INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Case No. 28

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

THE REPUBLIC OF MAURITIUS / THE REPUBLIC OF MALDIVES

REJOINDER OF THE REPUBLIC OF MALDIVES

VOLUME I

15 AUGUST 2022

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INTRODUCTION

1. The Republic of Maldives ('the Maldives') submits this Rejoinder in accordance with the time limit fixed by the Order of the Special Chamber dated 15 December 2021.

2. As recognised by the Republic of Mauritius ('Mauritius') in its Reply, there are significant areas of agreement between the Parties.[1] In particular, the Parties agree that:

   (a) The well-established three-step methodology applies to delimitation of the Parties' maritime boundary in the Exclusive Economic Zone ('EEZ') and continental shelf within 200 M;[2]

   (b) The 41 base points situated on the Maldives' coast on Addu Atoll,[3] and nine of the 13 base points (i.e. excluding the four base points placed by Mauritius on Blenheim Reef, namely MUS-BSE-10 to MUS-BSE-13) situated on Mauritius' coast on Île Diamant, Île de la Passe and Moresby Island in the Peros Banhos Atoll[4] are relevant for the construction of the provisional equidistance line;

   (c) There are low-tide elevations ('LTEs') at Blenheim Reef;[5]

   (d) The Maldives has an entitlement to a continental shelf beyond 200 M (as set out in its 2010 CLCS submission) which overlaps with Mauritius' EEZ;[6]

   (e) Each Party considers that, if the Special Chamber draws the equidistance line which it requests, there are no relevant circumstances requiring an adjustment for equitable delimitation under UNCLOS Articles 74 and 83;[7] and

   (f) Each Party considers that, if the Special Chamber draws the equidistance line which it requests, there is no disproportion requiring an adjustment for equitable delimitation under UNCLOS Articles 74 and 83.[8]

3. In accordance with Article 62(3) of the ITLOS Rules, this Rejoinder is "directed to bringing out the issues that still divide" the Parties.[9]

4. The fundamental issue that divides the Parties is remarkable in its simplicity: namely, whether the LTEs at Blenheim Reef can be used as locations of base points for the

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1 Reply of the Republic of Mauritius ('MR'), para. 1.3.

2 Memorial of the Republic of Mauritius ('MM'), paras. 4.2, 4.14–4.47; Counter-Memorial of the Republic of Maldives ('MCM'), paras. 5, 9, 113; MR, para. 1.3(a).

3 MM, para. 4.29 and Table 4.1; MCM, para. 133 and Table 1; MR, para. 1.3(b).

4 MM, para. 4.29 and Table 4.1; MCM, para. 149 and Table 2; MR, para. 1.3(b).

5 MM, para. 2.20; MCM, paras. 5, 9, 106; MR, para. 1.4.

6 MM, paras. 4.61, 4.64; MCM, para. 175. The Maldives' 2010 CLCS submission is at **MCM, Annex 47**.

7 MM, paras. 4.32–4.38; MCM, paras. 151–152; MR para. 1.3(c). For the avoidance of doubt, the Maldives also maintains its position that should any LTE at Blenheim Reef be used as a site for base points (*quod non*), there would be a relevant circumstance calling for adjustment of the equidistance line to neutralise the disproportionate effect of Blenheim Reef on that delimitation line (MCM, paras. 151–152).

8 MM, paras. 4.39–4.47; MCM, paras. 153–158; MR, paras. 1.3(d), 2.84–2.88.

9 International Tribunal for the Law of the Sea, 'Rules of the Tribunal', Doc ITLOS/8, 17 November 2009, Article 62(3). See also International Tribunal for the Law of the Sea, 'Guidelines Concerning the Preparation and Presentation of Cases before the Tribunal', Doc ITLOS/9, 14 November 2006, para. 2.

construction of the provisional equidistance line for the purposes of the delimitation of EEZ and continental shelf. The Maldives' Counter-Memorial established, with reference to the consistent international jurisprudence (*Qatar v. Bahrain*, *Bangladesh v. India*, and *Somalia v. Kenya*) that base points cannot be situated on such LTEs. Mauritius' Reply has manifestly failed to explain why those precedents should not apply to the present case. Moreover, its new argument — that a purported "recent discovery" that Blenheim Reef constitutes a "drying reef" within the meaning of Article 47(1) of UNCLOS "means that Mauritius is able to rely on its archipelagic baselines … to delimit the maritime boundary"[10] — is wholly without merit. The only case relied upon by Mauritius in this regard, *Barbados v. Trinidad and Tobago*, is of no relevance; no LTE was ever at issue in that case. Accordingly, Mauritius' argument on the selection of MUS-BSE-10 to MUS-BSE-13 as base points is entirely inconsistent with the jurisprudence, and it must fail.

5. As to Mauritius' survey of Blenheim Reef in February 2022 ('the Survey'), which was conducted aboard the luxury yacht *Bleu de Nîmes*:[11]

(a) Its findings are irrelevant to the issue regarding base points now before this Chamber, as noted by the Maldives prior to submission of the Reply. Whilst Mauritius achieved its stated objective of asserting sovereignty over the Chagos Archipelago (including the flag-raising ceremony on Peros Banhos),[12] for the purpose of these proceedings the Survey simply confirmed 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.

(b) The only relevance of the Survey is its clarification that: (i) Blenheim Reef is in fact a series of 57 distinct LTEs rather than a single LTE; (ii) only seven of those LTEs fall within 12 M of the nearest land territory on Île Takamaka; and (iii) *none* of the four basepoints at Blenheim Reef claimed by Mauritius fall within 12 M of that island. For the purposes of measuring the breadth of Mauritius' maritime zones, UNCLOS makes clear that base points cannot be

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10 MR, para. 1.9.

11 Details of the vessel chartered (the *Bleu De Nîmes*) are available online (Details of the *Bleu De Nîmes*, <https://www.edmiston.com/yacht-brokerage/yachts/bleu-de-nimes> accessed 5 August 2022 (**Annex 1**)). The team on board included foreign journalists, exiled Chagossians and lawyers. The UK's largest Chagossian community group, Chagossian Voices, described it as an "a pointless, expensive and failed vanity trip—carried out without consulting the Chagossian community": UK Chagos Support Association, Reactions of Chagossian Groups to Mauritius' Survey, 13 February 2022 <https://www.chagossupport.org.uk/post/chagossians-trip-to-islands-comment-and-reaction> accessed 5 August 2022 (**Annex 2**).

12 Mauritius' Prime Minister stated that the Survey would be a "concrete step" towards Mauritius "exercising its sovereignty" over the Chagos Archipelago: Republic of Mauritius, "Mauritius to undertake first scientific survey in Chagos Archipelago waters since Independence", 7 February 2022 <https://govmu.org/EN/newsgov/SitePages/Mauritius-to-undertake-first-scientific-survey-in-Chagos-Archipelago-waters-since-Independence.aspx> accessed 5 August 2022 (**Annex 3**).The raising of the flag on Peros Banhos was recorded in the Chief Officer's Log Book (Ola Oskarsson and Thomas Mennerdahl, *Geodetic Survey of Blenheim Reef*, 22 February 2022 ('Survey') (**MR, Annex 1**), Appendix 5, entry 16 February 2022, 09:15) and was widely reported: see, e.g., "Chagos Islands: Mauritian flag raised on British-controlled islands", *BBC*, 14 February 2022 <https://www.bbc.co.uk/news/uk-60378487> accessed 5 August 2022 (**Annex 4**).

placed on LTEs which are more than 12 M from the nearest land territory.[13] Accordingly, the outer limit of Mauritius' EEZ must be adjusted southward with a consequential reduction of the "grey area" arising from the overlap of Mauritius' EEZ and the Maldives' continental shelf beyond 200 M.[14]

(c) Mauritius' allegation that the Maldives failed to cooperate in allowing the survey ship to depart from Gan is simply not true, as clearly demonstrated by the relevant written communications.[15] Mauritius' last-minute request to use the port was accepted. The Maldives simply asked that Mauritius provide a list of the survey team, making expressly clear that all those whose presence was required (including lawyers and government officials) would be authorised to enter the port. Mauritius' claim that the Maldives must now pay the costs of the luxury yacht is a completely baseless argument.

6. In respect of Mauritius' new claim to an entitlement to an outer continental shelf ('OCS') in the 'Northern Chagos Archipelago Region', the Parties are in disagreement on whether that claim falls within the Chamber's jurisdiction or is otherwise admissible. Specifically, the following four issues still divide the Parties.

7. First, the Parties agree that the existence of a dispute when Mauritius filed its Notification and Statement of Claim ('Notification') on 18 June 2019 is a precondition to the exercise of jurisdiction,[16] but disagree on whether a dispute existed at that time with respect to Mauritius' claim of entitlement to an OCS in the 'Northern Chagos Archipelago Region' (as first set out in its CLCS Preliminary Information on 24 May 2021 ('the 2021 Preliminary Information')).[17] The Special Chamber's Judgment of 28 January 2021 on Preliminary Objections ('Judgment on Preliminary Objections') found that the Parties held "clearly opposite views" only in respect of "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".[18] It did not (and could not) refer anywhere to the significant overlap generated by Mauritius' new OCS claim (amounting to 22,298 km^2),[19] because Mauritius filed its 2021 Preliminary Information four months after the Judgment. The Maldives, self-evidently, had no notice of that claim, and no opportunity to respond with a 'clearly opposite view' of a non-existent claim, or even to exchange views as required by Article 283 of UNCLOS.

8. Second, the Parties agree in principle that a claim of entitlement to an OCS is inadmissible without a CLCS submission based on Preliminary Information made within the time limits stipulated under UNCLOS (as modified by subsequent agreement

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13 See Articles 48 and 47(4) of UNCLOS as addressed in Chapter 1.

14 Cf. MCM, paras. 188–189.

15 See Chapter 3.

16 MCM, para. 58; MR, paras. 3.11, 3.19 (not contesting the Maldives' position on this point in principle).

17 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**); MCM, Chapter 2, section IIA; MR, Chapter 3, Sections I–II.

18 *Dispute concerning 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.

19 MM, Figure 4.1.

through SPLOS/72 and SPLOS/183), the relevant date being 13 May 2009 for Mauritius.[20] They disagree, however, on the following:

(a) Whether, having failed to make a CLCS submission prior to its Notification in 2019, Mauritius' "Partial Submission" of April 2022 ('the 2022 Submission')[21] some three years later 'cures' the inadmissibility of its claim. The Maldives' position is that: (i) the critical date for determining admissibility is the date of Mauritius' Notification in 2019; and (ii) the 2022 Submission is in any event inadmissible as evidence before the Chamber based on Article 62 of the Rules of the Tribunal because it violates principles of procedural fairness for Mauritius to make its case in its Reply, especially when the data relied upon in its 2022 Submission has been publicly available for some 20 years; and

(b) Whether Mauritius' claim of entitlement in the 'Northern Chagos Archipelago Region' (set out in its 2021 Preliminary Information) was filed in accordance with the time limits on the basis (as alleged by Mauritius) that it was properly identified in its CLCS Preliminary Information in 2009 addressing the 'Southern Chagos Archipelago Region'. The Maldives' position is that the 2009 Preliminary Information makes no reference whatsoever to the 2021 claim and that Mauritius is not entitled to disregard the rules relating to time limits that other States Parties — including the Maldives — have diligently followed.

9. Third, the Parties appear to agree that Mauritius cannot establish entitlement to an OCS under UNCLOS Article 76 based on the natural prolongation of the submerged land territory of the Maldives along the Chagos Laccadive Ridge ('CLR') to the *north* and *west* of the Chagos Trough (i.e. entirely within the Maldives' uncontested continental shelf within 200 M) as set out by Mauritius in the Memorial.[22] The Parties disagree, however, on whether Mauritius' Reply has now established an alternate basis for natural prolongation in the opposite direction, to the *south* and *east* of the Chagos Trough through the Gardiner Seamounts and relying on a new base of slope ('BOS') to the east of the Chagos Trough, that avoids encroachment on the Maldives' continental shelf within 200 M. Mauritius' new theory is wholly inconsistent with its 2019 CLCS Submission, its Memorial, its 2021 Preliminary Information, and even its 2022 Submission, which recognised that the CLR is "bounded to the east by the Chagos Trough", making no mention whatsoever of the Gardiner Seamounts.[23] In addition, the purported new BOS to the east of the Chagos Trough is clearly inconsistent with the CLCS Guidelines and is in fact located on an oceanic ridge on the deep ocean floor (which, pursuant to Article 76(3) of UNCLOS, does not form part of the continental margin). Furthermore, Mauritius has offered no data to demonstrate the asserted submerged prolongation, which in any event features clear breaks in

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20 MCM, paras. 69–74; MR, paras. 3.28–3.29.

21 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 (**Annex 5**).

22 MCM, para. 82; MR, paras. 4.12–4.13.

23 Apart from being labelled on a single figure in the 2022 Submission (Figure 2.1): 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 (**Annex 5**).

morphological continuity. Mauritius' claim to entitlement is manifestly unfounded, and is thus inadmissible.

10. Fourth and finally, the Parties agree that an international court or tribunal may in certain circumstances delimit the continental shelf beyond 200 M without recommendations having been made for delineation of its outer limits (a task within the exclusive mandate of the CLCS).[24] They disagree, however, on whether Mauritius' proposed method of 'equal apportionment' of the alleged area of overlap in the OCS is admissible insofar as it necessarily requires prior delineation of the outer limits — an issue which Mauritius has simply ignored in its Reply.[25] In contrast to the baseless delimitation methodology advanced by Mauritius (which is entirely inconsistent with the jurisprudence), a directional line based on the three-step equidistance/relevant circumstances methodology is not predicated on any such prior delineation. There is in law only a single continental shelf, and Mauritius has failed to explain why delimitation beyond 200 M based on an equidistance line would suddenly become inequitable under UNCLOS Article 83.

11. The Maldives makes three further preliminary observations.

12. The first concerns the points raised in the Counter-Memorial regarding the vital importance of tuna fisheries to the Maldives and the highly fragile eco-system of the Chagos Bank.[26] In this regard, the Maldives welcomes Mauritius' indication that it is "fully committed to the protection of the marine environment and its ecosystems, in particular around the Chagos Archipelago",[27] and notes that Mauritius has recently proposed to create a Marine Protected Area around the Chagos Archipelago.[28]

13. Second, the Maldives welcomes Mauritius' call for mutual respect in these proceedings. It notes with regret, however, that Mauritius portrays the Maldives' submissions as "unfriendly remarks … inappropriate to the dignity" of proceedings between "two friendly neighbouring States".[29] In particular, Mauritius has unfairly misrepresented the Maldives' request that the United Kingdom be sufficiently informed of the Survey as evidencing its opposition *inter alia* to UN General Assembly resolution 73/295,[30] despite the fact that the Maldives' *bona fide* concern was evidently shared by Mauritius which itself obtained an assurance from the United Kingdom that it would not impede the Survey.[31] The Maldives hopes that in what remains of these proceedings, Mauritius will focus solely on the maritime boundary dispute before the Chamber to avoid unnecessary distractions. It is clearly possible for States to have differences of legal opinion without attacks aimed at injuring the honour and dignity of the other.

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24 MCM, para. 89; MR, para. 4.15.

25 MCM, paras. 90–92; MR, para. 4.16.

26 MCM, Chapter 1, section II.

27 MR, para. 1.18.

28 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 (**Annex 6**).

29 MR, para. 1.17.

30 MR, para. 1.14.

31 See further Chapter 3, para. 146 below.

14. Third, the Maldives notes that its primary concern in this proceeding has been and remains the application of settled jurisprudence, whether to questions of jurisdiction and admissibility or the delimitation of the maritime boundary. States parties must have confidence that the Part XV procedures will apply the law consistently to ensure the stability and predictability of outcomes.

15. This Rejoinder consists of three volumes as follows:

(a) Volume I contains the text of the Rejoinder together with illustrative charts and figures.

(b) Volume II contains the full set of figures that accompany the text of the Rejoinder.

(c) Volume III contains the annexes to the Rejoinder.

16. Volume I consists of this introduction, followed by three chapters which are organised as follows:

(a) **Chapter 1** addresses the delimitation of the Parties' respective EEZs and continental shelves within 200 M, in addition to the overlap between Mauritius' EEZ and part of the Maldives' continental shelf which is beyond 200 M.[32] It is divided into three sections. First, it explains that no base point can be situated on the LTEs at Blenheim Reef for the purposes of delimitation with the Maldives (Section I). Second, it confirms that the relevant coasts of the Parties are correctly defined in the Maldives' Counter-Memorial (Section II). Third, it confirms that the correct line of delimitation is the equidistance line without base points on Blenheim Reef as reflected in the Counter-Memorial (Section III).

(b) **Chapter 2** explains that Mauritius' claim to an OCS entitlement in the 'Northern Chagos Archipelago Region' is outside the Special Chamber's jurisdiction and otherwise inadmissible. It is divided into four sections as follows. First, it confirms that Mauritius' claim to an OCS entitlement is outside the Chamber's jurisdiction because it was clearly not within the scope of the 'dispute' between the Parties at the time Mauritius commenced these proceedings as recognised in the Judgment on Preliminary Objections (Section I). Second, it confirms that Mauritius' claim to an OCS entitlement is inadmissible by virtue of the late filing with the CLCS of both its 2021 Preliminary Information and 2022 Submission regarding the 'Northern Chagos Archipelago Region' after the initiation of proceedings in 2019 and beyond the time limits set out by UNCLOS States parties (Section II). Third, it explains that Mauritius' alleged entitlement is manifestly unfounded under UNCLOS Article 76 because it has clearly failed to establish the natural prolongation of its submerged land territory to the sole critical FOS on which it relies (Section III). Finally and in any event, it explains that the baseless delimitation 'method'

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32 As explained in MCM, para. 5, the maritime boundary dispute between the Parties concerns: (i) the overlapping claims in the EEZ and continental shelf within 200 M of the Parties' baselines; and (ii) a slight overlap between the Maldives' claim to continental shelf beyond 200 M (made in its 2010 submission to the CLCS) and Mauritius' claim to an EEZ and continental shelf within 200 M.

which Mauritius invites the Special Chamber to adopt in respect of its alleged overlapping OCS entitlement — namely, dividing the allegedly overlapping area with the Maldives in half — is predicated on a prior delineation of the claimed outer limits of the continental shelf, a task which the Chamber is unable to perform prior to the CLCS having made its recommendations (Section IV). For completeness, it confirms that, in any event, because there is in law only a single continental shelf, Mauritius has not shown why the three-step equidistance/relevant circumstances methodology would not equally apply beyond 200 M to achieve equitable delimitation under Article 83 of UNCLOS.

(c) Chapter 3 explains that the Maldives cooperated in good faith with respect to the Survey and Mauritius' claim for compensation against the Maldives is baseless.

17. Volume I ends with the submissions of the Maldives.

CHAPTER 1: DELIMITATION OF THE MARITIME BOUNDARY

18. This Chapter addresses the delimitation of the Parties' respective EEZs and continental shelves, including the area of the Maldives' continental shelf beyond 200 M that overlaps with Mauritius' EEZ.

19. As set out in the Introduction, the main disagreement between the Parties is whether base points for the purposes of drawing the provisional equidistance line can be situated on LTEs at Blenheim Reef. The Maldives has demonstrated in its Counter-Memorial that the relevant jurisprudence has consistently held that LTEs do not serve as a location for base points for the purposes of delimitation of the EEZ and continental shelf. In its Reply, Mauritius does not produce a single case to support the contrary position. Instead, it relies heavily on its Survey, which 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. Whether or not a given LTE is also a 'drying reef' (also an undisputed fact prior to the Survey) is irrelevant for delimitation purposes. What Mauritius' Survey has shown is that there are in fact 57 distinct LTEs at Blenheim Reef, only seven of which fall within 12 M of the nearest island (Île Takamaka). Whereas LTEs are irrelevant for delimitation, they are relevant for measuring the breadth of Mauritius' maritime zones, provided they are within 12 M of Île Takamaka, which does not apply to any of the LTEs on which the base points claimed by Mauritius are located. Accordingly, the outer limit of Mauritius' EEZ must be adjusted southward with a consequential reduction of the "grey area" arising from the overlap of Mauritius' EEZ and the Maldives' continental shelf beyond 200 M.

20. This Chapter will develop the Maldives' position in three sections as follows:

(a) Blenheim Reef is not an appropriate site for locating base points for the purposes of delimitation with the Maldives (**Section I**);

(b) The relevant coast of each Party is correctly defined in the Counter-Memorial (**Section II**); and

(c) The correct line of delimitation is the equidistance line set out in the Counter-Memorial (**Section III**).[33]

I. Blenheim Reef is not an appropriate site for locating base points for the purposes of delimitation with the Maldives

21. In its Counter-Memorial, the Maldives explained why Blenheim Reef is not an appropriate site for locating base points for delimitation purposes. Specifically, it explained that: an LTE pursuant to Article 13(1) does not generate an entitlement to

[33] The line of delimitation has been adjusted from that set out in MCM because of the necessity of adjusting point 47, as explained in further detail at paras. 65, 78–79 below.

maritime zones;[34] Blenheim Reef is not part of Mauritius' relevant coast;[35] and, in any event, the jurisprudence has consistently rejected LTEs as locations for base points.[36]

22. In its Reply, Mauritius relies on the Survey which simply confirms that Blenheim Reef includes 'drying reefs' which are above water at low-tide, constituting LTEs under UNCLOS Article 13.[37] This was already a matter of common ground between the Parties.[38]

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34 MCM, para. 129. Mauritius wrongly asserts that "the Parties agree that Blenheim Reef … generates an entitlement to maritime zones pursuant to Article 13(1) of the Convention" (MR, para. 2.18). In its Memorial, Mauritius had in fact referred to Article 13(2) in this regard (MM, para. 2.20). In any event, the Maldives has made it clear that it does not agree that Blenheim Reef, or any other LTE, "generates" an entitlement to maritime zones. What "generates" maritime entitlements is a "territory" connected with the sea through its coast. An LTE is not of such a nature, and Article 13(1) of UNCLOS does not suggest otherwise (providing simply a rule for the measurement of established entitlements, not a rule establishing that an LTE generates entitlements on its own): see MCM, para. 129, citing *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 641, para. 26.

35 MCM, paras. 127–130. Contrary to what Mauritius suggests at MR, para. 2.66, the *South China Sea* Arbitration confirms that "low-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": *South China Sea Arbitration (Philippines v. China)*, Award, 12 July 2016, para. 309. See also MCM, para. 127; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at p. 641, para. 26.

