On mesure aisément à quel point une telle conclusion serait déraisonnable. Il est d'ailleurs révélateur qu'elle ne soit pas soutenue par les Maldives elles-mêmes, puisque celles-ci demandent à la Chambre spéciale de tracer une frontière maritime unique valant donc – nous le supposons en tout cas – tant pour la ZEE que pour le plateau continental[13].

Mais on peut de ce fait se demander où est la cohérence dans leur position, puisque cette demande ne cadre pas avec les termes mêmes de la phrase du paragraphe 332 à laquelle nos contradicteurs attachent tant d'importance.

D'autre part – et surtout – en se focalisant sur ce membre de phrase du paragraphe 332, la partie adverse fait complètement l'impasse sur les termes beaucoup plus larges dans lesquels la Chambre spéciale a défini l'étendue de sa compétence dans ses conclusions. Dans la conclusion, tout d'abord, de son examen de la quatrième exception préliminaire des Maldives relatives à l'absence alléguée d'un différend. La Chambre rejette cette exception, car elle a conclu que « en la présente espèce, un différend existait entre les Parties concernant la délimitation de leur frontière maritime au moment du dépôt de la notification. »[14]

Puis, dans le dispositif même de l'arrêt, où les termes utilisés sont plus clairs encore : la Chambre

> a compétence pour statuer sur le différend dont les Parties l'ont saisie concernant la délimitation de leur frontière maritime dans l'océan Indien[15].

On ne trouve donc dans cette formulation aucun écho des termes plus spécifiques ou limités utilisés dans le paragraphe 332. On n'y trouve aucune restriction à la compétence de la

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[11] Ibid., par. 332.

[12] Contre-mémoire des Maldives, par. 57 et suiv. ; duplique des Maldives, par. 96.

[13] Duplique des Maldives, p. 69 et 70.

[14] TIDM, *Délimitation de la frontière maritime entre Maurice et les Maldives dans l'océan Indien (Maurice/Maldives), exceptions préliminaires*, arrêt, 28 janvier 2021, par. 335.

[15] Paragraphe 6 du dispositif, p. 105 de l'arrêt.

Chambre qui la contraindrait, comme l'affirme la partie adverse, à se prononcer exclusivement sur le conflit résultant du chevauchement entre la revendication par les Maldives d'un plateau continental au-delà de 200 M et la revendication d'une zone économique exclusive par Maurice.

Quels sont, en réalité, les contours de ce différend dont les Parties ont saisi la Chambre ? Il suffit, pour le savoir, de se tourner vers la notification de Maurice qui soumettait initialement à une procédure d'arbitrage basée sur l'annexe VII de la Convention le différend de délimitation maritime dans son ensemble. Dans son ensemble, c'est-à-dire, y compris celui qui porte sur « la portion du plateau continental relevant de Maurice au-delà de 200 milles marins des lignes de base à partir desquelles est mesurée la largeur de sa mer territoriale. »[16]

Il ne peut donc y avoir aucun doute sur ce point : la délimitation des plateaux continentaux au-delà de 200 M était bien comprise, dès la mise en œuvre des procédures de règlement des différends qui ont abouti à la présente instance, comme faisant partie intégrante du litige de délimitation qui opposait les Parties. Et tel est bien le différend qui a été transmis au Tribunal, avec l'accord des Maldives[17]. Il ne s'agit manifestement aucunement d'un nouveau différend qui serait né postérieurement à cette date et indépendamment de celui qui mettait déjà aux prises des Parties, comme le prétendent nos contradicteurs.

Maurice a analysé les conclusions de la Chambre spéciale par le menu dans sa réplique, en montrant à quel point elles étaient incompatibles avec la thèse défendue par les Maldives[18]. Dans sa duplique, la partie adverse n'a rien eu à dire à ce sujet. Peut-être pourra-t-elle nous éclairer dans les jours qui viennent sur la façon dont elle propose de comprendre ces passages-clés de la conclusion de la Chambre, et en particulier, le paragraphe 6 du dispositif de l'arrêt de janvier 2021.

Ce que Maurice retient pour sa part des conclusions de cet arrêt, c'est que vous avez défini la compétence de la Chambre spéciale dans des termes larges, en renvoyant à un différend « entre les Parties concernant la délimitation de leur frontière maritime », sans suggérer aucune distinction entre délimitation en deçà de 200 M et au-delà de cette limite. Contrairement à ce qu'affirment nos contradicteurs, Maurice ne se livre donc à aucune « réinterprét[ation] »[19] de cette décision. Elle en offre au contraire une lecture parfaitement conforme à ces termes.

C'est pour ces raisons, Monsieur le Président, Madame et Messieurs les juges, que la République de Maurice vous demande respectueusement de rejeter la nouvelle exception d'incompétence formulée par les Maldives en vue de restreindre la compétence de la Chambre spéciale à la délimitation des espaces maritimes des Parties en deçà de 200 M.

Maurice vous invite d'ailleurs à en faire de même avec l'exception d'irrecevabilité soulevée par la partie adverse, exception vers laquelle je vais me tourner maintenant. Monsieur le Président, Madame et Messieurs les juges, les Parties s'accordent sur la reconnaissance des principes juridiques qui doivent trouver application lorsqu'il s'agit d'apprécier la recevabilité d'une demande qui, à l'instar de celle de Maurice, porte sur la délimitation d'un plateau continental étendu. La Cour internationale de Justice a en effet très clairement établi qu'elle ne pouvait procéder à une telle délimitation que si un préalable indispensable était satisfait : la formulation d'une demande ou, à tout le moins, la communication d'informations préliminaires à la Commission des limites du plateau continental par l'État qui demande cette délimitation[20].

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[16] Notification, par. 27 (exceptions préliminaires des Maldives, annexe 1).

[17] Compromis et notification du 24 septembre 2019 avec, en annexe, le compte rendu des consultations (https://www.itlos.org/fileadmin/itlos/documents/cases/28/A28_Compromis_cr_TR.pdf).

[18] Réplique de Maurice, par. 3.12 et suiv.

[19] Duplique des Maldives, par. 96.

[20] *Question de la délimitation du plateau continental entre le Nicaragua et la Colombie au-delà de 200 milles marins de la côte nicaraguayenne (Nicaragua c. Colombie), exceptions préliminaires, arrêt, C.I.J. Recueil 2016,*

Là où les Parties divergent par contre, c'est dans leur analyse de la question de savoir si cette exigence est satisfaite dans la présente espèce. Selon les Maldives, la demande de Maurice relative à la délimitation du plateau continental au-delà de 200 M en ce qui concerne la région septentrionale de l'archipel des Chagos serait irrecevable, car la revendication de Maurice sur cette zone n'aurait pas fait l'objet d'une demande à la Commission des limites du plateau continental dans les délais requis[21]. Nos contradicteurs affirment à cet égard que la demande soumise à la Commission par Maurice en avril 2022 constituerait une demande nouvelle, présentée bien au-delà de la date du 13 mai 2009, fixée comme échéance ultime par les États parties à la Convention de Montego Bay pour l'introduction de telles demandes, ou à tout le moins d'informations préliminaires[22].

Permettez-moi, avant d'en venir à la réponse de Maurice sur ce point, de rappeler brièvement la chronologie des développements pertinents. En mai 2009, dans les délais requis par la décision des États parties, Maurice a communiqué à la Commission des limites du plateau continental des informations préliminaires concernant le plateau continental étendu dans la région de l'archipel des Chagos[23]. Maurice avait alors fait part de son intention de soumettre une demande complète en 2012. Cet objectif n'a toutefois pu être atteint. Ce n'est qu'en 2019 qu'une demande a été présentée concernant la région sud de l'archipel[24] et qu'en 2021 que des informations préliminaires amendées l'ont été pour la région nord[25]. Comme vous le savez, c'est finalement en avril de cette année que Maurice a présenté une demande complète pour cette dernière zone.

L'argument central de nos contradicteurs à l'appui de leur exception d'irrecevabilité consiste à dénier l'existence de tout lien entre les informations préliminaires communiquées en 2009 et les informations amendées transmises par Maurice en 2021[26]. Selon la partie adverse, le document de 2021 ne pourrait être vu comme un amendement de celui de 2009, dès lors que l'un et l'autre portent sur des espaces maritimes différents : sud de l'archipel des Chagos en 2009, nord de la même zone en 2021.

Monsieur le Président, Madame et Messieurs les juges, il est indéniable que les informations préliminaires soumises par Maurice en 2009 portaient à titre principal sur la région sud de l'archipel des Chagos. Maurice l'a clairement admis et n'entend nullement remettre ce fait en question. Mais ce qui est indéniable aussi, c'est précisément le caractère très préliminaire et partiel des informations communiquées. Le document est bref et n'offre qu'une présentation sommaire tant des revendications de Maurice dans cette zone que des fondements scientifiques sur lesquels ces revendications reposent. Il est de toute évidence destiné à préserver les droits de Maurice dans les délais requis et à être complété de façon substantielle au moment où la demande elle-même sera présentée à la Commission.

Le caractère extrêmement synthétique de ce document s'explique aisément. Maurice fait partie de ces petits États insulaires en développement dont la situation difficile a tout particulièrement été relevée par les États parties à la Convention de Montego Bay lorsqu'ils

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par. 85 et par. 105 ; voir aussi, implicitement, *Délimitation de la frontière maritime entre le Ghana et la Côte d'Ivoire dans l'océan Atlantique (Ghana/Côte d'Ivoire), arrêt, TIDM Recueil 2017*, par. 493-495.

[21] Duplique des Maldives, p. 43 et suiv.

[22] Ibid., par. 113.

[23] Informations préliminaires soumises par la République de Maurice concernant le plateau continental étendu dans la région de l'archipel des Chagos en vertu de la décision contenue dans le document SPLOS/183, mai 2009.

[24] Demande de Maurice à la CLPC concernant la région sud de l'archipel des Chagos, mémoire de Maurice, annexe 4.

[25] Informations préliminaires amendées de Maurice, mémoire de Maurice, annexe 3.

[26] Duplique, par. 116.

ont pris la décision de repousser les échéances initialement fixées pour le dépôt de demandes à la Commission des limites du plateau continental[27].

Ce renvoi à la catégorie générique des petits États insulaires en développement n'a ici rien de théorique. Les difficultés rencontrées par Maurice dans ce processus étaient bien réelles et elles étaient multiples. D'une part, ce n'est pas seulement à l'égard de la région de l'archipel des Chagos que Maurice avait alors à préparer une demande de plateau continental étendu, ou la communication d'informations préliminaires. Comme l'indique le document de 2009 lui-même, les autorités mauriciennes avaient eu à préparer, dans les mois qui précédaient la rédaction des informations préliminaires relatives à la région de l'archipel des Chagos, pas moins de deux demandes de plateau continental étendu concernant d'autres espaces maritimes. L'une, présentée conjointement avec les Seychelles et relative au plateau des Mascareignes avait été déposée le 1er décembre 2008[28]. L'autre portait sur la région de l'île de Rodrigues et avait été déposée le 6 mai 2009, soit exactement dans la même période que les informations préliminaires relatives à la région de l'archipel des Chagos[29].

Il est donc facile de se faire une idée de la charge de travail considérable qui pesait alors sur les services compétents à Maurice et sur les raisons qui ont fait que les informations préliminaires communiquées en mai 2009 se sont avérées sommaires et se sont pour l'essentiel limitées à la région sud de l'archipel des Chagos.

Le but poursuivi en déposant ce document était manifestement simplement d'arrêter la montre de manière à préserver les droits de Maurice pour l'avenir tout en respectant la nouvelle échéance fixée par les États parties à la Convention, mais sans limiter ces droits d'aucune façon.

D'autre part, Maurice était à l'époque confrontée à des difficultés manifestes résultant de la situation même de l'archipel des Chagos et des contestations autour de leur statut juridique, bien loin d'être résolues à ce moment-là. L'impossibilité physique de tout accès à la région de l'archipel des Chagos constitue indubitablement un autre facteur qui contribue à expliquer le caractère limité des informations préliminaires que Maurice a communiquées en 2009 relativement à cette zone. Ce serait tout de même assez extraordinaire, Monsieur le Président, Madame et Messieurs les juges, qu'en raison des difficultés manifestes que créait l'occupation illicite d'une partie de son territoire par l'ancienne puissance coloniale, la République de Maurice soit maintenant privée des droits que la Cour internationale de Justice a définis comme des droits inhérents que tout état possède *ipso facto* et *ab initio* sur son plateau continental[30].

En dépit de leurs limites, ce qui est en tout cas clair dans les informations préliminaires de 2009, c'est que l'intention exprimée par Maurice de présenter une demande concernant l'archipel des Chagos y est formulée dans les termes les plus larges et sans aucune restriction géographique.

J'en reprends les termes : « La République de Maurice [...] a également l'intention de présenter une demande relative à un plateau continental étendu concernant la région de

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[27] Convention des Nations Unies sur le droit de la mer, Réunion des États parties, Décision concernant la date de début du délai de 10 ans prévu à l'article 4 de l'annexe II de la Convention des Nations Unies sur le droit de la mer pour effectuer les communications à la Commission des limites du plateau continental, doc. SPLOS/72, 29 mai 2001, 5e paragraphe du préambule et Décision relative au volume de travail de la Commission des limites du plateau continental et à la capacité des Etats, notamment les Etats en développement, de s'acquitter de leurs obligations en vertu de l'article 4 de l'annexe II à la Convention des Nations Unies sur le droit de la mer, et de respecter l'alinéa a) de la décision figurant dans le document SPLOS/72, doc. SPLOS/183, 28 juin 2008, 8e paragraphe du préambule.

[28] Informations préliminaires, mai 2009, par. 2.1.

[29] Ibid.

[30] *Plateau continental de la mer du Nord, arrêt, C.I.J. Recueil 1969*, par. 19.

l'archipel des Chagos »[31]. Ce qui transparaît là, c'est une claire volonté de Maurice de préserver ses droits pour l'avenir et la possibilité de soumettre une demande de plateau continental étendu qui concerne l'ensemble de la région de l'archipel des Chagos. C'est précisément cela qui permet d'affirmer qu'il existe une continuité claire et directe entre les informations préliminaires communiquées par Maurice en 2009 et les amendements qui y ont été apportés en 2021, ainsi que la demande finale déposée en avril de cette année.

Et c'est d'ailleurs bien de cette façon que les informations complémentaires de 2021 ont été traitées par les services de la Division du droit de la mer de l'ONU. Comme Maurice l'a indiqué dans ses écritures, le site de la Division du droit de la mer répertorie en effet ces informations préliminaires amendées comme une suite de celles de 2009, et non comme une nouvelle communication. Nos contradicteurs tentent de vous convaincre que ce traitement est sans conséquence pour la question qui nous occupe. D'après eux, il devrait en aller ainsi en raison de la mention selon laquelle l'inclusion d'informations préliminaires dans la liste qui figure sur le site « n'implique aucune prise de position de la part du Secrétariat de l'ONU » – cela, c'est ce que dit le site – « quant à leur contenu » – ceci, c'est ce qu'ajoutent les Maldives[32].

Mais ce n'est aucunement ce que dit la note en question. Elle se lit en réalité comme suit : l'inclusion d'informations préliminaires dans la liste qui figure sur le site

> n'implique l'expression aucune prise de position de la part du Secrétariat de l'ONU au sujet du statut juridique de tout pays, territoire, ville ou espace ou de leurs autorités ou concernant la délimitation de ces frontières[33].

En d'autres termes, c'est uniquement par rapport au statut des espaces concernés que le Secrétariat de l'ONU n'entend exprimer aucune position, et non, comme le prétendent les Maldives, par rapport au contenu des documents soumis par les États parties. On voit donc très mal en quoi l'argument de la partie adverse sur ce point viendrait remettre en cause la pertinence de l'observation de Maurice sur le traitement réservé aux informations préliminaires de 2021 sur le site de la Division du droit de la mer de l'ONU.

Ce traitement montre clairement que, pour les services compétents de l'ONU, ces informations préliminaires amendées se rattachent manifestement aux informations préliminaires initialement communiquées par Maurice en 2009.

Les Maldives invoquent encore un dernier argument à l'appui de leur exception d'irrecevabilité, celui de l'équité procédurale. Selon la partie adverse, le fait que les informations préliminaires relatives à l'archipel des Chagos n'ont été communiquées par Maurice qu'après l'ouverture de la procédure devant la Chambre spéciale mettrait les Maldives dans une position défavorable, parce qu'elles seraient de ce fait privées du bénéfice d'un examen et d'une discussion détaillée des éléments fournis par Maurice à l'appui de sa demande[34].

Monsieur le Président, Madame et Messieurs les juges, le déroulement même de la procédure montre que cette critique de la partie adverse est dépourvue de fondement.

Dans leur contre-mémoire, les Maldives ont procédé à une contestation détaillée du bien-fondé de la revendication d'un plateau continental étendu dans la région septentrionale de

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[31] Informations préliminaires soumises par la République de Maurice concernant le plateau continental étendu dans la région de l'archipel des Chagos en vertu de la décision contenue dans le document SPLOS/183, mai 2009, par. 2.2.

[32] Duplique, par. 119.

[33] https://www.un.org/Depts/los/clcs_new/commission_preliminary.htm.

[34] Duplique, par. 107 et suiv.

l'archipel des Chagos[35], en réponse à la prétention formulée par Maurice dans son mémoire et dans les informations préliminaires de mai 2021.

Dans sa duplique, la Partie adverse a à nouveau pleinement eu l'occasion de remettre en cause les revendications de Maurice telles qu'elles avaient été précisées dans la réplique et dans la demande soumise à la Commission des limites du plateau continental en avril de cette année. Nos contradicteurs auront encore la possibilité de s'exprimer à ce sujet à deux reprises au cours de présente phase orale, tout comme ils auront, au surplus, la faculté de s'exprimer sur un éventuel rapport d'expert sur la question si la Chambre spéciale décidait de s'engager dans cette voie.

Il est donc difficile, dans ces circonstances, de voir en quoi les droits procéduraux des Maldives seraient méconnus si la Chambre exerçait sa compétence pour procéder à la délimitation des espaces maritimes entre les Parties au-delà de 200 M.

C'est pour l'ensemble de ces motifs que je vous prie respectueusement, Monsieur le Président, Madame et Messieurs de la Chambre spéciale, de rejeter l'exception d'irrecevabilité formulée par les Maldives à l'encontre de ce volet des demandes de Maurice.

Ceci termine mon intervention de ce jour, et je vous remercie pour votre bienveillante attention. Je vous prie, Monsieur le Président, de bien vouloir passer maintenant la parole à M. Rezah Badal pour qu'il puisse présenter à la Chambre les fondements scientifiques invoqués par Maurice à l'appui de sa revendication d'un plateau continental étendu dans la région septentrionale de l'archipel des Chagos.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Klein.

I now give the floor to Mr Rezah Badal to make his statement. You have the floor, Sir.

[35] Contre-mémoire, par. 79 et suiv.

STATEMENT OF MR BADAL
COUNSEL OF MAURITIUS
[ITLOS/PV.22/C28/2/Rev.1, p. 12–20]

Mr President, Members of the Special Chamber, good afternoon. It is an honour to appear before you and to address you on the scientific and technical aspects concerning the entitlement of the Republic of Mauritius to an extended continental shelf in the northern region of the Chagos Archipelago. My presentation consists of two parts, drawing on the written pleadings of Mauritius, and responding to the arguments of Maldives in its Rejoinder.

In the first part, I will make submissions on the geomorphological and geophysical evidence in the record. This confirms the existence of the natural prolongation extending from the northern Chagos Archipelago Region, which constitutes the continental margin of the Republic of Mauritius for the purposes of article 76, paragraph 3, of the Convention. In the second part of my presentation, on the test of appurtenance, I will proceed in three steps: first, I will address the location of the base of the continental slope. Second, I will identify the foot of the continental slope, and third, focus on the computation and delineation of the extended continental shelf resulting from the natural prolongation of the Republic of Mauritius.

Mr President, Members of the Special Chamber, I shall begin with the general setting of the area of the Chagos Archipelago Region, depicted on your screen here, which is Figure 4.2 from our Reply.

The Chagos Archipelago is located south of the Maldives between 4°S and 9°S. It is the surface expression of the southern portion of a prominent bathymetric feature in the western Indian Ocean known as the Chagos-Laccadive Ridge, which I will refer to as "CLR"'. The CLR was formed between 60 million years and 48 million years as a result of the interaction of the Reunion Hotspot with the oceanic lithosphere when the Indian plate moved northward.[1]

As you can see on your screen, the CLR is a slightly curved, continuous submarine ridge that extends for about 2,500 km from north to south along the 73°E meridian, between 14°N and 9°S. The ridge crest is comprised of islands, atolls, shoals, banks and coral reefs at depths of less than 1,500 metres.[2]

This map shows that the CLR consists of three major platforms: the Laccadive Plateau in the north, the Maldive Ridge in the middle portion and Chagos Ridge in the south.[3] The Laccadive Islands, the Maldives Islands and the Chagos Archipelago are the surface expression of these three platforms, which indeed share a common geological origin and are connected by saddle-like features, thus forming a major geomorphological and topographical continuity of the CLR.[4]

Now on your screens is the seismic refraction data, taken from Mauritius' submission to the CLCS, which confirms the continuity of the CLR.[5] The data show that the area between

[1] Partial Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region (April 2022) (hereinafter "Mauritius' Partial CLCS submission concerning the Northern Chagos Archipelago Region"), Mauritius Reply, Vol. III, Annex 3, para. 2.3.1 (referring to Duncan, R.A., "The volcanic record of the Réunion hotspot", in Duncan, R.A., Backman, J., Peterson, L.C., *et al.*, Proc. ODP, Sci. Results, 115: College Station, TX (Ocean Drilling Program) (1990), 3-10).

[2] Mauritius Partial CLCS submission concerning the Northern Chagos Archipelago Region, Mauritius Reply, Vol. III, Annex 3, para. 2.2.1.2.

[3] Mauritius Partial CLCS submission concerning the Northern Chagos Archipelago Region, Mauritius Reply, Vol. III, Annex 3, para. 2.2.1.2 (referring to Bhattacharya, G.C. and Chaubey, A.K., "Western Indian Ocean – a glimpse of the tectonic scenario" in Sen Gupta, R., and Desa, E. (eds.), *The Indian Ocean – a Perspective*, Oxford-IBH (2001), New Delhi, 691-729).

[4] *Ibid.*, para. 2.2.1.2.

[5] *Ibid.*, Figure 2.3.

the Maldive Ridge and the Chagos Ridge consists of a top layer and two thick underlayers: a top layer which is 1 km thick and consists of 2.15 km/sec velocity material; a lower layer is about 4 to 5 km thick with a velocity of 6.13 km/sec overlying a 7.1km/s crustal layer.[6]

The refraction data also show that from north to south, along the Maldive Ridge and Chagos Ridge, the thickness of the underlying crust reduces from approximately 27 km below the Maldive Ridge to approximately 9 km at the channel area. However, as one moves further south towards the Chagos Ridge, the crust thickens to about 20 km.[7] As described in Mauritius' Partial Submission to the CLCS concerning the Northern Chagos Archipelago Region, the presence of these thickened layers clearly demonstrates that the CLR is underlain with a continuous crustal layer and is thus geomorphologically continuous.[8]

Moreover, as shown on your screen, the flat topography of the top of the crust along the North-South axis of the Maldive Ridge and the deep-sea channel further confirms that the Maldive Ridge and Chagos Ridge are a continuous topographical and geomorphological structure of the same origin.[9]

As elaborated in Mauritius' Reply, the Laccadive Plateau, Maldive Ridge and Chagos Ridge are all connected, forming a single topographical and geomorphological continuity manifested in the CLR. This means that both the Maldives and the Chagos Archipelago are undeniably located on a single continental shelf along the CLR. The Maldives offered no response to the geomorphological evidence based on the bathymetry and gradient variations of the sea floor, on which Mauritius has relied in its written pleadings. This convincingly supports the conclusion that Mauritius has a natural prolongation from the landmasses of the Northern Chagos Archipelago Region, which include Peros Banhos, Salomon Islands and Blenheim Reef, to the edge of the continental margin.[10]

Mr President, Members of the Special Chamber, I shall now turn to the second part of my presentation relating to the test of appurtenance, in which I shall make submissions on the location of the base of the continental slope, identify the foot of the continental slope, and finally compute and delineate the Extended Continental Shelf.

In order to locate the base of continental slope regions, in its Partial Submission to the CLCS, Mauritius has applied the Scientific and Technical Guidelines of the CLCS.[11] Paragraphs 5.4.4 and 5.4.5 of those guidelines define the base of continental slope as the regions where the lower part of the continental slope merges into the top of the continental rise, or into the top of the deep ocean floor where a continental rise does not exist. As shown on this slide, which is taken from Mauritius' Partial Submission to the CLCS, the delineation of the base of slope region is carried out by maintaining the contiguity of the local seafloor form that links regions of similar gradient values.

As you can see on your screens, Mauritius has delineated the base of the slope in the Northern Chagos Archipelago Region by following the change in the regional gradient at the

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[6] *Ibid.*, para. 2.3.2.6 (referring to Francis, T.J.G. & Shor, G.G., "Seismic refraction measurements in the northwestern Indian Ocean", *J. Geophys. Res.*, vol. 72 (1966), 427-424).

[7] *Ibid.*, paras. 2.3.2.9-10 (referring to Kunnummal, P., Anand, S.P., Haritha, C., Rao, P.R., "Moho depth variations over the Maldive Ridge and adjoining Arabian & Central Indian basin, Western Indian Ocean, from three dimensional Inversion of Gravity anomalies", Journal of Asian Earth Sciences (2018)).

[8] *Ibid.*, para. 2.3.2.10.

[9] *Ibid.*, (referring to Kunnummal, P., & Anand, S.P., "Qualitative appraisal of high resolution satellite derived free air gravity anomalies over the Maldive Ridge and adjoining ocean basins, western Indian Ocean", *Journal of Asian Earth Sciences* (2019)) and Fontaine, F.R., Barruol, G., Tkalčić, H., Wölbern, I., Rümpker, G., Bodin, T., Haugmard, M., "Crustal and uppermost mantle structure variation beneath La Réunion hotspot track", *Geophys. J. Int. 203* (2015), 107-126.

[10] Mauritius Memorial, para. 2.32-2.36; Mauritius Reply, paras. 4.3-4.16.

[11] Mauritius Partial CLCS submission concerning the Northern Chagos Archipelago Region, Mauritius Reply, Vol III, Annex 3, paras. 3.2.1-7.

eastern side of the CLR. In determining the base of the slope region, Mauritius also relied, in chapters 2 and 3 of its CLCS Partial Submission, on morphological and bathymetric data in accordance with paragraph 5.4.6 of the CLCS Scientific and Technical Guidelines.

You can now see on your screen that the base of the slope region coincides with the zone where the eastern extension of the CLR merges with the more even seafloor of the Central Indian Ocean Basin. The base of slope region does indeed abut the elevated region north of the Gardiner seamounts in the northward direction along an overall elevated region.

Mr President, Maldives incorrectly asserts that this base of slope region is a new claim.[12] It overlooks that Mauritius had already presented this base of slope region in its Partial Submission to the CLCS and in the Reply.[13]

Maldives is not aided by its assertion that this Base of Slope region is located within the deep ocean floor of the Indian Ocean Basin along a "more seaward fracture zone (termed Northern Boussole Fracture Zone")" (NBFZ for short).[14] Maldives' reference to the NBFZ is irrelevant. The NBFZ is itself a break between the deep-sea floor and the overall elevated region on its west. This is evident when comparing the geological ages of the adjoining seafloor on both sides of this fracture zone which is calculated by using magnetic anomaly data, as depicted in this authoritative study of Muhammad Suhail and others in 2018.[15] This data, Mr President, is indeed found at Annex 19 of Maldives' Rejoinder. Maldives, therefore, plainly cannot dispute this study and its findings.

As shown in the yellow box on your screens, magnetic anomaly data are used to determine the geological ages of the sea floor, which are classified into age segments known as chronozones or, for short, chrons. Here, the chrons on either side of NBFZ are of different ages and are not aligned, as you can see from the unaligned blue and green lines on your screens. The evidence that Maldives has submitted in its Rejoinder thus shows that the NBFZ breaks the seafloor into a younger seafloor on its west and an older deeper seafloor on its east.

In other words, the data shows that the elevated region to the west of the NBFZ is younger than the adjacent deep ocean seafloor of the Indian Basin. The fracture zone thus marks the boundary of the deep ocean floor in this particular region. The evidence relied upon by Maldives therefore further confirms that the elevated region is not part of the deep ocean floor and demonstrates that Mauritius has a natural prolongation northwards along this topographic high.

Mr President, Members of the Special Chamber, I now turn to the identification of the foot of slope points. To establish the foot of slope points, Mauritius followed paragraph 4(b) of article 76 of the Convention. This states that, "[i]n the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base." In its Partial Submission to the CLCS, Mauritius identified the foot of slope points at the point of maximum change in gradient at their respective base of slope region based on geomorphological and bathymetric evidence in accordance with paragraph 5.4.6 of the CLCS Scientific and Technical Guidelines.[16]

As regards bathymetric information, in its Partial Submission to the CLCS, Mauritius used the National Geophysical Data Centre (NGDC) single beam bathymetric dataset, as shown

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[12] Maldives' Rejoinder, para.134.

[13] Mauritius' Partial CLCS submission concerning the Northern Chagos Archipelago Region, Mauritius Reply, Vol. III, Annex 3, paras. 3.2.1-7; Mauritius Reply, paras. 4.3-4.16.

[14] Maldives' Rejoinder, para. 134.

[15] Maldives' Rejoinder, Vol. III, Annex 19, Muhammad Shuhail and others, "Formation and evolution of the Chain-Kairali Escarpment and the Vishnu Fracture Zone in the Western Indian Ocean" (2018) 164 *Journal of Asian Earth Sciences*, p. 307.

[16] Mauritius' Partial CLCS submission concerning the Northern Chagos Archipelago Region, Mauritius Reply, Vol. III, Annex 3, paras. 3.2.1-7.

here on your screens.[17] These bathymetric data are now compiled and maintained by the National Centre for Environmental Information (NCEI) in Boulder, Colorado. The NCEI is an authoritative data archiving Centre of the National Oceanic Atmospheric Administration (NOAA), and its data products are recognized worldwide, including by the CLCS.

Based on the bathymetric data relied upon by Mauritius in its Partial Submission to the CLCS, Mauritius identified the following FOS points, shown on this graphic. The three red dots are non-critical foot of slope points, and the yellow dot is the critical foot of slope point. All of these points are located within the overall elevated region in the base of slope region.

The location of these points is consistent with the recommendation of the CLCS in response to the submission of the Seychelles in the Northern Plateau Region, where the CLCS determined that the overall morphology which characterizes a region should not be considered in isolation. More specifically, the Commission stated that

> all the three FOS points locations lie within an overall elevated region, which may be traced from the eastern to the western side of the Northern Plateau Region. Consequently, the ridges, peaks and the intervening saddles are considered parts of the continental slope.[18]

In accordance with that recommendation, Mauritius identified the four foot of the slope points. Of these, point FOS-VIT31B, circled in yellow on your screens, is deemed critical for delineating the extended continental shelf. Mauritius' evidence demonstrates the natural prolongation along the overall elevated region to FOS-VIT31B at the point of its maximum change in gradient and within the base of slope region. As explained in its Partial Submission to the CLCS, Mauritius has located this critical foot of slope point within the base of slope region using none other than the recognized GEOCAP software, a tool accepted and used by the CLCS.[19]

Mr President, Members of the Special Chamber, now on your screens is Figure 3.6 from Mauritius' Partial Submission to the CLCS. This shows the composite single beam bathymetric profiles, which are depicted as black lines. These are used to locate the critical foot of slope point, which runs north along the Chagos-Laccadive Ridge,[20] then east,[21] and then south in parallel to the CLR in the Central Indian Basin.[22] As can be seen, the overall depth along the profile gradually increases from the elevated ridge at around 3,000 m to the deep ocean floor at around 5,000 m, except for the abrupt increase when crossing the trough from around 3,000 m to around 4,000 m, which you can see at the centre of the profile on your screens. Morphologically, this elevation merges with the Central Indian Basin seafloor east of the CLR. In the absence of a distinct rise, Mauritius has defined the base of the slope to be the area where the slope merges with the deep-ocean floor of the Central Indian Basin, in accordance with paragraphs 5.4.4, 5.4.5 and 6.2.1 of the CLCS Scientific and Technical Guidelines. Consequently, the search for the maximum change in gradient was confined to that area to locate the critical foot of slope point. This is highlighted in yellow on your screens.

Similarly, the critical foot of slope point can also be located from further south, as illustrated here using Figure 2.12 in Mauritius' Memorial. This composite of single beam

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[17] *Ibid.*

[18] Maldives' Rejoinder, Vol. III, Annex 20. Commission on the Limits of the Continental Shelf, Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard of the Submission made by the Republic of Seychelles in respect of the Northern Plateau Region on 7 May 2009 (2018), para. 45.

[19] Mauritius' Partial CLCS submission concerning the Northern Chagos Archipelago Region, Mauritius Reply, Vol. III, Annex 3, section 3.4.

[20] Profile-ODP115JR. *Ibid.*, Figure 3.6.

[21] Profile-LUSI7BAR. *Ibid.*, Figure 3.6.

[22] Profile-VIT31B. *Ibid.*, Figure 3.6.

bathymetric profiles of the NGDC dataset starts south-east of the Chagos Ridge along the Gardiner Seamounts and runs north over an overall elevated region, then eastward, and continues northward parallel to the CLR to the critical foot of slope point FOS-VIT31B.

As you can see on your screens, this area is clearly not part of the deep ocean floor. Rather, it is a topographic high forming part of an overall elevated region culminating in several peaks and lower saddles northwards. This feature is an integral part of the Chagos Ridge that allows Mauritius to have a natural prolongation from the south-east of the Chagos Ridge to northward of the CLR. The depths over this region, as you can see from the scale on the left, range from less than 4,500 m to less than 5,000 m. This elevation merges in the north with the Central Indian Basin seafloor. Mauritius defines the base of the slope to be the area where the slope of the elevated region merges with the deep ocean floor of the Central Indian Basin. Consequently, the search for the maximum change in gradient is to be confined to that area to locate the critical foot of slope point.

That part of the Chagos Ridge along this elevated region is, accordingly, 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.[23] As I noted a moment ago, in the case of Seychelles, the CLCS accepted that there is an overall elevated region that abuts the Seychelles bank, and is an integral part of the Seychelles continental shelf. In so recommending, the CLCS accepted the location of all foot of slope points on this elevated region which were part of the continental slope shown here as the Northern Plateau outline.

The situation is similar in Mauritius' case. As illustrated on this graphic, a composite of measured bathymetry on an overall elevated region confirms that Mauritius has a natural prolongation throughout this area. You can see illustrated on this graphic that this elevated region is characterized by a raised topographic feature along the cross-sectional bathymetric profiles. The presence of such elevated area refutes Maldives' assertion that the Gardiner Seamounts and the Chagos Trough region lie immediately next to the deep-ocean floor.

Mr President, Members of the Special Chamber, Maldives is mistaken to suggest that this presence of the Chagos Trough, located to the east of the CLR and extending from south of the Chagos Archipelago Region up intermittently to the Equator, or thereabouts, blocks the natural prolongation of Mauritius. The Chagos Trough is interrupted by the Gardiner Seamounts, which is an integral protuberance of the CLR and extends to the east of the Chagos Trough. As you can now see on your screen, the Gardiner Seamounts extend further north and merge with the Overall Elevated Region, which culminates in several peaks and saddles in the north and does not form part of the deep-sea floor. In fact, Maldives has agreed that the Gardiner Seamounts "represent a protuberance of the slope of the CLR."[24] In other words, the Gardiner Seamounts are an integral part of the CLR. Consequently, Maldives cannot escape the conclusion that Mauritius has a natural prolongation from the south-east of the Chagos Ridge to the north along the Gardiner Seamounts, which merges with the Overall Elevated Region of the CLR.

Furthermore, because the Chagos Trough is also interrupted in the north with a similar integral protuberance, Mauritius can thus equally, I would say, have its natural prolongation northwards along an elevated saddle across the Chagos Trough, as you can now see here on your screens. Mauritius can thus equally establish its natural prolongation all along the overall elevated regions to the critical FOS point, at the point of maximum change in gradient and

[23] Maldives' Rejoinder, Annex 20, Commission on the Limits of the Continental Shelf, Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard of the Submission made by the Republic of Seychelles in respect of the Northern Plateau Region on 7 May 2009, 27 August 2018 (extracts), Figure 3.

[24] Mauritius' Rejoinder, para. 131.

within the base of slope region. Like the Gardiner Seamounts, this saddle also merges with the Overall Elevated Region of the CLR.

Mr President, Members of the Special Chamber, it is noteworthy that Maldives, in its submission to the CLCS, as shown on your screen here, has also used profiles from the NGDC data set to generate its own southernmost foot of slope point east of the Chagos Trough, and which is within Mauritius' EEZ.[25] This directly contradicts the position Maldives adopts in this case in relation to Mauritius' claim, namely that the Chagos Trough cannot be crossed in identifying FOS points.

Therefore, contrary to Maldives' assertion at paragraph 136 of the Rejoinder, Mauritius has indeed demonstrated that the elevated region east of the Chagos Trough is an integral part of the Chagos Ridge. This establishes a natural prolongation through the Gardiner Seamounts in the south-east and also through a lower saddle at around 4,800 m in the northern segment of the Chagos Trough, as you have seen previously. Consequently, this confirms the location of Mauritius' critical FOS point.

Mr President, Members of the Special Chamber, I shall now turn to the final part of my submissions concerning the computation and delineation of the outer limit of the extended continental shelf.

To determine the outer envelope of the continental margin, Mauritius has applied the Hedberg formula reflected in article 76, paragraph 4(a)(ii), of the Convention. That is a line delineated not more than 60 NM from the critical foot of slope point. This process, Mr President, is set out in chapter 4 of Mauritius partial submission to the CLCS.[26]

The critical foot of slope point is depicted on your screens as a yellow star which is located outside the EEZ of Maldives. The lines generated from this foot of slope point using the Hedberg Formula are now shown as a purple envelope of an arc. A bridging line can then be constructed connecting the envelope of arc to the 200 Mile.

Finally, the outer envelope thus determined commences and terminates, respectively, at a point on the 200-Mile limit measured from the territorial sea baseline of the Republic of Mauritius and the Republic of Maldives.

In accordance with article 76, paragraph 6, of UNCLOS, the 350-Mile constraint line was constructed using the relevant archipelagic basepoints which was then applied to delimit the envelope of the continental margin.

I shall now address the construction of the 350-Mile constraint line measured from Mauritius' archipelagic baselines and its application to delimit the outer edge of the continental margin. As explained in Mauritius' partial submission to the CLCS, the widely recognized GEOCAP software was also used for this purpose.[27]

Mr President, Members of the Special Chamber, on your screens you can see the line delimiting Mauritius' 200-Mile EEZ and the constraint line drawn 350 Miles from Mauritius' archipelagic baselines around the Chagos Archipelago.

This graphic illustrates both the outer envelope of the continental margin, as derived from the Hedberg formula line, and the 350-Mile constraint line.

Where the formula line extends beyond the 350-Mile constraint line, Mauritius has established the outer limits of its continental shelf in this area using the line generated by the Hedberg formula and 350-Mile constraint line, as you can now see on your screens. Mauritius

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[25] Maldives' Counter-Memorial, Vol. IV, Annex 47, Map 1 (Commission on the Limits of the Continental Shelf, Submission by the Republic of Maldives, 26 July 2010, available at https://www.un.org/depts/los/clcs_new/submissions_files/mdv53_10/MAL-ES-DOC.pdf (last accessed 3 October 2022)).

[26] Mauritius' Partial CLCS submission concerning the Northern Chagos Archipelago Region, Mauritius' Reply, Vol. III, Annex 3, Chapter 4.

[27] Mauritius' Partial CLCS submission concerning the Northern Chagos Archipelago Region, Mauritius' Reply, Vol. III, Annex 3, para. 4.6.1.3.

thus passes the test of appurtenance since the formula line based on the critical foot of slope point extends beyond the 200-Mile line and is within the 350-Mile line in accordance with the terms of articles 76, paragraph 4, and 76, paragraph 6.

Mr President, Members of the Special Chamber, the outer limit of Mauritius' extended continental shelf is therefore defined by 168 fixed points, as shown on your screens.

The first point (ECS 1) is located where the outer limit of Mauritius' extended continental shelf entitlement commences on the Mauritius 200-Mile limit from the Chagos Archipelago.

One hundred eighteen points (ECS 2 to ECS 113 and ECS 163 to ECS 168) are located on the arc at 60 Miles from the foot of slope point in accordance with article 76, paragraph 4(a)(ii), of UNCLOS.

Finally, 49 points (ECS 114 to ECS 162) are defined by the 350-Mile constraint line in accordance with article 76, paragraph 6, of UNCLOS.

Mauritius' extended continental shelf therefore covers an area of approximately 23,400 square km and out of which 22,272 square km overlaps with Maldives' extended continental shelf claim.

In conclusion, Mauritius has a submerged natural prolongation of its landmass in the Northern Chagos Archipelago Region and satisfies the test of appurtenance that allows it an extended continental shelf beyond 200 Miles.

Mr President, Members of the Special Chamber, thank you for your kind attention. With your permission, and I do not know if the break will come between us, but I would like you to invite Mr Loewenstein to address you on the delimitation of the maritime boundary beyond 200 Miles. Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Badal, for your statement.

Now, I give the floor to Mr Loewenstein. You have the floor, Sir. Mr Loewenstein, I inform you in advance that this afternoon session will be adjourned at 4.30 for a break of 30 minutes. Therefore, when we reach 4.30 I may have to interrupt you. With this understanding, you have the floor.

STATEMENT OF MR LOEWENSTEIN
COUNSEL OF MAURITIUS
[ITLOS/PV.22/C28/2/Rev.1, p. 20–33]

Of course, Mr President.

Mr President, Members of the Special Chamber, good afternoon. It is an honour to appear before you, and to do so on behalf of the Republic of Mauritius. I will continue the presentation on the delimitation of the continental shelf beyond 200 Miles.

You have heard from Dr Badal, who explained the scientific and technical basis for the entitlement of Mauritius to an outer continental shelf in the Northern Chagos Archipelago Region. As he showed, and as set out in the Parties' respective submissions to the CLCS, there is an area of overlapping continental shelf entitlements – approximately 22,272 square kilometers in size – that is located beyond 200 Miles from each of the Parties' baselines.[1]

The continental shelf in this area is the natural prolongation of the land territory of both Mauritius and Maldives. On the Mauritian side, the area is the submarine extension of the islands of Peros Banhos and Salomon Islands, and of Blenheim Reef. Those features – and, indeed, the Chagos Archipelago as a whole – are the surface expressions of the Chagos Ridge, which is itself part of the much larger Chagos Laccadive Ridge, a feature whose surface expressions include the islands that form Maldives as well. The continental shelf in this area of overlapping entitlements located beyond 200 Miles is, thus, just as much the natural prolongation of the landmass of Mauritius as it is the prolongation of the landmass of Maldives.

The Special Chamber can confirm these objectively verifiable facts through its own review of the underlying scientific and technical evidence, including, should the Special Chamber consider it to be helpful, by appointing an expert or experts suitably qualified in the relevant disciplines.

In that connection, I would be remiss if I did not observe that Maldives' resistance to the appointment of such an expert or experts is at odds with the practice of international courts and tribunals when faced with scientific and technical issues that bear upon maritime delimitation or related matters.

The Annex VII tribunal in *Guyana* v. *Suriname* appointed the expert hydrographer Mr David H Gray.[2] The tribunal in *Barbados* v. *Trinidad and Tobago* appointed Mr Gray as its expert hydrographer as well.[3] The *South China Sea* tribunal appointed the expert hydrographer Mr Grant Boyes.[4] And, in the *Case Concerning Maritime Delimitation in the Caribbean Sea and the Pacific Ocean*, the ICJ appointed two expert geomorphologists, Mr Eric Fouache and Mr Francisco Gutiérrez, to assist in identifying the starting point for the maritime delimitation between Costa Rica and Nicaragua.[5]

Mauritius, therefore, respectfully submits that the Special Chamber should not be deterred by Maldives' opposition to subjecting the Parties' respective submissions to expert scrutiny, should the Special Chamber consider the appointment of an expert or experts to be helpful in reaching a scientifically and technically rigorous decision. Mauritius is confident that such an independent review would confirm that Mauritius and Maldives both enjoy

[1] See Reply of the Republic of Mauritius, para. 4.5 and p. 54, Figure R4.6.
[2] *Guyana* v. *Suriname*, PCA Case No. 2004-04, Award, 17 September 2007, para. 108.
[3] *Barbados* v. *Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2006, para. 37.
[4] *The South China Sea Arbitration (Philippines* v. *China)*, PCA Case No. 2013-19, Award, 12 July 2016, para. 133.
[5] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2018*, paras. 15-17.

entitlements, due to the natural prolongation of their respective landmasses, to the same area of continental shelf located beyond 200 Miles from their baselines.

The legal consequence of this physical and geomorphological situation is that Mauritius and Maldives have equal entitlements to the area of continental shelf in question. This follows from the definition of the continental shelf contained in article 76, paragraph 1, of the Convention, which specifies that, in addition to a coastal State's entitlement to a continental shelf within 200 Miles of its baselines, and subject to the constraints set out elsewhere in article 76, the

> continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin.[6]

Accordingly, neither Mauritius nor Maldives has a superior claim to the continental shelf in the area where their entitlements beyond 200 Miles overlap. Each entitlement is equal under article 76, because each is based on the natural prolongation of the Parties' respective landmasses. Indeed, all of the relevant features – including the insular features of Mauritius, the insular features of Maldives, and the relevant submarine features, are all components of the overarching Chagos Laccadive Ridge.

Now, bearing in mind the equality of the Parties' respective continental shelf entitlements, let us turn to their delimitation, in view of article 83's mandate that the delimitation must "achieve an equitable solution."[7]

The overlapping entitlements can be seen on your screens. The area where the entitlements overlap – shaded in orange – is situated on a continuous stretch of shelf that includes a large area to the north, covering more than 118,000 square kilometres, which is claimed only by Maldives, and a much smaller area, some 1,152 square kilometres, claimed only by Mauritius. The approximately 22,000 square kilometres that comprise the overlapping entitlements, where both Mauritius and Maldives have entitlements under article 76 due to the natural prolongation of their respective landmasses, and thus the area subject to delimitation, is bracketed by the areas of shelf claimed exclusively by only one of the Parties.

You can now see on your screens a close-up of the area that is subject to delimitation. How does Maldives propose to delimit this area, where Mauritius and Maldives each have an entitlement that is equal in law? By robotically extending the equidistance line used for delimitation within 200 Miles so that the same line delimits the outer continental shelf entitlements as well.

But, as you can see on your screens, extending the properly constructed equidistance line would give Maldives nearly the entire area of overlapping entitlements. This leaves Mauritius with just a miniscule corner that is shaded in red. "Miniscule" is no exaggeration; under Maldives' proposed delimitation methodology, Mauritius would receive a mere 250 square kilometres, that is, just 1.12% of the area of overlapping entitlements. Maldives, on the other hand, would get 22,022 square kilometres, or close to 99% of the area.[8]

Indeed, the version of the extended equidistance line that Maldives contends should delimit the outer continental shelf – that is, the one based on its meritless argument that Blenheim Reef should be disregarded in constructing the line – is even more inequitable.

The map that is now on your screens depicts the Parties' proposed equidistance lines within 200 Miles. Maldives' proposed line is the one that appears as blue dashes. As you can see, the line terminates at the 200-Mile limit drawn from Maldives' baselines.

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[6] United Nations Convention on the Law of the Sea 1982, article 76, para. 1.

[7] *Ibid.*, article 83.

[8] See Reply of the Republic of Mauritius, para. 4.20.

Now, let's extend Maldives' proposed equidistance line so that it enters the area beyond Maldives' 200-Mile limit. And now, let's also add the area of overlapping outer continental shelf entitlements.

As you can see, the extension of Maldives' proposed equidistance lines travels south of the overlapping OCS entitlements. At no point does the extended line intersect the area where Mauritius and Maldives both have entitlements beyond 200 Miles. The line thus misses the area of overlapping OCS entitlements entirely.

In other words, the delimitation that Maldives proposes – extending its version of the equidistance line within 200 Miles so that it delimits the area beyond 200 Miles as well – is a non-starter, even as a theoretical matter, because it does not divide the Parties' overlapping outer continental shelf entitlements. After all, how can a line that does not cross the area to be delimited serve as the boundary in that area?

And if that were not enough, there is yet another reason not to extend Maldives' proposed equidistance line. As you can see on your screens, while the line travels south of the Parties' overlapping OCS entitlements, it passes through the area shaded in purple where Maldives maintains a claim to an outer continental shelf that overlaps with the maritime space that falls within 200 Miles of the baselines of Mauritius.

This, Maldives cannot do. Indeed, Maldives expressly recognized that this is the case during the Parties' 21 October 2010 maritime boundary negotiations, mentioned in the Special Chamber's second question. The official minutes of the meeting, signed by the Minister of Foreign Affairs of Maldives, Dr Ahmed Shaheed, memorialize that the Parties discussed Maldives' submission to the CLCS, which had improperly claimed an outer continental shelf entitlement within 200 Miles of the baselines of Mauritius.

The minutes further record that Minister Shaheed

> said that the Expert working on the submission of Maldives has acknowledged that in the submission to the CLCS the [EEZ] coordinates of the Republic of Mauritius in the Chagos region were not taken into consideration.[9]

Having acknowledged Maldives' error, its Minister of Foreign Affairs undertook to correct it. Specifically, the minutes record that Minister Shaheed

> assured the Mauritius side that this would be rectified by an addendum to the submission of the Republic of Maldives which would be prepared by the Expert in consultation with the Government of the Republic of Mauritius.[10]

Regrettably, Maldives did not fulfil that promise. In light of these events, and to answer the Special Chamber's question directly, the primary relevance of the 21 October 2010 meeting is, (1) Maldives' acceptance that it is improper to claim an outer continental shelf entitlement within 200 Miles of the baselines of Mauritius; and, (2) Maldives' related undertaking not to pursue an OCS claim in that area, an undertaking that is inconsistent with Maldives' pursuit of such a claim before the Special Chamber.

Regardless, extending the equidistance line – whether as constructed by Mauritius or Maldives – plainly does not result in the equitable solution required by article 83. Indeed, you will search Maldives' pleadings in vain for any explanation – let alone a reasoned or compelling

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[9] First Meeting on Maritime Boundary Delimitation and Submission Regarding the Extended Continental Shelf Between the Republic of Maldives and Republic of Mauritius (21 October 2010) (Written Observations of the Republic of Mauritius on the Preliminary Objections raised by the Republic of Maldives, Annex 13).
[10] *Ibid.*

one – for why a line that allocates nearly the entire area of overlap to Maldives achieves an equitable result.

That omission is unsurprising. There is no principle of law that requires a court or tribunal to delimit the outer continental shelf by means of an equidistance line merely because that method of delimitation has been found to be appropriate within 200 Miles. In fact, courts and tribunals are uniform in rejecting such an unthinking approach.

Instead, the delimitation methodology must at all times be appropriate to the circumstances. What may be appropriate for the delimitation in one area may be manifestly *in*appropriate for another part of the delimitation. As the ICJ observed in *Tunisia/Libya*, "One solution may be a combination of an equidistance line in some parts of the area with a line of some other kind in other parts."[11] Whether equidistance or some other delimitation line is required is, to use the Court's words, "dictated by the relevant circumstances."[12]

This context and fact-specific approach, which courts and tribunals have repeatedly emphasized, is essential when delimiting the outer continental shelf. The factors that might make it appropriate within 200 Miles may not apply beyond 200 Miles. Indeed, the very basis for entitlement is different. Within 200 Miles, entitlement to a continental shelf is based on distance from the coast and, thus, is a function of coastal configuration; beyond 200 Miles, however, entitlement is based exclusively on geology and geomorphology. Moreover, while a particular delimitation line may not cause an inequitable cut-off effect within 200 Miles, if extended beyond 200 Miles, it might result in an inequitable cut-off.

Maldives grapples with none of these issues. It simply asserts that the equidistance line used within 200 Miles should delimit the outer continental shelf as well. For the reasons I will explain, the Special Chamber should reject this crude approach, which has no basis in this Tribunal's jurisprudence or that of other courts or tribunals.

Instead, the appropriate approach, indeed the one that is mandated by the particular circumstances of this case, is for the delimitation to give due account of the Parties' equal entitlements to the shelf at issue, where, by virtue of being the natural prolongations of their respective landmasses, both Parties are equally entitled to the shelf in question. The equitable solution called for in these circumstances is to divide the area equally by means of a line that allocates to Mauritius and Maldives equal shares of the area to which they have equal entitlements. You can see on your screens the course of that line, which, starting from the easternmost endpoint of the delimitation within 200 Miles, consists of an azimuth bearing N 55 degrees East.

THE PRESIDENT OF THE SPECIAL CHAMBER: Mr Loewenstein, I am sorry to interrupt you but we have reached 4.35. Therefore, at this stage, the Special Chamber will withdraw for a break of 30 minutes. We will continue the hearing at 5.05.

(*Break*)

MR LOEWENSTEIN: Mr President, when we went to the coffee break we had just seen that the appropriate approach to delimitation in this case is to give effect to the Parties' equal entitlements by dividing the area equally by means of a line that allocates Mauritius and Maldives equal shares.

With this in mind, I turn to delimitation methodology, and the three-step method that courts and tribunals have often used. Maldives argues that the Special Chamber is compelled to deploy this methodology simply because it has been found to be appropriate in other

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[11] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, para. 109, emphasis added.
[12] *Ibid.*

delimitation scenarios. But, in so arguing, Maldives disregards the words of caution that the Tribunal has repeatedly emphasized, warning that, because in all instances the chosen methodology must result in an equitable solution, no particular methodology is sacrosanct, and thus the methodology appropriate to the delimitation at hand must be determined on a case-by-case basis and in light of the particular circumstances it presents.

As the Tribunal put it in *Bangladesh/Myanmar*, "the issue of which method should be followed in drawing the maritime delimitation should be considered *in light of the circumstances of each case*."[13]

That is because, the Tribunal explained, "[t]he goal of achieving an equitable result must be the paramount consideration."[14] Accordingly, "the method to be followed should be one that, *under the prevailing geographical realities and the particular circumstances of each case*, can lead to an equitable result."[15]

The Tribunal emphasized the same point in *Ghana/Côte d'Ivoire*, when it highlighted the need for a case-specific determination as to what method should be used:

> The appropriate delimitation methodology – if the States cannot agree – is left to be determined through the dispute-settlement mechanism and should achieve an equitable solution, in the light of the circumstances of each case.[16]

And, in *Bangladesh* v. *India*, the Annex VII tribunal explained that in choosing "the appropriate delimitation method," international courts and tribunals are

> guided by a paramount objective, namely, that the method chosen be designed so as to lead to an equitable result and that, at the end of the process, an equitable result be achieved.[17]

Similarly, in *Nicaragua* v. *Honduras*, a case where the ICJ declined to draw an equidistance line, the Court emphasized that an alternative delimitation method should be employed not only in circumstances where constructing an equidistance line would not be technically feasible, for instance, due to coastal instability, but also that equidistance should not be used in cases where doing so would, to use the Court's word, be "inappropriate."[18]

The paramount need to evaluate whether equidistance is appropriate in light of the "particular circumstances" of the case applies even when the three-step method is employed. In that regard, there is nothing pre-ordained about drawing an equidistance line at the first stage. In the *Black Sea* case, the ICJ chose its words carefully when it explained that, at the first stage, a court or tribunal "will establish a provisional delimitation line, using methods that are geometrically objective and also appropriate for the geography of the area in which the delimitation is to take place."[19]

That provisional delimitation line need not necessarily be an equidistance line. As the Court subsequently explained in *Nicaragua* v. *Colombia*, in deciding whether to use an

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[13] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 235, emphasis added.
[14] *Ibid.*
[15] *Ibid.*, emphasis added.
[16] *Dispute concerning delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment (23 September 2017), para. 281.
[17] *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, para. 339.
[18] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, para. 272.
[19] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, para. 116, emphasis added.

equidistance line as the "provisional delimitation line,"[20] even if constructing that line would be technically feasible, there may nonetheless be reasons for a court or tribunal to determine "whether [equidistance] is appropriate as a starting-point for the delimitation."[21]

To be sure, using an equidistance line as the provisional delimitation line will often be justified. Indeed, this will be the case in most delimitations – including the Parties' delimitation within 200 Miles in this case – as Mauritius and Maldives themselves agree. But the Tribunal has consistently emphasized, as it did in *Ghana/Côte d'Ivoire*, that an equidistance line should not be used at the first stage of the delimitation where this would be "inappropriate."[22] In making that point, the Tribunal repeated what it had previously stated in *Bangladesh/Myanmar*, where it underscored that "[e]ach case is unique and requires specific treatment, the ultimate goal being to reach a solution that is equitable."[23]

In so holding, the Tribunal gave effect to the consistent case law of international courts and tribunals. As the ICJ put it in *Tunisia/Libya*, "what is reasonable and equitable in any given case must depend on its particular circumstances."[24] Thus, in the words of the Court, "[t]here can be no doubt that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area."[25]

Similarly, referring to the Court's jurisprudence, the ICJ in *Nicaragua* v. *Honduras* emphasized that

> the equidistance method does not automatically have priority over other methods of delimitation and, in particular circumstances, there may be factors which make the application of the equidistance method inappropriate.[26]

Here, the particularities of the Parties' delimitation beyond 200 Miles make an equidistance line, even as a starting point for the delimitation at the first stage, manifestly inappropriate.

Why this is so concerns among many other reasons the nature of the Parties' entitlement to the continental shelf beyond 200 Miles and the relationship of that entitlement to the method of delimitation. Without belabouring the obvious, the two are inextricably linked. The method of delimitation must give effect to the basis of entitlement. The ICJ made this point in *Libya* v. *Malta* when it described as "self-evident" the fact that "the questions of entitlement and of definition of the continental shelf, on the one hand, and of delimitation of continental shelf on the other, are not only distinct but are complementary."[27] For that reason, the Court stressed, the "legal basis of that which is to be delimited, and of entitlement to it, cannot be other than pertinent to that delimitation."[28]

So, let us turn now to the nature of entitlements to the continental shelf both within and beyond 200 Miles, and examine how the different bases for those entitlements are given effect in delimitation.

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[20] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, para. 191.
[21] *Ibid.*, para. 195.
[22] *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, 23 September 2017, para. 289.
[23] *Ibid., citing Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 317.
[24] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, para. 72.
[25] *Ibid.*
[26] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, para. 272.
[27] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, para. 27.
[28] *Ibid.*

We begin with the continental shelf within 200 Miles. The legal basis for a coastal State's entitlement within 200 Miles is clear: it is founded exclusively on the distance criterion set out in article 76, paragraph 1, which states that a coastal State's continental shelf is comprised of the seabed and subsoil to "a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured."[29] The term "baselines," in this case, includes archipelagic baselines drawn in accordance with article 47 and Part IV of the Convention.[30] As a consequence of this basis for entitlement, the seaward extent of a coastal State's continental shelf rights is entirely dependent upon its coastal configuration.

The distance criterion for a coastal State's entitlement to a continental shelf within 200 Miles makes equidistance a particularly suitable means of delimitation for that maritime space, at least in most cases. As courts and tribunals have repeatedly confirmed, the merit of equidistance is that it is an objective method that gives effect to the coastal configurations of the States whose maritime entitlements are subject to delimitation. The ICJ, for example, observed in *Nicaragua* v. *Honduras* that the "equidistance method approximates the relationship between the two Parties' relevant coasts by taking account of the relationships between designated pairs of basepoints."[31]

But this rationale for using equidistance as the preferred means for delimitation of the EEZ and continental shelf within 200 Miles – that it gives effect to coastal configurations – falls away beyond 200 Miles. In the outer continental shelf, coastal configuration and distance from the coast have no relevance whatsoever. Instead, a coastal State's continental shelf entitlement is based exclusively on natural prolongation. It is thus geomorphology – not distance from the coast or coastal configuration – that is relevant to entitlement beyond 200 Miles.

This has significant consequences for delimitation of the outer continental shelf. The underlying logic that often makes equidistance the appropriate means of delimitation within 200 Miles cannot have the same application beyond that distance. The ICJ in *Libya* v. *Malta* explained how the basis of entitlement interacts with the means of delimitation. It observed

> since the development of the law enables a State to claim that the continental shelf appertaining to it extends up to as far as 200 miles from its coast, whatever the geological characteristics of the corresponding sea-bed and subsoil, there is no need to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims.[32]

The Court, however, was careful to limit this observation to "those areas [that] are situated at a distance of under 200 Miles from the coasts in question," where "title depends solely on the distance from the coasts of the claimant States" such that "the geological or geomorphological characteristics of those areas are completely immaterial."[33]

Beyond 200 Miles, the situation is reversed. To borrow the Court's words, entitlement to a continental shelf beyond 200 Miles depends "solely" on the area's "geological or geomorphological characteristics," while "distance from the coasts of the claimant States" is "completely immaterial."[34] Maldives' approach to delimitation beyond 200 Miles entirely ignores this fundamental distinction.

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[29] United Nations Convention on the Law of the Sea 1982, article 76, para. 1.
[30] *Ibid.*, article 47.
[31] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, para. 289.
[32] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, para. 39.
[33] *Ibid.*
[34] *Ibid.*

This is not to say that equidistance can never be an appropriate starting point for delimitation beyond 200 Miles. Again, everything depends on the particular factual circumstances of the case. There may be circumstances in which equidistance can still usefully serve as an appropriate starting point, such as where the geographical context is one of adjacency. This was the situation in prior delimitation cases where courts or tribunals were called upon to delimit the continental shelf beyond 200 Miles, such as in the *Bay of Bengal* cases and *Ghana/Côte d'Ivoire*.[35] In all those cases, the two parties were adjacent States, and the extension of the delimitation line within 200 Miles along the same azimuth made logical sense. Not so here, where Mauritius and Maldives are opposite States. Indeed, this is the first case in which any court or tribunal has been called upon to delimit the outer continental shelf claimed by two opposite States. And here, the equidistance approach deprives Mauritius of almost the entirety of its outer continental shelf entitlement.

In the particular geographical circumstances of this case, the extension of a properly constructed equidistance line, into the area beyond 200 Miles, deprives Mauritius of nearly 99 percent of its outer continental shelf entitlement, even though Mauritius has an equal entitlement to the same shelf that the equidistance line would allocate almost entirely to Maldives.

The faulty equidistance line proposed by Maldives is even worse: it misses the area of overlapping OCS entitlements altogether, depriving Mauritius of the entirety of its continental shelf entitlement beyond 200 Miles.

Thus, in the circumstances of this case, which are entirely different from any other faced previously by an international court or tribunal, the appropriate means for delimiting the overlapping outer continental shelf entitlements, that is, the means that would achieve the equitable result necessary under article 83, is not to extend the equidistance line that should serve as the Parties' maritime boundary within 200 Miles, but to apportion the area claimed by both States beyond 200 Miles equally between Mauritius and Maldives.