36 MCM, paras. 136–148.

37 See the Summary of Findings at Survey (**MR, Annex 1**), p. 1 (final para.). A 'reef' is a "a mass of rock or coral which either reaches close to the surface or is exposed at low tide" and a 'drying reef' is simply that part of a reef "which is above water at low tide but submerged at high tide": see United Nations Office for Ocean Affairs and the Law of the Sea, "The Law of the Sea – Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea", 1989, <https://www.un.org/depts/los/doalos_publications/publicationstexts/The%20Law%20of%20the%20Sea_Baselines.pdf> accessed 5 August 2022 (**Annex 7**), p. 60, item 66. That a drying reef is a type of LTE is common ground (see MR, paras. 2.47–2.48). The existence of "reef drying at low tide" at Blenheim Reef had been expressly noted in the Memorial (see MM, para. 2.24(c)), based on the charts available (see MM, para. 2.14, 2.24 and Figure 2.5; see also MCM, para. 105 and Figure 15). Any fine distinction as regards when precisely in the tidal cycle the feature is exposed (regarding which Mauritius' own expert recognises deficiencies in the Survey: 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**)) is irrelevant to the disputed issue of whether the LTEs in this case produce base points for the purposes of maritime delimitation. As to the "detailed evidence" said to be provided on the dimensions of Blenheim Reef more generally (MR, para. 2.14), these figures were already set out in the Memorial with reference to information that was publicly available (MM, para. 2.22).

38 MM, para. 2.20; MCM, paras. 5, 9, 106. Whilst Mauritius had expressly stated that the key objective of the Survey would be to confirm the coordinates of the four base points on Blenheim Reef on which it relied in its Memorial for the construction of an equidistance line (MM, paras. 1.11, 2.25; Note Verbale dated 1 December 2021 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 (**MR, Annex 7**); MR, para. 1.4), it is not clear from the Survey whether the locations of the base points were assessed as the point is simply not mentioned. If they were not, no explanation is given as to why not (given that this was one of the purposes of the Survey and would have been straightforward to execute, noting the location of the three 'global navigation satellite system' (GNSS) recording base stations as depicted on Figure 5 below). If their locations were assessed, no explanation is given as to why neither the fact of this investigation nor its outcome was recorded in the Survey. The Reply simply reasserts the existence of the same four base points (MUS-BSE-10 to MUS BSE-13): MR, para. 2.77.

23. As to those base points, Mauritius accepts that it cannot provide a single case "in which a provisional equidistance line in respect of overlapping EEZ and continental shelf claims has been drawn by situating a base point on an LTE".[39] In *Somalia v. Kenya*, with respect to the EEZ and continental shelf, the ICJ did not even respond to Somalia's proposal to draw the provisional equidistance line from an LTE, electing to locate base points on Somalia's mainland territory.[40] Even with respect to territorial sea delimitation under Article 15 of UNCLOS, in all three cases in which LTEs have been proposed as locations for base points — *Qatar v. Bahrain*, the *Bay of Bengal* Arbitration, and *Somalia v. Kenya*[41] — the ICJ and UNCLOS tribunals have expressly rejected these features as locations for base points. Mauritius' response is to contend that "the three authorities to support this proposition … are readily distinguishable from the present case".[42] As discussed in **subsection A** below, Mauritius has completely failed to explain why this jurisprudence does not apply equally to the present case.

24. Mauritius adds that, because Blenheim Reef is both an LTE under Article 13(1) of UNCLOS as well as a drying reef for the purpose of drawing archipelagic baselines under Article 47, that for the purposes of delimitation it "is to be treated like other land having entitlements to a full maritime area".[43] The only precedent it invokes[44] is the arbitral award in *Barbados v. Trinidad and Tobago*, which, does not refer anywhere to LTEs. In **subsection B** below, the Maldives will demonstrate that Mauritius' new archipelagic baselines theory (based on Part IV of UNCLOS with reference to the fact that Blenheim Reef is a drying reef) is wholly without merit.

25. The only relevance of Mauritius' Survey is that it demonstrates that only seven of the 57 LTEs at Blenheim Reef are within 12 M of Île Takamaka. Accordingly, the outer limit of Mauritius' EEZ (i.e. the 200 M line drawn from its baselines) must be adjusted southward with a consequential reduction of the grey area arising from the overlap of Mauritius' EEZ and the Maldives' OCS (as explained further in **subsection B** below).[45]

A. The relevant jurisprudence consistently rejects LTEs as locations for base points

26. This subsection addresses the correct reading of the three relevant authorities (*Qatar v. Bahrain*, the *Bay of Bengal* Arbitration, and *Somalia v. Kenya*[46]), before turning to explain why *Barbados v. Trinidad and Tobago* is of no support to Mauritius' position.

1. Qatar v. Bahrain

27. In its Counter-Memorial, the Maldives referred to *Qatar v. Bahrain* as supporting the position that an LTE cannot be considered part of an island if it is separated from this island by a channel, and that, if an LTE is not part of an island, it cannot be a proper base point for delimitation purposes.[47] Specifically, the Maldives referred to the Court's

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39 MR, para. 2.75.
40 See paras. 40–43 below.
41 Addressed at MCM, paras. 138–148, and paras. 27–43 below.
42 MR, para. 2.73.
43 *Ibid.*, para. 2.48.
44 *Ibid.*, paras. 2.50–2.51.
45 See paras. 65, 78–79 below.
46 Also addressed at MCM, paras. 138–148.
47 *Ibid.*, paras. 139–141.

consideration of a large feature called Fasht Al Azm (located just 265 metres from Sitrah island).[48]

28. Mauritius seeks to distinguish *Qatar v. Bahrain* based on an erroneous reading of the case.[49] It contends that "the 'decisive question' to be determined by the Court in relation to Fasht al Azm was 'whether a State can *acquire sovereignty by appropriation* over a low-tide elevation situated within the breadth of its territorial sea when that same low-tide elevation lies also within the breadth of the territorial sea of another State'".[50] Noting that neither Qatar nor Bahrain are archipelagic States for the purposes of Part IV of the Convention, Mauritius states "the Court disregarded certain small islands and low-tide elevations for the purposes of constructing the provisional equidistance line because they were located within the 12 M of *both* litigant States".[51]

29. This is not correct. The Court did not disregard "small islands"[52] in the construction of the equidistance line. Critically, and as Mauritius has overlooked, the Court addressed three specific features, in three separate parts of its reasoning, namely: (i) Qit'at Jaradah;[53] (ii) Fasht ad Dibal; and (iii) Fasht al Azm. Each is addressed in turn below.

(a) With respect to Qit'at Jaradah, the dispute concerned whether or not this feature was an island (with Qatar maintaining that it was not[54] and Bahrain claiming that it was[55]). The Court accepted that it was an island under the sovereignty of Bahrain and therefore determined that it was a feature that should be taken into account for drawing of the equidistance line.[56]

(b) Concerning Fasht ad Dibal, the parties agreed that this feature was an LTE.[57] The dispute concerned Bahrain's claim that this LTE was part of its territory and could be appropriated,[58] and that it had sovereignty over this feature on the basis of its *effectivités*. The Court observed that an LTE within 12 M of a coastal State's baselines is under the sovereignty of that State because the latter has sovereignty over its territorial sea.[59] But the Court noted that the question is complicated when the LTE is situated within the breadth of one State's territorial sea and also within the breadth of the territorial sea of another State.[60] It was in this context that the Court considered (with respect to Fasht ad Dibal, not Fasht al Azm) "whether a State can acquire sovereignty by appropriation over a low-tide elevation situated within the breadth of its territorial sea when that same low-tide elevation lies also within the breadth of the territorial sea of

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48 *Ibid.*

49 MR, para. 2.73(a).

50 *Ibid.*, citing *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40 at p. 101, para. 204.

51 MR, para. 273(a).

52 *Ibid.*

53 Described by the Court as "[a]nother issue": *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40 at p. 98, para. 191.

54 *Ibid.*, p. 99, para. 193.

55 *Ibid.*, p. 99, para. 194.

56 *Ibid.*, p. 99, para. 195.

57 *Ibid.*, p. 100, para. 200.

58 *Ibid.*

59 *Ibid.*, p. 101, para. 204.

60 *Ibid.*

another State".[61] The Court concluded it could not and, because the feature was within the zone of the parties' overlapping territorial sea claims, it concluded that this low-tide elevation must simply be disregarded.[62]

(c) As for Fasht al Azm, the feature referred to by the Maldives in its Counter-Memorial, there was no dispute concerning appropriation through *effectivités*. The only question was whether this feature "must be deemed to be part of the island of Sitrah or whether it is a low-tide elevation which is not naturally connected to Sitrah Island".[63] The parties disagreed on this issue, disputing whether it was separated from the island by a natural channel navigable at low tide.[64] The Court said that this question required "special mention",[65] and held that:

> "If this feature were to be regarded as part of the island of Sitrah, the basepoints for the purposes of determining the equidistance line would be situated on Fasht al Azm's eastern low-water line. If it were not to be regarded as part of the island of Sitrah, Fasht al Azm could not provide such basepoints."[66]

30. It is this last part of the Court's reasoning that is of direct relevance. In the present case, no LTE at Blenheim Reef is part of the nearest island, Île Takamaka,[67] and thus none of the LTEs at Blenheim Reef are suitable sites for base points for delimitation purposes.[68] The LTEs on Blenheim Reef are entirely separate features from that island.[69]

31. Mauritius seeks to rely upon the fact that in *Qatar v. Bahrain* "the Court did not discount the possibility of States with opposite or adjacent coasts using low-tide elevations for the purposes of measuring the breadth of the territorial sea, resulting

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61 *Ibid.*

62 *Ibid.*, pp. 102–103, para. 209.

63 *Ibid.*, p. 97, para. 188.

64 *Ibid.*, p. 98, para. 189.

65 *Ibid.*, p. 104, para. 216.

66 *Ibid.* This passage was cited by the Maldives in its Counter-Memorial: MCM, para. 140.

67 Ultimately, the Court did not make any determination that Fasht Al Azm was part of the island of Sitrah, leaving this question open (paras. 216, 218, 220), but the key point for present purposes is that in the present case Blenheim Reef is indeed separated from Île Takamaka (with no dispute as to the existence of a navigable channel). It is conspicuous that Mauritius did not challenge the Maldives' position set out in its Counter-Memorial (MCM, paras. 106–107) that Blenheim Reef "does not form part of Salomon Islands Atoll" (of which Île Takamaka forms part), especially as: (i) Mauritius' Survey was specifically intended to investigate not only Blenheim Reef but also Salomon Islands Atoll and the "appurtenant waters" (Note Verbale dated 1 December 2021 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 (**MR, Annex 7**)); and (ii) the Chief Officer's Log Book confirms that the vessel visited the Salomon Islands (Survey (**MR, Annex 1**), Appendix 5, e.g. entries at 13 February 11:15; 15 February 12:45). The Survey simply confirms that Blenheim Reef is "roughly 10.5 M east-northeast of the Salomon Islands" (**MR, Annex 1**, p. 3 and internal Annex 1, p. 4; MR, paras. 1.4, 1.9, 2.3, 2.18) and clarifies that the vast majority of LTEs at Blenheim Reef (including those on which Mauritius purports to place base points) are beyond 12 M of Île Takamaka.

68 MCM, paras. 106–107, 142.

69 Mauritius simply asserts that "[b]ecause it lies withing 10.6 M of Île Takamaka, Blenheim Reef cannot be erased from Mauritius' relevant coast": MR, para. 2.65. For the reasons set out in the Maldives' Counter-Memorial, Blenheim Reef does not form part of Mauritius' relevant coast: MCM, paras. 126–130.

in the low-tide elevation 'then form[ing] part of the coastal configuration of the two States'".[70]

32. But this says nothing about base points selected for delimitation purposes. Furthermore, as observed by the Maldives in its Counter-Memorial,[71] *Qatar v. Bahrain* was addressing the delimitation of the territorial sea under Article 15 of UNCLOS, which provides in relevant part that:

> "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured …"

33. UNCLOS makes clear that baselines can be drawn from LTEs (including drying reefs) if certain circumstances are met (see Articles 6, 7(4), and 13(1)). The Court was therefore only stating the obvious in considering the role of an LTE in the specific context of territorial sea delimitation, and the paragraph of its judgment relied upon by Mauritius (cited at paragraph 31 above) is of no assistance to it.

34. Whilst baselines play a role for the delimitation of territorial seas pursuant to Article 15 of UNCLOS, the position is different as regards the EEZ and continental shelf where the selection of appropriate base points for delimitation is a matter distinct from the selection of base points by the coastal State for drawing its baselines.[72]

35. The Maldives therefore maintains that *Qatar v. Bahrain* plainly supports its position that Blenheim Reef, because it is clearly not part of Île Takamaka, cannot be regarded as part of the relevant coast of Mauritius, and is thus not an appropriate location for base points for the purposes of delimitation with the Maldives.

2. The Bay of Bengal Arbitration

36. Mauritius accepts that in the *Bay of Bengal* Arbitration "the UNCLOS Tribunal declined to locate base points on a feature referred to as South Palpatty/New Moore".[73] It asserts, however, that the Maldives' discussion of this case in its Counter-Memorial[74] "fails to mention … that the Tribunal was unable to establish the very existence of South Talpatty/New Moore",[75] and Mauritius focuses on the fact that, "following a site

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70 MR, para. 2.73, citing *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Merits, Judgment, ICJ Reports 2001, p. 40 at p. 101, para. 202: "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. That is so even if the low-tide elevation is nearer to the coast of one State than that of the other, or nearer to an island belonging to one party than it is to the mainland coast of the other. 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."

71 MCM, para. 138.

72 See *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India),* Award, 7 July 2014, para. 260, cited in MCM, para. 136.

73 MR, para. 2.73(b).

74 MCM, paras. 145–146.

75 MR, para. 2.73(b).

visit", the tribunal stated that "it was not apparent whether the feature was permanently submerged or constituted a low-tide elevation".[76]

37. It may be that Mauritius seeks to lay ground for some purported distinction between the *Bay of Bengal* Arbitration and the present case on the grounds that there is no doubt as to the existence of Blenheim Reef because of the Survey. But that would be inapposite and Mauritius does not correctly set out the direct relevance of this precedent as discussed by the Maldives in its Counter Memorial.

38. As the Maldives stated: "The Tribunal rejected India's contention, and considered that, *irrespective of whether South Talpatty/New Moore Island was an LTE or permanently submerged*, this feature 'could in no way be considered as situated on the coastline'."[77] Whilst Mauritius emphasises the tribunal's observation that "it was not apparent whether the feature was permanently submerged or constituted a low-tide elevation,"[78] it does not mention the following sentence which states:

> "In any event, *whatever feature existed* could in no way be considered as situated on the coastline."[79]

39. Thus, Mauritius has no answer to the argument that was in fact advanced by the Maldives, which is that: (i) the tribunal found that *even if* South Talpatty/New Moore had been shown to exist, and *even if* it had been established that it was an LTE, it would "in no way" be appropriate for delimitation of the territorial sea; and (ii) *a fortiori* Blenheim Reef (comprising a series of LTEs) can "in no way be considered as situated on the coastline" of Mauritius for the purposes of delimitation of the Parties' EEZs and continental shelves.[80] The results of the Survey have no bearing on the plain reading of the award in the *Bay of Bengal* Arbitration which is entirely consistent with the Maldives' position in this case.

3. Somalia v. Kenya

40. As set out in the Counter-Memorial, in *Somalia v. Kenya* the ICJ rejected Somalia's submission that an LTE should be used as a base point for delimitation of the territorial sea, and completely ignored this feature in drawing the provisional equidistance line.[81]

41. Somalia had advanced three points on its baselines as appropriate base points for the delimitation of the territorial sea, pursuant to Article 15 of UNCLOS.[82] One of these (S3) was an LTE within 12 M from the mainland (Ras Kaambooni).[83] The Court rejected all three of these basepoints as inappropriate, because locating a base

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76 *Ibid.*, citing *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 263.

77 MCM, para. 146 (emphasis added).

78 MR, para. 2.73(b).

79 *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 263 (emphasis added).

80 MCM, para. 146.

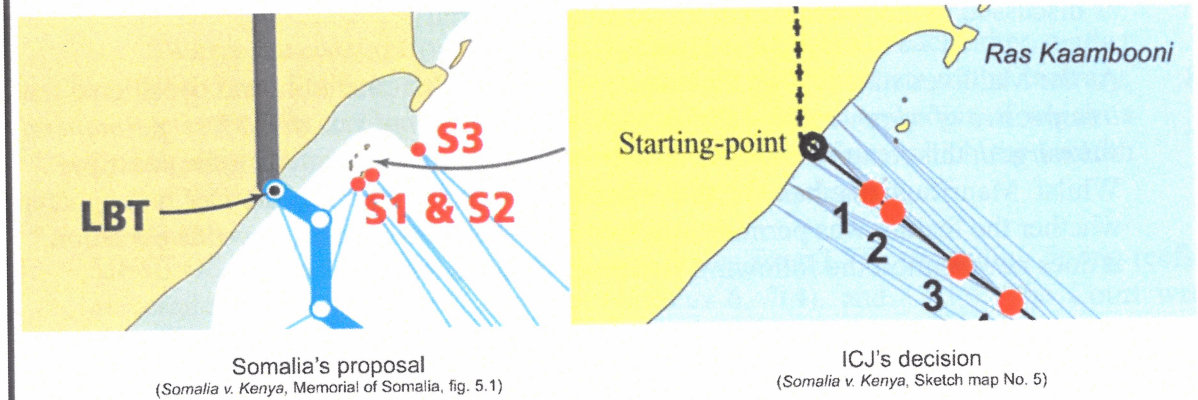
81 *Ibid.*, para. 147.

82 *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Memorial of Somalia, 13 July 2015, Vol. I, para. 5.16 ("It is therefore appropriate to use the normal baselines (i.e., the low-water line) of Somalia and Kenya for the purpose of constructing the equidistance line between them").

83 *Ibid.*, para. 5.19.

point on such a "tiny" feature or "minor protuberance" would have had a "disproportionate impact on the course of the median line in comparison to the size of these features".[84] Figure 1 below depicts Somalia's proposed base points, and those base points selected as appropriate by the Court.

Base Points for delimitation of the territorial sea in *Somalia v. Kenya*



Somalia's proposal
(*Somalia v. Kenya*, Memorial of Somalia, fig. 5.1)

ICJ's decision
(*Somalia v. Kenya*, Sketch map No. 5)

Figure 1

42. The Court's decision is plainly consistent with the position that Blenheim Reef, comprising 57 small LTEs,[85] only seven of which are within 12 M of Île Takamaka,[86] is not an appropriate site for base points for delimitation purposes. Again, the finding in *Somalia v. Kenya* arose in the context of a territorial sea delimitation pursuant to Article 15 of UNCLOS. The inappropriateness of locating base points on LTEs for delimitation purposes is even more obvious in the context of an EEZ and continental shelf delimitation, as in the present case.

43. Whilst Mauritius recognises that in *Somalia v. Kenya* the Court did not place base points on an LTE, it refers to the Court's finding that the presence of low-tide features on which Somalia sought to place base points "ha[d] not been confirmed by a field visit".[87] Again, it is possible that Mauritius seeks to lay ground for some purported distinction with the current case where Mauritius carried out its 'field visit' to Blenheim Reef (the Survey). Again, this point is entirely inapposite. The existence of LTEs on Blenheim Reef has never been in dispute. In any event, the Court's rejection of the

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84 *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 114.

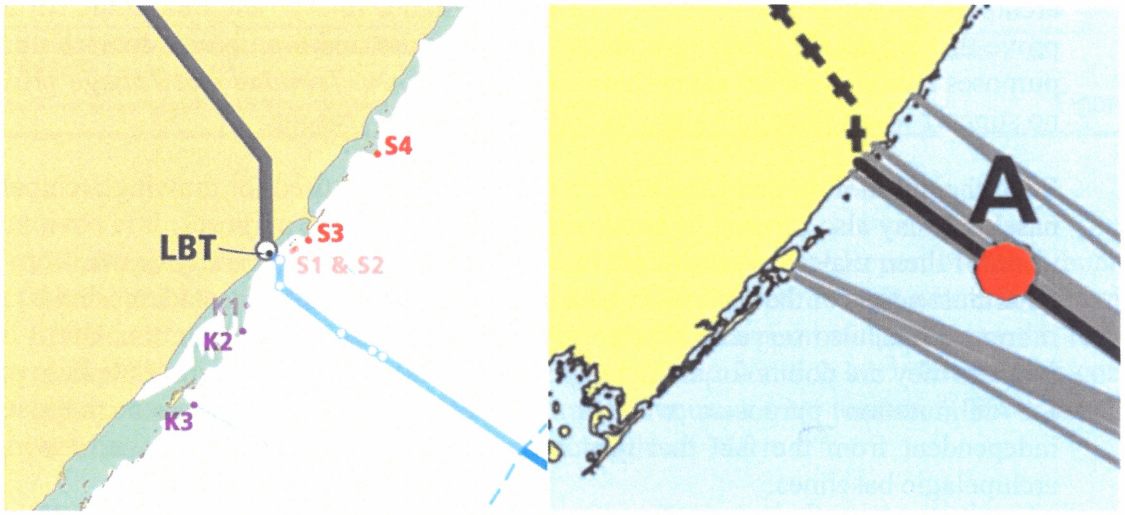
85 See paras. 5(b), 19 above. The largest of the LTEs (which is situated beyond 12 M from Île Takamaka) measures just 0.07 km^2. The area of reef recorded in the Survey "above Lowest Astronomical Tide" is just 0.09 km^2 (Survey (**MR, Annex 1**), internal Annex 2, p. 9) which is a mere 0.25% of the total area of Blenheim Reef as identified by Mauritius (MR, paras. 2.14, 2.82; Survey, internal Annex 1, p. 4). The photographs provided of the so-called "extensive areas of drying reef exposed at Mean Sea Level" (regarding which no square footage figure is provided) in fact show how insignificant those areas are: see Survey, Figures 17–19 and internal Annex 1, pp. 18–19.

86 See paras. 5(b), 19 above.

87 MR, para. 2.73(c), citing *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 113.

"low-tide elevation off the southern tip of Ras Kaambooni"[88] as an appropriate base point had nothing to do with whether its existence was confirmed by a survey or not. In delimiting the territorial sea, the Court simply considered it inappropriate to locate base points anywhere else than on "solid land on the mainland coast".[89] Furthermore, in drawing the provisional equidistance line for delimitation of the EEZ and continental shelf (shown in Figure 2 below, compared with the base points for which Somalia contended), the Court did not even mention the LTE, consistent with its view that such a feature was not appropriate for locating a base point. There can be no doubt that the same conclusion applies with respect to the LTEs at Blenheim Reef.

Base Points for delimitation of the EEZ and continental shelf in *Somalia v. Kenya*



Somalia's proposal
(*Somalia v. Kenya*, Memorial of Somalia, fig. 6.10)

ICJ's decision
(*Somalia v. Kenya*, Sketch map No. 9 p. 54. Point 'A' marks the endpoint of the maritime boundary in the territorial sea (see *Somalia v. Kenya* para. 146 at p.53))

Figure 2

4. Mauritius' new archipelagic baselines argument: The Barbados v. Trinidad and Tobago Arbitration

44. No doubt in response to the consistent jurisprudence rejecting the placement of base points on LTEs, Mauritius has elected to advance a new theory in its Reply. It now claims that, when a "drying reef" is selected as a point for drawing "valid" archipelagic baselines, that drying reef is an appropriate site for base points for delimitation purposes.[90]

45. Mauritius' theory is based on a misreading of UNCLOS which is examined below in further detail (see subsection B below). In short, Mauritius conflates: (i) points for drawing baselines, including archipelagic baselines; and (ii) base points appropriate for the purposes of drawing a provisional equidistance line when delimiting States' overlapping EEZ and continental shelves. The jurisprudence makes it abundantly clear

88 *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 114.
89 *Ibid.*
90 MR, Chapter 2, see e.g. para. 2.17.

that the two types of base points are distinct and should not be elided.[91] As recently recalled by the Court in *Nicaragua v. Colombia*:

> "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."[92]

46. Mauritius's theory is also based on a plain misreading of the sole authority on which it relies, namely the award in the *Barbados v. Trinidad and Tobago* Arbitration.[93] According to Mauritius, the tribunal in that case "adopted Trinidad and Tobago's archipelagic base points to construct the equidistance line",[94] and this would suffice to prove that points for drawing archipelagic baselines and base points for delimitation purposes are one and the same thing. But *Barbados v. Trinidad and Tobago* provides no support whatsoever to Mauritius for the following reasons.

47. First, the question in that case was not whether features used for drawing archipelagic baselines may also be used, if appropriate, for delimitation purposes. It is obvious that some of them may be so used. Archipelagic baselines are generally drawn from "the outermost points of the outermost islands",[95] and these points (located on islands) may, if appropriate, also serve as base points for the purposes of delimitation. But it is not *because* they are points for archipelagic baselines that they are appropriate base points for delimitation purposes; whether they are appropriate for such purposes is independent from the fact that the coastal State has selected them for drawing its archipelagic baselines.

48. Second, in contrast to the base points advanced by Mauritius in the present case, in *Barbados v. Trinidad and Tobago* there was no LTE (whether a drying reef or otherwise) at issue. The base points advanced (T1, T2, T3, and T4)[96] were located on the low-water line of features retained as base points for drawing Trinidad and Tobago's archipelagic baselines,[97] but all were islands, well above water at all times.

49. Figure 3 below depicts the four base points used to draw Trinidad and Tobago's archipelagic baselines (T1, T2, T3, and T4).

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91 MCM, para. 136.

92 *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, 21 April 2022, para. 250, citing *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61 at p. 108, para. 137.

93 MR, para. 2.50.

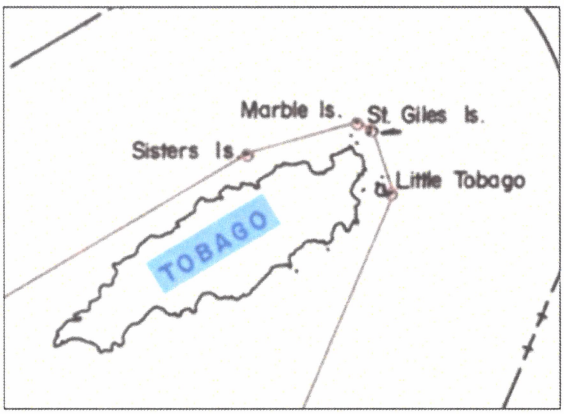
94 *Ibid.*

95 Article 47(1) of UNCLOS.

96 MR, para. 2.51.

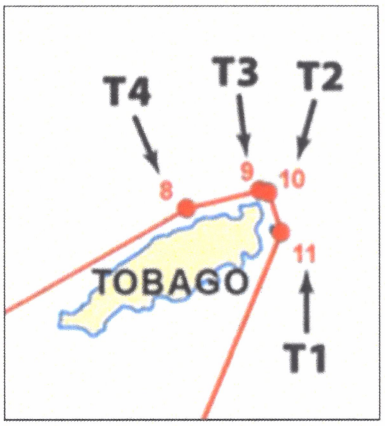
97 *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 382(4).

Base Points for archipelagic baselines in *Barbados v. Trinidad and Tobago*



Extract from the illustrative map provided by Trinidad and Tobago to DOALOS

https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/MAPS/TTO_MZN49_2004_00124.jpg



Extract of Figure R2.6 MR p. 29

Figure 3

50. What appears as T1 (meaning "Trinidad 1") in the Technical Report of the Tribunal's Hydrographer corresponds to point number 11 in the list of base points for drawing Trinidad and Tobago's archipelagic baselines.[98] This point is located on the feature called "Little Tobago". This is an island, spanning some 2 km^2. Formerly a cotton plantation, it now houses a wildlife reserve frequented by tourists.[99] BA Chart 477 confirms that Little Tobago has a charted height of 141 m.[100]

51. What appears as T2 (Trinidad 2) in the Technical Report of the Tribunal's Hydrographer corresponds to point number 10 in the list of base points for drawing Trinidad and Tobago's archipelagic baselines.[101] It is located on a feature called "St Giles Island". BA Chart 477 confirms that it has a charted height of 114 m.[102]

52. T3 (Trinidad 3) in the Technical Report of the Tribunal's Hydrographer corresponds to point number 9 in the list of base points for drawing Trinidad and Tobago's archipelagic

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98 United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas, No. 131, Trinidad and Tobago: Archipelagic and other Maritime Claims and Boundaries, 13 January 2014 <https://www.state.gov/wp-content/uploads/2020/01/LIS-131.pdf> accessed 5 August 2022 (**Annex 8**), pp. 6, 20, and see also the Technical Report of the Tribunal's Hydrographer annexed to *Barbados v. Trinidad and Tobago*, Award, 11 April 2006.

99 Caribbean Birding Trail, "Little Tobago" <https://caribbeanbirdingtrail.org/sites/trinidad-and-tobago/tobago/little-tobago/> accessed 5 August 2022 (**Annex 9**); Tobago Beyond, "Little Tobago Island" <https://www.visittobago.gov.tt/little-tobago-island> accessed 5 August 2022 (**Annex 10**).

100 *Barbados v. Trinidad and Tobago*: Extract from BA Chart 477 showing pertinent turning points of the Trinidad & Tobago Archipelagic baseline system from the Report of the Tribunal's hydrographer: see Vol II, Figure 4.

101 United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas, No. 131, Trinidad and Tobago: Archipelagic and other Maritime Claims and Boundaries, 13 January 2014 <https://www.state.gov/wp-content/uploads/2020/01/LIS-131.pdf> accessed 5 August 2022 (**Annex 8**), pp. 6, 20, and see also the Technical Report of the Tribunal's Hydrographer annexed to *Barbados v. Trinidad and Tobago*, Award, 11 April 2006.

102 *Barbados v. Trinidad and Tobago*: Extract from BA Chart 477 showing pertinent turning points of the Trinidad & Tobago Archipelagic baseline system from the Report of the Tribunal's hydrographer: see Vol II, Figure 4.

baselines.[103] It is located on a feature called "Marble Island". It is a group of two prominent rocky features on the north of the western coast of St Giles Island. BA Chart 477 confirms that Marble Island has a charted height of 44 metres.[104]

53. What appears as T4 (Trinidad 4) in the Technical Report of the Tribunal's Hydrographer corresponds to point number 8 in the list of base points for drawing Trinidad and Tobago's archipelagic baselines.[105] It is located on the feature called "Sisters Island". BA Chart 477 confirms that Sisters Island has a charted height of 30 metres.[106]

54. In summary, the archipelagic base points in *Barbados v. Trinidad and Tobago* were situated on significant islands and that case can be of no support whatsoever to Mauritius' contentions regarding the LTEs at Blenheim Reef.

B. Mauritius' erroneous new theory regarding archipelagic baselines

55. According to Mauritius' 'alternative' new theory, since Mauritius' Survey proves the "legal validity of Mauritius' claim to archipelagic baselines", then "Mauritius is entitled to rely on archipelagic base points placed on Blenheim Reef for the purposes of maritime delimitation".[107] Mauritius suggests that it was unable to present this theory before writing its Reply, because (so Mauritius contends) it only recently confirmed "with certainty" that Blenheim Reef is a drying reef.[108] Mauritius now contends that this feature is an appropriate location for base points for the purposes of delimitation of the Parties' EEZs and continental shelves, because it can — as a purportedly 'newly confirmed' drying reef — be a proper site for points for drawing archipelagic baselines under Article 47(1) of UNCLOS.[109]

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103 United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas, No. 131, Trinidad and Tobago: Archipelagic and other Maritime Claims and Boundaries, 13 January 2014 <https://www.state.gov/wp-content/uploads/2020/01/LIS-131.pdf> accessed 5 August 2022 (**Annex 8**), pp. 6, 20, and see also the Technical Report of the Tribunal's Hydrographer annexed to *Barbados v. Trinidad and Tobago*, Award, 11 April 2006.

104 *Barbados v. Trinidad and Tobago*: Extract from BA Chart 477 showing pertinent turning points of the Trinidad & Tobago Archipelagic baseline system from the Report of the Tribunal's hydrographer: see Vol II, Figure 4.

105 United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas, No. 131, Trinidad and Tobago: Archipelagic and other Maritime Claims and Boundaries, 13 January 2014 <https://www.state.gov/wp-content/uploads/2020/01/LIS-131.pdf> accessed 5 August 2022 (**Annex 8**), pp. 6, 20, and see also the Technical Report of the Tribunal's Hydrographer annexed to the *Barbados v. Trinidad and Tobago*, Award, 11 April 2006.

106 *Barbados v. Trinidad and Tobago*: Extract from BA Chart 477 showing pertinent turning points of the Trinidad & Tobago Archipelagic baseline system from the Report of the Tribunal's hydrographer: see Vol II, Figure 4.

107 MR, para. 2.17.

108 *Ibid.*, para. 2.21.

109 See, e.g., *ibid.*, paras. 1.8 ("Mauritius is entitled to rely on its archipelagic baselines that connect with Blenheim Reef for the construction of the equidistance line to delimit the Parties' overlapping entitlements within 200 M"), 1.9 ("the recent discovery of an extensive "drying reef" on the feature, within the meaning of Article 47(1) of UNCLOS, means that Mauritius is able to rely on its archipelagic baselines in accordance with Part IV of the Convention to delimit the maritime boundary"; "the findings of the recent survey reinforce Mauritius' position that, in accordance with the requirements of the Convention, Blenheim Reef is entitled to be given full effect in the delimitation of the Parties' overlapping maritime entitlements"), 2.4, 2.5, and others.

56. These assertions are surprising, and in any event factually and legally baseless.

57. First, there is no good reason why Mauritius could not have advanced this theory when it elected to commence proceedings against the Maldives. Its novelty cannot find any justification based on the "findings" of the Survey:

(a) As set out above, the Parties have always been in agreement that Blenheim Reef is a "reef", with some parts known to be exposed at low tide (i.e. a "drying reef"), and it is common ground that a drying reef is simply a type of LTE.[110] It follows that, even if Mauritius had any doubt regarding the legal validity of its archipelagic baselines prior to the Survey, it was certainly not because Blenheim Reef was previously considered "only" as comprising LTEs.

(b) To the extent that it lies within 12 M of the nearest island (Île Takamaka), the qualification of Blenheim Reef as a "drying reef" has no effect on the validity of Mauritius' archipelagic baselines. Article 47(4) of UNCLOS provides that archipelagic baselines can be drawn from an LTE within 12 M of the nearest island.[111] This rule, as agreed by Mauritius, applies to drying reefs since drying reefs are, by definition, LTEs.[112]

(c) Further, Mauritius claimed its archipelagic baselines drawn from points located on Blenheim Reef before conducting the Survey — indeed, long before it instituted these proceedings.[113] In its Memorial, Mauritius maintained that its archipelagic baselines were "deemed to be consistent with the provisions of Article 47 of UNCLOS".[114] It also claimed that it is from these archipelagic baselines that its maritime zones must be measured.[115]

58. Second, the only case to which Mauritius refers as a legal basis for its new theory is *Barbados v. Trinidad and Tobago*. For reasons explained at paragraphs 46–54 above, that case is of no avail to Mauritius.

59. Third, Mauritius' claim that "a drying reef that is located on a properly drawn archipelagic baseline is to be treated like other land having entitlements to a full maritime area"[116] does not assist it.

60. Mauritius claims that this position is "evident from the terms of Article 48 of the Convention".[117] What is in fact evident from the terms of this provision[118] is that it

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110 See paras. 5(a), 19, 22 above.

111 Article 47(4) of UNCLOS provides: "Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or 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."

112 MR, paras. 2.44, 2.47–2.48.

113 See MM, para. 3.9.

114 *Ibid.*

115 *Ibid.*

116 MR, para. 2.48.

117 *Ibid.*, paras. 1.21, 2.48, 2.72.

118 Article 48 of UNCLOS provides: "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."

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.[119] It does not conflate baselines for the measurement of the breadth of maritime areas, and base points for delimitation purposes. As recalled above at paragraph 34, the jurisprudence is clear that these are two different issues.

61. Mauritius' reference to Article 49 of UNCLOS as further support for its new theory[120] is equally without merit. This provision simply addresses the legal status of archipelagic waters, confirming that the sovereignty of an archipelagic State extends to the waters enclosed by the baselines drawn in accordance with Article 47. It says nothing about maritime delimitation (including the location of base points for such purposes) and is simply irrelevant.

62. Finally, it is erroneous for Mauritius to contend that its "findings" that Blenheim Reef is not 'only' an Article 13(1) LTE, but also an Article 47(1) drying reef,[121] confirm "the legal validity of Mauritius' claim to archipelagic baselines".[122]

63. For the avoidance of doubt and as developed further below, the Maldives considers that the legal validity of Mauritius' claim to archipelagic baselines is irrelevant to the maritime delimitation in the present case. However, for completeness, the Maldives now explains that in fact Mauritius' Survey confirms the *invalidity* of its archipelagic baselines.

64. As noted above,[123] Article 47(4) of UNCLOS provides that archipelagic baselines can be drawn from an LTE *within* 12 M of the nearest island. Mauritius asserts that a reason why those baselines are valid is that "no baselines have been drawn to low-tide elevations beyond 12 M of an island".[124] Mauritius' Survey has, however, clarified that Blenheim Reef is not a single LTE.[125] Rather, it comprises 57 LTEs, with large gaps between some of them (as represented in the inset and by the distances marked A–D in Figure 5 below), of which 50 are beyond 12 M of the nearest island (Île Takamaka). Accordingly, the three points identified by Mauritius from LTEs that are *beyond* 12 M of Île Takamaka (namely C83–C85[126]) are clearly invalid for the drawing of archipelagic baselines. It is also notable that, without explanation, Mauritius provides no data regarding those points, which it had stated in advance were to be the focus of the Survey.[127] Figure 5 below shows the location of the base points advanced by Mauritius (denoted by 'MUS-BSE' and a pink circle) and the surveyed positions (denoted by 'P' and a red circle), with the distance between them (marked as E) being 429 m. The inset demonstrates the gap of 56 m that separates the northernmost of the seven LTEs ('LTE 7') within 12 M of Île Takamaka from the 50 LTEs beyond 12 M.

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119 See UNCLOS Articles 3, 33(2), 57, 76(1).

120 MR, para. 2.49.

121 MR, paras. 2.17, 2.72.

122 *Ibid.*, paras. 2.17, 2.46.

123 See para. 57(b), with Article 47(4) of UNCLOS set out at footnote 111 above.

124 MR, para. 2.44.

125 Cf. *ibid.*, paras. 1.9, 2.17, 2.18, 2.48, 2.65, 2.72.

126 *Ibid.*, para. 2.32 and Figure R2.4.

127 MM, paras. 1.11, 2.25; Note Verbale dated 1 December 2021 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 (**MR, Annex 7**); MR, para. 1.4. See further footnote 38 above.

Further, there is an arrow (marked as F) showing that the distance from LTE 7 to the outermost of the base points for which Mauritius contends is 3.87 M.

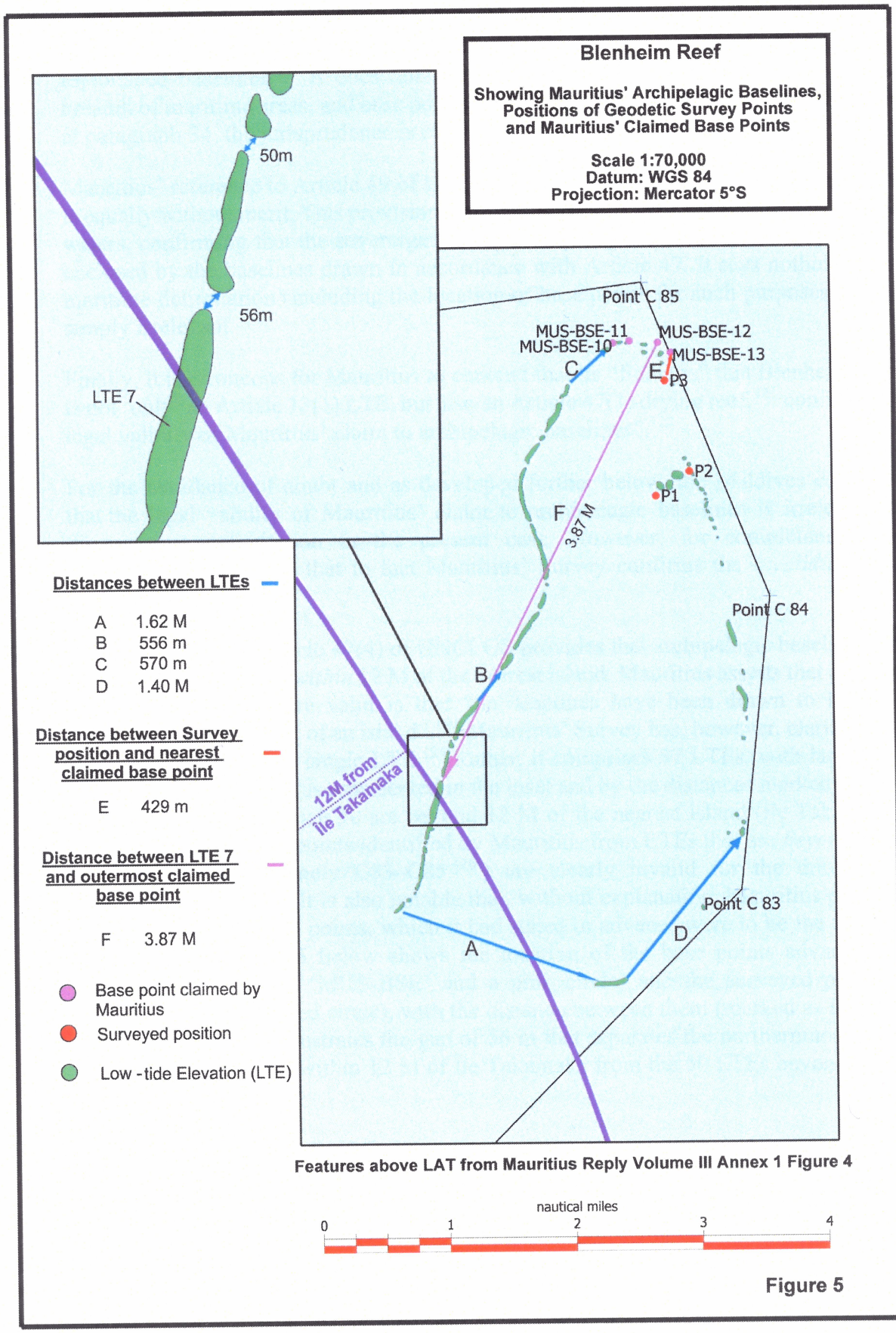
Blenheim Reef
Showing Mauritius' Archipelagic Baselines, Positions of Geodetic Survey Points and Mauritius' Claimed Base Points
Scale 1:70,000
Datum: WGS 84
Projection: Mercator 5°S
50m
56m
LTE 7
Point C 85
MUS-BSE-11
MUS-BSE-10
MUS-BSE-12
MUS-BSE-13
C
E
P3
P2
P1
F
3.87 M
Point C 84
B
12M from Ile Takamaka
A
D
Point C 83
Distances between LTEs
A 1.62 M
B 556 m
C 570 m
D 1.40 M
Distance between Survey position and nearest claimed base point
E 429 m
Distance between LTE 7 and outermost claimed base point
F 3.87 M
Base point claimed by Mauritius
Surveyed position
Low - tide Elevation (LTE)
Features above LAT from Mauritius Reply Volume III Annex 1 Figure 4
nautical miles
0
1
2
3
4

Figure 5

65. It is recalled that UNCLOS Article 48 provides that "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". Given that UNCLOS Article 47(4) provides that archipelagic baselines can be drawn from an LTE *within* 12 M of the nearest island, the consequence is that the breadth of Mauritius' maritime zones (its EEZ and continental shelf) must be recalculated using only LTEs situated within 12 M of Île Takamaka. Accordingly, the delineation of Mauritius' maritime zones must be adjusted southward to reflect the 3.87 M between LTE 7 (the outermost LTE within 12 M of Île Takamaka) and the location of the outermost base point for which Mauritius contends. This is depicted on Figure 6 below, which contrasts: (i) Mauritius' 200 M claim using baselines erroneously drawn from LTEs beyond 12 M of the nearest island (blue line)[128]; with (ii) Mauritius' 200 M claim recalculated using baselines correctly drawn from LTEs within 12 M of the nearest island (green line). The distance between points 47 and 47*bis* is 3.51 M. This results in a reduction in the "grey area" that arises from the drawing of the provisional equidistance line in the area where the Maldives' claims a continental shelf beyond 200 M and Mauritius claims an EEZ and continental shelf within 200 M.[129] This reduction in the "grey area" is indicated in Figure 6 below by grey hatched shading.

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128 This was the line to which both Parties referred in their first-round written pleadings before the Survey confirmed that this approach was erroneous.

129 See MCM, paras. 188–189. As noted at MCM, para. 191, and repeated here for the avoidance of doubt, point c is beyond the outer limit of the OCS entitlement claimed by the Maldives and there is therefore no question of the Parties' boundary continuing as far as its coordinates. However, point c is used to construct the equidistance line that is to run to the outer limit of the Maldives' OCS, which in turn is to be delineated at a future date following recommendations of the CLCS.