There is no merit to Maldives' argument that because the CLCS has not yet issued recommendations concerning the area's delineation the Special Chamber somehow cannot delimit the overlapping outer continental shelf entitlements by means of a line of equal apportionment.

To begin with, the absence of a delineation by the CLCS has not prevented courts or tribunals from establishing the boundary beyond 200 Miles by means of a directional line, as was done in *Bangladesh/Myanmar*, *Bangladesh* v. *India*, and *Barbados* v. *Trinidad and Tobago*.[36] The fact that the precise dimensions of the area had not yet been determined was no impediment to the delimitation in any of those cases.

Moreover, while Maldives has sought to challenge whether the outer continental shelf claimed by Mauritius is, in fact, a natural prolongation of the landmass of Mauritius – an argument that is mistaken, for the reasons explained by Dr Badal – Maldives does not dispute that the limits of the Mauritian outer continental shelf fall along the line described in Mauritius' submission to the CLCS, which you can see on your screens. There is no reason to doubt its accuracy. Regardless, the Special Chamber, including potentially through the work of the

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[35] See *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 424-25; *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, paras. 229, 260; *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 64. See also *Barbados* v. *Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2006, Map VI, following p. 114; *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)*, Judgment, 12 October 2021, para. 31.

[36] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 379; *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, para. 76; *Barbados* v. *Trinidad and Tobago*, PCA Case No. 2004-02, Award, 11 April 2006, para. 213.

distinguished expert or experts it might appoint, can verify for itself the scientific and technical correctness of the extent of the continental shelf claimed by Mauritius.

Mr President, notwithstanding what I have just argued, Maldives insists that the Special Chamber apply the traditional three-step method to the delimitation of the outer continental shelf, and that it do so by extending the equidistance line that would constitute the Parties' boundary within 200 Miles. This is not the appropriate way to proceed, for the reasons I have discussed.

But even if, *quod non*, the Special Chamber were to follow Maldives' preferred approach – misguided as it is – the end-result would still be the same. To achieve the equitable result required by article 83, the Special Chamber inevitably would have to adjust the provisional equidistance line to account for the inequitable cut-off it produces, depriving Mauritius of nearly the entirety of its outer continental shelf entitlement. As the Annex VII tribunal put it in *Bangladesh v. India*, the Special Chamber would need to "ameliorate [the] excessive negative consequences the provisional equidistance line would have" for Mauritius.[37]

Indeed, remedying such a cut-off of a coastal State's entitlement is a quintessential relevant circumstance that justifies adjustment of the equidistance line. The case law is unambiguous on this score. The Tribunal made that perfectly clear in *Bangladesh/Myanmar* in connection with evaluating the effect of concavity, where it stated that

> when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States … then an adjustment of that line may be necessary in order to reach an equitable result.[38]

It was for that reason – to remedy the cut-off produced by the equidistance line both within and beyond 200 Miles – that the Tribunal extended the adjusted line that it had drawn within 200 Miles to the delimitation beyond 200 Miles as well.

Here, adjusting the provisional equidistance line so that the area of overlapping entitlements is allocated equally would be required. As the ICJ ruled in *Nicaragua* v. *Colombia*,

> the achievement of an equitable solution requires that, so far as possible, the line of delimitation should allow the coasts of the Parties to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way.[39]

This has long been the rule followed by courts and tribunals. As early as the *North Sea Continental Shelf Cases,* the ICJ held that delimitation of the continental shelf should be effectuated

> in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other.[40]

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[37] *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, para. 477.

[38] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 292.

[39] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, para. 215.

[40] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, para. 37, quoting *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, para. 101.

As a result, as the Court explained in *Tunisia/Libya*, "equitable considerations would not justify a delimitation whereby one State was permitted to encroach on the natural prolongation of the other."[41]

The Tribunal confirmed this approach in *Bangladesh/Myanmar*, where, quoting the *Black Sea* case, it stated that the "objective is a line that allows the relevant coasts of the Parties 'to produce their effects, in terms of maritime entitlements, in a reasonable and mutually balanced way'".[42]

An unadjusted equidistance line would fall far short of meeting this standard. In principle, Mauritius is entitled under article 76 of the Convention to every square kilometer of the 22,272 that comprise the area of overlapping OCS entitlements by virtue of the natural prolongation of its land mass. The equidistance line, however, would deprive Mauritius of more than 22,000 of those square kilometers, nearly 99 percent of the area, even though Mauritius' entitlement to the area is of equal weight to that of Maldives.

For these reasons, a line that apportions the area of overlapping claims equally by means of the 55 degree azimuth extending from the easternmost point of the delimitation within 200 Miles is the solution that article 83 requires. Both Mauritius and Maldives are given access to their respective outer continental shelf entitlements in a reasonable and balanced way. Indeed, there could be no solution that would be more reasonable or balanced than to allocate the area – where both Parties enjoy equal entitlements – equally. Any other delimitation would necessarily deny one of the Parties a share of its entitlement in an unreasonable and unbalanced manner.

Moreover, the line results in a nearly equal division of the entire area of overlapping entitlements: 50.56% to Mauritius and 49.44% to Maldives. The delimitation also satisfies the non-disproportionality check that the Special Chamber should employ at the third stage of the delimitation process, which applies to the entire area subject to delimitation, both within and beyond 200 Miles.[43] The ratio for portions of the entire relevant area is 1.02:1 in favour of Mauritius. The ratio of the Parties' coastal lengths is 1.7:1, also in favour of Mauritius. There is no disproportionality, let alone one that would justify any adjustment of the line at the third stage.

Finally, Mr President, I will now answer the first question posed by the Special Chamber, which asks what would be the consequences if the CLCS were to take a different position on the entitlements of the Parties in its recommendations.

There is, at present, no possibility of the CLCS making such recommendations. Mauritius and Maldives have each objected to the other's submission in regard to the Northern Chagos Archipelago Region on the basis of their dispute concerning their continental shelf boundaries.[44] Accordingly, under the CLCS' Rules of Procedure, the Commission is precluded

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[41] *Ibid.*, para. 39.

[42] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 326, citing *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, para. 201.

[43] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, paras. 489-499; *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, paras. 470-497; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, 23 September 2017, paras. 533-538.

[44] Note Verbale dated 13 June 2022 from the Permanent Mission of the Republic of Maldives to the United Nations in New York to the United Nations Secretary-General, available at https://www.un.org/depts/los/clcs_new/submissions_files/mus2_2022/PICLCSMauritius.pdf; Note Verbale dated 24 March 2011 from the Permanent Mission of the Republic of Mauritius to the United Nations in New York to the United Nations Secretary-General (Counter-Memorial of the Republic of Maldives, Annex 59).

from proceeding.[45] Under the status quo, therefore, the CLCS cannot make any recommendations in regard to the outer limits of either Party's entitlements beyond 200 Miles, much less recommendations that differ from their respective positions.

In these circumstances, only the Special Chamber can break the impasse. And, there is no question that it has the jurisdiction to delimit the boundary in the outer continental shelf, as ITLOS confirmed in *Bangladesh/Myanmar*, where it ruled that it could – and should – exercise jurisdiction even though the CLCS had not issued recommendations. In so holding, the Tribunal emphasized its "obligation to adjudicate the dispute and to delimit the continental shelf between the Parties beyond 200 nm."[46] As the Annex VII tribunal subsequently stated in *Bangladesh* v. *India*, it could see "no grounds why it should refrain from exercising its jurisdiction to decide on the lateral delimitation of the continental shelf beyond 200 nm before its outer limits have been established."[47]

Maldives' refusal to accept that Mauritius satisfies the requirements set out in article 76 for an outer continental shelf is not a reason to forego exercising jurisdiction. The Special Chamber is empowered under Part XV of UNCLOS to interpret and apply the Convention. This includes article 76. The fact that the Convention assigns to the CLCS the role of ascertaining the outer limits of the continental margin, and making recommendations thereon, does not block a court or tribunal constituted under Part XV from making the same assessment in the context of a contentious case. Were it otherwise, the freezing of the CLCS' consideration of a submission due to the filing of an objection thereto, would, in this vitally important context, render the Convention's carefully crafted dispute resolution procedures without effect.

Regardless, the judgment of the Special Chamber is certain to satisfy the highest scientific and technical, as well as legal, standards. Thus, even were the CLCS to eventually make recommendations at some indeterminate point in the future, the likelihood that those recommendations would differ from the judgment is extremely unlikely. And, any such risk can be minimized by the Special Chamber obtaining expert assistance, as it has indicated it may do. This is particularly so in light of the fact that, as I have mentioned, while Maldives disputes whether natural prolongation enables Mauritius to use its foot of slope point, Maldives does not dispute the location of the outer limits of the Mauritian OCS should that foot of slope point be found to be proper. Further, even if the outer limits were to be adjusted closer or farther away, the 55 degree azimuth would still divide the overlapping OCS entitlements equally.

Finally, in the unlikely event the CLCS were to differ in its recommendations, the Parties may, under article 8 of Annex II, make revised or new submissions to the Commission, including ones that formally inform the Commission of the judgment, and of the Parties' obligations under article 296 of the Convention to comply with it. Indeed, the judgment of the Special Chamber would be binding, and would preclude the Parties from accepting recommendations from the CLCS that conflicted with it.

Mr President, Members of the Special Chamber, this concludes my presentation, as well as the first-round presentation of Mauritius. Thank you for your kind attention.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Loewenstein.

This brings us to the end of this afternoon's sitting and concludes the first round of oral argument of Mauritius. The hearing will be resumed on Thursday at 10 a.m. to hear the first round of oral argument of the Maldives. The sitting is now closed.

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[45] United Nations, Commission on the Limits of the Continental Shelf, *Rules of Procedure of the Commission on the Limits of the Continental Shelf*, U.N. Doc. CLCS/40/Rev.1 (17 Apr. 2008), Annex I, Section 5(a).

[46] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 394.

[47] *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, para. 76.

(*The sitting closed at 5.40 p.m.*)

PUBLIC SITTING HELD ON 20 OCTOBER 2022, 10 A.M.

Special Chamber

Present: *President* PAIK; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges* ad hoc OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

For Mauritius: [See sitting of 17 October 2022, 10 a.m.]

For the Maldives: [See sitting of 17 October 2022, 10 a.m.]

AUDIENCE PUBLIQUE TENUE LE 20 OCTOBRE 2022, 10 HEURES

Chambre spéciale

Présents : M. PAIK, *Président* ; MM. JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR *juges* ; Mme CHADHA, *juge* ; MM. OXMAN, SCHRIJVER, *juges* ad hoc ; Mme HINRICHS OYARCE, *Greffière*.

Pour Maurice : [Voir l'audience du 17 octobre 2022, 10 h 00]

Pour les Maldives : [Voir l'audience du 17 octobre 2022, 10 h 00]

THE PRESIDENT OF THE SPECIAL CHAMBER: 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 Maldives' first round of oral argument. I now give the floor to the Agent of the Maldives, his Excellency Mr Ibrahim Riffath, to make his opening statement.

Mr Riffath.

First Round: Maldives

STATEMENT OF MR RIFFATH
AGENT OF THE MALDIVES
[ITLOS/PV.22/C28/3/Rev.1, p. 1–5]

Mr President, honourable Members of the Special Chamber, Madam Registrar, honourable Agent and members of the delegation of the Republic of Mauritius, it is a great privilege for me to appear before you today as Agent of my country, the Republic of Maldives. I previously addressed this Chamber as the Agent of the Maldives at the preliminary objections phase of these proceedings. I welcome the opportunity to do so again.

The last time that I appeared, the Special Chamber, the Registry and the Parties' delegations were dealing with the extraordinary challenges of the COVID-19 pandemic. Several members of both delegations and members of the Special Chamber were required to attend remotely. I am confident that everyone in this room shares in the pleasure of the Maldives that we are now able to conduct this hearing fully in person. That human connection is always important in resolving differences and moving forward towards a better future.

Despite the change in the hearing format, one thing has remained constant: the Special Chamber and the Registry have arranged this hearing with their customary diligence, efficiency and courtesy. I take this opportunity to express the sincere gratitude of the Maldives for all the hard work that has gone into facilitating such an orderly hearing.

Mr President, throughout the history of the Maldives stretching back over 2,500 years, the ocean has always played a critical role in our people's identity, culture and prosperity. This is unsurprising, as our land territory of some 1,190 islands is spread over a vast portion of the Indian Ocean, measuring some 90,000 square kilometres. That is the home we have always known. Our country's oldest commercial and cultural ties were forged with peoples across Asia and Africa through maritime routes charted by courageous explorers. Our society and economy continue to rely on the ocean for their survival. The Maldives is profoundly committed to safeguarding this ancient maritime heritage. We consider ourselves as custodians of the ocean for future generations. Indeed our duty to protect and preserve the natural environment is expressly stated in our Constitution.[1] It is fundamental to our identity and values as a people.

A strong commitment to upholding international law is one of the cornerstones of the foreign policy of the Maldives. The Maldives recognizes the invaluable contribution of peaceful dispute settlement in upholding the rule of law in the international order, and it of course holds institutions such as the International Court of Justice as well as ITLOS and other tribunals constituted pursuant to the United Nations Convention on the Law of the Sea (UNCLOS) in the highest regard.

The Maldives is fully aware of the critical role of UNCLOS in the international efforts to ensure oceanic security and sustainability. The Maldives signed UNCLOS on 10 December 1982 and ratified it on 7 September 2000. It has adopted legislation to give effect to the Convention's provisions.

It is with an ever-increasing sense of urgency that the Maldives has sought to address the grave perils posed by climate change. Climate change poses an existential threat to all of humanity but its impacts will be felt – and are already being felt – disproportionately by small island developing States. The Maldives is particularly vulnerable to sea-level rise, both in terms of the continued existence of its territory and the security of its people. It is for this reason that the Maldives has pioneered and supported numerous international initiatives to address these

[1] Counter-Memorial of the Republic of Maldives ("MCM"), para. 19, citing article 22 of the Constitution of the Republic of Maldives, 2008 (MCM, Annex 7).

threats to the marine environment and to the planet. My colleague Ms Shabeen will address this in greater detail in her statement to the Chamber.

We also note in this regard the important role of ITLOS in addressing the obligations of States under UNCLOS to protect and preserve the marine environment – a matter which is the common concern of humanity. We take note of the recent initiative of the Commission of Small Island States on Climate Change and International Law, established a year ago at COP26, which has expressed its intention to request an advisory opinion from ITLOS on matters of great importance for UNCLOS States Parties.

In addressing you today, we come in a spirit of good faith, determined to strengthen our already robust ties of friendship with the Government and peoples of Mauritius with whom we have shared values and experiences as small island developing States, not to mention common cultural and historical ties. We express our sympathy with the Chagossians who wish to return to their homes. The Maldives has always supported all UN processes of decolonization of territories and the right to self-determination. There are many dimensions to a diplomatic relationship that unfortunately cannot be conveyed in the context of adversarial proceedings.

At the preliminary objections phase of these proceedings, I informed the Chamber that Mauritius appeared to have commenced these proceedings primarily with a view to advancing its bilateral dispute with the United Kingdom concerning sovereignty over the Chagos Archipelago, rather than to resolve any significant dispute with the Maldives concerning the law of the sea. The current phase of these proceedings has confirmed that the scope of the dispute between the Parties which is within the Chamber's jurisdiction is indeed very narrow. The Parties agree on the use of the established three-step methodology in the delimitation of their exclusive economic zones and continental shelves within 200 nautical miles of their baselines. Their disagreement essentially comes down to whether Mauritius is entitled to place four basepoints on low-tide elevations at Blenheim Reef, a maritime feature several miles off the coast of the nearest land territory of Mauritius. As counsel will explain, the relevant jurisprudence is clear that it cannot do so. Neither its written pleadings nor its oral submissions so far have provided any answer to the arguments raised by the Maldives.

In addition, there is a small "grey area" within the exclusive economic zone of Mauritius and in which the Maldives claims a continental shelf beyond 200 nautical miles. This was the subject of negotiations between the Parties after the Maldives made its submission to the Commission on the Limits of the Continental Shelf in 2010. Mauritius subsequently made a formal protest against that submission in 2011, "in as much as" the area claimed encroaches on the EEZ of Mauritius.[2]

The Maldives argues that the equidistance line generated by the three-step methodology should continue by way of a directional line, with the endpoint to be fixed following delineation of the outer limits of the outer continental shelf entitlement of the Maldives, which can occur only once the CLCS has examined the submission filed by the Maldives and made recommendations. In its written pleadings and its oral pleadings on Monday, Mauritius failed to engage with delimitation of the grey area at all.

Those matters constitute the entirety of the dispute which existed at the time Mauritius initiated these proceedings. As the Chamber is aware, and as will be the subject of more detailed submissions by the counsel of the Maldives, UNCLOS confers jurisdiction only over disputes which predated the proceedings in question. One of the purposes of this jurisdictional precondition is that a State should be aware of the claim against it and have an opportunity to respond before being forced to participate in compulsory dispute settlement procedures. A State

[2] 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).

should never be taken by surprise by a new claim articulated for the first time in the course of litigious proceedings.

Regrettably, the Maldives was indeed surprised by a significant expansion of the claim advanced by Mauritius when it filed its Memorial. For the first time, Mauritius claimed an outer continental shelf entitlement to the north of the Chagos Archipelago, overlapping by some 22,000 square kilometres with the entitlement of the Maldives. Mauritius had never challenged that entitlement since the Maldives filed its submission with the CLCS in 2010.

For more than a decade, the only protest made by Mauritius was limited to the slight overlap with its entitlements within 200 nautical miles. The Maldives had no notice whatsoever of this new and extensive claim. It had never been given an opportunity to respond. We consider this to be fundamentally inconsistent with the requirements of UNCLOS as well as the basic tenets of procedural fairness. The Maldives has been forced to deal with the highly technical matters inherent in an outer continental shelf claim within the constraints of litigation.

Unfortunately, this was not the only example of Mauritius defying the requirements of procedural fairness or the rules applicable to these proceedings. Mauritius has presented inconsistent grounds for its outer continental shelf claim and has failed to provide even elementary technical evidence in support. This has placed the Maldives in a position of material prejudice in the preparation of written and oral pleadings, as it has been forced to speculate as to what potential case Mauritius may ultimately run, including on issues of great technical complexity.

This was in addition to the fact that Mauritius chose to carry out a survey, supposedly of Blenheim Reef, Salomon Islands and appurtenant waters, only years into these proceedings. The survey's results transpired to be largely irrelevant and in any event without explanation, did not meet the basic objectives which Mauritius had identified for its voyage.

Before I summarize the speeches which will be presented on behalf the Maldives, there is one further development which I wish to address. As the Chamber is aware, on 22 August 2022, the President of the Maldives sent a letter to the Prime Minister of Mauritius. This letter stated that the Maldives would vote in favour of the United Nations General Assembly Resolution entitled "Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965". The Maldives had previously voted against this resolution for reasons which have been explained by the Maldives at the preliminary objections phase, in its written pleadings on the merits and indeed in the President's letter itself. However, as communicated in the President's letter, the Maldives has decided to vote in favour of the resolution. It has done so in view of the impending conclusion of these proceedings and with the intention of putting behind it the difficulties that arose from the formal protest which Mauritius raised in 2011 against the CLCS submission of the Maldives, several years before the 2019 advisory opinion.

This decision reflects the long-standing and steadfast commitment of the Maldives to decolonization and to upholding the right to self-determination.

The Maldives welcomed the decision of Mauritius, in light of this letter, to withdraw its claim against the Maldives for compensation in respect of its survey of Blenheim Reef. In a letter dated 23 September 2022, the Prime Minister of Mauritius informed the Maldives of this decision and affirmed the Parties' shared desire to maintain their warm relations. In that letter, the Prime Minister referred to his country's interest in undertaking joint measures to protect the marine environment of the Chagos Archipelago and the Maldives and to enhance maritime security in the Indian Ocean.

Naturally, the Maldives shares precisely these aspirations. To this end, the Maldives is gratified to see that Mauritius, at the United Nations Oceans Conference on 1 July this year, announced an intention to establish a marine protected area around the Chagos Archipelago. This is a proposal which the Maldives considers to be consistent with the obligations Mauritius

owes, under UNCLOS, in relation to protection and preservation of the marine environment, especially in relation to highly migratory species.

The Maldives sincerely hopes that Mauritius will now withdraw its protest of 2011 against the submission of the Maldives to the CLCS of 2010, reflecting the strong neighbourly relations between the two States. Indeed, in that context I note that, contrary to the contention advanced by 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.

Mr President, with your permission, I shall now briefly introduce the first round of oral pleadings by counsel and representatives of the Maldives. First, Professor Payam Akhavan will introduce the case to be advanced by the Maldives at this hearing. He will be followed by Professor Jean-Marc Thouvenin, who will address the Special Chamber on equitable delimitation of the Parties' maritime entitlements within 200 nautical miles of their coasts. Next will be Ms Amy Sander. She will set out the position of the Maldives on delimitation of the so-called "grey area", where the claim on the part of the Maldives to an outer continental shelf overlaps with the entitlements of Mauritius within 200 nautical miles. She will be followed by Ms Mariyam Shaany, who will speak about the good faith cooperation on the part of the Maldives in relation to the survey conducted by Mauritius earlier this year. After Ms Shaany will come Ms Khadeeja Shabeen, who will address the importance of the marine environment for the Maldives, with a particular focus on fisheries, climate change and the leadership shown by the Maldives in multilateral initiatives.

As far as the Maldives is concerned, the speeches I have outlined so far address all of the matters over which the Special Chamber possesses and should exercise jurisdiction. The latter speeches given by members of the delegation of the Maldives will address the new outer continental shelf claim advanced by Mauritius, first made in 2021, and explain why it is beyond the Chamber's jurisdiction, inadmissible and otherwise manifestly unfounded. Dr Naomi Hart will explain that this new claim by Mauritius to an outer continental shelf entitlement was not the subject of a dispute which had crystallized prior to Mauritius initiating the present proceedings and is for that reason outside the Chamber's jurisdiction.

Professor Makane Mbengue will then set out why the claim is inadmissible by virtue of timing considerations. He will explain that Mauritius had not filed a full submission (or even preliminary information) with the CLCS by the time it commenced proceedings, and that this barrier to jurisdiction could not be cured by the belated filings throughout the course of these proceedings. This is especially so in circumstances where Mauritius clearly failed to comply with the mandatory time limits for filing relevant documents with the CLCS.

Professor Akhavan will address the Chamber once again and explain that Mauritius has manifestly failed to establish any entitlement to an outer continental shelf, meaning that the claim should be dismissed as inadmissible.

Finally, Ms Sander will take the floor for a second time and address the final preliminary objection to the new outer continental shelf claim of Mauritius – namely that the delimitation methodology proposed by Mauritius for the area of overlap of the Parties' alleged outer continental shelf entitlements presupposes a particular delineation of the outer limit of those entitlements, thus prejudicing the performance by the CLCS of its specialized functions. She will also explain that the equal division methodology proposed by Mauritius for this area is inconsistent with international jurisprudence and, in addition to being inequitable, risks creating uncertainty and unpredictability in delimitation disputes.

Mr President, honourable Members of the Special Chamber, that concludes the Agent's opening statement. I now ask that you give the floor to Professor Akhavan.

STATEMENT OF MR AKHAVAN
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/3/Rev.1, p. 5–20]

Mr President, distinguished members of the Special Chamber, good morning. It is an honour to appear before you on behalf of the Republic of Maldives. I take this opportunity to also extend greetings to the delegation of Mauritius. It is indeed a relief to be in the post-pandemic world, to meet friends and colleagues in person once again, and to shake hands without immediately to reach for the hand sanitizer.

My task today is to introduce the Maldives' case; to provide a summary of the most important issues dividing the Parties. But if you allow me, Mr President, I will make two preliminary observations at the outset.

First, you will be well aware that throughout these proceedings, the emphasis in the Maldives' pleadings has been, and remains, that the Special Chamber should apply the 1982 Convention consistent with the settled jurisprudence. The very notion of the rule of law is based on the predictability and stability of results. The willingness of UNCLOS States Parties – and respondent States in particular – to enter into special agreements recognizing ITLOS's jurisdiction depends on such consistency. The same consideration applies to respect for the ITLOS Rules and principles of procedural fairness. Litigants must be confident that the breach of those rules and principles will have consequences; if they have no consequences, then they are not rules or principles at all.

I begin on this note because the recurrent theme in Mauritius' pleadings on Monday was that you should be creative; you should make history. Who cares about precedent and procedure when you could instead paint a masterpiece on a blank canvas? You are, Mauritius' counsel told us, the first to delimit the maritime boundary between two archipelagic States, so let us imagine that drying reefs are land territory and draw an equidistance line accordingly; and why bother with formalistic questions of jurisdiction and admissibility, we were admonished, when you could delimit a non-existent entitlement to an outer continental shelf with a perfect line of symmetry? Indeed, why let the absence of evidence stand in the way of this great work of art, when an expert report could achieve in a few weeks what it would take the CLCS several years to accomplish?

That, Mr President, was the recurrent theme in Mauritius' pleadings on Monday, inviting you to render the jurisprudential equivalent of a surreal painting by Salvador Dalí. We are confident that this Chamber knows better. UNCLOS States Parties did not sign up for unrestrained judicial activism. They consented to the Part XV procedures to achieve predictable and stable results; and they consented based on respect for principles of procedural fairness.

This brings me to the second preliminary observation, namely the scope of the dispute that is within your jurisdiction and on which the Maldives will address the merits. You will be well aware that the third preliminary objection of the Maldives in this proceeding was the absence of a dispute. Like the other questions that were before you at that stage, the issue was vigorously litigated. Mauritius had every opportunity to establish the existence of a dispute in respect of delimitation of overlapping claims in the outer continental shelf. It clearly did not do so. It did not ever mention such a claim, because such a claim did not exist. On the basis of Mauritius' own pleadings, this is what your judgment concluded:

> 332. In the view of the Special Chamber, it is clear from the above that there is an overlap between the claim of the Maldives to a continental shelf beyond 200 nm and the claim of Mauritius to an exclusive economic zone in the relevant area. In light of the formal protest of Mauritius, in its diplomatic note of 24 March 2011,

> to the submission by the Maldives to the CLCS, the Parties clearly hold opposite views and the claim of the Maldives is positively opposed by Mauritius.[1]

Mr President, the honourable Agent of Mauritius explained on Monday that an essential purpose of these proceedings has been to enable Mauritius to definitively establish its maritime spaces and sovereign rights under international law.[2]

It has achieved this purpose to the extent that this Chamber found that the effect of the 2019 ICJ advisory opinion was to resolve what it characterized as a long-standing sovereignty dispute between Mauritius and the United Kingdom.[3] The judgment found that for the purposes of UNCLOS, Mauritius is the only coastal State in respect of the Chagos Archipelago. It is an exceptional, if not historic precedent. It raises far-reaching questions about the incidental jurisdiction of ITLOS and Part XV procedures where maritime boundary disputes implicate questions of territorial sovereignty. By way of example, last week, on October 12, the UN General Assembly adopted resolution ES-11/4 by 143 votes to 5, declaring that Russia's annexation of Ukraine's territory is unlawful.[4] Would Ukraine be able to establish jurisdiction on this basis, or would it still need an advisory opinion?

Mr President, perhaps these are interesting questions for an academic seminar. But what matters for present purposes is that there is now a legally binding judgment that has resolved such uncertainties between the Parties. Mauritius and the Maldives will soon have a maritime boundary, thanks to the efforts of this Special Chamber. It is a felicitous outcome. The Parties have put past difficulties behind them. They move forward as two neighbours, in a spirit of friendship as two small island developing States, grappling with protection of the marine environment, catastrophic climate change, and the other common challenges confronting them in the years ahead.

But the time for historic precedents in this proceeding is over. What remains is simply a maritime boundary dispute that should be resolved strictly in accordance with UNCLOS and the settled jurisprudence. This applies both in respect of the merits, and the new questions of jurisdiction and admissibility that Mauritius' new claim to an outer continental shelf, OCS, have raised. With the greatest respect, Mauritius cannot have it all. It cannot now pick and choose only those parts of the judgment on preliminary objections that it likes, while disregarding the rest. There can be no more exceptions. There must be a sense of balance in this proceeding.

Mr President, my introductory presentation this morning will be in five parts. First, I will summarize the Maldives' position on the irrelevance of Blenheim Reef in drawing the equidistance line within the overlapping EEZs of the Parties. Second, I will briefly address the results of Mauritius' survey, and the consequent need to adjust the slight overlap between Mauritius' EEZ and the Maldives' claim to an outer continental shelf; the so-called "grey area". Third, I will address Mauritius' failure to comply with the ITLOS Rules and principles of procedural fairness in respect of its new claim to a continental shelf beyond 200 nautical miles. Fourth, I will respond to the Chamber's first question regarding the consequence of potential differences between the Parties' CLCS submissions and the recommendations of the CLCS. Fifth and finally, I will summarize the Maldives' objections to jurisdiction and admissibility in respect of Mauritius' new claim to an outer continental shelf.

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[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.

[2] ITLOS/PV.22/C28/1, p. 7 (lines 3–5) (Dabee). At the time of drafting, the Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

[3] Judgment on Preliminary Objections, para. 242.

[4] United Nations General Assembly Resolution ES-11/4, "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations", 12 October 2012, Doc No. A/RES/ES-11/4.

Mr President, as Mauritius confirmed on Monday, the dispute before you is essentially about four base points on Blenheim Reef. Mauritius argues that those basepoints are relevant for delimitation, even if they are situated on low-tide elevations labelled as "drying reefs". The Maldives argues to the contrary, that for the purposes of delimitation, basepoints should not be placed anywhere on Blenheim Reef. That is the central issue dividing the Parties.[5]

In particular, the dispute is whether there is a "relevant coast" on Blenheim Reef, and whether basepoints may be located there for the construction of the equidistance line. Mauritius has identified what it claims to be the relevant four locations as MUS-BSE-10 to 13. These are depicted in the figure which now appears on the screen, which is based on Figure 5 from the Maldives' Rejoinder.[6] The location of the alleged low-tide elevations is based upon the Satellite-Derived Bathymetry report for Blenheim Reef commissioned by Mauritius in 2021.[7] The close-up shows that three of them — MUS-BSE-11 to 13 — are apparently in the water.

You have now heard Mauritius' case. You were told that the authorities produced by the Maldives[8] — namely, *Qatar* v. *Bahrain*,[9] *Bangladesh* v. *India*,[10] and *Somalia* v. *Kenya*[11] — are somehow all inapplicable, and even support Mauritius' position. You were told that there is no special rule prohibiting the placing of base points on low-tide elevations; that in every one of these precedents the finding was a result of unique circumstances in that particular case. You were told that the Chamber cannot preclude the possibility that exceptional circumstances could justify the placing of base points on low-tide elevations. But throughout its written pleadings, Mauritius failed to produce a single example demonstrating exactly what such exceptional circumstances might look like. That is, until Monday, when Mauritius claimed that it had finally found an authority in support of its position; or so it seemed.

On Monday, your attention was turned to Edinburgh Reef in the 2012 *Nicaragua* v. *Colombia* judgment. You were told that the ICJ drew an equidistance line placing base points on this feature despite the fact that it is a low-tide elevation.[12] Surely, what the ICJ did for Edinburgh Reef in the Caribbean, you could similarly do for Blenheim Reef in the Indian Ocean. But what you weren't told, Mr President, is that in 2012, the Court had been led by Nicaragua to believe that Edinburgh Reef was an island.[13] Only later did the Court realize that this might not be correct; that the feature may in fact be a low-tide elevation. That is exactly why in its subsequent 2022 judgment, it did not place base points there for the purpose of drawing straight baselines.[14] Our friends on the other side will be familiar with that case. It does not assist them. Professor Thouvenin will have more to say on this.

Mauritius' argument on archipelagic baselines is equally unconvincing, and entirely unsupported. You were told on Monday that there is something unique, something magical, about the waters enclosed by archipelagic baselines; that the archipelagic waters of Chagos have the same status as internal waters, under the full sovereignty of Mauritius; that they "are to be treated … in a manner that is indistinguishable from the sovereignty [Mauritius] enjoys

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[5] See Rejoinder of the Republic of Maldives ("MRej"), para. 4.
[6] MRej, p. 24.
[7] See Ola Oskarsson and Thomas Mennerdahl, Geodetic Survey of Blenheim Reef, 22 February 2022 (Reply of the Republic of Mauritius ("MR")), Annex 1, Annex 2, Figure 4.
[8] Counter-Memorial of the Republic of Maldives ("MCM"), paras. 138–148; MRej, paras. 26–43.
[9] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Merits, Judgment, I.C.J. Reports 2001*, p. 40.
[10] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India*), Award, 7 July 2014.
[11] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021.
[12] ITLOS/PV.22/C28/1, p. 29 (lines 28–30) (Parkhomenko).
[13] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, Judgment of 21 April 2022, paras. 250–251.
[14] *Ibid.*

in relation to an island or any other land territory."[15] It is difficult to understand how this could be said with such confidence. For one thing, "ships of all States enjoy the right of innocent passage through archipelagic waters". Those are the exact words of article 52, paragraph 1, of the Convention. Surely, there can be no such right of passage in internal waters of States, let alone a right of passage of ships across land territory.

In brief, Mr President, Mauritius asks this Chamber to disregard the consistent practice of courts and tribunals in disregarding low-tide elevations for the purpose of drawing an equidistance line; it asks you to do so without providing any authority whatsoever to support its contrary position on inclusion of the four base points.

Mr President, on Monday, you heard much about Mauritius' survey. You were told that it has "changed the state of our knowledge" of this feature;[16] that there were significant discoveries arising from this expedition. This emphasis on the survey is a matter of curiosity. Its ostensible purpose was to take bathymetric measurements and to confirm the location of the four base points on which Mauritius seeks to rely. That is what the Maldives was told by Mauritius when it first proposed the survey; but, to the best of our knowledge, based on the information presented in the survey report, it took no such measurements. Having travelled to the middle of the Indian Ocean, and having placed its survey stations within 429 m of the basepoints on which it relies,[17] it surveyed many things, but not the location of the four base points. It is difficult to understand why – or perhaps the locations were surveyed and, for some reason, Mauritius elected not to include the results in its report. We simply do not know. Perhaps Mauritius will clarify its position in its second-round pleadings on Saturday.

We do know however, based on the statements of Mauritius' own scientific and technical experts, that even in respect of the measurements they did conduct in certain locations on Blenheim Reef, there was inadequate time to arrive at meaningful conclusions. The statement of Dr David Dodd states that: "The tide observation period at Blenheim Reef of approximately 56 hrs was much shorter than usually required for appropriate tidal analysis, and subsequent establishment of tidal datums."[18]

Nonetheless, as Counsel for Mauritius emphasized repeatedly, the Maldives has not disputed the findings of the survey. What we fail to understand is why, having insisted on the necessity of gathering accurate information on the grounds that existing nautical charts and satellite imagery were inaccurate, and having told you that it is a massive feature the size of several football fields, Mauritius abandoned its own survey report when it came to describing Blenheim Reef as a single low-tide elevation, rather than 57 distinct elevations, most of which are beyond 12 nm of the nearest land territory on Île Takamaka. In order to prove its point, Counsel for Mauritius resorted to precisely the same sources that it had insisted were inaccurate and inadequate, and which made the survey necessary.

Mr President, you will recall these nautical charts and satellite images from the pleadings on Monday. None of these are based on the data gathered from its survey. The first one is a British chart published in 1998; the second is an Indian Hydrographic Office chart first published in 1992; the third is a chart that was first published by the Soviet Union in 1964; and the fourth is a NIMA Chart which has not been updated since 1997. That data is between 24 and 58 years old, compared to the survey data from earlier this year. Presumably, much of this feature has since been submerged because of sea-level rise. What is more, the primary purpose of nautical charts is the safety of navigation. Mr President, not far from here we see the massive

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[15] ITLOS/PV.22/C28/1, p. 39 (lines 14–16) (Sands).
[16] ITLOS/PV.22/C28/1, p. 11 (lines 43–44) (Sands).
[17] See MRej, Figure 5.
[18] Dr David Dodd, *Assessment of methods used to determine the vertical relationship between Blenheim Reef and various vertical datums; including: WGS 84 Ellipsoid, EGM08 Geoid, MSL, LAT and HAT vertical references*, 28 March 2022 (MR, Annex 2).

container ships on the Elbe River, going to and from the port of Hamburg. Some have draughts of up to 20 m. The master of a ship is simply interested in avoiding a collision with such shallow features, even if they are fully submerged at low tide. We invite Mauritius to abandon those nautical charts and rely on its own, more accurate survey report.

This brings me to the only useful information arising from the survey; namely, confirmation that Blenheim Reef is definitely not a single low-tide elevation. Mr President, Counsel for Mauritius expressed some confusion as to the source of the Maldives' data in this respect. "We have no idea ... where the number 57 comes from",[19] he said in surprise. There was even something about Heinz ketchup, on the condimental kitchen shelf, claiming that each bottle consists of 57 tomatoes, without any proof of the Maldives' "57 different varieties of tomato".[20] We have an easy answer for Mauritius. It needs to look no further than its own survey report. The 57 different varieties are the fruits of its own effort — and I add, Mr President, that a tomato is a fruit, not a vegetable.

This is Figure 4 of the Satellite Derived Bathymetry Report for Blenheim Reef commissioned by Mauritius in 2021.[21] The areas depicted in red, and only those areas, are the parts of the reef which are above water at lowest astronomical tide. You will notice that there is not one large red area; rather, there are numerous small red areas with significant gaps between them. What the Maldives did was digitize those features and display them without the parts which remain below the surface of the water. Here is the comparison. The number 57 was reached by simply counting the separate elevations which, according to Mauritius' own data, are above water at low tide. It is evident that the distances between them are substantial. For example, here you can see a distance of 564 m between LTEs 10 and 11. You can also see that LTE 7, which is the last low-tide elevation partially within 12 miles of Île Takamaka, is separated by a distance of 56 m from the next elevation; that is half a football field.

These measurements confirm that even if they are not in fact fully submerged at low tide, none of the four base points claimed by Mauritius are either wholly or partly within 12 nm of the nearest land territory. They are up to 3.87 nm to the north-east of the last elevation within the territorial sea, as depicted by the purple arrow in Figure 5 of the Maldives' Rejoinder. Mr President, placing base points beyond the territorial sea for measuring the breadth of Mauritius' EEZ is clearly inconsistent with both UNCLOS article 13, paragraph 1, and article 47, paragraph 4, in respect of archipelagic baselines. Thus, there must be an adjustment of the line marking 200 nm from those baselines, moving it approximately 3.5 nm to the south-west. This relates to the third question posed by the Chamber on the afternoon of October 16; it will be addressed further by Professor Thouvenin.

The relevance of this information is in defining the area of overlap, but not in respect of entitlements within 200 nm of the Parties' coasts — instead, in the area identified by the Chamber in its Preliminary Objections Judgment; namely between "the claim of the Maldives to a continental shelf beyond 200 nm and the claim of Mauritius to an exclusive economic zone in the relevant area."[22] The necessary adjustment of Mauritius' EEZ as a result of the evidence of 57 LTEs further reduces the small area of overlap, which was at issue when Mauritius formally protested in 2011 against the Maldives' CLCS submission of the previous year. Ms Sander will have more to say on this point, including the Chamber's second question regarding the overlap between these two differing maritime entitlements.

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[19] ITLOS/PV.22/C28/1, p. 14 (lines 37) (Sands).

[20] ITLOS/PV.22/C28/1, p. 16 (lines 32) (Sands).

[21] See Ola Oskarsson and Thomas Mennerdahl, Geodetic Survey of Blenheim Reef, 22 February 2022 (MR, Annex 1), Annex 2, Figure 4.

[22] *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.

Mr President, it is fortunate that Mauritius has decided to withdraw its claim for compensation regarding the survey. The Maldives has demonstrated that it acted in good faith and a spirit of cooperation, and continues to welcome the use of its ports by the honourable Prime Minister of Mauritius. Ms Shaany will address the Chamber on this matter.

The Maldives also welcomes the fact that Mauritius' Memorial dropped its equally baseless claim regarding provisional arrangements under UNCLOS articles 74, paragraph 3, and 83, paragraph 3.

That would have left just four base points in dispute, which the Parties could surely resolve without the significant costs of litigation. But then, four months after the Judgment on Preliminary Objections, the day before filing its Memorial, and for the first time ever, Mauritius suddenly claimed an entitlement to a continental shelf beyond 200 nm to the north of the Chagos Archipelago. The small initial overlap of just 516 square kilometres between Mauritius' EEZ and the Maldives' claim in its 2010 CLCS submission was suddenly transformed into an overlap of 22,000 square kilometres. It suddenly unsettled the Maldives' claim after 10 years of acquiescence. Then, 11 months later, and just two days before filing its Reply, Mauritius filed a CLCS submission, seeking to cement its claim. To our knowledge (and Mauritius has not suggested otherwise), this is unprecedented in inter-State proceedings.

To make matters worse, Mauritius failed to properly explain the basis for its claim, until Monday, when Dr Badal first explained the exact scientific and technical basis for the claim of natural prolongation along the Gardiner Seamounts. The ITLOS Rules — notably article 62 — and principles of procedural fairness, require a State, especially an applicant State, to present a case that remains within the scope of the dispute, and to do so in full in its Memorial.[23]

Mr President, an applicant State that rushes to litigate must accept the consequences: the same applies for failing to produce evidence that has been available for decades until the final stages of pleadings. The Maldives has been prejudiced in this regard, and we hope that the Chamber will attach consequences to the breach of these rules and principles; otherwise, they are not rules and principles at all.

Mr President, you will be aware that the Parties have exchanged views in respect of Mauritius' inclusion of Dr Badal as a counsel and advocate, rather than an expert witness subject to cross-examination. I have had the great pleasure of meeting Dr Badal in these proceedings, and he is both a gentleman and a learned scientist, working in the Office of the Prime Minister of Mauritius; but he is not a lawyer; and that is not meant to be disrespectful, because calling someone a lawyer is not necessarily a compliment.

We recognize that the Rules do not specifically require counsel to have legal training. But there is a significant risk that an expert, addressing scientific and technical matters within his area of expertise, will in fact stray into territory reserved for an expert witness. In fact, Dr Badal introduced new arguments that appear nowhere in Mauritius' Reply. The alleged saddle between the Chagos Ridge and Maldives Ridge is but one example. We have had just 48 hours to prepare a response, not having called an expert witness, and we would certainly not place our friends on the other side in such a situation. Fortunately, despite this element of surprise, nothing in Dr Badal's testimony has changed the fact that Mauritius' new claim is manifestly unfounded, as I shall explain tomorrow.

So why, may it be asked, has the Maldives been opposed to an expert opinion arranged by the Chamber? Is it afraid that an independent scientist would conclude that the Gardiner Seamounts are a basis for natural prolongation? Absolutely not: that is not the issue. As the Maldives made clear in its August 31 letter to the Chamber, the point of procedure – a fundamental point of procedure – is that, in the words of the ICJ in *Pulp Mills,* "in accordance with the well-established principle of *onus probandi incumbit actori*, it is the duty of the party

[23] MRej, paras. 107–111.

which asserts certain facts to establish the existence of such facts".[24] The Chamber cannot relieve Mauritius of its burden of proof. It cannot produce evidence, where the party making a claim to an outer continental shelf has failed to even make a *prima facie* case. An expert opinion would only be necessary if there is relevant and divergent evidence that requires clarification, not to assist one of the Parties to establish its claim.

We note further the Maldives' position that if the Chamber were to arrange an expert opinion under article 82 of the ITLOS Rules, it would be prejudicial, necessarily prejudicial, to questions of jurisdiction and admissibility that it has raised. The Maldives has of course promptly complied with the Chamber's request on Sunday, October 16 and produced additional evidence in respect of its CLCS submission of 2010. However, the production of evidence at this late stage creates considerable difficulties. The Parties are asked to comment on complex technical matters within a week, or three weeks, when the CLCS would consider the same questions over several years.

On Monday, my friend Mr Loewenstein referred to several precedents, including *Guyana* v. *Suriname*[25] and *Costa Rica* v. *Nicaragua*,[26] where courts and tribunals appointed experts;[27] but those circumstances were radically different to those of the present case. Appointing a hydrographer to assist in drawing an accurate maritime boundary,[28] or a geographer to assist in identifying the starting point for delimitation,[29] is hardly analogous with an expert opinion on entitlement to an outer continental shelf. Why would UNCLOS States Parties establish the CLCS process and consider submissions over several years if an expert opinion could solve the matter in a few weeks?

That is why the ITLOS practice is to refrain from exercising jurisdiction where there is significant uncertainty; not to appoint an expert opinion as a substitute for the CLCS process.

Mr President, this brings me to the first question the Chamber addressed to the Parties on October 16, namely, "what would be the consequence if the CLCS takes a different position than the submissions of 2010 and 2022 respectively of the Parties on their entitlements in its recommendations?"

Article 76, paragraph 8, provides in relevant part that

> [t]he Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

Article 8 of Annex II further provides that

> [i]n the case of disagreement by the coastal State with the recommendations of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission.

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[24] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010*, p. 14 at p. 71, para. 162.

[25] *Guyana* v. *Suriname*, Award, 17 September 2007.

[26] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2018*, p. 139.

[27] ITLOS/PV.22C28/2, p. 19 (lines 16–23) (Loewenstein).

[28] *Guyana* v. *Suriname*, Award, 17 September 2007, para. 108.

[29] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica* v. *Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2018*, p. 139 at p. 147, para. 10.

In this regard, the Second Report of the ILA Committee on Legal Issues of the Outer Continental Shelf, from 2006, is instructive. Its members included Judge Dolliver Nelson, Judge Jean-Pierre Cot, and other distinguished experts. They observed that: "The Convention does not indicate how a continued disagreement between a coastal State and the Commission is to be resolved."[30] They observed further that: "The dispute settlement procedures entailing binding decisions under Part XV of the Convention are not available" – not available – "to resolve such a difference."[31] Scholars have presented two views on such an eventuality. Some, such as Professor McDorman, suggest that the process could go on indefinitely.[32] Others, such as Professor Caflisch, suggest that in case of continued difference, the coastal State might eventually establish the outer limits in accordance with its submission,[33] though he, and others such as Professor Treves, recognize that in such a case, the outer limits will not be opposable to other States.[34]

The question posed by the Chamber is an important one, but it is a matter of speculation whether, in fact, several years from now, the CLCS will make recommendations that differ from the Parties' submissions and, if so, whether the Parties would elect to make a revised submission and whether there would still be disagreement with a subsequent recommendation of the Commission.

There are also important considerations such as technological innovations that could significantly transform the scientific and technical data that informs the CLCS process. As I will explain, the measured bathymetric data in this region relied on by both the Maldives and Mauritius is more than 40 years old, some even from the 1950s. There is simply no comparison with the accuracy and resolution of the new technology.

The point, Mr President, is that there is no justification for the Chamber to assume the role of the CLCS today, based on what may or may not happen several years from now.

In this respect, we note Mauritius' view on Monday that

> ...in the unlikely event the CLCS were to differ in its recommendations, the Parties may, under article 8 of Annex II, make a revised or new submissions to the Commission, including ones that formally inform the Commission of the judgment, and of the Parties' obligations under article 296 of the Convention to comply with it. Indeed, the Judgment of the Special Chamber would be binding, and would preclude the Parties from accepting recommendations from the CLCS that conflicted with it.[35]

But that cannot be right. Article 76, paragraph 8, is unambiguous: "The limits of the shelf established by a coastal State on the basis of [CLCS] recommendations shall be final and binding." Its meaning and consequence is made clear by the ILA Report of 2006:

> The term "final" means that the outer limits shall no longer be subject to change. The term 'binding' implies an obligation to accept the outer limits as established.

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[30] International Law Association, Committee on Legal Issues of the Outer Continental Shelf, Second Report, Toronto Conference (2006), Conclusion No. 17, p. 21.

[31] *Ibid.*, Conclusion No. 17, p. 22.

[32] Ted L. McDorman, "The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World" (2002) 17 *International Journal of Marine and Coastal Law* 301, p. 306.

[33] L.C. Caflisch "The Settlement of Disputes relating to Activities in the International Seabed Area" in C.L. Rozakis and C.A. Stephanou (eds) (Elsevier Science Publishers B.V., Amsterdam: 1983) 303, p. 324.

[34] L. Caflisch "Les Zones Maritimes sous Juridiction Nationale, leurs Limites et leur Délimitation" in D. Bardonnet and M. Virally *Le Nouveau Droit International de la Mer* (Éditions A. Pedone, Paris: 1983) 35, p. 106; T. Treves "La Nona Sessione della Conferenza sul Diritto del Mare" (1980) 63 *Rivista di Diritto Internazionale* 432, p. 438.

[35] ITLOS/PV.22C28/2, p.31 (lines 26–31) (Loewenstein).

> If the outer limits of the continental shelf have been established in accordance with the substantive and procedural requirements of article 76 they will be final and binding on the coastal State concerned and other States Parties to the Convention. Outer limits lines that have not been established in accordance with these requirements will not become binding on other States.[36]

That is the view of the ILA Committee.

This makes clear that the CLCS has the final word, not the Part XV procedures. That was the intention of the drafters. The ILA Committee does suggest that "[a] court or tribunal may, in a judgment on a dispute between States Parties to the Convention, find that a recommendation or another act of the CLCS is invalid."[37] But that does not mean that it is entitled to substitute the scientific and technical functions of the CLCS. This incidental jurisdiction merely applies to questions such as, for instance, "the Commission has acted within the limits of its competence or *ultra vires*, or that an act of the Commission is invalid for other reasons, such as procedural irregularities or material error."[38]

As the ICJ explained in the *Nuclear Weapons Advisory Opinion*, the principle of speciality applies to international bodies because "they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them."[39] Similarly, the powers of ITLOS and the CLCS respectively are to be interpreted in light of "the logic of the overall system"[40] contemplated by UNCLOS.

Mr President, on Monday, Mauritius told you that you could pretty much do anything that you want as long as it involves interpretation of UNCLOS. They said "[t]he fact that the Convention assigns to the CLCS the role of ascertaining the outer limits of the continental margin … does not block a court or tribunal … from making the same assessment".[41] But this is flatly contradicted by ITLOS jurisprudence. *Bangladesh* v. *Myanmar* held that

> [j]ust as the functions of the Commission are without prejudice to the questions of delimitation of the continental shelf between States with opposite or adjacent coasts, so the 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.[42]

But it is not only in respect of delineation of the outer limits that ITLOS has deferred to the CLCS. It is also in respect of the predicate fact of entitlement. *Bangladesh* v. *Myanmar* noted that "[d]elimitation presupposes an area of overlapping entitlements. Therefore, the first step in any delimitation is to determine whether there are entitlements and whether they overlap."[43] It held, based on "uncontested scientific evidence"[44] in that case, that

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[36] International Law Association, Committee on Legal Issues of the Outer Continental Shelf, Second Report, Toronto Conference (2006), Conclusion No. 11, p. 15.

[37] *Ibid.*, Conclusion No. 22, p. 28.

[38] *Ibid.*, Conclusion No. 21, p. 28.

[39] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, p. 66 at p. 78, para. 25.

[40] *Ibid.*, p. 80, para. 26.

[41] ITLOS/PV.22C28/2, p. 31 (lines 4–7) (Loewenstein).

[42] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 379. This paragraph was cited with approval by the ICJ in *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)*, Judgment, 12 October 2021, para. 189.

[43] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 397.

[44] *Ibid.*, para. 446.

> [n]otwithstanding the overlapping areas indicated in the submissions of the Parties to the Commission, *the Tribunal would have been hesitant to proceed with the delimitation of the area beyond 200 nm had it concluded that there was significant uncertainty* as to the existence of a continental margin in the area in question.[45]

Bangladesh v. *Myanmar* emphasized the Commission's special expertise on scientific and technical issues, including in the fields of geology, geophysics and hydrography.[46] It observed that while article 76 "contains elements of law and science, [and] its proper interpretation and application requires both legal and scientific expertise",[47] it could exercise jurisdiction in respect of the Bay of Bengal because "the Parties' entitlement to a continental shelf beyond 200 nm *raises issues that are predominantly legal in nature*".[48] Legal and not scientific.

Similarly, in *Ghana* v. *Côte d'Ivoire*, the Special Chamber held that before exercising jurisdiction it must ascertain "whether the relevant [CLCS] submissions are admissible".[49] It found as a matter of admissibility that

> [t]he Special Chamber can delimit the continental shelf beyond 200 nm only if such a continental shelf exists. *There is no doubt – no doubt – about this in the case before the Special Chamber.* Ghana has already completed the procedure before the CLCS. Côte d'Ivoire has made its submission to the CLCS and, although as yet the latter has not issued any recommendation, the Special Chamber has no doubt that a continental shelf beyond 200 nm exists for Côte d'Ivoire since its geological situation is identical to that of Ghana, for which affirmative recommendations of the CLCS exist.[50]

Mr President, the ITLOS practice is clear. If there is significant doubt as to entitlement, this Special Chamber should not exercise jurisdiction. The answer is not to speculate that a coastal State may or may not accept future CLCS recommendations several years from now, and to thereby justify, with the greatest respect, usurpation of the functions of CLCS under the Convention. The answer is not to arrange an expert report as a substitute for the exacting CLCS process established by States Parties over almost a decade of negotiations at the Third UN Conference on the Law of the Sea.

I also note, Mr President, Mauritius' argument that only this Chamber can break the deadlock created by objections to CLCS submissions under article 5 of Annex I of the CLCS Rules of Procedure.[51]

You were told on Monday that "Mauritius and Maldives have each objected to the other's submission in regard to the northern Chagos Archipelago region on the basis of their dispute concerning their continental shelf boundaries."[52] That is what you were told, but that is simply not true. Unlike Mauritius, as the Agent noted, the Maldives has not made a formal protest against Mauritius' 2022 submission. That much is clear. It has simply indicated that the matters it raises are subject to pending proceedings and reserves its right to address relevant

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[45] *Ibid.*, para. 443 (emphasis added).
[46] *Ibid.*, para. 375.
[47] *Ibid.*, para. 411.
[48] *Ibid.*, para. 413 (emphasis added).
[49] *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 482.
[50] *Ibid.*, para. 491 (emphasis added).
[51] ITLOS/PV.22C28/2, p. 30 (line 24) (Loewenstein).
[52] ITLOS/PV.22C28/2, p. 30 (lines 16–18) (Loewenstein).

issues in due course.[53] It is only Mauritius that since 2011 has formally protested against the Maldives' CLCS submission because of a slight overlap of 516 square kilometres in its EEZ.[54]

With the greatest respect, it is disingenuous to hold the Maldives' CLCS submission hostage for more than a decade and then ask the Chamber to solve the problem Mauritius itself has created. That objection of 2011 was the cause of differences, as the Maldives set out in its explanation of vote in respect of General Assembly resolution 73/295 in 2019. Surely, if Mauritius has come to these proceedings in a spirit of friendly relations, to move beyond past differences, it could write to the CLCS and remove its objection.

Mr President, this brings me to the fifth and final part of my presentation; namely, the new questions of jurisdiction and admissibility that the Maldives has been forced to raise after the Judgment on Preliminary Objections. It is well established in the international jurisprudence that "the object of a preliminary objection is to avoid not merely a decision on but even any discussion of the merits".[55] Indeed, such objections are specifically "for the purpose of excluding an examination by the Court of the merits of the case."[56] A respondent is "entitled to question the Court's jurisdiction over a claim prior to being called on to respond to the merits of that claim."[57]

The Maldives has been deprived of its fundamental procedural right to bifurcate proceedings under the ITLOS Rules; it cannot be forced to address the merits before the Special Chamber has decided the prior question of jurisdiction and admissibility. The principles of procedural fairness, with the greatest respect, are not mere suggestions. They cannot be trumped by considerations of judicial economy.

There can be no doubt that, at the critical date in 2019, there was no dispute over an overlapping claim of 22,000 square kilometres in the outer continental shelf. Dr Hart will address this issue at greater length. There can also be no doubt that, at the critical date in 2019, Mauritius had not made its CLCS submission and that it made no reference whatsoever to the Northern Chagos Region when it filed its preliminary information in 2009 within the time limits fixed by UNCLOS States Parties. Professor Mbengue will have more to say on this issue.

Another point of admissibility is Mauritius' manifest failure to make even a *prima facie* case to entitlement. It cannot be denied that the Gardiner Seamounts theory that it first introduced in its Reply and on which Dr Badal has elaborated, is diametrically opposed, not only to its Memorial and CLCS Preliminary Information, but also the bathymetric data in its own CLCS submission of 2022.

There cannot be a first base of slope west of the Chagos Trough and then a second one to the east. Mauritius' CLCS submission is clear: the Chagos Laccadive Ridge is "bounded to the east by the Chagos Trough",[58] which extends north "from south of the Chagos Archipelago

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[53] Diplomatic Note Ref. 2021/UN/N/16 of the Permanent Mission of the Republic of the Maldives to the United Nations to the Commission on the Limits of the Continental Shelf, 15 July 2021 (MCM, Annex 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).

[54] 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).

[55] *Barcelona Traction, Light and Power Company, Limited (Belgium* v. *Spain), Preliminary Objections, Judgment, I.C.J. Reports 1964*, p. 6 at p. 44.

[56] *Panevezys-Saldutiskis Railway [Estonia* v. *Lithuania], Judgment, 1939, P.C.I.J., Series A/B, No. 76,* at p. 22.

[57] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Counter-Claim, Order of 10 March 1998, I.C.J. Reports 1998*, p. 190 at p. 198, para. 19.

[58] Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Executive Summary, Doc MCNS-ES-DOC, April 2022 (MRej, Annex 5), para. 8-2 (emphasis added).

Region up to the equator around 0° and 1°N".[59] Those are the words of its own CLCS submission. In other words, there is an obvious morphological break throughout Mauritius' EEZ. It cannot establish natural prolongation beyond 200 nm to the critical foot of slope based on its landmass as required by article 76, paragraph 3. It has accepted that it cannot do so by going north through the submerged prolongation of the Maldives' landmass well within the Maldives' 200 nautical mile-limit.

That is why the Gardiner Seamounts theory was invented at the final stage of these proceedings, to find another way of getting to the critical foot of slope point, through a most unusual detour, in flat contradiction with Mauritius' own admissions as to the correct location of the base of slope. That, Mr President, is how we arrived at this work of art that will by now be familiar to the members of the Chamber. It may not be fit for the Louvre, but we hope it is an adequate illustration of the point.

What is fatal for Mauritius' case, is that there is no measured bathymetric data — none whatsoever — in the region of the Gardiner Seamounts. Without such data, its claim of natural prolongation is a mere assertion; the Commission would never accept such a claim. The CLCS Guidelines are clear that such data is required. I will be elaborating on this question tomorrow with particular reference to the sources of data that Dr Badal himself referred to as well, and on which both Mauritius and the Maldives have relied.

Mr President, Mauritius is inviting you to make a judicial determination that will almost certainly be in contradiction with CLCS recommendations. Perhaps that explains the enthusiasm with which they have argued that there are no limits whatsoever to your jurisdiction; that you could do in a few weeks with an expert opinion what it takes the combined expertise of the CLCS several years to accomplish.

Finally, Mr President, another compelling reason for the inadmissibility of Mauritius' new claim is its unprecedented approach of so-called "equal apportionment",[60] which necessarily requires this Chamber to delineate the outer limits of the Parties' potential entitlements; again, a task reserved for the CLCS. That supposed methodology finds no support whatsoever in the jurisprudence, even if Mauritius had entitlement *quod non*. That is why it invites you to dispense Solomonic justice, *ex aequo et bono*, but only for the outer continental shelf. It is a creative argument, but not one that can be taken seriously. Ms Sander will address this matter further.

Mr President, even if there were no questions of jurisdiction and admissibility, and bifurcation was not at issue, there would still be compelling reasons to have a second phase to properly address scientific and technical evidence. The recent practice of the ICJ is instructive in this regard. You will of course be well aware that the legal issue underlying your second question on overlap between the EEZ and outer continental shelf of the Parties is pending before the ICJ, though as a matter of international customary law.

I refer to *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia).* In its recent Order of 4 October 2022, the Court decided to first hear the parties on questions of law "before proceeding to any consideration of technical and scientific questions [61] regarding the delimitation of the outer continental shelf. The Court is no doubt addressing the fact that it would require significant resources for the Parties to produce proper technical and scientific evidence and expert testimony, and for the Court to consider the same in a proper hearing. The

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[59] 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 (MR, Annex 3), para. 2.3.1.2 (emphasis added).

[60] MR, para. 4.25.

[61] *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)*, Order of 4 October 2022, p. 2.

same consideration applies to the present case, irrespective of the questions of jurisdiction and admissibility that the Maldives has raised.

Mr President, it is said that simplicity is the ultimate sophistication. This is attributed to Michelangelo, conjuring the image of Mona Lisa. It may not be as creative as Salvador Dalí's Persistence of Memory, with its clocks drooping like melted cheese, what he called the "camembert of time", but Michelangelo's masterpiece is a great work of art that has withstood the test of time.

The three-step methodology and principles of procedural fairness may not excite our passions in the same way, but they too have withstood the test of time. They have been the foundation of the consistency and objectivity that has reassured States that maritime boundary delimitation under the Part XV procedures is a reliable process with predictable results.

The dispute within your jurisdiction is simply about four base points on Blenheim Reef. Equitable delimitation under UNCLOS articles 74 and 83 simply requires an equidistance line for the Parties' entitlements within 200 nm, without those four base points; and it requires continuation of the equidistance line from point 46 by a directional line to the outer limits of the continental shelf following the recommendations of the CLCS.

Mr President, distinguished Members of the Special Chamber, that concludes my introductory remarks. I thank you for your patience and ask that you call Professor Thouvenin to the podium, unless you wish to take a break at this point.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Akhavan.

Although we have not reached 11.30 yet, if Mr Thouvenin prefers I will take a break of 30 minutes at this stage, and we will continue at 11.55 so that Mr Thouvenin can make his statement without being interrupted.

We will withdraw for a break of 30 minutes and we will continue the hearing at 11.55.

(*Break*)

THE PRESIDENT OF THE SPECIAL CHAMBER: Please be seated.

I now give the floor to Mr Thouvenin, to make his statement.

EXPOSÉ DE M. THOUVENIN
CONSEIL DES MALDIVES
[TIDM/PV.22/A28/3/Rev.1, p. 23–41]

Merci beaucoup, Monsieur le Président.

Monsieur le Président, Madame et Messieurs de la Chambre Spéciale, c'est un honneur pour moi de paraître à nouveau devant vous dans la présente affaire. Il me revient de présenter la ligne de délimitation maritime qu'il vous échet de tracer dans la limite des 200 M respectifs. La tâche qui est la vôtre, qui consiste essentiellement, nous le verrons, à construire la ligne d'équidistance provisoire, est à vrai dire fort simple. Mais les débats, on a pu le constater en début de semaine, sont malheureusement compliqués par la prétention de Maurice à poser les points de base là où elle ne le peut pas, tout bonnement au large de ses côtes, dans la zone du récif de Blenheim[1], et non pas sur le territoire terrestre de Maurice, à l'endroit où ce territoire terrestre rencontre la mer, c'est-à-dire sur ce que le droit de la mer appelle la « côte pertinente ».