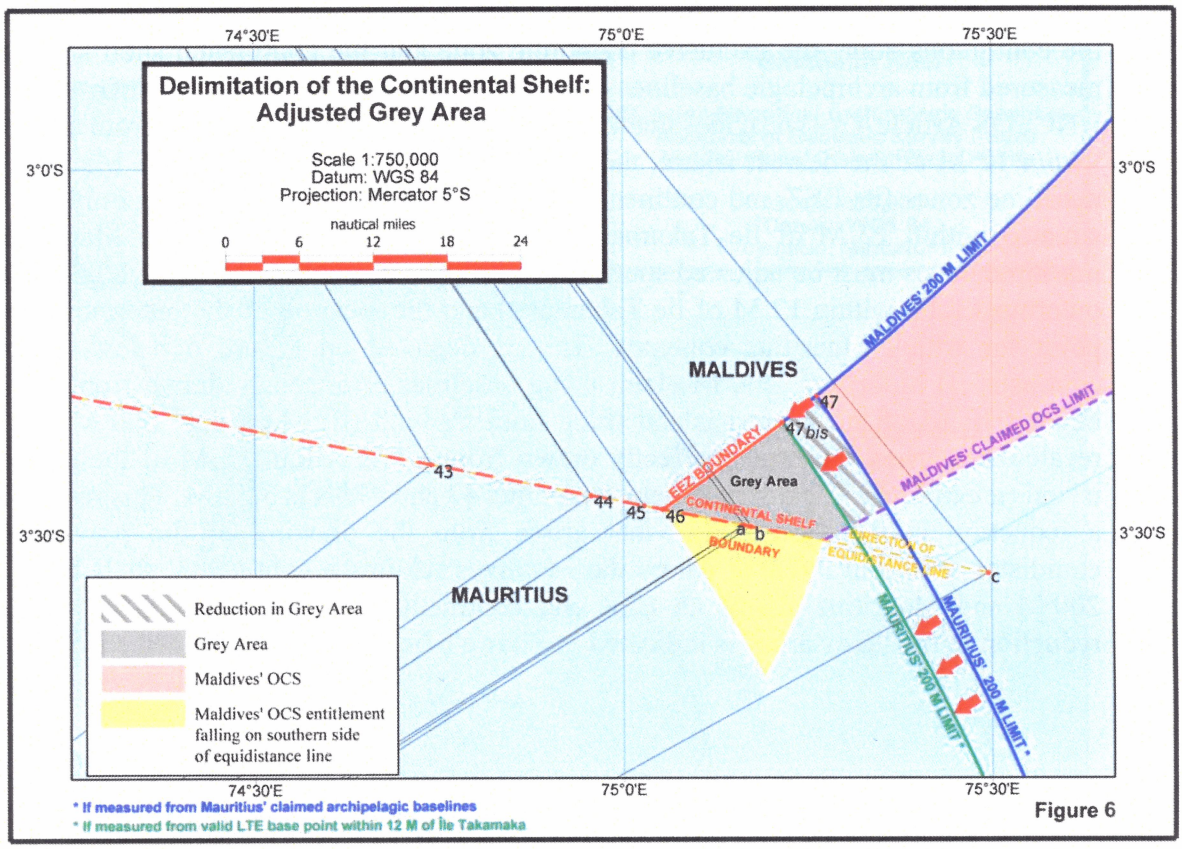

Figure 6

66. For the avoidance of doubt, the Maldives also maintains its position that the archipelagic baselines claimed by Mauritius depart to an appreciable extent from the general configuration of the "group of islands" forming the Chagos Archipelago for the following reasons:[130]

(a) An archipelago is not defined as simply comprising the "main islands", as Mauritius asserts.[131] Pursuant to Article 46 of UNCLOS, it is a "group of islands" that form an "intrinsic geographical, economic and political entity". Article 47(1) does not limit this entity to "main islands" but simply clarifies that "main islands" must be included.[132] Archipelagic baselines of the Chagos Archipelago excluding the Great Chagos Bank, which is a core feature of the 'intrinsic entity' that forms the Chagos Archipelago, do depart to a considerable extent from its general configuration.

(b) Mauritius' argument that Nelson's Island can be excluded from its archipelagic baselines because it is "a small rock within the meaning of Article 121(3)"[133] is equally artificial. It is the only high-tide feature of the Great Chagos Bank

130 MCM, para. 35.

131 MR, para. 2.40.

132 Article 47(1) of UNCLOS says "An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1."

133 MR, paras. 2.36 and 2.40.

excluded from Mauritius' archipelagic baselines.[134] Furthermore, Mauritius' own Maritime Zones (Baselines and Delineating Lines) Regulations 2005[135] make clear that Nelson's Island provides "baselines from which the maritime zones of Mauritius shall be determined",[136] while before this Special Chamber it seeks to downplay it as a rock with only a territorial sea. Mauritius also draws a comparison between Nelson's Island and features not retained as part of their archipelagos by Kiribati, Papua New Guinea, Seychelles and Tuvalu,[137] but this glosses over the specific geographical circumstances of the present case: Nelson's Island is a high-tide feature emerging from the Great Chagos Bank, and is therefore part of the intrinsic entity forming the Chagos Archipelago.

67. In any event, what is clear is that, however Mauritius chooses to draw its archipelagic baselines, the LTEs at Blenheim Reef cannot be a proper location for base points for the purposes of delimitation.

II. The Maldives correctly identified the Parties' relevant coasts in the Counter-Memorial

68. The Parties agree that the ratio of the length of the Parties' relevant coasts does not call for an adjustment of the equidistance line.[138] They disagree, however, on the identification of their respective relevant coasts. For completeness, the Maldives explains below why it accurately identified each Party's relevant coast in the Counter-Memorial.

69. As to the Maldives' relevant coast, Mauritius claims that the description of that coast in the Maldives' Counter-Memorial does not "comply with judicial practice"[139] because certain parts "do not face or abut upon the area to be delimited and, therefore, fall outside the scope of the relevant coast."[140] Specifically, Mauritius argues that certain parts of the coastlines of Addu Atoll (Figure R2.8) and the coast of Fuvahmulah (Fig. R2.7) are irrelevant because they do not "face" in the right direction.[141]

70. In fact, the judicial practice makes clear that, for the purposes of identifying a State's relevant coast, account should be taken of not only "frontal" projections (i.e. projecting in a single, perpendicular direction to the coastline) but also "radial" projections (i.e. radiating from the coastline according to a certain angle). See for example:

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134 MR, paras. 2.36 ("As to the Great Chagos Bank, it contains no high-tide features (aside from those already included within Mauritius' archipelagic baselines and Nelson's Island)"), 2.40 ("the only high-tide feature falling outside of Mauritius' archipelagic baselines is Nelson's Island").

135 United Nations Division for Ocean Affairs and the Law of the Sea, Law of the Sea Bulletin No. 67, 2008, "Maritime Zones (Baselines and Delineating Lines) Regulations 2005" (extracts) (**MCM, Annex 49**).

136 *Ibid.*, s. 1(3), and First Schedule Points C81–C82.

137 MR, para. 2.41.

138 The only exception to this agreement is that the Maldives considers that if Blenheim Reef were to be considered part of Mauritius' relevant coast on which base points could be situated (*quod non*), then the equidistance line should be adjusted to address the disproportionate effect of Blenheim Reef on that line.

139 MR, para. 2.58.

140 *Ibid.*, para. 2.60.

141 *Ibid.*, paras. 2.59–2.61.

(a) *Barbados v. Trinidad and Tobago*, a case to which Mauritius itself refers.[142] The tribunal held that:

> "The reason for coastal length having a decided influence on delimitation is that it is the coast that is the basis of entitlement over maritime areas and hence constitutes a relevant circumstance that must be considered in the light of equitable criteria. To the extent that a coast is abutting on the area of overlapping claims, it is bound to have a strong influence on the delimitation, an influence which results not only from the general direction of the coast but also from its radial projection in the area in question."[143]

(b) *Somalia v. Kenya*,[144] where the ICJ fully endorsed the method of radial projections.

71. All of the coast identified by the Maldives as its relevant coast generates projections (frontal and/or radial) which overlap with Mauritius' coastal projections. This is illustrated in Figure 19 of the Counter-Memorial and further in Figure 7 below. The Maldives has therefore plainly correctly identified its relevant coast.

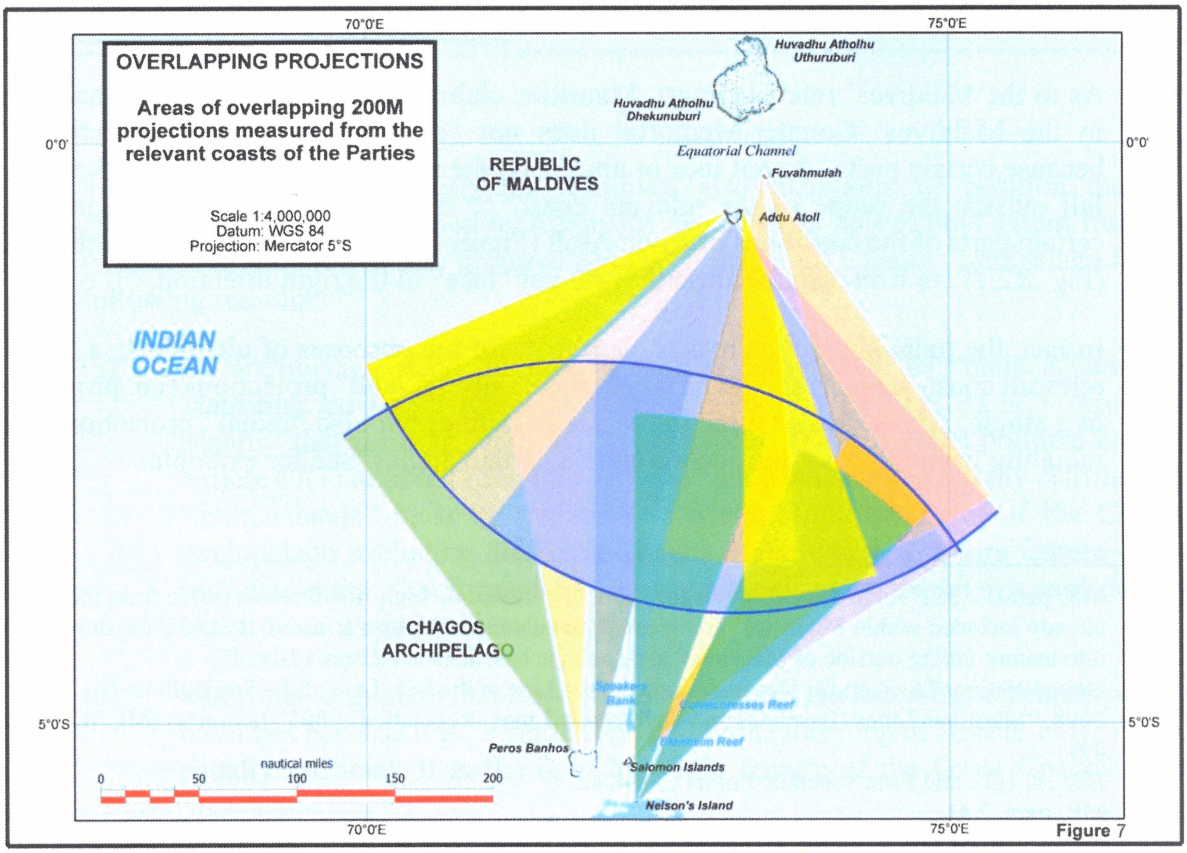

Figure 7

142 *Ibid.*, para. 2.61.

143 *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 239.

144 *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgment,* 12 October 2021, para. 137.

72. As to Fuvahmulah, Mauritius raises an additional argument that its projection "is entirely subsumed within the coastal projection generated by Addu Atoll".[145] Mauritius does not refer to any authority which suggests that part of a State's coast should be disregarded because of such an overlap, and its approach is inconsistent with the principle according to which the relevant coast is that which generates projections overlapping with the other State's coastal projection (which Fuvahmulah does). In fact, Mauritius' argument is directly contradicted by the jurisprudence. In *Nicaragua v. Colombia*, Nicaragua claimed that only the coasts of the islands of San Andrés, Providencia and Santa Catalina constituted part of the relevant coast, for the reason that if additional Colombian maritime features in the east of the San Andres Archipelago were included (Roncador and Serrana), it would "constitute a form of double counting".[146] The ICJ rejected this claim and held that the relevant coasts did include those of Roncador and Serrana,[147] notwithstanding that "any entitlement that they might generate within the relevant area (outside the territorial sea) would entirely overlap with the entitlement to a continental shelf and exclusive economic zone generated by the islands of San Andrés, Providencia and Santa Catalina".[148]

73. Mauritius' theory according to which coasts generating entitlements that are "subsumed" within other costal projections are to be disregarded is therefore misplaced. Accordingly, the Maldives maintains that the parts of Fuvahmulah's coast that generate projections overlapping with Mauritius' coastal projection do form part of the Maldives' relevant coast for the purposes of the present delimitation.

74. As to Mauritius' relevant coast the Maldives maintains its position that Blenheim Reef is not part of Mauritius' relevant coast because, as addressed above, it is a series of LTEs and not part of Mauritius' land territory.[149]

75. Mauritius' argument that Nelson's Island should be discounted because its projection is "subsumed within that generated by Peros Banhos Atoll and Salomon Islands Atoll"[150] should be rejected for the same reasons as set out above in relation to Fuvahmulah.[151]

76. The correct measurement of the Parties' respective coastal lengths is therefore the one calculated by the Maldives in its Counter-Memorial — namely, Mauritius' relevant coast is 39.9 km and the Maldives' relevant coast is 39.2 km, resulting in a ratio of 1.02:1 in favour of Mauritius.[152]

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145 MR, para. 2.61.
146 *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, 19 November 2012, para. 146.
147 *Ibid.*, para. 152.
148 *Ibid.*, para. 180.
149 See para. 30, 35, 39, 43 above, noting in particular footnotes 67, 69.
150 MR, para. 2.67.
151 See para. 72 above.
152 MCM, para. 155.

III. The line of delimitation

77. The Parties agree that the Special Chamber should apply the three-step methodology in order to determine the line of delimitation within 200 M.[153] The provisional equidistance line must of course be drawn from appropriate base points situated on the relevant coasts of the Parties. As demonstrated in the Counter-Memorial and in Section I above, base points should not be situated on any of the LTEs at Blenheim Reef. The Maldives therefore maintains that the base points it has identified in its Counter-Memorial are the appropriate points for delimitation of the maritime boundary. Accordingly, the provisional equidistance line to be drawn for the delimitation of the Parties' respective EEZs and continental shelves from point 1, on the western side of the area, to point 46, on the eastern side, is correctly set out in the Counter-Memorial (at Figure 26 and Table 3).

78. The Maldives also maintains its position that, in respect of the Parties' EEZs, the maritime boundary between them connects point 46 to point 47, following the 200 M limit measured from the baselines of the Maldives.[154] For the reasons set out at paragraph 65 above, however, Mauritius' 200 M claim must be recalculated using baselines correctly drawn from LTEs within 12 M of the nearest island, resulting in the outer limit of Mauritius' EEZ being adjusted southward to reflect the 3.87 M between LTE 7 and the outermost base point currently advocated by Mauritius. The consequence is that the location of point 47 must also be adjusted southward (by 3.51 M) i.e. to point 47*bis*. The adjusted location of point 47*bis* is indicated on Figure 8 below, with the green shading showing the area that Mauritius claims as its EEZ, but which, based on the adjustment, does not correctly fall within its entitlement.

79. Further, the Maldives maintains its position with respect to the delimitation of the Maldives' continental shelf beyond 200 M (consistent with its 2010 CLCS submission and noting further that Mauritius accepts the existence of the Maldives' entitlement[155]) and Mauritius' continental shelf within 200 M — i.e. the delimitation between the Parties' respective continental shelves in the area of overlapping entitlements which is both within the Special Chamber's jurisdiction and admissible. Specifically, the Maldives maintains its position that the three-stage methodology applies,[156] and the equidistance line of delimitation[157] continues from point 46 to the intersection of this line with the outer limit of the Maldives' OCS (the precise coordinates of which are to

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153 MR, para. 2.53.

154 MCM, para. 160, Table 4 at pp. 78–79, Submission (c) at p. 90. As explained at MCM, para. 160: (i) Mauritius measures the breadth of its EEZ from the baselines used for its territorial sea, including with reference to Blenheim Reef, on which basis Mauritius claims an EEZ that ends at point 47; and (ii) beyond point 46, the Maldives has no claim to an EEZ and there are therefore no overlapping EEZ claims of the Parties in the area to the east of point 46.

155 *Ibid.*, para. 175, citing MM, paras. 4.61, 4.64. Mauritius did not change its position in its Reply.

156 MCM, paras. 179–180. See also *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, para. 465; *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 454–455; *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, paras. 360, 526–527; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, paras. 182, 196.

157 As noted at MCM, para. 185, the base points are the same as those used for constructing the equidistance line within 200 M.

be determined at a future date following a recommendation of the CLCS).[158] As explained in the Counter-Memorial, the delimitation east of point 46 generates a "grey area" where the Maldives has continental shelf rights and Mauritius has the rights attaching to an EEZ.[159] As noted above (paragraph 65), because the outer limits of Mauritius' EEZ must be adjusted southward in view of the fact that it had previously been measured from LTEs which are more than 12 M from Île Takamaka, there is a consequential reduction of the grey area that had been presented in the Counter-Memorial. This reduced grey area is depicted in Figure 8 below, and has already been shown at a more magnified scale at Figure 6 above.

158 MCM, paras. 184–191.

159 MCM, para. 188 and Figure 31.

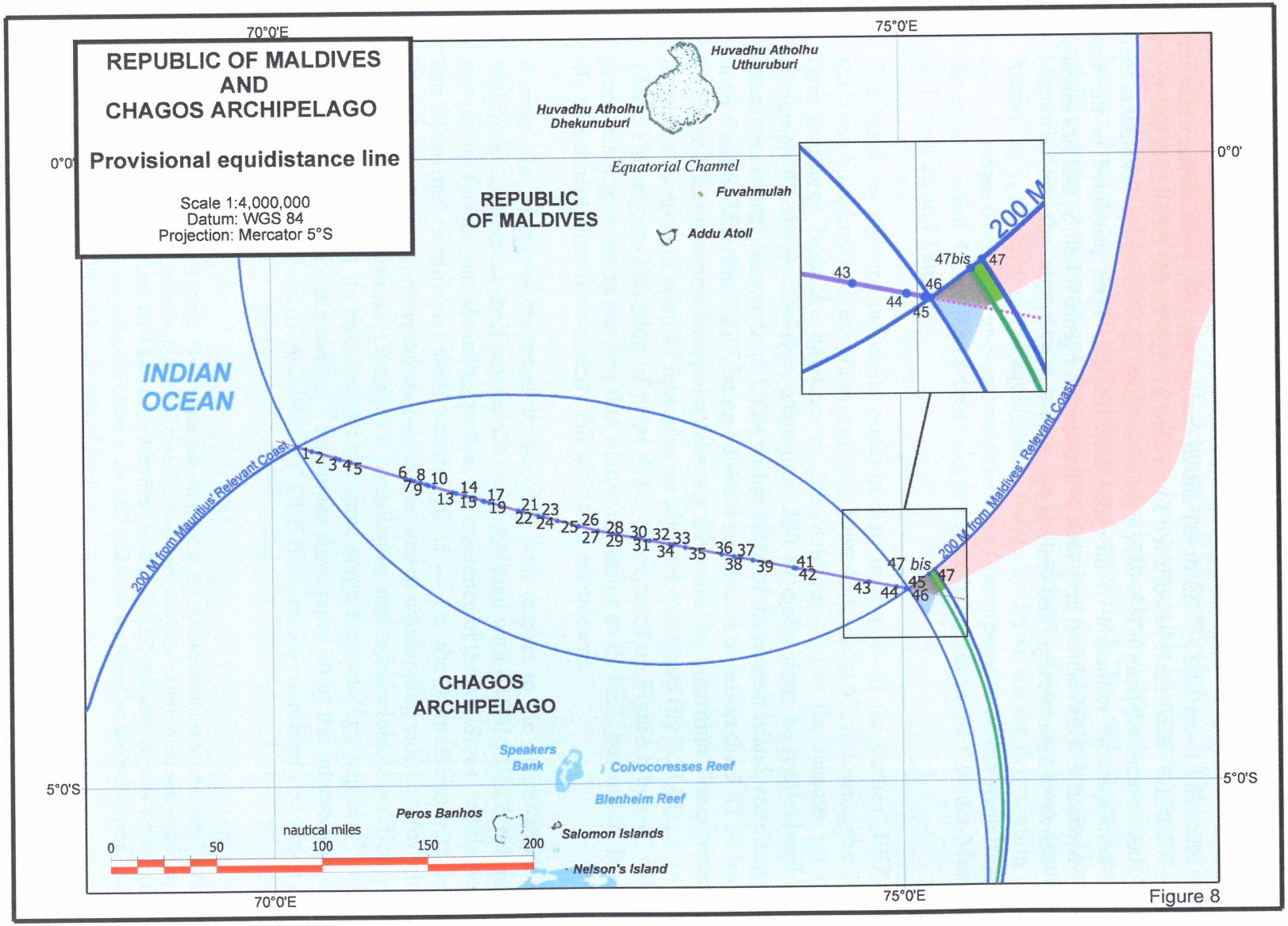
REPUBLIC OF MALDIVES
AND
CHAGOS ARCHIPELAGO
Provisional equidistance line
Scale 1:4,000,000
Datum: WGS 84
Projection: Mercator 5°S
70°0'E
75°0'E
0°0'
5°0'S
Huvadhu Atholhu Uthuruburi
Huvadhu Atholhu Dhekunuburi
Equatorial Channel
REPUBLIC OF MALDIVES
Fuvahmulah
Addu Atoll
INDIAN OCEAN
200 M from Mauritius' Relevant Coast
200 M from Maldives' Relevant Coast
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 47bis
CHAGOS ARCHIPELAGO
Speakers Bank
Colvocoresses Reef
Blenheim Reef
Peros Banhos
Salomon Islands
Nelson's Island
nautical miles
0 50 100 150 200

Figure 8

80. The Maldives maintains that, if this provisional equidistance line were to be adopted, there are no relevant circumstances calling for an adjustment of this line.[160] Mauritius has not suggested otherwise.

81. In its Counter-Memorial, the Maldives explained that, even if base points could be located on the LTEs which constitute Blenheim Reef (*quod non*), this would not have a significant impact on the maritime boundary, because an adjustment would be required to reflect the disproportionate impact that this would have on the delimitation.[161] In its Reply, Mauritius argues that the effect of Blenheim Reef would not be disproportionate because it would generate an additional maritime area of 4,690 km^2 for Mauritius, which is 5.4% of the total relevant area.[162] This attempt to downplay the significance of placing base points on Blenheim Reef is misplaced. The question is whether the placement of base points on these maritime features (the LTEs at Blenheim Reef) has an effect on the course of the line that is "disproportionate to their size and significance to the overall coastal geography".[163] Here, the LTEs on which Mauritius seeks to place base points are very small, not exceeding 100 metres in length, and cannot be said to have "significance to the overall coastal geography". It is plainly disproportionate for them to generate 4,690 km^2 of additional maritime area, which is nearly 11% of the relevant area allocated to Mauritius.[164]

82. For these reasons, the Maldives maintains that the delimitation line it has submitted in its Counter-Memorial should be endorsed by the Special Chamber (noting the adjustment from point 47 to point 47*bis* as set out at paragraphs 65 and 78–79 above).

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160 MCM, para. 186.

161 MCM, para. 152.

162 It is understood that the figure of 5.4% reflects the figure for the additional area of maritime area for Mauritius that Blenheim Reef would generate (4,690 km^2) as a percentage of the total relevant area to be divided between the Parties identified at MCM para. 156 (86,319 km^2).

163 *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 113: "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".