La thèse mauricienne ne tient pas ; et dans les minutes qui viennent je démontrerai que la construction de la ligne d'équidistance provisoire pertinente en l'espèce ne saurait en aucune manière tenir compte du récif de Blenheim, et qu'aucun des arguments présentés par Maurice pour vous convaincre du contraire n'est fondé en droit. Je montrerai en particulier que, premièrement, rien de ce qui émerge du récif de Blenheim à marée basse, et qui est totalement submergé à marée haute, ne saurait être retenu au titre de la « côte pertinente » de Maurice aux fins de la délimitation maritime ; n'apparaissent en effet, dans cette zone, qui se trouve à plus de 10,6 M de l'île la plus proche[2], que de petits hauts-fonds découvrants, totalement recouverts par la mer à marée haute.

Deuxièmement, les points de base pertinents pour la construction de la ligne d'équidistance provisoire, d'une part, et, d'autre part, les points choisis unilatéralement par un État côtier pour établir sa ligne de base, y compris archipélagique le cas échéant, aux fins de mesurer la largeur de sa mer territoriale et de ses autres prétentions maritimes, ne sauraient être confondus ; dès lors, l'invocation par Maurice de ses lignes de base archipélagiques[3] n'a aucune pertinence pour la construction de la ligne d'équidistance provisoire ;

Troisièmement, aucune cour, et aucun tribunal, n'a jamais, je souligne, jamais, modifié la géographie côtière d'un État de manière à considérer qu'un haut-fond découvrant, de quelque nature qu'il soit, puisse être utilisé pour situer un point de base aux fins de la ligne d'équidistance provisoire ; au contraire, les cours et tribunaux ont toujours, je répète, toujours, refusé de poser des points de base sur des hauts-fonds découvrants. Ce qui vous a été dit à cet égard lundi est tout simplement inexact. Et j'y reviendrai.

Tels sont les éléments principaux, mais non uniques, de ma démonstration, qui m'amènera également à répondre à la troisième question posée par la Chambre spéciale, et à d'autres arguments avancés lundi.

J'indique en passant que je ne répondrai pas à tous les arguments développés lundi, notamment aux longs développements de la partie adverse à propos de la légalité des lignes de base archipélagiques revendiquée par Maurice[4], ni sur les critiques mauriciennes des lignes de base maldiviennes[5]. Comme les Maldives l'ont dit et répété dans leurs plaidoiries écrites, mise à part concernant la question de l'étendue maximale de la ZEE de Maurice, les lignes de base archipélagiques n'ont strictement aucune pertinence dans la présente affaire[6]. Par ailleurs et

[1] Mémoire de la République de Maurice (MM), par. 4.29 et Table 4.1 (MUS-BSE-10 à MUS-BSE-13).
[2] MM, par. 2.20.
[3] TIDM/PV.22/A28/1, p. 15 (lignes 19-30) (Sands).
[4] TIDM/PV.22/A28/1, p. 34-40 (Sands).
[5] TIDM/PV.22/A28/1, p. 40 (lignes 9-12) (Sands).
[6] Duplique de la République des Maldives (DM), par. 63, 67.

bien entendu, le fait de ne pas répondre à tel ou tel argument ne signifie évidemment pas concession.

Monsieur le Président, par la suite, je suivrai méthodiquement l'ordre, la logique, et les règles de la méthode de délimitation en trois étapes. Comme la partie mauricienne l'a rappelé à juste titre[7], et c'est là sans doute un point d'accord entre les Parties, cette méthode en trois étapes conduit d'abord à tracer la ligne d'équidistance provisoire. J'y procèderai dans la 2e partie de ma plaidoirie. Ensuite à vérifier si des circonstances pertinentes appellent un ajustement de la ligne d'équidistance provisoire. Ce sera la troisième brève partie de ma plaidoirie.

Et enfin à procéder à la vérification de l'absence de disproportion marquée entre le rapport de longueurs des côtes pertinentes et le rapport des espaces attribués aux Parties dans la zone pertinente. Ce sera la quatrième partie de ma plaidoirie, là encore fort brève.

Pour mettre en œuvre la méthode en trois étapes que je viens de résumer, il convient à titre préliminaire de déterminer les côtes pertinentes. C'est ce que je ferai dans la première partie de ma plaidoirie.

Monsieur le Président, je consacre la première partie de ma plaidoirie à la détermination des côtes pertinentes car c'est un exercice nécessaire à la réalisation de la première comme de la troisième étape de la délimitation. Comme l'a indiqué la Cour internationale de Justice dans l'affaire de la *Délimitation maritime en mer Noire* :

> Le rôle des côtes pertinentes peut revêtir deux aspects juridiques distincts, quoique étroitement liés, dans le cadre de la délimitation du plateau continental et de la zone économique exclusive. En premier lieu, il est nécessaire d'identifier les côtes pertinentes aux fins de déterminer quelles sont, dans le contexte spécifique de l'affaire, les revendications qui se chevauchent dans ces zones. En second lieu, il convient d'identifier les côtes pertinentes aux fins de vérifier, dans le cadre de la troisième et dernière étape du processus de délimitation, s'il existe une quelconque disproportion entre le rapport des longueurs des côtes de chaque Etat et celui des espaces maritimes situés de part et d'autre de la ligne de délimitation[8].

Le point de savoir ce que sont les « côtes pertinentes » aux fins de la délimitation est donc important. Heureusement, les Parties sont globalement d'accord sur ce que sont leurs côtes pertinentes respectives, à ceci près, entre autres, que Maurice prétend qu'une partie de la sienne est localisée à plus de 10 M au large d'une île[9], à un endroit où, à marée haute, on ne peut voir que la mer. Cette prétention est intenable. Premièrement, la jurisprudence constante que je vais rappeler pose clairement que les côtes pertinentes sont faites de la rencontre entre le territoire terrestre et la mer.

Deuxièmement, rien de ce qui, au récif de Blenheim, est tous les jours vaincu par les eaux, quand elles sont hautes – j'allais dire, « est dominé par la mer » lorsqu'elle est haute ne peut participer à la détermination de la côte pertinente de Maurice.

Tout commence donc par la localisation des côtes pertinentes puisque ce sont elles qui déterminent les revendications maritimes, et elles seules. C'est sur ces côtes pertinentes, une fois déterminées, que peuvent être localisés les points de base pertinents permettant de tracer la ligne d'équidistance provisoire.

Cette méthode n'a rien d'arbitraire, mais elle n'est pas non plus purement mathématique, et encore moins tributaire d'un logiciel[10]. Je ne crois pas, Monsieur le Président,

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[7] TIDM/PV.22/A28/1, p. 16 (lignes 35-40) (Sands).

[8] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 61, par. 78 ; *Différend territorial et maritime (Nicaragua c. Colombie), arrêt, C.I.J. Recueil 2012*, p. 624, par. 141.

[9] Réplique de la République de Maurice (RM), par. 1.4-1.5.

[10] TIDM/PV.22/A28/2, p. 1 (lignes 25-29) (Reichhold).

et je parle ici sous le contrôle des Maldives, que la Chambre spéciale doive rendre les armes face à un quelconque logiciel. La localisation des points de base est un processus juridique, et reflète la règle d'airain qui structure le droit à un plateau continental et, dans son prolongement, à une zone économique exclusive, règle que nos confrères de l'autre côté de la barre pensent escamoter en l'invoquant : « la terre domine la mer »[11]. Oui, la terre domine la mer !

Le fait de le dire ne permet pas de le conjurer, car l'important n'est pas que ce soit dit. L'important, devant cette Chambre spéciale, est ce que le droit commande, à savoir que « la terre domine la mer ».

Cette règle de base a été rappelée à de multiples reprises. Dans l'affaire du *Plateau continental de la mer Égée,* la Cour internationale de Justice a souligné que « ce n'est qu'en raison de la souveraineté de l'Etat riverain sur la terre que des droits d'exploration et d'exploitation sur le plateau continental peuvent s'attacher à celui-ci *ipso jure* en vertu du droit international. »[12]

Dans l'affaire du *Plateau continental (Tunisie/Jamahiriya arabe libyenne)* la Cour a rappelé encore, à propos du titre que l'État côtier détient sur le plateau continental :

> Le lien géographique entre la côte et les zones immergées qui se trouvent devant elle est le fondement du titre juridique de cet État. [...] Ainsi qu'il a été expliqué à propos du prolongement naturel, c'est la côte du territoire de l'Etat qui est déterminante pour créer le titre sur les étendues sous-marines bordant cette côte[13].

Dans *Qatar c. Bahreïn,* la Cour a encore souligné que :

> Dans des affaires antérieures, la Cour a dit clairement que les droits sur la mer dérivent de la souveraineté de l'Etat côtier sur la terre, principe qui peut être résumé comme suit: « la terre domine la mer »[14].
> [...]
> C'est donc la situation territoriale terrestre qu'il faut prendre pour point de départ pour déterminer les droits d'un Etat côtier en mer. Conformément au paragraphe 2 de l'article 121 de la Convention de 1982 sur le droit de la mer, qui reflète le droit international coutumier, les îles, quelles que soient leurs dimensions, jouissent à cet égard du même statut, et par conséquent engendrent les mêmes droits en mer que les autres territoires possédant la qualité de terre ferme[15].

J'ai pris la liberté de souligner, dans cette citation, les termes « situation territoriale terrestre », et « terre ferme », parce que ce sont les mots clés qui définissent la nature de ce que sont les « côtes pertinentes » à partir desquelles « la terre domine la mer », c'est-à-dire, à partir desquelles s'établissent les revendications maritimes concurrentes au plateau continental et à la ZEE.

Ce qui « domine la mer », c'est le « territoire terrestre » c'est-à-dire le continent, et plus généralement la « terre ferme », la *terra firma*, ce qui inclut les îles.

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[11] TIDM/PV.22/A28/1 p. 42 (lignes 19-20) (Sands).

[12] *Plateau continental de la mer Egée (Grèce c. Turquie), arrêt, C.I.J. Recueil 1978,* p. 3, par. 86.

[13] *Plateau continental (Tunisie/Jamahiriya arabe libyenne), arrêt, C.I.J. Recueil 1982,* p. 18, par. 74.

[14] *Délimitation maritime et questions territoriales entre Qatar et Bahreïn (Qatar c. Bahreïn), fond, arrêt, C.I.J. Recueil 2001,* p. 40, par. 185 ; *Plateau continental de la mer du Nord (République fédérale d'Allemagne/Danemark, République fédérale d'Allemagne/Pays-Bas), arrêt, C.I.J. Recueil 1969,* p. 3, par. 96 ; *Plateau continental de la mer Egée (Grèce c. Turquie), arrêt, C.I.J. Recueil 1978,* p. 3. par. 86.

[15] *Délimitation maritime et questions territoriales entre Qatar et Bahreïn (Qatar c. Bahreïn), fond, arrêt, C.I.J. Recueil 2001,* p.40, par. 185 ; *Différend territorial et maritime (Nicaragua c. Colombie), arrêt, C.I.J. Recueil 2012,* p. 689, par. 176 ; *Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), arrêt, C.I.J. Recueil 2007,* p. 659, par. 113.

À l'évidence, un haut-fond découvrant ne forme nullement le « territoire terrestre » ou la « terre ferme », et ne saurait donc être pris en compte au titre de la côte pertinente d'un État. La sentence arbitrale dans l'affaire de la *Mer de Chine méridionale* est limpide à cet égard :

> *(Continued in English)*
> [L]ow-tide elevations do not form part of the land territory of a State in the legal sense. Rather they form part of the submerged landmass of the State and fall within the legal regimes for the territorial sea or continental shelf, as the case may be.[16]

(Reprend en français) Par conséquent, les hauts-fonds découvrants situés dans la zone du récif de Blenheim sur lesquels Maurice propose avec insistance à la Chambre spéciale de poser des points de base[17] doivent être écartés comme n'appartenant pas à la côte pertinente de Maurice aux fins de la délimitation.

Je reviendrai sur le récif de Blenheim dans un instant, mais je note dès à présent que les Parties s'accordent sur le fait que les formations qui y émergent à marée basse sont un ou des hauts-fonds découvrants[18].

Monsieur le Président, Madame et Messieurs de la Chambre spéciale, en affirmant qu'un haut-fond découvrant n'a rien de commun avec le territoire terrestre ou insulaire qui, seul, peut participer à la définition des « côtes pertinentes » aux fins d'une délimitation, je n'ignore évidemment pas ce que prévoit l'article 13 de la Convention. Et j'ignore encore moins ce que Maurice a tenté de faire dire à cet article[19] pour vous faire accepter certains hauts-fonds découvrants situés dans la zone du récif de Blenheim comme relevant de sa « côte pertinente ». Mais sa position est, là encore, intenable.

En substance, ce que Maurice a fait valoir, du moins ce qu'elle faisait d'abord valoir dans son mémoire[20], est que l'article 13 transforme les hauts-fonds découvrants situés dans la limite de la mer territoriale en territoire terrestre capable de dominer la mer.

Cette interprétation de l'article 13 ne repose sur aucun fondement. L'article 13, on le connaît bien, se lit ainsi :

> 1. Par « hauts-fonds découvrants », on entend les élévations naturelles de terrain qui sont entourées par la mer, découvertes à marée basse et recouvertes à marée haute. Lorsque des hauts-fonds découvrants se trouvent, entièrement ou en partie, à une distance du continent ou d'une île ne dépassant pas la largeur de la mer territoriale, la laisse de basse mer sur ces hauts-fonds peut être prise comme ligne de base pour mesurer la largeur de la mer territoriale.
>
> 2. Lorsque des hauts-fonds découvrants se trouvent entièrement à une distance du continent ou d'une île qui dépasse la largeur de la mer territoriale, ils n'ont pas de mer territoriale qui leur soit propre[21].

Maurice avait suggéré[22], certes de manière implicite, que le paragraphe 2 de l'article 13 doit devrait être lu *a contrario,* comme posant que lorsque des hauts-fonds découvrants se trouvent dans la limite des 12 M de la mer territoriale, ils ont une mer territoriale qui leur est propre. C'est inexact. En réalité, les hauts-fonds découvrants qui se situent dans la zone de 12 M de la côte la plus proche ne génèrent, en eux-mêmes, aucun titre. Ce qui génère les titres,

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[16] *South China Sea Arbitration (Philippines* v. *China),* Award, 12 July 2016, p. 132, para. 309.
[17] TIDM/PV.22/A28/1, p. 15 (lignes 30-31) ; p. 18 (lignes 5-7) (Sands).
[18] RM, par. 2.3 ; DM, par. 2 c).
[19] TIDM/PV.22/A28/1, p. 20 (lignes 39-47 ; p. 21 (lignes 1-25) (Parkhomenko).
[20] MM, par. 2.20.
[21] Conventions des Nations Unies sur le droit de la mer (CNUDM), 1989, article 13.
[22] MM, par. 2.20.

c'est le territoire terrestre, la terre ferme qui se trouve sur un continent ou sur une île. L'article 13, paragraphe 1, se borne à fixer l'emplacement possible de la ligne de base à partir de laquelle l'extension de la mer territoriale se calcule. Il ne transforme certainement pas les hauts-fonds découvrants en « côte », et encore moins en « côte pertinente » au sens du droit de la délimitation du plateau continental et de la zone économique exclusive.

Apparemment, Maurice a abandonné cette thèse esquissée dans son mémoire, pour en promouvoir une nouvelle, totalement inédite, lundi, en faisant cette fois un rapprochement insistant entre l'article 13, paragraphe 1, et l'article 5 de la Convention.

En l'entendant, je me suis demandé : s'agit-il d'un petit tour de passe-passe, ou d'un argument solidement étayé[23] ? Voyons de plus prés. L'article 5 pose : « sauf disposition contraire de la Convention, la ligne de base normale à partir de laquelle est mesurée la largeur de la mer territoriale est la laisse de basse mer le long de la côte »[24].

L'article 13, on l'a lu, pose au contraire que la ligne de base peut suivre la laisse de basse mer d'un haut fond découvrant dans certains cas.

Maurice laisse entendre que, parce que les deux articles font référence à la « laisse de basse mer », et parce que l'article 5 dit que la laisse de basse mer se situe « le long de la côte », il faut lire l'article 13 comme posant que la laisse de basse mer d'un haut fond découvrant est également « la côte ». Tel n'est pas le cas.

D'une part, l'article 13 est, comme le prévoit l'article 5, une « disposition contraire de la Convention », qui permet, à certaines conditions, que la ligne de base ne soit pas posée sur la laisse de basse mer le long de la côte, mais sur la laisse de basse mer d'un haut-fond découvrant. Ainsi, le rapprochement des deux textes ne démontre pas que la laisse de basse mer d'un haut-fond découvrant est « la côte », mais tout au contraire qu'un haut fond découvrant n'est pas la côte. Sinon, l'article 13, paragraphe 1, n'aurait aucun effet utile.

D'autre part, la Chambre spéciale sera frappée de ne pas trouver, dans le texte de l'article 13, qui évoque les hauts-fonds découvrants, le mot « côte ». Le mot « côte » n'y est pas. L'article 13, de ce point de vue, ne dit rien de comparable à ce que dit, par exemple, l'article 11 : « Aux fins de la délimitation de la mer territoriale, les installations permanentes faisant partie intégrante d'un système portuaire qui s'avancent le plus vers le large sont considérées comme faisant partie de la côte. »

Maurice semble lire dans l'article 13 ce qui se trouve dans l'article 11, comme si l'article 13 stipulait qu'« aux fins de la délimitation de la mer territoriale, un haut-fond découvrant situé dans la mer territoriale est considéré comme faisant partie de la côte ». Mais, bien sûr, ce n'est pas ce que dit l'article 13, pas plus que ce que dit l'article 5. C'était donc bien un petit tour de passe-passe, sans aucun fondement juridique.

Bien évidemment, ce qui vaut pour les hauts-fonds découvrants, qui ne sauraient faire partie de la côte pertinente, vaut pour les récifs découvrants, puisque ces derniers, les Parties en conviennent, ne sont rien d'autre qu'une catégorie de hauts-fonds découvrants. Un récif découvrant est défini par le glossaire établi par le Bureau des affaires maritimes et du droit de la mer des Nations Unies comme étant une « [p]artie du récif qui est émergée à marée basse mais immergée à marée haute »[25].

Un récif découvrant est donc un haut-fond découvrant, sa seule spécificité étant sa nature géomorphologique. Des lors, Monsieur le Président, Madame et Messieurs de la Chambre spéciale, la conclusion qu'il convient de tirer de la jurisprudence constante que je

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[23] TIDM/PV.22/A28/1, p. 24 (lignes 3-4) (Parkomenko) ; p. 33 (lignes 19-23) (Sands).

[24] CNUDM, article 5.

[25] « Récifs » in Bureau des affaires maritimes et du droit de la mer, « Lignes de base – Examen des dispositions relatives aux lignes de base dans la Convention des Nations Unies sur le droit de la mer », 1989, p. 68, <https://www.un.org/depts/los/doalos_publications/publicationstexts/f_88v5_baselines_highres.pdf> consulté le 11 octobre 2022.

viens de rappeler est limpide : les côtes pertinentes qui définissent les droits de l'État côtier en mer ne sont rien d'autre que les « côtes » des États concernés, lesquelles côtes se définissent comme étant à la limite entre le territoire terrestre et la mer.

C'est donc bien sûr à rebours de ce que le droit établit que nos contradicteurs insistent pour vous proposer de réinventer la géographie côtière et de considérer que la côte pertinente de Maurice aux fins de la construction de la ligne d'équidistance provisoire, comprend des hauts-fonds découvrants situés dans la zone du récif de Blenheim. Cette thèse n'a strictement aucun fondement.

Laissez-moi préciser ce qu'est le récif de Blenheim. Le récif de Blenheim est, pour l'essentiel, un récif immergé tant à hautes qu'à basses eaux. Autrement dit, le récif de Blenheim, pour l'essentiel de sa surface, est une formation sous-marine. Dans une étude publiée en 2021 par la Khaled Bin Sultan Living Oceans foundation, le récif de Blenheim est d'ailleurs présenté comme un petit atoll immergé, « a small submerged atoll »[26]. Vous voyez maintenant sur vos écrans, sur l'image de gauche, ce qu'est le récif de Blenheim à marée haute. Vous ne voyez rien que du bleu, c'est normal. C'est la manière dont on représente la mer sur ce type de croquis.

Je sais bien, Monsieur le Président, que la partie mauricienne préfère décrire le récif de Blenheim « au niveau moyen de la mer » – « at mean sea level »[27]. Ce concept de « niveau moyen de la mer » a beaucoup été entendu lundi dernier dans cette salle[28], comme s'il était pertinent aux fins de l'application de la Convention des Nations Unies sur le droit de la mer. Il ne l'est pas. Comme le tribunal arbitral dans l'affaire de la *Mer de Chine méridionale* l'a constaté :

> *(Continued in English)*
> Mean sea level is not a high-water datum, and this therefore offers no assistance in determining the appropriate datum for 'high tide' for the 'purposes of articles 13 and 121.'[29]

(Reprend en français) Je répète donc que, à marée haute, au sens de l'article 13 de la Convention, le récif de Blenheim, c'est donc bien ce que vous voyez sur la gauche de l'écran. La mer. À marée basse, comme cela apparaît sur l'image de droite, une très faible surface du récif de Blenheim affleure, pour former une série de ce que la Convention appelle de manière générique des « hauts-fonds découvrants ». À en croire le « Geodetic Survey of Blenheim Reef » produit par Maurice dans sa réplique, la description de ce qui vient d'apparaître sur la droite de votre écran serait la suivante :

(Continued in English)
> a low tide elevation with sizeable areas of drying reefs found primarily along the eastern, northern, and western flanks of the Blenheim's most seaward perimeter.[30]

(Reprend en français) Cette description est à la fois inexacte et dénuée de pertinence. Elle est inexacte parce que, en premier lieu, le récif de Blenheim, en droit, n'est pas « un haut-

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[26] Khaled bin Sultan Living Oceans Foundation, « Global Reef Expedition: Chagos Archipelago », 24 février 2021, p. 22 <https://www.livingoceansfoundation.org/wp-content/uploads/2021/02/Chagos-Archipelago-Final-Report.pdf>, consulté le 18 octobre 2022.
[27] TIDM/PV.22/A28/1, p. 7 (ligne 21) (Dabee).
[28] TIDM/PV.22/A28/1, p. 13 (lignes 14-19, 37) ; p. 14 (ligne 27) (Sands).
[29] *South China Sea Arbitration (Philippines* v. *China),* Award on the Merits, 12 July 2016, p. 134, para. 313.
[30] Ola Oskarsson and Thomas Mennerdahl, Geodetic Survey of Blenheim Reef, 22 February 2022 (RM, Annex 1), p. 3.

fond découvrant ». Comme je l'ai déjà indiqué, le récif de Blenheim, en tant que tel, est, pour l'essentiel, un récif immergé, j'ai dit sous-marin.

Dans la zone du récif de Blenheim émergent à marée basse quelques hauts-fonds découvrants, et, comme les Maldives l'ont indiqué dans la duplique[31] et encore ce matin, il s'agit de 57 différents hauts-fonds découvrants, séparés les uns des autres à marée basse par des espaces de mer.

Pour se convaincre qu'il s'agit en droit de plusieurs hauts-fonds découvrants, pas d'un seul, il convient de se référer à la définition juridique d'un haut-fond découvrant : et on le sait, cette définition nous dit que c'est une élévation naturelle de terrain entourée par la mer, découverte à marée basse et recouverte à marée haute[32]. Donc, en droit, chacune des 57 petites élévations de terrain découverte à marée basse est un seul et unique haut-fond découvrant, car chacune est entourée par la mer à marée basse, ce qui est le seul critère juridique pertinent. Il y a par conséquent des hauts-fonds découvrants dans la zone, pas un seul, contrairement à ce que Maurice essaie apparemment désespérément de vous faire croire.

À cet égard, vous avez entendu lundi Maurice affirmer avec assurance que si plusieurs élévations naturelles de terrain qui se découvrent à marée basse appartiennent au même récif sous-marin, alors il s'agit d'un seul et unique haut-fond découvrant. Non seulement cette affirmation sort elle de nulle part, mais l'article 13 dit exactement le contraire. Cela dit, testons plus avant cette affirmation.

Imaginons qu'une formation comparable au récif de Blenheim que vous voyez représentée à l'écran ne laisse, aux basses eaux, émerger que deux élévations naturelles de terrain, l'une tout au nord, l'autre tout au sud. La distance qui les sépare est d'environ 11 km. Dirait-on que ces deux protubérances que séparent près de 11 km de distance forment un seul et unique haut-fond découvrant ? Bien sûr que non. En irait-il différemment, c'est-à-dire, devrait-on considérer avoir affaire à un seul et unique haut-fond découvrant si la distance entre les deux émergences était plus faible ? Mais quel serait alors le critère ? 5 km ? 3 km ? 500 m ? 50 m ? Peut-être que nos amis de l'autre côté de la barre vous éclaireront sur le chiffre qu'ils lisent, pour leur part, dans l'article 13 de la Convention. Mais, en attendant, chacun aura le loisir de constater que le seul critère qui distingue un haut-fond découvrant d'un autre, c'est le fait que, à marée basse, l'un et l'autre sont séparés par la mer.

Il a également été soutenu, sur un plan plus factuel, lundi, que « la représentation de 57 formations maritimes distinctes est simplement le nombre des parties exposées de la même formation à un certain moment dans le temps. C'est insignifiant. »[33].

La Chambre spéciale notera que nos amis de l'autre côté de la barre ont compté, comme nous, 57 « formations maritimes séparées ». Mais ils vous disent « it is meaningless »[34]. C'est vrai, pour ce qui me concerne. Qu'il y ait 1 ou 57 hauts-fonds découvrants n'a strictement aucun impact sur la construction de la ligne d'équidistance provisoire. À ce titre, c'est un faux débat. Mais si notre contradicteur veut dire par « meaningless » qu'il n'y a pas 57 hauts-fonds découvrants, je ne suis pas d'accord puisque ce décompte a été fait en référence à la situation telle qu'elle existe aux plus basses eaux, c'est-à-dire à la marée astronomique minimale, contrairement, d'ailleurs, à ce qui vous a été indiqué lundi.

Nos contradicteurs ont aussi fait valoir qu'« une autre photo, prise une heure plus tard, révélerait peut-être un nombre différent, plus ou moins »[35]. Bien entendu, la physionomie de la mer change selon les marées, mais ce qui compte est la situation « à marée basse » – comme le dit expressément l'article 13 de la Convention, et c'est cette situation qui fait apparaître

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[31] DM, par. 5 b).
[32] CNUDM, article 13, par. 1.
[33] TIDM/PV.22/A28/1, p. 24 (lignes 21-23) (Parkhomenko).
[34] Ibid.
[35] TIDM/PV.22/A28/1, p. 24 (lignes 23-24) (Parkhomenko).

57 différents affleurements. Et 57, c'est évidemment le maximum puisque la mer ne peut pas descendre plus bas que marée basse – et cette dernière, en ce moment, a plutôt tendance à monter que par le passé.

Et il est vrai que le nombre décroit à mesure que la marée monte, jusqu'à ce qu'il n'y en ait plus aucun puisque, à marée haute, la mer domine complètement la zone comme on l'a vu. Mais cela n'a aucune conséquence sur le fait que, à marée basse, il y a bien 57 différents hauts-fonds découvrants.

La seconde inexactitude de la présentation que Maurice fait du récif de Blenheim est que les zones où apparaissent des hauts-fonds découvrants, visibles seulement à marée basse, ne forment pas de vastes zones. La description faite par le Geodetic Survey est en outre sans pertinence, car le point de savoir si ces hauts-fonds découvrants sont également des récifs découvrants n'a aucune conséquence sur la construction de la ligne d'équidistance provisoire. Cette dernière doit, toujours, se référer à des points de base situés sur le territoire terrestre, ce que ne sont pas des formations recouvertes par la mer à marée haute. En tant que catégorie de hauts-fonds découvrants, les récifs découvrant se singularisent seulement par leurs spécificités géomorphologiques. Or, comme la Cour internationale de Justice l'a indiqué dans l'affaire de la *Délimitation en Mer noire* à propos d'une langue de sable, [l]es caractéristiques géomorphologiques et la nature éventuellement sablonneuse de la péninsule n'affectent pas les éléments de sa géographie physique qui sont pertinents pour la délimitation maritime[36].

Ce qui vaut pour une formation sableuse vaut tout autant pour un récif ou toute autre formation géomorphologique : ses caractéristiques géomorphologiques n'ont aucune pertinence pour la délimitation maritime, qui s'appuie uniquement sur des considérations géographiques.

Monsieur le Président, puisque j'en suis à évoquer les inexactitudes de la présentation que Maurice fait du récif de Blenheim, il est également nécessaire de préciser ici qu'il n'est pas exact, contrairement à ce que Maurice a fait valoir dans son mémoire[37], que les hauts-fonds ou récifs découvrants situés dans la zone du récif de Blenheim font partie de l'atoll de Salomon. La réalité est que les hauts-fonds découvrants dans la zone du récif de Blenheim ne font aucunement partie des îles de Salomon car ils n'y sont pas connectés. Et c'est ici que l'affaire *Qatar c. Bahreïn*, à propos que laquelle nos contradicteurs nous font un bien mauvais procès[38], est pertinente.

La Chambre spéciale se rappellera que dans l'affaire *Qatar c. Bahreïn*, la Cour internationale de Justice s'était spécialement intéressée à Fasht Al Azm, une formation maritime immergée aux hautes eaux mais partiellement émergée à marée basse. Fasht Al Azm apparaît à l'écran en couleur verte. La Cour s'est demandée si cette formation était connectée à l'île la plus proche aux basses eaux, l'île de Sitrah qu'on voit en jaune car, dans ce cas, des points de base auraient pu être posés sur l'extrémité est de Fasht Al Azm. C'était la thèse de Bahreïn. On comprend bien la logique de la chose : si elle était effectivement le prolongement, aux basses eaux, de la terre ferme, la laisse de basse mer de Fasht Al Azm serait alors la laisse de basse mer de la côte de l'île. Si, au contraire, cette formation n'était pas connectée à l'île la plus proche, mais séparée d'elle par un chenal aux basses eaux, étant alors un simple haut-fond découvrant indépendant de l'île, elle ne pouvait servir de point de base. Et telle était la thèse du Qatar.

Tout cela est assez simple, et à vrai dire, et on comprend mal pourquoi l'avocat de la partie mauricienne vous a montré lundi une carte illustrant que Fasht al Azm se trouve à moins

[36] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 105, par. 129.
[37] MM, par. 2.20.
[38] TIDM/PV.22/A28/1, p. 28 (lignes 12-22) (Parkhomenko).

de 12 M du Qatar[39]. C'est vrai, mais le Qatar ne revendiquait nullement Fasht al Azm, qu'il considérait comme un haut-fond découvrant, c'était sa thèse, pour y placer sa ligne de base.

Le Qatar plaidait tout au contraire une délimitation « mainland-to-mainland », une approche à l'égard de laquelle la Chambre spéciale sera sûrement familière et n'avait donc aucunement manifesté l'intention de poser sa ligne de base, aux fins de la construction de la ligne d'équidistance, sur ou à l'extrémité de Fasht el Azm.

Ce que l'on vous a montré lundi est donc dénué de pertinence.

La question qui se posait à la Cour n'était pas de savoir à qui appartient Fasht el Azm. Elle était de savoir si la laisse de basse mer de Fasht el Azm pouvait être considérée comme étant la côte de l'île bahreïnite de Sitrah. Laissez-moi illustrer clairement ce point. Vous voyez sur le croquis, dont j'ai demandé de grossir un aspect, qu'est marqué un chenal entre Fasht Al Azm, en vert, et l'île de Sitrah, en jaune. Le cercle rouge que vous voyez à l'écran a vocation à guider votre regard sur ce chenal.

La Cour avait un doute sur l'existence de ce chenal à marée basse, du moins avant que n'y fusse creusé un chenal artificiel dont elle ne voulait pas tenir compte. Mais ce qui est important pour la présente affaire est qu'elle a considéré que si ce chenal existait aux basses eaux, alors Fasht Al Azm ne pourrait pas être considérée comme faisant partie de l'île. Elle ne serait qu'un haut-fond découvrant, ne ferait pas partie de la côte, et ne pourrait donc supporter un point de base.

La Cour a alors tracé deux lignes, correspondant aux deux hypothèses. Celle où Fasht Al Azm serait connectée à l'île et celle où Fasht Al Azm ne serait pas connectée à l'île. Dans l'hypothèse où Fasht Al Azm serait une partie intégrante de l'île de Sitrah, la ligne médiane tracée par la Cour serait celle que vous voyez maintenant sur une carte qui reproduit finalement celle qui apparaît dans l'arrêt de la Cour. Nous n'avons pas recopié la carte de la Cour, parce qu'elle n'est pas très belle, mais celle-ci en reproduit finalement les éléments.

On voit très distinctement une série de points de base posés sur l'extrémité est de Fasht el Azm, considérée donc ici comme la laisse de basse mer de la côte pertinente, point de base qui permettent de tracer la ligne médiane que l'on voit ici en pointillé.

Selon la Cour, dans l'hypothèse où Fasht al Azm ne serait qu'un haut-fond découvrant, la ligne d'équidistance serait celle que l'on voit à l'écran. On le voit, aucun point de base n'est posé sur Fasht al Azm, disqualifié à ce titre non pas parce que les deux Parties prétendaient y localiser leur ligne de base, puisque seul le Bahreïn avait cette prétention, mais plus simplement parce que c'est un haut-fond découvrant qui ne fait pas partie de la côte de l'île de Sitrah.

C'est cela que les Maldives ont rappelé dans leurs plaidoiries[40]. Et ce qui vaut pour Fasht Al Azm vaut, *a fortiori*, pour le récif de Blenheim. Il est matériellement impossible de considérer que ce qui apparaît à marée basse au récif de Blenheim est connecté d'une quelconque manière à une des îles alentours. L'île la plus proche est à une distance de plus de 10 M.

J'ajoute que, en application de la « jurisprudence Fasht Al Azm » tout comme du simple bon sens, le fait que les différents hauts-fonds découvrants situés dans la zone du récif de Blenheim soient séparés à marée basse par des chenaux, démontre qu'ils ne sauraient être vus comme un unique haut-fond ou récif découvrant. Il y en a bien 57, tous séparés les uns des autres à marée basse par des chenaux. Ils ne sont pas plus connectés entre eux aux basses eaux que ne l'est Fasht al Azm à l'île de Sitrah.

Comme on peut le voir sur le croquis, qui propose, à gauche, un grossissement de la partie sud de l'image de droite, il y a des chenaux de mer aux basses eaux entre les différents hauts-fonds découvrants.

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[39] Dossiers des Juges de Maurice (Parkhomenko-1), figure 25.

[40] DM, par. 28-29.

Monsieur le Président, pour en terminer avec les inexactitudes, du moins en ce qui concerne le récif de Blenheim, qu'il me soit permis de redire également, pour éviter tout doute, que contrairement à ce que Maurice semble comprendre d'une lecture un peu trop superficielle des écritures des Maldives,[41] se référant de manière erronée au paragraphe 64 de la duplique[42], la position des Maldives ne consiste pas du tout à soutenir que les points de base sur les hauts-fonds découvrants au récif de Blenheim, proposés par Maurice aux fins de la délimitation, doivent être rejetés parce que le récif de Blenheim n'est pas entièrement situé dans la limite des 12 M de l'île la plus proche. Pas du tout.

Rien dans les écritures des Maldives ne suggère un tel argument. Les Maldives considèrent que le point de savoir si les quelques hauts-fonds découvrants que je viens de décrire se trouvent totalement ou partiellement à plus ou moins 12 M de l'île la plus proche est sans aucune pertinence afin de déterminer quelles sont les « côtes pertinentes ». La question n'a en fait d'intérêt que pour le calcul de la ligne maximale de la zone économique exclusive mauricienne, point qui sera abordé tout à l'heure par Me Sander.

En résumé, les hauts fonds-découvrants qui se trouvent dans la zone du récif de Blenheim ne sont pas la côte pertinente, qu'ils forment un tout ou pas, et qu'ils soient ou non entièrement dans la limite des 12 M de l'île la plus proche.

Tout ceci relève de l'évidence mais, Monsieur le Président, Madame et Messieurs les juges, depuis sa réplique, Maurice cherche à faire valoir que, puisqu'il est un État archipel, le droit applicable à la délimitation serait spécial[43]. Il prétend, en substance, que les articles 47 à 49 de la Convention auraient pour effet de transformer les hauts-fonds découvrants, susceptibles de servir de support à une ligne de base archipélagique, en territoire terrestre, en île, autrement dit en terre ferme aux fins de la détermination de la côte pertinente dans le cadre de la délimitation du plateau continental et de la ZEE[44]. Et vous avez entendu les mêmes affirmations évidemment lundi.

Péremptoires, après avoir copieusement réprimandé les Maldives pour avoir, selon eux, lu dans tel ou tel article de la Convention ce qui ne s'y trouve pas, nos contradicteurs vous disent : « Un point de base sur un récif découvrant utilisé pour construire une ligne de base archipélagique peut également être utilisé aux fins de la délimitation. C'est ce que dit la partie IV ».[45]

Mais non, ce n'est pas ce que la partie IV dit. Pas du tout. L'article 47 prévoit qu'un « État archipel peut tracer des lignes de base archipélagiques droites reliant les points extrêmes des îles les plus éloignées et des récifs découvrants de l'archipel ».

Maurice prétend que cette disposition donne un statut extraordinaire aux récifs découvrants, les transformant en îles, non seulement pour la formulation des lignes archipélagiques, mais aussi pour la délimitation.

Lundi, vous avez entendu ceci :

> *(Continued in English)*
> Article 47 draws no distinction at all between islands and drying reefs for the purposes of entitlements for delimitation.[46]

(Reprend en français) Avec tout le respect dû, comme on dit en anglais dans un mauvais français, c'est doublement inexact. C'est inexact, en premier lieu, parce que, en réalité, la

[41] TIDM/PV.22/A28/1, p. 24 (lignes 13-14) (Parkhomenko).
[42] DM, par. 64.
[43] RM, par. 2.20-2.52.
[44] RM, par. 2.47-2.49.
[45] TIDM/PV.22/A28/1, p. 40 (lignes 6-8) (Sands).
[46] ITLOS/PV.22/C28/1, p. 40 (lines 7–9) (Sands).

Convention fait une distinction fondamentale entre îles et récifs découvrants. Je sais bien qu'on voudrait, de l'autre côté de la barre, oublier l'article 46 ; mais il est là. L'article 46 dit : « Un archipel est un ensemble d'îles, les eaux attenantes, etc. ». L'article 46 ne dit pas qu'un archipel est un ensemble d'îles et de récifs découvrants.

Par ailleurs, les récifs découvrants, tous, et tout le monde ici semble en être d'accord, sont également des hauts-fonds découvrants. Or, l'article 47, paragraphe 4, précise de manière cristalline que les hauts-fonds découvrants – donc les récifs découvrants, puisque tous les récifs découvrants sont des hauts-fonds découvrants –, ne peuvent être retenus pour tracer les lignes de base archipélagiques que s'ils se situent dans la limite des 12 M de l'île la plus proche, où s'ils supportent certaines installations.

Il en découle que, contrairement à ce que Maurice essaie de vous faire croire, l'article 47 ne dit pas, ni ne suggère, que pour ce qui touche aux États archipels, un récif découvrant est comme une île[47]. Une île, c'est une île. Elle est dotée d'une côte. Elle peut servir de point de base archipélagique sans devoir être à proximité d'une autre île. Un récif découvrant, ce n'est rien d'autre qu'un haut-fond découvrant, qui ne peut être un point de la ligne de base archipélagique que s'il se trouve dans la limite de 12 M d'une île. Et il n'y a rien là de différent de ce que prévoit, en substance, l'article 13, paragraphe 1, de la Convention.

Je n'ignore pas que Maurice s'est beaucoup appuyée sur le fait que le paragraphe 1 de l'article 47 parle de « récifs découvrants », tandis que le paragraphe 4 parle de « hauts-fonds découvrants ». Mais ceci trouve son origine évidente dans le fait que, comme l'a souvent répété mon contradicteur, tout haut-fond découvrant n'est pas un récif découvrant[48]. Le paragraphe 1 est donc volontairement plus limitatif dans sa portée que s'il offrait la possibilité aux États archipels de poser un point de base archipélagique sur des hauts-fonds découvrants de toute nature. Non, dit l'article 47, paragraphe 1 : seuls certains hauts-fonds découvrants sont éligibles, à savoir, ceux que l'on peut aussi qualifier de récifs découvrants. Mais il n'en demeure pas moins, puisqu'un récif découvrant est un haut-fond découvrant, que l'article 47, paragraphe 4, s'y applique pleinement.

Monsieur le Président, du reste, si tel n'était pas le cas, le paragraphe 4 serait dépourvu de tout effet utile puisque, aux termes mêmes de l'article 47, paragraphe 1, les lignes de base droites archipélagiques ne peuvent être tirées qu'en reliant des points extrêmes des îles les plus éloignées et des récifs découvrants. Il n'est donc pas autorisé, ce n'est pas prévu par la Convention, de tracer lesdites lignes droites archipélagiques de ou vers un haut-fond découvrant qui ne serait pas un récif découvrant. Le paragraphe 4 s'applique donc nécessairement aux récifs découvrants, sauf à être privé d'effet utile. Bien entendu, le paragraphe 4 doit avoir un effet utile, et pour qu'il ait un tel effet, il faut nécessairement qu'il s'applique aux récifs découvrants, en tant que hauts-fonds découvrants. Ceci invalide la thèse mauricienne et répond à la question 3 de la Chambre spéciale. Me Sander, cet après-midi, vous en dira un peu plus sur ce point tout à l'heure.

La lecture de la partie IV faite par Maurice est inexacte, en deuxième lieu, parce que l'article 47 ne porte que sur la ligne de base archipélagique. Il ne dit strictement rien de la délimitation, ni des points de base nécessaires à la construction de la ligne d'équidistance provisoire aux fins de la délimitation du plateau continental et de la ZEE. L'article 47 ne dit non seulement rien de la délimitation, mais ne dit pas non plus que les lignes de base archipélagique sont réputées être la côte pertinente à cette fin, contrairement à l'impression que Maurice voudrait faire valoir.

Pourtant, il faut reconnaître que la partie IV sait parler de côte lorsqu'elle entend parler de côte. L'article 49, d'abord, indique que « [l]a souveraineté de l'État archipel s'étend aux

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[47] TIDM/PV.22/A28/1, p. 8 (lignes 27-31) (Dabee).
[48] TIDM/PV.22/A28/1, p. 16 (lignes 22-23) (Sands).

eaux situées en deçà des lignes de base archipélagiques tracées conformément à l'article 47 [...] quelle que soit leur profondeur ou leur éloignement de la côte ». On ne lit pas : « Quelle que soit leur profondeur ou leur éloignement de la ligne archipélagique », mais bien « quelle que soit leur profondeur ou leur éloignement de la côte ». Voici un premier élément de contexte déterminant, qui démontre que la côte, c'est une chose, les lignes de base archipélagiques, c'est autre chose.

L'article 50, ensuite, évoque les eaux intérieures des États archipels, en renvoyant aux articles 9, 10 et 11. C'est un deuxième élément de contexte déterminant. Je rappelle en effet que l'article 11 stipule que les installations permanentes faisant partie intégrante d'un système portuaire qui s'avancent le plus vers le large sont considérées comme faisant partie de la côte. La côte, c'est donc la côte ; ce ne sont pas les lignes de base archipélagiques tracées en conformité avec l'article 47.

Dans la même veine, Maurice fait également grand cas du fait qu'aux termes de l'article 49, l'État archipel exerce sa souveraineté sur les eaux archipélagiques, l'espace aérien, etc.[49] Maurice suggère alors que les eaux archipélagiques doivent être vues comme l'équivalent du territoire terrestre. Mais, aux termes de l'article 2 de la Convention, l'État côtier non archipel exerce sa souveraineté sur sa mer territoriale, l'espace aérien surjacent, le fond des mers et le sous-sol, sans que l'on en déduise que la mer territoriale, c'est le territoire terrestre, ou que sa limite soit réputée être la côte.

L'article 48, sur lequel Maurice s'appuie également, ne fait que dire que la largeur de la mer territoriale, de la zone contiguë, de la ZEE, et du plateau continental, se mesure à partir des lignes de base archipélagiques. Mais cela ne dit strictement rien, ni de ce qu'est la côte aux fins de la délimitation, ni de la délimitation du plateau continental et de la ZEE entre États adjacents ou se faisant face.

Lire quoi que ce soit dans cet article à cet égard reviendrait à en violenter les termes. Les seuls articles qui s'appliquent à la délimitation du plateau continental et de la zone économique exclusive sont les articles 74 et 83 de la Convention. Pas l'article 48. Et les articles 74 et 83 ne font aucune différence selon que la délimitation concerne ou non un ou deux États archipélagiques.

Monsieur le Président, Madame et Messieurs de la Chambre spéciale, sur les bases que je viens d'indiquer, il convient de déterminer les côtes pertinentes aux fins de la présente délimitation, c'est-à-dire celles qui génèrent des droits concurrents. La Chambre spéciale a évidemment retenu des écritures que, en dehors de la question du récif de Blenheim, une autre controverse s'est nouée entre les Parties sur la détermination de leurs côtes respectives « dont les projections se chevauchent »[50].

Pour Maurice, les seules côtes à retenir sont celles qui se projettent de manière frontale dans la zone de chevauchement[51]. Pour les Maldives, au contraire, il faut considérer que la projection des côtes est à la fois frontale et radiale[52]. La polémique a été relancée lundi[53]. Mais il est inutile d'en débattre longuement puisque la question est réglée par la jurisprudence, notamment par l'arrêt fraichement rendu par la Cour internationale de Justice dans l'affaire *Somalie c. Kenya*, où la Cour a déterminé les côtes pertinentes des Parties : « en utilisant des projections radiales qui se chevauchent en deçà de 200 milles marins »[54].

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[49] TIDM/PV.22/A28/1, p. 41 (lignes 38-44) ; p. 42 (lignes 7-13) (Sands).

[50] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009,* p. 97, par. 99 ; *Délimitation maritime dans l'océan Indien (Somalie c. Kenya),* arrêt, 12 octobre 2021, p. 46, par. 132.

[51] RM, par. 2.59-2.61.

[52] DM, par. 70-71.

[53] TIDM/PV.22/A28/2, p. 2 (lignes 32-42) (Reichhold)

[54] *Délimitation maritime dans l'océan Indien (Somalie c. Kenya),* arrêt, 12 octobre 2021, p. 46, par. 137 ; voir aussi *La Barbade c. Trinité-et-Tobago*, sentence, 11 avril 2006, par. 239.

Les côtes pertinentes se présentent donc ainsi. Pour ce qui concerne les Maldives, vous voyez sur vos écrans la figure 20 du contre-mémoire des Maldives[55], qui est une représentation de ses côtes pertinentes qui génèrent des projections, tant frontales que radiales qui chevauchent les projections des côtes des îles chagossiennes. Pour ce qui concerne Maurice, voici maintenant une représentation visuelle de ses côtes pertinentes, que l'on trouve à la figure 21 du mémoire des Maldives[56]. La zone pertinente aux fins de la délimitation des espaces maritimes respectifs dans la limite des 200 M est représentée pour sa part de la manière suivante, et vous l'avez sur vos écrans et également dans la duplique des Maldives.

Je conclus ce point, Monsieur le Président, en soutenant que, dans le cas d'espèce, les côtes pertinentes, telles qu'elles sont définies en droit de la délimitation maritime, n'incluent rien qui se trouve dans la zone du récif immergé du récif de Blenheim. Aucun des hauts-fonds découvrants qui y apparaissent temporairement, à marée basse, avant de disparaître tous les jours sous les eaux, ne saurait jouer le moindre rôle s'agissant de la détermination des côtes pertinentes ; le fait que l'on puisse les qualifier de récifs découvrants n'emporte aucune conséquence à cet égard. Les côtes pertinentes respectives des Maldives sont telles qu'indiquées dans le contre-mémoire des Maldives[57], que je viens de représenter à nouveau. La longueur des côtes pertinentes respectives est de 39,2 km pour ce qui concerne les Maldives, 39,9 km pour ce qui concerne Maurice[58].

Il convient maintenant, c'est le second temps de ma plaidoirie, de tracer la ligne d'équidistance provisoire. Comme on le sait, les Parties ne sont pas d'accord sur la localisation de certains points de base à partir desquels la ligne d'équidistance se construit[59]. Je clarifierai donc la position des Maldives à propos de la proposition faite par Maurice de poser des points de base sur des hauts-fonds découvrants localisés dans la zone du récif de Blenheim, avant de vous montrer ensuite la ligne d'équidistance[60].

Comme je l'ai déjà indiqué, en matière de délimitation du plateau continental et de la ZEE, les points de base posés aux fins de la construction de la ligne d'équidistance provisoire ne peuvent se situer ailleurs que sur la côte pertinente, telle que je viens d'en rappeler la définition et de la définir pour le cas d'espèce. Il n'y a aucun précédent judiciaire qui suggère le contraire. Pour tenter que contourner cet obstacle, Maurice veut à tout prix confondre les points utilisés pour tracer la ligne de base, y compris archipélagique, et les points pertinents aux fins de la délimitation. Mais les points de la ligne de base, y compris archipélagiques, ne sont pas nécessairement les points pertinents en matière de délimitation. C'est ce qu'a jugé le tribunal établi en application de l'annexe VII de la Convention dans l'affaire *Bangladesh c. Inde* :

> *(Continued in English)*
> Low-tide elevations may certainly be used as baselines for measuring the breadth of the territorial sea.
>
> It does not necessarily follow, however, that low-tide elevations should be considered as appropriate base points for use by a court or tribunal in delimiting a maritime boundary between adjacent coastlines. Article 13 specifically deals with the measurement of the breadth of the territorial sea. It does not address the

[55] Contre-mémoire (CMM), p. 61.
[56] CMM, p. 63.
[57] CMM, par. 124,125 et 130.
[58] CMM, par. 155 ; RM, par. 76.
[59] RM, par. 2.53.
[60] DM, par. 19.

> use of low-tide elevations in maritime delimitations between States with adjacent or opposite coasts.[61]

(Reprend en français) Dans l'affaire de la *Délimitation maritime en mer Noire*, la Cour internationale de Justice a également clairement indiqué que :

> La question de la détermination de la ligne de base servant à mesurer la largeur du plateau continental et de la zone économique exclusive et celle de la définition des points de base servant à tracer une ligne d'équidistance ou médiane aux fins de délimiter le plateau continental et la zone économique exclusive entre deux États adjacents ou se faisant face sont deux questions distinctes.
>
> Dans le premier cas, l'État côtier peut déterminer les points de base pertinents conformément aux dispositions de la CNUDM (art. 7, 9, 10, 12 et 15). Il s'agit cependant d'un exercice qui comporte toujours un aspect international. Dans le second cas, celui de la délimitation des zones maritimes concernant deux États ou plus, la Cour ne saurait se fonder sur le seul choix par l'une des parties de ces points de base. La Cour doit, lorsqu'elle délimite le plateau continental et les zones économiques exclusives, retenir des points de base par référence à la géographie physique des côtes pertinentes[62].

Autrement dit, c'est la géographie physique des côtes pertinentes, ce n'est pas la ligne de base, qui commande la localisation des points de base. Le Tribunal du droit de la mer a posé la même jurisprudence dans l'affaire de la *Délimitation dans le golfe du Bengale* : le positionnement des points de base afin d'établir la ligne d'équidistance ne saurait « refaçonner, par voie judiciaire, la géographie physique »[63].

La jurisprudence est à cet égard constante. Elle postule que, contrairement à la ligne de base, qui peut dans certains cas s'appuyer sur des hauts-fonds ou récifs découvrants, les points de base pour la construction de la ligne d'équidistance doivent être situés sur la côte pertinente, et pas ailleurs, car on ne saurait refaçonner la géographie physique.

Dans l'affaire *Nicaragua c. Colombie*, la Cour a encore jugé, dans son arrêt de 2012, qu'il lui revenait de

> tracer une ligne médiane provisoire entre la côte nicaraguayenne et les côtes occidentales des îles colombiennes pertinentes qui lui font face. A cet effet, la Cour doit déterminer les côtes qu'il convient de prendre en compte et, de ce fait, les points de base qu'il y a lieu de retenir aux fins de la construction de la ligne. [...] comme la Cour l'a dit en l'affaire de la *Délimitation maritime en mer Noire*,
>
> > « Dans le ... cas ... de la délimitation des zones maritimes concernant deux Etats ou plus, la Cour ne saurait se fonder sur le seul choix par l'une des parties de [tels ou tels] points de base. La Cour doit, lorsqu'elle délimite le plateau continental et les zones économiques exclusives, retenir des points de base par référence à la géographie physique des côtes pertinentes. » (*Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 108, par. 137.) [64]

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[61] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India),* Award, 7 July 2014, p. 73–74, para. 260.
[62] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009,* p. 61, par. 137.
[63] *Délimitation de la frontière maritime dans le golfe du Bengale (Bangladesh/Myanmar), arrêt, TIDM Recueil 2012*, p. 4, par. 265.
[64] *Différend territorial et maritime (Nicaragua c. Colombie), arrêt, C.I.J. Recueil 2012*, p. 624, par. 200 ; *Délimitation de la frontière maritime dans le golfe du Bengale (Bangladesh/Myanmar), arrêt, TIDM Recueil 2012,* p. 4, par. 264.

Le principe selon lequel le choix des points de base se fait par référence à la géographie physique « des côtes pertinentes » est donc établi au-delà de tout doute. Or, comme je l'ai déjà amplement démontré, aucun des hauts-fonds ou récifs découvrants qui émergent à marée basse dans la zone du récif de Blenheim ne saurait être considéré comme situé sur la « côte pertinente ».

Permettez-moi d'insister sur le fait tout à fait déterminant que la jurisprudence n'a jamais dérogé à ce principe.

À vrai dire, en pratique, la question de savoir si un point de base peut être posé sur un haut-fond découvrant s'est toujours explicitement posée en matière de délimitation de la mer territoriale. La raison évidente de cet état de fait est que le droit applicable à la délimitation de la mer territoriale découle de l'article 15 de la Convention. Il pose la règle tout à fait spécifique selon laquelle, dans sa partie pertinente :

> Lorsque les côtes de deux États sont adjacentes ou se font face, ni l'un ni l'autre de ces États n'est en droit, sauf accord contraire entre eux, d'étendre sa mer territoriale au-delà de la ligne médiane – et c'est là que c'est important – dont tous les points sont équidistants des points les plus proches des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale de chacun des deux États[65].

Selon ce texte, la ligne médiane se construit à partir des lignes de base. Or, les lignes de base peuvent être tracées par les États côtiers selon différentes formules, et ces lignes peuvent légalement s'appuyer sur des formations qui ne se trouvent pas nécessairement sur la terre ferme, comme certains hauts-fonds découvrants. La différence avec le droit applicable en matière de délimitation des plateaux continentaux et ZEE, dont j'ai rappelé tout à l'heure la substance, en particulier le fait que les points de base doivent être posés sur les côtes pertinentes, c'est-à-dire sur le territoire terrestre, est frappante : en matière de délimitation de la mer territoriale, le texte de la Convention dit expressément que la ligne de base joue un rôle, alors que ce n'est précisément pas le cas s'agissant de la délimitation du plateau continental.

Monsieur le Président, il est 12 h 59 à ma montre, qui doit être précise. Je peux parfaitement m'arrêter à ce stade plutôt que de m'embarquer dans un paragraphe suivant, si tel est votre souhait.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Thouvenin.

I am sorry to interrupt you, but we have reached 1 o'clock, so this brings us to the end of this morning's sitting. You may continue in the afternoon. The hearing will be resumed at 3 p.m.

(*The sitting closed at 1 p.m.*)

[65] CNUDM, article 15.

PUBLIC SITTING HELD ON 20 OCTOBER 2022, 3 P.M.

Special Chamber

Present: *President* PAIK; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges* ad hoc OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

For Mauritius: [See sitting of 17 October 2022, 10 a.m.]

For the Maldives: [See sitting of 17 October 2022, 10 a.m.]

AUDIENCE PUBLIQUE TENUE LE 20 OCTOBRE 2022, 15 HEURES

Chambre spéciale

Présents : M. PAIK, *Président* ; MM. JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR *juges* ; Mme CHADHA, *juge* ; MM. OXMAN, SCHRIJVER, *juges* ad hoc ; Mme HINRICHS OYARCE, *Greffière*.

Pour Maurice : [Voir l'audience du 17 octobre 2022, 10 heures]

Pour les Maldives : [Voir l'audience du 17 octobre 2022, 10 heures]

THE PRESIDENT OF THE SPECIAL CHAMBER: Good afternoon. I give the floor to Mr Thouvenin to continue his statement on behalf of Maldives.

Premier tour : Maldives (suite)

EXPOSÉ DE M. THOUVENIN (SUITE)
CONSEIL DES MALDIVES
[TIDM/PV.22/A28/4/Rev.1, p. 1–6]

Monsieur le Président, Madame et Messieurs de la Chambre spéciale, avant la pause je vous expliquais qu'aucune cour et aucun tribunal n'a posé un point de base pour la construction de la ligne d'équidistance sur un haut-fond découvrant. Jamais. Je disais aussi que, en pratique, la question s'était posée essentiellement, et même seulement, à propos de la délimitation de la mer territoriale. Et j'expliquais que ceci s'explique, justement, par le fait que l'article 15 de la Convention dit expressément que la ligne médiane s'établit en relation avec la ligne de base ou les lignes de base et, évidemment, les lignes de base peuvent s'appuyer sur des hauts-fonds découvrants, comme on le sait, on application de l'article 13, paragraphe 1.

J'en étais à ce moment-là, mais j'allais vous dire que, et ceci est remarquable, même lorsqu'ils ont été saisis de la délimitation de la mer territoriale, et en dépit de l'article 15, les juges n'ont jamais accepté de positionner un point de base pour la construction de la ligne médiane de la mer territoriale sur un haut-fond découvrant. Jamais.

J'ai déjà évoqué sur ce point l'affaire *Qatar c. Bahreïn* tout à l'heure ; je n'y reviens pas. L'arbitrage du *Golfe du Bengale* est également éclairant. Le Tribunal a jugé qu'une formation maritime, dont il n'était pas certain qu'il s'agissait d'un haut-fond découvrant ou d'un récif immergé en permanence, mais qui se trouvait très proche des côtes, était dans tous les cas insusceptible de servir de support à un point de base. La sentence indique de manière on ne peut plus claire :

> *(Continued in English)*
> Breakers observed in that area did signal the existence of a feature, although it was not apparent whether the feature was permanently submerged or constituted a low-tide elevation. In any event, whatever feature existed could in no way be considered as situated on the coastline, much less as a "protuberant coastal point", to use the expression of the International Court of Justice. In the opinion of the Tribunal, South Talpatty/New Moore Island is not a suitable geographical feature for the location of a base point.[1]

(Reprend en français) Dans l'affaire de la *Délimitation maritime en mer noire,* la Cour internationale de Justice avait été très claire quant aux critères auxquels l'extrait de la sentence dans l'affaire du *Golfe du Bengale* que je viens de citer fait référence : dans tous les cas, les points de base, je le répète, doivent se situer sur les côtes pertinentes. Au paragraphe 117 de son arrêt, la Cour indique – j'en cite une partie :

> Il convient de tracer la ligne d'équidistance et la ligne médiane à partir des points les plus pertinents des côtes des deux États concernés [...]. Le tracé ainsi adopté est largement fonction de la géographie physique et des points où les deux côtes s'avancent le plus vers le large.[2]

Au paragraphe 127, la Cour a encore insisté sur le fait que :

> [à] ce stade du processus de délimitation, la Cour identifiera le long de la côte ou des côtes pertinentes des Parties les points appropriés [...]. Les points ainsi retenus

[1] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India),* Award, 7 July 2014, p. 4, para. 261.
[2] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009,* p. 101, par. 117.

> sur chaque côte auront, sur la ligne d'équidistance provisoire, un effet tenant dûment compte de la géographie.[3]

Seules les côtes peuvent accueillir des points de base. Encore récemment, je l'ai déjà brièvement évoqué, dans l'arrêt *Somalie c. Kenya*, la Cour internationale de Justice a refusé de positionner des points de base sur des hauts-fonds découvrants. On vous a dit lundi que la Cour a pris cette décision pour éviter de donner trop d'effet à de petites formations maritimes ayant un effet disproportionné sur la ligne[4]. C'est vrai, c'est ce que la Cour a dit. Mais elle ne l'a dit qu'à propos de la délimitation de la mer territoriale.

Il y a deux choses remarquables qui en découlent. Premièrement, alors même que la Somalie était en droit de prétendre que sa ligne de base passe par le haut-fond découvrant en cause, et alors même que l'article 15 de la Convention dispose que c'est à partir de la ligne de base que la ligne médiane se calcule, la Cour n'a tenu aucun compte de ce haut-fond découvrant situé pourtant à moins de 12 M de la côte.

Deuxièmement, au moment de choisir les points de base pour la délimitation du plateau continental et de la ZEE, dans un exercice séparé de celui fait par la Cour à propos de la délimitation de la mer territoriale, la Cour n'a même pas jugé nécessaire d'expliquer pourquoi elle ne retenait pas le haut-fond découvrant proposé par la Somalie, considérant, par un silence très éloquent, la proposition sans aucune pertinence.

Je note en passant que la Somalie prétendait, comme nos collègues de l'autre côté de la barre, qu'il fallait s'en remettre au logiciel CARIS LOT[5], ce que la Cour, plus au fait du droit que le logiciel CARIS LOT, n'a évidemment pas fait s'agissant du haut-fond découvrant.

Dans sa réplique[6], et lors de son premier tour de plaidoiries orales, Maurice a cherché refuge dans l'arbitrage *La Barbade c. Trinité-et-Tobago* alors que, dans cette affaire, il n'était nullement question de hauts-fonds découvrants. Pour que la Chambre en soit bien convaincue, voici les images des formations maritimes en cause. Sur l'écran vous voyez les points de base T1, T2, T3, T4. Voici maintenant une carte marine montrant précisément où sont posés les points T1 (à l'est), T2, T3, T4, en remontant par le nord. Vous voyez maintenant à l'écran un extrait agrandi de la carte que je viens de projeter avec le point T4 qui est représenté ici. On est sur le point T2 et T3 ici, on va montrer le point T4.

Je passe très vite, la chose ne pose aucun problème. Les points posés par le Tribunal dans cette affaire aux fins de la délimitation sont tous posés sur des îles. Pourtant, lundi, l'avocat de Maurice vous a tenu le raisonnement suivant : peu importe qu'il y ait eu ou non un récif découvrant dans cette affaire. Comme les points de base pour la construction de la ligne d'équidistance provisoire retenus par le Tribunal arbitral correspondaient aux points de base de la ligne de base archipélagique de la Trinité-et-Tobago, il faut conclure que si cette ligne archipélagique avait été tracée par la Trinité-et-Tobago en utilisant un récif découvrant, alors le Tribunal aurait automatiquement retenu ce récif découvrant comme point de base aux fins de la délimitation. Et notre contradicteur de suggérer que, comme lui devant vous, les arbitres dans cette affaire considéraient nécessairement qu'en vertu de l'article 47, un récif découvrant, c'est comme une île aux fins de la délimitation.

Monsieur le Président, Madame et Messieurs les juges, ce sont là des conjectures que Maurice saura d'autant moins prouver que : i) il n'y avait pas de récif découvrant en discussion dans cette affaire ; ii) aucune des Parties, dans cette affaire, n'a prétendu qu'en vertu de l'article 47, un récif découvrant, c'est comme une île ; et iii) le tribunal n'a certainement pas considéré que la ligne de base archipélagique s'imposait à lui s'agissant du choix des points de

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[3] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009,* p. 105, par. 127.
[4] TIDM/PV.22/A28/1, p. 30 (lignes 10-17) (Parkhomenko).
[5] *Délimitation maritime dans l'océan Indien (Somalie c. Kenya),* arrêt, 12 octobre 2021, p. 51, par. 143.
[6] RM, par. 2.50-2.52.

base. Mon contradicteur semble penser que le paragraphe 333 de la sentence arbitrale lui donne raison[7]. Mais c'est le paragraphe 334 qui tranche la question :

> *(Continued in English)*
> [B]aselines [, which] are only a method to facilitate the determination of the outer limit of the maritime zones in areas where the particular geographical features justify the resort to straight baselines, archipelagic or otherwise.[8]

(Reprend en français) Cet arbitrage ne soutient donc en rien la thèse mauricienne. Pas davantage d'ailleurs que cette autre tentative fondée sur l'arrêt de 2022 rendu dans la deuxième affaire *Nicaragua c. Colombie*. Triomphants, nos contradicteurs vous ont dit, lundi, que l'arrêt de 2022 démontre que si la Cour de Justice a jugé que la qualité d'île du récif d'Édimbourg n'avait pas été démontrée, elle a pourtant en 2012 :

> *(Continued in English)*
> placed a base point on the same low-tide elevation for delimitation purposes, and used it to construct the provisional equidistance line between Nicaragua and Colombia.[9]

(Reprend en français) Monsieur le Président, pour la bonne tenue du dossier, je note une information factuelle intéressante, et inédite, dont mon contradicteur, apparemment très bien informé, serait aimable de donner la source puisqu'il en fait état[10] et en tire avantage devant vous, à savoir que le récif d'Édimbourg est un haut-fond découvrant.

Cette information ne figure pas au dossier de la présente affaire, et, à ma connaissance, elle n'est pas non dans le domaine public. Ce que nous savons de la lecture de l'arrêt de la Cour est simplement ce que la Cour a jugé, à savoir que le Nicaragua n'avait pas prouvé devant elle que le récif d'Édimbourg était une île[11]. Peut-être est-ce une île, peut-être pas. Peut-être est-ce un haut-fond découvrant, peut-être n'est-ce même pas découvrant. L'arrêt ne dit rien d'autre. Alors, puisque nos contradicteurs livrent devant vous l'information qu'ils jugent clé pour leur thèse, selon laquelle le récif d'Édimbourg est bel et bien un haut-fond découvrant, il leur faut donner leur source. À moins que l'affirmation ne repose sur rien, mais je n'anticipe pas ce qui sera dit après-demain, nous verrons bien.

Mais supposons que le récif d'Édimbourg soit un haut-fond découvrant, pas une île. Alors pourquoi la Cour y a-t-elle posé un point de base pour la ligne d'équidistance provisoire ? La petite histoire du récif d'Édimbourg vous le fera comprendre. Dans l'affaire *Nicaragua c. Honduras*, le Nicaragua était parvenu à convaincre la Cour que le récif d'Édimbourg, à environ 20 M de ses côtes, était une île. Durant les plaidoiries, le Honduras fit valoir des doutes[12]. Mais, ne pouvant prouver le contraire, il avait rendu les armes et convenu que, dans le doute, il fallait concéder au Nicaragua l'existence de cette île. Sur cette base, la Cour attribua au récif d'Édimbourg la qualité d'île, dotée d'une mer territoriale[13], et traça la délimitation maritime entre le Nicaragua et le Honduras en tenant dûment compte de ce qu'on lui avait présenté comme étant une île.

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[7] ITLOS/PV.22/C28/1, p. 40 (lignes 27-28) (Parkhomenko)
[8] *Barbados* v. *Trinidad and Tobago,* Award, 11 April 2006, p. 102, para. 334.
[9] ITLOS/PV.22/C28/1, p. 29 (lignes 23-25) (Parkhomenko).
[10] Ibid.
[11] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie),* arrêt du 21 avril 2022, p. 86, par. 251.
[12] *Différend territorial et maritime (Nicaragua c. Colombie),* duplique du Honduras, par. 6.27.
[13] *Différend territorial et maritime (Nicaragua c. Colombie), arrêt, C.I.J. Recueil 2012,* par. 262, 299, 303, 307, 320, 362.

Par la suite, dans la première affaire *Nicaragua c. Colombie*, celle conclue par un arrêt de 2012, la Colombie n'avait pas songé à remettre en cause la qualité d'île déjà reconnue par la Cour au récif d'Édimbourg en 2007. Le Nicaragua s'en remettait apparemment lui aussi au jugement de la Cour. C'est sur cette base que la Cour jugea une fois encore que le récif d'Édimbourg était une île, et, dès lors, elle considéra approprié, parce que c'était une île, du moins le croyait-elle, d'y poser un point de base pour l'établissement de la ligne d'équidistance provisoire.[14]

Dans la seconde affaire *Nicaragua c. Colombie*, celle conclue par un arrêt de 2022, la Colombie avait entendu regarder de plus près si, comme la Cour l'avait indiqué depuis 2007, le récif d'Édimbourg était vraiment une île. La Cour rappela que

> dans son arrêt de 2012, alors qu'elle procédait au tracé d'une ligne d'équidistance provisoire, elle a désigné le « récif d'Édimbourg » au nombre des îles situées au large de la côte du Nicaragua [...], et y a placé un point de base [...].[15]

Mais, ayant entendu les arguments de la Colombie sur l'existence de doutes sérieux sur la qualité d'île du récif d'Édimbourg, arguments apparemment troublants, la Cour jugea

> que le Nicaragua n'a pas démontré, comme il lui incombait de le faire, que cette formation est une île.[16]

Autrement dit, la Cour avait jugé, tant en 2007 qu'en 2012, qu'une formation était une île, et dès lors avait jugé opportun de lui attribuer une mer territoriale, et d'y poser un point de base pour la construction de la ligne d'équidistance provisoire ; tandis que, en 2022, elle jugea que, tout bien réfléchi, il n'était pas du tout certain que cette formation soit effectivement une île.

Peut-être que la Cour s'est trompée en pensant que le récif d'Édimbourg était une île. C'est en tout cas ce que disent nos contradicteurs qui ont affirmé lundi, que c'est un haut-fond découvrant. Information qu'il leur revient de communiquer, puisqu'ils s'appuient sur elle pour convaincre la Chambre spéciale de leurs allégations. Mais c'est bien parce qu'elle croyait que c'était une île que la Cour y a logé un point de base. Dès lors, l'argument clé de lundi de nos contradicteurs, qui a résonné, il faut bien dire, comme un coup de théâtre, car, enfin, Maurice avait apparemment trouvé un exemple de jurisprudence posant un point de base sur un haut-fond découvrant, est donc un parfait contresens.

Monsieur le Président, Madame et Messieurs les juges, dès lors que l'on considère, comme le droit international positif le requiert, qu'aucun des hauts-fonds découvrants qui émergent dans la zone du récif de Blenheim ne saurait servir de support à un point de base aux fins de la construction de la ligne d'équidistance provisoire, ladite construction ne pose aucune difficulté, puisque les Parties s'accordent sur tous les points de base effectivement situés sur les côtes respectives[17]. La ligne construite conformément au droit international a été présentée avec une grande précision dans la duplique des Maldives[18]. Les Maldives maintiennent qu'elle est la seule ligne d'équidistance provisoire qui puisse se tracer dans la présente espèce[19]. Elle se présente de la manière maintenant indiquée sur vos écrans.

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[14] *Différend territorial et maritime (Nicaragua c. Colombie), arrêt, C.I.J. Recueil 2012*, pp. 698 – 699, par. 201.
[15] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie),* arrêt du 21 avril 2022, p. 86, par. 250.
[16] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie),* arrêt du 21 avril 2022, p. 86, par. 251.
[17] DM, par. 2 b).
[18] DM, par. 32.
[19] DM, par. 33.

Monsieur le Président, Madame et Messieurs de la Chambre spéciale, passons maintenant à la deuxième étape de la méthode en trois étapes. Les Maldives considèrent que la ligne d'équidistance provisoire qu'elles proposent ne nécessite aucun ajustement. Je n'ai rien de plus à en dire, d'autant que la Partie adverse semble en convenir. Dans le cas extraordinaire où la Chambre spéciale déciderait que la ligne proposée par Maldives doit être retenue, *quod non*, il y aurait indubitablement des circonstances pertinentes appelant un ajustement de la ligne. C'est que des hauts-fonds ou récifs découvrants, qui sont totalement insignifiants, auraient un effet disproportionné sur la ligne d'équidistance, qui devrait alors être corrigée en annulant tout effet que pourraient produire ces minuscules formations.

Évidemment, tout test de disproportionnalité s'appuie sur des référents. En l'espèce, comme les Maldives l'ont indiqué au paragraphe 152 de leur contre-mémoire, ce qui serait disproportionné serait de faire reposer l'essentiel de la ligne d'équidistance sur les hauts-fonds découvrants proposés par Maurice, revenant ainsi à attribuer près de 4 700 km^2 de ZEE et de plateau continental à de petites formations éparses qui disparaissent sous les eaux chaque jour, plutôt qu'à l'île Addu, aux Maldives.

Je passe au test de proportionnalité, la troisième étape du test en trois étapes. Aucune des Parties n'a fait valoir de difficulté à cet égard. Je passe donc très vite, la Cour est totalement informée sur cette question.

J'en viens donc à ma conclusion, Monsieur le Président, Madame et Messieurs les Juges, elle se résume dans les points suivants : les côtes pertinentes de Maurice ne contiennent rien qui relève de la zone du récif de Blenheim [20] ; aucun point de base aux fins de la construction de la ligne d'équidistance provisoire ne saurait être posé sur un ou des hauts-fonds découvrants situés dans la zone du récif de Blenheim ; la ligne d'équidistance provisoire est telle que présentée par les Maldives dans la duplique[21] ; aucune circonstance pertinente n'appelle un ajustement de cette ligne d'équidistance provisoire.

Par contraste, à supposer, *quod non*, que la ligne proposée par Maurice soit acceptée, le fait les points de base seraient situés sur des hauts-fonds découvrants situés dans la zone du récif de Blenheim, qui sont des formations maritimes insignifiantes, et que ces points auraient un effet totalement disproportionné sur la ligne, devrait conduire à un ajustement de cette ligne afin d'annuler totalement l'effet que lesdits hauts-fonds découvrants produisent sur elle.

La ligne d'équidistance provisoire non ajustée proposée par les Maldives ne génère aucune disproportion manifeste. Elle est donc la ligne de délimitation finale à que les Maldives vous proposent d'adopter.

Monsieur le Président, Madame et Messieurs les Juges, je vous remercie de votre infinie patiente attention et je vous demande de bien vouloir appeler maintenant à la barre Mme Amy Sander.

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

You have the floor, madam.

[20] DM, par. 124, 125 et 130.
[21] DM, par. 82.

STATEMENT OF MS SANDER
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/4/Rev.1, p. 6–12]

Mr President, Members of the Chamber, good afternoon. It is an honour to appear before you and to represent the Republic of Maldives in these proceedings.

Professor Thouvenin has addressed the delimitation of the area where the Parties' respective EEZs and continental shelves within 200 nautical miles overlap. In this Chamber's Judgment on Preliminary Objections it referred also to "an overlap between the claim of the Maldives to a continental shelf beyond 200 nautical miles" (its OCS) and "the claim of Mauritius to an exclusive economic zone in the relevant area".[1] The purpose of this pleading is twofold. First, to confirm how that small area of "overlap" arises. In this part of my speech, I will address the second question posed by the Chamber on Sunday. Secondly, this pleading will confirm the Maldives' position with respect to the delimitation of that area, namely a continuation of the equidistance line.

Turning first then to the small area of "overlap". As the Chamber is aware, in 2010 the Maldives made a submission to the Commission on the Limits of the Continental Shelf.[2] That submission was made in a timely manner, in accordance with the time limits stipulated under UNCLOS, a matter which Professor Mbengue will address. In that submission the Maldives presented its claim as to the outer limits of the continental shelf where it extends beyond 200 nautical miles from its archipelagic baselines. That claim is based on the natural prolongation of its land territory, extending through its continental shelf to the outer limit of that continental shelf.

I refer to the graphic now on your screen. This is a 3D view of the seafloor topography of the relevant area of the central Indian Ocean. The Chamber will see the Maldives Ridge indicated in purple shading to the north, with the Chagos Bank indicated in purple shading to the south. The critical foot of slope point, FOS-VIT31B, is marked with a pink dot, with the extent of the Maldives' claimed OCS extending from that foot of slope point. The Chamber will see a large white arrow is marked on the graphic. That indicates the Maldives' direct and uninterrupted submerged prolongation, running from the island of Malé across the Laccadive Basin, to the north of where the Chagos Trough ends, coming to the foot of slope point.

Mauritius does not dispute that the natural prolongation of the Maldives' land territory extends as claimed by the Maldives.[3] Mauritius has only protested the Maldives' submission, and I quote, "in as much as" the area claimed encroaches on the EEZ of Mauritius.[4] I refer there to its diplomatic note of 2011. That protest relates to the small area of overlap between the Maldives' OCS claim and Mauritius' EEZ identified by this Chamber to which I have referred and which is illustrated by the pink shading on the graphic now on the screen.

If I may pause here to address the Chamber's second question of which there are two parts.

The first part concerns the Parties' position with respect to the question of "whether the Maldives' entitlement to the continental shelf beyond 200 nautical miles from its baseline can be extended into the 200 nautical miles limit of Mauritius". As Professor Akhavan has already

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[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.

[2] "Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Republic of Maldives", 26 July 2010, Doc MAL-ES-DOC (Counter-Memorial of the Republic of Maldives ('MCM'), Annex 47).

[3] MCM, para. 175; Memorial of the Republic of Mauritius ("MM"), para. 4.61.

[4] 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).

noted, the same point, articulated as a matter of general principle under customary international law, has been recently put by the ICJ to the parties in the pending *Nicaragua* v. *Colombia* case.

In any event, turning to the specific facts of this case, the Maldives confirms its position that the Maldives' entitlement to the continental shelf beyond 200 nautical miles from its baseline can be so extended. The foot of slope point on which the Maldives relies in this regard is clearly within its 200 nautical mile limit and located on its side of the equidistance line (properly drawn).

The second part of the Chamber's question concerns the Maldives' statement relating to a "rectification" regarding its CLCS submission, as recorded in the minutes of a 2010 meeting attended by Maldivian and Mauritian officials.[5] The Maldives' position is that this statement is not relevant to the question of whether the Maldives' OCS entitlement can extend into the 200 nautical mile limit of Mauritius.

(a) The minutes simply record that at that meeting the Maldives acknowledged that the EEZ coordinates of Mauritius in the Chagos region had not been "taken into consideration", and that the Minister "assured the Mauritius side that this would be rectified by an addendum".[6]

(b) The minutes provide no information as to what the "rectification" might comprise. Certainly, contrary to what Mauritius indicated on Monday, there is no record of the Maldives recognising as a matter of legal principle that it could not extend its OCS claim into the 200 nautical mile limit of Mauritius.[7]

(c) But of course what is clear as a matter of legal principle is that a statement offered during inconclusive negotiations that fail to resolve interrelated issues cannot be taken into account. As the ICJ has stated, it "cannot take into account declarations, admissions or proposals which the Parties may have made during direct negotiations between themselves, when such negotiations have not led to a complete agreement.[8] And the negotiations did not lead to a "complete agreement", nothing said in the meeting can be taken as reflective, let alone constitutive, of any legal obligation on the part of the Maldives.

(d) Furthermore, to the extent that any rectification had to be made, it would be a rectification in accordance with international law. Indeed this seemed to be acknowledged by Mauritius in its submission on Monday in referring to a "recognition" by the Maldives of what it can and cannot do. And before this Chamber the Maldives has taken into account Mauritius' EEZ coordinates and its delimitation is in accordance with international law, as I will explain.

I turn back now to the small area of overlap between the Maldives' OCS claim and Mauritius' EEZ identified by this Chamber. On the screen now is a "zoomed in" depiction of that area of overlap.

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[5] Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (MCM, Annex 58).

[6] *Ibid.*

[7] ITLOS/PV.22/C28/2, p. 21 (lines 20–26) (Loewenstein); ITLOS/PV.22/C28/2, p. 22 (lines 3–4) (Loewenstein).

[8] *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, at p. 51, cited with approval in *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 253 at p. 270, para. 54.

Looking at that graphic:

(a) The red line depicts the equidistance line running from the left of the screen up to point 46. This was the delimitation line which Professor Thouvenin addressed in his speech.

(b) The red line proceeds northeast from point 46 to point 47 *bis*. This is the outer limit of the Maldives' 200 nautical mile entitlement, and thus the Maldives claims no EEZ beyond this point. So, insofar as their respective EEZs are concerned, this is where the boundary of the Parties lies.

(c) The blue lines running to the point marked as 47 *bis* mark the Parties' respective 200 nautical mile claims, with point 47 *bis* indicating where Mauritius' 200 nautical mile claim meets the Maldives' 200 nautical mile claim.

I pause here to note the location of point 47 *bis*.

Following receipt of Mauritius' Reply, it became clear to the Maldives that the 200 nm line of Mauritius needed to be adjusted southward, for reasons I will now explain.

As noted by Professor Thouvenin, the classification of Blenheim Reef as falling within the definition of "low-tide elevations" in article 13 of UNCLOS is common ground. It is similarly uncontroversial that a drying reef, being that part of a reef "which is above water at low tide but is submerged at high tide"[9] is simply a type of low-tide elevation. And as Professor Akhavan has explained, Mauritius' survey clarified that there are in fact a series of low-tide elevations at Blenheim Reef, not a single drying unit.

The Chamber will recall that UNCLOS article 47, paragraph 4, expressly states that such archipelagic baselines shall not be drawn to and from low-tide elevations except in two circumstances. The first, relating to 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".

The key point here is that Mauritius had (erroneously) drawn its baselines from those low-tide elevations at Blenheim Reef located beyond 12 nm of Île Takamaka. It is 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 — and it is that line that the Maldives has depicted.

Mauritius has advanced the position that with respect to the drawing of archipelagic baselines here, it is not article 47, paragraph 4, of UNCLOS that is relevant but just article 47, paragraph 1.[10] It is recalled that article 47, paragraph 1, provides that an archipelagical State may draw straight archipelagical baselines joining the outermost points of the outermost islands and drying reefs of the archipelago. So, says Mauritius, a State can draw baselines joining drying reefs with a zero distance constraint.

The Maldives rejects that submission, as earlier explained by Professor Thouvenin. It is not what the text of article 47 says. The Virginia Commentary notes what, in the Maldives' submission, is obvious: "drying reefs are 'low-tide elevations' within the meaning of article 13 and would be subject to the related requirement contained in article 47(4)".[11] This authoritative commentary goes on to confirm that article 47, paragraph 4, limits the use of "low-tide elevations" as turning points from which baselines can be drawn, except in the two

[9] MR para. 2.47, citing Myron H. Nordquist, Satya Nandan, and Shabtai Rosenne (eds.), *United Nations Convention on the Law of the Sea 1982: A Commentary*, Volume 1 (1985) ('UNCLOS Commentary'), p. 430.
[10] ITLOS/PV.22/C28/1, p. 34 (lines 18–26) (Sands).
[11] UNCLOS Commentary, p. 430 (para. 47.9(b)).

circumstances stated therein to which I have referred; and it concludes: "This provision [article 47(4)] is applicable to the 'drying reefs' referred to in paragraph 1."[12]

The mere fact that "drying reef" is a term referred to in article 47, paragraph 1, does not and cannot have a "strikethrough effect" with respect to article 47, paragraph 4, in circumstances where the features at issue are clearly low-tide elevations.

Turning back to the graphic depicting the small area of overlap, I have just addressed the fact that point 47 *bis* indicates where Mauritius' 200 nm claim meets the Maldives' 200 nm claim. We also see the Maldives' OCS claim beyond Mauritius' 200 nm limit is depicted in the pale pink shading in the north-east of the figure. So it is the purple shading that denotes the area of overlap identified by this Chamber in its preliminary objections judgment i.e. the overlap between the claim of the Maldives to an OCS and Mauritius' claim to an EEZ. I note for completeness that it is implicit in that Chamber's finding that Mauritius has a continental shelf claim in this purple area of overlap.[13] This purple area comprises just 516 square kilometres — about two-thirds the size of Hamburg; and it is to the delimitation of that purple area that I now turn.

The Maldives' position is that the Chamber should simply continue a directional equidistance line to delimit that area of overlap.[14]

This directional equidistance line is depicted on the graphic now on the screen.

Looking at this graphic: the equidistance line up to point 46, as addressed by Professor Thouvenin, is depicted by the solid red line, with the dashed red line showing its continuation through the area of overlap that I am discussing. The Chamber will see that the line continues in yellow dash further to the east. For the avoidance of doubt, the purpose of that yellow dashed lined is simply to show how the proposed delimitation line, as a series of geodetic lines, was constructed with reference to a point "c" which is equidistant between the Parties' coasts. The yellow triangular shading denotes an area of some 272 square kilometres where the Maldives' OCS claim falls to the southern side of the equidistance line. On the Maldives' proposed delimitation, this yellow area of continental shelf would be granted to Mauritius.

The "grey area" denotes a very small area of some 244 square kilometres north of the equidistance line where following the delimitation, the Maldives has continental shelf rights (by virtue of its OCS claim) and Mauritius has EEZ rights. So it is an area on the Maldives' side of the delimitation line, located beyond 200 nm from the coast of the Maldives but within 200 nm from the baselines (validly drawn) of Mauritius.[15] Consistent with the approach taken in the *Bay of Bengal* cases, in such circumstances a grey area may be identified.[16]

That the equidistance line should be continued through this small area of overlap is supported by the following four factors.

First, the Parties have expressly and repeatedly agreed that the three-step methodology should apply through the vast majority of the overlapping area within this Chamber's jurisdiction to delimit. Specifically, they have agreed that an equidistance line should be used with respect to the delimitation of the Parties' maritime claims to an EEZ and their continental shelves within 200 nm.[17] And of course the delimitation of the additional area of overlap I am addressing is still within Mauritius' EEZ and continental shelf within 200 nm.

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[12] UNCLOS Commentary, p. 431 (para. 47.9(f)) (emphasis added).

[13] *Barbados* v. *Trinidad and Tobago*, Award, 11 April 2006, para. 266.

[14] MCM, paras. 10, 178, 185.

[15] MCM, para. 188.

[16] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, paras. 471–476; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, Award, 7 July 2014, paras. 507–508.

[17] MM, paras. 1.13, 4.2; MCM, paras. 9, 113, 184; Reply of the Republic of Mauritius ("MR"), para. 1.3a; Rejoinder of the Republic of the Maldives ("MRej"), paras. 2(a), 77.

Second, there is no basis in UNCLOS article 83 (concerning delimitation of the continental shelf) for a distinction to be made between delimitation of the Maldives' continental shelf within and beyond 200 nm.[18] And there is in law only a single continental shelf, a point Mauritius has itself recognized as "axiomatic".[19]

Third, continuation of the equidistance line reflects the fact that there is, in practice, a presumption that the three-step methodology will apply to maritime delimitation grounded in the fundamental imperative to ensure transparency and predictability. As the Court framed it in *Somalia* v. *Kenya*, the question is whether there is a "reason in the present case to depart from its usual practice of using the three-stage methodology to establish the maritime boundary … in the exclusive zone and on the continental shelf".[20] There is no such reason here.

The Maldives of course recognizes that Mauritius has advanced certain additional arguments as to why the continuation of the equidistance line pursuant to the three-step methodology should not apply beyond 200 nm with specific reference to its claimed OCS which Mauritius says results in significant area of overlap between the Parties' respective OCS entitlements. Those arguments will be addressed in my submission tomorrow. I note here that the Maldives' firm position is that the OCS claim of Mauritius is beyond this Chamber's jurisdiction and otherwise inadmissible, so the present discussion is therefore only considering the small area of overlap identified by this Chamber between the Maldives' OCS and Mauritius' EEZ.

Finally, the Chamber will have noted that it is a directional line that is indicated, as opposed to dictating a fixed end point. This is so the delimitation does not presuppose the precise delineation of the Maldives' OCS claim. Such delineation must await the recommendation by the CLCS, which is yet to be issued, a point relating to the role of that Commission which I will also elaborate in my second speech tomorrow.

But in circumstances where there is no significant uncertainty with respect to an entitlement, ITLOS has recognized that the fact its entitlement's precise limits are not fixed is no bar to proceeding with a delimitation pursuant to the three-step methodology, including in relation to the third step of the disproportionality assessment.[21] Mathematical precision is not required in this regard,[22] and it is clear that no such significant disproportion arises here.[23] Professor Thouvenin noted that there was no gross disproportionality arising from the equidistance line up to point 46, and the continuation of that line through this additional small area of overlap does not change that assessment.

With many thanks for your kind attention, that concludes my present submission. I ask that you call Ms Shaany to the podium.

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

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[18] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021, para. 121; *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 454.

[19] MM, para. 4.67; MCM, para. 179.

[20] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021, para. 131.

[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. 534.

[22] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, at p. 123, para. 477; *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 3 at p. 69, para. 193; *Barbados* v. *Trinidad and Tobago*, Award, 11 April 2006, para. 238.

[23] *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, 23 September 2017, para. 534.

STATEMENT OF MS SHAANY
REPRESENTATIVE OF THE MALDIVES
[ITLOS/PV.22/C28/4/Rev.1, p. 12–15]

Mr President, members of the Special Chamber, it is an honour to appear before you and to represent the Maldives in this matter.

You have now heard the case advanced by the Maldives on what it considers should be the end of the matter, namely the delimitation of the Parties' exclusive economic zones and continental shelves within 200 nm and the additional small area of overlap between the EEZ of Mauritius and the outer continental shelf of the Maldives. With respect to the new claim to an outer continental shelf which Mauritius raised for the first time in the Memorial, the Maldives is firmly of the view that this claim is outside of this Chamber's jurisdiction and is otherwise inadmissible.

This is therefore an apposite juncture for the Maldives to make certain observations, however, in the spirit of transparency and with a view to setting the record straight, as regards its cooperation in the survey conducted by Mauritius earlier this year.

It was suggested by Mauritius on Monday that there has been a "change of tone" on the part of the Maldives in relation to cooperation with the survey.[1] In fact, there has been no change — only a consistent and good faith spirit of cooperation.

The Maldives was disappointed to be informed in the Reply filed by Mauritius that Mauritius sought to recover compensation of some half a million euros towards the costs of the survey.[2] This claim was advanced on the basis that the Maldives allegedly failed to cooperate in facilitating the departure of the yacht chartered by Mauritius for the survey from the Maldivian port at Gan.[3] The Maldives welcomes the decision by Mauritius to withdraw that unwarranted claim. Unfortunately, the withdrawal was made only shortly before the hearing, and long after the Maldives has expended significant resources responding to that claim. In any event, at this point, the purpose of this speech is simply to explain the good faith efforts on the part of the Maldives to cooperate with Mauritius in relation to this survey, with reference to the contemporaneous written evidence.

The Chamber will recall that Mauritius commenced these proceedings back in June 2019. The Chamber will also recall that in its Memorial in 2021, Mauritius had indicated its intention to conduct a survey in order "to confirm with precision the coordinates of base points along the low-water line of Blenheim Reef".[4]

The Maldives heard nothing further until, on 3 December 2021, after submission of the Counter-Memorial by the Maldives, the Permanent Mission of the Republic of Maldives to the UN in New York received a note from Mauritius informing it that Mauritius "will" carry out an "on-site scientific survey" of "Blenheim Reef, Salomon Islands and appurtenant waters".[5] In that note, Mauritius "expresse[d] the hope that … the Republic of Maldives would facilitate the departure of the vessel and Mauritius team from, and their return to, Gan when it undertakes the survey".

The Maldives responded to this request for assistance with respect to the survey within what was clearly a reasonable time and certainly as soon as was reasonably practicable. After receiving the original notification by Mauritius of its intention to conduct a survey, the

[1] ITLOS/PV.22/C28/1, p. 11 (line 7) (Sands). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.
[2] Reply of the Republic of Mauritius, ("MR"), Submission, p. 56.
[3] MR, Chapter 1, part II, pp. 4–10.
[4] Memorial of the Republic of Mauritius ("MM"), para. 1.11.
[5] Note Verbale from the Republic of Mauritius to the Republic of Maldives, 1 December 2021 (Rejoinder of the Republic of the Maldives ("MRej"), Annex 21).

Maldives conducted the normal process of sharing the request from Mauritius with the relevant government ministries with a view to coordinating a response, including compiling information on the precise course of action required to facilitate the departure of the survey vessel and its team from Gan. This was not an entirely straightforward issue. Gan is not an official sea port. This means that, as a matter of Maldivian law, it is necessary for a foreign vessel to obtain certain permits and approvals before docking there.[6]

By 13 January 2022 the Maldives had expressly confirmed its willingness to "accede to Mauritius' request" regarding facilitation of the departure of the vessel and the team from — and their return to — the port of Gan.[7] It has repeated that spirit of cooperation most recently in a letter dated 22 August 2022 from the President of the Maldives, directly inviting the Prime Minister of Mauritius to use the port of Gan for future visits to Chagos if he so wishes.

Mauritius sent a letter to the Special Chamber on 13 January 2022 indicating that the Maldives had "not yet confirmed its willingness to facilitate Mauritius' on-site survey".[8] In fact, when the Maldives received this letter from Mauritius to the Chamber it had already sent its response to Mauritius, to which I have referred. The Maldives hoped that constructive engagement would then follow.

Mauritius, however, raised two complaints to the Chamber,[9] neither of which had any foundation. It is those two complaints which I wish to address now to avoid any misunderstanding.

The first purported basis related to the explanation by the Maldives that Mauritius would need to procure the "requisite permits and approvals" in order for its survey vessel to dock at Gan and its request that Mauritius inform it in advance of the specific individuals who would attend the survey and their technical role. This, so Mauritius says, constituted an unreasonable "condition".[10] However, in its first letter of December 2021, Mauritius itself had expressly stated that it would provide the Maldives with "all relevant and necessary information" for the conduct of the survey. The request which the Maldives made for such information simply reflected the requirements of domestic law. It was set out in a spirit of full transparency to assist progression of the relevant authorisations. It was of course entirely consistent with the right of the Maldives, as a sovereign State, to regulate entry to its sea ports in accordance with its internal laws. In any event, to avoid any further escalation, the Maldives promptly sent a further letter – on 20 January 2022 – confirming that "lawyers and government officials whose presence is necessary on the survey were clearly included"[11] in the individuals it would allow to pass through Gan.

The second purported basis of the complaint by Mauritius concerned the request of the Maldives that, prior to conducting the survey, Mauritius ensured that the "necessary clearances are acquired from the United Kingdom".[12] The Maldives, continuing its spirit of good faith and transparency, clearly set out the reason for this request – namely its wish "to avoid any disruptions that might have negative implications for both countries".[13] The Maldives of course

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[6] MRej, para. 145(a).
[7] Letter from the Republic of Maldives to the Republic of Mauritius, 13 January 2022 (MRej, Annex 23).
[8] Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 12 January 2022, communicated to the Maldives by letter from the Registrar of the International Tribunal for the Law of the Sea, 13 January 2022 (MRej, Annex 22).
[9] Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 17 January 2022 (MRej, Annex 26); Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 8 February 2022 (MRej, Annex 28).
[10] MR, para. 1.13.
[11] Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 20 January 2022 (MRej, Annex 27).
[12] Letter from the Republic of Maldives to the Republic of Mauritius, 13 January 2022 (MRej, Annex 23).
[13] *Ibid.*

takes note of this Chamber's Judgment at the Preliminary Objections stage. However, as the Chamber is aware, the reality on the ground is that the United Kingdom continues to administer the territory.

Evidently, Mauritius was also acutely aware of this reality and the need for precautions. Indeed, Mauritius had previously explained that the United Kingdom's continuing administration of the Chagos Archipelago was the precise reason why it had not previously conducted a survey.[14] Further, Mauritius had itself engaged in direct communications with the United Kingdom, securing express assurances that its authorities would not impede the survey it intended to conduct in February 2022.[15]

In summary, it is clear from the relevant contemporaneous record that the Maldives was indeed entirely correct in its Rejoinder when it stated that it had fully cooperated in good faith with Mauritius with respect to its survey.[16] Again, the Maldives welcomes the spirit of cordiality which now prevails between the Parties on this matter.

I conclude by noting an important broader context to this issue.

Mr President, the Maldives is a small island developing State. It faces existential threats posed by rising sea levels induced by climate change. Resources to spend on litigation are limited.

The Maldives has at all times acted in good faith in its relations with Mauritius with whom it has always had strong bilateral relations. More recently, it has expressed its willingness to vote in favour of the General Assembly resolution concerning the ICJ's advisory opinion on the *Chagos Archipelago*, in view of the pending conclusion of these proceedings. It has also expressed its willingness to facilitate the visit of the Prime Minister of Mauritius to the Chagos Archipelago, having earlier done the same in respect of the survey. It has approached all aspects of these proceedings in good faith.

Mr President, Members of the Special Chamber. I thank you for your kind attention and for your courtesy in the conduct of these proceedings. May I ask that you call Ms Shabeen to address the Chamber.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Shaany.

I now call on Ms Shabeen to make her statement.

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[14] MM, para. 2.25.

[15] MRej, footnote 334, citing Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 12 January 2022, communicated to the Maldives by letter from the Registrar of the International Tribunal for the Law of the Sea, 13 January 2022 (MRej, Annex 22), "'I will be free': excitement grows as cruise ship nears Chagos Islands", *The Guardian*, 11 February 2022 <https://www.theguardian.com/world/2022/feb/11/i-will-be-free-excitement-grows-as-cruise-ship-nears-chagos-islands> accessed 5 August 2022 (MRej, Annex 33).

[16] MRej, para. 149(iii).

STATEMENT OF MS SHABEEN
REPRESENTATIVE OF THE MALDIVES
[ITLOS/PV.22/C28/4/Rev.1, p. 15–20]

Mr President, distinguished Members of the Special Chamber. It is an honour to appear before you today on behalf of the Republic of Maldives.

The claim before the Chamber concerns the Parties' entitlement to maritime spaces in the Indian Ocean. The Maldives, as an island nation, is critically dependent on the resources in the waters surrounding its territory. Aside from its cultural importance as an ancient seafaring nation, the ocean is crucial for the economy, the environment and the security of the Maldives. In this speech, I will address the Chamber on the relationship which the Maldives has with the marine environment: both its dependence on the ocean, and its sincere commitment to acting as a custodian of this precious resource by adopting sustainable practices. I will also address the recent proposal by Mauritius – welcomed by the Maldives – to create a multi-purpose Marine Protected Area ("MPA") around the Chagos Archipelago.

As the Special Chamber is well aware, the Maldives is an archipelagic nation with some 1,190 coral islands.[1] Its population is scattered across some 200 of those islands.[2] To put the ocean's importance to the Maldives into perspective, one need only consider the following. The total land area across all of the islands of the Maldives is some 227 square kilometres. However, this land territory is spread over a total maritime area within the archipelagic baselines drawn by the Maldives of more than 73,000 square kilometres.[3] These areas are shown in the figure now on the screen.

Given the basic geography of the Maldives, it is of course not surprising that the ocean is an integral part of the life of the Maldivian people and the economy of our country. Tuna and other fish are one of the staples of the diets of ordinary Maldivians, going back centuries. The country's economy relies heavily on both fishing and ecotourism.[4] Accordingly, the Maldives has an important role – indeed duty – in protecting and sustaining this crucial natural environment.

This duty is of such significance that it is expressly referred to in the Constitution of the Maldives. Article 22 states as: "The State has a fundamental duty to protect and preserve the natural environment, biodiversity, resources and beauty of the country for the benefit of present and future generations."[5]

Other legislation promulgated by the Maldives is equally forceful on this issue. For example, article 1 of the Environment Protection and Preservation Act of the Maldives states: "The natural environment and its resources are a national heritage that needs to be protected and preserved for the benefit of future generations."[6]

These have not been empty words. They have been matched by real-world action on the part of the Maldives to forge a sustainable and responsible fishing industry. The Maldives has already highlighted its leadership in this important area in its written pleadings,[7] and in this speech I wish to refer to just some of the most prominent examples.

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[1] Counter-Memorial of the Republic of Maldives ("MCM"), para. 15.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*, para. 19.
[5] Constitution of the Republic of Maldives, 2008. <http://extwprlegs1.fao.org/docs/pdf/mdv136135.pdf> accessed (MCM, Annex 7), article 22.
[6] Environment Protection and Preservation Act of the Maldives (Law No. 4/93, as amended by Law No. 12/2014) (MCM, Annex 8), article 1.
[7] MCM, paras. 20–22.

The Maldives has enacted a forward-looking Fisheries Act which governs all commercial fisheries.[8] This legislation forbids the use of chemicals, poisons and explosives in fishing.[9] It also prohibits any form of commercial net fishing,[10] which has made the Maldives a world leader in developing highly sustainable pole-and-line and handline techniques for fishing,[11] for which it has been awarded multiple sustainability certifications.[12]

The United Nations Food and Agriculture Organization has recognized the achievements of the Maldives in this area. In 2020, the Organization reported that pole-and-line fishery landed 99 per cent of the total skipjack tuna landings in the waters of the Maldives the previous year, and was also responsible for a significant portion of the total yellowfin tuna catches.[13] It proceeded to note as follows:

> Maldives pole-and-line and handline tuna fishery have minimal impact on the ecosystem. Catch and interactions with Endangered, Threatened and Protected (ETP) species and other species of ecological importance is virtually non-existent.[14]

The Maldives has coupled this action in its domestic laws and practices with leadership in global and regional fora. By way of example, in 2021, the Maldives co-sponsored initiatives at the 25th annual session of the Indian Ocean Tuna Commission to protect the Indian Ocean yellowfin tuna[15] and skipjack tuna.[16]

Climate change has added new urgency to the efforts on the part of the Maldives to protect the marine environment. As the Maldives has emphasized in its response to the International Law Commission's report on sea-level rise, there is a compelling need "for action by the international community" given the "severe impacts of sea-level rise on [small island developing States]".[17]

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[8] Fisheries Act of the Maldives (Act No. 14/2019) <https://www.gov.mv/en/files/fisheries-act-of-the-maldives.pdf> accessed (MCM, Annex 11).

[9] *Ibid.*, s. 27(e).

[10] *Ibid.*, s. 27.

[11] Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, Report of the 23rd Session of the IOTC Scientific Committee, Doc IOTC–2020–SC23–R[E], 4 June 2021 <https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2020-SC23-RE.pdf> accessed (MCM, Annex 13), pp. 68–69.

[12] Marine Stewardship Council, Track a Fishery, "Maldives pole & line skipjack tuna", 29 November 2012 <https://fisheries.msc.org/en/fisheries/maldives-pole-line-skipjack-tuna/> accessed (MCM, Annex 15); Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, "Structure of the Commission" <https://iotc.org/about-iotc/structure-commission> accessed (MCM, Annex 16).

[13] Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, Report of the 23rd Session of the IOTC Scientific Committee, Doc IOTC–2020–SC23–R[E], 4 June 2021 <https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2020-SC23-RE.pdf> accessed (MCM, Annex 13), p. 68.

[14] *Ibid.*, p. 69.

[15] Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, "On an Interim Plan for Rebuilding the Indian Ocean Yellowfin Tuna Stock in the IOTC Area of Competence (Maldives et al)", Doc IOTC-2021-S25-PropF-Rev2[E], 8 May 2021 <https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-PropF_Rev2E_-On_an_interim_plan_to_rebuild_the_yellowfin_tuna_stock_Maldives_et_al-cf_Res19-01_Rev2_0.pdf> accessed (MCM, Annex 17).

[16] Food and Agriculture Organization of the United Nations, Indian Ocean Tuna Commission, "On Harvest Control Rules for Skipjack Tuna in the IOTC Area of Competence (Maldives)", Doc IOTC-2021-S25-PropG_Rev1[E], 8 May 2021 <https://www.iotc.org/sites/default/files/documents/2021/06/IOTC-2021-S25-PropG_Rev1E_-_On_HRC_rules_for_skipjack_tuna_Maldives_et_al_cf_Res16-02_Rev1.pdf> accessed (MCM, Annex 18).

[17] United Nations General Assembly, Sixth Committee, 75th session, 13th plenary meeting, 5 November 2020, Statement of the Maldives on Agenda Item 80: Report of the International Law Commission on the Work of Its

In relation to climate change, the Maldives has again matched words with action. As long ago as 1989 it hosted the inaugural Small States Conference on Sea Level Rise, where 14 small island States signed the Malé Declaration on Global Warming and Sea Level Rise.[18] The following year it established the Alliance of Small Island States ("AOSIS") and then, in 2009, it established the Climate Vulnerable Forum.[19] The Maldives remains deeply concerned about not only its own survival in the face of climate change, but also the fate of other climate-vulnerable States. This led it, in 2019, to present a Climate Smart Resilient Islands initiative before the United Nations General Assembly.[20] The initiative, presented personally by President Ibrahim Mohamed Solih, is designed to provide "a replicable solution to combat climate change and provide sustainable development for Small Island Developing States."[21] He encouraged other small island developing States to adopt parts of the model for themselves.[22]

At the Conference of the Parties to the UN Framework Convention on Climate Change last year, the President of the Maldives called for collective action, noting: "Our islands are slowly being inundated by the sea. … [W]e are determined to be part of global solutions to reverse these trends."[23]

As reflected in that statement of the President, the Maldives is keenly aware that effective responses to climate change rely fundamentally not on the actions of single States but on international cooperation, facilitated by international institutions. In this respect, the Maldives notes the initiative of the Commission of Small Island States on Climate Change and International Law to request an advisory opinion from ITLOS in relation to the protection and preservation of the marine environment. The Agreement establishing the Commission was concluded by Antigua and Barbuda and Tuvalu on 31 October 2021 at COP26 and, since then, the Republic of Palau and Niue have become States Parties, while other AOSIS members have also expressed interest in joining. The Maldives supports such initiatives and looks forward to ITLOS playing an important role in the global response to climate change.

In its Counter-Memorial of 25 November 2021, the Maldives expressed its regret that Mauritius had not, at that time, undertaken any binding commitments concerning protection of the marine environment in and around the Chagos Archipelago. In particular, it had not indicated how it intended to comply with its obligations under article 64 of UNCLOS concerning the conservation and optimum utilization of highly migratory species, including tuna.[24]

Following that expression of concern, on 1 July 2022, at the United Nations Ocean Conference in Lisbon, Mauritius publicly announced its intention to create a Marine Protected Area ("MPA") around the Chagos Archipelago.[25] Naturally, the Maldives welcomes this

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Seventy-Second Session <https://www.un.org/en/ga/sixth/75/pdfs/statements/ilc/13mtg_maldives.pdf> accessed (MCM, Annex 27).

[18] MCM, para. 22.

[19] *Ibid.*

[20] Office of the President of the Republic of Maldives, "Press release: President presents Maldivian 'Climate Smart Resilient Islands Initiative' at UN Climate Action Summit as replicable and sustainable development model for SIDS", 23 September 2019 <https://presidency.gov.mv/Press/Article/22213> accessed (MCM, Annex 31).

[21] *Ibid.*

[22] *Ibid.*

[23] Office of the President of the Republic of Maldives. "President's speeches: Remarks by His Excellency Ibrahim Mohamed Solih, President of the Republic of Maldives at the 26th Session of the Conference of the Parties (COP26) to the United Nations Framework Convention on Climate Change (UNFCCC) held in Glasgow, Scotland", 1 November 2021 <https://presidency.gov.mv/Press/Article/25643> accessed.

[24] MCM, para. 25.

[25] Statement delivered by H.E. Mr. Jagdish D. Koonjul, Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations, during the UN Oceans Conference held in Lisbon, Portugal, 29 June 2022 (Rejoinder of the Republic of Maldives, Annex 6).

development and reiterates its commitment to cooperating with Mauritius with a view to protecting the marine resources of the Indian Ocean.

Based on the available information, the MPA would delimit the Chagos Archipelago region into "conservation units on the basis of a multi-use zoning plan" and "a buffer limit around Diego Garcia will be maintained in view of the security installations there". Furthermore, "[t]he Chagossians … will have a key role to play as the future custodians of the MPA".[26] Most recently, in his letter dated 23 September 2022, responding to the letter of the President of the Maldives dated 22 August 2022, the Prime Minister of Mauritius confirmed his interest "in undertaking joint measures to protect the marine environment of the Archipelago".

The Maldives welcomes these statements by Mauritius, and looks forward to receiving details of its MPA proposal. The Maldives is pleased that Mauritius recognizes the urgent necessity of preventing the catastrophic effects of industrialized fisheries in this fragile eco-system, on which the lives and futures of those with ancestral ties to this region depend.

Mr President, the reality of sea-level rise only increases the imperative for the peoples of small island States to play a more active role in the protection of the marine environment. In this regard, there is considerable State practice and *opinio juris* on the fixing of base lines and maritime zones, irrespective of changes in coastal geography.

In this respect, there are significant recent developments, such as the Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, adopted at the 51st meeting of the Pacific Islands Forum on 6 August 2021.[27]

As small island States, the Maldives and Mauritius have an important role in affirming these principles of international law, and joining forces with a view to a future where they will play a continuing and ever-important role as custodians of these fragile ecosystems. ITLOS would contribute to that future by articulating authoritative statements of legal principles which will help the international community navigate the uncertainties arising from climate change.

Mr President, I am confident that the Special Chamber has well in mind the significance of the present case for the Maldives, given its dependence on the ocean for its people's prosperity and wellbeing; indeed for their survival in the middle of the Indian Ocean.

As I conclude my speech, the Maldives has addressed all aspects of the claim by Mauritius over which the Maldives considers the Special Chamber can and should exercise jurisdiction to delimit the maritime boundary. This is where the matter can and should end.

However, Mauritius also seeks delimitation of what it alleges are the overlapping entitlements of the Parties to a continental shelf beyond 200 nm from their respective coasts. As far as the Maldives is concerned, there are several reasons why this aspect of the claim is beyond the Special Chamber's jurisdiction and is, in any event, inadmissible. The members of the delegation of the Maldives who will now address the Chamber in turn will deal with these matters.

Mr President, I would now ask that you give the podium to Dr Naomi Hart. Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Shabeen.

I now give the floor to Ms Hart to make her statement. You have the floor.

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[26] 2022 United Nations Ocean Conference Side Event "Protecting the Chagos Archipelago: Towards SDG-14, Sustainability and Self-Determination Through a New Marine Protected Area", Organized by the Government of the Republic of Mauritius, 1 July 2022 <https://sdgs.un.org/sites/default/files/2022-07/IBZ_Protecting%20the%20Chagos%20Archipelago-Towards%20SDG-14%2C%20Sustainability%20and%20Self-Determination%20Through%20a%20New%20Marine%20Protected%20Area.pdf> accessed.

[27] Pacific Islands Forum, Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, 6 August 2021 <https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/> accessed (MCM, Annex 29).

STATEMENT OF MS HART
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/4/Rev.1, p. 20–32]

Mr President, distinguished Members of the Special Chamber, it is an honour to appear before you today as Counsel for the Republic of Maldives. I will address the Chamber on Mauritius' claim of entitlement to a continental shelf beyond 200 nm (an "outer continental shelf" or "OCS"), first made in its Memorial in May 2021. Specifically, I will address the Chamber's lack of jurisdiction over this part of Mauritius' claim.

My colleagues will subsequently address the matters which, in addition to this lack of jurisdiction, render Mauritius' OCS claim inadmissible.

The Chamber already held in its judgment on preliminary objections that

> for it to have jurisdiction *ratione materiae* to entertain a case, "a dispute concerning the interpretation or application of the Convention between the Parties must have existed at the time of the filing of the Application."[1]

Those final words are key: the dispute must have crystallized prior to proceedings having commenced.

In the present case, there is one simple and incontrovertible fact which means that Mauritius has not satisfied this mandatory jurisdictional precondition. When Mauritius commenced these proceedings in June 2019, it had never claimed an OCS entitlement which overlapped with the claimed entitlement of the Maldives, and had never – really never – suggested a delimitation line of the kind it now seeks. Plain and simple, there was no disagreement or positive opposition of views on this issue. Instead, as identified by the Chamber in its judgment,[2] the only overlap involving any OCS entitlement was the overlap between the Maldives' claimed OCS and Mauritius' exclusive economic zone ("EEZ") and thus its continental shelf within 200 nm. In defining the dispute before this Special Chamber, that Judgment made no reference to a claim by Mauritius to an OCS – which was natural, as no such claim existed.

That is the beginning and the end of Mauritius' claim for delimitation of the Parties' overlapping OCS claims.

However, after the judgment on preliminary objections, Mauritius has sought to bring an entirely new OCS claim into the proceedings which was never notified to the Maldives, much less the subject of a dispute, prior to the Memorial. It is essential not to lose sight of the magnitude of this new claim. It is a claim for 22,000 square kilometres. It enlarges the area supposedly in play by more than 20 per cent. For more than 10 years, the Maldives claimed this area as part of its own OCS without any competing OCS claim by Mauritius. This new claim is not trivial. It is not subsumed or implicit within the dispute which the Chamber recognized at the Preliminary Objections phase. A simple question illustrates the point: did any of the distinguished Members of this Chamber expect that they would need to resolve such a dispute two years ago? On this side of the bar, nobody did.

My speech has three parts. First, I will address the evidential record relevant to Mauritius' new claim. Secondly, I will address the requirements of a dispute as the foundation

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[1] *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections,* Judgment, 28 January 2021 ("Judgment on Preliminary Objections"), para. 322, citing *M/V "Norstar" (Panama* v. *Italy), Preliminary Objections*, Judgment, 4 November 2016, p. 65, para. 84 and *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain),* Judgment, 28 May 2013, p. 46, para. 151.

[2] Judgment on Preliminary Objections, para. 332.

of the Special Chamber's jurisdiction, although the Chamber is already well acquainted with these uncontentious principles. Thirdly, I will explain why Mauritius' claim for delimitation of the Parties' overlapping OCS claims very obviously does not conform to these requirements.

First, the essential facts relating to Mauritius' OCS claim. It is important to go through the documents carefully. On Monday, Professor Klein sought to portray the Parties' exchanges as greatly varying in their wording, with the result that (so he said) it is possible to read into them a dispute concerning overlapping OCS entitlements.[3] In reality, he could point to only one document supposedly revealing a dispute regarding Mauritius' OCS claim. At the appropriate point in the chronology, I will explain why that single document in fact does not assist Mauritius at all.

In 2009, Mauritius filed Preliminary Information with the Commission on the Limits of the Continental Shelf ("CLCS") claiming an OCS entitlement in respect of "the Chagos Archipelago Region".[4] At that time, Mauritius indicated that the preparation of its submission in the "Chagos Archipelago Region" was "currently being undertaken", had "reached an advanced stage" and was expected to be completed by 2012.[5] Mauritius also confirmed that its Preliminary Information was "consistent with operative paragraph 1(a)" of "SPLOS/183".[6] That paragraph of SPLOS/183 concerns the requirements of preliminary information filed with the CLCS. One such requirement is that the preliminary information must be "indicative of the outer limits of the continental shelf beyond 200 nm".[7]

Returning to Mauritius' 2009 preliminary information, Mauritius provided a map which showed "indicatively" the outer limits of its claimed OCS.[8] As is apparent from this diagram, Mauritius' Preliminary Information related only to an area to the south of the Chagos Archipelago of no relevance to the present proceedings. It covered some 180,000 square kilometres.

For its part, the Maldives filed its submission to the CLCS in July 2010.[9] That submission contained a figure[10] with which the members of the Special Chamber are already familiar because Mauritius relied on this figure in its pleadings at the preliminary objections phase. I will return to this shortly.

Mauritius protested against the Maldives' CLCS submission. The specific grounds of its protest are of central importance.

On 21 September 2010 (two months after the Maldives filed its submission), Mauritius sent a diplomatic note.[11] As you can see now, Mauritius informed the Maldives that it was

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[3] ITLOS/PV.22/C28/2, p. 4 (lines 23–30) (Klein). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

[4] Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183, May 2009, Doc MCS-PI-DOC (Counter-Memorial of the Republic of Maldives ("MCM"), Annex 54).

[5] *Ibid.*, para. 2-2.

[6] *Ibid.*

[7] United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)", 20 June 2008, Doc SPLOS/183 (MCM, Annex 53), para. 1(a).

[8] Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183, May 2009, Doc MCS-PI-DOC (MCM, Annex 54), p. 10.

[9] "Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission by the Republic of Maldives", 26 July 2010, Doc MAL-ES-DOC (MCM, Annex 47).

[10] *Ibid.*, p. 10.

[11] Diplomatic Note No. 1311 from the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius, to the Ministry of Foreign Affairs of the Republic of Maldives, 21 September 2010 (MCM, Annex 65).

"agreeable to holding formal talks with the Government of the Republic of Maldives for the delimitation of the exclusive economic zones (EEZs) of Mauritius and Maldives". It also stated that it had "taken note" of the Maldives' CLCS submission and that "the holding of EEZ delimitation boundary talks are all the more relevant in light of this submission".

The reason why the Maldives' CLCS submission was relevant to EEZ delimitation negotiations was clarified soon after. The Parties met on 21 October 2010. The minutes, now shown, record that the discussion concerned the fact that "in the [Maldives'] submission to the CLCS the exclusive economic zone ... coordinates of the Republic of Mauritius in the Chagos region were not taken into consideration".[12] In other words, as noted by Ms Sander a few minutes ago, Mauritius' complaint was about an area of "overlap" between the Maldives' OCS entitlement and Mauritius' claimed entitlements within 200 nm.

In its written Reply, Mauritius seized on the fact that a single sentence in these minutes refers in passing to the vague possibility of Mauritius asserting an OCS entitlement to the north of the Chagos Archipelago,[13] a claim which was nowhere referred to in its 2009 preliminary information. Precisely what the minutes say is as follows:

> The Mauritius side also noted that to the north of the Chagos archipelago there is an area of potential overlap of the extended continental shelf of the Republic of Maldives and the Republic of Mauritius and suggested that the two States can make a joint submission with regard to that area.[14]

This is a matter that the two States could potentially have discussed. However, they could only have done so if Mauritius had articulated a claim. Had it done so, and had the Parties had discussions which did not produce an agreement, this could have evolved into a dispute. Plainly, the possibility of a future disagreement is not sufficient for the Chamber to be properly seized. As I will develop shortly, there must be an actual and objective dispute, as this notion is understood in international law. It is unsurprising that Professor Klein did not seek to rely on this document in his speech earlier this week.

Instead, Professor Klein took the Special Chamber to only one document: the Parties' joint communiqué of 12 March 2011.[15] He showed just one sentence to you,[16] which read as follows: "Both leaders agreed to make bilateral arrangements on the overlapping area of extended continental shelf of the two States around the Chagos Archipelago."[17]

The communiqué said nothing further at all regarding any OCS claim by either Party, so this sentence is the only evidence on which Mauritius hangs its entire case regarding the existence of a dispute. But this sentence does not refer to a disagreement between the Parties; instead, it refers to the Parties considering making "bilateral arrangements". An intention to collaborate is not a dispute.

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[12] Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (MCM, Annex 58).

[13] See Reply of the Republic of Mauritius ("MR"), paras. 3.8, 3.11.

[14] Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (MCM, Annex 58).

[15] Joint Communiqué of the Republic of Mauritius and the Republic of Maldives, 12 March 2011 (MCM, Annex 66).

[16] ITLOS/PV.22/C28/2, p. 4 (lines 32–34) (Klein).

[17] Joint Communiqué of the Republic of Mauritius and the Republic of Maldives, 12 March 2011 (MCM, Annex 66).

This reading of the joint communiqué is reinforced by the formal protest to the Maldives' CLCS submission which Mauritius filed with the Commission on 24 March 2011, 12 days after the joint communiqué.[18] The scope of Mauritius' protest could not have been clearer. It stated, as you can now see:

> The Republic of Mauritius hereby protests formally against the submission made by the Republic of Maldives in as much as the Extended Continental Shelf being claimed by the Republic of Maldives encroaches on the Exclusive Economic Zone of the Republic of Mauritius.[19]

In other words, Mauritius did not object to the Maldives' submission on the basis that it overlapped with any area of OCS to which Mauritius claimed an entitlement. Professor Klein sought to dismiss this fact on Monday as showing nothing more than a "lack of precision as to the precise extent" of Mauritius' claims.[20] But this document does not betray a mere absence of precision in any dispute concerning Mauritius' OCS claim. It shows the absence of any such dispute, full stop.

Mauritius finally filed a full CLCS submission on 26 March 2019,[21] immediately after the ICJ had rendered its advisory opinion on the Chagos Archipelago and just three months before Mauritius commenced the present proceedings. The OCS entitlement which this submission claimed was still not located to the north of the Chagos Archipelago. Rather, it was the same southern claim which had been advanced in 2009, as you can now see.[22]

In this submission, Mauritius stated vaguely that it intend[ed] to make a future partial submission concerning the continental shelf in the northern Chagos Archipelago Region in due course,[23] without indicating, for example, the extent of the claim it may advance. By a vague statement of future intent directed towards the CLCS, and not even to the Maldives itself, Mauritius had not asserted any OCS claim overlapping with the Maldives' claim. Equally clearly, in the three months before Mauritius instigated these proceedings, the Maldives had not disputed any such hypothetical future claim.

Nothing had changed by 18 June 2019, when Mauritius commenced the present proceedings, and still nothing had changed when the Special Chamber handed down its judgment on preliminary objections on 28 January 2021. As I will address in the third part of my speech, the Chamber gave careful consideration to the scope of the dispute which was within its jurisdiction. Despite what Professor Klein said earlier this week, the fact is that the dispute it identified did not encompass any claim to an OCS entitlement on the part of Mauritius.

The rest of the narrative is well known. On 24 May 2021, the day before filing its Memorial, Mauritius articulated its claim to an OCS entitlement north of the Chagos Archipelago for the first time, in the form of preliminary information filed with the CLCS.[24]

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[18] 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).
[19] *Ibid.*
[20] ITLOS/PV.22/C28/2, p. 4 (line 45) (Klein).
[21] Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Southern Chagos Archipelago Region, Executive Summary, Doc MCSS-ES-DOC, March 2019 (MCM, Annex 6).
[22] *Ibid.*, p. 9.
[23] *Ibid.*, para. 1-5.
[24] Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region, 24 May 2021, Doc MCN-PI-DOC (MCM, Annex 5).

Then, in April 2022, two days before filing its Reply, Mauritius filed a CLCS submission regarding this alleged entitlement.[25]

Mr President, now is a natural break in my speech. I wonder if it would be convenient to have the Chamber's break a few minutes early.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Hart.

At this stage, the Special Chamber will withdraw for a break of 30 minutes. We will continue the hearing at 5 p.m.

(*Break*)

THE PRESIDENT OF THE SPECIAL CHAMBER: I now give the floor to Ms Hart to continue her statement. You have the floor.

MS HART: Thank you, Mr President. I turn now to the second part of my statement concerning the requirements of a dispute within the meaning of article 288 of UNCLOS.

The Chamber's finding on a dispute as a jurisdictional precondition, to which I have already referred,[26] reflected the uniform jurisprudence on this issue. The award in the *South China Sea Arbitration* confirmed that the existence of a dispute "constitutes a threshold requirement for the exercise of the Tribunal's jurisdiction" with the result that, "[s]imply put, the Tribunal is not empowered to act except in respect of one or more actual disputes between the Parties".[27]

The basic requirements of a dispute are well known. In the *Marshall Islands* case, the International Court said that "the parties must 'hold clearly opposite views' with respect to the issue brought before the Court".[28] Note the specific reference to "the issue brought before the Court"; a disagreement on some other issue, even if related, is not sufficient.

The Court went on to say that an applicant State must "[demonstrate], on the basis of the evidence, that the respondent was aware, or could not have been unaware, that its views were 'positively opposed' by the applicant".[29] The tribunal in the *South China Sea Arbitration* confirmed that "'positive opposition' between the parties" means that "the claims of one party are affirmatively opposed and rejected by the other".[30]

The question of whether a dispute exists is an objective one and, moreover, to quote the ICJ in *Georgia* v. *Russia*, it is a "matter … of substance, not of form".[31] One party's assertion that there is a dispute is irrelevant if, in substance, there are not positively opposed claims.

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[25] Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Executive Summary, Doc MCNS-ES-DOC, April 2022 (Rejoinder of the Republic of Maldives, Annex 5).

[26] Judgment on Preliminary Objections, para. 322, citing *M/V "Norstar" (Panama* v. *Italy), Preliminary Objections*, Judgment, 4 November 2016, p. 65, para. 84; see also *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain)*, Judgment, 28 May 2013, p. 46, para. 151.

[27] *South China Sea Arbitration (Philippines* v. *China),* Award on Jurisdiction and Admissibility, 29 October 2015, para. 148.

[28] *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.

[29] *Ibid.*

[30] *South China Sea Arbitration (Philippines* v. *China),* Award on Jurisdiction and Admissibility, 29 October 2015, para. 159.

[31] *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.

Professor Klein suggested to the Chamber that there is no barrier to jurisdiction where there are mere imprecisions"as to the contours of the Parties' competing claims.[32] But he did not address any of the jurisprudence dealing with the clarity required of a dispute. As the ICJ held in the *Marshall Islands* case, it is not enough for one State to make statements that lack any particulars concerning the dispute.[33]

It is true that, in its earlier judgment, this Special Chamber clarified that "maritime delimitation disputes are not limited to disagreement concerning the location of the actual maritime boundary".[34] However, naturally, that did not remove the requirement for positively opposed claims. To the contrary, the Special Chamber had in the previous paragraph of its judgment expressly recognized precisely this requirement.[35]

While a dispute need not be articulated to the level of minute granularity, the requirement must have some meaningful content, such that the parties are able to understand and engage with each other's positions. In the context of OCS claims, any latitude cannot be stretched so far as to allow that one side need not indicate, even in high-level terms, the approximate scope of its entitlement. This is even more so when that same party has submitted formal documents to the CLCS which are required to be "indicative" of its claim but which did not include the area in question at all.

It is essential that the dispute existed at the critical date of the filing of the application.[36] Indeed, the ICJ made this authoritative pronouncement in the *Marshall Islands* case:

> [A]lthough statements made or claims advanced in or even subsequently to the Application may be relevant for various purposes – notably in clarifying the scope of the dispute submitted – they cannot create a dispute *de novo*, one that does not already exist.[37]

An applicant State cannot seek to have a multiplicity of matters determined together where only some of those matters satisfy the requirements of a dispute. This is related to the point I have already emphasized that the dispute must relate to "the issue brought before the Court"[38]. A dispute on a different issue cannot be used as a multi-purpose jurisdictional hook.