164 See MCM, para. 157, noting that the area allocated to Mauritius is 43,699 km^2.

CHAPTER 2: MAURITIUS' CLAIM TO AN OCS ENTITLEMENT IS OUTSIDE THE SPECIAL CHAMBER'S JURISDICTION AND/OR INADMISSIBLE

83. As the Maldives noted in its Counter-Memorial,[165] in its Judgment on Preliminary Objections the Special Chamber expressly reserved determination as to its exercise of jurisdiction in respect of Article 76 of UNCLOS to the merits phase of proceedings.[166]

84. It is recalled that while the Maldives made its CLCS submission in 2010,[167] Mauritius' claim to an OCS entitlement in the 'Northern Chagos Archipelago Region' was set out for the first time in its 2021 Preliminary Information filed with the CLCS just one day before it filed its Memorial — some two years after it had filed its Notification in 2019. Chapter 2 of the Maldives' Counter-Memorial set out multiple reasons as to why this new OCS claim is not within the Special Chamber's jurisdiction and is in any event inadmissible.

85. Then, just two days before Mauritius filed its Reply, and some three years after it had instituted these proceedings, Mauritius filed the 2022 Submission with the CLCS,[168] addressing the purported OCS entitlement which it had first presented in its 2021 Preliminary Information. As set out below, however, nothing in the 2022 Submission, nor any other matters on which Mauritius relies, adequately responds to the objections which the Maldives raised in its Counter-Memorial.

86. This Chapter addresses the following matters:

(a) First, Mauritius' claim to an OCS entitlement is outside the Chamber's jurisdiction because it was not within the scope of the 'dispute' between the Parties at the time Mauritius filed its Notification (**Section I**).

(b) Second, Mauritius' claim to an OCS entitlement is inadmissible by virtue of the timing of its filing with the CLCS of both the 2021 Preliminary Information and the 2022 Submission regarding the 'Northern Chagos Archipelago Region' (**Section II**). Mauritius' OCS claim was inadmissible at the time it instituted proceedings because it had not filed a CLCS submission in respect of such entitlement. A CLCS submission filed years later cannot 'cure' the inadmissibility *ab initio* on the critical date when the Notification was filed, especially in circumstances where the 2022 Submission is also inadmissible

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165 MCM, para. 66.

166 Judgment on Preliminary Objections, para. 354(6).

167 "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**).

168 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 (**Annex 5**). With respect to both the 2021 Preliminary Information and 2022 Submission, the Maldives wrote to the Secretary-General of the United Nations confirming that it did not consider it appropriate to respond given the matters it raised relates to these pending proceedings, and reserving its right to fully respond in due course: 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**); 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 (**Annex 11**).

because of the principles of procedural fairness reflected in Article 62 of the Rules. Furthermore, having failed to make any mention whatsoever of any asserted entitlement in the 'Northern Chagos Archipelago Region' in its 2009 Preliminary Information, Mauritius' submission is time-barred based on the express requirements of UNCLOS, SPLOS/72 and SPLOS/183.

(c) Third, Mauritius' alleged entitlement to an OCS is inadmissible because it is manifestly unfounded under Article 76 of UNCLOS (**Section III**). Mauritius appears to have conceded in its Reply that it is not entitled (as it did in the Memorial) to rest an OCS claim on a natural prolongation of the Maldives' submerged land territory *northwards* along the CLR to the *west* of the Chagos Trough, well within the Maldives' undisputed continental shelf within 200 M. Mauritius now claims in its Reply a new basis for natural prolongation in the opposite direction, *southwards* along the CLR through the Gardiner Seamounts and to the *east* of the Chagos Trough. This position is entirely inconsistent with its own position in its 2019 CLCS Submission, its Memorial, its 2021 Preliminary Information, and even its 2022 Submission. Mauritius has no explanation for this obvious contradiction, and, in any event, its new BOS situated on an oceanic ridge on the deep ocean floor is clearly inconsistent with UNCLOS Article 76(3) and the CLCS Guidelines, and otherwise untenable as a basis for natural prolongation.

(d) Fourth and finally, the unprecedented and baseless delimitation 'method' of 'equal apportionment' which Mauritius invites the Special Chamber to adopt in respect of the Parties' alleged overlapping OCS entitlements is predicated on a prior delineation of the outer limits of the claimed continental shelf, a task which the Chamber is unable to perform prior to the CLCS having made its recommendations (**Section IV**). In any event, Mauritius has failed to establish that, contrary to the consistent jurisprudence, the three-step methodology should not apply to equitable delimitation of the single continental shelf under UNCLOS Article 83.

I. Mauritius has still failed to show, and cannot show, that there was a dispute concerning Mauritius' alleged entitlement to an OCS in the 'Northern Chagos Archipelago Region' at the time it filed its Notification

87. In its Counter-Memorial, the Maldives demonstrated that the Special Chamber lacks jurisdiction over Mauritius' claim regarding delimitation of the Parties' overlapping OCS entitlements because no such dispute existed at the time Mauritius instituted proceedings.[169]

88. As the Judgment on Preliminary Objections recognised, [170] the absence of a dispute precludes the Special Chamber's jurisdiction according to the express terms of Article 288(1) of UNCLOS, which confers jurisdiction only "over any *dispute* concerning the interpretation or application of this Convention".[171]

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169 MCM, Chapter 2, Section II(A), paras. 56–65.

170 Judgment on Preliminary Objections, para. 322.

171 Emphasis added.

89. This is consistent with the principle that a State must not be "deprived of the opportunity to react before the institution of proceedings to the claim made against its own conduct".[172] This is closely linked to the obligation under UNCLOS Article 283(1) to engage in an exchange of views with respect to the settlement of any dispute. ITLOS jurisprudence has made clear that this obligation has a "distinct purpose"[173] and "is not an empty formality, to be dispensed with at the whims of a disputant"; rather, "[t]he obligation in this regard must be discharged in good faith, and it is the duty of the Tribunal to examine whether this is being done".[174] The tribunal in the *Chagos Marine Protected Area* Arbitration made clear that:

> "Article 283 forms part of the Convention and was intended to ensure that a State would not be taken entirely by surprise by the initiation of compulsory proceedings. It should be applied as such."[175]

The same tribunal emphasised that, "[o]nce a dispute has arisen, Article 283 then *requires* that the Parties engage in some exchange of views regarding the means to settle the dispute".[176] This obligation cannot be discharged after the initiation of proceedings.[177]

90. The legal principles relevant to the existence of a dispute and referred to in the Judgment on Preliminary Objections are set out in the Maldives' Counter-Memorial.[178] In particular, for a 'dispute' to exist, it must be clear that the parties "hold clearly opposite views" on the subject matter of the asserted dispute,[179] and that they did so at the time proceedings were instituted.[180] Furthermore, the dispute must be of "sufficient clarity that the Parties were aware of the issues in respect of which they disagreed"[181]

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172 *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833 at p. 851, para. 43.

173 *M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Provisional Measures, Order of 23 December 2010, Dissenting Opinion of Judge Wolfrum, para. 27.

174 *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.

175 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 382. See similarly *"Arctic Sunrise" Case (Kingdom of the Netherlands v. Russian Federation)*, Provisional Measures, Order of 22 November 2013, Declaration of Judge Anderson, para. 3 ("The main purpose underlying article 283 is to avoid the situation whereby a State is taken completely by surprise by the institution of proceedings against it").

176 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 383 (emphasis added).

177 *Dispute concerning the detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. Russian Federation),* Award, 27 June 2022, para. 201.

178 MCM, paras. 58–59, 65.

179 *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833, at pp. 850–851, para. 41

180 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at pp. 84–85, para. 30

181 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 382; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at pp. 84–85, para. 30.

and it must be shown that the respondent State "was aware, or could not have been unaware, that its views were 'positively opposed' by the applicant".[182] This is especially relevant where a new claim is of far-reaching significance rather than incidental to a prior dispute. In the present case, Mauritius' new OCS claim asserts an overlap of 22,272 km^2 with what the Maldives reasonably concluded was its undisputed OCS entitlement from 2010 when it made its CLCS submission until 2021 when Mauritius first asserted its claim.

91. Mauritius' contention in its Reply[183] that such a dispute existed at the time it filed its Notification on 18 June 2019[184] is entirely unconvincing. It is obvious that it had never made a claim to an OCS prior to 24 May 2021,[185] some two years after it had commenced proceedings, after the Judgment on Preliminary Objections, and just one day before filing its Memorial. The Maldives, self-evidently, was not aware of any "positively opposed" claims[186] in 2019 and was "deprived of an opportunity to react"[187] or even to exchange views as required by UNCLOS Article 283. In fact, since the only dispute arising from the Maldives' 2010 CLCS submission was the overlap between its OCS claim and Mauritius' EEZ, the Maldives was naturally (to use the words from the jurisprudence) "taken entirely by surprise"[188] when Mauritius first made its claim to an OCS entitlement in its 2021 Preliminary Information. This is precisely what the principles applicable to Part XV procedures are intended to avoid.

92. In its Reply, Mauritius invokes *Barbados v. Trinidad and Tobago* as supposed support for its argument that the Special Chamber can exercise jurisdiction in relation to its new OCS claim.[189] But that case confirms the opposite; namely, that, Mauritius having failed to make any claim to entitlement prior to its 2019 Notification, there is no jurisdiction in respect of Mauritius' 2021 claim. In that case, the *respondent* State (Trinidad and Tobago) invited the tribunal to exercise jurisdiction in respect of the parties' overlapping OCS claims, despite the applicant State (Barbados) contending that this was not a matter within its original application. The tribunal exercised jurisdiction to delimit the continental shelf beyond 200 M on the grounds *inter alia* that "the record of the negotiations shows that it was part of the subject-matter on the table during these negotiations" between the Parties and, thus, that a dispute had arisen between them specifically in respect of their OCS claims.[190] This stands in sharp contrast with the

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182 *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833 at pp. 850–851, para. 41.

183 MR, paras. 3.7–3.20.

184 Notification and Statement of Claim and the Grounds on which it is Based of the Republic of Mauritius, 18 June 2019 (**MCM, Annex 64**).

185 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**).

186 *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833 at pp. 850–851, para. 41.

187 *Ibid.*, para. 43.

188 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 382.

189 MR, para. 3.1.

190 *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, paras. 196, 213.

present case where Mauritius — as the *applicant* State — cannot point to any record whatsoever of its having claimed an overlapping OCS prior to its 2019 Notification.

93. Mauritius' case on jurisdiction rests on a single reference to a "potential overlap of the extended continental shelf" in negotiations with the Maldives in 2010. But, as recognised in the Judgment on Preliminary Objections,[191] this in fact refers to the overlap between the Maldives' OCS and Mauritius' EEZ.[192] Specifically:

(a) Mauritius refers to its own diplomatic note of 21 September 2010.[193] However, this refers only to the Parties' EEZs,[194] confirming that there was no dispute concerning overlapping OCS claims.

(b) Mauritius also refers to the minutes of the Parties' meeting on 21 October 2010,[195] which makes a reference to the extended continental shelf. However:

(i) It is clear from this note that this refers to a potential overlap between *the Maldives'* OCS claim (as set out in its CLCS Submission of 26 July 2010[196]) and Mauritius' EEZ[197]; and

(ii) Even in that context, the reference is merely to "a *potential overlap* of the extended continental shelf",[198] not any *actual* overlapping claims.

(c) Conspicuously, Mauritius does *not* refer to its formal objection to the Maldives' CLCS Submission, which it filed in March 2011.[199] As noted in the Counter-Memorial,[200] this objection was limited to the fact that "the Extended Continental Shelf being claimed by the Republic of Maldives encroaches on the Exclusive Economic Zone of the Republic of Mauritius, the coordinates of which were communicated to the Secretary-General in a Note dated 20 June

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191 See para. 96 below.

192 MR, paras. 3.7–3.20.

193 *Ibid.*, para. 3.8, citing 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**).

194 See MCM, para. 62(a).

195 MR, para. 3.8, citing 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**).

196 "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**).

197 See MCM, para. 62(b).

198 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**) (emphasis added).

199 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**), cited at MCM, para. 62(c).

200 MCM, para. 62(c).

2008".[201] Clearly, if Mauritius had any dispute with the Maldives — even regarding a *potential* future OCS claim — it would have raised it in its objection to the CLCS.

(d) Mauritius turns finally to its own diplomatic note of March 2019, in which it invited the Maldives to participate in negotiations concerning "delimiting the maritime boundary between Mauritius and Maldives".[202] It claims on this basis that the Parties "have always approached the issue of maritime delimitation *as a whole*, without limitation as to geographic extent, and without distinguishing between various areas that may be concerned — in particular, without ever distinguishing between the continental shelf within and beyond 200 M".[203] Obviously, the fact that the Parties did not *expressly exclude* a certain subject matter (overlapping OCS entitlements) from their negotiations does not mean that there was a dispute over that subject matter; to the contrary, it demonstrates that there was no dispute to be discussed. Again, Trinidad and Tobago's repeated claims to a continental shelf beyond 200 M in negotiations with Barbados provides a point of contrast with Mauritius' untenable arguments.

94. As noted in the Counter-Memorial,[204] Mauritius itself has confirmed in the Preliminary Objections proceedings that the *only* OCS dispute which predated its 2019 Notification, was the overlap between the Maldives' claimed OCS and Mauritius' EEZ. In fact, in seeking to demonstrate the existence of a dispute, Mauritius relied on Figure 3 from its Written Observations on Preliminary Objections, which is reproduced below as Figure 9. To provide greater clarity on the specific area of overlapping claims, the Maldives has added an inset as well as pink shading which shows the relevant overlap identified by Mauritius.

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201 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**).

202 MR, para. 3.9, citing Diplomatic Note No. 08/19 from the Permanent Mission of the Republic of Mauritius to the United Nations to the Permanent Mission of the Republic of Maldives to the United Nations, 7 March 2019 (**Annex 12**).

203 MR, para. 3.10 (emphasis in original).

204 MCM, para. 61.

The scope of the dispute according to Mauritius at the Preliminary Objections phase

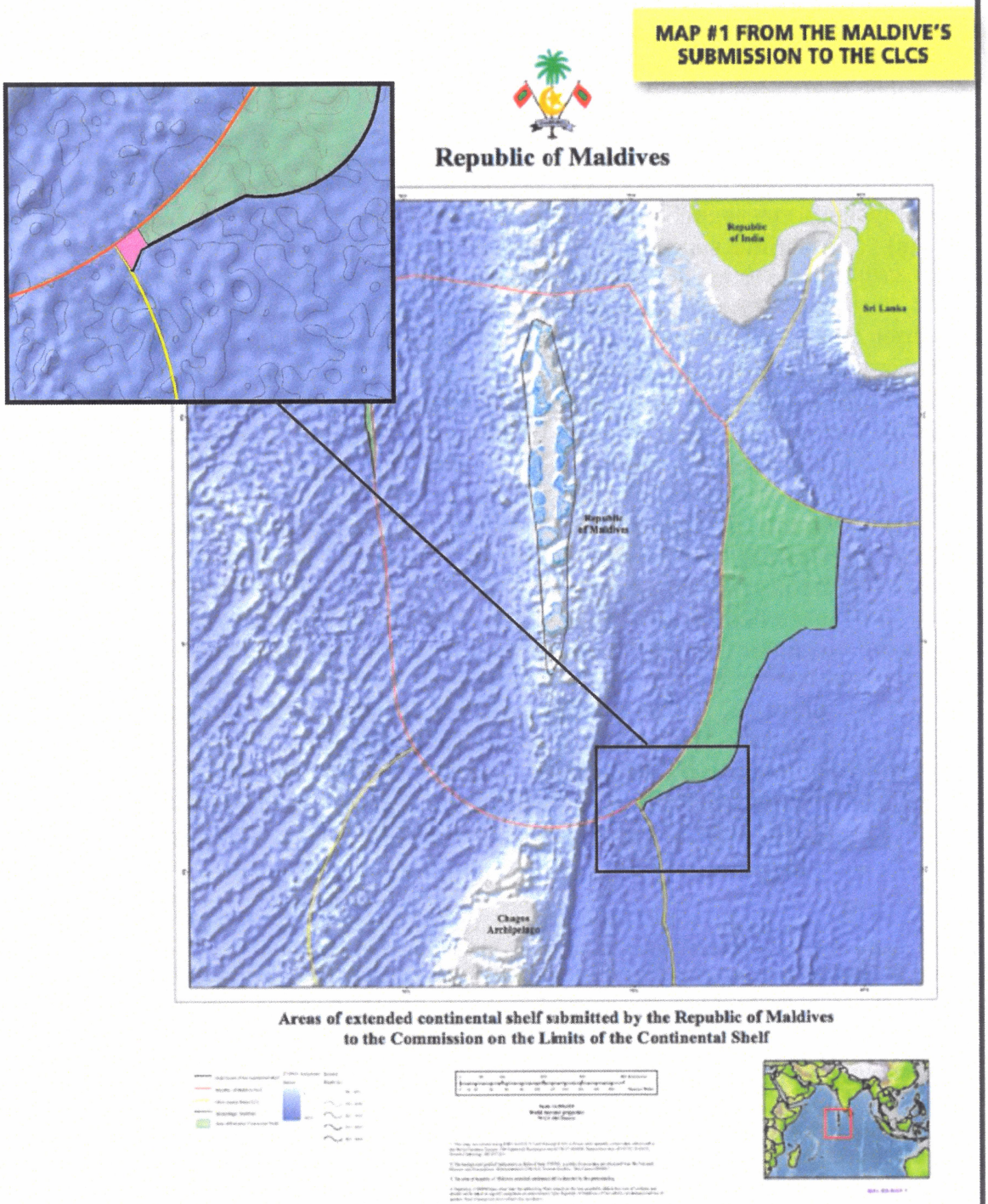

Figure 9

95. Mauritius expressly stated that this map "shows that the Maldives' claim extends a full 200 M 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".[205] It made no mention whatsoever of any dispute concerning any alleged OCS entitlement on the part of Mauritius, for the obvious reason that no such entitlement had been claimed.

96. It was on this basis that the Judgment on Preliminary Objections made clear that, as regards OCS entitlements, the only dispute which existed at the time Mauritius instituted proceedings was limited to the overlapping claims as between the Maldives' OCS and Mauritius' EEZ.[206] It is unavailing for Mauritius now to reinterpret the Judgment (contrary to its own submissions at the time) to suggest that the Special Chamber also recognised that a dispute as to overlapping OCS claims existed in June 2019.[207] In particular:

(a) Mauritius suggests that the Judgment was neither "detailed" nor "dispositive" on the scope of the dispute that existed between the Parties, and was concerned only with whether any dispute existed at all.[208] But that is inconsistent with the fact that the Special Chamber, responding to the Maldives' preliminary objection as to the absence of any dispute, specifically held that the dispute concerned the "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".[209]

(b) Further, the Special Chamber confirmed that the figures presented by Mauritius depicted "the extent of the Parties' claims".[210] As set out above, these figures did not include any claim by Mauritius to an OCS entitlement. The Maldives made this observation in its Counter-Memorial.[211] Mauritius failed to engage with this fact at all in the Reply.

(c) Moreover, Mauritius suggests that the language of the Judgment can be ignored because it "seeks only to reflect the language of [the Parties'] statements, as they were made at the time" — namely, in 2010 and 2011.[212] But that is a point *against* Mauritius. The Chamber's Judgment does indeed closely reflect the language of the Parties in identifying their dispute in exchanges prior to these

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205 Written Observations of the Republic of Mauritius on the Preliminary Objections Raised by the Republic of Maldives, 17 February 2020, para. 3.44.

206 MCM, para. 60, citing Judgment on Preliminary Objections, para. 332, and Separate and Dissenting Opinion of Judge Oxman, paras. 20, 24.

207 As it does at MR, paras. 3.15–3.19.

208 *Ibid.*

209 Judgment on Preliminary Objections, para. 332. The reference elsewhere in more generic terms to the existence of a dispute "concerning the maritime delimitation of the boundary between [the Parties] in the Indian Ocean" (see e.g. Judgment on Preliminary Objections, paras. 335, 354(6), quoted at MR, paras. 3.17–3.18), does not in any way affect the Special Chamber's finding as the specific scope of that dispute.

210 Judgment on Preliminary Objections, para. 314.

211 MCM, para. 61.

212 MR, para. 3.16.

proceedings,[213] which did not extend to any dispute concerning overlapping OCS claims.

97. Thus, Mauritius has manifestly failed to refute the Maldives' argument that there was no dispute concerning the Parties' overlapping OCS entitlements at the time proceedings were instituted in 2019. The requirement that a dispute exists at that critical date must be meaningfully applied — it cannot simply be set aside or glossed over as convenient for an applicant, let alone where a new claim has such significant consequences for the respondent (implicating in this case 22,272 km^2 of what was the Maldives' undisputed OCS entitlement from its 2010 CLCS submission until May 2021 when Mauritius first made its claim). On that basis, the Special Chamber lacks jurisdiction over this aspect of the claim.

II. Mauritius' claim to an OCS entitlement is inadmissible because it has failed to make a timely CLCS submission concerning the 'Northern Chagos Archipelago Region'

98. In its Counter-Memorial, the Maldives pointed out that, at the time Mauritius filed its Notification (and indeed when it filed its Memorial), Mauritius had not made a submission to the CLCS with respect to its alleged OCS entitlement to the north of the Chagos Archipelago.[214] As established by previous jurisprudence, this rendered its OCS claim inadmissible.[215] Further, Mauritius had failed to file Preliminary Information in respect of the 'Northern Chagos Archipelago Region' within the mandatory time limit in 2009 prescribed by UNCLOS and extended by SPLOS/72 and SPLOS/183, and it was no longer entitled to make a full submission to the CLCS.[216]

99. Having filed its purportedly "amended" CLCS Preliminary Information one day before its Memorial, Mauritius then filed the 2022 Submission two days before submitting its Reply. This timing, and the fact that the only two advisers identified in the submission are Mauritius' counsel in the present proceedings,[217] creates a strong impression that the submission was prepared for the specific purpose of litigation instead of providing scientific and technical evidence of entitlement.

100. Mauritius does not dispute that it was required to present a CLCS submission (and not just Preliminary Information) as a precondition to seeking delimitation of the OCS under Part XV of UNCLOS.[218] According to Mauritius, however, its submission of

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213 See para. 93 above; MCM, para. 62.

214 See, e.g., MCM, para. 53.

215 MCM, paras. 69–78, referring to: *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at pp. 668–669, paras. 125–130; *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, ICJ Reports 2016, p. 100 at p. 131–132, 136, paras. 82, 86–87, 105; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, paras. 187–188.

216 MCM, paras. 76–77.

217 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 (**Annex 5**), p. 2, identifying Mr Paul S. Reichler and Professor Philippe Sands QC. The same was true of Mauritius' 2021 Preliminary Information, filed one day before the time limit for Mauritius to file its Memorial: see MCM, paras. 6, 53; 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)**, p. 2.

218 See MCM, paras. 69–78.

April 2022 — filed some three years after its 2019 Notification — remedies the inadmissibility of its claim.[219]

101. This position is untenable. As is set out in the following subsections:

(a) Mauritius' claim to an OCS entitlement is inadmissible because it had not filed a full submission with the CLCS prior to its commencement of proceedings. It was not entitled to and did not 'cure' this inadmissibility by filing a full submission some three years later (**subsection A**);

(b) Mauritius did not file its Preliminary Information regarding the 'Northern Chagos Archipelago Region' within the mandatory time limits which expired in 2009, meaning that it was not entitled to file or rely on a submission in respect of this region (**subsection B**).