This is critical, because it is a principle that Mauritius would have the Special Chamber ignore. Mauritius stated in its Memorial that a choice by the Chamber to delimit the Parties' overlapping OCS claims would

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[32] ITLOS/PV.22/C28/2, p. 4 (lines 47, 49) (Klein).

[33] *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.

[34] Judgment on Preliminary Objections, para. 333.

[35] *Ibid.*, para. 332.

[36] See *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 pp. 84–85, para. 30; *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, paras. 43, 54.

[37] *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 p. 855, para. 54.

[38] *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.

> contribute to the efficient and sound administration of justice, allowing the Special Chamber to assist the Parties in fully resolving their differences, both within and beyond 200 M.[39]

But this cannot be the right approach as a matter of principle. The requirements of a crystallizsed dispute cannot be bypassed by simply rolling different issues into a single proceeding where not all of them were the subject of a timely disagreement.

This position is reflected in the award in *Barbados* v. *Trinidad and Tobago*. It is surprising that Mauritius cited this case in their Reply,[40] and indeed it remains the only authority Mauritius has cited in relation to the existence of a dispute, when in fact this award seriously undermines its case.

In that case, the applicant State was Barbados. Barbados had commenced a claim for delimitation of the parties' EEZs and continental shelf entitlements, and it confirmed that the latter related only to continental shelf entitlements within 200 nm.[41] The respondent State (Trinidad and Tobago) invited the tribunal to delimit the boundary in respect of the parties' overlapping OCS claims as well.[42] The tribunal acceded to this invitation.[43] But it did so not on the grounds merely that it would be efficient for all of the parties' maritime claims to be delimited at once. Instead, it embarked on a careful analysis which allowed it to conclude that this specific issue – the delimitation of the parties' claims to OCS entitlement – had been the subject of a dispute before the proceedings commenced. Specifically, it found that "the record of the negotiations shows that it" [i.e. how to deal with the overlap between OCS claims] "was part of the subject-matter on the table during those negotiations" between the parties.[44]

This finding was clearly supported by the evidence. In the parties' first round of negotiations in July 2000, Trinidad and Tobago stated as follows:

> Trinidad and Tobago is looking at a single all purpose delimitation line for the seabed and subsoil and the superjacent waters. Trinidad and Tobago is not looking to stop at 200 nautical miles but to extend its seabed jurisdiction up to the maximum limit of 350 nautical miles or 100 nm from the 2500 metre isobath which is subject to approval by the Commission on the Limits of the Continental Shelf.[45]

Trinidad and Tobago had claimed in that first negotiation to that:

> it was entitled to a shelf beyond the 200 nm mark in the eastern (Atlantic) sector in accordance with the principles that a State should not be cut off from its natural prolongation and that one State's maritime spaces should not unduly encroach on the coast of another.[46]

This was Trinidad and Tobago articulating its claim and its view of the correct legal position, giving Barbados an opportunity to set out a competing and positively opposed claim.

And that is precisely what Barbados did in a further round of negotiations in October 2000. Barbados was recorded as having "rejected Trinidad and Tobago's argument that it should not be cut off from its entitlement to a continental shelf beyond the 200 nm line".[47]

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[39] Memorial of the Republic of Mauritius ("MM"), para. 4.66.
[40] MR, para. 3.1.
[41] *Barbados* v. *Trinidad and Tobago*, Reply of Barbados, 9 June 2005, para. 126(a)–(b).
[42] *Barbados* v. *Trinidad and Tobago*, Award, 11 April 2006, para. 213.
[43] *Ibid.*
[44] *Ibid.*
[45] *Barbados* v. *Trinidad and Tobago*, Rejoinder of Trinidad and Tobago, 18 August 2005, para. 159.
[46] *Barbados* v. *Trinidad and Tobago*, Counter-Memorial of Trinidad and Tobago, 30 March 2005, para. 62(1).
[47] *Ibid.*, para. 65.

What this demonstrated was that each State had expressed its position and that those positions were affirmatively rejected by the other side. This is what led the tribunal to conclude that there had been a specific dispute in relation to the delimitation of overlapping OCS entitlements which had crystallized before proceedings began.

The requirement of a dispute predating the institution of proceedings is not a mere technicality, and nor is it a discretionary factor to which an international court or tribunal can attribute whatever weight it sees fit in the circumstances of a case. It is a compulsory precondition to the exercise of jurisdiction. When States signed up to the compulsory dispute settlement provisions in UNCLOS, their consent was conditioned on this requirement being observed.

This condition is one that is underpinned by compelling policy considerations. Binding dispute settlement exposes a State to a potentially drawn-out adversarial process in which both States seek maximum unilateral benefit. Parties to litigation are constrained to formulate their positions within tight time frames and in a fixed number of written and oral pleadings, rather than through expressions of views outside of litigation which could be made over a longer period and multiple exchanges. This is especially significant in relation to matters where extensive technical input is required. Finally, litigation entails significant costs, naturally of particular concern to small island developing States with limited resources.

All these considerations illuminate why States have an interest in knowing a claim against them before litigation is commenced and why, therefore, they agreed that the "dispute" requirement should be included in UNCLOS. Reflecting these concerns, the ICJ stated in the *Marshall Islands* case:

> If the Court had jurisdiction with regard to disputes resulting from exchanges in the proceedings before it, a respondent would be deprived of the opportunity to react before the institution of proceedings to the claim made against its own conduct.[48]

The Court considered such an outcome to be unacceptable and to "subvert" the dispute requirement.

The requirement of a dispute also needs to be analysed in the broader context of UNCLOS. This Special Chamber has already held that article 83, which concerns delimitation of the continental shelf, "entail[s] an obligation to negotiate in good faith with a view to reaching an agreement on delimitation".[49] Negotiations can occur only if both parties are aware that there is a matter on which they are positively opposed and what the other side's position is.

Beyond that, UNCLOS article 283 obliges the parties to a dispute to engage in an exchange of views regarding the settlement of their dispute before either of them has recourse to compulsory dispute settlement. The title of article 283 is "Obligation to exchange views", denoting that this provision refers to a mandatory substantive duty. It presupposes that there is already a "dispute" between the parties, after the crystallization of which they shall exchange views on means of peaceful settlement.

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[48] *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 p. 851, para. 43.

[49] Judgment on Preliminary Objections, para. 273.

It is well established that the requirement under article 283 has a "distinct purpose"[50] and "is not an empty formality, to be dispensed with at the whims of a disputant".[51] According to the case law, the purpose of article 283 is to ensure that "a State would not be taken entirely by surprise by the initiation of compulsory proceedings".[52] It is fair to say that the Maldives was taken by surprise by the OCS claim made against it in this case.

That brings me, Mr President, in the third and final part of my speech, to the application of these legal principles to the facts of the present case.

I can do so in short order, because the facts really speak for themselves. I have already taken the Special Chamber through the chronology of events. The record is clear. Mauritius did not, prior to these proceedings, ever articulate a claim to an OCS which overlapped with the Maldives' OCS entitlement. The only OCS claim it had ever articulated in the vicinity of the Chagos Archipelago was to the south.

The March 2011 joint communiqué on which Professor Klein relied does not change this position. It referred to the possibility of making bilateral arrangements and not to a dispute. The single sentence referring in passing to overlapping claims did not amount to a positive opposition of views or have the required level of clarity of a dispute and the Maldives could not have had any idea as to Mauritius' position. Recalling that the question is one of substance and not of form, Mauritius cannot establish that, substantively, there was any relevant dispute.

Even if the evidence were not conclusive (which it is), Mauritius' own conduct in the Preliminary Objection phase of these proceedings would eliminate any conceivable doubt. Indeed, given that the Maldives' fourth preliminary objection was specifically that there was no dispute, Mauritius advanced a head-on case as to the scope of the dispute and the evidence supporting it and its position was crystal clear.

In Figure 4 of its Written Observations, Mauritius depicted what it described as the "The Parties' Area of Overlapping Claims".[53] As you can see, the area which Mauritius itself presented as constitutive of the dispute was only the overlap between the Parties' claims within 200 nautical miles.

Of course, the dispute presented by Mauritius at that phase did involve an OCS claim, namely, that of the Maldives. Mauritius stated that the Maldives' claimed OCS entitlement "extends a full 200 nm southwards, encroaching to a significant extent into the maritime area claimed by Mauritius and disputing potential maritime entitlements of Mauritius to its EEZ north of the Chagos Archipelago".[54] Figure 4, which I have just shown, was said to reflect that aspect of the dispute as well. Surely, if there was a dispute between Mauritius and the Maldives regarding overlapping OCS entitlements, Mauritius would have mentioned it then.

It is no surprise that, in finding the existence of a dispute, the Chamber identified the dispute consistently with both the evidence and Mauritius' case. Mauritius' case, which the Chamber accepted, was that "graphic representations illustrate the extent of the Parties' claims".[55] Neither Mauritius nor the Chamber suggested that there was any dispute beyond that reflected in the relevant graphics, which I have already shown.

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[50] *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures,* Order of 23 December 2010, Dissenting Opinion of Judge Wolfrum, para. 27.

[51] *Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures,* Order of 8 October 2003, Separate Opinion of Judge Chandrasekhara Rao, para. 11.

[52] *Chagos Marine Protected Area Arbitration (Mauritius* v. *United Kingdom*), Award, 18 March 2015, para. 382.

[53] Written Observations of the Republic of Mauritius on the Preliminary Objections Raised by the Republic of Maldives, 17 February 2020, Figure 4.

[54] Written Observations of the Republic of Mauritius on the Preliminary Objections Raised by the Republic of Maldives, 17 February 2020, para. 3.44.

[55] Judgment on Preliminary Objections, para. 314.

The Chamber proceeded to find that the Parties' "respective claims to an Exclusive Economic Zone in the relevant area overlap".[56] It also recognized a dispute created by the overlap between the Maldives' OCS claim and Mauritius' EEZ. This is critical. The Chamber stated:

> In the view of the Special Chamber, it is clear from the above that there is an overlap between the claim of the Maldives to a continental shelf beyond 200 nautical miles and the claim of Mauritius to an exclusive economic zone in the relevant area.[57]

Unsurprisingly, the Chamber did not identify any dispute involving an OCS claim by Mauritius. How could it, when no such claim had ever been articulated let alone opposed by the Maldives?

On Monday, Professor Klein made two points with respect to the Judgment on Preliminary Objections. First, he said that paragraph 332, which I have just shown, should not be read literally because it referred only to an overlap between the Maldives' OCS and Mauritius' EEZ, which would, on the strictest of readings, exclude even a dispute over Mauritius' continental shelf within 200 nautical miles.[58]

This argument ignores the basic point raised by the Maldives since its Counter-Memorial[59] and never objected to by Mauritius, that, according to the case law, within 200 nm an EEZ claim necessarily co-exists with a continental shelf claim.[60] Thus, the Chamber's references to Mauritius' EEZ must of course be construed as corresponding to Mauritius' continental shelf claim within 200 nm. The Parties are in consensus that what Professor Klein himself described as an "absurd"[61] reading of the judgment is not the correct one.

Secondly, Professor Klein referred to the fact that, in places other than paragraph 332, the Special Chamber referred to the existence of a dispute concerning maritime delimitation in more general terms, including in paragraph 335 and the sixth paragraph of the dispositif.[62] But now it is my turn to urge against an absurd reading of the judgment. Those paragraphs of the judgment were merely meant to state the conclusion arising from the reasoning which had preceded them, and should not be read to the exclusion of the Chamber's substantive analysis. In those concluding paragraphs, the Chamber stated the existence of a dispute in categorical terms because neither Party had suggested that there was a dispute beyond the one it had previously identified with reference to the evidence and the Parties' submissions. Naturally, the Chamber would not have expressly excluded the existence of an OCS dispute which neither Party had suggested was in existence.

Professor Klein also drew attention to the fact that Mauritius referred, in its notification of June 2019, to an OCS claim by Mauritius.[63] But, as I have already explained, a dispute must have crystallized prior to proceedings, and a notification cannot itself create a dispute *de novo*. In this case the objective facts show that there was no relevant dispute, whatever Mauritius' notification said.

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[56] *Ibid.*, para. 327.
[57] *Ibid.*, para. 332.
[58] ITLOS/PV.22/C28/2, p. 5 (lines 27–40) (Klein).
[59] MCM, para. 111.
[60] *Barbados* v. *Trinidad and Tobago*, Award, 11 April 2006, paras. 226, 234; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13 at p. 33, para. 34.
[61] ITLOS/PV.22/C28/2, p. 5 (line 25) (Klein).
[62] ITLOS/PV.22/C28/2, p. 6 (lines 1–18) (Klein).
[63] Notification and Statement of Claim and the Grounds on which it is Based of the Republic of Mauritius, 18 June 2019 (MCM, Annex 64), para. 27; ITLOS/PV.22/C28/2, p. 6 (lines 21–26) (Klein).

On this point, allow me to illustrate Mauritius' change in position clearly with the figures you can now see. On the left is the figure that was Mauritius' representation of the overlapping claims at the preliminary objections phase. This was, according to Mauritius, the full extent of the dispute, and the Chamber agreed; and on the right is its figure showing the maritime territory which it now seeks to have delimited.

This case is not at all like *Barbados* v. *Trinidad and Tobago*. Unlike in that case, Mauritius never articulated an OCS claim overlapping with that claimed by the Maldives or sought delimitation of such overlapping claims. The Maldives had not a clue as to the extent of any OCS entitlement which Mauritius may have sought at some future point.

It is especially striking in this case that Mauritius' approach to delimitation of the overlapping OCS claims is such a radical one. As Ms Sander will address in more detail tomorrow, in her second speech, contrary to all precedents, Mauritius invites the Chamber to draw an azimuth that completely disregards the equidistance method. Plainly, Mauritius could never have anticipated this prior to the notification.

The Maldives has suffered all of the negative consequences which inevitably arise when a State is forced to litigate a claim where no dispute predated the proceedings. It was deprived of any opportunity to react to the claim or to engage in negotiations or an exchange of views as to methods of dispute settlement. It has been compelled to deal with this claim within a rigid timeframe, and it has done a limited number of exchanges, where evidence has been produced incrementally, against an adversarial backdrop. Its opportunity to consult technical experts has necessarily been curtailed. It has incurred the significant costs of litigation regarding an issue which was simply never communicated to it before proceedings started.

To exercise jurisdiction under such circumstances, the Maldives respectfully submits, would set an unfortunate precedent and be contrary to the terms of UNCLOS. We invite the Chamber to dismiss this part of Mauritius' claim. The Parties can then get on with constructive exchanges concerning these issues, outside of litigation, in the spirit of harmony which both sides have emphasized this week.

Mr President, I would now ask that you give the podium to Professor Mbengue.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Hart.

I now give the floor to Mr Mbengue to make his statement. You have the floor, Sir.

STATEMENT OF MR MBENGUE
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/4/Rev.1, p. 32–44]

Mr President, honourable Members of the Special Chamber, it is an honour to appear before you and to do so on behalf of the Republic of Maldives.

Mr President, I might need a few minutes to finalize my speech. Can I ask for your indulgence? Thank you very much.

My colleague Dr Hart has already shown that there is no jurisdiction to delimit the continental shelf beyond 200 nm in this case. Yet when, in its Judgment on Preliminary Objections, the Special Chamber deferred "to the proceedings on the merits questions regarding the extent to which the Special Chamber may exercise its jurisdiction",[1] it left open not only whether it has jurisdiction over this claim at all, but also whether, if jurisdiction exists, the Chamber should exercise it. I will now demonstrate how – even if *par impossible* the Special Chamber were to find that it has jurisdiction in this regard – Mauritius' claim would be inadmissible, for the chief reason that it is fatally time-barred.

Allow me, Mr President, to remind the Special Chamber of the undisputed facts relating to Mauritius' CLCS submission.

The Special Chamber will recall – and this was acknowledged by my colleague and friend Professor Klein on Monday – that Mauritius' 2009 Preliminary Information made no mention of the area it now refers to as the "Northern Chagos Archipelago". As shown in the chronology that appears on your screens, Mauritius made a CLCS submission in 2019 on the basis of this preliminary information before instituting arbitral proceedings against the Maldives less than three months later. Mauritius then purported to file preliminary information concerning the Northern Chagos Archipelago in May 2021 – after the Special Chamber had rendered its Judgment on Preliminary Objections, and one day before the deadline for its Memorial. Earlier this year, Mauritius purported to file what it alternatingly characterizes as a "full"[2] and "partial"[3] CLCS submission on the Northern Chagos Archipelago – after the Special Chamber had ordered a second round of pleadings necessary, and two days before the deadline for its Reply.

By asserting in its Reply that the "admissibility [of its April 2022 submission] for the purposes of the present proceedings is clearly established",[4] Mauritius does not dispute the fact that it was required to file a CLCS submission before seeking settlement under Part XV of the Convention[5] and that such requirement is a matter of admissibility for OCS claims. In fact, Mauritius agreed as much during these very oral proceedings. As you can see on your screens, Professor Klein said on Monday:

> *(Poursuit en français)*
> La Cour internationale de Justice a en effet très clairement établi qu'elle ne pouvait procéder à une telle délimitation que si un préalable indispensable était satisfait : la formulation d'une demande, ou, à tout le moins, la communication

[1] *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections,* Judgment, 28 January 2021 ("Judgment on Preliminary Objections"), paras. 352, 354(6).
[2] Reply of the Republic of Mauritius ("MR"), para. 3.29.
[3] *Ibid.*, para. 4.3.
[4] *Ibid.*, para. 3.29.
[5] *Ibid.*, Counter-Memorial of the Republic of Maldives ("MCM"), paras. 69–78.

> d'informations préliminaires à la Commission des limites du plateau continental par l'État qui demande cette délimitation.[6]

(*Resumed in English*) However, despite this clear acknowledgment, and instead of reaching the one and only logical conclusion that its claim is inadmissible, Mauritius still considers that it can "cure" that defect by filing a submission three years into this case.

Mr President, Mauritius' 2022 submission is unprecedented, not only in its timing, but also in its content. Mauritius is the only State which has sought to use the CLCS submission process to respond to arguments raised in international litigation. What Mauritius simply characterized in its Reply as "a more refined and accurate description"[7] of the outer continental shelf claim, first sketched out in rudimentary terms in its 2021 preliminary information, appears now and retrospectively as part of a broader process, a broader strategy, whose purpose was, to quote Professor Klein, "*manifestement, simplement d'arrêter la montre*".[8]

Unfortunately, by choosing to stop the clock, Mauritius is now facing two hurdles that affect the admissibility of its OCS claim *in casu*, and which I will address in turn.

First, it is clear from the jurisprudence of international courts and tribunals that a claim to an outer continental shelf is inadmissible without a prior CLCS submission, and it is equally clear that the critical date for admissibility is the date on which proceedings are initiated. This applies particularly to the Applicant State, which elects when to commence its case. On Monday, Mauritius remained entirely silent on the fact that it had not filed its CLCS submission concerning the Northern Chagos Archipelago when it elected in haste to commence proceedings, less than a month after General Assembly resolution 73/295.[9] It cannot now retroactively remedy that fundamental flaw by filing a CLCS submission two days before its Reply, in contravention of the ITLOS Rules and every basic principle of procedural fairness.

Second, and this was also admitted by Professor Klein on Monday, the States Parties to the Convention, in other words the very guardians of "the clock", made clear through Decision No. 72 of 2001,[10] and Decision No. 183 of 2008,[11] that States are under an obligation to make timely submissions.

That date, for Mauritius, was in 2009 when it filed its Preliminary Information on the Chagos Archipelago, with no mention whatsoever in respect of what it now calls the "Northern Chagos" region. By filing its so-called "amended" Preliminary Information in 2021, just one day before filing its Memorial, Mauritius has acted 12 years past the deadline that other State Parties, including the Maldives, have scrupulously observed. To declare that Mauritius' new claim is admissible, the Maldives respectfully submits, would undermine Rules established

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[6] TIDM/PV.22/A28/2, p. 7 (lignes 39-43) (Klein). Au moment de la rédaction, les Maldives n'avaient reçu que des exemplaires non vérifiés des comptes rendus. Toutes les références aux comptes rendus renvoient à ces versions non vérifiées.

[7] MR, para. 4.3.

[8] TIDM/PV.22/A28/2, p. 9 (line 30) (Klein).

[9] United Nations General Assembly Resolution 73/295, "Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", 24 May 2019, A/RES/73/295.

[10] United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea", 29 May 2001, Doc SPLOS/72 (MCM, Annex 52).

[11] United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)", 20 June 2008, Doc SPLOS/183 (MCM, Annex 53).

under this Convention, and would set an unfortunate precedent for future proceedings under the Convention.

I will now focus, Mr President, on these two hurdles to the admissibility of Mauritius' OCS claim. I will show that Mauritius' claim to an outer continental shelf entitlement is inadmissible because it has not filed a full submission with the CLCS prior to its commencement of proceeding, and that Mauritius is not entitled to file or rely on a submission in respect of the Northern Chagos Archipelago Region because it did not file its preliminary information regarding this region within the mandatory time limits, which expired in 2009. In both respects, Mauritius flaunts its non-compliance with established Rules, and asks the Special Chamber to remove the cornerstones of the Convention – to ignore, and ultimately destabilize, a carefully agreed balance between 168 parties.

I turn now to the first part of my submission, in which I will demonstrate that Mauritius' request for delimitation of the outer continental shelf is inadmissible because Mauritius did not file a full submission with the CLCS prior to instituting proceedings against the Maldives.

As I have already indicated, the Parties agree that a CLCS submission is a prerequisite for the admissibility of a claim to an outer continental shelf. The jurisprudence of international courts and tribunals has clearly established that it is essential to file this submission to the CLCS before requesting the delimitation of an outer continental shelf entitlement.[12] Contrary to this requirement, Mauritius did not make its submission before instituting these proceedings; and, as I will now discuss, Mauritius cannot rectify that failing by placing a submission before the Special Chamber and the Maldives at this very late stage.

In its 2016 judgment on the delimitation of the outer continental shelf between Nicaragua and Colombia, to which Mauritius referred several times, the International Court of Justice upheld its jurisdiction over Nicaragua's claim only because Nicaragua had provided the relevant final information consistent with its obligations under the Convention.[13] The Court confirmed that the filing of a full CLCS submission was a condition of and a prerequisite to upholding jurisdiction over such claims.[14] It found that a Party to the Convention must have "submit[ted] information on the limits of the continental shelf it claims beyond 200 nautical miles, in accordance with article 76, paragraph 8, of UNCLOS, to the CLCS."[15]

In other cases such as *Somalia* v. *Kenya*,[16] *Ghana* v.*Côte d'Ivoire*,[17] and *Bangladesh* v. *Myanmar*,[18] both the ICJ and ITLOS have made clear that an international tribunal must be satisfied that an alleged outer continental shelf entitlement exists – exists – before exercising jurisdiction to delimit this entitlement. In fulfilling this duty, no court or tribunal has ever used data produced after the crucial date of seisin.[19]

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[12] MCM, paras. 69–75.

[13] *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200nm from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 100 at p. 132, paras. 86–87.

[14] *Ibid.*, p. 132, para. 87 and p. 136, para. 105.

[15] *Ibid.*, p. 131, para. 82.

[16] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021, para. 193.

[17] *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, 23 September 2017, para. 491.

[18] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, paras. 397, 399, 446.

[19] See the jurisprudence recalled in MCM, paras. 79–80 and footnotes 155–157. Reproduced here: *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, p. 624 at p. 669, para. 129; *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya*), Judgment, 12 October 2021, para. 193; *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 491; *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 397, 399, 446; *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment,

Mauritius invites the Special Chamber to depart from this *jurisprudence constante* without cogent reasons. Indeed, with a submission it made only months ago, Mauritius seeks delimitation on the basis of data produced not only after the institution of this case, but also after the Chamber had issued its Judgment on Preliminary Objections, and the Parties had filed their Memorial and Counter-Memorial. In so doing, Mauritius has failed to comply with the principles governing these, and every international legal proceeding. These principles include a duty of good-faith cooperation with the tribunal in establishing the relevant facts, which prohibits parties from using a second round of pleadings to seek to alter the factual basis of their submissions.[20]

This approach, Mr President, is also out of step with article 62, paragraph 1, of the ITLOS Rules, which required Mauritius to set out in its Memorial "a statement of the relevant facts". Mauritius' actions are similarly inconsistent with the Special Chamber's Order granting a second round of pleadings in this case. In accordance with article 61, paragraph 3, of the Rules, the Special Chamber may authorize the presentation of replies and rejoinders in a case only if "it finds them to be necessary". Logically, this cannot be the basis for one party to introduce an entirely new submission.

By inhibiting a respondent's ability to respond to its allegations, Mauritius' late filings have had a serious and detrimental impact on the fairness of these proceedings, which in turn contravenes the general principles that govern international legal proceedings. As the ICJ found in *Land, Island and Maritime Frontier Dispute*, parties in inter-State proceedings are "subject to the obligations" arising under what the ICJ called "the general principles of procedural law".[21] In the *Genocide* case, the Court observed that "the submission by the Applicant of a series of documents" out of time is "difficult to reconcile with an orderly progress of the procedure before the Court, and with respect to the principle of equality of the Parties" and found that it could take such documents into account only when justified by the kind of extraordinary urgency utterly lacking in the present case.[22]

This jurisprudence, Mr President, reflects the fact that international courts and tribunals have not only the power, but also the duty to sanction breaches of the principle of party equality arising from the late substantiation of a claim, particularly when urgency is lacking and, as in the present case, such delay was avoidable.[23] Indeed, the single-beam, public domain data underlying Mauritius' 2022 submission is over 40 years old, and would therefore have been available when Mauritius filed its 2009 preliminary information (as well as its 2019 submission). This bathymetric data has in fact been readily available via download from the United States National Oceanic and Atmospheric Administration since the early 2000s.[24]

This casts serious doubt over the real ("*réelles*") and "many" difficulties mentioned by Professor Klein on Monday to justify what he called "*caractère extrêmement synthétique*"[25] of Mauritius' 2009 preliminary information. Indeed, given the fact that this data was fully

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14 March 2012, para. 440; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India),* Award, 7 July 2014, paras. 78, 457–458; *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021, para. 194.

[20] See Robert Kolb, "General Principles of Procedural Law", in Andreas Zimmermann, Christian J. Tams, Karin Oellers-Frahm, Christian Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary, Third Edition* (Oxford University Press, 2019), pp. 963–1006, at p. 978, para. 23(4).

[21] *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 92 at p. 135, para. 102.

[22] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 325 at pp. 336–337, para. 21.

[23] Robert Kolb, "General Principles of Procedural Law", in Andreas Zimmermann, Christian J. Tams, Karin Oellers-Frahm, Christian Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary, Third Edition* (Oxford University Press, 2019), pp. 963–1006, at p. 978, para. 23(4).

[24] Rejoinder of the Republic of the Maldives ("MRej"), para. 110.

[25] TIDM/PV.22/A28/2, p. 9 (ligne 28) (Klein).

available, these alleged difficulties could have been easily overcome, and there is no justification for the Applicant's subsequent 13-year delay in completing and amending this submission. Likewise, "*l'impossibilité physique de tout accès à la région de l'archipel des Chagos*", invoked by Professor Klein, cannot justify why Mauritius did not use the available data in 2009.

Finally, when Professor Klein referred to "*la charge de travail considérable qui pesait alors sur les services compétents à Maurice*", he mentioned the three distinct submissions Mauritius had to make in this crucial period — but this argument, Mr President, proves too much: if Mauritius could file three submissions at the time, why did it require 13 years to allegedly complete the 2009 submission? What happened to these "competent services"?

Mr President, Mauritius' ambiguous characterization of its 2022 submission as "partial"[26] – as well as the haste with which it made its 2021 and 2022 CLCS filings, and the age of the data it has conveyed to the CLCS – should give the Chamber pause; pause as to whether Mauritius has made its "final" submission in respect of the Chagos Archipelago.

As explained in the Maldives' Rejoinder,[27] the preparation of Mauritius' April 2022 submission suffered from a lack of input from qualified scientists and technical experts. By naming its legal counsel in this case as the sole "experts" for its 2022 submission, Mauritius departed from common practice – as well as from its own submissions regarding other regions, as it can be seen on your screens, all of which credited former CLCS members and other respected scientists.[28]

As it appears, while Mauritius credited work completed by scientific advisers in its previous filings, its 2022 submission indicates that its legal counsel in this case have prepared submissions – and indeed may prepare further submissions in respect of the northern Chagos Archipelago region. Yet, Mauritius asks the Special Chamber to rely upon this eleventh-hour filing to render a final and binding delimitation.

The Special Chamber should not encourage parties in future cases to treat the deferral of jurisdictional questions as an opportunity to attempt to cure defects in their cases. In this respect, Mauritius' approach has been strongly inconsistent with jurisprudence, principles of procedural fairness and established practice, including its own.

Mr President, Members of the Special Chamber, this is the central disagreement between the parties: whether inadmissibility at the time of filing a Notification and Statement of Claim may be subsequently cured. Mauritius' position on this finds no support in international practice. As the ICJ observed in *Oil Platforms* and the recent *ICAO Council* case, an objection to admissibility,

> consists in the contention that there exists a legal reason, even when there is jurisdiction, why the Court should decline to hear the case, or more usually,

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[26] MR, para. 4.3.

[27] MRej, para. 99. The Maldives has reserved its right to formally respond to this submission in a note verbale, as it did in response to Mauritius' May 2021 preliminary information filing. See Diplomatic Note Ref. 2021/UN/N/16 of the Permanent Mission of the Republic of the Maldives to the United Nations to the Commission on the Limits of the Continental Shelf, 15 July 2021 (MCM, Annex 63).

[28] These include: Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Southern Chagos Archipelago Region, Executive Summary, March 2019, Doc MCSS-ES-DOC (MCM, Annex 6); Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Extended Continental Shelf in the Region of Rodrigues Island, Executive Summary, May 2009, Doc MRS-ES-DOC ("Partial Submission concerning the Region of Rodrigues Island"); Joint Submission to the Commission on the Limits of the Continental Shelf concerning the Mascarene Plateau, Republic of Seychelles and Republic of Mauritius, Executive Summary, December 2008, Doc SMS-ES-DOC ("Joint Submission with Seychelles concerning the Mascarene Plateau").

> a specific claim therein. Such a reason is often of such a nature that the matter should be resolved *in limine litis*.[29]

If the admissibility of Mauritius' claim in the outer continental shelf has not been resolved *in limine litis* in this case, it is because Mauritius waited until after the Special Chamber's Judgment on Preliminary Objections – and indeed, until its Reply – to make a CLCS submission corresponding to this claim, despite the fact that the data on which it relies has been available in the public domain for decades.

But what is crucial – and indeed decisive in this case – is that, as with jurisdiction, admissibility is based on a "critical date"; the date on which proceedings were initiated. The jurisprudence on this point is clear. For instance, in the *Arrest Warrant* case, the ICJ affirmed that "[u]nder settled jurisprudence the critical date for determining the admissibility of an application is the date on which it is filed".[30]

In other words, either Mauritius' outer continental shelf claim was admissible when it instituted proceedings against the Maldives on 18 June 2019, or it is inadmissible today. There can be no doubt that Mauritius had not filed its CLCS submission on that critical date. There can be no doubt, therefore, that its claim was inadmissible then. Nor can there be any doubt that Mauritius cannot now "cure" that inadmissibility. That is the end of the matter. Mauritius has no answer for this obvious and inescapable conclusion, as evidenced by its intriguing silence on Monday.

Mr President, Members of the Special Chamber, the Maldives has repeatedly asked only that this Chamber applies the settled jurisprudence. Nothing more and nothing less. When the jurisprudence states unequivocally that a claim is either admissible or inadmissible at the critical date, then there is nothing more that can be said. Even if there was an outer continental shelf dispute at the critical date – which is obviously not the case, as my colleagues have explained – Mauritius' new claim must still fail because it did not make its CLCS submission until three years later.

This brings me to the second reason for the inadmissibility of Mauritius' request for delimitation beyond 200 nm: namely, its failure to comply with the mandatory time limits established by the Convention and the States Parties in respect of CLCS preliminary information. It is not in dispute between the Parties that the time limit fixed for Mauritius to file preliminary information elapsed in 2009. It is also not in dispute that Mauritius' preliminary information depicted only what it has since dubbed the southern Chagos Archipelago region. It did so based on the same data that Mauritius used 13 years later for its submission on the northern region. The only question in dispute between the Parties is whether the 2009 preliminary information also covered the claim to an overlapping outer continental shelf with the Maldives. Let us recall the only figure provided in Mauritius' 2009 preliminary information, which appears now on your screens.[31]

As I will explain, Mauritius was required to lay out all – I repeat all – of its remaining outer continental shelf claims in preliminary information filings by 2009. It is thus unsurprising

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[29] *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates* v. *Qatar), Judgment, I.C.J. Reports 2020*, p. 81 at p. 103, para. 55 (citing *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 161 at p. 177, para. 29).

[30] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, p. 3 at pp. 17–18, para. 40. See also, *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, I.C.J. Reports 1988*, p. 69 at p. 95, para. 66. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 115 at pp. 130–131, paras. 43–44.

[31] See MCM, para. 63.

that its 2009 filing simply refers to "the Chagos Archipelago Region".[32] What is surprising is that it bases its claim before the Special Chamber today on an area of the continental shelf far removed from the area depicted in its preliminary information. Its 2009 filing does not even depict the northern land features in the archipelago, let alone the continental shelf claim that Mauritius has since lodged on the basis of these features.

However, Mr President, honourable Members of the Special Chamber, the CLCS regime established under the Convention is no trivial matter to be dispensed with whenever it is convenient for a State Party to disregard the rules. It must be recalled that the Convention was painstakingly negotiated over almost a decade, from the first meeting of the Third Conference on the Law of the Sea in 1973 until the adoption of the final text in 1982.

Article 76, paragraph 8, of the Convention established the process for CLCS submissions and mandates that these "shall be submitted by the coastal State" in accordance with Annex II to the Convention.[33] As my dear colleague and friend, Professor Sands recalled on Monday, "shall" means "shall".[34] Annex II, in turn, mandates that a State claiming an outer continental shelf entitlement "shall submit particulars of such limits to the [CLCS] along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State."[35]

As you can see on your screens, the States Parties to the Convention (exceptionally refining this 10-year deadline in Annex II of the Convention) agreed on 20 June 2008 that coastal States could further reserve their submissions only by filing before 14 May 2009 "Preliminary Information indicative of the outer limits of the continental shelf beyond 200 nautical miles" and "a description of the status of preparation and intended date of making a submission".[36]

In accordance with these directions, Mauritius filed its Preliminary Information in respect of the Chagos Archipelago Region in May 2009. However, in its Reply Mauritius asserted that "[t]he Amended Preliminary Information submitted by Mauritius in May 2021 is … properly identified and to be treated as the completion of the Preliminary Information submitted in 2009 on the Chagos Archipelago Region."[37] Mauritius then argues, and this was repeated by Professor Klein on Monday, that its May 2021 preliminary information "plainly falls within the time limit set out" in the aforementioned decision of 20 June 2008,[38] through which the States Parties established and defined the Preliminary information procedure.

Unlike the amendment of submissions to the CLCS, however, the States Parties made no allowance for the amendment of preliminary information. Doing so would have defeated the purpose of the May 2009 deadline; creating stability by achieving finality in the designation of outer continental shelf claims.[39] In particular, as recalled in Proelss' authoritative

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[32] Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183, May 2009, Doc MCS-PI-DOC (MCM, Annex 54).

[33] UN Convention on the Law of the Sea, Article 76, para. 8. See further MCM, paras. 69–70.

[34] ITLOS/PV.22/C28/1, p. 38 (line 14) (Sands).

[35] UN Convention on the Law of the Sea, Annex II, Article 4 (emphasis added). See further MCM, para. 71.

[36] MCM, para. 76; United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)", 20 June 2008, Doc SPLOS/183 (MCM, Annex 53).

[37] MR, para. 3.28.

[38] *Ibid.*

[39] See e.g. United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Issues with respect to article 4 of Annex II to the United Nations Convention on the Law of the Sea", 1 May 2001, Doc SPLOS/64 (MRej, Annex 13), section VI entitled 'Reason for a coastal State to make a timely submission to the Commission', para. 46. This background paper was before the State Parties when considering the extended

commentary, the drafters of the Convention foresaw that the International Seabed Authority's functioning would be inhibited if it did not know the boundaries of the common heritage of mankind.[40]

The broader context of the Convention also reflects the Third Conference's intent that article 4 of Annex II achieve finality and promote stability.[41] Hence, article 76 requires precise information from States claiming an outer continental shelf entitlement, including the identification of "fixed points, defined by coordinates of latitude and longitude".[42]

The need for a time limit to achieve this certainty was clear from the earliest talks under the Convention to establish such a body under the Convention, as demonstrated by the *travaux préparatoires*.

It was therefore with good reason that this time limit was integrated in article 76 and Annex II of the Convention. Importantly, the needs of developing countries were central to the establishment of the preliminary information procedure and fully taken into account when the States Parties set the final May 2009 deadline. Mauritius asks the Special Chamber to ignore, and thus contravene, the clear agreement of the States Parties when establishing the preliminary information procedure.

Unlike its prior and contemporaneous submissions to the CLCS in respect of its claims elsewhere in the Indian Ocean,[43] Mauritius' 2009 preliminary information included no indications that this filing encompassed only a portion of its claim in the Chagos Archipelago region. In its Reply, Mauritius simply quotes a reference in its 2009 preliminary information to its intention "to make a submission for an extended continental shelf in respect of the Chagos Archipelago Region",[44] and asserts that it "has now made such a submission".[45] From this language, Mauritius wrongly concludes, as did Professor Klein on Monday, that its May 2021 preliminary information "is therefore properly identified and to be treated as the completion of the Preliminary Information submitted in 2009".[46]

Yet, as the Maldives has shown, there is simply no factual or legal basis to draw this conclusion.[47] Mauritius referred in 2009 only to the prospect of a formal submission to the CLCS in respect of the already-indicated area (which it completed in 2019) — not to an additional preliminary information filing. Its May 2021 preliminary information, filed over

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deadline in 2001. See United Nations Convention on the Law of the Sea, Meeting of States Parties, Eleventh Meeting, "Report of the eleventh Meeting of State Parties", 14 June 2021, Doc SPLOS/73 (MRej, Annex 14), para. 69.

[40] Andrew Serdy, "Annex II: Commission on the Limits of the Continental Shelf", in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Nomos/Bloomsbury, 2017), article 4, pp. 2082–2083.

[41] 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 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/171/08/IMG/N9917108.pdf?OpenElement> accessed 16 October 2022, p. 72, para 9.1.4(a).; Andrew Serdy, "Annex II: Commission on the Limits of the Continental Shelf", in Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Nomos/Bloomsbury, 2017), article 4, p. 2085.

[42] Art. 76, para. 7, of the Convention. See also *ibid.*, article 76, paras. 8–9.

[43] Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region, 24 May 2021, Doc MCN-PI-DOC (MCM, Annex 5), para. 2–1 (referring to the Joint Submission with Seychelles concerning the Mascarene Plateau and the Partial Submission concerning the Region of Rodrigues Island, which it communicated on the same date as its preliminary information filing).

[44] *Ibid.*, para. 2–2.

[45] MR, para. 3.29.

[46] *Ibid.*, para. 3.28.

[47] MRej, paras. 98–120.

12 years after the States Parties' deadline, without specifying an intended submission date as required, thus raises an entirely new outer continental shelf claim.[48]

The Maldives raised all these matters in its Counter-Memorial. Mauritius' response, in its Reply, was, however, inadequate. For example, the applicant argues, as you can see on your screens, that its 2021 preliminary information "appears on the CLCS website alongside the earlier submission, which makes clear that the 2021 submission is to be treated as a clarification of the earlier 2009 submission".[49] Of course, no inference can be drawn from how the States' various preliminary information filings are arranged on the CLCS website.

A note from the United Nations Secretariat, or more accurately a disclaimer, expressly states that it simply conveys these filings according to the States' own designations, and that "[t]heir listing on this website and the presentation of material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations" concerning their contents.[50] Rather, as the Secretariat puts it, "[t]he designations employed in preliminary information, including descriptions of the areas, *are as contained in the communications from submitting States*".[51]

The ordinary meaning of the terms "are as contained in the communication from submitting States" plainly indicates that the Secretariat merely posts the communications on this website without exercising editorial judgment, for which, indeed, there would be no basis. Read in its entirety, this disclaimer manifestly contradicts Professor Klein's assertion that

> *(Poursuit en français)*
> c'est uniquement par rapport au statut des espaces concernés que le Secrétariat de l'ONU n'entend exprimer aucune position, et non, comme le présentent les Maldives, par rapport au contenu des documents soumis par les États Parties.[52]

(*Resumed in English*) Even if Mauritius' argument had merit, it would then be fair to ask what significance should be drawn from the fact that, until last winter, and as you can see on your screens, the Secretariat categorized Mauritius' 2009 and 2021 preliminary information separately; not alongside each other, as they would later appear. The Internet Archive captured the Secretariat's preliminary information web page several times between May 2021 and April 2022. On all of these dates (until at least January of this year), the Secretariat distinguished Mauritius' 2009 and 2021 preliminary information filings in two separate rows, as the only State to have attempted to file preliminary information concerning two separate geographic areas.[53]

Mr President, as I have explained earlier, there is more at stake than mere compliance with purely procedural deadlines. Critically, if the Special Chamber were to accept Mauritius' proposed delimitation of the outer continental shelf, this will not produce the equitable result required under article 83 of the Convention. Rather, it will produce far-reaching consequences for the law of the sea, as States around the world would feel entitled to follow the brazen precedent set by Mauritius in this case.

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[48] MCM, para. 77; MR, para. 3.26.
[49] MR, para. 3.28.
[50] United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles (note at base of page) <https://www.un.org/depts/los/clcs_new/commission_preliminary.htm> accessed 5 August 2022 (MRej, Annex 15).
[51] *Ibid.*
[52] TIDM/PV.22/A28/2, p. 10 (lignes 36-39) (Klein).
[53] Internet Archive, Wayback Machine,"Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles", 20 January 2022 <https://web.archive.org/web/20220120093312/https://www.un.org/depts/los/clcs_new/commission_preliminary.htm> accessed 5 August 2022.

The States Parties to the Convention sought finality and stability in respect of outer continental shelf claims and, to this end, established time limits with which the Maldives and other States have duly complied. When it invoked a slight overlap with the EEZ in its 2011 formal protest to the Maldives' CLCS submission, Mauritius never raised any hint that it had a competing claim in the outer continental shelf, as you can see on your screen.

Mr President, Members of the Special Chamber, ITLOS is the guardian of the Convention. It must uphold the express provisions of that "constitution for the oceans" and it must particularly uphold the CLCS regime to which the States Parties agreed after exceedingly careful negotiations. The deadlines associated with article 76 cannot be divorced from the general pacta of the Convention. Rather, they must be interpreted in light of the treaty's object and purpose — and must be fulfilled in good faith — in accordance with the customary rules of treaty interpretation.[54]

Whether because it failed to file its CLCS submission at the critical date of seisin in 2019 or because it failed to make any mention whatsoever of the "northern region" in its preliminary information a decade earlier, Mauritius' new claim to an outer continental shelf is clearly inadmissible. It must fail. It does not matter whether Mauritius' breaches of procedural rules and principles have been strategic or happenstance. What matters is that condoning these actions would simply normalize them.

In light of the function of the CLCS time limits – the achievement of uniformity, fairness, predictability, stability, and finality – the question then is, will the Special Chamber preserve the Convention as a rules-based order? Or, with the greatest respect, will the Special Chamber decide against the values which underline this system's object and purpose?

Mr President, honourable Members of the Special Chamber, this is the question that will close my presentation. I appreciate your patience and kind attention. If you allow, this concludes the Maldives' pleadings for today. My colleague, Professor Akhavan, will address, tomorrow morning, how the irregularity of Mauritius' approach before both the Special Chamber and the CLCS reflects the fact that its alleged entitlement beyond 200 nm is manifestly unfounded, and inadmissible on this basis as well.

Thank you and good evening.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Mbengue, for your statement.

This brings us to the end of this afternoon's sitting. The hearing will be resumed tomorrow morning at 10.00 am. The sitting is now closed. Good evening.

(*The sitting closed at 6.05 p.m.*)

[54] Vienna Convention on the Law of Treaties (23 May 1969, Vienna), articles 26, 31.

PUBLIC SITTING HELD ON 21 OCTOBER 2022, 10 A.M.

Special Chamber

Present: *President* PAIK; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges* ad hoc OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

For Mauritius: [See sitting of 17 October 2022, 10 a.m.]

For the Maldives: [See sitting of 17 October 2022, 10 a.m.]

AUDIENCE PUBLIQUE TENUE LE 21 OCTOBRE 2022, 10 HEURES

Chambre spéciale

Présents : M. PAIK, *Président* ; MM. JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR *juges* ; Mme CHADHA, *juge* ; MM. OXMAN, SCHRIJVER, *juges* ad hoc ; Mme HINRICHS OYARCE, *Greffière*.

Pour Maurice : [Voir l'audience du 17 octobre 2022, 10 heures]

Pour les Maldives : [Voir l'audience du 17 octobre 2022, 10 heures]

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

I give the floor to Mr Akhavan to continue the Maldives' first round of oral arguments.

First Round: Maldives (continued)

STATEMENT OF MR AKHAVAN
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/5/Rev.1, p. 1–15]

Mr President, distinguished Members of the Special Chamber, good morning. Yesterday, my colleagues Dr Hart and Professor Mbengue explained why, in respect of Mauritius' new claim to an outer continental shelf, there is no jurisdiction without a prior dispute, and no admissibility without a prior and timely CLCS submission, at the critical date in 2019 when Mauritius elected to commence proceedings. I will now address why, in addition, Mauritius' claim of natural prolongation on the Gardiner Seamounts is inadmissible because it is manifestly unfounded.

Mr President, Mauritius' current theory was first mentioned in its Reply in paragraph 3.14 and supported by a single source in footnote 204; namely the *Gazetteer of Undersea Feature Names*. It was elaborated on for the first time by Mauritius' distinguished expert counsel, Dr Badal, on Monday. He made a number of arguments which clearly went beyond anything found in Mauritius' written pleadings. The Maldives has already placed on record its concerns about having to deal with new arguments and evidence from expert counsel. It is exceedingly difficult, within 48 hours, to prepare a full response to each and every point that he raised.

The Maldives thus places on record that the fact that it does not address each and every issue raised by Dr Badal should not be considered as an admission. That is a matter of elementary procedural fairness. Nonetheless, as I will explain today, nothing – nothing – that Dr Badal said on Monday changes the fact that Mauritius' claim is manifestly unfounded. There can be no doubt, as I will explain, that its Gardiner Seamounts theory is not supported by a shred of evidence under the CLCS Guidelines. The CLCS would certainly reject Mauritius' submission.

Mr President, my statement will be in three parts. First, I will explain why Mauritius' failure to even make a *prima facie* case is a question of admissibility. Second, I will explain a number of obvious technical flaws in Mauritius' claim. Third, I will address what is the most profound and fatal flaw in Mauritius' claim: the complete absence of any measured bathymetric data in respect of the Gardiner Seamounts.

Mr President, turning to the first point, I wish to briefly explain why the Maldives has raised this issue as a matter of admissibility rather than the merits. As I explained in the introduction yesterday, Part XV courts and tribunals, with the greatest respect, cannot usurp the functions of the CLCS; they must avoid a situation where a finding of entitlement is subsequently contradicted by CLCS recommendations. That is why the Special Chamber in *Ghana* v.*Côte d'Ivoire* held that, before it could proceed to delimitation of the outer continental shelf, it had to ascertain "whether the relevant submissions [were] admissible";[1] the Chamber found that they were admissible only because there was "no doubt" – no doubt – as to the relevant entitlements of those two States.[2] Likewise, in *Bangladesh* v.*Myanmar*, the Chamber recognized that it must not proceed with delimitation of the outer continental shelf if there is "significant uncertainty" regarding entitlement.[3] Thus, as a matter of admissibility, the burden

[1] *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, 23 September 2017, para. 482.
[2] *Ibid.*, para. 491 (emphasis added).
[3] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar*), Judgment, 14 March 2012, para. 397.

of proof rests on Mauritius to clearly establish its claim; and that evidence, of course, must be consistent with the CLCS Guidelines.

But the Maldives' argument on admissibility goes even further. It implicates the appropriate procedure for dismissal of a claim *in limine litis* where it is manifestly unfounded. National legal systems recognize the right to eliminate frivolous claims at an early stage of proceedings. There is recognition in ICJ jurisprudence that the absence of an express "filtering procedure" in the Court's Statute or Rules "makes it necessary to regard a right to take similar action, on similar grounds, as being part of the inherent powers or jurisdiction of the Court as an international tribunal".[4]

The Court has exercised this power, for example, in the *Legality of the Use of Force* cases, where it held that summary dismissal of Yugoslavia's claims – Yugoslavia as it then was – would "contribute to the sound administration of justice".[5] The simple point is that the Maldives should not be called upon to answer a claim that is *prima facie* unfounded. It is only in this limited context that the Maldives will address certain fundamental and obvious flaws in Mauritius' claim, without fully addressing all aspects on the merits.

Mr President, I will begin by addressing four matters showing that Mauritius' claim to an entitlement is obviously flawed, with the result that the Chamber should dismiss it as inadmissible.

First, the current basis for entitlement which Mauritius asserts flatly contradicts the case which it has previously advanced. The Parties agree that the Chagos Archipelago sits atop the Chagos-Laccadive Ridge (CLR). Prior to its Reply, Mauritius expressly and repeatedly admitted that the CLR is bounded to the east by the Chagos Trough. This admission is a concession that because of this morphological break, it is not possible – it is not possible – to show a natural prolongation directly from the Chagos Archipelago to FOS-VIT31B, the critical foot of slope point, because it places the base of slope well within Mauritius' 200 nm limit, not beyond. A natural prolongation could only be established if there was a way around the Chagos Trough without encroaching on the Maldives' uncontested 200 nm limit. As Ms Sander explained yesterday, from the Maldives' land territory, natural prolongation is established through the Laccadive Basin. As noted in the Counter-Memorial, the Laccadive Basin is morphologically linked to the Maldives within its 200 nm limit, but does not abut the CLR anywhere within the 200 nm limit of Mauritius. It is clearly separated from the CLR by the Chagos Trough, south of 0° latitude, the equator.[6]

Mauritius has clearly and repeatedly conceded this. Let's look at some of what it said on a variety of different occasions.

In its Memorial, Mauritius stated: "To the south and east of the Chagos Archipelago there is a linear depression, the Chagos Trough, which runs along[side] the CLR".[7] This exact statement was repeated in its 2021 preliminary information:[8] the Chagos Trough was said to run "alongside the CLR" – not just part of it. Notably, it was also consistent with Mauritius' position in its 2019 CLCS submission on the Southern Chagos Archipelago Region, submitted shortly before these proceedings. That submission recognized that "[t]he Chagos Ridge (the southern segment of the CLR) is bounded to the east by the Chagos Trough" and that this Ridge

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[4] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, I.C.J. Reports 1963*, p. 15, Separate Opinion of Judge Sir Gerald Fitzmaurice at pp. 106–7 (internal footnote omitted).

[5] *Legality of Use of Force (Yugoslavia* v. *Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999*, p. 761 at p. 773, para. 35; *Legality of Use of Force (Yugoslavia* v. *United States of America), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999*, p. 916 at p. 925, para. 29.

[6] See Counter Memorial of the Republic of Maldives ("MCM"), para. 85.

[7] Memorial of the Republic of Mauritius ("MM"), para. 2.35.

[8] Amended Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Northern Chagos Archipelago Region, 24 May 2021, Doc MCN-PI-DOC (MCM, Annex 5), para. 5-4.

"represents the submerged prolongation of the relevant land mass of the Republic of Mauritius in this area".[9]

Mauritius' CLCS submission further confirms that the Chagos Trough is "also called the Vishnu Fracture Zone",[10] and repeats that this feature represents the eastern boundary of the CLR. Specifically, it repeats Mauritius' previous position that "[t]he Chagos Ridge (the southern segment of the CLR) is bounded to the east by the Chagos Trough".[11]

Even in its 2022 CLCS submission, filed just two days prior to the Reply and on which it relies, Mauritius still advanced the position that the Chagos Trough represented a morphological break that "extend[s] from south of the Chagos Archipelago Region up to the equator around 0° and 1°N".[12] This is obviously a recognition that the Chagos Trough extends throughout Mauritius' EEZ, from the south to the north, and only ends around 0° and 1° north of the equator, well within the Maldives' EEZ. In fact, it is at a latitude corresponding to the island where the Maldives' capital, Malé, is situated.

In the Reply, and again in its oral submissions on Monday, however, Mauritius' case has been premised on the Chagos Trough not preventing it from establishing natural prolongation. This is the only way it could get around the Maldives' EEZ. Specifically, Mauritius has argued that a feature known as the Gardiner Seamounts interrupts the Chagos Trough, such that it represents an area where Mauritius can establish a submerged prolongation to an "elevated region" that Mauritius contends is the eastern extension of the CLR. The Reply stated at paragraph 4.13:

> Nor is Maldives correct that the Chagos Trough "passes through the entire EEZ of Mauritius' such that, Maldives contends, the Trough 'creates a clear break in the submerged prolongation of the Chagos Archipelago landmass." In fact, ... although part of the Chagos Trough is located in Mauritius' EEZ, its path is interrupted by the Gardiner Seamounts, a feature that enables Mauritius to establish the natural prolongation of its landmass.[13]

It is conspicuous that this feature, the Gardiner Seamounts, was never mentioned by Mauritius prior to the Reply. The idea that it supports a submerged prolongation also contradicts the descriptions by Mauritius of the Chagos Trough as a continuous feature bounding the CLR. Indeed, the Gardiner Seamounts was so irrelevant to Mauritius' 2022 CLCS submission that the only tangential reference to it is where it is labelled on a seafloor map.[14] There was no suggestion whatsoever that this feature could support a natural prolongation.

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[9] Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Southern Chagos Archipelago Region, Executive Summary, March 2019, Doc MCSS-ES-DOC (MCM, Annex 6), paras. 7-2–7-3.

[10] 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 of Mauritius ("MR"), Annex 3), para. 2.3.1.2. Oceanic fracture zones are common features of the deep ocean floor, formed within normal oceanic crust, and associated with the oceanic plates moving apart as a result of plate tectonics.

[11] Submission by the Republic of Mauritius to the Commission on the Limits of the Continental Shelf concerning the Northern Chagos Archipelago Region, Executive Summary, Doc MCNS-ES-DOC, April 2022 (Rejoinder of the Republic of Maldives ("MRej"), Annex 5), para. 8-2 (emphasis added).

[12] 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 (MR, Annex 3), para. 2.3.1.2 (emphasis added).

[13] MR, para. 4.13 (emphasis added).

[14] Apart from being labelled on a single figure (Figure 2.1).

Implicit in Mauritius' descriptions of the Chagos Trough as, for example, "a long well-defined oriented trench",[15] is a recognition by Mauritius that this was the location of the base of slope. The Maldives agrees that the base of slope does indeed fall within the Chagos Trough until the point between 0° and 1° north of the equator where the Trough loses its morphological expression. This, as I have explained, is what allows the Maldives to establish its natural prolongation across the Laccadive Basin. Mauritius' new case plainly contradicts its earlier position. As indicated by the red arrows, its new base of slope has resulted in a significant shift to the east from where it previously claimed that the base of slope is located.

Now, Mauritius' case rests on an allegation of a more easterly, seaward base of slope. In paragraph 4.12 of its Reply, Mauritius states:

> [T]he base of slope region starts southward of the Chagos-Laccadive Ridge, abutting the eastern extension of the [CLR] within the EEZ of Mauritius. The region continues northward along the [CLR] extension without encroaching on the EEZ of Maldives. The foot of slope points, including the critical FOS-VIT31B, are established in this base of slope region, outside Maldives' EEZ, along the continuous eastern flank of the Chagos and Maldive Ridges.[16]

Thus, in Figure R4.3 of its Reply, which is extracted from its CLCS submission,[17] Mauritius presented an entirely new base of slope region to the east of the Chagos Trough – the light grey line on the figure. Let us look at a comparison of the two base of slope lines that Mauritius has, at various points of time, sought to advance – the correctly located more western base of slope in the Chagos Trough, corresponding to its bathymetric profile, which I will come to shortly, and the grey sinuous line which Mauritius has manufactured to the east. You see that in the figure before you. The line which Mauritius identifies as its new base of slope[18] is not located within the Chagos Trough, along the Vishnu Fracture Zone. The black arrows show that it is a different base of slope, located on a more seaward minor elevation, associated with a different fracture zone (termed the Northern Boussole Fracture Zone (NBFZ)) which occurs within the deep ocean floor of the Indian Ocean Basin.[19]

In other words, the case which Mauritius now advances plainly contradicts its description of the relevant geomorphology in its Memorial and, perhaps more importantly, which it has employed in the preliminary information and submission it has filed with the CLCS. That gives serious cause for doubt about Mauritius' conviction in its own claim.

Second, I ask the question: why would Mauritius devise this theory which contradicts its own previously pleaded case and its technical position before the CLCS? The answer is simple: it has done so purely as part of a litigation strategy, not a scientific exercise. Given Mauritius' recognition of the Chagos Trough as a morphological break, the Maldives pointed out in its Counter-Memorial the obvious fact that Mauritius' submerged prolongation could not cross this break. Accordingly, Mauritius could only establish a natural prolongation which stretched for some 410 nm within the Maldives' EEZ; 260 miles to the north, past the

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[15] *Ibid.*, para. 2.3.1.2.

[16] MR, para. 4.12 (emphasis added).

[17] 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 (MR, Annex 3), Figure 3.1(b).

[18] It is difficult to comprehend Mauritius' reference to the BOS region "start[ing] southward of the Chagos-Laccadive Ridge": MR, para. 4.12. The BOS region which it identifies in its Reply stops to the east of the CLR, at a latitude where the CLR continues for a significant distance to the south: see MR, para. 4.10, Figure R4.3.

[19] Muhammad Shuhail and others, "Formation and evolution of the Chain-Kairali Escarpment and the Vishnu Fracture Zone in the Western Indian Ocean" (2018) 164 *Journal of Asian Earth Sciences*, p. 307 (MRej, Annex 19), at pp. 310, 312, 313.

equidistance line, before making an abrupt U-turn to the south-east, for another 206 nm, before arriving at the single foot of slope. The two red arrows on this graphic show the natural prolongation avoiding the base of slope which was common ground at that stage.

Notably, Mauritius' 2022 CLCS submission appears to conform with the view that the only possible path of natural prolongation which avoids the Chagos Trough is along this route. It included a figure showing the profile of the path of natural prolongation with reference to the single-beam bathymetric data on which Mauritius had relied in identifying the critical foot of slope point. Yet Mauritius' new Gardiner Seamounts theory presupposes a path of natural prolongation which, as shown in red, goes in the opposite direction. This is further depicted as a dashed red arrow in Figure 12 of the Maldives' Rejoinder. You can also see the convergence of the bathymetric profile, in black, with Mauritius' original submerged prolongation in solid red. That original submerged prolongation results from the location of the base of slope, which the Maldives had correctly identified in the Counter-Memorial.

In its Counter-Memorial, the Maldives made clear that Mauritius could, in fact, not rely on this natural prolongation to establish entitlement in the area it now claims. It stated:

> 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. It cannot validly claim an OCS entitlement based on the natural prolongation of another State's undisputed submerged land territory. Yet this is precisely what Mauritius seeks to do. Notably, the sole foot of slope point on which Mauritius bases its claim to an OCS … is not part of the natural prolongation of its submerged land territory across its seabed through the shelf, slope and rise. Rather, FOS-VIT31B can only be characterised as the natural prolongation of the Maldives' submerged land territory across the Maldives' seabed.[20]

Mauritius did not contest this legal position in its Reply, and still to this day has not done so. However, as I have explained, in its Reply it invented a new case relying on natural prolongation via the Gardiner Seamounts, as now shown. Again, as I have already said, in explaining its new case on natural prolongation, Mauritius was at pains to emphasize that, on this theory, the base of slope region ran to the east of the Chagos Trough "and continue[d] northward along the Chagos-Laccadive Ridge extension without encroaching on the EEZ of Maldives".[21] It similarly stressed that "the critical FOS-VIT31B … [is] outside Maldives' EEZ".[22]

Figure R4.3 of its Reply showed Mauritius' new base of slope region. If we zoom in to the section at the edge of the Maldives' 200 nm limit, it is striking that the new base of slope seems perfectly tailored to avoid the Maldives' EEZ, although it still encroaches on parts of it.

So what is clear is that Mauritius' new base of slope theory was not based on physical facts. Instead, it was devised as part of Mauritius' litigation strategy of circumventing the Maldives' EEZ. As Professor Mbengue explained, unlike its 2019 submission which listed two former CLCS members, the only two experts listed in Mauritius' 2022 submission are two of its counsel in this proceeding. This helps to explain why this theory is so technically deficient.

Third, there are a number of obvious flaws with the theory of entitlement based on a submerged prolongation through the Gardiner Seamounts. As the Maldives has made clear, it is not currently required to engage with the case on the merits, and the purpose of my speech

[20] MCM, para. 82.
[21] MR, para. 4.12.
[22] MR, para. 4.12 (emphasis added).

now is simply to identify a number of matters which plainly show that this claim does not even meet the requisite standard to proceed to a merits determination.

One major flaw is that Mauritius' base of slope line, used to support the alleged submerged prolongation through the Gardiner Seamounts, is not identified in accordance with the CLCS Guidelines. It is thus not one that the CLCS would ever conceivably accept. According to paragraph 5.4.5 of the CLCS Guidelines, the base of slope must be identified "where the lower part of the slope … merges into the top of … the deep ocean floor".[23] In order to make this assessment, the same paragraph sets out a two-step methodology as follows:

> The Commission recommends that the search for the base of the continental slope be carried out by means of a two-step approach. First, the search for its seaward edge should start from … the deep ocean floor … in a direction towards the continental slope. Secondly, the search for its landward edge should start from the lower part of the slope in the direction of the … deep ocean floor.[24]

The figure now shown depicts the two-step approach: in the first image, you see that the search for the seaward edge begins from below; in the second image, you see the search for the landward edge begins from above. As can be seen by the red-shaded area in the second image, an application of this methodology yields a region identified as the base of slope that has both a seaward and landward edge. Here, you can see the base of slope region correctly identified by the Maldives in light grey; you will notice that it has both a seaward and a landward edge.

Mauritius, on the other hand, has plainly ignored this requirement. Instead, it proposes "linking regions of similar gradient" at approximately 0.7 degrees,[25] resulting in the single grey line to the east that is now in front of you. You can see that, unlike the Maldives' base of slope region, Mauritius' single line does not have separate seaward and landward edges as required by the CLCS Guidelines. This line is in fact located within the deep ocean floor of the Indian Ocean Basin.[26]

Further, Dr Badal's reliance on an "elevated region", which he also describes as a "raised topographic feature",[27] as the basis for Mauritius' supposed submerged prolongation, is entirely misconceived, with the greatest respect. The so-called "elevated region" along the ridge supposedly connects the Gardiner Seamounts to the foot of slope.[28] Dr Badal showed this feature, on the left, with a series of white profiles crossing the Chagos Trough and so-called "elevated region". But these do not reflect the geomorphology of the seabed in any way. The white profiles have simply been added to grossly exaggerate the degree of elevation; the proportions of the small bridge shapes are nowhere near accurate. They suggest a height of the feature compared to its width which is wildly inaccurate.

Equally importantly, the drawn white bridges entirely ignore the actual topography of the slope between the CLR and the Chagos Trough. This is demonstrated by the figure on the right, which depicts an analysis by the Maldives in the same region. The white profiles on this

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[23] 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. 5.4.5.

[24] *Ibid.*

[25] 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 (MR, Annex 3), para. 3.2.6. See also MR, para. 4.10.

[26] See MRej, para. 134.

[27] ITLOS/PV.22C28/2, p. 16 (line 2) (Badal). At the time of drafting, the Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

[28] ITLOS/PV.22C28/2, p. 13 (lines 4–5) (Badal).

figure – which actually represent the morphological reality – demonstrate that to the east there is a steep descent into the Chagos Trough (supporting the fact that this is where the base of slope is to be properly identified), whereas Mauritius' supposed "elevated region" is in fact barely elevated at all.

Indeed, in its 2019 submission for the Southern Chagos Region, Mauritius itself characterized the southern portion of this very same elevated region as the deep ocean floor. As can be seen on this figure, the base of slope identified in that submission is well to the west of the supposed "elevated region". The point, Mr President, is that the deep ocean floor has various bumps and elevations along it, but they still form part of the deep ocean floor. Such features do not represent the submerged prolongation of any State's land territory. In fact, this is stated expressly in article 76, paragraph 3, of the Convention, which states that the continental margin "does not include …" does not include "… the deep ocean floor with its oceanic ridges or the subsoil thereof."

Dr Badal tried to justify Mauritius' reliance on this minor feature, with reference to technical details describing geophysical data relating to the NBFZ, and claimed that this data supported Mauritius' new base of slope. In particular, he referred to the relative ages of the seafloor on either side of the NBFZ, which had been measured using magnetic anomaly techniques. But the age of the seafloor is entirely irrelevant to the existence of natural prolongation or a base of slope. In reality, it is a common feature of fracture zones throughout the world's ocean basins that they divide seafloor of different ages. This has nothing to do with whether they form part of a continental margin. To the contrary, fracture zones are characteristic of oceanic ridges in the sense of article 76, paragraph 3, which I have just quoted and which expressly excludes their characterization as part of the continental margin.

If that wasn't enough, there are also obvious morphological breaks in this minor seafloor high before it arrives at the foot of slope, as indicated in the Rejoinder.[29]

The bathymetric profile now shown illustrates Mauritius' proposed submerged prolongation from its landmass to FOS-VIT31B, passing through the Gardiner Seamounts. This path was never illustrated by Mauritius in its Reply and barely alluded to by Dr Badal on Monday. He never showed the profile that is now before you. Here, it can be seen on the right that the "elevated region" is in fact a relatively flat, deep feature with an average depth of 4,800 metres, with a number of significant depressions along its length that reach depths of 5,000 metres, indicated by the red arrows; the deep ocean floor by Mauritius' own admission. Here is what Mauritius said in its Memorial, quoting from its 2021 preliminary information: "To the north, the CLR extends further eastward as irregular seafloor until it merges with the flat-lying deep ocean floor at a depth of around 5000m."[30]

Fourth, Mauritius' even newer theory does not salvage its case. We were somewhat astonished that, on Monday, Dr Badal announced yet another theory for overcoming Mauritius' lack of submerged prolongation to the critical foot of slope point. With little fanfare, he stated:

> [B]ecause the Chagos Trough is also interrupted in the north with a similar integral protuberance, Mauritius can thus equally, I would say, have its natural prolongation northwards along an elevated saddle across the Chagos Trough. … Like the Gardiner Seamounts, this saddle also merges with the Overall Elevated Region of the CLR.[31]

[29] MRej, para. 135.
[30] MM, para. 2.35
[31] ITLOS/PV.22C28/2, p. 16, (lines 22–29) (Badal).

Distinguished Members of the Special Chamber, you could scour Mauritius' pleadings in this case looking for a single reference to this elevated saddle, and the search would be in vain. It is a brand new theory presented by Dr Badal for the first time ever on Monday.

But, with the greatest respect, it is just as hopeless as Mauritius' theory based on the Gardiner Seamounts. To refresh your memory, here is the slide used by Dr Badal to depict this entirely new path of prolongation. You can see the saddle marked in the middle. This figure depicts the depth of the saddle more clearly, with the deepest areas in blue. Even a cursory examination demonstrates that this region is a flat part of the deep ocean floor, with depths approaching 5,000 metres. The information is there and we invite Mauritius to tell us why we have not arrived at the right figures. It can only be approached through the Laccadive Basin from the north, indicated by a black arrow, deep within the 200 nm limit of the Maldives.

Mauritius suggests further that the southernmost foot of slope point of the Maldives supports its identification of this saddle.[32] However, this foot of slope point in fact supports Maldives' position that Mauritius has no geomorphological connection to the east of the Chagos Trough through a saddle. The foot of slope point is located along a small feature, probably a seamount, that is morphologically connected to the slope of the CLR. As such, you can see that the base of slope region engulfs this small seamount. This is also confirmed by the measured bathymetric data upon which this foot of slope is based – the single beam profile UM68, which illustrates the seamount merged into the base of the steep slope of the CLR.

The base of slope proposed by Mauritius, represented by the pink dashed line now marked on the bathymetric profile, does not coincide with this region at all; it is located on what is clearly the flat and featureless deep ocean floor. So Mauritius can draw no support for its unfounded base of slope region from the analysis underlying the submission of the Maldives, which, unlike that of Mauritius, has remained unchanged since it was filed in 2010, almost a decade before these proceedings.

Mr President, that brings me to the most important part of my speech, and the last part, you will be happy to hear, which relates to the most obvious and utterly fatal flaw in Mauritius' case. Mr President, you will recall that article 4 of Annex II of UNCLOS requires a coastal State to submit particulars of the outer limits of the continental shelf to the CLCS "along with supporting scientific and technical data". This begs the question: what scientific and technical data, if any, has Mauritius produced to support its Gardiner Seamounts theory? After a thorough search of Mauritius' written pleadings, the Maldives discovered the lonely and neglected footnote 204.

That footnote appears in paragraph 4.13 of the Reply, which I quoted in full a few minutes ago. It is the paragraph – the only paragraph – in which Mauritius asserts that the Gardiner Seamounts interrupts the Chagos Trough and "enables Mauritius to establish the natural prolongation of its landmass" to the east of the Chagos Trough.[33] Footnote 204 is the only citation in this paragraph, and indeed anywhere else in the Reply, which purports to support the "interruption" posed by the Gardiner Seamounts.

Now let us look at footnote 204 itself. Here it is in full:

> General Bathymetric Chart of the Oceans Sub-Committee on Undersea Feature Names, International Hydrographic Organization-Intergovernmental Oceanographic Commission, *Gazetteer of Undersea Feature Names* available at https://gebco.net/data_and_products/ undersea_feature_names.[34]

[32] ITLOS/PV.22C28/2, p. 16, (lines 31–36) (Badal).
[33] MR, para. 4.13 (emphasis added).
[34] MR, footnote 204, accompanying para. 4.13.

Dr Badal did not even mention the *Gazetteer*. Mauritius' entire claim rests on that one source. But the Gazetteer is no authority at all. It is no more than a basic roadmap indicating the name and general location of undersea features. The GEBCO Sub-Committee on Undersea Feature Names ("SCUFN") is responsible for the Gazetteer. GEBCO, of course, stands for General Bathymetric Chart of the Oceans, a global compilation of data that I will turn to shortly.

For present purposes, it is simply noted that the Gazetteer identifies geomorphological features but does not purport to describe them. It does not provide technical details any more than a political map in a world atlas showing countries and cities could be equated with a detailed topographic map used by a mountaineer to scale Mount Everest. By way of illustration, before you is a screenshot of the Gazetteer with the entry for Gardiner Seamounts selected and appearing in orange. You can see that this entry is merely a line with a label placed on top of the map of GEBCO data indicating the general location of that feature. It contains no additional technical data or analysis whatsoever.

The crucial question is: does this purported "evidence" in fact support the contention that the Gardiner Seamounts interrupt the Chagos Trough? The answer is an emphatic "no" – and, if this were the evidence which Mauritius presented to the CLCS, its claim would be swiftly and definitely rejected.

It is important at this point to understand what data and information are contained in submissions to the CLCS and how, in turn, the CLCS considers this data. Bathymetry, as you will be well aware, is the measurement of the depths of the seafloor which provide an understanding of its topography. In considering how the CLCS examines questions of submerged prolongation and morphological continuity, it is necessary to consider the three main methods of gathering bathymetric data. These are depicted in the following figure:

The first method is to acquire bathymetric data by single beam echosounders. This is gathered by a survey vessel sending out a sound wave that is reflected by the seafloor and returns to a receiver on the vessel providing a single depth sounding. As the vessel moves along its path, a series of continuous depth soundings provides a bathymetric profile. The majority of the measured bathymetric data in this part of the Central Indian Ocean is comprised of single beam echosounder data that can be up to 50 years old or more, and is not particularly accurate. Some of this data can have a margin of error of tens of kilometres. At the bottom left of this figure, we see an example of this data along the Maldives' continental margin highlighted on the map on the right, with individual depth soundings having created single-beam tracks at various spacings.

The second method is to acquire data by multibeam echosounders – a more recent and significantly more accurate form of technology. This is gathered by a survey vessel that sends out fan-shaped sound waves that are reflected by the seabed and return to a receiver on the vessel, providing multiple depth soundings. As the vessel moves along its path, a swathe of bathymetric data is collected, giving detailed 3D coverage of the ocean floor. There is very little multibeam data in this part of the Indian Ocean. Again, at the bottom of the figure, we see an example of this data in the exact same region, with a swathe of continuous bathymetric data revealing, in high resolution and in three dimensions, the depth and shape of the seafloor.

The third method is bathymetric data derived from satellite altimetry. This is merely a rough estimate of bathymetry based on measurements of the ocean surface height (that is, the sea level) taken by satellite radar altimeters.

These measure the time it takes a radar pulse to make a round-trip from the satellite to the sea's surface and back. This method yields complete coverage of the seafloor, but it is much lower in precision than the other two methods; it provides only a rough estimate of bathymetry. For comparison, again, at the bottom right of the figure, we can see complete bathymetric coverage derived from satellite altimetry in the same region. You will notice that the data is

more extensive but the resolution is much lower than in the multibeam and even single-beam data examples.

The first two types of data, single-beam and multi-beam echosounder data, constitute measured data and can be accessed from public domain databases such as the United States National Geophysical Database, or NGDC, referred to by Dr Badal on Monday. Satellite altimetry-derived data is the least accurate of the three.

Mr President, Professor Robert Ballard, the famous oceanographer and explorer who discovered the wreck of the Titanic, compared satellite estimates of ocean depths to

> throwing a wet blanket over a table set for a fancy dinner party. You might see the outlines of four candelabras surrounded by a dozen chairs, perhaps some drinking glasses if the blanket's really wet. But that's about it. You wouldn't see the utensils and plates, let alone what's for dinner. Satellite data, in other words, only gives a rough idea of what lies beneath the sea.[35]

Those are the words of Professor Ballard.

Perhaps the technology will improve in the future, and we will look back at current maps of the seafloor with the same amusement that we look at wildly inaccurate medieval maps, with sea monsters and sirens luring unsuspecting sailors to their death. But for now, we have to be content with the three methods I have described.

The figure before you shows the relevant part of the Central Indian Ocean on the GEBCO grid which, as I explained, is a global compilation of the available data, which is publicly accessible and can be downloaded from the Internet for any part of the world through a web portal. GEBCO forms the basis, and background, of the maps presented by both Mauritius and the Maldives, including many of those shown by Dr Badal on Monday. Satellite altimetry-derived bathymetric data is utilized in the GEBCO grid only where there is no measured bathymetry available; that is to say single-beam or multi-beam echosounder data.

A crucial point is how the CLCS differentiates satellite altimetry-derived data from other methods of collecting data, such as single beam and multibeam echosounder data. In circumstances such as that of the present case, where the asserted path is not a straightforward prolongation of the landmass, paragraph 4.2.6 of the CLCS Guidelines, notes that

> satellite altimetry-derived bathymetric data … will not be regarded as admissible for the purpose of delineating the 2,500 m isobath. This information, however, might be useful as additional qualitative information in support of other parts of a submission but will not be considered during the determination of this or any other isobaths.[36]

Mr President, the text is absolutely clear. Satellite data is insufficient; it will not be considered by the CLCS to determine ocean depth and structure – without which natural prolongation cannot be ascertained.

Mr President, with your permission, I will further explore the application of article 4.2.6 just cited of the CLCS Guidelines to the present case. You will recall Dr Badal's figure showing Seychelles' Northern Plateau Region, which appears as Annex 20 of the Maldives' Rejoinder and is referred to in footnote 287. He said in particular that the "elevated region" on which

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[35] Robert D. Ballard, "Why We Must Explore the Sea", Smithsonian Magazine, October 2014 <https://www.smithsonianmag.com/science-nature/why-we-must-explore-sea-180952763/> accessed 17 October 2022.

[36] 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. 4.2.6.

Mauritius relies in the present case is "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".[37] Those were his words. We agree with Dr Badal that this is indeed a useful illustration of CLCS practice, especially in similar circumstances to Mauritius' claim where the asserted submerged prolongation, unlike that of the Maldives, was not obvious; but it proves the exact opposite of what Dr Badal said. What is most important for present purposes is the standard of evidential data required by the CLCS in the case of Seychelles' submission.

Let us examine the 2018 CLCS recommendations to Seychelles in the Northern Plateau Region[38] more closely. The Parties are in apparent agreement that the CLCS considered a similar morphological question. The Seychelles sought to establish its natural prolongation along the path depicted by the red arrow on the upper-left map, so that it could come from its landmass along ridge-like features to the critical foot of slope point (FOS-1). The data included in the Seychelles' submission is depicted in the bottom-left map; as you can see, it included both significant single-beam data (marked in orange) as well as multibeam data (marked in green). Nonetheless, during its consideration of the Seychelles' submission, the relevant CLCS subcommission was concerned by the fact that "the natural prolongation coming from the land mass to the critical foot of slope point could not be established based on the spatial coverage of the bathymetric data available."[39] To address this measured bathymetric data deficiency, the Seychelles acquired and subsequently submitted targeted multibeam bathymetric data during the CLCS examination process. The area covered by that additional data is highlighted in yellow on the lower-right map. It was only after gathering this additional high-resolution data that the Seychelles was able to successfully demonstrate natural prolongation. None of this was mentioned by Dr Badal on Monday.

Keeping the example of the Seychelles in mind, let us now turn to the measured data available to Mauritius in the Gardiner Seamounts, as can be observed from this map of data sources from the International Hydrographic Organization. The orange lines represent the tracks of ships that have taken single beam data, some from the 1950s with little accuracy; the green lines represent the tracks where more precise multibeam data has been collected in more recent years. Where there are no lines, it means that the only available data has been derived from satellite altimetry. You can clearly see that the bathymetry of the vast majority of this area is mapped from satellite altimetry-derived data; thus, it is at best a rough estimate of isobaths of the ocean floor.

If we zoom in even closer and look at the specific area of the Gardiner Seamounts upon which Mauritius' entire theory rests, we see that the data is completely non-existent. Here you see the isolated ridges, straddling the Chagos Trough. There is not a single ship track, whether single beam or multibeam. There is nothing at all that the CLCS would consider as evidence of natural prolongation. It is, with the greatest respect, blindingly obvious that the CLCS would not establish any entitlement on this basis. It is unsurprising that Dr Badal never pointed to the available data for this area, because the Special Chamber would then see that there is in fact no evidence whatsoever that Mauritius could invoke in support of its position. That is perhaps why they are eager for you to substitute the CLCS process, because they know that their claim, invented for litigation purposes, will definitely be rejected.

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[37] ITLOS/PV.22C28/2, p. 15 (lines 33–36) (Badal).

[38] Commission on the Limits of the Continental Shelf, Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard of the Submission made by the Republic of Seychelles in respect of the Northern Plateau Region on 7 May 2009, 27 August 2018.

[39] Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard of the Submission made by the Republic of Seychelles in respect of the Northern Plateau Region on 7 May 2009, Approved by the Commission on 27 August 2018, para. 35.

Here, is a simple comparison of the Seychelles' data with that of the Gardiner Seamounts region, indicated by red circles. On the left, we have the Seychelles' data coverage from before it obtained additional data – a significant web of ships' tracks. I remind you that the CLCS considered even this data to be insufficient for the Seychelles. On the right, you have the data available for the Gardiner Seamounts. It does not require an expert opinion to see the difference between the two. The key point here is that the CLCS, let alone this Special Chamber, could not possibly accept Mauritius' submission on the basis of the data available. The Seychelles precedent that Dr Badal referred to is in fact a perfect illustration of why Mauritius' case will obviously fail.

I note in passing that Dr Badal sought to create the impression that the Gardiner Seamounts theory was also supported by bathymetric data. He showed this graphic, and described the dashed white line as a "composite of single beam bathymetric profiles of the NGDC".[40] But as we have just seen, it cannot be. There is, to the best of our knowledge, no data there. This is simply a dashed line drawn over the proposed submerged prolongation Mauritius has alleged. It is not supported by any data whatsoever.

If this Chamber were to find that Mauritius has an entitlement, contrary to the CLCS Guidelines, and contrary to its practice, it would create an unfortunate situation where the CLCS would almost certainly issue recommendations contrary to the judgment of this Chamber. It is with good reason that the practice of ITLOS is not to delimit the outer continental shelf where there is significant uncertainty as to the existence of entitlement.

Mr President, in this presentation I have only touched on aspects of Mauritius' claim to demonstrate its obvious deficiencies. If Mauritius' claim was properly within the jurisdiction of the Chamber and otherwise admissible, and if it had otherwise put forward its case in full in its Memorial, rather than this Monday in Dr Badal's testimony, it would be possible to provide yet more details of its fundamental flaws. But that is not necessary because, as I have just explained, Mauritius has not even made a *prima facie* case; there is simply no case for the Maldives to answer.

The point is that if the Chamber delimits the maritime boundary with a directional line from point 46 as proposed by the Maldives, there would be no injustice to Mauritius, because its claim is simply unarguable. If, on these facts, Mauritius has entitlement, then anything is possible.

Mr President, Mauritius invites you to make history by substituting the CLCS process; but as Dr Ballard would remind us, the wreck of the Titanic on the ocean floor is also part of history. It would be a deeply unfortunate precedent if, having substituted the rigorous CLCS process for a quick solution, this Chamber were to find its decision contradicted by that expert body.

Mr President, that concludes my speech. I thank you for your patience and now ask that you give the podium to Ms Sander, possibly after the break – I do not know if this is an appropriate time or not – who will conclude the Maldives' first-round pleadings.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Akhavan.

I now give the floor to Ms Sander to make her statement.

[40] ITLOS/PV.22C28/2, p. 15 (lines 15–16) (Badal).

STATEMENT OF MS SANDER
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/5/Rev.1, p. 15–30]

Mr President, Members of the Chamber, it is an honour to address you again on behalf of the Republic of Maldives in these proceedings.

Dr Hart, Professor Mbengue and Professor Akhavan have addressed three distinct reasons why Mauritius' new claim to an OCS is outside this Chamber's jurisdiction and otherwise inadmissible.

The purpose of this part of the Maldives' pleadings is to address the fourth and final reason as to why the Chamber should not exercise jurisdiction over this part of Mauritius' claim. That is, that Mauritius' proposed delimitation of the Parties' overlapping OCS necessarily requires prior delineation of the outer limits and therefore encroaches on the mandate of the CLCS.

To further demonstrate the flaws of Mauritius' proposed delimitation of the Parties' purported overlapping OCS claims, I will then explain why its approach – asking the Chamber to jettison the continuation of the equidistance line pursuant to the three-step methodology in favour of an arbitrary "slicing of the pie" – should in any event be rejected.

Turning then to the fourth and final objection to Mauritius' request that the Chamber delimit the Parties' overlapping OCS claims, the starting point is the role of the CLCS, a body which, to use Mauritius' own words, has a "specialised expertise".[1] Professor Akhavan has made observations in this regard already and I wish to highlight two key points that are in essence sides of the same coin.

The first is that it is for the CLCS to make recommendations regarding delineation of the outer limits of the continental shelf.

UNCLOS article 76, paragraph 8, provides that following the submission by a coastal State to the Commission,

> [t]he Commission *shall* make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.[2]

What the functions of the Commission "shall be" is confirmed in Annex II of UNCLOS, which provides at article 4 that "where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nm, it shall submit particulars of such limits to the Commission" and at article 3 that the Commission's function shall be to consider that material and "make recommendations".

So, in brief, it is for the Commission to make recommendations as to the outer limits of a continental shelf. As the ICJ recently observed,

> [i]t is only after such recommendations are made [by the Commission] that [the coastal State] can establish final and binding outer limits of their continental shelves, in accordance with article 7, paragraph 8, of UNCLOS.[3]

Flipping the coin over as it were, the second and related point is that, as articulated by the tribunal in *Bangladesh v. Myanmar* is that

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[1] Memorial of the Republic of Mauritius ("MM"), para. 4.63.
[2] UNCLOS Article 76, para. 8 (emphasis added).
[3] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)*, Judgment, 12 October 2021, para. 188.

> the 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. [4]

So the respective mandates of a tribunal with respect to delimitation and the Commission with respect to delineation must complement, not conflict with, one another. Consistent with that imperative, as Professor Akhavan has explained, international courts and tribunals do not exercise jurisdiction where there is "significant uncertainty" as to entitlement, given the role of the Commission in this regard.

It is no answer for Mauritius to refer to a "freezing" of the CLCS process "due to the filing of an objection".[5] To the extent that there is such a "freezing", it is certainly not the Maldives that is the ice queen. As the Maldives' Agent has clarified, the Maldives has filed no objection, and Mauritius' 2011 protest is in its gift to withdraw so there can be no impediment to the process properly unfolding before the Commission.

So how does Mauritius invite the Chamber to delimit the boundary with respect to what it asserts are overlapping OCS claims? Its approach is to ditch the well-established three-step methodology that I referred to yesterday and simply take the area of what it claims are overlapping OCS claims and cut it down the middle.[6]

Fundamental to that proposal is the premise of an "equal share".[7] Mauritius says the overlapping OCS area should be simply, and I quote here, "divide[d] in equal parts",[8] with a "line of equal division"[9] that results in a mathematically precise "equal apportionment of the area".[10] So, according to Mauritius, the overlapping OCS area is to be divided up with exactly 11,136 square kilometres each.[11]

So it is clear that Mauritius' "line of equal division"[12] of 11,136 square kilometres each is premised on a particular delineation of the Parties' respective OCS claims. For Mauritius' approach of slicing up the geographical pie, this requires this Chamber to determine the contours of its crust!

Yet such delineation of outer limits cannot be undertaken independently of a recommendation of the CLCS. Mauritius' methodology depends on assuming what that recommendation from the CLCS will be, and that would be an encroachment on the function of the CLCS.

Put another way, if ultimately there is a different delineation of the parties' outer limits following the Commission's recommendations, then the "equal share" rug is pulled from under the Parties' feet. The "line of equal division" would no longer be equal.

Indeed, in the present proceedings, already two adjustments have become necessary with respect to Mauritius' OCS claim.

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[4] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 379.

[5] ITLOS/PV.22/C28/2, p. 31 (lines 8–11) (Loewenstein). At the time of drafting, Maldives had received only unverified copies of the transcripts. All references are to those unverified versions.

[6] MM, para. 4.77; Reply of the Republic of Mauritius ('MR'), para. 4.25.

[7] MM, para. 4.49.

[8] MM, para. 4.77.

[9] MR, Figure R4.6.

[10] MR, para. 4.25.

[11] MR, Figure R4.6 (reproduced in Mauritius' Judges' Folder, (Loewenstein-1) Figure 7).

[12] MR, Figure R4.6.

First, in its Reply, Mauritius changed what it says is the total area which is to be divided between the Parties.[13] For the Chamber's reference, the change is noted at para. 4.3 of Mauritius' Reply.

That adjustment did not take into account a second and further adjustment that is necessary in light of its survey. As I explained yesterday, the outer limit of Mauritius' claimed OCS must be recalculated using baselines correctly drawn from low-tide elevations within 12 nm of the nearest island. To achieve its so-called "equal division" therefore requires another re-drawing of the line.[14]

Mauritius may well seek to attempt to downplay these two adjustments as *de minimis* but that is no answer to the point of principle. What is more, we have no crystal ball as to what the delineation will be following a recommendation from the CLCS and whether that will only involve only *de minimis* adjustments. It of course cannot be assumed that the Commission will adopt any State's submission, and there are specific instances where the Commission has concluded that the evidence submitted was insufficient – Professor Akhavan has already referred to the Seychelles' submission in this regard.[15] That warning is all the more apposite in circumstances where Mauritius' submission is presented without the relevant supporting technical evidence, as we have just heard from Professor Akhavan. In this instance, it is obviously the case that there is, at the very least, significant doubt as to whether Mauritius has any entitlement at all, with the possible consequences that the CLCS will find Mauritius has no entitlement.

In fact, it was Monday that was the first time that we heard Mauritius' substantive response on this fundamental objection, i.e. the objection that Mauritius' proposed delimitation of the Parties' purported overlapping OCS necessarily requires prior delineation of the outer limits and therefore encroaches on the mandate of the Commission. As noted in the Maldives' Rejoinder, no answer to the issue has been advanced in Mauritius' written pleadings, despite the Maldives having raised this objection in its Counter-Memorial.[16] It is not clear to the Maldives why Mauritius only substantively answered the objection some 72 hours ago.

So what did Mauritius say? Well, not much. There seemed to be two aspects to its rather brief response.

First, it says that "the absence of a delineation by the CLCS has not prevented courts or tribunals from establishing the boundary beyond 200 M by means of a directional line", asserting that "the fact that the precise dimensions of the area has not yet been determined" is no impediment to the delimitation.[17]

The Maldives agrees, as noted in both of its written pleadings, that yes, in certain circumstances an absence of delineation will not prevent delimitation from occurring.[18] That is the case where a future delineation will not be prejudiced by a delimitation.

But the point is that the absence of delineation is an impediment to the delimitation proposed by Mauritius. As I explained at the start of my submission, the premise of Mauritius' approach is of a precise equal share and so determination of "the precise dimensions of the area" to be divided is key. Given the Commission might well delineate the outer limits of the continental shelf differently to how Mauritius contends that it should, the directional line would risk then not achieving the mathematical split on which Mauritius' whole approach is based.

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[13] MR, para. 4.3, footnote 183.

[14] MR, footnote 211, in conjunction with para. 4.5.

[15] Commission on the Limits of the Continental Shelf, Summary of Recommendations of the Commission on the Limits of the Continental Shelf in regard of the Submission made by the Republic of Seychelles in respect of the Northern Plateau Region on 7 May 2009, 27 August 2018, paras. 10, 35–37 <https://www.un.org/Depts/los/clcs_new/submissions_files/syc39_09/2018_08_27_COM_SUMREC_SYC.pdf> accessed 17 October 2022.

[16] Rejoinder of the Republic of Maldives ("MRej"), paras. 10 and 139.

[17] ITLOS/PV.22/C28/2, p. 27 (line 41) – 28 (line 3) (Loewenstein).

[18] Counter-Memorial of the Republic of Maldives ("MCM"), paras. 87–89; MRej, paras. 137(b), 139.

Mr Loewenstein later said that "even if the outer limits were to be adjusted closer or farther away, the 55 degree azimuth would still divide the overlapping OCS entitlements equally."[19] He didn't elaborate this submission but, as advanced, this seems clearly incorrect. If there is a change in the size and shape of the area to be divided, then retaining the same fixed azimuth would result in unequal portions being given to each side.

The second part of their response as we understand it is that Mauritius asserts that "[the] Maldives does not dispute that the limits of the Mauritian outer continental shelf claim fall along the line described in Mauritius' Submission to the CLCS".[20] I am citing there from the Monday pleading. In fact, the Maldives does dispute the entirety of Mauritius' OCS claim, including its limits. If the Commission were to agree with the Maldives, then the delimitation line proposed by Mauritius would purport to grant to Mauritius half of an area in which it has no entitlement at all. Equally critically, quite apart from the Maldives' position, the Commission may not recommend that the limits of the Mauritian outer continental shelf claim fall along the line described in Mauritius' submission to the Commission.

Mr President, I am moving now to the second part of my submission, which is a straight run of 40 minutes. Would now be a convenient time to take a morning break?

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Sander.

Then the Special Chamber will withdraw for a break of 30 minutes and the hearing will be resumed at quarter to noon.

(*Break*)

THE PRESIDENT OF THE SPECIAL CHAMBER: Ms Sander, you have the floor.

MS SANDER: Thank you, Mr President.

The Maldives' admissibility objection concerning "delimitation presupposing the outcome of delineation" that I addressed before the break arises from Mauritius' proposed approach for delimitation from with respect to the Parties' purported overlapping OCS claims. In this second part of my submission, I explain why that approach – an arbitrary "slicing of the pie" – is flawed. For the avoidance of doubt, the Maldives' position is that to proceed with a delimitation of the Parties' purported overlapping OCS claims is outside this Chamber's jurisdiction and inadmissible. But to fully demonstrate the flaws of Mauritius' case as a matter of jurisdiction and admissibility, it is necessary for me to step into their fantasy world for a moment, to follow the rabbit down the hole to Wonderland.

As a starting point, it is helpful to … well, identify the starting point. I leap here from Alice in Wonderland here to the hills of Salzburg: "Let's start from the very beginning; it's a very good place to start."

It is of course common ground that the three-step methodology is not mandatory. On Monday, Mr Loewenstein took us through a series of cases, highlighting the importance of achieving an equitable solution in light of the particular circumstances of the case.[21] Fine, and I will come to the particular circumstances of the case shortly. What I begin by doing is highlighting four further points that are also clear from the jurisprudence.

First, it is an equitable solution "on the basis of international law" that is mandated by article 83, paragraph 1, of UNCLOS, and international law is clear that "equity does not

[19] ITLOS/PV.22/C28/2, p. 31 (lines 22–24) (Loewenstein).
[20] ITLOS/PV.22/C28/2, p. 28 (lines 8–10) (Loewenstein).
[21] Mauritius' Judges' Folder, (Loewenstein-1) Figure 8–(Loewenstein-1) Figure 16.

necessarily imply equality".[22] Mauritius' argument depends on the overlapping continental shelf entitlements "being delimited by means of a line that apportions an equal share to each Party".[23] Yet, as expressly and repeatedly affirmed by the ICJ, "[t]he object of delimitation is to achieve a delimitation that is equitable, not an equal apportionment of maritime areas."[24] The Tribunal in the *Newfoundland Nova Scotia* arbitration observed that "dividing up of offshore areas on a strict mathematical basis [is] a procedure which the International Court has consistently denied is required by equitable principles".[25]

That is my first point.

Second, whilst simply dividing areas into equal shares has been expressly rejected in the case law, the three-step methodology, by contrast, is well-established in the jurisprudence and it meets two important objectives in achieving equitable delimitations.

On the one hand it provides sufficient flexibility to accommodate the circumstances of individual cases. The three-step methodology has an inbuilt fact-specific assessment; there may be an adjustment of a provisional equidistance line in light of the circumstances of the case and there is the further cross-check for gross disproportionality.

On the other hand, the three-step methodology ensures coherence and predictability, minimising arbitrariness of approach.

Thus, the Tribunal in *Bangladesh* v. *India* emphasized "transparency and the predictability of the delimitation process as a whole" as an important objective.[26] This chimes with an early statement of the Tribunal in *Barbados* v. *Trinidad and Tobago* that

> [t]he need to avoid subjective determinations requires that the method used start with a measure of certainty that equidistance positively ensures, subject to its subsequent correction if justified. A different method would require a well-founded justification.[27]

Third, reflecting the fact that the three-step methodology meets such important objectives, there is in practice a presumption that the three-step methodology will apply to maritime delimitation, grounded in the need to ensure transparency and predictability.

As I noted yesterday, we see the ICJ recently in *Somalia* v. *Kenya* asking whether there was a "reason in the present case to depart from its usual practice of using the three-stage methodology to establish the maritime boundary between Somalia and Kenya in the exclusive economic zone and on the continental shelf".[28]

On Monday, Mauritius itself cited a paragraph from *Ghana* v. *Côte d'Ivoire* where ITLOS stated that

> international jurisprudence confirms that, in the absence of any compelling reasons that make it impossible or inappropriate to draw a provisional equidistance line,

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[22] *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.

[23] MM, para 4.49, (emphasis added).

[24] *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).

[25] *Arbitration between Newfoundland and Labrador and Nova Scotia Concerning Portions of the Limits of their Offshore Areas*, Award of the Tribunal in the Second Phase, 2002, para. 5.6.

[26] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, Award, 7 July 2014, para. 339.

[27] *Barbados* v. *Trinidad and Tobago*, Award, 11 April 2006, para. 306.

[28] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021, para. 131.

> the equidistance/relevant circumstances methodology should be chosen for maritime delimitation.[29]

So, a compelling reason making it impossible or inappropriate would be required for an international court or tribunal to depart from the three-step methodology. We know the construction of the equidistance line in this case is not "impossible" — both parties seem to agree on this – and we also know that the mere fact that there is not an equal apportionment does not make it "inappropriate" – and I have referred to the case law on that.

The fourth point I wish to draw from the jurisprudence is that, consistent with the presumption I have referred to and the concern for coherence and predictability, all cases to date have applied the same methodology within and beyond 200 nm.

Thus in *Bangladesh* v. *Myanmar*, ITLOS stated:

> [T]he delimitation method to be employed in the present case for the continental shelf beyond 200nm should not differ from that within 200nm. Accordingly, the equidistance/relevant circumstances method continues to apply for the delimitation of the continental shelf beyond 200nm.[30]

Bangladesh v. *India*, the Tribunal confirmed:

> The Parties and the Tribunal agree that there is a single continental shelf. The Tribunal considers that the appropriate method for delimiting the continental shelf remains the same, irrespective of whether the area to be delimited lies within or beyond 200nm. Having adopted the equidistance/relevant circumstances method for the delimitation of the continental shelf within 200nm, the Tribunal will use the same method to delimit the continental shelf beyond 200nm.[31]

Ghana v. *Côte d'Ivoire*, the Chamber observed:

> As far as the methodology for delimiting the continental shelf beyond 200nm is concerned, the Special Chamber recalls its position that there is only one single continental shelf. Therefore it is considered inappropriate to make a distinction between the continental shelf within and beyond 200nm as far as the delimitation methodology is concerned.[32]

Somalia v. *Kenya*: there, the Court considered it

> appropriate to extend the geodetic line used for the delimitation of the exclusive economic zone and the continental shelf within 200nm to delimit the continental shelf beyond 200nm … until it reaches the outer limits of the Parties' continental shelves which are to be delineated by Somalia and Kenya, respectively, on the basis of the recommendations to be made by the Commission or until it reaches the area where the rights of third States may be affected. [33]

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[29] *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 (emphasis added here), cited by ITLOS/PV.22/C28/2, p. 24 (lines 37–39) (Loewenstein).

[30] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 455.

[31] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India),* Award, 7 July 2014, para. 465.

[32] *Delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire),* Judgment, 23 September 2017, para. 526.

[33] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021, paras. 195–196.

Against that backdrop, and recalling that the equitable solution mandated by article 83, paragraph 1, of UNCLOS is one that must be "on the basis of international law", the Maldives urges the Chamber to consider carefully the need for consistency of approach, meeting the undisputed imperative of transparency and predictability. That need to ensure transparency and predictability is not to be lightly glossed over as a mere high-level aspiration or peripheral consideration. The delimitation of the continental shelf beyond 200 nm is – and will increasingly be – of interest for States, noting the large number of submissions before the CLCS (some 93 at our last count) as well as submissions in the pipeline. Of course, it is also of critical importance for coastal States in the process of negotiating boundaries with nearby coastal States, with both sides inevitably looking to judgments of international courts and international tribunals to guide them in what would be equitable in the circumstances of their case. So, against that backdrop, the imperative of the consistency and coherence of the jurisprudence – all of which currently confirms a common approach to maritime delimitation within and beyond 200 nm and a presumptive application of the three-step methodology – is significant.

So, it seems in fact to be common ground that the real question here is as follows: is there a reason not to apply the three-step methodology – continuing the equidistance line – to the delimitation beyond 200 nm in the circumstances of this case?

One reason presented by Mauritius for disregarding all the prior cases I have cited applying the same methodology within and beyond 200 nm is that those cases concerned "adjacent States" and this case concerns "opposite States".[34] Mr Loewenstein acknowledged that "[t]here may be circumstances in which equidistance can still usefully serve as an appropriate starting-point, such as where the geographical context is one of adjacency." He continued:

> This was the situation in prior delimitation cases where courts or tribunals were called upon to delimit the continental shelf beyond 200 nm. In all those cases, the two parties were adjacent States, and the extension of the delimitation line within 200 nm along the same azimuth made logical sense.

But, so he says, "Not so here, where Mauritius and Maldives are opposite States".[35]

But this observation deserves some unpicking.

There is on the one hand the question of the configuration of the coastlines, which may be opposite or adjacent. The Tribunal in *Barbados* v. *Trinidad and Tobago* observed with reference to the applicable law under UNCLOS that "there is no justification to approach the process of delimitation from the perspective of a distinction between opposite and adjacent coasts".[36] So as an abstract point of distinction, the fact that two States have opposite or adjacent coastlines does not assist this Tribunal when it comes to the process of delimitation; and, as I will explain, considering this point of distinction on the facts of this case similarly does not move things forward. That is coasts.

There is, on the other hand, the question of the configuration of the continental margins, which again may be opposite or adjacent. So we see on the screen now an example of where the coastlines of State A (on the left) and State B (on the right) are opposite. Their 200 nm limit is denoted by the dark yellow shading delineated by the black line. Their respective OCS claim is indicated by the paler yellow shading delineated by the red line. Here the continental margin is, as with the coastlines, opposite, with those opposite margins meeting in the middle with a small area of overlap.

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[34] MM, para. 4.69.

[35] ITLOS/PV.22/C28/2, p. 26 (lines 6–15) (Loewenstein).

[36] *Barbados* v. *Trinidad and Tobago,* Award, 11 April 2006, para. 315.

But it is possible for the coastlines to be opposite while the continental margins sit in a position of adjacency. This is shown in the three graphics on the screen, which I am going to talk through in turn.

If we look first at the left-hand side, this is the graphic showing State A, marked in a blue colour, and State B, as adjacent States. Their 200 nm limit is denoted by the dark yellow shading delineated by the black line. Their OCS claim is indicated by pale yellow shading delineated by the red line. So here we have adjacent coastlines with continental margins also sitting in a position of adjacency.

I move now to the graphic in the middle of the screen. This is a graphic this time showing State A and State B as islands with opposite coasts; but, again, with their 200 nm limit denoted by the black line and their OCS limit indicated by the red line. So here we have opposite States, but their continental margins are still sitting in a position of adjacency.

On the right side is the graphic similarly showing State A and State B as islands with opposite coasts and their continental margins still sitting in a position of adjacency, but with the majority of the continental margin proximate to the coastline of State A.

So in all three examples, the States' continental margins are sitting in a position of adjacency.

Indeed, this right-hand graphic, broadly, reflects the position here. The coastlines of the Parties are indeed opposite. But when it comes to the OCS in this case the configuration is different – it is one of adjacency. I remind the Chamber that I am still in Wonderland here: the Maldives' case is that Mauritius has no entitlement to an OCS. But assuming they do, *quod non*, Mauritius' case is that "there is a single physical shelf in the area, a portion of which is claimed by both parties".[37] The purpose of this slide is to show the irrelevance of Mauritius' observation in this case that the Parties' coasts are opposite rather than adjacent. On the more pertinent issue of the configuration of their continental margins, the situation in this case is the same as in previous cases: the continental margins are adjacent.

And, it is recalled that Mr Loewenstein conceded that "where the geographical context is one of adjacency" then "equidistance can still usefully serve as an appropriate starting-point".[38] Consistent with that acknowledgment and consistent with all the previous cases to which I have referred, the Maldives' case is that equidistance is the appropriate starting point with respect to the purportedly overlapping OCS claims, and the Chamber should continue the equidistance line.

Another reason advanced by Mauritius for not applying the same methodology within and beyond 200 nm is its complaint that, in essence, "but continuing the equidistance line means we (Mauritius) are cut off from our OCS entitlement".[39]

By way of preliminary observation, of course, this is not a "cut off" in the sense of Mauritius being wedged in without access to the wider Indian Ocean, and Mauritius would have still of course its 1,100 square kilometres of OCS, which it has identified to the east of the area of overlapping OCS claims as only claimed by Mauritius.

But the more important point here is that, as stated by the Tribunal in *Bangladesh* v. *India*,

[37] MR, para. 4.14.
[38] ITLOS/PV.22/C28/2, p. 27 (lines 6–8) (Loewenstein).
[39] ITLOS/PV.22/C28/2, p. 22 (lines 36–37) (Loewenstein); ITLOS/PV.22/C28/2, p. 28 (lines 24–26) (Loewenstein).

> international jurisprudence on the delimitation of the continental shelf does not recognise a general right of coastal States to the maximum reach of their entitlements, irrespective of the geographical situation.[40]

It may well be that, in light of the geographical situation, a State is not awarded the full entitlement of OCS that would receive if there were no other State nearby.

Thus in the Bay of Bengal cases, the final delimitation lines adopted by ITLOS and the Annex VII tribunal stopped Bangladesh's continental shelf by over 100 nm short of the outer limit of the entitlement it had claimed in its submission before the Commission. I refer to the graphic now on your screen. This is the Bay of Bengal, with dark black lines indicating Bangladesh's 200 nautical mile limit and its OCS submitted to the CLCS. So the area we see here in yellow shows the area of OCS claimed by Bangladesh. In the next graphic we see marked in green the area of OCS awarded to Bangladesh by application of an adjusted equidistance line. In the final graphic, the Chamber will see marked in red the area of its OCS that Bangladesh was cut off from. The area of OCS awarded to Bangladesh we calculate as being less than 18 per cent of what it in fact claimed.

The key point is that, as noted by the Court in *Somalia* v. *Kenya,* "the potential cut-off of [a State's] maritime entitlements should be assessed in a broader geographical configuration".[41] And here the cut off identified by Mauritius is a reflection of the geographical configuration.

This merits further elaboration, and so it is to this geographical configuration I now turn.

It is helpful to begin by setting the scene. On the screen is a map showing Mauritius' mainland, the Chagos Archipelago and the Maldives, with Mauritius' OCS claim (both in the southern and, as now claimed, the northern region) shaded in pink.

If we now zoom in to Mauritius' OCS claim in the northern region, it is this pink area that it says is overlapping with the Maldives' OCS claim, and we see the 350 nm limit it has drawn pursuant to UNCLOS article 76, paragraph 5, marked by the white lines drawn from Blenheim Reef.

It is this pink overlapping area that Mauritius proposes to simply slice into two equal shares.

What is clear from the graphic is the proximity of what Mauritius is claiming to be its OCS to the Maldives' coastline. This is not in dispute – Mauritius has itself expressly conceded that the extended shelf that Mauritius claims – and I quote from its Memorial, "lies in closer proximity to Maldives' coast than to that of Mauritius".[42] As the figure shows, the distance from the Maldives' land territory to the furthest point on the outer limit of its OCS claim is just 25 nm – almost 100 nm closer than that of Mauritius.

This geographical reality is also reflected in the length of the Parties' respective 200 nm lines "edging" or abutting the (purportedly) overlapping OCS claims. These shared "edges" are marked in green on the graphic we are looking at. For the Maldives this is a long perimeter of some 290 km. For Mauritius it is just over 30 km. So the coastal "frontage" is vastly different.

The Maldives' proposal of a continuation of the equidistance line would reflect the geographical reality. To the charge that the equidistance line does not divide the Parties' overlapping OCS entitlements,[43] it is recalled that the line does divide the Parties' continental shelf, noting there is in law one single continental shelf, with Mauritius having continental shelf on its side of the equidistance line, albeit within 200 nm. The area of outer continental shelf on

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[40] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, Award, 7 July 2014, para. 469 (emphasis added).

[41] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment, 12 October 2021, para. 167.

[42] MM, para. 4.72.

[43] ITLOS/PV.22/C28/2, p. 21 (lines 6–15) (Loewenstein).

the Maldives' side of the equidistance line would simply be a function of the physical shape of the continental margin.

By stark contrast, Mauritius' proposed line of delimitation would completely ignore this geographical reality – it would in effect refashion geography, denying the reality of proximity to the Maldives' coast supported by the far longer coastal frontage, in favour of an abstract measure of so-called "equal division".

Presumably recognizing the unavoidable geographical reality in this case, Mauritius attempts to dismiss entirely the relevance of "coastal configuration".[44] The Maldives does not accept that simply because one has turned to the issue of delimitation of the continental shelf beyond 200 nm that this exercise can be considered in a vacuum, without reference to the "coastal configuration", specifically the margin's position with respect to the Maldives' coastline. This is for two reasons.

Firstly, to automatically dismiss geographical configuration with respect to delimitation beyond 200 nm is at odds with the jurisprudence, and I have already noted that the equitable solution mandated by article 83 of UNCLOS is one that must be "on the basis of international law". It is well established that through the process of delimitation there must be "no question of refashioning geography, or compensating for the inequalities of nature", and that "the method chosen and its results must be faithful to the actual geographical situation".[45] As Mauritius itself expressly observed on Monday, the method to be followed should be one that has regard to the "prevailing geographic realities",[46] one that is "geometrically objective and also appropriate for the geography of the area".[47]

Let us take *Ghana* v. *Côte d'Ivoire*. Yes, the States had adjacent coastlines (unlike this case), but the continental margin lay in an adjacent orientation, just like in this case.

The graphic now on the screen shows in green, at the top, the land territory of Côte d'Ivoire to the left and Ghana to the right. The yellow line you see towards the bottom of the screen shows the Parties' respective 200 nm lines, with the red line below that denoting the outer limits of the continental shelf claimed by each State. The area between the yellow and red line shows the overlapping OCS areas. The Chamber in that case determined an equidistance line, that you can see marked by the white dash line, that continued both within and beyond 200 nm. It is clear from that white dashed line, the equidistance line determined by the Chamber, that a slightly larger area was awarded to Côte d'Ivoire. This reflected the physical shape of the continental margin which lay in closer proximity to Côte d'Ivoire's coastline. What the Chamber did not do was simply split the overlapping OCS in two; if it had done, the delimitation line would have been that indicated by the orange line on this graphic. The Chamber did not draw the orange line, the Chamber did not refashion geography, even though the geographical realities meant that Côte d'Ivoire received a larger share.

I turn now to the second reason why the Maldives does not accept that simply because one has turned to the issue of delimitation of the continental shelf beyond 200 nm in this case that it can be considered without reference to geographical configuration. At this point in my submission, I ask the Chamber to take a step back.

A bedrock principle is that maritime rights derive from the coastal State's sovereignty over the land, a principle which can be summarized as "the land dominates the sea". This is a

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[44] ITLOS/PV.22/C28/2, p. 26 (lines 21–22) (Loewenstein).

[45] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13 at pp. 39–40, para. 57.

[46] MR, para. 4.19, citing *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 235; ITLOS/PV.22/C28/2, p. 23 (lines 36–38) (Loewenstein).

[47] ITLOS/PV.22/C28/2, p. 24 (lines 24–25) (Loewenstein), citing *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 61 at p. 101, para. 116.

principle referred to by Professor Sands on Monday and a point on which Professor Thouvenin addressed this Chamber yesterday.

We see that principle reflected with respect to a State's continental shelf entitlement beyond 200 nm in article 76 of UNCLOS. Mauritius seeks to rely upon article 76 to draw out the fact that the basis for entitlement to a continental shelf beyond 200 nm is not an automaticity based on distance. But the point that I want to draw out from article 76 is that article 76 expressly states that that the entitlement to a continental shelf is based on a State's "natural prolongation of its land territory" i.e., the prolongation from its coast. As stated by the ICJ, it is "the coast of each of the Parties" which "constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction". The Court has emphasized that "it is by means of the maritime front of this landmass, in other words by its coastal opening, that this territorial sovereignty brings its continental shelf rights into effect".[48] As the Court put the point in the *Aegean Sea Continental Shelf* case:

> [I]t is solely by virtue of the coastal State's sovereignty over the land that rights of exploration and exploitation in the continental shelf can attach to it, *ipso jure*, under international law. In short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State."[49]

Coasts, which of course is a key aspect of geography, are the cornerstone and fundamental basis of all States' maritime entitlements, including the OCS entitlement.

Flowing from this bedrock principle, it is to coastal geography that the law turns to provide a non-arbitrary reference point for an equitable delimitation. We see this in the construction of the equidistance line, and also with respect to relevant circumstances which may justify an adjustment of that equidistance line (which as Mauritius expressly acknowledges "are essentially of a geographic nature"[50]). Coastal geography is the important anchor in the quest to satisfy the twin objectives of both a stable legal outcome and flexibility to accommodate the circumstances in maritime delimitation, as I referred to at the start of my submission.

And of course a stable legal outcome has been and should remain vital to any delimitation decision, including, as I referred to earlier, in order that States in other disputes be assisted in their negotiations as required by article 83 of UNCLOS.[51] As the ICJ has said

> ... the justice of which equity is an emanation is not abstract justice but justice according to the rule of law; which is to say that its application should display consistency and a degree of predictability; even though it looks with particularity to the peculiar circumstances of an instant case, it also looks beyond it to principles of more general application".[52]

Yet Mauritius would not only have the Chamber simply ignore the coastal geography in favour of its alternative approach that a split down the middle is equitable on the basis that each Party receives an equal share, and this is despite the clear jurisprudence stating that equity does not mean equality.

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[48] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13 at p. 41, para. 49.
[49] *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 3 at p. 36, para. 86.
[50] MM, para. 4.33.
[51] *Barbados* v. *Trinidad and Tobago,* Award, 11 April 2006, para. 243.
[52] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13 at pp. 39–40, para. 45.

In any event, what does equal share really mean in this context? A continental shelf entitlement is not a plot of land territory which can be divvied up for construction by Hochtief, Istak or Balfour Beatty. A continental shelf has a value because of the resources it may contain. One half of an area of OCS claims may contain more or less resources than the other half. Geomorphological factors may also make one half more or less valuable – for example, differences in cost and accessibility of seabed resources in one half than the other.

The Chamber in this case plainly cannot take into account all the potentially myriad factors into consideration there and, plainly, based on the information before it, this Chamber cannot know which areas may be more prospective than others. But it is equally plain that it cannot be assumed that simply because two areas cover the same number of square kilometres this means that the Parties are receiving an equal share of value. So this very premise of equality which underpins Mauritius' case collapses.

The key point is that to accept Mauritius' approach would be to heave up the well-embedded anchor of coastal geography in favour of a premise unmoored from established legal criteria, leaving States seeking to negotiate in other disputes all at sea. In short, against the tide of established jurisprudence, it is a call sign to arbitrariness.

I began this section of my submission by posing the question whether there is a reason why this Chamber should not apply the three-step methodology to the delimitation beyond 200 nm in this case. There is none. Indeed we heard on Monday Mauritius, in fact, considering the application of the three-step methodology to the delimitation beyond 200 nm in this case. It focused on the second step, namely the question of whether there are relevant circumstances requiring an adjustment to the equidistance line, and relying in this regard on the cut-off effect which I have just addressed.[53] For the reasons I have explained, any cut off is simply a reflection of the geographical reality. An adjustment in favour of one State cannot result in the drawing of a line having a "converse distorting effect on the seaward projection of" the other State, which would be the case of the massive distortion proposed by Mauritius.[54]

Having engaged in the second step of the three-step methodology, Mauritius did not, however, then engage with the third step – i.e., the final sense check that there is no significant or gross disproportion arising from the continuation of the provisional equidistance line. Throughout its written and oral pleadings to date, Mauritius has studiously avoided considering the proportionality of applying the equidistance line to the full overlapping areas of the Parties, including its new OCS claim. Instead, in respect of an equidistance line, it has compared the size of the entitlements given to each Party with reference only to the overlapping OCS claims in isolation, not taking into context the maritime claims as a whole. The inappropriateness of that approach is shown by the fact that, when it came to discussing the proportionality of its proposed delimitation, Mauritius was quite happy to do a proportionality analysis of the entire area of overlapping claims.

As the Chamber is aware, it is not the function of the proportionality test to determine whether the provisional equidistance line distributes the disputed maritime spaces proportionately but to determine whether that distribution is significantly disproportional, and the Maldives had expressly stated in its Counter-Memorial its delimitation including overlapping OCS entitlements would not give rise to any gross disproportionality.

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[53] ITLOS/PV.22/C28/2, p. 28 (lines 21–26) (Loewenstein): "But even if, quod non, the Special Chamber were to follow Maldives' preferred approach – misguided as it is – the end-result would still be the same. To achieve the equitable result required by article 83, the Special Chamber inevitably would have to adjust the provisional equidistance line to account for the inequitable cut-off it produces, depriving Mauritius of nearly the entirety of its outer continental shelf entitlement."

[54] *Delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar),* Judgment, 14 March 2012, para. 325.

In conclusion, the approach to delimitation proposed by Mauritius is inadmissible and, in any event, it is inconsistent with the well-established jurisprudence, conjured up to bypass geographical realities and circumvent the obvious feasibility of simply continuing the equidistance line.

Mr President, Members of the Chamber, as I have the honour of concluding the first-round presentations of the Maldives, I wish to take this opportunity to reiterate the crux of the Maldives' submission.

Mr President, Members of the Chamber, this is a case where the key issue is whether basepoints for the construction of a provisional equidistance line can be placed on low-tide elevations at Blenheim Reef. They cannot. This is a case where the Chamber must decide whether there is any reason not to apply the well-established three-step methodology, the equidistance line, to the overlapping claims of the Parties. There is not.

Finally, this is a case where the Chamber must decide whether to assume jurisdiction over Mauritius' extensive and wholly unsubstantiated claim to an OCS entitlement, first made two years after it elected to commence these proceedings and followed by a drip-feed of partial and inconsistent evidence. In the Maldives' respectful submission, it can and should not.

I thank you for your attention, and that concludes the first-round submissions on behalf of the Republic of Maldives.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Sander.

This brings us to the end of the first round of oral arguments of the Maldives. We will continue the hearing tomorrow at 3 p.m. to hear the second round of oral arguments of Mauritius.

The sitting is now closed. Good afternoon.

(*The sitting closed at 12.25 p.m.*)

PUBLIC SITTING HELD ON 22 OCTOBER 2022, 3 P.M.

Special Chamber

Present: *President* PAIK; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges* ad hoc OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

For Mauritius: [See sitting of 17 October 2022, 10 a.m.]

For the Maldives: [See sitting of 17 October 2022, 10 a.m.]

AUDIENCE PUBLIQUE TENUE LE 22 OCTOBRE 2022, 15 HEURES

Chambre spéciale

Présents : M. PAIK, *Président* ; MM. JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR *juges* ; Mme CHADHA, *juge* ; MM. OXMAN, SCHRIJVER, *juges* ad hoc ; Mme HINRICHS OYARCE, *Greffière.*

Pour Maurice : [Voir l'audience du 17 octobre 2022, 10 heures]

Pour les Maldives : [Voir l'audience du 17 octobre 2022, 10 heures]

THE PRESIDENT OF THE SPECIAL CHAMBER: Good afternoon. The Special Chamber will continue today its hearing on the merits in the *Dispute concerning the delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean.* We meet this afternoon to hear the second round of oral argument of Mauritius.

I now give the floor to Mr Sands to make his statement.

Second Round: Mauritius

STATEMENT OF MR SANDS
COUNSEL OF MAURITIUS
[ITLOS/PV.22/C28/6/Rev.1, p. 1–13]

Mr President, Members of the Special Chamber, we have now had a chance to listen to our colleagues and friends from the Maldives, and it is apparent that there are three sets of issues that divide the Parties: first, should basepoints and baselines be drawn on and around Blenheim Reef? Second, does the Special Chamber have jurisdiction to address the claims put by Mauritius in respect of an extended continental shelf to the north of the Chagos Archipelago, and if so, is there a bar to the exercise of that jurisdiction? And third, if the Special Chamber has such jurisdiction and the claims are admissible, what are the merits of those claims and how should the Tribunal delimit the extended continental shelf?

I will address the first point; Professor Klein will address the second; and Mr Loewenstein will address the third. Then the Co-Agent of Mauritius, Ambassador Koonjul, will offer a few concluding remarks before reading the final submissions of Mauritius. We hope to finish by six o'clock or thereabouts.

We listened with much appreciation also to the presentations of Ms Shaany and Ms Shabeen, on the circumstances in which Maldives declined to allow Mauritius to conduct its survey of Blenheim Reef from the Maldives, and the Maldives' expression of commitment to the conservation of the marine environment. We hope that the Special Chamber might understand why we see no need to offer any detailed response to those presentations.

Suffice it to say, Mauritius greatly appreciates the role played by the Special Chamber and ITLOS in fostering a spirit of greater harmony and cooperation between the Parties. Your judgment on jurisdiction was significant in breaking a deadlock and in contributing to the rule of international law on maritime and appurtenant matters.

In this regard, the Special Chamber already has before it a great deal of evidence, introduced by the Parties in the course of the written pleadings. As noted in our letter to the Tribunal sent yesterday, Sir, in the course of its submissions this week, Maldives presented new material of a scientific and technical nature, for example bathymetric data, the source of which was described as having been, and I quote, "produced for hearing by GeoLimits Consulting".[1] In accordance with established practice of international courts and tribunals, Mauritius would be entitled to object to the introduction of this material at this stage of the proceedings, as some of the material newly presented is not to be found in the written record and its public provenance is not clearly indicated. However, given the warm spirit of cooperation that has informed the attitude of both Parties, and with the aim of assisting the Special Chamber, which presumably would want more available to it rather than less, Mauritius will not object to the introduction of this new material. This, of course, is on the understanding that it is able to respond to the issues raised by that new material later this afternoon so that the principle of equality of arms is fully respected.

I turn now to Blenheim Reef, the first issue. We have now heard, rather clearly, why Maldives says that Blenheim Reef should be excluded entirely from the process of delimitation, up to 200 nautical miles and beyond, and no basepoints should be placed on or near it.

Mr President, Members of the Special Chamber, on Thursday we listened with considerable interest to Maldives explain its assertion that Blenheim Reef is not a single feature – whether a drying reef or a low-tide elevation – but is actually 57 separate features.[2] That

[1] Maldives' PowerPoint slides, provided to Mauritius, do not contain figure numbers, such that it is not possible to list those slides which contain new evidence.
[2] ITLOS/PV.22/C28/3, p. 10-11 (Akhavan); TIDM/PV.22/A28/3, p. 27-28 (Thouvenin).

assertion is, to put it generously, perhaps a bit of a stretch. We noted that Professor Thouvenin and his colleagues declined to engage with any of the evidence or arguments we presented. We had shown you that Blenheim Reef is indeed a single, consolidated mass, a single reef. It is so depicted, as you can see, on every nautical chart we have been able to find, the most recent updated in 2017, and that is further evidenced by satellite images from 2021.

Counsel for Maldives had nothing really to say about this evidence. One of their counsel casually dismissed the material as being between 24 and 58 years old, but I would say this is not quite true.[3] The BA and Russian charts were updated in 2017, the Indian chart in 2005; and the satellite images are from last year. On Monday we told you that there was no cartographic, geographic or hydrographic evidence, and no expert testimony or report presented to support the claim that Blenheim Reef is 57 different features. The response from Maldives? Silence, unless you treat the counting of red dots on a white page as an exercise in evidentiary analysis. We say that there is no support for this wholly novel and unprecedented argument.

Let us look a little bit more closely at the red dots theory, a single image, reflecting satellite derived bathymetry, produced by a company called EOMAP, in advance of Mauritius' February 2022 survey.

Counsel for the Maldives took it from an annex to the geodetic survey that was itself an appendix to Mauritius' Reply.[4] You can see that on the screen. The Maldives says that the red dots on this image allegedly represent those parts of the reef exposed at approximately low tide, when the image was taken. You can see the image of the reef itself, below the red dots. This is the slide of the same image that Professor Thouvenin displayed on Thursday. Yet the illustrative material is an artifice: the underlying image of Blenheim Reef has been sort of airbrushed away, so all you see are 57 separate red splotches, apparently unconnected and distinct. In contrast, as you can see, the original, undoctored image makes it clear that all the red dots are in fact connected, and they are part of a single feature. Blenheim Reef is one feature, not 57. You will note that the complete image shows that Professor Thouvenin's theory on the presence of channels between the supposedly distinct features is entirely without merit.[5]

You have seen on your screens this image from the survey report of the February 2022 mission.[6] It is a recent and accurate depiction of the drying areas at a particular moment in time, and it plainly shows the connection of the drying parts to the underlying reef. It shows that a majority of the single feature's circumference was exposed at low tide. But Maldives ignored it entirely both in their Rejoinder and their opening round.

Of course, Blenheim Reef is no different from other similar large drying reef features. On Monday we took you to the *South China Sea* arbitration. The Annex VII tribunal determined that Mischief Reef, which you can see on the right, and it is about the same size as Blenheim Reef, and Second Thomas Shoal consisted of drying rocks – you can see now the Second Thomas Shoal; it is slightly larger than Blenheim Reef. The tribunal said these consisted of drying rocks, rocks exposed during half-tide and a number of drying patches.[7]

Yet, despite having multiple parts above water at low tide, each of these features was treated by the arbitral tribunal as a single feature. The number of exposed parts, or their extent, was totally immaterial. What mattered was that the different parts were connected, were part of a single maritime feature.

What did Maldives have to say about these features or the approach of the tribunal in the *South China Sea* case? Nothing. Has Maldives been able to point to any other feature of

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[3] ITLOS/PV.22/C28/3, p. 10 (lines 25-26) (Akhavan).
[4] ITLOS/PV.22/C28/3, p. 11 (lines 1-9) (Akhavan).
[5] TIDM/PV.22/A28/3, p. 30-31 (Thouvenin).
[6] Mauritius' Reply, Vol. 3, Annex 1, Appendix 1.
[7] ITLOS/PV.22/C28/1, p. 24 (lines 30-36) (Parkhomenko), citing *The South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19, Award (12 July 2016), paras. 377-379.

this nature which has been treated by an international court or tribunal as being many individual parts rather than the sum? It has not. The *South China Sea* award is totally inconsistent with Professor Thouvenin's assertion that article 13 of the Convention requires you to treat each protruding point of a single feature as a separate LTE, regardless of its geological or physical reality.