A. Mauritius had not filed a full submission with the CLCS at the time it instituted proceedings, and its 2022 Submission did not 'cure' this defect

102. As set out in the Maldives' Counter-Memorial,[220] the relevant jurisprudence makes clear — as affirmed by the ICJ in its 2016 judgment in *Nicaragua v. Colombia* — that an international court or tribunal may exercise jurisdiction over an alleged OCS claim only if the relevant State has "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".[221] The ICJ further clarified that the filing of a full submission with the CLCS was a "condition" of and a "prerequisite" to the Court exercising jurisdiction in respect of delimitation over an alleged OCS entitlement.[222] The ICJ could exercise jurisdiction over Nicaragua's OCS claim because Nicaragua had provided the relevant "'final' information" prior to filing its Application, consistent with its obligations under UNCLOS.[223]

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219 MR, para. 3.29.

220 MCM, paras. 69–74, referring to UNCLOS Article 76(8), Annex II Article 4; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 at pp. 668–669, paras. 125–130; *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, ICJ Reports 2016, p. 100 at p. 131, para. 82; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, paras. 187–188.

221 *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, ICJ Reports 2016, p. 100 at p. 131, para. 82. Similarly, in *Somalia v. Kenya,* the Court recalled that "as expounded in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, 'any claim of continental shelf rights beyond 200 miles [by a State party to UNCLOS] must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder' (*Judgment, I.C.J. Reports 2007 (II)*, p. 759, para. 319)", and the Court expressly noted that in the case before it "both States have made submissions … to the Commission in accordance with Article 76, paragraph 8, of the Convention": *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, paras. 187–188.

222 *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, ICJ Reports 2016, p. 100 at p. 132, para. 87, p. 136, para. 105.

223 *Ibid.*, p. 132, paras. 86–87.

103. Mauritius has not disputed — and clearly cannot dispute — the incontrovertible fact that, at the time at which it filed its Notification in 2019, it had not filed a full submission with the CLCS. Indeed, it had not done so even two years later, when it filed its Memorial.[224]

104. Mauritius' only argument is that it has "clearly established" the admissibility of its claim because it "has now [i.e. by the date of the Reply] made [a full] submission" to the CLCS.[225] This argument must fail for two reasons.

105. First, it is firmly settled in international law that "[t]he critical date for determining the admissibility of an application is the date on which it is filed".[226] This is "the only relevant date for determining the admissibility of the Application" and subsequent developments "cannot be taken into consideration".[227] Similarly, ITLOS has confirmed that "in principle, the decisive date for determining the issues of admissibility is the date of the filing of an application, [save that] events subsequent to the filing of an application may render an application without object".[228]

106. There is no authority — and Mauritius has not offered any — for the suggestion that inadmissibility may be cured subsequent to the initiation of proceedings, especially by conduct on the part of the applicant State. Mauritius elected to institute the present proceedings in June 2019, before the conditions existed for its claim to be admissible. Having instituted proceedings prematurely, it is not entitled to correct the defect in its claim.

107. Secondly, by virtue of the Rules of the Tribunal and the principles of procedural fairness which apply to these proceedings, the 2022 Submission on which Mauritius now seeks to rely is inadmissible as evidence and therefore cannot remedy the inadmissibility of Mauritius' OCS claim.

108. Article 62(1) of the Rules require that a party's memorial shall contain (*inter alia*) "a statement of the relevant facts". Further, Article 62(3) provides that a reply "shall be directed to bringing out the issues that *still divide* [the parties]" (emphasis added). It is not permissible for a State to use its reply to introduce new evidence that it could have introduced in the memorial, where nothing in the counter-memorial has necessitated the introduction of the new material. It has been noted that Article 49(1) of the ICJ

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224 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)**.

225 MR, para. 3.29.

226 *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Jurisdiction and Admissibility, ICJ Reports 1988, p. 69 at p. 95, para. 66. See also *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, ICJ Reports 1962, p. 321 at p. 344; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 1998, p. 9 at pp. 25–26, paras. 42–44; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Provisional Measures, Order of 28 May 2009, ICJ Reports 2009, p. 139 at pp. 148–149, para. 46.

227 *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 1998, p. 9 at p. 26, para. 44.

228 *The "Hoshinmaru" Case (Japan v. Russian Federation), Prompt Release*, Judgment, 6 August 2007, para. 64.

Rules of Court (identical to Article 62(1) of the ITLOS Rules) "make[s] clear that the Applicant should set out the entirety of its case in the Memorial" and that "[a] State should never hold part of its case — whether argument or evidence — in reserve for a second round".[229]

109. The duty to introduce evidence in the first round is especially exacting in respect of an applicant State, because it is the applicant that chooses when to commence proceedings. A respondent State should be informed of and have a full opportunity to reply to the case against it. The ICJ has made clear that the failure to substantiate a case in a timely manner "seriously jeopardizes the principle of procedural fairness and the sound administration of justice".[230] It has similarly held that the late filing of documents "is difficult to reconcile with an orderly progress of the procedure before the Court, and with respect for the principle of equality of the Parties" and should only be taken into account if there is genuine "urgency" in relation to them.[231]

110. There is clearly no justification for Mauritius seeking to introduce the 2022 Submission in the second round of written pleadings, especially as it relies on single-beam data which is over 40 years old and has been available in the public domain for some 20 years.[232] Mauritius could have waited to file its Notification when its case was properly prepared. Instead, it instituted proceedings hastily, less than a month after UN General Assembly resolution 73/295.

111. Mauritius' late filing of substantial technical evidence, apparently timed for litigation purposes, shows blatant disregard for Article 62 of the Rules and its underlying principles of procedural fairness. Mauritius' conduct has put the Maldives in a prejudicial position of having only the short period between the Reply and the Rejoinder to formulate a response, and of receiving Mauritius' first response to the Maldives' position at the oral hearings (which Mauritius will have two months to prepare, while giving the Maldives just a day and a half to respond). This defeats the purpose of having two rounds of written pleadings, especially in respect of CLCS submissions where technical expert input is of critical importance — reflected in the fact that the CLCS itself considers submissions over a period of years of careful scientific scrutiny.

112. Accordingly, having failed to file its CLCS submission prior to its 2019 Notification, and to produce readily available evidence in its Memorial, Mauritius should not be

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229 *Whaling in the Antarctic (Australia v. Japan; New Zealand intervening)*, Judgment, ICJ Reports 2014, p. 226, Separate Opinion of Judge Greenwood at pp. 418–419, para. 35.

230 *Legality of Use of Force (Yugoslavia v. Belgium), Provisional Measures*, Order of 2 June 1999, ICJ Reports 1999, p. 124 at p. 139, para. 44. It is noted that in this case the party sought to introduce a new legal argument (a new basis for jurisdiction) in the second round of oral hearings, but the principle identified clearly applies to the present case.

231 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Provisional Measures, Order of 13 September 1993, ICJ Reports 1993, p. 325 at pp. 336–337, para. 21. It is noted that in this case the party filed a new communication supplementing and amending the request for provisional measures shortly before the oral hearing, but the principle identified clearly applies to the present case.

232 The bathymetric data upon which both Chagos submissions are based are single beam public domain data over 40 years old that have been readily available via download from the United States National Oceanic and Atmospheric Administration since the early 2000s.

permitted to rely in these proceedings on its last-minute 2022 Submission — whether as a basis for the admissibility of its claim or otherwise.

B. Mauritius failed to comply with the mandatory time limits for the filing of Preliminary Information relating to the 'Northern Chagos Archipelago Region' with the CLCS

113. There are mandatory time limits for the filing of Preliminary Information with the CLCS in respect of an alleged OCS entitlement, which the Maldives set out in its Counter-Memorial.[233] Specifically:

(a) Article 4 of Annex II to UNCLOS requires that, where a State intends to establish the limits of its entitlement to an OCS, "it shall submit particulars of such limits to the Commission 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"; and

(b) In 2001, the States Parties to the Convention agreed in SPLOS/72 that, for States Parties for which, like Mauritius, UNCLOS entered into force before 13 May 1999, an extended deadline of 13 May 2009 would apply.[234] In 2008, it was separately agreed in SPLOS/183 that a State would be taken as having complied with the relevant time limit if it had submitted, before the expiry of that time period: (i) "preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles"; and (ii) "a description of the status of preparation and intended date of making a submission".[235]

114. These time limits are not discretionary. They represent binding obligations of States Parties to UNCLOS. As noted in SPLOS/72, there is a "responsibility of all States Parties to fulfil in good faith the obligations assumed by them under the Convention".[236] Such time limits also serve an important function. The objective of the CLCS process is to create stability and certainty as to States' claims to OCS entitlements.[237] This is

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233 MCM, para. 76.

234 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**) ("In the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999").

235 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**).

236 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**), preamble, first para.

237 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 (**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 deadline in 2001 (see United Nations Convention on the Law of

especially important in regions where there are potentially overlapping OCS entitlements. As noted at a meeting of UNCLOS States Parties, States with opposite and adjacent costs "are not in a good position to negotiate their joint boundaries in the area beyond 200 miles" unless there has been a binding recommendation as to the outer limits of each State's continental shelf, the only legal means of accomplishing which is via the CLCS submission process.[238] It is inconsistent with the purpose of the CLCS regime for a party to flout the time limits by filing Preliminary Information more than a decade late, especially in circumstances where the asserted claim overlaps with the (undisputed[239]) claim of a State which complied with the time limits.

115. Mauritius has clearly failed to comply with these time limits in respect of the Preliminary Information it filed on 24 May 2021 regarding the 'Northern Chagos Archipelago Region'[240] some 12 years after the time limit for filing preliminary information concerning an alleged OCS entitlement had expired on 13 May 2009. Throughout this twelve-year period, the Maldives had reasonably understood that its claim to an OCS entitlement (set out in its timely 2010 CLCS submission) did not overlap with the OCS claim of any other State. Contrary to its title, Mauritius' 24 May 2021 communication did not 'amend' its 2009 Preliminary Information but raised an entirely new OCS claim in a different region.

116. In its Reply, Mauritius did not challenge the existence or mandatory nature of the time limits set out above. Nor did it dispute that new preliminary information filed in 2021, taken in isolation, would not have been filed within these time limits. Instead, its only argument for getting around the lapsed time limit is that its May 2021 Preliminary Information is the "completion" of the wholly unrelated Preliminary Information filing of 2009 (which related only to the 'Southern Chagos Archipelago Region').[241]

117. Mauritius raises two points in support of this position, neither of which is sustainable. First, it seeks to downplay the extent to which its 2009 Preliminary Information was exclusively concerned with the area to the south of the Chagos Archipelago, in order to argue that the 2021 Preliminary Information filed 12 years later was a "clarification" of the 2009 document.[242] It concedes merely that the 2009 Preliminary Information "focuses on" the southern region.[243] In fact, the area to the south of the Chagos Archipelago is the exclusive subject matter of the 2009 Preliminary Information. Mauritius made no indication whatsoever that it would later file Preliminary Information or a full submission relating to any different area in the vicinity of the Chagos Archipelago.[244] To the contrary, it expressly stated that the 2009 Preliminary

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the Sea, Meeting of States Parties, Eleventh Meeting, "Report of the eleventh Meeting of State Parties", 14 June 2021, Doc SPLOS/73 (**Annex 14**), para. 69).

238 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 2021, Doc SPLOS/64 (**Annex 13**), paras. 43, 46.

239 In its Memorial, Mauritius expressly and unambiguously confirmed its agreement as to the existence of the Maldives' OCS entitlement: see MM, paras. 4.61, 4.64.

240 As set out in detail in MCM, paras. 77–78 and footnote 154.

241 MR, para. 3.28.

242 *Ibid.*

243 *Ibid.*, para. 3.27.

244 This is especially significant given that, in its 2009 Preliminary Information, Mauritius did refer to other areas in which it had claimed an OCS entitlement: United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, Preliminary Information Submitted by the

Information "provides an indication of the outer limits of the continental shelf of the Republic of Mauritius, that lie beyond 200 nautical miles (M) from the baselines from which the breadth of the territorial sea is measured (hereinafter referred to as 'the territorial sea baselines') in respect of the Chagos Archipelago Region".[245] The indicative map contained in the 2009 Preliminary Information did not even depict the northern *land* territory of the Chagos Archipelago, let alone any asserted OCS entitlement said to be appurtenant to it.[246] It is to be recalled in this context that preliminary information which was to be filed no later than 2009 (as set out above) was required to be "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 in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf".[247] There is no sense in which Mauritius' 2009 Preliminary Information was 'indicative of' an OCS claim to the north of the Chagos Archipelago.

118. Mauritius seeks to rely upon its statement of intention in the 2009 Preliminary Information "to make a submission for an extended continental shelf in respect of the Chagos Archipelago Region".[248] But all that this text indicates is that Mauritius intended to file a full submission in respect of the alleged OCS entitlement which had been referred to in its Preliminary Information (as is the usual course), which it did in 2019.[249] It did not signal an intention to make a substantively new Preliminary Information filing in respect of a totally different OCS entitlement. Even if that intention had been apparent, it would not in any event have been permissible, as Mauritius was not entitled unilaterally to extend the time limits for filing of Preliminary Information. It was obliged to file, no later than May 2009, Preliminary Information which was 'indicative of' the OCS entitlement which it would proceed to claim in a full submission. It failed to do so in respect of the area to the north of the Chagos Archipelago.

Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183, Doc MCS-PI-DOC, May 2009 (**MCM, Annex 54**), para. 2-1.

245 *Ibid.*, para. 1-1. It stated in similar terms that the Preliminary Information "provide[d] an indication of the outer limits of the extended continental shelf in the Chagos Archipelago Region as determined by the Republic of Mauritius": see para. 3-5.

246 United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, 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, Doc MCS-PI-DOC, May 2009 (**MCM, Annex 54**), Figure 1.

247 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**).

248 United Nations Convention on the Law of the Sea, Commission on the Limits of the Continental Shelf, 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, Doc MCS-PI-DOC, May 2009 (**MCM, Annex 54**), para. 3-4.

249 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**).

119. Mauritius' second point is that its 2021 Preliminary Information "appears on the CLCS website alongside the earlier submission" which (it contends) "makes clear" that the 2021 Preliminary Information is to be "treated as a clarification" of the earlier 2009 Preliminary Information.[250] Obviously, no inference as to the nature of the 2021 Preliminary Information or its validity can be drawn from this fact. As a general matter, the UN Secretariat has published a note making clear that it conveys Preliminary Information filings according to the States' own designations and that "[t]heir listing on this web site 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.[251] Unlike full submissions which are listed by the UN Secretariat in order of receipt (meaning that Mauritius' submissions of 2019 and 2022 are listed nine rows apart),[252] Preliminary Information communications are listed by coastal State alphabetically, with multiple communications listed under each State regardless of the region to which they refer or the relationship between multiple communications by a single State.[253] In respect of the 2022 Submission moreover, the UN Secretariat carefully notes on the website that "*[a]ccording to the submitting State*, this is a partial submission".[254] The mere placement of these submissions on the website is clearly not an endorsement of Mauritius' position.

120. Accordingly, nothing in the Reply undermines the conclusion reached in the Counter-Memorial[255] that Mauritius' obvious failure to file timely Preliminary Information in May 2009 regarding the Northern Chagos Archipelago Region means that its right to claim such an entitlement has lapsed. The Special Chamber should thus dismiss its claim to such an entitlement as inadmissible.

III. Mauritius' entitlement to an OCS in the 'Northern Chagos Archipelago Region' is manifestly unfounded

121. In the Counter-Memorial, the Maldives demonstrated that in addition to the absence of a 'dispute' and failure to make a timely CLCS submission, Mauritius' claim to an OCS

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250 MR, para. 3.28.

251 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 (**Annex 15**).

252 See United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982 <https://www.un.org/Depts/los/clcs_new/commission_submissions.htm> accessed 5 August 2022 (**Annex 16**).

253 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 (**Annex 15**).

254 See United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, Commission on the Limits of the Continental Shelf, Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Submission of the Republic of Mauritius (note in page) <https://www.un.org/Depts/los/clcs_new/submissions_files/submission_mus2_2022.html> accessed 5 August 2022 (**Annex 17**) (emphasis added).

255 MCM, para. 78.

entitlement based on the natural prolongation of the submerged land territory of the Maldives (i.e. well within its uncontested continental shelf within 200 M) is manifestly unfounded and thus inadmissible. In its Reply, Mauritius appears to recognise that its original position on natural prolongation is wholly untenable, and now advances a different theory based on a new BOS which is entirely inconsistent with its earlier position and in any event clearly indefensible.

122. As a preliminary matter, Mauritius' contention that the Maldives' admissibility challenge is a case on the merits[256] is wrong. As explained in the Counter-Memorial, before exercising jurisdiction in respect of a maritime delimitation dispute concerning a State's claimed entitlement to an OCS, an international tribunal must be satisfied that such entitlement exists.[257] In *Ghana/Côte D'Ivoire* the Chamber observed that it "can delimit the continental shelf beyond 200 nm only if such a continental shelf exists".[258] In the present case, even a *prima facie* review of Mauritius' claim demonstrates that it is manifestly unfounded and thus should be dismissed as a matter of admissibility.

123. In its Memorial, Mauritius claimed an OCS entitlement in the 'Northern Chagos Archipelago Region'. It left no doubt that it claimed an OCS entitlement based solely on the CLR and that this feature was bounded to the east by the Chagos Trough.[259] It noted in particular that "[t]o the south and east of the Chagos Archipelago there is a linear depression, the Chagos Trough, which runs alongside the CLR".[260] This statement was repeated in its 2021 Preliminary Information,[261] and was consistent with Mauritius' position in its 2019 CLCS Submission which recognised similarly that "[t]he Chagos Ridge (the southern segment of the CLR) is bounded to the east by the Chagos Trough" and that this Ridge "represents the submerged prolongation of the relevant landmass of the Republic of Mauritius in this area".[262] Mauritius did not suggest anywhere that the CLR extends to the east of the Chagos Trough, whether to the north or to the south; to the contrary, it positively asserted that it does not.

124. In both its Memorial and its 2021 Preliminary Information, Mauritius specified further that its purported natural prolongation is to the north of its land territory on the CLR (to the west of the Chagos Trough). It stated:

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256 MR, para. 3.23.

257 MCM, para. 79. As noted in the MCM para. 80, the Maldives does not dispute, as a matter of principle, that, where parties to a dispute have both made CLCS submissions, agreement between them as to the existence of their respective OCS entitlements can be a basis for an international court or tribunal to exercise jurisdiction. In the present case however, contrary to Mauritius' assertion, the Maldives does not agree that Mauritius is entitled to an OCS that overlaps with its own.

258 *Dispute concerning 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 (cited in MCM, footnote 155).

259 MM, paras. 2.32–2.45.

260 *Ibid.*, para. 2.35.

261 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.

262 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.

> "To the north, the CLR [which as noted above Mauritius said is bounded to the east by the Chagos Trough] extends further eastward as irregular seafloor until it merges with the flat-lying deep ocean floor at a depth of around 5,000 metres."[263]

125. Providing further confirmation that the asserted natural prolongation extended north from the land territory of the Chagos Archipelago, the Memorial also stated:

> "Mauritius submitted its own Amended Preliminary Information to the CLCS in which it explained that the natural prolongation of the continental shelf in the Northern Chagos Archipelago Region along the CLR *extends northwards* from the islands of Peros Banhos Atoll, Salomon Islands Atoll and Blenheim Reef."[264]

126. The Memorial makes clear that it is solely on the basis of these "geological and geomorphological circumstances" (namely, the CLR extending north, to the west of the Chagos Trough) that "Mauritius has an extended continental shelf comprised of the seabed and subsoil of the submarine areas that extend to the north-east beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin".[265]

127. Mauritius' 2021 Preliminary Information, consistent with this statement, repeatedly indicates that the natural prolongation on which Mauritius relied extended from Peros Banhos Atoll, Salomon Islands Atoll and Blenheim Reef.[266] It also made clear that Mauritius' claim to an OCS entitlement to the north of the Chagos Archipelago was made "[o]n the basis of the geological and geomorphological settings described above".[267]

128. Accordingly, in its Counter-Memorial, the Maldives demonstrated that Mauritius' purported natural prolongation to the north of the CLR and to the west of the Chagos Trough necessarily traverses deep with the Maldives' continental shelf within 200 M, and that the critical foot of slope point is appurtenant only to the Maldives' submerged land territory, and not that of Mauritius.[268] Specifically, it stated:

> "The only path by which Mauritius can show a prolongation from the landmass of the Chagos Archipelago to FOS-VIT31B passes well within the undisputed continental shelf of the Maldives within 200 M. This involves a convoluted submerged prolongation, first in a northeastward direction for some 400 M, 260 M of which is beyond the provisional equidistance line, to

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263 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; MM, para. 2.35.

264 MM, para. 2.40. The Memorial repeats at para. 2.45 that the natural prolongation extends from Peros Banhos Atoll, Salomon Islands Atoll and Blenheim Reef, suggesting that it extends in a northwards direction from the Chagos Archipelago.

265 MM, para. 2.37.

266 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**), paras. 4-4, 5-6, 6-5.

267 *Ibid.*, para. 6-4.

268 MCM, paras. 84–86.

a point where the Chagos Trough has lost its morphological expression in the Laccadive Basin, before abruptly turning in a southwestward direction for an additional 200 M, connecting to the southern part of the Laccadive Basin to arrive at FOS-VIT31B."[269]

129. That submerged prolongation was depicted by a red arrow in Figure 9 of the Counter-Memorial (reproduced below as Figure 10 of this Rejoinder). As shown in that Figure (denoted by pale grey shading), the Maldives (correctly) identified the relevant BOS as running along the Chagos Trough to the north where the Trough loses its morphological expression in the Laccadive Basin.[270] This Figure was consistent with Mauritius' own contentions that the natural prolongation on which its alleged OCS entitlement relied was to the north of the Chagos Archipelago and the west of the Chagos Trough.