Blenheim Reef is a single feature. It is large, but it is no larger than many other such features, including some I am going to refer to later this afternoon, all of which are treated by all persons as single features. Blenheim Reef runs for some 9.6 km north to south, and 4.7 km east to west, and it is an integral part of Mauritius' coast, within the meaning of article 13 of UNCLOS and the case law, since a part of it is located within 12 nautical miles of Takamaka Island. As the International Court of Justice explained in *Qatar* v. *Bahrain* in relation to low-tide elevations: "The relevant rules of the law of the sea explicitly attribute to them that function [that they are part of a State's legal coastline] when they are within a State's territorial sea."[8] Maldives failed to engage with this passage from a judgment that it itself has relied on in its Rejoinder.

Mr President, you will have worked out why Maldives has taken this very creative but entirely unprecedented approach. We are confident that the Special Chamber will not be taken in by the artifice, nor we suspect would you wish to set a precedent that departs from all geological, geographic, political and legal reality.

I turn to a second point in relation to our article 13 argument. On Monday we challenged Maldives' claim that, under the case law, basepoints may never be placed on low-tide elevations. We addressed three cases cited by Maldives and showed that none supported the proposition that basepoints may never be placed on an article 13 LTE, or for that matter an article 47, paragraph 4, LTE,[9] although as I will say shortly, that provision is of no pertinence whatsoever to this case. To the contrary, in each of the three cases, the decision not to place a basepoint on an LTE was explicitly based on the specific geographic circumstances of the case, and whether, in those circumstances, the basepoint would have had a disproportionate effect on the drawing of the equidistance line, rendering it prejudicial or inequitable to the other party. In Mauritius' submission, that is what the law is.

On Thursday, Maldives sought to respond. Did they regret citing *Qatar* v. *Bahrain* in the written pleadings, given how little they had to say about it on Thursday or Friday? If so, it would be with good reason. The ICJ declined to put basepoints on two LTEs only because they were located within 12 nautical miles of both States, so they sort of cancelled themselves out.[10] That is a very different geographical circumstance from ours.

As regards *Somalia* v. *Kenya*, Maldives did not seek to refute our argument, based on the language of the ICJ's judgment, that it rejected Somalia's basepoints on small islands and one LTE only because of the prejudicial impact of those basepoints on the equidistance line in the territorial sea. Professor Thouvenin sought to make something out of the fact that the Court did not use those basepoints for delimitation beyond the territorial sea, out to 200 nautical miles.[11] But the reason is obvious. If the basepoints caused prejudice in the territorial sea, how could you eliminate them for that purpose and then somehow restore them for the delimitation beyond 12 nautical miles?

The only other case invoked by Maldives is *Bangladesh* v. *India*. We already showed you on Monday that the Tribunal was not convinced in that case that New Moore, or South

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[8] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, para. 204.
[9] ITLOS/PV.22/C28/1, p. 25-28 (Parkhomenko).
[10] ITLOS/PV.22/C28/1, p. 25-26 (Parkhomenko).
[11] TIDM/PV.22/A28/4, p. 2 (Thouvenin).

Talpatty, was an LTE, and that the Tribunal preferred to place the basepoints on the coasts.[12] Preferring basepoints on the coast, the Tribunal also denied India a basepoint on another tiny LTE – depicted on this slide as I-3, on the slide you can now see – located approximately 12 nautical miles from the coast. In so doing, the Tribunal stated that in its view, "India's proposed basepoints are not acceptable because they are located on low-tide elevations."[13] In Mauritius' submission, the soundness of that approach is apparent if you consider the effects on the equidistance line, including far beyond the territorial sea, of allowing basepoints on New Moore/South Talpatty and on the low-tide elevation south of Dalhousie Island. That this would have been highly prejudicial to Bangladesh is obvious from this slide because those LTEs pushed the equidistance line across Bangladesh's coast, inequitably cutting it off from its maritime entitlements.

Professor Thouvenin devoted much attention to a fourth case, the *Violations* case between Nicaragua and Colombia,[14] where the ICJ acknowledged that in a prior case between the same parties, it had placed a basepoint on Edinburgh Reef, a low-tide elevation. We showed you the Court's sketch map from the 2012 judgment. Maldives seems to have been troubled by that sketch map, taking you all the way back to the 2007 case between Nicaragua and Honduras – a case that I recall well, as I was counsel for Honduras – when the Court placed a basepoint on this feature, and then its decision in 2012, when it had not decided whether it was an LTE or a small islet. It only recognized that it was an LTE in the subsequent *Violations* case, when Colombia proved it to be such in opposing Nicaragua's straight baseline claim.

Mr President, the relevant facts are beyond dispute. First, the Court expressly recognized in its 2022 judgment in the *Violations* case that in its 2012 judgment it had "placed a basepoint on this feature for the construction of the provisional equidistance line."[15] Second, the Court defended that decision, even as it denied Nicaragua's straight baseline claim, on the ground that "there are serious reasons to question the nature of Edinburgh Cay as an island for the purpose of article 7, paragraph 1, of UNCLOS."[16] The Court explained that:

> [t]he issue of determining the baseline for the purpose of measuring the breadth of the continental shelf and the exclusive economic zone and the issue of identifying basepoints for drawing an equidistance/median line for the purpose of delimiting the continental shelf and the Exclusive Economic Zone between adjacent or opposite States are two different issues.[17]

Third, and critically, the Court's decision to place a basepoint for delimitation purposes on Edinburgh Reef in 2012, despite conflicting evidence as to whether it was above water at low tide, fully supports Mauritius' view of the law. The key issue is not whether the feature is a small islet, a rock or an LTE; it is the impact of the feature on the equidistance line and whether that impact is disproportionate to the significance of the feature and inequitable to the other party. In its 2012 judgment, the Court determined, based on these geographic circumstances, in the context of two States with opposite coasts, to place a basepoint on the feature.

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[12] ITLOS/PV.22/C28/1, p. 26 (lines 28-33) (Parkhomenko) citing *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, para. 262.
[13] *Bangladesh* v. *India*, para. 362.
[14] TIDM/PV.22/A28/4, p. 3-5 (Thouvenin).
[15] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, Judgment, 21 April 2022, para. 250.
[16] *Ibid.*, para. 251.
[17] *Ibid.*, para. 250 citing to *Maritime Delimitations in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 108, para. 137.

The same approach was taken by the Court in *Somalia* v. *Kenya*, which also did not distinguish between Somalia's small islands, LTE or even its coastal headland at Ras Kaambooni. What concerned the Court was not the nature of each of these features but their impact on the delimitation. This is a well-established approach. As Professor Bowett concluded in his 1993 study on islands, rocks, reefs and low-tide elevations, "all of these features will be valid for use as basepoints, in conjunction with the equidistance method, where they can be regarded as forming an integral part of the coast."[18]

In sum, there is not now, and has never been, any rule against putting basepoints on low-tide elevations, in appropriate geographic circumstances.

I turn to my third point on article 13: its impact on the delimitation in the geographic circumstances of this case. The evidence before the Special Chamber, including that presented by Maldives, fully demonstrates that Blenheim Reef's impact on the delimitation in this case is neither disproportionate to its significance as an integral part of Mauritius' coast, nor inequitable to the Maldives.

This is the slide we showed on Monday, illustrating the actual impact of Blenheim Reef on the equidistance line. There is no impact at all until a point that is 145 nautical miles from the Parties' opposite coasts. It pushes a segment of the line, but not all of it, and only very slightly, to the north, giving Mauritius an extra 4,690 square kilometres of sea, so about 5 per cent of the total. The effect we would submit is *de minimis*, by any reasonable standard.[19] Maldives has not really argued otherwise.

Nor can the effect of Blenheim Reef be discounted on the ground that it is inequitable to Maldives. There is plainly no cut-off effect. Maldives accepts that there is no disproportionality, that our delimitation line, giving full effect to Blenheim Reef, passes the disproportionality test.

The obvious conclusion, Mr President and Members of the Special Chamber, is that Blenheim Reef is to be treated as a single low-tide elevation under article 13 of the Convention, or under article 47, paragraph 4, of the Convention. It does form part of the coast of Mauritius and the Chagos Archipelago, and four basepoints are properly to be placed upon it in drawing a provisional equidistance line; and so Blenheim Reef must be given full effect. Moreover, as the two Parties pretty much seem to agree – Professor Thouvenin offered a kind of gentle justification for an adjustment,[20] but one is bound to say that he did not give the impression that his heart was fully in that submission – there is no reason to make any adjustment to that line, since the effect of taking Blenheim Reef into account is rather modest.

That is what we say you can rule on article 13 if you need to. But let us not stop there. We also say you do not have to go through that exercise or those issues at all. In application of the principle of the path of least resistance, to which international judges and arbitrators are much attached – I speak for myself as an occasional arbitrator – there is a far cleaner and simpler way for you to reach the obvious and right conclusion: you take Part IV of the Convention and you apply it to the drying reef that is Blenheim Reef and to the archipelagic baselines drawn around that single feature and – Bingo! – we and you and everyone are home and dry.

In short, Maldives really only offers only a single argument in relation to Part IV. On Thursday they said you should proceed on the basis of the text you can see on the screens before you, article 47, paragraph 4, and treat Blenheim Reef not as a single drying reef but as a multitude of low-tide elevations, none of which has a lighthouse on it, and the relevant ones

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[18] D. Bowett, 'Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations', in J.I. Charney and L. M. Alexander (eds.), *International Maritime Boundaries, Vol. I* (1993), p. 151.
[19] ITLOS/PV.22/C28/1, p. 28 (lines 32-44) (Parkhomenko); ITLOS/PV.22C28/2, p.1 (lines 45-47) (Reichhold).
[20] TIDM/PV.22/A28/4, p. 5-6 (Thouvenin).

of which are more than 12 Miles from Takamaka Island.[21] With great respect, that argument is manifestly wrong. It is wrong because article 47, paragraph 4, is inescapably not applicable to this case, and it is wrong because even if it were applicable, which it is not, Blenheim Reef is a single feature and a part of it does lie within 12 Miles of Takamaka Island – that is not in dispute – which means you can use any part of it to construct the provisional equidistance line that defines the maritime boundary between Maldives and Mauritius.

Today, I am going to limit myself to the first point: article 47, paragraph 4, is not applicable at all to Blenheim Reef because it is a drying reef within the meaning of article 47, paragraph 1; it is not merely a low-tide elevation within the meaning of article 47, paragraph 4.

Ms Sander offered a single authority in support of Maldives' proposition that article 47, paragraph 4, is applicable to Blenheim Reef because it is a low-tide elevation within the meaning of that provision. She cited the Virginia Commentary, which says "drying reefs are 'low-tide elevations' within the meaning of article 13 and would be subject to the related requirement contained in article 47(4)".[22] The commentary goes on to state that article 47, paragraph 4, "is applicable to the 'drying reefs' referred to in paragraph 1."[23] Is that commentary dispositive of the matter? The Virginia Commentary, of course, has a certain authority, but it is not dispositive and sometimes it gets things wrong, and occasionally it gets things very wrong, and this is one such occasion.

I wonder if Ms Sander noticed, as we did when we first looked at the sentence in the commentary on which she places exclusive reliance, that it has no footnote after it and it has no source to support the proposition that it makes. In life we learn that the absence of a footnote is wont, sometimes, to set the heart aflutter and to get alarm bells ringing. Did she or Professor Thouvenin pause to consider what the absence of a footnote might actually mean? Did they consider digging a little further, as we did? I noticed that Professor Thouvenin urged the Tribunal to apply the *effet utile* principle in interpreting the Convention.[24] I noticed that Professor Mbengue called for a strict and rigorous interpretation of the Convention.[25]

Now, these are all superb lawyers, and they will have known as much as anyone that when the drafters of UNCLOS used the words "drying reef" in article 47, paragraph 1, rather than "low-tide elevation", it is likely, or even probable, that they must have done so for a reason. *Expressio unius est exclusio alterius*, my first professor in law, Professor Jennings, used to tell us when we were his law students: the expression of one thing is the exclusion of the other. It is reasonable to proceed on the basis that when the drafters decided to use "low-tide elevation" in article 47, paragraph 4, rather than "drying reef", they probably did so upon reflection. I am sure that everyone in this room will agree that, at the very least, it is striking, or odd even, that the drafters should decide in article 47, paragraph 1, that you can draw a straight archipelagic baseline from the outermost drying reef, but then to say in article 47, paragraph 4, that you cannot draw a straight baseline from the outermost low-tide elevation. That is, frankly a bit weird, is it not? I have learned in life that when things seem weird it is usually a good idea to dig a little deeper. So let us dig a little deeper.

Let us begin with an article written by Commander Peter Bryan Beazley, which he published in 1991 in the *Journal of Estuarine and Coastal Law*.[26] As you can see on your screens, he gave the article, which is available online, the title *Reefs and the 1982 Convention*

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[21] ITLOS/PV.22/C28/4, p. 8 (lines 34-44) (Sander).
[22] ITLOS/PV.22C28/4, p. 9 (lines 7-14) (Sander), citing to UNCLOS Commentary, p. 430-431, paras. 47.9 (b) and 47.9(f).
[23] *Ibid.*
[24] TIDM/PV.22/A28/3, p. 33 (lines 21-32) (Thouvenin).
[25] ITLOS/PV.22/C28/4, p. 32-44 (Mbengue).
[26] P.B. Beazley, Reefs and the 1982 Convention on the Law of the Sea, *International Journal of Estuarine and Coastal Law* (1991), 6(4), 281-312.

on the Law of the Sea. Now, as many of you on the Bench know, Commander Beazley was not just anybody. Commander Beazley served as a Commander in the Royal Navy; from 1963 he advised the United Kingdom Ministry of Defence on technical aspects of determining limits and boundaries of offshore zones of jurisdiction for the United Kingdom and Colonies, and for assessing the claims of other States, and from 1973 to 1982 he was an adviser to the UK delegation at the Third United Nations Conference on the Law of the Sea. In 1984 he was appointed, jointly, by the United States and Canada, as the technical expert to assist the International Court of Justice in the *Gulf of Maine* case.[27]

His article – and it was put in the folders, so you should be able to read it all – first addresses reefs in article 6 of the Convention, and he then turns to reefs in Part IV, and in particular our article 47. It is detailed, carefully researched and based on his direct experience. I do not have time to go into all the details, but you can read it, it is at tab 10. May I say, it bears careful reading. Let us go to the relevant parts. Let us go to page 306 of the article, where he addresses the negotiating history of article 47. What he says is:

> At the second session of the UNCLOS Conference at Caracas in 1974 a working paper submitted by Canada, Chile, Iceland, India, Indonesia, Mauritius, Mexico, New Zealand and Norway again included drying reefs without qualification.[28]

Let us pause there for a moment and look at the actual text submitted by those countries. You will see that on the screens now, and you can see, in the top right-hand corner, it was submitted, in English, on 26 July 1974. Its draft article 6(1) says:

> An archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago in drawing the baselines from which the extent of the territorial sea, economic zone and other special jurisdictions are to be measured.[29]

Now let us go back to Commander Beazley, who continues:

> At the same session the Bahamas submitted draft articles which included a paragraph [and I am going to read it out] "1. In drawing the baselines ... an archipelagic State may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs or low-tide elevations of the archipelago or may employ any non-navigable continuous reefs or shoals lying between such points."[30]

You will have noted the addition of the words "or low-tide elevations". I have dug up the original text – it is online – and you can see it on your screens now. You will see that this draft, the Bahamas draft, was submitted in English, on 20 August 1974, a month after the text proposed by Canada and eight other countries. Did it find favour with the negotiators? It did not. The drafters explicitly excluded any reference to low-tide elevations in article 47, paragraph 1.

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[27] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984, I.C.J. Reports 1984*, p. 165.
[28] Beazley, p. 306, citing document A/CONF.62/C/2/L.4.
[29] Document A/CONF.62/L.4.
[30] Beazley, p. 306-307, citing document A/CONF.62/C.2/L.70.

Let us go back to Commander Beazley's interpretation of this difference. It is in highlight at the bottom of the screen. "This draft clearly distinguishes between drying reefs and low-tide elevations."[31] That is Commander Beazley.

Now let us turn to Commander Beazley's general conclusions. He set out three reasons for which the UNCLOS drafters decided to include a special rule for drying reefs – one that did not apply at all to all low-tide elevations:

> Given the security implications that arise from the existence of an emergent coral reef within the geographical unity of an archipelago there is certainly need to include it within the archipelagic waters. Another practical consideration is that, if the drying reefs of an atoll, or of an island with fringing reefs, forming part of the archipelago lie more than 12 miles from the low-water line of the islands or island, they would be baselines under article 6. It would therefore be illogical for them to be excluded as archipelagic basepoints. Similarly it could not be the intention that in applying article 47(7) to determine the water to land ratio, some of the fringing reefs of islands and atolls might lie outside the archipelagic baselines.[32]

He ends with these words, and I invite you to read them very carefully.

> The conclusion is inescapable, that the inclusion of drying (coral) reefs as basepoints is not to be limited by the provisions of paragraph 4, but only by articles 46(b) and by paragraphs 1 2 3 and 5 of article 47.[33]

In other words, Professor Thouvenin, Ms Sander and the Maldives have fallen into inescapable error. Inescapable. That is a pretty strong word for a retired British naval commander who was, for those who knew him, certainly not prone to the language of excess.

The conclusion is very obviously correct and I could end my submissions on this note – but I will not. Let us go further, for there is more that should interest the Special Chamber. What more could we want, you may ask. What States actually do, I say to you. For what States actually do offers incontrovertible support to the submission that I put to you in the first round and to the views of Commander Beazley. For what archipelagic States actually do in practice is to use drying reefs located more than 12 Miles from an island to locate their turning points, and what other States do is (a) not object, and (b) positively affirm that practice. The practice makes it crystal clear that Mauritius' approach is fully consistent with the 1982 Convention, Part IV and article 47, in particular, paragraph 1.

Let us take three examples in the time that is available. Let us start with Fiji, in the Pacific Ocean. On your screens, you can see shaded in blue, on a chart, the area enclosed by Fiji's archipelagic baselines.[34] Here, in the northern part, circled in red, is the Great Sea Reef – a single feature, I would note. You will note that it is shown here as a single feature, not as dozens or hundreds or thousands of low-tide elevations.

Now you can see on a satellite image highlighting turning points 30 and 31 on the baseline. Now let us zoom in on those turning points. You can see that, very plainly, there are no islands located there. Now let us superimpose a chart. You can see points 30 and 31 on DMA Nautical Chart 83034. This shows points 30 and 31 located on the drying reef and, with a black line, the distance from the nearest island. Point 30 is 21.8 Miles from Yandua Island and point 31 is 16.6 Miles from the nearest island. In short, a drying reef located more than

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[31] Beazley, p. 307.

[32] *Ibid.*

[33] *Ibid.*

[34] U.S. Department of State, Limits in the Seas, No. 101 Fiji's Maritime Claims (Nov. 1984), p. 37, available at https://www.state.gov/wp-content/uploads/2019/12/LIS-101.pdf (last accessed 21 October 2022).

12 Miles from an island, with no lighthouse on it, is utilized on the basis of article 47, paragraph 1, not article 47, paragraph 4.

What has been the international reaction to this? No objection. To the contrary. This is the cover of the U.S. Department of State's Bureau of Intelligence and Research's Limits in the Seas, report number 101, on Fiji's Maritime Claims that I have just shown you. At page 3 you can see highlighted the text of article 47, paragraph 1, of the Convention, not 47, paragraph 4, and then the conclusion, and I quote: "It would appear that Fiji's archipelagic baseline system meets these requirements" – a reference to 47, paragraph 1 – noting that "30 of the 34 baseline turning points seem to be located on drying reefs" – and that includes points 30 and 31. This conclusion is completely consistent with that of Commander Beazley on the principles to be applied and on the application of those principles by Mauritius to Blenheim Reef.

I turn next to the second example. Here you can see the Solomon Islands, also in the Pacific. You can see that country's system of archipelagic baselines, with Rennell Island highlighted. As we zoom in, you can see the archipelagic baselines around Rennell Island, with highlights in red circles on North Reef – a single feature, Middle Reef – a single feature, and South Reef – a single feature. Together they are known, delightfully, as the Indispensable Reefs. Incidentally while I'm on this point, I might also add that Middle Reef in the Rennell Archipelago is about six or more times the size of Blenheim Reef. It measures 58 km tip-to-tip, and it is treated as a single feature, compared to Blenheim Reef's north-south measurement of 9.6 km.

Now we see Rennell Island and the three separate reefs on BA Chart 4634. You will note again, that each of these reefs is depicted as a single feature, not made up of millions of different LTEs that pop up and down as the tides rise and fall. Now we see the archipelagic baselines drawn onto that chart. I invite you to look at turning points 39 and 42. And now let us look at the distances: point 39 is 37.3 miles from Rennell Island, and point 42 is 69.5 Miles from Rennell Island. So, once again, in short, two drying reefs located more than 12 Miles from an island, with no lighthouse on it, are utilized on the basis of article 47, paragraph 1 – exactly what Mauritius has done.

What has been the international reaction to this? Again, no objection. This time we are looking at the cover of the U.S. State Department's Bureau of – renamed – Oceans and International Environmental and Scientific Affairs, Limits in the Seas, volume number 136, on the Solomon Island's maritime claims that I have just shown you.[35] At page 4 you can see the conclusion, and I quote:

> The configuration of the baselines does not appear to depart to any appreciable extent from the general configuration of the archipelago [...]. None of the baselines appears to be drawn using low-tide elevations.

Once more, the conclusion is crystal clear: there is distinction between drying reefs, on the one hand, and low-tide elevations, on the other, and there is no bar to a drying reef being used even when it is 69 Miles from the nearest island. Again, this is completely consistent with the views of Commander Beazley on the principles to be applied and on the application of those principles by Mauritius to Blenheim Reef. They do not say, any of these people – not Commander Beazley, not the U.S. Department of State – that we are dealing here with thousands of distinct, low-tide elevations. Inescapably, it might be said, the Indispensables are in full conformity with the 1982 Convention.

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[35] Bureau of Intelligence and Research, U.S. Department of State, Limits in the Seas, No. 136 Solomon Islands: Archipelagic and other Maritime Claims and Boundaries (Mar. 2014) available at https://www.state.gov/wp-content/uploads/2019/12/LIS-136.pdf (last accessed 21 October 2022).

I turn now to a third example, Comoros, located at the northern end of the Mozambique channel in the southern Indian Ocean. In 2010 Comoros established an archipelagic baseline system composed of 13 line segments, as you can see on the screens. If you look at Segment A to B, on the left side of the screen, you will see that it runs from the island of Grand Comore to Banc Vailheu, a distance of 13 Miles. The U.S. Department of State has reviewed these archipelagic baselines[36] and concluded that they are consistent with article 47, but with one exception. Report 134 says:

> Comoros' use of baseline point B on Banc Vailheu is not consistent with article 47.1, in that this feature is not among the outermost islands or drying reefs of the archipelago, nor does it fall under an exception under article 47.4 relating to low tide elevations. Banc Vailheu is neither an island nor a low-tide elevation, but rather an underwater feature. There does not appear to be any land or drying reef in the vicinity of Banc Vailheu.

The view of the U.S. Department of State is clear, in Limits in the Seas, number 134 at page 2: if Banc Vailheu was a drying reef, article 47, paragraph 1, would have allowed it to have been used notwithstanding the fact that it is more than 12 Miles from Grand Comore. This offers further confirmation that Commander Beazley's interpretation of article 47, paragraph 1, and that of Mauritius, is correct.

Allow me to summarize. The ordinary meaning of article 47 is clear: a drying reef is a drying reef and a low-tide elevation is a low-tide elevation. As the *travaux préparatoires* makes clear, the drafters of the 1982 Convention chose their terms with great care. The Bahamas tried to insert all low-tide elevations into what became 47, paragraph 1, and that effort failed. The drafters intended to draw a distinction between a low-tide elevation, on the one hand, and a drying reef, on the other. Commander Beazley gave you three reasons why, and subsequent practice, as I have shown, confirms his approach.

It follows from this that Mauritius was perfectly correct and entitled to use the outermost points of Blenheim Reef, which the charts, the survey and the satellite images, indisputably, established to be a drying reef. Mauritius is entitled to use, as one of the joining points of its archipelagic baselines, those four points close to Blenheim Reef, in accordance with article 47, paragraph 1. The fact that it, or any part of it, is more than 12 Miles from Takamaka Island, is totally irrelevant. In this way, you do not need to address article 47, paragraph 4, at all, as the rule there stated does not need to be invoked. But even if you did, the exception to the general rule cuts in, as I have already said, as a part of Blenheim Reef it is within 12 Miles of the nearest island. In this way too, interesting as the article 13 arguments might have been, you just do not need to go there.

Moreover, as article 48 makes clear, Mauritius's territorial sea, EEZ and continental shelf shall be drawn from the archipelagic baseline drawn around Blenheim Reef. To be clear, I submit there is simply no way around that conclusion. It is self-evidently the correct conclusion.

If the Special Chamber were to somehow come to a different conclusion on the interpretation and application of article 47, it would drive a coach and horses through article 47. The Special Chamber would, in effect, be telling Fiji and the Solomon Islands to go back to the drawing board. The Special Chamber would, in effect, be telling the U.S. State Department's various bureaus that over forty years of practice it has fallen into error. And you would need, somehow, to tell your readers why Commander Beazley's interpretation is wrong.

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[36] Bureau of Intelligence and Research, U.S. Department of State, Limits in the Seas, No. 134 Comoros: Archipelagic and other Maritime Claims and Boundaries (Mar. 2014) available at https://www.state.gov/wp-content/uploads/2019/10/LIS-134.pdf (last accessed 21 October 2022).

Mr President, Members of the Special Chamber, you will have noticed that the autumn air has inspired in me a fondness for maxims. Let me end with one of my very favourites: when you are in a hole, stop digging! Maldives has given you nothing to counter these arguments on the application of article 47, paragraph 1, to Blenheim Reef. It plainly applies, and the consequences of its application follow inexorably from the provisions of Part IV. I do not expect Maldives to somehow give up on Monday, but I truly do not envy them the mountain that they must now climb.

With that, Mr President, Members of the Special Chamber, I conclude my submissions. May I, as I customarily do, thank my colleagues, in particular Anjolie Singh and Remi Reichhold, for all their assistance in the preparation of my submissions.

Mr President, with your permission, may I just take this opportunity to express my deep respect and appreciation for a very good friend who is not with us today, and that is Professor Alan Boyle, who I have worked with for more than three decades, who is a fantastic colleague but who cannot be with us. He would be delighted by the spirit of cooperation that now infuses these proceedings. With that, Mr President, I invite you to invite Professor Klein to the bar, and thank you for your kind attention.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Sands, for your statement.

I now give the floor to Mr Klein to make his statement.

EXPOSÉ DE M. KLEIN
CONSEIL DE MAURICE
[TIDM/PV.22/A28/6/Rev.1, p. 14–26]

Monsieur le Président, Madame et Messieurs les juges, plus tôt cette semaine vous avez entendu nos contradicteurs dans leurs plaidoiries relatives aux problèmes de compétence et de recevabilité que soulèverait la demande de Maurice relative à la délimitation du plateau continental au-delà de 200 M.

Vous pourriez être tentés de penser sur cette base que la République de Maurice est un État dont la capacité de nuisance est inversement proportionnelle à la petite taille. Un État qui, s'il fallait prêter foi aux arguments de la Partie adverse, serait un agent du chaos, prêt à bouleverser les équilibres soigneusement établis par les États parties à la Convention des Nations Unies sur le droit de la mer, menaçant l'intégrité du système de règlement des différends institué par la Convention, et semant l'incertitude. Comme je voudrais vous le montrer aujourd'hui, rien ne justifie pourtant cette vision particulièrement alarmiste des conséquences d'une décision par laquelle la Chambre spéciale accepterait de se prononcer sur ce volet des demandes de Maurice.

Je le ferai, sans surprise, en abordant d'abord la question de la compétence de la Chambre spéciale, puis celle de la recevabilité de cette demande, en traitant pour chacune de ces questions des principaux arguments qui ont été avancés par nos contradicteurs avant-hier.

Fidèles à l'approche défendue dans leurs écritures, les Maldives ont continué à prétendre que la problématique de la délimitation des plateaux continentaux entre les Parties au-delà de 200 M constituerait un différend distinct de celui qui les oppose au sujet de la délimitation de leurs espaces maritimes en deçà de cette limite. Cette question n'aurait pas fait l'objet d'un véritable différend entre les Parties avant l'introduction de la présente instance et son inclusion dans les demandes de Maurice aurait pris les Maldives par surprise, en les privant de toute possibilité de tenter de régler cette question avant la mise en œuvre des procédures juridictionnelles de règlement des différends[1].

Attardons-nous tout d'abord à cette question de l'identification du différend qui oppose les Parties. Monsieur le Président, Madame et Messieurs les juges, ce qui est manifeste à ce stade des débats, c'est que les Parties vous proposent deux approches très différentes de cette problématique. Selon les Maldives, il devrait avoir existé un différend spécifique clairement identifiable entre les Parties, au sujet de la délimitation des plateaux continentaux au-delà de 200 M. Selon Maurice, au contraire, il suffit que la Chambre spéciale puisse avérer que cette question — celle de la délimitation des plateaux continentaux étendus — constituait bien l'un des éléments du différend global de délimitation qui les oppose. Je vous ai montré en début de cette semaine que tel était bien le cas, puisque les deux États ont constaté en 2011 l'existence d'un chevauchement des plateaux continentaux étendus dans la région des Chagos[2]. Un chevauchement qui, comme je l'expliquais, témoigne bien de l'existence de revendications concurrentes sur un même espace. Et des revendications concurrentes qui étaient, de toute évidence, bien connues des deux Parties, puisque celles-ci ont fait part à l'époque de leur volonté d'y apporter une solution. Aucun élément de surprise, donc.

Jeudi, Me Hart a tenté de minorer l'importance de ce communiqué conjoint de 2011. Il s'agirait d'un document isolé, qui reflèterait selon elle plutôt la volonté de coopération des Parties que l'existence d'un différend[3]. Mais à supposer même que cela soit exact, ce qui n'est pas l'opinion de Maurice, la question centrale devient alors de savoir si le problème de chevauchement que les Parties se sont accordées à reconnaître a trouvé une solution par la suite.

[1] ITLOS/PV.22C28/4, p. 32, lignes 25-31 (Hart).
[2] Communiqué conjoint du 12 mars 2011, Observations écrites de Maurice, annexe 14.
[3] ITLOS/PV.22C28/4, p. 24, lignes 1-2 (Hart).

Les deux États ont-ils été en mesure de soumettre une demande conjointe de plateau continental étendu à la Commission des limites du plateau continental, comme le suggérait l'ambassadeur Koonjul dès 2010 ? À l'évidence, non. Les deux États ont-ils conclu les arrangements bilatéraux envisagés dans le communiqué conjoint de 2011 ? À l'évidence, non. Les deux États ont-ils, dans les années qui ont suivi, réglé autrement cette question ? La réponse est, à l'évidence, encore une fois non, puisque les Maldives ont refusé de poursuivre le dialogue entamé en 2010. Et ce problème de chevauchement des plateaux continentaux étendus n'a pas disparu entre-temps comme par enchantement, simplement parce que les Maldives ont choisi de l'ignorer, tout comme elles ont ignoré la persistance du différend de délimitation dans son ensemble.

Comment pourrait-on encore s'étonner, dans ces circonstances, que ce problème, qui n'a manifestement pas été réglé dans les relations bilatérales entre les Parties, ait finalement été soumis à la Chambre spéciale comme partie intégrante du différend global de délimitation ? Comment prétendre, comme l'a fait la Partie adverse plus tôt cette semaine, qu'il s'agirait là d'un différend créé *de novo*, un différend qui n'existerait pas déjà[4] ? Tel n'est manifestement pas le cas. Ce qui a été transféré à la Chambre spéciale, c'est un différend global de délimitation, comprenant un volet relatif au problème suscité par le chevauchement des plateaux continentaux étendus des Parties, problème auquel ces Parties n'ont pas été en mesure d'apporter une solution entre-temps.

Avant-hier, nos contradicteurs ont également tenté d'appuyer leur contestation de la compétence de la Chambre spéciale pour traiter de la délimitation des plateaux continentaux au-delà de 200 M sur la manière dont l'existence d'un différend sur ce point entre les Parties avait été établie par le Tribunal arbitral dans l'affaire qui a opposé Trinité-et-Tobago à la Barbade[5]. Dans la sentence qu'ils ont rendue en 2006 dans cette affaire, les arbitres ont noté que le dossier des négociations montrait que cette problématique se trouvait bien sur la table et avait fait l'objet de plusieurs discussions entre les Parties, ce qui permettait d'avérer que cette question de la délimitation au-delà de 200 M entrait bien dans le champ de compétence du tribunal[6].

Selon nos contradicteurs, cette situation contrasterait nettement avec la présente affaire, où une telle opposition de vues entre les Parties sur cette question spécifique ne ressortirait pas de façon visible du dossier des négociations[7]. Mais ce qui ne ressort nullement de la plaidoirie de Me Hart, c'est le fait que le tribunal arbitral avait devant lui un dossier de négociations qui était radicalement différent du nôtre. Trinité-et-Tobago et la Barbade s'étaient engagées dans un processus de négociation extrêmement soutenu. Entre 2000 et 2003 seulement, les représentants des deux États se sont rencontrés à pas moins de neuf reprises pour discuter de leur frontière maritime et d'autres questions connexes[8]. Les équipes de négociation étaient appuyées par des experts techniques ; elles ont eu des échanges détaillés sur la portée exacte de leurs législations nationales et de leurs revendications respectives ; elles ont confronté leurs propositions respectives en ce qui avait trait à l'identification des points de base et au tracé de la ligne de délimitation, présentées sur des cartes préparées à cet effet[9].

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[4] ITLOS/PV.22C28/4, p. 26, lignes 35-37, p. 27, lignes 1-4 (Hart), se référant à C.I.J., *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Iles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016*, p. 855, par. 54.

[5] ITLOS/PV.22C28/4, p. 27, lignes 29-39, p. 28, lignes 1-32 (Hart), se référant à *Barbade c. Trinité-et-Tobago*, affaire CPA n° 2004-02, sentence, 11 avril 2006.

[6] ITLOS/PV.22C28/4, p. 27, lignes 13-45, p. 28 lignes 1-15 (Hart), se référant à *Barbade c. Trinité-et-Tobago*, affaire CPA n° 2004-02, sentence, 11 avril 2006, par. 213.

[7] ITLOS/PV.22C28/4, p. 32, lignes 13-17 (Hart).

[8] *Barbade c. Trinité-et-Tobago*, affaire CPA n° 2004-02, sentence, 11 avril 2006, par. 194.

[9] Voir, entre autres, contre-mémoire de Trinité-et-Tobago, par. 61-69.

Le contraste avec la situation dans la présente affaire pourrait difficilement être plus marqué. Comme vous le savez, Monsieur le Président, Madame et Messieurs les juges, la question de la délimitation de la frontière maritime entre Maurice et les Maldives a été brièvement évoquée en 2001 avant de retomber dans le silence pendant près de dix ans, à la suite de la fin de non-recevoir opposée par les Maldives à cette première demande de Maurice. Elle a suscité quelques échanges, et a fait l'objet d'une réunion entre des délégations des deux États en octobre 2010. Une seule et unique rencontre, à l'occasion de laquelle les discussions entre les représentants de deux Parties sont évidemment restées très générales – elles l'ont d'ailleurs été d'autant plus que la réunion en question n'a pas dépassé deux heures[10].

Le dossier des échanges entre les Parties, quant à lui, comprend en tout et pour tout une quinzaine de pages. On est donc très loin de l'abondance d'échanges et de matériaux qui ont pu être soumis au tribunal arbitral dans l'affaire de la délimitation maritime entre Trinité-et-Tobago et la Barbade. Et dans un tel contexte, Maurice est manifestement fondée à s'appuyer sur des documents nettement moins nombreux et considérablement plus synthétiques pour affirmer que la question du chevauchement des plateaux continentaux se trouvait bien sur la table des négociations entre les Parties à la présente instance, aussi brèves ces négociations aient-elles été.

Le parallèle tracé par Maurice avec le raisonnement du tribunal arbitral dans sa sentence de 2006 est donc pleinement valide. Il l'est d'ailleurs d'autant plus qu'au-delà de la présence de la question des plateaux continentaux étendus sur la table des négociations, l'argument majeur qui a manifestement justifié la décision des arbitres d'inclure la délimitation de ces espaces dans le champ de la compétence du tribunal a été celui de l'unicité du plateau continental. Cet élément ressort on ne peut plus clairement de la formulation de la dernière phrase du paragraphe 213 de la sentence :

> *(Continued in English)*
> The Tribunal considers that the dispute to be dealt with by the Tribunal includes the outer continental shelf, since (i) it either forms part of, or is sufficiently closely related to, the dispute submitted by Barbados, (ii) the record of the negotiations shows that it was part of the subject-matter on the table during those negotiations, and (iii) in any event there is in law only a single "continental shelf" rather than an inner continental shelf and a separate extended or outer continental shelf.

(Reprend en français) Monsieur le Président, Madame et Messieurs les juges, rien n'a changé sur ce point : en 2022 comme en 2006, il n'existe toujours qu'un seul plateau continental, plutôt qu'un plateau continental interne et un plateau continental étendu ou externe qui serait séparé du premier. Et cette considération pourrait, à elle seule, « *in any event* », justifier que la Chambre spéciale puisse procéder à la délimitation des plateaux continentaux étendus dans la présente instance.

Outre les éléments plus factuels liés à la teneur du dossier dont je viens de traiter, nos contradicteurs se sont également longuement employés ce jeudi à montrer à quel point, selon eux, une décision de la Chambre spéciale d'inclure dans son champ de compétence la délimitation des plateaux continentaux étendus viendrait remettre en cause les principes les mieux établis du contentieux international.

Me Hart a rappelé à cet égard combien il était important que les États puissent avoir une idée précise de ce qui leur est reproché avant de se voir entraînés dans un contentieux

[10] Première réunion sur la délimitation maritime et la demande concernant le plateau continental étendu entre la République des Maldives et la République de Maurice, 21 octobre 2010, Observations écrites de Maurice, annexe 13.

judiciaire international long et coûteux[11]. Pour reprendre ses termes, les Maldives auraient été « privées de toute possibilité de réagir à la revendication ou de procéder à des négociations ou à un échange de vues sur les méthodes de règlement des différends »[12].

L'argument, comme on dit, ne manque pas de piquant. L'insistance avec laquelle nos contradicteurs l'ont développé est, à vrai dire, assez surprenante au regard de l'attitude même qu'ont adoptée les Maldives dans la présente affaire. Comme Me Hart l'a elle-même rappelé, la *ratio* ultime de cette exigence de l'identification d'un différend préalable a été énoncée par la CIJ dans son arrêt de 2016 dans le litige opposant les Îles Marshall au Royaume-Uni : il s'agit d'assurer à l'État défendeur – je cite la Cour – « la possibilité de réagir, avant l'introduction de l'instance, à la réclamation visant son comportement »[13].

Dans notre espèce, les Maldives se sont-elles vues privées de la possibilité de réagir à la réclamation visant leur comportement ? La réponse, Monsieur le Président, Madame et Messieurs les juges, est non et non. Non, parce qu'elles ont eu cette possibilité de réagir depuis que le problème résultant du chevauchement des plateaux continentaux a été mis sur la table par les deux États, en mars 2011. Non, parce qu'elles ont encore eu la possibilité de le faire en 2019, lorsque la République de Maurice les a invitées à entamer une seconde ronde de négociations sur la question de la délimitation de leurs espaces maritimes. Les Maldives se sont-elles saisies de cette possibilité ? Ici encore, la réponse prend la forme d'une double négation : pas plus en 2011 ou dans les années qui ont suivi qu'en 2019 les Maldives n'ont-elles manifesté un réel intérêt à cet égard, puisqu'elles continuaient à apporter leur soutien au Royaume-Uni.

Nous sommes donc ici en présence d'un État qui a refusé de manière systématique toute tentative sérieuse de régler le différend de délimitation maritime qui l'opposait à son voisin dans tous ses aspects pendant près de dix ans. Et qui se plaint maintenant du fait que l'exercice par la Chambre spéciale de sa compétence pour procéder à la délimitation des plateaux continentaux au-delà de 200 M le priverait d'un droit — celui d'arriver à un règlement négocié —, un droit dont il ne s'est jamais saisi lorsque l'occasion lui en était ouverte. Il s'agit là, vous en conviendrez, d'un sacré paradoxe, qui fait que les appels des Maldives au respect des principes fondamentaux du contentieux international sonnent dans ce contexte singulièrement faux.

Les tentatives de nos contradicteurs de mettre Maurice face à ses supposées contradictions quant à la détermination de l'étendue du différend ne s'avèrent d'ailleurs pas plus convaincantes. Me Hart vous a présenté avant-hier deux cartes, qui sont censées illustrer l'incohérence dont Maurice aurait fait preuve dans ce domaine[14]. La première de ces cartes, que vous voyez maintenant sur vos écrans, représenterait, selon elle, la conception qu'avait Maurice du différend au moment de la procédure sur les exceptions préliminaires. Point de plateau continental étendu en vue du côté de Maurice, donc. Mais, vous le noterez, point de plateau continental étendu en vue du côté des Maldives non plus. Est-ce à dire que Maurice considérait qu'il n'existait alors aucune prétention, d'un côté ou de l'autre, à un plateau continental étendu — et donc aucun différend sur ce point ? Certainement pas. Tout ce que cette carte montre, c'est la zone de chevauchement des revendications des deux États fondées sur leur législation nationale respective — et donc jusqu'à 200 M seulement. La chose est très clairement exposée dans les observations écrites de la République de Maurice, dont la carte est extraite :

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[11] ITLOS/PV.22C28/4, pp. 27-29 (Hart).

[12] ITLOS/PV.22A28/4, p. 30, lignes 23-25 (Hart).

[13] *Obligations relatives à des négociations concernant la cessation de la course aux armes nucléaires et le désarmement nucléaire (Iles Marshall c. Royaume-Uni), exceptions préliminaires, arrêt, C.I.J. Recueil 2016*, p. 851, par. 43.

[14] ITLOS/PV.22C28/4, p. 32, lignes 7-11 (Hart).

(Continued in English)
The extent of the disputed area within 200 M from the baselines from which the breadth of the territorial sea is measured is shown in Figure 4.[15]

(Reprend en français) L'étendue de la zone contestée en deçà des 200 M.

On voit donc très mal sur quelle base nos contradicteurs ont tenté cette semaine d'en tirer un argument plus général sur de prétendues variations de la position de Maurice quant à l'identification du différend soumis à la Chambre spéciale.

Jeudi, Me Hart vous a demandé avec une certaine emphase qui aurait pu deviner il y a deux ans que la Chambre spéciale allait être amenée à traiter de la question de la délimitation des plateaux continentaux au-delà de 200 M[16]. Je serais tenté de lui répondre, très simplement : n'importe qui, pour autant que cette personne se soit donné la peine de lire la notification par laquelle la République de Maurice a initialement mis en œuvre la procédure de règlement qui a débouché sur la présente instance.

Et je ne doute évidemment pas, Monsieur le Président, Madame et Messieurs de la Chambre spéciale, que tel fut bien votre cas, dès le moment où la Chambre spéciale a été constituée, il y a non pas deux ans, mais plus de trois ans maintenant. Il n'y a donc ici aucune surprise, que ce soit pour la Chambre spéciale ou pour les Maldives. Il n'y a aucun procédé déloyal par lequel Maurice aurait insidieusement étendu la portée du différend une fois la Chambre spéciale saisie. Cette question faisait partie intégrante, depuis 2011 au moins, du différend global de délimitation qui opposait les Parties, et la Chambre est pleinement compétente pour statuer sur ce volet des demandes de Maurice. Contrairement à ce que tentent de vous faire croire nos contradicteurs, l'intégrité du système de règlement des différends institué par la Convention et les attentes légitimes des États parties n'en seront nullement affectées.

J'ajouterais un tout dernier élément à ce débat en rappelant à la Partie adverse comme à la Chambre spéciale que, dans le cas où — par impossible — la Chambre déclinerait d'exercer sa compétence à l'égard de cette partie du litige, rien n'empêcherait bien sûr la République de Maurice d'introduire une nouvelle instance sur la base de la partie XV de la Convention, instance qui porterait alors exclusivement sur la délimitation au-delà de 200 M. À supposer — *quod non* — que l'existence d'un différend sur ce point ne soit pas avérée dans le cadre de l'instance en cours, sa réalité serait établie hors de tout doute dans le contexte d'une nouvelle instance. Reste évidemment à savoir si une telle approche serait souhaitable et, surtout, compatible avec le principe de l'économie de procédure, consacré par la Cour internationale de Justice dans son arrêt de 2008 dans l'affaire de l'*Application de la convention sur le génocide*[17]. Comme l'avait alors énoncé la Cour, ce principe « est une composante des exigences de bonne administration de la justice », dès lors qu'il vise « à éviter la multiplication inutile des procédures »[18].

Il vaut certainement tout autant devant le Tribunal international du droit de la mer que devant la CIJ.

Mais encore une fois, cette possibilité d'introduction d'une nouvelle instance n'est rien d'autre qu'une simple conjecture, puisqu'il n'existe, de l'avis de la République de Maurice, aucune raison pour la Chambre spéciale de ne pas exercer sa compétence à l'égard de

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[15] Written Observations of Mauritius, p. 33, para. 3.44.
[16] ITLOS/PV.22C28/4, p. 21, lignes 25-27 (Hart).
[17] *Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie), exceptions préliminaires, arrêt, C.I.J. Recueil 2008*, p. 412.
[18] *Ibidem*, p. 443, par. 89.

l'ensemble du différend qui lui a été soumis. Tout comme il n'existe aucun obstacle à la recevabilité de ce volet de sa demande ; je vais y revenir maintenant.

Dans sa plaidoirie de cette semaine, M. Mbengue vous a présenté une vision particulièrement rigoriste du système établi par la Convention des Nations Unies sur le droit de la mer et par les États qui y sont parties pour ce qui est de la communication à la Commission des limites du plateau continental d'informations et de demandes de plateau continental étendu.

À l'entendre, les États seraient véritablement corsetés par leurs communications initiales, qu'il ne leur serait pas permis d'amender ou d'étendre. Maurice était donc tenue, d'après notre contradicteur, de présenter l'ensemble de ses revendications de plateau continental étendu dans ses informations préliminaires de 2009[19]. Tout complément, amendement, ou *a fortiori* extension à d'autres espaces maritimes que ceux couverts par la communication initiale devrait de ce fait être considéré comme irrecevable.

La question centrale est ici celle de l'interprétation des règles de la Convention de Montego Bay et des instruments qui y sont liés portant sur la modalité de présentation, par les États parties, de demandes de plateaux continentaux étendus. Or ce qui est marquant, à cet égard, c'est la flexibilité dont tant les États parties que la Commission des limites du plateau continental ont fait preuve. Cette flexibilité s'est manifestée de plusieurs manières. Dès 2005, le Conseiller juridique de l'ONU a rendu un avis aux termes duquel il est permis à un État qui a présenté une demande à la CLPC en vertu de l'article 76 de la Convention de fournir à la Commission, au moment où cette demande est examinée, des informations ou documents additionnels relatifs à la limite de son plateau continental même si ces données s'éloignent sensiblement des limites présentées par cet État à l'origine[20]. Cet avis juridique est manifestement pleinement en phase avec la conception de son rôle que se fait la Commission des limites du plateau continental elle-même : elle n'agit pas comme un juge, chargé de sanctionner les États pour les insuffisances éventuelles de leur dossier de demandes de plateau continental étendu, mais plutôt comme un partenaire de ces derniers, soucieux avant tout de leur prêter assistance dans cette démarche.

Dans le même ordre d'idées, il est évidemment à peine besoin de rappeler que les États parties eux-mêmes ont décidé de modifier à la fois le délai initialement prévu à l'article 4 de l'annexe II à la Convention pour la présentation de demande de plateau continental étendu[21], et d'admettre que ce délai pourrait être respecté en soumettant des « informations préliminaires indicatives sur les limites extérieures du plateau continental au-delà de 200 milles marins »[22]. Enfin, il convient encore de faire référence ici à l'annexe I du Règlement intérieur de la Commission des limites du plateau continental, qui porte sur les « demandes relatives à des différends entre États dont les côtes sont adjacentes ou se font face, ou relatives à d'autres différends maritimes ou terrestres non résolus »[23]. L'article 3 de ce texte prévoit que

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[19] ITLOS/PV.22C28/4, p. 39-41 (Mbengue).

[20] Lettre datée du 25 août 2005, adressée au Président de la Commission des limites du plateau continental par le Conseiller juridique, Secrétaire général adjoint de l'Organisation des Nations Unies aux affaires juridiques, doc. CLCS/46, 7 septembre 2005, p. 13.

[21] Décision concernant la date de début du délai de 10 ans prévu à l'article 4 de l'annexe II de la Convention des Nations Unies sur le droit de la mer pour effectuer des communications à la Commission des limites du plateau continental, doc. SPLOS/72, 29 mai 2001.

[22] Décision relative au volume de travail de la Commission des limites du plateau continental et à la capacité des États, notamment des États en développement, de s'acquitter de leurs obligations en vertu de l'article 4 de l'annexe II à la Convention des Nations Unies sur le droit de la mer, et de respecter l'alinéa a) de la décision figurant dans le document SPLOS/72, doc. SPLOS/183, 20 juin 2008.

[23] Règlement intérieur de la Commission des limites du plateau continental, doc. CLCS/40/Rev.1, 17 avril 2008.

(*Continued in English*)
A submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be made later notwithstanding the provisions regarding the ten-year period established by article 4 of Annex II to the Convention.

(Reprend en français) Nombre d'États se sont prévalus de cette disposition pour présenter, bien des années après leur communication initiale à la CLPC, des demandes de plateau continental étendu portant sur des régions tout autres que celles concernées par leur communication initiale. C'est par exemple le cas de la Micronésie, qui a communiqué en 2009 à la Commission des informations préliminaires concernant deux zones de plateau continental étendu[24]. En 2022, soit treize ans plus tard, le même État a présenté une demande de plateau continental au-delà de 200 M portant sur une région tout à fait différente. Cette demande contenait la précision suivante :

(*Continued in English*)
In accordance with paragraph 3 of Annex I to the Rules of Procedure, this Submission represents a partial submission in respect of a portion only of the continental shelf beyond 200 M from the territorial sea baselines of the Federated States of Micronesia. This is without prejudice to any future submission with respect to other areas of the continental shelf beyond 200 M from the territorial sea baselines, either covering completely separate areas or areas that are in any way related to, or connected with, any existing or future extended continental shelf claim of the Federated States of Micronesia. [...] Furthermore, in accordance also with paragraph 3 of Annex I to the Rules of Procedure, submissions for other areas of extended continental shelf may be claimed by the Federated States of Micronesia in the future, either separately or jointly with other state or states.[25]

(Reprend en français) De la même manière, l'Indonésie a présenté en 2008 une première demande relative à la région située au nord-ouest de Sumatra. Cette demande initiale précisait que

(*Continued in English*)
[i]n accordance with paragraph 3 of Annex I of the Rules of Procedure, submissions of the outer limits of the extended continental shelf of Indonesia in other areas will be made at a later stage.[26]

(Reprend en français) C'est effectivement ce que l'Indonésie a fait en 2019 pour la région située au nord de la Papouasie[27], en 2020 pour celle située au sud-est de Sumatera[28] et en 2022 pour la région du sud de Java et du sud de Nusa Tengarra[29]. Cette dernière communication continuait elle aussi à préserver les droits de l'Indonésie pour l'avenir, en indiquant que :

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[24] Informations préliminaires indicatives sur les limites extérieures du plateau continental au-delà de 200 milles marins pour les secteurs Eauripik Rise et Mussau Ridge présentées par les États Fédérés de Micronésie.
[25] Partial Submission by The Federated States of Micronesia to the Commission on the Limits of the Continental Shelf concerning the Area North of Yap, summary.
[26] Partial Submission by Indonesia in respect of the area of North West of Sumatra, summary, para. 2.
[27] Demande partielle concernant la région nord de la Papouasie présentée par l'Indonésie, résumé.
[28] Demande partielle concernant la région sud-ouest de l'Île Sumatera présentée par l'Indonésie, résumé.
[29] Demande partielle concernant la région sud de Java et du sud de Nusa Tenggara présentée par l'Indonésie, résumé.

(Continued in English)
[t]his partial submission shall not in any way exclude Indonesia's rights to inform the Commission on the establishment of the outer limit of Indonesia's continental shelf in other areas.[30]

(Reprend en français) Permettez-moi de prendre un dernier exemple, celui de la République de Corée, qui a communiqué en 2009 des informations préliminaires relatives à la mer de Chine orientale[31]. La Corée a soumis en 2012 une demande partielle relative à cette même zone maritime[32]. Mais elle a, elle aussi, précisé à cette occasion que

(*Continued in English*)
[p]ursuant to paragraph 3 of Annex I to the Rules, this Partial Submission concerns only a portion of the continental shelf beyond 200 M from the baselines of Korea in the East China Sea. It is made without prejudice to any future submission by Korea defining the outer limits of its continental shelf in other areas.

(Reprend en français) Les informations préliminaires amendées et la demande de plateau continental étendu dans la région septentrionale de l'archipel des Chagos présentée en avril 2022 par Maurice s'inscrivent donc dans le droit fil de cette pratique. Si cette demande menace la Convention en tant qu'ordre basé sur des règles, comme l'affirment de manière plutôt dramatique nos contradicteurs[33], ne faut-il pas en conclure qu'il en va de même pour les différentes demandes susmentionnées ? Celles-ci ne remettent-elles pas en cause elles aussi l'uniformité, la prédictibilité, la stabilité du système, tant vantées par M. Mbengue avant-hier[34] ? Ne faudrait-il pas déclarer toutes et chacune de ces demandes irrecevables ? Ou ne serait-ce pas plutôt une telle attitude qui remettrait en cause la prévisibilité du système pour les États qui concrétisent par de telles demandes leur droit à revendiquer un plateau continental étendu ?

De toute évidence, ce que met en lumière cette pratique, c'est une volonté délibérée de laisser davantage de flexibilité aux États aux prises avec de tels différends maritimes ou terrestres non résolus. On est bien loin, vous en conviendrez, du corset rigide imaginé dans ce domaine par nos contradicteurs et auquel je faisais référence tout à l'heure.

Et cette flexibilité n'est pas l'apanage des États parties. Elle se retrouve également dans la manière dont les juridictions internationales traitent les modifications apportées par les États aux communications transmises à la CLPC, même lorsque ces modifications interviennent en cours d'instance. L'affaire de la *Délimitation de la frontière maritime dans l'océan Atlantique (Ghana/Côte d'Ivoire)* en offre une illustration particulièrement éclatante. Dans cette affaire, la Côte d'Ivoire avait modifié sa demande initiale à la Commission après le dépôt du mémoire du Ghana et peu avant le dépôt de son propre contre-mémoire[35]. Le Ghana prétendait que cette demande révisée devait être exclue de la procédure, en vertu des « principes normaux de l'action internationale en justice »[36].

Si l'argument vous semble familier, Monsieur le Président, Madame et Messieurs les juges, c'est parfaitement normal. Vous l'avez en effet entendu avant-hier dans la bouche de

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[30] *Ibid.*, p. 2.
[31] Informations préliminaires indicatives sur les limites extérieures du plateau continental présentées par la République de Corée.
[32] Demande partielle à la Commission des limites du plateau continental conformément à l'article 78, paragraphe 8 de la Convention des Nations Unies sur le Droit de la Mer présentée par la République de Corée, résumé.
[33] ITLOS/PV.22A28/4, p. 36, lignes 27-30 (Mbengue).
[34] ITLOS/PV.22A28/4, p. 43, lignes 37-39 (Mbengue).
[35] TIDM, *Délimitation de la frontière maritime dans l'océan Atlantique (Ghana/Côte d'Ivoire),* arrêt, par. 515.
[36] *Ibidem.*

nos contradicteurs, affirmant que la Chambre spéciale ne pouvait prendre en compte la demande de plateau continental étendu de Maurice, car cela irait à l'encontre – je cite les Maldives – des « principes régissant [...] toutes les procédures internationales »[37].

Décider autrement, vous a-t-on dit, reviendrait à remettre en cause la « jurisprudence constante » des cours et tribunaux internationaux[38]. « Jurisprudence constante », vraiment ? Dans l'affaire qui opposait le Ghana et la Côte d'Ivoire, la Chambre spéciale a d'abord observé que

> c'est à chaque État qu'il appartient de décider – dans le cadre énoncé au titre de l'article 76, paragraphe 8, de la Convention (y compris les règles de la CLPC) – quand et comment il présente ses demandes à la CLPC.[39]

Puis, bien loin de rejeter la demande révisée de la Côte d'Ivoire pour les raisons procédurales invoquées par le Ghana, les juges ont conclu que la Côte d'Ivoire pouvait invoquer cette demande révisée dans la procédure devant la Chambre spéciale. Une fois encore, ce qui prévaut, ce n'est pas le corset de la demande initiale, mais bien le souci de permettre à l'État concerné de faire valoir au mieux sa demande sur son plateau continental étendu au-delà de la limite des 200 M.

Permettez-moi encore de m'attarder sur un dernier point. La Partie adverse fait un bien mauvais procès à Maurice lorsqu'elle prétend que les différents aléas auxquels les autorités mauriciennes ont pu être confrontées après la communication des informations préliminaires de 2009 n'ont joué aucun rôle par rapport aux délais dans lesquels Maurice a communiqué les informations préliminaires amendées, puis sa demande finale relative à cette région. Le seul argument avancé par M. Mbengue à cet égard est que les données sur la base desquelles les informations préliminaires amendées et la demande finale relative à la région de l'archipel des Chagos ont été préparées étaient publiquement accessibles depuis le début des années 2000[40]. Il devrait, selon lui, en résulter que ni la pression à laquelle étaient alors soumis les services gouvernementaux compétents à Maurice ni les incertitudes liées au statut juridique de l'archipel des Chagos ne pourraient d'une quelconque façon expliquer que les communications en cause n'aient été déposées à la Commission des limites du plateau continental que bien des années plus tard[41].

Monsieur le Président, Madame et Messieurs les juges, les différentes communications adressées par Maurice à la Commission des limites du plateau continental en 2014 et en 2015 montrent que rien n'est moins vrai. En juin 2014, le représentant permanent de Maurice auprès de l'ONU informe le Secrétaire de la CLPC que son État ne sera pas en mesure de présenter la demande de plateau continental étendu relative à la région de l'archipel des Chagos annoncée depuis 2012. Pour quelle raison? Parce que

> *(Continued in English)*
> Mauritius is experiencing capacity constraints and is presently engaged in preparations for the examination in July 2014 by a CLCS Sub-Commission of its Submission concerning the Extended Continental Shelf in the Region of Rodrigues Island.[42]

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[37] ITLOS/PV.22C28/4, p. 36, lignes 13-14 (Mbengue).
[38] ITLOS/PV.22C28/4, p. 36, ligne 8 (Mbengue).
[39] TIDM, *Délimitation de la frontière maritime dans l'océan Atlantique (Ghana/Côte d'Ivoire),* arrêt, par. 516.
[40] ITLOS/PV.22C28/4, p. 37, lignes 12-16 (Mbengue).
[41] ITLOS/PV.22C28/4, p. 37, lignes 18-26 (Mbengue).
[42] Letter from the Permanent Mission of the Republic of Mauritius to the United Nations to the Secretary of the Commission on the Limits of the Continental Shelf, 19 June 2014.

(Reprend en français) En décembre de la même année, le même ambassadeur annonce un nouveau retard dès lors que

> *(Continued in English)*
> our small technical team dealing with continental shelf issues has had to focus on providing detailed scientific and technical information relating to another submission which is currently being considered by a Sub-Commission at the CLCS.[43]

(Reprend en français) Et en décembre 2015, l'ambassadeur Koonjul informe le secrétaire de la Commission du fait que le Gouvernement de la République de Maurice entreprend des consultations avec le Gouvernement du Royaume-Uni en vue de préparer une demande conjointe à la CLPC sur la région de l'archipel des Chagos. Comme on le sait maintenant, cette démarche entamée à la suite du prononcé de la sentence arbitrale dans l'affaire de l'aire marine protégée des Chagos sera en fin de compte vouée à l'échec.

La République de Maurice, vous le voyez, n'est pas à la recherche de faux prétextes qui justifierait sa prétendue inaction. En particulier, les incertitudes qui ont continué à peser durant de longues années sur le statut juridique de l'archipel des Chagos ont joué un rôle déterminant dans l'écoulement du temps qui a séparé la communication d'informations préliminaires relatives à cette région et le dépôt d'informations préliminaires amendées, puis de la demande elle-même.

Ce n'est évidemment pas un hasard si la demande de plateau continental étendu relative à la région méridionale de l'archipel des Chagos a été présentée à la CLPC en 2019, quelques semaines seulement après que l'avis consultatif de la CIJ eut confirmé que cet archipel faisait partie intégrante du territoire de Maurice. Ce n'est pas un hasard non plus si les communications relatives à la région septentrionale de cette même zone ont été transmises peu après.

Il est manifeste que la revendication continue du Royaume-Uni sur l'archipel des Chagos, en violation des principes les mieux établis du droit international, a pesé pendant très longtemps d'un poids tout particulier sur les deux États qui sont Parties à la présente instance. C'est là un fait que la Chambre spéciale ne peut raisonnablement ignorer.

En conclusion, Monsieur le Président, Madame et Messieurs les juges, la position de Maurice n'a rien de déraisonnable. Accepter ses arguments relatifs à la compétence de la Chambre spéciale pour ce qui est du volet des demandes concernant la délimitation au-delà de 200 M et à la recevabilité de cette demande ne reviendra pas à bouleverser l'équilibre général du système mis en place dans ce domaine par les États parties à la Convention. La pratique de ces derniers témoigne au contraire clairement de la flexibilité dont ils ont entendu faire preuve pour préserver les droits des États parties à leur plateau continental, particulièrement pour ceux de ces États confrontés à des différends terrestres ou maritimes non résolus.

Je vous remercie pour votre aimable attention et je vous prie, Monsieur le Président, de bien vouloir passer la parole à mon collègue Andrew Loewenstein – sans doute après la pause.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Klein, for your statement.

At this stage, the Special Chamber will withdraw for a break of 30 minutes. We will continue the hearing at 5 o'clock.

(*Break*)

[43] Letter from the Permanent Mission of the Republic of Mauritius addressed to the United Nations to the Secretary of the Commission on the Limits of the Continental Shelf, 15 December 2014.

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

You have the floor, Sir.

STATEMENT OF MR LOEWENSTEIN
COUNSEL OF MAURITIUS
[ITLOS/PV.22/C28/6/Rev.1, p. 24–33]

Mr President, Members of the Special Chamber, good afternoon. I will respond to the arguments that have been made by Maldives concerning the entitlement of Mauritius to an outer continental shelf and to the delimitation of the area where the entitlement of Mauritius overlaps with the entitlement of Maldives beyond 200 Miles. In so doing, I will focus on the key issues that divide the parties.

I begin with Maldives' persistence in disputing – contrary to the evidence – that Mauritius has an entitlement to a continental shelf beyond 200 miles. Maldives tries to dissuade you from exercising your otherwise well-founded jurisdiction by arguing, in effect, that determining whether Mauritius has an entitlement to an outer continental shelf in accordance with article 76 is too scientifically and technically challenging for this Special Chamber, and that the matter should therefore be shunted to the CLCS, notwithstanding the fact that the CLCS is presently barred by operation of its Rules of Procedure from considering the matter. This is not a compelling reason to decline to exercise jurisdiction.

To begin with, Maldives overstates the complexity of the task at hand. To be sure, there are some tasks which the CLCS may be called upon to perform under article 76 that are, indeed, technically complicated, such as determining whether, under article 76, paragraph 4(a)(i), at each of the outermost fixed points of a State's OCS claim, the thickness of the sedimentary rocks is at least 1 per cent of the shortest distance to the foot of the continental slope.

But the Special Chamber is not called upon to do this. Instead, as set out in the partial submission of Mauritius to the CLCS, the outer limits of the Mauritian continental shelf beyond 200 Miles are to be delineated in accordance with article 76, paragraph 4(a)(ii). This simply requires the outer limits to be drawn by straight lines from the foot of the continental slope not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude.

And the Special Chamber's task is made even easier by virtue of the fact that both Mauritius and Maldives maintain the same critical foot of slope point. There is thus no dispute that, in accordance with article 76, paragraph 4(b), the foot of slope point has been determined at the point of maximum change in the gradient at the base of the continental slope. So, this is not a task that the Special Chamber needs to do, either.

Further, as I noted in the first round, Maldives does not dispute that Mauritius correctly identifies the outer limits of the continental margin, as calculated from the critical foot of slope point, in accordance with article 76, paragraph 4(a)(ii). You can see this in the images now appearing on your screens, which show that the outer limits of the OCS claimed by Mauritius are in alignment with the outer limits of the OCS claimed by Maldives.

So, really, the issue that divides the Parties in regard to entitlement to a continental shelf beyond 200 Miles is narrow: in essence, it comes down to whether Mauritius can establish that there is a natural prolongation of its landmass to the critical foot of slope point. Even on Maldives' case, if Mauritius can show the existence of such a natural prolongation, the claim for delimitation of the area of overlapping entitlements is admissible.

Here, I am happy to observe that yesterday's oral pleadings by Maldives narrowed the issues that the Special Chamber needs to resolve. Professor Akhavan helpfully described two types of data – single-beam and multi-beam echosounder data – both of which are collected by vessels. These, he said, "constitute measured data" and noted that they are accessible from "public domain databases such as the United States National Geophysical Database, or NGDC." Professor Akhavan contrasted these types of measured bathymetric data with less accurate satellite altimetry-derived data. Professor Akhavan then stated that "[a] crucial point

is how the CLCS differentiates satellite altimetry-derived data from other methods of collecting data, such as single beam and multi-beam echosounder data."

In that connection, Professor Akhavan further stated that

> [i]n circumstances such as the present case, where the asserted path is not a straightforward prolongation of the landmass, paragraph 4.2.6 of the CLCS Guidelines provides that "satellite altimetry-derived data… will not be regarded as admissible for purposes of delineating the 2,500 m isobath"

which Professor Akhavan said also applies to the determination of natural prolongation.

The key point to be drawn from Professor Akhavan's presentation is that Maldives expressly accepts that measured bathymetric data, whether single-beam or multi-beam echosounder data, is both superior to satellite-derived data and sufficient in itself to satisfy the requirements of the CLCS Guidelines for purposes of resolving the narrow issue that divides the Parties, namely whether there is a natural prolongation from the Mauritian landmass to the critical foot of slope point.

Professor Akhavan told you that there are no such data, and that, for this reason, the OCS claim of Mauritius is so manifestly wanting that it is inadmissible. He told you, in what he called the most important part of his presentation, that the absence of such data was the most obvious and utterly fatal flaw in Mauritius' case.

And, in specific regard to the area of the Gardiner Seamounts, where, in Mauritius' submission, its natural prolongation traverses the Chagos Trough, Professor Akhavan emphasized what he characterized as the absence of lines representing the tracks where measured bathymetric data had been collected by vessels. In support of that contention, he showed you the slide now appearing on your screens that, he said, was a close-up of the specific area of the Gardiner Seamounts upon which Mauritius' entire theory rests, and he told you that we see that the data is completely non-existent. There is, he said, not a single ship track, whether single beam or multi-beam.

The problem, one among many in Professor Akhavan's presentation, is that the image he showed you does not depict the location where the natural prolongation of Mauritius crosses the Chagos Trough. You can now see on your screens the actual route, depicted by solid black lines on the left side of your screens, by which Mauritius' natural prolongation traverses the trough and ultimately reaches the foot of slope point. Now, let's add the circle that Professor Akhavan showed. Mauritius' route is depicted by the dark pink lines that immediately skirt the circle.

As I said, this is one problem among many. Here is a bigger one. Professor Akhavan's statement that there is not a single ship track, whether single beam or multi-beam is mistaken. In fact, such data do exist; and not only that, but the data are readily accessible from publicly available sources, including the website of the National Center for Environmental Information, from which they obtained much of the data that Professor Akhavan relied on yesterday.

Mr President, contrary to what Professor Akhavan told you, there is measured bathymetric data for the entirety of the natural prolongation of Mauritius.

To reach the foot of slope point via the area around the Gardiner Seamounts, Mauritius relies on eight single-beam bathymetric profiles, the details of which you can see on your screens. These were obtained from the NCEI online database, which is the same source used by Maldives in its presentation yesterday. These surveys were carried out by a range of institutions from 1959 to 1995. The oldest, VIT31B, is the same bathymetric profile used by Maldives in reaching its own foot of slope point, which is located in the same place as Mauritius' foot of slope point.

Now depicted on your screens is the route Mauritius takes through the Gardiner Seamounts, shown by the black lines, via survey ANTAC23, continuing along the eight profiles that were shown on the table in the previous slide. The bathymetric profile served from these single beam surveys is depicted below. This shows an overall elevated region along the entirety of the route to the critical foot of slope point.

At the point that the base of slope region is reached, shown in the white section of the profile, Mauritius used the GEOCAP profile analysis known as "Analyze Profile" to locate the FOS point at the point of maximum change of gradient. This is described in section 3 of the Mauritius' partial CLCS submission. Maldives appears to have used the same methodology because the Parties reach exactly the same FOS point along survey VIT31B, which is circled in yellow on your screens.

Along the route, five more bathymetric profiles are available, all showing the elevated region along which Mauritius' path to the FOS point traverses. You can see the first three of these on your screens as black lines. These all depict an elevated region. Again, all of this data is available on the NCEI website.

The final two bathymetric profiles further north, also depicted as black lines, again show the overall elevated region, which represents the natural prolongation of Mauritius.

Adopting the same approach based on single-beam bathymetric data, Mauritius is also able to reach the same critical FOS point via the elevated saddle to the north of the Chagos Archipelago as depicted on your screens as black lines, via three bathymetric surveys, the last of which, VIT31B, is also relied upon by Maldives.

The bathymetric profile shows the elevated saddle, straddling the Chagos Trough region, before reaching the base of slope region. Again, the GEOCAP profile analysis utility "Analyze Profile" was used to identify the same critical FOS point relied upon by Maldives.

The natural prolongation of Mauritius extends additionally through the route described in the Memorial. Maldives does not dispute that, as a matter of geomorphology, this route is a morphological continuity that reaches the foot of slope point. The only objection Maldives has raised concerns the fact that the natural prolongation crosses within 200 miles of its baselines. So, its objection is legal in nature, not technical. Maldives cites no authorities that support its contention that Mauritius cannot establish its natural prolongation in this manner. And, we are aware of none.

In light of the existence and accessibility of the measured bathymetric data we have just reviewed, we were surprised when Maldives showed you yesterday the slide now appearing on your screens. This purported to show breaks in morphological continuity. The slide does not contain any indication of its source beyond that it was, quote, "Produced for hearing by GeoLimits Consulting". But, even more damning, as far as Mauritius has been able to ascertain, the figure is based on satellite-derived bathymetry, that is, the same type of data that Professor Akhavan told you is the least accurate of the various forms of bathymetric data and, in fact, so inaccurate that the CLCS Guidelines do not permit its use for determining the natural prolongation of a land mass in the circumstances present here.

In other words, the figure presents data that, by Maldives own reckoning, is of significantly inferior quality to the bathymetric data we just reviewed, which demonstrates beyond question that there is morphological continuity running from Mauritius' landmass all the way to the foot of slope point. Under the applicable CLCS Guidelines, this means that Mauritius has an entitlement to the continental shelf beyond 200 Miles that it has claimed.

The upshot is that there is no significant uncertainty as to whether Mauritius has an entitlement to an outer continental shelf. The evidence, in the form of measured bathymetric data, satisfies the standard that Maldives itself accepts is sufficient to establish the existence of an entitlement through natural prolongation. And, if the Special Chamber has even a shadow of a doubt about this, it can readily be verified by the Chamber, including though the assistance

of an expert or experts, should the Chamber consider the appointment to be useful in contributing to a judgment of unimpeachable scientific and technical rigour.

Will, as Maldives argues, exercising jurisdiction prejudice the task of the CLCS in delineating the outer limit of the continental shelf? No, it will not. As we have seen, the Parties agree as to the location of the continental shelf's outer limits in this area. They follow the same course in the submissions of both Mauritius and Maldives to the CLCS. That is 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) by reference to fixed points not more than 60 Miles from the foot of the continental slope. Both parties have done this, and concur as to the location of the resulting outer limits. Accordingly, there can be no question of prejudicing the CLCS in regard to its mandate of making recommendations in relation to delineation.

In any event, under the status quo, the CLCS is precluded from delineating the outer limits of the Parties' respective OCS claims. Here, I pause to respond to Maldives' curious contention that it has not objected to the Commission's consideration of Mauritius' submission. Maldives seems to rest on the "hyper-formalistic" view that its diplomatic note of 13 June 2022 to the UN Secretary General somehow does not qualify as an objection because it does not use the word "objection". But let's examine that contention having regard to the text of section 5(a) of Annex I to the Rules of Procedure of the CLCS.

The provision provides: "In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute." Thus, under its clear terms, the Commission is under an obligation not to consider a submission in circumstances where there is a land or maritime dispute. The phrase "shall not consider" admits no other interpretation. Section 5(a) provides only one exception: where prior consent is given by all States that are parties to the dispute.

Let's turn now to Maldives' diplomatic note of 13 June 2022. As you can see on your screens, Maldives informs the Secretary-General that "[i]n June 2019, Mauritius commenced proceedings against the Maldives with respect to the delimitation of the maritime boundary between the Maldives and the Chagos Archipelago" and that the dispute – that is the word used in the diplomatic note – was referred by agreement of the Parties to the Special Chamber. Maldives goes on to inform the Secretary- General that Mauritius has claimed "a continental shelf beyond 200 nautical miles from the baselines from which its territorial sea is measured that overlaps extensively with the area claimed by the Maldives in its full submission to the CLCS of 26 June 2010."[1] In other words, there is a maritime dispute that relates to the subject matter of the Parties' respective submissions to the CLCS. This, of course, triggers article 5(a)'s mandatory preclusion of the Commission's consideration of those submissions. Did Maldives' diplomatic note express its consent to their consideration by the Commission? No.

Mr President, this brings me to delimitation; and I begin with Maldives' insistence that it can maintain a claim to an outer continental shelf that encroaches within 200 Miles of the baselines of Mauritius. Now, notwithstanding Maldives' attempt in this litigation to portray itself as seeking to uphold the right of a coastal State to make such a claim, Maldives should not be confused with Nicaragua in its dispute with Colombia. The fact that Maldives is making an OCS claim that encroaches within 200 Miles of Mauritius is, in essence, an accident, and an accident that Maldives promised – but failed – to correct.

In its oral pleadings, Maldives did not deny that the 2010 OCS submission was prepared so as to respect the 200-Mile limit from the baselines of the Chagos Archipelago. Nor did Maldives make more than a half-hearted attempt to deny that Maldives committed itself – via

[1] Note Verbale dated 13 June 2022 from the Permanent Mission of the Republic of Maldives to the United Nations in New York to the United Nations Secretary-General, available at https://www.un.org/depts/los/clcs_new/submissions_files/ mus2_2022/PICLCSMauritius.pdf.

an undertaking made by its Minister of Foreign Affairs and recorded in jointly signed minutes – to rectify its failure to use the EEZ coordinates of Mauritius through an addendum to Maldives' submission to the CLCS. The precise phrase is that the Mauritius side was "assured" that this "would be rectified".[2]

Ms Sander was unable to explain how this could mean anything other than that Maldives had committed itself to fix or correct its failure to use Mauritius' baselines in the 2010 submission when determining the outer limits of its OCS claim. The consequence of Maldives' further failure to fulfil its undertaking is that its outer continental shelf claim encroaches slightly into the 200-Mile limit of Mauritius. The Special Chamber should not countenance this claim. Indeed, if Maldives were entitled to claim an outer continental shelf within 200 Miles of the baselines of Mauritius, so too could Mauritius, correspondingly, claim an outer continental shelf that encroaches within 200 Miles of Maldives. You can see on your screens how extensive such a claim by Mauritius would be, reaching far into Maldives' EEZ.

I turn now to the delimitation of the Parties' overlapping OCS entitlements. Although serious differences divide the Parties, there are three important areas of agreement.

First, Maldives agrees that the three-step method is not mandatory.[3]

Second, Maldives further agrees that, in those circumstances where the three-step method is to be applied by a court or tribunal, it must do so bearing in mind the importance of achieving an equitable solution in light of the particular circumstances of the case.[4]

Third, Maldives agrees as well that, while the three-step methodology ensures coherence and predictability, minimizing arbitrariness, it provides sufficient flexibility to accommodate the circumstances of individual cases and has an inbuilt fact-specific assessment. There may be an adjustment of a provisional equidistance line in light of the circumstances of the case and there is the further cross-check for gross disproportionality.[5]

Differences between the Parties remain, however. Most significantly, Maldives persists in refusing to acknowledge the inextricable link between, on the one hand, the basis of entitlement of the continent shelf within and beyond 200 Miles, and the means by which those maritime spaces are to be delimited, on the other, having regard to article 83's requirement of an equitable solution. We expected Maldives to address the ICJ's holding in *Libya* v. *Malta*, where the Court described the link between the method of delimitation and the basis for entitlement as being, to use the Court's words, "self-evident" and "logical".[6] But, what did we hear in response? Absolutely nothing.

It is not as though the holding has lost its force. Under article 76, entitlement to a continental shelf within 200 Miles is still based exclusively on the distance criterion. Entitlement to the continental shelf beyond 200 Miles is still based exclusively on geology and geomorphology. And, the delimitation of the continental shelf within and beyond 200 Miles must still give effect to these different sources of title.

During its first-round presentation, Maldives referred to the International Law Association's Committee on Legal Issues of the Outer Continental Shelf, under the chairmanship of the distinguished former President of this Tribunal, Dolliver Nelson. But, Maldives did not tell you what the ILA Committee had to say about this issue in the section of

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[2] First Meeting on Maritime Boundary Delimitation and Submission Regarding the Extended Continental Shelf Between the Republic of Maldives and Republic of Mauritius (21 October 2010) (Written Observations of the Republic of Mauritius on the Preliminary Objections raised by the Republic of Maldives, Annex 13).

[3] ITLOS/PV.22/C28/5, p. 19 (line 37).

[4] ITLOS/PV.22/C28/5, p. 19 (lines 38-39).

[5] ITLOS/PV.22/C28/5, p. 20 (lines 16-23).

[6] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, paras. 27, 61.

its 2002 report devoted to "Delimitation of the Outer Continental Shelf Between States".[7] It therefore falls to Mauritius to do so.

The Committee began by observing that while

> [t]he rule on the delimitation of the continental shelf between states with opposite or adjacent coast contained in article 83 of the LOS Convention does not make any explicit distinction between the delimitation of the continental shelf within the 200 nautical mile limit and beyond that distance

the "fact that the basis for entitlement to continental shelf and its delimitation are linked suggests that the process of delimitation may be different in these two cases." In other words, in the view of the ILA Committee, Maldives is wrong to argue that the fact that there is a single continental shelf means that the method for delimiting the continental shelf within 200 Miles should also be the delimitation method beyond 200 Miles.

The Committee then stated that "[e]ntitlement to the EEZ and a continental shelf extending up to the 200 nautical mile limit is based on distance from the coast." This fact, the Committee said, "makes the distance criterion" an "important consideration in the delimitation of these areas," that is, within 200 Miles. However, the Committee went on to state – again, in agreement with the position advanced by Mauritius and in disagreement with that of Maldives – that since "[d]istance does not play the same role in the establishment of entitlement over and the outer limit of the outer continental shelf," this "may have an impact on the rules applicable to the delimitation of this part of the continental shelf," that is, beyond 200 Miles.

Maldives ignores entirely this distinction, despite the emphasis placed on it by the ICJ and the ILA Committee. Maldives' approach to delimitation of the Parties' overlapping continental shelf entitlements therefore proceeds on the fundamentally erroneous premise that there is no linkage between the method of delimitation and the basis for entitlement. That is wrong, as both the Court and the ILA Committee have said.

Maldives is not helped by arguing that the approach Mauritius takes to delimitation beyond 200 Miles by giving effect to the basis for entitlement to the outer continental shelf is somehow inconsistent with the principle that the land dominates the sea. It is not. Entitlement beyond 200 Miles requires the area of shelf in question to be physically connected to the landmass, as the concept of natural prolongation is understood. As I showed earlier, that requirement is satisfied here.

Nor does the case law support Maldives' mechanistic approach to the three-step method. Maldives derives no support from cases where international courts or tribunals have extended adjusted or unadjusted equidistance lines within 200 Miles to delimit the continental shelf beyond 200 Miles. In each of those cases, the court or tribunal carefully noted that extending the equidistance line was justified on the facts of the particular case. In *Bangladesh* v. *Myanmar*, the Tribunal explained that "the delimitation method to be employed in the present case for the continental shelf beyond 200nm should not differ from that within 200nm."[8]

Nor, in *Bangladesh* v. *India*, did the Annex VII tribunal automatically extend the delimitation within 200 Miles into the area beyond 200 Miles. Rather, in connection with the delimitation beyond 200 Miles, the tribunal explained that it "must examine the geographic situation as a whole."[9] Only after examining the geographic situation as a whole and making adjustments to ensure that the line could achieve an equitable result did the Tribunal extend the delimitation line within 200 Miles to delimit the relevant area beyond 200 Miles as well.

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[7] Report of the ILA Committee on Legal Issues of the Outer Continental Shelf, New Delhi Conference (2002).

[8] *Bangladesh*/Myanmar, *Judgment, ITLOS Reports 2012*, p. 100, para. 455.

[9] *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*, PCA Case No. 2010-16, Award, 7 July 2014, para. 410.

Moreover, the Tribunal did not mechanically extend the provisional equidistance line. It took steps to "ameliorate [the] excessive negative consequences the provisional equidistance line would have."[10]

Likewise, in *Somalia* v. *Kenya*, the Court extended the delimitation line that it had drawn within 200 Miles only after reciting specific considerations and then specifying that

> *[i]n view of the foregoing*, the Court considers it *appropriate* to extend the geodetic line used for the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles to delimit the continental shelf beyond 200 nautical miles.[11]

The particular factual circumstances recorded in each of these judgments and awards as justifications for extending the delimitation line within 200 Miles to the area beyond do not pertain here. Each involved adjacent coastal States where – and this is the critical factor – the overlapping OCS entitlements were situated across a broad, continuous belt of shelf next to the adjacent States. Not so with respect to the location of the overlapping OCS entitlements here, where, due to geomorphological factors, the area subject to delimitation protrudes to the north.

As the ICJ indicated in *Libya* v. *Malta*, it is illogical to delimit that area by means of a methodology that gives primacy to coastal configuration and distance from the coast when those factors are irrelevant to the coastal States' source of entitlement.[12] Unlike within 200 Miles, there is no meaningful relationship with those factors. Thus, delimiting the area by means of equidistance would be essentially arbitrary. It would depend entirely on the happenstance of the location of the area of overlap.

In the particular circumstances of the present case, and as you can see on your screens, the arbitrariness of the equidistance line in relation to the location of the area of overlapping entitlements results in Mauritius being deprived of nearly 99 per cent of its overlapping OCS entitlement, or even 100 per cent, if Maldives' flawed version of the equidistance line is used, despite the fact that Mauritius has an equal entitlement in law to the area as does Maldives. Maldives warned against refashioning geography. But that is not the danger here. Instead, it is the refashioning of geomorphology that would result in treating the entitlement as if it does not exist.

Now, consider if the location of the overlapping entitlements were reversed, as you can see on your screens, with the area protruding south rather than north. In those circumstances, where the protruding area extends to the south rather than to the north, blindly extending the equidistance would line lop off nearly all of Maldives' entitlement, by virtue of applying a method of delimitation that gives effect only to coastal configuration and distance when those factors are immaterial beyond 200 Miles.

Finally, consider the circumstance now on your screens, where there is a belt of overlapping entitlements located in front of the endpoint of the delimitation within 200 Miles. In these circumstances, which broadly resemble those present in the handful of cases where a court or tribunal has been invited to delimit beyond 200 Miles, the delimitation line within 200 Miles could be extended, consistent with equity. Not so here, where, due to the location of the overlapping entitlements, doing so would deprive Mauritius almost entirely of its entitlement.

This is, on any reasonable view, an enormous cut-off effect – or at least one would have thought. Maldives, however, argues otherwise. Yesterday, they contended, to use Ms Sander's

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[10] *Ibid.*, para. 477.

[11] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Judgment of 12 October 2021, para. 195 (emphasis added).

[12] See *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, para. 39.

words, "this is not a 'cut off'".[13] Mr President, if extending the equidistance line deprives Mauritius of all, or nearly all, of its outer continental shelf entitlement, is not a cut-off effect, I am afraid the Special Chamber may need to invent a new term to cover this situation.

Regardless, it is patently inequitable and requires a remedy. As the ICJ held in the *Black Sea* case and repeated in *Nicaragua* v. *Colombia*, the delimitation line must allow the parties "to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way."[14] The extended equidistance line plainly falls far short of that standard.

Fortunately, the flexibility inherent in a Part XV court or tribunal's approach to maritime delimitation provides this Special Chamber with the means for crafting an appropriate solution. Even if the Special Chamber were to extend the equidistance line at the first stage, the Special Chamber would inevitably have to make a radical adjustment in order to achieve the equitable result mandated by article 83. As the case law demonstrates, adjustments can be radical indeed. For example, as you can see on your screens, in *Nicaragua* v. *Colombia*, while the ICJ began with a provisional equidistance line, due to the inequitable results at the equidistance line, the adjusted line bears no resemblance to the line drawn at that initial stage.[15] The final delimitation line involved three different delimitation methods: enclaving and semi-enclaving of islands; equi-ratios; and using parallels to create a corridor – all of which were designed to address the inequitable cut-off effect.

Resorting to the three-step method here would inevitably have to result in an adjustment of even greater magnitude. As the Court explained, the delimitation must allow the coastal States' maritime entitlements to produce their effects in a reasonable and mutually balanced way.[16] In the particular circumstances of this case, where the Parties have overlapping entitlements that are equal in law and coastal configuration is irrelevant, it is hard to see how the twin loadstars of reasonableness and mutual balance could result in anything other than an equal apportionment.

Mr President, Members of the Special Chamber, this concludes my presentation. May I take this opportunity to express my deep appreciation to all of my colleagues on the Mauritian team, including Mr Reichler, who was unable to be here today. Thank you for your kind attention. I ask that you invite the Co-Agent of Mauritius to the podium.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Loewenstein, for your statement. I understand the Co-Agent of Mauritius, Mr Koonjul, will make some closing remarks and present the final submissions for Mauritius.

In this regard, 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 their party's final submissions. A copy of the written text of these submissions, signed by the agent, shall be communicated to the Tribunal and transmitted to the other party.

I now invite the Co-Agent of Mauritius, Mr Koonjul, to take the floor to make a closing statement and present the final submissions of Mauritius.

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[13] ITLOS/PV.22C.28/5, p. 24 (lines 23-24).

[14] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, para. 215; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, para. 201.

[15] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, p. 624.

[16] *Ibid.*, para. 215.

STATEMENT OF MR KOONJUL
CO-AGENT OF MAURITIUS
[ITLOS/PV.22/C28/6/Rev.1, p. 34–36]

Mr President, honourable Members of the Special Chamber, honourable Agent and members of the delegation of the Republic of Maldives, in my capacity as Co-Agent of the Republic of Mauritius, it falls to me to bring to a close the oral pleadings of the Republic of Mauritius and to recite its final submissions.

As you have heard from Professor Sands, Professor Klein and Mr Loewenstein, the matters that remain in dispute between the Parties are relatively narrow in scope, but certainly not without significance.

First, within 200 nautical miles, Professor Sands has shown that Maldives has failed to substantiate any supposed hard-line rule that low-tide elevations can never be used for the placement of basepoints. There is no support for this proposition in the Convention, nor in the case law. Likewise, Maldives' newfound discovery of 57 separate maritime features at Blenheim Reef is completely at odds with all the relevant nautical charts; neither does it correspond with the observations made during Mauritius' technical and scientific on-site survey, or with the treatment of such features by international courts and tribunals, most notably in the *South China Sea* arbitration in relation to which our friends from Maldives have remained conspicuously silent.

Be that as it may, the path of least resistance in this case is Part IV of the Convention, which provides the Special Chamber with a cleaner and far simpler way to reach the right and obvious conclusion. Maldives' only real argument in response, relating to article 47, paragraph 4, of the Convention is, as demonstrated by Professor Sands, inescapably not applicable to drying reefs, which includes Blenheim Reef. This is supported not only by the terms of article 47 itself but, also, by the *travaux préparatoires*, authoritative academic commentary and the consistent practice of archipelagic States, such as Fiji and Solomon Islands, as well as the reactions of other States to such practice.

Second, on jurisdiction and admissibility in relation to Mauritius' claim beyond 200 nautical miles, Professor Klein has shown that Maldives has adopted an unduly formalistic approach to the definition of the dispute between the Parties, as well as the law and practice of the CLCS. There has been a long-standing dispute between the Parties concerning their overlapping entitlements beyond 200 nautical miles prior to Mauritius' notification. The steadfast refusal of Maldives to engage with Mauritius – premised on its misplaced support for the United Kingdom's unlawful occupation of the Chagos Archipelago – can in no way support Maldives' contention that there is no dispute concerning overlapping entitlements beyond 200 nautical miles. That dispute is now before the Special Chamber only because Maldives has, until very recently, refused to engage with Mauritius in its capacity as the only State having sovereignty over the Chagos Archipelago.

The Judgment of the Special Chamber on Preliminary Objections, described as "felicitous by Counsel for Maldives,[1] has been most welcome in fostering a new spirit of cooperation between the Parties. Professor Klein has also demonstrated, by reference to the relevant rules of the CLCS and the practice of UNCLOS member States, that Mauritius has made a timely and proper CLCS submission with regard to the Northern Chagos Archipelago Region. The Special Chamber has jurisdiction to determine Mauritius' claim beyond 200 nautical miles, and there is no reason for the Special Chamber not to exercise such jurisdiction. To the contrary, the Special Chamber would, in exercising the jurisdiction that it

[1] ITLOS/PV.22/C28/3, p.7, line 29 (Mr Akhavan).

has, be fulfilling its mandate in enhancing respect for the Convention and facilitating the resolution of disputes pursuant to Part XV.

Third, Mr Loewenstein has shown that Mauritius has a natural prolongation, extending from its landmass, through multiple routes to the critical foot of slope point to the north of the Chagos Archipelago. Contrary to what was asserted yesterday, there is publicly available measured bathymetric data – of the type that Maldives accepts is sufficient to establish natural prolongation – which does indeed establish that there is a natural prolongation of Mauritius' landmass to the critical foot of slope point. Mr Loewenstein has also demonstrated that Maldives' proposed delimitation beyond 200 nautical miles is unsupported and unsupportable, while Mauritius' proposed delimitation is the equitable solution required by article 83 of the Convention.

Mr President, on Thursday morning, counsel for Maldives submitted that if "there were no questions of jurisdiction and admissibility", there would be "compelling reasons to have a second phase to properly address scientific and technical evidence" with regard to the Parties' claims beyond 200 nautical miles.[2]

Mr President, to the extent that Special Chamber may consider that another phase is required, Mauritius would welcome such an approach. On the basis of the technical and scientific evidence before the Special Chamber – in relation to the claims of both Parties beyond 200 nautical miles – Mauritius considers that the Special Chamber is highly likely to be assisted, to a significant degree, by the appointment of a suitably qualified expert or experts. Such an appointment could only enhance the Special Chamber's capacity to apply the necessary scientific and technical rigour to the assessment of the Parties' respective entitlement to a natural prolongation beyond 200 nautical miles.

Mr President, as you have heard this week, both Mauritius and Maldives have acknowledged that they share warm and long-standing relations. As small island developing States, Mauritius and Maldives stand together in the face of the existential threats to which the distinguished Deputy Attorney General of Maldives, Ms Shaany, referred.[3] The mutual respect and cooperation between the Parties has been clearly reflected in the way this phase of the proceedings has been conducted. Over the last few days, we have also had the opportunity to engage with our friends from Maldives constructively to consider the possibility of collaboration in several areas of mutual interest, and we are looking forward to a new era of strengthened cooperation. We deeply appreciate the role played by ITLOS and the Special Chamber in enabling the Parties to reach this point.

At the same time, Mr President, we were somewhat surprised, on Wednesday afternoon, to hear Ms Shaany say that there has been no "change of tone" on the part of Maldives with regard to cooperation with Mauritius.[4] That is certainly not our understanding of the assurances given by the President of Maldives in his letter of 22 August 2022, which expressly recognizes Maldives' decision to "change its position".[5] In reply, the Prime Minister of Mauritius, in reliance on Maldives' assurances, has stated that past difficulties that arose prior to Mauritius' survey would be left to the past. And when we say left to the past, we really mean it.

To conclude, Mr President, on behalf of the Agent of Mauritius, my legal team, the Government and the people of Mauritius, I wish to express sincere thanks and appreciation to you, Mr President, and to the distinguished Members of this Special Chamber for your kind attention, astute engagement, and the manner in which you have conducted these proceedings. We are also grateful to ITLOS for its ongoing support to the Parties in resolving their dispute

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[2] ITLOS/PV.22/C28/3, p.19 (Mr Akhavan).
[3] ITLOS/PV.22/C28/4, p.14, lines 24-26 (Ms Shaany).
[4] ITLOS/PV.22/C28/4, p.12, lines 5-7 (Ms Shaany).
[5] Letter from the President of Maldives to the Prime Minister of Mauritius dated 22 August 2022 (Mauritius' Judges' folder, tab 1).

concerning delimitation of their common maritime boundary in the Indian Ocean. We also express our sincere gratitude to the Registrar, her outstanding staff, the interpreters, stenographers and all those who have played a part in facilitating this hearing.

Mr President, distinguished Members of the Special Chamber, that leaves me with the task, on behalf of the Agent of Mauritius, of reading out Mauritius' final submissions.

On the basis of the facts and law set forth in the Memorial and the Reply, and during the oral hearing, the Republic of Mauritius respectfully requests the Special Chamber to adjudge and declare that

(a) the Special Chamber has jurisdiction to determine Mauritius' claim to a continental shelf beyond 200 nautical miles and the claim is admissible;

(b) the entire maritime boundary between Mauritius and Maldives in the Indian Ocean, within 200 nautical miles and in the outer continental shelf, connects the 53 points, using geodetic lines, the geographic coordinates for which (in WGS 1984 datum) are set out on pages 54 and 55 of the Reply of Mauritius.

Thank you, Mr President and Members of the Special Chamber, for your kind attention. This concludes the oral pleadings of Mauritius. Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Koonjul.

This completes the second round of oral arguments of Mauritius. The hearing will resume on Monday at 10 a.m. to hear the Maldives' second round of oral arguments. The sitting is now closed. Good evening.

(*The sitting closed at 6 p.m.*)

PUBLIC SITTING HELD ON 24 OCTOBER 2022, 10 A.M.

Special Chamber

Present: *President* PAIK; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges* ad hoc OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

For Mauritius: [See sitting of 17 October 2022, 10 a.m.]

For the Maldives: [See sitting of 17 October 2022, 10 a.m.]

AUDIENCE PUBLIQUE TENUE LE 24 OCTOBRE 2022, 10 HEURES

Chambre spéciale

Présents : M. PAIK, *Président* ; MM. JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR *juges* ; Mme CHADHA, *juge* ; MM. OXMAN, SCHRIJVER, *juges* ad hoc ; Mme HINRICHS OYARCE, *Greffière*.

Pour Maurice : [Voir l'audience du 17 octobre 2022, 10 heures]

Pour les Maldives : [Voir l'audience du 17 octobre 2022, 10 heures]

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.

Second tour : Maldives

EXPOSÉ DE M. THOUVENIN
CONSEIL DES MALDIVES
[TIDM/PV.22/A28/7/Rev.1, p. 1–8]

Merci, Monsieur le Président.

Monsieur le Président, Madame et Messieurs les juges, j'ai l'honneur de débuter les plaidoiries orales du second tour des Maldives. À ce stade ultime des débats contradictoires qui ont vocation à nourrir vos réflexions, les écrans de fumée se sont estompés. Comme la Chambre spéciale le sait, la présente affaire de délimitation maritime a été initialement compliquée par le différend qui a opposé Maurice au Royaume-Uni, jusqu'à ce que la Chambre spéciale, dans sa sagesse, décide qu'il n'y a plus de différend entre le Royaume-Uni et Maurice. À cet égard, Maurice a eu gain de cause, et c'est très bien comme cela ; les Maldives s'en félicitent autant que Maurice.

Maintenant, il reste à trancher le fond du différend maritime qui oppose Maurice aux Maldives. Ce devrait être un non-sujet. Il suffit de s'accorder sur la ligne d'équidistance à partir des côtes pertinentes, conformément aux règles et à la pratique judiciaire établie, en se gardant bien sûr de refaire la géographie. C'est une affaire de cartographes et de diplomates, qui devrait d'autant moins nécessiter de mobiliser de longs débats juridiques que, nous avons pu en faire l'expérience durant ces quelques jours, les parties sont aimables entre elles, font preuve d'ouverture d'esprit, d'esprit d'amitié et de volonté de coopération. La bonne entente règne entre les Parties.

Mais voilà, il y a l'affaire du récif de Blenheim. La Chambre connaît maintenant bien ce qui divise les Parties à propos de cette formation. La Partie maldivienne estime qu'il faut traiter cette question conformément au droit international, tandis que la Partie mauricienne vous demande de vous aventurer sur des pentes bien plus hasardeuses, illustrées par l'image très parlante du « bingo »[1]. Je n'ai pas l'imagination d'un romancier, et je n'avais jamais songé qu'une délimitation maritime puisse être associée à un jeu de hasard. Vous laisserez-vous enivrer, au moment de votre délibéré, par le pouvoir de réinventer le droit de la délimitation maritime ? Tordrez-vous les règles du droit de la mer comme de vieilles ferrailles rouillées par le sel de mer ? Reformulerez-vous la géographie physique ? Réécrirez-vous la Convention sur le droit de la mer sans aucun égard pour les règles d'interprétation des traités codifiées dans la Convention de Vienne ? Pardonnerez-vous toutes les offenses faites à la procédure ? Vous enhardirez-vous à usurper la fonction de la Commission des limites du plateau continental ? Vous laisserez-vous convaincre par quelques croquis incohérents accompagnés de thèses contradictoires élaborées à la hâte, cherchant à vous convaincre qu'il existe un plateau continental étendu là où il n'y a rien ?

Sur toutes ces questions, la thèse mauricienne n'est en effet pas sans lien avec le jeu du bingo.

Monsieur le Président, puisque c'est le dernier jour et que nous sommes maintenant entre personnes qui se connaissent, je peux bien vous confier que ma grand-mère jouait au bingo dans ses vieilles années, et elle prétendait que ce jeu offre 90 chances de perdre contre une de gagner.

La thèse avancée par nos contradicteurs présenterait-elle donc quelque chose comme une chance sur 90 de vous convaincre ? Testons-là. Est-ce qu'une majorité d'entre les Membres de la Chambre spéciale se laissera convaincre que, aux fins de la délimitation et alors que, dans l'histoire, personne ne s'est laissé convaincre, que dans cette pratique de délimitation il

[1] TIDM/PV.22/A28/6, p. 6 (ligne 16) (Sands).

convient, par la magie d'une interprétation débridée des articles 13 et 5 de la Convention, de poser des points de base non pas sur la côte pertinente, mais sur des hauts-fonds découvrants très éloignés de la côte pertinente de l'île la plus proche, qui n'en font nullement partie, n'en sont pas davantage le prolongement et sont, en réalité, sans aucun lien avec elle ? Je vous en dirai un peu plus à ce sujet aujourd'hui. Mais si, et j'ai eu l'impression que c'est le sentiment qui dominait les plaidoiries de samedi, l'autre côté de la barre se rendait à l'évidence que « la côte pertinente sous-marine » a de bien faibles chances de succès, lui resterait-il l'espoir que vous serez davantage séduits par l'idée d'agir en législateurs, en réécrivant la partie IV de la Convention, sans égard bien sûr pour les règles les mieux établies du droit de l'interprétation des traités que la Convention de Vienne a codifiées ?

La Chambre spéciale se souviendra que la partie IV a été présentée lundi dernier comme un « régime [...] spécial »[2], concept apparemment magique, alors que la partie IV ne dit strictement rien du droit de la délimitation maritime, qui est le seul sujet qui nous intéresse ici, et alors que personne, à ma connaissance, n'a jamais soutenu que la partie IV dit qu'un récif découvrant est une île et que le droit de la délimitation maritime y est spécifié par exception au droit de la délimitation maritime posé aux articles 74 et 83. Faut-il croire que cette thèse a une chance sur 90 de l'emporter ?

Mme Sander vous en dira plus à cet égard. Elle reviendra également sur l'étendue de la ZEE de Maurice, qui à son tour détermine l'étendue de la zone de chevauchement entre la revendication des Maldives à un plateau continental étendu et celle de Maurice à une zone économique exclusive. Elle reviendra également sur la thèse du partage égal des prétendus chevauchements des plateaux continentaux étendus. Car, en effet, non seulement la partie adverse vous exhorte-t-elle à réinventer fondamentalement le droit de la mer et à bouleverser ses institutions en vous substituant définitivement à la Commission des limites du plateau continental, mais encore elle vous demande de refaçonner la géographie, en lui substituant, par la magie de votre arrêt, l'équilibre parfait que la géographie n'offre jamais, en divisant en deux parts égales une prétendue zone de chevauchement entre la revendication à un plateau continental étendu des Maldives, incontestable, incontesté, et celle de Maurice, née de la seule imagination de quelques-uns et inventée au beau milieu de cette instance.

Et nos contradicteurs de parier encore que, pour être en mesure de réaliser cette grande œuvre salomonique, vous pardonnerez promptement à celui qui vous en offre l'opportunité d'avoir scrupuleusement bafoué les règles de base de la procédure judiciaire internationale, et que vous irez jusqu'à vous juger compétents pour trancher un différend dont, au moment de rendre votre arrêt sur la compétence, vous n'aviez sans doute aucune idée qu'il eût pu exister.

Mme Hart y reviendra. Et, encore, que vous jugerez qu'est admissible la revendication à un plateau continental étendu de Maurice irrémédiablement hors délai ; M. Mbengue vous en dira davantage ; et, encore, que la revendication mauricienne à un plateau continental étendu est plausible, alors qu'elle est manifestement indigente, contradictoire, dénuée du minimum de crédibilité scientifique qui la rendrait recevable. M. Akhavan y reviendra. L'agent des Maldives, comme il se doit, terminera ce tour de plaidoiries en présentant les conclusions finales du défendeur.

Monsieur le Président, Madame et Messieurs de la Chambre spéciale, j'en viens à la première partie de la présentation d'aujourd'hui qui répond pour partie à la plaidoirie de M. Sands, lequel, comme réécrivant *L'île mystérieuse* de Jules Vernes, en l'épiçant du mythe de l'Atlantide, nous transporte vers le récif de Blenheim transfiguré en île de plein exercice[3], qui fait pleinement partie des côtes pertinentes, qui contrôle plus de 60 % de la ligne

[2] TIDM/PV.22/A28/1, p. 34 (lignes 41-43) (Sands).
[3] TIDM/PV.22/A28/1, p. 7 (lignes 17-21) (Sands).

d'équidistance provisoire et qui annexe fièrement 4 600 km² du plateau continental et de la zone économique exclusive qui devraient revenir à l'atoll Addu[4].

Avec tout le respect dû, c'est bien cela le roman écrit par la Partie adverse : le récif de Blenheim, dont on voit une représentation exacte à marée haute à l'écran, le récif de Blenheim, selon la Convention des Nations Unies sur le droit de la mer, c'est une île ! Il n'y a pas de différence entre une île et le récif de Blenheim. Et elle est grande, cette île. Vous devez donc la voir comme terre ferme. *Terra firma*. Le récif de Blenheim, c'est le territoire terrestre qui constitue la côte de Maurice ! Et à ce titre, elle doit, cette île, être retenue aux fins de la localisation d'un point de base pour déterminer la ligne d'équidistance provisoire.

Vous voyez à l'écran l'atoll Addu, à gauche. À droite, vous voyez la zone du récif de Blenheim qui laisse apparaître des hauts-fonds découvrants à marée basse. Les deux images sont à la même échelle. L'atoll Addu est composé de plusieurs îles, pas d'une seule. Personne n'en doute, ce qui illustre, par contraste, la faiblesse de la thèse du « haut-fond découvrant unique, mais fait de plusieurs hauts-fonds découvrants » de la partie adverse[5].

Voici, dans la partie sud-est de l'atoll Addu, l'île de Gan. Grande île habitée par plus de 1 000 habitants, disposant d'une vie économique trépidante. Monsieur le Président, Madame et Messieurs de la Chambre spéciale, la photo n'est pas très jolie, je m'en excuse, c'est la seule qui m'était disponible. L'atoll Addu est une île, au sens de l'article 121, paragraphe 1, qui a en anglais « full effect », comme le dit l'article 121, paragraphe 2. Comme on le sait, une île n'a pas « full effect » si elle est un rocher qui ne se prête à l'habitation humaine ou à une vie économique propre. Mais alors, si une île, une vraie, ne génère aucune projection au-delà de 12 M lorsque l'homme ne peut y résider ou qu'une vie économique propre ne peut s'y développer, par quelle magie les hauts-fonds découvrants du récif de Blenheim pourraient-ils avoir, eux, un effet au-delà de 12 M ?

Monsieur le Président, Madame et Messieurs les juges, vous avez peut-être pensé, en entendant nos contradicteurs tenter de justifier ce fabuleux destin qu'ils promettent au récif de Blenheim, à la fameuse tirade du Cyrano de Bergerac d'Edmond Rostand, qu'on appelle souvent « la tirade du nez ». Le récif de Blenheim ?

> Descriptif : C'est un roc ! … c'est un pic ! … c'est un cap ! Que dis-je, c'est un cap ? … C'est une péninsule ![6]

Rassurez-vous, même si je porte un habit presque pourpre, je ne vous emmènerai pas au théâtre aujourd'hui, sauf à mon corps défendant.

Monsieur le Président, bien qu'étant présentée de manière elliptique, samedi nous avons enfin pu comprendre la thèse que la Partie adverse vous demande de décréter comme étant « the law »[7]. Elle est la suivante :

> Premièrement, tout haut-fond découvrant localisé dans les 12 milles marins d'une terre doit en principe être considéré comme la côte pertinente au sens juridique et peut donc être retenu comme point de base pour la délimitation du plateau continental et de la ZEE[8] .
>
> Deuxièmement, ce n'est que si le haut-fond découvrant a un effet disproportionné sur la ligne d'équidistance qu'il peut être disqualifié[9].

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[4] TIDM/PV.22/A28/1, p. 6 (lignes 19-23) (Sands).
[5] TIDM/PV.22/A28/1, p. 6 (lignes 30-31) (Sands).
[6] « Cyrano de Bergerac » (1897), de Edmond Rostand, Acte 1, scène 4.
[7] TIDM/PV.22/A28/1, p. 4 (ligne 14) (Sands).
[8] TIDM/PV.22/A28/6, p. 4 (lignes 1-12) (Sands).
[9] TIDM/PV.22/A28/6, p. 4 (lignes 14-18) (Sands).

Si vous faisiez de cette thèse le droit, et pour reprendre là encore des mots de la tirade de Cyrano de Bergerac : « Assurément, monsieur, ce sera le gros lot ! »[10], pour la Partie mauricienne. Mais, bien sûr, cette thèse est erronée en ses deux branches. Quant à la première, j'ai rappelé jeudi devant la Chambre spéciale la jurisprudence constante s'agissant des côtes pertinentes qui génèrent les titres maritimes[11]. Les côtes, c'est la rencontre du territoire terrestre et de la mer. Jurisprudence claire. Massive. Incontestée. Respectée. Gage de sécurité juridique.

J'ai expliqué pourquoi certains États ont proposé aux cours et tribunaux de poser des points de base sur des hauts-fonds découvrants pour la délimitation de leur mer territoriale : parce que l'article 15 le permet expressément[12] ; j'ai indiqué aussi que jamais aucun État n'avait fait une telle proposition pour la délimitation judiciaire de sa zone économique exclusive et de son plateau continental, sauf la Somalie, laquelle s'est heurtée au mur de silence massif que lui a opposé la Cour.

Plutôt que d'en prendre acte, M. Sands s'est borné à répéter les arguments erronés du premier tour[13], réfutés au premier tour des Maldives[14]. En fait, samedi, nos contradicteurs sont restés visiblement écrasés sous le poids du sérieux et de la cohérence des arguments juridiques des Maldives. Ils n'ont rien eu à dire sur la jurisprudence constante concernant les côtes pertinentes qui, en droit de la délimitation du plateau continental et de la ZEE, un droit clairement distinct du droit de la délimitation de la mer territoriale, ne sont rien d'autre que la terre ferme, le territoire terrestre, la *terra firma*. Ils n'ont pas cherché à réfuter le dictum du tribunal arbitral dans l'affaire de la *Mer de Chine méridionale,* qui dit sans ambiguïté qu'un haut-fond découvrant, ce n'est pas le territoire terrestre[15]. Silence gêné. Ils n'ont pas davantage cherché à réfuter le principe fondamental qu'ils feignent par ailleurs d'adouber, « la terre domine la mer ». Tout ceci, disent-ils, est une « approche très imaginative, mais totalement sans précédent »[16]. Non, avec tout le respect dû, c'est la jurisprudence constante, massive, claire. C'est ce que le droit dit.

M. Sands a toutefois maintenu l'interprétation pour le coup authentiquement « imaginative, mais sans précédent » des articles 13 et 5 énoncée lundi par M. Parkhomenko[17], que j'avais réfutée jeudi, sans être contredit samedi, M. Sands se bornant à répéter que le récif de Blenheim « fait partie intégrante de la côte mauricienne »[18] – c'est ce qui est inexact –, et à citer une fois encore le prétendu paragraphe sauveur de *Qatar c. Bahreïn*, où il est dit :

> De l'avis de la Cour, dans la présente espèce, il ne s'agit donc pas de savoir si les hauts-fonds découvrants font ou non partie de la configuration géographique et s'ils sont susceptibles, en tant que tels, de déterminer la ligne de côte au sens juridique. Les règles pertinentes du droit de la mer leur reconnaissent expressément cette fonction quand ils se situent dans la mer territoriale d'un Etat.[19]

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[10] « Cyrano de Bergerac » (1897), de Edmond Rostand, Acte 1, scène 4.
[11] TIDM/PV.22/A28/4, p. 1 (lignes 33-47) ; p. 2 (1-16) (Thouvenin).
[12] TIDM/PV.22/A28/3, p. 36 (lignes 39-47) ; p. 37 (lignes 1-13) (Thouvenin).
[13] TIDM/PV.22/A28/1, p. 5 (lignes 39-46) (Sands).
[14] TIDM/PV.22/A28/1, p. 2 (lignes 1-29) (Thouvenin).
[15] TIDM/PV.22/A28/3, p. 23 (lignes 42-44) (Thouvenin).
[16] TIDM/PV.22/A28/1, p. 3 (lignes 46-47) (Sands).
[17] TIDM/PV.22/A28/1, p. 24 (lignes 29-44) (Parkhomenko).
[18] TIDM/PV.22/A28/1, p. 3 (ligne 39) (Sands).
[19] *Délimitation maritime et questions territoriales entre Qatar et Bahreïn (Qatar c. Bahreïn), fond, arrêt, C.I.J. Recueil 2001*, p. 101, par. 204.

Les Maldives « ne se sont[-elles] pas intéressées à ce passage », comme vous l'avez entendu samedi[20] ? La duplique y consacre ses paragraphes 31 à 35[21], paragraphes auxquels – et ceci en revanche est incontestable – nos contradicteurs ont consciencieusement refusé de « s'intéresser ». Monsieur le Président, cette fois, ce n'est pas moi qui vous entraîne au « théâtre de l'absurde » ; ce sont eux. Conformément aux bonnes règles, je ne répèterai pas notre duplique, mais invite instamment la Chambre spécial à s'y reporter.

En bref, il y est dit que Maurice sort manifestement cette phrase', cette citation de *Qatar c. Bahreïn,* de son contexte, qui est celui d'une délimitation de la mer territoriale, pas de la ZEE et du plateau continental, et que cette phrase n'entend rien dire d'autre que ce que dit « expressément » la Convention, laquelle dit « expressément », à l'article 15, que la ligne des médianes se calcule à partir des lignes de base qui peuvent donc légalement intégrer certains hauts-fonds découvrants, lignes de base qui, dans ce contexte, mais dans ce contexte seulement, pas du tout dans celui de la délimitation du plateau continental et de la ZEE, sont réputées être la ligne de côte au sens juridique. Je rappelle à cet égard que l'arbitrage du *Golfe du Bengale*, auquel trois membres de la présente Chambre spéciale participaient, a confirmé ce que les Maldives disent, mais que Maurice n'entend pas, à savoir que

> *(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]

(Reprend en français) Rien, absolument rien, n'a été répondu par nos confrères pour tenter de surmonter ces évidences, si ce n'est pour exhiber une étude de la pratique écrite par Derek Bowett[23], laquelle n'a évidemment pas la même autorité que la jurisprudence constante que j'ai rappelée et, au demeurant, ne dit rien d'autre que l'extrait de *Qatar c. Bahreïn*, dont je viens de rappeler qu'il ne porte que sur ce qui touche à la délimitation de la mer territoriale et pas à la délimitation au-delà de la mer territoriale.

La première branche de la thèse mauricienne s'effondre donc sur elle-même : un haut-fond découvrant n'est pas la côte pertinente en termes de géographie ; il peut être la côte pertinente par exception, par le jeu combiné des articles 15 et 13, dans le seul cadre de la délimitation de la mer territoriale, mais pas du tout pour ce qui touche à la ZEE et au plateau continental.

Quant à la deuxième branche de la thèse mauricienne, selon laquelle ce n'est que si un haut-fond découvrant a un effet disproportionné sur la ligne d'équidistance provisoire qu'il peut être écarté de son calcul, elle est aux antipodes de la jurisprudence.

Ce que dit la jurisprudence, c'est d'abord que, lorsque le droit prévoit expressément, dans le seul contexte de la délimitation de la mer territoriale, par le jeu combiné des articles 15 et 13, que le haut-fond découvrant est la côte au sens juridique, ce haut-fond découvrant sera quand même écarté s'il trahit la configuration côtière, tout comme doivent être écartés d'ailleurs de véritables formations de terre ferme, comme les rochers, les îles ou protubérances de la côte s'ils en trahissent le profil. Dans tous les cas connus à ce jour, les hauts-fonds découvrants ont été écartés. Tous. J'ai expliqué l'arrêt *Qatar c. Bahreïn*[24] et les autres cas en détail jeudi[25], ce à quoi mon contradicteur a répondu avec peu d'entrain ce qui était déjà écrit dans la réplique et dit au premier tour.

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[20] TIDM/PV.22/A28/1, p. 3 (lignes 43-44) (Sands).
[21] Duplique de la République des Maldives, par. 31-35
[22] *Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India),* Award, 7 July 2014, para. 338.
[23] TIDM/PV.22/A28/1, p. 6 (lignes 1-3) (Sands).
[24] TIDM/PV.22/A28/3, p. 29 (lignes 29-46) ; p. 30 (lignes 1-48) (Thouvenin).
[25] TIDM/PV.22/A28/3, p. 35 (lignes 14-46) ; p. 36 (lignes 1-47) (Thouvenin).

Ce que dit ensuite la jurisprudence, cette fois-ci à propos de la délimitation du plateau continental et de la zone économique exclusive, c'est, comme l'a rappelé avec approbation le Tribunal international du droit de la mer en 2012, que

> [l]a Cour doit, lorsqu'elle délimite le plateau continental et les zones économiques exclusives, retenir des points de base par référence à la géographie physique des côtes pertinentes.[26]

Tout est dit. Un haut-fond découvrant n'est pas la côte pertinente au sens de la géographie physique. Un haut-fond découvrant, au sens de la géographie physique, c'est la mer. Il ne peut donc porter de points de base aux fins de la délimitation. Affaire réglée, la ligne d'équidistance peut être tracée.

Mais, Monsieur le Président, il reste l'affaire du récif d'Édimbourg, ce prétendu haut-fond découvrant situé à plus de 20 M des côtes du Nicaragua et sur lequel la Cour de Justice aurait, selon mes contradicteurs, décidé en 2012 de poser un point de base aux fins de la délimitation[27]. C'est un argument clé de leur démonstration. Leur coup de théâtre. Ce qui, selon eux, pourrait faire basculer votre décision. On ne peut donc laisser cette affaire sans règlement.

Je ne répèterai pas la présentation que j'ai faite de l'affaire du récif d'Édimbourg[28], qui est juste et ne souffre aucune approximation. Je m'y suis astreint. Je n'en retire pas un mot, et je note que, plutôt que de répondre, le conseil de la Partie adverse a rédigé un épilogue au nouveau roman *L'île Mystérieuse*.

Trois points peuvent être faits sur cette question : premièrement, nos confrères insistent à prétendre que le récif d'Édimbourg n'est pas une île mais un haut-fond découvrant[29]. La Cour internationale de Justice n'en a jamais décidé ainsi, ni en 2007, au contraire, c'était alors une île dotée d'une mer territoriale[30] ; ni en 2012, c'était la même île du point de vue de la Cour, qui l'a répété plusieurs fois[31] dans son arrêt ; et pas non plus en 2022, où la Cour a seulement dit qu'elle ne savait pas et que le Nicaragua ne lui avait rien prouvé[32]. Personne ne sait où nos amis ont trouvé l'information dont ils font état, qui n'aide du reste en rien leur thèse. Car, deuxièmement, « sauf son respect », l'avocat de la Partie adverse a commis un authentique contresens en lisant l'arrêt de 2012. Il est incontestablement inexact d'affirmer qu'en 2012 la Cour « n'a pas tranché la question de savoir s'il s'agissait d'un haut-fond découvrant ou d'un petit îlot''''' »[33]. En 2012, la Cour avait décidé que c'était une île, parce que le Nicaragua ne lui avait pas dit le contraire et que la Colombie n'avait pas songé qu'il pût en aller autrement.

J'ai cité l'arrêt de 2012 qui ne souffre aucune difficulté d'interprétation sur ce point. La Cour dit que le récif d'Édimbourg est une île, et que c'est parce qu'elle croyait que c'était une île qu'elle y a posé un point de base.

Troisièmement, rien ne permet de dire, comme on l'a entendu samedi, que la Cour « a uniquement reconnu qu'il s'agissait d'un haut-fond découvrant dans l'affaire ultérieure sur les

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[26] *Délimitation maritime en mer Noire (Roumanie c. Ukraine), arrêt, C.I.J. Recueil 2009*, p. 108, par. 137.
[27] TIDM/PV.22/A28/1, p. 31 (lignes 36-40) (Parkohomenko).
[28] TIDM/PV.22/A28/4, p. 3 (lignes 40-47) ; p. 4 (lignes 1-40) ; p. 5 (lignes 1-8) (Thouvenin).
[29] TIDM/PV.22/A28/6, p. 3 (lignes 29-31) (Sands).
[30] *Différend territorial et maritime entre le Nicaragua et le Honduras dans la mer des Caraïbes (Nicaragua c. Honduras), arrêt, C.I.J. Recueil 2007*, p. 751, par. 303.
[31] *Différend territorial et maritime (Nicaragua c. Colombie), arrêt, C.I.J. Recueil 2012,* p. 638, par. 21. p. 698-700, par. 201 et 204.
[32] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie),* arrêt du 21 avril 2022, p.85, par. 248.
[33] TIDM/PV.22/A28/1, p. 5 (lignes 14-16) (Sands).

Violations alléguées, une fois que la Colombie a pu prouver qu'il en était bien ainsi en s'opposant à la revendication de la ligne de base droite du Nicaragua »[34].

La Cour a seulement dit, après avoir entendu les arguments troublants de la Colombie, présentés en septembre 2021[35], qu'elle ne pouvait plus tenir pour acquis que le récif d'Édimbourg est une île, ce qui n'est nullement une prise de position[36]. Dire qu'un fait n'est pas prouvé ne signifie certainement pas qu'il n'existe pas. Peut-être que c'est une île, peut-être pas. La Cour ne sait pas. C'est ce qu'elle dit, rien d'autre.

J'en termine, Monsieur le Président, d'un mot sur la thèse des récifs découvrants développée par nos contradicteurs, thèse sur laquelle Me Sander reviendra dans un instant. En bref, Maurice vous demande de juger en droit qu'en application de la partie IV les points marqués « drying reef » sur le croquis que voici, qui est une illustration préparée pour les besoins de la démonstration, sont, d'une part, autorisés comme points de base archipélagiques et, d'autre part, *ipso jure*, des points de base aux fins de la délimitation du plateau continental et de la ZEE.

Regardez bien ce point qui est à plus de 40 M, au nord de l'île la plus proche. Songez que c'est un haut-fond découvrant de la catégorie géomorphologique des récifs découvrants. Est-il raisonnablement imaginable que les rédacteurs de la Convention des Nations Unies sur le droit de la mer aient voulu que ce point soit à la fois autorisé comme point de base archipélagique et imposé aux tiers et aux juges comme point de base aux fins de la délimitation maritime ?

Je vous laisse à cette question, non sans vous livrer mon sentiment le plus net : c'est totalement inimaginable.

Monsieur le Président, Madame et Messieurs de la Chambre Spéciale, c'était un honneur de plaider devant vous. Cela conclut ma présentation, et je vous demande à présent de bien vouloir appeler à la barre Mme Sander.

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.

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[34] TIDM/PV.22/A28/1, p. 5 (lignes 9-10) (Sands).

[35] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie)*, CR 2021/18, p. 67-68, par. 30-36.

[36] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie)*, CR 2021/18, p. 67-68, par. 30-36.

[36] *Violations alléguées de droits souverains et d'espaces maritimes dans la mer des Caraïbes (Nicaragua c. Colombie)*, p. 86, par. 251.

STATEMENT OF MS SANDER
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/7/Rev.1, p. 8–20]

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 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.

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[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.
[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).

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 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

[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).

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]

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.

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

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[8] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J Reports 2012*, p. 624 at p. 644, para. 35.

[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.

[16] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J Reports 2012*, p. 624 at p. 644, para 36.

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 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,

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[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.

[20] MR, paras. 2.47–2.48; ITLOS/PV.22/C28/1, p. 15 (line 29) (Sands).

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.

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

[21] ITLOS/PV.22/C28/6, p. 7 (lines 40-43) (Sands).

[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.

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 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

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[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).

[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).

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 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]

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

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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).

[43] ITLOS/PV.22/C28/6, p. 30 (line 29) (Loewenstein).

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.

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

[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).
[47] ITLOS/PV.22/C28/6, p. 30 (lines 34–35) (Loewenstein).
[48] ITLOS/PV.22/C28/5, p. 24 (lines 23–24) (Sander).

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.

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]

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[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.
[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).

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] 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.

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[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.
[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).

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.

STATEMENT OF MS HART
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/7/Rev.1, p. 20–25]

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.

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

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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).

"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 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.

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

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[8] *Ibid.*, p. 14 (lines 4–11) (Klein).
[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).

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 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.

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[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.

[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).

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 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

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[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.
[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).

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.

STATEMENT OF MR MBENGUE
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/7/Rev.1, p. 26–30]

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 "*le principe de l'économie de procedure*".[3]

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.

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

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[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).
[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.

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 "*[d]es différents aléas auxquels les autorités mauriciennes ont été confrontées après la communication des informations préliminaires de 2009*".[12] 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 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.

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[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.

[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.

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 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:

> *(Poursuit en français)*
> La Chambre spéciale fait également observer que c'est à chaque État qu'il appartient de décider – dans le cadre énoncé au titre de l'article 76, paragraphe 8, de la Convention (y compris les règles de la CLPC) –quand et comment il présente ses demandes à la CLPC[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 "*le cadre énoncé au titre de l'article 76, paragraphe 8, de la Convention*".

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 "*différents aléas auxquels les autorités mauriciennes ont été confrontées après la communication des informations préliminaires de 2009*". Little can be said in response to such a wanting argument.

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[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).
[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., par. 516.

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 "*la prévisibilité du système pour les États qui concrétisent par de telles demandes leur droit à revendiquer un plateau continental étendu*" rings particularly hollow.[24] There can be no predictability 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.

[24] TIDM/PV.22/A28/6, p. 22 (lines 5–8) (Klein).

STATEMENT OF MR AKHAVAN
COUNSEL OF THE MALDIVES
[ITLOS/PV.22/C28/7/Rev.1, p. 30–39]

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.

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

[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).
[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.

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.

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

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[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.
[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.

> [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 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

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[10] ITLOS/PV.22/C28/6, p. 25 (lines 15–16) (Loewenstein).
[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).

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 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 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

[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).

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 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.

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

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 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.

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[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).

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 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

[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).

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.

STATEMENT OF MR RIFFATH
AGENT OF THE MALDIVES
[ITLOS/PV.22/C28/7/Rev.1, p. 39–41]

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.

Closure of the Oral Proceedings
[ITLOS/PV.22/C28/7/Rev.1, p. 41]

THE PRESIDENT OF THE SPECIAL CHAMBER: 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.*)

These texts are drawn up pursuant to article 86 of the Rules of the International Tribunal for the Law of the Sea and constitute the minutes of the public sittings held in the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections.*

Ces textes sont rédigés en vertu d'article 86 du Règlement du Tribunal international du droit de la mer et constituent le procès-verbal des audiences publiques du *Différend relatif à la délimitation de la frontière maritime entre Maurice et les Maldives dans l'océan Indien (Maurice/Maldives), exceptions préliminaires.*

Le 26 avril 2023
26 April 2023

Le Président de la Chambre spéciale
Jin-Hyun Paik
President of the Special Chamber

La Greffière
Ximena Hinrichs Oyarce
Registrar