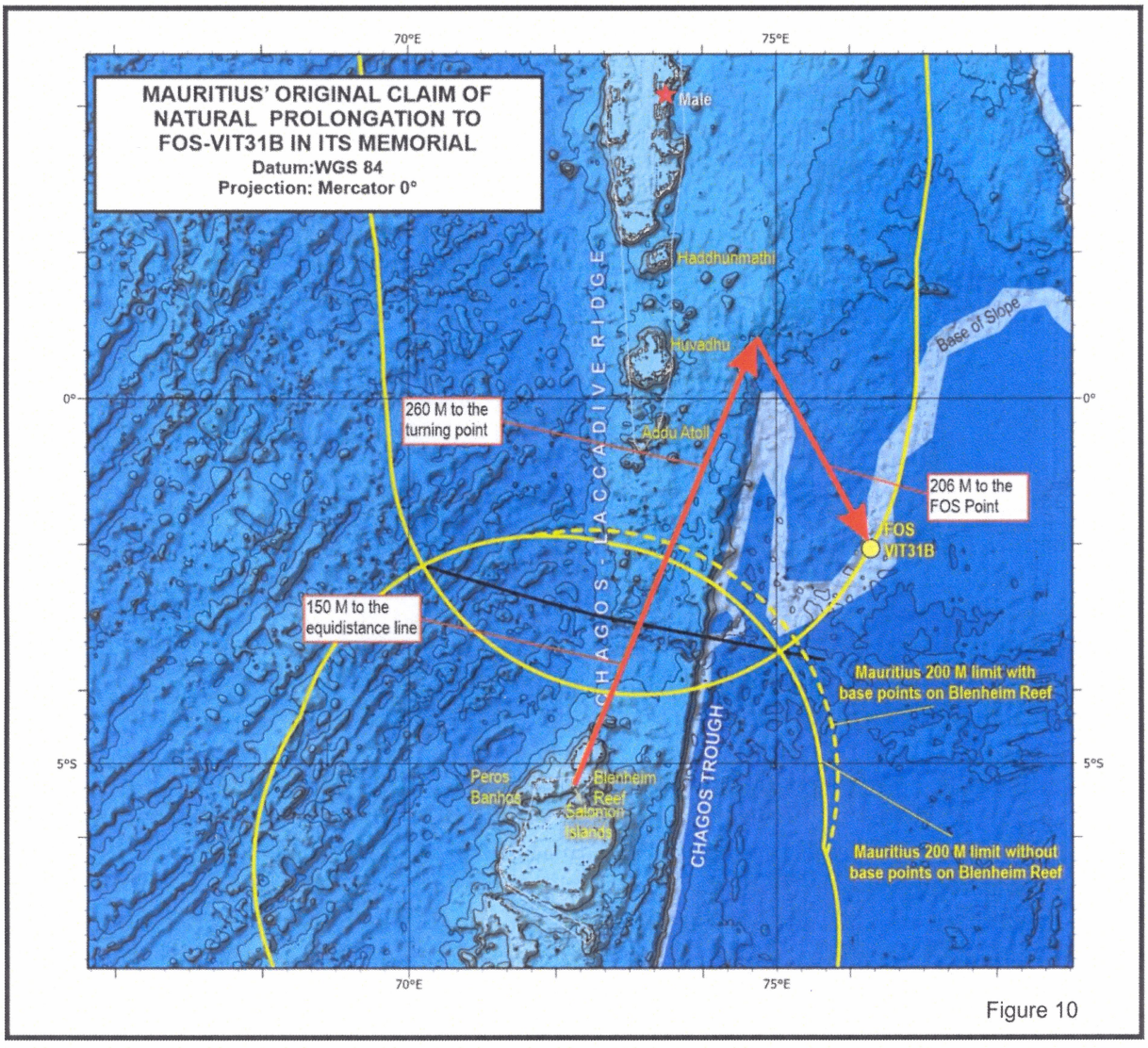

Figure 10

130. In its Reply, Mauritius has abandoned its prior position and advanced a contradictory approach to natural prolongation based on a BOS to the east of the Chagos Trough that is clearly inconsistent with Article 76 and the CLCS Guidelines. Mauritius' new

269 *Ibid.*, para. 85 (internal citation omitted).
270 See also *ibid.*

argument is premised on the assertion that, contrary to its previous statements: (i) the Chagos Trough does *not* bound the CLR because it is interrupted at the Gardiner Seamounts to the south; (ii) Mauritius can establish the natural prolongation of its landmass because of that purported interruption of the Chagos Trough by the Gardiner Seamounts; and (iii) the natural prolongation on which it relies does not encroach on the Maldives' continental shelf within 200 M (this latter point being a central pillar of Mauritius' current claim to an OCS entitlement). In particular, Mauritius states that:

> "Maldives is thus wrong to argue that 'FOS-VIT31B can only be characterised as the natural prolongation of the Maldives' submerged land territory across the Maldives' seabed.' As demonstrated in [Mauritius' 2022] Partial Submission, the base of slope region starts southward of the Chagos-Laccadive Ridge, abutting the eastern extension of the Chagos-Laccadive Ridge within the EEZ of Mauritius. The region continues northward along the Chagos-Laccadive Ridge 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.
>
> *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, as shown in **Figure R4.4**, 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.*"[271]

131. The Gardiner Seamounts is the name given to a series of underwater peaks to the east of the southern part of the Chagos Bank which represent a protuberance of the slope of the CLR; they are marked on Figure 11 below as "GSM".[272] As is evident from the same Figure, the relatively flat 5,000 m deep ocean floor lies immediately to the east of the Gardiner Seamounts, as is the case along the length of the Chagos Trough (to its east). The largest of these peaks rises from the seafloor (which occurs at depths averaging 5,000 m), to a depth of approximately 700 m.

132. Mauritius' new asserted natural prolongation put forward in the Reply is depicted in Figure 11 below in the dashed red line (with the BOS it now advances in dark grey) in contrast with the solid red line from the Maldives' Counter-Memorial. The light grey region represents the BOS region which is consistent with Mauritius' statements in its Memorial, its 2021 Preliminary Information and its 2019 CLCS Submission, and on which the Maldives relies. What is clear is that, instead of establishing natural

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271 MR, paras. 4.12–4.13 (emphasis added, internal citations omitted).

272 Mauritius has provided a graphic depicting the Gardiner Seamounts at Reply Figure R4.4. That graphic is taken from the 'SCUFN Gazetteer' (SCUFN being the Sub-committee on Undersea Feature Names of General Bathymetric Chart of the Oceans ('GEBCO')). The Gazetteer provides names, generic feature type and geographic position of features on the seafloor: General Bathymetric Chart of the Oceans, 'Undersea Feature Names – A digital gazetteer of the names of features on the seafloor' <https://www.gebco.net/data_and_products/undersea_feature_names/> accessed 5 August 2022 (**Annex 18**). It does not (and does not purport to) present accurate definitions of the feature and its morphological relationship with the CLR.

prolongation to the north of the CLR and west of the Chagos Trough through the Maldives' EEZ, Mauritius now advances a circuitous route in the opposite direction that goes first to the south, and then, at the Gardiner Seamounts, turns sharply north before traversing along an area to the east of the Chagos Trough, to arrive at the critical FOS point.

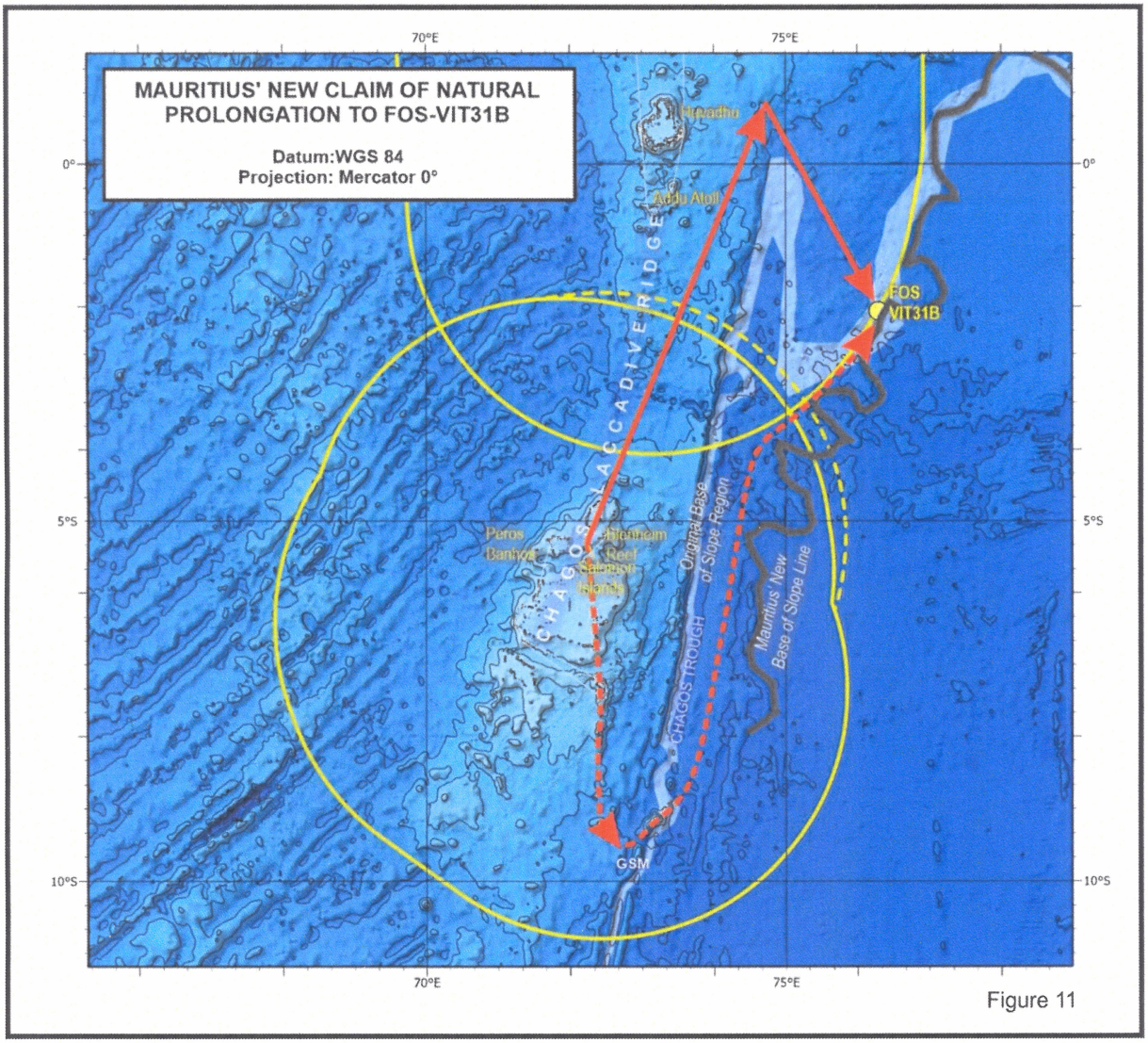

Figure 11

133. Noting that Mauritius' purported natural prolongation is now based exclusively on the Gardiner Seamounts, it is remarkable that there was no mention whatsoever of this feature in the Memorial or its 2021 Preliminary Information, despite these documents purporting to have identified all of the geomorphological and geological features on which Mauritius' claimed OCS entitlement rested. Presumably, that is because prior to its Reply, Mauritius' express position was that: (i) the CLR was bounded to the east by the Chagos Trough throughout, without any suggestion of an interruption to the south; and (ii) Mauritius' OCS entitlement extended from Paros Banhos Atoll Salomon Islands Atoll and Blenheim Reef — i.e., to the north of the Chagos Archipelago. What is even more striking is that the Gardiner Seamounts are not even mentioned in

Mauritius' 2022 Submission to the CLCS,[273] despite this document being filed virtually simultaneously with the Reply. Specifically:

(a) In the 2022 Submission, Mauritius states that the Chagos Trough is "also called the Vishnu Fracture Zone",[274] and repeats that this feature represents the eastern boundary of the CLR. Specifically, it repeats its previous contention that "[t]he Chagos Ridge (the southern segment of the CLR) is bounded to the east by the Chagos Trough",[275] a feature which it says "extend[s] *from south of the Chagos Archipelago Region up to the equator around 0° and 1°N*".[276] It also confirms that "[t]he Chagos Archipelago sits on the Chagos Ridge"[277] and that the Chagos Trough "is a long well-defined oriented trench parallel to the ridge's trend".[278]

(b) The 2022 Submission claims that "the natural prolongation of the continental shelf in the northern Chagos Archipelago rests *northward along the CLR* and is predicated on an extension of the submerged prolongation of the landmass of the Republic of Mauritius from the landmass of Peros Banhos, Salomon Islands and Blenheim Reef".[279] It also states that "the composite single beam bathymetric profile … on which FOS-VIT31B is based *runs north along the Chagos-Laccadive Ridge ... then east ... and then runs south parallel to the CLR* … in the Central Indian Basin".[280] That profile is depicted in Figure 3.6 of Mauritius' 2022 Partial Submission.[281] It is reproduced at Figure 12 below, overlaid on Figure 10 (which, as noted above, is taken from the Maldives' Counter-Memorial depicting Mauritius' alleged submerged prolongation from the landmass of the Chagos Archipelago to FOS-VIT31B).

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273 Apart from being labelled on a single figure (Figure 2.1).

274 2022 Submission (Main Body) (**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.

275 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 **(Annex 5)** (emphasis added).

276 2022 Submission (Main Body) (**MR, Annex 3**), para. 2.3.1.2.

277 *Ibid.*, para. 2.3.3.2.1 (emphasis added).

278 *Ibid.*, para. 2.3.1.2.

279 *Ibid.*, para. 2.3.3.2.1 (emphasis added).

280 *Ibid.*, para. 3.5.1.2 (emphasis added). The purpose of generating the composite single beam bathymetric profile is to show the relevant submerged prolongation.

281 2022 Submission (Main Body) (**MR, Annex 3**), p. 42.

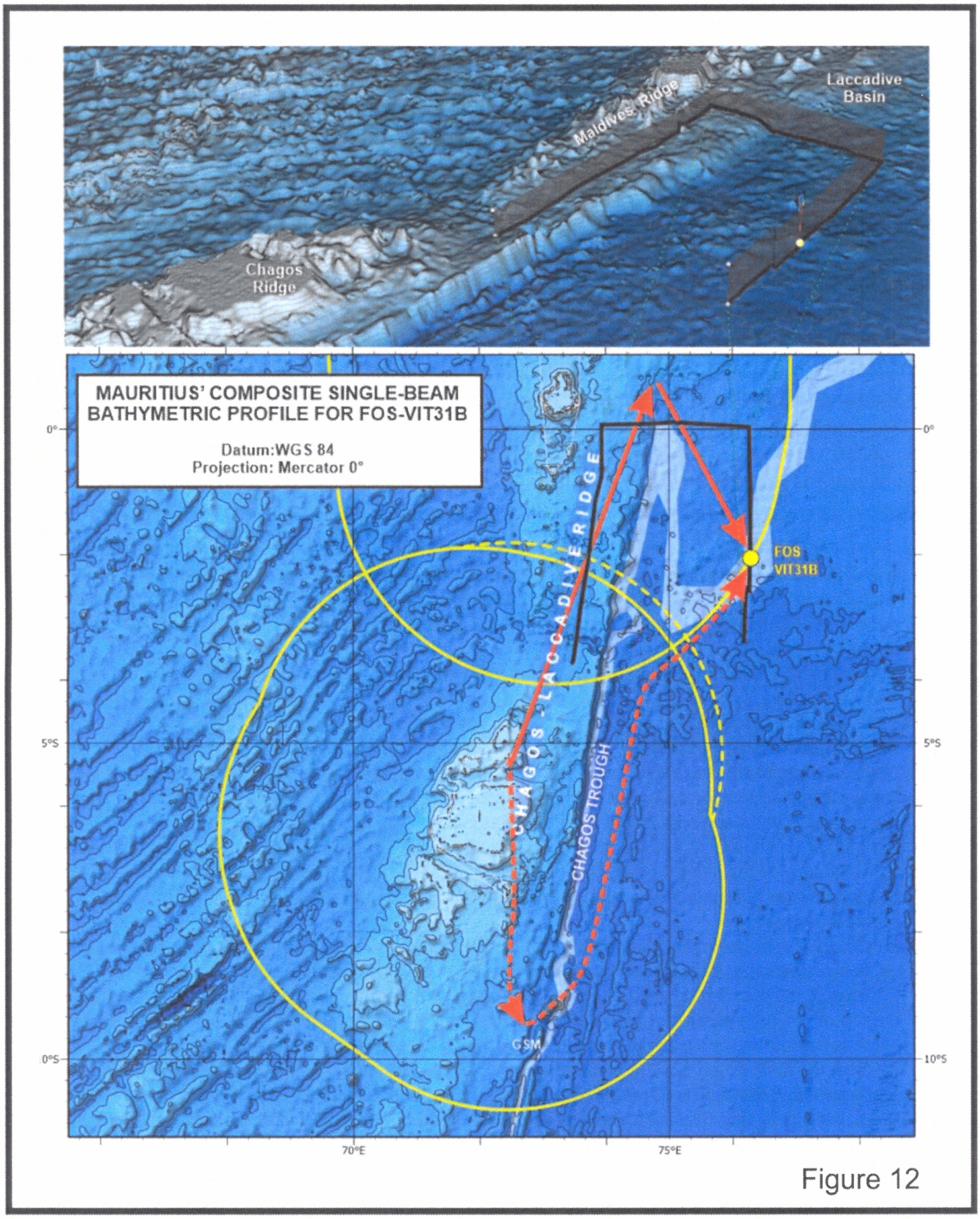

Figure 12

(c) This leaves no doubt that: (i) even in its 2022 Submission Mauritius is indeed relying upon a submerged prolongation closely resembling that identified in the Maldives' Counter-Memorial; and (ii) this submerged prolongation passes through the Maldives' undisputed continental shelf within 200 M.

134. Further, the line which Mauritius now identifies as its new BOS[282] is located not along the edge of the Vishnu Fracture Zone (as the 2022 Submission contends) but a *different*, more seaward fracture zone (termed the Northern Boussole Fracture Zone ('NBFZ')) which occurs within the deep ocean floor of the Indian Ocean Basin,[283] well beyond the continental margin as defined by UNCLOS Article 76(3).[284] This is clearly not the region where "the lower part of the slope merges in the direction of the deep ocean floor" as required by the CLCS Guidelines.[285] The new line which Mauritius now identifies as its BOS — a line at a gradient of approximately 0.7 degrees — in fact slopes in the *opposite* direction, *towards* the continental margin.[286]

135. Even if these difficulties could be overcome: (i) Mauritius has not provided the requisite measured bathymetric data in the region of the Gardiner Seamounts on which it could validly ground a case of submerged prolongation — a lack of sufficient data being a basis on which the CLCS has rejected submissions;[287] and (ii) there are obvious morphological breaks in the seafloor between the Gardiner Seamounts and

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282 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 (see MR, para. 4.10, Figure R4.3) stops to the east of the CLR, at a latitude where the CLR continues for a significant distance to the south.

283 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 (**Annex 19**), at pp. 310, 312, 313 ("The Vishnu FZ was designated to a ~1300 km long scarp east of the Chagos Bank. ... The fracture zone located immediately east of the Vishnu FZ is the Northern Boussole Fracture Zone (Patriat and Segoufin, 1988), also known as 73°E Fracture Zone (Kamesh Raju, 1993), which represents the conjugate of the Southern Boussole Fracture Zone in the Madagascar Basin, located immediately east of the Mauritius FZ").

284 Article 76(3) of UNCLOS states: "The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. *It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof*" (emphasis added).

285 The CLCS Guidelines provide in relevant part that the continental slope is defined "as the outer portion of the continental margin that extends from the shelf edge … to the deep ocean floor" (para. 5.4.4) and the base of the continental shelf is defined as "a region where the lower part of the slope merges into … the top of the deep ocean floor" (para. 5.4.5). The CLCS recommends that the search for the base of the slope is 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" (para. 5.4.5 of the CLCS Guidelines, cited and relied upon by Mauritius in its 2022 Submission (Main Body) (**MR, Annex 3**), para. 1.9.1).

286 It is noted that the BOS upon which Mauritius relies in the region of the Gardiner Seamounts has to be inferred as this is not even addressed in its 2022 Submission (as noted above) or in its Reply (Figure R4.3 simply reproduces the figure from the 2022 Submission which does not extend as far south as the Gardiner Seamounts).

287 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) <https://www.un.org/Depts/los/clcs_new/submissions_files/syc39_09/2018_08_27_COM_SUMREC_SYC.pdf> accessed 5 August 2022 (**Annex 20**), paras. 35–36 ("concerned by the fact that the natural prolongation coming from the landmass to the critical FOS point could not be established based on the spatial coverage of the bathymetric data available … none of the proposed FOS points that could contribute to an outer limit beyond 200 M line could be reliably connected to the landmass of Seychelles based on the data provided in the Submission").

FOS-VIT31B at depths of around 5,000 m, which has previously been identified by Mauritius as the deep ocean floor[288] beyond the continental margin.[289]

136. Accordingly, Mauritius' new theory of submerged prolongation based on the Gardiner Seamounts is wholly inconsistent with its earlier express admissions that the CLR does not extend to the east of the Chagos Trough, as well as with UNCLOS Article 76 and the CLCS Guidelines. Mauritius does not dispute that it cannot establish appurtenance based on the submerged prolongation of the Maldives' land territory, deep within the Maldives' uncontested continental shelf within 200 M. As such, its assertion of an OCS entitlement is manifestly unfounded, and its claim for delimitation beyond 200 M is inadmissible.

IV. Mauritius has failed to respond to the argument that its proposed delimitation is predicated on the CLCS making a specific recommendation on delineation

137. In its Counter-Memorial, the Maldives established that a further basis for the inadmissibility of Mauritius' OCS claim is that its arbitrary 'method' of equal division is predicated on the CLCS making a specific recommendation as to delineation.[290] It pointed out the following as a matter of well-established legal principle:

(a) The CLCS has exclusive competence to make final recommendations as to delineation of the outer limits of a State's OCS entitlement.[291]

(b) It is possible for an international court or tribunal to delimit a maritime boundary in the OCS without the CLCS having first made recommendations as to delineation[292] where delimitation can be performed "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".[293] This can occur if, for example, delimitation is based on a directional line that is not predicated on where the CLCS may ultimately identify the outer margins of the Parties' OCS entitlements as lying.[294]

138. The Maldives further showed that the delimitation proposed by Mauritius is not consistent with these principles because it is premised on a boundary which grants each Party half of a pre-determined area. Specifically, according to Mauritius, each Party

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288 MM, para. 2.35. See also 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 (the CLR "merges with the deep ocean floor at a depth of around 5000 m").

289 See Article 76(3), quoted at footnote 284 above.

290 MCM, paras. 87–92.

291 *Ibid.*, para. 87.

292 *Ibid.*, paras. 88–89.

293 *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, para. 379, cited at MCM, para. 87. 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.

294 MCM, para. 89, citing: *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, ICJ Reports 2018, p. 139 at p. 192, para. 144, and p. 197, para. 157; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 196.

should receive an area asserted in the Memorial to be 11,149 km^2,[295] and reduced in the Reply to 11,136 km^2.[296] This 'method' of equal division is necessarily predicated on the CLCS making the precise recommendation as to delineation which Mauritius has advanced; if the CLCS made a different recommendation, a delimitation based on equal division of the territory which had been previously declared by the Chamber would result in one of the Parties receiving more than the other Party. This would eviscerate the sole premise for Mauritius' proposed delimitation, being a mathematically identical split of the continental shelf beyond 200 M.[297]

139. Regrettably, Mauritius' Reply completely avoids this argument. It does so by disregarding the fundamental distinction between delineation and delimitation. It recites passages from various cases in which delimitation has been possible based on an azimuth but without a terminus (i.e. without a prior delineation)[298] — a settled point which the Maldives has already explained in its Counter-Memorial[299] (as noted above). Mauritius therefore has no answer to this objection to admissibility, which is specific to the circumstances of the present case.

140. In circumstances where Mauritius' claim to entitlement is manifestly unfounded, drawing the proposed azimuth and terminus advanced by Mauritius would do nothing but unjustly deprive the Maldives of 11,136 km^2 of its OCS entitlement.

141. For completeness, the jurisprudence makes clear that there is in law only a single continental shelf which is subject to the same approach to delimitation.[300] Mauritius has failed to justify why the three-step methodology should suddenly be abandoned beyond 200 M.[301] Specifically:

(a) In all of the cases cited by Mauritius addressing the importance of an equitable delimitation, the three-stage methodology was applied, including (where

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295 MM, para. 4.77 and Figure 4.11 (cited in MCM, para. 91).

296 MR, Figure R4.6.

297 MCM, para. 92. Even in the course of the present proceedings, Mauritius has already changed what it says is the total area which is to be divided between the Parties: see MR para. 4.3, footnote 183. Further, for the reasons stated at paras. 65, 78–79 above, the outer limit of Mauritius' claimed OCS must be recalculated using baselines correctly drawn from LTEs within 12 M of the nearest island (see Article 76(6) of UNCLOS).

298 MR, paras. 4.15–4.16.

299 MCM, paras. 87–89.

300 Mauritius has conceded that "[i]t is now axiomatic that there is a single continental shelf, not two separate shelves for the areas within and beyond 200 M" (MM, para. 4.67), citing *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, paras. 526 ("As far as the methodology for delimiting the continental shelf beyond 200 nm 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 200 nm as far as the delimitation methodology is concerned"). See also *Barbados v. Trinidad and Tobago*, Award, 11 April 2006, para. 213; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014, paras. 77, 404, 456; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, paras. 182, 196; *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 454–455.

301 MR, para. 4.18.

relevant) in respect of OCS entitlements.[302] This reflects the fact that this methodology takes into account the factors relevant in each case, as well as the fundamental importance of the principles of stability and predictability to maritime delimitation. Here, the application of the three-stage methodology would be equitable.[303] Noting that the Maldives is the only State with any OCS entitlement in the area in question, [304] the geography (notably the Parties' coastline both as regards its extent and proximity to the claimed OCS) and geomorphology (as described above) clearly justify the delimitation for which the Maldives contends. It is Mauritius which seeks impermissibly to "refashion geography".[305]

(b) Mauritius' reliance on an alleged distinction between the legal basis for a coastal State's entitlement to an EEZ/continental shelf within 200 M ("based on *coastal geography and distance from the coast*"), and its entitlement to a continental shelf beyond 200 M ("based exclusively on the *natural prolongation of the shelf* appurtenant to the coast") is flawed.[306] Article 76(1) of UNCLOS provides that the legal basis of a coastal State's entitlement to a continental shelf is based on a factual reality, namely the "natural prolongation of the land territory" (except if, and only if, the outer edge of this natural prolongation does not extend up to 200 M).[307] The Maldives' entitlement to its continental shelf throughout its length beyond 200 M (as with Mauritius if it had such an entitlement beyond 200 M, *quod non*) finds its legal basis in such a natural prolongation. Given the common ground that the three-step methodology applies for the delimitation of that part of the area of overlapping claims to a continental shelf within 200 M, there would be no reason, based on the nature of their respective entitlements, not to apply the same methodology for the delimitation of the rest of the overlapping area of continental shelf entitlements.

(c) As to Mauritius' unprecedented and baseless 'method' of "equal apportionment", [308] the settled jurisprudence expressly rejects delimitation based on "distributive justice" or "equality".[309] Mauritius acknowledges that

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302 See MR, paras. 4.18–4.19, 4.21 citing *Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 206–340, 450–462; *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021. See also Mauritius' admission that the three-step methodology achieves an equitable solution in "most" delimitation scenarios: MR, para. 4.18.

303 Cf. the allegation that its application would be "robotic" (MR para. 4.18). See also MR, paras. 4.20, 4.22.

304 See Section III above.

305 Cf. *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para. 409; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 172; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria; Equatorial Guinea intervening)*, Judgment, ICJ Reports 2002, p. 303 at pp. 436–437, 445–446, paras. 280, 296 and 299.

306 MR, para. 4.23 (emphasis added), referring to an argument made in MM, para. 4.72.

307 Article 76(1) of UNCLOS.

308 MR, para. 4.25

309 MCM, footnote 184, citing *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, para.

equitable delimitation within 200 M is "not an exercise of 'splitting the difference' between the Parties, or 'other mathematical approaches or use [of] ratio methodologies that would entail attributing to one Party what as a matter of law might belong to the other'".[310] And yet, in an apparent *volte face* it tries to convince the Special Chamber that, "in the circumstances of the present case",[311] the three-step methodology should be abandoned beyond 200 M precisely because it fails to 'split the difference'.[312] Its flawed argument as to disproportionality is based solely on the area beyond 200 M. As Mauritius itself stated in the Memorial "[w]ith regard to the continental shelf beyond 200 M, the non-disproportionality test applies by reference to the entire relevant area, and not separately for the areas within and beyond 200 M".[313]

142. Thus, Mauritius' proposed equal division 'method' is clearly inadmissible because it is predicated on a particular delineation being recommended by the CLCS, and, in any event, its proposed delimitation is wholly inconsistent with the jurisprudence on equitable delimitation under Article 83 of UNCLOS.

409; *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, Decision of 30 June 1977, para. 249; *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, Award, 7 July 2014 para. 397; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Judgment, 12 October 2021, para. 172; *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, Judgment, ICJ Reports 1969, p. 3 at p. 50, para. 91.

310 MR, para. 2.84.

311 MR, paras. 4.20, 4. 24, 4.25.

312 Mauritius asserts that "applying the equidistance/relevant circumstances methodology would very obviously not yield an equitable solution. … [T]he application of that methodology would result in Maldives being apportioned 22,022 km^2 of the area of overlapping entitlements, which amounts to 98.88% of the area. Mauritius would be left with a mere 250 km^2, that is, just 1.12% of the area": MR, para. 4.20.

313 MM, para. 4.78, citing *inter alia Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012, paras. 490–497; *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment, 23 September 2017, paras. 533–538.

CHAPTER 3: MAURITIUS' BASELESS CLAIM FOR COMPENSATION

143. Mauritius alleges that the Maldives "failed to co-operate" in relation to the Survey[314] and asks the Special Chamber to order that certain costs alleged to have been incurred in the conduct of that Survey be paid by the Maldives.[315] As set out in the Introduction Chapter 1,[316] the focus of the Survey was Mauritius' assertion of sovereignty over the Chagos Archipelago, and, as the Maldives had predicted, its findings are irrelevant to the fundamental issue of whether base points can properly be placed on Blenheim Reef. Nonetheless, the written communications of the Parties clearly record that at all times the Maldives cooperated in good faith and agreed to allow the Survey vessel to use the port at Gan (which is not an official sea port). Those communications are all annexed[317] and evidence the following five key points.

144. First, Mauritius' request to use the Maldives' port was made (for no good reason) at a very late stage in the proceedings and the Maldives responded as soon as was reasonably practicable:

(a) It was by a Note dated 1 December 2021 ('the 1 December Note'), received by the Maldives on 3 December 2021 when it was received by the Maldives' Permanent Mission to the United Nations in New York,[318] that Mauritius: (i) first informed the Maldives that "it will carry out an on-site scientific survey" in February 2022, described in similar terms in a separate letter to the Chamber as an "on-site technical and scientific survey of Blenheim Reef, Salomon Islands and appurtenant waters";[319] and (ii) "expresse[d] the hope" that the Maldives "would facilitate the departure of the vessel and the Mauritius team

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314 It is noted that Mauritius does not address the basis for a legal obligation to cooperate with the Survey in the circumstances of this matter.

315 MR, Submissions para. (2), p. 56. See also MR, paras. 1.16, 1.26.

316 See paras. 5, 19 above.

317 In ascending date order, the relevant communications are as follows: Note Verbale from the Republic of Mauritius to the Republic of Maldives, 1 December 2021 (**Annex 21**); 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 (**Annex 22**); Letter from the Republic of Maldives to the Republic of Mauritius, 13 January 2022 (**Annex 23**); Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 13 January 2022 (**Annex 24**); Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 17 January 2022 (**Annex 25**); Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 17 January 2022 (**Annex 26**); Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 20 January 2022 (**Annex 27**); Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 8 February 2022 (**Annex 28**); Letter from the Registrar of the International Tribunal for the Law of the Sea to the Republic of Maldives, 9 February 2022 (**Annex 29**); Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 14 February 2022 (**Annex 30**).

318 Note Verbale from the Republic of Mauritius to the Republic of Maldives, 1 December 2021 (**Annex 21**).

319 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 (**Annex 22**).

from, and their return to, Gan". Mauritius further stated that it would provide "all relevant and necessary information in a timely manner".[320]

(b) The Maldives responded to Mauritius as soon as was reasonably practicable, within just a few weeks on 13 January 2022, noting that of course time was required to co-ordinate between the relevant government departments of the Maldives before responding to Mauritius.[321]

145. Second, the Maldives expressly and repeatedly made clear its willingness to facilitate the use of the port of Gan by the vessel and the Survey team (including lawyers and government officials whose presence was necessary):

(a) In its response of 13 January 2022,[322] as repeated on 20 January 2022,[323] the Maldives expressly confirmed that it was "willing" to facilitate the departure of the vessel and the team from — and their return to — Gan. It explained that this was subject to the requisite permits and approvals being obtained; as a matter of domestic law, permission is required from the relevant authorities for a vessel to call at Gan which is not an official sea port.[324] There was no reason to consider that this would be controversial as Mauritius had already offered to provide "all relevant and necessary information".

(b) As noted above, Mauritius had made clear that it sought to conduct a scientific survey — in other words, a technical exercise. Accordingly, the Maldives confirmed it would grant permission to "individuals with technical roles directly involved" in the Survey and asked for further information in that regard,[325] with a view to the efficient progress of the relevant authorisation.[326]

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320 As noted above, Mauritius identified statements in the Maldives' Counter-Memorial with which it disagreed and which, on its view, necessitated the Survey (notably, that the Maldives' position that Blenheim Reef "does not form part of Salomon Islands Atoll", and that it is not an appropriate site for base points for the construction of an equidistance line).

321 It is also noted that: (i) it was Mauritius' election not to have conducted the survey at an earlier stage in proceedings; (ii) the December Note did not expressly present any direct question to the Maldives; and (iii) the Maldives was also at this time considering and responding to the submissions filed by the Chagossian Committee Seychelles (which were filed on 24 November 2021 and on which the Maldives was required by the Special Chamber to comment by no later than 15 December 2021).

322 Letter from the Republic of Maldives to the Republic of Mauritius, 13 January 2022 (**Annex 23**).

323 Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 20 January 2022 (**Annex 27**).

324 As noted by the Maldives in Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 17 January 2022 (**Annex 25**). Foreign vessels arriving cannot ordinarily dock directly at Gan, but must first dock at an international seaport and then obtain special permission before docking at Gan. Furthermore, the necessary visas and/or entry permits (including, where applicable, diplomatic visas and clearances) require processing. The relevant legal requirements are set out in Customs General Regulation, as amended to 27 May 2021, ss. 57(a), 70(a), 74 (original and unofficial English translation) (**Annex 31**); Maldives Immigration Act, as amended to 25 November 2020, s. 22 (original and unofficial English translation) (**Annex 32**).

325 Specifically, it requested information as to who was attending and their technical role.

326 The Maldives confirmed its position in Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 13 January 2022 (**Annex 24**) ("Mauritius has requested the Maldives' cooperation in facilitating the departure of the survey vessel from Gan in Addu Atoll, the Maldives' southernmost atoll. The Maldives has indicated that it is willing to accede to this request and will grant permission to individuals with technical roles directly involved in the survey to enter and exit the port at Gan, subject to Mauritius obtaining the necessary clearances").

The Maldives subsequently made it expressly clear that "individuals with technical roles directly involved" included relevant lawyers and government officials.[327] Mauritius asserts that it "was for Mauritius alone to decide on the composition of a team to survey its territory",[328] but of course the Maldives was entitled to ask further questions with respect to access to a port (which requires exceptional permission) on its sovereign territory for the stated purpose of a technical survey.[329]

146. Third, the Maldives had a concern, reflecting a practical reality, that any survey should be carried out with a view to avoiding disruptions that might have negative implications considering the de facto continued British administration of the Chagos Archipelago. The Maldives accordingly made a request for Mauritius to ensure that "necessary clearances" from the United Kingdom were acquired. As to Mauritius' position on this:

(a) Mauritius' characterisation of this as a "*requirement*"[330] or as somehow "inconsistent" with the Special Chamber's Judgment on Preliminary Objections and UN General Assembly resolution 73/295[331] is unfortunate and incorrect; it was a *request* made by the Maldives in light of the *bona fide* concern referred to above.[332]

(b) Despite such accusations against the Maldives, Mauritius itself: (i) had noted in its Memorial that its ability to conduct a survey was impaired by the United Kingdom's position with respect to the Chagos Archipelago;[333] and (ii) subsequently notified the United Kingdom of its intention to carry out the Survey, obtaining just the type of clearance that the Maldives indicated would be advisable (described by Mauritius as a "firm assurance that 'the British authorities will not impede the survey'"[334]). Any attempt by Mauritius to distinguish its communications with the United Kingdom as a mere "matter of

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327 Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 20 January 2022 (**Annex 27**).

328 MR, para. 1.13.

329 As noted by the Maldives in Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 20 January 2022 (**Annex 27**).

330 MR, para. 1.14 (emphasis added).

331 *Ibid.*

332 The United Kingdom re-affirmed its claim to sovereignty over the Chagos Archipelago in a statement issued on 14 February 2022: "Chagos Islands: Mauritian flag raised on British-controlled islands", *BBC*, 14 February 2022 <https://www.bbc.co.uk/news/uk-60378487> accessed 5 August 2022 (**Annex 4**).

333 MM, para. 2.25 (stating "an on-site survey … has not been possible, in spite of the February 2019 ICJ Advisory Opinion and the January 2021 Judgment of the ITLOS Special Chamber, due to the claims by the United Kingdom and its illegal colonial occupation of the Chagos Archipelago"). This reflects Mauritius' acknowledgment of the very same pragmatic reality with which the Maldives sought to engage.

334 The fact of this notification and the response of the United Kingdom is recorded in 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 (**Annex 22**). In a statement dated February 2022, the United Kingdom confirmed that Mauritius "notified the U.K. about its plans to conduct a scientific survey close to the Chagos Islands" and in response the United Kingdom "gave assurances to Mauritius that it would not interrupt the survey": "'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 (**Annex 33**).

courtesy"[335] is without substance (noting Mauritius has not disclosed these communications), and indeed the terms of the assurance sought would suggest an exchange based on more than mere 'courtesy'.

In the premises, for Mauritius now to accuse the Maldives of acting in bad faith[336] is highly regrettable.

147. Fourth, Mauritius chose not to engage in constructive discussions directly with the Maldives regarding any concerns it had before electing to use a port in the Seychelles:

(a) After Mauritius had sent the 1 December Note, rather than simply communicating directly with the Maldives to enquire with respect to its response, Mauritius elected to complain directly to the Special Chamber (by a letter dated 12 January 2022[337] that was received by the Maldives after it had in fact sent its response to Mauritius on 13 January 2022).

(b) As confirmed by the Maldives in a letter to the Registrar, having received the Maldives' response of 13 January 2022, it was for Mauritius to "take the necessary steps to obtain authorisation from the relevant Maldivian authorities".[338] Mauritius did not take such steps. Nor did Mauritius contact the Maldives directly to discuss any concerns it may have, including, for example: (i) making a "simple request for clarification" that "lawyers and government officials whose presence is necessary on the survey were clearly included" in the permission granted to Mauritius;[339] and/or (ii) exploring the possibility of using other ports in the Maldives.[340] Instead, Mauritius wrote to the Registrar on 17 January 2022 complaining that the position of the Maldives was

335 In Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 8 February 2022 (**Annex 28**) (provided to the Maldives by letter from the Registrar dated 9 February 2022 (Letter from the Registrar of the International Tribunal for the Law of the Sea to the Republic of Maldives, 9 February 2022 (**Annex 29**)), Mauritius stated that it "merely informed the colonial authorities about the survey of Blenheim Reef, Salomon Islands Atoll and appurtenant waters as a matter of courtesy and to seek an assurance that the survey would not be impeded".

336 See MR, para. 1.14, alleging that the "conditions imposed by Maldives were also inconsistent with its offer to collaborate in good faith".

337 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 (**Annex 23**); MR, para. 1.12.

338 The Maldives sent this letter dated 17 January 2022 in response to the letter from the Registrar dated 13 January 2022 attaching the letter of Mauritius dated 12 January 2022 complaining that the Maldives had not responded to its 1 December Note: Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 17 January 2022 (**Annex 25**). In fact, the Maldives had already despatched its response prior to receiving the Registrar's letter.

339 This fact was noted in Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 20 January 2022 (**Annex 27**, also **MR, Annex 12**). For Mauritius to maintain in its Reply that the Maldives was necessarily "excluding Mauritius' lawyers and officials" (MR, para. 1.13) is incorrect.

340 The allegation made that Maldives refused to "allow any part of its territory to be used in the conduct of the Survey" (see MR, Submissions para. (2), p. 56) is unsubstantiated and incorrect.

"unacceptable to Mauritius" and alleging it was now "impossible for Mauritius to use the port of Gan (or any other port in Maldives)".[341]

(c) When on 20 January 2022 the Maldives reiterated its willingness to accommodate the survey vessel and its team (including lawyers and government officials) whose presence was necessary,[342] rather than engage constructively with the Maldives, Mauritius simply informed the Registrar that "Mauritius has now proceeded to make arrangements for the survey to start and finish from a different location".[343] It is, however, clearly incorrect to assert that Mauritius was "compelled to make alternative arrangements".[344]

148. Fifth, Mauritius introduced this new factual evidence (the Survey) in its second-round pleading, some three years after it filed its Notification.[345] This is despite the fact that: (i) Mauritius was obliged to set out a statement of the entirety of the relevant facts in its Memorial;[346] and (ii) the Survey is based on data obtained in 2012,[347] along with an analysis of that data conducted prior to Mauritius' filing of its Memorial.[348]

149. For Mauritius now to ask the Special Chamber to order that the Maldives pay costs incurred in the conduct of the Survey aboard a luxury yacht is completely baseless, especially because: (i) Mauritius has failed to provide any documentary evidence whatsoever as to the actual costs incurred; (ii) the Survey was undertaken at an inappropriately late stage in proceedings and was irrelevant to the legal question of

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341 Letter dated 17 January 2022 (Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 17 January 2022 (**Annex 26**)), sent to the Maldives by the Registrar by letter of the same date.

342 Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 20 January 2022 (**Annex 27**).

343 Letter from the Republic of Mauritius to the Registrar of the International Tribunal for the Law of the Sea, 8 February 2022 (**Annex 28**). The Maldives wrote to the Registrar on 14 February 2022 stating: "The Special Chamber has already received the relevant communications regarding the Maldives' willingness to cooperate with Mauritius' technical survey and is of course aware of the proper dispute under UNCLOS that is before it. The Maldives will therefore not comment further on Mauritius' continued misrepresentation of the facts and rejects categorically its baseless assertion that the Maldives is acting in violation of UN General Assembly resolution 73/295 or that Mauritius is entitled to compensation for the additional costs of the survey. The Maldives reiterates its commitment to act in good faith and with professionalism in these proceedings, and to co-operate with the Special Chamber in respect of the maritime boundary delimitation under UNCLOS" (Letter from the Republic of Maldives to the Registrar of the International Tribunal for the Law of the Sea, 14 February 2022 (**Annex 30**)).

344 MR, para. 1.15.

345 Mauritius' Notification is dated 18 June 2019. As noted above, the Survey was provided as Annex 1 to Mauritius' Reply dated 14 April 2022.

346 See Chapter 2, paras. 108–111 above citing Article 62 of the Rules of the ITLOS Tribunal, *Whaling in the Antarctic (Australia v. Japan; New Zealand intervening)*, Judgment, ICJ Reports 2014, p. 226, Separate Opinion of Judge Greenwood, para. 35 and the fundamental principle of procedural fairness that a respondent State should be informed of and have a full opportunity to reply to the case against it.

347 See Survey (**MR, Annex 1**), internal Annex 2. This is a report of "satellite derived bathymetry" conducted by EOMAP. At p. 14 of that report is a table under the subheading "5 Summary" which sets out the date of the survey as "2012-12-20T05:58:48".

348 The table referred to in the preceding footnote states that the analysis of that survey data was conducted on "2021-04-09". It is understood that this date refers to 9 April 2021.

whether LTEs can properly be placed on Blenheim Reef; and (iii) in any event, the Maldives fully cooperated in good faith.

150. In the premises, it is regrettable that Mauritius elected to make this compensation claim. The focus of these proceedings should remain the maritime boundary dispute before the Chamber.

SUBMISSIONS

For the reasons set out in the Counter-Memorial and the Rejoinder, the Republic of Maldives requests the Special Chamber to adjudge and declare that:

(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 following points 1 to 46 as follows:

Point	Latitude	Longitude
1	02-17-19.1S	070-12-00.6E
2	02-19-22.8S	070-18-51.4E
3	02-22-50.0S	070-30-19.8E
4	02-23-24.5S	070-32-14.3E
5	02-24-54.3S	070-37-12.6E
6	02-32-515S	071-03-37.4E
7	02-33-32.3S	071-05-52.1E
8	02-34-02.5S	071-07-31.9E
9	02-35-03.2S	071-10-52.2E
10	02-35-51.5S	071-13-31.2E
11	02-36-13.8S	071-14-44.4E
12	02-36-58.6S	071-17-11.3E
13	02-39-35.3S	071-26-05.2E
14	02-40-03.3S	071-27-40.6E
15	02-41-18.7S	071-31-58.1E
16	02-42-43.4S	071-36-46.6E
17	02-43-45.9S	071-40-19.8E
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23	02-51-15.4S	072-06-44.9E
24	02-51-48.4S	072-08-49.6E
25	02-53-39.8S	072-15-50.4E
26	02-56-20.4S	072-25-56.6E
27	02-58-46.5S	072-35-08.8E
28	03-00-10.6S	072-42-14.8E
29	03-00-34.7S	072-44-17.0E

30	03-02-22.6S	072-53-24.5E
31	03-02-38.6S	072-54-45.5E
32	03-03-36.7S	072-59-39.2E
33	03-05-32.8S	073-09-26.1E
34	03-05-48.8S	073-10-46.8E
35	03-07-00.6S	073-16-48.5E
36	03-10-26.2S	073-34-04.3E
37	03-11-37.1S	073-40-01.4E
38	03-12-15.5S	073-43-14.5E
39	03-13-24.8S	073-49-03.6E
40	03-15-27.1S	073-59-19.5E
41	03-17-17.3S	074-08-42.7E
42	03-17-29.5S	074-09-44.8E
43	03-24-17.3S	074-44-21.3E
44	03-26-50.3S	074-57-21.9E
45	03-27-41.7S	075-01-40.6E
46	03-27-59.9S	075-03-12.2E

(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 M limit measured from the baselines of the Maldives:

Point	**Latitude**	**Longitude**
47*bis*	03-20-51.3S	075-12-56.7E

(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):

Point	**Latitude**	**Longitude**
a	03-29-18.1S	75-09-45.8E
b	03-29-25.0S	75-10-21.1E
c	03-33-11.5S	75-29-43.6E

(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.

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15 August 2022

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